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MONDAY
November 3, 1986

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Monday
November 3, 1986

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, New York, NY, and Pittsburgh, PA, see announcement on the inside cover of this issue.

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VOL 51 ISS 212 NO 3 1986 UMI

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: November 18 at 9:30 a.m.

WHERE: National Archives Theater,
8th and Pennsylvania Avenue NW.,
Washington, DC

RESERVATIONS: Laurice Clark, 202-523-3419.

NEW YORK, NY

WHEN: December 5 at 10:00 a.m.

WHERE: Room 305A, 26 Federal Plaza,
New York, NY

RESERVATIONS: Arlene Shapiro or Stephen Colon,
New York Federal Information Center,
212-264-4810.

PITTSBURGH, PA

WHEN: December 8 at 1:30 p.m.

WHERE: Room 2212, William S. Moorehead Federal
Building, 1000 Liberty Avenue,
Pittsburgh, PA

RESERVATIONS: Kenneth Jones or Lydia Shaw
Pittsburgh: 412-644-INFO
Philadelphia: 215-597-1707, 1709

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Presidential Documents

Title 3—

The President

Presidential Determination No. 87-2 of October 22, 1986

Assistance to the Nicaraguan Democratic Resistance

Memorandum for the Secretary of State

In accordance with Title II, Section 211(d)(1), of the act making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1987, as contained in Public Law 99-500, approved on October 18, 1986 (the "Act"), I hereby determine that the conditions set forth in that section with respect to the Nicaraguan democratic resistance have been met, specifically:

That Nicaraguan democratic resistance groups receiving assistance under the Act have agreed to and are beginning to implement:

(a) Confederation and reform measures to broaden their leadership base;

(b) coordination of their efforts;

(c) elimination of human rights abuses;

(d) pursuit of a defined and coordinated program for achieving representative democracy in Nicaragua;

(e) subordination of military forces to civilian leadership; and

(f) application of rigorous standards, procedures, and controls to assure that funds transferred under Section 206(a) of the Act are fully accounted for and are used exclusively for the purpose authorized by the Act.

In making this determination, I have taken into account the factors set forth in Section 211(d)(2) of the Act.

You are hereby directed to report this determination to the Congress. This memorandum shall be published in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, October 22, 1986.

[FR Doc. 86-24862
Filed 10-30-86; 12:17 pm]
Billing code 3195-01-M

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Filed 10-31
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Presidential Documents

Proclamation 5562 of October 31, 1986

Crack/Cocaine Awareness Month, 1986

By the President of the United States of America

A Proclamation

Cocaine poses a serious threat to our Nation. Long masquerading as glamorous and relatively harmless, cocaine has revealed its own deadly truth—cocaine is a killer. It can cause seizures, heart attacks, and strokes. It is indifferent in its destruction, striking regular users and initiates alike. The tragic deaths this past summer of two promising young athletes force us to recognize the terrible price this deadly drug exacts.

The tragedy of ruined lives and lost opportunities for personal growth and productivity cannot be adequately measured in dollars. It is too heavy a price for our citizens and for our Nation. As the consequences of cocaine use have been revealed, public awareness of the cocaine problem has increased. Yet many individuals continue to use cocaine, whether out of ignorance or unwillingness to believe its high risks. More than 22 million Americans have tried the drug at some time, and 5.8 million are current users.

Despite the best efforts by law enforcement officials, cocaine continues to come into our country at alarming levels, supplied by ruthless criminals who draw their power from public acquiescence. Bigger supplies and lower prices have put cocaine in the hands of people who were never before tempted to use it.

Today, an even more devastating form of cocaine—"crack"—has appeared. Crack is smoked, producing immediate effects in the user. It is relatively inexpensive, but is so powerfully addictive that the user, even a first-time user, feels an overwhelming compulsion for more. Crack is used by people of all ages. Tragically, it is sold to and used by even 11- and 12-year-olds. To mothers and fathers, boys and girls at this age are children. To a cocaine dealer, they are just another market.

The Congress, by Public Law 99-481, has designated October 1986 as "Crack/Cocaine Awareness Month" and has authorized and requested the President to issue a proclamation in observance of that occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of October 1986 as Crack/Cocaine Awareness Month. I call on each American to seek every opportunity to educate yourself and others about cocaine and to be unyielding in your intolerance of cocaine users and inflexible in your commitment to a drug-free America.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of October, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-24971
Filed 10-31-86; 12:05 pm]
Billing code 3195-01-M

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Presidential Documents

Proclamation 5563 of October 31, 1986

National Child Identification and Safety Information Day, 1986

By the President of the United States of America

A Proclamation

The American people are becoming increasingly aware of the incidence of abduction and exploitation of the children of the United States. In order to combat this threat, many private organizations and their dedicated volunteers have established programs to teach safety measures to children.

All across our country, in towns, cities, and rural areas alike, corporations, civic associations, church groups, and individual citizens are working together to strengthen the American family. Too often, we neglect to warn and protect these families from the most devastating blow they can suffer, the discovery that a child is missing. Many communities have neighborhood watch programs to help guard their possessions from theft. Should we do anything less for our children? Protecting the lives of these innocents is a community-wide responsibility. As part of this effort, many parents have established fingerprint and other identification records that will aid in locating their children should the unthinkable ever happen.

To focus national attention on this problem during Halloween, when parents are especially aware of possible threats to the safety of their children, the Congress, by Public Law 99–520, has designated October 31, 1986, as "National Child Identification and Safety Information Day" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim October 31, 1986, as National Child Identification and Safety Information Day, and I call upon the people of the United States to observe such day with appropriate and safe ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of October, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-24972
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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

Pay Administration; Prevailing Rate Systems

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This rule establishes a special pay plan for U.S. citizen wage employees in the Virgin Islands. The new plan is designed to provide a permanent and equitable method for determining rates of pay for covered employees in the Virgin Islands. The rule is necessary because the local industry/employment structure in the Virgin Islands does not meet the test of survey adequacy (establishment under wage system regulations) to be considered a separate wage area.

EFFECTIVE DATE: December 3, 1986.

FOR FURTHER INFORMATION CONTACT: Allan Summers (202) 632-7830.

SUPPLEMENTARY INFORMATION: On July 15, 1986, the Office of Personnel Management (OPM) published proposed regulations (51 FR 25531) to establish a special pay plan for U.S. citizen wage employees in the Virgin Islands. The proposed regulations provided a 60-day period for public comment. OPM received no comments during this period.

Even though there were no public comments, OPM did make one editorial change (§ 532.234(b)) to clarify that each grade and each step of the Virgin Islands special schedule will be adjusted during fiscal years 1987, 1988, and 1989.

OPM will proceed to implement these regulations effective with the date of the fiscal year 1987 adjustment to the overseas schedule. The Department of Defense, as lead agency, will issue all future Virgin Islands schedules.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulations.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they are changes that will affect only employees of the Federal Government.

List of Subjects in 5 CFR Part 532

Administrative practice and procedures, Government employees, Wages.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is proposing to amend 5 CFR Part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for Part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92-502.

2. Section 532.233 is amended by revising paragraph (a) to read as follows:

§ 532.233 Regular appropriated fund wage schedules in foreign areas and certain U.S. possessions and territories.

(a) The Office of Personnel Management shall issue regular appropriated fund wage schedules for U.S. citizens who are employees in foreign areas. The Department of Defense shall issue wage schedules for employees in Guam and Midway and, effective on the date of the fiscal year 1990 adjustment, in the Virgin Islands. The Department of Transportation shall issue wage schedules for employees in American Samoa. These schedules will provide rates of pay for nonsupervisory, leader, supervisory, and production facilitating employees.

* * * * *

3. A new § 532.234 is added to read as follows:

§ 532.234 Virgin Islands special wage schedules.

(a) The Department of Defense shall issue special wage schedules for U.S. citizen wage employees in the Virgin Islands in fiscal years 1987, 1988, and 1989. These schedules will provide rates of pay for nonsupervisory, leader, and supervisory employees.

(b) In each of the three fiscal years, on the effective date of the foreign areas schedules as prescribed in § 532.233, each grade and each step of the Virgin Islands special schedules will be increased by—

(1) The same cents per hour as the fiscal year's adjustment in the foreign areas schedules at the corresponding grade and step; plus

(2) An amount at each grade and step equal, as nearly as possible, to one-fourth of the difference between the FY 1986 Virgin Islands special schedules and the FY 1986 foreign areas schedules.

(c) The Virgin Islands special schedules will be abolished in FY 1990 on the effective date of the adjustment in the foreign areas schedules, and Virgin Islands wage employees will become subject to the foreign areas schedules as prescribed in § 532.233.

[FR Doc. 86-24774 Filed 10-31-86; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

Lemons Grown in California and Arizona; Amendment of Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) has decided to leave in effect an interim final rule which will: Allow handlers of organic lemons to ship 250 cartons per week of such lemons without regard to volume and size regulations under the order; permit the optional use of upward adjustments by handlers in Districts 1 and 3 up to 100 percent of their average weekly picks; and provide that District 2 handlers whose picks are interrupted for four or more successive weeks (rather than eight or more successive weeks as previously provided in the regulations) may apply for a new prorate base. This rule will also make these changes

effective for subsequent crop years. These actions provide lemon handlers with additional flexibilities to enable them to market their lemons more advantageously.

EFFECTIVE DATE: On and after December 3, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This final rule amends rules and regulations which pertain to handlers' prorate bases, upward adjustment of handlers' average weekly picks, and the exemption of organic lemons from volume and size requirements. In addition, this rule makes such amendments effective for subsequent crop years.

It is estimated that approximately 85 handlers of California-Arizona lemons under the marketing order for lemons grown in California and Arizona will be subject to regulation during the course of the current season and that the great majority of these firms may be classified as small entities. This action has been recommended by the committee and has been implemented in previous seasons. There is no anticipated adverse economic impact on small entities because this action relieves restrictions on handlers and provides them with increased marketing flexibilities. In addition, there is no increased burden in either reporting or recordkeeping for handlers to comply with the terms of these revised regulations.

An interim final rule was issued on July 31, 1986, and was published in the Federal Register on August 5, 1986 (51 FR 28059). Interested persons were given until September 4, 1986, to submit written comments on making these amendments effective for subsequent crop years. No comments were received.

The first change will allow the handling of organic lemons without regard to volume and size requirements that may be issued under the order if certain safeguards are met. Under the amendment, each handler of organic lemons will be required to apply to the committee for exemption from such regulations and furnish necessary information to the committee. The amendment will allow handlers to ship up to 250 cartons of organic lemons each week to designated market outlets, e.g. health food stores. This action is designed to facilitate the marketing of organic lemons. A similar exemption for the handling of organic lemons has been in effect for the past three marketing seasons.

The marketing order provides that the prorate base of each handler be based upon the handler's average weekly pick (the average weekly amount of lemons harvested and delivered to such handler's packinghouse during a specified number of weeks preceding the computation date). Provision for 100 percent upward adjustment of average weekly picks of handlers in Districts 1 and 3 is currently in effect and such provision has been in effect since 1980. Continuance of such a provision will allow Districts 1 and 3 handlers the option of receiving a larger proportion of their allotment earlier in the season, and enable them to use their proportionate share of the marketing opportunity more advantageously.

This final rule also changes from eight to four the minimum number of successive weeks during which picks are interrupted by District 2 handlers, before they may apply for a new prorate base. Under provisions of the marketing order, District 2 handlers who become eligible for a new prorate base may also apply for accelerated averaging of weekly picks and upward adjustments to receive additional allotment. Section 910.53(h) provides that the number of weeks specified in § 910.53(f)(2) may be changed through informal rulemaking. Such an amendment will afford District 2 handlers the opportunity to receive adjusted allotment to handle lemons on an accelerated basis. A similar rule has been authorized in past seasons. Since the rule is being made effective for this crop year and for subsequent crop years the term "8 successive weeks" in the first sentence of § 910.153(e)(2) is amended to read "4 successive weeks."

This rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The rule is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, Lemons, California, and Arizona.

PART 910—[AMENDED]

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.153 is amended by removing "8 successive weeks" from the first sentence of paragraph (e)(2) and by inserting "4 successive weeks" in place thereof, and by revising the first sentence of paragraph (e)(3) to read as follows:

§ 910.153 Prorate bases and allotments.

* * * * *

(e) * * *

(3) *Granting of upward adjustment for Districts 1 and 3 applicants.*

Upon receiving a duly filed application for an upward adjustment by a District 1 or 3 handler pursuant to § 910.53(f)(1), the committee shall adjust the average weekly pick of such handler by increasing such picks in the amount requested, but not in excess of 100 percent of such handler's average weekly pick. * * *

* * * * *

3. Section 910.180 is amended by adding a new paragraph (d)(3) to read as follows:

§ 910.180 Lemons not subject to regulation.

* * * * *

(d) * * *

(3) Any person may be granted an exemption of up to 250 cartons per week, or an equivalent amount thereof, to market or distribute organic lemons to organic or health food wholesalers or retailers. Such lemons shall be exempt from volume and size requirements issued under this part. Persons shall file with the committee an application for exemption as described in paragraph (d)(1) of this section. Such persons shall also file weekly reports (LAC Form 8) during each week in which such organic

lemons are shipped. For purposes of this section, "organic lemons" means lemons which are produced, harvested, distributed, stored, processed, and packaged without application of synthetically compounded fertilizers, pesticides, or growth regulators. In addition, no synthetically compounded fertilizers, pesticides, or growth regulators shall be applied by the grower to the field or area in which the lemons are grown for 12 months prior to the appearance of flower buds and throughout the entire growing and harvest season for lemons.

* * * * *

Dated: October 28, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86-24700 Filed 10-31-86; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-AEA-10]

Alteration of Control Zone, Atlantic City International Airport and Atlantic City Municipal/Bader Field, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; Request for comments.

SUMMARY: The nature of this action is to cancel the existing Atlantic City International Airport, NJ, and the Atlantic City Municipal/Bader Field, NJ, Control Zones and designate a new control zone in the same approximate area as the existing control zones. This action is taken to provide all users of the Atlantic City International and Atlantic City Municipal/Bader Field Airports those services associated with the Control Zone.

DATES: *Effective Date:* November 3, 1986.

Comment Date: Comments must be received on or before December 17, 1986.

ADDRESSES: Send comments on the rule in triplicate to: Glenn A. Bales, Manager, Airspace Planning Branch, AEA-530, Federal Aviation Administration, Docket 86-AEA-10, Fitzgerald Federal Building (formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430.

The official docket may be examined in the Office of Regional Counsel, Federal Aviation Administration, Fitzgerald Federal Building (formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Planning Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917-1228.

FOR FURTHER INFORMATION CONTACT: Glenn A. Bales, Airspace Planning Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917-1228.

SUPPLEMENTARY INFORMATION: On October 4, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulation (14 CFR Part 71) to designate a new control zone for Atlantic City Municipal/Bader Field, cancel the existing Atlantic City Control Zone, and designate a new Atlantic City International Airport Control Zone in the same approximate area as the existing control zone (50 FR 46751). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. One comment received supported establishment of a separate control zone to reduce delays and enhance safety. The rule was adopted as published in Handbook 7400.6B dated January 2, 1986. Since its adoption, weather reporting capabilities have been consistently unavailable. Since weather reporting service has been suspended for an indefinite period of time, permanent shutdown of service has resulted. The weather reporting and communications capability of Atlantic City Air Traffic Control to provide protection for aircraft operating to and from Atlantic City Municipal/Bader Field has been ascertained. The Current Atlantic City International Control Zone airspace abuts the Atlantic City Municipal/Bader Field Control Zone Airspace; Atlantic City Air Traffic Control can and will provide the service required for the Atlantic City Municipal/Bader Field Control Zone.

Request for Comments on the Rule

Although this action is in the form of a final rule, which cancels the existing Atlantic City International Airport, NJ, and the Atlantic City Municipal/Bader Field, NJ, Control Zones and designates a new control zone in the same approximate area as the existing control zones and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the Federal Aviation Administration (FAA) will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this rule must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AEA-10." The postcard will be date/time stamped and returned to the commenter. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments.

The Rule

The purpose of this amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to cancel the existing Atlantic City International Airport, NJ, and the Atlantic City Municipal/Bader Field, NJ, Control Zones and designate a new control zone in the same approximate area as the existing control zones. The FAA has identified a discrepancy in the weather reporting capability at Atlantic City Municipal/Bader Field and the weather reporting requirements and criteria for control zone designation; therefore, in order to provide all users of the Atlantic City International and Atlantic City Municipal Bader Field Airports those services associated with the Control Zone and to be consistent with the Agency's Safety Mandate, the present Atlantic City International Airport, NJ, and the Atlantic City Municipal/Bader Field, NJ, Control Zones will be canceled and a new control zone in the same approximate area as the existing control zones will be established. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

Under the circumstances presented, the FAA concludes that there is an

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immediate need for a regulation to cancel the existing Atlantic City International Airport, NJ, and the Atlantic City Municipal/Bader Field, NJ, Control Zones and designate a new control zone in the same approximate area as the existing control zones. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) is impracticable and contrary to the public interest. For that same reason, I find that good cause exists for making this amendment effective upon publication in the **Federal Register.**

The FAA has determined that this amendment only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zone, Aviation safety.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§71.171 [Amended]

2. Section 71.171 is amended as follows:

Atlantic City International Airport, NJ [Removed]

By removing the title and text.

Atlantic City Municipal/Bader Field, NJ [Removed]

By removing the title and text.

Atlantic City, NJ [New]

Within a 5-mile radius of the center, lat. 39°27′22″ N., long. 74°34′41″ W., of NAFEC Atlantic City Airport, Atlantic City, NJ; within 3 miles each side of the Atlantic City VORTAC 303° radial, extending from the 5-mile radius of the center, lat. 39°21′35″ N., long. 74°27′28″ W., of Atlantic City Municipal/Bader Field, Atlantic City, NJ; within 2 miles each side of the Atlantic City VORTAC 136° radial, extending from the VORTAC to the 3-mile radius zone and within 1.5 miles each side of the 283° bearing from a point lat. 39°21′43″ N., long 74°27′46″ W., extending from said point to 5.5 miles west.

Issued in Jamaica, New York, on October 23, 1986.

Edmund Spring,

Manager, Air Traffic Division.

[FR Doc. 86–24769 Filed 10–31–86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 81

[Docket No. 76N–0366]

Provisional Listing of FD&C Red No. 3 in Cosmetics and Externally Applied Drugs and of Its Lakes in Food and Ingested Drugs; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of FD&C Red No. 3 for use in coloring cosmetics and externally applied drugs and of the lakes of this color additive for use in coloring food and ingested drugs. The new closing date for the provisional listing of this color additive will be November 3, 1987. This postponement will provide additional time for the scientific review panel, assembled to consider data relating to the suggested secondary tumorigenic mechanism for RD&C Red No. 3, to complete its report. Time is also required for FDA to receive and evaluate the report and to publish its proposed action based on the panel's recommendations while allowing for a public comment period. The new closing date will permit the uninterrupted use of this color additive while the requisite Federal Register documents are prepared.

DATES: Effective November 3, 1986, the new closing date for the provisional listing of FD&C Red No. 3 and its lakes will be November 3, 1987.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5676.

SUPPLEMENTARY INFORMATION: FDA established the current closing date of November 3, 1986, for the provisional listing of FD&C Red No. 3 for use in cosmetics and in externally applied drugs and for the provisional listing of use of its lakes in food and ingested drugs by a rule published in the **Federal Register** of September 3, 1986 (51 FR 31323). FDA issued this postponement to provide time for the formulation of recommendations by a scientific review panel assembled to consider data supporting the sponsors' claim that FD&C Red No. 3 exerts the tumorigenic effect observed in test animals via a secondary mechanism. FDA has forwarded all available data to the review panel.

Because of the complexity of the scientific issues being considered by the panel, additional time is required for the panel to complete its deliberations and to prepare its report. The agency must then review and evaluate the report and take final action on the panel's recommendations.

FDA finds that this extension is consistent with the public health and the standards set forth for continuation of provisional listing in *McIlwain* v. *Hayes,* 690 F.2d (D.C. Cir. 1982).

Because of the shortness of time until the November 3, 1986, closing date, FDA concludes that notice and public procedure on this regulation are impracticable and that good cause exists for issuing the postponement as a final rule and for an effective date of November 3, 1986. This regulation will permit the uninterrupted use of these color additives until further action is taken. In accordance with 5 U.S.C. 553(b) and (d)(1) and (3), this postponement is issued as a final regulation, effective on November 3, 1986.

List of Subjects in 21 CFR Part 81

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

1. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86–618; sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.1 [Amended]

2. Section 81.1 *Provisional lists of color additives* is amended by revising the closing date for "FD&C Red No. 3" in paragraph (a) to read November 3, 1987.

§ 81.27 [Amended]

3. Section 81.27 *Conditions of provisional listing* is amended by revising the closing date for "FD&C Red No. 3" in paragraph (d) to read November 3, 1987.

Dated: October 29, 1986.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-24881 Filed 10-30-86; 12:24 p.m.]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD3-85-81]

Establishment of a Special Anchorage Area; Hudson River, Tarrytown, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a special anchorage area in the Hudson River southwest of Tarrytown, New York and northeast of the Tappan Zee Bridge. This special anchorage area is being established because there is a reported shortage of dock space for recreational vessels in the lower Hudson River. The special anchorage would help alleviate the shortage of space by providing a mooring area for approximately 45 small vessels.

EFFECTIVE DATE: December 3, 1986.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade T. S. Kuhaneck, Vessel Movement Officer, Commander, Coast Guard Group New York, at (212) 668-7933.

SUPPLEMENTARY INFORMATION: On March 6, 1986, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (51 FR 7812). Interested persons were requested to submit written comments and no comments were received.

Drafting Information

The drafters of this notice are LTJG T.S. Kuhaneck, Project Officer, Coast Guard Group New York and Mrs. M.A. Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Comments

As previoulsy stated, no comments regarding the NPRM were received. The area being designated as a special anchorage lies in an area southwest of Tarrytown, New York and northeast of the Tappan Zee Bridge. This is an area of heavy recreational boating concentration but one lacking in available dock area. This special anchorage area will increase the area available for recreational boaters to anchor in this section of the Hudson River.

This rule will allow anchoring of small boats (vessels under 65 feet in length) without requiring them to display anchor lights or sound fog signals. The area is well away from the navigable channel and is located where general navigation will not endanger or be endangered by unlighted vessels. It is projected that approximately 45 small vessels use this designated area. The area will be open to the general public with access available at the Washington Irving Boat Club. The boat club has launching equipment, a paved launching ramp, and fueling and parking facilities. This regulation is issued pursuant to 33 U.S.C. 2030, 2035, and 2070 as set out in the authority citation for all of Part 110.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Establishment of this Special Anchorage Area will not require dredging nor result in increased cost to any segment of the public. In fact, it may attract additional recreational boaters to the area which would have a favorable economic impact on commercial facilities providing services to these boaters.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subject in 33 CFR Part 110

Anchorage grounds.

PART 110—[AMENDED]

Final Regulations

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 110 is revised to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g). Section 110.1a and each section listed in § 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. In § 110.60, paragraphs (p-1) and (p-2) are redesignated (p-2) and (p-3), respectively, and a new paragraph (p-1) is added to read as follows:

§ 110.60 Port of New York and vicinity.

* * * * *

(p-1) *Hudson River, at Tarrytown, NY.* Beginning at a point on the shoreline at latitude 41°04'20" N. long. 73°51'04" W.; thence due west to a point at lat. 41°04'20" N. long. 73°52'12" W.; thence due south to a point at lat. 41°04'13" N., long. 73°52'12" W.; thence due east to a point on the shoreline at lat. 41°04'13" N., long. 73°52'00" W.; thence along the shoreline to the point of beginning.

* * * * *

Dated: October 16, 1986.

G.D. Passmore,

Rear Admiral (Lower Half), U.S. Coast Guard Commander, Third Coast Guard District.

[FR Doc. 86-24796 Filed 10-31-86; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CCGD09 86-11]

Drawbridge Operation Regulations; Maumee River, OH

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Ohio Department of Transportation and the City of Toledo, Ohio, the Coast Guard is changing the operating regulations of the Craig Memorial highway bridge, mile 3.30, and Cherry Street bridge, mile 4.30, across the Maumee River in Toledo, Ohio, by permitting the number of openings for pleasure craft to be limited during certain times and by permitting the bridge owners to remove bridgetenders during certain times and only open the bridges for the passage of vessels, other than emergency vessels and vessels in distress, upon receipt of an advance notice. This change is being made because of an increase in land traffic during the day and the lack of requests to open the draw during the winter months. Also, the Chessie System railroad bridge, mile 1.07, Norfolk and Western railroad bridge, mile 1.80, and Conrail railroad bridge, mile 5.76, will be included in this final rule for the removal of bridgetenders during the winter months in order to maintain consistency on the Maumee River for

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this period of time. This action will accommodate the needs of vehicle traffic, relieve the bridge owners of the burden of having a bridgetender in constant attendance while still providing for the reasonable needs for navigation.

EFFECTIVE DATE: These regulations become effective on December 3, 1986.

FOR FURTHER INFORMATION CONTACT: Robert W. Bloom, Jr., Chief, Bridge Branch, telephone (216) 522–3993.

SUPPLEMENTARY INFORMATION: On June 19, 1986, the Coast Guard published Proposed Rule, Vol. 51, No. 118, FR 22312, FR 22313 and FR 22314, concerning this amendment. The Commander, Ninth Coast Guard District, also published the proposal as a Public Notice, PN 09–07/86, dated 25 July 1986. In these notices, interested persons were given until August 4, 1986 and August 26, 1986, respectively, to submit comments.

Drafting Information

The drafters of these regulations are Fred H. Mieser, project officer, and Lt. R. A. Pelletier, project attorney.

Discussion of Comments

No comments were received as a result of publication in the **Federal Register**. Three comments were received in response to the Public Notice. The commentors that responded to the Public Notice represented commercial navigation and requested that the removal of bridgetenders during the winter months be changed to begin December 31 instead of December 15 because of vessel trips during this period of time and because adverse weather conditions contribute to unpredictable vessel schedules. Additional information furnished by officials of the City of Toledo, State of Ohio, and Conrail show that the greatest number of openings for commercial vessels in December occurred between December 1 and December 20; 20 openings in 1982, 16 in 1983, 22 in 1984 and 25 in 1985. For the period of time from 21 December through 31 December, openings for commercial vessels amounted to 5 in 1982, 4 in 1983, 16 in 1984 and 9 in 1985.

To accommodate the concerns of commercial navigation, it was suggested by commercial representatives that the advance notice requirement of twelve hours, to have the bridge opened for the passage of a vessel between December 21 and December 31, could be changed to four hours. The removal of bridgetenders starting on December 21 instead of December 15, and the requirement of a four hour advance notice instead of a twelve hour advance notice from December 21 to December 31, is a reasonable compromise and meets the reasonable needs of navigation. Therefore, the final rule will reflect this change.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The periods of time the bridges open for the passage of pleasure craft on a regulated schedule will relieve the problem of traffic tie-ups due to random bridge openings for these vessels and still provide for the reasonable needs of these vessels. During the periods of time the bridges are unattended, there is little or no significant vessel traffic on the river and the requirement for an advance notice will meet the reasonable needs of navigation. Since the impact of these regulations is expected to be so minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33 of the Code of Federal Regulations is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 is revised to read as follows:

Authority: 33 U.S.C. 499; and 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.855 is added to read as follows:

§ 117.855 Maumee River.

(a) The draw of the Craig Memorial highway bridge, mile 3.30, at Toledo, shall operate as follows:

(1) From April through December 20—

(i) Between the hours of 7 a.m. and 11 p.m., the draw need open only from three minutes before to three minutes after the hour and half-hour with no opening required at 7:30 a.m. and 4:30 p.m. for pleasure craft; for commercial vessels, during this period of time, the draw shall open on signal as soon as possible.

(ii) Between the hours of 11 p.m. and 7 a.m., the draw shall open on signal for commercial vessels and pleasure craft.

(2) From December 21 through March 31, no bridgetenders are required to be on duty at the bridge and the draw shall open on signal from December 21 through December 31, if at least a four hour advance notice is given and from January 1 through March 31, if at least a twelve hour advance notice is given.

(b) The draw of the Cherry Street highway bridge, mile 4.30 at Toledo, shall operate as follows:

(1) From April 1 through December 20—

(i) Between the hours of 7 a.m. and 11 p.m., the draw need open only from three minutes before to three minutes after the quarter and three-quarter hour with no opening required at 7:45 a.m. and 4:45 p.m. for pleasure craft; for commercial vessels, during this period of time, the draw shall open on signal as soon as possible.

(ii) Between the hours of 11 p.m. and 7 a.m., the draw shall open on signal for commercial vessels and pleasure craft.

(2) From December 21 through March 31, no bridgetenders are required to be at the bridge and the draw shall open on signal from December 21 through December 31, if at least a four hour advance notice is given and from January 1 through March 31, if at least a twelve hour advance notice is given.

(c) The draws of the Chessie System railroad bridge, mile 1.07, Norfolk and Western railroad bridge, mile 1.80 and Conrail railroad bridge, mile 5.76, all at Toledo, shall operate as follows:

(1) From April 1 through December 20, the draws shall open on signal for all vessels.

(2) From December 21 through March 31, no bridgetenders are required to be at the bridges and the draws shall open on signal for commercial vessels and pleasure craft from December 21 through December 31, if at least a four hour advance notice is given and from January 1 through March 31, if at least a twelve hour advance notice is given.

(d) At all times, the bridges listed in this section shall open as soon as possible for public vessels of the United States, state or local government vessels used for public safety and vessels in distress.

Dated: October 24, 1986.

A.M. Danielsen,

RADM, U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 86–24797 Filed 10–31–86; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 264, 265, 268, 270, and 271

[SWH-FRL-3102-9]

Hazardous Waste Management System: Land Disposal Restrictions for Solvent and Dioxin-Containing Hazardous Waste; Public Briefings

AGENCY: Environmental Protection Agency.

ACTION: Notice of public briefings.

SUMMARY: EPA plans to hold three public briefings to discuss and respond to questions on a final rulemaking soon to be issued in response to the Hazardous Solid Waste Amendments (HSWA) of 1984 related to land disposal restrictions.

DATES: The public briefings are scheduled as follows:

1. November 13, 1986—1:30 p.m. to 4:30 p.m., San Francisco, California.
2. November 17, 1986—1:30 p.m. to 4:30 p.m., Kansas City, Missouri.
3. November 21, 1986—1:30 p.m. to 4:30 p.m., Arlington, Virginia.

The meetings may be adjourned earlier if there are no remaining comments.

ADDRESSES: The public briefings will be held in the following locations:

1. Ramada Renaissance Hotel, 55 Cyril Magnin Street, San Francisco, California 94102, (415) 392-8000.
2. Executive Inn, 1600 North Universal Avenue, Kansas City, Missouri 64120, (816) 483-9900.
3. Quality Inn/Pentagon City, 300 Army Navy Drive, Arlington, Virginia 22202, (703) 892-4100.

Make lodging reservations directly with the hotels; a block of rooms has been reserved for the convenience of attendees requiring lodging.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346 or at (202) 382-3000. For technical information contact Ms. Geraldine Wyer or Ms. Devorah Zeitlin, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4646.

SUPPLEMENTARY INFORMATION: HSWA prohibits the land disposal of untreated hazardous waste unless a petition has been granted based on a showing that there will be no migration of hazardous constituents from the disposal unit for as long as the waste remains hazardous. Wastes that are not the subject of a successful petition must be managed in accordance with treatment standards set by the United States Environmental Protection Agency.

The legislation sets forth a series of deadlines for Agency action. The first date is November 8, 1986, and affects solvent and dioxin-containing wastes (EPA designations F001, F002, F003, F004, F005, F020, F022, F023, F026, F027, and F028). The Agency can extend the effective date of these prohibitions only if it finds that there is not sufficient available capacity to treat these wastes prior to land disposal.

The Agency expects to have treatment standards for solvent and dioxin-containing wastes promulgated by the November 8, 1986 deadline. These treatment standards are expected to take the form of specific performance levels based on the best demonstrated treatment operations. For concentrated spent solvent wastes (i.e., containing greater than 1% total F001-F005 solvents), treatment levels are likely to be based on the operation of incinerators meeting RCRA requirements.

It is expected that some solvent and dioxin-containing wastes will be granted extensions due to a shortage of available treatment capacity. However, it is likely that concentrated spent solvent wastes will not be granted such an extension, unless these wastes are generated by small quantity generators (those that generate less than 1000 kg/month of hazardous wastes).

- The effective date of the ban on the land disposal of concentrated spent solvent wastes is likely to be November 8, 1986 or the date of promulgation of the final rule.
- Generators of concentrated spent solvent wastes and owners and operators of land disposal facilities that currently dispose of such wastes should plan to send their banned wastes to RCRA storage or treatment (probably incineration) facilities that will meet the standards set in the solvent and dioxin rule.

Details of the final rulemaking will be provided in its publication in the **Federal Register.**

Dated: October 27, 1986.

J.W. McGraw,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 86-24660 Filed 10-31-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6735]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATE: The third date ("Susp.") listed in the third column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et. seq.). Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally

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enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified	Date [1]
Region III				
Pennsylvania:				
Canton, township of, Washington County	421201B	May 20, 1975, Emerg.; Nov. 5, 1986, Reg.; Nov. 5, 1986, Susp.	Sept. 20, 1974, May 21, 1976, and Nov. 5, 1986.	Nov. 5, 1986.
Ferndale, borough of, Cambria County	421429A	Nov. 24, 1975, Emerg.; Nov. 5, 1986, Reg.; Nov. 5, 1986, Susp.	Nov. 8, 1974 and Nov. 5, 1986	Do.
Harmony, township of, Forest County	421645A	Aug. 14, 1975, Emerg.; Nov. 5, 1986, Reg.; Nov. 5, 1986, Susp.	July 18, 1975 and Nov. 5, 1986	Do.
Tionesta, borough of, Forest County	421648B	May 12, 1975, Emerg.; Nov. 5, 1986, Reg.; Nov. 5, 1986, Susp.	Mar. 29, 1974, May 14, 1976, and Nov. 5, 1986.	Do.
Washington, city of, Washington County	420881A	Oct. 23, 1974, Emerg.; Nov. 5, 1986, Reg.; Nov. 5, 1986, Susp.	Nov. 12, 1976 and Nov. 5, 1986	Do.
Region IV				
Kentucky:				
Hawesville, city of, Hancock County	210239B	May 19, 1975, Emerg.; Nov. 5, 1986, Reg.; Nov. 5, 1986, Susp.	Feb. 15, 1974, July 2, 1976, and Nov. 5, 1986.	Do.
Wilmore, city of, Jessamine County	210311	Jan. 17, 1975, Emerg.; Nov. 5, 1986, Reg.; Nov. 5, 1986, Susp.	July 25, 1975 and Nov. 5, 1986	Do.
South Carolina: Charleston, city of, Charleston County	455412D	Oct. 30, 1970, Emerg.; Apr. 9, 1971, Reg.; Nov. 5, 1986, Susp.	Apr. 9, 1971, May 25, 1973, July 1, 1974, Sept. 3, 1976, and Nov. 5, 1986.	Do.
Region V				
Illinois: Highland, city of, Madison County	170445B	Oct. 4, 1974, Emerg.; Nov. 5, 1986, Reg.; Nov. 5, 1986, Susp.	Mar. 8, 1974, May 21, 1976, and Nov. 5, 1986.	Do.
Region VII				
Iowa: North Liberty, city of, Johnson County	190630A	May 24, 1977, Emerg.; Nov. 5, 1986, Reg.; Nov. 5, 1986, Susp.	Apr. 23, 1976 and Nov. 5, 1986	Do.
Region III—Minimal Conversions				
Pennsylvania:				
Boggs, township of, Armstrong County	421301B	Mar. 3, 1977, Emerg.; Nov. 1, 1986, Reg.; Nov. 1, 1986, Susp.	Aug. 30, 1974, Apr. 9, 1976, and Nov. 1, 1986.	Nov. 1, 1986.
Burrell, township of, Armstrong County	421303B	Oct. 25, 1977, Emerg.; Nov. 1, 1986, Reg.; Nov. 1, 1986, Susp.	Sept. 20, 1974, June 11, 1976, and Nov. 1, 1986.	Do.
Clarion, borough of, Clarion County	421500A	Oct. 3, 1975, Emerg.; Nov. 1, 1986, Reg.; Nov. 1, 1986, Susp.	Nov. 29, 1974 and Nov. 1, 1986	Do.
Clarion, township of, Clarion County	421507B	Jan. 20, 1976, Emerg.; Nov. 1, 1986, Reg.; Nov. 1, 1986, Susp.	Nov. 29, 1974, Feb. 4, 1977, and Nov. 1, 1986.	Do.
Cowanshannock, township of, Armstrong County	421230B	May 23, 1977, Emerg.; Nov. 1, 1986, Reg.; Nov. 1, 1986, Susp.	Sept. 13, 1974, Dec. 31, 1976, and Nov. 1, 1986.	Do.
Hovey, township of, Armstrong County	422209A	Apr. 7, 1976, Emerg.; Nov. 1, 1986, Reg.; Nov. 1, 1986, Susp.	Jan. 24, 1975 and Nov. 1, 1986	Do.
North Buffalo, township of, Armstrong County	421310B	Apr. 12, 1976, Emerg.; Nov. 1, 1986, Reg.; Nov. 1, 1986, Susp.	Apr. 5, 1974, June 18, 1976, and Nov. 1, 1986.	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified	Date [1]
Perry, township of, Lawrence County	421798B	July 24, 1975, Emerg.; Nov. 1, 1986, Reg.; Nov. 1, 1986, Susp.	Jan. 10, 1975, Jan. 18, 1980, and Nov. 1, 1986.	Do.
Plumcreek, township of, Armstrong County	421313B	May 18, 1984, Emerg.; Nov. 1, 1986, Reg.; Nov. 1, 1986, Susp.	Sept. 6, 1974, June 18, 1976, and Nov. 1, 1986.	Do.
Rayburn, township of, Armstrong County	421314A	May 10, 1976, Emerg.; Nov. 1, 1986, Reg.; Nov. 1, 1986, Susp.	Feb. 21, 1975 and Nov. 1, 1986	Do.
Scott, township of, Lawrence County	421799B	July 23, 1974, Emerg.; Nov. 1, 1986, Reg.; Nov. 1, 1986, Susp.	Jan. 31, 1975, Aug. 22, 1980, and Nov. 1, 1986.	Do.
Slippery Rock, township of, Lawrence County	422485B	Mar. 1, 1977, Emerg.; Nov. 1, 1986, Reg.; Nov. 1, 1986, Susp.	Apr. 14, 1978 and Nov. 1, 1986	Do.
Towamensing, township of, Carbon County	421456A	July 30, 1975, Emerg.; Nov. 1, 1986, Reg.; Nov. 1, 1986, Susp.	Dec. 20, 1974 and Nov. 1, 1986	Do.
Taylor, township of, Fulton County	421663C	Oct. 14, 1975, Emerg.; Nov. 1, 1986, Reg.; Nov. 1, 1986, Susp.	Dec. 20, 1974, Aug. 8, 1980, and Sept. 1, 1986.	Do.
Region V				
Wisconsin: Lancaster, city of, Grant County	550150B	Mar. 24, 1975, Emerg.; Aug. 5, 1986, Reg.; Nov. 1, 1986, Susp.	May 31, 1974 and Aug. 5, 1986	Do.

[1] Date certain Federal assistance no longer available in special flood hazard areas.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 86-24752 Filed 10-31-86; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[PR Docket No. 85-23, FCC 86-364]

Radio Services, Frequencies and Emissions

Correction

In FR Doc. 86-23507, beginning on page 37026 in the issue of Friday, October 17, 1986, make the following correction:

§ 97.67 [Corrected]

On page 37027, in the middle column, in the first line of amendatory instruction 5 and in the first line of the regulatory paragraph that follows, "(1)" should read "(i)".

BILLING CODE 1505-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 502 and 509

[APD 2800.12 CHGE 32]

General Services Administration Acquisition Regulation; Approval Level for Resolving Disagreements on Preaward Surveys

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5, is amended to revise Part 502 to reflect organizational and title changes; to revise Part 509 to designate the Credit and Finance Section, Region 6, as the office responsible for evaluating a prospective contractor's financial ability, to require the approval of an official one level above the contracting director instead of the head of the contracting activity before awarding a contract to a firm with an unfavorable preaward survey, to provide for GSA contracting activities to be notified of proposed debarments, and to eliminate the requirement that a copy of the notice of proposed debarment be given to affected agency components. The intended effect is to improve the regulatory coverage and to provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: October 22, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Office of GSA Acquisition Policy and Regulations on (202) 535-7791.

SUPPLEMENTARY INFORMATION: This rule will not have a significant cost or administrative impact on contractors or offerors. Therefore, it was not published in the **Federal Register** for public comment. The Director, Office of Management and Budget, by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The General Services Administration certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). The rule has no impact outside the agency. It establishes signatory authority approval levels within the agency, updates current organizational and title changes and changes the procedure used to notify GSA contracting activities of proposed debarments. Accordingly, no regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq.

List of Subjects in 48 CFR Parts 502 and 509

Government procurement.

1. The authority citation for 48 CFR Parts 502 and 509 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 502—DEFINITIONS OF WORDS AND TERMS

2. Section 502.101 is revised to read as follows:

502.101 Definitions.

"Head of the contracting activity" (HCA) means the Associate Administrator for Acquisition Policy, Commissioners of the Federal Supply Service (FSS), Information Resources Management Service (IRMS), Public Building Service (PBS), Federal Property Resources Service (FPRS), or Regional Administrators (Regions 1, 2, 3, 4, 5, 6, 7, 9, and the National Capital Region). The Regional Administrator, Region 1, serves as the HCA only for FPRS activities. The Associate Administrator for Acquisition Policy serves as the HCA for Central Office contracting activities outside of FSS, IRMS, PBS, and FPRS.

"Contracting director" means directors of Central Office or regional office divisions that are responsible for performing contracting and/or contract administration functions except for FSS. "Contracting director" means directors of Commodity Centers and Federal Supply Service Bureaus in the FSS.

"Senior procurement executive" means the Associate Administrator for Acquisition Policy.

"Agency competition advocate" means the Director of the Office of

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Acquisition Management and Contract Clearance.

"Contracting activity competition advocate" means the (a) Director of Acquisition Management and Contract Clearance, (b) FSS Competition Advocate, Office of Commodity Management, (c) Director, Agency Liaison Officer Program Division, IRMS, (d) Special Assistant to the Director, Program Support Office, FPRS, (e) Regional Director, Office of Project Control and Oversight for Regions 2, 3, 4, 5, 6, 7, 9, and the National Capital Region, and (f) Senior Advisor to the Regional Administrator, Region 1 (only with respect to FPRS activities). The Director of Acquisition Management and Contract Clearance serves as the contracting activity competition advocate for Central Office contracting activities outside of FSS, IRMS, and FPRS.

PART 509—CONTRACTOR QUALIFICATIONS

3. Section 509.105–1 is amended by revising paragraph (d) to read as follows:

509.105–1 Obtaining information.

* * * * *

(d) For the purposes of this subpart, the "auditor" in FAR 9.105–1(b)(2)(ii) is the Assistant Inspector General for Audits in the Central Office and the Regional Inspector General for Audits in the regions except for the evaluation of a prospective contractor's financial competence and credit needs, for which it is the Chief, Credit and Finance Section, Region 8.

4. Section 509.106–70 is revised to read as follows:

509.106–70 Disagreement with preaward survey recommendation.

When the contracting officer does not concur with the preaward survey recommendation, the contract file must be documented as to the basis of the determination of contractor responsibility. The concurrence of an official one level above the contracting director (see GSAR 502.101) shall be obtained before awarding of a contract to a firm which received an unfavorable preaward survey. If the contracting officer finds a small business nonresponsible, the certificate of competency procedures in FAR 19.6 must be used. The activity that prepared the preaward survey must be given a copy of the contracting officer's justification for overriding the preaward survey recommendation.

5. Section 509.406–3 is amended by revising paragraph (b)(3) to read as follows:

509.406–3 Procedures.

* * * * *

(b) *Notice of proposal to debar.*

* * * * *

(3) Contracting activities are to be notified of any proposed debarment.

* * * * *

Dated: October 22, 1986.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 86–24747 Filed 10–31–86; 8:45 am]

BILLING CODE 6820–61–M

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48 CFR Part 516

[APD 2800.12 CHGE 33]

General Services Administration Acquisition Regulation; Letter Contracts for Architect-Engineer (A–E) Services

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5, amended to revise section 516.603–3 to add special limitations on letter contracts for A–E services. The intended effect is to improve the regulatory coverage and to provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: October 24, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Ida M. Ustad, Office of GSA Acquisition Policy and Regulations (VP), (202) 566–1224.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The General Services Administration certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). This rule amends the GSAR to impose special restrictions on the services that can be performed under a letter contract for A–E services before the letter contract is definitized. The restrictions are being imposed because of the nature of the services and as a result of the problems that the agency has experienced with the use of letter contracts for A–E services. This rule does not contain information collection requirements which require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.).

List of Subjects in 48 CFR Part 516

Government procurement.

1. The authority citation for 48 CFR Part 516 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 516—TYPES OF CONTRACTS

2. Section 516.603–3 is revised to read as follows:

516.603–3 Limitations.

(a) *General.* Signatory authority for the determination and findings (D&F) required by FAR 16.603–3 is delegated to the heads of contracting activities or their designees (see GSAR 501.707).

(b) *Architect-Engineer services.* (1) The proposed Architect-Engineer (A–E) must provide a price proposal for the non-design effort to be performed under the contract before the letter contract is awarded. The letter contract must:

(i) Not authorize the A–E to begin the design effort. The scope of the letter contract may include the design effort but the letter contract may only authorize the A–E to perform those services that are independent of the design effort (e.g., feasibility studies, existing facility surveys or site investigation, etc.) before the letter contract is definitized.

(ii) Include a definitization schedule that outlines (A) a date for submission of the design fee proposal, (B) a date for the start of negotiations, and (C) a target date for definitization. The schedule must provide for definitization of the contract within 90 days after the date of the letter contract instead of 180 days as outlined in FAR 16.603–2(c).

(iii) Limit the Government's liability to the amount necessary for the non-design effort to be performed under the contract by inserting that amount in the clause at FAR 52.216.24, Limitation of Government Liability.

(2) If the contracting officer must issue a unilateral price decision under FAR 16.603–2(c), the maximum contract amount must be not exceed a reasonable price for the excludable items plus the 6 percent statutory fee limitation for the project.

Dated: October 24, 1986.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 86–24758 Filed 10–31–86; 8:45 am]

BILLING CODE 6820–61–M

Proposed Rules

Federal Register
Vol. 51, No. 212
Monday, November 3, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1137

Milk in the Eastern Colorado Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to continue through February 1987 a suspension of portions of the Eastern Colorado Federal milk order. Provisions proposed to be suspended relate to the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Also proposed to be suspended for the same period is the "touch-base" requirement that each producer's milk be received at least three times each month at a pool distributing plant. Continuation of the suspension of the provisions was requested by a cooperative association representing producers supplying the market in order to prevent uneconomic movements of milk.

DATE: Comments are due on or before November 10, 1986.

ADDRESS: Comments (two copies) should be filed with the Dairy Division, Room 2968, South Building; U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: The Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the Eastern Colorado marketing area is being considered for the months of November 1986 through February 1987:

1. In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing plant".
2. In the second sentence of § 1137.12(a)(1), the words "30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of" and "distributing".

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the Dairy Division, Agricultural Marketing Service, Room 2968, South Building, U.S. Department of Agriculture, Washington, DC 20250, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include November 1986 in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division office during normal business hours (7 CFR 1.27b)).

Statement of Consideration

Mid-America Dairymen, Inc. (Mid-Am), an association of producers that supplies some of the market's fluid milk needs and handles some of the market's reserve milk supplies, requested the suspension. The suspension would continue to relax for the months of November 1986 through February 1987 the limit on the amount of producer milk that a cooperative association may divert from pool plants to nonpool plants, and remove the requirement that three deliveries of each producer's milk be received at a pool distributing plant each month. The suspension currently in effect applies to milk deliveries through October 1986.

The order now provides that a cooperative may divert a quantity of milk not in excess of 30 percent of the cooperative association's member milk received at pool distributing plants during the months of March, April, May, June, July and December, and up to 20 percent in other months. Suspension of the requested language would allow up to 50 percent of a cooperative's member milk supply to be diverted to nonpool plants and remain eligible to share in the marketwide pool.

Mid-Am states that the volume of producer milk pooled on the Eastern Colorado order began to increase following the conclusion of the Milk Diversion Program in 1985, and has continued to increase during 1986. According to the cooperative, Eastern Colorado producer milk during the first 7 months of 1986 had increased 10.7 percent over the same period in 1985. At the same time, producer milk used in Class I had increased only 1.3 percent. Mid-Am states that as a result of increased milk production, there are ample supplies of local milk available to meet the fluid requirements of Denver-area distributing plants. The cooperative estimates that approximately 15 loads of producer milk produced in Kansas and Nebraska would have to be shipped to Eastern Colorado pool distributing plants each month in order to qualify Mid-Am producers for continued pool status. The cooperative states that these shipments would displace Denver-area milk, which would have to be moved to surplus handling plants. Both movements, according to Mid-Am, would represent uneconomic movements of milk. Without the requested continued suspension, the cooperative expects to incur substantial unnecessary costs for the movement of its milk solely for the purpose of pooling the milk of its members currently associated with the Eastern Colorado market.

List of Subjects in 7 CFR Part 1137

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1137 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

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Signed at Washington, DC, on October 28, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86-24809 Filed 10-31-86; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-134-AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend an Airworthiness Directive (AD) that requires inspection of the pneumatic system 8th stage check valve, and repair or replacement of the valve, as necessary, on Boeing Model 767 airplanes. The AD was prompted by reports of fragments of failed valves becoming lodged in other pneumatic system components, by reports of engine damage caused by ingested valve fragments, and by reports of cracked valves which have been removed from service. This condition, if not corrected, could cause engine shutdown, engine damage, or damage to the pneumatic system. This action proposes to require repetitive inspections of additional versions of the subject valve, which may be subject to similar failures, and adds a terminating action for the repetitive inspections.

DATE: Comments must be received on or before December 22, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-134-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, C-68966, Seattle, Washington 98168.

FOR FURTHER INFORMATION CONTACT: Mr. Gary D. Lium, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, Seattle Aircraft Certification Office; telephone (206) 431-1946. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-134-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

Airworthiness Directive (AD) 86-06-01, Amendment 39-5257 (51 FR 8792; March 14, 1986), was issued as a final rule with a request for comments. The closing date for the comment period was April 1, 1986, which was the same date as the effective date of the AD. This period afforded interested persons an opportunity to comment on the amendment. Due consideration has been given to the two comments received.

One commenter requested that valves be required to be inspected upon the accumulation of 2,000 hours time-in-service, or the next 500 hours time-in-service, whichever occurs, later, based on the fact wear would be minimal on new valves. The FAA concurs that the initial inspection period for valves manufactured after March 1, 1985 may be relaxed, based on data presented by The Boeing Company. These data are discussed below.

The second commenter was the Boeing Company, which provided data from Hamilton Standard, the valve manufacture, relating to the inspection of valves returned to Hamilton Standard. The data provide a correlation between poppet crack initiation and crack growth versus service hours. All valves with measurable crack lengths had accumulated more than 4,500 hours time-in-service prior to the inspection, with one single exception. All the returned valves, with this one exception, had tight eddie bolts. Hamilton Standard confirms that a loose eddie bolt will accelerate crack initiation and propagation.

The manufacturing procedure relating to eddie bolt torque was changed prior to March 1, 1985. Valves manufactured after this date, identified by serial number, have not been shown to contain loose eddie bolts. For this reason, the FAA has determined that valves manufactured after this date must be inspected initially prior to the accumulation of 2,000 hours time-in-service. The requirement to repeat the inspection at intervals not to exceed 2,000 hours time-in-service is retained.

Additional information received from the Boeing Company has revealed that, following publication of the AD, two additional valve configurations, part numbers 773856-4 and 773856-5, have been produced by Hamilton Standard. Both configurations are improvements to the 773856-3 valve, but neither is considered sufficient to constitute terminating action for the repetitive inspections required on the 773856-3 valve. The 773856-4 valve incorporates a new valve shaft, and the 773856-5 valve contains improved poppet retention. Although these changes could lessen the problem of cracked valve poppets, the fact that the poppet itself is unchanged indicates that cracked poppets could occur. The FAA has no data which would indicate the magnitude of poppet crack growth reduction, if any, due to the noted improvements. It is therefore proposed that the 773856-4 and 773856-5 valves be subject to the same repetitive inspection requirements as the 773856-3 valve.

The Boeing Company has identified the following three optional actions, which are proposed as terminating action for the repetitive inspections required by AD 86-06-01:

1. Incorporate Hamilton Standard Service Bulletins 36-2039, 36-2045, and 36.2046, which provide for an improved shaft, improved valve poppet retention, and thicker poppet, respectively. Incorporation of Service Bulletin 36-2039

creates a 773856–4 valve from a 773856–3 valve, and incorporation of Service Bulletin 36–2045 creates a 773856–5 valve from a 773856–4 valve. Incorporation of all three service bulletins creates a 773856–6 valve.

2. Install a new production check valve, Hamilton Standard part number 773856–6. This valve is the production equivalent for the modifications described in Item 1, above.

3. Install a Garrett check valve, part number 3202164–2. This valve has been shown to be dimensionally and functionally interchangeable with the Hamilton Standard 773856–6 valve.

It is unknown how many valves, part numbers 773856–4 and 773856–5, are in service. Approximately 28 manhours, however, would be required to accomplish the initial and repetitive inspection per airplane. Assuming a labor charge of $40 per manhour, the cost of an inspection would be $1,120 per airplane.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 767 airplanes are operated by small entities. A copy of the draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposed to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 39 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised) Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising Airworthiness Directive 86–06–01, Amdt. 39–5257 (51 FR 8792; March 14, 1986), to read as follows:

Boeing: Applies to all Model 767 airplanes, certificated in any category. Compliance is required as stated below. To preclude engine or pneumatic system damage caused by the failure of the pneumatic system 8th stage check valve, Hamilton Standard Part Numbers 773856–3, 773856–4, or 773856–5, accomplish the following, unless already accomplished:

A. Within 500 hours time-in-service after the effective date of this AD, inspect the pneumatic system 8th stage check valve, Hamilton Standard Part Number 773856–3, manufactured prior to March 1, 1985, in accordance with Boeing Service Bulletin 767–36–0017, dated January 17, 1986, or later FAA-approved revisions.

B. Inspect pneumatic system 8th stage check valve, Hamilton Standard Part Number 773856–3 manufactured after March 1, 1985, or Part Numbers 773856–4 or 773856–5, in accordance with Boeing Service Bulletin 767–36–0017, dated January 17, 1986, or later FAA-approved revisions, within the next 500 hours time-in-service after the effective date of this AD, or prior to accumulating such valves 2,000 hours time-in-service, whichever occurs later.

C. If any valve inspected in accordance with paragraphs A. or B., above, contains any visible cracks, or exceeds the allowable wear limits specified in the referenced service bulletin, before further flight, repair the valve in accordance with the reference service bulletin, or replace the valve with a serviceable valve. Valves manufactuted prior to March 1, 1985, and not installed on an airplane, must be inspected prior to their installation.

D. Repeat the inspection procedures required by paragraph A. or B., above, at intervals not to exceed 2,000 hours time-in-service.

E. Accomplishment of the procedures described in paragraphs 1., 2., or 3., below, shall constitute terminating action for the repetitive inspections required by paragraph D., above:

1. Install a check valve which has been modified by the incorporated of the following three service bulletins:

a. Hamilton Standard Service Bulletin 36–2039, dated January 2, 1986, or later FAA-approved revision.

b. Hamilton Standard Service Bulletin 36–2045, dated April 1, 1986, or later FAA-approved revision.

c. Hamilton Standard Service Bulletin 36–2046, dated April 1, 1986, or later FAA-approved revision.

2. Install Hamilton Standard check valve P/N 773856–6.

3. Install Garrett check valve P/N 3202164–2.

F. An alternate means of compliance or adjustment of the compliance time, which provides an ecceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received copies of the Service Bulletins cited herein may obtain copies upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington on October 24, 1986.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–24771 Filed 10–31–86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86–NM–94–AD]

Airworthiness Directives; Lockheed-California Company Model L–1011–385 Series Airplanes Equipped With Dynamic Controls Corporation Part Numbers 11035–2 and 11035–3

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Amendment to notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This document amends an earlier proposed airworthiness directive (AD) that would have required modification of the passenger oxygen initiator sequencer timer switches (sequencers) on Lockheed Model L–1011–385 series airplanes. This document amends the NPRM by requiring additional modification to the sequencers. This action is prompted by reports that modification of sequencers modified as proposed in the original NPRM has caused some sequencers to malfunction.

DATES: Comments must be received no later than December 22, 1986.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 86–NM–94–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: L–1011 Technical Operations, Dept. 63–38. This information may be examined at the FAA, Northwest Mountain Region, 17900

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Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. George Y. Mabuni, Aerospace Engineer, Systems & Equipment Branch, ANM-132L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6323.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-94-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

A Notice of Proposed Rulemaking was published in the **Federal Register** on May 14, 1986 (51 FR 17649), which requested public comment concerning a proposal to require modification of certain passenger oxygen sequencers on Lockheed Model L-1011-385 series airplanes. The comment period closed July 7, 1986. One comment was received. The commenter reported that an operator encountered operational difficulties with sequencers modified in accordance with the instructions provided in the vendor's service bulletin as proposed in the NPRM. Also during the comment period, the FAA and the operators were notified by the airplane manufacturer that, on some modified sequencers, an internal noise problem can cause the pulser circuit to operate incorrectly. Subsequent testing of the modified sequencers by the vendor revealed that, in some sequencers, internal noise is generated by the voltage inverter circuit which will continuously trigger the pulser circuit and cause the sequencer to continuously operate. To ensure consistent and normal operation of the pulser circuit in all the sequencers, additional modification is required. Dynamic Controls Corporation (DCC) revised Service Bulletin (SB) 11035-35-4 to include the additional modification. DCC SB 11035-35-4, Revision 1, dated June 16, 1986, describes the modification that will remove, add, and replace certain capacitors; add diodes; and replace certain resistors. Incorporation of the modification will eliminate the dormant failures caused by the electromagnetic interference (EMI) capacitors, protect certain capacitors against excessive voltage, and eliminate unwanted and continuous triggering of the pulser circuit.

Although the FAA has received no additional reports of failed EMI capacitors, the FAA has determined that there is a potential for such failures in the future, which could result in depriving passengers of needed oxygen. Therefore, an AD is being proposed which would require modification of sequencers on Lockheed L-1011-385 series airplanes in accordance with Part II of the Accomplishment Instructions of Lockheed Service Bulletin 093-35-041, Revision 2, dated August 27, 1986, which references DCC SB 11035-35-4, Revision 1, dated June 16, 1986.

It is estimated that 125 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 10 manhours per Lockheed Model L-1011-385-1 series airplane and 14 manhours per Lockheed Model L-1011-385-3 series airplane to accomplish the required action, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $67,600.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model L-1011-385 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a); 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending Notice of Proposed Rulemaking, Docket No. 86-NM-94-AD, as published in the **Federal Register** on May 6, 1986 (51 FR 17649), by changing the service bulletin reference in paragraph A. to read: "Lookheed Service Bulletin 093-35-041, Revision 2, dated August 27, 1986."

All persons affected by this proposal who have not already received the appropriate documents from the manufacturer may obtain copies upon request to the Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: L-1011, Technical Operations, Dept. 63-38. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on October 24, 1986.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-24772 Filed 10-31-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-ASO-26]

Proposed Alteration of Control Zone, Chamblee, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to reduce the size of the Chamblee, Georgia, control zone. An arrival extension located northeast of the DeKalb-Peachtree Airport was predicated in the Norcross VORTAC which has been decommissioned. The instrument approach procedure which

necessitated the arrival extension was canceled concurrent with the decommissioning. Thus, the floor of controlled airspace in an area northeast of the airport may be raised from the surface to 700 feet above the surface. Additionally, the geographical coordinates of the airport have changed due to airport construction and the new coordinates will be reflected in the amended control zone description.

DATES: Comments must be received on or before: December 15, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 86-ASO-28, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made. "Comments to Airspace Docket No. 86-ASO-28." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any persons may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Divisions, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that will reduce the size of the Chamblee, Georgia, control zone by eliminating an unneeded arrival extension. In addition, the geographical coordinates (longitude only) will be corrected as those presently listed are slightly in error. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zone.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. § 71.171 is amended as follows:

Chamblee, GA—[Amended]

By removing the words ". . . long. 84°18'10" W.); within 1.5 miles each side of Norcross VORTAC 242° radial extending from the 5 mile radius zone to 1 mile southwest of the VORTAC." and replacing them with the words" . . . long. 84°18'08" W.)."

Issued in East Point, Georgia, on October 23, 1986.

James L. Wright,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 86-24770 Filed 10-31-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AGL-29]

Proposed Transition Area Alteration; Harry W. Browne Airport, Saginaw, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the existing Harry W. Browne Airport, Saginaw, Michigan, transition area to accommodate a new NDB Runway 27 Standard Instrument Approach Procedure (SIAP) to Harry W. Browne Airport.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATES: Comments must be received on or before December 4, 1986.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 86-AGL-29, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation

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Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: The present transition area is being expanded to accommodate aircraft utilizing an NDB Runway 27 SIAP. The additional airspace designated will be approximately a 1-mile additional expansion to the east of the present transition area.

The development of the procedure requires that the FAA alter the designated airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AGL-29." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the designated airspace near Saginaw Harry W. Browne Airport, Michigan.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Saginaw Harry W. Browne Airport, MI—[Amended]

That airspace extending upward from 700 feet above the surface within a 5.5-mile radius of the Harry W. Browne Airport (Lat. 43°25'58" N., Long. 83°51'43" W.); and within 2 miles each side of the 86° bearing from Harry W. Browne Airport, extending from the 5.5-mile radius to 6.5 miles east of the airport excluding that portion within the Saginaw Tri-City Airport, Michigan, transition area.

Issued in Des Plaines, Illinois, on October 21, 1986.

Teddy W. Burcham,
Manager, Air Traffic Division.

[FR Doc. 86-24773 Filed 10-31-86; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 201

[Release Nos. 33-6662; 34-23647; 35-24200; 39-2042; IC-15334; IA-1039; File No. S7-26-86]

Proposed Amendments to Rule 2(e)(7) of the Commission's Rules of Practice

Correction

In FR Doc. 86-22720, beginning on page 35653, in the issue of Tuesday, October 7, 1986, make the following corrections:

§ 201.2 [Corrected]

On page 35655, second column, in § 201.2, the word "*Alternative*" was misspelled in the heading for *Alternative B.*

On the same page, same column, in § 201.2, under *Alternative B,* paragraph (e)(7)(i), first line, "of" should read "or".

On the same page, same column, under *Alternative B,* paragraph (e)(7)(iii), third line, "ham" should read "harm".

BILLING CODE 1501-01-M

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17 CFR Parts 229 and 230

[Release Nos. 33-6672, IC-15373; S7-28-86]

Elimination of Certain Pricing Amendments and Revision of Prospectus Filing Procedures

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission ("Commission") today is publishing for comment proposals intended to simplify the filing requirements applicable to a registration statement at the time of effectiveness. Proposed new Rule 430A would allow registrants, if specified conditions are satisfied, to omit information concerning the public offering price, price-related information, and the underwriting syndicate from a registration statement that is declared effective. The information omitted from the registration statement would be either included in the final prospectus and incorporated by reference into the registration statement or included in a post-effective amendment to the registration statement. In addition, the Commission is proposing related amendments to Rules 424(b) and 497 to require more immediate filing of a prospectus where Rule 430A has been used. Finally, the Commission is proposing other changes to Rule 424 to provide for a similarly shortened filing period for other prospectuses, to eliminate unnecessary filings, and to classify prospectuses according to the nature of the information being modified or added.

DATE: Comments should be received on or before December 18, 1986.

ADDRESS: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7-28-86. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549

FOR FURTHER INFORMATION CONTACT: Mauri L. Osheroff, Deputy Chief Counsel, or Abigail Arms, Attorney Advisor, at (202) 272-2573, Division of Corporation Finance, or for questions regarding the applicability of the proposals to investment companies, Thomas S. Harman, Special Counsel, at (202) 272-2107, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment a new proposed Rule 430A, related amendments to Items 512 and 601 of Regulation S-K [1] and amendments to Rules 424 [2] and 497 [3] of Regulation C [4]. These proposals are intended to simplify and reduce registrants' filing obligations under the federal securities laws, while permitting more immediate identification of and access to information filed with the Commission. The proposals are not intended to change registrants' disclosure obligations to investors.

I. Executive Summary

The Commission is proposing a new Rule, Rule 430A, under the Securities Act of 1933 (the "Securities Act") [5] to eliminate the need for pre-effective amendments to registration statements filed solely to provide pricing information, price-related information, the names of the underwriting syndicate and respective amounts underwritten, underwriter compensation, material relationships with underwriters, and dealer allowances. As proposed, the Rule would be available to any registrant that is offering securities for cash. The proposed Rule would not change the information required to be disclosed in either a preliminary prospectus used before, or a final prospectus used after, effectiveness of the registration statement. The omitted information would be disclosed in a prospectus filed under Rules 424 or 497 and incorporated by reference into the registration statement. If, however, the final prospectus is not filed within five business days after effectiveness of the registration statement, a post-effective amendment containing the information would be necessary.

In addition, the Commission is proposing a number of amendments to Rule 424, one of which would require that the prospectus used after effectiveness of a registration statement as permitted by proposed Rule 430A be filed on or prior to the date it is first used in connection with the public offering or sales. A comparable amendment to Rule 497 would provide the same shortened filing period for investment companies relying on Rule 430A. Other changes to Rule 424 would shorten the filing period for other prospectuses used after effectiveness, eliminate unnecessary filings and classify Rule 424 prospectuses more systematically.

This release discusses the rule proposals as well as possible alternatives to the proposals.

II. Proposed Rule and Amendments

A. Proposed Rule 430A

1. Overview and General Considerations

Proposed Rule 430A contemplates that, subject to the satisfaction of specified conditions, a registration statement may omit pricing information, information dependent upon the public offering price, and information about underwriting syndicate members (including material relationships with any underwriter not named therein) and their compensation at the time it is declared effective. This information ordinarily is filed in pre-effective "pricing" amendment to the registration statement.

The proposed elimination of the requirement to file pricing amendments is intended to simplify and reduce filing obligations.[6] The proposal should minimize possible disruptions of a registrant's marketing schedule caused by the need to file a pricing amendment and have the registration statement declared effective by the Commission or its staff pursuant to delegated authority.[7] The Commission believes that the proposed Rule and related amendments would achieve these purposes without affecting the adequacy and timeliness of disclosure of information to investors or investor rights of action under the federal securities laws. There would be no change in the information currently provided to the public by means of either the preliminary prospectus [8] or the final prospectus used after effectiveness.[9]

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[1] 17 CFR 229.512; 17 CFR 229.601.

[2] 17 CFR 230.424.

[3] 17 CFR 230.497.

[4] 17 CFR 230.444 *et seq.*

[5] 15 U.S.C. 77a *et seq.* (1982).

[6] In the recent Advance Notice of Proposed Rulemaking for the operational Edgar system, the Commission discussed possible rule changes to take advantage of the efficiencies of electronic filing. In Section IV.E. of the release, "Amendments and Supplements to Filings," the Commission sought comment on a two-stage method of filing pricing amendments and also on whether amendments to Securities-Act filings containing only changed pages should be permitted. *See* Release No. 33-6651 (June 26, 1986) [51 FR 24155]. Proposed Rule 430A represents another approach to streamlining the filing process and reducing unnecessary burdens, but the approaches addressed in the Edgar release will still be considered, particularly as some pricing amendments would continue to be filed even if Rule 430A is adopted.

[7] *See* section 8(a) of the Securities Act [15 U.S.C. 77h(a)] and 17 CFR 200.30-1(a).

[8] *See* Rule 430 [17 CFR 230.430], which defines a preliminary prospectus for purposes of section 5(b)(1) of the Securities Act [15 U.S.C. 77e(b)(1)].

[9] In response to a rulemaking petition submitted by the Securities Industry Association, the Commission has authorized its staff to prepare alternative proposals to permit prospectus delivery following the mailing of confirmations of sale to purchasers.

The proposed Rule would not change the current filing requirements applicable to exhibits.[10] Any exhibit required to be filed as part of a registration statement must continue to be filed prior to effectiveness. A registrant choosing not to file a pricing amendment would have to file all required exhibits with the initial registration statement or other pre-effective amendments. In particular, the Commission emphasizes that any required opinion, report or other document prepared by an accountant, other expert or counsel and applicable consents must be filed as part of the registration statement prior to the effective date.[11] While the public offering price may not be determined until shortly after the registration statement is declared effective, the Commission believes that in most cases requisite opinions, consents and reports, including legality opinions, can be issued prior to the specific pricing. Where this is not possible, the proposed Rule ordinarily would be unavailable. Comments, however, are solicited on this point and on possible alternative approaches, such as permitting opinions or consents to be filed, under limited circumstances, in a post-effective amendment prior to the commencement of the public offering or sales.

Certain exhibits, unlike opinions and consents, are not required to be completed and signed at the time of effectiveness (*e.g.*, trust indentures and underwriting agreements). The filing requirement may be satisfied by the form of the document to be used, which must be complete except for omission of prices, signatures and similar matters.[12] Because Instruction 1 to Item 601 of Regulation S-K requires that the information on price and similar matters omitted from an exhibit be contained in an amendment to the registration statement, a technical amendment to Instruction 1 is proposed to provide that inclusion of this information in the prospectus used after effectiveness of the registration statement as provided by proposed Rule 430A(a)(3) would satisfy this requirement.

Proposed Rule 430A would not change procedures requiring disclosure in the preliminary prospectus of information based on a bona fide estimate of the public offering price. For example, pro forma financial information on such matters as the ratio of earnings to fixed charges[13] should be set forth, accompanied by a clear statement that the information is based on an assumed public offering price and that the pro forma information will vary in a specified manner as the assumed price changes. Disclosure also should continue to be provided on the estimated dollar amount and allocation of proceeds to be received from the offering[14] and on dilution,[15] if applicable.

Nor would proposed Rule 430A alter traditional considerations regarding whether events or facts known prior to effectiveness require the filing of a pre-effective amendment to assure that the registration statement is not misleading when declared effective.[16] Registrants also should consider whether material changes to the disclosure contained in the latest preliminary prospectus distributed to underwriters, dealers and others[17] may necessitate recirculation of an amended preliminary prospectus.[18] In contrast, changes that currently are permitted to be made in a Rule 424(b)[19] prospectus rather than a pre-effective amendment to the registration statement, could continue to be made in the final prospectus. It is not contemplated that the proposals would change existing practice in this regard.

Proposed Rule 430A does not change requirements concerning the age of financial statements contained in a registration statement at the time of effectiveness.[20] Accordingly, the availability of the Rule would not eliminate the need to file a pre-effective amendment if the financial statements were required to be updated at the time of effectiveness. As the proposed Rule is not intended to change the disclosure to investors, the Commission does not intend Rule 430A to have the effect of permitting issuers to avoid financial statement updating requirements. Therefore, the Commission requests specific comment on whether proposed Rule 430A also should require registrants whose financial statements are not current at the time the first Rule 424(b) prospectus would be due to instead file a post-effective amendment containing updated financial statements, as well as the information omitted pursuant to Rule 430A.[21]

The proposed Rule is limited to registration statements that are declared effective, *i.e.*, where effectiveness is accelerated by the Commission or its staff acting pursuant to delegated authority, rather than by lapse of time.[22] Accordingly, an issuer who files a registration statement without the Rule 473 delaying amendment[23] would not be permitted to rely on Rule 430A.

At this time, the Commission does not intend to change the procedures applicable to securities to be offered under competitive bidding. Therefore, companies that offer and sell securities by that procedure may not use the proposed Rule. Such companies should continue to comply with the current rules and staff interpretations applicable to competitive bidding.[24]

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[10] *See* Item 601 of Regulation S-K.

[11] *See* section 7 and Schedule A(29) of the Securities Act, [15 U.S.C. 77g and 77aa Schedule A (29), respectively]; Item 601(b) (5), (6), (7), (8), and (24) of Regulation S-K [17 CFR 229.601(b) (5), (6), (7), (8), and (24)]; and Rules 436-439 [17 CFR 230.436 through 230.439]. An amendment to a registration statement that is filed solely for the purpose of adding exhibits and does not change the prospectus need include only the cover page to the registration statement, the exhibits and the signature page. *See* Rule 472 [17 CFR 230.472].

[12] Such exhibits may not be incorporated by reference into any subsequent filing made with the Commission. The completed exhibit, however, even if not part of the registration statement as declared effective, still may be incorporated by reference into other Commission documents if it is previously filed, *e.g.*, as part of a post-effective amendment or Form 8-K [17 CFR 249.308]. *See* instruction 1 to Item 601 of Regulation S-K. These procedures would not be affected by proposed Rule 430A.

[13] *See* Item 503(d)(9) of Regulation S-K [17 CFR 229.503(d)(9)].

[14] *See* Item 504 of Regulation S-K [17 CFR 229.504].

[15] *See* Item 506 of Regulation S-K [17 CFR 229.506].

[16] For example, a change in the estimated public offering price may materially affect disclosure on the use of proceeds and, if applicable, the adequacy of the proceeds to accomplish one or more stated purposes. *See* Items 504 and 101(a)(2)(iii)(A)(1) of Regulation S-K [17 CFR 229.101(a)(2)(iii)(A)(1)], respectively. Other areas of disclosure that may require updating include the business and plan of operation, management's discussion and analysis of financial condition and results of operations, and certain pro forma financial information. *See* Items 101, 303 and 503(d)(9) of Regulation S-K [17 CFR 229.101; 17 CFR 229.303].

[17] *See* Rule 15c2-8 [17 CFR 240.15c2-8].

[18] Pursuant to Rule 460 [17 CFR 230.460], the adequacy and availability of information to the public may be considered in acting upon requests for acceleration of the effectiveness of a registration statement.

[19] 17 CFR 230.424(b).

[20] *See* Rule 3-12 of Regulation S-X [17 CFR 210.3-12].

[21] *See also* discussion *infra* in Part II.A.5, "Section 11 Liability Issues."

[22] *See supra* n. 7 and discussion *infra* in Part II.A.3., "Eligibility and Conditions for Use of Proposed Rule 430A."

[23] 17 CFR 230.473.

[24] Rule 445 [17 CFR 230.445] requires the filing of a post-effective amendment to reflect the results of the competitive bidding. The post-effective amendment to the registration statement becomes effective automatically at the time it is filed unless the registrant has been notified that proceedings under section 8 of the Securities Act [15 U.S.C. 77h] have been commenced. The staff, however, permits registrants to file prospectuses pursuant to Rule 424(c) [17 CFR 230.424(c)] to reflect the results of the competitive bidding for securities offered on a delayed or continuous basis under Rule 415 [17 CFR 230.415].

2. Information That May Be Omitted Under Rule 430A

The proposed Rule permits a registration statement to be declared effective that omits information on the public offering price, underwriting syndicate including material relationships with any underwriter not named therein, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds, conversion rates, call prices and other matters dependent upon the public offering price. This range of information substantially parallels Rule 430.[25]

Unlike Rule 430, proposed Rule 430A specifically addresses information on the underwriting syndicate since the principal underwriters, respective amounts underwritten and material relationships with the registrant may be known at the time of effectiveness and disclosure would be required under item 508(a) of Regulation S–K[26] without a specific exclusion. The registration statement should include all of the required information on the plan of distribution[27] except the names of the syndicate members, material relationships with any underwriter not named therein, the amounts underwritten and the discounts and commissions. With respect to underwriter compensation, the registration statement should continue to disclose any compensation that is not easily reducible to a dollar per unit basis, such as options or warrants to purchase equity securities, fees for other services to be provided, and right of first refusal on future financings.[28] With respect to material relationships, the registration statement should continue to disclose required relationships between the registrant and those underwriters (for example, the anticipated managing underwriters) whose names do appear in the registration statement. Finally, the underwriting agreement or form thereof should continue to be filed as part of the registration statement prior to effectiveness.[29]

3. Eligibility and Conditions for Use of Proposed Rule 430A[30]

As proposed, the Rule would be available to any registrant whether or not subject to the reporting provisions of section 13(a) or 15(d) of the Securities Exchange Act of 1934 ("Exchange Act")[31] immediately prior to the filing of a registration statement. The Commission, however, specifically requests comment as to whether, in the case of non-reporting companies, the lack of public information, the lack of an existing trading market on which to base the price of the company's securities, or other factors are likely to result in a final determination of the public offering price that differs substantially from the estimate on which the registration statement disclosure is based and, if so, whether excluding such issuers from the proposed Rule is warranted.[32]

Comment also is solicited on other possible eligibility critieria such as: (1) Firm commitment underwriting arrangements;[33] (2) entities that are not development stage companies;[34] or (3) only those non-reporting companies where the public offering price falls within the bona fide estimate of the range of the maximum offering price contained in the preliminary prospectus.[35]

As proposed, the Rule would be limited to offerings of securities for cash. The "for cash" requirement is intended to prevent this Rule from being used for a registration statement covering securities issued in connection with a business combination, whether effected by a merger or exchange offer, recapitalization, reorganization or other similar transaction.[36] Most of these securities offerings are made in connection with a proxy solicitation or exchange offer where the price is known at the time the solicitation or offering commences, and there are not the same time pressures on pricing because of the solicitation and offering periods. Accordingly, there appears to be little need for the relief provided by proposed Rule 430A. Comments are solicited on the appropriateness of this limitation.

Proposed Rule 430A also is limited to registration statements that are declared effective—*i.e.*, where effectiveness is accelerated by the Commission or its staff acting pursuant to delegated authority, rather than by lapse of time pursuant to section 8(a) of the Securities Act.[37] Accordingly, the Rule would not be available for filings that lack a delaying amendment. To do otherwise would appear to provide a mechanism that could be used as a means to avoid the review process. While certain types of filings always become effective automatically and are not permitted to use delaying amendments,[38] the Commission believes these filings need not come within the scope of Rule 430A because such filings characteristically do not contain market-sensitive pricing information determined shortly before commencement of the offering.

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[25] While Rule 430 permits the omission of the public offering price and price related information from a preliminary prospectus, it does not permit the omission of such information from the form of prospectus filed as part of a registration statement that is declared effective.

[26] 17 CFR 229.508(a).

[27] *See* Item 508 of Regulation S–K [17 CFR 229.508].

[28] *See* Item 508 of Regulation S–K [17 CFR 229.508(e)], which requires disclosure of all items that would be deemed by the National Association of Securities Dealers to constitute underwriting compensation for purposes of the Association's Rule of Fair Practice.

[29] *See supra* n.10–12 and accompanying text.

[30] In addition to the criteria for use of the proposed Rule discussed in this section, the Rule would contain two further conditions: (1) That the registration statement contain the new undertaking specified in proposed Item 512(j) of Regulation S–K (*see* proposed Rule 430A(a)(2)); and (2) that the information omitted from the registration statement be in the prospectus filed with the Commission under Rule 424(b)(3) (i) or (iv), Rule 497(i), or in a post-effective amendment (*see* proposed Rule 430A(a)(3)). These conditions are discussed *infra* in Parts II.A.5., "Section 11 Liability Issues", II.A.6., "Relationship to Rule 415," and II.B., "Amendments to Rule 424."

[31] 15 U.S.C. 78m(a); 15 U.S.C. 78*o*(d).

[32] If the Rule was to be made available only to reporting companies, a new condition under paragraph (a) could read substantilly as follows: "the registant is subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, and has filed in a timely manner all required reports during the most recent twelve calendar months (or such shorter period that the registrant was required to file such reports)."

[33] Self-underwritten offerings and best efforts underwriting arrangements may lack some of the scheduling and timing sensitivities associated with firm commitment underwritings.

[34] *See* Rule 1–02(h) of Regulation S–X [17 CFR 210. 1–02(h)], defining a development stage company. Due to a development stage company's lack of an operating history, the estimated and actual price of the securities offering may be subject to greater variation. If so, substantial revisions to price-related disclosure may be required.

[35] *See* Item 501(c)(6) of Regulation S–K [17 CFR 229.501(c)(6)]. If the public offering price is within the bona fide range of the maximum offering price, there may be fewer revisions to the price-related disclosure.

[36] This requirement should be interpreted in the same manner as the "for cash" requirement for certain primary offerings of securities on Form S–3 [17 CFR 239.13]. *See* General Instruction I.B.1 thereof. For example, notes evidencing promises to pay installments in cash are considered to be cash within the meaning of the proposed Rule.

[37] Under section 8(a) of the Securities Act, a registration statement or pre-effective amendment thereto automatically becomes effective on the twentieth day after filing. This ordinarily is prevented by the use of a "delaying amendment" in the form specified by Rule 473, which delays effectiveness until accelerated by the Commission or its staff.

[38] These registration statements are: (1) Forms S-3 and F–3 [17 CFR 239.33[for dividend or interest reinvestment plans; (2) Forms S–4 [17 CFR 239.25] for bank or savings and loan holding company formations; and (3) Forms S–8 [17 CFR 239.16b], which are used for employee benefit plans. *See also infra* Part II.A.4., "Applicability of Proposed Rule 430A to Investment Companies," for a discussion of automatically effective investment company registration statements.

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4. Applicability of Proposed Rule 430A to Investment Companies

As proposed, Rule 430A would be available to mutual funds and other investment companies under the Investment Company Act of 1940 (the "Investment Company Act"),[39] as well as other issuers. It is likely that proposed Rule 430A would be used primarily by closed-end funds, because the pricing amendment typically is the last event preceding effectiveness of the registration statement for those funds. Conversely, it is unlikely that proposed Rule 430A would be extensively used by mutual funds or unit investment trusts, because the pricing amendment typically is not the last event, or is only part of the last event, preceding effectiveness of their registration statements. For example, unit investment trusts typically file financial statements at the end of the registration process, along with their pricing information, and these financial statements are reviewed by the staff. Also, proposed Rule 430A would only be available in connection with any registration statement that is "declared effective." Thus, it would not be available to unit investment trusts whose registration statements become effective automatically under Rule 487.[40]

Under the proposal, the time period for filing prospectuses containing the previously omitted information would be shortened for those investment companies relying on proposed Rule 430A.[41] The shortened filing requirements would be set forth in Rule 497, rather than Rule 424, because the Commission recently proposed to make Rule 497 the exclusive rule for investment company prospectus filing requirements.[42]

5. Section 11 Liability Issues

Section 11 of the Securities Act[43] imposes liability on the issuer, directors, signers, experts and other designated persons for material misstatements in or omissions from a registration statement at the time of effectiveness. Section 11 ordinarily does not apply to statements omitted from an effective registration statement and subsequently disclosed in a prospectus or prospectus supplement, rather than a post-effective amendment.[44] The Commission believes, however, that the proposal adequately preserves investors' rights under section 11.

While it may not be necessary to assure section 11 liability on the price itself, the Commission believes that the proposed Rule should not alter such liability for price-related information, including use and adequacy of proceeds, and underwriter-related information such as material relationships with the registrant. Accordingly, paragraph (d) of proposed Rule 430A would provide that such information would be deemed part of the registration statement and one condition to the use of the Rule would be inclusion in the registration statement of the new undertaking specified by proposed paragraph (j) to Item 512 of Regulations S–K. The effect of the proposed Rule and undertaking would be to maintain section 11 liability on the information omitted from the effective registration statement in reliance on proposed Rule 430A and subsequently disclosed in the prospectus used after the effective date.[45]

The proposed undertaking provides that the information omitted from an effective registration statement as permitted by proposed Rule 430A and filed in a prospectus pursuant to Rules 424(b)(3)(i) or (iv) or 497(i)[46] would be deemed to be incorporated by reference into the registration statement as of the time the registration statement was declared effective. Because of the close proximity in time between effectiveness of the registration statement, the filing of the final prospectus under Rule 424 or 497 and the initial bona fide offering of the securities (as used in sections 4(3) and 13 of the Securities Act),[47] proposed paragraph (j) to Item 512 omits any updating undertaking for statute of limitations and section 11 reliance purposes. Comments, however, are solicited on this approach and, in the event the five business day period specified by proposed Rule 430A is lengthened,[48] on whether an undertaking moving forward the date of the offering then should be required.

In the event the Rule 424 or 497 filing is not made within the five business day period, proposed Rule 430A would require the filing of a post-effective amendment. Since there would be no prescribed time period by which the post-effective amendment must be filed, the Commission solicits comment on whether an updating undertaking for liability and statute of limitations purposes is warranted. Such an undertaking could be similar to that applicable to post-effective amendments filed in connection with Rule 415 offerings.[49]

The Commission requests comment on the proposal and other approaches to the liability issues posed by elimination of pricing amendments. For example, in lieu of the proposed incorporation by reference undertaking, proposed Rule 430A could be revised to require all registrants using it to file, prior to the commencement of the public offering or sales, an automatically effective post-effective amendment signed by the issuer, a majority of the board of directors and other persons specified in section 6(a) of the Securities Act.[50] A further variation to this alternative would be to permit the post-effective amendment to be signed by the agent for service of process. Such a procedure would be similar to the current procedures applicable to competitive bidding registration statements.[51]

Section 11 liability will continue to extend to exhibits, opinions and consents of counsel and accountants' consents, which must be filed as part of the registration statement at the time of effectiveness, as discussed above.[52] In addition, underwriter liability under section 11 will not be affected by the omission of underwriters' names from the registration statement; anyone with the status of underwriter is liable under section 11 whether or not named in the registration statement.[53]

6. Relationship to Rule 415

The proposed Rule does not affect the existing eligibility requirements for filing a registration statement for a continuous or delayed offering under Rule 415. Accordingly, the securities being offered through a registration statement permitted by proposed Rule 430A must be priced before or shortly after the registration statement is declared effective, and the offering must commence promptly, unless the registration statement meets the criteria for a delayed offering under Rule 415.[54] In order to preclude the use of proposed Rule 430A to avoid compliance with the shelf eligibility criteria, the proposed Rule provides that when the prospectus containing the information omitted from the effective registration statement is not filed within five business days after effectiveness, the omitted information would have to be filed in a post-effective amendment (which would have to be declared effective before sale could be made). The five business day period is not intended as a definition of what constitutes a delayed offering for purposes of Rule 415, but rather as a mechanism to ensure that delays in pricing and marketing securities would not result in offerings inconsistent with the Rule 415 criteria. The Commission requests specific comment on the proposed approach and whether the five business day time period should be longer or shorter. The Commission also is considering whether it is necessary for the proposed Rule to include this or any other provision specifically targeted at protecting the Rule 415 delayed offering criteria. Comment is solicited on this question, as well as on whether there are other approaches that would clarify the relationship of Rule 415 to the proposed Rule.

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[39] 15 U.S.C. 80a–1 *et seq.*

[40] 17 CFR 230.487.

[41] The comparable rule changes for registrants other than investment companies are discussed *infra* in Part II.B.2., "Filing Period."

[42] *See* Investment Company Act Release No. 15315 (September 17, 1986) [51 FR 34384]. Because the Commission proposed in Release No. 15315 to add a paragraph (h) to Rule 497, the shortened filing requirements would be set forth in paragraph (i) of Rule 497.

[43] 15 U.S.C. 77k.

[44] Under section 12(2) of the Securities Act [15 U.S.C. 77*l*(2)], however, sellers of securities may be liable to their purchasers for misleading information contained in a prospectus.

[45] As other changes in the propectus would not be incorporated by reference into the registration statement, such changes would not be taken into account in determining the adequacy of the registration statement for section 11 liability purposes.

[46] *See infra* Part II.B.1., "Types of Prospectuses to be Filed and Classification of Prospectuses," and *supra* Part II.A.4., "Applicability of Proposed Rule 430A to Investment Companies."

[47] 15 U.S.C. 77d(3) and 77m.

[48] *See infra* Part II.A.6., "Relationship to Rule 415."

[49] *See id.*, and Item 512(a)(2) of Regulation S–K [17 CFR 229.512(a)(2)].

[50] 15 U.S.C. 77f(a).

[51] *See* Rules 445–447 [17 CFR 230.445 through 230.447] and *supra* n.24.

[52] *See supra* Part II.A.1., "Overview and General Considerations."

[53] *See generally* section 11 (a)(5), (b)(3), (d), (e) and (f) of the Securities Act [15 U.S.C. 77k (a)(5), (b)(3), (d), (e) and (f)].

Securities offerings that do meet the criteria for delayed offerings under Rule 415 would appear to have no need to rely upon the proposed Rule. Such registration statements already may become effective without price and syndicate information, because the information is not known at the time of effectiveness. The Commission does not propose to change the current practice, and such delayed offering filings are not subject to the conditions imposed by proposed Rule 430A.[55]

The proposed Rule would alleviate continuing interpretive and administrative questions concerning whether a registration statement otherwise eligible to be filed as a delayed offering under Rule 415 is a "convenience shelf," *i.e.*, a registration statement for which the offering of some or all the securities is intended to commence promptly. The Commission has stated that the securities to be offered immediately cannot be considered part of a delayed offering; therefore, a pricing amendment is required for such filings.[56] Under the proposal, such filings, would be able to be declared effective without pricing amendments, provided the terms and conditions of proposed Rule 430A were met.

7. Formula Pricing

Currently companies that intend to price an offering according to a formula related to the market price file alternative prospectus cover pages as part of the registration statement. One cover page describes the formula and is used to meet the requirements of paragraph (16) of Schedule A of the Securities Act and Item 501 of Regulation S–K.[57] The other, to be used in the final prospectus, omits the formula cover page and includes the pricing table that is completed after the securities are priced. Proposed Rule 430A would appear to make these procedures unnecessary.

B. Amendments to Rule 424 [58]

1. Types of Prospectuses Required to be Filed and Classification of Prospectuses

Rule 424 now requires the filing with the Commission of prospectuses in the exact form furnished to investors.[59] The Commission believes that the current rule results in unnecessary filings and, therefore, proposes to delete the word "exact" and restrict the filing requirement to prospectuses that contain substantive modifications or additions.[60] The term "substantive" refers to additions or modifications that update or correct the content and substance of the information contained in a prospectus. The term would exclude such matters as most typographical, grammatical, format and clarifying changes.[61]

In addition, to facilitate access to and use of the information, the prospectuses would be classified according to the nature of the information being added or modified. The Commission seeks comment on the proposed approach to the classification of prospectuses.

Because of the proposed new classification scheme, the Commission believes that it is unnecessary to retain the current distinction between the first prospectus filed after effectiveness and subsequently filed prospectuses. Accordingly, paragraphs (b) and (c) of Rule 424, which maintain such a distinction and specify different times for filing, would be merged.

Proposed paragraphs (b)(3) (i) and (ii) would apply to prospectuses disclosing "transaction-specific" information, *i.e.*, information relating primarily to the securities offering. If a registrant elected to use proposed Rule 430A, the prospectus used after effectiveness of the registration statement would ordinarily be filed under Rule 424(b)(3)(i). Any prospectus filed under that paragraph would disclose the price, price-related information and underwriter-related information that was omitted from the registration statement at the time of effectiveness.[62]

Any prospectus that discloses transaction-specific information about the offering of securities on a delayed shelf basis under Rule 415 would ordinarily be filed under new paragraph (b)(3)(ii).[63] The transaction information

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[54] Such criteria are set forth in Rule 415(a)(1) [17 CFR 230.415(a)(1)]; *see* particularly Rule 415(a)(1)(x) [17 CFR 230.415(a)(1)(x)].

[55] In contrast, continuous offerings under Rule 415, which are required to commence promptly, would be able to make use of the proposed Rule to omit price information that would otherwise be required. *See* Rule 415(a)(1)(ix) [17 CFR 230.415(a)(1)(ix)].

[56] *See* Securities Act Release No. 6499 (November 17, 1983) [48 FR 52889].

[57] 15 U.S.C. 77aa Schedule A(16); 17 CFR 229.501. *See* Instruction 2 to Item 501 of Regulation S–K.

[58] *See supra* Part II.A.4., "Applicability of Proposed Rule 430A to Investment Companies," for a discussion of the more limited proposed changes to Rule 497, the rule applicable to filing of investment company prospectuses.

[59] Currently, Rule 424(b) requires that 10 copies of the prospectus in the exact form used after the effective date of a registration statement be filed within 5 days after the effective date or the commencement of the public offering, whichever occurs later. Rule 424(c) requires that 10 copies of any prospectus varying from that filed pursuant to Rule 424(b) be filed with or mailed to the Commission before the prospectus is used. Temporary Rule 499(c)(7) [17 CFR 230.499(c)(7)] permits registrants participating in the Edgar pilot to file Rule 424 prospectuses electronically, rather than in the exact form furnished to investors; the filing contains a narrative explanation of variations in form.

[60] The changes to Rule 424 would only affect the filing requirements, not the legal determination as to whether information must be provided to investors, and if so, whether such information may be provided in a prospectus or prospectus supplement without being included in a post-effective amendment. *See, e.g.*, Item 512(a) of Regulation S-K [17 CFR 229.512(a)], which specifies certain filings that must be made by post-effective amendment.

[61] As a result of this change to Rule 424, most registrants that choose to follow traditional procedures and therefore file pricing amendments would not also have to file a Rule 424(b) prospectus, as that prospectus ordinarily would not contain substantive changes from the prospectus contained in the pricing amendment.

[62] As noted *supra* in Part II.A.6., "Relationship to Rule 415," proposed Rule 430A(a)(3) would require that a post-effective amendment be filed if the prospectus is not filed within five business days after effectiveness.

[63] This paragraph would be applicable only to primary offerings. Prospectuses used in connection with secondary offerings made on a delayed basis would be filed under proposed paragraph (b)(3)(iii).

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would include the price, a description of the securities, and the specific method of distribution. Typically, such a prospectus would be filed every time another series or "tranche" of securities was offered.

Prospectuses reflecting other substantive changes or additions not covered in the first two categories would be filed under proposed paragraph (b)(3)(iii). Finally, prospectuses reflecting information that falls within more than one paragraph of proposed Rule 424(b)(3) would be filed under paragraph (b)(3) (iv) or (v), as applicable.[64] In order to make the classification system useful, paragraph (e) of Rule 424 would amened to require that the filing designate the paragraph, section and subsection (*i.e.*, (b)(3)(i) through (b)(3)(v)) pursuant to which it is being made.

2. Filing Period

The Commission proposes to shorten the time by which prospectuses used after effectiveness of the registration statement must be filed. Because only prospectuses containing substantive change would be filed, the Commission believes the remaining filings warrant a shorter time period in order to ensure currency and completeness of the information in the public files of the Commission and to provide prompt availability of the information to the investing public and the Commission. Under the proposed amendments, the filing date would be tied to the first use after effectiveness of the prospectus that contains modified or additional information.

The proposed amendments would require that a prospectus disclosing transaction-specific information specified in paragraphs (b)(3)(i) and (ii) be physically filed on or before the date it is first used after effectiveness in connection with the public offering or sales.[65] Mailing of these prospectuses to the Commission on the specified date, as permitted for prospectuses filed under present Rule 424(c), would not satisfy the proposed filing requirement.

Unlike prospectuses filed pursuant to paragraphs (b)(3)(i) and (ii), prospectuses reflecting other substantive changes would not have to be on file on the date of first use. Paragraph (b)(3)(iii) would require that such prospectuses be filed within two business days of first use or transmitted by a means reasonably calculated to result in filing with the Commission by that date. Accordingly, mailing of prospectuses would suffice if overnight mail service or similar means were used.

Finally, as prospectuses filed under paragraph (b)(iv) or (v) would contain information subject to the timing requirement provided for in paragraph (b)(3) (i) or (ii), they would be required to be filed on or prior to the date of first use.

The Commission requests comment on the proposed changes to be filing period. In particular, comment is solicited on whether prospectuses that do no more than reflect a change in the price of the security and other narrowly specified terms,[66] prospectuses containing new information only about selling security holders, or other specified categories of prospectuses should be provided a longer filing period.

3. Filing Format

The Commission proposes to revise Rule 424(b) to explicitly permit the filing of a prospectus supplement or "sticker" only, rather than requiring that a registrant using a supplement refile the entire prospectus with the supplement attached.[67] The prospectus supplement distributed to investors, however, ordinarily would still be required to be attached to the prospectus to which the supplement relates.[68] The proposed Rule would require that a supplement smaller than a prospectus page filed separately be attached to a sheet of 8–½" X 11" paper for ease in processing.

In a related amendment, the Commission also is proposing to require that the first page of each prospectus supplement include a cross reference to the date(s) of the related prospectus and/or prospectus supplement(s). Although the current rules do not require that this information be disclosed, some companies voluntarily do so. In the Commission's view, such information should be set forth if companies are permitted to file only the prospectus supplement, so that the Commission and persons obtaining this information will be able to determine which documents comprise the complete prospectus.[69]

III. Cost-Benefit Analysis

To evaluate fully the benefits and costs associated with proposed Rule 430A and the amendments to Rules 424 and 497 and Items 512 and 601 of Regulation S–K, the Commission requests commentators to provide views and data as to the costs and benefits associated with the rules to eliminate pricing amendments and non-substantive Rule 424 filings, to permit the filing of a supplement without the rest of the prospectus, and to require more immediate filing of the prospectus. In this regard, the Commission notes that the proposals should reduce the filing burden of registrants and associated costs such as printing and travel expenses. A reduction in these expenses, however, may be offset in part by an increase in the costs associated with filing a Rule 424(b) or 497(i) prospectus at an earlier time.

IV. Initial Regulatory Flexibility Analysis

This initial regulatory flexibility analysis concerns proposed Rule 430A and proposed amendments to Rules 424 and 497 of Regulation C and Items 512 and 601 of Regulation S–K and has been prepared by the Commission in accordance with 5 U.S.C. 604.

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[64] These two categories represent a combination of (i) and (iii), and (ii) and (iii), respectively. No combination of (i) and (ii) is needed, as delayed offering shelf filings cannot use Rule 430A; *See supra* Part II.A.6., "Relationship to Rule 415."

Category (iv) would be used when a prospectus includes both information previously omitted pursuant to Rule 430A and other substantive changes that are customarily permitted to be made in a Rule 424 filing. As noted *supra* n.60, the proposed revisions to Rule 424 are not intended to alter traditional considerations determining when information must be included in a post-effective amendment. Accordingly, if a registrant relying on Rule 430A determines after effectiveness that the prospectus will contain information required to be set forth in a post-effective amendment, filing a Rule 424(b) prospectus under category (iv) would not substitute for a post-effective amendment. *See supra* n.45.

[65] *See* Rule 456 [17 CFR 230.456].

[66] Such prospectus supplements are frequently filed by registrants that continuously sell debt securities at varying market or negotiated fixed rates of interest. A supplement reflecting the fixed interest rate for each sale is filed under Rule 424(c). Because of the volume of such supplements and the fact that they do no more than reflect a new interest rate or certain other limited terms such as maturity date and redemption price, a longer filing period may be warranted. In contrast, supplements that describe new features of the security being offered, such as a yield contingent on a variable not described in the original prospectus, would be required to be filed in accordance with the shorter time periods described *supra*.

[67] Part IV.E. of the Edgar Advance Notice of Proposed Rulemaking requests comment on whether Rule 424 should permit the filing of only a supplement. The Commission believes this concept is appropriate both for paper and electronic filings and therefore is proposing it at this time.

[68] The Commission staff previously has permitted registrants to send prospectus supplements not attached to the prospectus (often called an "appendix" in the employee benefit plan context) to participants in an employee benefit plan or dividend or interest reinvestment plan, provided that the supplement is understandable without reference to the prospectus and that the participants have previously received a complete copy of the prospectus to which the supplement relates and are advised that they may receive another copy on request. *See* Securities Act Release No. 6281 (January 15, 1981) [46 FR 8446] and, *e.g.*, letter re Illinois Power Company (available October 11, 1982). This would continue to be permitted.

[69] The cross reference would not necessarily refer to all previous supplements filed in connection with the prospectus, but only to those supplements that constitute part of the statutory prospectus with respect to the securities currently being offered.

Proposed Rule 430A, if promulgated, will eliminate the filing of many pricing amendments by permitting a registration statement to be declared effective without disclosing the price, certain information about the underwriting syndicate (including material relationships with any underwriter not named therein), underwriting and dealer compensation, amount of proceeds, conversion rates, call prices and price-related information. This information would continue to be disclosed in the prospectus used after the effective date of the registration statement.

Certain amendments to Rules 424 and 497 and Items 512 and 601 are necessitated by proposed Rule 430A. Specifically, proposed Rule 430A and the new undertaking contained in Item 512(j) will maintain liability under section 11 of the Securities Act on the information permitted to be omitted from the effective registration statement and subsequently disclosed in the prospectus used after the effective date. The proposed technical amendment to Instruction 1 to Item 601 merely clarifies, with respect to information on price and similar matters from an exhibit, that subsequent inclusion of such information in the prospectus used after effectiveness of a registration statement permitted by proposed Rule 430A would satisfy the existing requirement that such information be contained in an amendment to the registration statement. Additionally, in order to ensure timely access to price, price-related and underwriter-related information, Rules 424(b) and 497 are proposed to be amended to require more immediate filing of the prospectus where the procedure outlined in proposed Rule 430A has been employed. Finally, other proposed amendments to Rule 424 apply to prospectuses not necessarily affected by proposed Rule 430A. These proposed amendments would eliminate unnecessary filings, provide for classification of prospectuses according to the nature of the information being modified or disclosed, and shorten the filing period for prospectuses used after the effective date.

Objectives

The objectives of proposed Rule 430A and the related amendments are to simplify and to reduce filing procedures and to minimize possible disruptions to a registrant's marketing schedule as the result of having to file a pre-effective pricing amendment. The proposed amendments to Rule 424 governing the prospectus classification system, filing format and time requirements are intended to provide a more useful and effective system for filing posteffective prospectuses. The Commission believes that the proposal will achieve these purposes without affecting the adequacy of disclosure of information to investors or investor protection under the Federal securities laws.

Legal Basis

The proposed amendments would be promulgated pursuant to sections 7, 10 and 19(a) of the Securities Act.

Small Entities Subject to the Rules

A small issuer for purposes of the Regulatory Flexibility Act is defined by Rule 157 [70] under the Securities Act as an issuer those total assets on the last day of its most recent fiscal year were $5 million or less and that is engaged or proposing to engage in an offering of securities which does not exceed $5 million. In the recent experience of the Commission, several hundred registration statements a year may be filed with the Commission by small issuers.

In addition, a "small business" or "small organization" for purposes of the Regulatory Flexibility Act is defined by Rule 0–10 [71] under the Investment Company Act as an investment company with net assets of $50 million or less as of the end of its most recent fiscal year. As of March 31, 1986, about 1300 of 2592 active registered investment companies would be small entities as defined by Rule 0–10. Because the Commission anticipates that Rule 430A would be primarily used by closed-end investment companies, it notes that, as of August 31, 1986, there were 215 closed-end companies, approximately 100 of which would be small entities as defined by Rule 0–10.

Reporting, Recordkeeping and Other Compliance Requirements

The Commission believes that proposed Rule 430A and the proposed amendments to Rules 424 and 497 and Items 512 and 601 would not result in any significant increase in reporting or recordkeeping requirements. The proposals do not change the information required to be disseminated to investors. Rather, the proposals decrease the information required to be filed with the Commission prior to effectiveness of the registration statement. Thus, the proposals will not only ease the burdens associated with the filing of a registration statement by a small issuer, but will minimize possible disruptions to a small issuer registrant's marketing schedule. Similarly, the proposed Rule and amendment to Item 512 do not affect the section 11 liability associated with the information currently required to be filed with the Commission prior to effectiveness. The proposals merely retain that liability for information that may be filed after effectiveness.

Small issuer registrants may be affected by the corollary amendments to Rules 424 and 497. Current Commission rules require the filing of the prospectus used after the effective date of a registration statement within five days after the effective date or the commencement of the public offering, whichever occurs later. The amendments to Rules 424 and 497 provide, however, that if the registrant chooses to comply with the requirements of proposed Rule 430A, a prospectus used after the effective date of a registration statement shall be filed on or prior to the date it is first used in connection with the public offering or sales. This proposed amendment is intended to ensure prompt availability of the price and price-related information to the investing public. Rule 424 would also require the same timing if the registrant chooses to make a delayed offering under Rule 415.

The Commission does not believe that the burdens associated with small issuer registrants filing prospectuses at an earlier date are significant. The proposed changes are voluntary in the sense that small issuers need not choose to use the procedures provided by Rules 430A or 415.

Registrants, including small issuer registrants, that choose not to follow the procedures outlined in proposed Rule 430A and, instead, file a pre-effective pricing amendment may no longer be required under Commission rules to file a prospectus used after the effective date of a registration statement. Proposed amendments to rule 424(b) provide that non-substantive changes to the information set forth in the last prospectus filed with the Commission need not be filed with the Commission in a prospectus used after the effective date of the registration statement. If substantive changes to information set forth in the last prospectus filed after effectiveness with the Commission do occur, such information must be filed within two business days of first use or transmitted by a means reasonably calculated to result in filing by that date. This proposed amendment will shorten the previously noted five day time period permitted registrants, including small entity issuers, for filing the prospectus used after the effective date of the registration statement or the

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[70] 17 CFR 230.157.

[71] 17 CFR 230.0 through 270.

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commencement of the public offering. In such situations, however, the proposed amendments would ease the filing requirement to permit the filing of a prospectus supplement rather than the entire prospectus.

Overlapping or Conflicting Federal Rules

The Commission does not believe that the proposed rules duplicate or conflict with any existing rule provisions.

Significant Alternatives

The Commission has requested comment on whether or not eligibility requirements to use proposed Rule 430A should be adopted. Specifically, the Commission has requested whether proposed Rule 430A should be available to registrants not subject to the reporting provisions of section 13(a) or 15(d) of the Exchange Act immediately prior to the filing of a registration statement. As noted, however, such an exemption may deny small issuer registrants the benefits of Rule 430A.

The Commission has considered imposing fewer requirements on filing of prospectuses used after effectiveness by small issuers, such as not requiring small issuers to file these prospectuses any earlier than currently required. The Commission does not believe that such alternative proposals would be consistent with the Commission's statutory mandate of investor protection. Similarly, the Commission does not consider the use of performance standards to be a significant alternative because such standards would be inconsistent with the Commission's statutory mandate.

V. Request for Comments

Any interested persons wishing to submit written comments on the proposals, as well as on other matters that may have an impact on the proposals contained herein, are requested to do so. In particular, the Commission specifically requests comment on whether proposed rule 430A should be available to all registrants or, in the alternative, whether different requirements should apply with respect to non-reporting companies and whether other eligibility criteria are appropriate. As noted throughout this release, the Commission also requests comment on a number of other aspects of the proposals.

The Commission also encourages the submission of written comments with respect to any aspect of the initial regulatory flexibility analysis. Such written comments will be considered in the preparation of the final regulatory flexibility analysis if the proposed rules are adopted.

VI. Statutory Basis

Rule 430A is being proposed by the Commission and Rules 424 and 497 and Items 512 and 601 of Regulation S-K are proposed to be amended by the Commission pursuant to sections 7, 10 and 19(a) of the Securities Act.

List of Subjects in 17 CFR Parts 229 and 230

Reporting and recordkeeping requirements, Securities.

VII. Text of Proposed Rules

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 299—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND CONSERVATION ACT OF 1975—REGULATION S-K

1. The authority citation for Part 229 is amended by adding the following citation: (Citations before * * * indicate general rulemaking authority).

Authority: Sec. 19, 48 Stat. 85, as amended: 15 U.S.C. 77s * * * Sections 229.512(j) and 229.601 also issued under sec. 7, 48 Stat. 78; 15 U.S.C. 77g.

2. By adding new paragraph (j) of § 229.512 to read as follows:

§ 229.512 (Item 512) Undertakings.

* * * * *

(j) Include the following in a registration statement permitted by Rule 430A under the Securities Act of 1933 (§ 230.430A of this chapter):

The undersigned registrant hereby undertakes that:

For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of a registration statement as permitted by Rule 430A and contained in the form of prospectus to be filed by the registrant pursuant to Rule 424(b)(3) (i) or (iv) or 497(i) under the Securities Act (§§ 230.424(b)(3) (i) or (iv) or 230.497(i) of this chapter) shall be deemed to be incorporated by reference into the registration statement at the time it was declared effective.

3. By revising Instruction 1 to § 229.601 to read as follows:

§ 229.601 (Item 601) Exhibits.

* * * * *

Instructions to Item 601. 1. If an exhibit to a registration statement (other than an opinion or consent), filed in preliminary form, has been changed only (A) to insert information as to interest, dividend or conversion rates, redemption or conversion prices, purchase or offering prices, underwriters' or dealers' commissions, names, addresses or participation of underwriters or similar matters, which information appears elsewhere in an amendment to the registration statement or a prospectus filed pursuant to Rule 424(b)(3) (i) or (iv) under the Securities Act (§ 230.424(b)(3) (i) or (iv) of this chapter), or (B) to correct typographical errors, insert signatures or make other similar immaterial changes, then, notwithstanding any contrary requirement of any rule or form, the registrant need not refile such exhibit as so amended; provided the registrant states in the amendment to the registration statement the basis provided by this Instruction for not refiling such exhibit. Any such incomplete exhibit may not, however, be incorporated by reference in any subsequent filing under any Act administered by the Commission.

* * * * *

PART 230—GENERAL RULES AND REGULATIONS SECURITIES ACT OF 1933

1. The authority citation for Part 230 is amended by adding the following citations: (Citations before * * * indicate general rulemaking authority).

Authority: Sec. 19, 48 Stat. 85, as amended: 15 U.S.C. 77s. * * * Sections 230.424(b), 424(c), and 424(e), 230.430A, and 230.497(i) also issued under secs. 7, 48 Stat. 78, 15 U.S.C. 77g; 10, 48 Stat. 81, as amended; 15 U.S.C. 77j.

* * * * *

2. By revising paragraphs (b), (c), and (e), and adding a "Note" after paragraph (c) of § 230.424 to read as follows:

§ 230.424 Filing of prospectuses, number of copies.

* * * * *

(b)(1) Ten copies of each form of prospectus purporting to comply with section 10 of the Act shall be filed with the Commission in the form in which it is used after the effectiveness of the registration statement; *Provided, however,* that only a form of prospectus that contains substantive changes or additions to a previously filed prospectus is required to be filed.

(2) This paragraph shall not apply in respect to a form of prospectus contained in a registration statement and relating solely to securities offered at competitive bidding, which prospectus is intended for use prior to the opening of bids.

(3) A form of prospectus used after effectiveness shall be filed or, if spcifically permitted, transmitted for filing as follows:

(i) A form of prospectus that discloses information previously omitted from an effective registration statement as permitted by Rule 430A under the

Securities Act (§ 230.430A of this chapter) shall be filed with the Commission on or prior to the date it is first used after effectiveness in connection with a public offering or sales;

(ii) A form of prospectus used in connection with a primary offering of securities on a delayed basis as permitted by Rule 415 under the Securities Act (§230.415 of this chapter) that discloses the public offering price, description of securities, specific method of distribution or similar matters shall be filed with the Commission on or prior to the date it is first used after effectiveness in connection with a public offering or sales;

(iii) A form of prospectus that reflects facts or events other than those covered in paragraphs (b) (3) (i) and (ii) of this rule that represent a substantive change in or addition to the information set forth in the last form of prospectus filed with the Commission under this rule or as part of a registration statement under the Securities Act shall be filed with the Commission within Two business days after the date it is first used after effectiveness in connection with a public offering or sales, or transmitted by a means reasonably calculated to result in filing with the Commission by that date;

(iv) A form of prospectus that discloses information facts or events covered in both paragraphs (b)(3) (i) and (iii) of this section shall be filed with the Commission on or prior to the date it is first used after effectiveness in connection with a public offering or sales;

(v) A form of prospectus that discloses information, facts or events covered in both paragraphs (b)(3) (ii) and (iii) shall be filed with the Commission on or prior to the date it is first used after effectiveness in connection with a public offering or sales.

(c) If a form of prospectus consists of a prospectus supplement attached to a prospectus that has been previously filed pursuant to this rule, only the prospectus supplement need be filed under paragraph (b) of this section, provided that the first page of each prospectus supplement includes a cross reference to the date(s) of the related prospectus and any propectus supplements thereto that together constitute the prospectus required to be delivered by section 5(b) of the Securities Act with respect to the securities currently being offered or sold.

Note.—Any Prospectus supplement being filed separately that is smaller than a prospectus page should be attached to an 8½"×11" sheet of paper.

* * * * *

(e) Each copy of a prospectus filed under this rule shall contain in the upper right corner of the cover page the paragraph, section and subsection of this rule under which the filing is made and the file number of the registration statement to which the prospectus relates. The information required by this paragraph may be set forth in longhand, provided it is legible.

3. By adding new § 230.430A to read as follows:

§ 230.430A Prospectus in a registration statement at the time of effectiveness.

(a) A form of prospectus filed as part of a registration statement that is declared effective may omit information with respect to the offering price, underwriting syndicate (including any material relationships between the registrant and underwriters not named therein), underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds, conversion rates, call prices and other matters dependent upon the offering price, *Provided that:*

(1) The securities to be registered are offered for cash;

(2) The registrant furnishes the undertaking required by Item 512(j) of Regulation S-K (§ 229.512(j) of this chapter); and

(3) The information omitted from the form of prospectus filed as part of a registration statement that is declared effective shall be contained in the form of prospectus filed with the Commission pursuant to Rule 424(b)(3) (i) or (iv) or Rule 497(i) under the Securities Act (§ 230.424(b)(3) (i) or (iv) of § 230.497(i) of this chapter); or if such form of prospectus is not filed within five business days after the effective date of the registration statement, the information shall be filed in a post-effective amendment to the registration statement.

(b) This rule shall not limit the information required to be contained in a form of prospectus meeting the requirements of section 10 of the Act for purposes of section 5(b) thereof used after effectiveness of the registration statement.

(c) This rule shall not be applicable to registration statements for securities to be offered by competitive bidding.

(d) The information permitted by paragraph (a) of this rule to be omitted from an effective registration statement and contained in a form of prospectus filed with the Commission pursuant to Rule 424(b)(3) (i) or (iv) or Rule 497(i) shall be deemed to be part of the registration statement as of the time it was declared effective.

4. By adding new paragraph (i) of § 230.497 to read as follows:

§ 230.497 Filing of prospectus—number of copies.

* * * * *

(i) On or prior to the date it is first used after effectiveness in connection with a public offering or sales, ten copies of every form of propectus and Statement of Additional Information, where applicable, that discloses the information previously omitted from an effective registration statement as permitted by Rule 430A under the Securities Act (§ 230.430A of this chapter) shall be filed with the Commission in the exact form in which it is used.

Dated: October 27, 1986.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-24814 Filed 10-31-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Ch. V

[Docket No. T84-01; Notice 11]

Passenger Motor Vehicle Theft Data for 1985; Request for Comments

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments.

SUMMARY: This notice publishes data on passenger motor vehicle thefts in 1985 for public review and comment. These data were calculated based on information provided to this agency by the National Crime Information Center (NCIC). These 1985 theft data indicate that vehicle thefts in 1985 increased above the 1983/84 level. Of the 158 lines sold in the United States during 1985, 87 of the lines had theft rates that exceeded the median theft rate for 1983/1984.

To address the potential problem of multiple counting of the same vehicle theft, this notice uses the same approach adopted by the agency for the final calculation of 1983/1984 theft rates. That is, once a vehicle has been reported as stolen, any reported thefts of the same vehicle within seven calendar days of the first report were *not* counted as additional thefts of that vehicle.

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DATE: All comments on this notice must be received by NHTSA not later than December 3, 1986.

ADDRESS: Comments should refer to Docket No. T84-01; Notice 11, and be submitted to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are 8:00 am to 4:00 pm, Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Brian McLaughlin, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202-366-4808).

SUPPLEMENTARY INFORMATION:

Pursuant to Title VI of the Motor Vehicle Information and Cost Savings Act (the Cost Savings Act; 15 U.S.C. 2021 *et seq.*), NHTSA promulgated a motor vehicle theft prevention standard applicable to high-theft car lines. Section 603(a)(1) of the Cost Savings Act (15 U.S.C. 2023(a)(1)) specifies that three types of car lines are high theft lines within the meaning of Title VI. These three types are:

(1) Existing lines that had a theft rate exceeding the median theft rate in 1983 and 1984;

(2) New lines that are likely to have a theft rate exceeding that median theft rate; and

(3) Lines with theft rates below the median theft rate, but which have a majority of major parts interchangeable with lines whose thefts rates exceeded or are likely to exceed the median theft rate.

Section 603(b) of the Cost Savings Act explains how the agency is to determine whether existing lines had a theft rate that exceeded the median theft rate in 1983 and 1984. Section 603(b)(3) directs NHTSA to "obtain from the most reliable source or sources accurate and timely theft and recovery data and publish such data for review and comment. To the greatest extent possible, the [NHTSA] shall utilize theft data reported by Federal, State, or local police. After such publication and opportunity for comment, the [NHTSA] shall utilize the theft data to determine the median theft rate under this subsection."

In accordance with this statutory directive, NHTSA published a final notice on November 12, 1985, setting forth the 1983/1984 theft data; 50 FR 46666. Based on those data, NHTSA calculated the median theft rate for purposes of Title VI as 3.2712 thefts per 1000 vehicles produced.

Section 603(b)(3) provides that NHTSA shall publish theft data for review and comment "immediately upon enactment of this title, *and periodically thereafter.*" (Emphasis added). These updated publications of theft data do not affect the determination of which car lines are subject to the theft prevention standard. According to section 603, these periodic publications of updated theft data are *not* to be used by the agency to calculate an updated median theft rate, or to determine whether new lines are likely to be high theft lines, because such lines are likely to have theft rates exceeding some updated theft rate.

The agency believes that the reason for its being directed to periodically publish updated theft data was to inform the public, particularly law enforcement groups, automobile manufacturers, and Congress, of the extent of the vehicle theft problem and the impact, if any, on vehicle thefts as a result of the Federal motor vehicle theft prevention standard. To carry out this purpose, this notice sets forth the theft rates for the 158 lines of passenger motor vehicles sold in the United States for the 1985 model year. NHTSA calculated these theft rates based on information provided by the NCIC.

These 1985 theft data show an increase in vehicle thefts above the levels experienced in 1983/1984. According to the Uniform Crime Reports published by the FBI, motor vehicle thefts in 1985 increased 6.8 percent as compared with 1984. This increase in thefts is reflected in the 1985 theft rates. For 1983/1984, the median theft rate was 3.2712 thefts per 1000 vehicles produced. Exactly 50 percent of the lines exceeded this theft rate. For 1985, 87 of the 158 lines, or 55 percent, exceeded 3.2712 thefts per 1000 vehicles produced.

In calculating the 1985 theft data, the agency followed the same approach it used in calculating the 1983/1984 median theft rate for limiting the possibility of multiple countings of the same vehicle theft. NHTSA became aware of the possibility that multiple countings of a single theft could arise if a law enforcement agency computer operator followed incorrect data entry procedures after getting further information about a vehicle already reported as stolen. Operators are supposed to revise an existing theft data entry to reflect new or additional data about the theft, but they sometimes cancel the original theft entry and enter a new theft report. The result of such actions would be that one actual theft reported to NCIC would be entered into the system more than once. To address this situation for the 1983/1984 theft data calculations, NHTSA excluded all duplicate vehicle identification numbers (VIN's) of stolen vehicles reported within seven calendar days of each other. This approach takes into account the possibility that a vehicle might actually be stolen more than once during a particular calendar year, but that it is highly unlikely to be stolen more than once in a week.

	Manufacturer	Make/model (line)	Thefts 1985	Production (mfgr's) 1985	Theft rate (thefts/product) (1985) (1,000's)
1	General Motors	Pontiac Firebird	1,691	86,221	19.6124
2	General Motors	Chevrolet Camaro	2,691	167,309	16.0840
3	Mazda	RX-7	864	58,848	14.6819
4	General Motors	Chevrolet Corvette	543	37,730	14.3917
5	General Motors	Buick Riviera	908	63,225	14.3614
6	General Motors	Chevrolet Monte Carlo	1,546	113,847	13.5796
7	General Motors	Buick Regal	1,599	120,772	13.2398
8	General Motors	Pontiac Grand Prix	728	59,790	12.1759
9	General Motors	Cadillac Eldorado	865	75,215	11.5004
10	Toyota	Supra	285	27,442	10.3855
11	General Motors	Oldsmobile Cutlass Supreme	2,412	234,470	10.2870
12	Chrysler Corp.	Dodge Conquest	25	2,502	9.9920
13	Toyota	Celica	693	74,235	9.3352
14	General Motors	Pontiac Fiero	609	69,391	8.7764
15	Mitsubishi	Starion	50	6,067	8.2413
16	General Motors	Oldsmobile Toronado	309	40,415	7.6457
17	Ford Motor Co.	Lincoln Town Car	864	115,763	7.4635
18	General Motors	Cadillac Seville	287	38,920	7.3741
19	Chrysler Corp.	Plymouth Conquest	17	2,500	6.8000
20	Toyota	MR2	153	23,323	6.5600
21	Volkswagen	Quantum	89	13,787	6.4554
22	General Motors	Cadillac Fleetwood Brougham (RWD)	372	58,364	6.3738

	Manufacturer	Make/model (line)	Thefts 1985	Production (mfgr's) 1985	Theft rate (thefts/product) (1985) (1,000's)
23	Nissan	300ZX	476	74,832	6.3609
24	Ford Motor Co.	Ford Mustang	909	143,627	6.3289
25	Toyota	Camry	538	93,198	5.7727
26	Volkswagen	Cabriolet	72	12,555	5.7348
27	Mazda	GLC	386	67,960	5.6798
28	Ford Motor Co.	Ford Thunderbird	821	144,627	5.6767
29	Porsche	911	26	4,590	5.6645
30	General Motors	Pontiac Grand AM	427	75,962	5.6212
31	General Motors	Cadillac Deville/Limo (FWD)	1,066	190,979	5.5818
32	Porsche	944	77	14,230	5.4111
33	AMC/Renault	Alliance/Encore	707	134,664	5.2501
34	Ford Motor Co.	Ford Exp	138	26,351	5.2370
35	Ford Motor Co.	Mercury Couger	584	111,667	5.2298
36	Mercedes-Benz	500SEL	45	8,695	5.1754
37	Chrysler Corp.	Dodge Diplomat	133	25,751	5.1648
38	Chrysler Corp.	Chrysler Fifth Avenue/Newport	572	110,999	5.1532
39	Toyota	Corolla/Corolla Sport	820	160,804	5.0994
40	Pininfarina	Spider/Azzura	3	600	5.0000
41	Mitsubishi	Tredia	61	12,320	4.9513
42	Isuzu	I-Mark	89	18,244	4.8783
43	General Motors	Pontiac Bonneville	259	53,395	4.8506
44	Mazda	626	446	93,709	4.7594
45	Ford Motor Co.	Mercury Capri	72	15,198	4.7375
46	Nissan	Sentra	821	173,873	4.7218
47	Toyota	Cressida	203	43,129	4.7068
48	Nissan	200 SX	156	33,460	4.6623
49	General Motors	Pontiac 6000	725	156,326	4.6377
50	Mitsubishi	Cordia	50	11,131	4.4920
51	Chrysler Corp.	Laser	227	50,916	4.4583
52	BMW	6-Series	16	3,681	4.3466
53	General Motors	Buick LeSabre	640	147,679	4.3337
54	Chrysler Corp.	Dodge Daytona	205	47,437	4.3215
55	Mitsubishi	Mirage	88	20,366	4.3209
56	Mercedes-Benz	380SL	48	11,111	4.3200
57	Ford Motor Co.	Ford LTD	784	184,863	4.2410
58	Ford Motor Co.	Lincoln Mark VII	75	17,692	4.2392
59	General Motors	Pontiac 1000	68	16,143	4.2124
60	Chrysler Corp.	Dodge Lancer	192	45,873	4.1855
61	General Motors	Chevrolet Sprint	116	27,781	4.1755
62	Mercedes-Benz	500SEC	7	1,687	4.1494
63	General Motors	Oldsmobile Delta 88/Custom Cruiser	924	227,481	4.0619
64	Volkswagen	Scirocco	56	13,812	4.0544
65	General Motors	Buick Skylark	328	81,409	4.0290
66	Chrysler Corp.	Chrysler Executive Sedan/Limousine	3	757	3.9630
67	Chrysler Corp.	Dodge 600	232	58,893	3.9393
68	Mitsubishi	Galant	37	9,447	3.9166
69	General Motors	Chevrolet Chevette	400	105,427	3.7941
70	Subaru	XT	19	5,019	3.7856
71	Alfa Romeo	Spider Veloce 2000	8	2,142	3.7348
72	Ford Motor Co.	Mercury Topaz	289	77,431	3.7324
73	General Motors	Buick Electra	485	129,998	3.7308
74	Avanti	Avanti II	1	270	3.7037
75	General Motors	Oldsmobile 98 Regency	577	161,135	3.5808
76	Volvo	740/760	176	49,272	3.5720
77	Chrysler Corp.	Dodge Aries	422	118,525	3.5604
78	Chrysler Corp.	Dodge Colt/Colt Vista	152	43,641	3.4830
79	General Motors	Chevrolet Impala/Caprice	830	239,308	3.4683
80	General Motors	Cadillac Cimarron	68	19,770	3.4396
81	Isuzu	Impulse	47	13,695	3.4319
82	Chrysler Corp.	Plymouth Gran Fury	43	12,543	3.4282
83	Nissan	Pulsar	135	40,252	3.3539
84	Jaguar	XJ-S	14	4,187	3.3437
85	Ford, Motor Co.	Ford Tempo	961	291,667	3.2949
86	General Motors	Pontiac 2000/Sunbird	316	96,080	3.2889
87	Chrysler Corp.	Dodge Charger	186	56,854	3.2715
88	General Motors	Buick Somerset	259	79,492	3.2582
89	General Motors	Pontiac Parisienne	225	69,526	3.2362
90	Toyota	Tercel	330	103,800	3.1792
91	General Motors	Buick Century	745	237,862	3.1321
92	General Motors	Oldsmobile Cutlass Ciera/Cruiser (FWD)	943	303,943	3.1026
93	General Motors	Oldsmobile Calais	299	98,574	3.0333
94	Chrysler Corp.	Chrysler New Yorker	181	60,766	2.9786
95	Chrysler Corp.	Dodge Omni	219	74,423	2.9426
96	Chrysler Corp.	Plymouth Reliant	402	137,762	2.9181
97	Mercedes-Benz	190	80	27,683	2.8899
98	Lotus	Espirt	1	350	2.8571
99	Chrysler Corp.	Chrysler LeBaron/Town & Country	261	92,967	2.8074
100	Chrysler Corp.	LeBaron GTS	170	60,838	2.7943
101	Chrysler Corp.	Plymouth Caravelle	111	40,010	2.7743
102	Ford Motor Co.	Ford Escort	1,128	407,315	2.7694
103	General Motors	Chevrolet Cavalier	989	360,353	2.7445
104	General Motors	Buick Skyhawk	199	73,821	2.6957
105	Peugeot	1505	56	20,824	2.6892
106	General Motors	Chevrolet Spectrum	122	46,341	2.6327
107	BMW	17-Series	24	9,130	2.6287
108	Chrysler Corp.	Plymouth Horizon	228	88,338	2.5810
109	General Motors	Chevrolet Citation	135	53,258	2.5348
110	Audi	5000S	127	50,558	2.5120
111	Saab	900	100	39,858	2.5089
112	Jaguar	XJ	43	17,277	2.4889
113	General Motors	Chevrolet Celebrity	873	354,144	2.4651
114	Ford Motor Co.	Mercury Lynx	209	84,805	2.4645

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	Manufacturer	Make/model (line)	Thefts 1985	Production (mfgr's) 1985	Theft rate (thefts/product) (1985) (1,000's)
115	Nissan	Stanza	118	48,005	2.4580
116	Chrysler Corp	Plymouth Colt/Colt Vista	101	41,368	2.4415
117	Ford Motor Co	Lincoln Continental	67	27,521	2.4345
118	General Motors	Oldsmobile Firenza	101	41,527	2.4322
119	Honda	Prelude	189	78,432	2.4097
120	Ford Motor Co	Mercury Marquis	226	95,040	2.3779
121	Mercedes-Benz	300D/CD/TD	55	23,344	2.3561
122	Chrysler Corp	Plymouth Turismo	123	52,471	2.3442
123	Bertone	X-1/9	3	1,310	2.2901
124	AMC/Renault	Fuego	8	3,509	2.2799
125	Mercedes-Benz	300SD/380SE	44	19,734	2.2297
126	Maserati	BiTurbo	4	1,840	2.1739
127	Ford Motor Co	Mercury Grand Marquis	323	151,102	2.1376
128	Honda	Accord	539	260,055	2.0726
129	BMW	13-Series	109	53,804	2.0259
130	Volkswagen	Jetta	149	73,665	2.0227
131	Nissan	Maxima	176	88,097	1.9978
132	BMW	15-Series	38	19,306	1.9683
133	Audi	4000/Coupe	45	23,025	1.9544
134	Honda	Civic	369	204,148	1.8075
135	Porsche	928	4	2,300	1.7391
136	Alfa Romeo	GTV6	1	626	1.5974
137	Subaru	Subaru	161	101,220	1.5906
138	Ferrari	308	1	645	1.5504
139	Ford Motor Co	Ford LTD Crown Victoria	221	166,346	1.3286
140	Volkswagen	Golf GTI	146	112,070	1.3028
141	Ford Motor Co	Merkur XR4TI	16	12,404	1.2899
142	Volvo	DL/GL	57	52,770	1.0802
143	AMC/Renault	181/Sportwagon	3	2,850	1.0526
144	General Motors	Chevrolet Nova	16	27,943	0.5726
145	Ferrari	Testarossa	0	120	0.0000
146	Rolls-Royce/Bentley	Silver Spirit/Silver Spur/Mulsanne	0	906	0.0000
147	Aston Martin	Saloon/Vantage/Volante	0	29	0.0000
148	Maserati	Quattroporte	0	143	0.0000
149	Audi	Quattro	0	69	0.0000
150	Excalibur	Phaeton/Roadster	0	[illegible]	0.0000
151	Ferrari	Mondial	0	148	0.0000
152	Aston Martin	Lagonda	0	23	0.0000
153	Rolls-Royce/Bentley	Corniche	0	226	0.0000
154	Rolls-Royce/Bentley	Continental	0	2	0.0000
155	Zimmer	Classic/Elegante/Cabriolet	0	170	0.0000
156	Rolls-Royce/Bentley	Camargue	0	135	0.0000
157	Bitter GMBH	Bitter SC	0	135	0.0000
158	TVR	280I	0	225	0.0000

Interested persons are invited to submit comments on these data. The agency is particularly interested in comments about the accuracy of these data and the methodology used to calculate theft rankings. It is requested but not required that 10 copies be submitted.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicate above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered before publication of final 1985 theft data. Comments on this notice will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Authority: 15 U.S.C. 2023; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: October 28, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86-24821 Filed 10-31-86; 8:45 am]

BILLING CODE 4910-59

Notices

Federal Register
Vol. 51, No. 212
Monday, November 3, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE OFFICE OF UNITED STATE COURTS

Board of Certification; United States Courts of Appeals Circuit Executive; Meeting

AGENCY: Board of Certification, United States Courts of Appeals, Circuit Executive, Administrative Office of United States Courts.

ACTION: Notice of meeting of Board of Certification in Washington, DC on November 7, 1986 to interview applicants who are interested in being certified as qualified for the position of circuit executive.

SUMMARY: Individuals who wish to serve as circuit executives in the United States judicial system must be certified as qualified by the statutorily created Board of Certification (28 U.S.C. 332(f)). While certification is a prerequisite for appointment as circuit executive, it does not ensure employment. By action of the Judicial Conference of the United States, persons who wish to be appointed as district court executives must also be certified by the Board.

A personal interview with the Board is necessary for certification, and the Board cannot reimburse candidates for attendant travel expenses.

Details on how to apply for certification may be had by writing to: Board of Certification, Administrative Office of the U.S. Courts, Washington, DC 20544.

The next meeting of the Board will be held in Washington, DC on November 7, 1986.

L. Ralph Mecham,

Secretary of the Board of Certification and Director, Administrative Office of the U.S. Courts.

[FR Doc. 86-24704 Filed 10-31-86; 8:45 am]

BILLING CODE 2210-01-M

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Request for Comments on Designation Applicant in the Geographic Area Currently Assigned to the Columbus Agency, Ohio

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicant for official agency designation in the geographic area currently assigned to Columbus Grain Inspection, Inc. (Columbus).

DATE: Comments to be postmarked on or before December 18, 1986.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Staff, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 1661 South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS requested applications for official agency designation to provide official services within a specified geographic area in the September 2, 1986, **Federal Register** (51 FR 31153). Applications were to be postmarked by October 2, 1986. Columbus was the only applicant for designation in its geographic area and applied for designation renewal in the area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the designation applicant. All comments must be submitted to the Information Resources Staff, Resources Management Division, at the address listed above.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicant will be informed of the decision in writing.

Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: October 23, 1986.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 86-24761 Filed 10-31-86; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants to Provide Official Services in the Geographic Area Currently Assigned to the Chattanooga Agency Tennessee

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of one agency will terminate, in accordance with the Act, and requests applications from parties, including the agency currently designated, interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agency. The official agency is Chattanooga Grain Inspection Company, Inc.

DATE: Applications to be postmarked on or before December 3, 1986.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of FGIS is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Chattanooga Grain Inspection Company, Inc. (chattanooga), Judd Road, P.O. Box 16711, Chattanooga, TN 37416, was designated under the Act as an official agency to provide inspection functions on May 1, 1984.

The official agency's designation terminates on April 30, 1987. Section 7(g)(1) of the Act states that official agencies' designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Chattanooga in the State of Tennessee pursuant ot section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

Bounded on the North by the northern Tennessee State line from Sumner County east;

Bounded on the East by the eastern Tennessee State line southwest;

Bounded on the South by the southern Tennessee State line west to Interstate 65; and

Bounded on the West by Interstate 65 north to the northern Williamson County line; the northern Williamson County line east; the western Rutherford, Wilson, and Sumner County lines north.

Interested parties, including Chattanooga, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic area is for the period beginning May 1, 1987, and ending April 30, 1990. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above, for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: October 23, 1986.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 86-24762 Filed 10-31-86; 8:45 am]

BILLING CODE 3410-EN-M

Designation Renewal of the Amarillo Agency and the State of Wisconsin

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Amarillo Grain Exchange, Inc. (Amarillo) and Wisconsin Department of Agriculture, Trade and Consumer Protection (Wisconsin), as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: December 1, 1986.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS announced that Amarillo's and Wisconsin's designations terminate on November 30, 1986, and requested applications for official agency designation to provide official services within specified geographic areas in the June 2, 1986, **Federal Register** (51 FR 19769). Applications were to be postmarked by July 2, 1986. Amarillo and Wisconsin were the only applicants for designation in their respective geographic areas and each applied for designation renewal in the area currently assigned to that agency.

FGIS announced the applicant names and requested comments on the same in the August 1, 1986, **Federal Register** (51 FR 27572). Comments were to be postmarked by September 15, 1986. Three favorable comments were received regarding Amarillo's designation renewal; no comments were received regarding Wisconsin's designation renewal.

FGIS evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act, and in accordance with section 7(f)(1)(B), determined that Amarillo and Wisconsin are able to provide official services in the geographic area for which FGIS is renewing their designation. Effective December 1, 1986, and terminating November 30, 1989, Amarillo will provide official inspection services and Wisconsin will provide official inspection and Class X or Class Y weighing services in their entire specified geographic areas, previously described in the June 2 **Federal Register**.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may receive a listing of an agency's specified service points by contacting either the Review Branch, Compliance Division, at the address listed above or by contacting the agencies at the following addresses:

Amarillo Grain Exchange, Inc., 1300 South Johnson Street, Amarillo, TX 79101

Wisconsin Department of Agriculture, Trade and Consumer Protection, 801 West Badger Road, Madison, WI 53713

Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: October 23, 1986.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 86-24760 Filed 10-31-86; 8:45 am]

BILLING CODE 3410-EN-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-351-012]

Hot-Rolled Carbon Steel Plate Cut to Length From Brazil; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by an exporter and an importer, the Department of Commerce has conducted

an administrative review of the antidumping duty order on hot-rolled carbon steel plate cut to length from Brazil that was in effect prior to October 1, 1984. The review indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value.

When no information was received in response to our questionnaire we used the best information available for assessment purposes.

On August 21, 1985, the Department published in the **Federal Register** (50 FR 33815) the final results of a changed circumstances administrative review and the revocation of the order, effective October 1, 1984. Therefore, no cash deposits of estimated antidumping duties are required on this merchandise entered, or withdrawn from warehouse, for consumption on or after October, 1984.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 3, 1986.

FOR FURTHER INFORMATION CONTACT: Michael Rill or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255/3601.

SUPPLEMENTARY INFORMATION:

Background

On March 22, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 10692) an antidumping duty order on hot-rolled carbon steel plate cut to length from Brazil. We began the current review of the order under our old regulations. After the promulgation of our new regulations, two exporters and an importer requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We published a notice of initiation of the antidumping duty administrative review on November 27, 1985 (50 FR 48825). One exporter withdrew its request on December 27, 1985. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of hot-rolled carbon steel plate cut to length. Hot-rolled carbon steel plate cut to length covers hot-rolled carbon steel products, whether or not corrugated or crimped; not pickled; not cold-rolled; not in coils; not cut, not pressed and not stamped to non-rectangular shape; 0.1875 inch or more in thickness and over 8 inches in width, as currently classifiable under item 607.6615 or 607.9400 of the Tariff Schedules of the United States Annotated ("TSUSA"); and hot-rolled carbon steel plate which has been coated or plated with metal, including any material which has been painted or otherwise covered after having been coated or plated with metal, as currently classifiable under item 608.0710 or 608.1100 of the TSUSA. Semifinished products of solid rectangular cross sections with a width at least four times the thickness in cast condition or processed only through primary mill hot rolling are not included.

Hot-rolled carbon steel plate is used in the construction of bridges, mining equipment, pressure vessels, railroad freight and passenger cars, ships, line pipe, industrial machinery, machine parts, and a large variety of other products.

The review covers three exporters of Brazilian hot-rolled carbon steel plate cut to length to the United States and the period June 10, 1983 through September 30, 1984.

USIMINAS and CSN did not respond to our questionnaire. For those non-responsive firms, we used the best information available for assessment purposes. The best information available was the most recent rate for each of those firms.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the c. & f. price to an unrelated purchaser in the United States. We made deductions for ocean freight, brokerage, and handling charges. We did not adjust for a tax which was rebated upon exportation of the merchandise, since the tax was not included in the foreign market value. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used constructed value, as defined in section 773(e) of the Tariff Act. The respondent provided insufficient information to indicate whether sufficient quantities of such or similar merchandise were sold in the home market at or above the cost of production to provide an adequate basis for comparison and provided no information on third-country sales; therefore, we used constructed value, which was calculated as the sum of materials and fabrication costs, general expenses, and profit. There were no packing costs.

For general expenses the Department used actual general expenses because they were higher than the statutory minimum of ten percent of the sum of materials and fabrication costs. Because actual profit information was inadequate, as best information available the Department used the statutory minimum of eight percent of the sum of materials and fabrication costs and general expenses. We made adjustments for differences in the merchandise, differences in credit costs, indirect selling expenses when a commission was paid in one market and not the other, and a tax included in the United States price. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist for the period June 10, 1983 through September 30, 1984:

Manufacturer/Exporter	Margin (percent)
COSIPA	24.29
USIMINAS	65.56
CSN	86.81

Interested parties may submit written comments on these preliminary results within 21 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 21 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

On August 21, 1985, the Department published in the **Federal Register** (50 FR 33815) a notice of the final results of its changed circumstances administrative review and its revocation of the order, effective October 1, 1984. This administrative review does not affect the revocation of the antidumping duty order. Therefore, we will instruct the Customs Service to continue to liquidate all entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984 without regard to antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a; 50 FR 32556, August 13, 1985).

Joseph A. Spetrini,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 86–24785 Filed 10–31–86; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-604]

Preliminary Determination of Sales at Less Than Fair Value; Certain Fresh Cut Flowers From Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain fresh cut flowers from Canada are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to suspend the liquidation of all entries of certain fresh cut flowers that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make our final determination by January 12, 1987.

EFFECTIVE DATE: November 3, 1986.

FOR FURTHER INFORMATION CONTACT: Jess Bratton or Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–3963 or (202) 377–5288.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that certain fresh cut flowers from Canada are being, or are likely to be, sold in the United States at less than fair value as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b(b)). We made fair value comparisons on sales of the class or kind of merchandise to the United States by the respondents during the period of investigation, June 1, 1985 through May 31, 1986. Comparisons were based on United States price and foreign market value furnished by petitioner. The margin preliminarily found for all companies investigated is listed in the "Suspension of Liquidation" section of this notice.

Case History

On May 21, 1986, we received a petition in proper form filed by the Floral Trade Council of Davis, California. The petition was filed on behalf of the U.S. industry that grows certain fresh cut flowers. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

We determined that the petition contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated such an investigation on June 10, 1986 (51 FR 21946, June 17, 1986), and notified the ITC of our action. On July 7, 1986, the ITC determined that there is a reasonable indication that imports of certain fresh cut flowers from Canada materially injure a U.S. industry (USITC Pub. No. 1887).

Based on information provided by the government of Canada and the Foreign Commercial Service of the U.S. Embassy in Ottawa we established that, of the 34 known Canadian growers of the subject flowers, only three growers had export sales to the United States during the period of investigation. This was subsequently confirmed by our own research. Between July 17 and August 8, 1986, we served questionnaires on Unsworth Greenhouses, Ltd., Tage Hansen, Ltd., and Renkema Florists, Ltd. These companies account for virtually all exports from Canada of the subject merchandise to the United States. We requested that responses be received by September 10, 1986.

On August 15, 1986, we received a response to Section A of our questionnaire from Unsworth Greenhouses, Ltd. On August 21, 1986, we requested additional information. On September 29, 1986, Unsworth Greenhouses, Ltd. notified us that the company would not supply the requested information.

On September 15, 1986, we received a response from Renkema Florists, Ltd. Also on September 15, 1986, we requested additional information. To date we have not received a reply to that request.

On September 22, 1986, Tage Hansen, Ltd. mailed a response which we did not receive until October 10, 1986. On October 15, 1986, we requested additional information. We have not received a response to that request.

Scope of Investigation

The products covered by this investigation are fresh cut miniature (spray) carnations, currently provided for in item 192.1700 of the *Tariff Schedules of the United States Annotated (TSUSA)*, and standard carnations currently provided for in item 192.2130 of the *TSUSA*.

Fair Value Comparisons

To determine whether sales by the respondents were made at less than fair value, we compared the United States price, based on best information available, with the foreign market value, also based on the best information available. We used best information available as required by section 776(b) of the Act because respondents did not provide full and complete responses to our antidumping duty questionnaires. The best information available was that in the petition.

United States Price

We calculated the purchase price of flowers on the basis of best information available which is the monthly average f.o.b. unit values of cut flowers imports reported by the Bureau of Census import statistics presented in the petition.

Foreign Market Value

We calculated the foreign market value on the basis of best information available which is the production costs presented in the petition, revised to eliminate apparent duplication. To this sum was added the constructed value statutory minimums of ten and eight percent for general expenses and profit, respectively. Petitioner derived constructed values through the use of United States growers' costs, adjusted for differences between U.S. and Canadian costs for labor.

Verification

We will verify all information used in making our final determination in accordance with section 776(a) of the Act. We will use standard verification procedures, including examination of relevant sales and financial records of respondents.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of certain fresh cut flowers from Canada that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or the posting of a bond on all entries equal to the estimated weighted-avarage amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The suspension of liquidation will remain in effect until further notice. The margin is as follows:

	Weighted-average margin percentage
All Manufacturers/Sellers/Exporters	11.35

Article VI.5 of the General Agreement on Tariffs and Trade provides that "[n]o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act, which prohibits assessing dumping duties on the portion of the margin attributable to export subsidies. We will consider this issue in our final determination, after we make a final countervailing duty determination.

ITC Notification

In accordance with section 733(f) of the Act, we notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry prior to the later of 120 days after our preliminary affirmative determination or 45 days after we make our final determination.

Public Comment

In accordance with section 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 2:00 p.m., on December 17, 1986, at the U.S. Department of Commerce, Room 1851, 14th Street and Constitution Avenue NW, Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within ten days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of any pre-hearing briefs must be submitted to the Deputy Assistant Secretary by December 10, 1986. Oral presentations will be limited to issues raised in the briefs. Written views will be considered if received not less than 30 days before the final determination or, if a hearing is held, within 10 days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 USC 1673b(f)).

October 28, 1986.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-24786 Filed 10-31-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-337-602]

Preliminary Determination of Sales at Less Than Fair Value; Standard Carnations From Chile

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that standard carnations from Chile are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to suspend the liquidation of all entries of certain fresh cut flowers that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make our final determination by January 12, 1987.

EFFECTIVE DATE: November 3, 1986.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins or John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1756 or (202) 377-3965.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that standard carnations from Chile are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b(b)). We made fair value comparisons on sales of the same class or kind of merchandise to the United States by the respondents during the period of investigation, June 1, 1985 through May 31, 1986. Comparisons were made between United States price and foreign market value, which was based on home market prices. The margins preliminarily found for all companies investigated are listed in the "Suspension of Liquidation" section of this notice.

Case History

On May 21, 1986, we received a petition in proper form filed by the Floral Trade Council of Davis, California. The petition was filed on behalf of the U.S. industry that grows standard carnations. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Chile are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

We determined that the petition contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated such an investigation on June 10, 1986 (51 FR 21951, June 17, 1986), and notified the ITC of our action. On July 7, 1986, the ITC determined that there is a reasonable indication that imports of

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standard carnations from Chile materially injure a U.S. industry (USITC Pub. No. 1887).

On July 16, 1986, we presented antidumping duty questionnaires to Agricola Longotoma, Ltda. and Jorge Puiggros Mazuela. These companies account for approximately 63 percent of exports from Chile of the subject merchandise to the United States, we requested responses in 30 days. On August 18, 1986, at the request of respondents, We granted extensions of the due dates for the questionnaire responses. On September 10, we received the responses from the companies. On October 1, we requested additional information from respondents. We received supplemental responses on October 14, 1986.

Scope of Investigation

The products covered by this investigation are fresh cut standard carnations currently provided for in item 192.21 of the *Tariff Schedules of the United States.*

Fair Value Comparisons

In order to determine whether sales of the subject merchandise to the United States were made at less than fair value, we compared a weighted-average monthly price of U.S. sales with foreign market value based on home market prices. Section 620(a) of the Trade and Tariff Act of 1984 expanded the discretionary use of sampling and averaging by the Department to include the determination of United States price or foreign market value, so long as the average is representative of the transactions under investigation. A combination of factors persuaded us to average U.S. sales. In a situation where, as here, there is a mass filing of petitions alleging the sale of the same products at less than fair value from a number of countries, the limited resources of the Department are severely taxed due to the statutory deadlines imposed. The legislative history of the Trade and Tariff Act of 1984 demonstrates that it was the intent of Congress in promulgating section 620(a) to reduce the Department's costs and administrative burden in determining dumping margins, and to maximize efficient use of limited resources, without loss of reasonable fairness in the results. In the instant situation there are eight simultaneous antidumping investigations and over 260,000 separate United States transactions from the countries under consideration. Another influential factor is the need for consistency in our treatment of all the cut flowers investigations. Although the number of transactions varies among the countries being investigated, uniform application of the averaging methodology ensures that all countries are treated on the same basis.

Our decision to average United States price over short periods of time is also based on the fact that the subject merchandise is perishable. Because of this characteristic, sellers may be faced with the choice of accepting whatever return they can obtain on certain sales or destroying the merchandise. Unlike nonperishable products, sellers cannot withold their flowers from the market until they can obtain a higher price.

We do not believe that the purpose of the antidumping duty law is to render such sales unfair. Instead, in situations like these where the product is perishable, we seek a comparison that takes this characteristic into account. We have preliminarily determined that the best way to achieve this is to average over short time periods, thus, in essence, balancing these "end of the day" sales with sales that are not undertaken in lieu of destroying the product. This comparision yields, in our view, the most accurate basis for determining whether sales are at less than fair value.

As provided by section 776(b) of the Act, we used publicly available information from other Chilean respondents as best information available for certain adjustments and charges.

United States Price

As provided in section 772(b) of the Act, we used purchase price to represent the United States price for Agricola Longotoma, Ltda., when the merchandise was sold to unrelated purchasers prior to importation into the United States. We calculated purchase price based on f.o.b., packed prices to unrelated purchasers in the United States. We made deductions for foreign inland freight.

For Agricola Longotoma, Ltda. and, for Jorge Puiggros Mazuela, when the merchandise was sold to unrelated purchasers after importation into the United States, we used exporter's sales price to represent the United States price, as provided in section 772(c) of the Act. We made deductions, where appropriate, for foreign inland freight, brokerage and handling, air freight, commissions, credit expenses and credit returns. Because the Generalized System of Preferences is applicable to Chilean flowers, no U.S. duty charge was deducted.

Foreign Market Value

For purposes of this investigation, the Department looked at an extended period of investigation of 12 months in order to compensate for the seasonality of flower production and sales.

In calculating foreign market value, the period of investigation was broken into two six-month periods. During each six-month period, if home market sales occurred in three months or more, then the weighted average for the months with sales were used for the entire six-month period. When there were sales in two months or less, constructed value was used for months without sales.

In accordance with section 773(a) of the Act, we calculated foreign market value based on f.o.b., packed, home market prices to unrelated purchasers for Jorge Puiggros Mazuela and Agricola Longotoma, Ltda. When comparing foreign market value to U.S. exporter's sales price transactions, we deducted home market commissions in accordance with § 353.15 of the Commerce Regulations. For U.S. purchase price sales we made an adjustment under § 353.15 for differences in credit expenses.

For both purchase price and exporter's sales price, we also added U.S. packing to foreign market value.

Currency Conversion

For comparisons involving purchase price transactions, when calculating foreign market value, we made currency conversions from Chilean pesos to U.S. dollars in accordance with § 353.56(a)(1) of our regulations. For comparisons involving exporter's sales price transactions, we used the official exchange rate on the date of purchase pursuant to section 615 of the 1984 Act rather than § 353.56(a)(2) of our regulations, as it supersedes that section of the regulations. Normally, we use certified daily exchange rates furnished by the Federal Reserve Bank of New York, but no certified rates were available for Chile. Therefore, we used monthly exchange rates published by Bank of America, London, as best information available. We have requested the Federal Reserve Bank to certify the exchange rates for the period of investigation. If the certified Federal Reserve Bank exchange rates are available, we will use the certified rates for our final determination.

Verification

We will verify all information used in making our final determination in accordance with section 776(a) of the Act. We will use standard verification procedures, including examination of relevant sales and financial records of respondents.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of standard carnations from Chile that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or the posting of a bond on all entries equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturer/seller/exporter	Weighted-average margin percentage
Jorge Puiggros Mazuela	0
Agricola Longotoma, Ltda.	33.2
All others	33.2

Article VI.5 of the General Agreement on Tariffs and Trade provides that "[n]o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act, which prohibits assessing dumping duties on the portion of the margin attributable to export subsidies. We will consider this issue in our final determination, after we make a final countervailing duty determination.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry prior to the later of 120 days after our preliminary affirmative determination or 45 days after we make our final determination.

Public Comment

In accordance with section 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10 a.m., on December 16, 1986, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within ten days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of any pre-hearing briefs must be submitted to the Deputy Assistant Secretary by December 9, 1986. Oral presentations will be limited to issues raised in the briefs. Written views will be considered if received not less than 30 days before the final determination or, if a hearing is held, within ten days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

October 28, 1986.

[FR Doc. 86-24793 Filed 10-31-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-301-602]

Preliminary Determination of Sales at Less Than Fair Value; Certain Fresh Cut Flowers From Colombia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain fresh cut flowers from Colombia are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to suspend the liquidation of all entries of certain fresh cut flowers, except for entries from Flores Timana, Flores Esmeralda, Inversiones Almer and Flores de Cota, that are entered, or withdrawn from warehouse, for consumption, or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make our final determination by January 12, 1987.

EFFECTIVE DATE: November 3, 1986.

FOR FURTHER INFORMATION CONTACT: Jay Kenkel or John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-5404 or (202) 377-3965.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that certain fresh cut flowers from Colombia are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b(b)). We made fair value comparisons on sales of the class or kind of merchandise to the United States by the respondents during the period of investigation, June 1, 1985 through May 31, 1986. Comparisons were based on United States price and foreign market value. Foreign market value was based on third country prices or constructed value. The margins preliminarily found for all companies investigated are listed in the "Suspension of Liquidation" section of this notice.

Case History

On May 21, 1986, we received a petition in proper form filed by the Floral Trade Council of Davis, California. The petition was filed on behalf of the U.S. industry that grows certain fresh cut flowers. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36) the petition alleged that imports of the subject merchandise are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, as amended, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We determined that the petition contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated such an investigation on June 10, 1986 (51 FR 21947, June 17, 1986), and notified the ITC of our action. On July 7, 1986, the ITC determined that there is a reasonable indication that imports of certain fresh cut flowers from Colombia

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materially injure a U.S. industry (USITC Pub. No. 1887).

On July 16, 1986, we presented antidumping duty questionnaires to the Flores La Pampa, Ltda., Flores Timana, Ltda., Flores Del Rio, S.A., Flores Generales, Ltda., Royal Carnations, Ltda., Cultivos del Caribe, Floramerica, S.A., Jardines de Colombia, Universal de Flores, Ltda., Inversiones Almer, Ltda., Inversiones Patxi, Flores de Cota, Ltda., Productura el Rosal, and Prismaflor. These companies account for at least 34 percent of exports from Colombia of the subject merchandise to the United States. We requested respones in 30 days.

On July 31, 1986, we received a voluntary response to section A of the questionnaire in acceptable form from Flores Esmeralda, Ltda. On August 1, 1986, the companies which received questionnaires filed their responses to section A of the questionnaire. On August 18, 1986, at the request of respondents, we granted extensions of the due dates for the remaining portions of the questionnaire responses. On September 10, we received the remaining portions of the responses from the companies, including a voluntary response from Flores Esmeralda which was submitted in proper form. Another company, Agrodex, filed a voluntary response on September 10, 1986. This response was incomplete and, therefore, was not used.

We received supplemental information on October 10, 14, 16, 17, 22, 23, 24, 27, and 28, 1986. At the request of the petitioner, we initiated a cost of production investigation against certain growers of standard carnations.

On August 11, 1986, we received a letter on behalf of the respondents, challenging the standard of the Floral Trade Council and requesting dismissal of the petition on the ground that the petition was not filed "on behalf of" the U.S. industry, as required by section 732 of the Act (19 U.S.C. 1673a). As we have previously stated, *see e.g., Final Affirmative Countervailing Duty Determination: Certain Fresh Atlantic Groundfish from Canada*, (51 FR 10041, March 24, 1986), neither the act nor the Commerce Regulations require a petitioner to establish affirmatively that it has the support of a majority of a particular industry. The Department relies on petitioner's representation that it has, in fact, filed on behalf of the domestic industry, until it is affirmatively shown that this is not the case. In this case, we have not received any opposition from the domestic industry.

Scope of Investigation

The products covered by this investigation are fresh cut miniature (spray) carnations, currently provided for in item 192.17 of the *Tariff Schedules of the United States* (TSUS), and standard carnations, standard chrysanthemums, pompom chrysanthemums, alstroemeria, gerbera, and gypsophila, currently provided for in item 192.21 of the TSUS.

Fair Value Comparisons

In order to determine whether sales of the subject merchandise to the United States were made at less than fair value, we compared a monthly weighted-average price of U.S. sales with a foreign market value based on third country prices or constructed value. Section 620(a) of the Trade and Tariff Act of 1984 expanded the discretionary use of sampling and averaging by the Department to include the determination of United States price or foreign market value, so long as the average is representative of the transactions under investigation. A combination of factors persuaded us to average U.S. sales. In a situation where, as here, there is a mass filing of petitions alleging the sale of the same product at less than fair value from a number of countries, the limited resources of the Department are severely taxed due to the statutory deadlines imposed. The legislative history which accompanied the Trade and Tariff Act demonstrates that it was the intent of Congress in promulgating section 620(a) to reduce the Department's costs and administrative burden in determining dumping margins, and to maximize efficient use of limited resources, without loss of reasonable fairness in the results. In the instant situation there are eight simultaneous antidumping investigations and over 260,000 separate United States transactions from the countries under consideration. Another influential factor is the need for consistency in our treatment of all the cut flowers investigations. Although the number of transactions varies among the countries being investigated, uniform application of the averaging methodology ensures that all countries are treated on the same basis.

Our decision to average United States price over short periods of time is also based on the fact that the subject merchandise is perishable. Because of this characteristic, sellers may be faced with the choice of accepting whatever return they can obtain on certain sales or destroying the merchandise. Unlike non-perishable products, sellers cannot withhold their flowers from the market until they can obtain a higher price.

We do not believe that the purpose of the antidumping duty law is to render such sales unfair. Instead, in situations like these where the product is perishable, we seek a comparison that takes this characteristic into account. We have preliminarily determined that the best way to achieve this is to average over short time periods, thus, in essence, balancing these "end of the day" sales with sales that are not undertaken in *lieu* of destroying the product. This comparison yields, in our view, the most accurate basis for determining whether sales are at less than fair value.

We used the best information available as required by section 776(b) of the Act for three companies because they only submitted responses to section A of our antidumping duty questionnaire. In cases where companies have failed to respond to our questionnaire, or where responses are deemed too deficient to be employed in our calculations, we have determined that it is appropriate for this preliminary determination to assign such companies the higher rate of either (1) that rate calculated from information supplied in the petition, adjusted, as appropriate, to remedy certain errors which in this case we consider obvious, or (2) the rate for the firm in Colombia with the highest margin of all firms that supplied adequate responses. Using this methodology to determine whether sales by these three companies, Inversiones Patxi, Productura el Rosal and Prismaflor, were made at less than fair value, we used the highest margin calculated for a responding firm.

We also selectively used the best information available for the remaining companies when they did not submit the information requested in the specified format. Best information available was used, where appropriate, for certain adjustments and charges based on an average amount calculated from data provided by Colombian growers for a particular adjustment or charge.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price, where the merchandise was sold to unrelated purchasers prior to importation into the United States. We calculated purchase price based on the f.o.b. packed and unpacked price to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight and airport cold storage charges.

Where the merchandise was sold to unrelated purchasers after importation into the United States, we used exporter's sales price to represent the United States price, as provided in section 772(c) of the Act. We made deductions, where appropriate, for foreign inland freight, airport cold storage charges, brokerage and handling, air freight, box commissions, credit expenses, returned merchandise expense, royalties, U.S. duty and either selling commissions paid to unrelated U.S. importers or indirect U.S. selling expenses of related consignees. We added a box charge to the U.S. selling price, where appropriate.

Foreign Market Value

For purposes of this investigation, the Department looked at an extended period of investigation of 12 months in order to compensate for the seasonality of flower production and sales. In calculating foreign market value, the period of investigation was broken into the six-month periods. During each six-month period, if home market or third country sales occurred in three months or more, then the weighted average for the months with sales were used for the entire six-month period. When there were sales in two months or less, that data was used only for those months and constructed value was used for months without sales.

For Royal Carnations, Flores La Pampa, Floramerica, Jardines de Colombia and Flores del Rio, we initiated a cost of production investigation with respect to their sales of standard carnations. We compared the cost of production of standard carnations to sales of that flower in the third country market, since there were no home market sales of such or similar merchandise. For all sales of Royal Carnations and for Flores La Pampa's sales in the first six-month period, we found that all sales were below cost. Therefore, we used constructed value data to determine foreign market value for the first six months for Flores La Pampa and for the entire period of investigation for Royal Carnations. For the sales by Flores La Pampa in its second six-month period, we found sufficient sales at or above cost to determine foreign market value. We deducted inland freight credit expense, damaged flower return expense and airport cold storage charges from the third country sales (f.o.b.) prices of Flores La Pampa in its second six-month period.

Two companies, Inversiones Almer and Floramerica, for gypsophila, had sufficient third-country sales to compare to U.S. sales. Accordingly, we deducted from the f.o.b. farm prices, credit expense and returned-flower charges, as appropriate.

In accordance with section 773(e) of the Act, we calculated foreign market based on constructed value for Flores Esmeralda, Flores Generales, Timana, Cultivos del Caribe, Floramerica (for flowers other than standard carnations and gypsophila) and Jardines, de Colombia (for alstroemeria) as there were not sufficient home market or third country sales of such or similar merchandise for purposes of comparison.

Constructed value, for all flowers of these companies and for those companies whose third country sales were below cost, was based on information submitted by respondents. Where necessary, constructed values were adjusted for the difference between reported production volumes and reported sales of export-quality flowers to account for spoilage. Where there were no sales to the home market or third countries or where selling expenses for these markets were not reported, U.S. selling expenses were included in constructed value. Where general expenses were less than 10 percent of the cost of materials and fabrication, the statutory minimum of 10 percent was used. The statutory minimum profit of eight percent was used. Where we compared constructed value to exporter's sales price, we deducted sales commissions when the importer was unrelated, or indirect U.S. selling expenses if sales were made through a related U.S. importer, credit expenses and royalties, as appropriate. For purchase price transactions, we adjusted the constructed value for credit expenses and deducted packing costs, as appropriate.

Flores Del Rio, Floramerica and Jardines de Colombia did not provide usable third country data on sales of standard carnations in sufficient time to analyze. Also, Universal de Flores did not provide usable constructed value data. Therefore, for these companies, we used the weighted/average constructed value of all Colombian growers that was submitted and analyzed as the best information available.

Currency Conversion

For comparisons involving purchase price transactions, when calculating foreign market value, we made currency conversions from Colombian pesos to U.S. dollars in accordance with § 353.56(a) of our regulations. For comparisons involving exporter's sales price transactions, we used the official exchange rate for the date of purchase pursuant to section 615 of the Trade and Tariff Act of 1984 rather than § 353.56(a)(2) of our regulations, as the statute supersedes that section of the regulations. Normally, we use certified daily exchange rates furnished by the Federal Reserve Bank of New York, but no certified rates were available for Colombia. Therefore, we used monthly exchange rates published by Bank of America, London, as best information available. We have requested the Federal Reserve Bank to certify the exchange rates for the period of investigation. If the Federal Reserve Bank exchange rates become available, we will use these certified rates for our final determination.

Verification

We will verify all information used in making our final determination in accordance with section 776(a) of the Act. We will use standard verification procedures, including examination of relevant sales and financial records of repondents.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of certain fresh cut flowers from Colombia, except for entries from Flores Timana, Flores Esmeralda, Inversiones Almer and Flores de Cota, that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or the posting of a bond on all entries equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturer/seller/exporter	Weighted-average margin percentage
Flores La Pampa, Ltda	49.11
Flores Timana, Ltda	0
Flores Del Rio, S.A	11.13
Flores Generales, Ltda	17.59
Royal Carnations, Ltda	252.76
Flores Esmeralda Ltda	0
Cultivos del Caribe	1.67
Floramerica, S.A	1.67
Jardines de Colombia	1.67
Universal de Flores, Ltda	122.74
Inversiones Almer, Ltda	0
Inversiones Pabsi	252.76
Flores de Cota, Ltda	0
Productora el Rosal	252.76
Prismaflor	252.76
All others	8.91

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Article VI.5 of the General Agreement on Tariffs and Trade provides that "(n)o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act, which prohibits assessing dumping duties on the portion of the margin attributable to export subsidies. We will consider this issue in the final determination after we make a final countervailing duty determination.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry prior to the later of 120 days after our preliminary affirmative determination or 45 days after we make our final determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 1:00 p.m., on December 18, 1986 at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within ten days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of any pre-hearing briefs must be submitted to the Deputy Assistant Secretary by December 11, 1986. Oral presentations will be limited to issues raised in the briefs. Written views will be considered if received not less than 30 days before the final determination or, if a hearing is held, within 10 days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

October 28, 1986.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-24787 Filed 10-31-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-223-602]

Preliminary Determination of Sales at Less Than Fair Value; Certain Fresh Cut Flowers From Costa Rica

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain fresh cut flowers from Costa Rica are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to suspend the liquidation of all entries of certain fresh cut flowers that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make our final determination by January 12, 1987.

EFFECTIVE DATE: November 3, 1986.

FOR FURTHER INFORMATION CONTACT: Terri Feldman or John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-0160 or (202) 377-3965.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that certain fresh cut flowers from Costa Rica are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b(b)). We made fair value comparisons on sales of the class or kind of merchandise to the United States by respondent during the period of investigation, June 1, 1985 through May 31, 1986. Comparisons were based on United States price and foreign market value, based on home market prices or constructed value. The margin preliminarily found for the company investigated is listed in the "Suspension of Liquidation" section of this notice.

Case History

On May 21, 1986, we received a petition in proper form filed by the Floral Trade Council of Davis, California. The petition was filed on behalf of the U.S. industry that grows certain fresh cut flowers. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Costa Rica are being, or are likely to be, sole in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

We determined that the petition contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated such an investigation on June 10, 1986 (51 FR 21947, June 17, 1986), and notified ITC of our action. On July 7, 1986, the ITC determined that there is a reasonable indication that imports of certain fresh cut flowers from Costa Rica materially injure a U.S. industry (USITC Pub. No. 1887).

On July 16, 1986, we presented an antidumping duty questionnaire to the American Flower Corporation. This company accounts for at least 60 percent of exports from Costa Rica of the subject merchandise to the United States. We requested a response in 30 days. On August 11, 1986, at the request of respondent, we granted an extension of the due date for the questionnaire response. On September 10, we received a response from the company. On October 1 and 10, we requested additional information from respondent. On October 10 and 16, we received supplemental responses. Outstanding deficiencies in the response remain.

On August 11, 1986, we received a letter on behalf of the respondent, American Flower Corporation, challenging the standing of the Floral Trade Council and requesting dismissal of the petition on the ground that the petition was not filed "on behalf of" the domestic industry, as required by section 732(b)(1) of the Act. As we have previously stated, *see e.g., Final Affirmative Countervailing Duty Determination: Certain Fresh Atlantic Groundfish from Canada* (51 FR 10041, March 24, 1986), neither the Act nor the Commerce Regulations requires a petitioner to establish affirmatively that it has the support of a majority of a particular industry. The Department relies on petitioner's representation that it has, in fact, filed on behalf of the domestic industry, until it is affirmatively shown that this is not the case. In this case, we have not received any opposition from the domestic industry.

Scope of Investigation

The products covered by this investigation are fresh cut miniature (spray) carnations, currently provided for in item 192.17 of the *Tariff Schedules of the United States* (TSUS), and standard carnations and pompon chrysanthemums currently provided for in item 192.21 of the TSUS.

Fair Value Comparisons

In order to determine whether sales of the subject merchandise to the United States were made at less than fair value, we compared a weighted average monthly price of U.S. sales with a foreign market value based on home market prices or constructed value. Section 620(a) of the Trade and Tariff Act of 1984 expanded the discretionary use of sampling and averaging by the Department to include the determination of United States price or foreign market value, so long as the average is representative of the transactions under investigation. A combination of factors persuaded us to average U.S. sales. In a situation where, as here, there is a mass filing of petitions alleging the sale of the same products at less than fair value from a number of countries, the limited resources of the Department are severely taxed due to the statutory deadlines imposed. The legislative history of the Trade and Tariff Act of 1984 demonstrates that it was the intent of Congress in promulgating section 620(a) to reduce the Department's costs and administrative burden in determining dumping margins and to maximize efficient use of limited services, without loss of reasonable fairness in the results. In the instant situation there are eight simultaneous antidumping investigations and over 260,000 separate United States transactions from the countries under consideration. Another influential factor is the need for consistency in our treatment of all the flowers cases. Although the number of transactions varies among the countries being investigated, uniform application of the averaging methodology ensures that all countries are treated on the same basis.

Our decision to average United States price over short periods of time is also based on the fact that the subject merchandise is perishable. Because of this characteristic, sellers may be faced with the choice of accepting whatever return they can obtain on certain sales or destroying the merchandise. Unlike non-perishable products, sellers cannot withhold their flowers from the market until they can obtain a higher price.

We do not believe that the purpose of the antidumping duty law is to render such sales unfair. Instead, in situations like these where the product is perishable, we seek a comparison that takes this characteristic into account. We have preliminarily determined that the best way to achieve this is to average over short time periods, thus, in essence, balancing these "end of the day" sales with sales that are not undertaken in *lieu* of destroying the product. This comparison yields, in our view, the most accurate basis for determining whether sales are at less that fair value.

To determine whether sales of miniature carnations by American Flower Corporation were made at less than fair value, we compared the United States price with the foreign market value based on the best information available, as noted below, as required by section 776(b) of the Act.

For certain adjustments to United States sales, we used, as the best information available, public information from growers' responses from Peru and Colombia submitted in connection with our investigations of certain flowers from those countries.

United States Price

As provided in section 772(c) of the Act, as all the merchandise was sold to unrelated purchasers after importation into the United States, we used exporter's sales price to represent the United States price. From f.o.b. delivered exporter's sales price, we made deductions, where appropriate, for brokerage and handling, air freight, box and sales commissions, and credit expenses. Since the respondent's responses were partially incomplete, we made deductions, where appropriate, for foreign inland freight and return credit expenses based on the best information available, as provided for in section 776(b) of the Act. Best information available was based on public information from growers' responses from our investigation of fresh cut flowers from Peru and Colombia. Because the Generalized System of Preferences is applicable to Costa Rican flowers, no U.S. duty charge was deducted.

Foreign Market Value

For purposes of this investigation, the Department looked at an extended period of investigation of 12 months in order to compensate for the seasonality of flower production and sales. In calculating foreign market value, the period of investigation was broken into two six-month periods. During each six-month period, if home market or third country sales occurred in three months or more, then the weighted averages for the months with sales were used for the entire six-month period. When there were sales in two months or less, constructed value was used for months without sales.

In accordance with section 773(a) of the Act, we calculated foreign market values for standard carnations and pompon chrysanthemums, based on delivered, packed home market prices to unrelated purchasers by American Flower Corporation. No deductions were made to home market prices because American Flower Corporation's response was incomplete with respect to adjustments and charges included in home market prices. U.S. packing was added to home market prices.

American Flower Corporation had no reported sales of such or similar merchandise for miniature carnations in the home market, but did have adequate third country sales. However, since American Flower Corporation did not provide a proper third country response for miniature carnations, we calculated foreign market value for miniature carnations based on constructed value of such or similar merchandise, as provided for in section 773(e) of the Act. In determining constructed value we used best information available as provided in section 776(b) of the Act. In the petition, constructed value for Costa Rica was based on Colombian growers' costs adjusted for Costa Rican labor costs. We have followed petitioner's methodology of using adjusted Colombian growers' costs for the Costa Rican constructed value. However, we have revised the constructed value in the petition for apparent duplication and have added general expenses and profit. Also, based on the constructed value responses received in the concurrent case on cut flowers from Colombia, we have adjusted petitioner's constructed value figures to reflect more accurately the actual costs incurred by Colombian growers. U.S. packing was added to the constructed value.

Currency Conversion

For comparisons involving exporter's sales price transactions, we used the

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official exchange rate on the date of purchase pursuant to section 615 of the 1984 Act rather than § 353.56(a)(2) of our regulations, as section 615 supersedes that section of the regulations. Normally, we use certified daily exchange rates furnished by the Federal Reserve Bank of New York, but no certified rates were available for Costa Rica. Therefore, we used monthly exchange rates published by Bank of America, London, as best information available. We have requested the Federal Reserve Bank to certify the exchange rates for the period of investigation. If the Federal Reserve Bank exchange rates are available, we will use these certified rates for our final determination.

Verification

We will verify all information used in making our final determination in accordance with section 776(a) of the Act. We will use standard verifiction procedures, including examination of relevant sales and financial records of respondents.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of certain fresh cut flowers from Costa Rica that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or the posting of a bond on all entries equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturer/seller/exporter	Weighted-average margin percentage
American Flower Corporation	27.29
All others	27.29

Article VI.5 of the General Agreement on Tariffs and Trade provides that "[n]o products . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 722(d)(1)(D) of the Act, which prohibits assessing dumping duties on the portion of the margin attributable to export subsidies. We will consider this issue in the final determination after we make a final countervailing duty determination.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry prior to the later of 120 days after our preliminary affirmative determination or 45 days after we make our final determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 2:00 p.m., on December 15, 1985, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within ten days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of any pre-hearing briefs must be submitted to the Deputy Assistant Secretary by December 8, 1986. Oral presentations will be limited to issues raised in the briefs. Written views will be considered if recevied not less than 30 days before the final determination or, if a hearing is held, within 10 days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C, 1673(f)).

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

October 28, 1986.

[FR Doc. 86-24768 Filed 10-31-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-331-602]

Preliminary Determination of Sales at Less Than Fair Value; Certain Fresh Cut Flowers From Ecuador

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain fresh cut flowers from Ecuador are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to suspend the liquidation of all entries of certain fresh cut flowers that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, except for entries from Flores Equinocciales, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make our final determination by January 12, 1987.

EFFECTIVE DATE: November 3, 1986.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins or John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1756 or (202) 377-3965.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that certain fresh cut flowers from Ecuador are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b(b)). We made fair value comparisons on sales of the class or kind of merchandise to the United States by the respondents during the period of investigation, June 1, 1985 through May 31, 1986. Comparisons were based on United States price and foreign market value. Foreign market value was based on home market prices or constructed value. The margins preliminarily found for all companies investigated are listed in the "Suspension of Liquidation" section of this notice.

Case History

On May 21, 1986, we received a petition in proper form filed by the

Floral Trade Council of Davis, California. The petition was filed on behalf of the U.S. industry that grows certain fresh cut flowers. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Ecuador are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

We determined that the petition contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated such an investigation on June 10, 1986 (51 FR 21947, June 17, 1986), and notified the ITC of our action. On July 7, 1986, the ITC determined that there is a reasonable indication that imports of certain fresh cut flowers from Ecuador materially injure a U.S. industry (USITC Pub. No. 1887).

On July 16, 1986, we presented antidumping duty questionnaires to the Jardines De Mojanda, Inverflora, Florisol, Flores Equinocciales, Eden Flowers and Terraflor. These companies account for approximately 62 percent of exports from Ecuador of the subject merchandise to the United States. We requested responses in 30 days. On August 18, 1986, at the request of respondents, we granted extensions of the due dates for the questionnaire responses. On August 20, we were informed that Jardines De Mojanda did not export to the United States. On September 10, we received responses from Flores Equinocciales and Florisol. On September 16, we received responses from Inverflora. On October 1, we requested additional information from respondents. We received supplemental responses on October 17, 1986. We received a response to our antidumping questionnaire from Terraflor on October 20, 1986.

Scope of Investigation

The products covered by this investigation are fresh cut miniature (spray) carnations, currently provided for in item 192.17 of the *Tariff Schedules of the United States* (TSUS), and standard carnations, standard chrysanthemums and pompon chrysanthemums currently provided for in item 192.21 of the TSUS.

Fair Value Comparisons

In order to determine whether sales of the subject merchandise to the United States were made at less than fair value, we compared a weighted-average monthly price of U.S. sales with foreign market value based on home market prices. Section 620(a) of the Trade and Tariff Act of 1984 expanded the discretionary use of sampling and averaging by the Department to include the determination of United States price or foreign market value, so long as the average is representative of the transactions under investigation. A combination of factors persuaded us to average U.S. sales. In a situation where, as here, there is a mass filing of petitions alleging the sale of the same products at less than fair value from a number of countries, the limited resources of the Department are severely taxed due to the statutory deadlines imposed. The legislative history which accompanied the Trade and Tariff Act of 1984 demonstrates that it was the intent of Congress in promulgating section 620(a) to reduce the Department's cost and administrative burden in determining dumping margins, and to maximize efficient use of limited resources, without loss of reasonable fairness in the results. In the instant situation, there are eight simultaneous antidumping investigations and over 260,000 separate United States transactions from the countries under consideration. Another influential factor is the need for consistency in our treatment of all the cut flowers investigations. Although the number of transactions varies among the countries being investigated, uniform application of the averaging methodology ensures that all countries are treated on the same basis.

Our decision to average United States price over short periods of time is also based on the fact that the subject merchandise is perishable. Because of this characteristic, sellers may be faced with the choice of accepting whatever return they can obtain on certain sales or destroying the merchandise. Unlike nonperishable products, sellers cannot withhold their flower from the market until they can obtain a higher price.

We do not believe that the purpose of the antidumping duty law is to render such sales unfair. Instead, in situations like these where the product is perishable, we seek a comparison that takes this characteristic into account. We have preliminarily determined that the best way to achieve this is to average over short time periods, thus, in essence, balancing these "end of the day" sales with sales that are not undertaken in *lieu* of destroying the product. This comparison yields, in our view, the most accurate basis for determining whether sales are at less than fair value.

In access where companies have failed to respond to our questionnaire, or where responses are deemed too deficient to be employed in our calculation, we have determined that it is appropriate for this preliminary determination to assign such companies the higher rate of either, (1) that rate calculated for information supplied in the petition, adjusted, as appropriate, to remedy certain errors which in this case we consider obvious, or (2) the rate for the firm from Ecuador with highest margin of all firms that supplied adequate responses. We used best information available for Eden flowers because that company did not submit a response to our antidumping duty questionnaire. We used best information available for Terraflor because Terraflor did not provide a full and completed response to our antidumping duty questionnaire in sufficient time for use in our preliminary determination. We have also used best information available to calculate the dumping margin for Inverflora. Although Inverflora provide an adequate home market sales response, that company did not supply a complete and full United States sales response. In this investigaton we are using as best information available the United States price and the constructed value information in the petition. In the petition, constructed value for Ecuador was based on the Colombia growers' cost adjusted for Ecuadorean labor costs. We have followed petitioner's methodology of using adjusted Colombian growers' cost for the Ecuadorian construced value. However, we have revised the constructed value in the petition to eliminate apparent duplication and have added general expense and profit. Also, based on the constructed value responses we received in the concurrent investigation of cut flowers from Colombia, we have adjusted petitioner's constructed value to reflect more accurately the actual costs insurred by Colombia growers. As required by section 776(b) of the Act, we used publicly available information from other Ecuadorian respondents as best information available for certain charges and adjustments.

United States Price

As provided in section 72(b) of the Act, we used the purchase price for the subject merchandise to represent the United States price for Flores Equinocciales, and, where appropriate, for Florisol, as the merchandise was sold to unrelated purchasers prior to importation into the United States. We calculated purchase price based on the f.o.b., Quito, packed price to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight.

As provided in section 772(c) of the Act, we used the exporter's sales price, where appropriate, to represent the United States price for Florisol, for that company's merchandise sold to unrelated purchasers after importation into the United States. We made deductions, where appropriate, for foreign inland freight, insurance, handling, air freight, and commissions. Because the Generalized System of Preferences is applicable to Ecuadorean flowers, no U.S. duty charge was deducted.

Foreign Market Value

For purposes of this investigation, the Department looked at an extended period of investigation of 12 months in order to compensate for the seasonality of flower production and sales.

In calculating foreign market value, the period of investigation was broken into two six-month periods. During each six-month period, if home market sales occurred in three months or more, then the weighted average for the months with sales were used for the entire six-month period. When there were sales in two months or less, constructed value was used for months without sales.

In accordance with section 773(a) of the Act, we calculated foreign market value for Florisol and Flores Equinocciales based on f.o.b. prices to unrelated purchasers in the home market. When comparing foreign market value to U.S. exporter's sales price transactions we made a deduction for home market credit expenses. For U.S. purchase price sales, we made an adjustment under § 353.15 of the Commerce Regulations for differences in circumstances of sale for credit expense in the United States.

For both purchase price and exporter's sale price comparisons, we subtracted home market packing and added U.S. packing to foreign market value.

Currency Conversion

For comparisons involving purchase price transactions, when calculating foreign market value, we made currency conversions from Ecuadorean sucres to U.S. dollars in accordance with § 353.56(a)(1) of our regulations. For comparisons involving exporter's sales price transactions, we used the official exchange rate on the date of purchase pursuant to section 615 of the Trade and Tariff Act of 1984 rather than § 353.56(a)(2) of our regulations, as the statute supersedes that section of the regulations. Normally, we use certified daily exchange rates furnished by the Federal Reserve Bank of New York but no certified rates were available for Ecuador. Therefore, we used monthly exchange rates published by Bank of America, London, as best information available. We have requested the Federal Reserve Bank to certify the exchange rates for the period of investigation. If Federal Reserve Bank certified exchange rates are available, we will use the certified rates for our final determination.

Verification

We will verify all information used in making our final determination in accordance with section 776(a) of the Act. We will use standard verification procedures, including examination of relevant sales and financial records of respondents.

Suspension of Liquidation

In accordance with section 733(d) of that Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of certain fresh cut flowers from Ecuador that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**, except for entries from Flores Equinocciales. The U.S. customs Services shall require a cash deposit or the posting of a bond on all entries equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturer/seller/exporter	Weighted-average margin percentage
Florisol	4.59
Flores Equinocciales	
Inverflora	30.43
Terraflor	30.43
Eden Flowers	30.43
All others	25.56

Article VI.5 of the General Agreement on Tariffs and Trade provides that "[no] product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(D) of the Act, which prohibits assessing antidumping duties on the portion of the margin attributable to export subsidies. We will consider this issue in our final determinations, after we make a final countervailing duty determination.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry prior to the later of 120 days after our preliminary affirmative determination or 45 days after we make our final determination.

Public Comment

In accordance with section 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 2 p.m., on December 16, 1986, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within ten days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of any pre-hearing briefs must be submitted to the Deputy Assistant Secretary by December 9, 1986. Oral presentations will be limited to issues raised in the briefs. Written views will be considered if received not less than 30 days before the final determination or, if a hearing is held, within ten days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

October 28, 1986.

[FR Doc. 86-24789 Filed 10-31-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-779-602]

Preliminary Determination of Sales at Less Than Fair Value; Certain Fresh Cut Flowers From Kenya

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain fresh cut flowers from Kenya are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to suspend the liquidation of all entries of certain fresh cut flowers that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make our final determination by January 12, 1987.

EFFECTIVE DATE: November 3, 1986.

FOR FURTHER INFORMATION CONTACT: Jim Riggs or Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202 377-5288.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that certain fresh cut flowers from Kenya are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b(b)). We made fair value comparisons on sales of the class or kind of merchandise to the United States by the respondent during the period of investigation, June 1, 1985 through May 31, 1986. Comparisons were based on United States price and foreign market value. Foreign market value was based on third country prices. The margin preliminarily found is listed in the "Suspension of Liquidation" section of this notice.

Case History

On May 21, 1986, we received a petition in proper form filed by the Floral Trade Council of Davis, California. The petition was filed on behalf of the U.S. industry that grows certain fresh cut flowers. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Kenya are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We determined that the petition contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated such an investigation on June 10, 1986 (51 FR 21947, June 17, 1986), and notified the ITC of our action. On July 7, 1986, the ITC determined that there is a reasonable indication that imports of certain fresh cut flowers from Kenya materially injure a U.S. industry (USITC Pub. No. 1887).

On July 16, 1986, we presented an antidumping duty questionnaire to counsel for Sulmac Company Ltd. This company accounts for virtually all exports from Kenya of the subject merchandise to the United States. We requested a response in 30 days. On August 8, 1986, at the request of respondent, we granted an extension of the due date for the questionnaire response to August 29, 1986. On August 8 and August 15, 1986, we received responses to Section A of the Department's questionnaire. On August 18 we granted an additional extension to September 10, 1986. We received responses to Sections B and C on September 22 and September 23, 1986. We requested additional information on October 1, 1986 to be submitted no later than October 10, 1986. We received additional information from the respondent on October 10, 1986.

We also requested additional information pertaining to U.S. sales. We requested by phone additional information on October 14, 1986, and in writing on October 17, 1986, due no later than October 28, 1986.

Scope of Investigation

The products covered by this investigation are fresh cut miniature (spray) carnations, currently provided for in iterm 192.17 of the *Tariff Schedules of the United States* (TSUS), and standard carnations, currently provided for in item 192.21 to the TSUS.

Fair Value Comparisons

In order to determine whether sales of the subject merchandise to the United States were made at less than fair value, we compared a weighted-average monthly price of U.S. sales with foreign market value based on third country prices. Section 620(a) of the Trade and Tariff Act of 1984 expanded the discretionary use of sampling and averaging by the Department to include the determination of United States price or foreign market value, so long as the average is representative of the transactions under investigation. A combination of factors persuaded us to average U.S. sales. In a situation where, as here, there is a mass filing of petitions alleging the sale of the same product at less than fair value from a number of countries, the limited resources of the Depatment are severely taxed due to the statutory deadlines imposed. The legislative history which accompanied the Trade and Tariff Act demonstrates that it was the intent of Congress in promulgating section 620(a) to reduce the Department's costs and administrative burden in determining dumping margins, and to maximize efficient use of limited resources, without loss of reasonable fairness in the results. In the instant situation there are eight simultaneous antidumping investigations and over 260,000 separate United States transactions from the countries under consideration. Another influential factor is the need for consistency in our treatment of all the flowers investigations. Although the number of transactions varies among the countries being investigated, uniform application of the averaging methodology ensures that all countries are treated on the same basis.

Our decision to average United States price over short periods of time is also based on the fact that the subject merchandise is perishable. Because of this characteristic, sellers may be faced with the choice of accepting whatever return they can obtain on certain sales or destroying the merchandise. Unlike non-perishable products, sellers cannot withhold their flowers from the market until they can obtain a higher price.

We do not believe that the purpose of the antidumping duty law is to render such sales unfair. Instead, in situations like these where the product is perishable, we seek a comparison that takes this characteristic into account. We have preliminarily determined that the best way to achieve this is to average over short time periods, thus, in essence, balancing these "end of the day" sales with sales that are not undertaken in *lieu* of destroying the product. This comparison yields, in our view, the most accurate basis for determining whether sales are at less than fair value.

To determine whether sales by Sulmac were made at less than fair value, we compared the United States

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price with the foreign market value based on the best information available. This was information selected from the response. We used the best information available as required by section 776(b) of the Act, because we did not receive a complete response.

United States Price

Based on the response, it appears that the merchandise is sold to the first unrelated purchaser after importation into the United States. For purposes of our preliminary determination, we were able to calculate the exporter's sales price of fresh cut flowers, as provided in section 772(c) of the Act, on the basis of respondent's c.&f. price. We made a deduction for airfreight based on an estimated airfreight charge to the United States from invoices furnished by respondent. We also deducted a commission paid to an unrelated party on all U.S. sales. We added U.S. packing costs based on a typical packing charge to the United States found in invoices furnished by respondent.

Foreign Market Value

For purposes of this investigation, the Department looked at an extended period of investigation of 12 months in order to compensate for the seasonality of flower production and sales. In calculating foreign market value, the period of investigation was broken into two six-month periods. During each six-month period, if home market or third country sales occurred in three months or more, then the weighted averages for the months with sales were used for the entire six-month period.

In accordance with section 773(a), we used third country prices to determine foreign market value, since, based on the response, the respondent did not appear to have a viable home market. Using the producer's prices, we arrived at ex-factory prices by deducting an estimated airfreight charge from Kenya to the Federal Republic of Germany (FRG). We also deducted a commission paid to an unrelated party. We added U.S. packing costs based on the typical packing charge to the United States.

Currency Conversion

When calculating foreign market value, we made currency conversions for German marks to U.S. dollars in accordance with § 353.56(a) of our regulation. We converted as of the date of shipment, as the best information available, using official exchange rates furnished by the Federal Reserve Bank of New York.

Verification

We will verify all information used in making our final determination in accordance with seciton 776(a) of the Act. We will use standard verification procedures, including examination of relevant sales and financial records of respondents.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of certain fresn cut flowers from Kenya that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or the posting of a bond on all entries equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The suspension of liquidation will remain in effect until further notice. The margin is as follows:

Manufacturers/sellers/exporters	Weighted-average margin percentage
Sulmac Co. Ltd.	4.69
All Others	4.69

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry prior to the later of 120 days after our preliminary affirmative determination or 45 days after we make our final determination.

Public Comment

In accordance with section 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 9:00 a.m., on December 17, 1986 at the U.S. Department of Commerce, Room 1851, 14th Street and Constitution Avenue NW, Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within ten days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of any pre-hearing briefs must be submitted to the Deputy Assistant Secretary by December 10, 1986. Oral presentations will be limited to issues raised in the briefs. Written views will be considered if received not less than 30 days before the final determination or, if a hearing is held, within 10 days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

October 28, 1986.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-24790 Filed 10-31-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-201-601]

Preliminary Determination of Sales at Less than Fair Value; Certain Fresh Cut Flowers From Mexico

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain fresh cut flowers from Mexico are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to suspend the liquidation of all entries of certain fresh cut flowers, with the exception of those from Floremor, that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make our final determination by January 12, 1987.

EFFECTIVE DATE: November 3, 1986.

FOR FURTHER INFORMATION CONTACT: William D. Kane or Charles E. Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-1766 or (202) 377-5288.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that certain fresh cut flowers from Mexico are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b(b)). We made fair value comparisons on sales of the class or kind of merchandise to the United States by the respondents during the period of investigation, June 1, 1985 through May 31, 1986. Comparisons were based on United States price and foreign market value. The margins preliminarily found are listed in the "Suspension of Liquidation" section of this notice.

Case History

On May 21, 1986, we received a petition in proper form filed by the Floral Trade Council of Davis, California. The petition was filed on behalf of the U.S. industry that grows certain fresh cut flowers. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Mexico are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We determined that the petition contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated such an investigation on June 10, 1986 (51 FR 21950, June 17, 1986), and notified the ITC of our action. On July 17, 1986, the ITC determined that there is a reasonable indication that imports of certain fresh cut flowers from Mexico materially injure a U.S. industry (USITC Pub. No. 1887).

On July 16, 1986, we presented antidumping duty questionnaires to Florex SPR. de RL. (Florex); Visaflor; Floremor; Tzitzic Tareta; Rancho Daisy; Rancho Alisitos; Rancho Mision el Descanso; Rancho Las Dos Palmas; and Las Flors de Mexico. These companies account for approximately 90% of all exports from Mexico of the subject merchandise to the United States. we requested responses to section A of the questionnaires in 10 days and responses to the balance of the questionnaires in 30 days. On July 29, 1986, we received responses to section A of our questionnaires from all companies except Las Flors de Mexico. On August 6, counsel for all respondents, with the exception of Las Flors de Mexico, requested an extension of the due date for the remaining sections of the questionnaire. The Department, on August 12, granted an extension to September 1, 1986. On August 18, we granted an additional extension to September 10, 1986. On September 10, we received responses from Florex; Visaflor; Floremor; Tzitzic Tareta; Rancho Daisy and Rancho Alisitos. On September 15, 1986, we received a response from Rancho Mision el Descanso. We received no subsequent information from Rancho Las Dos Palmas or Las Flors de Mexico. On October 1, 7 and 15, we requested further information from Florex; Visaflor; Floremor; Tzitzic Tareta; Rancho Daisy; Rancho Alisitos and Rancho Mision el Descanso. From October 7-17, supplemental responses were received from those firms.

Scope of Investigation

The products covered by this investigation are fresh cut pompon chrysanthemums, currently provided for in item 192.2110 of the *Tariff Schedules of the United States Annotated,* (TSUSA), standard carnations, currently provided for in item 192.2130 of the TSUSA, and standard chrysanthemums, currently provided for in item 192.2120 of the TSUSA.

Fair Value Comparisons

In order to determine whether sales of the subject merchandise to the United States were made at less than fair value, where possible, we compared a weighted-average monthly price of U.S. sales with foreign market value based on weighted-average monthly home market prices and constructed values. Section 620(a) of the Trade and Tariff Act of 1984 expanded the discretionary use of sampling and averaging by the Department to include the determination of United Stats price or foreign market value, so long as the average is representative of the transactions under investigation. A combination of factors persuaded us to average U.S. sales. In a situation where, as here, there is a mass filing of petitions alleging the sale of the same product at less than fair value from a number of countries, the limited resources of the Department are severely taxed due to the statutory deadlines imposed. The legislative history which accompanied the Trade and Tariff Act demonstrates that it was the intent of Congress in promulgating section 620(a) to reduce the Department's costs and administrative burden in determining dumping margins, and to maximize efficient use of limited resources, without loss of reasonable fairness in the results. In the instant situation, there are eight simultaneous antidumping investigations and over 260,000 separate United States transactions from the countries under consideration. Another influential factor is the need for consistency in our treatment of all the flower investigations. Although the number of transactions vary among the countries being investigated, uniform application of the averaging methodology ensures that all countries are treated on the same basis.

Our decision to average United States price over short periods of time is also based on the fact that the subject merchandise is perishable. Because of this characteristic, sellers may be faced with the choice of accepting whatever return they can obtain on certain sales or destroying the merchandise. Unlike non-perishable products, sellers cannot withhold their flowers from the market until they can obtain a higher price.

We do not believe that the purpose of the antidumping duty law is to render such sales unfair. Instead, in situations like these where the product is perishable, we seek a comparison that takes this characteristic into account. We have preliminarily determined that the best way to achieve this is to average over short time periods, thus, in essence, balancing these "end of day" sales with sales that are not undertaken in lieu of destroying the product. This comparison yields, in our view, the most accurate basis for determining whether sales are at less than fair value.

In cases where companies have failed to respond to our questionnaire, or where responses are deemed too deficient to be employed in our calculations, we have determined that it is appropriate for his preliminary determination to assign such companies the higher rate of either, (1) that rate calculated from information supplied in the petition, adjusted, as appropriate, to remedy certain errors which in this case we consider obvious, or (2) the rate for the firm from Mexico with the highest margin of all firms that supplied adequate responses. Using this methodology for Las Flors de Mexico and Rancho Las Dos Palmas, who failed to answer our questionnaires, and Tzitzic Tareta, whose response was

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found to be incomplete and inadequate for purposes of our calculations, we applied, as best information available, the highest margin calculated for a responding firm.

For Rancho Mision el Descanso, where reported cost of production information was deficient, we used best information available to reflect foreign market values.

U.S. Price

For purposes of our preliminary determination, we used purchase price when sales were made to unrelated purchasers in the United States prior to the date of importation, as provided in section 772(b) of the Act, and exporter's sales price when sales were made to unrelated purchasers in the United States after the date of importation. Purchase price was calculated based on the f.o.b. Mexico City airport or c.i.f. delivered, Ciudad Juarez, packed prices, to unrelated customers in the United States, or to an unrelated Mexican broker for resale to the United States. Deductions were made, where appropriate, for foreign inland freight and insurance, and foreign brokerage and handling. Exporter's sales price was calculated based on the price to the first unrelated customer in the United States. Deductions were made, where appropriate, for foreign inland freight and insurance, foreign brokerage and handling, further packing incurred in the United States, and selling commissions to unrelated parties.

Foreign Market Value

For purposes of this investigation, the Department looked at an extended period of investigation of 12 months in order to compensate for the seasonality of flower production and sales. In calculating foreign market value, the period of investigation was broken into two six-month periods. Because Mexico was determined to be a hyperinflationary economy, where possible, we calculated foreign market value based on weighted monthly average home market prices or monthly constructed values based on quarterly cost data submitted. Where foreign market value was based on home market prices, we calculated foreign market value based on f.o.b. ranch, packed prices. No deductions from this price were claimed or allowed. We deducted home market packing, and added U.S. packing. For Rancho Daisy, Rancho Alisitos and Rancho Mision el Descanso, foreign market value was based on constructed value, because there were insufficient home market or third country sales. The constructed values were based on information submitted by respondents. Where general expenses were less than 10 percent, the statutory minimum of 10 percent was used. The statutory minimum profit of 8 percent was used. We added U.S. packing.

For Florex and Visaflor, the qualities of products sold in the home market could not be identified for purposes of comparison to U.S. sales. Therefore, we based foreign market value for these companies on a weighted-average of constructed values for other responding companies. Rancho Mision el Descanso provided only 1985 cost data. Therefore, where necessary, we used, as best information available, petitioner's cost information for the relevant periods to calculate constructed values.

Currency Conversion

For ESP comparisons, we used the official exchange rate for the date of purchase since the use of that exchange rate is consistent with section 615 of the Tariff and Trade Act of 1984 (1984 Act). We followed section 615 of the 1984 Act rather than § 353.56(a)(2) of our regulations because the later law supersedes that section of the regulations.

Verification

We will verify all information used in making our final determination in accordance with section 776(a) of the Act. We will use standard verification procedures, including examination of relevant sales and financial records of respondents.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of certain fresh cut flowers from Mexico, with the exception of those from the firm Floremor, that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or the posting of a bond on all entries equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturers/Sellers/Exporters	Weighted-Average Margin Percentage
Florex	18.25
Visaflor	15.70
Floremor	0.00
Tzitzic Tareta	30.42
Rancho Daisy	30.42
Rancho Alisitos	11.28
Rancho Mision el Descanso	3.58
Rancho Las Dos Palmas	30.42
Las Flors de Mexico	30.42
All others	15.17

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry prior to the later of 120 days after our preliminary affirmative determination or 45 days after we make our final determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 1 p.m., on December 16, 1986, at the U.S. Department of Commerce, Room 1851, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within ten days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of any pre-hearing briefs must be submitted to the Deputy Assistant Secretary by December 9, 1986. Oral presentations will be limited to issues raised in the briefs.

Written views will be considered if received not less than 30 days before the final determination or, if a hearing is held, within 10 days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

October 28, 1986.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-24791 Filed 10-31-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-333-602]

Preliminary Determination of Sales at Less than Fair Value; Certain Fresh Cut Flowers From Peru

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain fresh cut flowers from Peru are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to suspend the liquidation of all entries of certain fresh cut flowers that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make our final determination by January 12, 1987.

EFFECTIVE DATE: November 3, 1986.

FOR FURTHER INFORMATION CONTACT: Terri Feldman or John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-0160 or (202) 377-3965.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that certain fresh cut flowers from Peru are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b(b)). We made fair value comparisons on sales of the class or kind of merchandise to the United States by the respondent during the period of investigation, June 1, 1985 through May 31, 1986. Comparisons were based on United States price and foreign market value, based on third country prices or constructed value. The margin preliminarily found for the company investigated is listed in the "Suspension of Liquidation" section of this notice.

Case History

On May 21, 1986, we received a petition in proper form filed by the Floral Trade Council of Davis, California. The petition was filed on behalf of the U.S. industry that grows certain fresh cut flowers. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Peru are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

We determined that the petition contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated such an investigation on June 10, 1986 (51 FR 21947, June 17, 1986), and notified the ITC of our action. On July 7, 1986, the ITC determined that there is a reasonable indication that imports of certain fresh cut flowers from Peru materially injure a U.S. industry (USITC Pub. No. 1887).

On July 16, 1986, we presented an antidumping duty questionnaire to Flores Esmeralda, S.R.L. This company accounts for at least 95 percent of exports from Peru of the subject merchandise to the United States. We requested a response in 30 days. On August 17, 1986, at the request of respondent, we granted an extension of the due date for the questionnaire response. On September 10, we received a response from the company. On October 2 and 10, we requested additional information from respondent. We received supplemental responses on October 10 and 16, 1986. Outstanding deficiencies in the response remain.

Scope of Investigation

The products covered by this investigation are fresh cut miniature (spray) carnations, currently provided for in item 192.17 of the *Tariff Schedules of the United States* (TSUS), and pompon chrysanthemums, and gyposphila, currently provided for in item 192.21 to the TSUS.

Fair Value Comparisons

In order to determine whether sales of the subject merchandise to the United States were made at less than fair value, we compared a weighted-average monthly price of U.S. sales with a foreign market value based on third country prices or constructed value. Section 620(a) of the Trade and Tariff Act of 1984 expanded the discretionary use of sampling and averaging by the Department to include the determination of United States price or foreign market value, so long as the average is representative of the transactions under investigation. A combination of factors persuaded us to average U.S. sales. In a situation, such as here, where there is a mass filing of petitions alleging the sale of the some products at less than fair value from a number of countries, the limited resources of the Department are severely taxed due to the statutory deadlines imposed. The legislative history which accompanied the Trade and Tariff Act of 1984 demonstrates that it was the intent of Congress in promulgating section 620(a) to reduce the Department's costs and administrative burden in determining dumping margins, and to maximize efficient use of limited resources, without loss of reasonable fairness in the results. In the instant situation there are eight simultaneous antidumping investigations and over 260,000 separate United States transactions from the countries under consideration. Another influential factor is the need for consistency in our treatment of all the flowers cases. Although the number of transactions varies among the countries being investigated, uniform application of the averaging methodology ensures that all countries are treated on the same basis.

Our decision to average United States price over short periods of time is also based on the fact that the subject merchandise is perishable. Because of this characteristic, sellers may be faced with the choice of accepting whatever return they can obtain on certain sales or destroying the merchandise. Unlike non-perishable products, sellers cannot withhold their flowers from the market until they can obtain a higher price.

We do not believe that the purpose of the antidumping duty law is to render such sales unfair. Instead, in situations like these where the product is perishable, we seek a compromise that takes this characteristic into account. We have preliminarily determined that the best way to achieve this is to average over short time periods, thus, in essence, balancing these "end of the day" sales with sales that are not undertaken in *lieu* of destroying the product. This comparison yields, in our view, the most accurate basis for determining whether sales are at less than fair value.

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United States Price

As provided in section 772(c) of the Act, as all the merchandise was sold to unrelated purchasers after importation into the United States, we used exporter's sales prices to represent the United States price. We made deductions, where appropriate, for box and sales commissions, return credits, brokerage and handling, inland freight, and credit expenses. We made an addition for the CERTEX export rebate. Because the Generalized System of Preferences is applicable to Peruvian flowers, no U.S. duty was deducted.

Foriegn Market Value

For purposes of this investigation, the Department looked at an extended period of investigation of 12 months in order to compensate for the seasonality of flower production and sales. In calculating foreign market value, the period of investigation was broken into two six-month periods. During each six-month period, if home market or third country sales occurred in three months or more, then the weighted average for the months with sales were used for the entire six-month period. When there were sales in two months or less, constructed value was used for months without sales.

For Peru, the first three months of the period of investigation have been deemed hyperinflationary, thus foreign market value was calculated on a monthly basis for these first three months. Effective September 1, 1985, the Government of Peru instituted inflation controls. We thus have determined that effective September 1, 1985, Peru was not a hyperinflationary economy. Therefore, to compare sales in the second three-month period and the final six-month period, one weighted-average foreign market value was used for each period, consistent with our determination to divide the period of investigation into two six-month periods.

As Flores Esmeralda, S.R.L. had no reported sales of such or similar merchandise in the home market for gypsophila, we calculated foreign market value, where appropriate, based on third country, packed prices to unrelated purchasers in the Federal Republic of Germany. Deductions were made, as appropriate, for inland freight and brokeage and handling. We made an addition for the CERTEX tax rebate. We made a deduction for third country credit expenses and third country market packing. We added U.S. packing to third country prices.

In accordance with section 773(e) of the Act, we calculated foreign market value based on the constructed value of miniature carnations and pompon chrysanthemums for Flores Esmeralda, S.R.L., as there were not sufficient home market or third country sales of such or similar merchandise. For the preliminary determination, estimated raw material costs submitted by respondent were adjusted based on actual raw material costs reported in other months. The constructed values were adjusted to reduce the variations resulting from fluctuations in monthly production volumes. Where actual general expenses were less than 10 percent of the cost of materials and fabrication, the statutory minimum of 10 percent was used. The statutory minimum profit of 8 percent was used since the actual profits in the third country were not reported. We added U.S. packing to constructed values. We made a deduction for home market credit expenses, and, where appropriate, we used indirect expenses to offset other United States selling expenses in accordance with § 353.15(c) of our regulations.

Currency Conversion

For comparisons involving exporter's sales price transactions, we used the official exchange rate for the date of purchase pursuant to section 615 of the 1984 Act, rather than § 353.56(a)(2) of our regulations, as it supersedes that section of the regulations. Normally, we use certified daily exchange rates furnished by the Federal Reserve Bank of New York, but no certified rates were available for Peru. Therefore, we used monthly exchange rates published by Bank of America, London, as best information available. We have requested the Federal Reserve Bank to certify the exchange rates for the period of investigation. If the Federal Reserve Bank exchange rates are available we will use these certified rates for our final determination.

Verification

We will verify all information used in making our final determination in accordance with section 776(a) of the Act. We will use standard verification procedures, including examination of relevant sales and financial records of respondents.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of certain fresh cut flowers from Peru that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or the posting of a bond on all entries equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturer/seller/exporter	Weighted-average margin percentage
Flores Esmeralda, S.R.L.	1.78
All others	1.78

Article VI.5 of the General Agreement on Tariffs and Trade provides that "[n]o products . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act, which prohibits assessing dumping duties on the portion of the margin attributable to export subsidies. We will consider this issue in our final determination after we make a final countervailing duty determination.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry prior to the later of 120 days after our preliminary affirmative determination or 45 days after we make our final determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 9:00 a.m., on December 15, 1986, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within ten days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of any pre-hearing briefs must be submitted to the Deputy Assistant Secretary by December 8, 1986. Oral presentations will be limited to issues raised in the briefs. Written views will be considered if received not less than 30 days before the final determination or, if a hearing is held, within 10 days after the hearing transcript is available.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

October 28, 1986.

[FR Doc. 86-24792 Filed 10-31-86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Yellowfin Tuna

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of determination.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, in consultation with the Department of State, finds that the Government of the Republic of Vanuatu is in substantial conformance with U.S. regulations governing the taking of marine mammals incidental to commercial tuna purse seining operations. Therefore, yellowfin tuna and yellowfin tuna products may be exported to the United States until such time as new regulations regarding yellowfin tuna are promulgated and new findings required under those regulations.

EFFECTIVE DATE: November 3, 1986.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Species and Habitat Conservation, NMFS, Washington, DC 20235 (202/673-5351).

SUPPLEMENTARY INFORMATION:

Background

The NMFS published regulations in the **Federal Register** on December 23, 1977 (42 FR 64548-64560) governing the taking of marine mammals incidental to commercial fishing operations. These regulations were repromulgated on October 31, 1980 (45 FR 72178-72196). Included in these regulations are provisions concerning the importation of yellowfin tuna and tuna products from nations whose vessels participate in the yellowfin tuna purse seine fishery in the eastern tropical Pacific Ocean (ETP). Effective January 1, 1978, these importation provisions made the importation of yellowfin tuna and tuna products from nations known to be involved in the ETP fishery contingent upon certain findings by the Assistant Administrator for Fisheries, NOAA (Assistant Administrator). The Assistant Administrator must find (a) that the fishing operations of the nation concerned ". . . are conducted in conformance with U.S. regulations and standards . . ." or (b) that ". . . although not in conformance with these regulations such fishing is accomplished in a manner which does not result in an incidental mortality and serious injury in excess of that which results from U.S. fishing operations under these regulations." To ensure that the conditions under which the original finding was made continue to exist, the Assistant Administrator requires an annual update of the items listed in § 216.24(e)(5)(ii).

Finding of Conformance

On October 22, 1986, the Government of the Republic of Vanuatu submitted information under 50 CFR 216.24(e) and requested that Vanuatu-flag tuna purse seine operations be found in conformance with U.S. regulations. The NMFS has reviewed this information and has determined that Vanuatu-flag purse seine vessels are fishing in substantial conformance with U.S. regulations regarding the protection of porpoise. Therefore, yellowfin tuna yellowfin tuna products may be exported to the United States. This finding of conformance will remain in effect until 90 days after the new regulations regarding the importation of yellowfin tuna become effective (see 51 FR 28963, August 13, 1986). On that date, all findings of conformance made under the current regulations will terminate and any nation purse seining in the ETP that does not have a new finding will be prohibited from exporting yellowfin tuna to the United States.

The information considered in Vanuatu's finding is summarized below:

(a) *Fleet.* The Republic of Vanuatu has three purse seine vessels, the *Grenadier,* the *American Eagle* and the *Sandra C.* The *Grenadier* and *American Eagle* transferred from U.S. to Vanuatu flag in 1985 and the *Sandra C.* in 1986. These three vessels have a combined carrying capacity of 3,515 tons and therefore make up less than 3 percent of the ETP tuna fleet's carrying capacity.

(b) *Gear and Techniques.* The Government of Vanuatu has certified that all three Vanuatu-flag purse seine vessels use the same gear and techniques as required on U.S. vessels. In addition, the Inter-American Tropical Tuna Commission (IATTC) has confirmed that the *American Eagle* and *Grenadier* are equipped with safety panels, and other dolphin rescue gear similar to panels and gear required by regulations for U.S. purse seine vessels. They also perform the backdown procedure when porpoise are captured and position crewmen as rescuers in the backdown area. The gear and porpoise release procedures of the *Sandra C.* have not been observed by IATTC but that vessel will carry an observer later this year. All three vessels carry high intensity floodlights for use during dark backdowns.

(c) *Mortality.* As the Vanuatu purse seine vessels did not change flag and take IATTC observers until late in 1985, there is insufficient data to project their 1985 mortality. However, as Vanuatu-flag purse seine vessels have been confirmed by the IATTC to be using the porpoise rescue gear and procedures required for U.S. vessels, mortality rates are expected to be similar to that incurred on U.S.vessels.

(d) *Observers.* The Government of the Republic of Vanuatu participates in the IATTC observer program. In 1985, 40 percent of the fleet's trips were covered. For 1986, 27 percent of the fleet's trips have been covered but will increase later this year as two more observer placements are expected.

The information submitted by the Government of the Republic of Vanuatu in requesting a finding of conformance by the United States is available to the public at the information contact address set out above.

Dated: October 28, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-24758 Filed 10-31-86; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council and its advisory entities will convene public meetings, November 18-20, 1986, at the Red Lion Motor Inn-

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Columbia River, 1401 North Hayden Island Drive, Portland, OR, as follows:

Council—will convene November 19 at 9 a.m. with an executive session (not open to the public) to discuss litigation and personnel matters. The general session (open to the public) will convene at 10 a.m. to consider administrative matters, including appointment of members to the Scientific and Statistical Committee (SSC), and the groundfish, salmon, and anchovy advisory subpanels for 1987 through 1988. The Council also will hear reports on the 1986 groundfish fishery and the final 1987 estimates for groundfish acceptable biological catch (ABC); domestic annual harvest; domestic annual processing, and total allowable level of foreign fishing. The Council will then adopt specifications, determine optimum yields, and adopt management measures to be recommended to the Secretary of Commerce for implementation in 1987. Other groundfish matters on the agenda include consideration of foreign fishing applications; definitions of ABC and other terms; plan amendment issues for 1988, and long-term sablefish management. There will be a public comment period at 4:45 p.m.

On November 20, the Council will hear salmon management matters, including a report on the 1986 ocean fishery; plan amendment issues for 1988; the 1987 management schedule and process; a hooking mortality study review, and a report on the Klamath River Salmon Management Group meeting.

Groundfish Select Group—will convene at 8 a.m., November 18, to develop recommendations for management measures for the balance of 1986 and 1987.

SSC—will convene at 1 p.m., November 18 to consider matters on the Council agenda. On November 19 the SSC will reconvene at 8 a.m.

Groundfish Advisory Subpanel—will convene at 1 p.m., November 18, to consider groundfish matters on the Council agenda.

Council Performance Select Group—will convene at 7 p.m., November 18 to review the staff report on Council performance and comments received on the report, and determine a process for further evaluation of the issues presented in the report and comments received.

Foreign Fishing Committee—will convene at 7 p.m., November 18, to review any foreign fishing applications received.

Budget Committee—will convene at 7 a.m., November 19 to consider the 1986 and 1987 budget status.

Salmon Select Group—will convene at 1 p.m., November 19 to review the schedule and process for developing the 1987 management measures.

Saltonstall-Kennedy (S-K) Criteria Committee—will convene at 7 a.m., November 20 to establish procedures for reviewing S-K proposals.

Detailed agendas for all of the above meetings will be available to the public on November 7. For further information contact Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, Metro Center, 2000 SW First Avenue, Suite 420, Portland OR 97201; telephone: (503) 221-6352

Dated: October 29, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Services.

[FR Doc. 86-24794 Filed 10-31-86; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Limit for Certain Cotton, Wool and Man-Made Fiber Sweaters Assembled in the Northern Mariana Islands (CNMI) From Imported Parts

October 29, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 1, 1986. For further information contact Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On October 22, 1985, a notice was published in the **Federal Register** (50 FR 42750) announcing that, effective on April 15, 1985, cotton, wool and man-made fiber sweaters in Categories 345, 445, 446, 645 and 646, determined by the U.S. Customs Service to be products of foreign countries or foreign territories and exported from the Commonwealth of the Northern Mariana Islands (CNMI), and certified to have been assembled in the CNMI, may be entered into the United States for consumption, or withdrawn from warehouse for consumption, in an amount not to exceed 73,500 dozen. This limited exception was to be effective for sweaters exported from the CNMI during the period which began on November 1, 1985 and extends through October 31, 1986.

The purpose of this notice is to advise the public that this exception is being continued for goods exported on and after November 1, 1986 and extending through October 31, 1987. The amount is being increased to 100,000 dozen, with a wool sublimit not to exceed 15,000 dozen, contingent upon certification from the United States Government by January 1, 1987 that 40 percent of local labor is used in production of textile products. If this requirement is not fulfilled, the limit will revert to 77,910 dozen, the standard increase based on last year's limit.

A certification will continue to be required and will be issued by the authorities in the CNMI prior to exportation as verification of assembly in the CNMI. A facsimile of the certification stamp was published in the **Federal Register** on September 9, 1985 (50 FR 36645).

For those sweaters properly certified, no export visa or license will be required from the country of origin of the merchandise, and imports entered under this procedure will not be charged to limits established for exports from the country of origin. Exports of sweaters in Categories 345, 445, 446, 645 and 646, which are not accompanied by a certification and those in excess of 100,00 dozen, will require the appropriate visa or export license from the country of origin and will be subject to any other applicable restriction.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

October 29, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, effective on November 1, 1986, you are directed to permit entry or withdrawal from warehouse for consumption in the United States of 100,000 dozen cotton, wool and man-made fiber textile products in Categories 345, 445, 446, 645 and 646, with a wool sublimit for Categories 445 and 446 not to exceed 15,000 dozen, the product of any foreign country or foreign territory, as determined under Customs Regulation Part 12, § 12.130 and which have been certified as assembled in the Commonwealth of the Northern Marianas Islands (CNMI) and exported to the United States during the twelve-month period beginning on November 1, 1986 and extending through October 31, 1987. You are directed not to require any otherwise applicable export visa or license and not to charge against any otherwise applicable import restriction sweaters subject to this provision. A certification will be issued by the authorities in the CNMI prior to exportation as verification of assembly in the CNMI. A facsimile of the certification stamp has been provided.

Imports of cotton, wool and man-made fiber textile products in Categories 345, 445, 446, 645 and 646, assembled in the CNMI, but not of the CNMI origin which are not accompanied by a certification and those in excess of 100,000 dozen exported during the twelve-month period beginning on November 1, 1986 and extending through October 31, 1987 will require the appropriate visa or export license from the country of origin and will be charged to any applicable quota.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements

[FR Doc. 86-24784 Filed 10-31-86; 8:45 am]

BILLING CODE 3510-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket 87-C0001]

Black and Decker (U.S.), Inc., A Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a Settlement Agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Black and Decker (U.S.), Inc., a corporation.

DATE: Any interested person may ask the Commission not to accept this agreement or otherwise comment on it's contents by filing a written request with the Office of the Secretary by November 18, 1986.

ADDRESS: Persons wishing to comment on this Settlement Agreement should send written comments to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Melvin I. Kramer, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6626.

Dated: October 21, 1986.

Sheldon D. Butts,

Deputy Secretary.

SUPPLEMENTARY INFORMATION:

Consumer Product Safety Commission

[CPSC No. 87-C0001]

Settlement Agreement and Order

In the matter of BLACK & DECKER (U.S.) INC., a corporation.

1. This Settlement Agreement is made by and between Black & Decker (U.S.) Inc., a corporation, (hereinafter "Black & Decker") and the staff of the Consumer Product Safety Commission (hereinafter "staff") to resolve the staff allegations described herein.

2. The provisions of the Settlement Agreement and Order shall apply to Black & Decker, and to each of its successors and assigns.

I. The Parties

3. Black & Decker is a corporation organized and existing under the laws of the State of Maryland with its principal corporate offices located at 701 E. Joppa Road, Baltimore, Maryland 21204.

4. Black & Decker is a manufacturer, as that term is defined in section 3(a)(4) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2052(a)(4), of certain weed/grass trimmers (hereinafter "trimmers") which it has distributed in commerce.

5. The trimmers are consumer products, as defined in section 3(a) of the CPSA, 15 U.S.C. 2052(a).

6. The "staff" is the staff of the Consumer Product Safety Commission, an independent regulatory Commission of the United States of America (hereinafter "Commission") created pursuant to section 4 of the CPSA, as amended, 15 U.S.C. 2053.

II. Staff Allegations

7. From 1981-1984, Black & Decker manufactured and distributed in commerce approximately 647,000 units of the weed/grass trimmers. The model numbers were Black & Decker model numbers 8243 (Types 1 and 2), 8251 (Types 1 and 2) and 8255 (Type 1); Montgomery Ward model numbers XBA2098A, XBA2098B, and XBA2099A; and McCulloch model numbers MAC30 (Type 1), and MAC40 (Type 2).

8. On March 4, 1986, the firm reported to the staff that the fan and cap hub assembly of this product may fracture during use, thereby throwing plastic pieces out from under the guard which could cut or bruise the user and/or bystanders.

9. Before reporting to the staff, Black & Decker was aware of approximately 102 incidents of product failure, beginning in 1982. A laceration or bruise injury was alleged by the complainant in 82 of the incidents.

10. The staff is now aware of a total of 139 incidents.

11. In addition, Black & Decker had alerted its service centers in late 1984 of this problem and issued guidelines for replacing the product under the warranty.

12. The staff further alleges that Black & Decker possessed sufficient information well in advance of the March 4, 1986 reporting date to reasonably support the conclusion that these trimmers contained a defect which could create a substantial product hazard but failed to report that information to the Commission in a timely manner as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b).

III. Agreement of the Parties

13. Black & Decker and the staff agree that the Commission has jurisdiction in this matter over Black & Decker and over the trimmers.

14. Without admitting the existence of a substantial produce hazard or a violation of any reporting requirements under section 15(b) of the CPSA, 15 U.S.C. 2064(b) Black & Decker agrees to pay to the Commission, in accordance with the attached Order, a civil penalty sum of $85,000 within 30 days of the final acceptance of this Settlement Agreement and service of the Commission's Order on Black & Decker. This penalty payment constitutes a settlement of any violations of the requirements of sections 15(b) and 19(a) (3) and (4) of the CPSA, 15 U.S.C. 2064 and 2068(a) (3) and (4), that may be alleged on the basis of the information that the Commission staff currently possesses concerning these trimmers.

15. Upon final acceptance of this Settlement Agreement by the Commission, Black & Decker knowingly, voluntarily and completely, waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission whether a violation has occurred, and (4) to a statement of findings of fact and conclusions of law. Should the Commission decide not to accept and adopt this Settlement Agreement and Order, the Settlement Agreement and Order shall have no force and effect.

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16. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had issued and the Settlement Agreement and Order will be made available to the public.

17. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and the provisional acceptance of the agreement shall be announced in the **Federal Register** in accordance with the procedure set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date of the announcement in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

18. Upon final Commission acceptance of this Settlement Agreement and Order, the Commission shall enter the incorporated Order and make the Settlement Agreement and Order available for public review at the Office of Secretary, Consumer Product Safety Commission. This Settlement Agreement and Order becomes effective only upon such final acceptance by the Commission and service upon Black & Decker.

19. The requirements of the Settlement Agreement and the Order resolve all issues that have arisen or could arise under section 15(b) of the Consumer Produce Safety Act, with respect to the allegations contained in Paragraphs 7 – 12, *supra*, and are in addition to and not to the exclusion of other remedies under the Consumer Product Safety Act.

20. The parties further agree that the incorporated Order be issued under the CPSA, 15 U.S.C. 2051 *et seq.*, and that a violation of the Order will subject Black & Decker to appropriate legal action.

21. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or to contradict its terms.

22. Nothing in this Agreement should be construed as limiting Black & Decker's obligation to report pursuant to section 15(b) of the CPSA.

Dated: September 15, 1986.

Black & Decker (U.S.) Inc.
Charles L. Costa,
Vice President.

The Consumer Produce Safety, Commission
Melvin I. Kramer,
Counsel for the Consumer Product Safety Commission.

Dated: September 29, 1986.

David Schmeltzer,
Associate Executive Director, Directorate for Compliance and Administrative Litigation.

Order

Upon consideration of the the Settlement Agreement of the parties, it is hereby

Ordered, that Black & Decker shall pay within 30 days of final acceptance of this final Settlement Agreement and entry of this Order, a civil penalty in the sum of $85,000 to the Consumer Product Safety Commission for transference to the U.S. Treasury.

Provisionally accepted on the 28th day of October, 1986.

By Order of the Commission.

Sadye E. Dunn,
Secretary, Consumer Product Safety Commission.

[FR Doc. 86-24825 Filed 10-31-86; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Proposed Long Term Intertie Acess Policy and Announcement of Public Meetings

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of proposed policy; announcement of technical discussion session on the proposed policy; public comment meetings on the proposed policy and the draft intertie development and use environmental impact statement; and request for comment.

BPA File No.: TIE–1. BPA requests that all comments submitted in response to this notice contain the file number designation *TIE–1.*

SUMMARY: BPA is announcing the availability of its Proposed Long Term Intertie Access Policy (IAP) for pubilc review and comment. The IAP will define long-term access to the Federally owned portion of the Pacific Northwest-Pacific Southwest Interties (Intertie).

This proposed policy reflects information and experience received since implementation of the Near Term IAP on September 7, 1984, as well as comments received at various public meetings held by BPA and comments received on the March 11, 1986, Long Term IAP discussion paper. The final Long Term IAP is expected to be implemented on or about July 1, 1987.

Responsible Official: Mr. James L. Jones, Deputy Power Manager, is the official responsible for the development of the Interties Access Policy.

DATES: BPA has scheduled a technical discussion session to clarify the proposed policy. This meeting will be held on: November 19, 1986—1 p.m.–5 p.m., Viscount Hotel, Crater Lake and Mt. Jefferson Rooms, 1441 NE. Second Avenue, Portland, Oregon.

BPA also has scheduled several public comment meetings to receive comments on both the proposed policy and the Draft Interties Development and Use Environmental Impact Statement (IDU DEIS). Dates and times for these meetings are listed below:

December 9, 1986—10 a.m.–2 p.m., Hyatt-Regency, Calvin Simmons, Room 4, 1001 Broadway, Oakland, California.

December 10, 1986—1 p.m.–3 p.m., Red Lion at Jantzen Beach, Clackamas Room, 909 North Hayden Island Drive, Portland, Oregon.

December 11, 1986—7 p.m.–10 p.m. Thunderbird Motor Inn, Conference, Room, 3612 South Sixth Street, Klamath Falls, Oregon.

BPA will hold additional public meetings on request. To arrange for a meeting, contact Ms. Shirley Price, (503) 230–4261, by November 14, 1986.

BPA will accept comments on the proposed policy through January 2, 1987.

ADDRESSES: Written comments should be submitted to the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: The Public Involvement office at the address listed above, 503–230–3478. Oregon callers outside of Portland may call toll-free 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may call toll-free 800–547–6048. Information may also be obtained from:

Mr. Georgia Gwinnett, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952.

Mr. Wayne Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. Terry Esvelt, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206–442–4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6226.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Owyhee Plaza, Suite 245, 1109 Main Street, Boise, Idaho 83707, 208–334–9137.

SUPPLEMENTARY INFORMATION:

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I. Background

The Pacific Northwest-Pacific Southwest Intertie (Intertie) is the high-voltage transmission system that connects the Pacific Northwest with the Pacific Southwest. The Intertie currently consists of three high-voltage transmission lines; two 500-kilovolt (kV) alternating-current (AC) lines and one 1000-kV direct-current (DC) line. The AC lines extend from John Day Substation near John Day Dam on the Columbia River in Oregon to the Lugo Substation near Los Angeles. The interconnect with other transmission lines at eight points. The DC line runs from the Celilo Station near The Dalles Dam in Oregon to the Sylmar Station near Los Angeles. The line transmits power directly between the Pacific Northwest and Southern California. Present capability of the three Intertie lines is approximately 5200 MW—about 3200 MW on the two AC lines and 2000 MW on the DC line.

Ownership of the AC Intertie north of the Oregon border is primarily by BPA. One line segment from Grizzly Substation to Malin Substation is owned by the Portland General Electric Company and some facilities are owned by Pacific Power and Light Company. BPA is the owner of the DC Intertie north of the Oregon border. Ownership of the AC and DC Intertie south of the Oregon border is divided among private and public utilities in California.

In the summer of 1983, BPA's Administrator began to explore the development of an Intertie Access Policy to enhance BPA's power marketing efforts and ability to recover revenues, and to provide certainty with respect to BPA's and others' firm and nonfirm transactions with Southwest utilities. In September 1983, BPA implemented an Interim IAP. In June 1985, upon completing an Environmental Assessment and Finding of No Significant Impact (FONSI) on the Near Term IAP, BPA implemented the Near Term IAP. This policy will continue in effect until it is superseded by a Long Term IAP.

When formulating and implementing the Near Term IAP, BPA anticipated development of a Long Term IAP. This phased approach recognized that there are both long-term and short-term Intertie issues. The Near Term IAP resolved immediate, discrete access issues resulting from the immediate surplus and revenue conditions. It also provides a solid basis for operating until a Long Term IAP is in effect.

In developing the Proposed Long Term policy, BPA has examined many issues concerning use by BPA and Scheduling Utilities of the BPA-controlled share of existing and future Intertie facilities, including: Access for new resources, extraregional resources, and resources qualifying under section 9(i)(3) of the Pacific Northwest Electric Power Planning and Conservation Act (Pacific Northwest Power Act); use of the Intertie for various types of power tranactions, including the trade-off between firm and nonfirm power transactions, and capacity arrangements; and provisions to protect, mitigate, and enhance fish and wildlife resources.

A. Legal Authority

The Pacific Northwest Preference Act, 16 U.S.C. 837(e), authorizes the BPA Administrator to make first use of the Federal Intertie lines to carry Federal surplus power to the Pacific Southwest. Only after BPA's needs are met may any excess capacity be made available to non-Federal entities. Congress reaffirmed this position in the Federal Columbia River Transmission System Act of 1974 (Transmission System Act, 16 U.S.C. 838(d)), and in the Pacific Northwest Power Act (16 U.S.C. 839f(i)). In April 1985, the Ninth Circuit Court of Appeals affirmed the priority for Federal needs, BPA's authority to allocate available Intertie capacity, and the authority to restrict the access of extraregional entities. (*Los Angeles Department of Water and Power* v. *Bonneville*, 759 F.2d 684 (9th Cir. 1985) (*LADWP*).)

B. Process to Date

The development of BPA's IAP stated on July 22, 1983, with a Notice of Intent to Develop Intertie Policy (48 FR 33515). BPA met with numerous organizations and interest groups to identify, discuss, and seek notice on the issues in response to the July 22 Notice. After several rounds of public scoping and comment, it became clear that some Intertie access issues had to be addressed immediately, while others could be addressed only through the development of a long term policy.

A draft interim Near Term IAP was published on July 30, 1984. After a comment period, the Interim Near Term IAP became effective on September 7, 1984. The initial term of this policy was to be approximately 6 months to allow for continuing public discussion environmental analyses, and an opportunity to gain operational experience under the policy. (The policy in effect during this time is referred to as the Interim IAP to distinguish it from the final Near Term IAP.) BPA simultaneously began the scoping process to develop an Environmental Impact Statement (EIS) on a Long Term IAP.

On January 31, 1985, a draft Near Term IAP was distributed that incorporated information and experience received under the Interim IAP. BPA requested comments, particularly on the specific aspects of this Near Term IAP that had changed from the Interim IAP. After a comment period, the final Near Term IAP was adopted on June 1, 1985, to be in effect until it is superseded by the Long Term IAP.

Throughout the development of the Near Term IAP and the Proposed Long Term IAP, BPA simultaneously worked on the environmental issues associated with these policies. BPA prepared an Environmental Assessment on the Near Term IAP that was approved by the Department of Energy on March 7, 1985. This Environmental Assessment supported a FONSI and was approved by the Department of Energy on May 31, 1985.

A **Federal Register** Notice of Intent to prepare an EIS on the Long Term IAP was published on October 15, 1984. The title of the EIS was changed from "Long Term Intertie Access Policy EIS" to "Intertie Deveopment and Use EIS," (IDU EIS) reflecting the fact that the analyses for the EIS includes potential and planned expansions of Intertie capacity as well as policies concerning access to the Intertie. The IDU EIS addresses the interaction between Intertie capacity and IAP alternatives in order to determine the potential environmental effects of decisions pertaining to the development and use of the Intertie system. ON October 14, 1986, the Department of Energy

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approved the Draft IDU EIS. Copies of the Draft IDU EIS are available upon request by contacting the Public Involvement Office.

C. Summary of the Proposed Policy

The purposes of the Long Term IAP are many. The include: (1) Enhancing BPA's ability to repay the U.S. Treasury in a timely manner for the Federal investment in the Federal Columbia River Power System; (2) supporting the Adminsitrator's ability to maintain reasonable power rates for BPA's wholesale customers in the Pacific Northwest; (3) allocating equitable access to Intertie capacity in excess of the Intertie capacity the Administrator determines is required for BPA use; (4) providing an opportunity for long-term assured access to enable non-Federal long-term power or firm capacity transactions; (5) supporting acceptable environmental quality; and (6) achieving consistency with other National environmental policies.

The proposed Long Term IAP is similar in format to the Near Term IAP. It has sections on definitions, term, conditions for Intertie access, Intertie capacity reserved for BPA, assured delivery and formula allocation methods for Intertie access, extraregional access, remedies, and exhibits.

The Proposed Long Term IAP identifies the Intertie capacity that will be reserved for BPA transactions. After meeting this requirement, the proposed policy establishes two types of Intertie access for Scheduling Utilities in the Northwest: Assured delivery, which provides firm access, and formula allocation, which provides hourly access. The policy provides that assured delivery will be granted for qualifying firm contracts from Scheduling Utilities in the Northwest. Assured delivery sales are given priority access to available Intertie capacity after the reservation for BPA. After this Intertie access is provided, the remainder of the Intertie is available for hourly sales via formula allocation methodologies.

The proposed policy provides for allocating the available Intertie capacity available for hourly sales depending on which of three conditions exists. Condition 1 defers to an existing agreement in the Northwest known as the Exportable Agreement, which expires at the end of 1988. The provisions of this agreement have been incorporated as Condition 1 of this policy until the agreement expires. Once the Exportable Agreement expires, Condition 1 would be defined as when the Federal system is in spill condition or likelihood of spill. BPA would declare the surplus it has for sale to the Southwest and Scheduling Utilities could declare surplus hydroelectric energy. BPA and the Scheduling Utilities would be provided a pro rata share of the available Intertie capacity.

An issue paper discussion the major issues concerning the Proposed Long Term Intertie Access Policy is available upon request made to the BPA Public Involvement Office, P.O. Box 122999, Portland, Oregon 97212. Or call BPA's toll-free document request line at 800-841-5867 in Oregon, 800-624-9495 in other Western States.

Condition 2 occurs when there is more Northwest energy declared available for sale in the Southwest at any price than there is Intertie capacity to transmit it. Under Condition 2, each Scheduling Utility and BPA makes a declaration of the amount of energy it would like to sell and is provided a pro rata share of the available Intertie capacity.

Condition 3 occurs when the declared nonfirm energy in the Northwest available for sale is less than the available Intertie capacity. Extraregional utilities will be granted access to excess Intertie capacity only under Condition 3, with U.S. extraregional utilities having the first chance to use the excess Intertie capacity. The IAP defines extraregional resources as resources that are not located within the region and are not dedicated to regional load. There are two kinds of extraregional resources: Extraregional resources in the U.S. and resources from Canada.

II Proposed Long Term Intertie Access Policy

A. Definitions

1. "Administrator" means the Administrator of Bonneville Power Administration (BPA) and is used interchangeably herein with BPA.

2. "Administrator's Power Marketing Program" or "BPA's Power Marketing Program" means the aggregate of BPA's power marketing actions taken and policies developed to fulfill BPA's statutory obligations and policy directives. These actions and policies are based on the exercise of broad authority to act, consistent with sound business principles, to recover adequate revenue to repay the Federal investment in the Federal system while, at the same time, encouraging the widest possible diversified use of electric power at the lowest possible rates for BPA customers. BPA's Power Marketing Program includes the Administrator's obligation to meet his power supply obligations in the Pacific Northwest and to market surplus power in the Pacific Northwest in manner that assures an adequate, reliable, economical, efficient, and environmentally acceptable power supply, while preserving regional and public preferene to Federal electric power and maintaining BPA's present and future rates to all customers at the lowest possible consistent with sound business principles. BPA's Power Marketing Program also includes the Administrator's objectives to market surplus Federal power to the Southwest utilities at equitable prices under rates adopted pursuant to section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (Pacific Northwest Power Act) and to assist in the marketing of the Pacific Northwest's surplus firm power to the Southwest.

3. "Assured Delivery" means Intertia transmission service provided by BPA under this policy that, for the term agreed-to by BPA in the transmission contract and regardless of changes in this policy, is interruptible only as result of uncontrollable forces or by a determiniation of the Administrator pursuant to subsection I.3.

4. "BPA Resources" means Federal Columbia River Power System (FCRPS) hydroelectric projects; resources acquired by the Adminstrator under long-term contracts, including resources acquired pursuant to section 6 of the Pacific Northwest Power Act; Exchange Resources consisting of electric power purchased under section 5(c) of the Pacific Northwest Power Act; and resources acquired pursuant to section 11(b)(6)(i) of the Federal Columbia River Transmission System Act (Transmission Act).

5. "Entity" means an owner of a resource other than a Scheduling Utility.

6. "Existing Extraregional Resources" are those resources located outside the Pacific Northwest that were operational on September 7, 1984, other than extraregional resources that qualify as Existing Pacific Northwest Resources.

7. "Existing Pacific Northwest Resources" are:

a. The Pacific Northwest resources of Scheduling Utilities that were operational on September 7, 1984;

b. The extraregional resources of Scheduling Utilities dedicated to Pacific Northwest load on September 7, 1984, which include pro rata portions of Montana Power Company's and Pacific Power and Light Company's shares of Colstrip 4 based on the ratio of their regional loads to their total loads and the Idaho Power Company's share of Valmy 2; and

c. The Pacific Northwest resources of Pacific Northwest Entities that were operational on September 7, 1984, and for which a continuing relationship had been established by that date with a Scheduling Utility of BPA to serve Pacific Northwest load.

Existing Pacific Northwest Resources do not include BPA Resources.

8. "FD Supported Sales" means that portion of a firm sale by a Pacific Northwest utility to a Southwest part that is equal to the utility's purchase of BPA Firm Displacement Power.

9. "Intertie Capacity" means transmission capacity on the Pacific Intertie controlled by BPA through ownership or contract right, increased by electric power scheduled South to North and decreased by loop flow, outages, and other factors that reduce transmission capacity from North to South, and decreased by Pacific Power and Light's scheduling rights at Malin under contracts Nos. DE-MS79-86BP92299 and DE-MS79-79BP90091.

10. "New Hydroelectric Plant" means any non-Federal hydroelectric power producing facility within the Columbia River Basin that becomes operational on or after September 7, 1984.

11. "Pacific Intertie" means the Pacific Northwest-Pacific Southwest Intertie that consists of three high-voltage transmission lines (two 500-kilovolt (kV) alternating current (AC) lines and one 1,000-kV direct current (DC) line), which extend from Oregon into California or Nevada, and any additions thereto identified by BPA as Pacific Northwest-Pacific Southwest Intertie facilities.

12. "Pacific Northwest" means, as defined in the Pacific Northwest Power Act, 16 U.S.C. 839e, the area consisting of the States of Oregon, Washington, and Idaho, the portion of the State of Montana west of the Continental Divide, and such portions of the States of Nevada, Utah, and Wyoming as are within the Columbia River Drainage Basin, and any contiguous areas, not in excess of 75 air miles from the area referred to above, which are a part of the service area of a rural electric cooperative customer served by the Administrator on the effective date of the Pacific Northwest Power Act which has a distribution system from which it serves both within and without such region.

13. "Qualified Extraregional Resources" means:

a. Existing Extraregional Resources until such time that the Administrator determines that the capacity of the Pacific Intertie is rated at approximately 7900 MW; and

b. after the Administrator has determined that the capacity of the Pacific Intertie is rated at approximately 7900 MW, all resources located outside of the Pacific Northwest, other than extraregional resources that are Qualified Pacific Northwest Resources.

14. "Qualified Pacific Northwest Resources" means:

a. Existing Pacific Northwest Resources; and

b. New regional resources of Scheduling Utilities:

(1) If the Administrator determines that the new regional resource is necessary to fulfill a firm power sales contract that has been granted Assured Delivery based on Existing Pacific Northwest Resources, which resources have since been removed from operation or have become necessary to serve the Scheduling Utility's regional load; or

(2) After the Administrator has determined that the capacity of the Pacific Intertie is rated at approximately 7900 MW.

15. "Resource" means an identified electric generating plant or stack of particular electric generating plants identified to supply power or capacity for sale over the Intertie.

16. "Section 9(i)(3) priority resource" means a resource that the Administrator has determined qualifies under section 9(i)(3) of the Pacific Northwest Power Act as interpreted by BPA's "Legal Interpretation of section 9(i)(3)", issued March 3, 1986.

17. "Scheduling Utility" means a utility, not including BPA, that operates a generation control area within the Pacific Northwest, and any utility within BPA's generation control area that schedules with BPA and is designated as a Computed Requirements customer.

18. "Substantial adverse impact," or "substantial increase" or "substantial decrease," or "substantially interfere," means a change that is of qualitative significance, of significant measurable effect, and of sufficient magnitude to require remedial action.

B. Term

This policy is effective on July 1, 1987, and will continue in effect until terminated or modified by the Administrator.

C. Conditions of Intertie Access

1. The Administrator will provide Assured Delivery or will allocate available Intertie Capacity to BPA and to Scheduling Utilities pursuant to the conditions and procedures set forth in this policy, unless otherwise provided by the terms of existing contracts listed in Exhibit C. An entity that desires access to the Pacific Intertie for a resource may request access through the Scheduling Utility or BPA depending upon whose control area contains the Entity's resource.

2. The Administrator will provide Assured Delivery or allocate available Intertie Capacity only for power from BPA Resources and Qualified Pacific Northwest Resources, except to the extent that Qualified Extraregional Resources are permitted access under this policy. For purposes of determining access to BPA's Intertie Capacity, utility declarations of available surplus shall not include amounts of energy that have been purchased from an extraregional utility if the Administrator determines such purchase would interfere with the marketing of BPA power or would decrease the Intertie access that BPA and Scheduling Utilities would otherwise have. If BPA determines that an extraregional purchase has been improperly included in the declaration, BPA shall adjust utility's Intertie access accordingly.

3. Subject to reserving Intertie Capacity otherwise required by the Administrator to support the Administrator's Power Marketing Program, the Administrator will provide Assured Delivery or allocate Intertie Capacity for a Qualified Pacific Northwest Resource or a Qualified Extraregional Resource only when providing such Intertie access:

a. Will not substantially interfere with:

(1) The Administrator's Power Marketing Program; or

(2) The operating limitations of the Federal system; and

b. Will not conflict with:

(1) The Administrator's existing contractual obligations; or

(2) Any other legal obligations of the Administrator; and

c. Will not enable:

(1) The construction or operation of a New Hydroelectric Plant that will have a substantial adverse impact on fish or wildlife resources within the Columbia River Basin; or

(2) The operation of Qualified Pacific Northwest Resources including New Hydroelectric Plants in a manner that is not in the compliance with applicable licenses, permits, or other provisions of state or Federal law; or

(3) The operation of Existing Pacific Northwest Resources whose use will adversely impact fish or wildlife in a manner that results in a substantial decrease in the effectiveness of, or a substantial increase in the need for, expenditures or other actions by the Administrator to protect, mitigate, or enhance fish and wildlife; or otherwise substantially interferes with the obligations of the Administrator under the Pacific Northwest Power Act to adequately protect, mitigate, or enhance

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fish and wildlife including taking into account at each relevant stage of decisionmaking processes to the fullest extent practicable the Fish and Wildlife Program adopted by the Northwest Power Planning Council pursuant to the Pacific Northwest Power Act.

4. "Operating limitations of the Federal system," which includes the Federal power and transmission systems, result from the Administrator's obligation to operate the Federal system in an economical and reliable manner consistent with prudent utility practices. These operating limitations include, but are not limited to:

a. The BPA Reliability Criteria and Standards;

b. Western System's Coordinating Council (WSCC) Minimum Operating Reliability Criteria;

c. North American Electric Reliability Council-Operating Committee Minimum Criteria for Operating Reliability; and

d. The limitations that result from the Administrator's coordination with other utilities and Federal agencies regarding resources and river operations.

5. "The Administrator's existing contractual obligations" include, but are not limited to, those contracts listed in Exhibit C. Section D describes how BPA will implement the Assured Delivery and allocation procedures to avoid conflict with these contracts.

6. Any Scheduling Utility or Entity that has access to Southwest markets by contractual or ownership rights to non-BPA transmission facilities will be required to use the capacity of such facilities prior to receiving any access to BPA Intertie Capacity.

7. Access to Intertie Capacity is conditioned on compliance with the terms of this policy, including compliance with the Procedures for Review of Compliance and Remedies, section I below.

D. Intertie Capacity Reserved for BPA

1. BPA will reserve for BPA's use Intertie Capacity sufficient to transmit the full amount of BPA's surplus firm power.

2. BPA will reserve Intertie Capacity sufficient to perform its obligations under existing BPA contracts as listed in Exhibit C, Existing BPA Contracts.

3. In addition to the Intertie Capacity reserved by BPA pursuant to 1 and 2 above, BPA may utilize available Intertie Capacity as specified in a. and b. below. BPA will give notice to Scheduling Utilities of such transactions.

a. To perform BPA's obligations under new BPA transactions.

b. To transmit a Scheduling Utility's energy and/or capacity under an FD Supported Sale in the proportion of the FD component to the total sale. The remaining portion of the sale must qualify for Assured Delivery as provided in section E.

E. Assured Delivery for Intertie Access

1. Exhibit B for Scheduling Utilities

a. For each Scheduling Utility, BPA will establish, and may from time to time revise, a maximum amount of Assured Delivery, based on the utility's average firm energy surplus, which will be shown in Exhibit B of this policy. A Scheduling Utility may retain all or part of its Exhibit B surplus to the extent the Scheduling Utility obtains Assured Delivery for a firm sale during the period of its surplus and later obtains new resources or power to serve such sale. Two transmission-contracts of the Washington Water Power Company (WWPCo), listed in Exhibit C, that were executed prior to September 7, 1984, are an exception. These contracts have a combined firm transmission demand greater than WWPCo's average firm surplus shown in Exhibit B. WWPCo's rights to use these transmission contracts above its Exhibit B amount are not altered by this policy.

b. A Scheduling Utility may increase its Exhibit B amount by purchasing surplus firm power from BPA or any Scheduling Utility. BPA will adjust Exhibit B for the buying and selling utilities accordingly.

2. Assured Delivery for Firm Power Contracts of Scheduling Utilities

a. Assured Delivery will be provided for Scheuduling Utilities' contracts listed in Exhibit C.

b. For new firm power contracts of a Scheduling Utility or for existing firm power contracts of a Scheduling Utility not included in Exhibit C. Assured Delivery may be provided for a maximum of 20 years to the extent that such contract:

(1) Meets the conditions of section C., above; and

(2) Is determined by BPA to be a firm power sale on the basis of the following considerations:

(a) The extent to which the contract provides for the sale of firm power from specified resources by a Scheduling Utility in which the amount of power to be delivered, the price, and terms for delivery are specified in a manner that assures that the contract is not merely an advance arrangement to sell nonfirm power;

(b) The extent to which the contract provides for a firm sale resulting in a net decrease in the region's surplus;

(c) The extent to which the selling price is not subject to change based on day-to-day fluctuation in market price;

(d) The extent to which the sale does not increase the costs to the Administrator of Exchange Resources; and

(e) The extent to which the buyer does not have the right to displace purchases under the contract with nonfirm energy.

c. The total maximum peak delivery of the contract or contracts for which a Scheduling Utility may be granted Assured Delivery may not exceed the Scheduling Utility's average firm energy surplus determined pursuant to subsection E.1.a. and as shown in Exhibit B.

d. A Scheduling Utility may be granted Assured Delivery only to the extent that the total firm energy that the utility is contractually obliged to deliver for an operating year does not exceed the utility's total energy surplus for such operating year, as set forth in Exhibit B.

3. Assured Delivery for Capacity Contracts of Scheduling Utilities

a. Assured Delivery may be provided for contracts for sales of capacity only, to the extent that such contracts:

(1) Meet the conditions of section C., above; and

(2) The total maximum peak delivery of the contract or contracts, including the capacity contract, of which a Scheduling Utility is granted Assured Delivery, may not exceed the Scheduling Utility's average firm surplus as shown in Exhibit B; and

(3) When Condition 1 is in effect, pursuant to subsection F.1., the capacity contract will not be granted Assured Delivery, but rather may be served under the Scheduling Utility's Formula Allocations, or if that allocation is insufficient the contract may be served by purchasing power from BPA.

4. Assured Delivery for Capacity/Energy and Seasonal Exchange Contracts of Scheduling Utilities

a. Until BPA is within a planning horizon of load/resource balance, as determined by the Administrator, Assured Delivery generally will not be granted for capacity/energy or seasonal exchange contracts of Scheduling Utilities.

b. Once BPA is within a planning horizon of load/resource balance, as determined by the Administrator, Assured Delivery may be granted for capacity/energy and seasonal exchange contracts of Scheduling Utilities. The criteria BPA will use to determine whether to grant Assured Delivery for capacity/energy or seasonal exchange contracts are that the contracts do not conflict with:

(1) The provisions of section C;

(2) BPA's ability to recover revenues; and

(3) The efficient operations of the Federal Columbia River Power System.

5. Assured Delivery for Firm Displacement Supported Sales

a. As provided in subsection D.3., above, BPA will provide, from BPA's reserved Intertie Capacity, Assured Delivery necessary to transmit the power and/or capacity under an FD Supported Sale in the amount of the FD component to the total sale.

b. For the remainder of the FD Supported Sale, the Scheduling Utility may be granted Assured Delivery consistent with the provision of Subsections E.2., E.3.,, and E.4., whichever is appropriate.

c. The Assured Delivery granted a Scheduling Utility for the remainder of the FD Support Sale plus the total of all Assured Delivery granted for other contracts of that Scheduling Utility may not exceed that Scheduling Utility's average firm energy surplus as shown in Exhibit B.

6. Assured Delivery for Section 9(i)(3) Priority Resources

A Scheduling Utility will be granted Assured Delivery for the total regional share of a section 9(i)(3) Priority Resource even if the amount of Assured Delivery exceeds the Exhibit B of the Scheduling Utility, if the contract under which the section 9(i)(3) priority resource is soldin otherwise in compliance with the terms of this policy.

7. Implication on BPA's Obligation to Serve Pacific Northwest Load

a. It is BPA's intent that the granting of Assured Delivery under subsections E.2., E.3., and E.4. not decrease BPA's ability to serve Pacific Northwest load. To ensure this result, the granting of Assured Delivery will be conditioned on a satisfactory contractual commitment by the Scheduling Utility at the time Assured Delivery is granted that either:

(1) The Scheduling Utility will purchase from BPA requirements to meet the Scheduling Utility's deficit up to the cumulative amount of Assured Delivery that is granted; or

(2) The Scheduling Utility's increased requirements on BPA, when the Scheduling Utility notifies BPA of increased load requirements aunder the provisions of the Scheduling Utility's Power Sales Contract with BPA, will be reduced by the cumulative amount of Assured Delivery that BPA has granted the Scheduling Utility.

Sales by Scheduling Utilities of Pacific Northwest hydroelectric resources will be subject to section 3(d) of Pub. L. 88–552.

8. Requests for Assured Delivery and Scheduling Requirements

a. Scheduling Utilities requesting Assured Delivery for a contract must submit a conformed copy of the executed contract to the Administrator. The Administrator shall review the contract and make a determination of whether to grant Assured Delivery consistent with the following procedure:

(1) If the Qualified Pacific Northwest Resource for which the Scheduling Utility seeks Assured Delivery is not a New Hydroelectric Plant or, if Assured Delivery is sought for a system sale and the Scheduling Utility's resource stack does not include such New Hydroelectric Plant, the Administrator shall determine whether the submitted contract meets the eligibility criteria set forth above, and will provide within 60 days written notification of tis determination, specifying the amount and term of Assured Delivery to be provided for the contract.

(2) If the Qualified Pacific Northwest Resource for which the Scheduling Utility seeks Assured Delivery is a New Hydroelectric Plant or, if Assured Delivery is sought for a system sale and the Scheduling Utility's resource stack includes such New Hydroelectric Plant, within 30 days of receipt of the request the Administrator will give notice of the request for Assured Delivery and request comment from the applicable State and Federal fish and wildlife agencies, the Northwest Power Planning Council, the Indian Tribes, and other interested persons. Those comments received within 90 days of the notice of the request for Assured Delivery will be considered by the Administrator in determining whether to grant Assured Delivery. Based on the comments received and the analysis of BPA staff, the Administrator shall determine whether the New Hydroelectric Plant will have a substantaital adverse impact on fish and wildlife resources within the Columbia River Basin. If the Administrator:

(a) Fails to find that the New Hydroelectric Plant will have a substantial adverse impact on fish and wildlife resources within the Columbia River Basin, and

(b) Determines that the submitted contract meets the eligibility criteria set forth above, the Administrator shall endeavor to provide written notification within 180 days from the date of submission of the request for Assured Delivery of the determination specifying the amount and term of Assured Delivery to be provided for the contract.

b. In the event that available Intertie Capacity is reduced such that it is, in BPA's determination, insufficient for BPA firm deliveries and Assured Deliveries of other Scheduling Utilities, the Pacific Northwest and Southwest parties will establish schedules for delivery.

c. Once a Scheduling Utility has been granted Assured Delivery for a firm contract, in order for the Scheduling Utility to receive Assured Delivery, the parties to the contract must establish firm hourly schedules and must inform BPA of those firm hourly schedules prior to BPA's allocating Intertie Capacity as provided in section F below.

F. Formula Allocation Methods

1. BPA will determine the Intertie Capacity available for formula allocations described in subsection F.2., below, after first taking into account the conditions for Intertie access specified in section C, above; the Intertie Capacity necessary to serve existing contractual obligations as described in Exhibit C; the Intertie Capacity necessary to fulfill new BPA contractual obligations; the Intertie Capacity reserved for BPA's Firm Surplus Power; and the Intertie Capacity necessary to provide Assured Delivery for qualifying firm contracts as described in subsection E.2, E.3, and E.4, above. Access to the remaining available Intertie Capacity will be allocated according to the formulae described below. BPA reserves the right to preempt this allocation, in part or in whole, should BPA require additional Intertie Capacity in order to take actions to protect fish and wildlife resources with in the Comumbia Basin.

2. One of three formulae will be used to allocate the available Intertie Capacity depending on which of these following three conditions exists:

a. Condition 1: When Exportable Energy is being scheduled pursuant to the terms of the Exportable Agreement (BPA Contract No. 14–03–73155), Intertie Capacity will be allocated pursuant to the Exportable Agreement. An example of an allocation under Condition 1 is shown in Exhibit A. The allocation procedure of the Exportable Agreement is an existing contractual obligation and has not been changed as a result of this policy. Upon expiration of the Exportable Agreement on December 31, 1988, Condition 1 will be in effect when the Federal system is in spill or in likelihood of spil, as determined by BPA. Access to the Intertie Capacity will be allocated to BPA, for the purpose of transmitting Federal energy available

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for sale outside the region, and to Scheduling Utilities declaring surplus hydro energy. After expiration of the Exportable Agreement, at those times when Condition 1 is in effect the capacity will be allocated pursuant to the following procedure:

(1) On any day the Scheduling Utilities observe as a normal workday, each Scheduling Utility shall submit to BPA declarations of daily quantities of surplus hydro energy and hourly capacity it has available for export sale for the period normally beginning at midnight of the day of declaration and continuing through midnight of the next normal workday.

(2) BPA's and the Scheduling Utilities' allocations for each hour will approximate the ratio of each delcaration to the sum of all declarations for each hour multiplied by the available Intertie Capacity, except that each Scheduling Utility's allocation will be limited by the ratio of the Scheduling Utility's hydroelectric capacity to the total regional hydroelectric capacity multiplied by the total of all allocations.

b. Condition 2: When Condition 1 is not in effect, but PBA and Scheduling Utilities declare amounts of power available for access to the Intertie that exceed the available Intertie Capacity, as determined as described in subsection F.1., above the capacity will be allocated pursuant to the following procedure:

(1) On any day the Scheduling Utilities observe as a normal workday, each Scheduling Utility shall submit to BPA declarations of daily quanitities of energy and hourly capacity it has available for export sale for the period beginning at midnight of the day of declaration and normally continuing through midnight of the next noraml workday.

(2) BPA's and the Scheduling Utilities' allocation for each hour will be determined and will approximate the ratio of each declaration to the sum of all declarations for each hour multiplied by the available Intertie Capacity. An example of an allocation under Condition 2 is shown in Exhibit A.

c. Condition 3: When Condition 1 is not in effect, and when BPA and Scheduling Utilities declare power available for access to the Intertie in an amount that does not exceed the available Intertie Capacity, BPA's and each Scheduling Utility's allocation will be equal to their declarations. An example of an allocation under Condition 3 is shown in Exhibit A.

d. The allocation accored each Scheduling Utility under subsections a., b., and c., above, will be decremented by the capacity associated with any New Hydroelectric Plant that the Administator has determined pursuant to subsection I.3., below, has a substantial adverse impact on fish or wildlife resources within the Columbia River Basin.

G. Access for Qualified Extraregional Resources

1. Qualified Extraregional Resources will be granted access as follows:

a. *Assured Delivery.* Qualified Extraregional Resources will not be granted Assured Delivery, except as provided in the contracts shown in Exhibit C or as provided in section H, below.

b. *Formula Allocation.* Prior to the expiration of the Exportable Agreement, access during Condition 1 is governed by that agreement which provides that access to Intertie Capacity is limited to signatories to that agreement. After expiration of the Exportable Agreement, under Condition 1 and, except as provided in section H, below, under Condition 2, Extraregional Utilities will not receive and allocation of Intertie Capacity.

c. Under Condition 3, Extraregional Utilities will have access to the Intertie to the extent that Intertie Capacity is available in excess of the capacity used by BPA and Scheduling Utilities, except as provided in section H, below. Utilities outside the Pacific Northwest must fully use other available transmission before receiving access to Intertie Capacity.

H. Special Provisions for Candian Resources

1. Candian resources will be granted Assured Delivery only by contract with BPA. Such proposed contract would be evaluated by BPA and reviewed publicly to determine that there is no substantial interference with BPA's Power Marketing Program. Such contract must include benefits to BPA such as increased storage, improved system coordination or operations, or disposition of downstream benefits under the Canadian Treaty beginning in 1998. All transactions would contain as a condition precedent an increase in Intertie capacity to approximately 7900 MW. BPA would expect to conduct a National Environmental Policy Act review of such contracts when the contractual terms and conditions are proposed.

2. BPA may, by contract, provide Canadian utilities limited access to Intertie Capacity under Condition 2. Such access, however, would be conditioned on such utilities' participation in the Pacific Northwest's coordinated planning and operation to a greater extent than in the past or agreement to provide other appropriate consideration of value to the Pacific Northwest.

3. Under Condition 3, Canadian utilities will have access to the Intertie to the extent that Intertie Capacity is available in excess of the capacity used by BPA, Scheduling Utilities and other U.S. Extraregional Utilities.

I. Procedures for Review of Compliance and Remedies

1. Access to Intertie Capacity is conditioned upon compliance with the terms of this policy. To verify condistency with this policy, upon BPA's request, Scheduling Utilities and extraregional utilities that are requesting or have received Assured Delivery or an allocation of Intertie Capacity, shall provide BPA with a list of resources that are to be operated or that were operated at such hours as access to the Intertie will be or was provided, and such other information as BPA may reasonably need to implement the policy. The utility shall clearly indicate whether it considers any such information proprietary. BPA will make such information available to the public to the extent it is not protected from disclosure by law.

2. Upon a determination by the Administrator that for reasons other than fish and wildlife considerations the terms of this policy are not being met, BPA will so notify the appropriate person(s) setting forth the nature of the noncompliance and the action(s) that may be taken to achieve compliance.

a. BPA will provide a reasonable opportunity to correct such noncompliance before imposing a sanction, other than decrementing an allocation as provided in subsection F.2.d., above. BPA may impose a prospective sanction to account for actions already taken that were not in compliance with this policy.

b. BPA may fashion and impose an appropriate sanction for noncompliance. Sanctions that BPA may impose inlcude, but are not limited to:

(1) Denial of access for a resource; or

(2) Refusal to accept schedules.

3. Procedures for review of compliance and remedies relating to Fish and Wildlife Resources:

a. This policy presumes that Qualified Pacific Northwest Resources, other than New Hydroelectric Plants, and Qualified Extraregional Resources are being operated consistent with applicable licenses, permits, or other provisions of State and Federal law, and that the operation of these resources or providing access for these resources will not adversely impact fish or wildlife resources in a manner described in subsection C.3.c., above, unless the Administrator determines otherwise.

b. Any interested person who wishes to challenge the presumption that a Qualified Pacific Northwest Resource or Qualified Extraregional Resource is being operated consistent with applicable licenses, permits, or other applicable provisions of State and Federal law must make that challenge with the State or Federal agency responsible for regulation of the resource or administration of that law.

c. Any interested person who wishes to challenge the presumption that the operation of a Qualified Pacific Northwest Resource or Qualified Extraregional Resource will not adversely impact fish and wildlife in the manner described in subsection C.3.c., above shall notify the Administrator in writing. The notification shall state in detail the manner in which and the extent to which fish or wildlife resources are being adversely impacted. The Administrator will provide a copy of that notification to the Scheduling Utility and to any other owner or operator of the resource, and accept public comment before making a determination whether fish or wildlife are being adversely impacted by the operation of the challenged resource.

d. Upon receipt of a determination by the relevant agency, under subsection I.3.b., above, that a hydroelectric resource is not in compliance with applicable licenses or permits or other applicable State and Federal law, the Administrator will not provide access to the Intertie for that resource.

e. For a resouce that is being operated in compliance with applicable licenses or permits and other applicable State or Federal law, but that the Administrator determines will adversely impact fish or wildlife resources in the manner described in subsection C.3.c., above, the Administrator will not provide access unless:

(1) The owner or operator of the resource agrees to modify the operation of the resource in a manner to assure that the operation of the resource will not have the adverse impact determined by BPA; or

(2) The owner or operator of the resoruce agrees to make expenditure or take other actions not inconsistent with the program adopted by the Northwest Power Planning Council to protect, mitigate, or enhance fish and wildlife to offset the adverse impact to fish and wildlife described in subsection C.3.c., above.

f. At any time after the effective date of this policy, upon the petition of any interested person alleging that a New Hydroelectric Plant has a substantial adverse impact on fish or wildlife resources in the Columbia River Basin, the Administrator will determine whether such New Hydroelectric Plant has a substantial adverse impact on fish or wildlife resources within the Columbia River Basin. Before making such a determination, the Administrator will provide notice of such petition to the Scheduling Utility and the owner and/or operator of such New Hydroelectric Plant and to other interested person including the state and Federal fish and wildlife agencies and Indian Tribes of the Pacific Northwest.

(1) Notice will establish a date by which comment must be received on the petition for such a determination and a process whereby the Administrator will make the determination, which will ordinarily be made within 180 days of receipt of a petition.

2. Upon a determination that such New Hydroelectric Plant will have a substantial adverse impact on fish or wildlife resources in the Columbia River Basin, each allocation to a Scheduling Utility pursuant to section F., above, will be decremented as provided in that section.

g. After a determination by the Administrator that a New Hydroelectric Plant will have a substantial adverse impact on fish or wildlife resourcs within the Columbia River Basin, the owner or operator of such new Hydroelectric Plant may petition for rescission of the determination upon a showing that the New Hydroelectric Plant no longer has a significant adverse impact on fish and wildlife resources within the Columbia River Basin. The Administrator will provide notice of such petition to interested persons including the state and Federal fish and wildlife agencies, the Northwest Power Planning Council, and Indian Tribes of the Pacific Northwest.

1. Notice will establish a date by which comment must be received on the petition for rescission, and a process whereby the Administrator will determine whether to rescind the determination that a New Hydroelectric Plant has a significant adverse impact on fish and wildlife resources within the Columbia River Basin.

2. After rescision of a determination that a New Hydroelectric Plant has a significant adverse impact on fish or wildlife of the Columbia River Basin, the Administrator will not decrement any allocation of the Scheduling Utility pursuant to subsection F.2.d., above, by the amount of capacity associated with such Plant.

J. Exhibits

Exhibits A, B, and C are a part of this policy.

Issued in Portland, Oregon on October 15, 1986.

James J. Jura,

Bonneville Power Administration.

Exhibits

Exhibit A

Examples of formula allocations under each condition will be appended to the final policy when published.

Exhibit B

Exhibit B is proposed to be developed as it was for the Near Term Intertie Access Policy, based on regional planning documents.

Exhibit C

The following is a list of contracts that were signed before the implementation of the Near Term IAP and were grandfathered under the Near Term IAP. These contracts will continue to receive Intertie access under the Long Term IAP.

This list is current as of October 1, 1986, and will be updated for the final Long Term IAP.

Utility	Contract No.	Expiration date
Washington Water Power.	14-03-79101	04/01/88
Washington Water Power.	De-MS79-81BP90165	07/01/91
Western Area Power Administration.	DE-MS79-84BP91627	10/31/90
Pacific Gas & Electric	14-03-54132	07/31/87
Burbank	14-03-53290	05/05/87
Glendale	14-03-53295	12/30/86
Pasadena	11-03-53297	01/24/88
Pacific Gas and Electric	14-03-54134	07/31/87
San Diego Gas and Electric.	14-03-58638	12/29/87
Southern California Edison.	14-03-54126	07/31/87

[FR Doc. 86-24779 Filed 10-31-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ES87-3-000 et al.]

Electric Rate and Corporate Regulation Filings; Kansas Gas and Electric Co. et al.

October 27, 1986.

Take notice that the following filings have been made with the Commission:

1. Kansas Electric and Gas Co.

[Docket No. ES87-3-000]

Take notice that on October 14, 1986, Kansas Gas and Electric Company (Applicant) filed an application seeking an order pursuant to section 204(a) of the Federal Power Act, authorizing the

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Applicant to issue not more than $60,000,000 principal amount of one or more series of its first mortgage bonds and seeking exemption from competitive bidding requirements.

Comment date: November 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Baltimore Gas and Electric Co.

[Docket No. ES87-4-000]

Take notice that on October 14, 1986, Baltimore Gas and Electric Company filed an application with the Federal Energy Regulatory Commission seeking authority, pursuant to section 204 of the Federal Power Act, to issue not more than $425 million of short-term unsecured promissory notes and commercial paper with a final maturity no later than December 31, 1988.

Comment date: November 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Oklahoma Gas and Electric Co.

[Docket No. ES87-5-000]

Take notice that on October 14, 1986, Oklahoma Gas and Electric Company filed an application with the Federal Energy Regulatory Commission seeking authority, pursuant to section 204 of the Federal Power Act, to issue not more than $250,000,000 of short-term debt on or before December 31, 1988, with a final maturity no later than December 31, 1989.

Comment date: November 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-24767 Filed 10-31-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2899-003, etc.]

Twin Falls Canal Co. et al.; Intent to Prepare Environmental Impact Statement; To Hold Scoping Session and Public Hearing

October 22, 1986.

In the matter of:

Twin Falls Canal Company, Project No. 2899-003
Cogeneration, Inc., Project No. 4797-001
B and C Energy Inc., Project No. 5797-002
Western Hydropower I, Ltd., Project No. 8795-000.

Four applications have been filed for licenses for hydropower projects located on or immediately adjacent to the Upper Snake River in Cassia, Jerome, Minidoka, and Twin Falls counties, Idaho. These projects are the Milner Project, (FERC No. 2899), the Auger Falls Project, (FERC No. 4797), the Star Falls Project, (FERC No. 5797), and the Royal Catfish Project, (FERC No. 8795). One of the proposed projects involves modifications to an existing structure; the other three projects would be entirely new structures.

The Commission staff has determined that issuance of licenses for the proposed hydroelectric projects would constitute a major federal action significantly affecting the quality of the human environment. The staff therefore intends to prepare an environmental impact statement (EIS) in accordance with the National Environmental Policy Act. Possible alternatives to the proposed actions and potential cumulative impacts will be addressed. A scoping document will follow this public notice and be sent to all recipients of this notice prior to the public and scoping meetings scheduled for December 1986.

Scoping Session

Interested persons and agencies are invited to participate in a scoping session to discuss the environmental impact issues associated with the proposed four projects listed above. The scoping session will be held on Wednesday, December 10, 1986, commencing at 1:00 p.m. at the College of Southern Idaho, Shields Building, Room 117, 315 Falls Avenue, Twin Falls, Idaho 83301-1238.

Scoping sessions are utilized by the Commission staff to do the following: (1) Present environmental issues that have been identified for coverage in the EIS to the public and to experts familiar with the projects; (2) receive input from the public and experts on the issues presented; (3) clarify the significance of issues; (4) identify additional issues for EIS treatment; and (5) identify issues that do not merit EIS treatment. Agencies and individuals with environmental expertise and concerns are encouraged to attend the meeting and to assist the Commission's staff with the determination of issues to be addressed in the EIS. For additional information, contact Lee Emery at 202-376-1955.

Public Hearing

Interested officials and members of the public are invited to express their views about the projects in a public hearing. A public hearing will be held on Wednesday, December 10, 1986, commencing at 7:00 p.m., at the College of Southern Idaho, Shields Building, Room 117, 315 Falls Avenue, Twin Falls, Idaho 83301-1238. The public hearing will be conducted by the Commission's staff.

At the public hearing persons may give their statements orally or in writing. The hearing will be recorded by a stenographer, and all statements (oral and written) will become part of the public hearing record. In addition, the public hearing record will remain open until January 21, 1987, and anyone may submit written comments on the projects until that time. Comments should be addressed to Kenneth F. Plumb Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, and should clearly show the project names and numbers (*e.g.,* the Milner Project, FERC No. 2899-003; the Auger Falls Project, FERC No. 4797-001, *etc.*) on the first page.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-24817 Filed 10-31-86; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 86-28: Agreement No. 003-010965]

Island Ocean Terminal Agreement; Order of Investigation

This proceeding is instituted pursuant to sections 15 and 22 of the Shipping Act, 1916, 46 U.S.C. App. 814 and 821.[1]

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[1] Agreement 003-010965 was filed with the Commission on June 18, 1986 under the Shipping Act, 1916, 46 U.S.C. App. 801-842, and the Shipping Act of 1984, 46 U.S.C. App. 1701-1720, because its provisions apply to both foreign and domestic commerce. As to foreign commerce, the Agreement became effective on August 2, 1986 pursuant to section 6(c)(1) of the Shipping Act of 1984, 46 U.S.C. App. 1705(c)(1). Accordingly, this proceeding is limited to consideration of the Agreement only as it relates to domestic commerce.

Agreement 003–010965 (Agreement) is between Puerto Rico Maritime Shipping Authority, Trailer Marine Transport Corporation and Sea-Land Service, Inc. (Proponents). Each is a vessel operating ocean carrier engaged in the domestic offshore trade between the United States mainland and Puerto Rico and, currently, each carries cargo in that trade pursuant to joint through rates set forth in tariffs on file with the Interstate Commerce Commission. In connection with their water carrier services, Proponents operate marine terminals and related facilities at ports in Puerto Rico and provide containers, chassis and related equipment.

The Agreement pertains only to terminal operations and related services and not linehaul ocean freight rates or intermodel through rates. Proponents seek authority to agree upon and establish a common tariff setting forth terminal and accessorial charges, and rules, regulations and provisions governing receipt and delivery of cargo at marine terminals in Puerto Rico. Authority also is sought for Proponents to cooperate both in collection of terminal and accessorial charges established under the Agreement and in the administration of the Agreement's rules, regulations and provisions. In addition, Proponents seek authority to establish neutral body policing of the Agreement.[2] The purported purpose of the Agreement is to curtail or eliminate malpractices.

Protests were filed by Marine Transportation Services Sea Barge Group, Inc. and Gulf Puerto Rican Transport, Inc. (Protestants), vessel operating carriers competing with Proponents in the Puerto Rican trade. Comments in opposition to the Agreement and a request for an evidentiary hearing were filed by the Puerto Rico Manufacturers Association (Protestant), a multi-industry trade association whose members are shippers or consignees in the Puerto Rican trade.

The submissions of Proponents and Protestants raise issues regarding the Commission's jurisdiction and the merits of the Agreement which will be addressed in this proceeding. Those issues are:

(1) Whether the parties to the Agreement are, or under the agreement will be, conducting activities as "common carrier[s] by water in interstate commerce" or "other persons subject to this Act" within the meaning of section 1 of the Shipping Act, 1916;

(2) Whether the Agreement is necessary to secure important public benefits, met a serious transportation need, and serve a valid regulatory purpose; and

(3) Whether the Agreement encroaches on antitrust policies more than is necessary to achieve the Agreement's proposes; e.g., whether ratemaking authority is a necessary or appropriate means to curtail Proponents' own unlawful activities.

Now therefore it is ordered, that pursuant to sections 15 and 22 of the Shipping Act, 1916, an investigation is instituted to determine whether Agreement No. 003–010965 should be approved, disapproved or modified;

It is further ordered, that a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61.[3]

It is further ordered, that Puerto Rico Maritime Shipping Authority, Trailer Marine Transport Corporation, and Sea-Land Service, Inc., are designated Proponents in this proceeding;

It is further ordered, that Marine Transportation Services Sea Barge Group, Inc., Gulf Puerto Rican Transport, Inc. and Puerto Rico Manufacturers Association are designated Protestants in this proceeding;

It is further ordered, that the Bureau of Hearing Counsel is designated a party to this proceeding;

It is further ordered, that notice of this Order be published in the **Federal Register**, and a copy be served on parties of record;

It is further ordered, that other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, that all future notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

It is further ordered, that all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on parties of record;

It is further ordered, that pursuant to the terms of Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law Judge shall be issued by October 28, 1987 and the final decision of the Commission shall be issued by March 1, 1988.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 86–24737 Filed 10–31–86; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–004161–001.

Title: San Francisco Terminal Agreement.

Parties:

San Francisco Port Commission (Port)
Marine Terminals Corporation (MTC)

Synopsis: The proposed amendment would establish procedures which would permit MTC to provide terminal and stevedoring services, on a case-by-case basis, at Port marine terminal facilities which are not otherwise assigned to management contractors, steamship lines or other cargo interests.

Agreement No.: 202–010982–002.

Title: Bahamas Shipowners Association.

Parties:

Tropical Shipping and Construction Co., Ltd.

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[2] On October 8, 1986, the Commission issued a Notice of Proposed Rulemaking in Docket No. 86–26. That rulemaking proposes to revoke the Commission's self-policing requirements for agreements under the Shipping Act, 1916.

[3] It is left to the sound discretion of the Administrative Law Judge to determine whether the jurisdictional and substantive issues should be served for purposes of trial or decision.

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Universal Alco Ltd.
Pioneer Shipping Line

Synopsis: The proposed amendment would delete the parties' authorities to agree upon the level of compensation paid to ocean freight forwarders under the agreement.

Agreement No.: 224-011021.

Title: Palm Beach Terminal Agreement.

Parties:

Port of Palm Beach District (Port)
Seaboard Marine, Ltd. (Seaboard)

Synopsis: The proposed agreement would permit Seaboard to lease 14,466 square feet of warehouse space and 240 square feet of office space from the Port until January 31, 1987 with an option for an extension of one year.

Dated: October 29, 1986.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

[FR Doc. 86-24778 Filed 10-31-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

The Mitsubishi Trust and Banking Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 17, 1986.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Mitsubishi Trust and Banking Corporation*, Tokyo, Japan; to engage *de novo* through its subsidiary MTBC Finance, Inc., New York, New York, in making, acquiring, or servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts) for the company's account or for the account of others, such as would be made by a consumer finance and credit card company pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in the United States and Canada.

Board of Governors of the Federal Reserve System, October 28, 1986.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 86-24742 Filed 10-31-86; 8:45 am]

BILLING CODE 6210-01-M

Orange County Banking Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 20, 1986.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Orange County Banking Corporation*, Ocoee, Florida; to acquire Retirement Accounts, Inc., Winter Park, Florida, and thereby engage in custodial trust functions pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 28, 1986.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 86-24743 Filed 10-31-86; 8:45 am]

BILLING CODE 6210-01-M

SouthTrust Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 20, 1986.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *SouthTrust Corporation*, Birmingham, Alabama; to acquire 100 percent of the voting shares of SBT Bancshares, Inc., Arab, Alabama, and thereby indirectly acquire Security Bank and Trust Company, Arab, Alabama.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Hopedale Investment Company*, Quincy, Illinois; to become a bank holding company by acquiring 84 percent of the voting shares of Community Bank of Hopedale, Hopedale, Illinois. Comments on this application must be received by November 17, 1986.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Stigler Bancorporation, Inc.*, Stigler, Oklahoma; to become a bank holding company by acquiring 93 percent of the voting shares of First Oklahoma National Corporation, Stigler, Oklahoma, and thereby indirectly acquire The First National Bank, Stigler, Oklahoma. Comments on this application must be received by November 21, 1986.

Board of Governors of the Federal Reserve System, October 28, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-24744 Filed 10-31-86; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Performance Review Board; Membership

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Gregory Knott, Deputy Director of Personnel, General Services Administration, 18th and F Streets, NW., Washington, DC 20405 (202) 566-0398.

SUPPLEMENTARY INFORMATION: Section 4313(c) (1) thorugh (5) of Title 5, U.S.C. requires each agency to establish in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The boards shall review the performance rating of each senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

The members of the Performance Review Board are:

1. Paul T. Weiss, Associate Administrator for Administration.
2. A. C. Arterbery, Associate Administrator for Operations.
3. Frank J. Carr, Commissioner, Information Resources Management Service.
4. Donald C. J. Gray, Commissioner, Federal Supply Service.
5. Earl E. Jones, Commissioner, Federal Property Resources Service.
6. William F. Sullivan, Commissioner, Public Building Service.
7. Patricia A. Szervo, Associate Administrator for Acquisition Policy.

Dated: October 27, 1986.

Gregory L. Knott,

Deputy Director of Personnel.

[FR Doc. 86-24755 Filed 10-31-86; 8:45 am]

BILLING CODE 6820-BR-M

Region IX, San Francisco, CA. Public Buildings Service; Intent To Prepare an Environmental Impact Statement for a Proposed Federal Building, Oakland, CA

Pursuant to Council on Environmental Quality Regulations, notice is hereby given that GSA is preparing an Environmental Impact Statement (EIS) for a new Federal Building proposed for Oakland, California. The site for the new Federal Building will be 144,000 square feet of land, consisting of two city blocks bounded by Clay, Jefferson, Twelfth and Fourteenth Streets. The proposed Federal Building will contain one million gross square feet of space, including 700,000 square feet of office space for agency assignments and up to 32,500 square feet for outlease to commercial activities.

Public scoping meetings will be held at Laney College, Room B262, 900 Fallon Street, Oakland, California, at 1:30 p.m. and 7:30 p.m. on Wednesday, November 12, 1986.

Written comments or information that should be considered during the assessment of environmental and socioeconomic impacts for the EIS should be directed to Miss Mary E. Brant, Director, Planning Staff—9PL, Public Buildings Service, General Services Administration, 525 Market Street, San Francisco, California 94105. For additional information, please call Mr. Peter Sneed of the Planning Staff, telephone (415) 974-7625 (FTS 454-7625).

Dated: October 22, 1986.

Edwin W. Thomas,

Regional Administrator.

[FR Doc. 86-24746 Filed 10-31-86; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Federal Financial Participation in State Assistance Expenditures, Aid to Families With Dependent Children, Medicaid, and Aid to Needy Aged, Blind, or Disabled Persons

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: The Federal Percentages and Federal Medical Assistance Percentages for Fiscal Year 1987 have been recalculated pursuant to Pub. L. 99-272. These percentages will be effective from October 1, 1986 through September 30, 1987. The data will supercede those published in the **Federal Register** on November 29, 1984 at 49 FR 46957. This notice announces the recalculated "Federal percentages" and "Federal medical assistance percentages" that we will use in determining the amount of Federal matching in State welfare and medical expenditures. The table gives figures for each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. Title XIX of the Social Security Act (the Act) exists in each jurisdiction, title IV-A in all jurisdictions except American Samoa and the Northern Mariana Islands, Titles I, X, and XIV operate only in Guam and the Virgin Islands, while title XVI (AABD) operates only in Puerto Rico. The percentages in this notice apply to State expenditures for assistance payments and medical services (except family planning which is subject to a higher matching rate). The statute provides separately for Federal matching of administrative costs

Section 1101(a)(8) of the act, as revised by section 9528 of Pub. L. 99-272,

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requires the Secretary of Health and Human Services to publish these percentages each year. The Secretary is to figure the percentages, by formulas set forth in sections 1101(a)(8) and 1905(b) of the Act, from the Department of Commerce's statistics of average income per person in each State and in the Nation as a whole. The percentages are within upper and lower limits given in those two sections of the Act. The statute specifies the percentage to be applied to Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

The "Federal percentages" are for Aid to Families with Dependent Children (AFDC) and aid to needy aged, blind, or disabled persons, and the "Federal medical assistance percentages" are for Medicaid. However, under section 1118 of the Act, States with approved Medicaid plans may claim Federal matching funds for expenditures under approved State plans for these other programs using either the Federal percentage or the Federal medical assistance percentage. These States may claim at the Federal medical assistance percentage without regard to any maximum on the dollar amounts per recipient which may be counted under paragraphs (1) and (2) of sections 3(a), 403(a), 1003(a), 1403(a), and 1603(a) of the Act.

DATES: The percentages listed will be effective for each of the 4 quarter-year periods in the period beginning October 1, 1986 and ending September 30, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Emmett Dye, Office of Family Assistance, Family Support Administraiton, Room B320, Transpoint Building, 2100 2nd Street SW., Washington, DC 20201, Telephone (202) 245-2040.

(Catalog of Federal Domestic Assistance Program Nos. 13.808—Assistance Payments—Maintenance Assistance (State Aid); 13.714—Medical Assistance Program)

Dated: September 19, 1986.

Otis R. Bowen, M.D.,

Secretary of Health and Human Services.

FEDERAL PERCENTAGES AND FEDERAL MEDICAL ASSISTANCE PERCENTAGES, EFFECTIVE OCT. 1, 1986–SEPT. 30, 1987 (FISCAL YEAR 1987)

State	Federal percentages	Federal medical assistance percentages
Alabama	65.00	72.41
Alaska	50.00	50.00
American Samoa	50.00	50.00
Arizona	57.92	62.13
Arkansas	65.00	74.02
California	50.00	50.00
Colorado	50.00	50.00
Connecticut	50.00	50.00
Delaware	50.00	50.00
District of Columbia	50.00	50.00
Florida	50.60	55.54
Georgia	60.60	64.54
Guam	50.00	[1] 50.00
Hawaii	50.00	51.29
Idaho	66.00	71.08
Illinois	50.00	50.00
Indiana	58.80	62.92
Iowa	55.99	60.39
Kansas	50.00	51.39
Kentucky	65.00	70.75
Louisiana	61.96	65.77
Maine	64.52	68.07
Maryland	50.00	50.00
Massachusetts	50.00	50.00
Michigan	52.09	56.88
Minnesota	50.00	52.98
Mississippi	65.00	78.50
Missouri	55.39	59.85
Montana	63.62	67.44
Nebraska	53.40	58.06
Nevada	50.00	50.00
New Hampshire	50.00	53.28
New Jersey	50.00	50.00
New Mexico	65.00	69.66
New York	50.00	50.00
North Carolina	64.69	68.40
North Dakota	51.57	56.41
Northern Mariana Islands	50.00	[1] 50.00
Ohio	53.63	58.27
Oklahoma	55.40	59.86
Oregon	58.30	62.47
Pennsylvania	52.53	57.26
Puerto Rico	50.00	[1] 50.00
Rhode Island	50.42	55.38
South Carolina	65.00	72.23
South Dakota	63.83	67.45
Tennessee	65.00	70.26
Texas	50.18	55.16
Utah	65.00	73.21
Vermont	63.75	67.37
Virgin Islands	50.00	[1] 50.00
Virginia	50.00	51.86
Washington	50.00	52.52
West Virginia	65.00	72.59
Wisconsin	52.87	57.58
Wyoming	50.00	54.20

[1] For purposes of section 1118 of the Social Security Act, the percentage used under titles I, X, XIV, and XVI and Part A of title IV will be 75 per centum.

[FR Doc. 86-24810 Filed 10-31-86; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 85N-0474]

Federation of American Societies for Experimental Biology's Scientific Steering Group; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming open meeting of the Federation of American Societies for Experimental Biology's (FASEB) Scientific Steering Group on the Use of Scientific Expertise in Food and Cosmetic Safety Analyses (Scientific Steering Group). The Scientific Steering Group will hold an open meeting to receive comments on Task Orders initiated since June 1, 1984, under a contract that FDA has with FASEB concerning the use of outside scientific expertise in food and cosmetic safety analyses. Following the open meeting, the Scientific Steering Group will meet in closed executive session to continue preparation of its final report.

DATE: The open meeting will be held on Friday, November 14, 1986, at 9 a.m. The executive session will be held immediately following the conclusion of the open meeting.

Requests to make oral presentations at the open meeting must be submitted in writing and be received by November 10, 1986. Written comments, data, and information must also be received by November 10, 1986.

ADDRESSES: The open meeting and executive session will be held at the Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814. Requests to make oral presentations and written comments, data, and information should be submitted as follows: Two copies to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and two copies to K.D. Fisher (address below).

FOR FURTHER INFORMATION CONTACT: Kenneth D. Fisher, Director, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, 301-530-7030.

SUPPLEMENTARY INFORMATION: FDA has a contract with FASEB concerning the use of outside scientific expertise in food and cosmetic safety analyses. The objectives of this contract are (1) to provide expert, objective counsel to FDA on general and specific issues of scientific fact and (2) to explore various review mechanisms with respect to their effectiveness and efficiency. FASEB established the Scientific Steering Group to serve FASEB in conjunction with this contract.

Since June 1, 1984, FDA has given FASEB a series of Task Orders under this contract to study various issues. See, e.g., 50 FR 46832 (November 13, 1985); 50 FR 51453 (December 17, 1985); 51 FR 2577 (January 17, 1986); and 51 FR 8030 (March 7, 1986). Copies of the Task Order reports completed under terms of this contract are on display at the Dockets Management Branch and the Life Sciences Research Office (addresses above). A list of the Task

Order Reports may be obtained by writing to the contact person (address above).

The Scientific Steering Group is now engaged in preparing its final scientific report to FASEB evaluating the effectiveness and the efficiency of the various review mechanisms employed under the contract. This report will help FASEB respond to Task Order No. 1. Accordingly, this notice invites public comment on the mechanisms used to review the work conducted under this contract on each of the several Task Orders. Specifically, the Scientific Steering Group invites both written and oral comments on the several external scientific review mechanisms utilized for completing the Task Orders with respect to their effectiveness and efficiency, taking into account such factors as:

1. The format of the questions reviewed;
2. Sources of information;
3. Time frames for response;
4. The ability to obtain appropriate experts in various operating formats;
5. The costs associated with various operating formats;
6. FDA's responsiveness to the information needs and other needs of the contractor; and,
7. The contractor's responsiveness to agency requests, particularly with respect to the agency's mission as defined in statutes and regulations.

In accordance with 21 CFR 14.15(b)(1), notice is given that the Scientific Steering Group will hold an open meeting on November 14, 1986, and will meet in executive session following the open meeting. At the meeting an opportunity will be provided for the public to present written and oral views, information, and data on the effectiveness and efficiency of the review mechanisms used by FASEB in the conduct of work under the contract.

Dated: October 28, 1986.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–24738 Filed 10–31–86; 8:45 am]

BILLING CODE 4160-01-M

Public Health Services

National Toxicology Program, Availability of Technical Report on Toxicology and Carcinogenesis Studies of Benzyl Acetate

The HHS' National Toxicology Program today announces the availability of the Technical Report describing the toxicology and carcinogenesis studies of benzyl acetate, a water-white liquid with pear-like odor, which is a natural constituent of several essential oils and flower absolutes from jasmine, hyacinth, gardenia, tuberose, ylang-ylang, cananga and neroli. Commercial benzyl acetate is used primarily as a component of perfumes for soaps and as a flavoring ingredient.

Toxicology and carcinogenesis studies were conducted by administering benzyl acetate in corn oil by gavage to groups of 50 male and 50 female F344/N rats at doses of 0, 250, or 500 mg/kg body weight and to groups of 50 male and 50 female B6C3F$_1$ mice at doses of 0, 500 or 1,000 mg/kg body weight five days per week for 103 weeks.

Under the conditions of these gavage studies, benzyl acetate increased the incidence of acinar-cell adenomas of the exocrine pancreas in male F344/N rats; the gavage vehicle may have been a contributing factor. There was no evidence of carcinogenicity[1] for female F344/N rats. For male and female B6C3F$_1$ mice there are some evidence of carcinogenicity in that benzyl acetate caused increased incidences of hepatocellular adenomas and squamous cell neoplasms of the forestomach.

Copies of *Toxicology and Carcinogenesis Studies of Benzyl Acetate in F344/N Rats and B6C3F$_1$ Mice (Gavage Studies)* (TR 250) are available without charge from the NTP Public Information Office, MD B2–04, P.O. Box 12233, Research Triangle Park, NC 27709. Telephone: (919) 541–3991. FTS: 629–3991.

Dated: October 28, 1986.

David P. Rall, M.D., Ph.D.,

Director.

[FR Doc. 86–24802 Filed 10–31–86; 8:45 am]

BILLING CODE 4140-01-M

National Toxicology Program, Availability of Technical Report on Toxicology and Carcinogenesis Studies of Dimethylvinyl Chloride

The HHS' National Toxicology Program today announces the availability of the Technical Report describing the toxicology and carcinogenesis studies of dimethylvinyl chloride, a clear colorless liquid which is a byproduct in the production of 3-chloro-2-methylpropene by the chlorination of isobutene. It is not known to be produced intentionally in the United States for other than laboratory purposes.

Toxicology and carcinogenesis studies of dimethylvinyl chloride were conducted by administering this chemical in corn oil by gavage to groups of 50 male and 50 female F344/N rats and B6C3F$_1$ mice at doses of 0, 100, or 200 mg/kg body weight 5 days per week for 102 or 103 weeks.

Under the conditions of these two year gavage studies, there was clear evidence of carcinogenicity [1] of dimethylvinyl chloride for both sexes of F344/N rats and B6C3F$_1$ mice. This was based on increased incidences of neoplasms of the nasal cavity, oral cavity, esophagus, and forestomach of male and female F344/N rats. B6C3F$_1$ mice showed increased incidences of squamous cell neoplasms of the forestomach in males and females and squamous cell carcinomas of the preputial gland in males.

Copies of *Toxicology and Carcinogenesis Studies of Dimethylvinyl Chloride (1-Chloro-2-Methylpropene) in F344/N Rats and B6C3F$_1$* Mice (Gavage Studies) (TR 316) are available without charge from the NTP Public Information Office, MD B2–04, P.O. Box 12233, Research Triangle Park, NC 27709. Telephone: (919) 541–3991. FTS: 629–39911.

Dated: October 27, 1986.

David P. Rall, M.D., Ph.D.,

Director.

[FR Doc. 86–24803 Filed 10–31–86; 8:45 am]

BILLING CODE 4140-01-M

Health Resources and Services Administration; Health Education Assistance Loan Program; "Maximum Interest Rates for Quarter Ending December 31, 1986 and Rate of Insurance Premium"

Section 727 of the Public Health Service Act (42 U.S.C. 294) authorizes the Secretary of Health and Human Services to establish a Federal program of student loan insurance for graduate students in health professions schools.

A. Section 60.13(a)(4) of the program's implementing regulations (42 CFR Part 60, previously 45 CFR Part 126) provides

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[1] The NTP uses five categories of evidence of carcinogenicity to summarize the strength of the evidence observed in each animal study: Two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

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that the Secretary will announce the interest rate in effect on a quarter basis.

The Secretary announces that for the period ending December 31, 1986, three intererst rates are in effect for loans executed through the Health Education Assistance Loan (HEAL) program.

1. For loans made before January 27, 1981, the variable interest rate is 9¼ percent. Using the regulatory formula (45 CFR 126.13(a)(2) and (3)), in effect prior to January 27, 1981, the Secretary would normally compute the variable rate for this quarter by finding the sum of the fixed annual rate (7 percent) and a variable component calculated by subtracting 3.50 percent from the average bond equivalent rate of 91-day U.S. Treasury bills for the preceding calendar quarter (5.65 percent), and rounding the result (9.15 percent) upward to the nearest ⅛ percent (9¼ percent). However, the regulatory formula also provides that the annual rate of the variable interest rate for a 3-month period shall be reduced to the highest one-eighth of 1 percent which would result in an average annual rate not in excess of 12 percent for the 12-month period concluded by those 3 months. Because the average rate of the 4 quarters ending December 31, 1986 is not in excess of 12 percent, there is no necessity for reducing the interest rate. For the previous 3 quarters the variable interest at the annual rate was as follows: 11 percent for the quarter ending March 31, 1986; 10⅝ percent for the quarter ending June 30, 1986; and 9⅞ percent for the quarter ending September 30, 1986.

2. For variable rate loans executed during the period of January 27, 1981 through October 21, 1985, the interest rate is 9¼ percent. Using the regulatory formula (42 CFR 60.13 (a)(3)) in effect since January 27, 1981, the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (5.65 percent); adding 3.50 percent (9.15 percent); and rounding that figure to the next higher one-eighth of 1 percent (9¼ percent).

3. For fixed rate loans executed during the period of October 1, 1986 through December 31, 1986, and for variable rate loans executed on or after October 22, 1985, the interest rate is 8¾ percent. The Health Professions Training Assistance Act of 1985 (Pub. L. 99–129), enacted October 22, 1985, amended the formula for calculating the interest rate by changing 3.5 percent to 3 percent. Using the regulatory formula (42 CFR 60.13(a)(2) and (3)) and substituting the new statutory change of 3 percent, the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (5.65 percent); adding 3.0 percent (8.65 percent) and rounding that figure to the next higher one-eighth of 1 percent (8¾ percent).

B. Public Law 99–129 also contained modifications to the insurance premium calculation, effective 9 months after enactment of the statute (July 22., 1986). Prior to that date, in accordance with § 60.14(b) of the regulations, the insurance premium was 2 percent per year of the loan principal for loans executed through the HEAL program. Effective July 22, 1986 in accordance with section 732 of the Act, as amended, the insurance premium is 8 percent of the principal of each HEAL loan. A notice announcing this, change was published in the **Federal Register** on June 18, 1986 (51 FR 22136).

(Catalog of Federal Domestic Assistance No. 13.108, Health Education Assistance Loans)

Dated: October 29, 1986.

David N. Sundwall,

Administrator

[FR Doc. 86–24782 Filed 10–31–85; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974—Revision of Notice of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to revise a notice describing a system of records pertaining to employee payroll, attendance, retirement, and leave information. Except as noted below, all changes being published are editorial in nature, and reflect minor administrative and technical revisions which have occurred since the publication of the material in the **Federal Register** on October 1, 1984 (49 FR 38712). The revised notice, published in its entirety below, is titled: "Payroll, Attendance, Retirement, and Leave Records—Interior, Office of the Secretary-85".

The notice is being revised to reflect the consolidation of payroll administration in the Department. Pursuant to the provisions of Secretary's Order No. 3111 dated December 20, 1985, the administration of Departmental payroll operations was consolidated into the Bureau of Reclamation. The portions of the system of records notice published below describing the system location and manager have been appropriately revised. Also, the existing routine disclosure statement for litigation purposes is revised to incorporate the clarification on such disclosures prescribed by the Office of Management and Budget (OMB) in its supplementary guidelines dated May 24, 1985, for implementing the Privacy Act. In addition, a new compatible routine use is added to provide for the disclosure of information on employee Thrift Savings Fund contributions to the Federal Retirement Thrift Investment Board established by Pub. L. 99–335.

5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment. Therefore, written comments on these proposed changes can be addressed to the Department Privacy Act Officer, Office of the Secretary (PIR), Room 7357, Main Interior Building, U.S. Department of the Interior, Washington, D.C. 20240. Comments received on or before December 3, 1986, will be considered. The notice shall be effective as proposed without further notice at the end of the comment period, unless comments are received which would require a contrary determination.

Dated: October 23, 1986.

Oscar W. Mueller, Jr.,

Director, Office of Information Resources Management.

INTERIOR/OS-85

SYSTEM NAME:

Payroll, Attendance, Retirement, and Leave Records—Interior, Office of the Secretary-85

SYSTEM LOCATION:

(1) Bureau of Reclamation, Managment Operations Center, Division of Payroll Operations, 7333 West Jefferson Ave., Academy Place 1, Denver, CO 80235.

(2) Bureau of Reclamation, Management Operations Center, Division of Payroll Operations, 1925 Isaac Newton Square, Reston, Virginia 22090 (effective on or about 11–1–86).

(3) All Departmental offices and locations which prepare and provide input documents and information for data processing and administrative actions.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees of the Department of the Interior, and employees of Independent Agencies, Councils, and Commissions who are provided payroll administrative support by the Department.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee identification, pay rate and grade, retirement, and location data; length of service; pay, leave, time and attendance, allowances, and cost distribution records; deductions for Medicare or FICA, savings bonds, FEGLI, union dues, taxes, allotments, quarters, charities; health benefits, Thrift Savings Fund contributions, awards, shift schedules, pay differentials, IRS tax lien data; and related payroll and personnel data. Also included is information on debts owed to the government as a result of overpayment, refunds owed, or a debt referred for collection on a transferred employee. The payroll, attendance, retirement, and leave records described in this notice form a part of the information contained in the Department's integrated payroll and personnel (PAY/PERS) automated information system. Personnel records contained in the PAY/PERS system are covered under the governmentwide system of records notice published by the Office of Personnel Management (OPM/GOVT-1).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5101, et seq., 31 U.S.C. 3512.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are for fiscal operations for payroll, attendance, leave, insurance, tax, retirement and cost accounting programs; and to prepare related reports to other Federal agencies including the Treasury Department and the Office of Personnel Management. Disclosures outside the Department of the Interior may be made: (1) To the Department of the Treasury for preparation of payroll checks and other checks to Federal, State, and local government agencies, non-governmental organizations, and individuals; (2) to the Internal Revenue Service and to State, local, tribal and territorial governments for tax purposes; (3) to the Office of Personnel Management in connection with programs administered by that office; (4) to another Federal agency to which an employee has transferred; (5) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (6) to disclose pertinent information to an appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (7) to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual; (8) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit; (9) to Federal, State or local agencies where necessary to enable the Department of the Interior to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, contract, license, grant or other benefit; (10) to appropriate Federal and State agencies to provide required reports including data on unemployment insurance; (11) to the Social Security administration to report FICA deductions; (12) to labor unions to report union dues deductions; (13) to insurance carriers to report withholdings for health insurance; (14) to charitable institutions to report contributions; (15) to a Federal agency for the purpose of collecting a debt owed the Federal government through administrative or salary offset; (16) to other Federal agencies conducting computer matching programs to help eliminate fraud and abuse and to detect unauthorized overpayments made to individuals; (17) to provide addresses obtained from the Internal Revenue Service to debt collection agencies for purposes of locating a debtor to collect or compromise a Federal claim against the debtor; (18) with respect to Bureau of Indian Affairs employee records, to a Federal, State, local agency, or Indian tribal group or any establishment or individual that assumes jurisdiciton, either by contract or legal transfer, of any program under the control of the Bureau of Indian Affairs; (19) with respect to Bureau of Reclamation employee records, to non-Federal auditors under contract with the Department of the Interior or Energy or water user and other organizations with which the Bureau of Reclamation has written agreements permitting access to financial records to perform financial audits; (20) to the Federal Retirement Thrift Investment Board with respect to Thrift Savings Fund contributions.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual, microfilm, microfiche, and printout form in the Payroll Office. Currently applicable records are stored on magnetic media at the computer processing center; historic records are stored on magnetic media at the computer center. Original input documents are kept in standard office filing equipment.

RETRIEVABILITY:

Indexed by name, social security number, and organizational code.

SAFEGUARDS:

Maintained with safeguards meeting the requirments of 43 CFR 2.51.

RETENTION AND DISPOSAL:

The records contained in this system of records have varying retention periods as described in General Records Schedule 2 issued by the Archivist of the United States, and are disposed of in accordance with the National Archives and Records Administration Regulations, 36 CFR 1228.74.

SYSTEM MANAGER(S) AND ADDRESS:

The following system manager is responsible for the payroll records contained in the integrated Payroll/Personnel (PAY/PERS) system which are pertinent to all Department of the Interior bureaus and offices. Personnel records contained in the PAY/PERS system fall under the jurisdiction of the Office of Personnel Management as prescribed in 5 CFR Part 293 and 5 CFR Part 297.

(1) Chief, Client Support Branch, Bureau of Reclamation, Management Operations Center, Division of Payroll Operations, 7333 W. Jefferson Ave., Academy Place 1, Denver, CO 80235

NOTIFICATION PROCEDURES:

Inquiries regarding the existence of records should be addressed to the System Manager. A written, signed request stating that the individual seeks information concerning his/her records is required. See 43 CFR 2.60.

BEST COPY AVAILABLE

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RECORD ACCESS PROCEDURES:

A request for access may be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirement of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and meet the content requirements of 43 CFR 2.71.

RECORDS SOURCE CATEGORIES:

Individuals on whom the records are maintained, supervisors, timekeepers, official personnel records, previous employers, and the Internal Revenue Service.

[FR Doc. 86-24768 Field 10-31-86; 8:45 am]

BILLING CODE 4310-09-M

Bureau of Land Management

[WY-030-86-4410-08]

Rawlins District, WY; Availability of Proposed Lander Resource Management Plan and Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of proposed lander RMP and final EIS.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared an environmental impact statement (EIS) and a proposed resource management plan (RMP) for public lands in the Lander Resource Area. The EIS describes and analyzes four alternatives, including the preferred alternative (i.e., the proposed plan), for managing 2.5 million surface acres and 2.7 million acres of Federal mineral estate over the next 15 to 20 years.

The final EIS is printed in its entirety in this final document. The BLM considered all of the comments received by letter and at the public hearing. Based upon an analysis of all the public comments and a thorough review of the draft EIS, released in November 1985, BLM has chosen to adopt a slight modification of the preferred alternative as the proposed plan for the area. Aside from minor additions and corrections, the modification primarily deals with providing more protection to critical wildlife habitat values and additional designations of areas of critical environmental concern (ACEC). A partial wilderness recommendation for the Sweetwater Canyon wilderness study area (WSA) is not included in the proposed plan. The wilderness study area is being considered further, along with the wilderness specific comments received on the draft RMP/EIS. After a review of the comments, a final wilderness EIS will be prepared along with the wilderness study report. These documents will include the BLM's tentative wilderness recommendation to the Director of the BLM and the Secretary of the Interior.

DATE: Any protests on the proposed RMP will have to be received by the Director no later than December 3, 1986.

ADDRESS: Copies of the proposed RMP and final EIS are available upon request from the Lander Resource Area Office, Bureau of Land Management, P.O. Box 589, Lander, Wyoming 82520, telephone (307) 332-7822.

FOR FURTHER INFORMATION CONTACT: Jack Kelly, Area Manager, Lander Resource Area Office, Bureau of Land Management, P.O. Box 589, Lander, Wyoming 82520, telephone (307) 332-7822.

SUPPLEMENTARY INFORMATION: Protests to the proposed plan shall be filed with the Director. Any person who participated in the planning process and has an interest which is or may be adversely affected by the resource management plan may protest. The procedures for filing a protest are listed in the proposed plan and in 43 CFR 1610.5-2.

Hillary A. Oden,

State Director.

[FR Doc. 86-24523 Filed 10-31-86; 8:45 am]

BILLING CODE 4310-22-M

[U-57904]

Utah; Proposed Withdrawal and Opportunity for Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes to withdraw 493.23 acres of public land for the Flaming Gorge Dam and Reservoir, near Vernal, Utah. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATE: Comments and requests for a public meeting should be received by January 26, 1987.

ADDRESS: Comments and meeting requests should be sent to: Utah State Director, Bureau of Land Management, 324 South State, Suite 301, Salt Lake City, Utah 84111-2303.

FOR FURTHER INFORMATION CONTACT: Nancy Bloyer, BLM, Utah State Office, 801-524-4036.

On August 7, 1986, a petition was approved allowing the Bureau of Reclamation to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general public land laws, including the mining laws, subject to valid existing rights:

Salt Lake Meridian, Utah

T. 2 N., R. 20 E.,
  Sec. 11, lots 1, 2, 3, 4, 5;
  Sec. 12, lot 1, NW¼SW¼, SE¼SW¼;
  Sec. 13, lots 1, 2, 3, W½NE¼;
  Sec. 24, lot 1.

The area described contains 493.24 acres in Daggett County.

The purpose of the proposed withdrawal is protection of the Flaming Gorge Dam and Reservoir.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Utah State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request of the Utah State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. No temporary uses will be permitted during the segregative period.

The temporary segregation of the lands in connection with a withdrawal application or proposal shall not affect administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands by the Bureau of Reclamation.

Dated: October 28, 1986.

Orval L. Hadley,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-24753 Filed 10-31-86; 8:45 am]

BILLING CODE 4310-DO-M

Alaska; Patenting of Mining Claims on Public Lands

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice; Locations for the filing of applications for mineral patent under the Minimg Law of 1872.

SUMMARY: Notice is hereby given that the BLM Anchorage District Office will no longer accept applications for patent of minimg claims.

All future applications will continue to be received at the BLM Alaska State Office (Anchorage Federal Building), 701 C Street, Anchorage, Alaska 99513, and the BLM Fairbanks Support Center, 1541 Gaffney Road, Fairbanks, Alaska 99703.

All case files concerning applications for mineral survey and patents will be located at the BLM Alaska State Office.

This action is in accordance with BLM Alaska's reorganization.

EFFECTIVE DATE: November 17, 1986.

FOR FURTHER INFORMATION CONTACT: Kay Kletka, Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513, (907) 271-3791.

James C. Johnson,

Acting District Manager.

[FR Doc. 86-24813 Filed 10-31-86; 8:45 am]

BILLING CODE 4310-JA-M

Minerals Management Service

Outer Continental Shelf Advisory Board; Alaska Regional Technical Working Group; Meeting

AGENCY: Minerals Management Service, Alaska OCS Region, Interior.

ACTION: Outer Continental Shelf Advisory Board, Alaska Regional Technical Working Group Committee; notice for meeting.

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92-463.

The Alaska Regional Technical Working Group (RTWG) committee of the Outer Continental Shelf (OCS) Advisory Board is scheduled to meet from 8:30 a.m. to 12:00 p.m., December 4, 1986, at the Civic Center in Valdez, Alaska. The Alaska RTWG is one of six such committees of the OCS Advisory Board that provides advice to the Director, Minerals Management Service, on technical matters of regional concern regarding OCS prelease and postlease sale activities.

Topics which may be addressed at the meeting are:

(a) Canmar's Single Steel Drilling Caisson used by Tenneco Oil Company in the Beaufort Sea.

(b) Amoco's ice island in the Beaufort Sea.

(c) Oil/Whalers Cooperative Programs.

(d) Surface transportation networks of Alaska's North Slope.

The Alaska RTWG meeting will be open to the public. Public seating may be limited. Interested persons may make oral or written presentations to the committee. A request to make a presentation should be made no later than November 20, 1986, to Alan D. Powers, Regional Director, Alaska OCS Region, 949 East 36th Avenue, Anchorage, Alaska 99508-4302, (907) 261-4010. A request to make an oral statement should be accompanied by a written summary of the oral statement. Written statements should be submitted by November 20, 1986.

Minutes of the meeting will be available 70 days after the meeting for public inspection and copying at the Minerals Management Service, Alaska OCS Region, 949 East 36th Avenue, Anchorage, Alaska 99508-4302, and at the Office of Offshore Information Services, Minerals Management Service, Department of the Interior, 18th and C Streets, NW., Washington, DC 20240.

Dated: October 28, 1986.

Robert J. Brock,

Acting Regional Director, Alaska OCS Region.

[FR Doc. 86-24754 Filed 10-31-86; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30862]

Itawamba County Development Council; Acquisition and Operation; Exemption and Mississippian Railway Coop., Inc.; Lease and Operation

The Mississippian Railway Cooperative, Inc. (MRC), has filed a supplemental notice of exemption to lease and operate a 25-mile rail line between Amory (milepost 0.0) and Fulton, MS (milepost 25.0). A notice of exemption was published in this proceeding at 51 FR 26768, July 25, 1986, governing the acquisition and operation of this line by Itawamba County Development Council (ICDC). MRC will operate the line under lease from ICDC. Any comments must be filed with the Commission and served on: Mr. Roy C. Harris, Secretary/Treasurer, Mississippian Railway Cooperative, Inc., P.O. Box 849, Fulton, MS 38843.

The supplemental notice is filed under 49 CFR 1150.31. If the supplemental notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Dated: October 24, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86-24777 Filed 10-31-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30851 (Sub-1)]

Spokane International Railroad Co.; Construction and Operation Exemption; Sandpoint, ID

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission, under 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 10901, the construction and operation of two connecting tracks totaling 3,630 feet at Sandpoint, ID, by Spokane International Railroad Company.

DATES: The decision is effective on November 13, 1986. Petitions to reopen must be filed by November 24, 1986.

ADDRESSES: Send pleadings referring to Finance Docket No. 30851 (Sub-No. 1) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Railroad's representative: Joseph D. Anthofer, Spokane International Railroad Company, 1416 Dodge Street, Omaha, NE 68179

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: October 27, 1986.

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By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 86–24775 Filed 10–31–86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30929]

Tioga Central Railroad Co.; Operation in Tioga County, NY; Modified Rail Certificate

On October 10, 1986, a notice was filed by the Tioga Central Railroad Company for a modified certificate of public convenience and necessity under 49 CFR 1150.23. As of that date, this carrier is authorized to provide service over portions of the (i) Auburn Branch of the former Lehigh Valley Railroad Company, USRA Line Number 1015, running from milepost 288.0 to milepost 289.6 in the Town and Village of Owego, Country of Tioga, NY, and the (ii) Freeville Secondary Track, USRA Line Number 1003, running from milepost 289.6 in the Village of Owego to milepost 315.6 in the Town of Hartford, Cortland Country, NY.

The line is owned by the State of New York.

This notice shall be served upon the Association of American Railroads (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreement, and upon the American Short Line Railroad Association.

Dated: October 27, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86–24776 Filed 10–31–86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collections Under Review

October 21, 1986.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The name and telehpone number of the Agency Clearance Officer (from whom a copy of the form/supporting documents is available); (2) the office of the agency issuing the form; (3) the title of the form; (4) the agency form number, if applicable; (5) how often the form must be filled out; (6) who will be required or asked to report; and estimate of the number of responses; (7) an estimate of the total number of respondents; (8) an estimate of the total number of hours needed to fill out the form; (9) an indication of whether Section 3504(h) of Pub. L. 96–511 applies; and, (10) the name and the telephone number of the person or office responsible for the OMB review. Copies of the proposed form(s) and the supporting documentation may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions regarding the item(s) contained in this list should be directed to the reviewer listed at the end of entry and to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

Department of Justice

Agency Clearance Officer: Larry E. Miesse, 202/633–4312.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Larry E. Miesse, 202/633–4312
(2) Criminal Division, Department of Justice
(3) REGISTRATION STATEMENT OF INDIVIDUALS (Foreign Agents)
(4) OBD–63 (CRM)
(5) On occasion
(6) Individuals or households, businesses or other for-profit, non-profit institutions, small businesses or organizations. Form contains registration statement and information used for registering foreign agents under 22 U.S.C. 611, et seq.
(7) 100 respondents
(8) 150 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

(1) Larry E. Miesse, 202/633–4312
(2) Criminal Division, Department of Justice
(3) REGISTRATION STATEMENT OF INDIVIDUALS (Foreign Agents)
(4) OBD–63 (CRM)
(5) On occasion
(6) Individuals or households, businesses or other for-profit, non-profit institutions, small businesses or organizations. Form contains registration statement and information used for registering foreign agents under 22 U.S.C. 611, et seq.
(7) 100 respondents
(8) 150 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

(1) Larry E. Miesse, 202/633–4312
(2) Criminal Division, Department of Justice
(3) EXHIBIT A TO REGISTRATION STATEMENT (Foreign Agents)
(4) OBD–67 (CRM)
(5) On occasion
(6) Individuals or households, businesses or other for-profit, non-profit institutions, small businesses or organizations. Form contains registration statement and information used for registering foreign agents under 22 U.S.C. 611, et seq.
(7) 75 respondents
(8) 38 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

(1) Larry E. Miesse, 202/633–4312
(2) Criminal Division, Department of Justice
(3) EXHIBIT B TO REGISTRATION STATEMENT (Foreign Agents)
(4) OBD–65 (CRM)
(5) On occasion
(6) Individuals or households, businesses or other for-profit, non-profit institutions, small businesses or organizations. Form contains registration statement and information used for registering foreign agents under 22 U.S.C. 611, et seq.
(7) 75 respondents
(8) 25 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

(1) Larry E. Miesse, 202/633–4312
(2) Criminal Division, Department of Justice
(3) SUPPLEMENTAL REGISTRATION STATEMENT OF INDIVIDUALS (Foreign Agents)
(4) OBD–64 (CRM)
(5) On occasion
(6) Individuals or households, businesses or other for-profit, non-profit institutions, small businesses or organizations. Form contains registration statement and information used for registering foreign agents under 22 U.S.C. 611, et seq.
(7) 2,400 respondents
(8) 3,300 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

(1) Larry E. Miesse, 202/633–4312
(2) Criminal Division, Department of Justice
(3) SHORT FORM REGISTRATION STATEMENT OF INDIVIDUALS
(4) OBD–66 (CRM)
(5) On occasion

(6) Individuals or households, businesses or other for-profit, non-profit institutions, small businesses or organizations. Form contains registration statement and information used for registering foreign agents under 22 U.S.C. 611, et seq.
(7) 350 respondents
(8) 150 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

(1) Larry E. Miesse, 202/633-4312
(2) Criminal Division, Department of Justice
(3) AMENDMENT TO REGISTRATION OF SUPPLEMENTAL REGISTRATION STATEMENT (Foreign Agents)
(4) OBD-68 (CRM)
(5) On occasion
(6) Individuals or households, businesses or other for-profit, non-profit institutions, small businesses or organizations. Form contains registration statement and information used for registering foreign agents under 22 U.S.C. 611, et seq.
(7) 200 respondents
(8) 300 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

(1) Larry E. Miesse, 202/633-4312
(2) Criminal Division, Department of Justice
(3) DISSEMINATION REPORT (TRANSMITTAL OF POLITICAL PROPAGANDA)
(4) OBD-69 (CRM)
(5) On occasion
(6) Individuals or households, businesses or other for-profit, non-profit institutions, small businesses or organizations. Form is used by registrant to record dissemination of political propaganda with 48 hours of initial dissemination under 22 U.S.C. 611, et seq.
(7) 3,600 respondents
(8) 1,800 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

(1) Larry E. Miesse, 202/633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) APPLICATION TO FILE DECLARATION OF INTENTION
(4) N-300
(5) On occasion
(6) Individuals or households. Form used to determine if applicant is eligible for issuance of declaration.
(7) 4,000 respondents
(8) 2,000 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

(1) Larry E. Miesse, 202/633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) AFFIDAVIT OF SUPPORT
(4) I-134
(5) On occasion
(6) Individuals or households. Information used to determine that applicant for benefits will not become a public charge if admitted into the United States,
(7) 44,000 respondents
(8) 14,608 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

(1) Larry E. Miesse, 202/633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) APPLICATION OF WAIVER OF GROUNDS
(4) I-601
(5) On occasion
(6) Individuals or households. Form used to determine if applicant is eligible for waiver of excludability.
(7) 3,000 respondents
(8) 1,500 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

(1) Larry E. Miesse, 202/633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) WAIVER OF RIGHTS, PRIVILEGES, EXEMPTIONS AND IMMUNITIES
(4) I-508
(5) On occasion
(6) Individuals or households. Information used to determine eligibility of alien applicant to retain status.
(8) 150 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814.

Larry E. Miesse,

Agency Clearance Officer, Department of Justice.

[FR Doc. 86-24798 Filed 10-31-86; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act; Methodology for Setting Performance Standards in Migrant and Seasonal Farmworker (MSFW) Programs for Program Year 1987

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice; proposed method for setting MSFW performance standards; request for comments.

SUMMARY: The Department of Labor is requesting comments on a proposed method for setting performance standards for Migrant and Seasonal Farmworker grantees for Program Year 1987 (July 1, 1987–June 30, 1988).

DATE: Comments must be submitted on or before November 17, 1986.

ADDRESS: Comments should be addressed to the Assistant Secretary of Labor for Employment and Training, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Clayton Johnson, Room N5637.

FOR FURTHER INFORMATION CONTACT: Clayton Johnson. Telephone (202) 535-0685.

SUPPLEMENTARY INFORMATION: Job Training Partnership Act (JTPA) section 402 establishes programs to meet the training and employment needs to migrant and seasonal farmworkers and their dependents. These programs and services are provided through grants made to public agencies and nonprofit organizations as determined by the Secretary of Labor (Secretary) to possess a demonstrated capability to effectively administer these activities within the given states. JTPA section 402 (c)(4) states, "Recipients of funds under this section shall establish performance goals, which shall, to the extent required by the Secretary, comply with performance standards established by the Secretary pursuant to section 106."

Performance standards for JTPA Migrant and Seasonal Farmworker (MSFW) programs were introduced on a trial basis in the last year of the Comprehensive Employment and Training Act (CETA) (Fiscal Year (FY) 83 (October 1, 1982–September 30, 1983)). Performance standards have continued to be used in MSFW programs during the following periods:

Transition Year (TY) 84—October 1, 1983–June 30, 1984
Program Year (PY) 84—July 1, 1984–June 30, 1985
Program Year (PY) 85—July 1, 1985–June 30, 1986
Program Year (PY) 86—July 1, 1986–June 30, 1987.

It should be noted, however, that Federal regulations for JTPA section 402 programs state that "no grantee shall be penalized for not meeting performance standards for program years 1984–86" (20 CFR 633.321 (c)). Therefore, PY 1987 (July 1, 1987–June 30, 1988) will be the first program period during which performance standards results will be used in assessing MSFW grantees for redesignation purposes in PY 1989. Performance standards are one of fourteen (14) responsibility tests that MSFW grantees must meet in being considered for final selection (20 CFR 633.204). By focusing on participant outcomes of the MSFW program,

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performance standards complement the other criteria relating to various compliance aspects.

Two performance measures are used for MSFW programs:

- Entered employment rate.
- Cost per entered employment.

In calculating these standards, participants in the "Services Only" programs and youths who obtain an employability enhancement outcome ard excluded and the costs of "Services Only" programs and administrative costs are subtracted from the cost measure.

The entered employment rate (EER) standard reflects the employment orientation of all JTPA programs. A cost per entered employment (CEE) standard holds grantees accountable for using their training funds in a cost effective manner.

Proposed Revisions and the Reasons for Them

Through PY 85, standards were adjusted based on the average performance in eight clusters of grantees, defined by whether more than 50% of the terminees were migrants and four categories of program size (based on allocation levels). Further adjustments were made to the entered employment rate for differences in the unemployment rate by using the adjustments from the JTPA Title II–A model. Adjustments for the unemployment rate were similarly made to the cost per entered employment standard and additional adjustments were also made for the proportion of indirect placements and the local consumer price index.

The use of the clusters to adjust standards created problems because the procedures were fairly ad hoc and thus lacked both statistical and face validity. For example, whether it is appropriate to use Title II–A unemployment rate adjustments for MSFW programs has not been verified. Further, the division of grantees into distinct groups meant that grantees serving 49% migrants were given substantially different standards than those serving 51%. Because of the problems with the clustering approach, an interim procedure was adopted for PY 1986 by which performance standards were set at 100% of each grantee's actual performance in PY 1984 with a 15% end of year variance allowed for both measures.

The rational for performance standards is to motivate grantees to run well-managed, efficient progams. Setting standards based on how well the grantee actually performed in the previous year assumed that service levels and local economic conditions do not change from year-to-year, and that only management quality is reflected in these year-to-year changes in performance. Moreover, it holds grantees harmless for perpetuating poorly managed programs for one year to the next. For a given set of client characteristics and labor market conditions, a grantee who ran a well managed program and, thus, did better in the past year would be given a higher standard than a grantee who runs a poorly-managed program and thus performed poorly last year. Because performance standards are intended to encourage efficient management, standards should distinguish beween well-managed and poorly-managed programs rather than holding the grantees harmless for management quality.

Participant characteristics and local economic conditions may change from year to year so that, for instance, a grantee is faced with meeting the same standard with a more difficult to serve clientele or a more difficult economy. The current approach assumes that each and every grantee can do as well as it did last year and does not account for whatever random or chance events that may also influence how well a grantee performs. For example, a new firm may open in the area, creating a short-term need for new workers that wanes in the following year; participants in one year may, by chance, be easier placed in job openings than the typical participants; additional funding for related programs may be available in one year, but not the next. Consequently, some MSFW grantees found that they could not expect to meet their issued PY 86 standards because of such random events and had to negotiate with DOL for revised standards.

To mitigate problems associated with the negotiation process, the Department of Labor is proposing the use of an adjustment model in setting PY 87 standards. Using historical (TY 84 and PY 84) data, the model identifies a set of factors that strongly influence the performance outcome. It then provides weights to convert differences among grantees on these factors into appropriate adjustments in expected performance levels. The adjustments raise or lower the expected performance level from average performance of all grantees. The adjustment model has the following advantages over the current standard-setting approach:

- The model represents the average influence of factors across all grantees; well managed programs are expected to do better than the model indicates and poorly-managed programs are expected to do worse. Thus, grantees will not be held harmless for poorly-managed programs.
- It allows adjustments to be applied consistently and equitably to all grantees.
- It qualifies the size of adjustments so that, for example, one knows not only that serving primarily a farming community is a justifiable reason for lowering performance standards but also that the standards should be lowered by a specific amount for each percentage point change in farming residents.
- It allows one to add up the adjustments for several factors to determine the net adjustments that should be made to the standards.

Selection of Modeling Factors

The models are designed to adjust expected performance levels for selected participant characteristics and local economic conditions (called "local factors") that are not in the grantees' control and are known to have strong relationships to program outcomes.

Numerous factors reported on the Farmworker Program Annual Status Report (FASR) were examined for inclusion in the model. Statewide economic conditions were constructed from Census and Bureau of Labor Statistics data. The following criteria was used when selecting the factors to be included in each model:

- Management practices were excluded because they are regarded as within the control of program managers, not beyond their control.
- There must be some variation on the factor, that is, in service levels or local economic conditions, among grantees.
- The relationship between the factor and the performance measure made intuitive sense.
- The factor was strongly related to the performance outcomes.
- Measures of the factor were objective and easily quantifiable.
- For statewide economic conditions, published data were available nationwide.

The following 15 factors are included in the PY 87 MSFW models:

Local factors (percent)	Model—	
	EER	CEE
Migrants	x	x
Females		x
Aged 14 to 21	x	x
Elementary School Dropouts	x	x
Blacks	x	x
Hispanic	x	x
Indian or Native American		x
Asian or Pacific Islander	x	x
Limited English Language proficiency.	x	x
Welfare recipient	x	x

Local factors (percent)	Model—	
	EER	CEE
Unemployed	x	x
Average Weeks Participated		x
Unemployment rate in State		x
Population living on farms	x	x
Median Family Income (000)		x

Models are derived from the past average performance of grantees (*e.g.*, TY 84 and PY 84 experience was used in estimating the PY 87 models). Such an approach is quite appropriate because the relationships between grantee performance and local factors remain fairly stable over time. The model weights represent the size and direction of each local factor's effect on the performance outcome when the other factors in the model are also taken into account. The following relationships between local factors and performance measures are identified in the PY 87 models:

- Migrants have somewhat higher entered-employment rates than seasonal farmworkers, presumably because the labor markets for seasonal farmworkers are more depressed immediately after they leave the program in the off-season; however, the cost per entered employment is somewhat higher for serving migrants, perhaps because they require more extensive training to find work in other industries.
- Youths under 21 have significantly lower entered employment rates than do older terminees; serving more youths is associated with lower costs, however, perhaps because these individuals are served more often in public schools or because funds from additional programs are available to supplement JTPA funds.
- Similarly, dropouts with less than 8 grades of education have lower entered employment rates than do individuals with more education, but the cost per entered employment is less for serving such individuals.
- Blacks, Hispanics and Asians have lower entered employment rates than do whites, and serving these groups is associated with higher costs per entered employment.
- Individuals with limited English-language proficiency have lower entered employment rates and are associated with higher costs per entered employment.
- Welfare recipients have lower entered employment rates and are associated with higher costs per entered employment.
- Individuals who were unemployed prior to entry have higher entered employment rates and are associated with somewhat lower costs per entered employment.
- Grantees in states with a greater proportion of the population living on farms have somewhat lower entered employment rate and higher costs per entered employment.

The following variables were added to the cost per entered employment model because they had strong or intuitively reasonable relationships only to that outcome:

- Grantees serving more females had somewhat higher cost per entered employment.
- Grantees serving more Indian and Native Americans had somewhat higher cost per entered employment.
- Grantees in states with higher unemployment rates had higher costs per entered employment.
- Grantees in states with higher median family incomes, and presumably higher living costs, had higher costs per entered employment.
- Grantees where the successful participants, on average, have longer training times have higher cost per entered employment.

Some factors are excluded from the models, for example, program mix was excluded to hold grantees accountable for the program-activity mix they provide. Providing the appropriate mix of program activities to meet the changing needs of the clients is an important management responsibility.

Other factors are excluded from the models because grantees serve very similar (and usually very small) proportions of individuals with those characteristics. Participant characteristics excluded because of little variation are: Single head of household and handicapped.

Some factors were included in a model for one of the outcomes but excluded from the other because their adjustments in the latter did not make sense from a programmatic perspective. Thus, females were excluded from the entered employment rate because including them would have generated higher expected performance.

Several variables measuring local economic conditions were examined but were excluded from the recommended models because they did not have significant relationships with the performance measures. These variables include population density, average annual earnings in the State, the unemployment rate in the local area, percent employed in manufacturing, percent of land in farms and percent of farm revenues from crops. The lack of a strong relationship between many economic conditions and program performance is probably due to the use of statewide data.

The recommended performance goals are calculated as differences from the national average performance. The national average performance represents the outcome of serving participants with average characteristics in local areas with average conditions. Thus, a grantee's performance adjustments will depend on how different its service levels and economic conditions are from the national averages of these local factors. The national average levels, excluding services only, of the factors used in the models to calculate the PY 87 performance goals are:

% Migrants	21.1
% Females	32.7
% Aged 14 to 21	31.6
% Elementary School Dropouts	23.7
% Black	19.4
% Hispanic	44.5
% Indian or Native American	3.2
% Asian or Pacific Islander	4.4
% Limited English Proficiency	17.7
% Welfare recipients	11.7
Average Weeks Participated	17.1
Unemployment rate in State	7.1
% of population living on Farms	45.7
Median Family Income (000)	19.5

These national averages of services levels are *not* meant to indicate that grantees should strive to serve those proportions of participants. These average service levels are used only to determine whether a grantee is serving more hard-to-serve participants than average and thus should receive lower than average performance goals, or whether the grantee is serving fewer hard-to-serve participants than average and thus should receive somewhat higher than average performance goals.

Because the use of an adjustment model may yield substantially different standards for some grantees than they received from previous standards-setting approaches, the Department of Labor will include past performance in the setting of standards for the first year of model use in PY 87. Under this weighted average approach, grantees' expected performance derived from the model and past performance would be weighted and combined to yield a new expected performance level that is a compromise between the two. A weight for past performance was statistically derived to best predict performance. Weights for past performance are 47% for the EER standard and 45% for the CEE standard.

The adjustment model will provide:

- *A recommended performance goal for each outcome measure.* This recommended goal will fall at an average performance level given the participant characteristics and local

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economic conditions of that grantee. As an average performance level, fifty per cent of grantees facing these same conditions can be expected to perform below this recommended goal.

- *A standard set below the recommended goal to reflect a minimally acceptable level of performance.* The standard identifies the performance a grantee must achieve to meet the responsibility test at 20 CFR 633.204(a)(5). Consistent with grantees' rate of failure to meet standards in the past, the performance standard will be set so that, unless grantees improve their performance relative to the conditions they face, 15% will perform below the standard.

No end of year variance will be allowed below this minimally acceptable standard, as was applied in the past. Thus, grantees should aim their planned performance at or above the recommended goal level calculated by the model. By planning and maintaining performance at the recommended goal level during the year, grantees can accommodate possible changes in actual service levels and local economic conditions during the year that may cause an overlooked increase in the grantee's minimum standard when it is recalculated at year end.

- *A level of exemplary performance* designated at such a level above which only 15% of grantees would be expected to perform above, unless they improve their performance relative to the conditions they face.

Minimally acceptable performance standards and exemplary levels of performance are uniquely established for each grantee taking into account the number of their terminees. Minimally acceptable standards will be set further below the recommended goal for smaller grantees than for larger grantees. Exemplary levels of performance will be set closer to the recommended goal for larger grantees than for smaller grantees.

The proposed standard setting system does *not* provide a fixed set of numbers—average expected, minimally acceptable, and exemplary performance—at the beginning of the year to be targeted by grantees throughout the year. Rather, it provides a model that may generate varying goals and standards depending upon each grantee's participant characteristics and local economic conditions. Service levels and local conditions will change during the year and grantees should monitor revised estimates of their performance goals and standards so that they will not be caught short when standards are recalculated on actual service levels shown in the Annual Status Reports at the end of the year.

The National Office will provide each grantee with initial performance levels—recommended goal, minimally acceptable performance standard, and exemplary performance—calculated using actual service levels reported on the PY 85 Annual Status Reports. These calculations will be included as part of the Annual Plan instructions for PY 87 issued in early calendar year 1987. Grantee performance will be judged, however, not by the initial calculations used for their planned service levels, but by model results using actual service levels reported at the end of the program year. At year end, grantees will submit their Annual Status Reports showing actual service levels and obtain their final performance levels once the National Office recalculates the model results.

A Farmworker Bulletin is being transmitted to all current JTPA Section 402 grantees containing sample worksheets that illustrate how the model adjustments are computed for their PY 84 local factors and how the grantee's past performance would be credited as part of the calculation process. Based on these, their performance standards and recommended performance goals will be estimated. The Employment and Training Administration National Office will perform worksheet computations for all grantees; however, individual grantees may wish to familiarize themselves with the worksheets for each measure. They can, of course, update the worksheets with more current service levels (PY 85 or PY 86 planning data) than the National Office can provide at this time in order to obtain a better estimate of the PY 87 standards.

Signed at Washington, DC, this 28th day of October 1986.

Roger D. Semerad,

Assistant Secretary of Labor.

[FR Doc. 86–24736 Filed 10–31–86; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for International Programs; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

NAME: Advisory Committee for International Programs.

DATES: November 17, 1986, 9:00 a.m. to 5:30 p.m. November 18, 1986, 9:00 a.m. to 12:30 p.m.

PLACE: American Association for the Advancement of Science; 1333 H St. NW., Washington, DC; 10th floor Board Room

TYPE OF MEETING: Open.

CONTACT PERSON: Mr. Richard J. Green, Acting Director, Division of International Programs, National Science Foundation, Wasington, DC 20550 Telephone (202) 357–9552

SUMMARY OF MINUTES: May be obtained from Contact Person.

PURPOSE OF MEETING: To provide advice, recommendations, and oversight related to support for international cooperation in science and engineering.

AGENDA: Opening remarks; review of activities during the past year both by the Committee and the National Science Foundation with focus on the August 1986 topical report, *Science, Technology, and Foreign Relations: The National Science Foundation's Role;* and the September 1986 *Report of the External Peer Review Group.* The Committee plans to meet with NSF management, other government agency officials and Congressional representatives.

M. Rebecca Winkler,

Committee Management Officer.

October 28, 1986.

[FR Doc. 86–24751 Filed 10–31–86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–335]

Florida Power & Light Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from the requirements of Appendix R, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979," 10 CFR Part 50, to Florida Power and Light Company (the licensee), for the St. Lucie Plant, Unit No. 1, located in St. Lucie County, Florida.

Environmental Assessment

Identification of Proposed Action: The exemptions are related to Sections III.G and III.J of Appendix R to 10 CFR Part 50. Section III.G requires fire protection features to protect structures, systems, and components important to safe shutdown. This protection can be obtained by separation, utilizing fire barriers, installation of fire suppression systems, and enclosure of cable and equipment. Section III.J requires emergency lighting with at least an 8-hour battery power supply for all plant areas needed for operation of safe shutdown equipment and in access and egress routes associated with this equipment. The requested exemptions related to specific instances where plant design features are not in accordance, with the above fire protection requirements.

These exemptions were requested by the licensee in applications for exemptions, pursuant to 10 CFR Part 50, § 50.12 dated December 14, 1983, November 28 and December 31, 1984, and February 21, 1985.

The Need for the Proposed Action: The proposed exemptions are needed because the features described in the licensee's request regarding the existing fire protection at their plant for these items are the most practical method for meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protection capability.

Environmental Impacts of the Proposed Action: The proposed exemptions will provide a degree of fire protection that is equivalent to that required by Appendix R for other areas of the plant such that there is no increase in the risk of fires at this facility. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor do the proposed exemptions otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemptions.

With regard to potential non-radiological impacts, the proposed exemptions involve features located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no signficiant non-radiological environmental impacts associated with the proposed exemptions.

Alternative Use of Resources: This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the St. Lucie Plant Unit No. 1.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of human environment.

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

For further details with respect to this action, see the applications for the exemptions dated December 14, 1983, November 28 and December 31, 1984, and February 21, 1985, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

Dated at Bethesda, Maryland this 27th day of October 1986.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, PWR Project Directorate #8, Division of PWR Licensing-B.

[FR Doc. 86-24807 Filed 10-31-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-416]

Mississippi Power and Light Co., Middle South Energy, Inc., South Mississippi Electric Power Association; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-29 issued to Mississippi Power and Light Company (MP&L), Middle South Energy, Inc. (MSE) (now renamed System Energy Resources, Inc., SERI), and South Mississippi Electric Power Association (SMEPA) for operation of the Grand Gulf Nuclear Station, Unit 1, located in Claiborne County, Mississippi.

The proposed amendment would change the Grand Gulf Nuclear Station, Unit 1 (GGNS) facility operating license and pages 6-3 and 6-9 of the facility Technical Specifications (TS's) to reflect the transfer of authority to control and operate the GGNS from MP&L to SERI in accordance with the licensee's application for amendment dated September 2, 1986 and as amended on October 4, 13 and 24, 1986.

In addition to the submittal of an application for amendment of the license pursuant to 10 CFR 50.90, the licensees have also submitted, pursuant to 10 CFR 50.80, an application for transfer of control of the licensed activities to System Energy Resources, Inc. The NRC staff's review of the application will address those issues necessary for both the issuance of the license amendment pursuant to 10 CFR 50.90 and for approval of transfer of control of licensed activities pursuant to 10 CFR 50.80.

Ownership of the GGNS remains unchanged, being 90 percent owned by MSE/SERI and 10 percent owned by SMEPA. SMEPA's role in this transfer is completely unchanged. The entire Nuclear Production Department, now a part of MP&L, will transfer, with no significant changes, to SERI. All of the costs, capacity and energy associated with SERI's 90 percent share of GGNS Unit 1 remain allocated to the Middle South Utilities system operating companies, Arkansas Power & Light Company, MP&L, Louisiana Power and Light Company and New Orleans Public Service, Inc.

The licensees propose that the application be considered in two parts. The first part will deal with a technical amendment which reflects transfer of control and operational responsibilities from MP&L to SERI. The second part will deal with consideration of the antitrust conditions presently embodied in the license. Accordingly, the Commission proposes to proceed with issuance of an amendment to the facility operating license which transfers control and operational responsibilities to SERI and also continues to hold MP&L and SERI to the terms of the existing antitrust conditions pending completion of review of the antitrust considerations of this amendment request.

The licensees have addressed in their application and the NRC review will include consideration of the following technical issues: Financial resources, technical qualifications of the proposed SERI staff, continuation of assured sources of offsite power in compliance with GDC-17, continuation of an adequate level of emergency preparedness and planning, and continuation of authority to control activities within the site exclusion area in compliance with 10 CFR Part 100.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a

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significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

With regard to (1) above the administrative changes to the facility operating license and the TS's to transfer control and operational responsibilities from MP&L to SERI does not increase the probability or consequences of an accident previously evaluated.

The changes to the license and to the TS's are limited to changing the designation of the licensee responsible for control and operations from MP&L to SERI and to changing the title of the President and Chief Operating Officer to President and Chief Executive Officer. There are no changes in the design of the plant and there is no impact on the safety analyses of Chapter 15 of the Final Safety Analysis Report.

There are no significant changes in the technical qualifications of the site and corporate staffs to be provided for the operation of the GGNS since virtually the entire onsite plant operating staff and virtually the entire corporate technical and managerial staffs of MP&L previously associated with the GGNS will transfer to SERI.

As a result of the proposed change SERI would be both the owner of 90 percent of the plant and the operator of the plant. MP&L would own the 500KV and 115KV switchyards, which are located on the plant site, and the associated transmission lines. Therefore, the proposed change was evaluated with respect to the control that the plant operating staff would have over the offsite power supplies to ensure provision of two independent sources of offsite power in compliance with the requirements of GDC–17, "Electric Power System." The licensee has provided information showing that the provision of offsite power to the Grand Gulf Nuclear Station, pursuant to a previously established contract between MSE/SERI as part owner of the plant and MP&L as owner of the transmission facilities and portions of the switchyard, remains unchanged and that the present compliance with GDC–17 is not changed. The licensee has also stated that a contractual agreement will be developed to define the interface between MP&L and SERI with respect to operation, maintenance, outages and future design changes. These agreements will constitute commitments by SERI which will also be incorporated into the FSAR. These agreements and commitments will ensure that the design and operation of the offsite power supplies, will continue to meet the requirements of GDC 17, and that any future changes will be reviewed by SERI consistent with the requirements of the Commission's regulations.

As a result of the proposed change SERI would have the responsibility for operation of the plant including control of activities within the exclusion zone including interfacing MP&L activities associated with the transmission lines and the two switchyards owned by MP&L which are within the exclusion zone. The licensees state that a contractual agreement will be established between MP&L and SERI which will recognize this interface and will specify that SERI has authority to exercise control over activities on any MP&L property within the exclusion area.

The proposed change will require a transferral of responsibility for emergency planning and preparedness from MP&L to SERI. This will be performed for SERI largely by the present Nuclear Production Department staff of MP&L which will transfer to SERI. However certain physical and personnel resources, limited to support in administrative areas but not inclusive of decision making authority, will continue to be provided by MP&L in support of these activities. The licensee states that decisional responsibilities related to accident recognition and classification, mitigative and corrective actions, radiological assessment and protective action recommendations and coordination with state and local authorities will rest with SERI personnel. The licensee has provided a description of an Emergency Preparedness Transition Plan specifying how the transition will be accomplished. Those resources required by SERI from MP&L for the uninterrupted continuation of emergency planning and preparedness activities will be specified in a contractual agreement between SERI and MP&L.

Thus, there are insignificant changes to the design of the plant, the safety analyses, the personnel to operate the plant and provisions will be made to ensure the continued adequacy of areas affected by the proposed change including offsite power supplies, control of access to the exclusion area and offsite emergency planning and preparedness. Therefore, the proposed change would not involve a significant increase in the probability or consequences of an accident previously evaluated.

With regard to (2) above the licensee states that the change from having MP&L operate the plant as an agent for MSE/SERI to having SERI operate the plant as its own agent using virtually the entire staff from MP&L previously involved in the operation of the GGNS will not create the possibility of a new or different kind of accident. The plant design, the licensing basis as specified in the FSAR as amended, the conditions for operation as set forth in the license and the TS's, the operating and emergency procedures are all unchanged. The design of the offsite power supply system, including the switchyards and transmission yards owned by MP&L is unchanged and provisions have been made whereby future changes which may be contemplated will be reviewed by SERI consistent with the requirements of the Commission's regulations.

The Nuclear Production Department, now in MP&L will continue, as the SERI staff, to control access to the exclusion area including those parts of the exclusion area which will continue to be owned by MP&L. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

With regard to (3) above the changes to the license and to the TS do not reduce the margin of safety. The purpose of the change is to effect the transfer of authority to control and operate the plant from MP&L, as MSE/SERI's agent, to SERI. The licensee's application does not involve any changes to the operating criteria as specified in the TS's nor does it involve any changes in the plant's design. The plant site and corporate staff in MP&L's Nuclear Production Department will be transferred virtually intact to SERI, thus there will be no significant reduction of the base of experience of those operating the plant. The significant financial aspects of supporting the operation of the plant appear to be unchanged and the economic regulatory authority over the plant's operation are unchanged in this regard. The offsite power supply system is unchanged and provisions will be made whereby future changes will be reviewd by SERI consistent with the requirments of the Commission's regulations. Control of access to the exclusion area will continue to be performed by the staff presently responsible for operation of the plant. Emergency planning and preparedness responsibilities will continue to be met by the staff currently responsible for these activities with some limited administrative support resources to be provided, under contractual agreement, by MP&L. Therefore no margin of safety is significantly reduced by this action.

On these bases, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC.

By December 3, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceedings, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Att: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Walter R. Butler, Director, BWR Project Directorate No. 4, Division of BWR Licensing: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell, and Reynolds, 1200 17th Street NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i) through (v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 2, 1986, as amended and supplemented on October 4, 13 and 24, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Dated at Bethesda, Maryland, this 29th day of October 1986.

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For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, BWR Project Directorate No. 4, Division of BWR Licensing.

[FR Doc. 86-24806 Filed 10-31-86; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-7444]

Issuer Delisting; Application To Withdraw From Listing and Registration; Oakwood Homes Corp.

October 28, 1986.

Oakwood Homes Corporation ("Company") has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the Common Stock, Par Value $.50, from listing and registration on the American Stock Exchange, Inc. ("Amex"). The Company's stock was recently listed and registered on the New York Stock Exchange Inc. ("NYSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of such securities on the NYSE and the Amex. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its securities.

Any interested person may, on or before November 19, 1986, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-24816 Filed 10-31-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

October 28, 1986.

The above named national securities exchange has filed application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Burroughs Corporation
Series A Cumulative Convertible Preferred Stock, $1.00 Par Value (File No. 7-9313)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 19, 1986 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-24815 Filed 10-31-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM-8/1018]

Shipping Coordinating Committee; Meeting

The Shipping Coordinating Committee will conduct an open meeting on 12 November 1986 at 0930 in Room 3310 of U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. The purpose of the meeting is to consider the U.S. position for the First Session of IMO/UNCTAD Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects.

At its 56th Session, the IMO Legal Committee considered an UNCTAD proposal to form a joint IMO/UNCTAD intergovernmental group of experts to consider the subject of maritime liens and mortgages and related subjects. This proposal was endorsed by the Legal Committee and approved by IMO Council. The group will meet alternatively in Geneva and London utilizing the scheduled meeting time of the UNCTAD International Shipping Legislation Working Group and a portion of the scheduled meeting time of the IMO Legal Committee. The first meeting is scheduled for 1-12 December 1986 in Geneva.

The Joint Intergovernmental Group of Experts will conduct a broad examination of the subject of maritime liens and mortgages and related subjects, including the possible consideration of:

1. The review of the maritime liens and mortgages Conventions and related enforcement procedures, such as arrest;
2. The preparation of model laws or guidelines on maritime liens, mortgages and related enforcement procedures, such as arrest; and
3. The feasibility of an international registry of maritime liens and mortgages.

IMO and UNCTAD have identified the following major objectives as deserving of priority consideration in any investigations regarding possible international action on maritime liens and mortgages:

1. To encourage ship financing by affording appropriate protection to persons providing finance;
2. To afford protection in respect of settled claims;
3. To encourage the provision of services to ships;
4. To protect the ship against multiple actions; and
5. To minimize the potential encumbrances to ship operation.

Members of the public are invited to attend the meeting, up to the seating capacity of the room.

For further information pertaining to the issues to be discussed at the Shipping Coordinating Committee meeting, contact Captain Frederick F. Burgess, Jr., U.S. Guard (G-LMI), Washington, DC, 20593, telephone (202) 267-1527.

Dated: October 16, 1986.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 86-24749 Filed 10-31-86; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements submitted to OMB on October 28, 1986

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on October 28, 1986, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson, or Cordelia Shepherd, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street SW., Washington, DC 20590, telephone (202) 366-4735, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that act. OMB reviews and approves agency submittals in accordance with criteria set forth in that act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an informationa collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on October 28, 1986.

DOT No. 2801
OMB No. 2127-0512
By: National Highway Traffic Safety Administration
Title: Consolidated Labeling Requirements for Motor Vehicles (Except the VIN Numbers) 49 CFR 571.105, 571.205, 571.209, and Part 567
Form(s): None
Frequency: On occasion
Respondents: Manufacturers of motor vehicles, glazing, seat belt assemblies and hydraulic brakes
Need/Use: Motor vehicles and motor vehicle equipment must be properly labeled to provide for safe operation by users and to ensure prompt identification of such equipment in the event of safety related defects.

DOT No. 2803
OMB No. 2106-0009
By: Office of the Secretary of Transportation—Aviation
Title: Part 221—Construction, Publication, Filing and Posting of Tariffs of Air Carriers and Foreign Air Carriers
Form(s): None
Frequency: As needed
Respondents: U.S. air carriers and foreign air carriers
Need/Use: Section 403 of the Federal Aviation Act of 1958, as amended, requires that every U.S. and foreign air carrier file, publish and make available to the public, tariffs for points served.

DOT No. 2805
OMB No. 2120-0005
By: Federal Aviation Administration
Title: General Operating and Flight Rules
Form(s): FAA Form 91
Frequency: On occasion
Respondents: Individuals, State and local Government and businesses
Need/Use: FAA Act of 1958, section 307 (49 U.S.C. 1348), authorizes issuance of regulations governing the use of navigable airspace. 14 CFR Part 91 prescribes regulations governing the general operation and flight of aircraft. Information is collected to determine compliance. Respondents are individual airmen, state and local government and businesses.

DOT No. 2806
OMB No. 2120-0034
By: Federal Aviation Administration
Title: Medical Standards and Certification—FAR 67
Form(s): FAA Forms 8500-7, 8, 14, 20
Frequency: On occasion
Respondents: Individuals
Need/Use: FAA Act of 1958, section 602, requires airmen to be physically able to perform the duties of the certificate sought. 14 CFR Part 67, prescribes minimum airman medical standards. Information collected shows applicant eligibility.

DOT No. 2807
OMB No. 2127-0006
By: National Highway Traffic Safety Administration
Title: Fatal Accident Reporting System (FARS)
Form(s): HS-214, 214A and 214B
Frequency: On occasion
Respondents: States
Need/Use: The (FARS) is a census of all fatal motor vehicle accidents in the U.S. Data is extracted from existing state records and automated for the agency's use in highway and motor vehicle safety problems, identification, travel analyses and program evaluation.

DOT No. 2808
OMB No. New
By: Federal Aviation Administration
Title: Impact of Interim Voice Response System (IRVS) on FSS Briefings
Form(s): None
Frequency: One-time survey
Respondents: Pilots
Need/Use: The information will be used to determine the impact of the Interim Voice Response System (IRVS) on specialist workload at the Philadelphia FSS. This survey represents an initial step in the process of drawing reliable inferences about the relationship between IRVS use and specialist workload on a national scale. Registered pilots in the metro Philadelphia area will be contacted.

DOT No. 2809
OMB No. 2115-0543
By: United States Coast Guard
Title: Regulations. Certificates of Adequacy for Chemical Reception Facilities
Form(s): CG-5401A and 5401B
Frequency: On occasion
Respondents: Ports and terminals used by oceangoing ships which handles MARPOL regulated chemicals
Need/Use: This information collection requirement is needed and used to: (1) Determine whether proposed reception facilities are adequate to receive wastes which ships cannot discharge at sea (2) grant waivers in particular circumstances: (3) provide

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Coast Guard with necessary changes for publication in the **Federal Register**; and (4) evaluate an appeal of Coast Guard's action.

DOT No. 2810
OMB No. 2127–0510
By: National Highway Traffic Safety Administration
Title: Consolidated Vehicle Identification Number Requirements and Vehicle Theft Prevention Standards. (49 CFR Parts 541, 565 and 567).
Form(s): None
Frequency: On occasion
Respondents: Business/small business
Need/Use: These standards specify physical requirements for the Vehicle Identification Number, its installation, format, and content to simplify information retrieval, and increase the efficiency of defect recall campaigns. Manufacturers must label major component parts of designated high-theft car limits with the VIN and mark certain replacement parts with the letter "R".

DOT No. 2811
OMB No. 2115–0539
By: United States Coast Guard
Title: Special Requirements for Cargo Lightering Operations
Form(s): N/A
Frequency: On occasion.
Respondents: Owners, agents and master of tank vessels
Need/Use: This information collection requires the advance notice of lightering operations. The Coast Guard uses the information to monitor lightering activities, conduct inspections and to enforce regulations. It is also used for responding to emergencies and to minimize the environmental damage of oil or hazardous materials spill.

DOT No. 2812
OMB No. 2115–0083
By: United States Coast Guard
Title: Operations Manual/Amendment to Operations Manual
Form(s): None
Frequency: On occasion.
Respondents: Businesses—Bulk Oil Facilities
Need/Use: This information collection is needed to establish and amend procedures for transferring oil to reduce the number of oil spills caused by defective procedures and human error. The information is used to prevent oil spills and control and decrease the effects of spills that occur.

DOT No. 2813
OMB No. 2115–0069
By: United States Coast Guard
Title: Continuous Discharge Book
Form(s): 719A
Frequency: On occasion.
Respondents: Merchant Seamen
Need/Use: This information collection requirement is needed to ensure compliance with Federal marine safety laws. It is used by shipping companies to establish the qualifications of personnel employed aboard merchant vessels. It is further used by foreign governments to establish bona fides of personnel entering their ports.

DOT No. 2814
OMB No. 2115–0053
By: United States Coast Guard
Title: Request for Designation and Exemption of Oceanographic Vessels
Form(s): N/A
Frequency: On occasion.
Respondents: Oceanographic vessel operators
Need/Use: This information collection requirement is needed and used by the Coast Guard to designate certain oceanographic research vessels as exempt. This relieves those vessels from specific regulatory requirements, thereby promoting oceanographic research.

DOT No. 2815
OMB No. 2137–0039
By: Research and Special Programs Administration
Title: Hazardous Materials Incident Report
Form(s): DOT F–5800.1
Frequency: On occasion.
Respondents: Carriers of hazardous materials
Need/Use: MTB uses this information to evaluate the adequacy of existing regulation and to determine when Federal action is needed for clean-up or emergency response.

DOT No. 2816
OMB No. 2115–0130
By: United States Coast Guard
Title: Plan Approval and Records for Cargo and Miscellaneous Vessels.
Form(s): N/A
Frequency: On occasion.
Respondents: Shipbuilders, owners, designers and operators
Need/Use: This information collection is necessary to allow the Coast Guard to determine compliance with applicable regulations. This information is used by the Coast Guard to determine if the vessel's construction, arrangement and equipment meet the applicable marine safety regulations. Review of the plans prior to construction assures the vessel owner or builder that the vessel will meet the regulatory standards, if built according to the plans. This requirement also provides sufficient information to vessel operating personnel for the safe and proper operation of the vessel.

Issued in Washington, DC on October 28, 1986.

John E. Turner,

Director of Information Resource Management.

[FR Doc. 86–24822 Filed 10–31–86; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed During the Week Ending October 24, 1986

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 44429

Date Filed: October 20, 1986

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 3, 1986

Description: Conforming Application of Eastern Air Lines, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity so as to authorize service between the coterminal points New York and Miami and the terminal point Caracas, Venezuela.

Docket No. 44430

Date Filed: October 20, 1986

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 17, 1986

Description: Application of Aerial Transit Company pursuant to section 401 of the Act and Subpart Q of the Regulations requests an amendment of its foreign air transport certificate authorizing it to perform scheduled all-cargo air transportation between points in the one hand, and Honduras and El Salvador on the other.

Docket No. 44435

Date Filed: October 21, 1986

Due Date for Answers, Conforming Application, or Motions to Modify Scope: November 18, 1986

Description: Application of Carga Aero Transportada, S.R.L., pursuant to section 402 of the Act and Subpart Q of the Regulations applies for a foreign air carrier permit to engage in charter foreign air transportation of property and mail between a point or points in the Republic of Bolivia and a point or points in the United States, with blind sector traffic rights, as specified.

Docket No. 44439

Date Filed: October 23, 1986

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 20, 1986

Description: Application of Tower Air, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity (or amendment of its current certificate) authorizing it to engage in scheduled foreign air transportation of persons, property and mail, or a permissive basis, between New York, N.Y., on the one hand, and Copenhagen, Denmark, on the other hand.

Docket No. 43284

Date Filed: October 23, 1986

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 20, 1986

Description: Application of P.T. Garuda Indonesia pursuant to section 402 of the Act and Subpart Q of the Act, requests permission to amend its existing permit to add Manado, Indonesia as an additional point on the Denpasar—Guam route.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-24795 Filed 10-31-86; 8:45 am]

BILLING CODE 4910-62-M

Aviation Proceedings; Agreements Filed During the Week Ending October 24, 1986

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 44446

Parties: The Civil Aviation Administration of China; The Flying Tiger Line Inc.

Date Filed: October 23, 1986.

Subject: Joint Application of The Civil Aviation Administration of China and The Flying Tiger Line Inc. pursuant to sections 412 and 414 of the Act, requests approval of an agreement and grant of antitrust immunity to develop wide-body cargo charter services to and from the People's Republic of China.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-24799 Filed 10-31-86; 8:45 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

[Docket No. IP86-10; Notice 1]

General Motors Corp.; Receipt of Petition for Determination of Inconsequential Noncompliance

General Motors Corporation, of Warren, Michigan, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.105, Motor Vehicle Safety Standard No. 105, *Hydraulic Brake Systems,* on the basis that it is inconsequential as it relates to motor vehicle safety.

This Notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S5.3.2 of Federal Motor Vehicle Safety Standard No. 105, *Hydraulic Brake Systems,* gives the activation requirements for brake systems indicator lamps. "All indicator lamps shall be activated as a check of lamp function, either when the ignition (start) switch is turned to the "on" (run) position when the engine is not running, or when the ignition (start) switch is in a position between "on" (run) and "start" that is designated by the manufacturer as a check position."

General Motors Corporation produced 11,316 Rivieras prior to mid-May 1986, that do not comply with paragraph S5.3.2 of Federal Motor Vehicle Safety Standard No. 105. The noncompliance was attributed to an oversight during development of Body Control Module software and has been corrected. On these vehicles, a lamp check function is provided with the application of the parking brake. In addition, a check of lamp function will activate (a) automatically upon entering the vehicle after pressing the outside door handle button, and (b) manually when a TEST button on the instrument panel cluster is pressed. General Motors believes that these provisions enable the operator to verify that the brake system indicator lamp is working properly and, therefore, the noncompliance is inconsequential.

Interested persons are invited to submit written data, views and agruments on the petition of General Motors, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filled and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: December 3, 1986.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: October 29, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86-24820 Filed 10-31-86; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B, notice is hereby given of the exemptions granted in August 1986. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
3142-X	DOT-E 3142	U.S. Department of Energy, Washington, DC.	49 CFR 173.24(a)(1)	To authorize shipment of nonflammable compressed gases in DOT Specification 3A1800 or 3A2000 cylinders, from which a controlled flow of gas is released to a leak calibration apparatus (Modes 1, 2).
3330-X	DOT-E 3330	General Electric Co., Schenectady, NY.	49 CFR 173.214(b), 173.214(d).	To authorize use of non-DOT specification insulated containers overpacked in DOT Specification 17C, 17H, or 37A metal drums, for transportation of certain flammable solid materials. (Modes 1, 2).
3941-X	DOT-E 3941	Aerojet Strategic Propulsion Co., Sacramento, CA.	49 CFR 173.239a(a)(2)	To authorize transport of ammonium perchlorate in non-DOT specification aluminium portable tanks. (Modes 1, 2).
3941-X	DOT-E 3941	Aerojet Tactical Systems Co., Sacramento, CA.	49 CFR 173.239a(a)(2)	To authorize transport of ammonium perchlorate in non-DOT specification aluminim portable tanks. (Modes 1, 2).
4734-X	DOT-E 3734	General Electric Co., Waterford, NY.	49 CFR 173.119(m), 173.135(a)(9), 173.136(a)(8), and 173.280(a)(8).	To authorize use of modified DOT Specification MC-331 cargo tanks, for transportation of certain flammable liquids and corrosive materials. (Mode 1).
5704-X	DOT-E 5704	Aerojet General Corp., Sacramento, CA.	49 CFR 173.62, 173.93(e)	To authorize transport of certain Class A and B explosives in prescribed non-DOT specification steel drums. (Modes 1, 2, 3).
6118-X	DOT-E 6418	Western Farm Service, Inc., Walnut Creek, CA.	49 CFR 173.357(b)	To authorize use of DOT Specification MC-303, MC-304, MC-306, MC-307, MC-310 or MC-312 steel cargo tanks for transportation of Class B poisonous liquids. (Mode 1)
6418-X	DOT-E 6418	Great Lakes Chemical Corp., West Lafayette, IN.	49 CFR 173.357(b)	To authorize a liquid mixture containing 67.7 percent chloroicrin, Class B poison, as an additional commodity for shipment in certain DOT Specification cargo tanks, (Mode 1)
6442-X	DOT-E 6442	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.53(k), 173.87	To authorize transport of a 155mm high explosive projectile containing either a corrosive or flammable liquid in metal cannister with an inner polyethylene container. (Modes 1, 2)
6518-P	DOT-E 6518	Texas Alkyls, Inc., Westport, CT.	49 CFR 172.101, 172.302, 173.119, 173.134, and 173.154.	To become a party to Exemption 6518. (Modes 1, 3)
6530-X	DOT-E 6530	The Great Plains Welding Supply Co., Cheyenne, WY.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2)
6536-X	DOT-E 6536	Hanco International, Inc., Miami, FL.	49 CFR 173.304(d)(3)(ii), 178.33.	To authorize use of a non-DOT specification inside nonrefillable metal container, for transportation of a certain flammable gas. (Modes 1, 3)
6536-X	DOT-E 6536	Optimus, Inc., Bridgeport, CT.	49 CFR 173.304(d)(3)(ii), 178.33.	To authorize use of a non-DOT specification inside nonrefillable metal container, for transportation of a certain flammable gas. (Modes 1, 3)
6536-X	DOT-E 6536	Pan Products Inc., Macedonia, OH.	49 CFR 173.304(d)(3)(ii), 178.33.	To authorize use of a non-DOT specification inside nonrefillable metal container, for transportation of a certain flammable gas. (Modes 1, 3)
6543-X	DOT-E 6543	Airco, The BOC Group, Inc., Murray Hill, NJ.	49 CFR 173.119, 173.135(a)(6), 173.136(a)(5), 173.245, 173.247, 173.271, and 175.3.	To authorize shipment of certain corrosive and flammable liquids in non-DOT specification 16 gauge, Type 304 stainless steel cylinders and/or 14 gauge Type 316 stainless steel cylinders. (Modes 1, 2, 3, 4)
6543-X	DOT-E 6543	Texas Instruments, Inc., Dallas, TX.	49 CFR 173.119, 173.135(a)(6), 173.136(a)(5), 173.245, 173.247, 173.271, and 175.3.	To authorize shipment of certain corrosive and flammable liquids in non-DOT specification 16 gauge, Type 304 stainless steel cylinders and/or 14 gauge Type 316 stainless steel cylinders. (Modes 1, 2, 3, 4)
6543-X	DOT-E 6543	Corning Glass Works, Corning, NY.	49 CFR 173.119, 173.135(a)(6), 173.136(a)(5), 173.245, 173.247, 173.271, and 175.3.	To authorize shipment of certain corrosive and flammable liquids in non-DOT specification 16 gauge, Type 304 stainless steel cylinders and/or 14 gauge Type 316 stainless steel cylinders. (Modes 1, 2, 3, 4)
6610-X	DOT-E 6610	ARCO Chemical Co., Pasadena, TX.	49 CFR 173.221	To authorize shipment of an organic peroxide in DOT Specification 111A100W6 tank cars and MC-307 cargo tanks. (Modes 1, 2)
6610-X	DOT-E 6610	Catalyst Resources, Inc., Elyria, OH.	49 CFR 173.221	To authorize shipment of an organic peroxide in DOT Specification 111A100W6 tank cars and MC-307 cargo tanks. (Modes 1, 2)
6651-X	DOT-E 6651	Enthone, Inc., West Haven, CT.	49 CFR 173.28(h), 173.28(m)	To authorize one-time reuse of involved single-trip containers, for transportation of certain Class B poisonous solids. (Mode 1)
6651-X	DOT-E 6651	Heatbath Corp. Chicago, IL	49 CFR 173.28(h), 173.28(m)	To authorize one-time reuse of involved single-trip containers, for transportation of certain Class B poisonous solids. (Mode 1)
6694-X	DOT-E 6694	Eurotainer, S.A., Paris, France.	49 CFR 173.315	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of nonflammable gases. (Modes 1, 2, 3)
6694-X	DOT-E 6694	Arbel-Fauvet-Girel, Paris, France.	49 CFR 173.315	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of nonflammable gases. (Modes 1, 2, 3)
6695-X	DOT-E 6695	Arbel-Fauvet-Girel, Paris, France.	49 CFR 173.315	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of nonflammable gases. (Modes 1, 2, 3)
6724-X	DOT-E 6724	U.S. Department of Defense, Falls Church, VA.	49 CFR 172.101, 173.89, and 175.3.	To authorize transport of caseless ammunition in an inside fiberboard box with egg crate separations and overpacked in a non-DOT specification strong wooden box. (Modes 1, 4)
6762-X	DOT-E 6762	Taylor Chemicals, Inc., Sparks, MD.	49 CFR 173.286(b)(2), 175.3	To authorize transport of chemical kits in plastic inside bottles, packed in plastic boxes overpacked in fiberboard boxes. (Modes 1, 2, 3, 4)
6762-X	DOT-E 6762	DuBois Chemical Co., Cincinnati, OH.	49 CFR 173.286(b)(2), 175.3	To authorize transport of chemical kits in plastic inside bottles, packed in plastic boxes overpacked in fiberboard boxes. (Modes 1, 2, 3, 4)
6932-X	DOT-E 6932	Eurotainer, S.A., Paris, France.	49 CFR 173.264(b)(4)	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of anhydrous hydrofluoric acid. (Modes 1, 3)
6932-X	DOT-E 6932	Arbel-Fauvet-Girel, Paris, France.	49 CFR 173.264(b)(4)	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of anhydrous hydrofluoric acid. (Modes 1, 3)
6944-X	DOT-E 6944	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.62(a), 177.834(L)(1).	To authorize transport of a liquid high explosive in a specially designed stainless steel desiccator. (Mode 1)
6971-X	DOT-E 6971	Chem Service, Inc., West Chester, PA.	49 CFR Parts 100 through 199.	To authorize transport of small quantities of reagent chemicals in inside glass bottles packed in metal boxes, overpacked in a strong wooden or fiberboard box. (Modes 1, 2, 3, 4, 5)
7052-X	DOT-E 7052	Smith Drilling Systems, Houston, TX.	49 CFR 173.101, 172.420, and 175.3.	To become a party to Exemption 7052. (Modes 1, 2, 3, 4)
7097-X	DOT-E 7097	Fuller System, Inc., Woburn, MA.	49 CFR 173.377(f)	To authorize shipment of dry mixtures of parathion and tetraethyl dithio pyrophosphate from specification packaging requirements. (Mode 1)
7259-X	DOT-E 7259	Monsanto Chemical Co., St. Louis, MO.	49 CFR 176.76(g)(5)	To authorize use of DOT Specification 56 aluminum portable tanks, for shipment of phosphorous pentasulfide by water. (Mode 3)
7285-X	DOT-E 7285	Arbel-Fauvet-Girel, Paris, France.	49 CFR 173.315(a)	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of certain nonflammable, liquefied gases. (Modes 1, 2, 3)
7607-P	DOT-E 7607	Union Pacific Railroad Co., Omaha, NE.	49 CFR 172.101, 175.3	To become a party to Exemption 7607. (Mode 5)
7607-P	DOT-E 7607	Baker/TSA, Inc., Beaver, PA	49 CFR 172.101, 175.3	To become a party to Exemption 7607. (Mode 5)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7909-X	DOT-E 7909	EMCO, Inc., Little Rock, AR	49 CFR 172.203, 172.400, 172.402(a)(2), 172.402(a)(3), 172.504(a), 173.345(a), 173.359(c), 173.364(a), 173.370(b), 173.370(d), 173.377(f), 175.3, 175.30, and 175.32.	To authorize manufacture, marking and sale of non-DOT specification plastic, metal or plastic-coated glass containers, for transport of limited quantities of poisonous liquid and solids. (Modes 1, 2, 4)
8037-X	DOT-E 8037	Mauser Packaging, Ltd., New York, NY.	49 CFR 173.127, 173.184, and 178.224.	To authorize manufacture, marking and sale of non-DOT specification fiberboard drums, for shipment of wet nitrocellulose. (Modes 1, 2, 3)
8051-X	DOT-E 8051	Mauser Packaging, Ltd., New York, NY.	49 CFR 173.262, 173.266	To authorize manufacture, marking and sale of DOT Specification 34 reusable, blowmolded, polyethylene container, for transportation of corrosive liquids and oxidizer. (Modes 1, 2, 3)
8060-X	DOT-E 8060	SLEMI, Paris, France	49 CFR 173.315(a)	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of certain nonflammable, liquefied gases. (Modes 1, 2, 3)
8060-X	DOT-E 8060	Arbel-Fauvet-Girel, Paris, France.	49 CFR 173.315(a)	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of certain nonflammable, liquefied gases. (Modes 1, 2, 3)
8091-X	DOT-E 8091	Restor Communications, Inc., Florence, KY.	49 CFR Part 100-177	To authorize transport of certain mercury relays exempted from 49 CFR 100-177, in heat sealed glass vials. (Modes 4, 5)
8127-P	DOT-E 8127	Wolff Walsrode AG, Walsrode, West Germany.	49 CFR 171.12(d), 173.127, 173.184, and 178.224.	To become a party to Exemption 8127. (Modes 1, 2, 3)
8141-X	DOT-E 8141	GTE Products Corp., Waltham, MA.	49 CFR 172.101, 173.206, and 173.247.	To authorize transport of individual cells and modules consisting of three cells containing lithium metal and thionly chloride in non-DOT specification wooden boxes. (Modes 1, 3)
8236-X	DOT-E 8236	Talley Defense Systems, formerly Talley Industries, Mesa, AZ.	49 CFR 173.153, 173.154, and 175.3.	To renew; and revise criteria for the passive restraint assembly and to authorize a DOT Specification 12B65 fiberboard box as additional packaging. (Modes 1, 2, 3, 4)
8337-X	DOT-E 8337	Industrial and Municipal Engineering, Inc., Calva, IL.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, and 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks with DOT Specification MC-307/312 except for bottom outlet valve variation, for shipment of liquid and semi-solid waste material. (Mode 1)
8436-X	DOT-E 8436	Pennwalt Corp., Buffalo, NY	49 CFR 173.119(m), 173.21	To authorize transport of a flammable liquid which is also an organic peroxide, in a DOT Specification MC-331 cargo tank. (Mode 1)
8445-P	DOT-E 8445	Eveready Battery Co., Inc., Rocky River, OH.	49 CFR Part 173, Subparts D, E, F, H.	To become a party to Exemption 8445. (Mode 1)
8445-X	DOT-E 8445	Aqua-Tech, Inc., Port Washington, WI.	49 CFR Part 173, Subparts D, E, F, H.	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1)
8445-P	DOT-E 8445	University of Maryland, Baltimore, MD.	49 CFR Part 173, Subparts D, E, F, H.	To become a party to Exemption 8445. (Mode 1)
8450-X	DOT-E 8450	Atlantic Research Corp., Camden, AR.	49 CFR 173.92	To authorize transport of rocket motors without igniters, in non-DOT Specification polyethylene containers. (Mode 1)
8458-X	DOT-E 8458	E.I. du Pont de Nemours and Co., Inc., Wilmington, DE.	49 CFR 173.31(c) Table 1	To authorize conversion of DOT Specification 105A500W or 122A400W tank cars to a DOT Specification 111A100W2 tank car, for transportation of certain corrosive materials and oxidizers. (Mode 2)
8489-X	DOT-E 8489	FMC Corp., Philadelphia, PA	49 CFR 173.154, 173.182, 173.217, and 173.245b.	To authorize shipment of certain oxidizers, a poison B, waste arsenical mixture, and a corrosive material in collapsible polyethylene-lined, woven polypropylene bags having a capacity not exceeding 2200 pounds each. (Modes 1, 2, 3)
8489-X	DOT-E 8489	Degussa Corp., Teterboro, NJ.	49 CFR 173.154, 173.182, 173.217, and 173.245b.	To authorize shipment of certain oxidizers, a poison B, waste arsenical mixture, and a corrosive material in collapsible polyethylene-lined, woven polypropylene bags having a capacity not exceeding 2200 pounds each. (Modes 1, 2, 3)
8538-X	DOT-E 8538	Hercules, Inc., Wilmington, DE.	49 CFR 173.62, 178.177	To authorize transport of liquid high explosives in DOT Specification 15M containers in which the inner copper containers and the rubber boots has been replaced with polyethylene containers. (Mode 1)
8545-X	DOT-E 8545	Hercules, Inc., Wilmington, DE.	49 CFR 173.62	To authorize transport of limited quantities of liquid high explosives in polyethylene bottles packed in a DOT Specification 37A drum, overpacked in a DOT Specification 15A wooden box. (Mode 1)
8556-X	DOT-E 8556	L'Air Liquide Corp., Paris, France.	49 CFR 173.318(a), 176.76(h)(4).	To authorize use of non-DOT specification containerized portable tanks insulated with vacuum plus liquid nitrogen shield, for transportation of a flammable and nonflammable gas. (Modes 1, 3)
8570-X	DOT-E 8570	Snyder Industries, Inc., Lincoln, NE.	49 CFR 173.119, 173.266, Part 173, Subpart F.	To authorize manufacture, marking and sale of non-DOT rotationally molded, cross-linked polyethylene portable tank, for shipment of corrosive liquids or an oxidizer. (Modes 1, 2, 3)
8582-P	DOT-E 8582	Consolidated Rail Corp., Philadelphia, PA.	49 CFR Parts 100 through 177.	To become a party to Exemption 8582. (Mode 1)
8644-X	DOT-E 8644	Richmond Lox Equipment Co., Livermore, CA.	49 CFR 172.101, 173.315	To authorize shipment of liquid nitrogen or oxygen, in vacuum insulated non-DOT specification cargo tanks. (Mode 3)
8760-X	DOT-E 8760	Barton Solvents, Inc., Des Moines, IA.	49 CFR 172.328, 172.334(b)	To authorize display of FLAMMABLE placards, showing identification (1993), on Barton Solvents, Inc. cargo tanks specified for the materials and having six or more compartments when transporting one or more hazardous materials. (Mode 1)
8792-X	DOT-E 8792	Digital Equipment Corp., Northborough, MA.	49 CFR Parts 100 through 199.	To authorize small quantities of isopropyl alcohol in a saturated pad, sealed in a plastic coated foil pack, overpacked not to exceed 250 packs per strong outside box, as essentially non-regulated. (Modes 1, 2, 3)
8809-X	DOT-E 8809	Continental Group, Inc., Lombard, IL.	49 CFR 178.225, Part 173	To authorize manufacture, marking and sale non-DOT specification fibre drum overpacks for 15-gal capacity inner polyethylene container, similar to DOT-21P/2U except top head is molded polyolefin polymer secured to drum by wire stitches for shipment of commodities authorized in DOT-21P/2U composite. (Modes 1, 2, 3)
8826-X	DOT-E 8826	Phoenix Air, Marietta, GA	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), and 175.320(b), Part 107, Appendix B.	To authorize carriage of certain Class A, B and C explosives that are not permitted for air shipment or are in quantities greater than those prescribed for shipment by air. (Mode 4)
8839-X	DOT-E 8839	Poly Processing Co., Inc., Monroe, LA.	49 CFR 173.226, 178.19, Part 173, Subparts D, F.	To authorize manufacture, marking and sale of non-DOT specification rationally molded, cross-linked polyethylene portable tanks, for shipment of flammable liquids, corrosive liquids and an oxidizer. (Modes 1, 2, 3)
8839-X	DOT-E 8839	Poly Cal Plastics, Inc., Monroe, LA.	49 CFR 173.226, 178.19, Part 173, Subparts D, F.	To authorize manufacture, marking and sale of non-DOT specification rationally molded, cross-linked polyethylene portable tanks, for shipment of flammable liquids, corrosive liquids and an oxidizer. (Modes 1, 2, 3)
8878-X	DOT-E 8878	Amalgamet Canada—Division of Premetalco Inc., Toronto, Ontario, Canada.	49 CFR 173.245	To authorize shipment of germanium tetrachloride, corrosive liquid, n.o.s., in glass containers of less than 3 gallon capacity, surrounded by vermiculite placed in a cylindrical steel overpack, packed six to a compartmented wooden box. (Mode 1)
8903-X	DOT-E 8902	Teledyne McCormick Selph, Hollister, CA.	49 CFR 173.101	To authorize transport of an initiating explosive, in plastic bottles, overpacked in DOT Specification 5, 5B, or 17H steel drums. (Mode 1)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8911–X	DOT–E 8911	Olin Corp., East Alton, IL	49 CFR 173.101	To authorize shipment of scrap, guillotined small arms ammunition loosely packed in non-DOT specification, nonreusable, closed-top wooden crates or fiberboard boxes, in truck load lots to an incinerator for disposal. (Mode 1)
8915–X	DOT–E 8915	Airco, The BOC Group, Inc., Murray Hill, NJ.	49 CFR 173.301(d), 173.302(a)(3).	To authorize shipment of certain flammable and nonflammable compressed gases in DOT Specification 3A, 3AA, 3AX, 3AAX and 3T cylinders. (Modes 1, 3)
8915–X	DOT–E 8915	Union Carbide Corp., Danbury, CT.	49 CFR 173.301(d), 173.302(a)(3).	To authorize shipment of certain flammable and nonflammable compressed gases in DOT Specification 3A, 3AA, 3AX, 3AAX and 3T cylinders. (Modes 1, 3)
8919–X	DOT–E 8919	The Upjohn Co., Kalamazoo, MI.	49 CFR Parts 100 through 199.	To authorize transport of small quantities of medical products containing ethyl alcohol in heat sealed glass ampules, packed in a corrugated outside fiberboard box. (Modes 1, 4, 5)
8920–X	DOT–E 8920	Applied Environments Corp., San Fernando, CA.	49 CFR 173.302(a)(4), 175.3	To authorize manufacture, marking and sale of non-DOT specification welded high pressure nonrefillable cylinders, for transportation of nonflammable, liquefied gases. (Modes 1, 2, 4)
8921–X	DOT–E 8921	Hoover Group, Inc., Beatrice, NE.	49 CFR 173.119, 173.125, and 173.266, Part 173, Subpart F.	To authorize manufacture, marking and sale of nonreusable non-DOT Specification steel jacketed polyethylene portable tanks, for shipment of corrosive liquids, flammable liquids or an oxidizer. (Modes 1, 2, 3)
8932–X	DOT–E 8932	Catalyst Resources, Inc., Elyria, OH.	49 CFR 173.119(m), 173.221	To authorize shipment of organic peroxide, in tank motor vehicles complying with DOT Specifications MC–307 and MC–312 cargo tanks. (Mode 1)
8943–X	DOT–E 8943	BASF Wyandotte Corp., Parsippany, NJ.	49 CFR 173.154	To authorize shipment of a polyol filter cake classed as a flammable solid, in a non-DOT specification open top, metal cargo carrying box. (Mode 1)
8963–X	DOT–E 8963	Atlantic Research Corp., Gainesville, VA.	49 CFR 173.88(e)(2)(ii)	To authorize transport of a rocket motor in a propulsive state, in a DOT Specification 15A wooden box. (Mode 1)
9126–X	DOT–E 9126	Allied Drum Service, Inc., Louisville, KY.	49 CFR 173.102–4, Part 107, Appendix B.	To authorize manufacture, marking and sale of DOT Specification 6D drum to be marked by embossing on the top permanent head instead of the bottom permanent head and that the drum need not be marked with the exemption number. (Modes 1, 2, 3, 4, 5)
9130–X	DOT–E 9130	Bio-Lab, Inc., Conyers, GA	49 CFR 173.154	To authorize twelve bottles containing two pounds or less 1-Bromo-3-chloro-5, 5-dimethylhydrantoin in a DOT Specification 12B box not to exceed 24 pounds and to authorize vessel as a mode of transportation. (Modes 1, 2).
9162–X	DOT–E 9162	Stoneco, Inc., Dacono, CO	49 CFR 172.101, 173.53(g), and 175.30.	To authorize transport of explosive pest repellant devices, in plastic boxes packed in DOT Specification 12B fiberboard boxes. (Modes 1, 2, 4).
9193–X	DOT–E 9193	Schlumberger Well Services, Houston, TX.	49 CFR Parts 100 through 199.	To authorize shipment of a downhole logging tool (anode) that contains an accelerator housing, one section of which is charged with sulfur hexafluroide to a pressure of 80 psig. (Modes 1, 2, 3, 4, 5).
9193–X	DOT–E 9193	Schlumberger Offshore Services, Houston, TX.	49 CFR Parts 100 through 199.	To authorize shipment of a downhole logging tool (anode) that contains an accelerator housing, one section of which is charged with sulfur hexafluoride to a pressure of 80 psig. (Modes 1, 2, 3, 4, 5).
9221–X	DOT–E 9221	Applied Companies, San Francisco, CA.	49 CFR 173.302(a)(4), 175.3, and 178.44.	To authorize manufacture, marking and sale of non-DOT specification girth welded stainless steel cylinders, for shipment of nonflammable gases. (Modes 1, 2, 4).
9233–X	DOT–E 9233	Diamond Shamrock Chemicals Co., Irving, TX.	49 CFR 173.164	To authorize shipment of dry chromic acid, in a non-DOT specification 900-cubic-foot, two-compartment, sift-proof covered hopper type tank motor vehicle. (Mode 1).
9263–X	DOT–E 9263	Liquid Air Corp., Walnut Creek, CA.	49 CFR 172.101, 173.316	To authorize transport of a flammable cryogenic liquid, in DOT Specification 4L 200 cylinders. (Mode 1).
9266–X	DOT–E 9266	Euortainer, S.A., Paris, France.	49 CFR 173.315, 178.245	To authorize use of non-DOT specification IMO Type 5 portable tanks, for shipment of liquefied compressed gases. (Modes 1, 2, 3).
9270–X	DOT–E 9270	E.I. du Pont de Nemours and Co., Inc., Wilmington, DE.	49 CFR 173.264(b)(2), 179.101–1(a).	To authorize shipment of hydrogen fluoride, in DOT Specification 112A400W tank cars stenciled DOT Specification 112A200W. (Modes 2).
9275–P	DOT–E 9275	American Critical Care, McGaw Park, IL.	49 CFR Parts 100 through 199.	To become a party to Exemption 9275. (Modes 1, 2, 3, 4, 5).
9279–X	DOT–E 9279	Keystone Steel and Wire Co., Peoria, IL.	49 CFR 173.154	To authorize transport of a flammable solid which is water reactive in open-top freight containers and open top trailers covered with tarpaulins. (Mode 1).
9296–X	DOT–E 9296	Honeywell, Inc., Minneapolis, MN.	49 CFR 172.500, 173.202	To authorize transport of limited quantities of liquid sodium potassium alloy packaging bearing the DANGEROUS WHEN WET label in motor vehicles and rail cars which are not placarded FLAMMABLE SOLID W. (Modes 1, 2).
9316–X	DOT–E 9316	Fluorowere, Inc., Chaska, MN	49 CFR 173.268, 173.299, 178.35, and 178.35a, Part 173, Subpart F.	To authorize additional size containers of 15 and 30 gallon capacity and to include additional corrosive materials and other hazard classes such as oxidizers and flammable liquids. (Modes 1, 2).
9430–X	DOT–E 9430	Bondico, Inc., Jacksonville, FL.	49 CFR 173.3(c)	To authorize an optional 12 inch lid configuration on the polyethylene/fiberglass 90 gallon capacity salvage drum. (Modes 1, 2).
9467–P	DOT–E 9467	Eastman Kodak Co., Rochester, NY.	49 CFR 177.834(k)	To become a party to Exemption 9467. (Mode 1).
9571–P	DOT–E 9571	Environmental Health Research and Testing, Inc., Lexington, KY.	49 CFR Parts 100 through 177.	To become a party to Exemption 9571. (Modes 1, 2, 3, 4, 5).

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9491–N	DOT–E 9491	E.I. du Pont de Nemours and Co., Inc., Wilmington, DE.	49 CFR 173.302, 173.304	To authorize transport of hexaflouroethane and triflouromethane in DOT Specification 3AL cylinders. (Modes 1, 2, 3, 4, 5)
9502–N	DOT–E 9502	Callery Chemical Co., Evans City, PA.	49 CFR 173.302(g)	To authorize use of DOT Specification 3A and 3E cylinders for transportation of diborane and diborane mixtures. (Modes 1, 2, 3)
9517–N	DOT–E 9517	Conroe Aviation Service, Inc., Conroe, TX.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), and 175.320(b), Part 107, Appendix B.	To authorize carriage of Class A, B and C explosives that are not permitted for air shipment or in quantities greater than those prescribed for air shipment (Mode 4)
9551–N	DOT–E 9551	Connie Kalitta Services, Inc., Ypsilanti, MI.	49 CFR 172.101 172.204(c)(3), 173.27, 175.30(a)(1), and 175.320(b), Part 107, Appendix B.	To authorize carriage of Class A, B and C explosives that are not permitted for air shipment or in quantities greater than those prescribed for air shipment. (Mode 4)
9582–N	DOT–E 9582	Amoco Oil Co., Chicago, IL	49 CFR 179.200–17, Part 107, Appendix B.	To authorize use of DOT Specification 111A100W3 tank cars fitted with solid bottom outlet caps in place of the threaded bottom outlet caps. (Mode 2)
9609–N	DOT–E 9609	Applied Companies, San Fernando, CA.	49 CFR 173.302(a), 175.3, 178.65.	To authorize manufacture, mark and sell of welded non–DOT specification non-reusable, non-refillable steel toroidal pressure vessel for a military system. (Modes 1, 2, 4)
9614–N	DOT–E 9614	Snelson's Welding Service, Norman, OK.	49 CFR 173.119, 173.245, and 178.253.	To authorize manufacture, marking and sale of non–DOT Specification portable tanks manifolded together within a frame and securely mounted on a truck chassis, for transportation of flammable liquids and corrosive liquids. (Mode 1)

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9636-N	DOT-E 9636	The Garrett Corp., Tempe, AZ.	49 CFR 173.304(a)(1), 175.3, and 178.44.	To authorize manufacture, marking and sale of non-DOT specification welded pressure vessel comparable to a DOT Specification 3HT cylinder with certain exceptions, for transportation of compressed gases. (Modes 1, 4, 5)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 9650-N	DOT-E 9650	Dynamit Nobel of America, Inc., Rockleigh, NJ.	49 CFR 171.12, 172.101, 172.102, and 176.11(a).	To authorize transport of tetrazole-1-acetic acid in fiber drums conforming with UN Specification 1G1 or 1G2 (comparable to DOT Specification 21C fiber drum). (Modes 1, 2, 3)
EE 9651-N	DOT-E 9651	Irecoo Inc., Salt Lake City, UT.	49 CFR 173.70(b), 176.11(a)	Too authorize transport of diazod initrophenol in non-DOT specification metal drums not to exceed 10 gallon capacity. (Modes 1, 3)
EE 9656-N	DOT-E 9656	The Bureau of Explosive, AAR, Edison, NJ.	49 CFR 173.86	To authorize one-time transport for disposal purposes of explosives with a tentative Class A or Class B hazard class. (Mode 1)

WITHDRAWALS

Application No.	Applicant	Regulation(s) Affected	Nature of exemption thereof
7909-P	Standard Oil Engineered Materials Co., Niagara Falls, NY.	49 CFR 172.203, 172.400, 172.402 (a)(2), 172.402(a)(3), 172.504(a), 173.345(a), 173.359(c), 173.364(a), 173.370(b), 173.370(d), 173.377(f), 175.3, 175.30, and 175.33.	To become a party to Exemption 7909. (Modes 1, 2, 4)

Denials

9526-N Request by Exxon Chemicals Americas, Baton Rouge, LA to authorize the intermittent unloading of bromine from tank cars with connections attached after unloading and tank cars temporarily unattended denied August 21, 1986.

9622-N Request by Monsanto Company, St. Louis, MO to allow unloading of anhydrous hydrogen chloride without an attendant within the required 25 feet of vehicle but instead allow unloading in a special area monoitored by TV under specially controlled conditions denied August 12, 1986.

Issued in Washington, DC, on October 27, 1986.

J. Suzanne Hedgepeth,

Chief, Exemption, Branch, Office of Hazardous Materials Transportation.

[FR Doc. 86-24730 Filed 10-31-86; 8:45 am]

BILLING CODE 4910-60-M

Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in September 1986. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
868-X	DOT-E 868	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.3(a), 173.7(a), 174.10, 174.104(f), 174.8, 177.801, 177.806(a).	To authorize exceptions to requirements for carrier inspection of manufacturer, vehicle, loading, etc. for transportation of Class A and B explosives loaded by Department of Defense shippers in DOT Specification containers. (Modes 1, 2)
2582-P	DOT-E 2582	Solkatronic Chemicals, Inc., Fairfield, NJ.	49 CFR 175.3, Part 173, Subparts D, E, F, G	To become a party to Exemption 2582. (Modes 1, 2, 3, 4)
4588-X	DOT-E 4588	U.S. Department of Energy, Washington, DC.	49 CFR 173.65(a)	To authorize use of packaging not presently prescribed for certain high explosives. (Mode 1)
4850-X	DOT-E 4850	Owen Oil Tools, Inc., Fort Worth, TX	49 CFR 173.100(cc), 175.3	To authorize shipment of flexible linear shaped charges, metal clad, in 100' lengths containing not more than 50 grains per lineal foot of high explosive, as a Class C explosive. (Modes 1, 2, 4)
4884-P	DOT-E 4884	Solkatronic Chemicals, Inc., Fairfield, NJ.	49 CFR 173.302(a)(1), 175.3, 178.61	To become a party to Exemption 4884. (Modes 1, 2, 3, 4, 5)
5036-P	DOT-E 5036	Solkatronic Chemicals, Inc., Fairfield, NJ.	49 CFR 173.630, 173.119, 173.135(a)(6), 173.136(a)(5), 173.247(a)(1), 173.346, 173.620, 175.3.	To become a party to Exemption 5036. (Modes 1, 2, 3, 4)
5403-X	DOT-E 5403	Halliburton Services, Duncan, OK	49 CFR 173.245(a)(31), 173.248(a)(6), 173.249(a)(6), 173.263(a)(10), 173.264(a)(14), 173.268(b)(3), 173.272(i)(21), 173.289(a)(4), 178.343-2(b), 178.343-5(b)(1)(i), 178.343-5(b)(2)(i).	To autherize use of a non-DOT specification cargo tank meeting the requirements of DOT Specification MC-312 with certain exceptions in support of oil well acidizing and industrial cleaning operations. (Modes 1, 3)
5600-P	DOT-E 5600	Solkatronic Chemicals, Inc., Fairfield, NJ.	49 CFR 175.3, Part 173, Subparts D, Subparts F, G.	To become a party to Exemption 5600. (Modes 1, 2, 4)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
5649-X	DOT-E 5649	Great Lakes Chemical Corp., Adrian, MI	49 CFR 173.154(a)	To authorize shipment of an oxidizer, in non-DOT specification polypropylene or polyethylene bags. (Modes 1, 2)
5820-X	DOT-E 5820	ICI Americas, Inc., Wilmington, DE	49 CFR 173.315(a)	To authorize shipment of nonflammable gases in non-DOT specification IMCO Type 5 portable tanks. (Modes 1, 2, 3)
6117-X	DOT-E 6117	Montana Sulphur and Chemical Co., Billings MT.	49 CFR 172.504, 173.314(c)	To authorize transport of hydrogen sulfide in DOT Specification 105A600W tank car tanks or proposed DOT Specification 120A600W tank car tanks. (Mode 2)
6296-X	DOT-E 6296	American Cyanamid Co., Wayne, NJ	49 CFR 173.377(g)	To authorize additional bag packagings, for transportation of certain Class B poisons in DOT Specification 44D multi-wall paper bags. (Modes 1, 2)
6296-X	DOT-E 6296	Rhone-Poulenc Inc., Monmouth, NJ	49 CFR 173.377(g)	To authorize additional bag packagings, for transportation of certain Class B poisons in DOT Specification 44D multi-wall paper bags. (Modes 1, 2)
6325-P	DOT-E 6325	J.H. Van Amburgh Explosives, Inc., Dallas, TX.	49 CFR 173.154(a)	To become a party to Exemption 6325. (Mode 1)
6369-X	DOT-E 6369	E. I. du Pont de Nemours and Co., Inc., Wilmington, DE.	49 CFR 173.346(a)(10), 173.347(a)(2), 173.353(a)(4), 173.374(a).	To authorize use of AAR proposed DOT Specification 120A300W and 120A400W tank car tanks, for transportation of certain Class B poisonous liquids. (Mode 2)
6418-P	DOT-E 6418	Trical, Inc., Hollister, CA	49 CFR 173.357(b)	To become a party to Exemption 6418. (Mode 1)
6543-X	DOT-E 6543	Union Carbide Corp., Danbury, CT	49 CFR 173.119, 173.135(a)(6), 173.136(a)(5), 173.245, 173.247, 173.271, 175.3.	To authorize shipment of certain corrosive and flammable liquids in non-DOT specification 16 gauge, Type 304 stainless steel cylinders and/or 14 gauge Type 316 stainless steel cylinders. (Modes 1, 2, 3, 4)
6543-P	DOT-E 6543	Solkatronic Chemicals, Inc., Fairfield, NJ.	49 CFR 173.119, 173,135(a)(6), 173.136(a)(5), 173.245, 173.247, 173.271, 175.3.	To become a party to Exemption 6543. (Modes 1, 2, 3, 4)
6611-X	DOT-E 6611	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.318(a)	To authorize use of a non-DOT specification vacuum insulated portable tank, for transportation of a nonflammable gas. (Modes 1, 3)
6762-P	DOT-E 6762	Polymetrics, Inc., Jenkintown, PA	49 CFR 173.286(b)(2), 175.3	To become a party to Exemption 6762. (Modes 1, 2, 3, 4)
6765-P	DOT-E 6765	Messer Griesheim Industries, Inc., Valley Forge, PA.	49 CFR 173.318(a), 176.76(h)(4)	To become a party to Exemption 6765. (Modes 1, 3)
6874-X	DOT-E 6874	ICI Americas, Inc., Wilmington, DE	49 CFR 172.101, 173.370(a)(13)	To authorize transport of sodium and potassium cyanides in non-DOT specification wooden boxes. (Modes 1, 2, 3)
6874-X	DOT-E 6874	Degussa Corp., Teterboro, NJ	49 CFR 172.101, 173.370(a)(13)	To authorize transport of sodium and potassium cyanides in non-DOT specification wooden boxes. (Modes 1, 2, 3)
6874-X	DOT-E 6874	E. I. du Pont de Nemours and Company, Wilmington, DE.	49 CFR 172.101, 173.370(a)(13)	To authorize transport of sodium and potassium cyanides in non-DOT specification wooden boxes. (Modes 1, 2, 3)
6902-P	DOT-E 6902	Solkatronic Chemicals, Inc., Fairfield, NJ.	49 CFR 173.314(c), 179.300-15	To become a party to Exemption 6902. (Modes 1, 2)
6971-P	DOT-E 6971	Accu-Standard, New Haven, CT	49 CFR Parts 100 through 199	To become a party to Exemption 6971. (Modes 1, 2, 3, 4, 5)
7024-P	DOT-E 7024	Greenwood Motor Lines, Inc., Greenwood, SC.	49 CFR 173.249(a)(7)	To become a party to Exemption 7024. (Mode 1)
7041-X	DOT-E 7041	Ethyl Corp., Baton Rouge, LA	49 CFR 173.134(a)(6)	To authorize shipment of pyrophoric waste materials in non-DOT specification cargo tank of the MC-331 type. (Mode 1)
7052-P	DOT-E 7052	Eveready Battery Co., Inc., Rocky River, OH.	49 CFR 172.101,172.420,175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, 4)
7052-X	DOT-E 7052	Matsushita Battery Industrial Co., Osaka, Japan.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solids. (Modes 1, 2, 3, 4)
7052-P	DOT-E 7052	Telonics, Inc., Mesa, AZ	49 CFR 172.101, 172.420, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, 4)
7052-P	DOT-E 7052	Schlumberger Well Services, Rosharon, TX.	49 CFR 172.101, 172.420, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, 4)
7052-P	DOT-E 7052	Toshiba Battery Co., Ltd., Tokyo, Japan	49 CFR 172.101, 172.420, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, 4)
7052-P	DOT-E 7052	ITT Barton Instruments Co., City of Industry, CA.	49 CFR 172.101, 172.420, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, 4)
7052-X	DOT-E 7052	EIC Laboratories, Inc., Norwood, MA	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, 4)
7227-X	DOT-E 7227	Richmond Lox Equipment Co., Livermore, CA.	49 CFR 172.203, 173.318,173.32, 173.320, 175.3, 176.30, 176.76, 178.338.	To authorize manufacture, marking and sale of vacuum insulated non-DOT specification portable tanks, for transportation of liquid nitrogen. (Modes 3, 4)
7247-X	DOT-E 7247	U.S. Department of Defense, Falls Church, VA.	49 CFR 146.29-11(c)(1), 146.29-75(b)(2)	To authorize a bulkhead in the lower hold of a vessel separating military explosives from general cargo to be secured on 4 inch by 6 inch uprights, in lieu of the required 6 by 6 inch uprights. (Mode 3)
7607-P	DOT-E 7607	HDR Infrastructure, Inc., Omaha, NE	49 CFR 172.101, 175.3	To become a party to Exemption 7607. (Mode 5)
7650-X	DOT-E 7650	ICI Americas, Inc., Wilmington, DE	49 CFR 173.315	To authorize use of non-DOT specification vacuum insulated steel portable tanks, for shipment of certain nonflammable compressed gases. (Modes 1, 3)
7694-P	DOT-E 7694	Quantic Industries, Inc., San Carlos, CA	49 CFR 173.302(a)(4), 175.3	To become a party to Exemption 7694. (Modes 1, 2, 4)
7716-P	DOT-E 7716	Atlas Powder Co., Dallas, TX	49 CFR 173.153(b)(1)	To become a party to Exemption 7716. (Modes 1, 2, 3)
7719-X	DOT-E 7719	Turner, Sycamore, IL	49 CFR 173.304, 175.3, 178.65	To authorize use of brazed DOT Specification 39 cylinders, for transportation of methylacetylene propadiene, stabilized. (Modes 1, 2, 4)
7741-X	DOT-E 7741	Bell Aerospace Textron, Buffalo, NY	49 CFR 173.276(a), 173.302(a), 173.34(d), 175.3, 175.30.	To authorize shipment of anhydrous hydrazine and helium in non-refillable non-DOT specification cylinders. (Modes 1, 3, 4)
7823-X	DOT-E 7823	Allied Corp., Morristown, NJ	49 CFR 173.246	To authorize transport of iodine pentafluoride in non-DOT specification welded stainless steel cylinders complying with DOT Specification 4BW with certain exceptions. (Modes 1, 2, 3)
7823-X	DOT-E 7823	Allied Corp., Morristown, NJ	49 CFR 173.246	To authorize transport of iodine pentafluoride in non-DOT specification welded stainless steel cylinders complying with DOT Specification 4BW with certain exceptions. (Modes 1, 2, 3)
7823-X	DOT-E 7823	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.246	To authorize transport of iodine pentafluoride in non-DOT specification welded stainless steel cylinders complying with DOT Specification 4BW with certain exceptions. (Modes 1, 2, 3)
7835-P	DOT-E 7835	Solkatronic Chemicals, Inc., Fairfield, NJ.	49 CFR 171.848, Part 107 Appen. B(1)	To become a party to Exemption 7835. (Mode 1)
7840-X	DOT-E 7840	General Dynamic Corp., Fort Worth, TX	49 CFR 173.87, 175.3, 176.83	To authorize transport of a Class C explosive and a nonflammable compressed gas, in the same non-DOT specification fiberboard shipping container. (Modes 1, 2, 3, 4, 5)
7840-X	DOT-E 7840	Douglas Aircraft Co., Long Beach, CA	49 CFR 173.87, 175.3, 176.83	To authorize transport of a Class C explosive and a nonflammable compressed gas, in the same non-DOT specification fiberboard shipping container. (Modes 1, 2, 3, 4, 5)

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RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7840-X	DOT-E 7840	Weber Aircraft, Burbank, CA	49 CFR 173.87, 175.3, 176.83	To authorize transport of a Class C explosive and a nonflammable compressed gas, in the same non-DOT specification fiberboard shipping container. (Modes 1, 2, 3, 4, 5)
7991-P	DOT-E 7991	Burlington Northern Railroad Co., Ft. Worth, TX.	49 CFR Parts 100-177	To become a party to Exemption 7991. (Mode 1)
8035-X	DOT-E 8035	NL McCullough/NL Industries, Inc., Houston, TX.	49 CFR 173.100(v), 173.112, 175.3	To authorize transport of limited quantities of certain propellant explosives in a plastic tube packed in a DOT Specification 12B fiberboard box. (Modes 1, 2, 3, 4)
8059-X	DOT-E 8059	EFI Corp., d/b/a EFIC, San Jose, CA	49 CFR 173.302(a)(1), 173.304(a), 173.304(d), 175.3.	To authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastic full composite cylinders, for transportation of certain flammable and nonflammable compressed gases. (Modes 1, 2, 3, 4, 5)
8111-X	DOT-E 8111	U.S. Department of Energy, Washington, DC.	49 CFR 173.304(a), 175.3	To authorize use of non-DOT specification welded, stainless steel cylinders, for transportation of a nonflammable gas mixture. (Modes 1, 2, 3, 4, 5)
8156-P	DOT-E 8156	Solkatronic Chemicals, Inc., Fairfield, NJ.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To become a party to Exemption 8156. (Modes 1, 2)
8230-P	DOT-E 8230	J.T. Baker Chemical Co., Phillipsburg, NJ.	49 CFR 173.268(b)(6), 173.269(a)(4)	To become a party to Exemption 8230. (Modes 1, 2, 3, 4)
8378-X	DOT-E 8378	Sigma Chemical Co., St. Louis, MO	49 CFR 173.268, 173.5	To authorize use of DOT Specification 12B fiberboard boxes with inside DOT Specification 2E polyethylene bottles, for transportation of a dilute solution of nitric acid. (Modes 1, 2, 4)
8378-P	DOT-E 8378	Aldrich Chemical Co., Inc., Milwaukee, WI.	49 CFR 173.268, 175.3	To become a party to Exemption 8378. (Modes 1, 2, 4)
8431-X	DOT-E 8431	American Hoechst Corp., Somerville, NJ	49 CFR 173.294(a)(2), 179.202-16	To authorize shipment of monochloroacetic acid solution in DOT Specification 111A100W6 insulated tank cars. (Mode 2)
8431-X	DOT-E 8431	Dow Chemical Co., Midland, MI	49 CFR 173.294(a)(2), 179.202-16	To authorize shipment of monochloroacetic acid solution in DOT Specification 111A100W6 insulated tank cars. (Mode 2)
8445-X	DOT-E 8445	Waste Conversion, Inc., Colmar, PA	49 CFR Part 173, Subpart D, E, F, H	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1)
8445-P	DOT-E 8445	HazMat Environmental Group, Inc., Buffalo, NY.	49 CFR Part 173, Subpart D, E, F, H	To become a party to Exemption 8445. (Mode 1)
8451-X	DOT-E 8451	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.65, 173.86(e), 175.3	To authorize shipment of not more than 25 grams of high explosives and pyrotechnics in 4 or 6 inch diameter piper overpacked in cushioned DOT Specification 12H box, strong wooden box, or metal drum. (Modes 1, 2, 4)
8453-P	DOT-E 8453	Pacific Powder Co., Tenino, WA	49 CFR 173.114a	To become a party to Exemption 8453. (Mode 1)
8453-P	DOT-E 8453	Pacific Motor Transport, Tenino, WA	49 CFR 173.114a	To become a party to Exemption 8453. (Mode 1)
8464-X	DOT-E 8464	Garrett Pneumatic Systems Division, Tempe, AZ.	49 CFR 173.302(a)	To authorize manufacture, marking and sale of non-DOT specification nonreusable, nonrefillable toroidal pressure vessels, for transportation of nonflammable, nonliquefied gases. (Modes 1, 4, 5)
8473-X	DOT-E 8473	Degussa AG, Frankfurt, West Germany	49 CFR 173.122	To authorize use of non-DOT specification IMCO Type 5 portable tanks for shipment of a flammable liquid. (Modes 1, 2, 3)
8489-P	DOT-E 8489	Chase Bag Co., Oak Brook, IL	49 CFR 173.154, 173.182, 173.217, 173.245b	To become a party to Exemption 8489. (Modes 1, 2, 3)
8526-X	DOT-E 8526	Phelco Inc. Trucking, Hazelwood, MO	49 CFR 177.834(L)(2)(i)	To authorize shipment of flammable liquids and/or flammable gases, in temperature controlled equipment. (Mode 1)
8627-P	DOT-E 8627	Ancor Services, Inc., Kilgore, TX	49 CFR 173.119, 173.245, 178.253	To become a party to Exemption 8627. (Mode 1)
8723-X	DOT-E 8723	Atlas Powder Co., Dallas, TX	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Modes 1, 3)
8723-X	DOT-E 8723	IRECO Inc., Salt Lake City, UT	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Modes 1, 3)
8741-X	DOT-E 8741	Alpha Aviation, Inc., Dallas, TX	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize carriage of certain Class A, B and C explosives not permitted for air shipment or in quantities greater than those prescribed for air shipment. (Mode 4)
8867-X	DOT-E 8867	3M Transportation, St. Paul, MN	49 CFR 173.119(k), 175.3	To authorize shipment of a certain viscous flammable liquid, n.o.s. in a polyvinyl chloride bottle, overpacked six to a DOT Specification 12B fiberboard box. (Modes 1, 2, 4)
8891-X	DOT-E 8891	BIC Corp., Milford, CT	49 CFR 173.21, 173.308	To authorize not more than two cigarette lighters containing flammable gas to be packed in the same inner container, overpacked in corrugated fiberboard boxes. (Modes 1, 2)
9168-X	DOT-E 9168	All-Pak, Inc., Pittsburgh, PA	49 CFR 172.400, 172.504, 173 118, 173.244, 173.345, 173.346, 173.359, 173.370, 173.377, 175.3, 175.33.	To authorize manufacture, marking and sale of specially designed composite type packaging, for shipment of small quantities of various flammable, corrosive, and poison B liquids and solids shipped without Poison, Corrosive, or Flammable labels. (Modes 1, 2, 4)
9253-X	DOT-E 9253	Wiva Verpakkingen B.V., Oosterhout, Netherlands.	49 CFR 173.119, 173.125, 173.256, 173.266(b), Part 173, Subpart F.	To manufacture, mark and sell non-DOT specification reusable polyethylene drums of 55-gallon capacity for shipment of certain flammable or corrosive liquids and hydrogen peroxide of 52% or less. (Modes 1, 2, 3)
9262-X	DOT-E 9262	Owen Oil Tools Inc., Fort Worth, TX	49 CFR 173.100(v), 175.30	To authorize transport of oil well cartridges containing not more than 500 grains of high explosive as Class C explosive, in a DOT Specification 12B fiberboard box. (Modes 1, 3, 4)
9277-X	DOT-E 9277	American Cyanamid Co., Wayne, NJ	49 CFR 173.377(j)	To authorize shipment of organic phosphate compound mixture, dry, Class B poison, in non-DOT specification five-ply kraft multiwall bags of 50 pounds capacity having a minimum total basis weight of 250 pounds. (Modes 1, 2)
9282-X	DOT-E 9282	Halocarbon Products Corp., Hackensack, NJ.	49 CFR 173.314(c)	To authorize use of DOT Specification 110A800W multi-unit tank car tanks except for safety relief devices, for shipment of trifluoroethylene. (Mode 1)
9283-X	DOT-E 9283	Varian Associates, Palo Alto, CA	49 CFR 173.306(f)(3), 175.3	To authorize use of a refrigeration system and components that consists of accumulators exempt from the retest requirements prescribed in 49 CFR 173.306(f)(2). (Modes 1, 2, 4, 5)
9307-X	DOT-E 9307	Better Methods, Inc., Paterson, NH	49 CFR 173.119(b)(4)	To authorize shipment of methyl alcohol in inside metal containers of two-gallon capacity, overpacked three to a DOT Specification 12B fiberboard box. (Mode 1)

BEST COPY AVAILABLE

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9338–P	DOT–E 9338	Anaquest, Cleveland, OH	49 CFR 179.302(a)	To become a party to Exemption 9338. (Modes 1, 2)
9401–X	DOT–E 9401	Arbel-Fauvet-Rail, Paris, France	49 CFR 173.315, 178.245	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of flammable and nonflammable liquefied compressed gases. (Modes 1, 2, 3)
9402–X	DOT–E 9402	Arbel-Fauvet-Girel, St. Laurent-Baingy, France.	49 CFR 173.315, 178.245	To authorize an additional 20 IMO Type 5 portable tank identical to those authorized except they will be ASME U stamped and incorporate a modified safety relief device. (Modes 1, 2, 3)
9487–P	DOT–E 9487	Chem-Tech, Ltd., Des Moines, IA	49 CFR 173.304	To become a party to Exemption 9487. (Mode 1)
9571–P	DOT–E 9571	National Institutes of Health, Bethesda, MD.	49 CFR Parts 100–177	To become a party to Exemption 9571. (Modes 1, 2, 3, 4, 5)
9597–X	DOT–E 7638	Minnesota Valley Engineering, Inc., New Prague, MN.	49 CFR 173.316(a), 175.3	To authorize manufacture, mark and sell of DOT Specification 4L cylinders for shipment of carbon dioxide, refrigerated liquid, classed as a nonflammable gas. (Modes 1, 2, 3, 4)
9607–X	DOT–E 9607	Darworth Co., Avon, CT	49 CFR Parts 100–199	To authorize shipment of self pressurized containers in strong outside fiberboard box with inside container which consist of a Polyethylene Terephthalate container enclosed in a neoprene rubber sleeve and overpacked in a vented metal can. (Modes 1, 4, 5)
9625–X	DOT–E 9541	Ashland Chemical Co., Dublin, OH	49 CFR 177.848, Part 107, Appendix B	To authorize transport of poisonous gases on a specially constructed vehicle with other hazardous materials. (Mode 1)

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9508–N	DOT–E 9508	Callery Chemical Co., Evans City, PA	49 CFR 173.202(a)(3), 173.34(e), 175.3	To authorize use of a DOT Specification 4BW240 cylinder that is retested decennially instead of quinquenially, for transportation of a flammable wolid, dangerous when wet. (Modes 1, 2, 3, 4)
9566–N	DOT–E 9566	United Technologies, San Jose, CA	49 CFR 173.88, 173.92, 177.834(L)(1)	To authorize transport in temperature controlled equipment, of a rocket motor in packaging authorized by DOD, and in a propulsive state. (Mode 1)
9572–N	DOT–E 9572	DuBois Chemicals, Division of Chemed Corp., Cincinnati, OH.	49 CFR 173.256, 173.277	To authorize shipment of liquid cleaning compound, not exceeding 14% hydrofluoric acid, and hypochlorite solution, not exceeding 16% available chlorine, in DOT Specification 6D/2U composite packaging of 55-gallon capacity. (Modes 1, 2)
9583–N	DOT–E 9583	Flopetrol Johnston, Houston, TX	49 CFR 173.119, 173.302, 173.304, 173.34(d), 175.3.	To authorize use of a non-DOT specification welded, high pressure cylinder for oil sampling purposes. (Modes 1, 2, 3, 4)
9584–N	DOT–E 9584	Flopetrol Johnston, Houston, TX	49 CFR 173.302, 173.304, 173.34(d), 175.3	To authorize use of a non-DOT specification seamless cylinder designed and constructed in accordance with DOT Specification 3A. (Modes 1, 2, 3, 4)
9594–N	DOT–E 9594	Monsanto Co., St. Louis, MO	49 CFR 173.190	To authorize use of a non-DOT specification portable tank for a one-time shipment of a flammable solid. (Mode 2)
9608–N	DOT–E 9608	Suburban Propane Gas Corp., Morristown, NJ.	49 CFR 178.337–11(c)(6), Part 107, Appendix B.	To authorize temporary use of 425 DOT Specification MC-331 cargo tanks having the required remote control station in the vicinity of the discharge connection area, for transportation of a flammable gas. (Mode 1)
9610–N	DOT–E 9610	Hercules Inc., Wilmington, DE	49 CFR 172.203 (a), (e), 172.204, 173.29 (a), (d), Part 107, Appendix B, Parts 171–189.	To authorize transport of DOT Specification 21C fiber drums which contain not more than 5 grams of smokeless powder essentially without regulation. (Modes 1, 2)
9626–N	DOT–E 9626	Miller Electric Manufacturing Co., Appleton, WI.	49 CFR 177.834(k)	To authorize transport of welding machines containing batteries in non-accessible places on a motor vehicle. (Mode 1)
9632–N	DOT–E 9632	Arbel-Fauvet-Girel, St. Laurent-Blangy France.	49 CFR 173.315, 178.245	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of flammable and nonflammable liquefied compressed gases. (Modes 1, 2, 3)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 8006–P	DOT–E 8006	UMSI Inc., Plainfield, NJ	49 CFR 172.400(a), 172.504 Table 2	To become a party to Exemption 8006. (Mode 1)
EE 9661–N	DOT–E 9661	The First Earth Run & U.N. Children's Fund, New York, NY.	49 CFR 173.118, 173.21, 175.30, 175.85, Part 107, Appendix B, Part 172, Subpart C, Subpart D, E.	To authorize carriage onboard an aircraft of small quantities of a flammable liquid in safety lamps. (Mode 5)
EE 9665–N	DOT–E 9665	Aeron International Airlines, Inc., Hagerstown, MD.	49 CFR 172.101 column 6(b), 173.64, 175.30	To authorize transport of a propellant explosive aboard cargo aircraft only.
EE 9666–N	DOT–E 9666	Stauffer Chemical Co., Westport, CT	49 CFR Part 107, Appendix B	To authorize approximately 150 DOT Specifications 4BA240 and 4BW240 cylinders, for transportation of a flammable liquid. (Modes 1, 3)
EE 9667–N	DOT–E 9667	Trinity Industries, Inc., Dallas, TX	49 CFR 172.203(a), 173.34(e), Part 107, Appendix B.	To authorize transport for exportation purposes only of approximately 2,400 non-DOT specification portable tanks containing approximately 2.5 pints, of methyl alcohol, to be shipped as limited quantities under to the Hazardous Materials Regulations. (Modes 1, 3)

Denials

5322–X—Request by San Diego Gas & Electric Co., San Diego, CA to authorize use of a non-DOT specification expanded polystyrene or vacuum-perlite insulated cargo tank for transportation of certain flammable gases denied September 1, 1986.

9613–N—Request by Pressed Steel Tank Co., Inc. Milwaukee, WI to authorize use of a small welded cylinder with a service pressure of at least 1800 psig for transportation of carbon dioxide and other compressed gases denied September 22, 1986.

Issued in Washington, DC, on October 27, 1986.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 86-24740 Filed 10-31-86; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: October 27, 1986.

The Department of Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 95-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7313, 1201 Constitution Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB No.: 1512-0353
Form No.: ATF REC 5170/2
Type of Review: Extension
Title: Wholesale Dealers Records of Receipt of Alcoholic Beverages, Disposition of Distilled Spirits, and Monthly Summary Report (Supplemental)
Clearance Officer: Robert G. Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7202, Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Comptroller of the Currency

OMB No.: 1557-0081
Form No.: FFIEC 031, 032, 033, and 034
Type of Review: Extension
Title: Reports of Condition and Income (Interagency Call Report)
Clearance Officer: Eric Thompson, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219
OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Internal Revenue Service

OMB No.: 1545-0046
Form No.: IRS Form 982
Type of Review: Revision
Title: Reduction of Tax Attributes Due to Discharge of Indebtedness
Clearance Officer: Garrick Shear (202) 566-6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Douglas J. Colley,

Departmental Reports Management Office.

[FR Doc. 86-24760 Filed 10-31-86; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. USIA is requesting approval for a three year extension of the approval for the use of our Form IAP-37, "Exchange Visitor Program Application."

DATE: Comments must be received by November 15, 1986.

Copies: Copies of the request for clearance (SF-83), supporting statement, instructions, transmittal letter and other documents submitted to OMB for review may be obtained from the USIA Clearance Officer. Comments on the item listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for USIA.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, John E. Davenport, United States Information Agency, M/ASP 301 4th Street SW, Washington, DC 20547, telephone (202) 485-7505. And OMB review: Bruce McConnell, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, telephone (202) 395-3785.

SUPPLEMENTARY INFORMATION: Exchange Visitor Program Application.

Abstract:

This information collection is intended to permit private businesses, government agencies and public and private educational institutions to apply for the authority to bring students, scholars, professors, trainees and international visitors to the United States as Exchange Visitors on the Exchange Visitor Visa J-1. Information is used to evaluate prospective Exchange Visitor sponsors.

Dated: October 24, 1986.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 86-24750 Filed 10-31-86: 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Agency Form Letter Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form letter, (2) the title of the form letter, (3) the agency form letter number, if applicable, (4) how often the form letter must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form letter, and (8) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the form letter and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans' Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joe Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before January 2, 1987.

Dated: October 29, 1986.

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By direction of the Administrator.

David A. Cox,

Associate Deputy Administrator for Management.

Extension

1. Department of Medicine and Surgery
2. Request to Firm for Estimate of Cost for Purchase or Repair of Prosthetic Applicances
3. VA Form Letter 10–90
4. On occasion
5. Businesses or other for-profit
6. 22,500 responses
7. 1,800 hours
8. Not applicable

Extension

1. Department of Veterans Benefits
2. Request to Employer for Employment Information in Connection with a Claim for Disability Benefits
3. VA Form Letter 29–459
4. On occasion
5. Individuals or households
6. 5,167 responses
7. 862 hours
8. Not applicable.

[FR Doc. 86–24804 Filed 10–31–86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 212
Monday, November 3, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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Consumer Product Safety Commission	1
Council on Environmental Quality	2
Equal Employment Opportunity Commission	3
Federal Election Commission	4
Neighborhood Reinvestment Corporation	5

1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, November 6, 1986.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

FY '87 Operating Plan

The staff will brief the Commission on the 1987 Operating Plan.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Sheldon D. Butts,
Deputy Secretary.
October 30, 1986.

[FR Doc. 86-24875 Filed 10-30-86; 12:12 pm]

BILLING CODE 6355-01-M

2

COUNCIL ON ENVIRONMENTAL QUALITY

October 29, 1986.

TIME AND DATE: 10:00 a.m., Wednesday, November 12, 1986.

PLACE: Conference Room First Floor, 722 Jackson Place, NW., Washington, DC.

MATTERS TO BE CONSIDERED:

1. The CEQ regulations implementing the procedural provisions of the National Environmental Policy Act (NEPA) provide that any interested party may file a request with the Council asking it to determine which federal agency shall be the lead agency for compliance with NEPA in regards to a particular proposal. 40 CFR 1501.5(e). The National Capital Planning Commission has filed such a request with CEQ in regards to the proposed PortAmerica project. The Council will discuss this request with representatives from involved federal agencies.

2. Other business.

CONTACT PERSON FOR MORE INFORMATION: Dinah Bear, General Counsel, Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC 20006.

A Alan Hill,
Chairman.

[FR Doc. 86-24823 Filed 10-29-86; 4:27 am]

BILLING CODE 3125-01-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (eastern time) Monday, November 10, 1986.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

Open

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. Notice of Proposed Rulemaking: Accrual of Pension Benefits Beyond Normal Retirement Age
4. Certification of Broward County Human Relations Division
5. Certification of Clearwater Community Relations Department
6. Certification of St. Petersburg Office of Human Relations

Closed

1. Proposed Contracts for Expert Services In Connection With Court Cases
2. Litigation Authorization: General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634-6748.

This Notice Issued October 29, 1986.

Dated: October 29, 1986.

Cynthia C. Matthews,
Executive Officer, Executive Secretariat.

[FR Doc. 86-24890 Filed 10-30-86; 1:56 pm]

BILLING CODE 6750-06-M

4

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NO.: 86-24626.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, November 6, 1986, 10:00 a.m.

THE FOLLOWING ITEM HAS BEEN ADDED TO THE AGENDA: Public hearing on Title 26 Proposed Rules.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 86-24859 Filed 10-30-86; 11:16 am]

BILLING CODE 6715-01-M

5

NEIGHBORHOOD REINVESTMENT CORPORATION

Personnel Committee Meeting

TIME AND DATE: 4:00 p.m., Tuesday, November 4, 1986.

PLACE: 1776 G Street, NW., 7th Floor Board Room, Washington, DC 20456.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION: Timothy McCarthy, Director of Communications, 376-2623.

AGENDA:

I. Setting of Officers' Salaries for FY 1987
II. Consideration of Executive Director's Recommendations on Officers' Performance Awards

Carol J. McCabe,
Secretary.

[FR Doc. 86-24874 Filed 10-30-86; 11:43 am]

BILLING CODE 7570-01-M

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federal register

Monday
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Part II

Committee for Purchase From the Blind and Other Severly Handicapped

Establishment of Procurement List 1987; Notice

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COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Establishment of Procurement List 1987

The Committee for Purchase from the Blind and Other Severely Handicapped was established by Pub. L. 92–28, June 23, 1971 (85 Stat. 77, 41 U.S.C. 46–48c) (hereinafter the Act) for the purpose of directing the procurement of selected commodities and services by the Federal Goverment to qualified workshops serving blind and other serverely handicapped individuals with the objective of increasing the employment opportunities for these individuals. The Committee is required to establish and publish in the **Federal Register** a procurement list of:

(1) Commodities produced by any qualified nonprofit agency for the blind or by any qualified nonprofit agency for other severely handicapped, and

(2) The services provided by any such agency

Which the Committee determines are suitable for procurement by the Government pursuant to the Act. The Act further provides that any entity of the Government which intends to procure any commodity or service on the procurement list, shall procure such commodity or service, at the price established by the Committee, from a qualified nonprofit agency for the blind or such agency for the other severely handicapped if the commodity or service is available within the normal period required by that Government entity. However, this requirement shall not apply to the procurement of any commodity which is available from Federal Prison Industries, Inc.

A Government entity is defined as any entity of the legislative branch or judicial branch, any executive agency or military department (as such agency and department are respectively defined by sections 102 and 105 of Title 5, United States Code), the U.S. Postal Service, and any nonappropriated fund instrumentality under the jurisdiction of the Armed Forces.

Notice is hereby given pursuant to section 2 of the Act that Procurement List 1987 is established as set forth below. Procurement List 1987 supersedes Procurement List 1986, October 15, 1985 (50 FR 41809) and subsequent changes thereto through October 31, 1986.

Any proposed additions or deletions to Procurement List 1986 pending on this date shall be considered as pending and applicable to Procurement List 1987.

By the Committee.

C.W. Fletcher,

Executive Director.

ASSIGNMENT CODES

CENTRAL nonprofit agency	Code
National Industries for the Blind	IB
National Industries for the Severely Handicapped	SH

Commodities

CLASS 1005

Sling, Adjustable, Small Arms (IB)
1005–00–167–4336
Sling, Padded, Adustable (IB)
1005–03–312–7177
Swab, Small Arms Cleaning (IB)
1005–00–912–4248
1005–00–288–3565

CLASS 1015

Staff Section (SH)
1015–00–699–0633

CLASS 1025

Staff Section (SH)
1025–00–563–7232
1025–01–044–2587

CLASS 1095

Scabbard, Bayonet-Knife (IB)
1095–00–508–0339

CLASS 1220

Case, Carrying (IB)
1220–00–765–5870
1220–00–937–8286

CLASS 1330

Tape Stiffener Assembly (SH)
1330–01–051–1533
13 million each annually

CLASS 1660

Harness Assembly (SH)
1660–00–066–2078

CLASS 1670

Harness, Parachutist (SH)
1670–00–897–8629
Message Dropper (SH)
1670–00–797–4495

CLASS 1680

Belt, Aricraft Safety (SH)
1680–00–725–5927
Wire Bundle Assemblies (SH)
1680–00–881–4215
1680–00–884–0409
1680–00–894–3991
1680–01–125–9646
1680–00–919–3706
1680–00–883–4487
1680–00–222–3876
1680–00–826–7752
1680–00–974–5275
1680–00–974–5276
1680–00–998–8594

CLASS 1730

Chock Wheel, Codit Reflecting (IB)
1730–00–294–3694
1730–00–063–4095
1730–00–294–3696
1730–00–294–3695
1730–00–945–8450
1730–00–163–8317 (4x6x24")
1730–00–NIB–001A (2x4x8") STD
1730–00–NIB–001B (6x8x18") STD
1730–00–NIB–001C (6x8x76") STD
1730–00–NIB–001D (8x12") U-SHAPED
1730–00–NIB–001E (10x20") U-SHAPED
Chock Wheel, Painted (IB)
1730–00–294–3694
1730–00–063–4095
1730–00–294–3696
1730–00–294–3695
1730–00–945–8450
1730–00–163–8317 (4x6x24")
1730–00–NIB–001A (2x4x8") STD
1730–00–NIB–001B (6x8x18") STD
1730–00–NIB–001C (6x8x76") STD
1730–00–NIB–001D (8x12") U-SHAPED
1730–00–NIB–001E (10x20") U-SHAPED
Chock Wheel, Reflective Tape (IB)
1730–00–294–3694
1730–00–063–4095
1730–00–294–3696
1730–00–294–3695
1730–00–945–8450
1730–00–163–8317 (4x6x24")
1730–00–NIB–001A (2x4x8") STD
1730–00–NIB–001B (6x8x18") STD
1730–00–NIB–001C (6x8x76") STD
1730–00–NIB–001D (8x12") U-SHAPED
1730–00–NIB–001E (10x20") U-SHAPED
Chock Wheel, Unpainted (IB)
1730–00–294–3694
1730–00–063–4095
1730–00–294–3696
1730–00–294–3695
1730–00–945–8450
1730–00–163–8317 (4x6x24")
1730–00–NIB–001A (2x4x8" std)
1730–00–NIB–001B (6x8x18" std)
1730–00–NIB–001C (6x8x76" STD)
1730–00–NIB–001D (8x12" U-SHAPED)
1730–00–NIB–001E (10x20") U-SHAPED

CLASS 2090

Weight, Canvas Bag (IB)
2090–00–845–9150

CLASS 2540

Belt, Automobile, Safety (IB)
2540–00–894–1273
2540–00–894–1275
2540–00–894–1274
2540–00–894–1276
Cushion Assembly, Back Rest (SH)
2540–00–737–3308
Cushion Assembly, Seat Back (SH)
2540–01–065–6288
Cushion Seat, Vehicular (SH)
2540–00–808–3811
2540–00–904–5680
2540–01–074–6363
Cushion, Seat Back, Vehicular (SH)
2540–00–880–3925
2540–01–065–6289
Kit, Deep Water Fording (SH)
2540–00–473–0111
2540–00–780–0844

2540–00–181–8109
Mirror and Bracket Assembly (SH)
2540–00–575–8392

CLASS 2920

Cable Assembly, Electrical (IB)
2920–01–027–0125 (50% of Gov't Rqmt)

CLASS 3510

Net, Laundry (IB)
3510–00–273–9738
3510–00–273–9739

CLASS 3920

Truck, Hand (IB)
3920–00–847–1305

CLASS 3990

Pallet, Corrugated Fiberboard, Material Handling (SH)
3990–00–L77–0044 Navy Ships Parts Control Center, Mechanicsburg, PA only
Pallet, Material Handling (SH)
3990–01–M00–0075 Pine Bluff Arsenal, AR only
3990–00–222–1051
3990–00–892–4394 Mechanicsburg, PA; Memphis, TN; Richmond, VA and Columbus, OH Depots only
Pallet, Wood (SH)
3990–00–X77–1721 New Cumberland Army Depot only
3990–00–NSH–0001 48X40X36" Social Security Administration, Baltimore, MD only
3990–00–NSH–0005 24X20" New Cumberland Army Depot only
3990–00–366–6806

CLASS 4130

Filter, Air Conditioning (IB)
4130–00–870–8796 Rgns 4, 5
4130–00–274–7800 Rgns 2, 3, W, 4, 5, 6, 7, 8, 9, 10
4130–00–541–3220 Rgns 4, 5
4130–00–756–1840 Rgns 2, 3, W, 4, 5, 6, 7, 8, 9, 10
4130–00–720–4143 Rgns 4, 5
4130–00–249–0966 Rgns 2, 3, W, 4, 5, 6, 7, 8, 9, 10
4130–00–203–3318 Rgns 4, 5
4130–00–203–3321 Rgns 2, 3, W, 4, 5, 6, 7, 8, 9, 10
4130–00–542–4482 Rgns 4, 5
4130–00–959–4734 Rgns 4, 5
4130–00–756–0978 Rgns 4, 5
4130–00–951–1208 Rgns 4, 5

CLASS 4240

Bag, Waterproofing (IB)
4240–00–377–9401
Harness, Head (SH)
4240–00–690–8765
4240–00–961–1064
Winterization Kit (SH)
4240–00–065–0319
(40% of Gov't Rqmt)

CLASS 4610

Bag, Drinking Water Storage (SH)
4610–00–268–9890

CLASS 4730

Fitting Kit (SH)
4730–00–470–6625

CLASS 4820

Valve, Ball (SH)
4820–00–052–4651
4820–00–052–4653

CLASS 4910

Creeper, Mechanic's (SH)
4910–00–251–6981
4910–00–106–7834
4910–00–NSH–0001

CLASS 5120

Screwdriver Set, Cross Tip (SH)
5120–00–357–7175
5120–00–580–0334
Screwdriver, Cross-Tip (SH)
5120–00–060–2004
5120–00–820–2995
5120–00–224–7370
5120–00–227–7293
5120–00–234–8913
5120–00–542–3438
5120–00–224–7375
5120–00–237–8174
5120–00–580–2361
Screwdriver, Flat-Tip (SH)
5120–00–289–9662
5120–00–287–2504
5120–00–287–2505
5120–00–278–1267
5120–00–288–7803
5120–00–236–2127
5120–00–278–1270
5120–00–227–7356
5120–00–260–4837
5120–00–227–7334
5120–00–293–0314
5120–00–222–8866
5120–00–596–8502
5120–00–278–1273
5120–00–062–0813
5120–00–293–3311
5120–00–222–8852
5120–00–596–9364
5120–00–293–0315
5120–00–227–7377
5120–00–180–3490
5120–00–236–2140
5120–00–062–8454
5120–00–720–4969
Vise, Multiposition (SH)
5120–00–991–1907

CLASS 5140

Bag, Tool (IB)
5140–00–772–4142
Bag, Tool (Satchel) (SH)
5140–00–473–6256
Belt, Tool, Repairman's (SH)
5140–00–529–2517
5140–00–529–1694
5140–00–529–2691
Tool Box, Portable (SH)
5140–00–289–8911
5140–00–289–8910

CLASS 5340

Strap (SH)
5340–00–235–4433
Strap, Webbing (SH)
5340–00–286–6895

CLASS 5350

Cloth, Abrasive (IB)
5350–00–187–6270
5350–00–187–6275
5350–00–187–6272
5350–00–187–6269
5350–00–187–6268
5350–00–187–6286
5350–00–187–6285
5350–00–187–6284
5350–00–187–6283
5350–00–187–6281
5350–00–187–6280
5350–00–187–6297
5350–00–187–6296
5350–00–229–3088
5350–00–229–3085
5350–00–187–6295
5350–00–187–6294
5350–00–187–6293
5350–00–187–6292
5350–00–187–6291
5350–00–274–6209
5350–00–187–6290
5350–00–187–6289
5350–00–187–7986
5350–00–229–3097
5350–00–229–3094
5350–00–229–3095
5350–00–229–3080
5350–00–229–3081
5350–00–229–3092
5350–00–192–9325
Mat, Abrasive (IB)
5350–00–967–5089
5350–00–967–5093
5350–00–967–5092

CLASS 5440

Ladder, Extension (Wood) (IB)
5440–00–223–6025
5440–00–242–1000
5440–00–223–6026
5440–00–242–0998
5440–00–223–6027
Ladder, Straight (Wood) IB)
5440–00–242–7151
5440–00–816–2585
5440–00–814–5084
5440–00–242–0995
5440–00–816–2575
5440–00–223–6029
5440–00–223–6030
Stepladder (IB)
5440–00–514–4483
5440–00–514–4485
5440–00–514–4487
5440–00–171–9836
5440–00–227–1592
5440–00–227–1593
5440–00–227–1594
5440–00–227–1595
5440–00–227–1596
5440–00–531–2589

CLASS 5510

Lath, Wood (SH)
5510–00–NSH–0002 (⅜×1–½×36")
5510–00–NSH–0003 (⅜×1–½×48")
BLM and U.S. Forest Service in Washington and Oregon only
Stake, Wood (SH)

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5510-00-NSH-0001 BLM at 5 Oregon locations only U.S. Forest Service in Washington and Oregon only
Stakes, Wood, Hub (SH)
5510-00-171-7733
5510-00-171-7732
Stakes, Wood, Location (SH)
5510-00-171-7701
5510-00-171-7700
5510-00-171-7734
Wedge, Wood (SH)
5510-00-640-9237

CLASS 5660

Fasteners, Fence Post (SH)
5660-00-148-7251

CLASS 5831

Amplifier Subassembly (SH)
5831-00-087-3408

CLASS 5940

Adapter, Battery Terminal (SH)
5940-00-549-6583
5940-00-549-6581

CLASS 6150

Cable Assembly, Power (SH)
6150-00-507-8852
6150-00-935-8799

CLASS 6230

Flashlight (SH)
6230-00-163-1856
Lantern, Electric, Head (SH)
6230-00-643-3562
Light, Desk (SH)
6230-00-299-7771
6230-00-682-3423

Light, Marker, Distress (SH)
6230-00-892-5192
Light-Marker, -Distress (without pouch) (SH)
6230-00-938-1778
Light-Marker, Distress (with pouch) (SH)
6230-00-067-5209

CLASS 6505

Ammonia Inhalant Solution, Aromatic (SH)
6505-00-106-0875
Iodine Ampoules, NF (SH)
6505-00-664-1408
Thimerosal Tincture, NF (SH)
6505-00-664-6911

CLASS 6510

Bandage, Muslin, Compressed Camouflaged (SH)
6510-00-201-1755

CLASS 6515

Bag, Tube Feeding (SH)
6515-00-481-2049

Case, Ear Plug (SH)
6515-00-299-8287 (80% of Gov't Rqmt)
Kit, Suture Removal (IB)
6515-00-690-6911
Tourniquet, Non-Pneumatic (IB)
6515-00-383-0565

CLASS 6530

Bag, Urine Collection (SH)
6530-00-057-0953
6530-00-761-0932
6530-00-761-0938
Cover, Litter (IB)
6530-00-784-1250
Drape, Surgical (IB)
6530-00-299-9608
6530-00-299-9607
6530-00-299-9605
6530-00-299-9604
Kit, Shaving Surgical Preparation (IB)
6530-00-676-7372
Litter, Folding (IB)
6530-00-783-7905
Pad, Cooling, Chemical (SH)
6530-00-133-4299
Pad, Litter (IB)
6530-00-137-3016
Pad, Pre-Operative Preparation (IB)
6530-00-457-8193
Paper Sheeting, Examination Table (IB)
6530-01-092-3914
6530-00-269-3598
6530-00-786-4790
Spineboard (SH)
6530-01-119-0011
6530-01-119-0012
Spreader Bar and Stirrups, Litter (IB)
6530-00-784-3450
Strap, Webbing Patient Securing (IB)
6530-00-784-4205
Strap, Webbing, Litter Securing (IB)
6530-00-784-4335
Surgical Dressing Set (IB)
6530-00-105-5826
Surgical Pack, Disposable (IB)
6530-00-103-6659
6530-01-174-8844
Towel Pack, Surgical (IB)
6530-00-110-1854
Urinal, Incontinent (IB)
6530-01-004-8969
6530-00-290-8292
6530-01-081-5303
6530-01-081-5304
Urinary Drainage Set (SH)
6530-01-056-3659
Wrapper, Sterilization (IB)
6530-00-299-3603
6530-00-197-9223
6530-00-197-9228
6530-00-197-9283
6530-00-926-4902
6530-00-926-4903
6530-00-926-4904
6530-00-926-4906

CLASS 6532

Cap—Operating, Surgical (SH)
6532-00-250-5042
6532-00-083-6545
6532-00-250-5041
6532-00-122-0468
Cap, Operating, Surgical (IB)
6532-00-299-9614
6532-00-299-9613
6532-00-299-9612
Clothing, Operating Room (SH)
6532-00-261-9005
6532-00-290-1887
6532-00-172-3509
6532-00-172-3507
6532-00-172-3508
6532-00-158-9890
6532-00-009-7174
Coat, Women's Pajama (SH)
6532-01-216-3199
6532-01-215-8093
Gown, Hospital (SH)
6532-00-104-9895
Gown, Hospital, Patient's Bedshirt (SH)
6532-01-005-8411
6532-01-005-8412
Gown, Hospital, Personnel (SH)
6532-01-045-5380
6532-01-045-5381
Gown, Operating, Surgical (SH)
6532-00-009-2034
6532-00-009-2035
Gown, Patient Examining (SH)
6532-00-421-7828
Gown, Operating, Surgical (IB)
6532-01-058-2519
6532-01-058-2520
6532-01-058-2523
6532-01-058-2522
6532-01-058-2524
6532-01-058-2521
6532-01-058-2525
Pillowcase—Disposable (IB)
6532-01-125-3269
Robe, Dressing, Men's (SH)
6532-01-215-7963
6532-01-215-7964
Robe, Dressing, Women's (SH)
6532-01-215-7966
Shirt, Operating, Surgical (IB)
6532-00-299-9627
6532-00-299-9634
6532-00-299-9633
6532-00-299-9632
Shirt, Operating, Surgical (SH)
6532-00-149-0322
6532-00-149-0323
6532-00-149-0324
6532-00-149-0325
Slippers, Convalescent Patient (SH)
6532-00-241-6393
6532-00-279-7794
6532-00-079-7889
6532-00-079-7899
6532-00-079-7902
6532-00-079-7904
6532-01-011-5055
6532-01-011-5056
6532-01-011-5057
Smock, Man's Dental Operating (SH)
6532-00-159-4881
6532-00-926-9964
6532-00-926-9975
6532-00-926-9976
Smock, Medical Assistant (SH)
6532-00-117-7487
6532-00-117-7542
6532-00-117-7543
6532-00-117-7546
Suit, Convalescent (SH)
6532-01-076-8684
6532-01-076-8683
6532-01-076-7369
6532-01-076-9769
Trousers, Women's Pajama (SH)
6532-00-149-0327
6532-00-149-0328
6532-00-149-0329
6532-00-149-0330
Trousers, Operating, Surgical (SH)
6532-01-216-2425
6532-01-216-2426

CLASS 6540

Case, Spectacles (IB)

6540-01-131-7919
6540-01-131-7918

CLASS 6625

Test Set, Lead (SH)
6625-00-553-1442
6625-00-395-9313

CLASS 6630

Micro Bleeder (IB)
6630-01-NIB-0002
Tube, Bleeding (IB)
6630-01-NIB-0001

CLASS 6645

Clock, Wall (IB)
6645-00-514-3523
6645-00-530-3342
6645-00-046-8848
6645-00-046-8849

CLASS 6695

Sampling Kit, Spectrometric Oil Analysis (IB)
6695-01-045-9820

CLASS 6840

Disinfectant, Detergent (IB)
6840-00-687-7904
6840-00-584-3129
6840-00-551-8346

CLASS 7105

Frame, Picture (SH)
7105-00-053-0170
7105-00-061-5834
7105-00-052-8697
7105-00-052-8695
7105-00-465-6199
7105-00-149-1277
7105-00-297-3398
7105-00-903-1842
7105-00-903-1843
7105-00-149-1282
7105-00-149-1281
7105-00-641-4385
7105-00-986-7356
7105-00-297-3397
7105-00-052-8696
7105-00-149-1276
7105-00-051-1212
7105-00-052-8686
7105-00-052-8698
Table, Coffee (SH)
7105-00-139-7573
7105-00-139-7601
Table, End (SH)
7105-00-139-7598
Table, Lamp (SH)
7105-00-139-7600

CLASS 7110

Blackboard (SH)
7110-00-132-6651
Bookcase, Steel, Contemporary (SH)
7110-00-601-9823
7110-00-149-1621
Bookcase, Wood, Executive (SH)
7110-00-973-5127
Credenza (SH)
7110-00-762-5513
Table, Office, Wood (SH)
7110-00-958-0780
7110-00-823-7675
7110-00-903-3061
7110-00-902-3052
Table, Steel (SH)
7110-00-113-0448
7110-00-113-0454
7110-00-149-2044
7110-00-149-2045
7110-00-149-2046

CLASS 7125

Cabinet, Storage (SH)
7125-00-449-6862

CLASS 7195

Bulletin Board (IB)
7195-00-989-2370
7195-00-844-9036
7195-00-989-2371
7195-00-844-9037
7195-00-989-2372
7195-00-844-9038
7195-00-990-0615
7195-00-843-7938
Costumer, Wood, Executive (SH)
7195-00-132-6842

CLASS 7210

Bedspread (IB)
7210-00-728-0186
7210-00-728-0187
7210-00-728-0188
7210-00-728-0189
7210-00-728-0190
7210-00-728-0191
7210-00-728-0173
7210-00-728-0175
7210-00-728-0176
7210-00-728-0177
7210-00-728-0178
7210-00-728-0179
7210-00-406-2800
7210-00-582-7540
7210-00-582-0984
7210-00-110-8104
7210-00-582-7541
7210-00-110-8105
Blanket, Bed/Bath (Flame Resistant) (IB)
7210-01-141-2458
Boxspring (IB)
7210-01-228-5735
7210-01-228-5736
7210-01-228-5737
7210-01-228-5738
Cover, Bed (IB)
7210-01-116-7860
7210-01-120-0679
7210-01-116-7858
7210-01-116-7859
7210-01-118-4085
7210-01-116-7855
7210-01-116-7856
7210-01-116-7857
7210-01-116-7854
7210-01-116-7853
7210-01-120-8015
7210-01-124-7626
7210-01-120-8013
7210-01-120-8014
7210-01-120-8011
7210-01-120-8010
7210-01-122-5015
7210-01-120-8012
7210-01-125-9250
7210-01-120-8009
7210-01-123-5148
7210-01-120-8017
7210-01-120-8021
7210-01-120-8022
7210-01-120-8018
7210-01-124-8303
7210-01-120-8019
7210-01-120-8020
7210-01-123-5149
7210-01-120-8016
Cover, Mattress (IB)
7210-00-291-8419
7210-00-205-3083
7210-00-205-3082
7210-00-067-7969
7210-00-996-7745
7210-00-883-8492
7210-00-140-4231
7210-00-140-4234
7210-00-543-8001
7210-00-171-1091
7210-00-935-8819
7210-00-230-1041
7210-00-241-9718
7210-00-543-8002
7210-00-140-4233
Insect Bar, Nylon (SH)
7210-00-266-9736
Mattress, Cotton-Felt (IB)
7210-00-139-6517
7210-00-139-6555
7210-00-139-6538
Mattress, Foam (IB)
7210-00-290-8300
7210-00-275-5873
7210-00-275-5874
7210-00-290-8298
7210-00-290-8297
7210-00-052-7327
7210-00-889-3733
7210-00-290-8299
7210-00-882-6503
7210-00-882-6504
Mattress, Innerspring (IB)
7210-00-205-3585
7210-00-139-6424
7210-00-716-0706
7210-00-139-6411
7210-00-205-3534
7210-00-139-6434
7210-00-139-6428
7210-00-110-8102
7210-00-110-8103
7210-01-177-3627
7210-01-177-3628
7210-01-177-1491
7210-01-177-1492
7210-01-177-1494
7210-01-177-1495
7210-01-177-1496
7210-01-177-1497
7210-01-177-1498
7210-01-177-1499
7210-01-177-1500
7210-01-177-1501
7210-01-177-1503
7210-01-177-1504
7210-01-177-1505
7210-01-177-1506
7210-01-177-1507
7210-01-177-1508
7210-01-177-1509
7210-01-177-1510
7210-01-177-1512
7210-01-177-1513

7210-01-177-1514
7210-01-177-1515
7210-01-076-9031
7210-01-076-1087
7210-01-078-2593
7210-01-076-1082
7210-01-076-1089
7210-01-076-9029
7210-01-076-1083
7210-01-076-1085
7210-01-076-8730
7210-01-076-1086
7210-01-077-9358
7210-01-075-8358
7210-01-076-1088
7210-01-076-8359
7210-01-076-1084
7210-01-076-9030
7210-01-228-5726
7210-01-228-5727
7210-01-228-5728
7210-01-228-5729
Mattress, Plastic Coated Innerspring (IB)
7210-00-995-1093
7210-00-682-7146
7210-00-529-3709
7210-01-138-8177
Pad, Mattress (IB)
7210-00-227-1526
7210-00-753-3042
Pillow, Bed (IB)
7210-01-035-3342
7210-00-753-6228
7210-00-894-1144
7210-01-015-5190
Except Richmond, VA depot
7210-00-119-5358
Pillow, Bed (Feather) (IB)
7210-00-205-3205
Pillow, Passenger, Headrest (IB)
7210-00-682-6601
Pillowcase (SH)
7210-00-119-7357
7210-01-030-5311
Pillowcase, Cotton/Cotton Polyester (IB)
7210-00-054-7910
7210-00-259-9005
7210-00-259-9006
7210-00-119-7356
7210-00-231-2373
7210-00-259-9004
7210-00-259-8897
7210-00-081-1380
Pillowcase, Disposable (IB)
7210-00-883-8494
7210-00-852-3417
Protector, Hospital Bed, Pillow (IB)
7210-00-958-9118
Protector, Mattress, Hospital Bed (IB)
7210-00-761-1471
7210-00-761-1470
Sheet, Bed (IB)
7210-00-299-9611
Sheet, Bed—Disposable (SH)
7210-00-144-6082
Sheet, Bed, Disposable (IB)
Memphis, TN and Tracy, CA Depots only
7210-00-498-0512
7210-00-139-6376
Tablecloth (SH)
7210-00-492-8381
Towel, Bath, Disposable(IB)
7210-01-029-0370
Washcloth (IB)
7210-01-013-2824

CLASS 7220

Mat, Floor (SH)
7220-00-205-3192
7220-00-205-3182
7220-00-457-6057
7220-00-457-6063
7220-00-151-6519
7220-00-151-6518
7220-00-151-6517
7220-00-477-3063
7220-00-194-1609
7220-00-457-6046
7220-00-477-1609
7220-00-457-6054
Mat, Floor (IB)
7220-00-205-3099
7220-00-224-6487
7220-00-238-8852
7220-00-224-6486
7220-00-238-8854
7220-00-165-7020
7220-01-023-9487
7220-01-023-9489
7220-01-024-5997
7220-01-023-9496
7220-01-023-9490
7220-01-023-9491
7220-01-023-9493
7220-01-023-9494
7220-01-023-9495

CLASS 7230

Curtain, Shower (IB)
7230-00-205-1762
7230-00-247-1280
7230-00-849-9838
7230-00-849-9839

CLASS 7290

Cover, Ironing Board (IB)
7290-00-130-3271

CLASS 7330

Pad, Bakery (IB)
7330-00-379-4439
Tongs, Food Serving (SH)
7330-00-616-0997
7330-00-616-0998
7330-00-616-1000

CLASS 7340

Flatware, Plastic, Heavy Duty (IB)
7340-00-022-1315
7340-00-022-1316
7340-00-022-1317
7340-00-401-8041
Flatware, Plastic, Picnic (IB)
7340-00-170-8374
7340-00-205-3187
7340-00-205-3342
Medium Weight Plastic Cutlery (IB)
7340-00-NIB-0005
7340-00-NIB-0006
7340-00-NIB-0007
7340-00-NIB-0008
Army and Air Force Exchange Service only
Spoon, Picnic, Plastic (IB)
7340-00-J19-1300

CLASS 7360

Dining Packet (IB)
7360-00-935-6407
7360-00-935-6408
7360-00-935-6409
7360-00-935-6410
7360-00-935-6411
7360-00-935-6412
7360-00-935-6413
7360-00-J19-2026
Dining Packet (Dietetic) (IB)
7360-00-177-4958
7360-00-177-4959
7360-00-177-4960
7360-00-177-4961
7360-00-177-4962
7360-00-177-4963
7360-00-935-6416
7360-00-935-6417
7360-00-935-6420
7360-00-935-6421
Dining Packet, Inflight (IB)
7360-00-860-0528
7360-01-167-2610
Flatware Set, Plastic (IB)
7360-00-634-4800

CLASS 7510

Binder, Awards Certificate (IB)
7510-00-115-3250
7510-00-482-2994
7510-00-755-7077
7510-01-056-1927
Binder, Looseleaf, (Pressboard) (IB)
7510-00-281-4309
7510-00-281-4314
7510-00-582-4201
7510-00-281-4310
7510-00-281-4311
7510-00-281-4313
7510-00-281-4315
7510-00-286-7792
7510-00-286-7794
7510-00-582-5488
7510-00-286-7791
7510-00-582-3807
Binder, Looseleaf, Presentation (IB)
7510-00-582-5398
7510-00-582-5399
7510-00-582-5400
Binder, Looseleaf, Three Ring (IB)
7510-00-782-2663
7510-00-409-8646
7510-00-409-8647
7510-00-984-5787
Binder, Looseleaf, Printout (IB)
7510-00-965-2443
Binder, Looseleaf, Three Ring (SH)
7510-00-889-3494
Binder, Note Pad (IB)
7510-00-286-6954
7510-00-145-0296
7510-00-728-8060
7510-00-053-5591
Board, Wall Calendar (IB)
7510-00-789-2455
Calendar Pad (SH)
7510-01-117-7713 (1987)
7510-01-225-9213 (1988)
Clip, Binder (SH)
7510-00-282-8201
7510-00-223-6807
7510-00-285-5995
Clip, Paper (SH)
7510-00-161-4292
Envelope, Crystal Clear Vinyl (IB)
7510-00-NIB-0003
7510-00-NIB-0004

- 7510-00-NIB-0005
- 7510-00-NIB-0006
- Envelope, Transparent (IB)
  - 7510-00-782-6274
  - 7510-00-782-6275
  - 7510-00-782-6276
- Eraser, Blackboard (IB)
  - 7510-00-244-9145
- Eraser, Mechanical Pencil (IB)
  - 7510-00-307-7885
- File Back (IB)
  - 7510-00-NIB-0002
- File Backer, Paper (IB)
  - 7510-00-285-2567
- File Front (IB)
  - 7510-00-NIB-0001
- Pad, Typewriter (IB)
  - 7510-00-257-2576
  - 7510-00-530-6412
  - 7510-00-849-1137
- Paperweight, Shotfilled (IB)
  - 7510-00-286-6965
- Pencil (IB)
  - 7510-00-286-5757
  - 7510-00-281-5234
  - 7510-00-281-5235
- Pencil, Fine-Line Writing (IB)
  - 7510-00-286-5755
  - 7510-00-286-5750
  - 7510-00-286-5751
- Pocket Planning Set (SH)
  - 7510-00-119-6371 (1987)
  - 7510-00-226-2953 (1988)
- Portfolio, Double Pocket (IB)
  - 7510-00-584-2489
  - 7510-00-584-2490
  - 7510-00-584-2491
  - 7510-00-584-2492
- Portfolio, Plastic Envelope (IB)
  - 7510-00-558-1572
  - 7510-00-558-1573
  - 7510-00-995-4856
  - 7510-00-995-4852
- Refill, Ballpoint Pen (IB)
  - 7510-00-543-6792
  - 7510-00-543-6793
  - 7510-00-754-2687
  - 7510-00-543-6795
  - 7510-00-754-2688
  - 7510-00-754-2689
  - 7510-00-754-2690
  - 7510-00-754-2691
- Refill, List Finder, Automatic (SH)
  - 7510-00-285-2800
- Sheath, Pen and Pencil (IB)
  - 7510-00-052-2664

CLASS 7520

- Arch Board File (IB)
  - 7520-00-240-5498
  - 7520-00-191-1075
  - 7520-00-255-7061
- Ballpoint Pen (IB)
  - 7520-00-935-7136
  - 7520-00-935-7135
  - 7520-00-543-7149
- Ballpoint Pen, Stick-type (IB)
  - 7520-01-058-9978
  - 7520-01-058-9977
  - 7520-01-058-9976
  - 7520-01-059-4125
  - 7520-01-060-5820
  - 7520-01-058-9975
  - 7520-01-060-8513
  - 7520-01-060-5821
- Ballpoint Pen, with Imprinting (IB)
  - 7520-00-8LP-6520
- Book Ends (IB)
  - 7520-00-264-5479
  - 7520-00-139-6158
- Box, Filing (SH)
  - 7520-00-285-3147
  - 7520-00-285-3143
  - 7520-00-285-3144
  - 7520-00-285-3145
  - 7520-00-285-3146
  - 7520-00-285-3148
  - 7520-00-139-3734
  - 7520-00-240-4830
  - 7520-00-240-4831
  - 7520-00-139-3743
  - 7520-00-240-4839
- Case, Maintenance & Operational Manuals (IB)
  - 7520-00-559-9618
- Clipboard File (IB)
  - 7520-00-281-5918
  - 7520-00-254-4610
  - 7520-00-240-5503
- Easel, Display & Training (IB)
  - 7520-00-579-7013
- File, Horizontal Desk (SH)
  - 7520-00-139-4869
  - 7520-00-728-5761
- Holder, Desk Memorandum (IB)
  - 7520-00-139-3802
  - 7520-00-290-6445
- Marker, Tube Type, Broad Tip (IB)
  - 7520-00-973-1059
  - 7520-00-973-1060
  - 7520-00-079-0285
  - 7520-00-973-1061
  - 7520-00-079-0286
  - 7520-00-079-0287
  - 7520-00-973-1062
  - 7520-00-079-0288
  - 7520-00-904-4476
  - 7520-00-558-1501
- Marker, Tube Type, Fine Tip (IB)
  - 7520-00-904-1265
  - 7520-00-904-1268
  - 7520-00-935-0979
  - 7520-00-904-1267
  - 7520-00-935-0981
  - 7520-00-935-0982
  - 7520-00-904-1266
  - 7520-00-935-0980
  - 7520-00-051-5031
  - 7520-00-051-5035
  - 7520-00-116-2888
  - 7520-00-051-5036
  - 7520-00-116-2886
  - 7520-00-116-2889
  - 7520-00-051-5033
  - 7520-00-116-2887
  - 7520-00-138-7981
- Pen Set, Desk (IB)
  - 7520-00-106-9640
- Pencil, Mechanical (IB)
  - 7520-00-223-6672
  - 7520-00-223-6673
  - 7520-00-268-9913
  - 7520-00-223-6675
  - 7520-00-223-6676
  - 7520-00-285-5826
  - 7520-00-285-5822
  - 7520-00-285-5823
  - 7520-00-161-5664
  - 7520-00-164-8950
  - 7520-00-268-9915
  - 7520-00-285-5818
  - 7520-00-268-9916
  - 7520-00-724-5606
  - 7520-00-590-1878
  - 7520-00-132-4996
- Perforator, Paper, Desk (SH)
  - 7520-00-139-4101
  - 7520-00-263-3425
- Stand, Calendar Pad (IB)
  - 7520-00-162-6153
  - 7520-00-162-6156
  - 7520-00-139-4177
  - 7520-00-139-4341
- Tray, Desk (SH)
  - 7520-00-232-6828
  - 7520-00-286-5601
  - 7520-00-285-5043
- Trimmer, Paper (IB)
  - 7520-00-224-7620 Rgns 1, 2, 3, W, 4, 5, 6, 7
  - 7520-00-224-7621
  - 7520-00-163-2568
  - 7520-00-634-4675
  - 7520-00-282-2137

CLASS 7530

- Book, Memorandum (IB)
  - 7530-00-286-8952
- Card Set, Guide, File (IB)
  - 7530-00-989-0696
  - 7530-00-989-0697
  - 7530-00-989-0683
  - 7530-00-082-2635
  - 7530-00-989-0684
  - 7530-00-989-0686
  - 7530-00-989-0692
  - 7530-00-989-0694
  - 7530-00-989-0693
  - 7530-00-989-0695
- Card, Guide, File (IB)
  - 7530-00-988-0164
  - 7530-00-989-2425
  - 7530-00-988-6541
  - 7530-00-988-6542
  - 7530-00-988-6543
  - 7530-00-988-6549
  - 7530-00-988-6550
  - 7530-00-988-6551
  - 7530-00-988-6544
  - 7530-00-988-6545
  - 7530-00-988-6546
  - 7530-00-988-6547
  - 7530-00-988-6548
  - 7530-00-988-6515
  - 7530-00-988-6516
  - 7530-00-988-6520
  - 7530-00-988-6521
  - 7530-00-988-6517
  - 7530-00-988-6518
  - 7530-00-988-6522
- Card, Index (IB)
  - 7530-00-238-4316
  - 7530-00-244-7453
  - 7530-00-244-7456
  - 7530-00-244-7451
  - 7530-00-244-7459
  - 7530-00-238-4319
  - 7530-00-949-2787
  - 7530-00-238-4331
  - 7530-00-243-9436
  - 7530-00-247-0310
  - 7530-00-281-1315
  - 7530-00-247-0316
  - 7530-00-264-3723
  - 7530-00-247-0311
  - 7530-00-244-7447
  - 7530-00-247-0315
  - 7530-00-243-9437
- Envelope, Wallet (IB)

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- 7530-00-281-5976
- 7530-00-281-4844
- 7530-00-281-4846

Folder, File, General-Purpose (IB)
- 7530-00-811-7169

Folder, File, Kraft (IB)
- 7530-00-800-3555
- 7530-00-559-4512
- 7530-00-281-5907
- 7530-00-281-5908
- 7530-00-926-8978
- 7530-00-926-8980

Folder, File Manila (IB)
- 7530-00-273-9845

Folder, File, Military Personnel Records Jacket (IB)
- 7530—DA Form 201

Folder, File, Pressboard (IB)
- 7530-00-926-8981
- 7530-00-286-6924
- 7530-00-926-8982
- 7530-00-926-8983
- 7530-00-926-8984
- 7530-00-043-1194
- 7530-00-739-7723

Folder-Set, File, Pressboard (IB)
- 7530-00-286-6923
- 7530-00-286-7080
- 7530-00-286-7244
- 7530-00-286-7253
- 7530-00-286-7286
- 7530-00-286-7287
- 7530-00-286-8570
- 7530-00-286-8571
- 7530-00-286-6925
- 7530-00-286-6926

Indes Sheet Set, Looseleaf Binder (IB)
- 7530-00-160-8474
- 7530-00-160-8475
- 7530-00-160-8476
- 7530-00-959-4441

Jacket, Filing, Wallet (IB)
- 7530-00-285-2913
- 7530-00-285-2914
- 7530-00-285-2915

Notebook, Stenographer's (IB)
- 7530-00-223-7939

Pad, Writing Paper (IB)
- 7530-00-285-3090 Rgns 1,5,6, only
- 7530-00-239-8479 All Regions
- 7530-01-131-1889 All Regions
- 7530-01-124-5660 Rgns W,1,3,4,5,6,7,8
- 7530-01-131-0091 Rgns W,1,3,4,5,6,7,8
- 7530-00-124-7632 Rgns W,1,2,3,5,7

Pad, Writing Paper (Easel) (IB)
- 7530-00-619-8880

Paper Set, Manifold and Carbon (IB)
- 7530-00-401-6910 Rgns W,4,6,7,9
- 7530-01-072-2536 Rgns W,4,6,7,9
- 7530-01-072-2537 Rgns W,4,6,7,9
- 7530-01-072-2538 Rgns W,4,6,7,9
- 7530-01-072-2539 Rgns W,4,6,7,9

Paper, Carbon, Typewriter (IB)
- 7530-00-244-4035 Rgns 1,2,3,6,7,8

Paper, Looseleaf, Blank (IB)
- 7530-00-286-5777
- 7530-00-286-5778
- 7530-00-286-5782
- 7530-00-286-5780
- 7530-00-286-5781
- 7530-00-286-5779
- 7530-00-286-6983
- 7530-00-286-6984

Paper, Looseleaf, Ruled (IB)
- 7530-00-286-6366
- 7530-00-286-4332
- 7530-00-286-4331
- 7530-00-286-4333
- 7530-00-286-4334
- 7530-00-286-4335
- 7530-00-198-6265
- 7530-00-286-4336
- 7530-00-286-4337
- 7530-00-286-4338
- 7530-00-286-4339

Paper, Teletypewriter, Roll (IB)
- 7530-00-019-6674
- 7530-00-019-6931
- 7530-00-019-7267
- 7530-00-019-7463
- 7530-00-223-7966
- 7530-00-056-2900
- 7530-00-721-6991
- 7530-00-223-7969
- 7530-00-262-9178
- 7530-00-142-9037
- 7530-00-943-7076
- 7530-00-272-9811
- 7530-00-285-3054
- 7530-00-285-5080
- 7530-00-286-7766
- 7530-00-019-7887
- 7530-00-019-7849
- 7530-00-019-7950
- 7530-00-019-8608
- 7530-00-019-8810
- 7530-00-142-9038

Paper, Writing (IB)
- 7530-00-285-5836
- 7530-01-047-3738

Refill, Appointment Book (SH)
- 7530-01-125-0987 (1987)
- 7530-00-228-9702 (1988)

Tape, Paper, Computing Machine (IB)
- 7530-00-286-9052
- 7530-00-222-3455
- 7530-00-286-9053
- 7530-00-286-9054
- 7530-00-238-8352
- 7530-00-222-3456
- 7530-00-286-9055

Tape, Postage Meter (IB)
- 7530-00-912-3924
- 7330-00-912-3925

CLASS 7670

Microfiche, Subject Headings and Name Authorities (SH)
- 7670-00-NSH-0001 Library of Congress only

CLASS 7899

Innerspring Mattress Rehabilitation (w/o handles) (IB)
- Group I—Less than 36" wide
- Group II—36" to 41" wide
- Group III—Over 41" to 49" wide
- Group IV—Over 49" wide

Innerspring Mattress Rehabilitation (w/ handles) (IB)
- Group I—Less than 36" wide
- Group II—36" to 41" wide
- Group III—Over 41" to 49" wide
- Group IV—Over 49" wide

CLASS 7910

Pad, Floor Polishing Machine (IB)
- 7910-00-685-6686
- 7910-00-685-6687
- 7910-00-685-3908
- 7910-00-685-6671
- 7910-00-685-3909
- 7910-00-685-6672
- 7910-00-685-3910
- 7910-00-685-6656
- 7910-00-685-6657
- 7910-00-685-3912
- 7910-00-685-6659
- 7910-00-685-3915
- 7910-00-685-6660
- 7910-00-685-3914
- 7910-00-685-4239
- 7910-00-685-4240
- 7910-00-685-4242
- 7910-00-685-4243
- 7910-00-685-4241
- 7910-00-685-4244
- 7910-00-685-4245
- 7910-00-820-7991
- 7910-00-820-7989
- 7910-00-820-7990
- 7910-00-820-9926
- 7910-00-820-9925
- 7910-00-820-9924
- 7910-00-820-9898
- 7910-00-820-7997
- 7910-00-820-7996
- 7910-00-820-9903
- 7910-00-820-9904
- 7910-00-820-9905
- 7910-00-820-9900
- 7910-00-820-9901
- 7910-00-820-9899
- 7910-00-820-9922
- 7910-00-820-9918
- 7910-00-820-9917
- 7910-00-820-9916
- 7910-00-820-9915
- 7910-00-820-9914
- 7910-00-820-9913
- 7910-00-820-9912
- 7910-00-820-9911
- 7910-00-820-9910

CLASS 7920

Broom, Push (IB)
- 7920-00-267-2967

Broom, Upright (IB)
- 7920-00-292-4371
- 7920-00-292-4375
- 7920-00-292-4372
- 7920-00-291-8305

Broom, Whisk (IB)
- 7920-00-240-6350

Brush, Chassis and Running Gear (IB)
- 7920-00-255-7536

Brush, Cleaning, Aircraft (IB)
- 7920-00-051-4384

Brush, Dusting (IB)
- 7920-00-178-8315

Brush, Floor Sweeping (IB)
- 7920-00-243-3407
- 7920-00-292-2363
- 7920-00-292-2367
- 7920-00-264-4638
- 7920-00-292-2362
- 7920-00-292-2365

Brush, Plater's, Hand (IB)
- 7920-00-267-1215
- 7920-00-267-1213

Brush, Sanitary (IB)
- 7920-00-772-5800
- 7920-00-234-9317

Brush, Scrub (IB)
- 7920-00-240-7174
- 7920-00-951-8796

7920-00-282-2470 Tampico Fibers
7920-00-282-2460 Styrene Fibers
7920-00-297-1511
7920-00-619-9162
7920-00-061-0038
Brush, Shoe and Stove (IB)
7920-00-852-8170
Brush, Wire, Scratch (IB)
7920-00-291-5815
7920-00-282-9246
7920-00-246-8501
7920-00-223-7649
7920-00-269-1259
7920-00-255-5135
7920-00-269-0933
Brush, Wire, Stainless Steel (IB)
7920-00-958-1157
Brush-Set, Shoe and Stove (IB)
7920-00-205-0200
Cloth, Polishing (IB)
7920-00-205-1656
Cloth, Wiping (SH)
7920-LL-L03-6103
7920-LL-L03-6134

Pearl Harbor Naval Shipyard, Pearl Harbor, HI only

Cloth, Wiping ("Jean Cotton") (SH)
7920-LL-L01-0013
7920-LL-L01-0014

Portsmouth Naval Shipyard, Portsmouth, NH only

Handle, Mop (IB)
7920-00-205-1168
7920-00-267-1218
7920-00-205-1167
7920-00-550-9902
7920-00-550-9911
7920-00-550-9912
7920-00-998-2485
7920-00-998-2486
7920-00-851-0140
7920-00-851-0142
7920-00-246-0930
7920-00-205-1170
Handle, Paint Roller (IB)
7920-00-682-6512
Handle, Wood (IB)
7920-00-177-5106
7920-00-141-5452
7920-00-263-0328
Kit, Aircraft Cleaning (IB)
7920-00-490-6046
Mop, Dusting, Cotton (IB)
7920-00-205-0481
7920-00-205-0483
7920-00-245-8289
7920-00-205-0484
Mop, Wet (IB)
7920-00-224-8726
Mop, Wet, Cellulose (Sponge Refill) (IB)
7920-00-471-2876
Mop, Wet, Cellulose Complete (IB)
7920-00-432-7117
Mophead, Dusting, Cotton (IB)
7920-00-634-0201
7920-00-267-4921
7920-00-998-2482
7920-00-998-2483
7920-00-998-2484
7920-00-851-0141
7920-00-205-0485
7920-00-205-0487
7920-00-205-0488
Mophead, Wet (IB)
7920-00-205-0425
7920-00-205-0426
7920-00-141-5549
7920-00-171-1148
7920-00-141-5550
7920-00-141-5547
7920-00-141-5548
7920-00-141-5544
7920-00-926-5492
7920-00-926-5493
7920-00-926-5494
7920-00-926-5495
7920-00-926-5496
7920-00-926-5497
7920-00-926-5498
7920-00-926-5499
7920-00-926-5501
7920-00-926-5502
Pad, Scouring (IB)
7920-00-753-5242
7920-00-151-6120
Scraper and Squeegee (IB)
7920-00-045-2556
Sponge, Cellulose (IB)
7920-00-161-6219
7920-00-633-9928
7920-00-240-2559
7920-00-884-1116
7920-00-884-1115
7920-00-633-9905
7920-00-240-2555
7920-00-633-9906
Sponge, Plastic (IB)
7920-00-633-9908
7920-00-633-9911
7920-00-633-9915
7920-00-685-4152
Squeegee (SH)
7920-00-224-8339
Squeegee, Window-Cleaning (IB)
7920-00-577-4744
7920-00-577-4745
7920-00-577-4746
Towel, Machinery Wiping (IB)
7920-00-260-1279
Towel, Paper (IB)
7920-00-823-9772
7920-00-823-9773

CLASS 7930

Cloth, Wiping (SH)
7930-LL-COO-3782
7930-LL-COO-2768
Mare Island Naval Shipyard, CA only
Cloth, Filter (SH)
7930-00-NSH-0001
Naval Supply Center, WA only
Detergent, General Purpose (IB)
7930-00-926-5280
7930-00-357-7386
7930-00-068-1669
7930-00-055-6122
7930-00-177-5243
7930-00-985-6945
7930-00-985-6946
7930-00-530-8067
7930-00-527-1207
7930-00-527-1237
7930-00-055-6121
7930-00-282-9700
7930-00-282-9699
7930-00-985-6911
Dishwashing Compound, Hand (IB)
7930-00-880-4454
7930-00-055-6136
7930-00-899-9534
Glass Cleaner (IB)
7930-00-664-6910
Rinse Additive, Dishwashing (IB)
7930-00-619-9573
7930-00-619-9575

CLASS 8010

Aerosol Paint, Lacquer (IB)
8010-00-721-9742
8010-00-079-2754
8010-00-141-2952
8010-00-721-9743
8010-00-584-3148
8010-00-721-9479
8010-00-141-2950
8010-00-721-9744
8010-00-721-9745
8010-00-965-2389
8010-00-079-2756
8010-00-141-2951
8010-00-584-3149
8010-00-584-3154
8010-00-721-9483
8010-00-883-5329
8010-00-965-2390
8010-00-965-2392
8010-00-721-9746
8010-00-721-9747
8010-00-721-9748
8010-00-721-9753
8010-00-141-2958
8010-00-721-9749
8010-00-721-9750
8010-00-721-9754
8010-00-835-7215
8010-00-965-2391
8010-00-290-6983
8010-00-290-6984
8010-00-582-5382
8010-00-584-3150
8010-00-721-9487
8010-00-721-9751
8010-00-721-9752
8010-00-515-2487
Enamel (IB)
8010-00-067-5436
8010-00-067-5437
8010-00-079-2750
8010-00-079-2752
8010-00-203-7803
8010-00-203-7804
8010-00-079-3750
8010-00-079-3752
8010-00-079-3754
8010-00-079-3756
8010-00-079-3758
8010-00-079-3760
8010-00-079-3762
8010-00-079-3764

CLASS 8105

Bag, Assembly, Crew Relief (IB)
8105-00-922-9469
Bag, Cloth (IB)
8105-00-282-8183
Bag, Cotton (IB)
8105-00-183-6981
8105-00-281-3924
8105-00-183-6982
8105-00-179-0089
8105-00-271-1511
8105-00-183-6985
8105-00-174-0826
8105-00-183-6989
8105-00-290-3360

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Bag, Currency (IB)
  8105-00-NIB-0006
  Bureau of Engraving and Printing, Washington, D.C. only
Bag, Evidence (IB)
  8105-00-NIB-0001
  8105-00-NIB-0002
  8105-00-NIB-0003
  8105-00-NIB-0004
  8105-00-NIB-0005
Bag, Motion Sickness (IB)
  8105-00-835-7212
Coin Bags, (SH)
  8105-00-NSH-0005
  8105-00-NSH-0006
  8105-00-NSH-0008
  8105-00-NSH-0009
  8105-00-NSH-0010
  8105-00-NSH-0011
  8105-00-NSH-0012

CLASS 8110

Tube, Mailing and Filing (SH)
  8110-00-412-4410

CLASS 8115

Box, Set-Up, Mailing Dental (IB)
  8115-00-511-5750
Box, Shipping (IB)
  8115-00-787-2142
  8115-00-787-2147
  8115-00-101-7647
  8115-00-101-7638
  8115-00-787-2146
  8115-00-787-2148
  8115-01-019-4085
  8115-01-019-4084
  8115-01-057-1244
  8115-01-057-1243
  8115-01-057-1245
  8115-00-192-1603
  8115-00-192-1604
  8115-00-192-1605
  8115-01-093-3730
Box, Wood (SH)
  8115-00-935-5887
  8115-00-935-6518
  8115-00-935-6525
  8115-00-935-6526
  8115-00-935-6527
  8115-00-935-6528
  8115-00-935-6530
  8115-00-935-6532
  8115-00-935-6531
Box, Wood, Nailed (SH)
  8115-01-M00-0081
  Pine Bluff Arsenal, AR only
Wood Container (SH)
  8115-L1-599-7220
  8115-L1-599-7320
  8115-L1-599-7820
  8115-L1-599-8020
  8115-L1-599-8120
  8115-L1-599-7920
  8115-L1-465-0920
  8115-L1-465-1020
  8115-L1-466-4120
  Robins AFB, GA only

CLASS 8135

Block, Currency Packing (IB)
  BEP Stock # L-1391
Chipboard (IB)
  8135-00-290-0338
  8135-00-782-3948
  8135-00-782-3951
  8135-00-579-8457

CLASS 8140

Pallet Assembly (SH)
  8140-01-050-9789

CLASS 8315

Sewing Kit (SH)
  8315-01-090-5823
  8315-01-222-0680

CLASS 8340

Cover, Tent (SH)
  8340-00-262-2397
Line, Tent (SH)
  8340-00-263-0254
  8340-00-263-0255
  8340-00-252-2268
  8340-00-252-2271
  8340-00-252-2273
  8340-00-252-2291
  8340-00-556-9689
  8340-00-252-2280
  8340-00-252-2282
  8340-00-252-2297
  8340-00-252-2298
Pin, Tent, Aluminum (SH)
  8340-00-261-9749
Pin, Tent, Wood (SH)
  8340-00-261-9750
  8340-00-261-9751
  8340-00-261-9752
Pole Section, Tent (SH)
  8340-00-223-7849
Shelter Half, Tent, Incomplete (SH)
  8340-00-577-4168
Shelter Half, Tent, Complete (SH)
  8345-01-026-6098

CLASS 8345

Case, Flag, Interment (IB)
  8345-00-782-3010
Flag, Signal (IB)
  8345-00-935-0588
  8345-00-935-0589
  8345-00-935-0590
  8345-00-935-0591
  8345-00-935-0592
  8345-00-935-0594
  8345-00-935-0595
  8345-00-935-0597
  8345-00-935-0598
  8345-00-935-0599
  8345-00-935-0602
  8345-00-935-0604
  8345-00-935-0607
  8345-00-935-0608
  8345-00-935-0633
  8345-00-935-1840
  8345-00-935-0634
  8345-00-935-0638
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  8345-00-935-0640
  8345-00-926-9977
  8345-00-926-9216
  8345-00-926-9978
  8345-00-926-6804
  8345-00-926-6806
  8345-00-926-9979
  8345-00-926-6807
  8345-00-926-6809
  8345-00-926-9980
  8345-00-926-9219
  8345-00-935-0582
  8345-00-926-9984
  8345-00-926-6003
  8345-00-926-9985
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  8345-00-935-0627
  8345-00-935-0407
  8345-00-935-0630
  8345-00-935-0631
Flag, Signal, Vehicle, Danger Red (IB)
  8345-00-260-2724
Pennant, Signal, and Special Flags (IB)
  8345-00-935-0420
  8345-00-935-0517
  8345-00-935-4755
  8345-00-825-1847
  8345-00-935-3201
  8345-00-935-4756
  8345-00-935-0522
  8345-00-914-6086
  8345-00-935-4753
  8345-00-935-4754
  8345-00-935-0404
  8345-00-935-0514
  8345-00-825-1866
  8345-00-935-0406
  8345-00-935-0509
  8345-00-926-5986
  8345-00-935-0512
  8345-00-921-4497
  8345-00-935-3199
  8345-00-825-1839

8345-00-935-0528
8345-00-914-6076
8345-00-914-6080
8345-00-914-6083
8345-00-935-0524
8345-00-926-5987
8345-00-926-5989
8345-00-935-0539
8345-00-926-5991
8345-00-825-1840
8345-00-935-0521
8345-00-914-6087
8345-00-926-6026
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8345-00-926-9211
8345-00-935-0499
8345-00-935-0500
8345-00-935-0501
8345-00-825-1818
8345-00-935-0497
8345-00-935-0504
8345-00-935-1841
8345-00-935-0418
8345-00-825-1819
8345-00-926-1551
8345-00-935-0503
8345-00-935-0534
8345-00-935-1843
8345-00-926-1548
8345-00-926-1549
8345-00-926-1552
Streamer, Warning, Aircraft (IB)
8345-00-863-9170

CLASS 8405

Cover, Service Cap (IB)
8405-01-046-8544
8405-01-046-8545
Liner, Poncho, Wet Weather (IB)
8405-00-889-3683
Poncho, Wet Weather (IB)
8405-01-100-0976

CLASS 8415

Apron, Construction Worker's (IB)
8415-00-205-3895
8415-00-257-4290
Apron, Food Handler's (IB)
8415-00-255-8577
8415-00-634-0205
8415-00-051-1173
8415-00-045-0587
Apron, Food Handler's (SH)
8415-00-899-3028
Apron, Impermeable (SH)
8415-00-082-6108
Apron, Laboratory (SH)
8415-00-634-5023
Band, Helmet, Camouflage (IB)
8415-01-110-9981
Cap, Food Handler's (IB)
8415-00-234-7677
8415-00-234-7678
8415-00-234-7679
Cover, Helmet (IB)
8415-00-105-0605
Cover, Helmet, Camouflage Pattern (IB)
8415-01-092-7514
8415-01-092-7515
Cover, Helmet, Chemical Protective (IB)
8415-01-111-9028 (75,000 each annually)
Cover, Helmet, Desert Camouflage (SH)
8415-01-103-1349
8415-01-103-1350
Hood, Anti-Flash (SH)
8415-00-275-3159
Hood, Spray Painter's Protective (SH)
8415-00-NSH-0001

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Liner, Coat, Cold Weather (IB)
8415-00-782-2886
8415-00-782-2887
8415-00-782-2888
8415-00-782-2889
8415-00-782-2890
8415-01-062-0679

All Gov't requirements except for Memphis Depot, TN

Liner, Trousers, Cold Weather (IB)
8415-01-180-0370
8415-01-180-0371
8415-01-180-0372
8415-01-180-0373
8415-01-180-0374
8415-01-180-0375
8415-01-180-0376
8415-01-180-0377
Mask, Extreme Cold Weather (SH)
8415-01-006-3468
Pad, Helmet, Flight Deck Crewman's (IB)
8415-00-178-6830
8415-00-178-6831
Socks, Extreme Cold Weather (SH)
8415-00-177-7992
8415-00-177-7993
8415-00-177-7994
8415-01-057-3503
Traffic Safety Clothing (See Class 8465 also) (IB)
8415-00-177-4976
8415-00-177-4974

CLASS 8430

Footwear Cover (IB)
8430-01-106-8304
8430-00-580-1205
8430-00-580-1206
8430-00-591-1359
8430-01-162-4453
Slide Fastener Unit, Laced Boot (IB)
8430-00-465-1888
8430-00-465-1889
8430-00-465-1890

CLASS 8440

Belt, Coat (IB)
8440-00-281-4965
8440-00-281-4966
Belt, Trousers (IB)
8440-00-270-0535
8440-00-412-2309
8440-00-573-1686
8440-00-270-0536
8440-00-412-2312
8440-00-573-1765
8440-00-270-0537
8440-00-412-2314
8440-00-573-3727
8440-00-290-0567
8440-00-052-9738
8440-00-290-0568
8440-00-052-9739
8440-00-269-5311
8440-00-052-9740
8440-00-634-5632
8440-00-753-6363
8440-00-577-4177
8440-00-753-6364
8440-00-577-4178
8440-00-753-6365
8440-00-270-0541
8440-00-412-2326
8440-00-270-0542
8440-00-412-2341
8440-00-270-0543
8440-00-412-2342
Handkerchief, Man's (SH)
8440-00-281-4246
Neckerchief (IB)
8440-01-198-5175
Neckerchief, Camouflage, Desert (IB)
8440-01-103-5981
8440-01-148-4549
Necktie (IB)
8440-01-156-0373
8440-01-171-7571
8440-01-190-0086
Scarf, Man's, Wool (SH)
8440-01-005-2558
8440-00-160-6843
8440-00-823-7520
Suspenders, Trousers (IB)
8440-00-221-0852

CLASS 8445

Belt, Trousers, Cotton (IB)
8445-01-068-8339
8445-01-068-8340
8445-01-075-0013
8445-01-075-0014
8445-01-075-0015
Scarf, Neckwear (IB)
8445-00-549-5363

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CLASS 8455

Holder, Identification (IB)
8455-00-988-9730
Scarf, Branch of Service (IB)
8455-00-916-8398
8455-00-405-2294
8455-00-985-7336
8455-01-078-0745

CLASS 8460

Briefcase (SH)
8460-01-193-9769
Kit Bag, Flyer's (IB)
8460-00-606-8366
8460-00-883-8673

CLASS 8465

Bag, Barrack (IB)
8465-00-530-3692
Bag, Carrying (IB)
8465-01-216-6259
Bag, Laundry (SH)
8465-00-616-9576
Bag, Laundry, Self-Closing, Ropeless (SH)
8465-00-656-0816
Bag, Personal Effects (SH)
8465-00-174-0808
Bag, Sleeping, Firefighter's (IB)
8465-00-081-0798
Bag, Soiled Clothes (SH)
8465-00-122-3869
Bag, Soiled Clothes, Submarine (IB)
8465-00-762-7671
Belt, Individual, Equipment, Nylon, LC-1 (IB)
8465-00-001-6487
8465-00-001-6488
8465-01-120-0674
8465-01-120-0675
Belt, M.P. (IB)
8465-00-527-8843
Binding, Snowshoe, Universal (IB)
8465-00-965-2175
Canteen, Water, Plastic (IB)
8465-01-115-0026
Carrier, Intrenching Tool (IB)
8465-00-001-6474
Case, Field, First Aid (IB)
8465-00-935-6814
Case, Maintenance Equipment, Small Arms (IB)
8465-00-781-9564
Clipboard, Pilot's (SH)
8465-01-012-9174
Clothes Stop (IB)
8465-00-377-5701
Cover, Field Pack, Camouflage (IB)
8465-01-103-0659
Cover, Field-Pack, Camouflage, White (SH)
8465-00-001-6478
Cover, Water, Canteen (IB)
8465-00-118-4956
Fieldpack, Canvas (SH)
8465-00-205-3493
Lanyard, Pistol (SH)
8465-00-262-5237
8465-00-965-1705
Mat, Sleeping, Cold Weather (SH)
8465-01-109-3369
Necklace, Personnel, Identification (SH)
8465-00-261-6629
Pack, Personal Gear (SH)
8465-01-141-2321
Pocket, Ammunition Magazine (IB)
8465-00-782-2239
8465-00-261-4983
Protector, Trousers, Pistol Holster (IB)
8465-00-682-6741
Sheath, Ax (SH)
8465-01-110-2078
Sheath, Brush Hook (Bush) (SH)
8465-01-136-4720
Sheath, McLeod Tool (SH)
8465-01-136-4718
Sheath, Pulaski Tool (SH)
8465-01-067-9999
Sheath, Shovel, Hand (SH)
8465-01-136-4719
Strap, Shoulder, Quick Release, Right Hand (IB)
8465-01-078-9282
Strap, Waist, with Pad, LC-2 (IB)
8465-01-075-8104
Strap, Webbing, Cargo, Tie-Down (IB)
8465-00-001-6477
Strap, Webbing, Frame Attaching (IB)
8465-01-151-2891
Strap, Webbing, Waist, LC-1 (IB)
8465-00-269-0481
Strap, Shoulder, Quick Release, Left Hand (IB)
8465-00-269-0482
Suspenders, Individual Equipment Belt (IB)
8465-00-001-6471
Traffic-Safety Clothing (IB)
8465-00-177-4975
8465-00-177-4976
8465-00-177-4977
Whistle, Ball, Plastic (IB)
8465-00-254-8808

CLASS 8470

Headband, Ground Troop, Helmet Liner (IB)
8470-00-153-6671
Mechanicsburg, PA and Richmond, VA only
Headband, Ground-Troop'/Parachutists' Helmet (IB)
8470-01-092-8493
8470-01-092-8492
Neckband, G.T., Helmet Liner (IB)
8470-00-753-6166
Pad, Parachutists' Helmet (IB)
8470-01-092-8494
Strap, Chin, Ground Troops'/Parachutists' Helmet (IB)
8470-01-092-7534
Strap, Chin, Parachutist Steel Helmet (IB)
8470-00-032-2737
Strap, Retention, Parachutists' Helmet (IB)
8470-01-092-7524
Strap, Soldier's Steel Helmet M-1 (IB)
8470-00-030-8003
Suspension Assembly, Liner, Helmet (IB)
8470-00-880-8814
Suspension-Assembly, Ground Troops'/Parachutist (IB)
8470-01-092-7516
8470-01-092-7517
8470-01-092-7518
8470-01-092-7519

CLASS 8520

Soap, Toilet (IB)
8520-00-228-0598
8520-01-058-7463
8520-00-141-2519

CLASS 8915

Potatoes, White, Fresh (SH)
8915-00-456-6111 Whole
8915-00-228-1945 Diced
DLA in North Carolina and South Crolina only

CLASS 8970

Food Packet, Survival, Aircraft, Life Raft, Indiv. (SH)
8970-01-028-9406

CLASS 9905

Holder, Card-Label (IB)
9905-00-866-0334
Plate, Marking, Blank (SH)
9905-00-473-5336
Sign-Kit, Vehicle (SH)
9905-00-565-6267
Tag, Key (SH)
9905-00-245-7826
Tag, Marker (SH)
9905-00-537-8954
9905-00-537-8955
9905-00-537-8956
9905-00-537-8957
Tree Shade (SH)
9905-00-NSH-0001 8″×12″
9905-00-NSH-0153 8″×16″
BLM and U.S. Forest Service, Washington and Oregon only

CLASS 9920

Ash Receiver, Tobacco (IB)
9920-00-682-6757
Cleaner, Tobacco Pipe (SH)
9920-00-292-9946

U.S. Postal Service Items

Divider, Separation (SH)
P.S. #01037-A
P.S. #01037-B
Lead Seal with Cord Attachment (SH)
P.S. #0815
Market, I.D., Plastic (SH)
P.S. #01036
P.S. #01036-A
P.S. #01036-B
P.S. #01036-C
P.S. #01036-D
P.S. #01036-E
P.S. #01036-F
Pallet, P.S., Material Handling (SH)
3990-00-NSH-0008
Postal Service, Western Area Supply Center only
Pocket, Imitation Leather (SH)
P.S. #D-1200-G
Safety Guard (SH)
P.S. #1075-B
Seal, Metal Band (SH)
P.S. #0816-A
P.S. #0816-B
Seat Assembly, Complete (SH)
P.S. #054-A
Seat Cover (SH)
P.S. #054-B
Strap, Mail Tray (IB)
P.S. #01067
Strap, Tie, Mail Carrier's, with buckle (IB)
8465—D-1216D
8465—D-1216E
8465—D-1216F

Military Resale Commodities

Procedures for ordering military resale commodities are contained in § 51–5.6, Code of Federal Regulations, Title 41.

Item No.	Item Name
060	Roller ball pen, red (IB)
061	Roller ball pen, blue (IB)
062	Roller ball pen, black (IB)
063	Retractable pen, black (IB)
064	Retractable pen, blue (IB)
065	Ultra fine tip marker, red (IB)
066	Ultra fine tip marker, blue (IB)
067	Ultra fine tip marker, black (IB)
068	Pencil, mechanical, 0.5 mm lead (IB)
204	Cleaner, tobacco, pipe (SH)
500	Room air freshener (IB)
501	Deodorizer, toilet bowl (IB)
503	Bowl deodorizer (IB)
504	Bowl deodorizer (IB)
510	Cleaner, all purpose (IB)
519	Fabric softener sheets, reusable, 8-¾ x 4" (60 count) (IB)
520	Fabric softener sheets, reusable, 8-¾ x 4" (40 count) (IB)
521	Candle, air freshening, fruit (IB)
522	Candle, air freshening, holiday (IB)
523	Candle, air freshening, floral (IB)
524	Candle, air freshening, berry (IB)
525	Candle, air freshening, forest (IB)
526	Candle, air freshening, carnival (IB)
527	Candle, air freshening, festival (IB)
528	Candle, air freshening, herbal (IB)
529	Candle, air freshening, assorted scents with holders (IB)
541	Scrubber, bathroom, with handle (IB)
542	Scrubber, kitchen, with handle (IB)
543	Scrubber, grill & garage, with handle (IB)
544	Scrubber, nylon net over polyurethane pad (IB)
554	Scrubber, nylon, rectangular (IB)
555	Scrubber, kitchen, 4-⅝ x 3-1/16 x 13/16" (IB)
556	Scrubber, bathroom, 4-⅝ x 3-1/16 x 13/16" (IB)
557	Scrubber, general household, 6-⅝ x 3-9/16 x 1" (IB)
563	Scrubber, plastic, for teflon (IB)
564	Scrubber, stainless steel (IB)
568	Board, ironing, table top (IB)
570	Clothespins, plastic (IB)
574	Clothesline, plastic, rayon reinforced, 100-ft. (IB)
575	Sponge, cellulose, 5-½ x 3-⅝ x 1-⅛" (IB)
576	Sponge, cellulose, 7-⅝ x 4 x 1-¾" (IB)
577	Sponge, cellulose, 5-½ x 3-⅝ x 1" (IB)
578	Sponge, cellulose, 5-½ x 3-⅝ x ⅝" (IB)
593	Sponge, bath, circular (IB)
594	Swatter, fly, plastic (IB)
596	Cutlery set, plastic, heavy duty (8 ea knives, forks, spoons) (IB)
597	Knives, plastic, heavy duty (IB)
598	Forks, plastic, heavy duty (IB)
599	Spoons, plastic, heavy duty (IB)
721	Paint roller cover, economy, 9" (IB)
723	Paint roller cover, all purpose, 9" (IB)
727	Paint roller cover, high pile, 9" (IB)
730	Paint roller cover, for rough surfaces, 9" (IB)
754	Pillow, Standard, 20" x 26" (IB)
755	Pillow, Queen, 20" x 30" (IB)
756	Pillow, King, 20" x 36" (IB)
901	Broom, mixed fiber (IB)
902	Broom, push, indoor/outdoor, 54" handle (IB)
903	Broom, parlor, corn, medium weight (IB)
904	Broom, corn, plastic cap (IB)
905	Broom, plastic filament, flagged ends (IB)
907	Broom, plastic filament, angle cut (IB)
908	Broom, plastic filament, angle tilt (IB)
909	Broom, whisk, corn (IB)
912	Brush, lint, plastic filament (IB)
914	Brush, barbecue, with scraper (IB)
915	Brush, counter, plastic (IB)
916	Brush, bowl, sanitary, nylon filament (IB)
918	Brush, scrub, household (IB)
919	Brush, scrub, plastic block, vinyl filament (IB)
920	Handle, mop, spring lever, for wet mopheads (IB)
921	Mop, anglematic (IB)
922	Applicator, wax, foam block (IB)
923	Mop, automatic, block sponge (IB)
924	Mop, block sponge, with scrub strip brush (IB)
925	Mop, dusting, nylon (IB)
926	Mop, stick, orlon/rayon yarn, wet (IB)
927	Mop, stick, rayon yarn, wet (IB)
928	Mop, stick, cotton yarn, wet (IB)
931	Refill, for #921 (IB)
933	Refill, mop, automatic, block sponge, for 923 (IB)
934	Refill, mop, block sponge, for 924 (IB)
936	Mophead, orlon/rayon yarn, wet (IB)
937	Mophead, cotton yarn, wet (IB)
940	Towel, heritage design (IB)
941	Cloth, dish, knitted cotton (IB)
942	Dish cloth, heritage design (IB)
943	Towel, modern design (IB)
944	Dish cloth, modern design (IB)
945	Towel, kitchen, cotton (IB)
946	Potholder, quilted, cotton (IB)
947	Oven mitt, modern design (IB)
948	Potholder, modern design (IB)
949	Mitt, oven, quilted, cotton (IB)
950	Mop, dish and bottle, wood handle (IB)
955	Brush, vegetable/utility, plastic filament (IB)
956	Brush, bottle, nylon filament (IB)
957	Brush, dish and pan, nylon filament (IB)
959	Brush, pastry and basting (IB)
962	Cover, ironing board, silicone and pad, poly foam (IB)
964	Cover, ironing board, silicone, double coated (IB)
965	Cover, ironing board, color coated (IB)
970	Bag, washing machine, nylon with zipper (IB)
971	Towel dish, traditional design (IB)
972	Dish cloth, traditional design (IB)
973	Towel, contemporary design (IB)
974	Dish cloth, contemporary design (IB)
975	Oven mitt, traditional design (IB)
977	Oven mitt, contemporary design (IB)
978	Pot holder, contemporary design (IB)
979	Pot holder, traditional design (IB)
980	Cloth, all purpose, cotton (IB)
983	Cloth, dusting (IB)
986	Cloth, wash, face (IB)
995	Dustpan, plastic (IB)

Services

Administrative Services

Department of Commerce:
  Herbert Hoover Building, 14th and Constitution Avenue, NW., Washington, DC (SH)
Department of Defense:
  DCASR Building B–95, 805 Walker Street, Marietta, Georgia (SH)
Department of Transporation:
  FAA Regional Office, East Point, Field Facilities and Accounting Office, Hapeville, Georgia (SH)
Environmental Protection Agency:
  1860 Lincoln Street, Denver, Colorado (SH)
  Marfair/Fairchild Building, Washington, DC (SH)
  Waterside Mall Complex, Washington DC (SH)
  345 Courtland Street, NE., Atlanta, Georgia (SH)
  General Services Branch, 230 South Dearborn Street, Chicago, Illinois (SH)
  Beltsville Research Laboratory, Beltsville, Maryland (SH)
  6100 Executive Boulevard, Rockville, Maryland (SH)
  9100 Brookville Road, Silver Spring, Maryland (SH)
  26 Federal Plaza, New York, New York (SH)
  6th and Walnut Street, Philadelphia, Pennsylvania (SH)
  Crystal Mall Complex, Arlington, Virginia (SH)

Assembly

Department of Defense:
  Belt, Trousers (IB)
  Food Packet, Long Range Patrol (8970–00–926–9222) (SH)
  Food Packet, Survival, Abandon Ship (8970–00–299–1365) (IB)
  Food Packet, Survival, General-Purpose, Individual (8970–00–082–5665) (IB)
General Services Administration:
  Living Kit, Basic and Supplemental (SH)

Bursting and Packaging of Commemorative Stamps

U.S. Postal Service:
  Washington, DC (SH)

Cage Cleaning

Department of Health and Human Services:
  Food and Drug Administration, Federal Office Building #8, 200 C Street, SW., Washington, DC (SH)

Cardboard and Paper Scrap Recovery

Department of Army:
  New Cumberland Army Depot, Pennsylvania (SH)
Department of Energy:
  Bonneville Power Administration, Portland, Oregon (SH)

Carpet Cleaning

General Services Administration:
  Portland, Oregon, plus 10-mile radius (SH)

Carwash

Department of Interior:
  Bureau of Land Management, Medford District Office, 3040 Biddle Road, Medford, Oregon (SH)

Catering Service

Department of Air Force:
  Military Entrance Processing Station, Jackson, Mississippi (SH)
Department of Army:
New Cumberland Army Depot, Military Entrance Processing Station, Building 521, New Cumberland, Pennsylvania (SH)

Commissary Shelf Stocking

Department of Navy:
  Naval Air Station, Alameda, California (SH)
  Naval Air Station, Long Beach, California (SH)
  Naval Air Station, Miramar, San Diego, California (SH)
  Naval Air Station, North Island, San Diego, California (SH)
  Naval Station, San Diego, California (SH)
  Naval Training Center, San Diego, California (SH)
  Mare Island Naval Shipyard, Vallejo, California (SH)
  Naval Air Station, Pensacola, Florida (SH)
  Naval Air Station, Barbers Point, Oahu, Hawaii (SH)
  Naval Base, Pearl Harbor, Hawaii (SH)
  Naval Training Center, Great Lakes, Illinois (SH)
  Naval Air Station, Brunswick, Maine (SH)
  Naval Air Station, Patuxent River, Maryland (SH)
  Naval Construction Battalion Center, Gulfport, Mississippi (SH)
  Naval Air Station, Fallon, Nevada (SH)
  Naval Administrative Unit, Scotia, New York (SH)
  Naval Station, Roosevelt Roads, Puerto Rico (SH)
  Naval Education Training Center, Newport, Rhode Island (SH)

- Naval Station and Naval Weapons Station, Charleston, South Carolina (SH)
- Branch Commissary Store, Little Creek Naval Amphibious Base, Building 3324, Norfolk, Virginia (SH)
- Naval Station, Norfolk, Virginia (SH)
- Branch Commissary Store, Building 350, Norfolk Naval Shipyard, Portsmouth, Virginia (SH)
- Naval Air Station, Oceana, Virginia Beach, Virginia (SH)
- Naval Submarine Base, Bangor, Washington (SH)
- Naval Air Station, Whidbey Island, Oak Harbor, Washington (SH)
- Naval Support Activity, Sand Point, Seattle, Washington (SH)

Commissary Shelf Stocking and Custodial Service

- Department of Air Force:
  - Gunter Air Force Station, Alabama (SH)
  - Maxwell Air Force Base, Alabama (SH)
  - Eielson Air Force Base, Alaska (SH)
  - Elmendorf Air Force Base, Alaska (SH)
  - Little Rock Air Force Base, Arkansas (SH)
  - George Air Force Base, California (SH)
  - Lowry Air Force Base, Colorado (SH)
  - Homestead Air Force Base, Florida (SH)
  - Robins Air Force Base, Georgia (SH)
  - Hickam Air Force Base, Hawaii (SH)
  - Mountain Home Air Force Base, Idaho (SH)
  - Scott Air Force Base, Illinois (SH)
  - McConnell Air Force Base, Kansas (SH)
  - Hanscom Air Force Base, Massachusetts (SH)
  - Columbus Air Force Base, Mississippi (SH)
  - Nellis Air Force Base, Nevada (SH)
  - Cannon Air Force Base, New Mexico (SH)
  - Griffiss Air Force Base, New York (SH)
  - Minot Air Force Base, North Dakota (SH)
  - Altus Air Force Base, Oklahoma (SH)
  - Myrtle Beach Air Force Base, South Carolina (SH)
  - Shaw Air Force Base, South Carolina (SH)
  - Goodfellow Air Force Base, Texas (SH)
  - Lackland Air Force Base, Texas (SH)
  - Randolph Air Force Base, Texas (SH)
  - Sheppard Air Force Base, Texas (SH)
  - Francis E. Warren Air Force Base, Wyoming (SH)
- Department of Army:
  - Fort Benjamin Harrison, Indiana (SH)

Commissary Warehousing Service

- Department of Air Force:
  - Columbus Air Force Base, Mississippi (SH)

Currency Packaging

- Department of Treasury:
  - Bureau of Engraving and Printing, Washington, DC (SH)

Document Destruction

- Department of Treasury:
  - Internal Revenue Service, Cincinnati Service Center, 200 West Fourth Street, Covington, Kentucky (SH)

Drill Sharpening

- Department of Navy:
  - Naval Supply Center, San Diego, California (SH)

Elevator Operation Service

- General Service Administration:
  - Wyoming Valley Veterans Building, 19 North Main Street, Wilkes-Barre, Pennsylvania (SH)

Food Service

- Department of Air Force:
  - Sheppard Air Force Base, Texas (SH)

Food Service Attendant

- Department of Army:
  - Consolidated Enlisted Dining Facility, Building 61, Fort McPherson, Georgia (SH)
  - Seneca Army Depot, Romulus, New York (SH)

Forms/Publication Storage and Distribution

- Department of Treasury:
  - Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC (SH)

Furniture Rehabilitation

- General Service Administration:
  - Altus Air Force Base, Oklahoma (SH)
  - Lawton, Oklahoma including Fort Sill (SH)
  - Oklahoma City, Oklahoma, plus 25-mile radius, including FAA and Tinker Air Force Base (SH)
  - San Antonio, Texas, plus 40-mile radius (SH)
  - Wichita Falls, Texas, including Sheppard Air Force Base (SH)
  - Spokane, Washington, plus 30-mile radius (SH)

Furniture Rehabilitation (Metal)

- Department of Navy:
  - Naval Ordnance Station, Louisville, Kentucky (IB)

Ground Maintenance

- Department of Air Force:
  - 26 Buildings, 1 Area, and 4 Athletic Fields, Edwards Air Force Base, California (SH)
- Department of Army:
  - 5 Buildings and 6 Fields, Fort Ord, California (SH)
  - Lewiston Levee Parkway, Nez Perce County, Idaho (SH)
  - Bonneville Lock and Dam, Bonneville, Oregon (SH)
  - U.S. Army Reserve Facility-Portland (South), Sears Hall, 2731 SW Multnomah Boulevard, Portland, Oregon (SH)
  - U.S. Army Reserve Facility-Portland (West), Sharff Hall, 8801 N. Chautaugua Boulevard, Portland, Oregon (SH)
  - Asotin Recreation Area, Asotin County, Washington (SH)
  - Cemetery Grounds (includes opening and closing of graves), Fort Lawton, Washington (SH)
  - U.S. Army Reserve Facility, Building 4306, Grant County Airport, Moses Lake, Washington (SH)
  - U.S. Army Reserve Facility, Mann Hall, N. 4415 Market Street, Spokane, Washington (SH)
  - U.S. Army Reserve Facility, N. 3800 Sullivan Road, Trentwood, Washington (SH)
  - Vancouver Army Barracks, Vancouver, Washington (SH)
- Department of Commerce:
  - National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 2725 Montlake Boulevard East, Seattle, Washington (SH)
- Department of Energy:
  - Morgantown Energy Technology Center, Morgantown, West Virginia (SH)
- Department of Interior:
  - Ash Woods, French Drive and Independence Avenue to 17th Street and Independence Avenue, Washington DC (SH)
  - National Park Service, LBJ Memorial Grove, Constitution Gardens, Washington, DC (SH)
- Department of Navy:
  - Marine Corps Air Station, Yuma, Arizona (SH)
  - Naval Weapons Center, China Lake, California (SH)
  - Naval Air Station, Recreation Areas, Lemoore, California (SH)
  - Mare Island Naval Shipyard, Combat Systems Technical School Command, Vallejo, California (SH)
  - Naval Air Station Miramar, 15 Parcel Areas, San Diego, California (SH)
  - Naval Postgraduate School, Monterey, California (SH)
  - U.S. Naval Security Activity, Skaggs Island, Sonoma, California (SH)
  - Naval Ordnance Station, Nonindustrial Area, Indian Head, Maryland (SH)
  - Naval Weapons Station, 2 Parks, 5 Buildings, and 7 Areas, Yorktown, Virginia (SH)
  - Naval Air Station, Whidbey Island, Washington (SH)
- Department of Transportation:
  - Federal Aviation Administration, AFSFO, 55 Midway Avenue, Daytona Beach, Florida (SH)
  - Federal Aviation Administration Airway Facilities Sector, 1100 South Service Road, Atlanta, Georgia (SH)
  - Federal Aviation Administration, Air Route Traffic Control Center, Ronkonkoma, New York (SH)
  - Federal Aviation Administration, New York TRACON Facility, Westbury, New York (SH)
  - Federal Aviation Administration, Air Route Traffic Control Center, Leesburg, Virginia (SH)
- Department of Treasury:
  - U.S. Secret Service, Special Training Building and Complex, Beltsville, Maryland (SH)
- General Services Administration:
  - Federal Center, 620 Central Avenue, Alameda, California (SH)
  - Federal Building and U.S. Post Office, 11000 Wilshire Boulevard, Los Angeles, California (SH)
  - U.S. Geological Survey, 345 Middlefield Road, Menlo Park, California (SH)
  - Federal Building, 2800 Cottage Way, Sacramento, California (SH)
  - U.S. Court of Appeals, 7th and Mission Streets, San Francisco, California (SH)
  - Social Security Administration Complex, 6401 Security Boulevard, Baltimore, Maryland (SH)
  - Social Security Administration Computer Center, 6201 Security Boulevard, Baltimore, Maryland (SH)

  - Internal Revenue Service Center, 310 Lowell Street, Andover, Massachusetts (SH)
  - U.S. Customs House, 6 World Trade Center, New York, New York (SH)
  - Federal Building, 1002 NE Holladay, Portland, Oregon (SH)
  - Pioneer Courthouse, 520 SW Morrison, Portland, Oregon (SH)
  - U.S. Courthouse 620 SW Main, Portland, Oregon (SH)
  - Wyatt Federal Building, 1220 SW Third, Portland, Oregon (SH)
  - Federal Building, 500 West 12th, Vancouver, Washington (SH)
- National Aeronautics and Space Administration:
  - Goddard Space Flight Center, Greenbelt, Maryland (SH)
- U.S. Postal Service:
  - 1088 Nandino Boulevard, Lexington, Kentucky (SH)

JANITORIAL/CUSTODIAL

- Department of Agriculture:
  - Forest Service, Sequoia National Forest, 2 Buildings, Porterville, California (SH)
  - Forest Service, Coeur d'Alene Nursery, 3600 Nursery Road, Coeur d'Alene, Idaho (SH)
  - Forest Service, Fernan Ranger Station, 2502 E. Sherman Avenue, Coeur d'Alene, Idaho (SH)
  - Wallace Ranger District of the Panhandle National Forest, Coeur d'Alene, Idaho (SH)
  - National Finance Center, NASA Facility, 13800 Old Gentilly Road, Building 350, New Orleans, Louisiana (SH)
  - Umpqua National Forest-Radio Shop, 2691 NE. Diamond Lake Boulevard, Roseburg, Oregon (SH)
  - Umpqua National Forest, Supervisor's Office, 2900 NW. Stewart Parkway, Roseburg, Oregon (SH)
- Department of Air Force:
  - 5 Buildings, Bergstrom Air Force Base, Texas (SH)
  - Ellsworth Air Force Base, South Dakota (SH)
  - Fairchild Air Force Base, Washington (excluding USAF Hospital, Air National Guard and Commissary) (SH)
  - Griffiss Air Force Base, New York (SH)
  - Building 1293, Hill Air Force Base, Utah (SH)
- Department of Army:
  - National Defense University, Health Fitness, Fort McNair, Washington, DC (SH)
  - Pentagon Officers Athletic Center, The Pentagon, Washington, DC (SH)
  - U.S. Army Reserve Center, John Williams Street, Attleboro, Massachusetts (SH)
  - U.S. Army Reserve Center, Belmont & Manley Streets, Brockton, Massachusetts (SH)
  - U.S. Army Reserve Center, 915 W. Chestnut Street Brockton, Massachusetts (SH)
  - U.S. Army Reserve Center, 675 American Legion Highway, Roslindale, Massachusetts (SH)
  - U.S. Army Reserve Center, 130 Eldridge Street, Taunton, Massachusetts (SH)
  - U.S. Army Reserve Center, Fort Snelling, Minnesota (SH)
  - U.S. Readiness Group, Fort Snelling, Minnesota (SH)
  - U.S. Army Reserve Center #3, 4301 Goodfellow Boulevard, St. Louis, Missouri (SH)
  - U.S. Army Reserve Center, 111 Finney Boulevard, Malone, New York (SH)
  - U.S. Army Reserve Center, Burrstone Road, Utica, New York (SH)
  - U.S. Army Reserve Center, Watertown, New York (SH)
  - U.S. Army Reserve Facility, Salem, Oregon (SH)
  - U.S. Army Reserve Center, 3273rd U.S. Army Reserve Hospital, Suites B and C, 1003 Grove Road, Greenville, South Carolina (SH)
  - U.S. Army Reserve Center, Center No. 1, 2201 Laurens Road, Greenville, South Carolina (SH)
  - U.S. Army Reserve Center, Kukowski-Donaldson Center, Perimeter Road, Greenville, South Carolina (SH)
  - Lewisville Lake Park, Lewisville, Texas (SH)
  - Resources Management Office Building, 400 Riverside Drive, Clarkston, Washington (SH)
  - U.S. Army Reserve Facility, Grant County Airport, Moses Lake, Washington (SH)
  - U.S. Army Reserve Facility, 14631 SE. 1092nd Street, Renton, Washington (SH)
  - Hiram M. Chittenden Locks, Seattle, Washington (SH)
  - U.S. Army Reserve Facility, Mann Hall, North 4415 Market Street, Spokane, Washington (SH)
  - U.S. Army Reserve Facility, 3800 North Sullivan Road, Trentwood, Washington (SH)
  - Vancouver Army Barracks, Vancouver, Washington (SH)
  - Yakima Firing Center, Yakima, Washington (SH)
- Departments of Army and Air Force:
  - Army and Air Force Exchange System, Fort Bliss Exchange, Main Store, Building 1735, Fort Bliss, Texas (SH)
  - Army and Air Force Exchange, Alamo Exchange Region, 5315 Summit Parkway, San Antonio, Texas (SH)
- Department of Defense:
  - DCASR Building B–95, 2 Buildings, Marietta, Georgia (SH)
- Department of Energy:
  - 3 Buildings, Idaho Falls, Idaho (SH)
  - Morgantown Energy Technology Center, Morgantown, West Virginia (SH)
- Department of Health and Human Services:
  - National Institute for Occupational Safety and Health, 5555 Ridge Avenue, Cincinnati, Ohio (SH)
- Department of Interior:
  - Indiana Dunes National Lakeshore, 1100 North Mineral Springs Road, Porter, Indiana (SH)
  - Bureau of Land Management, District Building, Roseburg, Oregon (SH)
  - Bureau of Land Management, Salem District Office, 1717 Fabry Road, SE., Salem, Oregon (SH)
- Department of Navy:
  - Marine Corps Air Station, Yuma, Arizona (SH)
  - 12 Buildings, Naval Research Laboratory, Washington, DC (SH)
  - Naval Communications Unit (Cheltenham), Washington, DC (SH)
  - Naval and Marine Corps Reserve Center, Jackson, Mississippi (SH)
  - Naval Resale and Support Office, Fort Wadsworth, Staten Island, New York (SH)
  - Naval and Marine Corps Reserve Center, Newport News, Virginia (SH)
  - Marine Corps Development and Education Command, Quantico, Virginia for All Family Housing Units and 38 Buildings (SH)
  - Pudget Sound Naval Shipyard, Equipment Maintenance Shops, Bremerton, Washington (SH)
  - Naval Air Station, 37 Buildings, Whidbey Island, Washington (SH)
- Department of Transportation:
  - Federal Aviation Administration, Air Traffic Control Tower, Atlanta, Georgia (SH)
  - Federal Aviation Administration Facilities, Air Route Traffic Control Center, Hampton, Georgia (SH)
  - Federal Aviation Administration, TRACON Facility, Westbury, New York (SH)
  - Federal Aviation Administration Facilities, 7 Buildings, Spokane, Washington (SH)
- Department of Treasury:
  - Bureau of Engraving and Printing, Annex Building, 14th and C Streets, SW., Washington, (SH)
  - Bureau of Engraving and Printing, Main Building, 14th and C Streets, SW., Washington, DC (SH)
- General Services Administration:
  - Federal Building, 3rd Avenue and 1st Street, Cullman, Alabama (SH)
  - Federal Building, 109 St. Joseph Street, Mobile, Alabama (SH)
  - GSA Motor Pool and Parking Garage, St. Joseph Street, Mobile, Alabama (SH)
  - John A. Campbell U.S. Courthouse, 113 St. Joseph Street, Mobile, Alabama (SH)
  - Federal Building and U.S. Courthouse, 15 Lee Street, Montgomery, Alabama (SH)
  - Federal Building, 55 East Broadway, Tucson, Arizona (SH)
  - Federal Building and U.S. Courthouse, 1130 "O" Street, Fresno, California (SH)
  - Federal Building, 801 I Street, Sacramento, California (SH)
  - John E. Moss Federal Building, 650 Capitol Mall, Sacramento, California (SH)
  - U.S. Court of Appeals and Post Office, 7th and Mission Streets, San Francisco, California SH)
  - Denver Federal Center, Building 85, Denver, Colorado (SH)
  - Central, East and South Buildings, 2430 E Street, NW., Washington, DC (SH)
  - Federal Building, 1724 F Street, NW., Washington, DC (SH)
  - Potomac Annex Buildings 1–7, 23rd and E Streets, NW., Washington, DC (SH)
  - Federal Building-U.S. Courthouse, 401 SE First Avenue, Gainesville, Florida (SH)
  - Federal Building, 51 SW First Avenue, Miami, Florida (SH)
  - Federal Building, U.S. Courthouse, U.S. Post Office, 601 North Florida Avenue, Tampa, Florida (SH)
  - Federal Building, 355 Hancock Avenue, Athens, Georgia (SH)

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Federal Building, 275 Peachtree Street, NE., Atlanta, Georgia (SH)

U.S. Court of Appeals, Forsyth & Walton Streets, Atlanta, Georgia (SH)

IRS Center, 4800 Buford Highway, Chamblee, Georgia (SH)

Federal Building, Moultrie, Georgia (SH)

Juliette Gordon Low Federal Buildings, Building A—120 Bernard Street, Building B—124 Bernard Street, Building C—100 W. Oglethorpe Avenue, Savannah, Georgia (SH)

Federal Building, U.S. Post Office and U.S. Courthouse, Thomasville, Georgia (SH)

Federal Regional Center, Pinetree Boulevard, Thomasville, Georgia (SH)

Federal Building, U.S. Post Office, 304 N. 8th, Boise, Idaho (SH)

Federal Building and U.S. Courthouse, 205 4th Street, Coeur d'Alene, Idaho (SH)

Federal Building, 536 South Clark Street, Chicago, Illinois (SH)

Federal Parking Facility, 450 South Federal Street, Chicago, Illinois (SH)

Interagency Motor Pool, 701 South Clinton Street, Chicago, Illinois (SH)

U.S. Customhouse, 610 South Canal Street, Chicago, Illinois (SH)

OSHA Training Center, 1555 Times Drive, Des Plaines, Illinois (SH)

Federal Building and U.S. Courthouse, 121 W. Spring Street, New Albany, Indiana (SH)

Federal Building and U.S. Courthouse, 101 First Street, SE., Cedar Rapids, Iowa (SH)

Federal Building, 210 Walnut Street, Des Moines, Iowa (SH)

Leased Spaced, 603–11 East 2nd Street, Des Moines, Iowa (SH)

U.S. Courthouse, 123 East Walnut Street, Des Moines, Iowa (SH)

Federal Building, 400 South Clinton, Iowa City, Iowa (SH)

Federal Building, U.S. Post Office and Courthouse, 330 Shawnee, Leavenworth, Kansas (SH)

U.S. Post Office-Courthouse, 601 Broadway, Louisville, Kentucky (SH)

Federal Building, U.S. Post Office, U.S. Courthouse, Frederica and 5th Streets, Owensboro, Kentucky (SH)

Federal Building and U.S. Post Office, 40 Western Avenue, Augusta, Maine (SH)

U.S. Federal Building & Post Office, 212 Harlow, Bangor, Maine (SH)

Garmatz Courthouse and Federal Building, 101 W. Lombard Street, Baltimore, Maryland (SH)

Roth Building, Social Security Administration Complex, 5536 Caswell Road, Baltimore, Maryland (SH)

Social Security Complex, Woodlawn Annex and Supply Buildings, 6401 Security Boulevard, Baltimore, Maryland (SH)

Social Security Administration Computer Center, 6201 Security Boulevard, Woodlawn, Maryland (SH)

John W. McCormack Post Office and Courthouse, Post Office Square, Boston, Massachusetts (SH)

U.S. Appraiser's Stores, 408 Atlanta Avenue, Boston, Massachusetts (SH)

U.S. Custom House, 8 McKinley Square, Boston, Massachusetts (SH)

Philip J. Philbin Federal Building, 885 Main Street, Fitchburg, Massachusetts (SH)

Springfield Federal Building, Main and Bridge Streets, Springfield, Massachusetts (SH)

Federal Records Center, 380 Trapelo Road, Waltham, Massachusetts (SH)

Waltham Federal Center, 424 Trapelo Road, Waltham, Massachusetts (SH)

Gerald R. Ford Museum, 303 Pearl Street, NW., Grand Rapids, Michigan (SH)

Federal Building, 212 3rd Avenue South, Minneapolis, Minnesota (SH)

Social Security Building, 1811 Chicago Avenue South, Minneapolis, Minnesota (SH)

Federal Building and U.S. Courthouse, 316 N. Robert Street, St. Paul, Minnesota (SH)

Federal Building, U.S. Post Office, and U.S. Courthouse, Main and Poplar Streets, Greenville, Mississippi (SH)

Federal Building, U.S. Post Office, 200 East Washington Street, Greenwood, Mississippi (SH)

William M. Colmer Federal Building-Courthouse, 701 Main Street, Hattiesburg, Mississippi (SH)

Federal Building, 100 West Capitol Street, Jackson, Mississippi (SH)

U.S. Post Office and U.S. Courthouse, 245 East Capitol Street, Jackson, Mississippi (SH)

Federal Building and U.S. Courthouse, 100 Centenntial Mall North, Lincoln, Nebraska (SH)

Social Security Administration District Office Building, 22 Morris Street, Hackensack, New Jersey (SH)

Social Security Administration District Office Building, 686 Nye Avenue, Irvington, New Jersey (SH)

Social Security Administration District Office Building, 396 Bloomfield Avenue, Montclair, New Jersey (SH)

Federal Building, 20 Washington Place, Newark, New Jersey (SH)

Federal Building, 3rd and Hill Avenue, Gallup, New Mexico (SH)

Leo W. O'Brien Federal Building, Clinton Avenue and N. Pearl Street, Albany, New York (SH)

U.S. Post Office and Courthouse, 455 Broadway, Albany, New York (SH)

Federal Building, 111 West Huron, Buffalo, New York (SH)

U.S. Courthouse, 68 Court Street, Buffalo, New York (SH)

Internal Revenue Service, 120 Church Street, New York, New York (SH)

Jacob K. Javits Federal Building, including U.S. Court of International Trade, 26 Federal Plaza and Centre Street Garage, 203–209 Centre Street, New York, New York (SH)

U.S. Courthouse Annex, 1 St. Andrews Plaza, New York, New York (SH)

U.S. Courthouse, 40 Foley Square, New York, New York (SH)

U.S. Mission to the United Nations, 799 U.N. Plaza, New York, New York (SH)

Kenneth B. Keating Federal Building and U.S. Courthouse, 100 State Street, Rochester, New York (SH)

Federal Building, 45 Bay Street, Staten Island, New York (SH)

U.S. Courthouse and Federal Building, Broad and Catherine Streets, Utica, New York (SH)

Federal Building, 401 West Trade Street, Charlotte, North Carolina (SH)

Social Security Administration Building, 215 West Third Avenue, Gastonia, North Carolina (SH)

Federal Building, 125 South Main Street, Muskogee, Oklahoma (SH)

Federal Building and Courthouse, 5th and Okmulgee, Muskogee, Oklahoma (SH)

Federal Building, U.S. Courthouse, 211 East 7th Avenue, Eugene, Oregon (SH)

Federal Building, 511 NW. Broadway, Portland, Oregon (SH)

Federal Building, Bonneville Power Administration, 1002 NE. Holladay Street, Portland, Oregon (SH)

Federal Warehouse, 2700 NW. Yeon Avenue, Portland, Oregon (SH)

Lloyd Group Buildings, 5 Locations, Portland, Oregon (SH)

Pioneer Courthouse, 520 SW. Morrison, Portland, Oregon (SH)

U.S. Courthouse, Broadway and Maine, Portland, Oregon (SH)

U.S. Customs House, 220 NE. 8th Avenue, Portland, Oregon (SH)

Federal Building, 6th and State Streets, Erie, Pennsylvania (SH)

Federal Building and Courthouse, 228 Walnut Street, Harrisburg, Pennsylvania (SH)

William J. Green, Jr. Federal Building, 600 Arch Street, Philadelphia, Pennsylvania (SH)

Federal Building, 240 West Third Street, Williamsport, Pennsylvania (SH)

Defense Mapping Agency, 175 Brookside Avenue, West Warwick, Rhode Island (SH)

L. Mendel Rivers Federal Building, 334 Meeting Street, Charleston, South Carolina (SH)

U.S. Post Office-Courthouse, Broad and Meeting Street, Charleston, South Carolina (SH)

C. F. Haynesworth Federal Building and U.S. Courthouse, 300 East Washington Street, Greenville, South Carolina (SH)

Federal Building/U.S. Courthouse, 515 9th Street, Rapid City, South Dakota (SH)

Federal Building-U.S. Courthouse, 400 South Phillips Street, Sioux Falls, South Dakota (SH)

Armed Forces Examining Station and Bureau of Mines Building, 1100 Filmore Street, Amarillo, Texas (SH)

J. Marvin Jones Federal Building and U.S. Courthouse, 295 E. 5th Street, Amarillo, Texas (SH)

3 Bridges and 1 Building, El Paso, Texas (SH)

U.S. Courthouse, 511 E. San Antonio Avenue, El Paso, Texas (SH)

Forest Service Building, 507 25th Street, Ogden, Utah (SH)

Federal Executive Institute, Route #29 North, Charlottesville, Virginia (SH)

U.S. Customs House, 101 E. Main Street, Norfolk, Virginia (SH)

U.S. Post Office and Courthouse, 600 Granby Mall, Norfolk, Virginia (SH)

Federal Building, 400 N. 8th Street, Richmond, Virginia (SH)

U.S. Courthouse, 10th and Main Streets, Richmond, Virginia (SH)

- GSA Center, 2 Buildings, Auburn, Washington (SH)
- Federal Building, 3002 Colby Avenue, Everett, Washington (SH)
- Federal Center, 25th and Dover Streets, Moses Lake, Washington (SH)
- Federal Building, U.S. Post Office, 403 West Lewis Street, Pasco, Washington (SH)
- Federal Building, U.S. Post Office and Courthouse, 825 Jadwin Avenue, Richland, Washington (SH)
- Federal Archives and Records Center, 6125 Sandpoint Way, Seattle, Washington (SH)
- Federal Building, Immigration and Naturalization Services, 815 Airport Way, Seattle, Washington (SH)
- Federal Center South, 4735 E. Marginal Way, Seattle, Washington (SH)
- U.S. Courthouse, 1010 Fifth Avenue, Seattle, Washington (SH)
- Federal Buillding, U.S. Post Office, W. 904 Riverside, Spokane, Washington (SH)
- U.S. Courthouse, West 920 Riverside Avenue, Spokane, Washington (SH)
- Federal Building, 500 W. 12th Street, Vancouver, Washington (SH)
- Federal Center, 14 Buildings, Walla Walla, Washington (SH)
- U.S. Courthouse, 120 North Henry Street, Madison, Wisconsin (SH)
- Federal Building, 500 Quarrier Street, West Virginia (SH)

Smithsonian Institution:
- National Zoological Park, Washington, DC (SH)
- Smithsonian Institution Service Center, 1111 North Carolina Street, NE., Washington, DC (SH)
- Paul E. Garber Complex, 3904 Old Silver Hill Road, Suitland, Maryland (SH)

U.S. Postal Service:
- Mailbag Facility, 7600 West Roosevelt Road, Forest Park, Illinois (SH)

Veterans Administration:
- Veterans Administration Medical Center, Building No. #32, Dublin, Georgia (SH)

Janitorial/Mechanical

General Services Administration:
- The Carter Presidential Library, Atlanta, Georgia (SH)
- Federal Office Building, 591 Park Avenue, Idaho Falls, Idaho (SH)

Janitorial/Elevator Operator

Department of Treasury:
- Bureau of Engraving and Printing, Public Debt Building, Washington, D.C. (SH)

General Services Administration:
- 3 Buildings, Navy Yard Annex, 2nd and M Streets, SE., Washington, DC (SH)
- Veterans Administration Clinic Building, 17 Court Street, Boston, Massachusetts (SH)
- Federal Building, 35 Ryerson Street, Brooklyn, New York (SH)
- Federal Building, 201 Varick Street, New York, New York (SH)
- Veterans Administration Building, 252 Seventh Avenue, New York, New York (SH)

Laundry

Department of Air Force:
- Hill Air Force Base, Utah (Wiping Rags only) (SH)

Department of Army:
- U.S. Army Medical Material Agency, Fort Detrick Maryland (SH)

Department of Navy:
- Naval Training Center, Great Lakes, Illinois (SH)

Mailing

Department of Agriculture:
- Washington, D.C. (Metropolitan area) (SH)

Department of Commerce:
- National Oceanic and Atmospheric Administration, 5 Offices, Rockville, Maryland (SH)
- National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia (SH)

Department of Defense:
- Defense Supply Service, National Committee for Employer Support for Guard and Reserve, 1117 N. 19th Street, Arlington, Virginia (SH)

Department of Education:
- Office of Civil Rights, Office of Program Review & Assistance, 300 C Street, SW., Washington, DC (SH)

Department of Energy:
- Distribution, 12th and Pennsylvania, NW., Washington, DC (SH)

Department of Health and Human Services:
- Office of the Secretary, Washington, DC (SH)
- National Institutes of Health, Bethesda, Maryland (SH)
- Alcohol, Drug, Abuse, and Mental Health Administration, Rockville, Maryland (SH)
- Food and Drug Administration, Rockville, Maryland (SH)
- Health Resources Administration, Rockville, Maryland (SH)
- Health Services Administration, Rockville, Maryland (SH)
- Office of Assistant Secretary for Health, Rockville, Maryland (SH)

Department of Housing and Urban Development:
- Washington, D.C. (SH)

Department of Interior:
- 18th & C Streets, NW., Washington, DC (SH)
- U.S. Geological Survey, 2 Divisions, Reston, Virginia (SH)

Department of Labor:
- 200 Constitution Avenue, NW., Washington, DC (SH)

Manpower Administration, Washington, DC (SH)
- President's Committee on Employment of the Handicapped, Washington, DC (SH)

Department of Transportation:
- National Highway Traffic Administration, 400 7th Street, SW., Washington, DC (SH)
- Office of the Secretary, Distribution Unit, 400 7th Street, SW., Washington, DC (SH)

Department of Treasury:
- Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC (SH)
- Bureau of Public Debt, 14th and C Streets, SW., Washington, DC (SH)

Architectural and Transportation Barriers Compliance Board:
- 330 C Street, SW., Washington, DC (SH)

Environmental Protection Agency:
- Specialized Procurement Unit, 401 M Street, SW., Washington, DC (SH)

Federal Election Commission:
- 1325 K Street, NW., Washington, DC (SH)

Federal Trade Commission:
- Pennsylvania Avenue and 6th Street, NW., Washington, DC (SH)

General Services Administration:
- National Archives and Records Services, 7th and Pennsylvania Avenue, NW., Washington, DC (SH)

Library of Congress:
- Washington, DC (SH)

Merit Systems Protection Board:
- Office of Special Counsel, 1120 Vermont Avenue, NW., Washington, DC (SH)

National Credit Union Administration:
- Printing Service, 1375 K Street, NW., Washington, DC (SH)

National Endowment for the Humanities:
- 1100 Pennsylvania Avenue, NW., Room 202, Washington, DC (SH)

National Science Foundation:
- 1800 G Street, NW., Washington, DC (SH)

Office of Personnel Management:
- 1900 E Street, NW., Washington, DC (SH)

Smithsonian Institution:
- Supply Division, Washington, DC (SH)

U.S. Commission on Civil Rights:
- 1211 Vermont Avenue, NW., Washington, DC (SH)

U.S. Consumer Product Safety Commission:
- Washington, DC (SH)

U.S. Information Agency:
- 400 C Street, SW., Washington, DC (SH)

Mattress and Box Spring Rehabilitation

General Services Administration:
- Orders for renovated mattresses may be arranged through GSA regional offices. IB will provide requirements for mattress and box spring renovation for GSA Regions W,2,3,4,5,6,7 and 8 only. (IB)

Microfilm Reproduction

Department of Navy:
- Naval Submarine Base Bangor, Silverdale, Washington, DC (SH)

Operation of USDA Central Shipping and Receiving Facility

Department of Agriculture:
- South Building, 12th and C Streets, S.W., Washington, DC (SH)

Operation of the Postal Service Center

Department of Air Force:
- Elmendorf Air Force Base, Alaska (SH)
- Barksdale Air Force Base, Louisiana (SH)
- Minot Air Force Base, North Dakota (SH)

Operation of Visitors Center Gift Shop

Department of Treasury:
- Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC (SH)

Pallet Repair

Department of Navy:
- Naval Supply Center, Norfolk, Virginia (SH)
- Naval Supply Center, Cheatham Annex, Williamsburg, Virginia (SH)
- Naval Supply Center, Puget Sound, Bremerton, Washington (SH)

Parts Sorting

Department of Air Force:
- Hill Air Force Base, Utah (SH)

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Photocopying

Department of Agriculture:
- National Agricultural Library Building, Beltsville, Maryland (SH)

Publications Distribution

Department of Navy:
- Naval Construction Battalion Center, Gulfport, Mississippi (SH)

Repair and Maintenance of Electric Typewriters Only

General Services Administration:
- Syracuse, New York (including Onondaga County) (SH)

Repair and Maintenance of Manual Typewriters Only

General Services Administration:
- Federal Court House Building, Syracuse, New York (SH)

Repair of Air Cargo Pallet Top and Side Nets

Department of Air Force:
- Norton Air Force Base, California (SH)
- Wright-Patterson Air Force Base, Ohio (SH)

Repair of Rubberized Items

Department of Army:
- Mattress Pneumatic (Noninsulated 8465-00-254-8887), Fort Bliss, Texas (SH)
- Mattress Pneumatic (Insulated 8465-00-518-2781), Fort Bliss, Texas (SH)
- Ponchos (8405-00-935-3257), Fort Bliss, Texas (SH)
- Bag, Clothing, Waterproof (8465-00-261-6909), Fort Bliss, Texas (SH)

Repair Service

Department of Army:
- Bag, Sleeping (8465-00-242-7855 and 8465-01-049-0088), Fort Bliss, Texas (SH)
- Case, Sleeping Bag (8465-00-237-8719), Fort Bliss, Texas (SH)
- Liner, Field Jacket (8415-00-782-2888), Fort Bliss, Texas (SH)
- Liner, Trousers, Field (8415-00-782-2926), Fort Bliss, Texas (SH)
- Bag, Barracks (8465-00-530-3692), Fort Bliss, Texas (SH)
- Bag, Duffel (8465-00-141-0932), Fort Bliss, Texas (SH)

Department of Navy:
- Electrode Holder Assemblies, Bremerton, Washington (SH)

Sewing

Department of Army:
- Redstone Arsenal, Alabama (Provide specified end items produced through use of customized, heavy-duty sewing service) (SH)

Shrink Wrapping Gift Packages

U.S. Postal Service:
- Washington, DC (SH)

Sponge Rubber Mattresses Rehabilitation

General Services Administration:
- Requirements for GSA Region 3 (SH)

[FR Doc. 86-24745 Filed 10-31-86; 8:45 am]

BILLING CODE [illegible]

federal register

Monday
November 3, 1986

Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 1, 22, 52, and 53

Federal Acquisition Regulation (FAR); Labor Standards for Construction Contracts; Proposed Rule

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DEPARTM

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Federal Ac
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Contracts

AGENCIES:
(DoD), Ger
(GSA), and
Space Adm

ACTION: Pr
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SUMMARY:
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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 22, 52, and 53

Federal Acquisition Regulation (FAR); Labor Standards for Construction Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule; notice of availability and request for comments.

SUMMARY: The Department of Labor (DOL) has issued labor standard provisions applicable to contracts covering Federally Financed and Assisted Construction. The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are proposing to revise Federal Acquisition Regulation (FAR) section 1.105, Subparts 22.3, Contract Work Hours and Safety Standards Act, and 22.4, Labor Standards for Contracts Involving Construction; and to add twelve clauses at 52.222-6 through 52.222-17 and three Standard Forms.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 2, 1987, to be considered in the formulation of a final rule.

ADDRESS: Interested parties may obtain copies of the proposed text from the FAR Secretariat and written comments should be submitted to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 83-7 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

A full, final regulatory impact and regulatory flexibility act analysis was prepared by DOL and a summary was published in the **Federal Register** on May 28, 1982 (47 FR 23661) when DOL published their regulation. The proposed revision to FAR 22.4 is an implementation of policy and regulation published by DOL.

B. Paperwork Reduction Act

The information collection requirements contained in this FAR revision were approved by the Office of Management and Budget (OMB) and have been assigned OMB control numbers 1215-0140, 1215-0149, and 1215-0017. Those portions (Standard Forms) not previously cleared under the above OMB control numbers have been submitted to OMB for clearance.

List of Subjects in 48 CFR Parts 1, 22, 52, and 53

Government procurement.

Dated: October 24, 1986.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

[FR Doc. 86-24828 Filed 10-31-86; 8:45 am]

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federal register

Monday
November 3, 1986

Part IV

Environmental Protection Agency

40 CFR Part 261

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Denials and Request for Comments

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3102-7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Denials

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to deny the petitions submitted by five petitioners to exclude their solid wastes from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste list. The effect of this action, if promulgated, would be to deny exclusions for certain wastes generated at five particular facilities from listing as hazardous wastes under 40 CFR Part 261, and revoke the temporary exclusions of certain wastes generated at these five facilities. Thus, the petitioned waste at the five facilities being denied exclusions would then be considered hazardous.

The Agency has previously evaluated all five of these petitions which are discussed in today's notice. Based on our review at that time, these petitioners were all granted temporary exclusions. Due to changes to the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, however, these petitions, have been evaluated both for the factors for which the wastes were originally listed, as well as other factors which reasonably could cause the wastes to be hazardous.

DATES: EPA will accept public comments on these proposed denials until November 6, 1986. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on these proposed decisions by filing a request with Bruce Weddle, whose address appears below, by November 6, 1986. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSP/OSW (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-86-MADP-FFFFF".

Requests for a hearing should be addressed to Bruce Weddle, Director, Permits and State Programs Division, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at U.S. Environmental Protection Agency, 401 M Street SW. (sub-basement), Washington, DC 20460, and is available for viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475-9327 or Kate Blow at (202) 382-4675 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401, M Street SW., Washington, DC 20460, (202) 382-5096.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit any of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.,* ignitability, corrosivity, reactivity, and extraction procedure [EP] toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To be excluded, petitioners must show that a waste generated at their facility does not meet any of the criteria under which the waste was listed. (See 40 CFR 260.22(a) and the background documents for the listed wastes.) In addition, the Hazardous and Solid Waste Amendments of 1984 (HSWA) require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics, as well as present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. (See 40 CFR 260.22(a); section 222 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6921(f); and the background documents for the listed wastes.) Although wastes which are "delisted" (*i.e.* excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of a hazardous waste, generators remain obligated to determine whether their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. (See 40 CFR 261.3(c) and (d)(2).) Again, the substantive standard for "delisting" is: (1) That the waste not meet any of the criteria for which it was listed originally; and (2) that the waste is not hazardous after considering factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Where the waste is derived from one or more listed hazardous waste, the demonstration may be made with respect to each constituent or the waste mixture as a whole. (See 40 CFR 260.22(b).) Generators of these excluded treatment, storage, or disposal residues remain obligated to determine on a periodic basis whether these residues exhibit any of the hazardous waste characteristics.

Approach Used to Evaluate Delisting Petitions

The Agency first will evaluate the petition to determine whether the waste (for which the petition was submitted) is non-hazardous based on the criteria for which the waste was originally listed. If the Agency believes that the waste is still hazardous (based on the original listing criteria), it will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the criteria for which the waste was listed, it then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

The Agency is using a hierarchical approach in evaluating petitions for the other factors or contaminants (*i.e.*, those listed in Appendix VIII of Part 261). This approach may, in some cases, eliminate the need for additional testing. The petitioner can choose to submit a raw materials lists and process descriptions. The Agency will evaluate this information to determine whether any Appendix VIII hazardous constituents are used or formed in the manufacturing and treatment process and are likely to be present in the waste at significant levels. If so, the Agency then will request that the petitioner perform additional analytical testing. If the petitioner disagrees, he may present arguments on why the toxicants would not be present in the waste, or, if present, why they would pose not toxicological hazard. The reasoning may include descriptions of closed or segregated systems, or mass balance arguments relating volume of raw materials used to the rate of waste generation. If the Agency finds that the arguments presented by the petitioner are not sufficient to eliminate the reasonable likelihood of the toxicant's presence in the waste, the petition would be tentatively denied on the basis of insufficient information. The petitioner then may choose to submit the additional analytical data on representative samples of the waste during the public comment period.

Rather than submitting a raw materials list, petitioners may test their waste for any additional toxic constituents that may be present and submit this data to the Agency. In this case, the petitioner should submit an explanation of why any constituents from Appendix VIII of Part 261, for which no testing was done, would not be present in the waste or, if present, why they would not pose a toxicological hazard.

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (a)(3). Specifically, the Agency considers whether the waste is acutely toxic, as well as the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and bioaccumulate, their persistence in the environment once released from the waste, plausible types of management of the waste, and the quantities of waste generated. In this regard, the Agency has developed an analytical approach to the evaluation of wastes that are landfilled and land treated. See 50 *FR* 7882 (February 26, 1985), 50 *FR* 48886 (November 27, 1985), and 50 *FR* 48943 (November 27, 1985). The overall approach, which includes a ground water transport model, is used to predict reasonable worst-case contaminant levels in ground water in nearby hypothetical receptor wells—"compliance points" (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The land treatment model also has an air component and predicts the concentration of specific toxicants at some distance downwind of the facility. The compliance point concentration determined by the model then is compared directly to a level of regulatory concern. If the value at the compliance point predicted by the model is less than the level of regulatory concern, then the waste could be considered non-hazardous and a candidate for delisting. If the value at the compliance point is above this level, however, then the waste probably still will be considered hazardous, and not excluded from Subtitle C control.[1]

This approach evaluates the petitioned wastes by assuming reasonable worst-case land disposal scenarios. This approach has resulted in the development of a sliding regulatory scale which suggests that a large volume of waste exhibiting a particular extract level would be considered hazardous, while a smaller volume of the same waste could be considered non-hazardous.[2] The Agency believes this to be a reasonable outcome since a larger quantity of the waste (and the toxicants in the waste) might not be diluted sufficiently to result in compliance point concentrations that are less than the level of regulatory concern. The selected approach predicts that the larger the waste volume, the higher the level of toxicants at the compliance point. The mathematical relationship (with respect to ground water) yields at least a six-fold dilution of the toxicant concentration initially entering the aquifer (*i.e.*, any waste exhibiting extract levels equal to or less than six times a level of regulatory concern will generate a toxicant concentration at the compliance point equal to or less than the level of regulatory concern). Depending on the volume of waste, an additional five-fold dilution may be imparted, resulting in a total dilution of up to thirty-two times.

The Agency is using this approach as one factor in determining the potential impact of the unregulated disposal of petitioned waste on human health and the environment. The Agency has used this approach in evaluating each of the wastes discussed in today's publication. As a result of this evaluation, the Agency is tentatively denying exclusions for the wastes from all five petitioners.

It should be noted that EPA has not verified the submitted test data before proposing to grant these exclusions. The sworn affidavits submitted with each petition bind the petitioners to present truthful and accurate results. The Agency, however, has initiated a spot sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions before final exclusions will be granted.

Finally, before the Hazardous and Solid Waste Amendments of 1984 were enacted, the Agency granted temporary exclusions without first requesting public comment. The Amendments specifically require the Agency to provide notice and an opportunity for comment before granting an exclusion. All five of the denials proposed today will not become effective unless and until made final. A notice of final denial will not be published until all public comments (including those that requested hearings, if any) are addressed.

Petitioners

The proposed denials published today are for the following petitioners:

ITE Electrical Apparatus Division of Siemens Energy and Automation, Inc., Spartanburg, South Carolina;

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[1] The Agency proposed a similar approach, including a ground water transport model, as part of the proposed toxicity characteristic (See 51 *FR* 21648, June 13, 1986). The Agency, has not completed its evaluation of the comments on this proposal, however. If a regulation is promulgated, using the ground water transport model, the Agency will consider revising the delisting analysis.

[2] Other factors may result in the denial of a petition, such as actual ground water monitoring data or spot check verification data.

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Monroe Auto Equipment Company, Cozad, Nebraska;
Harrison Radiator, Division of General Motors Corp., Dayton, Ohio;
Harrison Radiator, Division of General Motors Corp., Moraine, Ohio;
American Chrome and Chemicals, Corpus Christi, Texas.

I. ITE Electrical Apparatus Division of Siemens Energy and Automation, Inc.

A. Petition for Exclusions

ITE Electrical Apparatus Division of Siemens Energy and Automation, Inc. (ITE), located in Spartanburg, South Carolina (formerly Gould, Inc.) is involved in the manufacture of electrical products for use in industrial and commercial applications. ITE has petitioned the Agency to exclude their sludge, currently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. The listed constituents of concern for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed).

Based upon the Agency's review of their petition, ITE was granted a temporary exclusion on August 6, 1981.[3] The Agency's basis for granting the exclusion, at that time, was the low migration potential of the constituents of concern. On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Amendments require the Agency to consider: (1) Factors (including additional constituents) other than those for which the waste was originally listed; and (2) determine whether any other factors are present which could cause the waste to be hazardous. Today's notice is the result of the Agency's re-evaluation of this petition.

In support of their petition, ITE submitted a detailed description of their manufacturing and wastewater treatment processes, including schematic diagrams, a list of raw materials, and safety data sheets for those materials. In addition, ITE submitted analytical data to characterize the sludge. This included the results of total constituent analyses and EP leachate tests for the EP toxic metals and nickel; total constituent analysis and distilled water leachate tests for cyanide; and total constituent analyses for sulfide, total oil and grease, and certain organic compounds. The South Carolina Department of Health and Environmental Control (SCDHEC) provided ground-water monitoring data from ten RCRA approved monitoring wells surrounding the batch dump lagoon and holding basin.

ITE manufactures a product known as "electrical bus" or "lighting duct." The product has a steel casing that surrounds copper on aluminum bars that are protected by insulation. The bars are electroplated to provide a surface that has the best characteristics for the required use. Copper, cyanide, silver, acids, and alkalines are used in the electroplating processes.

Electroplating waste containing cyanide are subjected to pH adjustment and chlorination in a series of two cyanide destruction units. These wastes are then combined with acid and alkaline wastes in an equalization basin. Subsequent treatment includes addition of alum, additional pH adjustment steps, addition of polymer, and clarification. The sludge from the clarifier is pumped to an 8,650 yd^3-capacity clay-lined sludge holding basin. It is the sludge in that basin that is the subject of ITE's petition. Prior to disposal, the sludge is further dewatered to approximately 40 percent solids with a mobile filter press. ITE estimates the annual generation rate of the dewatered sludge to be 375 cubic yards per year.

Four composite samples were collected from ITE's sludge holding basin. Each sample was a composite of five full-depth cores from each quadrant. The basin was sampled in this manner in November 1980, in February 1985, and in March 1986. The 1980 samples (analyzed for inorganic toxicants) were dewatered to 40 percent solids prior to analysis in order to simulate the effects of the filter press. The 1985 samples (analyzed for inorganic toxicants) and the 1986 samples (analyzed for organic toxicants) were analyzed as collected. The results from the inorganic analyses are summarized in Table 1. Total oil and grease analyses revealed a maximum concentration of 0.5 percent.

Adjacent to the sludge holding basin is a batch dump lagoon. The batch dump lagoon is connected to the holding basin by an emergency overflow. Since the batch dump lagoon occasionally received paint wastes, ITE analyzed the holding basin sludge for several organic compounds that are typically found in paint wastes. The concentrations of the tested compounds are summarized in Table 2.

TABLE 1.—MAXIMUM CONCENTRATIONS (ppm)

Constituents	Total constituent analyses	EP leachate analyses	
		As collected from basin	Dewatered to 40% solids
As	190	<0.01	<0.001
Bd	20	<.1	<.1
Cd	23	<.02	<.01
Cr	143	<.05	<.05
Pb	74	<.1	<.1
Hg	<0.2	<.001	<.0002
Se	<.5	<.01	<.003
Ag	42	<.01	<.01
Ni	53	.07	X
CN(total)[1]	301	.34	.059
CN(free)[1]	<5.0	X	X
Sulfide	20	NA	NA
Oil & Grease	.5	NA	NA

X = test not performed
NA = test not applicable
[1] Cyanide leaching tests were performed with distilled water.

TABLE 2.—MAXIMUM CONCENTRATIONS

Constituents	Constituent concentration (mg/kg, wet wt.)
Carbon tetrachloride	<0.2
Methylene chloride	<.2
Tetrachloroethylene	<.2
Naphthalene	<.04
Bis(2-ethylhexyl)phthalate	3.3
Di-n-butyl phthalate	<.04
Toluene	.02
Phenol	.51
Pentachlorophenol	<.13
Vinyl chloride	<.2
Trichloroethylene	<.2
3,3-Dichlorobenzidine	<.08
Benzene	<.2

The ground-water monitoring data submitted by the SCDHEC indicates that the underlying ground water at ITE's site is contaminated with significant concentrations of VOC's, methylene chloride, chloroform, trichloroethylene, and dichloroethylene. None of these compounds were detected in the upgradient monitoring well using a detection limit of 0.005 ppm. Table 3 presents the maximum constituent concentrations detected in the ground water in upgradient Well Number 1, downgradient Well Numbers 3 and 6 (adjacent to the sludge holding impoundments), and Well Number 5 (adjacent to the batch dump lagoon).

TABLE 3.—MAXIMUM CONCENTRATION OF VOLATILE ORGANIC COMPOUNDS GROUND WATER (PPM)

Constituents	Upgradient monitoring well	Downgradient monitoring wells		
		No. 3	No. 5	No. 6
VOC's (Total)	<0.005	0.318	6.187	1.316
Chloroform	<.005	.024	.040	.024
Methylene chloride	<.005	.315	.418	1.20
Trichloroethylene	<.005	.038	.010	<.005
Dichloroethylene	<.005	.014	.345	.052

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[3] See 46 *FR* 40158, August 6, 1981.

B. Agency Analysis and Action

ITE has not demonstrated that their wastewater treatment system produces a non-hazardous sludge. This decision is based primarily on data submitted by SCDHEC.[4] The Agency believes that the samples collected by ITE are non-biased and adequately represent the sludge in that basin. The collection of four samples, each of which was a composite of five full-depth cores from a given quadrant, encompasses any horizontal or vertical stratification that may have occurred as the basin was being filled. Also, since the basin typically contains sludge that was generated over approximately one year, the sludge that was in the basin during the sampling periods is believed to be representative of the waste normally generated by ITE. Further, the samples that were dewatered to 40 percent solids prior to analysis indicate that the dewatering of the sludge in a filter press has no impact on the mobility of the toxicants in the sludge.

The Agency has evaluated the mobility of toxicants from ITE's waste by using the vertical and horizontal spread (VHS) model.[5] The compliance point concentrations of the inorganic toxicants were calculated by using the maximum reported leachate concentrations from the wet sludge (approximately 5 percent solids, as collected from the basin) and a waste volume equal to the capacity of the holding basin (8,650 cubic yards). The Agency also applied the VHS model to the dewatered sludge (40 percent solids, as ultimately disposed) using a waste volume of 1,100 cubic yards, which represents the volume of dewatered sludge that would be generated from 8,650 cubic yards of wet sludge. The results from these evaluations, along with the regulatory standards to which the compliance point concentrations are compared, are presented in Table 4.

TABLE 4.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS

Constituents	Compliance point concentrations (mg/l)		Regulatory standards (mg/l)
	As collected from basin	Dewatered to 40% solids	
As	<0.002	<0.001	0.05
Bd	<.016	<.007	1.0
Cd	<.003	<.001	.01
Cr	<.066	<.003	.05
Pb	<.018	<.007	.05
Hg	<.0082	<.0001	.002
Se	<.002	<.001	.01
Ag	<.002	<.001	.05
Ni	<.011	X	.35
CN (total)	<.054	<.004	.2

X=leachate test not performed.

For both the wet and the dewatered sludges, the compliance point concentrations of the EP toxic metals and cyanide are less than their regulatory standards (the National Interim Primary Drinking Water Standards for the EP metals and the U.S. Public Health Service's suggested drinking water standard for cyanide.[6] Also, the predicted compliance point concentration of nickel from the wet sludge is less than the Agency's interim delisting standard.[7] While the dewatered sludge was not subjected to the EP leachate test for nickel, the constituent concentration is sufficiently low (53 mg/kg maximum) that nickel is not expected to be of regulatory concern. That is, if all of the nickel were to leach from the waste, the EP leachate concentration would not be expected to exceed 2.7 mg/l due to the 20-fold dilution that is inherent in the EP toxicity test. With the VHS model, this leachate concentration would result in a compliance point concentration of 0.18 mg/l, which is less than the regulatory standard of 0.35 mg/l. The Agency concludes, therefore, that the presence of inorganic toxicants in ITE's waste is not of regulatory concern.

The Agency has evaluated the mobility of the organic toxicants found in ITE's waste by estimating the concentration of the toxicants in the leachate and by using the leachate concentrations in the Agency's organic leaching model (OLM).[8] The results of this evaluation are presented in Table 5. Table 5 also presents the regulatory standards for these toxicants.

TABLE 5.—VHS MODEL: CALCULATED ESTIMATED COMPLIANCE POINT CONCENTRATIONS [1]

Constituents	Best fit compliance point concentrations (mg/l)	95 percent compliance point concentrations (mg/l)	Regulatory standards
Carbon tetrachloride	<0.000265	<0.000364	0.00027
Methylene chloride	<.000682	<.00232	.058
Tetrachloroethylene	<.000142	<.000193	.00069
Naphthalene	<.0000267	<.0000365	8.6
Bis(2-ethylhexyl)-phthalate	<.000104	<.00014	.7
Di-n-butyl phthalate	<.0000192	<.0000261	3.5
Toluene	<.000225	<.000312	10.5
Phenol	<.00295	<.00436	3.5
Pentachlorophenol	<.0000438	<.0000614	1.1
Vinyl chloride	<.000418	<.00058	.002
Trichloroethylene	<.000299	<.00041	.0032
3,3-Dichlorobenzidine	<.0000198	<.0000267	.000021
Benzene	<.000359	<.000496	.0012

[1] Since the OLM has not yet been finalized, both versions of the model, baseline equation and 95 percent confidence interval (applied to the baseline), are calculated here. Once finalized, only one of these two versions will apply.

No compliance point concentrations exceeded the regulatory standards when the best fit model was used. The estimated compliance point concentrations of carbon tetrachloride and 3,3-dichlorobenzidine were found to exceed their respective regulatory standards in the 95 percent confidence version of the OLM when using the detection limit as the maximum total constituent concentration. The detection limits used to calculate the compliance points were acheived using the recommended extraction and analytical procedures from Test Methods for Evaluating Solid Waste (SW-846). These methods cannot achieve low enough detection limits to pass the OLM/VHS analysis for these constituents. Where hazardous constituents in a waste are determined to be not detected using appropriate analytical methods, the Agency will, as a matter of policy, not use those constituents as a basis to regulate the waste as hazardous.[9] The compliance point concentrations of the remaining constituents do not exceed their respective standards; the presence of these toxicants is not, therefore, of regulatory concern. Also, based upon the Agency's review of the raw materials and processes used by ITE, no additional hazardous constituents (other than those tested for) are expected to be present in the waste.

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[4] The Agency notes that the ground water data summarized in this notice does not include all of the corroborative data collected by the SCDHEC. This data is being compiled and will be available in the Public Docket by the on-set of the public comment period. Reference to this data will be made in the Agency's final decision on ITE's petition.

[5] See 50 *FR* 7882, Appendix I, February 26, 1985 for a detailed explanation of the development of the VHS model for use in the delisting program. See also the final version of the VHS model, 50 *FR* 48896, appendix, November 27, 1985.

[6] See Drinking Water Standards, U.S. Public Health Service, Publication 956 (1962).

[7] See 50 *FR* 20247 (May 15, 1985) for a complete description of the Agency's interim standard for nickel. To date, the Agency has collected enough statistically defensible data from its ongoing nickel toxicity study to indicate that the interim standard of 350 ppb will decrease.

[8] See 50 *FR* 48953–48966, November 27, 1985 for an explanation of the procedures used to estimate the concentration of organic compounds in the leachate. See also 51 *FR* 27061, July 29, 1986, for an explanation of the Agency's newly proposed OLM.

[9] The Agency is not indicating that these detection limits are appropriate minimum limits for all petitioners. The Agency further notes that, as the recommended clean-up procedures and analytical tests improve, the required detection limits will decrease for petitioners submitting petitions at that time.

The Agency has also reviewed the ground water monitoring data submitted by the SCDHEC. The monitoring data indicates that ground water contamination has occured at ITE's site. This contamination is the sole reason for the Agency's denial decision. The Agency's policy regarding the ground-water monitoring requirements and evidence of contamination for facilities that have previously been issued temporary exclusions, is that the RCRA Subpart F standards will not be required, however, any existing monitoring data will be reviewed. If existing monitoring data indicate that the petitioned waste has caused contamination, then these data will be used as a basis for petition denial. In ITE's case, ground water contamination exists, for several organic constituents. Chloroform, methylene chloride, trichloroethylene, and 1,1-dichloroethylene were found in three wells downgradient from ITE's holding impoundments and batch dump lagoon at concentrations above the Agency's levels of regulatory concern of 0.0005, 0.056, 0.003, and 0.003 ppm, respectively. Since several of these constituents could be expected to be present in ITE's waste due to comingling of wastes from painting operations and these constituents are present at levels of regulatory concern in downgradient wells (and were not detected in upgradient wells), the Agency has concluded that ITE's waste has caused ground water contamination at their site. The Agency believes that ITE has not demonstrated that their waste is non-hazardous. The Agency, therefore, proposes to deny ITE's petition for exclusion of its clarified wastewater treatment sludge as generated, and as held in its impoundments at its Spartanburg, South Carolina facility.

II. Monroe Auto Equipment Company

A. Petition for Exclusion

Monroe Auto Equipment Company (Monroe), located in Cozad, Nebraska, manufactures shock absorbers for automobiles, trucks, and tanks. Monroe has petitioned the Agency to exclude its wastewater treatment sludge, presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations, except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc aluminum plating on carbon steel; (5) cleaning/stripping associated with tin zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. Monroe claims that this waste should be excluded because it does not meet the criteria for which it was listed.

Monroe originally petitioned the Agency to exclude their alum treated sludge stored in two on-site surface impoundments. The petition did not at that time cover the material removed from the impoundments and disposed at an off-site landfill area (Sandhills Landfill). Monroe's waste was placed in the Sandhills Landfill area from 1977 through 1982. On September 16, 1985 Monroe altered their treatment process with the addition of a vacuum filtration unit and no longer placed any new waste into the impoundments. Monroe, therefore, submitted an additional petition seeking a one-time exclusion for the landfilled sludge and the re-treated surface impoundment sludge (stored on-site in the two impoundments); and an exclusion for the continuously generated vacuum filtered sludge.

Based upon the Agency's review of the original petition, Monroe was granted a temporary exclusion covering the material stored in their two on-site surface impoundments in December of 1982. The Agency's basis for granting the temporary exclusion, at that time, was the low migration potential of the constituents of concern, namely cadmium, hexavalent chromium, cyanide (complexed), and nickel.

Since that time, the Hazardous Waste and Solid Waste Amendments of 1984 were enacted. In part, the Amendments require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) In anticipation of enactment of this legislation and regulatory changes by the Agency, EPA requested additional information from Monroe. This information was submitted in numerous parts between October 25, 1985 and September 23, 1986 (see public docket). The Agency, therefore, has re-evaluated Monroe's petition to: (1) Determine whether the temporary exclusion should be made final based on the factors for which the waste was originally listed; and (2) evaluate the waste for factors (other than those for which the waste was listed) to determine whether the waste is non-hazardous. This notice presents the results of the Agency's re-evaluation of Monroe's petitions.

Monroe has submitted a detailed description of its manufacturing and waste treatment processes, including schematic diagrams; results from total constituent and Oily Waste EP toxicity analyses of the waste for all the EP toxic metals, cyanide, and nickel; results from total constituent analyses for volatile organic constituents; ground-water monitoring data; and ignitability, corrosivity, and reactivity data on samples collected from the on-site surface impoundments, the off-site landfill, and the currently generated vacuum filter sludge. In addition, Monroe also submitted a list of raw materials and material safety data sheets for all materials used in the manufacturing process.[10] The additional information was submitted, as indicated above, to determine whether any hazardous constituents other than those for which the waste was originally listed could be present in the waste at levels of regulatory concern.

Monroe manufactures shock absorbers for automobiles, trucks, and tanks. Purchased coils of steel are drawn through a cold forming tube mill and subject to continuous electrical resistance welding. The steel tubes are cut to the required lengths. Pistons are manufactured by injecting iron powder into molds, which are then baked to harden the powder metal parts. Rod for pistons is purchased as bar stock, cut to length, threaded and ground, then hard-chromium plated. The dirt shield tubes are attached to the piston rods by electric resistance welding and the shock absorber tubes are filled with either hydraulic fluid or pressurized air. The shock absorbers are assembled and checked for leaks, then phosphated and painted.

The rinse waters from the chrome plating lines are collected and then pumped to the wastewater treatment facility for hexavalent chromium reduction. Spent chromium baths are sent off-site for reclamation and chromic acid etch baths waters are reduced in-tank prior to discharging to the hexavalent chromium reduction unit (at the wastewater treatment facility). Process rinse waters from the alkaline dip tanks (paint removal operations), vertical seam welder, shock oil room and separator, zinc phosphating line, air compressors, air conditioners, pressure tube washer, and non-oily vat wastewater all flow to the wastewater treatment facility. All emulsified oils used in the zinc phosphating line, and grinding/milling operations, are collected in three rancid oil sumps. The rancid oil is then pumped to an oil cracker which separates the oil and water emulsions. The separated oil is shipped off-site for recycling and the water layer is sent to the wastewater treatment facility. The reduced wastewater from the chrome reduction unit and the process wastewaters are combined at the treatment facility, where the wastewater is neutralized. Flocculants and polyelectrolytes are added, and the resulting mixture is clarified. Sludge from the clarifier is dewatered by vacuum filtration, and the resulting filter cake is dropped into one cubic yard bags for off-site disposal.

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[10] The Agency notes that Monroe has not identified the components or major chemical families contained in 29 raw materials. The Agency had requested Monroe to supply additional information regarding these raw materials; however, we have yet to receive this information.

During 1984, the Nebraska Department of Environmental Protection (NDNR) and Monroe detected significant concentrations of trichloroethylene (TCE) (2.9 ppm) and 1,1,1-trichloroethane (TCA) (0.036 ppm) in the ground water at Monroe's production facility. Due to the ground-water contamination detected at the facility, Monroe collected a total of eight sludge samples from both the east and west surface impoundments during May of 1985. These eight samples were analyzed for total constituent concentrations of volatile organic constituents (VOCs). TCE and TCA were detected in the sludge at combined concentrations ranging from 25–57 ppm (in a ratio of 9:1 TCE to TCA). In order to reduce the concentrations of VOCs present in their impounded sludge, Monroe began a sludge re-treatment program in July 1985. This re-treatment program consisted of hydration, aeration, and attempted biological treatment of the sludge contained in both the east and west surface impoundments. The program, which ended in November 1985 (and was to be restarted in July 1986), affected the chemical and physical nature of the sludge, which potentially altered the waste matrix, pH, and mobility of toxic constituents. Some portion of the oil matrix is expected to have both oxidized and biologically degraded. For that fraction of sludge effected by aeration, evidence of the chemical alteration of the waste was apparent when the concentration of VOCs were reduced (see Table 2, which lists the maximum concentration of VOCs detected in Monroe's re-treated sludge). The Agency has not included any analytical data characterizing the concentrations of VOCs contained in the impounded wastes prior to the retreatment programs, since the original VOC data are no longer representative of the waste currently stored in the surface impoundments. The Agency is, however, using the test data for metals from the waste prior to retreatment. The Agency's basis for using the metals data is that if any change due to degradation of the oil fraction occurred, it would have increased (rather than decreased) the mobile metals concentration, enhancing the bases for denial.

Prior to the re-treatment of the waste contained in the two surface impoundments, Monroe submitted a total of four, four-point quadrant composites collected from the east impoundment on October 10, 1985. These samples were analyzed for total constituent concentrations and mobile metal concentrations (using the Oily Waste EP Toxicity Test) for the EP toxic metals, nickel, and cyanide. The maximum concentrations for these metals are displayed in Table 1.

Since the re-treatment of the impounded waste, Monroe has submitted a total of nine samples analyzed for total constituent concentrations of volatile organic constituents. Four composite samples were collected from the east impoundment. Two of these four samples, collected on November 27, 1985, were two to four point composites. The other two samples, collected in March 1986, were half pond 15-point composite samples. Five composite samples were taken from the west impoundment. One sample, collected on November 27, 1985, was a quadrant composite of six to eight cores. The other four samples, collected in March 1986, were 15-point quadrant composites.

TABLE 1.—MAXIMUM CONCENTRATIONS OF THE CONSTITUENTS OF CONCERN SURFACE IMPOUNDMENTS

Constituents	Maximum total concentrations (ppm)	Maximum mobile metal concentrations (ppm)
As	0.91	<0.0026
Ba	197.3	6.96
Cd	0.36	<.029
Cr (Total)	1762.1	3.37
Pb	1885.1	.30
Hg	<0.005	<[1].007
Ni	10.5	.226
Se	<0.005	<[1].007
Ag	<1.0	<.029
CN	0.06	[2]NA

[1] The Agency notes that although these detection limits are higher than the totals, these constituents are present below levels of regulatory concern.

[2] Not analyzed since the total concentration of cyanide is well below the regulatory standard for cyanide.

Table 2 presents the maximum total constituent concentration of the volatile organic constituents contained in the impounded sludge. The Agency notes that no other volatile organic constituents were detected using a detection limit of 10 ppb. The maximum total oil and grease content of the impounded waste prior to retreatment was 12.9 percent. Monroe claims that the impounded waste is not corrosive, reactive, or ignitable.

TABLE 2.—MAXIMUM CONCENTRATIONS OF VOLATILE ORGANIC CONSTITUENTS SURFACE IMPOUNDMENTS

Constituents	Maximum concentrations (ppm)
1,1-Dichloroethane	3.79
(trans)-1,2-Dichloroethylene	8.41
1,1,1-Trichloroethane	4.78
Trichloroethane	17.97
Vinyl chloride	2.14

Monroe collected a total of 24 full depth cores for volatile organic constituent analyses and a total of 13 full depth cores for total metals and mobile metal concentrations in December 1985[11] from the six cells (filled 1977 through 1982) at their Sandhills Landfill.

The total constituent analyses of the Sandhills sludge for the listed and non-listed metals found the maximum concentrations presented in Table 3. Table 3 also presents the maximum mobile metal concentrations detected using the Oily Waste EP method for both the listed constituents and the non-listed metals.

TABLE 3.—MAXIMUM CONCENTRATIONS OF THE CONSTITUENTS OF CONCERN SANDHILLS LANDFILL

Constituents	Maximum total concentrations (ppm)	Maximum mobile metal concentrations (ppm)
As	29.36	0.235
Ba	1.46	
Cd	1.6	.1
Cr (Total)	2090	5.3
Pb	2950	1.54
Hg	<0.6	[1] <.0015
Ni	2.7	[2] 1.13
Se	14.0	[1] .03
Ag	1.2	[1] .15
CN	<0.3	[2] .024

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[11] Four samples analyzed for total metals and mobile metals concentrations were collected on June 4, and 5, 1986. The Agency, however, is not considering the four samples, which were analyzed using the regular EP toxicity methodology due to the waste's high total oil and grease content (41.4 percent).

[1] Only three analyses were done using the Oily Waste EP procedure.

[2] An Oily Waste EP Analysis was not performed for this constituent; therefore, the Agency calculated the "worst-case" mobile metal concentration by assuming an oily dilution of 12.34 and 100 percent leaching (based on the total volume of oil and grease).

Table 4 presents the maximum total constituent concentrations of the volatile organic constituents detected in the sludge contained in the six cells at the Sandhills Landfill.

TABLE 4.—MAXIMUM CONCENTRATIONS OF VOLATILE ORGANIC CONSTITUENTS SANDHILLS LANDFILL

Constituents	Maximum concentrations (ppm)
1,1-Dichloroethylene	7.8
1,1-Dichloroethane	2.89
(trans)-1,2-Dichloroethylene	1.3
1,1,1-Trichloroethane	52.0
Trichloroethylene	[1] 1.36
Tetrachloroethylene	1.8
Dichloromethane	0.33
1,1,2-Trichloroethane	.06
Toluene	.093
Ethyl benzene	.115
1,2-Dichloropropane	.006

[1] The Agency notes that it is not using a higher reported trichloroethylene concentration of 6.6 ppm since it was detected in a sample of pre-RCRA waste.

The Agency notes that it does not know whether any other volatile organics or semi-volatile acid or base/neutral extractables were analyzed for and/or detected. Furthermore, the Agency was only able to use three of the 24 samples analyzed for VOCs and only three of the 13 samples analyzed for mobile metal concentrations, since the other 21 and 10 samples, respectively, were taken from either pre-RCRA material (*i.e.*, sludge generated and disposed prior to November 19, 1980), incompletely referenced samples (*i.e.*, insufficient documentation of sample location, compositing techniques, and sample composition), or from non-waste material (*i.e.*, soil, gravel, or a mixture of mostly soil and/or gravel, with sludge).[12] [13] [14] The Agency has not used test data on the pre-RCRA material since Monroe did not supply information detailing process description and raw materials lists for the manufacturing and treatment process at that time; nor did they indicate whether this material was generated from the same treatment system (*i.e.*, whether the material generated prior to 1980 was filtered sludge, dredged sludge, etc.). The maximum total oil and grease content of the Sandhills sludge is 41.4 percent. Monroe claims that the landfilled sludge is not corrosive, reactive, or ignitable.

Monroe collected a total of six grab samples of the filter cake from the vacuum filtration unit on November 6, 1985. A composite of the six grab samples was analyzed using the Oily Waste EP methodology; however, the results of the total metals analyses were not provided to the Agency. Table 5 presents the mobile metal concentrations for the EP toxic metals. (Monroe did not submit analyses for cyanide or nickel). Monroe performed total constituent analyses for the volatile organic constituents on each of the six grab samples; however, Monroe reported the results obtained on only three of the grab samples. No volatile organic constituents were detected at a detection limit of 10 ppb. Monroe did not provide results from the total oil and grease test or characteristics testing on the vacuum filtered sludge.

TABLE 5.—MAXIMUM CONCENTRATIONS OF THE CONSTITUENTS OF CONCERN VACUUM FILTERED SLUDGE [1]

Constituents	Mobile metal concentrations (mg/1)
As	<0.01
Ba	4.0
Cd	<.01
Cr	.1
Pb	<.1
Hg	<.01
Se	<.01
Ag	.1
CN	[2] NA
Ni	[2] NA

[1] The Agency notes that Monroe either did not perform the total constituent analyses for metals, or did not provide the results from this test.

[2] Monroe did not analyze any samples for this constituent. The Agency has notified the petitioner that analyses must be conducted.

The Agency conducted a sampling visit at Monroe's facility on June 26 and 27, 1986 under the spot-check sampling program. During this visit the Agency collected eight random two-point full-depth composite samples in each of the east and west surface impoundments, and six random two-point one to two foot deep composite samples from the Sandhills Landfill 1982 cell. The Agency also collected six composite samples of the vacuum filter cake. Each filter cake sample was a composite of 4 to 8 full depth core samples taken from two one cubic yard storage bags. Table 6 presents the maximum concentrations of the volatile and semi-volatile organics detected in the surface impoundment sludge, Sandhills Landfill (1982 cell), and the vacuum filter cake. The maximum concentration of total cyanide detected in the surface impoundment sludge, landfill sludge, and vacuum filter cake is also presented in Table 6. The Agency notes that it has not yet completed the analyses of total metals or mobile metals.

The Agency also reviewed the list of raw materials and material safety data sheets submitted by Monroe, identifying the following 12 Appendix VIII hazardous constituents: Methyl ethyl ketone, methyl isobutyl ketone, toluene, xylene, isobutyl alcohol, methylene chloride, hydrazine, 1,1,1-trichloroethane, ethyl benzene, formic acid, cresylic acid, and benzene. The Agency notes that Monroe submitted analytical data on methylene chloride, 1,1,1-trichloroethane, ethyl benzene, and benzene as part of the volatile organic constituents scans, and that no mass balance arguments nor analytical data have been presented on the remaining eight constituents, despite having been requested by the Agency.

TABLE 6.—AGENCY SPOT CHECK MAXIMUM CONSTITUENT CONCENTRATIONS (MG/KG)

Constituents	Surface impoundment sludge	Landfill sludge	Vacuum filter cake
1,1-Dichloroethane	12.0	ND	ND
(trans)-1,2,-Dichloroethylene	76.0	ND	1.2
1,1,1-Trichloroethylene	100.0	ND	ND
Trichloroethylene	13.0	ND	0.490
Tetrachloroethylene	1.8	0.22	ND
Toluene	6.9	1.3	1.6
1,1-Dichloroethylene	0.210	ND	ND
Methyl ethyl ketone	3.5	ND	ND
Ethyl benzene	1.0	0.078	2.3
Xylene (total)	5.9	0.58	14.0
Acetone	23.0	ND	ND
Pentacholorophenol	1.8	ND	ND
Benzo(a)pyrene	3.6	ND	ND
Chrysene	3.9	ND	ND

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[12] Monroe was unable to identify the exact location of the cells in the Sandhills Landfill area and the location of waste within the cells due to a lack of placement records and the movement of some material due to the local highway department's regrading of an adjacent side road for snow drift control.

[13] Of the 24 VOC samples: 12 were pre-RCRA material, 4 contained little or no sludge, and 8 were insufficiently documented, such that the sampling location, sample composition and compositing techniques were not known. (The Agency notes, that analytical data for these 8 samples were mentioned in Monroe's submissions, yet the data were never submitted. The Agency further notes that Monroe did not use the data for these eight samples in their own conclusions in the petition).

[14] Of the 13 mobile metals samples: 6 samples were of pre-RCRA material and 4 samples were analyzed using the standard EP toxicity analysis instead of the Oily Waste EP methodology.

TABLE 6.—AGENCY SPOT CHECK MAXIMUM CONSTITUENT CONCENTRATIONS (MG/KG)—Continued

Constituents	Surface impoundment sludge	Landfill sludge	Vacuum filter cake
Anthracene	3.6	ND	ND
Phenanthrene	14.0	25.0	11.0
Pyrene	9.0	ND	ND
Fluoranthene	9.7	ND	ND
Fluorene	3.1	ND	ND
Phenol	0.67	ND	ND
1,2-Dichlorobenzene	16.0	ND	2600
1,3-Dichlorobenzene	ND	ND	310
1,4-Dichlorobenzene	ND	ND	260
Anthracene	3.6	ND	ND
4,6-Dinitrocresol	ND	16.0	ND
4-Methyl-2-pentanone	0.53	ND	ND
Carbon disulfide	0.16	0.043	ND
Isophorone	120	32	ND
Vinyl chloride	8.7	ND	ND
p-Nitrosodiphenylamine	130	77	92.5
2-Butanone	3.5	0.059	ND
2-Chlorophenol	ND	13	ND
Chloroethane	0.23	ND	ND
Diethyl phthalate	220	ND	ND
p-Chloro-m-cresol	ND	15	ND
1,2-Dichloroethane	0.014	ND	ND
1,2-Dichloropropane	0.017	ND	ND
1,1,2,2-Tetrachloroethane	0.011	ND	ND
Bis(2-ethylhexyl) phthalate	200	180	760
Di-n-Butyl phthalate	ND	12	ND
Cyanide (total)	8.8	6.4	10.8

Monroe claims that the samples of the impounded sludge and landfilled sludge are representative of any variation of the listed and non-listed constituent concentrations, since no new waste is to be added to either the impoundments or landfill cells, and that the full depth cores are representative of any spatial variations in the wastes. In addition, Monroe contends that the manufacturing and treatment processes were uniform and consistent, and that the use of raw materials did not vary over time. Consequently, they believe that the samples collected and analyzed fully characterize their waste. Monroe also claims that the six grab samples taken from the vacuum filtration unit are representative of the waste and fully characterize any variation of the listed and non-listed constituent concentrations in the waste, since both the manufacturing and treatment process are uniform and consistent, and that the use of raw materials does not vary over time.

Monroe has also provided the results from ground-water monitoring data for both sites (Cozad surface impoundments and facility, and Sandhills Landfill). This included data from the vicinity of both surface impoundments, the facility, and the six cells of sludge in the Sandhills Landfill. (Complete ground-water monitoring data for the sites are available in the public docket for this notice.) A discussion of the available ground-water monitoring data is presented in Section C of this notice—Additional Agency Concerns. Monroe claims that the surface impoundments and Sandhills Landfill area contain approximately 3,270 and 895 cubic yards, respectively, and that they currently generate a maximum of 87 cubic yards of vacuum filter cake annually.

B. Agency Analysis and Action

Monroe has not demonstrated to the Agency that the sludge contained in the two on-site surface impoundments and the Sandhills Landfill, and the currently generated vacuum filter sludge are non-hazardous. The Agency is not certain whether the samples analyzed adequately characterize the impounded sludge, landfilled sludge, or vacuum filtered sludge due to Monroe's poor documentation of sampling, inconsistent sampling procedures, inconsistencies in the list of toxicants tested for, and submission of less than the required minimum number of samples (4) per unit. The Agency was unable to determine the following for some samples: Dates samples were collected, dates samples were tested, exact sampling location for each sample and subsample. We were also unable to clearly determine whether certain samples represented the vacuum filtered lagoon sludge or the newly generated vacuum filtered sludge. The Agency believes that Monroe was inconsistent in both the numbers and type of samples collected, and the selection of parameters for testing. Monroe took single random core samples of the material contained in the impoundments prior to re-treatment and then took six to eight point quadrant composites, 15 point quadrant composites and half pond 15-point composites from the impoundments during other sampling occasions. The Agency believes that the use of half pond composites (regardless of the number of separate core samples) potentially masks any variation in constituent concentrations across quadrants.

The Agency, as stated earlier, only considers three of the 24 samples analyzed for concentrations of VOC's and three of the 13 samples analyzed for concentrations of mobile metals, collected from the Sandhills Landfill area to be representative of the landfill material. The Agency does not consider the remaining 21 samples and 10 samples (analyzed for concentrations of VOCs and mobile metals, respectively) to be representative of the landfill material because the samples were either taken from material generated and disposed prior to November 19, 1980 (pre-RCRA) (for which the production process, raw materials and treatment process generating this waste were not documented); were incompletely documented (*i.e.*, sampling locations, compositing techniques, and sampling composition); or upon review of the coring data presented in Monroe's petition, the Agency determined that the samples were mainly from non-waste materials (*i.e.*, soil, gravel, or a mixture of mostly soil and/or gravel with sludge). We do not consider the data obtained from the four samples analyzed using the EP toxicity procedure for non-oily wastes representative of the waste material because the samples should have been analyzed using the Oily Waste EP toxicity test. (The Agency notes that Monroe was informed that the analyses should have been completed using the Oily Waste EP toxicity procedure.) The Agency considers the six samples taken from the vacuum filtration unit during the same day's operation as sample splits of the same waste rather than six separate samples because the six grab samples were from the same daily batch of treated waste (the Agency notes that it only received data on three grab samples).

The Agency believes that its spot check samples collected from the east and west surface impoundments accurately characterize the variations in constituent concentrations because they were randomly selected and constitute complete-depth samples[15] (necessary to

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[15] Monroe's surface impoundments contain between five and eight feet of sludge. The Agency, when trying to obtain a full-depth core, inserted a sampling tube into the sludge and pushed the tube downward until the bentonite liner was reached. The Agency then placed a stopper device on the top

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characterize vertical stratification). The Sandhills Landfill samples are not representative of the variations in constituent concentrations because they were not complete depth samples. The Agency notes that we normally collect complete depth core samples; however, due to equipment difficulties, we were only able to collect the top one to two feet of landfill material. The Agency was only able to sample the vacuum filter cake generated over the course of one week. The Agency believes that these samples adequately characterize any variations in constituent concentrations because Monroe's use of raw materials does not vary with time and there are no seasonal variations in production (*i.e.*, Monroe is not operated like a job shop).

Additionally, Monroe did not test each set of samples for the same set of parameters, making comparison impossible. Due to the lack of historical knowledge and appropriate documentation, the Agency would require that all samples be tested for the same set of parameters, including: The EP toxic metals, nickel, cyanide, and the remainder of constituents listed in Appendix VIII.[16] [17] TheAgency notes, that in Monroe's case, this problem was especially apparent since constituents, such as 1,1-dichloroethylene and 1,2-dichloroethane were detected in some samples and not tested for in other samples. Furthermore, Monroe has not submitted sufficient information regarding the chemical families and/or constituents contained in 29 raw materials, or analytical results on eight of the twelve Appendix VIII hazardous constituents identified by EPA in Monroe's list of raw materials and material safety data sheets. The Agency, therefore, is unable to determine whether the samples adequately characterize the petitioned wastes.

Lastly, the Agency notes that, Monroe has not submitted the required minimum of four samples per unit, and that the following additional samples from the following locations are still needed: The west impoundment analyzed for concentrations of total metals and mobile metals, the Sandhills Landfill analyzed for concentrations of VOCs, total metals, and mobile metals, and the vacuum filtered sludge for concentrations of VOCs, of total metals and mobile metals, and characteristics.

The Agency has evaluated the mobility of the constituents from Monroe's impounded sludge, landfilled sludge, and its continuously generated vacuum filter cake using the vertical and horizontal spread (VHS) model.[18] The Agency's evaluation of Monroe's 3,267 cubic yards of impounded sludge, 895 cubic yards of landfilled sludge, and 87 cubic yards of filter cake using the maximum mobile metal concentrations for the EP toxic metals, nickel, and cyanide in the VHS model generated the compliance point concentrations in Tables 7, 8, and 9, respectively. These tables also present, for each toxicant, the regulatory standard to which the compliance point concentration is compared.

TABLE 7.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (ppm) SURFACE IMPOUNDMENT SLUDGE[1]

Constituents	Compliance point concentrations[2]	Regulatory standards
As	<0.001	0.05
Ba	1.008	1.0
Cd	<.004	.01
Cr (total)	.488	.05
Pb	.043	.05
Hg	<.001	.002
Se	<.001	.01
Ag	<.004	.05
Ni	.033	.35
CN (total)	[3]<.009	.20

[1] As noted previously, the Agency is using metals data from the impounded sludge prior to retreatment since these levels would not be expected to decrease.

[2] Where concentrations were below the detection limits, the detection limit was used in the VHS model calculations.

[3] Calculated using the maximum total concentration of cyanide without the dilution associated with the volume of oil and the Oily Waste EP extraction test. The Agency is normally able to calculate an appropriate dilution factor when it knows the volume of oil present in the sample; however, this procedure is not applicable when a liquid phase of unknown volume is present in the sample.

TABLE 8.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (ppm) SANDHILLS LANDFILL SLUDGE

Constituents	Compliance point concentrations[1]	Regulatory standards
As	<0.013	0.05
Ba	1.061	1.0
Cd	<.006	.01
Cr (total)	.295	.05
Pb	.086	.05
Hg	<.001	.002
Se	<.001	.01
Ag	<.008	.05
Ni	.063	.35
CN (total)	<.001	.20

[1] Where concentrations were below the detection limits, the detection limit was used in the VHS model calculations.

TABLE 9.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (ppm) VACUUM FILTER CAKE

Constituents	Compliance point concentrations[1]	Regulatory standards
As	<0.001	0.05
Ba	124	1.0
Cd	<.001	.01
Cr (total)	.003	.05
Pb	<.003	.05
Hg	<.001	.002
Se	<.001	.01
Ag	<.003	.05
Ni	NC[2]	.35
CN (total)	NC[2]	.20

[1] Where concentrations were below the detection limits, the detection limit was used in the VHS model calculations.

[2] Not calculated since neither a total constituent analysis nor mobile metals analysis was performed.

The surface impoundment sludge exhibited arsenic, cadmium, lead, mercury, selenium, and silver levels (at the compliance point) below the National Interim Primary Drinking Water Standards (NIPDWS), cyanide levels below the U.S. Public Health Service's suggested drinking water standard [19] and nickel levels below the Agency's interim regulatory standard for nickel.[20] Barium and chromium concentrations were found (at the compliance point), however, exceed the NIPDWS.[21]

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of the sampling tube in order to create a vacuum sufficient to keep the sludge in the sampling tube. The Agency believes that due to the "fluid" nature of the waste, the bottom one to two feet of sludge slid out of the sampling tube when the tube was withdrawn from the impoundment; therefore, the samples were not complete full-depth cores. The Agency, however, believes that the core samples were representative of at least the top 4½ to 6 feet of sludge stored in Monroe's surface impoundments.

[16] The Agency would request data on the universe of Appendix VIII constituents since there is a lack of historical data on raw material use, the presence of painting operations, and the presence of unidentified volatiles in the ground water. The Agency can accept analyses for some subset of Appendix VIII depending on arguments based on raw materials lists, process descriptions, mass balances, reactivity, or available test methods.

[17] The Agency notes that it has informed Monroe of our concerns, and that should they re-petition the Agency, they must provide data on all of the requested parameters.

[18] See footnote 5.

[19] See footnote 6.

[20] See footnote 7.

[21] The Agency believes that the evaluation of hazardous wastes in the context of delisting should include the use of chromium standards which are based upon total chromium (*e.g.*, the EP toxicity characteristic). The acute toxicity of hexavalent chromium is well documented, and Cr (VI) has been incorporated in numerous hazardous waste listings as a constituent of concern. The Agency has information, however, which indicates that trivalent chromium, a less toxic form of chromium, is readily interconvertible with Cr (VI) in a number of environmental scenarios. Recent Agency studies on agueous systems have determined that Cr (III) in ground water may be readily converted to Cr (VI) by chlorination (commonly used to disinfect drinking water supplies), at a rate dependent on pH. (Clifford, Dennis, and Jimmy Man Chau, 1984. The fate of chromium (III) in chlorinated water. Draft Report prepared for MERL/ORD, EPA, Cincinnati, Ohio). The potential to form Cr (VI) exists for the entire pH range of most ground waters (Battelle.

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The sludge disposed at the Sandhills Landfill exhibited arsenic, barium, cadmium, mercury, selenium, and silver levels (at the compliance point) below the NIPDWS, cyanide levels below the U.S. Public Health Service's suggested drinking water standard [22] and nickel levels below the Agency's interim regulatory standard for nickel.[23] Chromium and lead, however, were found (at the compliance point) to exceed the NIPDWS.[24]

The continuously generated vacuum filter cake exhibited arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver levels (at the compliance point) below the NIPDWS. The Agency, however, is unable to evaluate the cyanide and nickel levels (at the compliance point) since Monroe did not submit any analytical data on these two constituents.

The organic constituents listed in Table 2 (surface impoundment sludge) and Table 4 (Sandhills Landfill sludge) were evaluated by first estimating their leachate concentrations (using the proposed Organic Leachate Model (OLM) and then predicting their compliance point concentrations with the BHS model.[25] This procedure resulted in the compliance point concentrations presented in Tables 10 and 11 for the surface impoundment sludge and Sandhills Landfill sludge, respectively. Tables 10 and 11 also present, for each organic compound, the regulatory standard to which the predicted compliance point concentration is compared.

TABLE 10.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS AND REGULATORY STANDARDS (mg/l) SURFACE IMPOUNDMENT SLUDGE [1]

Constituents	Compliance point concentration		Regulatory standards [2]
	Baseline	95 percent confidence	
1,1-Dichloroethane	1.67×10^{-2}	2.42×10^{-2}	3.5×10^{-4}
(trans)-1,2,Dichloroethylene	3.38×10^{-2}	4.37×10^{-2}	4.0×10^{-1}
1,1,1-Trichloroethane	2.02×10^{-1}	2.61×10^{-2}	3.0
Trichloroethylene	2.95×10^{-2}	3.64×10^{-2}	3.2×10^{-7}
Vinyl chloride	9.78×10^{-3}	1.26×10^{-2}	2.0×10^{-7}

[1] Since the OLM has not yet been finalized, both versions of the model; baseline equation and 95 percent confidence interval (applied to the baseline); are calculated here. Once finalized, only one of these two versions will apply.

[2] An explanation of the derivation of these regulatory standards is available in the public docket.

TABLE 11.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS AND REGULATORY STANDARDS (mg./l) SANDHILLS LANDFILL SLUDGE [1]

Constituents	Compliance point concentration		Regulatory standards [2]
	Baseline	95 percent confidence	
1,1-Dichloroethylene	8.75×10^{-3}	1.11×10^{-2}	3.01×10^{-4}
1,1-Dichloroethane	5.99×10^{-3}	7.8×10^{-3}	3.5×10^{-4}
(trans)-1,2-Dichloroethylene	3.67×10^{-3}	4.6×10^{-3}	4.0×10^{-1}
1,1,1-Trichloroethane	3.91×10^{-1}	5.0×10^{-2}	3.0
Trichloroethylene	1.97×10^{-2}	2.51×10^{-2}	3.2×10^{-3}
Tetrachloroethylene	1.13×10^{-2}	1.39×10^{-2}	6.9×10^{-4}
Dichloromethane	2.25×10^{-3}	3.16×10^{-3}	5.6×10^{-2}
1,1,2-Trichloroethane	4.09×10^{-4}	5.93×10^{-4}	6.1×10^{-3}
Toluene	2.54×15^{-4}	3.94×10^{-4}	10
Ethyl benzene	1.77×10^{-6}	2.44×10^{-6}	4.0
1,2-Dichloropropane	6.97×10^{-5}	1.13×10^{-4}	6.0×10^{-4}

[1] Since the OLM has not yet been finalized, both versions of the model, baseline equation and 95 percent confidence interval (applied to the baseline), are calculated here. Once finalized only one of these two versions will apply.

[2] An explanation of the derivation of these regulatory standards is available in the public docket.

As indicated in Table 10, both the concentrations from the baseline and 95 percent confidence versions of the OLM for 1,1-dichloroethane, trichloroethane, trichloroethylene, and vinyl chloride (at the compliance point) significantly exceed their respective regulatory standards. Both the baseline and 95 percent confidence level concentrations of (trans)-1,2-dichloroethylene and 1,1,1-trichloroethane (at the compliance point) are less than their respective regulatory standards.

Table 11 indicates that both the concentrations from the baseline and 95 percent confidence versions of the OLM for 1,1-dichloroethylene, 1,1-dichlorethane, and tetrachloroethylene (at the compliance point) significantly exceed their respective regulatory standards. Both the baseline and 95 percent confidence level concentrations of (trans)-1,2-dichloroethylene, 1,1,1-trichloroethane, trichloroethylene, dichloromethane, 1,1,2-trichloroethane, toluene, ethyl benzene, 1,2,-dichloropropane (at the compliance point) are less than their respective regulatory standards.

The organic constituents detected during the Agency's spot check visit were also evaluated using the OLM/VHS models. The predicted baseline and 95 percent confidence concentrations, and the applicable regulatory standards for the surface impoundment sludge, the Sandhills Landfill sludge, and the vacuum filter cake are presented in Tables 12 through 14, respectively. As indicated in Table 12 (the surface impoundment sludge) both versions of the OLM generate concentrations of 1,1-dichloroethane, trichloroethylene, vinyl chloride, 1,2-dichloroethane, tetrachloroethylene, 1,1-dichloroethylene, and benzo(a)pyrene and 95 percent confidence level concentrations of phenanthrene (at the compliance point) significantly above their respective regulatory standards. Both the baseline and 95 percent confidence level concentrations of the remaining constituents (at the compliance point) are less than their respective regulatory standards.

TABLE 12.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS AND REGULATORY STANDARDS (MG/1)[1] AGENCY SPOT CHECK VISIT DATA—SURFACE IMPOUNDMENTS

Constituents	Baseline	95 percent confidence	Regulatory standards [2]
1,1-Dichloroethane	4.09×10^{-2}	5.26×10^{-2}	3.5×10^{-4}
(trans)-1,2-Dichloroethylene	1.51×10^{-1}	1.94×10^{-1}	0.35
1,1,1-Trichloroethane	1.59×10^{-1}	2.04×10^{-1}	3.0
Trichloroethylene	2.37×10^{-2}	2.93×10^{-2}	3.2×10^{-3}
Tetrachloroethylene	2.95×10^{-3}	3.62×10^{-3}	6.9×10^{-4}
Toluene	1.41×10^{-2}	1.72×10^{-2}	10
1,1-Dichloroethylene	1.89×10^{-3}	2.61×10^{-3}	3.0×10^{-4}
Methyl ethyl ketone	7.59×10^{-2}	1.1×10^{-1}	1.8
Ethyl benzene	1.99×10^{-3}	2.55×10^{-3}	4.0
Xylene	7.35×10^{-3}	8.98×10^{-3}	2.0

Pacific Northwest laboratories, 1985). Geochemical behavior of chromium species, Interim report no. EA-4544, prepared for Electric Power Research Institute, Palo Alto, California). Cr (III), has also been found to oxidize readily to Cr (VI) under conditions found in many soils. This reaction is catalyzed by oxidized manganese, such as manganese dioxide which is commonly present in soils and sediments (Bartlett, R. and Bruce, James, 1979. Behavior of Chromium in Soils: III. Oxidation. J. Envir. Qual. 8(1):31–35). Earlier findings of the potential interconvertability of chromium species convinced the Agency to set its chromium species water standard on the basis of total chromium, not hexavalent chromium. The EP toxicity characteristic was also set on the basis of total chromium. EPA's proposal to amend the characteristic to apply to hexavalent chromium (45 *FR* 72029–72035, October 30, 1980; see also 48 *FR* 22170–22171, May 17, 1983) has not been made final, and is not likely to be made final. A recommended maximum contaminant level (RCML) of 0.12 mg/l has been proposed for total chromium (50 FR 46936–47016, November 13, 1985). This new RCML value is a non-enforceable health goal that serves as an initial stage for establishment of drinking water standards. A revised maximum contaminant level (MCL) for chromium will be proposed when the RCML is promulgated. Until such time that a new standard is established, the Agency will continue to use the current MCL for total chromium, which is the National Interim Primary Drinking Water Standard of 0.05 mg/1.

[22] See footnote 6

[23] See footnote 7

[24] See footnote 21

[25] See footnote 8

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TABLE 12.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS AND REGULATORY STANDARDS (MG/1)[1] AGENCY SPOT CHECK VISIT DATA—SURFACE IMPOUNDMENTS—Continued

Constituents	Baseline	95 percent confidence	Regulatory standards [2]
Acetone	1.87×10^{-1}	2.63×10^{-1}	4.0
Pentachlorophenol	1.2×10^{-3}	1.53×10^{-3}	1.1
Benzo(a)pyrene	5.93×10^{-5}	8.38×10^{-5}	3.0×10^{-6}
Chrysene	7.2×10^{-5}	1.09×10^{-4}	2.0×10^{-4}
Anthracene	2.38×10^{-4}	3.40×10^{-4}	2.0×10^{-3}
Phenanthrene	1.83×10^{-3}	2.34×10^{-3}	2.0×10^{-3}
Pyrene	6.34×10^{-4}	8.53×10^{-4}	4.0
Fluoranthene	7.97×10^{-4}	1.06×10^{-4}	0.2
Fluorene	8.02×10^{-4}	1.02×10^{-3}	2.0×10^{-3}
Phenol	1.66×10^{-3}	2.42×10^{-2}	3.5
1,2-Dichlorobenzene	1.12×10^{-2}	1.34×10^{-2}	3.2
Anthracene	2.38×10^{-4}	3.4×10^{-4}	2.0×10^{-3}
4-Methyl-2-pentanone	[3] NC	[3] NC	[4] NA
Carbon disulfide	1.73×10^{-3}	2.4×10^{-3}	3.5
Isophorone	2.61×10^{-1}	3.43×10^{-1}	7.0
Vinyl chloride	2.52×10^{-2}	3.2×10^{-2}	2.0×10^{-3}
n-Nitrosodiphenylamine	[3] NC	[3] NC	7.1×10^{-3}
2-Butanone	[3] NC	[3] NC	[4] NA
Chloroethane	[3] NC	[3] NC	[4] NA
Diethyl phthalate	7.26×10^{-2}	8.65×10^{-2}	455
1,2-Dichloroethane	4.95×10^{-4}	5.31×10^{-4}	6.0×10^{-4}
1,2-Dichloropropane	3.68×10^{-4}	7.51×10^{-4}	3.8×10^{-4}
1,1,2,2-Tetrachloroethane	2.81×10^{-4}	4.33×10^{-4}	2.0×10^{-3}
Bis(2-ethyl hexyl)phthalate	7.89×10^{-3}	1.01×10^{-3}	0.7

[1] Since the OLM has not yet been finalized, both versions of the model, baseline equation and 95 percent confidence interval (applied to the baseline), are calculated here. Once finalized, only one of these two versions will apply.

[2] An explanation of the derivation of these regulatory standards is available in the public docket.

[3] Not calculated because the Agency does not currently have a solubility value for this constituent.

[4] A regulatory standard is not currently available.

TABLE 13.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS AND REGULATORY STANDARDS (MG/L) [1]

[Agency Spot Check Visit Data—Landfill Sludge]

Constituents	Baseline	95 percent confidence	Regulatory standard [2]
Tetrachloroethylene	2.8×10^{-4}	3.7×10^{-4}	6.9×10^{-4}
Toluene	1.5×10^{-3}	1.9×10^{-3}	10
Ethyl benzene	1.3×10^{-4}	1.9×10^{-4}	4.0
Xylene	6×10^{-4}	7.9×10^{-4}	2.0
Phenanthrene	1.07×10^{-3}	1.36×10^{-3}	2.0×10^{-3}
4,6-Dinitrocresol	4.4×10^{-3}	5.27×10^{-3}	4.0×10^{-2}
Carbon disulfide	2.79×10^{-4}	4.1×10^{-4}	3.5
Isophorone	4.2×10^{-2}	5.5×10^{-2}	7.0
n-Nitrosodiphenylamine	[3]NC	[3]NC	7.1×10^{-3}
2-Butanone	[3] NC	[3] NC	[4] NA
2-Chlorophenol	3.15×10^{-2}	4.5×10^{-2}	5.0×10^{-3}
p-Chloro-m-cresol	1.6×10^{-3}	2.1×10^{-3}	.2
Bis(2-ethylhexyl) phthalate	2.9×10^{-2}	3.69×10^{-2}	.7
Di-n-butyl phthalate	1.69×10^{-3}	2.6×10^{-3}	4.0

[1] Since the OLM has not yet been finalized, both versions of the model, baseline equation and 95 percent confidence interval (applied to the baseline), are calculated here. Once finalized, only one of these two versions will apply.

[2] An explanation of the derivation of these regulatory standards is available in the public docket.

[3] Not calculated because the Agency does not currently have a solubility value for this constituent.

[4] A regulatory standard is not currently available.

TABLE 14.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS AND REGULATORY STANDARDS (MG/L) [1]

[Agency Spot Check Visit Data—Vacuum Filter Cake]

Constituents	Baseline	95 percent confidence	Regulatory standards [2]
(trans)-1,2-Dichloroethylene	1.93×10^{-3}	2.56×10^{-3}	0.35
Trichloroethylene	5.94×10^{-4}	7.4×10^{-4}	3.2×10^{-3}
Toluene	9.39×10^{-4}	1.18×10^{-3}	10
Ethyl benzene	7.48×10^{-4}	9.23×10^{-4}	4.0
Xylene	2.82×10^{-3}	3.4×10^{-3}	2.0
1,2-Dichlorobenzene	7.52×10^{-3}	9.81×10^{-3}	3.2
1,3-Dichlorobenzene	1.92×10^{-2}	2.32×10^{-2}	3.8
1,4-Dichlorobenzene	1.45×10^{-2}	1.74×10^{-2}	3.8
n-Nitrosodiphenylamine	[3]NC	[3]NC	[4]NC
Phenanthrene	3.2×10^{-4}	4.27×10^{-4}	2.0×10^{-3}
Bis(2-ethyl hexyl) phthalate	7.6×10^{-3}	1.0×10^{-2}	.7

[1] Since the OLM has not yet been finalized, both versions of the model, baseline equation and 95 percent confidence interval (applied to the baseline), are calculated here. Once finalized, only one of these two versions will apply.

[2] An explanation of the derivation of these regulatory standards is available in the public docket.

[3] Not calculated because the Agency does not currently have a solubility value for this constituent.

[4] A regulatory standard is not currently available

As indicated in Tables 13 and 14, none of the calculated baseline or 95 percent confidence concentrations for any hazardous constituents (except for 2–chlorophenol in the Sandhills Landfill) were found to exceed their respective regulatory standards. Both versions of the OLM generate a concentration of 2-chlorophenol (at the compliance point) significantly above its regulatory standard. The Agency notes that where hazardous constituents in a waste are determined to be not detected using appropriate analytical methods, the Agency will, as a matter of policy, not use those constituents as a basis to regulate the waste as hazardous.[26]

The Agency's evaluation of the processes and material safety data sheets used at Monroe's Cozad, Nebraska facility indicates that there could be other hazardous organic compounds, for which Monroe did not test, and that the Agency can presumably expect to be present in the sludges, and vacuum filter cake.

The Agency believes that, based upon the constituents and factors evaluated, Monroe's surface impoundment sludge and Sandhills Landfill sludge is hazardous. The Agency also believes that Monroe's demonstration for the currently generated filter cake is incomplete. The Agency's conclusion regarding the surface impoundment waste is based on the significantly high Oily Waste EP leachate concentrations of chromium and barium, total constituent concentrations of 1,1-dichloroethane, 1,2-dichloroethane, trichloroethylene, tetrachloroethylene, 1,1-dichloroethylene, benzo(a) pyrene, vinyl chloride, and 95 percent confidence concentration of phenanthrene. The conclusion that the landfilled sludge is hazardous is based on the significantly high Oily Waste EP leachate concentrations of chromium and lead, and total constituent concentrations of 1,1-dichloroethylene, 2-chlorophenol, 1,1-dichloroethane, and tetrachloroethylene. These constituent concentrations, the lack of information on the additional organic constituents which could reasonably be expected to be present in the impounded and landfilled sludge lead the Agency to conclude that the surface impounded sludge and landfilled sludge now presents and will continue to present a substantial hazard to human health and the environment. The Agency does not have enough data to draw any conclusions with respect to the filter press sludge. The Agency's conclusions regarding the hazardous nature of impoundment and landfill are further supported by the significant ground-water concentrations of trichloroethylene, cadmium, and chromium present at, and around, Monroe's impoundments and facility, and the significant groundwater concentrations of chloroform and chromium at th Sandhills Landfill. The Agency requested that Monroe address the ground-water contamination in order to prove that the waste contained in either the east and west surface impoundments or the Sandhills Landfill were not contributing to the overall degradation of the underlying ground water at these sites. The Agency has reviewed information provided by Monroe and believes that both the impounded sludge and the landfilled sludge has contributed to the ground-water contamination (see Section C for a discussion of the ground-water information submitted by Monroe, and an explanation why the Agency believes that the impounded and landfilled wastes may have contributed to the overall degradation of the underlying ground waters.) Based on the fact that Monroe's impounded and landfilled sludge fails the VHS model analysis for the above cited metals and organics, the need for additional analytical information, and the presence of ground-water contamination, the Agency believes that the surface impoundment sludge and the landfill sludge should therefore be considered hazardous and subject to regulation under 40 CFR Parts 262 through 265 and the permitting standards of 40 CFR Part 270.

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[26] The Agency will identify appropriate minimum detection limits on a case by case basis which will depend on waste matrices.

The Agency, therefore, proposes to revoke Monroe's temporary exclusion covering the impounded electroplating waste and deny their petitions to delist the electroplating sludge contained in the two surface impoundments and the Sandhills Landfill which was generated from their Cozad, Nebraska facility. The Agency is also proposing to deny Monroe's petition for the vacuum filter cake due to a lack of information.

C. Additional Agency Concerns

The Agency has reviewed ground-water monitoring data (submitted by Monroe) characterizing the ground-water quality at, and around, Monroe's on-site surface impoundments, Cozad facility, and the Sandhills Landfill in order to determine: (1) Whether or not the ground-water monitoring data presented by Monroe indicates that ground-water contamination has occurred at the sites; (2) whether or not the ground-water contamination at the sites is a direct result of the petitioned waste (*i.e.*, the material stored in both surface impoundments and the Sandhills Landfill); and, (3) whether there is insufficient information to determine both items (1) and (2), what additional information is needed in order to support a determination concerning the presence and the source of the ground-water contamination.

The Agency notes that where ground-water contamination is reported regarding a temporarily excluded waste, it is the Agency's policy to deny the petition unless the petitioner can provide ground-water monitoring information necessary to prove either that the ground water is not contaminated or that the ground-water contamination present at the site(s) is not a direct result of constituents migrating from the petitioned waste(s). The Agency believes that the ground-water monitoring data provided by Monroe was sufficient to prove that significant degradation of the underlying ground water has occurred at and around Monroe's on-site surface impoundments, facility, and Sandhills Landfill. The Agency also believes that the ground-water monitoring data strongly indicate that the resulting ground-water contamination has occurred as a direct result of constituent migration from the petitioned wastes (specifically trichloroethylene, cadmium, and chromium at the Cozad facility, and chromium and chloroform at the Sandhills Landfill).

The following discussion of the Agency's evaluation of Monroe's ground-water data is divided into two sections: one that addresses the Monroe Auto Plant Site, and one that addresses the Sandhills Landfill site. Each section provides site background information, and discussion of the ground-water contamination, the waste at the site, the monitoring data, and the Agency's conclusions. The Agency notes that all of the information provided by Monroe and the notes compiled during the Agency's analyses are available in the public docket.

1. Monroe Auto Plant Site

Figure 1 provides a map of Monroe's facility site in Cozad, Nebraska. Monroe claims that the site is underlain by alluvium and unconsolidated sediments of the Ogallala formation. Monroe further claims that both the alluvium and the Ogallala formation contain ground water, and its flow is largely from west to east across the site. However, the seepage from a storage lagoon, the Dawson County Drainage Ditch, and potentially from the two sludge lagoons is believed by the Agency to create a slight ground-water mound at certain times in the vicinity of the lagoons. The mound is only obvious when not influenced by pumping wells in the area. The Agency has reached this conclusion by reviewing data submitted by Monroe, showing isolines of reported ground-water elevations.

Samples of ground water throughout the plant area exhibit volatile organic contamination with heavy metals being present at a few locations. The presence of VOCs in the ground water is believed by the Agency to be largely the consequence of spills and inadvertent releases to surface water and soils near the plant site as well as migration of constituents from the waste in the impoundments. These spills are directly related to past site operations.

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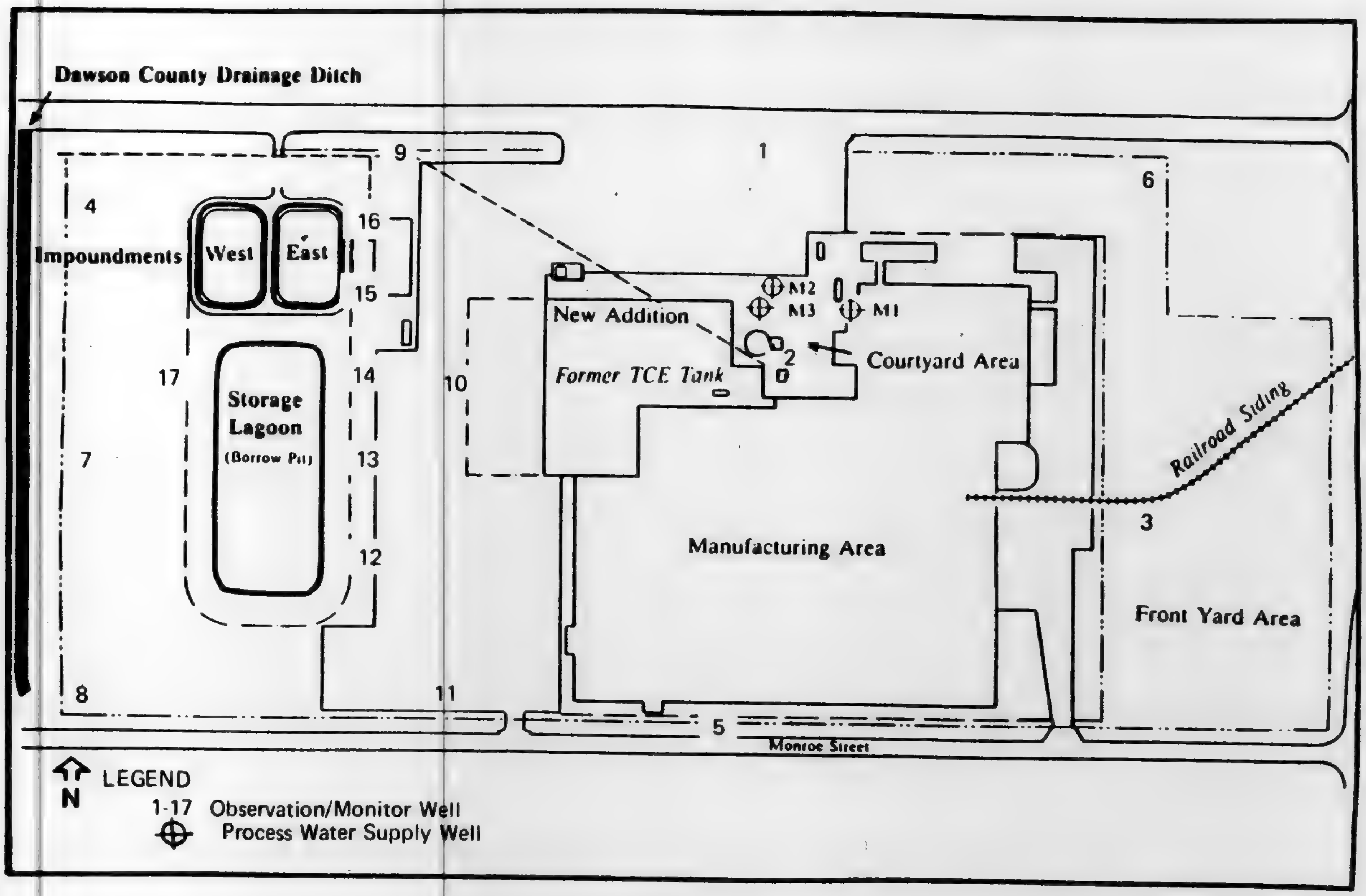
Dawson County Drainage Ditch
Impoundments
West
East
Storage Lagoon
(Borrow Pit)
New Addition
Former TCE Tank
Courtyard Area
Manufacturing Area
Railroad Siding
Front Yard Area
Monroe Street
M1
M2
M3
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
N
LEGEND
1-17 Observation/Monitor Well
⊕ Process Water Supply Well

Figure 1

Monroe Auto Cozad Site

Monroe submitted historical data indicating that numerous surface releases of trichloroethylene (TCE) and other solvents had occurred at Monroe's plant. Releases of TCE and other solvents are known to have occurred in the courtyard area, railroad siding area, front yard area, manufacturing area, and at least one time in the Dawson County Drainage Ditch when a tank truck of TCE off-loaded its remaining cargo of TCE after filling Monroe's TCE storage tank. The Agency believes that the past releases of TCE on Monroe's facility, and in the Dawson County Drainage Ditch (upgradient from the surface impoundments) are masking the contribution of TCE from the surface impoundments. The Agency notes that Monroe's own consultants believe that the surface impoundments may be an active source of TCE because during the course of their investigation they found 1 ppb of TCE in an upgradient monitoring well and 4 ppb of TCE in a downgradient monitoring well adjacent to the surface impoundments. The Agency's conclusion is further supported by the presence of chromium and cadmium in the ground water surrounding the surface impoundments. Specifically, the only source for these two metals is the waste contained in the surface impoundments. None of the surface releases of TCE or other solvents are expected to contain chromium and cadmium. The ground-water contamination, therefore, is at least in part from the constituents migrating from the waste contained in Monroe's surface impoundments, and the contribution of TCE from the surface impoundments is masked by the larger surface releases which occurred upgradient from the impoundments.

Ground-Water Contamination. Higher concentrations of VOCs, primarily trichloroethylene (TCE), appear upgradient from the lagoon area (in Wells 4 and 17) than appear downgradient in Wells 12 through 16. This is due to a one-time surface release of solvent to the Dawson County Drainage Ditch that runs north-south and lies upgradient of all site wells. The impounded sludge, which contained significant concentrations of TCE prior to aeration, is also believed to be a source of TCE. Other TCE sources are believed to include the railroad siding and the courtyard area that are located downgradient from Wells 12 through 16. These sources and irrigation water (from Well M–1) used on the front yard contribute to the higher VOC contamination in wells farther downgradient. Analyses of ground-water samples for content of EP toxic metals, nickel, and cyanide in wells near the sludge lagoons indicate that metals such as chromium and cadmium are present in Wells 15 and 16 that are downgradient of the sludge lagoon. A lower concentration of these metals also occurs in Well 17 which is upgradient of the lagoons. When Monroe's production wells are not pumping, the direction of flow of ground water is believed by the Agency to be radial from the impoundments; therefore, the Agency would expect to find low concentrations of EP toxic metals (cadmium and chromium) in Well 17. As stated above, the Agency has not identified any other sources of these EP metals and because the impounded waste contains concentrations of total chromium and cadmium, we have concluded that the impoundments are the source of metals contamination.

Waste Characterization. The sludge in the lagoons contained 25–57 ppm of combined trichloroethane (TCA) and TCE in the ratio of 1 to 9, respectively prior to aeration. The aeration of the sludge did reduce the levels of the VOCs; however, significant concentrations of VOC still remain in the aerated sludge (see Tables 2 and 6). Analyses for the EP toxic metals indicate high concentrations of chromium, lead, and barium with lesser amounts of cadmium, arsenic, and nickel (see Table 1).

Discussion and Conclusions. The TCE contamination at the Monroe Auto site stems largely from surface releases and spills. A past surface release in the Dawson County Drainage Ditch could account for the higher concentrations of TCE in Wells 4 and 17. Wells downgradient of the sludge lagoon (Wells 12 through 16) have considerably lower concentrations of TCE than do wells upgradient (Wells 4 and 17). Wells further downgradient are influenced by surface spills at the railroad siding and the courtyard areas, and by irrigation with water containing up to 3,000 ppb of TCE from Well M–1. Given the upgradient source in the drainage ditch, the effect of migration of TCE from the sludge lagoons would be masked by the larger source at the upgradient ditch. The Agency believes that the sludge lagoons have contributed TCE to the groundwater contamination. The evidence Monroe has submitted does not show that the impoundments are not a contributing source of TCE contamination. The EP toxic metals in the ground water (chromium and cadmium) in Wells 15, 16, 17 indicate that the sludge lagoons are a source of contamination. The lower concentration of these metals in Well 17 can be explained by periodic ground-water mounding in the vicinity of the lagoons when the ground water is not influenced by production wells. Under these conditions, Well 17 would also be downgradient from the sludge lagoons because the ground water would flow outward radially from the impoundments.

Based on this review of the ground-water monitoring data for the Cozad, Nebraska plant site, the Agency has made the following conclusions:

(1) The ground water at the site is contamininated with VOCs (primarily TCE) and EP toxic metals (chromium and cadmium).

(2) The waste in the sludge lagoons contains VOCs (primarily TCE) and EP toxic metals (primarily chromium, lead, and barium with lesser amounts of cadmium, arsenic, and nickel). Similar contaminants are found in ground water in the vicinity of the lagoons (TCE, chromium, and cadmium). Since a large amount of the TCE found in the ground water likely originated from surface spills and releases, Monroe has not demonstrated that the impoundments¼— are not contributing to the TCE contamination. The presence of chromium and cadmium in ground water at Wells 15, 16, and 17 provides positive evidence that some component of the ground-water contamination is due to the sludge lagoons. Since the ground water data for chromium and cadmium indicate that the lagoons are the source of this contamination; and TCE was used at the facility and was present in the impounded wastes at concentrations failing the VHS/OLM model, the Agency believes that the lagoons are also a contributing source to the TCE contamination. The Agency, however, cannot determine, based on the existing data, that the lagoons are definitely a source of the TCE contamination due to other masking sources.

(3) The only additional information that could be collected to better indicate the presence or absence of constituent migration to the ground water from the sludge lagoons would result from tracer studies. As mentioned previously, the chemical contaminants in the sludge are similar to those found in the ground water. The only way to determine the effect of the lagoons on ground water is to add a unique chemical constituent to the sludge and monitor for its appearance in the ground water.

2. Sandhills Disposal Site

Background. Between 1977 and 1982 sludges from operations at Monroe Auto

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were disposed of in trenches at the Cozad Sandhills Disposal Site. Monore claims that a total of six trenches that range in length from 160 to 210 feet and contain sludge that range in thickness from 2 to 3.5 feet were constructed at the Sandhills site. The trenches are about 20 to 30 feet wide and were filled at the rate of one per year.

The exact quantities and burial locations of the landfilled sludge is not known due to both Monroe's inadequate documentation and the regrading of the road adjacent to the Sandhills Landfill. Monroe believes that the material once contained in the 1977 and 1978 trenches were partially (if not completely) moved by the Highway Department. The Agency notes that Monroe does not own the Sandhills Landfill site, and therefore is unable to guarantee that the sludge will remain at the Sandhills Landfill. Monroe claims that the site is underlain by the Ogallala formation and the depth to ground water is more than 80 feet. Monore also claims that during construction of three monitoring wells, a resistant silt layer was encountered at a depth of approximately 45 feet. Monroe believes that this resistant silt layer is both impermeable and unfractured and, therefore capable of preventing any constituents from migrating downwards from the landfilled waste to the underlying ground water. The Agency does not believe that Monroe has submitted enough data to prove both that a resistant silt layer runs continuously under the Sandhills Landfill and that the resistant silt layer is not fractured. The Agency notes that the data submitted by Monroe, thus far, do not indicate the presence of a perched aquifer above the resistant silt layer, which indicates that either the resistant silt layer is not as impermeable as Monroe thought or that the resistant silt layer is sufficiently fractured to allow movement of ground water through the silt layer.

Ground-Water Contamination. The three wells, located more than 100 feet from the trenches, show evidence of chromium and chloroform contamination and exhibit significant concentrations of total organic carbon (TOC). The levels of chromium contamination have decreased with each sampling between 1981 and 1984, and the chloroform and TOC have also decreased. The decrease in chloroform and TOC were not as regular as that of chromium (*i.e.,* they were only detected during the first round of sampling). Prior to sampling each well, 7 to 9 well volumes were removed. The Agency believes that by bailing 7 to 9 times the well's volume, sufficient quantities of ground water were brought into the well's zone of influence to dilute the low concentrations of chloroform and TOC contained (the concentrations are low due to the slow migration of the constituents through the resistant silt layer beneath the Sandhills Landfill area) in the ground water at the beginning of Monroe's sampling program.

Waste Characterization. The sludge contained in the Sandhills Landfill is believed to contain high concentrations of chromium, lead, and barium with lesser amounts of arsenic, cadmium, selenium, and silver (see Table 3). The Agency notes that additional samples collected from the Sandhills Landfill are necessary in order to completely characterize the total concentrations of the EP metals, nickel, and cyanide. As indicated by Tables 4 and 6, significant concentrations of 1,2-dichlorobenzene, 1,3-dichlorobenzene, 1,4-dichlorobenzene, 1,1,1-trichloroethane, 1,1-dichloroethylene, xylene, tetrachloroethylene, and other volatile and semi-volatile organic constituents are present in the landfilled material. The Agency again notes that additional full-depth core samples are necessary in order to fully characterize the VOCs contained in the landfilled material. The Agency believes that the partially reduced concentrations of VOCs (when compared to the surface impoundment sludge) is likely due to volatilization prior to burial at the Sandhills Landfill and to some minor extent reduction by volatilization through the interstitial spaces of the cover soil and migration after burial since the waste trenches are not capped.

Discussion and Conclusions. Ground-water monitoring indicates that contamination has migrated downward from the disposal trenches, through the siltstone aquitard, and has reached the water table. The waste characterization information submitted to date indicates that the waste does have significant concentrations of chromium and lesser concentrations of VOCs. The landfilled material is the only source of metals and VOCs in the area; therefore, the Agency believes that the ground-water contaminants originated from the landfill area. Monroe believes that the aquitard should behave as a barrier to downward migration. However, if this were the case a perched ground-water table should exist above the siltstone. It appears more likely that enough pathways through the siltstone exist and that downward migration is only slowed by the presence of the siltstone. The Agency notes that Monroe must provide more data if they wish to prove that the siltstone layer is impermeable.

The three wells were installed far enough from the waste trenches (more than 100 feet) that no contamination should have been carried down the wellbore during construction (as Monroe claimed). The presence of chromium, chloroform, and total organic carbon (TOC) in the first sampling is likely due to actual ground-water contamination caused by very slow downward migration through the siltstone aquitard. Pumping of the wells during their development and purging with many well volumes prior to sampling may have drawn enough fresh water into the vicinity of the well to dilute the concentration of the contaminants. The downward migration may be slow enough that several years would be required to build back to the original concentrations. This would explain the significant reductions in constituent concentrations after each round of sampling.

Based on this review of ground-water monitoring data for the Sandhills Landfill site, the Agency has drawn the following conclusions:

(1) The ground water at the site is contaminated with chromium and to some extent with VOC.

(2) The ground-water contamination is likely due to downward migration of contamination from the disposal site because the landfill is the only source of EP metals, nickel, cyanide and VOCs in the area. The fact that perched ground water does not exist above the aquitard demonstrates that pathways exist for downward migration to the water table.

(3) More information concerning the siltstone aquitard at the site and installation of wells are necessary to determine the extent of the contamination.

III. Harrison Radiator, Division Of General Motors Corporation

A. Petition for Exclusion

Harrison Radiator, a Division of General Motors Corporation, located in Dayton, Ohio, manufactures automotive air conditioning compressors, accumulator/dehydrators, and related components. Harrison Radiator has petitioned the Agency to exclude its wastewater treatment sludge, presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. The listed constituents of concern for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed).

Based upon the Agency's review of their petition, Harrison Radiator was granted a temporary exclusion in December, 1981. The basis for granting the exclusion was due to the low concentration of cadmium and cyanide, and the relative immobility of chromium and nickel in the waste. Since that time, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Amendments require the Agency to consider factors (including additional constituents) other than those for which the waste was originally listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) As a result, the Agency has re-evaluated Harrison Radiator's petition to: (1) Determine whether the petition should be granted based on the factors for which the waste was originally listed; and (2) evaluate the waste for additional factors (other than those for which the waste was originally listed) to determine whether the waste is non-hazardous. Today's notice summarizes and presents the results of the Agency's re-evaluation of Harrison Radiator's petition.

In support of their petition, Harrison Radiator has submitted a detailed description of their wastewater treatment system; results from total constituent analyses, and EP toxicity and Oily Waste EP toxicity test results of the sludge for cadmium, chromium, and nickel; and total constituent analysis and distilled water leach results for cyanide. Harrison Radiator also submitted results from total constituent analyses and Oily Waste EP toxicity tests of the sludge for arsenic, barium, lead, mercury, selenium, and silver; analyses for certain organic compounds; and total oil and grease analyses on representative waste samples. In addition, Harrison Radiator submitted Materials Safety Data Sheets (MSDS) for the chemicals used in the manufacturing process. The Agency requested most of this information, as noted above, to determine whether toxicants, other than those for which the waste was originally listed, are present in the waste at levels of regulatory concern.

Harrison Radiator's manufacturing processes include chromium, zinc, and tin plating, and electrocleaning. Harrison Radiator claims that no cyanide is used in the manufacturing processes. Plating wastes resulting from the electroplating operations contain chromium, zinc, and tin. Plating wastes are treated by the reduction of hexavalent chromium with sodium metabisulfite, pH adjustment using lime, and flocculation with polymers. Oily wastes result from machining operations, spray cleaning, electrocleaning, airless painting, mechanical deburring, and floor cleaning. These oily wastes are subjected to gravity separation, de-emulsification, and phase separation. Effluents from the plating and oily waste treatment streams are mixed for equalization and pH adjustment. Wastewater is discharged to the municipal sewer system after filtration. The resulting metal hydroxide sludge and oily sludge are mixed, lime and polymers are added, and the sludge is dewatered in filter presses. The dewatered sludge is loaded into open-top luggers (containers for transport) and sent to a Subtitle C disposal facility. Harrison Radiator claims that the sludge is non-hazardous since the hazardous constituents are present only in an essentially immobile form.

Four samples were collected during four consecutive weeks in June 1981 from the sludge luggers at the wastewater treatment plant. Each sample was composed of multiple cores from the lugger box that contained the sludge generated during the previous week. These samples were analyzed for EP leachate concentrations. Additional samples were collected in a similar manner in February and March 1984 (four samples for total constituent analyses) and in June through August 1985 (eight samples for Oily Waste EP and organics analyses). Harrison Radiator claims that the raw materials used in the production processes do not vary substantially over time. In addition, they claim that the length of the sampling period and compositing methods used accounted for short-term fluctuations in sludge composition. Harrison Radiator claims, therefore, that the samples are representative of any variations in the listed and non-listed constituent concentrations in the sludge.

Total constituent and Oily Waste EP analyses of the sludge for the listed constituents revealed the maximum concentrations reported in Table 1. (The Oily Waste EP analysis was requested since the sludge's oil and grease content was reported at values up to 31.7 percent.)

TABLE 1.—MAXIMUM CONCENTRATIONS (ppm)

Constituents	Total constituent analyses (mg/kg)	Oily waste EP analyses (mg/l)
Cd	8.93	0.130
Cr	1320.00	1.640
Ni	193.00	.420
CN	1.028	[1] <.005

[1] From distilled water leach test.

Total constituent and Oily Waste EP analyses of the sludge for the non-listed EP toxic metals revealed the maximum concentrations reported in Table 2.

TABLE 2.—MAXIMUM CONCENTRATIONS

Constituents	Total constituent analyses (mg/kg)	Oily waste EP analyses (mg/l)
As	4.54	0.070
Ba	90.50	1.490
Pb	63.50	1.240
Hg	1.17	.035
Se	2.18	.040
Ag	4.00	.200

Harrison Radiator also submitted a list of raw materials and MSDS for the materials used in their processes. Since some Appendix VIII hazardous organic constituents were listed in these data sheets, eight samples were analyzed for the priority pollutants and other suspected Appendix VIII compounds. The maximum results from total constitutent analyses for organic compounds detected in the sludge are presented in Table 3.

TABLE 3.—MAXIMUM CONCENTRATIONS (MG/KG)

Constituents	Concentrations
1,1-Dichloroethane	5.300
1,1,1-Trichloroethane	127.000
Tetrachloroethylene	0.600
Methylene chloride	0.700
Toluene	1.300
Xylene	0.068
Bis (2-ethylhexyl) phthalate	114.10
Di-n-butyl phthalate	13.50
Phenanthrene	0.84
Fluorene	0.51

Methyl ethyl ketone and acrylamide were listed in the MSDS, but not detected in the sludge. Harrison Radiator claims that they generate approximately 600 cubic yards per year of the filtered sludge.

B. Agency Analysis and Action

Harrison Radiator has not demonstrated that their wastewater

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treatment system produces a non-hazardous sludge. The Agency believes that the samples collected by Harrison Radiator were non-biased and adequately reflect the variations that may occur in the waste stream petitioned for exclusion. In particular, since their raw materials do not change substantially over time and all processes that contribute to the sludge were operational during the sampling periods, the Agency believes that the samples are representative of the sludge generated at Harrison Radiator.

The Agency evaluated the mobility of the listed constituents in the sludge by using the vertical and horizontal spread (VHS) model.[27] The VHS model was used to calculate compliance point concentrations using the waste generation rate and the maximum reported Oily Waste EP concentrations as input parameters. The predicted compliance point concentrations are presented in Table 4.

TABLE 4.—VHS MODEL: PREDICTED COMPLIANCE POINT CONCENTRATIONS (MG/L)

Constituents	Predicted concentrations	Regulatory standards
Cd	0.005	0.01
Cr	.064	.05
Ni	.016	.35
CN	<.0002	.2

The compliance point concentration of cadmium is less than its National Interim Primary Drinking Water Standard; the cyanide concentration is less than the U.S. Public Health Services' suggested drinking water standard;[28] and the nickel concentration is less than the Agency's interim regulatory standard.[29] Also, the maximum constituent concentration of cyanide (1.028 mg/kg) is sufficiently low so as to not be of regulatory concern through an air contamination route (*i.e.*, total cyanide levels in the waste are sufficiently low so as to preclude the generation of hazardous levels of toxic gases.[30] The presence of these constituents, therefore, is not of regulatory concern.

Using the maximum reported Oily Waste EP value, the predicted compliance point concentration of chromium exceeds the National Interim Primary Drinking Water Standard. In view of the analytical results from the other seven samples; however, the Agency believes that the maximum value is an outlier and does not reflect the typical mobility of chromium in Harrison Radiator's waste.[31] Using the second-highest chromium value (1.010 mg/l), the predicted compliance point concentration is 0.039 mg/l, which is less than the regulatory standard. The Agency believes that the second-highest chromium value more accurately reflects the mobility of chromium in Harrison Radiator's waste and that, therefore, the presence of chromium is not of regulatory concern.

Compliance point concentrations were also calculated for the other EP toxic metals using the VHS model; they are presented in Table 5. These values are all less than the National Interim Primary Drinking Water Standards and, therefore, the presence of these toxicants is not of regulatory concern.

TABLE 5.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (MG/L)

Constituents	Compliance point concentrations	Regulatory standards
As	0.003	0.05
Ba	0.058	1.0
Pb	0.048	0.05
Hg	0.001	0.002
Se	0.002	0.01
Ag	0.008	0.05

The Agency also evaluated the mobility of the organic constituents detected in Harrison Radiator's sludge using the proposed Organic Leachate Model (OLM).[32] The calculated concentrations of the organics in the leachate were then used as input for the VHS model. The predicted leachate concentrations, calculated compliance point concentrations, and regulatory standards for these compounds are presented in Table 6.

TABLE 6.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS [1] (mg/l)

Constituent	Leachate concentrations		Compliance point concentrations		Regulatory standards [2]
	(Base)	(95% CI)	(Base)	(95% CI)	
1,1-Dichloroethane	0.162	0.211	0.0053	0.0062	0.00038
1,1,1-Trichloroethane	.852	1.068	.033	.041	1.2
Tetrachloroethylene	.0096	.013	.0004	.0005	.0007
Methylene chloride	.067	.093	.0026	.0036	.056
Toluene	.026	.033	.001	.0013	10.5
Bis(2-ethylhexyl)phthalate	.037	.048	.0014	.0019	.7
Di-n-butylphthalate	.032	.039	.0013	.0015	3.5
Phenanthrene	.0019	.0026	.00007	.0001	.002
Fluorene	.0016	.0023	.00006	.00009	.002

[1] Since the Organic Leachate Model (OLM) has not been finalized, both the baseline equation and 95 percent confidence interval (applied to the baseline), are calculated here. Once finalized, only one of these two versions will apply.

[2] An explanation of the derivation of these regulatory standards is available in the public docket.

The predicted compliance point concentrations of these compounds (except for 1,1-dichloroethane) are all less than their regulatory standards. The presence of these compounds, therefore, is not of regulatory concern. In addition, xylene, which is identified as presenting only an ignitability hazard, is not of concern due to the non-ignitability of the sludge. However, 1,1-dichloroethane levels in the sludge are of regulatory concern. Based on the maximum annual volume of waste generated, reported as 600 cubic yards per year, the maximum 1,1-dichloroethane level that could be present in the waste without failing the VHS model evaluation would be 0.084 mg/l for the baseline form of the OLM and 0.047 mg/l for the 95 percent confidence interval version of the OLM. All five samples analyzed for 1,1-dichloroethane exceeded the allowable level (either form of the OLM) for this constituent. The Agency's review of the processes and raw materials used at Harrison Radiator indicates that no additional Appendix VIII compounds (other than those tested for) are expected to be present, or are likely to be formed, in the sludge.

The Agency believes that Harrison Radiator has not demonstrated that their waste is non-hazardous. The prediction of 1,1-dichloroethane levels (at the compliance point) using the OLM/VHS model analysis reveals concentrations that exceed the regulatory standard, and indicates a potential for the waste to leach 1,1-dichloroethane and contaminate the ground water. The Agency, therefore, proposes to deny Harrison Radiator Division of General Motors Corporation's petition for exclusion of its wastewater treatment sludge generated at its Dayton, Ohio facility and revoke their temporary exclusion.

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[27] See footnote 5.

[28] See footnote 6.

[29] See footnote 7.

[30] See Internal Agency memorandum dated July 12, 1985, entitled "Interim Thresholds for Toxic Gas Generation" (in the RCRA public docket).

[31] The results from the Oily Waste EP test for the other seven samples were 0.980, 1.010, 0.380, 0.345, 0.370, 0.795, and 0.625 mg/l. The Agency's conclusion that the maximum value (1.640 mg/l) is an outlier is supported by the Dixon Extreme Value Test. This test and the supporting calculations are available in the public docket to this notice.

[32] See footnote 8.

IV. Harrison Radiator, Division of General Motors Corporation

A. Petition for Exclusion

The GMC Harrison Radiator-Moraine Plant, located in Moraine, Ohio, operates a wastewater pretreatment facility which serves the following GM plants: the Harrison Radiator-Moraine Plant, the Chevrolet-Moraine Truck Assembly Plant, and the Chevrolet-Moraine Engine Plant. Harrison Radiator Division of General Motors Corporation (Harrison Radiator) has petitioned the Agency to exclude the sludge generated at this wastewater treatment facility, currently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. The listed constituents of concern for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed).

Based upon the Agency's review of their petition, Harrison Radiator was granted a temporary exclusion on December 27, 1982. The Agency's basis for granting this exclusion was the low migration potential of the constituents of concern—namely cadmium, hexavalent chromium, nickel, and complexed cyanide. On November 8, 1984, the Hazardous and Solid Waste Amendments were enacted. In part, the Amendments require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such factors are present and could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(*f*).) As a result, the Agency has re-evaluated Harrison Radiator's petition to (1) determine whether the petition should be granted, based upon the factors for which the waste was originally listed; and (2) determine whether any additional factors are present which could cause the waste to be hazardous. Today's notice is the result of the Agency's re-evaluation of this petition.

The Harrison Radiator-Moraine Pretreatment Facility receives wastewater in two segregated streams—a general waste stream and an oily waste stream. The general waste stream is primarily generated at the Chevrolet-Moraine Assembly Plant and mainly consists of wastewater from painting, phosphate coating, and assembly operations. Additionally, acidified water, resulting from treatment of the oily waste stream, is added to the general waste stream at the Pretreatment Facility.

The general waste stream is treated by adding a cationic polymer to remove any residual oil. Lime is then used for purposes of pH adjustment and an anionic polymer is added to facilitate coagulation. The resultant floc is removed in a clarifier/thickener. Sludge from the clarifier/thickener is pumped to one of two centrifuges. The dewatered sludge is discharged from the centrifuges to luggers for disposal. The estimated annual sludge generation rate is 5,400 tons per year.

The oily waste stream is generated at the Harrison Radiator-Moraine and Chevrolet-Moraine Engine Plants and is chiefly comprised of water-soluble coolants and oily emulsions. The oily wastewater from machining and assembly operations is treated by adding alum and anionic and cationic polymers to break the oil emulsion. Dissolved air flotation is used to phase separate the mixture and remove the resulting float oils. The float oils are processed with a "cooking" operation, which consists of sulfuric acid addition, polymer treatment, heating with steam, and settlement to produce a recoverable oil. The acidic wastewater generated by this process is added to the general waste stream.

In support of their petition, Harrison Radiator submitted a detailed description of their manufacturing and treatment processes, lists of raw materials used in each process, and safety data sheets for those materials. Harrison Radiator also submitted analytical data to characterize the sludge in its as-disposed condition. This data included results from total constituent analyses, EP leachate tests, and Oily Waste EP leachate tests for the EP toxic metals and nickel. Results from tests for total oil and grease, constituent analyses for cyanide and several organic compounds, and distilled water leachate tests for cyanide were also submitted.

Samples were collected from the luggers that receive the dewatered sludge from the centrifuges. Multiple core samples were collected daily and combined to produce weekly composites. Samples were collected in this manner during a four-week period in January 1982 (total constituent analyses for the listed constituents and EP leachate tests for all EP toxic metals and nickel), a four-week period in March 1984 (total constituent analyses for the EP toxic metals, nickel, cyanide, and oil and grease as well as distilled water leachate analyses for cyanide), and an eight-week period from June through August 1985 (Oily Waste EP tests for the EP toxic metals and nickel as well as total constituent analyses for several organic compounds). Results from the analyses for inorganic toxicants are summarized in Table 1. The Agency notes that the Oily Waste EP data, rather than the EP data, are presented and evaluated in this notice since this is an oily waste.

TABLE 1.—MAXIMUM CONCENTRATIONS

Toxicants	Total constituent analyses (mg/kg, wet)	Oily waste EP[1] analyses (mg/l)
As	<6.27	<0.065
Ba	5,220	<1.130
Cd	80.3	<.115
Cr	2,580	1.610
Pb	916	<1.130
Hg	.223	.019
Se	<6.26	<.065
Ag	<9.37	<.170
Ni	309	3.79
CN (total)[2]	22.4	[3]NA
CN (free)	14.2	NA

[1] The Oily Waste EP test was required because the sludge's oil and grease content was reported at values up to 19 percent (See 49 FR 42591, October 23, 1984 for an explanation of the use of the Oily Waste EP test.)

[2] The leachate test for cyanide was performed with distilled water.

[3] NA = test is not applicable.

Based upon the processes and raw materials used, a number of organic toxicants were identified as potentially being present in the sludge. The concentrations of the Appendix VIII hazardous constituents that were detected in the sludge are summarized in Table 2.

TABLE 2.—MAXIMUM CONCENTRATIONS

Toxicants	Total constituent analyses (mg/kg, wet)
Bis (2-ethyl hexyl) phthalate	52.6
Butyl benzyl phthalate	177
Methylene chloride	13.0
1,1,1-Trichloroethane	11.4
Toluene	11.6

B. Agency Analysis and Action

Harrison Radiator has not demonstrated that the wastewater treatment sludge from the Harrison Radiator-Moraine Plant is non-hazardous. The Agency believes that the samples used to characterize the sludge were non-biased and adequately represent that sludge. Short-term

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fluctuations in sludge quality were addressed by the length of the sampling period and the method used to composite the sludge. Long-term fluctuations would not be expected since changes in the products, materials, or processes have not occurred.

The Agency has evaluated the mobility of the toxicants in Harrison Radiator's sludge by using the vertical and horizontal spread (VHS) model.[33] This evaluation, using the estimated maximum annual sludge volume (5,400 tons) and the maximum reported leachate concentrations of inorganic toxicants (from the Oily Waste EP tests), resulted in the compliance point concentrations presented in Table 3. Table 3 also presents, for each toxicant, the regulatory standards to which these concentrations are compared.

TABLE 3.—VHS MODEL: CALCULATED COMPLIANCE-POINT CONCENTRATIONS

Toxicant	From oily waste EP leachate test (mg/l)	Regulatory standard (mg/l)
As	<0.010	0.05
Ba	<.179	1.0
Cd	<.018	01
Cr	.267	.05
Pb	<.179	.05
Hg	003	.002
Se	<.010	.01
Ag	<.027	.05
Ni	.601	.350
CN		.2

Using the Oily Waste EP results, the compliance-point concentrations of cadmium, chromium, lead, mercury, and nickel exceed their regulatory standards. This evaluation incorporated the use of the detection limits for cadmium, and lead while the true leachate concentrations of cadmium and lead may, again, be lower. The Agency believes, however, that the petitioner should have been able to demonstrate much lower detection limits for these metals and has, therefore, used them as basis for denial in addition to the VHS results for mercury, chromium and nickel. The Agency and other petitioners have typically been able to achieve lower detection limits for similar wastes. This evaluation indicates, therefore, that chromium, mercury, nickel, cadmium, and lead could migrate from the waste to ground water in sufficient concentration to constitute a hazard to human health and the environment.

Organic toxicants were evaluated by using the Agency's estimation procedure for determining leachate concentrations.[34] The estimated leachate concentration was then used in the VHS model. The results of this evaluation are summarized in Table 4.

TABLE 4.—VHS MODEL: CALCULATED COMPLIANCE-POINT CONCENTRATION[1] (mg/l)

Toxicants	Estimated leachate concentrations (Base)	Estimated leachate concentrations (95% CI)	Compliance-point concentrations (Base)	Compliance-point concentrations (95% CI)	Regulatory standards
Bis (2-ethyl hexyl) phthalate	0.022	0.028	0.0035	0.0044	0.7
Butyl benzyl phthalate	.105	.151	.017	.024	8.75
Methylene chloride	.48	.66	.076	.104	.056
1,1,1-trichloroethane	.168	.21	.027	.033	1.2
Toluene	.12	.14	.018	.022	10.5

[1] Since the OLM has not been finalized, both versions of the model, the baseline equation and the 95 percent confidence interval (applied to the baseline), are calculated here. Once finalized, only one of these two versions will apply.

The sludge exhibited bis(2-ethyl hexyl)phthalate, butyl benzyl phthalate, 1,1,1-trichloroethane, and toluene concentrations below their regulatory standards. Methylene chloride, however, was detected above its regulatory standard. This constituent, therefore, is of regulatory concern.

The Agency also reviewed Harrison Radiator's raw materials lists and material safety data sheets for each component in the raw materials lists. The Agency has concluded from this review that no other Appendix VIII hazardous constituents, other than those tested for, are present in the waste.

The Agency believes that Harrison Radiator has not demonstrated that the wastes generated at its pretreatment facility are non-hazardous. The VHS model analysis of the sludge indicates the potential for the waste to leach chromium, mercury, nickel, cadmium, lead, and methylene chloride and contaminate ground water. Therefore, the Agency proposes to deny GMC-Harrison Radiator's petition for its wastewater treatment sludge generated at its Moraine, Ohio facility and revoke their temporary exclusion.

V. American Chrome and Chemicals

A. Petition for Exclusion

American Chrome and Chemicals (ACC), located in Corpus Christi, Texas, is involved in the production of sodium bichromate, sodium chromate, and chromic oxide products, including pigmentary grade chromic oxide. ACC has petitioned the Agency to exclude its waste presently listed as EPA Hazardous Waste No. K006—Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrous). The listed constituent of concern for this waste is chromium.

ACC has petitioned for a delisting of their chromic oxide wastewater. ACC has also included in their petition a description of the sludge contained in a settling pond which results from the settling of this wastewater and other wastes; and analytical results from the analyses of this sludge. The Agency notes that the K006 listing is descriptive of only the settling pond sludge. That is, a waste is not classified under the K006 listing until the wastewater treatment sludge from the production of chrome oxide green pigments is *formed*. Therefore, since wastewater stream is not classified under the K006 listing, the Agency has evaluated the sludge contained in ACC's settling pond because it is listed waste.

Based upon the Agency's review of the petition, ACC was granted a temporary exclusion on May 25, 1982. The Agency's basis for granting the temporary exclusion (at that time) was the low concentration and the low migration potential of chromium in the wastewater. The Agency has concluded, however, that a temporary exclusion should not have been granted since the petitioned waste—the wastewater mixture prior to settling—is not a listed waste.[35] ACC's temporary exclusion was based on data from laboratory formulations of experimental mixtures of chromic oxide wastewater and residue solids from the sodium bichromate/sodium chromate process. The Agency has determined that this mixture was representative of ACC's wastewater prior to settling, which as previously described is not a listed K006 waste. Since that time, the Hazardous and Solid Waste Amendments (HSWA) of 1984 were enacted. In part, the Amendments require the Agency to consider factors (including additional toxicants) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) ACC submitted data on sludge contained in one surface impoundment in response to data requests under HSWA. As a result, the Agency has re-evaluated ACC's petition to: (1) Determine whether the temporary exclusion should be made final based on the factors for which the waste was originally listed; and (2) determine whether the waste is non-hazardous with respect to factors and toxicants other than those for which the waste was originally listed. Today's notice is the result of the Agency's re-evaluation of ACC's petition.[36]

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[33] See footnote 5.

[34] See footnote 8.

[35] The Agency's policy regarding the point of delisting in a process where additional treatment can concentrate the hazardous constituents in a waste or wastewater has been to only allow the delisting demonstration to be made only after the last step of treatment. Furthermore, since the inception of the delisting program in 1980, the Agency has defined listed sludges such as EPA Hazardous Waste Nos. K006 and F006 as the solids fraction of the wastewater that settles out after a precipitation or settling step. (*i.e.*, the listed waste is not formed until the solids fraction has physically settled out of the wastewater).

In support of their petition, ACC has submitted a detailed description of its manufacturing and treatment processes, including schematic diagrams; total constituent analyses and EP toxicity test results of the settling pond sludge for the EP toxic metals, and nickel; and analytical results for total cyanide, and total available sulfides.[37] ACC also submitted results of total oil and grease analyses on representative settling pond sludge samples. ACC further submitted a list of raw materials used in the manufacturing process. As noted above, the Agency requested this information to determine whether toxicants, other than the original listing criteria, are present in the waste at levels of regulatory concern.

ACC manufactures sodium bichromate, sodium chromate, high purity metallurigical grade chromic oxide, and other products, including refractory and pigmentary grade chromic oxide.[38] Chromic oxide process wastes are discharged into batch treatment tanks. The waste treatment process includes conversion of any hexavalent chromium to trivalent chromium. In the course of this reduction (under pre-determined pH and temperature conditions), the trivalent chromium complexes are precipitated. The chromic oxide wastewater, which contains 0.1–0.2 percent solids, is then discharged from the treatment tanks to a settling pond. The settling pond also receives residue from the sodium bichromate/sodium chromate process. Wastewater from a secondary wastewater treatment facility (which included leachate from recovery operations, rain run-off from processing areas, and supernatent from treated chromate residue) was also discharged to the settling pond between 1971 and 1984. The liquid from the settling pond is discharged via a NPDES controlled outfall.

ACC presented anaytical data on eight composite samples collected from the settling pond. The 1.9 acre settling pond was divided into eight quadrants. Five core samples were collected and composited from each quadrant, resulting in eight composite samples. ACC claims that all samples collected are representative of any variation of the listed and non-listed constitutent concentrations in the waste. ACC further claims that the manufacturing processes used at the facility are operated in a consistent manner, and that the use of raw materials does not vary significantly over time.

Total constituent and EP toxicity analyses of the settling pond sludge for the listed and non-listed constituents revealed the maximum concentrations reported in Table 1.

TABLE 1.—MAXIMUM CONCENTRATIONS—SETTLING POND SLUDGE (ppm)

Listed constituents	Total constituent analyses	EP leachate analyses
Arsenic	1.0	<0.001
Barium	<10	<.1
Cadmium	<1.0	.0001
Chromium (total)	64,000	.50
Lead	<1	<.001
Mercury	.02	.0005
Nickel	270	.01
Selenium	<.1	<.001
Silver	<1	<.01
Cyanide[1]	1.0	.05

<: Denotes concentrations below the detection limit.

[1] Leachable cyanide tests were not required since cyanide is not used in the process and the total content was low. However, leachable cyanide was determined by assuming a theoretical leaching of 100 percent and a twenty-fold dilution (100 grams of solids diluted with 2.0 liters of water) of the maximum total constituent concentration of cyanide.

The maximum total oil and grease value reported for the settling pond sludge was 0.39 percent. The maximum total available sulfide level in the settling pond sludge was reported to be 8 ppm. ACC also submitted a list of all raw materials used in its manufacturing and wastewater treatment processes. This list indicated that no Appendix VIII hazardous constituents are used in the process and that formation of any of the constituents is highly unlikely. ACC claims that no organics are used in their chromic oxide process. ACC also provided test data indicating that the settling pond sludge is not ignitable, corrosive, or reactive. ACC also submitted ground water monitoring data characterizing constituent levels in the ground water beneath the waste disposal areas at its facility. ACC claims to generate 100–180 tons of chromic oxide solids per year and also reports that presently, the settling pond contains 2,240 tons of sludge.

B. Agency Analysis and Action

ACC has not demonstrated that its settling pond sludges are not hazardous. The Agency believes that the eight composite samples collected by ACC from the settling pond were non-biased and adequately represent any variations that may occur in the wastes. The Agency believes that since the samples were collected randomly throughout the pond, any stratification occurring vertically due to settling or horizontally as a function of waste discharge to the pond would be represented by the sampling scheme followed. The key factor that could vary toxicant concentrations in the waste would be the use of different raw materials due to changes in the product line being manufactured. ACC does not significantly vary their raw materials or product line. The Agency believes, therefore, that the settling pond samples are representative of the waste generated by ACC.

The Agency has evaluated the mobility of the listed and non-listed constituents from ACC's settling pond sludge using the vertical and horizontal spread (VHS) model.[39] The VHS model generated compliance point values using the reported volume of settling pond sludge and the maximum extract levels. These predicted compliance point concentrations are reported in Table 2. (When leachate concentrations were below the detection limits, the value of the detection was used).

TABLE 2.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (ppm) Settling Pond Sludge

Listed constituents	Compliance point concentrations	Regulatory standards
Arsenic	0.0001	0.05
Barium	.012	1.0
Cadmium	.00001	.01
Chromium (total)	.096	.05
Lead	.0001	.05
Mercury	.00006	.002

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[36] ACC's chromic oxide operations begun in early 1982 upon receipt of their temporary exclusion. At that time, ACC had planned to commingle the chromic oxide wastewater with residue from their chrome extraction process prior to treatment. However, since mid-1982, ACC has treated these wastes separately and then discharged these wastes into various settling ponds. The Agency has evaluated the sludge contained in one settling pond while other on-site settling ponds have been closed.

[37] ACC also submitted test data on their wastewater prior to settling, but these data are not presented in this evaluation since this is not the listed waste.

[38] ACC has claimed their process description and waste generation and treatment processes as confidential. Subsequently, a description of these processes is not included in the public record.

[39] See footnote 5.

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TABLE 2.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (ppm) Settling Pond Sludge—Continued

Listed constituents	Compliance point concentrations	Regulatory standards
Nickel	.001	.35
Selenium	.0001	.01
Silver	.0012	.05
Cyandie [1]	.006	.2

The settling pond sludge exhibited arsenic, barium, cadmium, lead, mercury, selenium, and silver levels (at the compliance point) below their respective National Interim Primary Drinking Water Standards, cyanide levels below the U.S. Public Health Service's suggested drinking water standard;[40] and nickel levels below the Agency's interim health advisory.[41] The wastes' maximum sulfide and cyanide content are also low enough to not be of regulatory concern from an air contamination route. That is, the Agency believes these levels to be sufficiently low so as to preclude the generation of hazardous levels of toxic gases.[42] (The capability of a sulfide or cyanide-bearing waste to generate hazardous levels of toxic gases, vapors, or fumes is a property of the reactivity characteristic.) These constituents, therefore, are not of regulatory concern. The settling pond sludge, however, exhibited chromium levels (at the compliance point) that exceed the regulatory standard for chromium. Therefore, chromium levels in the settling pond sludge are of regulatory concern.

In addition, ACC provided ground-water monitoring data from wells located at their facility.[43] These data indicate that groundwater contamination has been suspected and investigated since 1962. During the period from 1962 to 1979, chromium contamination was identified at various locations, and the site's previous owner, Pittsburgh Plate Glass Company, installed interceptor wells to recover chromium contaminated ground water. In 1979, ACC assumed ownership of the facility and the waste disposal areas, and, in 1982, reached an agreement with the Texas Department of Water Resources to rectify the ground-water contamination problem. (ACC began their chromic oxide operations in early 1982.) In light of the history of waste management activities at the facility and the ground water contamination problem, it is not possible, with the information currently available, for the Agency to identify whether or not the petitioned waste has contributed to the ground-water contamination problem. However, due to the fact that ACC's settling pond sludge fails the VHS model evaluation for chromium, it is possible that ACC's waste could be contributing to the ground-water contamination.

The Agency believes that ACC has not demonstrated that the settling pond sludge is non-hazardous. Furthermore, analysis of the settling pond sludge using the VHS model indicates the potential for the waste to leach chromium and contaminate the ground water.[44] The Agency, therefore, proposes to deny American Chrome and Chemicals' petition for its settling pond sludge generated at its Corpus Christi, Texas facility and revoke its temporary exclusion.[45]

VI. Effective Date

The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. For the five petitioners who may have their temporary exclusions revoked and their final exclusions denied, however, this is not the case. These petitioners may be required to revert back to handling their wastes as they did before they were granted their temporary exclusions (*i.e.*, they must handle their waste as hazardous). These petitioners would need some time to come into compliance with the RCRA hazardous waste management system. Accordingly, the effective date of the revocation of these temporary exclusions would be six months after publication of the final rule in the **Federal Register.**

VII. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This proposal is not major even though it would revoke a total of five temporary exclusions and deny final exclusions to these facilities. The effect of this proposal would increase the overall costs for these five facilities which currently have a temporary exclusion. The actual cost to these companies, however, would not be significant. In particular, in calculating the amount of waste that is generated by these facilities and considering a disposal cost of $300/ton, the increased cost to these facilities is approximately $4 million, well under the $100 million level constituting a major regulation.

VIII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will have the effect of increasing overall waste disposal costs. Some of the facilities being denied in this notice may be considered small entities, however, this rule only effects five facilities in different industrial segments. The overall economic impact, therefore, on small entities is small. Accordingly, I hereby certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Dated: October 24, 1986.

Jack W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 86–24536 Filed 10–30–86; 12:25 pm]

BILLING CODE 6560-50-M

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[40] See footnote 6.

[41] See footnote 7.

[42] See footnote 30.

[43] See the public docket for a complete summary of ground-water monitoring information, including an evaluation of chromium contamination of ground water.

[44] The Agency notes that although it is possible that ACC's waste is contributing to the ground-water contamination, the existing ground-water contamination was not used as a basis for denial in this decision.

[45] The Agency notes that if ACC were to modify the treatment of their chromic oxide wastewater so that the solids could be settled and segregated from other wastes, then ACC could submit a new petition for the separated solids. The separated solids would be classified in EPA Hazardous Waste No. K006.

federal register

Monday
November 3, 1986

Part V

Department of the Treasury

Fiscal Service

31 CFR Parts 316, 332, 342, 351, and 352

U.S. Savings Bonds; Minimum Interest Yield and Maturity Periods; Final Rule

VOL 51 ISS 212 NO 3 1986 UMI

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 316, 332, 342, 351, and 352

[Department of the Treasury Circulars No. 653, 10th Revision; No. 905, 7th Revision; Public Debt Series No. 3–67, 2nd Revision; No. 1–80, 2nd Revision; and No. 2–80, 2nd Revision]

U.S. Savings Bonds; Minimum Investment Yield and Maturity Periods

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule; changes in the minimum investment yield and maturity period of the United States Savings Bonds.

SUMMARY: This notice is being published to announce (i) reductions (a) in the minimum investment yield of newly-issued United States Savings Bonds, Series EE; (b) in the investment yield of newly-issued United States Savings Bonds, Series HH; and (c) in the minimum investment yield of outstanding United States Savings Bonds, Series E and H, and United States Savings Notes (Freedom Shares), entering into an authorized optional extension period; and (ii) a lengthening of the maturity period of newly-issued United States Savings Bonds, Series EE.

EFFECTIVE DATE: November 1, 1986.

FOR FURTHER INFORMATION CONTACT: Dean A. Adams, Assistant Chief Counsel, Bureau of the Public Debt, Parkersburg, WV, 26101–1328, (304) 420–6505.

SUPPLEMENTARY INFORMATION: The Secretary of the Treasury has announced that the minimum investment yield for Series EE savings bonds having an issue date on or after November 1, 1986, and held for five years or more, will be 6 percent per annum, compounded semiannually. The 6 percent yield will apply to all such Series EE bonds issued until the effective date of any subsequent revision in the minimum yield to reflect changes in the market interest rate. The minimum investment yield for Series EE bonds theretofore issued and held for five years or more had been last fixed at 7.5 percent per annum, compounded semiannually. The new minimum yield will also apply to any Series E and H savings bond or savings note that enters into an authorized extension period on or after November 1, 1986, but before the minimum yield is further revised.

Effective November 1, 1986, Series HH savings bonds issued in exchange for Series E/EE savings bonds and for savings notes, or issued upon the reinvestment of matured Series H savings bonds, will also have an investment yield of 6 percent per annum, compounded semiannually. This rate will apply to all Series HH bonds issued until the effective date of any subsequent revision in the investment yield. The investment yield was last set at 7.5 percent per annum, compounded semiannually.

In addition, effective November 1, 1986, the original maturity period for Series EE savings bonds bearing the issue date of November 1, 1986, or thereafter, will be lengthened from 10 years to 12 years. This will permit the issue prices of the bonds to remain unchanged and make their maturity values (calculated at the minimum investment yield) approximately twice the purchase price at issue.

The minimum investment yield is being reduced to reflect the general decline in interest rates that has occurred, to preserve the cost effectiveness of the Savings Bond Program, and to avoid excessive competition with other thrift instruments.

The market-based rate system and the basic features of Series E/EE bonds and savings notes remain unchanged, guaranteeing owners a competitive return under all market conditions. Bonds and notes held five years or longer receive the higher of (a) 85 percent of the average return on five-year Treasury marketable securities during the holding period, or (b) the applicable minimum investment yield. Series E/EE bonds and savings notes are exempt from State and local income taxes, and the Federal income tax may be deferred until the bonds or notes are redeemed, disposed of, or have reached final maturity.

Revised offering circulars for United States Savings Bonds, Series E, EE, H, HH, and for United States Savings Notes, reflecting the changes described in this notice, and containing new tables of redemption values or interest payments, will be published shortly.

Gerald Murphy,
Fiscal Assistant Secretary.

PART 316—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES E

1. The authority for Part 316 continues to read as follows:

Authority: Sec. 22, Second Liberty Bond Act, as amended, 49 Stat. 21; 31 U.S.C. 757c and 5 U.S.C. 301.

2. In § 316.8, the introductory text of paragraph (b) and paragraphs (b)(1) and (b)(2)(i) have been revised to read as set forth below:

§ 316.8 [Amended]

* * * * *

(b) *Improved yield—Outstanding bonds.* The investment yield on all outstanding bonds, effective from the first semiannual interest accrual period commencing on or after November 1, 1986, will be determined as follows:

(1) *Bonds bearing issue dates prior to May 1, 1952. Bonds issued prior to May 1, 1952, will continue to provide an investment yield of at least 8.5 percent per annum, compounded semiannually, to their final maturity, which is 40 years after issue.*

(2) *Bonds bearing issue dates of May 1, 1952, through June 1, 1980*—(i) *Guaranteed minimum investment yield.* Except as provided in paragraphs (b)(2)(ii) and (iii), the investment yields on Series E bonds bearing issue dates of May 1, 1952, through June 1, 1980, shall be the guaranteed minimum investment yield heretofore prescribed for any remaining period to next extended maturity. Any such bond entering an extended maturity period on or after November 1, 1986, will provide a guaranteed minimum investment yield of 6 percent per annum, compounded semiannually, for any such future extended maturity period, unless such yield is changed prior to the beginning of such future extension period.

* * * * *

PART 332—OFFERING OF U.S. SAVINGS BONDS, SERIES H

3. The authority for Part 332 continues to read as follows:

Authority: Sec. 22, Second Liberty Bond Act, as amended, 49 Stat. 21, as amended, (31 U.S.C 757c) and (5 U.S.C. 301).

4. In § 332.8, paragraph (b)(4) has been revised to read as set forth below:

§ 332.8 [Amended]

* * * * *

(b) * * *

(4) *Other extensions.* The investment yield for any authorized extensions beginning November 1, 1982, through October 1, 1986, was at the rate of 7.5 percent per annum, compounded semiannually, and is 6 percent per annum, compounded semiannually for any further extended maturity period beginning on or after November 1, 1986, unless such latter yield is changed prior to the beginning of such period.

* * * * *

PART 342—OFFERING OF UNITED STATES SAVINGS NOTES

5. The authority for Part 342 continues to read as follows:

Authority: 80 Stat. 379; sec. 18, 40 Stat. 1309, as amended; sec. 20, 48 Stat. 343, as amended; 5 U.S.C. 301; 31 U.S.C. 753, 754b.

6. In § 342.2a(b), paragraph (b)(1) has been revised to read as follows:

§ 342.2a [Amended]

* * * * *

(b) * * *

(1) *Guaranteed minimum investment yield.* Savings notes issued May 1, 1967, through April 1, 1968, will provide a guaranteed minimum investment yield of 8.5 percent per annum, compounded semiannually, for the remaining period to their next extended maturity date. Savings notes issued May 1, 1968, through October 1, 1970, will provide a guaranteed minimum investment yield of 7.5 percent per annum, compounded semiannually, for the remaining period to their next extended maturity date. If a savings note is held for the 11-year period from the first semiannual interest accrual period that began on or after January 1, 1980, its guaranteed minimum yield for such period will be increased by ½ of 1 percent per annum, compounded semiannually.

* * * * *

PART 351—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES EE

7. The authority for Part 351 continues to read as follows:

Authority: Sec. 22, Second Liberty Bond Act, as amended, 49 Stat. 21, as amended (31 U.S.C. 757c); 5 U.S.C. 301.

§ 351.0 [Amended]

8. In § 351.0, delete "November 1, 1982" and replace with November 1, 1986."

§ 351.2 [Amended]

9. In § 351.2(c), add as the first entry on the chart the following: "November 1, 1986, and thereafter," under "Issue dates," and "12 years from issue date" under "Maturity dates," and show the present first entry below the foregoing to read:

"November 1, 1982—October 1, 1986." under "Issue dates."

10. In § 351.2, revise the introductory text of paragraph (e) and paragraph (e)(1) to read as set forth below:

(e) *Investment yield (interest)—bonds bearing issue dates of November 1, 1982, through October 1, 1986.* The investment yield of Series EE bond issued on November 1, 1982, through October 1, 1986, from its issue date to each interest accrual date occurring less than five years after issue, will be graduated, as shown in Table 1 in the appendix to this Circular. Its yield from issue date to each semiannual interest accrual date, occurring on or after 5 years up to maturity will be the greater of the guaranteed minimum investment yield or the market-based variable investment yield as described below:

(1) *Guaranteed minimum investment yield.* The guaranteed minimum investment yield on a bond from its issue date to each semiannual interest accrual date occurring on or after 5 years from issue up to maturity will be 7.5 percent per annum, compounded semiannually, for a bond bearing the issue date of November 1, 1982, through October 1, 1986, and 6 percent per annum, compounded semiannually, for a bond bearing an issue date of November 1, 1986, or thereafter.

11. In the first sentence of § 351.2(h), delete the words "and thereafter" following the words "November 1, 1982," and substitute therefor the words "through October 1, 1986."

PART 352—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES HH

12. The authority for Part 352 continues to read as follows:

Authority: Sec. 22, Second Liberty Bond Act, as amended, 49 Stat. 21, as amended (31 U.S.C. 757c); (5 U.S.C. 301).

§ 352.0 [Amended]

13. In § 352.0, delete "November 1, 1982," and replace with "November 1, 1986."

14. In § 352.2, paragraphs (e)(1)–(e)(4) are redesignated as paragraph (e)(2)–(e)(5), a new paragraph (e)(1) is added, and paragraph (e)(2) is revised, to read as set forth below:

§ 352.2 [Amended]

* * * * *

(e) * * *

(1) *Current offering.* Series HH bonds issued on or after November 1, 1986, will yield 6 percent per annum, compounded semiannually.

(2) *Bonds with issue dates of November 1, 1982, through October 1, 1986.* Series HH bonds with the issue date of November 1, 1982, through October 1, 1986, will yield 7.5 percent per annum, compounded semiannually. See Table 1 in the Appendix to this Circular.

* * * * *

[FR Doc. 86–24818 Filed 10–31–86; 9:36 am]

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LIST OF PUBLIC LAWS

Last List October 31, 1986

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 2032/Pub. L. 99-571

Government Securities Act of 1986. (Oct. 28, 1986; 18 pages) Price: $1.00

H.R. 2205/Pub. L. 99-572

To authorize the erection of a memorial on Federal land in the District of Columbia and its environs to honor members of the Armed Forces of the United States who served in the Korean war. (Oct. 28, 1986; 2 pages) Price: $1.00

H.R. 3578/Pub. L. 99-573

District of Columbia Judicial Efficiency and Improvement Act of 1986. (Oct. 28, 1986; 8 pages) Price: $1.00

H.R. 4354/Pub. L. 99-574

National Bureau of Standards Authorization Act for Fiscal Year 1987. (Oct. 28, 1986; 7 pages) Price: $1.00

H.R. 4873/Pub. L. 99-575

To authorize certain transfers affecting the Pueblo of Santa Ana in New Mexico, and for other purposes. (Oct. 28, 1986; 5 pages) Price: $1.00

H.R. 5299/Pub. L. 99-576

Veterans' Benefits Improvement and Health-Care Authorization Act of 1986. (Oct. 28, 1986; 56 pages) Price: $1.75

H.R. 5598/Pub. L. 99-577

To provide for the transfer of the Coast Guard cutter "Taney" to the city of Baltimore, Maryland, for use as a maritime museum and display. (Oct. 28, 1986; 1 page) Price: $1.00

S. 209/Pub. L. 99-578

To amend section 3718 of title 31, United States Code, to authorize contracts retaining private counsel to furnish legal services in the case of indebtedness owed the United States. (Oct. 28, 1986; 4 pages) Price: $1.00

S. 475/Pub. L. 99-579

Truth in Mileage Act of 1986. (Oct. 28, 1986; 3 pages) Price: $1.00

S.J. Res. 367/Pub. L. 99-580

To designate October 28, 1986, as "National Kidney Program Day." (Oct. 28, 1986; 1 page) Price: $1.00

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1986. The CFR volume issued as of Apr. 1, 1980, should be retained.

[2] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1986. The CFR volume issued as of July 1, 1984, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1985 to June 30, 1986. The CFR volume issued as of July 1, 1985 should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[Order No. 1156-86]

Powers and Duties of Service Officers; Availability of Service Records

AGENCY: Immigration and Naturalization Service, Executive Office for Immigration Review, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the fee schedule of the Immigration and Naturalization Service and the Executive Office for Immigration Review. These changes are necessary to place the financial burden of providing special services and benefits, which do not accrue to the public at large, on the recipients. Charges have been adjusted to more nearly reflect the current cost of providing the benefits and services, taking into account public policy and other pertinent facts.

EFFECTIVE DATE: December 4, 1986.

FOR FURTHER INFORMATION CONTACT:
For General Information:

Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-3291

Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, 5203 Leesburg Pike, Falls Church, VA 22041, Telephone: (703) 756-6470

For Specific Information: Charles S. Thomason, Systems Accountant, Finance Branch, Immigration and Naturalization Service, 425 I Street, NW, Washington, DC 20536, Telephone (202) 633-4705

SUPPLEMENTARY INFORMATION: The Immigration and Naturalization Service (INS) and Executive Office for Immigration Review (EOIR) published a proposed rule on January 22, 1986, at 51 FR 2895, to amend the schedule of fees charged by the INS and EOIR for processing and adjudication of applications, petitions, motions, and requests submitted by the public. Comments were received from individuals and organizations, including professional and service associations, universities, attorneys, non-profit organizations, field directors, and members of the general public. All 16 comments received on or before March 24, 1986, were fully considered before preparing this final rule. The following summary addresses the substantive comments.

The INS and the EOIR believe it is clear that 31 U.S.C. 9701 and OMB Circular A-25 require Federal agencies to establish a fee system in which a benefit or service provided to or for any person be self-sustaining to the fullest extent. We believe arguments to the contrary are wholly without merit. Fees are neither intended to replace nor to be influenced by the budgetary process and related considerations, but instead, to be governed by the total cost to the agency to provide the service. A policy of setting fees on any basis other than cost would violate this principle. The INS and the EOIR have therefore attempted as fairly and accurately as possible to ascertain the cost of providing each specific benefit or service and to set the pertinent fee accordingly.

The fee structure provides for only six basic fee amounts, while at the same time adheres to the cost principle. Several commenters were concerned about the effects of fee increases on certain segments of the student population. However, in view of the substantial financial commitment that is necessary to seek an education in the United States, it is not likely to influence educational decisions.

Upon consideration of comments that the suspension of deportation applications are burdensome to families applying in the same proceeding, it was decided in the final rule to allow for one fee cover two or more aliens in the same proceeding. Since the regulations already provide for the waiver of a fee when it is shown that the recipient is unable to pay, the new fee schedule does not prohibit applications or requests on the basis of the inability to pay as some of the commenters suggested. Furthermore, several fees for administrative appeal processes and for filing naturalization petitions are at less than full cost recovery recognizing long-standing public policy and the interest served by these processes. Accordingly, the following fee changes are adopted as proposed, with one modification. Upon consideration of the comments, it was decided that suspension of deportation applications (I-256A) could be burdensome to families applying in the same proceeding; therefore the final rule allows for one fee to cover two or more aliens in the same proceeding.

1. Decrease the fee from $50 to $35 for filing Form I-140, petition to classify preference status of an alien on basis of profession or occupation under section 204(a) of the Act.

2. Increase the fee from $70 to $125 for filing Form I-246, application for stay of deportation under Part 243 of this Chapter.

3. Increase the fee from $75 to $100 for filing Form I-256A, application for suspension of deportation under section 244 of the Act. (A single fee of $100 will be charged whenever suspension of deportation applications are filed by two or more aliens in the same proceeding.)

4. Increase the fee from $50 to $110 for filing Form I-290A, appeal from any decision under the immigration laws in any type of proceedings (except a bond decision) over which the Board of Immigration Appeals has appellate jurisdiction in accordance with § 3.1(b) of this chapter. (Only one fee of $110 will be charged whenever an appeal is filed by or on behalf of two or more aliens and the aliens are covered by one decision).

5. Increase the fee from $50 to $110 for filing motion to reopen or reconsider any decision under the immigration laws (except on applications filed by exchange visitors on Form IAP-66, Cuban refugees on Form I-485A filed under the Act of November 2, 1966, or A-1, A-2 or G-4 nonimmigrations on Form I-566 for which no fee is chargeable). When the motion to reopen or reconsider is made concurrently with an application under the immigration laws, the application will be considered an integral part of the motion and only the fee for filing the motion or the fee for

filing the application, whichever is greater, is payable. (Only one fee of $110 will be charged whenever a motion is filed by or on behalf of two or more aliens and the aliens are covered by one decision).

6. Remove the $50 fee for filing request for temporary withholding of deportation under section 243(h) of the Act.

The above listed fee changes numbered 3, 4 and 5 (insofar as they relate to motions to reopen or reconsider any proceedings or decision of an immigration judge or the Board of Immigration Appeals) were provided by EOIR.

In addition, this rule includes minor technical changes to update the existing fee schedule by removing Form N-400, as no filing fee is required, and listing a $35.00 fee for filing Form N-604.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that the rule does not have a significant economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 103

Administrative practice and procedures, Archives and records, Authority delegation, Fees, Forms.

Accordingly, the following amendments to Chapter I of Title 8 of the Code of Federal Regulations are adopted:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for Part 103 of Title 8 is revised to read as follows:

Authority: Sec. 103 of the Immigration and Nationality Act, as amended; 8 U.S.C. 1103; 31 U.SC. 9701; OMB Cicrular A-25.

§ 103.7 [Amended]

2. In § 103.7, paragraph (b)(1) is amended as follows:

1. Decrease the fee for Form I-140 from "$50.00" to $35.00".

2. Increase the fee for Form I-246 from "$70.00" to $125.00".

3. Increase the fee for Form I-256A from "$75.00" to "$100.00" and add the following sentence: "(A single fee of $100.00 will be charged whenever suspension of deportation applications are filed by two or more aliens in the same proceeding.)"

4. Increase the fee for Form I-290A from "$50.00" to "$110.00" in both places where it appears.

5. Increase the fee for filing a Motion from "$50.00" to "$110.00" in both place where it appears.

6. Remove "Request. For filing application for temporary withholding of deportation under section 243(h) of the Act—$50.00."

7. Remove "Form N-400. For filing application for certificate of citizenship on Form N-400 by a parent, and the issuance thereof, under section 341 of the Act—$35.00."

8. Add Form N-604 in numerical sequence to read: "Form N-604. For filing application for a certificate of citizenship (made on Form N-400) under section 341 of the Act—$35.00."

Dated: October 23, 1986.

Edwin Meese III,

Attorney General.

[FR Doc. 86-24878 Filed 11-3-86; 8:45 am]

BILLING CODE 4410-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Reg. Y; Docket No. R-0511]

Bank Holding Companies and Change in Bank Control; Expanded List of Permissible Nonbanking Activities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation Y implementing the Bank Holding Company Act to include on the list of nonbanking activities generally permissible for bank holding companies the following activities: Personal property appraisals, commodity trading and futures commission merchant advice, consumer financial counseling, tax preparation and planning, check guaranty services, operating a collection agency, and operating a credit bureau. Certain of these activities have been previously approved by the Board by order.

EFFECTIVE DATE: December 15, 1986.

FOR FURTHER INFORMATION CONTACT: J. Virgil Mattingly, Deputy General Counsel (202/452-3430), Sara A. Kelsey, Senior Attorney (202/452-3236), or Kay E. Bondehagen, Senior Attorney (202/452-2067), Legal Division; Don E. Kline, Associate Director (202/452-3421), or Sidney M. Sussan, Assistant Director (202/452-2638), Division of Banking Supervision and Regulation; or Earnestine Hill or Dorothea Thompson, Telecommunication Device for the Deaf (202/452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Bank Holding Company Act

The Bank Holding Company Act of 1956, as amended ("BHC Act"), generally prohibits a bank holding company from engaging in nonbanking activities or acquiring voting securities of a company engaged in nonbanking activities. Section 4(c)(8) of the BHC Act provides an exception to this prohibition in the case of activities that the Board determines, after notice and opportunity for hearing, to be "so closely related to banking or managing or controlling banks as to be a proper incident thereto." (12 U.S.C. 1843(c)(8)). The Board is authorized to make this closely-related determination by order in an individual case or by regulation.

The Board has included in its Regulation Y a list of nonbanking activities that the Board has determined by regulation to be generally permissible for bank holding companies under section 4(c)(8) of the BHC Act. (12 CFR 225.25). Applications by bank holding companies to engage in activities included on the list of permissible nonbanking activities under Regulation Y generally are handled by the Reserve Banks under expedited processing procedures pursuant to delegated authority.

Proposed Nonbanking Activities.

On March 2, 1984, the Board proposed for public comment new nonbanking activities to be included on the Regulation Y list of activities that are generally permissible for bank holding companies under section 4(c)(8) of the BHC Act. The list included personal property appraisal, commodity trading and futures commission merchant advisory services, consumer financial counseling, tax preparation and planning, check guaranty services, collection agency and credit bureau activities, and armored car services. These activities were suggested by commenters in connection with the Board's revision of Regulation Y in 1984.

Public Comments

Approximately 212 comments were received on the proposal. Favorable comments were submitted by banks, bank holding companies, their trade associates, and the Department of Justice. The Federal Reserve Banks generally commented in support of the activities, subject to conditions to alleviate potential adverse effects. Businesses and professionals engaged in the proposed activities generally opposed allowing bank holding companies to engage in the activities.

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Closely Related to Banking

Before the Board may authorize bank holding companies to engage in a nonbanking activity, the Board must find that the activity is closely related to banking. In *National Courier Association* v. *Board of Governors*, 516 F.2d 1229 (D.C. Cir. 1975), the court established guidelines for determining whether a particular activity is closely related to banking or managing or controlling banks. Under these guidelines, an activity may be found to be closely related to banking if it is demonstrated that:

> (1) Banks generally in fact provide the proposed service;
>
> (2) Banks generally provide services that are operationally or functionally so similar to the proposed service as to equip them particularly well to provide the proposed service; or
>
> (3) Banks provide services that are so integrally related to the proposed service as to require their provision in a specialized form.

It is sufficient if the activity satisfies any one of these three criteria. (*ADAPSO* v. *Board of Governors*, 745 F.2d 677, 686 (D.C. Cir. 1984); *National Courier*, 516 F.2d at 1237–38.)

The courts have made it clear, however, that the Act grants the Board discretion to consider any criteria which provide a reasonable basis for a finding that a particular nonbanking activity has a close relationship to banking. *Securities Industry Ass'n.* v. *Board of Governors*, 468 U.S. 207, 210 n.5 (1984). The Board has stated that it will consider "any . . . factor that an applicant may advance to demonstrate a reasonable or close connection or relationship of the activity to banking." 49 FR 806 (1984). In considering whether a proposed activity is permissible for bank holding companies, the Board must adhere to the fundamental purpose of the BHC Act that banking be separated from commerce. S. Rep. No. 1084, 91st Sess. 2 (1970).

The Board has determined that all of the proposed activities, with the exception of armored car services, are closely related to banking under the *National Courier* guidelines, because banks engage in the activities or activities that are operationally or functionally similar. The Board has previously determined by order that certain of the activities are closely related to banking and has authorized those activities on a case-by-case basis (*i.e.*, consumer financial counseling, tax preparation, FCM advisory services, and check guaranty services). The Board is not making a finding that armored car services are closely related to banking for the reasons indicated in the discussion of armored car services below.

Proper Incident to Banking

In addition to finding that an activity is closely related to banking or managing or controlling banks, the Board must find that the activity is a proper incident thereto. In making this determination, section 4(c)(8) requires the Board to consider whether the activity will result in public benefits, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

This determination usually is made on a case-by-case basis in connection with individual applications to engage in a particular activity. However, the Board may determine not to add an activity to the list of permissible activities in Regulation Y on the basis that the activity generally would result in adverse effects that are not outweighed by public benefits. In addition, the Board may include in its regulations various conditions or limitations on which the Board may rely to alleviate possible adverse effects of particular activities.

With respect to public benefits, each of the activities being added to the list would provide greater convenience to customers and, if commenced *de novo*, increase competition. In order to minimize potential adverse effects with respect to certain of the activities, the Board is imposing certain conditions that have been previously imposed by order or that were suggested by the comments. Subject to these conditions, the Board has determined as a general matter that the public benefits of the activities outweigh possible adverse effects.

Specific Activities

Personal Property Appraisal. Personal property appraisal involves estimating or determining the value of property other than real property. In the broadest sense, the activity requires expertise regarding all types of personal and business property, including intangible property, such as corporate securities.

The Board has previously authorized by regulation real estate appraisal activities. (12 CFR 225.25(b)(13)). In addition, the Board has determined by order that the appraisal of certain types of personal property, both tangible and intangible, is closely related to banking. (*Security Pacific Corporation/Duff & Phelps, Inc.*, 71 Federal Reserve Bulletin 118 (1985)). In allowing bank holding companies to engage in the activity of providing valuations of companies, the Board noted that the commercial lending and trust departments of banks commonly make valuations of a broad range of tangible and intangible property, including the securities of closely held companies. Although the Board did not specify the exact types of personal property appraisal it determined were closely related to banking in the context of valuation services, providing valuations of companies necessarily involves the appraisal of various types of intangible personal property, such as securities of closely held corporations, as well as any tangible personal property that a company might possess.

In addition, a substantial number of the public commenters stated that banks currently engage in the appraisal of personal property through their trust departments. Several commenters stated that trust departments value private business interests for their own trust accounts and other types of personal property in a customer's estate for probate and tax purposes. In addition, many commenters noted that banks engage in property appraisal activities in connection with secured lending activities and routinely appraise property which they take as collateral on loans, including perishable commodities, durable goods, computer software, crops, livestock, machinery, and equipment.

Banks also engage in appraisal activities in connection with their leasing activities. With regard to leasing, banks determine the residual value of leased property, such as vehicles and equipment, in order to establish the terms of a lease. Some money-center banks have appraised aircraft and locomotives, in connection with their leasing or lending transactions. Finally, banks may become involved in personal property appraising when they appraise real property, since certain types of real property, such as factories or apartment buildings, contain fixtures or other personal property that must be evaluated to determine that the value of the real property.

On the basis of the foregoing, the Board finds that personal property appraisal is closely related to banking under the *National Courier* tests. The Board's determination is without limitation as to types of personal property to be appraised. Although banks may not be involved currently in appraising every type of personal property in connection with their banking functions, it is evident that they do engage in appraisals of a variety of

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both tangible and intangible property on a routine basis. In addition, as one of the commenters pointed out, there are general unifying principles and concepts that are basic to all branches of the appraisal profession. Hence, the skills that banks currently possess that enable them to evaluate one type of personal property are likely to be transferable to other types of personal property.

The comments indicate that personal property appraisal services are likely to result in public benefits in the form of increased competition in the appraisal industry due to the increased number of competitors and enhanced convenience to customers who would have the opportunity to obtain more financial services at a single location. Approval of personal property appraisal as a permissible activity would appear to involve few adverse effects. The commenters did not indicate any significant adverse effects arising from this activity.

Accordingly, the Board has determined to add this activity to the list of permissible nonbanking activities in Regulation Y without conditions.

Commodity Trading and Future Commission Merchant Advice. The Board proposed to add to the list of permissible activities furnishing investment advice, including counsel, publications, written analysis and reports, relating to the purchase and sale of those futures contracts and options on futures contracts that bank holding company FCM subsidiaries are permitted to execute and clear under § 225.25(b)(18) of Regulation Y. Such advice could be provided by a bank holding company either through a futures commission merchant ("FCM") subsidiary or as a commodity trading advisor ("CTA"). FCMs and CTAs are subject to registration with and regulation by the Commodity Futures Trading Commission pursuant to the Commodity Exchange Act, as amended. (7 U.S.C. 1 *et seq.*)

The commenters generally favored adding this activity to the list of permissible activities in Regulation Y.

The Board has previously determined that futures and options advice by FCMs is closely related to banking and has approved this activity by order. (*E.g., Bankers Trust New York Corporation,* 71 Federal Reserve Bulletin 111 (1985); *J.P. Morgan & Co. Incorporated,* 70 Federal Reserve Bulletin 780 (1984); *Manufacturers Hanover Corporation,* 70 Federal Reserve Bulletin 369 (1984)). The proposed CTA activity is identical to FCM advice and may be provided by a bank holding company that does not act as an FCM (*i.e.,* execute or clear orders for futures and options for customers). A reasonable basis thus exists that acting as a CTA is closely related to banking under the *National Courier* guidelines.

The comments indicate that the addition of futures and options advisory services to the list of permissible activities is likely to result in public benefits in the form of increased competition through *de novo* entry into the market place and would provide an additional service to customers. Some commenters noted possible adverse effects, such as tying and conflicts of interest when the advisor is also a principal or dealer in the underlying financial physicals. The risk of liability for negligent advice also was noted.

The Board considers that the anti-tying provisions of the BHC Act substantially address any problems in connection with the possiblity of tying of services. In order to further minimize possible conflicts and risk, however, the Board is imposing additional conditions similar to those previously imposed by order that prohibit the advisor from dealing and limit advice to financially sophisticated customers on futures and options on futures previously approved for FCM subsidiaries.

Accordingly, the Board has determined that FCM and CTA advice is a permissible activity subject to the following conditions:

(1) The FCM or CTA limits its investment advice to those futures and options on futures that bank holding companies may execute and clear for customers through their FCM subsidiaries under § 225.25(b)(18) of Regulation Y (*i.e.,* futures contracts and options on futures contracts traded on major commodity exchanges for bullion, foreign exchange, government securities, and money market instruments that a bank may buy or sell in the cash market for its own account);

(2) Customers are limited to financial institutions and other financially sophisticated customers that have significant dealings or holdings in the underlying commodities, securities, or instruments; and

(3) The FCM or CTA may not trade for its own account except for the purpose of hedging a cash position in the related government security, bullion, foreign currency, or money market instrument.

The Board specifically requested comment on whether advice should be limited to the financial commodities for which the Board has authorized FCM execution and clearance activities. Several commenters favored expanding the activity to include advice on futures and options for nonfinancial commodities, such as agricultural commodities. However, other commenters indicated that the field of banking organizations with sufficient expertise to offer advice on these instruments is narrow, and the overwhelming majority of the commenters did not request expansion of the types of instruments at this time.

Accordingly, the Board is maintaining the limitation on the scope of advice in the Board's previous decisions approving the activity by order. This decision does not preclude a bank holding company from filing an individual application for expanded advisory authority under section 4(c)(8) of the BHC Act.

Consumer Financial Counseling. Consumer financial counseling involves providing counseling, educational courses, and instructional materials to individuals on consumer-oriented financial management matters, including debt consolidation, mortgage applications, bankruptcy, budget management, real estate tax shelters, tax planning, retirement and estate planning, insurance and general investment management. This activity does not include the sale of specific products or investments. The commenters overwhelmingly supported the addition of this activity to the Regulation Y list.

The Board has previously determined that the provision of consumer financial counseling services is closely related to banking and has approved this activity by order. (*Citicorp/Citicorp Person-to-Person Financial Centers,* 65 Federal Reserve Bulletin 265 (1979); *Maryland National Corporation,* 71 Federal Reserve Bulletin 253 (1985); *United City Corporation,* 71 Federal Reserve Bulletin 662 (1985)).

The public comments indicated that the addition of this activity to the list would result in public benefits in the form of enhanced customer convenience, increased availability of financial information and counseling, and increased competition to the extent bank holding companies engage in the activity *de novo.*

Some commenters expressed concern that the activity could result in unfair competition, conflicts of interest, and other adverse effects. For example, a potential conflict was perceived between a bank's traditional role as a source of objective financial advice and the bank's interest in promoting a particular product, especially if the bank holding company provides discount brokerage services in addition to consumer financial counseling. Another conflict was noted in the provision of debt consolidation or bankruptcy counseling to clients who are in default on loan payments to an affiliate. Some commenters stated that such counseling could also give rise to legal liability for the unauthorized practice of law, depending on the content of the advice and State law, and that there would be a general risk of liability for negligent advice. The possibility of unauthorized disclosure of confidential information concerning customers was also noted.

To address these concerns, the Board has determined that conditions, similar to those previously established by the Board in orders approving consumer financial counseling activities, are necessary to guard against the potential conflicts associated with this activity. (See *Citicorp, supra*, 65 Federal Reserve Bulletin at 267). Accordingly, the Board is establishing the following conditions on consumer financial counseling services in Regulation Y:

(1) Educational materials and presentations used by the counselor may not promote specific products and services;

(2) The counselor shall advise each customer that the customer is not required to purchase any services from affiliates; and

(3) The counselor shall not obtain or disclose confidential information concerning its customers without the customer's written consent or pursuant to legal process.

The first of these conditions provides that the consumer financial counselor's educational materials and presentations may not promote specific products and services. The purpose of the consumer financial counseling authorization is to allow bank holding companies to provide consumers with basic consumer financial education and advice concerning the development of a general financial plan to meet the consumer's needs and objectives. The condition is intended to promote this purpose by ensuring the objectivity of educational materials and activities and preventing them from being used to promote specific products and services, such as those that may be offered by an affiliate. For example, in *Citicorp* the Board noted that the consumer financial counseling materials proposed in that case were objective and did not promote Citicorp financial services. This condition incorporates the distinction between promotional and educational activities required in the *Citicorp* case. In addition, Citicorp undertook to specifically advise each customer that the customer is not required to purchase any services from Citicorp affiliates, the second condition that the Board has incorporated into this regulation.

The third condition is also based on the Board's order in *Citicorp* and prohibits the counselor from obtaining or disclosing confidential information concerning its customers without the customer's written consent. The prohibition against unauthorized disclosure of confidential customer information does not, however, bar disclosure that is legally required, for example, by statute or under a court order.

With respect to possible unfair competition, the Board relies on the anti-typing provisions of the BHC Act (12 U.S.C. 1971 and 1972(1)) to substantially address the commenters' concerns. With respect to possible liability risk, the Board notes that insurance may be available in many cases to reduce any losses and cautions applicants to confine their activities to applicable state law limitations.

In addition, the Board has determined that a bank holding company may offer this activity through a subsidiary that also engages in securities brokerage only if the brokerage activity is provided by completely different personnel and in separate offices or in separate and distinctly marked areas of the facility through which counseling services are offered. The Board imposed similar restrictions in approving by order an application by a bank holding company to provide consumer financial counseling and securities brokerage services in the same subsidiary. *United City Corporation*, 71 Federal Reserve Bulletin 662 (1985).

The Board has also determined that consumer financial counseling does not include the provision of portfolio investment advice or portfolio management. These activities are already permissible under provisions of Regulation Y authorizing trust activities (12 CFR 225.25(b)(3)) and investment advice (12 CFR 225.25(b)(4)(iii)) subject to a fiduciary standard. The Board believes that these activities should not be authorized in other than a fiduciary context because of potential conflicts of interest that could arise between the provision of disinterested investment advice and the incentives to promote specific products sold by the bank holding company or its affiliates.

Tax Planning and Preparation. Tax planning involves providing advice and strategies designed to minimize tax liabilities and includes, for individuals, analysis of the tax implications of retirement plans, estate planning and family trusts and, for corporations, includes analysis of the tax implications of mergers and acquisitions, portfolio mix, specific investments, previous tax payments and year-end tax planning. Tax preparation involves the preparation of tax forms and advice concerning liability based on records and receipts supplied by the client. The overwhelming majority of the commenters favored adding tax planning and preparation services to the list of permissible activities.

The Board has previously determined that tax preparation services for individuals is closely related to banking and has approved this activity by order. (*Bancorp Hawaii, Inc.*, 71 Federal Reserve Bulletin 168 (1985)). Since tax preparation services for corporations are functionally or operationally similar to the tax preparation services that banks already provide to individuals as well as to their affiliates and other financial institutions, the Board has determined that corporate tax preparation services are closely related to banking.

The Board also has determined that tax planning is closely related to banking because banks provide this service through their trust and financial counseling departments. In addition, banks perform tax analyses of business transactions they finance, provide tax planning services to financial institutions, and provide tax planning services to corporations in connection with merger and acquisition and similar advisory services, and through their leasing subsidiaries.

The Board specifically requested the commenters to address whether tax planning for corporations should be considered management consulting. The Board has determined that general management consulting is not an activity that is closely related to banking. The Board has defined management consulting to include a broad range of counseling on matters relating to the substantive operation of a trade or business, often on a continuing basis. (See 12 CFR 225.25(b)(4) n.2; *First Commerce Corporation*, 58 Federal Reserve Bulletin 674 (1972)).

The Board has concluded that tax planning is a specialized form of financial advice, akin to the provision of financial feasibility studies on specific projects, which the Board has previously approved (*Security Pacific Corporation/Duff & Phelps, Inc.*, 71 Federal Reserve Bulletin 118 (1985)), and does not involve the degree of influence over substantive operations necessary to be deemed management consulting.

Several commenters recommended that the Board expand the final rule to include services to noncorporate businesses, such as partnerships and sole proprietorships, and tax exempt nonprofit organizations. Although not specifically proposed, services to these customers represent a logical extension of the proposed activity involving the same skills and expertise necessary to perform such services for corporations and individuals. In view of this similarity, the Board believes that its initial proposal is sufficiently broad to encompass tax services to noncorporate businesses and nonprofit organizations.

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The comments indicated that tax planning and preparation services are likely to result in public benefits in the form of enhanced convenience to customers, who would have a single source for many types of financial services. In addition, to the extent that bank holding companies enter this activity on a *de novo* basis, competition would be increased.

Some commenters noted potential adverse effects similar to those in consumer financial counseling, such as conflicts of interest if tax planner or preparer used materials that promoted other specific products or services, the misuse of confidential information concerning customers, or tying. Some commenters raised the possibility that tax planning services could give rise to legal liability for negligent advice or for the unauthorized practice of law.

The Board has determined that the activity should be added to the list of permissible activities subject to the following conditions to guard against potential conflicts and misuse of confidential information:

(1) The materials used by the tax planner or preparer do not promote other specific products and services; and

(2) The tax planner or preparer shall not obtain or disclose confidential information concerning its customers without the customer's written consent or pursuant to legal process.

With respect to tying, existing provisions of the BHC Act are specifically directed at preventing this type of abuse. Liability risk may be reduced by insurance and conforming activities to applicable legal and fiduciary limitations.

With respect to the unauthorized practice of law, the Board notes that the activity must be conducted in strict accordance with applicable local law, and that the activity would therefore be prohibited in those jurisdictions that specify the activity as the practice of law.

Check Guaranty Services. The proposed activity of check guaranty services would permit bank holding companies to authorize the acceptance by subscribing merchants of certain personal checks tendered by the merchant's customers in exchange for goods and services and to purchase validly authorized checks from merchants in the event the checks are subsequently dishonored.

The Board has previously determined that check guaranty services are closely related to banking and has approved applications by bank holding companies on a case-by-case basis to engage in this activity. (*Barnett Banks of Florida*, 65 Federal Reserve Bulletin 263 (1979); *Citicorp*, 67 Federal Reserve Bulletin 740 (1981)).

The comments indicate that the provision of check guaranty services by bank holding companies can reasonably be expected to provide public benefits in the form of increased competition through *de novo* entry into the market place. In addition, check guaranty services would increase customer convenience by facilitating the use of checks by consumers for the purchase of retail goods and services while providing merchants with a means to decrease bad check losses.

The commenters did not indicate that any significant adverse effects would result from this activity. In approving check guaranty services by order, however, the Board noted the potential for unfair competition or conflicts of interest with respect to the authorization of checks not drawn on affiliated banks. To minimize this possibility, the Board relied on a commitment that the applicant would not discriminate against checks drawn on unaffiliated banks. (*Citicorp, supra*). The Board believes it is appropriate to maintain that condition in authorizing check guaranty services under Regulation Y.

In proposing this activity, the Board asked whether conditions should be imposed to limit the liability of a bank holding company on the purchase of dishonored checks. The commenters on this issue answered in the negative. A number of commenters noted that banks impose various policies and procedures to limit liability through the terms of the agreement with the merchant subscribing to the service, and some limit liability to the amount of the purchased check. The Board believes that such procedures are sufficient to limit liability arising from this action.

Operating a Collection Agency or a Credit Bureau. A collection agency seeks to collect payment on the overdue bills of debtors, charging the party submitting the claim a flat dollar amount or a specified percentage commission contingent on the amount collected. A credit bureau gathers, stores, and disseminates factual information relating to the identity and paying habits of consumers. Credit bureaus then provide this information for a fee to credit grantors such as retailers, banks and finance companies to enable these institutions to arrive at prudent credit granting decisions.

The commenters noted that banks function as collection agencies, since they are presently engaged in debt collection activities for loans they originate and service. A number of commenters reported that some banks maintain professional staffs to conduct such collection activities. Other commenters pointed out that banks historically have operated collection agencies in order to collect on overdue credit card accounts. Accordingly, there is a reasonable basis for concluding that operating a collection agency is closely related to banking under the *National Courier* guidelines.

With regard to the credit bureau activity, the comments indicated that banks provide services that are operationally or functionally similar. Numerous commenters noted that banks maintain credit files and analyze credit information as part of their consumer lending function. Therefore, banks already possess a particular expertise with regard to credit reporting, and a reasonable basis exists to conclude that this activity is closely related to banking under *National Courier*.

The comments indicate that the operation of collection agencies and credit bureaus by bank holding companies can reasonably be expected to produce benefits to the public by increasing competition through *de novo* entry into the marketplace for these services. A number of commenters noted that the national credit bureau market is dominated by a small number of firms and that *de novo* entry by bank holding companies in this area would increase competition. In addition, the convenience of business customers would be enhanced because they would be able to obtain an increased number of financial services at a single source.

With respect to possible adverse effects from operating a collection agency, several commenters expressed concern over the potential for unfair competition or tying if business customers of an affiliated bank were required to use the collection services. Other commenters noted possible conflicts of interest arising if a bank allowed its affiliated collection agency to prematurely garnish a customer's bank account or to give a preference to an affiliated creditor in cases where multiple creditors are trying to collect from the same debtor.

Although the anti-tying provisions address potential tie-in arrangements, the Board has determined that conditions are warranted to minimize potential unfair competition or conflicts of interest. Accordingly, the Board is establishing the following conditions on operating a collection agency:

(1) The collection agency shall not obtain the names of customers of competing collection agencies from an affiliated depository institution that maintains trust accounts for those agencies; and

(2) The collection agency shall not provide preferential treatment to an affiliate or a customer of such affiliate seeking collection of an outstanding debt.

With respect to possible adverse effects from operating a credit bureau, representatives of the credit bureau industry expressed concern regarding potential conflicts of interest and unfair competition resulting from a bank holding company performing credit bureau activities. For example, under the Fair Credit Reporting Act, a credit bureau is required to investigate the accuracy of any item of information disputed by a consumer. (15 U.S.C. 1681(i)). Industry representatives claimed that a bank holding company credit bureau may not conduct an impartial investigation if the disputed information originates with an affiliate. In addition, they claimed that holding company entry into the industry would not result in increased competition through *de novo* entry, but rather would result in the absorption of existing firms by bank holding companies.

The Board considered similar arguments when it denied a bank holding company's proposal to engage in providing credit ratings for large businesses, many of which were credit customers of its subsidiary bank. (*Security Pacific Corporation/Duff & Phelps, Inc.*, 71 Federal Reserve Bulletin 118 (1985)). The present proposal, however, would allow bank holding companies to engage only in consumer credit reporting activities, rather than credit reporting activities concerning large commercial institutions. Consumer related activities would be subject to the public disclosure and other requirements of the Fair Credit Reporting Act. In addition, in order to address the possible conflict of interest of favoring an affiliate, the Board is imposing the condition that a credit bureau shall not provide preferential treatment to a customer of an affiliated financial institution.

Although the national credit reporting industry consists of only five firms, bank holding company entry into this market need not have an anticompetitive effect if entry is on a *de novo* basis. Accordingly, the Board would carefully consider an application to acquire one of the five dominant firms under the standards in the BHC Act, including whether it would result in unfair competition, undue concentration of resources, conflicts of interest, or other adverse effects.

Accordingly, the Board has determined to add operation of a credit bureau to Regulation Y subject to the above noted conditions.

Armored Car Services. The Board proposed to amend Regulation Y to authorize bank holding companies to provide fully insured transportation of cash, securities, and valuables (primarily between commercial customers and financial institutions) and such ancillary services as coin wrapping, change delivery, mail delivery, payroll check cashing, servicing of ATMs and leasing safes to commercial customers.

This activity was the most controversial of the activities proposed, and generated the most negative comment. The Board received numerous comments against adding this activity to the list, primarily from armored car operators, their trade associations, and insurers of armored car operators.

The opponents maintained that the activity is not closely related to banking but rather is essentially a transportation activity requiring no banking expertise. The opponents noted several possible adverse effects, including tying, conflicts of interest, liability risk for losses of valuables, or the use of armored car services to facilitate illegal branch banking. A large number of these commenters also maintained that approval would lead to unfair competition, possibly disrupting the existing level of service.

The Board initially proposed adding this activity to the list in 1971. In view of the adverse comments received from the industry at that time and the lack of strong interest on the part of bank holding companies, the Board did not issue a final rule, finding the evidence in support of the activity to be insufficient. However, the Board stated it would consider individual applications for this activity. To date the Board has received no bank holding company applications for armored car services.

The Board received many comments from bank holding companies expressing generalized support for the addition of armored car services to the Regulation Y list along with the other proposed new activities. Only a few of the commenters commented specifically on this activity, however, or indicated a desire to engage in the activity in the near future.

In view of the issue raised by the comments on this activity and the minimal interest by bank holding companies, the Board has decided not to add the activity to the Regulation Y list at this time. This decision will not preclude Board consideration of individual applications to engage in the activity under section 4(c)(8) of the Act, however.

Accordingly, the Board will continue its present policy of deferring action to add armored car services to Regulation Y pending receipt of an application for the activity. The Board expresses no opinion as to whether the activity would meet the *National Courier* test and would be a proper incident to banking.

Regulatory Flexibility Analysis—Paperwork Reduction Act

The Board has certified that adoption of this amended regulation dealing with permissible activities for bank holding companies is not expected to have a significant economic impact on small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). The Board is required by section 4(c)(8) of the BHC Act, 12 U.S.C. 1843(c)(8), to determine whether nonbanking activities are closely related to banking and thus are permissible for bank holding companies. The Board is clarifying the scope of activities it considers to be closely related to banking and permissible for bank holding companies, with Board approval. The amended regulation does not impose different or more burdensome requirements than the prior regulation for applications to the Board to engage in such activities. By clarifying the scope of permissible activities, the amended regulation will permit certain additional applications to qualify for more expeditious processing in the regional Federal Reserve Banks under authority delegated by the Board. 12 CFR 225.23.

The amended regulation imposes no additional information collection requirements and imposes no substantial change in the requirements for applications to engage in nonbanking activities.

List of Subjects in 12 CFR Part 225

Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements.

PART 225—[AMENDED]

For the reasons set out in this notice, and pursuant to the Board's authority under section 5(b) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(b)), the Board is amending 12 CFR Part 225 as follows:

1. The authority citation for Part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1843(c)(8), 1844(b), 3106, 3108, 3907 and 3909.

2. Section 225.25(b) is amended by revising paragraph (13) and adding new paragraphs (19), (20), (21), (22), (23), and (24) to read as follows:

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§ 225.25 List of permissible nonbanking activities.

* * * * *

(b) * * *

(13) *Real estate and personal property appraising.* Performing appraisals of real estate and tangible and intangible personal property, including securities.

* * * * *

(19) *Investment advice on financial futures and options on futures.* Providing investment advice, including counsel, publications, written analyses and reports, as a futures commission merchant ("FCM") authorized pursuant to paragraph (b)(18) of this section or as a commodity trading advisor ("CTA") registered with the Commodity Futures Trading Commission, with respect to the purchase and sale of futures contracts and options on futures contracts for the commodities and instruments referred to in paragraph (b)(18) of this section, provided that the FCM or CTA:

(i) Does not trade for its own account except for the purpose of hedging a cash position in the related government security, bullion, foreign currency, or money market instrument; and

(ii) Limits its advice to financial institutions and other financially sophisticated customers that have significant dealings or holdings in the underlying commodities, securities, or instruments.

(20) *Consumer financial counseling.* Providing advice, educational courses, and instructional materials to consumers on individual financial management matters, including debt consolidation, applying for a mortgage, bankruptcy, budget management, tax planning, retirement and estate planning, insurance and general investment management, provided:

(i) Educational materials and presentations used by the counselor may not promote specific products and services;

(ii) The counselor advises each customer that the customer is not required to purchase any services from affiliates; and

(iii) The counselor does not obtain or disclose confidential information concerning its customers without the customer's written consent or pursuant to legal process.

This paragraph does not authorize the provision of advice on specific products or investments or the provision of portfolio investment advice or portfolio management, which are authorized under paragraph (b)(3) and (4)(iii) of this section subject to certain fiduciary standards. If consumer financial counseling is offered by a company that also offers securities brokerage services pursuant to paragraph (b)(15) of this section, the brokerage and counseling services must be provided by different personnel and in separate offices or in separate and distinctly marked areas.

(21) *Tax planning and preparation.* Providing individuals, businesses, and nonprofit organizations tax planning and tax preparation services, including advice and strategies to minimize tax liabilities, and the preparation of tax forms, provided:

(i) The materials used by the tax planner or preparer do not promote other specific products and services; and

(ii) The tax planner or preparer does not obtain or disclose confidential information concerning its customers without the customer's written consent or pursuant to legal process.

(22) *Check guaranty services.* Authorizing a subscribing merchant to accept personal checks tendered by the merchant's customers in payment for goods and services and purchasing from the merchant validly authorized checks that are subsequently dishonored, provided that the check guarantor does not discriminate against checks drawn on unaffiliated banks.

(23) *Operating collection agency.* Collecting overdue accounts receivable, either retail or commercial, provided the collection agency:

(i) Does not obtain the names of customers of competing collection agencies from an affiliated depository institution that maintains trust accounts for those agencies; and

(ii) Does not provide preferential treatment to an affiliate or a customer of such affiliate seeking collection of an outstanding debt.

(24) *Operating credit bureau.* Maintaining files on the past credit history of consumers and providing that information to a credit grantor who is considering a borrower's application for credit, provided that the credit bureau does not provide preferential treatment to a customer of an affiliated financial institution.

By order of the Board of Governors of the Federal Reserve System, October 30, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-24930 Filed 11-3-86; 8:45 am]

BILLING CODE 6210-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

[Rev. 6; Amdt. 31]

Small Business Investment Companies

AGENCY: Small Business Administration.

ACTION: Final rule with request for comments.

SUMMARY: This final rule makes technical changes in the regulations governing the cost of money that Small Business Investment Companies may charge. The rule substitutes the term "Debenture Rate" for the term "FFB Rate" in the definitional section of the regulations and in the substantive regulation, thus tying the maximum permissible cost of money that a Small Business Investment Company may charge the small concerns it finances to the rate established on Small Business Investment Company debentures in sales to the public from time to time.

DATES: Effective November 4, 1986. Comments by January 5, 1987.

ADDRESS: Written comments may be sent to: Robert G. Lineberry, Deputy Associate Administrator for Investment, U.S. Small Business Administration, 1441 L Street, NW., 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: John L. Werner, Director, Office of Investment, U.S. Small Business Administration, 1441 L St., NW., Room 810, Washington, DC 20416 (202) 653-6584.

SUPPLEMENTARY INFORMATION: These changes implement section 18004 of Pub. L. 99-272, 100 Stat. 82, 364 (April 7, 1986) which adds a new section 320 to the Small Business Investment Act removing, as of October 1, 1986, the authority of the Federal Financing Bank to purchase debentures issued by Small Business Investment Companies and guaranteed by the Small Business Administration (SBA). Section 18005 of the same Pubic Law authorizes SBA to establish a mechanism by which certificates of interest backed by trusts or pools of guaranteed debentures may be sold to the public and requires SBA to take certain actions regarding the registration and conduct of such sales. The latter statutory directive was implemented by regulations published, and effective, June 12, 1986. 51 FR 21484. Since the debentures of Small Business Investment Companies will no longer be sold to the Federal Financing Bank, it is necessary to amend the present Cost of Money regulation, which refers to the interest rate charged by the Federal Financing Bank. Accordingly, references to the "FFB rate" now appearing in the regulations governing Small Business Investment Companies (13 CFR Part 107) will be replaced by references to the rate of interest on debentures which are pooled and which pool certificates are sold to the public with SBA's guarantee. The underlying principle of the regulations—that the Cost of Money to a small concern should bear a relationship to the current cost of ten-year money to Licensees—remains unchanged.

Executive Order 12291, Regulatory Flexibility and Paperwork Management

For the purposes of compliance with E.O. 12291 of February 17, 1981, SBA hereby certifies that this regulation does not constitute a major rule for purposes of Executive Order 12291. The annual effect of this rule on the economy will be less than $100 million. This rule will not result in a major increase in costs or price to consumers, individual industries, Federal, State, and local government agencies or geographic regions, or significant adverse effects on foreign or domestic competition, employment, investment, productivity or innovation, or on the ability of U.S.-based businesses to compete with foreign-based businesses to compete in domestic or export markets.

For the purposes of compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities. Under present regulations, user fees paid by a Small Business Investment Company are not to be considered in determining the FFB rate, with respect to which the Cost of Money ceiling is fixed, and this exclusion will not be affected. Guaranty fees, if any, paid by a Small Business Investment Company will also be excluded from computation of the Debenture rate, with respect to which the Cost of Money ceiling will henceforth be fixed. Also, this change in the regulation will not result, in and of itself, in a change in the rate of interest that small business will pay to an SBIC or have a financial impact upon a given SBIC.

SBA certifies that there is good cause to find that the solicitation of public comment prior to the effective date of the rule is impracticable under the circumstances. 5 U.S.C. 553(b)(B). The rule is made necessary by the statutory termination as of October 1, 1986 of the Federal Financing Bank's authority to purchase debentures issued by Small Business Investment Companies. Nevertheless, comments are invited and will be considered for possible revision of this regulation.

There is no alternative to this regulation that would have less economic impact or be less costly to small business. This regulation does not duplicate, overlap, or conflict with any existing Federal Rules.

This regulation contains no reporting requirements that are subject to approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. Ch. 35).

List of Subjects in 13 CFR Part 107

Small business investment companies, Regulations, Definitions, Operational requirements, License, Borrowing of licensee, Financing of small concerns, General provisions, Equity capital, Guarantees and commitments, Management service, Control of licensee, Lawful operations, Restricted activities, Prohibitions, Examinations, Accounts, Records of reports, Compliance, Exemptions.

PART 107—[AMENDED]

Accordingly, 13 CFR Part 107 is amended as follows:

1. The authority citation for Part 107 continues to read as follows:

Authority: Sec. 308(c), 72 Stat. 694, as amended (15 U.S.C. 687(c)); sec. 312, 78 Stat. 147 (15 U.S.C. 687d); sec. 315, 80 Stat. 1364 (15 U.S.C. 687g).

§ 107.3 [Amended]

2. By inserting after the definition of "Corporate Licensee" in § 107.3 the following definition:

* * * * *

Debenture Rate. "Debenture rate" means the interest rate, as published from time to time in the **Federal Register** by SBa, for ten year debentures issued by Licensees and funded through public sales of certificates bearing SBA's guarantee. User or guarantee fees, if any, paid by a Licensee are not considered in determining the Debenture rate.

* * * * *

3. By removing the definition of FFB Rate in § 107.3.

§ 107.302 [Amended]

4. By revising paragraphs (a) through (c) and republishing the introductory text of the section in § 107.302 to read as follows:

§ 107.302 Cost of Money; Loans and Debt Securities.

Subject to lower ceilings prescribed by local law, Cost of Money on Loans and Debt Securities shall not exceed the following:

(a) *Loans.* (1) If the current Debenture Rate is 8 percent per annum or lower, Cost of Money shall not exceed 15 percent.

(2) If the current Debenture Rate is in excess of 8 percent per annum, Cost of Money shall not exceed the sum of the current Debenture Rate plus 7 percentage points, but rounded off to the next lowest eighth of one percent.

(b) *Debt securities.* (1) If the current Debenture Rate is 8 percent per annum or lower, Cost of Money shall not exceed 14 percent.

(2) If the current Debenture Rate is in excess of 8 percent per annum, Cost of Money shall not exceed the sum of the current Debenture Rate plus 6 percentage points, but rounded off to the next lowest eighth of one percent.

(c) *Ceiling on specific financing.* The maximum Cost of Money on any specific Financing shall be determined with reference to the Debenture Rate in effect at the time of first disbursement, or when a legally binding written commitment was issued ("current Debenture Rate"), whichever shall first occur. A fluctuating interest rate is nevertheless subject to the maximum Cost of Money limitation in effect at the time or commitment, or of first disbursement if no legally binding written commitment was issued.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 16, 1986.

Charles L. Heatherly,

Acting Administrator.

[FR Doc. 86-24858 Filed 11-3-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 76-GL-22; Amendment 39-5454]

Airworthiness Directives; Bellanca Aircraft, Models 17-30, 17-30A, 17-31, and 17-31A, Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 76-23-03, Amendment 39-2772, applicable to certain Bellanca Models 17-30, 17-30A, 17-31, and 17-31A airplanes by changing the inspection intervals for the affected airplanes to intervals not to exceed 100 hours time-in-service or the next annual inspection, whichever occurs first. Additionally, this amendment adds a specific reference to inspect the tailpipe support. Reports have been received of engine power loss and of a subsequent accident due to exhaust system failure in which AD 76-23-03 was complied with within the last 50 hours but over three years calendar time had elapsed. Also, the NTSB has recommended inspection of the tailpipe support because its failure can contribute to exhaust system problems. This action is

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necessary to detect failures of exhaust system components on the affected airplanes.

DATES: *Effective Date:* November 7, 1986.

Compliance: As prescribed in the body of the AD.

ADDRESS: A copy of the background information relating to this action is contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Ty Krolicki, FAA, Chicago Aircraft Certification Office, ACE-140C, 2300 East Devon Avenue, Des Plaines, Illinois 60018; Telephone (312) 694-7032.

SUPPLEMENTARY INFORMATION: Airworthiness Directive 76-23-03 Amendment 39-2772, applicable to certain Bellanca Models 17-30, 17-30A, 17-31, and 17-31A airplanes requires inspection and replacement as necessary of the exhaust systems. A recent accident has highlighted the fact that, because some of these airplanes are flown infrequently, the time interval between 100 hour time in service inspections may span several years. In September 1985, the left exhaust muffler of a Bellanca Model 17-30A airplane failed at the outlet, permitting the exhaust gases to burn the magneto wiring resulting in power loss and a subsequent accident. AD 76-23-03 had been complied with in August 1982; however, no subsequent comparable inspections of the exhaust system had been accomplished because the airplane had only accumulated 50 flight hours since the previous inspection Additional reports document similar problems with the exhaust systems of these models of Bellanca airplanes. Long periods of nonuse may allow corrosion to develop causing the ball joint between the tailpipe and muffler to seize, resulting in undue stress on the exhaust system.

The FAA is revising AD 76-23-03 by changing the frequency of the required inspection from "intervals not to exceed 100 hours time-in-service" to "intervals not to exceed 100 hours time-in-service or the next annual inspection, whichever occurs first." In addition, the AD is being revised to add a specific reference to the tailpipe support because failure of this component may have been a causal factor in some of the exhaust system failures. If the tailpipe assemblies are not free to move at the ball joints, the bending stress created by the tailpipe and resonator can break the welded muffler outlet.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, the AD revision is being issued. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "**ADDRESSES**" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising AD 76-23-03, Amendment 39-2772, as follows: Revise the compliance paragraphs to read:

For airplanes with 200 or more hours time in service on the effective date of this AD, compliance is required within the next 10 hours time in service and thereafter at intervals not to exceed 100 hours time in service or the next annual inspection, whichever occurs first.

For airplanes with less than 200 hours time in service on the effective date of this AD compliance is required before the accumulation of 210 hours time in service and thereafter at intervals not to exceed 100 hours time in service or the next annual inspection, whichever occurs first.

Revise the first sentence of paragraph (A) to read as follows:

Visually inspect the muffler and tailpipe assemblies for cracks paying particular attention to the ball joint welds, the outlets of the muffler and resonator, and the support for the tailpipe assembly.

This amendment becomes effective November 7, 1986.

This amendment revises AD 76-23-03, Amendment 39-2772.

Issued in Kansas City, Missouri, on October 23, 1986.

T.R. Beckloff, Jr.,
Acting Director, Central Region.

[FR Doc. 86-24836 Filed 11-3-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-CE-50-AD; Adt. 39-5453]

Airworthiness Directives; Cessna Models 208 and 208A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 86-09-08 applicable to all Cessna Model 208 and 208A airplanes. AD 86-09-08 requires the installation of warning placards and temporary revision of the emergency procedures in the Pilot's Operating Handbook and Airplane Flight Manual (POH/AFM). This superseding action requires the installation of a fuel selector valve position warning system and modification of the low fuel level transmitter retention nuts. Reports have been received of forced landings which are attributed to fuel starvation due to attempting takeoff with both wing fuel tank selectors in the "off" position. This action will preclude fuel starvation caused by the fuel selector valves remaining in the "off" position.

DATES: *Effective date:* November 7, 1986.

Compliance: Required by December 31, 1986, unless already accomplished.

ADDRESSES: Cessna Caravan Service Bulletin Number CAB 86-8 dated October 10, 1986, applicable to this AD may be obtained from Cessna Aircraft Company, Customer Services, Post Office Box 1521, Wichita, Kansas 67201. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Paul O. Pendleton, FAA, Aircraft Certification Office, ACE–140W, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4427.

SUPPLEMENTARY INFORMATION: AD 86–09–08, Amendment 39–5308, applicable to Cessna Models 208 and 208A airplanes was published in the **Federal Register** on May 12, 1986 (51 FR 17322). This AD was prompted by reports of engine power loss from fuel starvation with subsequent forced landings due to both fuel selector valves remaining in the "off" position during operation. AD 86–09–08 requires installation of warning placards and revision to the Pilot's Operating Handbook and Airplane Flight Manual fuel system emergency procedures. This was interim action until a permanent design could be developed. Subsequently, FAA published NPRM Docket No. 86–CE–13–AD on June 5, 1986, in the **Federal Register** (51 FR 20495) which proposed a modification of the Cessna Models 208 and 208A airplanes fuel system by adding frangible safety wire to secure the wing fuel tanks selector valves in the "on" position. In addition, the proposal would have required instructional placards and revision to the Pilot's Operating Handbook and Airplane Flight Manual on these model aircraft. Subsequent to the issuance of this NPRM the FAA received comments suggesting an alternate solution would be more appropriate. Based on these comments the manufacturer developed a fuel selector warning system modification as described in Cessna Bulletin CAB 86–8 dated October 10, 1986, which will preclude mismanagement of the fuel system.

This modification provides "FUEL SELECT OFF" annunciator light and warning horn designed to alert the pilot or crew if both fuel tank selector valves are off before engine start, if either fuel tank selector valve is off during engine start, or if one fuel tank selector valve is off in flight and the fuel level in the tank being used drops below 25 gallons.

In addition, the manufacturer developed a modification to assure adequate security of the low fuel level transmitters as described in Cessna Bulletin CAB 86–26, dated September 5, 1986. This change will improve the reliability of the fuel selector warning system by securing the low fuel transmitter retention by adding a lock washer to the transmitter in the fuel reservoir and applying sealer on the transmitter nut in each wing tank.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, the FAA is issuing an AD applicable to Cessna Model 208 and 208A airplanes which will require the fuel selector warning system modification as described in Cessna Bulletin CAB 86–8 dated October 10, 1986, and the low fuel transmitters nut retention modification as described in Cessna Bulletin CAB 86–26, dated September 5, 1985. As part of this rulemaking AD 86–09–08 will be superseded. In addition, this action withdraws NPRM Docket No. 86–CE–13–AD since the actions proposed therein are no longer valid.

Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "**ADDRESSES**" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD.

Cessna: Applies to Models 208 and 208A (Serial Numbers 20800001 thru 20800105) airplanes certificated in any category.

Compliance: Required by December 31, 1986, unless already accomplished.

To prevent fuel starvation during takeoff due to improper positioning of the wing fuel tank selectors, accomplish the following:

(a) For Models 208 and 208A (Serial Numbers 20800001 through 20800105) airplanes, install the Cessna fuel selector warning system, revise the POH/AFM, and perform all required system checks, as described in Cessna Bulletin CAB 86–8 dated October 10, 1986.

(b) For Models 208 and 208A (Serial Numbers–20800001 through 20800083) airplanes, modify the low fuel level transmitter supports as described in Cessna Bulletin CAB 86–26, dated September 5, 1986.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An equivalent method of compliance with this AD may be approved by the Manager, Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this AD may obtain copies of the documents referred to herein upon request to Cessna Aircraft Company, Customer Services, Post Office Box 1521, Wichita, Kansas 67201; or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This action supersedes AD 86–09–08, Amendment 39–5308, published May 12, 1986 (51 FR 17322) and withdraws NPRM Docket Number 86–CE–13–AD published June 5, 1986 (51 FR 20495).

This amendment becomes effective on November 7, 1986.

Issued in Kansas City, Missouri on October 23, 1986.

T.R. Beckloff,

Acting Director, Central Region.

[FR Doc. 86–24829 Filed 11–3–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 86–CE–22–AD; Amendment 39–5452]

Airworthiness Directives; Pilatus Britten-Norman Limited, Models BN–2 and BN–2A Islander Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Pilatus Britten-Norman Limited (PBN), Models BN–2 and BN–2A Islander Series airplanes which requires rectifying defects found in the elevator mass balance for aircraft in service, and elevator spares. Instances have been

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reported of the internal lead balance weights becoming loose and even detaching from its bond to the steel mounting case in the nose of the elevator horn. This shift in the elevator balance may induce high amplitude vibrations, excessive control system wear, loss of control and possible catastrophic flutter. This AD will detect the loose balance weights and restore the correct elevator balance before any of the undesired oscillations, flutter or control system wear occurs.

DATES: *Effective date:* December 8, 1986.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD.

ADDRESSES: Pilatus Britten-Norman Limited, Mandatory Service Bulletin (MSB) No. BN–2/SB.113, Issue 2 dated April 14, 1986, and recommended Service Bulletin (S/B) BN–2/SB.113, Issue 1 dated February 1, 1978, applicable to this AD may be obtained from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, England. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Ebina, Aircraft Certification Staff, AEU–100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, Brussels, Belgium; Telephone 513.38.30; or Mr. Harvey A. Chimerine, FAA, ACE–109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374–6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring an inspection of the elevator horn balance weight, for cracks, looseness, corrosion and repair by incorporating Modification NB/M/990 on certain Pilatus Britten-Norman BN–2 airplanes was published in the **Federal Register** on August 7, 1986, 51 FR 28386. The proposal resulted from reports on Pilatus Britten-Norman Limited Models BN–2 and BN–2A Islander Airplanes, of elevator vibration, caused by the internal lead balance weight becoming detached from its bond to the steel mounting case forming the outer skin of the balance in the nose of the elevator horn. The initial construction of this assembly involves casting the lead directly into the steel case, resulting in a close fit and adhesion of the lead to the steel. In some cases, due to cooling and contraction of the two dissimilar metals, the lead became free from its steel holder, vibrated and deformed allowing ingress of moisture to cause corrosion of the steel case and has caused excessive vibrations of the elevator. As a result the manufacturer recommended the incorporation of Modification NB/M/990, as specified in Issue 1 of S/B.113 dated February 1, 1978. Recent service difficulty reports indicate that the problem still persists on aircraft that did not incorporate Modification NB/M/990. Consequently Pilatus Britten-Norman has re-issued S/B BN–2/SB.113 as Mandatory S/B BN–2/SB.113, Issue 2 dated April 14, 1986, which will detect the loose balance weights and restore the correct elevator balance before any undesired failures or vibrations occur, on both installed and spare elevators.

The United Kingdom Civil Aviation Authority (CAA–UK), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in the United Kingdom, classified this BN–2/SB.113, Issue 2 dated April 14, 1986, in addition to S/B BN–2/SB.113, Issue 1 dated February 1, 1978, and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes.

On airplanes operated under the United Kingdom registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the CAA–UK combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA examined the available information related to the issuance of BN–2/SB.113, Issue 2 dated April 14, 1986, in addition to S/B BN–2/SB.113, Issue 1 dated February 1, 1978, and the mandatory classification of this Service Bulletin by the CAA–UK and concluded that the condition addressed by BN–2/SB.113, Issue 2 dated April 14, 1986, in addition to S/B BN–2/SB.113, Issue 1 dated February 1, 1978, was an unsafe condition that may exist on other airplanes of this type certificated for operation in the United States. Accordingly, the FAA proposed an amendment to Part 39 of the FAR to include an AD on this subject.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change.

The FAA has determined that this regulation involves 100 airplanes at an approximate one-time cost of $70 for each airplane. The total cost is estimated to be $7,000 to the private sector.

The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 2, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Pilatus Britten-Norman Limited: Applies to Pilatus Britten-Norman Limited (PBN) Models BN–2 and BN–2A Islander airplanes certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished by incorporation of Modification NB/M/990 as noted in Britten-Norman Service Bulletin (S/B) No. BN.2/SB.113, Issue 2, dated April 14, 1986.

To prevent undesirable oscillations, flutter or control system wear, accomplish the following:

(a) Shake the elevator and aurally (by ear) determine if the mass balance weight is loose. Examine for any sign of movement, i.e., rust marks or grey lead deposits. In cases of uncertainty drill a small hole (5/32 in. dia) in the lower case and insert a probe to feel for lead movement. Alternatively dismantle the trimming weight assembly by removal of the blind riveted end covers and by removing the balance discs (note position and sequence for re-assembly).

(1) If a loose balance weight is found prior to further flight, accomplish the following:

(i) Remove the elevator;

(ii) Drill out rivets, remove the trim weight assembly and detach the complete case from the tip rib.

(iii) Lift out the profiled lead block.

(iv) Clean the case internally to remove any corrosion by the use of emery cloth. Keep clean; do not wipe with oily or greasy rag or bond of adhesive will be impared.

(v) Clean the lead block to obtain a corrosion free face to the steel case and permit free fit into the case with an approximate 0.020 in. to 0.030 in. clearance.

(vi) Prepare and apply a quantity of 3M's EC2216 epoxy adhesive to the case and press in the weight to obtain a layer of adhesive all around to fill the gap between the case and lead. Allow to cure approximately 12 hours at 60° to 65 °F and re-assemble to the elevator structure.

(vii) Re-assemble trim weights and check elevator balance, adjust trim weights if necessary to restore CAA–UK approved manufacturer's correct balance.

Note.—EC2216 may be substituted by similar "low flow" epoxy adhesive provided that the gap can be adequately sealed.

(2) If no defect is found, reassemble and return the airplane to service.

(b) Aircraft may be flown in accordance with Federal Aviation Regulation 21.197 to a location where this AD can be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Staff, ACE–100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

All persons affected by this directive may obtain copies of the documents, referred to herein upon request to Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, England; or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on December 8, 1986.

Issued in Kansas City, Missouri, on October 23, 1986.

T.R. Beckloff,

Acting Director, Central Region.

[FR Doc. 86–24633 Filed 11–3–86; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 307

Regulations Under the Comprehensive Smokeless Tobacco Health Education Act of 1986

AGENCY: Federal Trade Commission.

ACTION: Notice of final rulemaking.

SUMMARY: On February 27, 1986, the President signed into law the Comprehensive Smokeless Tobacco Health Education Act of 1986 (Smokeless Tobacco Act). The Smokeless Tobacco Act requires, among other things, that manufacturers, packagers, and importers of smokeless tobacco display health warnings on their packaging and in most of their advertising and submit plans to the Commission specifying the method used to rotate, display, and distribute the required health warnings. On July 3, 1986, the Commission published a notice of rulemaking (51 FR 24375 (1986)) that proposed regulations to implement these aspects of the Smokeless Tobacco Act. Written comments were invited until August 4, 1986. However, on July 28, 1986, the Commission extended the deadline for comments until August 18, 1986 (51 FR 26903 (1986)). Approximately 110 comments were received and placed on the public record. In addition, the Commission received three sets of physical exhibits consisting of mockups of advertisements with warnings in a variety of sizes and formats that were also placed on the rulemaking record. This notice contains the statement of basis and purpose for the regulations implementing the Smokeless Tobacco Act and the text of the final regulations.

EFFECTIVE DATES. These regulations (with the exception of §§ 307.4(c), 307.10, and 307.11, which involve the submission of plans) are effective February 27, 1987. Sections 307.4(c), 307.10, and 307.11 are effective December 19, 1986.

ADDRESS: Requests for copies of the regulations and the statement of basis and purpose should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 6th and Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Nancy S. Warder, (202) 376–8648 or Donald G. D'Amato, (202) 376–8617, Federal Trade Commission, 6th and Pennsylvania Ave., NW., Washington, DC 20580.

List of Subjects in 16 CFR Part 307

Health warnings, Smokeless tobacco, Trade practices.

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STATEMENT OF BASIS AND PURPOSE

I. Introduction

The Smokeless Tobacco Act was enacted by Congress for the express purpose of providing for public education concerning the health consequences of using smokeless tobacco products.[1] Among other things, the Smokeless Tobacco Act requires that 1 year after the date of enactment manufacturers, packagers, and importers of smokeless tobacco products include health warnings on their packages and advertising (with the exception of outdoor billboards). The Smokeless Tobacco Act also directs the Commission to issue regulations that implement the requirements for the display of health warnings in the labeling and advertising of smokeless tobacco products and the submission of plans specifying the method used to rotate, display, and distribute the required health warnings.

On July 3, 1986, the Commission published a notice announcing proposed regulations issued by the Commission pursuant to the Smokeless Tobacco Act.[2] The Commission invited comments on all aspects of the proposed regulations, and in addition solicited comments on a number of specific issues related to the proposed regulations. When the proposed regulations were originally published for comment, the notice required comments to be submitted on or before August 4, 1986. In response to requests for a 30-day extension by the Massachusetts Department of Public Health and the Coalition on Smoking OR Health,[3] the Commission, however, extended the deadline for comments until August 18, 1986. The Commission received 110 comments in response to the invitation to comment, which were placed on the public record.[4] The Commission also

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[1] Pub. L. No. 99–252, 100 Stat. 30 (1986) *to be codified at* 15 U.S.C. 4401 *et seq.*

[2] 51 FR 24375 (1986).

[3] 51 FR 26903 (1986).

[4] Comm'n Pub. Docket No. 209–52.

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received three sets of physical exhibits consisting of mockups of advertisements in a variety of sizes and formats that were placed on the rulemaking record. In addition, acetates prepared by staff consisting of thirteen circles and arrows in different sizes were placed on the public record in October.

II. The Regulations

The regulations proposed by the Commission were written, for the most part, as creating safe harbors rather than imposing mandatory, inflexible requirements for compliance with the Smokeless Tobacco Act. For example, rather than requiring the warning to appear on the side of snuff cans, the proposed regulations provided that the side of the can would be deemed to be a prominent place for display of the warnings. The final regulations also adopt the same flexible approach. The Commission believes that these safe harbors are conspicuous on the basis of the record before it. If, however, there is a pattern of abuse or confusion suggesting that the safe harbors are not conspicuous, the Commission will consider whether it is necessary to require greater specificity or more stringent standards.

This section discusses separately six aspects of the regulations: The terms defined (§ 307.3), the acts prohibited by the regulations (§ 307.4), the label disclosures (§ 307.6), the print advertising disclosures (§ 307.7), the audiovisual and audio advertising disclosures (§ 307.8), and cooperative advertising (§ 307.9). In each case, the discussion begins with a brief description of the pertinent section of the regulations as originally proposed and the issues, if any, raised by the Commission in connection with the section. Next, the major relevant comments on the section are discussed. The discussion concludes with an explanation of the section adopted by the Commission in the final regulations.

A. Terms Defined (§ 307.3)

As originally proposed, § 307.3 of the regulations defined the following terms: Act, Commission, regulation(s), commerce, United States, smokeless tobacco product, brand, package, label, billboard, manufacturer, packager, and importer. Section 307.3 as proposed did not contain a definition of the term "advertisement."

In the invitation to comment that accompanied the proposed regulations in the **Federal Register**, the Commission specifically sought comments on the problems that the absence of a definition of the term "advertisement" might create for implementing the regulations and achieving the purposes of the Smokeless Tobacco Act.[5] The Commission received a number of comments addressing this issue.

Some of the comments received urge the Commission to include a broad definition of the term "advertisement" in the final regulations. These comments take the position that a broad definition is needed to achieve what they view as the Smokeless Tobacco Act's intended purpose of requiring the display of health warnings on all types of advertising and promotional materials.[6] The American Association of Advertising Agencies,[7] however, notes that any definition of the term "advertisement" would be so broad that it would be meaningless as a guide to conduct. The Coalition on Smoking OR Health [8] notes that the Commission has not previously adopted an all-encompassing definition of advertising, and the Public Citizen Health Research Group [9] takes the position that the precedent setting implications of defining advertising in the context of these regulations would require full public comment on that issue alone.

The Commission believes that a broad definition of the term "advertisement" would not serve as a useful guide to conduct for those affected by the regulations and thinks that those instances where the applicability of the regulations to certain material is open to question are best resolved on a case by case basis. Accordingly, § 307.3 of the final regulations does not define the term "advertisement."

The invitation to comment that accompanied the proposed regulations also asked specifically whether § 307.3 as proposed should be revised so as to define additional terms other than the word "advertisement."[10] Few comments were received in response to this question, and only one comment [11] suggests defining any additional terms. Accordingly, § 307.3 of the final regulations does not define any terms other than the thirteen words defined in the section as originally proposed.

B. Prohibited Acts (§ 307.4)

As proposed § 307.4 contained five operative subsections. Paragraph (a) prohibited the distribution of smokeless tobacco packages without the required warning unless the product had been exempted. Paragraph (b) prohibited the dissemination of smokeless tobacco advertising without the required warnings and also stated that this prohibition did not apply to (among other things) point-of-sale promotional materials with a display area of 36 square inches or less or to utilitarian objects for personal use such as clothing, sporting goods, spittoons, towels, blankets, and furniture. Paragraph (b) was silent with respect to promotional banners displayed at sponsored events. Paragraph (c) prohibited failure to submit a plan to the Commission specifying the method used to rotate, display, and distribute the required warnings. Paragraph (d) provided a procedure for obtaining exemptions from the requirements of the regulations by rulemaking. Finally, paragraph (e) contained a provision that exonerated any manfacturer, packager, or importer of smokeless tobacco products that had taken certain reasonable steps to comply with the regulations.

As proposed § 307.4 raised four discrete issues: The appropriateness of the exemptions for point-of-sale promotional materials with a display area of 36 inches or less and utilitarian objects in paragraph (b); the appropriateness of the same subsection's silence with respect to promotional banners; the propriety of the exemption procedure set forth in paragraph (d); and the need for miscellaneous changes in § 307.4. Each of these issues is discussed separately below.

1. Point-of-Sale Materials and Utilitarian Objects

In the invitation to comment that accompanied the proposed regulations, the Commission, noting that paragraph (b) of § 307.4 had adopted a number of preexisting exemptions applicable to cigarette advertising, pointed out that paragraph (b) did not apply either to point-of-sale promotional materials with display areas of 36 square inches or less or to utilitarian objects intended for personal use. The Commission then specifically asked whether the exemption for both types of materials should be limited to items that do not carry a separate selling message.[12]

Although the Commission did not specifically solicit comments on the relationship of the Smokeless Tobacco Act to the requirements for the display of health warnings in cigarette advertising, a number of comments directly address this issue. In a joint comment, Senators Hatch, Lugar, and Kennedy,[13] who were the principal sponsors of the Smokeless Tobacco Act in the Senate, emphasize that the possibility of incorporating the history of the previous cigarette warning legislation by reference into the history of the Smokeless Tobacco Act was discussed, but rejected. Also in a joint comment, Representatives Waxman and Synar,[14] who were the primary authors of the Smokeless Tobacco Act, agree that the idea of incorporating cigarettes by reference was rejected and that the Smokeless Tobacco Act draws careful distinctions between how cigarettes and smokeless tobacco products are to be treated. The Smokeless Tobacco Council,[15] the trade association that represents the major smokeless tobacco manufacturers, also takes the position that neither the language of the Smokeless Tobacco Act nor its legislative history supports the proposition that Congress intended to treat smokeless tobacco products the same as cigarettes. In contrast, a few comments emphasize that fairness requires that smokeless tobacco products be treated no worse than cigarettes.[16] The weight of the comments, however, is to the effect that Congress did not intend to incorporate the regulatory history of cigarettes.

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[5] 51 FR 24375 at 24378 Question 1 (1986).

[6] Comm'n Pub. Docket No. 209–52 at 88–90, 99–100, 130–33, 143–62, 172–75, 234–41, 250–51, 254–56.

[7] *Id.* at 183–93.

[8] *Id.* at 205–26.

[9] *Id.* at 276–83.

[10] 51 FR 24375 at 24378 Question 2 (1986).

[11] That one comment recommends defining "marketed" as meaning "offered for sale." Comm'n Pub. Docket No. 209–52 at 137. The term marketed, however, was used in the proposed regulations as meaning advertised as well as offered for sale.

[12] 51 FR. 24375 at 24379 Question 7 (1986).

Moreover, the legislative history of the Smokeless Tobacco Act supports the position that Congress intended to treat smokeless tobacco products differently than cigarettes. In the Senate debates on the bill that was amended to become the Smokeless Tobacco Act, the chairman of the committee that reported out the bill expressly explained that, although many of the concerns and information that are applicable to the Comprehensive Smoking Education Act also apply to the smokeless tobacco legislation, the Smokeless Tobacco Act did not amend the Comprehensive Smoking Education Act or adopt its legislative history.[17]

Most of the comments that respond directly to the question concerning the appropriateness of requiring both point-of-sale promotional materials [18] and utilitarian objects [19] to display health warnings take the position that they should, regardless of whether they carry a separate selling message. In contrast, the comments that favor an exemption for these items refer to similar exemptions that are applicable to cigarette advertising as the basis for their position.[20]

Based on the comments received and further review of the legislative history of the Smokeless Tobacco Act, the Commission does not believe that the existence of an exemption for cigarettes in and of itself offers a legal basis for exempting classes of materials from the Smokeless Tobacco Act, although the cigarette exemptions do offer practical guidance as to what types of materials should be covered. The Commission is aware that some point-of-sale materials like shelf-talkers and similar product locators are almost always displayed in close proximity to products that will carry the required warnings. Shelf-talkers and similar product locators are often relatively small, with display areas of 12 square inches or less, and unobtrusive. A warning on these small items would produce virtually no benefits, especially since the type size of the warnings on these items would be smaller than the label warnings on the products. Accordingly, paragraph (b) of § 307.4 of the final regulations provides that shelf-talkers and similar product locators with a display area of 12 square inches or less are not required to display the required warnings. All other point-of-sale materials, regardless of size, are required to display the warnings.

Similarly, although the Commission understands that certain types of promotional activities, like the distribution of utilitarian objects, are intended to increase brand awareness, advertising and other promotional expenditures are commonly distinguished.[21] Moreover, there are practical problems in putting health warnings on many of the utilitarian objects distributed by the smokeless tobacco industry, such as golf balls and cuspidors. In addition, the Commission is sensitive to the need to avoid diminishing the seriousness of the required warnings by mandating their display in absurd situations. Since requiring the display of warnings on utilitarian items may be counterproductive to the Smokeless Tobacco Act's goal of providing meaningful information concerning the health risks associated with smokeless tobacco use, the benefits of requiring the display of warnings on these items is at best *de minimis*. Accordingly, paragraph (b) of § 307.4 of the final regulations exempts utilitarian objects for personal use. The Commission considered limiting the exemption for utilitarian objects to items that only carry a brand name, logo, or other product identifier. However, the distinction would not avoid the enormous practical problem of specifying a warning scheme for these objects or avoid the possible trivialization of the warnings. Accordingly, the Commission decided not to limit the exemption for utilitarian objects.

2. Banners

The invitation to comment also noted that paragraph (b) of § 307.4 was silent with respect to promotional banners used at sponsored events, such as fishing tournaments and automobile races and asked whether the regulations should be modified to address banners explicitly.[22] There are a number of responsive comments, most of which[23] take the position that banners are advertising in that they are displayed at sponsored event so that the public can see them and be persuaded to use smokeless tobacco products. The Smokeless Tobacco Council[24] takes a contrary position, pointing out that whether an object constitutes advertising depends on its use, rather than its characterization, and stating that banners used to denominate events, designate pit stop locations for race cars, and the like are not advertising.

The Commission believes that the question of whether banners constitute advertising should be addressed on a case by case basis. In addressing the question of whether various banners are advertising for purposes of the Smokeless Tobacco Act, the Commission will consider whether they are displayed, for example, to denominate an event, designate a pit stop, or for advertising purposes.

3. Exemption Procedure

The invitation to comment did not specifically solicit comments on the propriety of the procedure for obtaining exemptions from the requirements of the

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[13] Comm'n Pub. Docket No. 209-52 at 320-21.

[14] *Id.* at 322-25.

[15] *Id.* at 284-307.

[16] *Id.* at 310-15, 330-31.

[17] Cong. Rec. S17682 (daily ed. Dec. 16, 1985) (statement of Sen. Hatch).

[18] Comm'n Pub. Docket No. 209-5 at 88-90, 196-98, 205-26, 234-41, 246-47, 276-83, 320-21, 322-25, 361-63.

[19] *Id.* at 97, 99-100, 135, 143-62, 196-98, 205-26, 234-41, 254-56, 276-83, 361-63.

[20] *See e.g.*, 194-95, 284-307, 310-15, 318-19.

[21] The provision of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1337(b)(1982), requires the Commission to submit annual reports to Congress on, among other things, methods of cigarette advertising and promotion. Thus Congress itself is aware of this distinction.

[22] 51 FR 24375 at 24379 Question 8 (1986).

[23] Comm'n Pub. Docket No. 209-52 at 67, 99-100, 104-105, 107-08, 120-21, 122-23, 143-62, 172-75, 196-98, 205-26, 227-33, 234-41, 242-45, 276-83, 335, 361-63.

[24] *Id.* at 284-307.

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regulations, which was set forth in paragraph (d) of § 307.4 of the proposed regulations. However, the Coalition on Smoking OR Health[25] notes in its comments that the Smokeless Tobacco Act does not contain a provision that permits the creation of exemptions when compliance is "impractical, unreasonable, or unnecessary for the adequate protection of consumers." The Commission's rules of practice already provide a mechanism by which persons can seek exemptions from its rules. The Commission, therefore, has deleted proposed paragraph (d) from the final regulations. The Commission will determine what substantive standard, if any, constitutes an adequate basis for an exemption from the regulations in connection with any petitions for exemptions that may be filed.

4. Miscellaneous Changes

There are a number of additional comments on other aspects of § 307.4 as well as one technical change in the section that the Commission is making on its own initiative. Although not all of the comments discussed in this section expressly refer to § 307.4 of the proposed regulations, they all would require changes in § 307.4 to make clear that the section's prohibitions do not apply to the activity or material that is the subject of the comment.

First, four comments recommend [26] that the Commission add a provision to the regulations exempting public issues messages and other non-selling communications by smokeless tobacco companies from the requirements of the regulations. Both the Smokeless Tobacco Act and the proposed regulations, of course, apply only to commercial speech as that term has been defined in Supreme Court cases. Although the Commission agrees that fully protected speech is not required to carry health warnings, the Commission believes that distinctions of this sort are best made on a case by case basis. Thus to change is made in the regulations.

In addition, four comments [27] urge the Commission to add a provision to the proposed regulations that would provide for the disposition of finished goods inventories that are on hand on the effective date and advertising that is in place as of the effective date. More specifically, the Smokeless Tobacco Council suggests [28] that paragraphs (a) and (b) of § 307.4 be modified to provide that the regulations do not apply to smokeless tobacco products manufactured before February 27, 1987, and to make clear that recalling existing advertising is not necessary to comply with the regulations. The Commission recognizes the need for an orderly transitional period, but believes that these procedures can be worked out best with each smokeless tobacco company on an individual basis as part of its compliance plan. The Commission followed the same procedure in implementing the 1984 Comprehensive Smoking Education Act in that each company set out a proposal for the transitional period in its compliance plan. For example, the plans approved provided that the new warnings would appear only on the labels of products packaged after the effective date. Accordingly, no change is made in the proposed regulations in response to this recommendation.

In addition, the Smokeless Tobacco Council points out that paragraph (b) of § 307.4 identifies a number of activities to which the regulations do not apply, including publications that are not circulated to consumers and promotional materials that are not publicly displayed, but are distributed to smokeless tobacco dealers or merchants. The Smokeless Tobacco Council suggests that the word "intended" be inserted so that the original purpose of the activity is determinative of the applicability of this provision, rather than subsequent fate of the material. The Commission agrees that an enforcement action against a company because its trade materials accidentally became available to a number of consumers would be unwarranted, but also believes that inserting the word "intended" in the regulations would unnecessarily complicate enforcement and is, accordingly, inappropriate. No change, therefore, is made in the proposed regulations in response to this recommendation.

As proposed paragraph (e) of § 307.4, which created a safe harbor for smokeless tobacco companies that have taken reasonable steps to comply, provided that blurring or illegibility of the warnings that occurs for reasons that are beyond the control of a smokeless tobacco company would not be considered to be a violation of the regulations. Although the Commission would not institute an enforcement action based on blurring or illegibility of this sort, this explanatory language has been removed from the text of the regulations as unnecessary.

The Smokeless Tobacco Council suggests that paragraph (e) of § 307.4 be broadened to provide expressly that a smokeless tobacco company is not responsible for the failure to comply of a person that is not under the company's immediate control. Control is a broad concept and, for some purposes, even a company's advertising agency can be described as not being under its immediate control. Accordingly, no change is made in the proposed regulations in response to this comment and proposed paragraph (e) of § 307.4 is redesignated as paragraph (d) without any change other than the technical modification described in the preceding paragraph.

C. Label Disclosures (§ 307.6)

As proposed paragraph (a) of § 307.6 required the label warning statements to appear in a prominent place, which is described as being a part of the label that is likely to be seen. Proposed paragraph (a) then gave examples of the surfaces of a number of types of smokeless tobacco packages that would be deemed to be prominent for purposes of displaying the warning and stated that, absent special circumstances, the required warning would not be deemed to be prominent if it appeared on the bottom of a package. Paragraph (b) as proposed required the label statement to appear in a conspicuous format, in conspicuous and legible type in contrast with all other printed material on the package. Under paragraph (b) also provided that label statements separated from other material on the label and printed in two to four lines parallel to the base of the package would be deemed to be in a conspicuous format. Under paragraph (b) as proposed a warning printed in Univers 47 would be deemed to be conspicuous and legible. Proposed paragraph (b) also listed the type sizes that would be deemed to be conspicuous and legible for four examples of smokeless tobacco packages that were described in terms of contents (that is snuff or chewing tobacco) and in some cases in terms of capacity of the container as well. In addition, proposed paragraph (b) provided that a label warning printed in the color used anywhere on the package that is most visible against the background where the warning appears would be deemed to be sufficiently contrasting.

As proposed § 307.6 raised four issues: The prominence of the surfaces designated for display of the warning; the conspicuousness of the format; the legibility of the type; and the sufficiency of the color contrast. Each of these issues is discussed in a separate section below.

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[25] *Id.* at 205–26.

[26] *Id.* at 250–62A, 284–307, 310–15, 318–19.

[27] *Id.* at 284–307, 308–09, 310–15, 330–31.

[28] *Id.* at 284–307

1. Prominence of Designated Surfaces

In the invitation to comment that accompanied the proposed regulations, the Commission specifically sought comments on the issue of the appropriateness of the surfaces designated for display of the warnings in the proposed regulations.[29] Most of the responsive comments,[30] including a letter from the sponsors of the Smokeless Tobacco Act in the House,[31] favor requiring the warning on snuff cans to be printed on the top as opposed to the side. The Smokeless Tobacco Council,[32] however, points out that requiring a warning on the top of the snuff can would impose a substantial hardship on the manufacturers that emboss the top of the snuff can rather than use it as a label. A snuff can has only two surfaces that are used to display label information, the top and the side. Designating the side for display of the warning, rather than the top, avoids working a substantial hardship on those snuff manufacturers that emboss the top and yet satisfies the statutory standard that requires the warning to be displayed in a conspicuous and prominent place. Accordingly, no change is made in the proposed regulations.

However, a number of the comments [33] suggest that the side of the can would be an acceptable alternative to the top for display of the required warnings provided that, among other things, the warning were not printed on the tear line. This suggestion is reasonable and, accordingly, paragraph (a) is modified to provide that the required warning will not be deemed to be in a conspicuous and prominent place if it is printed on the tear line or any other surface where it will be obliterated when the package is opened.

Two comments also take issue with the proposed regulations' requirements for placement of the warnings on rectangular packages.[34] As previously indicated, paragraph (a) as proposed contained a list of examples of the surfaces that would be deemed to be prominent for display of the required warning. The third example was applicable to rectangular boxes of snuff, plugs of chewing tobacco, or cartons used to dispense individual cans of snuff or pouches or plugs of chewing tobacco and provided that either side of the package would be deemed to be conspicuous and prominent so long as the panel used was cleared of other written or graphic matter. The two comments object to the requirement that the side panel be cleared to be deemed prominent. Requiring the side panel to be cleared of everything other than reasonable extensions of materials from adjacent panels, such as plain bands of color and the like, prevents the side from becoming cluttered with busy printed material that contains any distracting designs or other detail. Accordingly, the Commission continues to believe that clearing the side is important to ensure the prominence of the warning. The requirement with respect to clearing the side panel, therefore, is not modified in response to these comments. However, one of the comments argues that the requirement is unfair because as a practical matter it only applies to cartons used to dispense chewing and plug tobacco, but not dispensers of snuff. The language of the example is modified so that it applies to all dispensers of smokeless tobacco, rather than merely to cartons. In addition, the example is further modified, since it is no longer limited to cartons, to specify that it only applies to dispensers that are available for sale as a unit.

The invitation to comment also specifically sought comments on the appropriateness of designating the front of chewing tobacco pouches as a prominent place for display of the warning.[35] Very few comments are directly responsive to this question, and the more detailed responsive comments [36] take the position that the requirement is unfair in that it singles out looseleaf chewing tobacco as the only smokeless tobacco product that is required to carry a warning on its principal display panel. These comments take the position that the regulations should be modified to designate the bottom of the pouch as a prominent place. Although the Commission appreciates the special problems designating the front of the pouch as being prominent creates for the makers of looseleaf chewing tobacco, the only surface that can most reasonably be deemed to be prominent in the case of a package with only three surfaces, a front, back, and bottom, is the front. As an alternative to designating the front as a prominent place, the Smokeless Tobacco Council suggests either face panel, taking the position that pouches do not have a front or a back, but rather have two nearly identical face panels. Accordingly, when the two face panels are in fact identical, for purposes of the regulations the front of the pouch will be deemed to be the panel on which the warning appears.

2. Conspicuousness of the Format

As previously indicated, paragraph (b) of § 307.6 as proposed provided that the required warning would be deemed to be conspicuous if it was separated from other material on the package and printed in two to four parallel lines. In addition, under proposed paragraph (b), with the exception of cans with a diameter of 1 and ¾ inches or less, the lines must also be printed parallel to the base of the package. The invitation to comment did not call for comments on the appropriateness of the format for the package warnings specifically, but rather merely asked whether the label statements would be sufficiently noticeable to satisfy the statutory standard that the warnings be displayed conspicuously.[37]

Most of the comments that address the requirements for the package warnings under the proposed regulations in global terms express concern over the adequacy of the disclosures.[38] Many of the comments also offer specific suggestions on how the conspicuousness of the label format could be enhanced. A few of the comments suggest that the Commission require a circle and arrow format,[39] at least for the warnings on some types of packages, whereas a number of comments urge the Commission to specify that the package warnings be printed in black on a white background.[40] Many comments recommend that the Commission at least require the package warnings to be surrounded by a border.[41]

The Smokeless Tobacco Council [42] comment states that other changes are

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[29] 51 FR 24375 at 24378 Question 3A (1986).

[30] Comm'n Pub. Docket No. 209-52 at 65-66, 70-71, 86-90, 98, 99-100, 104-05, 116-17, 120-21, 122-23, 127, 128, 169-70, 176, 196-98, 205-26, 227-33, 234-41, 246-47, 250-51, 253, 257-58, 276-83, 328-29, 335, 336, 361-83.

[31] *Id.* at 322-25.

[32] *Id.* at 284-307.

[33] *Id.* at 65-66, 70-71, 99-100, 116-17, 254-56.

[34] *Id.* at 263-75, 284-307.

[35] 51 FR 24375 at 24378 Question 3B (1986).

[36] Comm'n Pub. Docket No. 209-52 at 263-75, 284-307, 308-09.

[37] 51 FR 24375 at 24378 Question 4A (1986).

[38] Comm'n Pub. Docket No. 209-52 at 61, 72, 76, 78, 81, 82, 83-87, 106, 112, 115, 116-17, 118, 120-21, 124, 126, 129, 134, 176, 181, 196-98, 199, 234-41, 320-21, 335, 361-83.

[39] *Id.* at 86-90, 205-26, 250-51, 253, 361-83.

[40] *Id.* at 98, 176, 196-98, 205-26, 234-41, 254-56, 276-83.

[41] *Id.* at 65-66, 67, 70-71, 98, 99-100, 102, 104-05, 107-08, 116-17, 120-21, 122-23, 127, 176, 196-98, 227-33, 246-47, 254-56, 276-83, 328-29, 335, 361-83.

[42] *Id.* at 284-307.

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needed in the requirements for the format for the label. Specifically, the Smokeless Tobacco Council suggests that the warnings should be required to be separated from other printed matter on the label by only once the point size of the type in which the warning is printed, rather than twice the point size as was required by the proposed regulations. The Smokeless Tobacco Council also believes that the requirement that the warning be printed in two to four lines as opposed to just one line is unnecessary. Finally, the Smokeless Tobacco Council suggests that the exception from the parallelism requirement be broadened to include all rectangular packages, rather than be limited to cans with diameters of 1 and ¾ inches or less.

The Commission is not persuaded that any overall changes in the label format are required. Although many comments favor altering the format to make it more conspicuous, the format originally proposed appears to be sufficiently conspicuous to meet the statutory standard of "a conspicuous format." On the other hand, the Commission believes that the modifications suggested by the Smokeless Tobacco Council may detract from the conspicuousness of the label warnings. Accordingly, no change is made in the proposed regulations in response to any of these comments.

With respect to the format for the warnings on chewing tobacco pouches, the invitation to comment also asked whether a two line as opposed to a one line format would be sufficiently conspicuous, given that the warnings appear on the front of the package and also requested information about the relative cost of requiring the warning to be printed in two lines on pouches rather than one.[43] Although no comments were received on the relative costs, a few comments are directly responsive to the question about the appropriateness of a two line versus a one line warning on pouches.

The Smokeless Tobacco Council,[44] as well as four members of Congress,[45] take the position that the warning on pouches should be permitted to appear in one line. According to the Smokeless Tobacco Council, not only would a one line warning be sufficiently conspicuous, but a two line warning would distort the label and single out looseleaf chewing tobacco, the only smokeless tobacco product sold in a pouch, for unduly harsh treatment. According to The Pinkerton Tobacco Company,[46] a company that sells mostly looseleaf tobacco, the distortion of the label is particularly pronounced in the case of pouches with borders around the face panel. Attached to the comments of The Pinkerton Tobacco Company and the Smokeless Tobacco Council are copies of mockups of pouches with one and two line warnings. In contrast, other comments flatly take the position that a one line warning on a pouch would not be sufficiently conspicuous.[47]

The Commission realizes that the question on the merits of whether the warning on pouches should be permitted to appear in one as opposed to at least two lines is a subjective one, especially given the lack of both information on the relative costs as well as empirical data on the conspicuousness of the one line as opposed to the two line warnings on pouches. The Commission has decided that one line warnings on the face of pouches will be deemed to be conspicuous but, to ensure that the one line warnings are sufficiently prominent, the regulations are modified to provide that a one line warning printed on the front of a pouch in eleven point type (rather than eight point) will be deemed to be conspicuous. The Commission emphasizes that, as is the case with many other provisions of the regulations, this change takes the approach of creating a safe harbor rather than establishing an inflexible rule for compliance.

3. Legibility of the Type

As previously described, proposed paragraph (b) of § 307.6 provided that warnings printed in Univers 47 normal or an equivalent type would be deemed to be legible and contained a list of the type sizes that would be deemed to be conspicuous and legible for four examples of smokeless tobacco packages. The invitation to comment asked whether the label statements would be sufficiently noticeable to satisfy the statutory standard that the warnings be conspicuous.[48]

Few comments focus specifically on the appropriateness of the typeface or the type size for the label warnings. Although many comments question the adequacy of the label warnings generally [49] and five specifically take the position that the type sizes are too small,[50] the Commission believes that the sizes in the proposed regulations satisfy the statutory standard that the warnings be conspicuous and legible. Therefore, no change is made in the type sizes designated in the regulations. However, one comment, in connection with the adequacy of the advertising warnings, points out that there are a number of typefaces that are more readable than Univers 47 that occupy about the same amount of space.[51] The Commission agrees that Univers 57 (one of the type sizes this comment recommends) is considerably easier to read and takes up only slightly more space than Univers 47.[52] Accordingly, the regulations are modified to provide that a label warning printed in Univers 57 will be deemed to be conspicuous and legible.

In addition, a few comments [53] object to the way that the proposed regulations described the smokeless tobacco packages for purposes of specifying a type size. The proposed regulations described examples of smokeless tobacco packages both in terms of their configuration, that is can or pouch (for example), the contents, that is snuff or chewing tobacco (for example), and their capacity, that is the number of ounces contained. The objections go to the identification of the packages in terms of the nature of their contents and take the position that a better, more universal definition would merely refer to the configuration of the package and its capacity. The packages described in the proposed regulations are geared to the packaging most widely used for the best-selling smokeless tobacco products now on the market. The packages described in the regulations are intended to serve as examples so that the size of the type on less widely used or future types of packaging can be appropriately adjusted. Accordingly, no change is made in the regulations in response to these comments.

4. Sufficiency of the Color Contrast

As previously described, under subsection (b) as proposed a warning label printed in the color used anywhere on the package that was most visible against the background on which the warning appeared would be deemed to be sufficiently contrasting. Proposed paragraph (b) also provided that more than one color could be equally visible. In the invitation to comment the Commission specifically asked whether the regulations should adopt clearly visible as the standard for the color contrast for label warnings rather than most visible, as well as asked whether the most visible standard would pose an undue burden in the case of a product with a logo that incorporated a small amount of a sharply contrasting color.[54]

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[43] 51 FR 24375 at 24378 Questions 3 C and D (1986).

[44] Comm'n Pub. Docket No. 209-52 at 284-307.

[45] *Id.* at 308-09, 310-15, 316-17, 326-27.

[46] *Id.* at 263-75.

[47] *Id.* at 98, 234-41, 205-28, 254-56.

[48] 51 FR 24375 at 24378 Question 4A (1986).

[49] *See* note 38 and accompanying text *supra*.

[50] Comm'n Pub. Docket No. 209-52 at 88-90, 137, 253, 276-83, 361-83.

[51] *Id.* at 205-28.

[52] Specifically, in seven point type Univers 47 allows 6.16 characters per pica, while Univers 57 allows 5.22, and in twelve point type Univers 47 allows 3.60 characters per pica, while Univers 57 allows 3.05. Since a pica is equal to ⅙ of one inch, these differences are quite small.

[53] Comm'n Pub. Docket No. 209-52. at 263-75, 284-307, 326-27.

There are a number of responsive comments that are divided between those that contend that the most visible standard is excessive and confusing [55] and those that argue that the standard is too weak in that it would permit the use of an existing color on the package even if no color on the package sharply contrasts to the background on which the warning is printed.[56] After reviewing the comments, the Commission has decided to modify the regulations so that paragraph (b) provides that the statement is deemed to be in contrast if it is printed in a color (including black and white) that is clearly visible against the background on which the warning appears. However, the color is no longer limited to existing colors on the package.

D. Print Advertising Disclosures (§ 307.7)

As proposed paragraph (a) of § 307.7 stated that the required warning in print advertising must be placed in a conspicuous and prominent location in an ad in a circle and arrow format and provided that a conspicuous place in the ad was not in the margin, or next to other written matter or circular designs, or on a picture of the package. Proposed paragraph (b) described the proportions of the circle and arrow in terms of fractions of the diameter of the circle to ensure that all the advertising warnings would be displayed in the same configuration. As originally proposed paragraph (b) provided that a circle and arrow and warning statement printed in a clearly visible color against a solid background would be deemed to be in contrast with all other printed material in the ad. Proposed paragraph (b) also contained a list that provided the size of the circle and arrow as well as the point size of the type of the warning that would be deemed to be conspicuous in advertisements with a range of twelve different areas.

As proposed § 307.7 raised three severable issues: the conspicuousness of the warnings; the appropriateness of the description of the circle and arrow; and the need for miscellaneous changes in § 307.7. Each of these issues is discussed separately below.

1. Conspicuousness of the Warnings

The proposed regulations contained size specifications of the warnings in advertisements in twelve area ranges. The sizes were specified both in terms of the number of points for the type and the dimensions of the circle and arrow. In the invitation to comment the Commission sought comment on the issue of whether the sizes specified were sufficiently noticeable to satisfy the requirement that the warnings be conspicuous.[57] Under the proposed regulations the warnings were required to be in a clearly visible color against a solid background. The invitation to comment also specifically asked whether the smokeless tobacco advertising warnings, like the cigarette advertising warnings, should be required to appear in black on white.[58]

The proposed sizes and color contrast for the print advertising warnings generated more comments than any other aspect of the regulations. Although one comment does not object to the sizes proposed for the advertising warnings [59] and a few comments suggest that the proposed regulations' requirements for color contrast are too stringent,[60] the majority of the comments complain that the proposed sizes are much smaller than the current cigarette warnings [61] and take issue with the proposed regulations' failure to require that the advertising warnings be printed in black against a white background.[62]

Only two timely comments from members of Congress, however, address directly the question of whether black on white should be required. One Representative[63] who describes himself as having been closely involved in the negotiations that led to the passage of the Smokeless Tobacco Act states that requiring a black on white warning is inconsistent with the legislation. A comment from the House sponsors of the legislation, in contrast, merely states that they would have no objection if the Commission were to adopt a black on white color requirement.[64] This is consistent with the legislative history of the Smokeless Tobacco Act. More specifically, during the House debates that preceded passage of the Smokeless Tobacco Act, one of the law's principal sponsors noted that "[w]ith regard to advertisements, the FTC will promulgate regulations that prescribe . . . color of the warning statement and the background on which they appear." [65]

It is clear Congress intended the Commission's primary concern in developing implementing regulations to be the effectiveness of the warnings.[66] In addition to comments questioning the size and conspicuousness of the proposed warnings, the Commission received and placed on the public record four sets of mockups of warnings of various sizes, three from the outside and one from staff. After review of the comments and these mockups, the Commission has decided to modify the proposed warnings in a number of ways to ensure their conspicuousness. First, the Commission notes that the discrepancy in the size of the proposed smokeless warnings and the cigarette warnings is particularly great in the case of larger advertisements. Accordingly, the sizes originally specified for the two

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[54] 51 FR 24375 at 24378 Question 4B (1986).

[55] Comm'n Pub. Docket No. 209-52 at 179-80, 194-95, 284-307, 308-09, 310-15, 316-17, 318-19, 330-31.

[56] *Id.* at 94, 116-17, 119, 196-98, 246-47, 254-56, 328-29. Only two comments express a preference for most visible over clearly visible as the standard for color contrast. *Id.* at 98, 205-26.

[57] 51 FR 24375 at 24329 Question 6B (1986).

[58] *Id.* Question 6A.

[59] Comm'n Pub. Docket No. 209-52 at 284-307.

[60] *Id.* at 183-93, 174-95, 310-15, 316-17.

[61] Specifically, a number of comments express concern that the proposed advertising warnings for smokeless tobacco products are half the size of the cigarette warnings. *Id.* at 62, 64, 83-87, 88-90, 94, 104-05, 116-17, 122-23, 138, 166, 168, 248-49, 252, 328-29. Many other comments take the position that the warnings in smokeless tobacco advertising should be the same size as the cigarette warnings. *Id.* at 57-60, 64, 67, 70-71, 73, 77, 82, 88-90, 95, 96, 98, 103, 107-08, 114, 127, 128, 135, 136, 138, 139, 167, 169-70, 182, 196-98, 227-33, 246-47, 250-51, 254-56, 257-58, 361-83.

[62] *Id.* at 57-60, 65-66, 67, 70-71, 73, 77, 79, 82, 83-87, 94, 95, 96, 97, 98, 99-100, 101, 103, 104-06, 113, 114, 120-21, 128, 138, 139, 142, 169-70, 182, 196-98, 205-26, 227-33, 234-41, 246-47, 252, 257-58, 328-29, 361-83.

[63] *Id.* at 310-15.

[64] *Id.* at 322-25. In a subsequent letter to the Chairman dated September 12, 1986, the House and Senate sponsors of the Smokeless Tobacco Act clarify their comments by setting that it was their intention as drafters of the legislation that the advertising warnings appear in black against a solid white background. *Id.* at 407-08. Because this letter was from the members of Congress who were intimately involved in drafting the legislation, the Commission has given the letter careful consideration but, in light of the silence of the statute and its legislative history, does not believe that the Smokeless Tobacco Act necessarily requires a black on white warning. Similarly, the Commission also considered a September 24, 1986, letter to Chairman Oliver from Senator Broyhill and Representatives Bliley and Rose—three Congressmen who have had a continuing interest in the legislation. This letter reaffirmed the prior statements that each of these individuals had submitted during the comment period.

[65] Cong. Rec. H249 (daily ed. Feb. 1986) (statement of Rep. Waxman).

[66] *Id.*

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smallest ranges of advertisements remain the same as proposed. The size for the third area range, 65 to 180 square inches, is modified by splitting the range into two, 65 to 110 square inches and 110 to 180 square inches. The size specified for the lower range remains the same, but the size for the higher range is increased to the size that was proposed for the fourth range. The sizes specified for the remaining larger ranges are increased so that they have the same proportional relationship to the sizes of the cigarette warnings as the smaller ranges. While the resulting warnings occupy two-thirds of the area of the current cigarette warnings, the Commission believes they are equally conspicuous because of the circle and arrow format. However, the Commission will deem warnings of these sizes to be conspicuous only if they meet the following requirements: (1) The background field inside the circle and arrow is a color that would be clearly visible against the background of the ad upon which the circle and arrow appears; and (2) the color in which the rule and statement are printed is clearly visible against the background field within the circle and arrow as well as the background of the ad upon which they appear. These new requirements are set forth in paragraph (c) of § 307.7 of the final regulations. The regulations also specify that a warning consisting of a black rule and statement on a uniform white background will be deemed clearly visible. However, the regulations should be construed as permitting, but not requiring, warnings in black on white.

The final regulations also specify that smokeless tobacco companies place a warning against a uniform background, even if it is the same as the surrounding background in the ad, provided that the warning is in a clearly visible color. In this case, however, the sizes of the circle and arrow are increased by thirty percent and the type style and point sizes of the type are increased so that the warning remains proportional to the larger size of the circle and arrow. Specifications for these new requirements, which result in warnings with areas that are only slightly smaller than those of the current cigarette warnings, are set forth in paragraph (d) of § 307.7 of the final regulations. Paragraph (c) of the final regulations also provides that if a circle and arrow with a white background is displayed on a solid white background of an ad, the larger sizes specified in paragraph (d), rather than those specified in paragraph (c), will be deemed to be conspicuous.

By creating safe harbors for both warnings with clearly visible backgrounds and larger warnings with uniform backgrounds of any color the Commission intends to adopt requirements that ensure the effectiveness of the warnings while at the same time also preserve a reasonable amount of flexibility for the industry on how it conforms its advertising to the final regulations.

2. Description of the Circle and Arrow

As previously indicated, proposed paragraph (b) of § 307.7 described the proportions of the circle and arrow in terms of fractions of the diameter to ensure that all the advertising warnings would be displayed in the same configuration. In addition, as proposed paragraph (b) contained a list that provided the size of the circle and arrow as well as the point size for the type of the warnings in advertisements with areas in twelve different ranges. In the invitation to comment the Commission specifically asked whether the description of the proportions of the circle and arrow would create any problems, as well as asked whether the list of sizes should be deleted from the regulations and the smokeless tobacco companies be permitted or required to comply by conforming the advertising warnings to acetates submitted to the Commission.[67] Very few comments respond to these questions.[68]

The Smokeless Tobacco Council[69] takes the position that companies should be permitted, but not required, to comply by conforming the warnings to acetates submitted to the Commission. Other comments[70] take the position that the companies should not be permitted to comply by submitting acetates and that the regulations should contain a list of sizes to make it possible for the private sector to monitor compliance. The regulations as proposed permitted (but did not require) the companies to comply by submitting acetates pursuant to proposed § 307.10 as well as contained a list of sizes for the warnings in advertisements with different areas. Accordingly, no change is made in these aspects of the regulations, since as proposed they satisfied the industry's need for a convenient method of complying without compromising the public's interest in a mechanism for monitoring compliance.

3. Miscellaneous Changes

There are a number of other comments that focus on other discrete aspects of § 307.7. These comments are discussed in this section.

First, there are two comments that focus on the typeface specified for the advertising warnings in the proposed regulations. The Smokeless Tobacco Council[71] notes that Univers 47 by definition dictates the size of the character width and leading. The Coalition on Smoking OR Health points out that there are a number of typefaces that are more readable than Univers 47 without occupying any more space. The Commission agrees with the Smokeless Tobacco Council that designating a typeface by name and number also mandates character width and leading. The Commission also believes that requiring Univers 57 rather than Univers 47 will make the warnings more conspicuous and legible type without increasing the size of the warnings. Accordingly, the final regulations specify Univers 57 rather than Univers 47 for the advertising warnings with clearly visible backgrounds described in subsection (c) of § 307.7 of the final regulations. For the alternative larger warnings with solid backgrounds of any color that are described in paragraph (d), the final regulations specify a heavier typeface, Univers 67, that along with the increased point size of the type, will ensure the conspicuousness of the warnings.

In addition, the mockups submitted by the Coalition on Smoking OR Health show advertising warnings as they would have appeared under the proposed regulations as well as warnings that were modified in a variety of ways, including by increasing the width of the rule, to enhance their conspicuousness. The Commission agrees that increasing the width of the rule will help ensure conspicuousness of the warnings and notes that the size of the warning is not any larger as a result of the increase. Accordingly, the regulations are modified to increase the width of the rule for the warnings with clearly visible backgrounds approximately in proportion to the increase in the character width resulting from specifying Univers 57 rather than Univers 47. Similarly, the width of the rule for the warnings with solid backgrounds of any color reflect the proportionate increase in the size of those warnings over the warnings with clearly visible backgrounds.

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[67] 51 FR 24375 at 24379 Questions 5 and 9 (1986).

[68] Although no comment raised any problems with the proportions described in the proposed regulations, it has come to the Commission's attention that the proposed regulations failed to specify the height of the arrow, that is the distance between the tip of the arrow and its base. Accordingly, the final regulations provide that the height of the arrow is to be ⅝ of the diameter of the circle.

[69] Comm'n Pub. Docket No. 209–52 at 284–307.

[70] *Id.* at 205–28, 234–41, 276–83.

[71] *Id.* at 284–307.

There are two comments that object to the proposed regulations' requirements with respect to the placement of the required warnings in advertisements. As proposed paragraph (a) of § 307.7 provided that a conspicuous and prominent location for the circle and arrow in an advertisement was not next to other written matter or circular designs, or on a picture of the package. The Group Against Smoking Pollution of Massachusetts [72] objects that the regulations allow the warnings to be placed at the opposite end of the advertisement from eye-catching action. No change is made in response to this comment because identifying the focal point of an advertisement by regulation creates practical problems and is unnecessary to an effective display of the required warnings. The Smokeless Tobacco Council takes issue with the requirement that the warning not be displayed next to other written material or on the package. The Commission does not believe that the circle and arrow will necessarily overpower other written material, but agrees that, in the case of an advertisement consisting primarily of a picture of the package, the circle and arrow should be allowed to appear on the package. Accordingly, the regulations are modified to permit display of the circle and arrow on the package in an advertisement where 80 percent of the area is taken up by a picture of the package.

In addition, a number of comments raise the issue of the appropriate format for the warnings on packages that are distributed as free samples. Several of these comments [73] take the position that free samples are advertisements and as such should be required to display the warning statements in a circle and arrow format. The Commission believes that requiring companies to prepare special labels for free samples is unduly burdensome, especially for the smaller companies, and unnecessary for the effective display of the warnings. Accordingly, no change in the regulations is made in response to these comments and free samples are required to display the label disclosures required by § 307.6.

Similarly, a number of comments also concern the placement and format of the warnings on free sample coupons. Several of these comments [74] urge the Commission to require the simultaneous display of all three of the required warnings on free sample coupons. There is no statutory basis, however, for requiring simultaneous display of the warnings on coupons. Since the proposed regulations provided that coupons were to be treated as print advertisements, no change in the regulations is made in response to these comments.

E. Audiovisual and Audio Advertising Disclosures (§ 307.8)

As originally proposed § 307.8 of the regulations provided that the required warnings would be deemed to be conspicuous in videotapes, films, filmstrips, or other advertisements with similar visual components if they were superimposed on the screen at the end of the ad for a length of time and in graphics so that they would be easily legible by the typical viewer. Under proposed § 307.8 the required warnings would be deemed to be conspicous in cassettes, discs, or other advertisements with audio components if they were announced at the end of the advertisement in a manner that would be clearly audible and understandable to the typical listener. In addition, as proposed § 307.8 provided that the warnings in ads with both an audio and a visual component would be deemed to be conspicuous if they were superimposed on the screen at the end of the ad in a circle and arrow format and announced simultaneously in a manner that would be easily legible and clearly audible and understandable to the typical viewer. Although the invitation to comment did not raise any issues in connection with § 307.8, a few comments address the appropriateness of the section's requirements.

The American Association of Advertising Agencies [75] contends that requiring simultaneous audio and visual warnings mandates two warnings in a single advertisement as a practical matter, which upsets the balance between the valid sales message and the warning. During the debates that preceded passage of the Smokeless Tobacco Act in the House, however, one of the legislation's sponsors suggested that in the case of an ad with both a visual and an audio component the Commission "would be expected to issue regulations requiring that the advertisement bear the circle/arrow format during the pendency of the ad and that the warning be read by the principal narrator in the ad." [76] Accordingly, no change is made in the regulations in response to this aspect of the American Association of Advertising Agencies' comment.

In addition, the American Association of Advertising Agencies thinks that the requirement that the warnings be clearly audible and understandable to the typical listener is unnecessary and unfair. The Commission agrees that the references to the typical viewer and listener make the standard too subjective. Accordingly, the regulations are modified so that these references are deleted.

In addition, a few comments on the appropriateness of the requirements for audiovisual advertisements raise concerns about the continued viability of certain in-store announcements for which smokeless tobacco companies provide incentives.[77] The Commission agrees with these comments that requiring disclosures in audio announcements in retail stores is indeed onerous to the industry as well as imposes a significant enforcement burden on the Commission given both the apparent lack of prevalence of this type of advertising and the difficulty of establishing whether a short announcement in fact contained the required warning. If these announcements are limited to a brief statement of the brand name of the product and other product identifier, such as the flavor and cut of the tobacco, its price and location in the store, requiring health warnings in them would provide only *de minimis* benefits. Accordingly, § 307.8 has been modified to provide that no warning is required in the case of an audio advertisement in a retail store, even if a smokeless tobacco company pays an incentive for the ad, so long as the announcement is limited to the brand name of the product and other product identifier, that is, information about the flavor or cut of the tobacco, its price, and its location in the store.

F. Cooperative Advertising (§ 307.9)

As originally proposed the regulations did not contain any provision with respect to cooperative advertisements. The notice that accompanied the proposed regulations, however, explained that all advertisements for smokeless tobacco products (including cooperative advertisements) paid for, directly or indirectly, in whole or in part, by a smokeless tobacco company must bear the warnings required by the Smokeless Tobacco Act.[78] The notice also stated that any advertisement paid for entirely by a retailer or any person other than a manufacturer, packager, or importer of smokeless tobacco products need not carry a warning statement. Although the invitation to comment did not raise the issue of whether and to what extent the regulations should apply to cooperative advertisements, several comments address these issues.

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[72] *Id.* at 109–11.

[73] *Id.* at 65–68, 70–71, 99–100, 104–105, 120–21, 122–23, 227–33, 234–41, 242–45, 253, 276–82, 335.

[74] *Id.* at 65–66, 70–71, 99–100, 104–05, 122–23, 227–33.

[75] *Id.* at 183–93.

[76] Cong. Rec. H248 (daily ed. Feb. 3, 1986) (statement of Rep. Waxman).

[77] Comm'n Pub. Docket No. 209–52 at 284–307, 310–15, 333–34.

A number of comments, including letters from two members of Congress [79] and comments by the Smokeless Tobacco Council, [80] the Retail Tobacco Dealers of America, Inc., [81] and the American Advertising Federation [82] contend that the Smokeless Tobacco Act does not cover retailers and there is no basis for extending the regulations to include a manufacturer that contributes to part of the cost of a retailer's advertisement. This argument, however, fails to address the language of the Smokeless Tobacco Act, which makes it unlawful for a manufacturer, packager, or importer of smokeless tobacco "to advertise or cause to be advertised" any smokeless tobacco product without the required warning. The Commission believes that a person who pays in whole or in part for an advertisement for a product has caused the product to be advertised. In addition, a wholesale exemption for cooperative advertising would create a loophole with the potential for negating the requirement that the advertising for smokeless tobacco products carry health warnings. Accordingly, the Commission declines to modify the regulations to exclude cooperative advertisements.

Nevertheless, there are a few comments on the appropriateness of the requirements for the display of the required warnings in small advertisements (that is, advertisements with a display area of 15 square inches or less) that raise serious concerns with respect to the impact of the regulations on cooperative advertising. Specifically, the Smokeless Tobacco Council points out that requiring the display of a ½ inch circle and arrow will effectively lead to the elimination of certain tombstone advertisements. According to the Smokeless Tobacco Council these ads usually have an area of 4 square inches or less and are typically part of larger advertisements placed by grocery or drug stores to highlight sale items. The American Advertising Federation and the Retail Tobacco Dealers of America, Inc., similarly note in their comments that the regulations will lead to the end of tombstone ads of the type that small retailers place in local print media in connection with a cooperative advertising program. The Commission believes that tombstone ads of 4 square inches or less merely provide users of smokeless tobacco with information about the price and availability of smokeless tobacco products. More importantly, the visibility of a small warning in a tiny ad appearing in the midst of a number of other tiny ads is so low that the Commission believes that requiring warnings in tombstone ads with areas of 4 square inches or less would provide at best *de minimis* benefits.

Accordingly, a new § 307.9 is added to the regulations to meet these concerns. The new section provides in part that any advertisement placed by a retailer or any person other than a smokeless tobacco company with an area of 4 square inches or less need not carry a warning, even if it is partially paid for by a smokeless tobacco company, so long as it only contains the brand name and other product identifier and the price.[83]

III. Regulatory Flexibility Act

In publishing the proposed regulations, the Commission determined that the provisions of the Regulatory Flexibility Act [84] requiring an initial regulatory analysis were not applicable to the regulations because they did not appear to have a significant economic impact on a substantial number of small entities.[85] The Commission noted that the economic costs are primarily statutorily imposed and the Commission's regulations impose few, if any, independent additional costs. In light of the above, it was certified under the provisions of section 3 of the Regulatory Flexibility Act [86] that the proposed regulations would not have a significant economic impact on a substantial number of small entities.

The Commission requested comments on the effects of these regulations and asked for numerical estimates if the regulations were believed to affect costs, profitability, competitiveness, or employment in small entities. The comments, however, appear to address the compliance obligations that have been statutorily, rather than administratively, imposed. On the basis of all the information before it, the Commission has determined the final regulations will not have a significant economic impact on a substantial number of small entities. Consequently, the Commission concludes that a final regulatory flexibility analysis is not required and has filed a certificate with the Small Business Administration to that effect.

IV. Paperwork Reduction Act

In publishing the proposed regulations, the Commission noted that they contain provisions that constitute information collection requirements under the Paperwork Reduction Act.[87] Consequently, a request for clearance was submitted to the Office of Management and Budget. The request was approved on July 12, 1986,[88] and control number 3084–0082 was assigned to the information collection requirements. This approval will expire on July 31, 1989, unless it has been extended before that date.

V. Effective Dates

The provisions of the Smokeless Tobacco Act that pertain to the display of warnings in the labeling and advertising of smokeless tobacco products become effective on February 27, 1987. These regulations (with the exception of § 307.4(c), 307.10 and 307.11, which involve the submission of plans) also become effective on that date. However, the Smokeless Tobacco Act also specified that the Commission was to have issued these regulations 6 months before the effective date of the display requirements. Accordingly, during the period following the effective date and the date 6 months after the promulgation of these regulations, the Commission in making enforcement decisions will take into account, as appropriate, practical constraints on the industry in meeting the display requirements.

The provisions of the Smokeless Tobacco Act that pertain to the submission of plans to the Commission became effective on the date of enactment, February 27, 1986. Accordingly, the portions of the regulations that concern the submission of plans (§§ 307.4(c), 307.10, and 307.11) will become effective on December 19, 1986.

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[78] 51 FR 24375 at 24376 (1986).

[79] Comm'n Pub. Docket No. 209–52 at 310–15, 318–19.

[80] *Id.* at 284–307.

[81] *Id.* at 163–64.

[82] *Id.* at 259–62A.

[83] New § 307.9 also contains a cross-reference to the provisions of § 307.8 with respect to in-store audio announcements.

[84] 5 U.S.C. 603, 604 (1982).

[85] 51 FR 34375 at 34378 section E (1986).

[86] 5 U.S.C. 605(b) (1982).

[87] 51 FR 34375 at 34378 section D (1986).

[88] Notice of Office of Management and Budget Action to Carl Hevener, Federal Trade Commission, dated July 12, 1986.

Accordingly, it is proposed that Chapter I of 16 CFR be amended by adding Part 307 to read as follows:

PART 307—REGULATIONS UNDER THE COMPREHENSIVE SMOKELESS TOBACCO HEALTH EDUCATION ACT OF 1986

Scope

Sec.
307.1 Scope of regulations in this part.
307.2 Required warnings.

Definitions

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Authority: 15 U.S.C. 4401 *et seq.*

Scope

§ 307.1 Scope of regulations in this part.

These regulations implement the Comprehensive Smokeless Tobacco Health Education Act of 1986 *to be codified at* 15 U.S.C. 4401.

§ 307.2 Required warnings.

The Comprehensive Smokeless Tobacco Health Education Act of 1986 is the law that requires the enactment of these regulations. Section 7 of this law provides that no statement, other than the three warning statements required by the Act, shall be required by any Federal, State, or local statute or regulation to be included on the package or in the advertisement (unless the advertisement is an outdoor billboard) of a smokeless tobacco product. The warning statements required by the Act are as follows:

WARNING: THIS PRODUCT MAY CAUSE MOUTH CANCER
WARNING: THIS PRODUCT MAY CAUSE GUM DISEASE AND TOOTH LOSS
WARNING: THIS PRODUCT IS NOT A SAFE ALTERNATIVE TO CIGARETTES

Definitions

§ 307.3 Terms defined.

As used in this part, unless the context otherwise specifically requires:

(a) "Act" means the Comprehensive Smokeless Tobacco Health Education Act of 1986 (Pub. L. 99–252) and any amendments thereto.

(b) "Commission" means the Federal Trade Commission.

(c) "Regulation(s)" means regulations promulgated by the Commission pursuant to sections 3 and 5 of the Act.

(d) "Commerce" means (1) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island and any place outside thereof; (2) commerce between points in any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island, but through any place outside thereof; or (3) commerce wholly within the District of Columbia, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island.

(e) "United States", when used in a geographical sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, and installations of the Armed Forces.

(f) "Smokeless tobacco product" means any finely cut, ground, powered, or leaf tobacco that is intended to be placed in the oral cavity, including snuff, chewing tobacco, and plug tobacco.

(g) "Brand' means smokeless tobacco products that bear a common identifying name or mark, regardless of whether the products are differentiated by type of product, size, shape, packaging, or other characteristic, and, in the case of generic or private label smokeless tobacco products, means all products produced by a single manufacturer or its affiliates or imported by a single importer or its affiliates.

(h) "Package" means any pack, can, box, jar, carton, pouch, container, or wrapping in which any smokeless tobacco product is offered for sale, sold, or otherwise distributed to consumers, but for purposes of these regulations "package" does not include (1) any shipping container or wrapping used solely for transporting smokeless tobacco products in bulk or quantity to manufacturers, packagers, processors, wholesalers, or retailers unless the container or wrapping is intended for use as a retail display or (2) any wrapping or container that bears no written, printed, or graphic matter.

(i) "Label" means any written, printed, or graphic matter affixed to or appearing on any smokeless tabacco product or any package containing a smokeless tobacco product with the exception of any revenue stamp affixed to a smokeless tobacco product.

(j) "Billboard" means any outdoor sign with an area of more than 150 square feet.

(k) "Manufacturer" means any person who manufacturers, produces, or processes any smokeless tobacco product.

(l) "Packager" means any person who puts any smokeless tobacco product into packages to be offered for sale, sold, or distributed to consumers.

(m) "Importer" means any person who puts any smokeless tobacco product that was not manufactured inside the United States into commerce to be offered for sale, sold, or distributed to consumers.

General Requirements

§ 307.4 Prohibited acts.

(a) No manufacturer, packager, or importer of any smokeless tobacco product shall distribute, or cause to be distributed, in commerce any smokeless tobacco product in a package that, in accordance with the labeling requirements of the Act and these regulations, does not bear one of the following warning statements.

WARNING: THIS PRODUCT MAY CAUSE MOUTH CANCER
WARNING: THIS PRODUCT MAY CAUSE GUM DISEASE AND TOOTH LOSS
WARNING: THIS PRODUCT IS NOT A SAFE ALTERNATIVE TO CIGARETTES

Each smokeless tobacco product shall upon being prepared for distribution in commerce for retail sale, but before it is distributed to be offered for retail sale, be labeled in accordance with the Act and regulations in this part. In the case of an importer, the label statements may be affixed in the country of origin or after importation into the United States, but shall be affixed before the smokeless tobacco product is removed from bond for sale or distribution. This section does not apply to any smokeless tobacco product that is manufactured, packaged, or imported in the United States for export from the United States, if the product is not in fact distributed in commerce for use in the United States.

(b) No manufacturer, packager, or importer of any smokeless tobacco product shall advertise or cause to be advertised (other than through the use of

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billboard advertising) within the United States any smokeless tobacco product unless the advertising bears one of the warning statements as required by the Act and the regulations and set forth in § 307.4(a). This requirement is not applicable to company and divisional names, when used as such, to signs on factories, plants, warehouses, and other facilities related to the manufacturer or factory storage of smokeless tobacco, to corporate or financial reports, to communications to security holders and others who customarily receive copies of these communications, to employment advertising, to advertising in tobacco trade publications, or to promotional materials that are distributed to smokeless tobacco wholesalers, dealers, or merchants, but not to consumers. This requirement does not apply to utilitarian objects for personal use, such as pens, pencils, clothing, or sporting goods. In addition, this requirement does not apply to shelf-talkers and similar product locators with a display area of 12 square inches or less.

(c) No manufacturer, packager, or importer shall fail to submit a plan to the Commission which specifies the method that will be used to rotate, display, and distribute the statements required by the Act and regulations in this part. The Commission shall approve a plan if the plan provides for the rotation, display, and distribution of the statements in a manner that complies with the Act and these regulations. Authority to approve plans submitted by smokeless tobacco manufacturers, packagers, and importers has been delegated by the Commission to the Associate Director for Advertising Practices. Where significant issues not previously considered by the Commission are present, however, those plans will be referred by the Associate Director for Advertising Practices to the Commission in the first instance. This delegation is authorized by section 1(a) of the Reorganization Plan No. 4 of 1961 in order to enhance the efficiency and result in expedited treatment of these plans. Pursuant to section 1(b) of the Reorganization Plan, the Commission will retain the discretionary right to review the actions of the delegate. Any smokeless tobacco manufacturer, packager, or importer may within 30 days of the delegate's action file with the Secretary of the Commission a request for full Commission review of the action. If no review is sought by petition of the submitter of a plan or any intervenor or upon the Commission's own initiative within 30 days of the action, or if a review is sought and denied in this 30 day period, the delegate's action shall be deemed to be the action of the Commission.

(d) A manufacturer, packager, or importer of smokeless tobacco products shall be deemed to be in compliance with the Act and these regulations if it has taken reasonable steps to (1) provide, by written contract or other clear instructions, for the rotation of the label statements required by the Act; (2) give clear instructions and, if possible, furnish materials (such as film negatives, acetates, or other facsimiles) for the production of smokeless tobacco packages and advertising that contain the required warning statements; and (3) prevent and correct mistakes, errors, or omissions that have come to its attention. In the event of the distribution of labels or the publication of advertisements that do not conform with the Act and these regulations, the burden of establishing that reasonable steps have been taken (including fulfilling the conditions described in (1) through (3) of this paragraph) to comply shall rest with the manufacturer, packager, or importer of smokeless tobacco.

§ 307.5 Language requirements.

The warning statement on the label of a smokeless tobacco product required by the Act and these regulations shall be set out in the English language. If the label of a smokeless tobacco product contains a required warning in a language other than English, the required warning must also appear in English. In the case of an advertisement for a smokeless tobacco product in a newspaper, magazine, periodical, or other publication that is not in English, the warning statement shall appear in the predominant language of the publication in which the advertisement appears. In the case of any other advertisement, the warning statement shall appear in the same language as that principally used in the advertisement.

Label Disclosures

§ 307.6 Requirements for disclosure on the label.

(a) In the case of the label of a smokeless tobacco package, the warning statement required by the Act and these regulations must be in a conspicuous and prominent place on the package. A conspicuous and prominent place is a part of a label that is likely to be displayed, presented, shown, or examined. For example, in the case of the following types of packages, the following places shall be deemed to be conspicuous and prominent.

Cylindrical can—Side of the package
Pouch—Front of the package, provided that, in the case of a pouch with two identical face panels, the front of the pouch is the face panel upon which the warning is printed
Rectangular box of snuff, plug of chewing tobacco, or dispenser of individual packages of smokeless tobacco that may be purchased in its entirety—Any side of the package, provided that the side panel used does not bear any written or graphic matter other than the background color of the side panel and reasonable extensions of graphic matter from other panels

However, in the case of any package of smokeless tobacco, absent special circumstances, the required warning statement shall not be deemed to be in a conspicuous and prominent place if it appears on the bottom (that is, the underside) of the package or is printed on the tear line or on any other surface where it will be obliterated when the package is opened. However, in the case of a rectangular package that is wrapped in a continuous sheet of foil or plastic with randomly appearing label information, the required warning shall be deemed to be in a conspicuous and prominent place if it appears at least once in its entirety on any part of the package that is not crimped or seamed.

(b) The label statement required by the Act and these regulations must also be in a conspicuous format and in a conspicuous and legible type in contrast with all other printed material on the package. The required warning statement shall be deemed to be in a conspicuous format if it appears in two to four lines that are parallel to each other as well as to the base of the package. However, in the case of a cylindrical package with a diameter of 1 and ¾ inches or less the required warning statement need not be parallel with the base of the package to be deemed to be in a conspicuous format. In the case of all packages the required warning statement shall be deemed to be in a conspicuous format if it is separated in every direction from other written or graphic matter on the label by the equivalent of at least twice the point size of the type in which the warning is printed or if it is the only written matter on the surface of the package. The required warning statement shall be deemed to be in a conspicuous and legible type if it appears in all capitals in Univers 57 normal or an equivalent type style. For example, in the case of the following types of packages with the specified capacity, the following type sizes shall be deemed to be conspicuous and legible.

1 and ⅓ ounce snuff can—Seven point type
2 to 4 ounce pouch or plug of chewing tobacco—Eight point type, provided that if the warning statement is printed in one line, it will be deemed to be conspicuous and legible in eleven point type
Can roll consisting of cans wrapped for sale as a single unit—Twelve point type, provided that, if the warning statements on the individual cans are completely visible no warning statement is required on the outer wrapping
Dispenser of individual packages of smokeless tobacco that may be purchased in its entirety—Twelve point type

The required warning statement shall be deemed to be in contrast with all other printed material on the package if it is printed in a color (including black and white) that is clearly visible against the background on which the warning appears.

Advertising Disclosures

§ 307.7 Requirements for disclosure in print advertising.

(a) In the case of print advertisements for smokeless tobacco, including but not limited to, advertisements in newspapers, magazines, or other periodicals; point-of-sale promotional materials; non-point of sale promotional materials such as leaflets, pamphlets, coupons, direct mail circulars, or paperback book inserts; and posters and placards (other than outdoor billboard advertising), the warning statement required by the Act and these regulations must be in a conspicuous and prominent location, in conspicuous and legible type in contrast with all other printed material in the advertisement and must appear in capital letters in a circle and arrow format. A conspicuous and prominent location is anywhere within the trim area other than the margin in the case of an advertisement in a newspaper, magazine, or other periodical, and in all cases is not immediately next to other written matter or to any circular designs, elements, or similar geometric forms (other than a picture of a smokeless tobacco package such as a cylindrical snuff can). A circle and arrow will not be deemed to be conspicuous and prominent if it is included as an integral part of a specific design or illustration, such as a picture of the package, in the advertisement, unless at least 80 percent of the area of the advertisement is taken up by a picture of the package.

(b) The advertising warning statements required by the Act and these regulations must be in conspicuous and legible type in contrast with all other printed material in the advertisement and must appear in all capital letters in a circle and arrow format. The proportions of the circle and arrow shall be deemed to be conspicuous if they are such that the base of the arrow is equal to ¾ of the diameter of the circle; the neck of the arrow is equal to ⅙ of the diameter of the circle; the widest part of the head of the arrow is equal to the diameter of the circle; the tip of the arrow is centered at a point equal to ¾ of the diameter from the lowest point of the circle; and the distance between the tip of the arrow and the base of the arrow is equal to ⅜ of the diameter of the circle. The statements shall be deemed to be conspicous if they are parallel to the foot of the advertisement and centered in the circle, and the word "WARNING" followed by a colon appears in the neck of the arrow.

(c) The required warning statement shall be deemed to be conspicuous if it is printed in all capitals in Univers 57 normal or an equivalent type style and (1) the rule and the statement are printed in a color (including black and white) that is clearly visible against the background upon which they appear; and (2) the background field within the circle and arrow is clearly visible against the background of the advertisement; and (3) the warning has the following minimum outside dimensions in relation to the size of the advertisement.

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1
Display Area: **Up to 15 square inches**
Circle Diameter: *½″*
Rule Width: **1 point**
Type Size: **4½ point, set solid**
Type Style: **Univers 57**

2
Display Area: **15 to 65 square inches**
Circle Diameter: **1″**
Rule Width: **1½ point**
Type Size: **8 point, set solid**
Type Style: **Univers 57**

3
Display Area: **65 to 110 square inches**
Circle Diameter: **1¼″**
Rule Width: **2 point**
Type Size: **10 point, set solid**
Type Style: **Univers 57**

4
Display Area: **110 to 180 square inches**
Circle Diameter: **1½″**
Rule Width: **2½ point**
Type Size: **12 point, set solid**
Type Style: **Univers 57**

5
Display Area: **180 to 360 square inches**
Circle Diameter: **1¾″**
Rule Width: **2½ point**
Type Size: **14 point, set solid**
Type Style: **Univers 57**

6
Display Area: **360 to 470 square inches**
Circle Diameter: **2″**
Rule Width: **2½ point**
Type Size: **16 point, set solid**
Type Style: **Univers 57**

7
Display Area: **470 to 720 square inches**
Circle Diameter: **3¼″**
Rule Width: **3½ point**
Type Size: **27 point, set solid**
Type Style: **Univers 57**

BILLING CODE 6750-01-C

8
Display Area: **5 to 10 square feet**
Circle Diameter: **3¾″**
Rule Width: **3½ point**
Type Size: **30 point, set solid**
Type Style: **Univers 57**

9
Display Area: **10 to 20 square feet**
Circle Diameter: **6″**
Rule Width: **3½ point**
Type Size: **48 point, set solid**
Type Style **Univers 57**

10
Display Area: **20 to 30 square feet**
Circle Diameter: **7″**
Rule Width: **7 point**
Type Size: **58 point, set solid**
Type Style: **Univers 57**

11
Display Area **30 to 40 square feet**
Circle Diameter: **8¾″**
Rule Width: **9 point**
Type Size **72 point, set solid**
Type Style **Univers 57**

12
Display Area: **40 to 80 square feet**
Circle Diameter: **11¾″**
Rule Width: **12 point**
Type Size: **96 point, set solid**
Type Style: **Univers 57**

13
Display Area: **Over 80 square feet**
Circle Diameter: **1′4¾″**
Rule Width: **14 point**
Type Size: **$1\frac{7}{16}$″ cap height, set solid**
Type Style: **Univers 57**

A warning printed in black in a circle with a black rule and a white interior background shall be deemed a clearly visible color against a clearly visible background, except that any such black on white warning that appears against a uniform white background in an advertisement shall be deemed to be conspicuous only if it meets the size requirements of § 307.7(d) of this section.

(d) As an alternative to the format specified in § 307.7(c), the required warning statement shall be deemed to be conspicuous if it is printed in all capitals in Univers 67 normal or an equivalent type style and (1) the rule that forms the circle and arrow and the required statement are printed in a color (including black and white) that is clearly visible against the background upon which they appear, (2) the background of the circle and arrow is a uniform color, and (3) the warning has the following minimum outside dimensions in relation to the size of the advertisement.

BILLING CODE 6750-01-M

1
Display Area: **Up to 15 square inches**
Circle Diameter: **5/8"**
Rule Width: **1 point**
Type Size: **5 point, set solid**
Type Style: **Univers 67**

2
Display Area: **15 to 65 square inches**
Circle Diameter: **1 1/4"**
Rule Width: **2 point**
Type Size: **10 point, set solid**
Type Style: **Univers 67**

3
Display Area: **65 to 110 square inches**
Circle Diameter: **1 5/8"**
Rule Width: **2 1/2 point**
Type Size: **12 point, set solid**
Type Style: **Univers 67**

4
Display Area: **110 to 180 square inches**
Circle Diameter: **2"**
Rule Width: **3 point**
Type Size: **15 point, set solid**
Type Style: **Univers 67**

5
Display Area: **180 to 360 square inches**
Circle Diameter: **2 1/4"**
Rule Width: **3 point**
Type Size: **17 point, set solid**
Type Style: **Univers 67**

6
Display Area: **360 to 470 square inches**
Circle Diameter: **2 5/8"**
Rule Width: **3 point**
Type Size: **20 point, set solid**
Type Style: **Univers 67**

7
Display Area: **470 to 720 square inches**
Circle Diameter: **4 1/4"**
Rule Width: **4 point**
Type Size: **34 point, set solid**
Type Style: **Univers 67**

BILLING CODE 6750-01-C

8
Display Area: **5 to 10 square feet**
Circle Diameter: **4 7/8"**
Rule Width: **4 point**
Type Size: **36 point, set solid**
Type Style: **Univers 67**

9
Display Area: **10 to 20 square feet**
Circle Diameter: **7 3/4"**
Rule Width: **6 point**
Type Size: **57 point, set solid**
Type Style: **Univers 67**

10
Display Area: **20 to 30 square feet**
Circle diameter: **9 1/8"**
Rule Width: **9 point**
Type Size: **76 point, set solid**
Type Style: **Univers 67**

11
Display Area: **30 to 40 square feet**
Circle Diameter: **11 3/8"**
Rule Width: **11 point**
Type Size **94 point, set solid**
Type Style **Univers 67**

12
Display Area: **40 to 80 square feet**
Circle Diameter: **15 1/4"**
Rule Width: **15 point**
Type Size: **1 5/16" cap height, set solid**
Type Style: **Univers 67**

13
Display Area: **Over 80 square feet**
Circle Diameter: **1′9 3/4"**
Rule Width: **17 point**
Type Size: **1 13/16" cap height, set solid**
Type Style: **Univers 67**

(e) An advertisement in a newspaper, magazine, or other periodical that occupies more than one page shall not be required to have more than one warning statement, but the dimensions of the circle and arrow shall be determined by the aggregate area of the entire advertisement, and the warning statement shall appear on the page that contains most of the advertisement. Point-of-sale and non-point of sale promotional materials of more than one page in length shall not be required to have more than one warning statement, and the dimensions of the circle and arrow shall be determined by the size of the advertisement on the page on which most of the advertisement appears. Warning statements in circles and arrows that meet the specifications of this section and conform to the following diagram shall be deemed to be in a conspicuous format.

How to Conform to the Rule

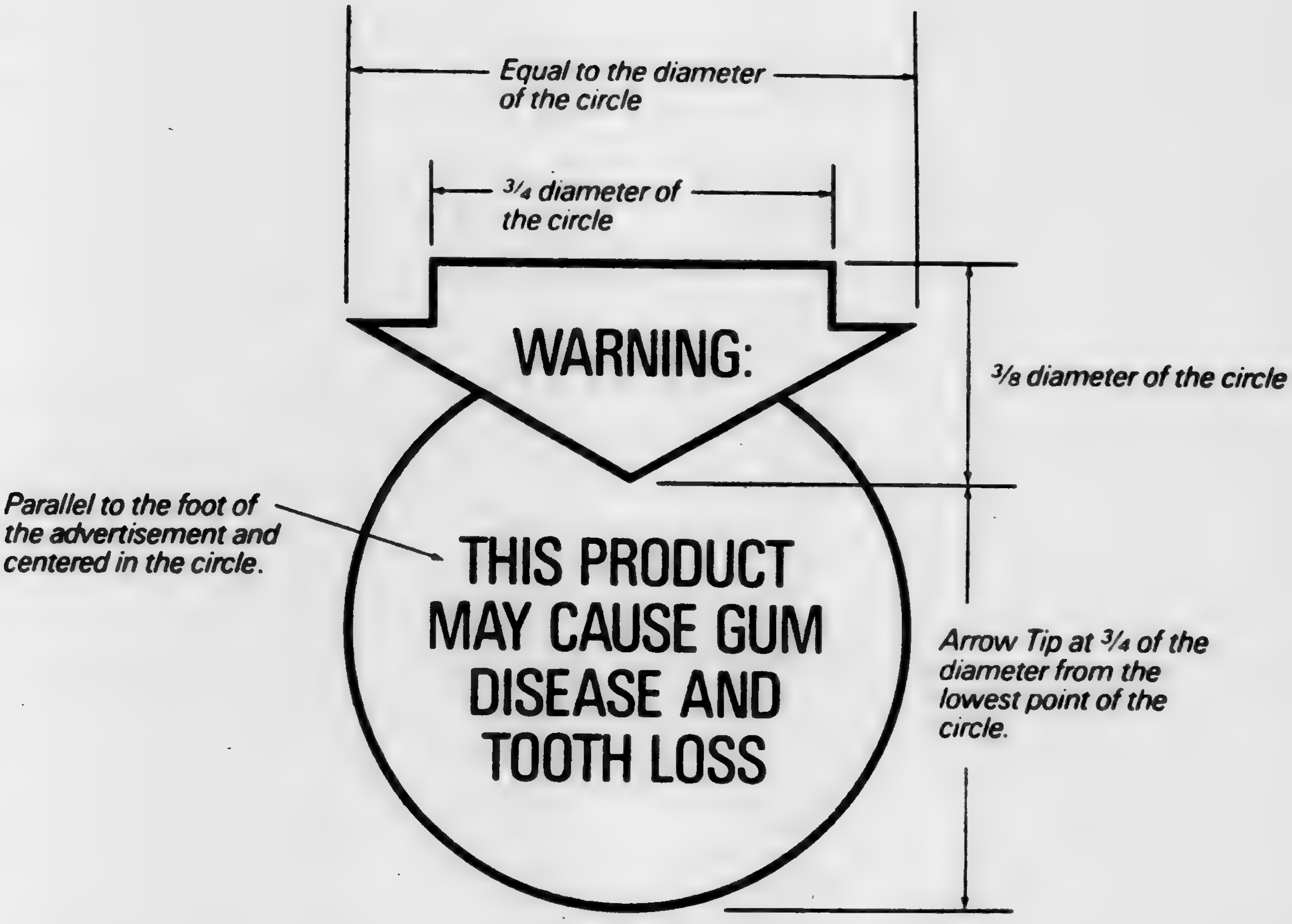
Equal to the diameter of the circle
3/4 diameter of the circle
3/8 diameter of the circle
WARNING:
Parallel to the foot of the advertisement and centered in the circle.
THIS PRODUCT MAY CAUSE GUM DISEASE AND TOOTH LOSS
Arrow Tip at 3/4 of the diameter from the lowest point of the circle.

§ 307.8 Requirements for disclosure in audiovisual and audio advertising.

In the case of advertisements for smokeless tobacco on videotapes, casettes, or discs; promotional films or filmstrips; and promotional audiotapes or other types of sound recordings, the warning statement required by the Act and these regulations must be conspicuous and prominent. If the advertisement has a visual component, the warning statement shall be deemed to be conspicuous and prominent if it is superimposed on the screen in a circle and arrow format at the end of the advertisement for a length of time and in graphics so that it is easily legible. If the advertisement has an audio component, the warning statement shall be deemed to be conspicuous and prominent if it is announced at the end of the advertisement in a manner that is clearly audible. If an advertisement has both a visual and an audio component, the warning statement shall be deemed to be conspicuous and prominent if it is superimposed on the screen in a circle and arrow format and announced simultaneously at the end of the advertisement in a manner that is easily legible and clearly audible. Provided, however, in the case of an audio advertisement in a retail store or other place where smokeless tobacco products are offered for sale, no warning shall be required, even if a manufacturer, packager, or importer of smokeless tobacco products provides an incentive for disseminating the ad, so long as the announcement includes only the brand name or product identifier, the price, and the product's location in the store.

§ 307.9 Cooperative advertising.

The Act prohibits any manufacturer, packager, or importer of smokeless tobacco products from advertising or causing to advertise any smokeless tobacco product within the United States without the required warning. Accordingly, all advertisements for smokeless tobacco products (including cooperative advertisement) paid for, directly or indirectly, in whole or in part, by a manufacturer, packager, or importer of smokeless tobacco products must bear the required warning. Provided, however, in the case of a print advertisement for a smokeless tobacco product disseminated by a retailer of smokeless tobacco products, other than a manufacturer, packager, or importer of smokeless tobacco products, with a display area of 4 square inches or less, no warning is required so long as the advertisement contains only the brand name or other product identifier and a price. In addition, no warning is required in the case of certain in-store audio announcements as described in § 307.8. Any advertisement of a smokeless tobacco product paid for entirely by a retailer or any person other than a manufacturer, packager, or importer of smokeless tobacco products need not carry a warning statement.

Plans

§ 307.10 Rotation, display, and distribution of warning statements on smokeless tobacco packages.

(a) In the case of the package of a smokeless tobacco product, each of the three warning statements required by the Act must (1) be displayed randomly by each manufacturer, packager, or importer of a smokeless tobacco product in each 12-month period in as equal a number of times as possible on each brand of the product and (2) be randomly distributed in all parts of the United States in which the product is marketed. The Commission will interpret the statutory language "equal number of times as possible" as permitting deviations of 4 percent or less in a 12-month period. Random distribution means that there is nothing in the production or distribution process of a smokeless tobacco product that would prevent the three warning statements on the package from being distributed evenly in all parts of the United States where the product is marketed.

(b) Each manufacturer, packager, or importer of a smokeless tobacco product shall submit to the Commission or its designated representative a plan that provides for the display of the three warning statements on the package of a smokeless tobacco product as required by the Act and these regulations. This plan shall be sufficiently detailed to enable the Commission to determine whether the warning statements appear on the package in a manner consistent with the Act and these regulations. These requirements may be satisfied in a number of ways. For example, a plan may satisfy the equal display requirement by providing for the engraving or preparation of cylinders, plates, or equivalent production materials in a manner that results in the simultaneous printing of the three required warnings in as near an equal number of times as possible under the circumstances. Alternatively, a plan may satisfy the equal display requirement by providing that stickers bearing the three required warnings be printed in equal numbers and affixed randomly to packages of the product. Alternatively, a plan may satisfy the equal display requirement by providing for the preparation of separate cylinders, plates, and equivalent production materials and requiring that they be changed at fixed intervals in a manner that results in the display of the three required warnings in as near an equal number of times as possible under the circumstances during a 1-year period. In any event, nothing in these regulations requires the use of more than one warning statement on the label of any brand during a given 4-month period.

(c) A plan for the rotation, display, and distribution of warning statements on smokeless tobacco packages shall include representative samples of labels with each of the three warning statements required by the Act and these regulations. This provision does not require submission of a label with each of the required warning statements for every brand marketed by a manufacturer, packager, or importer of smokeless tobacco products and shall be deemed to be satisfied by submission of labels for different types of smokeless tobacco products, such as moist snuff, scotch snuff, and loose-leaf and plug chewing tobacco, and a range of package sizes for each type of product.

§ 307.11 Rotation, display, and dissemination of warning statements in smokeless tobacco advertising.

(a) In the case of advertising for a smokeless tobacco product, each of the three warning statements required by the Act must be rotated every 4 months by each manufacturer, packager, or importer of a smokeless tobacco product in an alternating sequence in the advertisement for each brand of the product. Any rotational system, however, may take into account practical constraints on the production and distribution of advertising.

(b) Each manufacturer, packager, or importer of a smokeless tobacco product must submit a plan to the Commission or its designated representative that ensures that the three warning statements are rotated every 4 months in alternating sequence. There may be more than one system, however, that complies with the Act and these regulations. For example, a plan may require all brands to display the same warning during each 4-month period or require each brand to display a different warning during a given 4-month period. A plan shall describe the method of rotation and shall include a list of the designated warnings for each 4-month period during the first year for each brand. A plan shall describe the method that will be used to ensure the proper rotation in different advertising media in sufficient detail to ensure compliance with the Act and these regulations, although a number of different methods may satisfy these requirements. For example, a satisfactory plan for advertising in newspapers, magazines, or other periodicals could provide for rotation according to either the cover or closing date of the publication. A satisfactory plan for posters and placards, other than billboard advertising, could provide for rotation according to either the scheduled or the actual appearance of the advertising. A satisfactory plan for point-of-sale and non-point of sale promotional materials such as leaflets, pamphlets, coupons, direct mail circulars, paperback book inserts, or non-print items could provide for rotation according to the time that the material is scheduled to be disseminated or the order date for the material. The plan may specify that items having a useful life of significantly more than 4 months, such as clocks, electric signs, and durable dispensers may be rotated less frequently.

(c) A plan for the rotation, display, and dissemination of warning statements in smokeless tobacco advertising shall include a representative sample of each of the three warning statements required by the Act and these regulations. This provision does not require the submission of all advertising for each brand marketed by a manufacturer, packager, or importer of smokeless tobacco products and shall be deemed to be satisfied by submission of actual examples of different types of advertising materials for various brands, prototypes of actual advertising materials, the warning statement as it would appear in different sizes of advertisements, or acetates or other facsimiles for the warning statement as it would appear in different sizes of advertisements.

By direction of the Commission.

Emily H. Rock,
Secretary.

[FR Doc. 86-24846 Filed 11-3-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 19

[T.D. ATF-239; Re: Notices Nos. 370 and 557]

Reporting Taxes Due to the Governments of Puerto Rico and the Virgin Islands on Bulk Distilled Spirits

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: This final rule revises the reporting requirements for bulk Puerto Rican and Virgin Islands spirits, and rum imported from all other areas bottled by domestic distilled spirits plants. The reporting procedure forms the basis for the transfer of excise taxes to the Treasuries of Puerto Rico and the Virgin Islands.

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION CONTACT: James Stephens or Robert White, Distilled Spirits and Tobacco Branch, (202) 566-7531; Bureau of Alcohol, Tobacco and Firearms, Distilled Spirits and Tobacco Branch, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

SUPPLEMENTARY INFORMATION:

Background

Prior to the implementation of the Distilled Spirits Tax Revision Act of 1979 (Title VIII of the Trade Agreements Act of 1979, Pub. L. 96-39) on January 1, 1980, the excise taxes on bulk distilled spirits that were produced by distilled spirits plant permittees, imported, or brought into the United States were determined at the time the bulk spirits were withdrawn from the bonded storage area of a distilled spirits plant. The spirits were reported on ATF Form 179, Withdrawal of Spirits Tax Determined, prior to processing and bottling operations. For bulk rum and spirits brought into the United States from Puerto Rico and the Virgin Islands, the ATF regional office personnel prepared summary reports based on the Forms 179, and made adjustments to the amounts reported (i.e., operational losses, destruction, etc.), to determine the amount of taxes that would be transferred from the United States to the Treasuries of Puerto Rico and the Virgin Islands.

Impact of Public Law 98-67, Title II

Prior to the passage of the Caribbean Basin Economic Recovery Act (Pub. L. 98-67, Title II) on August 5, 1983, the reporting procedures required by 27 CFR 19.778 only affected Puerto Rican rum, other Puerto Rican spirits, and Virgin Islands spirits. Effective July 1, 1983, this Act mandated that the excise taxes collected on all rum imported into the United States are to be paid over to the Treasuries of Puerto Rico and the Virgin Islands by means of a formula prescribed by regulation. The purpose of this portion of the Act was to ensure that the economies of Puerto Rico and the Virgin Islands are not adversely affected by the elimination of duties on selected goods imported into the United States from certain countries in the Caribbean basin area.

Impact of Public Law 98-369, Title VI

Prior to passage of the Deficit Reduction Act of 1984 (Pub. L. 98-369, Title VI) on July 18, 1984, the reporting procedures required by 27 CFR 19.778 affected all Puerto Rican and Virgin Islands rum and spirits brought into the United States from these two possessions. Effective March 1, 1984, as to Virgin Islands rum and spirits, and January 1, 1985, as to rum and spirits from Puerto Rico, this Act mandated that any article containing distilled spirits shall in no event be treated as produced in Puerto Rico or the Virgin Islands unless at least 92 percent of the alcoholic content in such article is attributable to rum. The purpose of this portion of the Act was to limit the cover over of Federal excise tax revenues to distilled spirits having an economic connection with Puerto Rico or the Virgin Islands.

Existing Regulations

With the implementation of the Distilled Spirits Tax Revision Act of 1979 and temporary regulations issued in T.D. ATF-62 (44 FR 71613), the previous regulations in 27 CFR Part 201 were revised and recodified as 27 CFR Part 19. The final regulations were issued in T.D. ATF-198 (50 FR 8456).

The present law and regulations extended the bonded premises of a distilled spirits plant to include all operations from original production through bottling operations. Therefore, the excise taxes on distilled spirits are determined at the time the spirits are physically removed from the plant premises.

The point of tax determination for Puerto Rican and Virgin Islands rum and spirits, and rum imported from all other areas under the previous law and regulations occurred when the bulk spirits were removed from bonded storage prior to processing (including bottling) operations. Under the present law and regulations the reporting point

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for these spirits was also made prior to processing and bottling. This provided a smooth transition from the previous system to the present regulations.

Currently, proprietors of distilled spirits plants are required under 27 CFR 19.778 to maintain a separate accounting in proof gallons of Puerto Rican and Virgin Islands spirits, and rum imported from all other areas, that are received into the processing account for nonindustrial use.

Each month proprietors determine the percentage of overall gains or losses for all nonindustrial spirits received in their processing account. The proof gallons of Puerto Rican and Virgin Islands spirits, and rum imported from all other areas received in processing each month are adjusted by that percentage. Proprietors file monthly reports on ATF Form 5110.28, Monthly Report of Processing Operations, showing separately the adjusted proof gallons of Puerto Rican spirits, Virgin Islands spirits, and rum imported from all other areas received in processing. ATF regional office personnel compile these reports, together with ATF Forms 5110.11, Monthly Report of Storage Operations reflecting bulk Puerto Rican spirits, Virgin Islands spirits, and rum imported from all other areas removed tax determined from the storage account, and prepare a summary report that forms the basis for the remittance of excise taxes from the United States to the Treasuries of Puerto Rico and the Virgin Islands.

The new regulations require proprietors of distilled spirits plants to report the quantities of Puerto Rican and Virgin Islands spirits, and rum imported from all other areas when such spirits are actually removed from the processing account taxpaid or tax determined. Since the system currently used only approximates tax determinations by making adjustments for processing losses computed on the basis of all products in processing, it is potentially imprecise in accounting for actual quantities of Puerto Rican and Virgin Islands spirits, and rum imported from all other areas removed taxpaid or tax determined. This fact substantiates the need for the changes required by this Treasury Decision.

Presently, adjustments must be made to the excise tax remittances to Puerto Rico and the Virgin Islands for voluntary destructions, export transactions, accidental losses, and claims for drawback filed by manufacturers of nonbeverage products. The new system eliminates adjustments for any occurrences involving Puerto Rican and Virgin Islands spirits, and rum imported from all other areas prior to tax determination, such as voluntary destructions, accidental losses prior to tax determination, and removals without payment of tax for exportation. Adjustments to the remittances will still be required for claims that are filed for: accidental losses of spirits in these categories that have been tax determined but not removed from bonded premises; drawback of the excise taxes for spirits exported after tax determination; drawback of the excise taxes paid on spirits used in the manufacture of nonbeverage products; and claims for the excise taxes paid on spirits returned to bond.

Although proprietors will be required to adjust their recordkeeping procedures to account for quantities of these spirits contained in products removed from their processing accounts taxpaid or tax determined on ATF F 5110.28, their total recordkeeping burden will not be substantially increased. Regulations in Part 19 currently require that spirits removed from bonded premises be recorded by kind and quantity in the daily records; therefore, any additional records and recordkeeping required by this final rule should be available to distilled spirits plant proprietors in their daily records.

Discussion of Comments

ATF published a notice of proposed rulemaking in the **Federal Register** on April 13, 1981 (46 FR 21624), requesting comments to a proposed system of reporting Puerto Rican and Virgin Islands spirits for excise tax remittance purposes by accounting for them in two distinct categories. The first category would contain spirits mixed in processing with other alcoholic ingredients, and the second category would account for spirits not mixed in processing with any other alcoholic ingredient. Spirits in the first category would be reported upon completion of bottling or packaging, whereas spirits in the second category would be reported when removed from bond on tax payment or tax determination.

The consensus of the comments received subsequent to Notice No. 370 favored a new system of reporting taxes due to Puerto Rico and the Virgin Islands. Proprietors of the distilled spirits plants that responded to the notice suggested that instead of requiring a dual system of accounting for the spirits from Puerto Rico and the Virgin Islands, all quantities of these spirits contained in final products should be reported at actual tax determination on removal from the bonded premises. One proprietor stated that using this system would actually save the company 3 to 4 clerical hours per month at each plant, compared to the current system.

Suggestions were received from proprietors of distilled spirits plants to simplify or alter the reporting procedure for these spirits. Taking all of these recommendations into consideration, ATF issued an amended notice of proposed rulemaking incorporating the changes suggested in comments received to Notice No. 370.

ATF published the amended notice of proposed rulemaking in the **Federal Register** on February 14, 1985 (50 FR 6200), requesting comments on reporting all Puerto Rican and Virgin Islands spirits, and rum imported from all other areas at the time of tax determination on a revised ATF Form 5110.28, Monthly Report of Processing Operations.

We received two comments from distilled spirits plant proprietors to Notice No. 557. One proprietor stated that the revised procedure would not present any hardship. Another proprietor opposed the proposed procedure on the grounds that it would require the maintenance of additional records where spirits of different kinds are mixed in processing. They also felt that the one-time physical inventory required at the time of change in procedure would be time consuming.

Overall, comments to both notices were favorable and proprietors felt that the present system of reporting should be revised. Experience has shown that the present system is imprecise and should be revised. ATF feels that the system of reporting proposed in Notice No. 557 will ensure the accurate reporting of Federal excise taxes to be transferred to the Treasuries of Puerto Rico and the Virgin Islands. Accordingly, the regulations are revised as proposed in Notice No. 557.

Transition Plan

At the time of conversion to the new tax reporting system, distilled spirits plants will be in possession of Puerto Rican and Virgin Islands spirits, and rum imported from all other areas on which the taxes have already been credited to the insular treasuries. These spirits which have already been reported when they were transferred to a processing account, will be reported again at the actual time of tax determination. Therefore, proprietors are required to take one-time inventories of spirits in these categories that are in the processing account, including bottled and packaged goods in the finished products account, on the date of conversion to the new system. These inventories will be reported in a letter to the regional director (compliance), and will be used by ATF to offset the double reporting of taxes to be credited to the insular treasuries.

Payments to the Virgin Islands Treasury for products manufactured in that possession are made in advance and adjusted at the end of each fiscal year; consequently, the conversion inventory amounts will be taken as decreasing adjustments at the end of the fiscal year. Payments to the Puerto Rican Treasury for products manufactured in that possession, and payments to both of these treasuries for rum imported from all other areas, are made monthly; therefore, the inventory amounts will be amortized to reduce the economic effect of the conversion. The amortization plan is discussed in the next section of the preamble.

In order to ensure a smooth transition to this new system, to impose a minimal burden on domestic bottlers, and to ease the impact of the conversion on these treasuries, the following transition plan and new reporting procedures shall be used.

During the last month under the old system proprietors shall continue to report these spirits transferred into the processing account, adjusted by the net processing loss or gain, as previously reported on ATF F 5110.28, Monthly Report of Processing Operations.

On the first day of the new system, proprietors shall begin reporting tax determinations of these spirits, including quantities of these spirits contained as ingredients of other distilled spirits products tax determined. The revised regulations allow for standard reporting, averaging, or any approved alternative for reporting mixed products.

The standard reporting method of determining the amount of these spirits contained as ingredients of other products shall be computed by using the minimum quantity of these spirits as shown in the approved formula for each product removed tax determined. The averaging method allows distilled spirits plant proprietors to use the average quantity of these spirits contained in batches of each type (formulation) of mixed products that were produced and bottled during the preceding six-month period. This average shall be adjusted each month to include only the immediately preceding six-month period.

Beginning with the first month of the new system, proprietors shall report total monthly tax determinations of Puerto Rican and Virgin Islands spirits, and rum imported from all other areas, on ATF F 5110.28, which reflects revised captions in Part III.

Amortization Plan

Each processor shall take complete physical inventories of all Puerto Rican spirits, Virgin Islands spirits, and rum imported from all other areas in the processing account as of close of business the last day under the old system. The inventories may be taken within a period of a few days before or after this date if such period does not include more than one complete weekend and necessary adjustments are made to reflect pertinent transactions so that the recorded inventories will agree with the actual quantities of such spirits on hand in processing as of this date. The results of these inventories shall be reported in a letter to the regional director (compliance).

The conversion inventories will be used as decreasing adjustments to monthly taxable removal payments of these spirits that will be due to Puerto Rico and the Virgin Islands; therefore, this plan will amortize the decreasing adjustments over a period of twelve months.

To illustrate this amortization plan, the following example is given. The closing inventory of Puerto Rican spirits contained in the processing account is 500,000 pg×$10.50=$5,250,000. Rather than deduct this from payments to Puerto Rico in one lump sum, it will be amortized over 12 months, amounting to a deduction of $437,500 per month from the amount due the Puerto Rican Treasury. At the end of the 12 months, the entire conversion inventory amount ($5,250,000) will have been deducted. At this time, ATF will determine the amount of the closing inventories removed from the processing accounts for purposes other than tax payment or tax determination for domestic consumption, and make appropriate increasing adjustments to the insular government accounts.

The distilled spirits plant proprietors will only be responsible for reporting the conversion inventory quantities to the ATF regional director (compliance). Personnel of the ATF regional offices will be responsible for computing the amortization quantities, and deducting them each month from the summary report they prepare.

Executive Order 12291

This final rule is not a "major rule" within the meaning of section 1(b) of Executive Order 12291 on Federal Regulations issued February 17, 1981 (46 FR 13193). Analysis of this rule indicates that it will not result in: (a) An annual effect on the economy of $100 million or more; (b) a major increase in costs or prices for consumers, individual industries, or Federal, State or local government agencies, or geographic regions; or (c) a significant adverse effect on competition, employment, investments, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The requirements to collect information contained in this final rule have been submitted to the Office of Management and Budget under section 3507 of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35. These requirements have been approved by OMB under control number 1512–0198.

Disclosure

Copies of the notices of proposed rulemaking, all written comments, and this final rule are available for public inspection during normal business hours at: Office of Public Affairs and Disclosure, Room 4406, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

List of Subjects in 27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

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Drafting Information

The principal author of this document is James Stephens, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

For the reasons set out in the preamble, Part 19, Subchapter A, Chapter I of Title 27, Code of Federal Regulations is amended as set forth below.

PART 19—DISTILLED SPIRITS PLANTS

Paragraph 1. The authority citation for Part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5041, 5061, 5062, 5066, 5101, 5111–5113, 5171–5173, 5175, 5176, 5178–5181, 5201–5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 7510, 7605; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. The table of contents in Part 19 is amended to revise the heading of § 19.778 to read as follows:

* * * * *

§ 19.778 Removal on or after January 1, 1987 of Puerto Rican and Virgin Islands spirits, and rum imported from all other areas.

* * * * *

Par. 3. Section 19.778 is revised to read as follows:

§ 19.778 Removal on or after January 1, 1987 of Puerto Rican and Virgin Islands spirits, and rum imported from all other areas.

(a) *General.* The proprietor shall maintain separate accounts, in proof gallons, of Puerto Rican spirits having an alcoholic content of at least 92 percent rum, of Virgin Islands spirits having an alcoholic content of at least 92 percent rum, and of rum imported from all other areas removed from the processing account on determination of tax. Quantities of spirits in these categories that are contained in products mixed in processing with other alcoholic ingredients may be determined by using the methods provided in paragraphs (b), (c), or (d) of this section. The proprietor shall report these quantities monthly on Form 5110.28, Monthly Report of Processing Operations, as provided in § 19.792.

(b) *Standard method.* For purposes of the separate accounts, quantities of spirits in the above categories may be determined based on the least amount of such spirits which may be used in each product as stated in the approved formula, ATF F 5110.38.

(c) *Averaging method.* For purposes of the separate accounts, quantities of spirits in the above categories may be determined by computing the average quantity of such spirits contained in all batches of the same product formulation manufactured during the preceding 6-month period. The average shall be adjusted at the end of each month so as to include only the preceding 6-month period.

(d) *Alternative method.* Distilled spirits plant proprietors who wish to use an alternative method for determining the amount of spirits in these categories contained as ingredients of other distilled spirits products shall file an application with the Director. The written application shall specifically describe the proposed alternative method, and shall set forth the reasons for using the alternative method.

(e) *Transitional rule.* On January 1, 1987 the proprietor shall take physical inventories of all Puerto Rican spirits, Virgin Islands spirits, and rum imported from all other areas which were received into the processing account prior to that date. These inventories may be taken as provided in § 19.402(a)(2). The results of the inventories shall be submitted in a letter to the regional director (compliance) within 30 days of the required date of the inventories.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1394, as amended (26 U.S.C. 5555))

Signed: August 15, 1986.

Stephen E. Higgins,
Director.

Approved: September 16, 1986.

Michael H. Lane,
Acting Assistant Secretary (Enforcement).

[FR Doc. 86–24808 Filed 11–3–86; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 705

Restriction on Financial Interests of State Employees

Correction

In FR Doc. 86–23462 beginning on page 37118 in the issue of Friday, October 17, 1986, make the following correction: On page 37121, in the third column, in the paragraph under "*Section 705.13 Time for filing.*", in the eleventh and twelfth lines, remove "(Insert: * * * publication.)", and insert "March 16, 1987."

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Part 96

Low Income Home Energy Assistance; Announcement of the FY 1987 State Median Income

AGENCY: Family Support Administration, HHS.

ACTION: Rule-related notice.

SUMMARY: This notice announces the estimated median income for four-person households in each state and the District of Columbia for FY 1987. This listing of state median incomes concerns maximum income levels for households to which the states may make home energy assistance payments.

FOR FURTHER INFORMATION CONTACT: Leon Litow (202) 245–2951.

SUPPLEMENTARY INFORMATION: Under the provisions of section 2603(7) of Title XXVI of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), we are announcing median income of a four-person household for each state, the District of Columbia, and for the 50 states and the District of Columbia for the period of October 1, 1986 through September 30, 1987. The purpose of this announcement is to provide information on one of the income criteria for eligibility under the Low Income Home Energy Assistance Program (LIHEAP). Section 2605(b)(2)(B)(ii) of Pub. L. 97–35 provides that 60 percent of the median income for each state, as annually established by the Secretary of Health and Human Services, is one of the income eligibility criteria for LIHEAP.

The Low Income Home Energy Assistance Program is currently authorized through the end of fiscal year 1990 by provisions of Title V of The Human Services Reauthorization Act of 1986, Pub. L. 99–425, enacted on September 30, 1986. Under this Act, the current income eligibility provisions relating to state median income remain unchanged.

Estimates of the median income of four-person households for each state and the District of Columbia for fiscal year 1987 were developed by the Bureau of the Census. In developing the median incomes, the Bureau of the Census used the following three sources of data: (1) The March 1985 Current Population Survey; (2) the 1980 Census of Population; and (3) per capita income estimates from the Bureau of Economic Analysis.

The estimating method for FY 1987 is similar to that used in previous years. However, Current Population Survey (CPS) sample estimates for three- and five-person families and their statistical relationships to four-person family medians are now used in addition to the CPS sample estimates of four-person family medians already in use. For further information, contact Dan Burkhead, Economic Statistician, at the Bureau of the Census (301–763–5060).

A state-by-state listing of median income, and 60 percent of median income, for a four-person household for fiscal year 1987 follows. The listing describes our method for adjusting median income for households of different sizes as specified in 45 CFR 96.85, (which was published in the **Federal Register** on July 2, 1984 at 49 FR 27145).

Dated: October 29, 1986.

Wayne A. Stanton,

Administrator, Family Support Administration.

ESTIMATED STATE MEDIAN INCOME FOR 4-PERSON HOUSEHOLDS, FISCAL YEAR 1987[1]

State	Estimated State median income 4-person household[2]	60% of estimated State median income 4-person household[3]
Alabama	$26,595	$15,957
Alaska	44,017	26,410
Arizona	29,431	17,659
Arkansas	23,075	13,845
California	33,711	20,227
Colorado	34,154	20,492
Connecticut	39,070	23,442
Delaware	33,809	20,285
Dist. of Col.	31,104	18,662
Florida	28,858	17,315
Georgia	29,623	17,774
Hawaii	33,445	20,067
Idaho	25,499	15,299
Illinois	33,126	19,876
Indiana	30,302	18,181
Iowa	28,650	17,190
Kansas	30,330	18,198
Kentucky	25,815	15,489
Louisiana	28,430	17,058
Maine	26,237	15,742
Maryland	38,132	22,879
Massachusetts	36,731	22,039
Michigan	32,365	19,419
Minnesota	33,807	20,284
Mississippi	23,660	14,196
Missouri	30,050	18,030
Montana	26,072	15,643
Nebraska	28,752	17,251
Nevada	31,059	18,635
New Hampshire	33,255	19,953
New Jersey	39,096	23,458
New Mexico	25,468	15,281
New York	32,665	19,599
North Carolina	27,995	16,797
North Dakota	28,901	17,341
Ohio	30,779	18,467
Oklahoma	28,856	17,314
Oregon	28,633	17,180
Pennsylvania	29,573	17,744
Rhode Island	32,066	19,240
South Carolina	27,810	16,686
South Dakota	25,391	15,235
Tennessee	26,603	15,962
Texas	31,031	18,619
Utah	27,497	16,498
Vermont	26,645	15,987
Virginia	33,480	20,088
Washington	31,585	18,951

ESTIMATED STATE MEDIAN INCOME FOR 4-PERSON HOUSEHOLDS, FISCAL YEAR 1987[1]—Continued

State	Estimated State median income 4-person household[2]	60% of estimated State median income 4-person household[3]
West Virginia	25,316	15,190
Wisconsin	30,622	18,373
Wyoming	29,752	17,851

[1] In accordance with 45 CFR 96.85, each State's estimated median income for a 4-person household is multiplied by the following percentages to adjust for household size: 52% for 1-person households, 68% for 2-person households, 84% for 3-person households, 100% for 4-person households, 116% for 5-person households, and 132% for 6-person households. For each additional household member greater than six persons, and 3% to 132% for each additional household member and multiply the new percentage by the State's dollar amount for 4-person households.

[2] Prepared by the Bureau of the Census from the March 1985 Current Population Survey, 1980 Census of Population and Housing, and per capita income estimates from the Bureau of Economic Analysis.

[3] Prepared by the Family Support Administration, Office of Family Assistance.

NOTE.—The estimated median income for a 4-person household in the 50 States and the District of Columbia applicable to the period of October 1, 1986 through September 30, 1987 is $31,097.

[FR Doc. 86–24912 Filed 11–3–86; 8:45 am]

BILLING CODE 4190-04-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 61092-6201]

Tanner Crab Fishery Off the Coast of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: The Secretary of Commerce (Secretary) issues this emergency rule to repeal the regulations implementing the Fishery Management Plan for the Commercial Tanner Crab Fishery Off the Coast of Alaska (FMP). This action is necessary because of serious operational difficulties in implementing the FMP, which cause probable violations of the national standards of the Magnuson Fishery Conservation and Management Act and other applicable Federal law. The intended effect of the repeal of the regulations is to suspend Federal management of the Tanner crab fishery pending study of long-term alternatives to management under the present FMP.

EFFECTIVE DATE: From 0001 hours local time, November 1, 1986, until 2400 hours local time, January 29, 1987.

ADDRESS: Comments on this emergency rule may be mailed to Robert McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Raymond Baglin, Fishery Biologist, NMFS, 907–586–7230.

SUPPLEMENTARY INFORMATION: The FMP was adopted by the North Pacific Fishery Management Council (Council), approved by the Assistant Administrator for Fisheries on behalf of the Secretary of Commerce, and published in the **Federal Register** on May 16, 1978 (43 FR 21170) under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) (16 U.S.C. 1801 *et seq.*).

Final implementing regulations applicable to vessels of the United States were published on December 6, 1978 (43 FR 57149). Final implementing regulations applicable to vessels of foreign nations were published on December 19, 1978 (43 FR 59075; 43 FR 59202). The FMP has been amended nine times, most recently on September 12, 1984 (49 FR 35779). The objective of the FMP is to establish management measures necessary to conserve and manage Tanner crab stocks as a unit throughout their range in compliance with the national standards of the Magnuson Act and other applicable Federal law (FMP Section 8.3.1). In order to achieve this objective and effectively coordinate management with the State of Alaska, the FMP adopts the management system presently employed by the State to the maximum extent possible (FMP section 8.3.3.2).

The management measures adopted by the FMP are characteristic of plans developed shortly after the Magnuson Act was enacted. Optimum yield (OY) is specified rigidly as a fixed range of the amounts of Tanner crab that may be taken in specified areas each year. Season opening and closing dates and maximum sustainable yield (MSY) are similarly specified for each area. Because they are specifically prescribed in the FMP, these fishing areas and the OYs assigned to them may only be altered in the long term to reflect the changing condition of the Tanner crab stocks by plan amendment. In an attempt to provide flexibility in these matters, the FMP authorizes the NMFS Regional Director to adjust season dates and fishing areas by field order in the course of the season (FMP section 8.3.1.2). Under the FMP and its implementing regulations at 50 CFR Part 671, the Regional Director may issue such a field order when he determines in the course of the fishing year that the condition of the Tanner crab stocks within a given management area is substantially different from the condition anticipated at the beginning of the fishing year, and that such

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differences support the need for inseason conservation measures to protect those stocks.

Because the FMP in large part adopts the present State management regime, effective management of the Tanner crab fishery depends on close and timely cooperation between the State of Alaska and NMFS. However, shortly after approval and implementation of the FMP, problems with the management system became apparent. Since fishing areas and the OYs and season dates assigned to them are rigidly fixed in the FMP, NMFS may not, in the course of a season, impose the State's harvest guideline amounts and closures in the 3–200 mile fishery conservation zone (FCZ) unless implemented by NMFS through amendment to the FMP, promulgation of an emergency rule, or issuance of a field order.

Of these three available procedures, only a field order can generally be carried out in the short time available to coordinate State and Federal management. Practice has shown, however, that in many instances the present field order authority is too narrowly prescribed under the FMP and implementing regulations to permit NMFS to coordinate Federal actions with State management decisions. The abundance of Tanner crab off the coast of Alaska has been changing greatly from year to year. In many instances, State managers will have made an estimate of stock abundance before the beginning of the fishing year which is subsequently verified by information provided in the course of the fishery. Under these circumstances, a field order based on a State closure decision is not authorized because the stock's condition is not different from that previously anticipated. Thus, the fishery must be allowed to continue in the FCZ until either an FMP amendment or emergency rule is implemented, or until the resulting continued fishing of the stock causes its condition in fact to differ substantially from that anticipated at the beginning of the fishing year. Other situations arise in the fishery when State managers determine that a season date in an area should be advanced in response to social or economic considerations. NMFS may not advance a season opening or closure in this case by field order since the field order authority permits inseason adjustments only to protect Tanner crab stocks. For the same reason NMFS may not permit extension of a season if a Tanner crab stock should prove more abundant than was anticipated before the beginning of the fishing year.

In certain situations the regulations implementing the FMP fail to provide for timely Federal coordination with the State's management actions and may result in violations of National Standard 1 of Magnuson Act section 301(a), by failing to prevent over fishing. The implementing regulations also violate National Standard 2 in that conservation and management measures are based upon other than the best scientific information available. Compliance with National Standards 5, 6, and 7 is also called into question as the implementing regulations fail, where practicable, to promote efficiency in the utilization of fishery resources; fail to account for variations and contingencies in fisheries; and fail, where practicable, to minimize costs and avoid unnecessary duplication. A discussion of how current measures fail in this regard is contained in the preceding paragraph. In addition, the problems just described call into question conformance of the FMP's regulations with Executive Order 12291.

NMFS concurs with the Council's March 1986 recommendation that NMFS repeal the regulations implementing the FMP pending a study of long-term alternatives to management of the fishery under the present FMP. After repealing Federal regulations by this emergency action, management of the Tanner crab fishery would be undertaken in the FCZ by the State to the extent regulated vessels are registered under the laws of the State. This action would result in substantial savings to the Federal government by eliminating present Federal Tanner crab management and the FMP amendment process for the duration of the emergency. Federal expenditures for enforcement of the implementing regulations would also be eliminated, resulting in an additional savings to the Federal Government. The State is expected to increase its expenditures commensurately to maintain a comparable level of enforcement.

One of the main reasons for the initial development and implementation of the FMP was to check perceived State discrimination against non-Alaska participants in the fishery. Repealing the regulations implementing the FMP would relieve the Council and NOAA from routine management of the fishery for the duration of the emergency. However, if the State were, in fact, to adopt a regulation that discriminated on the basis of State residence, or otherwise violated the requirements of the Magnuson Act, the Council and the Secretary could take additional emergency action to respond. In addition, management measures that discriminate on the basis of State residence in violation of Magnuson Act section 301 will also frequently violate other Federal and State statutory and constitutional requirements, providing another basis for permanent judicial reversal of such measures. Thus, even in the absence of FMP implementation, adequate safeguards protect non-Alaska participants from discrimination on the basis of State residence.

The Council and NOAA will not participate in routine management of the fishery for the duration of the emergency. Since the Council will no longer be available to the industry as the forum for resolving disputes in the Tanner crab fishery, some increase in litigation and a corresponding increase in related costs may be anticipated. An estimate of the dollar amount of any such costs would be difficult to quantify, but in all likelihood these costs would be outweighed by the economic benefits to the industry from repealing the Federal regulations. If, for example, 500,000 pounds of otherwise harvestable crab remained unharvested because of the inability to extend the fishing season under Federal management, the cost to the fleet based on an average exvessel price of $1.35 recorded in Kodiak, Alaska, during 1985 would be about $675,000. Additional losses would be suffered by the processing, wholesale, and retail sectors of the industry.

On the other hand, if because of the present limited inseason management authority an overharvest were to occur in a particular area, the industry would realize immediate short-term gains associated with that harvest. For example, if a harvest guideline amount were exceeded by 2,000,000 pounds, the vessels participating in the fishery would realize an additional $2,700,000 in exvessel revenue, with corresponding gains to the processing, wholesaling, and retailing sectors. However, these gains to the industry would likely be offset by future reductions in harvest levels and possible area closures. Even though overharvest does not appear to be the cause of the recent precipitous decline in *C. bairdi* stocks in the Bering Sea, this fishery provides an example of the potential losses that might occur if an established fishery were to close. The average annual catch in the Bering Sea fishery is 15,900,000 pounds. At the 1985 exvessel price of $1.40 per pound, the loss to the fleet would be about $22,300,000 each year the fishery were closed, with corresponding industry-wide losses.

Repeal of the Federal regulations is expected to eliminate confusion caused by the the lack of timely coordination between the State and NMFS. The effects are difficult to quantify, but management under a single regulatory regime administered by the State will likely benefit all sectors of the industry to some degree.

For these reasons, the Secretary has determined that an emergency exists. This emergency rule will be effective for 90 days from its effective date and may be extended for an additional 90 days with the agreement of the North Pacific Fishery Management Council.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law. He has determined that continuation of the regulations now in force would not allow timely management response to the needs of the fishery, would allow violations of the national standards, and continue questions of conformance of the FMP'S regulations with Executive Order 12291 and of actions under the FMP with the Administrative Procedure Act. Also, because current Federal regulations allow fishing to begin November 1, 1986, while the State of Alaska has determined it is necessary to delay such openings until January 15, 1987, it is necessary to promulgate this emergency rule immediately to avoid operational problems during November and December 1986.

The Assistant Administrator finds that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable to provide prior notice and opportunity for public comment, or to delay for 30 days the effective date of this emergency rule, as required by section 553 (b) and (d) of the Administrative Procedure Act. The public had the opportunity to comment on the substance of this emergency rule during the Council meeting in March 1986, and during the September 1986 meeting where the Council created a "working group to study the issues."

This emergency rule eleminates collection of information requirements previously approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act, and contains no new requirements.

The Assistant Administrator has determined that this action will be consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under Section 307 of the Coastal Zone Management Act.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that Order. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the procedures of that Order.

The Assistant Administrator prepared a draft environmental assessment (EA) for this action and concluded that there will be no significant impact on the human environment. A copy of the EA is available from the Regional Director at the address listed above.

The Regulatory Flexibility Act does not apply to this rule because, as an emergency rule, it was not required to be promulgated as a proposed rule and the rule is issued without opportunity for prior public comment. Since notice and opportunity for prior public comment are not required to be given under section 553 of the Administrative Procedure Act; and since no other law requires that notice and opportunity for comment be given for this rule, under sections 603(a) and 604(a) of the Regulatory Flexibility Act no initial or final regulatory flexibility analysis will be prepared.

List of Subjects in 50 CFR Part 671

Fisheries, Reporting and recordkeeping requirements.

Dated: October 30, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

PART 671—TANNER CRAB OFF ALASKA

50 CFR Part 671 is amended as follows:

1. The authority citation for Part 671 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Part 671 consisting of §§ 671.1 through 671.27 is suspended from 0001 hours local time, November 1, 1986, until 2400 hours local time, January 29, 1987.

[FR Doc. 86-24927 Filed 10-30-86; 4:53 pm]

BILLING CODE 3510-22-M

VOL 51 ISS 213 NO 4 1986 UMI

Proposed Rules

Federal Register
Vol. 51, No. 213
Tuesday, November 4, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1011

Milk in the Tennessee Valley Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend provisions of the order relating to the Class I disposition requirements for a pool distributing plant. The proposed suspension would lower the Class I disposition requirements from 60 percent in the months of November 1986 and January and February 1987 to 40 percent in such months. Dairymen, Inc., a cooperative that represents producers who supply milk to the market requested the action to facilitate efficiency in the processing of Class II products in the Tennessee Valley market.

DATE: Comments are due on or before November 12, 1986.

ADDRESS: Comments (two copies) should be filed with the Dairy Division, Agricultural Marketing Service, Room 2968, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-2089.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would tend to ensure that dairy farmers would continue to have their milk priced under the order for the market which is the primary outlet for their milk and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provisions of the order regulating the handling of milk in the Tennessee Valley marketing area is being considered for the months of November 1986 and January and February 1987:

In § 1011.7(a)(2), the provisions "60 percent in each of the months of August through November and January and February, and" and "in each of the other months,".

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the Dairy Division, Agricultural Marketing Service, Room 2968, South Building, U.S. Department of Agriculture, Washington, DC 20250, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include November 1986 in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b).

Statement of Consideration

The proposed suspension would lower the total Class I disposition requirements for a pool distributing plant for the months of November 1986 and January and February 1987 from 60 percent to 40 percent of the plant's receipts of fluid milk products.

Suspension of the provisions was proposed by Dairymen, Inc., (DI), pending a hearing on DI's request that the pool plant standards for a distributing plant be amended to provide for unit pooling of two or more plants.

DI indicates that Flav-O-Rich, Inc., currently operates 3 pool distributing plants that are regulated under the Tennessee Valley milk order. The plants are located at Bristol, Virginia, London, Kentucky, and Rossville, Georgia. Flav-O-Rich indicates that it has consolidated the Class II processing operations of its three plants in the Bristol, Virginia, plant to increase efficiency in operations. As a consequence, the Bristol plant has difficulty in meeting the 60 percent Class I disposition requirement that applies during the months of August through November and January and February. DI indicates that the combined operations of its 3 pool distributing plants far exceed the 60 percent Class I requirements.

Without the requested suspension, the cooperative would have to incur added costs to insure the continued pooling of its members who deliver to the Bristol, Virginia, plant.

List of Subjects in 7 CFR Part 1011

Milk Marketing Orders, Milk, Dairy Products.

The authority citation for 7 CFR Part 1011 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Signed at Washington, DC, on October 29, 1986.

William T. Manley,

Deputy Administrator, Marketing Program.

[FR Doc. 86-24873 Filed 11-3-86; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Parts 115, 118

[Docket No. 86-028]

Viruses, Serums, Toxins, and Analogous Products: Inspections; Detention, Seizure, and Condemnation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Virus-Serum-Toxin Act of 1913 (VST Act), as amended by the Food Security Act of 1985, authorizes any officer, agent, or employee of the Department of Agriculture to enter and inspect any establishment preparing animal biologics at any hour, day or night. Previously, only licensed establishments were subject to this provision. The amendment also provides for detention, seizure, and condemnation of products. This proposed amendment of the regulations would add the expanded inspection authority to Part 115, and would establish a new Part 118 entitled,

"Detention, Seizure, and Condemnation."

DATE: Comments must be received on or before January 5, 1987.

ADDRESS: Interested parties are invited to submit written data, views, or arguments regarding the proposed regulations to Dr. David A. Espeseth, Chief Staff Veterinarian, Veterinary Biologics Staff, VS, APHIS, USDA, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Peter L. Joseph, Senior Staff Veterinarian, Veterinary Biologics Staff, VS, APHIS, USDA, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8332.

SUPPLEMENTARY INFORMATION: This proposed rule contains no new or amended recordkeeping, reporting, or application requirements or any type of information collection requirement subject to the Paperwork Reduction Act of 1980.

Executive Order 12291

This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512-1 to implement Executive Order 12291 and has been classified as a "Nonmajor Rule."

The proposed action would not have a significant effect on the economy and would not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It would also not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises, in domestic markets.

Certification Under the Regulatory Flexibility Act

The Administrator of the Animal and Plant Health Inspection Service has determined that this action would not result in adverse economic impact on a substantial number of small entities. Its purpose is to implement new enforcement provisions contained in the 1985 amendments to the VST Act.

Background

Part 115 of the regulations would be amended to provide for the expanded inspection authority under the VST Act. It would be revised to state that any establishment preparing biological products is subject to inspection at any time, day or night.

The amendment to the VST Act provides new enforcement authorities by incorporating the procedures of sections 402, 403, and 404 of the Federal Meat Inspection Act (21 U.S.C. 672, 673, and 674). These procedures, which relate to detentions, seizures, condemnations, and injunctions are applicable to the enforcement of the VST Act with respect to any animal biologic prepared, sold, bartered, exchanged, or shipped in violation of the Act or regulations.

This proposed rule would establish a new Part 118 relating to detention, seizure, and condemnation. It would be modeled after the regulations under the Federal Meat Inspection Act (9 CFR 329.1, et seq.). The period of detention would not exceed 20 days. The owner of the veterinary biologic or the owner's agent, or other person having custody of the product would be given written notice of the detention. Movement of the detained product would be allowed in accordance with the regulations. The procedures to be followed in seizing and condemning biological products would be those which are specified in § 403 of the Federal Meat Inspection Act.

List of Subjects in 9 CFR Parts 115 and 118

Animal biologics.

PART 115—INSPECTIONS

Accordingly, Chapter I, Subchapter E of Title 9 would be amended as follows:

1. The authority citation for Part 115 continues to read as follows:

Authority: 21 U.S.C. 151-159; 37 Stat. 832-833.

2. Part 115 would be amended by revising § 115.1 and § 115.2 to read as follows:

§ 115.1 Inspections of licensed establishments.

(a) Any inspector shall be permitted to enter any establishment where any biological product is prepared, at any hour during the day or night, and shall be permitted to inspect, without previous notification, the entire premises of the establishment, including all buildings, compartments, and other places, all biological products, and organisms and vectors in the establishment, and all materials and equipment, such as chemicals, instruments apparatus, and the like, and the methods used in the manufacture of, and all records maintained relative to, biological products produced at such establishment.

(b) Each inspector will have in his or her possession a numbered USDA badge or identification card. Either shall be sufficient identification to entitle him to admittance at all regular entrances and to all parts of such establishment and premises and to any place at any time for the purpose of making an inspection pursuant to paragraph (a) of this section.

§ 115.2 Inspections of biological products.

Any biological product, the container of which bears a United States veterinary license number or a United States veterinary permit number or other mark required by these regulations may be inspected at any time or place. If, as a result of such inspection, it appears that any such product is worthless, contaminated, dangerous, or harmful, the Secretary shall give notice thereof to the manufacturer or importer and to any jobbers, wholesalers, dealers, or other persons known to have any of such product in their possession. Unless and until the Secretary shall otherwise direct, no persons so notified shall thereafter sell, barter, or exchange any such product in any place under the jurisdiction of the United States or ship or deliver for shipment any such product in or from any State, Territory, or the District of Columbia. However, failure to receive such notice shall not excuse any person from compliance with the Virus-Serum-Toxin Act.

3. A new Part 118 would be added to read as follows:

PART 118—DETENTION; SEIZURE AND CONDEMNATION

Sec.
118.1 Administrative detention.
118.2 Methods of detention; notification.
118.3 Movement of detained biological products; termination of detention.
118.4 Seizure and condemnation.

Authority: 21 U.S.C. 151-159; 99 Stat. 1654-1656.

§ 118.1 Administrative detention.

Whenever any biological product which is prepared, sold, bartered, exchanged, or shipped in violation of the Act or regulations is found by any authorized representative of the Deputy Administrator upon any premises, it may be detained by such representative for a period not to exceed 20 days, pending action under § 118.4, and shall not be moved by any person from the place at which it is located when so detained, until released by such representative.

§ 118.2 Method of detention; notifications.

An authorized representative of the Deputy Administrator shall detain any biological product subject to detention under this part by:

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(a) Giving oral notification to the owner of the biological product if such owner can be ascertained, and, if not, to the agent representing the owner or to the immediate custodian of the biological product; and

(b) Promptly furnishing the person so notified with a preliminary notice of detention which shall include identity and quantity of the product detained, the location where detained, the reason for the detention, and the name of the authorized representative of the Deputy Administrator.

(c) Within 48 hours after the detention of any biological product, an authorized representative of the Deputy Administrator shall, if the detention is to continue, give written notification to the owner of the biological product detained by furnishing a written statement which shall include the identity and quantity of the product detained, the location where detained, specific description of the alleged noncompliance including reference to the provisions in the Act or the regulations which have resulted in the detention, and the identity of the authorized representative of the Deputy Administrator; or, if such owner cannot be ascertained and notified within such period of time, furnish such notice to the agent representing such owner, or the carrier or other person having custody of the biological product detained. The notification, with a copy of the preliminary notice of detention shall be served by either delivering the notification to the owner or to the agent or to such other person, or by certifying and mailing the notification, addressed to such owner, agent, or other person, at the last known residence or principal office or place of business.

§ 118.3 Movement of detained biological products; Termination of detention.

Except as provided in paragraphs (a) and (b) of this section, no biological product detained in accordance with the provisions in this part shall be moved by any person from the place at which such product is located when it is detained.

(a) A detained biological product may be moved from the place at which it is located when so detained for the purpose of providing proper storage conditions if such movement has been approved by an authorized representative of the Deputy Administrator: *Provided*, that, the biological product so moved shall be detained by an authorized representative of the Deputy Administrator after such movement.

(b) A detained biological product may be moved from the place at which it is detained on written notification by an authorized representative of the Deputy Administrator that the detention is terminated; *Provided*, that, the conditions under which the detained biological product may be moved will be specified in the written notification of the termination. The notification of termination shall be served by either personally delivering the notification, or by certifying and mailing the notification addressed to such person at the last known residence or principal office or place of business of the owner, agent, or other person having custody of the biological product.

§ 118.4 Seizure and condemnation.

(a) Any biological product which is prepared, sold, bartered, exchanged, or shipped in violation of the Act or regulations shall be liable to be proceeded against and seized and condemned, at any time, on a libel of information in any United States district court or other proper court within the jurisdiction of which the product is found. If the product is condemned, it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct, and the proceeds, if sold, less the court costs and fees, and storage and other proper expenses, shall be paid into the Treasury of the United States, but the product shall not be sold contrary to the provisions of the Act or the laws of the jurisdiction in which it is sold; *Provided*, that, upon the execution and delivery of a good and sufficient bond conditioned that the product shall not be sold or otherwise disposed of contrary to the provisions of the Act or the laws or jurisdiction in which disposal is made, the court may direct that such product be delivered to the owner thereof subject to such supervision by authorized representative of the Secretary as is necessary to ensure compliance with the applicable laws. When a decree of condemnation is entered against the product and it is released under bond, or destroyed, court costs and fees, and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the product. The proceedings in such libel cases shall conform, as nearly as may be practicable, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of the United States.

Done at Washington, DC, this 29th day of October, 1986.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 86-24911 Filed 11-3-86; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-ASW-11]

Airworthiness Directives; Messerschmitt-Bolkow-Blohm Gmbh (MBB), Model BK-117A-3 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD) which requires immediate replacement and frequent inspections of several tail rotor blades that may be installed on MBB BK-117A-3 helicopters. This proposed amendment is needed to exclude additional tail rotor blades from further inspection or replacement.

DATES: Comments must be received on or before December 17, 1986.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: FAA, Southwest Region, Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, Texas 76106, or delivered in duplicate to the above address, Room 158, Building 3B.

Comments mailed or delivered must be marked: Docket No. 86-ASW-11.

Comments may be inspected at Room 158, Building 3B, between the hours of 8 a.m. and 4:30 p.m. weekdays, except Federal holidays.

A copy of the alert service bulletin is contained in the Rules Docket located at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas 76106. The applicable service information may be obtained from MBB Helicopter Corp., P.O. Box 2349, West Chester, Pennsylvania 19380.

FOR FURTHER INFORMATION CONTACT: J.H. Major, Rotorcraft Standards Staff, ASW-110, Aircraft Certification Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone number (817) 624-5117.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments.

All comments submitted will be available, both before and after the closing date for comments, in the Office of the Regional Counsel specified above for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket Number 86-ASW-11. The postcard will be date/time stamped and returned to the commenter.

Amendment 39-5294 (51 FR 17614), AD 86-09-03, requires for certain MBB BK-117A-3 helicopters immediate replacement of certain tail rotor blades and frequent (preflight) inspections of the other blades for bond separation until rebonding of the affected blades, Serial Number (S/N) 63 through 115, is accomplished. After issuing Amendment 39-5294, MBB issued Service Bulletin No. SB-MBB-BK-117-30-1, Revision 1, dated June 12, 1986, to change the serial numbers of tail rotor blades that were affected. S/N's 63 through 82 are now affected. In addition, it is not clear in the AD that rebonded blades are no longer subject to the AD inspections although the preamble refers to rebonded blades.

The FAA has determined that inspections of certain tail rotor blades should be excluded from further inspection also. The proposed amendment would revise the AD applicability statement to limit AD 86-09-03 to tail rotor blades with S/N's 63 up to and including 82. A new paragraph would exclude rebonded blades from further inspections under the AD.

The FAA has determined that this proposed regulation only involves about six aircraft with an estimated cost of compliance of $100 per aircraft or a total of $600. In addition, the proposed amendment would relieve a requirement. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Safety.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending Amendment 39-5294 (51 FR 17614), AD 86-09-03, as follows:

(a) Revise the applicability statement by removing "115" and inserting "82."

(b) Add a New paragraph (f) to read as follows:

(f) A tail rotor blade with rebonded leading edge is no longer subject to this AD. (MBB Service Bulletin No. SB-MBB-BK117-30-1, Revision 1, dated June 12, 1986, pertains to this matter.)

Issued in Fort Worth, Texas, on October 15, 1986.

Don P. Watson,

Acting Director, Southwest Region.

[FR Doc. 86-24832 Filed 11-3-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-CE-07-AD]

Airworthiness Directives; Mitsubishi Heavy Industries, Limited, and Mitsubishi Aircraft International, Inc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM).

SUMMARY: This action supplements a notice published in the **Federal Register** on July 30, 1986, proposing to supersede Airworthiness Directives (AD) 74-11-02 (Amendments 39-1846 and 39-2269) and 75-02-01 (Amendments 39-2059 and 39-2269) applicable to certain Mitsubishi Heavy Industries, Limited, MHI) Models MU-2B, -10, -15, -20, -25, -26, -30, -35, and -36 airplanes. The new AD would eliminate the repetitive inspections of the superseded ADs and require a one time inspection, sealing, and replacement, as necessary, of wing flap flexible shafts as well as shaft routing adjustment for bend radius relief. Subsequent to the publication of the NPRM, the FAA ascertained that the applicability of the proposed AD should be extended to include the MU-2B airplanes certificated in the United States under Type Certificate (TC) No. A10SW, since the affected parts are common to all MU-2 airplanes. Therefore, the notice, as supplemented, includes the U.S. manufactured MU-2B airplanes.

DATES: Comments must be received on or before December 10, 1986.

ADDRESSES: (MHI) Service Bulletins (S/B) MU-2 No. 198 dated February 13, 1985, or MAI S/B MU-2 SB051/27-007, dated February 1, 1985, applicable to this AD, may be obtained from Mitsubishi Heavy Industries, Ltd., 10, Oye-Cho, Minato-ku Nagoya, Japan, or Beech Aircraft Corporation (Licensee to Mitsubishi Heavy Industries, Ltd.), 9709 East Central, Post Office Box 85, Wichita, Kansas 67201. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of Regional Counsel; Attention: Rules Docket No. 86-CE-07-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8:00 a.m. and 4:00 p.m. Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: For MHI TC A2PC Series airplanes manufactured in Japan: Mr. Jerry Sullivan, Aerospace Engineer, Western Aircraft Certification Office, ANM-172W, Federal Aviation Administration, Post Office Box 92007, Worldway Postal Center, Los Angeles, California, 90009-2007; Telephone (213) 297-1166. For MAI TC A10SW Series airplanes manufactured in the U.S.: Mr. Robert R. Jackson, Aerospace Engineer, Wichita Aircraft Certification Office, ACE-130W, Federal Aviation Administration, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4419.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposal contained in this supplemental notice may be changed in light of comments received. Comments

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are specifically invited on the overall regulatory, economic, environmental, and emergency aspects of the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Supplemental NPRM by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel; Attention: Rules Docket No. 86–CE–07–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

A Notice of Proposed Rulemaking, Docket No. 86–CE–07–AD, applicable to Mitsubishi Heavy Industries, Limited, Model MU–2B airplanes, was published in the **Federal Register** on July 30, 1986 (51 FR 27194). The published Notice proposed to supersede two ADs (74–11–02 and 75–02–01) that require repetitive inspections of the wing flap flexible drive shafts. The proposed superseding action was prompted by an additional failure of the wing flag flexible drive shaft on an MU–2B Model airplane. Since issuance of the NPRM the FAA has determined that it is necessary to broaden the applicability to include the MU–2B Model airplanes certificated by TC No. A10SW, based on information submitted by Beech Aircraft Corporation (Licensee to Mitsubishi Heavy Industries, Limited), for MU–2B airplanes certificated in the United States under TC No. A10SW. Beech advised that the unsafe condition addressed in the NPRM is a problem common to all MU–2 airplanes because of the commonality of parts. That problem is concerned with a report received from the manufacturer that a wing flap flexible shaft failed on a MU–2B airplane prior to the manufacturer's recommended maximum service life of 2000 hours because of water intrusion. There is one flap flexible drive shaft for each wing flap. Failure of the shaft in either wing will result in a non-operating flap on one side while the opposite flap continues to move normally. As a result, MHI issued MU–2 S/B No. 198 dated February 13, 1985, and MAI issued MU–2 S/B SB051/27–007, dated February 1, 1985, which give instructions for a torque inspection and a sealing process on flap flexible shaft joints. These instructions are more effective than inspections required by AD 74–11–02 and AD 75–02–01. The Japan Civil Aviation Bureau, which has responsibility and authority to maintain the continuing airworthiness of the MHI airplanes in Japan, has classified the MHI Service Bulletin No. 198 and the actions recommended therein by the manufacturer as mandatory and has issued (Japanese) AD TCD–2451–85, dated April 12, 1985, to assure the continued airworthiness of the affected MHI airplanes. On airplanes operated under Japanese regulations, this action has the same effect as an AD on airplanes certificated for operation in the United States.

Consequently, the proposed AD, as supplemented, including textual changes for clarity, will be applicable to all MHI and MAI Models MU–2B, –10, –20, –25, –26, –26A, –30, –35, –36, –36A, –40 and –60 airplanes. It would require inspection, sealing of joints, and replacement, if necessary, of the flap flexible shaft in accordance with MHI MU–2 S/B No. 198 or MAI MU–2 S/B SB051/27–007 and removal of flap drive shaft clamp at Wing Station (W.S.) 2590 to allow routing of the right and left hand flap flexible shafts to relieve any bend radius less than 8.7 inches and the elimination of the mandatory repetitive 100 hour time-in-service (TIS) inspections. In addition, the affected flap flexible shaft part numbers are now RY25–1 or 8022Y–OC–97.00, or 8022Y–OC–97.50 or 035A–961001–3. These actions are to preclude operational failure of the wing flaps which could result in differential flap extension.

There are approximately 548 United States registered airplanes affected by this proposed AD. The cost of complying with this proposed AD is estimated to be $240 per airplane. The cost to the private sector is estimated to be $131,520. Few, if any, small entities own the affected airplanes. The cost of compliance is so minimal that it would not impose a significant economic burden on any such owner.

Therefore, I certify that this action (1) is not a major rule under Executive Order 12291; and (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

PART 39—[AMENDED]

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 74–11–02 (Amendment 39–1846 as amended by Amendment 39–2269) and AD 75–02–01 (Amendment 39–2059 as amended by Amendment 39–2269) with the following new AD:

Mitsubishi: Applies to Models MU–2B, MU–2B–10, MU–2B–15, MU–2B–20, MU–2B–25, MU–2B–26, MU–2B–26A, MU–2B–30, MU–2B–35, MU–2B–36A, MU–2B–40, MU–2B–60 (Serial Numbers 008 through 457 inclusive (incl.), 501 through 799 incl., 1501 through 1566 incl. with or without the SA suffix) airplanes, certificated in any category. (Serial numbers with "SA" suffix designate those MU–2B airplanes certified in the United States of America under Type Certificate (TC) No. A10SW, and those serial numbers without "SA" suffix designate those MU–2B airplanes certificated in Japan under TC No. A2PC.)

Compliance: Required as indicated in the body of the AD, unless previously accomplished.

To preclude failure of flap flexible shaft Part Numbers (P/N) RY25–1, or 8022Y–OC–97.00, 8022Y–OC–97.50, or 035A–961001–3, and potential differential flap operation, accomplish the following:

(a) For flap flexible shafts:

(1) With less than 1000 hours of time-in-service (TIS), on the effective date of this AD:

(i) Within the next 100 hours of TIS, seal the fitting and the connection area of the flap flexible shaft in accordance with "INSTRUCTIONS" of MHI MU–2 Service Bulletin (S/B) No. 198 dated February 13, 1985, or "ACCOMPLISHMENT INSTRUCTIONS" of MAI MU–2 S/B SB051/27–007 dated February 1, 1985, as applicable.

(ii) Prior to the accumulation of 1100 hours total TIS of the flap flexible shaft, perform torque inspection of the flap flexible shaft in accordance with the MHI MU–2 S/B No 198, or MAI MU–2 S/B SB051/27–007, as applicable.

(A) If the torque value is 1.2 in-lbs (1.4 kg-cm) or less, in both clockwise and counter clockwise rotation, seal the flexible shaft in accordance with "INSTRUCTIONS" of MHI MU-2 S/B No. 198 or "ACCOMPLISHMENT INSTRUCTIONS" of MAI MU-2 S/B SB051/27-007, as applicable and return the airplane to service.

(B) If the torque value is greater than 1.2 in-lbs (1.4 kg-cm) in any direction of rotation, before further flight, remove flap flexible shaft and replace this shaft with a serviceable shaft, P/N 8022Y-OC-97.00, or 8022Y-OC-97.50 or 035A-961001-3 or FAA approved equivalent, in accordance with paragraph (b) of this AD, and return the airplane to service.

(2) With 1000 or more hours of TIS on the effective date of this AD: Within 100 additional hours TIS perform the torque inspection in accordance with MHI MU-2 S/B No. 198, or MAI MU-2 S/B SB051/27-007, as applicable.

(i) If the torque value is 1.2 in-lbs (1.4 kg-cm) or less, in both clockwise and counter clockwise rotation, seal the flexible shaft in accordance with "INSTRUCTIONS" of MHI MU-2 S/B No. 198 or "ACCOMPLISHMENT INSTRUCTIONS" of MAI MU-2 S/B SB051/27-007, as applicable and return the airplane to service.

(ii) If the torque value is greater than 1.2 in-lbs (1.4 kg-cm) in any direction of rotation, before further flight remove flap flexible shaft and replace this shaft with a serviceable shaft, P/N 8022Y-OC-97.00, or 8022Y-OC-97.50 or 035A-961001-3 or FAA approved equivalant, in accordance with paragraph (b) of this AD, and return the airplane to service.

(b) Prior to installing a serviceable replacement flexible shaft, seal the part in accordance with MHI MU-2 S/B No. 198 or MAI MU-2 S/B SB051/27-007, as applicable.

(c) Within 100 hours of TIS after the effective date of this AD, remove and do not reinstall the clamp at W.S. 2590 and ensure that the flap flexible shaft is installed so as to establish that no bend radius throughout the length of the shaft between Wing Station (W.S.) 2370 and W.S. 2910 is less than 8.7 inches (220 millimeters).

(d) Special flight permits may be issued in accordance with FAR 21.197 and FAR 21.199 to ferry aircraft to a maintenance base in order to comply with the requirements of this AD.

(e) An equivalent method of compliance with this AD may be used on the MHI airplanes, if approved by the Manager, Western Aircraft Certification Office, ANM-170 W, Federal Aviation Administration, Post Office Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007, and on the MAI airplanes, if approved by the Manager, FAA, Wichita Aircraft Certification Office, ACE-115W, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Mitsubishi Heavy Industries, Ltd., 10, Oye-Cho, Minato-ku, Nagoya, Japan, or Beech Aircraft Corporation, 9709 East Central, Post Office Box 85, Wichita, Kansas; or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment, if promulgated, will supersede AD 74-11-02 (Amendment 39-1846 (39 FR 17229) as amended by Amendment 39-2269 (40 FR 30464)) and AD 75-02-01 (Amendment 39-2059 (39 FR 44740) as amended by Amendment 39-2269 (40 FR 30464)).

Issued in Kansas City, Missouri, on October 24, 1986.

Barry D. Clements,

Acting Director, Central Region.

[FR Doc. 86-24838 Filed 11-3-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-CE-51-AD]

Airworthiness Directives; Partenavia Models P-68, PC-68B, P-68C, P-68-TC, P-68 "OBSERVER", and P68TC "OBSERVER" Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

AGENCY: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain Partenavia Models P-68, P68B, P-68C, P-68-TC, P-68 "OBSERVER", and P68TC "OBSERVER" airplanes equipped with photogrammetric hatch, which would require an inspection and modification of the aileron control cable at the right side of this hatch to prevent chafing/cutting of the brake oil line. An incident was reported where the aileron control cable sawed through the brake oil line, causing loss of the brake system. The proposed action will detect and prevent any interference and preclude possible loss of braking and/or the loss of aileron control.

DATES: Comments must be received on or before January 9, 1987.

ADDRESSES: Partenavia Service Bulletin (S/B) No. 68 dated January 31, 1986, applicable to this AD may be obtained from Partenavia Costruzioni Aeronautiche S.p.A., Via Cava, 80026 Casoria (Naples), Italy, or the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86-CE-51-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. M. Dearing, Brussels Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA c/o American Embassy, B-1000, Brussels, Belgium; telephone 513.38.30; or Mr. Harvey Chimerine, FAA, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86-CE-51-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

There was a reported incident where the aileron control cable at the right side of the photogrammetric hatch sawed through the brake oil line on a Partenavia P-68. An inspection for interference between the right aileron control and brake oil line will preclude possible chafing/cutting of the brake oil line, the loss of braking ability on the right side of the aircraft as well as possible loss of right aileron control. As a result, Partenavia has issued S/B No. 68 dated January 31, 1986, which requires a one-time visual inspection for interference between the right aileron control cable and brake oil line. The Registro Aeronautico Italiano (RAI) which has responsibility and authority to maintain the continuing airworthiness of these airplanes in Italy has classified this service bulletin and the actions recommended therein by the manufacturer as mandatory and has issued Italian AD No. 86–22 dated March 30, 1986, to ensure the continued airworthiness of the affected airplanes. On airplanes operated under Italian registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of RAI combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this design certificated for operation in the United States. The FAA has examined the available information related to the issuance of Partenavia S/B No. 68 dated January 31, 1986, and the mandatory classification of this service bulletin by RAI. Based on the foregoing, the FAA believes that the condition addressed by Partenavia S/B No. 68 dated January 31, 1986, is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Since only one occurrence has been reported, and due to the nature of the system, the proposed AD would require a visual inspection within the next 50 hours time-in-service for interference between the right aileron control cable (at the right side of the photogrammetric hatch) and the brake oil line to be performed and repairs completed as needed on the aileron cable and/or brake line, according to Part II "REPAIR INSTRUCTIONS" of Partenavia Mandatory S/B No. 68 dated January 31, 1986.

The FAA has determined there are approximately 15 airplanes affected by the proposed AD. The cost of inspecting and repairing, if necessary, these airplanes as required by the proposed AD is estimated to be $80 per airplane. The total cost is estimated to be $1,200 to the private sector.

Few small entities own the affected airplanes and the cost of compliance is so small that it would not impose a significant economic impact on any such owners.

Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation, prepared for this action, has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Partenavia: Applies to certain Partenavia Models P–68, P–68B, P–68C, P–68C–TC, P68 "OBSERVER" and P68TC "OBSERVER" (S/N 1 to 340 inclusive) airplanes equipped with photogrammetric hatch, certificated in any category. Compliance: Required within 50 hours time-in-service (TIS) after the effective date of this AD unless already accomplished.

To preclude possible loss of braking and/or loss of aileron control.

(a) For airplanes with Serial Numbers (S/N) 1 to 298 inclusive, visually inspect the aileron control cable to the right side of the photogrammetric hatch for interference with the brake oil line in accordance with steps 1 through 6 of Part 1A "INSPECTION INSTRUCTIONS" of Partenavia Service Bulletin (S/B) No. 68 dated January 31, 1986 (referred to hereafter as S/B No. 68).

(1) If no discrepancy is found return the airplane to service.

(2) If a discrepancy is found, prior to further flight accomplish the following:

(i) Replace damaged oil tube. Carefully inspect and if necessary, replace the aileron control cable.

(ii) To prevent further interference between the brake oil lines and the aileron control cable, install a clamp (MS 21919–DG9) as shown in figure 2 on page 3/3 of S/B No. 68.

(iii) Visually, check that the clamp is properly installed and the interference is no longer present.

(iv) Return the airplane to service.

(b) For airplanes with S/Ns 299 to 340 inclusive:

(1) Remove carpeting from around the photogrammetric hatch.

(2) Cut a rectangular inspection hole 3.35 in. by 2.35 in. (85 x 60mm) in accordance with figures 1 and 2 on page 3/3 of S/B No. 68.

(3) Manufacture rectangular cover plate for the above inspection hole in accordance with figure 2 on page 3/3 of S/B No. 68.

(4) Visually inspect the aileron cable to the right of the photogrammetric hatch for interference with the brake oil line in accordance with steps 3 through 6 of Part IA "INSPECTION INSTRUCTIONS" of S/B No. 68.

(i) If no discrepancy is found return the airplane to service.

(ii) If a discrepancy is found prior to further flight, accomplish paragraph (a)(2) of this AD.

(c) For all aircraft having clamp (P/N MS21919–DG9) installed on the brake oil line in accordance with Part II "Repair Instructions" of Partenavia S/B No. 68 dated January 31, 1986, no further action required.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(e) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Staff, AEU–100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B–1000 Brussels, Belgium.

All persons affected by this directive may obtain a copy of the document referred to herein upon request to Partenavia Construtioni Aeronautiche S.p.A., Via Cava, 80026 Casoria (Naples), Italy, or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 24, 1986.

Barry D. Clements,

Acting Director, Central Region.

[FR Doc. 86–24837 Filed 11–3–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 86–AGL–2]

Proposed Alteration of Federal Airways V–7 and V–510

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter Federal Airways V–7 and V–510 to provide for more efficient north/south and east/west traffic flows primarily in the states of Wisconsin and Illinois. Two actions are proposed. The first proposed action is the realignment of V–7 between Green Bay, WI, and Petty intersection to improve the north/south flow. The second action is the deletion of that portion of V–510 between Nodine, MN, and Lone Rock, WI, and extending V–510 from Nodine to Muskegon, MI, to improve east/west traffic flows.

DATES: Comments must be received on or before November 16, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 86–AGL–2, Federal Aviation

Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Gene Falsetti, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9249.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AGL-2." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changd in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to realign V-7 between Green Bay, WI, and delete a portion of V-510 from Nodine, MN, to Lone Rock, WI, and extend V-510 between Nodine and Muskegon, MI. Southern Wisconsin has historically exhibited a heavy use of north-south routings. Since 1980 routings oriented along east-west paths have increased dramatically in the area bounded by the cities of Madison, Milwaukee and Muskegon on the south and Eau Claire, Wausau, Green Bay and Traverse City on the north. Increases in air traffic in the above areas have resulted in numerous uses of off airway direct routings. The proposed realignment of V-7 and extension of V-510 is expected to help accommodate these naturally formed flows of traffic. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the critiera of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, VOR Federal airways.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. § 71.123 is amended as follows:

V-7 [Amended]

By removing the words "INT Chicago Heights 358° and Green Bay, WI, 166° radials;" and substituting the words "INT Chicago Heights 358° T (356° M) and Falls, WI, 170° T (169° M) radials; Falls;"

V-510 [Amended]

By removing the words "Lone Rock. From" and substituting the words "Dells, WI, Oshkosh, WI; Falls, WI;"

Issued in Washington, DC, on Ocober 21, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-24830 Filed 11-3-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 150

[Docket No. 25117; Notice No. 86-17]

Expansion of Applicability of Part 150 to Heliports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to expand the applicability of rules governing airport noise compatibility planning to include free-standing public-use heliports. It is needed because the current rule includes only those heliports that are located on public use airports that are used by other aircraft. The proposal is intended to allow the operators of free-standing public-use heliports to benefit from the Airport Improvement Program.

DATE: Comments must be received on or before February 3, 1987.

ADDRESS: Send comments on this proposal in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, ATTN: Rules Docket (AGC-204), Docket No. 25117, 800 Independence Ave., SW., Washington, DC 20591; or deliver comments in duplicate to: FAA Rules Docket, Room

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916, 800 Independence Ave., SW., Washington, DC 20591. Comments must be marked Docket No. 25117. Comments may be examined in the Rules Docket on weekdays except Federal holidays, between 8:30 a.m. and 5:00 p.m..

FOR FURTHER INFORMATION CONTACT: Mr. Richard Tedrick, Noise Policy and Regulatory Branch (AEE–110), Noise Abatement Division, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591. Telephone: (202) 267–3558.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address listed above. Commentors wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25117." The postcard will be date and time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the rules docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–430, 800 Independence Ave., SW., Washington, DC 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

Background

Part 150 of the Federal Aviation Regulations (14 CFR Part 150) contains requirements for airport operators who choose to submit voluntarily noise exposure maps and airport noise compatibility planning programs to the FAA. Operators of airports whose maps and programs have been accepted by the FAA as meeting the Part 150 standards are then eligible to apply for funding noise control projects under the Airport Improvement Program. The Aviation Safety and Noise Abatement Act of 1979, as amended (49 U.S.C. 2101 *et seq*, "the ASNA Act") also provides certain legal protections for those airport proprietors submitting maps.

In accordance with the ASNA Act, operators of certain public-use airports have been able to avail themselves of the benefits of Part 150 since its original adoption, on an interim basis, on January 19, 1981 (46 FR 8316, January 26, 1981). However, in that interim rule and in the final rule adopted December 13, 1984 (49 FR 49260, December 18, 1984), access to Part 150 was denied to the operators of one class of public airports, free-standing public-use heliports, i.e. those "used exclusively by helicopters." This was done primarily because there were relatively few public-use heliports and because adequate computational tools were not available for drawing noise contours around heliports.

Proposed Rule

Now, with the opening of several model public heliports and with the successful completion by the FAA of Helicopter Noise Model (HNM) computer program, the FAA proposes to lift this restriction. Sections 150.3 and 150.7 would be amended to specifically include all public-use heliports. Section A150.103 of Appendix A would be amended to reference use of the HNM and to insert map scale and size requirements more appropriate to heliports.

Regulatory Evaluation

The FAA conducted a detailed evaluation to determine the regulatory impact of removing the present regulatory restrictions on the operators of heliports. It was determined that this proposed rule is consistent with the objectives of Executive Order 12291 as part of the President's Regulatory Reform Program to reduce regulatory burdens on the public. Since Part 150 only contains a voluntary program for developing airport compatibility maps and programs, heliport operators (like other airport operations) can be expected to voluntarily bring themselves under the Part when it is only to their best interests. This proposal imposes only minor additional costs on the Federal Government, since it would only slightly increase (by less than one-tenth of one percent) the number of airport Improvement Program and the attendant administrative costs to the FAA. The Part 150 program is a well established program developed by Congress. Funds are allocated from the Airway Improvement Program from which an 8% set-aside of funds is currently required for noise mitigation purposes. Funding for the AIP is derived from passenger ticket taxes and a general aviation fuel tax as mandated by Congress. The expansion of the program to include heliports is not expected to adversely impact the current supply of funds.

In addition, this proposal, if adopted, would have no impact on trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

Regulatory Flexibility Analysis

As explained in the background section, the proposed changes would broaden access to a voluntary Federal program. If any heliport operators submit any maps or programs under the proposed amendment, they would do so voluntarily and on the basis of self-interest. Moreover, as of June 1986, only six heliports would be eligible to participate in the Part 150 program; none are small entities. Therefore, it is certified that the proposed amendment would not have significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Analysis

Pursuant to Department of Transportation "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1D), a draft Finding of No Significant Impact has been prepared. The changes proposed in this Notice do not significantly affect the quality of the human environment.

Conclusion

The only costs associated with this amendment are the voluntary costs to a heliport operator for the initial cost of preparation and submission of a noise exposure map and compatibility program, and minimal FAA Administrative costs. Therefore, the FAA has determined that this proposal involves a proposed regulation that is not a major regulation under Executive

Order 12291 or significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since no small entities would be affected by the proposed rule, it is certified under the criteria of the Regulatory Flexibility Act the proposed rule, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of entities. A copy of the initial regulatory evaluation prepared for this project may be examined in the public docket or obtained from the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 150

Airports, Aviation safety, Noise exposure maps, Noise compatibility programs, Land uses.

Proposed Amendment

PART 150—[AMENDED]

Accordingly, the FAA proposes to amend Part 150 of the Federal Aviation Regulations (14 CFR Part 150) as follows:

PART 150—AIRPORT NOISE COMPATIBILITY PLANNING

1. The authority citation for Part 150 is revised to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, 1431, 2101, 2102, 2103(a), 2104 (a) and (b), 2201 *et seq.*; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

§ 150.3 and 150.7 [Amended]

2. By removing from §§ 150.3 and 150.7 the words "not used exclusively by helicopters" and substituting in each place the words "including heliports".

APPENDIX A—[AMENDED]

3. By amending paragraph (a) of section A150.103 of Appendix A to add the words "for airports or the Helicopter Noise Model (HNM) for heliports" after the words "Integrated Noise Model (INM)".

4. By amending section A150.103(b) of Appendix A inserting the words "Except as provided in paragraph (c)," at the beginning thereof.

5. By amending section A105.103 of Appendix A to add a new paragraph (c) to read as follows:

Sec. A150.103 Use of computer prediction model.

* * * * *

(c) For heliports, the map required by paragraph (b)(1) of this section shall not be less than 1 inch to 2,000 feet and shall indicate heliport boundaries, takeoff and landing points, and typical flight tracks out to at least 4,000 feet. Where these flight tacks cannot be determined, obstructions or other limitations on flight tracks in and out of the heliport shall be identified within the map areas out to at least 4,000 feet. For static operation (hover), identify helicopter type and duration in minutes shall be identified. The other information required in paragraph (b) shall be furnished in a form suitable for input to the HNM.

Issued in Washington, DC, on October 30, 1986.

Norman H. Plummer,

Director of Environment and Energy.

[FR Doc. 86–24939 Filed 11–3–86; 8:45am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 861 0146]

L'Air Liquide Societe Anonyme Pour L'Etude et L'Exploitation des Procedes Georges Claude; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a French producer and seller of liquid gases to divest some assets to resolve any antitrust concerns raised by respondent's proposed acquisition of Big Three Industries Inc., a Houston-based competitor of respondent's American subsidiary. Additionally, respondent would be required to obtain prior FTC approval for similar future acquisitions.

DATE: Comments will be received until January 5, 1987.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/G–402, Jerry Philpott, Washington, DC 20580, (202) 254–7051.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to divest, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Liquid gases, Trade practices.

Before Federal Trade Commission

In the Matter of L'Air Liquide Societe Anonyme Pour L'Etude et L'Exploitation des Procedes Georges Claude, a corporation.

Agreement Containing Consent Order To Divest

The Federal Trade Commission having initiated an investigation into the proposed acquisition of the voting securities and certain assets of Big Three Industries ("BTI") by L'Air Liquide Societe Anonyme pour L'Etude et L'Exploitation des Procedes Georges Claude ("L'Air Liquide"), and it now appearing that L'Air Liquide is willing to enter into an agreement containing an order to divest certain assets;

It is hereby agreed by and between L'Air Liquide, by its duly authorized officer and its attorney, and counsel for the Commission that:

1. L'Air Liquide is a corporation organized and doing business under the laws of France, with its principal office located at 75 Quai d'Orsay, Paris 75321 France.

2. L'Air Liquide has a wholly owned subsidiary American Air Liquide, Inc., a corporation organized and doing business under the laws of Delaware, with its principal office at 767 Fifth Avenue, New York, New York, 10153.

3. Big Three Industries is a corporation organized under the laws of the State of Texas with its office and principal place of business located at 3535 West 12th Street, Houston, Texas 77008.

4. L'Air Liquide admits all jurisdictional facts set forth in the draft of complaint here attached.

5. L'Air Liquide waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All rights under the Equal Access to Justice Act.

6. This agreement shall not become part of the public record unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it and the draft of

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complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

7. This agreement is for settlement purposes only and does not constitute an admission by L'Air Liquide that the law has been violated as alleged in the draft of complaint here attached.

8. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to L'Air Liquide, (a) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to divest in disposition of the proceeding and (b) make information public in respect thereto. When so entered, the order to divest shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to L'Air Liquide's subsidiary American Air Liquide's address as stated in this agreement shall constitute service. L'Air Liquide waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

9. L'Air Liquide has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. L'Air Liquide further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is hereby ordered that as used in this Order the following definitions shall apply:

1. "L'Air Liquide" means L'Air Liquide Societe Anonyme pour L'Etude et L'Exploitation des Procedes Georges Claude, its officers, directors, agents, representatives, employees, successors, and assigns together with all subsidiaries it controls.

2. "Liquid Air" means Liquid Air Corporation, its officers, directors, agents, representatives, employees, successors, and assigns together with all subsidiaries it controls.

3. "Big Three" means Big Three Industries Inc., its officers, directors, agents, representatives, employees, successors, and assigns together with all subsidiaries it controls.

4. "Air separation gases" means oxygen, nitrogen and argon in gaseous or liquid form.

5. "Air separation gases plant" means a facility that produces air separation gases.

6. "Merchant Air Separation Gases" means oxygen, nitrogen and argon sold in liquid form or packaged cylinders.

7. "Merchant Air Separation Gases Producer" means any person that is engaged in all of the following: (i) production, (ii) distribution and (iii) sale of two or more merchant air separation gases.

8. "North Texas" means that portion of the State of Texas within a 200 mile radius of Dallas, Texas, but does not include customers currently served by Liquid Air's Stafford or Odessa air separation gases plants.

9. "Merchant Divestiture Assets" means the assets described in Paragraphs IIA and IIB of this Order.

10. "Material confidential information" means competitively sensitive or proprietary information not independently known to L'Air Liquide and includes, but is not limited to, customer lists and price lists.

II

It is further ordered that:

A. Within 9 months from the date this Order becomes final L'Air Liquide shall divest or shall cause to be divested, absolutely and in good faith, all of its right, title and interest in the following properties. Divestiture shall be made only to a buyer or buyers, and only in a manner, that receives the prior approval of the Commission. The purpose of the divestiture is to ensure the continuation of the assets as ongoing, viable enterprises engaged in the same businesses and to remedy the lessening of competition resulting from the acquisition as alleged in the Commission's complaint in this matter.

1. All of Liquid Air's existing merchant air separation gases customer, dealer and distributor contracts, excluding any contracts with Texas Instruments, specifying a delivery location in the state of Texas, together with associated storage vessels and cylinders;

2. Liquid Air's air separation gases plants located in Odessa, Texas and Stafford (Houston), Texas, together with associated distribution equipment, and distribution equipment sufficient to serve Liquid Air's merchant air separation gases customers located in North Texas;

3. Big Three's West Palm Beach, Florida air separation gases plant together with all associated distribution equipment, customer, dealer and distributor contracts, and associated storage vessels and cylinders;

4. Big Three's Albuquerque, New Mexico air separation gases plant, together with all associated distribution equipment, customer, dealer and distributor contracts, and associated storage vessels and cylinders;

5. Big Three's interest in the Palmer, Alaska air separation gases plant and associated merchant air separation gases customer, dealer and distributor contracts, storage vessels and distribution equipment. *Provided, however,* that if the aforementioned interest is divested to The Lincoln Electric Company, such divestiture will not require the prior approval of the Commission under this order.

B. L'Air Liquide shall also make available in North Texas for a period of up to 3 years from the date the divestiture of Liquid Air's existing merchant air separation gases customer, dealer and distributor contracts in North Texas is completed whether by L'Air Liquide or by the trustee identified in paragraph V, up to 50 T/D of liquid oxygen and 95 T/D of liquid nitrogen, which may be purchased by the acquirer of the merchant air separation gases customer, dealer and distributor contracts of Liquid Air in North Texas at a price equal to the electric power costs of the supplying air separation gases plant plus 5 cents/hundred cubic feet, F.O.B. the supplying plant.

C. Within 12 months from the date this Order becomes final, L'Air Liquide shall enter into a contract to sell to an unrelated third party all argon to which Liquid Air is entitled under an Operating Agreement among Borden, Inc., BASF Wyandotte Corporation, Liquid Air Corporation and LAI Properties, Inc., dated December 14, 1984, as amended. Such contract shall be made only with a buyer or buyers, and only in a manner, that receives the prior approval of the Commission. The purpose of requiring such contract is to remedy the lessening of competition resulting from the acquisition as alleged in the Commission's complaint in this matter.

III

It is further ordered that, pending the divestiture of all of the assets described in Paragraphs IIA and IIB, above, L'Air Liquide will hold such assets separate and apart on the following terms and conditions:

A. Within 30 days from the date this Order becomes final, L'Air Liquide shall cause all of its right, title and interest in the Merchant Divestiture Assets to be transferred to a separate corporation ("Nucorp"), whose management and directors will be independent of and separate from the management and directors of L'Air Liquide, Liquid Air, or Big Three.

B. Nucorp and the Merchant Divestiture Assets shall be operated independently of L'Air Liquide, Liquid Air or Big Three.

C. L'Air Liquide shall not exercise direction or control over, or influence directly or indirectly, the day-to-day operations of Nucorp or the Merchant Divestiture Assets, except as may be necessary (i) to assure compliance with this order, (ii) to prevent an event of default under financing arrangements to which L'Air Liquide or any of its subsidiaries is a party, or (iii) to prevent wasting or deterioration of the Merchant Divestiture Assets.

D. Except as provided in paragraph III(C) (i)–(iii) or as required by law and except to the extent that necessary information is exchanged in the course of defending litigation or negotiating agreements to dispose of Nucorp or all or any part of the Merchant Divestiture Assets, L'Air Liquide shall not receive or have access to, or the use of, any "material confidential information" relating to the Merchant Divestiture Assets not in the public domain. Any such information that is obtained pursuant to this subparagraph shall only be used for the purposes set out in this subparagraph.

E. Each transaction in the amount of $100,000 or more, or transactions in the aggregate of $500,000 or more which are not otherwise precluded to Nucorp by paragraph III(A)–(D), shall be subject to a majority vote of the Board of Nucorp. Prior to the Board of Nucorp approving any such transaction, such transaction must be submitted for review and approval by an officer of L'Air Liquide only for the limited purpose of determining whether such transaction would impair L'Air Liquide's obligations under this Order, including L'Air Liquide's ability to divest Nucorp or the Merchant Divestiture Assets, or would create an event of default under any financing arrangement. The submission of such proposed transactions to an executive of L'Air Liquide shall be made in writing only, and L'Air Liquide's response shall also be in writing only, and copies of all such writings shall be maintained by L'Air Liquide for two years following the divestiture of the Merchant Divestiture Assets. The approval of an officer of L'Air Liquide shall not be unreasonably withheld and shall be granted within a reasonable period of time.

F. Subject to the other provisions of this Order:

1. L'Air Liquide shall have the sole right to determine the terms of sale of Nucorp or any of the Merchant Divestiture Assets, including timing of sale and purchase price, and to cause Nucorp management to enter into any agreements or arrangements, or to take any other action, to fulfill L'Air Liquide's obligations under this Order, and

2. In the event L'Air Liquide has submitted one or more acquirers of the Merchant Divestiture Assets or of Nucorp to the Commission prior to the date this Order becomes final, L'Air Liquide will not be required to cause those assets for which it has a contract or contracts to sell to be transferred to Nucorp, unless and until the Commission denies approval of such acquirers. If the Commission denies such approval, L'Air Liquide shall transfer the Merchant Divestiture Assets to Nucorp (a) within ten (10) calendar days, or (b) if L'Air Liquide has not as yet transferred assets to Nucorp pursuant to paragraph III(A), then L'Air Liquide shall be required to transfer the Merchant Divestiture Assets described in this subparagraph in accordance with paragraph III(A).

IV

It is further ordered that L'Air Liquide shall not cause or permit the wasting or deterioration of the assets and operations to be divested in accordance with Paragraph II of this Order in any manner that impairs the marketability of any such assets and operations or impairs in any manner the viability of the assets and operations as a going concern engaged in the production, sale or distribution of industrial gases. *Provided, however*, that deterioration in the ordinary course of operation and normal wear is not a violation of this paragraph.

V

It is further ordered that:

A. If L'Air Liquide has not divested all of the Merchant Divestiture Assets within the 9-month period, or has not obtained approval for the contract described in Paragraph II(C) within the 12 month period, L'Air Liquide shall consent to the appointment of a trustee in any action that the Federal Trade Commission may bring pursuant to Section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission. In the event the court declines to appoint a trustee, L'Air Liquide shall consent to the appointment of a trustee by the Commission pursuant to the Order.

B. If a trustee is appointed by a court or the Commission pursuant to Paragraph V(A) of the Order, L'Air Liquide shall consent to the following terms and conditions regarding the trustee's duties and responsibilities:

1. The Commission shall select the trustee, subject to L'Air Liquide's consent, which shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall have 18 months from the date of appointment to submit for prior approval the divestiture of any undivested assets, which shall be subject to the prior approval of the Commission, and if the trustee was appointed by the court, subject also to the prior approval of the court. If, however, at the end of the 18-month period the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission or by the court, if the trustee was appointed by a court.

3. The trustee shall have full and complete access to the personnel, books, records, and facilities relating to any undivested assets and Nucorp or L'Air Liquide shall develop such financial or other information relevant to the assets to be divested as such trustee may reasonably request. Nucorp and L'Air Liquide shall cooperate with the trustee and shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

4. The power and authority of the trustee to divest shall be at the most favorable price and terms available consistent with the Order's absolute and unconditional obligation to divest.

5. The trustee shall serve at the cost and expense of L'Air Liquide on such

reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall account for all monies derived from asset sales and all expenses incurred. After approval by the court or the Commission of the account of the trustee, including fees for his or her services, all remaining monies shall be paid to L'Air Liquide and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee divesting undivested assets.

6. Promptly upon appointment of the trustee, L'Air Liquide shall, subject to the Commission's prior approval and consistent with provisions of this Order, execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to cause divestiture of undivested assets.

7. If the trustee ceases to act or fails to act diligently, the court or the Commission may, upon its own motion or by motion of L'Air Liquide, appoint a substitute trustee for the balance of the 18-month period specified in paragraph V(B)(2) or any extension thereof.

8. The trustee shall report in writing to L'Air Liquide and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

9. The trustee shall be authorized to retain independent legal counsel and other persons for purposes of discharging the functions set forth above. L'Air Liquide shall reimburse the trustee for the reasonable value of all expenses so incurred.

10. If L'Air Liquide and the trustee are unable to resolve a dispute regarding the reasonable value of his/her services or the reasonableness of an expenditure or obligation incurred by the trustee in connection with his/her efforts to divest the plant or plants, then L'Air Liquide and the trustee shall submit the dispute to the Commission for resolution. The trust agreement shall recite that the Commission's determination of the reasonable value of the trustee's services or the reasonableness of expenditures and other obligations incurred by the trustee shall be binding upon L'Air Liquide and the trustee.

VI

It is further ordered that, within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until L'Air Liquide has fully complied with the provisions of paragraphs II(A)–II(C) of this Order, L'Air Liquide shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying or has complied with those provisions. L'Air Liquide shall include in compliance reports, among other things that are required from time to time, a full description of contacts or negotiations for divestiture, including the identity of all parties contacted.

VII

It is further ordered that for a period commencing on the date this Order becomes final and continuing for ten (10) years from and after the date this Order becomes final, L'Air Liquide shall cease and desist from acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries or otherwise, the whole or any part of the stock or share capital of any United States merchant air separation gases producer, or any of the merchant air separation gases assets of any United States merchant air separation gases producer, provided, however, that nothing in this Order shall require L'Air Liquide to obtain prior Commission approval for acquisitions of (a) gas or any product for resale, (b) transportation, delivery or storage equipment, (c) cylinders, (d) converters, (e) bulk customer stations, or (f) plant equipment not incorporated in an operating merchant air separation gases plant, and provided further that nothing in this Order or in the Commission's Order entered in Docket C–2990 shall require L'Air Liquide to obtain prior Commission approval if L'Air Liquide increases its ownership in Liquid Air or causes Big Three to acquire Liquid Air. One year after the date this Order becomes final, and annually thereafter, L'Air Liquide shall file with the Commission a verified written report of its compliance with this paragraph.

VIII

It is further ordered that for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to L'Air Liquide made to its principal office, L'Air Liquide shall permit any duly authorized representatives of the Commission access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of L'Air Liquide relating to any matters contained in this Order.

IX

It is further ordered that L'Air Liquide shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change that may affect compliance obligations arising out of the Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has provisionally accepted a consent agreement with L'Air Liquide Societe Anonyme pour L'Etude et L'Exploitation des Procedes Georges Claude of France ("L'Air Liquide"), in settlement of a complaint alleging violations of section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. The consent agreement, accepted subject to final Commission approval, would require L'Air Liquide to sell within nine months to a buyer or buyers approved by the Commission (a) all of L'Air Liquide's existing merchant air separation gases customer, dealer, and distributor contracts (excluding any contract with Texas Instruments) specifying a delivery location in the state of Texas, together with associated storage vessels and cylinders; (b) L'Air Liquide's air separation gases plants located in Odessa, Texas and Stafford (Houston), Texas, together with associated distribution equipment and distribution equipment sufficient to serve L'Air Liquide's merchant air separation gas customers located in North Texas; (c) Big Three Industries' West Palm Beach, Florida air separation gases plant together with all associated distribution equipment, customer, dealer and distributor contracts and associated storage vessels and cylinders; (d) Big Three Industries' Albuquerque, New Mexico air separation gases plant, together with all associated distribution equipment, customer, dealer and distributor contracts, and associated storage vessels and cylinders; and (e) Big Three Industries' interest in the Palmer, Alaska air separation gases plant and associated merchant air separation gases customer, dealer and distributor contracts, storage vessels and distribution equipment. The consent would also require L'Air Liquide to make available in North Texas for a period of up to three years, up to 50 tons per day of liquid oxygen and 95 tons per day of liquid nitrogen which may be purchased by the acquirer of the merchant gases customers of L'Air Liquide in North Texas. Finally, the consent order would require L'Air Liquide within 12 months, to enter into a contract to sell to an unrelated third party all the argon to which it is entitled under an agreement by and among Borden Inc., Liquid Air Corp., BASF Wyandotte and LAI Properties, Inc. In the event that L'Air Liquide does not effectuate the divestitures within the time ordered, the order further provides that a trustee be appointed to effectuate them.

In addition to provisional acceptance of the proposed consent order, the Commission has entered into an "Agreement to Hold Separate" with L'Air Liquide. The Agreement provides that L'Air Liquide will hold separate all assets subject to the proposed consent order until L'Air Liquide has sold them or until the Commission determines that divestiture is unwarranted.

L'Air Liquide would be prohibited for ten years from acquiring, without prior Commission approval, any interest in or assets of any United States merchant air separation gases producer.

Emily H. Rock,

Secretary.

Dissenting Statement of Chairman Oliver in L'Air Liquide S.A., File No. 861-0146

I was prepared to vote to accept a consent agreement in this matter that contained a "fencing-in" provision requiring respondent to furnish advance notice to the Commission, for a set period of years, before completing future transactions in the same relevant markets. However, I believe that the circumstances of this case do not support imposition of a prior approval provision on respondent because it is not clear from this record that "market conditions and market structure in this industry are such that all such acquisitions, even under . . . conditions adopted by [a] prior approval remedy, are necessarily anticompetitive." [1] Accordingly, I have voted against acceptance of the consent order, which requires the respondent to obtain prior Commission approval before completing certain future transactions in the markets involved in this matter.

[FR Doc. 86-24845 Filed 11-3-86; 8:45 am]

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[1] *American Medical International,* 104 F.T.C. 1, 225 (1984); *see also Hospital Corp. of America,* 106 F.T.C. 361, 513-17 (1985).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2980-9]

Proposed Waiver From New Source Performance Standards; Innovative Technology Waiver for One Light-Duty Truck Surface Coating Operation

Correction

In FR Doc. No. 86-22031, beginning on page 34898, in the issue of Tuesday, September 30, 1986, make the following corrections:

1. On page 34898, second column, third line from the bottom, "topcoat" should read "topcoats".
2. On the same page, third column, third complete paragraph, first line, after "Clean" insert "Air".
3. On page 34900, first column, third complete paragraph, second line from the bottom, "40/60" should read "40/46".
4. On page 34901, first column, first complete paragraph, first line, "Chrysler's" should read "Chrysler", and on the third line, "Chrysler" should read "Chrysler's".
5. On page 34902, first column, seventh line, "update" should read "updated".

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40 CFR Part 81

[A-4-FRL-3104-8; AL-017]

Designation of Areas for Air Quality Planning Purposes; Redesignation of Two Ozone Nonattainment Areas in Alabama

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA today proposes to approve a request by Alabama that Etowah County and Mobile County be redesignated from nonattainment to attainment for ozone. The redesignation of these counties to attainment is based on three years of ambient monitoring data showing a calculated expected exceedance of less than or equal to 1.0 per year and on implementation of EPA-approved control strategies.

The public is invited to submit written comments on this proposed action.

DATES: To be considered, comments must reach us on or before December 4, 1986.

ADDRESSES: Written comments should be addressed to Jill Thomas of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the materials submitted by Alabama may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Air Division, Alabama Department of Environmental Management, 1751 Federal Drive, Montgomery, Alabama 36130.

FOR FURTHER INFORMATION CONTACT: Jill Thomas, Air Programs Branch, EPA Region IV, at the above address and telephone number 404/347-4253 or FTS 257-4253.

SUPPLEMENTARY INFORMATION: In the March 3, 1978, **Federal Register** (43 FR 8962), EPA designated Mobile County, Alabama as nonattainment for ozone. This designation was based on ambient air quality monitoring data which revealed that Mobile County had experienced oxidant violations. Several areas in Alabama were designated nonattainment for ozone and the State was therefore required to revise their state implementation plan (SIP) for ozone. Alabama drafted and adopted statewide regulations for controlling volatile organic compound (VOC) emissions from stationary sources. Through the Federal Motor Vehicle Control Program (FMVCP) and through implementation of Group I and Group II VOC regulations, Alabama demonstrated attainment of the ozone standard. EPA approved Alabama's ozone SIP on November 26, 1979 (44 FR 67375).

In the August 31, 1982, **Federal Register** (47 FR 38322), EPA changed the designation of Etowah County, Alabama to nonattainment for ozone. This designation was based upon exceedances measured in Etowah County during 1980-1981. Alabama was not required at this time to adopt new control requirements since the State had previously adopted a statewide plan for control of VOC emissions.

Alabama has requested that EPA change the attainment status of Etowah County and Mobile County from nonattainment to attainment for ozone. In order to redesignate a nonattainment area, EPA policy requires that the most recent three years of ozone data show an expected exceedance calculation of less than or equal to 1.0 per year. In the event that three years of ozone data is not available, the most recent eight quarters of quality assured ambient air

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data may suffice provided that no exceedances have occurred. In addition, the data must be accompanied by a demonstration of implementation of an EPA-approved control strategy.

Alabama's request for redesignation is based on three years of ambient ozone data. Specifically, the most recent three years of air quality data (1983, 1984, and 1985) for each county show the number of expected exceedances to be less than or equal to 1.0, as is summarized below:

	Exceedances (ppm)	Number of expected exceedances[1]	NAAQS ozone[2]
Etowah County			
Attalla:			
1983	.127	0.80	.12 ppm.
1984	.126		
1985	None		
Total	2 exceedances		
Mobile County			
Fort Everette:			
1983	.157, .126	0.67	.12 ppm.
1984	None		
1985	None		
Total	2 exceedances		
Salco:			
1983	None	0.00	.12 ppm.
1984	None		
1985	None		
Total	0 exceedances		

[1] Three-year average.

[2] Not to be exceeded more than once per year.

Furthermore, neither county has experienced any ozone exceedances during the 1986 ozone season.

For a more detailed discussion, please refer to the Technical Support Document which is available for inspection at the EPA Region IV office.

Proposed Action

Therefore, on the basis of three years of air quality data showing attainment and evidence of an implemented EPA-approved control strategy, EPA proposes to redesignate Etowah County and Mobile County from ozone nonattainment to attainment.

The public is invited to participate in this rulemaking by submitting written comment on these proposed actions.

Under 5 U.S.C. 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7642.

Dated: June 10, 1986.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 86–24913 Filed 11–3–86; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for Bonamia grandiflora (Florida Bonamia)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Bonamia grandiflora* a plant in the family Convolvulaceae (morning glories), to be a threatened species pursuant to the Endangered Species Act of 1973 (Act), as amended. Critical habitat is not proposed. This plant is endemic to sand pine scrub vegetation in the Florida peninsula, with a historic distribution from Volusia and Marion Counties south to Sarasota and Highlands Counties. The known populations of this plant are on private land and in the Ocala National Forest. *Bonamia grandiflora* is threatened by residential and commercial development of its habitat and by successional changes. This proposal, if made final, would implement the protection and recovery provisions afforded by the Act, for *Bonamia grandiflora.* The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by January 5, 1987. Public hearing requests must be received by December 19, 1986.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: David J. Wesley, Endangered species Field Supervisor, at the above address (904/791–2580 or FTS 946–2580).

SUPPLEMENTARY INFORMATION:

Background

Bonamia grandiflora was first collected in Florida by Ferdinand Rugel between 1842 and 1849. Specimens collected by A.P. Garber from Manatee and Sarasota Counties, Florida in 1878 were assigned by Asa Gray (1880) to a new species, *Breweria grandiflora.* The genus *Breweria* has since been merged into *Bonamia.* Hans Hallier transferred the plant to the genus *Bonamia* in 1897 (Myint and Ward 1968; D. Austin, Florida Atlantic Univ., pers. comm., 1986), but Small (1933) attributed the transfer to A. Heller, apparently in error. The plant is endemic to peninsular Florida. It is a perennial vine with sturdy prostrate stems about a meter (3 feet) long. The leathery oval or ovate leaves, up to about 4 centimenters (1.6 inches) long, are either upright or spreading. The flowers are solitary in the leaf axils. The funnel-shaped corolla is 7–10 centimeters (2.7–3.9 inches) long and 7–8 centimeters (2.7–3.1 inches) across, pale but vivid blue with a paler center, similar to the cultivated "Heavenly Blue" morning glory. The fruit is a capsule. This plant is the only morning glory vine of the scrub with large blue flowers (Wunderlin et al. 1980) and can be readily identified even when not in flower. *Bonamia grandiflora* is restricted to sand pine scrub vegetation consisting of evergreen scrub oaks and sand pine (*Pinus clausa*), with openings between the trees and shrubs occupied by lichens and herbs. The sandy openings are created by infrequent, severe fires or by mechanical disturbance. The openings eventually disappear as oaks regrow from their roots and as sand pines grow from seed. In Highlands and Polk Counties, *Bonamia grandiflora* occupies sandy openings along with other scrub endemic plants, including three proposed for Federal listing: Highlands scrub hypericum (*Hypericum cumulicola*), papery whitlow-wort (*Paronychia chartacea*), and scrub plum (*Prunus geniculata*). In Orange County, *Bonamia grandiflora* occurs with scrub lupine (*Lupinus aridorum*), proposed as federally endangered. The historic range of *Bonamia grandiflora* was from central Highlands County northward through Polk, northwestern Osceola, western Orange, Lake, eastern Marion, and northwestern Volusia Counties on ridges and uplands of the central peninsula. An isolated site was found by Johnson (1981) in Hardee County, and collections were made in Manatee and Sarasota Counties in 1878 and 1916 (Wunderlin *et al.* 1980). The plant has been extirpated from much of its former range by urban and agricultural development, especially citrus groves. In the Ocala National Forest, *Bonamia grandiflora* is restricted to bare, sunny sand at the margins of sand pine stands on road rights-of-way, fire lanes, and other places that are kept clear of trees and shrubs.

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In this report, *Bonamia grandiflora* was listed as threatened. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) that accepted the report as a petition in the context of section 4(c)(2) of the Act (petition acceptance is now covered by section 4(b)(3) of the Act, as amended). On December 15, 1980, the Service published a notice of review for plants (45 FR 82480), which included *Bonamia grandiflora* as a category-2 candidate (a species for which data in the Service's possession indicate listing is possibly appropriate, but for which additional biological information is needed to support a proposed rule). A supplement to the 1980 notice of review, published on November 28, 1983 (48 FR 53640), treated *Bonamia grandiflora* as a category-1 candidate (a species for which data in the Service's possession indicate listing is warranted), based on a status report by Wunderlin *et al.* (1980). An updated notice of review published on September 27, 1985 (50 FR 39525), maintained the plant as a category-1 candidate.

Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Bonamia grandiflora* because the Service had accepted the 1975 Smithsonian report as a petition. On October 13, 1983, October 12, 1984, October 11, 1985, and October 10, 1986, the Service found that the petitioned listing of this species was warranted, and that, although pending proposals had precluded its proposal, expeditious progress was being made to list this species. Publication of the present proposal constitutes the next 1-year finding that is required on or before October 13, 1987.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Bonamia grandiflora* (A. Gray) H. Hallier, (Florida bonamia) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Bonamia grandiflora* is currently known from Ocala National Forest in Marion County and from 18 sites south of the Forest: Hardee County, one site; Highlands County, 2 sites; Polk County, 10 sites; and Orange County, 5 sites. Habitat destruction is the principal threat. In Highlands County, 64.2 percent of the xeric vegetation (scrub, scrubby flatwoods, and southern ridge sandhills) present before settlement was destroyed by 1981, and an additional 10.3 percent of the xeric vegetation was moderately disturbed, primarily by construction of roads for housing subdivisions (Peroni and Abrahamson 1985). Remaining tracts of scrub are rapidly being developed for citrus groves and housing (Fred Lohrer, Archbold Biological Station, pers. comm., 1985). Habitat destruction is similar in Polk County, the leading county in the State for citrus production (Fernald 1981). A careful survey of scrub vegetation by the Florida Natural Area Inventory found *Bonamia grandiflora* at only 12 sites in these counties. Farther north, most of the former habitat of the plant in northwest Osceola, western Orange and central Lake Counties has been converted to agricultural or urban uses. The five known sites for the plant in Orange County are all on small remnants of scrub vegetation or vacant lots surrounded by houses or orange groves west and southwest of Orlando, one of the fastest growing urban areas in the United States.

Current management of the Ocala National Forest seems compatible with the protection of *Bonamia*. The 1985 Land and Resource Management Plan for the National Forests in Florida appears to be beneficial for *Bonamia grandiflora*. Practices that limit off-road vehicles and that maintain the early successional habitat of this plant (see Factor E.) will contribute to this species' continued existence in the forest.

Bonamia grandiflora is protected on The Nature Conservancy's Tiger Creek preserve in Polk County, but land acquisition has not yet been completed. Land acquisition by The Nature Conservancy in the Saddle Blanket Lakes area of Polk County may result in preservation of more habitat for this species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes. Bonamia grandiflora* is conspicuous and distinctive when in flower, and tends to grow in accessible areas, so it is vulnerable to excessive scientific collecting and to vandalism. Because of its flowers, the plant may be of interest as an ornamental.

C. *Disease or predation.* Not applicable.

D. *The inadequacy of existing regulatory mechanisms. Bonamia grandiflora* is listed as endangered under the Preservation of Native Flora of Florida Act (section 581.185–187, Florida Statutes), which regulates taking, transport, and sale of plants but does not provide habitat protection. The populations in Ocala National Forest are included on the "Regional Forester's Proposed Sensitive List;" species on this list are provided protection and management as outlined in 36 CFR Part 261. Listing under the Act will augment the Forest Service protective measures by providing for a recovery plan and other conservation measures throughout its range.

E. *Other natural or manmade factors affecting its continued existence.* In Hardee, Highlands, Polk, and Orange Counties, *Bonamia grandiflora* is restricted to remnant tracts of scrub. These tracts are surrounded by residential and agricultural areas and are vulnerable to trash dumping, invasion by exotic plants and weeds, and damage from off-road vehicles. *Bonamia* depends on occasional fires (see "Background" section) or equivalent mechanical land disturbance to renew the sunny openings that it inhabits. The Tiger Creek preserve, owned by the Nature Conservancy, will probably develop a prescribed burning program. *Bonamia grandiflora* does not occur within the dense managed sand pine forests of Ocala National Forest. The plant inhabits the edges of such forests, road rights-of-way, and fire lanes. The sites are created and maintained by human activity; therefore, the plant is vulnerable to changes in the management of such areas, which would allow succession to progress. The plant's spotty distribution and small geographic range make it especially susceptible to any adverse management practices.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *Bonamia grandiflora* in determining to propose this rule. Based on this

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evaluation, the preferred action is to list *Bonamia grandiflora* as threatened. The plant has already been extirpated from part of its historic range (Volusia County, Lake County outside the Ocala National Forest, most of western Orange County, and Manatee and Sarasota Counties). In the Ocala National Forest, in Lake and Marion Counties, existing forest management practices and the new Land and Resource Management Plan satisfactorily accommodate the habitat requirements of *Bonamia grandiflora*. However, in the National Forest the plant is effectively confined to manmade open areas, where it is vulnerable to a variety of human activities. Critical habitat is not being proposed for *Bonamia grandiflora* for the reasons described in the next section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Bonamia grandiflora* at this time. Publication of critical habitat descriptions and maps would increase the degree of threat from taking or other human activity. *Bonamia grandiflora* has a large blue "morning glory" type flower and may be of potential horticultural interest. Forest Service personnel at the Forest Supervisor's Office and the regional office were contacted during the preparation of this proposal and informed of the precise locations of this plant. Designation of critical habitat on Forest Service land might increase the vulnerability of *Bonamia grandiflora* to vandalism, collecting, and unintentional trampling by visitors. While collecting is regulated on National Forests, such regulations are difficult to enforce. Therefore, the Service finds that designation of critical habitat for *Bonamia grandiflora* is not prudent at the present time, since such designation can be expected to increase the degree of threat from taking or other human activity.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, (see revision at 51 FR 19926; June 3, 1986). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. All presently known sites for *Bonamia grandiflora* are on private land, except for those in the Ocala National Forest. The Forest Service's present management and its new Land and Resource Management Plan appear to benefit this species; consultation or conferral are not foreseen unless a decline in *Bonamia grandiflora* is observed in the National Forest or unless the Plan is significantly revised.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a service of general trade prohibitions and exceptions that apply to threatened plant species. With respect to *Bonamia grandiflora*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export a threatened plant species, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued. Requests for copies of the regulations on plant and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Bonamia grandiflora;*

(2) The locations of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the range and habitats of this species and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Endangered Species Field Station, Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is David Martin, Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207 (904/791–2580 or FTS 946–2580).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Convolvulaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	*
Convolvulaceae—Morning glory family:						
Bonamia grandiflora	Florida bonamia	U.S.A. (FL)	T		NA	NA
*	*	*	*	*	*	*

Dated: October 17, 1986.

Susan Recce,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–24894 Filed 11–3–86; 8:45 am]

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered and Threatened Status for Two Populations of the Roseate Tern

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine the population of the roseate tern (*Sterna dougallii dougallii*) that nests in northeastern North America to be endangered and to determine the Caribbean populations, including these of the U.S. Virgin Islands, Puerto Rico, the Florida Keys, and Dry Tortugas, to be threatened. This action is being taken because the number of suitable nesting islands for colonies of this species has been greatly reduced by human activity, competition from expanding numbers of large gulls, and predation. The proposed rule would provide protection to nesting populations within the United States jurisdiction. Critical habitat is not being proposed. The Service seeks additional data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by January 5, 1987. Public hearing requests must be received by December 19, 1986.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Masssachusetts 02158. Comments and materials received will be available for public inspection, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Roger L. Hogan at the above address (617/965–5100, extension 316, or FTS 829–9316).

SUPPLEMENTARY INFORMATION:

Background

The roseate tern is a dove-sized coastal bird, and one of several similar-appearing species of terns found in the United States and elsewhere throughout most of the world (American Ornithologists' Union [AOU] 1983). All of these terns are graceful, whitish seabirds with black caps and long forked tails. They are strong fliers that feed mainly on small fish, which they capture by plunging headfirst into the water. They nest on the ground, usually on small islands, in dense colonies of hundreds and sometimes thousands of birds. Often, two or more species share the same nesting areas. Although all of the associated species face similar problems, the roseate tern is particularly vulnerable because its nesting populations in North America and the Caribbean are very small and localized. Unlike certain other terns, it occurs only along marine coasts. Gochfeld (1983) determined a documented world population of this wide-ranging species to be between 20,000 and 30,000 pairs, but estimated that the actual population might be closer to 44,000 pairs, with the largest numbers in the Indian Ocean.

In North America this species can be distinguished from its close relatives by its pale color and mostly black bill and a slight rosy tint on its breast in summer. In winter, the black cap is largely

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replaced with a white forehead. The sexes look alike, but immature birds retain a distinctive plumage for their first year and do not nest until they are two or three years old. Although five subspecies are recognized worldwide, only one, the nominate subspecies (*Sterna d. dougallii*), occurs in the Northern Hemisphere, and there are three small, but widely seperated, breeding populations of that subspecies: northeastern coast of North America, several islands in the Caribbean Sea, and northwestern Europe (AOU 1983). Other former breeding areas have long been vacant, and recent surveys indicate that numbers nesting in the northeastern United States, adjacent Canada, the British Isles, and northwest France have declined sharply (Buckley and Buckley 1981, Nisbet 1980).

The size and trend of the island nesting population of roseate terns in the Caribbean Sea and occasionally the Florida Keys and Dry Tortugas, is less clear due to limited observations in many areas and some confusion between this species and the common tern (*Sterna hirundo*). This population nests primarily in Puerto Rico and the U.S. Virgin Islands, where Van Halewyn and Norton (1984) estimate about 2500 pairs. Sprunt (1984 estimates that 1000 to 2000 pairs nest in small colonies on cays and small islands in the Bahamas. In Florida, a few dozen pairs nest every year among vast numbers of other terns at the Dry Tortugas and about 40 pairs have nested on flat rooftops in Key West in recent years (Clapp and Buckley 1984).

Migrants from the northeastern United States winter primarily in the waters off Trinidad and northern South America from the Pacific Coast of Colombia to eastern Brazil (Nisbet 1984). Wintering grounds of the Caribbean population are still unknown, but may be the same general areas used by terns from the northeastern United States.

Although its nesting range in North America is often listed as extending from Nova Scotia to Virginia or North Carolina, plus the southern tip of Florida, the roseate tern was always most common in the central portion of this range (Massachusetts to Long Island) and in recent years has all but disappeared from the edges of that range (Buckley and Buckley 1981). This species has not nested for many decades in Bermuda (AOU 1983). In 1984, nesting was known to have occurred only in the states of Connecticut, Maine, Massachusetts, New York, and Florida and the provinces of Nova Scotia and Quebec.

The nesting population in the northern United States was greatly reduced by hunting for the military trade in the late 19th century. The population soon recovered when protection was provided and reached a high of about 8500 pairs in the 1930's (Nisbet 1980). Subsequently, it declined to about 4800 pairs in 1952 and reached a low of 2500 pairs in 1977–78 (Erwin and Korschgen 1979). The estimated population has fluctuated in the range of 2500 to 3300 pairs since then (Nisbet 1980, Buckley and Buckley 1981, Kress *et al.* 1983) with the most intensive, complete surveys conducted in recent years. Although numbers of pairs nesting at individual colonies are known to fluctuate from year to year, some of the reported changes in regional populations may be due to census problems. In all northeastern U.S. and Canadian colonies, this species nests among common terns (*Sterna hirundo*), which usually outnumber it. An accurate census requires a careful count of nests. The nests and eggs of the two species are similar, but roseates tend to conceal their nests under vegetation, boulders, boards, etc., making a complete nest count difficult. Also, young birds nesting for the first time tend to nest substantially later than old birds and could be missed on a single census (Spendelow 1982).

At least 29 major sites used by roseate terns have been lost since 1920. Some of these colonies moved because of repeated mammal predation, but nearly half of the sites were abandoned because of competition and predation from expanding populations of gulls (Nibset 1980).

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the population of the roseate tern that nests in northeastern North America should be classified as endangered and the Caribbean nesting and wintering populations as threatened. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to roseate terns in the Western Hemisphere are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Almost all important colonies of roseate terns are and have been on small islands, often located at ends or breaks in barrier islands. Nesting habitat for the northeastern North America population has been greatly reduced by human development of barrier islands. Some roseate terns have attempted to nest in the salt marshes but with almost no success (Buckley and Buckley 1981).

In southern New England, many traditional nesting sites were abandoned during the 1940's and 1950's when herring (*Larus argentatus*) and great black-backed (*Larus marinus*) gulls rapidly expanded their nesting ranges southward into that region. These large and aggressive gulls gradually took over most of the outer islands that were preferred by nesting terms. The gulls select nesting sites and initiate nesting in early spring, before the terns return from wintering areas. After a few years, when the nesting gulls reach a certain density, the terns are forced to seek other sites. In several instances islands close to shore, or even peninsulas, have been used, but various predators caused the terns to abandon those sites within a few years.

Many of the islands used by nesting terns in recent years were long-time sites of lighthouses with occupied residences. The presence of humans usually discouraged nesting by gulls, but not terns. However, as the lights have been automated and human occupation terminated, the gulls have gradually taken over the islands. At one such site in Massachusetts nesting gulls had displaced all terns by 1966. A gull removal program was implemented and the island now supports nearly 60% of all nesting roseate terns in North America as well as large numbers of common terns. Other islands with formerly manned lighthouses or forts now support large tern colonies, but only because nesting gulls have been kept out. In the Caribbean area, almost all of the recorded breeding sites of roseate terns have been on very small islets, usually located off small or medium-sized islands. Although these islets are too small for development, they regularly visited by "eggers" who collect large quantities of eggs for food (Van Halewyn and Norton 1984).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The roseate tern, as most other terns and many other colonial nesting waterbirds, suffered a drastic population decline in the United States in the late 19th century due to hunting for the millinery trade. However, under protective laws (Migratory Bird Treaty Act, 16 U.S.C. 703–711) and changing fashions in the early 20th century, the species staged a rapid comeback. Most existing colonies are on publicly-owned lands and receive some protection.

Some of the larger colonies are the subject of intensive, long-term research that involves nest-trapping, banding, measurements of eggs and young, and other activities that can be disruptive. However, high productivity in those colonies suggest that regular presence by humans conducting studies may actually be beneficial by deterring predation from mammals and birds as well as possible human vandalism. The research activity also habituates the birds to human presence, resulting in less harm from casual human visitation (Nisbet 1981b).

A major cause of the recent decline may be the trapping and netting of wintering terns for human food along the northeastern coast of South Ameirca (Nisbet 1984). In the Virgin Islands, and elsewhere in the Caribbean, the harvest of eggs for food is a common although illegal, practice.

C. *Disease or predation.* Disease has not been identified as a significant problem in this species in North America, but terns of other species have succumbed to avian cholera, botulism and paralytic shellfish poisoning. An arbovirus was collected from dead roseate terns at a nesting colony in the Seychelles and probably was transmitted by ticks (Converse *et al.* 1976).

Adult terns are relatively long-lived birds and not highly vulnerable to predators other than humans. On the other hand, eggs and young are vulnerable and predation may completely wipe out production in a given colony (Nisbet 1981a).

In daylight hours roseate terns, as well as the more agressive common terns with which they nest, are fairly successful in deterring avian predators by harassment. Nocturnal predators are more of a problem because they may cause the entire colony to desert eggs and young and not return until dawn. Although the predator may destroy only a few nests, other eggs and young are exposed to chilling, resulting in delayed hatching of eggs and, under extreme weather conditions, major losses of eggs and young. In some locations, delay at the hatching stage my result in losses of young to ants (Nisbet 1981a).

The main reason terns are only successful on small islands for nesting is the absence of predatory mammals such as foxes, skunks, and brown rats. If such predators do gain access, the terns soon abandon the site. Predatory birds, such as the nocturnal great-horned owl (*Bubo virginianus*) and black-crowned night-heron (*Nycticorax nyctricorax*), pose a greater problem because they can fly to the islands and attack in darkness when the terns are at a distinct disadvantage. Sometimes individuals of these two predators specialize in preying on terns. The owls prey on adult terns or nearly-grown young; the night-herons on eggs and recently hatched young. When terns nested on remote outer islands, they had less contact with these predators. However, as gulls took over the preferred remote nesting islands, the terns were restricted to islands closer to the mainland.

In the Caribbean area, populations are declining primarily as a result of disturbance and predation by man and introduced animals, including the brown rat and mongoose (Van Halewyn and Norton 1984, Sprunt 1984).

D. *The inadequacy of existing regulatory mechanisms.* The Migratory Bird Treaty Act protects the roseate tern and its parts, nests, and eggs from taking and trade while it is under United States jurisdiction, but not when in the Caribbean or South American wintering grounds. The roseate tern is a state-listed species in Florida and Massachusetts (threatened) and in New York and Connecticut (endangered), which provides some protection from take and transport, but these States' laws provide no protection of the habitat itself. Although its current major nesting islands in the Northeast are somewhat protected, pressure from human encroachment and nesting gulls limits any opportunity for expansion or shift to new or former sites. The current protection of colonies is almost entirely by volunteer private interests that are self-funded and without long-term institutional commitment. The Endangered Species Act offers additional possibilities for increased protection and management of the nesting habitat for the bird.

E. *Other natural or manmade factors affecting its continued existence.* As previously noted, the displacement of roseate terns from their traditional colonies by gulls has been the major factor in reducing the number of nesting colonies in northeastern North America, if not in reducing the population as well. The increase of gulls is primarily attributed to an increased food base provided by human garbage at landfills. Survival of young gulls in the critical first winter is greatly enhanced by the abundant food source. In order to make more nesting habitat available for the terns, it may be necessary to reduce or eliminate gull populations at some locations.

The roseate tern is a specialist feeder on small schooling marine fish that it captures by diving into the water. In New England, American sandlance *(Ammodytes americanus)* have comprised 80–100% of the fish eaten by adults or fed to young (Nisbet 1981a). This fish has become extremely plentiful in recent years and may account for relatively high reproductive success among the terns. In other places the terns feed on other small fish. They may fly up to 10 kilometers (6 miles) from nesting areas to favored feeding areas *(ibid).* However, if conditions that now sustain the high number of sandlances in the major tern area change and fish populations dwindle, the roseate terns may become subject to considerable stress.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the population of roseate terns that nest in northeastern North America as endangered. The small, reduced population that nests within a constricted range, at only a few sites, and with nearly 60% of the population confined to one small island off southeastern Massachusetts, warrants endangered rather than threatened status. If gulls are allowed to take over the few major nesting islands, this tern will be in danger of becoming extirpated from the contiguous United States.

An additional preferred action is to list as threatened the nesting population of the Caribbean (including the Virgin Islands, Puerto Rico [Culebra], and Florida [Dry Tortugas and Florida Keys]) and all wintering birds in the Western Hemisphere. On the wintering grounds in this Hemisphere, the Northeastern and Caribbean nesting populations are very probably uniformly mixed. Protection can be extended to these terns while wintering to prevent their being imported into the U.S., although imports are not now taking place, and none are expected. Threatened status would, therefore, cover all roseate terns in the Caribbean, regardless of their origins.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. This determination has been made since it is felt that such a designation would not be beneficial to the species (50 CFR 424.12). Terns can be disturbed on nesting islands by unknowing members of the public who might be attracted to the colony location by the publication of maps and other information. Most existing nesting colonies of the roseate tern in U.S. jurisdiction are on lands that are owned and protected by Federal, State or local government agencies, who have already been notified of the terns' locations. No other notification benefits would accrue.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act includes recognition, recovery actions, requirements for Federal protection and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State (incl. Puerto Rico and Virgin Islands), and local governments and private agencies, groups and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and (see revision at 51 FR 19926, June 3, 1986). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No Federal involvement is expected or known that is likely to adversely affect this species and no critical habitat is proposed to be designated.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general trade prohibitions and exceptions that apply to all endangered or threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdictions of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and state conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered or threatened wildlife species under certain circumstancs. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered, if such relief were not otherwise available. Because the roseate tern already is protected from trade under the Migratory Bird Treaty Act, hardship permits are not expected.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the roseate tern (*Sterna dougallii dougallii*) in the Western Hemisphere;

(2) The location of any additional colonies of the roseate tern in the Western Hemisphere and the reasons why any habitat should or could not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species;

(4) Current or planned activities in the subject area and their possible impacts on the roseate tern.

Final promulgation of the regulation on *Sterna dougallii dougallii* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

National Environmental Policy Act

The Fish and Wildlife service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Authors

The primary authors of this proposed rule are Ralph Andrews and Roger Hogan, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158 (617/965–5100 or FTS 829–9316/829–9378).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under BIRDS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Birds	*	*	*	*	*	*	
Tern, roseate	*Sterna dougallii dougallii*	Tropical and temperate oceans in Atlantic Basin.	U.S.A. (Atlantic coast south to NC), Canada (NS, QU), Bermuda.	E		NA	NA
Do	do	do	Western Hemisphere and adjacent oceans and seas (incl. USA [PR, VI, FL]) where not listed as endangered.	T		NA	NA
*	*	*	*	*	*	*	

Dated: October 17, 1986.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–24888 Filed 11–3–86; 8:45 am]

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Sabal miamiensis (Miami Palmetto)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine a Florida palm, *Sabal miamiensis* (Miami palmetto), to be an endangered species pursuant to the Endangered Species Act of 1973, as amended (Act). This small, trunkless palmetto is currently known from only two sites in northern Dade County. One site is in a Dade County park and the other is privately owned. Fewer than 11 plants are known from the wild; 40–50 plants are in cultivation at a botanical garden in Miami. The species is threatened by the continued urbanization of the Miami area. This rule will implement the Federal protection and recovery provisions afforded by the Act for *Sabal miaminesis*.

DATES: Comments from all interested parties must be received by January 5, 1987. Public hearing requests must be received by December 19, 1986.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: David J. Wesley, Endangered Species Field Supervisor, at the above address (telephone: 904/791–2580 or FTS 946–2580).

SUPPLEMENTARY INFORMATION:

Background

The Miami palmetto is a member of the palm family (Arecaceae) that was first collected in Coconut Grove, Dade County, Florida, by J.K. Small and G.V. Nash in 1901. Small subsequently collected more specimens of this large-fruited dwarf palmetto at Miami and west of Kendal in Dade County, and at Fort Lauderdale in Broward County (Zona 1983). Small (1903) named these plants *Sabal megacarpa* (Chapman) Small, basing the name on *Sabal adansonii* var.? *megacarpa* Chapman. Later, Small (1933) wrote that "the exact position in the genus of *S. adansonii*? *megacarpa* . . . is uncertain . . . We have not been able to decide whether it

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is conspecific with *S. entonia* or merely a juvenile condition of *S. palmetto*."

Zona (1983) conducted a taxonomic investigation into the cabbage palm (*Sabal palmetto*) and its close relative, the scrub palmetto (*Sabal etonia*) in Florida. He concluded that these two palmettos are distinct species, and that Small's palmetto from southeastern Florida is in most respects intermediate between the two widespread species, but is distinct from them in its very large fruits and seeds, and in its restriction to Miami rock pinelands. Consequently, he recognized these plants as a separate species, as Small had in 1903. However, the name *Sabal megacarpa* is a synonym for *Sabal etonia*, so Zona (1983) proposed the new name, *Sabal miamiensis*, for the species.

Sabal miamiensis has no aboveground stem. Its fan-shaped leaves have petioles 40–60 centimeters (16–24 inches) long and blade segments 50–76 centimeters (20–30 inches) long. Each plant has 3–6 yellow-green leaves (similar to *Sabal etonia*). The numerous small flowers are borne in a loose, horizontal to arching panicle with three orders of branching (similar to *Sabal palmetto*). The fruits are 15–19 millimeters (0.6–0.8 inches) in diameter (longer than either *Sabal palmetto* or *S. etonia*), and the seeds are 10–11 millimeters (roughly 0.4 inches) in diameter (greater than *Sabal palmetto* or *S. entonioa*).

The habitat of this plant has almost entirely been urbanized. Only two populations are presently known, one in a Dade county park where no more than eight individuals inhabit a sandy area with evergreen scrub oaks (Roger Sanders, Fairchild Tropical Garden, pers. comm., April 22, 1986). The second site, also in Dade County, had many palmettos but is now being converted to a housing development. Herbarium specimens show that *Sabal miamiensis* was found in the pine rocklands with south Florida slash pine and dwarfed cabbage palms (Zona 1985), but the Miami palmetto was very likely restricted to sandy sites in the pinelands (R. Sanders, pers. comm., 1986), like the federally listed endangered species, *Polygala smallii*, which has a similar geographic range (Krauss 1980). Specimens collected by George Avery (Zona 1985) and Avery's field notes (R. Sanders, pers. comm., 1986) indicate that *Sabal miamiensis* is very rare. Avery collected extensively throughout south Florida, including Everglades National Park, but collected or noted the plant at only three sites. One of these sites has been destroyed.

Dr. W. Judd (associate professor, University of Florida) verbally notified the Service of the status of the Miami palmetto in early 1985. On May 30, 1985, the Service distributed to botanists and agencies in Florida a list of endangered, threatened, and candidate plants that contained several potential new candidates for listing, including the "Miami palmetto," and solicited comments from the recipients. Dr. J. Popenoe (Director, Fairchild Tropical Garden) responded that the plant could be made a category I candidate (a species for which sufficient biological information is available to support listing) when a description of the species appeared in print. Judd responded in writing that the palemtto was "extremely endangered" and provided additional biological information. Based on these comments, on additional information provided by Dr. R. Sanders (pers. comm., 1985, 1986), and on the published description of *Sabal miamiensis* by Zona (1985), the Service is proposing to list the Miami palmetto as endangered.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Sabal miamiensis* Zona (Miami palmetto) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* In the early twentieth century, *Sabal miamiensis* was collected in pinelands of the south Florida limestone ridge from Fort Lauderdale (Broward County) south to Miami and west of Kendal (Zona 1985). Conversion of pinelands to residential and commercial uses began in the early twentieth century and accelerated after 1930. Herndon (1984) estimated that 98 percent of the Dade County pinelands outside of Everglades National Park had been destroyed by 1984. *Sabal miamiensis* is presently known from only two sites: a County park in the northern part of Dade County, where six to eight plants are known, and along a fence at the edge of a construction site, also Dade County, where only three plants survive out of what had been a sizeable population (R. Sanders, pers. comm., 1986). A nearby site where George Avery collected the palmetto is now the Bayshore campus of Florida International University, and the original vegetation has been destroyed. Other collection sites have also been lost to urbanization.

B. *Overutilization for commercial, recreational, scientific, or educational purposes. Sabal miaminesis* is so limited in distribution and population size that scientific or other collecting could cause the species to become extinct in the wild. Palms are commonly used landscape plants. Over-collecting and vandalism could become problems if the locations of the plants were to be publicized.

C. *Disease or predation.* Not applicable to *Sabal miamiensis.*

D. *The inadequacy of existing regulatory mechanisms.* At the present time, no State or Federal laws protect *Sabal miamiensis.*

E. *Other natural or manmade factors affecting its continued existence.* Because only 9 to 11 plants of *Sabal miamiensis* are known to exist in the wild, and 3 of these are on a site that will soon be destroyed, the species is highly vulnerable to any disturbance or natural disaster.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Sabal miamiensis* as endangered. Only a few individuals are known to exist at two sites. Nearly all of the original habitat of this species has been destroyed, so there are few sites within its historic range where new populations could be established. The Service judges that this species is in danger of extinction in the remnants of its former range. Critical habitat is not proposed for *Sabal miamiensis* for reasons discussed in the next section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Sabal miamiensis* at this time. This species inhabits only two sites, both in urban Miami, where the plants could easily be collected and/or vandalized. Palms are also commonly desired plants for landscape purposes. Publication of critical habitat maps in the **Federal Register** would increase the likelihood of such activities. The Miami palmetto occurs only on land owned by private individuals or by local governments. All involved parties and landowners will be notified of the location and importance of protecting this species' habitat. Therefore, designation of critical habitat would be of no benefit to this species. For these reasons, the Service finds that designating critical habitat for *Sabal miamiensis* is not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against collecting are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementating this interagency cooperation provision of the Act are codified at 50 CFR Part 402 (see revision at 51 FR 19926; June 3, 1986). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Since the presently known sites for *Sabal miamiensis* are on land owned by private individuals or local governments, there will be no effect from the above requirement unless the private landowners or local governments require some Federal action for their activities, such as funding or issuance of permits.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export an endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since *Sabal miamiensis* is extremely rare in both the wild and cultivation. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Sabal miamiensis;*

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the range and habitat of this species and their possible impacts.

Final promulgation of the regulation on *Sabal miamiensis* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the national Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 29244).

References Cited

Herdon, A. 1984. Dade County pinelands. Palmetto 4(2):3–11.

Krauss, P. Status report on *Polygala smallii.* Unpublished report prepared for U.S. Fish and Wildlife Service, Jacksonville, FL. 7 pp. + Appendices.

Small, J.K. 1903. Flora of the southeastern United States. Published by the author. New York. 1370 pp.

Small, J.K. 1933. Manual of the southeastern flora. Univ. of North Carolina Press, Chapel Hill. xxii + 1554 pp.

Zona, S. 1983. A taxonomic study of the *Sabel palmetto* complex (Palmae) in Florida. M.S. thesis, Univ. of Florida, Gainesville. viii + 88 pp.

Author

The primary author of this proposed rule is David Martin, Jacksonville Endangered Species Field Station (see address section).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

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Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Arecaceae, to the list of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
* * *		*	*	*		
Arecaceae—Palm family:						
Sabal miamiensis	Miami palmetto	USA (FL)	E		NA	NA
* * *		*	*	*		

Dated: October 17, 1986.

Susan Recce,

Deputy Assistant Secretary for Fish and Wildlife and Parks

[FR Doc. 86–24895 Filed 11–3–86; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 51, No. 213
Tuesday, November 4, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Members of Performance Review Board

AGENCY: ACTION.

ACTION: Revision of list of performance review board positions.

SUMMARY: ACTION publishes the revised list of positions which comprise the Performance Review Board established by ACTION under the Civil Service Reform Act.

FOR FURTHER INFORMATION CONTACT: Thomas R. Hyland, Acting Director of Personnel ACTION, 806 Connecticut Avenue NW., Washington, DC 20525 (202) 634-9230.

SUPPLEMENTARY INFORMATION: The Civil Service Reform Act of 1978 (CSRA), which created the Senior Executive Service (SES), requires that each agency establish one or more performance review boards to review and evaluate the initial appraisal of a senior executive's performance by the supervisor and to make recommendations to the appointing authority concerning the performance of the senior executive.

The positions listed below will serve as members on the ACTION Performance Review Board:

1. Deputy Director, ACTION, Chairman
2. Associate Director, Domestic and Anti-Poverty Operations, ACTION
3. Associate Director, Office of Management and Budget, ACTION
4. Assistant Director for Financial Management, ACTION
5. Director, Office of International Energy Analysis, Department of Energy
6. General Counsel, ACTION
7. Director, Division of Program Management and Assessment, Department of Energy

Issued in Washington, DC on October 6, 1986.

Donna M. Alvarado,
Director, ACTION.

[FR Doc. 86-24887 Filed 11-3-86; 8:45 am]

BILLING CODE 6050-28-M

Schedule for Awarding Senior Executive Service Performance Awards (Bonuses)

AGENCY: ACTION.

ACTION: Notice.

SUMMARY: Notice is hereby given to the schedule for awarding Senior Executive Service bonuses.

FOR FURTHER INFORMATION CONTACT: Thomas R. Hyland, Acting Director of Personnel, ACTION, 806 Connecticut Avenue, NW., Washington, DC 20525 (202) 634-9230.

SUPPLEMENTARY INFORMATION: Office of Personnel Management Guidelines require that each agency publish a notice in the Federal Register of the agency's schedule for awarding Senior Executive Service bonuses at least 14 days prior to the date on which the awards will be paid.

Schedule for Awarding Senior Executive Service bonuses: ACTION intends to award Senior Executive Service bonuses for the 1985-1986 rating cycle. Payouts will occur before December 31, 1986. Issued in Washington, DC on October 6, 1986.

Donna M. Alvarado,
Director, ACTION.

[FR Doc. 86-24986 Filed 11-3-86; 8:45 am]

BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Advisory Committee Meeting

Pursuant to provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), a notice is hereby given of the following committee meeting.

Name: National Commission on Dairy Policy.

Time and date: 9:00 a.m., November 20, 1986.

Place: Room 104-A, Administration Building, United States Department of Agriculture, Independence Avenue SW., Washington, DC 20250.

Status: Open.

Matters To Be Considered: The meeting is expected to consider organizational business including the election of a chairperson and other officers of the Commission; and discussion of matters including rules for Commission procedures, the placement of offices and staff and the financing of Commission activities.

Written Statements May be Filed Before or After the Meeting With: Contact person named below.

Contact Person for More Information: Mr. Floyd Gaibler, Assistant to the Secretary, Office of the Secretary, United States Department of Agriculture, Washington, DC 20250. (202) 447-3631.

William T. Manley,
Deputy Administrator, Marketing Programs, Agricultural Marketing Service, U.S. Department of Agriculture.

October 29, 1986.

[FR Doc. 86-24672 Filed 11-3-86; 8:45 am]

BILLING CODE 3410-02-M

Forest Service

Herbicide Use for Weed Control; Deerlodge National Forest, Butte, Montana; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement for a proposal to use herbicides to control noxious weeds on the Deerlodge National Forest.

A range of alternatives will be considered including alternate methods of weed control and a no action alternative.

Federal, state, and local agencies; other individuals; and organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. The process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous envionmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

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Frank Salomonsen, Forest Supervisor, Deerlodge National Forest, Butte, Montana is the responsible official.

The analysis is expected to take about five months. The draft environmental impact statement should be available for public review by January, 1987. The final environmental impact statement is scheduled to be completed by March, 1987.

Written comments and suggestions concerning the analysis should be sent to Frank Salomonsen, Deerlodge National Forest, Butte, Montana 59701, by December 8, 1986.

Questions about the proposed action and environmental impact statement should be directed to Dave Ruppert, Soil Scientist, Deerlodge National Forest, phone 406-496-3368.

Dated: October 28, 1986.

Frank Salomonsen,

Forest Supervisor.

[FR Doc. 86-24915 Filed 11-3-86; 8:45 am]

BILLING CODE 3410-11-M

Land and Resource Management Plan; Eldorado National Forest, El Dorado, Placer, Amador, and Alpine Counties, CA; Environmental Impact Statement; Extension of Comment Period

The public comment period for the Eldorado National Forest proposed Land and Resource Management Plan and Draft Environmental Impact Statement is being extended. Comments must now be postmarked by January 10, 1987.

This amends the Notice of Availability published in the **Federal Register** of August 29, 1986 (51 FR 30910).

The former due date was November 27, 1986

For further information contact: Gary Bilyeu, Forest Planning Officer, Eldorado National Forest, 100 Forni Road, Placerville, California 95667; telephone (916) 622-5061.

Dated: October 27, 1986.

Jerald N. Hutchins,

Forest Supervisor.

[FR Doc. 86-24864 Filed 11-3-86; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

National Bureau of Standards

[Docket No. 60116-6175]

Federal Information Processing Standards Publication 125; MUMPS; Approval

AGENCY: National Bureau of Standards, Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce (Secretary) has approved the programming language MUMPS as a Federal Information Processing Standard (FIPS). This standard adopts the American National Standard for MUMPS, ANSI/MDC X11.1-1984, and will be published as FIPS Publication 125. This FIPS is added to the family of FIPS programming languages, which includes Ada, Minimal BASIC, COBOL, FORTRAN, and Pascal.

SUMMARY: On March 28, 1986, notice was published in the **Federal Register** (51 FR 9237) that a FIPS for MUMPS was being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to this standard were reviewed by NBS. On the basis of this review, NBS recommended that the Secretary approve the standard as a FIPS and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC 20230.

This approved FIPS contains two portions: (1) An announcement portion which provides information concerning the applicability, implementation, and maintenance of the FIPS, and (2) a specifications portion which deals with the technical requirements of the FIPS. Only the announcement portion of the standard is provided with this notice.

ADDRESS: Interested parties may purchase copies of this FIPS, including the technical specifications portion, from the National Technical Information Service (NTIS). Specific ordering information from NTIS is set out in the Where to Obtain Copies section of the announcement portion of the FIPS.

FOR FURTHER INFORMATION CONTACT: Ms. Mabel Vickers, Center for Programming Science and Technology, Institute for Computer Science and Technology, National Bureau of Standards, Gaithersburg, MD 20899, (301) 921-2431.

Dated: October 28, 1986.

Ernest Ambler,

Director.

Federal Information Processing Standards Publication 125

Announcing the Standard for MUMPS

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Bureau of Standards pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89-306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations (CFR).

1. *Name of Standard.* MUMPS (FIPS PUB 125).

2. *Category of Standard.* Software Standard, Programming Languages.

3. *Explanation.* This publication announces the adoption of American National Standard for Information Processing Systems Programming Language MUMPS, ANSI/MDC X11.1-1984, as a Federal Information Processing Standard (FIPS). The American National Standard specifies the form and meaning of program units writtin in MUMPS. The purpose of the standard is to promote portability of MUMPS programs for use on a variety of data processing systems. The standard is used by implementors as the reference authority in developing language processors; and by other computer professionals who need to know the precise syntactic and semantic rules of the language.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

6. *Cross Index.* American National Standard for Information Systems Programming Language MUMPS, ANSI/MDC X11.1-1984.

7. *Related Documents.*[1]

a. Federal Information Resources Management Regulation 201-8.1, Federal ADP and Telecommunications Standards.

b. Federal Information Processing Standards (FIPS) Publication 29, Interpretation Procedures for Federal Information Processing Standard Programming Languages.

c. NBS Special Publication 500-117, Selection and Use of General-Purpose Programming Languages.

8. *Objectives.* Federal standards for high level programming languages

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[1] Refers to most recent revision of FIPS PUBS.

permit Federal departments and agencies to exercise more effective control over the production, management, and use of the Government's information resources. The primary objectives of Federal programming language standards are:

—To encourage more effective utilization and management of programmers by insuring that programming skills acquired on one job are transportable to other jobs, thereby reducing the cost of programmer re-training;

—To reduce the cost of program development by achieving the increased programmer productivity that is inherent in the use of high level programming languages;

—To reduce the overall software costs by making it easier and less expensive to maintain programs and to transfer programs among different computer systems, including replacement systems; and

—To protect the existing software assets of the Federal Government by insuring to the maximal feasible extent that Federal programming language standards are technically sound and that subsequent revisions are compatible with the installed base.

Government-wide attainment of the above objective depends upon the widespread availability and use of comprehensive and precise standard language specifications.

9. *Applicability.*

a. Federal standards for high level programming languages should be used for computer applications and programs that are either developed or acquired for government use. FIPS MUMPS is one of the high level programming language standards provided for use by all Federal departments and agencies. FIPS MUMPS is suited for the following applications:

—Those involving the creation and manipulation of string-oriented or text-oriented, hierarchically organized collections of data;

—Those requiring interactive data management;

—Those traditionally, but not exclusively, in medical, health-service and related administrative systems.

b. The use of FIPS high level programming languages is strongly recommended when one or more of the following situations exist:

—It is anticipated that the life of the program will be longer than the life of the presently utilized equipment.

—The application or program is under constant review for updating of the specifications, and changes may result frequently.

—The application is being designed and programmed centrally for a decentralized system that employs computers of different makes, models and configurations.

—The program will or might be run on equipment other than that for which the program is initially written.

—The program is to be understood and maintained by programmers other than the original ones.

—The advantages of improved program design, debugging, documentation and intelligibility can be obtained through the use of this high level language regardless of interchange potential.

—The program is or is likely to be used by organizations outside the Federal Government (i.e., State and local governments, and others).

c. Nonstandard language features should be used only when the needed operation or function cannot reasonably be implemented with the standard features alone. Although nonstandard language features can be very useful, it should be recognized that their use may make the interchange of programs and future conversion to a revised standard or replacement processor more difficult and costly.

d. It is recognized that programmatic requirements may be more economically and efficiently satisfied through the use of report generation, database management, or text processing languages. The use of any facility should be considered in the context of system life, system cost, data integrity, and the potential for data sharing.

e. Programmatic requirements may be also more economically and efficiently satisfied by the use of automatic generators. However, if the final output of a program is a MUMPS source program, then the resulting program should conform to the conditions and specifications of FIPS MUMPS.

10. *Specifications.* FIPS MUMPS specifications are the language specifications contained in American National Standard for Information Systems Programming Language MUMPS, ANSI/MDC X11.1–1984.

ANSI/MDC X11.1–1984 specifies the form of a program writtin in MUMPS, the formats of data for input and output, and semantic rules for program and data interpretation. The standard does not specify the results when the rules of the standard fail to establish an interpretation, the means of supervisory control of programs, or the means of transforming programs for processing.

11. Implementation. The implementation of FIPS MUMPS involves three areas of consideration: acquisition of MUMPS processors, interpretation of FIPS MUMPS, and validation of MUMPS processors.

11.1 *Acquisition of MUMPS Processors.* This publication is effective May 1, 1987. MUMPS processors acquired for Federal use after this date should implement FIPS MUMPS. Conformance to FIPS MUMPS should be considered whether MUMPS processors are developed internally, acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services.

A transition period provides time for industry to produce MUMPS processors conforming to the standard. The transition period begins on the effective date and continues for one (1) year thereafter. The provisions of this publication apply to orders placed after the effective date; however, a MUMPS processor conforming to FLIPS MUMPS, if available, may be acquired for use prior to the effective date. If a conforming MUMPS processor is not available, a MUMPS processor not conforming to FIPS MUMPS may be acquired for interim use during the transition period.

11.2 *Interpretation of FIPS MUMPS.* NBS provides for the resolution of questions regarding FIPS MUMPS specifications and requirements, and issues official interpretations as needed. All questions about the interpretation of FIPS MUMPS should be addressed to: Director, Institute for Computer Science and Technology, Attn: MUMPS Interpretation, National Bureau of Standards, Gaithersburg, MD 20899.

11.3 *Validation of MUMPS Processors.* The National Bureau of Standards is investigating methods for providing validation services for FIPS MUMPS. For more information contact: Director, Institute for Computer Science and Technology, Attn: FIPS MUMPS Validation, National Bureau of Standards, Gaithersburg, MD 20899.

12. *Where to Obtain Copies.* Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 125 (FIPSPUB 125), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 24860 Filed 11–3–86; 8:45 am]

BILLING CODE 3510-CN-M

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National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permits; Dr. Louis M. Herman [P166C]

Notice is hereby give that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217–222).

1. Applicant:

a. Name: Dr. Louis M. Herman.

b. Address: Kewalo Basin Marine Mammal Laboratory, University of Hawaii at Manoa, 1129 Ala Moana Blvd., Honolulu, HI 96814.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals: Humpback whales (*Megaptera novaeangliae*), 400 per year.

4. Type of Take: Harassment.

5. Location of Activity: All Regions of the North Pacific.

6. Period of Activity: 5 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Services.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805 Washington, DC.;
Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415; and
Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115.

Dated: October 27, 1986.

Henry R. Beasley,

Director, Office of International Fisheries National Marine Fisheries Service.

[FR Doc. 86–24884 Filed 11–3–86; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Requesting Public Comment on Bilateral Textile Consultations With the Government of the People's Republic of China Concerning Cotton Textile Products in Category 369 pt. (Handbags)

October 29, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 4, 1986. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

On August 28, 1986, pursuant to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China, the Government of the United States requested consultations concerning imports into the United States of cotton handbags in Category 369 pt. (only T.S.U.S.A. numbers 706.3640 and 706.4106), produced or manufactured in China and exported to the United States.

A summary market statement concerning this part category follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607, December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

Anyone wishing to comment or provide data on information regarding the treatment of this part category under the agreement with the People's Republic of China, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in these categories, is invited to submit such comments or information in ten copies to Mr. William H. Houston III, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Pursuant to the terms of the bilateral agreement, the People's Republic of China is obligated under the consultation provision to limit its exports to the United States of cotton handbags in Category 369 pt. during the ninety-day period which began on August 28, 1986 and extends through November 26, 1986 to 1,636,267 pounds.

The People's Republic of China is also obligated under the bilateral agreement, if no mutually satisfactory solution is reached during consultations, to limit its exports to the United States during the twelve months following the ninety-day consultation period (November 27, 1986–November 26, 1987) to 5,283,545 pounds.

The United States Government has decided, pending a mutually satisfactory solution, to control imports of textile products in Category 369 pt. exported during the ninety-day period at the level described above. The United States remains committed to finding a solution concerning this part category. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register**.

In the event the limit established for Category 369 pt. for the ninety-day period is exceeded, such excess amounts, if allowed to enter, shall be charged to the level defined in the agreement for the subsequent twelve-month period.

SUPPLEMENTARY INFORMATION: On December 30, 1985 a letter to the Commissioner of Customs was published in the **Federal Register** (50 FR 53182) from the Chairman of the Committee for the Implementation of Textile Agreements which established restraint limits for certain categories of cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during 1986. The notice which preceded that letter referred to the consultation mechanism which applies to categories of textile products under the bilateral agreement, such as Category 369 pt., which are not subject to specific ceilings and for which levels may be established during the year. In the letter to the Commissioner of Customs which follows this notice a ninety-day level is established for handbags in Category 369 pt.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Category 369 Pt.—Cotton Handbags From China

August 1986.

Summary and Conclusions

U.S. imports of Category 369—Cotton Handbags—from China during the year-ending June 1986 were 4.7 million pounds, 46 percent above the 3.2 million pounds imported a year earlier. Imports for the first six months of 1986, at 2.95 million pounds, were up 37 percent from the same period in 1985. China was the second largest supplier, accounting for 38 percent of the January–June 1986 imports.

The U.S. market for cotton handbags has been disrupted by imports. China's position as a major supplier of these handbags makes it a major contributor to the U.S. market disruption.

Production and Market Share

U.S. production of cotton handbags continues to decline. Production in 1984 declined 10 percent from its 1983 level and experienced an additional 11 percent decline in 1985.

The U.S. producers' share of the market for domestically produced and imported cotton handbags dropped from 45 percent in 1983 to 36 percent in 1984. In 1985, the domestic producer provided 27 percent of the market.

Imports and Import Penetration

U.S. imports of Category 369—Cotton Handbags from all sources increased 40 percent in 1985 to a record level 11.2 million pounds. Imports for the first six months of 1986 were 7.7 million pounds, 17 percent above the same period of the 1985 level of 6.6 million pounds.

The ratio of imports to domestic production more than doubled increasing from 120.0 percent in 1983 to 276.5 percent in 1985.

Duty-Paid Values and U.S. Producers' Prices

Approximately 95 percent of Category 369—Cotton Handbag imports from China during January–June 1986 entered under TSUSA No. 706.3640—cotton handbags not of pile or tufted construction. The duty-paid landed values of these handbags are below the U.S. producers' price for comparable handbags.

October 29, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on November 4, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 369 pt.,[1] produced or manufactured in the People's Republic of China and exported during the ninety-day period which began on August 28, 1986 and extends through November 26, 1986 in excess of 1,636,287 pounds.[2]

Textile products in Category 369 pt., which have been exported to the United States prior to August 28, 1986 shall not be subject to this directive.

Textile products in Category 369 pt., which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448 (b) or 1484 (a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–24861 Filed 11–3–86; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of an Import Limit for Certain Cotton Textiles Produced or Manufactured in the Arab Republic of Egypt

October 30, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 5, 1986. For further information contact Kathy Davis, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

On May 6, 1986 a notice was published in the **Federal Register** (51 FR 16733), which announced an import restraint limit for Category 313 (cotton sheeting), among others, produced or manufactured in Egypt and exported during the current agreement year which began on January 1, 1986 and extends through December 31, 1986. The Bilateral Cotton Textile Agreement of December 7 and 28, 1977, as amended and extended, between the Governments of the United States and the Arab Republic of Egypt, under the terms of which this limit was established, also includes provision for the carryover of shortfalls from the previous agreement year in certain categories (carryover). Under the foregoing provision of the bilateral agreement and at the request of the Government of the Arab Republic of Egypt, the limit established for Category 313 is being increased by carryover for goods exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14,

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[1] In Category 369, only TSUSA numbers 706.3640 and 706.4106.

[2] The limit has not been adjusted to account for any imports exported after August 27, 1986.

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1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States annotated (1986).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

October 30, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on April 30, 1986 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton textile products, produced or manufactured in the Arab Republic of Egypt and exported during 1986.

Effective on November 5, 1986, the directive of April 30, 1986 is hereby further amended to adjust the previously established limit for cotton textiles in Category 313, as provided under the terms of the bilateral agreement of December 7 and 28, 1977, as amended and extended:[1]

Category	Adjusted 1986 limit [1]
313	15,737,371 square yards.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1985.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-24891 Filed 11-3-86; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

October 30, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 30, 1986. For further information contact Kathy Davis, International Trade Specialist, Office of Textile and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On December 27, 1985, April 30, 1986 and June 9, 1986 notices were published in the **Federal Register** (50 FR 52988, 51 FR 16094, 51 FR 20875) establishing specific limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986. The bilateral agreement of November 18, 1982, as amended, provides for percentage increases in certain categories during an agreement year for swing and shift, provided corresponding reductions in equivalent square yards, are made in other specific limits or sublimits during the same agreement year. Pursuant to the terms of the bilateral agreement, the import restraint limits established for Categories 310/318, 313–315, 319, 320, 336, 338/339, 340–342, 345, 347/348, 353/354/653/654, 359–H, 360, 361, 363, 369–L, 433, 436, 444, 445/446, 604, 611–613, 614–P, 631, 632, 633/634/635, 636, 640–644, 647–650, 652, 659–B, 659–I, 659–S, 669–P, 670–H and 670–L, exported during the twelve-month period which began on January 1, 1986 are being adjusted, variously, for swing, shift and carryforward.

Accordingly, in the letter published below, the Chairman of CITA directs the Commissioner of Customs to adjust the restraint limits previously established for these categories.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedule of the United States Annotated (1986).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

October 30, 1986.

Commissioner of Customs, Department of the Treasury,
Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directives issued to you on December 23, 1985, April 24, 1986 and June 4, 1986 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and man-made fiber textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

Effective on October 30, 1986, you are requested to further amend the directives of December 23, 1985, April 24, 1986 and June 4, 1986 to adjust the previously established limits for cotton, wool and man-made fiber textile products in the following categories, as provided under the terms of the bilateral agreement of November 18, 1982, as amended:[1]

Category	Adjusted 1986 Limit[2]
310/318	6,141,800 square yards.
313	47,524,434 square yards.
314	3,681,482 square yards.
315	30,137,311 square yards.
319	14,941,188 square yards.
320	91,972,207 square yards.
336	86,887 dozen.
338/339	701,858 dozen.
340	745,860 dozen.
341	397,946 dozen.
342	201,730 dozen.
345	94,486 dozen.
347/348	1,017,575 dozen of which not more than 488,764 dozen shall be in Category 347 and not more than 806,801 dozen shall be in Category 348.
353/354/653/654	107,083 dozen.
359-H[3]	3,582,071 pounds.
360	841,697 numbers.
361	1,060,696 numbers.
363	12,965,265 numbers.
369-L[4]	2,579,877 pounds.
433	12,716 dozen.
436	4,614 dozen.
444	15,527 dozen.
445/446	134,600 dozen.
604	511,358 pounds.
611	1,269,865 square yards.
612	10,379,457 square yards.
613	30,905,503 square yards.
614-P[5]	15,272,244 square yards.
631	3,847,398 dozen pairs.
632	4,244,525 dozen pairs.
633/634/635	1,583,530 dozen of which not more than 1,028,960 dozen shall be in Category 633/634 and not more than 766,886 dozen shall be in Category 635.
636	330,389 dozen.
640	3,266,979 dozen.
641	742,908 dozen.
642	618,160 dozen.
643	41,597 dozen.
644	175,422 dozen.
647	2,585,906 dozen.
648	3,293,038 dozen.
649	586,268 dozen.
650	41,191 dozen.
652	1,434,104 dozen.
659-B[6]	1,002,637 pounds.
659-I[7]	3,787,710 pounds.
659-S[8]	3,662,270 pounds.
669-P[9]	676,137 pounds.
670-H[10]	32,310,989 pounds.
670-L[11]	75,334,398 pounds of which not more than 3,472,553 pounds shall be in T.S.U.S.A. number 706.3415.

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[1] The agreement provides, in part, that: (1) Specific limits may be exceeded during the agreement year by designated percentages; (2) specific limits may be adjusted for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

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[1] The agreement provides, in part, that: (1) Specific limits or sublimits may be exceeded by certain designated percentages, provided a corresponding reduction in equivalent square yards is made in one or more specific limits or sublimits during the same agreement period; (2) certain specific limits or sublimits may be increased for carryforward; (3) special shift may be applied to certain categories, provided an equal amount in square yards equivalent is deducted from designated categories; and (4) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

[2] The limits have not been adjusted to reflect any imports exported after December 31, 1985.

[3] In Category 359, only T.S.U.S.A. numbers 702.0800 and 702.1200.

[4] In Category 369, only T.S.U.S.A. numbers 706.3210, 706.3650, 706.4111.

[5] In Category 614, only T.S.U.S.A. numbers 338.5040, 338.5045, 338.5051, 338.5058, 338.5061, 338.5065, 338.5069, 338.5072, 338.5075, 338.5079, 338.5084, [illegible], [illegible], [illegible] and [illegible].

[6] In Category 659, only T.S.U.S.A. numbers 384.1815, 384.8022.

[7] In Category 659, only T.S.U.S.A. numbers 384.2105, 384.2115, 384.2120, 384.2125, 384.2646, 384.2647, 384.2648, 384.2649, 384.2652, 384.8651, 384.8652, 384.8653, 384.8654, 384.9356, 384.9357, 384.9358, [illegible] and [illegible].

[8] In Category 659, only T.S.U.S.A. numbers 381.2340, 381.3170, 381.9100, 381.9570, 384.1920, 384.2339, 384.8300, 384.8400 and 384.9353.

[9] In Category 659, only T.S.U.S.A. numbers 385.5300.

[10] In Category 670, only T.S.U.S.A. numbers 706.3405 and 706.4125.

[11] In Category 670, only T.S.U.S.A. numbers 706.3415, 706.4130, 706.4135.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-24893 Filed 11-3-85; 8:45 am]

BILLING CODE 3510-DR-M

Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mauritius

October 30, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 5, 1986. For further information contact Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On May 30, 1986, notices were published in the **Federal Register** (51 FR 20687) and FR 20686) which established import limits for certain cotton textile products in Categories 341 and 347/348, produced or manufactured in Mauritius and exported during the twelve-month periods which began on February 28, 1986 (Category 341) and January 31, 1986 (Category 347/348).

During consultations, the Governments of the United States and Mauritius agreed to further amend their Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 3 and 4, 1985, to, among other things, establish specific limits of 300,000 dozen pairs for Category 331 (cotton gloves and mittens), 239,000 dozen for Category 341/641 (cotton and man-made fiber blouses and shirts), 425,000 dozen for Category 347/348 (cotton trousers, slacks and shorts) and 115,000 dozen for Category 640, of which 40,250 dozen can be yarn dyed shirts, produced or manufactured in Mauritius and exported during the twelve-month period beginning on October 1, 1986 and extending through September 30, 1987.

Accordingly, in the letter which follows this notice, the Chairman of CITA directs the Commissioner of Customs to cancel the directives issued on May 30, 1986 and to establish the newly agreed specific limits.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

October 30, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive cancels and supersedes the directives issued to you on May 30, 1986 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton textile products, produced or manufactured in Mauritius and exported during the twelve-month periods which began on February 28, 1986 (Category 341) and January 31, 1986 (Category 347/348).

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 3 and 4, 1985, as amended, between the Governments of the United States and Mauritius; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on November 5, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 331, 341/641, 347/348 and 640, produced or manufactured in Mauritius and exported during the twelve-month period beginning on October 1, 1986 and extending through September 30, 1987, in excess of the following restrain limits:

Category	12-mo. restraint limits [1]
331	300,000 dozen pairs.
341/641	239,000 dozen.
347/348	425,000 dozen.
640	115,000 dozen (of which not more than 40,250 dozen shall be in T.S.U.S.A. Numbers 381.3132, 381.3142, 381.3152, 381.9535, 381.9547 and 381.9550).

[1] The limits have not been adjusted to account for any imports exported after September 30, 1986.

Imports of cotton and man-made fiber textile products in Categories 331, 640 and 641, exported prior to October 1, 1986, shall not be subject to this directive. Cotton textile products in Categories 341 and 347/348, exported prior to October 1, 1986 during restraint periods established, in the case of Category 341, for the twelve-month period which began on February 28, 1986 and extends through February 27, 1987, and, in the case of Category 347/348, for the twelve-month period which began on January 31, 1986 and extends through January 30, 1987, shall be subject to this directive. Charges for imports in these categories will be provided in a separate letter.

Textile products in Categories 331, 341/641, 347/348 and 640 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-24892 Filed 11-3-86; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade; Long Term Municipal Bond Index

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule change.

SUMMARY: The Chicago Board of Trade ("CBT" or "Exchange") has submitted a proposal to amend CBT Regulation 1950.01(a) regarding the standards for the municipal bonds included in the CBT's long term municipal bond index ("muni-bond index") futures contract. The proposal would provide that certain municipal bonds whose interest payments may be subject to an alternative minimum income tax under the Tax Reform Act of 1986 are eligible for inclusion in the muni-bond index. The CBT has indicated that it intends to make the proposed amendments effective upon Commission approval for existing and newly listed contracts.

DATE: Comments must be received on or before November 19, 1986.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to changes to CBT Regulation 1950.01.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. (202) 254-7303.

Text of Amendments

In accordance with section 5a(12) of the Commodity Exchange Act, 7 U.S.C. 71(12) (1982), and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis, on behalf of the Commission, has determined that the proposal submitted by the Chicago Board of Trade relating to its long term municipal bond index futures contract is of major economic significance. Accordingly, the proposed amendments are printed below with brackets indicating deletions and italics indicating additions.

Regulation 1950.01

* * * * *

(a) General Index Composition—The Index, at all times, shall be composed of 40 [tax-exempt] term municipal bonds *that are generally exempt from federal income taxation including those generally exempt issues whose interest payments may be subject to an alternative minimum tax.*

* * * * *

The CBT states that the proposed amendments will be made effective following Commission approval for both existing and newly listed contracts.

Additional Information

According to the Exchange, under the provisions of the Tax Reform Act of 1986, the previous general exemption from federal taxation of interest payments on municipal bonds was sharply curtailed for some classes of municipal bond issues, by subjecting interest on such bonds to an alternative minimum tax. Pursuant to the Tax Reform Act of 1986, municipal bonds which are classified as "non-essential function" bonds are subject to the alternative minimum tax. This new provision applies to bonds issued on and after August 7, 1986.

In accordance with section 5a(12) of the Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that the proposal is potentially of major economic significance and that, accordingly, publication of the proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act. The Director of the Division further believes that a comment period of only fifteen (15) days is warranted to expedite the review of the proposal by the Commission and therefore to avoid potential disruptions in the pricing of the muni-bond index futures contract. As indicated above, CBT Regulation 1950.01(a) currently specifies that all bonds in the muni-bond index must be tax-exempt. Further, under the provisions of the recently enacted tax law, certain municipal bonds currently included in the muni-bond index (*i.e.*, those bonds issued on and after August 7, 1986 which are deemed "non-essential function" bonds) would be subject to a federal minimum income tax under certain circumstances. With the Exchange's proposal, these generally exempt issues would continue to be eligible for inclusion in the Index. In this regard, the Division requests explicitly that persons commenting on the proposal discuss whether, in view of recent changes in the tax law, the CBT's proposal would have a significant impact on the pricing of muni-bond index futures and the value of existing contracts and whether it would significantly impact the contract in any other way.

Other materials submitted by the CBT in support of the proposed amendments are available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts, Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 by November 19, 1986.

Issued in Washington, DC on October 29, 1986.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 86-24862 Filed 11-3-86; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Defense Intelligence Agency Scientific Advisory Committee

AGENCY: Defense Intelligence Agency Scientific Advisory Committee.

ACTION: Notice of cancellation of closed meeting.

SUMMARY: Notice is hereby given that the closed meeting of the DIA Scientific Advisory Committee's U.S. Strategic Defense Initiative Panel, scheduled for 5 November 1986, that was announced in the **Federal Register** on Thursday, 2 October 1986 (51 FR 35260) has been cancelled.

FOR FURTHER INFORMATION CONTACT: Colonel Duarte A. Lopes, USAF, Acting Executive Secretary, DIA Scientific Advisory Committee, Washington, DC, 20340-1328 (202/373-4930).

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

October 29, 1986.

[FR Doc. 86-24876 Filed 11-3-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Military Traffic Management Command's Acceptance of Carrier Safety Ratings

AGENCY: Military Traffic Management Command (MTMC), Department of the Army, Department of Defense (DOD).

ACTION: Proposed policy statement.

SUMMARY: MTMC requests public comments concerning its proposed policy statement governing DOD use of interstate motor carriers based on the motor carrier safety ratings issued by the Federal Highway Administration (FHWA), Department of Transportation (DOT). MTMC proposes that the DOD will not do business with interstate carriers known to have "unsatisfactory" or "conditional" safety ratings. Interstate carriers with "insufficient information" ratings transporting general commodities (except hazardous materials) will be used pending completion of an FHWA safety audit. Interstate carriers with "insufficient information" ratings will not be used to transport those hazardous materials specified by MTMC until their safety ratings are upgraded to "satisfactory."

DATES: Comments must be received by this agency not later than November 28, 1986.

ADDRESS: Comments should be submitted to: Headquarters, Military Traffic Management Command, Directorate of Inland Traffic, 5611 Columbia Pike, Falls Church, Virginia 22041–5050.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Sours, Headquarters, Military Traffic Management Command, 5611 Columbia Pike, Falls Church, VA 22041–5050, Telephone: (202) 756–1356/1565.

SUPPLEMENTARY INFORMATION: MTMC proposes to amend the Commander's Policy Book, MTMC Regulation No. 1–7, in order to ensure Defense shipments are transported only via carriers operating in compliance with DOT Safety Regulations and rated by the DOT as identified in 49 Code of Federal Regulations Part 385—Safety Ratings. DOD's policy is not to do business with interstate carriers known to have "unsatisfactory" or "conditional" safety ratings assigned by FHWA. Interstate carriers determined to have "unsatisfactory" or "conditional" ratings will be placed in a nonuse status until their safety ratings are upgraded to "satisfactory."

General commodity interstate carriers having "insufficient information" ratings may transport freight shipments pending completion of an FHWA audit. This is in recognition that many carriers currently doing business with the DOD have not yet been audited by FHWA and that new entrants to the trucking industry will require sufficient time to establish a safety record and be scheduled for an audit by FHWA. Hazardous material interstate carriers with "insufficient information" ratings will not be used until their safety ratings are determined to be "satisfactory" if they are transporting bulk hazardous materials, any quantities of classes of A and B explosives or poisons, Yellow III lable radioactive material, etiological agents or any other hazardous substance identified by MTMC.

The safe transport of DOD freight is important to the DOD. Therefore, any carrier who does not meet these safety rating standards will not be permitted to transport DOD freight.

John O. Roach,
Army Liaison Officer with the Federal Register.

[FR Doc. 86–24888 Filed 11–3–86; 8:45 am]

BILLING CODE 3710-08-M

Standardized Driver Certification of Classes A and B Explosives Safety Training and Competency

AGENCY: Military Traffic Management Command, Army Department, DOD.

ACTION: Notice of a new requirement for carriers to issue a standard safety training and competency certification to their drivers hauling military classes A and B explosives.

SUMMARY: Effective December 1, 1986, all commercial carrier drivers transporting classes A and B explosives for the Department of Defense (DOD) must possess a company-issued certification card which duplicates exactly the wording and format shown below. Failure to present such certification when a shipment is picked up may result in rejection of a carrier's equipment.

CERTIFICATION OF CLASSES A AND B EXPLOSIVES SAFETY TRAINING AND COMPETENCY

(Name of Carrier)
(Carrier Address/Telephone)

Valid only while qualified by (Name of Carrier)

This is to certify that (Name of Driver) successfully completed training and is competent in the transportation of classes A and B explosives. The driver understands the hazards of the material being transported, as required by 49 CFR federal, state, and local regulations, and provisions of the Department of Defense agreement governing the transport of such materials. A record of such training is contained in the driver's qualification file located at the address above.

____

Signature of Company Official

____

Date

ADDITIONAL INFORMATION: Carriers' and Department of Defense shippers' questions regarding what constitutes acceptable proof of training led to the development of a standardized certification card format. This was accomplished in coordination with representatives of the munitions carrier industry. Only MTMC approved carriers may transport classes A and B explosives for the DOD. To obtain further information contact: Ms. Betty Yanowsky, Headquarters, Military Traffic Management Command, ATTN: MT–INFF, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, telephone (703) 756–1565/1566.

John O. Roach, II,
Army Liaison Officer with the Federal Register.

[FR Doc. 86–24889 Filed 11–3–86; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Mankind Research Unlimited Inc., Intent to Grant Limited Exclusive Patent License

The Department of the Navy hereby gives notice of intent to grant to Mankind Research Unlimited Inc., a corporation of the State of Maryland, a revocable, nonassignable, limited exclusive license to practice the Government-owned invention described in U.S. Patent No. 4,352,542 entitled "Cable Connector" issued October 5, 1982; inventors: John E. Tydings.

This license will be granted unless within 60 days from the date of this notice written objections to this grant along with supporting evidence, if any, are received by the Office of the Chief of Naval Research (Code OOCCPP1), Arlington, VA 22217.

For further information concerning this notice, contact: Mr. R.J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research, Code OOCCPP1, Ballston Tower No. 1, 800 N. Quincy Street, Arlington, VA 22217–5000, Telephone No. (202) 696–4005.

Dated: October 30, 1986.

H.L. Stoller,
Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 86–24901 Filed 11–3–86; 8:45 am]

BILLING CODE 3810-AE-M

VOL 51 ISS 213 NO 4 1986 UMI

Naval Research Advisory Committee, Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on U.S. Marine Corps Command and Control Systems Interoperability will meet on November 20–21, 1986, at Headquarters, U.S. Marine Corps, Washington, DC. The meeting will commence at 9:00 a.m. and terminate at 4:00 p.m. on November 20; and commence at 9:00 a.m. and terminate at 3:00 p.m. on November 21, 1986. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to review interservice command and control systems requirements for naval forces in the near- and mid-term, and identify future communications and command and control systems architecture features with a view toward improving interoperability. The agenda will include technical briefings and discussions addressing warfighting and interoperability procedures. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: October 30, 1986.

Harold R. Stoller, Jr.,

Commander, JAGC, U.S. Navy Federal Register Liaison Officer.

[FR Doc. 86–24902 Filed 11–3–86; 8:45 am]

BILLING CODE 3810–AE–M

Naval Research Advisory Committee, Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Automated Submarine Detection will meet on November 20–21, 1986, at the U.S. Naval Facility, Bermuda. The meeting will commence at 8:30 a.m. and terminate at 4:30 p.m. on November 20 and 21, 1986. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to review the present undersea surveillance automated submarine detection and classification techniques and capabilities. The agenda will include technical discussions addressing the threat, maritime strategy, and industry overviews of past, present and future automated efforts. These discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: October 30, 1986.

Harold R. Stoller, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 86–24903 Filed 11–3–86; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

Testimony Solicitation

AGENCY: National Advisory Council on Indian Education.

ACTION: Notice of testimony solicitation.

SUMMARY: This notice is intended to notify the general public of their opportunity to provide the National Advisory Council on Indian Education with written testimony regarding the reauthorization of the Indian Education Act of 1972, Pub. L. 92–318.

FOR FURTHER INFORMATION CONTACT: Lincoln C. White, Executive Director, National Advisory Council on Indian Education, 2000 L Street, NW., Suite 574, Washington, DC 20036 (202/634–6160).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is soliciting written testimony in preparation of the reauthorization of the Indian Education Act of 1972, Pub. L. 92–318, due to expire on September 30, 1989. It is extremely important that all Indian people throughout the country who are involved in or who have been affected by the benefits of Title IV, the Indian Education Act of 1972, Pub. L. 92–318, consider submitting written testimony to the National Advisory Council on Indian Education, 2000 L Street, NW., Suite 574, Washington, DC 20036 (202/634–6160). Written testimony will be received from November 1986 to December 1988. The contents of the written testimony should state specifically what benefits have come about from the Title IV Programs, the effectiveness of the programs as it relates to the delivery of services and funding, and what improvements can be made in the programs. The testimony should be well-documented by statistics.

All testimony received will be used by the National Advisory Council on Indian Education for presentation to the Congress of the United States on the reauthorization of the Indian Education Act of 1972, Pub. L. 92–318.

Dated: October 29, 1986. Signed at Washington, DC.

Lincoln C. White,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 86–24938 Filed 11–3–86; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Alaska Power Administration

[Rate Order No. APA–7]

Snettisham Project; Order Confirming and Approving an Increase in Power Rates on an Interim Basis

AGENCY: Alaska Power Administration, DOE.

ACTION: Notice of power rate order.

SUMMARY: On October 29, 1986, the Under Secretary of Energy confirmed and approved, on an interim basis, Rate Schedule SN–F–3 increasing wholesale firm power service from the Snettisham Project, Alaska, effective November 1, 1986. The rate is subject to confirmation and approval by the Federal Energy Regulatory Commission on a final basis.

EFFECTIVE DATES: The effective date for the power rate on an interim basis is November 1, 1986.

FOR FURTHER INFORMATION CONTACT:

Grodon J. Hallum, Chief, Power Division, Alaska Power

Administration, P.O. Box 50, Juneau, Alaska 99802, (907) 586-7405
Rodney L. Adelman, Director, Washington Liaison Office, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-2008.

SUPPLEMENTARY INFORMATION: By Delegation Order No. 0204-108 effective December 14, 1983 (48 FR 55664), and amended May 30, 1986 (51 FR 19744), the Secretary of Energy delegated to the Under Secretary of Department of Energy the authority to confirm, approve, and place in effect power and transmission rates on an interim basis and delegated to the Federal Energy Regulatory Commission the authority to confirm and approve such rates on a final basis. The attached Rate Order No. APA-7 approves Snettisham Project's new Power Rate Schedule SN-F-3 on an interim basis, effective November 1, 1986, for a period of 12 months unless such period is extended or until the FERC confirms and approves it on a final basis. The order raises the rate from 25.0 mills per kilowatthour to 28.8 mills per kilowatthour or 15 percent.

The rate to be placed in effect on an interim basis will be submitted promptly to the Federal Energy Regulatory Commission for confirmation and approval on a final basis.

Issued in Washington, DC October 29, 1986.

Joseph F. Salgado,

Under Secretary.

Pursuant to section 302(a) of the Department of Energy Organization Act, Pub. L. 95-91, the functions of the Secretary of the Interior under section 204 of the Flood Control Act of 1962, Pub. L. 87-874, 76 Stat. 1173, 1193, for the Snettisham Project were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204-108, effective December 14, 1983 (48 FR 55664), and amended May 30, 1986 (51 FR 19744), the Secretary of Energy delegated to the Under Secretary of the Department of Energy, the authority to confirm, approve, and place in effect power rates on an interim basis and delegated to the Federal Energy Regulatory Commission the authority to confirm and approve on a final basis or to disapprove rates developed by the Administrators of the Power Marketing Administrations under the delegation.

Background

Existing Rate

The existing rate schedule, SN-F2, for 25 mills per kilowatthour for firm energy for the Snettisham Project was confirmed and approved by the Deputy Secretary of the Department of Energy on November 28, 1983. The rate was confirmed and approved on a final basis on April 19, 1984, by the Federal Energy Regulatory Commission in Docket No. EF84-1021-000 for the period December 1, 1983, through November 30, 1988.

Public Notice and Comment

Notice of a meeting to present the rate proposal was printed in the Federal Register, Vol. 51, No. 102, on May 28, 1986, and in the local area newspaper on May 28, June 4, June 18, and July 7, 1986. On July 8, 1986, a public meeting was held in Room 117 of the Juneau Federal Building.

The Administrator and the Chief, Power Division, explained the legislative authority and background information about the project's construction and Department of Energy policies for power sales and wholesale power rates.

The Alaska Electric Light and Power Company presented a comment paper for the implementation of an interruptible rate. There were objections to the rate increase. The public consensus was that even though the increase was small, they were opposed to any increase. Requests were made for Alaska Power Administration to review and revise if possible the estimated operation costs which increased the current rate. Alaska Power Administration did prepare new studies with revised operations cost and new sales forecast. A new proposed rate increase to 28.8 mills per kilowatthour resulted.

Discussion

Project Repayment

The Snettisham Project was authorized by section 204 of the Flood Control Act of 1962, Pub. L. 87-874, 76 Stat. 1173, 1193, in accordance with the Army-Interior Agreement of March 14, 1962. The project was constructed by the Corps of Engineers. Upon completion of construction, it was transferred to the Alaska Power Administration for operation and maintenance. Initial project construction was completed December 1, 1973. However, because of serious transmission problems, full commercial production of power did not start until October 30, 1975. Construction of the Long Lake phase of the Snettisham Project was completed in 1978.

Subsecton 201(a) of the Water Resources Development Act of 1976, Pub. L. 94-587, provides that the costs of replacing and relocating the original Salisbury Ridge secton of the 138 kilovolt transmission line shall be nonreimbursable. Subsection 201(b) of the Act further modifies the repayment provisions for the project by providing that the repayment period shall be sixty years, that the annual repayment for the first ten years shall rise from 0.1 per centum of the total principal amount to be repaid the first year to 1.0 per centum the tenth year, and that the subsequent annual repayments for the remaining fifty years shall be one-fiftieth of the remaining balance, including interest over the sixty-year period.

Snettisham has the capability of furnishing 196,000,000 kilowatthours of average energy from the Long Lake phase of the project. The Snettisham units have a nameplate capacity of 47,160 kW for the existing Long Lake stage. The units are also capable of 15 percent continuous overload. Alaska Electric Light and Power has a capability of generating 57 million kilowatthours per year from small hydroelectric plants, and an additional amount from dieselelectric generators.

As required by DOE Order RA 6120.2, two repayment studies were made: A Current Repayment Study showing a continuation of the existing rate of 25 mills per kilowatthour for the remainder of the repayment period, and a Revised Repayment Study, using a rate of 28.8 mills per kilowatthour beginning November 1, 1986, for the remainder of the repayment period.

The Current Repayment Study shows that the existing 25 mills per kilowatthour rate for energy will not provide sufficient revenues to achieve payout in the remaining 50 years of the repayment peroid.

Proposed Rates

The Revised Power Repayment Study demonstrates an increase of annual revenue in 1987 from $4,670,000 to $5,373,000, or 15 percent. This will be sufficient to recover costs as required by the authorizing legislation and the Water Resources Development Act of 1976. The costs includes operation and maintenance, wheeling, interest, required amortization of the project, and amortization of the interest which was deferred for the first 10 years of the project.

The following tabulation lists the historical and estimated revenues from the sales of energy. FY 80 through FY 85 are the historical sales. Beginning November 1, 1986, throughout the remainder of the study, the estimated revenues are based on 28.8 mills per kilowatthour.

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FY	kWh x 1000	Revenues	
		Revised study (dollars)	Current study (dollars)
1980	90,753	1,421,066	1,421,066
1981	112,992	1,780,888	1,780,888
1982	140,027	2,195,211	2,195,211
1983	167,523	2,626,506	2,626,506
1984	183,015	4,277,619	4,277,619
1985	167,000	4,268,673	4,268,673
1986	180,000	4,545,000	4,545,000
1987	185,000	5,373,000	4,670,000
1988	185,000	5,373,000	4,670,000
1989	186,000	5,401,800	4,695,000
1990	187,000	5,430,600	4,720,000

Environmental Impact

The public hearings and other public outreach efforts raised no significant impacts involving the human environment within the meaning of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended by Pub. L. 94–83) and implementing regulations would be caused by implementing the rate proposal.

Availability of Information

Information regarding this rate adjustment, including studies, comments, transcripts, and other supporting material, is available for public review in the offices of the Alaska Power Administration, Room 825, Federal Building, 709 West Ninth Street, Juneau, Alaska 99802, and in the Office of Director, Washington Liaison Office, Forrestal Bldg., Room 1E184, 1000 Independence Avenue SW, Washington, DC 20585.

Submission to the Federal Energy Regulatory Commission

The rate herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission for confirmation and approval on a final basis.

Schedule of Rate For Wholesale Firm Power Service

Effective:
  November 1, 1986
Available:
  In the area served by the Snettisham Project, Alaska.
Applicable:
  To wholesale power customers for general power service.
Character of Service:
  Alternating current, sixty hertz, three-phase.
Monthly Rate:
  Capacity Charge: None
  Energy Charge: Firm energy at 28.8 mills per kilowatthour.
Minimum Annual Capacity Charge:
  None.
Minimum Annual Energy Charge:
  As provided for under appropriate contract terms.
Adjustments:
  FOR TRANSFORMER LOSSES: If delivery is made at the high-voltage side of the customer's transformers but metered at the low-voltage side, the meter readings will be increased 2 percent to compensate for transformer losses.
Supersedes: SN–F–3; SN–F–2.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective November 1, 1986, Rate Schedule SN–F–3. This rate shall remain in effect for a period of 12 months unless extended or superseded or until the FERC confirms and approves them or substitute rates on a final basis.

Issued in Washington, DC October 29, 1986.

Joseph F. Salgado,
Under Secretary.

[FR Doc. 86–24928 Filed 11–3–86; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER87–47–000, et al.]

Alamito Company, et al.; Electric Rate and Corporate Regulation Filings

October 29, 1986.

Take notice that the following filings have been made with the Commission:

1. Alamito Co.

[Docket No. ER87–47–000]

Take notice that on October 24, 1986, Alamito Company tendered for filing an Amended and Restated Power Sale Agreement ("Restated Agreement") between Alamito and Tucson Electric Power Company ("TEP") (hereinafter sometimes collectively referred to as "Parties"). Alamito states that the Restated Agreement will supersede and replace Alamito Company Rate Schedule FERC No. 3 and Supplements Nos. 1, 2, and 3 thereto between the Parties if Alamito is able to complete on terms satisfactory to it, TEP and various institutional investors a sale and leaseback of Alamito's 360MW Springerville Unit 1 prior to January 1, 1987. TEP and Alamito have reached an agreement whereby, in the event of such a sale and leaseback, TEP will extend its current purchase from the Springerville Unit and shorten its current purchase from Alamito's San Juan Unit No. 3 and Alamito will enter into such a sale and leaseback at a lease payment price which will be substantially less than the demand charges under the existing Twelve Year Power Sale Agreement for depreciation, return, and income taxes attributable to the facilities so sold and leased back. Alamito Company requests that the Restated Agreement be accepted for filing to become effective on December 26, 1986, or such other date prior to January 1, 1987, as the sale and leaseback of Springerville Unit 1 becomes effective and that the existing rate schedule be superseded effective as of the date on which the sale and leaseback becomes effective. Alamito Company states that copies of the filing have been mailed to TEP and San Diego Gas and Electric Company.

Comment date: November 12, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Arkansas Power and Light Co.

[Docket No. ER81–577–013]

Take notice that on October 16, 1986, Arkansas Power and Light Company (AP&L) tendered for filing a compliance report reflecting the application of final rates referred to in Docket No. ER81–577–000.

Comment date: November 12, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Centel Corp.

[Docket No. ES87–6–000]

Take notice that on October 22, 1986, Centel Corporation (Applicant), a corporation organized under the law of the State of Kansas, with its principal executive offices located in Chicago, Illinois, filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, seeking an Order authorizing the issuance of up to 650,000 shares of common stock, $2.50 par value, to be issued in connection with its Retirement Savings Plan and its Dividend Reinvestment Plan.

Comment date: November 12, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power Corp.

[Docket No. ER87–25–000]

Take notice that on October 14, 1986, Florida Power Corporation (Florida Power) tendered for filing a Scheduling Service Agreement dated October 9, 1986 with Seminole Electric Cooperative, Inc. (Seminole), which provides for scheduling services for power purchased by Seminole from Oglethorpe Power Corporation. These scheduling services are ancillary to the transmission services provided by Florida Power to Seminole. The agreement is submitted for filing as a supplement to Florida Power's Rate Schedule FERC No. 106.

Florida Power requests that the Scheduling Service Agreement be made effective as a rate schedule on October 10, 1986, and therefore requests waiver of the sixty (60) day notice requirement. Copies of this filing have been served on Seminole Electric Cooperative, Inc., Southern Company Services, Inc., Oglethorpe Power Corporation, and the Florida Public Service Commission.

Comment date: November 10, 1986, in accordance with Standard Paragraph E at the end of this document.

5. Florida Power and Light Company.

[Docket No. ER87-32-000]

Take notice that on October 16, 1986, Florida Power and Light Company (FPL) tendered for filing a document entitled Amendment Number Seven to Revised Agreement to Provide Specified Transmission Service Between Florida Power and Light Company and City of Kissimmee (Rate Schedule FERC No. 65) and a document entitled Schedule TX Operating Agreement Between Florida Power and Light Company and Kissimmee Utility Authority, which document supplements Amendment Number Seven.

FPL states that under Amendment Number Seven, FPL will transmit power and energy for Kissimmee Utility Authority as is required in the implementation of its interchange agreements with the Florida Municipal Power Agency and Jacksonville Electric Authority.

FPL further states that the Schedule TX Operating Agreement defines the methodology used to determine the additional incremental cost under Section I.4 of Amendment Number Seven.

FPL requests that waiver of § 35.3 of the Commission's Regulations be granted and that the proposed Amendment and the proposed Operating Agreement be made effective immediately. FPL states that copies of the filing were served on Kissimmee Utility Authority.

Comment date: November 10, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Indianapolis Power and Light Co.

[Docket No. ER87-22-000]

Take notice on October 10, 1986, Indianapolis Power and Light Company ("IPL") tendered for filing a rate schedule in the form of an agreement which sets forth the rates, charges, terms and conditions for providing wholesale electric service to Boone County Rural Electric Membership Corporation ("Boone REMC"), which is the only REMC IPL serves. The new rates are intended to supersede and replace the existing agreement and rates designated as Indianapolis Power and Light Company Rate Schedule FERC No. 20, as supplemented, with respect to the type of service above-referenced.

The only customer affected by the proposed new rates is Boone REMC, which has executed an agreement with IPL, dated as of October 9, 1986, which binds IPL to render, and Boone REMC to take, service under the new rates for a period of two (2) years after their effective date.

IPL alleges that the structure of the new rates has not been changed from the present rates; that the principal change in the new rates is to provide an increase in annual revenues from Boone REMC of $188,882.00, based upon the test year ended June 30, 1985, producing a rate of return for such test year of 11.12% on the original cost, less depreciation, of its facilities devoted to wholesale service to such REMC under the new rates.

IPL states that copies of this filing, together with exhibits, were sent to Boone REMC and to the Public Service Commission of Indiana.

Comment date: November 10, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. Louisiana Power and Light Co.

[Docket No. ER86-626-001]

Take notice that on October 16, 1986, Louisiana Power and Light Company (LP&L) tendered for filing additional information with respect to its proposed change in rates for wholesale electric service to the Town of Vidalia, Louisiana. In response to a deficiency letter LP&L states that the additional information is fully responsive to a request for such information from the FERC Staff dated September 16, 1986.

Comment date: November 10, 1986, in accordance with Standard Paragraph E at the end of this notice.

8. Otter Tail Power Co.

[Docket No. ER87-31-000]

Take notice that Otter Tail Power Company (OTP) on October 14, 1986 tendered for filing proposed changes in its FPC Electric Service Tariff No. 171.1. These changes are explained in the filed Amendment No. 2 and are a result of the termination on December 13, 1985 of the original contract. Amendment No. 2 covers the terms and conditions of the Integrated Transmission System of Central Power Electric Cooperative and Otter Tail Power Company.

Copies of this filing, along with the signed Amendment, have been sent to Central Power Electric Cooperative, Inc., P.O. Box 1576, Minot, North Dakota 58701.

Comment date: November 10, 1986, in accordance with Standard Paragraph E at the end of this notice.

9. Utah Power and Light Co.

[Docket No. ER87-24-000]

Take notice that Utah Power and Light Company (UP&L) on October 14, 1986, tendered for filing a proposed change in its FERC Fuel Adjustment Clause. The change consists of amendments to the language recommended as a result of an FERC audit to bring UP&L's Fuel Adjustment Clause in compliance with 18 CFR 35.14.

UP&L states that the missing language was inadvertent and at the time the tariff was filed in Docket No. ER84-572, the cost of service data clearly identified the costs of geothermal steam as being included in the Fuel Adjustment Clause. A Settlement Agreement submitted in Docket No. ER84-572-000 was approved by the Commission on November 20, 1985 [33 FERC ¶ 61,310 (1985)], and since this proposed amendment does not change the approved rate, there will be no adverse impact on that Settlement Agreement.

UP&L requests a waiver of the notice provisions of 18 CFR 35.13 and that the amended Fuel Adjustment Clause be made effective retroactively as of January 11, 1985, the date on which the Tariff was accepted for filing in Docket No. ER84-572-000 [30 FERC ¶ 61,015 (1985)].

Notice of this filing was served upon all of UP&L's wholesale purchasers and upon the State Commissions of Utah, Idaho, Wyoming, Nevada, California and Colorado.

Comment date: November 10, 1986, in accordance with Standard Paragraph E at the end of this document.

10. Vermont Electric Power Co., Inc.

[Docket No. ER87-21-000]

Take notice that Vermont Electric Power Company, Inc. ("VELCO") on October 9, 1986, tendered for filing a proposed Amendment No. 1 dated as of April 15, 1986 ("Amendment No. 1") to the Vermont Participation Agreement for Quebec Interconnection dated as of July 15, 1982, VELCO Rate Schedule FERC No. 238.

The Amendment No. 1, when accepted, will provide that the obligations and rights of 16 Vermont utilities participating in the first phase of

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a transmission interconnection between Hydro-Quebec and utilities that are participants in the New England Power Pool (the "Interconnection"), through VELCO which acts as the Vermont utilities' representative, apply to certain contracts executed by VELCO for support of VETCO and New England Electric Transmission Corporation (the two companies constructing the United States portion of the Interconnection) as those contracts may be "amended from time to time."

Copies of the filing were served on all affected utilities and on the State of Vermont Public Service Board and its Department of Public Service.

Comment date: November 10, 1986, in accordance with Standard Paragraph E at the end of this notice.

11. Georgia Power Co.

[Docket No. ER87-27-000]

Take notice that on October 14, 1986, Georgia Power Company ("Georgia Power") tendered for filing a Scheduleing Services Agreement (the "Agreement") dated as of October 10, 1986, between Georgia Power and Oglethorpe Power Corporation (An Electric Membership Generation and Transmission Corporation) ("OPC").

Georgia Power states that the Agreement has been executed to facilitate a short-term, non-firm energy transaction between OPC and Seminole Electric Cooperative, Inc. Georgia Power seeks waiver of the Commission's notice requirements and seeks an effective date of October 10, 1986. The Agreement will terminate on December 31, 1986.

Comment date: November 10, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or portests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-24926 Filed 11-3-86; 8:45 am]

BILLING CODE 6717-01-M

Application Filed With the Commission

October 31, 1986.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. Type of Application: Transfer of License.

b. Project No.: 4113-004.

c. Date Filed: October 14, 1986.

d. Applicant: Long Lake Energy Corporation, Oswego Corporation, and Prudential Interfunding Corporation.

e. Name of Project: The Phoenix Project.

f. Location: On the Oswego River in Onondaga and Oswego Counties, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Ms. Christine Benagh, Nixon, Hargrave, Devans, & Doyle, One Thomas Circle NW, Suite 800, Washington, DC 20005 (202) 223-7200

i. Comment Date: November 17, 1986.

j. Description of Proposed Transfer: On March 31, 1986, a license was issued to Long Lake Energy Corporation (Licensee), to construct, operate, and maintain the Phoenix Project No. 4113. The Licensee intends to tranfer the license to Long Lake Energy Corporation, Oswego Corporation, and Prudential Interfunding Corporation, (Transferee) to facilitate the financing of the project through the establishment of this joint venture. The licensee has complied with the terms and conditions of the license. The project is not constructed as of this date. The Transferee has agreed to accept all the terms and conditions of the license and the requirements of the Federal Power Act and to be bound by it as if it were the original licensee.

k. This notice also consists of the following standard paragraphs: B and C.

Standard Paragraph

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATIONS", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203-RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-24917 Filed 11-3-86; 8:45 am]

BILLING CODE 6717-01-M

Applications Filed With the Commission

October 31, 1986.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. Type of Application: Transfer of License.

b. Project No.: 2861-011.

c. Date Filed: October 6, 1986.

d. Applicant: Pontook Hydro Partners Ltd, New Hampshire Water Resources Board, and Pontook Operating Limited Partnership.

e. Name of Project: Pontook Project.

f. Location: On the Androscoggin River in the Town of Dummer, Coos County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. McNeill Watkins, II, Bishop, Liberman, Cook, Purcell & Reynolds, 1200 Seventeenth

Street, NW., Washington, DC 20036, (202) 857-9800.

i. Comment Date: November 17, 1986.

j. Description of Proposed Transfer: On March 26, 1981, a license was issued to Robert W. Shaw to construct, operate, and maintain the Pontook Project No. 2861. On August 23, 1983, the license was transferred to Pontook Hydro Partners, Ltd (Licensee). On June 11, 1985, the New Hampshire Water Resource Board was added as a co-licensee. Pontook Hydro Partners, Ltd. and the New Hampshire Water Resources Board (Licensees) intend to transfer the project to the New Hampshire Water Resources Board and Pontook Operating Limited Partnership to facilitate more favorable financing and operation of the project. The project is currently under construction and is expected to be in operation by the end of November.

The Licensee has complied with the terms and conditions of the license. The Transferees have agreed to accept all the terms and conditions of the license and the requirements of the Federal Power Act and to be bound by it as if they were the original licensees.

k. This notice also consists of the following standard paragraphs: B and C.

Standard Paragraphs

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. 385.210, 385.211 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Managment, Federal Energy Regulatory Commission, Room 203-RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-24918 Filed 11-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS68-21, et al.]

O'Neill Properties, Ltd. (Joseph I. O'Neill, Jr.), et al.; Applications for Small Producer Certificates [1]

October 29, 1986.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Commission's Regulations thereunder for a small producer certificate of public convenience and necessity authority the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make a protest with reference to said applications should on or before November 17, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure therein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No.	Date filed	Applicant
CS68-21	[1] 9-29-86	O'Neill Properties, Ltd. (Joseph I. O'Neill, Jr.), P.O. Box 2840, Midland, TX 79702.
CS77-432	[2] 9-16-86	Petrus Oil Co. (H.R. Perot), 12201 Merit Dr., Suite 900, Dallas, TX 75251.
CS83-102-007	[3] 9-10-86	Graham Energy, Ltd., *et al.*, P.O. Box 3134, Covington, LA 70434-3134
CS87-1-000	• 20-2-86	Texas Crude Exploration, Inc., 801 Travis, Suite 2100, Houston, TX 77002.
CS87-3-000	10-3-86	Wisenbaker Production Co., 3131 Turtle Creek Blvd., Suite 900, Dallas, TX 75219.
CS87-4-000	10-3-86	Wise Oil Ventures, 3131 Turtle Creek Blvd., Suite 900, Dallas, TX 75219.
CS87-5-000	10-3-86	Tribal Drilling Co., P.O. Box 45440, Dallas, TX 75245.
CS87-8-000	10-14-86	Chieftain International, Inc., 1201 T.D. Tower, Edmonton, AB, Canada T5J 2Z1.
CS87-9-000	10-9-86	Winchester Oil Co., Winchester Production Co., and Westchester Gas Co., 300 W. Austin St., Marshall, TX 75670.
CS87-10-000	10-15-86	Robert T. Priddy and James Allan Clark, 600 City National Bldg., Wichita Falls, TX 76301.
CS87-11-000	10-15-86	Anthony Oil & Gas Co., Route 2, Lake Village, AR 71653.
CS86-12-000	10-20-85	Ronco Energy, Box 1285, Fritch, TX 79036.
CS87-13-000	10-24-86	Permian Resources, Inc./a.k.a. Earl R. Bruno, P.O. Box 590, Midland, TX 79702.

[1] Letter dated Sept. 26, 1986, requesting redesignation of small producer certificate.

[2] Letter dated Sept. 11, 1986, as supplemented by letter dated Sept. 25, 1986, filed Sept. 29, 1986, requesting redesignation of small producer certificate.

[3] By letter dated Sept. 4, 1986, as supplemented by letter dated Oct. 14, 1986, received Oct. 15, 1986, Applicant requests the certificate in Docket No. CS83-102-002 be amended to include the following entities as certificate co-holders:

Chapman Oil of Australia, Inc.
McCormick 1976 Oil & Gas Program.
McCormick Exploration Corp.
McCormick Exco, Inc.
Graham McCormick Operating Partnership.
Graham Acquisition Ltd. Partnership 1984-1
S.P.G. Reserve program I.
S.P.G. Reserve program II.
Graham Acquisition Partnership 1984-II.
Chase 84 N.P.I. Venture.
Graham McCormick Oil & Gas Partnership.
Prudential Bache Energy Income Partnership III P-12.
Prudential Bache Energy Income Production Partnership III P-12.
Prudential Bache Energy Income Partnership III P-13
Prudential Bache Energy Income Production Partnership III P-13.
Prudential Bache Energy Income Partnership III P-14.
Prudential Bache Energy Income Production Partnership III P-14.
Prudential Bache Pension & Retirement Production Partnership PBR-I.
Prudential Bache Pension & Retirement Production Partnership PBR-II.
Prudential Bache Pension & Retirement Limited Partnership PBR-I.
Prudential Bache Pension & Retirement Limited Partnership PBR-II.
The Property Warehouse, Inc.
G. P. L. Co.
Graham Energy Ventures, Inc.
Graham Research & Investment Performance, Inc.
Graham Oil & Gas, Ltd.
Graham Energy Management, Inc.
Graham Depositary Co.
Graham Production Co.
Prudential Bache Energy Income Partnership II P-4.
Prudential Bache Energy Income Partnership II P-5.
Prudential Bache Energy Income Partnership II P-6.
Prudential Bache Energy Income Partnership II P-7.
Prudential Bache Energy Income Partnership II P-8.
Prudential Bache Energy Income Partnership II P-9.
Prudential Bache Energy Income Partnership II P-10.
Prudential Bache Energy Income Partnership II P-11.
Prudential Bache Energy Income Production Partnership II P-4.
Prudential Bache Energy Income Production Partnership II P-5.
Prudential Bache Energy Income Production Partnership II P-6.
Prudential Bache Energy Income Production Partnership II P-7.
Prudential Bache Energy Income Production Partnership II P-8.
Prudential Bache Energy Income Production Partnership II P-9.
Prudential Bache Energy Income Production Partnership II P-10.
Prudential Bache Energy Income Production Partnership II P-11.

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[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Prudential Bache Production Partnership 1982-P-1.
Prudential Bache Production Partnership 1982-P-2.
Prudential Bache Production Partnership 1982-P-3.
Prudential Bache Energy Income Fund 1983 P 1.
Prudential Bache Energy Income Fund 1983 P 2.
Prudential Bache Energy Income Fund 1983 P 3.

Applicant, an affiliate of Graham Resources, Inc., states effective June 28, 1986, McCormick Oil & Gas merged properties with Graham Resources, Inc. Applicant requests the small producer certificate issued to McCormick 1976 Oil & Gas Program in Docket No. CS77-319 be terminated.

[4] By supplemental letter dated Oct. 8, 1986, Applicant states that its affiliate, Texas Crude Oil Co., a small producer certificate holder in Docket No. CS68-46 was dissolved in 1981. Applicant requests termination of the small producer certificate in Docket No. CS68-46.

[FR Doc. 86-24924 Filed 11-3-86; 8:45 am]

BILLING CODE 6717-01-M

Applications Filed With the Commission

October 31, 1986.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. Type of Application: Transfer of License.

b. Project No.: 7153-005.

c. Date Filed: October 14, 1986.

d. Applicant: SNC Hydro Inc. and Victory Mills Company, Inc.

e. Name of Project: Victory Mills Project.

f. Location: On Fish Creek in Saratoga County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Peter Kissel, 5804 Utah Avenue, NW., Washington, DC 20015, (202) 887-1424.

i. Comment Date: November 17, 1986.

j. Description of Proposed Transfer: On May 15, 1984, a license was issued to SNC Hydro, Inc., to construct, operate, and maintain the Victory Mills Project No. 7153. A license amendment was issued on March 27, 1986, authorizing the relocation of the powerhouse. SNC Hydro, Inc., intends to transfer the license to Victory Mills Company, Inc. (a wholly owned subsidiary for SNC Hydro, Inc.) to facilitate and obtain favorable tax treatment for the project. The licensee has complied with the terms and conditions of the license. The project is currently under construction and licensee expects that it will be in operation by the end of 1986. The Victory Mills Company, Inc. has agreed to accept all terms and conditions of the license and the requirements of the Federal Power Act and to be bound by it as if it were the original licensee.

k. This notice also consists of the following standard paragraphs: B and C.

Standard Paragraphs

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filing must bear in all capital letters the title "Comments", "Notice of Intent to File Competing Application", "Competing Application", "Protest" or "Motion to Intervene", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203-RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-24919 Filed 11-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC87-2-001]

Arkla Energy Resources, a Division of Arkla, Inc.; Tariff Sheet Filings

(October 30, 1986).

Take notice that on October 24, 1986, Arkla Energy Resources, a Division of Arkla, Inc., (Arkla Energy), Post Office Box 21734, Shreveport, Louisiana 71151, filed in Docket No. TC87-2-001 the following revised tariff sheets to its FERC Gas Tariff to be effective November 15, 1986:

Substitute Eighth Revised Sheet No. 3F which supersedes Seventh Revised Sheet No. 3F
Substitute Eighth Revised Sheet No. 3G which supersedes Seventh Revised Sheet No. 3G

Arkla Energy is filing these sheets to correct computational errors in its original Docket No. TC87-2-000, which was submitted pursuant to § 281.204(b)(2) of the Commission's Regulations.

Arkla Energy requests that the tariff sheets be permitted to become effective November 15, 1986, as proposed.

Any person desiring to be heard or make any protest with reference to said tariff sheet filing should on or before November 12, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-24921 Filed 11-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-524-001, et al.]

FMP Operating Co., et al.; Applications for Abandonment and Blanket Limited-Term Certificate

October 29, 1986.

Take notice that the applicant listed herein has filed applications pursuant to section 7 of the Natural Gas Act for authorization to abandon service and for a blanket limited-term certificate to sell natural gas in interstate commerce, as described herein.

The circumstances presented in the applications meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436-A, issued October 9, and December 12, 1985, in Docket No. RM85-1-000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protests with reference to said applications should on or before 15 days after the date of publication of this notice in the Federal Register, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR

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385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file petitions to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price Per Mcf	Pressure base
CI86-524-001 B. Sept. 25, 1986[1]	FMP Operating Company, et al.[2] P.O. Box 60004, New Orleans, Louisiana 70160-0004.	Columbia Gas Transmission Corporation, Eugene Island Block 308, Offshore Louisiana.	(³)	
CI86-748-000 A. Sept. 25, 1986[1]	do	Various Purchasers, Eugene Island Block 308, Offshore Louisiana.	(⁴)	

Filing Code: A—Initial Service—B—Abandonment—C—Amendment to add acreage—D—Amendment to delete acreage—E—Total Succession—F—Partial Succession.

[1] These applications were noticed on October 24, 1986. However, that notice did not include Applicant's additional request received October 22, 1986, as amended October 24, 1986, to revise the list of non-signatory joint interest owners. Applicant states that the list first submitted incorrectly aggregated the interests of certain owners under FMP Operating Company due to a mistaken belief that certain joint interest owners were limited partners in FMP Operating Company. Applicant proposes by its October 22, 1986, submittal to include the interests of CLK Oil and Gas Co., Robert A. Day, Jr., Halliburton Company, and Continental Land & Fur Co., Inc.

[2] The *et al.* parties are Tesoro Petroleum Corporation, TXP Operating Company, CLK Oil and Gas Co., Robert A. Day, Jr., Halliburton Company, and Continental Land & Fur Co., Inc.

[3] Applicant requests a two-year limited-term abandonment of excess gas sales to Columbia, subject to a "recall" on the gas by Columbia on 30-days' notice. Applicant states that initially Columbia will require only approximately 25% of Applicant's anticipated daily deliverability. This, Applicant states, would cause Columbia to incur substantial take-or-pay liabilities and Applicant to experience a severely curtailed cash flow. As such, Applicant states it is subject to substantially reduced takes without payment. Applicant states that sales to Columbia are to be made under its FERC Gas Rate Schedule No. 31. Applicant states that the gas qualifies as NGPA section 102(d) gas and that the deliverability for all joint interest owners is estimated to be 56.6 MMcf/d. Applicant states that under a June 2, 1986, contract amendment Applicant can demand release from its obligations. Applicant further states that upon release of the gas Columbia will receive take-or-pay relief.

[4] Applicant requests a two-year blanket limited-term certificate with pre-granted abandonment to make sales for resale in interstate commerce of gas which is subject to the limited-term abandonment in Docket No. CI86-524-001. Applicant requests that the filing requirements of §§ 154.92(b), 154.94(h) and 154.94(k) and Part 271 of the Commission's Regulations be waived. Applicant states it is willing to accept reporting requirements in lieu of compliance with the foregoing.

[FR Doc. 86-24923 Filed 11-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-6-000]

El Paso Natural Gas Co.; Petition To Institute a Hearing

October 29, 1986.

Take notice that on October 3, 1986, El Paso Natural Gas Company (El Paso) tendered for filing a Petition To Institute A Hearing in accordance with Article VI of the Stipulation and Agreement in Settlement of Rate Proceedings (settlement agreement) approved by the Commission's August 14, 1985 letter order in El Paso's Docket Nos. RP85-58, *et al.* Article VI notes that the rates approved in the settlement include an "additional fixed cost reimbursement charge" applicable to sales service to Southern California Gas Company (SoCal) and Pacific Gas and Electric Company (PG and E). The charge was to be levied at any time purchases by SoCal or PG and E fell short of an "additional fixed cost reimbursement quantity." the additional fixed cost reimbursement quantity was equal to 60% of the annual contract quantity for SoCal and PG and E.

El Paso states Article VI limits the duration of the additional fixed cost reimbursement charge to SoCal and PG and E. Paragraph 6.2 recites that if the minimum commodity bill of Transwestern Pipeline Company (Transwestern) to SoCal is established at any level other than 60% of the annual contract quantity, El Paso will be required to modify its additional fixed cost reimbursement quantities to reflect the same percentage level. Nevertheless, Paragraph 6.3 provides that if the new level is less than 60%, El Paso will have the right, upon request, to a prompt hearing to determine a higher level to be proposed by El Paso.

On August 4, 1986, in Transwestern's Docket Nos. RP81-130-024, *et al.*, the Commission lowered Transwestern's minimum commodity bill level to zero. As provided by Paragraph 6.2 of the Settlement Agreement, El Paso is filing concurrently herewith revised tariff sheets which reduce its additional fixed cost reimbursement quantities to zero. This petition is intended to exercise El Paso's right under Paragraph 6.3 to inititate a prompt hearing with respect to the just and reasonable level of El Paso's additional fixed cost reimbursement charge.

El Paso has served copies of this petition upon all the parties to Docket Nos. RP85-58, *et al.*, all customers of El Paso, and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before November 7, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-24922 Filed 11-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-101-002]

Superior Offshore Pipeline Co.; Compliance Filing

October 29, 1986.

Take notice that on October 20, 1986, Superior Offshore Pipeline Company (SOPCO) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet Nos. 5, 7, 8, 10, 17, 18, 32, 34, 35, 38, 39, 47, 48, 53, and 54.

According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until October 24, 1986.

SOPCO states that this filing is in compliance with the Commission's order of October 17, 1986, and that the First Revised Sheets have been modified to conform with § 154.33 of the Commission's regulations with respect to proper pagination. Additionally, First Revised Sheet No. 5 has been amended to include a one cent per MMBtu minimum rate pursuant to Ordering Paragraph (B) of the October 17, 1986 order.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before November 5, 1986. Protests will be considered by the Commission in determining the

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appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–24920 Filed 11–3–86; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

[Solicitation No. DE–PSO1–87CE27462]

Announcement of Competitive Grant Program; Least Cost Utility Planning Program

The United States Department of Energy, Office of Conservation and Renewable Energy, Office of Buildings and Community Systems, is entering into a competitive grant program for the performance of research to determine the impacts of energy conservation technologies on utilities' load shapes and ways this data, information, and analysis can be used in least-cost utility planning.

Least-cost utility planning is a methodology that is still evolving and there is a need to develop improved data, methodologies and analytical tools to assist State energy agencies, regulatory commissions, utilities and consumer groups in identifying and evaluating various combinations of supply and demand-side options that could lead to a least-cost load-resource balance.

The U.S. Department of Energy, in the forthcoming solicitation, will request applications in the major areas of Technology Assessment, Market Penetration, Integrated Utility Planning and Technology Transfer.

Technology Assessment identifies the cost and performance *potential* of energy conservation and load-shaping technologies. Market Penetration involves a technology's penetration of the market as a result of utility programs and expected cost/benefit impacts of the use by the customer of such technologies. In Integrated Utility Planning, utilities use the information from the first two areas above to integrate their demand-side and supply-side alternatives into the combination that provides the least cost to their customers. Technology Transfer is the activity that collects information on least-cost utility programs and disseminates it to utilities, regulators and others in a form that they can use.

Multiple awards for research and technology transfer are expected to be made during FY 1987. At least $250,000 will be allocated for this program.

Eligibility: Unrestricted.

It is anticipated that a formal solicitation will be issued in November 1986 and that a Pre-Application Conference will be conducted on or about December 17, 1986. Requests for copies of this solicitation should be addressed to: U.S. Department of Energy, Office of Procurement Operations, Attn: Document Control Specialist, 1000 Independence Avenue, SW., Washington, DC 20585.

The Contract Specialist is Rose Mason at (202) 252–6757.

Dated: October 23, 1986.

Stephen J. Michelsen,

Director, Contract Operations Division "B" Office of Procurement Operations.

[FR Doc. 86–24929 Filed 11–3–86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[A–6–FRL–3104–7]

Delegation of Authority to the State of Texas; Prevention of Significant Deterioration and Visibility Protection New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: Notice is hereby given which clarifies the visibility new source review (NSR) program for the State of Texas. This action is a result of a proposed rulemaking on October 23, 1984, (49 FR 42670) in which EPA proposed to disapprove State Implementation Plans (SIPs) of states, including Texas, which failed to comply with the provisions of 40 CFR 51.307 for visibility NSR.

Texas has had partial authority through delegation for technical and administrative review of the Federal Prevention of Significant Deteroration (PSD) program, 40 CFR 52.21, since April 23, 1981. The EPA revised the PSD program to incorporate the requirements of 40 CFR 51.307 on July 12, 1985. The PSD delegation to Texas includes any revision to the PSD program which occurs subsequent to the original delegation of April 23, 1981. Consequently, the technical and administrative review of the revised PSD program has been delegated to the State of Texas.

EFFECTIVE DATE: Partial delegation is effective as of July 12, 1985, for visibility NSR.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–AN), 1201 Elm Street, Dallas, Texas 75270

Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

FOR FURTHER INFORMATION CONTACT: John Crocker, Air Programs Branch, EPA Region 6, 1201 Elm Street, Dallas, Texas 75270, telephone (214) 767–9850 or (FTS) 729–9850. Reference Docket File Number TX–86–1.

SUPPLEMENTARY INFORMATION:

Background

Section 169A of the Clean Air Act, 42, U.S.C. 7491, requires visibility protection for mandatory Class I Federal areas where EPA has determined that visibility is an important value. ("Mandatory Class I Federal areas" are certain national parks, wilderness areas, and international parks, as described in section 162(a) of the Act, 42 U.S.C. 7472(a), 40 CFR 81.400–437.) Section 169A specifically requires EPA to promulgate regulations requiring certain states to amend their State Implementation Plans (SIPs) to provide for visibility protection.

On December 2, 1980, EPA promulgated the required visibility regulations in 45 FR 80084, codified at 40 CFR 51.300 *et seq.* It required the states to submit their revised SIPs to satisfy those provisions by September 2, 1981. (See 45 FR 80091, codified in 40 CFR 51.302(a)(1).) That rulemaking resulted in numerous parties seeking judicial review of the visibility regulations. In March 1981, the Court stayed the litigation pending EPA action on related administrative petitions for reconsideration of the visibility regulations filed with the Agency.

In December 1982, the Environmental Defense Fund (EDF) filed suit in the U.S. District Court for the Northern District of California alleging that EPA failed to perform a nondiscretionary duty under section 110 of the Act to promulgate visibility SIPs. A negotiated settlement agreement between EPA and EDF required EPA to promulgate visibility SIPs on a specific schedule. It required EPA to propose and promulgate federal regulations in states where SIPs are deficient with respect to the 1980 visibility new source review and monitoring regulations, 40 CFR 51.307 and 51.305, respectively. Texas has two mandatory Class I areas: Big Bend National Park and Guadalupe Mountains National Park. No other Class I areas currently exist in the State. Texas is one of the states listed in 49 FR 42670 as having an inadequate New Source Review (NSR) and monitoring plan for visibility protection. Texas did not submit a visibility monitoring strategy. Consequently, EPA promulgated a Federal monitoring plan in the July 12, 1985, Federal Register (50 FR 28544). This notice clarifies the visibility NSR program for Texas.

On December 11, 1985, the Governor of Texas submitted a SIP Revision for Protection of Visibility for new source review. Visibility NSR regulations were included in the submittal. EPA is reviewing the submittal and will take action on it in a separate notice.

New Source Review

40 CFR 51.307 requires states to review new major stationary sources and major modifications prior to construction to assess potential impacts on visibility in any visibility protection area, regardless of the air quality status of the area in which the source is located. That is, sources locating in attainment areas and nonattainment areas must undergo visibility new source review (See 40 CFR 51.307(a) and (b)(2), respectively). These requirements ensure that (1) the visibility impact review is conducted in a timely and consistent manner, (2) the reviewing authority considers any timely Federal Land Manager (FLM) analysis demonstrating that a proposed source would have ad adverse impact on visibility, and (3) there is public availability of the permitting authority's conclusion.

Visibility NSR is addressed in two parts: one addreses major stationary sources subject to the Prevention of Significant Deterioration (PSD) regulations (40 CFR 51.24) which apply to attainment areas, and the second addresses major sources in nonattainment areas. On July 12, 1985, at 50 FR 28544, EPA promulgated three programs to meet these requirements, each to be applicable in separate circumstances. The EPA promulgated revisions to the Federal PSD program (40 CFR 52.21) which incorporate the requirements of §51.307(a) and is applicable in States with Federally operated or delegated PSD programs. The EPA created a new program, §52.27, which is applicable in States with a Federally approved State PSD program. The EPA created a new program, §52.28, to meet the requirements of §51.307(b) and is applicable in States with nonattainment areas. Texas has no nonattainment areas that may impact visibility in its mandatory Class I Federal areas and was therefore exempted from the nonattainment program requirements of 40 CFR 51.307(b)(2) by EPA (50 FR 28549). Thus, the Texas visibility new source review regulations need only apply to attainment areas and specify the standard requirements for any permit application and permit approval.

Current Plan Status

Texas has had partial authority through delegation for technical and administrative review of the Federal PSD program, 40 CFR 52.21, since April 23, 1981. The EPA revised the PSD program to incorporate the requirements of 40 CFR 51.307 on July 12, 1985. The PSD delegation to Texas includes any revision to the PSD program which occurs subsequent the original delegation of April 23, 1981. Consequently, the technical and administrative review of the revised PSD program has been delegated to the State of Texas. On December 11, 1985, the Governor of Texas submitted to EPA a SIP revision for the Prevention of Significant Deterioration Program including amendments to TACB General Rules and to TACB Regulation VI. The State has incorporated the requirements of §51.307(a) into these revisions. The EPA is currently reviewing the PSD SIP revision and will publish its determination in a separate Federal Register notice. If EPA approves the State's submittal, that action will supercede the PSD delegation of authority.

Dated: October 17, 1986.

Frances E. Phillips,

Acting Regional Administrator.

[FR Doc. 86-24914 Filed 11-3-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-776-DR]

Illinois; Amendment to Notice of a Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois (FEMA-776-DR), dated October 7, 1986, and related determinations.

DATED: October 28, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice: The notice of a major disaster for the State of Illinois, dated October 7, 1986, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 7, 1986: The Cook County Townships of Leyden, Maine, Proviso, Riverside, and Wheeling for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support Federal Emergency Management Agency.

[FR Doc. 86-24897 Filed 11-3-86; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-780-DR]

Kansas; Amendment to Notice of a Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas (FEMA-780-DR), dated October 22, 1986, and related determinations.

DATED: October 29, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice: The notice of a major disaster for the State of Kansas, dated October 22, 1986, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 22, 1986: Allen, Bourbon, Chautauqua, Cherokee, Cowley, Montgomery, Neosho, and Wilson Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support Federal Emergency Management Agency.

[FR Doc. 86-24898 Filed 11-3-86; 8:45 am]

BILLING CODE 6718-02-M

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[FEMA-779-DR]

Missouri; Amendment to Notice of a Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri (FEMA-779-DR), dated October 14, 1986, and related determinations.

DATED: October 28, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3616.

Notice: The notice of a major disaster for the State of Missouri, dated October 14, 1986, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 14, 1986:

Vernon County for Individual Assistance.

Cooper County as an adjacent area for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 86-24899 Filed 11-3-86; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-778-DR]

Oklahoma; Amendment to Notice of a Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oklahoma (FEMA-778-DR), dated October 14, 1986, and related determinations.

DATED: October 28, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3616.

Notice: The notice of a major disaster for the State of Oklahoma, dated October 14, 1986, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 14, 1986:

The following counties for Public Assistance:

Beckham
Blaine
Caddo
Canadian
Cherokee
Custer
Garfield
Grady
Grant
Greer
Kay
Kingfisher
Kiowa
Logan
McClain
Major
Muskogee
Osage
Ottawa
Pawnee
Payne
Sequoyah
Tillman
Tulsa
Wagoner
Washington
Washita

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 86-24900 Filed 11-3-86; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL RESERVE SYSTEM

Industry Workshop; Electronic Payments Formats; Meeting

The Federal Reserve System will sponsor two workshops on a standard electronic payments format on Monday, November 17, 1986 and Monday, November 24, 1986. The two workshops, which will be open to industry representatives, are similar but are targeted towards different audiences. The November 17, 1986 workshop is for banking industry and standards setting representatives. The November 24, 1986 workshops is for software and hardware vendors. The two workshops will be held as follows:

AUDIENCE: Banking industry and standards setting groups
DATE: November 17, 1986
TIME: 9:30 to 12:00 noon
ADDRESS: Home Insurance Building, 59 Maiden Lane, New York City (between Nassau and Williams Streets, in the Financial District)
ROOM: 15th Floor

AUDIENCE: Software and hardware vendors
DATE: November 24, 1986
TIME: 9:30 to 12:00 noon
ADDRESS: Federal Reserve Bank of Boston, 600 Atlantic Avenue, Boston, Massachusetts
ROOM: Auditorium, ground level

The purpose of the workshop is to discuss with industry participants the implications of moving to one standard format for all Federal Reserve electronic payments (transfer of funds, securities transfer, and the automated clearing house). The need for such a workshop is a result of research, recently conducted by the Federal Reserve, on the future of electronic payments in this country. One of the major issues to emerge was the need for a standard format for electronic payments.

The task force studying standard formats, would like industry feedback on the implications and the viability of selecting ANSI X12 as a standard format.

The workshop is an opportunity for participants, knowledgeable about the various payments formats, to discuss the impact of such a change in formats. Changing to a new format would provide both benefits and transition hurdles to payments system users. Since acceptance by users is essential to the success of any new transaction format, the Federal Reserve is interested in the ramifications of such a change to depository institutions and their customers, and in any obstacles inherent in the use of the ANSI X12 standard.

Issues and comments generated from the workshop will help focus subsequent research and coordination efforts, helping the Federal Reserve develop an effective and efficient standard format.

Persons wishing to comment in writing regarding the above topic may do so by mailing statements to Tina Slater, Senior Analyst, Division of Bank Operations, Board of Governors of the Federal Reserve System, Washington, DC 20551, or to Frank Zalesky, Technological Consultant, Federal Reserve Bank of Minneapolis, 250 Marquette Avenue Minneapolis, Minnesota 55480. Comments must be received no later than November 10, 1986.

For further information contact Tina Slater at (202) 452-2539 or Frank Zalesky at (612) 340-2008. For Telecommunications Device for the Deaf (TDD) users, contact: Earnestine Hill or Dorothea Thompson at (202) 452-3544.

Board of Governors of the Federal Reserve System, October 29, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-24857 Filed 11-3-86; 8:45 am]

BILLING CODE 6210-01-M

Barnett Banks of Florida, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 24, 1986.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW, Atlanta, Georgia 30303:

1. *Barnett Banks of Florida, Inc.*, Jacksonville, Florida; to acquire 80 percent of the voting shares of First City Bancorp, Inc., Marietta, Georgia, and thereby indirectly acquire The First National Bank of Cobb County, Marietta, Georgia.

In connection with this application, Applicant also proposes to acquire Georgia Interchange Network, Inc., Atlanta, Georgia, and thereby engage in the operation of an electronic funds transfer interchange system within the state of Georgia pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 29, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-24907 Filed 11-3-86; 8:45 am]

BILLING CODE 6210-01-M

PNC Financial Corp.; Application To Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or grains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 24, 1986.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *PNC Financial Corp*, Pittsburgh, Pennsylvania; to engage *de novo* through its subsidiary, Provident National Corporation, Cherry Hill, New Jersey, in making business loans to commercial customers from an office located in New Jersey pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 29, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-24856 Filed 11-3-86; 8:45 am]

BILLING CODE 6210-01-M

Premier Bankshares Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 24, 1986.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Premier Bankshares Corporation*, Tazewell, Virginia; to acquire 100 percent of the voting shares of Peoples Bank, Inc., Honaker, Virginia.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Bank South Corporation*, Atlanta, Georgia; to acquire 100 percent of the voting shares of Southern Bancorp, Inc., Waycross, Georgia, and thereby indirectly acquire the Exchange Bank, Douglas, Georgia; Southern Bank, Waycross, Georgia; and Mount Vernon Bank, Mount Vernon, Georgia.

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2. *Brannen Banks of Florida, Inc.*, Inverness, Florida; to acquire 100 percent of the voting shares of The Bank of Brooksville, Brooksville, Florida, a *de novo* bank.

C. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Bancorp, Inc.*, Yates City, Illinois; to become a bank holding company by acquiring 80 percent of the voting shares of Bank of Yates City, Yates City, Illinois. Comments on this application must be received by November 21, 1986.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Bankers' Bancorporation of Missouri, Inc.*, Jefferson City, Missouri; to become a bank holding company by acquiring at least 80 percent of the voting shares of Missouri Independent Bank, Jefferson City, Missouri.

2. *Mark Twain Bancshares, Inc.*, St. Louis, Missouri; to acquire at least 95 percent of the voting shares of Bankers Trust Company, Belleville, Illinois.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Love County Bancorp*, Marietta, Oklahoma; to become a bank holding company by acquiring 80 percent of the voting shares of Bank of Love County, Marietta, Oklahoma. Comments on this application must be received by November 21, 1986

Board of Governors of the Federal Reserve System, October 29, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 24908 Filed 11–3–86; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION

Transaction No.	Name of acquiring person	Name of acquired person	Name of acquired entity	Date terminated
(1) 86-1236	Occidental Petroleum Corp	Diamond Shamrock Corp	Diamond Shamrock Chemicals Corp	Aug. 27, 1986.
(2) 86-1323	Summit Health Ltd	Tucson General Hospital	Tucson General Hospital	Aug. 19, 1986.
(3) 86-1405	Blue James N	Chevron Corp	GA Technologies Inc	Sept. 18, 1986.
(4) 86-1439	Whittaker Corp	Arlen Corp	Steel Strip-Juster Steel Div.	Aug. 7, 1986.
(5) 86-1449	Arlen Corp	Whittar Industries Ltd	Whittar Industries Ltd	Aug 7, 1986.
(6) 86-1489	United Van Lines Inc	Sentry Insu A Mutual Co	Great Southwest Fire Insu Co	Aug. 7, 1986.
(7) 86-1506	Federal Realty Investment Trus	Berman Wolford I-Melvin J	Berman Enterprises	Aug. 7, 1986.
(8) 86-1511	BankAmerica Corp	BCI Associates L P	Beatrice Financial Services In	Aug. 7, 1986.
(9) 86-1496	Gulf Western Inc	W D Larson Cos Ltd Inc	Allstate Finance Leasing	Aug. 8, 1986.
(10) 86-1481	Natl Patent Development Corp	Baxter Travenol Labs Inc	Abbey Medical Inc	Aug. 11, 1986.
(11) 86-1497	Petroleos de Venezuela S A	Southland Corp	Citgo Petroleum Corp	Sept. 4, 1986.
(12) 86-1498	Petroleos de Venezuela S A	Colonial Pipeline Co	Colonial Pipeline Co	Sept. 4, 1986.
(13) 86-1522	Imperial Chemical Industries	Chevron Corp	Paraquat	Aug. 7, 1986.
(14) 86-1513	Mead Corp	James River Corp of Virginia	Zellerbeck Distribution Group	Aug. 15, 1986.
(15) 86-1534	Burmah Oil Inc	Columbia Cement Co Inc	Columbia Cement Co Inc	Aug. 8, 1986.
(16) 86-1535	Hansen Elmer F-Eileen G	Fidelcor Inc	Fidelity Bond Mortgage Co	Aug. 8, 1986.
(17) 86-1520	Triangle Industries Inc	American Can Company	American Can Company	Sept. 25, 1986.
(18) 86-1521	American Can Co	Triangle Industries Inc	Triangle Industries Inc	Sept. 25, 1986.
(19) 86-1554	Heritage Communications Inc	Rollins Communications Inc	Rollins Communications Inc	Aug. 7, 1986.
(20) 86-1551	Jefferson Smurfit Group plc	Mobil Corp	Container Corp of America	Aug. 25, 1986.
(21) 86-1552	Morgan Stanley Leveraged Equit	Mobil Corp	Container Corp of America	Aug. 25, 1986.
(22) 86-1553	H.F. Lenfest	Tele-Communications Inc	Tele-Communications Inc	Aug. 28, 1986.
(23) 86-1537	Gloucester County Times Inc	Times Mirror Co	Times Herald Printing Co	Aug. 7,1986.
(24) 86-1547	Ladd Furniture Inc	American Furniture Co Inc	American Furniture Co Inc	Aug. 7, 1986.
(25) 86-1540	Georgetown Industries Inc	V H I Inc	V H I Inc	Aug. 13, 1986.
(26) 86-1586	Exposaic Industries Inc	Georgetown Industries Inc	Andrews Wire Divi of Gll	Aug. 19, 1986.
(27) 86-1559	V F Corp	Blue Bell Save-Profit Sharing	Blue Bell Save-Profit Sharing	Aug. 27, 1986.
(28) 86-1563	Giant Group Ltd	Tre Corp	Tre Corp	Sept. 2, 1986.
(29) 86-1586	Exposaic Industries Inc	Georgetown Industries Inc	Andrews Wire Divi of Gll	Aug. 19, 1986.
(30) 86-1598	Interco Inc	Converse Inc	Converse Inc	Aug. 19, 1986.
(31) 86-1603	Boots Co PLC	Baxter Travenol Labs Inc	Flint Divi-Smith Labs	Aug. 28, 1986.
(32) 86-1604	Commonwealth Energy System	Texas Eastern Corp	Texas Eastern Corp	Sept. 4, 1986.
(33) 86-1611	Gillett George N Jr	A S Abell Co	Wmar Inc—WRLH-TV	Sept. 4, 1986.
(34) 86-1612	Gillett George N Jr	Times Mirror Co	Times Mirror Co	Sept. 4, 1986.
(35) 86-1656	Alaska Air Goup Inc	Jet America Airlines Inc	Jet America Airlines Inc	Aug. 22, 1986.
(36) 86-1638	Sedgwick Group-Fred S James	Armistead Group Inc	Armistead Group Inc	Aug. 28, 1986.
(37) 86-1640	Pan-American Life Insu Co	Gill Marvin D	National Insu Services Inc	Aug. 28, 1986.
(38) 86-1646	Saddlebrook Corp	First Columbia Financial Corp	Mid-Continent Computer Servs	Aug. 28, 1986.
(39) 86-1648	Cineplex Odeon Corp	Landes Michael	RKO Century Warner Theatres	Aug. 29, 1986.
(40) 86-1649	Cineplex Odeon Corp	Schwartz Albert	RKO Century Warner Theatres	Aug. 29, 1986.
(41) 86-1657	Alaska Air Group Inc	Jet America Airlines Inc	Jet America Airlines Inc	Aug. 22, 1986.
(41) 86-1661	Reed Intl P L C	Levine Mark	American Baby Inc-Cable TV	Aug. 27, 1986.
(42) 86-1665	Armstrong World Industries Inc	Henry Warner W	WW Henry Co-Henry Development	Aug. 27, 1986.
(43) 86-1668	Reed Intl P L C	Goldberg Alan	American Baby Inc-Cable TV	Aug. 27, 1986.
(44) 86-1679	Weyerhaeuser Co	Benjamin Ansehl Co	Benjamin Ansehl Co	Aug. 28, 1986.
(45) 86-1691	Weyerhaeuser Co	Jack Ansehl Living Trust	Jack Ansehl Living Trust	Aug. 28, 1986.
(46) 86-1686	Textron Inc	Ex-Cell O Corp	Ex-Cell O Corp	Aug. 28, 1986.
(47) 86-1696	Textron Inc	Ex-Cell O Corp	Ex-Cell O Corp	Aug. 28, 1986.
(48) 86-1681	Davis William Jack	Pratt-Read Corp	Pratt-Read Corp	Sept. 5, 1986.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

Transaction No.	Name of acquiring person	Name of acquired person	Name of acquired entity	Date terminated
(49) 86-1682	Genetics Institute Inc	Welgen Manufacturing Inc-J V	Welgen Manufacturing Inc-J V	Sept. 10, 1986.
(50) 86-1685	Wellcome Trust Foundation Ltd	Welgen Manufacturng Inc-J V	Welgen Manufacturing Inc-J V	Sept. 10, 1986.
(51) 86-1683	Imperial Chemical Industries	Hanson Trust PLC	HSCM-6 Inc	Sept. 11, 1986.
(52) 86-1688	Ocelot Industries Ltd-J V Lyons	State Industries Inc	State Industries Inc	Sept. 11, 1986.
(53) 86-1673	Borg Warner Corp	Service Corp International	Service Corp International	Sept. 12,1986.
(54) 86-1666	Conseco Inc	H F Ahmanson	Bankers Natl Life Insu Co	Sept. 2, 1986.
(55) 86-1641	Rowntree Mackintosh plc	Sunmark Inc	Sunmark Inc	Sept. 3, 1986.
(56) 86-1659	Kenbar Industries Inc	Dart Kraft Inc	Dart Kraft Inc	Sept. 4, 1986.
(57) 86-1676	Gonzalez Hector Luis	Champion Intl Corp	Central Natl Insu Co of Omaha	Sept. 10, 1986
(58) 86-1651	ACI International Limited	Aancor Holdings Inc	Aancor Holdings Inc	Sept. 11, 1986.
(59) 86-1715	Fulcrum II Limited Partnership	Transamerica Corp	Budget Rent A Car Corp	Sept. 17, 1986.
(60) 86-1718	Peltz Nelson	Triangle Industries Inc	Triangle Industries Inc	Aug. 8, 1986.
(61) 86-1716	Great Western Financial Corp	T L C Associates	City Holding-City Finance Co	Sept. 2, 1986.
(62) 86-1712	Companhia Vale do Rio Doce	Dixon Group	California Steel Industries	Sept. 3, 1986.
(63) 86-1714	Kawasaki Steel Corp	Dixon Group	California Steel Industries	Sept. 12, 1986.
(64) 86-1706	Hitachi Zosen Corporation	Hanson Trust PLC	Clearing Inc	Sept. 12, 1986.
(65) 86-1698	Tenneco Inc	Fulcrum Partnership	E-Z Por Corp	Sept. 25, 1986.
(66) 86-1699	Fletcher Challenge Limited	Miller Vance C	Pacific Construction Co Ltd	Sept. 2, 1986.
(67) 86-1702	Beneficial Corp	American Savings Loan Assc	American Savings Loan Assc	Sept. 5, 1986.
(68) 86-1701	Inspiration Resources Corp	Merrill Lynch	Merill Lynch Leasing Inc	Sept. 5, 1986.
(69) 86-1704	RMB Texas T Partners	Taft Broadcasting Co	Taft Broadcasting Co	Sept. 10,1986.
(70) 86-1703	Honeywell Inc	Newco	Newco	Sept. 12, 1986.
(71) 86-1694	Sudbury Holdings Inc	West Clarence	United Industries Inc	Sept. 26, 1986.
(72) 86-1695	English China Clays P L C	Moretti Harrah Marble Co Inc	Moretti Harrah Marble Co Inc	Aug. 29, 1986.
(73) 86-1692	Lone Star Industries Inc	Pacific Ready Mix Inc	Pacific Ready Mix Inc	Sept. 2, 1986.
(74) 86-1693	CasChem Group Inc	Schering Aktiengesellschaft	Nepera Inc	Sept. 4, 1986.
(75) 86-1689	Jannock Limited	Nika Holding Inc	Richtex Corp	Sept. 5, 1986.
(76) 86-1697	NEC Corp	Newco	Newco	Sept. 17, 1986.
(77) 86-1720	FCS Energy Inc	Amax Inc	Amax Chemical Corp	Oct. 12, 1986.
(78) 86-1719	Allied Signal Inc	Becton Dickinson Co	Endevco Dvi-Transducer Tech	Sept. 5, 1986.
(79) 86-1722	Lafarge Coppee S A	Aancor Holdings Inc	Aancor Holdings Inc	Sept. 11, 1986.
(80) 86-1725	Arabian Investment Banking	Peebles Inc	Peebles Inc	Sept. 11, 1986.
(81) 86-1723	Dresser Industries Inc	Newco	Newco	Sept. 16, 1986.
(82) 86-1724	Halliburton Co	Newco	Newco	Sept. 29, 1986.
(83) 86-1735	Allegheny Corp	Shelby Mutual Insu Co of Shelb	Shelby Mutual Insu Co of Shelb	Sept. 29, 1986.
(84) 86-1741	Unocal Corp	Santa Fe Southern Pacific Corp	Southern Pacific Land Co	Sept. 8, 1986.
(85) 86-1743	American Express Co	Sun Co Inc	Sun Distributors Inc	Sept. 9, 1986.
(86) 86-1761	Interco Inc	Converse	Converse	Sept. 9, 1986.
(87) 86-1739	Weston Paper Manufacturing Co	Green Bay Packaging Inc	Pioneer Container Corp	Sept. 12, 1986.
(88) 86-1742	Reckitt Colman plc	Hanson Trust plc	HSCM-7 Inc	Sept. 17, 1986.
(89) 86-1726	Mutual Life Insur Co of N Y	Hunt James R	North American Mortgage Co	Sept. 25, 1986.
(90) 86-1728	Lorimar Telepictures Corp	WBC Associates	Wometco Broadcasting Co	Sept. 9, 1986.
(91) 86-1729	Lorimar Telepictures Corp	SCI Associates L P	SCIPSCO Inc	Sept. 12, 1986.
(92) 86-1738	Interco Inc	Converse Inc	Converse Inc	Sept. 12, 1986.
(93) 86-1733	Merrill Lynch Co Inc	Gelco Corp	Gelco Corp	Sept. 12, 1986.
(94) 86-1732	Rigas John J	Prime Cable Corp	Comax Telecom Corp	Sept. 17, 1986.
(95) 86-1752	Merrill Lynch Co Inc	Wilkins James M-Orbit Manuf	Orbit-Claco Manuf-Penline Gar	Sept. 25, 1986.
(96) 86-1745	Days Inns Corp	Belz Jack A	Northwest Motel Corp-Expressws	Sept. 8, 1986.
(97) 86-1755	Scripps Memorial Corp	Bay Hospital Medical Center	Bay Hospital Medical Center	Sept. 12, 1986.
(98) 86-1754	Oklahoma Publishing Co	Chiles H E	Rangers Management Inc	Sept. 12, 1986.
(99) 86-1748	Willamette Industries Inc	Peter Kiewit Sons, Inc	Peter Kiewit Sons, Inc	Sept. 19, 1986.
(100) 86-1751	RMS Ltd Partner-c/o Home Shop	WBC Associates L P Ltd Partner	Wometco WWHT Inc	Sept. 22, 1986.
(101) 86-1759	Peracchi Donald J-Judith E	H F Ahmanson & Co	Natl American Life Insu Co	Sept. 25, 1986.
(102) 86-1756	Aluminum Co of America	Borden Inc	Ragsdale Bros Inc-Tool Co	Sept. 8, 1986.
(103) 86-1760	Humana Inc	Womens Hospital Properties Ltd	Womens Hospital Properties Ltd	Sept. 12, 1986.
(104) 86-1758	Bonanno Carmine J-Miller Crop	I C Industries Inc	Abex Corp	Sept. 18, 1986.
(105) 86-1762	Excel Industries	Ford Motor Co	Modular Concepts Inc	Sept. 23, 1986.
(106) 86-1763	Ford Motor Co	Excel Industries Inc	Excel Industries Inc	Sept. 29, 1986.
(107) 86-1769	Chase Manhattan Co	Goff Tommy	Certified Savings Association	Sept. 29, 1986.
(108) 86-1768	Investment Ltd Partnership	Conductron Corp	Conductron Corp	Sept. 12, 1986.
(109) 86-1765	Phila Contri Insu of Houses	Rosenlund Arthur O	Germantown Insurance Co	Sept. 17, 1986.
(110) 86-1766	RMS Ltd Partnership-Home Shop	Plangere Jules L Jr	WSJT-TV 65	Sept. 22, 1986.
(111) 86-1767	RMS Ltd Partnership-Home Shop	Estate of E W Lass	WSJT-TV 65	Sept. 23, 1986.
(112) 86-1764	AlaTenn Resources Inc	Colony Energy Corp	Colony Energy Corp	Sept. 23, 1986.
(113) 86-1772	Basf Aktiengesellschaft	Intl Minerals Chemical Corp	IMC Pipeline Co	Sept. 29, 1986.
(114) 86-1775	Compact Video Inc	Revlon Group Inc	Adams Drug Co Inc	Sept. 12, 1986.
(115) 86-1777	Waste Management Inc	Baker International Corp	Baker International Corp	Sept. 12, 1986.
(116) 86-1770	National Freight Consortium	Bauphin Distribution Servs Co	Dauphin Distribution Servs Co	Sept. 12, 1986.
(117) 86-1771	Sosnoff Martin T	Caesars World Inc	Caesars World Inc	Sept. 23, 1986.
(118) 86-1776	Pfizer Inc	Intermedics Inc	Infusaid Co	Sept. 24, 1986.
(119) 86-1778	Arthur J Gallagher & Co	Hefferman Frank M Jr	Hefferman Keller Doble Inc	Sept. 26, 1986.
(120) 86-1779	Hefferman Frank M Jr	Arthur J Gallagher & Co	Hefferman Keller Doble Inc	Sept. 16, 1986.
(121) 86-1781	Triton Group Ltd	Intermark Inc	U S Press Inc	Sept. 16, 1986.
(122) 86-1782	Intermark Inc	Triton Group Ltd	Triton Group Ltd	Sept. 18, 1986
(123) 86-1784	Bird Inc	Noranda Inc	Norandex Distribution Corp	Sept. 18, 1986.
(124) 86-1786	Mitsubishi Corp	Memory-Tech Inc	Memory-Tech Inc	Sept. 23, 1986.
(125) 86-1795	United Cable Television Corp	Prime Cable Corp	United CATV Inc	Sept. 25, 1986.
(126) 86-1793	Sedgwick Group plc	Crump Cos Inc	Crump Cos Inc	Sept. 22, 1986.
(127) 86-1819	Sedgwick	Crump Cos Inc	Crump Cos Inc	Sept. 23, 1986.
(128) 86-1790	Dart Kraft Inc	Distribuco Inc	Keeler Foods Inc	Sept. 23, 1986.
(129) 86-1787	Prudential Insu Co of America	Lumbermens Mutual Insu Co	Lumbermens Mutual Insu Co	Sept. 24, 1986.
(130) 86-1792	Artra Group Inc	Levinger Frederick N	Park Lane Associates Inc	Sept. 26, 1986.
(131) 86-1797	C H Beazer (Holdings) PLC	Gifford-Hill Co Inc	Gifford-Hill Co Inc	Sept. 29, 1986.
(132) 86-1798	Rockwell Intl Corp	Electronics Corp of America	Electronics Corp of America	Sept. 16, 1986.
(133) 86-1799	Rockwell International Corp	Electronics Corp of America	Electronics Corp of America	Sept. 23, 1986.
(134) 86-1804	McJunkin Corp	Grant Corps	Grant Supply Co	Sept. 23, 1986.
(135) 86-1801	General Electric Co	BankAmerica Corp	BancAmerica Acceptance Corp	Sept. 23, 1986.
(136) 86-1802	Tyco Toys Inc	K A C Inc	Kusan Inc	Sept. 25, 1986.
(137) 86-1806	InterContinental Life Corp	Standard Life Insurance Co	Standard Life Insurance Co	Sept. 25, 1986.
(138) 86-1810	Hindman Don J	simon Bros Inc	Simon Bros Inc	Sept. 22, 1986.
(139) 86-1813	Marshall Field V	Westinghouse Electric Corp	Group W Radio Inc	Sept. 22, 1986.
(140) 86-1808	Charmer Industries Inc	Handelman Irving	Service Liquor Distributors	Sept. 25, 1986.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

Transaction No.	Name of acquiring person	Name of acquired person	Name of acquired entity	Date terminated
(141) 86-1809	Oy Wartsila Ab	GCA Corp	GCA Industrial Systems Group	Sept. 25, 1986.
(142) 86-1812	Gotaas-Larsen Shipping Corp	Admiral Holdings Corp	Admiral Holdings Corp	Sept. 25, 1986.
(143) 86-1824	Brierley Investments Ltd	Anadite Inc	Anadite Inc	Sept. 26, 1986.
(144) 86-1825	U S F G Corp	Capital Guaranty Corp	Capital Guaranty Corp	Sept. 26, 1986.
(145) 86-1832	Baltimore Gas Electric Co	Capital Guaranty Corp	Capital Guaranty Corp	Sept. 26, 1986.
(146) 86-1835	Great Northern Nekoosa Corp	J J Corrugated Box Corp	J J Corrugated Box Corp	Sept. 26, 1986.
(147) 86-1816	Campeau Robert	Allied Stores Corp	Allied Stores Corp	Sept. 27,1986.
(148) 86-1817	Campeau Robert	Allied Stores Corp	Allied Stores Corp	Sept. 29, 1986.
(149) 86-1874	Roxboro Investments (1976) Ltd	Pullman-Peabody Co	Industrial Leasing Corp	Sept. 25, 1986.
(150) 86-1840	Bancorp Hawaii Inc	BankAmerica Corp	Arbella Leasing Corp	Sept. 26, 1986.
(151) 86-1846	Daniels Bill	Daniels-Hauser Holdings	GWC-3 Inc et al	Sept. 26, 1986.
(152) 86-1858	ASARCO Inc	British Petroleum Co The	Ray Mines Division	Sept. 26, 1986.
(153) 86-1849	Armstrong Rubber Co The	Dayco Corp	World Wide Rubber Operations	Sept. 29, 1986.
(154) 86-1867	Alco Standard Corp	Silvestri Corp	Silvestri Corp	Sept. 26, 1986.
(155) 86-1881	Siebe plc	Robertshaw Controls Co	Robertshaw Controls Co	Sept. 29, 1986.
(156) 86-1882	Siebe plc	Robertshaw Controls Co	Robertshaw Controls Co	Sept. 29, 1986.
(157) 86-1625	Nash-Finch Co	Thomas Howard Co of Hickory	Thomas Howard Co of Hickory	Aug. 28, 1986.
(158) 86-1629	M P G Acquisition Corp	Gould Inc	Medical Products Group	Aug. 28, 1986.
(159) 86-1624	General Instrument Corp	M-A Com Inc	Cable Home Communication Corp	Sept. 2, 1986.
(160) 86-1613	American Express Co	American Intl Group Inc	Preinco Holdings Inc	Sept. 3, 1986.
(161) 86-1614	Groupe Bruxelles Lambert S A	American Intl Group Inc	Preinco Holdings Inc	Sept. 3, 1986.
(162) 86-1623	New Zealand Dairy Board	Philip Morris Companies Inc	Otto Roth Co Inc	Sept. 4,1986.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Legal Technician, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 523-3894.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 86-24844 Filed 11-3-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee Meeting; Anesthesiology and Respiratory Therapy Devices Panel

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Anesthesiology and Respiratory Therapy Devices Panel

Date, time, and place. November 21, 9 a.m., Rm. T-416, 12720 Twinbrook Parkway, Rockville, MD.

Type of meeting and contact person. Open public hearing, 9 a.m. to 9:30 a.m.; open committee discussion, 9:30 a.m. to 11:30 a.m.; closed presentation of data, 1 p.m. to 2 p.m.; open committee discussion, 2 p.m. to 5 p.m.; Carolyn Derrer, Center for Devices and Radiological Health (HFZ-430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7226.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 10, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of the proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application (PMA) on a high frequency ventilator.

Closed presentation of data. Trade secret and/or confidential commercial or financial information will be presented to the committee regarding the manufacturing and in vitro data contained in the PMA for a high frequency ventilator. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA-305), Rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: October 28, 1986.

John A. Norris,

Acting Commissioner for Food and Drugs.

[FR Doc. 24848 Filed 11-3-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86V-0196]

Approved Variance From the Standard for Diagnostic X-Ray Systems and Their Major Components; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a variance from the performance standard for diagnostic X-ray systems and their major components has been approved by FDA's Center for Devices and Radiological Health (CDRH) for heavy-duty stretchers and beds.

DATES: The variance became effective July 30, 1986, and terminates July 30, 1991.

ADDRESSES: The application and all correspondence on the application have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Land, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Donovan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), CDRH has granted the Stryker Corp., 420 East Alcott St., Kalamazoo, MI 49001-6197, a variance from § 1020.30(n) (21 CFR 1020.30(n)) of the performance standard for diagnostic X-ray systems and their major components for heavy-duty stretchers and beds that are used in emergency rooms, recovery rooms, and intensive care/coronary care units, and that can be used to hold overweight patients during diagnostic X-ray procedures.

The specific requirement of the standard from which a variance has been granted pertains to the provision of § 1020.30(n) which states that the aluminum equivalent of each of the items listed in table II which are used between the patient and the image receptor may not exceed the indicated limits. All other provisions of the performance standard remain applicable to the product.

CDRH had determined that: (1) The requirement of § 1020.30(n) is not appropriate for heavy-duty stretchers and beds that are used to hold overweight patients during diagnostic X-ray procedures; (2) the anticipated frequency of use of these heavy-duty stretchers and beds for X-ray purposes is about 5 percent of all X-rays taken in the hospital units in question; and (3) the best available estimates indicate that, under the variance, the increase in patient X-ray exposure would not be over 10 percent more than the exposure afforded by similar products that are in compliance with the standard. Thus, these heavy-duty beds and stretchers will still utilize suitable means of providing radiation safety. For these reasons, on July 30, 1986, CDRH approved the requested variance by a letter to the manufacturer from the Deputy Director of CDRH.

So that the product may show evidence of the variance approved for the manufacturer, the product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number appearing in the heading of this notice, and the effective date of the variance.

In accordance with § 1010.4, the application and all correspondence on the application have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the

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Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: October 16, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86–24847 Filed 11–3–86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Walker River Indian Irrigation Project Schurz, NV; Proposed Annual Operation and Maintenance Charges

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Public notice.

SUMMARY: The purpose of this notice is to propose an increase in the annual per acre assessment rate for the operation and maintenance of the Walker River Indian Irrigation System. The proposed increase in the annual per acre assessment is from $11.00 to $15.29 per acre. The proposed rate for lands owned and operated solely by Indians is $7.32 per acre. The Bureau of Indian Affairs' budget for FY '87 will request the difference between the full rate of $15.29 per acre and the Indian rate of $7.32 per acre for the project acreage subject to the reduced Indian rate.

COMMENTS: Written comments on the proposed rate increase will be accepted for a period of 30 days from November 4, 1986.

ADDRESS: Comments should be submitted to Robert L. Hunter, Superintendent, Western Nevada Agency, 1300 S. Curry Street, Carson City, NV 89701.

SUPPLEMENTARY INFORMATION: The current operation and maintenance charges were established in 1977. The costs of labor, materials, fuel, and equipment have increased during this period and now significantly exceed the revenue generated by the present operation and maintenance assessment.

A notice of the proposed changes in the assessment rate was sent to all water users on August 6, 1986. Three public meetings were conducted to receive and acknowledge comments from all interested parties. All comments received were carefully considered in arriving at the proposed rates.

Pursuant to § 171.1e, Part 171, Chapter 1, Title 25, of the Code of Federal Regulations, this public notice is issued under authority delegated to the Assistant Secretary for Indian Affairs by the Secretary of the Interior in 209 DM 8 and redelegated by the Assistant Secretary to the Area Director in 10 BIAM 3.

Walker River Indian Irrigation Project Proposed Annual Operation and Maintenance Charges

Annual Operation and Maintenance Charge—Pursuant to the Indian Appropriation Act of August 1, 1914, (Stat. 582, 25 U.S.C. 385) annual operation and maintenance charges for irrigation water shall be levied against all lands within the Walker River Indian Irrigation Project to which irrigation water can be delivered by the project operators. The charge is assessable whether or not the water is requested or used.

The annual per acre operation and maintenance charge is hereby proposed to be $15.19 per acre. Pursuant to the Assistant Commissioner's memorandum of July 11, 1960, annual per acre operation and maintenance charge for lands owned and operated soley by Indians is hereby proposed to be $7.32 per acre. Upon careful review of written comments, the Area Director shall fix and announce in the **Federal Register** pursuant to § 171.1e, Part 171, Chapter 1, Title 25, of the Code of Federal Regulations, the annual operation and maintenance assessment rates.

Payment—The proposed annual operation and maintenance charge shall become due on March 1 of every year and is payable on or before that date.

Charges that remain unpaid after the due date shall accrue interest at the rate of one percent (1%) per month. In addition, an administrative processing fee of ten dollars ($10.00) shall be added to the total charge each time an overdue payment notice is prepared and mailed by the Bureau.

Irrigation water shall not be delivered to any lands for which the annual charges have not been paid unless an agreement has been reached under the provisions of 25 CFR 171.17, Delivery or Water.

Water User's Responsibility—The water users are responsible for the water after it has been delivered to their lands and are required to maintain their field ditches in suitable condition to economically and efficiently transport the irrigation water to the place of use. Water delivery shall be refused to such ditches that are not satisfactorily maintained.

Distribution and Apportionment—All appropriated water of the project is deemed a common water supply in which all irrigable lands of the project are entitled to a fair and equitable share of the water as is practically possible.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Hunter, Superintendent, Western Nevada Agency, 1300 South Curry Street, Carson City, NV 89701.

Dated: October 16, 1986.

Robert L. Hunter,

Superintendent.

[FR Doc. 86–24865 Filed 11–3–86; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[NM NM 27504]

New Mexico; Proposed Reinstatement of Terminated Oil and Gas Lease

United States Department of the Interior, Bureau of Land Management, Santa Fe, New Mexico 87504. Under the provisions of 43 CFR 3108.2–3, Chevron USA, Inc., petitioned for reinstatement of oil and gas lease NM NM 27504 covering the following described lands located in Lea County, New Mexico:

T. 26 S., R. 32 E., NMPM, New Mexico,
  Sec. 13: SW¼, W½SE¼, SE¼SE¼;
  Sec. 14: E½, SW¼;
  Sec. 23: N½, SE¼;
  Sec. 24: N½, N½S½, S½SW¼.

Containing 1,800.00 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $7.00 per acre per year and royalties shall be at the rate of 16⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, September 1, 1985.

Dated: October 21, 1986.

Dolores L. Vigil,

Acting Chief, Adjudication Section.

[FR Doc. 86–24811 Filed 11–3–86; 8:45 am]

BILLING CODE 4310-FB-M

[AZ–050–07–4212–11; A–21090, A–21170]

Realty Action; Lease or Conveyance of Public Lands in Mohave County, AZ

The following lands have been determined to be suitable and will be classified for lease or conveyance to the

City of Bullhead City under the Recreation and Public Purposes Act as amended (43 U.S.C. 869 et seq.):

Gila and Salt River Meridian, Arizona

T. 20 N., R. 21 W.,
  Sec. 18, NE¼ containing 160 acres.
T. 20 N., R. 22 W.,
  Sec. 20, Lot 4 & SW¼NE¼ containing 54.36 acres.

The City of Bullhead City has expressed an interest in the above described lands for community purposes.

These lands are not required for Federal purposes. Lease or conveyance of these lands is consistent with the Bureau's planning for this area and would be in public interest.

The lease or conveyance would be subject to the following conditions:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.
2. All valid existing rights of record at the time of lease or conveyance.

Upon publication of this notice in the **Federal Register**, these lands will be segregated from all forms of appropriations, including the general mining laws, except as to application under the Recreationl and Public Purposes Act. For a period of 45 days from the date of publication of this Notice, interested parties may submit comments to the District Manager, Yuma District, P.O. Box 5680, Yuma, Arizona 85364. Any objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior, effective 60 days from the date of publication in the **Federal Register**. Additional information may be obtained from the Havasu Resource Area (602) 855–8017.

Dated: October 28, 1986.

J. Dorwin Snell,

District Manager.

[FR Doc. 86–24866 Filed 11–3–86; 8:45 am]

BILLING CODE 4310-32-M

[CA-060-06-4212-14; CA 18889]

Realty Action; Sale of Public Land in Riverside County, CA

Correction

In FR Doc. 86–16691 beginning on page 26603 in the issue of Thursday, July 24, 1986, make the following correction:

On page 26603, in the table, the last line of the "Legal description" for parcel R–2 should read "SE¼NE¼, SE¼SE¼, SW¼NE¼, SE¼, E½SW¼".

BILLING CODE 1505-01-M

[CA-940-06-4212-13; CA 18780]

California; Exchange of Public and Private Lands in Riverside County and Opening Order

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of land exchange conveyance document and order opening lands acquired in this exchange.

SUMMARY: The purpose of this exchange was to acquire a portion of the non-Federal lands within the proposed 13,030-acre preserve for the Coachella Valley fringe-toed lizard. The lizard is Federally listed as threatened and State listed as endangered. The Bureau of Land Management's goal is to acquire 6,700 acres of land within the preserve. Other State or Federal agencies will acquire the remaining portion of the preserve. Within the preserve there are habitat and non-habitat areas for the fringe-toed lizards. The land acquired in this exchange is within a non-habitat area and will be used as a source of sand for the lizards' habitat areas. The public interest was well served through completion of this exchange. The land acquired in this exchange will be open to the operation of the public land laws and to the full operation of the United States mining laws and mineral leasing laws.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, California State Office, (916) 978–4815.

The United States issued an exchange conveyance document to The Nature Conservancy on September 12, 1986, for the following described land under the Federal Land Policy and Management Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716:

San Bernardino Meridian, California

T. 3 S., R. 5 E.,
  Sec. 30, Lots 59 and 60, E½SW¼, and SE¼.
  Comprising 325.91 acres of public land.

In exchange for these lands the United States acquired the following described land from The Nature Conservancy:

San Bernardino Meridian, California

T. 4 S., R. 6 E.,
  Sec. 2: Lots 3 and 4, SW¼NW¼, W½SE¼NW¼, SW¼, W½SE¼, SW¼NE¼SE¼, and SE¼SE¼.
T. 4 S., R. 7 E.,
  Sec. 6: Lot 1 of NW¼, Lot 1 of SW¼, N½ of Lot 2 of SW¼, and W½SW¼ NW¼SE¼.

Except any portion within the 80.00-foot-wide right-of-way for an aqueduct road, the 50.00-foot-wide right-of-way for a transmission line, and the 80-foot--wide right-of-way for an aqueduct road, granted to the Metropolitan Water District of Southern California, by an act of Congress, approved June 18, 1932 (Ch. 270, 47 Stat. 324) as shown on the Maps of definite location thereof, approved by the Secretary of the Interior, May 2, 1933 and December 2, 1933.

Containing 641.51 acres of nonfederal land.

A payment in the amount of $1,000 has been paid to the United States by The Nature Conservancy to equalize values between the nonfederal lands and the public land.

At 10 a.m. on December 3, 1986, the nonfederal lands described above shall be open to operation of the public land laws generally, subject to valid existing rights and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on December 3, 1986, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 10 a.m. on December 3, 1986, the nonfederal lands described above shall be open to applications under the United States mining laws and mineral leasing laws.

Inquiries concerning the land should be addressed to the Bureau of Land Management, Room E–2841, 2800 Cottage Way, Sacramento, California 95825.

Dated: October 24, 1986.

Sharon N. Janis,

Chief, Branch of Adjudication and Records.

[FR Doc. 86–24867 Filed 11–3–86; 8:45 am]

BILLING CODE 4310-40-M

[M-66519]

Realty Action, Exchange; Montana

Correction

In FR Doc. 86–23438 beginning on page 37084 in the issue of Friday, October 17, 1986, make the following corrections:

1. On page 37084, in the second column, under "T.8S., R. 49E.,", in "Sec. 34", "SW¼SW¼" should read "SE¼SW¼".
2. In the same column, under "T.9S., 49E.,", in "Sec. 4", in the first line, "SW¼SW¼," should read "NW¼SW¼,".
3. Also on page 37084, in the third column, under "T.9S., R. 49E.,", in "Sec. 32", "NW¼SE¼" should read "NE¼SE¼".
4. In the third column, in the DATES caption, in the sixth line, "evaluate" should read "evaluated".

BILLING CODE 1505-01-M

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[CA-940-07-4520-12; C-10-86]

California; Filing of Plat of Survey

October 15, 1986.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

San Bernardino Meridian, Riverside County

T. 6 S., R. 22 E.

2. This supplemental plat of the South West ¼ section 32, Township 6 South, Range 22 East, San Bernardino Meridian, California, showing amended lottings is based upon the plat approved October 6, 1856, the plat accepted December 14, 1960, the Bureau of Public Roads R/W Map No. 11-RIV-10-P.M. 146.9 and the Director's Deed No. R/W DK-17154-01-01, State of California, Gift of Land, dated December 17, 1974, recorded in the Official Records Book No. 1979, at Page 76218, Riverside County, was accepted September 30, 1986.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This supplemental plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 86-24868 Filed 11-3-86; 8:45 am]

BILLING CODE 4310-40-M

Minerals Management Service

[FES 86-44]

Gulf of Mexico Region; Availability of the Final Environmental Impact Statement on the Proposed Central and Western Gulf of Mexico Lease Sales 110 (April 1987) and 112 (August 1987)

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Minerals Management Service has prepared a final Environmental Impact Statement (EIS) relating to proposed 1987 Outdoor Continental Shelf oil and gas lease sales of available unleased blocks in the Central and Western Gulf of Mexico (GOM). The proposed Central GOM Sale 110 will offer for lease approximately 31.7 million acres, and the Western GOM Sale 112 will offer approximately 28.2 million acres.

Single copies of the final EIS can be obtained from the Minerals Management Service, Gulf of Mexico Region, 1420 S. Clearview Parkway, New Orleans, Louisiana 70123.

Copies of the final EIS will be available for review by the public in the following libraries: Austin Public Library, 402 West Ninth Street, Austin, Texas; Houston Public Library, 500 McKinney Street, Houston, Texas; Dallas Public Library, 1513 Young Street, Dallas, Texas; Brazoria County Library, 410 Brazoport Boulevard, Freeport, Texas; LaRatama Library, 505 Mesquite Street, Corpus Christi, Texas; Texas Southmost College Library, 1825 May Street, Brownsville, Texas; Rosenburg Library, 2310 Sealy Street, Galveston, Texas; New Orleans Public Library, 219 Loyola Avenue, New Orleans, Louisiana; Louisiana State Library, 760 Riverside, Baton Rouge, Louisiana; Lafayette Public Library, 301 W. Congress, Lafayette, Louisiana; Calcasieu Parish Library, Downtown Branch, 411 Pujo Street, Lake Charles, Louisiana; Nicholls State Library, Nicholls State University, Thibodaux, Louisiana; Harrison County Library, 14th and 21st Avenue, Gulfport, Mississippi; Mobile Public Library, 701 Government Street, Mobile, Alabama; Montgomery Public Library, 445 South Lawrence Street, Montgomery, Alabama; St. Petersburg Public Library, 3745 Ninth Avenue North, St. Petersburg, Florida; West Florida Regional Library, 200 West Gregory Street, Pensacola, Florida; Northwest Regional Library System, 25 West Government Street, Panama City, Florida; Leon County Public Library, 127 North Monroe Street, Tallahassee, Florida; Lee County Library, 3355 Fowler Street, Fort Myers, Florida; Charlotte-Glades Regional Library System, 2280 NW Aaron Street, Port Charlotte, Florida; and Tampa-Hillsborough County Public Library System, 800 North Ashley Street, Tampa, Florida.

Dated: October 29, 1986.

Donald L. Sant,

Acting Director, Minerals Management Service.

Approved.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 86-24831 Filed 11-3-86; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Intention To Negotiate Concession Contract; Oregon Caves Co.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Regional Director of the Pacific Northwest Region of the National Park Service proposes to negotiate a concession contract for the continued operation of hotel, restaurant and cave guide services for the public at Oregon Caves National Monument in the state of Oregon. The contract will be for a period of ten (10) years from January 1, 1987, through December 31, 1996.

The existing concessioner, Oregon Caves Company, has performed its obligations to the satisfaction of the Secretary under a current contract. Therefore, pursuant to the Act of October 9, 1965, the existing concessioner is entitled to be given a preference in the negotiation of a new contract. This preference allows an existing satisfactory concessioner to offer to meet the terms of the best offer made in response to the terms of the Statement of Requirements if that offer is not that of the existing satisfactory concessioner.

For a copy of the Statement of Requirements describing the opportunity offered and including the application requirements, interested parties should write to the Superintendent, Crater Lake National Park, P.O. Box 7, Crater Lake, Oregon 97604 (Administrative Headquarters for Oregon Caves National Monument) or call Mr. Phil Parker, Concession Analyst, 206-442-5193.

The Secretary will consider and evaluate all proposals timely received. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

This contract action has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

Dated: July 14, 1986.

William J. Briggle,

Acting Regional Director, Pacific Northwest Region.

[FR Doc. 86-24826 Filed 11-3-86; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 25, 1986. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by November 19, 1986.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Coconino County

Tutuveni

Willow Springs

ARKANSAS

Phillips County

Helena, *Beech Street Historic District,* Roughly bounded by McDonough, Columbia, Beech, Elm, Perry, and College

Union County

El Dorado, *Exchange Bank,* Corner of Washington and Oak Sts.

Washington County

Fayetteville, *Lewis Brothers Building,* 1 S. Block

CALIFORNIA

Los Angeles County

Los Angeles, *Granada Shoppes and Studios,* 672 S. Lafayette Park Place.

CONNECTICUT

Fairfield County

Fairfield, *Osborne, John, House,* 909 King's Highway W.

Hartford County

Simsbury, *Simsbury Bank and Trust Company Building,* 760–762 Hopmeadow St.
Windsor, *Fitch, John, School,* 156 Bloomfield Ave.

Middlesex County

East Haddam, *Warner House,* 307 Town St.
Middletown, *Wilcox, Crittenden Mill,* 234–315 S. Main St., Pameacha, and Highland Aves.

New Haven County

Meriden, *Meriden Curtain Fixture Company Factory,* 122 Charles St.
Southbury, *South Britain Historic District,* E. Flat Hill, Hawkins, Library and Middle Rd., and 497–884 S. Britain Rd.

New London County

Waterford, *Eolia—Harkness Estate,* Great Neck Road

GEORGIA

Fulton County

Atlanta, *Raoul, William, G., House,* 848 Peachtree St.

KANSAS

Cowley County

Winfield vicinity, Silver Creek Bridge, East of Winfield

Douglas County

Lawrence, *Eldridge House Hotel,* Seventh and Massachusetts

Miami County

Osawatomie, *Mills, William, House,* 212 First St.

MISSISSIPPI

Hancock County

Bay St. Louis, *Glen Oak—Kimbrough House (Bay St. Louis MRA),* 806 N. Beach Blvd.
Bay St. Louis, *Taylor House (Bay St. Louis MRA),* 808 N. Beach Blvd.

NORTH CAROLINA

Pitt County

St. John's, *St. John's Episcopal Church,* SE corner of SR 1917 and SR 1753

Richmond County

Rockingham vicinity, *Dockery, Alfred, House,* E side SR 1005, 0.1 mile S of jct. with SR 1143

OHIO

Hamilton County

Cincinnati, *Doctor's Building,* 19 Garfield Pl.

PENNSLYVANIA

Philadelphia County

Philadelphia, *Bache, Alexander Dallas, School (Philadelphia Public Schools TR), 801 N. 22nd St.*
Philadelphia, *Bartlett School (Philadelphia Public Schools TR), 1100 Catharine St.*
Philadelphia County, Philadelphia, *Bartram, John, High School (Philadelphia Public Schools TR), 67th & Elmwood Sts.*
Philadelphia, *Bok, Edward, Vocational School (Philadelphia Public Schools TR), 1901 S. 9th St.*
Philadelphia, *Boone, Daniel, School (Philadelphia Public Schools TR), Hancock and Wildley Sts.*
Philadelphia, *Brooks, George L., School (Philadelphia Public Schools TR), 5629–5643 Haverford Ave.*
Philadelphia, *Central High School (Philadelphia Public Schools TR), Olney & Ogontz Aves.*
Philadelphia, *Darrah, Lydia, School (Philadelphia Public Schools TR), 708–732 N. Seventeenth St.*
Philadelphia, *Drexel, Francis M., School (Philadelphia Public Schools TR), 1800 S. Sixteenth St.*
Philadelphia, *Dunbar, Paul Lawrence, School (Philadelphia Public Schools TR), Twelfth above Columbia Ave.*
Philadelphia, *Dunlap, Thomas, School (Philadelphia Public Schools TR), 5031 Race St.*
Philadelphia, *Farragut, David, School (Philadelphia Public Schools TR), Hancock & Cumberland Sts.*
Philadelphia, *Fayette School (Philadelphia Public Schools TR), Old Bustleton and Welsh Rd.*
Philadelphia, *Federal Street School (Philadelphia Public Schools TR),* 1130–1148 Federal St.
Philadelphia, *Fitler School (Philadelphia Public Schools TR),* SE Seymour and Knox Sts.
Philadelphia, *Fleischer, Helen, Vocational School (Philadelphia Public Schools TR),* Thirteenth and Brandywine Sts.
Philadelphia, *Fulton, Robert, School (Philadelphia Public Schools TR),* 60–68 E. Haines St.
Philadelphia, *Furness, Horace Jr., High School (Philadelphia Public Schools TR),* 1900 S. Third St.
Philadelphia, *Germantown Grammar School (Philadelphia Public Schools TR),* McCallum & Haines Sts.
Philadelphia, *Hanna, William B., School (Philadelphia Public Schools TR),* 5720–5738 Media St.
Philadelphia, *Hawthorne, Nathaniel School (Philadelphia Public Schools TR),* 712 S. 12th St.
Philadelphia, *Horn, George L., School (Philadelphia Public Schools TR),* Frankford and Castor Aves.
Philadelphia, *Institute for Colored Youth (Philadelphia Public Schools TR),* Tenth and Bainbridge Sts.
Philadelphia, *Key, Francis Scott, School (Philadelphia Public Schools TR),* 2226–2250 S. 8th St.
Philadelphia, *Kinsey, John L., School (Philadelphia Public Schools TR),* 65th Ave. & Limekiln Pike
Philadelphia, *Landreth, David, School (Philadelphia Public Schools TR),* 1201 S. Twenty-third St.
Philadelphia, *Martin Orthopedic School (Philadelphia Public Schools TR),* 800 N. Twenty-second St.
Philadelphia, *McDaniel, Delaplaine, School (Philadelphia Public Schools TR),* 2100 Moore St.
Philadelphia, *Meade, George, School (Philadelphia Public Schools TR),* 1801 Oxford St.
Philadelphia, *Mechanicsville School (Philadelphia Public Schools TR),* Mechanicsville Rd.
Philadelphia, *Meredith, William M., School (Philadelphia Public Schools TR),* Fifth & Fitzwater St.
Philadelphia, *Mifflin School (Philadelphia Public Schools TR),* 808–818 N. Third St.
Philadelphia, *Mitchell, S. Weir, School (Philadelphia Public Schools TR),* Fifty-sixth & Kingsessing St.
Philadelphia, *Muhr, Simon, Work Training School (Philadelphia Public Schools TR),* Twelfth & Allegheny St.
Philadelphia, *Northeast Manual Training School (Philadelphia Public Schools TR),* 701 Lehigh St.
Philadelphia, *Olney Elementary School (Philadelphia Public Schools TR),* Tabor Rd. & Water St.

Philadelphia, *Olney High School (Philadelphia Public Schools TR),* Duncannon and Front Sts.

Philadelphia, *Overbrook High School (Philadelphia Public Schools TR),* Fifty-ninth & Lancaster Ave.

Philadelphia, *Penn, William, High School for Girls (Philadelphia Public Schools TR),* 1501 Wallace St.

Philadelphia, *Philadelphia High School for Girls (Philadelphia Public Schools TR),* Seventeenth & Spring Garden Sts.

Philadelphia, *Poe, Edgar Allen, School (Philadelphia Public Schools TR),* 2136 Ritner St.

Philadelphia, *Powers, Thomas, School (Philadelphia Public Schools TR),* Frankford Ave. and Somerset St.

Philadelphia, *Ralston, Robert, School (Philadelphia Public Schools TR),* 221 Bainbridge St.

Philadelphia, *Ramsey, J. Sylvester, School (Philadelphia Public Schools TR),* Pine and Quince Sts.

Philadelphia, *Read, Thomas Buchanan, School (Philadelphia Public Schools TR),* Seventy-eighth and Buist Ave.

Philadelphia, *Schaeffer, Charles, School (Philadelphia Public Schools TR),* Germantown Ave. and Abbottsford St.

Philadelphia, *Shoemaker, William Jr., High School (Philadelphia Public Schools TR),* 1464–1488 N. Fifty-third St.

Philadelphia, *Smith, Walter George, School (Philadelphia Public Schools TR),* 1300 S. Fourteenth St.

Philadelphia, *Southwark School (Philadelphia Public Schools TR),* Eighth & Mifflin Sts.

Philadelphia, *Spring Garden School No. 1 (Philadelphia Public Schools TR),* Twelfth & Ogden Sts.

Philadelphia, *Spring Garden School No. 2 (Philadelphia Public Schools TR),* SS Melon St., S of 12th St.

Philadelphia, *Stevens, Thaddeus, School of Observation (Philadelphia Public Schools TR),* 1301 Spring Garden St.

Philadelphia, *Stokely, William J., School (Philadelphia Public Schools TR),* 1844–1860 N. 32nd St.

Philadelphia, *Tilden, William J. Jr., High School (Philadelphia Public Schools TR),* Sixty-sixth St. and Elmwood Ave.

Philadelphia, *Vare, Abigal, School (Philadelphia Public Schools TR),* Morris St. & Moyamensing Ave.

Philadelphia, *Wagner, Gen, Louis Jr., High School (Philadelphia Public Schools TR),* Seventeenth and Chelten Sts.

Philadelphia, *Walton, Rudolph, School (Philadelphia Public Schools TR),* 2601–2631 N. Twenty-eighth St.

Philadelphia, *Washington, George, School (Philadelphia Public Schools TR),* Fifth & Federal Sts.

Philadelphia, *Wayne, Anthony, School (Philadelphia Public Schools TR),* 2700 Morris St.

Philadelphia, *West Philadelphia High School (Philadelphia Public Schools TR),* 4700 Walnut St.

Philadelphia, *Willard Francis E., School (Philadelphia Public Schools TR),* Emerald & Orleans Sts.

Philadelphia, *Wilson, Woodrow Jr., High School (Philadelphia Public Schools TR),* Cottman Ave. & Loretta St.

Philadelphia, *Wright, Richardson L., School (Philadelphia Public Schools TR),* 1101 Venango St.

TENNESSEE

Marshall County

Verona vicinity, *Bethbirei Presbyterian Church,* Bethberei Rd.

Williamson County

Brentwood, *Mountview,* 913 Franklin Rd.

WISCONSIN

La Crosse County

Samuels' Cave

[FR Doc. 86-24834 Filed 11-3-86; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operations at Denali National Park and Preserve; Availability

Notice is hereby given that pursuant to the provisions of section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9A, Sam Koppenberg has filed a plan of operations in support of proposed mining operations on lands embracing the Caribou-Howtay Association Nos. 7–11 Placer Mining Claims within Denali National Park and Preserve. This plan is available for inspection during normal business hours at the Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska.

Robert Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 86-24835 Filed 11-3-86; 8:45 am]

BILLING CODE 4310-70-M

Illinois and Michigan Canal National Heritage Corridor Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Illinois and Michigan Canal National Heritage Corridor Commission will be held November 14, 1986, beginning at 10 a.m. at the McCook Village Hall, McCook, Illinois.

The Commission was originally established on August 24, 1984, pursuant to provisions of the Illinois and Michigan Canal National Heritage Corridor Act of 1984, 98 Stat. 1456, 16 U.S.C. 461 note, to implement and support the conceptual plan.

Matters to be discussed at the meeting will include the review of the FY 87 budget, the presentation of sign design by representatives of Graphic Solutions, Inc., and a discussion of the proposed final boundaries of the Illinois and Michigan Canal National Heritage Corridor.

The meeting will be open to the public. Interested persons may submit written statements to the official listed below prior to the meeting. Further information concerning the meeting may be obtained from Alan M. Hutchings, Chief, Division of External Affairs, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102, telephone 402–221–3481 (FTS 864–3481). Minutes of the meeting will be available for public inspection at the Midwest Regional Office 3 weeks after the meeting.

Dated: October 16, 1986.

Randall R. Pope,

Acting Regional Director, Midwest Region.

[FR Doc. 86-24827 Filed 11-3-86; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30761(B)]

Austin Railroad Co., Inc., Operation, City of Austin, TX; Notice of Exemption

Austin Railroad Company, Inc., has filed a notice of exemption to operate approximately 162 miles of railroad line [1] that the City of Austin, TX, is acquiring from Southern Pacific Transportation Company.[2] Any comments must be filed with the Commission and served on Ellen M. Burger; Weiner, McCaffrey, Brodsky & Kaplan, Suite 800, 1350 New York Avenue, NW., Washington, DC 20005–4797.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: October 10, 1986.

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[1] The line includes two segments: (1) One segment extends from milepost 57.00 near Giddings to milepost 113.4 near Austin, TX; and (2) one segment extends from milepost 0.00 near Austin to milepost 99.04 near Llano, TX. The line also includes the Marble Falls Branch, which extends from milepost 6.2 near Marble Falls to milepost 0.0 near Fairland, TX.

[2] The City of Austin's noitice of exemption for acquisition of the involved line is being served simultaneously in Finance Docket No. 30761(A).

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee

Secretary.

[FR Doc. 83–24905 Filed 11–13–86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30861(A)[1]]

City of Austin, TX, Acquisition, Southern Pacific Transportation Co.; Notice of Exemption

The City of Austin, TX has filed a notice of exemption[2] to acquire Southern Pacific Transportation Company's line extending: (a) From milepost 57.00 near Giddings to milepost 113.4 near Austin, TX; and (b) from milepost 0.0 near Austin to milepost 99.04 near Llano, TX. The line also includes the Marble Falls Branch, from milepost 6.2 near Marble Falls to milepost 0.0 near Fairland, TX. Any comments must be filed with the Commission and served on: Richard H. Streeter; Wheeler & Wheeler, 1729 H Street, NW., Washington, DC 20005.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505 may be filed at any time.

The filing of a petition to revoke will not automatically stay the transaction.

Decided: October 10, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86–24906 Filed 11–3–86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

[Tax Division, Directive No. 86–59]

Authority To Approve Grand Jury Expansion Requests to Include Federal Criminal Tax Violations

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: This Directive delegates the authority to approve requests seeking to expand nontax grand jury investigations to include inquiry into possible federal criminal tax violations from the Assistant Attorney General, Tax Division, to any United States Attorney, Attorney-In-Charge of a Criminal Division Organization Strike Force or Independent Counsel. The Directive also sets forth the scope of the delegated authority and the procedures to be followed by designated field personnel in implementing the delegated authority.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Edward M. Vellines, Senior Assistant Chief, Office of Policy & Tax Enforcement Analysis, Tax Division, Criminal Section (202–633–3011). This is not a toll fee number.

SUPPLEMENTARY INFORMATION: This order concerns internal Department management and is being published for the information of the general public.

Tax Division Directive No. 86–59

By virtue of the authority vested in me by Part O, Subpart N of Title 28 of the Code of Federal Regulations, particularly § 0.70, delegation of authority with respect to approving requests seeking to expand a nontax grand jury investigation to include inquiry into possible federal criminal tax violations is hereby conferred on the following individuals:

1. Any United States Attorney appointed under section 541 or 546 of Title 28, United States Code.
2. Any Attorney-In-Charge of a Criminal Division Organization Strike Force established pursuant to section 510 of Title 28, United State Code.
3. Any Independent Counsel appointed under section 593 of Title 28, United States Code.

The authority hereby conferred allows the designated official to approve, on behalf of the Assistant Attorney General, Tax Division, a request seeking to expand a nontax grand jury investigation to include inquiries into potential federal criminal tax violations in a proceeding which is being conducted within the sole jurisdiction of the designated official's office. (§ 301.6103(h)(2)–1(a)(2)(ii) (26 CFR)). *Provided,* that the delegated official determines that—

1. There is reason to believe, based upon information developed during the course of the nontax grand jury proceedings, that federal criminal tax violations may have been committed.
2. The attorney for the Government conducting the subject nontax grand jury inquiry has deemed it necessary in accordance with F.R.Cr.P. 6(e)(A)(ii) to seek the assistance of Government personnel assigned to the Internal Revenue Service to assist said attorney in his/her duty to enforce federal criminal law.
3. The subject grand jury proceedings do not involve a multijurisdictional investigation, nor are the targets individuals considered to have national prominence—such as local, state, federal, or foreign public officials or political candidates; members of the judiciary; religious leaders; representatives of the electronic or printed news media; officials of a labor union; and major corporations and/or their officers when they are the targets (subjects) of such proceedings.
4. A written request seeking the assistance of Internal Revenue Service personnel and containing pertinent information relating to the alleged federal tax offenses has been forwarded by the designated official's office to the appropriate Internal Revenue Service official (e.g., Chief, Criminal Investigations).
5. The Tax Division of the Department of Justice has been furnished by certified mail a copy of the request seeking to expand the subject grand jury to include potential tax violations, and the Tax Division interposes no objection to the request.
6. The Internal Revenue Service has made a referral pursuant to the provisions of 26 U.S.C. section 6103(h)(3) in writing stating that it: (1) Has determined, based upon the information provided by the attorney for the Government and its examination of relevant tax records, that there is reason to believe that the federal criminal tax violations have been committed; (2) agrees to furnish the personnel needed to assist the Government attorney in his/her duty to enforce federal criminal law; and (3) has forwarded to the Tax Division a copy of the referral.
7. The grand jury proceedings will be conducted by attorney(s) from the designated official's office in sufficient time to allow the results of the tax segment of the grand jury proceedings to be evaluated by the Internal Revenue Service and the Division before undertaking to initiate criminal proceedings.

The authority hereby delegated includes the authority to designate: The targets (subjects) and the scope of such tax grand jury inquiry, including the tax years considered to warrant investigation. This delegation also includes the authority to terminate such grand jury investigations, *provided,* that prior written notification is given to both the Internal Revenue Service and the Tax Division. If the designated official terminates a tax grand jury investigation or the targets (subjects) thereof, then the designated official shall indicate in its correspondence that such notification

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[1] This proceeding is directly related to Finance Docket No. 30861(B), in which a notice of exemption filed by Austin Railroad Company, Inc., is being served simultaneously.

[2] The City of Austin, TX also filed a motion seeking dismissal of its notice of exemption. The motion will be addressed in a separate decision.

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terminates the referral of the matter pursuant to 26 U.S.C. 7602(c).

This delegation of authority does not include the authority to file an information or return an indictment on tax matters. No indictment is to be returned or information filed without specific prior authorizaton of the Tax Division. Except in Organized Crime Drug Task Force Investigations, individual cases for tax prosecution growing out of grand jury investigations shall be forwarded to the Tax Division by the United States Attorney, Independent Counsel or Attorney-in-Charge of a Strike Force with a special agent's report and exhibits through Regional Counsel, (Internal Revenue Service) for evaluation prior to transmittal to the Tax Division. Cases for tax prosecutions growing out of grand jury investigations conducted by an Organized Crime Drug Task Force shall be forwarded directly to the Tax Division by the United States Attorney with a special agent's report and exhibits.

The authority hereby delegated is limited to matters which seek either to: (1) Expand nontax grand jury proceedings to include inquiry into possible federal criminal tax violations; (2) designate the targets (subjects) and the scope of such injury; or (3) terminate such proceedings. In all other instances, authority to approve the initiation of grand jury proceedings which involve inquiries into possible criminal tax violations, including requests generated by the Internal Revenue Service, remains vested in the Assistant Attorney General in charge of the Tax Division as provided in 28 CFR 0.70. In addition, authority to alter any actions taken pursuant to the delegations contained herein is retained by the Assistant Attorney General in charge of the Tax Division in accordance with the authority contained in 28 CFR 0.70.

Approved to take effect on October 1, 1986.

Roger M. Olsen,

Assistant Attorney General, Tax Division.

[FR Doc. 86–24880 Filed 11–3–86; 8:45 am]

BILLING CODE 4410-01-M

Voting Rights Act Certifications Apache County, AZ

In accordance with section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, I hereby certify that in my judgment the appointment of examiners is necessary to enforce the guarantees of the Fourteenth and Fifteenth Amendments to the Constitution of the United States in Apache County, Arizona. This county was included within the scope of the determinations of the Attorney General and the Director of the Census made on March 15, 1971, under section 4(b) of the Voting Rights Act of 1965 and published in the **Federal Register** on March 27, 1971 (36 FR 5809). Apache County was also included within the scope of the determinations of the Attorney General and the Director of the Census made on September 18, 1975 and October 20 and 21, 1975 under sections 4(b) and 4(f)(3) of the Voting Rights Act of 1965, as amended in 1975, and published in the **Federal Register** on September 23, 1975 (40 FR 43746) and October 22, 1975 (40 FR 49422).

Dated: October 31, 1986.

Edwin Meese III,

Attorney General of the United States.

[FR Doc. 86–25003 Filed 10–31–86; 4:00 pm]

BILLING CODE 4410-01-M

Voting Rights Act Certifications; Navajo County, AZ

In accordance with section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, I hereby certify that in my judgment the appointment of examiners is necessary to enforce the guarantees of the Fourteenth and Fifteenth Amendments to the Constitution of the United States in Navajo County, Arizona. This county was included within the scope of the determinations of the Attorney General and the Director of the Census made on March 15, 1971, under section 4(b) of the Voting Rights Act of 1965 and published in the **Federal Register** on March 27, 1971 (36 FR 5809). Navajo County was also included within the scope of the determinations of the Attorney General and the Director of the Census made on September 18, 1975 and October 20 and 21, 1975 under sections 4(b) and 4(f)(3) of the Voting Rights Act of 1965, as amended in 1975, and published in the **Federal Register** on September 23, 1975 (40 FR 43746) and October 22, 1975 (40 FR 49422).

Dated: October 31, 1986.

Edwin Meese III,

Attorney General of the United States.

[FR Doc. 86–25004 Filed 10–31–86; 4:00 pm]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Notice of Extension of the Task Force on Economic Adjustment and Worker Dislocation; Correction

AGENCY: Department of Labor.

ACTION: Notice; correction.

SUMMARY: This document corrects the notice of extension which appeared at page 37797 in the **Federal Register** of Friday, October 24, 1986 (51 FR 37797). This action is necessary to correct the date on which the document was signed.

FOR FURTHER INFORMATION CONTACT: Gerald Holmes, Office of the Assistant Secretary for Policy, telephone (202) 523–7571.

The following correction is made in FR Doc. 86–24035 appearing on page 37797 in the issue of October 24, 1986. On page 37797, column two, "November" is corrected to read "October."

Signed at Washington, DC, this 28th day of October 1986.

William E. Brock,

Secretary of Labor.

[FR Doc. 86–24909 Filed 11–3–86; 8:45 am]

BILLING CODE 4510-23-M

Employment and Training Administration

[TA–W–17,553]

BBC Brown Boveri, Inc.; Greensburg, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an applicant for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the BBC Brown Boveri, Incorporated, Greensburg, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–17,553; BBC Brown Boveri, Incorporated
Greensburg, Pennsylvania (October 21, 1986)

Signed at Washington, DC, this 28th day of October 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86–24851 Filed 11–3–86; 8:45 am]

BILLING CODE 4510-30-M

[TA–W–17,551]

Stackpole Corp.; St. Marys, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Stackpole Corporation, St. Marys, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-17,351; Stackpole Corporation
St. Marys, Pennsylvania (October 27, 1986)

Signed at Washington, DC this 28th day of October 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-24852 Filed 11-3-86; 8:45 am]

BILLING CODE 4510-30-M

Summaries of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period October 13–October 17, 1986 and October 20–October 24, 1986.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-17,687; Twin Disc, Inc., Rockford, IL

TA-W-17,460; F.E. Hale Manufacturing Co., Herkimer, NY

TA-W-17,423; William Orsteen Heel Co., Bradford, MA

TA-W-17,336; Andiamo Knitwear, Inc., West New York, NJ

In the folowing cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-17,463; Burnham Trucking, Inc., W. Milwaukee, WI

Aggregate U.S. imports of metal building and parts were negligible.

TA-W-17,464; Inryco, Inc., W. Milwaukee, WI

Aggregate U.S. imports of metal building and parts were negligible.

TA-W-17,443; Jeffrey Chain Company, Morristown, TN

A survey of customers indicated that increased imports did not contribute importantly to workers separations at the firm.

TA-W-18,210; Horizon Mud Company, Midland, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-17,791; Teledyne Firth Sterling, Houston, TX

Aggregate U.S. imports of rock drill bits are negligible.

TA-W-18,009; Koomey Incorporated, Brookshire, TX

Aggregate U.S. imports of oilfield machinery are negligible.

TA-W-18,024; J.M. Huber Houston, TX

Aggregate U.S. imports of oilfield machinery are negligible.

TA-W-18,038; Western Company of North America, Pacesetter Tool Div., Houston, TX

Aggregate U.S. imports of oilfield machinery are negligible.

TA-W-18,042; Joy Industrial Equipment Company, Houston, TX

Aggregate U.S. imports of oilfield machinery are negligible.

TA-W-18,062; Lufkin Industries, Lufkin, TX

Aggregate U.S. imports of oilfield machinery are negligible.

TA-W-18,070; Shoreline Equipment Company, Odessa, TX

Aggregate U.S. imports of oilfield machinery are negligible.

TA-W-18,085; Reedy Manufacturing and Repair Service, Inc., Odessa, TX

Aggregate U.S. imports of oilfield machinery are negligible.

TA-W-18,098; Axelson, Inc., Longview, TX

Aggregate U.S. imports of oilfield machinery are negligible.

TA-W-18,104; Dailey Oil Tools, Inc., Corpus Christi, TX

Aggregate U.S. imports of oilfield machinery are negligible.

TA-W-18,255; Rebel Mud Company, Corpus Christi, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,246; Ashland Chemical Company, Laredo, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,783; Sabine Ranch, Hampshire, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-17,923; Bibbins & Rice, Morgan City, LA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-17,594; Snyder Logging, Inc., Grayville, IL

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-17,595; Snyder Completion, Inc., Grayville, IL

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-17,537; ASARCO, Inc., Central Research Dept., South Plainfield, NJ

The research and development activities were transferred to another domestic location.

TA-W-18,137; Jamco Sales and Service, Mirando City, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,138; Spain Construction Service, Inc., St. Elmo, IL

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,145; Kelli-Ray Corp., Oklahoma City, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,149; Enserch Corp., Newtown, ND

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,155; Reliant Management Services Company, Stafford, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,161; N.L. McCullough Corp., McAllen, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

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TA-W-18,102; Lafayette Well Testing, Inc., Laredo, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,093; Zapata Offshore Company, Houston, Texas

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,097; Advance Consultants Corp., Midland, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,103; Dresser Atlas, Odessa, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-103A; Dresser Atlas, Bryan, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,105; Offshore Casing and Hammers, Inc., Corpus Christi, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,106; Karl F. Edmonds, Inc., Laredo, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,107; Karl F. Edmonds, Inc., Kilgore, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,110; Loffland Brothers Company, Central Division, New Brunfels, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,128; Kelsch Basin Tire, Inc., Williston, ND

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,157; Geo-Search Corp., Lubbock, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,159; Schlumberger Production Service, Laredo, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,160; Schlumberger Offshore, Beaumont, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,212; Wipco Hydraulic & Valve, Inc., Odessa, TX

Aggregate U.S. imports of oilfield machinery did not increase as required for certification.

TA-W-18,158; Chromalloy American Corp., Laredo, TX

Aggregate U.S. imports of drilling fluid are negligible.

TA-W-17,803; Schlumberger Offshore Service, Victoria, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-17,775; Eastman Whipstock, Inc., Abilene, TX

Aggregate U.S. imports of oilfield machinery are negligible.

TA-W-17,917; Dresser Industries, Security Div., Dallas, TX

Aggregate U.S. imports of oilfield machinery are negligible.

TA-W-18,075; Otis Engineering Corp., Corpus Christi, TX

Aggregate U.S. imports of oilfield machinery are negligible.

TA-W-18,144; Hamco International Oilfield Supply Div., Williston, ND

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,108; N.L. Baroid Industries, Laredo, TX

Aggregate U.S. imports of drilling fluids are negligible.

TA-W-18,109; N.L. Bariod Industries, Bay City, TX

Aggregate U.S. imports of drilling fluids are negligible.

TA-W-17,852; Halliburton Co., Halliburton Services Div., Odessa, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,035; Teledyne Movible Offshore, New Iberia, LA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,036; The Reliable Specialty Company, Corpus Christi, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,039; Riley Drilling Company, Big Springs, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,041; Safari Drilling Corp., Abilene, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,043; Wards Oilfield Service Gladewater, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,044; F.W.A. Drilling Co., Inc., Midland, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,052; B & G Roustabout, Williston, ND

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,053; N.L. Acme Tool, Corpus Christi, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,054; N.L. Acme Tool, Laredo, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,139; Core Service, Inc., Corpus Christi, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,140; Core Service, Inc., San Antonio, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,141; Core Service, Inc., Carrizo Springs, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,142; Core Service, Inc., Hebbronville, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

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TA-W-18,143; Core Service, Inc., Victoria, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,129; Henkel Corp., Kenedy, TX

Aggregate U.S. imports of drilling fluid are negligible.

TA-W-18,081; IMCO, Laredo, TX

Aggregate U.S. imports of drilling fluid are negligible.

TA-W-18,156; Halliburton Services, Amarillo, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,091; Welex Div., of Halliburton Service, Alice, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,100; Halliburton Services, Tioga, ND

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,101; Halliburton Service, Alice, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,120; Halliburton Service, Abilene, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-17,880; M.F. Machen Contractor, Midland, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-17,882; Petroleum Information Corp., San Antonio, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-17,895; Petco Fishing & Rental, Corpus Christi, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,056; Nevada Scout (subsidiary of Cedar Strat), Reno, NV

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,057; Cedar Strat, Ely, NV

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,058; Cedar Strat, Reno, NV

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,059; Cedar Strat Lobs, Ely, NV

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,060; Cedar Strat Supply, Ely, NV

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,061; Petro-Tex Drilling Company, Houston, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,063; AMF Tuboscope, Corpus Christi, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,065; W.B. Hinton Drilling Co., Mt Pleasant, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,066; Repcon, Inc., Corpus Christi, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,068; Drilling Measurements, Inc., Corpus Christi, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,076; Stage Drilling, Corpus Christi, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,079; Zarsky Lumber Company, Laredo, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,084; Oil Well Servicing Company, Corpus Christi, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-17,866; Geoservice, Inc., Denver CO

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-17,867; Willis Drilling, Edinburg, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-17,568; USX Corp., Oilwell Div., Garland, TX

Aggregate U.S. imports of oilfield pumps are negligible.

TA-W-17,425; Alpine Knitting Mill, Boulder, CO

Separations from the subject firm were seasonal in nature.

TA-W-17,534; Sioux Tools, Inc., Sioux City, IA

Imports did not contribute importantly to employment declines at the firm.

TA-W-18,211; J.H. Clough Oilfield Contracting Service, Inc., Beecher City, IL

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,213; Sharp Drilling Co., Inc., Odessa, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,225; Benton Casing Service, Inc., Victoria, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,228; Canal's Well Service, Kermit, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,229; Dixilyn-Field Drilling Company, Alice, Texas

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,232; AMF Scientific Drillings, Inc., Corpus Christi, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,233; The B of Fournet Company, Corpus, Christi, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,235; Westwood Drilling Company, Laredo, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,236; Wilson Downhole Service, Bay City, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,237; Halliburton Services, Elkview, WV

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,249; Clint Hurt and Associates, Inc., Midland, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,253; Dowell Schlumberger, Alice, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,254; Franks Casing Crew and Rental Tools, Corpus Christi, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,256; Dresser Atlas, Alice, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,258; Vachel's Telecommunications, Ross, ND

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-17,842; Hayhurst Brothers, Drilling Company, Abilene, Tx

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-17,863; Schlumberger Offshore Service, Corpus Christi, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,889; Harbor Electronics Aransas Pass, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-17,903; Conquest Exploration, Denver, CO

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-17,920; Gearhart Industries, Inc., Corpus Christi, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-17,921; Houston Offshore International, Inc., Houston, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,040; Veco Drilling, Inc., Grand Junction, CO

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,046; Leamco Services, Inc., Snyder, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,050; Flournoy Drilling Company, Alice, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,072; Republic Supply Co., Dickinson, ND

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,073; Republic Supply Co., Tioga, ND

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,078; Texas Drilling Co., Laredo, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,080; The Western Company, Rankin, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,086; J.R. Drilling, Mt. Pleasant, MI

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-17,588; Felmont Oil Corp., Midland, TX

A survey of Customers indicated that increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA-W-17,575; Creative Footwear, McAdoo, PA

A certification was issued covering all workers of the firm separated on or after June 3, 1985 and before January 20, 1986.

TA-W-17,472; Transue and Williams Corp., Forging Plant, Alliance, OH

A certification was issued covering all workers of the firm separated on or after May 2, 1985.

TA-W-17,467; Florsheim Shoe Co., Hermann, MO

A certification was issued covering all workers of the firm separated on or after May 3, 1985.

TA-W-17,367; Ralph Edwards Sportswear, Cape Girardeau, MO

A certification was issued covering all workers of the firm separated on or after April 8, 1985 and before May 31, 1985.

TA-W-17,287; Sellersville, Manufacturing Co., Sellersville, PA

A certification was issued covering all workers of the firm separated on or after May 3, 1985 and before July 31, 1986.

TA-W-17,429; Florsheim Shoe Co., Kirksville, MO

A certification was issued covering all workers of the firm separated on or after December 1, 1985.

TA-W-17,442; Florsheim Shoe Co., West Belmont Street Plant, Chicago, IL

A certification was issued covering all workers of the firm separated on or after May 5, 1985 and before August 1, 1986.

TA-W-17,442A; Florsheim Shoe Co., South Canal Street Main Office, Chicago, IL

A certification was issued covering all workers of the firm separated on or after May 5, 1985.

TA-W-17,458; Christina Dress Co., Shenandoah, PA

A certification was issued covering all workers of the firm separated on or after May 19, 1985 and before January 31, 1986.

TA-W-17,397; Firestone Tire and Rubber Co., Bloomington, IL

A certification was issued covering all workers of the firm separated on or after April 25, 1985.

TA-W-17,407; Everett Piano Div., Yamaha International Corp., South Haven, MI

A certification was issued covering all workers of the firm separated on or after April 21, 1985.

TA-W-17,482; Smith Victor Corp., Griffith, IN

A certification was issued covering all workers of the firm separated on or after December 1, 1985.

TA-W-17,457; Reichard Coulston, Inc., Bethlehem, PA

A certification was issued covering all workers of the firm separated on or after May 6, 1985 and before January 31, 1986.

TA-W-17,884; Duluth Missabe & Iron Range Railway Co., Duluth, MN

A certification was issued covering all workers of the firm separated on or after August 11, 1985.

TA-W-17,673; Marsha Lee, Inc., West Hazleton, PA

A certification was issued covering all workers of the firm separated on or after June 30, 1985 and before December 1, 1985.

TA-W-17,726; California Manufacturing, California, MO

A certification was issued covering all workers of the firm separated on or after July 18, 1985.

TA-W-17,415; Burlington Industries, Inc., Domestics Div., Sherman, TX

A certification was issued covering all workers of the firm separated on or after April 29, 1985 and before July 1, 1986.

TA-W-17,444; J. Saveri Sportswear, Inc., Wind Gap, PA

A certification was issued covering all workers of the firm separated on or after April 11, 1985 and before April 30, 1986.

TA-W-17,550; Allis-Chalmers Corp., Industrial Truck Div., Matteson, IL

A certification was issued covering all workers of the firm separated on or after June 6, 1986 and before January 31, 1987.

TA-W-17,438; Bingham-Willamette Co., Shreveport, LA

A certification was issued covering all workers of the firm separated on or after April 25, 1985.

TA-W-17,376; D & R Sportswear Co., Roseto, PA

A certification was issued covering all workers of the firm separated on or after July 1, 1985 and before April 30, 1986.

TA-W-17,437; Burlington Industries, Inc., Domestics Div., Rocky Mount, VA

A certification was issued covering all workers of the firm separated on or after May 5, 1985 and before July 1, 1986.

TA-W-17,576; Elkem Metals Co., Alloy, West VA

A certification was issued covering all workers of the firm separated on or after June 3, 1985.

TA-W-17,605; International Playtex, Manchester, GA

A certification was issued covering all workers of the firm separated on or after June 3, 1985 and before October 27, 1985.

TA-W-17,366; Polytex, Bayonne, NJ

A certification was issued covering all workers of the firm separated on or after March 25, 1985 and before September 30, 1985.

TA-W-17,700; U.S. Steel Mining Co., Inc., Maple Creek Complex, New Eagle, PA

A certification was issued covering all workers of the firm separated on or after January 1, 1986.

TA-W-17,660; Kast Metals Corp., Mid-Continent Steel Casting Div., Shreveport, LA

A certification was issued covering all workers of the firm separated on or after June 21, 1985.

TA-W-17,740; U.S. Steel Mining Co., Inc., Central Div., Kanawha, WV

A certification was issued covering all workers at the 34 Morton and Job 50 Surface Mines, the Winifred Miscellaneous Unit and the River Tipple Facility separated on or after January 1, 1986.

TA-W-17,757; Timken Company, Research Facility, Canton, OH

A certification was issued covering all workers of the firm separated on or after April 21, 1985.

TA-W-17,651; Ross Bicycles, Inc., Allentown, PA

A certification was issued covering all workers of the firm separated on or after June 12, 1985 and before March 31, 1986.

TA-W-17,544; Michael Scott, Milltown, NJ

A certification was issued covering all workers of the firm separated on or after May 19, 1985 and before January 31, 1986.

TA-W-17,549; Acme Boot Co., Inc., Springfield, TN

A certification was issued covering all workers of the firm separated on or after August 15, 1985 and before April 5, 1986.

TA-W-17,470; Maul Technology Co., Millville, NJ

A certification was issued covering all workers of the firm separated on or after May 14, 1985 and before September 30, 1986.

TA-W-17,499; Tex Tech Industries, Inc., Auburn, ME

A certification was issued covering all workers of the firm separated on or after September 1, 1985.

TA-W-17,280; Donora Sportswear Co., Inc., Donora, PA

A certification was issued covering all workers of the firm separated on or after February 15, 1985 and before March 14, 1986.

TA-W-17,385; Picker International, Inc., Ultrasound & Nuclear Div., Northford, CT

A certification was issued covering all workers of the firm separated on or after July 1, 1985 and before January 1, 1987.

TA-W-17,418; Firestone Steel Products Co., Henderson, KY

A certification was issued covering all workers of the firm separated on or after July 1, 1985.

TA-W-17,303; Bellaire Garment Co, Division Bobbie Brooks, Bellaire, OH

A certification was issued covering all workers of the firm separated on or after October 1, 1985 and before May 12, 1986.

TA-W-17,431; Harris/Lanier, Thomaston, GA

A certification was issued covering all workers of the firm separated on or after May 2, 1985.

TA-W-17,350; Hamilton Sportswear, Inc., Stroudburg, PA

A certification was issued covering all workers of the firm separated on or after October 15, 1985 and before March 21, 1986.

TA-W-17,332; Regal Ware, Inc., Flora, MS

A certification was issued covering all workers of the firm separated on or after March 24, 1985 and before September 1, 1986.

I hereby certify that the aforementioned determinations were issued during the period October 13 October 17, 1986, and October 20–October 24, 1986. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: October 28, 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-24854 Filed 11-3-86; 8:45 am]

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Employment Standards Administration

Office of Worker's Compensation Programs; Report on Computer Matching Project Involving Certain Beneficiaries Under the Black Lung Benefits Act (BLBA)

Summary

The Department of Labor, Employment Standards Administration, Office of Workers' Compensation Programs (OWCP) announces a computer match to be performed by the OWCP of the names and Social Security Numbers of Kentucky Workmen's Compensation black lung beneficiaries and federal black lung beneficiaries under the BLBA. The match will be made under written agreement.

a. *Authority:* Title IV of the Federal Mine Safety and Health Act, 30 U.S.C. 901, et seq.

b. *Description of Match:* It is the responsibility of the OWCP in the administration of the BLBA to assure that benefit payments are proper and to prevent fraud and abuse. The computer matching program is an efficient and non-intrusive method of determining the propriety of program beneficiaries receiving compensation due to black lung disease.

The matching effort will compare the names and Social Security Numbers of those persons receiving Kentucky Workmen's Compensation black lung benefits with the names and Social Security Numbers of those persons receiving black lung benefits under the BLBA. The intent of the match is to identify those beneficiaries receiving benefits under both programs. The OWCP will match the information furnished by the Kentucky Labor Cabinet, Division of Special Fund, against its Black Lung Benefit Payments File. The records resulting in matches will be used by both the OWCP and the Kentucky Labor Cabinet to determine which dual beneficiaries, if any, are receiving benefits in excess of the amount allowed under state and/or federal law. In those cases in which it is determined that improper payments have been made, the involved agencies will initiate steps to have these payments reduced or terminated, if appropriate. Certain findings may be submitted to the Department of Justice through the U.S. Department of Labor, Office of the Inspector General, for prosecution.

c. *Description of Federal Records to be Matched:* DOL/ESA-7 Office of Workers' Compensation Programs, Black Lung Benefit Payments File (47 FR 30378, July 13, 1982; as amended in 48 FR 5824, February 8, 1983; and 50 FR 5144, February 6, 1985) will be the source of the federal black lung information.

d. *Period of Match:* The first match should begin on or about November 1, 1986, and recur annually.

e. *Security:* The personal privacy of individuals identified is protected by strick compliance with the Privacy Act (Pub. L. 93-579) and OMB Cirular A-108. Information from the match will be used only for official purposes and will not be released to the public. Specific data obtained from the match will be entered into claim files subject to release only under Privacy Act provisions.

The extract files will be used and accessed only for the purposes previously agreed upon. Extract files will not be used to obtain included in the file of matches. Extract files will not be duplicated or disseminated within or outside the matching or source agency, unless agreed upon in writing by both agencies. The agencies involved will use the data supplied in a manner prescribed by law and will maintain proper safeguards to prevent unauthorized release or use of all data supplies.

Access to working spaces and claim folder file storage areas in the Kentucky Labor Cabinet, Division of Special Fund, Payment Unit offices is restricted to Kentucky state employees. File areas are locked after normal duty hours and the offices are protected from outside access by security personnel. Strict control measures are enforced to ensure that access to and disclosure of these claim file records is limited to a need-to-know basis.

f. *Disposition of Records:* The Kentucky source data will remain the property of the Kentucky Labor Cabinet and will be returned to Kentucky with an extract of the matches. The matching file will become the joint property of the Kentucky Labor Cabinet and the OWCP. The extract of matches that is sent to Kentucky will be destroyed by Kentucky upon receipt from the OWCP of the following year's extract of matches.

The OWCP extract of matches will be kept so long as an administrative audit is active and will be disposed of in accordance with the requirements of the Privacy Act and the Federal Records Schedule.

Signed at Washington, DC. this 30th Day of October 1986.

Richard Staufenberger,

Deputy Director, Office of Workers' Compensation Programs.

[FR Doc. 86-24910 Filed 11-3-86; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-86-12-M]

American Aggregates Corp. Petition for Modification of Application of Mandatory Safety Standard

American Aggregates Corporation, 3101 Honeywell Lake Road, P.O. Box 272, Milford, Michigan 48042 has filed a petition to modify the application of 30 CFR 56.9087 (audible warning devices and back-up alarms) to its Milford 315 Pit and Mill (I.D. No 20-01768) located in Oakland County, Michigan. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that heavy duty mobile equipment be provided with audible warning devices or an observer to signal safe backup when the operator of the equipment has an obstructed view to the rear.

2. Petitioner has received several complaints from neighbors to this property about the noise of the back-up alarms prior to 8:00 a.m. and after 5:00 p.m.

3. As an alternate method, petitioner proposes to use a high intensity strobe light on the front end loaders in lieu of the back-up alarms prior to 8:00 a.m. and after 5:00 p.m.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 4, 1986. Copies of the petition are available for inspection at that address.

Dated October 27, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-24850 Filed 11-3-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-14-M]

Texasgulf Chemicals; Petition for Modification of Application of Mandatory Safety Standard

Texasgulf Chemicals, P.O. Box 100, Granger, Wyoming 82934 has filed a petition to modify the application of 30 CFR 57.4761 (underground shops) to its Trona Operations (I.D. No. 48-00639) located in Sweetwater County, Wyoming. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement of routing the mine shop air directly to an exhaust system to confine or prevent the spread of toxic gases from a fire originating in an underground shop where maintenance work is routinely done on mobile equipment.

2. The main underground shop is located east of the shaft bottom area. 50,000 cubic feet per minute of ventilation air is coursed through the area and distributed by mandoor/regulators and two auxiliary fans. Along with battery charging station air, shop air is directed north through a regulator to No. 1 exhaust shaft.

3. As an alternate method, petitioner proposes to route shop air from the present west to north flow through the regulator to an east then south airflow around the Zero North Beltway intake airway. This air would then be utilized to ventilate working areas in the mine. Auxiliary fans and mandoor/regulators will still be used to draw air from the shop working locations, but reversed to flow eastward instead of west to the regulator. The shop split will be ventilated by the rerouted east flowing intake air from the Zero North Beltway by installing a door just southeast of the No. 2 intake shaft, allowing more than 50,000 cfm to flow through, improving ventilation.

3. In further support of this request a carbon monoxide (CO) sensor will be installed in the east shop exhaust air to monitor air quality. In case of a fire, at a specific CO level, the CO monitor will trip an alarm, automatically opening an air actuated door south of the shop regulator, short circuiting fumes directly to the No. 1 exhaust shaft away from all shop and mining section personnel.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 4, 1986. Copies of the petition are available for inspection at that address.

Dated: October 27, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-24853 Filed 11-3-86; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Utah State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On January 10, 1973, notice was published in the **Federal Register** (38 FR 1178) of the approval of the Utah Plan and adoption of Subpart E to Part 1952 containing the decision.

The Plan provides for the adoption of Federal Standards as State Standards by:

1. Advisory Committee recommendation.
2. Publication in newspapers of general/major circulation with a 30-day waiting period for public comment and hearings.
3. Commission order adopting and designating an effective date.
4. Provision of certified copies of Rules and Regulations or Standards to the Office of the State Archivist.

OSHA regulations (29 CFR 1953.22 and 1953.23) require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register**, and within 30 days for emergency temporary standards. Although adopted State standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in Part 1953, they are enforceable by the state prior to federal review and approval. By letter dated July 28, 1986, from Douglas J. McVey, Administrator, Utah Occupational Safety and Health Division, to Byron R. Chadwick, OSHA Regional Administrator, the State submitted rules and regulations in response to Federal OSHA's General Industry Standards (29 CFR 1910.1047: Ethylene Oxide; Labeling Requirements, 50 FR 41491, October 11, 1985.)

The above adoptions of Occupational Federal standards have been incorporated in the State Plan, and are contained in the Utah Occupational Safety and Health Rules and Regulations for General Industry, as required by Utah Code annotated 1943, Title 63-46-1. In addition, the standards were published in newspapers of general/major circulation throughout the State. No public comments were received and no hearings were held.

State Standards for 29 CFR 1910.1047: Ethylene Oxide; Labeling Requirements, were adopted by the Industrial Commission of Utah, Archive's File Number 8201 on December 20, 1985, (effective February 1, 1985) pursuant to Title 35-9-6, Utah Code, annotated 1953. The State Standard on Ethylene Oxide; Labeling Requirements is identical to the Federal standard action, with the only exception being paragraph numbering.

2. *Decision.* The above State Standard has been reviewed and compared with the relevant Federal Standard and OSHA has determined that the State Standard is at least as effective as the comparable Federal Standard, as required by section 18(c)(2) of the Act. OSHA has also determined that the differences between the State and Federal Standards are minimal and that the Standards are thus identical. OSHA therefore approves this standard; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. *Location of Supplement for Inspection and Copying.* A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Room 1554, Federal Office Building, 1961 Stout Street, Denver, Colorado 80294; Utah State Industrial Commission, UOSHA Offices at 160 East 300 South, Salt Lake City, Utah 84111; and the Office of State Programs, Room N-3476, 200 Constitution Avenue, NW., Washington, DC 20210.

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4. *Public Participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Utah State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason(s):

The standards were adopted in accordance with the procedural requirements of State law which included public comment and further public participation would be repetitious. This decision is effective November 4, 1986.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 [29 U.S.C. 667])

Signed at Denver, Colorado this 8th Day of September, 1986.

Harry C. Borchelt,

Acting Regional Administrator.

[FR Doc. 86–24849 Filed 11–3–86; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing in Upper Darby, PA, Railroad Accident

In connection with its investigation of the accident involving the collision and derailment of Southeastern Pennsylvania Transportation Authority Single-Car Train No. 167 at the 69th Street Terminal, Upper Darby, Pennsylvania, on August 23, 1986, the National Transportation Safety Board will convene a public hearing at 9 a.m. (local time) on December 3, 1986, at the Adam's Mark Hotel, City Avenue and Monument Road, Philadelphia, Pennsylvania. For more information contact Bill Bush, Office of Government and Public Affairs, National Transportation Safety Board, 800 Independence Ave., SW., Washington, DC 20594, telephone (202) 382–6607.

Ray Smith,

Federal Register Liaison Officer.

October 28, 1986.

[FR Doc. 86–24904 Filed 11–3–85; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Revised Meeting Agenda

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on November 6–8, 1986, in Room 1046, 1717 H Street, NW., Washington, DC. Notice of this meeting was published in the **Federal Register** on October 23, 1986.

Thursday, November 6, 1986

8:30 a.m.–8:45 a.m.: Report of ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest to the Committee.

8:45 a.m.–10:30 a.m.: Improved Light-Water Reactors (Open)—The members of the Committee will discuss proposed ACRS comments and recommendations to the NRC regarding characteristics of improved light-water reactors.

10:45 a.m.–12:45 p.m.: NRC Safety Research Program (Open)—Briefing and discussion of matters related to the NRC safety research program including prioritization of research activities, specifically those related to fire protection research for nuclear power plants.

1:45 p.m.–3:30 p.m.: Review of the Regulatory Process (Open)—Discuss the basis for proposed ACRS review of NRC Regulatory requirements and related regulatory processes and procedures.

3:45 p.m.–5:45 p.m.: Prioritization of Generic Issues (Open)—Members of the Committee will discuss proposed priorities for a new (fourth) group of unresolved generic issues.

5:45 p.m.–6:00 p.m.: Nomination of Candidates for ACRS CY 1987 Officers (Closed)—The Members of the Committee will discuss the qualifications of candidates for ACRS officers and membership on the ACRS Planning Subcommittee for CY 1987.

This portion of the meeting will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy consistent with 5 U.S.C. 552b(c)(6).

6:00 p.m.–6:45 p.m.: Safety of Nuclear Power Plants (Open/Closed)—Discuss implications of ACRS International Meeting on Nuclear Power Plant Safety.

Portions of this session will be closed as necessary to discuss information provided in confidence by representative of foreign governments consistent with 5 U.S.C. 552b(c)(1).

Friday, November 7, 1986

8:30 a.m.–9:30 a.m.: NRC Quantitative Safety Goals (Open)—Discuss proposed ACRS comments regarding development of a methodology for interpretation of NRC Quantitative Safety Goals in terms of the population doses associated with nuclear power plant accidents.

9:30 a.m.–10:15 a.m.: Office of Nuclear Material Safety and Safeguards' Activities—Radioactive Waste Management and Disposal (Open)—Briefing and discussion regarding activities of the NRC Office of Nuclear Material Safety and Safeguards, Division of Waste Management.

10:30 a.m.–11:30 a.m.: ACRS Subcommittee Activities (Open)—Report and discussion of ACRS subcommittee review of the implications of the Chernobyl nuclear plant accident to U.S. nuclear power plants.

11:30 a.m.–12:30 p.m.: Safety Features of Foreign Nuclear Plant (Open)—The members will hear and discuss a report by representatives of the NRC Staff regarding safety-related modifications in the Paluel Nuclear Plant.

1:30 p.m.–2:00 p.m.: Future ACRS Activities (Open)—Discuss anticipated ACRS subcommittee activities and proposed items for consideration by the full Committee.

2:00 p.m.–4:45 p.m.: ACRS Subcommittee Activities (Open)—Discuss reports of designated ACRS subcommittees regarding the status of safety-related activities including Phase I of the NRC Maintenance and Surveillance Program; the NRC inspection and enforcement program; safety technology, philosophy and criteria, and management of ACRS resources.

4:45 p.m.–5:30 p.m.: Nuclear Power Plant Improvements (Open)—Discuss proposed ACRS comments regarding the basis for nuclear power plant improvements.

5:30 p.m.–6:30 p.m.: Emergency Planning (Open)—Discuss the bases for NRC/FEMA Guidelines and requirements for emergency planning in the vicinity of nuclear power plants.

Saturday, November 8, 1986

8:30 a.m.–12:00 Noon: Preparation of ACRS Reports to the NRC (Open)—Discuss proposed ACRS reports to the NRC regarding items considered during this meeting and a proposed report regarding selection of nuclear power plant personnel by use of aptitude testing.

1:00 p.m.–3:00 p.m.: Generic Safety Issues (Open)—Complete discussion of items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 2, 1985 (50 FR 191). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R. F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attned should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss privileged and classified informaiton from foreign sources [5 U.S.C. 552b(c)(1)] and information the release of which would represent a clearly unwarranted invasion of personal privacy [5 U.S.C. 552b(c)(6)]

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 A.M. and 5:00 P.M.

Dated: October 30, 1986.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 86–24932 Filed 11–3–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–400]

Shearon Harris Nuclear Power Plant, Unit 1; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Facility Operating License No. NPF–53 to Carolina Power & Light Company, and North Carolina Eastern Municipal Power Agency (the licensees) which authorizes operation of the Shearon Harris Nuclear Power Plant, Unit 1, at reactor core power levels not in excess of 2775 megawatts thermal in accordance with the provisions of the license, the Technical Specifications, and the Environmental Protection Plan with a condition limiting operation to five percent of reactor core power (139 megawatts thermal).

Shearon Harris Nuclear Power Plant, Unit 1, is a pressurized water reactor located in Wake and Chatham Counties, North Carolina, approximately 16 miles southwest of Raleigh, North Carolina.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter 1, which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on January 27, 1982 (47 FR 3898). The power level authorized by this license and the conditions contained therein are encompassed by that prior notice.

The commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of relief and the issuance of the exemption included in this license will have no significant impact on the environment (51 FR 36329, dated October 9, 1986).

For further details with respect to this action, see (1) Facility Operating License No. NPF–53; (2) the Commission's Safety Evaluation Report, dated November 1983 (NUREG–1038), and Supplements 1 through 4; (3) the Final Safety Analysis Report and Amendments thereto; (4) the Environmental Report and supplements thereto; (5) the Final Environmental Statement, dated October 1983; (6) the Partial Initial Decisions of the Atomic Safety and Licensing Board, dated February 20, August 20, December 11, 1985, and April 28, 1986.

These items are available at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Wake County Public Library, 1313 New Bern Avenue, Raleigh, North Carolina 27601. A copy of the Facility Operating License NPF–53 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of PWR Licensing-A. Copies of the Safety Evaluation Report and its supplements (NUREG–1038) and the Final Environmental Statement may be purchased through the U.S. Government Printing Office by calling (202) 275–2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, this 24th day of October, 1986.

For the Nuclear Regulatory Commission.

Lester S. Rubenstein,

Director, PWR Project Directorate #2, Division of PWR Licensing–A, Office of Nuclear Reactor Regulation.

[FR Doc. 86–24805 Filed 11–3–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–324 and 50–325]

Carolina Power and Light Company; Brunswick Steam Electric Plant; Relocation of Local Public Document Room

Notice is hereby given that the Nuclear Regulatory Commission (NRC) has relocated the local public document room (LPDR) for Carolina Power and Light Company's Brunswick Steam Electric Plant from the Brunswick County Library, Southport, to the William Madison Randall Library, University of North Carolina at Wilmington, Wilmington, North Carolina.

Members of the public may now inspect and copy documents and correspondence related to the licensing and operation of the Brunswick Steam Electric Plant at the William Madison Randall Library, University of North Carolina at Wilmington, 601 S. College Road, Wilmington, NC, 28403. The Library is open on the following

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schedule: Monday through Thursday 7:30 a.m. to midnight; Friday 7:30 a.m. to 9 p.m.; Saturday 10 a.m. to 6 p.m.; and Sunday 3 p.m. to midnight.

For further information, interested parties in the Wilmington area may contact the LPDR directly through Mrs. Arlene Hanerfeld, telephone number (919) 395–3760. Parties outside the service area of the LPDR may address their requests for records to the NRC's Public Document Room 1717 H Street, NW., Washington, DC 20555, telephone number (202) 634–3273.

Questions concerning the NRC's local public document room program or the availability of documents at the Brunswick LPDR should be addressed to Ms. Jona L. Souder, Chief, Local Public Document Room Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone number (800) 638–8081 toll-free.

Dated at Bethesda, Maryland, this 30th day of October, 1986.

For The Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Rules and Records, Office of Administration.

[FR Doc. 86–24934 Filed 11–3–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–336]

Northeast Nuclear Energy Company et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–65, issued to Northeast Nuclear Energy Company (the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 2, located in New London County, Connecticut.

By applications for license amendments dated October 20, October 24 and October 27, 1986, the licensee requested changes to the Technical Specifications (TS) for Millstone Unit No. 2. The proposed changes to the TS provide for: (1) Revised temperature pressure limits in TS 3/4.4.9, "Pressure/Temperature Limits" and TS Figure 3.4.–2, "Reactor Coolant System Pressure Temperature Limitations for 12 Full Power Years," (2) a change to the surveillance frequency for determining reactor coolant system (RCS) flow rate in TS 4.2.6, "DNB Margin," and (3) changes to several TS associated with RCS flow and reactor power peaking limits.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The October 20, 1986 application for license amendment proposes revised temperature/pressure limitations for the reactor pressure vessel that would be applicable to 12 effective full power years (EFPY). The existing limitations in the TS are only applicable up to 7 EFPY which will be reached early during Cycle 8 operation. The reactor is presently in a refueling outage in preparation for Cycle 8 operation.

Operation of the reactor vessel is restricted to safe pressures for a given temperature. Since exposure to radiation embrittles the vessel, the operating restrictions are modified over time. To maintain a constant safety margin, either the maximum allowable pressure for a given temperature is reduced or the maximum allowable rate of temperature change is modified. The goal is to reduce the vessel stresses in recognition of the vessel's reduced resistance to brittle fracture. In the case of the proposed TS, safety margin is maintained through a combination of proposed reduced heat-up and cooldown rates (maximum allowable rate of temperature change) in TS 3/4.4.9 and reduction in the maximum allowable pressure for a given temperature as shown in proposed TS Figure 3.4–2.

The proposed changes to TS 3/4.4.9 and TS Figure 3/4–2 do not involve a significant increase in the probability or consequences of accidents previously evaluated. The requirements of TS 3/4.4.9 and TS Figure 3.4–2 are associated with preventing brittle fracture of the vessel and not with any previously analyzed accident. The proposed changes to the TS will not create the possibility of a new or different type of accident since the proposed limitations conservatively account for progressive vessel embrittlement to 12 EFPY; thus, operation within the limits of the proposed TS will prevent a brittle fracture of the reactor pressure vessel. Finally, the proposed change to the TS will not involve a reduction in a safety margin. As indicated previously, the proposed TS maintain the safety margin for reactor vessel failure by increasing the restrictions on reactor vessel temperature change rates and on minimum temperature at given pressures. Accordingly, the Commission proposes to determine that the proposed changes to TS 3/4.4.9 and TS Figure 3.4–2 involve no significant hazards considerations.

The October 24, 1986 application for license amendment proposes a change to the RCS flow surveillance requirements of TS 4.2.5.2. At the present time, RCS flow must be determined every 12 hours. The licensee proposes that the surveillance interval be increased to require RCS flow measurement every 31 days.

The measurement of RCS flow, together with other measurements, is important to assure that the core thermal margins are sufficient. In this regard, the departure from nucleate boiling (DNB) ratio is an important indicator of the reactor core thermal margin. Significant changes in DNB ratio due to RCS flow changes could result from two sources. The first, type of flow-related DNB change could result from the loss of one or more reactor coolant pumps. This change would be dramatic and would result in the automatic shutdown of the reactor by the reactor protection system (RPS). The second type of flow-related DNB change could result from the deposition of corrosion products (crud) in the core. Experience has shown that crud buildup, should it occur, is a long term problem that is manifested over several months and thus would be observed over several of the proposed surveillance intervals.

Based upon the above, the proposed change to TS 4.2.5.2 does not involve a significant increase in the probability or consequences of accidents previously evaluated. Accidents involving sudden RCS flow decreases are mitigated by the RPS and not by determination of RCS flow via TS 4.2.5.2. The proposed change to the TS does not create the possibility of a new or different type of accident since no changes to equipment or operating modes are involved. Finally, no safety margins would be significantly reduced. The slow buildup of crud, should it occur, would still be detected prior to any significant decrease in DNBR. Accordingly, the Commission proposes to determine that the proposed change to TS 4.2.5.2 involves no significant hazards considerations.

The October 27, 1986 application for license amendment proposes changes to the TS that would allow the reduction in the RCS flow rate from the current value of 350,000 GPM to 340,000 GPM. Since the reduction in the RCS flow rate would reduce the DNB margin, a change is also proposed to reduce the total integrated radial peaking factor (F_r^T). The current value for F_r^T is 1.565 for full power operation and is defined by TS figure 3.2–3b for reduced power. It is proposed to replace (F_r^T) with a 1.537 limit for full power operation and a more restrictive Figure 3.2–3b for reduced power levels. The proposed change, therefore, is a trade-off of RCS flow for F_r^T. The following TS would change:

- TS Figure 2.1–1, "Reactor Core Thermal Margin Safety Limit"—The indicated flow on this figure would be changed.
- TS Table 2.2–1, "Reactor Protective Instrumentation Trip Setpoint Limits"—The setpoint for low RCS flow would be changed.
- TS Figure 3.2–3b, "Total Radial Peaking Factor vs. Allowable Fraction of Rated Thermal Power"—This would be a revised curve.
- TS 3.2.3, "Total Integrated Radial Peaking Factor—F_r^T"—The limit on F_r^T would be changed.
- TS Table 3.2–1, "DNB Margin"—The indicated RCS flow would be changed.

The licensee has provided a reanalysis of accidents and transients which could be affected by the proposed change in RCS flow and F_r^T and has determined that there are no significant changes in the analytic results.

Based upon the above, the proposed changes to the TS do not involve a significant increase in the probability or consequences of an accident previously evaluated. Since the reduction in RCS flow rate will be offset by a reduction in F_r^T, the Millstone Unit No. 2 design basis accidents are not adversely affected. The proposed TS changes will not create the possibility of a new or different kind of accident from any previously evaluated. Because the change in RCS flow rate is offset by changes to the total integrated radial peaking factor, no new unanalyzed events are created. Finally, the proposed TS changes do not involve a significant reduction in a margin of safety. The potential reduction in DNB margin which would be caused by a reduction in the RCS flow rate is offset by the reduction in F_r^T. Accordingly, the Commission proposes to determine that the proposed changes to the TS do not involve significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing. Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

By December 4, 1986 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commisson may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public

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Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Ashok C. Thadani: petitioner's name and telephone number; date petition was mailed: plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esq., Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the applications for amendments dated October 20, October 24 and October 27, 1986, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06103.

Dated at Bethesda, Maryland, this October 29, 1986.

For The Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, PWR Project Directorate #8, Division of PWR Licensing-B.

[FR Doc. 86-24935 Filed 11-3-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-124]

Finding of No Significant Environmental Impact Regarding Proposed Order Authorizing Dismantling of the Reactor and Disposition of Component Parts; Virginia Polytechnic Institute and State University

The Nuclear Regulatory Commission is considering issuance of an Order authorizing the Virginia Polytechnic Institute and State University to dismantle the Argonaut reactor facility in Blacksburg, Virginia and to dispose of the reactor component in accordance with the application dated July 17, 1986, as supplemented.

The Order would authorize the dismantling of the facility and disposal of the components in accordance with the application for decontamination and dismantling, dated July 17, 1986, as supplemented. Opportunity for hearing was afforded by the Proposed Issuance of Orders Authorizing Disposition of Component Parts and Termination of Facility License published in the Federal Register on August 26, 1986 at 51 FR 30455. No request for hearing or petition for leave to intervene was filed following notice of the proposed action.

Finding of No Significant Environmental Impact

The Commission has determined not to prepare an Environmental Impact Statement for the proposed action. The Commission has prepared an Environmental Assessment of this action, dated October 29, 1986, and has concluded that the proposed action will not have a significant effect on the quality of the human environment.

Summary of Environmental Impacts

The environmental impacts associated with the dismantling and decontamination operations are discussed in an Environmental Assessment associated with this action, dated October 29, 1986. The operations are calculated to result in a total radiation exposure of less than 2 person-rem to facility staff and the public. The Environmental Assessment concluded that the operation will not result in any significant environmental impacts on air, water, land or biota in the area, and that an Environmental Impact Statement need not be prepared. These conclusions were based on the fact that all proposed operations are carefully planned and controlled, all contaminated components will be removed, packaged, and shipped offsite, and that the radiological effluent control procedures and systems ensure that releases of radioactive wastes from the facility are a small fraction of the limits of 10 CFR Part 20 and are as low as is reasonably achievable (ALARA).

For further details with respect to this proposed action, see the application for dismantling, decontamination and license termination dated July 17, 1986, as supplemented, the Environmental Assessment, and the Safety Evaluation prepared by the staff. These documents and this Finding of No Significant Environmental Impact are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555. Copies may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTENTION: Director, Division of PWR Licensing-B.

Dated at Bethesda, Maryland, this 29th day of October, 1986.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Standardization and Special Projects Directorate, Division of PWR Licensing-B, Office of Nuclear Reactor Regulation.

[FR Doc. 86-24931 Filed 11-3-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-124]

Virginia Polytechnic Institute and State University, (VPI Argonaut Reactor); Order Authorizing Dismantling of Facility and Disposition of Component Parts

By application dated July 17, 1986, as supplemented, the Virginia Polytechnic Institute and State University (VPI or the licensee) requested authorization to dismantle the Argonaut reactor facility, Facility Operating License No. R-62, located in Blacksburg, Virginia and to dispose of the component parts, in accordance with the plan submitted as part of the application. A "Proposed Issuance of Orders Authorizing Dismantling of Facility and Disposition of Component Parts, and Terminating Facility License" was published in the Federal Register on August 26, 1986 at 51 FR 30455. No request for hearing or petition for leave to intervene was filed following notice of the proposed action.

The Nuclear Regulatory Commission (the Commission) has reviewed the application in accordance with the provisions of the Commission's rules and regulations and has found that the dismantling and disposal of component parts in accordance with the licensee's dismantling plan will be in accordance with the regulations in 10 CFR Chapter I, and will not be inimical to the common defense and security or to the health and safety of the public. The basis of these findings is set forth in the concurrently issued Safety Evaluation by the Office of Nuclear Reactor Regulation.

The Commission has prepared an Environmental Assessment, dated October 29, 1986, for the proposed action. Based on that Assessment, the Commission has determined that the proposed action will not result in any significant environmental impact and that an Environmental Impact Statement need not be prepared.

Accordingly, VPI is hereby ordered to dismantle the reactor facility and dispose of the component parts in accordance with its dismantling plan and the Commission's rules and regulations.

After completion of the dismantling and disposal, VPI will submit a report on the radiation survey it will perform to confirm that radiation and surface contamination levels in the facility area satisfy the values specified in the dismantling plan and in the Commission's guidance. Following an inspection by representatives of the Commission to verify the radiation and contamination levels in the facility, consideration will be given to issuance of a further order terminating Facility Operating License No. R-62.

For further details with respect to this action, see (1) the VPI application for authorization to dismantle the facility and dispose of component parts, dated July 17, 1986, as supplemented, (2) the Commission's related Safety Evaluation, and (3) the Environmental Assessment. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC. Copies of items (2) and (3) may be obtained upon request, addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Director, Division of PWR Licensing-B.

Dated at Bethesda, Maryland this 29th day of October, 1986.

For The Nuclear Regulatory Commission.

Frank J. Miraglia,

Director, Division of PWR Licensing-B, Office of Nuclear Reactor Regulation.

[FR Doc. 86-24936 Filed 11-3-86; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

[Disaster Loan Area #2261]

Alaska; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on October 27, 1986, I find that the Boroughs of Matanuska-Susitna and Kenai Peninsula and the City of Cordova in the State of Alaska constitute a disaster loan area because of flooding which occurred on October 10-13, 1986. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on December 26, 1986, and for economic injury until the close of business on July 27, 1987, at: Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, Sacramento, California 95825, or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	7.500
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 226106 for physical damage and for economic injury the number is 646200.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: October 28, 1986.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 86-24839 Filed 11-3-86; 8:45 am]

BILLING CODE 8025-01-M

[Disaster Loan Area #2258; Amendment #1]

Missouri; Declaration of Disaster Area

The above-numbered Declaration (51 FR 37532) is hereby amended in accordance with the Notice of Amendment to the President's disaster declaration, dated October 22, 1986, to include Boone, Callaway, Cole, Franklin, Gasconade, Montgomery, Saline, Warren and the adjacent Counties of Howard, Moniteau and Osage in the State of Missouri because of damage from severe storms and flooding beginning on September 18, 1986. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on December 15, 1986, and for economic injury until the close of business on July 14, 1987.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: October 23, 1986.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 86-24840 Filed 11-3-86; 8:45 am]

BILLING CODE 8025-01-M

[Disaster Loan Area #2257; Amendment #1]

Montana; Declaration of Disaster Loan Area

The above-numbered Declaration (51 FR 37533) is hereby amended in accordance with the Notice of Amendment to the President's declaration, dated October 24, 1986, to include Rosebud and Valley Counties and the adjacent Counties of McCone and Hill in the State of Montana because of damage from severe storms and flooding beginning on September 25, 1986. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on December 15, 1986, and for economic injury until the close of business on July 14, 1987.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: October 28, 1986.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 86-24841 Filed 11-3-86; 8:45 am]

BILLING CODE 8025-01-M

[Disaster Loan Area #2259; Amendment No. 1]

Oklahoma; Declaration of Disaster Area

The above-numbered Declaration (51 FR 37533) is hereby amended in accordance with the Notice of Amendment to the President's declaration, dated October 20, 1986, to include the Counties of Kay, Payne and Rogers in the State of Oklahoma because of damage from severe storms and flooding beginning on September 26, 1986. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on December 15, 1986, and for economic injury until the close of business on July 14, 1987.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: October 23, 1986.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 86-24842 Filed 11-3-86; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2259]

Oklahoma; Declaration of Disaster Area

Correction

In FR Doc. 86–23820, appearing on page 37533, in the issue of Wednesday, October 22, 1986, first column, in the fourth line from the bottom, "Loan" should read "Logan".

BILLING CODE 1505-01-M

[License No. 02/02–5483]

Fans Capital Corp.; Issuance of a Small Business Investment Company License

On March 26, 1985, a notice was published in the **Federal Register** (50 FR 11977) stating that an application has been filed by Fans Capital Corporation, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1985)) for a license as a small business investment company.

Interested parties were given until close of business April 26, 1985, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02–5483 on September 26, 1986, to Fans Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 27, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86–24843 Filed 11–3–86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Proposed Suspension of the Section 401 Certificate of Pride Air, Inc.

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of order to show cause (Order 86–10–67) Docket 42139.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order suspending the certificate of Pride Air, Inc., issued under section 401 of the Federal Aviation Act.

DATE: Persons wishing to file objections should do so no later than November 20, 1986.

ADDRESSES: Responses should be filed in Docket 42139 and addressed to the Documentary Services Division, Department of Transportation, 400 7th Street, SW., Room 4107, Washington, DC 20590 and should be served on the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Carol A. Szekely, Special Authorities Division, P–47, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590 (202) 366–9721.

Dated: October 30, 1986.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86–24925 Filed 11–3–86; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

[Georgia Project EDS–460(2); P.I. Number 662200]

Environmental Impact Statement; Forsyth and Gwinnett Counties, GA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Forsyth and Gwinnett Counties, Georgia.

FOR FURTHER INFORMATION CONTACT: Tom Myers, District Engineer, Federal Highway Administration, Suite 300, 1720 Peachtree Road, N.W., Atlanta, Georgia 30367, telephone (404) 347–4751, or Peter Malphurs, State Environment/Location Engineer, 3993 Aviation Circle, Atlanta, Georgia 30336, telephone (404) 696–4634.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Georgia Department of Transportation (GDOT) will prepare an environmental impact statement (EIS) on a proposal to construct a new location connector from S.R. 371 in Forsyth County to I–85 in Gwinnett County. The proposed project consists of two sections. The first section consists of the construction of a two-lane highway beginning at S.R. 371 in Forsyth County and extends to S.R. 400 in Forsyth County (beginning of section two). The second section consists of the construction of a four-lane divided highway beginning at S.R. 400 in Forsyth County and extends southeasterly to I–85 in Gwinnett County. Project length is approximately 18.3 miles. The proposed work is necessary to accommodate existing and future traffic demand resulting from the continued growth in the Metropolitan Atlanta area.

To ensure that the full range of issues related to this proposed project are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or the Georgia DOT at the address provided above.

The catalog of Federal Domestic Assistance Program Number is 20.205 *Highway Research, Planning and Construction.* Georgia's approved clearinghouse review procedure apply to this program.

Issued on October 27, 1986.

Tom Myers,

District Engineer, Federal Highway Administration Atlanta, Georgia.

[FR Doc. 86–24870 Filed 11–3–86; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Hampden Township, Cumberland County, PA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Cumberland County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Philibert A. Ouellet, District Engineer, Federal Highway Administration, 228 Walnut Street, P.O. Box 1086, Harrisburg, Pennsylvania 17108, Telephone: (717) 782–4422, or William Greene, Project Manager, Pennsylvania Department of Transportation, 21st and Herr Sts., Harrisburg, Pennsylvania 17120, Telephone (717) 783–5148.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation (PennDOT) will prepare an Environmental Impact Statement on a proposal to relieve traffic congestion and improve safety on U.S. 11 in Hampden Township, located in south central Pennsylvania. The proposed project is approximately 2.5 miles in length and may consist of a highway on a new alignment to connect U.S. 11 with

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an existing interchange of Interstate 81. The proposed project begin on U.S. 11 and travels north to tie in with I–81. Section 4(f) Evaluations will be performed as necessary in conjunction with the proposed project.

Three basic alternatives will be considered: a transportation system management alternative using much of the existing highway system, an alignment mainly on new location with limited access, and a no-build alternative. For each of the alternatives under study, the following areas will be investigated: traffic, preliminry design and cost, air quality, noise, energy, water quality and aquatic biota, ground water and hydrogeology, vegetation and wildlife, floodplains the flood hazard areas, endangered species, hazardous waste facilities, wetland, solid and erosion, farmlands, visual quality, socio-economics and land use, construction impacts, and archaelogical and historic resources.

Public involvement and interagency coordination will be maintained throughout the development of the Environmental Impact Statement. A Plan of Study and an invitation to scoping meeting will be distributed to interested agencies. A public hearing will be held, if required, to obtain formal public input on the findings of the environmental and engineering studies.

To insure that the full range of issues related to the proposed action are addressed and that all significant issues are identified, comments or questions concerning this action and the Environmental Impact Statement should be directed to the FHWA or PennDOT at the addresses listed above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provision of Executive Order 12372, Intergovernmental Review of Federal Program regarding State and local review of Federal and Federally assisted programs and projects apply to this program.)

Issued on: October 27, 1986.

Manuel A. Marks,

Division Administrator, Harrisburg, Pennsylvania.

[FR Doc. 86–24871 Filed 11–3–86; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement, Wyomissing Borough and Brecknock, Cumru, and Spring Townships, Berks County, PA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Berks County, Pennsylvania. A Section 4(f) Evaluation and/or Section 106 reports will be prepared as necessary.

FOR FURTHER INFORMATION CONTACT: Philibert A. Ouellet, District Engineer, Federal Highway Administration, 228 Walnut Street, P.O. Box 1086, Harrisburg, Pennsylvania 17108, Telephone: (717) 782–4422 or Steve Caruano, Project Manager, Pennsylvania Department of Transportation, 1713 Lehigh Street, Allentown, Pennsylvania 18105, Telephone: (215) 821–4150.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation (PennDOT), will prepare an Environmental Impact Statement on a proposal to relieve traffic problems and improve safety on Traffic Route 222 near Reading, located in southeastern Pennsylvania. The proposed project is approximately 6.5 miles in length and may consist of a Transportation Systems Management Alternative, or a relocation of Traffic Route 222 on a new alignment to connect with the existing Warren Street Bypass (Traffic Route 422). The proposed project begins at the Berks/Lancaster County line in Cumru Township on Traffic Route 222 and travels northeast through Brecknock and Spring Townships to tie in with T.R. 422. The purpose of the proposed project is to facilitate traffic flow in the southwestern section of Berks County.

Four basic alternatives will be considered: a transportation systems management alternative using much of the existing highway system, an alignment mainly on new location with controlled access, an alignment mainly on new location with limited access, and a no-build alternative. For each of the alternatives under study, the following areas will be investigated: traffic, preliminary design and cost, air quality, noise, energy, vibration, surface water and ground water quality, surface water and ground water hydrology, terrestrial ecology, wetlands, soils and erosion, farmlands, visual quality, socio-economics and land use, construction impacts, and archaeological and historic resources. The three build alternatives will require the acquisition of additional right of way.

Public involvement and interagency coordination will be maintained throughout the development of the Environmental Impact Statement. A Plan of Study and an invitation to scoping meetings will be distributed to interested agencies. A public hearing will be held, if required, to obtain formal public input on the findings of the environmental and engineering studies.

To ensure that the full range of issues related to the proposed action are addressed and that all significant issues are identified, comments or questions concerning this action and the Environmental Impact Statement should be directed to the FHWA or PennDOT at the addresses listed above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Execute Order 12372, Intergovernmental Review of Federal Programs, regarding State and local review of Federal and Federally assisted programs and projects apply to this program.)

Issued on: October 27, 1986.

Manuel A. Marks,

Division Administrator, Harrisburg, Pennsylvania.

[FR Doc. 86–24869 Filed 11–3–86; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

[Docket No. RSSI–86–1, Notice No. 1]

Special Safety Inquiry; Radio Communications

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Special Safety Inquiry.

SUMMARY: FRA is initiating Special Safety Inquiry to provide a forum for a broad-based examination of communications in railroad operations.

DATES: (1) A public hearing will begin at 10:00 a.m. on January 27, 1987, and continue at the same time on the 28th and 29th of January.

(2) Prepared statements to be made at the hearing should be submitted to the Docket Clerk at least two working days before the hearing date (close of business, January 22, 1987). Parties not meeting that deadline will not be permitted to present oral testimony; however, their written statements will be included in the record of this proceeding.

(3) Persons not desiring to testify, but wishing to submit written comments for inclusion in the safety inquiry docket should submit them by February 27, 1987.

ADDRESSES: (1) Hearing location—Room 2230, Nassif Building, 400 Seventh Street, SW., Washingotn, DC 20590.

(2) Docket Clerk, Office of Chief Counsel (RCC–30), Federal Railroad

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Administration, Washington, DC 20590. Telephone 202-366-0617.

FOR FURTHER INFORMATION CONTACT: Mark J. Weihofen, Office of Safety Analysis, RRS-21, Federal Railroad Administration, 400 7th Street, SW., Washington, DC 20590 (telephone (202) 366-0547), or Mark Tessler, Office of Chief Counsel, Federal Railroad Administration, 400 7th Street, SW., Washington, DC 20590 (telephone (202) 366-0628).

SUPPLEMENTARY INFORMATION: High quality communications are essential to both efficient and safe railroad operations. In the railroad industry, communications have taken various forms: published timetables, telegraphic and hand-written messages, and electronic, electric, and manual signal systems. Today, radios have become a common and often indispensable feature in railroad operations, and given recent developments in communications technology, the railroad industry stands poised on the brink of a communications revolution.

At an accident investigation symposium in July 1984, Federal Railroad Administrator John Riley expressed his intention that the agency address this subject in detail. FRA staff has been examining the issue for some time, and we believe that obtaining views and information from the public is necessary for further progress. This is a propitious moment in railroad history to sponsor a public forum where the safety issues that arise from changing communications methods and practices can be explored. At the same time, there exists a need to examine current use of radios in relation to safe and effective communication practices.

FRA's decision to initiate this inquiry arises in part form an examination of railroad accident data. In recent years, the proportion of reportable railroad accidents attributable to human factors has approached 30 percent. Many of these may involve communications failures or situations in which better communications could have averted or reduced the likelihood of an accident.

The National Transportation Safety Board (NTSB) has also expressed concern about railroad communications. On January 15, 1986, the NTSB issued Safety Recommendation R-85-129, in which it recommended that FRA

> [e]stablish regulations that address the issues surrounding the uses of radio for operational purposes on trains to include, but not be limited to, requirements for radios to be installed on trains; usage requirements for inter- and intra-train communications; usage requirements for dispatching and control operations; frequency compatibility requirements; and maintenance, inspection, and testing requirements.

Although FRA expects that *radio* communications will be an important focus of this inquiry, our intent is that the scope of the proceeding be considerably broader, considering the issue of communications generally. The inquiry will address present railroad operating and dispatching practices, types of radios and other equipment now in use and current FRA regulations and industry standards that affect communications. It will also address the future: (a) What new communications technologies and other innovations having potential application in the railroad environment are on the horizon; and (b) what changes in FRA or industry rules may be needed to accommodate changing technologies, while assuring their consistency with sound safety practices.

We urge the parties in this proceeding to consider these general questions and the more specific questions we present below. We stress, however, that our list is illustrative, not all-inclusive. We ask that parties present comments on any issue they identify as falling within the broad scope of this inquiry.

Further FRA action on this subject will depend entirely on the record developed. A variety of results are possible. For example, the evidence may support issuance of a notice of proposed rulemaking in one or more areas. It may foster joint, voluntary action within the industry, or justify taking no action at this time. A major FRA goal underlying this inquiry is to increase our knowledge of current and future communications issues so we can anticipate rather than react to changing technologies, and so that agency action, or inaction, is based on a firm understanding of the salient facts, technical data, and economic and safety elements of the changing railroad communications environment.

Background

The following is a brief review of the various railroad operations using radio communications:

Train Operations: Mobile radio operations permit communication from one end of a train to the other (either through manned cabooses or end of train devices), from one train to another, and from a stationary point to a moving train. These uses, on a specific channel assigned to each railroad, permit normal working communications as well as the transmittal of information of an unusual or emergency nature. Voice communication from one train to another is limited by the transmission and reception range of radios, so that generally one is limited to speaking to the crew of a passing train only. There is a further limitation in that the radios of one railroad cannot be used to communicate with another railroad due to the different assigned frequencies for each carrier.

Radio voice communication today is generally used as a backup system to signalization and written train orders, but on certain subdivisions of some railroads it is the sole method of controlling train movements. This method provides for voice communications between moving trains and the train dispatcher. Such methods of train control (called variously, track warrant control, manual block systems, direct traffic control, or absolute block system) involve specific verbal orders being given directly to the train crew by the dispatcher.

The dispatcher is at the center of an increasingly complex communications network. The dispatcher now uses a combination of one or more telephone systems, one or more base radio stations, and computer communications. Because the dispatcher is the center of this communications hub, he or she often assumes duties beyond those directly associated with train movements. Among those extra duties are placement of locomotives and crews, operating computer terminals, and receiving and transmitting messages and instructions among field personnel and carrier officials.

Yard and Terminal Operations: Radio voice communications enable a yardmaster to communicate with the yard crews equipped with hand-carried radios and radio-equipped locomotives. In addition, switcher crews use radios to guide switcher locomotives, and in some cases to control hump locomotives.

Maintenance Operations: Aside from normal operational communications among maintenance workers, radios serve the essential safety function of providing a communications link to warn the men and women working along the right-of-way of approaching trains and to direct those trains through the area of track under repair.

Automated Communications: Automated radio communication is also part of current railroad operations. In cabooseless trains, radio telemetry devices keep the engineer aware of the end-of-train brake pipe pressure and the condition of the rear marker. In addition, many wayside detection systems, such as hot box and shifted load detectors, communicate information by radio to dispatcher stations, or in some cases, directly to the train crew.

Emergency Situations: Radio communication is also an important means to summon emergency aid for victims of train and grade crossing accidents and to warn the train crew of hazards and emergency situations up the line. In rural areas, the train crew is frequently the only witness to an accident. Radios also permit the train crew to report dangerous or suspicious activities to police, such as children playing on tracks, acts of vandalism, or forced entry of standing railroad cars.

Current Railroad Communications

To assist FRA in obtaining the most comprehensive information available regarding the state of radio communications in the railroad industry, interested parties are strongly encouraged to comment on the broad range of communications related subjects in which they have expertise or interest. Labor, industry, and supplier representatives should provide information they believe to be relevant to radio use, safe train operations, and employee and public safety.

FRA would like equipment manufacturers to provide technical information on the present state-of-the-art equipment used in railroad communications as well as a preview of future systems. Representatives of the industry and individual railroads are also encouraged to provide an overview of the communications systems on the nation's railroad's, from the perspectives of both large and small carriers. Submission of system maps showing radio coverage and explaining the system, equipment, and use applications would be helpful.

We urge interested parties to submit all information and ideas and may be helpful in addition to addressing the following listed areas of inquiry:

Mandatory Installation and Use of Radio Equipment

1. Should a radio be required on:

(a) Every train operating on a main track or over joint use trackage?

(b) Every locomotive operating in yards, switching areas or terminals?

(c) All maintenance-of-way equipment, signal and high-rail vehicles?

2. Are there any operational, technical, or other type of constraints that would render compliance with such a requirement difficult or impossible?

3. What technical features would be necessary in these radios? What technical features would be desirable in these radios? What are the costs of the recommended equipment?

4. Should there be compatibility standards for the required radios? Should there be compatibility requirements for radio equipment among interconnecting carriers?

5. What, if any, technical, operational, or economic problems would be associated with such compatibility requirements?

6. If mandatory installation and use of radios is not appropriate in general, are there specific situations in which mandatory installation and use would be appropriate?

7. Should radios be required on any other railroad equipment?

8. Should all road equipment be equipped with radios capable of contacting local emergency response personnel?

9. To what extent should there be regulations or industry-wide standards governing the specifications, installation and maintenance of radio equipment?

Radio Communications Use—General

1. What has been your experience with FRA's Radio Standards and Procedures regulations (49 CFR Part 220)? Do you suggest any changes to the regulations?

2. Please identify any radio communications problems you are experiencing. Do you propose any solutions to the problem?

3. Should *specific* radio rules be implemented for any of the following: (a) Yard areas; (b) urban areas; (c) emergency situations; (d) train order transmissions; (e) voice controlled manual block system; (f) high speed operations; (g) passenger operations; (h) cabooseless operations; (i) foreign crew operations; (j) hazardous materials operations; (k) maintenance-of-way activity; (l) rail-highway crossings; (m) slave locomotive control; (n) hump activity control; (o) wayside detector tramsmissions; (p) other.

4. Under what conditions should the use of radio communications be required in train operations and train control? in other situations?

5. Is the extent of extraneous and non-railroad related conversations a significant problem for radio users? If so, what should be done to eliminate the problem?

6. Should stricter radio discipline be enforced? If so, how?

7. Is there a need to limit radio transmissions on channels designated for train or yard operations strictly to operational communications? If so, how should this be enforced?

Radio Communication Use—Voice Controlled Manual Block System

1. What has been your experience with voice controlled manual block systems (VCMBS) such as manual block, direct traffic control and track warrant control?

2. Are there any "checks and balances" or redundant procedures that have been instituted to provide an extra measure of safety? Are any needed?

3. Is there sufficient capacity in your assigned frequency channels to operate a voice-controlled manual block system? If not, how would you deal with the situation?

4. If adjacent VCMBS's are operated on the same channel, does one dispatcher interfere with another? If so, how can that problem be eliminated?

5. Current FRA regulations govern the transmission of train orders by radio (49 CFR 220.61). What has been your experience under these regulations? Do you have any changes to suggest?

Technical Areas

1. FRA field personnel have identified several areas in which specific problems have alleged. Please comment on the presence or absence of these problems and possible solutions: (a) Interference; (d) congestion; (c) dead spots; (d) lack of reliability and durability of equipment; (e) poor maintenance; (f) lack of availability of equipment when needed; (g) limited range; and (h) other problems.

2. Have you experienced any problems with the transmission or reception of radio communications? How have these problems affected your operations? How have they affected employee and public safety?

3 Have there been any situations in which dead spots have prevented radio communication of voice-controlled manual block system operations? If so, please explain.

4. Should there be periodic testing of all radio equipment? What type of testing would be necessary to ensure consistent equipment performance?

5. Do radio transmissions from automatic wayside detectors interfere with normal radio communications? If so, please provide details and discuss what changes should be made in the operation of such wayside detectors to eliminate unnecessary interference.

6. Certain radio systems require that the caller initiate the call by first transmitting a tone or series of "clicks." Are there any particular problems or advantages associated with this type of system?

7. Has consideration been given to using radios with selectable power outputs as an aid to decreasing congestion and interference and as a method of increasing battery life? What would such an option cost? What problems would be created by selectable power outputs?

8. Has consideration been given to the use of radio telephones by the

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maintenance-of-way or signal department as a method of providing more open channels for other uses?

9. What improvements, if any, are needed in the location of radio controls in order to improve safety and operational efficiency?

10. Could the location of locomotive radios be improved in terms of employee safety, equipment survival in accidents, or operational efficiency?

11. Please comment on the quality, reliability, and durability of the radio equipment available on today's market. Are there differences in maintenance costs, range, susceptibility to atmospheric or geographic conditions, or in other areas?

12. How many road and yard locomotives are currently equipped with a radio? How many are not equipped with a radio?

13. How many of each of the following types of radio are used in road service? yard service?

(a) Fixed frequency, crystal controlled.

(b) Synthesized, external frequency controlled.

(c) Other (please specify).

14. At what rate are you currently replacing crystal radios with those with external frequency controls?

15. What are the costs of various types of radio equipment? (a) Base stations; (b) mobile units; (c) portable units; (d) relay stations; (e) repeaters; (f) other (please specify).

Spectrum Availability

1. Is the present 91-channel railroad VHF radio spectrum sufficient to assure safety of train operations nationwide?

2. With the understanding that FRA is limited in its jurisdiction regarding spectrum availability, are there any changes in today's system that would relieve the effects of limited spectrum availability.

3. What is your position regarding inter-service sharing?

4. How will satellite-based systems or fiber optics communication affect the present limitations in the VHF spectrum?

Future Railroad Communications

In an effort to improve operating efficiency and maintenance costs, improve safety, and become more competitive with other transportaton modes, the railroad industry is moving to research and develop microprocessor-based communication and control systems for railroad operations. Most of these activities involve the identification and control of trains and other track-occupying equipment. Competing types of train control systems are presently in varying stages of development.

Proponents and developers of these systems in addition to other interested parties are invited to respond to the following series of questions regarding future railroad communications:

1. Please discuss the new communications technologies that are currently under development and those that may be developed in the future. How might they be used?

2. What are the general safety issues implicated by new and different means of communication in the railroad industry?

3. Are FRA's current regulations a barrier to the introduction of new technologies? Are they adequate to preserve safety if new technologies are introduced?

4. To what extent are these new technologies additions to or replacements for standard signal system?

5. Satellite-based train control systems hold out the potential for highly sophisticated communications links for monitoring rail equipment and for train control. What are the safety implications of those technologies? Are FRA regulations a barrier to their implementation? How will these technologies affect future operations?

6. In situations where satellite communications are planned for train operations, what, if any, provision have been made for fail-safe or back-up systems of the following: (a) Train control; (b) voice communications; and (c) computer data links?

Authority: Secs. 202, 208, 84 Stat. 971, 974 (45 U.S.C. 431, 437); Section 1.49(m) of the Regulations of the Office of the Secretary of Transportation (49 CFR 1.49(m)); 49 CFR 211.61.

Issued in Washington, DC, on October 29, 1986.

John H. Riley,

Administrator.

[FR Doc. 86-24781 Filed 11-3-86; 8:45 am]

BILLING CODE 4910-06-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 213
Tuesday, November 4, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

October 29, 1986.

CHANGE IN PREVIOUSLY ANNOUNCED AGENDA

TIME AND DATE: 10:00 a.m., Thursday, October 30, 1986.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed (Previously announced as open)—Pursuant to 5 U.S.C. 552b(c)(10).

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Secretary of Labor, MSHA v. Cathedral Bluffs Shale Oil Company, Docket No. WEST 81–186–M.
2. Secretary of Labor, MSHA v. Brown Brothers Sand Co., Docket No. SE 86–11–M. (Issues include discussion of the Administrative Law Judge's entry of default and order to pay the proposed civil penalties.)

It was determined by a unanimous vote of Commissioners that this meeting be closed and no earlier announcement of the closure or addition was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629.

Jean Ellen,
Agenda Clerk.

[FR Doc. 86–24967 Filed 10–31–86; 10:59 am]

BILLING CODE 6735-01-M

2

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

October 29, 1986.

TIME AND DATE: 10:00 a.m., Thursday, November 6, 1986.

PLACE: Room 600, 1730 K St., NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. Hobet Mining & Construction Co. v. Secretary of Labor, Docket No. WEVA 84–113–R, etc., (Issues include whether the judge properly found a violation of 30 CFR 77.1303(h), dealing with warnings before blasting.)

FOLLOWING THE ARGUMENT: The Commission will consider and act upon the following in a Closed meeting (pursuant to 5 U.S.C. 552b(c)(10).

1. Hobet Mining & Construction Co. v. Secretary of Labor, Docket No. WEVA 84–113–R, etc.

It was determined by a unanimous vote of Commissioners that this portion of the meeting be closed.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629.

Jean Ellen,
Agenda Clerk.

[FR Doc. 86–24968 Filed 10–31–86; 10:59 am]

BILLING CODE 6735-01-M

3

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Friday, November 7, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on October 29, 1986.)
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board: (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 30, 1986.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 86–24937 Filed 10–31–86; 8:45 am]

BILLING CODE 6210-01-M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, November 10, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed purchaser of computer equipment within the Federal Reserve System.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 31, 1986.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 86–25015 Filed 10–31–86; 4:00 pm]

BILLING CODE 6210-01-M

5

NATIONAL SCIENCE FOUNDATION

DATE AND TIME:

November 14, 1986
8:30 a.m. Closed Session
8:45 a.m. Open Session

PLACE: National Science Foundation Washington, DC.

STATUS:

Most of this meeting will be open to the public.
Part of this meeting will be closed to the public.

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MATTERS TO BE CONSIDERED NOVEMBER 14:

Closed Session (8:30–8:45 a.m.)

1. Minutes—August 1986 Meeting
2. NSB and NSF Staff Nominees
3. Grants, Contracts, and Programs—Action Items

Open Session (8:45–11:30 a.m.)

4. Grants, Contracts, and Programs
5. Chairman's Report
6. Minutes—August 1986 Meeting
7. Director's Report
8. Proposed 1987 Award Review Exemptions
9. Proposed Amendments to the NSF Act
10. Presentation on University/Industry Research Centers
11. Report from the Committee on International Science
12. Other Business

Thomas Ubois,

Executive Officer.

[FR Doc. 86–24969 Filed 10–31–86; 11:02 am]

BILLING CODE 7555-01-M

6

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:00 a.m., Thursday, November 13, 1986.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: The first item will be open to the public. The last two items will be closed to the public under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. *Highway Accident Report:* Intercity Bus Loss of Control and Collision with Bridge Rail, Interstate 70, Frederick, Maryland, August 25, 1985.

2. *Opinion and Order:* Administrator v. Smith, Docket SE–5559; disposition of the Appeals of respondent and the Administrator.

3. *Opinion and Order:* Administrator v. Spais, Docket SE–6625; disposition of the respondent's appeal.

FOR MORE INFORMATION, CONTACT: Ray Smith (202) 382–6525.

Ray Smith,

Federal Register Liaison Officer.

November 3, 1986.

[FR Doc. 86–25013 Filed 10–31–86; 3:54 pm]

BILLING CODE 7533-01-M

7

TENNESSEE VALLEY AUTHORITY

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 51 FR 39610 (October 29, 1986).

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:30 a.m. (e.s.t.), Friday, October 31, 1986.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

ADDITIONAL MATTERS: The following items are added to the previously announced agenda:

Old Business Items

1. Supplement to personal services Contract No. TV–65375A with Bechtel North American Power Corporation, Gaithersburg, Maryland, for performance of general engineering, design, and architectural services, requested by the Office of Nuclear Power.

2. Supplement to personal services Contract No. TV–66821A with General Electric Company, Atlanta, Georgia, for engineering and related support to the Browns Ferry Nuclear Plant's Site Services Group, requested by the Office of Nuclear Power.

New Business Items

D. Personnel Items

3. Conflict of interest guidelines governing loaned employees and certain contractor advisors and TVA managers.

4. Supplement to Contract No. TV–60324A with Stone & Webster Engineering Corporation, for engineering, construction, and operation support services, requested by the Office of Nuclear Power.

5. Personal services contract with Ebasco Services, Incorporated, New York, New York, for engineering, design, quality assurance, drafting and related engineering construction, and operations support services, requested by the Office of Nuclear Power.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615–632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202–245–0101.

SUPPLEMENTARY INFORMATION:

TVA Board Action

The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business requires the subject matter of this meeting be changed to include the additional items shown above and that no earlier announcement of this change was possible.

The members of the TVA Board voted to approve the above findings and their approvals are recorded below:

Dated: October 30, 1986.

Approved.

C.H. Dean, Jr.,

Director and Chairman.

John B. Waters,

Director.

[FR Doc. 86–24990 Filed 10–31–86; 2:32 pm]

BILLING CODE 8120-01-M

federal register

Tuesday
November 4, 1986

Part II

Department of Health and Human Services

Public Health Service

42 CFR Part 36

48 CFR Part PHS 352

Indian Health; Policy for Charging Interest and Penalty on Debts; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 36

48 CFR Part PHS 352

Indian Health; Policy for Charging Interest and Penalty on Debts

AGENCY: Public Health Service, HHS.

ACTION: Proposed rule.

SUMMARY: This notice proposes to charge interest on amounts owed to the government by Indian tribes and tribal organizations who are contractors or grantees under the Indian Self-Determination Act. Pub. L. 93–638; and to charge interest, penalties and the administrative costs of collecting overdue amounts owed to the Government by Indian organizations which are not tribal governments or components of tribal governments.

DATE: Written comments should be received on or before December 19, 1986, in order to ensure consideration in the preparation of a final rule.

ADDRESS: Address written comments to: Richard J. McCloskey, Indian Health Service, Room 6A–20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: John Bird, Health Resources and Services Administration, 5600 Fishers Lane, Room 16A–0, Rockville, Maryland 20857 Telephone (301) 443–6344.

SUPPLEMENTARY INFORMATION: This Department is proceeding as expeditiously as possible to enhance its debt collection efforts by charging interest on all debts, and penalties and administrative costs on delinquent debts. This policy will implement the Debt Collection Act of 1982 (Pub. L. 97–365), the Department of Treasury's guidelines pertaining to debt collection activities, and the joint regulations of the Attorney General and the Comptroller General. Accordingly, the Department is proposing to charge interest on amounts owed to the government by Indian tribes and tribal organizations which are contractors or grantees under Pub. L. 93–638; and to charge interest, penalties, and the administrative costs of collecting overdue amounts owed by Indian organizations which are not tribal governments or components of tribal governments.

Section 11 of the Federal Claims Collection Act of 1982 addresses the question of interest and penalty charges to government debtors. It requires agencies to charge interest and administrative costs associated with handling delinquent debts and late penalty charges on "outstanding debts on claims owed by persons." This section also permits waiver of these charges, provided it is done pursuant to government-wide standards and agency regulations. For purposes of this section, the term "person" is defined so as not to include any agency of the United States or any State or local government. Therefore, Indian tribes or components of tribal governments will not be subject to charges, other than interest, because, as local governments, they are excluded from the provisions of section 11 of the Claims Collection Act authorizing the assessment of these charges. The Department has elected to charge interest to tribes or components of tribal governments under our common law authority, which is unaffected by section 11. On the other hand, some "tribal organizations" having contracts with the IHS under the Indian Self-Determination Act, Pub. L. 93–638 are not components of tribal governments and are, therefore, covered by section 11. Such "tribal organizations" would be charged interest, penalties, and the administrative costs of collecting overdue amounts.

Paragraph (a)(1) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that the Department becomes entitled to recovery. The rate is identical to the interest rate charged under the National Research Services Awards program pursuant to 42 U.S.C. 2891–1 (c)(4)(B). The rate of interest was established to protect the interests of the government, since the "current value of funds" rate does not provide adequate protection inasmuch as the rate is substantially lower than existing commercial rates of interest. The interest rate is adjusted on a quarterly basis and the Assistant Secretary for Management and Budget will publish all adjustments in the **Federal Register** upon receipt from the Department of the Treasury.

Paragraph (a)(2) provides that such rate of interest may be no lower than the current value of funds rate, as required by 31 U.S.C. 3717. Paragraph (c)(1) provides that rates of interest on installment agreements shall be no lower than the U.S. Treasury "Schedule of Certified Interest Rates with Range of Maturities." Interest rates under this schedule bear a relation to the length of time over which payment of a debts is extended. Information regarding the schedule of certified interest rates may be obtained from Mr. Gerald Murphy, Fiscal Assistant Secretary, Department of Treasury, Room 2112, Main Treasury Building, 15th and Pennsylvania Avenue NW., Washington, DC 20220, (202) 566–2112).

On January 14, 1983, IHS sent a letter to Indian tribes and organizations concerned with Pub. L. 93–638 regulations, notifying them that IHS regulations would be changed to conform to the extent permitted by law, to the Department's policy of charging interest and penalties on delinquent debts and notifying them that they would have another opportunity to comment when a specific proposal was published in the **Federal Register**.

In addition, as required by section 107(c) of Pub. L. 93–638, the Department notified the House and Senate Committees on Interior and Insular Affairs of the proposed changes by letters dated May 2, 1984. The language of the proposed contract clause contained in the letters to Congress differed from that contained in the earlier letter to the tribes. This was the result of more recent advice and suggested language provided by the Department's Office of the General Counsel. The language proposed in this notice is identical to that contained in the letters to Congress.

There are no new paperwork requirements subject to the Office of Management and Budget approval under the Paperwork Reduction Act of 1980.

The Department of Health and Human Services has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291. Further, these regulations will not have a significant economic impact on a substantial number of small entities, and therefore do not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

List of Subjects

42 CFR Part 36

Alaska natives, Contracts, Eskimos, Grant programs, Health, Indians.

48 CFR Part PHS 352

Government procurement.

Dated: July 14, 1986.

Robert E. Windom,

Assistant Secretary for Health.

Approved: July 25, 1986.

Otis R. Bowen,

Secretary.

For the reasons set out in the preamble, the Department proposes to amend Part 36 of Title 42, Code of

Federal Regulations, Subpart H and Subpart I, as follows:

TITLE 42—PUBLIC HEALTH

PART 36—INDIAN HEALTH

1. The authority citation for Part 36, Subpart H is revised to read as follows:

Authority: Secs. 104, 107, 25 U.S.C. 450h(b), 450k; Sec. 3, Pub L. 83–568, 42 U.S.C. 2003; Sec. 11, Pub. L 97–365, 31 U.S.C. 3717.

2. The table of contents for Subpart H is amended by adding an entry for § 36.122 to read as follows:

Subpart H—Grants for Development, Construction, and Operations of Facilities and Services

Sec.

* * * * *

36.122 Interest and penalties on debts.

* * * * *

3. A new § 36.122 is added to Subpart H to read as follows:

§ 36.122 Interest and penalties on debts.

Grants made under this subpart shall incorporate the following clause:

(a) *Interest.* Amounts owed to the government by a grantee under a grant awarded under Pub. L. 93–638, section 104(b) will bear interest from the date on which the government first mails or hand delivers to the debtor written notice of the debt if the debt is not paid within 30 days from that date, at a rate established as follows:

(1) Except as provided in paragraph (a)(2) of this section, the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that the Department becomes entitled to recovery. This rate may be revised quarterly by the Secretary of the Treasury and shall be published by the HHS Assistant Secretary for Management and Budget quarterly in the **Federal Register.**

(2) The interest rate established at paragraph (a)(1) of this section shall be no lower than the current value of funds rate, as set by the Secretary of the Treasury pursuant to 31 U.S.C. 3717.

(b) *Charges.* (1) A debtor will be charged the administrative costs to the Government of processing and handling a delinquent debt; and a penalty of six percent a year on a debt, or any portion of a debt that is more than 90 days delinquent, except where the debtor is an Indian tribe or a component of a tribal government, or where the debt arose under a grant executed before, and in effect on, October 25, 1982. These charges will be assessed monthly or per payment period, throughout the continued period of delinquency.

(2) A debt is delinquent if it is not paid by the due date specified in the notice of the debt referred to in paragraph (a) of this section, and it is not the subject of a repayment agreement approved by the Secretary, or if the debtor fails to satisfy his or her obligations under a repayment agreement. (3) This paragraph does not apply to payments under an installment arrangement. See paragraph (c) of this section.

(c) *Installment payments.* The Secretary may agree to accept repayment of a debt in installments pursuant to 4 CFR 101.11 if the debtor is unable to repay in one lump sum. An installment agreement will be in writing and will provide that:

(1) The rate of interest payable on deferred amounts will be set in accordance with paragraph (a) of this section. However, the Secretary may charge interest for installment payment agreements at a rate no lower than the applicable rate determined from the U.S. Treasury "Schedule of Certified Interest Rates with Range of Maturities"; and

(2) Administrative costs of collection as provided in paragraph (b)(1) of this section, and a penalty of 6 percent a year, payable on each installment or portion of an installment which becomes delinquent, as defined in paragraph (b)(2) of this section, beginning on the date that the payment becomes delinquent.

(d) *Waiver.* Interest, penalties or administrative cost charges assessed under this section may be waived in whole or in part if:

(1) The debt or the charges resulted from the agency's error, action or inaction (other than normal processing delays), and without fault on the part of the debtor;

(2) Collection in any manner authorized under this regulation and the Department's Claim's Collection Regulations at 45 CFR Part 30 would defeat the overall objectives of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638).

4. The authority citation for Part 36, Subpart I is revised to read as follows:

Authority: Secs. 103, 107, 25 U.S.C. 450, 450k; Sec. 3, Pub.L. 83–568, 42 U.S.C. 2003; sec. 11, Pub.L. 97–365; 31 U.S.C. 3717.

5. The table of contents for Subpart I is amended by adding an entry for § 36.238 to Subpart I to read as follows:

Subpart I—Contracts Under the Indian Self-Determination Act

* * * * *

36.238 Interest and penalties on debts.

* * * * *

6. A new § 36.238 is added to subpart I to read as follows:

§ 36.238 Interest and penalties on debts.

Contracts awarded under authority of the Act shall incorporate the following clause, which is also set forth in 48 CFR PHS 352.280–4 (a) and (b).

(a) *Interest.* Amounts owed to the Government by a contractor under a contract awarded under Pub. L. 93–638, section 103(a) will bear interest from the date on which the Government first mails or hand delivers to the debtor written notice of the debt if the debt is not paid within 30 days from that date, at a rate established as follows:

(1) Except as provided in paragraph (a)(2) of this section, the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that the Department becomes entitled to recovery. This rate may be revised quarterly by the Secretary of the Treasury and shall be published by the HHS Assistant Secretary for Management and Budget quarterly in the **Federal Register.**

(2) The interest rate established at paragraph (a)(1) shall be no lower than the current value of funds rate, as set by the Secretary of the Treasury pursuant to 31 U.S.C. 3717.

(b) *Charges.* (1) A debtor will be charged the administrative costs to the Government of processing and handling a delinquent debt; and a penalty of six percent a year on a debt, or any portion of a debt that is more than 90 days delinquent, except where the debtor is an Indian tribe or a component of a tribal government, or where the debt arose under a contract executed before, and in effect on, October 25, 1982. These charges will be assessed monthly or per payment period, throughout the continued period of delinquency.

(2) A debt is delinquent if it is not paid by the due date specified in the notice of the debt referred to in paragraph (a) of this section, and it is not the subject of a repayment agreement approved by the Secretary, or if the debtor fails to satisfy his or her obligations under a repayment agreement.

(3) This subsection does not apply to payments under an installment arrangement. See paragraph (c) of this section.

(c) *Installment payments.* The Secretary may agree to accept repayment of a debt in installments pursuant to 4 CFR 101.11 if the debtor is unable to reply in one lump sum. An installment agreement will be in writing and will provide that:

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(1) The rate of interest payable on deferred amounts will be set in accordance with paragraph (a) of this section. However, the Secretary may charge interest for installment payment agreements at a rate no lower than the applicable rate determined from the U.S. Treasury "Schedule of Certified Interest Rates with Range of Maturities"; and

(2) Administrative costs of collection as provided in paragraph (b)(1) of this section, and a penalty of 6 percent a year, payable on each installment or portion of an installment which becomes delinquent, as defined in paragraph (b)(2) of this section, beginning on the date that the payment becomes delinquent.

(d) *Waiver.* Interest, penalties or administrative cost charges assessed under this section may be waived in whole or part if:

(1) The debt or the charges resulted from the agency's error, action or inaction (other than normal processing delays), and without fault on the part of the debtor;

(2) Collection in any manner authorized under this regulation and the Department's Claims Collection Regulations at 45 CFR Part 30 would defeat the overall objectives of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638).

TITLE 48—FEDERAL ACQUISITION REGULATIONS SYSTEM

PART PHS 352 [AMENDED]

The Department proposes to amend Part PHS 352 of Title 48, Code of Federal Regulations as follows:

1. The authority citation for Part PHS 352 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

2. A new clause number 43 is added in numerical sequence to section PHS 352.280-4(a), to read as follows:

PHS 352.280-4 Contracts Awarded Under the Indian Self-Determination Act

(a) * * *

Clause No. 43—Interest and Penalties on Debts

(a) *Interest.* Amounts owed to the Government by a contractor under a contract awarded under Pub. L. 93-638, section 103(a) will bear interest from the date on which the Government first mails or hand delivers to the debtor written notice of the debt if the debt is not paid within 30 days from that date, at a rate established as follows:

(1) Except as provided in paragraph (a)(2) of this clause, the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that the Department becomes entitled to recovery. This rate may be revised quarterly by the Secretary of the Treasury and shall be published by the HHS Assistant Secretary for Management and Budget quarterly in the **Federal Register.**

(2) The interest rate established in paragraph (a)(1) of this clause shall be no lower than the current value of funds rate, as set by the Secretary of the Treasury pursuant to 31 U.S.C. 3717.

(b) *Charges.* (1) A debtor will be charged the administrative costs to the Government of processing and handling a delinquent debt; and a penalty of six percent a year on a debt, or any portion of a debt that is more than 90 days delinquent, except where the debtor is an Indian tribe or a component of a tribal government, or where the debt arose under a contract executed before, and in effect on, October 25, 1982. These charges will be assessed monthly or per payment period, throughout the continued period of delinquency.

(2) A debt is delinquent if it is not paid by the due date specified in the notice of the debt referred to in paragraph (a) of this clause; and it is not the subject of a repayment agreement approved by the Secretary, or if the debtor fails to satisfy his or her obligations under a repayment agreement.

(3) This subsection does not apply to payment under an installment arrangement. *See* paragraph (c) of this clause.

(c) *Installment payments.* The Secretary may agree to accept repayment of a debt in installments pursuant to 4 CFR 101.11 if the debtor is unable to repay in one lump sum. An installment agreement will be in writing and will provide that:

(1) The rate of interest payable on deferred amounts will be set in accordance with paragraph (a) of this clause. However, the Secretary may charge interest for installment payment agreements at a rate no lower than the applicable rate determined from the U.S. Treasury "Schedule of Certified Interest Rates with Range of Maturities"; and

(2) Administrative costs of collection as provided in paragraph (b)(1) of this clause, and a penalty of 6 percent a year, payable on each installment or portion of an installment which becomes delinquent, as defined in paragraph (b)(2) of this clause, beginning on the date that the payment becomes delinquent.

(d) *Waiver.* Interest, penalties, or administrative cost charges assessed under this clause may be waived in whole or in part if:

(1) The debt or the charges resulted from the agency's error, action, or inaction (other than normal processing delays), and without fault on the part of the debtor;

(2) Collection in any manner authorized under this regulation and the Department's Claims Collection Regulations at 45 CFR Part 30 would defeat the overall objectives of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638).

3. A new clause number 35 is added in numerical sequence to Part PHS 352.280-4(b), to read as follows:

PHS 352.280-4 Contracts Awarded Under the Indian Self-Determination Act

* * * * *

(b) * * *

Clause No. 35—Interest and Penalties on Debts

(a) *Interest.* Amounts owed to the Government by the contractor under a contractor under a contract awarded under Pub. L. 93-638 Sec. 103(a) will bear interest from the date on which the Government first mails or hand delivers to the debtor written notice of the debt if the debt is not paid within 30 days from that date, at a rate established as follows:

(1) Except as provided in paragraph (a)(2) of this clause, the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that the Department becomes entitled to recovery. This rate may be revised quarterly by the Secretary of the Treasury and shall be published by the HHS Assistant Secretary for Management and Budget quarterly in the **Federal Register.**

(2) The interest rate established in paragraph (a)(1) of this clause shall be no lower than the current value of funds rate, as set by the Secretary of the Treasury pursuant to 31 U.S.C. 3717.

(b) *Charges.* (1) A debtor will be charged the administrative costs to the Government of processing and handling a delinquent debt; and a penalty of six percent a year on a debt, or any portion of a debt that is more than 90 days delinquent, except where the debtor is an Indian tribe or a component of a tribal government, or where the debt arose under a contract executed before, and in effect on, October 25, 1982. These charges will be assessed monthly or per payment period, throughout the continued period of delinquency.

(2) A debt is delinquent if it is not paid by the due date specified in the notice of the debt referred to in paragraph (a) of this clause; and it is not the subject of a repayment agreement approved by the Secretary, or if the debtor fails to satisfy his or her obligations under a repayment agreement.

(3) This paragraph does not apply to payments under an installment arrangement. *See* paragraph (c) of this clause.

(c) *Installment payments.* The Secretary may agree to accept repayment of a debt in installments pursuant to 4 CFR 101.11 if the debtor is unable to repay in one lump sum. An installment agreement will be in writing and will provide that:

(1) The rate of interest payable on deferred amounts will be set in accordance with paragraph (a) of this clause. However, the Secretary may charge of interest for installment payment agreements at a rate no lower than the applicable rate determined from the U.S. Treasury "Schedule of Certified Interest Rates with Range of Maturities"; and

(2) Administrative costs of collection as provided in paragraph (b)(1) of this section, and a penalty of 6 percent a year, payable on each installment or portion of an installment which becomes delinquent, as defined in paragraph (b)(2) of this clause, beginning on the date that the payment becomes delinquent.

(d) *Waiver.* Interest, penalties or administrative cost charges assessed under this clause may be waived in whole or in part if:

(1) The debt or the charges resulted form the Agency's error, action or inaction (other than normal processing delays), and without fault on the part of the debtor;

(2) Collection in any manner authorized under this regulation and the Department's Claims Collection Regulations at 45 CFR Part 30 would defeat the overall objectives of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638).

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Tuesday
November 4, 1986

Part III

Department of the Interior

Minerals Management Service

North Atlantic OCS Lease Sale 96; Call for Information and Nominations; Intent To Prepare Environmental Impact Statement; Notice

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE
North Atlantic
OCS Lease Sale 96
Call for Information and Nominations
and
Notice of Intent to Prepare an Environmental Impact Statement

CALL FOR INFORMATION AND NOMINATIONS

Purpose of Call

The purpose of the Call is to assist the Secretary of the Interior in carrying out his responsibilities under the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1331-1343) as amended, and regulations appearing at 30 CFR 256.23, with regard to proposed OCS Lease Sale 96 in the North Atlantic Planning Area tentatively scheduled for October 1988. We have determined that a Request for Interest, a prelease step included in the Proposed 5-Year Program, is not necessary for Sale 96 as several companies have already advised the Minerals Management Service (MMS) of their general interest in this sale. However, the designation of specific areas of company interest is being solicited in this Call.

The Call is the initial information-gathering step in the prelease process and is important for ensuring that all interests and concerns are communicated to the Department of the Interior (DOI) early in the leasing process. This Notice does not indicate a preliminary decision to lease in the areas described below.

Information submitted in response to this Call will be used for several purposes. First, responses will be used to identify the areas of potential for oil and gas development. Second, comments on possible environmental effects and use conflicts will be used in the analysis of environmental conditions in and near the Call area. Together these two considerations will allow a preliminary determination of the potential advantages and disadvantages of oil and gas exploration and development to the region and the Nation. Thus, it may be possible to make key decisions in connection with the next step in the planning process--Area Identification--to further resolve conflicts by deferring blocks where there is sufficient information to justify that action. However, the Area Identification represents only a preliminary step to select the area to be analysed in the environmental impact statement (EIS). The Area Identification is scheduled for January 1987.

A third purpose for this Notice is to use the comments collected to initiate scoping of the EIS, which will include public meetings, and to identify and analyze alternatives to the proposed action. A Notice of Intent to Prepare an EIS which also describes the scoping process for this proposed sale, is included below. Fourth, comments may be used in developing lease terms and conditions to assure safe offshore operations. Fifth, comments may be used in understanding and considering ways to avoid or mitigate potential conflicts between offshore oil and gas activities and the Coastal Management Plans (CMP's) of affected States.

The Call area includes blocks in several military operating areas, submarine transit lanes, and shipping traffic lanes. Presale consultation with the Department of Defense and the U.S. Coast Guard will occur during the comment period for this Call. Blocks presenting defense or navigation-related multiple use conflicts, which cannot be otherwise mitigated, will be deleted at the Area Identification stage.

Consideration of Bidding Changes

For Sale 96, the MMS anticipates a return to the minimum bid level of $25 per acre used before 1983 and is considering the use of alternative bidding systems to encourage leasing and exploration in the North Atlantic planning area. These changes are being evaluated to determine effective and proper ways to encourage exploration, which, in turn, will provide more accurate assessment of the hydrocarbon potential of the planning area. Present economic conditions affecting the oil and gas industry and the negative results of previous exploration in this area indicate the need for a reevaluation of oil and gas leasing practices in order to encourage an assessment of hydrocarbon resources in this high cost, high risk frontier area.

The only sale held to date in the North Atlantic (Sale 42) employed a minimum bid of $25 per acre. At that sale, 359,000 of the more than 50 million acres in the planning area were leased. High bids on the leased acreage totaled $817 million. Of the eight wells drilled, none resulted in commercial quantities of hydrocarbons nor were there measurable environmental effects from exploratory drilling. There is some indication that the use of the $150 per acre minimum bid in proposed Sale 82 in conjunction with the economic conditions of the time and the high risk of the area may have effectively discouraged industry interest in that sale.

The results of drilling, whether a dry hole or a commercial find, contribute considerably to the Nation's understanding of potential resources (and resource areas) available to meet future energy needs. Thus, the drilling results on the Sale 42 leases, while disappointing due to the absence of commercial hydrocarbons, did provide vital information concerning the resource potential in specific areas.

The knowledge that an area does or does not contain hydrocarbons is of greater benefit to the Nation than to an individual operator who only has rights to a limited portion of a planning area. This would be determined by a first discovery in an area, but such a discovery depends on exploratory activity which, in turn, requires active leases. It is also in the national interest to create a situation where the private sector is able to be responsive to changing economic conditions and international crises. Further, it is in the national interest to maintain some level of domestic exploration so the private sector can, over the longer term, make up a portion of the deficit caused by ongoing depletion of known fields and be able to respond to future energy needs. Incentives such as the $25 per acre minimum bid and alternative bidding systems may be necessary to provide the proper climate for exploration in high risk areas such as the North Atlantic. The need for these incentives is compounded by the lengthy and complex prelease process and the current instability of the oil and gas industry.

Description of Area

The area of this Call is offshore Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, and New Jersey. The area lies approximately 50 to 265 statute miles offshore in water depths ranging from 60 to 4,400 meters. The area is shown in detail on the Call map available free from the Regional Supervisor, Office of Leasing and Environment, 1951 Kidwell Drive, Suite 601, Vienna, VA 22180, telephone (703) 285-2165. The following list identifies the Official Protraction Diagrams and full and partial blocks comprising this Call area. The Diagrams may be purchased for $2.00 each from the Regional Supervisor, Office of Leasing and Environment, Atlantic Region, at the address given above (checks or drafts payable to the United States Department of the Interior--MMS).

NK 19-5, Cashes Ledge

700
743-744
786-788
829-832
1005-1008

NK 19-6

489-494
532-539
574-583
617-628
661-673
705-717
749-762
793-807
969-971

NK 19-8, Chatham

37-40
80-84
124-127
168-169

NK 19-9

108
152
196-197
241-242
285-286
329-331
372-376
414-420
458-465
502-510
546-554
590-599
634-644
677-688
721-733
764-778
808-823
851-867
892-912
951-957
995-1001

NK 19-10, Block Island Shelf

474-478
516-524
560-568
604-612
643-660
687-704
731-748
775-792
819-836
863-880
907-924
951-959
961-968
995-1003
1005-1008
1010-1012

NK 19-11, Hydrographer Canyon

608-609
611-612
621-632
652-653
655-656
665-676
692-697
700
709-720
730-741
744
753-764
768-778
780-786
788
797-808
812-823
825-830
832
841-852
854-867
869-876
885-911
913-920
929-945
947-955
957-964
973-989
991-1008

NK 19-12, Lydonia Canyon

24-34
68-79
110-123
154-167
193-211
237-255
279-299
323-324
326-343
365-369
372-387
406-413
417-431
450-475
489
491-520
533
535-564
573
575-577
579-608
617-621
623-626
628-652
661-662
664-665
667-696
705-706
708-710
712-740
749-750
752-754
756-784
793-794
796-798
800-828
837-872
881-916
925-960
969-1004

NJ 19-1 Block Canyon

28-36
38-44
72-80
82-88
116-124
126-129
131-132
160-168
170-176
204-220
248-264
292-308
336-352
380-396
424-440
468-484
512-528
556-572
600-616
644-660
688-704
732-748
776-792
820-836
864-880
908-924
952-968
996-1012

NJ 19-2, Veatch Canyon

All Federal blocks except blocks 53 and 97

NJ 19-3

All Federal blocks

NOTE

The above block list contains 106 blocks in the vicinity of submarine canyon areas. The following aliquot portions of these 106 blocks are included within this Call:

NK 19-10, Block Island Shelf

916 - N1/2NE1/4; NW1/4; W1/2SW1/4.
917 - NE1/4; N1/2NW1/4; E1/2SE1/4.

NK 19-10, Block Island Shelf (cont)

921 - N1/2; N1/2SW1/4; SW1/4SW1/4.
922 - N1/2; SE1/4.
961 - NE1/4NE1/4; S1/2NE1/4; SE1/4SW1/4; SE1/4.
965 - W1/2W1/2.
966 - E1/2E1/2.
1003 - W1/2E1/2; W1/2.
1005 - E1/2; E1/2NW1/4; SW1/4.
1010 - E1/2E1/2.

NK 19-11, Hydrographer Canyon

609 - N1/2NW1/4; SW1/4NW1/4; W1/2SW1/4.
653 - W1/2W1/2.
655 - E1/2; NE1/4NW1/4.
697 - SW1/4SW1/4.
700 - E1/2; NE1/4NW1/4.
734 - N1/2; SW1/4; N1/2SE1/4.
735 - N1/2; N1/2S1/2.
741 - W1/2W1/2; SE1/4SW1/4.
744 - E1/2; E1/2W1/2.
769 - N1/2N1/2; SW1/4NW1/4.
778 - W1/2.
780 - N1/2NE1/4; SE1/4NE1/4.
781 - N1/2; SE1/4.
785 - W1/2NE1/4; W1/2; SE1/4.
786 - SW1/4SW1/4.
788 - E1/2; E1/2NW1/4.
813 - W1/2SW1/4; SE1/4SW1/4.
814 - E1/2; N1/2NW1/4; SE1/4NW1/4; NE1/4SW1/4.
822 - SW1/4NE1/4; W1/2; W1/2SE1/4; SE1/4SE1/4.
823 - SW1/4SW1/4.
825 - E1/2; E1/2SW1/4.
830 - SW1/4NE1/4; W1/2; W1/2SE1/4; SE1/4SE1/4.
857 - W1/2.
858 - E1/2E1/2.
867 - NE1/4NW1/4; W1/2W1/2.
869 - E1/2; E1/2W1/2.
875 - SW1/4NW1/4; W1/2SW1/4; SE1/4SW1/4.
901 - W1/2.
902 - E1/2NE1/4.
911 - W1/2; SW1/4SE1/4.
913 - E1/2; E1/2W1/2.
945 - W1/2.
947 - E1/2; NW1/4; N1/2SW1/4; SE1/4SW1/4.
955 - NW1/4NE1/4; S1/2NE1/4; W1/2; SE1/4.
979 - W1/2NE1/4; W1/2.
980 - E1/2E1/2.
989 - SW1/4NE1/4; W1/2; SE1/4.
991 - E1/2E1/2; NW1/4NE1/4.

NK 19-12, Lydonia Canyon

155 - NE1/4; N1/2NW1/4.
156 - N1/2; N1/2SW1/4; SE1/2SW1/4; SE1/4.
199 - SW1/4SW1/4.
280 - N1/2N1/2; SW1/4NW1/4; W1/2SW1/4.
281 - N1/2.
282 - N1/2; N1/2SW1/4; SE1/4SW1/4; SE1/4.
324 - SW1/4NE1/4; W1/2; W1/2SE1/4.
326 - N1/2NE1/4; SE1/4NE1/4.
369 - SW1/4SW1/4.
413 - NW1/4NW1/4; S1/2NW1/4; SW1/4; W1/2SE1/4; SE1/4SE1/4
450 - N1/2NW1/4; SW1/4NW1/4; W1/2SW1/4.
451 - NE1/4; N1/2NW1/4; SE1/4NW1/4; SE1/4.
489 - W1/2NW1/4; SW1/4.
494 - W1/2NW1/4; SE1/4NW1/4; SW1/4.
495 - E1/2E1/2.
533 - W1/2NE1/4; SE1/4NE1/4; W1/2; N1/2SE1/4.
535 - E1/2; SE1/4SW1/4.
538 - NW1/4; W1/2SW1/4.
539 - E1/2E1/2.
575 - E1/2E1/2.
577 - W1/2.
579 - E1/2; E1/2W1/2.
582 - W1/2NW1/4; SW1/4.
583 - NE1/4NE1/4.
618 - SW1/4SW1/4.
619 - NE1/4NE1/4.
621 - W1/2.
623 - E1/2;E1/2W1/2.
626 - W1/2NE1/4; W1/2; W1/2SE1/4; SE1/4SE1/4.
662 - W1/2W1/2; SE1/4NW1/4.
665 - W1/2NE1/4; W1/2; W1/2SE1/4; SE1/4SE1/4.
667 - N1/2NE1/4; SE1/4NE1/4; E1/2SE1/4.
671 - W1/2NW1/4; NW1/4SW1/4.
706 - SW1/4NW1/4; W1/2SW1/4.
710 - SW1/4SW1/4.
750 - SW1/4NE1/4; W1/2NW1/4; SE1/4NW1/4; SW1/4; W1/2SE1/4.
754 - W1/2NW1/4; SW1/4; S1/2SE1/4.
794 - S1/2NE1/4; NW1/4NE1/4; NW1/4; S1/2.

NJ 19-1, Block Canyon

36 - W1/2.
42 - SE1/4SE1/4.
43 - E1/2; NE1/4SW1/4; S1/2SW1/4.
80 - NW1/4; W1/2SW1/4.
82 - N1/2; N1/2SW1/4; SE1/4SW1/4; SE1/4.
86 - E1/2NE1/4.
124 - W1/2NW1/4; SE1/4NW1/4; SW1/4.
131 - E1/2; E1/2NW1/4; SW1/4.
168 - W1/2.

NJ 19-1, Block Canyon (cont)

174 - E1/2E1/2.
212 - W1/2.
213 - E1/2E1/2.

NJ 19-2, Veatch Canyon

8 - NE1/4NW1/4; W1/2W1/2.
9 - NE1/4NE1/4.
19 - SE1/4NW1/4; W1/2NW1/4; SW1/4.
52 - W1/2NW1/4; SW1/4.
54 - E1/2; E1/2W1/2.
63 - W1/2NE1/4; W1/2; SE1/4.
96 - W1/2E1/2; W1/2.
98 - E1/2; E1/2NW1/4; NE1/4SW1/4.

Instructions on Call

The Call map delineates the Call area. Respondents are requested to nominate any or all of the Federal blocks within the Call area that they wish to have included in Sale 96. Although the identities of those submitting nominations become a matter of public record, the individual indications of interest are considered proprietary.

Those indicating such interest are required to do so on the Call map, available free from the Regional Supervisor, Office of Leasing and Environment at the address stated under "Description of Area." Interest should be shown by outlining the area(s) of interest along block lines. A detailed list of whole and partial blocks nominated (by OCS Official Protraction Diagram designations) should be submitted to ensure correct interpretation of nominations.

Respondents should rank areas in which they have expressed interest according to priority of their interest (e.g., priority 1 (high), 2, or 3). If there are areas within the Call area in which respondents have no interest, no priority should be assigned to them. Areas where interest has been indicated but on which respondents have not indicated any priorities will be considered priority 3. The telephone number and name of a person to contact in the respondent's organization for additional information should be included. Again, information concerning both location and priority of interest submitted by individual companies will be held proprietary and will help determine the areas to be analyzed in the EIS. In addition to the indications of interest by respondents, further considerations of areas for analysis in the EIS will be based on hydrocarbon potential and environmental, economic, and multiple-use conditions.

Comments or suggestions are requested on the following:

- technology that is presently available or anticipated for exploration and development operations in deepwater areas.
- minimum bid levels and alternative bidding systems.
- procedures which may lead to enhanced understanding of the oil and gas resources of the North Atlantic OCS.
- particular geologic, environmental, biological, archeological, or socioeconomic conditions or conflicts, or other information which might bear upon potential leasing and development in particular areas.
- potential conflicts that may result from future oil and gas activities resulting from this sale and approved State and local CMP's. If possible, these comments should identify specific CMP policies, the nature of the conflicts foreseen, and steps that MMS can take to avoid or mitigate potential conflict. Comments may either be in terms of broad areas or restricted to particular blocks. Those submitting comments are requested to outline the subject area on the standard Call map.

Indications of interest and comments must be received no later than 45 days following publication of this document in the Federal Register in envelopes labeled "Nominations for Proposed Lease Sale 96 in the Atlantic OCS Region" or "Comments on the Call for Information and Nominations for Proposed Lease Sale 96 in the Atlantic OCS Region." The standard Call map and indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Atlantic OCS Region, at the address stated under "Description of Area."

Tentative Schedule

Final delineation of the area for possible leasing will be made at a later date and in accordance with established departmental procedures and applicable laws, including all requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and regulations (40 CFR 1501.7), and the OCSLA as amended. If a decision to offer blocks is made, a final Notice of Sale will be published in the Federal

Register detailing areas to be offered for competitive bidding, stating the terms and conditions for leasing, and announcing the location, date, and time bids will be received and opened.

The following is a list of tentative milestones which will precede the sale, proposed for 1988:

Milestones	Date
Comments due on the Call and the Notice of Intent to Prepare an EIS	December 1986
Area Identification	January 1987
Draft EIS published	October 1987
Hearings held on draft EIS	November 1987
Final EIS published	April 1988
Proposed Notice of Sale published	June 1988
Governor's comments due on proposed Notice	August 1988
Final Notice of Sale published	September 1988
Sale	October 1988

Existing Information

Information already available for the Call area includes the results of studies and environmental impact statement analyses conducted in conjunction with previously scheduled Sales 42, 52, and 82 and the results of past exploration activities in this planning area. Also available is information gathered during the EIS and decision processes for the 1980, 1982, and currently Proposed 5-Year Oil and Gas Leasing Program. In addition, comments previously received by the DOI from State and local governments, other Federal Agencies, environmental groups, and the oil and gas industry concerning past OCS actions will be used.

An extensive environmental studies program has been underway in this area since 1973 (See Environmental Studies Program Information in the Atlantic OCS Region, below). The following is a list of other information which will be available to the DOI for consideration regarding the proposed 1988 OCS Lease Sale in the Atlantic OCS Region.

Atlantic OCS Indices and Summary Reports

1. Atlantic Index, January 1975 through November 1980.

2. Atlantic Index, December 1980 through June 1981.
3. Atlantic Index, June 1981 through May 1983.
4. Atlantic Index, June 1983 through May 1984.
5. Atlantic Index, June 1984 through January 1985.
6. North Atlantic Planning Area Summary Report, July 1981, Initial.
7. North Atlantic Planning Area Summary Report, April 1982, Update.
8. North Atlantic Planning Area Summary Report, February 1983, Update.
9. North Atlantic Planning Area Summary Report, June 1983, Update.
10. Atlantic Region Summary Report, December 1984, Initial.
11. Atlantic Region Summary Report/Index, January 1985-June 1986.
12. Geology Report, Proposed North Atlantic OCS oil and gas Lease Sale #96 (MMS 84-0062, 1985)

Environmental Studies Program Information in the Atlantic OCS Region

The DOI initiated the Environmental Studies Program in 1973. The emphasis, has been on geological mapping, environmental characterization of biologically sensitive habitats, physical oceanography, ocean circulation modeling, and ecological effects of oil and gas activities. These studies provide useful information for a number of environmental issues, including topographic features, deepwater biological communities on the continental slope, and coastal wetland habitats.

A complete listing of available study reports and information for ordering copies can be obtained from the Atlantic OCS Region at the address stated under "Description of Area," or by telephone at (703) 285-2728. The reports may also be ordered for a fee directly from the National Technical Information Service. The mailing address is U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

In addition, a program status report for continuing studies in this area can be obtained from the Chief, Environmental Studies and Leasing Section, Atlantic OCS Region at the address stated under "Description of Area" or by telephone at (703) 285-2728.

NOTICE OF INTENT TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT

Purpose of Notice of Intent

Pursuant to the regulations implementing the procedural provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321), the MMS is announcing its intent to prepare an EIS regarding the oil and gas leasing proposal known as North Atlantic lease Sale 96. The Notice of Intent also serves to announce the scoping process which will be followed for this EIS. Throughout the scoping process, Federal, State, and local governments and other interested parties aid the MMS in determining the significant issues and alternatives to be analyzed in the EIS. The public may present comments and recommendations at scoping meetings which will be held in appropriate locations for the purpose of obtaining additional comments and information regarding the scope of the EIS following a decision on Area Identification. In addition, comments and recommendations may be submitted in writing. The times and locations of these scoping meetings and the date scoping comments are due will be announced in a future Federal Register Notice and by press release.

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks included in the area defined in the Area Identification procedure as the proposed area of the Federal action. Alternatives to the proposal which would modify or cancel the sale, will be rigorously evaluated in the EIS.

For further information concerning the proposal and the EIS, contact the Regional Supervisor, Office of Leasing and Environment, Atlantic Region, 1951 Kidwell Drive, Suite 601, Vienna, VA 22180, telephone (703) 285-2165.

Wm D Bettenberg
Director, Minerals Management Service
William D. Bettenberg

Approved:

Assistant Secretary - Land and Minerals Management
J. Steven Griles

OCT 23 1986
Date

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3. The important elements of typical Federal Register documents.
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Washington, DC

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WHERE: Room 305A, 26 Federal Plaza,
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New York Federal Information Center,
212-264-4810.

PITTSBURGH, PA

WHEN: December 8 at 1:30 p.m.

WHERE: Room 2212, William S. Moorehead Federal Building, 1000 Liberty Avenue,
Pittsburgh, PA

RESERVATIONS: Kenneth Jones or Lydia Shaw
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Ch. XIV

Regional Office; Address Change

AGENCY: Federal Labor Relations Authority (including the General Counsel of the Federal Labor Relations Authority) and Federal Service Impasses Panel.

ACTION: Amendment of rules and regulations.

SUMMARY: This document amends Appendix A, paragraph (d)(9) (46 FR 40769) of the rules and regulations of the Federal Labor Relations Authority (Authority), General Counsel of the Federal Labor Relations Authority (General Counsel), and Federal Service Impasses Panel (Panel), published at 5 CFR Part 2400 *et seq.*, (1985) to establish a new location, mailing address and telephone numbers for the Authority's San Francisco Regional Office.

EFFECTIVE DATE: October 15, 1986.

FOR FURTHER INFORMATION CONTACT: Nancy Anderson Speight, Deputy to the Assistant General Counsel (202) 382-0811.

SUPPLEMENTARY INFORMATION: Effective January 28, 1980, the Authority, General Counsel and Panel published at 45 FR 3482, January 17, 1980, final rules and regulations to govern the processing of cases by the Authority, General Counsel and Panel under Chapter 71 of Title 5 of the United States Code (5 CFR Part 2400 *et seq.* (1985)). These rules and regulations are required by Title VII of the Civil Service Reform Act of 1978 and are sets forth in 5 CFR Part 2400 *et seq.* (1985). Appendix A, paragraph (d) of the foregoing rules and regulations sets forth office addresses and telephone numbers of the Regional Directors of the Authority. This amendment sets forth the new location, mailing address and telephone numbers of the San Francisco Regional Office of the Authority.

Accordingly, in Appendix A to Chapter XIV, pargraph (d)(9) of the Authority, General Counsel, and Panel rules and regulations (5 CFR Part 2400 *et seq.* (1985)) is revised to read as follows:

Appendix A to 5 CFR Ch. XIV—Current Addresses and Geographic Jurisdictions

* * * * *

(d) The Office addresses of Regional Directors of the Authority are as follows:

* * * * *

(9) *San Francisco Regional Office*—Suite 220, 901 Market Street, San Francisco, California 94103, Telephone: FTS—995-5000. Commercial—(415) 995-5000.

(5 U.S.C. 7134)

Dated: October 16, 1986.

John C. Miller,

General Counsel, Federal Labor Relations Authority.

[FR Doc. 86-24980 Filed 11-4-86; 8:45 am]

BILLING CODE 6727-01-M

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 68

U.S. Standards for Lentils, Whole Dry Peas, and Split Peas

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is revising the U.S. Standards for Lentils to set grade limits for skinned lentils for U.S. No. 1 and U.S. No. 2 grades, and lower the percentage of skinned lentils necessary for a Sample grade designation. This change is made to facilitate the marketing of lentils. No changes are being made to the U.S. Standards for Whole Dry Peas and the U.S. Standards for Split Peas.

EFFECTIVE DATE: December 5, 1986.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Information Resources Staff, USDA, FGIS, Room 1661 South Building, 1400 Independence Avenue SW., Washington, DC, telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the order.

Regulatory Flexibility Act Certification

John W. Marshall, Acting Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities because those persons who apply the standards and most users of pea and lentil inspection services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities by FGIS employees and licensed persons.

Standards Review

In compliance with the requirement for the periodic review of existing regulations, FGIS reviewed and proposed to revise the U.S. Standards for Lentils in the August 26, 1986 **Federal Register** (51 FR 30368), as corrected on September 17, 1986 (51 FR 32924). The U.S. Standards for Whole Dry Peas and the U.S. Standards for Split Peas were also reviewed. However, FGIS proposed no changes for these standards.

Various meetings were held by the dry pea and lentil industry that were attended by pea and lentil producers, processors, and domestic and export merchandisers as well as representatives of FGIS. It was the consensus of industry members attending these discussions that the current U.S. Standards for Whole Dry Peas and the U.S. Standards for Split Peas are meeting the needs of the pea industry and no changes are needed at this time. However, industry representatives recommended revisions to the U.S. Standards for Lentils to establish in the lentil grade requirements (§ 68.607) the factor of skinned lentils. Skinned lentils are defined in the standards as lentils from which three-fourths or more of the seedcoat has been removed (§ 68.601(l)).

FGIS studies of the percentages of skinned lentils found in the 1985 crop year, determined that the average percentage of skinned lentils was 1.01 percent based on 150 samples. Four of the samples examined exceeded 4.0 percent skinned lentils, three samples exceeded 7.0 percent, and the range of skinned lentils was from 0.0 to 11.2 percent. The results of this study support the industry recommendations for new limits for skinned lentils in the grade requirements. FGIS determined that this change would facilitate the marketing of lentils.

One comment was received, on the proposed change, from the American Dry Pea and Lentil Association. The Association supported the proposed revision to the U.S. Standards for Lentils, as corrected (51 FR 32924) and concurred with the proposed no change to the U.S. Standards for Whole Dry Peas and the U.S. Standards for Split Peas.

Accordingly, based on information available, including the results of the FGIS study, and recommendations and comment received from the industry, FGIS has determined that the U.S. Standards for Lentils which appear at 7 CFR 68.601–68.611 are revised to include grade limits for skinned lentils under § 68.607 *Grades and grade requirements for dockage-free lentils.* In addition, § 68.607, the requirement for sample grade regarding skinned lentils which is designated as § 68.607(d) is removed. Further, FGIS has determined that no changes should be made to the U.S. Standards for Whole Dry Peas which appear at 7 CFR 68.401–68.410 and the U.S. Standards for Split Peas which appear at 7 CFR 68.501–68.510.

List of Subjects in 7 CFR Part 68

Administrative practice and procedures, Agricultural commodities, and Export.

PART 68—[AMENDED]

Accordingly, 7 CFR Part 68 is amended as follows:

1. The authority citation for Part 68 is revised to read as follows:

Authority: Secs. 203, 205, Agricultural Marketing Act of 1946 (7 U.S.C. 1622, 1624).

2. Section 68.607 is revised to read as follows:

§ 68.607 Grades and grade requirements for dockage-free lentils. (See also § 68.609.)

Grade	Maximum limits of—						Minimum requirements—color
	Defective lentils			Foreign material		Skinned lentils (percent)	
	Total (percent)	Weevil-damaged lentils (percent)	Heat-damaged lentils (percent)	Total (percent)	Stones (percent)		
U.S. No. 1	2.0	0.3	0.2	0.2	0.1	4.0	Good
U.S. No. 2	3.5	.8	.5	.5	.2	7.0	Fair

U.S. Sample grade: U.S. Sample grade shall be lentils which—
(a) Do not meet the requirements for the grades U.S. Nos. 1 or 2; or
(b) Contain more than 14.0 percent moisture, live weevils or other live insects, metal fragments, broken glass, or a commercially objectionable odor; or
(c) Are materially weathered, heating, or distinctly low quality.

Dated: October 24, 1986.

John W. Marshall,

Acting Administrator.

[FR Doc. 86–24974 Filed 11–4–86; 8:45 am]

BILLING CODE 3410-EN-M

Agricultural Marketing Service

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Amendment to the Weight Adjustment (Moisture) System for Certain Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the weight adjustment (moisture) system for certain seedless raisins. Currently, producers who deliver raisins to handlers with moisture levels between 10.0 and 13.9 percent moisture receive a weight credit (bonus tonnage) for such raisins. This action will allow producers to also receive a weight credit for raisins delivered below the 10 percent moisture level, thereby receiving a larger payment for those raisins. This action was unanimously recommended by the Raisin Administrative Committee, which works with the USDA in administering the marketing order.

EFFECTIVE DATE: November 5, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250 (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation No. 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This action will lower the minimum moisture level allowable for producers to receive a weight credit under the weight adjustment system for Natural (sun-dried) Seedless and Monukka raisins.

It is estimated that 23 handlers of California raisins under the marketing order for raisins produced from grapes grown in California will be subject to regulation during the course of the current season and that the majority of these firms may be classified as small entities. This action will improve handler operations since lower moisture raisins have better packaging and storing characteristics. For most producers, the lowering of the minimum percent will result in increased incentive payments. There is no anticipated adverse economic impact on small entities because this will benefit handlers as well as producers.

A proposed rule on this amendment was published in the Federal Register on September 10, 1986 (51 FR 32216) inviting written comments through September 25, 1986. No comments were received.

This rule is issued under Marketing Order No. 989, as amended (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). It is hereby found that this action will tend to effectuate the declared policy of the Act.

The weight adjustment (moisture) system was established on August 28, 1985 (50 FR 35769) to encourage raisin producers to deliver lower moisture Natural (sun-dried) Seedless and Monukka raisins to handlers (i.e., in the 10 to 14 percent moisture range). The industry has found that high maturity raisins of these varietal types with a moisture level in excess of 14 percent tend to sugar if held in storage for extended periods of time. Sugaring is an undesirable characteristic because the raisins feel gritty, rather than soft and pliable, when eaten. Increasing the storage life of raisins is important to the industry because of the industry's current oversupply situation and the potential for continued levels of overproduction in the immediate future. This situation has resulted in raisins being held for longer periods of time in the industry's reserve pools.

Under the current system, growers delivering lots of raisins to handlers containing 14.1 through 16.0 percent moisture receive a weight dockage, whereas growers delivering raisins with 12.1 through 13.9 percent moisture receive a weight credit of 2 pounds of raisins per ton for each 1/10 percent moisture under 14.0 percent. Raisins with a moisture percentage of 10.0 throught 12.0 percent receive a weight credit of 40 pounds per ton.

The Committee has recommended that the minimum allowable percentage (10.0 percent) to obtain a weight credit be eliminated. Currently, producers who deliver raisins below the 10.0 percent moisture level receive no such weight credit. This change will allow producers to also receive a weight credit for raisins delivered below the 10.0 percent moisture level. Therefore, raisin deliveries with a moisture level of 12.0 percent or lower will receive a weight credit of 40 pounds per ton.

It is further found that is impracticable and contrary to the public interest to postpone the effective date until 30 days after the publication in the Federal Register (5 U.S.C. 553) because raisin producers have already begun deliveries of 1986–87 season raisins and to be of maximum benefit to producers this rule should be in effect as early in the harvest season as possible.

List of Subjects in 7 CFR Part 989

Marketing agreements and orders, Grapes, Raisins, and California.

PART 989—[AMENDED]

1. The authority citation for 7 CFR Part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Paragraphs (a) and (c) of § 989.211 are revised to read as follows:

Subpart—Supplementary Regulations

§ 989.211 Weight adjustment (moisture) system.

(a) *General.* Natural (sun-dried) Seedless, and Monukka raisins containing from 14.1 percent through 16.0 percent moisture or 13.9 percent or lower moisture may be acquired by a handler under a weight adjustment system. The creditable weight of each lot of raisins acquired under this adjustment system shall be obtained by multiplying the net weight of the raisins in the lot by the applicable factor prescribed in paragraphs (b) or (c) of this section.

* * * * *

(c) *Adjustment table for Natural (sun-dried) Seedless and Monukka raisins with 13.9 percent moisture or lower:*

Percent moisture	Adjustment factor
14.0	1.000
13.9	1.001
13.8	1.002
13.7	1.003
13.6	1.004
13.5	1.005
13.4	1.006
13.3	1.007
13.2	1.008
13.1	1.009
13.0	1.010
12.9	1.011
12.8	1.012
12.7	1.013
12.6	1.014
12.5	1.015
12.4	1.016
12.3	1.017
12.2	1.018
12.1	1.019
12.0—or lower	1.020

Note.—No adjustment for deliveries at 14 percent moisture.

Dated: October 31, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division.

[FR Doc. 86–25016 Filed 11–4–86; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 316a

Residence, Physical Presence and Absence; Application Fee, etc.

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule revises 8 CFR 316a.21 to correct an obsolete fee to be submitted with application Form N–470. Additionally, this rule makes minor non-substantive editorial corrections.

EFFECTIVE DATE: November 5, 1986.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536 Telephone: (202) 633–3048

For Specific Information: F. Gerard Heinauer, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536 Telephone: (202) 633–5014

SUPPLEMENTARY INFORMATION: Presently, 8 CFR 316a.21 (a) and (b) quote an incorrect application fee for filing Form N–470. This regulation references the fee specified in § 103.7, and makes minor editorial changes.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because this rule merely updates the correct application fee for Form N–470, and provides for editorial changes.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule, if promulgated, does not have a significant economic impact on a substantial number of small entities. This rule is not a rule within the meaning of section 1(a) of E.O. 12291 as it relates to administrative practice and procedure.

List of Subjects in 8 CFR Part 316a

Citizenship and naturalization, Immigration and Nationality Act, Residence.

Accordingly, Chapter 1 of Title 8 of the Code of Federal Regulations is amended as follows:

PART 316a—RESIDENCE, PHYSICAL PRESENCE AND ABSENCE

1. The authority citation for Part 316a is revised to read as follows:

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Authority: Secs. 103, 316, 317, 332, and 405 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103, 1427, 1428 and 1443).

2. Section 316a.21 is revised as follows:

§ 316a.21 Application for benefits with respect to absences; appeal.

(a) *Preservation of residence under section 316.* An application for the residence benefits of section 316(b) of the Immigration and Nationality Act to cover an absence from the United States for a continuous period of one year or more shall be submitted to the Service on Form N–470 in accordance with the instructions contained therein. The application shall be filed either before or after the applicant's employment commences but before the applicant has been absent from the United States for a continous period of one year. The fee specified in § 103.7 of this title shall be submitted with the application.

(b) *Preservation of residence under section 317.* An application for the residence and physical presence benefits of section 317 of the Immigration and Nationality Act to cover any absences from the United States, whether before or after December 24, 1952, shall be submitted to the Service on Form N–470 in accordance with the instructions contained therein, either before or after the absence from the United States or the performance of the functions or the services described in that section. The fee specified in § 103.7 of this title shall be submitted with the application.

(c) *Approval, denial and appeal.* The applicant shall be notified of the approval of the application on Form N–472 and, if the application is denied, of the reasons therefor and of the right to appeal in accordance with the provisions of Part 103 of this chapter.

(d) *Spouse and unmarried dependents included.* Approval of Form N–470 under section 316(b) of the Act shall cover the spouse and unmarried dependents of the applicant who are residing abroad as members of the applicant's household during the period covered by the application. Form N–472 shall be notated to identify those family members so covered.

Harriet B. Marple,

(Acting) Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 86–24962 Filed 11–4–86; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 84–030]

Treatment of Horses From Countries Affected by CEM; Affirmation of Interim Rule

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms, with certain changes, an interim rule which revised the conditions which States must meet in order to receive stallions over 731 days of age imported from countries in which CEM exists. These amendments are necessary to prevent the introduction and dissemination of CEM into the United States.

EFFECTIVE DATE: November 5, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. C.A. Gipson, Program Planning Staff, VS, APHIS, USDA, Room 845, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8321.

SUPPLEMENTARY INFORMATION:

Background

Section 92.4 of the regulations in 9 CFR Part 92 (referred to as the regulations), among other things, sets forth conditions States must meet to be approved to receive stallions and mares over 731 days of age imported into the United States for permanent entry from countries in which contagious equine metritis (CEM), a contagious disease of horses, exists.

On May 13, 1983, an interim rule was published in the **Federal Register** (48 FR 21549–21553) amending § 92.4 of the regulations by: (1) requiring a State veterinarian to directly supervise treatment of stallions when treatment is performed by an accredited veterinarian; (2) requiring that mares be permanently identified by marking with the letter "T" before they are used as test mares; (3) prohibiting test mares to be used more than once to test stallions; (4) prohibiting the use, as test mares, of mares which were bred to stallions other than those being tested for CEM after specimens were taken or samples drawn to qualify the mares as apparently free from CEM; (5) requiring States to agree to quarantine mares used as test mares until such mares have been released from quarantine in accordance with specified requirements; (6) providing criteria for releasing stallions and test mares from quarantine: (7) requiring the specimens, from stallions be cultured for CEM prior to the animals being treated for CEM; (8) requiring that specimens be dated and allowing tests and cultures to be conducted not only at the National Veterinary Services Laboratories, Ames, Iowa, but also at any other laboratory approved by the Deputy Administrator, Veterinary Services; and (9) giving States the option of whether to have laws or to have regulations requiring specified treatment of stallions for CEM.

The interim rule invited the submission of written comments on or before July 12, 1983. Six comments were received. These comments are discussed below.

Supervision by a State Veterinarian

Prior to the effective date of the interim rule, the regulations provided that in order for a State to be approved to receive stallions over 731 days of age from countries in which CEM exists, a State must require certain treatment of the stallions to be performed by an accredited veterinarian under the monitoring of a State or Federal veterinarian.

The interim rule amended the extent of oversight of the treatment by requiring that the treatment be done under the direct supervision of a State veterinarian. Four commenters addressed this issue. One commenter favored the change; the three other commenters opposed the change. The following assertions were made in opposition to the change:

(1) That accredited veterinarians had been peforming the procedures satisfactorily "under supervision and instruction";

(2) That no evidence was presented that the performance of accredited veterinarians poses an unnecessary risk and that the physical presence of the State veterinarian seems to be "redundant";

(3) That in one commenter's State it would be a near impossibility for the State veterinarian to observe all of the treatment procedures for each stallion entering that State from a CEM country; and

(4) That a State animal health technician, rather than a State veterinarian, could be present when such procedures were performed and that the presence of a State animal health technician would serve the same purpose as the presence of a State veterinarian.

APHIS has carefully considered these comments. APHIS believes that retaining the regulations as amended by the interim rule would be in the best interests of disease control and of the equine industry in the United States. However, based on these comments and on experience gained since the interim rule was made effective, APHIS has concluded at this time that there are not sufficient qualified personnel available to allow compliance with this requirement. Therefore, until new requirements can be developed and proposed, the regulations are amended to reimplement those regulations in § 92.4(a)(6)(iii)(A) which were in effect immediately prior to the effective date of the interim rule. Those regulations require that the treatment of stallions for CEM be performed by an accredited veterinarian and "monitored" by a State or Federal veterinarian.

Permanent Marking of Test Mares

The interim rule added a new requirement that mares to be used for testing stallions for CEM must be permanently indentified with the letter "T". This marking is to be applied to either the left shoulder or left side of the animal's neck using a hot iron or freezemarking, or tattooed on the animal's lip.

One commenter suggested that a hoof brand could be used in lieu of branding, tattooing, or freezemarking. A hoof brand would be simple and inexpensive and would last 6–8 months. Another commenter objected to the requirement that mares be permanently indentified, based on the assertion that owners of valuable, registered broodmares used as test mares would not tolerate the CEM program if their animals had to be tattooed. The commenter asserted that "registered animals could be identified by their registration papers or registration tattoos already in place. Nonregistered or grade mares could be tattooed. . .". One of the commenters stated that owners of valuable registered broodmares would not allow them to be used for CEM testing if they were tattooed, and that the use of tattoos even on nonregistered or grade mares "inhibits their further use or sale as performance mares." This commenter also suggested that registration papers or registration tattoos already in place on registered animals could be used as identification.

No changes are made in the interim rule based on these comments. As stated in the document of May 13, 1983 (48 FR 21551), "[t]his identification is necessary to aid State officials in determining the identity of mares which must be placed under quarantine" and which may be released only in accordances with the regulations after they are used for CEM testing. The Department reaffirms this rationale. Permanent physical markings which remain for the life of the mare and which clearly identify her as a CEM test mare are necessary to enable State and Federal personnel to easily, quickly, and accurately identify such animals. Occasionally an animal is tested for CEM and incorrectly found to be negative. In addition, attempts are sometimes made to circumvent the regulations. In both of these situations it is imperative that it be known whether or not a mare found to be infected with CEM has been used as a test mare. Her contacts with other equines, including the stallions she was used to test for CEM, can then be traced, and any infection spread by her can be located and prevented from spreading further. Without permanent physical identification, it might not be determined that the mare was once a test mare, and efforts at controlling the spread of CEM could be hampered.

Neither hoof brands, registration tattoos, nor registration papers, all suggested by the commenters as alternative methods, would ensure that such identification could be made. Hoof brands last only 6–8 months and are not permanent markings which remain for the life of the animal. Registration tattoos are permanent, but they do not indicate that the animal has been used for CEM testing. Registration papers are not physically attached to the animal and could therefore become separated from the animal. Also, they do not indicate that the animal has been used for CEM testing.

Release of Mares From Quarantine

The interim rule also amended the regulations to require States to agree to quarantine all mares used to test stallions for CEM. The interim rule further provided the following conditions under which a State may release from quarantine a mare that has been used to test a stallion for CEM:

(i) The mare is found negative for CEM on all cultures and tests required and paragraphs (a)(6)(iii)(C)(*1*), (a)(6)(iii)(C)(*2*), and (a)(6)(iii)(C)(*3*) of § 92.4; or

(ii) The mare is subjected to an ovariectomy by an accredited veterinarian under the direct supervision of a State veterinarian; or

(iii) The mare is treated and handled in accordance with paragraph (a)(6)(iii) of [§ 92.4, which sets forth the treatment and handling necessary to ensure that the mare is not affected with CEM]; or

(iv) The mare is moved directly to slaughter without unloading enroute, is euthanized, or dies.

Three commenters addressed these new provisions. One commenter favored the provisions; the other two commenters opposed them.

One commenter asserted that all of the conditions for releasing a mare from quarantine are cumbersome and expensive and may not contribute to disease control. This commenter further suggested that an ovariectomy will not add to disease control because mares could be induced into heat with drugs.

The other commenter also objected to the option of subjecting the mare to an ovariectomy, based on the assertion that some 'test' mares will accept a stallion whether or not they are in estrus.

No changes are made based on these comments. In the interim rule (48 FR 21551), the Department explained that it believes "each condition under which the mares in question may be released from quarantine will assure that the mare does not disseminate CEM." The Department continued on to state, in connection with each option except number four, the death or slaughter of a mare, that the risk is minimal that an animal which met any of the prescribed conditions would transmit CEM. In connection with option number four, the Department observed that a dead mare or a mare disposed of by euthanizing or moving her directly to slaughter without unloading enroute will not have an opportunity to breed and disseminate CEM. The Department affirms all of these statements.

Regarding the comments that it is possible for a mare which has had an ovariectomy to be willing to breed in spite of that fact and that such animals can be induced chemically into heat, the Department agrees that both of these are possible. However, the Department reaffirms its view that "the risk of the mare disseminating CEM is minimal" when the animal has had an ovariectomy.

The Department is unsure which of the four options for releasing test mares from quarantine was being addressed by the commenter who stated that all mares should be sent to slaughter unless they are identified and go through "the quarantine release procedure." All of the four options require that test mares be identified, and all of the four options are quarantine release procedures, as discussed above. In addition, the Department believes that all of the options offered are effective means of stopping the spread of CEM.

Culture Results From Stallions

The regulations were also amended by the interim rule to require that prior to the treatment of the stallion, various specimens must be taken and cultured for CEM. Three commenters addressed

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this issue. One comment was positive. The other comments questioned the need to wait for culture results before treating the stallion.

As stated in the interim rule (48 FR 21550):

> * * * This requirement is added for two reasons. First, it will provide this Department information regarding the numbers of stallions and the origins of stallions which are affected with CEM when they enter this country. Present § 92.2(i)(2)(iv) requires that stallions over 731 days of age from countries in which CEM exists must be accompanied by a certificate signed by a salaried veterinary officer of the national government of the country of origin stating that certain specified things were done or not done with respect to the stallion.
>
> Should the information provided by the cultures performed prior to treatment of the stallion in the United States indicate a pattern of CEM affected stallions entering this country from a particular country of origin, the Department will have an opportunity to consult with the national veterinary service of that country in an attempt to remedy any deficiencies which may exist in their treatment of such stallions.
>
> The second reason for adding the requirement that specimens be taken from the stallion and cultured prior to the treatment presently required in § 92.4(a)(6)(iii)(A) is to provide State officials with information regarding the disease status of each stallion to be treated. If a culture indicates that a particular stallion is affected with CEM prior to the stallion being treated, this will enable the State veterinarian supervising such treatment and the accredited veterinarian performing such treatment to be particularly conscientious with respect to the treatment required in § 92.4(a)(6)(iii)(A). It should be noted however, that the treatment required by § 92.4(a)(6)(iii)(A) is required no matter what results are obtained by culturing the specimens taken prior to treatment.

Neither culturing nor test breeding are completely accurate methods of identifying infected animals, although they are the best methods available. It is therefore vital for veterinarians to have as much information as possible concerning the horse they are treating. As stated in the interim rule, this information will enable "the accredited veterinarian performing such treatment to be particularly conscientious with respect to the treatment . . .". All possible steps to ensure that the animal is free of CEM can then be taken before the animal is test bred. In this way the chances of detecting and successfully treating all CEM-affected animals are maximized. For these reasons no changes are made based on these comments.

Reuse of Test Mares

The document of May 13, 1983, also amended the regulations to prohibit the use of mares for test breeding stallions when the mares have been previously used to test stallions for CEM. Four comments addressed this issue. One comment supported the regulation in its entirety. Three commenters asserted that a total prohibition on the reuse of mares for CEM test breeding was not needed.

One commenter appeared to state that the reuse of test mares did not need to be prohibited because there was virtually no chance that stallions would not have been properly "scrubbed to rid them of CEM." The same commenter continued to say that it is "difficult to find test mares that have healthy reproductive tracts" and that candidate mares often have subclinical infections which preclude their use as test mares. Another commenter stated that he was in favor of prohibiting the immediate reuse of test mares, but that a month or two months between uses would be adequate if the mares passed the required two weeks of prebreeding cultures and tests for CEM prior to each use as a test mare. The final commenter stated that mares could be reused 60 days after breeding, and suggested that the regulations be amended to provide that test mares "may be reused for test purposes provided they are maintained under quarantine and used for test purposes only", and to provide that upon completion of testing such mares may be released from quarantine only in accordance with the regulations.

The rationale for prohibiting the reuse of test mares was stated in the document of May 13, 1983 (48 FR 21551) as follows: (1) To ensure that the mares used to test the stallion for CEM were not affected with CEM prior to being used to test the stallion; (2) to prevent the possible spread of CEM to stallions by test mares; and (3) to provide "a more reliable indication of the source of infection" if a test mare is found after test breeding to be infected with CEM.

After carefully reviewing these comments, the Department has determined that this section of the regulations should be amended to allow the reuse of test mares. The Department agrees that it is difficult to locate suitable test mares. The Department also concludes that mares previously used for test breeding are no more likely to be infected with CEM than mares from the general horse population, because they are subjected to qualifying cultures and tests prior to test breeding, are quarantined after breeding, and are released only in accordance with the regulations. Therefore, § 92.4(a)(6)(iii)(B)(*2*) of the regulations is amended to delete the prohibition on reuse of test mares.

Miscellaneous

Section 92.4(a)(6)(iii)(E)(*1*) of the regulations contains provisions concerning laboratories which may conduct CEM tests and cultures, including the approval or withdrawal of approval of laboratories. The section also contains provisions governing the handling and identification of specimens submitted to such laboratories for CEM tests and cultures.

This final rule contains nonsubstantive changes to clarify that the procedures for approval and withdrawal of approval of laboratories to conduct CEM tests and cultures are the same whether the laboratory is handling specimens from mares or from stallions, and to clarify that specimens taken from both mares and stallions for CEM cultures must be handled and identified in the same manner.

In addition, this final rule contains nonsubstantive changes for the purposes of clarity.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in conformance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this action will not result in a significant annual effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities. This rule will affect only those importers interested in importing stallions from countries in which CEM exists. It is anticipated that approximately 91 such stallions will be imported during calendar year 1986. This compares with approximately 40,653 horses of all classes imported into the United States in fiscal year 1985.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, it has been determined that the rule should remain effective as published in the **Federal Register** on May 3, 1983, except as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for Part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 92.4, paragraph (a)(6)(iii)(A) is amended to change "by an accredited veterinarian under the direct supervision of a State veterinarian" to "under the monitoring of a State or Federal veterinarian and performed by an accredited veterinarian."

3. In § 92.4, paragraphs (a)(6)(iii)(B) (*1*) and (*2*) are revised to read as follows:

§ 92.4 [Amended]

(a) * * *

(6) * * *

(iii) * * *

(B)(*1*) *Identification of test mares.* Mares to be used to test stallions for CEM shall be permanently identified before the mares are used for such testing with the letter "T." The marking shall be permanently applied by an inspector, a State inspector, or an accredited veterinarian who shall use a hot iron, freezemarking, or a lip tattoo. If a hot iron or freezemarking is used, the marking shall not be less than two inches high and shall be applied to the left shoulder or left side of the neck of the mare. If a lip tattoo is used, the marking shall not be less than one inch high and three-fourths of an inch wide and shall be applied to the inside surface of the upper lip of the mare.

(*2*) After a period of seven days following the fifth consecutive day of scrubbing and packing required in paragraph (a)(6)(iii)(A) of this section, the stallion shall be bred to two mares which are qualified prior to breeding as apparently free from CEM and which have not been bred from the time specimens were taken from the mares to qualify the mares as apparently free from CEM. To qualify as apparently free from CEM, each mare shall be tested with negative results by a complement fixation (CF) test for CEM, and specimens taken from each mare shall be cultured negative for CEM. For culture, one specimen each shall be collected during estrus from the endometrium of the uterus, clitoral sinuses and clitoral fossa. After an interval of not less than seven days, one specimen each shall be collected from the cervix, clitoral sinuses, and clitoral fossa.

* * * * *

4. In § 92.4(a), paragrah (6)(iii)(E) is redesignated paragraph (a)(10), and paragraphs (6)(iii)(E)(*1*), (6)(iii)(E)(*2*), (6)(iii)(E)(*3*), (6)(iii)(E)(*4*)(*i*), and (6)(iii)(E)(*4*)(*ii*) are redesignated paragraphs (10)(i), (10)(ii), (10)(iii), (10)(iv)(A), and (10)(iv)(B), respectively.

5. In § 92.4, new paragraph (a)(10)(i) is revised to read as follows:

(a) * * *

(10)(i) All tests and cultures required by paragraphs (a)(6) and (a)(9) of this section shall be conducted at the National Veterinary Services Laboratories, Ames, Iowa, or at a laboratory approved by the Deputy Administrator, Veterinary Services, to conduct CEM cultures and tests.

* * * * *

Done at Washington, DC, this 31st day of October 1986.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 86-25018 Filed 11-4-86; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL HOME LOAN BANK BOARD

[No. 86-1156]

12 CFR Parts 543, 546, 552, 562, 563, 563b and 574

Conversions From Mutual to Stock Form and Acquisitions of Control of Insured Institutions

October 17, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is amending its regulations governing mutual-to-stock conversions of insured institutions. Through these amendments, the Board intends to encourage mutual insured institutions to undertake standard conversions and to enable more institutions that fail to meet their regulatory capital requirements or are insolvent to convert to stock form and raise new capital using the modified and voluntary supervisory conversion procedures. The amendments also, (1) provide increased protection to newly converted institutions from changes in control that may disrupt the transition into the stock form of ownership and the prudent deployment of conversion proceeds, (2) clarify issues relating to stock purchases by management of converting institutions in conversions and thereafter, (3) provide additional incentives for insured institutions and other acquirers to participate in merger conversions with insolvent institutions, (4) make more attractive the voluntary supervisory and modified conversion procedures to management of insured institutions and potential acquirers, and (5) enhance the efficiency of processing of modified and voluntary supervisory conversion applications.

The Board also is amending its regulations governing acquisition of control of insured institutions in order to conform provisions of those rules to changes in the Conversion Regulations.

EFFECTIVE DATE: November 5, 1986. These amendments will apply to all conversion applications filed on or after November 5, 1986.

FOR FURTHER INFORMATION CONTACT: Dean V. Shahinian, Attorney, (202) 377-7289; J. Larry Fleck, Associate General Counsel for Conversions, (202) 377-6413; or Julie L. Williams, Deputy General Counsel, Director, (202) 377-6459; Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

A. General

The Board, as the operating head of the Corporation, has broad authority to authorize mutual-to-stock conversions of insured institutions under sections 5(i) (1) and (2) of the Home Owners' Loan Act of 1933 ("HOLA"), 12 U.S.C. 1464(i) (1), (2) (1982), and section 402(j) of the National Housing Act ("NHA"), 12 U.S.C. 1725(j) (1982). Sections 5(i) (1) and (2) provide that, subject to the rules and regulations of the Board, any institution which is, or is eligible to become, a Federal Home Loan Bank ("FHLB") member may convert itself into a federal savings and loan association or federal savings bank, and simultaneously or subsequently may convert from mutual to stock form; and that any federally chartered association may convert from the mutual to stock form of organization.

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Section 402(j) of the NHA provides that mutual insured institutions may convert to federally or state-chartered stock form only in accordance with the rules and regulations of the Board.

Section 121 of the Garn-St Germain Depository Institutions Act of 1982 ("Garn-St Germain Act"), which added paragraph (p) to section 5 of the HOLA, 12 U.S.C. 1464(p) (1982), enhanced the Board's conversion authority under sections 5(i) (1) and (2) of the HOLA and section 402(j) of the NHA. Section 121 of the Garn-St Germain Act empowered the Board in certain circumstances to preempt other provisions of federal and state law in order to authorize and, in the case of a federally chartered insured institution, to require the conversion of a FSLIC-insured savings and loan association or savings bank, from mutual to federal stock form; or to charter a federal stock savings and loan association or federal stock savings bank to acquire the assets of, or merge with, a mutual institution under the rules and regulations of the Board. The Board's conversion authority under section 5(p) of the HOLA arises only if (1) the institution is in receivership, (2) the Corporation has contracted to provide assistance to the institution under section 406 of the NHA, or (3) the Board has determined that severe financial conditions exist which threaten the stability of the institution and that such authorization is likely to improve the financial condition of the institution.

Section 5(p) expired July 15, 1986, Pub. L. No. 99-278, 100 Stat. 397 (1986) and has been reinstated for brief intervals since that time. The Board has urged the Congress to restore this and several other sections which provide important emergency acquisition authority for the Board, and certain amendments are being adopted in the hope that section 5(p) eventually will be restored. Of course, the Board will not act under any regulation or portion thereof whose sole basis was section 5(p) unless, and until, the section is reenacted. The Board notes, however, that while section 5(p) has been an extremely valuable tool, the absence of section 5(p) will not preclude the Board from acting on voluntary conversions. Section 5(i) of the HOLA provides an independent basis for the Board's authority to regulate all types of conversions where the resulting entity is federally chartered, provided that no preemption is required and that the transaction is voluntary on the part of the institution. The Board's authority over conversions of state-chartered institutions pursuant to section 402(j) of the NHA also remains intact.

Part 563b of the Rules and Regulations for the Federal Savings and Loan Insurance Corporation (the "Conversion Regulations"), 12 CFR Part 563b (1986), sets forth the requirements for conversion from mutual-to-stock form of federally-chartered and FSLIC-insured institutions. The Conversion Regulations were promulgated and have been amended by the Board over the years in order to implement the Board's comprehensive conversion authority under sections 5(i) (1) and (2) of HOLA, section 402(j) of NHA, as well as 5(p) of HOLA. The Conversion Regulations today provide for three basic types of conversions of insured institutions from the mutual to the stock form of organization: standard, voluntary supervisory, and modified conversions. Subpart A of the Conversion Regulations, 12 CFR 563b.1 through 563b.10, establishes the rules and procedures applicable to standard conversions. In a standard conversion, an institution's accountholders and voting members are given the first right to subscribe for conversion stock, followed by a community or public offering of any stock that is unsubscribed. Purchases by directors and officers and their "associates" in the aggregate are limited to between 25 and 35 percent of the total offering, determined on a sliding scale depending upon the asset size of the institution. Generally, no person acting in concert with any associate or group of persons may purchase more than 5% of the conversion stock. Standard conversions must be authorized by vote of a majority of the institution's voting members.

Subpart C of the Conversion Regulations, 12 CFR 563b.20 through 563b.33, specifies the qualifications for and the rules and procedures applicable to voluntary supervisory conversions. Previously, institutions that were insolvent on the basis of regulatory accounting principles or were projected to be so within 12 months, would be eligible to undertake a voluntary supervisory conversion. Upon a determination that there was no realizable equity value remaining for the mutual members, the substantive and procedural rights granted to the members in converting mutual insured institutions by the Board's standard conversion rules under Subpart A were eliminated. Accordingly, the members of the insured institution converting to stock form on a voluntary supervisory basis were not afforded rights of approval or participation, and upon completion of the conversion had no continuing legal or beneficial ownership interest in the converted insured institution. Previously, in order for the Board to authorize a voluntary supervisory conversion, an insured institution had to satisfy all of the following criteria, which were set forth in section 563b.23 of Subpart C: (1) As to a federally-chartered insured institution, the Board had the power to appoint a receiver for the purpose of liquidation, or, as to a state-chartered insured institution, the Board would have the power to appoint a receiver for the purpose of liquidation were the institution federally-chartered; (2) upon liquidation, there would be no equity value realizable by the mutual accountholders; (3) the insured institution was in receivership, or the Corporation had contracted to provide assistance to the insured institution under section 406 of the NHA, or the Board had determined that severe financial conditions existed which threatened the financial condition of the insured institution; and (4) the insured institution would have been a viable entity under § 563b.26 of Subpart C following the conversion.

Subpart D of the Conversion Regulations provides guidelines for modified conversions. Modified conversions generally are available to institutions that fail to meet their regulatory capital requirement, but do not "qualify" for a voluntary supervisory conversion, and that demonstrate that they would be unable to sell their stock in a standard conversion. In a modified conversion, the substantive and procedural rights granted to members of mutual institutions converting under Subpart A are limited but not eliminated. Modified conversions may be effected without the approval of members, but must involve sales of conversion stock at an aggregate price in excess of the *pro forma* market value of the institution as determined by an independent appraiser, and provide for members' preemptive rights to purchase conversion stock, but subject to limitations.

Pursuant to § 563b.36(a), an insured institution must meet one of the three previously described conditions derived from section 5(p)(2) of the HOLA in order to qualify for Board authorization of a modified conversion. The Board has established the following criteria under § 563b.36(c) of Subpart D for determining the existence of the severe financial conditions portion of such test: (1) Failure of the institution to meet its regulatory capital requirement; (2) insufficiency of current and projected income from operations to restore and maintain the institution's regulatorily required capital; and (3) a demonstration that a standard conversion would not be feasible.

The Board considers the mutual-to-stock conversion process an extremely valuable structural option available to savings institutions today. Mutual-to-stock conversions infuse new capital into insured institutions, provide an opportunity for needed portfolio restructuring and may enable institutions to compete successfully in the modern financial marketplace. Since the advent of the Board's mutual-to-stock conversion program in the mid-1970's, the aggregate amount of new capital raised through conversions now exceeds $7 billion, with approximately $6.5 billion being raised in the past three and one-half years. The conversion process also increases an institution's capital without requiring an institution to rely on increased earnings. Therefore, mutual-to-stock conversions represent a desirable means for increasing capital in the industry, and constitute a valuable tool to enable institutions to meet their regulatory capital requirements.

B. Summary of Current Proposal

Revisions to Subpart A of the Conversion Regulations relate to the purchases of stock by management, employees and various types of employee stock benefit plans in the conversion and thereafter. In addition, stock institutions that undertake merger conversions with insolvent institutions will be afforded added post-conversion anti-takeover protection derived from the converting insured institutions. The duration of such protection will depend upon the asset size of the converting insolvent institution and, potentially, other factors. The amendments also attempt to facilitate merger conversions by providing an exception to the aggregate conversion stock purchase limitations applicable to officers and directors of the existing insured stock institution and their associates in merger conversions.

The amendments define the term "acting in concert," as used in the conversion stock purchase limitations, and clarify that the rebuttable presumptions of concerted action set forth in § 574.4(d) of the Board's Acquisitions of Control Regulations apply to conversion stock purchases by any person together with any associate or group of persons acting in concert. Certain amendments also are being made to the regulations dealing with the liquidation account established by converted institutions in order to clarify the transferability of such account if the converted institution merges, dissolves into, or is otherwise absorbed by another institution.

The amendments to Subparts C and D of the Conversion Regulations effect a major change in the criteria used by the Board to determine whether an insured institution is in such severe financial condition as to qualify for voluntary supervisory or modified conversion. The new tests use a calculation based upon generally accepted accounting principles ("GAAP") rather than regulatory accounting principles ("RAP") for standards of insolvency or regulatory capital compliance in the case of both voluntary supervisory and modified conversions, and, in the case of voluntary supervisory conversions, provide an alternative approach for satisfying the requirement for the amount of capital that must be infused in the conversion. The tests for determining whether an institution qualifies for a voluntary supervisory or modified conversion are being substantially simplified to easily ascertainable objective standards of financial condition and specified legal structural requirements. Another revision involves delegating the authority to approve certain types of voluntary supervisory conversions to the Board's Office of General Counsel ("OGC"), as is now the case with standard and modified conversions, except in cases involving a significant issue of policy. Various components of supervisory and modified conversions, such as a business plan, are subject to approval by the appropriate FHLB and/or the Office of Regulatory Policy, Oversight and Supervision ("ORPOS"). Authority to approve holding company applications and change in control notices that accompany voluntary supervisory and modified conversions continues to be delegated to be appropriate FHLB, or to ORPOS with the concurrence of OGC, in accordance with the delegation standards set forth in § 574.8 of the Board's Acquisitions of Control Regulations.

Finally, the Board also is amending its Acquisitions of Control Regulations to conform with certain revisions to the Conversion Regulations.

C. Summary of Comments

The Board received eleven public comments in response to its proposal. Three of the comments were received from savings and loan associations; one from a bank; two from law firms which practice savings and loan and banking law; three from trade associations, including a national savings and loan trade association, a state savings and loan trade association and a state banking trade association; and two from government agencies, including a state comptroller.

Commentators agreed that the conversion procedure is an effective means of raising capital for savings institutions and should be promoted and concurred in the objectives of strengthening the savings and loan industry.

Six commentators discussed the proposal to revise § 563b.3(i)(6) to require a prospective acquirer of a recently converted institution to demonstrate that a proposed acquisition would benefit the institution, its depositors, and the FSLIC. A national trade association supported the proposal and stated that the added standard would prevent needless diversion of the institution's energies and proceeds during the critical three years following conversion. The trade association believed it would prevent an institution from being used as a tool to achieve a short-term objective, but rather would enhance the institution's long-term viability. The commenter also urged the addition of specific sanctions for violating the antitakeover or purchase restrictions, that violators should be subject to injunctive proceedings and all their shares should be "sterilized," or stripped of voting rights. The commenter further advocated that the regulation state that the converting institution has a private right of action against an acquirer that violates the post-conversion acquisition restrictions. A state thrift association also endorsed the proposal as an attractive vehicle for making ailing thrifts more desirable.

On the other hand, a bank felt the added criterion was unduly restrictive and had no basis under the Board's authority and that the current criteria were adequate and appropriate to prevent undersirable acquisitions. A trade association representing banks in the same state objected that it would be improper to require that transactions must benefit specific groups in order to obtain approval. The bank trade association added that the new standard would be so difficult to meet that it would effectively prohibit the acquisition of healthy savings and loans. The trade association suggested the adoption of an alternative requirement, that the applicant show that its plans will not disrupt the efforts to adjust to reorganization or deploy the conversion proceeds. The Comptroller of the same state objected that the requirement was not directly related to the objective of encouraging more insured institutions to convert, and could impose an insurmountable barrier to an acquisition proposal that may have demonstrable benefits. The Comptroller added that

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current criteria provide adequate authority for the Board to prevent acquisitions that would disrupt the reorganization.

A federal agency also criticized the beneficial effect criterion and questioned whether the Board had identified the specific problems to be alleviated or had explained why existing restrictions were insufficient protection for recently converted institutions. The agency also believed that the Board's present rules were sufficient to allow it to prohibit thrift acquisitions that might harm the public, and that any additional protection should come through shareholder approved charter provisions. The agency felt that this provision would essentially preclude takeovers, depress share price, and operate contrary to certain public policies. The agency also questioned the extension of antitakeover protection resulting from merger conversions to institutions or their parents companies proposed in section 563b.10, and stated that the protection was unwarranted and excessive, no clear evidence showed its necessity and therefore it should not be adopted. The agency criticized the Board for creating a sanctuary for any firm fearing a takeover bid, and stated that the notice does not indicate that the Board had considered alternative approaches.

Another commentator, the national trade association, commented on and supported the amendment of § 563b.3(i)(3) to include within the scope of the rule the holding of revocable and irrevocable proxies under specified circumstances because the commenter agreed that these holders potentially can exert control over the association.

Two commentators, the national trade association and a law firm, commented on and supported the amendments regarding the exemptions on aggregating purchases by employee stock ownership plans and individual officers and directors. The law firm noted that the amendments would be useful in providing management of converting associations with appropriate incentives.

Two commentators, the national and state thrift trade associations, commented on and praised the amendment allowing a converting association to permit any number of a separate tax-qualified employee stock benefit plans to purchase an aggregate of 10 percent of the stock offered in the conversion. The state thrift trade association predicted that this will motivate management and employees of a converting institution with such employee plans to greater productivity and effectiveness. The national thrift trade association noted that the amendments will be beneficial in encouraging employee participation in growth and providing antitakeover protection. It found these amendments consistent with Board objectives for infusing capital into the industry and with Congressional purposes.

One commentator, a law firm, commented on and expressed concern about prohibiting associations from guaranteeing loans or making binding commitments to fund employee stock option plans ("ESOPs"), in § 563b.3(c)(24) because the commentator felt that such a commitment would be necessary to persuade unaffiliated lenders to make loans to ESOPs. It suggested that the Board permit associations with net worth above 6% of total liabilities to either guarantee loans or to pledge as supplementary collateral for a loan to its ESOP government securities equal to 50% of the loan.

One commentator, the national thrift trade association, commented on and commended the Board's innovation and initiative involving the amendments governing media disclosure during the conversion process.

Regarding the clarification of the meaning of "complete liquidation" in connection with a liquidation account, one commentator, a law firm, agreed that a merger with another FSLIC-insured institution should not be considered a "complete liquidation." However, four commentators urged that a merger into or acquisition by a Federal Deposit Insurance Corporation ("FDIC")-insured bank also be treated as not constituting a complete liquidation. The law firm noted that accountholders would receive comparable protection from the FDIC, and predicted that the uncertainty at the time of conversion with respect to the possibility of future acquisitions would have an adverse effect on the market value of the stock. The law firm asked that the Board provide more definitive standards for determining whether a transaction constitutes a complete liquidation and stated that any transaction in which the deposit liabilities of the institution are assumed by a federally-insured institution should be excluded. A bank complained that the Board's proposal equating "complete liquidation" with merger or consolidation was contrary to common usage and that no legitimate regulatory purpose would be served by authorizing the payout of a liquidation account where an institution is acquired by an FDIC-insured institution. The bank felt that a payout would be a windfall resulting from the conversion, and also could conflict with state statutes which promote cross-industry transactions. The bank argued that an FDIC-insured institution acquisition should be treated the same as an acquisition by a FSLIC-insured institution, because the financial strength of the institution, not the type of deposit insurance, determines the protection afforded liquidation account holders. The bank asserted that the proposal could impede the acquisition of converted institutions by bank holding companies and converted banks if such acquisitions trigger payout of liquidation accounts. This would reduce corporate alternatives and adversely impact the stock prices of newly-converted institutions. It concluded that no additional regulation was needed.

The state banking agency expressed concern that the proposed amendments to §563b.3(f)(3) created a potential for uncertain application of the regulation, and suggested that this proposal confused rather than settled the liquidation account issue. It noted that the prospect that a consolidation between a FSLIC-insured and a non-FSLIC insured institution may be deemed a "complete liquidation" requiring a liquidation account payout could create a substantial economic disincentive to such transactions, and urged the Board to proceed cautiously.

The state banking trade association stated the rule could discriminate against potential bank acquirers and certain depositors by raising the cost of acquisitions through requiring payout of the liquidation account which a FSLIC-insured or non-financial institution acquirer would not have to do. The comment urged the Board to define the scope of its discretion and to state if it does not intend to discriminate against banks or, if it would be discriminatory, not to adopt the provision.

One commentator, a bank, noted that the proposal did not indicate when the amendments, if they were adopted, would become effective, and commented that they should become applicable only with respect to institutions that either adopt plans of conversion or complete their conversions after the amendments were adopted but not apply to those which have already filed.

One commentator, a law firm, commended the Board for proposing to allow a converting institution that has sold all of its conversion shares through subscription to pay the underwriter a consulting fee, because such a fee provides an incentive for investment bankers to assist thrifts in raising capital. The firm expressed concern under this provision that the Board would determine what constituted a "reasonable fee" and suggested that the Board be permitted to veto only a fee that is unfair and grossly excessive.

One commentator, a state thrift trade association, commented on and approved the use of generally accepted accounting principles in determining whether a thrift qualifies for a voluntary supervisory conversion.

Another commentator, the national thrift association, commented on and supported the new viability tests for supervisory conversions and found them to be sound and flexible. The state thrift association agreed with one of the alternative viability standards, a five-year phase-in (while questioning the potential severity of the sanctions for failure to comply), but observed that the other alternative, the infusion of new capital to raise net worth to 4.5%, might be excessive. The national thrift association suggested that the Board consider the inclusion of debt used to leverage ESOPs as a part of net worth for purposes of the viability test.

One commentator, the national trade association, commented that it supported the proposed liberalization of the merger conversion rules, in order to provide strong management incentives in terms of stock ownership and antitakeover protection.

One commentator, a thrift, commented that the rules for calculating net worth should be modified to permit the inclusion of projected proceeds from the sale of conversion stock in the financials prepared prior to and distributed in the conversion.

One commentator, a thrift, encouraged the Board to allow management to make substantial purchases in the conversion and commented that smaller rural institutions will not attract competent management to devote their full-time and energies to thrift administration unless such people can buy enough stock in the financial institution to control their destiny. This commenter recommended that management be permitted to buy majority control of 51% or more in the institution. He also commented on the need for permitting simplified plans of conversion.

Revisions to Subpart A

A. Introduction

The Conversion Regulations reflect an extended effort on the part of the Board to develop a conversion procedure that is equitable to accountholders and insured institutions and which functions effectively as a capital-raising tool. Since their adoption, the Board has refined the Conversion Regulations periodically in light of its experience with the conversion process and in response to developments in the marketplace, in order to facilitate the standard conversion procedure and enhance its use by insured institutions.

The Board has once again reviewed the standard conversion process to determine the measures that would encourage more insured institutions to convert to stock form and induce stock institutions to undertake transactions involving the mutual-to-stock conversion of insolvent institutions. The Board believes that it has identified several provisions of Subpart A of the Conversion Regulations that it can revise to achieve the above-described goals without conflicting with the guiding equitable principles of the conversion process and the assurance to insured institutions that such procedures can withstand judicial scrutiny. *See York* v. *Federal Home Loan Bank Board*, 624 F. 2d 495 (4th Cir.), *cert. denied*, 449 U.S. 1043 (1980).

B. Anti-Takeover Provisions

The Board has reviewed its position regarding the adoption by converting insured institutions of charter provisions that generally make more difficult the acquisition of controlling interests of the institution's stock. Section 563b.3(i)(7) currently allows a converting or newly converted institution to include in its stock charter, for a specified period of time after conversion not to exceed five years, any or all of the provisions specified in § 552.4(b)(8). The full availability of these charter provisions to state-chartered insured institutions will depend upon state law.

Section 552.4(b)(8) authorizes federal institutions for a specified period to eliminate cumulative voting, limit the right of shareholders to call special meetings of shareholders relating to changes in control or to amending the converted institution's charter, and, most fundamentally, to restrict the acquisition of more than 10 percent of the converted institution's stock. Following conversion, a state-chartered insured institution may adopt any anti-takeover charter provision that would be permitted to be adopted by an institution chartered by the state in which the converted institution is chartered, and a federally chartered insured institution may adopt any such charter provision permitted under § 552.4 of this chapter. Section 552.4 currently employs a state law standard of reference for determining the permissibility of anti-takeover charter provisions for federal associations.

The Board notes that the charter provisions that currently may be adopted at the time of conversion are extensive and afford substantial protection against changes in control to converting and newly converted institutions. One commenter in fact noted the usefulness of § 563b.3(i)(7) in protecting recently converted institutions against hostile takeovers. The Board also is concerned that extending the maximum time period that these anti-takeover provisions may remain in effect without shareholder ratification beyond five years could harm the institution's ability to market its conversion stock, reduce the amount of capital raised in the conversion and reduce the liquidity of the institution's stock after conversion. The Board also is aware that institutions that want to maintain the antitakeover charter amendments for a period of time longer than five years generally have been able to do so after submitting the provisions to their shareholders for a vote.

In view of the other amendments adopted by the Board which provide an increased measure of anti-takeover protection for converting and recently converted institutions, the Board has weighed the need for further changes in this area and has determined at this time not to adopt any amendment to § 563b.3(i)(7).

C. Restrictions on Offers to Acquire and Acquisitions of Converted Institutions

Section 563b.3(i)(3) of the Conversion Regulations prohibits, for a period of 3 years following the date of the completion of an insured institution's conversion, any person, directly or indirectly, from offering to acquire or acquiring the beneficial ownership of more than 10 percent of any class of the institution's equity securities without the prior written approval of the Board. Section 563b.3(i)(6) sets forth 6 general grounds for the Board to deny an application involving offers to acquire or acquisitions of the securities of converted institutions and generally requires the Board to make a finding that the acquisition would be detrimental to the institution under one or more of those standards in order for the application to be denied.

The Board proposed to revise § 563b.3(i)(6) to require in addition that a prospective acquirer of a recently converted institution affirmatively demonstrate that a proposed acquisition would be beneficial to the converted institution, its depositors, and the FSLIC. By placing the burden on the acquirer to make an affirmative showing regarding the beneficial effects of a proposed acquisition, the Board believed the standard would operate to reasonably ensure that changes in control of newly converted institutions would not disrupt

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the institution's efforts to adjust to its reorganization into stock form and prudently deploy its conversion proceeds.

Some commentators endorsed this new standard as a way of protecting the converted institution. However, other commentators felt that the standard was unduly restrictive and unnecessary, and not in the best interest of stockholders. In light of the concerns of the critical commentators and recognizing the urgency with which the other provisions are needed, the Board has reconsidered the proposed beneficial effect test which would be used in determining whether to approve acquisitions of stock in recently converted institutions.

In light of these comments, the Board is modifying the proposal in two respects. The Board has decided, first, to revise the proposed positive benefit test to be used in determining whether to approve acquisitions of recently converted institutions, and second, to clarify and restate the application of the current criteria. In addition, the Board wishes to emphasize that it will closely examine the character, integrity, and experience of potential acquirers to ensure that the acquisition will not be disruptive of prudent operations of the institution and will be consistent with economical home financing. While the fears of takeover on the part of existing mutual institutions may be a reason for not electing to convert, the Board has attempted to balance. this factor against the likely efficiency gains due to at least the possibility of takeovers. The Board also wishes to note, however, that its conversion regulations currently provide significant protections against a hostile takeover for recently converted institutions. The Board will study the need for and potential effects of a requirement to show a beneficial effect in light of its experience with the other newly adopted amendments.

The Board also is amending § 563b.3(i)(3) to include within the scope of the rule the holding of revocable and/or irrevocable proxies under specified circumstances that have been regarded as providing the proxy holder with the potential to exert effective control over significant aspects of an institution's operations and management. The Board has already recognized in the Acquisition of Control Regulations that a holder of proxies can exert the same type of control in matters of shareholder voting as the owner of shares. The inclusion of proxies therefore parallels § 574.4 of the Acquisitions of Control Regulations. The one comment on this item supported this approach. Thus, the holding of revocable and/or irrevocable proxies would be subject to § 563b.3(i)(3) only in the same circumstances that holding of such proxies would give rise to a conclusive or rebuttable control determination under §§ 574.4 (a) and (b), respectively.

D. Purchases by Management, Employees, and Employee Stock Benefit Plans

1. Purchases at the Time of Conversion

a. Introduction. A number of issues have arisen regarding the application of certain provisions of the Conversion Regulations and other regulations to employee stock benefit plans such as ESOPs. An ESOP, for example, is an employee stock benefit plan designed to invest primarily in an employer's stock, principally by using tax-deductible contributions made to the ESOP under the terms of the plan.

The Congress in a series of laws has "made clear its interest in encouraging employee stock ownership plans as a bold and innovative method of strengthening the free enterprise system which will solve the dual problems of securing capital for necessary capital growth and of bringing about stock ownership by all corporate employees." *See* Tax Reform Act of 1976, Pub. L. No. 94–455, 90 Stat. 1580, 1590, Title VIII, section 803(h). In addition, through various other provisions of the Internal Revenue Code ("IRC"), Congress has identified other types of employee stock purchase plans that have public benefits and which have been found to warrant a favorable type of tax treatment (referred to herein as "tax-qualified employee stock benefit plans"). These include certain types of pension plans, profit-sharing plans, stock bonus plans and annuity plans.

The Board is adopting amendments to eliminate uncertainty on a variety of issues presented by employee stock benefit plans and to enhance the ability of officers, directors and employees of an institution to acquire stock when their institution converts, through various types of employee stock benefit vehicles. The Board believes that acquisition of an institution's stock by such plans provides a means for officials and employees of converting institutions to acquire larger ownership stakes in their institutions upon conversion without undermining the basic equities of the conversion process.

b. Definition of "Tax Qualified Employee Stock Benefit Plan". A new paragraph (a)(37) is being added to section 563b.2 to define the terms "tax-qualified employee stock benefit plan" and "non-tax-qualified employee stock benefit plan." A tax-qualified plan will be defined with reference to the types of plans described in section 401 of the IRC. As noted above, this includes types of pension plans, profit-sharing plans, stock bonus plans, and annuity plans. These new definitions clarify the treatment of such plans for the purposes of various restrictions on stock purchases imposed by the Conversion Regulations.

The Board notes that tax-qualified employee stock benefit plans generally must comply with various participation, vesting, distribution, and other rules under the IRC designed to protect the interests of all employees. For example, a plan must be in writing, permanent, communicated to employees, and all provisions essential to qualification must be included in the written plan. The minimum vesting requirements include minimum schedules under which an employee's benefit from employer contributions must accrue and become nonforfeitable and special rules for vesting in the event that the plan is terminated. In addition, these employee stock benefit plans generally must be established for the benefit of employees and meet minimum employee participation standards designed to enhance employee participation and prohibit discrimination in favor of employees who are officers, directors, shareholders, or highly compensated employees. Discrimination in favor of persons other than officers, directors, shareholders, or highly compensated employees, such as rank-and-file employees, is not prohibited, however.

c. Amendment to the Definition of "Associate". The ability of employee stock benefit plans to acquire conversion stock could be substantially effected by the scope of the term "associate." A "associate" of a person previously has been defined under § 563b.2(a)(4) of the Conversion Regulations to include any trust in which a person has a substantial beneficial interest or in which the person serves as a trustee or in a similar fiduciary capacity. Thus, the literal application of § 563b.2(a)(4) would require any employee stock benefit plan that retains an officer or director of the insured institution as a plan trustee or similar fiduciary to be considered an "associate" of each such officer or director (and potentially of more than one officer or director). In addition, if a person were deemed to have a "substantial beneficial interest" in the trust, or even if officers and/or directors as a group were deemed to hold a substantial beneficial interest, the trust would be treated as an "associate" of that person, or of the officers or directors collectively. Where the trust is treated as an associate of the officers and directors, it becomes subject to the various conversion stock purchase priorities and percentage limitations established in the Conversion Regulations, including limitations on the total number of shares that officers, directors, and their associates may purchase both individually and in the aggregate in the conversion stock offering, and to the restrictions set forth in § 563b.3(c)(9) of the Conversion Regulations on post-conversion stock purchases by officers, directors, and their associates.

The Board believes that the application of the term "associate" to employee stock benefit plans in certain of these contexts is neither necessary nor intended in order to accomplish the purposes of the "associate" definition as used in the Conversion Regulations. Therefore, the Board is amending current § 563b.2(a)(4), redesignated as new § 563b.2(a)(5), to clarify the circumstances when stock held by an employee stock benefit plan will be aggregated with stock purchased by a person or purchased by all officers and directors as a group for purposes of §§ 563b.3 (c)(6), (c)(7), (c)(8), (c)(9), and (d)(5). A distinction is being made between tax-qualified and non-tax-qualified plans. With respect to purchase restrictions that apply to individual purchases, (§§ 563b.3 (c)(6), (c)(7), (c)(9) and (d)(5)), stock held by either a tax-qualified or non-tax-qualified plan would *not* be aggregated to a person who has a substantial beneficial interest in, or serves as a trustee or other fiduciary of the plan. With respect to the aggregate director and officer purchase restrictions, (section 563b.3(c)(8)), however, stock held by a tax-qualified plan would not be counted, but stock held by a *non*-tax-qualified plan and attributable to the institution's directors and officers would be counted for purposes of the aggregate management purchase limits set by that section.

d. Purchases of Stock In the Conversion—(i) Treatment of Tax-Qualified Plans. The amendments adopted today by the Board permit an association to create a conversion plan allowing any number of separate tax-qualified employee stock benefit plans to purchase, in the aggregate, up to ten percent of the stock offered in the conversion. Such a plan may otherwise limit purchases by any other person together with any associate or group of persons acting in concert to a lesser amount than five percent of the total shares offered in the conversion in accordance with existing provisions of the Conversion Regulations. Tax-qualified employee benefit plans also are entitled to purchase up to ten percent of the offering regardless of the number of shares purchased by any other party. Thus, if an offering is over-subscribed, the plan's purchases will not be pro-rated.

Generally, plans must include a broad base of employee beneficiaries in order to meet the definition of a tax-qualified plan. Accordingly, the Board believes that its goal of selling conversion stock in a wide distribution, *see* 12 CFR 563b.3(c)(6)(iii), will not be undermined, even when, for example, an ESOP acquires ten percent of the stock sold in the conversion, because the plan is holding stock for the benefit of employees. However, since employees of the association may also have subscription rights or may desire to purchase stock sold in a community or public offering, the Board is amending other aspects of its conversion regulations, to recognize the independence of the new ten percent tax-qualified employee stock benefit plan purchase provision.

The Conversion Regulations have limited the amount of conversion stock that management officials and their associates may purchase as a group to between 25 and 35 percent of the stock sold in the conversion, depending on the asset size of the converting association, under § 563b.3(c)(8). If the shares purchased by an employee stock benefit plan which were allocable to various employees were attributed to management officials as beneficiaries of such plan, the plan might not be able to purchase a substantial amount of stock without causing management, as a group, to exceed its limitation. (The attribution of these shares, it should be noted, is a separate issue from attribution based upon the definition of "associate," and must be addressed independently.) Accordingly, the Board is excepting purchases by tax-qualified employee stock benefit plans from the aggregate amount that the officers and directors may purchase under § 563b.3(c)(8) of the Conversion Regulations. Section 563b.3(c)(8) also is being revised to include the formula for calculating permitted share purchases. Commentators have supported these amendments as ways of allowing thrifts to provide appropriate management incentives.

In addition to limitations on the purchases by the officers and directors of the association as a group, as already noted, the Conversion Regulations have limited the amount of conversion stock that any person, including individual officers, directors and employees, may purchase. Therefore, the Board also is amending 12 CFR 563b.3 (c)(6), (c)(7), (c)(9) and (d)(5) to provide that shares purchased by employee stock benefit plans—whether or not tax-qualified—that are attributed to an individual employee as a beneficiary of the employee stock benefit plan, will not be aggregated with any conversion shares purchased directly by or otherwise attributable to the individual. However, where shares attributable to one person are held by more than one plan, those shares could be separately aggregated to determine if the conversion stock purchase limits are exceeded. As already discussed as a separate issue, an amendment to the definition of "associate" set forth in section 563b.2(a)(4), would provide that an employee stock benefit plan in which a person has a substantial beneficial interest or serves as a trustee or in a similar fiduciary capacity will not be considered an "associate" of such person for purposes of the purchase limitations of § 563b.3 (c)(6), (c)(7), (c)(9) and (d)(5).

Finally, the Board notes that in order to give an employee stock benefit plan an opportunity to purchase shares in certain conversions, that plan must receive priority subscription rights to purchase conversion stock. It is recognized that the institution's board of directors could obtain a subscription priority status for the employee stock benefit plan under the current conversion regulations merely by opening an account for the employee stock benefit plan with a qualifying balance at the association prior to the eligibility record date. In order to simplify this process, however, the Board is providing in new § 563b.3(c)(23) of the Conversion Regulations an explicit priority for tax-qualified employee stock benefit plans that permits the plan to purchase conversion stock. Thus, tax-qualified employee stock benefit plans are permitted to acquire, in the aggregate, up to ten percent of the total conversion stock offering without proration in the event of oversubscription.

In a related area, the Board notes that many converting institutions have experienced a significant increase in new accounts being opened in the institutions after they have given notice of their impending conversions. Pursuant to § 563b.3(c)(5), these new account holders become voting members in the conversion and thereby receive the same subscription rights as eligible account holders and supplemental

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account holders, if applicable, with the exception that they are subordinated to the stock purchase rights of the other account holders. Many converting institutions have advised the Board that these new account holders have disrupted the orderly distribution of their conversion stock and requested that the conversion regulations be revised accordingly. The Board solicited but received no comments on this issue and thus makes no revision to the stock purchase rights of voting members at this time.

(ii) *Treatment of Non-Qualified Plans.* In addition to employee stock benefit plans that receive beneficial tax treatment, associations may desire to devise other benefit plans. Plans that do not qualify for favorable tax treatment ("non-tax-qualified plans") may vary from tax-qualified plans in several ways. For instance, these plans may benefit a limited group of the highest compensated employees. Further, non-tax-qualified plans do not provide the same financial benefits to the association as tax-qualified plans, generally failing to obtain a tax deduction for contributions to the plan. The Board notes, however, that the adoption of non-tax-qualified plans that purchase the association's stock nevertheless may foster certain goals related to the conversion process, such as, for example, enabling the association to retain or attract key employees. Accordingly, the Board is amending the regulations to eliminate the uncertainly of the applicability of the conversion regulations to purchases by these plans.

Because non-tax-qualified plans need not be broad-based among the employees of the association, the Board is not providing special purchase treatment for the amount of conversion stock each non-tax-qualified plan may purchase. A non-tax-qualified plan will be treated no differently than any other person. Further, because a plan could be structured to benefit primarily top management officials, the stock purchased by such plans will be attributable to the officers and directors of the association to the extent that any such management officials are beneficiaries of the plan, but solely for purposes of determining the amount that officers and directors as a group may purchase in the conversion pursuant to § 563b.3(c)(8).

On the other hand, the Board recognizes the potential complexity of individual vesting provisions, which leads to difficulty in fairly attributing precise amounts of stock to specified management officials, as of the time of conversion. Accordingly, the Board is providing that shares attributable to individual beneficiaries of such plans would not be aggregated with shares purchased in the conversion directly by, or otherwise attributable to, such individuals for purposes of §§ 563b.3 (c)(6), (c)(7) and (d)(5). This is the same treatment as discussed above with respect to tax-qualified plans, and it should be noted again that where shares attributable to one person are held by more than one plan, these shares can be separately aggregated to determine if the conversion stock purchase limits are exceeded.

The Board also is not providing non-tax-qualified plans with special subscription rights to purchase conversion stock, but notes that, as in the case of qualified plans, management of the association could obtain a priority subscription right for the plan by qualifying the plan as an eligible accountholder. In the case of a non-tax-qualified plan, however, subscriptions by the plan could be reduced on a pro-rata basis in the same manner as any other subscription, in the event of an oversubscription.

(iii) *Financing Considerations.* A fundamental premise of the Board's conversion process is the raising of new capital for insured institutions. The Board is amending its Conversion Regulations to clarify its position and the role which an association may take in financing the acquisition of conversion stock by an employee stock benefit plan. First, a contribution of any amount of conversion stock to an employee benefit plan for less than full consideration is inconsistent with the fundamental premises of the conversion process. Second, the conversion regulations expressly prohibit the converting association from extending credit to any person, which includes an association's own employee stock benefit plan, for the purpose of purchasing conversion stock, under § 563b.3(i)(22). This requirement also prohibits an association from guaranteeing an extension of credit to an employee stock benefit plan. (Individual stockholders or officials of the association could guarantee such a loan, however.) In addition, although not the subject of these amendments, the Board's conflicts rules would preclude the extension of credit by an insured institution to an employee stock benefit plan where the plan constituted an affiliated person under the Board's regulations. 12 CFR 563.43.

One commentator urged the Board to permit associations with net worth in excess of 6% of total liabilities to either guarantee loans or to pledge government securities for a loan to an employee stock benefit plan because such commitments maybe necessary to obtain loans. The evidence available to the Board does not support the contention that loans cannot be obtained without such pledges and the Board also is reluctant to discriminate in favor of certain institutions in this regard. Since the Board views the primary function of the conversion program as raising capital, and since the conversion process to date has not shown that it is necessary for an institution to finance the funding of employee stock benefit plans, the Board has determined to continue the present ban on contractual financing obligations from an association to an employee stock benefit plan or to a third party lender to the plan in the conversion context.

Nevertheless, the Board also is aware that employee stock benefit plans constitute a useful means of compensating association employees and that such a plan itself is not capable of generating income sufficient to service the debt it may incur to acquire conversion stock. Accordingly, the Board in § 563b.3(c)(24) is permitting plans of conversion in which the association indicates its intent to make certain scheduled contributions to employee stock benefit plans, provided that such contributions are made in the discretion of the association's management.

Of course, plans also must provide for a realistic schedule of payments in light of the historical performance of the association and projected earnings after the conversion. Moreover, management of an association considering the inclusion of employee stock benefit plans in the association's conversion should carefully consider the impact on the capital that may be raised in the conversion of sales of substantial amounts of conversion stock to tax-qualified or non-tax-qualified employee stock benefit plans as well as the financial burdens such a plan may place on the association.

e. Post-Conversion Purchase Restrictions Applicable to Directors and Officers

Section 563b.3(c)(9) restricts on the manner in which officers and directors of a converted institution, and their "associates," may acquire additional stock of the institution. Where a director or officer of the institution serves as a trustee of an employee stock benefit plan (or in a similar fiduciary capacity), or where directors or officers individually or collectively have a substantial beneficial interest in the plan, the plan would be an "associate" of such persons and thereby subject to the stock purchase constraints applicable to the director or officer. Moreover, attribution of shares to individual officers and directors, pursuant to vesting provisions of a plan, arguably could also be deemed an acquisition of stock within the scope of the rule.

However, consistent with the approach already discussed above of not aggregating employee benefit plans to individual directors or officers for purposes of purchases in the conversion, the Board is further amending the definition of "associate" to provide that, for the purposes of § 563b.3(c)(9), the term "associate" does not include an employee stock benefit plan in which a person has a substantial beneficial interest or serves as a trustee or in a similar fiduciary capacity. In addition, § 563b.3(c)(9) is amended to exclude from its coverage shares that may be attributable to individual officers and directors, acquired by an employee stock benefit plan.

Finally, the Board notes that questions have arisen in a related area, regarding the treatment of stock option plans under § 563b.3(c)(9). It is the Board's view that this section was not intended to apply to purchases by officers and directors from a converted institution pursuant to a stock option plan.

f. Issuer Repurchase Restrictions

Section 563b.3(g) of the Conversion Regulations generally prohibits an insured institution, for a period of three years from its conversion, from repurchasing any of its capital stock from any person, except in the case of a repurchase on a pro-rata basis from all stockholders. While the rule, by its terms, applies only to the recently converted institution itself, the Board is aware that the rule may have been unclear as to whether purchases by an employee stock benefit plan of the stock of its recently converted sponsor institution may be attributed to the institution and thereby be considered a repurchase subject to the rule. The Board believes that routine purchases by either tax-qualified or non-tax-qualified employee stock benefit plans of amounts of capital stock reasonable and appropriate to fund the plan should not lead to a presumption that impermissible repurchases are being made. Therefore, the Board is amending § 563b.3(g)(1) to provide that stock purchased in such a manner would not be considered a "repurchase" by the institution within the scope of the restriction and, thus, the acquisition would not be subject to the issuer repurchase restrictions of § 563b.3(g). The Board also notes in this regard that purchases of newly issued shares from the institution would not be a "repurchase" and thus would not come within the scope of the rule.

g. Acquisitions of Stock of Recently Converted Institutions

Section 563b.3(i) of the Conversion Regulations generally prohibits any person or persons acting in concert, for a period of three years following the date of completion of the conversion of an insured institution, from offering to acquire or acquiring beneficial ownership of greater than 10 percent of any class of equity securities of that institution without the prior written approval of the Board. The term "person" is broadly defined in the rule to include all forms of entities, and thus includes trusts and employee stock benefit plans.

The Board is concerned that the requirements of § 563b.3(i)(3) may make unnecessarily more difficult routine purchases by an employee stock benefit plan of capital stock of a converted institution to fund the plan, since the plan may need to receive the prior written approval of the Board to offer to acquire or acquire greater than 10 percent of the stock or to rebut the presumption of concerted action before it makes such an offer or acquisition. As discussed above, the Board believes that employee stock benefit plans provide an incentive to an institution's management and employees to perform their duties effectively and, thus, potentially benefit the FSLIC. Therefore, the Board is adding to § 563b.3(i) a new subsection (5)(v) to exempt any one or more tax-qualified employee stock benefit plans (as defined in § 563b.2(a)(37)), provided the plans have beneficial ownership in the aggregate of a total of not more than 25 percent of any class of equity securities of the recently converted institution. Commentators have supported this amendment and indicated that it will help them in attracting and motivating managerial talent.

A key issue for this purpose is the time when a plan will be deemed to beneficially own the institution's stock. Section 563b.3(i) does not define "beneficial ownership", but rather generally incorporates the definition of "beneficial ownership" in Rule 13d–3 under the Securities Exchange Act of 1934 ("Exchange Act"), 17 CFR 240.13d–3. Thus, beneficial ownership includes voting power, which involves the power to vote shares, *or* the power to dispose or to direct the disposition of shares, *or* the right to dividends and/or proceeds in liquidation, *or* the right to acquire beneficial ownership within sixty days, such as by exercise of an option, warrant or conversion right, and reaches schemes designed to avoid the definition of beneficial ownership.

Thus, vesting, as well as pass-through voting provisions, affect the total number of shares attributable to the employee stock benefit plan only when other factors also are present. In this regard, shares vested with plan participants which carry pass-through voting rights and over which the employee stock benefit plan does not otherwise retain *any* of the above-mentioned indicia of beneficial ownership will not be included for purposes of the exemption to the rule's 10 percent threshold. However, if the employee stock benefit plan does retain some form of control or legal ownership, as described above, such as dispositive power, all those shares will be considered beneficially owned by the employee stock benefit plan. (It should also be noted that such shares could *also* be deemed to be beneficially owned by the employees that also possess indicia of beneficial ownership, *e.g.*, voting rights.)

The Board also notes that the term "person" encompasses those parties or entities who may be considered for purposes of the rule to be a "group acting in concert." The term "acting in concert," which is defined in § 563b.3(i)(8)(v), is comprehensive and is intended to encompass, among other things, conscious parallel action towards a common goal—in this case, offering to acquire or acquiring the stock of an insured institution. As a mixed question of law and fact, action in concert may be established directly through available factual information or by means of a presumption that is based on the legal or familial relationships between the parties, or both. In certain circumstances, acting in concert may be presumed from business relationships where a fiduciary relationship and dual ownership of an insured institution's stock exist. For example, where a person or other entity acts as a trustee over a trust, and both the trustee and the trust have certain interests in or relationships with an insured institution, the inference is raised that they are acting in concert with respect to the shares which each owns in the insured institution. In particular, the fiduciary duties that a trustee owes to the trust lead to the presumption that they act in concert, since it is unlikely that the trustee could fulfill those duties while voting independently of the trust. The

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Board had codified the rebuttable presumption of action in concert between a trust and trustee in the context of the acquisition of control of an insured institution under the Holding Company Act and Change in Savings and Loan Control Act ("Control Act"), 12 U.S.C. 1730(q), in its Acquisitions of Control Regulations. In some circumstances, however, it may be possible to rebut the presumption of concerted action by demonstrating on a clear and convincing basis that the decisions by the trustee with respect to stock held in its own account, or similarly, stock held as trustee for another trust or other fiduciary accounts, are made independently of decisions as trustee for a specific trust.

Under the previous rules, the shares of an institution held by the trustee of an employee stock benefit plan would have been presumed by the Board to be aggregated with the shares of the institution held by the plan itself in determining whether the 10 percent threshold of § 563b.3(i) has been exceeded by either the institution or the ESOP trustee. In other words, stock held by an employee stock benefit plan trustee for its own account or as a trustee or in some other fiduciary capacity with respect to trust or fiduciary accounts other than the employee stock benefit plan presumptively would have been aggregated with the stock held by the plan in assessing whether the rule's threshold has been met or exceeded, subject to rebuttal.

The amendment to § 563b.3(i) adopted by the Board exempts a tax-qualified employee stock benefit plan from the rule's approval requirements up to a 25 percent level. Thus, the amendment relaxes the limitation but does not moot the issue of whether the employee stock benefit plan and trustee's stock should be aggregated for purposes of determining whether the rule's threshold has been exceeded.

To further address the issues presented in this area, the Board is revising the term "acting in concert" by deleting § 563b.3(i)(8)(v), defining the term in § 563b.2(a)(1) to incorporate the definition of § 574.2(c), and modifying § 574.2(c)(3) to provide that, *solely* for the purpose of determining whether stock held by the trustee and stock held by the plan will be aggregated, a *tax-qualified* employee stock benefit plan will *not* be deemed to act in concert with its trustee or a person who serves in a similar fiduciary capacity. It should be emphasized, however, that this does *not* mean that two different plans having the same trustee or other fiduciaries in common, or otherwise connected, could not be found to be acting in concert and their holdings aggregated for purposes of § 563b.3(i)(3) or the Acquisitions of Control Regulations. Finally, the Board notes that for purposes of § 574.2(c), and accordingly as would apply also in the conversion context under the rules adopted today, members of the board of directors of an institution are not deemed to act in concert solely as a result of their director status.

2. Application of the Holding Company Act and the Acquisitions of Control Regulations

a. To Purchases by Employee Stock Benefit Plans. Acquisitions of control of stock from insured institutions generally are governed by either the Control Act or the Holding Company Act. The Holding Company Act prohibits any "company" directly or indirectly or acting in concert with one or more persons from acquiring "control" of an insured institution (or holding company) without the prior written approval of the Board. The term "company" here is broadly defined to include any corporation, partnership, trust, joint stock company, or similar organization. Thus, an employee stock benefit plan, as a type of trust, is subject to the Holding Company Act if it acquires an amount of stock (or takes other actions) that would constitute control under the Holding Company Act or the Board's Acquisitions of Control Regulations thereunder.

Under the Board's Acquisitions of Control Regulations, a plan's purchases of stock would be subject to the requirement of obtaining prior approval under the Holding Company Act in various situations. For example, control is conclusively determined to exist upon the acquisition of ownership, control, or the power to vote more than 25 percent of a class of voting stock of an insured institution (or holding company), or where a company controls in any manner the election of directors of an insured institution. Control also is determined to exist, subject to rebuttal, where a company acquires more than 10 percent of a class of voting stock of an institution, when such stock ownership is combined with specified "control factors."

In determining the amount of shares subject to the numerical "control" criteria, the Board notes certain issues regarding aggregation of stock that may arise. For example, as discussed in part II.C.1.g. above, shares of the institution held by trustees of the plan presumptively would be aggregated with those of the plan, subject to rebuttal, to determine whether the control threshold has been met. Accordingly, in order for regulations governing similar concepts to be consistent, the Board is amending the rebuttable presumption of concerted action set forth in § 574.4(d)(6) of the Acquisitions of Control Regulations to provide that solely for the purposes of determining whether to combine the holdings of a plan and its trustee (or fiduciary), a tax-qualified employee stock benefit plan will *not* be deemed to act in concert with its trustee or a person who serves in a similar fiduciary capacity. As already noted in the context of the comparable treatment under the Conversion Regulations, this does *not* mean that two plans having the same trustee or other fiduciaries in common would not be presumed to act in concert, since persons (in this case, the two plans) are presumed to act in concert where they both act in concert with the same third person, in this case, the common trustee under § 574.4(d)(7). Were this to occur, the Board would consider rebuttals of the presumption of action in concert on a case by-case basis.

A related issue is whether, in employee stock benefit plans with pass-through voting provisions, shares allocated to employees with pass-through voting rights or other "sterilization" provisions, *i.e.*, plans which provide that unallocated shares are voted on pass-through basis in proportion to allocated share voting, should be included. Under the Holding Company Act, as in the Conversion Regulations, the definition of control is broad and includes all means of beneficial or equitable ownership. Accordingly, the Board believes that all shares held by an employee stock benefit plan, regardless of any pass-through voting provisions (except for shares actually distributed to employees under the distribution terms of the plan), should be counted as being held by the plan for purposes for determining whether the Holding Company Act is applicable.

Consistent with its amendment to the Conversion Regulations, the Board also is revising § 574.3(c) of the Acquisitions of Control Regulations by adding a new paragraph (c)(1)(vi) to exempt from the Board's review process under the Holding Company Act acquisitions of up to 25 percent of a class of an institution's stock by a tax-qualified employee benefit plan. This amendment is consistent with the Board's revision to § 563b.3(i) to exempt from its prior approval requirements offers to acquire and acquisitions of not more than 25 percent of a class of a newly converted institution's equity securities by a tax-qualified employee stock benefit plan. The amendment will not affect either the requirement for approval of a holding company application where an employee stock benefit plan (or plans deemed to be acting in concert) intends to acquire more than 25 percent of a class of an institution's voting stock, or the treatment of non-tax-qualified plans.

The Board is making a corresponding revision to § 552.4(b)(8), regarding permissible charter amendments, to add with respect to beneficial ownership limitations an exclusion for tax-qualified employee benefit plans.

b. Delegation of Authority. The Board also is taking this opportunity to amend its delegation of authority for approval of acquisitions of insured institutions to reflect a recent regulatory development, and to coordinate filings that may be made in conjunction with a conversion. Previously, the Principal Supervisory Agent ("PSA") has been authorized to approve or deny any holding company application to acquire control of an insured institution, a notice of change of control or a merger application unless, *inter alia,* certain filings under the Exchange Act were required to be made within the Board. 12 CFR 546.2(i)(1)(i); 563.22(f)(1)(i), 574.8(a)(1)(i). In adopting this standard, the Board stated that "review of such acquisitions can be done more efficiently in the same office where the Exchange Act filings of such institutions are reviewed." 50 FR 48711 (Nov. 26, 1985).

After adopting these delegation standards, the Board adopted securities offering disclosure regulations applicable to all insured institutions. *See* 12 CFR 563g. The procedures of new Part 563g require review and clearance of offering circulars in connection with specified types of public offerings of securities by the Board's Office of General Counsel in a fashion similar to materials filed under the Exchange Act. Accordingly, in order to clarify any uncertainty that exists in this area, the Board is amending its delegation of authority standards in §§ 546.2(i)(1)(vi), 563.22(f)(i)(vi) and 574.8(a)(i)(v) to remove authority from the PSA to approve merger or holding company applications or to clear notices of change in control, if in connection with such transactions an offering circular is required to be reviewed and cleared pursuant to Part 563g of the Board's regulations. Similarly, the Board is also clarifying the scope of the existing delegations to delete delegated authority on the part of the PSA where merger or holding company applications or change in control notices are filed in connection with mutual to stock conversions.

E. Merger Conversions With Insolvent Insured Institutions

The Board is amending § 563b.10(c) of the Conversion Regulations in order to encourage voluntary supervisory merger conversions with any mutual institution that is qualified to undertake a supervisory conversion. The Board believes that these changes should assist the FSLIC in resolving a number of its significant supervisory cases. Specifically, the amendment grants to the resulting stock institution in a supervisory merger conversion up to three-years' post-conversion protection with regard to offers to acquire or acquisitions of more than 10 percent of any class of the institution's stock, depending upon the converting institution's asset size. The applicable time periods originally proposed were one year of coverage in the case of an insolvent mutual institution with less than $100 million in total assets; two years for an institution with assets in the $100 million to $500 million range; and three years for an institution with more than $500 million in total assets.

One commentator objected to granting takeover protection to existing stock institutions that acquired troubled institutions. The commentator argued that while the granting of takeover protection to the acquirer of a FSLIC case would be beneficial to FSLIC and to society as a whole because of the disappearance of a troubled institution, it could be detrimental to the stockholders of the acquiring institution because they would generally be prevented from tendering their shares in a hostile takeover situation during the antitakeover period. The commentator also argued that either takeover or the threat of takeover had a beneficial effect in that it was an important factor in assuring that management act in the best interest of stockholders.

The Board has carefully considered the comments received in this regard, but has concluded that the potential benefits available as a result of the amendment outweigh the theoretical arguments against it. Moreover, the Board notes that the effect of various types of antitakeover protections on stock prices will vary widely with the entity in question. For example, many recently converted state-chartered institutions with more takeover defenses than federal associations trade at higher multiples than similar federal associations. However, the Board recognizes the concern expressed by the commentator and wishes to note that in conjunction with the antitakeover protection that could be obtained in a supervisory merger conversion, the Board will especially scrutinize whether the proposed acquisition is part of a "scorched-earth" policy in which a takeover target embarks on a program of decreasing the value of a firm to the potential acquirer. Where a supervisory merger conversion, taken as a whole, is not in the best interests the converting institution, its depositors, and the FSLIC, for example, it may be denied. 12 CFR 563b.27(b)(3).

In addition, order to prevent a firm from buying takeover protection by the acquisition of a very small institution, where the takeover protection period would not have a sufficient nexus with the period needed to assimilate the acquisition of the insolvent institution, the Board has determined to revise the period of takeover protection according to the following schedule:

Asset size of institution acquired	Antitakeover period
Up to $100 million	0.
$100 up to $250 million	6 months.
$250 up to $500 million	12 months.
$500 up to $750 million	18 months.
$750 million up to $1 billion	24 months.
$1 up to $2 billion	30 months.
$2 billion or above	36 months.

This new schedule removes the potential for acquiring a disproportionate amount of takeover protection through the acquisition of a single very small institution. The categories are designed to reflect the time needed to assimilate insolvent institutions of differing sizes and to provide appropriate periods of adjustment for acquisitions of different magnitudes. Total assets would be calculated as of the end of the most recently concluded quarter of the converting institution prior to filing of the voluntary supervisory merger conversion application.

The Board also wishes to note that the availability of this treatment need not be limited to existing operating stock institutions, and that a company could acquire an institution in a supervisory merger conversion by chartering an interim stock institution subsidiary with which the converting institution would merge. As a result, the antitakeover provisions of § 563b.3(i) will apply to the stock of the parent acquiring company as well as that of the resulting institution, since the rule is applicable to indirect as well as direct acquisitions of stock of converted institution and an acquisition of the parent company's stock would constitute an indirect acquisition of the stock of its subsidiary.

The acquiring stock institution may not cumulate the postconversion protection derived from the acquisition of a financially ailing or insolvent institution, however. In other words, the § 563b.3(i)(3) post-conversion acquisition features will last for up to three years from the most recent acquisition of an institution in a supervisory merger conversion.

F. Purchase Limitations for Officers, Director, and Their Associates in Merger Conversions

The Board also is amending § 563b.3(c)(8) of the Conversion Regulations to provide an exception to the aggregate conversion stock purchase limitations for officers, directors, and their associates in merger conversions undertaken pursuant to § 563b.10(c). Specifically, the amendment excludes the pre-merger percentage of stock ownership of the officers and directors of an existing stock institution that undertakes a merger conversion with a mutual institution in calculating the aggregate amount which may be purchased by officers and directors in connection with the merger conversion.

Previously, under § 563b.3(c)(8), the aggregate amount of stock that officers, directors, and their associates could purchase in a conversion was limited to a sliding scale of between 25 and 35 percent based upon the total asset size of the converting institution. In a standard merger conversion, the accountholders and voting members of the converting institution receive preemptive rights to subscribe for stock of the existing stock institution. Thus, the purchase limitations which applied to officers and directors of the existing stock institution and their associates who purchase its stock, could have had the effect of preventing those persons—if their aggregate stock ownership at the time of conversion equalled or exceeded the specified percentage purchase limitations—from purchasing any additional stock in the merger conversion, even where such purchases were designed merely to preserve their previous percentage ownership.

It is the Board's belief that some existing insured stock institutions may not have pursued merger conversions for this reason. Commentators have noted that management views the opportunity to purchase conversion stock as an incentive in undertaking a conversion. Therefore, the Board believes that by permitting additional purchases, the amendment to § 563b.3(c)(8) will encourage use of the merger-conversion procedure as a capital raising tool for insured institutions.

G. Definition of "Acting In Concert"

Sections 563b.3(c)(6), 563b.3(c)(7), and 563b.3(d)(5) establish percentage limitations on the amount of stock a person together with any associate or group of persons acting in concert may purchase in the conversion and various stages of the conversion. Since the recent adoption of its Acquisitions of Control Regulations, the Board and its staff have received inquiries regarding the relationship of the rebuttable presumptions of concerted action set forth in § 574.4(d) to the conversion stock purchase limitations.

The Board is revising § 563b.2 of the Conversion Regulations by adding a new paragraph (a)(1), which incorporates the definition of "acting in concert" established in § 574.2(c) of the Acquisitions of Control Regulations and applies it to the entire Part 563b, and deleting the definition of "acting in concert" in § 563b.3(i)(8)(v) which would become superfluous. The Board believes that the converting insured institution and its counsel should take appropriate steps to ensure that conversion stock purchase limitations and the requirements of the Acquisitions of Control Regulations are not exceeded by groups of persons acting in concert in connection with conversion stock purchases.

H. Use of Media Advertisements, Sales Literature and Other Forms of Publicity In Connection With the Offer and Sale of Conversion Stock

The Board also wishes to clarify certain questions which have arisen with respect to the use of media advertisements, sales literature, and other forms of publicity by converting institutions to promote a conversion stock offering to prospective investors. In this respect, the Board seeks to provide guidance to converting institutions for charting compliance with the Board's Conversion Regulations and also to alleviate any confusion which may have existed previously.

The Board notes that concerns regarding compliance with the Board's Conversion Regulations have arisen in connection with the use of media advertisements, sales literature and other forms of publicity during the mutual-to-stock conversion process in two respects: first, publicity which may constitute premature proxy soliciting material in connection with the vote of the mutual members of the thrift on the conversion to stock form; and second, information which may prematurely "offer" the conversion stock by means of prohibited communications. For example, media advertisements, sales literature or other forms of publicity used by a converting institution *prior* to the Board's approval of its proxy soliciting materials may constitute proxy soliciting materials required to be filed with the Board and cleared prior to its use, pursuant to § 563b.5(b) of the Board's Conversion Regulations.[1] In addition, § 563b.5(e) specifically requires that any additional proxy soliciting material furnished to association accountholders *subsequent* to furnishing the proxy statement regarding the proposed conversion (including soliciting material in the form of media presentations such as press releases, and radio or television scripts) must be filed with the Board for review at least five business days prior to the date on which the FHLBB is requested to authorize the use of such material.[2] As with proxy material required to be filed with and cleared by the Board prior to use pursuant to § 563b.5(b), failure to file such additional solicitation materials with the Board prior to use would constitute a violation of the Board's Conversion Regulations.

Second, media advertisements, sales literature and other forms of publicity, depending upon their content, also may constitute conversion stock offering materials which are required to be filed with and cleared by the Board prior to use. Any material which "offers" conversion stock must be accompanied or preceded by a conversion offering circular declared effective by the Board. In this regard, the broad definition of "offer" in the Board's Conversion Regulations[3] generally has been interpreted to cover a wide variety of forms of media or written communication disseminated by a converting institution at any time during the mutual-to-stock conversion process. However, the Board's staff has taken the position that a notice, containing basic information concerning a proposed offering which meets the requirements of Rule 134 under the Securities Act of 1933 ("Securities Act")[4] will not be

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[1] 12 CFR 563b.5(b). Section 563b.2(a)(30) of the Board's Conversion Regulations broadly defines the terms "solicitation" and "solicit" to refer to "(i) any request for a proxy whether or not accompanied by or included in a form of proxy; (ii) any request to execute, not execute, or revoke a proxy; or (iii) the furnishing of a form of proxy *or other communication to association members under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy.*" (emphasis added). 12 CFR 563b.2(a)(30).

[2] *See* 12 CFR 563b.5(e).

[3] Section 563b.2(a)(22) of the Board's Conversion Regulations, in pertinent part, defines the terms "offer" "offer to sell" or "offer for sale" to include "every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value." 12 CFR 563b.2(a)(22).

[4] *See* 17 CFR 230.134.

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considered offering material for this purpose and thus, may be used prior to clearance of an offering circular.

In order to provide comprehensive guidance in this area, the Board is revising its regulation governing the offer and sale of securities, § 563b.7, and adding a new § 563b.7(a)(2), which prohibits any offer or sale of securities in a mutual-to-stock conversion under Part 563b, unless: (1) the offer or sale is accompanied or preceded by an offering circular filed with and declared effective by the FHLBB, *or* (2) an exemption from the offering circular requirement is available. The rule provides exemptions for three types of communications, which will not be deemed to be an "offer" for this purpose. These exemptions, which closely track the requirements under the Board's securities offering regulation at Section 563g,[5] and also are similar to the disclosure rules under the federal securities laws, are available for: (1) any notice of the proposed offering, used prior to the filing of an offering circular, which meets the requirements of Rule 135 under the Securities Act; (2) oral offers after the filing of an offering circular; and (3) any notice, circular, advertisement, letter or other communication, including media communications such as radio or television advertisements, which meets the requirements of Rule 134 under the Securities Act,[6] which is used after the filing of an offering circular.

The Board cautions that if a thrift publishes any information or statements in advance of a proposed offering that have the effect of arousing public interest in the issuer or its securities, this activity may be regarded as an impermissible "offer." The same concerns apply to publication, between the filing date and the effective date of an offering, of information that is part of a selling effort.

This does not mean that an institution must stop providing information to the public when it is in the process of converting. While a converting institution should not initiate publicity, it is still appropriate to respond to legitimate inquiries for factual information about the institution's financial condition and operations. Other practices that continue to be appropriate are: (1) customary and routine advertisements of products and services in the ordinary course of business; (2) distribution of customary quarterly, annual or other periodic reports to members; (3) press announcements on factual business and financial developments; and (4) responses to unsolicited inquiries from members, financial analysts, the press and others for factual information.

To be particularly avoided are the issuance of forecasts, projections or predictions concerning revenues, income or earnings per share, or the publication of opinions on values. In the event an institution publicly releases material information concerning new corporate developments while a conversion offering circular is pending, the preliminary offering circular should be amended at or before the time the information is released. If this is not done and such information is publicly released, whether inadvertently or otherwise, the pending offering circular should be promptly amended to reflect such information.

In addition, notwithstanding the general prohibition on offers and sales prior to the effective date of an offering circular, a preliminary offering circular will be permitted to be used for an offer, but not for a sale, of a security prior to the effective date of the offering circular if the preliminary version has been filed with the Board and includes the information required to be contained in the final offering circular, except for the omission of pricing information and matters dependent thereon, and if the offering circular that ultimately is declared effective by the Board is furnished to a purchaser prior to, or simultaneously with, the sale of the security. This provision also tracks the Board's securities offerings regulation.[7] In order to provide interpretive guidance in this area so that proxy soliciting materials will not be subjected to the offering circular requirements in inappropriate cases, the Board generally will consider information regarding the proposed conversion stock offering which does not exceed the disclosure requirements of either Rule 134 under the Securities Act or § 563b.4(a)(3)(ii) of the Board's Conversion Regulations [8] not to be subject to the offering circular requirements. The comments received supported these clarifying amendments.

Finally, the Board notes that interpretive questions also have arisen regarding the specific scope of permissible media communications, especially regarding radio or television advertisements, including whether such media advertisements regarding a proposed conversion stock offering may differ significantly from the standards set forth in Rule 134. In this regard, the Board notes that television and radio advertisements may serve as a legitimate means of announcing a proposed conversion stock offering, and as such, are not prohibited under the Board's conversion regulations. The Board cautions, however, that such media advertisements should, as noted above, comply with the information requirements of Rule 134 so as not be considered impermissible "offers" under the Board's Conversion regulations.

The Board notes that thrifts have increasingly considered the use of television advertisements to announce a conversion stock offering. These ads present special interpretive questions under the Board's regulations since a *visual* as well as *audio* presentation is made. While the Board is not proposing at this time any specific rules in this area, converting institutions generally should insure that such advertisements do not contain a visual presentation which would present or otherwise suggest or depict matters which would fall outside the specific scope of Rule 134 or otherwise be inconsistent with the policies underlying that Rule.

In conclusion, media advertisements in the form of radio and television ads may raise novel issues of compliance under the Board's regulations, and the Board will continue to closely scrutinize and monitor this area. In order to resolve potential compliance issues, converting institutions and their outside counsel are strongly encouraged to seek the guidance of the Board's staff by filing such materials for review prior to use.

I. Liquidation Account

The Board is aware that questions have arisen regarding the assumability or transferability of the liquidation account required to be established in non-supervisory conversions, and whether various types of transactions constitute complete liquidations for the purposes of payout of the liquidation account. Without addressing all the situations where such a distribution may or may not be required, the Board is modifying § 563b.3(f)(3), to clarify its

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[5] See 12 CFR 563g.1, 563g.3.

[6] 17 CFR 230.134.

[7] *See* 12 CFR 563g.2(c)(1)–(3).

[8] *See* 12 CFR 563b.4(a)(3)(ii). Section 563b.4(a)(3)(ii) of the Board's Conversion Regulations generally permits an association to issue a press release immediately subsequent to adoption of a plan of conversion, announcing such action. However, the nature and extent of information which may be presented in such a press release is extremely limited. In this regard, the rule sets forth an exclusive "laundry list" of disclosure items; the press release must contain only (but need not contain all of) the information items set forth in the list, which predominantly is limited to factual information regarding the conversion proposal, rights of accountholders and required regulatory approvals. The rule also provides that the press release need not be filed with the FHLBB prior to its use, but may be submitted to the FHLBB's Office of General Counsel for review. *Id.*

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view that the term "complete liquidation" is not meant to include a merger, consolidation, bulk sale of assets or similar transaction with a FSLIC-insured institution. The amendment provides that in the event of a merger, consolidation, bulk sale of assets, or similar transaction, with another FSLIC-insured institution, the liquidation account shall be assumed by the surviving insured institution. One commentator agreed with this revision regarding FSLIC-insured institution, while several disagreed.

The Board intends to reserve the ability to address on a case-by-case basis other situations that may be found to constitute a complete liquidation and/or upon application and having determined that appropriate safeguards are available, to permit transfer and assumption of a liquidation account. The Board notes that a variety of transactions might be deemed to constitute a complete liquidation for this purpose and is aware that the staff has expressed the view that a merger, consolidation, or equivalent transaction with a non-FSLIC-insured institution could be deemed to be a complete liquidation for this purpose.

Some commentators have raised the issue that a merger, consolidation, bulk, sale of assets or similar transactions with an FDIC-insured institution should be treated in the same way as with an FSLIC-insured institution. The amendments do not preclude this interpretation but rather give the Board the ability to assess the particular facts of each case. The Board finds it appropriate at this time not to extend the regulation further.

J. Underwriter Consulting Fee

The Board is aware that questions recently have arisen regarding the compensation paid to underwriters for various services they may render in connection with a conversion. The Board notes that a converting institution often must enter understandings with underwriters to sell conversion stock in a public offering before the institution knows how many shares will be sold in the subscription offering, or whether all shares will be sold by subscription and that a public offering therefore will not occur. In the event that all shares are subscribed and no public offering occurs, the underwriter would earn nothing in commissions and only be reimbursed for out-of-pocket expenses, which has been interpreted to include reasonable compensation for time spent by employees and officers of the underwriting firm prior to the stock offering. However, the institution may be obligated to pay certain underwriter consulting fees.

The regulations have not addressed the issue of an acceptable level of expenses under these circumstances. Accordingly, the Board is amending § 563b.7(e) to permit the payment of a consulting fee, found by the Board or its delegate to be reasonable under the circumstances, to an underwriter in the event that all shares are sold prior to the public offering and no public offering occurs. A commentator commended the Board for this provision but suggested that Board review of the reasonableness of fees may interfere with private fee negotiations. The commentator proposed allowing the Board or its delegate only to veto unfair or grossly excessive fees. The Board believes that this amendment will not be unduly burdensome and does not intend to second-guess every fee negotiated. However at this time, the need exists to safeguard against fees which, while unreasonably large, might not be grossly excessive. This provision also may enable thrifts to obtain more favorable fees.

III. Revisions to Subpart C

A. Introduction

In revising Subpart C, the Board has sought to streamline the processing of voluntary supervisory conversions and thereby to substantially increase the number of voluntary supervisory conversions that may be accomplished. In its review of both the completed and pending voluntary supervisory conversions, the Board and its staff repeatedly have been confronted with questions not previously clearly answered in Subpart C, such as the permissibility of employment contracts incident to a voluntary supervisory conversion, the amount of expenses an insured institution may incur in connection with a voluntary supervisory conversion, the components of a voluntary supervisory conversion application, the nature of the consideration given by the Board to the character and financial condition of the prospective conversion stock purchasers and other features of the transaction, and the eligibility of FDIC-insured savings banks for voluntary supervisory conversion under section 112 of the Garn-St Germain Act. 12 U.S.C. 1464(o) (1982). The Board is amending Subpart C to clarify its interpretations and policies regarding these and other matters, in order to facilitate compliance with voluntary supervisory conversion procedures, expedite applications processing, and encourage the use of the voluntary supervisory conversion procedure as a method of raising capital levels in the industry.

In addition, the Board is amending Subpart C to remove the requirement that the offer and sale of capital stock in a voluntary supervisory conversion must constitute a non-public offering. The Board believes that the potential risk to the institution of a failure to complete the conversion through the sale of conversion stock to the public is outweighed by the need to provide mutual insured institutions with the maximum appropriate flexibility to structure a plan of voluntary supervisory conversion in the most effective manner. Of course, any public offering will be fully subject to the securities offering disclosure requirements established by the Conversion Regulations.

The Board also is revising the tests it uses to determine whether an institution qualifies for voluntary supervision conversion by substantially simplifying the tests. The previous standards in section 563b.23 are replaced with a two-part test: first, whether an institution is insolvent on a GAAP basis, and second, whether the institution will be "viable," as redefined in the rule, after conversion. All other aspects of the previous tests, and it is hoped, some of the processing delays incident thereto have been eliminated.

The Board believes that reference to GAAP is a more appropriate standard to measure the existence of any equity value of an institution for its mutual account holders. Unlike regulatory capital, which is a measure of the financial buffer to the FSLIC, GAAP provides the best picture of whether there would be any equity value of the institution that could be attributed to the mutual account holders. In this respect, the Board believes that use of GAAP is fully consistent with the Board's longstanding concerns to ensure the equitability of the conversion process, and would not result in the taking of any property interest of an institution's mutual account holders. Thus, the Board believes that when determining the participation afforded mutual account holders in a conversion, a GAAP financial measure would be appropriate, while regulatory capital standards continue to be appropriate for determining the need for supervisory intervention and related exposure of FSLIC resources.

The Board believes that requiring insured institutions to be evaluated in accordance with GAAP also will best serve the public interest. Analyzing the financial strength of insured institutions on this basis also provides the Board with a more consistent basis for comparing the financial statements filed by all insured institutions. Because of the predominant role of GAAP in the public disclosure and reporting of other financial institutions as well as other entities in the business community, financial information prepared in accordance with GAAP should provide the Board a more consistent, comprehensive basis to monitor the performance and soundness of the industry. This should also enhance industry stability by providing the Board with an additional yardstick to assess and address supervisory concerns. A commentator supported the use of generally accepted accounting principles, because they are a consistent and recognizable measurement in the industry.

In addition, the Board is aware that by determining insolvency on a GAAP basis, significantly more mutual insured institutions will be eligible to undergo a voluntary supervisory conversion, which can be an attractive conversion option to both management and potential acquirers. Generally, management and prospective investors may be more interested in undertaking a mutual-to-stock conversion if they can be assured of where control of the institution will reside after the conversion. The voluntary supervisory conversion procedure provides such assurance since the transaction is voluntary, and a purchaser or purchasers (who may include the institution's management) may acquire all of the conversion stock.

The Board also has reconsidered the application of the criteria used to determine whether a converted institution will be a viable entity following the voluntary supervisory conversion, and is substantially simplifying the existing viability standard as well as providing a second alternative viability standard. The second alternative viability standard will permit an institution to be found to be viable with a lesser initial capital infusion but would obligate the acquirer to increase the institution's capital levels in the future or risk the imposition of potentially severe supervisory measures. Reliance on the alternative viability standard also will be deemed to present issues of policy requiring approval by the Board itself, rather than by use of delegated authority.

The Board is additionally streamlining the conversion procedure by centralizing the processing of voluntary supervisory conversion applications in OGC, as is now the case with both standard and modified conversions. In this connection, the Board is delegating authority to approve voluntary supervisory conversion applications to OGC, except in cases where the application presents significant issues of law or policy. In the latter case, the application will be considered by the Board itself. The Board wishes to emphasize that this revised processing procedure is not intended to, and will not diminish the ability of ORPOS or the appropriate FHLB to scrutinize aspects of the transaction that could give rise to supervisory concerns and clearance by ORPOS and/or the appropriate FHLB is specifically required for various aspects of the conversion process. In addition, the authority to approve holding company applications and change in control notices that accompany supervisory conversion applications will continue to be delegated to ORPOS, with the concurrence of OGC and matters of supervisory concern also may be addressed in connection with such filings. With these changes, the Board hopes to expedite the conversion approval process by better defining the review and approval roles of its various Offices and the FHLBs, and thereby enable functions necessary for approval of conversions to be accomplished concurrently. Finally, the Board is adopting certain other technical amendments to Subpart C. Subpart C is being revised extensively and, therefore, the revised subpart is set forth in its entirety.

B. Scope of Subpart C

The Board has generally regarded the Conversion Regulations as applicable to all institutions that satisfy the definition of an "insured institution" under its rules, which, unless the context otherwise requires, includes federal savings banks insured by the Federal Deposit Insurance Corporation ("FDIC") and chartered by the Board under section 112 of the Garn-St Germain Act. 12 CFR 563b.2(a)(1) and 561.1 (1985), 12 U.S.C. 1464(o) (1982). Consistent with a similar recent amendment to the modified conversion rules under Subpart D, *see* 12 CFR 563b.34(a), 563b.38(b) (1985), the Board is revising section 563b.20 of Subpart C to clarify its applicability to mutual-to stock conversions under section 5(o)(2)(F) of the HOLA, (to the extent the section is in effect), as well as to sections 5(i) (1) and (2) and 5(p) of the HOLA (to the extent the latter is in effect), and section 402(j) of the NHA, and to revise current § 563b.23, which will be redesignated as § 563b.25, to specify the eligibility of FDIC-insured mutual savings banks for conversion thereunder.

The Board notes that while Subpart C has not expressly encompassed such conversions, several voluntary supervisory conversions of FDIC-insured federally and state-chartered mutual savings banks to federal stock form have been undertaken pursuant to joint action by the FDIC and the Board under section 5(o)(2)(F) of the HOLA. Specifically, such conversions have occurred under section 5(o)(2)(F) when the FDIC has certified that severe financial conditions exist that threaten the stability of an FDIC-insured savings bank and that conversion to federal-stock form is likely to improve the financial condition of the savings bank, and the Board has concurred in the determination of the FDIC and authorized the conversion pursuant to the Board's Conversion Regulations. The Board is setting forth the eligibility requirements for a section 5(o)(2)(F) voluntary supervisory conversion in new § 563b.25(a).

In order to ensure that a voluntary supervisory conversion undertaken pursuant to Subpart C will be subject to the same equitable standards and safeguards as a standard conversion undertaken pursuant to Subpart A, the Board is adding to § 563b.20 a requirement that, unless clearly inapplicable, all of the provisions of Subpart A shall apply to a voluntary supervisory conversion undertaken pursuant to Subpart C. The Board notes that as a result of the addition of this provision, it is unnecessary to retain current § 563b.28(c), which restates the provisions of § 563b.8(d) of Subpart A regarding the status of a converting insured institution's charter, and § 563b.31, which subjects a converted insured institution to the dividend and repurchase restrictions set forth in § 563b.3(g) (2)(ii) and (3) of Subpart A. The Board, therefore, is deleting §§ 563b.28(c) and 563b.31.

C. Definition of Voluntary Supervisory Conversions

In order to eliminate uncertainty as to the types and structures of transactions that fall within the scope of Subpart C, the Board is amending § 563b.21 to clarify that in addition to the sale of the converting insured institution's conversion stock directly to a person or persons, a voluntary supervisory conversion may be accomplished by mergering the converting institution into a stock institution that has been organized and newly chartered for the purpose of facilitating the conversion. Subpart C will continue to govern only voluntary supervisory conversions, and the Board will continue to exercise its power to authorize and order non-voluntary supervisory stock conversions on a case-by-case basis under its other supervisory authorities. In addition, the Board is adding new § 563b.22 to set forth the regulatory purpose of this Subpart.

D. Qualification for Voluntary Supervisory Conversion

The Board is substantially revising and clarifying § 563b.23, which sets forth the four qualification criteria for voluntary supervisory conversion discussed in part I above. First, in recognition of the fact that the Board has the authority to approve voluntary supervisory conversions of both FSLIC-insured and FDIC-insured institutions, but that it may not be feasible—and in the case of section 5(o)(2)(F) conversions, not required—for the Board to apply the same voluntary supervisory conversion qualification criteria to FSLIC-insured and FDIC-insured institutions, the Board is clarifying in new paragraph 563b.24 that the qualification criteria in § 563b.23 apply only to FSLIC-insured institutions and specifying qualification criteria applicable to FDIC-insured institutions in a separate new paragraph 563b.25.

New paragraph 563b.25(a) establishes the qualification standards applicable to section 5(o)(2)(f) conversion undertaken by an FDIC-insured institution, *see* Part II.B. above, and new paragraph 563b.25(b) establishes the qualification criteria applicable to a voluntary supervisory conversion undertaken by an FDIC-insured mutual institution to federal stock form pursuant to section 5(i) of the HOLA. Accordingly, pursuant to new § 563b.25(b) the Board may, in its discretion, authorize an FDIC-insured institution to undergo a voluntary supervisory conversion to federal stock form if the following conditions have been met: (1) the institution is insolvent (as defined) on a GAAP basis; and (2) a sufficient amount of permanent capital stock is issued in connection with the voluntary supervisory conversion to allow the institution to meet its FDIC capital requirement immediately upon completion of the conversion. The Board intends that the § 563b.25(b) voluntary supervisory conversion procedure will be available to FDIC-insured institutions as an alternative to section 5(o)(2)(F) conversion.

Second, the Board is revising and substantially simplifying new § 563b.24, which sets forth the test used by the Board to determine whether a FSLIC-insured institution qualifies to undertake a supervisory conversion. As discussed above, the Board believes it is preferable to simplify this test, and to use GAAP to determine whether an institution is insolvent and, thus, qualifies for voluntary supervisory conversion. Specifically, in order to demonstrate that it meets this qualification test, the institution must submit a audited balance sheet prepared in accordance with GAAP which reflects a debit balance in retained earnings. The Board believes that the use of GAAP represents a better measure of whether there is any value that could be attributed to account holders in the institution, and thus would be fully consistent with the Board's historical concerns regarding the interests of mutual account holders.

Thus, the test for determining whether an institution qualifies to undertake a voluntary supervisory conversion will simply be, first, whether the institution would have no net equity realizable upon liquidation on a GAAP basis, and second, whether the institution after conversion would satisfy the new viability test set forth in revised § 563b.26. The Board also is amending the voluntary supervisory conversion qualification criteria to clarify that if the converting institution is state chartered and is converting to state stock form, the conversion must be authorized under state law. Finally, the Board wishes to emphasize that it will closely scrutinize any transactions undertaken by an institution which have the effect of creating or recognizing losses which thereby enabling an institution to qualify for a supervisory conversion. Where such transactions are undertaken proximately in time to the conversion application, cannot be justified by an independent business purpose, and/or were authorized by persons who will be acquiring stock in the conversion, the Board may elect to disregard the effect of the transaction in determining whether an institution qualifies for a supervisory conversion.

In sum, as a result of the current proposal, § 563b.22 is redesignated as § 563b.23 and revised to incorporate appropriate new section references; § 563b.24 is revised to incorporate the foregoing simplified qualification test for FSLIC insured institutions; § 563b.23 is replaced with new § 563b.25 containing provisions applicable to FDIC-insured institutions; and existing §§ 563b.25, 563b.32 and 563b.33, which deal with the determination of realizable equity value of an institution, treatment of appraised equity capital and capital certificates, are deleted.

E. Viability of Converted FSLIC-Insured Institution

Section 563b.26 has set forth the required characteristics of a viable entity. Previously, these characteristics have been that the capital of the insured institution after conversion would (1) meet regulatory requirements, and (2) be reasonably sufficient to absorb projected operating losses for a period of not less than three years after completion of the conversion.

The Board has reconsidered the previous definition of viable entity and is of the view that a more flexible approach to the required initial capital infusion would have the desirable effect of encouraging management and prospective acquirers to undertake voluntary supervisory conversions. Accordingly, the Board in revised § 563.26 is creating two alternative viability tests. When the conversion meets the standards of the first test, including the infusion of a substantial new capital base for the converted institution, an expedited processing procedure will be available. Accordingly, the Board is revising the definition of viable entity by providing a simplified alternative standard as follows: an FSLIC-insured institution may be deemed a viable entity if the Board determines that the prospective acquirer will infuse sufficient new capital to cause the institution to achieve a ratio of capital to total liabilities, of the greater of either 3% of liabilities, computed in accordance with GAAP, or the institution's regulatory capital requirement as of the time of conversion. The Board in the August release proposed new capital infused to raise the net worth to 4.5%. Some commentators felt that this amount was excessive. Upon reconsideration, and in view of the implementation of the Board's new regulatory capital requirements which increase required regulatory capital levels, the Board is revising this to an amount equal to at least to the greater of 3% of liabilities computed on a GAAP basis or the minimum regulatory capital requirement. Applicants will be required to submit *pro forma* financial statements which demonstrate that as a result of the conversion, the institution will meet this test.

The second part of the previous test, regarding viability over a three-year horizon, is eliminated. Supervisory conversions that meet the *first* alternative viability test will be eligible for approval under delegated authority by OGC, provided that the transaction does not present issues of policy requiring consideration by the Board, and provided also that ORPOS and the appropriate FHLB have no objection to specified aspects of the transaction.

The amendments also create a second alternative viability test. Under this alternative, an FSLIC-insured institution will be deemed a viable entity if the prospective acquirer will infuse an amount of capital sufficient to increase the converting insured institution's capital to at least one percent of liabilities calculated on a GAAP basis, immediately following conversion. As in the case of the first alternative, applicants will be required to submit *pro forma* financial statements which demonstrate that as a result of the conversion, the institution will meet this test. In addition, in such cases, the acquirer must agree in writing with the FSLIC to infuse additional capital into the converted institution, as necessary, to enable the institution to increase its capital on a scheduled basis such that the institution's capital will comply with the Board's regulatory capital regulations, within not more than five years of the date of conversion. The one commentator specifically addressing the alternative felt that it was appropriate.

The Board does not intend to foreclose the use of non-cash assets or securities which do not constitute permanent equity capital, such as subordinated debt or mandatorily redeemable previability standard. The use of securities not constituting permanent equity capital in a voluntary supervisory conversion must be justified by prospective acquirer, however, and the Board intends to evaluate the acceptability of their use on a case-by-case basis.

The written agreement entered into between the FSLIC and prospective acquirer under the second alternative viability standard could provide for a range of sanctions for failure to achieve the required increased levels of capital, or to adhere to the business plan required to be submitted as part of the supervisory conversion application. The Board, in approving an application under this alternative viability tests, will have the ability to determine which potential sanctions are appropriate to apply in a given case. In addition, the Board and the Supervisory Agent will exercise their discretion as to whether to pursue any sanction for failure to meet the terms of the agreement. Thus, for example, the Board could seek the automatic effectiveness of a consent agreement with the FSLIC, the vesting of proxies to vote the acquirer's shares in the institution with the Principal Supervisory Agent of the appropriate FHLB, the ability of the PSA to terminate certain or all executive officers' employment with the institution, and/or the imposition of appropriate capital maintenance obligations. Transactions relying on this second alternative viability test will be deemed to present policy issues appropriate for consideration by the Board itself and will not be eligible for approval under delegated authority. One commentator suggested that the acquirer be provided the opportunity to be heard prior to the imposition of a sanction. The Board envisions that an acquirer will have an opportunity to respond to alleged failure to meet scheduled contributions prior to the imposition of sanctions, as in the case in other enforcement matters.

Under either of the foregoing alternatives, the viability test will contain a requirement that the transaction overall must be in the best interests of, and not present the potential for injury to, the converting institution, its depositors, or the FSLIC. The Board includes this additional criterion as a result of its experience in several cases where the managerial resources, integrity, or financial resources of the prospective acquirer in the conversion transaction presented significant concerns to the Board relating to the safety and soundness of the insured institution after conversion, the welfare of depositors and risk to the FSLIC. The qualification criteria have not previously included an express standard which empowered the Board to disapprove a voluntary supervisory conversion on the basis of the managerial resources, integrity, or financial condition of the prospective conversion stock purchaser or other unfavorable features of the transaction. With respect to the managerial resources of the prospective acquirer, however, the Board or ORPOS, with the concurrence of OGC, will continue to have the option to consider a change in control notice or holding company application filed as part of the conversion application under the respective standards 12 CFR 574.7(c), 574.7(d) (1986).

The Board also is eliminating the alternative previously contained in § 563b.26 for the proposed conversion stock purchaser to guarantee to maintain the insured institution's capital at regulatorily required levels for a period of not less than three years from the date of completion of the conversion, in lieu of providing an opinion of qualified, independent counsel or an independent certified public accountant regarding the tax consequences to the insured institution arising from the conversion, or an Internal Revenue Service ruling that the transaction qualifies as a tax-free reorganization. The Board believes that the viability of the institution is adequately addressed by the revised viability tests of the supervisory conversion qualification criteria, and that it is important for a converting insured institution, as well as the Corporation, to receive professional advice regarding the tax consequences arising from a voluntary supervisory conversion. Moreover, the Board will continue to have the option to impose, on a case-by-case basis, individual capital maintenance requirements as a condition of approval of voluntary supervisory conversions, on those applications that are considered by the Board and not handled under delegated authority.

F. Voluntary Supervisory Conversion Application

The Board notes that a variety of the documents and information necessary for its staff to review a voluntary supervisory conversion and related transactions have not previously been specifically required to be filed as part of the application under former § 563b.27. The Board, therefore, is amending § 563b.27, to require that the following information and documents, if applicable to the transaction, be filed by an insured institution as part of its voluntary supervisory conversion application: (1) The plan of conversion; (2) a copy of any agreements between the converting institution and the proposed conversion stock purchasers; (3) an opinion of qualified independent counsel or an independent certified public accountant regarding the tax consequences to the insured institution arising from the conversion, or an Internal Revenue Service Ruling that the transaction qualifies as a tax-free reorganization; (4) a business plan; (5) a holding company application or change in control notice; (6) the proposed charter and bylaws of the converted institution; (7) the proposed stock certificate form; (8) a description of all existing and proposed employment contracts; (9) all filings required under Parts 563b and 563g; (10) a subordinated debt application, if applicable; (11) applications for permission to organize a stock institution, Federal Home Loan Bank membership, insurance of accounts, and merger, if applicable; (12) an opinion of an independent public accountant regarding the appropriateness of the accounting treatment for the transaction and the conformity of such accounting treatment to generally accepted accounting principles and Board Memorandum No. R–55; (13) information to support the value of any non-cash assets to be contributed to the insured institution in connection with the voluntary supervisory conversion (appraisals submitted in this connection must be acceptable to the Board and, in the case of real estate assets, must meet the standards of Board Memorandum No. R–41c); (14) a description of the estimated expenses of the voluntary supervisory conversion of the insured institution; (15) an audited balance sheet (i) prepared in accordance with GAAP as of a date within 90 days of the date of submission of the conversion application, (ii) prepared by an auditor and in the form of an audit report both of which meet the requirements of Article 2 of Regulation S–X, 17 CFR 210.2; and (iii) which reflects a debit balance in retained earnings; (16) *pro forma* financial statements applying "push down" purchase accounting to the financial statements described in item (15) above, and which reflect stockholder equity equal to at least (i) 3 percent of the institution's total liabilities, (ii) the institution's regulatory capital requirement under § 563.13, or (iii) 1 percent of the institution's total liabilities; (17) an opinion of independent counsel that the voluntary supervisory conversion of a state-chartered insured institution to state stock form is authorized under applicable state law, if applicable; (18) a specific description of any of the features of the insured institution's application that do not conform to the requirements of Subpart C; and (19) a specific description of and detailed justification for any waivers or supervisory forebearances that are requested as part of the voluntary supervisory conversion.

G. Sales of Conversion Stock

As discussed in Part II.A above, the Board is removing the requirement previously contained in § 563b.30 that the offer and sale of voluntary supervisory conversion stock must constitute a non-public offering under Part 563g of the Subchapter. Pursuant to new § 563b.30, each insured institution that converts on a voluntary supervisory basis will be required to offer and sell its conversion stock pursuant to the requirements of 12 CFR Part 563b. In addition, pursuant to § 563b.20(c), the offer and sale of a converting insured institution's voluntary supervisory conversion stock would be subject to the provisions of Subpart A unless clearly inapplicable.

H. Procedural Requirements

Previously under § 563b.28(a), an applicant was required to file an original and two copies of the voluntary supervisory conversion application with the Principal Supervisory Agent of the applicable FHLB ("PSA") and one copy with ORPOS. In order to expedite the application processing procedure, the Board is revising § 563b.28(a), to require an applicant to file an original and one copy of the voluntary supervisory conversion application with the Board's Office of General Counsel, with one copy each to ORPOS and the appropriate PSA.

The Board has sought to streamline the processing of voluntary supervisory conversion applications by modelling the new process upon that already in effect with respect to standard conversions. The Office of General Counsel will have delegated authority to approve voluntary supervisory conversions, except in cases presenting issues of policy, with clearance required from ORPOS and the appropriate FHLB for components of the application which may present supervisory concerns. The aspects of the application requiring ORPOS/FHLB clearance under this delegated authority processing procedure are specified in § 563b.28(c). In addition, as noted previously, ORPOS, with the concurrence of OGC, must review and may possess delegated authority to approve holding company applications and change in control notices required to be submitted in connection with supervisory conversion applications. At this time, the Board believes that such applications and notices should be considered in tandem with the supervisory conversion application to which they relate, and thus should not be approved under delegated authority by the FHLB.

By amending §§ 543.2(h)(3) and 562.7, the Board also is delegating authority to charter interim federal institutions and to approve the insurance of accounts for such institutions, where an institution is created in connection with, and to facilitate, transactions that may be approved by the PSA or by ORPOS, OGC or the Director of the Office of District Banks. These steps should further expedite the processing of conversions, and is modelled upon the delegation standards previously in existence with respect to mergers generally.

I. Expenses

The Board is providing in new § 563b.31, that expenses incurred by an insured institution in connection with a voluntary supervisory conversion shall be reasonable and, with respect to an FSLIC-insured institution, shall not be in an amount such that the proceeds to the institution from the sale of its conversion stock would be insufficient to satisfy the applicable viability qualification criteria.

J. Employment Contracts

The Board is adding a new § 563b.32 to clarify its concerns regarding employment contracts incident to a voluntary supervisory conversion, particularly those to existing management of the applicant with a term in excess of one year. In addition, the Board is requiring that an applicant for a voluntary supervisory conversion justify any employment contract incidental to the conversion, and otherwise demonstrate to the Board's satisfaction that the making of such an employment contract by an insured institution would not be an unsafe or unsound practice or represent a sale of control. For example, employment contracts entered into in connection with conversions relying upon the second alternative viability standard could be subject to the provisions of any agreement entered into as a condition of use of the alternative standard. Finally, new § 563b.32 provides that the Board or its delegate shall determine the permissibility of an employment contract based upon, at a minimum, the applicant's justification for the contract, the term, salary, and severance provisions of the contract, the identity and background of the officer or employee subject to the employment contract, and the amount of conversion stock to be purchased by such officer or employee or his affiliates or associates.

IV. Revisions to Subpart D

A. Introduction

The Board also is adopting several technical amendments and other modifications to Subpart D in order to expedite the processing of modified conversion applications, and thereby to encourage the use of the modified conversion procedure by insured institutions as a capitalization vehicle.

The Board is revising the test used to determine whether an insured institution qualifies for a modified conversion by referring to a GAAP-based standard as it did for voluntary supervisory conversions. Thus, an institution with capital calculated in accordance with GAAP that fails to meet the Board's required minimum capital level could be eligible to undertake a modified conversion if the institution also demonstrates that it is unable to accomplish a standard conversion which would raise a specified level of capital. Qualification under this test must be demonstrated by submission of (i) an audited balance sheet prepared in accordance with generally accepted accounting principles which reflects an amount of retained earnings in an

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amount less than the amount of the institution's required level of regulatory capital, (ii) an independent appraisal describing the amount of capital that could be raised in a conversion stock offering in a standard conversion, and (iii) *pro forma* financial statements which demonstrate that as a result of an infusion of the amount of capital that could be raised in a standard conversion, the institution would not have an amount of stockholders' equity at least equal to the institution's required level of regulatory capital under § 563.13. The Board also is incorporating into the rule an expectation that the Board had previously expressed in the preamble to its original promulgation of the modified conversion rules, to clarify that acquirers of a controlling amount of stock in a modified conversion are required to pay a control premium for the acquisition.

Because of the extent of the changes proposed to Subpart D, the revised subpart is set forth in its entirety.

B. Technical Amendments and Other Modifications

The Board is deleting the requirement formerly in § 563b.38 that a modified conversion applicant must obtain prior written permission from the Corporation to file a modified conversion application. Such a requirement is not imposed on an applicant for supervisory conversion under Subpart C or standard conversion under Subpart A, and this pre-filing approval requirement in the modified conversion context may have unduly delayed the processing of modified conversion applications. In connection with this revision, the Board also is deleting the last sentence of § 563b.35, which refers to the pre-filing approval requirement of § 563b.38. In addition, the Board is clarifying, in new § 563b.39, that an insured institution seeking to undergo a modified conversion shall file an application for approval in accordance with the requirements of § 563b.8 of Subpart A. The Board is also adding a brief description of the modified stock conversion, in new § 563b.35.

Finally, the Board is amending § 563b.34(a) to clarify the applicability of Subpart D to mutual-to-stock conversions under §§ 5(i) (1) and (2) of the HOLA and 402(j) of the NHA, as well as to §§ 5(o)(2)(F) and 5(p) of the HOLA, and revising § 563b.37(b) to clarify that both state-chartered and federally chartered FDIC-insured mutual savings banks may undergo modified conversions to federal stock form pursuant to § 5(o)(2)(F) of the HOLA.

C. Qualification for Modified Conversion

The Board is revising § 563b.38(c), which sets forth the guidelines discussed in part I, above, for determining whether an institution qualifies to undertake a modified conversion. Previously, § 563b.37(c) generally provided that an insured institution qualified for a modified conversion if it did not meet its regulatory capital requirement and allowed an institution to recognize deferred losses and disregard appraised equity capital in determining whether its regulatory capital was sufficiently low to justify a modified conversion.

The Board is revising and substantially simplifying this qualification guideline by providing that an insured institution qualifies for modified conversion if it meets a two-part test. First, the institution must not meet its applicable regulatory capital requirement computed on the basis of GAAP. As discussed in Part III.D, above, the Board is revising Subpart C in a similar manner. Second, the institution must not be able to undertake a standard conversion, which, on the basis of an independent valuation as provided in § 563b.7 acceptable to the Board or its delegate, would raise sufficient capital to enable the institution to meet its regulatory capital requirement computed in accordance with GAAP.

The Board is making this revision because it believes that using GAAP to determine whether an institution is financially qualified to undergo a modified conversion is a realistic measure of the institution's financial position from the perspective of the extent of equity value in the institution which could be obtainable by the mutual account holders. Moreover, like the voluntary supervisory conversion, the modified conversion is attractive to both management and potential acquirers, since it provides assurance of how control in the institution will be vested after the conversion. For this reason, the Board is of the view that the amendment to the qualification guideline will facilitate the modified conversion procedures. The Board wishes to note, however, that as in the case of supervisory conversions, transactions undertaken by an institution which have the effect of creating or recognizing losses which thereby enable an institution to qualify for a modified conversion will be closely scrutinized with reference to the same standards discussed in Part III.D., above.

D. Substantive Guidelines

The Board is adding new § 563b.38(g), which requires acquirers of control in an institution undertaking a modified conversion to pay the price per share set for all acquirers plus an additional control premium, in an amount, form, and on terms acceptable to the Board or its delegate. This premium recognizes the additional value attributable to a control block of stock and also provides additional capital to the institution.

The Board is also amending § 563b.38(e) to revise terminology in certain respects and to delete clause (2) and replace it with more comprehensive language comparable to that proposed for the viability test for supervisory conversions regarding the overall benefit of the transaction to the institution, its depositors and the FSLIC.

E. Buyback of Minority Stock

The Board is aware that despite the ability of insured institutions that undertake modified conversions to limit the preemptive subscription rights of accountholders and other members on a sliding scale based upon the institution's capital as a percentage of liabilities, some prospective acquirers may have been reluctant to use the modified conversion procedure because of their inability in most cases to obtain all of the common stock in the conversion. While the preemptive rights of members have been an essential element in the Conversion Regulations since their introduction, the Board has carved out exceptions to this requirement in supervisory conversions and in modified conversion involving institutions in which there is negligible or no realizable liquidation value.

The Board wishes to maintain a balance between the ownership interests of accountholders and other shareholders, and the need of institutions undertaking modified conversions to provide prospective acquirers with the assurance of obtaining control. The Board is revising current § 563b.37 in new § 563b.38(h) to provide that for three years following the completion of a modified conversion, controlling shareholders may acquire and the converted institution may repurchase other shares only after receiving Board approval and upon making an offer that reflects the fair value of the shares, supported by an independent appraisal. The appraisal would be based on several factors, including historic and projected earnings, financial strength, market price, net asset value, dividends, investment value, and book value.

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F. Modified Conversion Application

The Board notes that a variety of the documents and information necessary for its staff to review a modified conversion and related transactions have not been specifically required to be filed as part of the application under § 563b.39. The Board, therefore, is amending § 563b.39 to require that the following information and documents, if applicable to the transaction, be filed by an insured institution as part of its modified conversion application: (1) The plan of conversion; (2) a copy of any agreements between the converting institution and the proposed conversion stock purchasers; (3) an opinion of qualified independent counsel or an independent certified public accountant regarding the tax consequences to the insured institution arising from the conversion, or an Internal Revenue Service Ruling that the transaction qualifies as a tax-free reorganization; (4) a business plan; (5) a holding company application or change in control notice; (6) the proposed charter and bylaws of the converted institution; (7) and the proposed stock certificate form; (8) a description of all existing and proposed employment contracts; (9) all filings required under Parts 563b and 563g; (10) a subordinated debt application, if applicable; (11) applications for permission to organize a stock institution, Federal Home Loan Bank membership, insurance of accounts, and merger, if applicable; (12) an opinion of an independent public accountant regarding the appropriateness of the accounting treatment for the transaction and the conformity of such accounting treatment to generally accepted accounting principles and Board Memorandum No. R–55; (13) information to support the value of any non-cash assets to be contributed to the insured institution in connection with the modified conversion (appraisals submitted in this connection must be acceptable to the Board and, in the case of real estate assets, must meet the standards of Board Memorandum No. R–41c); (14) a description of the estimated expenses of the modified conversion of the insured institution; (15) an audited balance sheet (i) prepared in accordance with GAAP as of a date within 90 days of the date of submission of the conversion application, (ii) prepared by an auditor and in the form of an audit report both of which meet the requirements of Article 2 of Regulation S–X, 17 CFR 210.2, and (iii) which reflects a balance in retained earnings in an amount less than the institution's regulatory capital requirement calculated under § 563.23; (16) an independent appraisal meeting the requirements of § 563b.7 which describes the amount of capital that the institution could raise in a standard conversion stock offering, and supports the control premium proposed to be paid in the modified conversion; (17) *pro forma* financial statements which demonstrates that as a result of an infusion of the amount of capital that could be raised in a standard conversion, the institution would not have an amount of stockholders' equity at least equal to the institution's required level of regulatory capital and that as a result of the capital infusion proposed in the modified conversion, that the amount of stockholders' equity would at least equal such level of required capital; (18) if applicable, an opinion of independent counsel that the modified conversion of a state-chartered insured institution to state stock form is authorized under applicable state law, if applicable; (19) a specific description of any of the features of the insured institution's application that do not conform to the requirements of Subpart D; and (20) a specific description of and detailed justification for any waivers or supervisory forebearances that are requested as part of the modified conversion. The procedural requirements governing an application for a modified conversion are set forth in new § 563b.41.

Final Rule

The Board notes that while the final rule being adopted today is substantially similar to the proposal, these final amendments differ from the proposal in certain aspects. The proposed amendment to § 563b.3(i)(6), that would have added a standard that the Board could deny an application involving an offer for or announcement of an acquisition of securities to "be beneficial to the converted institution, the depositors of the converted institution, and the FSLIC," has been revised to refer more specifically to the effect of the acquisition on prudent deployment of conversion proceeds. The proposed amendment to § 563b.10(c)(2)(ii), is being modified as to the threshold amounts of assets of an acquired insolvent institution that result in the various time periods for which the acquiring institution will be subject to § 563b.3(i)(3). The viability alternative in § 563b.27(b)(1) which was proposed at 4.5% is being set at the greater of 3% of liabilities computed on a GAAP basis, or the minimum required regulatory capital.

The effective date of this rule is the date of publication in the **Federal Register**. All applications filed after that date shall be processed in accordance with the procedures, substantive standards, and policies adopted today.

Effective Date

Pursuant to 12 CFR 508.14, the Board finds that the 30-delay of the effective date is unnecessary with respect to these amendments, which are effective November 5, 1986. The amendments relieve restrictions upon insured institutions, and the Board wishes to secure immediately the full measure of the benefits of these amendments for the thrift industry. More specifically, these amendments will encourage more insured institutions to undertake conversion from mutual to stock form, resulting in significant infusions of new capital, and in particular will enable more institutions that fail to meet their minimum regulatory capital requirements or that have a negative net worth to convert to stock form. These amendments also provide additional incentives for institutions to participate in merger conversions with insolvent institutions, clarify issues relating to the purchases of stock by management, and streamline the administrative procedure for filing and processing conversion applications.

Final Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following final regulatory flexibility analysis:

1. Need for and objectives of the rule. These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

2. Issues raised by comments and agency assessment and response. These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

3. Significant alternatives minimizing small-entity impact and agency response. The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a). Therefore, small entities to which the final rule applies are the 1,742 insured institutions that had assets totaling $100 million or less as of December 31, 1985.

The final amendments treat insured institutions similarly regardless of size because to do otherwise would be fundamentally inconsistent with the objectives of the rule. The Board's supervisory experience indicates that smaller and larger institutions will benefit from the applications of these amendments.

List of Subjects in 12 CFR Parts 543, 546, 562, 563, 563b, and 574

Administrative practice and procedure, Bank deposit insurance, Holding companies, Reporting and recordkeeping requirements, Savings and loan associations, Securities.

Accordingly, the Board hereby proposed to amend Parts 543 and 546, Subchapter C, Parts 562, 563, 563b and 574 of Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

Subchapter C—Federal Savings and Loan System

PART 543—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL MUTUAL ASSOCIATIONS

1. The authority citation for 12 CFR Part 543 is revised to read as follows, and all authority citations at the ends of the sections are removed.

Authority: Secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); sec. 406, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 801, 91 Stat. 1147, as amended (12 U.S.C. 2901 *et seq.*); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend § 543.2 by revising paragraph (h)(3) to read as follows:

§ 543.2 Application for permission to organize.

* * * * *

(h) * * *

(3) *Delegations of authority.* (i) The Board delegates the authority to approve applications for permission to organize an interim Federal association under paragraph (g) of this section to the Principal Supervisory Agent (as defined in § 541.18 of this subchapter), provided that the Principal Supervisory Agent otherwise is authorized to approve the transaction for which the interim Federal association has been chartered to facilitate.

(ii) The Board delegates the authority to approve applications for permission to organize an interim Federal association under paragraph (g) of this section to the Director of the Office of District Banks or his designee with the concurrence of the General Counsel or his designee, provided that the Director of the Office of District Banks, the General Counsel, or the Director of the the Office of Regulatory Policy, Oversight and Supervision ("ORPOS"), jointly or individually, otherwise are authorized to approve the transaction for which the interim Federal association has been chartered to facilitate.

PART 546—MERGER, DISSOLUTION, REORGANIZATION, AND CONVERSION

3. The authority citation of Part 546 is revised to read as follows, and the authority citations at the ends of the sections are removed.

Authority: Secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); Sec. 406, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., P. 1071.

4. Amend § 546.2 by adding new paragraphs (i)(1), (vi), and (vii) to read as follows:

§ 546.2 Procedure; effective date.

* * * * *

(i) * * *

(1) * * *

(vi) Either constituent association is required under section 563g.2 of this chapter to file an offering circular with the Board.

(vii) The merger is part of a conversion under Part 563b of this Chapter.

PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS

5. The authority citation for Part 552 is revised to read as follows, and the authority citations at the ends of the sections are removed.

Authority: Sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425a); secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); sec. 406, 82 stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

6. Section 552.2–2(d) is revised to read as follows:

§ 552.2-2 Procedures for organization of Interim Federal Stock Association.

* * * * *

(d) The authority of the Board to approve applications for permission to organize an interim Federal association may be exercised as provided in §§ 543.2(h)(3) (i) and (ii) of this chapter.

7. Section 552.4(b)(8) Section 8 is amended by revising the first paragraph of A to read as follows:

§ 552.4 Charter amendments.

* * * * *

(b) * * *

(8) * * *

Section 8. * * *

A. *Beneficial Ownership Limitation.* No person shall directly or indirectly offer to acquire or acquire the beneficial ownership of more than 10 percent of any class of an equity security of the Association. This limitation shall not apply to a transaction in which the Association forms a holding company without change in the respective beneficial ownership interests of its stockholders other than pursuant to the exercise of any dissenter and appraisal rights, the purchase of shares by underwriters in connection with a public offering, or the purchase of shares by a tax-qualified employee stock benefit plan which is exempt from the approval requirements under § 574.3(c)(1)(vi).

* * * * *

Subchapter D—Federal Savings and Loan Insurance Corporation

PART 562—APPLICATION FOR INSURANCE OF ACCOUNTS

8. The authority citation for 12 CFR Part 562 is revised to read as follows, and the authority citations at the ends of §§ 562.3, 562.4, and 562.5 are removed.

Authority: Secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); sec. 406, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 801, 91 Stat. 1147, as amended (12 U.S.C. 2901 *et seq.*); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

9. Amend § 562.7 by redesignating it as § 562.7(a) and by adding a new paragraph (b) to read as follows:

§ 562.7 Action by Corporation.

* * * * *

(b) The Board delegates to the Principal Supervisory Agent or to the Director of the Office of District Banks or his designee, with the concurrence of the General Counsel or his designee, the authority to approve the application for insurance of accounts of an interim Federal association (i) accompanying an application for permission to organize an interim federal association which may be approved under delegated authority pursuant to §§ 543.2(h)(3) (i) and (ii) respectively, or (ii) for an interim state-chartered institution chartered to facilitate a transaction which otherwise may be approved under delegated authority by the Principal Supervisory Agent or by the Director of the Office of District Banks, the General Counsel or the Director of ORPOS, or their respective designees, jointly or individually.

PART 563—OPERATIONS

10. The authority for Part 563 continues to read as follows:

Authority: Sec. 10, 47 Stat. 725, as amended (12 U.S.C. 1421 et seq.); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 4, 80 Stat. 824, sec. 17,

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46 Stat. 736, as amended (12 U.S.C. 1425b and 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 202, 96 Stat. 1489, as amended (12 U.S.C. 1729(f)); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

11. Amend § 563.22 by adding a new paragraph (f)(1)(vi) to read as follows:

§ 563.22 Merger, consolidation, purchase or sale of bulk assets, or assumption of liabilities.

* * * * *

(f) * * *

(1) * * *

(vi) The insured institution to be acquired or the acquiror is required under § 563g.2 of this Chapter to file an offering circular with the Corporation in connection with the merger.

* * * * *

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

12. The authority citation for 12 CFR Part 563b is revised to read as set forth below and all other authority citations in this Part are removed:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 17, 46 Stat. 736, as amended (12 U.S.C. 1437); secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); secs. 3(b), 12–14, 23, 48 Stat. 882, 892, 894–895, 901, as amended (15 U.S.C. 78c, 1–n, w); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

13. Section 563b.2 is amended as follows:

A. Paragraph (a)(36) is redesignated as paragraph (a)(38).

B. Paragraphs (a)(1) through (a)(35) are redesignated as paragraphs (a)(2) through (a)(36).

C. New paragraphs (a)(1) and (a)(37) are added to read as set forth below.

D. New paragraph (a)(5)(ii) is revised to read as set forth below. The revised and added materials read as follows:

§ 563b.2 Definitions.

(a) * * *

(1) *Acting in concert.* The term "acting in concert" shall be defined as provided in § 574.2(c).

* * * * *

(5) *Associate.* * * *

(ii) Any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity, except that for the purposes of §§ 563b.3 (c)(6), (c)(7), (c)(9), and (d)(5) it does not include any tax-qualified employee stock benefit plan or non-tax-qualified employee stock benefit plan in which a person has a substantial beneficial interest or serves as a trustee or in a similar fiduciary capacity, and that, for the purposes of § 563b.3(c)(8) does not include any tax-qualified employee stock benefit plan.

* * * * *

(37) *Tax-qualified employee stock benefit plan.* A "tax-qualified employee stock benefit plan" is any defined benefit plan or defined contribution plan, such as an employee stock ownership plan, stock bonus plan, profit-sharing plan or other plan, which, with its related trust meets the requirements to be "qualified" under section 401 of the Internal Revenue Code. A "non-tax-qualified employee stock benefit plan" is any defined benefit plan or defined contribution plan which is not so qualified.

* * * * *

Subpart A—Standard Conversions

14. Amend § 563b.3 by revising paragraphs (c)(6)(i), (c)(7), (c)(8), (c)(9), by adding new paragraphs (c)(23) and (c)(24); by revising the introductory text of paragraph (d)(3) and revising paragraphs (d)(4), (d)(5), (f)(3), (g)(1), and (i)(3); by adding new paragraph (i)(5)(v); and by revising paragraph (i)(6) to read as follows:

§ 563b.3 General principles for conversion.

* * * * *

(c) * * *

(6) * * *

(i) Subject to the adoption in the plan of conversion of the optional provision of paragraph (d)(5) of this section, a condition limiting purchases in the public offering or the direct community offering by any person together with any associate or group of persons acting in concert to not more than five percent (5%) of the total offering of shares, except that any one or more tax-qualified employee stock benefit plans may purchase in the aggregate not more than ten percent (10%) of the total offering of shares and shall be entitled to purchase such amount regardless of the number of shares to be purchased by other parties, and that shares held by one or more tax-qualified or non-tax-qualified employee stock benefit plans and attributed to a person shall not be aggregated with other shares purchased directly by or otherwise attributable to that person.

* * * * *

(7) Subject to the adoption in the plan of conversion of the optional provision of paragraph (d)(5) of this Section, provide that the total of shares which any person and any associate or group of persons acting in concert may subscribe for or purchase in the conversion shall not exceed five percent (5%) of the total offering of shares, except that any one or more tax-qualified employee stock benefit plans may purchase in the aggregate not more than ten percent (10%) of the total offering of shares, and shall be entitled to purchase this quantity regardless of the number of shares to be purchased by other parties, and that shares held by one or more tax-qualified or non-qualified employee stock benefit plans and attributed to a person shall not be aggregated with shares purchased directly by or otherwise attributable to that person.

(8) Provide that the officers and directors of the converting institution and their associates may purchase in the conversion, up to thirty-five percent (35%) of the total offering of shares of the converting institution provided that the converting institution has less than $50 million in total assets, and up to twenty-five percent (25%) in the total offering of shares if the converting institution has more than $500 million in total assets. If the converting institution has between $50 million and $500 million, in total assets, the maximum percentage shall be equal to thirty-five percent (35%) minus one percent (1%) multiplied by the quotient of the total assets less $50 million divided by $45 million. For example, for a converting institution with $275 million in total assets, the percentage will be thirty percent (30%), calculated as thirty-five percent (35%) minus one percent (1%) multiplied by the quotient of $275 million less $50 million, or $225 million, divided by $45 million, which equals five, or five percent (5%), which when subtracted leaves a difference of thirty percent (30%). In calculating the number of shares which may be purchased, any shares attributable to the officers and directors and their associates but held by one or more tax-qualified employee stock benefit plans shall not be included. In the case of merger conversions undertaken pursuant to § 563b.10(c), any shares owned prior to the merger conversion by officers, directors, and their associates shall not be included in calculating the aggregate amount which may be purchased by such persons.

(9) Provide that an officer or director, or his associates, shall not purchase, without the prior written approval of the Corporation, the capital stock of the converted insured institution except

from a broker or dealer registered with the Securities and Exchange Commission, for a period of three years following the date of the conversion; except that, this paragraph (c)(9) shall not apply to (i) negotiated transactions involving more than one percent (1%) of the outstanding capital stock of the converted insured institution, or (ii) purchases of stock made by and held by any one or more tax-qualified or non-tax-qualified employee stock benefit plan which may be attributable to individual officers or directors.

* * * * *

(23) Provide that a tax-qualified employee stock benefit plan has a priority to purchase conversion stock prior to eligible and supplemental accountholders and voting members who have subscription rights.

(24) May make scheduled discretionary contributions to a tax-qualified employee stock benefit plan provided such contributions do not cause the association to fail to meet its regulatory capital requirement.

(d) * * *

(3) That directors, officers and employees of the converting insured institution shall receive without payment nontransferable subscription rights to purchase shares of capital stock that are available after satisfying the subscriptions of eligible account holders, supplemental eligible account holders, voting members, and tax-qualified employee stock benefit plans provided for under paragraphs (c) (2), (4), (5), and (23) of this section, subject to the following conditions:

* * * * *

(4) Any account holder receiving rights to purchase stock in the subscription offering, shall also receive, without payment, non-transferable subscription rights to purchase up to one percent of the total offering of shares of capital stock, to the extent that such shares are available after satisfying the subscriptions provided for under paragraphs (c) (2), (4), (5), and (23) of this section, subject to such conditions as may be provided in the plan of conversion. In the event of an oversubscription for such additional shares, the shares available shall be allocated among the subscribing eligible account holders, supplemental eligible account holders and voting members on such equitable basis, related to the amounts of their respective subscriptions, as may be provided in the plan of conversion. Where possible such subscriptions shall be allocated in such a manner that total purchases by eligible account holders, supplemental eligible account holders, and voting members shall be rounded to the nearest 100 shares.

(5) That purchases in the public offering or in the direct community offering by any person together with any associate or group of persons acting in concert shall be limited to less than ten percent (10%) of the total offering of shares, provided that orders for conversion stock exceeding five percent (5%) of the total offering of shares shall not exceed in the aggregate ten percent (10%) of the total offering of shares, except that tax-qualified employee stock benefit plans may purchase in the aggregate up to ten percent (10%) of the total offering and not be included in the order limit.

* * * * *

(f) * * *

(3) In the event of a complete liquidation of the converted insured institution (and only in such event), each eligible account holder and supplemental eligible account holder shall be entitled to receive a liquidation distribution from the liquidation account, in the amount of the then current adjusted subaccount balances for savings accounts held, before any liquidation distribution may be made with respect to capital at the time of the conversion in exchange for the surrender of mutual capital certificates issued by the institution prior to conversion. A merger, consolidation, sale of bulk assets, or similar combination or transaction with another FSLIC-insured institution is not considered a complete liquidation for these purposes, and in such a transaction the liquidation account would be assumed by the surviving institution. Preferred stock issued in exchange for mutual capital certificates may receive distributions in liquidation prior to distribution from the liquidation account to the holders of the mutual capital certificates that would have been entitled to priority over the residual rights of depositors had the institution not been converted as of the date of liquidation.

* * * * *

(g) * * *

(1) No converted insured institution shall for a period of three years from the date of the completion of the conversion repurchase any of its capital stock from any person, except that this restriction shall not apply to either (i) a repurchase, on a pro rata basis pursuant to an offer approved by the Corporation and made to all shareholders of such institution, (ii) the repurchase of qualifying shares of a director, or (iii) a purchase in the open market by a tax-qualified or non-tax-qualified employee stock benefit plan in an amount reasonable and appropriate to fund the plan.

* * * * *

(i) * * *

(3) *Prohibition on offers to acquire and acquisitions of stock for three years following conversion.* For a period of three years following the date of the completion of the conversion, no person shall directly or indirectly, offer to acquire or acquire the beneficial ownership of more than ten percent of any class of an equity security of an insured institution converted in accordance with the provisions of this Part 563b, without the prior written approval of the Corporation. Where any person, directly or indirectly, acquires beneficial ownership of more than ten percent of any class of any equity security of an insured institution converted in accordance with Part 563b, without the prior written approval of the Corporation as required by this section, the securities beneficially owned by such person in excess of ten percent shall not be counted as shares entitled to vote and shall not be voted by any person or counted as voting shares in connection with any matter submitted to the stockholders for a vote. For the purposes of this section, a person shall be deemed to have acquired beneficial ownership of more than ten percent (10%) of a class of equity security of an insured institution where the person holds any combination of stock or revocable or irrevocable proxies of the institution under circumstances that give rise to a conclusive control determination or rebuttable control determination under § 574.4 (a) and (b) of this chapter.

* * * * *

(5) * * *

(v) Paragraphs (i)(1), (i)(2) and (i)(3) of this subsection shall not apply to the acquisition of securities by any one or more tax-qualified employee stock benefit plans, provided that, the plan or plans do not have beneficial ownership in the aggregate of more than twenty-five percent (25%) of any class of equity security of the converted institution.

(6) *Criteria for approval.* The Corporation may deny an application involving an offer or, acquisition of any security or proxies to vote securities of a converted association submitted under paragraphs (i) (3) or (4) of this section if it finds that (i) the proposed acquisition would frustrate the purposes of the provisions of this Part 563b; (ii) would be manipulative or deceptive; (iii) would subvert the fairness of the conversion; (iv) would be likely to result in injury to the association; (v) would not be

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consistent with economical home financing; (vi) would otherwise be violative of law or regulation; or (vii) would not contribute to the prudent deployment of the institution's conversion proceeds.

* * * * *

15. Part 563b is amended by removing § 563b.3(i)(8)(v).

16. Amend § 563b.7 by revising paragraphs (a) and (e) to read as follows:

§ 563b.7 Pricing and sale of securities.

(a) *General.* (1) No offer to sell securities of an applicant pursuant to a plan of conversion may be made prior to approval by the Corporation of the application for conversion and until the proxy statement has been authorized for use by the Corporation.

(2) No offering circular may be transmitted to any person in connection with an offer or sale of a security that is the subject of a plan of conversion which has been filed with the Board unless the offering circular meets the requirements of this part or section 563g.

(3) No sale of securities may be made except by means of a final offering circular which has been declared effective by the Corporation.

(4) The provisions of § 563b.7(a) shall not apply to preliminary negotiations or agreements between an applicant and any underwriter or among underwriters who are to be in priority of contract with the applicant.

* * * * *

(e) *Underwriting expenses.* Underwriting commissions shall not exceed an amount or percentage per share accepted as reasonable by the Corporation or its delegate. No underwriting commission shall be allowed or paid with respect to shares of capital stock sold in the subscription offering unless the plan of conversion contains the optional provision permitted by § 563b.3(d)(12) of this Part; however, an underwriter may be reimbursed for accountable expenses in connection with the subscription offering where the public offering is limited such that reasonable underwriting commissions thereon would not be sufficient to cover total accountable expenses and, in the case in which no public offering occurs, an underwriter may be paid a consulting fee reasonable under the circumstances as the Corporation shall accept. The term "underwriting commissions" includes underwriting discounts.

* * * * *

17. Amend § 563b.10 by redesignating paragraph (c) as paragraph (c)(1); and by adding a new paragraph (c)(2) to read as follows:

§ 563b.10 Conversion of an insured institution in connection with an acquisition by an existing holding company; conversion of an insured institution through merger with an insured stock institution.

* * * * *

(c) *Merger with an existing insured stock institution.* (1) * * *

(2) An insured institution that qualifies for a voluntary supervisory conversion under Subpart C, or a modified conversion under Subpart D of this Part, also may convert to stock form by merging with an interim federal or state chartered stock institution in a transaction in which stock of the resulting institution is issued.

(i) Following the date of the completion of a merger conversion of an institution that qualifies for a voluntary supervisory conversion in accordance with Subpart C of this Part, § 563b.3(i)(3) shall be applicable with respect to the equity securities of the resulting institution for the period specified in subsection (ii) below.

(ii) The period specified shall be six months if the converting insolvent institution has between $100 million and $250 million in total assets; twelve months if the converting insolvent institution has between $250 million and $500 million in total assets; eighteen months if the converting insolvent institution has between $500 and $750 million in total assets; twenty-four months, if the converting insolvent institution has between $750 million and $1 billion in total assets; thirty months if the converting insolvent institution has between $1 and $2 billion in total assets; and thirty-six months if the converting insolvent institution has more than $2 billion in total assets. In all of the foregoing cases, total assets shall be calculated at the end of the fiscal quarter of the converting institution concluded immediately prior to the filing of the voluntary supervisory merger conversion application.

Subpart C—Voluntary Supervisory Stock Conversion

18. Amend Part 563b by revising § 563b.20 to read as follows:

§ 563b.20 Scope of subpart.

(a) Except as the Board may otherwise determine, the provisions of this subpart shall govern the voluntary supervisory conversion from the mutual to stock form of FSLIC-insured institutions and FDIC-insured institutions converting to federal stock form as authorized or ordered by the Board pursuant to sections 5(i) (1) and (2) and 5(p) of the Home Owners' Loan Act, 12 U.S.C. 1464(i) (1), (2), (p), and, with respect to FSLIC-insured institutions, section 402(j) of the National Housing Act, 12 U.S.C. 1725(j), and the voluntary supervisory conversion to federal stock form of FDIC-insured savings banks as certified by the FDIC and as concurred in by the Board pursuant to section 5(o)(2)(F) of the Home Owners' Loan Act, 12 U.S.C. 1464(o)(2)(F).

(b) The determination to authorize or order a voluntary supervisory conversion of a FSLIC-insured institution, to authorize a voluntary supervisory conversion of an FDIC-insured savings bank, or to concur in the certification of the FDIC regarding a FDIC-insured savings bank, shall be in the sole discretion of the Board or its delegate.

(c) All of the provisions of Subpart A of this Part shall apply to a supervisory conversion undertaken pursuant to this Subpart unless clearly inapplicable.

19. Amend Part 563b by revising § 563b.21 to read as follows:

§ 563b.21 Voluntary supervisory conversions.

A voluntary supervisory conversion of an FSLIC-insured institution or a FDIC-insured savings bank may be accomplished through the sale of the institution's or savings bank's securities issued in the conversion directly to a person or persons. Such a conversion may also occur through the merger of the institution or savings bank into a stock savings and loan association or stock savings bank newly-chartered for the purpose of facilitating the conversion. At least a majority of the board of directors of the converting institution or savings bank shall adopt a plan of voluntary supervisory conversion that is in accordance with the provisions of this Subpart. The members of the institution shall have no rights of approval or participation in the voluntary supervisory conversion, or to the continuance of any legal or beneficial ownership interest in the converted institution or savings bank.

20. Part 563b is further amended as follows:

§ 563b.24 [Removed]

A. Section 563b.24 is removed.

§§ 563b.22 and 563b.23 [Redesignated as §§ 563b.23 and 563b.24]

B. Section 563b.23 is redesignated as § 563b.24 and revised to read as set forth below.

C. Section 563b.22 is redesignated as § 563b.23 and revised to read as set forth below.

D. A new § 563b.22 is added to read as set forth below:

§ 563b.22 Purpose of subpart.

The purpose of this subpart is to give guidance to insured institutions and potential acquirors of the stock of converting insured institutions regarding the qualification of insured institutions for a supervisory conversion under this subpart, and guidance as to the extent to which the Board will permit, by means of a supervisory conversion, deviations from the substantive and procedural requirements adopted by the Board for standard conversions under Subpart A of this part.

§ 563b.23 Authorization of supervisory conversions.

The Board will consider authorizing or ordering a supervisory stock conversion if the insured institution files an application containing the information and documents specified in §563b.27 of this part, in accordance with the procedures specified in § 563b.28 of this subpart, and meets the qualification standards specified in § 563b.24 of this subpart. If the Board authorizes or orders a supervisory stock conversion, the conditions specified in § 563b.29 of this subpart must be fulfilled and the converted insured institution and the purchaser or purchasers of its conversion stock must comply with the requirements of § 563b.30 of this subpart.

§ 563b.24 Qualification for supervisory conversion of FSLIC-insured institutions.

The Board in its discretion may authorize the supervisory conversion of an insured institution when:

(a) The institution's liabilities exceed its assets, as calculated under generally accepted accounting principles on a going concern basis, and

(b) The institution would be a viable entity as determined under § 563b.26 of this part following the conversion.

21. Part 563b is further amended as follows:

§§ 563b.25, 563b.26, 563b.31, 563b.32 and 563b.33 [Removed]

A. Sections 563b.25, 563b.28, 563b.31, 563b.32, and 563b.33 are removed.

B. Section 563b.30 is revised to read as set forth below.

C. Section 563b.29 is revised to read as set forth below.

D. New §§ 563b.28, 563b.31 and 563b.32 are added to read as set forth below.

E. Section 563b.27 is revised to read as set forth below.

F. Section 563b.26 is revised to read as set forth below.

G. New § 563b.25 is added to read as set forth below.

The revised and added material reads as follows:

§ 563b.25 Qualification for supervisory conversion of FDIC-insured institutions.

(a) The Board may, in its discretion, concur with the determination of the Federal Deposit Insurance Corporation ("FDIC") that an FDIC-insured mutual savings bank qualifies for a voluntary supervisory conversion if the FDIC certifies to the Board in accordance with section 5(o)(2)(F) of the Home Owners' Loan Act of 1933, 12 U.S.C. 1464 (o)(2)(F), that severe financial conditions exist that threaten the stability of the savings bank and that the voluntary supervisory conversion is likely to improve the financial condition of the savings bank; or

(b) The Board may, in its discretion, authorize an FDIC-insured institution to undergo a voluntary supervisory conversion to Federal stock form if the following conditions have been met: (i) the institution's liabilities exceed its assets, as calculated under generally accepted accounting principles, assuming the institution is a going concern; and (ii) (A) a sufficient amount of permanent capital stock is issued in connection with the voluntary supervisory conversion to allow the institution to meet its capital requirement as established by the FDIC immediately upon completion of the conversion; or (B) the FDIC has indicated that, based upon the institution's proposed post-conversion operating plan, the institution would achieve a capital level acceptable to the FDIC within a period satisfactory to the FDIC.

§ 563b.26 Viability of converted insured institution.

(a) An application of an insured institution to convert pursuant to this subpart may be approved by the Board in its discretion if it finds that the FSLIC-insured institution will be a "viable entity" following the conversion.

(b) A converting FSLIC-insured institution is a "viable entity" if either subsection (b)(1) or (b)(2), and subsection (b)(3) are met.

(1) As part of the plan of conversion, the prospective acquirer shall infuse sufficient capital at the conversion to enable the institution to achieve a ratio of net worth to total liabilities, equal to the greater of (i) three percent (3%) of liabilities, computed on the basis of generally accepted accounting principles, or (ii) the institution's regulatory capital requirement established under § 563.13.

(2) As part of the plan of conversion, the prospective acquirer shall (i) infuse sufficient capital at the conversion to enable the institution to achieve a ratio of net worth to total liabilities, computed on the basis of generally accepted accounting principles, of at least one percent (1%) of total liabilities, and (ii) agree in writing with the Corporation that the acquirer will infuse additional capital as necessary to enable the institution to increase its regulatory capital on a scheduled basis in order to comply with the Board's regulatory capital requirements in effect from time to time within five years of the date of conversion, *and* agree that upon failure to achieve scheduled regulatory capital levels on or before the due date or to adhere in all material aspects to the business plan submitted as part of the supervisory conversion application, the acquirer shall be subject to such sanctions as the Board, in connection with its approval of the supervisory conversion application, directs to be included in the written agreement, and

(3) The transaction taken as a whole is in the best interests of, and does not present the potential for injury to, the converting institution, its depositors and the FSLIC.

§ 563b.27 Application for voluntary supervisory stock conversion.

An insured institution may apply for Board approval of a voluntary supervisory conversion pursuant to this subpart by filing the following information and documents in accordance with the procedures specified in § 563b.28 of this subpart:

(a) A plan of conversion adopted by the board of directors of the institution, which shall contain at a minimum, the name and address of the insured institution; the names, addresses, dates and places of birth, and social security numbers of the proposed purchasers of conversion stock and their relationship to the insured institution; the title, per-unit par value, number, and per-unit and aggregate offering price of shares of conversion stock to be authorized and issued; the number and percentage of shares of conversion stock to be purchased by each investor, the aggregate number and percentage of shares of conversion stock to be purchased by directors, officers or their affiliates and associates (as defined in § 563b.2(a) of this part); the form of consideration to be paid for the conversion stock; and certified copies of all resolutions of the board of directors relating to the Plan.

(b) A copy of any agreements between the insured institution and the proposed conversion stock purchasers.

(c) An opinion of qualified, independent counsel or an independent, certified public accountant regarding the tax consequences to the insured institution arising from the conversion, or an Internal Revenue Service ruling that the transaction qualifies as a tax-free reorganization.

(d) The business plan which shall contain a description of the proposed operating policies of the insured institution following the conversion, including a statement as to how the conversion proceeds will be used, and a projection of the insured institution's results of operations for the three-year period following completion of the conversion. The insured institution shall specify the assumptions on which its projections are based.

(e) A savings and loan holding company application or a Change-in-Control Act notice for each proposed conversion stock purchaser as required by § 574.3 of this subchapter, whichever is applicable, and the certifications required by Memorandum SP-51 issued by ORPOS.

(f) The proposed charter and bylaws of the converted insured institution.

(g) The proposed stock certificate form.

(h) A description of all existing and proposed employment contracts, if applicable.

(i) All filings required under the securities offering rules of 12 CFR Parts 563b and 563g.

(j) A subordinated debt application, if applicable.

(k) Applications for permission to organize a stock institution, Federal Home Loan Bank membership, insurance of accounts, and merger, if applicable.

(l) An opinion of an independent certified public accountant regarding the appropriateness of the accounting treatment for the transaction and the conformity of such accounting treatment to generally accepted accounting principles and Memorandum No. R-55 of ORPOS.

(m) Information to support the value of any non-cash assets to be contributed to the insured institution in connection with the voluntary supervisory conversion, if applicable. Appraisals submitted in this connection must be acceptable to the Board and, in the case of real estate assets, meet the standards of Memorandum No. R-41c of ORPOS.

(n) A description of the estimated expenses of the voluntary supervisory conversion to the insured institution.

(o) An audited balance sheet (i) prepared in accordance with generally accepted accounting principles of a date within 90 days of the date of submission of the conversion application; (ii) prepared by an auditor, and in the form of an audit report, both of which meet the requirements of Article 2 of Regulation S-X, 17 CFR 210.2; and (iii) which reflects a debit balance in retained earnings;

(p) *Pro forma* financial statements applying "push down" purchase accounting to the financial statements described in (o) above, and which reflect stockholders' equity equal to at least (i) 3 percent of the institution's total liabilities; (ii) the institution's regulatory capital requirement under § 563.13; or (iii) 1 percent of the institution's total liabilities.

(q) An opinion of independent counsel that the voluntary supervisory conversion of a state-chartered insured institution to state stock form is authorized under applicable state law, if applicable.

(r) A specific description of any of the features of the insured institution's application that do not conform to the requirements of this subpart.

(s) A specific description of and detailed justification for any waivers or supervisory forbearances that are requested as part of the voluntary supervisory conversion.

§ 563b.28 Procedural Requirements.

(a) *Filing of voluntary supervisory conversion application.* An insured institution seeking to convert pursuant to this subpart shall file an original and one copy of its supervisory conversion application containing the information and documents specified in § 563b.27 of this subpart with the Corporate and Securities Division of the Board's Office of General Counsel, with one copy each to ORPOS and to the appropriate Principal Supervisory Agent ("PSA"). The application shall be deemed to be filed on the date received by the Corporate and Securities Division.

(b) *Incomplete application.* An application for supervisory stock conversion that does not contain all of the applicable information and documents specified in § 563b.27 shall constitute an incomplete application, and the PSA shall continue to seek other appropriate supervisory resolutions of the institution's financial condition pending the filing of a complete application.

(c) The Board delegates to the General Counsel or his designee, the authority to approve applications for voluntary supervisory conversions, and to exercise the authority of the Board pursuant to this section, provided that (i) the application does not present a significant issue of law or policy, and (ii) that ORPOS does not raise supervisory objection to the application based upon significant unresolved supervisory issues with respect to the financial or managerial resources of the converting institution, the items specified in §§ 563b.24, 563b.25, and 563b.26, or the items required to be submitted pursuant to subsections (b), (d), (h), (j), (l), (m), (n), (o), (p), (r) and (s) of § 563b.27.

(d) *Termination or amendment of charter.* (1) Upon Board approval of a plan of supervisory stock conversion of a state-chartered insured institution or a Federally-chartered insured institution which is converting to a state-chartered stock insured institution, the mutual charter of such insured institution shall terminate upon the issuance to it of a stock charter under the laws of the state in which its home office is located. If such converting insured institution is a Federally-chartered insured institution, its Federal charter shall be surrendered promptly to the Board for cancellation. An insured institution converting to a state-chartered stock insured institution shall promptly file with the Corporation a copy of the stock charter issued to it. The certificate of insurance of such insured institution shall be surrendered promptly to the Corporation for amendment or cancellation, and the Corporation shall promptly issue an amended or new certificate of insurance to the converted insured institution.

(2) A Federally-chartered mutual insured institution converting to a Federally-chartered stock insured institution shall apply to amend its charter and bylaws to read in the form of charter and bylaws for a Federal stock charter. The effective date of such amendment shall be stated in the Board's resolution approving the conversion.

(3) The corporate existence of a Federally-chartered mutual insured institution converting to a Federally-chartered stock insured institution shall be deemed to be a continuation of the entity of the institution so converted. In the case of a state-chartered mutual insured institution converting to a state-chartered stock insured institution, unless state law otherwise prescribes, the corporate existence of the converting mutual insured institution shall similarly not terminate and the converted insured institution shall be deemed to be a continuation of the

entity of the insured institution so converted.

§ 563b.29 Conditions of approval.

Board approval of a supervisory conversion application will be conditioned upon the following:

(a) Completion of the sale of conversion stock within a maximum of three months after the Board approves the application, or within such additional period as the General Counsel or his designee may for good cause grant;

(b) Compliance with all filing requirements of 12 CFR Parts 563b and 563g;

(c) Submission of an opinion of independent legal counsel that all applicable state securities law requirements have been met in connection with the sale of the institution's conversion stock;

(d) Compliance with all applicable laws, rules, and regulations; and

(e) Satisfaction of any other requirement or conditions the Board or its delegate may impose.

§ 563b.30 Sale of conversion stock.

Each insured institution that converts pursuant to this Subpart shall offer and sell its conversion stock pursuant to the requirements of 12 CFR Part 563g.

§ 563b.31 Expenses.

Expenses incurred by an insured institution in connection with its voluntary supervisory conversion application shall be reasonable and, with respect to a FSLIC-insured institution, shall not be in an amount such that the payment of such expenses would render the proceeds to the institution from the sale of its conversion stock insufficient to satisfy the viability requirement of § 563b.26 of this subpart.

§ 563b.32 Employment contracts.

An applicant for voluntary supervisory conversion must justify any employment contract incidental to the conversion, and otherwise demonstrate that the making of such an employment contract by an insured institution would not be an unsafe or unsound practice or represent a sale of control. The Board shall determine the permissibility of such contract based upon, at a minimum, the applicant's justification for the contract, the term, salary, and severance provisions of the contract, the identity and background of the officer or employee who is subject to the employment contract, and the amount of the conversion stock to be purchased by such officer or employee or his affiliates or associates. Any employment contract incident to a voluntary supervisory conversion with a term in excess of one year granted to existing management of an insured institution generally will be disfavored.

Subpart D—Guidelines for Modified Conversions

22. Part 563b is further amended as follows:

A. Sections 563b.34, 563b.39, and 563b.40 are revised to read as set forth below.

§ 563b.38 [Removed]

B. Section 563b.38 is removed.

§§ 563b.35–563b.37 [Redesignated as §§ 563b.36, 563b.37 and 563b.38]

C. Section 563b.37 is redesignated as § 563b.38 and revised to read as set forth below.

D. Section 563b.36 is redesignated as the new § 563b.37 and revised to read as set forth below.

E. Section 563b.35 is redesignated as the new § 563b.36 and revised to read as set forth below.

F. New §§ 563b.35 and 563b.41 are added to read as set forth below.

§ 563b.34 Scope of subpart.

(a) This subpart establishes guidelines for modified conversion from the mutual to stock form of insured institution as authorized or ordered by the Board pursuant section 5(i) (1) and (2) and 5(p) of the Home Owners' Loan Act, 12 U.S.C. 1464 (i) (1) and (2), (p) and section 402(i) of the National Housing Act, 12 U.S.C. 1725(j) or of an FDIC-insured savings bank as concurred in by the Board pursuant to section 5(o) of the Home Owners' Loan Act, 12 U.S.C. 1464(o).

(b) The provisions of this subpart are not exclusive and may be waived by the Board.

§ 563b.35 Modified stock conversion.

A modified conversion generally is available to an institution that fails to meet its regulatory capital requirement. In a modified conversion, the substantive and procedural rights granted to members in mutual insured institutions converting under Subpart A may be restricted in order to meet the needs of an insured institution whose financial condition has deteriorated such that a standard conversion which would raise sufficient capital to enable the institution to achieve a solid capital base is not feasible. Modified conversions may be effected without the approval of members, must involve sales of conversion stock at an aggregate price in excess of the *pro forma* market value of the institution as determined by an independent appraiser, and involve the limitation of members' preemptive rights.

§ 563b.36 Purpose of subpart.

The purpose of this subpart is to give guidance to insured institutions and potential acquirors of the stock of insured institutions regarding the qualification of insured institutions for a modified conversion under this subpart, and guidance as to the extent to which the Board will permit, by means of a modified conversion, deviance from the substantive and procedural requirements adopted by the Board for standard conversions under Subpart A of this part.

§ 563b.37 Qualification for modified conversion.

(a) The Board may, in its discretion, approve or order a modified conversion if it finds that: (1) the insured institution does not meet its regulatory capital requirement calculated according to generally accepted accounting principles; and (2) that the projected net proceeds of the sale of conversion stock by the insured institution in a standard conversion under Subpart A, as demonstrated by an appraisal determined to be acceptable to the Board, would not be sufficient to enable the institution to meet its regulatory capital requirement computed in accordance with generally accepted accounting principles.

(b) The Board may, in its discretion, concur that an FDIC-insured mutual savings bank qualifies for a modified conversion to federally-chartered stock savings bank form if the Federal Deposit Insurance Corporation certifies to the Board in accordance with section 5(p)(2)(F)–(H) of the Home Owners' Loan Act that severe financial conditions exist that threaten the stability of the savings bank and conversion to the federally-chartered stock savings bank form is likely to improve the financial condition of the savings bank.

§ 563b.38 Authorization of modified conversion.

(a) All of the provisions of Subpart A of this part shall apply to a conversion undertaken pursuant to the subpart unless clearly inapplicable.

(b) The Board may authorize the conversion to the stock form of an insured institution under this subpart upon the filing of an application approved by resolution of the majority of the board of directors of the institution, but neither the Board nor the institution is required to secure the prior approval of the institution's members of the conversion.

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(c) An insured institution that has converted to the stock form pursuant to this subpart is required to establish a liquidation account on behalf of the institution's members as required under § 563b.3(f) of this part.

(d) An insured institution converting under this Subpart D shall sell its stock at an aggregate price exceeding the estimated *pro forma* market value of the institution, including an appropriate control premium, based on an independent valuation determined to be acceptable by the Board, as provided in § 563b.7 of this part.

(e) The Board may, in its discretion, approve an application for conversion pursuant to this subpart if it is demonstrated to the Board's satisfaction, through a submission prepared by an independent appraiser investment banking firm or other qualified person, that (1) the net capital to be received from the sale by the converting insured institution of its capital stock pursuant to this subpart, would cause the insured institution to meet its regulatory capital requirement computed in accordance with generally accepted accounting principles and (2) the transaction would benefit the institution, its depositors, and the FSLIC.

(f) The eligible accountholders, the supplemental eligible accountholders, and the voting members, if any, of the insured institution converting pursuant to this subpart shall be granted subscription rights to purchase the stock proposed to be issued by the insured institution, in accordance with the rules and regulations of Subpart A of this part, except that such subscription rights may be reduced as follows: (1) If the regulatory capital of the institution is between 0 percent of an institution's liabilities and one-third of its regulatory capital requirement under § 563.13, such subscription rights may be reduced to an amount between 0 percent and 20 percent of the total offering, such percentage to be determined on a sliding sale on the basis of the institution's regulatory capital; (2) if the regulatory capital of the institution is more than one-third but not in excess of two-thirds of its regulatory capital requirement under § 563.13, subscription rights may be reduced to an amount between 20 percent and 50 percent of the total offering, such percentage to be determined on a sliding scale of the basis of the institution's regulatory capital; and (3) if the regulatory capital of the institution is more than two-thirds of its regulatory capital requirement but not in excess of the institution's regulatory capital requirement, subscription rights may be reduced to an amount between 50 percent and 100 percent of the total offering, such percentage to be determined on a sliding scale on the basis of the institution's regulatory capital. Regulatory capital for purposes of this paragraph shall be computed in accordance with generally accepted accounting principles.

(g) An acquiror of a controlling interest in an institution undertaking a modified conversion shall pay a control premium in such an amount and in such form determined to be acceptable by the Board.

(h) For three years following the date of completion of a modified conversion, any controlling shareholder or the converted institution may not acquire shares from minority shareholders without first obtaining prior Board approval of such purchases and offering fair value, as determined through an independent appraisal which takes into consideration the value of the institution on a "going concern" basis including, but not limited to, an evaluation of historical earnings, future prospects for earnings, financial conditions, any arms' length trades in the stock, net asset value, dividends record, investment value, and book value.

§ 563b.39 Application for modified conversion.

An insured institution may apply for Board approval of a modified conversion pursuant to this subpart by filing in accordance with the procedures specified in § 563b.8 of this part an application which includes the following information and documents:

(a) A plan of conversion adopted by the board of directors of the institution, which shall contain, at a minimum the name and address of the insured institution; the names, addresses, dates and places of birth, and social security numbers of the known proposed purchasers of conversion stock and their relationship to the insured institution; the method of stock sale; the title, per-unit par value, number, and per-unit and aggregate offering price of shares of conversion stock to be authorized and issued; the number and percentage of shares of conversion stock to be purchased by each investor, the aggregate number and percentage of shares of conversion stock to be purchased by directors, officers or their affiliates and associates (as defined in § 563b.2(a) of this part); the form of consideration to be paid for the conversion stock; and certified copies of all resolutions of the board of directors relating to the plan.

(b) A copy of any agreements between the insured institution and the proposed conversion stock purchasers.

(c) An opinion of qualified, independent counsel or an independent, certified public accountant regarding the tax consequences to the insured institution arising from the conversion, or an Internal Revenue Service ruling that the transaction qualifies as a tax-free reorganization.

(d) A business plan acceptable to the appropriate Federal Home Loan Bank and ORPOS, which shall contain a description of the proposed operating policies of the insured institution following the conversion, including a statement as to how the conversion proceeds will be used, and a projection of the insured institution's results of operations for the three-year period following completion of the conversion. The insured institution shall specify the assumptions on which its projections are based.

(e) A savings and loan holding company application or a Change-in-Control Act notice for each proposed conversion stock purchaser as required by § 574.3 of this subchapter, where applicable, and the certifications required by Memorandum SP-51 issued by ORPOS.

(f) The proposed charter and bylaws of the converted insured institution.

(g) The proposed stock certificate form.

(h) A description of all existing and proposed employment contracts, if applicable.

(i) All filings required under the securities offering rules of 12 CFR Part 563b and 563g.

(j) A subordinated debt application, if applicable.

(k) Applications for permission to organize a stock institution, Federal Home Loan Bank membership, insurance of accounts, and merger, if applicable.

(l) An opinion of an independent certified public accountant regarding the appropriateness of the accounting treatment for the transaction and the conformity of such accounting treatment to generally accepted accounting principles and Memorandum No. R–55 of ORPOS.

(m) Information to support the value of any non-cash assets to be contributed to the insured institution in connection with the modified conversion. Appraisals must be acceptable to the Board and, in the case of real estate assets, submitted in this connection must meet the standards of Memorandum No. R–41c of ORPOS.

(n) A description of the estimated expenses of the modified conversion to the insured institution.

(o) An audited balance sheet prepared in accordance with generally accepted accounting principles as of a date within 90 days of the date of submission of the conversion application, (ii) prepared by an auditor and in the form of an audit report, both of which meet the requirements of Article 2 of Regulation S–X, 17 CFR 210.2, and (iii) which reflects a balance in retained earnings in an amount less than the institution's regulatory capital requirement calculated under § 563.13.

(p) An independent appraisal meeting the requirement of § 563b.7 which (i) describes the amount of capital that the institution could be expected to raise in standard conversion, stock offering, and (ii) supports the control premium proposed to be paid in the modified conversion.

(q) *Pro forma* financial statements which demonstrate that (i) as a result of an infusion of the amount of capital that could be expected to be raised in a standard conversion, the institution would not have an amount of stockholders' equity at least equal to the institution's required level of regulation capital under § 563.13, and (ii) as a result of the capital infusion proposed in the modified conversion, the amount of stockholders' equity would at least equal the level of the institution's required regulatory capital under § 563.13.

(r) An opinion of independent counsel that the modified conversion of a state-chartered insured institution to state stock form is authorized under applicable state law, if applicable.

(s) A specific description of any of the features of the insured institution's application that do not conform to the requirements of this subpart.

(t) A specific description of and detailed justification for any waivers or supervisory forbearances that are requested as part of the modified conversion.

§ 563b.40 Sale of stock.

(a) *General.* No offer to sell securities of an applicant pursuant to a plan of modified conversion may be made prior to approval by the Corporation of the application for conversion. No sale of securities may be made except by means of a final offering circular which has been declared effective by the Corporation.

(b) *Delegation.* The Board delegates to the General Counsel or his designee the authority of the Corporation to declare a final offering circular effective.

§ 563b.41 Procedural requirements.

(a) *Filing of modified conversion application.* An insured institution seeking to convert pursuant to this subpart shall file an original and one copy of its modified conversion application containing the information and documents specified in § 563b.39 of this subpart with the Corporate and Securities Division of the Board's Office of General Counsel, with one copy each to ORPOS and to the appropriate Principal Supervisory Agent ("PSA"). The application shall be deemed to be filed on the date received by the Corporate and Securities Division.

(b) *Incomplete application.* An application for modified stock conversion that does not contain all of the applicable information and documents specified in § 563b.39 shall constitute an incomplete application, and shall not be approved pending the filing of a complete application.

(c) The Board delegates to the General Counsel or his designee the authority to approve applications for modified conversions except in those applications presenting a significant issue of law or policy, and to exercise the authority of the Board pursuant to this section.

(d) *Termination or amendment of charter.* (1) Upon Board approval of a plan of modified stock conversion of a state-chartered insured institution or a Federally-chartered insured institution which is converting to a state-chartered stock insured institution, the mutual charter of such insured institution shall terminate upon issuance to it of a stock charter under the laws of the state in which its home office is located. If such converting insured institution is a Federally-chartered insured institution, its Federal charter shall be surrendered promptly to the Board for cancellation. An insured institution converting to a state-chartered stock insured institution shall promptly file with the Corporation a copy of the stock charter issued to it. The certificate of insurance of such insured institution shall be surrendered promptly to the Corporation for amendment or cancellation, and the Corporation shall promptly issue an amended or new certificate of insurance to the converted insured institution.

(2) A Federally-chartered mutual insured institution converting to a Federally-chartered stock insured institution shall apply to amend its charter and bylaws to read in the form of charter and bylaws for a Federal stock charter. The effective date of such amendment shall be stated in the Board's resolution approving the conversion.

(3) The corporate existence of a Federally-chartered mutual insured institution converting to a Federally-chartered stock insured institution shall be deemed to be a continuation of the entity of the institution so converted. In the case of a state-chartered mutual insured institution converting to a state-chartered stock insured institution, unless state law otherwise prescribes, the corporate existence of the converting mutual insured institution shall similarly not terminate and the converted insured institution shall be deemed to be a continuation of the entity of the insured institution so converted.

PART 574—ACQUISITION OF CONTROL OF INSURED INSTITUTIONS

23. The authority citation for 12 CFR Part 574 is revised to read to follows:

Authority: Sec. 407, 48 Stat. 1260, as amended (12 U.S.C. 1730); and Sec. 408; 82 Stat. 5, as amended (12 U.S.C. 1730a).

24. Amend § 574.2 by revising paragraph (c)(3) to read as follows:

§ 574.2 Definitions.

* * * * *

(c) * * *

(3) A person or company which acts in concert with another person or company ("other party") shall also be deemed to be acting in concert with any person or company who is also acting in concert with that other party, except that any tax-qualified employee stock benefit plan as defined in § 563b.2(a)(37) will not be deemed to be acting in concert with its trustee or a person who serves in a similar capacity solely for the purpose of determining whether stock held by the trustee and stock held by the plan will be aggregated.

* * * * *

25. Amend § 574.3 by adding a paragraph (c)(1)(vi) to read as follows:

§ 574.3 Acquisition of control of insured institutions.

* * * * *

(c) *Exempt transactions.*

(1) * * *

(vi) Acquisitions of up to twenty-five percent (25%) of a class of stock by a tax-qualified employee stock benefit plan as defined in § 563b.2(a)(37).

* * * * *

26. Amend § 574.4 by revising paragraph (d)(6) to read as follows:

§ 574.4 Control.

* * * * *

(d) * * *

(6) A person or company will be presumed to be acting in concert with any trust for which such person or company serves as trustee, except that a tax-qualified employee stock benefit plan as defined in § 563b.2(a)(37) shall not be presumed to be acting in concert

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with its trustee or person acting in a similar fiduciary capacity solely for the purposes of determining whether to combine the holdings of a plan and its trustee or fiduciary.

* * * * *

27. Amend § 574.8 by adding new paragraphs (a)(1) (v) and (vi) to read as follows:

§ 574.8 Delegations of authority.

(a) * * *

(1) * * *

(v) Neither the insured institution to be acquired or the acquiror is required under § 563g.2 of this chapter to file an offering circular with the Board in connection with the acquisition.

(vi) The acquisition is not a part of a conversion under Part 563b of this chapter.

The Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 86-24800 Filed 11-4-86; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-AAL-3]

Revision of Transition Area at Galena, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule

SUMMARY: This action revises the transition area at Galena, AK. The revised transition area will provide additional controlled airspace from 1,200 feet above the surface (AGL) to the base of the overlying controlled airspace between the 40-mile radius of Galena VORTAC and 46-mile radius of Galena VORTAC. This action will allow the use of radar vectors routinely within a 40 nautical mile (NM) radius of Galena VORTAC between 1,200 feet AGL and 14,500 feet above mean sea level (AMSL.) This will permit the minimum vectoring altitude in this area to be lowered from 15,000 feet AMSL to 6,000 feet AMSL.

EFFECTIVE DATE: 0901 UTC, February 12, 1987.

FOR FURTHER INFORMATION CONTACT: Robert C. Durand, Procedures and Airspace Specialist, (AAL-536), Air Traffic Division, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, AK 99513-0087, telephone (907) 271-5903.

SUPPLEMENTARY INFORMATION:

History

On August 26, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the transition area at Galena, AK (51 FR 30373). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will extend the base of controlled airspace at 1,200 feet above the surface, from within a 40-mile radius of the Galena VORTAC, to within a 46-mile radius of the Galena VORTAC, AK. This airspace designation will permit Galena Approach Control to vector departure and arrival aircraft below 15,000 feet AMSL within a 40 NM radius of the Galena VORTAC.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Galena, AK—[Amended]

By removing the words "40-mile" wherever it appears and substituting the words "46-mile".

Issued in Anchorage, Alaska, on October 28, 1986.

Henry A. Elias,

Manager, Air Traffic Division.

[FR Doc. 86-24941 Filed 11-4-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 372, 373, 374, 377, 379 and 390

[Docket No. 60972-6172]

Individual Validated Export Licenses; Longer Validity Periods and Amendments

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Interim rule and request for comments.

SUMMARY: The Export Administration Regulations (15 CFR Parts 368-399) are being amended to authorize a 24-month validity period for new individual validated licenses, extend the validity period of outstanding 12-month individual validated licenses for 12 additional months from the original expiration dates, and establish a 24-month validity period when required for reexports. Other than technical data licenses and reexport authorizations for technical data, amendments to extend individual validated licenses and reexport authorizations with 24-month validity periods will not be considered, except when warranted by extenuating circumstances. The rule adds a provision requiring submission of copies of the license application and export license with an amendment request.

Currently, technical data licenses and reexport authorizations are granted for 24-months and can be extended for additional 24-month periods. This rule provides for an initial validity period or an extension of greater than 24 months for a technical data license or reexport authorization, only when requested and justified. "Technical scope" of a project is defined, and a requirement is established that proposed changes in the

scope of a technical data license be submitted as amendments to the license.

Validity periods and extensions currently in effect for special validated licenses (including Distribution Licenses, Project Licenses, Qualified General Licenses, Service Supply Licenses and Humanitarian Licenses) and short supply licenses issued under 15 CFR Part 377 are not affected by this rule.

The changes in this rule are intended to improve the amendment process, to reduce the paperwork burden on the export community, and to assist U.S. exporters in maintaining their competitiveness in the international business community. Export Administration is currently reviewing the entire process of amending individual validated licenses. To assist Export Administration in this review, suggestions on improving the amendment process are being solicited, including comments on the changes effected by this interim rule, as well as other changes that would reduce paperwork and assist U.S. exporters. For example, under what circumstances should exporters be permitted, without formal amendment of the license, to increase the quantity and value of authorized exports, to substitute new models of equipment where parameters are unaffected, or to substitute notification to the Office of Export Licensing (OEL) for a formal amendment? Export Administration is particularly interested in receiving comments on a proposal now under consideration to remove the authority of the District Offices to take action on amendment requests (15 CFR 372.11(g)(2)). Comments on the changes effected by this interim rule, or suggestions for further changes in the amendment regulations relating to the amendment process, should be supported by an analysis of the paperwork reduction or other economic benefit associated with the proposal.

DATES: This rule is effective November 5, 1986. Comments must be received by December 5, 1986.

ADDRESS: Written comments (six copies) should be sent to: Joan Maguire, Regulations Branch, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: John Black or Patricia Muldonian, Regulations Branch, Export Administration, Department of Commerce, Washington, D.C. 20230 (Telephone (202) 377-2440).

SUPPLEMENTARY INFORMATION:

Regulatory Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule contains collections of information subject to the requirements of the Paperwork Reductions Act of 1980 (44 U.S.C. 3501 et seq.) As this rule will effect a reduction in the number of applications required for export licenses, requests to amend licenses, and reexport authorization (Forms ITA-622P, ITA-685P, and ITA-699P), it decreases the regulatory burden on exporters. The collections of information have been approved by the Office of Management and Budget under control numbers of 0625-0001, 0625-0003, and 0625-0009.

3. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. §§ 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close December 5, 1986. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations.

All public comments on these regulations and the entire amendment process will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations and the entire amendment process will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 4104, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Patricia L. Mann, International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377-3031.

List of Subjects

15 CFR Parts 372, 373, and 374

Exports, Reporting and recordkeeping requirements.

15 CFR Part 377

Administrative practice and procedure, Exports, Forests and forest products, Petroleum, Reporting and recordkeeping requirements.

15 CFR Part 379

Computer technology, Exports, Reporting and recordkeeping requirements, Science and technology.

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15 CFR Part 390

Administrative practice and procedure, Advisory committees, Exports.

Accordingly, Parts 372, 373, 374, 377, 379, and 390 of the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

1. The authority citations for 15 CFR Parts 372 and 374 continue to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

2. The authority citations for 15 CFR Parts 373 and 379 continue to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 et seq., as amended by Pub. L. 97–145 of December 29, 1981, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223, 50 U.S.C. 1701 et seq.; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985), as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986).

3. The authority citation for 15 CFR Part 377 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 et seq., as amended by Pub. L. 97–145 of Dec. 29, 1981, and by Pub. L. 99–64 of July 12, 1985, E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); sec. 103, Pub. L. 94–163, as amended, (42 U.S.C. 6212) as amended by Pub. L. 99–58 of July 2, 1985; sec. 28, Pub. L. 93–153, (30 U.S.C. 185); sec. 28, Pub. L. 95–372, (43 U.S.C. 1354); E.O. 11912 of April 3, 1976 (41 FR 15825, as amended); sec. 101 and 201(11)(e), Pub. L. 94–258, (10 U.S.C. 7420 and 7430(e); and Presidential Findings (50 FR 25189, June 18, 1985).

4. The authority citation for 15 CFR Part 390 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 et seq., as amended by Pub. L. 99–145 of December 29, 1981, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); 50 U.S.C. 1701 et seq.; E.O. 12543 of January 7, 1986 (51 FR 875, January 9, 1986).

PART 372—[AMENDED]

5. Section 372.9 is amended as follows:

a. In paragraph (d)(1), revise the heading to read *"Twenty-four month validity period"*, in the first sentence revise the reference to "one year" to read "24 months", "June 11, 1979" to read "June 11, 1986", and "June 30, 1980" to read "June 30, 1988" and add to the end of the paragraph the sentence "See Part 373 for validity periods for special licenses, Part 377 for validity periods for short supply licenses, and Part 379 for validity periods for technical data licenses."

b. Paragraph (d)(2) is revised to read as follows:

§ 372.9 Issuance of validated licenses.

* * * * *

(d) * * *

(2) *Extended validity period.* A validity period in excess of 24 months generally will not be granted for commodities. However, the Office of Export Licensing will consider granting a validity period exceeding 24 months when extenuating circumstances warrant. For example, an extended validity period will generally be granted where the transaction is related to a multi-year construction project, when production lead time will not permit export during the original validity period of the license, or for other similar circumstances. A continuing requirement to supply spare or replacement parts will not normally justify an extended validity period. Applicants may request an extended validity period by indicating the desired validity period in the additional information block of Form ITA–622P, and attaching justification and documentation to support the request. The approved expiration date will be indicated on the face of the license. For extensions of the validity period after the license has been issued, see § 372.12.

* * * * *

6. Section 372.11 is amended as follows:

a. Paragraph (e)(7) is revised as set forth below;

b. Paragraph (g)(2)(i) is removed;

c. Paragraphs (g)(2) (ii), (iii), and (iv) are redesignated as new paragraphs (g)(2) (i), (ii), and (iii);

d. Paragraph (g)(3) is amended by removing the words "or extension" from paragraphs (g)(3) (i), (ii), and (v), and (vi); and

e. Paragraph (h)(4) is redesignated as paragraph (h)(5) and the fourth sentence, which is enclosed in parentheses, is revised to read as set forth below; and

f. New paragraph (h)(4) is added to read as set forth below.

§ 372.11 Amending export licenses.

* * * * *

(e) * * *

(7) Extension of the validity of a 24-month license, but only as provided in § 372.12. See Part 373 for extension of special licenses and § 379.5(f)(2) for technical data licenses.

* * * * *

(h) * * *

(4) *Copy of Export License.* A copy of the license application (Form ITA–622P) or reexport request (Form ITA–699P), Export License (Form ITA–628), and any previous amendment requests related to the application shall be submitted with an amendment request.

(5) * * * (See § 372.12 for additional information on emergency processing of extension requests.) * * *

* * * * *

7. Section 372.12 is amended by revising the introductory text and paragraph (a) to read as set forth below, by removing paragraphs (b) and (c), and by redesignating paragraphs (d), (e), and (f) as new paragraphs (b), (c), and (d).

§ 372.12 Special provisions for an amendment to extend the validity period of a license.

A request to extend the validity period of an individual validated license for commodities generally will not be granted, but will be considered by the Office of Export Licensing in the circumstances described in § 372.9(d)(2) or when an unforeseen emergency situation prevents shipment within the 24-month validity of the license. The request must be made on Form ITA–685P in the same manner as any other amendment request. Licenses issued under the emergency clearance provisions of § 372.4(b) will not be extended.

(a) *Procedure for requesting an extension.* (See Parts 373, 377, and 379 for extension of licenses issued under those parts.)

(1) The amendment request must be submitted at least 30 days prior to expiration of the license;

(2) In the space entitled "Facts Necessitating Amendment," state the circumstances that provide the basis for the new validity period request. Attach supporting documentation and a detailed justification;

(3) The required length of extension and proposed new expiration date should be indicated on Form ITA–685P in the space entitled "Amend License to Read as Follows."

* * * * *

§ 373.7 [Amended]

6. Section 373.7 is amended by revising the reference in paragraph (m)(2)(i) from "(see paragraph (n)(1)(i) of this part)" to read "(see paragraph (m)(1)(i) of this section)".

7. Section 374.5 is amended as follows:

a. Paragraph (a) is amended by revising the reference in the second sentence to "twelfth month" to read "twenty-fourth month";

b. Paragraph (b) heading and introductory text are revised to read as set forth below; and

c. Paragraph (b)(2) is revised to read as follows:

§ 374.5 Validity period.

* * * * *

(b) *Extension of validity period.* The validity period of any reexport authorization for commodities generally will not be extended. A request for extension will be considered by the Office of Export Licensing in the circumstances described in § 372.9(d)(2) or when an unforeseen emergency situation prevents shipment within the 24-month validity of the license. The request should be submitted on Form ITA–685P. Request for and Notice of Amendment Action, or by letter, in accordance with the following: * * *

(2) *Letter request for extension.* If Form ITA–685P is not readily available, the foreign applicant may submit a request for the extension of the validity period of a previously approved reexport authorization in a letter, subject titled "Request for Extension of Reexport Authorization Validity Period," containing—

(i) The name and address of the foreign applicant;

(ii) The name and address of the new ultimate consignee;

(iii) The case number, the validation number, the date of the original reexport request, and a copy of the approved authorization;

(iv) The countries involved in the proposed reexport transaction; and

(v) Justification for the extension.

The documentation normally required to support certain reexport requests under the provisions of § 374.3(c) need not be resubmitted with a request for the extension of the validity period of a reexport authorization, provided the original documents are still valid and remain in the possession of the Office of Export Licensing.

8. Section 377.6 is amended by revising paragraph (g) to read as follows:

§ 377.6 Petroleum and petroleum products.

* * * * *

(g) *Validity period.* A license issued pursuant to this § 377.6 is valid for one year from the last day of the month during which it is issued.

* * * * *

9. Section 377.7 is amended by revising paragraph (i)(1) to read as follows:

§ 377.7 Unprocessed western red cedar.

* * * * *

(i) *Export licenses for western red cedar*—(1) A license issued pursuant to this § 377.7 is valid for one year from the last day of the month during which it is issued.

* * * * *

10. Section 379.5 is amended by revising paragraphs (d)(6) and (f) to read as follows:

§ 379.5 Validated license applications.

* * * * *

(d) * * *

(6) An explanation of the process, product, size, and output capacity of the plant or equipment, if applicable, or other description that delineates, defines, and limits the data to be transmitted (the "technical scope");

* * * * *

(f) *Validity period and extension*—(1) *Initial validity.* Validated licenses covering exports of technical data will generally be issued for a validity period of 24 months. Upon request, a validity period exceeding 24 months may be granted where the facts of the transaction warrant it and the Office of Export Licensing determines that such action would be consistent with the objectives of the applicable U.S. export control program. Justification for a validity period exceeding 24 months should be provided in accordance with the procedures set forth in § 372.9(d)(2) for requesting an extended validity period with a license application. The Office of Export Licensing will make the final decision on what validity beyond 24 months, if any, should be authorized in each case.

(2) *Extensions.* A request to extend the validity period of a technical data license shall be made on Form ITA–685P in accordance with the procedures set forth in § 372.12(a). The request shall include on Form ITA–685P, in the space entitled "Amend License to Read as Follows," whether the license has been previously extended and the date(s) and duration of such extension(s). The Office of Export Licensing will make the final decision on what extension beyond 24 months, if any, should be authorized in each case. (See § 379.8(c)(1) for validity period extensions for reexports of technical data.)

11. Section 379.7 is revised to read as follows:

§ 379.7 Amendments.

Requests for amendments shall be made in accordance with the provisions of § 372.11. Changes requiring amendment include any expansion or upgrade of the technical scope that was described in the letter of explanation, as approved or modified on the export license.

12. In § 379.8, the last sentence of paragraph (c)(1) is revised and a new sentence is added to the end of the paragraph to read as follows:

§ 379.8 Reexports of technical data and exports of the product manufactured abroad by use of U.S. technical data.

* * * * *

(c) * * *

(1) * * * Any request for extension of the validity period shall be requested in accordance with § 374.5(b), and shall specify the period for which additional validity is required. The Office of Export Licensing will make the final decision on what validity beyond 24 months, if any, should be authorized in each case.

* * * * *

13. New § 390.5 is added to read as follows:

§ 390.5 General order extending outstanding individual validated licenses for commodities.

Effective November 5, 1986 all outstanding individual validated licenses that were initially issued for one-year validity periods, except for short supply licenses issued under 15 CFR Part 377, are extended for 12 months from their original expiration dates. Also effective November 5, 1986 all reexport authorizations that were initially granted with one-year validity periods, except for reexport authorizations under 15 CFR Part 377, are extended for 12 months from their original expiration dates.

Dated: October 31, 1986.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 86–25030 Filed 11–4–86; 8:45 am]

BILLING CODE 3510-DT-M

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15 CFR Part 399

[Docket No. 60976-6178]

Removal of Validated License Controls on Mercury-Cadmium-Telluride (HgCdTe) Detectors.

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains the Commodity Control List

(CCL), which identifies those items subject to Department of Commerce export controls.

This rule amends the validated export license controls on certain photosensitive components described in entry 1548A of the CCL according to a finding of foreign availability under Section 5(f) of the Export Administration Act of 1979, as amended. Single element, encapsulated mercury-cadmium-telluride (HdCdTe) uncooled (295 °K room temperature operation) photoelectro-magnetic (PEM) or photoconductive (PC) mode photo detectors with a peak sensitivity at a wave length shorter than 11,000 nanometers now require a validated license for export only to destinations in Country Groups Q, S, W, Y, and Z, the People's Republic of China, and Afghanistan.

Notice of the foreign availability determination on this equipment has been published previously (51 FR 37469, October 22, 1986).

EFFECTIVE DATE: This rule is effective November 5, 1986.

FOR FURTHER INFORMATION CONTACT: Larry Hall, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377-3564.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of Section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has been or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. Section 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Vincent Greenwald, Office of Technology and Policy Analysis, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule mentions a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0625-0001.

List of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 368-399) are amended as follows:

1. The authority citation for Part 399 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223, 50 U.S.C. 1701 *et seq.*; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986).

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1548A is amended by revising the *Validated License Required* paragraph to read "Country Group QSTVWYZ, except that single element, encapsulated mercury-cadmium-telluride (HgCdTe) uncooled (295 °K room temperature operation) photoelectro-magnetic (PEM) or photoconductive (PC) mode photo detectors with a peak sensitivity at a wavelength shorter than 11,000 nanometers described in paragraph (a) require a validated license only for Country Groups QSWYZ, the People's Republic of China, and Afghanistan.

Dated: October 29, 1986.

Dan Hoydysh,

Acting Director, Office of Technology and Policy Analysis.

[FR Doc. 86-25031 Filed 11-4-86; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 85C-0532]

Confirmation of Effective Date for Iron Oxides, Chromium Oxide Greens, and Titanium Dioxide; Listing of Color Additives for Coloring Contact Lenses

Correction

In FR Doc. 86-21086 appearing on page 33032 in the issue of Thursday, September 18, 1986, make the following correction:

In the first column, in the last paragraph, fourth line, "276" should read "376".

BILLING CODE 1505-01-M

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21 CFR Part 172

[Docket No. 84F-0408]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Sucrose Fatty Acid Esters

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of sucrose fatty acid esters prepared with the solvents dimethyl sulfoxide and isobutyl alcohol. This action responds to a petition filed by Mitsubishi Chemical Industries, Ltd.

DATES: Effective November 5, 1986; objections by December 5, 1986. The Director of the Office of the Federal Register approves the incorporation by reference of certain publications in 21 CFR 172.859 effective November 5, 1986.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 4, 1985 (50 FR 551), FDA announced that a petition (FAP 5A3839) had been filed by Mitsubishi Chemical Industries, Ltd., 5-2, Marunouchi 2-chome, Chiyoda-ku, Tokyo, Japan,

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proposing that 21 CFR 172.859 of the food additive regulations be amended to provide for the safe use of dimethyl sulfoxide and isobutyl alcohol as solvents in the preparation of sucrose fatty acid esters.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(5).

Any person who will be adversely affected by this regulation may at any time on or before December 5, 1986 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 172.859 by revising the last sentence in paragraph (a) and by adding new paragraph (b)(10) and (11) to read as follows:

§ 172.859 Sucrose fatty acid esters.

* * * * *

(a) * * * Ethyl acetate or methyl ethyl ketone or dimethyl sulfoxide and isobutyl alcohol (2-methyl-1-propanol) may be used in the preparation of sucrose fatty acid esters.

(b) * * *

(10) The total dimethyl sulfoxide content is not more than 2 parts per million as determined by a method entitled "Determination of Dimethyl Sulfoxide," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register 1100 L St. NW., Washington, DC 20408.

(11) The total isobutyl alcohol (2-methyl-1-propanol) content is not more than 10 parts per million as determined by a method entitled "Determination of Isobutyl Alcohol," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

Dated: October 27, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86–24953 Filed 11–4–86; 8:45 am]

BILLING CODE 4160-01-M

UNITED STATES INFORMATION AGENCY

22 CFR Parts 526 and 527

Freedom of Information Act Regulations for the National Endowment for Democracy

AGENCY: United States Information Agency.

ACTION: Final rule.

SUMMARY: These regulations comply with Pub. L. 99–93 of August 16, 1985, amending the National Endowment for Democracy Act (22 U.S.C. 4411, *et seq.*) which requires the Director of the United States Information Agency to publish information on the application of the Freedom of Information Act (5 U.S.C. 552) (hereinafter "FOIA") to the National Endowment for Democracy (hereinafter "NED"). More specifically, Pub. L. 99–93 requires that NED make available to the Director of the United States Information Agency (hereinafter "USIA") such records and information as necessary to comply with the provisions of FOIA, and that the Director shall cause such records and information to be published in the **Federal Register.**

EFFECTIVE DATE: December 5, 1986.

FOR FURTHER INFORMATION CONTACT: John A. Lindburg, Office of the General Counsel, United States Information Agency, Room 700, 301 Fourth Street SW., Washington, DC 20547 (202) 485–7976.

SUPPLEMENTARY INFORMATION:

Background

NED's proposed FOIA regulations were published by USIA in the **Federal Register** on August 29, 1986, subject to a thirty-day public comment period. No comments were received by USIA, and the only change made to NED's regulations concerns the Endowment's Procedures Manual [see Part 527(4)(h)] which was under revision during the comment period. The revised Manual was approved by the NED Board on September 12, 1986.

Under the National Endowment for Democracy's most recent authorizing legislation (Pub. L. 99–93), NED is required to comply with the provisions of the Freedom of Information Act. *See* 22 U.S.C. 4415(a). The regulations governing NED's compliance with FOIA were drafted to ensure that requesters seeking access to NED records receive prompt responses and have recourse to denials through a series of procedures.

The law also establishes a mechanism of review by the Director of USIA in the event of final determinations by NED not to comply with a FOIA request for its records. *See* 22 U.S.C. 4415(c). In such instances, NED is required to submit to the Director of USIA a report of its reasons for noncompliance. *See* 22 U.S.C. 4415(c)(1). If the Director approves NED's determination, USIA then assumes full responsibility, including financial responsibility, for defending NED in judicial review of its determination. *See* 22 U.S.C. 4415(c)(2). If the Director disapproves NED's determination, NED must comply with the request. *See* 22 U.S.C. 4415(c)(3).

The regulations fulfill the publication requirements of 5 U.S.C. 552(a)(1) for NED's and USIA's compliance with FOIA. The regulations largely follow USIA's existing regulations implementing FOIA, since USIA regulations have provided an effective framework for compliance. To the extent that the regulations differ from USIA's existing regulations, they do so to reflect the structure and organization of NED and the additional review by the Director of USIA of NED determinations not to comply with requests for records. The significant differences between the sets of regulations are discussed below.

Section 526(a). Requesters are premitted to make their initial requests for records and appeals of denials thereof to either NED or USIA, consistent with the legislative intent expressed by the Committee of Conference. *See* H.R. Rep. No. 99–240, 99th Cong., 1st Sess. 79 (1985). Requesters are encouraged, however, to make their requests directly to NED to expedite their handling. For the same reason, USIA is required to forward any request it receives to NED within 2 working days of receipt by USIA. Requests will not be deemed to have been received for purposes of the time period set forth in 5 U.S.C. 552(a)(6)(A)(i) until actually received by NED.

Section 526(b). The regulations provide a 30-day period for appeal of an initial adverse NED determination, which period runs from the receipt by the requester of the notification of denial. This is the same as the appeal period contained in the existing USIA regulations. Thus, NED's initial determination becomes its final determination, *inter alia,* upon expiration of the appeal period. To allow for full consideration within NED before review by the Director of USIA, only final determinations by NED are review by the Director.

At the same time, the regulations allow a requester to accelerate the time within which NED's initial determination becomes final and therefore eligible for review by the Director of USIA (and by the courts) by notifying NED of his election to forego appeal by the President of NED or his designee. This will allow more expeditious resort to review by USIA if the requester wishes.

The regulations require NED to submit a report to the Director of USIA within five working days of NED's determination to deny a request for records. This period is designed to provide the requester with expeditious review and NED with sufficient opportunity to prepare the report that will serve as the basis of approval or disapproval by the Director.

Because review by the Director may resolve any dispute over access to NED records in favor of the requestor, the proposed regulations encourage, but do not require, the requester to await the determination on review by the Director before seeking judicial review of NED's final determination. The minimal time period allowed for USIA review should not prejudice requesters.

USIA has determined that this is not a major rule for purpose of Executive Order 12291. Therefore, no Regulatory Impact Analysis is required. In addition, because USIA neither prescribes nor exercises any discretion over NED's grant application procedures, Paperwork Reduction Act requirements governing information collection are inapplicable.

List of Subjects

22 CFR Part 526

Freedom of Information.

22 CFR Part 527

Organization and functions.

Dated: October 14, 1986.

C. Normand Poirier,

Acting General Counsel, United States Information Agency.

Accordingly, for the reasons set out in the preamble, 22 CFR Chapter V is amended as set forth below:

1. New Part 526 is added to read as follows:

PART 526—AVAILABILITY OF THE RECORDS OF THE NATIONAL ENDOWMENT FOR DEMOCRACY

Sec.

526.1 Introduction
526.2 Location of description of organization and substantive rules of general applicability adopted as authorized by law, and statements of general applicability formulated and adopted by NED.
526.3 Places at which forms and instructions for use by the public may be obtained.
526.4 Availability of final opinions, orders, policies, interpretations, manuals, and instructions.
526.5 Availability of NED records.
526.6 Exemptions.
526.7 Limitation of exemptions.
526.8 Reports.

Authority: Title II, Sec. 210, Pub. L. 99–93, 99 Stat. 431, 22 U.S.C. 4415.

§ 526.1 Introduction.

These regulations amend the Code of Federal Regulations to conform with Pub. L. 99–93. Pub. L. 99–93 amended the National Endowment for Democracy Act (22 U.S.C. 4411, et. seq.) to require the National Endowment for Democracy (hereinafter "NED") to comply fully with the provisions of the Freedom of Information Act (5 U.S.C. 552) (hereinafter "FOIA"), notwithstanding that NED is not an agency or establishment of the United States Government. NED will make information about its operation, organization, procedures and records available to the public in accordance with the provisions of FOIA.

§ 526.2 Location of description of organization and substantive rules of general applicability adopted as authorized by law, and statements of general applicability formulated and adopted by NED.

See 22 CFR Part 527 for a description of the organization of NED and substantive rules of general applicability formulated and adopted by NED.

§ 526.3 Places at which forms and instructions for use by the public may be obtained.

(a) All forms and instructions pertaining to procedures under FOIA may be obtained from the FOIA Officer of the National Endowment for Democracy, 1156 15th Street NW., Suite 304, Washington, DC 20005.

(b) Grant guidelines may be obtained from the Program Office of NED to the address shown in paragraph (a) of this section.

(c) General information may be obtained from the Public Affairs Office of NED at the address shown in paragraph (a) of this section.

§ 526.4 Availability of final opinions, orders, policies, interpretations, manuals and instructions.

NED is not an adjudicatory organization and therefore does not issue final opinions and orders made in the adjudication of cases. NED will, however, in accordance with the rules in this section and 526.7, make available for public inspection and copying those statements of policy and interpretation that have been adopted by NED and are not published in the **Federal Register**, and administrative staff manuals and instructions to staff that affect any member of the public.

(a) *Deletion to protect privacy.* To the extent required to prevent a clearly unwarranted invasion of personal privacy, NED may delete identifying details when it makes available or publishes a statement of policy, interpretation, or staff manual or instruction. Whenever NED finds any such deletion necessary, the responsible officer or employee must fully explain the justification therefor in writing.

(b) *Current index.* NED will maintain and make available on its premises for public inspection and copying a current index providing identifying information for the public as to any matter issued, adopted or promulgated after July 4, 1967, and required by this section to be made available or published. NED will provide copies on request at a cost of $0.15 per page.

§ 526.5 Availability of NED records

Except with respect to the records made available under 526.4, NED will, upon request that reasonably describes records in accordance with the requirements of this section, and subject to the exemptions listed in 5 U.S.C. 552(b), make such records promptly available to any person.

(a) *Requests for records—How made and addressed.* (1) Requesters seeking access to NED records under FOIA should direct all requests in writing to: Freedom of Information Act Officer, National Endowment for Democracy, 1156 15th Street, NW., Suite 304, Washington, DC 20005, (202) 293-9072. Although requesters are encouraged to make their requests for access to NED records directly to NED, requests for access to NED records also may be submitted to USIA's Office of General Counsel and Congressional Liaison at the following address: Freedom of Information/Privacy Acts Coordinator, U.S. Information Agency, Room M-04, 301 Fourth Street SW., Washington, DC 20547.

(2) Appeals of denials of initial requests must be addressed to NED or USIA in the same manner, with the addition of the word "APPEAL" preceding the address on the envelope. Requests or appeals addressed directly to USIA's Office of the General Counsel and Congressional Liaison will not be deemed to have been received by NED for purposes of the time period set forth in 5 U.S.C. 552(a)(6)(A)(i) until actually received by NED. USIA shall forward any request or appeal received by it to NED within 2 working days from the actual day of receipt by USIA.

(3) The request letter should contain all available data concerning the desired records, including a description of the material, dates, titles, authors, and other information that may help identify the records. The first paragraph of a request letter should state whether it is an initial request or an appeal.

(b) *Administrative time limits.* (1) Within 10 working days after NED's receipt of any request for access to NED records in compliance with paragraph (a) of this section, NED shall make an initial determination whether to provide the requested information and NED shall notify the requester in writing of its initial determination. In the event of an adverse determination, notification shall include the reasons for the adverse determination, the officials responsible for such determination, the right of the requester to appeal within NED, and that the final determination by NED to deny a request for records in whole or in part shall be submitted to the Director of USIA for review. NED shall also provide USIA a copy of its response as soon as practicable after it responds to the requester.

(2) When a request for records has been denied in whole or in part, the requester may, within 30 days of the date of receipt by the requester of the adverse determination from NED, appeal the denial to the President of NED or his designee, who will make a determination whether to grant or deny such appeal within 20 working days of receipt thereof. All appeals should be addressed in compliance with paragraph (a) of this section. If on appeal, the denial of the request for records is upheld, in whole or in part, NED shall notify the requester in writing of such determination, the reasons therefor, the officials responsible for such determination, the right of the requester to judicial review, and that the final determination by NED whether to deny a request for records in whole or in part shall be submitted to the Director of USIA for review.

(3) If the requester elects not to appeal to the President of NED or his designee within the appeal period specified above, NED's initial determination will become the final NED determination upon expiration of said appeal period or receipt by NED of notice from the requester that he does not elect to appeal, whichever is earlier. If the requester chooses to appeal NED's initial determination within NED, the decision on appeal will become NED's final determination.

(4)(i) Once NED's determination to deny a request in whole or in part becomes final, NED shall submit a report to the Director of USIA explaining the reasons for such denial no later than 5 working days thereafter.

(ii) The Director of USIA shall review NED's final determination within 20 working days. If the Director of USIA or his designee approves NED's denial in whole or in part, USIA shall inform the requester and NED in writing of such determination, the reasons therefor, the officials responsible for such determination, and the right of the requester to judicial review of NED's determination. In the event of such a determination, USIA shall assume full responsibility, including financial responsibility, for defending NED in any litigation relating to such request.

(iii) If the Director of USIA or his designee disapproves NED's denial in whole or in part, USIA shall promptly notify NED and thereafter NED shall promptly comply with the request for the pertinent records.

(iv) Because review by the Director of USIA may resolve any dispute over access to NED records in the requester's favor, the requester is encouraged (but not required) to wait for the determination on review by the Director of USIA before seeking judicial review of NED's final determination.

(5) In unusual circumstances as defined in 5 U.S.C. 552(a)(6)(B), the time limit provisions noted in paragraphs (b)(1) and (b)(2) of this section may be extended by written notice to the requester setting forth the reasons for such extension and the date on which a determination can be expected. Such extensions of the time limits may not exceed 10 working days in the aggregate.

(6) Any person making a request for records pursuant to 526.5 may consider administrative remedies exhausted if NED fails to comply within the applicable time limit provisions of this section. When no determination can be dispatched within the applicable time limits set forth in this section, NED shall nevertheless continue to process the request. On the expiration of the time limit, NED shall inform the requester of

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the reason for the delay, of the date on which a determination may be expected to be dispatched, and of the requester's right to treat the delay as a denial and of the requester's right to appeal. NED may ask the requester to forego appeal until a determination is made. A copy of any such notice of delay will be sent to the Director of USIA or to his designee no later than 2 working days after it has been sent to the requester. A court may retain jurisdiction and allow NED additional time to complete its review of the records, if it can be determined that exceptional circumstances exist and that NED is exercising due diligence in responding to the request.

(c) *Schedule of standard fees.* The following specific fees shall apply with respect to services rendered to the public pursuant to the FOIA:

(1) Making photocopies—$0.15 per page. No fee will be charged for a request totalling 10 pages or fewer.

(2) Searching for records—$8.00 per hour for clerical personnel; $15.00 per hour for supervisory personnel. No fees will be charged for searches of one hour or less.

(3) Duplication of architectural photographs and drawings—$2.00.

(4) For signed statement of nonavailability of record—no fee.

(5) Fees must be paid in full prior to issuance of requested copies.

(6) Where it is anticipated that the fees chargeable under this section will amount to more than $25.00, and the requester has not indicated in advance a willingness to pay fees as high as are anticipated, the requester shall be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In appropriate cases, an advance deposit may be required. The notice or request for an advance deposit shall extend an offer to the requester to confer with knowledgeable NED personnel in an attempt to reformulate the request in a manner which will reduce the fees and meet the needs of the requester. Dispatch of such a notice of request shall suspend the running of the period for response by NED until a reply is received from the requester.

(7) Search costs are due and payable even if the record that was requested cannot be located after all reasonable efforts or if NED determines that a record that is exempt from disclosure under this part is to be withheld.

(8) Remittances shall be in the form of a personal check or bank draft drawn on any bank in the United States, a postal money order, or cash. Remittances shall be made payable to the order of: National Endowment for Democracy. NED will assume no responsibility for cash lost in the mail.

(9) A receipt for fees paid will be given only upon request. Refund of fees paid for services actually rendered will not be made.

(10) The President of NED or his designee may waive all or part of any fee provided for in this section when the President of NED or his designee deems such waiver to be in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(d) *Determination of Non-Standard Fees.* When no specific fee has been established for a service (for example, when the search involves computer time, or special travel, transportation, or communication costs), the President of NED or his designee is authorized to determine the direct costs of the service and include such costs in the fees chargeable under this section.

§ 526.6 Exemptions.

NED reserves the right to withhold records and information that are exempt from disclosure under FOIA. *See* 5 U.S.C. 552(b).

§ 526.7 Limitation of exemptions.

FOIA does not authorize withholding of information or limit the availability of NED records to the public except as specifically stated in this part. Nor is authority granted to withhold information from Congress.

§ 526.8 Reports.

On or before March 1 of each calendar year, NED shall submit a reporting covering the preceding calendar year to the Speaker of the House of Representatives and the President of the Senate for referral to the appropriate committees of the Congress. The report shall include those items specified at 5 U.S.C. 552(d).

2. New Part 527 is added to read as follows:

PART 527—ORGANIZATION OF THE NATIONAL ENDOWMENT FOR DEMOCRACY

Sec.
527.1 Introduction.
527.2 Board of Directors.
527.3 Management.
527.4 Description of functions and procedures.

Authority: 22 U.S.C. 4411 *et seq.*; Title II, Sec. 210, Pub. L. 99-93, 99 Stat. 431, 22 U.S.C. 4415.

§ 527.1 Introduction.

(a) The National Endowment for Democracy (hereinafter "NED") was created in 1983 to strengthen democratic values and institutions around the world through nongovernmental efforts. Incorporated in the District of Columbia and governed by a bipartisan Board of Directors, NED is tax-exempt, nonprofit, private corporation as defined in section 501(c)(3) of the Internal Revenue Code. Through its worldwide grant program, NED seeks to enlist the energies and talents of private citizens and groups to work with partners abroad who wish to build for themselves a democratic future.

(b) Since its establishment in 1983, NED has received an annual appropriation approved by the United States Congress as part of the United States Information Agency budget. Appropriations for NED are authorized in the National Endowment for Democracy Act (the "Act"), 22 U.S.C. 4411 *et seq.*

(c) The activities supported by NED are guided by the six purposes set forth in NED's Articles of Incorporation and the National Endowment for Democracy Act. These six purposes are:

(1) To encourage free and democratic institutions throughout the world through private-sector initiatives, including activities which promote the individual rights and freedoms (including internationally recognized human rights) which are essential to the functioning of democratic institutions;

(2) To facilitate exchanges between U.S. private sector groups (especially the two major American political parties, labor and business) and democratic groups abroad;

(3) To promote U.S. nongovernmental participation (especially through the two major American political parties, labor, and business) in democratic training programs and democratic institution-building abroad;

(4) To strengthen democratic electoral processes abroad through timely measures in cooperation with indigenous democratic forces;

(5) To support the participation of the two major American political parties, labor, business, and other U.S. private-sector groups in fostering cooperation with those abroad dedicated to the cultural values, institutions, and organizations of democratic pluralism; and

(6) To encourage the establishment and growth of democratic development in a manner consistent both with the broad concerns of United States national interests and with the specific requirements of the democratic groups in other countries which are aided by NED-supported programs.

§ 527.2 Board of Directors.

(a) NED is governed by a bipartisan Board of Directors of not fewer than thirteen and not more than seventeen members reflecting the diversity of American society. The officers of the corporation are Chairman and Vice Chairman of the Board, who shall be members of the Board, a President, Secretary and Treasurer, and such other officers as the Board of Directors may from time to time appoint. Meetings of the Board of Directors are held at times determined by the Board, but in no event fewer than four times each year. A current list of members of the Board of Directors and a schedule of upcoming meetings is available from NED's office at 1156 15th Street, NW., Suite 304, Washington, DC 20005.

(b) All major policy and funding decisions are made by the Board of Directors. The primary statement of NED's operating philosophy, general principles and priorities is contained in the National Endowment for Democracy's *Statement of Principles and Objectives*, adopted by the Board of Directors in December 1984. Copies of this statement as well as other general information concerning the organization are available from NED on request.

(c) As a grantmaking organization, NED does not carry out programs directly. The procedures for approval of grants are stated in NED's bylaws: "[a]ll grants made by the corporation shall be by a two-thirds vote of those voting at a meeting at which a quorum is present, provided, however, that no grant may be approved by less than a majority of the Board of Directors" (Article VI, Section 5). In addition, "[a]ny Board member who is an officer or director of an organization seeking to receive grants from the Corporation must abstain from consideration of and any vote on such grant" (Article VI, Section 6). Copies of the bylaws are available from NED's offices.

§ 527.3 Management.

(a) NED's operations and staff are managed by a President selected by the Board of Directors. The President is the chief executive officer of the corporation and manages the business of the corporation under the policy direction of the Board of Directors. The President directs a staff whose functions are divided among the Office of the President, a Program Section and a Finance Office.

(b) The Office of the President provides policy direction and is responsible for day-to-day management of the organization, including personnel management, liaison with the Board of Directors and preparation of meetings of the Board and Board committees. The President's office also provides information concerning NED's activities to the press and public. The Program Section, under the direction of the Director of Program, is responsible for the review and preparation of proposals submitted to the Endowment and for the monitoring and evaluation of all programs funded by NED.

(c) The Finance Office, under the direction of the Comptroller, is responsible, with the President and the Board of Directors, for financial management of NED's affairs, including both administrative financial management and grant management. The Director of Program and the Comptroller report to the NED President.

§ 527.4 Description of functions and procedures.

(a) In accordance with the *Statement of Principles and Objectives*, NED is currently developing and funding programs in five substantive areas:

(1) *Pluralism.* NED encourages the development of strong, independent private-sector organizations, especially trade unions and business associations. It also supports cooperatives, civic and women's organizations, and youth groups, among other organizations. Programs in the areas of labor and business are carried out, respectively, through the Free Trade Union Institute and the Center for International Private Enterprise.

(2) *Democratic governance and political processes.* NED seeks to promote strong, stable political parties committed to the democratic process. It also supports programs in election administration and law, as well as programs that promote dialogue among different sectors of society and advance democratic solutions to national problems.

(3) *Education, culture and communications.* NED funds programs that nourish a strong democratic civic culture, including support for publications and other communications media and training programs for journalists; the production and dissemination of books and other materials to strengthen popular understanding and intellectual advocacy of democracy; and programs of democratic education.

(4) *Research.* A modest portion of NED's resources is reserved for research, including studies of particular regions or countries where NED has a special interest, and evaluations of previous or existing efforts to promote democracy.

(5) *International cooperation.* NED seeks to encourage regional and international cooperation in promoting democracy, including programs that strengthen cohesion among democracies and enhance coordination among democratic forces.

(b) As a grantmaking organization, NED has certain responsibilities that govern its relationship with all potential and actual grantees. Briefly, these are:

(1) *Setting program priorities* within the framework of the purposes outlined in NED's articles of incorporation and contained in the legislation, and guided by the general policy Statement of the Board of Directors;

(2) *Reviewing and vetting proposals*, guided by the general guidelines and selection criteria adopted by the NED Board;

(3) *Coordinating among all grantees* to avoid duplication and to assure maximum program effectiveness;

(4) *Negotiating a grant agreement* which ensures a high standard of accountability on the part of each grantee;

(5) *Financial and programmatic monitoring* following the approval and negotiation of a grant, and ongoing and/or follow-up evaluation of programs prior to any subsequent funding of either a particular grantee or a specific program. Grantees will also be expected to monitor projects, to provide regular reports to NED on the progress of programs, and to inform NED promptly of any significant problems that could affect the successful implementation of the project. NED grantees will also conduct their own evaluations of programs.

(6) As a recipient of congressionally appropriated funds, NED has a special responsibility to

(i) Operate openly,

(ii) Provide relevant information on programs and operations to the public, and

(iii) Ensure that funds are spent wisely, efficiently, and in accordance with all relevant regulations.

(c) Institutes representing business, labor, and the major political parties carry out programs which are central to NED's purposes. As a result of their unique relationship to NED, institute programs are an integral part of NED's priorities and the institutes themselves are "core" grantees. As such, the institutes, while subject to all the normal procedures governing NED's relationships with grantees, will be treated differently in the following respects:

(1) The institutes will have the mandate to carry out programs funded by NED in their respective sectors of business, labor and political parties.

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(2) As an integral part of the process of budgeting and setting program priorities, the NED Board will target a certain amount of its annual resources for institute programs in their respective fields of activity.

(3) Unlike its practice for the majority of its grantees, NED will fund significant administrative costs for each of the core grantees.

(4) Institute staff will assume responsibility for program development and preparation of proposals for the Board in each field of activity for which it has a special mandate.

(5) NED will expect its core grantees to perform their monitoring/evaluation function described in programmatic monitoring under *Financial and programmatic monitoring* above in a manner that will minimize the need to devote NED resources for these purposes. (Individual copies of the Grants Policy are available from the NED office.)

(6) As stated above, in awarding grants the Board is guided by established grant selection critieria. In addition to evaluating how a program fits within NED's overall priorities, the Board considers factors such as the urgency of a program, its relevance to specific needs and conditions in a particular country, and the democratic commitment and experience of the applicant. NED is especially interested in proposals that originate with indigenous democratic groups. It is also interested in nonpartisan programs seeking to strengthen democratic values among all sectors of the democratic political spectrum.

(d) *Selection criteria.* In determining the relative merit of a particular proposal NED considers whether the grant application:

(1) Proposes a program that will make a concrete contribution to assisting foreign individuals or groups who are working for democratic ends and who need NED's assistance.

(2) Proposes a program, project or activity which is consistent with current NED program priorities and contributes to overall program balance and effectiveness.

(3) Proposes an activity that meets an especially urgent need.

(4) Does not overlap with what others are doing well.

(5) Proposes a program that will encourage an intellectual climate which is favorable to the growth of democratic institutions.

(6) Proposes a program that is not only culturally or intellectually appealing, but will affect the education and the awareness of minorities and/or the less privileged members of a society.

(7) Originates from an organization within a particular country representing the group whose needs are to be addressed.

(8) Appears to be well thought out, avoiding imprudent activities and possibilities for negative repercussions.

(9) Takes into consideration not only what objectively could be significant to a certain society, but how the cultural traditions and values of that society will react to the project.

(10) Incorporates an analysis of the problem of democracy in the area in question and the method by which the proposed program will have a constructive impact on the problem.

(11) Proposes a program that will enhance our understanding of what really helps in aiding democracy.

(12) Creatively enlists supports for foreign democratic organizations.

(13) Encourages democratic solutions and peaceful resolution of conflict in situations otherwise fraught with violence.

(14) Proposes a program, project or activity that is clearly relevant to NED program objectives and not better funded by other government or private organizations. (Proposing organizations will be be referred to other funding organizations where substantial overlap exists.)

(15) Proposes a program or strategy that is appropriate to the circumstances in the country concerned.

(16) Proposes a program that can be expected to have a multiplier effect, hence having an impact broader than that of the specific project itself; or establishes a model that could be readily replicated in other countries or institutions.

(17) Proposes appropriate, qualified staff who have a demonstrated ability to administer programs capably so as to accomplish stated goals and objectives.

(18) Proposes an appropriate ratio of administrative to program funds.

(19) Is responsive to NED suggestions with regard to program revisions.

(20) Proposes a realistic budget that is consistent with NED perceptions of project value and is performed within a stated and realistic time frame; and

(21) Proposes a program that has, as one of its principal aspects, a major impact on the role of women and/or minorities.

(e) The following guidelines also apply to all projects funded by NED.

(1) The proposing organization must be able to show that it is a responsible, credible organization or group that has a serious and demonstrable commitment to democratic values. (Various factors may be considered in this regard: recognized democratic orientation; established professional reputation; proven ability to perform; existence of organization charter, board of directors, regular audits, etc.);

(2) The proposing organization must be willing to comply with all provisions of the National Endowment for Democracy Act as well as all provisions of current and subsequent agreements between the USIA and NED;

(3) The proposing organization must agree not to use grant funds for the purpose of educating, training, or informing United States audiences of any U.S. political party's policy or practice, or candidate for office. (This condition does not exclude making grants or expenditures for the purpose of educating, training or informing audiences of other countries on the institutions and values of democracy that may incidentally educate, train, or inform American participants);

(4) The proposing organization must agree that no NED funds will be used for lobbying or propaganda that is directed at influencing public policy decisions of the government of the United States or of any state or locality thereof;

(5) The proposing organization must agree that there shall be no expenditure of NED funds for the purpose of supporting physical violence by individuals, groups or governments;

(6) The proposing organization may not employ any person engaged in intelligence activity on behalf of the United States government or any other government;

(7) NED will not normally reimburse grantees for expenses incurred prior to the signing of a grant agreement with NED;

(8) Each grant made by NED will be an independent action implying no future commitment on NED's part to a project or program;

(9) NED may, from time to time, fund feasibility studies. Applications for grants in this category should include, but not be limited to, the following: Scope, method and objective of the study; Calendar; Proposed administration of the study; and Detailed budget. The funding of a feasibility study by NED does not imply support for any project growing out of the study. It does, however, imply interest by NED in the area under study and a willingness to entertain a project proposal growing out of the study; and

(10) The proposing organization may not use NED funds to finance the campaigns of candidates for public office.

(f) All proposals received by NED are reviewed by the staff in order to determine their congruence with NED's purposes as stated in the organization's Articles of Incorporation and the NED Act.

(g) Grant applications must contain the following information:

(1) A one-page summary of the proposed program;

(2) Organizational background and biographical information on staff and directors in the U.S. and abroad;

(3) A complete project description, including a statement of objectives, a project calendar, and a description of anticipated results;

(4) A statement describing how the project relates to NED's purposes;

(5) A description of the methods to be used to evaluate the project in relation to its objectives;

(6) A detailed budget, including an explanation of any counterpart support anticipated by the applicant, whether monetary or in-kind, domestic or foreign; and

(7) The names and addresses of all other funding organizations to which the proposal has been submitted or will be submitted.

(h) After an award determination has been made by the Board, NED enters into a grant agreement with the recipient. That agreement is made in accordance with NED policy, the terms of NED's grant agreement with USIA, and the terms of the Act, and the terms of NED's standard grant agreement as they apply to the specific project in question. The NED Board of Directors approved a revised Statement of General Procedures and Guidelines on September 12, 1986. The statement, outlined above, is available from the NED office.

(i) NED Staff welcomes preliminary letters of inquiry prior to submission of a formal proposal. Letters of inquiry and formal proposals should be submitted to: Director of Program, National Endowment for Democracy, 1156 15th Street, NW., Suite 304, Washington, DC 20005.

[FR Doc. 86-24883 Filed 11-4-86; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 31 and 602

[T.D. 8105]

Time and Manner of Making Quarterly Payments of the Railroad Unemployment Repayment Tax

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations relating to the time and manner of making quarterly payments of the railroad unemployment repayment tax. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register.** The temporary regulations reflect amendments to the Internal Revenue Code of 1954 with respect to quarterly payments of the railroad unemployment repayment tax made by section 231(b) of the Railroad Retirement Solvency Act of 1983, and provide guidance with respect to the time and manner of making those payments. (Amendments to the railroad unemployment repayment tax made by section 13301 of the Consolidated Omnibus Budget Reconciliation Act of 1985 do not affect the rules in this document.)

DATES: The regulations contained in this document are effective December 5, 1986, and apply to remuneration paid after June 30, 1986.

FOR FURTHER INFORMATION CONTACT: Gail H. Morse of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue., NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-3297, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Railroad workers, unlike most other occupational groups within the United States, are not covered by the Federal Unemployment Tax Act (FUTA). Instead, such workers receive unemployment benefits under the Railroad Unemployment Insurance Act (RUIA), a separate program administered by the Railroad Retirement Board.

Railroad employers pay over to the Railroad Unemployment Insurance Trust Fund contributions on the wages of their employees ranging from .5 percent to 8 percent (the specific percentage for a calendar year depends upon the financial condition of the railroad unemployment insurance account on the preceding September 30). See 20 CFR Part 345, relating to employers' contributions and contribution reports under the Railroad Uemployment Insurance Act. Unlike the FUTA system, there are no individual employer experience ratings under RUIA. Rather, one experience rating is determined for the railroad industry as a whole and imposed on all employers.

When contributions are insufficient to pay railroad unemployment benefits, the program can borrow from the railroad retirement account and repay when the Railroad Unemployment Insurance Trust Fund has more cash than is needed to pay benefits. For 21 of the last 26 years the unemployment fund has had to borrow from the retirement system. In recent years such borrowing has increased and has been coupled with non-repayment of the borrowed funds. A crisis arose in the railroad industry with respect to the railroad retirement and unemployment compensation systems in 1982—by 1983 a shortfall in the retirement fund was expected due to the decline in rail employment relative to the number of retired railroad employees (resulting in an excess of benefit payments over contributions to the system) and increased borrowing by the unemployment system coupled with non-repayment of the borrowed funds. The expected shortfall caused Congress to act to insure the solvency of both the railroad retirement and the railroad unemployment accounts. The Railroad Retirement Solvency Act of 1983 (the Act) (Pub. L. 98-76, 97 Stat. 426) was intended to improve the financial status of both the railroad retirement and unemployment systems and to increase the likelihood that both systems would be able to meet their continuing benefit obligations.

In addition to provisions with respect to the retirement system and administration of the railroad unemployment system, the Act sought to provide for the repayment of funds borrowed by the railroad unemployment system which had not been repaid. Chapter 23A, added to the Internal Revenue Code of 1954 by section 231 of the Act, provides for the imposition of the railroad unemployment repayment tax. This tax is an excise tax on railroad employers (a term defined in the Act by reference to section 1 of the Railroad Unemployment Insurance Act) with respect to having individuals in their employ as well as a tax on the income of employee representatives. The tax is effective for remuneration paid after June 30, 1986, and, as amended by section 13301 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272, 100 Stat. 325), is equal to the applicable percentage of total rail wages for a particular taxable period. The applicable percentage, equal to the sum of the basic rate plus the surtax rate, will vary for each taxable period. The basic rate is applicable to taxable periods beginning after June 30, 1986, and before October 1, 1990. (This rate will terminate at an earlier date if

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loans made to the railroad unemployment fund before October 1, 1985, are repaid before October 1, 1990). The surtax rate is effective for any taxable period beginning after September 30, 1986, where, as of September 30 of the preceding taxable year, there is an outstanding balance of transfers (or unpaid interest thereon), made after September 30, 1985, to the railroad unemployment insurance account under section 10(d) of the Railroad Unemployment Insurance Act.

Section 6157 provides that the payment of the railroad unemployment repayment tax will be on a quarterly basis in such manner and at such time as regulations prescribed by the Secretary may provide.

The temporary regulations found in this document provide the time and manner of making quarterly payments of the railroad unemployment repayment tax.

Explanation of Provisions

The temporary regulations reflect amendments to the Employment Tax Regulations under sections 6011, 6071, 6157, and 6302 of the Internal Revenue Code with respect to the requirement that there be quarterly payments of the railroad unemployment repayment tax.

Section 31.6011(a)–3AT (a) provides that rail employers shall make an annual return of the railroad unemployment repayment tax imposed by section 3321 on Form CT–1 (currently used for returns of railroad retirement tax). The Form CT–1 will thus provide for both the return of railroad retirement tax and the return of railroad unemployment repayment tax. The return is to be made for each taxable period (as defined in section 3322) in which the tax is imposed beginning with the period which commences on July 1, 1986. Section 31.6011(a)–3AT(b) provides that employee representatives (as generally defined in section 3323(d)) shall make a quarterly return of the railroad unemployment repayment tax on Form CT–2 (currently used for returns of railroad retirement tax). The Form CT–2 will thus provide for both the return of railroad retirement tax and the return of railroad unemployment repayment tax. The report is to be made for each calendar quarter of a taxable period in which the tax is imposed beginning with the period which commences on July 1, 1986.

Section 31.6071(a)–1T provides rules regarding the time for filing Forms CT–1 and CT–2. Section 31.6071(a)–1T(a) provides that Forms CT–1 and CT–2 are to be filed on or before the last day of the second calendar month following the period for which return is made (the same due date applicable to such returns filed in connection with railroad retirement taxes).

Section 31.6302(c)–2AT sets forth the rules governing the computation and payment by rail employers of the railroad unemployment repayment tax on a quarterly basis and provides for the deposit of the tax so computed with a Federal Reserve Bank or an authorized financial institution. The deposits are to be made by the last day of the first calendar month following the close of each of the first three calendar quarters of a taxable period. However, no deposit is required with respect to any of the first three calendar quarters if the tax computed for the quarter plus unpaid amounts for prior quarters during the taxable period is $100 or less. No deposit of the railroad unemployment repayment tax is required for the last calendar quarter in any taxable period unless the amount of such tax reportable on Form CT–1 exceeds by more than $100 the sum of the amounts deposited in the preceding three calendar quarters. In cases where the reportable railroad unemployment retirement tax exceeds by more than $100 the sum of the amounts deposited in the preceding three calendar quarters, § 31.6302(c)–2AT(b)(3) requires that the balance due be deposited with a Federal Reserve bank or with an authorized financial institution by the last day of the first calendar month following the taxable period for which the return is being filed. Where the railroad unemployment repayment tax reportable on Form CT–1 does not exceed by more than $100 the sum of the amounts deposited in the preceding three calendar quarters, that amount is to be remitted with Form CT–1. The preprinted Federal Tax Deposit coupon (Form 8109) is the form prescribed for making the deposits of the railroad unemployment repayment tax. Section 31.6302(c)–2AT(b)(1)(ii) requires that certain rail employers make their quarterly deposits of the railroad unemployment repayment tax by wire transfer to the Treasury. The wire payments will be credited to the rail employers' CT–1 account in the same manner as railroad retirement wire transfers. The wire deposit of the railroad unemployment repayment tax may not be made in the same wire deposit as any other tax.

Regulatory Flexibility Act; Executive Order 12291; Paperwork Reduction Act of 1980

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Moreover, the Internal Revenue Service has concluded that the regulations herein will not have a significant impact on a substantial number of small entities. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule. The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. The reporting requirements added by this document have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. The reporting requirements have been approved by OMB.

Drafting Information

The principal author of these temporary regulations is Gail H. Morse of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations both on matters of substance and style.

List of Subjects

26 CFR Part 31

Employment taxes, Income taxes, Lotteries, Railroad retirement, Social security, Unemployment tax, Withholding.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 31 and Part 602 are amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority for Part 31 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 31.6011(a)–3AT is also issued under the authority of 26 U.S.C. 6011; § 31.6071(a)–1T is also issued under the authority of 26 U.S.C. 6071; § 31.6157–1T is also issued under 26 U.S.C. 6157(d); and § 31.6302(c)–2AT is also issued under 26 U.S.C. 6302.

Par. 2. A new § 31.6011(a)–3AT is added immediately following existing § 31.6011(a)–3 to read as follows:

§ 31.6011(a)–3AT Returns of the railroad unemployment repayment tax (temporary).

(a) *Requirement*—(1) *Employers.* Every rail employer (as defined in section 3323(a) and section 1 of the Railroad Unemployment Insurance Act) shall make a return of the tax imposed by section 3321(a) (relating to the railroad unemployment repayment tax) for each taxable period (as defined in section 3322(a)) with respect to the total rail wages (as defined in section 3323(b)) paid by the rail employer during the taxable period. Form CT–1 is the form prescribed for use in making the return. One original and a duplicate of each return on Form CT–1 shall be filed with the director of the service center as designated in the instructions to Form CT–1. Rail wages taxable under section 3321(a) shall be reported in the return required under this section for the return period in which they are actually paid unless they were constructively paid in a prior return period, in which case such wages shall be reported only in the return for such prior period.

(2) *Employee representatives.* Each employee representative (as defined in section 3323(d)(2) and section 1 of the Railroad Unemployment Insurance Act) shall make a return of the tax imposed by section 3321(b) on the rail wages paid to him (as determined under section 3321(b)(2)) during each calendar quarter within a taxable period. Form CT–2 is the form prescribed for use in making the return. One original and a duplicate of each return on Form CT–2 shall be filed with the director of the service center as designated in the instructions to Form CT–2. Rail wages taxable under section 3321(b) shall be reported in the return required under this section for the return period in which they are actually paid unless they were constructively paid in a prior return period, in which case such wages shall be reported only in the return for such prior period.

(b) *Time and place for filing returns.* For provisions relating to the time and place for filing returns, see § 31.6071(a)–1T and § 31.6091–1, respectively.

Par. 3. A new § 31.6071(a)–1T is added immediately following existing § 31.6071(a)–1 to read as follows:

§ 31.6071(a)–1T Time for filing returns with respect to the railroad unemployment repayment tax (temporary).

(a) *In general.* Each return of the taxes imposed under section 3321 (a) and (b) required to be made under § 31.6011(a)–3AT shall be filed on or before the last day of the second calendar month following the period for which it is made.

(b) *Last day for filing.* For provisions relating to the time for filing a return when the prescribed due date falls on Saturday, Sunday, or a legal holiday, see the provisions of § 301.7503–1 of this chapter (Regulations on Procedure and Administration).

(c) *Late filing.* For additions to the tax in the case of failure to file a return within the prescribed time, see the provisions of § 301.6651–1 of this chapter (Regulations on Procedure and Administration).

Par. 4. Section 31.6157–1T is added immediately following existing § 31.6157–1 to read as follows:

§ 31.6157–1T Cross reference (temporary).

For provisions relating to the time and manner of depositing the railroad unemployment repayment tax imposed by section 3321(a), see § 31.6302(c)–2AT.

Par. 5. A new § 31.6302(c)–2AT is added immediately following existing § 31.6302(c)–2 to read as follows:

§ 31.6302(c)–2AT Use of Government depositaries in connection with the railroad unemployment repayment tax (temporary).

(a) *Effective date.* The provisions of this section apply with respect to the tax imposed by section 3321(a) on rail employers (as defined in section 3323(a)) on wages paid on or after July 1, 1986, during a taxable period.

(b) *Requirement*—(1) *Rail employers*—(i) *In general.* Except as provided in this section, every rail employer who is required by section 6157(d) to compute the tax imposed by section 3321(a) on a quarterly basis shall deposit the amount of the tax so computed with respect to a calendar quarter (other than the fourth quarter of a calendar year) with a Federal Reserve bank or with an authorized financial institution on or before the last day of the first calendar month following the close of the calendar quarter.

(ii) *Special rule for certain rail employers.* If, for the calendar year prior to the calendar year immediately preceding the current calendar year, the aggregate amount of taxes imposed under sections 3202 and 3221 of the Code (relating to the railroad retirement tax) with respect to an employer equaled or exceeded $1,000,000, such employer shall (except as provided below) deposit his undeposited railroad unemployment repayment tax imposed by section 3321(a) with respect to the current calendar year at the time such tax would otherwise be required to be deposited under this section in the manner set forth in Revenue Procedure 83–90, 1983–2 C.B. 615 (relating to transfers by wire to the Treasury). The funds transfer message described in Revenue Procedure 83–90 (with respect to the railroad retirement tax) shall be completed in the same manner as is prescribed in that Revenue Procedure, except that the amount required by item 12(f) shall be the amount of the railroad unemployment repayment tax (to be labeled as such by the rail employer). Item 12(g) is to be disregarded with respect to the use of the Revenue Procedure for deposits of the railroad unemployment repayment tax. A wire transfer required to be made by a rail employer with respect to the railroad unemployment repayment tax shall be made separately from any wire transfer required to be made with respect to any other tax.

(2) *Special rule where accumulated amount does not exceed $100.* The provisions of paragraph (b)(1) of this section shall not apply with respect to any calendar quarter if the amount of tax imposed by section 3321(a) for such calendar quarter as computed under section 6157, plus unpaid amounts for prior calendar quarters within the taxable period, does not exceed $100.

(3) *Requirement for deposit in lieu of payment with return.* If the amount of the tax reportable on a return of tax on Form CT–1 for a taxable period (as defined in section 3322(a)) exceeds by more than $100 the sum of the amounts deposited pursuant to paragraph (b)(1) of this section for such taxable period, the rail employer shall, on or before the last day of the first calendar month following the period, deposit the balance of the tax due with a Federal Reserve bank or with an authorized financial institution.

(4) *Special rule for third calendar quarter of 1986.* Notwithstanding paragraph (b)(1)(i) of this section, every rail employer required by section 6157(d) to compute the tax imposed by section 3321(a) for the third calendar quarter of 1986 shall deposit the tax so computed on or before December 15, 1986, in the manner provided by this section.

(c) *Depositary forms.* The provisions of paragraphs (b) and (c) of § 31.6302(c)–2, relating to depositary forms, are incorporated in this § 31.6302(c)–2A by reference.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 7. Section 602.101(c) is amended by inserting in the appropriate places in the table: "§ 31.6011(a)–3AT * * * 1545–0955, "§ 31.6071(a)–1T * * * 1545–0955 "§ 31.6157–1T * * * 1545–0955 and "§ 31.6302(c)–2AT * * * 1545–0955."

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There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

P.E. Coates,

Acting Commissioner of Internal Revenue.

Approved: October 28, 1986.

J. Roger Mentz,

Assistant Secretary of the Treasury.

[FR Doc. 86-24983 Filed 10-31-86; 1:28 pm]

BILLING CODE [illegible]

POSTAL SERVICE

39 CFR Part 776

Organizational Changes; Floodplain Management and Protection of Wetlands

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The purpose of this document is to reflect in the postal procedures on floodplain management and protection of wetlands certain changes in the organizational structure of the real estate and buildings function of the Postal Service at Headquarters and the field.

EFFECTIVE DATE: November 5, 1986.

FOR FURTHER INFORMATION CONTACT: Frank R. Rowan, (202) 268-3124.

SUPPLEMENTARY INFORMATION:

List of Subjects in 39 CFR Part 776

Environmental impact statements, Flood plains, Postal Service.

Accordingly, Part 776 of 39 CFR is amended as follows:

PART 776—FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS PROCEDURES

1. The authority citation for Part 776 continues to read as follows:

Authority: 39 U.S.C. 401.

§ 776.2 [Amended]

2. In § 776.2, strike out "Real Estate and Buildings" and insert "Facilities" in lieu thereof.

§ 776.5 [Amended]

3. In § 776.5, in paragraphs (g) and (h), strike out "HQ Director, Office of Program Planning, RE&B Department" and insert "Facilities Service Center Director" in lieu thereof; in paragraph (i), strike out "Regional Director, RE&B Department" and insert "Facilities Service Center Director" in lieu thereof; in paragraph (f), the introductory text is revised to read as follows:

* * * * *

(f) *Reevaluation.* If, after consideration of the Site Planning Report, Environmental Assessment, and preliminary Economic Analysis Report, the determination is that there appears to be no practicable alternative to locating in a floodplain or wetland, a final reevaluation of alternatives must be conducted. The Facilities Service Center Director is responsible for this reevaluation. To facilitate this reevaluation, the following data must be submitted to the Facilities Service Center Director:

* * * * *

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 86-24991 Filed 11-4-86; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-158; RM-5245]

Radio Broadcasting Services; Boonville, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 267A for Channel 268A at Boonville, New York, at the request of Oswego-Jefferson Broadcasting Corporation. The substitution of channels could permit Station WSCP-FM, Pulaski, New York to change transmitter site and operate with maximum Class A facilities. The applicants for Channel 268A at Boonville, the Atwood Broadcasting Corp. and J & S Broadcasting will be allowed to amend their applications to specify the new channel without loss of filing protection. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 1, 1986.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-158, adopted September 30, 1986, and released October 23, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the table of allotments is amended, under New York, by revising Channel 268A to 267A for Boonville.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Divsion, Mass Media Bureau.

[FR Doc. 86-24947 Filed 11-4-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-260; RM-4955]

Television Broadcasting Services; Eldon, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 270A to Eldon, Missouri, as that community's second FM broadcast service, in response to a petition filed by Roy D. Williford. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 1, 1986.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85-260, adopted October 3, 1986, and released October 23, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television Broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the table of allotments is amended under the entry of Eldon, Missouri, to add Channel 270A.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-24946 Filed 10-31-86; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1135 and 1312

[Ex Parte No. 290 (Sub-No. 2)]

Railroad Cost Recovery Procedures; Correction

AGENCY: Interstate Commerce Commission.

ACTION: Final rule; correction.

SUMMARY: At 51 FR 37635, October 17, 1986, the Commission modified its rules governing railroad cost recovery procedures by requiring railroads to adjust their cost recovery tariffs to take into account declines in the rail cost adjustment factor. That notice contained an omission of language, which this notice corrects.

FOR FURTHER INFORMATION CONTACT: Craig M. Keats (202) 275-7602.

SUPPLEMENTARY INFORMATION: In the rules appearing at 51 FR 37035, paragraph (k)(3) of § 1212.17 is correctly added to read as follows:

PART 1312—[CORRECTED]

§ 1312.17 Amendments.

* * * * *

(k) * * *

(3) All cost recovery tariffs filed with the Commission shall state that they are being in conformity with the rules in 49 CFR 1135.1 and 1312.17, and shall be amended under the same timetable applicable to cost recovery rate increases, to reflect declines in the cost index. Any declines in the index below the level in effect on December 31, 1985, will be addressed by postponing authorizations for future cost recovery rate increases pursuant to a "banking" procedure described more fully in Ex Parte No. 290 (Sub-no. 2), *Railroad Cost Recovery Procedures*, served October 17, 1986.

* * * * *

Noreta R. McGee,

Secretary.

[FR Doc. 86-24981 Filed 11-4-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 60792-6202]

Taking and Importing of Marine Mammals; Emergency Interim Rule and Request for Comments

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule and request for comment.

SUMMARY: NOAA issues this emergency interim rule to amend the importation requirements for yellowfin and bigeye tuna which are effective after the U.S. tuna fishermen are prohibited from setting their nets around porpoise. This rule is intended to modify and clarify an Interim Rule published on September 16, 1986.

EFFECTIVE DATE: November 4, 1986. Comments must be received on or before November 28, 1986.

ADDRESS: Comments may be mailed to the Assistant Administrator for Fisheries, National Marine Fisheries Service, NOAA, Department of Commerce, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: E.C. Fullerton, Director, Southwest Region, NMFS, (213) 514-6196, or Robert B. Brumsted, Acting Director, Office of Protected Species and Habitat Conservation, NMFS, (202) 673-5350.

SUPPLEMENTARY INFORMATION: The NMFS issued an interim rule on September 16, 1986 (51 FR 32786), which amended 50 CFR 216.24 to better enforce the quota on incidental porpoise mortality. That amendment imposed restrictions on United States tuna fishermen landing yellowfin and bigeye tuna from the eastern tropical Pacific Ocean. It also required that any yellowfin or bigeye tuna offered for importation into the U.S. must not have been caught in a manner proscribed to U.S. tuna fishermen. In this case, that would mean the imported tuna must be demonstrated not to have been caught in association with porpoise during the period the U.S. fleet is prohibited from setting on porpoise. For tuna caught on fishing trips that ended before the closure date and offered for import after the closure date, the interim rule required (50 Part 216.24(e)(9)(iv)(B)) that the import documentation include the date those lots were placed in a bonded warehouse. U.S. companies that import tuna have raised concerns that the lack of bonded warehouses, especially ones equipped for cold storage, in most of the exporting nations would unnecessarily restrict some imports, as would delays inherent in unloading tuna from vessels immediately prior to the closure.

This amendment expands the range of acceptable methods of documenting that the imported tuna was caught on a fishing trip that ended before the porpoise closure. The NMFS will accept a declaration by a responsible government official that the tuna offered for import came from a vessel that was in port waiting to unload or that the tuna was aboard a common carrier on the effective date of the closure. In either of these cases the intent of the interim rule is met.

This change requires that paragraph (e)(9)(i) be revised to recognize that tuna on a common carrier or on board a fishing vessel in port waiting to unload on the date of the closure is acceptable for importation. Also the instructions for preparing the official declaration are modified in paragraph (e)(9)(iv) to reflect this change.

U.S. flag vessels of 400 short tons carrying capacity or less are exempt from the yellowfin and bigeye tuna restrictions because vessels of this size class normally are incapable of fishing on porpoise. This amendment extends similar exemption to foreign-flag vessels of 400 short tons or less and the tuna from which is imported into the United States. Paragraph (e)(9)(iv) is revised by adding a new subparagraph (E) to reflect this change.

Classification

The NMFS has determined that this rule will result in no significant impacts on the environment other than those already discussed in the final environmental impact statement (EIS) on Proposed Amendments to the Regulations Governing the Taking of Marine Mammals Associated with Tuna Purse Seining Operations, published in December 1985, and the environmental assessment on yellowfin tuna importation released in August 1986. Therefore, this action does not require the preparation of additional documentation. Copies of these

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documents may be obtained by writing to NMFS (see address).

This emergency interim rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that Order. This rule is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that Order.

The porpoise quota was reached on October 21, 1986. In order to allow prompt importation of tuna taken before the closure these regulations must go into effect immediately. Therefore, NMFS finds that it is impracticable and contrary to the public interest to provide notice and an opportunity to comment on or to delay for 30 days the effective date of these regulations under the provisions of section 553(b)(B) and (d) of the Administrative Procedure Act.

The Regulatory Flexibility Act does not apply to this rule. As an emergency rule issued under 5 U.S.C. 553(b)(B), it is not required by section 553 to be published as a proposed rule with opportunity for public comment. In addition, no other law requires such publication.

This rule does not contain collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Marine mammals, Reporting and recordkeeping requirements, Transportation.

Dated: October 31, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resources Management, National Marine Fisheries Service.

PART 216—[AMENDED]

For the reasons set out in the preamble, 50 CFR Part 216 is amended as follows:

1. The authority citation for Part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

§ 216.24 [Amended]

2. In § 216.24, paragraph (e)(9) is revised to read as follows:

(e) * * *

(9)(i) *Restrictions on yellowfin and bigeye tuna imports.* No yellowfin or bigeye tuna harvested by a purse seine vessel fishing on porpoise in the eastern tropical Pacific Ocean (the "ETP") during the period that such fishing is prohibited for vessels of the United States under § 216.24(a)(4)(i) in 1986, may be imported into the United States. Any tuna harvested in the ETP before the closure date must be placed in a bonded warehouse, aboard a common carrier, or aboard a vessel in port awaiting to unload before the closure date in order to be imported into the United States after the closure date.

(ii) *Definitions for purposes of § 216.24(e)(9).* (A) "Closure date" means the date on which the allowable quota on incidental mortality permitted under the general permit will be reached as announced under the provisions of § 216.24(d)(2)(i)(B).

(B) "Closure period" means a period beginning on the closure date and ending on December 31, 1986, during which United States purse seine vessels are prohibited from catching tuna by setting on porpoise.

(C) "ETP" means the eastern tropical Pacific Ocean which includes the Pacific Ocean area bounded by 40° N. latitude, 40° S. latitude, 160° W. longitude, and the coastline of North, Central, and South America.

(D) "NMFS" means the National Marine Fisheries Services, National Oceanic and Atmospheric Administration, Department of Commerce.

(iii) *Authorization required for yellowfin and bigeye tuna imports.* Any yellowfin or bigeye tuna harvested by a vessel of a country for which the Assistant Administrator has made a finding under paragraph (e)(5)(i) of this section, that is offered for importation between the closure date and June 30, 1987, must be accompanied by a letter of authorization from NMFS.

(iv) *Procedure to obtain letter of authorization.* Any person desiring to obtain a letter of authorization from NMFS to allow the importation of yellowfin or bigeye tuna must submit to the Regional Director, NMFS, 300 S. Ferry Street, Terminal Island, California 90731, a declaration signed by a responsible government official of the country whose flag vessel caught the tuna, that the tuna being offered for importation was not taken by fishing on porpoise during the closure period. The declaration of the responsible government official must include the information listed in either paragraph (e)(9)(iv) (A), (B), (C), (D), or (E) of this section, as appropriate.

(A) If the tuna to be imported was taken on a fishing trip any part of which was in the ETP during the closure period, the declaration must include the following information:

(*1*) The name of the vessel(s) which harvested the tuna,

(*2*) The date of the trip(s) on which the tuna was harvested,

(*3*) A statement that the vessel carried an observer approved by the government on every portion of the trip that occurred after the closure date, and

(*4*) A statement that the observer certified that no tuna was harvested by fishing on porpoise after the closure date.

(B) If the tuna to be imported was taken on a fishing trip in the ETP that ended before the closure date, the declaration must include the following information:

(*1*) The names of the vessel(s) which harvested the tuna,

(*2*) The dates of the trip(s) on which the tuna was harvested, and one of the following sets of information:

(*i*) The date the tuna arrived in port, the date when the tuna was placed in a bonded warehouse, the date the tuna was removed from the bonded warehouse, and the name and address of the bonded warehouse. Documentation establishing that the tuna was in port on the closure date and documentation from the bonded warehouse that shows the dates that the tuna was placed into the warehouse and taken out of the warehouse must accompany the declaration.

(*ii*) The date the tuna arrived in port, the date when the tuna was placed on a common carrier for shipping, and the name and address of the common carrier for shipping, and the name and address of the common carrier. Documentation establishing that the tuna was in port on the closure date and documentation from the common carrier that shows the date(s) that the tuna was placed aboard the carrier must accompany the declaration.

(*iii*) The date the tuna arrived in port, awaiting unloading, the date the vessel is schedule for unloading, the intended disposition of the tuna (i.e., common carrier, bonded warehouse, offloading in Puerto Rico, Venezuela, etc.) and documentation from a port official verifying the arrival date of the vessel.

(C) If the tuna to be imported was taken by fishing on porpoise on a fishing trip that began after the closure period ends, the declaration must include the following information:

(*1*) The names of the vessel(s) which harvested the tuna,

(*2*) the dates of the trip(s) on which the tuna was harvested, and

(*3*) The location of the harvest.

(D) If the tuna to be imported was taken on a fishing trip on which the vessel was not in the ETP for any portion of the trip, the declaration must include the following information:

(*1*) The names of the vessel(s) which harvested the tuna, (*2*) The dates of the trip(s) on which the tuna was harvested, and

(*3*) The areas in which the vessel(s) was during the trip(s) (e.g., the western Pacific Ocean).

(E) If the tuna to be imported was taken in part or entirely by tuna purse seine vessels of 400 short tons carrying capacity or less, (and any remaining tuna was not caught by tuna purse seine vessels of larger than 400 short tons) the declaration must include the following information:

(*1*) The name(s) of the vessel(s) which caught the tuna;

(*2*) The carrying capacity in short tons of the(se) vessel(s); and

(*3*) the quantity of tuna being imported that was caught by the(se) vessel(s).

(v) *Disposition of tuna not accompanied by required documentation.* (A) Tuna that requires a letter of authorization under paragraph (e)(9)(iii) above that is offered for importation without the required letter of authorization must be either—

(*1*) Exported under Customs supervision within 60 days,

(*2*) Placed into a bonded warehouse, or

(*3*) Disposed of under Customs laws and regulations, as long as that disposition does not result in its introduction into the United States.

(B) The importer will remain liable for any expenses incurred in the storage and/or disposal of tuna refused admission under these regulations. If, within 60 days of fish being placed into a bonded warehouse, the District Director of Customs receives appropriate documentation for that fish, the fish will be allowed to be entered into the United States, otherwise it will be disposed of as set forth in paragraph (e)(9)(v) (A) of (C) of this section.

* * * * *

[FR Doc. 86-24966 Filed 11-4-86; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 652

[Docket No. 60229-6072]

Atlantic Surf Clam Fishery Closure

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of surf clam fishery closure.

SUMMARY: NOAA issues this notice to close the Nantucket Shoals Area surf clam fishery for the remainder of 1986. The action is required to prevent significant overharvest of surf clam allocations. The intended effect is to prohibit further harvest of the resource.

EFFECTIVE DATE: October 31, 1986.

FOR FURTHER INFORMATION CONTACT: Bruce Nicholls, (617) 281-3600 ext. 263.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for Atlantic Surf Clam and Ocean Quahog Fisheries contain at § 652.22(d) a provision to close any of the regulated fisheries if the Regional Director, Northeast Region, NMFS, upon review of available information including current and expected levels of fishing effort, determines that the fishery quota will be exceeded.

Logbooks submitted by fishermen and processors show that as of October 24, 1986, surf clam harvests from the Nantucket Shoals Area during 1986 reached 204,000 bushels. The annual quota for the area is 200,000 bushels. This level of harvest occurred despite action by the Mid-Atlantic and New England Councils directing the Regional Director to adjust harvest figures downward by 23,000 bushels to eliminate from quota consideration amounts taken on Stellwagen Bank, which is within the Nantucket Shoals Area but north of Cape Cod. The fishery quota has thus been exceeded and closure is mandatory. This closure might not have been necessary if trip limits could have been imposed in accordance with provisions of Amendment 6 to the FMP. However, failure of operators in the fishery to submit timely reports of their fishing activity frustrated NOAA's ability to impose catch restrictions. NOAA is investigating means to ensure better compliance with the mandatory logbook program by operators in the Nantucket Shoals Area fishery.

The fishery will reopen on January 1, 1987.

Other Matters

This action is taken under the authority of 50 CFR Part 652 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Dated: October 31, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-25020 Filed 10-31-86; 4:23 am]

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Proposed Rules

Federal Register
Vol. 51, No. 214
Wednesday, November 5, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Parts 57 and 68

U.S. Standards for Hay and Straw

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: According to the requirements for the periodic review of existing regulations, the Federal Grain Inspection Service (FGIS) has reviewed the U.S. Standards for Hay and Straw. Pursuant to this review, FGIS proposes to remove these standards from the regulations. Official services would no longer be performed for these agricultural commodities. The hay and straw standards are authorized by the Agricultural Marketing Act of 1946 (the Act). These inspection programs no longer meet the objectives of the Act. Therefore, the programs should be terminated and applicable provisions of the regulations removed.

DATE: Comments must be submitted on or before January 5, 1987.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., Information Resources Staff, RM, USDA, FGIS, Room 1661 South Building, 1400 Independence Avenue, SW., Washington DC 20250, telephone (202) 382–1738. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: The U.S. Standards for Hay and Straw were established under the authority of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*). Pursuant to section 203(c) of the Act (7 U.S.C. 1622(c)), the Administrator is authorized to develop and improve standards for all assigned agricultural commodities.

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulations 1512–1. The action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

D.R. Galliart, Acting Administrator, FGIS has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities because those persons who apply the standards and most potential users of hay and straw inspection services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the requests for official services for hay and straw have declined over the years to an average of less than 50 requests per year, the majority of which are requested by an agency within USDA itself. If the hay and straw standards are removed from the regulations, users of official inspection services could in the alternative, request unofficial services, as has been the recent trend, from available state programs or commercial laboratories.

Standards Review

The review of the standards included a determination of the continued need for the standards. The objective was to evaluate if the standards facilitate the marketing of hay and straw.

The U.S. Standards for Hay (7 CFR Part 57, Subpart A, Sections 57.1–57.13) and the U.S. Standards for Straw (7 CFR Part 57, Subpart B, Sections 57.50–57.52) were established in 1925 and 1933, respectively. Hay and straw inspection are authorized by the Agricultural Marketing Act of 1946 as amended (7 U.S.C. 1621–1627). Pursuant to that Act, the Secretary is authorized to provide for the inspection of certain agricultural products or commodities, including hay and straw. The program is a voluntary program. The regulations for inspection and certification of certain agricultural commodities and the products of including hay and straw, appear in Subpart A of Part 68 (7 CFR 68.1 through 68.54). If the hay and straw standards are removed from the regulations, the only change to Subpart A of Part 68 would be revision of § 68.42a, Fees for Certain Federal Inspection Services to remove references to hay and straw fees.

The hay and straw standards were used frequently until the early 1950's, but the number of official inspections has declined appreciably since that time. The highest number of official inspections occurred in fiscal year 1946 when 25,067 hay and straw inspections were performed. During the last decade, less than 50 official inspections were performed in most years. The number of requests for service are at such a level as to raise concerns regarding the continued effectiveness and viability of the hay and straw program.

The decrease in the number of official hay and straw inspections has primarily resulted from a decline in the purchase of these commodities by various government installations. Prior to World War II about half of the hay and straw which was officially inspected was used by the U.S. Army for horses and mules. Following that period, use of these animals began to decline as did requests for hay and straw inspections. The majority of recent inspections has been for hay and straw purchased by the USDA, Agricultural Research Center, Beltsville, Maryland.

U.S. Standards for Hay

In the hay standards, hay is defined as the harvested, unthreshed herbage of forage plants which meets the requirements of one of the various classes in groups I to XI; i.e., (I) Alfalfa and Alfalfa Mixed Hay; (II) Timothy and Clover Hay; (III) Prairie Hay; (IV) Johnson and Johnson Mixed Hay; (V) Grain, Wild Oat, Vetch, and Grain Mixed Hay; (VI) Lespedeza and Lespedeza Mixed hay; (VII) Soybean and Soybean Mixed Hay; (VIII) Cowpea and Cowpea Mixed Hay; (IX) Peanut and Peanut Mixed Hay; (X) Grass Hay; and (XI) Mixed Hay. Hay cannot be coarse and woody, nor can it contain more than 35 percent foreign material or moisture. The numerical or Sample grade designation of hay is determined by generally subjective grading factors in the standards. Depending on the class of hay inspected, leafiness, color, foreign material, and/or maturity are the primary grading factors.

The absence of objective grading factors has been suggested as another reason for minimal use of the hay standards. Forage researchers, in particular, have expressed concern regarding the subjective grading factors and in their opinion such factors are poor measurements of quality, especially for feed value. Objective analyses, such as protein and fiber content, are considered to be more accurate indicators of nutrient content for balancing a livestock ration.

In the mid- to late-1970's and early-1980's, FGIS studied the feasibility of revising the hay standards to incorporate objective testing procedures as grading factors. The objective tests under consideration were crude protein, acid detergent fiber, neutral detergent fiber, and a calculated measurement of relative feed value. Near Infrared Reflectance (NIR) instrumentation was the testing method of choice for these determinations. However, NIR analysis was not feasible since calibration equations had not been developed for testing the major types of hay on a nationwide basis. In addition, installation of NIR equipment for analysis of hay and straw across the country would cause increases in program costs which, in our view, would require increases in inspection fees.

Use of wet chemical analysis to test hay was not considered a viable option to NIR instrumentation because of time and cost concerns. In addition, the Beltsville Testing Laboratory is the only FGIS laboratory capable of analyzing hay. Consequently, no substantive changes were made to the standards to include objective grading factors. During recent discussions with the industry, the majority of hay buyers and sellers indicated that official inspection is not needed to facilitate hay marketing. There was some suggestion that official inspections could cause delays in shipments of hay. Marketed hay moves fairly quickly and buyers and sellers are often located in areas which are not readily accessible to official inspection personnel. Also, sampling and inspection procedures are applicable for small hay bales. These procedures are difficult or impossible to perform on large bales and on hay pellets, wafers, and cubes.

Most hay industry members have stressed that official inspection is not necessary However, they agree that it is preferable to have unofficial uniform objective testing procedures to market hay nationwide. In an effort to develop uniform analysis procedures between commercial hay testing laboratories, members of the American Forage and Grassland Council and the National Hay Association established the National Alfalfa Hay Testing Association. This Association has organized a committee to approve and monitor commercial laboratories for uniform, accurate alfalfa hay testing. A number of laboratories on a nationwide scale currently participate in this program, and additional laboratories are expected to be approved in the near future. Since the majority of hay produced and marketed in the U.S. is alfalfa or alfalfa mixed hay, objective testing of this type of hay has predominated over other legume and grass hays.

In addition to FGIS, cooperating states perform official inspections of both hay and straw. There are presently 13 states performing the official services. If the official hay and straw programs are eliminated, these states could continue their programs under state authorities, as applicable. Also private inspection agencies could initiate unofficial inspection services for these commodities.

U.S. Standards for Straw

In the straw standards, straw is defined as the stems, leaves, and chaff of wheat, oats, barley, rye, and rice which remain after threshing. The numerical or Sample grade designation in the standards is determined by color and percentage of chaff.

The straw standards have generally been used less as a marketing tool than the hay standards. Not only is less straw marketed than hay, but fewer quality concerns are associated with straw since most is used for livestock bedding. The present and potential demand for straw inspection services on a yearly basis is insignificant.

For these reasons, the Service has determined that the official inspection, certification, and identification of the class, quality, quantity, and condition of hay and straw does not facilitate trading of these commodities and that the programs do not meet the objectives of the Act. FGIS, therefore, proposes that the U.S. Standards for Hay and the U.S. Standards for Straw be removed as official standards from the regulations under the Agricultural Marketing Act of 1946. In addition, it is proposed that the fees relating to the inspection of hay and straw be removed from 7 CFR Part 68.

List of Subjects

7 CFR Part 57

Hay, Straw, Exports.

7 CFR Part 68

Administrative practice and procedure, Agricultural commodities, Beans, Peas, Reporting and recordkeeping requirements, Rice.

PART 57—[REMOVED]

1. It is proposed to remove Part 57—United States Standards for Hay and Straw.

PART 68—[AMENDED]

2. The authority citation for Part 68 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087, 1090, as amended; 7 U.S.C. 1622, 1624, unless otherwise noted.

3. 7 CFR Part 68, Subpart A, § 68.42a is amended by revising the undesignated center heading and Table 2 to read as follows:

§ 68.42a Fees for Certain Federal Inspection Services.

* * * * *

Fees for Inspection of Hops, Pulses, and Miscellaneous Processed Commodities

* * * * *

TABLE 2.—UNIT RATES

Service [1]	Bean; pea; lentil	Hops	Non-graded, non-processed commodities
Lot or sample (per lot or sample)		$22.40	
Field run (per lot or sample)	$15.00		
Other than field run (per lot or sample)	11.20		
Factor analysis (per factor)	3.75		3.75
Extra copies of certificates (per copy)	3.00	3.00	3.00

[1] Fees apply to determinations (original or appeal) for kind, class, grade, factor analyses, and any other quality designation as defined in the official U.S. Standards or applicable instructions when performed at other than the point of service.

* * * * *

Dated: October 15, 1986.

D.R. Galliart,

Acting Administrator.

[FR Doc. 86-24973 Filed 11-4-86; 8:45 am]

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Agricultural Marketing Service

7 CFR Parts 1064, 1102, 1106, 1108, 1126, and 1138

[Docket Nos. AO-231-A54 et al.]

Milk in the Texas and Certain Other Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders

7 CFR Parts	Marketing areas	Docket Nos.
1126	Texas	AO-231-A54
1064	Greater Kansas City	AO-23-A57
1102	Fort Smith, Arkansas	AO-237-A34-RO1
1106	Southwest Plains	AO-210-A45-RO1
1108	Central Arkansas	AO-243-A39
1138	Rio Grande Valley	AO-335-A32

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rules.

SUMMARY: This final decision proposes to modify the plant location adjustments to prices under the Texas, Greater Kansas City, Southwest Plains, and Central Arkansas Federal milk marketing orders. The location adjustment changes are necessary to align prices among Federal order markets to conform with the Class I differentials mandated by the Food Security Act of 1985 that were implemented on May 1, 1986. The Class I differentials also changed the price relationships among Federal order markets and require changes to the location adjustment provisions to align prices at competing plants on an intra- and inter-order basis. The changes are necessary to promote the orderly marketing of milk in the affected markets. The location adjustment amendments are based on proposals by cooperative associations and proprietary handlers that were considered at a public hearing held March 4–7, 1986, in Irving, Texas.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U. S. Department of Agriculture, Washington, DC 20250, (202) 447–2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments propose to modify the transportation allowances provided under the four orders to make them conform more closely to the economic conditions that currently exist in the marketplace. The main economic conditions involved are the implementation of the Class I differentials mandated by the Food Security Act of 1985 effective May 1, 1986, and the cost of transporting bulk milk as reflected in such differentials. Reflection of the changed marketing conditions through amendments to plant location adjustments to order prices will not result in a significant added price impact on regulated handlers.

Prior documents in this proceeding:

Notice of Hearing: Issued February 14, 1986; published February 21, 1986 (51 FR 6250).

Emergency Final Decision: Issued May 8, 1986; published May 16, 1986 (51 FR 17982).

Final Order: Issued June 4, 1986; published June 10, 1986 (51 FR 20955).

Tentative Decision: Issued July 9, 1986; published July 15, 1986 (51 FR 25539).

Interim Amendments: Issued August 5, 1986; published August 11, 1986 (51 FR 28687).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the Texas and certain other marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice 7 CFR Part 900, at Irving, Texas, on March 4–7, 1986. Notice of such hearing was issued on February 14, 1986 and published February 21, 1986 (51 FR 6250).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Assistant Secretary, Marketing and Inspection Services, on July 9, 1986, filed with the Hearing Clerk, United States Department of Agriculture, a tentative decision containing notice of the opportunity to file written exceptions thereto. The hearing notice specifically invited interested persons to present evidence concerning the probable regulatory and informational impact of the proposals on small businesses. To the extent that this issue was raised, it is considered in the following findings and conclusions. The material issues, findings and conclusions, rulings, and general findings of the tentative decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

Under Issue 1a: 1. Two paragraphs are added after the 20th paragraph.

2. Paragraph 27 is revised for clarification.

3. Two paragraphs are added after the 27th paragraph.

Under Issue 1b: 1. Paragraph 44 is revised for clarification as a result of points raised in exceptions.

2. Eight paragraphs are added after the 46th paragraph.

3. One paragraph is added after the 65th paragraph.

4. One paragraph is added after the 73rd paragraph.

Under Issue 1c: Two paragraphs are added after the 18th paragraph.

Under Issue 1d: 1. Paragraph 2 is revised as a result of points raised in exceptions.

2. Two paragraphs are added after the 40th paragraph.

3. Four paragraphs are added after the 41st paragraph.

4. One paragraph is added after the 55th paragraph.

5. One paragraph is added after the 65th paragraph.

6. The last paragraph (paragraph 71) is revised as a result of points raised in exceptions and three paragraphs are added thereafter.

The material issues on the record of hearing relate to:

1. Plant location adjustments to handlers regulated under the orders regulating the handling of milk in the:

a. Greater Kansas City marketing area;

b. Southwest Plains and Fort Smith, Arkansas marketing areas;

c. Central Arkansas marketing area; and

d. Texas and Rio Grande Valley marketing areas.

2. Whether emergency marketing conditions exist with respect to issue number 1.

An additional material issue involved proposed changes to the location adjustment provisions of the Memphis, Tennessee milk order. However, this issue has been resolved by the issuance of a separate, emergency final decision and order amending the Memphis, Tennessee order.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

Background for material issue No. 1

The purpose of the hearing was to receive evidence on the economic and marketing conditions that relate to proposed amendments to the location adjustment provisions of the Federal milk order markets involved in this proceeding. The proposed location adjustment changes by dairy industry

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participants were filed in response to increases in Class I differentials under 35 of 44 Federal milk marketing orders mandated by the Food Security Act of 1985. The Acting Assistant Secretary's final decision to implement the mandated differentials (of which official notice is taken) was issued subsequent to the hearing on March 14, 1986; and published March 20, 1986 (51 FR 9669). The mandated differentials were implemented on May 1, 1986. Basically, the location adjustment changes were proposed to conform with the mandated differentials which also changed the alignment of prices for milk in fluid uses among Federal order markets.

Federal orders classify milk in accordance with the form in which or the purpose for which it is used and establish minimum prices for each such use classification, which all handlers shall pay. Such prices are to be uniform as to all handlers, subject to certain permissible adjustments, including the locations at which delivery of such milk is made to handlers.

Milk used for fluid purposes (Class I) is priced at a higher level than milk in other uses. The minimum Class I price under each Federal order is determined by adding the Class I differential specified in the order to the basic formula price for the second preceding month. Since the basic formula price for any month is the same for all milk order markets, minimum Class I prices vary among markets to the extent that Class I differentials vary among markets.

The Class I differential in each Federal order market represents the additional minimum value necessary to attract a sufficient supply of milk for fluid use for each market. Historically, each Class I differential includes a factor to cover the additional costs incurred in producing milk under the rigid sanitary standards that apply to Grade A milk. The Class I differential for each market accounts for other special economic conditions relevant to each market, particularly transportation costs, which influence prices for milk in city markets. In total, the minimum price for milk in Class I uses, as well as the prices for milk in other uses, is intended to recognize the economic conditions affecting the production and marketing of milk in each market so as to bring forth a sufficient supply of milk to meet the demand for milk and dairy products in each regulated market.

An additional factor relevant to the determination of the appropriate Class I price level in each market is the relationship, or alignment, of such price with prices in other markets to recognize the cost of obtaining alternative or supplemental supplies of milk from lower cost areas. Generally, Class I prices increase from north to south in recognition of alternative sources of milk from northern, heavy supply areas. Prior to May 1, 1986, Class I prices in Federal order markets east of the Rocky Mountains generally reflected an alignment of Class I prices from the north (Eau Claire, Wisconsin) to principal cities in Federal order markets to the south at a rate approximating a cost for hauling bulk milk of 1.5 cents per hundredweight per 10 miles.

The Class I differentials in these markets were not precisely aligned on a 1.5-cent rate from Eau Claire since recognition of local marketing conditions is an essential element in the determination of the appropriate Class I price level in each market. However, Class I prices tend to reflect an alignment from north to south since the Class I price level in any market is constrained by the cost of milk in alternative markets plus the cost of hauling bulk milk from such alternative source of supply. In effect, a regulated minimum price level in each market, in the long run, cannot significantly exceed the cost of milk from an alternative, lower cost production area. Such an alignment recognizes economic alternatives and results in the lower cost area being a basing point from which price constraints in other markets are established. Eau Claire, Wisconsin, is generally recognized as the basing point for a large number of Federal order markets since it is the lowest cost area, in terms of Federal order pricing, and is in a heavy milk producing region that represents an actual and potential source of supply for markets to the south.

Effective May 1, 1986, the Class I differentials were increased by varying amounts in 35 of 44 Federal order markets as required by the Food Security Act of 1985. Such differentials were increased, at least in part, because of increases in the cost of hauling bulk milk that were not reflected in the minimum order Class I differentials effective prior to May 1, 1986. The extent to which the differentials were increased for the Federal order markets involved in the proceeding are indicated in the following table. In addition, the change in the differentials in other markets that regulate plants that have fluid milk sales in one or more of the markets involved in this proceeding, is also included in the table. The Class I differential changes in these other markets is an important consideration affecting the location adjustment changes necessary in the six remaining markets involved in this proceeding because of the need to maintain some alignment of pricing among markets for the economic reasons previously set forth.

Class I differentials	Marketing order		
	Prior to May 1	Effective May 1	Increase
			(Dollars per hundredweight)
Georgia	2.30	3.06	.76
Southern Illinois	1.53	1.92	.39
Greater Kansas City	1.74	1.92	.18
Nebraska-Western Iowa	1.60	1.75	.15
Iowa	1.40	1.55	.15
New Orleans-Mississippi	2.85	3.85	1.00
Greater Louisiana	2.47	3.28	.81
Memphis, Tennessee	1.94	2.77	.83
Nashville, Tennessee	1.85	2.52	.67
Paducah, Kentucky	1.70	2.39	.69
Fort Smith, Arkansas	1.95	2.77	.82
Southwest Plains	1.98	2.77	.79
Central Arkansas	1.94	2.77	.83
Lubbock-Plainview, TX	2.42	2.49	.07
Texas	2.32	3.28	.96
Central Arizona	2.52	2.52	0
Texas Panhandle	2.25	2.49	.24
Western Colorado	2.00	2.00	0
Eastern Colorado	2.30	2.73	.43
Rio Grande Valley	2.35	2.35	0

The varying increases in the Class I differentials resulted in a change in the Class I price relationships among markets. It is noted that the Class I differentials increased the most in southern areas and increased the least in northern and western areas. As a result, the price surface is the steepest among markets on a straight north-south axis and flattens out as the alignment to the south is measured from a northwest or northeast direction. In fact, on a straight east-west direction, an equal price line ($2.77 Class I differential as of May 1, 1986) has been established from Chattanooga, Tennessee, to Oklahoma City, Oklahoma, a distance of 774 miles. It is also noted that in the southwest a new price alignment has been established between Texas and New Mexico where the Class I differential now increases from west to east.

The Class I differentials that were effective on May 1, as well as those that were previously effective, apply to a specific location (or so-called base zone) prescribed by each of the orders involved in this proceeding. The base zone is a principal city, and thus a major consumption center for fluid milk products that is included within the marketing area of each order. Each of the orders also provides for adjustments to Class I and blend prices payable to producers to reflect the various locations, other than the base zone, at which milk may be received from producers. Some of the orders provide for only reductions to the base zone prices while others provide for both plus

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and minus adjustments. Also, some of the orders provide for location adjustments based on the actual distance between a specific city and actual plant locations, while others provide for price zones (both inside and outside the marketing area) that relate to distances between principal cities. The specific pricing structure for each of the orders, as well as the marketing structure that provides the basis for the particular pricing arrangement, is set forth hereafter for each of the markets.

Regardless of the pricing structure employed, the purpose of location adjustments is to reflect the cost of hauling milk from where it is produced to where it is needed for use in fluid milk products. The Class I and blend prices at major-city, base zone locations are intended to attract a sufficient supply of milk to such location. To the extent that plants are located some distance from the base zone, and closer to the major supply areas for the market, Class I and blend prices are reduced to reflect the lesser hauling costs that are incurred in supplying such plants relative to plants located in the base zone. Also, in two of the markets, Class I and blend prices are increased at pricing zones that are located further from the major production areas than plants in the base zone. Thus, adjustments to Class I and blend prices reflect the cost of the economic service provided by producers to handlers at varying locations. The value of the service provided varies in terms of both distance and the cost of hauling bulk milk. The extent to which there is adequate compensation for the value of services provided raises an issue of equity, both among producers and among handlers.

Since the Food Security Act of 1985 mandated changes in the Class I pricing structure among Federal order markets, application of current location adjustments in individual markets could result in substantial price differences among plants regulated under the same or different orders. Substantial price differences at plants near to each other, or even at plants that are relatively distant from each other, because of the application of current location adjustments could affect the ability of certain plants to obtain milk supplies from current production areas. Although location adjustments reflect the cost of hauling milk from where it is produced to where it is needed, thereby providing a price incentive for milk movements, handlers operating fluid milk plants also expressed a primary concern over their ability to continue to compete with other handlers in selling fluid milk products because of substantial changes in Class I prices among competing plant locations. As a result, this hearing and three other regional hearings were held to consider proposals to amend location adjustment provisions. Official notice is taken of the Notices of Hearing for such other proceedings: Milk in the Georgia and Certain Other Marketing Areas, issued February 7, 1986, published February 13, 1986 (51 FR 5363); Milk in the Chicago Regional and Certain Other Marketing Areas, issued February 14, 1986, published February 21, 1986 (51 FR 6241); and Milk in the Upper Midwest, Nebraska-Western Iowa, and Iowa Marketing Areas, issued February 25, 1986, published March 3, 1986 (51 FR 7280). It is obviously noted that each of the hearings were held prior to the effective date of implementation of the mandated Class I differentials. Consequently, all hearing participants could only testify with respect to potential disorderly marketing conditions that would result because of the changes in inter-market price relationships and application of current location adjustments.

As a matter of procedure, it is noted that changes in the location adjustments in one market could affect the extent to which changes can or should be made in location adjustment provisions in other markets. Although the proposed location adjustment changes were set forth for individual markets in the Notice of Hearing, the testimony and evidence centered on certain price relationships among markets. Consequently, the material issues for this decision begin with the northern-most market and progress to the south. In this way, the decision can best accommodate a discussion of individual market circumstances as well as the inter-market price relationships.

As a further preliminary point, the Memphis, Tennessee milk order is a part of this regional proceeding. However, a separate, emergency final decision pertaining only to that market was issued. Official notice is taken of that decision issued by the Deputy Assistant Secretary on May 8, 1986, published May 16, 1986 (51 FR 17982). It is also noted that this proceeding on location adjustment changes was a reopening of a hearing for the Southwest Plains and Fort Smith, Arkansas orders. The prior hearing for these markets was held on November 6, 1985, at Tulsa, Oklahoma, to consider proposals to merge the marketing areas of the two orders and further expand the Southwest Plains marketing area to include additional territory in southwest Missouri and northwest Arkansas. This decision deals only with the location adjustment issues while another decision will follow on the marketing area expansion issue.

1a. Plant location adjustments for handlers under the order regulating the handling of milk in the Greater Kansas City marketing area

The Greater Kansas City order should be amended to increase the rate (from 1.5 cents to 1.7 cents) for establishing location adjustments at plants located outside the marketing area. The higher rate should apply to out-of-area plants that are more than 70 miles from the nearer of Kansas City, Missouri or Topeka, Kansas. The location adjustment would be minus 1.7 cents for each 10 miles, or fraction thereof, between the plant and the nearer of the two basing points.

The current order pricing structure provides for no location adjustments within the marketing area. The Class I and blend prices are reduced at plants outside the marketing area that are also more than 50 miles from the nearer of Kansas City, Missouri or Topeka, Kansas. Such prices are reduced by 10 cents per hundredweight for plants that are between 50 and 70 miles from the nearer basing point and by an additional 1.5 cents per hundredweight for each 10 miles beyond 70 miles from the nearer basing point. Consequently, the location adjustments reflect the classical pricing structure whereby marketing area prices are reduced in all directions to reflect the lower value associated with milk at distant locations relative to prices that are necessary to attract supplies of milk to major population centers in the marketing area.

The marketing area, within which no location adjustments apply, consists of 26 counties in Kansas and 20 counties in Missouri and has a population of about 2.3 million. The primary population centers are Kansas City, Missouri and Kansas City and Topeka, Kansas. Of the 46 counties, there are only five that have populations in excess of 100,000. Four of these counties (Johnson and Wyandotte in Kansas and Clay and Jackson in Missouri) represent the Kansas City area while the fifth county (Shawnee) represents Topeka, Kansas. These counties represent about 60 percent of the total marketing area population.

There are seven distributing plants regulated under the order, all of which are located in the marketing area. Six are located in Kansas while one is located in Missouri. Four of the plants are located in the Kansas City area while the other three are located to the west at Lawrence, Topeka, and Junction City, Kansas.

There are also four supply plants regulated under the order that are located in outlying production areas surrounding the major population centers. Two of these plants are located in Kansas, one in Missouri and one in Iowa. One of the Kansas supply plants is located in the marketing area at Sabetha (Nemaha County) which is north of Kansas City and Topeka. The other Kansas plant is located at Ottawa (Franklin County) which is adjacent to the marketing area and south of Kansas City and Topeka. Currently a minus 10-cent location adjustment applies at such location. The Missouri supply plant is at Chillicothe (Livingston County) which is adjacent to the marketing area and northeast of Kansas City. Currently, a minus 13-cent location adjustment applies at such location. The Iowa supply plant is located at Fredericksburg (Chickasaw County) which is 340 miles from Kansas City, Missouri. Currently a minus 50.5-cent location adjustment applies at this distant procurement area.

There are more than ample supplies of milk associated with the market to meet fluid milk requirements. During 1985, a monthly average of 74.3 million pounds of milk was pooled on the market, while producer milk in Class I uses averaged about 36.4 million pounds. For the year, Class I utilization of producer milk was 48.9 percent, ranging from a high of 58 percent in January to a low of 41 percent in June.

The source of the producer milk supply for the market originates on farms located in the states of Kansas, Missouri, Iowa, and Nebraska. Kansas and Missouri represent the major sources of supply, representing 49 percent and 36 percent, respectively, of the total market supply during November 1985. During the same month, Iowa represented 10 percent of the producer milk associated with the market and Nebraska 5 percent. During November of the two previous years, Kansas and Missouri producers combined represented about 87 percent and 88 percent of milk supplies during 1984 and 1983, respectively, while Iowa and Nebraska sources represented less of total supplies than they represented in 1985. Of the Kansas and Missouri supplies, most is situated relatively near to the major population centers. For example, during 1985, milk was produced in 44 of the 46 counties that comprise the marketing area and represented about two-thirds of the market's total supply of milk.

Fluid milk requirements of the market are also supplied by distributing plants that are regulated under other Federal orders. During December 1985, 15 distributing plants regulated under four different Federal orders had sales in the Greater Kansas City marketing area that represented about 28 percent of the total packaged fluid milk products disposed of in the marketing area. Three plants regulated under the Southern Illinois order represented about two percent of total sales while four Nebraska-Western Iowa plants represented about three percent of total fluid milk sales. Three Iowa plants represented about six percent of total sales while five plants regulated under the Southwest Plains order represented about 17 percent of the total fluid milk sales in the Greater Kansas City marketing area.

Effective May 1, 1986, the Class I differential under the Greater Kansas City order was increased by 18 cents, from $1.74 to $1.92 per hundredweight. The Class I differentials under the two order markets to the north (Nebraska-Western Iowa and Iowa) were each increased by 15 cents. As a result, the Iowa Class I differential is $1.55 (up from $1.40) and the Nebraska-Western Iowa differential is $1.75 (up from $1.60). The Southern Illinois order to the east was increased by 39 cents, from $1.53 to $1.92, while the Southwest Plains order to the south was increased by 79 cents, from $1.98 to $2.77.

As a result of the change in the price relationship between the Greater Kansas City and other orders, Mid-America Dairymen, Inc. (Mid-Am), proposed that the location adjustment provisions be amended. Mid-Am proposed that a zone pricing structure be established within the marketing area. Under the proposal, the Kansas City and Missouri portions of the marketing area would be retained as the base zone in which no location adjustments would apply. Two new price zones would be established to the west of Kansas City where plus location adjustments would apply. A plus 10-cent location adjustment would apply in the first zone to the west of the base zone and would include nine counties that are in the marketing area and two counties (Osage and Franklin) that are adjacent to the marketing area. This would result in a 10-cent increase at a distributing plant in Topeka (where no adjustment currently applies) and a 20-cent increase at a Mid-Am supply plant at Ottawa (Franklin County) where a minus 10-cent adjustment currently applies. The third pricing zone, with a plus 20-cent location adjustment, would include eight southwestern counties of the marketing area. Such location adjustment would apply to a distributing plant at Junction City, where no adjustment currently applies. Mid-Am contended that the plus location adjustments in the western portion of the marketing area were intended to provide for better price alignment with competing handlers located in higher priced markets to the south who are regulated under the Southwest Plains order.

Mid-Am also proposed that the rate for determining minus location adjustments at distant plants be increased from 1.5 to 2.0 cents per 10 miles. Topeka would be eliminated as a basing point for establishing out-of-area location adjustments and the territory surrounding Kansas City, Missouri, within which no location adjustments apply would be expanded from 50 to 70 miles. Mid-Am contended that the higher rate was necessary to cover a greater portion of the hauling cost to provide an incentive to ship milk from northern supply areas to major population centers in the market for fluid use. Mid-Am testified that its proposal would maintain essentially the same location value of milk in northern supply areas that exists under the current location adjustment provisions. Specifically, Mid-Am referred to plants located at Arlington, Bremer, and Fredericksburg, Iowa which are within the Iowa procurement area of the Greater Kansas City marketing area. The Fredericksburg plant is a pool supply plant on the Kansas City market that is operated by Associated Milk Producers, Inc. (AMPI), while the other two plants are nonpool plants at which producer milk is priced under the Kansas City order.

In its brief, Mid-Am withdrew its support for the proposal to establish plus pricing zones in the Kansas portion of the marketing area. However, Mid-Am contends, that for pricing purposes the counties of Franklin and Osage should be included in the base zone. Consequently, no location adjustment would apply at Mid-Am's Ottawa supply plant, whereas a minus 10-cent adjustment currently applies at such location and a plus 10-cent adjustment would have applied under Mid-Am's original proposal.

AMPI (North Central Region) opposed Mid-Am's location adjustment proposal to increase the rate from 1.5 to 2.0 cents per 10 miles. AMPI testified that the 2.0-cent rate was in excess of a rate that is necessary to recognize the alignment of Class I differentials among markets established on May 1, 1986. AMPI testified that in view of the price relationship between the Greater Kansas City market and markets to the north (Nebraska-Western Iowa, Iowa, and Upper Midwest), a rate of 1.7 cents per 10 miles was all that was necessary

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to reflect the new alignment of prices. Specifically, AMPI (North Central Region) proposed that a minus 12-cent location adjustment apply to plants outside the marketing area that are between 50 and 70 miles from the nearer basing point, with a further minus adjustment of 1.7 cents per each 10 miles beyond 70 miles from such basing point.

The National Farmers' Organization (NFO) opposed the zoning of the Kansas portion of the marketing area. NFO contended that the application of higher prices in the western part of the marketing area would disrupt the historical price relationship among the market's distributing plants. In particular, NFO contended that the distributing plant at Topeka (which NFO supplies) would be placed in a disadvantageous position relative to plants in the Kansas City area. NFO also opposed the deletion of Topeka as a basing point for establishing location adjustments at plants outside the marketing area. NFO indicated that it sometimes diverts milk to nonpool plants that are outside the marketing area and south and west of Kansas City. Thus, elimination of Topeka as a basing point would reduce the price on such diverted milk since Topeka is 66 miles west of Kansas City.

NFO supported the increase in the rate for computing location adjustments to 2.0 cents per 10 miles. NFO contended that such higher rate is necessary to provide an incentive for northern milk supplies in Iowa to be shipped to Kansas City when needed for fluid use. Moreover, NFO contended that the application of a lower rate for determining location adjustments would over-value milk at distant locations that is pooled on the market but which is not shipped to distributing plants for fluid use.

The handler operating the Topeka distributing plant also opposed the price increase that would result from Mid-Am's proposal to provide plus location adjustment zones in Kansas. The handler contended that the order's current intra-market pricing structure is providing adequate supplies of milk at all plant locations in an orderly manner. The handler also claimed that establishing plus zones in western Kansas actually would discourage milk from moving to the major population center in Kansas City.

The basis for Mid-Am's proposal (which Mid-Am has abandoned but which is supported by AMPI—Southern Region) to establish plus location adjustment zones in western Kansas is to recognize the change in the Class I differential alignment between the Greater Kansas City and Southwest Plains orders. Prior to May 1, 1986, the $1.98 Class I differential under the Southwest Plains order was 24 cents higher than the $1.74 differential under the Greater Kansas City order. In conjunction with current location adjustment provisions under both orders, the Class I differential value at Wichita under the Southwest Plains order was 6 cents above the Class I differential at distributing plants located at Topeka and Junction City under the Greater Kansas City order. However, with the Class I differentials implemented on May 1, 1986, the Southwest Plains price exceeds the Greater Kansas City price by 85 cents. In the absence of any location adjustment change, the Class I price at Wichita would exceed the Class I price at Junction City and Topeka by 67 cents. Such a price difference between competing plants represents an alignment rate of 4.8 cents per 10 miles between Topeka and Wichita (137 miles) and 5.6 cents between Junction City and Wichita (112 miles). Consequently, AMPI contends that the application of Mid-Am's Greater Kansas City proposal, in conjunction with AMPI's proposal for Southwest Plains, would moderate the substantial price change between these areas by both increasing prices in the western portion of the Greater Kansas City market and decreasing the price at Wichita under the Southwest Plains order.

Although there has been a substantial change in the price relationship between the Greater Kansas City and Southwest Plains markets, price alignment alone is not a sufficient basis for increasing prices above the level mandated by Congress in the western portion of the Greater Kansas City marketing area. Location adjustments for the Greater Kansas City market must recognize the entire structure of the market which dictates the extent to which varying location values of milk may or should be recognized. Of particular importance is the relationship of the location of the sources of producer milk relative to the population centers and plants that process the fluid milk needs of the market.

As indicated previously, the Kansas City and Topeka areas are the major population centers. Most of the distributing plants are located in or near the Kansas City area while only two are located any appreciable distance to the west of Kansas City. In addition, the marketing area represents the primary supply area for the market. The counties that represent the greatest volume of producer milk are also scattered throughout the milkshed.

As a result of the plant and supply locations, there is no indication that there are any greater distances involved for producers to supply the Junction City and Topeka plants versus the Kansas City area plants. Thus, there is no indication that there are any greater costs incurred by producers to supply the western area plants versus the Kansas City plants. Consequently, there is no basis to conclude that there is any greater economic service provided by producers, for which they should be compensated by the handler receiving the service, for supplying the western plants relative to the economic service provided in supplying plants in the Kansas City area. In addition, the application of higher prices in the western part of the marketing area would result in a price disincentive for milk to move towards Kansas City. Therefore, the proposed higher priced zones for the western portion of the marketing area must be denied.

The Steffen Dairy Company, which operates a distributing plant at Wichita, Kansas, that is regulated under the Southwest Plains order, filed exceptions to the denial of the proposed plus location adjustments for the western portion of the Greater Kansas City marketing area. Steffen is primarily concerned with the location adjustment applicable at Wichita under the Southwest Plains order (which is considered under issue 1b) and the resulting price relationship between the Wichita plant and the distributing plants located to the north at Junction City and Topeka that are regulated under the Greater Kansas City order. In the event that a lower price could not be adopted at Wichita under the Southwest Plains order, Steffen suggested that the proposed plus location adjustments for the western portion of the Greater Kansas City marketing area be reconsidered as a means to reduce the price difference between Wichita and plants to the north.

For reasons previously set forth, the structure of the Greater Kansas City market, particularly the location of the sources of producer milk relative to plant locations and the population centers of the market, does not provide a basis for establishing higher prices in the western portion of the Greater Kansas City marketing area. Consequently, the substantial change in the price relationship between the Greater Kansas City and Southwest Plains markets must be dealt with, to the extent possible, in the context of the appropriate location value of milk at Wichita under the Southwest Plains order. The location adjustment at

Wichita is considered in the following issue.

The rate used to compute location adjustments for plants located outside the marketing area should be increased from 1.5 cents to 1.7 cents. In addition, Topeka should be retained as a basing point for determining out-of-area location adjustments.

Topeka, although less populated than the Kansas City area, is a major population center in the marketing area that is 66 miles west of Kansas City, Missouri (the other basing point). To the extent that plants in distant areas (particularly those in lower-priced markets to the north) should become associated with the Greater Kansas City market, the minus location adjustments and resulting value of milk at such locations, should be based on the distance between such plants and the major population centers in the Greater Kansas City marketing area. Plants northwest of the marketing area would be nearer to Topeka while plants to the northeast would be nearer to Kansas City, Missouri. Location adjustments at distant plants should be based on the nearer basing point to reflect their proximity to the major cities where Class I prices are established to attract supplies of milk for fluid use. Removal of Topeka as a basing point would tend to ignore the importance of this major population center as a fluid market and the extent to which it is an attraction to supplies of milk for fluid use.

Neither of the rates proposed for establishing location adjustments at distant plants (1.7 and 2.0 cents per 10 miles) represents the current bulk milk hauling cost of $1.60 per loaded mile. Such hauling cost represents a rate per hundredweight per 10 miles that varies from 3.27 to 3.56 cents, depending on the weight of the milk in the tanker.

Proponents of the lower 1.7-cent rate relied on price alignment considerations while proponents of the higher 2-cent rate relied on increases in hauling costs as well as alignment considerations. Proponents of the higher rate indicate that it would represent more of the current hauling costs and thus provide a greater incentive than the lower rate for milk to be shipped to the market for fluid use. Proponents of both rates focussed on the application of their proposed rates in lower-priced markets to the north.

As previously stated, the area around Fredericksburg, Iowa, represents the most distant supply area for the market. A supply plant operated by AMPI (North Central Region) that is pooled on the market, as well as two nonpool plants at which milk is priced under the order, are located in such area. Producer milk in this Iowa area represented about 10 percent of the total producer milk on the Greater Kansas City market in November 1985. This percentage was up from about eight percent in 1984 and 1983. About half of the milk supply associated with the Fredericksburg supply plant is shipped to distributing plants regulated under the order while the other half is retained for manufacturing. Although the proportion of producers on the market from Iowa has increased, such supplies represent a relatively minor proportion of total milk supplies.

It would not appear that the use of a 2.0-cent rate, rather than a 1.7-cent rate, for establishing location adjustments would result in providing any significantly greater incentive for milk to be shipped from Iowa to distributing plants. Also, it is not clear that a greater incentive is necessary to attract this distant milk supply for fluid use. Also, application of the 2.0-cent rate would result in establishing essentially the same location value of milk in this Iowa area that exists in such area under the current location adjustments of the Greater Kansas City order. Consequently, such a rate would ignore the fact that the Class I differential under the Iowa order was increased by 15 cents on May 1, 1986. Consequently, the primary relevant factor with respect to this issue is the alignment of Class I prices among markets rather than a price incentive for shipments of milk from supply plants in distant areas.

In this regard, there is very little change in the alignment of Class I prices between the Greater Kansas City order and markets to the north that regulate distributing plants that have sales in the Greater Kansas City marketing area (Nebraska-Western Iowa and Iowa). Prior to May 1, the Greater Kansas City Class I differential exceeded the Nebraska-Western Iowa Class I differential by 14 cents. On the basis of the 163 miles between Omaha and Topeka, this price difference represented an alignment rate of less than 1 cent (.82 cent) per 10 miles. The alignment rate between Des Moines (Iowa order) and Kansas City, Missouri, was 1.7 cents per 10 miles on the basis of the 34-cent difference in Class I differentials and 192-mile distance. The current rate for establishing out-of-area location adjustments is 1.5 cents, within the range of the alignment rates that existed prior to May 1 between the Greater Kansas City market and the two nearest northern markets.

The alignment rate between Omaha and Topeka now reflects 1 cent per 10 miles since the difference in the Class I differentials between the two orders is 17 cents. Also, the alignment rate between Des Moines and Kansas City, Missouri, presently is 1.85 cents per 10 miles because of the current 37-cent Class I differential difference between the two orders. As a result, a 1.7-cent rate is more appropriate for establishing location adjustments in distant areas since it is within the range of the current alignment rates.

NFO excepted to the adoption of the 1.7-cent rate per 10 miles to establish location adjustments at distant locations and urged that the higher proposed 2.0-cent rate be adopted. NFO contends that the use of the lower rate is inconsistent with the adoption of higher rates for other markets involved in this proceeding as well as for other markets in this region of the country. In particular, NFO contends that the 2.0-cent rate adopted for the Southern Illinois order under a different proceeding should also be adopted for the Greater Kansas City order to establish similar location values of milk in northern production areas (Iowa, Minnesota and Wisconsin) where there is a considerable overlapping of procurement areas among Federal order markets. NFO also contends that the lower rate would result in over-valuing milk at distant locations, such as at Des Moines, Iowa, thereby encouraging the pooling of distant milk supplies on the Greater Kansas City market without being shipped to service the fluid milk needs of the market.

The fact that a 2.0-cent or higher 10-mile rate was adopted for computing location adjustments at distant locations under other Federal orders does not provide a basis for the use of such rate under the Greater Kansas City order. The use of a single, uniform rate for establishing location adjustments would not recognize the varying alignments of Class I prices among Federal order markets that occurred because of the varying changes in Class I differentials that were mandated by the Food Security Act of 1985. As previously stated in this decision, the mandated Class I differential alignment rates between the Greater Kansas City market and the two nearest northern markets range from 1.0 to 1.85 cents per 10 miles. Consequently, a 2.0-cent rate for establishing location adjustments would be excessive in terms of the alignment rates resulting from such mandated differentials. In addition, a 2.0-cent rate for each 10 miles would be excessive relative to applicable prices in more northern production areas in Minnesota and Wisconsin. Furthermore, the 1.7-cent rate does not result in over-valuing milk in such distant northern

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production areas in terms of the mandated Class I differential alignment rates. With respect to the location value of milk at Des Moines, the 1.7-cent rate results in a Class I value that exceeds the Iowa order mandated Class I differential value by 3 cents per hundredweight, which is hardly a significant variance over the 200 miles between Des Moines and Kansas City.

As previously stated, the Greater Kansas City order establishes minus location adjustments in all directions outside the marketing area. Establishing minus location adjustments for plants located to the south to attract milk northward is somewhat in conflict with the increase in milk values from north to south. Currently, there is a minus location adjustment at a supply plant in Franklin County that is outside the marketing area to the south of the major population centers. Elimination of this minus adjustment, as proposed by Mid-Am (the cooperative association that operates the plant) would be more consistent with the increase in milk values to the south. However, this can be accomplished without placing Osage and Franklin Counties in the base zone as Mid-Am proposed. To accomplish this objective, the area around the current basing points (which is also outside the marketing area) within which no location adjustments apply should be expanded from 50 to 70 miles. Plants that are outside the marketing area, and more than 70 miles from the nearer of Topeka or Kansas City, Missouri, would have location adjustments computed on the basis of the total distance between the plant and the nearer basing point. This will result in no location adjustment being applicable at Mid-Am's southern supply plant. Also, this will result in essentially the same location adjustment at distant plants that was proposed by AMPI (North Central Region).

1b. Plant location adjustments for handers under the orders regulating the handling of milk in the Southwest Plains and Fort Smith, Arkansas marketing areas

The location adjustment provisions of the Southwest Plains order should be amended to provide for a better alignment with prices established in surrounding markets on May 1, 1986, and also to reflect a greater portion of the increase in the cost of hauling bulk milk. In view of the changes in Class I differentials in this and surrounding markets, Southwest Plains order minimum prices within the marketing area need to be increased to the south of Oklahoma City and decreased to the north, northeast, and northwest. At locations outside the marketing area, location adjustment changes are necessary to update the current procedure employed under the order to recognize the values of milk established in out-of-area locations under other Federal orders. No location adjustment changes were proposed for the Fort Smith, Arkansas order and no changes are included herein. This order is a part of a prior hearing held to consider a merger of the Southwest Plains and Fort Smith, Arkansas marketing areas, and a further expansion of the Southwest Plains marketing area to include unregulated territory in northwest Arkansas and southwest Missouri. At this time, it is only necessary that the Southwest Plains order recognize the mandated Class I differential for the Fort Smith order implemented on May 1, 1986. Such differential applies to the only plant regulated under the Fort Smith order and the location adjustment provisions of the order do not apply to any plant location. However, the mandated differential at Fort Smith is a factor in determining the location value of milk at locations north of Fort Smith that are applicable at plants in such areas that are regulated under the Southwest Plains order.

The location adjustment provisions of the Southwest Plains order date to January 1, 1983, when the Southwest Plains marketing area was formed by a consolidation of the marketing areas of four separate Federal orders and a further expansion to include intervening unregulated territory. Official notice of the final decision issued by the Assistant Secretary on October 4, 1982 (47 FR 44268) was taken at the hearing. Basically, the pricing structure for the merged and expanded marketing area reflected the pricing structure and price levels that existed under the separate orders, with minor modifications, that previously regulated the handlers operating plants that would become regulated under the new order.

For pricing purposes, the Southwest Plains marketing area is divided into six pricing zones. Zone I includes Oklahoma City and represents the market's largest population concentration. There are no adjustments to Class I and blend prices at plants in Zone 1 which contains 19 counties in central Oklahoma extending east from Oklahoma City to the Arkansas state boundary. There are currently six distributing plants located in this zone, as well as a cooperative association manufacturing plant, that are pooled under the order. Five of these plants are located in Oklahoma City, one in Norman (Cleveland County) and one in El Reno (Canadian County).

Zone II includes 33 Oklahoma counties located south and west of Zone I, including the panhandle area. There is a plus 7-cent adjustment for such zone although there are no longer any pool plants in the area. Zone III includes 25 Oklahoma counties located north of Zone I, where a minus 10-cent location adjustment applies. There are three distributing plants and one manufacturing plant located in Zone III that are pooled under the order. The manufacturing plant and one distributing plant are located in Tulsa, while the other two distributing plants are located at Ponca City (Kay County) and Enid (Garfield County). Both Ponca City and Tulsa are basing points for determining location adjustments at plants that are substantial distances from the marketing area. Both cities are just over 100 miles from Oklahoma City, although Ponca City is due north while Tulsa is northeast of Oklahoma City.

Zone IV, which is north of Zone III, contains four Missouri counties and nine southeastern Kansas counties. A minus 33-cent location adjustment applies at the one distributing plant in the zone that is located at Pittsburg, Kansas (Crawford County).

Zone V contains 22 south central Kansas counties located north of Zone III and west of Zone IV. Wichita, which is straight north of Ponca City, is the major population center in the area. Four distributing plants and one manufacturing plant that are pooled under the order are located in the area. Two of the distributing plants are located in Wichita (Sedgwick County), one at El Dorado (Butler County) and one at Hutchinson (Reno County). The manufacturing plant is located at Hillsboro (Marion County). A minus 18-cent location adjustment applies at plants in this area.

Zone VI is located west of Zone V and contains 21 southwestern Kansas counties. A minus 13-cent location adjustment applies although there are no longer any pool plants in the area.

The current in-area pricing structure provides for increasing prices to the south and west of Oklahoma City in recognition of increasing values of milk in such directions under Federal orders regulating the handling of milk in Texas as well as under the former Red River Valley order, the Oklahoma portion of which is included in the Southwest Plains marketing area. Prices decrease to the north of Oklahoma City in recognition of lower milk values that existed under the separate orders whose marketing areas are now a part of the Southwest Plains marketing area. However, in this northern area, prices also increase from east to west across southern Kansas.

The Southwest Plains order also establishes specific location adjustments for plants located in areas that surround the marketing area. In effect, the order establishes pricing zones in most of the territory in seven states (Arkansas, Louisiana, Texas, New Mexico, Colorado, Kansas, and Missouri) that surround the marketing area. The specified location adjustments (both plus and minus) are intended to result in the same location value of milk that exists in such areas under other Federal orders that regulate plants in surrounding areas. This procedure, which was adopted when the Southwest Plains order was first issued, is based on the concept that, for the most part, prices in these surrounding states were established under Federal order public hearing procedures as the minimum price levels necessary to bring forth adequate supplies of milk to specific locations. Consequently, in the event that any plants in these surrounding states became associated with the Southwest Plains order, a price change should not result because of a change in regulation.

The out-of-area locations that are particularly relevant with respect to this proceeding are those adjustments that apply in territory in Arkansas and Missouri that is adjacent to the Southwest Plains marketing area. Currently, the order provides for no adjustments in the Fort Smith, Arkansas area since the Class I differentials prior to May 1, 1986, at Fort Smith and Oklahoma City were almost the same. In the Fayetteville, Arkansas and Springfield, Missouri areas the order provides for minus location adjustments of 21 cents and 38 cents, respectively. Such adjustments resulted in the same location value of milk in such areas that existed under the former St. Louis-Ozarks order that was terminated effective April 1, 1985. Plants in these areas that were regulated under the St. Louis-Ozarks order have become regulated under the Southwest Plains order. Currently, in northwest Arkansas, there is a distributing plant at Fayetteville (Washington County), a supply plant at Bentonville and a cooperative-operated plant at Siloam Springs (both in Benton County) that are pooled under the order. In southwest Missouri, there are two distributing plants at Springfield (Greene County), a cooperative-operated plant at Lebanon (Laclede County) and a supply plant at Marshfield (Webster County) that are pooled under the order.

For purposes of illustration, the Class I differential values that existed under the Southwest Plains order prior to May 1 in each of the pricing zones, as well as the adjacent Arkansas and Missouri areas, with current location adjustments are shown on the following table. Also indicated are the Class I differentials that have existed in each zone since May 1, 1986, with current location adjustments. Also, for comparison purposes, the Class I differential values adopted herein are included. The principal cities for each of the zones are also indicated as a reference point although the composition of Zones II and III have been modified.

[Dollars per hundredweight]

Zone	Cities	Class I Differentials		
		Prior to May 1	Since May 1	Adopted
I	Oklahoma City	1.98	2.77	2.77
II	Lawton	2.05	2.84	3.00
III	Ponca City/Tulsa	1.88	2.67	2.59
IV	Joplin/Independence	1.65	2.44	2.30
V	Wichita	1.80	2.59	2.30
VI	Garden City	1.85	2.84	2.50
	Fort Smith	1.98	2.77	2.77
	Fayetteville	1.77	2.56	2.56
	Springfield	1.60	2.39	2.19

For plants that are located outside the marketing area and beyond the territory within which specific location adjustments apply, Class I and blend prices are reduced at the rate of 1.5 cents for each 10 miles distance from the nearer of Ponca City or Tulsa, Oklahoma. Since specific location adjustments are established for most of the territory surrounding the marketing area, Nebraska is the nearest northern location in which such rate for determining location adjustments would apply. Such rate for establishing minus location adjustments applies in all directions where specific adjustments are not established, except for locations in the State of Texas. For southwest Texas locations that are not included in any Federal order marketing area, plus location adjustments are established at the rate of 1.5 cents per 10 miles from Oklahoma City.

The Oklahoma City and Tulsa areas represent the largest population centers in the marketing area. Oklahoma County (Zone I) and Tulsa County (Zone III) combined represent about one-third of the Oklahoma population. Cleveland County, which is also in Zone I adjacent to Oklahoma County, is the third most populated county in Oklahoma with a population in excess of 100,000. Comanche County (Lawton area), which is in Zone II southwest of Oklahoma City, is the fourth most populated county in Oklahoma that contains in excess of 100,000 people. The other major population center in the marketing area is Wichita, Kansas (Sedgwick County). This is the third most populated county in the marketing area, ranked behind Tulsa and Oklahoma counties.

Of the 133 counties in the marketing area, only the five previously mentioned have populations in excess of 100,000. These counties represent about 39 percent of the total population in the marketing area, indicating that a substantial proportion of the population is scattered throughout the marketing area. Two other relatively heavily populated areas outside the marketing area within which Southwest Plains order pool distributing plants are located are the Springfield, Missouri (Greene County) and Fayetteville, Arkansas (Washington County) areas.

The volume of producer milk associated with the Southwest Plains order is more than adequate to meet the fluid milk needs of the market. The current supply/demand relationship of the market is depicted by the time period since April 1, 1985, when the adjacent St. Louis-Ozarks order was terminated. Since that time the volume of producer milk under the order has about doubled as additional fluid milk plants, and milk supplies associated with such plants, became regulated under the Southwest Plains order. For April-December 1985, receipts of milk from producers averaged more than 230 million pounds per month. Only about 48 percent of such receipts was used for Class I purposes by handlers regulated under the order.

The sources of producer milk for the market originate at dairy farms located in the states of Arkansas, Kansas, Louisiana, Mississippi, Missouri, Nebraska, New Mexico, Oklahoma, and Texas. However, the primary sources of supply are Missouri (45 percent), Oklahoma (28 percent), and Kansas (21 percent), which represent about 94 percent of the total producer milk on the market. About five percent of the producer milk originates in Arkansas while the remaining states account for about one percent.

The southwest Missouri area around Springfield represents the heaviest milk producing area for the Southwest Plains market as eight of the top 10 milk producing counties are located in this area. The remaining two top producing counties are Grady County, Oklahoma (which is in Zone I south of Oklahoma City) and Sedgwick County, Kansas (which is the Wichita area in Zone V). Combined, these 10 counties represented 39.5 percent of the total

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producer milk on the market in November 1985. The next 10 leading counties in terms of producer receipts represented about 16 percent of the total producer milk on the market. Three of these counties are also located in the Springfield area while two are located around the Fayetteville, Arkansas area. Three of these counties are located in Zone III around Tulsa while the remaining two are in Zone V around Wichita. In total, the top 20 counties accounted for almost 56 percent of total producer milk with the remainder being scattered throughout the marketing area.

Fluid milk needs of the market are also supplied by handlers who operate plants that are regulated under other Federal order markets. For the fourth quarter of 1985, 18 distributing plants regulated under seven different orders distributed fluid milk products in the Southwest Plains marketing area. Such sales represented 7.8 percent of the total fluid milk sales in the market area. Effective May 1, 1986, the Class I differentials for the Federal orders that regulate the plants with sales in the marketing areas increased by varying amounts, ranging from 15 to 96 cents. For the orders involved, the Class I differential increases were: Nebraska-Western Iowa, 15 cents; Greater Kansas City, 18 cents; Texas Panhandle, 24 cents; Southern Illinois, 39 cents; Southwest Plains, 79 cents; Fort Smith, Arkansas, 82 cents; Central Arkansas, 83 cents; and Texas, 96 cents.

Because of the change in the relationship of the Class I differentials between the Southwest Plains order and other surrounding Federal order markets, four proposals to amend the location adjustment provisions of the Southwest Plains order were received and included in the hearing notice. One proposal covered the entire scope of the current location adjustment provisions with modifications to the adjustments at all locations inside and outside the marketing area. The other three proposals concerned location adjustments at two specific locations, namely, Springfield, Missouri and Wichita, Kansas.

AMPI and Mid-Am, which represent a substantial majority of the producers who supply the market, jointly proposed that all location adjustments be revised in light of the 79-cent increase in the Class I differential mandated by the Food Security Act. The current and proposed location adjustments for the marketing area and territory in Arkansas and Missouri that was previously proposed to be added to the Southwest Plains marketing area, and net Class I differential changes at such locations are indicated in the following table. The proposed Class I differential value for each of the areas is also indicated.

Zone	Cities	Location adjustments		Net class I diff. increase	Proposed diff. (dollars)
		Current	Proposed (cents)		
I	Oklahoma City	0	0	79	2.77
II	Lawton	+7	+23	95	3.00
III	Ponca City/Tulsa	−10	−18	71	2.59
IV	Joplin/Independence	−33	−47	65	2.30
V	Wichita	−18	−42	55	2.35
VI	Garden City	−13	−27	65	2.50
	Fort Smith	0	0	82	2.77
	Fayetteville	−21	−22	78	2.55
	Springfield	−38	−47	70	2.30

In addition, AMPI and Mid-Am proposed that the composition of three of the zones be modified. The cooperatives proposed that the western and northwestern counties be removed from Zone II and be included in Zone III, and that Lincoln County be removed from Zone III and be included in Zone I.

The cooperatives testified that no location adjustment should apply in Zone I or in the Fort Smith, Arkansas area under the Southwest Plains order to reflect the east-west alignment of the $2.77 Class I differential mandated by the Food Security Act. In addition, they contended that Lincoln County should be added to Zone 1 because a new distributing plant is being constructed at Chandler, Oklahoma. The cooperatives contended that the new Farm Fresh plant, which is to be a replacement for the current plant at Ponca City, should be included in Zone I since it is only about 15 miles from the boundary of Oklahoma County. As such, the cooperatives contend that the price at the new plant should be the same as the price that applies at other nearby plants with which the Chandler plant will compete for fluid milk sales. Also, the cooperatives testified that the new plant location is further from supply areas than the Ponca City plant and that it would cost more than an additional 18 cents to supply the new location.

With respect to southern Oklahoma counties that would remain in Zone II, the cooperatives testified that the plus location adjustment should be increased from 7 cents to 23 cents. They contend that the increase is necessary to recognize the difference between the Class I differentials under the Southwest Plains and Texas orders effective May 1, 1986 (51 cents) compared to a 34-cent difference prior to May 1. They also testified that the removal of the western and northwestern counties from Zone II and their inclusion in Zone III is necessary because of the alignment changes between the Southwest Plains and Texas Panhandle orders. Prior to May 1, the Class I differential under the Texas Panhandle order exceeded the Southwest Plains differential by 27 cents, whereas since May 1, the Texas Panhandle differential is 28 cents less than the Southwest Plains differential. Consequently, the cooperatives proposed that a minus 18-cent location adjustment apply in such area to recognize the lower value of milk under the Texas Panhandle order. Also, in the Zone III area north of Zone I, the cooperatives testified that the proposed minus 18-cent adjustment was reasonable in terms of the distances between Oklahoma City and distributing plants located at Tulsa, Ponca City and Enid, Oklahoma and a 2.2-cent alignment rate.

The cooperatives contend that the proposed increases in the minus adjustments for Zones IV, V, and VI to 47, 42, and 27 cents, respectively, are necessary to align prices between the Southwest Plains and Greater Kansas City orders. They testified that such adjustments were necessary to spread the 85-cent difference between the mandated Class I differentials for the two orders over the 344 miles between Kansas City and Oklahoma City, an alignment rate of about 2.40 cents per 10 miles.

For the Fayetteville, Arkansas area, the cooperatives proposed that a minus 22-cent location adjustment ($2.55 differential value) apply, but offered no explanation for the one-cent change from the current location adjustment. In the Springfield, Missouri area the cooperatives testified that the minus 47-cent location adjustment ($2.30 differential value) was appropriate in view of Class I differentials mandated at surrounding cities. The cooperatives used an alignment rate of 2.0 cents per 10 miles between Springfield and six cities (Kansas City, St. Louis, Tulsa, Oklahoma City, Fort Smith, and Little Rock) and averaged the six differentials.

For other locations outside the marketing area the cooperatives proposed specific location adjustments for groups of counties to reflect under the Southwest Plains order the same Class I prices established in such counties under other Federal orders. For more distant locations beyond which specific adjustments do not currently apply, the cooperatives proposed that the rate for computing location adjustments be increased from 1.5 cents to 2.25 cents per 10 miles. For all plant locations, except Texas, the adjustments would be negative and based on the distance between the plant and the nearer of Ponca City or Tulsa, as is currently provided under the order. For Texas locations outside any Federal order marketing area, the adjustment would be plus and based on the distance between plants and Oklahoma City, as is currently provided.

Prairie Farms Dairy, Inc., a cooperative association that jointly operates a fluid milk plant at Springfield, Missouri with Mid-Am, proposed that the resulting Class I differential value in the Springfield area should be the same as the Class I differential at Kansas City, Missouri or St. Louis, Missouri, whichever is higher. (The mandated Class I differential at Kansas City is $1.92 while the differential at St. Louis is $1.99 under current Southern Illinois order provisions, but proposed to be $2.01 under another proceeding.) Prairie Farms testified that such lower differential at Springfield is necessary to reflect the historic alignment of pricing among Springfield, Kansas City and St. Louis and to continue to recognize the substantial volume of milk that is produced in southwest Missouri. Prairie Farms testified that the Missouri production area had long been recognized by the Federal order pricing structure whereby the Class I differential at Springfield was the same as the differential at St. Louis and was 14 cents less than the differential at Kansas City.

Mid-Am, which offered additional testimony in support of the AMPI/Mid-Am proposal, contended that a price as low as that proposed by Prairie Farms was no longer necessary in the Springfield area since such supplies have a growing association with markets to the south. Mid-Am also contended that there are sufficient supplies of milk located to the north of Kansas City and St. Louis that can be relied upon for fluid milk needs in those consumption centers. AMPI also testified that a Class I differential of $1.99 at Springfield would produce chaos in markets in all directions. AMPI noted that a $1.99 differential at Springfield would result in an alignment rate in excess of 4.4 cents per 10 miles between Springfield and the mandated $2.77 Class I differential at Fort Smith.

Mid-Am and Prairie Farms altered their positions and filed a joint brief supporting a $2.19 Class I differential at Springfield. The basis for such differential (a minus 58-cent location adjustment) was not specified.

Foremost Dairies, Inc., which operates a pool distributing plant at Springfield, opposed the AMPI/Mid-Am proposal and supported the testimony and proposal submitted by Prairie Farms. Foremost contends that recognition must continue to be given to the surplus milk production available in the Springfield area that was provided for under the pricing structure that existed prior to May 1, 1986. In its brief, Foremost indicates that a Class I differential of $2.12 at Springfield would be less inequitable and would reflect the 2.25-cent rate proposed by AMPI/Mid-Am for out-of-area location adjustments and the mileage between Springfield and Oklahoma City.

The National Farmers Organization (NFO) opposed both the AMPI/Mid-Am and Prairie Farms proposed location adjustments for the Springfield area. NFO, which does not represent producers on the Southwest Plains market, but which represents producers in southwest Missouri who supply the Southern Illinois market, suggested that a middle of the road approach needs to be taken to balance producer and handler interests in the Springfield area. NFO suggested that a $2.12 differential value at Springfield would accomplish such an objective and is based on the 2.25-cent proposed out-of-area rate and the mileage between Oklahoma City and Springfield.

NFO also suggested modifications to the AMPI/Mid-Am proposed location adjustments at Fayetteville and Zones IV and V of the marketing area. At Fayetteville NFO suggested a $2.43 Class I differential (34-cent location adjustment). NFO testified that such a location adjustment would provide for east-west alignment of pricing in northern Arkansas as such price was proposed by Foremost to apply at Paragould, Arkansas under the Central Arkansas order. In Zones IV and V of the marketing area, NFO suggested Class I differentials of $2.17 and $2.32, respectively. Such pricing would result in maintaining the same east to west alignment from Springfield to Wichita that exists under the current Southwest Plains order. NFO contends that the intra-market east-west alignment (Zone IV exceeds Springfield by 5 cents and Zone V exceeds Springfield by 20 cents) should not be disturbed.

Two handlers that operate distributing plants in Zone V proposed greater minus location adjustments for such area than proposed by AMPI/Mid-Am. Jackson Ice Cream Co., whose plant is located at Hutchinson, proposed that a 60-cent location adjustment ($2.17 differential value) be established for Zone V. The handler testified that such adjustment was necessary to better align prices between the handler's plant and plants that are regulated under the Greater Kansas City order. The handler testified that most of the stores supplied by the Hutchinson plant are in the direction of Kansas City in competition with sales by distributing plants from the Kansas City area.

Prior to May 1, 1986, the Class I price in Zone V exceeded the Kansas City price by 6 cents. Since May 1, absent a location adjustment change under the Southwest Plains order, the Zone V Class I price exceeds the Kansas City price by 67 cents. Consequently, Jackson contends that a 60-cent location adjustment, which would provide for a 25-cent price difference between Kansas City and Hutchinson, is necessary to maintain some reasonable minimum order price competition between the two areas.

Steffen Dairy Co., whose plant is at Wichita, proposed that a 78-cent location adjustment apply in Zone V. Such an adjustment would result in virtually no change in the price relationship between Kansas City and Wichita as a result of the change in the Class I differentials effective May 1, 1986. At the hearing, and in its brief, Steffen indicated that at least a 55-cent location adjustment for Zone V ($2.22 differential value) was justified on the basis of a 3.5-cent rate applicable to the cost of hauling bulk milk. In addition, Steffen testified that most of the plants sales of fluid milk products are made in competition with other plants where lower prices apply rather than with plants to the south where higher prices apply.

Both Steffen and Jackson testified that the AMPI/Mid-Am proposal does not provide a price in Zone V that is low enough to recognize the supplies of milk that are available in the immediate area, and that the price need not be as high as the cooperatives proposed to attract milk supplies to Zone V plants. Also, in its brief Steffen indicated that the AMPI/Mid-Am proposal merely splits the 85-cent mandated price spread between the Greater Kansas City and

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Southwest Plains orders at Wichita, thus assuming that marketing conditions between Oklahoma City and Wichita are the same as between Kansas City and Wichita. Steffen points out that under the cooperatives' proposal, 49 percent (42 cents) of the 85-cent difference is reflected between Oklahoma City and Wichita while 51 percent (43 cents) is covered between Wichita and Kansas City. Prior to May 1, 1986, 25 percent of the 24-cent difference in the differentials between the orders was reflected between Kansas City and Wichita (6 cents) and 75 percent of the spread was reflected between Wichita and Oklahoma City (18 cents).

Farm Fresh, Inc., which is building a new distributing plant at Chandler, Oklahoma (Lincoln County) to replace its plant at Ponca City, opposed the removal of Lincoln County from Zone III and its inclusion in Zone I. The handler contends that the rezoning of Lincoln County has nothing to do with the stated primary purpose of the hearing to consider location adjustment changes to conform with the Class I differentials mandated by the Food Security Act of 1985. The handler further contends that the rezoning issue was buried within the proposed pricing changes for the order and, as a result, was not known by Farm Fresh in sufficient time for the handler to adequately prepare for the hearing. Since the summary of the purpose of the hearing did not specify the proposed rezoning, Farm Fresh contends that the issue was not properly noticed for hearing. Farm Fresh further contends that the rezoning proposal cannot be adopted without the preparation of a regulatory flexibility analysis indicating the impact of the rule on a small business. In addition, Farm Fresh contends that the record would not support the rezoning since Lincoln County is a relatively heavy milk producing area and further, that Chandler is no farther from supplies of milk in southwest Missouri than is Ponca City.

Effective May 1, 1986, the Class I differentials for the Southwest Plains and Fort Smith, Arkansas orders were increased by 79 cents and 82 cents, respectively, to $2.77. Such differential applies to plants in Zone I of the Southwest Plains order as well as to the only plant regulated under the Fort Smith, Arkansas order. No location adjustments apply at plants in Zone I since it contains the major population center in the market and is the focal point for pricing adjustments at all other areas under the order. Also, no location adjustment should apply at Fort Smith under the Southwest Plains order to recognize the mandated Class I differential at that location.

Lincoln County should be removed from Zone III and be included in Zone I as proposed by AMPI/Mid-Am. Such action was supported by a handler who operates a distributing plant in Zone I at Norman (Cleveland County). The handler supported the proposal because of the proximity of Chandler (where the new distributing plant is being constructed) to the Oklahoma City area and other plants in the area that serve the major population center.

Farm Fresh contends that Lincoln County should remain in Zone III (where a minus 18-cent location adjustment would apply) because: (1) Chandler is 45 miles from Oklahoma City; (2) Farm Fresh's principal competitors are located at Tulsa in Zone III; and (3) the new plant at Chandler is no farther from southwest Missouri supply areas than the current plant at Ponca City. Such factors are not controlling in determining the appropriate zone in which Lincoln County should be included.

Under a zone pricing arrangement, location adjustments are not established on the precise location of each and every plant. Prices are established at major city locations with the territory being expanded to include additional counties in the proximity of the population center within which additional plants may be located. Within such zone the same prices apply to all plants that would be expected to compete with each other, both in terms of fluid milk sales in the major population center, and in the procurement of supplies of milk. For example, Zone I includes the major population centers around Oklahoma City. However, in total Zone I includes a band of 19 central Oklahoma counties that extends from Caddo County on the west to the Arkansas border on the east. Such zone, in addition to recognizing the major population center, recognizes the location value of milk in central Oklahoma that is identical on an east-west axis from Fort Smith to Oklahoma City. In contrast, the focal point for pricing in Zone III is Tulsa, the major population center. A minus location adjustment applies at Tulsa and 25 north and northeastern counties because such counties are relatively nearer to supplies of milk in southwest Missouri and southern Kansas than Oklahoma City and the counties in Zone I.

Because of its proximity to Oklahoma City and the $2.77 Class I differential value of milk across central Oklahoma, Lincoln County is much more closely associated with the value of milk in Zone I than with the value of milk at Tulsa in Zone III. Lincoln County is adjacent to Oklahoma County and most of the territory in the County (including Chandler) is south of the north border of Oklahoma County. Chandler is about 15 miles east of the Oklahoma County border and about the same distance north of the east-west price line mandated by the Food Security Act of 1985. In such a situation, it would be unreasonable for a minus 18-cent location adjustment to apply at Chandler, as was proposed for the more northeastern population center at Tulsa, since the primary competitors of the new plant in terms of both sales and procurement would be other plants in the Zone I area.

In terms of procurement of raw milk supplies, the Chandler plant is much further south of milk supplies in Kansas than the current plant at Ponca City. Also, the Chandler plant is further from the heavy southwest Missouri supply area than plants in the Tulsa area. The fact that Lincoln County is the third largest milk producing county in Oklahoma (3.5 to 4 million pounds of milk per month) is not a factor that requires a minus 18-cent location adjustment in such county. Lincoln County supplies, which are available to any number of plants, cannot possibly satisfy the fluid milk requirements of the major population center. Additional supplies must be obtained from northern and northeastern supply areas. Obviously, by the submission of their proposal, AMPI and Mid-Am (which are major suppliers of Farm Fresh) would not prefer to make supplies available to the Chandler location at a price less than the price that applies in the adjacent Oklahoma County because greater costs would be incurred in supplying the new plant. In fact, the cooperatives testified that it would cost more than an additional 18 cents to supply the plant at its new location. This indicates that the location value of milk at Chandler is essentially the same as for other current Zone 1 locations, and is in excess of the value of milk at plants in Zone III that are nearer to the primary sources of supply for the market.

Farm Fresh, which is now the largest distributing plant in Oklahoma, is considered to be a small business. Virtually all other fluid milk plants, and the producers who supply such plants, are also considered to be small businesses. While the inclusion of Lincoln County in Zone I may have an impact on Farm Fresh, the primary consideration is the establishment of uniform prices at similarly situated handler plants as required by the Agricultural Marketing Agreement Act of 1937, as amended. As indicated by Farm Fresh, the decision to build a new plant at Chandler was based in part on the reduction in costs to supply the fluid milk needs of the major population center. The minimum order price should be the same at Chandler as at other similarly located plants that serve the Oklahoma City area and which also will compete with Farm Fresh for a source of supply. Also, the higher price will partially offset the extra costs incurred by producers to supply the new plant relative to supplying plants that are nearer to the principal sources of supply in southwestern Missouri and southern Kansas.

The notice scheduling the hearing indicated that the purpose of the hearing was to consider proposals to amend seven different milk orders and the proponents indicated the proposals were designed to change location adjustment provisions to conform with Class I differentials mandated by the Food Security Act of 1985. The major impetus for the hearing was the change in Class I differentials, as indicated in the summary of the hearing. It is not possible to indicate in a short summary of the purpose of the hearing all the zoning and price changes for specific plant locations that were proposed by amending location adjustment provisions. All of the specific proposals for the various orders were set forth in the hearing notice as required for review by interested parties. Farm Fresh, a handler who has long been regulated under the Southwest Plains order, would certainly have an interest in proposed pricing changes at either the new or current plant location. It is the responsibility of affected parties, such as Farm Fresh, to determine if and how the specific proposals would affect prices at various locations, rather than depend on a summary of potential changes prepared by another party. Although the rezoning of Lincoln County was not the major impetus for the hearing, consideration of the issue was both timely and relevant in terms of the inter and intra-market price adjustments that might be required as a result of the Class I differential changes. Although more time to prepare may have been desired, Farm Fresh participated at the hearing, both through direct testimony and cross-examination of other witnesses, and filed a brief. All of the issues relevant to a determination of the appropriate zoning of Lincoln County were fully explored on the record of the proceeding.

Farm Fresh excepted to the inclusion of Lincoln County in Zone I. Farm Fresh contends that such action: (1) would disrupt historical price relationships since Lincoln County has been included in Zone III for many years; (2) would establish a price to Farm Fresh that is in excess of the price applicable to primary competitors in Zones III and V; (3) cannot be justified on the basis of the proximity of milk supplies since the Chandler plant is 25 miles closer to the market's major milk supply area than the current Ponca City plant; (4) is based on speculation that supplies of milk would not be made available to Chandler at the Zone III price; (5) does not address the impact of the price change on a small business as required by the Regulatory Flexibility Act; and (6) was not adequately noticed for hearing.

As previously stated in this decision, the issue of the appropriate location adjustment for Lincoln County centers on whether the location value of milk delivered to Chandler is more closely associated with the value of milk in Zone I or Zone III. The issue is relevant since the replacement of the Ponca City plant with a new plant that is under construction at Chandler reflects a significant new development in marketing conditions under the Southwest Plains order. Since no milk has been priced at the Chandler location in the past, there has been no historical price relationship between Chandler and plants at any other location in the market.

The inclusion of Lincoln County in Zone I will increase the cost to Farm Fresh at Chandler by 18 cents relative to the Ponca City plant and other plants in Zone III at Enid and Tulsa, Oklahoma. Whether these plants or other plants in Oklahoma City are the primary competitors of Farm Fresh in the distribution of fluid milk products is not a particularly relevant consideration. Also, whether Farm Fresh distributes most of its fluid milk products in the major Oklahoma City population area or in areas to the north is not relevant. Even if all the fluid milk sales by Farm Fresh were made in northern areas in competition with plants at which lower prices apply, it would not have a bearing on the value of milk delivered to the plant at Chandler. The primary consideration is whether the costs incurred in supplying the Chandler plant with milk from the major production areas of the market are more closely associated with the value of milk in Zone I or with the lower value of milk delivered to plants in Zone III that are nearer to the major production areas of the market.

In this regard, Chandler is substantially further south from the southern Kansas supply area than the current Ponca City plant or other distributing plants in Zone III (Enid and Tulsa). Chandler is about 100 miles further from this supply area than Ponca City. Consequently, greater costs would be incurred to supply milk to the Chandler location than to the Ponca City or other Zone III locations from southern Kansas.

With respect to the major production area in southwestern Missouri, the claim by Farm Fresh that Chandler is 25 miles closer to such area than Ponca City is not supported by testimony of the specific southwestern Missouri locations involved. Although the testimony of cooperative associations likewise does not provide specific locations, a review of the Household Goods Carriers' Bureau Mileage Guide 13 (of which official notice was taken at the hearing) supports the conclusion that Chandler and Ponca City are about the same distance from this major production area. However, the relevant mileage comparison with respect to supplies of milk in southwest Missouri is with Tulsa, not Ponca City. In this regard, Chandler is about 60 miles further from the southwestern Missouri production area than is Tulsa. This indicates that the value of milk delivered to Chandler is greater than the value of milk delivered to Tulsa. If prices were the same at Tulsa and Chandler, there would be no economic incentive under the order for producers to incur the additional costs involved to supply the Chandler location, versus Tulsa, from the southwestern Missouri production area.

The foregoing lends considerable support to the testimony of cooperative associations that it would cost more than the additional 18 cents to supply Farm Fresh at its new plant location at Chandler. Because of the distances involved, milk originating in both the major southwestern Missouri and southern Kansas production areas has a greater value delivered to Chandler than to other Zone III locations at Tulsa, Enid or Ponca City. The producers who supply the Chandler plant will provide a greater economic service to Farm Fresh than the service provided in supplying other plants in Zone III that are nearer the primary production areas of the market, and should be compensated accordingly. Consequently, all relevant factors involved, rather than speculation, indicate that Lincoln County should be included in Zone I.

The inclusion of Lincoln County in Zone I will not have a significant

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economic impact on Farm Fresh. The 18-cent increase at Chandler represents less than 1.4 percent of the minimum order Class I price applicable at the handler's Ponca City plant during 1985. Furthermore, even if there were a substantial price increase at Chandler, there would be no basis under the Agricultural Marketing Agreement Act of 1937, as amended, to establish a different price for Farm Fresh because of a size comparison between Farm Fresh and other handlers. Such Act requires that prices be uniform among similarly located handlers. Also, it would not appear that any further regulatory flexibility analysis of the impact on Farm Fresh would be required since the promulgation of Agency rules involving prices are exempt from the Regulatory Flexibility Act. This is specified in section 601(2) of the Regulatory Flexibility Act which states ". . . that the term 'rule' does not include a rule of particular applicability relating to . . . prices. . . ."

With respect to other procedural issues involved, Farm Fresh raised no issues relating to the adequacy of the notice of hearing that were not previously considered in this decision. For all of the foregoing reasons, Lincoln County should be included in Zone I.

Adjustments to the Zone I price to reflect the value of milk at other locations are necessary because of the changes in the price relationships between the Southwest Plains and other Federal order markets. The price alignment issue is particularly acute with respect to northern and northeastern areas, particularly Wichita and Springfield, where the greatest controversy exists over the location adjustments that should apply at such locations under the order. At all other locations there was either no opposition to the location adjustments proposed by AMPI/Mid-Am, or at least a much narrower range between what was proposed and suggested modifications to such proposal. For northern areas, the price adjustment should reflect, to the extent possible, the market structure set forth previously and the cost of hauling milk from where it is produced to the principal population centers where it is needed for use in fluid milk products. To the south and west of Zone I, the location adjustments are primarily an alignment issue.

Zone II should be redefined as proposed by AMPI/Mid-Am to include only those southern Oklahoma counties that are located between Zone I and Texas. The plus location adjustment should also be increased from 7 cents to 23 cents, resulting in a Class I differential value of $3.00. There was no opposition to this proposed location adjustment change and there are no longer any pool plants in the area. The location adjustment increase reflects the increase in the difference between the Class I differentials under the Southwest Plains and Texas orders since May 1, 1986.

Prior to May 1, the Texas order differential ($2.32) exceeded the Southwest Plains order differential ($1.98) by 34 cents. This difference reflected an alignment rate of about 1.6 cents per 10 miles over the distance between Oklahoma City and Dallas. Since May 1, the difference in the differentials between the two orders is 51 cents, reflecting an alignment rate of about 2.4 cents per 10 miles. Because of the increase in the differential difference between the two orders, a 23-cent location adjustment represents an appropriate value of milk in southern Oklahoma territory that is approximately halfway between Dallas and Oklahoma City.

The current western counties in Zone II (including the panhandle area) should be included in Zone III with a minus 18-cent location adjustment. There was no opposition to such proposal and there are no longer any pool plants in this area. This change is necessary because of the substantial price alignment change between the Southwest Plains and Texas Panhandle orders. Prior to May 1, the Class I differential under the Texas Panhandle order ($2.25) exceeded the Southwest Plains differential by 27 cents. Since May 1, the Texas Panhandle differential has been 28 cents less than the Southwest Plains differential. Consequently, a minus 18-cent location adjustment, rather than a plus 7-cent adjustment, will recognize the declining value of milk to the west of Oklahoma City mandated by the Food Security Act of 1985.

As indicated previously, location adjustments to the north and northeast of Oklahoma City are more critical than those just discussed, both in terms of price alignment with other markets and in terms of the structure of the Southwest Plains market. The primary structural consideration is the dependence upon northern milk supplies, particularly those in southwest Missouri, to meet the fluid milk needs of the major population centers of the market, namely, Oklahoma City, Tulsa, and Wichita.

Proponents of various location adjustments relied upon various alignment rates ranging from 2.0 to 3.5 cents per 10 miles. However, since location adjustments are intended to reflect the cost of hauling bulk milk from where it is produced to where it is needed, the rate used to calculate location adjustments should reflect hauling costs. Producers who supply milk to distant plants incur a greater hauling cost than producers who supply relatively nearby plants. Thus, location adjustments that reflect the cost of hauling bulk milk compensate producers for the varying degrees of service they provide to handlers by supplying milk to different locations.

In this regard, a number of witnesses testifying with respect to the Southwest Plains and other orders involved in the proceeding indicated that $1.60 per loaded mile represents the current cost of hauling bulk milk. Such cost represents a rate per 10 miles that varies from 3.27 to 3.56 per hundredweight, depending on the weight of the load. However, a conservative rate, rather than an actual rate, should be used for location adjustments to encourage hauling efficiencies and minimize the potential of exceeding actual costs. If location adjustments were based on a rate sufficiently in excess of costs, significant economic incentives could be created to move milk to obtain hauling profits rather than for the purpose of supplying fluid milk needs. Also, some concern was expressed with respect to declines in fuel costs which might not be reflected in hauling costs. Consequently, a rate of 3 cents per 10 miles should be used as a conservative hauling rate to reflect the varying values of milk and to align prices between Zone I and zones to the north and northeast. It is noted that the use of such rate is constrained somewhat by the scope of the proposals as well as by the proximity of certain plants to Fort Smith, which has a mandated differential.

The Zone III location adjustment proposed for the counties north of Zone I is minus 18 cents, compared to minus 10 cents currently. There was no opposition to the proposed adjustment and it was supported by handlers who operate plants in the area in briefs. Tulsa is the major population center in the zone. Also, Tulsa and Ponca City are basing points for determining location adjustments at plants that are substantial distances from the marketing area. Historically, prices have been the same at both cities since both are approximately the same distance from Oklahoma City.

Tulsa is 105 miles northeast of Oklahoma City and the minus 18-cent proposed adjustment represents an alignment rate of about 1.6 cents per 10 miles. However, recognizing only the northward direction, the adjustment represents a rate of about 3 cents per 10 miles from the mandated price line that extends from Oklahoma City to Fort Smith. In addition, such price represents an alignment rate of about 3 cents between Tulsa, Oklahoma and Topeka, Kansas. The Tulsa differential would be 67 cents greater than Topeka over a distance of 220 miles.

Ponca City is straight north of Oklahoma City by 102 miles. Incorporation of the 3-cent hauling rate would result in a substantially lower price at Ponca City than was proposed or testified to by any interested party. However, the controlling factor in determining the value of milk north of Zone I must be Tulsa, which is the second largest population center in the market. Also, since prices have historically been the same in this territory, and since both cities are basing points, the minus 18-cent location adjustment ($2.59 differential value) should be adopted.

At Fayetteville, Arkansas, AMPI/Mid-Am proposed a minus 22-cent location adjustment (a $2.55 differential value) while NFO suggested a 34-cent location adjustment ($2.43 differential). A $2.43 differential at Fayetteville is too low relative to the $2.77 mandated Class I differential at Fort Smith which is 62 miles south of Fayetteville. A 34-cent location adjustment at Fayetteville would represent an alignment rate of over 4.8 cents per 10 miles between Fayetteville and Fort Smith. Such a rate, which probably exceeds the cost of hauling packaged milk, would represent a severe misalignment of pricing between distributing plants at Fayetteville and Fort Smith.

The 22-cent location adjustment at Fayetteville would represent about a 3.1-cent rate over the seven 10-mile zones between Fort Smith and Fayetteville. Since such rate is reasonably close to the 3-cent hauling rate for bulk milk, the $2.55 differential proposed at Fayetteville is about as low a price that can be justified at such location. Consequently, the 1-cent increase in the location adjustment at Fayetteville should be adopted.

The two most populated counties in Zone IV, which is north of Tulsa and Fayetteville, are Montgomery County, Kansas and Jasper County, Missouri. The minus 47-cent location adjustment proposed ($2.30 differential) should be adopted since such adjustment represents an alignment rate of about 3 cents per 10 miles on a north-south basis. For example, Independence, Kansas (Montgomery County) is about 90 miles north of Tulsa and Joplin, Missouri (Jasper County) is about 90 miles north of Fayetteville. Consequently, the value of milk in Zone IV, based on a 3-cent hauling rate from north to south, would be $2.32 based on Tulsa, and $2.28 based on Fayetteville. As such, the $2.30 differential that results from the minus 47-cent location adjustment proposed is reasonable in view of the cost of hauling milk and the north to south alignment of prices.

Springfield, Missouri, which is northeast of the major population centers of the Southwest Plains market, is in the heart of a major milk producing region. This region has by far the greatest volume of milk supplies that are available to meet the fluid milk needs of the market. Such factor has been recognized under the pricing structure that existed prior to May 1. Prior to May 1, the Class I differential was $1.60 at Springfield, the same as the differential at St. Louis (209 miles to the northeast), and 14 cents lower than the differential at Kansas City (169 miles to the northwest).

The Class I differential value at Springfield that results from the location adjustments proposed range from $2.01 to $2.30. Proponents of the various differentials relied on a variety of alignment rates to justify their positions. Basically, those parties that proposed the greatest minus location adjustments place primary emphasis on the supplies of milk available in the area and the need to continue the historical pricing structure that recognized such supplies of milk. The lesser minus location adjustment would give little recognition to the supply situation basically indicating that the historical pricing structure has been altered.

Application of the current Southwest Plains location adjustment at Springfield (minus 38 cents) would result in a $2.39 differential. Such differential would be 47 cents higher than at Kansas City and 38 cents higher than the $2.01 differential proposed for St. Louis under another proceeding. Consequently, the alignment of pricing at Springfield has been significantly altered by the change in the Class I differentials on May 1. However, to the extent possible, the substantial volume of milk available in the Springfield area must be recognized under the Southwest Plains order pricing structure.

The extent to which recognition can be given to the substantial production in the area by a relatively lower value of milk is constrained by the price alignment that results among distributing plants at Springfield, Fayetteville and Fort Smith. For example, a $2.01 differential at Springfield, which would result in an alignment rate of about 3 cents per 10 miles between Springfield and Tulsa, would result in a substantial misalignment of pricing between distributing plants in a more north to south direction. With a $2.01 differential, the resulting alignment rate between Springfield and the mandated differential at Fort Smith would exceed 4 cents per 10 miles. Between Springfield and the $2.55 differential at Fayetteville (120 miles), the rate would be about 4.5 cents.

The 3-cent rate, which is a conservative estimate of bulk milk hauling costs, applies on a straight north to south axis. The mandated differentials also have the greatest alignment rate on a straight north to south direction and this rate declines as the direction is tilted to the east or west. However, to recognize the existence of milk supplies in the Springfield area, the 3-cent hauling rate should be used in a northeast direction. This will recognize the situation in the Southwest Plains market whereby the major production area is not located strictly to the north.

The extent to which the 3-cent hauling rate can be shifted to the east is constrained by the location of distributing plants at Fayetteville and Fort Smith. Since Fayetteville is the nearest major population center where a pool distributing plant is located, it must be the basis from which the relative value of milk at Springfield is computed. A 3-cent rate between Fayetteville and Springfield indicates that the price at Springfield should be 36 cents lower than at Fayetteville. Consequently, relative to Zone I, a minus 58-cent location adjustment should apply in the Springfield area, resulting in a $2.19 Class I differential value.

Foremost filed exceptions to the $2.19 Class I differential adopted at Springfield and contended that the Class I differential at Springfield should not be greater than $2.12. The exceptions, however, do not provide a basis to further reduce the Class I differential at Springfield under the Southwest Plains order. The location adjustment at Springfield is limited by the Class I differential to the south at Fayetteville which is also constrained by the mandated Class I differential at Fort Smith. In view of these southern prices, the Class I differential at Springfield cannot be lower than $2.19.

It is noted that the Springfield, Fayetteville and Fort Smith areas are outside the boundaries of the current Southwest Plains marketing area. Such areas have a significant association with the Southwest Plains market, as three of the distributing plants in the area (two at Springfield and one at Fayetteville) are regulated under the order. Also, a

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proposal to include this territory in the Southwest Plains marketing area is under consideration.

The appropriate location adjustments, for reasons previously stated, at Fort Smith, Fayetteville and Springfield are zero, minus 22 cents and minus 58 cents, respectively. These adjustments will be reflected in that portion of the location adjustment provisions that relate to areas outside the marketing area. The minus 58-cent adjustment for the Springfield area (Greene County) will be specified and will apply to a large number of additional southern Missouri counties. Extension of this $2.19 constant price surface across southern Missouri, as was proposed, is consistent with the east to west mandated constant price line that extends from Chattanooga through Memphis, Little Rock, and Fort Smith to Oklahoma City. In similar fashion, the $2.77 price line (no adjustment) and the $2.55 price line (minus 22 cents) will be extended across central and northern Arkansas.

However, these two price adjustments for Arkansas will not be specifically indicated in the Southwest Plains order. The regulatory language of the Southwest Plains order, which establishes location adjustment zones to equate values of milk with prices established by other orders in seven states that surround the Southwest Plains marketing area, is being shortened and simplified to accomplish the same objective. Since the proper milk value has been determined at Fayetteville with respect to its primary association with the Southwest Plains market, and at Fort Smith by recognizing the mandated differential, the Central Arkansas order will have to recognize these values under the zone pricing structure to be established for that order. The Central Arkansas order covers a substantial proportion of the territory in Arkansas, and for reasons set forth in the next issue, will zone prices throughout the State to recognize the mandated differential at Fort Smith and the value of milk at Fayetteville. Consequently, the opportunity presents itself to greatly simplify the out-of-area location adjustment provisions of the Southwest Plains order. The Southwest Plains order language no longer needs to specify groups of Arkansas counties, or out-of-area zones, to which specific location adjustments are applied to coordinate pricing with other orders. The order need only specify that the location adjustment under the Southwest Plains order for any plant located in Arkansas shall be the difference between the Southwest Plains Class I price and the Class I price applicable at any plant in Arkansas under the Central Arkansas order. This procedure should also be used for establishing location adjustments in other states surrounding the Southwest Plains marketing area where a substantial proportion of the territory is included under a Federal order (Louisiana, Texas, New Mexico and Colorado). This will greatly shorten and simplify the regulatory language without making any pricing changes from what was proposed and continues the current procedure to recognize the value of milk in other order areas under the Southwest Plains order.

The location adjustment issue in the Wichita (Zone V) area is similar to the Springfield area that was previously discussed. There is a significant amount of production available in the area though not nearly so much as in southwest Missouri. However, a significant change in the price alignment between the Southwest Plains and Greater Kansas City orders occurred on May 1. Prior to May 1, the Class I price under the Southwest Plains order at the four distributing plants in Zone V was only 6 cents greater than the Class I price applicable at Junction City and Topeka under the Greater Kansas City order. Since May 1, the price in Zone V has been 67 cents greater than the Class I price applicable at these northern plants with which Zone V handlers compete for fluid milk sales in Kansas. Based on the 112 miles between Wichita and Junction City, the pricing change represents an increase in the alignment rate from one-half cent to over 5.5 cents per 10 miles. Such a change obviously indicates that there should be a greater minus location adjustment applicable to Zone V under the Southwest Plains order.

The $2.35 differential (42-cent location adjustment) proposed by AMPI/Mid-Am does not go far enough to recognize the alignment problem between Wichita and Kansas City order plants. The resulting alignment rate between Wichita and Junction City would be over 3.5 cents per 10 miles while the rate between Wichita and Ponca City to the south would be just over 2.6 cents per 10 miles.

On the other hand, a $2.22 or lesser differential in Zone V would recognize the alignment problem to the north, but not the south. Such proposed differential, which is based on a 3.5-cent rate from Oklahoma City, would result in an alignment rate of 2.5 cents between Junction City and Wichita. However, such differential would represent a rate between Wichita and Ponca City in excess of 4.1 cents per 10 miles.

The brief of Steffen Dairy suggested that a large number of factors need to be taken into account in establishing the location adjustment in Zone V. However, in suggesting that all such factors are relevant, the $2.22 proposed differential value of Steffen is based on the full cost of hauling bulk milk between Oklahoma City and Wichita. Such proposal ignores the price alignment constraint established by the existence of the $2.59 differential value at Ponca City that extends across northeastern Oklahoma. Also, a location adjustment that is on the conservative side of the cost of hauling bulk milk should be used for reasons previously indicated.

A 3-cent rate based on the distance between Ponca City and Wichita would result in a $2.32 differential in Zone V. However, since the $2.59 differential value extends across northeastern Oklahoma, a $2.30 differential should be established in Zone V which is the same as the differential for Zone IV that is to the east and adjacent to Zone V. Such differential, which is the result of a minus 47-cent location adjustment, results in a alignment rate of slightly more than 3.2 cents between Ponca City and Wichita and slightly less than 3.2 cents between Wichita and Junction City. As a result of the adjustment change, Zones IV and V should be combined.

Steffen took the position in exceptions that the Class I differential at Wichita should be reduced further to mitigate competitive inequities between Southwest Plains order handlers located at Wichita and handlers located to the north that are regulated under the Greater Kansas City order. As indicated previously in this decision, the minus location adjustment at Wichita reflects slightly in excess of the conservative estimate of the cost of hauling bulk milk. This is necessary to reflect the substantial change in the relationship between the Class I differentials for the Southwest Plains and Greater Kansas City orders that took place on May 1, 1986. However, any greater minus location adjustment at Wichita would result in a misalignment of prices between Wichita and more southern locations.

Zone VI, which is the southwestern Kansas area, should be reestablished as Zone V because of the previous combination of Zones IV and V. The proposed minus 27-cent location adjustment should be adopted ($2.50 differential value). There was no opposition to this proposal and there are no longer any pool plants in the area. Historically, prices in western Kansas have been higher than those in central Kansas because of the influence of higher prices in Colorado under the Eastern Colorado order. Prior to May 1, the Eastern Colorado Class I differential of $2.30 exceeded the Southwest Plains differential by 32 cents. Since May 1, the Eastern Colorado differential has been 4 cents less than Southwest Plains ($2.73 versus $2.77). Consequently, a $2.50 differential in this southwestern Kansas area of relatively limited production is reasonable in view of the historical alignment and the influence of the Eastern Colorado differential in the area.

As previously stated, the procedure for establishing location adjustments outside the Southwest Plains marketing area that recognizes the value of milk established in such areas under other Federal orders should be continued. An advantage of such procedure is illustrated by the circumstances that occurred when the adjacent St. Louis-Ozarks order was terminated. Plants that were regulated under that order became regulated under the Southwest Plains order. However, because the location adjustments of the Southwest Plains order provided for the same pricing of milk in southwest Missouri as was provided under the St. Louis-Ozarks order, no price changes occurred at plants that became regulated under the Southwest Plains order. This is consistent with the requirement that prices under Federal orders are established at the location at which milk is received from producers. If price changes had occurred at the southwest Missouri plants as a result of the regulatory change, prices would have, in effect, been established on the basis of where milk was distributed.

One modification should be made to the proposed out-of-area location adjustments for the central and western Colorado areas. Currently, no location adjustment applies in such areas and a continuation of such procedure was proposed. However, prior to May 1, the Class I differentials under the Southwest Plains and Western Colorado orders were about the same ($1.98 under Southwest Plains versus $2.00 under Western Colorado). Since May 1, the Southwest Plains differential has exceeded the Western Colorado differential by 77 cents. Consequently, a minus 77-cent location adjustment should apply in central and western Colorado areas where no adjustment currently applies.

For those distant areas that are beyond the states where the Southwest Plains order provides specific location adjustments, the rate for establishing location adjustments should be increased to 2.25 cents from the current 1.5 cents. Because of the extensive zoning procedure used, the nearest northern market where the higher rate would apply for establishing a location adjustment is Nebraska. The differentials mandated on May 1 reflect an alignment rate of 2.22 cents per 10 miles between Oklahoma City and Omaha, Nebraska. In terms of the distance between Omaha and the nearer Southwest Plains order basing point (Ponca City) the alignment rate is 2.27 cents per 10 miles. Consequently, a rate of 2.25 cents is reasonable in determining location adjustments in such distant areas. The minus adjustments for all areas not zoned, except Texas, should continue to apply on the basis of the distance between any plant and the nearer of Ponca City or Tulsa. The adjustment for areas in Texas that are outside any Federal milk marketing order area should be plus 2.25 cents per 10 miles between any such plants in Texas and Oklahoma City. Use of such higher rate is consistent with the increase in the alignment rate between the Southwest Plains and Texas orders effective on May 1. There was no opposition to the use of this higher rate, for either plus or minus adjustments. Such rate appears to be reasonable in terms of the new pricing alignment.

1c. Plant location adjustments for handlers under the order regulating the handling of milk in the Central Arkansas marketing area.

The location adjustment provisions of the Central Arkansas order should be amended to provide for a minus 22-cent location adjustment zone across northern Arkansas and a plus 31-cent location adjustment across southern Arkansas. This plus adjustment should also apply in Bowie and Cass counties in Texas. Also, the rate that is used to compute location adjustments at distant areas, both plus and minus adjustments, should be increased from 1.5 cents per 10 miles to 2.1 cents per 10 miles. However, the use of this rate for determining minus location adjustments in southwest Missouri (Springfield area) results in a greater value of milk than was previously considered to be appropriate under the Southwest Plains order. Consequently, a specific minus 58-cent location adjustment ($2.19 Class I differential value) should apply in a southwestern Missouri area that includes 19 Missouri counties.

The current Central Arkansas order provides for no location adjustments at plants located in a 40-county area extending from east to west across the middle of the State of Arkansas. Location adjustments are also not applied at any plant located in the States of Tennessee or Oklahoma. Thus, the order currently recognizes the east/west equal price line that extends from Chattanooga to Oklahoma City. For plants located in Arkansas that are south of the no adjustment zone, as well as plants located in the States of Louisiana, Mississippi or Texas, plus location adjustments apply. At all other locations, including the territory in Arkansas that is north of the no adjustment zone, minus location adjustments apply. The plus or minus adjustments are computed at the rate of 1.5 cents per 10 miles from the nearer of Forrest City, Arkansas (St. Francis County) or Little Rock, provided that plants are more than 60 miles from the nearest basing point.

The Central Arkansas marketing area includes 21 Arkansas counties in the central to eastern part of the State. The market's only major population center is Pulaski County, which includes Little Rock. Pulaski County, with 340,597 residents, is the only county with a population in excess of 100,000. About one-third of the population in the marketing area resides in Pulaski County. Pulaski County plus the three additional counties that comprise the Little Rock metropolitan area contain almost one-half of the population in the marketing area.

Five distributing plants are fully regulated under the order. Three of these plants are in the Little Rock area while one is located at Hot Springs in Garland County. No location adjustments apply at any of these plants. The fifth distributing plant is located outside the marketing area at Paragould, Arkansas (Greene County). Paragould is in the northeastern part of the State and is 85 miles north of Forrest City. Thus, a minus 13.5-cent location adjustment currently applies at Paragould.

The Central Arkansas market is a relatively small, primarily fluid use market. During 1985, total producer milk on the market averaged about 42 million pounds per month. Approximately 80 percent of total receipts were used for Class I purposes by handlers regulated under the order.

The source of producer milk for the market is primarily from farms located in the State of Arkansas. In November 1985, about 86 percent of the total supplies on the market originated in Arkansas, most of which originated on farms located northwest of Little Rock. Missouri represented about 13 percent of total supplies while Oklahoma represented about one percent. Most of the Missouri milk originated in the south central and southwest part of the State while the Oklahoma supply originated in three eastern counties adjacent to the Arkansas boundary.

The five distributing plants regulated under the order accounted for about 80 percent of the fluid milk products distributed in the Central Arkansas marketing area during the fourth quarter of 1985. The remaining sales were supplied by plants regulated under primarily five other Federal orders. The Class I price changes effective May 1 resulted in varying price increases under the other orders regulating plants that have sales of fluid milk products in the Central Arkansas marketing area. The Class I differential increases were as follows: Greater Kansas City, 18 cents; Southern Illinois, 39 cents; Nashville, Tennessee, 67 cents; Paducah, Kentucky, 69 cents; Memphis, Tennessee and Central Arkansas, 83 cents.

Because of these pricing changes, AMPI/Mid-Am proposed that the location adjustment provisions of the order be amended. The proposal by the cooperatives is essentially the same as that adopted herein, except for the modification for territory in southwest Missouri. The cooperatives contend that their proposal, which would result in a location adjustment change at only one pool distributing plant location, is necessary to provide competitive equity with handlers regulated under the Memphis, Tennessee; Southern Illinois; Southwest Plains; and Paducah, Kentucky orders. As a result of the changes in the Class I differentials on May 1, the cooperatives contend that the minus location adjustment at Paragould should be increased to 22 cents from the current 13.5 cents.

The only opposition to the cooperatives' proposal was by the handler who operates the distributing plant at Paragould (Foremost). Foremost contends that the location adjustment at Paragould should be minus 34 cents, resulting in a Class I differential value of $2.43. The handler contends that the lower price is justified on the basis of the areas in which Foremost distributes fluid milk products in competition with other handlers. The handler testified that 80 percent of the plant's sales (50 percent in the Paragould area and 30 percent to the north) are in competition with handlers in the St. Louis area who are regulated under the Southern Illinois order. Also, the handler indicated that about 17 percent of the plant's sales are in the Little Rock area while the remaining three percent are in the Memphis area. As a result, the handler contends that the location adjustment at Paragould should be based primarily on the price relationships between Little Rock and Paragould and between Paragould and St. Louis. Foremost concludes that a 34-cent location adjustment is reasonable since it would result in an alignment rate of about 2 cents per 10 miles between Paragould and Little Rock as well as between Paragould and St. Louis.

Because of the changes in the Class I differentials on May 1, the location adjustment provisions of the Central Arkansas order should be revised. The issue is critical only with respect to the adjustment at Paragould since it is the only location at which an adjustment applies to a distributing plant that is regulated under the order. All other pool distributing plants are located around Little Rock where the mandated Class I differential applies.

Currently a minus 13.5-cent location adjustment applies at Paragould. Such adjustment is based on a 1.5-cent rate over the 90 miles between Paragould and Forrest City, Arkansas. Forrest City, which is east northeast of Little Rock, has been used as a basing point in conjunction with Little Rock for a number of years to establish location adjustments at distant plants. The use of the distance between any plant and the nearer basing point currently has the effect of establishing more uniform location adjustments across northern Arkansas than if only Little Rock were a basing point. The fact that the Paragould handler contended that its current location adjustment based on Forrest City fails to recognize the location value of milk at Paragould relative to the major population center at Little Rock, is irrelevant to a determination of the appropriate location adjustment at Paragould. It is noted, however, that the current and future use of Forrest City for determining location adjustments at distant plants does nothing more than recognize the identical east-west axis Class I differentials at Little Rock and Memphis, both prior to and since May 1, 1986.

The continued use of the 13.5-cent location adjustment would leave the Foremost plant in the same competitive position relative to handlers in the Little Rock area. However, since the Class I differentials were increased by greater amounts in the south relative to the north, the competitive position of the plant, relative to more northern plants, would be worsened. For example, prior to May 1, the Central Arkansas Class I differential exceeded the differential at St. Louis by 34 cents, reflecting an alignment rate of less than one cent between St. Louis and Little Rock. Effective May 1, the Southern Illinois Class I differential was increased by 39 cents while the Central Arkansas differential was increased by 83 cents, reflecting an alignment rate of about 2.2 cents between St. Louis and Little Rock. At the Paragould location, the alignment rate between Paragould and St. Louis was less than one cent prior to May 1, and would be over 2.8 cents since May 1 if the current minus 13.5-cent location adjustment were continued. Consequently, it would appear that some increase in the minus location adjustment at Paragould would be reasonable in view of the alignment change.

Foremost contended that, since only a small proportion of its fluid milk sales are in the Memphis area, the price relationship between Memphis and Paragould makes no sense in determining the location adjustment at Paragould under the Central Arkansas order. Basically, such a position would ignore certain inter-market price relationships and how changes in price relationships could have an impact on sales area changes of distributing plants. The current 13.5-cent adjustment at Paragould represented an alignment rate of 1.5 cents per 10 miles between Paragould and Memphis. A 34-cent location adjustment would increase the alignment rate between Paragould and Memphis to almost 3.8 cents per 10 miles. Consequently, the $2.77 differential which was mandated at Memphis, is a limiting factor to the possible increase in the minus location adjustment at Paragould.

The location adjustment at Paragould must be viewed primarily in terms of the inter-market mandated pricing structure, although the location of the available milk supplies for the Central Arkansas order also are important. Consideration of both factors indicates that the minus location adjustment at Paragould should not be greater than 22 cents.

A mandated $2.77 Class I differential applies at Little Rock, in the center of Arkansas, as well as at Memphis to the east and Fort Smith to the west. This provides a constant east-west price line across Arkansas. The price surface actually extends for about 780 miles from Oklahoma City to Chattanooga. It is also noted that the steepest alignment rates among mandated differentials occur on a straight north to south axis and decline to zero on an east to west axis.

A 3-cent conservative estimate of current bulk milk hauling costs, applied from the $2.77 Class I differential line straight to the north, should be the basis upon which the location adjustment at Paragould, as well as all of northern Arkansas, is determined.

On the western border of Arkansas, a 3-cent rate from the $2.77 differential at Fort Smith would result in a 21-cent location adjustment at Fayetteville. On the eastern border of Arkansas, a 3-cent rate from the $2.77 differential at Memphis would result in a 21-cent location adjustment at Blytheville, Arkansas. Although there are no pool plants located at Blytheville, it is due north of Memphis and thus approximates the north to south alignment of the mandated differentials and the appropriate value of milk at Paragould to the west of Blytheville. Extension of an equal price surface across northern Arkansas is reasonable in view of the mandated price surface across central Arkansas. Also, a minus 22-cent location adjustment, which is slightly in excess of the 3-cent bulk milk hauling rate, reasonably reflects the value of milk in northern Arkansas versus central Arkansas.

The supplies of milk for the Central Arkansas order are primarily located northwest of Little Rock. Also, there are substantial reserve milk supplies available in southwest Missouri. Relative to the supplies in southwestern Missouri, there are relatively limited supplies in southeastern Missouri. Consequently, if there were any basis to deviate from a flat price surface across northern Arkansas, the supplies of milk available in southwest Missouri would indicate that prices in northwestern Arkansas should be lower than in northeastern Arkansas. Such a pricing structure would be the reverse of the structure proposed by Foremost. In any event, the location adjustment at Paragould and across northern Arkansas must be limited to not more than 22 cents because of pricing constraints imposed by the mandated differentials at cities to the south.

Foremost filed exceptions to the minus 22-cent location adjustment at Paragould. The handler claims that the adjustment should be minus 34 cents on the basis of mileage to competitors to the north and south of Paragould. Foremost further contends that the use of Forrest City to establish the location adjustment at Paragould is not supported by record evidence since Forrest City is neither a supply nor a consumption center.

Foremost's exceptions fail to recognize the essential record evidence and reasons previously set forth in this decision pertaining to the location adjustment at Paragould. As previously stated, the location adjustment at Paragould reflects a 3-cent per 10 miles bulk milk hauling cost on a straight north-south basis along both the eastern (Memphis) and western (Fort Smith) boundaries of the State of Arkansas that approximates the north-to-south alignment of the mandated Class I differentials. Also, an equal east-west price surface across northern Arkansas (Paragould to Fayetteville) is consistent with the mandated flat price surface across central Arkansas. To the extent that there is any basis to establish a different price at Paragould than at Fayetteville, the proximity of the two cities to the substantial southwestern Missouri production area would require a higher price at Paragould (less than a minus 22-cent location adjustment) than at Fayetteville. Consequently, the record evidence pertaining to the mandated Class I differential relationships, the cost of hauling bulk milk, and the recognition of the market's primary supply areas do not permit a greater minus location adjustment than 22 cents at Paragould.

The Arkansas counties located to the south of the base zone, as well as Bowie and Cass counties in Texas, should be included in a plus 31-cent location adjustment zone. Such an adjustment, which would result in a $3.08 differential value in such areas, was not opposed by any interested party and there are no pool plants in the area. Such plus adjustment is consistent with the increasing value of milk to the south and the alignment of pricing between the Central Arkansas and southern markets. Since May 1, the Class I differentials under the Texas and Greater Louisiana orders ($3.28) has exceeded the Central Arkansas differential by 51 cents. Prior to May 1, the Greater Louisiana differential ($2.47) exceeded the Central Arkansas differential ($1.94) by 53 cents while the Texas differential exceeded the Central Arkansas differential by 38 cents. Since May 1, the alignment rate between Little Rock and Shreveport, Louisiana has been 2.55 cents per 10 miles and the alignment rate between Little Rock and Dallas, Texas has been 1.59 cents per 10 miles. At Texarkana, the 31-cent proposed location adjustment represents an alignment rate of 2.2 cents, which is within the range of the alignment rates among markets which decline as the alignment shifts from a north-south to an east-west axis. At El Dorado, Arkansas, the plus 31-cent location adjustment represents a 2.58-cent rate from Little Rock. The reflection of such a rate, which is in excess of the rate between Little Rock and Shreveport, is appropriate since El Dorado is directly south of Little Rock. Also, such rate is less than the north-south alignment of the mandated Class I differentials between Little Rock and Monroe, Louisiana which reflects a rate of 2.8 cents per 10 miles. Consequently, the plus 31-cent location adjustment for southern Arkansas (and Bowie and Cass counties in Texas) represents a reasonable location value of milk relative to prices in markets to the south.

The 2.1-cent rate for establishing plus location adjustments on the basis of mileage for plants located in Mississippi, Louisiana, and Texas is also reasonable in view of the range of alignment rates to the south as previously set forth. In addition, the 2.1-cent rate for establishing minus location adjustments for areas north of Arkansas is appropriate in view of the alignment rate reflected between the Central Arkansas and northern markets since May 1. For example, the difference between the Class I differentials at Little Rock and Kansas City represents less than 2.2 cents per 10 miles over the 390 miles between the cities. Also, the approximate alignment rate between St. Louis and Little Rock is less than 2.2 cents per 10 miles. However, it is noted that the use of the 2.1-cent rate for determining location adjustments (both plus and minus) on the basis of mileage to distant areas is based on the nearer of Little Rock or Forrest City. Such procedure, which is currently utilized, recognizes the constant, east-west axis pricing across Arkansas in northern and southern areas.

Use of the 2.1-cent rate should be modified with respect to territory in southwest Missouri. Use of such rate would result in about a minus 46-cent location adjustment at Springfield, Missouri, representing a $2.31 Class I differential value. Such value would be in excess of the value of milk in this major production area under the Southwest Plains order. Consequently, a minus 58-cent location adjustment should apply in the southwest Missouri area under the Central Arkansas order.

The proposed use of the 2.1-cent rate for establishing location adjustments in southwest Missouri under the Central Arkansas order was not opposed by any interested party. However it is noted that the location adjustment proposed by AMPI/Mid-Am resulted in essentially the same values of milk that were initially proposed for the southwest Missouri areas under both the Southwest Plains and Central Arkansas orders. Also, a substantial amount of testimony and evidence was presented and considered with respect to the location value of milk in southwest Missouri under the Southwest Plains

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order. Although the primary association of the southwest Missouri area is with the Southwest Plains order, the substantial volume of production in the area is available to other southern markets as well as to the Southwest Plains market. Consequently, the value of milk in southwest Missouri should be reflected under the Central Arkansas order.

No location adjustment should apply in the States of Oklahoma and Tennessee, as is currently provided under the Central Arkansas order, to continue to reflect the constant east-west axis price alignment. In total, the location adjustment provision of the Central Arkansas order, as amended, will reflect the alignment of pricing established among markets on May 1, both on an east-west and north-south basis.

1d. Plant location adjustments for handlers under the orders regulating the handling of milk in the Texas and Rio Grande Valley marketing areas

The location adjustment provisions of the Texas order should be amended to provide for a better alignment with prices established in surrounding markets on May 1, 1986. Within the marketing area, price alignment considerations require location adjustment changes in those areas that are east, northwest, and west of Dallas. Specifically, the minus location adjustment for Zone 1–A, which is northwest of Dallas, should be increased from 12 to 25 cents. Also, the plus location adjustments of 6 cents for Zone 2 (east of Dallas) and 25 cents for Zone 6 (west of Dallas) should be eliminated. For reasons set forth hereafter, no other location adjustment changes are necessary within the marketing area to reflect the cost of hauling milk from where it is produced to where it is needed for fluid use. The current intra-market pricing structure reflects the extent to which current hauling costs need be recognized to cover the additional costs in shipping milk substantial distances from northern production areas to deficit southern population centers. The order was amended May 1, 1985 on the basis of a hearing held October 4–7, 1983 to consider proposals to completely restructure the location adjustment provisions of the order. Official notice is taken of the Acting Assistant Secretary's final decision issued March 6, 1985 (47 FR 9661). Such decision concluded that the only price change necessary on the basis of the hearing record was an 18-cent increase in the plus location adjustment for Zone 8 (Houston). Such action resulted in the current total location adjustment for Zone 8 of 54 cents, and is now the subject of litigation. Several proposals in this proceeding relating to the intra-market pricing structure provided the opportunity for a further exploration of the same issues considered at the 1983 hearing.

For territory outside the Texas marketing area, the current procedure of establishing location adjustments that recognize the value of milk in other order areas should be expanded to include plants located in New Mexico, Oklahoma, Arkansas and parts of Kansas and Missouri. For more distant areas, the rate used to compute minus location adjustments should be increased from 1.5 cents to 2.2 cents per 10 miles from Dallas. On the basis of exceptions, the rate of 2.2 cents per 10 miles should also be used to compute minus location adjustments for a 16-county area of southwest Texas that is outside the marketing area of any Federal order. The basing point for establishing location adjustments in such area should be San Angelo.

No location adjustment changes are necessary under the Rio Grande Valley order. A location adjustment change was proposed by a handler who operates a distributing plant at San Angelo, Texas, that is regulated under the Texas order and two plants that are regulated under the Rio Grande Valley order. The purpose of the proposal was to improve the alignment of prices between the Rio Grande Valley order and the handler's plant at San Angelo. Prior to May 1, 1986, the Class I differentials under the Rio Grande Valley and Texas orders were essentially the same. However, the mandated Class I differential for the Texas order was increased by 96 cents ($2.32 to $3.28) while the mandated differential for the Rio Grande Valley order ($2.35) was not changed. A description of the Rio Grande Valley pricing structure, as well as the reasons for denying the proposal, are included with the discussion concerning the appropriate location adjustment for the San Angelo area under the Texas order.

The current pricing structure of the Texas order provides for 13 pricing zones in the marketing area. Zone 1 (which includes the Dallas/Ft. Worth area) is the basing point for the announcement of the Class I price to handlers and the blend price payable to producers each month. No location adjustment applies to plants in Zone 1 which is the zone in which the Class I differential specified in the order is directly applicable in establishing monthly Class I prices. Class I prices to handlers and blend prices payable to producers for all other zones are established by location adjustments to the Zone 1 prices. A minus location adjustment applies to milk received at plants in Zone 1–A, which is northwest of Zone 1. Plus adjustments apply to all other zones. Generally, Zone 2 is east of Zone 1 and borders with the marketing area of the Greater Louisiana order which covers most of the territory in Louisiana. Zone 6 is west of Zone 1 and borders with the marketing area of the Lubbock-Plainview marketing area and the marketing area of the Rio Grande Valley order which covers most of the territory in New Mexico. All other zones of the Texas marketing area are south of Zones 1 and 2.

The current location adjustments for each of the zones, as well as the resulting Class I differential values prior to May 1, 1986, are indicated in the following table. Although each zone consists of groups of counties, the major cities within such zones are indicated for reference purposes. Also, for comparison purposes, the Class I differential values adopted herein are included. The adopted changes reflect the $3.28 mandated differential and the location adjustment changes for Zones 1–A, 2, and 6 as previously indicated.

[Dollars per hundredweight]

Zone/Cities	Prior to May 1, 1986		Adopted pricing	
	Location adjustment	Class I diff.	Location adjustment	Class I diff.
1–A Burkburnett	−.12	2.20	−.25	3.03
1 Dallas, Ft. Worth	0	2.32	0	3.28
2 Tyler, Marshall	+.06	2.38	0	3.28
3 Waco	+.15	2.47	+.15	3.43
4 Lufkin	+.18	2.50	+.18	3.46
5 Bryan	+.20	2.52	+.20	3.48
6 San Angelo	+.25	2.57	0	3.28
7 Austin	+.30	2.62	+.30	3.58
8 Beaumont, Houston	+.54	2.86	+.54	3.82
9 San Antonio	+.42	2.74	+.42	3.70
10 Victoria	+.53	2.85	+.53	3.81
11 Corpus Christi	+.66	2.98	+.66	3.94
12 Edinburg, Harlingen	+.75	3.07	+.75	4.03

During December 1985, 34 distributing plants were regulated under the order. Of these, 20 are located in Zones 1, 8, and 9 (Zone 1, 11 plants; Zone 8, 5 plants; and Zone 9, 4 plants), which are the most heavily populated areas of the marketing area. Three of the plants are located in Zone 2, and two plants are located in each of Zones 6, 11, and 12. One plant is located in each of Zones 1–A, 3, 4, 5, and 7. There are no longer any plants in Zone 10.

In addition to distributing plants, two manufacturing plants operated by AMPI that are pooled under the order as cooperative balancing plants are located in the heavy milk producing areas of the market in Zone 1. These plants are located at Sulphur Springs (Hopkins County) and Muenster (Cooke County). Two supply plants are also regulated under the order. One is located at Yantis (Wood County) and one at Aurora, Missouri (Lawrence County). There are also four nonpool plants located in Zone 1 that obtain producer milk supplies by diversion from other plants. Two of these are located in the Dallas area while the other two are located in the heavy Hopkins County production area. Two additional nonpool plants that receive producer milk are located in Zone 8 of the marketing area. Additional manufacturing plants that serve as outlets for producer milk are located in the States of Texas (outside the Texas marketing area), Oklahoma, Missouri and Arkansas.

The 1980 population of the Texas marketing area exceeded 12.3 million persons, almost a 29 percent increase from 1970. Most of the population resides within Zones 1, 8, and 9 which accounted for over 67 percent of the total marketing area population. Zone 8, the largest population center, accounted for 29 percent of the total population and experienced a population growth of more than 37 percent between 1970 and 1980. Zone 1 is the second largest population center representing almost 28 percent of total population with a 24 percent increase between 1970 and 1980. Zone 9 is the third most populated area representing about 10.5 percent of total population with a 20 percent increase from 1970 to 1980.

The volume of producer milk associated, in total, with the Texas market (over 372 million pounds per month during 1985) is adequate to meet fluid milk needs. About 252 million pounds of producer milk per month was used in fluid milk products, indicating a Class I utilization of about 68 percent for 1985. Class I utilization ranged from a high of about 77 percent in January to a low of 60 percent in June. The Class I utilization for 1984 was about 70 percent (ranging from 77 to 63 percent) while the 1983 Class I utilization was 64 percent (ranging from 71 to 57 percent).

The milk associated with the Texas market is produced on farms located in the States of Arkansas, Mississippi, Missouri, New Mexico, Oklahoma and Texas. By far, Texas represents the greatest source of supply, representing in excess of 80 percent of the total milk pooled on the market during 1985. Such production exceeded the amount of producer milk in Class I use by almost 20 percent. New Mexico, representing about 10 percent of total market supplies, was the second greatest supply area.

The major Texas production areas are located in the northern portion of the marketing area, primarily in the Sulphur Springs (Hopkins County) and Stephenville (Erath County) areas. Production available in the top 10 milk producing counties in the marketing area represented about 45 percent of the total amount of producer milk pooled on the market during December 1985. Of these counties, six are located in Zone 1, three in Zone 3, and one in Zone 1–A. These 10 counties, plus eight additional heavy milk producing counties in the vicinity of Sulphur Springs and Stephenville (four in each area) represent in excess of 54 percent of the total amount of producer milk pooled under the order during December 1985.

Fluid milk needs of the Texas market are supplied, to a very limited degree, by handlers who operate plants that are regulated under other Federal order markets. Handlers regulated under five other orders had sales of fluid milk products in the marketing area during 1985 that averaged less than 6.7 million pounds per month. The orders regulating these plants that have sales in the marketing area, and the increases in the Class I differentials on May 1, 1986, are as follows: Greater Louisiana, 81 cents; Southwest Plains, 79 cents; Lubbock-Plainview, 7 cents; Texas, 96 cents; and Texas Panhandle, 24 cents. In addition, there was no change in the Class I differential under the Rio Grande Valley order which regulated a handler who has fluid milk sales in the Texas marketing area.

AMPI and Mid-Am, which represent a substantial proportion of the dairy farmers who supply the Texas market, proposed that location adjustment changes be made in Zones 1–A, 2, 3, 4, 5, 6 and 7 of the marketing area. The cooperatives contend that the changes are necessary because of changes in the alignment of prices between the Texas and other Federal order markets effective May 1, 1986, and to recover a greater portion of transportation costs that are incurred in supplying certain areas of the market.

For Zones 1–A and 2, the cooperatives indicated that price alignment considerations necessitate location adjustment changes. For Zone 1–A, the cooperatives proposed that the minus location adjustment be increased from 12 to 25 cents to recognize the 51-cent difference established between the Southwest Plains and Texas order Class I differentials. They contend that the 25-cent adjustment for this territory that is northwest of Dallas would be appropriate since the area is equidistant between Oklahoma City and Dallas. For Zone 2, which is east of Dallas, the cooperatives proposed that the current plus 6-cent location adjustment be eliminated since identical Class I differentials were established for the Texas and Greater Louisiana orders. Prior to May 1, the Greater Louisiana Class I differential exceeded the Texas differential by 15 cents. With the elimination of this difference between differentials, the cooperatives contend that the 6-cent adjustment should be eliminated to provide an east-west alignment of prices between Shreveport, Louisiana and Dallas.

For Zone 3, which is south of Zone 1, the cooperatives proposed that the plus location adjustment be increased from 15 to 19 cents to reflect more of the cost of hauling milk to Waco. For Zone 4, which is east of Zone 3 and south of Zone 2, the cooperatives proposed that the plus location adjustment be increased by 4 cents to 22 cents. They contend that the increase is necessary to align prices between a distributing plant at Lufkin in Zone 4 with distributing plants located to the north in Zone 2 at Tyler and Marshall. In addition, the cooperatives contend that the higher price is necessary to cover a greater portion of the hauling cost incurred in supplying the Zone 4 plant.

For Zone 5, which is southeast of Waco in Zone 3 and southwest of Lufkin in Zone 4, the cooperatives proposed that the plus adjustment be increased from 20 to 30 cents. The cooperatives contend that the increase is necessary to align prices between a distributing plant at Bryan in Zone 5 with the bottling plant at Waco in Zone 3. In addition, the cooperatives contend that the higher price is necessary to cover more of the transportation costs incurred in shipping milk long distances to supply the Zone 5 plant. For Zone 7, which is south of Zones 3 and 5, the cooperatives proposed that the plus location adjustment be increased from 30 to 39 cents. The cooperatives contend that such increase is also necessary to cover a greater portion of the costs of hauling milk to Zone 7.

For Zone 6, which is the western most zone in the Texas marketing area, the cooperatives proposed that the current plus 25-cent location adjustment be eliminated. The cooperatives contend that such change is necessary because of the substantial change in the price alignment between the Texas order and other Federal order markets to the west, primarily the Rio Grande Valley order. Prior to May 1, there was only a 3-cent

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difference between Class I differentials under the Texas order ($2.32) and the Rio Grande Valley order ($2.35). Effective May 1, the Texas order differential was increased by 96 cents while there was no increase in the mandated Rio Grande Valley order differential. With the current plus 25-cent location adjustment, the Class I differential value at San Angelo would exceed the Rio Grande Valley order differential by $1.18. The cooperatives contend that elimination of the plus adjustment would improve the new east-west alignment and allow the distributing plant at San Angelo to continue to compete for sales of fluid milk products with handlers located in Zones 1, 3, 7, 9, and 11 of the marketing area. The cooperatives indicated that any greater price reduction was not warranted because of limited competition for sales in west Texas with plants in eastern New Mexico. The cooperatives' proposal was supported by Safeway, Inc., which operates distributing plants under the Texas and Rio Grande Valley orders.

For Zone 8, the cooperatives proposed that the current plus 54-cent location adjustment be continued. Such proposal was basically in opposition to proposals by other parties that would reduce the current Class I price for Zone 8 by 18 cents. The cooperatives contend that Zone 8 is the most difficult and costly area to supply because of the substantial distances that milk must be shipped from production areas to supply the fluid milk needs of distributing plants in Zone 8.

For locations outside the Texas marketing area, the cooperatives proposed that the Texas order location adjustments recognize the location value of milk in such areas established under other Federal orders. This procedure is currently utilized under the Texas order for Texas territory included in the Texas Panhandle and Lubbock-Plainview orders and some Oklahoma territory included in the Southwest Plains order. The cooperatives' proposal would extend this procedure to include all of the territory in the Southwest Plains marketing area, a portion of Missouri and all of the State of Arkansas. For Louisiana and New Mexico (including El Paso County, Texas, which is in the Rio Grande Valley marketing area) the cooperatives proposed that no location adjustment be applied under the Texas order. The cooperatives proposed that this procedure, which is currently utilized under the Texas order, be continued despite the substantial change that occurred between the Class I differential values under the Texas and Rio Grande Valley orders on May 1, 1986. The cooperatives contend that no location adjustment should apply to milk that is pooled under the Texas order that is received at plants regulated under the Rio Grande Valley order even though the Class I differential under the Rio Grande Valley order is 93 cents less than the Texas order Class I differential effective May 1. The cooperatives contend that application of the Texas order Zone 1 value is necessary to allow AMPI to recover substantial transportation costs that are incurred in qualifying milk produced in New Mexico and El Paso County for producer status under the Texas order in the event that such milk is needed to supplement the fluid milk requirements of the Texas market.

For other areas outside the marketing area the cooperative proposed that a rate of 2.1 cents per 10 miles from Dallas be used to establish location adjustments.

The Southland Corporation (which operates five distributing plants under the order) and Hygeia Dairy Co. (which operates two distributing plants under the order) jointly proposed that the location adjustment for Zone 8 be reduced by 18 cents to the plus 36-cent adjustment that applied to milk received at plants in Zone 8 prior to May 1, 1985. Southland and other handlers who operate plants in Zone 8 (Borden, Carnation, and Safeway) have challenged the prior action to provide for a 54-cent location adjustment for Zone 8. In this proceeding, Southland testified that distributing plants in Zone 8 received sufficient supplies of milk to meet fluid requirements when the 36-cent location adjustment applied and that, consequently, there was no reason to provide for a 54-cent location adjustment. Southland testified that the 36-cent location adjustment should be reestablished since plants in Zone 8 are adequately supplied, which according to Southland, indicates that there is no need for any greater economic incentive for milk to be shipped to Zone 8 from distant production areas. Southland also testified that a return to a 36-cent location adjustment would reestablish the historical east-west price alignment between Zone 8 of the Texas order and the Greater Louisiana and New Orleans-Mississippi orders. Prior to May 1, 1985, the Zone 8 Class I differential value was $2.68, compared to $2.85 under the New Orleans-Mississippi order. Effective May 1, 1985, with the 54-cent location adjustment for Zone 8, a $2.86 Class I differential value was established. Southland contends that a $3.64 differential value in Zone 8 ($3.28 mandated differential plus a 36-cent location adjustment) would provide the proper east-west alignment with the $3.85 differential value mandated for New Orleans. Southland also testified that Congress did not mandate any increase in the Class I differential for any Texas location south of Dallas where the order Class I differential applies. Therefore, since Zone 8 and intervening zones are adequately supplied according to Southland, Southland contends that the Zone 8 location adjustment should be reduced to 36 cents, and the AMPI/Mid-Am proposed location adjustment changes for Zones 2, 3, 4, 5, and 7 should be denied. A reduction of the Zone 8 location adjustment to 36 cents was also proposed by Borden, Inc., and supported by Safeway, Inc. for essentially the same reasons testified to by Southland.

Southland and Hygeia also proposed that a new minus location adjustment Zone 1-B be established in the heavy milk producing area of Zone 1. The proposal would establish a minus 18-cent location adjustment zone to include 10 counties located north and northeast of Dallas. Southland testified that neither the mandated 96-cent increase in the Texas Class I differential, nor the mandated changes in the price relationships among markets that incorporates north to south and west to east movements of milk, provide an economic incentive for milk to be shipped to distributing plants in Dallas. Southland testified that this lack of incentive occurs because Zone 1 currently includes both the consumption and production areas. Since manufacturing plants are located in the production area at Sulphur Springs and Muenster, producers who supply such manufacturing plants receive the same blend price as producers who supply distributing plants at Dallas. As a result, Southland contends that producers who supply distributing plants at Dallas, which is 80 miles southwest of Sulphur Springs, should receive an 18-cent higher price than producers whose milk is received at Sulphur Springs. Consequently, under the current pricing structure, Southland proposed that an 18-cent lower price be established at Sulphur Springs. Southland contends that at times there has been a shortage of milk at distributing plants in Dallas while milk was being processed at AMPI manufacturing plants at Sulphur Springs and Muenster and, thus, a price incentive should be incorporated under the order for milk to be shipped to Dallas. Southland also testified that the impact of its proposal on total producer returns would be insignificant because there are no Class I bottling plants in the proposed zone and that its proposal would establish a better east-west alignment of pricing across north Texas than the AMPI/Mid-Am proposal. In its brief, Southland indicated that even if there were distributing plants in its proposed lower price zone, the adjustment would be appropriate in view of the proper location value of milk.

For out-of-area locations, Southland proposed the current procedure for recognizing the value of milk under other orders in certain territory in Texas and Oklahoma. However, Southland proposed that for other areas, particularly for plants located in El Paso County, Texas, and New Mexico (where no location adjustment currently applies under the Texas order), a minus location adjustment should apply at the rate of 2.2 cents per 10 miles between any plant and Dallas. Southland contends that such change in pricing is necessary because of the substantial change in the price relationship between the Texas and Rio Grande Valley orders effective May 1, 1986. Southland contends that even under the price relationship that existed prior to May 1, 1986, reserve milk supplies for the Rio Grande Valley order were pooled under the Texas order, thereby depressing the blend price to all producers who supply the Texas market. Southland contends that absent a change in the location adjustments for El Paso and New Mexico, there would be a substantial economic incentive for surplus milk produced in such areas to be pooled on the Texas order. Therefore, Southland contends that a minus location adjustment should apply to milk received at plants in El Paso and New Mexico to reflect its economic value at such locations relative to the Texas market, thereby establishing an economic disincentive for such milk to be pooled on the Texas market.

With respect to other proposals concerning Zone 8, Schepps Dairy (a handler who operates a distributing plant in Zone 1) proposed that the plus location adjustment be increased from 54 cents to 72 cents. Schepps contends that an increase is necessary to cover the additional transportation costs that are incurred in shipping milk long distances from northern production areas to the deficit Zone 8 consumption center. Schepps contends that the Zone 8 location adjustment should reflect current hauling costs of 3.5 cents per 10 miles over the distance between Houston and the supply area for Zone 8. Schepps testified that the Houston milkshed extends outward 325 miles into the procurement area for Zone 1 plants. Schepps testified that since the procurement area for Zone 1 plants extends outward from Dallas by about 60 miles, the Zone 8 location adjustment should reflect the additional mileage to Houston (325−60 = 265 miles) at 3.5 cents per 10 miles, resulting in about a 94-cent location adjustment. In view of this cost, Schepps contends that the proposed 75-cent location adjustment would be more reasonable than a 54-cent adjustment. Also, Schepps testified that the 75-cent adjustment is reasonable in view of the 72-cent additional cost incurred by Mid-Am to supply Houston versus Dallas from the same production area, as well as in terms of AMPI's average unrecovered transportation costs of 20 cents to supply Zone 8 plus the current 54-cent location adjustment. Schepps contends that with the current location adjustment Zone 8 handlers are not paying the value of the economic service provided by producers, thus resulting in inequities among handlers and producers.

Kroger, Inc., which also operates a pool distributing plant in Zone 1, proposed that Montgomery County be removed from Zone 8 and placed in a separate price zone. The zone change was proposed because Kroger is in the process of building a new distributing plant at Conroe in Montgomery County to service fluid milk outlets in Zone 8 and other southern areas. Basically, Kroger proposed that the plus location adjustment for Montgomery County be 10 cents less than for the rest of the territory in Zone 8. Kroger proposed that the Zone 8 location adjustment be increased to 64 cents but that Montgomery County be included in a separate 54-cent plus location adjustment zone. As an alternative, Kroger proposed that the location adjustment for Montgomery County be 44 cents with a 54-cent location adjustment applicable in the rest of the territory currently in Zone 8. Kroger testified that a 10-cent difference in pricing between Conroe and Houston is justified since Conroe is located some 39 miles north of Houston closer to the production area that would have to be relied on for a source of supply for the Conroe plant. Kroger testified that haulers who were contacted said they would haul milk to Conroe for less than the cost of hauling milk to Houston. Kroger also testified that significant traffic congestion occurs between Conroe and Houston, resulting in lower overall transportation costs for the Conroe location, which is a further basis for a lower plus location adjustment at Conroe than at Houston.

Dean Foods Company proposed that the location adjustment for plants in Zone 6 of the Texas marketing area be changed from plus 25 cents to minus 25 cents per hundredweight and that the minus 15-cent location adjustment be eliminated at plants located in eastern New Mexico that are regulated under the Rio Grande Valley order. Dean, who operates a distributing plant at San Angelo in Zone 6, as well as plants regulated under the adjacent Lubbock-Plainview and Rio Grande Valley orders, contends that its proposed changes are needed primarily to reflect the substantial change in the Class I price relationship between the Texas and Rio Grande Valley orders effective May 1, 1986. Dean claims that its proposed changes in the location adjustment provisions of the orders are needed to allow the San Angelo plant to remain competitive with bottling plants regulated under other nearby orders for sales of fluid milk products.

The Dean proposal for the Rio Grande Valley order was opposed by AMPI and Safeway on the basis that the proposed action would be an inappropriate method of trying to resolve the resale problems that Dean anticipates. With respect to the handler's proposal for the Texas order, Foremost, Borden, Hygeia and Southland opposed any change in the plus 25-cent location adjustment at plants in Zone 6. These major Texas handlers claimed that any changes in the location adjustment for Zone 6 would create competitive inequities among handlers for sales of fluid milk products in Zone 6 and in territory south and east of Zone 6.

Necessary changes to the location adjustments under the Texas order involve a consideration of the intra-market pricing structure as well as the issue of inter-market price alignment between the Texas and other Federal order markets. Although these issues are related, price alignment consideration among Federal order markets is of greater importance in northern and western portions of the Texas marketing area. In other portions of the Texas marketing area, location adjustments must reflect the structural characteristics of the market and an intra-market alignment of the varying location values of milk throughout the market.

The Texas order regulates handlers operating a large number of plants dispersed over a large geographic area. Consequently, location adjustments are necessary to reflect substantial differences in the value of milk because

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of the greater distances that milk must be hauled to meet the fluid milk needs of the various population centers in the market. Consequently, in order to recognize the value of the service provided by producers, location adjustments are intended to reflect the cost of hauling milk from where it is produced to where it is needed for fluid use. Thus, location adjustments provide an economic incentive for milk to be shipped to alternative outlets from production areas and compensate those producers who incur the cost of providing a greater service supplying distant plants relative to those producers who supply nearby plants. This promotes a measure of equity among producers, as well as uniformity of pay prices, on the basis of the service provided. At the same time, location adjustments that reflect the value of the transportation service provide equity and uniformity of pricing among handlers by establishing a price for milk that is commensurate with its value at the point of receipt. To the extent that certain handlers are able to obtain milk at less than its location value, they may have an economic advantage relative to other handlers.

The structure of the Texas market was set forth previously. The major structural characteristic relevant to the intra-market location adjustment issue is the proximity of production areas to the major population centers in the market. The major population centers, in order of importance, are Zones 8, 1, and 9 of the marketing area. The major production areas are located in north Texas, specifically northeast and southwest of the Dallas/Fort Worth area. These northern production areas are a source of supply for each of the primary consumption centers. Thus, there must be an economic relationship of prices among Zones 1, 8, and 9 relative to their common primary procurement areas. The price relationship among these zones establishes an overriding price structure to which prices in other intervening zones should be related. It is noted that no location adjustment changes were proposed for Zone 9 or other more southern zones of the marketing area. Although the Zone 9 location adjustment is important to the primary price structure, the Zone 11 and 12 location adjustments are not at issue, since there were no proposed changes and also because plants in such zones do not rely to any significant degree on the primary production areas for a source of milk.

Zones 8 and 9 are the most deficit production zones in the Texas marketing area in terms of the relationship of production within each zone and the volume of bulk milk received at distributing plants in each zone. During May 1985, production in Zone 8 represented slightly over 13 percent of the bulk milk received at Zone 8 plants. In Zone 9, production represented just over 28 percent of the milk received at distributing plants. During October 1985, when the supply/demand relationship for the Texas market was tighter than in May, Zone 8 production represented about 11.5 percent of bulk milk received at distributing plants. For Zone 9, production represented about 24 percent of bulk milk receipts. In contrast, Zone 1 is virtually surrounded by the heavy northern production areas of the market. In terms of the relationship between Zone 1 production and distributing plant receipts, production represented over 138 percent of bulk receipts during May and about 116.5 percent of bulk receipts at distributing plants during October. In addition, a substantial amount of milk is produced to the southwest of Dallas in counties in Zone 3 of the marketing area that are about the same distance from portions of the Dallas/Fort Worth area as is the northeast production area around Sulphur Springs. In Zones 3, 5, and 7, which were combined to avoid revealing confidential data, production represented about 817 percent of bulk milk received at distributing plants in such zones during May, and over 709 percent of receipts during October.

As a result of the relationship of production to receipts, plants in Zones 8 and 9 must reach out substantial distances to obtain sufficient supplies of milk for fluid use. The milkshed for the Beaumont segment of Zone 8 extended just over 153 miles from Beaumont during October 1985 in terms of the weighted average distance of all milk shipments. However, for the major Houston segment of Zone 8, the weighted average distance from which milk was obtained was 251 miles. Also, more than 53 percent of the milk obtained by Houston plants originated more than 200 miles from Houston while more than 44 percent came from more than 250 miles from Houston. Just over 14 percent of the milk came from 351 or more miles from Houston. The milkshed for Zone 8 thus extends to and beyond the Sulphur Springs (Hopkins County) and Stephenville (Erath County) production areas of the market which are 253 and 267 miles, respectively, from Houston. With respect to Zone 9, the milk shipment weighted average distance was about 186 miles, with just over 48 percent of the milk being obtained from over 200 miles from San Antonio. Only about three percent of the milk came from beyond 351 miles from San Antonio, indicating that the milkshed extends to the Stephenville area (205 miles from San Antonio) but does not extend to any appreciable degree to the Sulphur Springs area (335 miles from San Antonio). Also, in terms of the change in the sources of milk over time, the milkshed for Zones 8 and 9 has shifted northward to a significant degree between 1961 and 1985.

In contrast to Zones 8 and 9, segments of the Zone 1 area were able to obtain sufficient milk supplies from the nearby production areas. Distributing plants in the Dallas, Ft. Worth, and Grandview areas of Zone 1 obtained milk, on a weighted average distance basis, from 105, 45, and 17 miles, respectively, from such plant locations. Very little milk was received from beyond 150 miles from distributing plants in Zone 1.

Producers in the major Texas production areas supply the fluid milk needs of distributing plants located in the three major consumption areas of the market. As stated previously, these major production areas are centered around the Sulphur Springs and Stephenville areas which are northeast and southwest of Dallas. Producers in these areas incur different hauling costs and provide varying degrees of service to handlers depending on the different distances involved in supplying the alternative outlets. Stephenville is about 97 miles from Dallas and 67 miles from Ft. Worth. Also, Stephenville is 205 miles from San Antonio. Based on the three-cent-per-10-mile hauling cost, which is a conservative estimate of hauling costs used to align prices among plants on a north-south axis, a total hauling cost of 63 cents would be reflected between Stephenville and San Antonio. However, Stephenville area producers also supply distributing plants in Zone 1. Consequently, only the additional mileage involved in supplying San Antonio versus Dallas/Ft. Worth, need be reflected in the Zone 9 location adjustment to cover the additional service provided by producers in supplying Zone 9 plants. San Antonio is 108 miles further from Stephenville than is Dallas which indicates that a 33-cent location adjustment at Zone 9 would cover the additional hauling cost and service. Ft. Worth, which is west of Dallas, is about 67 miles from Stephenville. On this comparison, there is an additional 138 miles to San Antonio, or a 42-cent difference in the cost of supplying the alternative outlets. Consequently, the current 42-cent location adjustment for Zone 9 represents an appropriate measure of the location value of milk in this major southern consumption center relative to the Dallas/Ft. Worth area.

The Stephenville area is also a major source of supply for plants in Zone 8. Houston is 62 miles further from Stephenville than is San Antonio which indicates that a greater cost is incurred by Stephenville area producers to supply Houston than San Antonio. On this basis, the location adjustment for Zone 8 should be 21 cents greater than at San Antonio, or a 63-cent location adjustment relative to Zone 1.

Houston is nearer to Sulphur Springs than to Stephenville. Consequently, the Zone 8 location adjustment should be based on the nearer primary production area. Otherwise, the Zone 8 location adjustment would be in excess of the value of the service provided by producers who are nearer to Houston than Stephenville area producers.

Sulphur Springs is about 79 miles from Dallas and 253 miles from Houston. Consequently, producers in this major production area have to ship milk an additional 174 miles to supply Houston area plants versus plants in the Dallas area. This indicates that a 54-cent location adjustment for Zone 8 represents the appropriate location value of milk relative to milk delivered to Dallas.

The location adjustments for Zones 8 and 9, relative to the Class I differential value in Zone 1, are based on a three-cent-per-10-mile bulk milk hauling rate from north to south to reflect the greater service provided by producers supplying more distant southern alternative outlets. Although San Antonio is further south from Dallas than is Houston, San Antonio is nearer to the primary northern production areas that must be relied on for a source of milk. Consequently, the location adjustment for Zone 9 is appropriately lower than for Zone 8 because of the lesser costs incurred in supplying Zone 9. In addition, since San Antonio is west of Houston, a lower price at San Antonio is more consistent with the mandated price alignment change which establishes a price incentive for west to east as well as north to south movements of milk.

The price relationship among Zones 1, 8, and 9 establishes the primary pricing structure for the Texas market. This pricing structure recognizes both the primary consumption and production areas in the market. Consequently, location adjustments in intervening zones must be related to the values of milk in the major metropolitan areas of the market. However, prior to considering the location adjustments in intervening zones, additional consideration is directed to other proposals concerning Zone 8 of the marketing area.

Counter proposals that would establish a greater or lesser location adjustment than the current 54-cent adjustment (which is reaffirmed for reasons previously set forth) must be denied. The higher plus adjustments are based on the contention that a greater proportion of the additional hauling costs that are incurred by producers to supply Zone 8 relative to supplying other zones should be reflected in the Zone 8 location adjustment. The higher adjustments are based on greater hauling costs and distances than are reflected in the analysis to derive the 54-cent location adjustment. A higher location adjustment is not totally unreasonable in that it would result in Zone 8 handlers paying a greater proportion of the actual hauling costs that are incurred in shipping milk to Houston. However, it is not intended that total hauling costs at any one point in time be reflected at each plant location. Hauling costs vary over time among haulers and on the basis of the actual distances that milk is shipped. Consequently, location adjustments reflect an average situation. Thus, location adjustments should represent a conservative estimate of current hauling costs. The three-cent rate used to establish location adjustments on a north-south basis in the Texas market, as well as Federal order markets to the north, represents a conservative estimate of actual hauling costs incurred in shipping bulk milk. Such rate promotes continued incentives for hauling efficiencies. It is also consistent with the concern expressed over whether declines in fuel prices were reflected in hauling costs portrayed on the record. In reflecting an average experience, location adjustments that exceed transportation costs would establish incentives to ship milk to obtain hauling profits.

Schepps filed exceptions to the failure of the tentative decision to estsblish a greater plus location adjustment than 54 cents for Zone 8. Schepps contends that a greater plus adjustment is supported by record evidence and is warranted to assure that Zone 8 handlers would pay a greater proportion of the actual hauling costs that are incurred in shipping milk to plants in Zone 8. The handler also argues that since milk is shipped an average of 251 miles to supply plants in the Houston area, the transportation cost is about 75 cents per hundredweight based on a hauling rate of 3 cents per 10 miles. In addition, Schepps contends that a plus adjustment in excess of 54 cents is supported by the testimony of cooperative associations. Schepps cites testimony of cooperative associations concerning the incremental costs to supply Houston area plants of 75 cents from the Sulphur Springs area and a cost of at least 64 cents from the Stephenville area.

It is noted that the plus 54-cent Zone 8 location adjustment, which reflects the additional cost of hauling milk to Houston versus alternative fluid outlets in Zone 1 from the Sulphur Springs procurement area, is less than the costs reflected by the testimony of cooperative associations. Although these differences cannot be totally explained, the economic rationale previously set forth in this decision to establish the 54-cent adjustment has not been contested by Schepps. In addition, the decision sets forth hauling efficiency concerns and price alignment considerations with respect to markets to the east which tend to establish limitations to a greater plus location adjustment for Zone 8.

The proposals to reestablish a 36-cent location adjustment for Zone 8 is totally unreasonable in view of current hauling costs and the increases in the Class I differentials mandated by the Food Security Act of 1985 that are intended to recognize increases in hauling costs that were not previously recognized under Federal milk orders. The contention of Zone 8 handlers that sufficient supplies of milk were received with a 36-cent adjustment merely indicates that such handlers were able to transfer the additional hauling cost incurred in shipping milk to Zone 8 to the producers who supply plants in Zone 8. Since AMPI supplies Zone 8 almost exclusively over long distances, the absorption of the additional, unrecovered transportation costs resulted in inequities between AMPI producers and other producers in the nearby northeast Texas procurement area who provide no service in shipping milk long distances to the major deficit zone consumption area. In addition, a 36-cent location adjustment would not even approach the value of the service received by Zone 8 handlers, resulting in inequities between Zone 8 handlers and handlers in other areas who pay a greater proportion of the value of the transportation service.

Borden, Carnation, Southland and Hygeia excepted to the plus 54-cent location adjustment for Zone 8 and urged that the proposed 36-cent location adjustment be adopted. The handlers contend that the only basis offered to support the 54-cent adjustment was generalized testimony that transportation costs had increased and that a previous decision on a prior

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record was correct. The handlers also contend that the adjustment discriminates against Houston dealers since all surrounding dealers pay less for milk even though the cost of transporting bulk milk to such dealers reflects the same rate per 10 miles as the cost of hauling milk to Houston. The handlers further contend that there was no evidence indicating a problem in supplying milk to Houston with a 36-cent location adjustment.

First of all, there is a substantial amount of testimony indicating that the cost of hauling bulk milk is $1.60 per loaded mile. A large number of witnesses representing various parties, including one of the excepting handlers, confirmed such fact. When a cost figure is virtually undisputed by any witness, a much greater degree of significance is attached to such testimony than the connotation associated with the "generalized testimony" terminology used by the excepting handlers. In addition, there is substantial testimony and evidence in the record concerning the appropriate location value of milk for Zone 8 relative to other zones in the marketing area.

In this connection, the distance that milk must be hauled, as well as the 10-mile hauling rate, must be considered with respect to this issue. The fact that the hauling rate may be the same for all handlers is of much less importance without a consideration of the location of the primary production areas and the varying distances involved in supplying alternative fluid outlets. As previously set forth in this decision, the Zone 8 location adjustment is based on the greater distance that milk must be moved from the market's primary production areas to supply Zone 8 relative to the distances involved in supplying plants in other zones that are nearer to such production areas. Consequently, these same considerations (i.e., hauling rate and distance) are instrumental in determining the appropriate price relationships among Zones 1, 8, and 9 as well as the price relationships with intervening zones. As a result, the plus 54-cent location adjustment does not discriminate against Zone 8 handlers. Such adjustment, which reflects a reasonable value of milk relative to plants in other zones on the basis of the hauling rate and the distance involved, promotes a greater degree of equity among handlers than a 36-cent adjustment would provide. A 36-cent adjustment would undervalue milk delivered to Zone 8 relative to the value of milk delivered to plants in other zones. Also, it is not correct that prices which apply to all surrounding dealers are less than the Zone 8 prices. The plus location adjustments at other more southern zones are in excess of the Zone 8 location adjustment. Also, the location adjustment at plants in Zone 9 that are located in San Antonio and to the south and west of Zone 8 is less than the Zone 8 adjustment because San Antonio is considerably closer to the Stephenville production area than is Houston.

Despite the handlers' claim in exceptions, there are problems associated with supplying milk to handlers in Zone 8 that would be intensified by reducing the plus location adjustment. Zone 8 is a major consumption center to which substantial supplies of milk must be shipped regularly over considerable distance on a daily basis to furnish fluid milk needs. To the extent that the location adjustment does not reflect the additional cost incurred by producers in supplying Zone 8, relative to the lesser costs incurred in supplying nearer plants, producers are not adequately compensated for the transportation service provided. Consequently, inequities develop between those producers who supply such zone versus those producers who provide no service in shipping milk long distances to supply this deficit consumption area. In addition, inequities develop among those handlers who pay a greater share of the transportation service versus those who pay a lesser share. As previously set forth in this decision, a reduction of the Zone 8 location adjustment to plus 36 cents would cause further inequities both among producers and handlers.

The 72-cent and 36-cent location adjustments would result in $4.00 and $3.64 Class I differential values in Zone 8. Both would represent a misalignment of Class I differentials on an east-west axis. A $3.82 Class I differential as a result of a 54-cent location adjustment represents a reasonable alignment with the mandated $3.85 Class I differential at New Orleans and the $3.78 Class I differential at Lake Charles adopted under a different proceeding involving the Greater Louisiana order.

Montgomery County should not be removed from Zone 8 and placed in a separate pricing zone at this time as proposed. Kroger is in the process of building a new plant at Conroe to service fluid milk retail outlets in Zone 8 and other southern Texas and Louisiana territory. The plant is expected to begin operating by April 1987. Kroger proposed that the price at its new plant should be 10 cents less than the price at Houston because it is 39 miles north of Houston and nearer to northern production areas.

Based simply on the distance between Conroe and Houston, there is some economic merit to the proposal. However, the proposal seeks a refinement of establishing a location adjustment on the basis of the location of a single plant, which goes far beyond the zone pricing structure used historically in the Texas market. Under a zone pricing structure, prices are established at city locations relative to other consumption centers. The area is then expanded to encompass additional areas in the proximity of the city within which plants are located. Such plants would be expected to compete with each other, both for sales in the major consumption area and for supplies of milk. Recognition of a precise plant location (in fact Conroe is not a precise plant location) relative to a major city in a zone would nullify the zone pricing structure applicable to all other distributing plants regulated under the order. For example, Houston and Dallas cover a substantial amount of territory. Thus, plants within such cities could be further from each other than Conroe is from Houston. Consequently, Conroe must be viewed in terms of its proximity to the rest of the territory in Zone 8 to determine whether Montgomery County should be in a separate pricing zone.

Montgomery County has been included in Zone 8, and in the same price zone as Houston, at least since the Texas marketing area was formed in 1975. It is also not the northernmost located county in Zone 8. Also, it appears that Conroe is only about 16 miles north of the northern boundary of Harris County and 20 miles north of the Houston city limits. In addition, a portion of the City of Houston extends into Montgomery County and Montgomery County is a part of the Houston Primary Metropolitan Statistical Area. In addition, Beaumont (Jefferson County) is also in Zone 8 located northeast of Houston nearer to northern production areas. It is noted that Beaumont is substantially closer to milk supplies than is Houston. Conroe, relative to Beaumont, is only 6 to 8 miles further to the north. Consequently, in view of its proximity to the rest of the territory in Zone 8, Montgomery County should not be removed from Zone 8.

As previously stated, the proposed location adjustment changes for Zones 2, 3, 4, 5 and 7 must be viewed in terms of the primary pricing structure for the major metropolitan portions of the market. The mandated Class I differential is established for Zone 1 while the location adjustments for

Zones 8 and 9 are based on the difference in the cost of hauling milk to such deficit zones relative to hauling milk to Zone 1. Location adjustments in the intervening zones should be aligned with prices to the south since milk that is shipped to the deficit southern Zones 8 and 9 either originates in or must pass through this intervening territory. Consequently, use of the three-cent alignment rate through this territory establishes whether the proposed location adjustment changes should be adopted.

Austin, in Zone 7, is 78 miles northeast of San Antonio in Zone 9. A three-cent alignment rate indicates that the Zone 7 location adjustment should be 18 to 24 cents less than Zone 9, depending on whether the mileage over the entire northeast direction or just the northern direction is utilized. Consequently, the proposed plus 39-cent location adjustment for Zone 7, which is only three cents less than San Antonio, should be denied since the current 30-cent Zone 7 location adjustment represents a more reasonable alignment between the two zones. A denial of the increase in the Zone 7 location adjustment also requires a denial of the proposed location adjustment for Zone 3, which is directly north of Zone 7. Adoption of the proposed location adjustment for Zone 3, in conjunction with a denial of the Zone 7 proposed increase, would reduce the price difference between Zones 3 and 7 while a three-cent alignment rate indicates that the price difference should increase between the two zones.

The proposed increases in the plus location adjustments for Zones 4 and 5 of four and 10 cents, respectively, should also be denied since the current location adjustments for such zones are already aligned on a three-cent rate with prices to the south in Zone 8. This is based on the 120 miles between Lufkin in Zone 4 and Houston and the 102 miles between Bryan in Zone 5 and Houston. The current Zone 4 plus location adjustment is 36 cents lower than Zone 8 while the Zone 5 adjustment is 34 cents lower than Zone 8.

Zone 2 is north of Zone 4 and currently the Zone 2 price is 12 cents less than Zone 4. The 90 miles between Tyler in Zone 2 and Lufkin indicates a 27-cent price difference between the two zones. Consequently, the proposal to eliminate the current six-cent location adjustment in Zone 2 should be adopted to improve the north-south alignment between Zones 2 and 4. In addition, removal of the plus adjustment provides for an east-west alignment of pricing between Shreveport and Dallas. Texarkana, which is outside the Texas marketing area, is directly north of Zone 2. Continued use of the three-cent hauling alignment rate on a north-south axis indicates a location adjustment of 21 cents based on the distance from Shreveport to Texarkana. Consequently, the minus 20-cent location adjustment proposed for the Texarkana area (Bowie and Cass Counties in Texas and Little River and Miller in Arkansas) should be adopted.

Zone 1 of the marketing area has historically included the major Dallas/Ft. Worth population center as well as a major production area in which two AMPI manufacturing plants are located that are pooled under the order as balancing plants. Zone 1 is the base zone for the market in which the mandated $3.28 Class I differential applies. The Southland proposal would split the consumption and production areas of the current base zone into two different pricing zones. The proposed minus 18-cent location adjustment would apply in the production area to provide an additional incentive for producers to ship milk to distributing plants in the consumption areas rather than shipping milk to manufacturing plants in the production area.

There is one plant in the proposed minus 18-cent location adjustment zone that operated as a distributing plant during June through December of 1985, and as a producer-handler during other months. Consequently, it would appear that adoption of the proposal would have a minimal impact on the pooled value of milk since little, if any, milk in Class I use would be priced at the lower level. However, there could be a substantial change in returns to producers.

The concept advanced by the proposal appears to be reasonable in terms of a price incentive under the order for those producers who would incur a greater cost in shipping milk to Dallas than to manufacturing plants in the production area. However, Southland indicated that prices paid to its producers would probably continue to be the same regardless of whether their producers' milk was shipped to plants in Dallas or to Southland's Class II nonpool plant at Sulphur Springs. Apparently, competitive pressures among handlers for supplies of milk require uniform pay prices to producers. Under such a situation, it is difficult to comprehend how the 18-cent lower price under the order at Sulphur Springs relative to Dallas would provide a price incentive for milk to move minimal additional distances to Dallas.

The competitive situation to return uniform pay prices to producers in the heavy northeast procurement area would have a substantial impact on AMPI because the cooperative operates two manufacturing plants in the area. Substantial quantities of milk are manufactured at the two plants when it is not needed for fluid use at distributing plants. These plants balance the fluid milk needs of the market with milk receipts varying substantially on a seasonal basis. A minus 18-cent location adjustment would reduce the blend price at the Sulphur Springs plant operated by AMPI 18 cents below the blend price applicable at a supply plant operated by another cooperative at Yantis just 16 miles south of Sulphur Springs. This difference in blend prices would result in disorderly milk procurement competition in the northeast production area.

In addition, although it makes economic sense for manufacturing plants to be located in heavy producing areas where most of the weekly and seasonal reserve supplies would be expected to be located, supplies from other higher-priced zones are also received at the two plants when it is in excess of weekly and seasonal fluid milk needs. No transportation costs are recovered under the order on such necessary movements of milk. Thus, any minus location adjustment at these manufacturing plants would amount to an added price deterrent to the movement of reserve milk supplies in other areas of the market to these manufacturing outlets.

Since the proposed Zone 1–B would disrupt procurement competition and adversely impact the movement of reserve supplies to manufacturing outlets there would need to be a compelling basis to adopt such proposal. The record does not reveal a compelling need to reduce the price 18 cents per hundredweight at plants in this 10-county area. Certainly, it is not needed to conform order pricing to the mandated Class I differentials. Although the concept of a price adjustment between the production area and Dallas to encourage the movement of milk for fluid use has merit, the record does not reveal any significant problem as a result of movements of milk to Dallas handlers. Consequently, the proposal is denied.

Southland and Hygeia excepted to the denial of the proposed Zone 1–B. The handlers requested that the arguments presented in their post-hearing brief concerning this issue be incorporated as an exception without further elaboration. Since no further arguments were advanced, no additional consideration of the issue is necessary as all relevant factors included in testimony and briefs were previously considered in denying the proposal.

For Zone 1–A, which is northwest of Dallas, the minus location adjustment should be increased from 12 to 25 cents. This change is necessary because of the increase in the difference between the Texas and Southwest Plains order Class I differentials on May 1, 1986. The minus 25-cent location adjustment basically splits the difference between the 51-cent Class I differential difference between Oklahoma City and Dallas for territory that is approximately half way between the two cities. Also, the greater minus adjustment better reflects the change in the relationship of Class I differentials between the Texas order and the Lubbock-Plainview, and Texas Panhandle orders to the west and northwest of Dallas. Prior to May 1, the Texas order Class I differential was 10 cents less than the Lubbock-Plainview differential to the west and seven cents greater than the Texas Panhandle differential to the northwest. Effective May 1, the Texas order differential exceeds the differential in the other two orders by 79 cents. This reduction in Class I differentials to the west and northwest represents an alignment rate of 2.5 cents between Dallas and Lubbock and 2.2 cents between Dallas and Amarillo. The minus 25-cent location adjustment for Zone 1–A represents an alignment rate of only 1.8 cents between Dallas and Wichita Falls. Consequently, the 25-cent location adjustment represents a better price relationship than the current 12-cent location adjustment.

With respect to Zone 6 of the marketing area, Dean Foods, Inc., proposed that the current plus 25-cent location adjustment be changed to a minus 50-cent adjustment (modified to minus 25 cents at the hearing). In addition, Dean proposed that the current minus 15-cent location adjustment applicable in eastern New Mexico under the Rio Grande Valley order be eliminated.

The Rio Grande Valley order specified a $2.35 Class I differential prior to May 1, 1986, and a continuation of such differential was mandated by the Food Security Act of 1985. This differential is applicable through the relatively more populated areas in central New Mexico and El Paso County, Texas. A minus 15-cent location adjustment applies to the relatively more rural production areas of eastern New Mexico. Consequently, the order's pricing structure reflects the need for milk to move from eastern New Mexico to consumption centers in central New Mexico and El Paso. Also, New Mexico is a surplus milk production state.

Prior to May 1, the Texas order and Rio Grande Valley order Class I differentials were essentially the same. Since May 1, the Texas order differential has been 93 cents higher than the Rio Grande Valley order differential. Thus, Dean's proposals were an attempt to lessen the substantial change in the price relationship between the two orders.

The proposed 15-cent increase in the value of milk in eastern New Mexico should not be adopted. Such a pricing change would be totally inconsistent with the intent of Congress (which mandated no price change), the supply/demand relationship within the marketing area, and the pricing structure of the market. Consequently, to the extent that the change in the price relationship between the two markets should be recognized, it must be done with respect to the location adjustment in Zone 6 under the Texas order.

Much of the testimony by Dean to support its proposal, as well as the testimony in opposition to the proposal by other handlers, centered on the effects that a price change would have on the ability of plants to compete with each other for fluid milk sales. This has essentially nothing to do with the issue of the appropriate location adjustment at Dean's San Angelo distributing plant in Zone 6. The issue is whether the changes in the Class I differential relationship between the two orders has modified the price that is necessary to attract a supply of milk to San Angelo.

For the most part, supplies of milk for San Angelo originate from Zone 6 in the vicinity of the San Angelo plant and from the east in the Stephenville area. To a lesser extent, supplies originate from the west in New Mexico. Apparently, the current plus 25-cent adjustment reflects the higher location value of milk at San Angelo to attract milk from the east and west (and to some extent, the north) because of the distances involved.

The mandated 96-cent increase in the Texas order Class I differential in conjunction with no change in the Rio Grande Valley order differential obviously establishes an incentive for west to east movements of milk in this region of the country. In addition, the change in the relationship between the Texas and Lubbock-Plainview orders also contemplates such movements. The lower value of milk to the west also indicates that production in such areas is more readily available as a reserve supply of milk for the Texas market.

A $2.35 Class I differential value at El Paso reflects a $3.55 value at San Angelo over the 400 miles between the two cities and a three-cent per 10 miles hauling rate. However, from Hobbs, New Mexico (Lea County) a $2.83 value is reflected at San Angelo over the 210 miles and the $2.20 Class I differential value in Lea County. Consequently, some reduction of the location adjustment at San Angelo without jeopardizing the supply of milk for such location appears reasonable.

Zone 6 covers a large geographic area that extends from New Mexico on the west to Zone 3 of the Texas order on the east. An additional distributing plant is located in Zone 6 in Brown County, which is adjacent to the heavy milk producing counties in the Stephenville area. Thus, any price change in Zone 6 is limited to some extent by the proximity of such plant to the heavy milk producing area of the market. It would not appear that the value of milk in Brown County need be any higher than the Zone 1 price to attract milk from this heavy milk producing area. Consequently, the plus 25-cent location adjustment should be eliminated for Zone 6. Elimination of the plus adjustment appears to be as much of a pricing change that can be made at this time to reflect the changed price relationship. Also, application of the $3.28 differential at San Angelo is within the range of the value of milk at such location based on New Mexico sources of supply.

Foremost excepted to the removal of the plus 25-cent location adjustment for Zone 6. Foremost indicates that the San Angelo plant receives substantial supplies of milk from the same procurement area as other handlers who are nearer to that source of supply. Consequently, Foremost contends that the 25-cent plus adjustment should continue to apply to cover the greater cost of hauling milk to San Angelo versus the cost of hauling milk to plants that are nearer to the same source of supply. Foremost's exceptions, however, fail to recognize that supplies of milk located to the west of San Angelo now represent an alternative supply source because the value of such milk has been reduced relative to eastern supplies. This price relationship change is clearly set forth previously in this decision and must be recognized in the Zone 6 location adjustment.

The location adjustment provisions of the order for territory outside the marketing area (except for the Texarkana area that was discussed previously) should be amended to recognize the value of milk in such areas established under other Federal orders. This procedure, which is used to a limited extent, should be expanded to include plants located in New Mexico, Oklahoma, Arkansas, and parts of Kansas and Missouri. No location adjustments should be applied to plants in Louisiana, as was proposed and as is currently provided under the order since prices in Louisiana are about the same as those in Texas.

This procedure was proposed by AMPI, except for New Mexico, and by Southland/Hygeia, but to a lesser extent. With respect to New Mexico, AMPI proposed that no location adjustment be applied. This would result in the application of the Texas order Zone 1 blend price being applied to milk received at New Mexico manufacturing plants even though the location value of milk in New Mexico (in terms of the difference between the Class I differentials) is 93 cents less than under the Texas order. Such proposal is totally inconsistent with the mandated differentials and the rest of AMPI's proposal. Southland's proposal would base location adjustments in New Mexico on mileage from Dallas at a rate of 2.2 cents per 10 miles. Such proposal would recognize the declining value of milk to the west. However, at this time, it is not necessary to go beyond recognition of the value of milk established in New Mexico under the Rio Grande Valley order.

Federal orders price milk on the basis of where it is received. Thus, in surrounding territory, the location value of milk is established under other orders. In the event that plants in surrounding territory become associated with the Texas market, the price at such plant should not change as a result of a change in regulation. Otherwise, milk would be priced on the basis of where it is sold rather than on the basis of where it is received.

In order to carry out this procedure, the order language is being shortened and simplified to avoid a specific listing of counties and location adjustments for such areas. For example, the order language specifies that for plants in the Southwest Plains marketing area, the location adjustment is the difference between the Texas order Class I price and the Class I price applicable at such plant under the Southwest Plains order. However, with respect to the Southwest Plains order, additional territory in southwest Missouri is included. This is because there are plants in such area that are regulated under the Southwest Plains order.

For other areas outside Texas and the marketing area, location adjustments should be established on the basis of mileage from Dallas at the rate of 2.2 cents per 10 miles. Both the 2.1 and 2.2 rates proposed fall within the range of the alignment rates with other Federal order markets to the north. However, most of these markets reflect a rate that is substantially in excess of 2.2 cents. Consequently, the higher rate should be used.

For territory in southwest Texas that is outside any marketing area, the price applicable at any plant should be the price that applies at the nearer of San Angelo, San Antonio or Corpus Christi. This procedure is currently used and comports with the proposals to include certain territory in southwest Texas in designated pricing zones. Consequently, the current procedure is continued, although Midland is dropped as a basing point since the same price applies at San Angelo.

The above procedure, however, should be modified with respect to a 16-county area of southwest Texas that is outside any marketing area and generally situated between San Angelo and El Paso. A minus location adjustment, at the rate of 2.2 cents per 10 miles from San Angelo, should apply to plants located in such area as urged in exceptions filed by Southland and Hygeia.

Southland and Hygeia contend that a failure to adopt a minus location adjustment in this area greatly undermines the adoption of the 93-cent location adjustment for Texas order producer milk received at El Paso. They contend that an incentive would be created to build plants in these southwest Texas counties to take advantage of the 93-cent price difference between El Paso and other nearby southwest Texas counties.

Although there are no plants or current marketing problems associated with this area, the modification should be adopted in recognition of the substantial mandated change in the price relationship between the Texas and Rio Grande Valley orders. Since May 1, 1986, the Rio Grande Valley order Class I differential has been 93 cents less than the Texas differential. It appears reasonable to establish minus location adjustments in southwest Texas to recognize the mandated declining value of milk from east to west in this area. San Angelo, rather than Dallas, should be used as a basing point to compute location adjustments for southwest Texas at the rate of 2.2 cents per 10 miles. As a result of other location adjustment changes set forth in this decision, the price at San Angelo is the same as at Dallas. Also, San Angelo is the nearest Texas order pricing point to this area of Texas. The use of San Angelo and a 2.2-cent rate results in a reasonable alignment of prices between the Texas and Rio Grande Valley orders.

2. The need for emergency action with respect to issue No. 1

A recommended decision was omitted on the basis that the due and timely execution of the Secretary's functions required such omission so that the Class I prices that apply at various plants under the orders would be realigned on an intra-market and inter-market basis to reflect the Class I differentials mandated by the Food Security Act of 1985 that became effective on May 1, 1986. A tentative decision was issued so that interested parties would have an opportunity to file exceptions to the order amendments, which were adopted with the tentative decision, and made effective on September 1, 1986, on an interim basis.

The hearing notice indicated that evidence would be taken at the hearing to determine whether emergency marketing conditions existed to such an extent that omission of a recommended decision under the rules of practice and procedure would be warranted. There was a general consensus among the hearing participants that the location adjustment provisions needed to be amended quickly to avoid the possibility that disruptive marketing conditions would develop after the mandated Class I differentials took effect. However, most of the participants requested that a recommended decision should be issued so that interested parties would have an opportunity to file exceptions to the Department's proposed findings and conclusions.

After the hearing, three interested parties requested that the Secretary issue a temporary decision to implement the location adjustment amendments on an interim basis pending completion of the normal rulemaking procedures.

The procedure adopted accommodated the wishes of interested parties involved in this proceeding on the issue of expeditious handling. The complexity of the issues and the diversity of opinion regarding certain of the proposals under consideration

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warranted the issuance of a tentative decision. This procedure implemented the location adjustment amendments at the earliest possible date and also gave interested parties an opportunity to file exceptions to the tentative decision, and thereby assisted in the Department's rulemaking process.

Ruling on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

Determination

The findings and conclusions of this decision do not require any changes in the order provisions regulating the handling of milk in the Rio Grande Valley marketing area. It is hereby determined that this proceeding shall be terminated with respect to the Rio Grande Valley order.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the aforesaid orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Agricultural Marketing Agreement Act as amended;

(b) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, the marketing agreements upon which a hearing has been held; and

(c) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk and an Order amending the orders regulating the handling of milk in the aforesaid marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision and the two documents annexed hereto, be published in the **Federal Register**. The regulatory provisions of the marketing agreement are identical with those contained in the orders as hereby proposed to be amended by the attached order which is published with this decision.

Determination of Producer Approval and Representative Period

March 1986 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the Texas, Greater Kansas City, Southwest Plains and Central Arkansas marketing areas, is approved or favored by producers, as defined under the terms of the orders (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

List of Subjects in 7 CFR Parts 1064, 1106, 1108, and 1126

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC, on October 30, 1986.

Karen K. Darling,

Deputy Assistant Secretary, Marketing & Inspection Services.

Order[1] Amending the Orders, Regulating the Handling of Milk in Certain Specified Marketing Areas

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing areas; and the minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof, the handling of milk in each of the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows. The provisions of the tentative marketing agreements and order amending the orders on an interim basis as contained in the tentative decision issued by the Deputy Assistant Secretary, Marketing and Inspection Services, on July 9, 1986, and published in the Federal Register on July 15, 1986 (51 FR 25539), shall be and are the terms and provisions of this order amending the orders except for a modification to § 1126.52(a)(5).

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[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

The authority citation for 7 CFR Parts 1064, 1106, 1106, and 1126 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

PART 1064—MILK IN THE GREATER KANSAS CITY MARKETING AREA

In § 1064.52, paragraph (a) is revised to read as follows:

§ 1064.52 Plant location adjustments for handlers.

(a) For milk received from producers at a plant located outside the marketing area and more than 70 miles by the shortest highway distance as determined by the market administrator, from the nearer of the City Hall in Kansas City, Missouri, or Topeka, Kansas, which is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1064.50(a) shall be reduced by a per hundredweight rate of 1.7 cents for each 10 miles or fraction thereof that such plant is located from the nearer City Hall.

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PART 1102—MILK IN THE FORT SMITH, ARKANSAS MARKETING AREA

Note: No amendatory action taken.

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

1. Section 1106.2 is revised to read as follows:

§ 1106.2 Southwest Plains marketing area.

The "Southwest Plains marketing area", hereinafter called the "marketing area", means all territory within the boundaries of the following counties, and all territory occupied by government (Municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed counties:

Zone I.—In the State of Oklahoma

Caddo
Canadian
Cleveland
Coal
Garvin
Grady
Haskell
Hughes
Latimer
LeFlore
Lincoln
McClain
McIntosh
Okfuskee
Oklahoma
Pittsburg
Pontotoc
Pottawatomie
Seminole
Sequoyah

Zone II.—In the State of Oklahoma

Atoka
Bryan
Carter
Choctaw
Comanche
Cotton
Greer
Harmon
Jackson
Jefferson
Johnston
Kiowa
Love
Marshall
McCurtain
Murray
Pushmataha
Stephens
Tillman

Zone III.—In the State of Oklahoma

Adair
Alfalfa
Beaver
Beckham
Blaine
Cherokee
Cimarron
Craig
Creek
Custer
Delaware
Dewey
Ellis
Garfield
Grant
Harper
Kay
Kingfisher
Logan
Major
Mayes
Muskogee
Noble
Nowata
Okmulgee
Osage
Ottawa
Pawnee
Payne
Roger Mills
Rogers
Texas
Tulsa
Wagoner
Washita
Washington
Woods
Woodward

Zone IV.—In the State of Kansas

Allen
Barber
Barton
Bourbon
Butler
Chautauqua
Cherokee
Comanche
Cowley
Crawford
Edwards
Ellis
Harper
Harvey
Kingman
Kiowa
Labette
Marion
McPherson
Montgomery
Neosho
Pawnee
Pratt
Reno
Rice
Rush
Russell
Sedgwick
Stafford
Sumner
Wilson

In the State of Missouri

Barton
Jasper
Newton
Vernon

Zone V.—In the State of Kansas

Clark
Finney
Ford
Gove
Grant
Gray
Greeley
Hamilton
Haskell
Hodgeman
Kearny
Lane
Meade
Morton
Ness
Scott
Seward
Stanton
Stevens
Trego
Wichita

2. In § 1106.52, paragraph (a) is revised to read as follows:

§ 1106.52 Plant location adjustments for handlers.

(a) For milk received at a plant from producers or a handler described in § 1106.9(c) and which is classified as Class I milk without movement in bulk form to a pool distributing plant at which a higher Class I price applies, the price specified in § 1106.50(a) shall be adjusted by the amount stated in paragraphs (a) (1) through (9) of this section for the location of such plant:

(1) For a plant located within one of the zones set forth in § 1106.2, the adjustment shall be as follows:

	Adjustment per hundredweight
Zone I	No Adjustment.
Zone II	Plus 23 cents.
Zone III	Minus 18 cents.
Zone IV	Minus 47 cents.
Zone V	Minus 27 cents.

(2) For a plant located in any of the following Kansas counties, the adjustment shall be as follows:

(i) *Minus 85 cents.* Anderson, Atchison, Brown, Chase, Clay, Cloud, Coffey, Dickinson, Doniphan, Douglas, Franklin, Geary, Jackson, Jefferson, Johnson, Leavenworth, Linn, Lyon, Marshall, Miami, Morris, Nemaha, Osage, Ottawa, Pottawatomie, Republic, Riley, Saline, Shawnee, Wabaunsee, Washington and Wyandotte.

(ii) *Minus 47 cents.* Elk, Greenwood and Woodson.

(iii) *Minus 27 cents.* Cheyenne, Decatur, Ellsworth, Graham, Jewell, Lincoln, Logan, Mitchell, Norton, Osborne, Phillips, Rawlings, Rooks, Sheridan, Sherman, Smith, Thomas and Wallace.

(3) For a plant located in the State of Missouri, the adjustment shall be as follows:

(i) *Minus 58 cents.* In the county of Barry, Butler, Carter, Cedar, Christian, Crawford, Dade, Dallas, Dent, Douglas, Dunklin, Gasconade, Greene, Howell, Iron, Laclede, Lawrence, Madison, Maries, McDonald, Mississippi, New Madrid, Oregon, Ozark, Pemiscot, Phelps, Polk, Pulaski, Reynolds, Ripley, Scott, Shannon, Stoddard, Stone, Taney, Texas, Wayne, Webster or Wright.

(ii) *Minus 76 cents.* In the county of Jefferson, St. Charles, or St. Louis or in the city of St. Louis.

(iii) *Minus 85 cents.* In any other county that is outside the marketing area and also outside the designated pricing area described in paragraph (a)(3)(i) or (a)(3)(ii) of this section.

(4) For a plant located in the State of Arkansas, the adjustment shall be the difference (plus or minus) between the

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applicable Class I price effective at such plant location under the Central Arkansas order (Part 1108) and the Class I price specified in § 1106.50(a).

(5) For a plant located in the State of Louisiana, the plus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Greater Louisiana order (Part 1096) and the Class I price specified in § 1106.50(a).

(6) For a plant located in any of the following territory in the State of Texas, the adjustment shall be as follows:

(i) In the Texas marketing area, the plus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Texas order (Part 1126) and the Class I price specified in § 1106.50(a).

(ii) In the Texas Panhandle marketing area or in Lipscomb County, Texas, the minus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Texas Panhandle order (Part 1132) and the Class I price specified in § 1106.50(a).

(iii) In the Lubbock-Plainview, Texas, marketing area or in Parmer County, Texas, the minus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Lubbock-Plainview, Texas, order (Part 1120) and the Class I price specified in § 1106.50(a).

(iv) In the county of Bowie or Cass, the adjustment shall be plus 31 cents.

(v) In any other territory that is outside the marketing area of any Federal order and also outside the designated pricing areas described in paragraphs (a)(6) (i) through (iv) of this section, the adjustment shall be plus 2.25 cents per hundredweight for each 10 miles or fraction thereof that such plant is from the City Hall in Oklahoma City, Oklahoma (based on the shortest hard-surfaced highway distance as determined by the market administrator).

(7) For a plant located in the Rio Grande Valley marketing area and the New Mexico counties of Catron, Colfax, Hidalgo or Union, the minus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Rio Grande Valley order (Part 1138) and the Class I price specified in § 1106.50(a).

(8) For a plant located in the State of Colorado, the adjustment shall be as follows:

(i) In the Eastern Colorado marketing area or in the county of Baca, Bent or Prowers, the adjustment shall be the difference (plus or minus) between the applicable Class I price effective at such plant location under the Eastern Colorado order (Part 1137) and the Class I price specified in § 1106.50(a).

(ii) In any other territory that is outside the Rio Grande Valley marketing area and outside the designated pricing area described in paragraph (a)(8)(i), the adjustment shall be minus 77 cents.

(9) For a plant located outside the designated pricing areas described in paragraphs (a) (1) through (8) of this section, the adjustment shall be minus 18 cents plus an additional reduction of 2.25 cents per hundredweight for each 10 miles or fraction thereof that such plant is located from the nearer of the City Hall in Tulsa or Ponca City, Oklahoma (based on the shortest hard-surfaced highway distance as determined by the market administrator).

* * * * *

PART 1108—MILK IN THE CENTRAL ARKANSAS MARKETING AREA

In § 1108.52, paragraph (a) is revised to read as follows:

§ 1108.52 Plant location adjustments for handlers.

(a) For milk received at a plant from producers or a handler described in § 1108.9(c) and which is classified as Class I milk without movement in bulk form to another pool plant at which a higher Class I price applies, the price specified in § 1108.50(a) shall be adjusted by the amount stated in paragraphs (a) (1) through (6) of this section for the location of such plant:

(1) For a plant located in the State of Arkansas, the adjustment shall be as follows:

(i) In the counties of Arkansas, Clark, Cleburne, Cleveland, Conway, Crawford, Crittenden, Cross, Dallas, Desha, Faulkner, Franklin, Garland, Grant, Hot Spring, Howard, Jefferson, Johnson, Lee, Lincoln, Logan, Lonoke, Monroe, Montgomery, Perry, Phillips, Pike, Polk, Pope, Prairie, Pulaski, Saline, Scott, St. Francis, Sebastian, Sevier, Van Buren, White, Woodruff, or Yell, no adjustment shall apply;

(ii) In any county lying north of any county specified in paragraph (a)(1)(i) of this section, the adjustment shall be minus 22 cents; and

(iii) In any county lying south of any county specified in paragraph (a)(1)(i) of this section, the adjustment shall be plus 31 cents.

(2) For a plant located in the State of Oklahoma or Tennessee, no adjustment shall apply.

(3) For a plant located in the Texas county of Bowie or Cass, the adjustment shall be plus 31 cents.

(4) For a plant located in the State of Louisiana, Mississippi or Texas (except the counties of Bowie and Cass), the adjustment shall be plus 2.1 cents per hundredweight for each 10 miles or fraction thereof (rounded to the nearest cent) that such plant is located from the nearer of the County Courthouse in Forrest City, Arkansas, or the State Capitol in Little Rock, Arkansas, (based on the shortest hard-surfaced highway distance as determined by the market administrator).

(5) For a plant located in any of the following Missouri counties, the adjustment shall be minus 58 cents.

Barry
Cedar
Christian
Dade
Dallas
Douglas
Greene
Howell
Laclede
Lawrence
McDonald
Ozark
Polk
Pulaski
Stone
Taney
Texas
Webster
Wright

(6) For a plant located outside the designated pricing areas specified in paragraphs (a) (1) through (5) of this section, the adjustment shall be minus 2.1 cents per hundredweight for each 10 miles or fraction thereof (rounded to the nearest cent) that such plant is located from the nearer of the County Courthouse in Forrest City, Arkansas, or the State Capitol in Little Rock, Arkansas (based on the shortest hard-surfaced highway distance as determined by the market administrator).

* * * * *

PART 1126—MILK IN THE TEXAS MARKETING AREA

In § 1126.52, paragraph (a) is revised to read as follows:

§ 1126.52 Plant location adjustments for handlers.

(a) For milk received at a plant from producers or a handler described in § 1126.9(c) and which is classified as Class I milk without movement in bulk form to a pool distributing plant at which a higher Class I price applies, the price specified in § 1126.50(a) shall be adjusted by the amount stated in paragraphs (a) (1) through (10) of this section for the location of such plant:

(1) For a plant located within one of the zones set forth in § 1126.2, the adjustment shall be as follows:

	Adjustment per hundredweight
Zone 1	No adjustment.
Zone 1–A	Minus 25 cents.
Zone 2	No adjustment.
Zone 3	Plus 15 cents.
Zone 4	Plus 18 cents.

	Adjustment per hundredweight
Zone 5	Plus 20 cents.
Zone 6	No adjustment.
Zone 7	Plus 30 cents.
Zone 8	Plus 54 cents.
Zone 9	Plus 42 cents.
Zone 10	Plus 53 cents.
Zone 11	Plus 66 cents.
Zone 12	Plus 75 cents.

(2) For a plant located in the Texas Panhandle marketing area or in Lipscomb County, Texas, the minus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Texas Panhandle order (Part 1132) and the Class I price specified in § 1126.50(a).

(3) For a plant located in the Lubbock-Plainview, Texas, marketing area or in Parmer County, Texas, the minus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Lubbock-Plainview, Texas order (Part 1120) and the Class I price specified in § 1126.50(a).

(4) For a plant located in Bowie or Cass County, Texas, the adjustment shall be minus 20 cents.

(5) For a plant located in the State of Texas that is outside the designated pricing areas described in paragraphs (a) (1) through (4) and (a)(6) of this section, the adjustment shall be the adjustment applicable at the nearer of Corpus Christi, San Angelo, or San Antonio, Texas, except that for a plant located in the Texas counties of Brewster, Crane, Crockett, Culberson, Hudspeth, Irion, Jeff Davis, Loving, Pecos, Presidio, Reagan, Reeves, Terrell, Upton, Ward, and Winkler the adjustment shall be minus 2.2 cents per hundredweight for each 10 miles or fraction thereof that such plant is located from the City Hall in San Angelo, Texas (based on the shortest hard-surfaced highway distance as determined by the market administrator).

(6) For a plant located in the Rio Grande Valley marketing area or the New Mexico counties of Catron, Colfax, Hidalgo or Union, the minus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Rio Grande Valley order (Part 1138) and the Class I price specified in § 1126.50(a).

(7) For a plant located in the Southwest Plains marketing area or in the Missouri counties listed below, the minus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Southwest Plains order (Part 1106) and the Class I price specified in § 1126.50(a).

Barry
Cedar
Christian
Dade
Dallas
Douglas
Greene
Howell
Laclede
Lawrence
McDonald
Ozark
Polk
Pulaski
Stone
Taney
Texas
Webster
Wright

(8) For a plant located in the State of Arkansas, the minus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Central Arkansas order (Part 1108) and the Class I price specified in § 1126.50(a).

(9) For a plant located in the State of Louisiana, no adjustment shall apply.

(10) For a plant located outside the designated pricing areas described in paragraphs (a) (1) through (9) of this section, the adjustment shall be minus 2.2 cents per hundredweight for each 10 miles or fraction thereof that such plant is located from the City Hall in Dallas, Texas (based on the shortest hard-surfaced highway distance as determined by the market administrator).

* * * * *

PART 1138—MILK IN THE RIO GRANDE VALLEY MARKETING AREA

Note: No amendatory action taken.

[FR Doc. 86-24973 Filed 11-4-86; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103 and 214

[Order No. 1157-86]

Powers and Duties of Service Officers; Availability of Service Records: Nonimmigrant Classes

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: The proposed regulation would revise the procedures and authority to withdraw approval of a school to enroll foreign students. Under the proposed regulation, a district director would have authority to withdraw school approval, with a right of appeal to the Associate Commissioner, Examinations. This would correct an existing procedure where an initial hearing is conducted outside the Service, but an appeal is taken within the Service, and would mirror procedures for granting school approval.

DATE: Comments must be received on or before January 5, 1987.

ADDRESS: Please submit written comments in duplicate to the Director, Policy, Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Room 2011, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy, Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-3048

For Specific Information: Michael J. Heilman, Associate General Counsel, Office of General Counsel, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-2820

SUPPLEMENTARY INFORMATION: The Immigration and Naturalization Service is proposing to revise the regulations relating to the approval of schools to enroll foreign students.

Under current regulations, a school obtains approval to enroll nonimmigrant students by filing a petition with a district director. If the petition is denied, the school may appeal to the Associate Commissioner, Examinations.

If approval is granted, the district director subsequently determines that the school has violated a condition of approval, then the district director may initiate proceedings to withdraw the approval. The school is given notice of the intent to withdraw approval and informed that it has thirty days to respond and to request a hearing before an immigration judge. A school may appeal an order withdrawing approval entered by an immigration judge to the Associate Commissioner, Examinations.

The current regulations pose two problems. First, immigration judges come within the Executive Office for Immigration Review, a body separate from the Service. There thus exists a procedure where the initial hearing is conducted outside the Service in an adversarial context, but an appeal is taken within the Service. Second, procedures for school withdrawal do not mirror those for granting school approval. This means that approval granted by the agency may not be rescinded without resort to an administrative hearing conducted outside the agency.

In light of these problems, and in light of the fact that there is no due process requirement for an adversarial hearing

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prior to withdrawal of approval, the Service proposes to change the procedures relating to withdrawal. The Service believes that the standards of *Mathews V. Eldridge,* 424 U.S. 319 (1976) apply. There it was held that no trial type evidentiary hearing was required prior to termination of a benefit. For example, if the credibility or veracity of witnesses is not at issue, then documentary presentation of evidence is sufficient. In addition, the Supreme Court held that due process will be protected if the agency informs the recipient of its "tentative assessment, the reasons therefore, and provides a summary of the evidence it considers the most relevant".

The proposed regulations would meet these standards. A school will be given notice of the intent to withdraw approval, and the reasons for that action. The school will be given thirty days to respond and may request an interview with the district director.

If approval is withdrawn, the school may then appeal the decision to the Associate Commissioner, Examinations.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule, if promulgated, would not have a significant impact on a substantial number of small entities.

This rule is not a major rule as defined in section 1(b) of E.O. 12291.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegation.

8 CFR Part 214

Administrative practice and procedure, Schools.

Accordingly, it is proposed to amend Chapter 1 of Title 8 of the Code of Federal Regulations as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority for Part 103 is revised to read:

Authority: Secs. 103, 281, 343, 344, 382 and 405 of the Immigration and Nationality Act, as amended (8 U.S.C. 1101, 1103, 1351, 1454 and 1455).

2. In § 103.1, paragraph (f)(2)(ix) would be revised to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(f) * * *

(1) * * *

(ix) Decisions of district directors regarding withdrawal of approval of schools for attendance by foreign students under § 214.4 of this title.

* * * * *

PART 214—NONIMMIGRANT CLASSES

3. The authority for Part 214 continues to read as follows:

Authority: Sec. 101, 103, 212, and 214 of the Immigration and Nationality Act as amended (8 U.S.C. 1101, 1103, 1182 and 1184).

4. In § 214.4 paragraph (b)–(h) would be revised to read as follows:

§ 214.4 Withdrawal of school approval.

* * * * *

(b) *Notice.* Whenever a district director has reason to believe that an approved school (system) in his/her district is no longer entitled to approval, a proceeding shall be commenced by service upon its designated official of notice of intention to withdraw the approval. The notice shall inform the designated official of the school (system) of the grounds upon which it is intended to withdraw its appoval. The notice shall also inform the school (system) that it may, within 30 days of the date of service of the notice, submit written representations under oath supported by documentary evidence setting forth reasons why the approval should not be withdrawn and that the school (system) may, at the time of filing the answer, request in writing an interview before the district director in support of the written answer.

(c) *Assistance of counsel.* The school (system) shall also be informed in the notice of intent to withdraw approval that it may be assisted or represented by counsel of its choice in preparation of its answer or at the interview.

(d) *Allegations admitted or no answer filed.* If the school (system) admits all of the allegations in the notice of intent to withdraw approval, or if the school (system) fails to file an answer within the 30 day period, the district director shall withdraw the approval previously granted and he/she shall notify the designated school official of the decision. No appeal shall lie from the district director's decision if all allegations are admitted or no answer is filed within the 30 day period.

(e) *Allegations denied.* If the school (system) denies the allegations in the notice of intent to withdraw approval, then the school (system) shall, in its answer, provide all information of evidence on which the answer is based.

(f) *Interview requested*—(1) If in its answer to the notice of intent to withdraw approval, the school (system) requests an interview, the school (system) shall be given notice of the date set for the interview.

(2) A summary of the information provided by the school (system) at the interview shall be prepared and included in the record. In the discretion of the district director, the interview may be recorded.

(g) *Decision.* The decision of the district director shall be in writing and shall include a discussion of the evidence and findings as to withdrawal. The decision shall contain an order either withdrawing approval or granting continued approval. The written decision shall be served upon the school (system), together with the notice of the right to appeal pursuant to Part 103 of this chapter.

(h) *Appeal.* An appeal shall be taken within 15 days after the service of the written decision. The reasons for the appeal shall be stated in the notice of appeal, Form I–290B and supported by a statement or brief specifically setting forth the grounds and the evidence for contesting the withdrawal of the approval.

* * * * *

Dated: October 23, 1986.

Edwin Meese, III,

Attorney General.

[FR Doc. 86–24879 Filed 11–4–86; 8:45 am]

BILLING CODE 4410-10-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 70 and 74

Reporting of Special Nuclear Material Physical Inventory Summary Results

Correction

In FR Doc. 86–23971, beginning on page 37578, in the issue of Thursday, October 23, 1986, make the following corrections:

1. On page 37578, third column, third line from the bottom, insert "since 1975. The objective of these amendments is to provide a regulatory basis" between "basis" and "for".

1. On page 37579, first column, under "Background" in the fifth line, "basic" should read "basis".

3. On page 37579, second column, first complete paragraph, second line, insert "results, IE requested an explicit regulatory basis for this physical inventory" between "inventory" and "reporting". Also in the tenth line, insert "were published for a 60-day public comment period. Comments were received" between "amendments" and "from".

4. On page 37580, first column, first line of the first paragraph, insert

"Flexibility" between "Regulatory" and "Act".

5. On page 37580, second column, first paragraph, fourth line, insert "2233" between "2232," and "2282". Also in the second paragraph, fourth line, insert "948" between "Stat." and "949".

6. On the same page and column, in § 74.17(b), in the fifth line, "From" should read "Form".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-205-AD]

Airworthiness Directives; Aerospatiale Model ATR-42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require modification to the pilot's seat back locking mechanism on certain flightcrew seats on Aerospatiale Model ATR-42 airplanes. This action is prompted by a report of seat back collapsing in flight. Failure of the seat reduces the pilot's ability to control the airplane.

DATES: Comments must be received no later than December 26, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-205-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-205-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The French Direction Générale de L'Aviation Civile (DGAC) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition that may exist on certain Aerospatiale ATR-42 airplanes.

Excessive clearance between the pilot's seat back structure fork fitting and the recline unit latch pin has resulted in the inadvertent collapse of a flightcrew seat back on an Aerospatiale Model ATR-42 airplane during flight operations. Aerospatiale has issued Service Bulletin ATR 42-25-0006, dated July 21, 1986, which references IPECO Europe, Ltd. (manufacturer of the seat), Service Bulletin A001-25-22, dated June 5, 1986, which describes modification of the crew seat back structure and locking mechanism to prevent inadvertent collapse of the seat back.

The DGAC issued French Airworthiness Directive 86-78-01(B), dated May 28, 1986, to require modification of the seats in accordance with the above service bulletins. The United Kingdom Civil Aviation Authority (CAA) has classified the IPECO Europe, Ltd., service bulletin as mandatory. (The seats are manufactured in England.)

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require modification of the seat back locking mechanism on crew seats manufactured by IPECO and installed on certain Aerospatiale Model ATR-42 series airplanes, in accordance with the previously mentioned service bulletins.

It is estimated that 4 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $480.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($120). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

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Aerospatiale: Applies to Model ATR–42 series airplanes listed in Aerospatiale Service Bulletin ATR 42–25–0006, dated July 21, 1986, fitted with IPECO flight crew seats, certificated in any category. Compliance is required within 30 days after the effective date of this AD, unless already accomplished.

To prevent collapse of the pilot or co-pilot seat backs, accomplish the following:

A. Modify seats, P/N 3A063–0035, 3A063–0036, 3A063–0079, and 3A063–0080, in accordance with Aerospatiale Service Bulletin ATR 42–25–0006, dated July 21, 1986. (Reference IPECO Service Bulletin A001–25–22, dated June 5, 1986.)

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayone, 31060 Toulouse Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on October 29, 1986.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–24942 Filed 11–4–86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86–NM–192–AD]

Airworthiness Directives, Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) which would require inspection for minimum engagement or overlap of the side support lip that restrains the main deck unit load device (ULD), and modification if necessary, on certain Boeing Model 747 convertible and freighter series airplanes. This action is prompted by recent reports of the restraints not being adequately engaged and, in one case, movement of the cargo during flight on a freighter airplane. This action is necessary since inadequate engagement of the side support lips, if not corrected, could result in cargo movement during flight and subsequent possible degradation of controllability of the airplane.

DATES: Comments must be received on or before December 26, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 86–NM–192–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM–120S; telephone (206) 431–1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 86–NM–192–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

There have been a number of recent reports of side support lips that restrain the ULD's on freighter or combi airplanes not being adequately engaged. In one case, movement of the cargo occurred during flight. The lack of adequate engagement is caused by seat track misalignment in the over-wing area between fuselage station 980 and 1500. Until the minimum restraint lip overlap is verified by inspection in accordance with the service bulletin, all forward, aft, and vertical restraints between body stations 980 and 1500, are assumed to be inoperative restraints. Lack of proper engagement could result in cargo movement during flight on a freighter or combi airplane and subsequent possible degradation of controllability of the airplane.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–53A2273, dated July 29, 1986, which describes the specific procedures to be used to inspect the side support lip that restrains the main deck unit load device, for proper engagement or overlap and modification, if necessary.

Since this condition is likely to exist or develop on other airplanes of this same type design, an airworthiness directive is being proposed which would require installation of placards, inspection of the side support lip for proper engagement or overlap, and modification, if necessary, in accordance with Boeing Service Bulletin 747–53A2273, dated July 29, 1986, or later FAA-approved revisions.

It is estimated that 23 airplanes of U.S. registry would be affected by this AD, that it would take approximately 48 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $44,160 for the initial inspection.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A copy of draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747 convertible and freighter series airplanes listed in Boeing Alert Service Bulletin 747-53A2273, dated July 29, 1986, certificated in any category.

To prevent inadvertent in-flight movement of main deck cargo on freighter or combi airplanes, accomplish the following, unless already accomplished:

A. Within 10 landings after the effective date of this AD, or immediately after the replacement or reinstallation of the restraint hardware, unless the requirements of paragraph B., for removal of placards, decals, or stencils, are accomplished, install suitable placards, decals, or stencils at all restraints along both left and right buttock lines (BL) 98.2, 9.8, and 1.8, between body stations (BS) 980 and 1500, that state the following:

"This restraint is inoperative. Cargo must be tied down per FAA-approved procedures."

B. Placards, decals, or stencils installed in accordance with the provisions of paragraph A., above, may be removed at each location where a determination is made in accordance with Boeing Service Bulletin 747-53A2273, dated July 29, 1986, or later FAA-approved revisions, that the restraint lip overlap meets or exceeds the minimum value specified therein, or if terminating action defined in paragraph C., below, is accomplished.

C. Terminating action for this amendment consists of the inspection of the seat track alignment and, if necessary, modification of the floor beams between body station 980 and 1480 in accordance with Section 111., Part II of Boeing Service Bulletin 747-53A2273, dated July 29, 1986, or later FAA-approved revisions.

D. An alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received the applicable service bulletin from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on October 29, 1986.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-24940 Filed 11-4-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 7, 20, 25, 53, and 56

[EE-154-78]

Lobbying by Public Charities; Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to lobbying expenditures by certain tax-exempt public charities that are described in section 501(c)(3) of the Internal Revenue Code of 1954. Changes to the applicable tax laws were made by the Tax Reform Act of 1976. The regulations will provide the organizations the guidance needed to comply with the Act, and will primarily affect organizations electing the expenditure test under section 501(h).

DATES: Written comments and requests for a public hearing must be delivered or mailed by February 3, 1987. The amendments to Parts 7, 20, 25, and 56 are proposed to be effective for taxable years beginning after December 31, 1976. Amendments to §§ 1.170A-1, 1.501(c)(3)-1, 1.501(c)(4)-1, 1.6033-2, and § 53.4945-2(a) are also proposed to be effective for taxable years beginning after December 31, 1976. Section 1.504-1 is proposed to be effective October 5, 1976. Section 1.504-2 and the amendments to § 53.4945-2(d)(1) are proposed to be effective February 3, 1987.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T:EE-154-78, Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Paul G. Accettura of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:LR:T:EE-154-78, telephone 202-566-3544 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1), Temporary Income Tax Regulations under the Tax Reform Act of 1976 (26 CFR Part 7), Estate Tax Regulations (26 CFR Part 20), Gift Tax Regulations (26 CFR Part 25), Foundation and Similar Excise Taxes (26 CFR Part 53), and Public Charity Excise Taxes (26 CFR Part 56), under sections 170, 501(c)(3), 501(c)(4), 504, 2055, 2522, 4911, 4945, 6001, 6011, and 6033 of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 1307 of the Tax Reform Act of 1976 (90 Stat. 1720) and are to be issued under the authority contained in sections 501(h)(6), 504(b), 4911(f)(3) and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1721, 1722, 1726, 68A Stat. 917; 26 U.S.C. 501(h)(6), 504(b), 4911(f)(3), 7805).

Prior Law

A publicly supported charity is not an organization described in section 501(c)(3) ("a section 501(c)(3) organization") unless any lobbying it does is limited to an insubstantial part of its activities. If it is determined that a substantial part of an organization's activities consists of attempts to influence legislation, the public charity will lose its tax-exempt status. Before the passage of the Tax Reform Act of 1976, there was uncertainty about what constituted a "substantial part" of an organization's activities. Congress was aware that the loss of tax exemption could constitute a severe blow to an organization or could, in some cases, have relatively little effect. This uncertain effect could tend to discourage enforcement. Further, Congress was aware of the belief that the vague standards of the substantial part test tended to encourage subjective and selective enforcement.

Expenditure Test

Under sections 501(h) and 4911, added by section 1307 of the Tax Reform Act of 1976, certain section 501(c)(3) organizations may elect to spend up to a

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certain percentage of their "exempt purpose expenditures" to influence legislation without violating section 501(c)(3). If an organization elects the "expenditure test" of sections 501(h) and 4911, specific limits on lobbying expenditures apply. Separate limits, the "lobbying nontaxable amount" and the "grass roots nontaxable amount," are established for all lobbying expenditures and for grass roots lobbying expenditures, respectively. A 25 percent excise tax is imposed on the greater of the amount by which an organization's lobbying expenditures exceed its lobbying nontaxable amount or the amount by which its grass roots expenditures exceed its grass roots nontaxable amount. Additionally, "ceiling amounts" equal to 150 percent of the lobbying nontaxable amount and 150 percent of the grass roots lobbying nontaxable amount are established. If an organization's lobbying expenditures or grass roots expenditures normally exceed the corresponding ceiling amount, the organization will cease to be described in section 501(c)(3) and therefore will cease to be exempt from tax.

Denial of Deduction for Out-of-Pocket Expenditures in Connection With Lobbying

Code section 170 provides income tax rules governing the deductibility of charitable contributions made to public charities and certain other organizations, including churches and church-related organizations. Under income tax regulations that are substantially unchanged since 1958, no deduction is allowed for expenditures for the "promotion or defeat of legislation" including out-of-pocket expenditures incurred in connection with lobbying on behalf of organizations referred to above.

Section 1307(c) of the Tax Reform Act of 1976 ("Act") added Code section 170(f)(6). That section denies a deduction for out-of-pocket expenditures made in connection with lobbying on behalf of a charitable organization; but contains a parenthetical exclusion relating to churches or church-related organizations ("disqualified organizations"). The parenthetical exclusion in that section is consistent with Congressional intent that the rules in section 1307 of the Act not apply to disqualified organizations. *See, e.g.,* S. Rep. No. 938 Part 2, 94th Cong., 2d Sess. (1976) 84, reprinted in 1976–3 C.B. Vol. 3 at 726. Accordingly, these proposed regulations do not construe the parenthetical language of section 170(f)(6) to permit a deduction for out-of-pocket expenditures made in connection with lobbying on behalf of a disqualified organization. Instead, the proposed regulations provide that out-of-pocket lobbying expenditures incurred on behalf of disqualified organizations are governed by prior law as if section 1307 of the Act had not been enacted. Thus, the proposed regulations do not affect the denial of deductibility, under present regulations, for out-of-pocket expenditures made in connection with lobbying on behalf of any organization other than an eligible organization.

Allocations Between Lobbying and Other Purposes

Where an activity of an organization covered by these proposed regulations includes both lobbying and other purposes, the proposed regulations provide several specific rules. Section 56.4911–2(c)(1) provides that if any part of an advertisement constitutes grass roots lobbying, the entire amount expended for, or in connection with, the advertisement constitutes a grass roots expenditure. Section 56.4911–2(d)(2) provides that an expenditure that is both a fund raising expenditure and an expenditure for grass roots lobbying will be considered an expenditure for grass roots lobbying in full. However, if one of these special rules does not apply, § 56.4911–2(d)(1) provides that an activity involving both lobbying and other purposes will require an allocation, based on all the facts and circumstances, between that part of the expenditure which is treated as a lobbying expenditure and that part which is treated as a nonlobbying expenditure. The Internal Revenue Service specifically requests comments on suggested factors to be taken into account in administering the facts and circumstances allocation rule of § 56.4911–2(d)(1).

Making Available the Results of Nonpartisan Analysis, Study, or Research

Code section 4911(d)(2)(A) provides that the term "influencing legislation" does not include making available the results of nonpartisan analysis, study, or research. These proposed regulations construe nonpartisan analysis, study, or research by cross-reference to § 53.4945–2(d)(1) (relating to a similar exception to the private foundation rules regarding lobbying). In addition, this document proposes to amend § 53.4945–2(d)(1)(iv) (relating to making available the results of nonpartisan analysis, study, or research) to provide that the exception does not apply, if the method of distribution favors those persons interested solely in one side of a particular issue. This corresponds to the existing requirement that the distribution may not be limited to persons on one side of an issue and is intended to promote broad and equitable distribution of the analysis, study, or research, to all interested persons. The proposed amendment to § 53.4945–2(d)(1) has a proposed effective date of ninety days after publication of this notice in the **Federal Register.**

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Regulatory Flexibility Act; Executive Order 12291; Paperwork Reduction Act of 1980

Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Supersession

These regulations, when published in final form in the **Federal Register**, will supersede § 7.0(c)(4) of the Temporary Income Tax Regulations under the Tax Reform Act of 1976.

Drafting Information

The principal author of these proposed regulations was George Baker of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel. Other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR Part 1

Income taxes, Taxable income, Deductions, Exemptions, Exempt organizations, Foundations, Nonprofit organizations, Cooperatives, Political organizations, Homeowners associations, Administration and procedure, Filing requirements.

26 CFR Part 7

Income taxes, Tax Reform Act of 1976.

26 CFR Part 20

Estate taxes.

26 CFR Part 25

Gift taxes.

26 CFR Part 53

Excise taxes, Foundations, Investments, Trusts and trustees.

26 CFR Part 56

Excise tax, Lobbying expenditures, Exempt purpose expenditures, Affiliated organizations, Administration and procedure.

Proposed Amendments to the Regulations

A new Part 56, Public Charity Excise Taxes, is proposed to be added to Title 26 of the Code of Federal Regulations, and amendments to 26 CFR Parts 1, 7, 20, 25, and 53 are proposed as follows:

INCOME TAX REGULATIONS

PART 1—[AMENDED]

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Sections 1.504–1 and 1.504–2 also issued under 26 U.S.C. 504(b).

Par. 2. Section 1.170A–1 is amended by revising paragraph (h)(5), adding a new paragraph (h)(11), and revising paragraph (i). These revised and added provisions read as follows:

§ 1.170A–1 Charitable, etc., contributions and gifts; allowance of deduction.

* * * * *

(h) *Exceptions and other rules.* * * *

(5) No deduction shall be allowed under section 170 for amounts paid to an organization—

(i) Which is disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, or

(ii) Which participates in, or intervenes in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

For purposes of determining whether an organization is attempting to influence legislation or is engaging in political activities. see sections 501(c)(3), 501(h), 4911 and the regulations thereunder.

* * * * *

(11) No deduction shall be allowed under section 170 for out-of-pocket expenditures on behalf of an eligible organization (within the meaning of § 1.501(h)–2(b)(1)) if the expenditure is made in connection with influencing legislation (within the meaning of section 501(c)(3) or § 56.4911–2), or in connection with the payment of the organization's tax liability under section 4911. For the treatment of similar expenditures on behalf of other organizations see paragraph (h)(6) of this section.

(i) *Effective date.* In general, this section applies to contributions paid in taxable years beginning after December 31, 1969. Paragraph (h)(11), however, applies only to out-of-pocket expenditures made in taxable years beginning after December 31, 1976.

Par. 3. In § 1.501(c)(3)–1, paragraph (b)(3) is amended by adding the following sentence at the end:

§ 1.501(c)(3)–1 Organizations organized and operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals.

* * * * *

(b) *Organizational test.* * * *

(3) *Authorization of legislative or political activities.* * * * An organization's articles will not violate the provisions of subdivision (i) of this paragraph (b)(3) even though the organization's articles expressly empower it to make the election provided for in section 501(h) with respect to influencing legislation and, only if it so elects, to make lobbying or grass roots expenditures that do not normally exceed the ceiling amounts prescribed by section 501(h)(2) (B) and (D).

* * * * *

Par. 4. In § 1.501(c)(3)–1, paragraph (c)(3)(ii) is amended by adding a new sentence at the end of subdivision (ii) to read as follows:

§ 1.501(c)(3)–1 Organizations organized and operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals.

* * * * *

(c) *Operational test.* * * *

(3) *"Action" organizations.* * * *

(ii) * * * An organization for which the expenditure test election of section 501(h) is in effect for a taxable year will not be considered an "action" organization by reason of this subdivision (ii) for that year if it is not denied exemption from taxation under section 501(a) by reason of section 501(h).

* * * * *

Par. 5. In § 1.501(c)(4)–1, paragraph (a)(2)(ii) is amended by revising the last sentence and adding a new sentence immediately thereafter. The revised and added sentences read as follows:

§ 1.501(c)(4)–1 Civic organizations and local associations of employees.

(a) *Civic organizations.* * * *

(2) *Promotion of social welfare.* * * *

(ii) *Political or social activities.* * * * A social welfare organization that is not, at any time after October 4, 1976, exempt from taxation as an organization described in section 501(c)(3) may qualify under section 501(c)(4) even though it is an "action" organization described in § 1.501 (c)(3)–1 (c)(3) (ii) or (iv), if it otherwise qualifies under this section. For rules relating to an organization that is, after October 4, 1976, exempt from taxation as an organization described in section 501(c)(3), see section 504 and § 1.504–1.

* * * * *

Par. 6. The following new §§ 1.501(h)–1 through 1.501(h)–3 are added in the appropriate place:

§ 1.501(h)–1 Application of the "expenditure test" to expenditures to influence legislation; introduction.

(a) *Scope.* Section 501(c)(3) requires, among other things, that an organization described therein be one "no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, (except as otherwise provided in subsection (h))" This requirement is referred to as the "substantial part test." Under section 501(h), certain organizations described

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in section 501(c)(3) (see § 1.501(h)–2) may elect the "expenditure test" described in this section, § 1.501(h)–2, and § 1.501(h)–3, as a substitute for the substantial part test. An organization that elects the expenditure test under section 501(h) may make expenditures for lobbying or for grass roots lobbying within limits determined under section 4911(c) (the limits being referred to as the "lobbying nontaxable amount" and "grass roots nontaxable amount") without incurring an excise tax under section 4911(a) and without loss of tax exemption as an organization described in section 501(c)(3) by reason of section 501(h). However, if an electing organization's lobbying expenditures or grass roots expenditures exceed the corresponding nontaxable amount, the organization is subject to an excise tax on the excess (see §§ 56.4911–1 *et seq.*). Further, under section 501(h) (see § 1.501(h)–3), if an electing organization's lobbying or grass roots expenditures normally exceed its "lobbying ceiling amount" or "grass roots ceiling amount" (150 percent of the corresponding nontaxable amounts), the organization will cease to be described in section 501(c)(3). An organization that elects the expenditure test may nevertheless be determined to be an action organization under § 1.501(c)(3)–1(c)(3) (iii) or (iv). An organization that does not elect the expenditure test (including an organization not eligible to elect, or disqualified from making the election) remains subject to the substantial part test. The substantial part test is applied without regard to the provisions of section 501(h) and 4911 and the regulations thereunder.

(b) *Effective date.* The provisions of §§ 1.501(h)–1 through 1. 501(h)–3, are effective for taxable years beginning after December 31, 1976. An election made before November 5, 1986, under the provisions of § 7.0(c)(4) or the instructions to Form 5768 will be effective under these regulations without again filing Form 5768.

§ 1.501(h)–2 Electing the expenditure test.

(a) *In general.* The election to be governed by section 501(h) may be made by an eligible organization (as described in paragraph (b) of this section) for any taxable year of the organization beginning after December 31 1976, other than the first taxable year for which a voluntary revocation of the election is effective (see paragraph (d) of this section). The election is made by filing a completed Form 5768, Election/Revocation of Election by an Eligible Section 501(c)(3) Organization to Make Expenditures to Influence Legislation, with the appropriate Internal Revenue Service Center listed on that form. Under section 501(h)(6), the election is effective with the beginning of the taxable year in which the form is filed. For example, if an eligible organization whose taxable year is the calendar year files Form 5768 on December 31, 1979, the organization is governed by section 501(h) for its taxable year beginning January 1, 1979. Once made, the expenditure test election is effective (without again filing Form 5768) for each succeeding taxable year for which the organization is an eligible organization and which begins before a notice of revocation is filed under paragraph (d) of this section.

(b) *Organizations eligible to elect the expenditure test*—(1) *In general.* For purposes of section 501(h) and the regulations thereunder, an organization is an eligible organization for a taxable year if, for that taxable year, it is—

(i) Described in section 501(c)(3) (determined, in any year for which an election is in effect, without regard to the substantial part test of section 501(c)(3)),

(ii) Described in section 501(h)(4) and paragraph (b)(2) of this section, and

(iii) Not a disqualified organization described in section 501(h)(5) and paragraph (b)(3) of this section.

(2) *Certain organizations listed.* An organization is described in section 501(h)(4) and this paragraph (b)(2) if it is an organization described in—

(i) Section 170(b)(1)(A)(ii) (relating to educational institutions),

(ii) Section 170(b)(1)(A)(iii) (relating to hospitals and medical research organizations),

(iii) Section 170(b)(1)(A)(iv) (relating to organizations supporting government schools),

(iv) Section 170(b)(1)(A)(vi) (relating to organizations publicly supported by charitable contributions),

(v) Section 509(a)(2) (relating to organizations publicly supported by admissions, sales, etc.), or

(vi) Section 509(a)(3) (relating to organizations supporting public charities), but only if the organization it supports is described in section 501(c)(3).

(3) *Disqualified organizations.* An organization is a disqualified organization described in section 501(h)(5) and this paragraph (b)(3) if the organization is—

(i) Described in section 170(b)(1)(A)(i) (relating to churches),

(ii) An integrated auxiliary of a church or of a convention or association of churches (see § 1.6033–2(g)(5)), or

(iii) Described in section 501(c)(3) and affiliated (within the meaning of § 56.4911–7) with one or more organizations described in subdivision (i) or (ii) of this paragraph (b)(3).

(4) *Other organizations ineligible to elect.* Under section 501(h)(4), certain organizations, although not disqualified organizations, are not eligible to elect the expenditure test. For example, organizations described in section 509(a)(4) are not listed in section 501(h)(4) and therefore are not eligible to elect. Similarly, private foundations (within the meaning of section 509(a)) are not eligible to elect. For the treatment of expenditures by a private foundation for the purpose of carrying on propaganda, or otherwise attempting, to influence legislation, see § 53.4945–2.

(c) *New organizations.* A newly created organization may submit Form 5768 to elect the expenditure test under section 501(h) before it is determined to be an eligible organization and may submit Form 5768 at the time it submits its application for recognition of exemption (Form 1023). If the newly created organization is determined to be an eligible organization, the election will be effective under the provisions of paragraph (a) of this section, that is, with the beginning of the taxable year in which the Form 5768 is filed by the eligible organization. However, if a newly created organization is determined by the Service to be a private foundation, section 4945(d)(1) and § 53.4945–2 will apply and the organization will be liable for excise taxes under section 4945 on amounts expended in attempts to influence legislation. Also, if a newly created organization is neither a private foundation (see § 1.501(h)–2(b)(4)) nor a disqualified organization (see § 1.501(h)–2(b)(3)), but is determined by the Service not to be an eligible organization, the organization's election will not be effective and the substantial part test will apply from the effective date of its section 501(c)(3) classification.

(d) *Voluntary revocation of expenditure test election*—(1) *Revocation effective.* An organization may voluntarily revoke an expenditure test election by filing a notice of voluntary revocation with the appropriate Internal Revenue Service Center listed on Form 5768. Under section 501(h)(6)(B), a voluntary revocation is effective with the beginning of the first taxable year after the taxable year in which the notice is filed. If an organization voluntarily revokes its election, the substantial part test of section 501(c)(3) will apply with respect to the organization's activities in attempting to influence legislation beginning with the taxable year for which the voluntary revocation is effective.

(2) *Re-election of expenditure test.* If an organization's expenditure test election is voluntarily revoked the organization may again make the expenditure test election, effective no earlier than for the taxable year following the first taxable year for which the revocation is effective.

(3) *Example. X*, an organization whose taxable year is the calendar year, plans to voluntarily revoke its expenditure test election effective beginning with its taxable year 1985. *X* must file its notice of voluntary revocation on Form 5768 after December 31, 1983, and before January 1, 1985. If *X* files a notice of voluntary revocation on December 31, 1984, the revocation is effective beginning with its taxable year 1985. The organization may again elect the expenditure test by filing Form 5768. Under paragraph (d)(2) of this section, the election may not be made for taxable year 1985. Under paragraph (a) of this section, a new expenditure test election will be effective for taxable years beginning with taxable year 1986, if the Form 5768 is filed after December 31, 1985, and before January 1, 1987.

(e) *Involuntary revocation of expenditure test election.* If, while an election by an eligible organization is in effect, the organization ceases to be an eligible organization, its election is automatically revoked. The revocation is effective with the beginning of the first full taxable year for which it is determined that the organization is not an eligible organization. If an organization's expenditure test election is involuntarily revoked under this paragraph (e) but the organization continues to be described in section 501(c)(3), the substantial part test of section 501(c)(3) will apply with respect to the organization's activities in attempting to influence legislation beginning with the first taxable year for which the involuntary revocation is effective.

(f) *Supersession.* This section supersedes § 7.0(c)(4) of the Temporary Income Tax Regulations under the Tax Reform Act of 1976, effective [the date that final regulations are published in the **Federal Register**.]

§ 1.501(h)-3 Lobbying or grass roots expenditures normally in excess of ceiling amount.

(a) *Scope.* This section provides rules under section 501(h) for determining whether an organization that has elected the expenditure test and that is not a member of an affiliated group of organizations (as defined in § 56.4911-7(e)) either normally makes lobbying expenditures in excess of its lobbying ceiling amount or normally makes grass roots expenditures in excess of its grass roots ceiling amount. Under section 501(h) and this section, an organization that has elected the expenditure test and that normally makes expenditures in excess of the corresponding ceiling amount will cease to be exempt from tax under section 501(a) as an organization described in section 501(c)(3). For similar rules relating to members of an affiliated group of organizations, see § 56.4911-9.

(b) *Loss of exemption*—(1) *In general.* Under section 501(h)(1) an organization that has elected the expenditure test shall be denied exemption from taxation under section 501(a) as an organization described in section 501(c)(3) for the taxable year following a determination year if—

(i) The sum of the organization's lobbying expenditures for the base years exceeds 150 percent of the sum of its lobbying nontaxable amounts for the base years, or

(ii) The sum of the organization's grass roots expenditures for its base years exceeds 150 percent of the sum of its grass roots nontaxable amounts for the base years.

The organization thereafter shall not be exempt from tax under section 501(a) as an organization described in section 501(c)(3) unless, pursuant to paragraph (d) of this section, the organization reapplies for recognition of exenption and is recognized as exempt.

(2) *Special exception for organization's first election.* For the first, second, or third consecutive determination year for which an organization's first expenditure test election is in effect, no determination is required under paragraph (b)(1) of this section, and the organization will not be denied exemption from tax by reason of section 501(h) and this section if, taking into account as base years only those years for which the expenditure test election is in effect—

(i) The sum of the organization's lobbying expenditures for such base years does not exceed 150 percent of the sum of its lobbying nontaxable amounts for the same base years, and

(ii) The sum of the organization's grass roots expenditures for those base years does not exceed 150 percent of the sum of its grass roots nontaxable amounts for such base years.

If an organization does not satisfy the requirements of this paragraph (b)(2), paragraph (b)(1) of this section will apply.

(c) *Definitions.* For purposes of this section—

(1) The term "lobbying expenditures" means lobbying expenditures as defined in section 4911(c)(1) or section 4911(f)(4)(A) and § 56.4911-2(a).

(2) The term "lobbying nontaxable amount" is defined in § 56.4911-1(c)(1).

(3) An organization's "lobbying ceiling amount" is 150 percent of the organization's lobbying nontaxable amount for a taxable year.

(4) The term "grass roots expenditures" means grass roots expenditures as defined in section 4911(c)(3) or section 4911(f)(4)(A) and § 56.4911-2(c).

(5) The term "grass roots nontaxable amount" is defined in § 56.4911-1(c)(2).

(6) An organization's "grass roots ceiling amount" is 150 percent of the organization's grass roots nontaxable amount for a taxable year.

(7) In general, the term "base years" means the determination year and the three taxable years immediately preceding the determination year. The base years, however, do not include any taxable year preceding the taxable year for which the organization is first treated as described in section 501(c)(3).

(8) A taxable year is a "determination year" if it is a year for which the expenditure test election is in effect, other than the taxable year for which the organization is first treated as described in section 501(c)(3).

(d) *Reapplication for recognition of exemption*—(1) *Time of application.* An organization that is denied exemption from taxation under section 501(a) by reason of section 501(h) and this section may apply on Form 1023 for recognition of exemption as an organization described in section 501(c)(3) for any taxable year following the first taxable year for which exemption is so denied. See subparagraphs (2) and (3) of this paragraph (d) for material to be included with an application described in the preceding sentence.

(2) *Section 501(h) calculation.* An application described in paragraph (d)(1) of this section must demonstrate that the organization would not be denied exemption from taxation under section 501(a) by reason of section 501(h) if the expenditure test election had been in effect for all of its last taxable year ending before the application is made by providing the calculations, described either in paragraphs (b)(1) (i) and (ii) of this section or in § 56.4911-9(b), that would have applied to the organization for that year.

(3) *Operations not disqualifying.* An application described in paragraph (d)(1) of this section must include information that demonstrates to the

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satisfaction of the Commissioner that the organization will not knowingly operate in a manner that would disqualify the organization for tax exemption under section 501(c)(3) by reason of attempting to influence legislation.

(4) *Re-election of expenditure test.* If an organization is denied exemption from tax for a taxable year by reason of section 501(h) and this section, and thereafter is again recognized as an organization described in section 501(c)(3) pursuant to this paragraph (d), it may again elect the expenditure test under section 501(h) in accordance with § 1.501(h)–2(a).

(e) *Examples.* The provisions of this section are illustrated by the following examples, which also illustrate the operation of the tax imposed by section 4911.

Example (1). (1) The following table contains information used in this example concerning organization *X*.

Year	Exempt Purpose Expenditures (EPE)	Calculation	Lobbying Nontaxable Amount (LNTA)	Lobbying Expenditures (LE)
1979	$400,000	(20% of $400,000=)	$80,000	$100,000
1980	300,000	(20% of $300,000=)	60,000	100,000
1981	600,000	(20% of $500,000+15% of $100,000=).	115,000	120,000
1982	500,000	(20% of $500,000=)	100,000	100,000
Total	1,800,000		355,000	420,000

(2) Organization *X, whose taxable year is the calendar year was organized in 1971. X* first made the expenditure test election under section 501(h) effective for taxable years beginning with 1979 and has not revoked the election. None of *X*'s lobbying expenditures for its taxable years 1979 through 1982 are grass roots expenditures. Under section 4911(a) and § 56.4911–1(a), *X* must determine for each year for which the expenditure test election is effective whether it is liable for the 25 percent excise tax imposed by section 4911(a) on excess lobbying expenditures. *X* is liable for this tax for each of its taxable years 1979, 1980, and 1981, because in each year its lobbying expenditures exceeded its lobbying nontaxable amount for the year. For 1979, the tax imposed by section 4911(a) is $5,000 [25%×($100,000−$80,000)=$5,000]. For 1980, the tax is $10,000. For 1981, the tax is $1,250.

(3) The taxable years 1979 through 1981 are all determination years under paragraph (c)(8) of this section. On its annual return for determination year 1979, the first year of its first election, *X* can demonstrate, under paragraph (b)(2) of this section, that its lobbying expenditures during 1979 ($100,000) do not exceed 150 percent of its lobbying nontaxable amount for 1979 ($120,000). For determination year 1980, under paragraph (b)(2), *X* can demonstrate that the sum of its lobbying expenditures for 1979 and 1980 ($200,000) does not exceed 150 percent of the sum of its lobbying nontaxable amounts for 1979 and 1980 ($210,000). For 1981, under paragraph (b)(2), *X* can demonstrate that the sum of its lobbying expenditures for 1979, 1980, and 1981 ($320,000) does not exceed 150 percent of the sum of its lobbying nontaxable amounts for 1979, 1980, and 1981 ($382,500). For each of the determination years 1979, 1980, and 1981, the first three years of its first election, *X* satisfies the requirements of paragraph (b)(2). Accordingly, no determination under paragraph (b)(1) of this section is required for those years, and *X* is not denied tax exemption by reason of section 501(h).

(4) Under paragraph (b)(1) of this section, *X* must determine for its determination year 1982 whether it has normally made lobbying expenditures in excess of the lobbying ceiling amount. This determination takes into account expenditures in base years 1979 through 1982. The sum of *X*'s lobbying expenditures for the base years ($420,000) does not exceed 150% of the sum of the lobbying nontaxable amounts for the base years (150%×$355,000=$532,500). Accordingly, *X* is not denied tax exemption by reason of section 501(h).

Example (2). (1) The following table contains information used in this example concerning *W*.

Year	Exempt Purpose Expenditures (EPE)	Calculation	Lobbying Nontaxable Amount (LNTA)	Lobbying Expenditures (LE)	Grass Roots nontaxable amount (25% of LNTA)	Grass Roots expenditures
1979	$700,000	(20% of $500,000+15% of $200,000=)	$130,000	$120,000	$32,500	$30,000
1980	800,000	(20% of $500,000+15% of $300,000=)	145,000	100,000	36,250	60,000
1981	800,000	(20% of $500,000+15% of $300,000=)	145,000	100,000	36,250	85,000
1982	900,000	(20% of $500,000+15% of $400,000=)	160,000	150,000	40,000	65,000
Total	3,200,000		580,000	470,000	145,000	220,000

(2) Organization *W*, whose taxable year is the calendar year, made the expenditure test election under section 501(h) effective for taxable years beginning with 1979 and has not revoked the election. *W* has been treated as an organization described in section 501(c)(3) for each of its taxable years beginning with its taxable year 1974.

(3) Under section 4911(a) and § 56.4911–1(a), *W* must determine for each year for which the expenditure test election is effective whether it is liable for the 25 percent excise tax imposed by section 4911(a) on excess lobbying expenditures. In 1980, 1981, and 1982, *W* has excess lobbying expenditures because its grass roots expenditures in each of those years exceeded its grass roots nontaxable amount for the year. Therefore, *W* is liable for the excise tax under section 4911(a) for those years. The tax imposed by section 4911(a) for 1980 is $5,937.50 [25%×($60,000−$36,250)=$5,937.50]. For 1981, the tax is $7,187.50. For 1982, the tax is $6,250.

(4) On its annual return for its determination years 1979, 1980, and 1981, the first three years of its first election, *W* demonstrates that it satisfies the requirements of paragraph (b)(2) of this section. Accordingly, no determination under paragraph (b)(1) of this section is required for those years, and *W* is not denied tax exemption by reason of section 501(h).

(5) On its annual return for its determination year 1982, *W* must determine under paragraph (b)(1) whether it has normally made lobbying expenditures or grass roots expenditures in excess of the corresponding ceiling amount. This determination takes into account expenditures in base years 1979 through 1982. The sum of *W*'s lobbying expenditures for the base years ($470,000) does not exceed 150% of the sum of *W*'s lobbying nontaxable amounts for those years (150%×$580,000=$870,000). However, the sum of *W*'s grass roots expenditures for the base years ($220,000) does exceed 150% of the sum of *W*'s grass roots nontaxable amounts for those years (150%×$145,000=$217,500). Under section 501(h), *W* is denied tax exemption under section 501(a) as an organization described in section 501(c)(3) for its taxable year 1983. For its taxable year 1984 and any taxable year thereafter, *W* is exempt from tax as an organization described in section 501(c)(3) only if *W* applies for recognition of its exempt status under paragraph (d) of this section and is recognized as exempt from tax.

Example (3). (1) The following table contains information used in this example concerning organization *Y*.

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Taxable year	Exempt purpose expenditures (EPE)	Calculation	Lobbying nontaxable amount (LNTA)	Lobbying expenditures (LE)	Grass roots nontaxable amount (25% of LNTA)	Grass roots expenditures
1977	$700,000	(20% of $500,000+15% of $200,000=)	$130,000	$182,000	$32,500	$30,000
1978	800,000	(20% of $500,000+15% of $300,000=)	145,000	224,750	36,250	35,000
Subtotal	1,500,000		275,000	406,750	68,750	65,000
1979	900,000	(20% of $500,000+15% of $400,000=)	160,000	264,000	40,000	50,000
Total	2,400,000		435,000	670,750	108,750	115,000

(2) Organization *Y* whose taxable year is the calendar year, was first treated as an organization described in section 501(c)(3) on February 1, 1977. *Y* made the expenditure test election under section 501(h) effective for taxable years beginning with 1977 and has not revoked the election.

(3) For 1977, *Y* has excess lobbying expenditures of $52,000 because its lobbying expenditures ($182,000) exceed its lobbying nontaxable amount ($130,000) for the taxable year. Accordingly, *Y* is liable for the 25 percent excise tax imposed by section 4911(a). The amount of the tax is $13,000 [25% × $52,000 = $13,000].

(4) For 1978, *Y* again has excess lobbying expenditures and is again liable for the 25 percent excise tax imposed by section 4911(a). The amount of the tax is $19,937.50 [25% × ($224,750 − $145,000) = $19,937.50].

(5) For 1979, *Y*'s lobbying expenditures ($264,000) exceed its lobbying nontaxable amount ($160,000) by $104,000, and its grass roots expenditures ($50,000) exceed its grass roots nontaxable amount ($40,000) by $10,000. Under § 56.4911–1(b), *Y*'s excess lobbying expenditures are the greater of $104,000 or $10,000. The amount of the tax, therefore, is $26,000 [25% × $104,000 = $26,000].

(6) Under paragraph (c)(8) of this section, 1977 is not a determination year because it is the first year for which the organization is treated as described in section 501(c)(3). For 1977, *Y* need not determine whether it has normally made lobbying expenditures or grass roots expenditures in excess of the corresponding ceiling amount for purposes of determining whether it is denied exemption under section 501(h) for its taxable year 1978.

(7) For determination year 1978, *Y* must determine whether it has normally made lobbying or grass roots expenditures in excess of the corresponding ceiling amount, taking into account expenditures for the base years 1977 and 1978. For *Y*, the determination under paragraph (b)(2) of this section considers the same base years as the determination under paragraph

(b)(1) of this section and is, therefore, redundant. Accordingly, *Y* proceeds to determine, under (b)(1), whether it is denied exemption. *Y*'s grass roots expenditures for 1977 and 1978 ($65,000) did not exceed 150 percent of the sum of its grass roots nontaxable amounts for those years ($103,125). *Y*'s lobbying expenditures for 1977 and 1978 ($406,750) did not exceed 150% of its lobbying nontaxable amount for those years (150% × $275,000 = $412,500). Therefore, *Y* is not denied tax exemption under section 501(h) for its taxable year 1979.

(8) For determination year 1979, the sum of *Y*'s grass roots expenditures in base years 1977, 1978, and 1979 does not exceed 150 percent of its grass roots nontaxable amount (calculation omitted). However, the sum of *Y*'s lobbying expenditures for the base years ($670,750) does exceed 150% of the sum of the lobbying nontaxable amounts for those years (150% × $435,000 = $652,500). Since *Y* was not described in section 501(c)(3) prior to 1977, only the years 1977, 1978, and 1979 may be considered in determining whether *Y* has normally made lobbying expenditures in excess of its lobbying ceiling. Therefore, *Y* determines that it has normally made lobbying expenditures in excess of its lobbying ceiling. Under section 501(h), *Y* is denied tax exemption under section 501(a) as an organization described in section 501(c)(3) for its taxable year 1980. For its taxable year 1981, and any taxable year thereafter, *Y* is exempt from tax as an organization described in section 501(c)(3) only if *Y* applies for recognition of its exempt status under paragraph (d) of this section and is recognized as exempt from tax.

Par. 7. Existing section 1.504–1 is removed and new §§ 1.504–1 and 1.504–2, to read as follows, are added in the appropriate place:

§ 1.504–1 Attempts to influence legislation; certain organizations formerly described in section 501(c)(3) denied exemption.

Section 504(a) and this section apply to an organization that is exempt from taxation at any time after October 4, 1976, as an organization described in section 501(c)(3), and that ceases to be described in that section because it—

(a) Is an "action" organization, within the meaning of § 1.501 (c)(3)–1 (c)(3) (ii) or (iv), on account of activities occurring after October 4, 1976, or

(b) Is denied exemption under the provisions of section 501(h) (see § 1.501(h)–3 or § 56.4911–9).

This section does not apply, however, to an organization that was described in section 501(h)(5) and § 1.501(h)–2(b)(3) (relating generally to churches) for its taxable year immediately preceding the first taxable year for which it is no longer an organization described in section 501(c)(3). An organization to which section 504(a) and this section apply shall not be treated as described in section 501(c)(4) at any time after the organization ceases to be described in section 501(c)(3). Further, an organization denied treatment as an organization described in section 501(c)(4) under this section may not be treated as an organization described in section 501(c) other than as an organization described in section 501(c)(3). For rules relating to recognition of exemption after exemption is denied under section 501(h), see § 1.501(h)–3(d).

§ 1.504–2 Certain transfers made to avoid section 504(a).

(a) *Scope.* Under section 504(b), a transfer described in paragraph (b) or (c) of this section to an organization exempt from tax under section 501(a) may result in loss of exemption by the transferee unless the Commissioner determines, under paragraph (e) of this section, that the original transfer did not effect an avoidance of section 504(a). For purposes of this section, the term "transfer" includes any use by, or for the benefit of, the recipient of the transfer, but does not include any transfer made for adequate and full consideration.

(b) *Transferor and transferee commonly controlled*—(1) *Loss of exemption.* A transfer is described in this paragraph (b) if it is described in paragraph (b)(2) through (b)(6). The transferee of a transfer described in this paragraph will cease to be exempt from tax under section 501(a), unless the provisions of paragraph (e) of this section apply.

(2) *Transferor organization.* A transfer is described in this paragraph (b)(2) only if it is from an organization that—

(i) Is or was described in section 501(c)(3), but not in section 501(h)(5), and

(ii) Is determined to be an "action" organization (as defined in § 1.501 (c)(3)–1 (c)(3) (ii) or (iv)), or is denied exemption from tax by reason of section 501(h) and either § 1.501(h)–3 or § 56.4911–9.

(3) *Transferor and transferee commonly controlled.* A transfer is described in this paragraph (b)(3) only if, at the time of the transfer or at any time during the transferee's ten taxable years following the year in which the transfer was made, the transferee is controlled (directly or indirectly), as defined in paragraph (f) of this section,

by the same person or persons who control the transferor.

(4) *Time of transfer.* A transfer is described in this paragraph (b)(4) only if the transfer is made after February 3, 1987, and—

(i) After the date that is 24 months before the earliest of the effective date of the determination under section 501(h) that the transferor is not exempt, the effective date of the Commissioner's determination that the transferor is an "action" organization (as defined in § 1.501(c)(3) (ii) or (iv)), or the date on which the Commissioner proposes to treat it as no longer described in section 501(c)(3), and

(ii) Before the transferor again is recognized as an organization described in section 501(c)(3).

(5) *Transferee.* A transfer is described in this paragraph (b)(5) only if the transferee is exempt from tax under section 501(a) but the transferee is neither—

(i) An organization described in section 501(c)(3), nor

(ii) An organization described in section 401(a) to which the transferor contributes as an employer.

(6) *Amount of transfer.* A transfer is described in this paragraph (b)(6) only if the amount of the transfer exceeds the lesser of 30 percent of the transferor's assets, or 50 percent of the transferee's assets, computed immediately before the transfer. For purposes of this paragraph (b)(6)—

(i) The amount of a transfer by a transferor is the sum of the amounts transferred to any number of transferees in any number of transfers, all of which are described in paragraphs (b)(2) through (b)(5) of this section, and the time of the transfer is the time of the first transfer so taken into account; and

(ii) The amount of a transfer to a transferee is the sum of the amounts transferred by a transferor to the transferee in any number of transfers, all of which are described in paragraphs (b)(2) through (b)(5) of this section, and the time of the transfer is the time of the first transfer so taken into account.

(c) *Other transfers*—(1) *Transfers included.* A transfer is described in this paragraph (c) if it would be described in paragraph (b) of this section except that either—

(i) The amount of the transfer is less than the amount determined in paragraph (b)(6) of this section, or

(ii) The transferor and transferee are not commonly controlled as described in paragraph (b)(3) of this section, or

(iii) The transferee is an organization described in sections 501(c)(3) and 501(h)(4).

(2) *Loss of exemption.* The transferee of a transfer described in this paragraph (c) will cease to be exempt under section 501(a) if the Commissioner determines on all the facts and circumstances that the transfer effected an avoidance of section 504(a). In determining whether a transfer effected an avoidance of section 504(a), the Commissioner may consider whether the transferee engages, or has engaged, in attempts to influence legislation and may also consider any of the factors enumerated in paragraph (e) of this section.

(d) *Date of loss of exempt status.* A transferee of a transfer described in paragraph (b)(c)(1)(ii), or (c)(1)(iii) of this section will cease to be exempt from tax under section 501(a) on the date that all the requirements of paragraph (b), (c)(1)(ii), or (c)(1)(iii) (other than the determination by the Commissioner) are satisfied. A transferee of a transfer described in paragraph (c)(1)(i) of this section will cease to be exempt from tax under section 501(a) on the date of the last transfer preceding notification of the transferee that the Commissioner proposes to treat the transferee as other than an exempt organization.

(e) *Transfers not in avoidance of section 504(a).* Notwithstanding paragraph (b) of this section, if, based on all the facts and circumstances, the Commissioner determines that a transfer described in paragraph (b) did not effect an avoidance of section 504(a), the transferee will not be denied exemption from tax by reason of section 504(b) and this section. In making the determination called for in the preceding sentence, the Commissioner may consider all relevant factors including:

(1) Whether enforceable and effective conditions on the transfer preclude use of any of the transferred assets for any purpose that, if it were a substantial part of an organization's activities, would be inconsistent with exemption as an organization described in section 501(c)(3);

(2) In the absence of conditions described in paragraph (e)(1) of this section, whether the transferred assets are used exclusively for purposes that are consistent with the transferor's exemption as an organization described in section 501(c)(3);

(3) Whether the assets transferred would be described in § 53.4942(a)–2(c)(3) before, as well as after, the transfer if both the transferor and transferee were private foundations;

(4) Whether and to what extent the transfer would satisfy the provisions of § 1.507–2(a) (7) and (8) if the transferor were a private foundation;

(5) Whether all of the transferred assets have been expended during a period when the transferee was not controlled (directly or indirectly) by the same person or persons who controlled the transferor; and

(6) Whether the entire amount of the transferred assets were in turn transferred, before the close of the transferee's taxable year following the taxable year in which the transferred assets were received, to one or more organizations described in section 507(b)(1)(A) none of which are controlled (directly or indirectly) by the same persons who control either the original transferor or transferee.

(f) *Control.* For purposes of section 504 and the regulations thereunder—

(1) The transferor will be presumed to control any organization with which it is affiliated within the meaning of § 56.4911–7(a), or would be if both organizations were described in section 501(c)(3), and

(2) The transferee will be treated as controlled (directly or indirectly) by the same person or persons who control the transferor if the transferee would be treated as controlled under section 53.4942(a)–3(a)(3), for which purpose the transferor shall be treated as a private foundation.

Par. 8. Section 1.6033–2 is amended by adding paragraph (a)(2)(ii)(*k*). This added provision reads as follows:

§ 1.6033–2 Returns by exempt organizations; taxable years beginning after December 31, 1969.

(a) *In general.* * * *

(2) * * *

(ii) * * *

(*k*) Its lobbying expenditures, grass roots expenditures, exempt purpose expenditures, lobbying nontaxable amount, and grass roots nontaxable amount for the taxable year and for prior taxable years that are base years (within the meaning of § 1.501(h)–3(c)(7)), if the organization has an election under section 501(h) in effect for the taxable year. An organization that is a member of an affiliated group of organizations (as defined in § 56.4911–7(e)) but that is not a member of a limited affiliated group (as defined in § 56.4911–10(b)) shall report this information based on the expenditures of all members of the group during the taxable year of the group that ends with or within the member's taxable year and for prior taxable years of the group that are base years (within the meaning of § 56.4911–9(b)). For additional information required to be furnished by members of an affiliated group of organizations, and by controlling members in a limited affiliated group, see §§ 56.4911-9(d) and 56.4911-10(f)(1), respectively.

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TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976

PART 7—[AMENDED]

Par. 9. The authority citation for Part 7 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 10. In § 7.0, paragraph (c)(4) is removed and paragraph (d) is amended by removing ", (c)(4)" from the first parenthetical phrase in the first sentence.

ESTATE TAX REGULATIONS

PART 20—[AMENDED]

Par. 11. The authority citation for part 20 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 12. Section 20.2055-1(a)(2) is revised to read as follows:

§ 20.2055-1 Deduction for transfers for public, charitable, and religious uses; in general.

(a) *General rule.* * * *

(2) To or for the use of any corporation or association organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes (including the encouragement of art and for the prevention of cruelty to children or animals), if no part of the net earnings of the corporation or association inures to the benefit of any private stockholder or individual (other than as a legitimate object of such purposes), if the organization is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and if, in the case of transfers made after December 31, 1969, it does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

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GIFT TAX REGULATIONS

PART 25—[AMENDED]

Par. 13. The authority citation for part 25 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 14. In § 25.2522(a)-1, paragraph (a)(2) is revised to read as follows:

§ 25.2522(a)-1 Charitable and similar gifts; citizens or residents.

(a) * * *

(2) Any corporation, trust, community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, if no part of the net earnings of the organization inures to the benefit of any private shareholder or individual, if it is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and if, in the case of gifts made after December 31, 1969, it does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

* * * * *

Par. 15. In § 25.2522(a)-1, paragraph (b)(2) is revised to read as follows:

§ 25.2522(a)-1 Charitable and similar gifts; citizens or residents.

(b) * * *

(2) It must not be disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation.

* * * * *

FOUNDATION AND SIMILAR EXCISE TAXES

PART 53—[AMENDED]

Par. 16. The authority citation for part 53 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 17. Section 53.4945-2 is amended as follows:

1. Paragraph (a)(5)(i) is revised to read as set forth below and paragraph (a)(5)(iii) is removed;
2. Paragraphs (a)(6) and (a)(7) are added as set forth below; and
3. In paragraph (d)(1)(iv), the last sentence is revised to read as set forth below.

§ 53.4945-2 Propaganda influencing legislation.

(a) *Propaganda influencing legislation, etc.* * * *

(5) *Grants to public organizations*—(i) *In general.* A grant by a private foundation to an organization described in section 509(a) (1), (2), or (3) does not constitute a taxable expenditure by the foundation under section 4945(d), other than under section 4945(d)(1), if the grant by the private foundation is not earmarked to be used for any activity described in section 4945(d) (2) or (5), is not earmarked to be used in a manner which would violate section 4945(d) (3) or (4), and there does not exist an agreement, oral or written, whereby the grantor foundation may cause the grantee to engage in any such prohibited activity or to select the recipient to which the grant is to be devoted. For purposes of this subdivision, a grant by a private foundation is earmarked if the grant is given pursuant to an agreement, oral or written, that the grant will be used for specific purposes. For the expenditure responsibility requirements with respect to organizations other than those described in section 509(a) (1), (2), or (3), see § 53.4945-5. For rules for determining whether grants to public charities are taxable expenditures under section 4945(d)(1), see paragraphs (a)(6) and (a)(7) of this section.

* * * * *

(6) *Grants to public organizations that attempt to influence legislation*—(i) *In general.* A grant made by a private foundation to an organization described in section 509(a) (1), (2), or (3) (a "public charity" for purposes of paragraphs (a) (6) and (7) of this section), does not constitute a taxable expenditure under section 4945(d)(1) if it meets the requirements of this paragraph (a)(6).

(ii) *General support grant.* A general support grant by a private foundation to a public charity is not a taxable expenditure by the private foundation under section 4945(d)(1) to the extent that—

(A) The grant is not earmarked, within the meaning of § 56.4911-4(f)(4), to be used in connection with an attempt to influence legislation, and

(B) The amount of the grant (as defined in paragraph (a)(6)(iv)(A) of this section)) does not exceed the greater of the amount expended by the grantee in the taxable year preceding the year of the grant or the amount budgeted for the year of the grant by the grantee for the sum of expenditures that constitute exempt purpose expenditures (within the meaning of § 56.4911-4) other than lobbying expenditures (within the meaning of § 56.4911-2(a)), plus expenditures for fund raising (see § 56.4911-4(f)(1)).

(iii) *Specific project grant.* A grant by a private foundation to fund a specific project of a public charity is not a taxable expenditure by the foundation under section 4945(d)(1) to the extent that —

(A) The grant is not earmarked, within the meaning of § 56.4911-4(f)(4), to be used in connection with an attempt to influence legislation, and

(B) The amount of the grant (as defined in paragraph (a)(6)(iv)(B) of this section) does not exceed the amount budgeted for the year of the grant by the grantee organization for specific project activities that are not attempts to influence legislation.

(iv) *Special rules.* For purposes of paragraph (a)(6) of this section, the amount of a grantor's grant is the sum of—

(A) The sum of the grantor's general support grants (if any) and all specific project grants (if any) made to the same grantee for the same taxable year of the grantee, or

(B) The sum of the grantor's general support grants (if any) plus the grant for the specific project (but not grants for other specific projects, if any) made to the same grantee for the same taxable year of the grantee, plus

(C) Each grant (if any) attributed to the grantor even if made by another private foundation. For purposes of this paragraph (a)(6)(iv)(C), a grant is attributed to one private foundation (even if made by a second foundation) only if made in the same taxable year of the grantee to the same grantee under an oral or written agreement between the private foundation to which it is attributed and the other private foundation to make the grant. A grant described in the preceding sentence is counted once by each foundation.

(7) *Grants to organizations that cease to be described in 501(c)(3)—(i) Not taxable expenditure; conditions.* A grant to a public charity (as defined in paragraph (a)(6)(i) of this section) that thereafter ceases to be an organization described in section 501(c)(3) by reason of its attempts to influence legislation is not a taxable expenditure if—

(A) The grant meets the requirements of paragraph (a)(6) of this section,

(B) The grant is made before notice of the grantee organization's loss of tax exemption is given to the public,

(C) At the time the grant is made, no foundation manager (as defined in section 4946(b)(1)) of the grantor private foundation knows (or in the case of the taxes imposed by section 4945 (a)(1) and (b)(1), has reason to know) that the grantee organization's ruling or determination letter has been or will be revoked, or is aware of the activities which would provide the basis for the revocation, and

(D) No disqualified person with respect to the private foundation, during the grantee's taxable year in which the grant is made, or the preceding or succeeding taxable year, controls, in whole or in part, the grantee organization's attempts to influence legislation.

(ii) *Examples.* The provisions of paragraphs (a)(6) and (a)(7) of this section are illustrated by the following examples:

Example (1). W, a private foundation, makes a general purpose grant to *Z*, a public charity described in section 509(a)(1). As an insubstantial portion of its activities, *Z* makes some attempts to influence the State legislature with regard to changes in the mental health laws. The amount of *Z*'s nonlobbying expenditures for the taxable year prior to the grant, as well as the amount budgeted for those expenditures for the taxable year of the grant, far exceed the amount of *W*'s general purpose grant. The use of the grant is not earmarked by *W* to be used in a manner which would violate section 4945(d)(1). In addition, there is no oral or written agreement whereby *W* may influence the choice by *Z* of the activity or recipient to which the grant is to be devoted. Even if the grant is subsequently devoted by *Z* to its legislative activities the grant by *W* is not a taxable expenditure under section 4945(d).

Example (2). X, a private foundation, makes a specific project grant to *Y* University for the purpose of conducting research on the potential environmental effects of certain pesticides. *X* does not earmark the grant for any purpose which would violate section 4945(d)(1) and there is no oral or written agreement or understanding whereby *X* may cause *Y* to engage in any activity described in section 4945(d) (1), (2), or (5), or to select any recipient to which the grant may be devoted. Further, *X* determines that *Y*'s budget for the project is reasonable and does not contain any amount for attempts to influence legislation. *Y* uses most of the funds for the research project: however, on its own volition, *Y* expends a portion of the grant funds to send a representative to testify at Congressional hearings on a specific bill proposing certain pesticide control measures. The portion of the grant funds expended with respect to the Congressional hearings is not treated as a taxable expenditure by *X* under section 4945(d)(1).

Example (3). *M*, a private foundation, makes a specific project grant of $150,000 to *P*, a public charity described in section 509(a)(1). In requesting the grant from *M*, *P* stated that the total budgeted cost of the project is $200,000, and that of this amount $20,000 is allocated to attempts to influence legislation related to the project. In making the grant, *M* did not earmark any of the funds from the grant to be used for attempts to influence legislation. *M*'s grant of $150,000 to *P* will not constitute a taxable expenditure under section 4945(d)(1) because *M* did not earmark any of the funds for attempts to influence legislation and because the amount of its grant ($150,000) does not exceed the amount allocated to specific project activities that are not attempts to influence legislation ($200,000 − $20,000 = $180,000).

Example (4). Assume the same facts as in example (3), except that *M*'s grant letter to *P* provides that *M* has the right to renegotiate the terms of the grant if there is a substantial deviation from those terms. This additional fact does not make *M*'s grant a taxable expenditure under section 4945(d)(1).

Example (5). Assume the same facts as in example (3), except that *M* made a specific project grant of $200,000 to *P*. Part of *M*'s grant of $200,000 will constitute a taxable expenditure under section 4945(d)(1). The amount of the grant ($200,000) exceeds by $20,000 the amount *P* allocated to specific project activities that are not attempts to influence legislation ($180,000). *M* has made a taxable expenditure of $20,000.

Example (6). Assume the same facts as example (3), except that *M* made a specific project grant of $180,000, and received from *P* an enforceable commitment that grant funds would not be used in connection with attempts to influence legislation. *M*'s grant is not a taxable expenditure under section 4945(d)(1).

Example (7). Assume the same facts as in example (3) except that *M* directed *P* to hire *A*, an individual, to expend $20,000 from the grant to engage in direct lobbying (within the meaning of § 56.4911–2(b)) and grass roots lobbying (within the meaning of § 56.4911–2(c)). *P* does not expend any other grant funds for lobbying activities. The $20,000 that is earmarked for direct lobbying and grass roots lobbying is a taxable expenditure under section 4945(d)(1).

Example (8). R, a public charity described in section 509(a)(1), requested *N*, a private foundation, to make a general purpose grant to it to aid *R* in carrying out its exempt purpose. In making this request, *R* notified *N* that it had elected the expenditure test under section 501(h) and that it expected to attempt to influence legislation in areas related to its exempt purpose. Since its formation, *R* generally has had exempt purpose expenditures (as defined in § 56.4911–4) in excess of $7,000,000 in each of its taxable years, and has budgeted in excess of $7,000,000 of exempt purpose expenditures for the year of the grant. *N* made a grant of $200,000 to *R*. *N* did not earmark the funds for *R*'s attempts to influence legislation. The general purpose grant by *N* does not constitute a taxable expenditure under section 4945(d)(1).

Example (9). Assume the same facts as in example (8), except that *N* learns that *R* has had excess lobbying expenditures (within the meaning of § 56.4911–1(b)) in some prior years. *N* also learns that in no year has *R*'s lobbying or grass roots expenditures (within the meaning of § 56.4911–2 (a) and (c)) exceeded the corresponding ceiling amount (within the meaning of § 1.501(h)–3(c) (3) and (6)). *N* then makes the grant to *R*. After receiving the grant, *R* spends a large portion of its funds on influencing legislation and, as a consequence, is denied exemption from tax,.as an organization described in section 501(c)(3), under section 501(h) and § 1.501(h)–3. No disqualified person with respect to N controlled, in whole or in part, *R*'s attempts to influence legislation. The general purpose grant will not constitute a taxable expenditure under section 4945(d)(1).

* * * * *

(d) *Exceptions—(1) Nonpartisans analysis, study, or research.* * * *

(iv) *Making available results cf analysis, study, or research.* * * * For purposes of this paragraph (d)(1)(iv), such presentations may not be limited to, be directed toward, or otherwise favor in any manner, persons who are interested solely in one side of a particular issue.

* * * * *

Par. 18. Title 26 is revised by adding a new Part 56 to read as follows:

PART 56—PUBLIC CHARITY EXCISE TAXES

Sec.
56.4911–1 Tax on excess lobbying expenditures.
56.4911–2 Lobbying expenditures, expenditures for direct lobbying, and grass roots expenditures.
56.4911–3 Activities not attempts to influence legislation.
56.4911–4 Exempt purpose expenditures.
56.4911–5 Communications with members.
56.4911–6 Records of lobbying and grass roots expenditures.
56.4911–7 Affiliated group of organizations.
56.4911–8 Excess lobbying expenditures of affiliated group.
56.4911–9 Application of section 501 (h) to affiliated group of organizations.
56.4911–10 Members of a limited affiliated group of organizations.
56.6001–1 Notice or regulations requiring records, statements, and special returns.
56.6011–1 General requirement of return, statement, or list.

Authority: 26 U.S.C. 7805. Sec. 56.4911–7 also issued under 26 U.S.C. 4911(f)(3).

§ 56.4911–1 Tax on excess lobbying expenditures.

(a) *In general.* Section 4911(a) imposes an excise tax of 25 percent on the excess lobbying expenditures (as defined in paragraph (b) of this section) for a taxable year of an organization for which the expenditure test election under section 501(h) is in effect. The limit on expenditures for influencing legislation on which no tax is due from an organization for a taxable year is the lobbying nontaxable amount, or, on expenditures for influencing legislation through grass roots lobbying, the grass roots nontaxable amount (see paragraph (c) of this section). For rules concerning the application to the members of an affiliated group of organizations (as defined in § 56.4911–7(e)) of the excise tax imposed by section 4911(a), see § 56.4911–8.

(b) *Excess lobbying expenditures.* For any taxable year for which the expenditure test election under section 501(h) is in effect, the amount of an organization's excess lobbying expenditures is the greater of—

(1) The amount by which the organization's lobbying expenditures (within the meaning of § 56.4911–2(a)) exceed the organization's lobbying nontaxable amount, or

(2) The amount by which the organization's grass roots expenditures (within the meaning of § 56.4911–2(c)) exceed the organization's grass roots nontaxable amount.

(c) *Nontaxable amounts*—(1) *Lobbying nontaxable amount.* Under section 4911(c)(2), the lobbying nontaxable amount for any taxable year for which the expenditure test election is in effect is the lesser of—

(i) $1,000,000, or

(ii) To the extent of the organization's exempt purpose expenditures (within the meaning of § 56.4911–4) for that year, the sum of 20 percent of the first $500,000 of such expenditures, plus 15 percent of the second $500,000 of such expenditures, plus 10 percent of the third $500,000 of such expenditures, plus 5 percent of the remainder of such expenditures.

(2) *Grass roots nontaxable amount.* Under section 4911(c)(4), an organization's grass roots nontaxable amount for any taxable year is 25 percent of its lobbying nontaxable amount for that year.

(d) *Examples.* The provisions of this section are illustrated by the examples in § 1.501(h)–3.

(e) *Effective date.* The provisions of §§ 56.4911–1 through 56.4911–10 are effective for taxable years beginning after December 31, 1976.

§ 56.4911–2 Lobbying expenditures, expenditures for direct lobbying, and grass roots expenditures.

(a) *Lobbying expenditures.* An organization's lobbying expenditures for a taxable year for which the expenditure test election under section 501(h) is in effect are the sum of its expenditures for direct lobbying (as defined in paragraph (b) of this section) for the year and its grass roots expenditures (as defined in paragraph (c) of this section) for the year. In determining an organization's lobbying expenditures, no expenditure shall be counted twice.

(b) *Expenditures for direct lobbying defined*—(1) *Expenditures.* An expenditure for direct lobbying is any amount paid or incurred for, or in connection with, direct lobbying, or any amount treated as an expenditure for direct lobbying under paragraph (d) or (e) of this section or under § 56.4911–5, or any amount included as an expenditure for direct lobbying under § 56.4911–10(d)(2). Expenditures for direct lobbying include amounts paid or incurred as current or deferred compensation for an employee's services in connection with direct lobbying, and the allocable portion of administrative, overhead, and other general expenditures attributable to direct lobbying.

(2) *Direct lobbying communication defined.* A communication is an attempt to influence legislation through direct lobbying if the communication—

(i) Pertains to legislation being considered by a legislative body, or seeks or opposes legislation,

(ii) Reflects a view with respect to the desirability of the legislation (for this purpose, a communication that pertains to legislation but expresses no explicit view on the legislation shall be deemed to reflect a view on legislation if the communication is selectively disseminated to persons reasonably expected to share a common view of the legislation), and

(iii) Is either—

(A) With a member or employee of a legislative body, or

(B) With a government official or employee (other than a member or employee of a legislative body) who may participate in the formulation of legislation, but only if the principal purpose of the communication is to influence legislation.

(3) *Examples.* The provisions of this paragraph (b) are illustrated by the following examples:

Example (1). *P* is an organization for which the expenditure test election under section 501(h) is in effect. *P*'s employee, *A*, is assigned to approach members of Congress to gain their support for a pending bill. *A* spends several weeks researching the issue and contacting *P*'s directors to clarify *P*'s position on the bill. *P* then prints a position letter that is distributed to members of Congress. Additionally, *A* personally contacts several members of Congress or their staffs to seek support for *P*'s position on the bill. Amounts paid or incurred for, or in connection with, *A*'s research. *A*'s discussions with *P*'s directors, the position letter, and *A*'s Congressional contacts are expenditures for direct lobbying.

Example (2). Assume the same facts as in example (1), except that after *A* completes the research on the issue, it is decided by *P*'s directors that *P* will neither support nor oppose the bill. Under these circumstances, *A* has not engaged in any direct lobbying. Accordingly, *P*'s expenditures incurred for, or in connection with, *A*'s research are not expenditures for direct lobbying.

(c) *Grass roots expenditures*—(1) *Defined.* A grass roots expenditure is any amount paid or incurred for, or in connection with, grass roots lobbying, or any amount treated as a grass roots expenditure under paragraphs (d) or (e) of this section or under § 56.4911–5 or any amount included as a grass roots expenditure under § 56.4911–10(d)(3). Grass roots expenditures include amounts paid or incurred as current or deferred compensation for an employee's services in connection with grass roots lobbying, and the allocable

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portion of administrative, overhead, and other general expenditures attributable to grass roots lobbying. "Grass roots lobbying" means an attempt to influence the general public, or any segment thereof, with respect to any legislation. A communication shall be considered an attempt to influence the general public, or a segment thereof, with respect to legislation if the communication—

(i) Pertains to legislation being considered by a legislative body, or seeks or opposes legislation,

(ii) Reflects a view with respect to the desirability of the legislation (for this purpose, a communication that pertains to legislation but expresses no explicit view on the legislation shall be deemed to reflect a view on legislation if the communication is selectively disseminated to persons reasonably expected to share a common view of the legislation), and

(iii) Is communicated in a form and distributed in a manner so as to reach individuals as members of the general public, that is, as voters or constituents, as opposed to a communication designed for academic, scientific, or similar purposes. A communication may meet this test even if it reaches the public only indirectly, as in a news release submitted to the media.

If any part of an advertisement constitutes grass roots lobbying, the entire amount expended for, or in connection with, the advertisement constitutes a grass roots expenditure.

(2) *Examples.* The provisions of this paragraph (c) are illustrated by the following examples:

Example (1). L, an organization for which the expenditure test under section 501(h) is in effect, places in local newspapers in State *W* an advertisement that asserts that lack of new capital is hurting the state's economy. The advertisement recommends that residents either invest more in local businesses or increase their savings so that funds will be available to others interested in making investments. Although the advertisement expresses a view with respect to a general problem that might receive legislative attention and is distributed in a manner so as to reach and influence many individuals, it does not constitute an attempt to influence the public with respect to legislation because it pertains to private conduct rather than legislation.

Example (2). Assume the same facts as in example (1), except that the advertisement, although not expressly calling for legislative action, also asserts that particular kinds of state tax incentives (which could not be implemented without legislation) would substantially increase capital formation. Thus, the advertisement is seeking action by the legislature and, at least in part, is addressed to individuals as voters or constituents rather than as potential investors. The advertisement reflects a view with respect to the desirability of the legislation. The advertisement constitutes an attempt to influence the public with respect to legislation, and the entire amount expended for, or in connection with, the advertisement is a grass roots expenditure.

Example (3). There is pending in the legislature of State *X* a proposal to amend certain laws concerning voting in state elections. As a public service, *M,* an organization in State *X* for which the expenditure test election is in effect places in local newspapers of general circulation an advertisement that explains both the current voting laws and the proposed amendments. The advertisement takes no position on the merits of the proposal. Under these circumstances, the advertisement does not reflect a view with respect to the desirability of the proposal and does not constitute an attempt to influence the general public with respect to the proposal.

Example (4). The legislature of State *Y* is considering a proposal to prohibit hunting on land owned by the State. *N,* an organization for which the expenditure test election is in effect, prepares a pamphlet that analyzes the proposal in detail but expresses no view on its merits. *N* arranges for distribution of the pamphlet to groups in State *Y* (with which it is not affiliated) that are opposed to hunting. The pamphlet pertains to legislation, and is deemed to reflect a view with respect to the desirability of the legislation by reason of its selective distribution to an audience reasonably expected to support the prohibition on hunting. The information is communicated in a form and distributed in a manner so as to reach individuals as voters or constituents. Expenditures for, or in connection with, the preparation and distribution of the pamphlet are grass roots expenditures.

Example (5). The legislature in State *Z* is considering a proposal to require pharmaceutical firms to test the safety of their products through certain laboratory procedures. *P* an organization in State *Z* for which the expenditure test is in effect, prepares a detailed report on the usefulness of the tests that would be required under the proposal. The report concludes that the tests specified in the proposal are poorly designed. *P* distributes copies of the report to university professors in the field of health science without suggesting that the recipients make any attempt to influence the public with respect to the proposal. Although the report pertains to legislation and implies that the legislative proposal under consideration should not be enacted, the limited distribution of the report indicates that copies were furnished to the recipients as scholars in the field rather than as members of the general public, that is, as voters or constituents. The expenditures for the report, therefore, are not grass roots expenditures.

Example (6). Assume the same facts as in example (5), except that *P* also prepares a leaflet summarizing the report and distributes both the report and the leaflet only to academics in the field of health science who are known to oppose the legislation. The academics publicize their position by using the leaflets provided by *P. S,* an organization described in section 501(c)(4), of which the academics are members, also publicizes its opposition to the legislation using the leaflets provided by *P.* All amounts expended by *P* in connection with the report and the leaflets are grass roots expenditures since they were not communications designed for academic, scientific, or similar purposes.

Example (7). Q, an organization for which the expenditure test is in effect, pays for the radio broadcast of an advertisement that refers to a current controversy involving legislation and urges citizens to "become involved." The advertisement does not discuss the merits of any legislative proposal but it does offer a free booklet which analyzes and takes positions on various legislative proposals relating to the controversy. All expenditures for, or in connection with, the advertisement and the booklet are grass roots expenditures because together they constitute an attempt by *Q* to influence the public with respect to legislation.

Example (8). R, an organization for which the expenditure test is in effect, makes the services of *B,* one of its paid executives, available to *S,* an organization described in section 501(c)(4) of the Code. *B* works for several weeks to assist *S* in developing materials designed to influence public opinion on legislation. In performing this work, *B* uses office space and clerical assistance provided by *R. R* pays full salary and benefits to *B* during this period and receives no reimbursement from *S* for these payments or for the other facilities and assistance provided. All expenditures of *R* including allocable office expenses, that are attributable to this assignment are grass roots expenditures because *B* was engaged in an attempt to influence the public on legislation.

(d) *Mixed purpose expenditures*—(1) *In general.* Except as provided in paragraphs (c)(1), (d)(2), and (d)(3) of this section, in the case of a mixed purpose expenditure, a reasonable allocation, based on all the facts and circumstances, must be made between the portion of the expenditure incurred for lobbying purposes and the portion incurred for charitable or fundraising purposes. For example, if a pamphlet has three articles of equal length, one of which constitutes an attempt to influence the general public with respect to legislation, ano two of which relate to charitable, nonlobbying purposes, the cost of printing and mailing will be considered allocated reasonably if one-third of this cost is treated as a grass roots expenditure. See § 56.4911–5 for rules with respect to certain communications with members.

(2) *Grass roots expenditures and fundraising.* If an expenditure (to which § 56.4911–5 does not apply) is made for both grass roots lobbying purposes and fundraising purposes, the entire expenditure will be treated as a grass roots lobbying expenditure. For

purposes of the preceding sentence, an expenditure for fundraising literature is not made for grass roots purposes if the fundraising literature merely mentions that the organization engages in attempts to influence legislation only to the extent consistent with section 501(c)(3) status.

(3) *Mixed lobbying.* If an expenditure (to which § 56.4911-5 does not apply) is made for both direct lobbying and grass roots lobbying purposes, the expenditure will be treated as a grass roots expenditure except to the extent that the organization demonstrates that the expenditure was incurred solely for direct lobbying purposes.

(e) *Certain transfers treated as lobbying expenditures*— (1) *Transfer earmarked for grass roots purposes.* A transfer is a grass roots expenditure to the extent that it is earmarked (as defined in § 56.4911-4(f)(4)) for grass roots lobbying purposes and is not described in § 56.4911-4(e).

(2) *Transfer earmarked for direct and grass roots lobbying.* A transfer that is earmarked for direct lobbying purposes or for direct lobbying and grass roots lobbying purposes is treated as a grass roots expenditure in full except to the extent the transferor demonstrates that the amounts transferred were expended for direct lobbying purposes. This paragraph (e)(2) shall not apply to any expenditure described in § 56.4911-4(e).

(3) *Certain transfers to organizations that lobby.* A transfer that is neither a controlled grant (as defined in § 56.4911-4(f)(3)) nor an expenditure described is § 56.4911-4(e) and that is made to an organization not described in section 501(c)(3) that engages in attempts to influence legislation is treated as a grass roots expenditure to the extent of the lesser of the amount of the transfer or the transferee's expenditures for grass roots lobbying. If the amount of the transfer exceeds the transferee's expenditures for grass roots lobbying, the excess will be treated as an expenditure for direct lobbying to the extent of the transferee's expenditures for direct lobbying. In applying the preceding two sentences, the expenditures of the transferee will be determined as if the regulations under section 4911 applied to the transferee.

(f) *Definitions.* For purposes of section 4911 and the regulations thereunder—

(1) *Legislation.* The term "legislation" includes action by the Congress, any state legislature, any local council, or similar legislative body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure. The term "legislation" includes a proposed treaty required to be submitted by the President to the Senate for its advice and consent from the time the President's representative begins to negotiate its position with the prospective parties to the proposed treaty.

(2) *Action.* The term "action" is limited to the introduction, amendment, enactment, defeat or repeal of Acts, bills, resolutions, or similar items.

(3) *Legislative body.* The term "legislative body" does not include executive, judicial, or administrative bodies.

(4) *Administrative bodies.* The term "administrative bodies" includes school boards, housing authorities, sewer and water districts, zoning boards, and other similar Federal, State, or local special purpose bodies, whether elective or appointive.

§ 56.4911-3 Activities not attempts to influence legislation.

(a) *In general.* This section describes activities that are not attempts to influence legislation for purposes of section 4911. Accordingly, expenditures for, or in connection with, activities described in this section are not lobbying expenditures under § 56.4911-2.

(b) *Nonpartisan analysis, study or research.* Under section 4911(d)(2)(A), "influencing legislation" does not include making available the results of nonpartisan analysis, study, or research. For guidance in determining whether an amount is paid or incurred for, or in connection with, making available the results of nonpartisan analysis, study, or research see § 53.4945-2(d)(1).

(c) *Technical advice or assistance.* Under section 4911(d)(2)(B), "influencing legislation" does not include providing technical advice or assistance to a governmental body, a governmental committee, or a subdivision of either in response to a written request by the body, committee, or subdivision. For guidance in determining whether an amount is paid or incurred for, or in connection with, providing technical advice or assistance, see § 53.4945-2(d)(2).

(d) *Self-defense*—(1) *In general.* Under section 4911(d)(2)(C), "influencing legislation" does not include an appearance before or communication with any legislative body with respect to a possible action by the body that might affect the existence of the organization, its powers and duties, its tax-exempt status, or the deductibility of contributions to the organization. For guidance in determining whether an amount is paid or incurred for, or in connection with, these communications or appearances, see § 53.4945-2(d)(3). See also, paragraphs (d)(2), (d)(3), and (d)(4) of this section concerning appearances on behalf of other organizations.

(2) *Affiliated group of organizations.* For an organization that is a member of an affiliated group of organizations (within the meaning of § 56.4911-7(e)), "influencing legislation" does not include appearances before, or communications with, a legislative body with respect to a possible action by the body that might affect the existence of any other member of the group, its powers and duties, its tax-exempt status, or the deductibility of contributions to it.

(3) *Activities on behalf of member organizations.* For an organization that has a membership consisting solely of other organizations that are described in section 501(c)(3), "influencing legislation" does not include appearances before, or communications with, any legislative body with respect to a possible action by the body which might affect the existence of one or more of the member organizations, their powers, duties, or tax-exempt status, or the deductibility of contributions to one or more of the member organizations.

(4) *Limited affiliated group of organizations.* For an organization that is a member of a limited affiliated group of organizations under § 56.4911-10, "influencing legislation" does not include appearances before, or communications with, the Congress of the United States with respect to a possible action by the Congress that might affect the existence of any member of the limited affiliated group, its powers and duties, tax-exempt status, or the deductibility of contributions to it.

§ 56.4911-4 Exempt purpose expenditures.

(a) *Application.* This section provides rules under section 4911(e) for determining an organization's "exempt purpose expenditures" for a taxable year for purposes of section 4911(c)(2) and § 56.4911-1(c)(2), which define an organization's lobbying nontaxable amount by reference to its exempt purpose expenditures. In determining an organization's exempt purpose expenditures, no expenditure shall be counted twice by an organization.

(b) *Included expenditures.* Amounts paid or incurred by an organization that are exempt purpose expenditures include—

(1) Amounts paid or incurred to accomplish a purpose enumerated in section 170(c)(2)(B), including (but not limited to) the amount of any transfer made by the organization (other than a

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transfer described in paragraph (e) of this section) to another organization to accomplish the transferor's exempt purposes, and including amounts expended by an organization out of transfers (other than a transfer described in paragraph (e) of this section) for which the organization is the transferee,

(2) Amounts paid or incurred as current or deferred compensation for an employee's services in connection with a purpose enumerated in section 170(c)(2)(B),

(3) The allocable portion of administrative overhead, and other general expenditures attributable to the accomplishment of a purpose enumerated in section 170(c)(2)(B),

(4) Lobbying expenditures (as defined in § 56.4911–2(a)) whether or not for a purpose enumerated in section 170(c)(2)(B),

(5) Amounts paid or incurred for, or in connection with, activities described in § 56.4911–3,

(6) Amounts paid or incurred for, or in connection with, activities described in § 56.4911–5 that are not lobbying expenditures, and

(7) A reasonable allowance for exhaustion, wear and tear, obsolescence, or amortization, of assets to the extent used for one or more of the purposes described in paragraphs (b) (1) through (6) of this section, computed on a straight-line basis (for this purpose, an allowance for depreciation will be treated as reasonable if based on a useful life that would satisfy section 312(k)(3)(A) as in effect on January 1, 1985).

(c) *Excluded expenditures.* Notwithstanding paragraph (b) of this section, exempt purpose expenditures do not include—

(1) Amounts paid or incurred that are neither expenditures to accomplish a purpose enumerated in section 170(c)(2)(B) nor lobbying expenditures (as defined in § 56.4911–2(a)),

(2) The amount of any transfer described in paragraph (e) of this section,

(3) Amounts paid to or incurred for a separate fund raising unit (as defined in paragraph (f)(2) of this section) of an organization or of an affiliated organization (see § 56.4911–7(a)),

(4) Amounts paid to or incurred for any person not an employee, or any organization not an affiliated organization, if paid or incurred primarily for fund raising,

(5) Amounts paid or incurred that are properly chargeable to a capital account, determined in accordance with the principles that apply under sections 312(k) (1) and (3) (as in effect on January 1, 1985), to amounts paid or incurred in a trade or business,

(6) Amounts paid or incurred for a tax that is not imposed in connection with the organization's efforts to accomplish a purpose described in section 170(c)(2)(B), such as the taxes imposed under sections 511(a)(1) and 4911(a), and

(7) Amounts paid or incurred in connection with the production of income, whether or not described in section 512(a)(1).

(d) *Certain transfers treated as exempt purpose expenditures*—(1) An organization's transfer will be treated as an exempt purpose expenditure under paragraph (b)(1) of this section if it is—

(i) Described in either paragraph (d)(2) or (d)(3) of this section, and

(ii) Not described in paragraph (e) of this section.

(2) A transfer is described in this paragraph (d)(2) if it is made to an organization described in section 501(c)(3) in furtherance of the transferor's exempt purposes and is not earmarked for any purpose other than a purpose described in section 170(c)(2)(B). Thus, a payment of dues by a local or state organization to, respectively, a state or national organization that is described in section 501(c)(3) is considered an exempt purpose expenditure of the transferor to the extent it is not otherwise earmarked.

(3) A transfer is described in this paragraph (d)(3) if it is a controlled grant (as defined in paragraph (f)(3) of this section), but only to the extent of the amounts that are paid or incurred by the transferee that would be exempt purpose expenditures if paid or incurred by the transferor.

(e) *Transfers not exempt purpose expenditures*—(1) An organization's transfer is described in this paragraph (e) if it is described in one of paragraphs (e)(2) through (e)(4).

(2) A transfer is described in this paragraph (e)(2) if it is made to a member of any affiliated group (as defined in § 56.4911–7(e)) of which the transferor is a member.

(3) A transfer is described in this paragraph (e)(3) if the Commissioner determines that the transfer artificially inflates the amount of the transferor's or transferee's exempt purpose expenditures. In general, the Commissioner will make that determination if a substantial purpose of a transfer is to inflate those exempt purpose expenditures. A transfer described in this paragraph will not be considered an exempt purpose expenditure of the transferor, but will be an exempt purpose expenditure of the transferee to the extent that the transferee expends the transfer in the active conduct of its charitable activities or attempts to influence legislation. Standards similar to those found in § 53.4942(b)–1(b) may be applied in determining whether the transferee has expended amounts in the "active conduct" of its charitable activities or attempts to influence legislation.

(4) A transfer is described in this paragraph (e)(4) if it is not a controlled grant and is made to an organization not described in section 501(c)(3) that does not attempt to influence legislation.

(f) *Definitions*—(1) For purposes of paragraph (c) of this section, "fund raising" includes—

(i) Soliciting dues or contributions from members of the organization, from persons whose dues are in arrears, or from the general public,

(ii) Soliciting grants from businesses or other organizations, including organizations described in section 501(c)(3), or

(iii) Soliciting grants from a governmental unit referred to in section 170(c)(1), or any agency or instrumentality thereof.

(2) For purposes of paragraph (c) of this section, a separate fund raising unit of any organization must consist of either two or more individuals a substantial part of whose time is spent on fund raising for the organization, or any separate accounting unit of the organization that is devoted to fund raising.

(3) For purposes of this section, a "controlled grant" is a grant made by an eligible organization described in § 1.501(h)–2(b) to an organization not described in section 501(c)(3) that meets the following requirements:

(i) The donor limits the grant to a specific project of the recipient that is in furtherance of the donor's exempt purposes; and

(ii) The donor maintains records to establish that the grant is used in furtherance of the donor's exempt purposes.

(4) A transfer, including a grant or payment of dues, is "earmarked" for a specific purpose—

(i) To the extent that the transferor directs the transferee to add the amount transferred to a fund established to accomplish the purpose, or

(ii) To the extent of the amount transferred or, if less, the amount agreed upon to be expended to accomplish the purpose, if there exists an agreement, oral or written, whereby the transferor may cause the transferee to expend amounts to accomplish the purpose or whereby the transferee agrees to expend an amount to accomplish the purpose.

(g) *Example.* The provisions of this section are illustrated by the following example:

Example. Organization *X* is an exempt organization described in section 501(c)(3) that is organized for the purpose of rehabilitating alcoholics. *X* elected to be subject to the provisions of section 501(h) in 1981. For 1981, *X* had the following expenditures that are included in its exempt purpose expenditures to the extent indicated.

Description	Total	Includible
Cost of real estate purchased for use as half-way house for alcoholics, attributable to the following:		
Land	$30,000	0
Building	200,000	0
Depreciation 40-year useful life	0	$5,000
Expenses of operating its halfway house	170,000	170,000
Administrative expenses of the organization allocated to the operation of its half-way house	95,000	95,000
Depreciation and allowances for equipment	10,000	10,000
Expenses related to attempts to influence legislation (lobbying expenditures)	40,000	40,000
Amounts paid to *Z* by the organization for fundraising	35,000	0
Total		320,000

Note.—For 1981, *X*'s exempt purpose expenditures total $320,000. The $35,000 paid by *X* to *Z* for fund raising is not included in the exempt purpose expenditures total. All lobbying expenses are included in full. Only depreciation computed on a straight-line basis is included in exempt purpose expenditures.

§ 56.4911-5 Communications with members.

(a) *In general.* For purposes of section 4911 and § 56.4911-2, expenditures in connection with certain communications between an organization and its members are treated as expenditures for direct lobbying, as grass roots expenditures, or as other than lobbying expenditures in accordance with this section.

(b) *Communication directed only to members; excepted communication.* Expenditures for, or in connection with, a communication that pertains to legislation or proposed legislation are not lobbying expenditures if the communication satisfies the following requirements:

(1) The communication is directed only to members of the organization;

(2) The legislation or proposed legislation to which the communication relates is of direct interest to the organization and its members;

(3) The communication does not directly encourage the member to engage in direct lobbying (whether individually or through the organization); and

(4) The communication does not directly encourage the member to engage in grass roots lobbying, whether individually or through the organization.

(c) *Communication directed only to members: expenditures for direct lobbying.* Expenditures for, or in connection with, a communication that reflects a view with respect to the desirability of legislation and that satisfies the requirements of subparagraphs (1), (2), and (4) of paragraph (b) of this section, but does not satisfy the requirements of subparagraph (3) of such paragraph (b), are treated as expenditures for direct lobbying.

(d) *Communication directed only to members; grass roots expenditures.* Expenditures for, or in connection with, a communication that reflects a view with respect to the desirability of legislation and that satisfies the requirements of subparagraphs (1) and (2) of paragraph (b) of this section, but does not satisfy the requirements of subparagraph (4) of such paragraph (b), are treated as grass roots expenditures (whether or not the communication satisfies the requirements of subparagraph (3) of such paragraph (b)).

(e) *Written communications directed to members and nonmembers*—(1) *In general.* Expenditures for, or in connection with, any written communication that is designed primarily for members of an organization (but not directed only to members) and that reflects a view with respect to the desirability of legislation or proposed legislation of direct interest to the organization and its members, are treated as expenditures for direct lobbying or grass roots expenditures in accordance with paragraph (e)(2) or (e)(3) of this section.

(2) *Direct lobbying encouraged*—(i) *Lobbying expenditure amount.* If a written communication described in paragraph (e)(1) of this section directly encourages readers to engage individually or through the organization in direct lobbying but does not encourage them to engage in grass roots lobbying, the cost of the communication is allocated between expenditures for direct lobbying and grass roots expenditures in accordance with paragraphs (e)(2) (ii) and (iii) of this section. The portion of the cost to be allocated includes all costs of preparing all the material with respect to which readers are urged to engage in direct lobbying plus the mechanical and distribution costs attributable to the lineage devoted to this material (see § 1.512(a)-1(f)(6)).

(ii) *Grass roots amount.* The amount allocable as a grass roots expenditure for a communication described in paragraph (e)(1) of this section is the amount calculated in paragraph (e)(2)(i) of this section multiplied by the sum of the nonmember subscribers percentage and the all other distribution percentage, both as defined in paragraph (f)(7) of this section. Solely for purposes of the allocation described in this paragraph (e)(2)(ii), the nonmember subscribers percentage is treated as zero unless it is greater than 15% of total distribution.

(iii) *Direct lobbying amount.* The amount allocable as an expenditure for direct lobbying for a communication described in paragraph (e)(1) of this section is the excess of the amount described in paragraph (e)(2)(i) of this section over the amount described in paragraph (e)(2)(ii) of this section.

(3) *Grass roots expenditure if grass roots lobbying encouraged.* The portion of the cost of a written communication described in paragraph (e)(1) of this section that constitutes a grass roots expenditure is—

(i) If the communication directly encourages readers to engage individually or collectively (whether through the organization or otherwise) in grass roots lobbying (whether or not it also encourages readers to engage in direct lobbying), the grass roots expenditure includes all the costs of preparing all the material with respect to which readers are urged to engage in grass roots lobbying plus the mechanical and distribution costs attributable to the lineage devoted to this material (see § 1.512(a)-1(f)(6)); or

(ii) If the communication does not directly encourage readers to engage in direct lobbying (determined by applying the rule in paragraph (f)(6) of this section) and does not encourage readers to engage in grass roots lobbying, whether individually, collectively, through the organization, or otherwise, the amount described in paragraph (e)(2)(ii) of this section.

(f) *Definition and special rules.* For purposes of the regulations under section 4911–

(1) *Member; general rule.* A person is a member of an organization if the person—

(i) Pays dues or makes a contribution of more than a nominal amount.

(ii) Makes a contribution of more than a nominal amount of time, or

(iii) Is one of a limited number of "honorary" or "life" members who have more than a nominal connection with the organization and who have been chosen for a valid reason (such as length of service to the organization or involvement in activities forming the basis of the organization's exemption) unrelated to the organization's dissemination of information to its members.

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(2) *Member; special rule.* A person not a member of an organization within the meaning of paragraph (f)(1) of this section may be treated as a member if the organization demonstrates to the satisfaction of the Internal Revenue Service that there is a good reason for its membership requirements not meeting the requirements of such paragraph (f)(1), and that its membership requirements do not operate to permit an abuse of the rules described in this section.

(3) *Member; affiliated group of organizations.* For purposes of this section, a person who is a member of an organization that is a member of an affiliated group of organizations (within the meaning of § 56.4911–7(e)) is treated as a member of each organization in the affiliated group.

(4) *Member; limited affiliated group of organizations.* For purposes of this section, a person who is a member of an organization that is a member of a limited affiliated group of organizations (within the meaning of § 56.4911–10(b)) is treated as a member of each organization in the limited affiliated group, but only to the extent that the communication relates to a national legislative issue (within the meaning of § 56.4911–10(g)).

(5) *Subscriber.* A person is a subscriber to a written communication if—

(i) The person is a member of the publishing organization and the membership dues expressly include the right to receive the written communication, or

(ii) The person has affirmatively expressed a desire to receive the written communication and has paid more than a nominal amount for the communication.

(6) *"Self-defense" exception for communications with members.* For purposes of paragraphs (b)(3), (e)(2)(i), and (e)(3)(ii) of this section, a communication that directly encourages a member to engage in direct lobbying activities that are described in section 4911(d)(2)(C) and that would not be attempts to influence legislation if engaged in directly by the organization is treated as a communication that does not directly encourage a member to engage in direct lobbying.

(7) *Percentages of total distribution.* With respect to a communication described in paragraph (e)(1) of this section—

(i) "Member percentage" means the percentage of total distribution that represents distribution of a single copy to any member;

(ii) "Nonmember subscribers percentage" means the percentage of total distribution that represents distribution to nonmember subscribers (including libraries); and

(iii) "All other distribution percentage" means 100% reduced by the sum of the member percentage and the nonmember subscribers percentage.

§ 56.4911–6 Records of lobbying and grass roots expenditures.

(a) *Records of lobbying expenditures.* An organization to which the expenditure test under section 501(h) applies for a taxable year must keep a record of its lobbying expenditures for the taxable year. Lobbying expenditures of which an organization must keep a record include the following:

(1) Expenditures for grass roots lobbying, as described in paragraph (b) of this section;

(2) Amounts directly paid or incurred for direct lobbying, including payments to another organization earmarked for direct lobbying, fees and expenses paid to individuals or organizations for direct lobbying, and printing, mailing, and other direct costs of reproducing and distributing materials used in direct lobbying;

(3) The portion of amounts paid or incurred as current or deferred compensation for an employee's services in connection with direct lobbying;

(4) Amounts paid for out-of-pocket expenditures incurred on behalf of the organization and in connection with direct lobbying, whether or not incurred by an employee;

(5) The allocable portion of administrative, overhead, and other general expenditures attributable to direct lobbying;

(6) Expenditures for publications or for communications with members to the extent the expenditures are treated as expenditures for direct lobbying under § 56.4911–5; and

(7) Expenditures for direct lobbying of a controlled organization (within the meaning of § 56.4911–10(c)) to the extent included by a controlling organization (within the meaning of § 56.4911–10(c)) in its lobbying expenditures.

(b) *Records of grass roots expenditures.* An organization to which the expenditure test under section 501(h) applies for a taxable year must keep a record of its grass roots expenditures for the taxable year. Grass roots expenditures of which an organization must keep a record include the following:

(1) Amounts directly paid or incurred for grass roots lobbying, including payments to other organizations earmarked for grass roots lobbying, fees and expenses paid to individuals or organizations for grass roots lobbying, and the printing, mailing, and other direct costs of reproducing and distributing materials used in grass roots lobbying;

(2) The portion of amounts paid or incurred as current or deferred compensation for an employee's services in connection with grass roots lobbying;

(3) Amounts paid for out-of-pocket expenditures incurred on behalf of the organization and in connection with grass roots lobbying, whether or not incurred by an employee;

(4) The allocable portion of administrative, overhead, and other general expenditures attributable to grass roots lobbying;

(5) Expenditures for publications or communications that are treated as expenditures for grass roots lobbying under § 56.4911–5; and

(6) Expenditures for grass roots lobbying of a controlled organization (within the meaning of § 56.4911–10(c)) to the extent included by a controlling organization (within the meaning of § 56.4911–10(c)) in its grass roots expenditures.

§ 56.4911–7 Affiliated group of organizations.

(a) *Affiliation between two organizations*—(1) *In general.* For purposes of the regulations under section 4911, two organizations are affiliated, subject to the limitation described in paragraph (a)(2) of this section, if one organization is able to control action on legislative issues by the other by reason of interlocking governing boards (see paragraph (b) of this section) or by reason of provisions of the governing instruments of the controlled organization (see paragraph (c) of this section). The ability of the controlling organization to control action on legislative issues by the controlled organization is sufficient to establish that the organizations are affiliated; it is not necessary that the control be exercised.

(2) *Organizations not described in section 501(c)(3).* Two organizations, neither of which is described in section 501(c)(3), are affiliated only if there exists at least one organization described in section 501(c)(3) that is affiliated with both organizations.

(3) *Action on legislative issues.* For purposes of this section, the term "action on legislative issues" includes taking a position in the organization's name on legislation, authorizing any person to take a position in the organization's name on legislation, or authorizing any lobbying expenditures.

The phrase does not include actions taken merely to correct unauthorized actions taken in the organization's name.

(b) *Interlocking governing boards*—(1) *In general.* Two organizations have interlocking governing boards if one organization (the controlling organization) has a sufficient number of representatives (within the meaning of paragraph (b)(5) of this section) on the governing board of the second organization (the controlled organization) so that by aggregating their votes, the representatives of the controlling organization can cause or prevent action on legislative issues by the controlled organization. If two organizations have interlocking governing boards, the organizations are affiliated without regard to how or whether the representatives of the controlling organization vote on any particular matter.

(2) *Majority or quorum.* Except as provided in paragraph (b) (3) or (4) of this section, the number of representatives of an organization (the controlling organization) who are members of the governing board of a second organization (the controlled organization) will be presumed sufficient to cause or prevent action on legislative issues by the controlled organization if that number either—

(i) Constitutes a majority of incumbents on the governing board, or

(ii) Constitutes a quorum, or is sufficient to prevent a quorum, for acting on legislative issues.

(3) *Votes required under governing instrument or local law.* Except as provided in paragraph (b)(4) of this section, if under the governing documents of an organization (the controlled organization), it can be determined that a lesser number of votes than the number described in paragraph (b)(2) of this section is necessary or sufficient to cause or to prevent action on legislative issues, the number of representatives of the controlling organization who are members of the governing board of the controlled organization will be considered sufficient to cause or prevent action on legislative issues if it equals or exceeds that number.

(4) *Representatives constituting less than 15% of governing board.* Notwithstanding paragraph (b) (2) or (3) of this section, if the number of representatives of one organization is less than 15 percent of the incumbents on the governing board of a second organization, the two organizations are not affiliated by reason of interlocking governing boards.

(5) *Representatives.* (i) This paragraph (b)(5) describes members of the governing board of one organization (the controlled organization) who are considered representatives of a second organization (the controlling organization). Under this paragraph (b)(5), a member of the governing board of a controlled organization may be a representative of more than one controlling organization. A person with no authority to vote on any issue being considered by the governing board is not a representative of any organization.

(ii) A board member of one organization (the controlled organization) is a representative of a second organization (the controlling organization) if the controlling organization has specifically designated that person to be a board member of the controlled organization. For purposes of this paragraph (b)(5)(ii) and paragraph (b)(5)(iii) of this section, a board member of the controlled organization is specifically designated by the controlling organization if the board member is selected by virtue of the right of the controlling organization, under the governing instruments of the controlled organization, either to designate a person to be a member of the controlled organization's governing board, or to select a person for a position that entitles the holder of that position to be a member of the controlled organization's governing board.

(iii) A board member of one organization who is specifically designated by a second organization, a majority of the governing board of which is made up of representatives of a third organization, is a representative of the third organization as well as being a representative of the second organization pursuant to paragraph (b)(5)(ii) of this section.

(iv) A board member of one organization who is also a member of the governing board of a second organization is a representative of the second organization.

(v) A board member of one organization who is an officer or paid executive staff member of a second organization is a representative of the second organization. Although titles are significant in determining whether a person is a member of the executive staff of an organization, any employee of an organization who possesses authority commonly exercised by an executive is considered an executive staff member for purposes of this paragraph (b)(5)(v).

(c) *Governing instrument.* One organization (the "controlling" organization) is affiliated with a second organization (the "controlled" organization) by reason of the governing instruments of the controlled organization if the governing instruments of the controlled organization expressly or by implication limit the independent action of the controlled organization on a legislative issue by requiring that it take into account the position of the controlling organization on that issue. Any limitation on the independent action of the controlled organization on a legislative issue is sufficient to establish the existence of the relationship of affiliation. It is immaterial how or whether the limiting power is exercised.

(d) *Three or more organizations affiliated*—(1) *Two controlled organizations affiliated.* If a controlling organization described in this section is affiliated with each of two or more controlled organizations described in this section, then the controlled organizations are affiliated with each other.

(2) *Chain rule.* If one organization is a controlling organization described in this section with respect to a second organization and that second organization is a controlling organization with respect to a third organization, then the first organization is affiliated with the third.

(e) *Affiliated group of organizations*—(1) *Defined.* For purposes of the regulations under section 4911, an affiliated group of organizations is a group of organizations—

(i) Each of which is affiliated with every other member for at least thirty days of the taxable year of the affiliated group (determined without regard to the election provided for in paragraph (e)(5) of this section),

(ii) Each of which is an eligible organization (within the meaning of § 1.501(h)–2(b)(1)), and

(iii) At least one of which is an electing member organization (within the meaning of paragraph (e)(4) of this section).

Each organization in a group of organizations that satisfies the requirements of the preceding sentence is a member of the affiliated group of organizations for the taxable year of the affiliated group.

(2) *Multiple membership.* For any taxable year of an organization, it may be a member of two or more affiliated groups of organizations.

(3) *Taxable year of affiliated group.* If all members of an affiliated group have the same taxable year, that taxable year is the taxable year of the affiliated group. If the members of an affiliated group do not all have the same taxable year, the taxable year of the affiliated

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group is the calendar year, unless the election under paragraph (e)(5) of this section is made.

(4) *Electing member organization.* For purposes of the regulations under section 4911, an "electing member organization" is an organization to which the expenditure test election under section 501(h) applies on at least one day of the taxable year of the affiliated group of which it is a member. For purposes of the preceding sentence (and notwithstanding § 1.501(h)–2(a)), the expenditure test is not considered to apply to the organization on any day before the date on which it files the Form 5768 making the expenditure test election.

(5) *Election of member's year as group's taxable year.* The taxable year of an affiliated group may be determined according to the provisions of this paragraph (e)(5) if all of the members of the affiliated group so elect. Under this paragraph (e)(5), each member organization shall apply the provisions of section 501(h) and 4911, and the regulations thereunder (unless the regulations provide otherwise), by treating its own taxable year as the taxable year of the affiliated group. The election may be made by an electing member organization by attaching to its annual return a statement from itself and every other member of the affiliated group that contains: the organization's name, address, and employer identification number; and its signed consent to the election provided for in this paragraph (e)(5). The election must be made no later than the due date of the first annual return of any electing member for its taxable year for which the member is liable for tax under section 4911(a), determined under § 56.4911–8(d). The election may not be made or revoked after the due date of the return referred to in the preceding sentence except upon such terms and conditions as the Commissioner may prescribe.

(f) *Examples.* The provisions of this section are illustrated by the following examples.

Example (1). M, N, and *O* are eligible organizations within the meaning of § 1.501(h)–2(b)(1). Each has a governing board made up of nine members. Five members on the board of *N* are also members of the board of *M. N* designates five individuals from among its board, officers, and executive staff members to serve on the board of *O. M* is affiliated with *N. N* is affiliated with *O,* and *M* is affiliated with *O.*

Example (2). X, an eligible organization, has a board consisting of 10 members. Five unaffiliated tax-exempt organizations each designate two individuals to serve on the governing board of *X.* A simple majority of the board of *X* is a quorum and may establish *X*'s position on legislative issues. *X* is not affiliated with any of the five autonomous organizations by reason of interlocking governing boards.

Example (3). P and *Q* are eligible organizations. The governing instruments of *Q* indicate that it will not take a position on legislation if *P* disapproves of the position. In addition, there is regular correspondence between *P* and *Q* with regard to positions on legislation. *P* is affilated with *Q* regardless of whether *P* has ever vetoed a position taken by *Q.*

Example (4). The governing board of organization *R* resolves to adopt the position taken on legislative issues by organization *S. R* and *S* are eligible organizations and do not have interlocking governing boards. The governing instruments of *R* do not mention organization *S* and do not indicate that *R* is to be bound by the decisions on legislation of any organization. *R* and *S* are not affiliated.

Example (5). Organization *Z* is bound, under the terms of its governing instruments, by the legislative positions of Organization *Y.* Organization *Y,* however, is bound, under the terms of its governing instruments, by the legislative positions of Organization *X.* Organization *X* is affiliated with *Y* and *Z*; *Y* is affiliated with *X* and *Z*; and *Z* is affiliated with *X* and *Y.*

Example (6). Organizations *T* and *U* have interlocking boards of directors. *T* is the controlling organization. Organization *V* is bound, under the terms of its governing instruments, by the legislative positions of *U. T* and *V* are affiliated because *T* may cause or prevent action on legislative issues by *U,* and *V* is bound by *U*'s action. If *U* were the controlling organization, *T* and *V* would be affiliated as two organizations controlled by the same organization.

Example (7). Organization *A* is an organization described in section 501(c)(4). It is affiliated, as the controlling organization, with organizations *K* and *L,* both of which are described in 501(c)(3) and are eligible to elect under 501(h). If *K* elects under section 501(h), *K* and *L* are an affiliated group of organizations.

Example (8). G, H, I, and *J* are eligible organizations. *G, H,* and *I* have elected the expenditure test under section 501(h). The governing board of *J* has nine members. Under the governing instruments of *J,* organizations *G, H,* and *I* each designate three members of the governing board of *J.* Also under the governing instruments of *J,* action on legislative issues requires the approval of any seven board members. Because the three representatives of *G* may prevent action on legislative issues, *J* is affiliated with *G.* Similarly, *J* is affiliated with each of *H* and *I.* However, under none of the rules of affiliation is *G* affiliated with *H,* or *H* with *I,* or *I* with *G.* Therefore *J* is a member of one affiliated group comprising *G* and *J,* of another group comprising *H* and *J,* and of a third group comprising *I* and *J.*

Example (9). Organizations *C, D,* and *E* have been affiliated for many years and have all elected the expenditure test. Each has a taxable year ending July 31. For every day of the year ending July 31, 1982, they were eligible organizations, electing member organizations, and affiliated with each other. On no day of that year were they affiliated with any other eligible organization having a different taxable year. Therefore, the year ending July 31, 1982, is the taxable year of the affiliated group comprising *C, D* and *E.*

§ 56.4911–8 Excess lobbying expenditures of affiliated group.

(a) *Application.* This section provides rules concerning the exempt purpose expenditures, lobbying expenditures, and grass roots expenditures of an affiliated group of organizations, and the application of the excise tax imposed by section 4911(a) on the excess lobbying expenditures of the group.

(b) *Affiliated group treated as one organization.* Under section 4911(f), an affiliated group of organizations is treated as a single organization for purposes of the tax imposed by section 4911(a). For any taxable year of the affiliated group, the group's lobbying expenditures, grass roots expenditures, and exempt purpose expenditures are equal to the sum of the lobbying expenditures, grass roots expenditures, and exempt purpose expenditures, respectively, paid or incurred by each member during the taxable year of the affiliated group. The lobbying and grass roots nontaxable amounts for the affiliated group for a taxable year are determined under section 4911(c) (2) and (4) and § 56.4911–1(c) and are based on the sum of the exempt purpose expenditures described in the preceding sentence. The lobbying and grass roots ceiling amounts for the affiliated group for a taxable year are calculated under § 1.501(h)–3(c) (3) and (6) based upon the nontaxable amounts determined pursuant to the preceding sentence.

(c) *Tax imposed on excess lobbying expenditures of affiliated group.* The excise tax under section 4911(a) is imposed for a taxable year of an affiliated group if the group has excess lobbying expenditures. For any taxable year of an affiliated group, the group's excess lobbying expenditures are the greater of—

(1) The amount by which the group's lobbying expenditures exceed the group's lobbying nontaxable amount, or

(2) The amount by which the group's grass roots expenditures exceed the group's grass roots nontaxable amount.

(d) *Liability for tax*—(1) *Electing organizations.* As provided in this paragraph (d), an electing member organization is liable for all or a portion of the excise tax imposed by section 4911(a) on the excess lobbying expenditures of an affiliated group of organizations. An organization that is liable under this paragraph (d) is not liable for any excise tax under section 4911 based on its own excess lobbying expenditures. A member of the affiliated group that is not an electing member organization is not liable for any portion of the excise tax that is imposed with respect to the affiliated group.

(2) *Tax based on excess lobbying expenditures.* If the excise tax imposed by section 4911(a) on the excess lobbying expenditures of an affiliated group of organizations is based upon the amount described in paragraph (c)(1) of this section, and at least one electing member has made lobbying expenditures, each electing member organization is liable for a portion of the tax equal to the amount of the tax multiplied by a fraction, the numerator of which is the electing member organization's lobbying expenditures paid or incurred during the taxable year of the affiliated group, and the denominator of which is the sum of the lobbying expenditures of all electing member organizations in the group paid or incurred during the taxable year of the affiliated group.

(3) *Tax based on excess grass roots expenditures.* If the excise tax imposed by section 4911(a) on the excess lobbying expenditures of an affiliated group of organizations is based upon the amount described in paragraph (c)(2) of this section, and at least one electing member has made grass roots expenditures, each electing member organization is liable for a portion of the tax equal to the amount of the tax multiplied by the fraction described in paragraph (d)(2) of this section, except that "grass roots expenditures" is substituted for "lobbying expenditures."

(4) *Tax based on exempt purpose expenditures.* If the excise tax imposed by section 4911(a) on the excess lobbying expenditures of an affiliated group of organizations is based upon the amount described in paragraph (c)(2) of this section, and if paragraphs (d)(2) and (d)(3) of this section do not apply because no electing organization has made lobbying or grass roots expenditures, respectively, each electing member organization is liable for a portion of the tax equal to the amount of tax multiplied by a fraction the numerator of which is the electing member organization's exempt purpose expenditures and the denominator of which is the exempt purpose expenditures of all the electing member organizations in the affiliated group.

(5) *Taxable year for which liable.* An electing member organization that is liable for all or a portion of the excise tax imposed by section 4911(a) on the excess lobbying expenditures of an affiliated group of organizations is liable for the tax as if the tax were imposed for its taxable year with which or within which ends the taxable year of the affiliated group.

(6) *Organization a member of more than one affiliated group.* If, under this paragraph (d), an organization is liable for its taxable year for two or more excise taxes imposed by section 4911(a) on the excess lobbying expenditures of two or more affiliated groups, then the organization is liable only for the greater of the two or more taxes.

(e) *Former member organization.* An electing member organization that ceases to be a member of an affiliated group of organizations, the taxable year of which is different from its own, must thereafter determine its liability under § 56.4911-1 for the excise tax imposed by section 4911(a) as if its taxable year were the taxable year of the affiliated group of which it was formerly a member. An organization to which this paragraph (e) applies that is liable for the excise tax imposed by section 4911(a) is liable for the tax as if the tax were imposed for its taxable year within which ends the taxable year of the affiliated group of which it was formerly a member. The Commissioner may, at the Commissioner's discretion, permit an organization to disregard the rules of this paragraph (e) and to determine any liability under section 4911(a) based upon its own taxable year.

§ 56.4911-8 Application of section 501(h) to affiliated groups of organizations.

(a) *Scope.* This section provides rules concerning the application of the limitations of section 501(h) to members of an affiliated group of organizations (as defined in § 56.4911-7(e)(1)).

(b) *Determination required.* For each taxable year of an affiliated group of organizations, the calculations described in § 1.501(h)-3(b)(1) (i) and (ii) must be made, based on the expenditures of the group. If, for a taxable year of an affiliated group, it is determined that the sum of the affiliated group's lobbying or grass roots expenditures for the group's base years exceeds 150 percent of the sum of the group's corresponding nontaxable amounts for the base years, then under section 501(h), each member organization that is an electing member organization (as defined in § 56.4911-7(e)(4)) at any time in the taxable year of the affiliated group shall be denied tax exemption beginning with its first taxable year beginning after the end of such taxable year of the affiliated group. Thereafter, exemption shall be denied unless (pursuant to § 1.501(h)-3(d)) the organization reapplies and is recognized as exempt as an organization described in section 501(c)(3). For purposes of this section, the term "base years" generally means the taxable year of the affiliated group for which a determination is made and the group's three preceding taxable years. Base years, however, do not include any year preceding the first year in which at least one member of the group was treated as described in section 501(c)(3).

(c) *Member organizations that are not electing organizations.* An organization that is a member of an affiliated group of organizations but that is not an electing member organization remains subject to the "substantial part test" described in section 501(c)(3) with respect to its activities involving attempts to influence legislation.

(d) *Filing of information relating to affiliated group of organizations*—(1) *Scope.* The filing requirements described in this paragraph (d) apply to each member of an affiliated group of organizations for the taxable year of the member with which, or within which, ends the taxable year of the affiliated group.

(2) *In general.* Each member of an affiliated group of organizations shall provide to every other member of the group, before the first day of the second month following the close of the affiliated group's taxable year, its name, identification number, and the information required under § 1.6033-2(a)(2)(ii)(*k*) for its expenditures during the group's taxable year and for prior taxable years of the group that are base years under paragraph (b). For groups electing under § 56.4911-7(e)(5) to have each member file information with respect to the group based on its taxable year, each member shall provide the information required by the preceding sentence by treating each taxable year of any member of the group as a taxable year for the group.

(3) *Additional information required.* In addition to the information required by § 1.6033-2(a)(2)(ii)(*k*), each member of an affiliated group of organizations must provide on its annual return the group's taxable year and, if the election under § 56.4911-7(e)(5) is made, the name, identification number, and taxable year identifying the return with which its consent to the election was filed.

(4) *Information required of electing member organization.* In addition to the information required by § 1.6033-2(a)(2)(ii)(*k*) and paragraph (d)(3) of this section, each electing member organization (as defined in § 56.4911-7(e)(4)) must provide on its annual return—

(i) The name and identification number of each member of the group, and

(ii) The appropriate calculation described in § 56.4911–8(d), if the organization is an electing member organization liable for all or any portion of the excise tax imposed by section 4911(a).

(e) *Example.* The provisions of this section may be illustrated by the following example:

Example. (1) *M, N,* and *O* are affiliated organizations under § 56.4911–7(a). *M's* taxable year ends November 30, *N's*, January 31, and *O's*, June 30. On June 20, 1979, *O* files Form 5768 to elect to be governed by the expenditure test. *M* files Form 5768 in December of 1979. Neither *M* nor *O* revokes the election, and no organization makes the election provided for in § 56.4911–7(e)(5). *M, N,* and *O* constitute an affiliated group of organizations, the first taxable year of which is the calendar year 1979.

(2) Because the organizations did not elect under § 56.4911–7(e)(5) to use their own taxable years as the group's taxable years, the expenditures of the affiliated group for its first taxable year are the expenditures made by *M, N,* and *O* during calendar year 1979, and are reported by *M, N* and *O* on their returns for their taxable years within which falls December 31, 1979. *M* reports the expenditures of the affiliated group for 1979 on its return for its taxable year ending November 30, 1980; and *O*, on its return for its taxable year ending June 30, 1980. *N* is not an electing member (as defined in § 56.4911–7(e)(4)). Accordingly, under paragraph (d)(3)(i) of this section, it reports the name and identification number of each member of the group.

(3) The following tables summarize the expenditures by the affiliated group for the calendar years indicated. None of the group's lobbying expenditures for its taxable years 1979 through 1982 were grass roots expenditures.

TABLE I.—GROUP'S EXPENDITURES

Year	Exempt purpose expenditures (EPE)	Calculation	Lobbying nontaxable amount (LNTA)	Lobbying expenditures (LE)
1979	$400,000	(20% × $400,000 =)	$80,000	$100,000
1980	300,000	(20% × $300,000 =)	60,000	100,000
1981	600,000	(20% × $500,000 + 15% × $100,000 =)	115,000	120,000
1982	500,000	(20% × $500,000 =)	100,000	220,000
Totals:	1,800,000		355,000	540,000

TABLE II.—EXPENDITURES OF M AND O

	Exempt purpose expenditures		Lobbying nontaxable amount		Lobbying expenditures		*M*+*O*
	M	O	*M*	O	*M*	O	
1979	$125,000	$100,000	$25,000	$20,000	$80,000	$20,000	$80,000
1980	100,000	50,000	20,000	10,000	40,000	40,000	80,000
1981	250,000	100,000	50,000	20,000	60,000	40,000	100,000
1982	200,000	100,000	40,000	20,000	160,000	40,000	200,000

(4) For the affiliated group's taxable years 1979, 1980, 1981, and 1982, the group has excess lobbying expenditures, Under section 4911(f)(1)(B) and § 56.4911–8(d), *M* and *O*, as electing member organizations, are liable for a portion of the 25 percent excise tax imposed on the group's excess lobbying expenditures, based on their respective shares of the lobbying expenditures of all electing member organizations. For 1979, the excess lobbying expenditures are $20,000 ($100,000 − $80,000). The tax is 25% of $20,000 or $5,000; *M* must pay $3,750 [($60,000/$80,000) × $5,000 = $3,750], and *O* must pay $1,250 [($20,000/$80,000) × $5,000 = $1,250]. For 1980, the tax is $10,000 and each must pay $5,000. For 1981, the tax is $1,250 *M* must pay $750 and *O* must pay $500. For 1982, the tax is $30,000. *M* must pay $24,000 and *O* must pay $6,000. *M* and *O* are not liable for any separate § 4911 excise tax that otherwise would have been imposed on their separate excess lobbying expenditures.

(5) Under § 56.4911–9(b), the group must make the calculation described in § 1.501(h)–3(b)(1) for each of the group's taxable years 1979 through 1982. The following illustrates only the required calculation for the group's taxable year 1982. For its taxable year 1982, the group must determine whether it normally has made lobbying expenditures in excess of its lobbying ceiling amount. The determination takes into account the group's expenditures in base years 1979 through 1982. The sum of the group's lobbying expenditures for the base years ($540,000) exceeds 150% of the sum of the group's lobbying nontaxable amounts for the base years (150% × $355,000 = $532,500). Therefore, for its taxable year 1982, the group normally has made lobbying expenditures in excess of its lobbying ceiling amount. Under section 501(h) and § 56.4911–9(b), *M* is not exempt from tax under section 501(a) as an organization described in section 501(c)(3) for its taxable year beginning December 1, 1983, and *O* is not exempt for its year beginning July 1, 1983. Whether *N's* lobbying expenditures disqualify it for tax exemption at any time after January 1, 1979, is determined under the substantial part test of section 501(c)(3).

(f) *Cross reference.* For other provisions relating to members of an affiliated group of organizations, see §§ 56.4911–3(d)(2), 56.4911–4(c)(2), 56.4911–4(e), and 56.4911–5(f)(3).

§ 56.4911–10 Members of a limited affiliated group of organizations.

(a) *Scope.* This section provides additional rules for members of a limited affiliated group of organizations, as defined in paragraph (b) of this section (relating generally to organizations that are affiliated solely by reason of provisions of their governing instruments that extend control solely with respect to national legislation). Except as otherwise provided in this section, §§ 56.4911–8 and 56.4911–9 do not apply to members of a limited affiliated group. Thus, as modified by this section, the regulations under sections 501(h) and 4911 apply to electing members of a limited affiliated group individually. For example, §§ 56.4911–2(b), 56.4911–2(c), and 56.4911–4 which, by their terms, include amounts described in paragraph (d) of this section, are used in applying sections 501(h) and 4911 to controlling member organizations (within the meaning of paragraph (c) of this section). Except as otherwise provided in this section, members of a limited affiliated group that are not electing organizations are subject to the substantial part test.

(b) *Members of limited affiliated group.* For purposes of section 4911, a limited affiliated group consists of two or more organizations that meet the following requirements:

(1) Each organization is a member of an affiliated group of organizations as defined in § 56.4911–7(e);

(2) No two members of the affiliated group described in paragraph (b)(1) of this section are affiliated by reason of interlocking governing boards under § 56.4911–7(b); and

(3) No member of the affiliated group described in paragraph (b)(1) of this section is, under its governing instrument, bound by decisions of one or more of the other such members on legislative issues other than national legislative issues.

Each organization in a group of organizations that satisfies the requirements of the preceding sentence is a member of the limited affiliated group.

(c) *Controlling and controlled organizations.* For purposes of this section, a member of a limited affiliated group is a controlling member organization if it controls one or more of the other members of the limited affiliated group, and a member of a limited affiliated group is a controlled member organization if it is controlled by one or more of the other members of the limited affiliated group. For purposes of the preceding sentence, whether an organization controls a second organization shall be determined by whether the second organization is bound, under its governing instruments, directly or indirectly, by actions taken by the first organization on national legislative issues.

(d) *Expenditures of controlling organization*—

(1) *Scope.* This paragraph (d) applies to a controlling member organization that has the expenditure test election in effect for its taxable year. This paragraph (d) applies whether or not the organization is also a controlled member organization. In determining a controlling member organization's expenditures, no expenditure shall be counted twice.

(2) *Expenditures for direct lobbying.* A controlling member organization for which the expenditure test election is in effect shall include in its direct lobbying expenditures for its taxable year the direct lobbying expenditures (as defined in § 56.4911–2(b)) paid or incurred with respect to national legislative issues during such year by each organization that is a member of the limited affiliated group and is controlled (within the meaning of paragraph (c) of this section) by such controlling member organization.

(3) *Grass roots expenditures.* A controlling member organization for which the expenditure test election is in effect shall include in its grass roots expenditures for its taxable year the grass roots expenditures (as defined in § 56.4911–2(c)) paid or incurred with respect to national legislative issues during such year by each organization that is a member of the limited affiliated group and is controlled (within the meaning of paragraph (c) of this section) by such controlling member organization.

(4) *Exempt purpose expenditures.* The exempt purpose expenditures of a controlling member organization do not include the exempt purpose expenditures (other than lobbying expenditures described in paragraphs (d)(2) and (d)(3) of this section), of any organization that is a controlled member organization with respect to it.

(e) *Expenditures of controlled member.* A controlled member organization that is an electing organization but that does not control (within the meaning of paragraph (c) of this section) any organization in the limited affiliated group shall apply sections 501(h) and 4911 and the regulations thereunder without regard to the expenditures of any other member of the limited affiliated group.

(f) *Reports of members of limited affiliated groups*—(1) *Controlling member organization's additional information on annual return.* In addition to the information required by §1.6033–2(a)(2)(ii)(k), each controlling member organization for which the expenditure test election is in effect must provide on its annual return the name and identification number of each member of the limited affiliated group.

(2) *Reports of controlling members to other members.* Each controlling member organization for which an expenditure test election is in effect must notify each member that it controls of its taxable year in order for the controlled organization to prepare the report required by paragraph (f)(3) of this section. Such notification must be made before the beginning of the second month after the close of each taxable year of the controlling member for which the election is in effect.

(3) *Reports of controlled member organization.* Every controlled member organization (whether or not the expenditure test election is in effect with respect to it) shall provide to each member of the limited affiliated group that controls it, before the first day of the second month following the close of the taxable year of each such controlling organization, its name, identification number, and the lobbying expenditures and grass roots expenditures on national legislative issues incurred by the controlled member organization.

(g) *National legislative issues.* The term "national legislative issue" means legislation, limited to action by the Congress of the United States or by the public in any national procedure. If an issue is both national and local, it is characterized as a national legislative issue if the contemplated legislation is Congressional legislation.

(h) *Examples.* The provisions of this section are illustrated by the following examples:

Example (1). State *X* has an income tax law that uses definitions contained in the Internal Revenue Code as it may be amended from time to time. Legislation to change a definition in the Internal Revenue Code is pending in Congress. This is a national legislative issue even though Congressional action may affect state law.

Example (2). Organization *M* takes a position favoring approval by Congress of a proposed amendment to the United States Constitution. This is a national legislative issue. After approval by Congress and submission to the states for ratification, the proposed amendment ceases to be a national legislative issue.

Example (3). N, O, and *P* are organizations described in section 501(c)(3) that do not have interlocking governing boards, within the meaning of § 56.4911–7(b). *N* has elected the expenditure test under section 501(h). By virtue of the governing instruments of *O* and *P,* any decision made by *N* on national legislative issues (such as issues concerning action on acts, bills, resolutions, or similar items by Congress) binds both *O* and *P.* Under their governing instruments, *O* and *P* are not bound on any other issues. Therefore, *N, O,* and *P* constitute a limited affiliated group. If *P* sends a series of letters and pamphlets to members of Congress in support of bill *V,* their cost will be included in *N*'s and *P*'s expenditures for direct lobbying and in *N*'s and *P*'s exempt purposes expenditures, but will not be included in *O*'s lobbying expenditures. If N hires a lobbyist to solicit support for bill V, the cost of hiring the lobbyist will be includable only in *N*'s lobbying expenditures. Any lobbying expenditures incurred by either *O* or *P* on any issue that is not a national legislative issue will not be included in *N*'s lobbying expenditures.

Example (4). Y is an electing organization and a member of a limited affiliated group of organizations. *Y* controls organizations *A, B,* and *C* with respect to national legislative issues but is not controlled by any other organization. *Y*'s taxable year is the calendar year. During 1982, A dissolves on March 15th and *D,* also controlled by *Y* with respect to national legislative issues, is established on May 1st. For 1982 the limited affiliated group comprises *Y, A, B, C,* and *D.*

Example (5). P, Q, R, and *S* are electing organizations. The governing instruments of *Q* require it to adopt the positions on national legislative issues adopted by *P. R* is similarly bound by *Q*'s positions. *R* and *S* have interlocking governing boards, within the meaning of section 56.4911–7(b), but *S*'s governing instruments do not require it to adopt the position of any other organization on any legislative issues. Under § 56.4911–7(e)(1), *P, Q, R,* and *S* are members of an affiliated group. Applying paragraph (b) of this section, it is determined that (1) *P, Q, R* and *S* are members of an affiliated group; and (2) *R* and *S* are affiliated by reason of interlocking governing boards. Accordingly, *P, Q, R* and *S* are not a limited affiliated group. Similarly, *P, Q,* and *R* do not constitute a limited affiliated group because they are members of an affiliated group comprising *P, Q, R,* and *S,* two of whose members, *R* and *S,* are affiliated by reason of interlocking governing boards.

Example 6. T, U, V, and *W* are electing organizations. The governing instruments of *U* and *V* require them to adopt the positions on national legislative issues adopted by *T,* but do not require them to adopt the positions of any organization on any other legislative issues. The governing documents of *W* require it to adopt the positions of *V* on all legislative issues. Applying paragraph (b) of this section, it is determined that, (1) *T, U, V,* and *W* are all members of an affiliated group; (2) no two of *T, U, V,* and *W* are affiliated by reason of interlocking governing boards; but (3) *W* is bound, under its governing instrument, by decisions of *V* on legislative issues that are not national legislative issues.

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Accordingly *T, U, V,* and *W* do not constitute a limited affiliated group. Similarly, *T, U,* and *V* do not constitute a limited affiliated group. *T, U, V,* and *W* are an affiliated group under § 56.4911-7.

§ 56.6001-1 Notice or regulations requiring records, statements, and special returns.

(a) *In general.* The provisions of § 53.6001-1 shall apply to any person subject to tax under chapter 41, Subtitle D, of the Code, by treating each reference to chapter 42 in § 53.6001-1 as a reference to chapter 41.

(b) *Cross references.* See § 56.4911-6 for general information on records of lobbying expenditures. See §§ 56.4911-9(d) and 56.4911-10(f) for information that members of an affiliated group and a limited affiliated group, respectively, are to provide to other members of the group and to the Internal Revenue Service.

§ 56.6011-1 General requirement of return, statement, or list.

Every organization liable for the tax imposed by section 4911(a) shall file an annual return with respect to the tax on the form prescribed by the Internal Revenue Service for that purpose and shall include the information required by the form and its instructions.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 86-29916 Filed 11-4-1986; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 31

[LR-12-86]

Time and Manner of Making Quarterly Payments of the Railroad Unemployment Repayment Tax

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the rules and regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary employment tax regulations relating to the time and manner of making quarterly payments of the railroad unemployment repayment tax. The text of the temporary regulations serves as the comment document for this notice of proposed rulemaking.

DATES: Proposed Effective Date: The proposed amendments would be effective 30 days after publication in the **Federal Register** of the Treasury decision finalizing these regulations and would be applicable to remuneration paid after June 30, 1986.

Dates For Comments and Requests For a Public Hearing: Written comments and requests for a public hearing must be delivered or mailed by January 5, 1987.

ADDRESS: Send comments and requests for a public hearing to Commissioner of Internal Revenue, Attention CC:LR:T (LR-12-86) Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Gail H. Morse of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224, Attention CC:LR:T (202-566-3297, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the rules and regulations portion of this issue of the **Federal Register** amend the Employment Tax Regulations (26 CFR Part 31) under section 6011, 6071, 6157, and 6302 of the Internal Revenue Code.

For the text of the temporary regulations see T.D. 8105 published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains the addition to the regulations.

Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. The Internal Revenue Service has concluded that the regulations herein will not have a significant impact on a substantial number of small entities. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Comments and Requests For a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments and requests for a public hearing that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**. The collection of information requirements contained herein have been submitted to OMB for review under the Paperwork Reduction Act, and comments on them should be sent to the Office of Information and Regulatory Affairs of OMB, Attn: Desk Officer for the Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests persons submitting comments to OMB to also send copies of the comments to the Service.

Drafting Information

The principal author of these proposed regulations is Gail H. Morse of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations both on matters of substance and style.

P. E. Coates,

Acting Commissioner of Internal Revenue.

[FR Doc. 86-24984 Filed 10-31-86; 1:29 pm]

BILLING CODE 4830-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 67

[CC Docket No. 80-286]

Communications Common Carrier, Telephone; Extension of Reply Comment Period

AGENCY: Federal Communications Commission.

ACTION: Order inviting comments; Extension of reply comments.

SUMMARY: In this proceeding addressing MTS and WATS market structure, the Federal-State Joint Board, in its Order Inviting Comments and Request for Data, FCC86J-1 (released May 7, 1986 and published June 10, 1986, 51 FR 21000), set out certain issues with regard to Category 6 and Category 8 Central Office Equipment and asked for comments on those issues. Four of the parties to this proceeding requested that the time for filing reply comments on these issues be extended from October 24, 1986, until November 3, 1986. They assert that because of delays in data processing, data would not be available in usable form until too late to permit adequate analysis and preparation of reply comments by October 24, 1986. The Chief, Common Carrier Bureau, extended the time for filing until October 29, 1986. He stated that, given the need to avoid delay in the resolution

of this proceeding, the full extension requested did not appear justified. He stated that the October 29, 1986, date should allow the petitioners adequate time to prepare and submit their reply comments.

DATES: Reply comments due on or before October 29, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael E. Wilson, or Cindy Schonhaut, Accounting and Audits Division, Federal Communications Commission, Washington, DC 20554 (202) 632-7500.

SUPPLEMENTARY INFORMATION: This is a summary of the Order in CC Docket No. 80-286, adopted by the Chief, Common Carrier Bureau, on October 23, 1986, and released on October 29, 1986. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, 2100 M Street, NW., Room 140, Washington, DC 20037, (202) 857-3800.

Ordering Clauses

Accordingly it is ordered, that the Request for Extension of Time filed on October 20, 1986, is granted to the extent indicated above; and

It is further ordered, that the date for filing reply comments in this proceeding is extended to October 29, 1986.

Federal Communications Commission.

Albert Halprin,

Chief, Common Carrier Bureau.

[FR Doc. 86-24948 Filed 11-4-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 644

Caribbean Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NFMS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: A fishery management plan (FMP) for billfishes is being developed as a joint effort of the South Atlantic, New England, Gulf of Mexico, Mid-Atlantic, and Caribbean Fishery Management Councils. The basic objective of the FMP is to promote the conservation of these billfish throughout their range.

The Caribbean Fishery Management Council (Council) must adopt a position regarding some of the management options that are proposed in the draft FMP. To this end, the Caribbean Council has decided to hold public hearings to receive comments from constituents on the proposed options. Interested persons are invited to attend and participate.

DATES: See "SUPPLEMENTARY INFORMATION" for dates, time, and locations of the hearings. Public comments are invited through December 5, 1986.

ADDRESSES: See "SUPPLEMENTARY INFORMATION" for locations of the hearings. Written comments should be sent to the Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico 00918.

FOR FURTHER INFORMATION CONTACT: Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, 809-753-4926.

SUPPLEMENTARY INFORMATION: The hearings are scheduled as follows:

U.S. Virgin Islands

November 24, 1986, 7:00 p.m. Conference Room, Legislature Building, Christiansted, St. Croix.

November 25, 1986, 7:00 p.m. Conference Room, Legislature Building, Charlotte Amalie, St. Thomas.

Puerto Rico

December 2, 1986, 9:30 a.m. Colegio de Ingenieros y Agrimensores, Roosevelt Development, Hato Rey, Puerto Rico.

December 3, 1986, 2:00 p.m. Mayaguez Hilton Hotel, Mayaguez, Puerto Rico.

December 4, 1986, 2:00 p.m. Holiday Inn Hotel, Highway No. 2, El Tuque, Ponce, Puerto Rico.

Dated: October 30, 1986.

Morris M. Pallozzi,

Director, Office of Enforcement.

[FR Doc. 86-24965 Filed 10-31-86; 11:23 am]

BILLING CODE 3510-22-M

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Notices

Federal Register
Vol. 51, No. 214
Wednesday, November 5, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Student Service-Learning Projects; Availability of Funds

AGENCY: ACTION.

ACTION: Notice of Availability of funds; Student Service-Learning Projects.

The Division of VISTA/Service-Learning Programs, ACTION, announces the availability of funds for fiscal year 1987 for new VISTA Service-Learning grants authorized by the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113, Title I, Part B, 42 U.S.C. 4974.)

Application kits and technical assistance on grant preparation are available from the ACTION State Office. Two completed application forms, with original signature, must be received in the appropriate ACTION State Office no later than 5:00 PM local standard time on February 20, 1987.

Any applications received after that date will not be considered for Fiscal Year 1987 funding.

I. Purpose

The statutory purpose of student service-learning projects is to encourage students to undertake volunteer service in their communities in such a way as to enhance the educational value of the service experience, through participation in activities which address poverty-related problems. Student volunteers must be enrolled in secondary, secondary vocational or post-secondary schools on an in-school or out-of-school basis. They serve on a part-time, non-stipended basis.

Service opportunities must result in student volunteers gaining experiences through service in poverty communities which relate to classroom, vocational, or other learning needs.

It is the intent of student service-learning projects to join community, school and youth in developing the scope and nature of volunteer experiences which serve the needs of poverty communities while securing resources by which the effort can be continued and expanded after federal support ends.

Local communities should determine what their problems are and how best to solve them. ACTION resources can be made available to assist in helping communities solve some of their problems through fostering student volunteer service. The community must generate increasing resources to enable the project to continue once ACTION grant funds are no longer provided. Technical assistance and training in project management, fund raising and recruiting will be provided by ACTION as required.

II. Grantee Eligibility and Selection Criteria

The following criteria will be employed by ACTION staff in the selection and approval of student service-learning projects:

a. The applicant must be a Federal, State, or local agency, or private non-profit organization or foundation in the United States, the District of Columbia, Virgin Islands, Puerto Rico, American Samoa, or Guam, which has the authority to accept and the capability to administer a student service-learning project grant.

b. Student volunteer activities must be poverty-related in scope and otherwise comply with the provisions of the legislative authority outlined in Part II.

C. Grant funds must be used to initiate or expand a student volunteer service-learning project which addresses the needs of the low-income community.

d. The grantee must develop and maintain community support for the student service-learning project through a planned program including public awareness and communications.

e. Community representation in the project's operation, including representatives of youth groups, school systems, educational institutions, etc., must be identified in the grant application.

f. The grant application must demonstrate that project goals and objectives are quantifiable, measurable, and show benefits to the student volunteers and to the low-income community. It must describe the expected learning outcomes which will result from the service experience. The projected number of student volunteers who will serve in the project and hours of service are to be included in project goals and objectives.

g. The grant application must demonstrate how student volunteers will be recruited and how they will receive orientation appropriate to their assignments.

h. The grantee must identify resources which will permit continuation of the service-learning project upon the conclusion of Federal funding as outlined in Part II.

i. The grantee must comply with all programmatic and fiscal aspects of the project and may not delegate or contract this responsibility to another entity. This does not refer to agreements made with volunteer placement sites as discussed in Part V. This includes compliance with applicable financial and fiscal requirements established by ACTION or other elements of the Federal government.

j. The grantee must ensure compliance with the restrictions outlined in Part VI.

III. Grant Application Procedures

A. Scope of Grant

Student service-learning project grants are awarded for up to a twelve month period. Requests for second or third year reduced funding can be sought by grantees. Maximum federal awards over a period of three years are up to $15,000 for the first year, up to $10,000 for the second, and up to $5,000 for the third. The grantee is required to contribute a local share of at least 43,000 each year. Final determination of the actual amount of grant awards rests with the ACTION Regional Director.

ACTION seeks sponsoring organizations which can demonstrate the ability to raise sufficient local support in order to achieve 100% non-ACTION funding of their student service-learning projects after Federal funding ends.

Applicants for new or renewal grants must comply with the provisions of Executive Order 12372, the "Intergovernmental Review of Federal Programs and Activities" as set forth in 45 CFR Part 1233. ACTION State Offices will provide applicant organizations with technical assistance regarding this requirement.

B. Procedures for New Grantees

Applications will be submitted to the appropriate ACTION State Office for programmatic and technical review. ACTION Regional Offices will review all new applications recommended for funding by the State Offices and send them, along with Regional recommendations, to the Director of VISTA/Service-Learning Programs. The Director of VISTA/Service-Learning will render final decisions on new student service-learning project grant applications.

Regional Grants and Contracts Officers will issue Notices of Grant Awards upon notification from the Director of VISTA/Service-Learning Programs.

IV. Project Management

Sponsors shall manage grants awarded to them in accordance with the provisions of these guidelines and ACTION Handbook 2850.2, *Grants Management Handbook for Grantees,* which will be furnished the sponsor at the time the initial grant is awarded.

Project support provided under an ACTION grant will be furnished at the lowest possible cost consistent with the effective operation of the project. Project costs for which ACTION funds are budgeted must be justified as being essential to project operation.

A. Local Support Contributions: The student service-learning project sponsor shall be responsible for providing at least $3,000 in non-federal share contribution for each year of the grant's operation. This amount can be obtained through cash and/or allowable in-kind contributions.

Local share can include, but is not limited to, cash or in-kind contributions such as office space, office equipment, supplies, accounting services, insurance, vehicles, telephones, printing, postage, recognition, travel and personnel which directly benefit the project.

B. Reporting Requirements: Sponsors must comply with fiscal reporting requirements as outlined in ACTION Handbook 2650.2 and must maintain records in accordance with generally accepted accounting principles. Records shall be kept available for inspection at the request of ACTION and shall be preserved for at least three years following the date of submission of the final Financial Status Report for each budget period.

If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

A quarterly project progress report shall also be submitted to the ACTION State Office no later than 30 days after the end of each project quarter. The report shall include, but not be limited to, the following items:

1. A comparison of actual accomplishments with the goals and objectives established for the period.

2. The number of volunteers participating in the project during the quarter.

3. The number of volunteer hours generated during the quarter.

4. Problems, delays, or adverse conditions that have affected or will affect the attainment of project objectives.

C. Insurance: Grantees are responsible for ensuring that student volunteers, while performing their assignments, have adequate accident, personal liability, and automobile liability insurance coverage consistent with other insurance maintained by the organization, and with sound institutional and business practices.

D. Transportation:

The sponsor should structure student volunteer assignments to minimize transportation expenses and requirements.

When transportation is not provided, volunteers may be reimbursed for actual costs within the limitations prescribed by the local project and the availability of funds.

E. Project Staff: Each grantee will designate a person to serve as the Project Director. A full-time Director is desirable yet fiscal realities or project needs may dictate otherwise. A rationale for less than a full-time Project Director must be included with the project application. Supervision of the Project Director is the responsibility of the sponsor.

Student service-learning project staff are employees of the grantee organization and are subject to its personnel policies and practices.

F. Community Relations:

1. Public Awareness: A strong community relations program ensures public awareness of start-up and continuing project activities. It is essential for the successful recruiting of volunteers and for the recognition of volunteer service. The project sponsor and Project Director should inform community, city and county officials, and the media about development, growth and success of the student service-learning project.

2. Volunteer Recognition: With the participation of the sponsor, the staff, and volunteer placement sites, recognition should be given to student volunteers for service to the community. Projects can also provide recognition to local individuals and agencies or organizations for significant activities in support of project goals.

3. Community support: A viable community support system needs to be initiated to ensure project success and project continuation without Federal funds. Project support may be sought from school districts, governmental entities, religious and service groups, United Way, foundations, the business community, youth organizations, etc. One method of enlisting and maintaining community support for the project's operation is through the establishment of a project advisory council and/or working committee of the sponsor's board.

V. Student Volunteer Assignments

Student volunteers are assigned to serve low-income communities in a variety of ways. Local sponsors are expected to develop volunteer service opportunities taking into consideration the focus of the project, the age, skills, and interests of student volunteers, as well as the value of the learning experience itself.

Clear understanding concerning the responsibilities of volunteer placement sites must be reached between representatives of the grantee's project staff and the volunteer site supervisor. Agreements may be formally arranged through the utilization of a Memorandum of Understanding, a Letter of Agreement or other means.

A formal agreement between the project staff and volunteer site will greatly assist the staff and volunteers in the management of volunteers. Issues and responsibilities concerning volunteer orientation/training, volunteer transportation, recognition and reporting of service hours, are functions outlined in this agreement.

VI. Restrictions

A. Special restrictions on student service-learning project grantees:

1. Political Activities

a. Grant funds shall not be used to finance, directly or indirectly, any activity to influence the outcome of any election to public office or any voter registration activity.

b. No project shall use grant funds to provide services, employ or assign personnel or volunteers for, or take any action which would result in the identification or apparent identification of the project with:

(1) any partisan or non-partisan political activity or any other political activity associted with a candidate, or contending faction or group, in an election for public or party office;

(2) any activity to provide voters or prospective voters with transportation

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to the polls or similar assistance in connection with any election; or

(3) any voter registration activity.

2. Lobbying

a. No grant funds or volunteers may be used by the sponsor in any activity for the purpose of influencing the passage or defeat of legislation or proposals by initiative petition, except as follows:

(1) In any case in which a legislative body, a committeee of a legislative body, or a member of a legislative body requests a student volunteer, a sponsor chief executive, his or her designee, or project staff to draft, review, or testify regarding measures or to make representations to such legislative body, committee, or member; or

(2) In connection with an authorization or appropriation measure directly affecting operation of the program.

Regulations found in 45 CFR Part 1226, "Prohibitions On Electoral and Lobbying Activities," apply fully hereto, and provide further details on the limitations of political and lobbying activities that apply to volunteers and sponsors. Each grantee is obliged to know, and communicate to staff and volunteers, the prohibitions included therein.

3. Special Restriction on State or Local Government Employees

If the sponsor receiving a grant from ACTION is a state or local government agency, certain restrictions contained in Chapter 15 of Title 5 of the United States Code are applicable to persons who are principally employed in activities associated with the project. The restrictions are not applicable to employees of educational or research institutions. An employee subject to these restrictions may not:

a. Use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office.

b. Directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes; or

c. Be a candidate for elective office, except in a non-partisan election. "Non-partisan election" means an election at which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for Presidential election received votes in the last preceding election at which Presidential electors were selected.

If a project staff member, whose salary is traceable in whole or in part to an ACTION grant, is also a State or local government employee, the staff member is covered by provisions of the Hatch Act, restricting in many instances public participation in partisan political activities. Questions about the coverage of the Hatch Act may be addressed to the Office of General Counsel, ACTION, Washington, DC 20525.

4. *Non-discrimination:* No person with responsibility for the operation of a project shall discriminate with respect to any activity or program because of race, creed, belief, color, national origin, sex, age, handicap, or political affiliation.

5. *Religious Activities:* Volunteers and project staff funded by ACTION shall not give religious instruction, conduct worship services, or engage in any form of proselytization as part of their duties.

6. *Labor and Anti-Labor Activity:* No grant funds shall be directly or indirectly utilized to finance labor or anti-labor organization or related activity.

7. *Non-displacement of Employed Workers:* A student volunteer may not perform any service or duty which would supplant the hiring of workers who would otherwise be employed to perform similar services or duties; or result in the displacement of employed workers or impair existing contracts for service.

8. *Non-compensation for Services:* No volunteer or other person, organization, or agency shall request or receive any compensation for services of student volunteers. No volunteer site of any member or cooperating organization shall be requested or required to contribute or to solicit contribution to establish any part of a local share. This does not prevent the acceptance of cash contributions made voluntarily and without condition to the grantee for legitimate charitable purposes.

9. *Volunteer Status:* Student volunteers are not employees of the sponsoring organization or the U.S. Government while volunteers.

Following is an address list of ACTION Regional Offices, along with the addresses of ACTION State Offices under their jurisdiction:

Region I

ACTION Region Office, 441 Stuart Street, 9th Floor, Boston, MA 02116

ACTION State Office, Abraham Ribicoff Fed. Bldg., 450 Main St., Rm 524, Hartford, CT 06103

ACTION State Office, Federal Bldg., Rm 305, 76 Pearl Street, Portland, ME 04101

ACTION State Office, 441 Stuart Street, 9th Floor, Boston, MA 02116

(New Hampshire/Vermont)

ACTION State Office, Federal Post Office & Courthouse, 55 Pleasant Street, Rm 316, Concord, NH 03301

ACTION State Office, John E. Fogarty Bldg., Rm 200, 24 Weybosset Street, Providence, RI 02903

Region II

ACTION Region Office, Jacob K. Javits Fed. Bldg., 26 Federal Plaza, Suite 1611, New York, NY 10278

ACTION State Office, 402 East State St., Rm 246, Trenton, NJ 08608

(Metropolitan New York)

ACTION State Office, Jacob K. Javits Fed. Bldg, 26 Federal Plaza, Suite 1609, New York, NY 10278

(Upstate New York)

ACTION State Office, U.S. Courthouse Federal Bldg., 445 Broadway, Room 103, Albany, NY 12207

(Puerto Rico/Virgin Islands)

ACTION State Office, Frederico DeGetau Federal Ofc. Bldg., Carlos Chardon Avenue, Suite 662, Hato Rey, PR 00918

Region III

ACTION Region Office, U.S. Customs House, 2nd & Chestnut St., Rm 108, Philadelphia, PA 19106

ACTION State Office, Federal Building, Room 372–D, 600 Federal Place, Louisville, KY 40202

ACTION State Office, Federal Building, 31 Hopkins Plaza, Romm 1125, Baltimore, MD 21201

ACTION State Office, Federal Building, Room 500, 85 Marconi Blvd., Columbus, OH 43215

ACTION State Office, U.S. Customs House, Room 108, 2nd & Chestnut Streets, Philadelphia, PA 19106

(Virginia/Dist. of Columbia)

ACTION State Office, 400 North 8th Street, P.O. Box 10066, Richmond, VA 23240

ACTION State Office, 603 Morris Street, 2nd Floord, Charleston, WV 25305

Region IV

ACTION Region Office, 101 Marietta St., N.W., Suite 1003, Atlanta, GA 30323

ACTION State Office, 2131 8th Avenue North, Rm 722, Birmingham, AL 35203

ACTION State Office, 930 Woodcock Road, Suite 221, Orlando, FL 32803

ACTION State Office, 75 Piedmont Ave., NE, Suite 412, Atlanta, GA 30303

ACTION State Office, Federal Building, Rm 1005–A, 100 West Capital Street, Jackson, MS 39269

ACTION State Office, Federal Bldg., P.O. Century Station, 300 Fayetteville Street Mall, Rm 131, Raleigh, NC 27601

ACTION State Office, Federal Building, Room 872, 1835 Assembly Street, Columbia, SC 29201

ACTION State Office, Federal Bldg./US Courthouse, 801 Broadway, Room 246, Nashville, TN 37203

Region V

ACTION Region Office, 10 West Jackson Blvd., 6th Floor, Chicago, IL 60604

ACTION State Office, 10 West Jackson Blvd., 6th Floor, Chicago, IL 60604

ACTION State Office, 46 East Ohio Street, Room 457, Indianapolis, IN 46204

ACTION State Office, Federal Building, Room 339, 210 Walnut, Des Moines, IA 50309

ACTION State Office, Federal Bldg., Room 652, 231 West Lafayette Blvd., Detroit, MI 48226

ACTION State Office, Old Federal Bldg., Room 126, 212 Third Avenue South, Minneapolis, MN 55401

ACTION State Office, 517 East Wisconsin Ave., Rm 601, Milwaukee, WI 53202

Region VI

ACTION Region Office, 1100 Commerce, Rm 6B11, Dallas, TX 75242

ACTION State Office, Federal Building, Room 2506, 700 West Capitol Street, Little Rock, AR 72201

ACTION State Office, Federal Building, Room 171, 444 S.E. Quincy, Topeka, KS 66603

ACTION State Office, 626 Main Street, Suite 102, Baton Rouge, LA 70801

ACTION State Office, Federal Office Building, 911 Walnut, Room 1701, Kansas City, MO 64106

ACTION State Office, Federal Building, Cathedral Place, Room 129, Santa Fe, NM 87501

ACTION State Office, 722 North Broadway, Room 101, Oklahoma City, OK 73102

ACTION State Office, 611 East Sixth Street, Suite 107, Austin, TX 78701

Region VIII (No Region VII)

ACTION Region Office, 1405 Curtis Street, Denver, CO 80202

ACTION State Office, Columbine Bldg., Room 301, 1845 Sherman Street, Denver, CO 80203

ACTION State Office, Federal Building, Room 8036, 2120 Capitol Avenue, Cheyenne, WY 82001

ACTION State Office, Federal Office Bldg., Drawer 10051, 301 South Park, Rm 192, Helena, MT 59626

ACTION State Office, Federal Bldg., Room 293, 100 Centennial Mall North, Lincoln, NE 68508

(North & South Dakota)

ACTION State Office, Federal Building, Room 213, 225 S. Pierre Street, Pierre, SD 57501

ACTION State Office, U.S. Post Office & Courthouse, 350 South Main St., Room 484, Salt Lake City, UT 84101

Region IX

ACTION Region Office, 211 Main Street, Rm 530, San Francisco, CA 94105

ACTION State Office, 522 North Central, Room 205–A, Phoenix, AZ 85004

ACTION State Office, 211 Main Street, Room 534, San Francisco, CA 94105

ACTION State Office, Federal Bldg., Room 14218, 11000 Wilshire Blvd., Los Angeles, CA 90024

(Hawaii/Guam/American Samoa)

ACTION State Office, Federal Building, P.O. Box 50024, Honolulu, HI 96850

ACTION State Office, 4600 Kietzke Lane, Suite E–141, Reno, NV 89502

Region X

ACTION Region Office, 909 First Avenue, Seattle, WA 98174

ACTION State Office, The Alaska Center, Suite 340, 1020 Main Street, Boise, ID 83702

(Alaska)

ACTION State Office, Suite 3039, Federal Office Bldg., 909 First Avenue, Seattle, WA 98174

ACTION State Office, Federal Bldg., Room 647, 511 N.W. Broadway, Portland, OR 97209

ACTION State Office, Suite 3039, Federal Office Bldg., 909 First Avenue, Seattle, WA 98174

(42 U.S.C. 4974)

Dated in Washington, D.C. on October 28, 1986.

Donna M Alvarado,

Director, ACTION.

[FR Doc. 86–24985 Filed 10–4–86; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

October 31, 1986.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250 (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Agricultural Marketing Service

Grain Market News Reports and Molasses Market News

LS–177, –383, –388

Monthly, Daily

Businesses or other for-profit; 2,828 responses; 471 hours; not applicable under 3504(h).

James Ray (202) 447–6231

- Office of International Cooperation and Development Automated Skills Inventory System (ASIST)

OICD–73 Qualifications Summary

Once only

Individuals or households; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 500 responses; 500 hours; not applicable under 3504(h).

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Chuck Rooney (202) 475-5234.

Jane A. Benoit,

Departmental Clearance Officer.

[FR Doc. 86-25017 Filed 11-4-86; 8:45 am]

BILLING CODE 3410-01-M

Office of the Secretary

Members of Performance Review Boards

AGENCY: U.S. Department of Agriculture.

ACTION: Notice.

SUMMARY: This document amends the list of Performance Review Board Members published October 25, 1985, 50 FR 43427 and October 18, 1985, 50 FR 42198, and gives notice of additional Performance Review Board members.

EFFECTIVE DATE: November 5, 1986.

FOR FURTHER INFORMATION CONTACT: Fran Lopes, Chief, Compensation, Employment Performance and Executive Resources Staff, Office of Personnel, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC 20250, (202-447-6905).

The membership of the U.S. Department of Agriculture's Performance Review Boards include:

Earle J. Bedenbaugh
Louis G. Bennett
James Boillot
J. Patrick Boyle
William Buisch
John Carson
Vance Clark
Keith J. Collins
Lester Crawford
Vivian Culp-Mann
James R. Donald
George Dunlop
Martin F. Fitzpatrick
Ray Fosse
J. Robert Franks
James Frazier
Kenneth H. Gilles
Mary Nell Greenwood
Joseph Haas
Glenn Haney
Bert Hawkins
Christopher Hicks
Donald Houston
Joseph H. Howard
Harold V. Hunter
Jerome Hytry
Myron Johnsrud
Allan S. Johnson
Billy H. Jones
John P. Jordan
William E. Kibler
Terry B. Kinney
Ralph Klofenstein
Robert Leard
John E. Lee, Jr.
Sherman Lewis
Robert Long
Philip L. Mackie
Casey Mann
John Marshall
Diane McIntyre
Kirk Miller
Donald J. Novotny
John H. Ohman
Floyd Payton
John W. Peterson
R. Max Peterson
G. Wilson Scaling
Judith Segal
Carol Seymour
Gilbert E. Sindelar
Leon Snead
Patricia Stolfa
Ed Thomas
Eric P. Thor, Jr.
Randall Torgerson
Jack Van Mark
Thomas A. Von Garlem
Joan Wallace
Saul T. Wilson
Monroe Woods.

Peters C. Myers,

Chairman, Secretary's Performance Review Board.

October 30, 1986.

[FR Doc. 86-24978 Filed 11-4-86; 8:45 am]

BILLING CODE 3410-96-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 338]

Resolution and Order approving the Application of the Quad-City Foreign-Trade Zone, Inc., for a Foreign-Trade Zone in the Quad-City Iowa/Illinois Customs Port of Entry

Resolution and order

Pursuant to the authority granted in the Foreign -Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Quad-City Foreign-Trade Zone, Inc., an Iowa non-profit corporation licensed to do business in Illinois, filed with the Foreign-Trade Zones Board (the Board) on December 23, 1985, requesting a grant of authority of establishing, operating, and maintaining a general-purpose foreign-trade zone in Davenport, Iowa, and Milan, Illinois, within the Quad-City Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisifed, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which building may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant

To Establish, Operate, and Maintain a Foreign-Trade Zone in the Quad-City, Iowa/Illinois Port of Entry Area

WHEREAS, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

WHEREAS, the Quad-City Foreign-Trade Zone, Inc. (the Grantee), an Iowa non-profit corporation also licensed to do business in Illinois, has made application (filed December 23, 1985, Docket No. 46-85, 51 FR 774) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone with sites in Davenport, Iowa, and Milan, Illinois, within the Quad-City Customs port of entry;

WHEREAS, Notice of said application has been given and published, and full oppportunity has been afforded all interest parties to be heard; and,

WHEREAS, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisifed;

NOW, THEREFORE, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated in the records of the Board as Zone No. 133 at the above locations and more particualrly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone sites in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall be the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilites.

IN WITNESS WHEREOF, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 29th day of October 1986, pursuant to Order of the Board.

Foreign-Trade Zones Board,

Malcolm, Baldrige,

Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 86-25021 Field 11-4-86; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 33-86]

Proposed Foreign-Trade Zone, Reading Municipal Airport, Berks County, PA; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign-Trade Zone Corporation of Southeastern Pennsylvania (FTZCSP), a Pennsylvanian non-profit corporation, requesting authority to establish a general-purpose foreign-trade zone in Berks County, Pennsylvania, adjacent to the Philadelphia Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on October 20, 1986. The applicant is authorized to make this proposal under Chapter 31, Title 66 of the Pennsylvania Consolidated Statutes Annotated.

The proposed foreign-trade zone would cover the industrial park areas (200 acres) of the 865-acre Reading Municipal Airport in Berks County. A 10,000 square foot warehouse is available for inital zone activity. FTZCSP will select an operator for multi-user warehousing operations.

The application contains evidence of the need for zone services in the Reading area. Several firms have expressed an interest in using the zone for storage/manipulation of chemicals, tubular goods, fasteners, recreational goods, electronic products, mushrooms and apparel. No manufacturing approvals are being sought at this time. Such requests would be made on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), the Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Edward A. Goggin, Assistant Regional Commissioner, U.S. Customs Service, Northeast Region, 100 Summer St., Boston, MA 02110; and Lt. Colonel Ralph V. Locurcio, District Engineer, U.S. Army Engineer District Philadelphia, 2nd and Chestnut Sts., Philadephia, PA 19106.

As part of its investigation, the examiners committee will hold a public hearing on December 4, 1986, beginning at 9:00 a.m., in the Board Room of the Berks County Chamber of Commerce Offices, 645 Penn St., Reading, Pennsylvania.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377-2862) by November 25. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through January 12, 1987.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Berks County Chamber of Commerce Offices, 645 Penn Street, Reading, PA 19601

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Ave., NW., Room 1529, Washington, DC 20230

Dated: October 30, 1986.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 86-25022 Filed 11-4-86; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-475-017]

Pads for Woodwind Instrument Keys From Italy; Partial Revocation of Antidumping Duty Order

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On June 12, 1986, the United States Court of International Trade found that the Commerce Department ("Department") erred in its antidumping finding on pads for woodwind instrument keys from Italy, insofar as, for one respondent, Luciano Pisoni Fabbrica Accessori Instrumenti Musicali ("Pisoni"), it failed to make an adjustment for differences in the physical characteristics of the merchandise compared. The Court also found, in connection with the investigation of that respondent, that in an investigation involving only ten home market sales, the Department of Commerce may not reasonably find a dumping margin by using quarterly exchange rates when no dumping would result if conversions were based on rates prevailing at the time of the transactions. The Court remanded the action to the Department for action consistent with the opinion of the Court.

On July 28, 1986, the Department reported the results of its remand proceedings to the Court. As a result of these remand proceedings, the Department found that pads for woodwind instrument keys from Italy, manufactured or exported by Pisoni, are not being, nor are likely to be, sold in the United States at less than fair value. On September 15, 1986, the Court affirmed the Department's redetermination upon remand.

As a result, the Department is revoking the antidumping finding on pads for woodwind instrument keys from Italy with regard to merchandise produced or exported by Pisoni.

EFFECTIVE DATE: November 5, 1986.

FOR FURTHER INFORMATION CONTACT: Vince Kane, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-5414.

SUPPLEMENTARY INFORMATION

Background

On July 11, 1984, the Department published its final determination of sales at less than fair value on pads for woodwind instrument keys from Italy (49 FR 28295). Following a final affirmative injury determination by the International Trade Commission (49 FR 34313; August 29, 1984), the Department issued an antidumping duty order (49 FR 37137; September 21, 1984).

One of the respondents in the Department's investigation leading to the antidumping finding, Luciano Pisoni Fabbrica Accessori Instrumenti Musicali ("Pisoni"), filed suit in the United States Court of International Trade, challenging the Department's final determination. On July 21, 1986, the Court held that the Department's determination was not supported by substantial evidence or in accordance with law. *Luciano Pisoni Fabbrica*

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Accessori Instrumenti Musicali, et al. v. *United States,* 10 CIT ——, Slip Op. 86–62 (June 12, 1986). The Court held that the Department had improperly compared different merchandise in determining the difference between United States price and home market price, and that an adjustment for differences in the physical characteristics of the merchandise was required, pursuant to 19 CFR 353.16. It also held that in an investigation involving only ten home market sales, the Department may not reasonably find a dumping margin by using quarterly exchange rates when no dumping margin would result if conversions were based on rates prevailing at the time of the transactions. The action was remanded to the Department for action consistent with the Court's opinion.

In the remand proceedings, the Department made an adjustment for differences in the physical characteristics of the merchandise compared, and it used daily exchange rates for all necessary currency conversions. As a result, the weighted-average margin for Pisoni in the remand determination was found to be 0.286 percent. Because this amount is considered to be *de minimus,* the Department's redetermination on remand was that pads for woodwind instrument keys from Italy, manufactured or exported by Pisoni, are not being, nor are likely to be, sold in the United States at less than fair value.

After opportunity for comment by plaintiffs, the Court affirmed the Department's redetermination on remand. *Luciano Pisoni Fabbrica Accessori Instrumenti Musicali, et al.* v. *United States,* 11 CIT ——, Slip Op. 86–92 (September 15, 1986).

Partial Revocation of Antidumping Duty Order

As a result of the redetermination on remand, the Department revokes the antidumping duty order on pads for woodwind instrument keys from Italy, manufactured or exported by Pisoni. The Department will instruct the United States Customs Service to proceed with liquidation of this merchandise without regard to antidumping duties, and to refund all cash deposits and release all securities posted to cover estimated antidumping duties.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 86–25023 Filed 11–4–86; 8:45 am]

BILLING CODE 3510-DS-M

[C–351–609]

Initiation of Countervailing Duty Investigation; Certain Forged Steel Crankshafts From Brazil

AGENCY: Import Administration, International Trade Administration.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Brazil of certain forged steel crankshafts, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of the subject merchandise from Brazil materially injure, or threaten material injury to, a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before November 24, and we will make our preliminary determination on or before January 2, 1987.

EFFECTIVE DATE: November 5, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas Bombelles, Bradford Ward, or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202/377–3174, 202/377–2239, or 202/377–2438.

SUPPLEMENTARY INFORMATION:

The Petition

On October 9, 1986, we received a petition in proper form filed by the Wyman-Gordon Co., a domestic producer of certain forged steel crankshafts. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Brazil of certain forged steel crankshafts receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act). In addition, the petition alleges that such imports materially injure, or threaten material injury to, a United States industry producing a like product. Since Brazil is a "country under the Agreement" within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Brazil materially injure, or threaten material injury to, a United States industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the imposition of countervailing duties, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on certain forged steel crankshafts from Brazil and have found that it meets the requirements. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Brazil of certain forged steel crankshafts as described in the "Scope of Investigation" section of this notice receive benefits which constitute subsidies. If our investigation proceeds normally, we will make our preliminary determination on or before January 2, 1987.

Scope of Investigation

The products covered by this investigation are forged carbon or alloy steel crankshafts with a shipping weight between 40 and 750 pounds, whether machined or unmachined. These products are currently classified under items 660.6713, 660.6727, 660.6747, 660.7113, 660.7127, and 660.7147 of the *Tariff Schedules of the United States Annotated* (TSUSA). Neither cast crankshafts nor forged crankshafts with shipping weights of less than 40 pounds or greater than 750 pounds are subject to this investigation.

Allegations of Subsidies

The petition lists a number of practices by the Government of Brazil which allegedly confer subsidies to manufacturers, producers, or exporters in Brazil of certain forged steel crankshafts. We are initiating an investigation on the following programs:

- Working Capital Financing for Exporters.
- Preferential Export Financing for Trading Companies.
- Export Financing Under the CIC-CREGE 14–11 Circular.
- Financing for Storage of Exports.
- PROEX Export Financing.
- Resolution 68 (FINEX) Financing.
- Resolution 509 (FINEX) Financing.
- BEFIEX.
- Income Tax Exemptions for Export Earnings.

- CIEX.
- Exemption of IPI Tax and Customs Duties on Imported Equipment.
- Accelerated Depreciation for Brazilian-made Capital Equipment.
- FINEP/ADTEN Long-Term Loans.
- Rebate of IPI Taxes for Capital Investment.

We are not initiating an investigation on the following program:

- Banco Nacional de Desenvolvimento Economico e Social (National Bank for Economic and Social Development or BNDES) Loans.

The Department has previously investigated BNDES loans and has found that these loans are not limited to a specific enterprise or industry or group of enterprises or industries. See *Final Affirmative Countervailing Duty Determination: Certain Carbon Steel Products from Brazil* (49 FR 17988, April 26, 1984). Because petitioner has not submitted any new evidence or alleged changed circumstances with respect to BNDES loans, we are not initiating on this program.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action, and to provide it with the information we used to arrive at this demonstration. We will notify the ITC and make available to it all nonprivileged and nonproprietary information in our files. We will also allow the ITC access to all privileged and proprietary information in our files, provided it confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by November 24, 1986, whether there is a reasonable indication that imports of certain forged steel crankshafts from Brazil materially injure, or threaten material injury to, a United States industry. If its determination is negative, this investigation will terminate; otherwise, it will continue according to statutory procedures.

This notice is published pursuant to section 702(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

October 29, 1986.

[FR Doc. 86–25024 Filed 11–14–86; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-608]

Extension of the Deadline Date for the Final Countervailing Duty Determination and Rescheduling of the Public Hearing on Paint Filters and Strainers from Brazil

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of petitioner, the Louis M. Gerson Company, Inc., we are extending the deadline date for the final determination in the countervailing duty investigation of paint filters and strainers from Brazil to correspond to the date of the final determination in the antidumping duty investigation of the same product pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98–573). In addition, we are rescheduling the public hearing.

EFFECTIVE DATE: November 5, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas Bombelles, Bradford Ward or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–3174, 377–2239 or 377–2438.

SUPPLEMENTARY INFORMATION:

Case History

On July 15, 1986, we received antidumping and countervailing duty petitions filed by the Louis M. Gerson Company, Inc. against paint filters and strainers from Brazil.

In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the antidumping petition alleged that imports of paint filters and strainers from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained suffficient grounds on which to initiate an antidumping duty investigation, and on August 4, 1986, we initiated such an investigation (51 FR 28737, August 11, 1986). The preliminary determination in the antidumping investigation will be made on or before December 22, 1986.

In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the countervailing duty petition alleged that manufacturers, producers, or exporters in Brazil of paint filters and strainers directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds on which to initiate a countervailing duty investigation, and on August 4, 1986, we initiated such an investigation (51 FR 28739, August 11, 1986). On October 8, 1986, we issued a preliminary negative determination in the countervailing duty investigation (51 FR 36734, October 15, 1986).

On October 23, 1986, petitioner filed a request for extension of the deadline date for the final determination in the countervailing duty investigation to correspond with the date of the final determination in the antidumping investigation.

Section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984, provides that when a countervailing duty investigation is "initiated simultaneously with an [antidumping] investigation . . . which involves imports of the same class or kind of merchandise from the same or other countries, the administering authority, if requested by the petitioner, shall extend the date of the final determination [in the countervailing duty investigation] to the date of the final determination" in the antidumping investigation (19 U.S.C. 1671d(a)(1)). Pursuant to this provision, we are granting an extension of the deadline date for the final determination in the countervailing duty investigation of paint filters and strainers from Brazil until not later than March 6, 1987, the current deadline for the final determination in the antidumping investigation.

In addition, due to the extension of the final determination in the countervailing duty investigation, we are rescheduling the date of the public hearing, originally set for November 7, 1986. We have received a request for a hearing which will now be held at 10:00 a.m. on Friday, February 6, 1987, at the U.S. Department of Commerce, Room 1413, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B–099, at the above address within ten days of the publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants;

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(3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least ten copies of prehearing briefs must be submitted to the Deputy Assistant Secretary by January 30, 1987. Oral presentations will be limited to issues raised in the briefs.

In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, all written views will be considered if received not less than 30 days before the final determination is due, or, if a hearing is held, within ten days after the hearing transcript is available.

This notice is published pursuant to section 705(d) of the Act, as amended.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

October 30, 1986.

[FR Doc. 86-25025 Filed 11-4-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-408-006]

Sodium Gluconate From the European Communities; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On July 14, 1986, the Department of Commerce published the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on sodium gluconate from the European Communities. The review covers the period November 1, 1983 though December 31, 1984 and two programs.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results.

EFFECTIVE DATE: November 5, 1986.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Lorenza Olivas, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On May 22, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 21107) the final results of its last administrative review of the agreement suspending the countervailing duty investigation on sodium gluconate from the European Communities (the EC") (46 FR 58132, November 30, 1981). On October 7, 1985, the petitioner, Pfizer Inc., requested in accordance with § 355.10 of the Commerce Regulations an administrative review of the agreement. We published the initiation of the administrative review on January 21, 1986 (51 FR 2747) and the preliminary results of review on July 14, 1986 (51 FR 25383). We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of the chemical sodium gluconate from the EC. Such merchandise is currently classified under item 437.5250 of the Tariff Schudules of the United States Annotated.

The review covers the period November 1, 1983 through December 31, 1984 and two programs: (1) Production refunds and (2) restitution payments.

The review covers two exporters, Joh. A. Benckiser GmbH of West Germany and Akzo Chemie Nederland B.V. of the Netherlands, signatories to the suspension agreement.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results. We determine that the signatories to the agreement have complied with its terms during the period of review. Therefore, the suspension agreement for sodium gluconate from the EC will remain in effect.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (50 FR 32556, August 13, 1985).

Dated: October 30, 1986

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-25026 Filed 11-4-86; 8:45 am]

BILLING CODE 3510-DS-M

Rutgers University et al.; Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 86-135R. APPLICANT: Rutgers University, Procurement and Contracting, P.O. Box 1089, Piscataway, NJ 08854. Instrument: GC/Mass Spectrometer/Data System, Model 8230C. Manufacturer: Finnigan Corporation, West Germany. Original notice of this resubmitted application was published in the **Federal Resister** of March 19, 1986.

Docket Number: 86-335. Applicant: Veterans Administration Hospital, 130 W. Kingsbridge Road, Bronx, NY 10468. Instrument: Gas Chromatograph/Mass Spectrometer/Data System, Model TS-250. Manufacturer: VG Tritech, United Kingdom. Intended Use: The instrument is intended to be used for studies of hormonal function and abnormalities in human disease, especially the steroid and peptide hormones and their derivatives and metabolites. These studies will involve both identification and measurement of the amounts of these substances in body fluids and tissue extracts. All methods of introducing the sample into the ion source of mass spectrometer will be used including an interface with a gas or liquid chromatograph and direct inlet using soft ionization techniques. Application Received by Commissioner of Customs: October 7, 1986.

Docket Number: 87-003. Applicant: University of Florida, College of Medicine, Department of Anatomy & Cell Biology, Gainsville, FL 32610. Instrument: Electron Microscope, Model JEM-100CX with Accesssories. Manufacturer: JEOL, Japan. Intended Use: Ultrastructural studies of various organs of the body that will include developmental changes both normal and abnormal. Investigations will further include ultrastructure of Sertoli cells of the testis, spermatogenesis and the blood testis barrier. Experiments will be performed to define events which occur at the molecular and macromolecular level. Other experiments involve immunocytochemistry at the ultrastructural level of various cell types of the body. In addition, the instrument will be used for demonstration purposes in order that medical students may gain a better understanding of cell structure and methods employed in learning about cell ultrastructure. Other educational uses include teaching Ph.D. candidate students the methodology of electron microscopy so that they may employ the instrument in their research. Application Received by Commissioner of Customs: October 14, 1986.

Docket Number: 87-004. Applicant: Yale University School of Medicine, 333 Cedar Street, New Haven, CT 06510. Instrument: Electron Microscope, Model CM 10 with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended Use: The instrument will be used in research programs in the fields of neuroanatomy, cell biology, dermatology and reproductive biology. Electron microscopy will be used to: (1) Localize ferritin labeled luteinizing hormone and luteinizing hormone receptors labeled with receptor antibodies by immunohistochemistry, (2) map structural and functional sites on isolated luteinizing hormone receptors with ferritin labeled receptor antibodies (3) map microvasculature and elastic fibers in human skin by serial reconstruction and immunohistochemistry, (4) examine effects of estrogen on hypothalamic cell ultrastructure in relation to age-related reproductive failure, (5) examine hypothalamic neuroendocrine connections related to the control of gonadotropin release by ultrastructural tracing methods and immunohistochemical detection of transmitters and hormones, (6) determine the origin of "LHRH-like" peptide in the ovary by immunohistochemistry, (7) examine the effect of sex steroids on developing and adult mammalian spinal motoneurons and identify neurons by immunohistochemistry that input to motoneurons labeled by intracellular injection of horseradish peroxidase and (8) examine the effect of ovarian steroids on the hypothalamus, preoptic area and uterus by assessing neuronal and membrane ultrastructure and gap junction formation (uterus). Application Received by Commissioner of Customs: October 14, 1986.

Docket Number: 87-005. Applicant: University of Colorado, Boulder, Department of Molecular, Cellular & Developmental Biology, Box 347, Boulder, CO 80309. Instrument: High Pressure Freezing Apparatus, Model #HPMO10. Manufacturer: Balzers AG, Liechtenstein. Intended Use: The instrument is intended to be used for: (a) The study of the basic organization of cells, (b) and how cell architecture is changed by disease; (c) the basic testing of the usefulness of the instrument for biological research, (d) development of application procedures and (e) testing of design modifications. In addition, the instrument will be used to train undergraduate and graduate students and postdoctoral fellows in the use of the most advanced techniques in structural cell biology. Application Received by Commissioner of Customs: October 14, 1986.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-25027 Filed 11-4-86; 8:45 am]

BILLING CODE 3510-DS-M

Yale University et al.; for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with §§ 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No.: 87-001. Applicant: Yale University, A.M. Wright Nuclear Structure Laboratory, 272 Whitney Avenue, P.O. Box 6666, New Haven, CT 06511. Instrument: Magnetic Analysis System and Transport. Manufacturer: Bruker Instruments, Inc., West Germany. Intended Use: The instrument will be used for the analysis of ion beams in nuclear physics research. The ion beam analysis provided will be an important aspect for both research activities and educational activities in the training of predoctoral graduate students in the Ph.D. thesis research. Application received by Commissioner of Customs: October 14, 1986.

Docket No.: 87-002. Applicant: University of Hawaii, Manoa Campus, Department of Chemistry, 2545 The Mall, Honolulu, HI 96822. Instrument: Mass Spectrometer, Model VG 70-SE with Accessories. Manufacturer: VG Instruments Inc., United Kingdom. Intended Use: The instrument will be used in the following areas of research:

(1) Structural analysis of pharmacologically-active natural products, in particular new anticancer drugs isolated from marine organisms and cultured microalgae;

(2) Characterization of intermediates in the total synthesis of pharmacologically-active natural products;

(3) Detection and identification of drug metabolites in organ extracts;

(4) Detection and identification of biosynthetic precursors of pharmacologically-active natural products from marine organisms and cultured microalgae; and

(5) Structural studies of peptides, polysaccharides and other biological compounds with common repeating units.

The main purpose of the instrument will be to produce molecular ions and fragmentation ions for each natural product or biomolecule under study and to display the various ions in a spectrum. The instrument will also be used to train undergraduate students, graduate students and postdoctoral fellows in modern methods of organic analysis and structure determination research. Application received by Commissioner of Customs: October 14, 1986.

Docket No.: 87-006. Applicant: St. Jude Children's Research Hospital, 332 N. Lauderdale, Memphis, TN 38101. Instrument: Stopped-flow Apparatus. Manufacturer: Hi-Tech Scientific Limited, United Kingdom. Intended Use: The instrument is intended to be used for studies of enzyme and liquid fluorescene vs. time after extremely rapid mixing, and measurements of catalytic activity with time under similar conditions. Application Received by Commissioner of Customs: October 15, 1986.

Docket No.: 87-007. Applicant: Temple University School of Medicine, Pathology Department, 3401 N. Broad Street, Philadelphia, PA 19140. Instrument: Electron Microscope, Model CM 10 with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended Use: The instrument will be used for studies of biologic tissues that often have various disease processes being manifest. Some studies will involve the normal morphobiology of tissue. Experiments being conducted include:

(1) Studies of the pattern of electron dense immunologic deposits and the reaction of the renal glomerular cells to these deposits;

(2) Studies of the distribution of various hormones including retinol binding protein by immuno electron microscopy using gold labelling;

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(3) Studies of the distribution of convoluted lymphocytes as obtained by light microscopic smears versus electron microscopy;

(4) Studies and comparison of two types of brain tumors that appear to have overlapping features: the Schwannoma and the meningioma;

(5) Studies of the cause of Creutzfeldt-Jakob disease.

In addition, the instrument will be used for both training and teaching of pathology residents in the postdoctoral program and for use in preparing materials for pathology students in the undergraduate medical school class. Application Received by Commissioner of Customs: October 15, 1986.

Docket No.: 87-008. Applicant: University of Utah, Purchasing Department, Room 151, Annex Building, Salt Lake City, UT 84112. Instrument: Optical Rotatory Dispersion/Circular Dichroism Spectrophotometer, Model J-20C with Accessories. Manufacturer: Jasco, Japan. Intended Use: The instrument will be used for the following research projects entitled:

(1) Conformational Properties of Cyclic Nucleotide Derivatives

(2) Chemistry of Chiral Organorhenium Complexes

(3) Conformations of Farnesyl Pyrophosphate Synthetase, the Enzyme-Substrate, and the Enzyme-Product Complex

(4) Development of New Methodologies for Organic Synthesis.

In addition, the instrument will be used for teaching an instrumental analysis course, Chemistry 570. Application Received by Commissioner of Customs: October 16, 1986.

Docket No.: 87-009. Applicant: The University of South Carolina, Geology Department, Earth Water Science Building, Columbia, SC 29208. Instrument: Electron Microprobe, Model CAMEBAX SX 50. Manufacturer: Cameca, France. Intended Use: The instrument will be used for studies of rocks, minerals, meteorites and synthetic inorganic compounds. Experiments will involve measurement of X-ray intensity emitted by samples when bombarded by focused electron beam to determine the mode of formation of rocks and meteorites through chemical analysis of constituent minerals. The instrument will also be used for educational purposes in the courses: Introduction to Microprobe Analysis and Reading and Research. Application Received by Commissioner of Customs: October 16, 1986.

Docket No. 87-010. Applicant: The University of Oklahoma, 660 Parrington Oval, Room 321, Norman, OK 73019. Instrument: Isotope Ratio Mass Spectrometer, Model Delta E. Manufacturer: Finnigan MAT, West Germany. Intended Use: The instrument is intended to be used to determine the stable carbon, nitrogen, oxygen and sulfur isotopic compositions of a variety of geologic materials, including crude oils, natural gases, source rocks, Precambrian organic-rich shales and limestones and individual organic compounds e.g. amino acids, isolated from modern and fossil shell and bones, A primary objective is to perform stable isotope measurements at the molecular level i.e. investigate the stable isotopic compositions of individual stereoisomers of organic compounds. The information obtained will contribute to the general research objectives of determining the origins, distribution and alteration of organic matter in the earth's crust. In addition, the instrument will be used for educational purposes by providing hands-on experience, instruction in Geology 5743 and Geology 6970 and instruction in graduate seminar courses in geology and geophysics. Application Received by Commissioner of Customs: October 16, 1986.

Docket No.: 87-012. Applicant: New England Medical Center Hospitals, Department of Medicine, 171 Harrison Avenue, Boston, MA 02111. Instrument: Electron Microscope, Model CM10/PC with Accessories. Manufacturer: Philips Electronic Instruments Inc., The Netherlands. Intended Use: The instrument is intended to be used for studies of tissues sections, cell suspension, cell cultures and subcellular organelles. Experiments will be conducted for in vitro detection of: enzymes, secretion products, antigenic and antigen-antibody reaction sites, physiological and pathological cellular pathways and intracellular and cell surface receptors. The objective of these investigations is more precise morphologic delineation of cellular and molecular physiological and pathological pheomena. In addition, the instrument will be used for training students at the Masters and Ph.d. level in anatomy and cellular biology courses. Application Received by Commissioner of Customs: October 20, 1986.

Docket No. 87-013. Applicant: University of Connecticut Health Center, School of Medicine, Farmington, CT 06032. Instrument: Electron Microscope, Model CM10/PC with accessories. Manufacturer: Philips Electronic Instruments, The Netherlands. Intended Use: The instrument will be used to conduct the following:

(1) Characterizatioin and localization of extracellular and cell surface associated glycosaminoglycans and proteoglycans and B-adrenergic receptors in developing salivary glands.

(2) Study of the synthesis and secretion of osteoblast extracellular matrix proteins, and their regualtion by 1,25 dihydroxy-vitamin D_3 and parathyroid hormone (PTH).

(3) Studies of mammalian gustatory system which focus on the connections of identified afferent axonal endings in the medulla.

(4) Studies of titanium alloys in dentistry.

(5) Studies of the mechanisms for the non-specific and specific antibacterial properties of SnF_2.

(6) Histologic and electon microscopic observations on the effect of experimental diabetes on periodontal tissues and periodontal disease.

Application Received by Commissioner of Customs: October 20, 1986.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-25028 Filed 11-4-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

[P77 #21]

Application for Marine Mammals Permit; National Marine Fisheries Service, Northwest and Alaska Fisheries Center

Notice is hereby given that an applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217-222).

1. Applicant: a. Name: Northwest and Alaska Fisheries Center National Marine Fisheries Service
b. Address: 7600 Sand Point Way, NE. BIN C15700 Seattle, Washington 98115.
2. Type of Permit: Scientific Research/Scientific Purposes
3. Name and Number of Marine Mammals: An unspecified number of specimen materials may be taken and/or imported from dead individuals of all species of pinnipeds, except walrus, and all species of cetaceans which are; (a) Directly

taken in fisheries for such animals, in countries and situations where such taking is legal; (b) killed incidental to fishing or other operations, (c) found dead floating at sea or beached, or (d) dead of natural causes

4. Location of Activity: Worldwide, principally from the open waters, coastal areas and islands of the North Pacific Ocean, Gulf of Alaska, Bering Sea, Chuckchi Sea and Beaufort Sea
5. Period of Activity: 5 Years

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm 805, Washington, DC; and

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau Alaska 99802;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930;

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE. BIN C15700, Seattle Washington 98115;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: October 28, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-25010 Filed 11-4-86; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Proposed Development of Cedar Island in Accomack County, VA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

1. **Proposed Action:** Cedar Island is a largely undeveloped barrier island off the coast of Virginia. Mr. Ben Benson, whose family had owned much of Cedar Island, has recently sold approximately 100 lots on the island for residential development. He proposes to construct a community pier at the north end of the island for use by the lot owners and for bringing building supplies to the island. The direct impacts of the community pier and the subsequent secondary and cumulative impacts of the residential development on the island will be addressed in the DEIS.

2. **Alternatives:** Alternatives which will be investigated include but will not be limited to different means of access to Cedar Island, different possible scenerios of development on the island, and the no action (permit denial) alternative.

3. **Scoping Process:** A public scoping meeting on this project is not anticipated at this time due to the substantial amount of information available from public meetings about island development held by the Virginia Marine Resources Commission (VMRC). Transcripts and statement copies will be obtained from VMRC to determine the significant issues identified by the Federal, State, and local agencies, individuals and organized groups during the VMRC's meetings and hearings. A public notice requesting written scoping comments will be published in the near future. Significant issues which have already been identified and which will be analyzed in the DEIS include indirect impacts of residential development on wetlands, sand dunes, beach erosion, and on the Piping Plover, a bird which nests on the island and which is listed as a threatened species under the Endangered Species Act.

4. **DEIS Availability:** It is estimated that the DEIS will be available to the public for review and comments in the fall of 1987.

ADDRESS: Questions about the proposed action and DEIS can be answered by: Mrs. Cynthia Wood, U.S. Army Corps of Engineers District, Norfolk, 803 Front Street, Norfolk, Virginia 23510-1096, (804) 441-3219—COM, 827-3219—FTS.

Dated: October 28, 1986.

Claude D. Boyd III,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 86-24945 Filed 11-4-86; 8:45 am]

BILLING CODE 3710-EN-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER87-39-000 et al.]

Arkansas Power & Light Co. et al.; Electric Rate and Corporate Regulation Filings

October 31, 1986.

Take notice that the following filings have been made with the Commission.

1. Arkansas Power & Light Co.

[Docket No. ER87-39-000]

Take notice that Arkansas Power & Light Company (AP&L) tendered for filing on October 22, 1986 a letter agreement for sale of Middle South System reserve capacity to Associated Electric Cooperative, Inc.

AP&L requests an effective date of January 1, 1987 for the letter agreement.

Comment date: November 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Consolidated Edison Co. of New York, Inc.

[Docket No. ER87-45-000]

Take notice that on October 24, 1986, Consolidated Edison Company of New York, Inc. ("Con Edison") tendered for filing, as a rate schedule change, an agreement to extend the term of its capacity sale to Long Island Lighting Company ("LILCO") under its Rate Schedule FERC No. 80, from October 25, 1986, the current termination date, to December 31, 1986. No other changes are made in the Rate Schedule.

Con Edison requests waiver of the notice requirements of § 35.3 of the Commission's regulations so that the Supplement can be made effective as of October 26, 1986.

Con Edison states that a copy of this filing has been served by mail upon LILCO.

Comment date: November 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

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3. Florida Power & Light Co.

[Docket No. ER87-36-000]

Take notice that Florida Power & Light Company (FPL), on October 20, 1986, tendered for filing: (1) A Contract for Interchange Service Between Florida Power & Light Company and the Utilities Commission, City of New Smyrna Beach, Florida ("Contract"); and (2) Cost Support Schedules C, F, and G (together with Cost Support Schedule F Supplements) which support the daily capacity charges for sales under Service Schedule B (Short-Term Firm Interchange Service) of the Contract. The Contract has been executed by both parties.

FPL respectfully requests that the proposed Contract and Cost Support Schedules C, F, and G (together with Cost Support Schedule F Supplements) be made effective January 1, 1987. According to FPL, a copy of this filing was served upon the Utilities Commission, City of New Smyrna Beach, Florida and the Florida Public Service Commission.

Comment date: November 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Interstate Power Co.

[Docket No. ER86-654-000]

Take notice that on October 7, 1986, Interstate Power Company tendered for filing a request that present EXHIBIT VI be deleted and a revised EXHIBIT VI will be filed if and when any charges are actually made under the provisions of the shared facilities agreement.

Comment date: November 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Central Vermont Public Service Corp.

[Docket No. ER86-689-000]

Take notice that Central Vermont Public Service Corporation (Central Vermont) on October 20, 1986 tendered for filing additional information relative to the Company's August 29, 1986 filing of the annual cost data as required by provisions of Article V of the Power Purchase Contracts with the following customers:

Customer	Rate schedule FERC No.
Vermont Electric Generation and Transmission Co-operative, Inc	88
Lyndonville Electric Department	92
Village of Ludlow Electric Light Department	96
Village of Johnson Water and Light Department	105
Village of Hyde Park Water and Light Department	111

The additional information is intended to more fully explain the derivation of the purchased capacity and transmission by others costs set forth on APPENDIX II, Schedule 1, Page 1 of 2 of the annual cost update. The information reconciles the purchased power data contained in the Company's FERC Form No. 1 to the purchased capacity data used in this annual update and the purchased energy included in the monthly System Power Energy Charge.

The Company respectfully requests a waiver of the 60-day notice requirement so that the System Capacity Rates may become effective on November 1, 1986 as provided for under the Contracts.

Copies of this filing were served upon the customers and the Vermont Public Service Board.

Comment date: November 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Mississippi Power and Light Co.

[Docket No. ER86-679-000]

Take notice that on October 14, 1986, Mississippi Power & Light Company (the Company) tendered for filing as an amendment of the Letter Agreement for Short-Term Firm Power, workpapers that provide support for the monthly demand charge included in the Letter Agreement.

Comment date: November 14, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Co.

[Docket No. ER86-170-004]

Take notice that on October 3, 1986, New England Power Company (NEP) tendered for filing a compliance report statement that NEP had acted in accordance with the Commission's interim rate order, whereby billings at the Tariff No. 3 settled rates were initiated on June 22, 1986 and billings under Tariff No. 4 commenced at settlement rates July 1, 1986. Therefore, NEP states that no amounts have been collected in excess of the settlement rate levels and no refunds to customers under Tariff Nos. 3 and 4 are required.

Comment date: November 14, 1986, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Company Services, Inc.

[Docket No. ER87-26-000]

Take notice that on October 14, 1986, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company ("Southern companies") tendered for filing Amendment No. 3 to an Interchange Contract between Southern Companies and Florida Power & Light Company.

The subject amendment to the Interchange Contract revises the terms and conditions under which Southern Companies and Florida Power & Light Company will price economy energy transactions between their respective electric systems. The amendment provides for an additional pricing mechanism which allows the parties to negotiate the price of economy energy transactions.

Comment date: November 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-25005 Filed 11-4-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-22-000 et al.]

Northwest Pipeline Corp. et al.; Natural Gas Certificate Filings

October 30, 1986.

Take notice that the followings filings have been made with the Commission.

1. Northwest Pipeline Corp.

[Docket No. CP87-22-000]

Take notice that on October 14, 1986, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP87-22-000, a petition for an order declaring that a certain activity as proposed by Northwest is a temporary act or operation for which the issuance of a certificate under section 7(c) of the Natural Gas Act (NGA) is not requried in the public interest and is therefore exempt from the requirements of that section. It is stated that the activity for which Northwest seeks the exemption is the construction and operation of a meter station and appurtenant facilities and the transportation of up to 29,000 MMBtu of non-jurisdictional sales gas per day

(MMBtu/d) by Northwest for sale to Exxon Company U.S.A. (Exxon) for use during emergency shut-downs of Exxon's Dry Piney Dehydration Plant and during facility malfunction at Mountain Fuel Resources, Inc.'s (MFR) Dry Piney Gas Conditioning Plant, both in Sublette County, Wyoming, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

It is stated that the Dry Piney Dehydration Plant was constructed by Exxon to treat natural gas from the La Barge Anticline located in southwestern Wyoming. It is then stated that the natural gas treated in the Dry Piney Dehydration facility is transported through Exxon's facilities to the inlet of Exxon's Shute Creek Processing Plant. Northwest states that ANR Pipeline Company (ANR) then purchases the processed gas for its general system supply requirements. It is indicated that by order dated January 24, 1985, in Docket No. CP84–756–000, MFR was granted authorization to deliver natural gas to its affiliated local distribution company for ultimate delivery to Exxon for base load requirements at Exxon's Dry Piney Dehydration Plant. Northwest states that the supply source from which MFR provides base load requirements to Exxon is MFR's Dry Piney Gas Conditioning Plant. MFR has indicated to Northwest that the current production at the tailgate of its plant is approximately 8,500 MMBtu/d.

Exxon has stated to Northwest that in the event of a plant upset at the Dry Piney Dehydration Plant, its needs for instantaneous emergency gas would be approximately 29,000 MMBtu/d, an amount that is in excess of the present capacity of MFR's plant. In the event that Exxon's Dry Piney facility experienced failure, it is stated, MFR would be unable to supply a sufficient source of pipeline quality gas to provide flare assistance volumes to Exxon, thus creating a potentially hazardous situation because Exxon would be unable to flare the unprocessed gas within the plant site because the raw gas contains lethal amounts of hydrogen sulfide; thus, the limited venting of this gas could create a safety hazard for field employees. It is further stated that in the event MFR's facility failed to operate at capacity or to otherwise function properly, MFR would be unable to supply Exxon's Dry Piney facility with its entire base load requirements.

It is stated that to insure an ample supply of emergency shut-down gas to Exxon for use in flare assistance procedures and to supply base load protection, Exxon and Northwest have entered into an emergency gas sales agreement (Agreement) dated July 28, 1986, under which Northwest would provide on a firm basis up to 29,000 MMBtu/d of pipeline quality gas for use as emergency fuel gas for emergency shut-down operations at Exxon's Dry Piney Dehydration Plant. It is maintained that in the event that MFR cannot provide adequate base load volumes due to a facility malfunction, Northwest would supply a portion of Exxon's base load requriements until MFR is able to correct the facility malfunction. It is stated that the Agreement is effective for a primary term of five years and from year-to-year thereafter until terminated upon six months written notice. Northwest stated that the emergency shut-down gas would be used, in the event of a plant failure, as flare assistance gas and as purge and pack gas to restart the plant. It is stated that Exxon estimates that for each plant failure the emergency gas volumes would be required for a period of 4–5 hours for flare assistance and for a period of 24 hours maximum to purge and repack the plant. Northwest states that Exxon indicates that plant upsets would probably occur no more than twice a year. It is maintained that the emergency base load would be provided only during periods when MFR is unable to provide Exxon with 100% of its base load requirements. Inasmuch as MFR's facilities malfunctions are impossible to forecast as to length of time and frequency, Northwest states that it would provide the emergency base load requirement on an as-needed basis only. However, Northwest expects that any failure, such as a meter freeze-off could be expected to be corrected within hours of the failure. It is stated that if Exxon's emergency base load requirements were not supplied by Northwest, Exxon's plant could be forced into unnecessary and repeated plant failures, requiring Exxon to flare and purge the entire facility. Northwest states that it would deliver the subject gas to MFR for Exxon's account at the new meter station located in Sublette County, Wyoming. The new facilities are located on existing Northwest right-of-way adjacent to its 30-inch Big Piney lateral.

It is stated that for all volumes of natural gas sold to Exxon under the terms of the Agreement, Northwest would charge a rate equal to its IOS–1 rate which currently is 24.008 cents per therm as set forth on Twenty-Seventh Revised Sheet No. 10 in Northwest's FERC First Revised Volume No. One Tariff. In accordance with the approved settlement of Northwest's rate proceeding in Docket No. RP85–13–000, Northwest states it would retain all revenues received from Exxon hereunder.

Northwest states that the estimated cost of installing the meter station and appurtenant facilities would be $402,000, which would be financed from funds on hand. Northwest further states that Exxon would reimburse Northwest for the total cost of installing such facilities.

It is stated that Northwest requests the Commission to issue a declaratory order confirming that the activity described above is a temporary act or operation for which the issuance of a certificate under section 7(c) of the NGA is not required in the public interest and is therefore exempt from the requirements of that section.

Comment date: November 20, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Tennessee Gas Pipeline Co., a Division of Tenneco Inc.

[Docket No. CP87–25–000]

Take notice that on October 14, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed a request pursuant to §§ 157.205 and 157.212 of the Regulations under the Natural Gas Act (18 CFR 157.205) to establish a new delivery point to its existing firm sales customer New York State Electric & Gas Corporation (NYSEG) under Applicant's blanket certificate issued in Docket No. CP82–413–000, all as more fully set forth with the Commission and open to public inspection.

Applicant states that pursuant to NYSEG's request, it has agreed to establish a new delivery point in Yates County, New York. According to Applicant, the new delivery point is necessary to enable NYSEG to render service to a new gas franchise area recently acquired by NYSEG. It is stated that all costs associated with the construction of the proposed new delivery point would be borne by NYSEG.

It is stated that the Maximum Daily Quantity to be delivered at the subject delivery point would be 1,000 dt equivalent. Applicant further states that it does not propose to increase or decrease the total daily and/or annual quantities it is authorized to deliver to NYSEG. Applicant asserts that the establishment of the proposed new delivery point would not be prohibited by Applicant's currently effective tariff and that it has sufficient capacity to accomplish the deliveries at the proposed new delivery point without detriment or disadvantage to any of Applicant's other customers.

Comment date: December 15, 1986, in accordance with Standard Paragraph G at the end of this notice.

3. Texas Eastern Transmission Corp.

[Docket No. CP87–28–000]

Take notice that on October 16, 1986, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP87–28–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity for authorization to provide a firm storage delivery service for Consolidated Edison Company of New York, Inc. (Con Ed), pursuant to its Rate Schedule SS–II and to construct and operate additional pipeline facilities required to render such service, all as more fully set forth

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in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to provide a firm storage delivery service for Con Ed of 23,115 dt equivalent firm daily delivery of natural gas and to construct and operate facilities at an estimated cost of $13,438,000. It is stated that the project involves the looping of 8.00 miles of 36-inch pipeline at four locations in Pennsylvania, and upgrading compression facilities by 8,600 hp at each of two locations in Pennsylvania.

Applicant states that a Precedent Agreement has been executed with Con Ed who has requested Firm Daily Withdrawal Quantities (FDWQ). It is asserted that the annual costs associated with all facilities which must be added to Applicant's system to render the firm deliveries would be borne by Con Ed by means of a Firm Demand Charge. Applicant estimates a Firm Demand Charge of $10.0350 per dt equivalent of natural gas at FDDQ per month.

Comment date: November 20, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Williston Basin Interstate Pipeline Co.

[Docket No. CP87-20-000]

Take notice that on October 14, 1986, Williston Basin Interstate Pipeline Company (Applicant), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP87-20-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authority to construct a sales tap and appurtenant facilities to provide for the transportation of natural gas owned by Marathon Oil Company (Marathon), under the certificate issued in Docket No. CP82-487-000, T3et. al., pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that Applicant seeks authorization to construct a new sales tap and appurtenant facilities on its Grass Creek gathering system, located in Hot Springs County, Wyoming, to provide for the delivery of between 350 and 375 Mcf of natural gas per day owned by Marathon for field use by Marathon. Applicant proposes to transport such volumes for Marathon pursuant to its rate schedule S-2 or any superseding rate schedule. The estimated cost to construct the proposed sales tap is $8,900 and would be reimbursed in total by Marathon. Applicant avers that the installation of the sales tap would have no signficant effect on its peak day or annual requirements.

Comment date: December 15, 1986, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if not motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unecessary for the applicant to appear to be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-25006 Filed 11-4-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-41-000]

Bangor Hydro-Electric Co. et al.; Notice of Filing of Rate Schedule

October 27, 1986.

In the matter of Bangor Hydro-Electric Co.; Central Maine Power Co.; Central Vermont Public Service Co.; Fitchburg Gas and Electric Co.; Maine Public Service Co.;

Take notice that on October 22, 1986, the above-named utilities (Sellers) tendered for filing as an initial rate schedule to become effective sixty days following such filing date an agreement between Sellers and EUA Power Corporation (EUA Power) providing for service to EUA Power on certain transmission-related facilities at the Seabrook nuclear generating project.

Sellers state that the purpose of such initial rate schedule is to provide service to EUA Power pending Commission authorization under section 203 of the Federal Power Act approving the conveyance of such transmission-related facilities to EUA Power.

Sellers state that a copy of this initial rate schedule filing was mailed to EUA Power.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 6 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-24970 Filed 11-4-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA87-1-000]

Crest Resources and Exploration Corp.; Petition for Adjustment

October 30, 1986.

On October 6, 1986, Crest Resources and Exploration Corp. (Crest) filed an application with the Commission under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) for relief from its Btu refund obligation under Order Nos. 399 and 399–A.[1] Crest states that it is the operator of a gas well in Matagorda County, Texas, but does not own a working interest therein. The well was plugged and abandoned during the first part of 1983. Prior to abandonment, gas from the well was sold to Tennessee Gas Pipe Line Company.

Crest asserts that it has made diligent effort to collect the refunds owed by the 38 different owners of interests in the well, and received $2448.33, which it has paid over to Tennessee. Crest seeks a waiver of the remaining balance of funds owed, $8,859.58 plus accured interest, on grounds that it has been unable to locate some interest owners, some have died, and others are in bankruptcy. Crest also argues that since it is not an interest owner in the well, it is not responsible for paying refunds on behalf of the owners, and furthermore, that it is financially unable to make the payments.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed with in 15 days after publication of this notice in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–25007 Filed 11–4–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP80-55-012 and RP85-167-006]

Sea Robin Pipeline Co.; Filing

October 31, 1986.

Take notice that on *October 28, 1986,* Sea Robin Pipeline Company (Sea Robin) submitted the following proposed tariff sheets as part of its FERC Tariff:

Original Volume No. 1

Forty-Fifth Revised Sheet No. 4
Twenty-Fourth Revised Sheet No. 4–A

Original Volume No. 2

Twenty-Eighth Revised Sheet No. 127–D
Twenty-Eighth Revised Sheet No. 135–C

Sea Robin requested waivers of the Commission's regulations to permit the tariff sheets to become effective on October 1, 1986.

Sea Robin states that the filing is in compliance with the decision of the United States Court of Appeals for the District of Columbia Circuit in *Sea Robin Pipeline Company v. FERC,* 795 F.2d 182 (D.C. Cir. 1986), as contemplated in the approved settlement at Docket No. RP85–167.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before *November 7, 1986.* Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any protestant a party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–25008 filed 11–4–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-125-019]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc., Filing

October 30, 1986.

Take notice that on October 27, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc., tendered for filing proposed tariff sheets to its FERC Gas Tariff First Revised Volume No. 1 and Original Volume No. 2, consisting of the following:

First Revised Volume No. 1

Second Revised Sheet No. 22
Third Revised Sheet No. 22

Original Volume No. 2

First Revised Sheet Nos. 3 through 8
Original Sheet Nos. 9 and 10
Original Sheet Nos. 1749 through 1847
Original Sheet Nos. 1848 through 5000
Original Sheet Nos. 5601 through 5631.

Tennessee states that these tariff sheets are filed to reflect new rates for Rate Schedules SST–NE and ISST–NE, to implement new rate schedules for certain long-term transportation agreements that have received authorization in various proceedings before the Commission, and to revise the Summary of Rates and Charges in Original Volume No. 2.

Any person desiring to be heard or to protest said filing should file a motion to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before November 7, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–25009 Filed 11–04–86; 8:45 am]

BILLING CODE 6717-01-M

Conservation and Renewable Energy Office

National Energy Extension Service Advisory Board; Change in Time of Meeting

This notice is given to advise of the change in time of the meeting of the National Energy Extension Service Advisory Board on November 13 and 14, 1986, as published in the Federal Register on October 16, 1986 (51 FR 36846).

On November 13, the meeting will convene at 8:00 a.m. and adjourn at 1:30 p.m. On November 14, the meeting will convene at 8:00 a.m. and adjourn at 12:00 noon. The agenda topics will remain the same. The meeting will be held in the Capitol Room, East Conference Center, Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC.

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[1] Refunds Resulting from Btu Measurement Adjustments, 49 FR 37735 (Sept. 28, 1984) (Order No. 399), FERC Statutes & Regulations [Regulations Preambles 1982–1985] ¶ 30,597. In Order No. 399, the Commission established refund procedures for charges for natural gas above NGPA ceilings as a result of Btu measurements based on the "as delivered" water vapor content of the gas, rather than on a water saturated basis. In so doing, the Commission was implementing the decision in Interstate Natural Gas Association of America v. Federal Energy Regulatory Commission, 716 F.2d 1 (D.C. Cir. 1983), *cert. denied,* 465 U.S 1108 (1984). Order No. 399–A, 49 FR 46353 (Nov. 26, 1984), FERC Statutes & Regulations [Regulations Preambles 1982–1985] ¶ 30,612, recognized the Commission's authority to waive Btu refunds attributable to royalty interest payments where the operator can demonstrate its inability to collect the refunds from royalty interest owners.

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Issued at Washington, DC, on October 31, 1986.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 86–25029 Filed 11–4–86; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Salt Lake City Area Integrated Projects Proposed Power Rate

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Power Rate—Salt Lake City Area Integrated Projects.

SUMMARY: The Western Area Power Administration (Western) is proposing to establish a rate for power and energy from the Salt Lake City Area Integrated Projects (Integrated Projects). The projects included in integration are the Collbran Project (Collbran), the Rio Grande Project (Rio Grande), and the Colorado River Storage Project (CRSP). The rate for the Integrated Projects (Integrated rate) will cover annual operating expenses and repay the Federal investment in the projects. The proposed Integrated rate for firm power is 10.25 mills per kWh. The present rate for Collbran power is 21.8 mills per kWh. The present rate for Rio Grande power is 30.85 mills per kWh with a proposed rate of 37.32 mills per kWh scheduled to begin in April 1987. The present CRSP rate is 9.92 mills per kWh. In addition, Western proposes to include a surcharge of 1 percent for each percent or major part thereof that a customer's power factor falls below 95 percent lagging or 95 percent leading. Another part of the power factor adjustment provision will provide a means for Western to recover costs it may incur because of conditions on a customer's system. The proposed new SLCA–F1 Rate Schedule will replace schedules SP–F2 and SP–FP2 for CRSP firm and peaking power services. Collbran and Rio Grande contractors will be offered contract modifications to discontinue the purchase of Collbran and Rio Grande resources in exchange for equivalent amounts of Integrated resources upon the effective date of Rate Schedule SLCA–F1. The effective date is expected to be on or before the first day of the October 1987 billing period. A brochure explaining the reasons for including a power factor surcharge and outlining the methodology used in developing the proposed Integrated rate will be distributed to the customers of the Integrated Projects and other interested parties. Since the proposed Integrated rate is a major rate adjustment as defined by the current procedures for public participation in general rate adjustments, public information and comment forums are required. At least one combined public information/comment forum will be held. After public discussions and review of public comments, Western will determine a final proposal Integrated rate.

DATES: The consultation and comment period will begin with publication of this notice in the **Federal Register** and will end February 17, 1987.

A public information forum, at which Western will outline the methodology used in developing the Integrated rate, will be held at the Hotel Utah, Main and South Temple, Salt Lake City, Utah, 1 p.m., on November 20, 1986. Western will answer questions at this forum. A public comment forum, at which Western will receive oral and written comments, will be held at the Hotel Utah, Main and South Temple, Salt Lake City, Utah, at 8:30 a.m. on December 18, 1986. Written comments should be received by the end of the consultation and comment period to be assured of consideration and may be sent to the address below.

FOR FURTHER INFORMATION CONTACT: Mr. Lloyd Greiner, Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147, (801) 524–5493.

SUPPLEMENTARY INFORMATION: Power rates for the Integrated Projects are established pursuant to the Department of Energy Organization Act of August 4, 1977, 42 U.S.C. 7101, *et seq.*; the Reclamation Act of 1902, ch. 1093, 372 Stat. 388 (1902), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); and the acts specifically applicable to the projects involved.

The Secretary of the Department of Energy, by Declaration Order No. 0204–108 (48 FR 55664, December 14, 1983), as amended at 51 FR 19744 on May 30, 1986, delegated to the Administrator of Western the authority to develop power and transmission rates; to the Under Secretary of Energy the authority to confirm, approve, and place such rates in effect on an interim basis; and to the Federal Energy Regulatory Commission the authority to either confirm and approve and place in effect on a final basis, to remand, or to disapprove such rates.

The procedures for public participation in rate adjustments for power marketed by Western at 10 CFR Part 903 were published in the **Federal Register** at 50 FR 37835 on September 18, 1985.

Availability of Information

All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the proposed Integrated rate are and will be available for inspection and copying at the Salt Lake City Area Office.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the initiation of the Integrated rate relates to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rules of particular applicability relating to rates or services are not considered rules within the meaning of the act. Since the Integrated rate is of limited applicability, no flexibility analysis is required.

Determination Under Executive Order 12291

The Department of Energy has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291 (46 FR 13193, February 19, 1981). In addition, Western has an exemption from sections 3, 4, and 7 of Executive Order 12291; and therefore, will not prepare a regulatory impact statement.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969, Council of Environmental Quality regulations, and DOE guidelines, Western conducts environmental evaluations of certain rate and allocation actions. Under integration, the existing Collbran and Rio Grande customers will receive from the Integrated Projects, through FY 1989, fixed commitments approximately equal to amounts they are now receving. This will result in decreased costs to these customers. Western analyzed the effect this would have on consumption as a part of its Post-1989 Marketing Criteria Environmental Assessment (DOE EA-0265) and found that it did not significantly affect consumption. For the post-1989 period, these customers will receive reduced allocations from the Integrated Projects. Western has also compared the effect of the proposed Integrated rate, as it will increase the charges to CRSP customers, to the rate of inflation in the period since the existing CRSP power rate was placed in effect. Since increased consumption from lower rates is insignificant and since the proposed differential increase in the Integrated rate does not exceed the rate of inflation, an environmental assessment is not required, and a memorandum to this effect will be prepared and copies will be sent to interested persons upon request.

Issued at Golden, Colorado, October 28, 1986.

William H. Clagett,

Administrator.

[FR Doc. 86-25083 Filed 11-4-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3106-4]

Availability of Technical Report on Oil, Gas and Geothermal Industry Waste and Announcement of Public Meetings

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability of Report and Public Meetings.

SUMMARY: Section 8002(m) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6982(m) requires EPA to study the adverse effects, if any, of drilling fluids, produced waters, and other wastes associated with the exploration, development or production of crude oil or natural gas, or geothermal energy on human health and the environment. Section 3001(b) of RCRA exempts these wastes from regulation as hazardous waste until EPA: (1) Produces a Report to Congress on the study required by 8002(m); (2) provides opportunity for public comment and hearings(s); (3) makes a regulatory determination; and (4) regulations are authorized by Act of Congress.

In August, 1985, the Alaska Center for the Environment sued EPA (Alaska Center for the Environment *vs.* Lee Thomas) on EPA's failure to conduct this study. EPA signed a consent order which obligates the Agency to meet several milestone dates and to submit the final Report to Congress on August 31, 1987. One such milestone is to complete a Technical Report by October 31, 1986. This **Federal Register** notice announces the availability of that Technical Report and public meetings to accept comments on it.

In the Technical Report, EPA presents a profile of the oil and gas industry and the geothermal industry. EPA also describes the methodologies to be used to gather information and prepare the final Report to Congress which must address: (1) The sources and volumes of discarded material generated per year from such wastes; (2) present disposal practices; (3) potential danger to human health and the environment from the surface runoff or leachate; (4) documented cases which prove or have caused danger to human health and the environment from surface runoff or leachate; (5) alternatives to current disposal methods; (6) the cost of such alternatives; and (7) the impact of those alternatives on the exploration for, and development and production of, crude oil and natural gas or geothermal energy. Two public meetings will be held in conjunction with the availability of this Technical Report.

DATES: Due to time constraints imposed by the court-ordered deadlines, public comments on this report should be submitted as soon as possible. The Agency prefers that comments be submitted no later than December 15, 1986. EPA will hold two public meetings pertaining to this Technical Report: December 3, 1986 in Washington, D.C., and December 5, 1986 in New Orleans, Louisiana.

ADDRESSES: The locations of the public meetings are.

Park Terrace Hotel, 1515 Rhode Island Avenue, Washington, D.C. 20005, (202) 232-7000

New Orleans Marriott Hotel, 555 Canal Street, New Orleans, Louisiana 70140, (504) 581-1000

The meetings will begin at 9:30 a.m. and will end at 4:30 p.m. If there are no remaining comments, the meetings will adjourn earlier. If you wish to present oral comments at one of the meetings, please notify, in writing, Ms. Geraldine Wyer, Office of Solid Waste (WH-562), U.S. EPA, 401 M Street, SW., Washington, DC 20460.

For the convenience of attendees requiring overnight accommodations, sleeping rooms have been reserved at both hotels the evening preceding the meetings. Please make your reservations by contacting the hotel directly. The document entitled, Technical Report: Waste from the Exploration, Development and Production of Crude Oil, Natural Gas and Geothermal Energy, An Interim Report on Methodology for Data Collection and Analysis, is available for viewing at all EPA Regional libraries and in the EPA RCRA Docket (sub-basement), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460, from 9:30 a.m. to 3:30 p.m., Monday through Friday, except Federal holidays, by appointment only. Appointments can be made by calling Mia Zmud at (202) 475-9327 or Kate Blow at (202) 382-4675. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies costs 20 cents per page. The public must send an original and two copies of their comments to: Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Place the docket number F-86-OGRN-FFFFF on your comments.

FOR FURTHER INFORMATION CONTACT: RCRA/Superfund Hotline (800) 424-9346 or (202) 382-3000. For technical information, contact Mr. Bob Hall (202) 475-7415.

Dated: October 31, 1986.

J. Winston Porter,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 86-25099 Filed 11-4-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50661; FRL-3103-3]

Issuance of Experimental Use Permits: Chevron Chemical Co. et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail, the product manager cited in each experimental use permit at the address below: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

239-EUP-104. Extension. Chevron Chemical Company, 940 Hensley St., Richmond, CA 94804-0036. This experimental use permit allows the use of 213 pounds of the insecticide alpha-cyano-3-phenoxybenzyl, 2,2,3,3-tetramethylcyclopropanecarboxylate on apples and pears to evaluate the control of various insects. A total of 160 acres are involved; the program is authorized only in the States of California, Colorado, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Virginia, Washington, and West Virginia. The experimental use permit is effective from June 6, 1986 to June 6, 1987. A temporary tolerance for residues of the active ingredient in or on apples and pears has been established. (George LaRocca, PM 15, Rm. 204, CM#2 (703-557-2400))

464-EUP-85. Amendment. Dow Chemical Company, P.O. Box 1706, Midland, MI 48640. In the **Federal Register** of June 4, 1986 (51 FR 20342), EPA issued an experimental use permit pertaining to the issuance of 464-EUP-85 to Dow Chemical Company. At the request of the company, the permit has been amended to add four States and to reduce the acreage. The experimental use permit allows the use of 750 pounds of the herbicide 2-(3,5-dichlorophenyl)-2-(2,2,2,-trichloroethyl)oxirane on grain sorghum to evaluate the control of broadleaf weeds and grasses. A total of 1,500 acres are involved; the program is authorized only in the States of Alabama, Arkansas, Georgia, Illinois, Kansas, Missouri, Mississippi, Tennessee, Nebraska, Oklahoma, and Texas. The experimental use permit is effective from April 9, 1986 to April 9, 1988. A temporary tolerance for residues of the active ingredient in or on grain sorghum has been established. (Robert Taylor, PM 25, Rm. 245, CM#2 (703-557-1800))

279-EUP-86. Extension. FMC Corporation, 2000 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 88.7 pounds of the insecticide cypermethrin on various crops to evaluate the control of various insects. A total of 160 acres are involved; the program is authorized in the States of Alabama, Arizona, California, Colorado, Florida, Georgia, Idaho, Kansas, Michigan, Minnesota, Montana, Nebraska, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Virginia, Washington, Wisconsin, and Wyoming. The experimental use permit is effective from July 22, 1986 to July 22, 1987. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (George LaRocca, PM 15, Rm. 204, CM#2 (703-557-2400))

3125-EUP-188. Extension. Mobay Chemical Corporation, Hawthorn Road, P.O. Box 4913, Kansas City, MO 64120. This experimental use permit allows the use of 2,250 pounds of the insecticide cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate on cotton to evaluate the control of various insects. A total of 3,000 acres are involved; the program is authorized only in the States of Alabama, Arizona, Arkansas, California, Georgia, Louisiana, Mississippi, Oklahoma, South Carolina, Tennessee, and Texas. The experimental use permit is effective from June 6, 1986 to June 6, 1987. A temporary tolerance for residues of the active ingredient in or on cottonseed has been established. (George LaRocca, PM 15, Rm. 204, CM#2 (703-557-2400))

476-EUP-102. Issuance. Stauffer Chemical Company, 1200 South 47th St., Richmond, CA 94804. This experimental use permit allows the use of 1,875 pounds of the herbicide trimethylsulfonium carboxymethylaminomethylphosphonate on noncropland to evaluate the control of broadleaf weeds and grasses. A total of 7,500 acres (3,750 acres to be treated each year) are involved. (Robert Taylor, PM 25, Rm. 245, CM#2 (703-557-1800))

476-EUP-103. Issuance. Stauffer Chemical Company, 1200 South 47th St., Richmond, CA 94804. The experimental use permit allows the use of 1,875 pounds of the herbicide trimethylsulfonium carboxymethylaminomethylphosphonate on noncropland to evaluate the control of broadleaf weeds and grasses. A total of 7,500 acres (3,750 acres to be treated each year) are involved; this program and the one above are authorized in the States of Alabama, Arkansas, Arizona, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Montana, North Carolina, North Dakota, Nebraska, New Jersey, New Mexico, New York, Nevada, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, and Wyoming. Both permits are effective from July 16, 1986 to July 16, 1988. The permits will use the same active ingredient but different formulations. (Robert Taylor, PM 25, Rm. 245, CM#2 (703-557-1800))

264-EUP-59. Extension. Union Carbide Agricultural Products Company, Inc., T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709. This experimental use permit allows the use of 4,000 pounds of the growth regulator ethephon on sugarcane to evaluate flower inhibition and biomass increase following treatment of sugarcane. A total of 5,000 acres are involved; the program is authorized only in the State of Hawaii. The experimental use permit is effective from July 14, 1986 to July 14, 1988. A temporary tolerance for residues of the active ingredient in or on sugarcane has been established. A food additive tolerance for residues of the active ingredient in or on sugarcane molasses has been established. (Robert Taylor, PM 25, Rm. 245, CM#2 (703-557-1800))

264-EUP-64. Extension. Union Carbide Agricultural Products Company, Inc., P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709. This experimental use permit allows the use of 3,752 pounds of the insecticide thiodicarb on field corn to evaluate the control of various insects. A total of 2,500 acres are involved; the program is authorized in the States of Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Carolina, North Dakota, Ohio, South Dakota, Texas, West Virginia, and Wisconsin. The experimental use permit is effective from July 7, 1986 to July 7, 1987. Temporary tolerances for residues of the active ingredient in or on field corn grain and corn fodder and forage have been established. (Larry Schnaubelt, PM 12, Rm. 202, CM#2 (703-557-2386))

Persons wishing to review these experimental use permit are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: October 22, 1986.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-24556 Filed 11-4-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59229A (FRL-3106-1)]

Toxic Substances; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-86-58. The test marketing conditions are described below.

EFFECTIVE DATE: October 27, 1986.

FOR FURTHER INFORMATION CONTACT: Susan Hodges, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Environmental Protection Agency, RM. E-613, 401 M St. SW., Washington, DC 20460 (202-382-2260).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substance for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-86-58. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-86-58. Any person who may be exposed to the test market substance during manufacturing, processing, or use must wear impervious gloves, chemical safety goggles or full face shields, and aprons. A bill of lading and Material Safety Data Sheet (MSDS) accompanying each shipment must state that use of the substance is restricted to that approved in the TME, and that any person who may be exposed to the test market substance must wear the above described protective equipment. In addition, the Company shall maintain the following records until 5 years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced.

2. The applicant must maintain records of dates of the shipments to the customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading and MSDS that accompanies each shipment of the TME substance.

4. The applicant must maintain records of persons who wear impervious gloves and clothes, chemical safety goggles or full face shields, and aprons during the manufacturing, processing, and use the TME substance.

T-86-58.

Date of Receipt: August 29, 1986.

Notice of Receipt: September 10, 1986 (51 FR 175).

Applicant: Monsanto Company.

Chemical: (G) Substituted Amide.

Use: (G) Chelating agent for chemical process in closed system.

Production Volume: Confidential.

Number of Customers: 1.

Worker Exposure: 10 workers—8 hrs/day—40 days/yr.

Test Marketing Period: 18 months.

Commencing on: October 27, 1986.

Risk Assessment: EPA identified potential health concerns for the PMN substance by analogy to acetamide, which is a potential carcinogen. However, EPA has determined that the use of appropriate protective equipment durng manufacturing, processing and use will significantly reduce exposure and potential risk. EPA identified no significant environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environmental.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its findings that the test market activities will not present any unreasonable risk of injury to health or the environment.

Dated: October 27, 1986.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 86-24993 Filed 11-4-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

October 27, 1986.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of this submission may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037, telephone (202) 857-3800. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395-4814. For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0028
Title: Application for Authorization in the Auxiliary Radio Broadcast Services
Form No.: FCC 313
Action: Revision (Environmental Impact data only)
Estimated Annual Burden: 2,620 Responses; 13,100 Hours.

William J. Tricarico,

Secretary.

[FR Doc. 86-24949 Filed 11-4-86; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

October 27, 1986.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on these submissions contact Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to

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comment on these information collections should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB No.: 3060-0174
Title: Section 73.1212, Sponsorship identification; list retention; related requirements
Action: Extension
Respondents: Licensees of broadcast stations
Estimated Annual Burden: 1,150 Recordkeepers; 115 Hours.

OMB No.: 3060-0216
Title: Section 73.3538, Application to make changes in an existing station
Action: Extention
Respondents: Licensees of broadcast stations filing to make changes in station authorization
Estimated Annual Burden: 50 Responses; 400 Hours.

OMB No.: 3060-0211
Title: Section 73.1940, Broadcasts by Candidates for Public Office
Action: Extension
Respondents: Licensees of broadcast stations
Estimated Annual Burden: 11,703 Recordkeepers; 73,144 Hours.

William J. Tricarico,
Secretary.

[FR Doc. 86-24950 Filed 11-4-86; 8:45 am]

BILLING CODE 6712-01-M

[Report No. W-11]

Window Notice for the Filing of FM Broadcast Applications.

Released: October 28, 1986.

Notice is hereby given that applications for vacant FM broadcast allotment(s) listed below may be submitted for filing during the period beginning October 28, 1986 and ending December 8, 1986 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process. *See Report and Order* in Docket 85-383 released September 3, 1986.

Channel—254A

Holmes Beach, FL

Federal Communications Commission.

William J. Tricarico,
Secretary.

[FR Doc. 86-24951 Filed 11-4-86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-781-DR]

Major Disaster and Related Determinations for State of Alaska

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA-781-DR), dated October 27, 1986, and related determinations.

DATED: October 27, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3616.

Notice

Notice is hereby given that, in a letter of October 27, 1986, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

> I have determined that the damage in certain areas of the State of Alaska resulting from an Arctic sea storm, high winds, and wave action beginning on or about September 20, 1986, is of sufficient severity and magnitude to warrant a major—disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of Alaska.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Ms. Joan F. Hodgins of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alaska to have been affected adversely by this declared major disaster and are designated eligible as follows:

North Slope Borough and the City of Kotzebue in the Northwest Arctic Borough for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Julius W. Becton, Jr.,
Director.

[FR Doc. 86-24986 Filed 11-4-86; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-782-DR]

Notice of Major Disaster and Related Determination for State of Alaska

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declarationof a major disaster for the State of Alaska (FEMA-782-DR), dated October 27, 1986, and related determinations.

DATE: October 27, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency Washington, DC 20472 (202) 646-3616.

Notice

Notice is hereby given that, in letter of October 27, 1986, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

> I have determined that the damage in certain areas of the State of Alaska resulting from severe storms and flooding beginning on or about October 10, 1986, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of Alaska.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Ms. Joan F. Hodgins of the Federal Emergency Management

Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alaska to have been affected adversely by this declared major disaster and are designated eligible as follows:

Matanuska-Susitna Borough, Kenai Peninsula Borough and the City of Cordovo for Individual Assistance and Public Assistance.

That portion of the Alaska Railroad south of the Community of Healy for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Julius W. Becton, Jr.,

Director.

[FR Doc. 86-24987 Filed 11-4-86; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-776-DR]

Amendment to Notice of a Major-Disaster Declaration for State of Illinois

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois (FEMA-776-DR), dated October 7, 1986, and related determinations.

DATED: October 29, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice

The notice of a major disaster for the State of Illinois, dated October 7, 1986, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 7, 1986:

The Cook County Township of River Forest for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 86-24988 Filed 11-4-86; 8:45 am]

BILLING CODE 24988-03-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 202-010656-015

Title: North Europe Gulf Freight Association

Parties:

- Atlanticargo (South Atlantic Cargo Shipping NV)
- Compagnie Generale Maritime (CGM)
- Lykes Bros, Steamship Co., Inc.
- Gulf Container Line (GCL), B.V.
- Nedlloyd Lijnen, B.V.
- Hapag-Lloyd AG
- Sea-Land Service, Inc.
- Trans Freight Lines
- United States Lines, Inc.

Synopsis: The proposed amendment would extend current agreement provisions concerning Wallenius Line (WL) and the transportation of vehicular cargo and non-containerizable cargo carried in WL's car carrier vessels through June 30, 1987. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: October 31, 1986.

Joseph C. Polking,

Secretary.

[FR Doc. 86-24985 Filed 11-4-86; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

SES Performance Review Boards for Small Client Agencies Serviced by GSA; Names of Members

Section 4314(C) (1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with guidelines prescribed by the Office of Personnel Management, one or more Performance Review Boards. The board shall review and evaluate the initial appraisal by the supervisor of a senior executive's performance, along with any recommendations to the appointing authority relative to the performance of the senior executive.

As provided under section 601 of the Economy Act of 1932, as amended, 31 U.S.C. 1535, the General Services Administration through its External Services Staff, Personnel Division, provides various personnel management services to a number of diverse Presidential commissions, committees and other small agencies and boards through reimbursable administrative support agreements. This notice is on behalf of these client agencies, and it supersedes all other notices in the **Federal Register** on this subject.

Because of their small size, a Performance Review Board register has been established in which all SES-member client agencies participate. The Board is composed of SES members from the various agencies. From this register of names, the head of each client agency will appoint executives to a specific board to serve the particular agency.

The members whose names appear on the Performance Review Board register to serve client agencies are:

Lindley S. Sloan, Executive Director, Japan U.S. Friendship Commission
Bruce D. Porter, Executive Director, Board for International Broadcasting
Anatole Shub, Foreign Information Officer, Board for International Broadcasting
Mark G. Pomar, Deputy Executive Director, Board for International Broadcasting
Stephen L. Babcock, Executive Director, Administrative Conference of the U.S.
Richard K. Berg, General Counsel, Administrative Conference of the U.S.
Jeffrey S. Lubbers, Research Director, Administrative Conference of the U.S.
Ralph A. Watkins, Jr., Chairman, Navajo and Hopi Indian Relocation Commission
Sandra L. Masseto, Commissioner
Hawley Atkinson, Commissioner, Navajo and Hopi Indian Relocation Commission
Navajo and Hopi Indian Relocation Commission.

FOR FURTHER INFORMATION CONTACT: Delois B. Hammonds, External Services Staff, Personnel Division (202-453-5370); mailing address: General Services Administration, National Capital Region (WCPX), Washington, DC 20407

BEST COPY AVAILABLE

Dated: October 29, 1986.

James A. Williams,

Acting Regional Administrator, National Capital Region.

[FR Doc. 86-24952 Filed 11-4-86; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

1987 Cost-of-Living Increase and Other Determinations

AGENCY: Social Security Administration, HHS.

ACTION: Notice.

SUMMARY: The Secretary has determined—

1. A 1.3 percent cost-of-living increase in benefits under title II (section 215(i)) of the Social Security Act (the Act);

(2) An increase in the Federal SSI (title XVI) benefit amounts for 1987 to $4,080 for an eligible individual, $6,120 for an eligible individual with an eligible spouse, and $2,040 for an essential person (section 1617 of the Act);

(3) The average of the total wages for 1985 to be $16,822.51;

(4) The Social Security contribution and benefit base to be $43,800 for remuneration paid in 1987 and self-employment income earned in taxable years beginning in 1987;

(5) The amount of earnings a person must have to be credited with a quarter of coverage in 1987 to be $460;

(6) The monthly exempt amounts under the Social Security retirement earnings test for taxable years ending in calendar year 1987 to be $680 for beneficiaries age 65 through 69 and $500 for beneficiaries under age 65;

(7) The "old-law" contribution and benefit base to be $32,700 for 1987.

We also describe the computation of benefits for a worker and the worker's family who first become eligible for benefits in 1987, and the computation of the OASDI fund ratio used to determine whether the automatic increase in benefits under title II of the Act is affected by the "stabilizer" provision.

Finally, we are publishing a table of OASDI "special mimimum" benefit amounts. This table provides the range of primary insurance amounts and the corresponding maximum family benefits under the "special minimum" benefit provision, as revised to reflect the automatic benefit increase. These benefits are payable to certain individuals with long periods of relatively low earnings.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Kunkel, Office of the Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-3877.

SUPPLEMENTARY INFORMATION: The Secretary is required by the Act to publish within 45 days after the close of the third calendar quarter of 1986 the benefit increase percentage and the revised table of "special minimum" benefits (section 215(i)(2)(D)). Also, the Secretary is required to publish before November 1 the average of the total wages for 1985 (section 215(i)(2)(C)(iii)) and the OASDI fund ratio for 1986 (section 215(i)(2)(C)(iii)). Finally, the Secretary is required to publish on or before November 1 the contribution and benefit base for 1987 (section 230(a)), the amount of earnings required to be credited with a quarter of coverage in 1987 (section 213(d)(2)), the monthly exempt amounts under the Social Security retirement earnings test for 1987 (section 203(f))8)(A)), the formula for computing a primary insurance amount for workers who first become eligible for benefits or die in 1987 (section 215(a)(1)(D)), and the formula for computing the maximum amount of benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 1987 (section 203(a))2)(C)).

Cost-of-Living Increases

General. The cost-of-living increase is 1.3 percent for benefits under titles II and XVI of the Social Security Act.

Under title II, old-age, survivors, and disability insurance benefits will increase by 1.3 precent beginning with the December 1986 benefits, which are payable on January 2, 1987. The kinds of benefits payable to individuals entitled under this program are old-age, disability, wife's, husband's, child's, widow's, widower's, mother's, father's, and parent's insurance benefits. This increase is based on the authority contained in section 215(i) of the Act (42 U.S.C. 415(i) as modified by Pub. L. 99-509).

Under title XVI, Federal SSI payment levels will also increase by 1.3 percent effective for payments made for the month of January 1987 but paid on December 31, 1986. This is based on the authority contained in section 1617 of the Act (42 U.S.C. 1382f). The percentage increase effective January 1987 is the same as the title II benefit increase and the annual payment amount is rounded, when not a multiple of $12, to the next lower multiple of $12.

Automatic Benefit Increase Computation. Under section 215(i) of the Act, the third calendar quarter of 1986 is a cost-of-living computation quarter for all the purposes of the Act. The Secretary is, therefore, required to increase benefits, effective with December 1986, for individuals entitled under section 227 or 228 of the Act, to increase primary insurance amounts of all other individuals entitled under title II of the Act, and to increase maximum benefits payable to a family. For December 1986, the benefit increase is the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the third quarter of 1985 through the third quarter of 1986. Automatic benefit increases may be modified by a "stabilizer" provision under certain adverse financial conditions that are described in the section on the OASDI fund ratio. The December 1986 benefit increase is not affected by this provision.

Section 215(i)(1) of the Act provides that the Consumer Price Index for a cost-of-living computation quarter shall be the arithmetical mean of this index for the 3 months in that quarter. The Department of Labor's Consumer Price Index for Urban Wage Earners and Clerical Workers for each month in the quarter ending September 30, 1985, was: for July 1985, 319.1; for August 1985, 319.6; and for September 1985, 320.5. The arithmetical mean for this calendar quarter is 319.7 (after rounding to the nearest 0.1). The corresponding Consumer Price Index for each month in the quarter ending September 30, 1986 was: for July 1986, 322.9; for August 1986, 323.4; and for September 1986, 324.9. The arithmetical mean for this calendar quarter is 323.7. Thus, because the Consumer Price Index for the calendar quarter ending September 30, 1986 exceeds that for the calendar quarter ending September 30, 1985 by 1.3 percent, a cost-of-living benefit increase of 1.3 percent is effective for benefits under title II of the Act beginning December 1986.

Title II Benefit Amounts. In accordance with section 215(i) of the Act, in the case of insured workers and family members for whom eligibility for benefits (i.e., the worker's attainment of age 62, or disability or death before age 62) occurred before 1987, benefits will increase by 1.3 percent beginning with benefits for December 1986 which will be received in January 1987. In the case of first eligibility after 1986, the 1.3 percent increase will not apply.

For eligibility after 1978, benefits are generally determined by a benefit formula provided by the Social Security Amendments of 1977 (Pub. L. 95-216), as described later in this notice.

For eligibility before 1979, benefits are determined by means of a benefit table. In accordance with section 215(i)(4) of the Act, the primary insurance amounts and the maximum family benefits shown in this table are revised by (1) increasing by 1.3 percent the corresponding amounts established by the last cost-of-living increase and the last extension of the benefit table made under section 215(i)(4) (to reflect the increase in the contribution and benefit base for 1986); and (2) by extending the table to reflect the higher monthly wage and related benefit amounts now possible under the increased contribution and benefit base for 1987, as described later in this notice. A copy of this table may be obtained by writing to: Social Security Administration, Office of Governmental Affairs, Office of Public Inquiries, 4100 Annex, Baltimore, Maryland 21235.

Section 215(i)(2)(D) of the Act requires that, when the Secretary determines an automatic increase in Social Security benefits, the Secretary shall publish in the **Federal Register** a revision of the range of the primary insurance amounts and corresponding maximum family benefits based on the dollar amount and other provision described in section 215(a)(1)(C)(i). These benefits are referred to as "special minimum" benefits and are payable to certain individuals with long periods of relatively low earnings. In accordance with section 215(a)(1)(C)(i), the attached table shows the revised range of primary insurance amounts and corresponding maximum family benefit amounts after the 1.3 percent benefit increase.

Section 227 of the Act provides flat-rate benefits to a worker who became age 72 before 1969 and was not insured under the usual requirements, and to his or her spouse or surviving spouse. Section 228 of the Act provides similar benefits at age 72 for certain uninsured persons. The current monthly benefits amount of $138.50 for an individual under sections 227 and 228 of the Act is increased by 1.3 percent to obtain the new amount of $140.30. The present monthly benefit amount of $69.40 for a spouse under section 227 is increased by 1.3 percent to $70.30.

Title XVI Benefit Amounts. In accordance with section 1617 of the Act, Federal SSI benefit amounts for the aged, blind, and disabled are increased by 1.3 percent effective January 1987. Therefore, the yearly Federal SSI benefit amount of $4,032 for an eligible individual, $6,048 for an eligible individual with an eligible spouse and $2,016 for an essential person, which are effective January 1986, are increased, effective with January 1987, to $4,080, $6,120, and $2,040 respectively after rounding. The monthly payment amount is determined by dividing the yearly amount by 12, and subtracting monthly countable income. In the case of an eligible individual with an eligible spouse, the amount payable is further divided equally between the two spouses.

Average of the Total Wages for 1985

The determination of the average wage figure for 1985 is based on the 1984 average wage figure of $16,135.07 announced in the **Federal Register** on Octobr 31, 1985 (50 FR 45558), along with the percentage increase in average wages from 1984 to 1985 measured by annual wage data tabulated by the Social Security Administration (SSA). The average amounts of wages calculated directly from this data were $15,250.75 and $15,900.51 for 1984 and 1985, respectively. To determine an average wage figure for 1985 at a level that is consistent with the series of average wages for 1951–1977 (published December 29, 1978, at 43 FR 61016), we multiplied the 1984 average wage figure of $16,135.07 by the percentage increase in average wages from 1984 to 1985 (based on the SSA-tabulated wage data) as follows (with the result rounded to the nearest cent): Average wage for 1985 = $16,135.07 × $15,900.51 ÷ $15,250.75 = $16,822.51. Therefore, the average wage for 1985 is determined to be $16,822.51.

Contribution and Benefit Base

General. The contribution and benefit base is $43,800 for remuneration paid in 1987 and self-employment income earned in taxable years beginning in 1987.

The contribution and benefit base serves two purposes:

(1) It is the maximum annual amount of earnings on which Social Security taxes are paid, and

(2) It is the maximum annual amount used in determining a person's Social Security benefits.

Computation. Section 230(c) of the Act provides a table with the contribution and benefit base for each year 1978, 1979, 1980, and 1981. For years after 1981, section 230(b) of the Act contains a formula for determining the contribution and benefit base. Under the prescribed formula, the contribution and benefit base for 1987 shall be equal to the 1986 base of $42,000 multiplied by the ratio of: (1) the average amount, per employee, of total wages for the calendar year 1985 to (2) the average amount of those wages for the calendar year 1984. Section 230(b) further provides that if the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Average Wages. The average wage for calendar year 1984 was previously determined to be $16,135.07. The average wage for calendar year 1985 has been determined to be $16,822.51 as stated herein.

Amount. The ratio of the average wage for 1985, $16,822.51, compared to that for 1984, $16,135.07, is 1.0426053. Multiplying the 1986 contribution and benefit base of $42,000 by the ratio 1.0426053 produces the amount of $43,789.42 which must then be rounded to $43,800. Accordingly, the contribution and benefit base is determined to be $43,800 for 1987.

Quarter of Coverage Amount

General. The 1987 amount of earnings required for a quarter of coverage is $460. A quarter of coverage is the basic unit for determining whether a worker is insured under the Social Security program. For years before 1978, an individual generally was credited with a quarter of coverage for each quarter in which wages of $50 or more were paid, or an individual was credited with 4 quarters of coverage for every taxable year in which $400 or more of self-employment income was earned. Beginning in 1978, wages generally are no longer reported on a quarterly basis; instead, annual reports are made. With the change to annual reporting, section 352(b) of the Social Security Amendments of 1977 (Pub. L. 95–216) amended section 213(d) of the Act to provide that a quarter of coverage would be credited for each $250 of an individual's total wages and self-employment income for calendar year 1978 (up to a maximum of 4 quarters of coverage for the year). Individuals generally must have self-employment income of at least $400 in a taxable year in order to be credited with any quarters of coverage.

Computation. Under the prescribed formula, the quarter of coverage amount for 1987 shall be equal to the 1978 amount of $250 multiplied by the ratio of: (1) the average amount, per employee, of total wages for calendar year 1985 to (2) the average amount of those wages reported for calendar year 1976. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages. The average wage for calendar year 1976 was previously determined to be $9,226.48. This was published in the **Federal Register** on

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December 29, 1978, at 43 FR 61016. The average wage for calendar year 1985 has been determined to be $16,822.51 as stated herein.

Quarter of Coverage Amount. The ratio of the average wage for 1985, $16,822.51, compared to that for 1976, $9,226.48, is 1.823286. Multiplying the 1978 quarter of coverage amount of $250 by the ratio of 1.823286 produces the amount of $455.82 which must then be rounded to $460. Accordingly, the quarter of coverage amount is determined to be $460 for 1987.

Retirement Earnings Test Exempt Amounts

(a) *Beneficiaries Aged 70 or Over.* Beginning with months after December 1982, there is no limit on the amount an individual aged 70 or over may earn and still receive Social Security benefits.

(b) *Beneficiaries Aged 65 through 69.* The retirement earnings test monthly exempt amount for beneficiaries aged 65 through 69 is stated in the Act at section 203(f)(8)(D) for years 1978 through 1982. A formula is provided in section 203(f)(8)(B) for computing the exempt amount applicable for years after 1982. The monthly exempt amount for 1986 was determined by this formula to be $650. Under the formula, the exempt amount of 1987 shall be the 1986 exempt amount multiplied by the ratio of: (1) the average amount, per employee, of the total wages for calendar year 1985 to (2) the average amount of those wages for calendar year 1984. The section further provides that if the amount so determined is not a multiple of $10, it should be rounded to the nearest multiple of $10.

Average Wages. Average wages for this purpose are determined in the same way as for the contribution and benefit base. Therefore, the ratio of the average wages of 1985, $16,822.51 compared to that for 1984, $16,135.07, is 1.0426053.

Exempt Amount for Beneficiaries Aged 65 through 69. Multiplying the 1986 retirment earnings test monthly exempt amount of $650 by the ratio of 1.0426053 produces the amount of $677.69. This must then be rounded to $680. Thus, the retirement earnings test monthly exempt amount for beneficiaries aged 65 through 69 is determined to be $680 for 1987. The corresponding retirement earnings test annual exempt amount for these beneficiaries is $8,160.

(c) *Beneficiaries Under Age 65.* Section 203 of the act provides that beneficiaries under age 65 have a lower retirement earnings test monthly exempt amount than those beneficiaries aged 65 through 69. The exempt amount for beneficiaries under age 65 is determined by a formula provided in section 203(f)(8)(B) of the Act. Under the formula, the monthly amount for beneficiaries under age 65 is $480 for 1986. The formual provides that the exempt amount for 1987 shall be the 1986 exempt amount for beneficiaries under age 65 multiplied by the ratio of: (1) the average amount, per employee, of the total wages for calendar year 1985 to (2) the averge amount of those wages for calendar year 1985. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages. Average wages for this purpose are determined in the same way as for the contribution and benefit base. Therefore, the ratio of the average wages of 1985, $16,822.51, compared to that of 1984, $16,135.07, is 1.0426053.

Exempt Amount for Beneficiaries Under Age 65. Multiplying the 1986 retirement earnings test monthly exempt amount of $480 by the ratio 1.0426053 produces the amount of $500.45. This must then be rounded to $500. The retirement earnings test monthly exempt amount for beneficiaries under age 65 is thus determined to be $500 for 1987. The corresponding retirement earnings test annual exempt amount of these beneficiaries is $6,000.

Computing Benefits After 1978

The Social Security Amendments of 1977 changed the formula for determining an individual's primary insurance amount after 1978. This basic new formula is based on "wage indexing" and was fully explained with interim regulations and final regulations published in the **Federal Register** on December 29, 1978 (43 FR 60877) and July 15, 1982 (47 FR 30732) respectively. It generally applies when a worker after 1978 attains age 62, becomes disabled, or dies before age 62. This formula uses the worker's earnings after they have been adjusted, or "indexed," in proportion to the increase in average wages of all workers. Using this method, we determine the worker's "average indexed monthly earnings." We then compute the primary insurance amount, using the worker's average indexed monthly earnings. The computation formula is adjusted automatically each year to reflect changes in general wage levels.

Average Indexed Monthly Earnings. To assure that a worker's future benefits reflect the general rise in the standard of living that occurs during his or her working lifetime, we adjust or "index" the worker's past earnings to take into account the change in general wage levels that has occurred during the worker's years of employment. These adjusted earnings are then used to compute the worker's primary insurance amount.

For example, to compute the average indexed monthly earnings for a worker attaining age 62, becoming disabled, or dying before attaining age 62, 1987, we divide the average of the total wages for 1985, $16,822.51 by the average of the total wages for each year prior to 1985 in which the worker had earnings. We then multiply the actual wages and self-employment income as defined in section 211(b) of the act credited for each year by the corresponding ratio to obtain the worker's adjusted earnings for each year. After determining the number of years we must use to compute the primary insurance amount, we pick those years with highest indexed earnings, total those indexed earnings and divide by the total number of months in those years. This figure is rounded own to the next lower dollar amount, and becomes the average indexed monthly earnings figure to be used in computing the worker's primary insurance amount of 1987.

Computing the Primary Insurance Amount. The primary insurance amount is the sum of three separate percentages of portions of the average indexed monthly earnings. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount over $1,085. The amounts for 1987 are obtained by multiplying the 1979 amounts by the ratio between the average of the total wages for 1985, $16,822.51, and for 1977, $9,779.44. These results are then rounded to the nearest dollar. For 1987, the ratio is 1.720192. Multiplying the 1979 amounts of $180 and $1,085 by 1.720192 produces the amounts of $309.63 and $1,866.41. These must then be rounded to $310 and $1,866. Accordingly, the portions of the average indexed monthly earnings to be used in 1987 are determined to be the first $310, the amount between $310 and $1,866, and the amount over $1,866.

Consequently, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 1987, or who die in 1987 before becoming eligible for benefits, we will compute their primary insurance amount by adding the following:

(a) 90 percent of the first $310 of their average indexed monthly earnings, plus

(b) 32 percent of the average indexed monthly earnings over $310 and through $1,866, plus

(c) 15 percent of the average indexed monthly earnings over $1,866.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the adjustments we have described are contained in section 215(a) of the Act (42 U.S.C. 415(a)).

Maximum Benefits Payable to a Family

The 1977 Amendments continued the long-established policy of limiting the total monthly benefits which a worker's family may receive based on his or her primary insurance amount. Those amendments also continued the then existing relationship between maximum family benefits and primary insurance amounts but did change the method of computing the maximum amount of benefits which may be paid to a worker's family. The Social Security Disability Amendments of 1980 (Pub. L. 96–265) established a new formula for computing the maximum benefits payable to the family of a disabled worker. This new formula is applied to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, and who first become eligible for these benefits after 1978. The new formula was explained in a Final Rule published in the **Federal Register** on May 8, 1981, at 46 FR 25601. For disabled workers initially entitled to disability benefits before July 1980, or whose disability began before 1979, the family maximum payable is computed the same as the old-age and survivor family maximum.

Computing the Old-Age and Survivor Family Maximum. The formula used to compute the family maximum is similar to that used to compute the primary insurance amount. It involves computing the sum of four separate percentages of portions of the worker's primary insurance amount. In 1979, these portions were the first $230, the amount between $230 and $332, the amount between $332 and $433, and the amount over $433. The amounts for 1987 are obtained by multiplying the 1979 amounts by the ratio between the average of the total wages for 1985, $16,822.51, and the average for 1977, $9,779.44. This amount is then rounded to the nearest dollar. For 1987, the ratio is 1.720192. Multiplying the amounts of $230, $332, and $433 by 1.720192 produces the amounts of $395.64, $571.10, and $744.84. These amounts are then rounded to $396, $571, and $745. Accordingly, the portions of the primary insurance amounts to be used in 1987 are determined to be the first $396, the amount between $396 and $571, the amount between $571 and $745, and the amount over $745.

Consequently, for the family of a worker who becomes age 62 or dies in 1987, the total amount of benefits payable to them will be computed so that it does not exceed:

(a) 150 percent of the first $396 of the worker's primary insurance amounts, plus

(b) 272 percent of the worker's primary insurance amount over $396 through $571, plus

(c) 134 percent of the worker's primary insurance amount over $396 through $745, plus

(d) 175 percent of the worker's primary insurance amount over $396 through $745.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the adjustments we have described are contained in section 203(a) of the Act (42 U.S.C. 403(a)).

"Old-Law" Contribution and Benefit Base

General. The 1987 "old-law" contribution and benefit base is $32,700. This is the base that would have been effective under the Social Security Act without the enactment of the 1977 amendments. The base is computed under section 230(b) of the Social Security Act as it read prior to the 1977 amendments.

The "old-law" contribution and benefit base is used by:

(1) The Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payment which correspond to basic Social Security benefits,

(2) The Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act. (This use is stated in section 230(d) of the Social Security Act.), and

(3) Social Security to determine a "year of coverage" in computing the "special minimum" benefit and in computing benefits for persons who are also eligible to receive pensions based on employment not covered under section 210 of the Social Security Act.

Computation. The base is computed using the automatic adjustment formula in section 230(b) of the Act as it read prior to the enactment of the 1977 amendments. Under the formula, the "old-law" contribution and benefit base shall be the "old-law" 1986 base multiplied by the ratio of: (1) the average amount, per employee, of total wages for the calendar year 1985 to (2) the average amount of those wages for the calendar year 1984. If the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Average Wages. The average wage for calendar year 1984 was previously determined to be $16,135.07. The average wage for calendar year has been determined to be $16,822.51, as stated herein.

Amount. The ratio of the average wage for 1985, $16,822.51 compared to that for 1984, $16,135.07, is 1.0426053. Multiplying the 1986 "old-law" contribution and benefit base amount of $31,500 by the ratio of 1.0426053 produces the amount of $32,842.07 which must then be rounded to $32,700. Accordingly, the "old-law" contribution and benefit base is determined to be $32,700 for 1987.

OASDI Fund Ratio

General. Section 215(i) of the Act was amended by section 112 of Pub. L. 98–21, the Social Security Amendments of 1983, to include a "stabilizer" provision that can limit the automatic OASDI benefit increase under certain circumstances. If the combined assets of the OASI and DI Trust Funds, as a percentage of annual expenditures, are below a specified level, the automatic benefit increase is equal to the lesser of: (1) the increase in average wages or (2) the increase in prices. The threshold level specified for the OASDI fund ratio is 15.0 percent for benefit increases for December of 1984 through December 1988, and 20.0 percent thereafter. The amendments also provide for subsequent "catch-up" benefit increase for beneficiaries whose previous benefit increases were affected by this provision. "Catch-up" benefit increases occur only when trust fund assets exceed 32.0 percent of annual expenditures.

Computation. Section 215(i) specifies the computation and application of the OASDI fund ratio. The OASDI fund ratio for 1986 is defined as the ratio of: (1) the combined assets of the OASI and DI Trust Funds at the beginning of 1986, including advance tax transfers for January 1986 and excluding amounts owed to the Hospital Insurance (HI) Trust Fund, to (2) the estimated expenditures of the OASI and DI Trust Funds during 1986, excluding payments of interest and principal on amounts owed to the HI Trust Fund and transfer payments between the OASI and DI Trust Funds, and reducing any transfers to the Railroad Retirement Account by any transfers from that account into either trust fund.

Ratio. The combined assets of the OASI and DI Trust Funds at the beginning of 1986 (including advance tax transfers for January 1986 and excluding amounts owed to the HI Trust Fund) equaled $47,901 million, and the

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expenditures are estimated to be $201,802 million. Thus, the OASDI fund ratio for 1986 is 23.7 percent, which exceeds the applicable threshold of 15.0 percent. As a result, the "stabilizer" provision does not affect the benefit increase for December 1986.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802–13.805. and 13.807 Social Security Programs.)

Dated: October 31, 1986.

Otis R. Bowen,

Secretary of Health and Human Services.

SPECIAL MINIMUM PRIMARY INSURANCE AMOUNTS AND MAXIMUM FAMILY BENEFITS

Special minimum primary insurance amount payable for Dec. 1985	No. of years required at minimum earnings level	Special minimum primary insurance amount payable for Dec. 1986	Special minimum maximum family benefit payable for Dec. 1986
19.20	11	19.40	29.20
38.10	12	38.50	58.00
57.20	13	57.90	87.10
76.20	14	77.10	115.90
95.20	15	96.40	144.70
114.40	16	115.80	173.90
133.40	17	135.10	202.70
152.50	18	154.40	231.70
171.50	19	173.70	260.60
190.40	20	192.80	289.40
209.60	21	212.30	318.60
228.60	22	231.50	347.50
247.80	23	251.00	376.70
266.80	24	270.20	405.50
285.70	25	289.40	434.20
305.00	26	308.90	463.60
324.00	27	328.20	492.50
343.00	28	347.40	521.20
361.90	29	366.80	550.20
380.90	30	385.80	579.00

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Family Support Administration

Refugee Resettlement Program; Proposed Statement of Goals, Priorities, Standards, and Guidelines for the Unaccompanied Minor Refugee and Cuban/Haitian Entrant Programs

AGENCY: Office of Refugee Resettlement (ORR), FSA, HHS.

ACTION: Notice of proposed goals, priorities, standards, and guidelines for the programs for refugee and Cuban/Haitian entrant unaccompanied minors.

SUMMARY: This notice proposes establishment of goals, priorities, standards, and guidelines for the Unaccompanied Minor Refugee and Cuban/Haitian Entrant Programs. The Standards are amplifications of ORR child welfare regulations (45 CFR Part 400, Subpart H, Sections 400.110–120). The Guidelines in most cases reflect recommendations of a National Interagency Work Group on Unaccompanied Minors.

DATE: Comments on this proposal will be considered if received by December 22, 1986.

ADDRESS: Address written comments, in duplicate, to: William R. Eckhof, Office of Refugee Resettlement, Room 1229, Switzer Building, 330 C St. SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: William R. Eckhof, (202) 245–0980.

Subject: ORR Statement of Program Goals, Standards, and Guidelines for the Refugee and Entrant Unaccompanied Minors Program.

Authority

Section 412(a)(6) of the Immigration and Nationality Act (the "INA"), as amended by the Refugee Act of 1980, (the "Act"), 8 U.S.C 1522(a)(6): "As a condition for receiving assistance under this section, a State must . . . (B) meet standards, goals, and priorities, developed by the Director, which assure the effective resettlement of refugees . . . and the effective provision of services . . . . "

Section 412(d)(2)(A) of the INA, 8 U.S.C. 1522(d)(2)(A): The Director is authorized to provide assistance, reimbursement to States, and grants to and contracts with public and private nonprofit agencies, for the provision of child welfare services, including foster care maintenance payments and services and health care . . ."

Section 412(d)(2)(B) of the INA, 8 U.S.C. 1522(d)(2)(B): (i) In the case of a refugee child who is unaccompanied by a parent or other close adult relative (as defined by the Director), the services described in subparagraph (A) may be furnished until the month after the child attains eighteen years of age (or such higher age as the State's child welfare services plan under part B of title IV of the Social Security Act prescribes for the availability of such services to any other child in that State).

(ii) The Director shall attempt to arrange for the placement under the laws of the States of such unaccompanied refugee children, who have been accepted for admission to the United States, before (or as soon as possible after) their arrival in the United States. During any interim period while such child is in United States or in transit to the United States but before the child is so placed, the Director shall assume legal responsibility (including financial responsibility) for the child, if necessary, and is authorized to make necessary decisions to provide for the child's immediate care."

Title V of Refugee Education Assistance Act of 1980, enacted on October 10, 1980, provides for Federal assistance and services to individuals having Cuban/Haitian Entrant status. Under this Act, the President is required to exercise authorities identical to those under chapter 2 of title IV of the Immigration and Nationality Act (INA) with respect to Cuban/Haitian entrants.

Introduction

Basis and Purpose of the Program

It is basis the and purpose of the program to provide appropriate care, consistent with State and Federal child welfare laws and practices, for unaccompanied minor refugees and entrants and to prepare them for productive lives in the United States.

To ensure the most effective possible resettlement of unaccompanied minor refugees in the United States consistent with and as mandated by the applicable provisions of the Refugee Act of 1980, as well as compliance with 45 CFR Part 400, Subpart H, "Child Welfare Services," the Office of Refugee Resettlement (ORR) establishes the following program goals, priorities, standards, and guidelines for the State-administered refugee resettlement program (RRP) for FY 1987 and the following fiscal years. These goals and standards will be applied to the Cuban/Haitian Entrant Unaccompanied Minor Program, for the States which participate in that program.

Definitions

The provider agency. An organization, either public or private, which provides placement and direct service to the unaccompanied minor.

The supervising agency. The public agency, either State or local, which supervises the provider agency.

The contracting agency. The public agency which either contracts with a private contractor or a county for care of the child.

I. Program Goals

The goals of the program are for unaccompanied minor refugees and entrants are:

—To reunify unaccompanied refugee children with their parents or, within the context of State child welfare practice, with non-parental adult relatives.

—To help unaccompanied minors develop appropriate skills to enter adulthood and achieve economic and social self-sufficiency, through delivery of child welfare services in a culturally sensitive manner.

II. Priorities for State Program Administration

—To place unaccompanied minor refugees and entrants in least restrictive care settings as soon as possible, and to establish legal responsibility in such a way, under State law, as to ensure that these children receive the full range of assistance, care, and services to which all children in the State are entitled, and to designate a legal authority to act in place of the child's unavailable parent(s).

—To encourage reunification of minors with their parents, or other appropriate adult relatives to work with supportive resources, such as voluntary refugee resettlement agencies, at the State and local levels, to facilitate such reunion.

—To provide child welfare services and refugee-specified services that will help children adjust to their communities, with emphasis on those services most likely to help children prepare for emancipation/self-supporting status, appropriate to their age and development. States should strive to ensure provision of services in a cost-effective manner. Cost should generally parallel those of the State's regular domestic child welfare program, except where consideration given to unique cultural, language, and psychological needs of the refugee clientele mandates different costs.

—In attempting to arrange placement of unaccompanied minor refugees under State child welfare laws, to make every effort to ensure a cooperative and effective working relationship between the State, voluntary agencies, and provider agencies participating in the Refugee and Entrant Unaccompanied Minors Programs.

III. Program Standards

The program for unaccompanied minor refugees requires a unique blend of services and program management, with specific cognizance of both refugee resettlement concerns and child welfare practices. Likewise, it requires a high degree of cooperation, coordination, and planning among numerous entities at various levels.

In requiring the Director of the Office of Refugee Resettlement to "attempt to arrange for the placement under the laws of the State . . ." of unaccompanied minor refugees, the Refugee Act implies an effort by the Director to effect this cooperation, coordination, and planning. In consequence, the Director of the Office of Refugee Resettlement hereby establishes the following Standards for operation of the State-administered unaccompanied minor refugee and entrant program. Compliance with the regulations under which these standards are issued (45 CFR Part 400 Subpart H) is mandatory.

Administration/Management

A. Annual Planning

Standard: A cooperative, effective, well-coordinated, and culture-sensitive working relationship exists among agencies involved in the unaccompanied minors program.

Criterion: A State or county supervising and/or contracting agency for refugee children confers at least annually with provider agencies therein to discuss program needs and problems, and to establish numbers of children to be served in the coming year within the State.

B. State Leadership Role

Standard: The State provides adequate organizational leadership and administrative support for the State unaccompanied minors program.

Criteria: 1. Basic requirements of 45 CFR 400.5 (Refugee Resettlement Program State Regulations) and 45 CFR 400.110–400.120 are in place and are adhered to.

2. State rules or regulations provide the same child welfare services and benefits for refugee children, to the same extent, as those which are provided to other children of the same age in the State under a State's title IV–B plan, and in accordance with the state's child welfare standards, practices, and procedures.

3. The State provides foster care maintenance payments under the State's title IV–E program to any refugee children eligible under that program.

4. Rules, regulations, and procedures are in place whereby the State assumes program accountability for all aspects of the program, including fiscal and program reporting.

5. The program is structured within State government in such a way that meaningful input into programmatic issues is provided by *both* the State's refugee program and child welfare staffs.

6. State goals and objectives do not alter or infringe upon program goals of ORR as set forth herein.

7. Child welfare services, assistance procedures, and facilities meet recognized standards consistent with the State Plan pursuant to title IV–B of the Social Security Act.

C. Monitoring and Reporting

Standard: The State effectively monitors services to unaccompanied minor refugees and entrants.

Criteria: 1. Written State procedures, consistent with the State's Refugee Resettlement Plan, ensure that the appropriate supervising child welfare agency monitors activity of the provider agency at least annually.

2. The monitoring instruments reflect regular State standards for foster care, and ORR standards for unaccompanied minors care as applicable.

3. Corrective actions are taken promptly on problems identified during fiscal and program monitoring.

4. All ORR–3 (Placement) Reports are filed with ORR within 30 days of the date of placement, and within 60 days of a change of status (e.g., change of placement or legal responsibility, reunification with adult relatives, and termination from the program (e.g., emancipation or reunification with parent(s))).

5. All ORR–4 (Progress) Reports are filed with ORR annually.

Legal Considerations

A. Legal Responsibility

Standard: Legal responsibility is established promptly under State child welfare laws.

Criteria: 1. The State or State-authorized child welfare provider agency petitions an appropriate court to establish legal responsibility within 30 days of the child's arrival at the location of resettlement and placement, if action by a court is required by State law.

2. The section of State law under which legal responsibility is established makes the unaccompanied minor eligible for the full range of assistance, care, and services to which all children in the State are entitled.

2. The section of State law under which legal responsibility is established designates a legal authority to act in place of the child's unavailable parent(s).

4. Procedures exist to ensure that mechanisms of the Interstate Compact on Placement of Children are utilized when an interstate placement is required subsequent to initial placement.

5. Procedural safeguards exist which ensure that the rights of the minor's unavailable parent(s) are protected, and are not terminated as long as reunification with the parents remains reasonably possible, as determined by an appropriate State court.

B. Family Reunion

Standard: Written State policy encourage the reunion in the United States of unaccompanied minor refugees with their parents or other appropriate relatives.

Criteria: 1. Programs for unaccompanied minor refugees are located in areas which have, or have ready access to, existing refugee resettlement agencies which are able to effect family reunion.

2. Children are encouraged to apply for admission of their parents to the United States, and are assisted with

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preparation of the necessary documentation, including applications.

3. When reunion becomes possible following arrival of a parent or parents in the United States, the provider agency assists children and parent(s) in the process, as necessary, for up to 90 days after the agency has knowledge of the presence of the parents, after which ORR unaccompanied minor benefits cease.

Programmatic

A. Case Planning

Standard

The unaccompanied minor is provided appropriate child welfare and refugee specific services to develop the skills necessary for social, emotional, and economic self-sufficiency.

Criteria

1. State regulations or rules provide that a written case plan for the care and supervision of each child, including a service plan, leading to non-dependent emancipation or family reunion, is developed, and reviewed for each child semi-annually. The case plan at a minimum addresses each of the following areas:

—social adjustment
—English language training
—career planning
—education/training as appropriate
—health needs
—suitable mode of care in the least restrictive setting
—development of socialization skills
—family reunification
—preservation of ethnic and religious heritage
—mental health needs, if necessary.

IV. Guidelines for Program Development

The Director of the Office of Refugee Resettlement further establishes the following Guidelines for Program Development, developed by a special national workgroup of experts in care for unaccompanied minors, composed of representatives of national voluntary agencies, local provider agencies, State government, the Department of State, and ORR. These guidelines are strongly recommended by the Director as a yardstick against which current provider activities may be evaluated by State or county supervising/contracting agencies, and against which possible future placements may be planned by national voluntary agencies.

A. Cost Effectiveness

Guideline

The program is administered in a cost-effective manner.

Criteria

1. Costs for refugee children are consistent with costs for other children in care in the State.

2. Cost is a consideration when evaluating overall program effectiveness, but should not exist as an isolated criterion. Minimum program standards must be addressed at first as a context from which to evaluate the effectiveness and costs of unaccompanied minors programs.

3. To assure effective staff utilization and to provide a sufficiently broad range of services and types of care, at least 30 children are participating in provider-operated local programs.

4. The provider agency attempts to access non-ORR funded resources (such as the Job Training Partnership Act, Job Corps, vocational education, scholarships to preparatory schools and colleges).

B. Provider Agency Staff Qualifications

Guideline

A well-qualified provider agency staff is utilized to provide services.

Criteria

1. Supervisors, at a minimum, meet established State standards for persons providing similar services in non-refugee child care agencies.

2. The provider agency has on-staff (a) bilingual, bicultural worker(s) specific to the clientele served.

3. The bilingual, bicultural worker(s) are utilized as an integral part of the program's service function, and not merely as translator(s).

4. Bilingual, bicultural workers are encouraged to actively pursue training opportunities that will help them to become qualified under State standards.

5. At least 50 hours, annually, of ongoing, planned staff development activities are provided for each staff member, including program supervisors, directly involved in provision of services.

6. The direct-services staff ratio of clients to service workers is not greater than the State's standard for non-refugee child care.

C. Placement Options

Guideline

The provider agency maintains, or has access to, a range of suitable placement options.

Criteria

1. Placement options include family foster homes, ethnically matched foster homes, group homes, and supervised independent living.

2. To the maximum feasible extent, children 12 years of age and younger are placed in ethnically matched foster homes to support their understanding of their native culture.

3. No more than 30 percent of the existing caseload have had more than two placements (exclusive of placements in reception centers, reception homes, temporary/emergency placements not exceeding 45 days, or planned independent living situations).

4. No more than 10 percent of the existing caseload have had more than three placements (same exclusions as item 3 above).

5. Before family foster care is utilized, the foster family receives training and information related to cultural sensitivities of the caseload.

D. Preparation for Emancipation

Guideline

The program actively and formally promotes the responsible emancipation of unaccompanied minors.

Criteria

1. Program components provide independent living skills services to assist unaccompanied minors to prepare adequately for emancipation without reliance on public assistance.

2. The public cash assistance dependency rate for employable former unaccompanied minors, subsequent to their emancipation, is no greater than 10 percent of all the provider agency's refugee emancipees 90 days following emancipation.

3. State law is sufficiently flexible to permit an unaccompanied minor to remain in care through the completion of high school (but not beyond the 21st birthday).

E. Retention of Ethnic Heritage

Guideline

Children are encouraged to retain an understanding of, and respect for, their native culture and religion.

Criteria

1. Programs for unaccompanied minor refugees are located in geographic areas which have ethnic communities similar to those of the children placed.

2. Children are placed within ethnically similar communities, or in areas that are readily accessible to the activities of those communities.

3. Provider agencies maintain a written plan and periodic schedule for exposure to and participation in appropriate cultural events.

F. Health and Mental Health

Guideline

Children are provided with necessary health and mental health services.

Criteria

1. The provider agency maintains ongoing access to health and mental health services.
2. The provider agency has a written contingency plan involving identification of potential resources for coping with cases of severe mental health disorders.

Dated: August 8, 1986.

Billie F. Gee,

Acting Director, Office of Refugee Resettlement.

[FR Doc. 86-24812 Filed 11-4-86; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 86M-0403]

Bausch & Lomb Optics Center; Premarket Approval of Bausch & Lomb® Fizziclean™ Protein Remover, Bausch & Lomb® Extended Wear Protein Remover, and Bausch & Lomb® Therma-Zymne™ Protein Remover

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Baucsh & Lomb Optics Center, Rochester, NY, for premarket approval, under the Medical Device Amendments of 1976, of BAUSCH & LOMB® FIZZICLEAN™ Protein Remover, BAUSCH & LOMB® Extended Wear Protein Remover, and BAUSCH & LOMB® THERMA-ZYME™ Protein Remover for use with soft (hydrophilic) contact lenses. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by December 5, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On December 24, 1985, Bausch & Lomb Optics Center, Rochester, NY 14692, submitted to CDRH an application for premarket approval of BAUSCH & LOMB® FIZZICLEAN™ Protein Remover, BAUSCH & LOMB® Extended Wear Protein Remover, and BAUSCH & LOMB® THERMA-ZYME™ Protein Remover. The BAUSCH & LOMB® FIZZICLEAN™ Protein Remover is indicated for use in heat or chemical lens care systems in the weekly cleaning of soft (hydrophilic) contact lenses. The BAUSCH & LOMB® Extended Wear Protein Remover is indicated for use in a heat or chemical lens care system for periodic cleaning of extended wear soft (hydrophilic) contact lenses. The BAUSCH & LOMB® THERMA-ZYME™ Protein Remover is indicated for use during heat disinfection in the weekly cleaning of soft (hydrophilic) contact lenses that can be heat disinfected.

On July 18, 1986, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On September 19, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CHRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written requests. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

The labeling of the device states that the solution is indicated for weekly or periodic cleaning of soft (hydrophilic) contact lenses. Manufacturers of soft (hydrophilic) contact lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the **Federal Register** of the approval of a new solution for use with an approved soft contact lens, the manufacturer of each lens shall correct its labeling to refer to the new solution at the next printing or at such other time as CDRH prescribes by letter to the applicant.

Opportunity for Administration Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to the in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 5, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 28, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86-24954 Filed 11-4-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86M-0408]

CILCO®, Inc.; Premarket Approval of CDS II™ (Sodium Chondroitin Sulfate)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by CILCO®,

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Inc., Huntington, WV, for premarket approval, under the Medical Device Amendments of 1976, of CDS II™ (Sodium Chondroitin Sulfate). After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (LDRD) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by December 5, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip J. Phillips, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–8221.

SUPPLEMENTARY INFORMATION: On January 14, 1983, CILCO®, Inc., Huntington, WV 25701, submitted to CDRH and application for premarket approval of CDS II™, (Soldium Chondroitin Sulfate). CDS II™ (Sodium Chondroitin Sulfate) is indicated for use as a surgical aid in anterior segment procedures including cataract extraction, intraocular lens implantation, corneal transplant surgery, and glaucoma filtering surgery on pseudophakic and aphakic eyes.

On Novemer 18, 1983, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On September 30, 1986, CDRH approved the application by a letter to the applicant from the director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Philip J. Phillips (HFZ–460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 5, 1986, file with the Dockets Management (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 28, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86–24955 Filed 11–4–86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86M–0409]

CooperVision, Inc.; Premarket Approval of the MiraFlow® Extra Strength Cleaner

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by CooperVision Inc., Mountain View, CA, for premarket approval, under the Medical Device Amendments of 1976, of the MiraFlow® Extra Strength Cleaner. After reviewing the recommendation of the Opthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by December 5, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

SUPPLEMENTARY INFORMATION: On August 12, 1985, CooperVision, Inc., Mountain View, CA 94039, submitted to CDRH an application for premarket approval of the MiraFlow® Extra Strength Cleaner. The MiraFlow® Extra Strength Cleaner is indicated for use to clean soft (hydrophilic) contact lenses each time the lenses are removed for disinfecting. The solution is to be used in either a heat or chemical lens disinfection system.

On January 24, 1986, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On September 30, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above.

The labeling of the device states that the solution is indicated for cleaning soft (hydrophilic) contact lenses. Manufacturers of any soft (Hydrophilic) contact lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the **Federal Register** of the approval of a new solution for use with an approved soft contact lens, the manufacturer of each lens shall correct its labeling to refer to the new solution at the next printing or at such other time as CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 1033(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 5, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 28, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86–24956 Filed 11–4–86; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[OA–003–N]

Medicare/Medicaid; Request for Comments on Long-Term Health Care Insurance Policies

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of request for comments.

SUMMARY: Under section 10(a)(3) of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), we are requesting, on behalf of the Long-Term Health Care Policies Task Force, comments and information on Long-Term Health Care Insurance Policies.

DATE: We are requesting that comments be forwarded to the address below by December 31, 1986.

ADDRESS: Task Force on Long-Term Health Care Policies Attn.: Dennis DeWitt, Executive Director Room 4406, Health and Human Services North Building 330 Independence Avenue, SW. Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Dennis DeWitt, 202–245–0063.

SUPPLEMENTARY INFORMATION:

Purpose

The Task Force on Long-Term Health Care Policies, established under section 9601 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272), is evaluating current issues relating to private long-term care insurance. To ensure the evolution of sound private long-term care insurance policies and to help foster consumer confidence in them, the Task Force will develop guidelines that can be used by State regulators, persons involved in the insurance industry, and consumers who may wish to purchase such policies.

The term "long-term health care policy" means an insurance policy, or similar health benefits plan, that is designed for or marketed as providing (or making payment for) health care services (such as nursing home care and home health care) or related services (which may include home or community-base services), or both, over an extended period of time.

The Task Force on Long-Term Health Care Policies will advise the Secretary of Health and Human Services and the Administrator of the Health Care Financing Administration concerning the development of insurance policies for long-term care that are privately marketed to individuals or groups. The Task Force will develop recommendations for long-term health care policies, including recommendations designed to—

- Limit marketing and agent abuse of those policies;
- Assure the dissemination of information to consumers necessary to permit informed choice in purchasing the policies and to reduce the purchase of unnecessary or duplicative coverage;
- Assure that benefits provided under the policies are reasonable in relationship to premiums charged; and
- Promote the development and availability of long-term health care policies that meet these recommendations.

Request for Comments

The Task Force requests written public suggestions, comments or statements concerning the development of insurance policies for long-term care that are—

- Privately marketed to individuals or group; and
- Specifically within the purview of, and the recommendations to be made by, the Task Force as outlined above.

(Sec. 10(a)(3) of Pub. L. 92–463, as amended (5 U.S.C. App. I Sec. 1–15))

Dated: October 27, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 86–25011 Filed 11–4–86; 8:45 am]

BILLING CODE 4120-01-M

Social Security Administration

Disability Advisory Council; Meeting

AGENCY: Social Security Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), this notice announces the schedule and proposed agenda of the first meeting of the Disability Advisory Council (the Council). This notice also describes the purpose, structure, and termination date of the Council.

DATE: General session—November 20, 1986, 10:00 a.m. to 5:00 p.m.

ADDRESS: Department of Health and Human Services, North Auditorium (use "C" Street entrance), 330 Independence Ave. SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Douglas Badger, Executive Director, Disability Advisory Council, P.O. Box 17064, Baltimore, Maryland 21203, (301) 594–8177.

SUPPLEMENTARY INFORMATION:

The Council is established and governed by the provisions of section 12102 of Pub. L. 99–272.

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The purposes of the Council are to study and make recommendations on the medical and vocational aspects of disability under the Social Security and Supplemental Security Income (SSI) programs. The Council may engage technical assistance in order to carry out its purposes. Studies must include: (1) The effectiveness of vocational rehabilitation programs for Social Security and SSI beneficiaries; (2) the question of using specialists to complete medical and vocational evaluations at the State agency disability decisionmaking level, including the question of requiring medical specialists to complete the medical portion of each case review and any assessment of residual functional capacity in other than mental impairment cases; (3) alternative approaches to work evaluation, the feasibility of providing work evaluation stipends, and screening criteria for work evaluation referrals; and (4) possible criteria for assessing the probability that an applicant or recipient of benefits based on disability will benefit from rehabilitation services.

The Council is to submit a report, specified in Pub. L. 99-272, consisting of the findings and any recommendations to the Secretary of Health and Human Services (the Secretary). The Secretary, in turn, is to submit the report to the Congress and to the Board of Trustees of the Federal Disability Insurance Trust Fund.

The statute provides that the Council terminate after the specified report is submitted to the Congress.

The Secretary has appointed the members of the Council in accordance with the provisions of the statute. This notice announces the first meeting of the Council. The Council is chaired by Dr. John E. Affeldt.

This meeting is open to the public to the extent that space is available. Anyone wishing to submit his or her views and/or questions for consideration by the Council should send them to the Executive Director of the Council at the address shown above.

A transcript of the Council meeting will be made available to the public on an at-cost-of-duplication basis. The transcript can be ordered from the Executive Director of the Council.

The proposed agenda includes briefings on current programs (with an emphasis on disability under the Social Security and SSI programs), an overview of issues the Council must consider, the development of work plans for future Council meetings, and such other business as the chairperson, the Executive Director, or the membership may put before the Council.

Dated: October 31, 1986.

W. Douglas Badger,

Executive Director, Disability Advisory Council.

[FR Doc. 86-25081 Filed 11-4-86; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Alaska Land Use Council's Land Use Advisors Committee; Public Invitation

The Federal and State Cochairman of the Alaska Land Use Coucil are soliciting nominations for appointment or reappointment to the Council's Land Use Advisors Committee.

The Land Use Advisors Committee is mandated by section 1201(m) of the Alaska National Interest Lands Conservation Act (ANILCA), Pub. L. 96-487, dated December 2, 1980. The Committee plays a key role in the public participation program established by the Alaska Land Use Council. Among other responsibilities, the Committee makes recommendations to the Council concerning actions of the Federal agencies as they implement the Alaska lands legislation and the Council's annual work program.

The Alaska Lands Act requires that the Land Use Advisors Committee be representative of a balance between State and national interests concerned with the use of federally-owned public lands and resources in Alaska and the several geographic regions of the State. Members of the Committee are appointed jointly by the two Cochairmen and serve without compensation but are reimbursed for necessary travel expenses.

If you are interested in serving on the Alaska Land Use Council's Land Use Advisors Committee, send a letter of interest along with a detailed resume to:

Alaska Land Use Council, Office of the Federal Cochairman, P.O. Box 100120, Anchorage, Alaska 99510-0120, (907) 272-3422, (FTS) 271-5465

Alaska Land Use Council, State Cochairman Designee, Office of Management and Budget, Division of Governmental Coordination, 2600 Denali St, Suite 700, Anchorage, Alaska 99503-2798, (907) 274-3528

The deadline for filing your letter of interest is December 19, 1986. These appointments are for one calendar year, January 1, 1987, through December 31, 1987. For further information, you may write to either of the above addresses or call.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-24957 Filed 11-4-86; 8:45 am]

BILLING CODE 4310-10-M

[AA-650-06-4121-09]

Notice of Charter Renewal of the Federal-State Coal Advisory Board

AGENCY: Department of the Interior.

ACTION: Notice.

SUMMARY: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior (Secretary) is renewing the charter for the Federal-State Coal Advisory Board that was reestablished October 26, 1984. Under the renewed charter the board will continue its role of advising the Secretary on Federal coal leasing matters of a national scope.

DATES: Renewal of the Federal-State Coal Advisory Board Charter will be effective October 26, 1986.

ADDRESSES: Copies of the Federal-State Coal Advisory Board Charter may be obtained from: Director, Bureau of Land Management (650), Department of the Interior, 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: John Carlson at the above address; telephone 202/343-4772.

Certification

I hereby certify that the renewal of the Federal-State Coal Advisory Board is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by those statutory authorities listed in 43 CFR 3400.0-3 and by Departmental policy for Federal-State cooperation concerning the Federal coal management program.

Dated: September 22, 1986

Donald Paul Hodel,

Secretary of the Interior.

[FR Doc. 86-24989 Filed 11-4-86; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Land Management

[OR-050-4410: GP7-018]

Prineville District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 92-463 of a meeting of the Prineville District Advisory Council to be held December 12, 1986. The meeting will begin at 10:00 am at the Prineville District BLM Office located at 185 East Fourth Street, Prineville, Oregon.

Agenda items to be discussed by the Council include the Brothers/LaPine Resource Management Plan/Environmental Impact Statement and public comment dealing with the preliminary issues and alternatives to be analyzed. Other agenda items also include the preparation of the John Day River Management Plan and the update of the District land exchange strategy.

The meeting is open to the public. Anyone wishing to attend and make written or oral comments to the Council should contact the Prineville District Manager at the above address before December 5, 1986.

Dated: October 27, 1986.

Donald L. Smith,

Acting District Manager.

[FR Doc. 86-24958 Filed 11-4-86; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Reclamation

Central South Dakota Water Supply System, Pick-Sloan Missouri Basin Program, South Dakota

AGENCY: Bureau of Reclamation, Interior.

ACTION: Public hearing on draft environmental statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental statement for the development of the Central South Dakota Water Supply System (CENDAK) in South Dakota This statement (DES 86-39) was made available to the public on October 2, 1986.

Hearings

Public hearings will be held in Huron and Highmore, South Dakota, on December 2 and 3, 1986, respectively to receive views and comments from interested organizations and individuals relating to the environmental impacts on the proposed project. Hearings will be held at the High School Auditorium in Huron beginning at 7:30 p.m.; at the City Auditorium in Highmore beginning at 7:30 p.m. Speakers will be limited to a period of 15 minutes at the hearing. Speakers will not be allowed to trade their time to obtain a longer presentation; but, the person authorized to conduct the hearing may allow any speaker more time to coment after everyone wishing to comment has been heard. Speakers will be scheduled according to the time preference mentioned in their letter or telephone request whenever possible; speakers not present when called will lose their position in the scheduled order, although their names will be recalled upon completion of the scheduled presentations. Requests for presentation will be accepted up to 4 p.m., November 26, 1986, and any subsequent requests will be handled on a first come, first-serve basis after the scheduled speakers.

Organizations or persons wishing to present statements at the hearing should contact: Regional Environmental Affairs Officer, Bureau of Reclamation, P.O. Box 36900, Billings, MT 59107-6900, Telephone: (406) 657-6558.

Written comments from those unable to attend, and from those wishing to supplement their statements at the hearing should be received by December 19, 1986, so that they can be included in the hearing record.

Dated: October 30, 1986.

C. Dale Duvall,

Commissioner.

[FR Doc. 86-24961 Filed 11-4-86; 8:45 am]

BILLING CODE 4310-09-M

Minerals Management Service

Development Operations Coordination Document, Texaco USA

AGENCY: Minerals Management Service.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Texaco USA has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5041, Block 37, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Morgan City and Louisa, Louisiana.

DATE: The subject DOCD was deemed submitted on October 27, 1986. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1420 South Clearview Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit, Phone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: October 27, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-24959 Filed 11-4-86; 8:45 am]

BILLING CODE 4310-MR-M

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National Park Service

Notice of Intention To Negotiate Concession Contract

Pursuant to the provisions of section 5 of the act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Regional Director of the Pacific Northwest Region of the National Park Service proposes to negotiate a concession contract for continued operation of hotel, restaurant and cave guide services for the public at Oregon Caves National Monument in the state of Oregon. The contract will be for a period ten (10) years from January 1, 1987, through December 31, 1996, and is conditioned upon completion of an improvement program.

The existing concessioner, Oregon Caves Company, has performed its obligations to the satisfaction of the Secretary under a current contract. Therefore, pursuant to the Act of October 9, 1965, the existing concessioner is entitled to be given a preference in the negotiation of a new contract. This preference allows an existing satisfactory concessioner to offer to meet the terms of the best offer made in response to the terms of the Statement of Requirements if that offer is not that of the existing satisfactory concessioner.

For a copy of the Statement of Requirements describing the opportunity offered and including the application requirements, interested parties should write to the Superintendent, Crater Lake National Park, P.O. Box 7, Crater Lake, Oregon 97604 (Administrative Headquarters for Oregon Caves National Monument) or call Mr. Phil Parker, Concession Analyst, 206–442–5193.

The Secretary will consider and evaluate all proposals timely received. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

This contract action has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

Dated: October 10, 1986.

William J. Briggle,

Acting Regional Director, Pacific Northwest Region.

[FR Doc. 86–24960 Filed 11–4–86; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-243]

Luggage Products; Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a consent order agreement: Dimensions Unlimited (Dimensions).

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on October 29, 1986.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:14 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

By order of the Commission.

Issued: October 29, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–25034 Filed 11–4—86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-243]

Luggage Products; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Winn International Corporation (Winn).

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on October 29, 1986.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register.** Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

By order of the Commission.

Issued: October 29, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-25035 Filed 11-4-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-243]

Luggage Products; Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a consent order agreement: Montgomery Ward & Co. (Montgomery Ward).

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on October 29, 1986.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register.** Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

By order of the Commission.

Issued: October 29, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-25036 Filed 11-4-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-258]

Moldable/Extrudable Polyetheresteramide Copolymers; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 25, 1986, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Atochem, Inc., 266 Harristown Road, Post Office Box 607, Glen Rock, New Jersey 07452. Two supplements to the complaint were filed on October 14, 1986. The complaint as supplemented alleges unfair methods of competition and unfair acts in the importation of certain moldable/extrudable polyetheresteramide copolymers into the United States, and in their sale by reason of alleged (1) infringement of at least claims 1-3, 5-7, 15, and 17-18 of U.S. Letters Patent 4,331,786; and (2) infringement of at least claims 1-4 and 6-11 of U.S. Letters Patent 4,332,920. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: T. Spence Chubb, Esq., or Stephen S. Sulzer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-523-0397 and 202-523-0419.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on October 23, 1986, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain moldable/extrudable polyetheresteramide copolymers into the United States, or in their sale, by reason of alleged (1) infringement of claims, 1-3, 5-7, 15, and 17-18 of U.S. Letters Patent 4,331,786; and (2) infringement of claims 1-4 and 6-11 of U.S. Letters Patent 4,332,920, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Atochem, Inc., 266 Harristown Road, Post Office Box 607, Glen Rock, New Jersey 07452.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Huls AG, Lipper Weg 20, 4370, Marl 1,
Federal Republic of Germany

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Huels Corporation, 750 Third Avenue, New York, New York 10017

Nuodex, Inc., Turner Place, Post Office Box 365, Piscataway, New Jersey 08854.

(c) T. Spence Chubb, Esq., and Stephen S. Sulzer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 701 E Street N.W., Room 126 and Room 124, respectively, Washington, DC 20436, shall be the Commission investigative attorneys, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202-523-0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0001.

By order of the commission

Issued: October 27, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-25037 Filed 11-4-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-229]

Nut Jewelry and Parts; Issuance of General Exclusion Order, Four Cease and Desist Orders, and Two Consent Orders

AGENCY: U.S. International Trade Commission.

ACTION: Determination of violation of section 337 of the Tariff Act of 1930 and issuance of a general exclusion order, four cease and desist orders, and two consent orders.

SUMMARY: The Commission has determined that a general exclusion order and cease and desist orders directed to respondents R. Baird & Co., Liven & Co., Pong Lai Coral Development Co., Ltd., and Ali Baba Import & Export pursuant to sections 337 (d) and (f) of the Tariff Act of 1930 (19 U.S.C. 1337(d) and (f)) are the appropriate remedies for violations of section 337 found to exist; that the public interest considerations enumerated in section 337 (d) and (f) do not preclude such relief; and that the amount of the bond during the Presidential review period under section 337(g) shall be 157 percent of the entered value of the imported articles. The Commission has also determined to issue consent orders terminating the investigation as to respondents Blair, Ltd. and RDCO, Inc. Termination of the investigation as to respondents Blair, Ltd. and RDCO, Inc. based on consent orders furthers the public interest by conserving Commission resources and those of the parties involved.

FOR FURTHER INFORMATION CONTACT: Randi S. Field, Esq., Office of the General Counsel, U.S. International Trade Commission , telephone 202-523-0261.

SUPPLEMENTARY INFORMATION: On July 30, 1986, the presiding administrative law judge (ALJ) issued an initial determination (ID) finding that there is a violation of section 337 in the unauthorized importation and domestic sale of certain nut jewelry and parts thereof by reason of inadequate designation of country of origin when the jewelry is sold with certain labels, with the effect or tandency to destroy or substantially injure an efficiently and economically operated industry in the United States. On September 22, 1986, the Commission determined to review the ALJ's ID on the definition of the domestic industry and his determination in the ID denying the joint motions of Blair and RDCO to terminate the investigation as to them on the basis of consent orders. 51 FR 33935 (September 24, 1986). The Commission requested briefs on the issues under review and on the issues of remedy, the public interest, and bonding. Submissions were received from complainant Kukui Nuts of Hawaii, Inc, respondents Blair, Ltd., and RDCO, Inc., the Commission investigative attorney, and the U.S. Customs Service. No submissions from the public have been received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and §§ 210.54-210.56 of the Commission's Rules of Practice and Procedure (19 CFR 210.54-.56).

Notice of this investigation was published in the *Federal Register* on October 30, 1985 (50 FR 45173).

Copies of the nonconfidential version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Issued: October 31, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-25038 Filed 11-4-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-356 through 363 [Preliminary]]

Portland Hydraulic Cement and Cement Clinker from Colombia, France, Greece, Japan, Mexico, the Republic of Korea, Spain, and Venezuela; Import Investigations

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary antidumping investigations and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-356 through 363 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is

materially retarded, by reason of imports from Colombia (inv. No 731–TA–356 (Preliminary)), France (inv. No. 731–TA–357 (Preliminary)), Greece (inv. No. 731–TA–358 (Preliminary)), Japan (inv. No. 731–TA–359 (Preliminary)), Mexico (inv. No. 731–TA–360 (Preliminary)), the Republic of Korea (inv. No. 731–TA–361 (Preliminary)), Spain (inv. No. 731–TA–362 (Preliminary)), and Venezuela (inv. No. 731–TA–363 (Preliminary)) of Portland hydraulic cement and cement clinker,[1] provided for in item 511.14 of the Tariff Schedules of the United States (TSUS), which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in these cases by December 15, 1986.

For further information concerning the conduct of these investigations and rules of general applications, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: October 30, 1986.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202–523–4612), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in reponse to a petition filed on October 30, 1986, by counsel on behalf of members of the American Cement Trade Alliance.

Participation in the investigations.

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will provide a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201./16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list) and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on November 21, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Tedford Briggs (202–523–4612) not later than November 17, 1986, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions

Any person may submit to the Commission on or before November 25, 1986, a written statement of information pertinent to the subject of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary of the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority

These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: October 31, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–25039 Filed 11–4–86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731–TA–355 (Preliminary)]

Certain Silica Filament Fabric From Japan; Import Investigations

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–355 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of woven fabrics, of glass (silica filaments), whether or not colored, containing not over 17 percent of wool by weight, provided for in items 338.25 and 338.27 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by December 11, 1986.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: October 27, 1986.

FOR FURTHER INFORMATION CONTACT: Stephen Vastagh (202–523–0283), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–724–0002. Information may also be obtained via electronic mail by

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[1] These investigations do not include white, nonstaining Portland hydralic cement, providing for in TSUS item 511.11, or oil well cement, provided for in TSUS item 511.14.

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accessing the Office of Investigations' remote bulletin board system for personal computers at 202-523-0103.

SUPPLEMENTARY INFORMATION:

Background.

This investigation is being instituted in response to a petition filed on October 27, 1986, by counsel on behalf of Ametek, Inc. (Haveg Division), of Wilmington, DE, and HITCO of Newport Beach, CA.

Participation in the investigation.

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a document for filing without a certificate of service.

Conference.

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on November 19, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Stephen Vastagh (202-523-0283) not later than November 13, 1986, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions.

Any person may submit to the Commission on or before November 21, 1986, a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority. This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rule (19 CFR § 207.12).

By order of the Commission.

Issued: October 31, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-25040 Filed 11-4-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-274 (Final)]

Softwood Lumber From Canada; Import Investigations

AGENCY: United States International Trade Commission.

ACTION: Institution of a final countervailing duty investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigation No. 701-TA-274 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of softwood lumber, rough, dressed, or worked (including softwood flooring classified as lumber), provided for in items 202.03 through 202.30, inclusive; softwood siding, not drilled or treated, provided for in items 202.47 through 202.50, inclusive; other softwood lumber and siding, provided for in items 202.52 and 202.54 and softwood flooring provided for in item 202.60 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination, to be subsidized by the Government of Canada. Commerce will make its final subsidy determination in this investigation on or before December 30, 1986 and the Commission will make its final injury determination by February 17, 1987 (see section 705(a) and 705(b) of the Act (19 U.S.C. 1671d(a) and 1671d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commision's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: October 22, 1986.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202-523-1793), Office of Investigations, U.S. International Trade Commission, 701 E. Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background.

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 701 of the act (19 U.S.C. 1671) are being provided to mamufacturers, producers, or exporters in Canada of softwood lumber. The investigation was requested in a petition filed on May 19, 1986 by the Coalition for Fair Lumber Imports, a group of U.S. softwood lumber manufacturers and associations representing U.S. softwood lumber manufacturers and foresters. In response to that petition the Commission conducted a preliminary countervailing duty investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (51 FR 25752, July 16, 1986).

Participation in the investigation.

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one

(21) days after the publication of htis notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report

A public version of the prehearing staff report in this investigation will be placed in the public record on December 23, 1986, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on January 15, 1987, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on January 2, 1987. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on January 6, 1987, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is January 8, 1987.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analylsis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearings must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on January 22, 1987. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before January 22, 1987.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 208). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: October 30, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-25041 Filed 11-4-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-230]

Certain Unitary Electromagnetic Flowmeters With Sealed Coils; Import Investigations

AGENCY: U.S. International Trade Commission.

ACTION: Determination of no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the above-captioned investigation.

SUMMARY: The Commission has determined to reverse those parts of the initial determination (ID) of the administrative law judge (ALJ) finding an effect of substantial injury and a tendency to substantially injure the domestic industry in the above-captioned investigation. The investigation is therefore terminated on the basis that there is no violation of section 337.

FOR FURTHER INFORMATION CONTACT: Jean A. Heck, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1693.

SUPPLEMENTARY INFORMATION: On September 24, 1985, Fischer & Porter Co. filed a complaint under section 337. On October 21, 1985, the Commission instituted an investigation to determine whether there is a violation of section 337 in the unlawful important or sale of certain electromagnetic flowmeters with sealed coils into the United States by reason of alleged infringement of claims 1, 2, 3, 4, and 5 of U.S. Letters Patent 4,420,982, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. The Commission named Krohne Messtechnik GmbH & Co. of the Federal Republic of Germany and Krohne-America, Inc., of Peabody, Massachusetts, as respondents.

On July 30, 1986, the ALJ issued an ID finding a violation of section 337. On September 15, 1986, the Commission determined to review the effect of substantial injury and tendency to substantially injure portions of the ID (51 FR 33933). All parties submitted briefs of all issues under review and on remedy the public interest, and bonding. No other submissions were received.

The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in § 210.56 of the Commission's Rules of Practice and Procedure (49 FR 46123) (19 CFR 210.56).

Copies of the Commission's Action and Order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission TDD terminal on 202-724-0002.

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By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: October 30, 1986.

[FR Doc. 86-25042 Filed 11-04-86; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Reimbursable Services; Excess Cost of Preclearance Operations

Notice is hereby given that pursuant to Immigration and Naturalization Service Regulations (8 CFR 235.5(c)), the biweekly reimbursable excess costs for each preclearance installation are determined as set forth below and will be effective with the pay period beginning October 26, 1986.

Installation	Biweekly excess cost
Montreal, Canada	$11,271.32
Toronto, Canada	16,158.03
Kindley Field, Bermuda	2,396.82
Freeport, Bahama Islands	6,532.27
Nassau, Bahama Islands	7,504.98
Calgary, Canada	4,630.41
Edmonton, Canada	2,192.73
Vancouver, Canada	8,960.91
Victoria, Canada	5,507.99
Winnipeg, Canada	1,791.64

These amounts will be in effect and billed biweekly through November 29, 1986.

Dated: October 30, 1986.

Malcolm E. Arnold,

Comptroller.

[FR Doc. 86-24963 Filed 11-4-86; 8:45 am]

BILLING CODE 4410-10-M

Office of Juvenile Justice and Delinquency Prevention

Change of Proposal Submission Date for Research on Effects of Deinstitutionalization of Status Offenders

AGENCY: Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of change of proposal submission date.

SUMMARY: Notice of change of proposal submission date for grant applications under OJJDP's Research on Effects of the Deinstitutionalization of Status Offenders program.

SUPPLEMENTARY INFORMATION: This notice announces a change in Section VIII of **Federal Register** Vol. 51, No. 174, Tuesday, September 9, 1986, Pages 32184-32187 (Part III). Section VIII, paragraph 4 of the program announcement specified the following application submission date: "applications must be received by mail or hand delivered to the NIJJDP/OJJDP by 5:30 p.m. EST on November 15, 1986." Since November 15, 1986 falls on a Saturday a new submission date has been established. The new submission date will be Tuesday, November 18, 1986. Applications must be received by mail or hand delivered to the NIJJDP/OJJDP by 5:30 p.m. EST on November 18, 1986.

DATES: Effective November 5, 1986.

FOR FURTHER INFORMATION CONTACT: Richard Sutton, Research and Program Development Division, NIJJDP/OJJDP, 633 Indiana Ave. NW., Room 778, Washington, DC 20531, Telephone: (202) 724-5929.

Verne L. Speirs,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 86-24975 Filed 11-4-86; 8:45 am]

BILLING CODE 4410-18-M

NUCLEAR REGULATORY COMMISSION

Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations; Bi-Weekly Notice

I. Background

Pursuant to Public Law (Pub. L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. Pub. L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last bi-weekly notice which was published on October 22, 1986 (51 FR 37502) through October 27, 1986.

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U. S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice.

By December 5, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFP 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way.would result, for example, in derating or shutdown of the facility. The Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Project Director)*: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of General Counsel, Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

Arizona Public Service Company et al, Docket Nos. STN 50–528 and 50–529, Palo Verde Nuclear Generating Station (PVNGS), Units 1 and 2, Maricopa County, Arizona

Date of amendment requests: October 16, 1986 (three applications)

Description of amendment requests: The proposed amendments would allow additional sale and leaseback transactions by Arizona Public Service Company (APS), Public Service Company of New Mexico (PNM) and El Paso Electric Company (El Paso) relating to their ownership interests in Palo Verde. Specifically, the three applications request authorization by three of the co-owners to transfer all or a portion of their remaining fee interests to equity investors and the simultaneous transfer by the equity investors back to these co-owners of a long term (approximately 27½–29½ years) possessory leasehold interest of these shares under the terms described in the applications and other identified documents. (For PNM, the sale and leaseback transactions relate to Palo Verde 1 and 2; for APS and El Paso, the sale and leaseback transactions relate to Palo Verde 2.).

It is comtemplated that the equity investors may be third parties not affiliated with the co-owners. These equity investors might include electric utilities, or affiliates or subsidiaries thereof, in which case antitrust considerations may be present. Under the proposed transactions, it is represented that the present co-owners will remain in possession of their present partial interests in the Palo Verde facilities under leaseholds rather than by virtue of ownership. APS would continue to be the sole licensed operator of the facilities.

The proposed amendments are similar to a request filed on October 18, 1985, by Arizona Public Service Company (APS) regarding the sale and leaseback transactions by Public Service Company of New Mexico (PNM) of a portion of PNM's ownership interests in PVNGS Unit 1. See 50 FR 45955. By Order of December 12, 1985, the Commission approved the proposed sale and leaseback transactions and authorized the amendment of the PVNGS Unit 1 license subject to certain conditions. On December 26, 1985, the PVNGS Unit 1 license was amended and conditioned pursuant to the Commission's Order. See 51 FR 1883.

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The Commission also received requests for additional similar transactions related to sale and leaseback of Palo Verde Units 1 and 2 ownership shares by PNM (see 51 FR 8259, 51 FR 8587, and 51 FR 9125) and requests for similar transactions related to sale and leaseback of Palo Verde Unit 2 ownership shares by El Paso Electric Company (see 51 FR 20366) and by Arizona Public Service Company (see 51 FR 20367). On June 2, August 12 and 15, 1986, the PVNGS Units 1 and 2 licenses were amended to allow the requested sale and leaseback transactions. These amendments permitted the transactions to be completed by PNM for Unit 1 by August 31, 1986 and by PNM, APS and El Paso for Unit 2 by September 30, 1986.

The current applications state that, although the co-owners have sold and leased back portions of the ownership interests authorized by the license amendments, additional amendments are requested to allow the sale and leaseback transactions of the remainder of their ownership interests. They anticipate these transactions will be completed by June 30, 1987.

In addition, co-owner Public Service Company of New Mexico has requested that Paragraph 2.B(6) of the Unit 1 license be revised to change the language concerning insurance to make it consistent with the language of the Unit 2 license. Specifically, in lieu of the statement that the licensees notify the Commission of "any change in the existing insurance", it should be changed to "any change in . . . the existing property insurance coverage for the Palo Verde Nuclear Facility, Unit 1 as specified in licensees counsel's letter of November 26, 1985".

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

A discussion of these standards as they relate to the amendment requests follows:

Standard 1—Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

No change is involved in any aspect of plant design, criteria or operation of any of the plant units. The proposed amendments do not, therefore, significantly increase the probability or consequences of an accident.

Standard 2—Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed amendments do not affect any aspect of plant design, criteria or operation and do not affect any condition or parameter of any unit. For this reason, the NRC staff has determined that the proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3—Involve a Significant Reduction in a Margin of Safety

The requested amendments do not change any aspect of plant design, criteria or operation of any of the plant units. For this reason, the NRC staff has determined that the proposed changes do not involve a significant reduction in any margins of safety.

The proposed amendments would authorize additional time to complete sale and leaseback transactions of a kind previously authorized by the Commission and clarify a condition concerning Unit 1 property insurance to reflect that which has been approved for Unit 2. Furthermore, the proposed amendments would maintain the co-owners in possession of their present interests in PVNGS as lessees and they would continue to be obligated to pay their share of all costs of construction, maintenance, operation, capital improvements and decommissioning. The equity investors do not have any rights of possession in, absent further license amendment, or control over PVNGS. Arizona Public Service Company would continue to be the sole licensee authorized to use and operate the facility.

Based on the above considerations, the Commission proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room Location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: George W. Knighton.

Commonwealth Edison Company, Docket No. 50-373, La Salle County Station, Unit 1, La Salle County, Illinois

Date of amendment request: October 14, 1986.

Description of amendment request: The proposed amendment to Operating License No. NPF-11 would revise the La Salle Unit 1 Technical Specifications for a one-time technical specification relief during the La Salle Unit 2 first refueling outage to extend the present ten-day period to thirty days during which only three diesel generators would be required to satisfy the standby AC on-site power requirements for Unit 1. This one time change will allow the installation of the diesel generator lube oil modification required by license condition to be installed on Unit 2 prior to startup after the first refueling for the common diesel generator "2A". Because 2A Diesel Generator is shared between the two units and existing Technical Specification 3.8.1.1 requires this diesel generator be operable whenever either unit is in operation, the licensee is unable to perform the modification without bringing both units to shutdown.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee indicates in its application that the proposed Technical Specifications are justifiable because:

1. The probability that a station blackout will occur during the 30 days is extremely unlikely.

2. The operating unit can be safely shutdown following a loss of offsite power transient even if one of the remaining diesels fails.

In addition to the above, the licensee contends that the La Salle diesels have a higher than average reliability. The average emergency diesel generator has a reliability of 0.98 and those at La Salle have a reliability that exceed 0.99.

The licensee has determined, and the NRC staff agrees, that the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because in the event of a loss of offsite power with the "2A" diesel inoperable for this period sufficient onsite power with a single active failure will still be available to shut down the operating unit safely.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because emergency power is still available to those systems required to mitigate accidents evaluated in the FSAR, and, because the sole function of this diesel is to provide a portion of such power, its unavailability will not create any other new or different kind of accident.

3. Involve a significant reduction in the margin of safety because the probability of a loss of offsite power in addition to a remaining diesel generator failure during the period of these diesel generator modifications is sufficiently small to reasonably assure the health and safety of the public.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards considerations.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney for licensee: Isham, Lincoln and Burke, Suite 840, 1120 Connecticut Avenue, NW., Washington, DC 20036.

NRC Project Director: Elinor G. Adensam.

Commonwealth Edison Company, Docket No. 50–374, La Salle County Station, Unit 2, La Salle County, Illinois

Date of amendment request: October 16, 1986.

Description of amendment request: The proposed amendment to Operating License No. NPF–18 would revise the La Salle Unit 2 Technical Specifications to permit replacing an existing peripheral locking piston control rod drive module with a Fine Motion Control Rod Drive (FMCRD) module during one fuel cycle. The purpose of the test is to demonstrate the capability of an FMCRD module in a reactor environment. The proposed amendment incorporates three additional Special Test Exception's (¾.10.8, ¾.10.9 and ¾.10.10) which are necessary to allow testing of the FMCRD at the control rod location 02–43. This peripheral location, having a low reactivity worth, was specifically chosen in order to avoid any reactivity safety concerns.

Special Test Exception ¾.10.8 allows bypass of the FMCRD in the Rod Sequence Control System and programming out of the Rod Worth Minimizer, ¾.10.9 provides for determination of the Shutdown Margin with an increased allowance for the withdrawn worth of the FMCRD, and ¾.10.10 provides for disarming the FMCRD motor electrically in case of not meeting the shutdown margin requirement.

In addition, the Operational Conditions applicable to the Technical Specification 3.1.1, 3.1.3.1 through 3.1.3.7, 3.1.4.1 and 3.1.4.2 are marked with footnotes to reflect incorporations of these exceptions. The Technical Specification 3.9.1 is modified to assure that the core alterations for control rods other than the FMCRD can proceed only after the FMCRD is fully inserted and its motor electrically disarmed.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequenses of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined, and the NRC staff agrees, that the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because: (a) Interconnections between the new FMCRD and existing plant systems and equipment have been minimized and configured to include sufficient protection to assure that any potential electrical fault within the FMCRD and its supporting equipment will not propagate back into the rest of the plant equipment to which it is directly or indirectly connected; (b) replacement of the locking piston control rod drive (LPCRD) module at a peripheral core location with an FMCRD does not affect the fail-safe feature of the reactor protection system; (c) even when postulating independent or concomitant misoperation of the FMCRD, results of the analyzed transient or accident events (and control rod related parameters such as shutdown margin and scram reactivity worth) would bound the reactivity effects from the postulated misoperation; and (d) the inserted FMCRD (by administrative control) will not be moved until reactor power is greater than 25 percent and a rod pattern has been established in order to free the FMCRD rod from the Rod Sequence Control Sequence (RSCS) logic and the Rod Worth Minimizer (RWM) program as proposed by the Technical Specification Exception 3/4.10.9 (RSCS and RWM restrictions apply only during 0 to 20 percent reactor power level for establishing a rod pattern).

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because: (a) The worst case (i.e., bounding) accidents and the assumptions used in the analysis of these accidents remain unchanged; (b) the replaced FMCRD, which utilizes hydraulic equipment similar to the replaced LPCRDs to scram and a small electric motor for shimming purposes, does not pose a concern of a new accident since the FMCRD is located at a peripheral location which has minimal impact on reactor operation or accident analysis; and (c) inadvertent withdrawal of the FMCRD during refueling will be prevented by disconnecting the power supply to the electric motor and special administrative controls will be in place for refueling bridge movement or control rod withdrawal.

3. Involve a reduction in the margin of safety because the low reactivity worth location of the FMCRD assures that: (a) The FMCRD rod would not likely reach prompt critical due to a rod withdrawal error and the produced peak fuel enthalpy would be well within those of the generic analyses and the licensing criterion of 170 cal/gm; (b) in case of an FMCRD rod drop accident postulated conservatively in the lower power region, a low peak fuel enthalpy (less than 100 cal/gm) would result, well under the licensing criterion of 280 cal/gm; (c) the associated minimum critical power ratio (MCPR) limit would not be approached because of a rod withdrawal error; and (d) the requirement of the current Technical Specification for calculated shutdown margin (equal to or greater than 0.38 percent delta k/k) will be met throughout the cycle based on the design shutdown margin of 1.0 percent delta k/k assuming the FMCRD rod and the strongest worth rod are fully withdrawn at the limiting point in the cycle.

Accordingly, the Commission proposes to determine that the proposed

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changes to the Technical Specifications involve no significant hazards considerations.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney for licensee: Isham, Lincoln and Burke, Suite 840, 1120 Connecticut Avenue, NW., Washington, DC 20036.

NRC Project Director: Elinor G. Adensam.

Commonwealth Edison Company, Docket No. 50-265, Quad Cities Nuclear Power Station, Unit 2, Rock Island County, Illinois

Date of amendment request: September 18, 1986.

Description of amendment request: This request includes Technical Specification (TS) changes to reflect Cycle 9 reload fuel and transient analyses. In addition, the licensee has requested the deletion of the provisions for Single Loop Operation (SLO) in the body of the facility TS. More specifically, Commonwealth Edison proposes to amend Facility Operating License DRP-30 for Quad Cities Unit 2 to support the Cycle 9 core reload. The proposed changes include: (1) Incorporation of the Cycle 9 Minimum Critical Power Ratio (MCPR) limit determined by the Cycle 9 transient analysis, (2) Addition of Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) limits for the reload fuel and extension of existing limits to 40,000 MWD/t for fuel type BP8DRB282, and (3) Deletion of the existing License Condition addressing SLO and the incorporation of SLO in the body of the TS.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c).

10 CFR 50.91 requires at the time a licensee requests an amendment, it must provide to the Commission its analyses, using standards in § 50.92, about the issue of no significant hazards consideration. Therefore, in accordance 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

> Commonwealth Edison has evaluated the proposed Technical Specification amendment and determined that it does not represent a significant hazards consideration. Based on the criteria for defining a significant hazards consideration established in 10 CFR 50.92(c), operation of Quad Cities Unit 2 Cycle 9 in accordance with the proposed amendments will not:
>
> A. Involve a significant increase in the probability or consequences of an accident previously evaluated because:
>
> (1&2) The incorporation of the MCPR and MAPLHGR limits noted above is explicitly provided to establish limits on normal reactor operation which ensure that the core is operated within the assumptions and initial conditions of previous accident analyses. Operation within these limits will assure that the consequences of the affected accident, the Loss of Coolant Accident, remain with[in] the results of the previous analyses. These limits were generated using analytical methods previously approved by the NRC. The probability of an accident is not affected by this change because no physical systems or equipment which could initiate an accident are affected.
>
> (3) The proposed SLO provisions are explicitly based on analyses performed by General Electric using NRC approved methods, to determine required adjustments in operating restrictions (MCPR, MAPLHGR) for SLO. Operation within the proposed SLO limits has been previously analyzed to assure that the consequences of accidents are not increased. The probability of an accident is not increased because operation in single loop has been previously approved for Quad Cities and has no causal relationship with the equipment or system failures necessary to initiate an accident.
>
> B. Create the possibility of a new or different kind of accident from any accident previously evaluated because:
>
> (1&2) The proposed MCPR and MAPLHGR limits represent limitations on core power distribution which do not directly affect the operation or function of any system or component. As a result, there is no impact on or addition of any systems or equipment whose failure could initiate an accident.
>
> (3) SLO has been previously analyzed and approved for Quad Cities.
>
> C. Involve a significant reduction in the margin of safety because all of the proposed changes have been analyzed to demonstrate that the consequences of transients or accidents are not increased beyond that previously evaluated and accepted at Quad Cities.
>
> Based on the above discussion, Commonwealth Edison concludes that the proposed amendments do not represent a significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendment involves no siqnificant hazards consideration.

Local Public Document Room location: Moline Public Library, 504—17th Street, Moline, Illinois 61265.

Attorney for licensee: Mr. Robert G. Fitzgibbons, Jr., Isham, Lincoln, & Beale, Three First National Plaza, Suite 5200, Chicago, Illinois 60602.

NRC Project Director: John A. Zwolinski.

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: October 22, 1986.

Description of amendment request: The proposed amendment to the Quad Cities Units 1 and 2 Technical Specifications (TS) to modify the Low Pressure Coolant Injection (LPCI) pump flow test requirements from the current three pump test demonstrating 14,500 gpm to a two pump test demonstrating 9,000 gpm. This change is required to support facility modification to the Units 1 and 2 LPCI pump minimum flow valve control logics to resolve a single failure concern identified in Inspection and Enforcement Bulletin (IEB) 86-01.

The existing LPCI loop selection logic is such that failure of either the "A" loop or "B" loop flow sensor would close both the "A" and "B" 'minimum flow valves. In response to IEB 86-01, this logic is being modified so that the "A" valve is controlled only by the "A" flow sensor and the "B" valve by the "B" sensor. With this configuration, during LPCI injection through the loop crosstie the minimum flow valve on the operating LPCI loop would remain open, thereby reducing the LPCI loop flow (consisting of two LPCI pumps) by the amount of recirculating flow through the minimum flow valve.

The original design of the LPCI system required three pumps with a combined flow capacity of 14,500 gpm. In 1974, 10 CFR 50.46/Appendix K was implemented requiring re-analysis of the Design Basis Loss of Coolant Accident (DBLOCA) to demonstrate compliance with the revised peak clad temperature (PCT) limit (2200 °F) and single failure criterion. This is the current Emergency Core Cooling System licensing basis. In the current Appendix K LOCA analysis, the most limiting event is the hypothetical, double-ended recirculation suction line break with an assumed failure of the LPCI injection valve. This scenario assumes no credit for the LPCI pumps; therefore, the proposed TS change in the LPCI flow has no effect on this event and the core cooling capability is not reduced for the most limiting event.

The second most limiting break and single failure combination, which takes credit for LPCI cooling, is the DBA recirculation suction line break with a diesel generator failure. This scenario requires one low pressure core spray pump and two LPCI pumps for core cooling. Commonwealth Edison requested General Electric analyze this event assuming the proposed 9,000 gpm flowrate for two LPCI pumps rather than the 9,667 gpm flowrate assumed in the initial Appendix K analysis. The results of the analysis indicate that, with the revised flowrate, the PCT increases by 32°F to 1793°F. This temperature is well below the Quad Cities limiting break PCT and the 2200°F limit set by 10 CFR 50.46.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c).

10 CFR 50.91 requires at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in § 50.92, about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed the following analysis.

> Commonwealth Edison has evaluated the proposed Technical Specification amendment and determined that it does not represent a significant hazards consideration. Based on the criteria for defining a significant hazards consideration established in 10 CFR 50.92(c), operation of Quad Cities in accordance with the proposed amendment will not:
>
> 1. Involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed LPCI flowrate does not affect the most limiting design basis LOCA and for the event that is affected, the slightly increased peak cladding temperature is well below the limiting event peak cladding temperature and the limit set by the NRC. The probability of a LOCA is unaffected since the proposed change affects an accident mitigating system and has no relationship to the failures or events necessary to initiate an accident.
>
> 2. Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change in flow rate requirements does not affect any systems or equipment whose failure or malfunction during operation could lead to the initiation of a reactor transient or accident.
>
> 3. Involve a significant reduction in the margin of safety since the analysis supporting this Technical Specification change showed that existing margins to safety are preserved because the existing design basis LOCA is unchanged. The change in peak clad temperature for the affected non-limiting event is insignificant in comparison to the available margin.
>
> Based on the previous discussion Commonwealth concludes that the proposed Technical Specification changes do not represent a significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposed to determine that the application for amendments involves no significant hazards consideration.

Local Public Document Room location: Moline Public Library, 504—17th Street, Moline, Illinois 61265.

Attorney for licensee: Mr. Michael I. Miller; Isham, Lincoln, & Beale, Three First National Plaza, Suite 5200, Chicago, Illinois 60602.

NRC Project Director: John A. Zwolinski.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-366, Edwin I. Hatch Nuclear Plant, Unit No. 2, Appling County, Georgia

Date of amendment request: August 19, 1986.

Description of amendment request: The proposed amendment would modify the Technical Specifications (TS) to correct the dummy load profiles provided for testing the station batteries under simulated emergency battery loading conditions. The changes are proposed to reflect past design changes in the plant that have affected this emergency load profile.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. These changes do not result in any new modes of operation and therefore do not affect the probability of any previously evaluated accidents or create the possibility of a new or different kind of accident. Correcting these test load profiles should ensure that consequences of previously evaluated accidents are not increased and that existing margins of safety are maintained.

On the basis of the above, the Commission has determined that the requested amendment meets the three criteria and therefore has made a proposed determination that the amendment application does not involve a significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Daniel R. Muller.

Indiana and Michigan Electric Company, Docket No. 50-315, Donald C. Cook Nuclear Plant, Unit No. 1, Berrien County, Michigan

Date of amendment request: October 1, 1986.

Description of amendment request: The proposed amendment would change the Technical Specifications to include a new Section 4.0.6 which by specific reference would allow certain tests normally designated as 18 month surveillances to be delayed until the end of the next refueling outage currently scheduled to begin during the second quarter of 1987. These tests include channel calibrations on steam generator level, and related post accident monitoring instrumentation, channel calibrations on pressurizer water level, channel calibrations of containment sump level and flow instruments, PORV limit switch calibrations, testing of residual heat removal/reactor coolant system interlocks, steam generator snubbers and Grinnel small bore snubber tests, battery service tests, divider barrier seal inspection, containment sump inspection, reactor coolant pump spray tests, diesel testing including relief valve and essential service water valve tests, auxiliary feedwater pumps and related engineered safety feature (ESF) testing, and time response testing for reactor trip and ESF instrumentation. There is one proposed editorial change.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for making a no significant hazards determination by providing certain examples (51 FR 7744). One of these examples (i) is a purely administrative change to technical specifications. The licensee has proposed to correct a typographical error by clarifying that semiannually means every 6 months rather than every 5 months. The example is directly related to this change.

The Commission's standard for determining whether a significant hazards consideration exists is as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a

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significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The changes proposed by the licensee will extend certain tests to the next refueling outage rather than shutdown the plant, which would be required to safely do the tests, beginning about midDecember. The safety significance, therefore, is in consideration of extending some 18 month tests until about 24 months and the confidence that the components or systems will still perform their intended function with this extension of time. The licensee has evaluated each test and has provided the basis for maintaining confidence that the components or systems will continue to function adequately. We have reviewed the licensee's submittal and summarize below our agreement with the licensee's findings.

The steam generator level and pressurizer level instrumentation have channel functional tests and channel checks periodically which demonstrate operability. Only the sensor is not checked in these tests, but comparison with other monitors and variables would reveal any significant changes in the sensor. The RHR/RCS interlocks are used to prevent opening full system pressure to the RHR system, therefore, there is no expected wear or deterioration expected that would make them inoperable. The extension will not result in a significant increase in the probability or consequences of a previously evaluated accident nor will it create the possibility of a new or different kind of an accident. Any loss of calibration during the extension is expected to be small and will not result in a significant reduction in the margin of safety.

The steam generator snubbers and Ginnell snubbers test extension is for the functional testing only; visual examination is not required until after the scheduled refueling. Visual examinations since 1975 have found less than 1% failure and only one Ginnell snubber failed to lock up in compression. For the extension period, this small failure rate is acceptable although none are expected due solely to the approximately six months extension. Even with this small failure rate, systems should operate as before and without a significant increase in the probability or consequences of an accident previously analyzed. Failure of the snubber itself should not create the possibility of a new or different kind of accident and would not involve a significant reduction in a margin of safety.

The containment sump flow and level instrumentation is backed up with humidity monitors, and RCS water inventory balances performed every 72 hours. The flow and level monitors calibration during the extension may have minor changes but the systems are not expected to completely fail. Even if they do, adequate backup monitors are available. The extension of time for calibration would not significantly increase the probability or consequences of an accident previously evaluated or create the possibility of a new or different kind of accident than previously analyzed. Any change in calibration would not significantly reduce a margin of safety.

The N-Train batteries are scheduled for a capacity test at the next refueling. All other tests on the battery to reveal any deterioration will still be performed and based on pact performance, the N-Train batteries are expected to have adequate capacity even with the extension proposed by the licensee. Likewise, the extension of time before testing the diesel generator's capability to energize, sequence, and shed emergency loads is not expected to reduce the overall ability of the diesel generators since other tests will continue to prove starting and running capability. The test results of previous associated circuitry surveillances do not indicate any problems with wear or failures. The tests on the PORV and block valves' emergency power supply and test on some essential service water valves that supply water to the diesels will be also be delayed with the diesel tests. The previous test data on these systems do not indicate any reason why the extension will affect them. As such, the delay in these tests does not involve a significant increase in the probability or consequences of an accident previously analysed nor will it create the possibility of a new or different kind of accident from any previously analyzed. The extension of time will not involve a significant reduction in a margin of safety.

The divider barrier seal limits ice condenser bypass leakage from the upper to lower volume in the event of an accident. The seal is a passive component and does not depend upon any other safety system to function. The test history indicates no problems with the seal and none that should occur during the extension. The containment sump inspection is to assure the sump is free of debris and its components are free of abnormal corrosion and distress. Housekeeping inspection procedures are followed after each containment entry to assure no debris is left after the entry. The extension of time is not expected to change the condition of the divider barrier seal or containment sump. Therefore, the proposed change does not increase the probabilities or consequences of an accident previously analyzed nor does it create any new or different kind of accident from any previously analyzed. The extension of time does not involve a significant reduction in a margin of safety.

The licensee proposes to extend the calibration of the PORV limit switches. These limit switches indicate either open or close and are not generally subject to mechanical drift. Additional indication of a leaking PORV is provided by tail pipe temperatures and pressurizer relief tank temperatures and pressure. Previous test results indicate that the extension of time should have no effect on the calibration of the switches. This change does not involve a significant increase in the probabilities or consequences of an accident previously analyzed nor does it create a new or different kind of accident. The extension of time does not involve a significant reduction in a safety margin.

The reactor coolant pumps spray test is to determine the capability to extinguish a fire at the pump. The system has not failed a test since it was installed and an extension of time before the next test should have no effect in the system operation. The auxiliary feedwater pump test proposed for extension is a channel functional test on loss of main feedwater and a pump start and valve actuation test upon receipt of appropriate signals. The auxiliary feedwater pumps have been called upon to operate since the last refueling but not all the appropriate signals were tested. The results of previous tests do not indicate that the extension of time should be a factor in any new failure. For both these system tests, the extension does not involve a significant increase in the probability or consequences of any previously analyzed accident nor does it create the possibility of a new or different kind of accident. The extension does not involve a significant reduction in a margin of safety.

The last proposed extension involves time response testing of reactor trip and ESF instrumentation. This instrumentation has not had a time response failure since initial startup, 11 years ago. Other surveillance tests such as channel checks, channel functional tests, and channel calibrations will continue to be performed except for a few calibrations. This testing, and the test records since startup, supports the proposed change to extend the test period. This change does not involve a significant increase in the probability or consequences of any previous accident analyzed nor does it create the possibility of a new or different kind of accident. The extension does not significantly reduce any margin of safety.

Based on the above considerations, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 M Street, NW., Washington, DC 20036.

NRC Project Director: B.J. Youngblood.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: September 26, 1986.

Description of amendment request: By application for license amendment dated September 26, 1986, Northeast Nuclear Energy Company, et al. (the licensee), requested changes to the Technical Specifications (TS) for Millstone Unit 2. The proposed changes would renumber TS 3/4.9.3, "Decay Time" and incorporate the following new requirement in the TS: (1) A limiting condition for operation (LCO) and associated surveillance requirement (SR) addresses the need for fuel, discharged from the reactor, to have a minimum decay time of 504 hours prior to suspending operability of the spent fuel pool cooling system, and (2) an LCO and SR to require that the reactor remain shutdown in Modes 5 or 6 until discharged fuel has achieved a decay time of 504 hours.

Basis for proposed no significant hazards consideration determination: On January 15, 1986, the NRC issued Amendment No. 109 to Facility Operating License No. DPR–65 for Millstone Unit 2. The amendment revised the TS to allow an increase in the spent fuel storage capability from 667 to 1112 fuel assemblies. In the safety evaluation associated with Amendment No. 109, the NRC staff concluded that the existing TS should be supplemented by requirements to limit the temperature in the spent fuel pool to 140 °F. In their letter dated November 27, 1985, the licensee had previously committed to submitting a proposed TS change. The application dated September 26, 1986 satisfies the licensee's commitment.

The proposed changes to the TS would require a combination of equipment to be operable, for spent fuel pool cooling, for 504 hours, which provides sufficient capacity to limit the spent fuel pool temperature to 140 °F. Following the 504 hour period, the spent fuel pool temperature can be maintained below 140 °F with a reduced complement of cooling equipment. The temperature limit of 140 °F is specified in Standard Review Plan 9.1.3, "Spent Fuel Pool Cooling and Cleanup System," and is partly based upon the need to protect the resins, used in the spent fuel pool cleanup system, from excessive temperatures.

On March 6, 1986, the NRC published guidance in the **Federal Register** (51 FR 7751) concerning examples of amendments that are not likely to involve a significant hazards consideration. One example provided in 51 FR 7751 of amendments not likely to involve significant hazards considerations is example (ii) which provides for "A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: for example, a more stringent surveillance requirement."

The proposed TS provide for requirements on spent fuel pool cooling system operability, and restrictions on reactor startup, which were not previously in the TS and thus represent additional restrictions consistent with example (ii) above. Accordingly, the Commission proposes to determine that the proposed changes to TS 3/4.9.3 involve no significant hazards considerations.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esq., Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Project Director: Ashok C. Thadani.

Sacramento Municipal Utility District, Docket No. 50–312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: January 24, 1986, as supplemented September 19, 1986.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Table 2.3–1, "Reactor Protection System Trip Setting Limits," and Figure 2.3–1, "Protective Systems Maximum Allowable Setpoints, Pressure vs Temperature." The licensee proposes to (1) increase the reactor coolant system (RCS) high pressure reactor trip setpoint from 2300 psig to 2355 psig, and (2) increase the anticipatory reactor trip on turbine trip arming threshold from 20 percent reactor power to 45 percent reactor power to reduce the number of challenges to plant safety systems and increase plant availability. The licensee also proposes to revise the related bases to reflect this proposed amendment.

Basis for proposed no significant hazards consideration determination: In its January 24, 1986 letter, the licensee stated that the proposed TS amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed increase of the RCS high pressure reactor trip from 2300 psig to 2355 psig and the percent reactor power at which the anticipatory reactor trip system (ARTS) is disabled from 20 percent to 45 percent have been evaluated and, based on the NRC approved safety analyses contained in Babcock & Wilcox reports BAW–1890, "Justification for Raising Setpoint for Reactor Trip on High Pressure," and BAW–1893, "Basis for Raising Arming Threshold for Anticipatory Reactor Trip on Turbine Trip," there are no increases in the probabilities of previously evaluated accidents.

The licensee also stated that the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because 2355 psig is the design high pressure trip setpoint and, therefore, the original Final Safety Analysis Report analyses remain applicable for this setpoint. In addition, at a pressure trip setpoint of 2355 psig, runbacks from 45 percent power can be achieved.

Finally, the licensee stated that the proposed amendment does not involve a significant reduction in a margin of safety because the increase in the reactor high pressure trip will have negligible impact on the frequency of opening the power-operated-relief-valve (PORV) during anticipated overpressurization transients. The probability of an open PORV failing to close is sufficiently low to satisfy small break loss of coolant accident criteria for the PORV.

The Commission agrees with the licensee's evaluation of the application

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for amendment against the criteria of 10 CFR 50.92(c), and therefore proposes to determine that the amendment application does not involve a significant hazards consideration.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814.

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813.

NRC Project Director: John F. Stolz.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Dates of amendment requests: January 29, 1986, February 14, 1986, March 20, 1986, and June 13, 1986.

Description of amendment requests: The proposed license amendments would make numerous changes to the Technical Specifications (TSs) and their bases to correct typographical errors and punctuation, change nomenclature, number previously unnumbered pages, define a previously undefined time period, update the table of contents, delete and add to correct inadvertent errors originating from various previously approved license amendments, and to achieve clarity and consistency throughout the TSs.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples of amendments that are considered not likely to involve significant hazards considerations (51 FR 7751). One of these examples is (i) a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. The TS changes proposed by the licensee are all encompassed by this example. The Commission proposes, therefore, to determine that the proposed amendments involve no significant hazards considerations.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814.

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813.

NRC Project Director: John F. Stolz.

South Carolina Electric and Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of amendment request: September 16, 1986.

Description of amendment request: The amendment would change Technical Specification surveillance requirement 3.6.1.6, "Containment Structural Integrity." The change revises the number and the representative sample of containment tendons to be tested, deletes Technical Specification Tables 4.6-1a, 4.6-1b, and 4.6-2 which list surveillance tendons and adjacent tendons base values and normalizing factors, and revises downward the minimum required average tendon force for each group (dome, vertical and hoop) of tendons.

Basis for proposed no significant hazards consideration determination: The proposed Technical Specification revision identifies the appropriate surveillance intervals and number of tendons to be examined for all subsequent surveillances. Specific tendons have purposely not been included in tables in the proposed Technical Specification revision and will instead be identified in station surveillance procedures. Additionally, acceptable base values and normalizing factors for each specific tendon will be identified in the station procedures and not in the Technical Specifications. This format will eliminate the need for further Technical Specification changes in the event a tendon has to be substituted at inspection time due to an unforeseen interference which may have developed.

Calculations have been performed which determined that the present Technical Specification limits for the minimum average tendon forces are very conservative. Those calculations support the new minimum average tendon forces. These forces are 2.9 percent less for vertical tendons, 4.7 percent less for dome tendons, and 15.3 percent less for hoop tendons from the original Technical Specification values. The new minimum average tendon forces have been verified acceptable to ensure that the containment tendons will perform their design basis function under all postulated loads and loading conditions.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from accidents previously evaluated; or (3) involve a significant reduction in margin of safety. The staff has determined that the requested amendment:

(1) Would not involve a significant increase in the probability or consequences of an accident previously evaluated because it does not change any of the hardware on the tendon system, it specifies the testing program to be used in the future for containment tendons, and the minimum average tendon force has been verified to enable the containment tendons to perform their design basis function under all postulated loading conditions.

(2) Would not create the possibility of a new or different kind of accident from any accident previously evaluated because it provides for a continued testing program for tendons that will ensure containment integrity; and

(3) Would not involve a significant reduction in the margin of safety because the testing program will continue to provide assurance of the integrity of the containment post tensioning system and will provide for warning and appropriate actions if abnormal degradation should develop and the minimum average tendon force values have been verified to enable the containment to meet all postulated loads and loading combinations as required to maintain safety.

Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Attorney for licensee: Randolph R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218.

NRC Project Director: Lester S. Rubenstein.

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: April 22, 1985, as supplemented July 31, 1986.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to delete the isolation (closure) times for certain High Pressure Injection (HPI) system and Containment Spray (CS) system isolation valves. The proposed amendment would also correct two typographical errors.

Basis for proposed no significant hazards consideration determination: The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that the operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed amendment involves the deletion of isolation times for certain HPI and CS system valves which are normally closed and open automatically upon a Safety Features Actuation Signal (SFAS) to perform their safety function. These valves are not provided with an automatic closure feature.

The proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The deletion of the closing time requirement would not increase the probability of an accident previously evaluated. The safety function requires that the isolation valves open rather than close upon an actuation signal. The correction of typographical errors is an administrative change.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. These changes, which delete the closing time for the isolation valves on the HPI and CS lines, would not create the possibility of a new or different kind of accident since the function of these valves is to open rather than close. The correction of the typographical errors is an administrative change.

(3) Involve a significant reduction in the margin of safety. The deletion of the closing time for these valves would not reduce the margin of safety as their safety function is to open (valves are normally closed) upon SFAS signal and not to close. The correction of the typographical errors is an administrative change. All margins of safety assumed in previous analyses remain unchanged.

Therefore, the Commission proposes to determine that the application does not involve a significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this bi-weekly notice. They are repeated here because the bi-weekly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Florida Power & Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: July 2, 1986.

Brief description of amendment: The amendment would permit the licensee to transfer Unit No. 1 spent fuel from the Unit No. 1 spent fuel pool to the Unit No. 2 spent fuel pool.

Date of publication of individual notice in **Federal Register:** October 20, 1986 (51 FR 37242).

Expiration date of individual notice: November 19, 1986.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated. For further details with respect to the action see: (1) The applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

Alabama Power Company, Dockets Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2, Houston County, Alabama

Date of application for amendments: December 16, 1985, supplemented August 1, 1986.

Brief description of amendments: The amendment revises Technical Specifications Limiting Conditions of Operation and Surveillance Requirements for the reactor trip breakers including the automatic shunt trip feature modifications. These modifications resulted from the Commission staff's Generic Letter 85-28 for Item 4.3 dated July 8, 1983.

Date of issuance: October 24, 1986.

Effective date: October 24, 1986.

Amendment Nos.: 67 and 59.

Facilities Operating License Nos. NPF-2 and NPF-8. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 29, 1986 (51 FR 3709).

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The August 1, 1986, submittal provided supplemental information only and therefore did not change the determination of the initial **Federal Register** Notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 24, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, La Salle County Station, Units 1 and 2, La Salle County, Illinois

Date of application for amendments: June 27, 1986.

Brief description of amendments: The amendments to Operating License No. NPF–11 and Operating License No. NPF–18 revise the La Salle Units 1 and 2 Technical Specifications to amend the reporting requirements for iodine spiking and would eliminate the existing requirements to shut the plants down if coolant iodine activity limits are exceeded for 800 hours in a 12 month period. These changes are in accordance to Generic Letter 85–19, "Reporting Requirements on Primary Coolant Iodine Spikes", dated September 27, 1985.

Date of issuance: October 23, 1986.

Effective date: October 23, 1986.

Amendment Nos.: 46 and 28.

Facility Operating License Nos. NPF–11 and NPF–18: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 13, 1986 (51 FR 28994). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 23, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Consumers Power Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: June 20, 1986.

Brief description of amendment: This amendment increased the allowable quantity of CS–137 contained in sealed calibration sources used in support of operation of the facility and added a Technical Specification requiring leakage testing of all sealed sources. The amendment also corrected a typographical error.

Date of issuance: October 15, 1986.

Effective date: October 15, 1986.

Amendment No: 98.

Provisional Operating License No. DPR–20: The amendment revised the license and the Technical Specifications.

Date of initial notice in **Federal Register:** July 30, 1986 (51 FR 27276 at 27282).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 15, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Duke Power Company, et al., Docket No. 50–413, Catawba Nuclear Station, Unit 1, York County, South Carolina

Date of application for amendment: August 6, 1986.

Brief description of amendment: The amendment changes a license condition to incorporate the recommendations and conclusions contained in the NRC staff's Safety Evaluation Report on Operability/Reliability of Emergency Diesel Generators Manufactured by Transamerica Delaval, Inc.

Date of issuance: October 21, 1986.

Effective date: October 21, 1986.

Amendment No.: 16.

Facility Operating License No. NPF–35: Amendment revised the Operating License.

Date of initial notice in **Federal Register:** August 27, 1986 (51 FR 30567).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 21, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: December 10, 1985.

Brief description of amendment: This amendment changes the Technical Specifications to increase the enrichment of fuel assemblies stored in Spent Fuel Pool B and the dry fuel storage rack from 3.5 weight percent to 4.0 weight percent uranium-235.

Date of issuance: October 14, 1986.

Effective date: October 14, 1986.

Amendment No.: 92.

Facility Operating License No. DPR–72: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 10, 1986 (51 FR 32267).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 14, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Crystal River Public Library, 668 NW. First Avenue, Crystal River, Florida 32629.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: August 14, 1986, as supplemented October 6, 1986.

Brief description of amendment: This amendment extends the surveillance interval for high-pressure injection and low-pressure injection pumps and valves from once per 18 months to once per fuel cycle for Cycle 6 only. Other changes proposed in the August 14, 1986 application are being handled separately.

Date of issuance: October 21, 1986.

Effective date: October 21, 1986.

Amendment No.: 93.

Facility Operating License No. DPR–72: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 19, 1986 (51 FR 33322).

Since the initial notice, the licensee submitted a supplement dated October 6, 1986, which responded to the Commission's request for additional information. The information did not change the original application in any way, and therefore did not warrant renoticing.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 21, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Crystal River Public Library, 668 NW. First Avenue, Crystal River, Florida 32629.

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of application of amendment: July 15, 1986 as supplemented by two letters dated September 4, 1986 and one letter dated October 10, 1986.

Brief description of amendment: This amendment changed the Reactor Coolant System Pressure/Temperature

(P/T) limit figures to be effective up to four effective full power years of operation. The amendment changed the technical specifications dealing with overpressure protection systems because they are linked with the new P/T limit figures. The amendment also added the shutdown cooling system relief valves as overpressure protection devices. The applicable bases sections are changed to reflect the above changes.

Date of issuance: October 16, 1986.

Effective date: October 16, 1986.

Amendment No.: 16.

Facility Operating License No. NPF-16: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 13, 1986 (51 FR 28992 at 28999).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 16, 1986. Additional information was provided by the licensee subsequent to the issuance of the notice in the **Federal Register.** The additional information did not alter the staff's proposed determination that a no significant hazards consideration is involved.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virgina Avenue, Ft. Pierce, Florida.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Dockets Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2, Appling County, Georgia

Date of application for amendments: January 27, 1986, as supplemented July 10, 1986.

Brief description of amendment: The amendments revised the TSs for Hatch Units 1 and 2 to require additional sampling of gaseous effluents following shutdown, startup, or power level changes greater than 15% of rated thermal power (1) to be required only if the primary coolant activity of I-131 and the noble gas activity had increased by more than a factor of 3, and (2) to be followed by analysis of only the principal gamma emitters.

Date of issuance: October 23, 1986.

Effective date: October 23, 1986.

Amendments Nos.: 130 and 65.

Facility Operating License Nos. DPR-57 and NPF-5: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 7, 1986 (51 FR 16927) and September 10, 1986 (51 FR 32269).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 23, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-366, Edwin I. Hatch Nuclear Plant, Unit No. 2, Appling County, Georgia

Date of application for amendment: July 11, 1986.

Brief description of amendment: The amendment revises Table 3.8.2.8-1 "Primary Containment Penetration Conductor Overcurrent Protective Devices" to reflect the installation of two additional overcurrent protective devices.

Date of issuance: October 22, 1986.

Effective date: October 22, 1986.

Amendment No.: 64.

Facility Operating License No. NPF-5: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 10, 1986 (51 FR 32268).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 22, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Kansas Gas and Electric Company, Kansas City Power & Light Company, Kansas Electric Power Cooperative, Inc., Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of application for amendment: March 4, 1986, as supplemented July 29 and September 18, 1986. The supplement of September 18, 1986 did not substantively change original amendment request.

Brief description of amendment: The amendment modifies the Technical Specifications to reflect a title change, a change in reporting relationship, correction of typographical errors, addition and deletion of groups from the Unit Organization figure, addition of positions and group from the Nuclear Department organization and changes in membership to the Nuclear Safety Review Committee.

Date of issuance: October 22, 1986.

Effective date: October 22, 1986.

Amendment No.: 2.

Facility Operating License No. NPF-42: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 30, 1986 (51 FR 27285) and August 13, 1986 (51 FR 29001).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 22, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: The William Allen White Library, Emporia State University, Emporia, Kansas; and Washburn University School of Law, Topeka, Kansas.

Louisiana Power and Light Company, et al., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Dates of application for amendment: August 1, 1985, as supplemented October 8, 1986.

Brief Description of Amendment: The amendment revises the Technical Specifications by correcting three typographical errors in Table 3.8-1, changing Technical Specification 3/4.9.7 so that use of the spent fuel handling machine is not required for movement of new fuel outside the spent fuel pool, and revising Technical Specification 3/4.7.2, "Steam Generator Pressure/Temperature Limits".

Date of Issuance: October 16, 1986.

Effective Date: October 16, 1986.

Amendment No.: 6.

Facility Operating License No. NPF-38: Amendment revised the Technical Specifications.

Date of Initial Notices in **Federal Register:** October 23, 1985 (50 FR 43028-43030).

The Commission's related evaluation is contained in a Safety Evaluation dated October 16, 1986. No significant hazards consideration comments were received.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, New Orleans, Louisiana 70122.

Louisiana Power and Light Company, et al., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Dates of application for amendment: August 1, 1985, as supplemented October 8, 1986.

Brief description of amendment: The amendment revises the Technical Specifications by increasing the authorized fuel enrichment limit,

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revising the uncertainties allowance for spent fuel storage racks, changing the surveillance interval for Control Element Assembly rod drop timing tests, correcting an error in the characterization of uranium fuel rod loading, and revising the definition of a Shift Technical Advisor.

Date of issuance: October 16, 1986.

Effective date: October 16, 1986.

Amendment No.: 7.

Facility operating license No. NPF-38: Amendment revised the Technical Specifications.

Date of Initial Notices in **Federal Register:** August 27, 1986 (51 FR 30574 and 30575); September 10, 1986 (51 FR 32273) and September 11 and 25, 1986 (51 FR 32381 and 34170).

The Commission's related evaluation is contained in a Safety Evaluation dated October 16, 1986. No significant hazards consideration comments were received.

Local public document room location: University of New Orleans Library, Louisiana Collection, New Orleans, Louisiana 70122.

Mississippi Power & Light Company, Middle South Energy, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: January 29, 1986 as amended April 14, July 16 and August 26, 1986; June 13, 1986, as amended August 26, 1986; and July 25, 1986, as amended August 11, 1986.

Brief description of amendment: This amendment changes Technical Specifications (TSs) by: changing the nomenclature of certain drywell chilled water system isolation valves and associated electrical protective devices; correcting an inconsistency in records retention TSs; changing the TSs for the drywell post-accident vacuum relief system to reflect installation of valve position indicators; correcting an error in referencing a reporting requirement for radiological environmental monitoring; changing the TSs for the control rod scram discharge volume to reflect installation of redundant level instrumentation, a redundant vent valve and a redundant drain valve; making permanent a temporary note that allows certain actuation signals of the high pressure core spray system to be inoperable for specified reactor conditions; and, adding TSs for the automatic depressurization system accumulators to reflect installation of pressure instrumentation. In addition, this amendment changes Operating License Condition 2.C.(33)(b) regarding the implementation of TMI Action Plan Item 1.G.1, "Special Low-Power Testing and Training" to make it consistent with present staff requirements.

Date of issuance: October 17, 1986.

Effective date: Changes in the Technical Specifications on Pages 3/4 6-31, 3/4 6-39, 3/4 6-42, 3/4 6-44, 3/4 12-1 and 6-20 and revised License Condition 2.C.(33)(b) are effective upon issuance of the amendment and the remainder of the changes in Technical Specifications are effective when the equipment necessitating the changes on affected TS pages is installed and operable but not later than startup following the first refueling outage.

Amendment No. 21.

Facility Operating License No. NPF-29. This amendment revised the Technical Specifications and License.

Date of initial notice in **Federal Register:** August 13, 1986 (51 FR 29002) and September 10, 1986 (51 FR 32275, 32276 and 32277).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 17, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Mississippi Power & Light Company, Middle South Energy, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: July 14, 1986 as amended August 15, September 4, and September 5, and supplemented October 3, 1986.

Brief description of amendment: This amendment changes the Technical Specifications for operation with new Exxon fuel assemblies replacing spent General Electric fuel assemblies in the reactor core.

Date of issuance: October 24, 1986.

Effective date: October 24, 1986.

Amendment No. 23.

Facility Operating License No. NPF-29. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 24, 1986 (51 FR 33955).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 24, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: March 24 and July 22, 1986.

Brief description of amendment: The amendment revises the Technical Specifications to permit operation of the plant with only one recirculation loop in operation.

Date of issuance: October 22, 1986.

Effective date: October 22, 1986.

Amendment No.: 47.

Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 13, 1986 (51 FR 29004).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 22, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: June 10, 1986, as supplemented. August 19, 1986.

Brief description of amendments: These amendments revise the Technical Specification to (1) redefine the moderator temperature coefficient limits, (2) revise the F^N-delta-H partial power multiplier, and (3) delete the design feature description of the total weight of uranium in a fuel rod. These changes will facilitate the operation of Unit 1 Cycle 2. Change (1) and (3) apply equally to Units 1 and 2. Change (2) applies only to Unit 1. The August 19, 1986 letter did not change the Technical Specifications and thus was not noticed.

Date of issuance: October 21, 1986.

Effective date: October 21, 1986.

Amendment Nos.: 10, 8.

Facility Operating Licenses Nos. DPR-80 and DPR-82: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 30, 1986 (51 FR 27286).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 21, 1986.

No significant hazards consideration comments received: No

Local Public Document Room location: California Polytechnic State University Library, Documents and Maps Department, San Luis Obispo, California 93407.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: July 24, 1986.

Brief description of amendment: The amendment changes Technical Specifications 5.5.B concerning the criterion for storage of nuclear fuel in the spent fuel pool.

Date of issuance: October 24, 1986.

Effective date: October 24, 1986.

Amendment No.: 101.

Facility Operating License No. DPR-59. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 27, 1986 (51 FR 30580).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 24, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Unit No. 3, Westchester County, New York

Date of application for amendment: June 4, 1986.

Brief description of amendment: The amendment revises the Technical Specifications to include a provision for utilizing a temporary closure plate in place of the equipment door during refueling operations.

Date of issuance: October 7, 1986.

Effective date: October 7, 1986.

Amendment No.: 69.

Facilities Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 13, 1986 (51 FR 29011). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 7, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Rochester Gas and Electric Corporation, Docket No. 50-244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: July 19, 1985.

Brief description of amendment: The amendment clarifies the requirement in the Technical Specifications related to the record retention period for the quality assurance activities.

Date of issuance: October 22, 1986.

Effective date: October 22, 1986.

Amendment No.: 20.

Facility Operating License No. DPR-18: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 25, 1985 (50 FR 38922).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 22, 1986. No significant hazards consideration comments received: No.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

NRC Project Director: George E. Lear, Director.

Washington Public Power Supply System, Docket No. 50-397, WNP-2, Richland, Washington

Date of amendment request: March 20, 1986.

Brief description of amendment: This amendment revised the WNP-2 Operating License, NPF-21, by modifying paragraph 2.E which governs the requirements for a Physical Security Plan, Guard Training and Qualification and a Safeguards Contingency Plan. Specifically, the amendment deletes the commitment to use a redundant detection system to the plant protected area intrusion detection system.

Date of issuance: October 16, 1986.

Effective date: October 16, 1986.

Amendment No: 29.

Facility Operating License No. NPF-21: Amendment revised the license.

Date of initial notice in the **Federal Register:** August 27,1986 (51 FR 30584) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 16, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES).

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may

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provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated. For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By December 5, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of.the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Project Director):* petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Mississippi Power & Light Company, Middle South Energy, Inc., South Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: October 3, 1986.

Brief description of amendment: This amendment provides temporary changes to the Technical Specifications (TSs) for secondary containment isolation valves and associated actuation instrumentation, secondary containment integrity, and the standby gas treatment system. The amendment is effective October 3, 1986 through October 10, 1986 while the plant is in the refueling mode. The changes will allow certain secondary containment equipment to be inoperable during removal and reinstallation of control rods in defueled core cells so that work on this equipment can continue while removal and reinstallation of control rods is done. Two compensatory measures will be in effect when this temporary change to TSs is used: (1) Administrative controls will be implemented for temporarily closing portions of secondary containment that are open for ongoing work; and (2) the height of control rods over irradiated fuel assemblies will be minimized during control rod removal and re-installation.

Date of issuance: October 22, 1986.

Effective date: October 3, 1986.

Amendment No.: 22.

Facility Operating License No. NPF-29: Amendment revised Technical Specifications Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, consultation with the State of Mississippi, and final no significant hazards considerations determination are contained in a Safety Evaluation dated October 22, 1986.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

NRC Project Director: Walter R. Butler.

Dated at Bethesda, Maryland this 29th day of October, 1986.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Director, Division of PWR Licensing-B, Office of Nuclear Reactor Regulation.

[FR Doc. 86-24933 Filed 11-4-86; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Docket No. A87-2; Order No. 714]

Vanna, Ga.; Notice and Order Accepting Appeal and Establishing Procedural Schedule

Issued: October 29, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Bonnie Guiton, Vice-Chairman; John W. Crutcher; Henry R. Folsom; Patti Birge Tyson.

Docket No.: A87-2
Name of Affected Post Office: Vanna, Georgia 30672
Name (s) of Petitioner(s): Mr. & Mrs. Harris
Type of Determination: Closing
Date of Filing of Appeal Papers: October 23, 1986
Categories of Issues Apparently Raised:

1. Effect on the community [39 U.S.C. 404(b)(2)(A)].
2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].
3. Economic savings [39 U.S.C. 404(b)(2)(D)].

Other legal issues may be disclosed by the record when it is filed; or conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before November 7, 1986.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

Vanna, Georgia 30672, Oct. 23, 1986—Filing of Petition.
Oct. 29, 1986—Notice and Order of Filing of Appeal.
Nov. 17, 1986—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111 (b)].
Nov. 28, 1986—Petitioners' Participant Statement or Initial Brief [*see* 39 CFR 3001.115 (a) and (b)].
Dec. 18, 1986—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].
Jan. 2, 1987—Petitioners' Reply Brief should petitioners choose to file on [*see* 39 CFR 3001.115(d)].
Jan. 9, 1987—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR 3001.116].
Feb. 20, 1987—Expiration of 120-day decisional schedule [see 39 U.S.C. 404(b)(5)].

[FR Doc. 86-24964 Filed 11-4-86; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review of Office of Management and Budget

Agency clearance officer: Kenneth A. Fogash, (202) 272-2142.

Upon written request copy available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, DC 20549.

Extension

Rule 17a-2
No. 270-189

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17a-2 (17 CFR 240.17a-2) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) which requires the manager of an underwriting syndicate to retain in a separate file certain information relating to stabilizing purchases of a security being distributed. The potential affected persons are approximately 500 managing underwriters per year.

Submit comments to OMB Desk Officer: Ms. Sheri Fox, (202) 395-3785, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

October 29, 1986.

[FR Doc. 86-24976 Filed 11-4-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular Detonation Testing in Reciprocating Aircraft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Draft Advisory Circular (AC) Availability and Request for Comments.

SUMMARY: This draft AC (No. 33.47-1) is intended to provide guidance for demonstrating compliance with the requirements of Part 33 of the Federal Aviation Regulations (FAR's) relating to detonation testing for reciprocating aircraft engines.

DATE: Comments must be received on or before January 7, 1987.

ADDRESS: Send all comments on draft AC No. 33.47-1 to: Federal Aviation Administration, Aircraft Certification Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: George Mulcahy, Aerospace Engineer, Engine and Propeller Standards Staff,

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Aircraft Certification Division, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this draft AC by writing to: Federal Aviation Administration, Aircraft Certification Division, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone 617-273-7077.

Background

This AC, relating to engine certification substantiation procedures, is intended to assist in establishing uniformity in the certification process and in the pre-certification test planning by defining certain terms and procedures which may be of assistance in meeting the related regulations.

Comments Invited

Interested parties are invited to submit comments on this draft AC. The draft AC and comments received may be inspected at the Aircraft Certification Division, Room 408, 12 New England Executive Park, Burlington Massachusetts, between the hours of 8:00 a.m. and 4:30 p.m. on weekdays, except Federal holidays.

Issued in Burlington, Massachusetts, on October 22, 1986.

William H. Williams, Jr.,

Acting Director, New England Region.

[FR Doc. 86-24944 Filed 11-4-86; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-86-18]

Exemption Petitions; Summary and Dispositions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provision governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: November 28, 1986.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn. Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue,. SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on October 31, 1986.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
24951	Jungle Aviation and Radio Service, Inc.	14 CFR Parts 91 and 125	To allow petitioner to operate its DC-3, N13JA, at a takeoff weight of 110 percent of its authorized maximum certificated takeoff weight (29,600 pounds) to fly food and supplies to areas in Africa.
22436	American Airlines	14 CFR 121.351(a) and 121.99	Extension of Exemption No. 3493 to allow petitioner to operate its turbojet aircraft on routes in the New York oceanic control area between the east coast of the United States and Bermuda with one high frequency communications system and without maintaining two-way radio communication between each aircraft and the dispatch office.
24304	Omniflight Offshore, Inc.	14 CFR 43.3(g)	Extension of Exemption No. 4259 to allow petitioner's pilots to remove, check, and reinstall magnetic chip detector plugs installed in Allison 250C series turbine engines, transmissions, and tail rotor gearboxes of the Bell 206 helicopter.
20816	Zephyrhills Parachute Center	14 CFR 91.47	To allow petitioner to transport 40 parachutists in its DC-3/C47 aircraft.
25035	Evergreen International Airlines, Inc.	14 CFR 121.503 (a), (b), and (d)	To allow petitioner to schedule a pilot to fly 10 hours in any 24-hour period and to schedule a crewmember for 150 hours of duty in any 30 consecutive days.
25087	Hughes Aircraft Company	14 CFR 91.213 and 91.31	To allow petitioner to operate its NA 265 aircraft with one pilot without a second in command for the conduct of ferry flights, aircraft flight tests, and airborne equipment evaluations where no persons or property other than as necessary for the operation are carried.
16787	Petroleum Helicopters, Inc.	14 CFR 133.1 and 133.45(a)(3)	Petition to reinstate Exemption No. 2534 to allow petitioner to use its Bell 212, 214ST, and Puma SA-330 helicopters to lower and hoist harbor pilots, on an external hoist, to and from ships at sea.
18104	Flight Safety International	14 CFR 61.57(a)(1)	Extension of Exemption No. 2592E to allow petitioner to administer the Biennial Flight Review in approved visual, phase I, or phase II simulators.
22457	American Arilines	14 CFR 121.351(a) and 121.99	Extension of Exemption No. 3462 to allow petitioner to operate its turbojet aircraft in extended overwater operations in the Gulf of Mexico with one high frequency communications system and one long range navigational system.
028CE	Beech Aircraft Corp.	14 CFR § 23.2	A one-year temporary exemption from the effective date of Amendment 23-32 which states that all airplanes manufactured after December 12, 1985 must meet requirements of Section 23.785(g) relative to restraint systems on side-facing seats.
012NM	United Airlines	14 CFR 25.1305(d)(3)	Relieve petitioner from the requirement to install and maintain rotor unbalance indicators on its 737-300 aircraft.
24187	Florida Department of Law Enforcement	14 CFR 91.79(c), 91.109(a)	To allow petitioner to be exempted from the FAR 91.79(c), and 91.109(a) to conduct law enforcement air support.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
25065	Z Air, Inc.	14 CFR 61.63(d)(2) and (3), 61.157(d)(1), and 121.407(a)(1)(i).	To allow students of the petitioner, who are applicants for a type rating to be added to any grade of pilot certificate, to complete a portion of that practical test in an airplane simulator. *Granted September 24, 1986.*
12488	Petroleum Helicopters, Inc.	14 CFR 43.3(g)	Extension of Exemption No. 1821 to allow petitioner to have its appropriately trained and certificated pilots remove, check, and reinstall magnetic chip detector plugs in the Aerospatiale AS-355, Bell 206, and Bolkow 105 helicopters along with their respective transmissions and tail rotor gearbox plugs. *Granted September 24, 1986.*
25028	Executive Airlines and Charter Services, Inc.	14 CFR 121.411 (a)(1), (a)(2), (a)(3), and (a)(6), and 121.413 (b) and (c).	To allow petitioner to utilize pilot flight instructors from Aeroformation and Aerospatiale [G.I.E. Avions de Transport Regional (ATR)] for the purpose of training petitioner's initial cadre of pilots in the Aerospatiale 42 (ATR-42) airplane in Toulouse, France, without holding appropriate U.S. certificates and ratings and without meeting all of the applicable training requirements of Subpart N of Part 121 of the FAR. *Granted September 10, 1986.*
2445	American Airlines	14 CFR Part 121, Appendix H	Extension of Exemption No. 4813 to allow petitioner the continued use of its Interim Simulator Upgrade Plan without meeting the milestone dates of Condition No. 3. *Granted August 29, 1986.*
24941	Perris Valley Skydiving Society, Inc.	14 CFR 105.43	Extension of Exemption No. 4684 to allow foreign parachutists relief from the equipment and packing requirements of § 105.43. *Granted August 27, 1986.*
25041	Presidential Airways	14 CFR 121.411(a) (2) and (3) and 121.413 (b) and (c).	To allow petitioner to utilize certain highly qualified British Aerospace (BAe) pilot flight instructors for the purpose of training petitioner's initial cadre of pilots in the BAe 146 type airplane in the United Kingdom and/or the United States without the BAe pilots meeting all of the applicable training requirements of Subpart N of Part 121 of the FAR. *Granted July 28, 1986.*
25017	Systems International Airways	14 CFR 121.411(a) (2) and (4)	To allow petitioner to use Mr. James G. Beekman as a pilot flight instructor for the purpose of training petitioner's initial cadre of pilots in the Martin 404 (M-404) airplane without Mr. Beekman meeting all of the applicable training requirements. *Partially Granted September 10, 1986.*
24537	Robert A. Evans	14 CFR 61.161(b)	To allow petitioner to apply for an airline transport pilot certificate with a rotorcraft category rating without meeting the requirement of at least 1,200 hours of flight time within the preceding 8 years. *Granted October 3, 1986.*
22633	Virgin Islands Seaplane Shuttle, Inc.	14 CFR 135.175(a)	Extension of Exemption No. 3487 to allow petitioner to conduct day visual flight rule (VFR) flights in large multiengine airplanes without approved airborne weather radar equipment installed. *Granted October 14, 1986.*
25024	University of Illinois Institute of Aviation	14 CFR Part 141, Appendixes A, C, D, F, and H.	To allow petitioner to train certain of its students to a performance standard without meeting the prescribed minimum flight time requirements. *Granted October 3, 1986.*
23492	United States Hang Gliding Association, Inc.	14 CFR 103.1 (a) and (b)	To allow the definition of "ultralight vehicle" to apply to unpowered vehicles of not more than 155 pounds weight used to carry two occupants for the purpose of sport and recreation, including practicing for, or participating in, two-place competition, or flight instruction conducted by petitioner's certified instructors. *Granted October 9, 1986.*

Dispositions of Petitions for Exemption

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
24623	Pacific Coast Airlines	14 CFR §§ 135.89 & 135.157	To allow petitioner to remove the oxygen system in petitioner's Handley Page HP-137 Jetstream Mk.1 Aircraft and configure the aircraft to comply with 14 CFR Part 121, for turbine aircraft certified up to 25,000 feet. *DENIED 10/21/86.*
25097	Aerotours Dominicana S.A.	14 CFR Section 91.307	To allow operation in the United States, under a service to small communities exemption, of specified two-engine airplanes identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988: 1 "Stage 1 airplane". *GRANTED 10/10/84.*
21635	Airborne Express Inc.	15 CFR 91.307	To amend Exemption No. 3196f to add 2 aircraft. The present exemption allows operation in the United States, under a service to small communities exemption, of specified two-engine airplanes, identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988: 15 DC-9 aircraft. *Granted 10/26/84.*
009NM	De Haviland Aircraft of Canada	14 CFR 25.807(c)(1)	To permit type certification of the DHC-8 series 100 aircraft configured with a passenger configuration of 40 seats while still retaining one Type II and one Type III emergency exit on each side of the fuselage. *Granted 10/24/86.*

[FR Doc. 86-24999 Filed 11-4-86; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Executive Committee Meeting With the International Associates

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Executive Committee with the International Associates to be held on November 17, 1986, at the Marriott Crystal Gateway Hotel, Salon K, 1700 Jefferson Davis Highway, Arlington, Virginia, commencing at 2 p.m.

The Agenda for this meeting is as follows: (1) Chairman's Opening Remarks and Introductions; (2) Approval of Minutes of September 19, 1986, Meeting; (3) Executive Director's Report on Administrative Activities; (4) Special Committee Activities Report for September–October 1986; (5) Consideration of Proposals to Establish New Special Committees; (6) Consideration for Approval of Special Committee Reports: (a) Special Committee 137 Report, "Minimum Operational System Performance Standards for Area Navigation Equipment Using Loran-C Inputs," (b) Special Committee 153 Report, "Minimum Operational Performance Standards for Airborne ILS Localizer Receiving Equipment Operating Within the Radio Frequency Range of 108–112 MHz," (c) Special Committee 153 Report, "Minimum Operational Performance Standards for VOR Receiving

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Equipment Operating Within the Radio Frequency Range of 108–117.95 MHz"; (7) Report on EUROCAE Activities; (8) Comments and Reports by International Associates Present; (9) Other Business; and (10) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 24, 1986.

Wendie F. Chapman,

Designated Officer.

[FR Doc. 86–24943 Filed 11–4–86; 8:45 am]

BILLING CODE 4910-13-M

Meeting To Allocate High Density Traffic Airport Slots by Lottery

AGENCY: Federal Aviation Administration (FAA), Department of Transportation, (DOT).

ACTION: Notice of meeting to allocate High Density Traffic Airport slots by lottery.

SUMMARY: In December 1985 the Secretary of Transportation issued a rule establishing procedures for the allocation and transfer of operating slots at the four airports designated as high density traffic airports: Kennedy International, LaGuardia, O'Hare International, and Washington National Airports. The rule provides that unallocated and returned slots will be distributed by lottery. Special Federal Aviation Regulation (SFAR) No. 48, issued by the Secretary in March 1986, provides for two special lotteries to distribute up to 5 percent of air carrier slots at LaGuardia, O'Hare, and National airports.

This notice announces a meeting to conduct 3 lotteries: (1) the second special lottery under SFAR No. 48, for allocation of air carrier slots at LaGuardia, O'Hare, and National airports, (2) a lottery of air carrier slots which have become available at any of the four airports since March 27, 1986, and (3) a lottery of commuter slots which have become available at any of the four airports since April 29, 1986.

DATES:

Meeting: The meeting will be held on Tuesday, December 9, 1986. The air carrier slot lotteries will begin at 9:00 a.m. The commuter slot lottery will begin at 1:30 p.m.

Requests to participate: Notice of intent to participate must be received by 5:00 p.m. on the following dates: Incumbent operators: December 5, 1986; new entrant operators: November 24, 1986.

ADDRESSES: The meeting will be held at FAA Headquarters, Third Floor Auditorium, 800 Independence Avenue, SW., Washington, DC.

Requests to participate in the lottery should be submitted to: Office of the Chief Counsel, Slot Administration Office, AGC–200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT:

David L. Bennett, Manager, Airspace and Air, Traffic Law Branch, AGC–230, Telephone: (202) 267–3491

Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of Amendment No. 93–49, "High Density Traffic Airports; Slot Allocation and Transfer Methods," and SFAR No. 48, "Special Slot Withdrawal and Reallocation Procedures," by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591; or by calling (202) 426–8058. Communications must identify the amendment number of the document.

Background

On December 16, 1985, the Department of Transportation issued Amendment No. 93–49, "High Density Traffic Airports; Slot Allocation and Transfer Methods; Final Rule" (50 FR 52180, December 20, 1985), adding new Subpart S to Part 93 of the Federal Aviation Regulations (FAR), 14 CFR Part 93, Subpart S. The rule established procedures for the allocation and transfer of operating slots at the four airports designated as high density traffic airports under the High Density Rule, 14 CFR Part 93, Subpart K: Kennedy International, LaGuardia, O'Hare International, and Washington National Airports. The rule provides that unallocated and returned slots will be distributed by lottery.

On March 7, 1986, the Department issued Special Federal Aviation Regulations 48 (51 FR 8632, March 12, 1986) which announced the procedures for lotteries to reallocate certain air carrier slots at LaGuardia, O'Hare International, and Washington National Airports. A lottery to allocate up to five percent of the slots at the three airports was held on March 27, 1986. The SFAR states that a second lottery, to distribute slots from the special lottery pool which are available because they were not selected on March 27 or because they were selected and returned for nonuse, will be held by December 15, 1986. This lottery fulfills that provision.

A small number of air carrier slots not covered by SFAR No. 48 have become available since March 27. These slots will be allocated by a separate lottery conducted under Subpart S procedures, immediately following the secondary lottery under SFAR No. 48. This lottery will also allocate any slots not selected in the SFAR 48 secondary lottery and not designated for return to a particular incumbent carrier (as a result of having been surrendered by that carrier in the March 26 withdrawal lottery conducted under SFAR No. 48, § 4).

On April 29, 1986, a lottery of commuter slots at all four high density traffic airports was conducted under the provisions of Subpart S. Since that time a few slots have again become available, through operation of the use-or-lose provisions of 14 CFR 93.227 and through the failure of some carriers to use the slots obtained in the April 29 lottery within the required time. The final rule issued in December states that lotteries will be held when sufficient slots were available for general distribution, but normally not more than twice each year. In consideration of the availability of slots and the fact that no lottery has been held since April 1986, a lottery of commuter slots will be held on December 9.

On June 10, the Department issued an amendment to Subpart S which, among other changes, made certain minor modifications to the Subaprt S lottery procedures (51 FR 21708, June 13, 1986). Specifically, the amendment increases the set-aside of slots for new entrants from 15% to 25%; requires that operators withing to participate in the lottery notify the FAA of any common control or ownership with other carriers; prohibits participation by carriers which drew slots in the previous lottery and failed to use them; and provides that unselected slots from the new entrant pool will be distributed to incumbents.

These changes will be incorporated in the general lotteries on December 9. However, the special air carrier slot lottery conducted under SFAR No. 48 is not affected.

Secondary Lottery Under SFAR 48

Time: 9:00 a.m., December 9.

Requests to Participate:

For each of the three airports covered by SFAR No. 48, each U.S. air carrier operating at the airport with fewer than eight total slots (including all international or domestic, commuter or air carrier slots), and desiring to be included in the secondary lottery to obtain slots under SFAR NO. 48, must notify the Office of the Chief Counsel, Slot Administration, AGC-200, 800 Independence Avenue, SW., Washington, DC 20591, that it desires to participate in the reallocation lottery for that airport. The notification must be in writing and must be submitted in duplicate by 5:00 p.m. Eastern Standard Time on December 5. The notification must include a certified statement signed by an officer of the operator indicating that the operator operates or has contracted for sufficient aircraft having a maximum seating capacity of 56 or more to use the slots to be obtained and that the operator has bona fide plans to use all requested slots within the timeframe described in Section 6 of SFAR No. 48.

Any U.S. new entrant air carrier wishing to initiate scheduled service at the airport shall be included in the lottery if it: (1) Has appropriate economic authority under Title IV of the Federal Aviation Act of 1958, as amended; (2) has, at the time of the lottery, FAA operating authority under Part 121; and (3) notifies the Office of the Chief Counsel, Slot Administation Office, AGC-200, 800 Independence Avenue, SW., Washington, DC 20591, that it desires to participate in the lottery. The notification must be in writing and must be submitted in duplicate by 5:00 p.m. Eastern Standard Time on November 24. The additional notification time for new entrants is needed to confirm the certification status of applicants. The notification must include a certified statement signed by an officer of the operator indicating that the operator operates or has contracted for sufficient aircraft having a maximum certificated passenger seating capacity of 56 or more to use the slots to be obtained and that the operator has bona fide plans to use all requested slots within the timeframe described in section 6 of SFAR No. 48.

A carrier which obtained slots in the lottery on March 27 shall *not* be eligible to participate in this secondary lottery if any of the following situations applies:

(1) The carrier failed to use the slots in accordance with Section 6 of SFAR No. 48 or an exemption from that section issued by the FAA.

(2) The carrier sold, or transferred for consideration other than one or more slots at the same airport, the slots selected in the lottery.

(3) The carrier leased those slots on a long-term basis (more than one year), which is the equivalent of a sale for the purposes of determining whether a carrier made bona fide use of slots obtained in the lottery as a new entrant.

Carriers obtaining slots under the SFAR 48 lottery are reminded of the use requirements for those slots contained in SFAR No. 48, particularly section 6. Among those requirements are the need for carriers obtaining slots to:

—Begin to use them between 90 and 180 days after the lottery.

—Give the incumbent carrier 90 days notice of intent to operate.

—Use the slots only in scheduled domestic passenger operations.

—Comply with the 65% slot use requirements once operations are initiated.

—Use the slots only with aircraft having 56 or more seats for 90 days before transfer restrictions are removed.

Carriers are expected to be familiar with SFAR 48 requirements and to adhere strictly to those requirements.

Lottery Procedures:

Air carrier slots will be distributed in accordance with the procedures established in SFAR No. 48:

(a) Random drawings shall be held to determine the order of slot selection by the eligible carriers.

(b) An operator may select up to two slots available at the airport during each selection sequence, except that new entrant carriers may select up to four slots, if available, in the first sequence. (See limitation in paragraph (d) below).

(c) At the lottery, each operator must make its selection within 5 minutes after being called or it shall lose its turn. If capacity still remains after each operator has had an opportunity to select slots, the allocation sequence will be repeated in the same order.

(d) No carrier may select more than eight slots under SFAR No. 48 or select any slots that would result in it having a total of more than eight slots at any one airport, reduced by:

(1) Each slot lost under § 93.227(a) since December 16, 1985; and

(2) Each non-lottery slot transferred for consideration other than one or more slots at the same airport since March 27, 1986. The transfer of non-lottery slots does not affect eligibility to participate in the secondary lottery. However, the number of slots which may be selected will be reduced by slots voluntarily relinquished since the March lottery. It would be unfair to permit a limited incumbent carrier that sold its existing slots, after acquiring lottery slots, to continue to compete with new entrant carriers in the secondary lottery for no purpose other than to obtain slots to replace the slots sold.

(e) If all eligible carriers decide not to select additional slots or have selected their maximum number of slots, the lottery at that airport will end and the remaining slots will be returned to the carriers from which they were withdrawn under Section 4 of SFAR No. 48.

GENERAL SLOT LOTTERIES UNDER 14 CFR 93.225

Time: Air carrier lottery: Immediately after completion of the SFAR 48 lottery.

Commuter operator lottery: 1:30 p.m., December 9.

Requests to Participate:

For each of the high density airports, each air carrier and commuter operator operating at that airport will be included in the appropriate lottery for the airport upon written notification to the FAA by 5:00 p.m. on Friday, December 5, of the operator's desire to participate.

Any air carrier or commuter operator which (i) is not operating at the airport and (ii) has not failed to operate slots obtained in the previous lottery, but wishes to initiate service at the airport, shall be included in the lottery if that operator notifies the Office of the Chief Counsel in writing. To be eligible to participate, the operator must hold appropriate economic authority under Title IV of the Federal Aviation Act of 1958, as amended, and must hold or have made substantial progress in obtaining FAA operating authority under Part 135 or Part 121 of Title 14 of the Code of Federal Regulations. "Substantial progress" for this purpose is defined in 14 CFR § 93.225(g). The notification must also include a statement as to whether there is any common ownership or control of, by, or with any other carrier as defined in 14 CFR 93.213(c). The notification must be in duplicate and must be received by 5:00 p.m. on Monday, November 24. The additional notification time for new entrants is needed to confirm the certification status of applicants.

All notifications of intent to

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participate in the lottery must be submitted to the address listed under "ADDRESSES" above.

Lottery Procedures:

A list of the air carrier and commuter slots to be allocated will be prepared by the FAA and will be available by December 5, 1986. Slots not allocated in the SFAR 48 lottery will be included in this lottery if they were not slots subject to withdrawal from incumbent carriers under section 4 of SFAR No. 48. The list may be obtained by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." A separate lottery will be conducted for slots at each airport.

Slots will be allocated in accordance with the lottery procedures set forth in 14 CFR Subpart S, 93.225. The procedures for the lottery at each airport may be summarized as follows:

1. A random lottery will be held to determine the order of slot selection.

2. During the first selection sequence, 25 percent of the slots available at each airport but no fewer than two slots shall be reserved for selection by new entrant carriers.

3. Each carrier will make its selection in the order determined in the initial sequence lottery, except that only new entrant carriers will be permitted to make selections until the percentage of slots set aside for new entrants is selected. The normal sequence will resume at that time, beginning with the first incumbent carrier passed over during the new entrant selections.

4. An operator may select any two slots available at the airport during each selection sequence, except that new entrant carriers may select four slots, if available, in the first sequence.

5. Each operator must make its selection within 5 minutes after being called or it shall lose its turn. If capacity remains after each operator has had an opportunity to select slots, the allocation sequence will be repeated in the same order.

Public Process

The meeting is open to the public and all interested persons are invited to attend. All lotteries will be held at FAA Headquarters in the Third Floor Auditorium.

Issued in Washington, DC on October 31, 1986.

E. Tazewell Ellett,

Chief Counsel.

[FR Doc. 86–25000 Filed 11–4–86; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

[FRA Waiver Petition Docket No., HS-86-18]

Petition for Exemption From the Hours of Service Act; Amador Central Railroad Co.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Amador Central Railroad Company (ACR) has petitioned the Federal Railroad Administration (FRA) for a permanent waiver of compliance with the provisions of the Hours of Service Act (83 Stat. 464, Pub. L. 91–169, 45 U.S.C. 64a(e)).

The Hours of Service Act currently makes it unlawful for a railroad to require specified employees to remain on duty for a period in excess of 12 hours. However, the Hours of Service Act contains a provision that permits a railroad which employs no more than 15 employees who are subject to the statute to seek an exemption from the 12 hour limitation.

The ACR seeks a continuation of a previously issued exemption so that it can permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionaly, the petitioner asserts that it employes not more than 15 employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in these proceedings by submitting written views and comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning the proceedings should identify this docket number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Communications received before December 20, 1986, will be considered by FRA before final action is taken. Comments received after that will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC, on October 30, 1986.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 86–25014 Filed 11–4–86; 8:45 am]

BILLING CODE 4910-06-M

Research and Special Programs Administration

[Docket No. IRA-37]

Citizens Against Nuclear Trucking; Application for Inconsistency Ruling; Correction

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Public Notice and Invitation to Comment; Correctional

In FR Doc. 86–23624 beginning on page 37248 in the issue of Monday, October 20, 1986, make the following correction: on page 37249, in the first column, under "Addresses", change the last two sentences to read: "A copy of each comment and rebuttal comment also must be sent to Mr. Lindsay Audin, Technical Director, Citizens Against Nuclear Trucking, 21547 47th Ave., Bayside, NY 11591, and to TBTA's Counsel, Joseph Bulgatz, Esq., Triborough Bridge and Tunnel Authority, P.O. Box 35, New York, NY 10035, and that fact certified to at the time comment is submitted to the Dockets Branch. [The following Format i is suggested: "I hereby certify that copies of this comment have been sent to Messrs. Audin and Bulgatz at the addresses specified in the **Federal Register**."]"

Issued in Washington, DC on October 30, 1986.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 86–24982 Filed 11–4–86; 8:45 am]

BILLING CODE 4910-60-M

VETERANS ADMINISTRATION

Cost-of-Living Adjustments and Headstone or Marker Allowance Rate

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: As required by law the Veterans Administration (VA) is hereby giving notice of cost-of-living adjustments (COLAs) in certain benefit rates and income limitations. These COLAs affect the pension and parents' dependency and indemnity compensation (DIC) programs. These adjustments are based on the rise in the Consumer Price Index (CPI) during the one year period ending September 30, 1986. The VA is also giving notice of the maximum amount of reimbursement that may be paid for headstones or markers purchased in lieu of Government-furnished headstones or markers in

fiscal year 1987 which began on October 1, 1986.

DATES: These COLAs are effective December 1, 1986. The headstone or marker allowance rate is effective October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, (202) 233–3005.

SUPPLEMENTARY INFORMATION: Under the provisions of 38 U.S.C. 3112 and sec. 306 of Pub. L. 95–588 the VA is required to increase the benefit rates and income limitations in the pension and parents' DIC programs by the same percentage, and effective the same date, as increases in the benefit amounts payable under title II of the Social Security Act. The increased rates and income limitations are also required to be published in the Federal Register.

The Social Security Administration has announced that there will be a 1.3 percent cost-of-living increase in social security benefits effective December 1, 1986. Therefore, applying the same percentage, the following increased rates and income limitations for the VA's pension and parents' DIC programs will be effective December 1, 1986.

Improved Pension

Table 1

Maximum Annual rates

(1) Veterans permanently and totally disabled (38 U.S.C. 521). Veteran with no dependents, $5,963. Veteran with one dependent, $7,811. For each additional dependent, $1,012.

(2) Veterans in need of aid and attendance (38 U.S.C. 521). Veteran with no dependents, $9,539. Veteran with one dependent, $11,387. For each additional dependent, $1,012.

(3) Veterans who are housebound (38 U.S.C. 521). Veteran with no dependents, $7,288. Veteran with one dependent, $9,137. For each additional dependent, $1,012.

(4) Two veterans married to one another; combined rates (38 U.S.C. 521). Neither veteran in need of aid and attendance or housebound, $7,811. Either veteran in need of aid and attendance, $11,387. Both veterans in need of aid and attendance, $14,961. Either veteran housebound, $9,137. Both veterans housebound; $10,463. One veteran housebound and one veteran in need of aid and attendance, $12,712. For each dependent child, $1,012.

(5) Surviving spouse alone and with a child or children of the deceased veteran in custody of the surviving spouse (38 U.S.C. 541). Surviving spouse alone, $3,996. Surviving spouse and one child in his or her custody, $5,235. For additional child in his or her custody, $1,012.

(6) Surviving spouses in need of aid and attendance (38 U.S.C. 541). Surviving spouse alone, $6,392. Surviving spouse with one child in his or her custody, $7,628. For each additional child in his or her custody, $1,012.

(7) Surviving spouses who are housebound (38 U.S.C. 541). Surviving spouse alone, $4,885. Surviving spouse and one child in his or her custody, $6,121. For each additional child in his or her custody, $1,012.

(8) Surviving child alone (38 U.S.C. 542), $1,012.

Reduction for income. The rate payable is the applicable maximum rate minus the countable annual income of the eligible person. (38 U.S.C. 521, 541, and 542).

Mexican border period and World War I veterans. The applicable maximum annual rate payable to a Mexican border period or World War I veteran under this table shall be increased by $1,347. (38 U.S.C. 521(g)).

Parents' DIC

DIC (dependency and indemnity compensation) shall be paid monthly to parents of a deceased veteran in the following amounts. (38 U.S.C. 415).

Table 2

One parent. If there is only one parent the monthly rate of DIC paid to such parent shall be $279 reduced on the basis of the parent's annual income according to the following formula:

FOR EACH $1 OF ANNUAL INCOME

The $279 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	0	$800
.08	$800	6,783

No DIC is payable under this table if annual income exceeds $6,783.

One Parent Who Has Remarried. If there is only one parent and the parent has remarried and is living with the parent's spouse, DIC shall be paid under table 2 or under table 4, whichever shall result in the greater benefit being paid to the veteran's parent. In the case of remarriage, the total combined annual income of the parent and the parent's spouse shall be counted in determining the monthly rate of DIC.

Two parents not living together. The rates in table 3 apply to (1) two parents who are not living together, or (2) an unmarried parent when both parents are living and the other parent has remarried. The monthly rate of DIC paid to each such parent shall be $199 reduced on the basis of each parent's annual income, according to the following formula:

Table 3

FOR EACH $1 OF ANNUAL INCOME

The $199 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	0	$800
.05	$800	1,000
.07	1,000	1,200
.08	1,200	6,783

No DIC is payable under this table if annual income exceeds $6,783.

Two parents living together or remarried parents living with spouses. The rates in table 4 apply to each parent living with another parent; and each remarried parent, when both parents are alive. The monthly rate of DIC paid to such parents will be $188 reduced on the basis of the combined annual income of the two parents living together or the remarried parent or parents and spouse or spouses, as computed under the following formula:

Table 4

FOR EACH $1 OF ANNUAL INCOME

The $188 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	0	$1,000
.03	$1,000	1,700
.04	1,700	2,200
.05	2,200	2,700
.06	2,700	3,200
.07	3,200	3,600
.08	3,600	9,120

No DIC is payable under this table if combined annual income exceeds $9,120.

The rates in this table are also applicable in the case of one surviving parent who has remarried, computed on the basis of the combined income of the parent and spouse, if this would be a greater benefit than that specified in table 2 for one parent.

Aid and attendance. The monthly rate of DIC payable to a parent under tables 2 through 4 shall be increased by $147 if such parent is (1) a patient in a nursing home, or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

Minimum rate. The monthly rate of DIC payable to any parent under tables 2 through 4 shall not be less than $5.

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Section 306 Pension Income Limitations

Table 5

(1) Veteran or surviving spouse with no dependents, $6,783 (Pub. L. 95–588, section 306(a)).

(2) Veteran with no dependents in need of aid and attendance, $7,283 (38 U.S.C. 521(d) as in effect on December 31, 1978).

(3) Veteran or surviving spouse with one or more dependents, $9,120 (Pub. L. 95–588, section 306(a)).

(4) Veteran with one or more dependents in need of aid and attendance, $9,620 (38 U.S.C. 521(d) as in effect on December 31, 1978).

(5) Child (no entitled veteran or surviving spouse), $5,543 (Pub. L. 95–588, section 306(a)).

(6) Spouse income exclusion (38 CFR 3.262), $2,161 (Pub. L. 95–588, section 306(a)(2)(B)).

Old-Law Pension Income Limitations

Table 6

(1) Veteran or surviving spouse without dependents or an entitled child, $5,937 (Pub. L. 95–588, section 306(b)).

(2) Veteran or surviving spouse with one or more dependents, $8,562 (Pub. L. 95–588, section 306(b)).

Headstone or Marker Allowance

Under 38 U.S.C. 906(d) the VA may provide reimbursement for the cost of non-Government headstones or markers at a rate equal to the actual cost or the average actual cost of Government-furnished headstones or markers during the fiscal year preceeding the fiscal year in which the non-Government headstone or marker was purchased, whichever is less.

The average actual cost of Government-furnished headstones and markers during any fiscal year is determined by dividing the sum of the VA's costs during that fiscal year for procurement, transportation, Monument Service and miscellaneous administration, inspection and support staff by the total number of headstones and markers procured by the VA during that fiscal year and rounding to the nearest whole dollar amount.

The average actual cost of Government-furnished headstones or markers for fiscal year 1986 under the above computation method was $71. Therefore, effective October 1, 1986, the maximum rate of reimbursement for non-Government headstones or markers purchased during fiscal year 1987 is $71.

Dated: November 3, 1986.

Thomas K. Turnage,
Administrator.

[FR Doc. 86–25052 Filed 11–4–86; 8:45 am]

BILLING CODE 8320-01-M

Advisory Committee on Native American Veterans; Rescheduled Meeting

The meeting of the Advisory Committee on Native American Veterans which was scheduled for November 12 through 14, 1986, (51 FR 36630, October 14, 1986), has been rescheduled to December 10 through 12, 1986. The sessions will be held in the Omar Bradley Conference Room, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC. The meetings on December 10 and 11 will convene at 8:30 a.m., and run until 4:30 p.m. The December 12 meeting will convene at 8:30 a.m., and adjourn at 12:30 p.m. All sessions will be open to the public up to the seating capacity of the room. To assure adequate accommodations, those who plan to attend should contact Mr. John Fulton, M.S.W., Coordinator, Advisory Committee on Native American Veterans, (202) 233–2614.

Dated: October 27, 1986.

By direction of the Administrator:

Rosa Maria Fontanez,
Committee Management Officer.

[FR Doc. 86–24997 Filed 11–4–86; 8:45 am]

BILLING CODE 8320-01-M

Performance Review Board Members List

AGENCY: Veterans Adminstration.

ACTION: Notice.

SUMMARY: Under the provisions of 5 U.S.C. 45314(c)(4) agencies are required to publish a notice in the **Federal Register** of the appointment of Performance Review Board (PRB) members. This notice revises the list of members of the Veterans Adminstration's Performance Review Boards which was published in the **Federal Register** (50 FR 47323, November 15, 1985).

EFFECTIVE DATE: November 1, 1986.

FOR FURTHER INFORMATION CONTACT: K. Joyce Edwards, Office of Personnel and Labor Relations (05A3, Veterans Adminstration, 810 Vermont Aveue, NW, Washington, DC 20420, (202) 233–3423.

The members of the VA's Performance Review Board are:

VA Performance Review Board

Chairperson

Thomas E. Harvey, Deputy Administrator

Members

John A. Gronvall, M.D., Acting Chief Medical Director
John Vogel, Chief Benefits Director
Arthur S. Hamerschlag, Acting Chief Memorial Affairs Director
Susan Livingstone, Associate Deputy Administrator for Logistics
Joan E. Lamb, Associate Deputy Administrator for Public and Consumer Affairs
Burt L. Talcott, Associate Deputy Administrator for Congressional and Intergovernmental Affairs
David A. Cox, Associate Deputy Administrator for Management
Donal L. Ivers, General Counsel
Kenneth E. Eaton, Chairman, Board of Veterans Appeals
Jack J. Sharkey, Director, Office of Data Management and Telecommunications
Conrad R. Hoffman, Director, Office of Budget and Finance (Controller)
Raymond S. Blunt, Director, Office of Program Analysis and Evaluation
Gerald E. Neumann, Director, Office of Facilities
Michel Rudd, Director, Office of Personnel and Labor Relations
E. L. Harper, Acting Director, Office of Procurement and Supply
Robert W. Schultz, Director, Office of Information Management and Statistics
Renald P. Morani, Deputy Inspector General

Alternate

Arthur J. Lewis, M.D. Acting Deputy Chief Medical Director

Department of Medicine and Surgery

Performance Review Board

Chairperson

Arthur J. Lewis, M.D. Acting Deputy Chief Medical Director

Members

Robert E. Lindsey, Jr., Director for Operations
D. Earl Brown, Jr., M.D., Associate Deputy Chief Medical Director for Programs, Planning and Policy Development
Albert B. Washko, Director, Northwest Region
Donald, B. Thompson, Director, Southeast Region
Albert Zamberlan, Director, Great Lakes Region

Sidney M. Ford, Director, Midwestern Region

Richard P. Miller, Director, Southwestern Region

Alvis B. Carr, Jr., Acting Director, Western Region

John J. Lee, Director, Mid-Atlantic Region

Charles V. Yarbrough, Director, Management Support Office

Francis E. Conrad, M.D., Director, Office of Quality Assurance

Frederick L. Malphurs, Director, Resource Management Office

Department of Veterans Benefits

Performance Review Board

Chairperson

David A. Brigham, Executive Assistant to the Chief Benefits Director

Members

Raymond H. Avent, Deputy Chief Benefits Director for Field Operations

Grady W. Horton, Deputy Chief Benefits Director for Program Management

Paul D. Ising, Deputy Chief Benefits Director for ADP Systems Management

Robert W. Gardner, Director, Budget Staff

Gerald P. Moore, Director, Compensation and Pension Service

Edward D. Green, Director, Veterans Assistance Service

Robert M. O'Toole, Director, Loan Guaranty Service

Dennis R. Wyant, Director, Vocational Rehabilitation and Counseling Service

Office of the Inspector General

Performance Review Board

Chairperson

James H. Curry, Assistant Inspector General for Audit Policy and Oversight, Department of Defense

Members

Joseph Genovese, Acting Inspector General, Department of Transportation

Raymond S. Blunt, Director, Office of Program Analysis and Evaluation

Alternates

Conrad R. Hoffman, Director, Office of Budget and Finance (Controller)

Dated: October 29, 1986.

Thomas K. Turnage,

Administrator.

[FR Doc. 86-24996 Filed 11-4-86; 8:45 am]

BILLING CODE 8320-01-M

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Sunshine Act Meetings

Federal Register
Vol. 51, No. 214
Wednesday, November 5, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Wednesday, November 5, 1986 at 10:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints:
   Certain battery-powered smoke detectors (Docket Number 1350).
5. Inv. No. 701-TA-265 (Final) and 731-TA-297, 298, and 299 (Final) (Porcelain-on-steel cooking from Mexico, the People's Republic of China, and Taiwan)—briefing and vote.
6. Update of discussion of the Management Review of Procurement, ADP, and the Property Management Systems.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

Kenneth R. Mason,

Secretary.

October 23, 1986.

[FR Doc. 86-25032 Filed 11-3-86; 9:10 am]

BILLING CODE 7020-02-M

2

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Friday, November 14, 1986 at 2:00 p.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. No. 731-TA-349 (Preliminary) (Certain welded carbon steel pipes and tubes from Taiwan)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

Kenneth R. Mason,

Secretary.

October 27, 1986.

[FR Doc. 86-25033 Filed 11-3-86; 9:11 am]

BILLING CODE 7020-02-M

3

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 3, 10, 17, and 24, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of November 3

Monday, November 3

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

2:00 p.m.
Briefing on GE Containment Program (Public Meeting)

Thursday, November 6

10:00 a.m.
Briefing on Assessment of B&W Plants (Public Meeting)

2:00 p.m.
Briefing on Initiatives to Improve Maintenance Performance (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Braidwood—Draft Order for Resolution of Dispute Between Braidwood Board and OI Over Disclosure of Investigatory Information (Tentative)
b. "Motion for Reformation" in Braidwood (Tentative)

Friday, November 7

10:00 a.m.
Briefing on Status of Performance Indicator Program (Public Meeting) (Postponed from October 31)

Week of November 10—Tentative

Monday, November 10

2:00 p.m.
Briefing on Thermal Hydraulic Research Program (Public Meeting)

Friday, November 14

10:00 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of November 17—Tentative

Wednesday, November 19

10:00 a.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7) (Postponed from October 31)

2:00 p.m.
Briefing in Advance of Publication of Draft NUREG-1150 (Source Term) (Public Meeting)

Thursday, November 20

10:00 a.m.
Discussion of Mangement-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

2:00 p.m.
Periodic Meeting with NUMARC (Public Meeting)

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, November 21

10:00 a.m.
Discussion Possible Vote on Davis Besse Restart (Public Meeting)

Week of November 24—Tentative

Wednesday, November 26

10:00 a.m.
Affirmation Meeting (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Affirmation of "Disposition of Petitions for Hearing Regarding October 1986 Order Modifyng License of Sequoyah Fuels Corporation" (Pulbic Meeting) was held on October 30.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634-1410.

Robert B. McOsker,

Office of the Secretary.

[FR Doc. 86-25019 Filed 10-31-86; 8:45 am]

BILLING CODE 7590-01-M

4

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

(Northwest Power Planning Council).

STATUS: Open. The Council will also hold an executive session to discuss civil litigation and personnel matters.

TIME AND DATE: November 12–13, 1986, 9:00 a.m.

PLACE: Council Offices, 850 SW. Broadway, Suite 1100, Portland, Oregon.

MATTERS TO BE CONSIDERED:

November 12

1. Public Comment and Council Action on a Process and Criterion for Determining Consistency under the Resource Acquisition Provisions of the Northwest Power Act (Section 6(c)).
2. Council Action to Enter Rulemaking to Amend the Model Conservation Standards for New Residential Buildings.
3. Public Comment on Petitions to Revise the Model Conservation Standards for New Commercial Buildings, to Adopt Model Conservation Standards for Existing Residential Buildings, to Reinstate Surcharge for Conversion Standards, and to Adopt Model Conservation Standards for the Direct Service Industries and Federal Agency Customers.
4. Status Report on Regional Economy and Loads.

November 13

5. Staff Presentation and Public Comment on Issue Paper on Salmon and Steelhead System Objective and Policies.
6. Staff Presentation, Public Comment and Council Action on Bonneville Power Administration Work Plan for Fish and Wildlife.
7. Council Business.
8. Public Comment.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Atkins at (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 86–25043 Filed 11–3–86; 9:12 am]

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Federal Register

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WHO: The Office of the Federal Register.

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WHERE: National Archives Theater,
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RESERVATIONS: Laurice Clark, 202-523-3419.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 87-3 of October 27, 1986

Determination Pursuant to Section 620E(e) of the Foreign Assistance Act of 1961, as Amended

Memorandum for the Honorable George P. Shultz, the Secretary of State

Pursuant to section 620E(e) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2375(e), I hereby certify that Pakistan does not possess a nuclear explosive device and that the proposed United States assistance program will reduce significantly the risk that Pakistan will possess a nuclear explosive device.

You or your delegatee are authorized and directed to publish this determination and certification in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, October 27, 1986.

[FR Doc. 86-25250
Filed 11-4-86; 4:05 pm]
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 51

Domestic Licensing of Production and Utilization Facilities; Communications Procedures Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations that establish the procedures for submitting correspondence, reports, applications, or other written communications pertaining to the domestic licensing of production and utilization facilities. The amendments indicate the correct mailing address for delivery of the communications and specify the number of copies required to facilitate action by the NRC. The proposed amendments will resolve a number of problems that have developed during the past several years regarding the submission of applications and reports. In addition to clarifying the procedures, these amendments will result in a reduction in reproduction and postage costs for the affected licensees.

EFFECTIVE DATE: January 5, 1987.

FOR FURTHER INFORMATION CONTACT: Steve Scott, Information and Records Management Branch, Division of Technical Information and Document Control, Office of Administration, Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-8585.

SUPPLEMENTARY INFORMATION: Because of varying and sometimes conflicting requirements for the submittal of information by applicants and licensees, confusion has arisen with regard to copy requirements and proper submittal procedures. In an effort to clarify these matters, the NRC issued Regulatory Guide 10.1 (Revision 4) "Compilation of Reporting Requirements for Persons Subject to NRC Regulations" and on August 8, 1982 the Director, Division of Licensing, Office of Nuclear Reactor Regulation, issued Generic Letter 82-14 "Submittal of Documents to the Nuclear Regulatory Commission." While these efforts at clarification resolved much of the confusion, these guidance documents contain outdated information and in many cases conflict with requirements in regulations or individual licenses. Therefore, the NRC is issuing this rule to specify copy requirements and provide mailing instructions. The rule also clarifies the current requirement in § 50.30 for making an updated copy of the application available at an appropriate office near the site for inspection by the public.

This rule supersedes all existing requirements and guidance with respect to the number of copies and mailing procedures. The Commission's guidance documents dealing with communications procedures will be revised to conform with the rule. Licensees whose technical specifications contain conflicting submittal directions are authorized by this rule to delete the conflicting directions by pen-and-ink changes to their technical specifications. The Commission does not expect formal applications for amendment of license to result from the rulemaking.

This rule codifies NRC actions to reduce copy requirements. With few exceptions, copy requirements for licensee reports and applications are reduced to three. By reducing the number of copies transmitted to the Commission, the rule will result in reduced reproduction and postage costs for licensees.

Undesignated paragraphs in the amended text have been designated and obsolete titles of NRC personnel have been updated to reflect current NRC titles.

Proposed Rule

On March 28, 1985, the Commission published a proposed rule in the Federal Register (50 FR 11884) that would: (1) Clarify and standardize, to the extent practical, the procedures for making Part 50 submittals to the NRC; (2) reduce overall the number of copies of Part 50 submittals that applicants and licensees are required to send to the Commission; and (3) facilitate the flow of written communications from the affected licensees to NRC staff by eliminating the need for NRC to re-transmit Part 50 submittals between NRC Headquarters and the Regional Offices. After consideration of the public comments received, the Commission has modified the proposed rule as discussed in the following section. In addition, conforming amendments to 10 CFR Part 51 have been included to eliminate conflicting submittal directions.

Comments on Proposed Rule

The Commission received fifteen letters commenting on the proposed rule. Copies of those letters are available for public inspection and copying for a fee at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Thirteen letters were from utilities, one from a major nuclear vendor and one from a national organization representing non-power nuclear reactors. There was a total of 53 individual comments that are discussed by subject below.

Copy Requirements

Comments: Eight commenters responded that the rule should go further in reducing the number of copies of submittals required by the Commission. The commenters recommended that NRC reduce the requirements for the following types of submittals: (1) Applications for license amendments; (2) various descriptive material, such as analyses of hydrogen control systems, analyses to ensure safe plant operation pending completion of equipment qualification, information demonstrating compliance with requirements for reduction of risk from anticipated transients without scram (ATWS) events, and information concerning modification of structures, systems or components of a facility; and (3) submittals required of non-power nuclear reactors.

Response: The Commission is reducing its copy requirements as suggested by the commenters. The Commission found that in many cases NRC did not fully utilize copies of the submittals named by the commenters when multiple copies were furnished by licensees. As as result, the copy requirements for the submittals named by the commenters were reduced to avoid unnecessary copying and postage costs for licensees.

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Citation of Regulatory Requirement

Comment: Eight commenters addressed the section of the proposed rule that requires applicants and licensees to cite in the upper right corner of the first page of each Part 50 submittal, the specific regulation requiring the submission of the communication. The comments ranged from supportive to strongly opposed. Several commenters stated that a single submittal may be governed by several regulations. In addition, many licensee communications are in direct response to NRC requests for information, such as generic letters, inspection and enforcement bulletins, and Commission orders. For these responses, identifying the governing regulation would be burdensome to the licensee and a subjective decision open to interpretation.

Response: The Commission has revised this section to make citing the governing regulation on the upper right corner of the first page of the submittal a recommendation rather than a requirement for licensees and applicants. Standardizing the method of citing the regulation governing a submittal will help NRC administrative staff quickly and accurately sort (for distribution purposes) the large volume of correspondence, reports, applications, etc., received at NRC. The quick and proper handling of submittals that results from citing the basis for the submittal is in the best interest of the respondent as well as the NRC. However, as the commenters have pointed out, establishing this procedure as a requirement can cause various interpretive problems for licensees and the Commission has revised the rule accordingly.

Apparent Conflict in Proposed Rule

Comment: Three commenters responded that the proposed rule contained conflicting directions for submitting information concerning the modification of structures, systems, or components of a facility pursuant to § 50.109. This submittal type is listed in both § 50.4(b)(1) and § 50.4(b)(2). These sections have different copy requirements.

Response: The conflicting language in the proposed rule was the result of a drafting error. In the final rule, format changes were made that removed the sections containing the conflicting language noted by the commenters.

Additional Submittal Types for Inclusion in Rule

Comment: Three commenters recommended that the rule be modified to add several types of submittals. Two of these commenters cumulatively suggested expanding the coverage of the rule to 10 CFR Parts 2, 20, 21, 55, 70, and 73. The one other commenter suggested providing general guidance on submittal procedures for the types of written communications that are not specifically mentioned in the regulations, but frequently occur in the communication process with applicants and licensees.

Response: The Commission is presently working to standardize the communication procedures in the other parts of Title 10. However, those efforts will be reflected in different rulemakings and are beyond the scope of this particular rule. In response to the third commenter, language was added to § 50.4(b)(1) to identify types of written communications made pursuant to 10 CFR Part 50, not specifically mentioned in the regulations.

Waiver of Fee for License Amendments Resulting from Rule

Comment: Three commenters responded that applications for amendment of license technical specifications, which may result from promulgation of the rule, should not be subject to fees since they only address administrative matters.

Response: Since the rule does address only administrative matters and it clearly supersedes any conflicting submittal directions which may be found in an individual licensee's technical specifications or license conditions, licensees are not required to submit formal applications to amend their licenses to conform with the revised communications procedures. The Commission authorizes 10 CFR Part 50 licensees to delete any conflicting submittal requirements from their licenses or technical specifications by pen-and-ink changes. The Office of Inspection and Enforcement, through the NRC inspectors, will work with individual licensees to see that their procedures are updated.

Address Requirements

Comment: Three comments were made regarding the change in the address requirements contained in the proposed rule. Two commenters questioned whether communications would actually be addressed to the Document Control Desk or whether they would be addressed to the current NRC recipient and *mailed* to the Document Control Desk. The third commenter asked why other NRC organizations, such as the Office of Inspection and Enforcement, were not identified to receive separately mailed copies.

Response: The address requirements in the rule specify that the signed original of 10 CFR Part 50 communications must be addressed to the "U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555." The purpose of this rule is to establish one primary addressee for 10 CFR Part 50 submittals. Applicants and licensees will no longer be required to determine which NRC organization is the correct primary or secondary recipient. Nonetheless, it is required that *copies* of submittals be sent to the appropriate Regional Office and NRC Resident Inspector. No other NRC organizations were identified in the rule as receipients because the NRC internal distribution system will service them.

Elevation of Administrative Matters to Regulatory Requirements

Comments: Two commenters responded that the administrative requirements such as those contained in the rule (i.e. address requirements, distribution requirements, forms of communication, and delivery of communications) would be more appropriately issued in a guidance document (e.g. a regulatory guide or a generic letter) rather than placed in the regulations. One commenter stated that it would be too cumbersome to change the regulations every time NRC's administrative needs change. The other commenter considered the proposed rule to be divergent from the directives of the Atomic Energy Act of 1954 because administrative matters, such as photocopying, do not impact the health and safety of the public and as such should not be managed by rule, regulation or order. The commenter also felt that the rule is diametrically opposed to the spirit of the Paperwork Reduction Act of 1980 since licensees will have to develop strict procedures to assure compliance with administrative guidelines that have been elevated to regulatory requirements.

Response: The Commission recognizes its responsibilities to minimize the number of administrative requirements placed in the regulations. It is also understood that administrative requirements are usually minor in nature when viewed within the full scope of NRC's programs for protecting the public health and safety. However, some administrative requirements are necessary to effectively implement these programs and therefore must be based in regulation. During the development of this rulemaking, compliance with the intent of the Paperwork Reduction Act of 1980, i.e. minimizing the Federal paperwork burden for individuals, small businesses, State and local governments and other persons, was a prime consideration. Based on a determination of actual NRC needs, the Commission, through this rulemaking, is reducing the administrative burden placed on licensees especially with respect to copying requirements. The Commission has also, in response to commenters' concerns, revised the final rule to make citing the governing regulation on the upper right corner of the first page of the submittal, a recommendation rather than a requirement for applicants and licensees.

The administrative requirements which are contained in the rule are similar to those requirements which were previously found in 10 CFR Part 50. This rule has compiled and to a great extent standardized those earlier requirements. The Commission has determined that the Communications rule will actually *reduce* burden on licensees and is in full compliance with the Atomic Energy Act and Paperwork Reduction Act.

Clarify Subsection of Rule Regarding Reports Pursuant to § 50.71(b)

Comment: Two commenters recommended that § 50.4(b)(2)(xviii) of the proposed rule be clarified to better define what types of reports are covered by this subsection.

Response: Section 50.4(b)(2)(xviii) of the proposed rule was removed from the final rule. However, in response to the commenter's suggestion language was added to § 50.4(b)(1) to specifically identify additional types of written communications covered by the rulemaking.

Distribution Requirements to Resident Inspector

Comment: Two commenters responded that the Commission should clarify what is meant by the requirement to send one copy of certain 10 CFR Part 50 submittals to the "appropriate NRC Resident Inspector, if applicable."

Response: The Commission intends that licensees and applicants, with NRC Resident Inspectors stationed onsite, send copies of certain 10 CFR Part 50 submittals to the Resident Inspector. This has been clarified in the final rule.

Procedures for Proprietary Information

Comment: One commenter recommended that special procedures be established to protect submittals containing proprietary information. The commenter suggested that proprietary information, along with the appropriate application for withholding from public disclosure, be submitted to the responsible NRC management person and a copy (minus the proprietary information) sent to the Document Control Desk.

Response: NRC's internal document control procedures provide specifically for the proper handling and distribution of proprietary information. Currently, the Document Control Desk is responsible for receiving and disseminating proprietary 10 CFR Part 50 submittals sent to NRC Headquarters. Adopting the commenter's suggestion to send proprietary information directly to the responsible NRC management person would unnecessarily impede NRC's dissemination process and would not improve NRC control of proprietary information. Licensees and applicants who wish to have proprietary information withheld from public disclosure should submit the information in accordance with 10 CFR 2.790. When submitted, the proprietary information should be clearly identified and accompanied by a request containing detailed reasons and justifications that the proprietary information be withheld from public disclosure. A nonproprietary summary describing the general content of the proprietary information should also be provided.

Submission to Project Manager

Comment: One commenter suggested that it would speed up the processing of submittals if the NRC licensing project manager was specified as the primary addressee with a copy or copies sent to the Document Control Desk. The commenter stated that this method of addressing communications is encouraged in Generic Letter 82–30 "Filings Relating to 10 CFR Part 50 Production and Utilization Facilities" dated December 28, 1982.

Response: In actual practice, the Document Control Desk is the direct recipient of all 10 CFR Part 50 submittals mailed to NRC Headquarters. This includes those submittals addressed in the manner described in Generic Letter 82–30. This rule designates the Document Control Desk as the official addressee so that (1) the regulations more accurately reflect NRC's internal procedures and (2) correspondence procedures are made simpler for applicants and licensees. It is true that some licensees have arranged or have been requested to mail informal or courtesy copies directly to key NRC personnel and this practice will likely continue after issuance of the communications rule. However, licensees should note that in general, courtesy copies are not regarded by NRC as substitutes for formal submittals.

Clarify Submittal Due Dates

Comment: One commenter recommended that the rule formally clarify how submittal due dates are adjusted should the date occur on a weekend or holiday.

Response: Provisions for adjusting due dates were added to the rule in § 50.4 paragraph (d).

Implementation Schedule

Comment: On commenter recommended that the rule include an implementation schedule in view of the extensive changes to internal procedures and technical specifications that will be needed to implement the new requirements.

Response: The effective date of the rule is 60 days after publication in the **Federal Register**. This will allow those affected by the rule sufficient time to revise their internal procedures accordingly. As mentioned in a response to a previous comment, it will not be necessary for licensees to formally apply for changes to their technical specifications. Instead, the Commission authorizes licensees to make pen-and-ink changes to correct conflicting procedures in individual licenses and technical specifications.

Submittals in Media Other Than Paper

Comment: One commenter objected to the provision requiring applicants and licensees to contact the Division of Technical Information and Document Control before making submittals in other than paper form. The commenter stated that this requirement would unnecessarily impede the timely flow of information to the NRC.

Response: The Commission recognizes the need to keep the flow of information to the NRC as timely as is reasonably achievable. This is the primary reason the rule contains provisions for submissions in alternative media. The requirement to contact the Division of Technical Information and Document Control before making alternative media submissions is included to ensure that a submittal is in a form usable by NRC, i.e., compatible with NRC equipment.

Exemptions to the Copy Requirements

Comment: Two commenters recommended modifying the provisions in the rule regarding requests for exemptions to the copy requirements. One commenter objected to the requirement for specific exemption under 10 CFR 50.12 in order to submit other than the number of copies

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specified in the proposed rule. The commenter questioned whether the Commission really wants to tie up the exemption process with such trivial matters. The other commenter suggested that the rule include provisions allowing licensees to negotiate copy requirements with the NRC project manager. The commenter states that this would codify an existing desirable practice.

Response: The Commission has modified the section to allow licensees to request case specific exceptions to the communications procedures through the NRC's Division of Technical Information and Document Control.

Determination of Receipt Date

Comment: One commenter recommended that the rule be changed to specifically state that the NRC Document Control Desk is the official NRC organization responsible for determining whether submittals have been filed within the required time period.

Response: For the past several years, the Document Control Desk has served as the receipt point for 10 CFR Part 50 submittals mailed to NRC Headquarters. After submittals are received, they are entered, or accessioned, in the NRC's document control system. It is at this point that 10 CFR Part 50 submittals are generally regarded as being formally filed with NRC Headquarters. This practice will continue under the provisions of the revised communications procedures. In parallel with NRC Headquarters, the Regional Offices serve as the official receipt determination point for 10 CFR submittals mailed to them.

Drafting Changes

Comment: There were numerous other comments that suggested minor editorial changes in the rule.

Response: These suggestions were evaluated in light of the revised structure of the rule and changes were made when they improved the rule.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval number 3150-0011.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. Interested persons may examine a copy of the regulatory analysis at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the analysis may be obtained from Steve Scott, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555: telephone 301-492-8585.

Regulatory Flexibility Certification Statement

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule does not have a significant economic impact upon a substantial number of small entities. This rule amends 10 CFR 50 by specifying submittal procedures which facilitate NRC processing. This rule affects nuclear generating facilities by reducing the overall regulatory burden of reproducing and transmitting submittals to the Commission. Therefore, it is not expected to have a significant economic impact on any licensee.

Application of Backfit Rule

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to the final rule. The final rule is purely administrative in nature, and therefore does not result in the "modification of or addition to systems, structures, components, or design of a facility . . . or the procedures or organization required to design, construct, or operate a facility. . ." See 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Parts 50 and 51.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION OF FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, Sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1248 (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 95-601, Sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sections 50.57(d), 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2071, 2073 (42 U.S.C. 2133, 2239). Sec. 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Secs. 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Secs. 50.100-50.102 issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§50.10 (b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73 and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 50.4 is revised to read as follows:

§ 50.4 Written communications.

(a) *Address requirements.* The signed original of all correspondence, reports, applications, and other written communications from the applicant or licensee to the Nuclear Regulatory Commission concerning the regulations in this part or individual license conditions must be addressed to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

(b) *Distribution requirements.* Copies of all correspondence, reports, and other written communications concerning the regulations in this part or individual license conditions must be submitted to the Nuclear Regulatory Commission at the locations and in the quantities set forth below (addresses for the NRC Regional Offices are listed in Appendix D of Part 20 of this chapter).

(1) *Applications for amendment of permits and licenses; reports; and other communications.* All written communications (including responses to: generic letters, bulletins, information notices, inspection reports, and

miscellaneous requests for additional information), that are required of holders of operating licenses or construction permits issued pursuant to this part, must be submitted as follows, except as otherwise specified in paragraphs (b)(2) through (b)(7) of this section: the signed original to the Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555, one copy to the appropriate Regional Office, and one copy to the appropriate NRC Resident Inspector, if one has been assigned to the site of the facility.

2. *Applications for permits and licenses, and amendments to applications.* Applications for construction permits, applications for operating licenses and amendments to either type of application must be submitted as follows, except as otherwise specified in paragraphs (b)(3) through (b)(7) of this section.

(i) Applications for licenses for facilities described in § 50.21 (a) and (c) and amendments to these applications: The signed original must be sent to the Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555 and one copy to the appropriate Regional Office.

(ii) Applications for permits and licenses for facilities described in § 50.21(b) or § 50.22, and amendments to these applications: the signed original and 37 copies must be sent to the Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555, one copy to the appropriate Regional Office, and one copy to the appropriate NRC Resident Inspector, if one has been assigned to the site of the facility.

(3) *Acceptance review application.* Written communications required for an application for determination of suitability for docketing pursuant to § 50.30(a)(6) must be submitted as follows: the signed original and 13 copies to the Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555 and one copy to the appropriate Regional Office.

(4) *Security plan and related submittals.* Written communications, as defined in paragraphs (b)(4)(i) through (iv) of this section must be submitted as follows: The signed original and three copies to the Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555, and two copies to the appropriate Regional Office;

(i) Physical security plan pursuant to § 50.34;

(ii) Safeguards contingency plan pursuant to § 50.34;

(iii) Change to security plan, guard training and qualification plan, or safeguards contingency plan made without prior Commission approval pursuant to § 50.54(p);

(iv) Application for amendment of physical security plan, guard training and qualification plan, or safeguards contingency plan pursuant to § 50.90.

(5) *Emergency plan and related submittals.* Written communications as defined in paragraphs (b)(5)(i) through (iii) in this section, must be submitted as follows: the signed original to the Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555, two copies to the appropriate Regional Office, and one copy to the appropriate NRC Resident Inspector if one has been assigned to the site of the facility.

(i) Emergency plan pursuant to § 50.34;

(ii) Change to an emergency plan pursuant to § 50.54(q);

(iii) Emergency implementing procedures pursuant to Appendix E.V of this part.

(6) *Updated FSAR.* An updated Final Safety Analysis Report (FSAR) or replacement pages, pursuant to § 50.71(e) must be submitted as follows: the signed original and 10 copies to the Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555, one copy to the appropriate Regional Office, and one copy to the appropriate NRC Resident Inspector if one has been assigned to the site of the facility.

(7) *Quality assurance related submittals.* (i) A change to the Safety Analysis Report quality assurance program description pursuant to § 50.54(a)(3) or § 50.55(f)(3), or a change to a licensee's NRC-accepted quality assurance topical report pursuant to § 50.54(a)(3) or § 50.55(f)(3), must be submitted as follows: the signed original to the Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555, one copy to the appropriate Regional Office, and one copy to the appropriate NRC Resident Inspector if one has been assigned to the site of the facility.

(ii) A change to an NRC-accepted quality assurance topical report from nonlicensees (i.e., architect/engineers, NSSS suppliers, fuel suppliers, constructors, etc.) must be submitted as follows: one signed original to the Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555.

(c) *Form of communications.* All copies submitted to meet the requirements set forth in paragraph (b) of this section must be typewritten, printed or otherwise reproduced in permanent form on unglazed paper. Exceptions to these requirements may be granted for the submittal of micrographic, photographic, or electronic forms. Prior to making any submittal in other than paper form, the applicant or licensee must contact the Division of Technical Information and Document Control, Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-8585, to obtain specifications, copy requirements, and prior approval.

(d) *Delivery of communications.* Written communications may be delivered to the Document Control Desk at 7920 Norfolk Avenue, Bethesda, MD, between the hours of 8:15 a.m. and 4:00 p.m. Eastern Time. If a submittal due date falls on a Saturday, Sunday, or Federal holiday, the next Federal working day becomes the official due date.

(e) *Regulation governing submission.* Licensees and applicants submitting correspondence, reports, and other written communications pursuant to the regulations of this part are requested but not required to cite whenever practical, in the upper right corner of the first page of the submittal, the specific regulation or other basis, requiring submission.

(f) *Conflicting requirements.* The communications requirements contained in this section and §§ 50.12, 50.30, 50.36, 50.36a, 50.44, 50.49, 50.54, 50.55, 50.55a, 50.59, 50.62, 50.71, 50.73, 50.82, 50.90, and 50.91 supersede and replace all existing requirements in any license conditions or technical specifications in effect on January 5, 1987. Exceptions to these requirements must be approved by the Division of Technical Information and Document Control, Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492-8585.

3. In § 50.30, paragraphs (a) and (b) are revised to read as follows and paragraph (c) is removed.

§ 50.30 Filing of application for licenses; oath or affirmation.

(a) *Serving of applications.* (1) Each filing of an application for a license to construct and/or operate a production or utilization facility (including amendments to the applications) must be submitted to the U.S. Nuclear Regulatory Commission in accordance with § 50.4.

(2) An additional 10 copies of the general information and 30 copies of the safety analysis report, or part thereof or amendment thereto, must be retained by the applicant for distribution in accordance with the written instructions of the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as appropriate.

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(3) Each applicant shall, upon notification by the Atomic Safety and Licensing Board appointed to conduct the public hearing required by the Atomic Energy Act for the issuance of a construction permit, update the application and serve the updated copies of the application or parts of it, eliminating all superseded information, together with an index of the updated application, as directed by the Atomic Safety and Licensing Board. In addition, at that time the applicant shall serve a copy of the updated application on the Atomic Safety and Licensing Appeal Panel. Any subsequent amendment to the application must be served on those served copies of the application and must be submitted to the U.S. Nuclear Regulatory Commission as specified in § 50.4.

(4) The applicant must make a copy of the updated application available at the public hearing for the use of any other parties to the proceeding, and shall certify that the updated copies of the application contain the current contents of the application submitted in accordance with the requirements of this part.

(5) At the time of filing an application, the Commission will establish a Local Public Document Room near the site of the proposed facility, for the use of the public, where a copy of the application, subsequent amendments, and other records pertinent to the facility will be available for public inspection and copying.

(6) The serving of copies required by this section must not occur until the application has been docketed pursuant to § 2.101(a) of this chapter. Copies must be submitted to the Commission, as specified in § 50.4, to enable the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as appropriate, to determine whether the application is sufficiently complete to permit docketing.

(b) *Oath or affirmation.* Each application for a license, including whenever appropriate a construction permit, or amendment of it, and each amendment of each application must be executed in a signed original by the applicant or duly authorized officer thereof under oath or affirmation.

* * * * *

4. In § 50.36, paragraph (c)(5) is revised to read as follows:

§ 50.36 Technical specifications.

* * * * *

(c) * * *

(5) *Administrative controls.* Administrative controls are the provisions relating to organization and management, procedures, recordkeeping, review and audit, and reporting necessary to assure operation of the facility in a safe manner. Each licensee shall submit any reports to the Commission pursuant to approved technical specifications as specified in § 50.4.

* * * * *

5. In § 50.36a, paragraph (a)(2) is revised to read as follows:

§ 50.36a Technical specifications on effluents from nuclear power reactors.

(a) * * *

(2) Each licensee shall submit a report to the Commission within 60 days after January 1 and July 1 of each year, that specifies the quantity of each of the principal radionuclides released to unrestricted areas in liquid and in gaseous effluents during the previous six months of operation, including any other information as may be required by the Commission to estimate maximum potential annual radiation doses to the public resulting from effluent releases. The report must be submitted as specified in § 50.4. If quantities of radioactive materials released during the reporting period are significantly above design objectives, the report must cover this specifically. On the basis of these reports and any additional information the Commission may obtain from the licensee or others, the Commission may require the licensee to take action as the Commission deems appropriate.

* * * * *

6. In § 50.44, paragraphs (c)(3)(vi)(A) and (c)(3)(vii)(A) are revised to read as follows:

§ 50.44 Standards for combustible gas control system in light water cooled power reactors.

* * * * *

(c) * * *

(3) * * *

(vi)(A) Each applicant for or holder of an operating license for a boiling light-water nulcear power reactor with a Mark III type of containment or for a pressurized light-water nuclear power reactor with an ice condenser type of containment issued a construction permit before March 28, 1979, shall submit an analysis to the Commission as specified in § 50.4.

* * * * *

(vii)(A) By June 25, 1985, each applicant for or holder of an operating license subject to the requirements of paragraphs(c)(3) (iv), (v) and (vi) of this section shall develop and submit to the Commission a proposed schedule for meeting these requirements. The schedule may be developed using integrated scheduling systems previously approved for the facility by the NRC.

* * * * *

7. In § 50.49, paragraph (h) and the introductory text of paragraph (i) are revised to read as follows:

§ 50.49 Environmental qualification of electric equipment important to safety for nuclear power plants.

* * * * *

(h) Each license shall notify the Commission as specified in § 50.4 of any significant equipment qualification problem that may require extension of the completion date provided in accordance with paragraph (g) of this section within 60 days of its discovery.

(i) Applicants for operating licenses granted after February 22, 1983, but prior to November 30, 1986, shall perform an analysis to ensure that the plant can be safely operated pending completion of equipment qualification required by this section. This analysis must be submitted, as specified in § 50.4, for consideration prior to the granting of an operating license and must include, where appropriate, consideration of:

* * * * *

8. In § 50.54, the introductory text of paragraphs (a)(3), (a)(3)(i), (f), and the introductory language of (p), (q), and (w)(4) are revised to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(a) * * *

(3) After March 11, 1983, each licensee described in paragraph (a)(1) of this section may make a change to a previously accepted quality assurance program description included or referenced in the Safety Analysis Report, provided the change does not reduce the commitments in the program description previously accepted by the NRC. Changes to the quality assurance program description that do not reduce the commitments must be submitted to the NRC at least annually in accordance with the requirements of § 50.71. Changed to the quality assurance program description that do reduce the commitments must be submitted to NRC and receive NRC approval prior to implementation, as follows:

(i) Changes made to the Safety Analysis Report must be submitted, as specified in § 50.4. Changes made to NRC-accepted quality assurance topical report descriptions must be submitted, as specified in § 50.4.

* * * * *

(f) The licensee shall at any time before expiration of the license, upon request of the Commission, submit, as specified in § 50.4, written statements, signed under oath or affirmation, to enable the Commission to determine whether or not the license should be modified, suspended, or revoked.

* * * * *

(p) The licensee shall prepare and maintain safeguards contingency plan procedures in accordance with Appendix C of Part 73 of this chapter for effecting the actions and decisions contained in the Responsibility Matrix of the safeguards contingency plan. The licensee may make no change which would decrease the effectiveness of a security plan prepared pursuant to § 50.34(c) or Part 73 of this chapter, or of the first four categories of information (Background, Generic Planning Base, Licensee Planning Base, Responsibility Matrix) contained in a licensee safeguards contingency plan prepared pursuant to § 50.34(d) or Part 73 of this chapter without prior approval of the Commission. A licensee desiring to make such a change shall submit an application for an amendment to a license pursuant to § 50.90. The licensee may make changes to the security plan or to the safeguards contingency plan without prior Commission approval if the changes do not decrease the safeguards effectiveness of the plan. The licensee shall maintain records of changes to the plans made without prior Commission approval for a period of two years from the date of the change, and shall submit, as specified in § 50.4, a report containing a description of each change within two months after the change is made. Prior to the safeguards contingency plan being put into effect, the licensee shall have:

* * * * *

(q) A licensee authorized to possess and/or operate a nuclear power reactor shall follow and maintain in effect emergency plans which meet the standards in § 50.47(b) and the requirements in Appendix E to this part. A licensee authorized to possess and/or operate a research reactor or a fuel facility shall follow and maintain in effect emergency plans which meet the requirements in Appendix E of this part. The nuclear power reactor licensee may make changes to these plans without Commission approval only if the changes do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the standards of § 50.47(b) and the requirements of Appendix E of this part. The research reactor licensee and/or the fuel facility licensee may make changes to these plans without Commission approval, only if these changes do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the requirements of Appendix E of this part. Proposed changes that decrease the effectiveness of the approved emergency plans shall not be implemented without application to and approval by the Commission. The licensee shall submit, as specified in § 50.4, a report of each proposed change for approval. If a change is made without approval, the licensee shall submit, as specified in § 50.4, a report of each change within 30 days after the change is made.

* * * * *

(w) * * *

(4) The licensee shall report, as specified in § 50.4, on April 1 of each year, the present levels of insurance or financial protection it maintains and the sources of the insurance or protection.

* * * * *

9. In § 50.55, paragraphs (e)(3), the introductory text of (f)(3), and (f)(3)(i) are revised to read as follows:

§ 50.55 Conditions of construction permits.

* * * * *

(e) * * *

(3)(i) The holder of a construction permit shall also submit, as specified in § 50.4, a written report on a reportable deficiency within 30 days.

(ii) The report must include a description of the deficiency, an analysis of the safety implications and the corrective action taken, and sufficient information to permit analysis and evaluation of the deficiency and of the corrective action. If sufficient information is not available for a definitive report to be submitted within 30 days, an interim report containing all available information shall be filed, as specified in § 50.4, together with a statement that indicates when a complete report will be filed.

* * * * *

(f) * * *

(3) After March 11, 1983, each construction permit holder described in paragraph (f)(1) of this section may make a change to a previously accepted quality assurance program description included or referenced in the Safety Analysis Report, provided the change does not reduce the commitments in the program description previously accepted by the NRC. Changes to the quality assurance program description that do not reduce the commitments must be submitted to NRC within 90 days. Changes to the quality assurance program description that do reduce the commitments must be submitted to NRC and receive NRC approval before implementation, as follows:

(i) Changes to the Safety Analysis Report must be submitted for review as specified in § 50.4. Changes made to NRC-accepted quality assurance topical report descriptions must be submitted as specified in § 50.4.

* * * * *

10. In § 50.55a, paragraphs (g)(5)(ii) and (g)(5)(iii) are revised to read as follows:

§ 50.55a Codes and standards.

* * * * *

(g) *Inservice inspection requirements.*

* * * * *

(5) * * *

(ii) If a revised inservice inspection program for a facility conflicts with the technical specification for the facility, the licensee shall apply to the Commission for amendment of the technical specifications to conform the technical specification to the revised program. The licensee shall submit this application, as specified in § 50.4, at least six months before the start of the period during which the provisions become applicable, as determined by paragraph (g)(4) of this section.

(iii) If the licensee has determined that conformance with certain code requirements is impractical for its facility, the licensee shall notify the Commission and submit, as specified in § 50.4, information to support the determinations.

* * * * *

11. In § 50.59, paragraph (b) is revised to read as follows:

§ 50.59 Changes, tests, and experiments.

* * * * *

(b)(1) The licensee shall maintain records of changes in the facility and of changes in procedures made pursuant to this section, to the extent that these changes constitute changes in the facility as described in the safety analysis report or to the extent that they constitute changes in procedures as described in the safety analysis report. The licensee shall also maintain records of tests and experiments carried out pursuant to paragraph (a) of this section. These records must include a written safety evaluation which provides the bases for the determination that the change, test, or experiment does not involve an unreviewed safety question.

(2) The licensee shall submit, as specified in § 50.4, a report containing a brief description of any changes, tests, and experiments, including a summary of the safety evaluation of each. The report must be submitted annually or at such shorter intervals as may be specified in the license.

(3) The records of changes in the facility shall be maintained until the date of termination of the license, and records of changes in procedures and records of tests and experiments shall be maintained for a period of five years.

* * * * *

12. In § 50.62, paragraphs (c)(6) and (d) are revised to read as follows:

§ 50.62 Requirements for reduction of risk from anticipated transients without scram (ATWS) events for light-water-cooled nuclear power plants.

* * * * *

(c) * * *

(6) Information sufficient to demonstrate to the Commission the adequacy of items in paragraphs (c)(1) through (c)(5) of this section shall be submitted to the Commission as specified in § 50.4.

(d) *Implementation.* By 180 days after the issuance of the QA guidance for non-safety related components, each licensee shall develop and submit to the Commission, as specified in § 50.4, a proposed schedule for meeting the requirements of paragraphs (c)(1) through (c)(5) of this section. Each shall include an explanation of the schedule along with a justification if the schedule calls for final implementation later than the second refueling outage after July 26, 1984, or the date of issuance of a license authorizing operation above 5 percent of full power. A final schedule shall then be mutually agreed upon by the Commission and licensee.

13. In § 50.71, paragraphs (a), (b) and (e)(1) are revised to read as follows:

§ 50.71 Maintenance of records, making of reports.

(a) Each licensee and each holder of a construction permit shall maintain all records and make all reports, in connection with the activity, as may be required by the conditions of the license or permit or by the rules, regulations, and orders of the Commission in effectuating the purposes of the Act, including section 105 of the Act. Reports must be submitted in accordance with § 50.4.

(b) With respect to any production or utilization facility of a type described in § 50.21(b) or 50.22, or a testing facility, each licensee and each holder of a construction permit shall submit its annual financial report, including the certified financial statements, to the Commission, as specified in § 50.4, upon issuance of the report.

* * * * *

(e) * * *

(1) The licensee shall submit revisions containing updated information to the Commission, as specified in § 50.4, on a replacement-page basis that is accompanied by a list which identifies the current pages of the FSAR following page replacement.

* * * * *

14. In § 50.73, paragraphs (c) and (d) are revised to read as follows:

§ 50.73 Licensee event report system.

(c) *Supplemental information.* The Commission may require the licensee to submit specific additional information beyond that required by paragraph (b) of this section if the Commission finds that supplemental material is necessary for complete understanding of an unusually complex or significant event. These requests for supplemental information will be made in writing and the licensee shall submit, as specified in § 50.4, the requested information as a supplement to the initial LER.

(d) *Submission of reports.* Licensee Event Reports must be prepared on Form NRC 366 and submitted within 30 days of discovery of a reportable event or situation to the U.S. Nuclear Regulatory Commission, as specified in § 50.4.

* * * * *

15. In § 50.82, paragraph (a) is revised to read as follows:

§ 50.82 Application for termination of licenses.

(a) Any licensee may submit an application to the Commission, as specified in § 50.4, for authority to surrender a license voluntarily and to dismantle the facility and dispose of its component parts. The Commission may require information, including information as to proposed procedures for the disposal of radioactive material, decontamination of the site, and other procedures, to provide reasonable assurance that the dismantling of the facility and disposal of the component parts will be performed in accordance with the regulations in this chapter and will not be inimical to the common defense and security or to the health and safety of the public.

* * * * *

16. Section § 50.90 is revised to read as follows:

§ 50.90 Application for amendment of license or construction permit.

Whenever a holder of a license or construction permit desires to amend the license or permit, application for an amendment must be filed with the Commission, as specified in § 50.4, fully describing the changes desired, and following as far as applicable, the form prescribed for original applications.

17. In § 50.91 paragraph (a)(1) is revised to read as follows:

§ 50.91 Notice for public comment; State consultation.

* * * * *

(a) *Notice for public comment.* (1) At the time a licensee requests an amendment, it must provide to the Commission, in accordance with the distribution requirements specified in § 50.4, its analysis about the issue of no significant hazards consideration using the standards in § 50.92.

* * * * *

18. In Appendix E, section V is revised to read as follows:

Appendix E—Emergency Planning and Preparedness for Production and Utilization Facilities

* * * * *

V. Implementing Procedures

No less than 180 days prior to the scheduled issuance of an operating license for a nuclear power reactor or a license to possess nuclear material the applicant's detailed implementing procedures for its emergency plan shall be submitted to the Commission as specified in § 50.4. Licensees who are authorized to operate a nuclear power facility shall submit any changes to the emergency plan or procedures to the Commission, as specified in § 50.4, within 30 days of such changes.

19. In Appendix G, section V, paragraph E is revised to read as follows:

Appendix G—Fracture Toughness Requirements

* * * * *

V. Inservice Requirements—Reactor Vessel Beltline Material

* * * * *

E. The proposed programs for satisfying the requirements of sections V.C. and V.D. of this appendix must be submitted, as specified in § 50.4, for review and approval on an individual case basis at least three years prior to the date when the predicted fracture toughness levels will no longer satisfy the requirements of section V.B. of this appendix.

20. In Appendix H, section II, paragraph B.3 and section III, paragraph A are revised to read as follows:

Appendix H—Reactor Vessel Material Surveillance Program Requirements

* * * * *

II. Surveillance Program Criteria

B. * * *

3. A proposed withdrawal schedule must be submitted with a technical justification as specified in § 50.4. The proposed schedule must be approved prior to implementation.

* * * * *

III. Report of Test Results

A. Each capsule withdrawal and the test results must be the subject of a summary technical report to be submitted, as specified in § 50.4, within one year after capsule withdrawal unless an extension is granted by the Director, Office of Nuclear Reactor Regulation.

* * * * *

21. In Appendix I, section IV, paragraph A.3. and paragraph A.3.a of the "Concluding Statement on Position of the Regulatory Staff (Docket–RM–50–2)" are revised to read as follows:

Appendix I—Numerical Guides for Design Objectives and Limiting Conditions for Operation To Meet the Criterion "As Low as is Reasonably Achievable" for Radioactive Material in Light-Water-Cooled Nuclear Power Reactor Effluents

* * * * *

Sec. IV. *Guides on technical specifications for limiting conditions for operation for light-water-cooled nuclear power reactors licensed under 10 CFR Part 50.*

* * * * *

A. * * *

3. Report these actions as specified in § 50.4, within 30 days from the end of the quarter during which the release occurred.

* * * * *

Concluding Statement on Position of the Regulatory Staff (Docket–RM–50–2)

A. * * *

3. * * *

a. The applicant submits, as specified in § 50.4, an evaluation of the potential for effects from long-term buildup on the environment in the vicinity of the site of radioactive material, with a radioactive half-life greater than one year, to be released; and

* * * * *

22. In Appendix J, section V, paragraph B.1. is revised to read as follows:

Appendix J—Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors

* * * * *

V. Inspection and Reporting of Tests

* * * * *

B. *Report of test results.* 1. The preoperational and periodic tests must be the subject of a summary technical report submitted to the Commission, as specified in § 50.4, approximately three months after the conduct of each test. The report must be titled "Reactor Containment Building Integrated Leak Rate Test."

* * * * *

23. In Appendix K, section II, paragraph 1.c. is revised to read as follows:

Appendix K—ECCS Evaluation Models

* * * * *

II. Required Documentation

1. * * *

c. The licensee shall submit to the Commission, as specified in § 50.4, a complete listing of each computer program, in the same form as used in the evaluation model.

* * * * *

24. In Appendix M, Paragraph 2 is revised to read as follows:

Appendix M—Standardization of Design; Manufacture of Nuclear Power Reactors; Construction and Operation of Nuclear Power Reactors Manufactured Pursuant to Commission License

* * * * *

2. An application for a manufacturing license pursuant to this Appendix M must be submitted, as specified in § 50.4, and meet all the requirements of §§ 50.34(a) (1)–(9) and 50.34a (a) and (b), except that the preliminary safety analysis report shall be designated as a "design report" and any required information or analyses relating to site matters shall be predicated on postulated site parameters which must be specified in the application. The application must also include information pertaining to design features of the proposed reactor(s) that affect plans for coping with emergencies in the operation of the reactor(s).

* * * * *

25. In Appendix N, paragraph 2. is revised to read as follows:

Appendix N—Standardization of Nuclear Power Plant Designs: Licenses to Construct and Operate Nuclear Power Reactors of Duplicate Design at Multiple Sites

* * * * *

2. Applications for construction permits submitted pursuant to this Appendix must include the information required by §§ 50.33, 50.33a, 50.34(a) and 50.34a (a) and (b) and be submitted as specified in § 50.4. The applicant shall also submit the information required by § 51.50 of this chapter. * * *

* * * * *

26. In Appendix O, paragraph 2 is revised to read as follows:

Appendix O—Standardization of Design; Staff Review of Standard Designs

* * * * *

2. The submittal for review of the standard design must be made in the same manner and in the same number of copies as provided in §§ 50.4 and 50.30 for license applications.

* * * * *

27. In Appendix Q, paragraph 2 is revised to read as follows:

Appendix Q—Pre-Application Early Review of Site Suitability Issues

* * * * *

2. The submittal for early review of site suitability issue(s) must be made in the same manner and in the same number of copies as provided in §§ 50.4 and 50.30 for license applications. The submittal must include sufficient information concerning a range of postulated facility design and operation parameters to enable the Staff to perform the requested review of site suitability issues. The submittal must contain suggested conclusions on the issues of site suitability submitted for review and must be accompanied by a statement of the bases or the reasons for those conclusions. The submittal must also list, to the extent possible, any long-range objectives for ultimate development of the site, state whether any site selection process was used in preparing the submittal, describe any site selection process used, and explain what consideration, if any, was given to alternative sites.

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

28. The authority citation for Part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3303–3041. Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021).

29. Section 51.54 is revised to read as follows:

§ 51.54 Environmental report—manufacturing license.

Each applicant for a license to manufacture a nuclear power reactor or, for an amendment to a license to manufacture seeking approval of the final design of the nuclear power reactor, pursuant to Appendix M of Part 50 of this chapter, shall submit with its application, as specified in § 50.4, a separate document, entitled "Applicant's Environmental Report—Manufacturing License," or "Supplement to Applicant's Environmental Report—Manufacturing License." The environmental report shall address the environmental matters specified in Appendix M of Part 50 of this chapter, and shall contain the information specified in § 51.45, as appropriate.

30. Section 51.55 is revised to read as follows:

§ 51.55 Environmental report—number of copies; distribution.

(a) Each applicant for a license to construct and operate a production or utilization facility covered by paragraph (b)(1), (b)(2), (b)(3) or (b)(4) of § 51.20 or for a license amendment covered by paragraph (b)(5) of § 51.20 shall submit

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to the Commission an environmental report, or any supplement to an environmental report in the manner specified in § 50.4. The applicant shall retain an additional 109 copies of the environmental report or any supplement to the environmental report for distribution to parties and Boards in the NRC proceeding, Federal, State, and local officials and any affected Indian tribes, in accordance with written instructions issued by the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate.

(b) Each applicant for a license to manufacture a nuclear power reactor, or for an amendment to a license to manufacture seeking approval of the final design of the nuclear power reactor, pursuant to Appendix M of Part 50 of this chapter shall submit to the Commission an environmental report or any supplement to an environmental report in the manner specified in § 50.4. The applicant shall retain an additional 109 copies of the environmental report or any supplement to the environmental report for distribution to parties and Boards in the NRC proceeding, Federal, State, and local officials and any affected Indian tribes, in accordance with written instructions issued by the Director of Nuclear Reactor Regulation.

* * * * *

Dated at Bethesda, Maryland, this 31st day of October 1986.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Acting Executive Director for Operations.

[FR Doc. 86–25132 Filed 11–5–86; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket Number 86–ANE–42; Amdt. 39–5455]

Airworthiness Directives; Pratt & Whitney (PW) JT9D–7R4D, D1, E, and E1 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires the second stage high pressure turbine rotor (HPTR) four knife edge airseal to be replaced with or reworked to a HPTR three knife edge airseal on PW JT9D–7R4D, D1, E, and E1 turbofan engines. A modification to the turbine cooling air system which reduces the number of metering bolts in the first stage turbine rotor assembly and increases the airflow of the HPT cooling airduct is required. The AD is needed to prevent uncontained failure of the second stage HPTR airseal which could result in extensive engine and aircraft damage.

DATES: Effective December 8, 1986.

Compliance Schedule—As prescribed in the body of the AD. Comments for inclusion in the docket must be received on or before January 5, 1987.

Incorporation by Reference—Approved by the Director of the Federal Register as of December 8, 1986.

ADDRESSES: Comments on the amendment may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 86–ANE–42, 12 New England Executive Park, Burlington, Massachusetts 01803
or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket Number 86–ANE–42".

Comments may be inspected at the New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable Alert Service Bulletin (ASB) may be obtained from Pratt & Whitney, Commercial Products Division, 400 Main Street, East Hartford, Connecticut 06108. A copy of the ASB is contained in Rules Docket Number 86–ANE–42, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Diane Kirk, Engine Certification Branch, ANE–142, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7082.

SUPPLEMENTARY INFORMATION: The FAA has determined that fatigue cracks, attributed to high cycle fatigue (HCF), can originate on the tip of the fourth knife edge of the second stage HPTR airseal, and may propagate to fracture, which could result in an uncontained second stage HPTR airseal failure on JT9D–7R4D, D1, E, and E1 turbofan engines. A total of 11 fracture/crack events on airseal P/N 5001413–01 have occurred in a total population of 289 airseals. Four events have been in-service failures; two of these events were uncontained. Seven events, which had fourth knife edge HCF cracking in the airseal, were found by inspection in accordance with PW Service Bulletin (SB) JT9D–7R4–72–245. Although the mechanism of failure is not established, analysis indicates the most probable cause of the HPTR airseal rear knife edge HCF cracking is attributed to an aeroelastic instability.

Since this condition is likely to exist or develop on other engines of the same type design, an AD is being issued which requires replacement of second stage HPTR airseals, P/N 5001413–01 or 798916, with RPTR airseal, P/N 803673 or 803674 respectively, or rework of P/N 5001413–01 or 798916 in accordance with PW ASB JT9D–7R4–72–318, dated October 25, 1986, on JT9D–7R4D, D1, E, and E1 turbofan engines.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable.

Although this action is in the form of a final rule which involves requirements affecting flight safety and, thus, was not preceded by notice and public procedure, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above.

All communications received on or before the closing date for comments will be considered by the Director. This rule may be amended in light of comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available for examination in the Rules Docket at the address given above by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 86–ANE–42". The postcard will be date/time stamped and returned to the commenter.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT**".

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by Reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding to § 39.13 the following new airworthiness directive (AD):

Pratt & Whitney: Applies to Pratt & Whitney (PW) JT9D–7R4D, D1, E, and E1 turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent failure of the second stage high pressure turbine rotor (HPTR) airseal that can cause an uncontained engine failure, accomplish the following:

(a) Remove from service, HPTR airseal Part Number (P/N) 5001413–01 or 798916 and replace with HPTR airseal P/N 803673 or 803674, respectively, or rework HPTR airseal P/N 5001413–01 or 798916 in accordance with PW Alert Service Bulletin (ASB) JT9D–7R4–72/318, dated October 25, 1986, or FAA approved equivalent, per the following schedule:

(1) JT9D–7R4d1 and JT9D–7R4E1 series engines:

(i) Within 400 cycles in service (CIS) after the effective date of this AD, for HPTR airseals with greater than 800 CIS since new on the effective date of this AD.

(ii) Within 400 CIS after the effective date of this AD, or 800 CIS since new, whichever occurs later, for HPTR airseals with 800 CIS since new or less on the effective date of this AD.

(2) JT9D–7R4D and JT9D–JT4E series engines:

(i) Within 900 CIS after the effective date of this AD, for HPTR airseals with greater than 1,600 CIS since new on the effective date of this AD.

(ii) Within 900 CIS after the effective date of this AD, or 1,600 CIS since new, whichever occurs later, for HPTR airseals with 1,600 CIS since new or less on the effective date of this AD.

(b) Remove first stage high pressure turbine cooling (HPTC) airduct assembly, P/N 796123, 796975, or 796746, and replace with HPTC airduct assembly, P/N 804146, 804145, or 804148, respectively, or rework HPTC airduct assembly, P/N 796123, 795975, or 796746, in accordance with PW ASB JT9D–7R4–72–318, dated October 25, 1986, or FAA approved equivalent, concurrent with accomplishing paragraph (a) above.

(c) Modify the first stage turbine rotor assembly, P/N 792041, 792931, 795121, or 801821, by removing two units each of bolt, P/N 746130; washer, P/N 151178; and nut, P/N 341859; and redistributing the remaining units in accordance with PW ASB JT9D–7R4–72–318, dated October 25, 1986, or FAA approved equivalent, concurrent with accomplishing paragraph (a) above.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, may adjust the compliance times specified in this AD.

Pratt & Whitney ASB JT9D–7R4–72–318, dated October 25, 1986, identified and described in this document, is incorporated herein and made a part thereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Pratt & Whitney, Commercial Products Division, 400 Main Street, East Hartford, Connecticut 06108. This document also may be examined at the Office of the Regional Counsel, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket Number 86–ANE–42, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

This amendment becomes effective on December 8, 1986.

Issued in Burlington, Massachusetts, on October 24, 1986.

Jack A. Sain,

Acting Director, New England Region.

[FR Doc. 86–25045 Filed 11–5–86; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 131

[Docket Nos. 81N–204F and 76N–0175]

Milk, Lowfat Milk, and Skim Milk; Notice of Order and Partial Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Notice of order and partial confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Center for Food Safety and Applied Nutrition's motion for partial summary judgment on two of the four issues in the hearing concerning milk, lowfat milk, and skim milk is granted, and that the stays on those portions of the standards of identity for these products that concern the addition of vitamins and minerals and the use of stabilizers and emulsifiers are terminated. The agency is, therefore, confirming the effective date for compliance with those portions of the standards of identity as published in the **Federal Register** of October 10, 1973 (38 FR 27924).

DATE: Effective January 5, 1987 for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date.

FOR FURTHER INFORMATION CONTACT: Karen L. Carson, Center for Food Safety and Applied Nutrition (HFF–215), Food and Drug Administration, 200 C St. NW., Washington, DC 20204, 202–485–0110.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 6, 1983 (48 FR 45545), FDA published a notice of hearing on objections to the standards of identity for milk, lowfat milk, and skim milk. The hearing was granted on objections to (1) the portions of the standards of identity for milk, lowfat milk, and skim milk that limited the addition of vitamins and minerals to these products, (2) the portions of the standards of identity for lowfat milk and skim milk that restricted the use of stabilizers and emulsifiers in lowfat milk and skim milk, (3) the appropriateness

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of the term "with added milk solids not fat" for lowfat and skim milks made to contain at least 10 percent milk-derived nonfat solids, and (4) the reasonableness of the decision to prohibit use of the terms "protein fortified" and "fortified with protein." The latter two issues, involving labeling of lowfat milk and skim milk made to contain not less than 10 percent milk-derived nonfat solids, have not been resolved and are, therefore, not included in this action.

Background

In the **Federal Register** of October 10, 1973 (38 FR 27924), FDA established standards of identity for milk, lowfat milk, and skim milk (21 CFR 131.110, 131.135, and 131.143; formerly 21 CFR 18.2, 18.10, and 18.20, respectively). These standards limited the vitamins that can be added to these products to vitamins A and D only and did not provide for the addition of minerals. The Milk Industry Foundation filed a timely objection and requested a hearing on the failure of the standards to provide for the addition of other vitamins and minerals.

The lowfat milk and skim milk standards promulgated in 1973 allowed the use of stabilizers and emulsifiers in these products only when milk-derived nonfat solids were added to the products and limited the quantity to not more than 2 percent by weight of the milk-derived nonfat solids added. The Celanese Corp. and the Detroit Milk Dealers, Inc., filed timely objections and requests for hearing on this restricted use of stabilizers and emulsifiers in lowfat milk and skim milk. (Other persons filed objections to the restriction but did not request a hearing.)

As a result of these objections and requests for a hearing, the effective dates of those portions of §§ 131.110(b), 131.135(b), and 131.143(b) that limit the addition of vitamins and minerals to these products to vitamins A and D and those portions of §§ 131.135(c)(3) and 131.143(c)(3) that limit the use of stabilizers and emulsifiers were stayed (39 FR 42351; December 5, 1974), pending the outcome of a hearing. In addition, stays of effective date were imposed on the following related provisions of the standards: (1) Provisions dealing with the use of carriers for vitamins A and D (§§ 131.110(c)(1), 131.135(c)(1), and 131.143(c)(1)); and (2) provisions dealing with labeling when vitamins are added to the foods (§§ 131.110(e)(1)(i), 131.135(e)(1)(ii), and 131.143(e)(1)(i)).

In the **Federal Register** of October 26, 1976 (41 FR 46873), FDA sought to resolve the stabilizer and emulsifier use issue with a proposal to permit the use of stabilizers and emulsifiers in lowfat milk and skim milk without the restrictions referred to above. FDA withdrew this proposal, however, because the agency decided that, based upon its review of the comments, this proposal was not appropriate.

A notice granting a hearing on these two issues, as well as on the labeling issues, was published in the **Federal Register** of October 6, 1983 (48 FR 45545). The specific issues, as stated in the notice of hearing, were:

1. Is a standard of identity for milk, lowfat milk, or skim milk that excludes the addition of vitamins and minerals other than vitamins A and D a reasonable standard of identity that will promote honesty and fair dealing in the interest of consumers?

2. Is a standard of identity for lowfat milk and skim milk that excludes the use of stabilizers and emulsifiers except when used in conjunction with added milk-derived nonfat solids such that the stabilizers and emulsifiers amount to no more than 2 percent by weight of the solids that are added a reasonable standard of identity that will promote honesty and fair dealing in the interest of consumers?

The Administrative Law Judge's Order

At the November 9, 1983, prehearing conference, the Milk Industry Foundation withdrew its objection to the failure of the standards to provide for addition of vitamins and minerals other than vitamins A and D. Also, neither of the parties who filed objections to the failure of the standards for lowfat milk and skim milk to provide for the unrestricted use of stabilizers and emulsifiers appeared. Therefore, the Center for Food Safety and Applied Nutrition moved for partial summary judgment. In accordance with 21 CFR 12.93, any other interested party had 10 days in which to oppose the motion. Because no oppositions to the motion were filed, the Administrative Law Judge issued an order, dated December 12, 1983, granted the motion for partial summary judgment. In that order he found that:

1. A standard of identity for milk, lowfat milk, and skim milk that excludes the addition of vitamins and minerals other than vitamins A and D is a reasonable standard of identity that will promote honesty and fair dealing in the interest of consumers; and

2. A standard of identity for lowfat milk and skim milk that excludes the use of stabilizers and emulsifiers except when used in conjunction with added milk-derived nonfat solids such that the stabilizers and emulsifiers amount to no more than 2 percent by weight of the solids that are added is a reasonable standard of identity that will promote honesty and fair dealing in the interest of consumers.

No exceptions were filed to this order by hearing participants. Therefore, under 21 CFR 12.120(e) and (f), which provide that the initial decision becomes the final decision of the Commissioner if no hearing participant files an exception, and that notice of this final decision must be published in the **Federal Register**, notice is hereby given that this order is the Commissioner's final decision regarding these two hearing issues.

List of Subjects in 21 CFR Part 131

Cream, Food standards, Milk, Yogurt.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10); *It is ordered* that the stays announced in the **Federal Register** of December 5, 1974 (39 FR 42351), on the portions of 21 CFR 131.110(b), 131.135(b), and 131.143(b), which preclude the addition of vitamins other than vitamins A and D to milk, lowfat milk, and skim milk, and the stays on 21 CFR 131.135(c)(3) and 131.143(c)(3), which limit the use of stabilizers and emulsifiers in lowfat milk and skim milk, are terminated. The Commissioner is also terminating the stays on related provisions in 21 CFR 131.110(c)(1), 131.135(c)(1), and 131.143(c)(1) providing for use of carriers for vitamins A and D, and in 21 CFR 131.110(e)(1)(i), 131.135(e)(1)(ii), and 131.143(e)(1)(i) requiring labeling when vitamins A or D are added to the foods. Notice is given that the amendments, as published in the **Federal Register** of October 10, 1973 (38 FR 27924), of §§ 131.110(b), 131.135(b), and 131.143(b) as they pertain to addition of vitamins A and D and §§ 131.135(c)(3) and 131.143(c)(3) as they pertain to use of stabilizers and emulsifiers in conjunction with addition of milk-derived nonfat solids and related provisions in §§ 131.110(c)(1) and (e)(1)(i), 131.135(c)(1) and (e)(1)(ii), and 131.143(c)(1) and (e)(1)(i) will become effective January 5, 1987.

Dated: October 31, 1986.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-25046 Filed 11-5-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5-86-025]

Drawbridge Operations in North Carolina

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from Drawbridge Operation Regulations for Bridge Across Atlantic Intracoastal Waterway, at Fairfield, North Carolina.

SUMMARY: The Coast Guard has granted a temporary deviation from the regulations for the drawbridge across the Atlantic Intracoastal Waterway at mile 113.8 at Fairfield, North Carolina. The purpose of this deviation from the regulations is to allow the project contractor for the U.S. Army Corps of Engineers, the owner of the bridge, to repair the bridge. The repairs are expected to be completed by December 1, 1986.

DATES: This temporary deviation from the regulations becomes effective on October 27, 1986, and terminates on December 1, 1986, or earlier if bridge repairs are completed ahead of schedule.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Commander (oan), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, or telephone number (804) 398-6222.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Ann B. Deaton, project officer, and CDR Robert J. Reining, project attorney.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—[AMENDED]

Temporary Deviation From Drawbridge Regulations

In consideration of the foregoing, the regulations in § 117.5 of Title 33, Code of Federal Regulations, do not apply to the bridge across the Atlantic Intracoastal Waterway, mile 113.8, at Fairfield, North Carolina.

From October 27, 1986, until December 1, 1986, or earlier if bridge repairs are completed ahead of schedule, the bridge may remain closed to vessel traffic from 8 a.m. to 5 p.m. daily, except that, the bridge shall open at 12 noon for all accumulated and approaching vessels. At all other times, the bridge shall open on signal.

(33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g), 117.35(d))

Dated: October 28, 1986.

B.F. Hollingsworth,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 86-25094 Filed 11-5-86; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

Sale and Disposal of Timber; Timber Export and Substitution

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the reporting requirements at 36 CFR 223.48 related to the export of timber from National Forest System lands and the use of such timber to substitute for private timber exported by the purchaser. The rule changes the report from a biannual to an annual report of the timber exported, sold for export, exchanged or otherwise disposed of during the previous calendar year. The rule reduces the paperwork burden on purchasers of National Forest timber sales and on Forest Service employees while maintaining appropriate controls on log exports.

EFFECTIVE DATE: This rule is effective December 8, 1986.

FOR FURTHER INFORMATION CONTACT: Stephen J. Paulson, Timber Management Staff, Forest Service, USDA, P.O. Box 2417, Washington, DC 20013, (202) 475-3755.

SUPPLEMENTARY INFORMATION:

Background

In response to concerns about possible increases in third party substitution of National Forest timber for private timber which is exported, the Senate Subcommittee on Interior and Related Agencies Appropriations directed the Forest Service to report every 6 months on trends in log exports and substitution. In order to provide this information, the Forest Service required purchasers of National Forest timber to report every 6 months on the disposition of harvested timber (36 CFR 223.48).

On July 25, 1983, the Chairman of the Senate Committee on Appropriations and the Chairman of the Subcommittee on Interior and Related Agencies requested the United States General Accounting Office (GAO) to review the potential impacts of tightening Forest Service log export restrictions in the West. On January 28, 1985, GAO reported its findings and concluded that there was no significant amount of third party substitution occurring in the western United States and that tightened controls were unnecessary.

Concerned about burdening purchasers with the 6-month reporting requirements, the Forest Service subsequently requested that the Subcommittee change the reporting frequency to an annual report. In light of the GAO finding and Forest Service analysis of past years' reports, the Subcommittee agreed to the Forest Service request.

This final rule will not change the requirement that purchasers domestically process National Forest System timber or change the requirement for certification of domestic processing from other firms or individuals that receive unprocessed National Forest System timber. Under this rule, purchasers will be required to submit an annual certified report, for the previous calendar year, on the disposition of unprocessed timber from National Forests which is sold, exchanged, or otherwise disposed of to another party and report the sale of any timber from private lands owned or controlled by the purchaser which is exported or sold for export.

Analysis of Public Comments

The proposed rule was published in the **Federal Register** of May 16, 1986, at 51 FR 95. A total of 6 responses were received. A majority of the respondents were supportive of the attempt to reduce the paperwork burden on purchasers and urged the rule be implemented. One commenter expressed concern that the reporting forms should be no more complex than those currently in effect under the existing procedures. Some comments were received expressing concern that a change to an annual report would adversely effect allocation of non-manufacturer volumes for tracking the Small Business Set aside program. These concerns evolve from the fact that the current 6-month reporting frequency is utilized to approximate the distribution of these volumes to large or small businesses.

All suggestions and comments were reviewed and considered in preparation of this final rule. Responses are available for review in the office of the Timber Management Staff, Forest Service, USDA, Room 3224, South Agriculture Building, 12th and Independence Avenue, SW., Washington, DC.

The final rule will provide for submitting an annual report on the disposition of harvested volume. The

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reporting forms associated with this report are being revised to reduce the number of forms to be submitted each year. Purchasers will be able to show the distribution of volumes for several sales on one form rather than completing a form for each individual sale. Steps are being taken to incorporate the information from the Automated Timber Statement Account into an automated reporting of timber harvested by the purchaser each year. These efforts should further reduce the amount of work in gathering and analyzing export and substitution data.

Tracking of the distribution of non-manufacturer harvest volumes will continue, although not through the biannual export and substitution reports prepared by purchasers. The Forest Service will use other available means to determine this distribution, namely tracking of scale station volumes, purchaser haul routes, or other appropriate procedures. The annual report established in this final rule will be utilized to refine the estimated distribution.

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order 12291. It has been determined that this regulation is not a major rule. The regulation will have little or no effect on the economy or on individuals since the regulation is essentially procedural. The changes will result in savings to the Forest Service and purchasers of National Forest timber sales by reducing the cost to prepare, submit, and review Timber Export and Substitution reports.

Based on past experience and an environmental analysis, it has been determined that this rule will have no significant effect on the human environment, individually or cumulatively. Therefore, it has been categorically excluded from documentation in an environmental analysis or an environmental impact statement. (40 CFR 1508.4)

Controlling Paperwork Burdens on the Public

Under this rule, individuals and firms who purchase National Forest timber sales would be required to submit reports annually rather than every 6 months. Therefore, the rule would reduce the information collection requirements as defined in Office of Management and Budget (OMB) regulations at 5 CFR 1320.7. The present semi-annual report has OMB approval under control number 0596–0021 for use through March 31, 1987.

List of Subjects in 36 CFR Part 223

Exports, Government contracts, National forests, Timber.

For the reasons set forth above, Part 223 of Chapter II, Title 36, of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 223 will continue to read:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213, 16 U.S.C. 618, unless otherwise noted.

PART 223—[AMENDED]

§ 223.48 [Amended]

2. Revise paragraphs (a) and (b) of § 223.48 to read as follows:

§ 223.48 Reports on export or substitution of unprocessed timber.

* * * * *

(a) Submit annually, until all unprocessed timber is accounted for, a certified report on the disposition of any unprocessed timber harvested from the sale, including a description of unprocessed timber which is sold, exchanged, or otherwise disposed of to another person and a description of the relationship with the other person;

(b) Submit annually, until all unprocessed timber from the sale is accounted for, a certified report on the sale of any unprocessed timber from private lands in the tributary area which is exported or sold for export; and

* * * * *

3. Add a parenthetical note at the end of § 223.48 to read as follows:

(Approved by the Office of Management and Budget under control number 0596–0021)

§ 223.164 [Amended]

4. Remove the editorial note on Office of Management and Budget approval of report #0596–0021 that occurs at the end of § 223.164.

Dated: October 14, 1986.

Douglas W. MacCleery,

Deputy Assistant Secretary for Natural Resources and Environment.

[FR Doc. 86–25110 Filed 11–5–86; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-7-FRL-3106-1]

Approval and Promulgation of State Implementation Plans; Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This notice advises the public that EPA today takes final action to approve amendments to two regulations as part of the Missouri State Implementation Plan (SIP) for the attainment of the National Ambient Air Quality Standards (NAAQS). The amendments change the exemption level for requiring a bulk gasoline plant to be equipped with a vapor recovery system for controlling volatile organic compounds (VOC). The emission limits on major sources of VOC are required by the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on December 8, 1986.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; Missouri Department of Natural Resources, 101 Jefferson Street, Jefferson City, Missouri 65101; Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Deann K. Hecht at (913) 236–2893 or FTS 757–2893.

SUPPLEMENTARY INFORMATION: On July 2, 1985, the state of Missouri submitted a request to approve a revision to the Missouri SIP. The revision is an amendment to state Rules 10 CSR 10–5.220 for the St. Louis Metropolitan Area, and 10 CSR 10–2.260 for the Kansas City Metropolitan Area, both entitled, "Control of Emissions from Petroleum Liquid Storage, Loading, and Transfer." On March 12, 1986, EPA published a notice in the **Federal Register** (51 FR 8517) proposing to approve the amendments to the state rules.

The amendments to the two regulations change the exemption level for requiring bulk gasoline plants to be equipped with a vapor recovery system for controlling VOC emissions, from 600,000 gallons average monthly throughput to 120,000 gallons. However, the control technique guideline (CTG) refers to an exemption of 4,000 gallons throughput per day for 288 working days in a year, or approximately 24 working days per month. This would mean an exemption level of 96,000 gallons average monthly throughput of gasoline. The state has demonstrated that the total VOC emissions from the bulk plants are within 5 percent of the total VOC emissions obtained by applying the CTG exemption level. EPA can approve a state regulation if the emissions from a source category are higher than the CTG, but no more than 5 percent higher than the emissions would be if the CTG is followed exactly. Therefore, the state deviation from the CTG exemption level is acceptable. A more detailed description of EPA's review of the state's amendments can be found in the proposal. No public comments were received on the proposal.

Final Action

In today's notice, EPA takes final action to approve amendments to the Missouri state rules, changing the exemption level in both regulations from 600,000 gallons average monthly throughput of gasoline to 120,000 gallons.

This state submission constitutes revisions to the Missouri SIP. The Administrator's decision to approve or disapprove these revisions is based on a determination that the revisions meet the requirements of section 110 and 172 of the Clear Air Act; of 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans; and of the 1982 SIP policy (46 FR 7184, January 22, 1981).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days from today. This action may not be challenged later in proceedings to enforce its requirements.

Incorporation by reference of the State Implementation Plan for the state of Missouri was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 23, 1986.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

40 CFR Part 52 is amended as follows:

Subpart AA—Missouri

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401—7642.

2. Section 52.1320 is amended by adding paragraph (c)(57) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(57) On July 1, 1985, the Missouri Department of Natural Resources submitted amendments to Rules 10 CSR 10–5.220 for the St. Louis Metropolitan Area, and 10 CSR 10–2.260 for the Kansas City Metropolitan Area. The amendments require bulk gasoline plants to be equipped with a vapor recovery system if their monthly throughput is greater than the exemption level.

(i) Incorporation by reference.

(A) 10 CSR 10–5.220, and 10 CSR 10–2.260, Control of Emissions from Petroleum Liquid Storage, Loading, and Transfer, as published in the Missouri Register on May 1, 1985.

[FR Doc. 86–25105 Filed 11–5–86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-3-FRL-3105-6]

Approval and Promulgation of Implementation Plans; Revision of Allegheny County Portion; Commonwealth of Pennsylvania Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Commonwealth of Pennsylvania has submitted a revision to its State Implementation Plan (SIP) to incorporate an amendment, Appendix 22, to the Allegheny County portion of the Pennsylvania SIP. The revision provides the Allegheny County Health Department (ACHD) with the authority to grant, on a case-by-case basis, extensions of the final air pollution compliance dates for surface coating and graphic arts sources in Allegheny County. For each case the extension would be granted only after being specifically approved by EPA.

Such extensions could extend the final compliance date until April 21, 1987. EPA has determined that approval of this revision will not interfere with the attainment and maintenance of the National Ambient Air Quality Standard (NAAQS) for ozone.

EFFECTIVE DATE: December 8, 1986.

ADDRESSES: Copies of this SIP revision and relevant support documents are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Programs Branch, 841 Chestnut Building, Philadelphia, PA 19107, Attn: Denis M. Lohman

Commonwealth of Pennsylvania, Department of Environmental Resources, Bureau of Air Quality Control, 200 North Third Street, Harrisburg, PA 17120, Attn: Gary L. Triplett

Allegheny County Health Department, Bureau of Air Pollution Control, 301 Thirty-ninth Street, Pittsburgh, PA 15201, Attn: Roger C. Westman

Public Information Reference Unit, Room 2922, EPA Library, Environmental Protection Agency, 401 M Street SW. (Waterside Mall), Washington, DC 20460

Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Denis M. Lohman (3AM11) at the EPA address above, or telephone (215) 597–8375.

SUPPLEMENTARY INFORMATION: The change to the Pennsylvania SIP was submitted by the Allegheny County Health Department (ACHD) through the Pennsylvania Department of Environmental Resources (PADER). The change is an amendment to section 512.G of Article XX, Rules and Regulations of the Allegheny County Health Department. The amendment would provide the Bureau of Air Pollution Control (BAPC) with the authority to grant, on a case-by-case basis, extensions of the final compliance dates for surface coating and graphic arts sources in Allegheny County. These extensions would be granted through the issuance of a Delayed Compliance Order (DCO). The DCO must be approved by EPA in accordance with section 113(d) of the Clean Air Act. The final compliance date could be extended until April 21, 1987, or for up to three years after the original compliance date, whichever comes first.

The provisions of the amended section 512.G. specify that extended compliance dates, for surface coating and graphic arts sources, may only be granted if the source demonstrates one or more of the following:

a. That it is physically impossible for the source to comply with the applicable compliance schedule; or

b. That, by allowing an extension of the compliance schedule, innovative technology will be applied which will result in the achievement of emission

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reductions which are significantly greater than those otherwise required; or

c. That additional time is necessary to allow for the development of low solvent systems when the only alternative is the application of add-on emission control equipment which would cause an undue economic burden.

Furthermore, the DCO must contain a commitment to install add-on emission control equipment if the low solvent development program is not successful.

There are four substantive changes to the current section 512.G. represented by the proposed amendment:

(1) A final compliance date of June 30, 1985, is replaced with the date of April 21, 1987;

(2) The conditions to be satisfied to qualify for a DCO are modified by deleting explicit reference to specific add-on emission control equipment and by deleting the participation in a statewide control prioritization program;

(3) The subsection pertaining to Graphic Arts—Nonporous Substrates is deleted in entirety;

(4) The required commitment to install add-on control equipment if the low solvent development program fails, currently applicable to the nonporous substrate graphic arts sources, is extended to apply to all surface coating and graphic arts sources.

The rules and regulations of the Commonwealth of Pennsylvania, which pertain to the surface coating and graphic arts sources, are equivalent to the proposed rules for Allegheny County. The revision to section 512.G. was proposed by the ACHD in order to have equitable treatment of the same classes of sources in and adjacent to Allegheny County.

In accordance with 40 CFR 51.4, a public hearing was held and an opportunity for submitting written comments was announced. The public hearing was held on June 18, 1985. The amendment was approved and adopted by the Board of County Commissioners on June 27, 1985.

On March 12, 1986, (51 FR 8581) EPA published a proposed rule to approve the revision to the Allegheny County portion of the SIP. Public comment on the proposed revision was invited. Within the 30 day comment period only one comment was received. An attorney, representing a graphic arts source, stated that the proposed revision should be approved by EPA.

Final Action

EPA has reviewed the information submitted by the State and is approving the revision to the Allegheny County portion of the SIP. The revision will permit, with sufficient justification, the extension of final compliance dates for graphic arts sources in Allegheny County.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 5, 1987. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference.

Note.—Incorporation by reference of the State Implementation Plan for the State of Pennsylvania was approved by the Director of the Federal Register on July 1, 1982.

Dated: October 17, 1986.

Lee M. Thomas,
Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40, Part 52, Subpart NN of Code of Federal Regulations is amended as follows:

Subpart NN—Pennsylvania

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2020 is amended by adding paragraph (c)(67) as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(67) Amendment to section 512.G. Extensions, of Article XX, Rules and Regulations of the Allegheny County Health Department providing authority to grant compliance date extensions for surface coating and graphic arts sources, submitted by DER Secretary Nicholas DeBenedictis on August 13, 1985.

(i) Incorporation by Reference.

(A) Letter of August 13, 1985 to EPA from the Pennsylvania Department of Environmental Resources, and Appendix 22, Amendment to section 512.G., Allegheny County portion of the Pennsylvania State Implementation Plan (extension of final air pollution compliance dates for surface coating and graphic arts) adopted by the Board of County Commissioners of June 27, 1985.

[FR Doc. 86–25103 Filed 11–5–86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Parts 795 and 799

[OPTS–42065A; FRL–3080–4]

2-Ethylhexanoic Acid; Final Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final test rule.

SUMMARY: EPA is issuing a final test rule, under section 4 of the Toxic Substances Control Act (TSCA), requiring manufacturers and processors of 2-ethylhexanoic acid (EHA, CAS No. 149–57–5) to conduct 90-day subchronic toxicity, developmental toxicity, and pharmacokinetics (i.e., absorption, distribution, metabolism, and excretion) studies. This action follows EPA's proposed rule of May 17, 1985 (50 FR 20678).

DATE: In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern daylight time on November 20, 1986. These regulations shall become effective on December 20, 1986. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Office of the Federal Register as of December 20, 1986.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Rm. E–543, 401 M St., SW., Washington, DC 20460, (202–554–1404).

SUPPLEMENTARY INFORMATION: EPA is issuing a final test rule under section 4(a) of TSCA to require health effects testing of EHA.

I. Introduction—Test Rule Development Under TSCA

This notice is part of the overall implementation of section 4 of TSCA (Pub. L. 94–469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*), which contains authority for EPA to require development of data relevant to assessing the risks to health and the environment posed by exposure to particular chemical substances or mixtures.

Under section 4(a)(1) of TSCA, EPA must require testing of a chemical substance to develop health or environmental data if the Administrator finds that:

(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

A more complete understanding of the statutory section 4 findings is provided in the Agency's first proposed test rule published in the **Federal Register** of July 18, 1980 (45 FR 48510).

II. Background

A. Profile

EHA is a colorless liquid with a mild odor. It has a vapor pressure of 0.03 torr at 20°C, boils at 226.9°C at 760 torr, and is 0.1 percent soluble in water at 20°C. EHA is used exclusively as a chemical intermediate or reactant in the production of 2-ethylhexanoate metal soaps, peroxy esters, or other derivatives (Refs. 1 and 2).

There are two domestic manufacturers and three importers of EHA (Ref. 3). Eastman Kodak Co. is the primary domestic manufacturer of EHA. Union Carbide Corp. is also a domestic manufacturer of EHA; American Hoechst Corp., BASF Wyandotte Corp., and Filo Chemical Inc. are importers of EHA. The annual U.S. supply (domestic production plus imports) of EHA is currently between 20 to 25 million pounds. The import level of EHA is about 1 to 2 million pounds annually (Ref. 4).

The total weight of evidence overwhelmingly suggests that EHA has strong developmental toxicity potential. Furthermore, the potential health hazards of EHA are expected to be high because of EHA's structural similarity to several chemicals that have been associated with oncogenicity, developmental toxicity, and subchronic toxicity, the metabolic interrelationships of these chemicals to EHA, and the suggestive evidence that chemicals that induce peroxisomal proliferation may have oncogenic potential.

EPA believes exposure to EHA is inherent from the widespread and variable conditions under which the 20 to 25 million pounds per year of EHA is encountered during manufacturing, processing, and use (i.e., transfers, drumming, undrumming, shipping, loading, unloading, maintenance, clean-up, and sampling). The various conditions under which the large volume of EHA is encountered include variations in industrial hygiene practices and engineering controls at 2 manufacturing and about 100 processing sites. These variations may affect exposure to about 400 workers. The physicochemical properties of EHA do not force workers to avoid contact with EHA. Dermal exposure is expected because protective equipment may not be used and may not be fully effective. Refer to the proposed rule (50 FR 20678) published in the **Federal Register** May 17, 1985 for a detailed discussion of the potential health hazards and exposure for EHA.

Based on current information, environmental release is considered negligible, and the physical and chemical properties of EHA suggest that, if released, it would not persist or bioaccumulate. If EHA were disposed of in a surface impoundment, however, it may potentially leach to contaminate ground water.

B. Regulatory History

The Interagency Testing Committee (ITC) designated EHA for priority consideration for health effects tests in its 14th Report, published in the **Federal Register** of May 29, 1984 (49 FR 22389). The ITC recommended that EHA be tested for chronic health effects including carcinogenicity. The ITC further identified, although it did not specifically recommend for testing, the following biological effects of concern to human health: Acute toxicity, teratogenicity/embryotoxicity, metabolism and pharmacokinetics, genotoxicity, and other effects (peroxisome induction).

EPA responded to the ITC's recommendations for EHA by publishing in the **Federal Register** of May 17, 1985 (50 FR 20678) a proposed test rule for EHA that would require developmental toxicity, subchronic toxicity, and pharmacokinetics (i.e., absorption, distribution, metabolism, and excretion) tests. EPA also made the findings for oncogenicity testing, but did not propose testing at that time because a bioassay was planned by the National Toxicology Program (NTP) for 2-ethylhexanol. The Agency planned to evaluate data from this bioassay along with other information to determine whether oncogenicity testing of EHA is necessary. Refer to the proposed rule for details of EPA's findings and the proposed test standards and reporting requirements. Subchronic oral toxicity testing proposed under 40 CFR 798.75 and pharmacokinetics testing proposed under 40 CFR 798.460 have been redesignated as 40 CFR 795.260 and 795.223, respectively, in this final rule, and the standard for 2-ethylhexanoic acid proposed under 40 CFR 799.2050 has been redesignated as 40 CFR 799.1650 in this final rule.

On October 8, 1985, EPA held a public meeting to hear and discuss comments presented on the proposed rule. The transcript of the public meeting is included in the docket for this rulemaking (Ref. 35), and substantive comments are addressed in Unit III. of this notice.

Following publication of the proposed rule, new information was received by the Agency which relates to the potential developmental toxicity of EHA and potential exposure to EHA. The new information consisted of a study and supplemental data by Ritter *et al.* (Refs. 6 and 7), which reported that a single dose of EHA administered during pregnancy resulted in fetal resorption and malformation in rats and a series of studies conducted by Nau (Refs. 8 and 9) and Nau and Loscher (Ref. 10), which provides additional suggestive evidence of EHA's potential developmental toxicity. The first two studies in the series by Nau (Refs. 8 and 9) describe the parental and fetal pharmacokinetics of valproic acid, a known human and animal developmental toxicant that is structurally related to EHA. The remaining study (Ref. 10) compares the developmental effects of valproic acid and a number of structurally similar compounds including other ethylhexyl-containing acids. The results suggest that as a class these compounds have potential developmentally toxic effects. In addition, industry conducted an industrial hygiene survey and a glove permeability study (Ref. 12). These studies were reviewed by the Agency and found not to support industry's contention that exposure is negligible and fully controlled.

III. Response To Public Comments

The Agency received comments, summarized below, from the Chemical

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Manufacturers Association (CMA) Ethylhexanoic Acid Program Panel (the Panel) on the proposed test rule for EHA. The Panel members include Eastman Kodak Co., Union Carbide Corp., BASF Wyandotte Corp., American Hoechst Corp., and Filo Chemical Inc.

A. Exposure

1. *Review of the 1985 Survey of Safety Procedures for EHA.* The Panel contends that EHA has insufficient exposure potential to pose an unreasonable risk of injury, and, that without the potential for exposure, the Agency does not have the regulatory authority to require testing. In support of this claim, the results of a questionnaire survey regarding EHA safety procedures were submitted to the Agency (Ref. 12). The Panel claims that the survey results refute EPA's "speculation" that gloves and other protective equipment may not be used by all employees who could be exposed to EHA.

The Agency has reviewed the survey and has several concerns with regard to study design and execution. By its very nature, the questionnaire survey is a simplified form of an industrial hygiene audit. That is, an audit is a process used to determine the presence or absence of industrial hygiene program elements (Ref. 13). What is lacking from the audit process and from this survey are the necessary measures of program performance and effectiveness. The questionnaire survey succeeds only in providing mere indicators of activity, not compliance.

Moreover, the survey was designed and administered as a self-audit involving plant management and/or supervisory personnel. No indication is given that workers or their union representatives participated in the survey. This type of selection bias will predictably lead to diminished confidence in the objectivity of the responses.

Control of dermal exposures involves a combination of effective engineering controls, proper work practices, personal hygiene, and protective clothing. These are factors which can only be properly addressed through on-site industrial hygiene surveys, and not by questionnaire audits. Furthermore, there can be expected to exist considerable plant-to-plant variation in chemical control procedures (e.g., storage and loading facilities, physical plant conditions, waste disposal practices, etc.) and critical event planning (e.g., fire, explosion, chemical spill, etc.). These variables will impact significantly on the potential for worker exposure. Furthermore, according to the American Insurance Institute, the most important factors contributing to compensable losses in the chemical industry are equipment and operational failures (Ref. 14). Such failures may result in significant worker exposures to chemicals and are not reflected in the results of the questionnaire survey.

2. *Glove permeability test.* To demonstrate that glove materials used by industry are an effective barrier to EHA, the Panel submitted data from a glove permeation test. The test measured nitrile and neoprene glove materials using ASTM procedure F739–81 (Ref. 15). Although the data show no EHA breakthrough after 7 hours of continuous exposure, the data fail to establish the steady-state permeation rate for EHA as prescribed in the ASTM procedure. Data on the permeation rate are necessary in order to determine if EHA may eventually permeate the glove material and eventually, through persistent permeation, occur on the inside surface of the glove (Ref. 15). Permeation information would be significant for prolonged or repeated use of the gloves.

The survey of safety procedures (Ref. 12) indicated that glove materials other than nitrile and neoprene (e.g., rubber, polyvinyl chloride, latex, and cotton) are used by some workers potentially exposed to EHA. Since the selection of the type of glove material and use of gloves by specific industries is voluntary, the potential for dermal exposure is likely to be variable among the companies that manufacture and use EHA.

EHA will be processed in mineral spirits, but the data fails to show the breakthrough or permeation rate of EHA in mineral spirits. Data on the migration of the pure component of a mixture may vary drastically with data for a mixture (Ref. 16). Because the materials tested do not necessarily represent materials used by industry, because the ASTM procedure was not completed to show the permeation rate for the material tested, and because actual exposure will likely be with EHA in mineral spirits and not with pure EHA, EPA believes the glove permeation data do not provide conclusive evidence that worker exposure to EHA will be precluded by industries' use of gloves.

3. *Dermal contact determination for EHA.* The Panel believes that EPA's estimate of "worst-case" dermal exposure to hands (500 mg/kg/contact) in the proposed rule is excessive.

EPA agrees and, based on a model for incidental hand exposure which the Panel and EPA believes more accurately describes exposure for EHA, the "worst case" exposure to EHA is revised to 60 mg/kg/contact.

Both Eastman Kodak Co. (Ref. 17) and Union Carbide Corp. (Ref. 18) report that EHA is a mild to moderate dermal irritant, and it is labeled as a mild acid. EPA believes that the acute effects from EHA and the current label do not preclude dermal exposure to EHA, but suggest a greater potential for lax industrial hygiene practices and a greater potential for dermal exposure than if the compound was labeled as a more severe hazard or was more acutely toxic.

B. Health Effects

1. *Developmental toxicity test.* The Panel made several comments on the adequacy of the study conducted by Ritter *et al.* (Ref. 6). The Ritter study was a single high dose (12.5 mmol/kg, approximately 1.8 g/kg) and a second lower dose (6.25 mmol/kg approximately 0.9 g/kg) administered on day 12 of gestation to pregnant Wistar rats via the oral route. In the control group, the incidence of total fetal toxicity was 4.4 percent as compared to 71.1 percent in the high dose EHA-treated group. In addition, the low dose EHA-treated group had an incidence of 7.1 percent for total embryo toxicity. The data from the Ritter study are consistent with the hypothesis that EHA causes developmental toxicity. Although submitted after the proposed EHA rule was published, the Ritter study was shared with industry in time to be included with other industry comments. Industry stated that the study was not reported in sufficient detail to allow adequate evaluation of the study design and results, and that the study was not state-of-the-art. The Panel also commented that a single high dose as reported in this study is inappropriate, that the authors did not report on maternal toxicity, and that there was no indication that a negative control was included in the study. EPA agrees the study is not of state-of-the-art design and would be inappropriate for assessing human risk. The Agency believes, however, that this study and other available data raise sufficient concern about the potential for developmental toxicity of EHA to support the hazard component of the "may present an unreasonable risk" finding. If these studies were of sufficient quality to fully assess the potential for developmental toxicity of EHA, further testing would be unnecessary.

The Panel believes that human exposure cannot be equated in magnitude with the single high dose exposure used in the Ritter study (Ref. 6). The Panel cited evidence from Johnson (Ref. 23) that states that short duration high dose level studies have little value in establishing human safety guidelines. EPA generally agrees with this finding, but EPA disagrees that this supposition should modify the decision to test. The report by Johnson suggests that any effects of one-day exposures would also be discovered in longer duration segment II studies. The type of developmental effect produced would, of course, be dependent on the gestational stage(s) insulted and more severe effects would be elicited at lower doses since treatment is prolonged. Until an adequate state-of-the-art is performed, the no-observed-effect level for the developmental effects of EHA will remain undetermined.

The Panel believes tests conducted by Hazelton Laboratories (Ref. 19) were severely compromised, since all compounds at the dose tested produced overt signs of maternal toxicity. In addition, the Panel does not consider [[[3,5-bis(1,1-dimethylethyl)-4-hydroxyphenly]methyl]thio] acetic acid, 2-ethylhexyl ester, which was tested by CIBA-GEIGY (Ref. 20), an adequate analogue for EHA. EPA believes these studies viewed by themselves would be of little assistance in the evaluation of EHA; but, when considered along with other evidence of the potential developmental toxicity of EHA, they add to the weight of evidence supporting the potential developmental toxicity of EHA and thus the need for more definitive testing.

The Panel suggests the comparison between EHA and valproic acid is not justified based largely on the Panel's belief that the study of Brown and Coakley (Ref. 21) "does not provide any evidence to warrant a comparison of EHA to valproic acid." The comparison, however, is based on both structural similarities and the evidence of Brown and Coakley. Both EHA and valproic acid are isomeric acids which differ only in the placement of a –COOH group on an octane backbone. Thus, EHA corresponds to 3-carboxyoctane, and valproic acid corresponds to 4-carboxyoctane. There is a great deal of evidence as stated in the review by Gram and Bentsen (Ref. 22) that valpoic acid is both an animal and human developmental toxicant. The structural similarity alone between these two acids would support making the "may present" finding. The major significance of the Brown and Coakley study is that it describes the similarity in biologic effects between EHA and valprioc acid, which is supported by the previously discussed structural similarity.

The Agency believes that the total weight of evidence presented in the proposed test rule for EHA is adequate to support the Agency's finding that EHA may present an unreasonable risk for developmental effects. Since the proposed test rule, EPA has obtained additional information that further supports the Agency's hazard finding. In addition to the study by Ritter discussed above, in a series of studies in mice conducted by Nau (Refs. 8 and 9) and Nau and Loscher (Ref. 10), several short-chain acids were examined for fetal effects at doses of 600 mg/kg given on day 8 of gestation. Neural tube defects were observed in offspring of groups treated with valproic acid, 2-propylhexanoic acid, 2-butylhexanoic acid, and 2-ethylpentanoic acid. Furthermore, the Agency has evaluated results from a preliminary study (Ref. 11) reporting that decreases in pup weight on days 1 and 3 after parturition were observed in groups of mice exposed by gavage to EHA at 1,000 mg/kg on days 7 through 13 of gestation. Although these studies are not of adequate design to allow full assessment of the effects of EHA on fetal development, the studies do add further support to the need for testing.

2. *Subchronic toxicity testing.* The Panel does not believe that sufficient justification exists for the Agency to require subchronic toxicity testing. The Panel believes: (1) The study by Moody and Reddy (Ref. 24) used by EPA is inadequate justification; (2) data from related compounds suggest a low order of subchronic toxicity; and (3) the NTP subchronic study on 2-ethylhexanol should provide adequate data to evaluate EHA.

The objective of this test is to characterize fully the subchronic toxicity of EHA, and since the Agency may use a bioassay to be conducted on 2-ethylhexanol to evaluate whether oncogenicity testing of EHA will be required, the subchronic test is necessary to compare 2-ethylhexanol and EHA. At this time, it is not clear whether NTP will conduct the subchronic toxicity study of 2-ethylhexanol.

In the study by Moody and Reddy (Ref. 24), EHA exposure resulted in a greater than 50 percent increase in liver weight and substantial changes in certain measured biochemical parameters. These effects, observed in a study of only 3 weeks duration, are of a magnitude which EPA believes would indicate that a toxic process was involved rather than a simple adaptation. These data are sufficient to raise concern for the potential chronic toxicity of EHA.

Valproic acid, a close structural analogue of EHA, has been shown to be toxic to the liver in both humans and animals (Refs. 36 through 39), and this increases concern for potential liver effects from EHA.

In its comments on the relative subchronic toxicity of EHA, the Panel suggets EHA is less toxic compared with other chemicals tested because, on a molar basis, up to 3 times more EHA is required to produce similar effects. The Agency believes that in comparing the toxicity of EHA with other chemical substances, the comparison should be made on the relative molar levels of the 2-ethylhexyl moiety since it is this moiety that is hypothesized to be the active agent. Using this assumption, the differences in molar dose are no greater than approximately 50 percent.

3. *Oncogenicity.* The Panel considers the available data insufficient for the Agency to make a finding that EHA may present an unreasonable risk for an oncogenic effect. The Agency based its finding on the structural similarity of EHA with four compounds, which also contain the ethylhexyl moiety [di(2-ethylhexyl) phthalate, sodium 2-ethylhexyl sulfate, di(2-ethylhexyl) adipate, and tris(2-ethylhexyl) phosphate] and have been demonstrated to produce neoplasias in laboratory animals in bioassays conducted by NTP. In addition, EHA has been shown to cause peroxisomal proliferation, an effect produced by many carcinogenic compounds (Ref. 24). Despite possible flaws, the Agency considers that taken together this evidence constitutes sufficient justification for concern that EHA "may present an unreasonable risk" for oncogenicity.

4. *Pharmacokinetic test standard.* The Panel raised several comments regarding the proposed pharmacokinetic test standard, and the Panel submitted an alternative pharmacokinetic test standard. Principal concerns raised by the Panel were: (1) The need to include two experimental animal species, (2) the need to measure placental transfer of EHA, and (3) the need for a repeated dose study. In addition, questions were raised regarding proposed test methods involving: (1) The use of oral versus dermal absorption kinetics to assess bioavailability, (2) isolation of sufficient amounts of urinary metabolites to permit structure elucidation, and (3) the long time interval between blood sampling points.

In response to questions raised by the Panel about the proposed methods, the

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Agency has modified the test standard as follows:

1. Intravenous administration has been included in the bioavailability test to provide a base line that is certain to produce 100 percent bioavailability;

2. Up to 10 percent unidentified labeled material is allowed;

3. Shorter blood collection intervals are required during the first hour of the study;

4. The Fischer 344 rat only will be used for the study; and

5. The placental transfer requirement is deleted.

The Panel contends that there are no data to suggest that EPA presents a chronic hazard; thus there is no need for a repeated dose study. Given the postulated exposure scenario for EHA, involving intermittent low-level dermal contact in the workplace the Agency believes data are needed on both repeated dose exposure and single dose exposure. An important pharmacokinetic consideration in toxicology is dose-dependent disposition, involving both dose-dependent availability and concentration-dependent elimination. Since the biotransformation of xenobiotics is controlled by enzymatic processes, metabolism is usually directly proportional to the substrate concentration provided the metabolizing enzymes do not become saturated. Enzyme saturation typically occurs with compounds that are rapidly absorbed and have a large volume of distribution, and is a function of the size and/or number of doses. The consequences of dose-dependent disposition can be a change in the urinary excretion profile for the unchanged parent compound and its metabolites, or large increases in toxic effects with increasing dose beginning at the dose level where saturation occurs. To evaluate the likelihood for dose-dependent disposition to occur, studies should be conducted that compare pharmacokinetics at high and low single doses of the same compound, or single and repeated administration of the substance at a constant dose. In a repeated dose study, however, it is not likely that dose-dependent disposition would be evident unless the dosing interval was less than the elimination half-life. Estimation of the elimination half-life would require the conduct of a preliminary single-dose study.

The rationale for performing a repeated dose pharmacokinetic study for EHA should be viewed in light of current knowledge regarding the metabolism of xenobiotic carboxylic acids. Many carboxylic acids, particularly those with low pK_a values, will be eliminated in the urine without any metabolic alteration (Ref. 26). An important route of carboxylic acid biotransformation is conjugation with glucuronic acid. β-Oxidation and other oxidative pathways to acidic metabolites are also important. Such metabolites are frequently excreted as glucuronides. Therefore, one may expect to find unchanged EHA and/or EHA glucuronide plus other acids and/or their glucuronides in the urine of EHA-dosed rats. The proportions of these metabolites can be expected to vary as pathways become saturated. For valproic acid, the formation of a relatively minor metabolite (2-*n*-propyl-4-pentenoic acid) is critical for the expression of toxicity to the liver (Ref. 36). A similar situation may hold for EHA toxicity.

IV. Final Test Rule for EHA

A. Findings

EPA is basing the final health testing requirements for EHA on the authority of section 4(a)(1)(A) of TSCA.

EPA finds that EHA may present an unreasonable risk of oncogenicity, developmental toxicity, and subchronic toxicity. These findings are based on the strongly suggestive evidence of toxicity discussed in Unit II. of this preamble and in Unit II. of the proposed rule and the potential for dermal exposure of workers engaged in manufacturing, transfer, storage, and processing of EHA. Because EPA believes EHA has a high hazard potential, EPA believes the exposure potential need not be very high to justify the 4(a)(1)(A) finding. Furthermore, although current exposure may appear to be low, future exposure from the same or different uses may change.

Inadequate data exist to characterize oncogenicity, developmental toxicity, subchronic toxicity, and pharmacokinetics of EHA. In addition, the dermal exposure of an estimated 400 workers during the manufacture, transfer, storage, and processng of EHA has not been sufficiently characterized to conclude that there is no unreasonable risk from this exposure to EHA. Furthermore, the potential health hazard of EHA is significant because of: (1) Its structural similarity to several chemicals that have been associated with such health effects; (2) the metabolic interrelationships of certain of these chemicals to EHA; and (3) the suggestive evidence that chemicals such as EHA that induce peroxisomal proliferation may have oncogenic potential. The available data on the health effects of concern are inadequate to reasonably predict or determine the health risks posed by present exposure to EHA. At this time, the Agency does not find that oncogenicity "testing is necessary to develop such data" for EHA. The Agency is currently negotiating with industry to obtain a bioassay for 2-ethylhexanol (EH), the immediate precursor of EHA, under the recently published consent agreement process but will propose such testing if a consent agreement cannot be achieved. The Agency will evaluate data from the EH bioassay along with other information to determine if oncogenicity testing of EHA will be necessary.

Data are not available to characterize the pharmacokinetics, subchronic toxicity, and developmental toxicity of EHA. The Agency is unaware of any ongoing or planned testing in these areas of concern. Therefore, the Agency finds that the testing specified below is necessary to characterize these risks.

B. Required Testing

On the basis of these findings, the Agency is requiring developmental toxicity, 90-day subchronic, and pharmacokinetic testing as a basis for determining the health risks of EHA.

The Agency is requiring that the following health effects test guidelines be the test standards for the purpose of testing EHA.

The Agency believes that the pharmacokinetic test standard developed by the Office of Toxic Substances (OTS) for this final rule is appropriate for determining and comparing the absorption, distribution, metabolism, and excretion of EHA for both the oral and dermal routes of administration. Data from these studies are necessary to aid in the evaluation of test results from other toxicology studies and to determine the comparability of oral and dermal dosing.

The Agency requires that 7- to 9-week-old Fischer 344 rats be used for the pharmacokinetics studies. Furthermore, Fischer 344 rats are required for subchronic testing or EHA and have been used extensively by NTP for testing ethylhexyl-containing chemicals. They have also been used extensively in percutaneous absorption studies. Two doses shall be required in the pharmacokinetics studies, a "low" dose and a "high" dose. When administered orally, the "high" dose level should ideally induce some overt toxicity such as weight loss. The "low" dose level should correspond to a no-effect level. The same "high" and "low" dose shall be administered orally and dermally. The required studies evaluate blood levels, urinary and fecal excretion, and biotransformation of

EHA when administered dermally and orally. In addition, the extent to which washing removes dermally-applied EHA is also evaluated.

In response to comments from industry, the final test standards have been modified to include an intravenous administration in the bioavailability test, allow up to 10 percent unidentified labeled material in the urine, and require shorter collection intervals during the first hour of the study.

The Agency believes that this modified pharmacokinetics test methodology represents the state-of-the-art and forms the basis for a valid and scientifically acceptable test standard. This test standard was proposed under 40 CFR 798.460 published in the **Federal Register** of May 17, 1985 (50 FR 20689), and is published in the final rule below under 40 CFR 795.223.

The Agency believes that the subchronic exposure oral toxicity test standard developed by OTS for this final rule is appropriate in determining the subchronic toxicity of EHA. This test permits the determination of the no-observed-effect level, the characterization of toxic effects associated with continuous or repeated exposure for a period of 90 days, and provides information on target organs.

The subchronic test is conducted by administering a chemical substance such as EHA orally for 90 days in graduated daily doses to several groups of experimental animals, one dose level per group. During the period of administration the animals are observed daily to detect signs of toxicity. Animals which die during the period of administration are necropsied, and at the conclusion of the test all surviving animals are sacrificed and histopathological examinations conducted on the tissues. Given the test results of Moody and Reddy (Refs. 24 and 31), the subchronic toxicity evaluation should pay particular attention to hepatotoxicity and serum lipid alterations.

The Agency believes that this subchronic toxicity test methodology represents the state-of-the-art and forms the basis for a valid and scientifically acceptable test standard. This test standard was proposed under 40 CFR 798.75, published in the **Federal Register** of May 17, 1985 (50 FR 20687), and is published in the final rule below under § 795.260.

To determine the developmental hazard of EHA, EPA proposed that testing be conducted by either the OTS guideline, which on May 17, 1985 was entitled "Developmental Toxicity (HG-Organ/Tissue-Developmental Toxicity-Oral, OTS Health Effects Test Guidelines)", or the OECD test guideline entitled "Teratogenicity", No. 414, adopted May 12, 1981. No comments were received on either test standard. However, since publication of the proposed rule for EHA, the Agency published the test guideline entitled "Developmental Toxicity Study" under 40 CFR 798.4900 (50 FR 39433; September 27, 1985). The Agency proposed modifications to this guideline in the **Federal Register** of January 14, 1986 (51 FR 1523). These modifications provide more explicit guidance on the necessary minimum elements for this testing. In addition, these revisions avoid repetitive chemical-by-chemical changes to the guidelines in its adoption as a test standard. The OTS guideline proposed for EHA, therefore, will be subject to change. EPA believes, nonetheless, that the OECD test guideline as proposed for EHA represents a state-of-the-art method and forms the basis for a valid and scientifically acceptable test standard.

The developmental toxicity test is conducted by administering a chemical substance such as EHA orally in graduated doses, for at least that part of the pregnancy covering the period of organogenesis, to several groups of pregnant experimental animals, one dose level being used per group. Shortly before the expected date of delivery, the pregnant females are sacrificed, the uteri removed, and the contents examined for structural malformations, *in utero* death, and growth retardation.

Rats and a nonrodent mammalian species should be utilized. EPA recommends rabbits as the nonrodent species. The Agency believes that multispecies testing is a more sensitive means of detecting developmental hazards than single species testing (Refs. 32, 33, and 34). Testing EHA in the rat and a nonrodent mammalian species will provide the Agency with the data needed to reasonably determine or predict whether EHA poses a risk of developmental toxicity to humans.

The Agency believes that the OECD oral developmental toxicity test guideline represents a state-of-the-art methodology and forms the basis for a valid and scientifically acceptable test standard for evaluating the developmental toxicity of a chemical substance such as EHA. The guideline has been reviewed to ensure that it reflects the most current scientific approach to developmental toxicity testing.

C. Test Substance

EPA is requiring that EHA of at least 99 percent purity be used as the test substance. EHA of this purity is commercially available at nominal cost. EPA has specified a relatively pure substance for testing because the Agency is interested in evaluating the effects attributable to EHA itself. Radiolabeled ^{14}C-EHA will be needed for the pharmacokinetics testing.

D. Persons Required to Test

Section 4(b)(3)(B) specifies that the activities for which the Administrator makes section 4(a) findings (manufacture, processing, distribution, use and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing. Both manufacturers and processors are required to test if the exposures giving rise to the potential risk occur during use, distribution, or disposal.

Because EPA has found that existing data are inadequate to assests the health risks from the manufacture, transfer, storage and processing of EHA, EPA is requiring that persons who manufacture or process, or intend to manufacture or process, EHA at any time from the effective date of the final test rule to the end of the reimbursement period are subject to the pharmacokinetic, subchronic toxicity, and developmental toxicity testing requirements contained in the final rule. The end of the reimbursement period will be 5 years after the last final report is submitted for EHA or an amount of time equal to that which was required to develop data if more than 5 years after the submission of the last final report required under the test rule.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from the requirement. EPA promulgated procedures for applying for TSCA section 4(c) exemptions in 40 CFR Part 790.

Manufacturers (including importers) subject to this rule are required to submit either a letter of intent to perform testing or an exemption application within 30 days after the effective date of the final test rule. The required procedures for submitting such

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letters and applications are described in 40 CFR Part 790.

Processors subject to this rule, unless they are also manufacturers, will not be required to submit letters of intent or exemption applications, or to conduct testing, unless manufacturers fail to submit notices of intent to test or later fail to sponsor the required tests. The Agency expects that the manufacturers will pass an appropriate portion of the costs of testing on to processors through the pricing of their products or reimbursement mechanisms. If manufacturers perform all the required tests, processors will be granted exemptions automatically. If manufacturers fail to submit notices of intent to test or fail to sponsor all the required tests, the Agency will publish a separate notice in the **Federal Register** to notify processors to respond; this procedure is described in 40 CFR Part 790.

EPA is not requiring the submission of equivalence data as a condition for exemption from the required testing for EHA. As noted in Unit IV.C. above, EPA is interested in evaluating the effects attributable to EHA and has specified a relatively pure substance for testing.

Manufacturers and processors who are subject to this test rule must comply with the test rule development and exemption procedures in 40 CFR Part 790 for single-phase rulemaking.

E. Reporting Requirements

EPA is requiring that all data developed under this rule be reported in accordance with its final TSCA Good Laboratory Practice (GLP) standards, which appear in 40 CFR Part 792.

In accordance with 40 CFR Part 790 under single-phase rulemaking procedures, test sponsors are required to submit individual study plans within 45 days before initiation of each study.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. Specific reporting requirements for each of the proposed test standards follow:

The pharmacokinetic test shall be completed, and the final results submitted to the Agency within 1 year of the effective date of the final test rule. An interim progress report shall be provided 6 months from the effective date of this rule.

The subchronic toxicity tests shall be completed, and the final results submitted to the Agency within 15 months of the effective date of the final test rule. Interim progress reports shall be provided 6 months and 12 months from the effective date of this rule.

The developmental toxicity tests shall be completed, and the final results submitted to the Agency within 18 months of the effective date of the final test rule. Interim progress reports shall be provided 6 months and 12 months from the effective date of this rule.

NTP's experience with testing other ethylhexyl moiety substances and the Agency's experience with Negotiated Testing Agreements with industry suggest that this testing can be completed within the specified time. The 18-month extension for pharmacokinetics testing requested by industry is therefore denied at this time. If technical problems arise during this testing, the sponsors may request that the Agency modify this rule requirement.

TSCA section 14(b) governs Agency disclosure of all test data submitted to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the **Federal Register** as required by section 4(d).

Persons who export a chemical substance or mixture which is subject to a section 4 test rule are subject to the export reporting requirements of section 12(b) of TSCA. Final regulations interpreting the requirements of section 12(b) are in 40 CFR Part 707 (45 FR 82844). In brief, as of the effective date of this test rule, an exporter of EHA must report to EPA the first annual export or intended export of EHA to any one country. EPA will notify the foreign country concerning the test rule for the chemical.

F. Enforcement Provisions

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records; (2) submit reports, notices, or other information; or (3) permit access to or copying of records required by the Act or any regulation or rule issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce." The Agency considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory inspections and data audits will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by duly designated representatives of the EPA for the purpose of determining compliance with the final rule for EHA. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and interpretations and evaluations to determine compliance with TSCA GLP standards and the test standards established in the rule.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers that fail to submit a letter of intent or an exemption request and that continue manufacturing after the deadlines for such submissions.

This provision would also apply to processors that fail to submit a letter of intent or an exemption application and continue processing after the Agency has notified them of their obligation to submit such documents (see 40 CFR 790.48(b)). Intentional violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to 1 year. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as all the other factors listed in section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

V. Economic Analysis of Final Rule

To assess the potential economic impact of this rule, EPA has prepared an economic analysis (Ref. 4) that evaluates the potential for significant economic impacts on the industry as a result of the required testing. The economic analysis estimates the costs of conducting the required testing and evaluates the potential for significant adverse economic impact as a result of these test costs by examining four market characteristics of EHA: (1) Price sensitivity of demand, (2) industry cost characteristics, (3) industry structure, and (4) market expectations. If there is no indication of adverse effect, no further economic analysis is performed. However, if the first level of analysis indicates a potential for significant economic impact, a more comprehensive and detailed analysis is conducted which more precisely predicts the magnitude and distribution of the expected impact.

Total testing costs for this final rule are estimated to range from $216,210 to $275,620. In order to predict the financial decision-making practices of manufacturing firms, these costs have been annualized. Annualized costs are compared with annual revenue as an indication of potential impact. The annualized costs represent equivalent constant costs which would have to be recouped each year of the payback period in order to finance the testing expenditure in the first year.

The annualized test costs (using a cost of capital of 25 percent over a period of 15 years) range from $56,000 to $71,400. Based on an estimated minimum production volume for EHA of 12 million pounds, the unit test costs will be about 0.6 cents per pound. In relation to the selling price of 57 cents per pound for EHA, these costs are equivalent to one percent of price.

Based on these costs and the uses of EHA, the economic analysis indicates that the potential for significant adverse economic impact as a result of this testing rule is low. This conclusion is based on the following observations:

1. EHA is an intermediate whose demand is dispersed over several markets;

2. The dosage requirements of EHA derivatives, notably metal octoates, are very small in relation to their end products;

3. The estimated unit test costs are low, one percent of current price in the upper-bound case; and

4. The unit costs, when dispersed over the production costs of EHA derivatives and their end products, will be significantly reduced due to both the intermediate nature of EHA and the small percent composition requirements of its derivatives.

Refer to the economic analysis for a complete discussion of test cost estimation and the potential for economic impact resulting from these costs.

VI. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules and test programs negotiated with industry in place of rulemaking. Copies of the study, "Chemical Testing Industry: Profile of Toxicological Testing (PB 82-140773)", can be obtained through the National Technical Information Service (NTIS).

On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing in this rule.

VII. Rulemaking Record

EPA has established a record for this rulemaking (OPTS-42065A). This record includes basic information considered by the Agency in developing this rule and appropriate **Federal Register** notices.

The record includes the following information:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this decision consisting of:

(a) Notice containing the ITC designation of EHA to the Priority List (49 FR 22389; May 29, 1984).

(b) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards (48 FR 53922; November 29, 1983).

(c) Notice of final rule on two-phase test rule development and exemption procedures (49 FR 39774; October 10, 1984).

(d) Notice of interim final rule on single-phase test rule development and exemption procedures (50 FR 20678; May 17, 1985).

(e) Notice of final rule on data reimbursement policy and procedures (48 FR 31786; July 11, 1983).

(f) Notices requiring TSCA section 8 (a) and (d) reporting requirements for EHA (49 FR 22284, 22286; May 29, 1984).

(g) Notice of EHA proposed test rule (50 FR 20678; May 17, 1985).

(h) Toxic Substance Control Act Test Guidelines Final Rule, 40 CFR Parts 796, 797, and 798, September 27, 1985.

(i) Notice of final rule amending TSCA section 8(d) reporting requirements for EHA (51 FR 32720; September 15, 1986).

(2) Support documents: consisting of:

(a) Study of availability of test facilities and personnel.

(b) EHA economic analysis.

(3) Records of minutes of informal meetings.

(4) Communications before proposal consisting of:

(a) Written public and intra- or interagency memoranda and comments.

(b) Summaries of telephone conversations.

(c) Reports—published and unpublished factual materials.

(5) Test guidelines proposed as standards.

B. References

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(13) Corn, M. and Lees, P.S.J. "The industrial hygiene audit: Purposes and implementation." *American Industrial Hygiene Association Journal.* 44(2):135–141. (1983)

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(17) Eastman Kodak Co. Material Safety Data Sheet: Kodaflex TEG–EH Triethylene Glycol Di-2-ethylhexanoate. (June 1983)

(18) Union Carbide Corp. Cover letter from G.P. Bigelow, Union Carbide to R. Borghi, Dynamac Corp. (October 14, 1983) Enclosures:

(a) Product Literature on Organic Acids.

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Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the OPTS Reading Room. NE–G004, 401 M Street, SW., Washington, DC from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

VIII. Other Regulatory Requirements

A. Classification of Rule

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order; i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprise to compete with foreign enterprises.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses because: (1) They will not perform testing themselves, or will not participate in the organization of the testing effort; (2) they will experience only very minor costs in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this final rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned them OMB number 2070–0033.

List of Subjects in 40 CFR Parts 795 and 799

Testing, Environmental protection, Hazardous substances, Chemicals, Reporting and recordkeeping requirements, Incorporation by reference.

Dated: October 27, 1986.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

1. By adding new Part 795, consisting at this time of §§ 795.223 and 795.260, to read as follows:

PART 795—PROVISIONAL TEST GUIDELINES

Subpart A—[Reserved]

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—Provisional Health Effects Guidelines

Sec.
795.223 Pharmacokinetic test.
795.260 Subchronic oral toxicity test.

Authority: 15 U.S.C. 2603, 2625.

Subparts A-C—[Reserved]

Subpart D—Provisional Health Effects Guidelines

§ 795.223 Pharmacokinetic test.

(a) *Purpose.* The purpose of these tests is to determine:

(1) The bioavailability of a test substance after dermal administration.

(2) Whether or not the biotransformation of the test substance is qualitatively and quantitatively the same after dermal and oral administration.

(3) Whether or not the biotransformation of the test substance is changed qualitatively or quantitatively by repeated dosing.

(b) *Definitions*—(1) Bioavailability refers to the rate and extent to which the administered compound is absorbed, i.e., reaches the systemic circulation.

(2) Relative percent of percutaneous absorption is defined as 100 times the ratio between total urinary excretion of compound following topical administration and total urinary excretion of compound following intravenous injection.

(c) *Test procedures*—(1) *Animal selection*—

(i) *Species.* The species utilized for investigating the test substance shall be the rat, a species for which historical data on the toxicity and carcinogenicity of several compounds are available and which is used extensively in percutaneous absorption studies.

(ii) *Animals.* Adult female Fischer 344 rats shall be used. The rats shall be 7 to 9 weeks old and weigh 125 to 175 grams. Prior to testing the animals shall be selected at random for each group. Animals showing signs of ill health shall not be used.

(iii) *Animal care.* (A) The animals should be housed in environmentally controlled rooms with 10 to 15 air changes per hour. The rooms should be maintained at a temperature of 25±2° C and humidity of 50±10 percent with a 12-hour light/dark cycle per day. The rats should be kept in a quarantine facility for at least 7 days prior to use.

(B) During the acclimatization period, the rats should be housed in cages on hardwood chip bedding. All animals shall be provided with conventional laboratory diets and water *ad libitum.*

(2) *Administration of test substance*—(1) *Test compound.* Test studies require the use of both nonradioactive test substance and ^{14}C-labeled test substance. Both preparations are needed to investigate under paragraph (a)(2) of this section. The use ^{14}C-test substance is required to investigate under paragraphs (a)(1), (2), and (3) of this section because it will facilitate the work, improve the reliability of quantitative determinations, and increase the probability of observing the presence of previously unidentified metabolities.

(ii) *Dosage and treatment.* (A) Two doses shall be used in the study, a "low" dose and a "high" dose. When administered orally, the "high" dose level should ideally induce some overt toxicity such as weight loss. The "low" dose level should correspond to a no-effect level.

(B) The same "high" and "low" doses shall be administered orally and dermally.

(C) Oral dosing shall be performed by gavage or by administering encapsulated test substance. Whichever method is selected for this study shall be the same as used for the 90-day oral subchronic toxicity testing conducted for comparison purposes.

(D) For dermal treatment, the doses shall be applied at a volume adequate to deliver the prescribed doses. The backs of the rats should be lightly shaved with an electric clipper shortly before treatment. The dose shall be applied with a micropipette on 2 cm^2 of the freshly shaven skin. The dosed areas shall be occluded with an aluminum foil patch which is secured in place with adhesive tape.

(iii) *Bioavailability study in rats.* At least eight rats shall receive a single intravenous (low) dose of ^{14}C-test substance and serial samples of blood removed from four animals at 15 minutes, 30 minutes, 1 hour, 8 hours, 24 hours, 48 hours, and 96 hours. All animals shall be housed in metabolism cages and urine and feces collected at 8, 24, 48, 72, and 96 hours. The procedure shall be repeated with eight rats in which ^{14}C-test substance is maintained in contact with the skin for the duration of the study (96 hours). If dermal adsorption cannot be demonstrated, the study should be repeated using a higher dose. Total radioactivity shall be measured in the blood, urine, and feces samples collected from all animals. The results shall be used to construct a blood concentration-time curve and to calculate bioavailability by the ratio of the total 96-hour urinary excretion of radioactivity after dermal and intravenous administration. Bioavailability is expressed as (percent dose dermal/percent dose intravenous)×100=percent dermal absorption. Urine shall be saved for metabolite identification, if it becomes necessary.

(iv) *Biotransformation in rats after oral and dermal administration.* Eight rats shall be dosed orally, and eight rats shall be dosed dermally (96-hour contact) with the high dose of ^{14}C-test substance. The results of the bioavailability study (see paragraph (c)(2)(iii) of this section shall be evaluated first to ensure that the dermal dose applied will result in the appearance of radioactivity in the urine. All animals shall be housed in metabolism cages allowing for separate collection of urine and feces at 8, 24, 48, 72, and 96 hours. The parent compound and any metabolite that comprises greater than 10 percent of the dose shall be identified in the urine. These results shall be qualitatively compared to the urinary excretion data obtained in the low dose bioavailability study (see paragraph (c)(2)(iii) of this section); metabolites in the low dose urine shall also be identified if a different pattern of metabolism is evident.

(v) *Repeated dosing study.* Four rats shall receive a series of single daily oral doses of nonradioactive test substance over a period of at least 14 days, followed at 24 hours after the last dose by a single oral dose of ^{14}C-test substance. Each dose shall be at the low-dose level. If the pattern of urinary metabolite excretion is qualitatively different from that obtained with the orally dosed animals in the single-dose biotransformation study at 24 and 48 hours (see paragraph (c)(2)(iv) of this section), metabolites shall be identified in accordance with the procedure given in paragraph (c)(2)(iii) of this section.

(vi) *Skin washing study.* If greater than 10 percent of test substance is absorbed through the skin (see paragraphs (c)(2) (ii) and (iii) of this section) then a washing efficacy

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experiment shall be performed to assess the extent of removal of the applied test substance by washing with soap and water. Four rats should be lightly anesthetized and treated with a dermal dose of test compound previously shown to result in measurable percutaneous absorption greater than 10 percent. Soon after application (5 to 10 minutes) the treated animals shall be washed with soap and water, then housed in individual metabolism cages for excreta collection. Measurements of total radioactivity in urine and feces shall be made in the same manner as described in paragraph (c)(2)(iii) of this section.

(d) *Data and Reporting*—(1) *Treatment of results.* Data shall be summarized in tabular form.

(2) *Evaluation of results.* All observed results, quantitative or incidental, shall be evaluated by an appropriate statistical method.

(3) *Test report.* In addition to the reporting requirements as specified in the TSCA Good Laboratory Practice Standards, 40 CFR Part 792, Subpart J, the following specific information shall be reported:

(i) Species, strain, and supplier of laboratory animals.

(ii) Information on the degree (i.e., specific activity for a radiolabel) and site(s) of labeling of the test substances.

(iii) A full description of the sensitivity and precision of all procedures used to produce the data.

(iv) Relative percent absorption by the dermal route for rats administered low and high doses of ^{14}C-test substance, compared with 100 percent of the intravenous dose.

(v) Quantity of isotope, together with percent recovery of the administered dose, in feces, urine, and blood.

(vi) Biotransformation pathways and quantities of the test substance and metabolites in urine collected after administering single high and low oral and dermal doses.

(vii) Biotransformation pathways and quantities of test substance and metabolites in urine collected after administering repeated low doses of test substance to rats.

§ 795.260 Subchronic oral toxicity test.

(a) *Purpose.* In the assessment and evaluation of the toxic characteristics of a test substance, the determination of subchronic oral toxicity may be carried out after initial information on toxicity has been obtained by acute testing. The subchronic oral study has been designed to permit the determination of the no-observed-effect level and toxic effects associated with continuous or repeated exposure to a test substance for a period of 90 days. The test is not capable of determining those effects that have a long latency period for development (e.g., carcinogenicity and life shortening). It provides information on health hazards likely to arise from repeated exposure by the oral route over a limited period of time. It will provide information on target organs, the possibilities of accumulation, and can be of use in selecting dose levels for chronic studies and for establishing safety criteria for human exposure.

(b) *Definitions.* (1) Subchronic oral toxicity is the adverse effects occurring as a result of the repeated daily exposure of experimental animals to a chemical for a part (approximately 10 percent for rats) of a life span.

(2) Dose is the amount of test substance administered. Dose is expressed as weight of test substance (g, mg) per unit weight of test animal (e.g., mg/kg), or as weight of test substance per unit weight of food or drinking water.

(3) No-effect level/No-toxic-effect level/No-adverse-effect level/No-observed-effect level is the maximum dose used in a test which produces no observed adverse effects. A no-observed-effect level is expressed in terms of the weight of a substance given daily per unit weight of test animal (mg/kg). When administered to animals in food or drinking water, the no-observed-effect level is expressed as mg/kg of food of mg/ml of water.

(4) Cumulative toxicity is the adverse effects of repeated doses occurring as a result of prolonged action on, or increased concentration of, the administered substance or its metabolites in susceptible tissue.

(c) *Principle of the test method.* The test substance is administered orally in graduated daily doses to several groups of experimental animals, one dose level per group, for a period of 90 days. During the period of administration the animals are observed daily to detect signs of toxicity. Animals which die during the period of administration are necropsied. At the conclusion of the test all animals are necropsied and histopathological examinations carried out.

(d) *Test procedures*—(1) *Animal selection*—

(i) *Species.* Rats and mice shall be used.

(ii) *Age.* (A) Young adult animals shall be employed. At the commencement of the study the weight variation of animals used shall not exceed ± 20 percent of the mean weight for each sex.

(B) Dosing shall begin as soon as possible after weaning, ideally before the animals are 6 weeks old, and in any case not more than 8 weeks old.

(iii) *Sex.* (A) Equal numbers of animals of each sex should be used at each dose level.

(B) The females should be nulliparous and non-pregnant.

(iv) *Numbers.* (A) At least 20 rats and 20 mice (10 females and 10 males of each species) shall be used at each dose level.

(B) If interim sacrifices are required, the number shall be increased by the number of animals scheduled to be sacrificed before the completion of the study.

(2) *Control groups.* A concurrent control group is required. This group shall be an untreated or sham-treated control group or, if a vehicle is used in administering the test substance, a vehicle control group. If the toxic properties of the vehicle are not known or cannot be made available, both untreated and vehicle control groups are required.

(3) *Satellite group.* A satellite group of 20 rats and 20 mice (10 females and 10 males of each species) shall be treated with the high dose level for 90 days and observed for reversibility, persistence, or delayed occurrence of toxic effects for a post-treatment period of not less than 28 days.

(4) *Dose levels and dose selection.* (i) In subchronic toxicity tests, it is desirable to have a dose response relationship as well as no-observed-toxic-effect level. Therefore, at least three dose levels with a control and, where appropriate, a vehicle control (corresponding to the concentration of vehicle at the highest exposure level) shall be used. Doses should be spaced appropriately to produce test groups with a range of toxic effects. The data shall be sufficient to produce a dose-response curve.

(ii) The highest dose level shall result in toxic effects but not produce an incidence of fatalities which would prevent a meaningful evaluation.

(iii) The lowest dose level shall not produce any evidence of toxicity. Where there is a usable estimation of human exposure the lowest dose level shall exceed this.

(iv) Ideally, the intermediate dose level(s) should produce minimal observable toxic effects. If more than one intermediate dose is used, the dose levels should be spaced to produce a gradation of toxic effects.

(v) The incidence of fatalities in low and intermediate dose groups and in the controls should be low to permit a meaningful evaluation of the results.

(5) *Exposure conditions.* Ideally the animals should be dosed with the test substance on a 7-day per week basis

over a period of 90 days. However, based primarily on practical considerations, dosing by gavage or capsule studies on a 5-day per week basis shall be acceptable.

(6) *Observation period.* (i) Duration of observation shall be for at least 90 days.

(ii) Animals in the satellite group scheduled for followup observations shall be kept for not less than 28 days without treatment to detect recovery from, or persistence of, toxic effects.

(7) *Administration of the test substance.* (i) The test substance shall be administered in the diet or in capsules. Alternatively, it may be administered by gavage or in the drinking water.

(ii) All animals shall be dosed by the same method during the entire experimental period.

(iii) Where necessary, the test substance is dissolved or suspended in a suitable vehicle. If a vehicle or diluent is needed, ideally it should not elicit important toxic effects itself nor substantially alter the chemical or toxicological properties of the test substance. It is recommended that wherever possible the usage of an aqueous solution be considered first, followed by consideration of a solution of oil, and then by possible solution in other vehicles.

(iv) For substances of low toxicity, it is important to ensure that when administered in the diet the quantities of the test substance involved do not interfere with normal nutrition. When the test substance is administered in the diet, either a constant dietary concentration (ppm) or a constant dose level in terms of the animals' body weight shall be used; the alternative used shall be specified.

(v) For a substance administered by gavage or capsule, the dose shall be given at similar times each day, and adjusted at intervals (weekly or biweekly) to maintain a constant dose level in terms of animal body weight.

(8) *Observation of animals.* (i) Each animal shall be handled and its physical condition appraised at least once each day.

(ii) Additional observation shall be made daily with appropriate actions taken to minimize loss of animals to the study (e.g., necropsy or refrigeration of those animals found dead and isolation or sacrifice of weak or moribund animals).

(iii) Signs of toxicity shall be recorded as they are observed including the time of onset, degree, and duration.

(iv) Cage-side observations shall include, but not be limited to, changes in skin and fur, eyes and mucous membranes, respiratory, circulatory, autonomic and central nervous systems, somatomotor activity, and behavior pattern.

(v) Measurements shall be made weekly of food consumption or water consumption when the test substance is administered in the food or drinking water, respectively.

(vi) Animals shall be weighed weekly.

(vii) At the end of the 90-day period all survivors in the nonsatellite treatment group shall be sacrificed. Moribund animals shall be removed and sacrificed when noticed.

(9) *Clinical examinations.* (i) The following examinations shall be made on at least five animals of each sex in each group of rats.

(A) Certain hematology determinations shall be carried out just prior to terminal sacrifice at the end of the test period. The following hematology determinations shall be carried out: Hematocrit, hemoglobin concentration, erythrocyte count, total and differential leucocyte count, and a measure of clotting potential such as clotting time, prothrombin time, thromboplastin time, or platelet count.

(B) Certain clinical biochemistry determinations shall be carried out just prior to terminal sacrifice at the end of the test period. The following clinical biochemical test areas shall be carried out: Electrolyte balance, carbohydrate metabolism, and liver and kidney function. The selection of additional tests shall be influenced by observations on the mode of action of the substance. Suggested additional determinations include: calcium, phosphorus, chloride, sodium, potassium, fasting glucose (with period of fasting appropriate to the species/breed), serum glutamic-pyruvic transaminase (now known as serum alanine aminotransferase), serum glutamic oxaloacetic transaminase (now known as serum aspartate aminotransferase), ornithine decarboxylase, gamma glutamyl transpeptidase, urea nitrogen, albumen, blood creatinine, total bilirubin, and total serum protein measurements. Other determinations which may be necessary for an adequate toxicological evaluation include analyses of lipids, hormones, acid/base balance, methemoglobin, and cholinesterase activity. Additional clinical biochemistry may be employed where necessary to extend the investigation observed effects.

(ii) The following examinations shall be made on at least five animals of each sex in each group.

(A) Ophthalmological examination, using an ophthalmoscope or equivalent suitable equipment, shall be made prior to the administration of the test substance and at the termination of the study. If changes in the eyes are detected, all animals shall be examined.

(B) Urinalysis is required only when there is an indication based on expected or observed toxicity.

(10) *Gross necropsy.* (i) All animals shall be subjected to a full gross necropsy which includes examination of the external surface of the body, all orifices, and the cranial, thoracic and abdominal cavities and their contents.

(ii) At least the liver, kidneys, adrenals, gonads, and brain shall be weighed wet, as soon as possible after dissection to avoid drying.

(iii) The following organs and tissues, or representative samples thereof, shall be preserved in a suitable medium for possible future histopathological examination: All gross lesions; brain—including sections of medulla/pons, cerebellar cortex and cerebral cortex; pituitary; thyroid/parathyroid; thymus; lungs; trachea; heart; sternum with bone marrow; salivary glands; liver; spleen; kidneys/adrenals; pancreas; gonads; uterus; accessary genital organs (epididymis, prostrate, and, if present, seminal vesicles); aorta; (skin), (non-rodent gall bladder); esophagus; stomach; duodenum; jejunum; ileum; cecum; colon; rectum; urinary bladder; representative lymph node; (mammary gland), (thigh musculature), peripheral nerve; (eyes), (femur including articular surface), (spinal cord at three levels—cervical, midthoracic and lumbar); and, (rodent-exorbital lachrymal glands).

(11) *Histopathology.* (i) Full histopathology shall be performed on the organs and tissues, listed under paragraph (d)(10) (ii) and (iii) of this section of all animals in the control and high-dose groups, and all animals that died or were killed during the study.

(ii) Histopathology shall be performed on all gross lesions in all animals.

(iii) Histopathology shall be performed on target organs in all animals.

(iv) Histopathology shall be performed on the tissues mentioned in brackets under paragraph (d)(10)(iii) of this section if indicated by signs of toxicity or target organ involvement.

(v) Histopathology shall be performed on lungs, liver, and kidneys of all animals. Special attention to examination of the lungs should be made for evidence of infection since this provides a convenient assessment of the state of health of the animals.

(vi) For the satellite group, histopathology shall be performed on tissues and organs identified as showing effects in the treated groups.

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(e) *Data and reporting*—(1) *Treatment of results.*

(i) Data shall be summarized in tabular form, showing for each test group the number of animals at the start of the test, the number of animals showing lesions, the type of lesions, and the percentage of animals displaying each type of lesion.

(ii) All observed results, quantitative and incidental, shall be evaluated by an appropriate statistical method. Any generally acceptable statistical methods may be used; the statistical methods should be selected during the design of the study.

(2) *Evaluation of the study results.* (i) The findings of a subchronic oral toxicity study should be evaluated in conjunction with the findings of preceding studies and considered in terms of the toxic effects and the necropsy and histopathological findings. The evaluation shall include the relationship between the dose of the test substance and the presence or absence, the incidence and severity, of abnormalities, including behavioral and clinical abnormalities, gross lesions, identified target organs, body weight changes, effects on mortality and any other general or specific toxic effects. The test shall provide a satisfactory estimation of a no-effect level.

(ii) In any study which demonstrates an absence of toxic effects, further investigation to establish absorption and bioavailability of the test substance shall be considered.

(3) *Test report.* In addition to the reporting requirements as specified in the TSCA Good Laboratory Practice Standards, Subpart J of Part 792 of this chapter, the following specific information shall be reported:

(i) *Group animal data.* Tabulation of toxic response data by species, strain, sex, and exposure level for:

(A) Number of animals dying.

(B) Number of animals showing signs of toxicity.

(C) Number of animals exposed.

(ii) *Individual animal data.* (A) Time of death during the study or whether animals survived to termination.

(B) Time of observation of each abnormal sign and its subsequent course.

(C) Body weight data.

(D) Food consumption data when collected.

(E) Hematological tests employed and all results.

(F) Clinical biochemistry tests employed and all results.

(G) Necropsy findings.

(H) Detailed description of all histopathological findings.

(I) Statistical treatment of results where appropriate.

PART 799—[AMENDED]

2. In Part 799:

a. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

b. By adding § 799.1650, to read as follows:

§ 799.1650 2-Ethylhexanoic acid.

(a) *Identification of test substance.* (1) 2-Ethylhexanoic acid (CAS No. 149–57–5) (hereinafter "EHA") shall be tested in accordance with this section.

(2) EHA of at least 99-percent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests, and submit data.* All persons who manufacture or process EHA other than as an impurity from the effective date of this section, December 20, 1986, to the end of the reimbursement period shall submit an exemption application, or shall submit a letter of intent to conduct testing, study plans, conduct tests, and submit data as specified in this section, Subpart A of this Part, and Parts 790 and 792 of this chapter. The end of the reimbursement period shall be 5 years after the submission of the last final report required under this test rule.

(c) *Health effects testing*—(1) *Pharmacokinetics*—

(i) *Required testing.* Metabolism studies of the oral and dermal routes of exposure shall be conducted with EHA using Fischer 344 rats in accordance with the test standard specified in § 795.223 of this chapter.

(ii) *Reporting requirements.* (A) Study plans shall be provided to the Agency at least 45 days prior to initiating testing.

(B) An interim progress report shall be provided to the Agency 6 months after the effective date of the final test rule.

(C) The final report of results shall be submitted to the Agency no later than 1 year from the effective date of the final test rule.

(2) *Subchronic toxicity*—(i) *Required testing.* Subchronic toxicity tests shall be conducted with EHA using Fischer 344 rats and B6C3F1 mice in accordance with the test standard specified in § 795.260 of this chapter.

(ii) *Reporting requirements.* (A) Study plans shall be provided to the Agency at least 45 days prior to initiating testing.

(B) Interim progress reports shall be provided to the Agency 6 months and 12 months after the effective date of the final test rule.

(C) The final report of results shall be submitted to the Agency no later than 15 months from the effective date of the final test rule.

(3) *Administration of test substance.* Oral dosing for testing required under paragraph (c) (1) and (2) of this section shall be by the same method for both tests, as specified in § 795.223(c)(2)(ii)(C) of this chapter.

(4) *Development toxicity*—(i) *Required testing.* Developmental toxicity tests shall be conducted with EHA using one rodent and one nonrodent mammalian species in accordance with the OECD guideline entitled "Teratogenicity", No. 414, adopted May 12, 1981. The OECD guideline is available in OECD Publication No. ISBN 92-64-12221-4 and is sold by the OECD Publication and Information Center, Room Number 1207, 1750 Pennsylvania Avenue, NW., Washington, DC. Copies of this document may be inspected at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC, or the OPTS Reading Room (docket No. OPTS–42065), Room N.E.–G004, Environmental Protection Agency, 401 M Street, SW., Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. These materials are incorporated as they exist on the effective date of this rule; a notice of any change will be published in the **Federal Register.**

(ii) *Reporting requirements.* (A) Study plans shall be provided to the Agency at least 45 days prior to initiating testing.

(B) Interim progress reports shall be provided to the Agency 6 months and 12 months after the effective date of the final test rule.

(C) The final report of results shall be submitted to the Agency no later than 18 months from the effective date of the final test rule.

(Information collection requirements are approved by the Office of Management and Budget under control number 2070–0033.)

[FR Doc. 86–24992 Filed 11–5–86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–6728]

Changes in Flood Elevation Determinations; Illinois; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule; correction.

SUMMARY: This document corrects a Notice of Changes in Flood Elevation Determinations previously published at 51 FR 31635 on September 4, 1986. This correction notice provides a more accurate representation of the dates the newspaper notice was published for the Village of Lincolnshire, Lake County, Illinois.

FOR FURTHER INFORMATION CONTACT: Mr. John Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Changes in Flood Elevation Determinations for selected locations in the Village of Lincolnshire previously published at 51 FR 31635 on September 4, 1986, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 65.

On page 31635, in the September 4, 1986 issue of the **Federal Register**, entry under "Illinois: Lake, Village of Lincolnshire", is corrected to read as follows:

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Illinois: Lake	Village of Lincolnshire	August 28, 1986, September 4, 1986, The Deerfield Review.	The Honorable Evelyn Cooper, Mayor, Village of Lincolnshire, 175 Olde Half Day Road, Lincolnshire, Illinois 60069.	July 24, 1986	170378

Issued: October 30, 1986.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 86-25060 Filed 11-5-86; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Administration

48 CFR Parts 2413 and 2433

[Docket No. R-86-1263; FR-2098]

Implementation of the Competition in Contracting Act of 1984 Into the HUD Acquisition Regulation

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Final rule.

SUMMARY: This final rule adopts the interim rule for the implementation of the Competition in Contracting Act of 1984 (CICA) into the HUD Acquisition Regulation (HUDAR), which was published in the **Federal Register** of November 8, 1985 (50 FR 46572). In addition, it revises the interim rule to reflect the broadened authority of the General Accounting Office (GAO) under CICA to decide bid protests and GAO's recent decision in *Matter of CoMont, Inc.* that GAO has jurisdiction to decide protests of National Housing Act procurements. This rule also revises the interim rule to reflect current procedures for the Department's treatment of bid protests and to delegate to the Senior Procurement Executive the authority to establish further procedures for the use of imprest funds in accordance with Treasury requirements.

DATE: *Effective Date:* Upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, but not before further notice of the effective date is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Edward L. Girovasi, Jr., Director, Policy and Evaluation Division, Office of Procurement and Contracts, telephone (202) 755-5294. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The uniform regulation for the procurement of supplies and services by Federal departments and agencies, the Federal Acquisition Regulation (FAR), was promulgated on September 19, 1983 (48 FR 42102). The FAR is codified in Title 48, Chapter 1 of the Code of Federal Regulations. The FAR has been signficantly revised to implement the Competition in Contracting Act of 1984 (CICA) (41 U.S.C. 253, 41 U.S.C. 403, and 31 U.S.C. 3551-3556).

HUD promulgated its regulations to implement the FAR on March 1, 1984 (49 FR 7696). The HUD Acquisition Regulation (HUDAR) was revised in an interim rule published in the **Federal Register** of November 8, 1985 (50 FR 46572) to implement CICA. This interim rule was later amended by technical corrections published in the **Federal Register** of March 7, 1986 (51 FR 7947). (For a description of the pertinent regulatory provisions of the FAR, the HUDAR, and the CICA, see 50 FR 46572-46574, November 8, 1985.)

II. Interim Rule for the Implementation of CICA

The interim HUDAR rule of November 8, 1985 supplemented the FAR procedures for the implementation of CICA. In particular, the interim rule supplemented the FAR in the following topic areas: (1) The designation of certain managers and staff in HUD to carry out various competition in contracting requirements, (2) the designation of "competition advocates" to implement certain responsibilities under CICA, and (3) the establishment of bid protest procedures implementing various functions under CICA. Because of the possibility of public interest in portions of the rule, the Department published these HUDAR changes as interim rulemaking and provided for a public comment period of 60 days. No public comments were received. However, HUD has determined that several revisions to the interim rule are necessary to accord with the Department's current procurement procedures.

III. Revisions to the Interim Rule

A. Authority of GAO for the Resolution of Bid Protests

Section 2741 of CICA (31 U.S.C. 3551-3556) modified Federal procurement law affecting procedures for bid protests. In particular, section 2741 of CICA specifically authorizes the Comptroller General of the General Accounting Office (GAO) to decide bid protests concerning procurement decisions of Federal agencies. FAR Subpart 33.1 (Protests) and Subpart 33.2 (Disputes and Appeals) implement those procedures, with certain exemption. HUDAR Part 2433 of the interim rule implemented CICA section 2741 and established procedures for the consideration of bid protests.

In *Matter of CoMont, Inc.* B-219730 (November 15, 1985), the Comptroller General has determined that bid protests of procurement contracts awarded under the National Housing Act (NHA), 12 U.S.C. 1702, are subject to

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GAO's statutory authority under CICA to decide protests of procurements by Federal agencies. Prior to the enactment of CICA, the Comptroller General has held that GAO lacked jurisdiction to decide protests of National Housing Act procurements.

Because GAO may now consider NHA bid protests, the Department is revising the bid protest provisions of the HUDAR to cover protests of departmental procurements awarded under the authority of the NHA. Accordingly, this rule deletes the exemption in HUDAR Part 2433.000 for procurements under the Acquired Property Program. (In addition, the Department has promulgated a final rule (which was published in the **Federal Register** of August 7, 1986, 51 FR 28364) rescinding the authority of the HUD Board of Contract Appeals to decide bid protests of NHA contracts.) As a result of today's rule, interested parties protesting future departmental procurements under the NHA will file their protests with the Contracting Officer or GAO.

This rule also revises HUDAR 2433.104(f) which involves situations where HUD decides not to comply with a GAO recommendation on a bid protest. Under current HUDAR 2433.104(f), the Head of the Contracting Activity (HCA) must report to GAO if HUD has decided not to comply with a GAO recommendation concerning a bid protest against a HUD procurement decision. Under this revision to the HUDAR, the HCA must obtain the concurrence of the Senior Procurement Executive (the Assistant Secretary for Administration) and the Office of General Counsel if he or she decides not to comply with a GAO recommendation. The purpose for this revision is to ensure that this decision by the HCA will be approved by the HUD official who has been delegated authority to set HUD procurement policy and by counsel.

In addition, HUDAR 2433.104–70 is added, to provide for notice procedures to GAO on protests filed for procurements under the Department's Acquired Property Program. This section provides for HUD Headquarters' review of proposals not to implement a GAO recommendation by requiring the HCA to notify the Reconditioning and Contracting Branch, Office of Multifamily Housing of its proposal within 30 days of receiving GAO's recommendation. The Chief of the Reconditioning and Contracting Branch shall then notify GAO a HUD's decision not to comply with GAO's recommendation.

B. Authority of the GSBCA for the Resolution of ADP Bid Protests

Section 2713 of CICA provides that a protest against a Federal agency's awarding of an automated data processing (ADP) procurement may now be filed with the General Services Board of Contract Appeals (GSBCA). The GSBCA has the authority to make a final determination concerning such protests, and pending its decision and at the request of an interested party, the GSBCA may suspend the agency's procurement authority to acquire further goods or services under the protested contract. The GSBCA will suspend the procurement authority unless the agency establishes that urgent and compelling circumstances significantly affecting the interests of the United States will not permit waiting for the decision of the Board. GSBCA's procedures require that the urgent and compelling circumstances must be established by a Determination and Finding (D&F) executed by the agency head or designee. FAR 33.105 states procedures for filing and resolution of these protests.

Under the current HUDAR 2433.105(d)(2), the HCA has the authority to execute the Determination and Finding (D&F) that establishes the circumstances for GSBCA's not suspending the Department's authority to award an ADP procurement. This revision to HUDAR 2433.105(d)(2) requires that the Assistant Secretary for Administration execute the D&F. The purpose of this revision is to ensure that the individual responsible for both ADP and procurement policy executes the D&F.

C. Imprest Fund Limitations

The addition of HUDAR 2413.404(a) delegates to the Senior Procurement Executive the authority to establish additional procedures for the use of imprest funds in accordance with Treasury requirements.

IV. Miscellaneous

A. Executive Order 12291

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291. The rule does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local agencies or geographic regions; or (3) have significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rule involves modifications of various departmental procedures for HUD procurement activities. These modifications will not affect specific HUD contractors or prospective contractors, but rather revise the procedures for HUD procurement decisions. In addition, the revisions to HUDAR Part 2433 merely implement certain precedents set by the Comptroller General.

B. Regulatory Flexibility Act

Consistent with the provisions of section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities because to the extent changes are made to current regulations, they are designed to foster and promote participation of small entities in the Department's procurement program.

C. Paperwork Reduction Act

HUDAR 2401.105 of this interim rule states that under the Paperwork Reduction Act of 1980 (44 U.S.C. 3520), information collection requests covered by the Act have been approved by OMB. This final rule refers to departmental procedures for HUD procurement activities and does not involve additional information collection burdens to those in the May 1984 HUDAR.

The following OMB control number applies for information collection requests under this final rule: OMB Approval Number 2535–0091. The expiration date is March 31, 1987. This OMB approval refers to the following information collection activities: (1) Organizational conflict of interest disclosure or representation (2409.504(a)); (2) organizational conflict of interest clause (2409.504(b)); (3) determination of award fee earned clause (2416.405(e)(1)); and (4) certification of status as a Minority Business Enterprise (MBE) (2421.103).

D. National Environmental Policy Act

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

E. Administrative Procedure Act

With the exception of revisions to HUDAR Parts 2413 and 2433, the text of this rule is identical to the interim rule published on November 8, 1985 as amended by a March 7, 1986 final rule making minor technical corrections. The Department traditionally has provided for prior notice and comment even when not required by the Administrative Procedure Act (*see* 24 CFR 10.1). Although this is the general policy of the Department, we have determined, with respect to the largely procedural revisions to HUDAR 2413 and 2433 contained in this rule, that it is unnecessary to delay promulgation. The revisions to the interim rule implement the *CoMont* decision of the Comptroller General and provide other revisions to include the Department's Senior Procurement Executive in certain HUD procurement decisions.

F. Department's Semiannual Agenda of Regulations

This final rule is listed as item 948 in the Department's Semiannual Agenda of Regulations published on October 27, 1986 (51 FR 38424, 38465) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 48 CFR Parts 2413 and 2433

Government procurement.

Accordingly, the interim rule published on June 6, 1984 (50 FR 46572) as amended by a March 7, 1986 final rule (51 FR 7947) making technical revisions is adopted as final without further change, except as indicated below.

PART 2413—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

1. The authority citation for 48 CFR Part 2413 is revised to read as follows:

Authority: Section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. The Table of Contents for Part 2413 is revised to read as follows:

Subpart 2413.4—Imprest Fund

Sec.
2413.403 Agency responsibilities.
2413.404 Conditions for use.

3. A new 2413.404 is added, to read as follows:

§ 2413.404 Conditions for use.

(a) The transaction does not exceed $500 or such other limits as have been approved by the Senior Procurement Executive;

PART 2433—PROTESTS, DISPUTES, AND APPEALS

4. The authority citation for 48 CFR Part 2433 continues to read as follows:

Authority: Competition in Contracting Act of 1984 (31 U.S.C. 3551–3556); sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

5. The Table of Contents for Part 2433 is revised to read as follows:

Sec.
2433.000 Scope of part.

Subpart 2433.1—Protests

2433.101–70 Definitions.
2433.102 General.
2433.102–70 Responsibility.
2433.103 Protests to the agency.
2433.103–70 Times for filing
2433.103–71 Agency decision.
2433.104 Protests to GAO.
2433.104–70 Notice to GAO on protests filed under the Acquired Property Program.
2433.105 Protests to GSBCA.

6. HUDAR 2433.000 is revised to read as follows:

2433.000 Scope of part.

This part identifies the responsible agents and sets forth procedural requirements for handling protests.

7. HUDAR 2433.104, paragraph (f) is revised to read as follows:

2433.104 Protests to GAO.

* * * * *

(f) *Notice to GAO.* If the HCA proposes not to comply with a GAO recommendation concerning the resolution of a protest of a procurement award, prior to reporting to the Comptroller General concerning that decision, the HCA shall obtain the concurrence of the Office of General Counsel and the Senior Procurement Executive.

8. HUDAR 2433.104–70 is added, to read as follows:

2433.104–70 Notice to GAO on protests filed under the Acquired Property Program.

With respect to protests filed under the Office of Housing's Acquired Property Program, the HCA shall notify the Reconditioning and Contracting Branch, Office of Multifamily Housing Management in the event that he or she proposes not to comply with a GAO recommendation concerning the resolution of a protest. The notification shall be in writing, shall include supporting documentation and a rationale, and shall be submitted to the Reconditioning and Contracting Branch within 30 days from the date of the Department's receipt of GAO's decision. The Reconditioning and Contracting Branch shall obtain the concurrence of the Office of General Counsel and the Senior Procurement Executive. The Chief, Reconditioning and Contracting Branch shall then notify the Comptroller General of the Department's decision not to comply with GAO's recommendation.

9. HUDAR 2433.105 is revised to read as follows:

2433.105 Protests to GSBCA.

(d)(2) The Determination and Findings (D&F) establishing the circumstances for not suspending the Department's procurement authority shall be executed by the Assistant Secretary for Administration.

Dated: October 22, 1986.

Judith L. Tardy,

Assistant Secretary for Administration.

[FR Doc. 86–25069 Filed 11–5–86; 8:45 am]

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Proposed Rules

Federal Register
Vol. 51, No. 215
Thursday, November 6, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Production and Utilization Facilities; Request for Comments on Development of Policy for Nuclear Power Plant License Renewal

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement: Request for comments.

SUMMARY: In light of the industry and government initiatives which are already underway, the U.S. Nuclear Regulatory Commission (the Commission) is considering the development of a regulatory policy on extending nuclear power plant licenses beyond 40 years. In order to solicit early comments from the public, industry and other government agencies on various issues that will require timely resolution, responses to questions bearing on the issues that the Commission has identified to date are being solicited via this notice of a Request for Comments on Development of Policy for Nuclear Power Plant License Renewal.

DATE: The comment period expires January 5, 1987.

ADDRESSES: Send written comments or suggestions to the Secretary of the Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received by the Commission may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Jerry E. Jackson, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555 Telephone (301) 492–8544.

SUPPLEMENTARY INFORMATION: In the early part of the twenty-first century, a significant number of the licenses for the existing operating nuclear power plants are due to expire. Without renewal of these licenses, these plants will be shut down and their generating capacity will be lost. If this potential loss of generating capacity is combined with potential losses of electric generating capacity from other existing non-nuclear sources, the electric power which would have to be supplied from new generating capacity is substantial. In response to their recognition of this situation and the necessity to address life extension issues early, the utilities, industry and the Department of Energy (DOE) are sponsoring programs to study plant life extension for both nuclear and non-nuclear generating plants.

The Commission recognizes the long term nature of the issues and believes that it may be desirable to develop an agency policy at this time to help assure that issues which could affect public health and safety are identified and resolved in a timely manner. And, further, it would be a help in planning for the nation's long term stable supply of commercial nuclear energy. In addition, although not all issues can be resolved at this time, it may be useful at this time to develop a unified approach to the extension of operating licenses beyond 40 years. The Commission also believes that the operating performance of nuclear power plants, especially in the 10 to 20 years prior to the end of a plant's operating license term will be a significant factor in its determination of any license extension. Therefore, it is the Commission's intention that any license extension and the conditions for extending a license will take into account the operating performance history of the power plant.

Applicable Statutory Requirements

The current regulatory requirements for extending a plant's operating license are quite general. Chapter 10, section 103(c) of the Atomic Energy Act of 1954, as amended, states:

> Each license shall be issued for a specified period, as determined by the Commission, depending on the type of activity to be licensed, but not exceeding forty years, and may be renewed upon the expiration of such period.

10 CFR 50.51 reflects this requirement and states:

> Each license will be issued for a fixed period of time to be specified in the license but in no case to exceed 40 years from the date of issuance . . . . Licenses may be renewed by the Commission upon the expiration of the period.

Another important provision is stated in Title 5 of the U.S. Code, Chapter 5, Subchapter II, section 558(c):

> . . . When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been fully determined by the agency.

10 CFR 2.109 implements this provision by providing that:

> If, at least thirty (30) days prior to the expiration of an existing license authorizing any activity of a continuing nature, a licensee files an application for a renewal or for a new license for the activity so authorized, the existing license will not be deemed to have expired until the application has been finally determined.

Current NRC Initiatives

In its 1986 Policy and Planning Guidance, the Commission has stated:

> Requests for an operating license renewal are to be anticipated and will require advanced planning and analysis. The Commission intends to continue development of the policies and criteria to define requirements for operating license extensions to help assure that industry's efforts in this area are focused on the primary regulatory concerns.

The following guidance is provided to the staff to implement this policy:

> In view of industry initiatives to address operating license renewals, the staff should propose policy guidance and develop licensing criteria to define requirements for operating license extensions. The staff should work with industry to ensure that key regulatory issues are identified.

The NRC staff has approved limited research on nuclear power plant "aging" issues for several years. In recognition of the importance of aging issues to plant life extensions and to be responsive to the industry interests in extension of nuclear plant life extension, these efforts have been directed to consider the life extension issue. The NRC staff is in the process of developing its "Plan to Accomplish Technical Integration for Plant Aging/Life Extension." One of the primary purposes of this plan is to integrate current NRC activities in aging so that any overlaps or deficiencies in agency programs may be identified and state-of-the-art information on aging is coordinated and disseminated within the NRC and among its contractors. A key element of this plan is the establishment of a Technical Integration Review Group for Aging and Life Extension (TIRGALEX) which will involve all interested NRC offices in the formulation and implementation of the plan.

Questions for Public Comment

To aid the NRC in developing this policy, and in its planning for timely responses to any requests for nuclear power plant operating license extensions beyond a forty-year period and to help assure that the staff and industry resources are allocated appropriately, and the relevant programs are coordinated effectively, the Commission is soliciting the public, government and industry views on the following issue questions that will require timely resolution.

1. Timeliness of Policy

(a) To what extent should the NRC proceed at this time in defining the regulatory policy which would be applicable to requests by utilities to extend the operational life of commercial light-water power reactors beyond the current forty-year operating license period?

(b) Is an effort by the Commission to formulate such policy well in advance of the expiration of operating licenses appropriate?

(c) When must such a policy be in place? What is the basis for this time?

(d) To what extent are the individual reactor licensees or industry groups acting on behalf of licensees actively planning at this time to request NRC permission for extended operation beyond the expiration of power reactor licenses?

2. Timing and Length of License Extension Requests

(a) What criteria should be applied to judge that a request for license extension is both timely and sufficient?

(b) Current regulations do not define a time limit beyond the initial 40 year term for which plants could operate while being considered for license extension. Should there be a limitation? If so, what should the limiting period beyond the 40 year term be during which a plant could continue operation while undergoing license extension review?

3. Acceptable Level of Plant Safety

(a) In additon to NRC's current requirements, how should the NRC incorporate performance based information coupled with insights derived from probabilistic risk assessment into the decision making process?

(b) Should plants applying for life extension be required to demonstrate conformance to regulations in effect on the date of the extension application? On what basis should a licensee not have to demonstrate continued conformance with applicable rules and regulations?

(c) Should the intent to operate in excess of a forty-year operating period be factored into current and future benefit-cost analyses and safety findings for backfitting considerations? If not, why not?

4. Scope of Plant Life Extension Applications

(a) Should a life extension application be for a specific period of time? If so, for what length should it be? Should the Commission specify varying requirements based on the period requested for life extension?

(b) Which, if any, of NRC's licensing criteria are not appropriate for the purpose of reviewing plant life extension requests?

(c) How and to what extent should the prior operating history of the plant be factored into considerations for license extensions?

5. Technical Considerations for Plant Life Extension

(a) Which components and structures will require residual lifetime evaluations in consideration for license extensions? What are the criteria for the selection of these components and structures?

(b) What are the major technical parameters and criteria which should be considered in NRC reviews to permit power reactor operation beyond the expiration of licenses?

(c) What additional monitoring and maintenance programs will be needed to assure safety during extended life?

(d) Which of these technical factors, including degradation processes and methods for detecting such degradation, are major "leadtime" items requiring data accumulation over the years prior to expiration of power reactor licenses?

(e) How should codes and standards be revised to support license extension?

(f) What investigations and research have been or are going on that address nuclear plant life extension? What mechanisms should be established to assure timely information exchange with the NRC to encourage communication, early consideration and avoid duplication?

6. Schedule for Resolution of Issues

(a) What overall schedule is appropriate to achieve major milestones and for resolution of the issues relative to nuclear plant license extension?

7. Procedural Considerations

(a) Should there be any procedural changes regarding future operating license extensions and current treatment of initial operating license applications? If so, what changes should be made?

(b) Please be as specific as possible, e.g., identify the specific procedural requirement and describe how it should be changed; identify whether such change can be accomplished under the current provisions of applicable statutes or whether it would involve a statutory change.

Dated at Washington, DC, this 3rd day of November 1986.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 86-25112 Filed 11-5-86; 8:45 am]

BILLING CODE 7590-01-M

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10 CFR Part 50

[Docket No. PRM-50-45]

Petition for Rulemaking, Kenneth G. Sexton; Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; extension of comment period.

SUMMARY: On October 6, 1986 (51 FR 35518), the NRC published a notice of a petiton for rulemaking filed by Kenneth G. Sexton. The petition requested that the Commission amend its regulations to require that current methodolgies and analytical techniques be used to reevaluate the established Emergency Planning Zone (EPZ) for nuclear power plants. The notice of receipt requested public comment on the petition and established a comment closing date of December 5, 1986.

In response to requests from the Nuclear Information and Resource Service and the Committee to Bridge the Gap, the NRC is extending the comment period on PRM-50-45 for 90 days from the original comment closing date.

DATES: The comment period for PRM-50-45 has been extended from December 5, 1986 to March 9, 1987.

ADDRESSES: A copy of the petition for rulemaking is available for public inspection in the Commission's Public Room, 1717 H Street, NW., Washington, DC. A copy of the petition may be obtained by writing to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

All persons desire to submit written comments concerning the petition for

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rulemaking should send their comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Acting Branch Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7758 or Toll Free: 800-368-5642.

Dated at Washington, DC, this 3d day of November 1986.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 86-25111 Filed 11-5-86; 8:45am]

BILLING CODE 7590-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 852 3262]

International Masters Publishers Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Los Angeles mail-order seller of recipe cards to honor cancellation and return requests in a timely manner and would prohibit respondent from misrepresenting its return and cancellation policies.

DATE: Comments will be received until January 5, 1987.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave. NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Janet Grady, Director, San Francisco Regional Office, Federal Trade Commission, 450 Golden Gate Ave., San Francisco, CA 94102. (415) 556-1270.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Mail-order, Recipe cards, Trade practices.

Before Federal Trade Commission

[File No. 852-3262]

Agreement Containing Consent Order to Cease and Desist

In the Matter of International Masters Publishers Inc. a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of International Masters Publishers Inc., a corporation, (hereinafter sometimes referred to as proposed respondent), and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between International Masters Publishers Inc., and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent International Masters Publishers Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its offices and principal place of business located at 4929 Wilshire Blvd., Los Angeles, California 90010.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondent that the law has been violated as alleged in the draft of complaint there attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to-order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For purposes of this Order, the following definitions shall apply:

A. "Continuity sales plan" means a sales plan requiring the consumer to receive periodic installments of merchandise or services on approval.

B. "Billing cycle" means that period of time between the sending of one scheduled invoice or billing document (whether accompanying a shipment of goods or not) and the sending of the following scheduled invoice or billing document.

C. "Return" means any item returned under the provisions of a continuity sales plan, as defined above.

D. "Received by respondent" or "receipt by respondent" includes material received at any mail drop respondent has established.

I

It is Ordered that respondent International Masters Publishers Inc. ("IMP"), its successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary division, or other device, in connection with the advertising, offering for sale, sale or distribution of recipe cards or any other product or service by means of a continuity sales plan in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Misrepresenting in any manner, directly or by implication, any term or condition for cancellation of enrollment or return of merchandise, or misrepresenting, in any manner, directly or by implication, any right granted to, or any duty or obligation imposed on, any consumer.

B. Failing, by the end of the first billing cycle following the billing cycle in which a consumer's request for cancellation of enrollment is received by respondent, to cancel that consumer's enrollment, and, if thereafter the consumer is contacted in connection with any obligation arising out of the enrollment, to notify that consumer in writing that the enrollment has been cancelled.

C. Sending a consumer more than one additional installment of merchandise following receipt by respondent of an enrollment cancellation request.

D. Failing, by the end of the first billing cycle following the billing cycle in which a consumer's return of merchandise or goods is received by respondent, to credit that consumer's account for the return, and, if thereafter the consumer is contacted in connection with any obligation arising out of the enrollment, to notify the consumer in writing that the account has been credited for the return; provided, however, that such written notification may be made in a scheduled billing document or in a separately mailed document.

E. Failing to include in the first communication from respondent to each consumer following enrollment in any of respondent's continuity sales programs the statement attached hereto as Attachment A, or a statement similar thereto, explaining return and cancellation policies; provided, however, that should respondent represent to consumers that cancellations of enrollment, credits for returns of merchandise, or the sending of written confirmations thereof will be accomplished in a shorter time than required under Paragraphs I B or I D of this Order, respondent, its successors and assigns, shall amend attachment A to conform with such representation.

II

It is Further Ordered that respondent International Masters Publishers Inc., its successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale or distribution of any recipe card or other product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that any consumer's credit rating will or may be adversely affected, or representing, in any manner, directly or by implication, that there will or may be any adverse consequence to failing to pay any amount claimed to be delinquent, unless there is a reasonable likelihood such rating will be so affected or such consequence will occur.

III

It is Further Ordered that for five (5) years after the date of service of this Order respondent, its successors and assigns shall maintain, and upon written request make available to the Federal Trade Commission for inspection and copying the following records:

A. For a period of two (2) years from the date of receipt, all documents containing, reflecting, or referring to each consumer complaint relating to cancellation of enrollment in a continuity sales plans, return of merchandise, alleged billing error, or collection effort, as well as such documents or records as will disclose any response thereto.

B. For a period of one year from the date of receipt, copies of each written request for cancellation of enrollment received during the week starting with the third Monday of each month.

C. For a period of one year from the date of preparation, records sufficient to show the date on which each return of merchandise and request for cancellation was made effective.

D. For a period of two years from the date of their last use, specimen copies of all form communications, promotional materials, and advertisements as well as documents sufficient to show the period of time when such documents or materials were in use.

IV

It is Further Ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of the Order.

V

It is Further Ordered that respondent shall, within sixty (60) days after service upon it of this Order, submit to the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Attachment A—Important Information: Please Retain for Your Records

Returning Merchandise

To return merchandise to us at no cost to you, simply place the goods in the original package, reseal it, and deposit it in a mailbox. Please allow up to two billing cycles [number of days in two billing cycles] for us to process the return. If you receive an invoice or other request for payment for the merchandise returned, you do not need to pay it.

Cancellation Information

You may cancel your enrollment in our program by calling [number], or by writing to us at [address]. Please allow up to two billing cycles [number of days in two billing cycles] for us to process the cancellation.

In some circumstances, because of unforseen delays, you may receive one additional shipment from us. If so, merely return the merchandise and any enclosed invoice to us. You will not be charged for that shipment.

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Before Federal Trade Commission

[File No. 852-3282]

Analysis of Proposed Consent Order to Aid Public Comment

In the Matter of International Masters Publishers Inc., a corporation.

The Federal Trade Commission has provisionally accepted an agreement containing a consent order to cease and desist from International Masters Publishers Inc ("IMP"). The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns representations and other actions by IMP in connection with its sale of recipe cards through a "continuity program"—*i.e.,* a sales plan requiring consumers enrolling in the program to receive periodic installments of merchandise on approval. The Commission's complaint in this matter charges that IMP represented to consumers that it would honor their enrollment cancellation requests and returns of merchandise within a reasonable period of time. In fact, the complaint alleges, in a substantial number of cases, IMP did not honor enrollment cancellation requests or returns of merchandise in a reasonable period of time. Instead, according to the complaint, a substantial number of consumers were billed and dunned by IMP and collection agencies for returned merchandise or merchandise received after they had attempted to cancel their enrollments.

The complaint also alleges that, in its attempts to collect alleged debts, IMP falsely represented to consumers that referral of their names to a designated credit reporting agency might adversely affect their ability to obtain credit for typical consumer transactions.

The consent order is designed to remedy the practices alleged, as well as to prevent IMP from engaging in similar acts and practices in the future.

Part I of the consent order addresses the issues of enrollment cancellations and returns of merchandise in connection with IMP's continuity sales programs. First, it generally prohibits IMP from misrepresenting the enrollee's rights, duties, and obligations. Second, it specifically requires IMP to honor all requests for enrollment cancellations and merchandise returns by the end of the billing cycle following the billing cycle in which the request or return is received by IMP. It also requires IMP to provide information to consumers on how to cancel enrollments and how to return merchandise.

Part II of the consent order addresses IMP's alleged debt collection misrepresentations by prohibiting IMP from representing that a consumer's credit may be adversely affected if payment is not made unless there is a reasonable likelihood that such a consequence will actually result.

The order also contains provisions requiring IMP to retain records documenting enrollment cancellations, merchandise returns, and consumer complaints.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 86–25053 Filed 11–5–86; 8:45 am]

BILLING CODE 6750-01-M

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1307

Enforcement of Nondiscrimination on the Basis of Handicap in Tennessee Valley Authority Programs

AGENCY: Tennessee Valley Authority.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation would amend the regulation issued by Tennessee Valley Authority for enforcement of section 504 of the Rehabilitation Act of 1973, as amended, in federally assisted programs or activities to include a cross-reference to the Uniform Accessibility Standards.

DATE: To be assured of consideration, comments must be in writing and must be received on or before January 5, 1987.

ADDRESSES: Comments should be sent to: William L. Osteen, Jr., Associate General Counsel, Office of the General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Comments received will be available for public inspection in the TVA Technical Library, 400 West Summit Hill Drive, Knoxville, Tennessee 37902. Copies of this notice are available on tape for persons with impaired vision. They may be obtained at the above address.

FOR FURTHER INFORMATION CONTACT: William L. Osteen, Jr., Associate General Counsel, Office of the General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902, Phone: 856–4142, Commercial (615) 632–4142.

SUPPLEMENTARY INFORMATION: Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), provides that:

> No otherwise qualified handicapped individual in the United States . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. . . .

The existing Tennessee Valley Authority (TVA) section 504 regulation for federally assisted programs requires that new construction be designed and built to be accessible and that alterations of facilities be made in an accessible manner. It requires new construction or alteration to be accomplished in accordance with standards specified by TVA in the contract for the program. The standards used by TVA were ANSI Standard A117.1, "Specifications for Making Buildings and Facilities Accessible to, and Usable by, Physically Handicapped People." The proposed revision states that new construction or alteration accomplished in accordance with the Uniform Federal Accessibility Standards (UFAS) meets the requirements of section 504.

On August 7, 1984, UFAS was issued by the four agencies establishing standards under the Architectural Barriers Act (49 FR 31528) (see discussion *infra*). The Department of Justice, as the agency responsible under Executive Order 12250 for coordinating the enforcement of section 504, has recommended that agencies amend their section 504 regulations for federally assisted programs or activities to establish that, with respect to new construction and alterations, compliance with UFAS shall be deemed to be in compliance with section 504. Because facilities subject to new construction or alteration requirements under section 504 are also subject to the Architectural Barriers Act, Government-wide reference to UFAS would diminish potential conflict between standards enforced by the responsible funding agencies under the two statutes. In addition, compliance with UFAS by Federal agencies and States will reduce potential conflicts when a building is subject to the section 504 regulations of more than one Federal agency and also when it is subject to State or local accessibility requirements as well.

Background of Assessibility Standards

The Architectural Barriers Act of 1968, 42 U.S.C. 4151-4157 (1982), requires certain Federal and federally funded buildings to be designed, constructed, and altered in accordance with accessibility standards. It also designates four agencies (the General Services Administration, the Departments of Defense and of Housing and Urban Development, and the U.S. Postal Service) to prescribe the accessibility standards. Section 502 of the Rehabilitation Act of 1973 established the Architectural and Transportation Barriers Compliance Board (ATBCB). In 1978 the Rehabilitation Act was amended to require the ATBCB, inter alia, to issue minimum guidelines and requirements for the standards to be issued by the four standard-setting agencies. The minimum guidelines were published on August 4, 1982 (45 FR 33662), and are codified at 36 CFR Part 1190.[1]

On August 7, 1984, the four standard-setting agencies issued the Uniform Federal Accessibility Standards as an effort to minimize the differences among the four agencies' Barriers Act standards, and among those standards and accessibility standards used by the private sector. The General Services Administration (GSA) and Department of Housing and Urban Development (HUD) have incorporated UFAS into their Barriers Act regulations (*see* 49 FR 31625 (1984) (to be codified at 41 CFR Parts 101-19) (GSA) and 49 FR 31620 (1984) (to be codified at 24 CFR Part 40) (HUD)). In order to ensure uniformity, UFAS was designed to be consistent with the scoping and technical provisions of the ATBCB's minimum guidelines and requirements, as well as with the technical provisions of ANSI A117.1-1980, published by the American National Standards Institute (ANSI). (The 1980 ANSI standard contains few scoping provisions.) ANSI is a private, national organization that publishes recommended standards on a wide variety of subjects. ANSI's original accessibility standard, ANSI A117.1, "Specifications for Making Buildings and Facilities Accessible to, and Usable by, Physically Handicapped People," was published in 1961 and reaffirmed in 1971. The current edition, issued in 1980, is ANSI A117.1-1980. The 1961 and 1980 ANSI standards are frequently used in private practice and by State and local governments.

This proposed amendment would amend the current regulation implementing section 504 in federally assisted programs or activities receiving Federal financial assistance from TVA to refer to UFAS.

The agency has determined that it will not require the use of UFAS, or any other standard, as the sole means by which recipients can achieve compliance with the requirement that new construction and alterations be accessible. To do so would unnecessarily restrict recipients' ability to design for particular circumstances. In addition, it would create conflicts with State or local accessibility requirements that may also apply to recipients' buildings and that are intended to achieve ready access and use. It is expected that in some instances recipients will be able to satisfy the section 504 new construction and alteration requirements by following applicable State or local codes, and vice versa.

Effect of Amendment

The amendment would not affect the current section 504 requirement that new facilities be designed and constructed to be readily accessible and that alterations be accessible to the maximum extent feasible. It would merely provide that compliance with UFAS with respect to buildings shall be deemed compliance with these requirements with respect to those buildings. Thus, for example, an alteration is accessible "to the maximum extent feasible" if it is done in accordance with UFAS. It should be noted that UFAS contains special requirements for alterations where meeting the general standards would be impracticable or infeasible (*see, e.g.*, UFAS 4.1.6(1)(b), 4.1.6(3), 4.1.6(4), and 4.1.7).

The amendment also includes language providing that departures form particular UFAS technical and scoping requirements are permitted so long as the alternative methods used will provide substantially equivalent or greater access to and utilization of the building. Allowing these departures from UFAS will provide recipients with necessary flexibility to design for special circumstances and will facilitate the application of new technologies that are not specified in UFAS. As explained under "Background of Accessibility Standards," we anticipate that compliance with some provisions of applicable State and local accessibility requirements will provide "substantially equivalent" access. In some circumstances, recipients may choose to use methods specified in model building codes or other State or local codes that are not necessarily applicable to their buildings but that achieve substantially equivalent access.

The amendment requires that the alternative methods provide "substantially" equivalent or greater access, in order to clarify that the alternative access need not be precisely equivalent to that afforded by UFAS. Application of the "substantially equivalent access" language will depend on the nature, location, and intended use of a particular building. Generally, alternative methods will staisfy the requirement if in material respects the access is substantially equivalent to that which would be provided by UFAS in such respects as safety, convenience, and independence of movement. For example, it would be permissible to depart from the technical requirement of UFAS 4.10.9 that the inside dimensions of an elevator car be at least 68 inches or 80 inches (depending on the location of the door) on the door opening side, by 54 inches, if the clear floor area and the configuration of the car permits wheelchair users to enter the car, make a 360° turn, maneuver within reach of controls, and exit from the car. This departure is permissible because it results in access that is safe, convenient, and independent, and therefore substantially equivalent to that provided by UFAS.

With respect to UFAS scoping requirements, it would be permissible in some circumstances to depart from the UFAS new construction requirement of once accessible principal entrance at each grade floor level of a building (*see* UFAS 4.1.2(8)), if safe, convenient, and independent access is provided to each level of the new facility by a wheelchair user from an accessible principal entrance. This departure would not be permissible if it required a handicapped person to travel an extremely long distance to reach the spaces served by the inaccessible entrances or otherwise provided access that was substantially less convenient than that which would be provided by UFAS.

It would not be permissible for a recipient to depart from UFAS's requirement that, in new construction of a long-term care facility, at least 50 percent of all patient *bedrooms* be accessible (see section 4.1.4(9)(b)), by using large accessible wards that make it possible for 50 percent of all *beds* in

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[1] The ATBCB Office of Technical Services is available to provide technical assistance to recipients upon request relating to the elimination of architectural barriers. Its address is: U.S. ATBCB, Office of Technical Services, 330 C Street, SW., Washington, DC 20201. The telephone number is (202) 472-2700 (voice/TDD). This is not a toll free number.

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the facility to be accessible to handicapped persons. The result is that the population of handicapped persons in the facility will be concentrated in large wards, while able-bodied persons will be concentrated in smaller, more private rooms. Because convenience for handicapped persons is therefore compromised to such a great extent, the degree of accessibility provided to handicapped persons is not substantially equivalent to that intended to be afforded by UFAS.

It should be noted that the amendment does not require that existing buildings leased by recipients meet the standards for new construction and alterations. Rather, it continues the current Federal practice under Section 504 of treating newly leased buildings as subject to the program accessibility standard for existing facilities.

The proposed revision includes language modifying the effect of UFAS 4.1.6(1)(g), which provides an exception to UFAS 4.1.6, *Accessible buildings: alterations.* Section 4.1.6(1)(g) of UFAS states that "mechanical rooms and other spaces which normally are not frequented by the public or employees of the building or facility or which by nature of their use are not required by the Architectural Barriers Act to be accessible are excepted from the requirements of 4.1.6." Particularly after the development of specific UFAS provisions for housing alterations and additions, UFAS 4.1.6(1)(g) could be read to exempt alterations to privately owned residential housing, which is not covered by the Architectural Barriers Act unless leased by the Federal Government for subsidized housing programs. This exception, however, is not appropriate under section 504, which protects beneficiaries of housing provided as part of a federally assisted program. Consequently, the proposed amendment provides that, for purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only spaces that, because of their intended use, will not require accessibility to the public or handicapped residents or employees.

The proposed revision also provides that whether or not the recipient opts to follow UFAS in satisfaction of the ready access requirement, the recipient is not required to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member. This provision does not relieve recipients of their obligation under the current regulation to ensure program accessibility.

This document has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., at 298).

The Architectural and Transportation Barriers Compliance Board has also been consulted in the development of this document in accordance with 28 CFR 41.7.

This regulation is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp. at 127) because it imposes no new requirements. Therefore, a regulatory impact analysis has not been prepared.

It does not have an impact on small entities and, therefore, is not subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

List of Subjects in 18 CFR Part 1307

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

For the reasons stated in the preamble, Part 1307 of Title 18 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1307—[AMENDED]

1. The authority citation for Part 1307 continues to read as follows:

Authority: TVA Act, 48 Stat. 58 (1933) as amended, 16 U.S.C. 831—831dd (1976) and sec. 504 of the Rehabilitation Act of 1973, Pub. L. 93–112, as amended, 29 U.S.C. 794 (1976; Supp. II 1978).

2. In 1307.6, paragraph (d) is revised to read as follows:

§ 1307.6 Program availability.

* * * * *

(d) *New construction.* (1) New facilities required under a program subject to this part shall be designed and constructed to be readily accessible to and usable by handicapped persons. For the purposes of this part, a new facility is one on which actual construction began after May 2, 1978.

(2) Effective as of (the effective date of this amendment), design, construction, or alteration of buildings in conformance with sections 3–8 of the Uniform Federal Accessibility Standards (UFAS) (41 CFR 101–19.6 app. A) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(3) For purposes of this section, 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of physically handicapped persons.

(4) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

W.F. Willis,
General Manager.

October 29, 1986.

[FR Doc. 86–25062 Filed 11–5–86; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF THE TREASURY

31 CFR Part 10

Tax Practitioners; Solicitation for Extended Comments

AGENCY: Department of the Treasury.

ACTION: Proposed rule; solicitation for extended comments; extension of time for comments.

SUMMARY: This notice solicits public comments on the issue of the standard of practice with respect to tax return preparation and advice. A notice of proposed rulemaking was published in the **Federal Register** on August 14, 1986 (51 FR 29113) and solicited comments from the public. The overall area on which comments are invited is broadened by this notice, and the time for comments is being extended to February 13, 1987.

DATE: Comments must be mailed or delivered by February 13, 1987.

ADDRESS: Director of Practice, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attn: PM:HRMS:DP.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie S. Shapiro, Director of Practice, Internal Revenue Service, Washington, DC 20224. Telephone 202–535–6787 (Not a toll-free number).

SUPPLEMENTARY INFORMATION: By notice of proposed rulemaking published in the **Federal Register** on August 14, 1986 (51 FR 29113), the Treasury Department proposed certain additions to 31 CFR

Part 10 (Treasury Department Circular No. 230), which contains regulations governing practice before the Internal Revenue Service. On August 27, 1986, the Treasury Department published (51 FR 30510) a notice extending the deadline for public comments to November 13, 1986.

The proposed rule would amend Circular 230 to require that, in a situation where the provisions of section 6661 of the Internal Revenue Code may apply, a practitioner must exercise due diligence with respect to tax return preparation and the advice provided on tax return positions. The proposal arose from the concern that, in the absence of an express standard of practice with respect to return preparation and advice, some practitioners are advising taxpayers to take very aggressive tax return positions that have little or no chance of being sustained if challenged by the IRS. Such a practice, by exploiting the so-called audit lottery, substantially undermines the integrity of the voluntary self-assessment system.

Despite this continuing concern, the Treasury Department is still considering whether it is appropriate to link a uniform standard of practice for return advice and preparation to the application of the section 6661 penalty. There is concern that such a linkage may inhibit the IRS from asserting the section 6661 penalty, because successful assertion could result in disbarment of a practitioner or return preparer. Moreover, comments received to date have pointed out certain inconsistencies and mechanical problems that may result from implementing the proposed rule in its current form.

Accordingly, the Treasury Department requests that interested persons comment, not only on the specific language of the proposed rule, but also on the broader issue of the standard of practice that should apply with respect to tax return preparation and advice. Because of the expansion of comments contemplated in this notice and pursuant to requests from the practitioner community, the time for comments on the proposed rulemaking is being extended to February 13, 1987.

The effective date of the rule to be adopted will be prospective in nature and will be published in a future notice.

Dated: November 3, 1986.

Leslie S. Shapiro,

Director of Practice.

[FR Doc. 86-25090 Filed 11-5-86; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-86-01]

Special Local Regulations for Marine Events; Norfolk/Portsmouth Harbor, Elizabeth River, VA

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal that would establish special local regulations for the Elizabeth River in the vicinity of the "Waterside" area of downtown Norfolk, Virginia, and the "Portside" area of downtown Portsmouth, Virginia. This area is the site of several large marine events each year, including Norfolk's Harborfest, Portsmouth's Seawall Festival, Independence Day Celebration power boat races, and boat parades. These regulations would govern vessel activities during those events. Notices of the precise dates and times that regulations are effective will be published in the Local Notices to Mariners and Federal Register. These special local regulations are considered necessary to control vessel traffic and provide for the safety of life and property on the navigable waters within the immediate vicinity of the event.

DATES: Comments must be received on or before December 22, 1986.

ADDRESSES: Comments should be hand delivered, or mailed to Commander (bb), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments will also be available for inspection and copying at Room 209 of this address. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Billy J. Stephenson, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, telephone number: (804) 398-6204.

SUPPLEMENTARY INFORMATION: On March 3, 1986 the Coast Guard published a notice of proposed rule making in the **Federal Register** relating to the annual Norfolk Harborfest (51 FR 7286). Interested persons were requested to submit comments. No comments were received.

This supplemental proposal reduces the size of the regulated area and extends its effective dates to cover all events held in the area.

Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 05-86-01) and the specific section of the proposal to which their comments apply, and given reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and CDR Robert J. Reining, project attorney, Fifth Coast Guard District Legal Office.

Discussion of Proposed Regulations

This proposal supplements the notice of proposed rulemaking that would have established special local regulations for the City of Norfolk Harborfest. It would apply the same regulations to most marine events held in Norfolk harbor. These regulations are necessary due to the confined nature of the waterway and the expected congestion at the time of the various events. The area subject to the special local regulations is smaller than the area which has been subject to the regulations for previous Norfolk Harborfests. The special regulations are substantially the same as those established in the past. Norfolk Harborfest and Portsmouth Seawall Festivals are annual weekend events, designed to promote and enhance the City of Norfolk and Portsmouth's nautical heritage. The events held are a combination of land and water activities centered about the downtown portion of Norfolk and Portsmouth. They typically include speedboat races, air-sea rescue demonstrations of military vessels and riverine warfare craft, and fireworks displays. Other events that have been regulated in the past include a parade of sailing ships into the Waterside area and subsequent open house periods for public viewing of the ships; fireworks displays; power boat races; and parades of lighted boats. The events have drawn

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large numbers of boats to the Town Point Reach area creating congestion.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Its economic impact is expected to be minimal since, as in the past, closure of the waterway for any extended period is not anticipated and commercial traffic should not be severely disrupted at any given time.

Comments received concerning past events indicate that commercial interests normally using the waterways can adapt to the minor restrictions they may encounter.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: (33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35).

2. Section 100.501 is added to read as follows:

§ 100.501 Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, Virginia.

(a) *Definitions*—(1) *Regulated Area.* The waters of the Elizabeth River and its branches from shore to shore, bounded to the northwest by a line drawn across the Port Norfolk Reach section of the Elizabeth River between the northern corner of the landing at Hospital Point, Portsmouth, Virginia, at latitude 36°50′51″ North, longitude 076°18′09″ West, and the north corner of the City of Norfolk Mooring Pier at the foot of Brooke Avenue located at latitude 36°51′00″ North, longitude 076°17′52″ West; bounded on the southwest by a line drawn from the southern corner of the landing at Hospital Point, Portsmouth, Virginia, at latitude 36°50′50″ North, longitude 076°18′10″ West, to the northern end of the eastern most pier at the Tidewater Yacht Agency Marina, located at 36°50′29″ North, longitude 076°17′52″ West; bounded to the south by a line drawn across the Lower Reach of the Southern Branch of the Elizabeth River, between the Portsmouth Lightship Museum located at the foot of London Boulevard, in Portsmouth, Virginia at latitude 36°50′10″ North, longitude 076°17′47″ West, and the northwest corner of the Norfolk Shipbuilding & Drydock, Berkley Plant, Pier No. 1, located at latitude 36°50′08″ North, longitude 076°17′39″ West; and to the southeast by the Berkley Bridge which crosses the Eastern Branch of the Elizabeth River between Berkley at latitude 36°50′21.5″ North, longitude 076°17′14.5″ West, and Norfolk at latitude 36°50′35.0″ North, longitude 076°17′10.0″ West.

(2) *Coast Guard Patrol Commander.* (a) The Coast Guard Patrol Commander is a commissioned or petty officer of the Coast Guard, who has been designated by Commander, Coast Guard Group Hampton Roads.

(b) *Special Local Regulations.* (1) Except for participants registered with the event sponsor and vessels that are moored to a pier, dock, or shore, no vessel underway or at anchor may enter or remain in the regulated area without the permission of the Coast Guard Patrol Commander.

(2) The operator of any vessel in the regulated areas shall—

(a) Stop his vessel immediately when directed to do so by any Coast Guard officer or petty officer on board a vessel displaying a Coast Guard ensign; or

(b) Proceed as directed by any Coast Guard officer or petty officer.

(3) Spectator vessels may anchor outside of the regulated area specfied in paragraph (1) of these regulations but may not block a navigable channel.

(4) The Coast Guard Patrol Commander may stop the event to assist the transit of marine traffic through the regulated area.

(5) *Effective Dates.* These regulations are effective on those dates and times published in notices in the Local Notice to Mariners and Federal Register.

Dated: October 24, 1986.

B.F. Hollingsworth,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 86–25097 Filed 11–5–86; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD8–86–09]

Drawbridge Operation Regulations; Bayou Teche, LA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Louisiana State University (LSU) Agricultural Experiment Center, the Coast Guard is considering a change to the regulation governing the operation of the swing span bridge across Bayou Teche, mile 46.5, near Jeanerette, Iberia Parish, Louisiana. This proposed change would require the draw of the bridge to open on at least four hours advance notice from 7 a.m. to 5 p.m., Monday through Friday, to be consistent with the existing opening requirement for the bridge immediately upstream at mile 43.5 and the bridge downstream at mile 48.7. The bridge at mile 46.5 is maintained in the open position at all other times.

This proposal is being made because of infrequent requests to open the draw. This action should relieve the bridge owner of the burden of having a person constantly available at the bridge from 7 a.m. to 5 p.m., while still providing for the reasonable needs of navigation.

DATE: Comments must be received on or before December 22, 1986.

ADDRESS: Comments should be mailed to Commander (obr), Eighth Coast Guard District, 500 Camp Street, New Orleans, Louisiana 70130. The comments and other materials referenced in this notice will be available for inspection and copying in Room 1115 at this address. Normal office hours are between 8:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, at the address given above, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposed. This proposal regulation may be changed in the light of comments received.

Drafting Information

The drafters of this notice are Perry Haynes, project officer, and Lieutenant Commander James Vallone, project attorney.

Discussion of Proposed Regulation

The LSU Agricultural Experiment Center bridge over Bayou Teche at mile 46.5 has a closed position vertical clearance of 5 feet above high water. Waterway traffic consists of an occasional commercial vessel (mainly fishing/shrimping boats) and recreational craft. Data submitted by the Louisiana Department of Transportation and Development show that traffic is infrequent. Bridge opening statistics were reviewed and showed the bridge averages well under one opening per day during the prescribed advance notice period.

Considering the few openings involved for the bridge, the Coast Guard feels that four hours notice can be adopted with only minimal economic impact This arrangement will allow for relief to the bridge owner, while still providing for the reasonable needs of navigation.

The advance notice of opening the draw would be given by placing a collect call to the LSU Agricultural Experiment Center between the hours of 7:30 a.m. and 4:30 p.m., telephone (318) 276–5527; at all other times call (318) 276–9422 or 6337. From afloat, this contact may be made by radiotelephone through a public coast station. A call is required for passage from 7 a.m. to 5 p.m., Monday through Friday only. The bridge is maintained in the open to navigation position at all other times.

The LSU Agricultural Experiment Center recognizes that there may be an unusual occasion when there may be a need to open the bridge on less than four hours notice for a bona fide emergency, or to operate the bridge on demand for an isolated but temporary surge in waterway traffic, and has committed to doing so if such and event should occur.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that few vessels pass through the bridge as evidenced by the 1984 bridge opening statistics. These vessels can reasonably give four hours notice for a bridge opening by placing a collect call to the bridge owner at any time from ashore or afloat. Mariners requiring the bridge openings are mainly repeat users of the waterway and scheduling their arrival at the bridge at the appointed time during the proposed advance notice period should involve little or no additional expense to them. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.501 is revised by redesignating existing paragraphs (b)(8) through (b)(18) as (b)(9) through (b)(19), and by adding a new paragraph (b)(8) to read as follows:

§ 117.501 Teche Bayou.

* * * * *

(b) * * *

(8) LSU Agri bridge, mile 46.5 near Jeanerette (notice required for opening from 7 a.m. to 5 p.m., Monday through Friday except holidays).

* * * * *

Dated: October 23, 1986.

Peter J. Rots,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 86–25095 Filed 11–5–86; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–3106–6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Extension of Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Extension of public comment period for two previously proposed exclusions for delisting petitions.

SUMMARY: Today's notice announces the extension of the public comment periods for two previously proposed Agency decisions regarding the grant of exclusions for delisting petitions. Today's extension responds to a request received from the Environmental Defense Fund (EDF) on October 31, 1986. The proposed grant of these exclusions responds to delisting petitions submitted to the Agency under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the code of regulations, and specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste list. The effect of the proposed action, if made final, would be to exclude certain wastes generated at four particular facilities from listing as hazardous waste under 40 CFR Part 260. The proposed exclusions previously published were for three facilities of Tricil Environmental Services, Inc. (see 51 FR 36974, October 16, 1986) and one facility of Lederle Laboratories, a Division of the American Cyanamid Company (see 51 FR 37760, October 24, 1986). The comment periods for these decisions were originally to end on October 31, 1986 for the proposed decisions on Tricil Environmental Services, Inc. and November 3, 1986 for the proposed decision on Lederle Laboratories. Today's notice extends both of these comment periods.

DATES: EPA will accept public comments on the previously proposed decisions until November 7, 1986 for Tricil Environmental Services, Inc., and November 24, 1986 for Lederle Laboratories. These dates reflect an extension of the original comment periods as cited in the proposed rules. Comments postmarked after the close of the extended comment periods will be stamped "late".

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (WH–562), 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variance Section, Assistance Branch, PSPD/OSW (WH–563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. All comments must be identified at the top with the appropriate docket number. Comments addressing the proposed decisions for Tricil Environmental Services, Inc.

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should be identified using docket number "F-86-TRPE-FFFFF". Comments addressing the proposed decision for Lederle Laboratories should be identified using docket number "F-86-LPE-FFFFF".

The public docket where the information can be viewed for both of the proposed rules is located at the U.S. Environmental Protection Agency, 401 M Street, SW. (sub-basement), Washington, DC 20460. The docket is open from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475-9327 or Kate Blow at (202) 382-4675 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $0.20 per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information, contact Ms. Lori DeRose, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-5096.

SUPPLEMENTARY INFORMATION: The Agency proposed to exclude the wastes generated at four facilities from hazardous waste control in response to delisting petitions submitted under 40 CFR 260.20 and 260.22. These facilities included: (1) Tricil Environmental Services, Inc., located in Hilliard, Ohio (see 51 FR 36976, October 16, 1986); (2) Tricil Environmental Services, Inc., located in Nashville, Tennessee (see 51 FR 36979, October 16, 1986); (3) Tricil Environmental Services, Inc., located in Muskegon, Michigan (see 51 FR 36983, October 16, 1986); and (4) Lederle Laboratories a Division of American Cyanamid Co., located in Pearl River, New York (see 51 FR 37762, October 24, 1986). The public comment periods for these proposed rules were originally scheduled to end on October 31, 1986, for the proposed decisions regarding the three Tricil facilities (see 51 FR 36974, October 16, 1986) and November 3, 1986, for the proposed decision regarding Lederle Laboratories (see 51 FR 37760, October, 24, 1986).

During the original public comment period for the proposed rules, the Agency received a request from the Environmental Defense Fund to extend the public comment period for the proposed rules to allow additional time for submission of comments regarding the Agency's decisions. The Agency has agreed to extend the comment period for these two proposed rules and will now accept public comments until November 7, 1986, for the proposed Tricil decisions and until November 24, 1986, for the proposed Lederle Laboratories decision.

Dated: October 31, 1986.

Jeffery D. Denit,

Acting Director, Office of Solid Waste.

[FR Doc. 86-25100 Filed 11-5-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 533

[Docket No. FE-86-02; Notice 2]

Light Truck Average Fuel Economy Standards; Request for Comments; Extension of Period for Public Comment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments; extension of period for public comment.

SUMMARY: On September 16, 1986, NHTSA published in the **Federal Register** (51 FR 32802), a notice requesting comments to assist the agency in carrying out its rulemaking responsibilities concerning average fuel economy standards for light trucks. In response to a request from General Motors, the comment period closing date is changed from November 17, 1986, to December 19, 1986.

DATE: Comments on the September 16, 1986 notice must be received on or before December 19, 1986.

ADDRESSES: Comments on the September 16, 1986 notice must refer to the docket and notice numbers set forth in that notice and be sumitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. Submissions containing information for which confidential treatment is requested should be submitted (three copies) to Chief Counsel, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street SW., Washington, DC 20590, and seven additional copies from which the purportedly confidential information has been deleted should be sent to the Docket Section.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Acting Chief, Motor Vehicle Requirements Division, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202) 366-4936.

SUPPLEMENTARY INFORMATION: Section 502(b) of the Motor Vehicle Information and Cost Savings Act requires NHTSA to issue light truck average fuel economy standards at least 18 months before the beginning of each model year The agency is now in the process of beginning a rulemaking analysis to determine the level of light truck average fuel economy standards for model years after 1989. On September 16, 1986, NHTSA published in the **Federal Register** (51 FR 32802) a notice requesting comments, to assist the agency in developing that analysis. Comments were to be provided by November 17, 1986.

In a letter dated October 10, 1986, General Motors (GM) requested that the comment period be extended to December 19, 1986. That company indicated that its plans for model years 1990-91 are being significantly revised, and that its new product plan is scheduled for completion and for management approval in December. GM indicated that an extension of the comment period would enable it to provide more up-to-date information that would reflect its latest forecasts of fuel prices, competitive actions, and market trends.

NHTSA has determined that there is merit in the arguments presented by GM. The comment closing date is therefore changed from November 17, 1986, to December 19, 1986. All comments received before the close of business on the comment closing date will be considered, and will be available for examination in the docket at the above address. To the extent possible, comments filed after the closing date will also be considered. NHTSA will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

List of Subjects in 49 CFR Part 533

Energy conservation, Gasoline, Imports, Motor vehicles.

Authority: 15 U.S.C. 2002, delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on October 31, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86-25066 Filed 11-5-86; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 51, No. 215
Thursday, November 6, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 86-411]

National Animal Damage Control Advisory Committee; Criteria for Membership Selection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document specifies the criteria that will be used for the selection of members to the National Animal Damage Control Advisory Committee. The National Animal Damage Control Advisory Committee is being formed to advise the Secretary of Agriculture on policies, program issues, and research needed to conduct the Animal Damage Control Program of USDA.

DATE: Comments concerning the criteria must be received on or before December 8, 1986.

ADDRESS: Views and comments of interested persons may be submitted to Bert W. Hawkins, Administrator, Animal and Plant Health Inspection Service (APHIS), USDA, Room 312-E, Administrator Building, 14th and Independence Avenue, SW., Washington, DC 20250. Please state that your comments are in response to Docket No. 86-411. You may inspect written comments received in Room 312-E of the Administration Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: James O. Lee, Jr., Deputy Administrator for Animal Damage Control, APHIS, USDA, Room 1624 South Building, 14th and Independence Avenue, SW., Washington, DC 20250; telephone Area Code (202) 447-2054.

SUPPLEMENTARY INFORMATION: On June 30, 1986, the Office of the Secretary of Agriculture published a notice announcing the formation of the National Animal Damage Control Advisory Committee (NADCAC). The NADCAC is being formed to provide advice to the Secretary of Agriculture on policies, programs, issues, and research needed to conduct the Animal Damage Control (ADC) Program of USDA. The NADCAC is also intended to serve as a public forum which will enable those affected to have a voice in the ADC Program's policies.

Notice is hereby given that the Secretary of Agriculture proposes to use the following criteria for selection of members to the NADCAC.

Members of the committee will be chosen from a list of interested persons representing a variety of organizations. The proposed criteria to be used in selecting organizations for representation on the committee will include the following:

1. National in scope.
2. Non-Federal (except for congressionally directed).
3. Experience in cooperative working relationships.
4. Tradition of national public interest and service.
5. Record of achievement in national public interest goals.
6. Subject matter knowledge and experience.
7. Represents clients fairly and comprehensively.
8. Continuing interest in ADC.

This notice is given in compliance with the Federal Advisory Committee Act (Pub. L. 92-463).

Done in Washington, DC, this 3rd day of November, 1986.

Bert W. Hawkins,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 86-25187 Filed 11-5-86; 8:45 am]

BILLING CODE 3410-34-M

Cooperative State Research Service

Committee of Nine; Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the Cooperative State Research Service announces the following meeting:

Name: Committee of Nine.
Date: December 3, 1986.
Time: 8:00 a.m.-5:00 p.m.
Place: Breckenridge King's Inn, 9600 Natural Bridge Road, St. Louis, Missouri.

Type of meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

Purpose: To evaluate and recommend proposals for cooperative research on problems that concern agriculture in two or more States, and to make recommendations for allocation of regional research funds appropriated by Congress under the Hatch Act for research at the State agricultural experiment stations.

Contact person for agenda and more information: Dr. Edward M. Wilson, Executive Secretary, U.S. Department of Agriculture, Cooperative State Research Service, Room 206 Justin Smith Morrill Bldg., Washington, DC 20251; Telephone: (202) 447-6040.

Done at Washington, DC this 28th day of October 1986.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 86-25079 Filed 11-5-86; 8:45 am]

BILLING CODE 3410-22-M

Forest Service

Public Meeting Schedule for the Review of the Draft Environmental Impact Statement and Proposed Land and Resource Management Plan for the Inyo National Forest Involving Portions of Mono, Inyo, Tulare, Madera, Fresno Counties, CA, and Esmeralda, Mineral Counties, NE

AGENCY: Forest Service, USDA.

ACTION: Notice of public meetings for review of the Draft Environmental Impact Statement and Proposed Land and Resource Management Plan.

SUMMARY: Meetings to assist the public in understanding the content of the Draft Environmental Impact Statement and Proposed Plan will be held at 2 to 5 PM and again at 7 to 10 PM at the following locations and dates:

June Lake, California, November 18, 1986
Mammoth Lakes, California, November 25, 1986
Bishop, California, December 4, 1986
Lone Pine, California, December 9, 1986

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Additional public meetings will be held at 2 to 5 PM and again at 7 to 9 PM at the following locations and dates:

Glendale, California, January 6, 1987
Santa Ana, California, January 7, 1987
Ridgecrest, California, January 8, 1987

A public hearing at which formal comment may be presented will be held at 1 to 4 PM and again at 7 to 9 PM in Bishop, California, January 28, 1987.

Special information about those meetings has already been made available through direct mailing to the project mailing list; media releases will be made in the near future.

FOR FURTHER INFORMATION CONTACT: Oliver Sapousek at Inyo National Forest, 873 North Main Street, Bishop, California, 93514, or by calling (619) 873-5841.

Dated: October 30, 1986.

Dennis W. Martin,

Forest Supervisor.

[FR Doc. 86-25128 Filed 11-5-86; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Cull Creek Watershed, California; Environmental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Cull Creek Watershed, Alameda and Contra Costa Counties, California.

FOR FURTHER INFORMATION CONTACT: Eugene E. Andreuccetti, State Conservationist, Soil Conservation Service, 2121-C Second Street, Davis, California, 95616, telephone (916) 449-2848.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Eugene E. Andreuccetti, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood control and watershed protection. The planned works of improvement include clearing and snagging, post wire revetment and tree planting in Cull Creek, rangeland management and gully stabilization for land treatment and accelerated technical assistance for land treatment.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Eugene E. Andreuccetti.

No administrative action on implementation of the proposal will be taken until December 8, 1986.

(This activity is listed in the Catalog of Federal Domestic Assistance under no. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Eugene E. Andreuccetti,

State Conservationist.

October 29, 1986.

[FR Doc. 86-25119 Filed 11-5-86; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-016]

Choline Chloride From Canada; Preliminary Results of Antidumping Duty; Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by Chinook Chemicals Co., Ltd., the Department of Commerce has conducted an administrative review of the antidumping duty order on choline chloride from Canada. The review covers Chinook Chemicals Co. Ltd. and the period April 30, 1984 through October 31, 1985. The review indicates the existence of *de minimis* dumping margins during the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 6, 1986.

FOR FURTHER INFORMATION CONTACT: Edward Haley or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5289/5255.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 45469) the antidumping duty order on choline chloride from Canada. Chinook Chemicals Co., Ltd. requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. The Department published a notice of initiation of an antidumping duty administrative review on December 13, 1985 (50 FR 50933). As required by section 751 of the Tariff Act of 1930 ("the Tariff Act") the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of choline chloride, currently classifiable under item 439.5055 of the Tariff Schedules of the United States Annotated. Choline chloride is marketed in several forms including, but not limited to, a solution of 70 percent choline chloride in water (aqueous choline chloride) or in potencies of 50 to 60 dried on a cereal carrier.

The review covers Chinook Chemicals Co., Ltd. and the period April 30, 1984 through October 31, 1985.

United States Price

The calculating United States price the Department used purchase price or exporter's sales price ("ESP"), both as defined in section 772 of the Tariff Act, as appropriate. Purchase price and exporter's sales price were based on the packed or unpacked, duty-paid, delivered price to unrelated purchasers in the United States. Where applicable, we made adjustments for U.S. and foreign inland freight, import duties, brokerage and handling charges, commissions to unrelated parties, and indirect selling expenses. We also included in the calculated of purchase price for aqueous choline chloride part of a free shipment to one customer. No other adjustments where claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed or unpacked, ex-factory or delivered price to unrelated purchasers in Canada. We make adjustments, where applicable, for inland freight, credit, and other selling expenses when a commission was paid in one market and not the other. In accordance with § 353.14(a) of the Commerce Regulations, we did not include sales of small quantities of aqueous choline chloride in drums in calculating home market price. These sales amounted to less than two percent of Chinook's Canadian sales of aqueous choline chloride. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price of foreign market value we preliminarily determine that a margin of 0.17 percent exists during the period April 30, 1984 through October 31, 1985.

Interested parties may submit written comments on these preliminary results within 21 days of the date of publication of this notice and may request disclosure and/or a hearing within 5 days of the date of publication. Any hearing, if requested, will be held 21 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties shall be required. Since the margin for Chinook is less than 0.5 percent and therefore *de minimis* for cash deposit purposes, the Department waives the deposit requirement for that firm. For any future entries of this merchandise from a new exporter, whose first shipments occurred after October 31, 1985 and who is unrelated to Chinook Chemicals Co., Ltd., the Department waives the cash deposit requirement. This waiver is effective for all shipments of choline chloride entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: October 30, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-25123 Filed 11-5-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-606]

Certain Forged Steel Crankshafts From Japan; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether certain forged steel crankshafts from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury to, a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before November 23, 1986, and we will make ours on or before March 18, 1987.

EFFECTIVE DATE: November 6, 1986.

FOR FURTHER INFORMATION CONTACT: Charles Wilson or James Riggs, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5288 or (202) 377-4929.

SUPPLEMENTARY INFORMATION:

The Petition

On October 9, 1986, we received a petition in proper form filed by Wyman-Gordon Company. In compliance with the filing requirements of 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Japan are being, or are likely to be, sold in the United states at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury to, a United States industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and, further, whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on certain forged steel crankshafts from Japan and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether certain forged steel crankshafts from Japan are being, or are likely to be, sold in the United States at less than fair value.

Scope of Investigation

The products covered by this investigation are forged carbon or alloy steel crankshafts with a shipping weight between 40 and 750 pounds, whether machined or unmachined. These products are currently classified under items 660.6713, 660.6727, 660.6747, 660.7113, 660.7127 and 660.7147 of the *Tariff Schedules of the United States Annotated (TSUSA).* Neither cast crankshafts nor forged crankshafts with shipping weights of less than 40 pounds or greater than 750 pounds are subject to this investigation.

United States Price and Foreign Market Value

Petitioner based United States price on sales or offers, C.I.F., delivered, duty paid, by a Japanese manufacturer. Deductions were made for foreign inland freight and insurance, ocean freight and marine insurance, U.S. customs duties, U.S. brokerage and handling charges, U.S. inland freight and insurance, commissions and other selling expenses incurred in the United States, and the cost of a U.S. seller inventory to arrive at an ex-factory packed price.

Petitioner based foreign market value on the home market prices of a Japanese manufacturer. Deductions were made for foreign inland freight and credit costs to arrive at an ex-factory packed price.

Based on this method of comparison, petitioner alleges a dumping margin of 29.22 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it by nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by November 23, 1986, whether there is a reasonable indication that imports of certain forged steel crankshafts from Japan are causing material injury, or threaten material injury to, a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

October 29, 1986.

[FR Doc. 86-25122 Filed 11-5-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-412-602]

Certain Forged Steel Crankshafts From the United Kingdom; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether certain forged steel crankshafts from the United Kingdom (U.K.) are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before November 24, 1986, and we will make ours on or before March 18, 1987.

EFFECTIVE DATE: November 6, 1986.

FOR FURTHER INFORMATION CONTACT: Charles Wilson or James Riggs, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5288 or (202) 377-4929.

SUPPLEMENTARY INFORMATION:

The Petition

On October 9, 1986, we received a petition in proper form filed by Wyman-Gordon Company. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from the U.K. are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and, further, whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on certain forged steel crankshafts from the U.K. and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether certain forged steel crankshafts from the U.K. are being, or are likely to be, sold in the United States at less than fair value.

Scope of Investigation

The products covered by this investigation are forged carbon or alloy steel crankshafts with a shipping weight between 40 and 750 pounds, whether machined or unmachined. These products are currently classified under items 660.6713, 660.6727, 660.6747, 660.7113, 660.7127 and 660.7147 of the *Tariff Schedules of the United States Annotated (TSUS)*. Neither cast crankshafts nor forged crankshafts with shipping weights of less than 40 pounds or greater than 750 pounds are subject to this investigation.

United States Price and Foreign Market Value

Petitioner based United States price on sales or offers, C.I.F., delivered, duty paid, by a British manufacturer. Deductions were made for foreign inland freight and insurance, ocean freight and marine insurance, U.S. customs duties, U.S. brokerage and handling charges, U.S. inland freight and insurance, and other selling expenses incurred in the United States, and the cost of a U.S. seller's inventory to arrive at an ex-factory packed price.

Because petitioner was unable to provide information on home market or third country market selling prices in the U.K., petitioner based foreign market value on constructed value. British material, labor, and power costs were provided. Depreciation, maintenance and other factory overhead were calculated using ratios based on petitioner's experience. To the sum of materials and fabrication costs, petitioner added the statutory minimums of ten and eight percent for general expenses and profit, respectively.

Based on this method of comparison, petitioner alleges an average dumping margin of 18.10 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and proprietary information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by November 24, 1986, whether there is a reasonable indication that imports of certain forged steel crankshafts from the U.K. are causing material injury, or threaten material injury to, a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to statutory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

October 29, 1986.

[FR Doc. 86-25120 Filed 11-5-86; 8:45 am]

BILLING CODE 3510-DS-M

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[A-428-604]

Certain Forged Steel Crankshafts From the Federal Republic of Germany; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether certain forged steel crankshafts from the Federal Republic of Germany (FRG) are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury to, a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before November 24, 1986, and we will make ours on or before March 18, 1987.

EFFECTIVE DATE: November 6, 1986.

FOR FURTHER INFORMATION CONTACT: Charles Wilson or James Riggs, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5288 or (202) 377-4929.

SUPPLEMENTARY INFORMATION:

The Petition

On October 9, 1986, we received a petition in proper form filed by Wyman-Gordon Company. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from the FRG are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury to, a United States industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and, further, whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on certain forged steel crankshafts from the FRG and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether certain forged steel crankshafts from the FRG are being, or are likely to be, sold in the United States at less than fair value.

Scope of Investigation

The products covered by this investigation are forged carbon or alloy steel crankshafts with a shipping weight between 40 and 750 pounds, whether machined or unmachined. These products are currently classified under items 660.6713, 660.6727, 660.6747, 660.7113, 660.7127, and 660.7147 of the *Tariff Schedules of the United States Annotated (TSUSA)*. Neither cast crankshafts nor forged crankshafts with shipping weights of less than 40 pounds or greater than 750 pounds are subject to this investigation.

United States Price and Foreign Market Value

Petitioner based United States price on sales or offers, C.I.F., delivered, duty paid, by a German manufacturer. Deductions were made for foreign inland freight and insurance, ocean freight and marine insurance, U.S. customs duties, U.S. brokerage and handling charges, U.S. inland freight and insurance, and other selling expenses incurred in the United States, and the cost of a U.S. seller's inventory to arrive at an ex-factory packed price.

Because petitioner was unable to provide information on home market or third contry market selling prices in Germany, petitioner based foreign market value on constructed value. German material, labor, and power costs were provided. Depreciation, maintenance and other factory overhead were calculated using ratios based on petitioner's experience. To the sum of materials and fabrication costs, petitioner added the statutory minimums of ten and eight percent for general expenses and profit respectively.

Based on this method of comparison, petitioner alleges an average dumping margin of 28.29 percent.

Notification of ITC.

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and proprietary information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by November 24, 1986, whether there is a reasonable indication that imports of certain forged steel crankshafts from the FRG are causing material injury, or threaten material injury to, a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration

October 29, 1986.

[FR Doc. 86-25121 Filed 11-5-86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Ronald Lafferty From an Objection by the New Jersey Department of Environmental Protection

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Appeal and Stay.

On October 17, 1986, Ronald Lafferty filed a notice of appeal from an objection by the New Jersey Department of Environmental Protection (DEP) under section 307(c)(3)(A) of the Coastal Zone Management Act. The DEP objected to appellant's bulkhead constructed at 306 51st Street, Avalon, New Jersey, without a permit form the Army Corps of Engineers.

Appellant and the DEP are currently negotiating in an attempt to resolve the inconsistencies of the bulkhead with the New Jersey Coastal Zone Management Program. During these negotiations, this appeal is stayed for four months. This stay can be extended on a showing of good cause. If negotiations are successful, appallant may withdraw his appeal. If the parties are unable to settle their differences, either on their own or with the assistance of the National Oceanic and Atmospheric Administration, the appeal may be resumed at the request of the parties, or on the Secretary of Commerce's motion. A briefing schedule and request for

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public comments will be issued at that time.

FOR ADDITIONAL INFORMATION CONTACT: L. Pittman, Office of the General Counsel, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235; (202) 673-5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration)

Dated: November 3, 1986.

Daniel W. McGovern,

General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 86-25116 Filed 11-5-86; 8:45 am]

BILLING CODE 3510-08-M

Coastal Zone Management; Federal Consistency Appeal by the County of San Mateo

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Withdrawal of appeal.

SUMMARY: On October 17, 1986, the Secretary of Commerce granted the request of the County of San Mateo, California, to withdraw its appeal filed under section 307(c)(3)(A) of the Coastal Zone Management Act, 16 U.S.C. 1456(c)(3)(A). The County had appealed an objection by the California Coastal Commission to the construction of a fence in Princeton-by-the-Sea. The fence was built to block vehicle access to a marsh adjacent to Princeton Harbor. The Commission objected to the fence because it also blocked beach access in violation of the California Coastal Management Program.

The parties to this appeal requested informal mediation assistance from the National Oceanic and Atmospheric Administration's Office of Ocean and Coastal Resource Management. The appeal was stayed during mediation, which was successful, with the County agreeing to construct six new parking spaces adjacent to the fenced area. The County then requested permission to withdraw its appeal.

FOR FURTHER INFORMATION CONTACT: L. Pittman, NOAA Office of General Counsel, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673-5200.

(Federal Domestic Assistance Catalog No. 11.419, Coastal Zone Management Program Administration.)

Dated: October 31, 1986.

Daniel W. McGovern,

General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 86-25047 Filed 11-5-86; 8:45 am]

BILLING CODE 3510-08-M

[Modification No. 2 to Permit No. 443]

Marine Mammal Permit Modification; Southwest Fisheries Center

Correction

In FR Doc. 86-23880 appearing on page 37624 in the issue of Thursday, October 23, 1986, make the following corrections:

On page 37624, in the first column, in paragraph "5.", in the first line, "point" should read "permit", and in the last line, "1988" should read "1989".

BILLING CODE 1505-01-M

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will convene a public meeting, November 18-19, 1986, at the Holiday Inn, Oceanfront at 39th Street, Virginia Beach, VA (telephone: 804-428-1711), to consider Amendment #7 to the Surf Clam and Ocean Quahog Fishery Management Plan; to consider joint venture applications for 1987; to review river herring bycatch information, as well as to discuss other fishery management matters. The public meeting may be lengthened or shortened depending upon progress on agenda items. The Council also may convene a closed session (not open to the public) to discuss personnel and/or national security matters. For further information, contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal building, 300 South New Street, Room 2115, Dover, DE 19901; telephone: (302) 674-2331.

Dated: November 3, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-25048 Filed 11-5-86; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Lehn & Fink Products Group, Sterling Drug, Inc., having a place of business in Montvale, New Jersey, an exclusive right to manufacture, use and sell cockroach-repellent compositions embodied in the inventions entitled "Cockroach Repellents," U.S. Patent Applications No. 6-625,266 and S.N. 6-625,329 and "Insect Repellents," U.S. Patent Application S.N. 6-625,328. The patent rights in these inventions have been assigned to the United States of America.

The proposed license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101-4.1. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Patent Licensing Specialist, Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 86-25058 Filed 11-5-86; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Thailand

November 3, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 7, 1986. For further information contact Kathy Davis, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Governments of the United States and Thailand have agreed in consultations to further amend their Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 27 and August 8, 1983, as previously amended and extended, to drop the import restraint limit for men's and boys' other wool coats in Category 434 during 1986, and to establish, among other things, new specific limits for cotton yarns in Categories 300 and 301, woven fabrics of man-made fibers in Category 611, and polypropylene bags in part of Category 669 (only TSUSA number 385.5300), produced or manufactured in Thailand and exported, in the case of Categories 300 and 301, during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986; in the case of Category 611, during the six month period which began on June 1, 1986 and extends through December 31, 1986, and in the case of Category 669 pt., duirng the four-month period which began on September 1, 1986 and extends through December 31, 1986. In the letter which follows this notice the Chairman of CITA directs the Commissioner of Customs to establish these new specific limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

November 3, 1986.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of November 27, 1985, as previously amended, which established limits for certain categories of cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Thailand and exported during the agreement year which began on January 1, 1986.

Effective on November 7, 1986, the directive of November 27, 1985, as previously amended, is hereby further amended to establish the following limits for cotton textiles in Categories 300 and 301:

Category	12-mo restraint limit [1]
300	5,000,000 pounds.
301 pt.[2]	5,000,000 pounds.
301 pt.[3]	1,000,000 pounds.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1985, May 31, 1986, or August 31, 1986, as applicable.

[2] In Category 301, only TSUSA numbers 300.6026 and 300.6028.

[3] In Category 301, all TSUSA numbers in the category except those listed in footnote 2.

Also effective on November 7, 1986, the following limits should be established for man-made fiber textile products in Categories 611 and 669 pt.:

Category	Restraint limit [1]	Date of export period
611	2,300,000 square yards.	June 1 to December 31, 1986.
669 pt.[2]	850,000	September 1 to December 31, 1986.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1985, May 31, 1986, or August 31, 1986, as applicable.

[2] In Category 669, only TSUSA number 385.5300.

Textile products in the foregoing categories which have been exported to the United States prior to January 1, 1986 (Categories 300 and 301), prior to June 1, 1986 (Category 611), or prior to September 1, 1986 (Category 669 pt.) shall not be subject to this directive.

Textile products in all of the foregoing categories which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-25117 Filed 11-5-86; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Government of Turkey on Categories 350 and 605pt.

November 3, 1986.

On September 30, 1986, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended by Protocols dated December 15, 1977, December 22, 1981 and July 31, 1986, requested the Government of Turkey to enter into consultations concerning exports to the United States of certain cotton and man-made fiber textile products, produced or manufactured in Turkey.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations with Turkey, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of cotton dressing gowns in Category 350 and man-made fiber handknitting yarns in Category 605pt. (only T.S.U.S.A. numbers 310.9310 and 310.9320), produced or manufactured in Turkey and exported to the United States during the twelve-month period which began on September 30, 1986 and extends through September 29, 1987 at levels of 64,972 dozen (Category 350) and 747,011 pounds (Category 605pt.).

Summary market statements for these categories follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of these categories is invited to submit such comments or information in ten copies to Mr. William H. Houston III, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Turkey—Market Statement

Category 350—Cotton Dressing Gowns and Robes—September 1986

Summary and Conclusions

U.S. imports of Category 350 from Turkey were 69,878 dozen during the year ending July 1986 over three and one-half times the 19,513 dozen imported a year earlier. During the first seven months of 1986, imports from Turkey were 43,692 dozen, a threefold increase over the 14,178 dozen imported during the same period of 1985 and eight percent more than the amount imported during the full year 1985. Turkey is the fifth largest supplier and the largest uncontrolled supplier of Category

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350 imports, accounting for ten percent of 1986 imports.

The U.S. market for Category 350 has been disrupted by imports. The sharp and substantial increase of imports from Turkey has contributed to this disruption.

U.S. Production and Market Share

U.S. production of Category 350 declined by 11 percent from 680 thousand dozen in 1983 to 605 thousand dozen in 1985. The U.S. pruducers' share of the market fell from 60 percent in 1983 to 47 percent in 1985.

U.S. Imports and Import Penetration

U.S. imports of Category 350 grew from 461 thousand dozen in 1983 to 676 thousand dozen in 1985, a 47 percent increase. Imports continue to grow in 1986. Category 350 imports are up 20 percent in the first seven months of 1986. The ratio of imports to domestic production increased from 68 percent in 1983 to 112 percent in 1985.

Duty-Paid Value and U.S. Producers' Price

Approximately 88 percent of Category 350 imports form Turkey during the first seven months of 1986 entered under TSUSA No. 381.5020—men's and boys' cotton dressing gowns and robes, except corduroy, not knit and TSUSA No. 384.4000—women's, girls' and infants' cotton dressing gowns and robes, except corduroy, not knit. These dressing gowns and robes entered the U.S. at duty-paid landed values below the U.S. producer price for comparable dressing gowns and robes.

Turkey—Market Statement

Category 605 Pt.—Man-Made Fiber Handknitting Yarns—September 1986

Summary and Conclusions

U.S. imports of Category 605-Pt.—man-made fiber handknitting yarns—from Turkey totaled 985,050 pounds during the year-ending July 1986. This is nearly four and half times the amount imported during the same period a year earlier. During the first seven months of 1986, imports of handknitting yarns from Turkey were 920,344 pounds, nearly five times the amount imported during the comparable period of 1985 and almost 3 and a half time the level imported during calendar year 1985. Turkey is the third largest supplier of handknitting yarns accounting for 14.5 percent of total U.S. imports in 1986.

The sharp and substantial increase of low-valued imports from Turkey are severely disrupting the U.S. market for man-made fiber handknitting yarns.

U.S. Production and Market Share

U.S. production of handknitting yarns in 1985 was 18 percent below the 1983 level. During the first six months of 1986, production dropped 15 percent below the level of the comparable period of 1985.

U.S. producers' share of the market for domestically produced and imported man-made fiber handknitting yarns declined from 93 percent in 1983 to 81 percent during the first six months of 1986.

Import and Import Penetration

U.S. imports of man-made fiber handknitting yarns more than doubled in 1985 reaching 6.9 million pounds. Imports in 1986 continue to increase at a substantial rate. Imports for the first seven months were up 72 percent above the January–July 1985 level.

The ratio of imports to domestic production during the first six months of 1986 was 23.8 percent, more than 3 times the 7.6 percent of 1983.

Duty Paid Values and U.S. Producers' Price

Approximately 90 percent of Category 605 Pt. man-made fiber handknitting yarns from Turkey during the first seven months of 1986 entered under TSUSA No. 310.9320—man-made fiber handknitting yarn, over 90 cents per pound. These yarns are entered at landed duty paid values below the U.S. producers' price for comparable handknitting yarns.

[FR Doc. 86–25118 Filed 11–5–86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force Activities for Conversion to Contract

ACTION: Notice.

The Air Force recently determined that the satellite Supply function at Kelly AFB, TX, will be examined for possible conversion to contract.

For further information contact Ms. Karen Johnson, HQ ESC/XPMQ, Kelly AFB, TX, telephone (515) 925–2271.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 86–25065 Filed 11–5–86; 8:45 am]

BILLING CODE 3910-01-M

Public Information Collection Requirement Submitted to OMB Review

ACTION: Public Information Collection Requirement Submitted to OMB Review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Revision

Arrears of Pay Designation and/or Annuity Beneficiary Changes

AF form 114 will request or update arrears of apy (AOP) designation information from Air Force retiree and use the information to automate and expedite AOP payments to beneficiaries when the retiree dies.

Individuals

Responses: 3,000; Burden Hours: 150.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Ms. June Parsons, AFAFC/RP, Denver, CO 80279–5000, telephone number (303) 370–7458.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

October 31, 1986.

[FR Doc. 86–25077 Filed 11–5–86; 8:45 am]

BILLING CODE 3810-01-M

USAF Scientific Advisory Board

October 30, 1986.

The USAF Scientific Advisory Board Ad Hoc Committee on Minuteman III Penetration Aids will meet at Headquarters Ballistic Missile Office, Norton AFB CA on November 24–25, 1986 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to review, discuss and evaluate the effectiveness of penetration aids proposed for the Minuteman III.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–25059 Filed 11–5–86; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

National Board of the Fund for the Improvement of Postsecondary Educational; Meeting

AGENCY: National Board of the Fund for the Improvement of Postsecondary Education, ED.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92-463), section 10(a)(2)).

DATE: December 4, 1986 at 9:00 a.m. through December 6, 1986 at 12:00 p.m.

ADDRESS: Washington Hilton, 1919 Connecticut Avenue, NW., Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Charles Karelis, Director, Fund for the Improvement of Postsecondary Education, 7th & D Streets, SW., Washington, DC 20202 (202) 245-8091.

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education is established under section 1003 of the Higher Education Amendments of 1980, Title X (20 U.S.C. 1135a-1). The National Board of the Fund is established to "advise the Secretary and the Director of the Fund for the Improvement of Postsecondary Education . . . on the selection of projects under consideration for support by the Fund in its competitions."

The meeting of the National Board will be open to the public. The proposed agenda includes:

—An orientation and introduction of new Board members;

—A discussion and review of the past year;

—Development and discussion of policies and priorities for the coming year.

—Observation and participation in the Fund for the Improvement of Postsecondary Education Annual Project Directors' Meeting.

Records shall be kept of all Board proceedings, and shall be available for public inspection at the Fund for the Improvement of Postsecondary Education, 7th & D Streets, SW., Room 3100, Washington, DC 20202 from the hours of 8:00 a.m. to 4:30 p.m. weekdays, except Federal Holidays.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 86-25096 Filed 11-5-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Renewal of the Charter of The American Statistical Association Committee on Energy Statistics

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), I hereby certify that the renewal of the charter of the American Statistical Association Committee on Energy Statistics is in the public interest in connection with the performance of duties imposed on the Department of Energy by law. This determination follows consultation with the Committee Management Secretariat of the General Services Administration, pursuant to 41 CFR Subpart 101-6.1007.

The purpose of the committee is to provide advice on a continuing basis to the Administrator of the Energy Information Administration (EIA), including:

1. Periodic reviews of elements of EIA information collection and analysis programs and the provision of recommendations;

2. Advice on priorities of technical and methodological issues in the planning, operation, and review of EIA statistical programs; and

3. Advice on matters concerning improved energy modeling and forecasting tools, particularly regarding their functioning, relevancy, and results.

Further information concerning this committee can be obtained from Gloria Decker (202-252-8990).

Dated: October 31, 1986.

Charles Tierney,

Advisory Committee Management Officer.

[FR Doc. 86-25127 Filed 11-15-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[SWH-FRL-3106-5]

Solid Waste Disposal; Household Hazardous Waste; State Programs

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of reports on household hazardous waste and state solid waste (subtitle D) programs.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is today announcing the availability of two reports. The first report is entitled "A Survey of Household Hazardous Waste and Related Collection Programs." This report defines household hazardous waste (HHW); summarizes existing information regarding the presence of HHW in residential waste; and discusses the impacts of HHW on homeowners, solid waste collection and disposal personnel, and the environment. Information about HHW collection programs conducted at the State and local levels is also included in the report. The second report is entitled "Census of State and Territorial Subtitle D Non-Hazardous Waste Programs." This report summarizes the results of a mail survey of State and Territorial non-hazardous (solid) waste regulatory programs. Data from all the States and six Territories are reported. State organization and available resources for Subtitle D programs are given. Numbers and basic characteristics of landfills, land application units, and surface impoundments are included, as well as information on regulations and enforcement patterns.

ADDRESS: The reports are available for viewing at all EPA libraries and in the EPA RCRA docket room, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, from 9:30 a.m. to 3:30 p.m., Monday thru Friday, except legal holidays; telephone: (202) 475-9327. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost 20 cents per page. Limited copies of the HHW report are available, while supplies last, from the EPA RCRA/Superfund Hotline at (800) 424-9346 ((202) 382-3000 in Washington, DC). These documents are available for purchase from the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, VA 22161, at (703) 487-4600: "A Survey of Household Hazardous Waste and Related Collection Programs" (EPA/530-SW-86-038, NTIS No.: PB-87-108-072, $18.95 hardcopy, $6.50 microfiche) and "A Census of State and Territorial Subtitle D Non-Hazardous Waste Programs" (EPA/530-SW-86-039, NTIS No.: PB-87-108-080, $24.95 hardcopy, $6.50 microfiche).

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Hotline at (800) 424-9346 ((202) 382-3000 in Washington, DC). For technical

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information on the HHW report contact, Gerry Dorian, Office of Solid Waste (WH–565E), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–4688. For information on the State Survey report, contact Allen Geswein, (202) 382–4687, at the same address.

SUPPLEMENTARY INFORMATION: In 1979, under the authority of sections 1008(a)(3) and 4004(a) of Subtitle D of the Resource Conservation and Recovery Act (RCRA), EPA promulgated the "Criteria for Classification of Solid Waste Disposal Facilities and Practices" (40 CFR Part 257). These Criteria include environmental performance standards that are used for determining which solid waste disposal facilities and practices pose a reasonable probability of adverse effects on human health or the environment. Those facilities that violate the Criteria are deemed "open dumps." The Criteria are enforced by the States or through citizen suits.

In 1984, Congress passed the Hazardous and Solid Waste Amendments (HSWA), which include several major provisions regarding the solid waste regulatory program. The Amendments, require EPA to submit a report to Congress by November 8, 1987, that addresses whether the current Criteria (40 CFR Part 257) are adequate to protect human health and the environment, and whether additional authorities are needed to enforce the Criteria. Further, EPA is required to revise the Criteria by March 31, 1988, for facilities that may receive hazardous household waste or small quantity generator (SQG) hazardous waste. HWSA also requires the States to have a permit program for the existing Criteria by November 1987, and to have a revised permit program 18 months after the revised Criteria are promulgated.

In response to these statutory mandates, the Agency is currently gathering extensive data for both the report to Congress and the Criteria revisions. The two reports being made publicly available today are the result of two of these data collection efforts.

Household Hazardous Waste Report

The report entitled, "A Survey of Household Hazardous Waste and Related Collection Programs," contains the results of a study of household hazardous waste that addressed the following topics: (1) The definition of HHW; (2) the quantities of HHW in the municipal waste of stream; (3) the impacts of HHW on homeowners, solid waste collection and disposal personnel, and the environmental; and (4) HHW collection programs conducted at the State and local levels. Included in the review of collection programs was an examination of the liability of operators and sponsors of HHW collection programs under RCRA and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

As part of the study, a standard definition of HHW was developed. Lists of household products that may be considered household hazardous wastes, when discarded, were prepared based on this definition. For example, certain products within the following broad classes of materials could be considered HHW when discarded: drain openers, oven cleaners, wood and metal cleaners and polishes, automotive oil and fuel additives, grease and rust solvents, carburetor and fuel injection cleaners, air conditioning refrigerants, starter fluids, paint thinners, paint strippers and removers, adhesives, herbicides, pesticides and fungicides/wood preservatives. The report describes the criteria used in the definition and the limitations of the analysis. The study also found that there is very little data on the quantities of HHW in residential wastes. However, the limited studies conducted to date indicate that HHW is a small portion of all residential wastes.

The key results regarding the impacts of HHW on the environment, refuse personnel, and homeowners are summarized in the report. Although homeowners are assumed to have been injured due to the presence of HHW in their homes, no data were available to show a direct correlation. However, a number of communities across the nation have reported injuries to sanitation workers that have been caused by HHW. These indicences are often associated with materials that splash or spill during compaction, containers that explode, or materials that emit toxic fumes.

Much recent activity has focused on HHW collection programs. These programs enlist homeowners' cooperation in taking HHW to collection centers where the wastes are identified, packaged, and transported to secure waste disposal facilities. The number of these programs has grown rapidly, with over 30 States having conducted a collection program. Information on these programs, gathered from several sources, is summarized in the report.

A major element of all programs has been public education related to identification of HHW and developing an awareness of the environmental consequences of improper disposal. Problems currently associated with these programs include relatively low participation, high disposal costs, and sponsor liability concerns.

State Survey Report

The report entitled, "Census of State and Territorial Subtitle D Non-Hazardous Waste Programs," summarizes the findings of a mail survey of State and Territorial non-hazardous waste regulatory programs. The survey focused on three key areas: (1) State organization and resources; (2) number and characteristics of landfills, land application units, and surface impoundments; and (3) characteristics of the regulatory program (e.g., regulations, inspections, violations).

The report is organized in six major parts. Part I contains the introduction to the report, the study methodology, and a description of the statistical reliability of the data. Part II describes State organizational structures and resources for the Subtitle D program. Part III provides information on the total number and basic characteristics (owership, acreage, amount of waste received, monitoring systems, design and operational controls) of Subtitle D waste facilities. Part IV provides data on Subtitle D regulatory programs, including information on regulation and enforcement patterns. Part V contains information with respect to the number and quantity of Subtitle D facilities that receive exempted small quantity generator hazardous waste. Part VI provides a summary and conclusions of the report.

There are four appendices to the report. Appendix A provides the responses to a survey question concerning Statewide landfill capacity problems. Appendix B contains data tables with estimates of landfill tipping fees. The cover letters that accompanied the questionnaire are in Appendix C. Appendix D is a copy of the questionnaire used for the survey.

Examples of some of the key survey results contained in the report are as follows:

(1) Approximately 227,000 Subtitle D facilities are located at 120,000 establishment;

(2) The total number of Subtitle D disposal facilities includes: 16,416 landfills (of which 9,300 are municipal waste landfills), 18,889 land application units (LAUs), and 191,822 surface impoundments;

(3) Roughly 16 percent of all Subtitle D facilities, or 36,000, are reported to receive hazardous wastes from households or small quantity generators;

(4) Very few facilities have extensive design and operational controls and very few facilities have systems to monitor releases; and

(5) State Subtitle D regulations and resources vary by State and Territory.

Dated: October 27, 1986.

J.W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 86-25101 Filed 11-5-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notice; Acquisition of Banks or Bank Holding Companies

The notificants listed in this notice have applied for the Board's approval under the Change in Bank Control Act (12 U.S.C. 1817(j) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors.

Comments regarding these applications must be received not later than November 21, 1986.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *The Citizens National Bank of Bowling Green Employee Stock Ownership Plan and Related Trust,* Bowling Green, Kentucky; to acquire 16.58 percent of the voting shares of Trans Financial Bancorp, Inc., Bowling Green, Kentucky, and thereby indirectly acquire The Citizens National Bank of Bowling Green, Bowling Green, Kentucky.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Arnold B. Chace, Jr.,* Malcolm G. Chace, III, Malcolm G. Chace III Trust, Malcolm G. Chace, Jr. Trust, Jane Chace Trust, Jonathan Chace Clay Trust, Eliot Chace Trust, Christian Nolen Trust, Arnold B. Chace III Trust, Leigh Fibers, Inc., and William R. Dimeling to acquire 83.2 percent of the voting shares of Escrow Corporation of America, Inc., Pennock, Minnesota, and thereby indirectly acquire State Bank of Pennock, Pennock, Minnesota; and Heritage Bank, National Association, Willmar, Minnesota.

2. *David G. Smith,* to acquire 51.13 percent, and Keith G. Eltreim, to acquire 48.87 percent of the voting shares of Jasper Investment Company, Inc., Jasper, Minnesota, and thereby indirectly acquire Jasper State Bank, Jasper, Minnesota.

Board of Governors of the Federal Reserve System, October 31, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-25084 Filed 11-5-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program, Board of Scientific Counselors, Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the National Toxicology Program (NTP) Board of Scientific Counselors, U.S. Public Health Service, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences, Research Triangle Park, North Carolina, on November 25, 1986.

The meeting will be open to the public from 8:30 a.m. until adjournment on November 25. The preliminary agenda with *approximate* times are as follows:

8:30 a.m.-9:00 a.m.—Report of the Director
9:00 a.m.-9:30 a.m.—Overview of the NIEHS Intramural Research Program
9:30 a.m.-10:00 a.m.—Overview of the NTP
10:15 a.m.-11:45 a.m.—Review of Chemicals Nominated for NTP Studies.

(Ten chemicals will be reviewed. Of these, five were reviewed by the NTP Chemical Education Committee (CEC) on April 29, 1986, and listed in the **Federal Register**, Volume 51, No. 111, p. 21020, June 10, 1986: (1) Cobalt naphthenate; (2) Di(2-ethylhexyl) sebecate; (3) Methylcyclopentadienyl manganese tricarbonyl; (4) 2-Methylquinoline; and (5) 4-Methylquinoline. The remaining five chemicals, which are benzodiazepine drugs, were reviewed by the CEC on September 16, 1986, and listed in the **Federal Register**, Volume 51, No. 197, pp. 36479-36480, October 10, 1986: (1) Chlordiazepoxide; (2) Clorazepate; (3) Diazepam; (4) Flurazepam; and (5) Oxazepam.)

12:30 p.m.-4:45 p.m.—NIEHS Cellular and Genetic Toxicology Branch—Short-term Assay Evaluation.

I. Introduction.
II. Comparison of *In Vitro* Assay Results with Rodent Carcinogenicity.
III. Comparative Evaluation of Short-term *In Vivo* Assay.
IV. Statistical Aspects.
V. Strategies for Testing and Other Implications of the Evaluation.

The Executive Secretary, Dr. Larry G. Hart, Office of the Director, National Toxicology Program, P.O. Box 12233, Research Triangle Park, North Carolina 27709, telephone (919) 541-3971, FTS 629-3971, will have available a roster of Board members and other program information prior to the meeting and summary minutes subsequent to the meeting.

Dated: October 30, 1986.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 86-25067 Filed 11-5-86; 8:45 am]

BILLING CODE 4140-01-M

Restablishments

Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463 (5 U.S.C., Appendix 2), the Office of the Assistant Secretary for Health announces the reestablishment by the Secretary, DHHS, with concurrence by the General Services Administration, of the following advisory committees:

Designation: Health Care Technology Study Section.

Purpose: The Study Section shall advise the Secretary and make recommendations to the Director, National Center for Health Services Research and Health Care Technology Assessment, on research grant applications in medicine, technology assessment, the information sciences, decision sciences (operations research, industrial engineering, health care administration), communications technology, bioengineering, and related fields as applied to hospital-based ambulatory, and community health care. The members of this Study Section shall survey, as scientific leaders, the status of research in their fields.

Designation: Health Services Research and Developmental Grants Review Committee.

Purpose: The Committee shall advise the Secretary and make recommendations to the Director, National Center for Health Services Research and Health Care Technology Assessment, on research grant applications of two general types. One

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type of application involves primarily analysis and the use of statistical, economic, and other theoretical approaches to examine problems associated with the delivery of health services. The other type of application involves the analysis of data that derive from both large and small-scale experiments and demonstrations which are designed to test more cost-effective or efficient ways to provide health services.

Authority for the Health Care Technology Study Section will expire on June 30, 1988, and the authority for the Health Services Research and Developmental Grants Review Committee will expire on September 30, 1988, unless the Secretary, DHHS, with the concurrence of the General Services Administration, formally determines that continuance is in the public interest.

Dated: October 23, 1986.

John E. Marshall,

Director, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 86-25078 Filed 11-5-86; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. D-86-824; FR-2300]

Office of the Regional Administrator—Regional Housing Commissioner, Fort Worth Regional Office; Designation

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of order of succession.

SUMMARY: The Regional Administrator—Regional Housing Commissioner is designating officials who may serve as Acting Regional Administrator—Regional Housing Commissioner during the absence, disability, or vacancy in the position of the Regional Administrator—Regional Housing Commissioner.

EFFECTIVE DATE: This designation is effective October 8, 1986.

FOR FURTHER INFORMATION CONTACT: Ann Hallan, Director, Management and Budget Division, Office of Administration, Fort Worth Regional Office, Department of Housing and Urban Development, 1600 Throckmorton, P.O. Box 2905, Forth Worth, Texas 76113-2905, Telephone (817) 885-5451 (this is not a toll-free number).

Designation

Each of the officials appointed to the following positions is designated to serve as Acting Regional Administrator—Regional Housing Commissioner during the absence, disability, or vacancy in the position of the Regional Administrator—Regional Housing Commissioner, with all the powers, functions, and duties redelegated or assigned to the Regional Administrator—Regional Housing Commissioner: Provided that no official is authorized to serve as Acting Regional Administrator unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability, or vacancy in the position:

1. Deputy Regional Administrator;
2. Regional Counsel;
3. Director, Office of Community Planning and Development;
4. Director, Office of Administration;
5. Director, Office of Housing;
6. Director, Office of Fair Housing and Equal Opportunity; and
7. Director, Office of Public Housing.

This designation supersedes the designation published at 44 FR 19043 on July 5, 1984.

Authority: Delegation of Authority 27 FR 4319 (1962); section 9(c), Department of Housing and Urban Development Act, 42 U.S.C. 3531 note; and Interim Order II, 31 FR 815 (1966).

Sam R. Moseley,

Regional Administrator—Regional Housing Commissioner, Region VI.

[FR Doc. 86-25134 Filed 11-5-86; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-07-4213-24; CA-13968]

Filing an Airport Lease Application, Serial Number CA-13968, San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing an airport lease application.

SUMMARY: Notice is hereby given that on May 10, 1983, Marlton P. Forest filed an application for an airport lease at the Giant Rock landing strip in San Bernardino County, California pursuant to the Act of May 24, 1928 (45 Stat. 728; 49 U.S.C. 211-214) as amended (55 Stat. 621, 49 U.S.C. 211) and the regulations thereunder (43 CFR Part 2911). That filing segregated the following public lands from all other appropriations under the public land laws effective May 10, 1983.

San Bernardino Meridian

T. 3N., R. 6E.,
  Sec. 19, E½E½,
  Sec. 20, S½NW¼, SW¼,
  Sec. 21, W½NE¼, NW¼.
  Containing 640 acres.

Comments may be sent to the Area Manager, Bureau of Land Management, 150 Coolwater Lane, Barstow, CA 92311. Serial number CA-13968 must be included in the comments to identify the pending application.

Dated: October 30, 1986.

Bary A. Frost,

Acting District Manager.

[FR Doc. 86-25129 Filed 11-5-86; 8:45 am]

BILLING CODE 4310-40-M

[OR-030-07-4322-02: GP7-020]

Vale District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Vale District Grazing Advisory Board will meet December 9 in the Vale District Office. The meeting agenda will include discussion of proposed 1987 range improvement projects, Rangeland Program Summary updates for the Baker, Northern and Southern Malheur Resource Areas, and a review of the current status of remanded grazing decisions. The advisory board will also be briefed on the Cold Springs wild horse roundup, 1986 wildfire rehabilitation, and the Vale district's policy on supplemental grazing use.

DATE: The meeting will be held Tuesday, December 9, beginning at 9:00 a.m. in the Vale District Office conference room.

ADDRESSES: The Vale District Office is located at 100 East Oregon Street, Vale, Oregon, 97918.

FOR FURTHER INFORMATION CONTACT: Barry Rose, Public Affairs Specialist, Vale District Office, 503-473-3144.

David Lodzinski,

Associate District Manager

[FR Doc. 86-25130 Filed 11-5-86; 8:45 am]

BILLING CODE 4310-33-M

[AZ-010-67-4322-02; 1784-010]

Arizona Strip District Grazing Board; Meeting

ACTION: Notice of meeting.

SUMMARY: The Arizona Strip District Grazing Board will meet at 8:30 A.M. on Tuesday, December 2, 1986 at the Holiday Inn, 850 Bluff Street, St. George, Utah. The primary topics for consideration are FY 1987 rangeland improvements and antelope release update.

FOR FURTHER INFORMATION CONTACT: G. William Lamb, District Manager, 196 E. Tabernacle, St. George, Utah 84770, (801) 673-3545.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Interested persons may make oral statements at 9 A.M. or file written statements for the Board's consideration.

G. William Lamb,

Arizona Strip District Manager.

[FR Doc. 86-25060 Filed 11-5-86; 8:45 am]

BILLING CODE 4310-32-M

[AZ-010-87-4332-02; 1784-010]

Arizona Strip District Advisory Council; Meeting

ACTION: Notice of meeting.

SUMMARY: The Arizona Strip District Advisory Council will meet at 8:30 A.M. on Thursday, December 4, 1986 at the Holiday Inn, 850 Bluff Street, St. George, Utah. Primary topics on agenda are on-going District programs and discussion of issues related to minerals, cultural resources; wildlife and wilderness management.

FOR FURTHER INFORMATION CONTACT: G. William Lamb, District Manager, 196 E. Tabernacle, St. George, Utah 84770, (801) 673-3545.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Interested persons may make oral statements at 2 p.m. or file written statements for the Council's consideration.

G. William Lamb,

Arizona Strip District Manager.

[FR Doc. 86-25061 Filed 11-5-86; 8:45 am]

BILLING CODE 4310-32-M

[NV-030-07-4322-02]

Carson City District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Carson City District Grazing Advisory Board.

DATE: December 11, 1986—10:00 a.m. to 3:30 p.m.

DATES: Conference Room, 1535 Hot Springs Road, Suite 300, Carson City, Nevada.

FOR FURTHER INFORMATION CONTACT: Phil Anderson, Carson City District, Bureau of Land Management, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89701 (702) 882-1631.

SUPPLEMENTARY INFORMATION: This will be the first meeting for the newly elected Carson City District Grazing Advisory Board. The charter of the Advisory Board provides that the Board will advise the Bureau of Land Management (BLM) District Manager in the development of Allotment Management Plans, all phases, and in the expenditure of Range Betterment Funds. The agenda of this meeting will include election of officers, discussion of the Carson City Range Program for the 1987 fiscal year, a brief discussion of current allotment management plans, plus those new plans for 1987 fiscal year, and the status of the land use plans as they pertain to the grazing program and the projects that will be funded by 1987 range betterment funds. The meeting is open to the public. Any person may attend, file a written statement by mail or appear before the board at 2:00 p.m.

James W. Elliott,

District Manager.

[FR Doc. 86-25069 Filed 11-5-86; 8:45 am]

BILLING CODE 4310-HC-M

[MT-020-06-4410-02]

Miles City District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Notice of Meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Miles City District Advisory Council will be held Wednesday, December 10, 1986, at 10 a.m. in the conference room at the Miles City District, Bureau of Land Management Resource Area Offices, Miles City Plaza, Miles City, Montana 59301.

The agenda is as follows:

1. Status of access and easement acquisition program.
2. Report on "Access in Montana".
3. Status of Montana BLM Wilderness Designation Process.
4. Consideration of resolution on membership apportionment of National Public Lands Advisory Council.

The meeting is open to the public. The public may make oral statements before the Advisory Council or file written statements for the Council's consideration. Depending upon the number of persons wishing to make an oral statement, a person time limit may be established.

Summary minutes of the meeting will be maintained in the Bureau of Land Management District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: District Manager, Miles City District, Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301

Nat Millenbach,

District Manager.

[FR Doc. 86-25072 Filed 11-5-86; 8:45 am]

BILLING CODE 4310-DN-M

[AZ-040-07-4322-02]

Safford District Advisory Council and Grazing Advisory Board; Joint Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92-463 and 94-579 and 43 CFR Part 1780, that meetings of the Safford District Advisory Council and the Safford District Grazing Advisory Board will be held. Both the Council and Board meetings will be in conjunction with a field tour of the Lazy B Ranch. The tour will start at the Safford District Office.

DATE: Monday, December 15, 1986; 10:00 a.m.

ADDRESS: Safford District Office, 425 E. 4th Street, Safford, Arizona.

FOR FURTHER INFORMATION CONTACT: Pete Zwaneveld, Public Affairs Specialist or Jack Rietz, District Range Conservationist Safford District Office, 425 East 4th Street, Safford, Arizona 85546. Telephone (602) 428-4040.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes the following items: Field tour of the Lazy B Ranch to observe various grazing management systems, including Holistic Resource Management; Management Update; and Business from the floor.

The concurrent meetings are open to the public. Council and Board members will meet at the Safford District Office, 425 East 4th Street, Safford, Arizona, at 10:00 a.m. From there they will depart via BLM-provided vehicles for a tour of the Lazy B Ranch. Members of the public may accompany the tour but must provide their own transportation. Written statements may be filed for either the Council's or Board's consideration. A management update and business from the floor will take place during the lunch stop. The tour is expected to return to Safford by 5:00 p.m.

Summary minutes of the meetings will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: October 31, 1986.

Vernon L. Saline,

Acting District Manager.

[FR Doc. 86-25071 Filed 11-5-86; 8:45 am]

BILLING CODE 4310-32-M

[AA-6980-A, AA-6980-B, AA-6980-C]

Alaska Native Claims Selection; Huna Totem Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(b) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(b), will be issued to Huna Totem Corporation for approximately 1,534.42 acres. The lands involved are in the vicinity of Hoonah, Alaska.

U.S. Survey No. 2594

Cooper River Meridian, Alaska

T. 43 S., R. 60 E;
T. 43 S., R. 61 E;
T. 43 S., R. 62 E;
T. 44 S., R. 63 E;

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the JUNEAU EMPIRE. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until December 8, 1986, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Steven L. Willis,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-25056 Filed 11-5-86; 8:45 am]

BILLING CODE 4310-JA-M

[CA-010-07-4322-10]

Public Use Restriction (Extension); California

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of temporary vehicle use restrictions in the Short Canyon Area within Kern County in the Caliente Resource Area, Bakersfield District, California.

SUMMARY: This action extends restrictions on vehicle use on BLM-administered public land in the Short Canyon Area in Kern County, California, due to flood-caused damage. Maps of the affected area are available at the Caliente Resource Area Office, 520 Butte Street, Bakersfield, California. All vehicle use in this area is prohibited, except for administrative and rehabilitative purposes. Persons allowed to drive in the area will be designated by an authorized officer. This closure will continue to apply until December 30, 1986, or will open earlier if conditions permit.

The public lands affected by this closure are located in portions of T.26S., R.35E., M.D.M., Sections 20, 21, 22, 26, 27, 28, 29, 32, 33, 34, and 35.

SUPPLEMENTARY INFORMATION: Due to extensive flooding that occurred during July and August 1984 and severe storms in August 1986, massive amounts of sandy soils have been eroded and deposited in the Short Canyon Area. These recently deposited soils, as well as eroded hillside soils, and loss of soil-holding vegetation, represent a potential hazard in that they are highly vulnerable to further erosion and subsequent massive soil movement. This situation directly effects commercial and residential developments in the area. In order to stabilize the eroded area, a temporary vehicle closure will be maintained so that vegetation can be reestablished to protect these fragile soils. Authority for this vehicle closure is contained in CFR Title 43, Chapter II, Part 8364.1(a).

DATES: This vehicle closure is effective from November 16, 1987 through December 30, 1987, unless conditions permit an early opening.

FOR FURTHER INFORMATION CONTACT: Glenn Carpenter, Caliente Resource Area Manager, Caliente Resource Area, Bureau of Land Management, 520 Butte Street, Bakersfield, California 93305; (805) 861-4236.

Dated: October 29, 1986.

Katherine G. McPeters,

Acting Caliente Resource Area Manager.

[FR Doc. 86-25057 Filed 11-5-86; 8:45 am]

BILLING CODE 4310-40-M

[AZ-020-07-4212-13; A-22309]

Realty Action; Exchange of Mineral Estate; Arizona

The following described federal mineral estate has been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian

T. 19 N., R. 25 E.,
  Section 30: NE¼SW¼.
  Comprising 40 acres.

In exchange for the federal mineral estate described above, the United States will acquire the following privately owned mineral estate:

T. 19 N., R. 24 E.,
  Section 27, SW¼SW¼.
  Comprising 40 acres.

The purpose of this exchange is to acquire the mineral estate underlying a parcel of land that is to be added to Petrified Forest National Park. The above described federal mineral estate is not encumbered by mining claims. The mineral estate to be acquired by the United States from Santa Fe Mining, Inc., is also unencumbered.

Based on leasable and locatable mineral potential reports, it has been determined that the overall potential mineral value of the private and federal mineral estates are approximately equal.

Publication of this notice shall segregate the federal minerals, as described in this notice, from appropriation under the mining laws. This segregative effect shall terminate upon the issuance of a patent or two years from the date of this notice, or upon publication of a Notice of Termination.

Detailed information concerning the exchange, including the locatable mineral potential and the leasable mineral potential reports, can be obtained from the Phoenix Resource Area Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027. For a period of forty-five (45) days, from the date of this notice, interested parties may submit comments to the Phoenix

District Manager, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: October 30, 1986.

Marlyn V. Jones,

District Manager.

[FR Doc. 86-25070 Filed 11-5-86; 8:45 am]

BILLING CODE 4310-32-M

[CA-060-07-4211-07-NCBG; CA-19159]

Realty Action; Exchange of Public and Private Lands in Riverside and San Diego Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—exchange of Public and Private Lands, CA 19159.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

Legal Description and Reservation

Riverside County, San Bernardino Meridian, California

T. 8S., R. 2E.,
  Sec. 14: NW¼ NW¼.—A-1
T. 7S., R. 3 E.,
  Sec. 18: E½ E½, SE¼ SE¼.—A-1

San Diego County, San Bernardino Meridian, California

T. 11S., R. 1W.,
  Sec. 29: Lot 14.
  Sec. 31: Lot 6.
  Sec. 32: Lots 8, 9, 11, 12, 13.—A-1
T. 9S., R. 2W.,
  Sec. 4: SW¼ NE¼, SE¼ NW¼, N½ SW¼.—A-1,2;B
T. 11S., R. 3W.,
  Sec. 9: Lots 9 & 18.—A-1
T. 12S., R. 2E.,
  Sec. 28: NW¼ NW¼.—A-1
T. 16S., R. 7E.,
  Sec. 2: N½ NW¼, SW¼ NE¼, N½ SE¼ NW¼, NE¼ SW¼.—A-1;B

Containing 470.53 acres, more or less.

In exchange for these lands, the United States will acquire the following described non-federal lands in Riverside County from The Nature Conservancy:

San Bernardino Meridian, California

T. 4S., R. 7E.,
  Sec. 8: All.

Containing 640.00 acres, more or less.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire a portion of the non-federal lands within the proposed 13,030 acre preserve for the Coachella Valley fringe-toed lizard. The lizard is federally listed as threatened and State listed as endangered. The Bureau of Land Management's goal is to acquire approximately 6,700 acres within the preserve. The acres being acquired do not constitute habitat for the lizard, but provide a sand source required for the continuing production of active sand dune areas that are critical habitat for the lizard. Other state and federal agencies will acquire the remaining portions of the preserve. The public interest will be well served by completing this exchange.

The values of the lands to be exchanged are approximately equal; full equalization of values will be achieved through acreage adjustment, or by cash payment in an amount not to exceed 25 percent of the value of the lands being transferred out of federal ownership.

Lands to be transferred from the United States will be subject to:

A-1. A reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States; Act of August 30, 1890 (26 Stat. 391, 43 U.S.C. 945).

A-2. A right-of-way for a water tank and pipeline granted to Anthony DiMaggio pursuant to the Act of October 21, 1976 (43 U.S.C. 1761); Grant No. CA 18124.

B. All the Geothermal Steam and associated Geothermal Resources shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document is available for review at this BLM office.

Publication of this notice in the **Federal Register** segregates the public lands from operation of the public land laws and the mining law, except for mineral leasing. The segregative effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

For detailed information concerning this exchange, including the planning documents, environmental assessment and land report, contact Peter A. Kempenich, BLM Indio Resource Area Office, 1900 E. Tahquitz-McCallum Way, Suite B-1, Palm Springs, California 92262.

For a period of 45 days after publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: October 30, 1986.

Bary A. Freet,

Acting District Manager.

[FR Doc. 86-25131 Filed 11-5-86; 8:45 am]

BILLING CODE 4310-40-M

[WY-920-07-4111-15-7001; W-95566]

Proposed Reinstatement of Terminated Oil and Gas Lease, Wyoming

October 30, 1986.

Pursuant to the Provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (n)(1), a petition for reinstatement of oil and gas lease W-95566 for lands in Natrona County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16-2/3 percent, respectively.

The lessee has paid the required $500 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-95566 effective July 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Patricia J. Wattles,

Acting Chief, Leasing Section.

[FR Doc. 86-25073 Filed 11-5-86; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-07-4111-15-7001; W-70060-A]

Proposed Reinstatement of Terminated Oil and Gas Lease, Wyoming

October 30, 1986.

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-70060-A for lands in

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Converse County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $7 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-70060-A effective August 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Patricia J. Wattles,

Acting Chief, Leasing Section.

[FR Doc. 86-25074 Filed 11-5-86; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-07-4111-15-7001; W-90534]

Proposed Reinstatement of Terminated Oil and Gas Lease, Wyoming

October 29, 1986.

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-90534 for lands in Big Horn County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-90534 effective February 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Patricia J. Wattles,

Acting Chief, Leasing Section.

[FR Doc. 86-25075 Filed 11-5-86; 8:45 am]

BILLING CODE 4310-22-M

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On August 4, 1986, a notice was published in the **Federal Register** (51(149) FR 27918) that an application had been filed with the Fish and Wildlife Service by Vancouver Public Aquarium (PRT-709567) for a permit to take and export two Alaskan sea otters (*Enhydra lutris lutris*) for public display.

Notice is hereby given that on October 22, 1986, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Endangered Species Act (16 U.S.C. 1539), the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

The permits are available for public inspection during normal business hours at the Fish and Wildlife Service's Office in Room 605, 1000 North Glebe Road, Arlington, Virginia 22201.

Dated: October 31, 1986.

R.K. Robinson,

Chief, Federal Wildlife Permit Office.

[FR Doc. 86-25115 Filed 11-5-86; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Outer Continental Shelf (OCS) Oil and Gas Information Program

Notice. Availability of 1986 Outer Continental Shelf Information Program (OCSIP) Documents for the Atlantic, Pacific, and Gulf of Mexico Regions, and the OCS National Compendium.

Summary: The OCSIP has recently published the following documents in compliance with the OCS Lands Act Amendments of 1978 and 30 CFR 252.4:

MMS 86-0017 *OCS National Compendium.* "Outer Continental Shelf Oil and Gas Information through 1984"

MMS 86-0060 *Pacific Summary Report/Index: November 1984-May 1986*

MMS 86-0084 *Gulf of Mexico Summary Report/Index: November 1984-June 1986*

MMS 86-0071 *Atlantic Summary/Index: January 1985-June 1986*

In an effort to publish a more cost effective document, the OCSIP has made an evolution of format changes during the past year, as can be seen in the document title variations listed above. The resulting format for 1987 should provide a more succinct reference tool for State and local planners, as well as to Federal Government managers.

While still reporting on the standard topics, the OCSIP is striving to eliminate parallel coverage so that the documents will be easier to read and cheaper to publish, yet still be as information and up-to-date as possible. The first format change combined the subregional documents of the Alaska (Arctic, Bering, Gulf of Alaska) and Atlantic (North, Mid, and South) Regions into one document for each region, instead of three.

Another format change further combined the regional summary reports and the regional indexes into one document for each region; i.e., Summary Report/Index.

The standard topics still include the following:

(1) Offshore oil and gas resources.

(2) Magnitude and timing of OCS development.

(3) Oil and gas transportation strategies.

(4) Nature and location of onshore support facilities.

(5) Appendixes of OCS-related studies and issues, Federal and State agency directories, Federal depository libraries, and leasing procedure descriptions.

The *OCS National Compendium* (MMS 86-0017) is a consolidated volume of historical data taken from past OCSIP Summary Reports and Indexes, which provides a national overview as well as allowing regional comparisons. Where information was available, worldwide offshore data have been included for comparison.

To obtain: Copies of the documents may be obtained free of charge from the OCS Information Program, Office of Offshore Information and Publications, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Mail Stop 642, Vienna, Virginia 22180. Telephone (703) 285-2280.

FOR FURTHER INFORMATION CONTACT: Douglas L. Slitor, Chief, OCS Information Program, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Mail Stop 642, Vienna, Virginia 22180. Telephone (703) 285-2285.

Dated: October 28, 1986.

John Goll,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 86-25066 Filed 11-5-86; 8:45 am]

BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 395-7313.

Title: State Regulatory Authority: Inspection and Enforcement, 30 CFR Part 840.

Abstract: This information collection requirement is authorized by section 521 of Pub. L. 95-87. This provision requires the regulatory authority to submit and maintain inspection records for public review. This information is necessary to meet the public participation provisions of the Act. Public review assures the public that the State is meeting the requirements of the Act and approved State regulatory program.

Bureau Form Number: None.

Frequency: Quarterly, monthly and on occasion.

Description of Respondents: State Regulatory Authorities.

Annual Responses: 144,408.

Annual Burden Hours: 216,804.

Bureau clearance officer: Darlene Grose Boyd 202-343-5447.

Dated: August 13, 1986.

Donald L. Hinderliter,

Acting, Assistant Director for Budget and Administration.

[FR Doc. 86-25106 Filed 11-5-86; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-271X]

Chicago & Illinois Midland Railway Company; Exemption; Abandonment in Christian County, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by Chicago & Illinois Midland Railway Company of its "B&O connection track" (track Nos. 6 and 11), a distance of approximately 1.5 miles in Taylorville, Christian County, IL, subject to standard labor protective conditions and the filing of a notice of environment and energy matters on the designated State agency in Illinois.

DATES: This exemption will be effective on December 6, 1986. Petitions to stay must be filed by November 17, 1986, and petitions for reconsideration must be filed by November 26, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB-271X to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: William G. Harvey, P.O. Box 139, Springfield, IL 62705

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: October 30, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 86-25082 Filed 11-5-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree in Clean Air Act Enforcement Action

In accordance with Departmental Policy, 28 CFR 50.7 38 FR 19029, notice is hereby given that a consent decree in *United States* v. *Osceola Farms Co.* was lodged with the United States District Court for the Southern District of Florida on October 24, 1986. The proposed consent decree requires Osceola Farms to comply with applicable Clean Air Act requirements governing emissions of particular matter, implement certain operation and maintenance procedures for three years, and pay a civil penalty of $85,000.

The Department of Justice will receive for thirty (30) days from the publication date of this notice, written comments relating to the decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and refer to *United States* v. *Osceola Farms Co.*, 90-5-2-1-870.

The consent decree can be examined at the office of the United States Attorney, 155 S. Miami Avenue, Room 500, Miami, Florida 33130, the Region IV Office of the Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia, and at the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice, (Room 1515), Ninth and Pennsylvania Avenue, NW., Washington, DC 20530. Copies of the consent decree can be obtained in person or by mail from the Environmental Enforcement Section at the above address.

F. Henry Habicht, II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-25063 Filed 11-5-86; 8:45 am]

BILLING CODE 4410-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-440]

Cleveland Electric Illuminating Co., et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from a portion of the requirements of Appendix E to 10 CFR Part 50 to the Cleveland Electric Illuminating Company (CEI), Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, and Toledo Edison Company (the licensees) for the Perry Nuclear Power Plant, Unit No. 1, located at the licensees' site in Lake County, Ohio. The exemption was requested by the licensees by letter from CEI dated October 30, 1986.

Environmental Assessment

Identification of Proposed Action: The exemption will permit the licensees, following the Commission's issuance of a full power operating license for the facility, to operate the unit above 5% of its rated power without conducting another offsite full participation emergency preparedness exercise prior to May 1988.

Section IV.F.1 of 10 CFR Part 50, Appendix E, requires that a full participation exercise of the offsite

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emergency preparedness plans be conducted within 1 year prior to operation above 5% of rated power. The Perry emergency plan was previously exercised on April 15, 1986, with state and local government participation. However, the need for this exemption has arisen because the Federal Emergency Agency (FEMA), in its report dated September 5, 1986, has characterized the April 1986 exercise as demonstrating full participation for Ashtabula, Geauga and Lake Counties of Ohio, but partial participation for the State of Ohio.

The Need for the Proposed Action: The proposed exemption is needed to permit the licensee to proceed with operation above 5% of rated power prior to conducting another offsite emergency preparedness exercise. The next exericse with full participation at the State and County level is presently scheduled for May 1988. An alternative possibility is to upgrade an onsite exercise planned for May 1987 to include full offsite participation. However, neither date would be timely for Perry Unit 1, which is expected to be ready by mid to late November 1986 for operation above 5% of rated power.

Environmental Impact of the Proposed Action: The exemption would not affect the environemtal impact of the facility because the level of emergency preparedness will not be degraded by its issuance. Both FEMA and the NRC concluded from the April 1986 exercise that the results provide reasonable assurance of adequate offsite emergency preparedness relative to the Perry Plant. Therefore, the proposed exemption does not involve a significant radiological environmental impact. In addition, the action would have no effect on nonradiological environmental impacts associated with the Perry Plant.

Alternative to the Proposed Action: Because the staff has concluded that there is no significant impact associated with the proposed exemption, any alternative to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to the Operation of Perry Nuclear Power Plant, Units 1 and 2," dated August 1982.

Agencies and Persons Consulted: The NRC staff consulted FEMA regarding its September 5, 1986 report. No other agencies or persons were contacted.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the request for exemption dated October 30, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Bethesda, Maryland, this 3rd day of November 1986.

Walter R. Butler,

Director, BWR Project Directorate No. 4, Division of BWR Licensing.

[FR Doc. 86-25133 Filed 11-5-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Spent Fuel Storage; Meeting

The ACRS Subcommittee on Spent Fuel Storage will hold a meeting on November 21, 1986, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, November 21, 1986—8:30 a.m. Until the Conclusion of Business

The Subcommittee will continue its review of 10 CFR Part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High Level Radioactive Waste" and Monitored Retrievable Storage (MRS).

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Owen Merrill (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., whicy may have occurred.

Dated: November 3, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-25113 Filed 11-5-86 8:45 am]

BILLING CODE 7590-01-M

Proposed Availability of FY 1987 Funds for Financial Assistance To Enhance Technology Transfer and Dissemination of Nuclear Energy Process and Safety Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC), Office of Nuclear Regulatory Research announces proposed availability of FY 1987 funds to support professional meetings symposia, conferences, national and international commissions and publications for the expansion, exchange and transfer of knowledge, ideas and concepts directed toward the research necessary to provide a technology base to assess the safety of nuclear power (hereinafter called project).

Projects will be funded through grants.

EFFECTIVE DATE: November 1, 1986 through September 30, 1987.

ADDRESS: U.S. Nuclear Regulatory Commission, Attn: Grants Officer, Division of Contracts, Office of Administration, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: The cognizant NRC grant official is Mr. Ronald Thompson, telephone (301) 492-4322.

SUPPLEMENTARY INFORMATION:

A. Scope and Purpose of this Announcement

Pursuant to section 31.a. and 141.b. of the Atomic Energy Act of 1954, as amended, the NRC's Office of Nuclear Regulatory Research proposes to support educational institutions, nonprofit institutions, state and local governments, and professional societies through providing funds for expansion, exchange and transfer of knowledge, ideas and concepts directed toward the research program. The program includes, but is not limited to, support of professional meetings, symposia, conferences, national and international commissions, and publications. The primary purpose of this will be to stimulate research to provide a technological base for the safety assessment of systems and subsystems technologies used in nuclear power applications. The results of this program will be to increase public understanding relating to nuclear safety, to enlarge the funds of theoretical and practical knowledge and technical information, and ultimately to enhance the protection of the public health and safety.

B. Eligible Applicants

Educational institutions, nonprofit entities, state and local governments and professional societies are eligible to apply for a grant under this announcement.

C. Research Proposals

A research proposal should describe: (i) The objectives and scientific significance of the proposed meeting, symposium, conference, or commission; (ii) the methodology to be proposed or discussed, and its suitability; (iii) the qualifications of the participants and the proposing organization; and (iv) the level of financial support required to perform the proposed effort.

Proposals should be as brief and concise as is consistent with communication to the reviewers. Neither unduly elaborate applications nor voluminous supporting documentation is desired.

State and local governments shall submit proposals utilizing the standard forms specified in Office of Management and Budget (OMB) Circular A-102, Attachment M. Nonprofit organizations, universities, and professional societies shall submit proposals utilizing the standard forms stipulated on OMB Circular A-110, Attachment M.

The format used for project proposals should give a clear presentation of the proposed project and its relation to the specific objectives contained in this notice. Each proposal should follow the format outlined below unless the NRC specifically authorizes exception.

1. Cover Page. The Cover Page should be typed according to the following format (submit separate cover pages if the proposal is multi-institutional):

Title of Proposal—To include the term "conference," "symposium," "workshop," or other similar designation to assist in the identification of the project;

Location and Dates of Conferences, Symposium, Workshop, etc.;

Name of Principal Participants;

Total Cost of Proposal;

Period of Proposal;

Organization or Institution and Department;

Required Signatures:

Principal Participants:

Name:
Date:
Address:
Telephone No.:

Required Organization Approval:

Name:
Date:
Address:
Telephone No.:

Organization Financial Officer:

Name:
Date:
Address:
Telephone No.:

2. Project Description. Each proposal shall provide, in ten pages or less, a complete and accurate description of the proposed project. This section should provide the basic information to be used in evaluating the proposal to determine its priority for funding.

Applicants must identify other proposed sources of financial support for a particular project.

The information provided in this section must be brief and specific. Detailed background information may be included as supporting documentation to the proposal.

The following format shall be used for the project description:

(a) Project Goals and Objectives:

The project's objectives must be clearly and unambiguously stated.

The proposal should justify the project including the problems it intends to clarify and the development it may stimulate.

(b) Project Outline:

The proposal should show the project format and agenda, including a list of principal areas or topics to be addressed.

(c) Project Benefits:

The proposal should indicate the direct and indirect benefits that the project seeks to achieve and to whom these benefits will accrue.

(d) Project Management:

The proposal should describe the physical facilities required for the conduct of the project. Further, the proposal should include brief biographical sketches of individuals responsible for planning the project.

(e) Project Costs:

Nonprofit organizations shall adhere to the cost principles set forth in OMB Circular A-122; Educational Institutions shall adhere to the cost principles set forth in OMB Circular A-21; and state and local governments shall adhere to the cost principles set forth in OMB Circular A-87.

The proposal must provide a detailed schedule of project costs, identifying in particular:

(1) Salaries—in proportion to the time or effort directly related to the project;

(2) Equipment (rental only);

(3) Travel and Per Diem/Subsistence in relation to the project;

(4) Publication Costs;

(5) Other Direct Costs (specify)—e.g., supplies or registration fees;

Note.—Dues to organizations, federations or societies, exclusive of registration fees, are not allowed as a charge.

(6) Indirect Costs (attach negotiated agreement/cost allocation plan); and

(7) Supporting Documentation. The supporting documentation should contain any additional information that will strengthen the proposal.

D. Proposal Submission and Deadline

This program announcement is valid for the period of November 1, 1986 to September 30, 1987. Proposal submissions shall be one signed original and six copies.

E. Funds

For Fiscal Year 1987, the U.S. Nuclear Regulatory Commission, Office of Nuclear Regulatory Research anticipates making $75,000-$100,000 available for funding the project(s) mentioned hearing.

The NRC anticipates that approximately 5 to 10 projects will be funded. Further, the NRC anticipates that its average support will be $5,000-$15,000 per project.

F. Evaluation Process

All proposals received as a result of this announcement will be evaluated by an NRC review panel.

G. Evaluation Criteria

The award of NRC grants is discretionary. Generally, projects are supported in order to merit to the extent permitted by available funds.

Evaluation of proposals will employ the following criteria:

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1. Potential usefulness of the proposed project for the advancement of scientific knowledge;

2. Clarity of statement of objectives, methods, and anticipated results;

3. Range of issues covered by the meeting agenda;

4. Qualifications and experience of project speakers; and

5. Reasonableness of estimated cost in relation to anticipated results.

H. Disposition of Proposals

Notification of award will be made by the Grants Officer and organizations whose proposals are unsuccessful will be so advised.

I. Proposal Instructions and Forms

Questions concerning the preceding information, copies of application forms, and applicable regulations shall be obtained from or submitted to: U.S. Regulatory Commission; Attn: Grants Officer, Division of Contracts, AR–2223, Office of Administration, Washington, DC 20555.

The address for hand-carried applications is: U.S. Regulatory Commission; Attn: Grants Officer, Division of Contracts, Office of Administration, Room 2223, 4550 Montgomery Avenue, Bethesda, MD 20814

Nothing in this solicitation should be construed as committing the NRC to dividing available funds among all qualified applicants.

Dated at Washington, DC this 29th day of October 1986.

For the U.S. Nuclear Regulatory Commission.

Ronald D. Thompson,

Chief, Contract Negotiation Branch No. 2, Division of Contracts, Office of Administration.

[FR Doc. 86–25044 Filed 11–5–86; 8:45 am]

BILLING CODE 7590-01-M

PEACE CORPS

Notification of Extension Request of Peace Corps' Form PC 1532, Volunteer Reference Form

ACTION: Notification of extension request of Peace Corps' form PC 1532, volunteer reference form.

SUMMARY: The information collection from described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Peace Corps is requesting a three-year extension approval of the form.

ADDRESS: Interested persons are invited to submit comments regarding this form by name. These comments should be sent to Francine Picoult, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20503. Comments should be received on or before January 5, 1987.

FOR FURTHER INFORMATION CONTACT: James Duke, Management Analyst, Office of Volunteer Recruitment and Selection, Peace Corps, 806 Connecticut Avenue, NW., Room M–900 Washington, DC 20526, telephone (202) 254–8387. This is not a toll-free number. For a copy of the form contact Mr. Duke.

SUPPLEMENTARY INFORMATION: Individuals applying for Peace Corps Volunteer service furnish names and addresses of persons having knowledge of their qualifications for such service. Reference forms sent to the listed individual for those applicants basically qualified and nominated for Peace Corps Volunteer service. Information furnished by the referents is used as a part of the determination process in selecting and placing applicant/nominees in volunteer projects. Peace Corps has no other means of obtaining this type of appraisal of an applicant's capabilities for volunteer service.

List of Subjects: Volunteers, Privacy Act
Form Title: Peace Corps Volunteer Reference Form
Office: Volunteer Recruitment and Selection
Form Number: PC 1532
Frequency of Submission: On occasion
Affected Public: Individuals listed as references by Peace Corps Volunteer applicants
Estimated Burden Hours: 35,000 per annum

This is not a proposal to which 44 U.S.C. 3504(h).

This notice is issued in Washington, DC on November 3, 1986.

Linda Rae Gregory,

Associate Director for Management.

Robert E. McClendon,

Certifying Officer, Peace Corps.

[FR Doc. 86–25055 Filed 11–5–86; 8:45 am]

BILLING CODE 6051-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission.

DATE: Comments should be submitted by November 28, 1986. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Copies of survey, request for clearance (S.F. 83), supporting statement, instructions, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Elizabeth M. Zaic, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653–6623
OMB Reviewer: Patricia Aronsson, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395–7231
Title: Erroneous Penalties Assessed by IRS Associated with Payroll Taxes
Frequency: On-time, non-recurring
Description of Respondents: SBA is conducting a study to determine the reasons for the large number of erroneous penalty assessments made by IRS on small businesses with respect to employment returns and the number of small businesses which pay the erroneous assessment instead of challenging them. This data will be collected from small businesses by a mail questionnaire.
Annual Responses: 3,200
Annual Burden Hours: 96
Type of Request: New

Elizabeth M. Zaic,

Deputy Director, Office of Administrative Services, Small Business Administration.

[FR Doc. 86–25109 Filed 11–5–86; 8:45 am]

BILLING CODE 8025-01-M

[Disaster Loan Area No. 2255 Amdt. No. 1]

Missouri; Declaration of Disaster Loan Area

The above-numbered Declaration (51 FR 37532) is hereby amended to include the entire county of Jackson County, Missouri, due to torrential rains, flash flooding and flooding which occurred on September 17, 1986. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on December 15, 1986, and for economic injury until the close of business on July 15, 1987.

Dated: October 29, 1986.

Charles L. Heatherly,

Acting Administrator.

[FR Doc. 86-25096 Filed 11-5-86; 8:45 am]

BILLING CODE 8025-01-M

[License No. 05/05-0173]

Madison Capital Corp.; Surrender of License

Notice is hereby given that Madison Capital Corporation, 102 State Street Madison, Wisconsin 53703 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Madison Capital Corporation was licensed by the Small Business Administration on December 9, 1983.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on October 16, 1986 and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 27, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-25049 Filed 11-5-86; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 01/01-0340]

Monarch—Narragansett Ventures, Inc.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.102 of the SBA Regulations (13 CFR 107.102 (1986)) by Monarch—Narragansett Ventures, Inc., (Applicant) One Financial Plaza, Springfield, Massachusetts 01102, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 et seq.) and the Rules and Regulations promulgated thereunder.

The officers, directors and shareholders of the Applicant are as follows:

Name	Title or relationship	Percentage of shares owned
George W. Siguler, One Financial Plaza, Springfield, MA 01102.	President, Director.	
James M. Durham, One Financial Plaza, Springfield, MA 01102.	Treasurer, Director.	
Gordon N. Oakes, Jr., One Financial Plaza, Springfield, MA 01102.	Director	
Raymond A. Terlera, Esq., One Financial Plaza, Springfield, MA 01102.	Clerk	
Michael J. Romanowski, One Financial Plaza, Springfield, MA 01102.	Manager	
Monarch-Narragansett Corporation, One Financial Plaza, Springfield, MA 01102.	Shareholder	99.991
Monarch Capital Corporation, One Financial Plaza, Springfield, MA 01102.	Shareholder	.009

Monarch Capital Corporation is a publicly traded holding company and sole shareholder of Monarch-Narragansett Corporation.

The Applicant, a Massachusetts corporation, will begin operations with approximately $10,000,000 paid in capital and paid in surplus.

The Applicant will conduct its activities primarily in the Commonwealth of Massachusetts but will consider investments in businesses in other areas of the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the company under their management including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in Springfield, Massachusetts.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 30, 1986.

John L. Werner,

Acting Deputy Associate Administrator for Investment.

[FR Doc. 86-25051 Filed 11-5-86; 8:45 am]

BILLING CODE 8025-01-M

Senior Executive Service Performance Review Boards List of Members

AGENCY: Small Business Administration.

ACTION: Listing of personnel serving as members of this agency's senior executive service performance review boards.

SUMMARY: Pub. L. 95-454 dated October 13, 1978, (Civil Service Reform Act of 1978) requires that Federal Agencies publish notification of the appointment of individuals who serve as members of that agency's Performance Review Boards (PRB). The following is a listing of those individuals currently serving as members of this Agency's PRB:

1. James P. Gallogly, Assistant Administrator for Information Resources Management;
2. Edwin T. Holloway, Associate Administrator for Finance and Investment;
3. Janice E. Wolfe, District Director, Washington;
4. Monika Edwards Harrison, Associate Administrator for Procurement Assistance;
5. Robert H. Miller, Regional Administrator, Philadelphia;
6. Richard L. Osbourn, Director of Personnel, (Non-voting Technical Advisor); and
7. George H. Robinson, Director of Equal Employment Opportunity and Compliance, (Non-voting Equal Employment Advisor);
8. Martin D. Teckler, Deputy General Counsel;
9. June M. Nichols, Regional Administrator, Atlanta
10. Robert J. Moffitt, Deputy Associate Administrator for Procurement Assistance;
11. Albert J. Prendergast, Director of Program Analysis and Review;
12. Wilfredo J. Gonzales, Associate Administrator for Minority Small Business and Capital Ownership Development;
13. Robert G. Lineberry (Alternate), Deputy Associate Administrator for Investment;
14. Renald Morani, Deputy Inspector General, Veterans Administration;
15. Joseph J. Genovese, Assistant Inspector General for Auditing, Department of Transportation; and

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16. Lawrence Dempsey (Alternate), Assistant Inspector General for Investigations, General Services Administration.

Dated: October 31, 1986.

Charles L. Heatherly,

Acting Administrator.

[FR Doc. 86–25050 Filed 11–5–86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM–8/1019]

Overseas Schools Advisory Council; Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Executive Committee meeting on Wednesday, December 17, 1986, 9:30 a.m., in Conference Room 1107, Department of State Building, Washington, DC.

Agenda items scheduled for discussion are as follows:

I. Welcome and Introduction of Participants.

II. Greetings from the Department of State.

III. Results of Surveys and Reports Concerning Schools Fund-Raising Drives and Activities of Regional School Associations.

IV. Council Programs of Educational Assistance:

(a) Final Report of 1985 Program and Initial Progress Report on 1986 Program.

(b) Recommendations of Council's Evaluation Committee Regarding Projects submitted by Regional Overseas Schools Associations for 1987 Program.

(c) Council's Efforts in Securing Necessary Contributions for 1986 and 1987 Programs.

V. Council's Communications with U.S. Corporations and Foundations.

VI. Election of Council Chairman and Vice Chairman.

Access to the State Department is controlled, therefore members of the public desiring to attend the meeting should call Ms. Joyce Bruce, Office of Overseas Schools, Department of State, Washington, DC, Area Code 703–235–9600, prior to December 17. The public may participate in discussions at the Chairman's instructions.

Dated: October 30, 1986.

Ernest N. Mannino,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 86–25064 Filed 11–5–86; 8:45 am]

BILLING CODE 4710-24-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Multnomah County, OR

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Multnomah County, Oregon.

FOR FURTHER INFORMATION CONTACT: Elton Chang, Environmental Coordinator and Safety Programs Engineer, Federal Highway Administration, Equitable Center, Suite 100, 530 Center NE., Salem, Oregon 97301. Telephone: (503) 399–5749.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Oregon Department of Transportation will prepare an environmental impact statement (EIS) on a proposal to reconstruct a 4.3 mile section of I–84 between 181st Avenue and the Troutdale Interchange. The project would widen the roadway to six lanes and reconstruct the interchanges. The interchanges may be replaced at locations that are different from the existing interchange locations. The project is located in east Multnomah County and passes through the cities of Wood Village and Fairview. The proposed improvement is considered necessary to provide for the existing and projected traffic demand and a safe and efficient highway meeting modern design standards.

Alternatives under consideration include (1) widen the roadway and replace the interchanges in essentially the same locations; (2) widen the roadway, reconstruct two of the interchanges, and redesign the third interchange as a full instead of a partial interchange; (3) widen the roadway and relocate one or two of the interchanges to new locations; and (4) taking no action.

Information describing the proposed action and soliciting comments will be sent to the appropriate Federal, State and local agencies. Public meetings will be held during project development, and a public hearing will be held. No formal scoping meeting is planned at this time.

Comments or questions concerning this proposed action, and the EIS, should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372. "Intergovernmental Review of Federal Programs" apply to this program)

Issued on: October 24, 1986.

Elton H. Chang,

Environmental Coordinator/Safety Program Engineer, Oregon Division, Salem, Oregon.

[FR Doc. 86–25067 Filed 11–5–86; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Multnomah County, OR

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Multnomah County, Oregon.

FOR FURTHER INFORMATION CONTACT: Elton Chang, Environmental Coordinator and Safety Programs Engineer, Federal Highway Administration, Equitable Center, Suite 100, 530 Center NE., Salem, Oregon 97301. Telephone: (503) 399–5749.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Oregon Department of Transportation will prepare an environmental impact statement (EIS) on a proposal to improve traffic flow and safety on a 1.9 mile section of I–5 (Pacific Highway) in Portland, Oregon. The proposed improvements are intended to minimize the number of on-and-off-ramps entering and leaving the freeway; to provide standard acceleration and deceleration lanes; and to provide standard weave and merge distances associated with the ramps through a system of collector-distributor frontage roads and braided ramps. The proposed improvement is considered necessary to provide for the existing and projected traffic demand and a safe and efficient highway meeting modern design standards.

Alternatives under consideration include different ramp locations and different local street patterns. An alternative that would not include any action is also being considered.

Information describing the proposed action and soliciting comments will be sent to the appropriate Federal, State and local agencies. Public meetings will be held during project development, and a public hearing will be held. No formal scoping meeting is planned at this time.

Comments or questions concerning this proposed action, and the EIS, should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372. "Intergovernmental Review of Federal Programs" apply to this program)

Issued on October 24, 1986.

Elton H. Chang,

Environmental Coordinator/Safety Prgm Engineer, Oregon Division, Salem, Oregon.

[FR Doc. 86-25068 Filed 11-5-86; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. IP86-06; Notice 2]

Motor Vehicle Safety Standards; Marina Mobili, Inc.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Marina Mobili, Inc. of Moonachie New Jersey, to be exempted from the notification and remedy requirements of the National Highway Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.115, Motor Vehicle Safety Standard No. 115, *Vehicle Identification Number.* The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on May 7, 1986, and an opportunity afforded for comment (51 FR 16944).

Paragraphs S3 and S4.2 of Federal Motor Vehicle Standard No. 115, *Vehicle Identification Number,* give the definition of vehicle identification numbers and requirement of the standard respectively. "A vehicle identification number is a series of Arabic number and Roman letters which is assigned to a motor vehicle for identification purposes." Standard No. 115 requires that the vehicle identification number consist of seventeen (17) characters.

The petitioner determined that 50 mopeds (motor driven cycles) manufactured in 1981 do not comply with Standard No. 115 requirements because of the use of an abbreviated vehicle identification number.

Marina Mobili stated that, due to the small number of Negrini mopeds involved, it believes the abbreviated vehicle identification number on these vehicles is an inconsequential noncompliance as it relates to motor vehicle safety.

Marina Mobili also argued that recalls would have detrimental effects because:

"a. The original certification level contains the month and year of manufacture as well as the vehicle identification number. The new labels would have to be sent out with the date of manufacture space blank, making it necessary for the customer to imprint this information into the new certification label.

b. Most Department of Motor Vehicle Offices would become suspect of a moped having been stolen after the old certification plate had been removed and a new label installed.

c. Some of the Gazelle III mopeds affected by the noncompliance are being used in States that require moped registration. These units would already be registered under the original abbreviated vehicle identification number. Changing the vehicle identification number on these units would create a great deal of confusion at the various Department of Motor Vehicle Offices and in turn, create problems for the consumer."

No comments were received on the petition.

The agency has recognized, in past instances of noncompliances with Standard No. 115, the problems that removal and reissuance of VINs would cause. Because the population of affected vehicle is small, and their VINs are sufficient to identify them in the event the manufacturer wishes to recall them, the manufacturer has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegation of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on October 31, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc 86-25085 Filed 11-5-86; 8:45 am]

BILLING CODE 4910-59-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joe Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: November 3, 1986.

By direction of the Administrator.

Robert W. Schultz,

Director, Office of Information Management and Statistics.

Extension

1. Department of Veterans Benefits
2. Claim for Disability Insurance Benefits
3. VA Form 29-357
4. On occasion
5. Individuals or households
6. 13,250 responses
7. 26,500 hours
8. Not applicable

1. Department of Veterans Benefits
2. Certification of Loan Disbursement Manufactured Home
3. VA Form 26-8646
4. On occasion
5. Businesses or other for-profit
6. 1,200 responses
7. 300 hours.
8. Not applicable

Revision

1. Department of Veterans Benefits
2. Application for Guaranty of Loan to Purchase Manufactured Home and/or Lot
3. VA Form 26-8641
4. On occasion
5. Individuals or households; Businesses or other for-profit
6. 1,050 responses
7. 788 hours
8. Not applicable

Extension

1. Department of Veterans Benefits
2. Supplemental Information for Change of Program or Reenrollment After Unsatisfactory Progress or Conduct
3. VA Form 22-8873
4. On occasion

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5. Individuals or households
6. 31,743 responses
7. 10,581 hours
8. Not applicable

[FR Doc. 86-25068 Filed 11-5-86; 8:45 am]

BILLING CODE 8320-01-M

Voluntary Service National Advisory Committee, Availability of Annual Report

Notice is hereby given that the Annual Report of the Veterans Administration Voluntary Service National Advisory Committee Annual Meeting for 1985 has been issued.

The report summarizes activities of the annual meeting which was held in Reno, Nevada, October 24 through 27, 1985.

It is available for public inspection at two locations:

Library of Congress, Serial and Government Publications Reading Room, LM 133, Madison Building, Washington, DC 20540

and

Veterans Administration, Voluntary Service (135), Veterans Service Unit, Room 132, 810 Vermont Avenue, NW., Washington, DC 20420

Dated: October 30, 1986.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 25054 Filed 11-5-86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 215
Thursday, November 6, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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Securities and Exchange Commission	7

1

COUNCIL ON ENVIRONMENTAL QUALITY

November 4, 1986.

TIME AND DATE: 10:00 a.m., Thursday, November 13, 1986.

PLACE: Conference Room First Floor, 722 Jackson Place, NW., Washington, DC.

MATTERS TO BE CONSIDERED:

1. Continuation of Sunshine Act Meeting begun on Wednesday, November 12, 1986. 51 FR 39943 (1986). Because of the number of people who will be participating in the Sunshine Act meeting on the lead agency issue for the proposed PortAmerica project, the Council will reconvene on Thursday, November 13.

CONTACT PERSON FOR MORE INFORMATION: Dinah Bear, General Counsel, Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC 20006.

A. Alan Hill,
Chairman.

[FR Doc. 86–25221 Filed 11–4–86; 2:10 pm]

BILLING CODE 3125-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:25 p.m. on Friday, October 31, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Republic Bank, Blanchard, Louisiana, which was closed by the Commissioner of Financial Institutions for the State of Louisiana on Friday, October 31, 1986; (2) accept the bid for the transaction submitted by American Bank & Trust Company in Monroe, Monroe, Louisiana, an insured State nonmember bank; (3) approve the application of American Bank & Trust Company in Monroe, Monroe, Louisiana, for consent to purchase certain assets of and assume the liability to pay deposits made in Republic Bank, Blanchard, Louisiana, and for consent to establish the six offices of Republic Bank as branches of American Bank & Trust Company in Monroe; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke, (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: November 3, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 86–25178 Filed 11–4–86; 11:13 am]

BILLING CODE 6714-01-M

3

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: October 29, 1986, 51 FR 39607.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: November 3, 1986, 10:00 a.m.

CHANGE IN THE MEETING: The meeting will be held in Hearing A, 825 North Capitol, NE., Washington, DC 20426.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 86–25186 Filed 11–4–85; 12:07 pm]

BILLING CODE 6717-02-M

4

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

DATE AND TIME: November 19–20, 1986.

PLACE: Sheraton National Hotel, Concourse II Meeting Room, Columbia Pike and Washington Boulevard, Arlington, Virginia 22204.

STATUS: Open.
November 19, 9:00 a.m. to 4:30 p.m.
November 20, 9:00 a.m. to 4:30 p.m.

MATTERS TO BE DISCUSSED:

Introduction of New NCLIS Chairman and Executive Director
Chairman's Report
Approval of August 1986 Minutes
Executive Director's Report
  —FY 1986 Final Program Report
  —Administrative Matters
  —FY 1987 Program Plans
NCLIS Program Objectives: FY 1986–1988
Committee Reports
  —1989 National Conference
  —Bicentennial
  —Budget and Finance
  —Program Review
  —Public Affairs
Guest Speakers on Preservation:
  Warren Haas, Council on Library Resources (CLR)
  Peter Sparks, Library of Congress
Meeting Reports
  —Information in the Economy
  —Chief Officers of State Library Agencies (COSLA)
  —White House Conference on Library and Information Services Taskforce (WHCLIST)
Guest Speakers on the Information Age Bill:
  Jane Bortnick, Congressional Research Service (CRS)
  John Clement, American Federation of Information Processing Societies (AFIPS)
  Ralph Petta, Senator Nunn's Office
  Milton Wessell, Association of Data Processing Service Organizations (ADAPSO)
ALA President's Committee on Library Services to Minorities
Old Business
New Business

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CONTACT: Vivian J. Arterbery, Executive Director (202) 382-0840.2

SUBMITTED:

Jane D. McDuffie,

Staff Assistant.

October 30, 1986.

[FR Doc. 86-25150 Filed 11-4-86; 10:03 am]

BILLING CODE 7537-01-M]

5

NATIONAL TRANSPORTATION SAFETY BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 51 FR 40106, November 4, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m., Thursday, November 13, 1986.

CHANGE IN MEETING: The following items have been added to the agenda and will be discussed in open session:

2. *Depositions:* Request for staff-conducted depositions regarding the collision of CSX Transportation Company freight train Extra 7593 with standing camp cars, Frenchton, West Virginia, September 3, 1986.

3. *Depositions:* Request for staff-conducted depositions regarding the bus/truck collision, I-295, Carney's Point, New Jersey, September 29, 1986.

CONTACT PERSON FOR MORE INFORMATION: H. Ray Smith (202) 382-6525.

H. Ray Smith,

Federal Register Liaison Officer.

November 4, 1986.

[FR Doc. 86-25230 Filed 11-4-86; 3:23 pm]

BILLING CODE 7533-01-M

6

POSTAL RATE COMMISSION

TIME AND DATE: 10:00 a.m. on November 19, 1986.

PLACE: Conference Room, 1333 H Street, NW., Suite 300, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: To consider motions to dismiss the Complaint of the Sacramento Bee et al., which is Docket No. C86-2.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW., Washington, DC 20268-0001, Telephone (202) 789-6840.

Charles L. Clapp,

Secretary.

[FR Doc. 86-25248 Filed 11-4-86; 4:03 pm]

BILLING CODE 7715-01-M

7

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of November 10, 1986:

A closed meeting will be held on Wednesday, November 12, 1986, at 2:30 p.m. An open meeting will be held on Thursday, November 13, 1986, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Peters, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Wednesday, November 12, 1986, at 2:30 p.m., will be:

Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Settlement of administrative proceeding of an enforcement nature.
Opinion.

The subject matter of the open meeting scheduled for Thursday, November 13, 1986, at 10:00 a.m., will be:

1. Consideration of whether to solicit comment on proposed amendments to two Commission rules that would result in the designation as National Market System ("NMS") Securities of almost all listed securities, as well as the over-the-counter securities that currently are designated as NMS Securities, and on proposed companion rule changes filed by the National Association of Securities Dealers, Inc. For further information, please contact Andrew Feldman at (202) 272-2414.

2. Consideration of whether to adopt an amendment to Rule 31a-2 under the Investment Company Act of 1940 which would allow investment companies to store certain required records on magnetic tape, disk, or other computer storage medium. For further information, please contact John McGuire at (202) 272-7317.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Patrick Daugherty at (202) 272-3077.

Shirley E. Hollis,

Assistant Secretary.

October 31, 1986.

[FR Doc. 86-25197 Filed 11-4-86; 1:22 pm]

BILLING CODE 8010-01-M

federal register

Thursday
November 6, 1986

Part II

Department of Labor

48 CFR Part 2901, Etc.

Acquisition Regulation Concerning Competition in Contracting; Interim Rule

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DEPARTMENT OF LABOR

48 CFR Parts 2901, 2902, 2903, 2905, 2906, 2909, 2913, 2914, 2915, 2916, 2917, 2919, 2933, 2943, and 2949

Acquisition Regulation Concerning Competition in Contracting

AGENCY: Department of Labor.

ACTION: Interim rule; request for comments.

SUMMARY: This rule amends the Department of Labor Acquisition Regulation (DOLAR) to implement the Competition in Contracting Act of 1984 and Federal Acquisition Circular 84–5. The rule also makes editorial changes to the DOLAR.

DATES: The effective date of this rule is November 6, 1986, in order to effect implementation of the procedures under Federal Acquisition Circular 84–5. Written comments must be received on or before December 8, 1986 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to Mr. Theodore Goldberg, Room S–1522, Office of Procurement and Grant Policy, Directorate of Administrative and Procurement Programs, Office of the Assistant Secretary for Administration and Management, United States Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. Adam W. Hare. Telephone: (202) 523-9174.

SUPPLEMENTARY INFORMATION: The Department of Labor (DOL) has determined that this rule concerns agency procedures. These procedures are required for the DOL's implementation of the changes made to the Federal Acquisition Regulation resulting from the Competition in Contracting Act of 1984 (CICA), Pub. L. 98–369.

The purpose of this rule is to conform the DOLAR to revisions made to the FAR for implementing the Competition in Contracting Act of 1984. The FAR revisions were implemented under Federal Acquisition Circular 84–5. The rule also makes editorial changes to the DOLAR and implements revised procedures for filing protests with the General Accounting Office (GAO) and new procedures for filing automatic data processing protests with the General Services Administration Board of Contract Appeals (GSBCA) as required by CICA. Revisions were made to the FAR to implement the new bid protest procedures under Federal Acquisition Circular 84–6 dated January 15, 1985, and Federal Acquisition Circular 84–9 dated June 20, 1985. Prior notice and opportunity for public comment on this rule would be impracticable and contrary to the public interest in view of the need to implement the new protest procedures in as timely a manner as possible. In accordance with 5 U.S.C. 553(b)(3) (A) an (B), the Department has determined that prior notice and comment may be omitted. On the same basis, the Department has found good cause to make these regulations effective upon publication under 5 U.S.C. 553(d)(3).

Public Comment

Section 22 of the Office of Federal Procurement Policy Act, 41 U.S.C. 418(b), requires a 30 day notice and comment period for significant procurement regulations. Section 22(d) provides for the waiver of that period if urgent and compelling circumstances make compliance impracticable. In such cases, the regulation may be effective on a temporary basis where provision is made for a 30 day public comment period beginning on the date of notice of the temporary regulation. The Department has determined that the need to implement the new protest procedures in a timely manner constitutes urgent and compelling circumstances permitting the issuance of this regulation on a temporary basis with provision for a 30 day comment period.

Regulatory Impact

This rule does not have the financial or other impact to make it a major rule, and, therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order No. 12291, 3 CFR, 1981 Comp., p. 127, 5 U.S.C. 601 note.

The rule appears not to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because it imposes no new requirements which would require such entities to change their business practices, incur additional costs or otherwise affect their competitive position.

The Department of Labor has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to 5 U.S.C. 605(b), that the rule will not have a significant economic impact on a substantial number of small entities. The rule revises existing Department-wide acquisition regulations and contains no new requirements on small entities beyond those prescribed by the Competition in Contracting Act of 1984.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

List of Subjects in 48 CFR Parts 2901, 2902, 2903, 2905, 2906, 2909, 2913, 2914, 2915, 2916, 2917, 2919, 2933, 2943 and 2949

Government procurement.

For the reasons set out in the preamble, Chapter 29 of Title 48 of the Code of Federal Regulations is amended as set forth below.

Signed at Washington, DC, this 29th day of October, 1986.

Thomas K. Delaney,

Procurement Executive.

Thomas C. Komarek,

Assistant Secretary for Administration and Management.

PART 2901—DEPARTMENT OF LABOR ACQUISITION REGULATION SYSTEM

1. The Authority citation for 48 CFR Part 2901 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

2. The heading for Part 2901 is revised to read as set forth above.

3. Section 2901.603–1 is amended as follows:

a. In paragraph (a)(3), the words, "input for" are removed from the second sentence;

b. In paragraph (d)(8)(i), the word "copiers" in the last sentence is revised to read "copier"; and

c. Paragraphs (d)(4)(iii), (d)(9), (f)(2), (g)(2), and (g)(3) are revised to read as follows:

2901.603–1 General.

* * * * *

(d) * * *

(4) * * *

(iii) The purchase, lease, or renewal of lease(s) of ADP equipment, software and services costing $100,000 or less without prior approval of the Directorate of Information Resources Management (DIRM), OASAM. Requirements shall not be fragmented in order to circumvent this $100,000 threshold. ADP equipment, software or services costing more than $100,000 require prior approval of DIRM. Prior approval of DIRM for ADP equipment, software, or services costing less than $100,000 is also required when costs involved exceed GSA blanket delegation thresholds granted under FIRMR 201–23.104.

* * * * *

(9) The Director, National Capital Service Center, OASAM, or an officer acting in that capacity, is delegated authority and responsibility for acquisition of all property and services on behalf of DOL activities except for those contracting and grant responsibilities designated above. This includes (except for the Mine Safety and Health Administration (MSHA)) acquisition authority for the purchase, lease, and renewal of lease(s) of all ADP equipment, software and all ADP services where Agencies have obtained prior approval from the Directorate of Information Resources Management (DIRM), OASAM, as appropriate.

* * * * *

(f) * * *

(2) The Director, Directorate of Information Resources Management (DIRM), OASAM, or an officer acting in that capacity, is responsible for:

(i) Reviewing and providing prior approval for the purchase, lease or renewal of lease(s) of ADP equipment, software and services costing $100,000 or more (the purchase price is to be used to determine inclusion in this paragraph regardless of whether the item is to be purchased or leased) and for all ADP services. Requirements shall not be fragmented in order to circumvent this $100,000 threshold. Reviews involving lower amounts will be made when costs involved exceed GSA blanket delegation thresholds granted under FIRMR 201–23.104.

(ii) Providing oversight, including periodic system reviews, to promote efficient and effective management of information technology resources.

(iii) Reviewing ADP procurement requests for compliance with procurement policies, standards, and regulations.

(iv) Representing DOL and agencies in DOL in liaison with GSA and OMB on ADP matters.

(v) Developing and publishing policies and guidelines for managing information technology resources.

* * * * *

(g) * * *

(2) *Automated data processing (ADP).* The following requirements and limitations exist for the purchase or lease of ADP equipment, software and services:

(i) Authority to issue purchase orders and contracts is limited only to those officials in paragraph (b) with procurement responsibility explicitly including this authority.

(ii) Acquisition of ADP equipment, software and services costing $100,000 or more requires prior approval of DIRM, OASAM.

(iii) Acquisition of ADP equipment, software and services costing less than $100,000 do not require prior approval of DIRM, OASAM, unless costs involved exceed GSA blanket delegation thresholds granted under FIRMR 201–23.104. However, agencies are responsible for complying with FIRMR documentation requirements.

(3) *Records equipment.* The purchase of records equipment; defined as file cabinets, shelf files, visible files, mechanized files, files guides, folders, jackets, wallets, and similar items used in the creation and maintenance of records and in mail handling requires special authority. Federal Property Management Regulation 101–11.306 as implemented by the Department of Labor Manual Series (DLMS–1) requires that: Form DL 1–194 be completed by the Agency Records Officer and forwarded to the Departmental Records Officer, DIRM, OASAM, for approval prior to acquisition. Regional Administrators—OASAM are delegated this approval authority for their respective regions. In keeping with GSA Bulletins FPMR B–120 and B–122 which discourage the use of legal-size files, no new legal size records equpment is to be purchased.

* * * * *

4. A new section 2901.603–74 is added to read as follows:

2901.603–74 Legal review and assistance.

Proposed acquisitions may be subject to legal review by the Office of the Solicitor of Labor. Internal DOL procedures are contained in the Department of Labor Manual Series (DLMS–2, Chapter 900, Section 910). Copies of the DLMS Chapter may be obtained upon written request from the Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

PART 2902—DEFINITION OF WORDS AND TERMS

5. The Authority citation for Part 2902 is revised to read as follows and the separate Authority citations following the sections in Part 2902 are removed:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

6. Section 2902.101 is amended by adding definitions for "Head of procuring activity" and for "Procuring activity", and by revising the definitions for "Automated Data Processing (ADP)" and "Procurement Executive", as follows:

2902.101 Definitions.

* * * * *

"Automated Data Processing (ADP)," as used throughout this document, is defined as Information Technology. Information Technology means the merging of three technologies: automated data processing, office automation and telecommunications. Information technology resources include automated data processing (ADP) equipment, software, maintenance, related supplies, services, general purpose facilities for office automation, and data and integrated voice/data telecommunications services, facilities, and equipment.

* * * * *

"Head of procuring activity" means the Assistant Secretary for Administration and Management; the Assistant Secretary for Employment and Training; the Assistant Secretary for Mine Safety and Health, and the Director, National Capital Service Center.

* * * * *

"Procurement Executive" means the Director, Directorate of Procurement and Grant Management, and is synonymous with the term "Senior Procurement Executive" defined at FAR Subpart 2.1. Responsibilities of the Procurement Executive include appointing the DOL advocate for competition.

"Procuring activity" means the Office of the Assistant Secretary for Administration and Management; the Employment and Training Administration; the Mine Safety and Health Administration; and the National Capital Service Center.

PART 2903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

7. The Authority citation for Part 2903 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

2903.204 [Amended]

8. Section 2903.204(a) is amended by revising the word "Afer" in the first sentence to read "After".

PART 2905—PUBLICIZING CONTRACT ACTIONS

9. The Authority citation for Part 2905 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(C).

10. A new Subpart 2905.2 is added to read as follows:

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Subpart 2905.2—Synopsis of Proposed Contract Actions

2905.202 Exceptions.

The Procurement Executive is authorized to make the determination prescribed in FAR 5.202(b). A written determination documenting the reasons why advance notice is not appropriate or reasonable shall be submitted by the HCA to the Director, Directorate of Procurement and Grant Management, for appropriate action including communication with the officials listed in FAR 5.202(b).

11. A new Part 2906 is added to 48 CFR Chapter 29, to read as follows:

PART 2906—COMPETITION REQUIREMENTS

Subpart 2906.2—Full and Open Competition After Exclusion of Sources

2906.202 Establishing or maintaining alternative sources.

Subpart 2906.3—Other Than Full and Open Competition

2906.303 Justifications.
2906.303-1 Requirements.

Subpart 2906.5—Competition Advocates

2906.501 Requirement.

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2906.2—Full and Open Competition After Exclusion of Sources

2906.202 Establishing or maintaining alternative sources.

The Procurement Executive is authorized to make the determination prescribed in FAR 6.202(b). A written determination shall be submitted by the HCA to the Director, Directorate of Procurement and Grant Management.

Subpart 2906.3—Other Than Full and Open Competition

2906.303 Justifications.

2906.303-1 Requirements.

(a) As prescribed in the Department of Labor Manual Series (DLMS) 2, Chapter 830, any proposed noncompetitive aquisitions in excess of the small purchases limitation must be fully justified, submitted to the DOL Procurement Review Board and approved by the Assistant Secretary for Administration and Management and, in the case of research contracts, by the Assistant Secretary for Policy.

(b) The contracting officer is responsible for assuring that proposed acquisitions below the dollar level specified in paragraph (a) of this section are in compliance with FAR and DOLAR requirements regarding competition.

Subpart 2906.5—Competition Advocates

2906.501 Requirement.

(a) The Competition Advocate for the Department of Labor is the Director, Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, OASAM.

(b) The head of the agency has delegated the authority to the Procurement Executive to appoint the Agency and Procuring Activity Competition Advocates. The Procurement Executive has delegated authority to the Head of the Procuring Activity to appoint Procuring Activity Competition Advocates.

PART 2909—CONTRACTOR QUALIFICATIONS

12. The Authority citation for Part 2909 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

13. Section 2909.105-1 is amended by revising paragraph (b) to read as follows:

2909.105-1 Procedures.

* * * * *

(b) Contracting officers may obtain credit reports prior to the issuance of any loan, loan guarantee, contract or grant through the credit bureau service. The National Capital Service Center will award a contract for the credit bureau service for use by all DOL contracting activities until such services become available through an established GSA Federal Supply Schedule.

PART 2913—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

14. The Authority citation for Part 2913 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

2913.403 [Amended]

15. Section 2913.403 is amended by revising the word "System" in the first sentence to read "Series".

2913.503-70 [Amended]

16. Section 2913.503-70 is amended by revising the word "orignal" in the first sentence of the second paragraph to read "original".

PART 2914—SEALED BIDDING

17. The Authority citation for Part 2914 continues to read:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

18. The part heading of Part 2914 is revised to read as set forth above.

19. Sections 2914.404 and 2914.404-1 are added to read as follows:

2914.404 Rejection of bids.

2914.404-1 Cancellation of invitations after opening.

The head of the contracting activity (HCA) is authorized to make the written determination required by FAR 14.404-1(c).

20. Section 2914.407-8 is revised to read as follows:

2914.407-8 Protests against award.

See DOLAR subpart 2933.1, "Protests".

PART 2915—CONTRACTING BY NEGOTIATION

21. The Authority citation for Part 2915 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subparts 2915.1, 2915.2, and 2915.3 [Removed]

22. Part 2915 is amended by removing Subparts 2915.1, 2915.2 and 2915.3.

23. Section 2915.608 is added to read as follows:

2915.608 Proposal evaluation.

The head of contracting activity (HCA) is authorized to make the determination required by FAR 15.608(b).

PART 2916—TYPES OF CONTRACTS

24. The authority citation for Part 2916 continues to read; as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

25. A new Subpart 2916.3 is added to read as follows:

Subpart 2916.3—Cost-Reimbursement Contracts

§ 2916.306 Cost-plus-fixed-fee contracts.

The Contracting Officer is authorized to approve the determination establishing the basis for application of the statutory price or fee limitation prescribed in FAR 16.306(c)(2).

PART 2917—SPECIAL CONTRACTING METHODS

26. The Authority citation for Part 2917 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c)

27. Section 2917.502 is revised to read as follows:

2917.502 General.

The head of the contracting activity is authorized to make the determination prescribed in FAR 17.502 in accordance with the requirements contained in FAR 17.503.

PART 2919—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

28. The Authority citation for Part 2919 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

2919.202-1 [Amended]

29. Section 2919.202-1 is amended as follows:

a. In paragraph (a), the dollar amount "$2,500" is revised to read "$10,000".

b. In paragraph (b), the word "and" is added at the end thereof; and

c. In paragraph (c), the words "synopsis message; and" are revised to read "synopsis message.".

PART 2933—PROTESTS, DISPUTES, AND APPEALS

30. The Authority citation for Part 2933 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

31. The part heading for Part 2933 is revised to read as set forth above.

32. Part 2933 is amended by adding a new subpart 2933.2, to read as follows:

Subpart 2933.2—Disputes and Appeals

2933.003, 2933.003-70, 2933.009, 2933.011 and 2933.012 [Redesignated]

33. Sections 2933.003, 2933.003-70, 2933.009, 2933.011 and 2933.012 are redesignated in the new Subpart 2933.2, with redesignated section numbers as set forth in the following table:

Old Section:	New Section (In Subpart 2933.2)
2933.003	2933.203
2933.003-70	2933.203-70
2933.009	2933.209
2933.011	2933.211
2933.012	2933.212

2933.203 [Amended]

34. In paragraph (a) of newly redesignated section 2933.203, the citation "33.003(b)" is revised to read "33.203(b)".

2933.211 [Amended]

35. In the first sentence of newly redesignated section 2933.211, the phrase "The written decision required by FAR 33.011 (a)(4) shall include, in the paragraph listed under FAR 33.011(a)(4)(v)," is revised to read "The written decision required by FAR 33.211(a)(4) shall include, in the paragraph listed under FAR 33.211(a)(4)(v),".

36. Part 2933 is amended by adding a new Subpart 2933.1 consisting of sections 2933.102 through 2933.105, to read as follows:

Subpart 2933.1—Protests

2933.102 General.

The Director, Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, shall be responsible for coordinating bid protests filed with the General Accounting Office (GAO). All communications relative to protests filed with GAO or GSBCA shall be coordinated with the Director, Office of Procurement and Grant Policy. Bid protests concerning automatic data processing (ADP) acquisitions filed with the General Services Administration Board of Contract Appeals (GSBCA) shall be coordinated by the contracting officer.

2933.103 Protests to the DOL Agency.

When protests are filed with a DOL Agency and received before award, the contracting office shall obtain the advice of the Director, Office of Procurement and Grant Policy, before making the determination under FAR 33.103(a).

2933.104 Protests to the GAO.

(a) *Notice of protest.* Upon being advised telephonically by GAO or the receipt of a protest before or after award, the Office of Procurement and Grant Policy shall inform the appropriate contracting officer and request preparation of the protest report required by FAR 33.104(a)(2). For GAO protests concerning ADP acquisitions, the Office of Procurement and Grant Policy shall also inform the Director, Directorate of Information Resources Management, who, in turn, shall notify the appropriate DOL Agency Information Resources Management (IRM) contact. As required by FAR 33.104(a)(3) and 4 CFR 21.3, the contracting officer shall promptly notify all interested parties, including offerors (or the contractor, if the protest is after award) involved in or affected by the protest, that a protest has been filed with GAO and the basis for the protest. A written record of such notification shall be placed in the contract file. After receiving a copy of the protest from GAO and its request for an administrative report, the Office of Procurement and Grant Policy will promptly furnish the same to the contracting officer. The contracting officer shall promptly transmit by letter a copy of the protest to all interested parties previously notified and include a statement requiring furnishing of views and information directly to GAO. Copies of cover letters shall be sent to the Director, Office of Procurement and Grant Policy. Cover letters shall set forth a specified period of time for submission of comments (see FAR 33.104(a)(3)) and include instructions that any comments submitted to GAO should also be submitted simulaneously to the contracting officer and the Director, Office of Procurement and Grant Policy. Materials submitted by the protester may be withheld from interested parties in accordance with 4 CFR 21.3(b).

(b) *Submission of report.* (1) All personnel shall handle protests on a priority basis. Within 25 work days after receipt by the Office of Procurement and Grant Policy of GAO's telephonic notice of the protest, or within 10 work days after receipt from GAO of a determination to use the express option, a complete report shall be submitted to GAO (see FAR 33.104(a)(2)). If the specific circumstances of the protest require a longer period, the head of the contracting activity shall immediately notify the Office of Procurement and Grant policy which shall request, in writing, an extension of the time period in accordance with 4 CFR 21.3(d).

(2) In addition to the requirements of FAR 33.104(a)(2), the report responsive to the protest shall be appropriately titled and dated; shall cite the GAO file number; and shall be signed by the contracting officer or the contracting officer's representative. Reports shall be prepared with the assistance of the Office of the Solicitor of Labor. If appropriate, the report shall contain a statement regarding any urgency for the acquisition and the extent to which a delay in award may result in significant performance difficulties or additional expense to the Government. If award is not urgent, a statement shall be included giving an estimate of the length of time an award may be delayed without significant expense or difficulty in performance. The head of the contracting activity shall submit an original and one copy of the contracting officer's report to the Director, Office of Procurement and Grant Policy, with a forwarding letter to GAO signed by the Assistant Secretary for Administration and Management. When the letter and report are dated and transmitted to GAO, the Director, Office of Procurement and Grant Policy, will inform the contracting officer. The contracting officer will then distribute copies of the report to all interested parties.

(c) *Notice to GAO.* The Assistant Secretary for Administration and

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Management shall submit the report required by FAR 33.104(f). The report shall be submitted to the Comptroller General through the Director, Office of Procurement and Grant Policy, and the Director, Directorate of Procurement and Grant Managemnent. For decisions concerning ADP acquisitions, the report shall also be submitted through the Director, Directorate of Information Resources Management.

2933.105 Protests to General Services Administration Board of Contract Appeals.

(a) *Notice of protest.* Immediately upon receipt of a copy of a protest to the General Services Administration Board of Contract Appeals (GSBCA), the contracting officer shall inform the Office of Procurement and Grant Policy, the Directorate of Information Resources Management, and the Office of the Solicitor of Labor. The contracting officer shall, within 1 work day after receipt of a copy of the protest, provide oral or written notice to all parties required to be notified by FAR 33.105(a)(2) and shall provide the GSBCA with a written list of all such parties to whom notice was provided within 5 work days after receipt of a copy of the protest. A copy of all notifications to interested parties and related correspondence with GSBCA shall be maintained in the contract file and a copy of the list of interested parties notified shall be provided to the Office of Procurement and Grant Policy simultaneously with submission to the GSBCA.

(b) *Submission of protest file.* An original and one copy of a protest file (see FAR 33.105(b)) plus one copy for each interested party which has a notice of intervention or a motion to intervene in accordance with the requirements of Rule 5(a)(3) of GSBCA Rules of Procedure (48 CFR 6101.5(a)(3)) shall be prepared by the contracting officer. The protest file shall be organized to comply with the requirements of Rule 4(b) of the GSBCA Rules of Procedure (48 CFR 6101.4(b)). The contracting officer shall submit the file to the GSBCA within 10 work days after filing of the protest and shall also send copies to the Director, Office of Procurement and Grant Policy, and to each interested party.

(c) *Hearings.* The Solicitor of Labor, or the Solicitor's representative, is responsible for representing the contracting officer at all stages of proceedings on suspension of the agency's delegation of procurement authority (see FAR 33.105(d)), at all stages of proceedings on the merits of the protest (see FAR 33.105(e)), and with respect to any other proceedings which may be heard by the GSBCA. The head of the contracting activity shall be responsible for executing the determination required by FAR 33.105(d)(1). The Office of the Solicitor shall notify the contracting officer and the Directorate of Information Resources Management of the results of such proceedings, including any hearing.

PART 2943—CONTRACT MODIFICATIONS

37. The Authority citation for Part 2943 is revised to read as follows, and the separate Authority citations for sections in the part are removed:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

38. Part 2943 is amended by adding a new subpart 2943.3 to read as follows:

Subpart 2943.3—Forms

2943.301 Use of forms.

FAR 43.301(a)(1)(vi) requires the use of Standard Form 30 (SF-30) to effect any obligation or deobligation of contract funds after award. The SF-30 also shall be used to deobligate funds when effecting contract closeout for a cost reimbursement contract when obligated funds exceed the final contract costs. In such an instance, the SF-30 may be issued as an administrative modification on a unilateral basis if the contractor's financial release has been separately obtained.

PART 2949—TERMINATION OF CONTRACTS

39. The Authority citation for Part 2949 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2949.1—General Principles

40. Part 2949.1 is amended by revising the subpart heading to read as set forth above

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Thursday
November 6, 1986

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 868, 874, 878, and 886
Medical Devices; Ear, Nose, and Throat Devices; Final Rule, Proposed Rule and Withdrawal of Proposed Rules

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 868 and 874

[Docket No. 78N-1549]

Ear, Nose, and Throat Devices; General Provisions and Classifications of 47 Devices

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying 47 devices: 45 ear, nose, and throat devices and 2 anesthesiology devices. The preamble to this rule responds to comments received on the proposed regulations classifying these devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: December 8, 1986.

FOR FURTHER INFORMATION CONTACT: David A. Segerson, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-8185.

SUPPLEMENTARY INFORMATION:

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A. Background

In the **Federal Register** of January 22, 1982 (47 FR 3280-3325), FDA published a proposed rule containing general provisions applicable to the classification of ear, nose, and throat devices and individual proposed regulations classifying 67 ear, nose, and throat devices into one or more of three regulatory classes: class I (general controls), class II (performance standards), and class III (premarket approval).

In the final rule, FDA is classifying 47 devices, with 14 devices in class I, 26 devices in class II, 5 devices in class III, 1 device in either class I or class II (depending upon its construction), and 1 device in either class II or class III (depending upon its intended use).

For several reasons, there is a difference between the number of devices covered by the proposal (67) and the number of devices covered by the final rule (47). First, FDA has grouped 23 devices that were the subjects of proposed regulations into 9 generic types of devices, resulting in 14 fewer devices. Second, FDA is postponing classification of six devices pending review of additional data. Third, FDA is announcing its decision on a reclassification petition for the microsurgical argon laser for use in otology and is codifying the reclassification of this device into class II for certain intended uses; however, the device remains in class III for other intended uses. Fourth although FDA proposed that the transdermal stimulator (§ 874.5850, Docket No. 78N-1636) be classified into class III (47 FR 3280) as part of the ear, nose, and throat device classification proceeding, the agency later determined that the device is an investigational device not in commercial distribution before May 28, 1976, the enactment date of the amendments. Because the device was not in commercial distribution, the transdermal stimulator is classified into class III by statute as provided in section 513(f) of the act (21 U.S.C. 360c), without the need for agency publication of a classification regulation for the device.

Two proposed ear, nose, and throat devices, the tracheostomy tube and tube cuff (class II) and the tracheal tube cleaning brush (class I), are being codified with anesthesiology devices in 21 CFR Part 868. Therefore, in this final rule, FDA is classifying 45 ear, nose, and throat devices and 2 anesthesiology devices.

Elsewhere in the issue of the **Federal Register**, FDA is publishing a notice withdrawing the proposed regulations that are unnecessary due to the decisions described above.

Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule proposing to exempt from the requirement of premarket notification, with limitations, four class I ear, nose, and throat devices.

Classification of medical devices in commercial distribution is required by section 513 (21 U.S.C. 360c) of the Medical Device Amendments of 1976 (Pub. L. 94-295) (the amendments) to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301-392). The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application that includes information concerning safety and effectiveness tests for the device. For a class III device that was not considered a new drug before the amendments and that either was in commercial distribution before May 28, 1976, or that is substantially equivalent to a device that was in commercial distribution before that date, each application for premarket approval must be submitted to FDA on or before June 28, 1989, or within 90 days after promulgation of a separate regulation requiring premarket approval of the device, whichever occurs later. Devices that FDA previously regarded as new drugs, or newly offered devices that are not substantially equivalent to a device that was in commercial distribution before the amendments, are classified by statute into class III and already are required to have in effect an approved application for premarket approval. See sections 520(l) and 513(f) of the act (21 U.S.C. 360j(l) and 360c(f)).

The preamble to the proposed rule described the development of the general provisions and the proposed regulations classifying ear, nose, and throat devices and the activities of the FDA advisory committee that makes recommendations to FDA concerning the classification of ear, nose, and throat devices. FDA provided a period of 60 days for interested persons to submit written comments on the proposals. The deadline was later extended to July 1, 1982. The comments received and FDA's responses to the comments are discussed in section "K. Summaries of Comments and FDA's Responses to Comments" of this preamble.

In April 1985, H.R. 2177 (99th Cong. 1st Sess.) was introduced in the U.S. House of Representatives. The bill is a legislative proposal of the Department of Health and Human Services. Among other things, the bill would (1) and amend the act to eliminate the statutory category of class II, (2) make the establishment of a performance standard one of the several general controls that may be made applicable to a device, and (3) streamline the procedure for establishing standards set out in section 514 of the act. If this bill becomes law, there will be only two categories of devices, class I (general controls) and class II (premarket approval, formerly class III). Class II devices would be redesignated as class I devices. Because this legislation includes transitional provisions that translate classifications under the current law to classifications under the proposed law, FDA is continuing its issuance of classification rules under the current law and has established a policy, described below, to set priorities for the establishment of performance standards for class II devices.

B. FDA's Priorities for Establishing Performance Standards

In the **Federal Register** of October 23, 1985 (50 FR 43060), FDA published a notice, "Policy Statement; Class II Medical Devices," announcing its policy for setting priorities for initiating proceedings to establish performance standards for medical devices classified into class II. Under the amendments, FDA is required to establish performance standards for class II devices. At this time, however, FDA does not have the resources to establish performance standards for all of the devices already classified (or being classified) in class II.

In the notice of October 23, 1985, FDA announced it will consider the following factors when setting priorities for establishing performance standards for class II devices:

1. The seriousness of questions concerning the safety and effectiveness of the device; the risks associated with use of the device; the significance of a device to the public health; and the present and projected use of the device.
2. The recommendations of FDA's advisory committees.
3. The impact of an FDA guideline or recommendation.
4. The effect of a Federal standard or other regulatory controls under an authority other than the act.
5. The impact of voluntary standards.
6. The impact of activities authorized under the general controls provisions of the act.
7. The effect of dissemination of information and education efforts.
8. The sufficiency of voluntary corrective actions.
9. Valid scientific evidence developed since classification.
10. The existence of a petition for reclassification.
11. The impact of any other factors that affect a device's safety or effectiveness.

C. Changes in the Name of the Ear, Nose, and Throat Device Advisory Committee

FDA has periodically restructured its advisory panels for device classification. Most recently, on April 14, 1984, FDA established the Ear, Nose, and Throat Devices Panel (see 49 FR 17446; April 24, 1984). The new panel performs the same functions with respect to ear, nose, and throat devices as did its predecessors, the Ear, Nose, and Throat Device Classification Panel (1976–1978) and the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel (1978–1984).

D. Grouping of Similar Devices

In response to comments and to simplify and clarify the regulations, in the final rule FDA has grouped 23 proposed ear, nose, and throat devices into 9 generic types of devices. The term "generic type of device" is defined in 21 CFR 860.3(i) to mean a grouping of devices that do not differ significantly in purpose, design, materials, energy source, function, or any other feature related to safety and effectiveness. Consequently, similar regulatory controls are appropriate to provide reasonable assurance of the safety and effectiveness of these devices. The devices being grouped are identified below under the heading in the preamble entitled "J. List of Ear, Nose, and Throat Devices." Each generic type of ear, nose, and throat device being classified is identified with both the docket number used for that device in the proposed regulations and the section number of the Code of Federal Regulations at which its classification is being codified. A device listed under the heading "J. List of Ear, Nose, and Throat Devices" that is not identified with a section number is being grouped into the generic type of device with a section number that is listed directly before it. Thus, for example, *Air caloric stimulator* and *Water caloric stimulator* are being grouped into the generic type of device *Air or water caloric stimulator* (§ 874.1800).

E. Devices Not Being Classified at This Time

FDA is postponing classification of the following six generic types of ear, nose, and throat devices in order to review additional data on electrical safety. Because similar ear, nose, and throat devices are being grouped as described above, the six generic types of devices encompass devices that were the subjects of eight proposed regulations. The following is a list of the six generic types of devices that are not being classified in the final rule. FDA is considering classifying these six devices in class I.

Docket No.	Device
78N-1552	Short increment sensitivity index (SISI) adapter.
78N-1565	Air or water caloric stimulator.
78N-1622	Laryngostroboscope.
78N-1624	Otoscope.
78N-1630	Ear, nose, and throat examination and treatment unit.
78N-1631	Powered nasal irrigator.

F. Changes in Classifications in Final Regulations

Based upon consideration of the comments received and on additional consideration of all information before the agency, FDA has placed several devices that are listed below in different classes from those proposed. FDA's reasons for adopting classifications for these devices that differ from the proposal are provided in this preamble under the heading "K. Summaries of Comments and FDA's Responses to Comments."

Secs.	Device	Proposed class	Final class
874.1060	Acoustic chamber for audiometric testing.	II	I
874.1100	Earphone cushion for audiometric testing.	II	I
874.3300	Hearing aid	II	I, II
874.3450	Partial ossicular replacement prothesis.	II, III	II
874.3495	Total ossicular, replacement prosthesis.	II, III	II
874.3630	Ear, nose, and throat porous polyethylene synthetic polymer material.	III	II
874.3880	Tympanostomy tube	II, III	II
874.4140	Ear, nose, and throat bur.	II	I
874.4420	Ear, nose, and throat manual surgical instrument.	II	I
874.5840	Antistammering device.	II	I

FDA believes that it is unnecessary to issue a new proposal concerning these decisions. The purpose of publishing a proposal and soliciting comments is to enable the agency to determine whether its proposed classification of a device was correct. After reviewing the comments submitted on a proposal, or upon reconsideration, the agency may determine that its proposed classification is incorrect. Persons interested in the classification process should anticipate that in a final regulation a device may be placed in a class different from the one originally proposed. This possibility was specifically identified in the proposed

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general regulations for ear, nose, and throat devices (see 47 FR 3280; January 22, 1982). Persons who disagree with a final classification for a device may petition for reclassification of the device under Subpart C of Part 860.

G. Minor Changes or Clarifications

Occasionally the agency has made minor changes in the name of a generic type of device or its identification to clarify the final regulation. Additionally, the agency is adding new § 874.3 in Subpart A to explain the various effective dates for premarket approval requirements for devices classified into class III. FDA also is adding a new paragraph (c) in the classification regulation for each device classified into class III to declare, where applicable, the effective date for premarket approval requirements for the device.

H. Reclassification of the Microsurgical Argon Laser

Postamendments devices that are not substantially equivalent to devices in commercial distribution before May 28, 1976, are classified by statute into class III under section 513(f)(1) of the act (21 U.S.C 360c(f)(1)). In response to a petition received by FDA under section 513(f)(2) of the act and Part 860 of the regulations, FDA may reclassify a new device into class I or class II.

On October 15, 1980, FDA received a petition (Docket No. 81P–0115) under section 513(f) of the act requesting the agency to reclassify the petitioner's Model 770 argon laser with microsurgical attachments for use in otolarynogological surgery from class III to class II. On December 4, 1980, FDA received a petition (Docket No. 80P–0501) under section 513(e) of the act (21 U.S.C. 360(e)) requesting the agency to reclassify the petitioner's Model 9005 argon laser with microsurgical attachments for use in otology from class III to class II. In the **Federal Register** of May 11, 1982 (47 FR 20188), FDA published the recommendations of the Ear, Nose, and Throat Devices Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel that both of these devices be reclassified from class III to class II and treated as one generic type of device. The agency provided a period of 30 days (extended to 60 days by notice of July 2, 1982 (47 FR 29004)) for interested persons to submit written comments on the recommendations. No written comments were received. FDA agreed with the section's recommendations that the device be reclassified. Further, the Section recommended, and FDA agrees, that the labeling for the device include a comprehensive description of the techniques, risks, and hazards which accompany use of the device, as well as a discussion on how the attendant risks and hazards can be avoided. In accordance with section 513(f)(2)(C)(i) of the act and 21 CFR 860.134(b)(6) of the regulations, FDA partially approved and partially denied the petitions and, by orders in the form of letters dated November 19, 1982, and sent to each petitioner, reclassified the microsurgical argon laser for use in otology from class III to class II. However, the microsurgical argon laser for other uses, including use in laryngology and general use in otolaryngology, remains in class III and may not be commercially distributed without an approved application for premarket approval.

FDA is codifying the reclassification into class II of the microsurgical argon laser for use in otology at § 874.4490(a). FDA's orders reclassifying the device for certain uses into class II and the regulation apply to any microsurgical argon laser for use of otology that is substantially equivalent to the reclassified device. FDA determines substantial equivalence of new devices by reviewing premarket notification submissions under section 510(k) of the act and Subpart E of Part 807.

I. Classification Regulations Published to Date

The following table shows the current structure of the advisory committees involved with the classification of medical devices and a list of all proposed and final classification regulations published to date:

Panel name	Publication date in FEDERAL REGISTER
Circulatory System Devices Panel	Mar. 9, 1979, 44 FR 13284–13434 (proposals); Feb. 5, 1980, 45 FR 7904–7971 (final regulations).
Clinical Chemistry and Clinical Toxicology Devices Panel.	Feb. 2, 1982, 47 FR 4802–4929 (proposals).
Hematology and Pathology Devices Panel.	Sept. 11, 1979, 44 FR 53063 (proposals); Sept. 12, 1980, 45 FR 60576–6051 (final regulations).
General Hospital and Personal Use Devices Panel.	Aug. 24, 1979, 44 FR 49844–49954 (proposals); Oct. 21, 1980 45 FR 69678–69737 (final regulations).
Gastroenterolgy-Urology Devices Panel.	Jan. 23, 1981, 46 FR 7562–7641 (proposals); Nov 23, 1983, 48 FR 53012–53029 final regulations)
Immunology Devices Panel	Apr. 22, 1980, 45 FR 27204–27359 (proposals); Nov. 9, 1982, 47 FR 50814–50840 (final regulations).
Microbiology Devices Panel	Do.
Obstetrics-Gynecology Devices Panel.	Apr. 3, 1979, 44 FR 19894–19971 (proposals); Feb. 26, 1980, 45 FR 12682–12720 (final regulations).
Radiologic Devices Panel	Jan. 29, 1982, 47 FR 4406–4451 (proposals).
Ophthalmic Devices Panel	Jan. 26, 1982, 47 FR 3694–3749 (proposals).
Ear, Nose, and Throat Devices Panel.	Jan. 22, 1982, 47 FR 3280–3325 (proposals); (Nov. 6, 1986 (final regulations))
Dental Devices Panel	Dec. 30, 1980, 45 FR 85962–86168 (proposals).
Anesthesiology and Respiratory Therapy Devices Panel.	Nov. 2, 1979, 44 FR 63292–63426 (proposals); July 16, 1982, 47 FR 31130–31150 (final regulations).
Neurological Devices Panel	Nov 23, 1978, 43 FR 54640–55732 (proposals); Sept. 4, 1979, 44 FR 51726–51778, (final regulations).
Orthopedic and Rehabilitation Devices Panel (Physical Medicine Devices).	Aug. 28, 1979, 44 FR 50458–50537 (proposals); Nov. 23, 1983, 48 FR 53032–53054 (final regulations).
Orthopedic and Rehabilitation Devices Panel (Orthopedic Devices).	July 2, 1982, 47 FR 29052–29140 (proposals).
General and Plastic Surgery Devices Panel.	Jan. 19, 1982, 47 FR 2810–2853 (proposals).

J. List of Ear, Nose, and Throat Devices

The list below shows for each ear, nose, and throat device the section of the Code of Federal Regulations at which the classification of that device is being codified (or will be codified), the docket number of the corresponding proposed classification regulation (where applicable), the final classification of the device, and an identification (yes or no) of whether public comments were received on the proposed regulation. If no comments were received, generally FDA is adopting the proposed regulation without a change in classification. The list includes the six generic types of ear, nose, and throat devices for which final classification is being postponed. For each of these six devices, the section number of the Code of Federal Regulations is in parentheses, the name of the device is identified with footnote "¹," and no final classification is provided.

Section	Device	Docket No.	Class	Comments
	SUBPART B—DIAGNOSTIC DEVICES			
874.1050	Audiometer	78N-1550	II	Yes.
874.1060	Acoustic chamber for audiometric testing	78N-1551	I	Yes.
(874.1070)	Short increment sensitivity index (SISI) adapter [1]	78N-1552		Yes.
874.1080	Audiometer calibration set	78N-1553	II	Yes.
874.1090	Auditory impedance tester	78N-1554	II	Yes.
874.1100	Earphone cushion for audiometric testing	78N-1555	I	Yes.
874.1120	Electronic noise generator for audiometric testing	78N-1556	II	Yes.
874.1325	Electroglottograph	78N-1558	II	Yes.
874.1500	Gustometer	78N-1561	I	No.
(874.1800)	Air or water caloric stimulator [1]	78N-1565		
	Air caloric stimulator	78N-1565		Yes.
	Water caloric stimulator	78N-1566		Yes.
874.1820	Surgical nerve stimulator/locator	78N-1567	II	Yes.
874.1925	Toynbee diagnostic tube	78N-1568	I	No.
	SUBPART D—PROSTHETIC DEVICES			
874.3300	Hearing aid	78N-1569	I, II	Yes.
874.3310	Hearing aid calibrator and analysis system	78N-1570	II	Yes.
874.3320	Group hearing aid or group auditory trainer	78N-1571	II	Yes.
874.3330	Master hearing aid	78N-1572	II	Yes.
874.3375	Battery-powered artificial larynx	78N-1573	I	No.
874.3400	Tinnitus masker	78N-1574	III	No.
874.3430	Middle ear mold	78N-1576	II	Yes.
874.3450	Partial ossicular replacement prosthesis	78N-1577	II	
	Partial ossicular replacement prosthesis	78N-1577		Yes.
	Porous polyethylene partial ossicular replacement prosthesis	78N-1637		Yes.
874.3495	Total ossicular replacement prosthesis	78N-1578	II	
	Total ossicular replacement prosthesis	78N-1578		Yes.
	Porous polyethylene total ossicular replacement prosthesis	78N-1639		Yes.
874.3540	Prosthesis modification instrument for ossicular replacement surgery	78N-1579	I	No.
874.3620	Ear, nose, and throat synthetic polymer material	78N-1583	II	
	Ear, nose, and throat polyamide mesh or foil synthetic polymer material	78N-1583		Yes.
	Ear, nose, and throat porous polyethylene synthetic polymer material	78N-1584		Yes.
874.3695	Mandibular implant facial prosthesis	78N-1586	II	Yes.
874.3730	Laryngeal prosthesis (Taub design)	78N-1589	II	Yes.
874.3760	Sacculotomy tack (Cody tack)	78N-1591	II	Yes.
874.3820	Endolymphatic shunt	78N-1593	II	Yes.
874.3850	Endolymphatic shunt tube with valve	78N-1594	III	Yes.
874.3880	Tympanostomy tube	78N-1595	II	
	Tympanostomy tube	78N-1595		Yes.
	Porous polyethylene tympanostomy tube	78N-1641		Yes.
874.3930	Tympanostomy tube with semipermeable membrane	78N-1596	III	Yes.
	SUBPART E—SURGICAL DEVICES			
874.4100	Epistaxis balloon	78N-1599	I	No.
874.4140	Ear, nose, and throat bur	78N-1601	I	Yes.
874.4175	Nasopharyngeal catheter	78N-1602	I	No.
874.4250	Ear, nose, and throat electric or pneumatic surgical drill	78N-1604	II	Yes.
874.4350	Ear, nose, and throat fiberoptic light source and carrier	78N-1606	II	Yes.
874.4420	Ear, nose, and throat manual surgical instrument	78N-1609	I	
	Bronchial, tracheal, or esophageal surgical instrument	78N-1607		Yes.
	Surgical instrument for the ear	78N-1608		Yes.
	Ear, nose, and throat multiple-use surgical instrument	78N-1609		Yes.
	Laryngeal surgical instrument	78N-1610		Yes.
	Pharyngeal surgical instrument	78N-1611		Yes.
	Nasal and paranasal sinus surgical instrument	78N-1612		Yes.
874.4490	Microsurgical argon laser [2]	80P-0501 and 81P-0115	II, III	
874.4500	Ear, nose, and throat microsurgical carbon dioxide laser	78N-1613	II	Yes.
874.4680	Bronchoscope (flexible or rigid) and accessories	78N-1616	II	
	Bronchoscope (flexible or rigid)	78N-1616		Yes.
	Ear, nose, and throat endoscopic accessory [3]	78N-1617		Yes.
	Laryngeal-bronchial telescope	78N-1625		Yes.
874.4710	Esophagoscope (flexible or rigid) and accessories	78N-1619	II	Yes.
874.4720	Mediastinoscope and accessories	78N-1620	II	Yes.
(874.4750)	Laryngostroboscope [1]	78N-1622		
	External Laryngostroboscope	78N-1622		No.
	Laryngostroboscope (patient-contacting)	78N-1643		Yes.
874.4760	Nasopharyngoscope (flexible or rigid) and accessories	78N-1623	II	Yes.
(874.4770)	Otoscope [1]	78N-1624		Yes.
868.5800 (Proposed 874.4900)	Tracheostomy tube and tube cuff	78N-1626	II	
	Tracheostomy tube	78N-1626		Yes.
	Tracheostomy tube cuff	78N-1626		Yes.
868.5795 (Proposed 874.4910)	Tracheal tube cleaning brush	78N-1627	I	No.
	SUBPART F—THERAPEUTIC DEVICES			
874.5220	Ear, nose, and throat drug administration device	78N-1629	I	No.
(874.5300)	Ear, nose, and throat examination and treatment unit [1]	78N-1630		Yes.
874.5350	Suction antichoke device	78N-1597	III	No.
874.5370	Tongs antichoke device	78N-1598	III	No.
(874.5550)	Powered nasal irrigator [1]	78N-1631		Yes.
874.5800	External nasal splint	78N-1634	I	No.
874.5840	Antistammering device	78N-1635	I	Yes.

[1] Classification postponed.

[2] Not proposed; classification results from reclassification petitions.

[3] The endoscopic accessories formerly identified in this proposed regulation are included in the following sections of the final rule: 874.4680, 874.4710, 874.4720, and 874.4760.

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K. Summaries of Comments and FDA's Responses to Comments

FDA is responding to comments received on the proposed regulations that were published in the **Federal Register** of January 22, 1982 (47 FR 3280–3325).

1. Comments stated a review of manufacturers' complaint files and of reports in FDA's device experience network show no adverse experience reports for a number of devices. For these reasons, the comments said the devices listed below should be classified into class I, rather than class II or class III as proposed.

Section	Device	Class proposed, by FDA
874.3430	Middle ear mold	II
874.3450	Partial ossicular replacement prosthesis.	II
874.3760	Sacculotomy tack (Cody tack).	II
874.3880	Tympanostomy tube	II
874.3930	Tympanostomy tube with semipermeable membrane.	III

FDA disagrees with the comments regarding the devices above. The reports in FDA's device experience network (DEN) are submitted voluntarily to FDA. FDA believes that the adverse experience reports in DEN and the data in complaint files of manufacturers may not reflect the actual levels of adverse experiences with devices. See the preamble to FDA's reproposed rule on medical device reporting (May 27, 1983; 48 FR 24014 at 24016). In the **Federal Register** of September 14, 1984 (49 FR 36326), FDA published a final rule requiring manufacturers and importers to report to FDA deaths and serious injuries caused or contributed to by devices (See 21 CFR Part 803). FDA believes that the data this reporting system yields are not a definitive basis for classification decisions, as manufacturers need not report adverse experiences which do not rise to the level of death or serious injury, and health professionals are not required to report adverse experiences to manufacturers. Therefore, FDA is classifying the devices listed above into the classes shown.

2. Comments questioned whether the risks to health identified in the proposed regulations for each of the devices listed below justify development of a mandatory performance standard. The comments suggested that these devices be classified into class I, rather than class II as proposed. FDA's responses to these comments are in paragraphs 2a through 2o.

2a. Section 874.1050; Audiometer.

FDA believes that a performance standard is necessary for this device to control calibration parameters, method of calibration, reference levels, test frequencies, distortion level, and masking levels. The agency believes these characteristics must be controlled by a standard to prevent misdiagnosis or injury to the patient resulting from devices of improper design or construction. Accordingly, FDA is adopting the proposed regulation without change.

2b. Section 874.1060; Acoustic chamber for audiometric testing.

FDA agrees with the comments regarding the acoustic chamber for audiometric testing. FDA now believes that the general controls of class I are sufficient to provide reasonable assurance of the safety and effectiveness of the device. The agency believes that labeling that provides adequate directions for use of the acoustic chamber for audiometric testing is sufficient to control the risk to health of asphyxiation. FDA believes that the labeling should provide adequate instructions to the operator and the patient with respect to procedures for opening the door of the acoustic chamber. FDA now believes that it is unnecessary to establish a performance standard for the device. Accordingly, FDA is adopting the proposed regulation with the classification of class I rather than class II as proposed.

2c. Section 874.1080; Audiometer calibration set.

The agency believes that a performance standard is necessary for this device to control calibration parameters to prevent erroneous measurement of hearing thresholds which could lead to a misdiagnosis and to prevent excessive sound output levels from the audiometer which may produce hearing damage in a patient. Accordingly, FDA is adopting the proposed regulation with a minor clarifying change.

2d. Section 874.1090; Auditory impedance tester.

The agency believes that a performance standard is necessary to control the static pressure produced by the device to prevent damage to the tympanic membrane and to control the sound output levels produced by the device to prevent hearing damage. Accordingly, FDA is adopting the proposed regulation without change.

2e. Section 874.1120; Electronic noise generator for audiometric testing.

The sound output level produced by the device is not under the direct control of the patient, and the patient may tolerate excessive sound levels under the mistaken belief that excessive sound levels are intentional and necessary. The agency believes that a performance standard is necessary to control the maximum sound output levels to minimize the possibility of hearing damage to the patient. Accordingly, FDA is adopting the proposed regulation with a minor clarifying change.

2f. Section 874.1325; Electroglottograph.

The agency believes that a performance standard is necessary to control the output characteristics of this device to prevent erroneous measurement of electrical impedance of the larynx which could lead to misdiagnosis and subsequent inappropriate therapy. Accordingly, FDA is adopting the proposed regulation without change.

2g. Section 874.1820; Surgical nerve stimulator/locator.

The agency believes that the output characteristics of the surgical nerve stimulator/locator need to be specified and controlled by a performance standard to assure that the electrical current will not damage nerve tissue. The agency notes that application of direct current to an area of exposed nerve may injure the nerve and cause paralysis. A standard is needed to prevent injury to the patient from devices of improper design or construction. Accordingly, FDA is adopting the proposed regulation without change.

2h. Section 874.3300; Hearing aid.

FDA agrees in part and disagrees in part with the comments urging that the hearing aid be placed in class I instead of class II as proposed. FDA agrees that the air-conduction hearing aid presents a sufficiently low risk to health of hearing loss from excessive sound output levels that the controls of class I, in conjunction with the requirements for labeling and conditions for sale for hearing aids (21 CFR 801.420 and 801.421) would provide reasonable assurance of safety and effectiveness of this kind of hearing aid. However, FDA continues to believe that a performance standard is necessary for the bone-conduction hearing aid to control the sound levels to prevent further hearing damage in a patient and to ensure effectiveness of this kind of hearing aid. A performance standard for the bone-conduction hearing aid would establish the parameters for the values of the data elements that are required by § 801.420(c)(4) to be included in the labeling and would ensure that each bone-conduction hearing aid device is able to function within such parameters. Accordingly, in the final rule FDA is clarifying the identification of the device, classifying the air-conduction hearing aid into class I, and classifying the bone-conduction hearing aid into class II as proposed.

2i. Section 874.3310; Hearing aid calibrator and analysis system.

The agency believes that a performance standard is necessary for this device to control the accuracy of the calibration mechanism. A standard is needed to minimize erroneous calibration of a hearing aid which could cause further hearing damage in a patient from excessive sound output levels. Accordingly, FDA is adopting the proposed regulation with minor clarifying changes.

2j. Section 874.3320; Group hearing aid or group auditory trainer.

The agency believes that a performance standard is necessary for this device to control the maximum allowable sound output pressure levels to prevent further hearing damage in a patient. Accordingly, FDA is adopting the proposed regulation without change.

2k. Section 874.3330; Master hearing aid.

The agency believes that a performance standard is necessary for the master hearing aid to control its calibration of a hearing aid, because inaccurate calibration may cause the hearing aid to produce excessive sound output levels and result in further hearing damage in a patient or cause a practitioner to select the wrong hearing aid or incorrectly adjust a hearing aid for a patient. Accordingly, FDA is adopting the proposed regulation without change.

2l. Section 874.3760; Sacculotomy tack (Cody tack).

The agency believes that a performance standard is necessary for the sacculotomy tack to control the size and sharpness of the device and assure its biocompatibility with inner ear tissues and fluids. The agency believes that there is sufficient information available to develop a standard for the device (Ref. 10). Accordingly, FDA is adopting the proposed regulation with minor clarifying changes in the identification of the device.

2m. Section 874.3820; Endolymphatic shunt tube.

FDA believes that a performance standard is necessary to control the risks of possible infection and adverse tissue reaction from the use of materials that are not biologically or mechanically compatible with the body. Implantation of an endolymphatic shunt tube into the middle ear is a major surgical procedure. Accordingly, FDA is adopting the proposed regulation with clarifying changes in the name of the generic type of device and its identification to clarify that the rule also applies to silicone sheets, which serve the same purpose as shunt tubes.

2n. Section 874.3880; Tympanostomy tube.

FDA believes that references 51 through 54 cited in the proposed rule show that performance standards are necessary to control the risks to health, infection and adverse tissue reaction, that are described in the proposed regulation for the device. Further, Reference 11 cited in this final rule shows that large diameter tympanostomy tubes present the additional risk to health of permanent perforation of the tympanic membrane. Thus, to control risks associated with the device, including permanent perforation of the tympanic membrane, adverse tissue reaction, infection, or malleous erosion from devices of improper design or construction (such as use of tubes of excessively large diameter), the agency believes that a performance standard is necessary for the tympanostomy tube. Accordingly, FDA is adopting the proposed regulation with clarifying changes in the identification of the device.

2o. Section 874.5840; Antistammering device.

FDA agrees with the comments suggesting that the antistammering device be classified into class I instead of class II as proposed. FDA now believes that general controls alone are sufficient to provide reasonable assurance of the safety and effectiveness of the device. The device is intended for use by persons with normal hearing acuity who have direct control of the sound output levels produced by the device. In case of excessive sound output, the user can either adjust or remove the device. Accordingly, FDA is classifying the device into class I.

3. A comment suggested that the biocompatibility of the devices listed below could be controlled through premarket notification procedures in section 510(k) of the act. The comment suggested that these devices be classified into class I, rather than class II as proposed. No medical or scientific data were presented to support the suggestion.

Section	Device	Class proposed by FDA
874.3695	Mandibular implant facial prosthesis.	II
874.3730	Laryngeal prosthesis (Taub design).	II
874.3820	Sacculotomy tack (Cody tack).	II
874.3880	Tympanostomy tube	II
874.4920	Tracheostomy tube cuff	II

FDA disagrees with the comment regarding the devices above. Premarket notification procedures required by section 510(k) of the act and Subpart E of 21 CFR Part 807 apply to manufacturers of a device being introduced into commercial distribution for the first time (as defined in 21 CFR 807.81(a) (1) and (2)) or manufacturers of a commercially distributed device that is about to be significantly changed or modified (as defined in § 807.81(a)(3)). Premarket notification procedures are not intended to assure that preamendments devices and postamendments substantially equivalent devices in commercial distribution are safe and effective. FDA believes that establishment of a performance standard is necessary for each of the devices listed above to control the risks to health identified in the proposed regulations and to provide reasonable assurance of the safety and effectiveness of the devices.

4. Section 874.1100; Earphone cushion for audiometric testing.

A comment stated that premarket notification procedures would be sufficient to detect the use of new materials which may not be biocompatible and cause contact dermatitis. The comment suggested that this device be classified into class I rather than class II as proposed.

FDA agrees with the comment. FDA identified the risk to health of contact dermatitis from use of materials that may not be biocompatible. However, the device is used by a patient for only a short time period. FDA now believes that the general controls of class I are sufficient to provide reasonable assurance of the safety and effectiveness of the device. Accordingly, FDA is classifying the device in class I.

5. Section 874.3430; Middle ear mold.

Two comments requested that the device be placed in class I instead of class II as proposed, based upon the extensive clinical use of the device with minimal risk to patients.

FDA disagrees with the comments. FDA acknowledges the extensive clinical use over several years of middle ear molds that are implanted in the middle ear. However, the agency notes that the synthetic materials from which

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middle ear molds are made have been marketed for less than 10 years. Consequently, there have not been any long-term clinical toxicology studies to determine the biocompatibility of the device at the implantation site. As stated in the proposed regulation, FDA believes that a performance standard is necessary for this device to control the risks to health of adverse tissue reaction and infection, because general controls alone are insufficient to control these risks. Accordingly, FDA is adopting the proposed regulation with a minor clarifying change.

6. Section 874.3620; Ear, nose, and throat polyamide mesh or foil synthetic polymer material; proposed class II.

A comment requested that the device be classified into class I. No medical or scientific data were presented to support the request.

FDA disagrees with the comment. The agency believes that a performance standard is necessary for this implanted device to control the risks to health of adverse tissue reaction and infection. Accordingly, FDA is adopting the proposed regulation with minor clarifying changes.

7. FDA proposed that four ear, nose, and throat prostheses be classified into class II if made of certain materials and proposed that the same four devices be classified into class III if made of porous polyethylene.

Devices Proposed for Class II

§ 874.3450 Partial ossicular replacement prosthesis
§ 874.3495 Total ossicular replacement prosthesis
§ 874.3620 Ear, nose, and throat polyamide mesh or foil synthetic polymer material
§ 874.3880 Tympanostomy tube

Devices Proposed for Class III

§ 874.3465 Porous polyethylene partial ossicular replacement prosthesis
§ 874.3510 Porous polyethylene total ossicular replacement prosthesis
§ 874.3630 Ear, nose, and throat porous polyethylene synthetic polymer material
§ 874.3910 Porous polyethylene tympanostomy tube

During open Panel meetings held on June 22, 1978; November 6, 1978; and March 19, 1979, the Panel recommended that the four devices above made of porous polyethylene (PPE) be classified into class III. At that time, the Panel believed that the general controls of class I alone would not provide sufficient control over the risks to health presented by the four devices intended to be implanted in the ear and that insufficient information was available to develop performance standards for these four devices. Based on the Panel recommendations, FDA prepared draft regulations proposing to classify the four devices made of PPE into class III. These four proposed regulations, accompanied by the other 63 ear, nose, and throat proposed classification regulations, were submitted to FDA's Office of the Commissioner for approval and publication in the **Federal Register**.

On November 3, 1981, the Panel held another public meeting to review additional data on the safety and effectiveness of the four devices. At that meeting, for the reasons set forth below, the Panel recommended that FDA classify each of the four devices made of PPE into class II instead of class III as the Panel had originally recommended. FDA's Center for Devices and Radiological Health then decided to agree with the new recommendations.

However, by the November 3, 1981, advisory committee meeting the draft proposed classification regulations to classify ear, nose, and throat devices had been submitted to FDA's Office of the Commissioner for final approval. Due to inadvertence, the draft proposed regulations were not retrieved and updated to include the results of the November 3, 1981, meeting and the Center's views, both of which now favored a proposed classification into class II. As a result, FDA's proposed classification regulations for ear, nose, and throat devices, published on January 22, 1982, did not include the Panel's November 3, 1981, recommendations that the four PPE devices be in class II or the Center's revised views as to the appropriate classification of the devices.

Although the Panel's class II recommendations were not included in the proposed regulations, FDA received a comment from a manufacturer disagreeing with the Panel's recommendations of November 3, 1981, and requesting that FDA classify the four devices into class III as proposed. FDA also received comments that agreed with the Panel's recommendations of November 3, 1981, that the devices be classified into Class II. These comments requested that FDA classify the four devices into class II instead of class III.

The comment requesting that the four devices be in class III questioned the safety of PPE as an ear implant. The comment noted that the literature on clinical use of PPE in ear surgery did not identify the material in terms of its physical and chemical characteristics. The comment also questioned the effectiveness of PPE as an implant material: the comment questioned the ability of implants made from the material to permit tissue ingrowth and stabilization. The comment summarized the results of a paper by A.G. Kerr (Ref. 6). The comment said that Dr. Kerr, in his examination of 52 patients, did not find evidence that ear implants made of PPE provided tissue ingrowth stabilization.

For the reasons set forth below, FDA now believes that sufficient evidence is available of the safety and effectiveness of the four devices made of PPE that the agency concludes that the four devices should be classified into class II, rather than class III as proposed. FDA believes that the amount of tissue ingrowth into any pores in the implant material is not a critical factor in the agency's determination of whether these implants are placed in class II or class III. FDA is discussing below the critical factors upon which classification of these ear implants is based.

FDA agrees with the comments requesting that FDA classify the four devices made of PPE into class II.

At the meeting of the Panel on March 19, 1979, Dr. Zimlak and Mr. Lurie, American Hoechst Corp., described the process used to produce PPE, the mechanical and chemical properties of PPE, and the use of additives and catalysts in production of PPE. At the same meeting, Mr. Joseph Ferri, General Polymeric Corp., described the procedures used by his company to manufacture PPE. Mr. Ferri said that no additives are used and no chemical changes occur during their conversion of polyethylene (PE) powder to porous polyethylene (PPE).

Although PPE produced through use of various additives may indeed have a different physical and chemical composition from PE, FDA believes that PPE produced without additives (as noted above) can be characterized physically and chemically to the same extent as nonporous PE. Thus, FDA believes that sufficient information is available to develop performance standards for both PE and PPE.

Dr. Shea performed a scanning electron micrograph study of a PPE implant that had been removed from the middle ear of a human patient after it had been implanted for many months (Ref. 8). The study showed interlacing fibrous tissue engaging a section of the PPE implant. Thus, some tissue invasion into the PPE implant does take place from the interlacing network of fibrous connective tissue formed by the body around the implant. The study showed that the result of the tissue invasion is a columna of living tissue with a PPE skeleton. Dr. Shea found no evidence of either acute or chronic tissue inflammation around the implantation site.

At the Panel meeting of June 22, 1978, Dr. Shea presented data to the Panel on the results of his studies of cats involving implantation of PPE in the middle ear and in the oval window. At this meeting, Dr. Shea also presented results of clinical studies involving 225 PPE implantation procedures in the middle ears of human patients. Data from these procedures were obtained during a followup period of 12 to 28 months. Dr. Shea said that the data showed excellent results. Dr. Shea presented slides to the Panel which illustrated the acceptance of PPE by human tissue and the characteristics of the material that allow tissue ingrowth (Ref. 9).

At the Panel meeting of November 3, 1981, Myron Spector, Ph.D., University of South Carolina, presented data to the Panel on the results of implanting PPE into the middle ear of cats (Ref. 1). The studies showed that after six months of implantation the animal formed a thin fibrous tissue capsule surrounding the implanted PPE material. The fibrous capsule appeared to cover the pores of the implant, and in some areas the fibrous tissue formed a continuum with fibrous tissue within the pores of the PPE material. Dr. Spector stated that internal pores of the PPE contained fibroblasts, blood vessels, macrophages, and foreign body giant cells. Occasionally, the fibroblasts and fibrocollagenous material in the pore structure of the PPE was contiguous with the fibrous capsule itself. The fibrous capsule around the PPE was also seen to be continuous with connective tissue structures of the middle ear. Dr. Spector observed that this fibrous tissue capsule, which formed around the PPE implant, appeared to stabilize the implant in the middle ear.

At the Panel meeting of November 3, 1981, J.M. Cassell and R.E. Dehl, National Bureau of Standards, reviewed the results of their studies performed under contract from FDA to characterize the porosity of PPE (Refs. 2, 3, and 4).

Following its review of the data above, on November 3, 1981, the Panel revised its earlier recommendation. The Panel unanimously recommended that the four ear, nose, and throat devices made of PPE and intended to be implanted in the middle ear be placed in class II. The Panel recommended, however, that the labeling for the four devices made of PPE should indicate that the devices not be implanted in direct contact with fluids of the inner ear.

FDA has concluded that PPE middle ear implants are at least as safe and effective as nonporous PE implants. Sufficient scientific and technical information is available to establish a performance standard that would adequately characterize the PPE material in terms of its physical and chemical specifications. Because the chemical composition of PPE may be different from nonporous PE, FDA believes that PPE should be specified and characterized separately from PE. FDA finds that adequate valid scientific evidence is available to show that middle ear implants made of PPE facilitate, to some extent, tissue ingrowth within the pore structure of the implant that serves to improve overall stabilization of the implant. Data from studies of PPE indicate that a fibrous tissue capsule forms around the implant made of PPE which serves to stabilize the device in a manner similar to the stabilization of the device made of nonporous PE.

Accordingly, FDA is classifying the porous polyethylene partial ossicular replacement prosthesis; porous polyethylene total ossicular replacement prosthesis; ear, nose, and throat porous polyethylene synthetic polymer material; and the porous polyethylene tympanostomy tube into class II instead of class III as proposed. FDA now believes that premarket approval is unnecessary for these four devices, because performance standards established for these devices under section 514 of the act would provide reasonable assurance of the safety and effectiveness of the devices and sufficient information is available to establish such standards. FDA also believes that the general controls of class I alone are insufficient to provide reasonable assurance of the safety and effectiveness of these four devices.

In the final rule, to reduce unnecessary regulations, certain of the devices above have been grouped together. See "D. Grouping of Similar Devices" and "J. List of Ear, Nose, and Throat Devices."

8. Section 874.3850; Endolymphatic shunt tube with valve; proposed class III.

One comment stated that sufficient data are available to assure the safety and effectiveness of the device with establishment of a performance standard. The comment said that the device had been used longer than 7 years and that nearly 2,000 devices had been implanted. The comment alleged that clogging is an infrequent generic problem with endolymphatic tubes, whether valved or not, and that because there is no observable injury to inner ear structures, it is unreasonable to place the valved device in class III. The comment cites clinical data that indicate the following effectiveness rates for the device: relief of vertigo, 89 to 90 percent; hearing stabilization, 64 to 72 percent; relief of aural pressure, 60 to 70 percent; and relief of tinnitus, 35 to 49 percent. The comment recommended that the proper classification of the device should be class I or class II.

FDA disagrees with the comment and believes that the device should be classified into class III as proposed. The agency notes that the endolymphatic shunt tube with valve is a relatively new device that is intended to be implanted. Several different versions have evolved over the past few years. The valve is intended to maintain a physiologically normal endolymphatic pressure, yet little is known about what is normal pressure. If the valve becomes inoperative or clogs, FDA believes that a significant risk to health would result from buildup of fluid pressure in the inner ear. Any surgical procedure to correct a defective valve also presents additional risks to health, such as infection. For these reasons, and the reasons stated in the proposed regulation, the agency believes that the endolymphatic shunt tube with valve should be in class III. Accordingly, FDA is adopting the proposed regulation with minor clarifying changes.

9. Section 874.3930; Tympanostomy tube with semipermeable membrane; proposed class III.

A comment argued that the risks to health in the proposed regulation are identical to those for the tympanostomy tube that FDA proposed to classify into class II: (a) Perforation; (b) adverse tissue reaction; (c) infection; and (d) hearing loss. Therefore, the comment stated that these risks are not risks which support classification of the tympanostomy tube with semipermeable membrane into class III. Further, the comment noted that hearing loss, as a result of membrane blockage, has not been substantiated in the clinical literature. A second comment stated that, considering the risks to health mentioned in the proposal, a performance standard is adequate to control the safety and effectiveness of the device. The comments recommended that the device be classified into class II, rather than class III as proposed.

FDA disagrees with the comments. The agency believes that the tympanostomy tube with semipermeable membrane presents a significant risk to health that is not presented by other tympanostomy tubes: The risk of hearing

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loss due to blockage of the membrane. When the Panel recommended that the device be in class III, data demonstrating the safety and effectiveness of the device were not available (47 FR 3305). The comments did not provide scientific evidence demonstrating that blockage of the membrane is no longer a risk. Accordingly, FDA is adopting the proposed regulation with minor clarifying changes.

10. Section 874.4140; Ear, nose, and throat bur; proposed class II.

Comments stated that both the physical and material properties of the device and its design have been established for many years. The comments also stated that the cutting device is intended to remove bone and tissue and that the skill of the user is most essential in the safe and effective use of the device. The risks to health of hearing damage from noise or vibration from use next to the cochlea or ossicular chain and of excessive amount of tissue removal are controllable by the user. Eccentricity and corrosion of the device can be detected by the user, and fracture of the device is unlikely to occur. Thus, the comments argued the device should be in class I, rather than class II as proposed.

FDA agrees with the comments. FDA now believes that the general controls of class I will provide reasonable assurance of the safety and effectiveness of the device. FDA believes that manufacturers' adherence to requirements of the current good manufacturing practice (CGMP) regulations in Part 820 would assure that eccentricity of the device is controlled and provide reasonable assurance that it would not fracture during use. Accordingly, FDA is adopting the proposed regulation with a change in classification from class II to class I.

11. Section 874.4250; Ear, nose, and throat electric or pneumatic surgical drill; proposed class II.

A comment stated that the risk to health of mechanical trauma caused by whip or wobble in the device is not appropriate for this generic product as this condition can only occur after attachments are affixed to the device. A comment noted that the risk of noise trauma can be controlled by checking the device for excessive output noise prior to use, and the risk of explosion can be controlled with appropriate labeling concerning use of the device in an explosive atmosphere. A comment stated that general controls would be adequate for this device, because the identified risks to health are user-related, rather than the result of manufacturing deficiencies. The comments suggested that this device be classified into class I rather than class II as proposed.

FDA disagrees with the comments. The agency believes that when the ear, nose, and throat electric or pneumatic surgical drill is being used as intended, the drill would have accessories attached and thus could present the risk of whip or wobble under normal conditions of use. For the reasons stated in the proposal, the agency believes that establishment of a performance standard is necessary to provide reasonable assurance of the safety and effectiveness of the device, including control of noise output and prevention of fire or explosion when used in the presence of flammable gases. Accordingly, FDA is adopting the proposed regulation with minor clarifying changes.

12. Section 874.4340; Ear, nose, and throat fiberoptic light source and carrier; proposed class II.

Three comments suggested that electrical hazards alone should not be used as the basis for classifying a device into class II and recommended that this device be classified into class I.

FDA believes that this device should be classified into class II. When the ear, nose, and throat fiberoptic light source and carrier is connected to an used with the various endoscopes for which it is intended, a direct pathway to the thoracic cavity is established that can transmit to the patient any hazardous chassis leakage currents or fault currents. In addition, in FDA's contract problem definition study that identified hazards and performance problems associated with endoscopes and endoscopic accessories (Ref. 12), the contract report recommended that certain performance parameters and attributes of this device be addressed by a standard, such as thermal safety, eye safety, and provisions for back-up lamps. Thus, the device has characteristics other than electrical safety hazard, that warrant a peformance standard. FDA believes that general controls alone are insufficient to provide reasonable assurance of the safety and effectiveness of the device, and that it is necessary to establish a performance standard to control the attributes identified above to prevent injury to the patient from a device of improper design or construction. Accordingly, FDA is adopting the proposed regulation without change.

13. FDA proposed to classify the ear, nose, and throat manual surgical instruments listed below into class II. Comments argued that the risks to health identified in these six proposed regulations essentially are the same as the risks identified for the general and plastic surgery manual surgical instruments that FDA proposed to classify into class I. (See § 878.4800 *Manual surgical instrument for general use;* Docket No. 78N–2696; 47 FR 2810; January 19, 1982.) The comments said that a review of complaints received in FDA's device experience network during the last 3 years showed only nine complaints for the manual devices. In each of the nine reports, the device had broken during use. The comments said that these experience data show that the devices do not present risks to health that require performance standards. Comments said that some of the devices also may be included in the identification of the manual surgical instrument for general use (§ 878.4800) that FDA proposed to classify with general and plastic surgery devices. The comments therefore suggested that FDA classify the devices listed below into class I. Further, the comments suggested that the ear, nose, and throat devices listed below, which were subjects of the six separate proposed regulations, be treated as one generic type of device.

Section	Device	Class proposed by FDA
874.4400	Bronchial, tracheal, or esophageal surgical instrument.	II
874.4410	Surgical instrument for the ear.	II
874.4420	Ear, nose, and throat multiple-use surgical instrument.	II
874.4430	Laryngeal surgical instrument.	II
874.4440	Pharyngeal surgical instrument.	II
874.4450	Nasal and paranasal sinus surgical instrument.	II

FDA agrees that the risks to health identified in the proposed regulations above essentially are the same as the risks identified for general and plastic surgery manual surgical instruments that FDA proposed to classify into class I. FDA agrees that the general controls of class I, particularly the controls of the CGMP regulations in 21 CFR Part 820, would control the risks to health of unnecessary tissue trauma or device fracture and would provide reasonable assurance of the safety and effectiveness of the devices above. The agency now believes that it is unnecessary to establish performance standards for these devices. Accordingly, FDA is classifying the devices above into class I instead of class II as proposed.

FDA disagrees that some of the devices identified above are included in the devices subject to the proposed regulation for general and plastic surgery manual surgical instruments. Nevertheless, for the reasons given above, FDA now is classifying the devices into class I.

FDA agrees that the devices above should be grouped into one generic type of device. Accordingly, FDA is treating the devices which are subjects of the six proposed regulations listed above as one generic type of device—the ear, nose, and throat manual surgical instrument (§ 874.4420)—and is classifying this device into class I. FDA also is making appropriate changes in the identification of the device.

14. Section 874.4500; Ear, nose, and throat microsurgical carbon dioxide laser; proposed class II.

A comment questioned the need for a performance standard where the possibility of an electrical hazard is involved and suggested that this device be classified into class I rather than class II as proposed. The comment provided no additional data.

FDA disagrees with the comment. The device presents risks other than electrical hazard. The agency believes that the laser beam alignment and exposure characteristics of this device must be controlled by a standard to prevent injury to the patient resulting from devices of improper design or construction. Accordingly, in the final rule FDA is adopting the proposed regulation with clarifying changes in the name and identification of the device.

15. Comments stated that the risks to health FDA identified in the proposed regulations on the devices listed below are unlikely to occur and that these risks can be controlled adequately by the general controls of class I. The comments stated that (1) the risk of tissue trauma due to corrosion or fracture of the devices can be controlled by adequate labeling; (2) electrical hazards can be controlled through appropriate safeguards that have already been established; (3) the risk of trauma as a result of a sharp edge on a device can be controlled with adequate labeling; (4) the risk of asphyxiation due to use of a device of an improper size or shape is the responsibility of the user (given appropriate labeling and sufficient information); (5) the risk of reflex stimulation from the use of a device of an improper size or shape is also within the control of the user; and (6) the risk of infection from a device that is difficult to disassemble, clean, and reassemble or from a device that is not cleaned properly is a function of user knowledge and manufacturers' labeling. The comments also argued that the risk of failure of the ventilation system which may cause the patient to receive an inadequate supply of breathing gas was not considered by FDA to be sufficiently serious to warrant an FDA contract problem definition study to recommend a standard as a solution for this problem. The comments recommended that these devices be classified into class I, rather than class II as proposed.

Section	Device	Class proposed by FDA
874.4680	Bronchoscope (flexible or rigid)	II
874.4685	Ear, nose, and throat endoscopic accessory.	II
874.4710	Esophagoscope (flexible or rigid)	II
874.4720	Mediastinoscope	II
874.4760	Nasopharyngoscope (flexible or rigid).	II

FDA disagrees with the comments. The agency notes that its contract problem definition study, which identified hazards and performance problems associated with endoscopes and endoscopic accessories (Ref. 12), recommended that certain performance characteristics of these devices be addressed by standards (image quality, tip control, protective sheath specifications, control mechanisms, withdrawal mechanisms, brittleness and durability, disassembly procedures, and lamp illumination levels). The agency believes that performance standards are necessary to control these characteristics to prevent injury to the patient resulting from a device of improper design or construction.

FDA proposed that the ear, nose, and throat endoscopic accessory be classified as a separate device. FDA is grouping the accessories that were the subjects of proposed § 874.4685 with each of the respective endoscope devices identified above, as appropriate. Accordingly, FDA is adopting the proposed regulations for the devices listed above with changes in the names of the devices and their identifications to include any accessories.

16. Section 874.4900; Tracheostomy tube; proposed class II.

Comments argued that tissue trauma due to corrosion of a metal tracheostomy tube or fracture of the device is a user's responsibility and that corrosion or fracture may result as a consequence of improper cleaning, improper care, or improper maintenance of the device. The comments recommended this device be classified into class I, rather than class II as proposed.

FDA disagrees with the comments. The agency has reviewed its device experience network reports over the past several years and finds that a significant number of problems have been reported involving tracheostomy tubes (Ref. 13). The agency believes that the general controls of class I are insufficient to control certain risks to health, such as the problems reported in FDA's proposed rule and that these risks can be controlled only by requiring manufacturers to comply with a performance standard for the device. Specific characteristics of the device for which FDA believes that a standard is necessary include integrity of the inflation system and material specifications. Accordingly, FDA is classifying the device into class II as proposed with minor clarifying changes.

L. Exemptions for Class I Devices

Exemptions From Current Good Manufacturing Practice (CGMP) Requirements

Section 513(d)(1)(2)(A) of the act allows FDA to exempt class I devices from certain requirements under the act if the agency determines that compliance with these requirements is not required to assure that the device will be safe and effective and otherwise in compliance with the act. Of the 15 devices FDA is classifying into class I in this rule, FDA is exempting manufacturers of one anesthesiology device and four ear, nose, and throat devices from the CGMP requirements with the exception of the requirements specified in 21 CFR 820.180 and 820.198 relating to records and complaint files. The exemptions apply to the tracheal tube cleaning brush (§ 868.5795), the gustometer (§ 874.1500), the battery-powered artificial larynx (§ 874.3375), the prosthesis modification instrument for ossicular replacement surgery (§ 874.3540), and the ear, nose, and throat drug administration device (§ 874.5220). However, for the reasons given in the preamble to the proposed regulations, these exemptions do not apply to devices that are labeled or otherwise represented as sterile.

As stated in the proposed rule, the agency has determined that exemption of manufacturers of any device from §§ 820.180 and 820.198 of the CGMP regulations would not be in the public interest. Moreover, compliance with these sections is not unduly burdensome for device manufacturers. The complaint file requirements of § 820.198 ensure that device manufacturers have adequate systems for complaint investigation and followup. The general requirements concerning records in § 820.180 ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, can determine whether the manufacturer's corrective

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actions are adequate, and can determine whether an exemption from other sections of the CGMP regulations, if one has been granted, is still appropriate.

FDA has prepared guidelines on the procedures that should be followed by persons who wish to submit petitions for exemption or variance from the device CGMP regulations. These petitions may be submitted in accordance with the provisions of section 520(f)(2) of the act (21 U.S.C. 360j(f)(2)). The agency announced the availability of these guidelines in a notice published in the **Federal Register** of January 18, 1980 (45 FR 3671).

Exemptions From the Requirement of Premarket Notification

FDA proposed to grant an exemption from the requirement of premarket notification for one device, the tracheal tube cleaning brush (proposed § 874.4910). FDA did not receive any comments regarding this proposed exemption. Nor did FDA receive comments urging exemptions for any of the ear, nose, and throat devices subject to other proposed regulations. In this final rule, FDA is granting an exemption from the requirement of premarket notification for the tracheal tube cleaning brush, as proposed. Elsewhere in this issue of the **Federal Register**, FDA is proposing to grant an exemption from the requirement of premarket notification, with limitations, for each four class I ear, nose, and throat devices. The preamble to that proposed rule explained FDA's criteria for granting these exemptions.

M. References

The following information has been placed in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. Spector, Myron, "Tissue Response to Plastipore and Proplast Otologic Implants in the Middle Ear of Cats," Division of Otolaryngology, Medical University of South Carolina.
2. Dehl, R.E.; Cassell, J. M., "Characterization of Porosity in Porous Polymeric Implant Materials," National Bureau of Standards; Summary minutes; Ear, Nose, and Throat Device Advisory Section meeting, November 2-3, 1981, Appendix J.
3. "Evaluation of Methods of Characterizing the Porosity of Porous Polymeric Implant Materials: A Review of the Current Status of Porosity Measurements," (NBSIR 81-2212), February 1981.
4. "Characterization of Porosity in Porous Polymeric Implant Materials" (NBSIR 81-2459), February 1982.
5. (Reserved)
6. Kerr, A.G., "Proplast and Plastipore," *Clinical Otolaryngology*, 6:187, 1981.
7. (Reserved)
8. Shea, J.J., et al., "Biocompatible Ossicular Implants," *Archives of Otolaryngology*, 104: 191-196, 1978.
9. Shea, J.J., "Porous Polyethylene Information," Shea Clinic; Summary minutes; Ear, Nose, and Throat Device Classification Panel meeting, June 22-23, 1978, Appendix D.
10. Cody, D.T.R., "The Shunt Operation and the Tack Operation, Long-Term Results," *Canadian Journal of Otolaryngology*, 3:3, 271-275, 1974.
11. Holt, J.J., and M.D. Herner, "Effects of Large-Bore Middle Ear Ventilation Tubes," *Journal of Otolaryngology and Head and Neck Surgery*, 88: 581-585, 1980.
12. Skreenock, J.J., D.S. Mead, and J.H. Stalker, "A Study of the Common Characteristic's, Hazards, and Performance Problems of Endoscopes and Endoscopic Accessories," Department of Health and Human Services, FDA Contract Number 223-77-5037, Task Order No. 3, Final Report, ECRI, Plymouth meeting, PA, April 1, 1981.
13. Reports of problems concerning tracheostomy tubes and cuffs, FDA's Device Experience Network, January 1984.

N. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

O. Economic Impact

The Food and Drug Administration has carefully analyzed the economic effects of this final rule and has determined that, if promulgated, the rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of Executive Order 12291, the impact of this final rule has been carefully analyzed, and it has been determined that the final rule does not constitute a major rule as defined in section 1(b) of the Executive Order. Rules classifying devices into class I generally maintain the status quo: These devices are now subject only to the general controls provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j) and under the final rule, remain subject only to such controls either in their entirety or with certain exemptions. Devices classified into class II also remain subject only to the general controls provisions of the act unless and until an applicable performance standard is established. Similarly, devices classified into class III remain subject only to the general controls provisions of the act until an additional regulation is promulgated pursuant to section 515(b) of the act (21 U.S.C. 360e(b)) requiring that such devices have in effect approved applications for premarket approval. In accordance with section 501(f)(2)(B) of the act (21 U.S.C. 351(f)(2)(B)), devices classified by regulation into class III may remain in commercial distribution without an approved premarket approval application for 30 months following the effective date of classification of the device into class III, or for 90 days following the promulgation of a regulation under section 515(b) of the act (21 U.S.C. 360e(b)), whichever occurs later. In sum, device classification rules do not have a significant impact on a substantial number of small entities and are not major rules.

List of Subjects

21 CFR Part 868

Anesthesiology devices, Medical devices.

21 CFR Part 874

Ear, nose, and throat devices, medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Chapter I of Title 21 of the Code of Federal Regulations is amended in Parts 868 and 874 as follows:

PART 868—ANESTHESIOLOGY DEVICES

1. The authority citation for 21 CFR Part 868 is revised to read as follows:

Authority: Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)); 21 CFR 5.10.

2. Part 868 is amended in Subpart F by adding new §§ 868.5795 and 868.5800 to read as follows:

Subpart F—Therapeutic Devices

§ 868.5795 Tracheal tube cleaning brush.

(a) *Identification.* A tracheal tube cleaning brush is a device consisting of a brush with plastic bristles intended to clean tracheal cannula devices after their removal from patients.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 868.5800 Tracheostomy tube and tube cuff.

(a) *Identification.* A tracheostomy tube and tube cuff is a device intended to be placed into a surgical opening of the trachea to facilitate ventilation to the lungs. The cuff may be a separate or integral part of the tracheostomy tube and is, when inflated, intended to establish a seal between the tracheal wall and the tracheostomy tube. The cuff is used to prevent the patient's aspiration of substances, such as blood or vomit, or to provide a means for positive-pressure ventilation of the patient. This device is made of either stainless steel or plastic.

(b) *Classification.* Class II.

3. New Part 874 is added to read as follows:

PART 874—EAR, NOSE, AND THROAT DEVICES

Subpart A—General Provisions

Sec.
874.1 Scope.
874.3 Effective dates of requirement for premarket approval.

Subpart B—Diagnostic Devices

Sec.
874.1050 Audiometer.
874.1060 Acoustic chamber for audiometric testing.
874.1080 Audiometer calibration set.
874.1090 Auditory impedance tester.
874.1100 Earphone cushion for audiometric testing.
874.1120 Electronic noise generator for audiometric testing.
874.1325 Electroglottograph.
874.1500 Gustometer.
874.1820 Surgical nerve stimulator/locator.
874.1925 Toynbee diagnostic tube.

Subpart C—[Reserved]

Subpart D—Prosthetic Devices

874.3300 Hearing aid.
874.3310 Hearing aid calibrator and analysis system.
874.3320 Group hearing aid or group auditory trainer.
874.3330 Master hearing aid.
874.3375 Battery-powered artificial larynx.
874.3400 Tinnitus masker.
874.3430 Middle ear mold.
874.3450 Partial ossicular replacement prosthesis.
874.3495 Total ossicular replacement prosthesis.
874.3540 Prosthesis modification instrument for ossicular replacement surgery.
874.3620 Ear, nose, and throat synthetic polymer material.
874.3695 Mandibular implant facial prosthesis.
874.3730 Laryngeal prosthesis (Taub design).
874.3760 Sacculotomy tack (Cody tack).
874.3820 Endolymphatic shunt.
874.3850 Endolymphatic shunt tube with valve.
874.3880 Tympanostomy tube.
874.3930 Tympanostomy tube with semipermeable membrane.

Subpart E—Surgical Devices

874.4100 Epistaxis balloon.
874.4140 Ear, nose, and throat bur.
874.4175 Nasopharyngeal catheter.
874.4250 Ear, nose, and throat electric or pneumatic surgical drill.
874.4350 Ear, nose, and throat fiberoptic light source and carrier.
874.4420 Ear, nose, and throat manual surgical instrument.
874.4490 Microsurgical argon laser.
874.4500 Ear, nose, and throat microsurgical carbon dioxide laser.
874.4680 Bronchoscope (flexible or rigid) and accessories.
874.4710 Esophagoscope (flexible or rigid) and accessories.
874.4720 Mediastinoscope and accessories.
874.4760 Nasopharyngoscope (flexible or rigid) and accessories.

Subpart F—Therapeutic Devices

874.5220 Ear, nose, and throat drug administration device.
874.5350 Suction antichoke device.
874.5370 Tongs antichoke device.
874.5800 External nasal splint.
874.5840 Antistammering device.

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

Subpart A—General Provisions

§ 874.1 Scope.

(a) This part sets forth the classification of ear, nose, and throat devices intended for human use that are in commercial distribution.

(b) The identification of a device in a regulation in this part is not a precise description of every device that is, or will be, subject to the regulation. A manufacturer who submits a premarket notification submission for a device under Part 807 cannot show merely that the device is accurately described by the section title and identification provision of a regulation in this part, but shall state why the device is substantially equivalent to other devices, as required by § 807.87.

(c) To avoid duplicative listings, an ear, nose, and throat device that has two or more types of uses (e.g., used both as a diagnostic device and as a therapeutic device) is listed in one subpart only.

(d) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 874.3 Effective dates of requirement for premarket approval.

A device included in this part that is classified into class III (premarket approval) shall not be commercially distributed after the date shown in the regulation classifying the device unless the manufacturer has an approval under section 515 of the act (unless an exemption has been granted under section 520(g)(2) of the act). An approval under section 515 of the act consists of FDA's issuance of an order approving an application for premarket approval (PMA) for the device or declaring completed a product development protocol (PDP) for the device.

(a) Before FDA requires that a device commercially distributed before the enactment date of the amendments, or a device that has been found substantially equivalent to such a device, has an approval under section 515 of the act FDA must promulgate a regulation under section 515(b) of the act requiring such approval, except as provided in paragraph (b) of this section. Such a regulation under section 515(b) of the act shall not be effective during the grace period ending on the 90th day after its promulgation or on the last day of the 30th full calendar month after the regulation that classifies the device into class III is effective, whichever is later. See section 501(f)(2)(B) of the act. Accordingly, unless an effective date of the requirement for premarket approval is shown in the regulation for a device classified into class III in this part, the device may be commercially distributed without FDA's issuance of an order approving a PMA declaring completed a PDP for the device. If FDA promulgates a regulation under section 515(b) of the act requiring premarket approval for a device, section 501(f)(1)(A) of the act applies to the device.

(b) Any new, not substantially equivalent, device introduced into commercial distribution on or after May 28, 1976, including a device formerly marketed that has been substantially altered, is classified by statute (section 513(f) of the act) into class III without any grace period and FDA must have issued an order approving a PMA or declaring completed a PDP for the device before the device is commercially distributed unless it is reclassified. If FDA knows that a device being commercially distributed may be a "new" device as defined in this section because of any new intended use or other reasons, FDA may codify the statutory classification of the device into class III for such new use. Accordingly, the regulation for such a class III device states that as of the enactment date of

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the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

Subpart B—Diagnostic Devices

§ 874.1050 Audiometer.

(a) *Identification.* An audiometer or automated audiometer is an electroacoustic device that produces controlled levels of test tones and signals intended for use in conducting diagnostic hearing evaluations and assisting in the diagnosis of possible otologic disorders.

(b) *Classification.* Class II.

§ 874.1060 Acoustic chamber for audiometric testing.

(a) *Identification.* An acoustic chamber for audiometric testing is a room that is intended for use in conducting diagnostic hearing evaluations and that eliminates sound reflections and provides isolation from outside sounds.

(b) *Classification.* Class I.

§ 874.1080 Audiometer calibration set.

(a) *Identification.* An audiometer calibration set is an electronic reference device that is intended to calibrate an audiometer. It measures the sound frequency and intensity characteristics that emanate from an audiometer earphone. The device consists of an acoustic cavity of known volume, a sound level meter, a microphone with calibration traceable to the National Bureau of Standards, oscillators, frequency counters, microphone amplifiers, and a recorder. The device can measure selected audiometer test frequencies at a given intensity level, and selectable audiometer attenuation settings at a given test frequency.

(b) *Classification.* Class II.

§ 874.1090 Auditory impedance tester.

(a) *Identification.* An auditory impedance tester is a device that is intended to change the air pressure in the external auditory canal and measure and graph the mobility characteristics of the tympanic membrane to evaluate the functional condition of the middle ear. The device is used to determine abnormalities in the mobility of the tympanic membrane due to stiffness, flaccidity, or the presence of fluid in the middle ear cavity. The device is also used to measure the acoustic reflex threshold from contractions of the stapedial muscle, to monitor healing of tympanic membrane grafts or stapedectomies, or to monitor followup treatment for inflammation of the middle ear.

(b) *Classification.* Class II.

§ 874.110 Earphone cushion for audiometric testing.

(a) *Identification.* An earphone cushion for audiometric testing is a device that is used to cover an audiometer earphone during audiometric testing to provide an acoustic coupling (sound connection path) between the audiometer earphone and the patient's ear.

(b) *Classification.* Class I.

§ 874.1120 Electronic noise generator for audiometric testing.

(a) *Identification.* An electronic noise generator for audiometric testing is a device that consists of a swept frequency generator, an amplifier, and an earphone. It is intended to introduce a masking noise into the non-test ear during an audiometric evaluation. The device minimizes the non-test ear's sensing of test tones and signals being generated for the ear being tested.

(b) *Classification.* Class II.

§ 874.1325 Electroglottograph.

(a) *Identification.* An electroglottograph is an AC-powered device that employs a pair of electrodes that are placed in contact with the skin on both sides of the larynx and held in place by a collar. It is intended to measure the electrical impedance of the larynx to aid in assessing the degree of closure of the vocal cords, confirm larygeal diagnosis, aid behavioral treatment of voice disorders, and aid research concerning the laryngeal mechanism.

(b) *Classification.* Class II.

§ 874.1500 Gustometer.

(a) *Identification.* A gustometer is a battery-powered device that consists of two electrodes that are intended to be placed on both sides of the tongue at different taste centers and that provides a galvanic stimulus resulting in taste sensation. It is used for assessing the sense of taste.

(b) *Classification.* Class I. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180 with respect to general requirements concerning records, and § 820.198 with respect to complaint files.

§ 874.1820 Surgical nerve stimulator/locator.

(a) *Identification.* A surgical nerve stimulator/locator is a device that is intended to provide electrical stimulation to the body to locate and identify nerves and to test their excitability.

(b) *Classification.* Class II.

§ 874.1925 Toynbee diagnostic tube.

(a) *Identification.* The toynbee diagnostic tube is a listening device intended to determine the degree of openness of the eustachian tube.

(b) *Classification.* Class I.

Subpart C—[Reserved]

Subpart D—Prosthetic Devices

§ 874.3300 Hearing Aid.

(a) *Identification.* A hearing aid is wearable sound-amplifying device that is intended to compensate for impaired hearing. This generic type of device includes the air-conduction hearing aid and the bone-conduction hearing aid, but excludes the group hearing aid or group auditory trainer (§ 874.3320), master hearing aid (§ 874.3330), and tinnitus masker (§ 874.3400).

(b) *Classification.* (1) Class I for the air-conduction hearing aid. (2) Class II for the bone-conduction hearing aid.

§ 874.3310 Hearing aid calibrator and analysis system.

(a) *Identification.* A hearing aid calibrator and analysis system is an electronic reference device intended to calibrate and assess the electroacoustic frequency and sound intensity characteristics emanating from a hearing aid, master hearing aid, group hearing aid or group auditory trainer. The device consists of an acoustic complex of known cavity volume, a sound level meter, a microphone, oscillators, frequency counters, microphone amplifiers, a distoration analyzer, a chart recorder, and a hearing aid test box.

(b) *Classification.* Class II.

§ 874.3320 Group hearing aid or group auditory trainer.

(a) *Identification.* A group hearing aid or group auditory trainer is a hearing aid that is intended for use in communicating simultaneously with one or more listeners having hearing impairment. The device is used with an associated transmitter microphone. It may be either monaural or binaural, and it provides coupling to the ear through either earphones or earmolds. The generic type of device includes three types of applications: hardwire systems, inductance loop systems, and wireless systems.

(b) *Classification.* Class II.

§ 874.3330 Master hearing aid.

(a) *Identification.* A master hearing aid is an electronic device intended to simulate a hearing aid during audiometric testing. It has adjustable acoustic output levels, such as those for gain, output, and frequency response. The device is used to select and adjust a person's wearable hearing aid.

(b) *Classification.* Class II.

§ 874.3375 Battery-powered artificial larynx.

(a) *Identification.* A battery-powered artificial larynx is an externally applied device intended for use in the absence of the larynx to produce sound. When held against the skin in the area of the voicebox, the device generates mechanical vibrations which resonate in the oral and nasal cavities and can be modulated by the tongue and lips in a normal manner, thereby allowing the production of speech.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180 with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 874.3400 Tinnitus masker.

(a) *Identification.* A tinnitus masker is an electronic device intended to generate noise of sufficient intensity and bandwidth to mask ringing in the ears or internal head noises. Because the device is able to mask internal noises, it is also used as an aid in hearing external noises and speech.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 874.3.

§ 874.3430 Middle ear mold.

(a) *Identification.* A middle ear mold is a preformed device that is intended to be implanted to reconstruct the middle ear cavity during repair of the tympanic membrane. The device permits an ample air-filled cavity to be maintained in the middle ear and promotes regeneration of the mucous membrane lining of the middle ear cavity. A middle ear mold is made of materials such as polyamide, polytetrafluoroethylene, silicone elastomer, or polyethylene, but does not contain porous polyethylene.

(b) *Classification.* Class II.

§ 874.3450 Partial ossicular replacement prosthesis.

(a) *Identification.* A partial ossicular replacement prosthesis is a device intended to be implanted for the functional reconstruction of segments of the ossicular chain and facilitates the conduction of sound wave from the tympanic membrane to the inner ear. The device is made of materials such as stainless steel, tantalum, polytetrafluoroethylene, polyethylene, polytetrafluoroethylene with carbon fibers composite, absorbable gelatin material, porous polyethylene, or from a combination of these materials.

(b) *Classification.* Class II.

§ 874.3495 Total ossicular replacement prosthesis.

(a) *Identification.* A total ossicular replacement prosthesis is a device intended to be implanted for the total functional reconstruction of the ossicular chain and facilitates the conduction of sound waves from the tympanic membrance to the inner ear. The device is made of materials such as polytetrafluoroethylene, polytetrafluoroethylene with vitreous carbon fibers composite, porous polyethylene, or from a combination of these materials.

(b) *Classification.* Class II.

§ 874.3540 Prosthesis modification instrument for ossicular replacement surgery.

(a) *Identification.* A prosthesis modification instrument for ossicular replacement surgery is a device intended for use by a surgeon to construct ossicular replacements. This generic type of device includes the ear, nose, and throat cutting block; wire crimper, wire bending die; wire closure forceps; piston cutting jib; gelfoam™ punch; wire cutting scissors; and ossicular finger vise.

(b) *Classification.* Class I. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180 with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 874.3620 Ear, nose, and throat synthetic polymer material.

(a) *Identification.* Ear, nose, and throat synthetic polymer material is a device material that is intended to be implanted for use as a space-occupying substance in the reconstructive surgery of the head and neck. The device is used, for example, in augmentation rhinoplasty and in tissue defect closures in the esophagus. The device is shaped and formed by the suregon to conform to the patient's needs. This generic type of device is made of material such as polyamide mesh or foil and porous polyethylene.

(b) *Classification.* Class II.

§ 874.3695 Mandibular implant facial prosthesis.

(a) *Identification.* A mandibular implant facial prosthesis is a device that is intended to be implanted for use in the functional reconstruction of mandibular deficits. The device is made of materials such as stainless steel, tantalum, titanium, cobalt-chromium based alloy, polytetrafluoroethylene, silicone elastomer, polyethylene, polyurethane, or polytetrafluoroethylene with carbon fibers composite.

(b) *Classification.* Class II.

§ 874.3730 Laryngeal prosthesis (Taub design).

(a) *Identification.* A laryngeal prosthesis (Taub design) is a device intended to direct pulmonary air flow to the pharynx in the absence of the larynx, thereby permitting esophageal speech. The device is interposed between openings in the trachea and the esophagus and may be removed and replaced each day by the patient. During phonation, air from the lungs is directed to flow through the device and over the esophageal mucosa to provide a sound source that is articulated as speech.

(b) *Classification.* Class II.

§ 874.3760 Sacculotomy tack (Cody tack)

(a) *Identification.* A sacculotomy tack (Cody tack) is a device that consists of a pointed stainless steel tack intended to be implanted to relieve the symptoms of vertigo. The device repetitively ruptures the utricular membrane as the membrane expands under increased endolymphatic pressure.

(b) *Classification.* Class II.

§ 874.3820 Endolymphatic shunt.

(a) *Identification.* An endolymphatic shunt is a device that consists of a tube or sheet intended to be implanted to relieve the symptons of vertigo. The device permits the unrestricted flow of excess endolymph from the distended end of the endolymphatic system into the mastoid cavity where resorption occurs. This device is made of polytetrafluoroethylene or silicone elastomer.

(b) *Classification.* Class II.

§ 874.3850 Endolymphatic shunt tube with valve.

(a) *Identification.* An endolymphatic shunt tube with valve is a device that consists of a pressure-limiting valve associated with a tube intended to be implanted in the inner ear to relieve the symptoms of vertigo. The device directs excess endolymph from the distended end of the endolymphatic system into the mastoid cavity where resorption occurs. The function of the pressure-limiting inner ear valve is to impede the flow of endolymph so that a physiologically normal endolymphatic pressure is maintained. The device is made of silicone elastomer and polyamide and contains gold radiopaque markers within the silicone elastomer sheath.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 874.3.

§ 874.3880 Tympanostomy tube.

(a) *Identification.* A tympanostomy tube is a device that is intended to be implanted for ventilation or drainage of the middle ear. The device is inserted through the tympanic membrane to permit a free exchange of air between the outer ear and middle ear. A type of tympanostomy tube known as the malleous clip tube attaches to the malleous to provide middle ear ventilation. The device is made of materials such as polytetrafluoroethylene, polyethylene, silicon elastomer, or porous polyethylene.

(b) *Classification.* Class II.

§ 874.3930 Tympanostomy tube with semipermeable membrane.

(a) *Identification.* A tympanostomy tube with a semipermeable membrane is a device intended to be implanted for ventilation or drainage of the middle ear and for preventing fluids from entering the middle ear cavity. The device is inserted through the tympanic membrane to permit a free exchange of air between the outer ear and middle ear. The tube portion of the device is made of silicone elastomer or porous polyethylene, and the membrane portion is made of polytetrafluoroethylene.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 874.3.

Subpart E—Surgical Devices

§ 874.4100 Epistaxis balloon.

(a) *Identification.* An epistaxis balloon is a device consisting of an inflatable balloon intended to control internal nasal bleeding by exerting pressure against the sphenopalatine artery.

(b) *Classification.* Class I.

§ 874.4140 Ear, nose, and throat bur.

(a) *Identification.* An ear, nose, and throat bur is a device consisting of an interchangeable drill bit that is intended for use in an ear, nose, and throat electric or pneumatic surgical drill (§ 874.4250) for incising or removing bone in the ear, nose, or throat area. The bur consists of a carbide cutting tip on a metal shank or a coating of diamond on a metal shank. The device is used in mastoid surgery, frontal sinus surgery, and surgery of the facial nerves.

(b) *Classification.* Class I.

§ 874.4175 Nasopharyngeal catheter.

(a) *Identification.* A nasopharyngeal catheter is a device consisting of a bougie or filiform catheter that is intended for use in probing or dilating the eustachian tube. This generic type of device includes eustachian catheters.

(b) *Classification.* Class I.

§ 874.4250 Ear, nose, and throat electric or pneumatic surgical drill.

(a) *Identification.* An ear, nose, and throat electric or pneumatic surgical drill is a rotating drilling device, including the handpiece, that is intended to drive various accessories, such as an ear, nose, and throat bur (§ 874.4140), for the controlled incision or removal of bone in the ear, nose, and throat area.

(b) *Classification.* Class II.

§ 874.4350 Ear, nose, and throat fiberoptic light source and carrier.

(a) *Identification.* An ear, nose, and throat fiberoptic light source and carrier is an AC-powered device that generates and transmits light through glass of plastic fibers and that is intended to provide illumination at the tip of an ear, nose, or throat endoscope. Endoscopic devices which utilize fiberoptic light sources and carriers include the bronchoscope, esophagoscope, laryngoscope, mediastinoscope, laryngeal-bronchial telescope, and nasopharyngoscope.

(b) *Classification.* Class II.

§ 874.4420 Ear, nose, and throat manual surgical instrument.

(a) *Identification.* An ear, nose, and throat manual surgical instrument is one of a variety of devices intended for use in surgical procedures to examine or treat the bronchus, esophagus, trachea, larynx, pharynx, nasal and paranasal sinus, or ear. This generic type of device includes the esophageal dilator; tracheal bistour (a long, narrow surgical knife); tracheal dilator; tracheal hook; laryngeal injection set; laryngeal knife; laryngeal saw; laryngeal trocar; laryngectomy tube; adenoid curette; adenotome; metal tongue depressor; mouth gag; oral screw; salpingeal curette; tonsillectome; tonsil guillotine; tonsil screw; tonsil snare; tonsil suction tub; tonsil suturing hook; antom reforator; ethmoid curette; frontal sinus-rasp; nasal curette; nasal rasp; nasal rongeur; nasal saw; nasal scissors; nasal snare; sinus irrigator; sinus trephine; ear curette; ear excavator; ear rasp; ear scissor, ear snare; ear spoon; ear suction tub; malleous ripper; mastoid gauge; microsurgical ear chisel; myringotomy tube inserter; ossici holding clamp; sacculotomy tack inserter; vein press; wire ear loop; microrule; mirror; mobilizer; ear, nose, and throat punch; ear, nose and throat knife; and ear, nose, and throat trocar.

(b) *Classification.* Class I.

§ 874.4490 Microsurgical argon laser.

(a) *Microsurgical argon laser for use in otology*—(1) *Identification.* A microsurgical argon laser for use in otology is a device intended to cut, destroy, or alter tissue or bone of the ear using laser light energy.

(2) *Classification.* Class II.

(b) *Microsurgical argon laser for all other uses*—(1) *Identification.* A microsurgical argon laser for all other uses, including use in laryngology and general use in otolaryngology, is a device that is intended to cut, destroy, or alter tissue.

(2) *Classification.* Class III.

(3) *Date PMA or notice of completion of a PDP is required.* As of May 28, 1976, an approval under section 515 of the act is required before the device identified in paragraph (b) may be commercially distributed. See § 874.3.

§ 874.4500 Ear, nose, and throat microsurgical carbon dioxide laser.

(a) *Identification.* An ear, nose, and throat microsurgical carbon dioxide laser is a device intended for the surgical excision of tissue from the ear, nose, and throat area. The device is used, for example, in microsurgical procedures to excise lesions and tumors of the vocal cords and adjacent areas.

(b) *Classification.* Class II.

§ 874.4680 Bronchoscope (flexible or rigid) and accessories.

(a) *Identification.* A bronchoscope (flexible or rigid) and accessories is a tubular endoscopic device with any of a group of accessory devices which attach to the bronchoscope and is intended to examine or treat the larynx and tracheobronchial tree. It is typically used with a fiberoptic light source and carrier to provide illumination. The device is made of materials such as stainless steel or flexible plastic. This generic type of device includes the rigid ventilating bronchoscope, rigid nonventilating bronchoscope, nonrigid bronchoscope, laryngeal-bronchial telescope, flexible foreign body claw, bronchoscope tubing, flexible biopsy forceps, rigid biopsy curette, flexible biopsy brush, rigid biopsy forceps, flexible biopsy curette, and rigid bronchoscope aspirating tube, but excludes the fiberoptic light source and carrier.

(b) *Classification.* Class II.

§ 874.4710 Esophagoscope (flexible or rigid) and accessories.

(a) *Identification.* An esophagoscope (flexible or rigid) and accessories is a tubular endoscopic device with any of a group of accessory devices which attach to the esophagoscope and is intended to examine or treat esophageal malfunction symptoms, esophageal or mediastinal disease, or to remove foreign bodies from the esophagus. When inserted, the device extends from the area of the hypopharynx to the stomach. It is typically used with a fiberoptic light source and carrier to provide illumination. The device is made of materials such as stainless steel or flexible plastic. This generic type of device includes the flexible foreign body claw, flexible biopsy forceps, rigid biopsy curette, flexible biopsy brush, rigid biopsy forceps and flexible biopsy curette, but excludes the fiberoptic light source and carrier.

(b) *Classification.* Class II.

§ 874.4720 Mediastinoscope and accessories.

(a) *Identification.* A mediastinoscope and accessories is a tubular tapered electrical endoscopic device with any of a group of accessory devices which attach to the mediastinoscope and is intended to examine or treat tissue in the area separating the lungs. The device is inserted transthoracicly and is used in diagnosis of tumors and lesions and to determine whether excision of certain organs or tissues is indicated. It is typically used with a fiberoptic light source and carrier to provide illumination. The device is made of materials such as stainless steel. This generic type of device includes the flexible foreign body claw, flexible biopsy forceps, rigid biopsy curette, flexible biopsy brush, rigid biopsy forceps, and flexible biopsy curette, but excludes the fiberoptic light source and carrier.

(b) *Classification.* Class II.

§ 874.4760 Nasopharyngoscope (flexible or rigid) and accessories.

(a) *Identification.* A nasopharyngoscope (flexible or rigid) and accessories is a tubular endoscopic device with any of a group of accessory devices which attach to the nasopharyngoscope and is intended to examine or treat the nasal cavity and nasal pharynx. It is typically used with a fiberoptic light source and carrier to provide illumination. The device is made of materials such as stainless steel and flexible plastic. This generic type of device includes the antroscope, nasopharyngolaryngoscope, nasosinuscope, nasoscope, postrhinoscope, rhinoscope, salpingoscope, flexible foreign body claw, flexible biopsy forceps, rigid biopsy curette, flexible biospy brush, rigid biopsy forceps and flexible biopsy curette, but excludes the fiberoptic light source and carrier.

(b) *Classification.* Class II.

Subpart F—Therapeutic Devices

§ 874.5220 Ear, nose, and throat drug administration device.

(a) *Identification.* An ear, nose, and throat drug administration device is one of a group of ear, nose, and throat devices intended specifically to administer medicinal substances to treat ear, nose, and throat disorders. These instruments include the powder blower, dropper, ear wick, manual nebulizer pump, and nasal inhaler.

(b) *Classification.* Class I. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 874.5350 Suction antichoke device.

(a) *Identification.* A suction antichoke device is a device intended to be used in an emergency situation to remove, by the application of suction, foreign objects that obstruct a patient's airway to prevent asphyxiation to the patient.

(b) *Classification.* Class III.

(c) *Date PMA or notice or completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 874.3.

§ 874.5370 Tongs antichoke device.

(a) *Identification.* A tongs antichoke device is a device that is intended to be used in an emergency situation to grasp and remove foreign objects that obstruct a patient's airway to prevent asphyxiation of the patient. This generic type of device includes a plastic instrument with serrated ends that is inserted into the airway in a blind manner to grasp and extract foreign objects, and a stainless steel forceps with spoon ends that is inserted under tactile guidance to grasp and extract foreign objects from the airway.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* A No effective date has been established of the requirement for premarket approval. See § 874.3.

§ 874.5800 External nasal splint.

(a) *Identification.* An external nasal splint is a rigid or partially rigid device intended for use externally for immobilization of parts of the nose.

(b) *Classification.* Class I.

§ 874.5840 Antistammering device.

(a) *Identification.* An antistammering device is a device that electronically generates a noise when activated or when it senses the user's speech and that is intended to prevent the user from hearing the sounds of his or her own voice. The device is used to minimize a user's involuntary hesitative or repetitive speech.

(b) *Classification.* Class I.

Dated: October 22, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 874

[Docket No. 86N-0010]

Ear, Nose, and Throat Devices; Proposed Exemptions From Premarket Notification

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to exempt from the requirement of premarket notification, with limitations, for ear, nose, and throat devices. Elsewhere in this issue of the **Federal Register**, FDA is issuing a final rule classifying these and other devices. These actions are being taken under the Medical Device Amendments of 1976 and are a step in implementing one of the goals in FDA's plan for action.

DATES: Comments by January 5, 1987. FDA is proposing that the final rule based on this proposed rule become effective 30 days after its date of publication in the **Federal Register**.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David A. Segerson, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-8185.

SUPPLEMENTARY INFORMATION: The Medical Device Amendments of 1976 (Pub. L. 94-295, hereinafter called the amendments) establish a comprehensive system for the regulation of medical devices intended for human use. One provision of the amendments, section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), establishes three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness: class I, general controls; class II, performance standards; and class III, premarket approval.

Section 513(d)(2)(A) of the act (21 U.S.C. 360c(d)(2)(A)) authorizes FDA to exempt, by regulation, a generic type of class I device from the requirement of, among other things, premarket notification in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR Part 807, Subpart E. Such an exemption allows manufacturers to introduce into commercial distribution devices of the generic type exempted without first submitting to FDA a premarket notification. When FDA was publishing its proposed classification regulations for preamendment devices, the agency did not routinely evaluate whether it should grant to manufacturers of such devices placed in class I an exemption from the requirement of premarket notification in section 510(k) of the act and 21 CFR Part 807, Subpart E. Generally, FDA considered such exemptions only when the advisory panels recommended the exemptions.

Recently, FDA developed criteria for exempting certain class I devices from the requirement of premarket notification, to reduce the number of premarket notifications on relatively innocuous devices while freeing agency resources for the review of more complex notifications.

The development of these criteria and the issuance of proposed and final rules exempting appropriate devices from the requirement of premarket notification in section 510(k) of the act will help implement a goal in FDA's July 1985 "A Plan for Action" (Ref. 1).

Criteria for 510(K) Exemptions

FDA is proposing to exempt a generic type of class I device from the requirement of premarket notification with the limitations described below, if FDA determines that premarket notification is not necessary for the protection of the public health. FDA may propose to grant an exemption if both of the following criteria are met:

1. FDA has determined that the device does not have a significant history of false or misleading claims or of risks associated with inherent characteristics of the device such as device design or materials. When making these determinations, FDA may consider the frequency, persistence, cause, or seriousness of such claims or risks, or other factors.

2. FDA has determined that: (a) Characteristics of the device necessary for its safe and effective performance are well established; (b) anticipated changes in the device that are of the type that could affect safety and effectiveness will (1) be readily detectable by users by visual examination or other means, such as routine testing, e.g., testing of a clinical laboratory reagent with positive and negative controls, before causing harm; or (2) not materially increase the risk of injury, incorrect diagnosis, or ineffective treatment; and (c) that any changes in the device will not be likely to result in a change in the device's classification.

FDA will make the determination above based on its knowledge of the device, including past experience with premarket notification and publicly available reports or studies on device performance. Based on the above criteria, FDA will place the exempted device into the same class as the class I device to which it would be substantially equivalent.

FDA may, if it has concerns only about certain types of changes in a class I device, grant a limited exemption from premarket notification for the generic type of device. A limited exemption will specify what types of changes manufacturers must continue to report to FDA. For example, FDA may exempt a device except when a manufacturer intends to use a different material.

FDA's decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic of a device that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

Application of the Criteria to Class I; Ear, Nose, and Throat Devices

In the proposed rule of January 22, 1982 (47 FR 3280), FDA proposed to classify preamendments ear, nose, and throat devices in accordance with the amendments. When FDA proposed to classify the four devices below, the agency did not propose exemptions from the requirement of premarket notification for these devices and the Panel did not recommend exemptions from the requirement of premarket notification for certain of the devices. FDA agrees that full exemption from premarket notification is unjustified for these devices; however, the agency, for the efficient enforcement of the act and consistent with its policy regarding exemptions from premarket notification, now is proposing to exempt from the requirement of premarket notification, with limitations, the four devices below.

Section	Device
874.1100	Earphone cushion for audiometric testing
874.3540	Prosthesis modification instrument for ossicular replacement surgery
874.4420	Ear, nose, and throat manual surgical instrument
874.5800	External nasal splint

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule classifying the devices above in class I. FDA is proposing in this document to grant an exemption from the requirement of premarket notification for each of the devices above. However, the proposed exemptions for the earphone cushion for audiometric testing (§ 874.1100); prosthesis modification instrument for ossicular replacement surgery (§ 874.3540); ear, nose, and throat manual surgical instrument (§ 874.4420); and the external nasal splint (§ 874.5800) are limited and would apply only to those devices made of the same materials that were used in the devices before May 28, 1976.

Reference

The following information has been placed in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. "Food and Drug Administration—A Plan for Action," Public Health Service, Department of Health and Human Services, July 1985, p. 18.

Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

FDA has carefully analyzed the economic effects of this proposed rule and has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of Executive Order 12291, the impact of this proposed rule has been carefully analyzed, and it has been determined that the proposed rule does not constitute a major rule as defined in section 1(b) of the Executive Order.

The devices subject to this proposed rule are now subject only to the general controls provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j), with certain exemptions. Under any final rule based on this proposal, the devices would remain subject to such controls, other than premarket notification.

Interested persons may, on or before January 5, 1987, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 874

Ear, nose, and throat devices, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 874 be amended as follows:

PART 874—EAR, NOSE, AND THROAT DEVICES

1. The authority citation for 21 CFR Part 874 continues to read as follows:

Authority: Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)); 21 CFR 5.10.

2. Part 874 is amended by adding new § 874.9 to read as follows:

§ 874.9 Limitations of exemptions from section 510(k) of the act.

FDA's decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufactures of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

3. In § 874.1100 by revising paragraph (b) to read as follows:

§ 874.1100 Earphone cushion for audiometric testing.

* * * * *

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, it is exempt from the premarket notification procedures in Subpart E of Part 807.

4. In § 874.3540 by revising paragraph (b) to read as follows:

§ 874.3540 Prosthesis modification instrument for ossicular replacement surgery.

* * * * *

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, it is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180,

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with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

5. In § 874.4420 by revising paragraph (b) to read as follows:

§ 874.4420 Ear, nose, and throat manual surgical instrument.

* * * * *

(b) *Classification*. Class I. If the device is made of the same materials that were used in the device before May 28, 1976, it is exempt from the premarket notification procedures in Subpart E of Part 807.

6. In § 874.5800 by revising paragraph (b) to read as follows:

§ 874.5800 External nasal splint.

* * * * *

(b) *Classification*. Class I. If the device is made of the same materials that were used in the device before May 28, 1976, it is exempt from the premarket notification procedures in Subpart E of Part 807.

Dated: October 22, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 86-25093 Filed 11-5-86; 8:45 am]

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21 CFR Parts 874, 878, and 886

[Docket Nos. 78N-1566 et al.]

Medical Devices; Withdrawal of Certain Proposed Rules for Device Classification

AGENCY: Food and Drug Administration.

ACTION: Withdrawal of proposed rules.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing the proposed rules classifying 15 ear, nose, and throat devices, a general and plastic surgery device, and an ophthalmic device to eliminate unnecessary regulations. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule classifying ear, nose, and throat devices.

FOR FURTHER INFORMATION CONTACT: David A. Segerson, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-8185.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 22, 1982 (47 FR 3280), January 19, 1982 (47 FR 2810), and January 28, 1982 (47 FR 3694), FDA proposed to classify ear, nose, and throat, general and plastic surgery, and ophthalmic devices, respectively. These actions were taken as part of the agency's overall implementation of the Medical Device Amendments of 1976 (the amendments) that established a system for the regulation of medical devices for human use. One provision of the amendments, section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), establishes three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness: class I (general controls), class II (performance standards), and class III (premarket approval). The amendments also established a procedure for the agency to promulgate regulations classifying each generic type of device into one of these three classes. Persons who disagree with a final classification of a device may petition for reclassification of the device under Subpart C of 21 CFR Part 860. Because the same generic type of device may be used in different medical specialty area (cardiovascular, general and plastic surgery, anesthesiology, etc.) under different names and because FDA is attempting to reduce unnecessary regulations, the agency continues to consolidate its list of generic types of devices.

FDA proposes that the transdermal stimulator (§ 874.5850) be classified into class III (47 FR 3280). After publishing the proposed regulation as part of the ear, nose, and throat device classification proceeding (Docket No. 78N-1636), the agency determined that the device is an investigational device not in commercial distribution before May 28, 1976, the enactment date of the amendments. Because the device was not in commercial distribution and is not substantially equivalent to a device that was in commercial distribution, the transdermal stimulator is classified into class III under section 513(f) of the act (21 U.S.C. 360c), without the agency's publication of a classification regulation for the device. No comments were received by FDA on this proposed regulation.

To eliminate unnecessary regulations, FDA is withdrawing 14 of the 67 ear, nose, and throat proposed regulations that were published in the Federal Register of January 22, 1982. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule classifying ear, nose, and throat devices. In that final rule, FDA is grouping 23 proposed ear, nose, and throat devices into nine generic types of ear, nose, and throat devices. The term "generic type of device" is defined in 21 CFR 860.3(i). Therefore, in that final rule each of the 14 devices listed below in the column on the left is being grouped into the generic type of device opposite in the column on the right. FDA is withdrawing each of the proposed regulations listed in the column on the left. Further, FDA is postponing classification of six generic types of ear, nose, and throat devices pending review of additional data, including two devices being grouped. FDA advises that, for the proposed regulations for the ear, nose, and throat devices being withdrawn, summaries of any comments submitted and FDA's responses are discussed in the preamble to the appropriate final rule.

Proposed rugulations being withdrawn	Final regulations published elsewhere in this issue of the FEDERAL REGISTER
78N-1564—Ear, nose, and throat porous polyethylene synthetic polymer material.	78N-1583—Ear, nose, and throat synthetic polymer material.
78N-1637—Porous polyethylene partial ossicular replacement prosthesis.	78N-1577—Partial ossicular replacement prosthesis.
78N-1639—Porous polyethylene total ossicular replacement prosthesis.	78N-1578—Total ossicular replacement prosthesis.
78N-1641—Porous polyethylene tympanostomy tube.	78N-1585—Tympanostomy tube.
78N-1607—Bronchial, tracheal, or esophageal surgical instrument.	78N-1609—Ear, nose, and throat manual surgical instrument.
78N-1608—Surgical instrument for the ear.	Do.
78N-1610—Laryngeal surgical instrument.	Do.
78N-1611—Pharyngeal surgical instrument.	Do.
78N-1612—Nasal and paranasal sinus surgical instrument.	Do.
78N-1617—Ear, nose, and throat endoscopic accessory.	78N-1616—Bronchoscope (flexible or rigid) and accessories.
78N-1625—Laryngeal-bronchial telescope.	Do.
78N-1628—Tracheostomy tube cuff.	78N-1628—Tracheostomy tube and tube cuff.

Proposed regulations being withdrawn	At this time, FDA is not publishing in the FEDERAL REGISTER final regulations for these devices
78N-1566—Water caloric stimulator.	78N-1565—Air or water caloric stimulator.
78N-1643—Laryngostroboscope (patient-contacting).	78N-1622—Laryngostroboscope.

After publication of the proposal (47 FR 2835; January 19, 1982) to classify the aorto-saphenous vein ostia marker (Docket No. 78N-2688) into class II as part of the general and plastic surgery device classification proceeding, the agency determined that the aorto-saphenous vein ostia marker is included as an accessory in a generic type of device that the agency already has classified into class II as part of the classification proceeding for cardiovascular devices, § 870.3460 *Vascular graft prosthesis of 6 millimeters and greater diameter.* The final regulation to classify the vascular graft prosthesis of 6 millimeters and greater diameter was published in the **Federal Register** of February 5, 1980 (45 FR 7938), following opportunity for

1

comment. In the **Federal Register** of January 6, 1986 (51 FR 564—Docket No. 83N-0190), the agency issued an invitation for offers to submit or develop a performance standard for the vascular graft prosthesis of 6 millimeters and greater diameter as a step in establishing a performance standard for the device.

A comment received on the January 19, 1982 proposal regarding the aorto-saphenous vein ostia marker stated that the proposed identification excluded certain types of the device that are currently being marketed.

FDA agrees with the comment. However, because FDA now believes that the devices subject to the proposal already have been classified into class II, FDA is withdrawing the proposed regulation.

FDA proposed that the fluorescein strip (§ 886.1310) be classified into class I (47 FR 3694) as part of the ophthalmic device classification proceeding. A comment on that proposed regulation noted that FDA regulates fluorescein solution as a drug, but the agency proposed to classify a strip of filter paper impregnated with fluorescein solution as a device. The comment suggested that FDA regulate the fluorescein solution and the fluorescein strip using the same regulatory controls.

FDA has determined that it will regulate the fluorescein strip as a drug rather than as a device. Accordingly, FDA is withdrawing its proposed regulation classifying the fluorescein strip (Docket No. 78N-3150).

The administrative record for each of the ear, nose, and throat proposals of January 22, 1982, that are being grouped will be included in the administrative record for the docket number that is opposite in the column on the right, and the administrative record for the January 19, 1982, proposal for the aorto-saphenous vein ostia marker will be included in the administrative record (Docket No. 78N-1484) for the proceeding to classify the vascular graft prosthesis of 6 millimeters and greater diameter into class II.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), the proposals to classify the 15 ear, nose, and throat devices described above that were published in the **Federal Register** of January 22, 1980, the proposal to classify the aorto-saphenous vein ostia marker that was published in the **Federal Register** of January 19, 1982, and the proposal to classify the fluorescein strip that was published in the **Federal Register** of January 26, 1982, under docket numbers 78N-1566, 78N-1584, 78N-1607, 78N-1608, 78N-1610, 78N-1611, 78N-1612, 78N-1617, 78N-1625, 78N-1628, 78N-1636, 78N-1637, 78N-1639, 78N-1641, 78N-1643, 78N-2688, and 78N-3150 are withdrawn.

Dated: October 22, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 86-25092 Filed 11-5-86; 8:45 am]

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H.R. 2776/Pub. L. 99–581

To amend the District of Columbia Stadium Act of 1957 to direct the Secretary of the Interior to convey title to the Robert F. Kennedy Memorial Stadium to the District of Columbia. (Oct. 29, 1986; 2 pages) Price: $1.00

H.R. 3415/Pub. L. 99–582

Bicentennial of the Constitution Coins Act. (Oct. 29, 1986; 3 pages) Price: $1.00

H.R. 4037/Pub. L. 99–583

Relating to the Indiana Dunes National Lakeshore, and for other purposes. (Oct. 29, 1986; 4 pages) Price: $1.00

H.R. 4685/Pub. L. 99–584

Texas Wilderness Act Amendments of 1986. (Oct. 29, 1986; 2 pages) Price: $1.00

H.R. 5181/Pub. L. 99–585

To designate the United States Courthouse at 68 Court Street, Buffalo, New York, as the "Michael J. Dillon Memorial United States Courthouse." (Oct. 29, 1986; 1 page) Price: $1.00

H.R. 5218/Pub. L. 99–586

To amend title 5, United States Code, to provide that certain individuals be accorded competitive status for purposes of transferring to the competitive service. (Oct. 29, 1986; 1 page) Price: $1.00

H.R. 5459/Pub. L. 99–587

To direct the release, on behalf of the United States, of certain conditions and reservations contained in a conveyance of land to the State of Utah, and for other purposes. (Oct. 29, 1986; 2 pages) Price: $1.00

H.R. 5470/Pub. L. 99–588

To designate the United States Courthouse for the Eastern District of Virginia in Alexandria, Virginia, as the "Albert V. Bryan United States Courthouse." (Oct. 29, 1986; 1 page) Price: $1.00

H.J. Res. 620/Pub. L. 99–589

Designating the week beginning January 4, 1987, as "National Bowling Week." (Oct. 29, 1986; 1 page) Price: $1.00

H.R. 4350/Pub. L. 99–590

To amend the Wild and Scenic Rivers Act, and for other purposes. (Oct. 30, 1986; 11 pages) Price: $1.00

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Friday
November 7, 1986

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WHEN: December 8 at 1:30 p.m.,

WHERE: Room 2212, William S. Moorehead Federal Building, 1000 Liberty Avenue,
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RESERVATIONS: Kenneth Jones or Lydia Shaw
Pittsburgh: 412-644-INFO
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The President

Proclamation 5564 of November 3, 1986

Placing Into Full Force and Effect the Covenant With the Commonwealth of the Northern Mariana Islands, and the Compacts of Free Association With the Federated States of Micronesia and the Republic of the Marshall Islands

By the President of the United States of America

A Proclamation

Since July 18, 1947, the United States has administered the United Nations Trust Territory of the Pacific Islands ("Trust Territory"), which includes the Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands, and Palau.

On February 15, 1975, after extensive status negotiations, the United States and the Marianas Political Status Commission concluded a Covenant to establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States ("Covenant"). Sections 101, 1002, and 1003(c) of the Covenant provide that the Northern Mariana Islands will become a self-governing Commonwealth in political union with and under the sovereignty of the United States. This Covenant was approved by the Congress by Public Law 94–241 of March 24, 1976, 90 Stat. 263. Although many sections of the Covenant became effective in 1976 and 1978, certain sections have not previously entered into force.

On October 1, 1982, the Government of the United States and the Government of the Federated States of Micronesia concluded a Compact of Free Association, establishing a relationship of Free Association between the two Governments. On June 25, 1983, the Government of the United States and the Government of the Marshall Islands concluded a Compact of Free Association, establishing a relationship of Free Association between the two Governments. Pursuant to Sections 111 and 121 of the Compacts, the Federated States of Micronesia and the Republic of the Marshall Islands become self-governing and have the right to conduct foreign affairs in their own name and right upon the effective date of their respective Compacts. Each Compact comes into effect upon (1) mutual agreement between the Government of the United States, acting in fulfillment of its responsibilities as Administering Authority of the Trust Territory of the Pacific Islands, and the other Government; (2) the approval of the Compact by the two Governments, in accordance with their constitutional processes; and (3) the conduct of a plebiscite in that jurisdiction. In the Federated States of Micronesia, the Compact has been approved by the Government in accordance with its constitutional processes, and in a United Nations-observed plebiscite on June 21, 1983, a sovereign act of self-determination. In the Marshall Islands, the Compact has been approved by the Government in accordance with its constitutional processes, and in a United Nations-observed plebiscite on September 7, 1983, a sovereign act of self-determination. In the United States the Compacts have been approved by Public Law 99–239 of January 14, 1986, 99 Stat. 1770.

On January 10, 1986, the Government of the United States and the Government of the Republic of Palau concluded a Compact of Free Association, establishing a similar relationship of Free Association between the two Governments. On October 16, 1986, the Congress of the United States approved the Compact of Free Association with the Republic of Palau. In the Republic of Palau, the Compact approval process has not yet been completed. Until the future political status of Palau is resolved, the United States will continue to discharge its responsibilities in Palau as Administering Authority under the Trusteeship Agreement.

On May 28, 1986, the Trusteeship Council of the United Nations concluded that the Government of the United States had satisfactorily discharged its obligations as the Administering Authority under the terms of the Trusteeship Agreement and that the people of the Northern Mariana Islands, the Federated States of Micronesia, and the Republic of the Marshall Islands had freely exercised their right to self-determination, and considered that it was appropriate for that Agreement to be terminated. The Council asked the United States to consult with the governments concerned to agree on a date for entry into force of their respective new status agreements.

On October 15, 1986, the Government of the United States and the Government of the Republic of the Marshall Islands agreed, pursuant to Section 411 of the Compact of Free Association, that as between the

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United States and the Republic of the Marshall Islands, the effective date of the Compact shall be October 21, 1986.

On October 24, 1986, the Government of the United States and the Government of the Federated States of Micronesia agreed, pursuant to Section 411 of the Compact of Free Association, that as between the United States and the Federated States of Micronesia, the effective date of the Compact shall be November 3, 1986.

On October 24, 1986, the United States advised the Secretary General of the United Nations that, as a consequence of consultations held between the United States Government and the Government of the Marshall Islands, agreement had been reached that the Compact of Free Association with the Marshall Islands entered fully into force on October 21, 1986. The United States further advised the Secretary General that, as a result of consultations with their governments, agreement had been reached that the Compact of Free Association with the Federated States of Micronesia and the Covenant with the Commonwealth of the Northern Mariana Islands would enter into force on November 3, 1986.

As of this day, November 3, 1986, the United States has fulfilled its obligations under the Trusteeship Agreement with respect to the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, and the Federated States of Micronesia, and they are self-governing and no longer subject to the Trusteeship. In taking these actions, the United States is implementing the freely expressed wishes of the peoples of the Northern Mariana Islands, the Federated States of Micronesia, and the Marshall Islands.

NOW, THEREFORE, I, RONALD REAGAN, by the authority vested in me as President by the Constitution and laws of the United States of America, including Section 1002 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, and Sections 101 and 102 of the Joint Resolution to approve the "Compact of Free Association", and for other purposes, approved on January 14, 1986 (Public Law 99-239), do hereby find, declare, and proclaim as follows:

Section 1. I determine that the Trusteeship Agreement for the Pacific Islands is no longer in effect as of October 21, 1986, with respect to the Republic of the Marshall Islands, as of November 3, 1986, with respect to the Federated States of Micronesia, and as of November 3, 1986, with respect to the Northern Mariana Islands. This constitutes the determination referred to in Section 1002 of the Covenant.

Sec. 2. (a) Sections 101, 104, 301, 302, 303, 506, 806, and 904 of the Covenant are effective as of 12:01 a.m., November 4, 1986, Northern Mariana Islands local time.

(b) The Commonwealth of the Nothern Mariana Islands in political union with and under the sovereignty of the United States of America is fully established on the date and at the time specified in Section 2(a) of this Proclamation.

(c) The domiciliaries of the Northern Mariana Islands are citizens of the United States to the extent provided for in Sections 301 through 303 of the Covenant on the date and at the time specified in this Proclamation.

(d) I welcome the Commonwealth of the Northern Mariana Islands into the American family and congratulate our new fellow citizens.

Sec. 3. (a) The Compact of Free Association with the Republic of the Marshall Islands is in full force and effect as of October 21, 1986, and the Compact of Free Association with the Federated States of Micronesia is in full force and effect as of November 3, 1986.

(b) I am gratified that the people of the Federated States of Micronesia and the Republic of the Marshall Islands, after nearly forty years of Trusteeship, have freely chosen to establish a relationship of Free Association with the United States.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of November, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-25463
Filed 11-6-86; 11:17 am]
Billing code 3195-01-M

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Executive Order 12572 of November 3, 1986

Relations With the Northern Mariana Islands

By the authority vested in me as President by the Constitution and laws of the United States of America, it is hereby ordered that, consistent with the Joint Resolution to approve the "Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America," approved March 24, 1976 (Public Law 94-241; 90 Stat. 263), the relations of the United States with the Government of the Northern Mariana Islands shall, in all matters not the program responsibility of another Federal department or agency, be under the general administrative supervision of the Secretary of the Interior.

Ronald Reagan

THE WHITE HOUSE,
November 3, 1986.

[FR Doc. 86-25466
Filed 11-6-86; 11:18 am]
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Presidential Documents

Proclamation 5565 of November 5, 1986

National Alzheimer's Disease Month, 1986

By the President of the United States of America

A Proclamation

Alzheimer's disease afflicts more than 2.5 million Americans. It destroys specific cells of the brain, impairing memory and judgment and producing confused thought and irritability. Families and friends, no less than the patient, are caught up in a daily battle to cope emotionally, physically, and financially with the patient's loss of intellectual functioning. We owe these patients and their families our understanding and our support.

No cure or treatments yet exist for Alzheimer's disease, but scientific research gives us hope. In medical institutions and laboratories across our country, scientists, supported by the Federal government's National Institute of Neurological and Communicative Disorders and Stroke and by voluntary organizations such as the Alzheimer's Disease and Related Disorders Association, are carrying out a wide range of studies on Alzheimer's disease and similar forms of dementia.

Each day, these efforts yield new knowledge about the functions of the brain and its disorders. New imaging techniques have disclosed that Alzheimer's disease does not affect the entire brain, as previously thought, but instead destroys specific areas. Scientists can now target future research more precisely on these areas and on certain brain chemicals that appear to play a role in the disease. Much about Alzheimer's disease remains to be learned, but through research we hope to find a way to overcome what we now know is a disease and not "senility" or a normal consequence of aging.

To demonstrate our commitment to conquering this disease and to enhance public awareness of Alzheimer's disease, the Congress, by Public Law 99-520, has designated the month of November 1986 as "National Alzheimer's Disease Month" and authorized and requested the President to issue a proclamation in observance of that occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of November 1986 as National Alzheimer's Disease Month, and I call upon the people of the United States to observe this month with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of November, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

Tobacco Inspection; Standard Grades for Fire-Cured, Burley and Dark Air-Cured Tobacco

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: These regulations modify the Official Standard Grades for Fire-Cured, Burley and Dark Air-Cured Tobacco to more accurately describe tobacco as it presently appears at the marketplace. These modifications will: (1) Reduce the number of size designations in fire-cured and dark air-cured tobacco; (2) add a special factor symbol in the fire-cured types to denote tobacco that is not sufficiently smoked; (3) add grades in burley tobacco to separate tannish-buff color from tan color, to describe fine quality mixed color leaf, and to describe variegated color in mixed groups; (4) delete certain grades determined to be no longer necessary; and (5) modify and add definitions to clarify terminology related to grade determinations of fire-cured tobacco.

EFFECTIVE DATE: November 7, 1986.

FOR FURTHER INFORMATION CONTACT: Director Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250, telephone (202) 447-2567.

SUPPLEMENTARY INFORMATION: A notice was published October 1, 1986 (51 FR 34994), that the Department was considering the modification of the Official Standard Grades for Fire-Cured Tobacco, U.S. Types 21–23 and Foreign Type 96, Burley Tobacco, U.S. Type 31 and Foreign Type 93, and Dark Air-Cured Tobacco, U.S. Types 35–37 and Foreign Type 95, pursuant to the authority contained in the Tobacco Inspection Act of 1935, as amended (49 Stat. 731; 7 U.S.C. 511 *et seq.*).

The following modifications were proposed: (1) Reduce the number of standard sizes in fire-cured tobacco, types 22–23 and 96 and dark air-cured types 35–37 and 95, by specifying a range of 8 inches within individual sizes and redesignating the standard sizes as "1", "2" and "3"; (2) change the specification of body in dark fire-cured tobacco, types 22–23 and 96, from "heavy" to "medium to heavy" in grades B1D–B5D, B3G–B5G, X1D–X3D and X3G; (3) add a special factor "semifired (SF)" in dark fire-cured tobacco, types 21–23 and 96, to describe tobacco that has not received the amount of smoke characteristic of fire-cured tobacco; (4) replace grade N1G in dark fire-cured tobacco, types 22–23 and 96, with two new grades, N1GL and N1GX, to separate green nondescript from thinner Lug group and green nondescript from the heavier Leaf group; (5) add a new combination color symbol and definition in burley tobacco types 31 and 93 to describe tannish-buff (FL) color and add new grades B2FL, B3FL and B4FL to describe tannish-buff color produced in the Leaf (B) group; (6) add a new grade B2M in burley tobacco, types 31 and 93, to describe fine mixed color in the Leaf (B) group; (7) delete grades M1F and M2F in burley, types 31 and 93, based on the fact that tobacco characteristic of these grades has appeared in insufficient volume to justify retention; and (8) add grades M4K and M5K in burley, types 31 and 93, to describe variegated color in the mixed (M) group.

A total of nine comments were received, six from producer associations, and one each from a manufacturer, dealer, and dealer association. Eight of the comments generally supported the proposals, although some suggested modifications, which are discussed below.

Three comments from producer associations suggested that the Tips (T) grades be deleted in dark air-cured tobacco, types 35–37 and 95. The proposal would delete the Tips (T Group) grades by creating standard size "1", which would include tips and other leaves ranging from 12 to 20 inches in length. The proposal inadvertently failed to delete all of the references to tips. In order to avoid confusion, this final rule will also delete all references to tips in the Official Standard Grades for dark air-cured tobacco, types 35–37 and 95.

Two comments from producer associations suggested that the special factor "BL" (Broad Leaf) be deleted. This special factor symbol is used in Type 35, to designate tobacco that contains broad leaves. This suggestion appears to have some merit. However, since the suggested change is not directly related to the changes which appeared in the notice of proposed rulemaking, it would not be appropriate to make such a change at this time. The suggestion will be considered for inclusion in any future proposed revision of the Official Standard Grades.

One comment from a company which deals in leaf tobacco suggested that the standard sizes in Type 21 should be: Size "1"—12 to 18 inches, Size "2"—18 to 26 inches, and Size "3"—over 26 inches. The Department believes that the proposed standard sizes would be easier to correlate to the current standard sizes. The proposed standard size "1" combines current standard sizes "43" and "44", proposed standard size "2" combines current standard sizes "45" and "46", and proposed standard size "3" is the same as current standard size "47". Also, the Department believes that uniform sizes should be maintained in all dark types of tobacco. Accordingly, this suggestion is not adopted in this final rule.

One comment was received from a tobacco manufacturer which supported the proposed regulations, and which also suggested that some action be taken concerning the rule applying to wet tobacco. This suggestion will be considered in any future proposed revision of the Official Standard Grades.

One comment was received from an association representing burley tobacco growers, objecting to the inclusion of any additional grades for burley tobacco. The commentor argued that no additional grades are necessary to adequately describe the crop. However, in recent years burley tobacco lighter than tan color has appeared at the marketplace in substantial quantities, as has mixed color leaf which exceeds third quality. Also, experience with the grading of imported burley tobacco has shown that substantial quantities of mixed variegated leaf are being imported. The additional grades are necessary to adequately describe such tobacco. Accordingly, the suggested

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modification of the proposal is not adopted in this final rule.

Finally, minor corrections have been made in the grade name and specifications of the new grade "B2FL". In the proposal, the grade name was given as "Good Tannish-Buff Leaf", which was the same as the name of the grade "B3FL". This has been corrected to "Fine Tannish-Buff Leaf" in this final rule. Also, the injury tolerance for "B2FL" has been corrected to be 10 percent, which is the standard injury tolerance for fine quality in the "B" group.

This final rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be "nonmajor" because it does not meet any of the criteria established for major rules under the Executive Order. Initial review of the regulations contained in 7 CFR Part 29 for need, currentness, clarity, and effectiveness has been completed.

Additionally, in conformance with the provisions of Pub. L. 96-354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact on small business of this final rule. The Administrator, Agricultural Marketing Service, has determined that this final rule will not have a significant economic impact upon a substantial number of small entities.

The purpose of the Official Standard Grades is to accurately describe tobacco as it presently appears in the marketplace, in terms of the characteristics which are significant in current marketing practices. This final rule would adjust the Official Standard Grades to reflect current conditions and practices relevant to the marketing of tobacco. The changes would impose no additional burdens on persons affected by the regulations.

It is also found and determined that it is impractical, unnecessary and contrary to the public interest to delay the effective date of the issuance of this rule for 30 days after publication in the **Federal Register.** This final rule is made effective upon publication in order to allow the Commodity Credit Corporation to establish and announce the price supports by grade prior to the opening of the 1986 marketing season.

Therefore, after consideration of comments on the proposal and other relevant information, the Department hereby adopts the proposed regulations with minor modifications.

List of Subjects in 7 CFR Part 29

Administrative practices and procedures, Tobacco.

PART 29—TOBACCO INSPECTION

Accordingly, the Department hereby amends the regulations under the Tobacco Inspection Act contained in 7 CFR Part 29, Subpart C, as follows:

1. The authority citation for §§ 29.2251 to 29.2481 is revised to read as follows:

Authority: Sections 29.2251 to 29.2481, issued under 7 U.S.C. 511m and 511r.

§§ 29.2295 through 29.2316 [Redesignated as §§ 29.2296 through 29.2317]

2. Current §§ 29.2295 through 29.2316 are redesignated as §§ 29.2296 through 29.2317, respectively.

3. A new § 29.2295 is added to read as follows:

§ 29.2295 Semifired (SF).

Tobacco that is partially or lightly smoked or has not received the amount of smoke that is characteristic of fire-cured tobacco.

4. § 29.2371 is revised to read as follows:

§ 29.2371 Standard sizes.[1]

Inches	Size
12–20	1
20–28	2
Over 28	3

[1] The application of sizes is governed by the major portion of the lot or package.

5. § 29.2404 is revised to read as follows:

§ 29.2404 Rule 13.

Length shall be stated in connection with each grade of the A, B and C groups and may be stated in connection with the grades of other groups. The standard tobacco sizes shall be used.

6. § 29.2405 is revised to read as follows:

§ 29.2405 Rule 14.

The standard tobacco size 2 shall be used to designate X group tobacco of M or G color when such tobacco is 20 inches or over in length.

7. A new § 29.2414 is added to read as follows:

§ 29.2414 Rule 23.

Tobacco that is semifired but which otherwise meets the specifications of a grade shall be treated as a subgrade by placing the special factor "SF" after the grademark. This factor does not apply to tobacco designated "No-G".

§ 29.2461 [Amended]

8. Section 29.2461 is amended by revising the table heading "321 Grades of lugs" to read "21 Grades of lugs".

9. Section 29.2461 is further amended by revising the sentence beginning "Special factors" to read as follows:

Special factors "U", "W" and "SF" may be applied to all grades.

10. Section 29.2461 is further amended by revising the heading and text of the chart "U.S. Standard sizes applicable" to read as follows:

Standard sizes applicable.

A1, A2	2, 3
B1	2, 3
B2, B3, B4, B5	1, 2, 3
C1	2, 3
C2, C3, C4, C5	1, 2, 3
X3, X4, X5, M and G [1]	2

[1] No size is applied to these grades if tobacco is under size 2.

11. The authority citation for §§ 29.2501 to 29.2696 is revised to read as follows:

Authority: Sections 29.2501 to 29.2696 issued under 7 U.S.C. 511m and 511r.

§ 29.2547 through § 29.2570 [Redesignated as § 29.2548 through § 29.2571]

12. Current §§ 29.2547 through 29.2570 are redesignated as §§ 29.2548 through 29.2571, respectively.

13. A new § 29.2547 is added to read as follows:

§ 29.2547 Semifired (SF).

Tobacco that is partially or lightly smoked or has not received the amount of smoke that is characteristic of fire-cured tobacco.

14. § 29.2606 is revised to read as follows:

§ 29.2606 Standard sizes.[1]

Inches	Size
12–20	1
20–28	2
Over 28	3

[1] The application of sizes is governed by the major portion of the lot or package.

§ 29.2629 [Amended]

15. § 29.2629 is amended to remove the words "4-inch series of" from the last sentence.

16. A new § 29.2640 is added to read as follows:

§ 29.2640 Rule 24.

Tobacco that is semifired but which otherwise meets the specifications of a grade shall be treated as a subgrade by placing the special factor "SF" after the grademark. This factor does not apply to tobacco designated "No-G".

§ 29.2662 [Amended]

17. The table in § 29.2662 is amended in the text under the headings "B1D-Choice Dark-brown Heavy Leaf", "B2D-Fine Dark-brown Heavy Leaf", "B3D-Good Dark-brown Heavy Leaf", "B4D-Fair Dark-brown Heavy Leaf", "B5D-Low Dark-brown Heavy Leaf", B3G-Good Green Heavy Leaf", "B4G-Fair Green Heavy Leaf", and "B5G-Low Green Heavy Leaf" to remove the word "Heavy" and add in the place thereof the words "Medium to heavy body".

§ 29.2664 [Amended]

18. Section 29.2664 is amended in the text under the headings "X1D-Choice Dark-brown Lugs", "X2D-Fine Dark-brown Lugs", "X3D-Good Dark-brown Lugs", and "X3G-Good Green Lugs" to remove the word "Heavy" and add in the place thereof the words "Medium to heavy body".

§ 29.2665 [Amended]

19. § 29.2665 is amended to remove the grade "N1G-First Quality Crude Green Nondescript".

20. § 29.2665 is further amended to add two new grades following the grade "N1D-First Quality Dark Colored Nondescript" to read as follows:

N1GL	First Quality Crude Green Nondescript from the C or B Groups 60 percent crude leaves or injury tolerance.
N1GX	First Quality Crude Green Nondescript from the X Group 60 percent crude leaves or injury tolerance.

§ 29.2686 [Amended]

21. § 29.2686 is amended by revising the heading and text of the chart "4 Grades of Nondescript" to read as follows:

5 Grades of Nondescript

N1L	N1D	N1GL	N1GX	N2

22. § 29.2686 is further amended by revising the sentence beginning "Special factors" to read as follows:

Special factors "U", "W", "S" and "SF" may be applied to all grades.

23. § 29.2686 is further amended by revising the chart "Standard Sizes Applicable" to read as follows:

Standard sizes applicable

A1, A2, A3	2, 3
B1, B2, B3, B4, B5	1, 2, 3
C1, C2, C3, C4, C5	1, 2, 3

24. The authority citation for §§ 29.3001 to 29.3182 is revised to read as follows:

Authority: Sections 29.3001 to 29.3182 issued under 7 U.S.C. 511m and 511r.

25. § 29.3013 is revised to read as follows:

§ 29.3013 Combination color symbols.

As applied to Burley, combination color symbols are as follows:

FL—tannish buff, FR—tannish red, VF—greenish tan, VR—greenish red, GF—green tan, and GR—green red. (See rules 17 and 18.)

§§ 29.3067 through 29.3077 [Redesignated as §§ 29.3068 through 29.3078]

26. Current §§ 29.3067 through 29.3077 are redesignated as §§ 29.3068 through 29.3078, respectively.

27. A new § 29.3067 is added to read as follows:

§ 29.3067 Tannish-buff (FL).

A light red-yellow shaded toward buff.

28. § 29.3118 is revised to read as follows:

§ 29.3118 Rule 15.

Any lot of tobacco containing over 20 percent of variegated leaves shall be described as "variegated" and designated by the color symbol "K."

29. § 29.3153 is amended to add three new grades following the grade "B5F-Low Tan Leaf", and by adding one new grade following "B5K-Low Variegated Leaf: to read as follows:

§ 29.3153 Leaf (B Group).

* * * * *

Grades	Grade names and specifications
* * *	* *
B5F	* * *
B2FL	Fine Tannish-buff Leaf. Medium body, ripe, open, even, clear finish, strong color intensity, spready, 20" or over in length, 90 percent uniform, and 10 percent injury tolerance.
B3FL	Good Tannish-buff Leaf Medium body, mature to ripe, firm to open, wavy to even, moderate finish and color intensity, narrow to normal width, 18" or over in length, 85 percent uniform, and 15 percent injury tolerance.
B4FL	Fair Tannish-buff Leaf. Medium body, mature, firm, wavy, dull finish, weak color intensity, narrow, 16" or over in length, 80 percent uniform, and 20 percent injury tolerance.
* * *	* *
B5K	* * *
B2M	Fine Mixed Color Leaf. Fleshy to medium body, ripe, open, even, clear finish, strong color intensity, 20" or over in length, 90 percent uniform, and 10 percent injury tolerance.

§ 29.3155 [Amended]

30. § 29.3155 is amended to remove the grades "M1F-Choice Light Mixed" and "M2F-Fine Light Mixed".

31. § 29.3155 is further amended to add two new grades following the grade "M5FR—Low Dark Mixed" to read as follows:

§ 29.3155 Mixed (M Group).

* * * * *

Grades	Grade names and specifications
* * *	* *
M5FR	* * *
M4K	Fair Variegated Mixed. General quality of X4, C4, B4, T4, fleshy to thin body, under 20 percent greenish, and 20 percent injury tolerance.
M5K	Low Variegated Mixed. General quality of X5, C5, B5, T5, fleshy to thin body, under 20 percent greenish, and 30 percent injury tolerance.

§ 29.3181 [Amended]

32. § 29.3181 is amended by revising the heading and text of the chart "35 Grades of Leaf" to read as follows:

39 Grades of Leaf

B1F	B3FR	B3K	B3VR
B2F	B4FR	B4K	B4VR
B3F	B5FR	B5K	B5VR
B4F	B1R	B2M	B3GF
B5F	B2R	B3M	B4GF
B2FL	B3R	B4M	B5GF
B3FL	B4R	B5M	B3GR
B4FL	B5R	B3VF	B4GR
B1FR	B4D	B4VF	B5GR
B2FR	B5D	B5VF	

33. § 29.3181 is further amended by revising the chart "8 Grades of Mixed Group" to read as follows:

8 Grades of Mixed Group

M3F	M5F	M4FR	M4K
M4F	M3FR	M5FR	M5K

34. § 29.3181 is further amended by revising the chart "7 Grades of Nondescript" to read as follows:

7 Grades of Nondescript

N1L	N1R	N2L	N2G
N1F	N1G	N2R	

§ 29.3182 [Amended]

35. § 29.3182 is amended under the heading "Colors" by adding "FL—Tannish Buff" following "F—Tan".

36. The authority citation for §§ 29.3501 to 29.3686 is revised to read as follows:

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Authority: Sections 29.3501 to 29.3686 issued under 7 U.S.C. 511m and 511r.

37. § 29.3523 is revised to read as follows:

§ 29.3523 Group.

A division of a type covering closely related grades based on certain characteristics which are related to stalk position, body, or the general quality of the tobacco. Groups in Dark Air-cured types are: Wrappers (A), Heavy Leaf (B), Thin Leaf (C), Lugs (X), Nondescript (N), and Scrap (S).

38. § 29.3529 is revised to read as follows:

§ 29.3529 Length.

The linear measurement of cured tobacco leaves from the butt of the midrib to the extreme tip. (See Standard Tobacco Sizes, § 29.3591.)

39. § 29.3545 is revised to read as follows:

§ 29.3545 Size.

The length of tobacco leaves. Size does not apply to tobacco in strip form. (See Standard Tobacco Sizes § 29.3591.)

40. § 29.3591 is revised to read as follows:

§ 29.3591 Standard Tobacco Sizes.[1]

Inches	Sizes
12–20	1
20–26	2
Over 26	3

[1] The application of sizes is governed by the major portion of the lot or package.

41. § 29.3601 is revised to read as follows:

§ 29.3601 Rules.

The application of §§ 29.3501 to 29.3568, § 29.3591, §§ 29.3646 to 29.3648, §§ 29.3650 to 29.3652 and 29.3681 shall be in accordance with the following rules.

42. § 29.3614 is revised to read as follows:

§ 29.3614 Rule 13.

Length shall be stated in connection with each grade of the A, B, and C groups, except strip grades, and may be stated in connection with grades of other groups. For this purpose, the standard tobacco sizes shall be used. (See Applicable Standard Sizes, § 29.3681.)

43. § 29.3619 is revised to read as follows:

§ 29.3619 Rule 18.

Any lot of tobacco of the B, C, or X groups shall be classified as "mixed" and designated by the color symbol "M" when it is not green but contains (a) over 30 percent of colors distinctly different from the major color or (b) over 30 percent of a combination of variegated and colors distinctly different from the major color mingled together.

44. § 29.3621 is revised to read as follows:

§ 29.3621 Rule 20.

Crude leaves shall not be included in any grade of any color except the fourth and fifth qualities of the B, C, and X groups in green color. Any lot containing 20 percent or more of crude leaves shall be designated as Nondescript.

§ 29.3649 [Removed and Reserved]

45. § 29.3649 is removed and reserved.

§ 29.3676 [Amended]

46. § 29.3676 is amended to remove the heading and text of the chart "15 Grades of Tips."

47. § 29.3681 is revised to read as follows:

§ 29.3681 Applicable standard sizes.

Types 35, 36, 37 and 95

A1, A2, A3	2, 3
B1, B2, B3, B4, B5	1, 2, 3
C1, C2, C3, C4, C5	1, 2, 3

§ 29.3686 [Amended]

48. § 29.3686 is amended to remove the words "T-Tips" under the heading "Group."

Dated: November 5, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86-25312 Filed 11-5-86; 10:41 am]

BILLING CODE 3410-02-M

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7 CFR Part 1280

[Docket No. WR-1]

Wheat and Wheat Foods Research and Nutrition Education; Termination Order

Correction

In FR Doc. 86-24746 beginning on page 39738 in the issue of Friday, October 31, 1986, make the following correction:

On page 39739, first column, second complete paragraph, thirteenth line, insert the following after "cracker": ", (3) pasta, and (4) bread manufacturers. Cereal manufacturers and biscuit and cracker ".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-33-AD; Amdt. 39-5459]

Airworthiness Directives; Fokker Model F27 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that requires a one-time inspection of the elevator trim tab bracket attachment, and repair, if necessary, on certain Fokker Model F27 series airplanes. The use of incorrect rivets was a contributing factor in one case of rudder tab flutter; there is evidence that the same incorrect rivets may have been used in the elevator trim tab. Flutter could lead to structural failure.

DATE: Effective December 10, 1986.

ADDRESSES: The service bulletin specified in this AD may be obtained from the Manager of Maintenance and Engineering, Fokker B.V., Product Support, P.O. Box 7600, 11172J Schinphol Oost, the Netherlands. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires a one-time inspection and repair, if necessary, of the elevator trim tab bracket on certain Fokker Model F27 series airplanes to prevent structural failure, was published in the **Federal Register** on May 15, 1986 (51 FR 17745).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 40 airplanes of U.S. registry will be affected by this AD, that it will take approximately one manhour per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $1,600.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($40). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Fokker B.V.: Applies to Model F27 airplanes; serial numbers 10105 to 10648 inclusive, 10654, 10658, 10659, 10660, 10662 to 10667 inclusive, 10669, 10672 and 10678; certificated in any category. To ensure structural integrity of the elevator trim tab, accomplish the following, unless already accomplished:

A. Within 60 days after the effective date of this AD, conduct a one-time visual inspection of the elevator trim tab in accordance with Fokker Service Bulletin F27/55–59, Revision, 1, dated October 15, 1985.

B. If incorrect rivets are installed, repair the tab before further flight in accordance with the above service bulletin.

C. An alternate means of compliance or adjustment of compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to the Manager of Maintenance and Engineering, Fokker B.V., Product Support, P.O. Box 7600, 1117ZJ Schiphol Oost, the Netherlands. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective December 10, 1986.

Issued in Seattle, Washington, on October 30, 1986.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 86–25137 Filed 11–6–86; 8:45 am]

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14 CFR Part 39

[Docket No. 86–CE–54–AD; Amdt. 39–5457]

Airworthiness Directives; Univair (Ercoupe) Models 415, –C, –CD, –D, –E, –G and (Forney) Models F1 and F1A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Univair (Ercoupe) Models 415, –C, –CD, –D, –E, –G, and (Forney) Models F1 and F1A airplanes which requires inspection of the fuel line nipple located between the gascolator and the carburetor for cracks, incorrect alignment or over torque and replacement as necessary, of the original AN911–2D (aluminum) nipple with a AN911–2 (brass or steel) nipple. Reports have been received indicating this nipple is cracking causing fuel leakage and engine power loss. These failures may have been the result of incorrect alignment or over torque of the aluminum nipple. The inspection and replacement of this nipple as necessary, will prevent future fuel line failures.

EFFECTIVE DATE: November 13, 1986.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Univair Aircraft Corporation (Ercoupe) Service Bulletin (S/B) No. 24A dated August 22, 1966, applicable to this AD may be obtained from Univair Aircraft Corporation, 2500 Himalaya Road, Aurora, Colorado 80011. A copy of this information is also contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald F. May, FAA, Denver Aircraft Certification Office, ANM–170D, Northwest Mountain Region, 10455 East Avenue, Suite 307, Aurora, Colorado 80010; Telephone (303) 340–5582.

SUPPLEMENTARY INFORMATION: Reports have been received of the fuel line nipple (AN911–2D) located between the gascolator and the carburetor cracking causing fuel leakage and engine power loss on certain Univair (Forney) Models 415, F1 and F1A airplanes. These failures may have been the result of incorrect alignment or over torque of the aluminum nipple. To reduce the possibility of these nipple failures the manufacturer has published Revision A to Ercoupe Bulletin No. 24. This bulletin provides instructions to assure correct alignment and prevent over torque of the fitting. In addition, it changes the fitting material from a AN911–2D (aluminum) to AN911–2 (brass or steel) nipple.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, an AD is being issued requiring inspection of the fuel line nipple for cracks, incorrect alignment or over torque and replacement as necessary of the original AN911–2D (aluminum) nipple with a AN911–2 (brass or steel) nipple on Univair (Ercoupe) Models 415, –C, –CD, –D, –E, –G, and (Forney) Models F1 and F1A airplanes in accordance with Ercoupe Bulletin No. 24A. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may

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be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Univair Aircraft Corporation: Applies to Model (Ercoupe) 415, –C, –CD, –D, –E, –G (all serial numbers), and (Forney) Models F1 and F1A (all serial numbers) airplanes certificated in any category.

Compliance: Required within the next 25 hours time-in-service after the effective date of this AD or at the next annual inspection whichever occurs first, unless already accomplished.

To prevent possible fuel leakage and loss of engine power, accomplish the following:

(a) Visually inspect the fuel line nipple located between the gascolator and the carburetor for cracks, incorrect alignment or over torque and prior to further flight replace as necessary, the nipple from a AN911–2D (aluminum) to a AN911–02 (brass or steel) fitting as described in Univair Aircraft Corporation, Ercoupe Bulletin No. 24A dated August 22, 1986.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Denver Aircraft Certification Office, Northwest Mountain Region, 10455 East Avenue, Suite 307, Aurora, Colorado 80010.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Univair Aircraft Corporation, 2500 Himalaya Road, Aurora, Colorado 80011; or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on November 13, 1986.

Issued in Kansas City, Missouri, on October 29, 1986.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 86–25138 Filed 11–6–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 85–AWA–1]

Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects the Theodore Francis Green State Airport, Providence, RI, Airport Radar Service Area (ARSA) by adding the hours of operation.

EFFECTIVE DATE: 0901 UTC, December 18, 1986.

FOR FURTHER INFORMATION CONTACT: Robert G. Burns, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 267–9253.

SUPPLEMENTARY INFORMATION:

History

On October 20, 1986, the FAA published a final rule which will established an ARSA at Theodore Francis Green State Airport, effective December 18, 1986 (51 FR 37256). The hours of operation of this ARSA were inadvertently omitted from the rule. This action corrects the final rule to reflect the hours of operation.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Adoption of the Correction

PART 71—[CORRECTED]

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 86–23606, as published in the **Federal Register** on October 20, 1986, (51 FR 37256) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a) and 1354(a); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. Section 71.501 is amended as follows:

Providence Theodore Francis Green State Airport, RI [Amended]

By adding the following to the end of the text "This airport radar service area is effective during the specific days and times of operation of the Quonset Approach Control as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory."

Issued in Washington, DC, on October 31, 1986.

Harold H. Downey,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–25136 Filed 11–6–86; 8:45 am]

BILLING CODE 4910–13–M

Office of the Secretary

14 CFR Parts 204 and 291

[Docket No. 44036; Amdt. Nos. 204–8 and 291–19]

Limitation on Fitness Determination: Revocation of Operating Authority

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Department is making final a rule that will automatically revoke the authority of carriers who do not begin operations within one year of being found fit or who, having begun and then ceased operations, remain dormant for any subsequent one-year period. The new rule substitutes provisions to this effect for existing §§ 204.8 and 291.15. These sections currently require, after two years, a new fitness determination for dormant carriers proposing to start operations, but they do not terminate the authority of carriers that choose not to start service at all or that, having started and stopped, choose not to resume. The purpose of the change is to improve the Department's ability to monitor continuing fitness of air carriers.

DATE: This regulation is effective December 8, 1986.

FOR FURTHER INFORMATION CONTACT: Jeffery B. Gaynes or Patricia T. Szrom, Office of Aviation Operations, Department of Transportation, 400 Seventh Street, SW., Room 6402, Washington, DC 20590. (202) 366-2424 or (202) 366-9721.

SUPPLEMENTARY INFORMATION:

Background

Under section 401(r) of the Federal Aviation Act of 1958, as amended, the fitness requirement for those carriers holding a certificate under section 401 is a continuing one. The Department of Transportation has the authority under section 401(r), after notice and hearing, to modify, suspend, or revoke an air carrier's certificate if it is no longer fit, willing, and able to operate, or if it violates any Department reporting requirements to implement the continuing fitness requirement. We have comparable authority *vis-a-vis* commuter air carriers and section 418 all-cargo carriers. The FAA and the Department can directly monitor the continuing fitness of carriers that are actually operating in air transportation. Carriers that are not operating, even though they have been certificated or otherwise authorized to provide service for which a fitness finding is needed, pose a special problem of how to review their continuing fitness.

By the Notice of Proposed Rulemaking issued May 16, 1986 (51 FR 19071, May 27, 1986), we announced a proposal designed to address this problem. We proposed to automatically revoke the authority of carriers that do not begin operations within one year of being found fit or that, having begun and then ceased operations, remain dormant for any subsequent one-year period. We proposed to do so by substituting provisions to this effect for existing §§ 204.8 and 291.15 of the Department's regulations. These sections currently require, after two years, a new fitness determination for dormant carriers proposing to start operations, but they do not terminate the authority of carriers that choose not to start service at all or that, having started and stopped, choose not to resume operations. The Department also proposed to terminate dormant authority of operating carriers in certain instances and to require carriers temporarily ceasing all operations to file notices and supporting information prior to recommencing operations.

Comments

We received comments on our proposal from DHL Airways, Pacific American Airlines, Transamerica Airlines, The Flying Tiger Line, Airlift International, Midway Airlines and the Regional Airline Association (RAA).

DHL and Pacific American oppose the proposed rule in its entirety. DHL says the proposal contravenes the deregulation philosophy of promoting public benefits by maximizing the number of carriers, and thereby maximizing the price and service options available to consumers. Furthermore, DHL says that the rule is unnecessary since current regulations and practices are sufficient to protect against certificate abuses. Finally, DHL sees the proposal as causing specific harm to itself, since it holds substantial dormant authority—especially certain international large aircraft authority—that it spent time and resources to acquire, might seek to use on short notice, but now would risk losing with no way of reacquisition short of lengthy procedures. As a compromise, DHL (which at present conducts cargo operations only) would allow its dormant passenger authority to be subject to the one year revocation rule, so long as its unused cargo authority would continue.

Pacific American, like DHL, feels that the existing regulations on dormancy are adequate. In opposing the proposed rule, it says that the rule would create problems for new carriers by forcing them to reestablish their fitness every year, and do so while they were in the midst of negotiations to secure financing; that any time period of less than two years to initiate service is simply insufficient for a carrier to pursue all financing options and undertake the tasks related to start-up; that the rule could inhibit small carriers from seeking certification or could pressure certificated carriers into starting operations with insufficient capital; and that instead of easing our burden of monitoring fitness, the rule would actually increase it by encouraging repetitive filings from dormant carriers.

The other commenters, Transamerica, Flying Tiger, Midway, RAA, and Airlift, either support the proposed rule in principle or take no position on its overall merits; but each seeks certain limited modifications or clarifications. Generally, their concerns go to an aspect of our proposal that would revoke certain dormant authority of otherwise operating air carriers, to our requirement that carriers ceasing operations systemwide file notices before resuming services, and to the conditions under which we might be prepared to grant exemptions from the rule.

Disposition

We have decided to adopt the proposed rule, subject to a clarification urged upon us by Transamerica, Flying Tigers, Midway, and RAA: namely, that the rule shall be deemed to affect only the certificate authority of carriers operating none of the authority for which they have been found fit. The proposed rule has been revised accordingly. Several editorial and clarifying changes have also been made.

We disagree with the commenters who say that the rule is unnecessary. We fully described in the NPRM the problems created by dormant certificates in the performance of our continuing fitness function and the inadequacy of our existing regulations to resolve those problems. We discussed the problems we were encountering as a result of dormant certificate holders, specifically as regards trafficking in unused certificates to avoid our fitness requirements. We made clear that the specific problem of trafficking went beyond the "one particular promoter" DHL claims was our sole source of concern. Furthermore, we referred to a number of proceedings that clearly demonstrate the potential for consumer harm latent in dormant certificates. Accordingly, DHL is incorrect in saying that we have "fail[ed] to show that any of the dormant certificates in the universe harms anyone."[1]

As we pointed out in the NPRM, the concerns that make the rule essential go to something far more fundamental than certificate trafficking. We have come now to realize that in a universe so full of dormant certificates, we simply cannot rely upon a system that leaves retention of a certificate solely to the discretion of a dormant carrier to advise us of developments affecting its certificate authority. In light of reduced carrier reporting requirements, we are in

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[1] Furthermore, we have found that the potential harm from dormant certificates remains present notwithstanding the existence of certain safeguards cited by DHL, specifically: FAA certification requirements; §§ 201.6 and 204.8 of our regulations (addressing precertification sales and advertising, and pre-inauguration fitness reviews after 2-year start-up delays, respectively); our holding announced in the StatesWest Airlines Case (Order 86-4-69) (requiring updated evidence of financial condition before actual start-up); and our ability to limit the effective date of a certificate—all currently available safeguards that DHL says eliminate the need for the new rule. For while DHL concludes that, in light of these safeguards, a two-year old certificate has minimal value even though it has not been formally revoked, we have found that it is the unrevoked dormant certificate that has sufficient value—even in the eyes of consumers—to prompt the types of abuses we described. Moreover, as we discuss below, our concern over dormant certificates goes beyond trafficking to the overall performance of our fitness function, *i.e.*, to being assured that every certificate holder continues to meet the fitness requirements of the Act. The remedial devices DHL relies upon do not adequately address this concern.

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position where we often remain uninformed of even the most fundamental changes affecting dormant carriers during the period of their dormancy. In these circumstances, a period of up to two years after our initial fitness finding now appears to be too long to permit carriers to begin operations without our taking a fresh look at their fitness. We now believe, based on our own and the CAB's accumulated experience, that after one year, fitness findings for dormant carriers are essentially no longer valid.

Against this background, we have concluded that the best way to deal with our section 401(r) responsibilities is to ensure that authority supported by stale fitness findings ceases to exist. At a time of staff shortages and severe budgetary constraints, we simply must limit the universe of dormant authority or else we can no longer be confident that the public is fully protected. We have read nothing in DHL's or Pacific American's comments that convinces us otherwise.

DHL claims we proposed the rule simply for our own bureaucratic convenience. It has misunderstood our purpose. We proposed the rule, and we are adopting it today, because section 401(r) of the Act entrusts us with a responsibility to protect the public by ensuring that certificated carriers continue to be fit. We take this responsibility seriously. We came to realize, in light of the sheer number of certificate holders we must monitor, the difficulty of adequately performing the monitoring function where a large number of those carriers were dormant. This prompted our concern over whether we could any longer say with assurance that such carriers remained fit. We recognized that we could no longer fulfill our section 401(r) responsibility without a change to our regulations. This rule is nothing less than the product of our determination to carry out our statutory mandate.

This last point is critical. For in contending that we are contravening the policies of deregulation, DHL misses the meaning both of the Deregulation Act itself, and of our efforts to implement it. As we said in the NPRM, 51 FR at 19074, "[the] need to balance a liberal entry policy with a heigthened vigilance on fitness was at the very heart of the amendments to section 401(r) in the Airline Deregulation Act." Congress manifestly appreciated that the open entry policies of deregulation raised a corresponding need for checks and balances designed to ensure an adequately protected traveling and shipping public. Deregulation was never intended to eliminate the need for continuing fitness as DHL implies, and therefore our action today does not represent the change in policy that DHL contends. As we said in the NPRM, our action—

> simply represents an additional mid-course correction, following upon corrective steps already begun by the CAB, and based upon the additional years of deregulation experience. It is thus no more than a further step designed to achieve the balance that Congress plainly intended all along. (*Id.*)

We see Pacific American's opposition to the rule as no better founded than DHL's. Pacific American incorrectly sees the rule as requiring yearly reapplications from dormant carriers. Our NPRM made plain that carriers who lost their authority because of dormancy would not be prejudiced. They could reapply at such time as they were prepared to reestablish their fitness. We pointed out that the Department—unlike the CAB—has consistently used expedited non-oral procedures for processing fitness applications—even those coming from uncertificated applicants. A carrier suffering a dormancy revocation would thus be in practically the same procedural posture as a certificated but dormant carrier relying on present § 204.8 which also has to reestablish its fitness under the non-oral hearing procedures used in two-year fitness review cases.

Even if a carrier chose to retain its certificate by seeking a fitness reevaluation each year, we would not anticipate voluminous repetitive filings Pacific American contemplates. On the contrary, while the dormant carrier clearly must provide enough information for us to assess its current fitness, to the extent that previously submitted materials remained accurate reflections of the current situation, they could certainly be relied upon and incorporated by reference. This would ease any burden on the carrier and the Department.

We find Pacific American's other concerns similarly without merit. It says that the fitness application process will hinder a carrier's efforts to gain financing. Yet, we are continually getting applications from new carriers who pursue their financing efforts while our fitness review proceeds. Indeed, this situation is the norm, with financing often completed or nearly so by the time our certificate issues. Moreover, we have seen no evidence that small carriers would be inhibited from seeking certification. Even with our existing case-by-case approach of reducing the number of dormant certificates, we are still regularly receiving certificate applications from small carriers. Nor do we believe that certificated carriers would be pressured into operating on inadequate capital as Pacific American alleges. Our new *StatesWest* policy (*see* Order 86-4-69) provides the necessary safeguards against undercapitalized start-up. Finally, as to Pacific American's assertion that two years is an absolute minimum for a carrier to pursue financing and prepare for operations, history has shown the contrary. As our NPRM pointed out, 51 FR at 19073, nearly 80 percent of previously non-operating carriers certificated since the 1978 Deregulation Act inaugurated service within one year of certification.

Clearly then, neither DHL nor Pacific American has provided a valid basis for not going forward with the rule.

Transamerica, Flying Tiger, Midway, and RAA, on the other hand, have presented a sound justification for slightly modifying the rule's reach. These commenters point out that if we applied the rule as strictly as we had indicated in the NPRM, operating carriers whose continuing fitness was hardly in doubt might nevertheless lose substantial amounts of authority. This was because we proposed that where a carrier had been found fit and certificated for two or more types of service (*e.g.* charter and scheduled) but ceased operating one of the types (*e.g.* scheduled), then the other type would be revoked.

The comments have persuaded us that the approach announced in the NPRM goes beyond our needs. This rule is essentially aimed at facilitating our monitoring of non-operating carriers, not at ensuring that operating carriers properly seek fitness evaluations for substantial changes in their operations. As we have ample regulatory control over the latter concern under § 204.4 of our regulations, we need not address it by this rule. Thus, contrary to the inference permissible from the preamble in the NPRM, *i.e.* that the rule would apply where a carrier operated some but not all of the authority for which it had been found fit, the rule shall in fact apply only where an air carrier operates *none* of the authority for which it has been found fit. This clarification should also resolve the concern voiced by DHL as to the specific harm it would suffer under our proposed rule.

Transamerica also sought clarification of our requirement that carriers completely ceasing operations must file a notice to the Department 45 days before planned resumption and receive Department authorization before resuming operations. Transamerica claims the proposed rule could be read to apply to instances where a carrier must temporarily cease all operations for reasons wholly beyond its control (strikes, weather, FAA groundings) and argues that surely we could not have intended to require a 45-day fitness resubmission in such circumstances.

Transamerica is correct in its view that the rule would require a notice in *all* cases of a complete cessation of operations, even those outside the carrier's control. However, for a variety of reasons we do not see this as either unwise or unduly burdensome. First, even the examples Transamerica cites represent extraordinary occurrences. They are thus unlikely to pose a recurring problem. When they do arise, even if they represent forces beyond the carrier's control, they may have fitness implications for the carrier about which we need to be notified. We expect the notice, though, to be tailored to the circumstances. In the examples Transamerica cites, the notice almost certainly would not involve a complete Part 204 refiling; nor would the Department's review procedures preclude a prompt start up. Sections 204.8(c) and 291.15(c) provide a procedure whereby carriers can learn precisely what data need be filed. This will enable them to limit their notice filings accordingly. As we said in the NPRM:

> Such notice must include information on any *substantial changes* in operations as well as in the carrier's management, financial position, or compliance disposition as prescribed by our regulations. The Department would conduct fitness inquiries *where appropriate.*

51 CFR 19073 (emphasis added). We added that "we do not intend our rule to prevent carriers whose continuing fitness can be readily established from quickly resuming operations." *Id.* And we made clear our readiness to grant exemptions from the 45-day rule to allow rapid start-ups in the event of short-term cessations. Subject to review of the precise facts of a given case, each of the generic examples Transamerica cities would seem to hold the possibility for such an exemption.

The only remaining concern raised about our proposed rule came from Airlift. Airlift was fearful that a carrier might lose its authority solely because of a foreign government refused to grant it landing rights within a year of certification. We see the circumstances Airlift envisages as highly unlikely. Given our decision to limit the reach of the rule to carriers performing no certificate operations at all, an airline would be affected as Airlift asserts only when the sole certificate authority it held was for service to foreign points and all the foreign authorities refused to grant landing rights. So long as the carrier was engaging in some certificate operations somewhere, the rule would have no effect on any of its certificates. In the unlikely event that the carrier's only certificate authority was to foreign points where landing rights could not be obtained, we would expect that an exemption from the rule normally would be available, provided no legitimate fitness issues were present.

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act of 1980

This action has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographic regions. Furthermore, this rule will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. These regulations will result in no net change in reporting burden for certificated air carriers. Accordingly, a regulatory impact analysis is not required.

This regulation is significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because it involves important Departmental policies. However, its economic impact should be minimal and a full regulatory evaluation is not required.

I certify that this rule will not have a significant economic impact on a substantial number of small entities.[2] The ability of such entities to engage in certificate operations essentially will be unaffected by the regulation.

Economic Impact Analysis

Because of the Department's streamlined certification procedures, carriers needing to reapply for certificate authority by virtue of this rule would face filing requirements and procedures closely comparable to those that exist under the Department's current continuing fitness rule. Therefore, the rule's impact should be minimal and a full regulatory evaluation is not required.

List of Subjects

14 CFR Part 204

Air carriers, Reporting and recordkeeping requirements.

14 CFR Part 291

Administrative practice and procedure, Air carriers, Freight, Reporting and recordkeeping requirements.

Final Rule

For these reasons, the Department amends 14 CFR Chapter II as follows:

PART 204—[AMENDED]

1. The authority citation for Part 204 continues to read as follows:

Authority: Secs. 204, 401, 407, 419, Pub. L. 85–726, as amended, 72 Stat. 743, 754, 766, 92 Stat. 1732; 49 U.S.C. 1324, 1371, 1377, 1389.

2. The existing § 204.8 in Subpart A of 14 CFR Part 204, Data to support fitness determinations, is revised to read as follows:

§ 204.8 Revocation for dormancy.

(a) Except as provided in paragraph (b) of this section, an air carrier that has not begun initial operations to provide any type of air transportation for which it was found fit, willing, and able, and for which it was granted authority by the Department or by the Civil Aeronautics Board, within one year of the date of that finding, or that, for any period of one year after the date of such finding, has not provided any type of air transportation for which that kind of finding is required, shall be deemed no longer to continue to be fit to provide the air transportation for which it was found fit and, accordingly, its authority to provide such air transportation shall be revoked automatically.

(b) For all air carriers that were the object of fitness findings made by the Department of Transportation before the effective date of this rule, or made by the Civil Aeronautics Board, the one-year periods referred to in paragraph (a) of this section shall each run from the effective date of this rule and not from the date of those fitness findings.

(c) An air carrier found fit by the Department of Transportation after the effective date of this rule and that begins initial operations within one year after being found fit but then ceases operations, shall not resume operations without first filing all the data required by § 204.4 or § 204.7, as applicable, at least 45 days before it intends to provide any such air transportation. The

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[2] For purposes of its aviation economic regulations Departmental policy categorizes certificated air carriers operating small aircraft (60 seats or less or 18,000 pounds maximum payload or less) in strictly domestic service as small entities for purposes of the Regulatory Flexibility Act.

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Department will entertain requests for exemption from this 45-day advance filing requirement for good cause shown. If there has been no change in data submitted previously in connection with a prior evaluation of the carrier's fitness, the carrier shall file a statement to that effect signed by one of its officers. The carrier may contact the Chief, Special Authorities Division, Office of Aviation Operations, to ascertain the data already available to the Department, which need not be included in the refiling. A carrier to which this paragraph applies shall not provide any air transportation for which it is required to be found fit, willing, and able until the Department either decides that the carrier continues to meet those requirements, or finds that the carrier is fit, willing, and able to perform such air transportation based on new information the carriers submits. During the pendency of the Department's consideration of a data submission under this paragraph, the revocation period set out in paragraph (a) of this section shall be stayed. If the decision or finding by the Department on the issue of the carrier's fitness is favorable, the date of that decision or finding shall be the date considered in applying paragraph (a) of this section.

(d) The provisions of paragraph (c) of this section shall apply to all air carriers that were the object of fitness findings made by the Department before the effective date of this rule or made by the Civil Aeronautics Board, who either are not now operating under the authority for which they were found fit or who are operating under such authority but later cease operations and seek to resume before expiration of the one-year revocation period.

(e) For purposes of this section, the date of a Department decision or finding shall be the service date of the Department's order containing such decision or finding, or, in cases where the Department's decision or finding is made by letter, then the date of such letter.

(f) For purposes of this section, references to operations and to the providing of air transportation shall refer only to the actual performance of flight operations under an operating certificate issued to the carrier by the FAA.

PART 291—[AMENDED]

3. The authority citation for Part 291 continues to read as follows:

Authority: Secs. 101, 102, 204, 401, 407, 408, 416, 418, Pub. L. 85–726, as amended, 72 Stat. 740, 743, 766, 767; 49 U.S.C. 1301, 1302, 1324, 1371, 1377, 1378, 1386, 1388, unless otherwise noted.

4. The existing § 291.15 in Subpart B of 14 CFR Part 291, Domestic Cargo Transportation, is revised to read as follows:

§ 291.15 Revocation for dormancy.

(a) Except as provided in paragraph (b) of this section, an all-cargo air carrier that has not begun initial operations to provide any type of air transportation for which it was found fit, willing, and able, and for which it was granted authority by the Department or by the Civil Aeronautics Board, within one year of the date of that finding, or that, for any period of one year from the date of the most recent such finding, has not provided any type of air transportation for which that kind of finding is required, shall be deemed no longer to continue to be fit to provide the air transportation for which it was found fit and, accordingly, its authority to provide such air transportation shall be revoked automatically.

(b) For all all-cargo air carriers that were the object of fitness findings made by the Department of Transportation before the effective date of this rule, or made by the Civil Aeronautics Board, the one-year periods referred to in paragraph (a) of this section shall each run from the effective date of this rule and not from the date of those fitness findings.

(c) An all-cargo air carrier found fit by the Department of Transportation after the effective date of this rule and that begins initial operations within one year after being found fit but then ceases operations, shall not resume operations without first filing all the data required by § 291.11 at least 45 days before it intends to provide any such air transportation. The Department will entertain requests for exemption from this 45-day advance filing requirement for good cause shown. If there has been no change in the data submitted previously in connection with a prior evaluation of the carrier's fitness, the carrier shall file a statement to that effect signed by one of its officers. The carrier may contact the Chief, Special Authorities Division, Office of Aviation Operations, to ascertain the data already available to the Department, which need not be included in the refiling. A carrier to which this paragraph applies shall not provide any air transportation for which it is required to be found fit, willing, and able until the Department either decides that the carrier continues to meet those requirements, or finds that the carrier is fit, willing, and able to perform such air transportation based on new information the carrier submits. During the pendency of the Department's consideration of a data submission under this paragraph, the revocation period set out in paragraph (a) of this section shall be stayed. If the decision or finding by the Department on the issue of the carrier's fitness is favorable, the date of that decision or finding shall be the date considered in applying paragraph (a) of this section.

(d) The provisions of paragraph (c) of this section shall apply to all all-cargo air carriers that were the object of fitness findings made by the Department before the effective date of this rule or made by the Civil Aeronautics Board, who either are not now operating under the authority for which they were found fit or who are operating under such authority but later cease operations and seek to resume before expiration of the one-year revocation period.

(e) For purposes of this section, the date of a Department decision or finding shall be the service date of the Department's order containing such decision or finding, or, in cases where the Department's decision or finding is made by letter, then the date of such letter.

(f) For purposes of this section, references to operations and to the providing of air transportation shall refer only to the actual performance of flight operations under an operating certificate issued to the carrier by the FAA.

(49 U.S.C. 1324, 1371, 1377, 1386, 1388, 1389)

Issued in Washington, DC on October 31, 1986.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86–25190 Filed 11–6–86; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 814

[Docket No. 79N–0009]

Premature Approval of Medical Devices; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that prescribes the contents of a premarket approval application (PMA) for a medical device and the criteria FDA will employ in approving,

disapproving, or withdrawing approval of a PMA. This document corrects editorial errors in the final rule.

EFFECTIVE DATE: November 19, 1986.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: In FR Doc. 86-16262 appearing on page 26342 in the issue of Tuesday, July 22, 1986, the following corrections are made:

§ 814.15 [Corrected]

1. In the first column on page 26366, in § 814.15 *Research conducted outside the United States* in paragraph (b), the paragraph heading is corrected to read "(b) *Research begun on or after effective date.*"

§ 814.20 [Corrected]

2. In the third column on page 26366, in § 814.20 *Application* in paragraph (b)(3)(v), the first sentence is corrected to read, "An abstract of any information or report described in the PMA under paragraph (b)(8)(ii) of this section and a summary of the results of technical data submitted under paragraph (b)(6) of this section."

Dated: October 31, 1986.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-25151 Filed 11-6-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 637

Sampling and Testing of Materials and Construction

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending its regulation which establishes general requirements for the sampling and testing of materials and construction of Federal-aid highway projects. The amended regulation will clarify existing policy and procedures and provide additional guidance in the areas of acceptance sampling and testing, laboratory inspection program and materials certification.

EFFECTIVE DATE: December 8, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Bob B. Myers, Chief, Construction and Maintenance Division, (202) 366-1548 or Mr. Michael Laska, Office of the Chief Counsel, (202) 366-1383, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET., Monday through Friday.

SUPPLEMENTARY INFORMATION: Subpart B of 23 Part 637 establishes general requirements and procedures related to sampling and testing of materials and construction of Federal-aid highway projects. The sampling and testing program is to provide assurance that all materials and construction of Federal-aid highway projects comply with approved plans and specifications. These revisions clarify and further delineate policy and procedural requirements which are already in effect.

Reviews conducted by the FHWA from 1981 through 1984 have identified several points of misinterpretation of requirements, particularly in the independent assurance sampling and testing requirements. The revisions will clarify these requirements and provide additional guidance in the areas of acceptance sampling and testing, laboratory inspection programs and material certifications. The revisions will not result in any significant additional actions or procedural changes in the standard operating procedures currently being used by the State and local highway agencies.

A notice of proposed rulemaking (NPRM) was published in the **Federal Register** on September 20, 1985 (50 FR 38136). A total of 11 commenters responded to the NPRM, 8 State highway agencies, 2 national laboratory associations, and 1 Federal agency. A complete summary and analysis of these comments has been prepared and placed in docket 85-6. The major comments and FHWA's response thereto are summarized as follows.

Several respondents recommended an expanded role for third party consultants in the control and testing of materials. The comments addressed three areas where third party consultants could be utilized: the National Reference Laboratories, independent assurance testing, and acceptance testing.

The first area concerns allowing other testing services to perform the activities of the National Reference Laboratories. The purpose of the laboratory inspection program is to review the States' testing procedures, testing equipment, and measuring equipment against national standards as part of the Federal Highway Administration's (FHWA's) determination pursuant to 23 U.S.C. 302 that a State has an adequate operating highway department. The laboratory inspection program, as proposed, would allow other equally suitable laboratories to perform the function of the reference laboratory. Currently, the only comprehensive central laboratory inspection systems in existence are the Cement and Concrete Reference Laboratory (CCRL) and the American Association of State Highway and Transportation Officials (AASHTO) Materials Reference Laboratory (AMRL). For an inspection system to be considered equal to AMRL and CCRL, the system would have to include a procedure for checking all equipment and procedures that are currently being checked by these services (AMRL and CCRL). This includes a procedure for calibration of equipment and weights with the National Bureau of Standards and for providing reference samples at regular intervals.

This is not to say that other testing services will not eventually have the same capability for evaluating consultants to be used for material testing. Since the National Reference Laboratory program is part of the FHWA's determination that a State has an adequate highway department, the FHWA retains the right to approve comparable testing services as they become available.

The second area concerns the fact that the regulation does not permit the use of consultants for independent assurance testing. The independent assurance testing is an extension of the national reference laboratory program. This extension is necessary to ensure a proper acceptance testing program that is recognized by all parties: contractor, State, and Federal. For any test result to be accepted and respected, the results must be repeatable. To accomplish this, the standardization of the reference laboratories on testing procedures and testing equipment must be transferred to the acceptance testing program. In addition, States that have subsidiary laboratories that fulfill the functions of the central laboratory are encouraged to establish their own programs for reviewing equipment and procedures of those laboratories if they are not included in the reference laboratory inspection program.

It is the States' responsibility to ensure that the equipment and procedures that are used in acceptance testing are in accordance with accepted standards. The independent assurance testing program provides the State this assurance by providing standardization through the extension of the reference laboratories to the acceptance testing. If

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consultants were permitted to perform the independent assurance testing function, the State would have to repeat the function in reviewing the consultants procedures. This would be necessary in order to assure that the sampling and testing procedures are properly performed. Under these circumstances, using consultant testing for independent assurance testing would be an unwarranted additional expense. For this reason we are requiring the State personnel to perform this testing function. Therefore, no changes are being made to the regulation in this area.

The third area concerns the extent to which consultants or independent laboratories can be used for acceptance sampling and testing. The purpose of the acceptance sampling and testing is to serve as the principal basis for determining the quality and acceptability of material being incorporated into an item of construction. It was the intent of the FHWA to allow the States and local agencies to use consultants and independent laboratories for acceptance sampling and testing provided they would be directly accountable to the State highway agency or local agency. A definition of State representative has been added to the regulation to clarify this point.

The role of consultant and independent laboratories could be significant in the sampling and testing of highway construction projects. The acceptance sampling and testing along with process control testing represent the principal area in which consultants and independent laboratories may participate in project testing. For the most part, in the past, the contractors' operations have been controlled by the States' sampling and testing programs. However, due to limited personnel along with the need for more frequent process control tests, States are encouraged to require contractors to perform their own process control tests. The FHWA strongly encourages the certification of consultant and independent laboratories used in the acceptance and process control testing programs. Certification provides the State with assurance that the consultants are qualified to perform the inspection services. Certification has become more important since States are using more consultants to perform inspection services due to the reduction in State personnel. Presently, there are no national certification programs that FHWA considers adequate. The sampling and testing community is moving to fill this void. However, since the issue has not been settled, we consider it inappropriate to issue guidelines at the present time.

One commenter recommended that a precision statement for the test methods used in independent assurance sampling and testing be provided. The purpose of the independent assurance test is to check the reliability of acceptance test results. This requires the preparation of split samples to verify testing equipment and actual observation to ensure that the procedures are performed properly. It is not necessary to have statistically proven precision statements to perform this function. The FHWA has recommended, and continues to believe, that a range should be used as a guide when precision statements do not exist.

One commenter questioned the requirement that the States perform the acceptance testing. It has always been FHWA policy that State personnel or a State representative perform acceptance sampling and testing. This final rule only clarifies the policy contained in the previous version of this regulation. It is the opinion of the FHWA that the State must retain its responsibility for acceptance of materials and this is possible only if State personnel or a State's representative performs the acceptance sampling and testing. Acceptance sampling and testing by the contractor would raise the obvious question about a contractor's ability to test objectively and, if necessary, reject his/her own work.

One commenter questioned the necessity of requiring that all independent assurance tests use equipment other than that assigned to the project. The sampling and testing program permits a reasonable portion of independent assurance samples and tests to be accomplished by observation of the acceptance sampling and testing. In these instances, project equipment would be used. No change is necessary.

One commenter recommended that clarification be made as to what constitutes an exception and the degree of explanation necessary in the certification letter. An exception is any material that does not meet the requirements as stated in the approved plans and specifications. The explanation should be sufficient to justify allowing the material to remain in the project. The wording on the certification letter has been modified to indicate that any exception must be explained and attached to the back of the certification letter rather than in the projects records. In addition, the certification letter has been changed to require any deviation from the approved plans and specifications to be listed as an exception. Previously, deviations that were reasonably close to conformity were sometimes not considered exceptions. Under the new procedure, all such exceptions must be listed on the reverse side of the letter.

Section-by-Section Analysis

The revised regulation includes the following revisions:

1. Section 637.203 is revised to include the definition of acceptance samples and tests the provision that such activities be performed either by State personnel or a State representative. The definition for "State representative" has also been included. This definition encompasses other public agencies or consultants and independent laboratories who are employed and paid by the State or public agencies and accountable to those agencies.

2. Section 637.205 is revised to emphasize that all State highway agencies are required to participate in the regular laboratory inspection and comparative sample testing program provided by the National Reference Laboratories or other approved and equally recognized authority. This is to provide assurance that the State's sampling and testing equipment and procedures are reliable and repeatable. Currently, all State highway agencies voluntarily participate in this program; however, due to recent budget constraints, several have considered discontinuing this service. The FHWA believes participation in this type of program is essential to assure continued State laboratory capability.

3. Section 637.207(d) is revised to emphasize the requirement for comparison, including documentation, of acceptance test results with independent assurance test results. In order for the independent assurance program to be effective, comparisons to acceptance test results must be made in a timely manner. This requirement for comparison documentation should assure the proper comparisons. The comparison should be normally maintained in the project records.

4. Section 637.209 is added to provide for a Laboratories Inspection Program. Each State shall have its own headquarters laboratory included in a regular inspection and comparative sample testing program by a nationally recognized authority as described in § 637.205. Each State shall authorize the inspecting authority to submit copies of all inspection reports to the FHWA. This will allow monitoring of the program described in § 637.205. Since the inspection reports are developed by the inspecting authority, no additional effort

is required by the State highway agencies.

5. Appendix A, Guide Letter of Certification by State Engineer, is revised to provide for the explanation of exceptions to the plans and specifications on the back of the letter. Identification of these exceptions to the plans and specifications will facilitate their review and judgment of their acceptability.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the information collection requirements contained in this regulation are being submitted for approval to the Office of Management and Budget (OMB).

The FHWA has determined that this action does not contain a major rule under Executive Order 12291 or a significant rule under the regulatory policies and procedures of the Department of Transportation. The revisions do not impose any new mandatory standards on State and local governments, but would provide general program direction and recommended criteria. For this reason, the anticipated economic impact of this rule is so minimal as not to require preparation of a full regulatory evaluation. For the foregoing reasons and under the critiera of the Regulatory Flexibility Act, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

In consideration of the foregoing, and under the authority of 23 U.S.C. 109, 114, and 315; 49 CFR 1.48(b), the FHWA hereby amends Chapter I of Title 23, Code of Federal Regulations, by revising Part 637, Subpart B to read as set forth below. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 637

Construction project—sampling and testing, Grant program—transportation, Highways and roads, Materials testing.

Issued on: October 31, 1986.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

Part 637 is amended by revising Subpart B to read as follows:

PART 637—CONSTRUCTION INSPECTION AND APPROVAL

* * * * *

Subpart B—Sampling and Testing of Materials and Construction

Sec.
637.201 Purpose.
637.203 Definitions.
637.205 Policy.
637.207 Sampling and testing program.
637.209 Laboratory inspection program.
Appendix A to Subpart B—Guide Letter of Certification by State Engineer

Subpart B—Sampling and Testing Materials and Construction

Authority: 23 U.S.C. 109, 114, and 315; 49 CFR 1.48(b).

§ 637.201 Purpose.

To prescribe policies, procedures, and guidelines relating to sampling and testing of materials and construction in Federal-aid highway projects.

§ 637.203 Definitions.

(a) *Acceptance samples and tests.* All of the samples and tests performed by State personnel or a State representative used for determining the quality and acceptability of the materials and workmanship which have been or are being incorporated in the project.

(b) *Independent assurance samples and tests.* Independent samples and tests or other procedures performed by State personnel who do not normally have direct responsibility for process control and acceptance sampling and testing. They are used for the purpose of making independent checks on the reliability of the results obtained in acceptance sampling and testing and not for determining the quality and acceptability of the materials and workmanship directly.

(c) *National reference laboratories.* The American Association of State Highway and Transportation Officials (AASHTO) Materials Reference Laboratory (AMRL) and the Cement and Concrete Reference Laboratory (CCRL).

(d) *Process control samples and tests.* All of those samples and tests that are performed in order to make adjustments to the contractors' operations.

(e) *State personnel.* An employee or employees of a State agency.

(f) *State representative.* An employee or employees of a State or public agency or a consultant/independent laboratory which is employed, paid by and directly accountable to the State or public agency.

§ 637.205 Policy.

(a) *Sampling and testing program.* Each State highway agency shall develop a sampling and testing program which will provide assurance that the materials and workmanship incorporated in each Federal-aid highway construction project are in reasonably close conformity with the requirements of the approved plans and specifications, including approved changes. The program must meet the criteria in § 637.207, and be approved by the FHWA.

(b) *Laboratory inspection program.* Each State highway agency shall participate in the regular laboratory inspection and comparative sample testing program provided by the National Reference Laboratories or a comparable laboratory approved by FHWA.

§ 637.207 Sampling and testing program.

Each State's acceptance and independent assurance sampling and testing program shall provide for the following:

(a) The specific location in the construction or production operation at which sampling and testing is to be accomplished for acceptance or independent assurance testing.

(b) Frequency guide schedules for acceptance and independent assurance sampling and testing which will give general guidance to personnel responsible for the program, yet give them reasonable latitude for adaptation to specific project needs.

(c) Independent assurance sampling and testing shall be performed by State personnel who have no direct responsibility for acceptance sampling and testing using test equipment other than that assigned to the project. The program may permit a reasonable portion of the independent samples and tests to be accomplished by independent observation of the acceptance sampling and testing.

(d) A prompt comparison of acceptance test results with independent assurance test results and documentation of that comparison.

(e) The preparation and submission of a materials certification, conforming in substance to Appendix A of this regulation, to the FHWA Division Administrator for each construction project.

§ 637.209 Laboratory inspection program.

(a) Each State shall have its central laboratory included in a regular laboratory inspection and comparative sample testing program such as that provided by the National Reference Laboratories.

(b) Each State is required to authorize the National Reference Laboratories, or the other comparable laboratory used in its laboratory inspection program, to submit copies of all laboratory inspection reports to the appropriate

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regional and division offices of the FHWA.

Appendix A to Subpart B—Guide Letter of Certification by State Engineer

Date __________
Project No. __________

This is to certify that:

The results of the tests on acceptance samples indicate that the materials incorporated in the construction work, and the construction operations controlled by sampling and testing, were in conformity with the approved plans and specifications; and such results compare favorably with the results of the independent assurance sampling and testing.

Exceptions to the plans and specifications are explained on the back hereof (or on attached sheet).

____

Director of Laboratory or other Appropriate State Official.

[FR Doc. 86–25283 Filed 11–6–86; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF DEFENSE

Department of the Army

35 CFR Parts 251 and 253

Regulations of the Secretary of the Army; Panama Canal Employment System

AGENCY: Department of the Army, DoD.

ACTION: Final rule; correction.

SUMMARY: The Panama Canal Area Personnel Board, designated by the Secretary of the Army, is correcting an error in the effective date section previously published in the **Federal Register** September 19, 1986, (51 FR 33261). The effective date section is correctly revised to read as set forth below:

EFFECTIVE DATE: September 19, 1986, except the amendments to § 251.4(b)(4) and (g) relating to employees of the National Security Agency which is effective retroactively to 31 March 1982.

FOR FURTHER INFORMATION CONTACT: LTC. Kenneth Dunn, Office of the Assistant Secretary of the Army (CW), Washington, DC 20310. Tel. (202) 695–1370.

Dated: November 4, 1986.

William R. Gianelli,

Chairman, Panama Area Personnel Board.

[FR Doc. 86–25295 Filed 11–6–86; 8:45 am]

BILLING CODE 3710-02-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Delaware Water Gap National Recreation Area, Pennsylvania and New Jersey

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule implements recent amendments to Federal statutory provisions governing commercial vehicles operated on U.S. Highway 209 within Delaware Water Gap National Recreation Area, Pennsylvania. Provisions contained in Pub. L. 99–88 (8/15/85) now limit the combined total of commercial vehicles from the New York Counties of Orange, Rockland, Ulster, and Sullivan to a maximum of 125 Northbound and 125 Southbound vehicles per day servicing businesses or persons within these four New York Counties on a first come first served basis. Pub. L. 98–151 had provided for up to 150 Northbound and 150 Southbound commercial vehicles per day servicing businesses or persons within Orange County, New York to be exempted from the prohibition found at CFR § 5.6. This rulemaking reflects the reduction in the number of authorized commercial vehicles and the increase in the number of New York Counties provided for the Pub. L. 99–88.

EFFECTIVE DATE: December 8, 1986.

FOR FURTHER INFORMATION CONTACT: Amos Hawkins, Superintendent, Delaware Water Gap National Recreation Area, Bushkill, PA 18324, Telephone 717/588–6637.

SUPPLEMENTARY INFORMATION:

Background

Pub. L. 98–63 was enacted July 30, 1983, closing U.S. Highway 209 in accordance with § 5.6 of the Code of Federal Regulations prohibiting commercial vehicles from Delaware Water Gap National Recreation Area, authorizing the exemption of some commercial vehicles, and directing that fees be established for certain authorized commercial vehicle operations on Highway 209.

In addition to the exemption established by Pub. L. 98–63, Pub. L. 98–151 (Section 117) also provided exemptions for up to 150 Northbound and 150 Southbound commercial vehicles per day serving businesses or persons in Orange County, New York. Pub. L. 99–88, dated August 15, 1985, amended Pub. L. 98–151 (Section 117) to include commercial vehicles servicing businesses or persons from the New York Counties of Rockland, Ulster and Sullivan and reduced the combined number of vehicles from 150 to 125 Northbound and Southbound daily.

Pub. L. 99–88 further amended Pub. L. 98–151 by indefinitely extending the date of termination of authority from December 31, 1985 to such time as Congress may take action to the contrary.

This rulemaking revises National Park Service (NPS) regulations to reflect the new statutory provisions that went into effect upon enactment of Pub. L. 99–88 and that apply regardless of the conflicting and outdated text in the existing regulations. The purpose of this rulemaking is to remove the regulatory text that has been rendered either obsolete or inappropriate by the new statutory provisions that take precedence.

The NPS is publishing this rulemaking as a final rule without prior publication of a proposed rule. This action is being taken because the NPS has determined that a proposed rulemaking and opportunity for public comment in this case are unnecessary and contrary to the public interest. This determination is based on the fact that the revised regulatory text incorporates statutory provisions that have been in effect since August 15, 1985 and that were implemented by the NPS on the same date. Prompt removal of expired or inappropriate regulatory text from the Code of Federal Regulations avoids confusion and facilitates consistent interpretation of regulations by NPS officials and the general public and is therefore in the public interest. Publication of a proposed rule would delay this process unnecessarily and would also result in unnecessary additonal expense, both contrary to the public interest.

Public comment on this regulation is unnecessary and irrelevant because the statutory provisions are already in effect and will continue to take precedence over the existing regulatory text, regardless of public comment. The applicable statutory provisions are mandatory and contain no discretionary elements that are open to agency interpretation or whose implementation could be influenced by public comment to the NPS.

Drafting Information

The principal author of this rulemaking is Frank W. Mills, Delaware Water Gap National Recreation Area, National Park Service, Bushkill, Pennsylvania 18324.

Paperwork Reduction Act

The rule does not contain information collection requirements which require approval by Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The final Environmental Impact Statement on the management of U.S. Highway 209 (September 1982) addresses the impacts of commercial vehicular traffic on U.S. Highway 209 and the diversion of that traffic. Copies of these documents are available at the address provided at the beginning of this rulemaking. The Department has determined that it is not necessary to prepare any additional documents concerning this regulation in order to comply with the National Environmental Policy Act (42 U.S.C. sec. 4321 *et seq.*).

The Department of the Interior has determined that this rulemaking is not a "major rule" within the meaning of E.O. 12291, and certifies that this document will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5, U.S.C. 601 *et seq.*) The persons and businesses in the three additional counties in New York which can be serviced by commercial vehicles using Route 209 will be positively affected. The costs of delivering goods and providing services will be cheaper, since the commercial vehicles will be able to use a more direct route. The reduction in the number commercial vehicles authorized to use Route 209 (from 150 to 125 Northbound and Southbound per day) in order to serve the New York counties will have no negative effects. Only an average of 29 northbound and 27 southbound used Route 209 per day prior to the change in the law. Only an additional 8 northbound and 7 southbound commercial vehicles are using the road daily in order to service the three additional counties. These figures are well below the 125 which can use the road each way each day.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Chapter I is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

2. Section 7.71 is amended as follows:

a. By revising paragraph (d)(1)(iii) to read as follows:

b. By removing paragraph (d)(3).

§ 7.71 Delaware Water Gap National Recreation Area.

* * * * *

(d) * * *

(1) * * *

(iii) On a first come-first served basis, up to 125 northbound and up to 125 southbound commercial vehicles per day serving businesses or persons in Orange County, Rockland County, Ulster County or Sullivan County, New York; and

* * * * *

Dated: October 13, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–25293 Filed 11–6–86; 8:45 am]

BILLING CODE 4310–70–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 67; A-2-FRL-3105-5]

Approval and Promulgation of Implementation Plans; Revision to the State of New York Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces that the Environmental Protection Agency is approving a revision to the New York State Implementation Plan (SIP) concerning a change made to Part 217, the State's motor vehicle emission control regulation. The change provides for more stringent light duty gasoline vehicle inspection standards and new heavy duty gasoline vehicle inspection standards.

DATES: This action will be effective January 6, 1987, unless notice is received by December 8, 1986, that someone wishes to submit adverse or critical comments.

ADDRESSES: All comments should be addressed to: Christopher J. Daggett, Regional Administrator, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the SIP revision are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, Room 1005, 26 Federal Plaza, New York, New York 10278
Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460
The Office of the Federal Register, 1100 L Street, NW., Room 8301, Washington, DC
New York State Department of Environmental Conservation, Division of Air, 50 Wolf Road, Albany, New York 12233

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Room 1005, 26 Federal Plaza, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION: On June 17, 1985 (50 FR 25073) the Environmental Protection Agency (EPA) approved the New York State Implementation Plan (SIP) for attainment of the ozone and carbon monoxide national ambient air quality standards. As a part of its control strategy, New York committed in its SIP to revise the State regulation, Part 217, of Title 6 of the New York Code of Rules and Regulations, "Emissions from Motor Vehicles Propelled by Gasoline Engines." These revisions were necessary in order to obtain additional emission reductions in volatile organic compounds (VOCs) from light duty gasoline vehicles and to obtain emission reductions from heavy duty gasoline powered vehicles.

On January 2, 1986, the State submitted the required revisions to Part 217. Light and heavy duty emission standards were affected as follows:

NEW YORK STATE EMISSION STANDARDS

[Prior to Jan. 29, 1986]

Vehicle model year	Carbon monoxide limit (percent)	Hydrocarbon limit (ppm)
Light duty vehicles: [1]		
1974 and older	6.0 (9.9)	700 (1,900)
1975, 1976 and 1977	3.5 (7.5)	400 (1,500)
1978	3.5 (6.0)	400 (870)
1979	2.5 (4.5)	300 (630)
1980	2.5 (2.7)	300 (330)
1981 and newer	1.2 (1.2)	220 (220)
Heavy duty vehicles: [2]		
1969 and older	7.0	800
1970 to 1973	6.0	700
1974 to 1978	4.5	600
1979 and newer	3.5	400

[1] 6,500 pounds and under.
[2] Over 6,500 pounds.

Conclusion

EPA is today approving the revisions made to Part 217 as part of the New York SIP. EPA has determined that the revisions fulfill the commitment made by New York in its ozone SIP.

This notice is issued as required by section 110 of the Clean Air Act, as amended. The Administrator's decision regarding the approval of this plan revision is based on its meeting the requirements of section 110 of the Clean Air Act and 40 CFR Part 51.

EPA is approving this SIP revision request without prior proposal because it is viewed as noncontroversial and no adverse comments are anticipated. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and the other will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. (See 46 FR 44476 dated September 4, 1981 and 47 FR 27073 dated June 23, 1983).

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of today. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2).).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Incorporation by reference.

Note.—Incorporation by Reference of the State Implementation Plan of New York was approved by the Director of the Federal Register on July 1, 1982.

Dated: October 5, 1986.

Lee M. Thomas,

Administrator, Environmental Protection Agency.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40, Chapter I, Subchapter C, Part 52, Code of Federal Regulations is amended as follows:

Subpart HH—New York

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1670 paragraph (c) is amended by adding new paragraph (c)(75) as follows:

§ 52.1670 Identification of plan.

* * * * *

(c) * * *

(75) A revision to the New York State Implementation Plan for attainment and maintenance of the ozone standards was submitted on January 2, 1986 by the New York State Department of Environmental Conservation.

(i) Incorporated by reference:

(A) Part 217, "Emissions from Motor Vehicles Propelled by Gasoline Engines," effective January 29, 1986.

3. Section 52.1679 is amended by adding on an entry in numerical order for Part 217 in the table as follows:

§ 52.1679 EPA-approved New York State regulations.

New York State regulation	State effective date	Latest EPA approval date	Comments
*	*	*	*
Part 217, Emissions from Motor Vehicles Propelled by Gasoline Engines.	Jan. 29, 1986	[November 7, 1986, FR page 40414].	
*	*	*	*

[FR Doc. 86–25102 Filed 11–6–86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Parts 413 and 433

[OW–FRL–3103–9]

Electroplating and Metal Finishing Point Source Categories; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This technical amendment makes a grammatical clarification to § 413.01(c) and § 433.10(c) and corrects errors in the lists of regulated toxic organic pollutants in § 413.02 and § 433.11.

EFFECTIVE DATE: November 7, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Ernst P. Hall, Chief, Metals Industry Branch, (202) 382–7126.

SUPPLEMENTARY INFORMATION: On July 15, 1983 (48 FR 32462), EPA promulgated 40 CFR Part 433 and final amendments to 40 CFR Part 413. EPA published a correction notice related to these parts on September 26, 1983 (48 FR 43680). However, since that date the Agency has detected additional errors which the Agency is correcting in today's notice.

In §§ 413.01(c) and 433.10(c) the Agency exempted metallic platemaking and gravure cylinder preparation "conducted within printing and publishing facilities." The Agency has been informed that this exclusionary language has been restrictively interpreted to mean that only metallic platemaking and gravure cylinder preparation operations physically conducted within a printing and publishing facility would be excluded from regulation under Parts 413 and 433. This was never the Agency's intent.

As is demonstrated by the discussion in the original electroplating preamble (44 FR 52591, September 7, 1979), the Agency intended to exclude all printing and publishing industry operations from regulation under Part 413. The Agency identified the industry by reference to SIC Code 2700. In the 1982 Standard Industrial Classification Manual, Major group 27—Printing, Publishing, and Allied Industries, includes "establishments engaged in printing by one or more of the common processes, . . .; and those establishments which perform services for the printing trade . . ." For example, a shop that manufactures and sells metallic plates to a printing and publishing facility would be included within the SIC Code 2700 group. The Agency, in developing the electroplating and metal finishing pretreatment standards, did not specifically study or cost treatment technologies for any metallic platemaking or gravure cylinder preparation conducted either within or "for" the printing and publishing industry. Therefore, the administrative records for those rulemakings support today's correction notice clarifying that the exclusionary language in §§ 413.01(c) and 433.10(c) also applies to facilities that perform metallic platemaking or gravure cylinder preparation "for," as well as within, the printing and publishing industry.

Today's correction notice adds the words "or for" after the word "within" in the applicable exclusionary provisions in §§ 413.01(c) and 433.10(c). This clarifies that facilities engaged in metallic platemaking and gravure cylinder preparation for printing and publishing, either within their facility or for an outside printing or publishing facility, are not subject to the

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electroplating and metal finishing pretreatment standards.

The other corrections addressed in this notice relate to the listing of toxic organic pollutants in the definition of the term "TTO" in §§ 413.02(i) and 433.11(e). This notice adds the chemical "1,3-dichloropropylene (1,3-dichloropropene)" to both lists as it was inadvertantly omitted. In addition, the notice corrects the listing of "1,2-dichloropropane (1,3-dichloropropene)" by deleting "(1,3-dichloropropene)".

The Agency is making these corrections effective upon publication in the **Federal Register**. The Agency's action makes only minor corrections and therefore the Agency does not believe that public notice and opportunity to comment is necessary.

List of Subjects

40 CFR Part 413

Electroplating, Metals, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

40 CFR Part 433

Metals, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: October 21, 1986.

Michael B. Cook,

Acting Assistant Administrator for Water.

40 CFR Parts 413 and 433 are amended as follows:

PART 413—[AMENDED]

1. The authority citation for Part 413 continues to read as follows:

Authority: Secs. 301, 304(g), 307, 308, 309, 402, 405, 501(a), Clean Water Act, as amended, (33 U.S.C. 1311, 1314(g), 1317, 1318, 1318, 1322, 1325 and 1341(a)).

§ 413.01 Amended]

2. In § 413.01(c), the phrase "conducted within printing and publishing facilities" is revised to read as follows: "conducted within or for printing and publishing facilities".

§ 413.02 [Amended

3. In § 413.02(i), the listing entry "1,2-dichloropropane (1,3-dichloropropene)" is revised to read as follows: "1,2-dichloropropane".

4. Section 413.02(i), is amended by adding as a separate listing entry after the listing entry "1,2-dichloropropane", the following: "1,3-dichloropropylene (1,3-dichloropropene)".

PART 433—[AMENDED]

5. The authority citation for Part 433 continues to read as follows:

Authority: Secs. 301, 304 (b), (c), (e), and (g), 306(b) and (c), 307 (b) and (c), 308 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1971, as amended by the Clean Water Act of 1977) (the "Act"); 33 U.S.C. 1311, 1314 (b) (c), (e), and (g), 1316 (b) and (c), 1317(b) and (c), 1318 and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

§ 433.10 [Amended]

6. In § 433.10(c), the phrase "conducted within printing and publishing facilities" is revised to read as follows: "conducted within or for printing and publishing facilities".

§ 433.11 [Amended]

7. In § 433.11(e) the listing entry "1,2-Dichloropropane (1,3-dichloropropene)" is revised to read as follows: "1,2-Dichloropropane".

8. Section 433.11(e), is amended by adding as a separate listing entry after the listing entry "1,2-Dichloropane", the following: "1,3-Dichloropropylene (1,3-dichloropropene)".

[FR Doc. 86–24659 Filed 11–6–86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6628

[AK-960-07-4220-11; F-019601]

Alaska; Revocation of Public Land Order No. 1847, and Partial Revocation of Public Land Order No. 547

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes two public land orders (PLOs) insofar as they affect approximately 23,120 acres of public lands withdrawn for military purposes. This action will also classify the lands as suitable for selection by the State of Alaska, if such lands are otherwise available. The lands will remain closed to all other forms of appropriation and disposition under the public land laws, including the mining and mineral leasing laws.

EFFECTIVE DATE: November 7, 1986.

FOR FURTHER INFORMATION CONTACT: Mary Jane Clawson, BLM Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907–271–5060.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and by Subsection 17(d)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 708 and 709; 43 U.S.C. 1616(d)(1), it is ordered as follows:

1. Public Land Order Nos. 547 and 1847, dated February 2, 1949 and May 16, 1959, which withdrew lands for use by the military, are hereby revoked insofar as they affect the following described lands:

Fairbanks Meridian

T. 7 S., R. 7 W., unsurveyed,
  Secs. 5 to 8, inclusive, secs. 17 to 20, inclusive, and secs. 29 to 32, inclusive.
T. 7 S., R. 8 W., partially surveyed,
  Secs. 1 to 6, inclusive;
  Sec. 7, lots 1, 2, and 3, NE¼, E½NW¼, NE¼SW¼, N½SE¼;
  Sec. 8, N½, N½S½;
  Sec. 9, N½, N½S½;
  Secs. 10 to 15, inclusive;
  Sec. 22, NE¼, E½NW¼, E½W½NW¼, those lands lying outside of the following tract:

Beginning at the common corner of Secs. 15, 16, 21, and 22, thence East 660 ft., thence South 1,470 ft., thence N. 56°47'12" W. approximately 20 ft. to corner No. 1 on the center line of the Anderson Road, the point of beginning.

From corner No. 1, by metes and bounds, Thence S. 56°47'12" E. 330 ft. to corner No. 2 at the southwest corner of the off loading area of the Anderson Airport, from which the southwest corner of a 28' x 112' terminal building bears northerly approximately 115 ft.; Thence N. 33°12'48" E. 260 ft. on common boundary with the off loading area to corner No. 3; Thence N. 56°47'12" W. 331 ft. to corner No. 4 on the center line of the Anderson Road; Thence S. 30°01'16" W. 261 ft. to corner No. 1, the point of beginning.

  Sec. 23, that portion east of the west boundary of right-of-way F–025067 for the Parks Highway;
  Secs. 24 and 25;
  Secs. 26, 27, 32, 33, and 34, those portions east of the west boundary of right-of-way F–025067 for the Parks Highway;
  Secs. 35 and 36.
T. 7S., R. 9 W., surveyed,
  Secs. 1, 2 and 11;
  Sec. 12, lots 1 to 5, inclusive, E½NE¼, SW¼NE¼, NW¼NW¼, N½SE¼.

The lands described aggregate approximately 23,120 acres.

2. Subject to valid existing rights, the lands described above are hereby classified as suitable for and opened to selection by the State of Alaska under either the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, et seq.; 48 U.S.C. prec. 21, or subsection 906(b) of the Alaska National Interest Lands Conservation Act of December 2, 1980, 94 Stat., 2437–2438.

3. As provided by subsection 6(g) of the Alaska Statehood Act, the State of Alaska is provided a preference right of selection for the lands described above

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for a period of ninety-one (91) days from the date of publication of this order, if the lands are otherwise available. Any of the lands described herein that are not selected by the State of Alaska will continue to be subject to the terms and conditions of PLO 5187 and other withdrawals of record.

J. Steven Griles,

Assistant Secretary of the Interior.

November 3, 1986.

[FR Doc. 86-25223 Filed 11-6-86; 8:45 am]

BILLING CODE 4310-JA-M

LEGAL SERVICES CORPORATION

45 CFR Part 1612

Restrictions on Lobbying and Certain Other Activities

AGENCY: Legal Services Corporation.

ACTION: Reconsideration of final rule.

SUMMARY: This notice requests further comment on the final rule published August 1, 1986 (51 FR 27539) concerning restrictions on lobbying and certain other activities. Pub. L. 99-500 provides that no funds appropriated by it to LSC may be spent to implement or enforce Part 1612 of Title 45 of the Code of Federal Regulations, as published on May 31, 1984 (49 FR 22651), or as published on August 1, 1986 (51 FR 27539). This notice seeks public comment to assist the LSC Board in its reconsideration of the rule at the next meeting of its Operations and Regulations Committee.

DATE: Comments must be received on or before December 8, 1986.

ADDRESS: Comments may be submitted to the Office of General Counsel, Legal Services Corporation, 400 Virginia Avenue, SW., Washington, DC 20024-2751.

FOR FURTHER INFORMATION CONTACT: John H. Bayly, Jr., General Counsel, (202) 863-1820.

SUPPLEMENTARY INFORMATION: The Corporation published revised Part 1612, "Restrictions on Lobbying and Certain Other Activities," as a final rule on August 1, 1986 (51 FR 27539-27552). In furtherance of Congressional intent, LSC had sought in the rule to remove restrictions on services recipient programs could perform in *bona fide* representation of eligible clients and to ensure that proper regulation was established for conduct of recipient activity in such relevant areas as publications, training, grassroots lobbying, dues payment, and organizing. The rule had attempted to simplify and reorganize old Part 1612 by expanding the definitions section; by dividing old § 1612.5; and by according consistent treatment to all funds derived by recipients from LSC. Prior to the Board's adoption of this rule as final on February 21, 1986, numerous comments had been received and considered by the Operations and Regulations Committee of the Board during extensive deliberation and lengthy hearings. Following publication on August 1, 1986 (51 FR 27539), LSC has continued to receive comments and inquiries respecting the new rule. In addition, Pub. L. 99-500 has provided that no funds appropriated by it for LSC may be used to implement or enforce Part 1612 as printed in 49 FR 22651 (May 31, 1984) or 51 FR 27539 (August 1, 1986).

In consideration of continuing expressions of interest in this rule by affected parties, in light of comments and requests for interpretation and advice received by LSC from recipients, bar organizations, and members of the public since publication of this rule on August 1, 1986, and in view of subsequent Congressional action, LSC requests additional comments on the existing rule, particularly §§ 1612.1, 1612.4, 1612.5., 1612.7, 1612.9, 1612.11, and 1612.13.

List of Subjects in 45 CFR Part 1612

Administrative representation, Legal services, Lobbying, Publicity, Reporting and record-keeping requirements.

Dated: November 5, 1986.

John H. Bayly, Jr.,

General Counsel.

[FR Doc. 86-25387 Filed 11-6-86; 8:45 am]

BILLING CODE 6820-35-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 252

Operating-Differential Subsidy for Bulk Cargo Vessels Engaged in World-Wide Services

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD) is issuing this final rule to amend the regulations governing the calculation and payment of operating-differential subsidy (ODS) for bulk cargo vessels engaged in worldwide services. The rule provides for the payment of ODS as a fixed and final daily amount that encompasses all items of expense authorized for ODS participation by the ODS contracts currently in force.

DATE: This rule is effective December 8, 1986 for application to the wage rate year beginning July 1, 1987, and the rate year for other items beginning January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Arthur B. Sforza, Director, Office of Ship Operating Costs, Maritime Administration, Washington, DC 20590, Tel. (202) 366-2323.

SUPPLEMENTARY INFORMATION: On December 23, 1985, MARAD published in the **Federal Register** (50 FR 52338) a notice of proposed rulemaking (NPRM) to amend the regulations governing the calculation and payment of ODS for bulk cargo vessels engaged in worldwide services. The proposed amendments would provide for the payment of ODS as a fixed and final daily amount encompassing all items of expense authorized for ODS participation by the ODS contracts currently in force.

In response to a recommendation in a 1981 GAO report that MARAD pay ODS on a more timely basis and to improve current procedures for ODS rate determinations, MARAD has developed a system which would pay ODS as a fixed and final daily amount that includes all items of subsidizable expense. The new system permits the operators to establish conclusively the amounts of ODS receivable at the time they prepare financial statements and tax filings, and when making decisions on dividends. More extensive information concerning the background and specific details of this final rulemaking are to be found in the preamble to the NPRM. Modifications made to the rulemaking, as a result of comments on the NPRM, are accounted for in this preamble to the final rule and incorporated, as applicable, in the new regulation.

The NPRM provided a period of public comment that initially expired on February 21, 1986, but was subsequently extended to March 26, 1986, at the request of interested parties. On March 18, 1986, MARAD held a public hearing on the matter, pursuant to an informal request by counsel for three of the subsidized operators. During the hearing, MARAD emphasized that it would consider all comments, provided they were submitted in writing according to the instructions in the NPRM.

On March 26, 1986, written comments were received from Kominers, Fort, Schlefer & Boyer (Kominers) on behalf of Apex Marine Corp., Moore-McCormack Bulk Transport, Keystone Shipping and American Maritime

Transport, Inc. Comments were also submitted by Seabulk Transmarine I, Inc., Seabulk Transmarine II, Inc. and Seabulk Transmarine III, Inc. (Seabulk) by telex dated March 25, 1986.

The comments submitted by Kominers dealt with several aspects of the proposed new system. These comments, along with MARAD's response to them are discussed below.

1. Accuracy of Payments

Kominers stated that the new system would remove the direct correlation between expenses incurred and subsidy paid, and could result in significant and possibly permanent under or overpayment of ODS. In addition, according to Kominers, the proposed method seems to contradict the government's statutory and contractual obligation to pay necessary ODS amounts for operators to achieve cost parity with foreign competitors.

The new system does not provide a direct dollar-for-dollar correlation between expenses incurred and subsidy paid. However, the system employs historical cost experience that would be verified through audit to obtain a fair and reasonable estimate of expenses. This is fully within the dictates of the Merchant Marine Act, 1936, as amended (the Act) and the ODS agreements. MARAD does not believe significant under or overpayments will occur, due to the semi-annual adjustments based on historical data. The system will provide cost parity to the extent required by the ODS contracts.

2. Maintenance and Repair

Kominers offered the following six comments with regard to the treatment of maintenance and repair (M&R) subsidy:

a. Operators would receive large subsidy amounts in years when they have few M&R expenses and vice versa.

b. The system will harm the operators' ability to compete effectively with foreign operators as it would unduly influence operators' decisions as to when and where to repair vessels. This is because the timing of drydocking would affect the calculation of the constructed per diem subsidy.

c. The data on which the per diem amount is based will be one to three years old. The subsidy paid at any time will not reflect the current M&R expense, but will only approximately reflect the M&R expense for a prior period.

d. Because the base periods are determined by the period between drydockings, the length of the period used to calculate the per diem subsidy is entirely unrelated to the period over which that per diem subsidy amount is paid. A per diem subsidy amount computed from a 36-month period (where expenses were high) might be paid over a single year (where expenses were low) while a subsidy amount computed over 18 months might be applied to a three-year period.

e. The rule does not provide for the subsidy to "catch up" to the actual M&R expenses at the end of a subsidy contract, thus leading to overpayments or underpayments at the time a contract terminates.

f. Most ODS vessels are in the later years of their useful lives and have steadily increasing M&R expenses. The expense subsidy lag described above will have a distinct adverse impact upon operators.

Kominers also offered the following alternative to the proposed M&R changes. Upon submission of an operator's certified expenses, 100 percent of the subsidy be paid and that any refund due the government be repaid when the expenses are audited. Kominers stated that this system would never result in a net overpayment of subsidy at any time because the operator continually incurs new subsidizable expenses.

With regard to Kominer's comments on the time frame (a. and d. above) in which M&R subsidy is paid, MARAD concedes that using historical costs to determine subsidy payments in the current year may not reflect actual expenses incurred in that year. However, the use of a moving historical period, escalated to the current period by an appropriate index, provides a reasonable estimate of subsidizable expense in each year. In addition, under the current system which utilizes tentative rates, there is also uncertainty with regard to whether the tentative rates will closely reflect the final rates. Thus, an operator may be overpaid or underpaid during the period in which it incurs the expense. In the case of an underpayment, it may take two to three years for an operator to be made whole when the rates are finalized. MARAD believes that the new system is superior in this respect. The moving historical experience over time would automatically compensate for any under/overpayments, to the extent that they exist.

MARAD does not agree that there will be substantial under/overpayments of subsidy and that the subsidy paid at any time will not reasonably reflect the current M&R expense. As noted in the regulations, historical cost experience from the 24–36 month period immediately preceding the subsidized period will be indexed to the subsidized year by the BLS Index of Shipbuilding and Repairing Employment and Average Hourly Earnings. The eligible M&R costs so established will be divided by the calendar days of the historical period to establish a weighted daily average M&R cost. The U.S.-foreign cost differential percentage applicable to the most recent year will be applied to the weighted daily average cost to determine the daily M&R subsidy amount. MARAD believes that indexing will yield a fair and reasonable estimate of current M&R expenses and subsidy.

The new system attempts to provide an estimation of a fair and reasonable M&R cost for a given period of time. MARAD concedes that M&R expenses increase as the ship gets older, but MARAD contends that, for the most part, this is offset by the indexing previously referred to and the time value of receiving a final per diem subsidy with no subsequent adjustment. In addition, MARAD does not foresee the expense subsidy lag as being of significant value.

MARAD does not believe the new system will influence operators' decisions as to when and where to repair vessels. As provided in the regulation, the length of the period used for establishing the subsidizable M&R costs will be the number of months between the last two routine drydockings and the subsidizable costs will include the most recent drydocking. The eligible costs would be divided by the calendar days in the historical period to provide an appropriately weighted daily expense. Although a shorter time frame between drydockings would likely result in a higher daily expense, MARAD expects that the operators would not seek to undergo drydockings more frequently than necessary as this would not be to their benefit for economic reasons.

In view of the foregoing, MARAD considers the alternative offered by Kominers as inappropriate. In addition, it is inconsistent with section 603 of the Act, which provides 100 percent ODS payment only after expenses have been audited.

3. Protection and Indemnity Insurance

a. Kominers argued that, as in the case of M&R, subsidy for protection and indemnity (P&I) deductible expenses will not reflect actual expenses and will never "catch up" with increases in expenses at the end of the contract.

MARAD believes that the new system provides for the establishment of a relationship between P&I deductible subsidy and wage subsidy during a moving historical period that reflects the fullest measure of crew claims experience. This percentage relationship is applied to current wage subsidy to provide an estimate of current P&I deductible subsidy. MARAD believes that this system results in a fair and reasonable subsidy amount.

b. Kominers stated that the NPRM does not provide for circumstances in which an operator's deductible limit is increased. In this case an operator would be liable for claims up to a greater amount but would still receive subsidy based upon prior years when a lower deductible was in effect. This problem could be solved if the P&I deductible subsidy for prior years was recalculated with the higher deductible limit for purposes of determining the current P&I deductible subsidy.

It was MARAD's intent that this methodology be followed and MARAD has clarified the new regulation to make this more explicit.

c. Kominers contended that the NPRM has no provision to modify the maximum deductible absorption limit in the event operators are unable to get P&I insurance with a deductible limit at or below that established by the regulations.

In MARAD's view, the purpose of this rule is to take existing procedures and convert them to a per diem system. The rule is not a vehicle to modify the maximum deductible absorption limit. Operators who desire such modification should present their justification as a separate matter.

4. Hull and Machinery Insurance

It is Kominer's view that under both the present and proposed regulation MARAD's method to determine foreign premium costs for hull and machinery (H&M) insurance is flawed. The "particular average factor" is erroneous. There is no reason why the percentage should be limited to 85 percent. The percentage is often much higher and may reach 95–100 percent. In addition, since the calculation is based only upon claims paid by the underwriter as opposed to those paid by the underwriter (H&M cost under or over deductible limit) or operator, the resulting percentage will not reflect a true particular average portion.

MARAD believes that the methodology for determining subsidy rates for hull and machinery insurance premiums clearly indicates that the hull and machinery insurance subsidy rate is limited to the particular average portion of the partial loss premium related specifically to the domestic repair of the vessel. The partial loss premium is equal to the basic premium cost (plus premium costs for increased value and excess liability, if applicable) less total loss premiums. Total loss premiums are excluded from the calculation since ship values are assumed to be the same for both the U.S. operator and its foreign competitors as clearly indicated in the procedures.

The particular average portion of the partial loss premium is determined by measuring historical underwriters absorptions for particular average domestic repair claims as a percentage of total underwriters absorptions for all other claims, including general average claims but excluding total losses. This particular average percentage factor has been capped at 85 percent in recognition of the fact that a certain percentage of the partial loss premium is applicable to claims other than those related to particular average, e.g., general average claims. MARAD has reexamined this aspect of the calculation and finds that the allocation of 15 percent of partial loss premiums to claims other than particular average is completely justified. Accordingly, the final rule makes no change in the 85 percent cap. Further, MARAD considers it entirely correct that the operators' absorptions are not used in determining the particular average portion of the partial loss premium. To the extent subsidized operators absorb domestic repair costs under the deductible provisions of their policies, such absorptions are eligible for ODS at the maintenance and repair subsidy rate and are not used in the hull and machinery calculation.

The foregoing procedures have been accepted by all subsidized bulk vessel operators since their entry into subsidized service. It is clear that questions now arise since certain of the operators have recently begun carrying very high deductible levels under their hull and machinery policies in order to reduce premium costs. The result is that those operators have in some years absorbed all domestic particular average claims while the underwriters have absorbed none. The lack of underwriters absorptions produces a zero particular average percentage factor and consequently, a zero subsidy rate for hull and machinery premiums. MARAD considers this to be appropriate since the carriage of high deductible levels by the operators in effect places them in the same category as self insurers for all but major claims and, to the extent the operators absorb repair costs under the deductible provisions, they are reimbursed by the government at the maintenance and repair subsidy rate. Overall, we find the procedures for determining ODS for hull and machinery insurance premiums to be logical and completely supportable. No changes have been made.

5. Variable Costs

Kominers stated that the NPRM provides that variable costs shall be based upon variable cost data for the first nine months of the preceding calendar year. This would exclude several variable costs incurred during the Christmas season (overlap crew costs, transportation costs). It is recommended that a 12-month period from October to October ending in the preceding calendar year be used.

MARAD disagrees with this reasoning, as the Christmas season would not make an appreciable difference in costs. MARAD believes the nine-month period is adequate and, in fact, is using a nine-month period under the current system.

6. Wage Costs (Ship Type)

Kominers stated that one operator would be affected by the use of the "predominant" ship type and recommended that the computation be done on a ship-by-ship basis in order that no operator or the government be adversely affected.

MARAD believes that use of the phrase "predominant" ship type is inappropriate. Rates for bulk vessels are done on a ship type basis that accounts for every particular ship type in the bulk fleet. Since any two vessels within the same type are treated identically, the system, in effect, accounts for each individual vessel.

7. Submission of Financial Data

The present regulation and the NPRM require operators to submit quarterly balance sheets. Kominers stated that the requirement is not appropriate for bulk vessels that often make voyages that last more than 3 months, and should be dropped. In addition, the operator should be given 120 days rather than 90 days to submit the annual balance sheet and MA–172.

MARAD agrees on this point. The requirement for quarterly statements has been deleted. In addition, the rule has been revised to require the submission of semiannual MA–172s and audited annual financial statements not later than 120 days after the close of the operator's semiannual and annual reporting periods.

8. Fuel Subsidy

Kominers stated that the Act, the regulations, and the subsidy contracts entitle operators to an amount to compensate for the U.S.-foreign cost differential for fuel costs.

This is a matter that goes beyond the scope of the NPRM and is the basis for pending litigation initiated by operators represented by the commenter.

9. ODS Budget

Kominers stated that the proposed rule would not enable MARAD to estimate with greater accuracy its annual ODS budget. Under the NPRM, MARAD's annual budget would remain subject to a number of unpredictable factors, not the least of which is the varying number of days that subsidized vessels would be operating under subsidy.

MARAD believes that the new system would make the ODS budget process more accurate in the per diem subsidy eliminates the unknown factor of the difference between tentative and final rates and the amounts which would be paid after auditing.

10. Miscellaneous

Kominers offered the following miscellaneous comments, which MARAD responds to.

In view of section 615 of the Act, the provision requiring U.S.-built vessels should be dropped.

Section 615 of the Act has expired. However, MARAD realizes that some vessels were built or acquired foreign under its provisions. Since these vessels were eligible for ODS under the applicable law at the time they were built, they are included under the new system. MARAD has made this explicit in the final regulation.

The NPRM refers to the daily rate of subsidy for subsidized items of expense identified in the operating-differential sudsidy agreement (ODSA). The commenter stated that the provision should be changed to reflect that there are subsidizable items (e.g., training, medical costs) not identified in the ODSAs.

MARAD believes these items are included in the ODSAs since the ODSAs reference section 603 of the Act which defines wage expenses as those contained in collective bargaining or other agreements. No further definition is necessary.

The MPRM defines approved manning complement as the complement approved by the Maritime Subsidy Board (Board) for subsidy. Kominers assumes this means the complement previously approved for construction subsidy. If so, this should be clarified.

MARAD disagrees since the manning complement referred to is that approved for ODS, which subsequent to the initial award of CDS and ODS could be reduced to reflect later collective bargaining agreements. No further clarification is necessary.

The provisions dealing with the possibility of the manning complement for a vessel varying in number should be dropped since this applies only to liner vessels.

MARAD agrees and the final rule has been amended accordingly.

11. Seabulk Comments

Seabulk commented that its ODSAs specifically allow it to be paid subsidy on a calendar month basis rather than voyage basis. Therefore, all reference to terminated voyage and voyage days are not applicable with respect to Seabulk's ODSAs.

MARAD agrees with this and Seabulk will be paid subsidy in accordance with its ODSAs.

E.O. 12291, Statutory and DOT Requirements

The Maritime Administrator has determined that this final rulemaking is not major, as defined in E.O. 12291, but is significant under DOT regulatory policies and procedures due to considerable public interest (49 FR 11034; February 1979). This rulemaking places the ODS receipts of the operator and the obligations of the government on a current basis, with no appreciable overall change in such receipts and obligations.

Since it only facilitates the payment of final ODS amounts in a more timely manner, the economic impact of this rulemaking has been found to be minimal and further evaluation to be unnecessary. However, MARAD specifically requested comments on the industry's views with respect to the economic impact of this proposal. No comments on this aspect of the regulation were received. MARAD expects no appreciable change in ODS receipts or obligations. The major benefit is one of improving the timeliness of ODS payments. Accordingly, no further Regulatory Evaluation is deemed necessary.

Since this final rulemaking affects principally ship operators with substantial annual revenues, the Maritime Administrator certifies that this rulemaking does not exert a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*). It does not include new information collection requirements, but maintains existing information requirements which have been approved by OMB under control numbers 2133-0004 and 2133-0024, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 46 CFR Part 252

Bulk commodities, Bulk cargo vessels, ODS program, Water transportation.

PART 252—[AMENDED]

Accordingly, 46 CFR Part 252 is amended as follows:

1. The authority citation for Part 252 is revised to read as follows:

Authority: Secs. 204(b), 603-606, 608-611, Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b), 1173-1176), 49 CFR 1.66.

2. A new § 252.4 is added to the Table of Contents under Subpart A, to read as follows:

Sec.
252.4 Waivers.

3. Subpart C in the Table of Contents is amended by removing § 252.23 [Reserved]" and redesignating § 252.24 as § 252.23.

4. Section 252.1 is revised to read as follows:

§ 252.1 Purpose.

This part prescribes regulations implementing provisions in Title VI of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1171-1176 and 1178-1181) governing operating-differential subsidy for bulk cargo vessels engaged in carrying bulk cargo in essential services in the foreign commerce of the United States.

§ 252.3 [Amended]

5. Section 252.3 is amended as follows:

a. Paragraph (f) is amended by removing the word "Assistant" and inserting in its place, the word "Associate".

b. Paragraph (j) is removed and paragraphs (k) through (u) are redesignated (j) through (t).

6. A new § 252.4 is added to Subpart A to read as follows:

§ 252.4 Waivers.

In special circumstances and for good cause shown, the procedures prescribed in this Part may be waived, in writing, by mutual agreement of the parties, in keeping with the circumstances then present, provided that the procedures adopted are consistent with the Act and with the intent of these regulations.

7. Section 252.12(b) is revised to read as follows:

§ 252.12 Approval.

* * * * *

(b) The vessel was built in the United States, or built foreign and determined to be eligible for ODS pursuant to the applicable law at the time it was built or

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acquired, and the vessel is documented under the laws of the United States.

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§ 252.20 [Amended]

8. Section 252.20(b)(3) is amended by removing the reference to "§ 252.24(a)" and inserting § 252.23(a)".

9. Section 252.22(a) is revised to read as follows.

§ 252.22 Substantiality and extent of foreign-flag competition.

(a) *Type and tonnage groupings.* Foreign-flag competition shall be determined, as of January 1 of the year preceding January 1 of the subsidized year, by surveying a data file known as "Merchant Fleets of the World" that is maintained by MARAD. All foreign-flag bulk cargo vessels included in this data file are divided by type and category, and further subdivided by class. Classes include, but are not limited to general tanker, chemical tanker, OBO, general dry bulk carrier and wood chip carrier. Each vessel class is further divided into deadweight tonnage ranges as follows:

(1) Range A-vessels of less than 25,000 DWT;

(2) Range B-vessels of 25,000 but less than 50,000 DWT;

(3) Range C-vessels of 50,000 but less than 100,000 DWT; and

(4) Range D-vessels of 100,000 or more DWT.

* * * * *

§§ 252.23 and 252.24 [Redesignated and Amended]

10. In § 252.23 the designation, "Reserved", is removed and the §252.24 is redesignated as §252.23.

11. Paragraph (d) of newly redesignated § 252.23 is amended as follows:

a. In the first sentence of the introductory text, by removing the words "Director, Office of Financial Analysis", and inserting, the words "Director, Office of Financial Approvals".

b. By removing paragraph (d)(1), and redesignating paragraphs (d)(2) and (d)(3) as paragraphs (d)(1) and (d)(2), respectively.

c. By revising newly redesignated paragraph (d)(1) to read as follows:

(d) * * *

(1) Not later than 120 days after the close of the operator's semiannual accounting period, a Form MA–172 on a semiannual basis, in accordance with 46 CFR 232.6.

d. By revising newly redesignated paragraph (d)(2) to read as follows:

(d) * * *

(2) Not later than 120 days after the close of the operator's annual accounting period an audited annual financial statement, in accordance with 46 CFR 232.6.

12. Subpart D is revised to read as follows:

Subpart D—Calculation of Subsidy Rates

Sec.

252.30 Amount of subsidy payable.
252.31 Wages of Officers and Crews.
252.32 Maintenance (upkeep) and repairs.
252.33 Hull and machinery insurance.
252.34 Protection and indemnity insurance.

§ 252.30 Amount of subsidy payable.

(a) *Daily rates.* Daily ODS rates shall be used to quantify the amount of ODS payable. The daily ODS rate represents the cost differential between the subsidized vessel and its foreign-flag competition. A daily rate shall be calculated for each subsidized item of expense identified in the ODSA, and the total of all items is the daily amount of ODS payable for approved vessel operating days, excluding reduced crew periods.

(b) *Reduced crew periods.* For reduced crew periods, as defined in § 252.3 of this part, a man-day reduction amount, calculated separately for officers and unlicensed crew members, shall be used to reduce the daily wage ODS rate to conform to the complement remaining on the vessel. The man-day reduction amounts shall be determined by dividing the daily wage ODS for officers and unlicensed crew members by the number of subsidizable crew members in each category. For each day of a reduced crew period, the man-day amount shall be multiplied by the number of crew members missing for that day, and the resulting product shall be deducted from the daily ODS rate. The difference shall be the ODS payable for such day. (See illustration in Schedule C at § 252.41 of this part.)

(c) *Review of rates.* Daily subsidy rates shall be reviewed every six months. For the item, "wages of officers and crews," the daily rate shall be calculated for fiscal periods July 1 through June 30, in accordance with provisions of the Act. During the period January through June, adjustments—paid as a lump sum or as a daily amount—shall be made to wage ODS so that the correct amount of ODS for the full fiscal period is received by the operator. For other subsidizable items of expense, the daily rate shall be calculated for calendar years.

(d) *Negative rates.* When an ODS rate in any category is less than zero, indicating that the subsidized operator is at an advantage rather than a disadvantage in such category, the negative rate shall be deducted from positive rates in determining the daily ODS amount payable.

(e) *Operator Comments.* The operator shall have the opportunity to comment on each subsidy rate as calculated by MARAD. The operator and contracting officer shall make every effort to resolve disagreements that arise. In the event of a disagreement that cannot be resolved, comments received from the operator and the contracting officer's recommendation shall be presented to the Board for its consideration in determining subsidy rates.

§ 252.31 Wages of Officers and Crews.

(a) *Definitions.* When used in this part:

(1) *Base period.* The first base period under the wage index systems, as provided in section 603 of the Act, is the period beginning July 1, 1970 and ending June 30, 1971. Thereafter, base period means any annual period beginning July 1 and ending June 30, with respect to which the Board establishes a base period cost. At intervals of not less than two years, nor more than four years, the Maritime Subsidy Board shall establish a new base period. Base periods shall be announced by the Board prior to the December 31 date that would be included in the new base period.

(2) *Base period cost.*—(i) *Initial base period.* For the initial base period of subsidized service, the term "base period cost" means the collective bargaining cost as of January 1 of that base period.

(ii) *Subsequent base periods.* For base periods subsequent to the initial base period, the term "base period cost" means the average of the collective bargaining cost as of January 1 of such fiscal year, and the base period cost of the previous base period, indexed to January 1 of the new base period by an index compiled by the Bureau of Labor Statistics. This index shall consist of the average annual change in wages and benefits placed into effect for employees covered by collective bargaining agreements, with equal weight to be given to changes affecting employees in the transportation industry (excluding the off-shore maritime industry) and to changes affecting employees in private non-agricultural industries other than transportation. However, such base period cost shall not be less than a minimum, nor more than a maximum amount, determined as a percentage of the collective bargaining cost computed for January 1 of such base period in accordance wth the following schedule:

	Minimum (pct)	Maximum (pct)
Base period following a:		
2 year cycle	97½	102½
3 year cycle	96¼	103¾
4 year cycle	95	105

(3) *Collective bargaining cost (CBC)* means the annual cost, calculated on the basis of the per diem rate of expense, as of January 1 of the annual fiscal periods July 1 through June 30, of all items of expense required by the operator through a collective bargaining or other agreement, covering the employment of the approved manning complement of the subsidized vessel, including payments required by law to assure old-age pensions, unemployment benefits or similar benefits, and taxes or other governmental assessments on crew payrolls.

(4) *Approved manning complement* means the complement approved by the Board for subsidy.

(5) *U.S. wage cost (WC)* means the annual cost, calculated on the basis of the per diem rate of expense as of January 1 of the annual fiscal periods July 1 through June 30, of all items of expense required of the operator through a collective bargaining or other agreement, covering the employment of the normal manning complement of the subsidized vessel, including payments required by law to assure old-age pensions, unemployment benefits or similar benefits, and taxes or other governmental assessments on crew payrolls.

(6) *Normal manning complement* means the crew complement established by a collective bargaining or other agreement with the officers and unlicensed crew of the vessel. When ratings of different salaries are in the same job during the year, the base wages of the rating carried most of the time shall be used.

(7) *Subsidizable wage cost* means, (i) with respect to a base period, the base period cost, and (ii) in any fiscal period other than a base period, the most recent base period cost, increased or decreased by the change from January 1 of the base period to January 1 of the non-base period. The subsidizable wage cost shall not be less than 90 percent nor greater than 110 percent of the collective bargaining cost as of January 1 of such period.

(8) *Unpredictably timed costs* are collective bargaining costs that are not regularly incurred. Examples of unpredictably timed costs are such costs as severance pay, shortfalls, special assessments, and war zone bonuses.

(b) *Method of calculating collective bargaining cost (CBC).* CBC shall be determined by pricing out, for the approved crew complement, the per diem total of fixed costs specified in the collective bargaining agreement and adding a per diem total of variable costs obtained from the cost experience of the subsidized vessel during the first nine months of the preceding calendar year.

(1) *Fixed Costs.* The per diem total of fixed costs shall include all costs that are stated in specific or determinable amounts per time period and, based on operating experience, do not vary. In cases where a monthly amount is specified in the agreement, the per diem amount shall be determined by dividing the monthly amount by 30. When a daily amount is specified it shall be used. Examples of fixed costs are:

(i) Base wages:

(ii) Non-watch pay;

(iii) Vacation pay (including contributions to vacation funds);

(iv) Tool allowance;

(v) Clothing and uniform allowances; and

(vi) Per diem contributions for pension, training, welfare, unemployment, including unallocated contributions placed in escrow.

(2) *Variable costs.* Variable costs are regularly incurred employment costs which vary with ship operating experience. The per diem aggregate of variable costs as of January 1 shall be determined by applying a ratio to the per diem aggregate of base wage costs as of January 1, the numerator of which shall be the total of variable costs for the first nine months of the preceding calendar year and the denominator of which shall be the total of base wage costs for the first nine months of the preceding calendar year. Variable costs include but are not limited to:

(i) Payroll taxes (including social security taxes);

(ii) Overtime and penalty pay;

(iii) Variable pension, training, welfare, unemployment, and vacation costs;

(iv) Pay in lieu of time off;

(v) Transportation and travel allowances;

(vi) Payments to relief officers and crews;

(vii) Wages and other expenses of USMMA cadets and extra messmen;

(viii) Board and lodging allowances;

(ix) Overlap in wages (a maximum of three days for officers and two days for unlicensed crew); and

(x) Penalty cargo bonuses.

(c) *Method of calculating U.S. wage cost (WC).* Two different calculations of WC are necessary—a per diem amount for every ship type on the service and a per month amount for the predominant ship type (most voyages) on the service. The purpose of the per month calculation is to make a comparison with the monthly foreign wage costs. The relationship of WC to foreign costs for the predominant ship is applied to the per diem WC for other ship types in the service to estimate comparable foreign costs for them.

(1) *Calculation of per diem WC.* The per diem WC shall be calculated by the same method that applies to CBC, except that the normal manning complement shall be used.

(2) *Calculation of per month WC.* The costs and manning level used in this calculation shall be the same as those used for the per diem WC.

(d) *Data submission requirements.* For purposes of calculating CBC and WC the operator shall each year submit Form MA-790 and, as appropriate, current copies of all collective bargaining or other agreements, memoranda of understanding, and arbitration awards, which specify the fixed costs as of January 1. Schedule A of Form MA-790, which covers wage costs on voyages terminated during the first nine months of the previous calendar year, shall be submitted by December 31. Schedule B of Form MA-790—normal manning complement, rates of pay, and contributions in effect on January 1 of the current year—shall be submitted by January 31. Form MA-790, Schedules A and B, shall be submitted to the Director, Office of Ship Operating Costs, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590.

(e) *Example Calculation.* The following is a sample calculation of CBC and WC:

ABC BULK CO.

Jan. 1, 1985, Collective Bargaining Costs (CBC) and U.S. Wage Cost (WC)

	Per diem	
	WC	CBC
Crew Complement	[1] 36	[2] 31
Fixed Costs as of January 1, 1985:		
Base Wages and non-watch pay	$1,789.79	$1,571.60
Allowances (radio, telephone, clothing, etc.)	$5.75	$5.75
Vacation Pay	$1,189.60	$1,109.65
Pension, Welfare, Training, Unemployment Fund Contributions	$1,280.80	$1,171.75
Total Fixed	$4,265.94	$3,858.75
Variable Costs as of January 1, 1985:		
Variable Cost Factor (based on 1984 cost experience) (pct)	104.69	104.69
Total Variable Costs (January 1, 1985 base wages x variable cost factor)	$1,873.73	$1,645.31
Total wage costs as of January 1, 1985	$6,139.67	$5,504.06

[1] Normal manning complement.

[2] Approved manning complement.

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(f) *Method of calculating foreign wage cost.* The foreign wage cost (FC) of the principal foreign-flag competitor and the comparable WC of the subsidized vessel are matched as of January 1 of the subsidized fiscal year for purposes of determining the wage cost of the principal foreign-flags. The following procedures are used:

(1) *Manning.* The foreign manning complement in number and nationality for the principal foreign-flag competitor shall be constructed for the subsidized vessel type using the manning scales and practice of the competitor as developed through an examination of alien crew manifests, payrolls, and other reliable information. The commonly used crew complement of the competitor shall be adjusted to fit the predominant vessel type, in recognition of differences in physical characteristics that would affect manning scales. Where the manning complement cannot be estimated with reasonable substantiation, it will be deemed to be identical with that of the subsidized vessel.

(2) *Method.* The method of calculating FC shall be the same as that used for WC, provided that it is possible to obtain foreign cost data on the same basis as wage cost data. Preference shall be given to pricing out for fixed costs and to cost experience for variable costs. Where applicable, foreign currencies shall be converted into U.S. currency equivalents by using the average of end-month exchange rates for July through January, unless they consistently change in one direction by 25% or more during the period, in which case the January exchange rate shall be used. The exchange rates shall be obtained from the publication, "International Financial Statistics," published monthly by the "International Monetary Fund. If exchange rates for particular foreign currencies are not available in this publication, they shall be obtained from the United States Department of the Treasury.

(3) *Foreign wage cost.* The per diem composite foreign wage cost is determined by multiplying the per diem WC for the U.S. ship type by the ratio of FC to WC for the foreign-flag competitor. The following is a sample calculation of the foreign cost percentage.

ABC BULK COMPANY, INC.

[Jan. 1, 1985—Foreign Wage Cost (FC)]

	United States	Liberia
Crew Complement	26	26
Base Wages	[1] $53,687	[1] $24,779
Allowances	$1,074	$4,584
Vacation Pay (leave)	[1] $35,681	[1] $13,009
Pension and Welfare	[3] $38,407	[1] $2,065
Social Security	[2] $6,608	[2] $7,227
Overtime and other variable costs (not elsewhere included)	[2] $48,732	[2] $10,944
Repatriation		
Total wage costs	$184,189	$62,608
Percentage FC to WC		33.99

[1] Based on Jan. 1 priced out cost.

[2] Based on cost experience.

[3] Excludes training costs—foreign data not available.

(g) *Determination of daily wage rate.* The foreign wage cost is deducted from subsidizable wage costs to determine the daily wage subsidy rate. Table 1 is an example calculation of a daily wage subsidy rate using the procedures described in this section.

(h) *Unpredictably timed costs (UTC)* are subsidized by calculating costs incurred during the previous six months and converting them into a daily rate. A lump sum amount would be paid for special lump sum assessments or for per man-day increases to benefits plans which become effective during the six months following the establishment of the daily rate. In either case, the percentage subsidy rate—which is the differential percentage between the subsidizable wage cost and the foreign wage cost—is used to establish the amount of subsidy payable for UTC incurred.

(1) UTC expenses such as severance pay and area bonuses shall be eligible for subsidy payment without obtaining prior approval and subsidy shall be paid as a lump sum amount.

(2) Expenses such as shortfalls in benefit fund contributions, special assessments for benefits funds, and retroactive wage increases may be treated as UTC if the cost increase was not negotiated. Such costs must be approved as UTC by the Director, Office of Ship Operating Costs. To the extent such expenses qualify for UTC, the Director shall determine the appropriate method of paying subsidy—added to the per diem wage subsidy rate and/or as a lump sum amount treated separately.

TABLE 1.—ABC BULK COMPANY, INC.

[Calculation of Wage Subsidy Rates [1]]

Base period	Interim period	U.S. wage cost	Collective bargaining cost	Application of BLS index to base period cost	Averaging in base periods (4)+(5) 2	Appropriate limits
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1981		$4,162.80	$3,850.29			
	1982	$4,578.24	$4,230.15	$3,850.29×1.0645=$4,175.64		.9×(4)=$3,807.14 1.1×(4)=$4,653.17
	1983	$4,578.24	$4,230.15	$3,850.29×1.1816=$4,549.50		.9×(4)=$4,104.34 1.1×(4)=$5,016.42
	1984	$5,539.40	$4,966.90	$3,850.29×1.2992=$5,002.30		.9×(4)=$4,470.21 1.1×(4)=$5,463.59
1985		$6,139.57	$5,504.06	$3,850.29×1.4044=$5,407.35		.95×(4)=$5,228.86 1.05×(4)=$5,779.26

[1] This computation is based on a new vessel entering subsidized service in May 1981.

Base period cost	Subsidizable wage cost	Foreign cost percentage	Foreign wage cost	Wage subsidy daily rate	Wage subsidy percentage rate (12)+(9)
$3,850.9	$3,850.29	32.99	$1,373.24	$2,477.05	64.33
	$4,175.64	32.98	$1,509.90	$2,665.74	63.84
	$4,549.50	32.15	$1,812.49	$2,737.01	60.16
	$5,092.30	34.77	$1,926.05	$3,076.25	61.50
$5,455.71	$5,455.71	33.99	$2,066.84	$3,368.87	61.75

§ 252.32 Maintenance (upkeep) and repairs.

(a) *Basis for subsidy.* The fair and reasonable maintenance and repair costs not compensated by insurance, if eligible for subsidy under the ODSA and the regulations in 46 CFR Part 272, shall be used for determining the daily amount of subsidy. The U.S.-foreign cost differential shall be determined from price estimates of representative items of maintenance and repair work and by using the repair practices of the foreign-flag competition.

(b) *U.S.-foreign cost differential.* MARAD shall use the following procedures for calculating the U.S.-foreign cost differential for M&R.

(1) *Cost survey.* MARAD shall select a sample of jobs which are representative of the various types of maintenance and repair work—drydocking and underwater repairs, machinery repairs, hull and deck repairs, electrical repairs, exterior painting and interior painting, etc. The jobs shall be described fully and combined into a standard set of specifications based on a particular type of vessel. The same specifications shall be used for obtaining all price estimates. MARAD shall request reliable and mutually acceptable ship repair cost experts to ascertain the U.S. and foreign M&R prices. MARAD shall survey foreign countries during a three-year cycle. The survey year prices shall be adjusted in the years between surveys by price adjustments estimated by the ship repair cost experts.

(2) *Country cost differential.* A country cost differential shall be determined for each country where work was performed on the competitive vessels. The country cost differential shall be 100 percent minus the ratio of the estimated foreign price to the U.S. price estimate. The U.S. price estimate shall be representative of the coastal area included in the subsidized service (for example East Coast) or, if more than one coast is served, the coast where the company is home based. For example:

DETERMINATION OF COUNTRY COST DIFFERENTIAL

[Year—1985; U.S. Atlantic—Gulf Coast; Foreign Country—Singapore]

Repair category	Foreign price	U.S. price
Drydocking and Underwater Repairs	$89,840	$300,245
Tank Cleaning and Coating	70,160	77,060
Boiler Repairs	10,545	47,550
Machinery Repairs	22,505	106,165
Hull and Deck Repairs	33,500	99,370
Piping System	71,905	215,830
Electrical Repairs	12,340	38,680
Exterior Painting	5,035	30,640
Interior Painting	390	1,470
Estimate Totals	316,220	917,010

Foreign/U.S. Price Ratio—34%.
Country Cost Differential (100–34)—66%.

(3) *Distribution of repairs.* The distribution of repairs refers to the countries where M&R work was performed on the vessels of the foreign-flag competitor. When data on the repairing practices are obtained directly from the foreign competitor, they shall be used. If information about such practices is unavailable—or only partially available—data, published by the classification societies and Lloyd's Voyage Record, reporting the dates and localities of drydocking and completion of the various types of vessel surveys, shall be used for determining the geographical distribution of the unknown repairing practices. For diesel vessels, there are three basic types of survey—drydocking, machinery, and hull. For steam vessels, there is a fourth survey—boiler—in addition to the other three surveys. Since these surveys may be performed in different countries, they are weighted in order to determine the distribution of repairs. The weighting factors shall be: drydocking—20 percent, machinery—40 percent (10 percent allocated to boiler survey on steam vessels), and hull—40 percent.

(4) *U.S.-foreign cost differential.* The U.S.-foreign cost differential for the foreign-flag competitor shall be determined by multiplying the percentage distribution of repairs for each country where repair work was performed by the country cost differential for that country, and by adding the resulting weighted cost differential for all countries. For example:

ABC BULK COMPANY, INC., U.S.-FOREIGN COST DIFFERENTIAL, 1985

Principal competitor	Distribution of repairs		Country cost differential percent	Weighted cost differentials
	Country	Percent		(1) × (2) (percent)
	(1)		(2)	(3)
Liberia	U.K.	15	19	2.9
	Japan	20	36	7.2
	Singapore	65	57	37.1
U.S.-foreign cost differential				47

(c) *Calculation.* The U.S.-foreign cost differential is applied to the subsidizable maintenance and repair costs to establish the daily M&R subsidy amount.

(1) *Subsidizable costs.* The period used for establishing the subsidizable maintenance and repair costs will generally be a 24- to 36-month period ending in the year prior to the subsidizable year. The length of the period will be the number of months between the last two routine drydockings, and the subsidizable costs will include only the most recent routine drydocking. The costs of each year will be indexed to the subsidized year by the BLS Index of Shipbuilding and Repairing Employment and Average Hourly Earnings. The eligible costs will be divided by the calendar days of the period to establish daily average maintenance and repair costs. The U.S.-foreign differential percentage applicable to the most recent year will be applied to the daily average cost to determine the daily M&R subsidy amount.

(2) *Data submission requirement.* The operator is required to submit an annual certified statement of eligible M&R expenses for each month. The report shall be submitted to the Director, Office of Ship Operating Costs. The report should be submitted not later than sixty (60) days after the close of each calendar year.

§ 252.33 Hull and machinery insurance.

(a) *Subsidy items.* The fair and reasonable net premium costs (including stamp taxes) of hull and machinery, increased value, excess general average, salvage, and collision liability insurance against risks and liabilities covered under the terms and conditions of policies approved as to form and coverage by MARAD, less lay-up returns, shall be eligible for subsidy and used for determining the U.S.-foreign cost differential. Port risk premiums are eligible for subsidy but not for determining the U.S.-foreign cost differential.

(b) *U.S.-foreign cost differential.* A U.S.-foreign cost differential shall be calculated for the service. Due to the difficulty of comparing forms and costs of hull and machinery insurance coverages, the following assumptions shall be used for estimating the composite premium cost of the foreign-flag competitor.

(1) *Coverage.* The foreign competitive vessels have the same types and amounts of insurance coverages and deductible averages as the subsidized vessels.

(2) *Premium rate.* The foreign competitive vessels are insured in the British market and the rate for such vessels is the same as the British market rate for the subsidized vessels. If the operator carries all of its insurance in the American market, the American market rate shall be assumed to be the same as the British market rate.

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(3) *Repairs.* Insurable repairs of the foreign competitive vessels are performed in the same countries and in the same distribution as non-insurable repairs, and the cost differential for such repairs shall be the same as the maintenance and repair percentage differential.

(4) *Particular average.* The percentage of particular average repair claims for the foreign competitive vessels is the same as the percentage of particular average repair claims for the subsidized vessels. The particular average portion of the premium cost for the subsidized vessels shall be determined as follows:

(i) *Percentage.* The particular average portion of the premium cost shall be determined by applying a percentage to the hull and machinery premium cost after deducting the estimated total loss premium. The percentage is based on insured claims experience. The percentage shall be determined by dividing the total of underwriter's absorptions for particular average domestic repair claims paid and estimated by the total of underwriter's absorptions for all claims paid and estimated (excluding total loss and constructive total loss claims) under the hull and machinery portion of the insurance coverage, except that such percentage shall not exceed eighty-five (85) percent. The percentage is based on the claims experience of the subsidized vessels for the five (5) calendar year period preceding the subsidized year. For subsidized operators that do not have five years of claims experience, the average percentage of particular average domestic repair claims for all similar subsidized vessels shall be used unless the operator can submit data to substantiate its own claims cost experience on similar vessels.

(ii) *Data submission requirement.* The operator shall submit the five year claims experience, invoices showing net premium costs and coverages for the subsidized year, and lay-up returns for the previous year to the Director, Office of Ship Operating Costs, not later than sixty (60) days after the close of each calendar year.

(c) *Calculation.* In calculating the subsidized premium cost, the following steps shall be taken:

(1) The particular average portion of the premium cost shall be adjusted in order to give effect to the repair cost differential for the foreign competitive vessels by applying the complement of the maintenance and repairs percentage cost differential (100 percent minus the differential) to the particular average portion of the premium cost. The adjusted particular average foreign premium cost shall be added to the net premium cost excluding the particular average portion to determine the composite foreign premium cost.

(2) The foreign premium cost shall be subtracted from the operator's total premium cost to determine the difference in dollars. The percentage differential is determined by dividing the dollar difference by the operator's total premium cost. An example calculation is included in Table 2.

(3) The net premium cost of the subsidized vessels shall be divided by the number of days in the calendar year and the resultant daily insurance cost shall be multiplied by the U.S.-foreign cost differential percentage applicable to the most recent year to determine the daily amount of subsidy for hull and machinery insurance.

Table 2.—ABC Bulk Company, Inc., U.S./Foreign Cost Differential for Hull and Machinery Insurance—1985

1. Foreign Premium Cost:		
A. Hull and Machinery, Total coverage	$92,741,996	
Average Premium Rate in British Market	1.00966%	
Premium Cost in British Market		$936,379
(Estimated Total Loss Premium $92,741,966@ .46500% [1]	431,250)	
B. *Increased Value,* Total Coverage	1,083,325	
Average Premium Rate in British Market	.32550%	
Premium Cost in British Market		3,526
C. *Excess Liability,* Total Coverage		None
D. Total Premium Cost if Insured 100% in British Market		939,905
E. *Deduct Particular Average Portion:* $936,379 Less $431,250= $505,129× 62% [2]		313,180

Table 2.—ABC Bulk Company, Inc., U.S./Foreign Cost Differential for Hull and Machinery Insurance—1985—Continued

F. Net Premium Cost Exclusive of Particular Average		626,725
G. *Particular Average Adjustment.*	Worldwide service	
P/A Portion of Premium Cost	$313,180	
M&R Subsidy Rate Complement [3]	84.48%	
Adjusted P/A Foreign Premium Cost	264,574	
Add: Net Premium Cost (Excluding P/A)	626,725	
2. *Foreign Premium Cost*	891,299	
3. *Total Premium Cost to Subsidized Operators*	1,068,998	
4. *Differential in Dollars* [4]	177,699	
5. *U.S.–Foreign Cost Differential* [5]	16.62%	

[1] Estimated gross total loss rate adjusted for broker's discounts, policy tax and other costs, as necessary.

[2] Percentage of particular average.

[3] 100% minus M&R subsidy rate of the same calendar year.

[4] Line 3 less line 2.

[5] Line 4 divided by line 3.

§ 252.34 Protection and indemnity insurance.

(a) *Subsidy items.* Items eligible for determination of subsidizable costs and the U.S.-foreign cost differential are:

(1) *Premiums.* The fair and reasonable net premium costs (including stamp taxes) of protection and indemnity, excess insurance, second seamen's insurance, "tovalop" or other forms of pollution insurance, bumbershoot (only that portion identified as applicable to P&I insurance), cargo liability if excluded from the primary policy, supplemental calls against liabilities covered under the terms and conditions of policies approved as to form and coverage by MARAD, less lay-up return premiums, shall be eligible for subsidy and used for determining the U.S.-foreign cost differential.

(2) *Deductibles.* The fair and reasonable cost of crew claims paid by and pending with the operator under the deductible provision of the protection

and indemnity insurance policy approved as to form and coverage by MARAD, to the extent that such cost would have been paid by the insurance underwriter under the terms of the policy, except for the fact that it did not exceed the deductible provision of the policy, shall be eligible for subsidy. For subsidy purposes, the deductible absorption shall not exceed $50,000 for each accident or occurrence, provided however, that benefits paid on unearned wages, if excluded from coverage under the protection and indemnity insurance policy, shall be eligible, notwithstanding that the deductible provisions of the policy may be exceeded.

(b) *Assumptions made in calculation.* For purposes of determining subsidy for protection and indemnity insurance, it shall be assumed that the cost differential between the subsidized vessels and the foreign competitive vessels is limited to those portions of premium costs and deductible absorptions which are related to crew liability and that the cost of all other liabilities is the same for both the subsidized vessels and the foreign competitive vessels.

(c) *Calculation.* The following is the method of calculating the U.S.-foreign cost differential for premiums:

(1) *General.* A differential shall be calculated for the service of the vessels. Since the premium cost for all other liabilities is assumed to be the same for both the U.S. and foreign competitive vessels, the calculation of the differential for protection and indemnity insurance premiums is in effect based on the difference between U.S. and foreign premium costs for crew liabilities. Premium costs are determined in costs per gross registered ton (GRT).

(2) *Reporting requirement.* The operator shall submit the total premium cost for the subsidized year, plus any supplemental calls and lay-up return premiums not previously reported, to the Director, Office of Ship Operating Costs, not later than 60 days after the beginning of such year. The data shall be supported by invoices from the insurance underwriter.

(3) *U.S. crew liability cost.* the crew liability portion of the total premium cost shall be determined by applying a percentage to the total premium cost based on five (5) years of claims experience for the five years commencing six years prior to January 1 of the subsidized year. The percentage shall be determined by dividing the total of underwriter's absorptions for crew claims, paid and estimated, by the total of underwriter's absorptions for all claims, paid and estimated. The crew claims portion shall be limited to eighty-five (85) percent unless the operator can substantiate a higher percentage as a result of having crew liability and all other liabilities insured with different underwriters. The operator shall submit the five-year claims experience not later than 60 days following the close of each calendar year.

(4) *All other liabilities cost—U.S. and foreign.* The all other liabilities portion of the U.S. premium cost shall be determined by subtracting the crew liability portion from the total premium cost. The same cost shall be used for the all other liabilities portion of the foreign-flag competitor's premium cost.

(5) *Foreign crew liability cost.* The crew liability cost of each principal foreign-flag competitor shall be used, if reliable cost data can be obtained. If such data cannot be obtained for a principal competitor, and it is determined that such competitor has a non-national crew, the crew liability cost for similar vessels registered under the flag of the crew's nationality may be used, at the Board's discretion, provided reliable cost data are obtained. If no reliable cost data are obtained for a competitor, the crew liability cost for that competitor shall be estimated by multiplying the subsidized operator's crew liability portion of the total premium cost by the ratio of that competitor's wage costs (FC) to the subsidized operator's wage costs (WC), as determined in the calculation of the wage differential.

(6) *U.S.-Foreign cost differential.* The U.S.-foreign cost differential shall be the excess of the operator's total premium cost over the principal foreign-flag competitor's estimated total premium cost, expressed as a percentage, calculated in the following manner.

ABC BULK COMPANY, INC., PROTECTION AND INDEMNITY INSURANCE PREMIUMS, 1985

Premium cost (per GRT)	United States	Liberia
Crew liability	[1] $3.98	[2] $1.27
All other liability	$1.06	$1.06
Total cost	$5.04	$2.33
Differential—Excess of U.S. cost over foreign cost		$2.71
U.S.-foreign cost differential (pct)		53.77

[1] Determined by applying 79.03% (based on 5-year claims experience) to total GRT premium rate of $5.04.

[2] Crew Liability data obtained by Maritime Administration.

NOTE.—The unweighted percentage of foreign to U.S. wage costs would be used to estimate the foreign cost if the foreign crew liability data were not available.

(d) *Daily subsidy rate.* The daily subsidy rate shall be calculated in the following manner:

(1) *Premiums.* The net premium costs per calendar day for the subsidized year shall be multiplied by the U.S.-foreign cost differential percentage determined for the most recent year. The product shall be the daily amount of subsidy for P&I premiums.

(2) *Deductibles.* (i) The eligible illness and injury crew claims paid and pending for each calendar year of a three-year period commencing six years prior to January 1 of the subsidized year, shall be recalculated, if necessary, to reflect the operator's current deductible levels. These expenses, after audit, shall be multiplied by the percentage wage differential, and determined in the calculation of wage subsidy for the appropriate fiscal period. The resulting calendar period P&I deductible subsidy for the three-year period shall be divided by the voyage days for the period to arrive at an aggregate daily P&I deductible subsidy. The aggregate fiscal period wage subsidy accrued for the three-year period shall be divided by the voyage days for the period to arrive at an aggregate daily wage subsidy amount. The aggregate daily P&I deductible subsidy for the three-year calendar period shall be divided by the aggregate daily wage subsidy for the three-year period. The P&I deductible differential shall be divided by the fiscal period wage differential in the service for the three-year period, and the resulting percentage shall be applied to the wage per diem calculated for each ship type in the service to derive the daily amount of subsidy for P&I deductibles. As to pending claims previously recognized in the historical period, only the amount of changes in cost with respect to such claims shall be subsequently recognized. The following methodology shall determine subsidy for P&I deductibles.

DETERMINATION OF DAILY AMOUNT OF SUBSIDY FOR P&I DEDUCTIBLES

Item	Calendar year 1979	Calendar year 1980	Calendar year 1981	Total
P&I deductible C.Y. expenses	$1,680,000	$1,220,000	$1,400,000	
Diff. foreign/U.S. wage cost (pct)	26.00	23.00	20.00	
Subsidy	$436,800	$280,600	$280,000	$997,400
Voyage days	1,140	1,100	1,225	3,465

Average subsidy per voyage day ($997,400÷3,465 days)=$287.85.

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	Fiscal year 1979	Fiscal year 1980	Fiscal year 1981	Total
Wages fiscal year per diem rate	$7,660	$7,700	$8,050	
Voyage days	1,090	1,180	1,230	3,500
Subsidy	$8,349,400	$9,086,000	$9,901,500	$27,336,900

Average subsidy per voyage day ($27,336,900 ÷ 3,500 days) = $7,810.54.
Ratio P&I deductible ODS to wage ODS $287.85 ÷ $7,810.54 = 3.69%.

T.R. 98 ship type	Daily wage ODS 1/1/85	Ratio P&I ded. to wage ODS (pct)	Daily P&I ded. ODS 1/1/85
C4-A	$9,000	×3.69	$332.10
C5-B	9,300	×3.69	343.17
C6-C	9,600	×3.69	354.34

(ii) In cases where national insurance schemes cover crew claims costs in their entirety, resulting in no cost to the foreign competitor for deductible absorptions, the composite percentage differential for wages shall be adjusted by substituting a zero cost for such foreign competitor in the calculation of the differential. The adjustment of the wage percentage differential shall not be used for Japan, where operators incur minimal costs for deductible absorptions, rather than no costs. For Japan, the insurance related costs which are normally included in the calculation of Japanese wage costs shall be excluded in adjusting the wage percentage differential for this purpose.

(3) *Data submission requirement.* The operator is required to submit annually a certified statement of eligible and audited crew claims as identified in paragraph (d)(2) of this section for the historical period identified therein. The report shall be submitted to the Director, Office of Ship Operating Costs, no later than January 1 of the subsidized year.

12. Section 252.40 is revised to read as follows:

§ 252.40 Payment of subsidy.

Submission of voucher. At the close of each calendar month, the subsidized operator may submit a voucher, and include for payment in such voucher the amount of ODS accrued for the voyages terminated during the period.

13. Section 252.41 is revised to read as follows:

§ 252.41 Subsidy billing procedures.

(a) *Subsidy voucher*—(1) *Form.* Requests for payment of ODS shall be submitted on a public voucher, Standard Forms 1034 and 1034A, which can be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC. 20402.

(2) *Copies.* The operator shall submit the original and 3 copies of the voucher to the MARAD Region Director for payment. The original and 2 copies must be supported by schedules and an affidavit. The third copy is the payee's copy and need not be supported.

(b) *Schedules and affidavit.* (1) The following schedules shall be used for calculating the amount of ODS payable:

Schedule A

(Company) ————————
ODSA No. ————————
ODS Accrued During Fiscal Year 19—
ODS Payable for the Month of ———

	Current voucher	Previous voucher	Total
Total accrued ODS (sched. B)	$———		
Les ODS reductions: reduced crew (sched. C)	———		
Net ODS accrued	———	$———	$———
Less previous payments			———
ODS payable			———

Schedule B

(Company) ————————
ODS Accrued for the Month of ———

Vessel name	Voy. No.	Voyage dates		Voy. days	Per diem rates	Accrued subsidy
		From	To			
					$———	$———
ODS payable for unpredictably timed expenses not included in daily amount (attach supporting supporting information)						$———
Total accrued subsidy (enter on Schedule A)						$———

Schedule C

(Company) ————————

REDUCED CREW PERIODS

Vessel	Reduced crew dates		No. of reduced crew days (a)		No. of crew reduced		Man-days		Man-day amount		Reduced crew reduction
	From	To									
				×		=		×	$———	=	$———
				×		=		×	———	=	———
				×		=		×	———	=	———
				×		=		×	———	=	———
Total reduced crew reduction (enter on Schedule A)									———		

(a) If licensed crew, indicate (a).
(b) If unlicensed crew, indicate (b).

(2) A notorized affidavit as shown below shall be signed by an official of the subsidized operator who is familiar with the ODSA, these regulations, the operation of the subsidized vessel, and the accounts, books, records, and disbursements of the subsidized operator relating to such operation:

Affidavit

State of ————————
City of ————————
County/Parish of ————————

I, ———, being duly sworn, depose and say that I am ——— (title) of the ——— (herein referred to as the "Operator"), and as such am familiar with (a) provisions of the Operating-Differential Subsidy Agreement, Contract No. ———, dated as of ———, as amended, to which the Operator is a party; and (b) the regulations governing the payment of operating-differential subsidy for bulk cargo vessels, PART 252, Title 46, CFR; and (c) the operation of the vessels covered by said Agreement and regulations; and (d) the accounts, books, records, and disbursements of the Operator relating to such operation.

Referring to the public voucher dated ——, covering voyage days allowed for subsidy during the periods commencing ——, and ending ——, and attached, submitted by said Operator concurrent herewith for a payment on account in the sum of ——, under said Agreement, I further depose and say that, to the best of my knowledge and belief, the Operator has fully complied with the terms and conditions of said Agreement and regulations, applicable orders, rulings and provisions of the Merchant Marine Act, 1936, as amended, and is entitled, under the provisions of said Agreement and regulations, orders and rulings applicable thereto, to the amount of the payment on account requested; and further depose and say that the vessels named in the attached schedules were in authorized service for the vessel operating days on which the payment is requested and has not included in the calculation of the amount of subsidy claimed in the attached voucher any costs of a character that the Maritime Administration, or Secretary of Transportation acting by and through the Maritime Subsidy Board or any predecessor or successor, had advised the Operator to be ineligible to be so included, or any costs collectible from insurance, or from any other source.

Payment by the Maritime Administration of all or part of the amount claimed herein shall not be construed as approval of the correctness of the amount stated to have been due, nor a waiver of any right of remedy the Maritime Administration, or Secretary of Transportation, acting by and through the Maritime Subsidy Board, or any predecessor or successor, may have under the terms of said Agreement, or otherwise.

I further depose and say that this affidavit is made for and on behalf and at the direction of the Operator for the purpose of inducing the Maritime Administration to make a payment pursuant to the provisions of the aforesaid Operating-Differential Subsidy Agreement, as amended.

Subscribed and sworn to before me, a Notary Public, in and for the aforesaid County and State, this —— day of ——,
My commission expires ——
Notary Public ——

(3) The subsidized operator shall furnish its own supply of supporting schedules and affidavit.

14. Section 252.42 is revised as follows:

§ 252.42 Appeals procedures.

(a) *Appeals of annual or special audits.* An operator who disagrees with the findings, interpretations or decisions in connection with audit reports of the Office of the Inspector General and who cannot settle said differences by negotiation with the Contracting Officer may submit an appeal to the Maritime Administrator from such findings, interpretations or decisions in accordance with Part 205 of this chapter.

(b) *Appeals of administrative determinations.*—(1) *Policy.* An operator who disagrees with the findings, interpretations or decisions of the Contracting Officer with respect to the administration of this part may submit an appeal from such findings, interpretations or decisions as follows:

(i) Appeals shall be made in writing to the Secretary, Maritime Subsidy Board, Maritime Administration, within 60 days following the date of the document notifying the operator of the administration determination of the Contracting Officer. In his appeal to the Secretary the operator shall indicate whether or not he desires a hearing.

(ii) The appellant will be notified in writing if a hearing is to be held and whether he is required to submit additional facts for consideration in connection with the appeal.

(iii) When a decision has been rendered by the Board, the appellant will be notified in writing.

(2) *Appeal to the Secretary of Transportation.* An operator who disagrees with the Board may appeal such findings and determinations by filing a written petition for review of the Board's action with the Secretary of Transportation. The petition shall be filed in accordance with provisions of the Department of Transportation pertaining to Secretarial review.

(3) *Hearings,* The Rules of Practice and Procedures, 46 CFR Part 201, Subpart M, shall be followed for all hearings granted under 46 U.S.C. 1176 and 46 CFR 252.42.

By order of the Maritime Administrator.

Dated: October 31, 1986.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 86-24977 Filed 11-6-86; 8:45 am]

BILLING CODE 4910-81-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-26; RM-5113]

Radio Broadcasting Services; Fresno, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 257A to Fresno, California, as that community's eighth commercial FM service, in response to a petition filed by New Life Enterprises, Inc.

With this action, this proceeding is terminated.

EFFECTIVE DATE: December 1, 1986; The window period for filing applications will open on December 2, 1986, and close on December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-26, adopted September 26, 1986, and released October 23, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202, (b) the table of allotments is amended by adding Channel 257A to the entry for Fresno, California.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-25156 Filed 11-6-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-17; RM-4973]

Radio Broadcasting Services; Kings Beach, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 299A to Kings Beach, California, as that community's first local FM broadcast service, in response to a petition filed by Eric R. Hilding.

With this action, this proceeding is terminated.

EFFECTIVE DATE: December 1, 1986; the window period for filing applications will open on December 2, 1986, and close on December 31, 1986.

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FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, (202) 634–6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–17, adopted September 30, 1986, and released October 23, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of Allotments is amended by adding Kings Beach, Channel 299A, under California.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–25157 Filed 11–6–86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85–379; RM–5091]

Radio Broadcasting Services; Franklin, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 269A to Franklin, Virginia, as that community's first FM service at the request of Franklin Broadcasting Corporation. A site restriction of 6.6 kilometers (4.1 miles) west of the community is required. The window periods for filing applications on Channel 269A will be announced at a later date. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 1, 1986.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85–379, adopted September 26, 1986, and released October 23, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202 (b), the table of allotments, the entry for Franklin, Virginia is amended to add Channel 269A.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–25158 Filed 11–6–86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket 85–90; FCC 86–433]

Broadcast Services; Directional Antenna Proof of Performance Measurements and Design Specifications; Petitions for Reconsideration

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: This action is taken in response to petitions for reconsideration of the *Report and Order* (*Report*) in this proceeding, (50 FR 47051, November 14, 1985). That decision deregulated the rules requiring proof of performance measurements (proofs) by AM stations using directional antennas (DAs). The *Report* also deleted from the Rules criteria for antenna monitor sampling system approval. This action reaffirms that decision.

EFFECTIVE DATE: November 24, 1986.

FOR FURTHER INFORMATION CONTACT: John Wong or John Reiser, Policy and Rules Division, Mass Media Bureau, (202) 632–9660.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order* in MM Docket 85–90, adopted, October 6, 1986, and released October 17, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. The *Report* in this proceeding deregulated the rules for AM–DA operation. Petitions for reconsideration of that decision were filed by The Association of Federal Communications Consulting Engineers (AFCCE) and by du Treil-Rackley Consulting Engineers (du Treil-Rackley).

2. First, the *Memorandum Opinion and Order* (*Order*) denies the AFCCE petition. That petition sought amendment of the Rules to sanction the use of nondirectional measurements in performing partial proofs. The *Order* finds it unnecessary to incorporate such an acknowledgement into the Rules.

3. Second, the Commission denies a request of du Treil-Rackley to reinstate the criteria defining an acceptable sampling system, as the deleted information can easily be obtained in a public notice. The *Order* does, however, add a Note to the Rules explaining to all interested parties the existence of the public notice.

Regulatory Flexibility Information

4. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that this action will not have a significant economic impact on a substantial number of small entities because it does not adopt significant Rule amendments.

5. The Secretary shall cause a copy of this *Memorandum Opinion and Order*, including the Final Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of Small Business Administration, in accordance with section 603(a) of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq*), (1981).

Paperwork Reduction Act Statement

6. The *Memorandum Opinion and Order* contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new modified form, information collection and/or recordkeeping, labeling, disclosure, or

record retention requirements; and will not increase or decrease burden hours imposed on the public.

Ordering Clauses

7. Accordingly, It Is Ordered, That the petition for reconsideration filed by the Association of Federal Communications Consulting Engineers Is Denied.

8. It Is Further Ordered, That the petition for reconsideration filed by du Treil-Rackley Is Granted to the extent specified above, and Is Denied in all other respects.

9. It Is Further Ordered, That Part 73 of the Commission's Rules Is Amended as set forth below, effective November 24, 1986.

10. It Is Further Ordered, That this proceeding Is Terminated.

11. Authority for these actions is contained in sections 4, and 303 of the Communications Act of 1934, as amended.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Amendatory Text

47 CFR Part 73 is amended as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, and 405.

2. Section 73.68 is amended by adding a Note following paragraph (b) to read as follows:

§ 73.68 Sampling systems for antenna monitors.

* * * * *

(b) * * *

Note.—A public notice giving additional information on approval of antenna sampling systems is available upon request from the FCC's current copy contractor.

* * * * *

William J. Tricarico,
Secretary.

[FR Doc. 86-25155 Filed 11-6-86; 8:45 am]

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Proposed Rules

Federal Register
Vol. 51, No. 216
Friday, November 7, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 335

Promotion and Internal Placement

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: The Office of Personnel Management (OPM) proposes to amend its regulations on promotion and internal placement. This amendment is being proposed together with a major revision of chapter 335 of the Federal Personnel Manual (FPM). These changes are intended to preserve basic management rights and flexibilities, emphasize cost effectiveness over procedural complexity, and ensure adherence to basic merit principles. The corresponding FPM chapter was submitted to agencies and employee organizations for comment in July, 1985. A copy of the chapter, which contains specific policies, advice, and guidance to agencies amplifying these regulations, is available upon request from the contact office below.

DATE: Comments must be submitted on or before January 6, 1987.

ADDRESS: Send or deliver comments to Don Holum, Chief, Staffing Policy Analysis Division, Office of Personnel Management, Room 6504, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Raleigh M. Neville, (202) 632-6817.

SUPPLEMENTARY INFORMATION: OPM is proposing to revise and strengthen its regulations and instructions to agencies governing promotion and competitive internal placement actions in the competitive civil service by amending this part and FPM chapter 335. The following are among the more important changes being proposed.

a. Area of consideration is revised to specify that it is a geographical and/or organizational area which must be as broad as practicable and applies only to actions for which competition is required.

b. Agency promotion plans must provide for open competition and may not, *as a matter of policy,* exclude "outside" candidates. (Consideration may be restricted for individual promotion actions).

c. Agencies may not give unwarranted first consideration for promotion to a particular group of employees.

d. Performance appraisals must be given significant weight in evaluating candidates for promotion. No employee may be promoted unless his or her most recent rating of record is "Fully Successful" or higher.

e. The content of the crediting plans and the weight assigned to individual factors in evaluating candidates for promotion must be based on the actual requirements of the job to be filled and are entirely within management's discretion to determine.

f. The decisions of if and when to promote rest with agency management. Agencies may not adopt policies that allow virtually automatic promotions upon meeting time-in-grade requirements, but must make promotion decisions in each individual case based on qualifications, performance, availability of higher grade work, budget, and other management considerations.

g. The selecting official may select, or non-select, from any appropriate source of candidates, at any point in the selection process.

h. To prevent abuse, controls are placed on reclassification actions involving a change in duties.

i. An exception from competition is allowed for repromotion to any grade formerly held under nontemporary appointment provided the employee was not separated or demoted for cause.

j. Agencies are allowed to make term promotions without coming to OPM.

k. An employee serving under a term or temporary promotion may be returned to his or her former grade level at any time without adverse action or reduction in-force procedures.

l. Corrective action must be based on the loss of an opportunity or benefit.

m. Employees may not grieve nonselection for promotion or reassignment from a group of properly ranked and certified candidates, or failure to receive a noncompetitive promotion.

The provisions of the current § 335.101, effect of position change on status and tenure, are beng removed from this part and will be included in Part 212 at a later date.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined by section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal Employees.

List of Subjects in 5 CFR Part 335

Government employees.

U.S. Office of Personnel Management.
Constance Horner,
Director.

Accordingly, OPM proposes to revise Part 335 of title 5, Code of Federal Regulations, as follows:

PART 335—PROMOTION AND INTERNAL PLACEMENT

Subpart A—General Provisions

Sec.
335.101 Agency authority to promote, demote, and reassign.
335.102 Agency promotion and placement plans.
335.103 Eligibility for promotion.
335.104 Requirements for competition.
335.105 Exceptions from competition.
335.106 Evaluating candidates.
335.107 Corrective actions.
335.108 Appeals and grievances.

Authority: 5 U.S.C. 3301, 3302, E.O. 10577.

Subpart A—General Provisions

§ 335.101 Agency authority to promote, demote, and reassign.

Subject to § 335.102, an agency may:

(a) Promote, demote, or reassign career and career-conditional employees.

(b) Reinstate or transfer career and career-conditional employees in accordance with Part 315 of this chapter.

(c) Promote, demote, or reassign overseas limited employees who are not serving under temporary appointments limited to 1 year or less to any position to which an initial appointment of the same type is authorized by Part 301 of this chapter.

(d) Promote, demote, or reassign status quo employees.

(e) Promote, demote, or reassign term employees to any position that may properly be filled by term appointment.

(f) Promote, demote, or reassign, or transfer Veterans' Readjustment Authority appointees as prescribed in Part 307 of this chapter.

(g) Promote, reassign, or transfer student appointees in career-related work study programs authorized under E.O. 12015.

(h) Reassign employees serving under a temporary appointment pending establishment of a register (TAPER) to any position to which the individual's original appointment could have been made under the same authority by the same appointing office, from the same recruiting list, in the same order of consideration.

(i) Promote, demote, reassign or transfer worker-trainee TAPER employees.

(j) Make temporary promotions to meet a temporary need, or term promotions for purposes of participation in a designated project or planned rotation program, for any period up to a maximum of 4 years. The employee must be informed in writing that the promotion is for a specified term and that return to the former grade may be effected at any time and is not subject to the procedures set forth in Parts 351, 432, 752, or 771 of this chapter. Extensions beyond 4 years require OPM approval. However, a temporary or term promotion, or any combination thereof, may not last longer than a total of 5 years.

§ 335.102 Agency promotion and placement plans.

Promotion and placement actions under § 335.101 must conform to the requirements of this part and to implementing material published by OPM in Chapter 335 of the Federal Personnel Manual. Each agency must adopt a plan, designed to ensure a systematic means of selection according to merit, which meets the following criteria:

(a) *Nondiscrimination.* Provides for consideration and selection without regard to political, religious, or labor organization affiliation or nonaffiliation; marital status; race; color; sex; national origin; nondisqualifying handicap; age; or other nonmerit factor.

(b) *Open competition.* Provides for open competition and consideration of candidates from a varity of sources—including outside the agency—consistent with principles of good management and merit selection. Agencies may not adopt policies which give unwarranted first consideration to a particular group of employees.

(c) *Area of consideration.* Defines the scope of competition, as determined by agency management, which must be as broad as practicable within a geographic and/or organizational area.

(d) *Rights of selecting official.* Preserves the right of the selecting official to select or not select from any appropriate source at any point in the selection procecess.

(e) *Promotion decisions.* Preserves management's discretion to determine if and when to promote an employee. This applies to all situations that may involve promotion, including career ladder promotions, reclassification actions, and details to higher graded jobs.

§ 335.103 Eligibility for promotion.

No employee shall receive a promotion unless his or her most recent rating of record for the current position under Part 430 of this chapter is "Fully Successful" (level 3) or higher. In addition, no employee may receive a promotion who has a rating below "Fully Successful" in a critical element that is also critical to performance in the higher grade position.

§ 335.104 Requirements for competition.

Unless an exception is allowed under § 335.105, competition is required for promotions, transfers, or reinstatements to a higher grade; reassignments, transfers, or demotions to positions with more promotion potential; selection for training which leads to promotion; term promotions; temporary promotions which exceed 120 days; and details of more than 120 days to higher graded jobs or to positions with more promotion potential.

§ 335.105 Exceptions from competition.

Competition does not apply to the following in-service placement actions:

(a) Career promotions where an employee occupies a grade level below the established full performance level of the position;

(b) Reclassification actions due to issuance of a new classification standard or correction of a classification error;

(c) Reclassification actions in which additional duties and responsibilities result in the position being classified at a higher grade and the employee continues to perform the same basic functions, the duties of the former position are administratively absorbed into the new position, the new position has no known promotion potential, and the additional duties and responsibilities do not adversely affect another encumbered position. This exception may not be used to promote a nonsupervisor to a supervisor when the supervisory duties are the sole basis for upgrading the position;

(d) Permanent promotion to a position held under temporary or term promotion or detail when the assignment was originally made under competitive procedures and it was made known to all competitors that it might lead to permanent promotion, and the area of consideration is the same as it would have been for a permanent promotion;

(e) Reinstatement of a former career or career conditional employee who has served under a career SES appointment;

(f) Placement as a result of priority consideration when a candidate was not previously given proper consideration in a competitive promotion action;

(g) Placement under Part 351 in a position with more promotion potential or to a different pay system in which the employee receives higher pay;

(h) Repromotion or transfer to a grade previously held under a nontemporary appointment in the competitive service except when the employee was demoted for cause.

(i) Reassignment to a position with more promotion potential in lieu of disability retirement; and

(j) Promotion resulting from successful completion of a training program which is required for promotion or given primarily to prepare an employee for advancement.

§ 335.106 Evaluating candidates.

(a) *General principles.* To ensure that selection and advancement is based on relative ability, knowledges, and skills, procedures used to assess candidates for placement under this part must be job related, capable of distinguishing differences in the qualifications measured, and applied in a fair and consistent manner.

(b) *Crediting plans.* The content of crediting plans (or other methods of evaluating candidates) and the weight given each factor must be determined on the basis of the requirements of the job to be filled. Agencies must use multiple measures to determine candidate qualifications. Significant weight must be given to performance appraisals.

§ 335.107 Corrective actions.

Corrective actions are intended to redress an improper personnel action or other violation under this part. Any corrective action regarding an individual must be directly linked to the loss of a specific opportunity or benefit.

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§ 335.108 Appeals and grievences.

(a) Appeals. There is no right to appeal an action under this part.

(b) Grievances. Employees may not grieve nonselection under this part from a group of properly ranked and certified candidates, or failure to receive a noncompetitive promotion.

[FR Doc. 86-25296 Filed 11-6-86; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 425

[Amendment No. 1; Doc. No. 0105A]

Peanut Crop Insurance Regulations; Withdrawal of Proposed Rulemaking

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Withdrawal of Notice of Proposed rulemaking.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby publishes this notice for the purpose of withdrawing a Notice of Proposed Rulemaking (NPRM) amending the Peanut Crop Insurance Regulations (7 CFR Part 425), effective for the 1987 and succeeding crop years. FCIC has determined that giving insureds more time to qualify for a higher amount of insurance would result in adverse selection against the insurance company and that the change is unnecessary and contrary to the basic concept underlying the insurance program. The authority for the promulgation of this notice is contained in the Federal Crop Insurance Act, as amended.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: On Wednesday, August 27, 1986, FCIC published a Notice of Proposed Rulemaking in the **Federal Register** at 51 FR 30497, proposing to amend the Peanut Crop Insurance Regulations (7 CFR Part 425), effective for the 1987 and succeeding crop years. The public was given 30 days in which to submit written comments on the proposed rule.

One comment was received by the Crop-Hail Insurance Actuarial Association (CHIAA) expressing opposition to the proposed change of allowing a producer until the acreage reporting date to sign sales contracts. CHIAA contends that the current conditions allow a producer sufficient time to establish an insurance contract at the time of planting. CHIAA also expressed opposition to the change that would give insureds more time to qualify for a higher amount of insurance contending that such a change would allow adverse selection against the insurance company.

FCIC has determined that giving insureds more time to qualify for a higher amount of insurance would result in adverse selection against the insurance company and that the change is unnecessary and contrary to the basic concept underlying the insurance program.

For the reasons stated above, the Notice of Proposed Rulemaking, published on Wednesday, August 27, 1986 (51 FR 30497) is hereby withdrawn.

Done in Washington, DC on October 23, 1986.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-25280 Filed 11-6-86; 8:45 am]

BILLING CODE 3410-08-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

Requirements for Criminal History Checks

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) proposes to add a new regulation to implement a program for the control and use of criminal history data received from the Federal Bureau of Investigation (FBI) as part of criminal history checks of individuals granted unescorted access to nuclear power facilities or access to Safeguards Information by nuclear power reactor licensees. Conducting criminal history checks of such individuals will help assure that individuals with criminal histories impacting upon their reliability and trustworthiness are not permitted unescorted access to a nuclear power facility or access to Safeguards Information. Issuance of this regulation is required under the provisions of Pub. L. 99-399, "Omnibus Diplomatic Security and Anti-Terrorism Act of 1986."

DATES: Submit comments by December 8, 1986. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given unless comments are received on or before this date.

ADDRESSES: Send comments to: Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Deliver comments to: Room 1121, 1717 H Street NW., Washington, DC, between 8:15 a.m. and 5:00 p.m.

Examine comments received and the regulatory analysis at: the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Kristina Jamgochian, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 427-4754.

SUPPLEMENTARY INFORMATION: Section 606 of Pub. L. 99-399, "The Omnibus Diplomatic Security and Anti-Terrorism Act of 1986," requires nuclear power reactor licensees and applicants to conduct criminal history checks through the use of FBI criminal history data on individuals with unescorted access to nuclear power facilities or access to Safeguards Information. The Act, signed by the President on August 27, 1986, requires the NRC to issue regulations to establish conditions for the use and control of the criminal history data received from the FBI no later than six months after the date of the enactment of the Act. These conditions include procedures for the taking of fingerprints, limits on use and redissemination of criminal history data, assurance that the information is used solely for its intended purpose, and provisions that individuals subject to fingerprinting are provided the right to complete, correct, and explain information in their criminal history records prior to any final adverse action.

The Conference Report on H.R. 4151 (published in the Congressional Record on August 12, 1986, p. H-5965) contains the following legislative history:

Criminal History Record Checks

> The Senate amendment (Section 703) contains a provision requiring fingerprinting and criminal history record checks for certain employees of nuclear power plants.
>
> The House bill contains no comparable provision.
>
> The conference substitute (Section 606) is similar to the Senate amendment with some modifications. The substitute, which incorporates the substance of S. 274, passed by the Senate on October 3, 1985, adds a new section to the Atomic Energy Act of 1954 which is intended to establish a uniform procedure for criminal history checks, applicable to all commercial licensees, regardless of ownership.
>
> The Committee of Conference agrees that the Nuclear Regulatory Commission (NRC)

> would serve as a channeling agency, in order to collect fingerprint cards from licensees and applicants, forward them to the Federal Bureau of Investigation for identification and a criminal history record check, and distribute the results of the search to the licensees and applicants. The NRC will not screen the results. It will, however, be responsible for checking incoming cards to ensure that they are complete and legible and have been submitted by a licensee or applicant entitled to receive criminal history information under this law. The NRC may refuse to accept requests from, or return results to, a licensee or applicant the Commission finds is mishandling or misusing information obtained under this provision.
>
> The conference substitute specifies that the regulations the Commission is to promulgate under this section must include provisions to ensure that no final adverse action may be taken against an employee or job applicant solely on the basis of information obtained under this section involving an arrest more than 1 year old for which there is no information of the disposition or an arrest that resulted in dismissal of the charge or an acquittal. A licensee or applicant receiving a criminal record showing an arrest not accompanied by a disposition may seek to determine the disposition of the charge, but if no disposition information can be obtained, the arrest cannot be used as the basis for adverse action.
>
> The conference substitute also specifies that the Commission's regulations must protect individuals subject to fingerprinting from misuse of criminal history records provided under the section. Misuse would include, for example, use of the records to discriminate against minorities or to penalize union members or whistleblowers or to accomplish any other unlawful purpose. As the Senate indicated in its report on S. 274, the statutory requirements for the Commission's regulations are minimum requirements and are not meant to limit the discretion of the Commission to implement a practical program for carrying out the purposes of the section and protecting the due process and privacy interests of prospective employees.
>
> The Committee of Conference also added language authorizing the Commission to collect and retain fees for its services as channeling agency. The FBI already has established and is authorized to collect fees for its processing non-criminal justice fingerprint checks. It is the intent of the Committee of Conference that this language ensures that the FBI will be able to collect its normal fee for the work it will do in processing record checks under this provision.

Licensees cannot have access to the criminal history data provided by the legislation until the NRC has established regulations for the control and use of the data. In accordance with the Act, the NRC will only collect fingerprint cards, forward them to the FBI, and distribute the results of the search. The NRC will not maintain any new files of information or system of files to contain either fingerprint cards or the results of the search. Only those records necessary for administering the program will be kept. The routine turnaround time for a criminal history check, from the time the licensee mails the fingerprint card to the NRC to the time the licensee receives the returned fingerprint card with the results of the criminal history check, is expected to average 25 working days.

The legislation requires nuclear power reactor licensees and applicants to conduct criminal history checks on individuals with unescorted access to nuclear power facilities or access to Safeguards Information. However, current regulations do not require protection measures against radiological sabotage until issuance of an operating license. Accordingly, the Commission does not deem it necessary to require fingerprinting of applicant employees for unescorted access to the facility. Applicants who anticipate receiving their operating license in the near future and wish to submit fingerprints of those individuals who will remain on staff after the license is issued may do so in accordance with the provisions of the rule.

Implementation of this rule will take place immediately upon its effective date. The Commission will send to the licensee an initial stock of the necessary fingerprint cards prior to the date of the effective rule, as well as a sample forwarding letter to be used by licensees for transmitting the fingerprint cards and fees to the NRC. The forwarding letter will contain the following information: facility docket number, number of fingerprint cards being submitted, amount of the proper fee being submitted, and the contact person at the facility along with his/her phone number. (The fingerprint cards and the results of the criminal history checks, when completed, will be sent to the licensee to the attention of the contact person.) In accordance with the Act, the fee will be utilized to offset NRC and FBI costs for processing of fingerprints and criminal history records.

Within 180 days of the effective date of this rule, each licensee will return to the Commission, as they are completed, the fingerprint cards of all individuals (licensee, contractors, manufacturers, and suppliers) who are deemed to require unescorted access at the nuclear power facility or access to Safeguards Information. The fingerprint cards are to be filled out completely and the facility docket number shall be included on each individual card in addition to the information required in the space marked "Reason Fingerprinted". To assist the licensee in ensuring a low rejection rate of submitted fingerprint cards, Edison Electric Institute (EEI) and FBI training tapes are available for use in establishing procedures for the proper method of taking fingerprints. Fingerprint cards shall be filed by the licensee on behalf of the contractor, manufacturer, and supplier employees who are expected to haved unescorted access to a nuclear power facility or to Safeguards Information with the appropriate fee attached. NRC personnel requiring unescorted access to the facility do not need to be fingerprinted by the licensee. The Commission conducts an equivalent program for fingerprinting of NRC employees for FBI criminal history checks.

In accordance with the provisions of § 73.57(e) and (f), the licensee will establish procedures for implementing the individual's right to correct, complete, and explain information prior to any adverse action. The licensee will also establish procedures for limiting redissemination of an individual's criminal history record to only those who have a need to have access to the information in performing assigned duties in the process of granting or denying unescorted access to a nuclear power facility or access to Safeguards Information as well as against unauthorized disclosure. Submittal of an amended security plan is not necessary.

During the internal staff review of the proposed rule, a question arose as to whether or not fingerprinting should be required only for unescorted access to vital areas rather than to the nuclear power facility which also includes protected areas. To be consistent with the legislative intent and specific language of Pub. L. 99–399, the staff has written the proposed rule to require fingerprinting of individuals granted unescorted access to the nuclear power facility. Additionally, during the public comment period on the proposed Access Authorization Rule, licensee and industry groups commented that it was more cost effective to run a single access authorization program, especially since the majority of employees needing access to the protected area also required access authorization to one or more vital areas. In the interest of determining whether this view still prevails, specific response is requested during the public comment period to the following question: should fingerprinting be required of individuals for unescorted access to vital areas only or to the nuclear power facility?

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Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3). Therefore neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555. Single copies of the analysis may be obtained from Kristina Jamgochian, Safeguards Reactor Regulatory Requirements Section, Division of Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 427-4754.

Regulatory Flexibility Certification

Based on the information available at this stage of the rulemaking proceeding and in accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that if promulgated, this rule will not have a significant economic impact upon a substantial number of small entities. The proposed rule affects licensees who operate nuclear power plants under 10 CFR Parts 50 and 73. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in § 605(b) of the Regulatory Flexibility Act of 1980, or within the definition of Small Business Size Standards set out in regulations issued by the Small Business Administration in 13 CFR Part 121.

Backfit Analysis

As this rulemaking is based upon a legislative mandate, the need to make a backfit decision is unnecessary.

List of Subjects in 10 CFR Part 73

Hazardous materials—transportation, Incorporation by reference, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendent to 10 CFR Part 73.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

1. The authority citation for CFR Part 73 is revised to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245 (42 U.S.C. 5841, 5844).

Section 73.37(f) is also issue under sec. 301, Pub. L. 96-295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 7.357 is issued under sec. 606, Pub. L. 99-399.

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 73.21, 73.37(g), 73.55 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 73.20, 73.24, 73.25 73.26, 73.27, 73.37, 73,40, 73.45, 73.46, 73.50, 73.55, 73.67, are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 73.20(c)(1), 73.24(b)(1), 73.26(b)(3), (h)(6), and (k)(4), 73.27(a) and (b), 73.37(f), 73.40(b) and 73.46(g)(6) and (h)(2), 73.50(g)(2), (3)(iii)(B), and (h), 73.55(h)2), and (4)(iii)(B), 73.70, 73.71, 73.72 are issued under sec 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. A new § 73.57 is added to read as follows:

§ 73.57 Requirements for criminal history checks of individuals granted unescorted access to a nuclear power facility or access to Safeguards Information by power reactor licensees.

(a) *General.* (1) Each licensee who is authorized to operate a nuclear power reactor under Part 50 shall comply with the requirements of this section.

(2) Each applicant for a license to operate a nuclear power reactor pursuant to Part 50 of this chapter shall submit fingerprint cards for those individuals who have access to Safeguards Information.

(3) Each applicant for a license to operate a nuclear power reactor purusant to Part 50 of this chapter may submit fingerprint cards prior to receiving its operating license for those individuals who will require unescorted access to the nuclear power facility.

(b) *General performance objective and requirements.* (1) Each licensee subject to the provisions fo this section shall fingerprint each individual, except NRC employees and individuals responding to a site emergency in accordance with the provisions of § 73.55(a), who is permitted unescorted access to the nuclear power facility or access to Safequards Information. Individuals who have unescorted access authorization on ——— [1] will retain such access pending licensee receipt of the results of the criminal history check of the individuals' fingerprintes, so long as the cards were submitted by ——— [2]. The licensee will then review and use the information received from the FBI, and based on the provisions contained in this rule, determine either to continue to grant or to deny further unescorted access to the facility or Safeguards Information for that individual. Individuals who do not have unescorted access after ——— [1] shall be fingerprinted by the licensee and the results of the criminal history records check shall be used in making a determination for granting unescorted access to the nuclear power facility.

(2) The licensee shall notify each affected individual that the fingerprints will be used to scure a review of his/her criminal history record.

(3) Fingerprints need not be taken, in the discretion of the licensee, if an individual who is a permanent employee of a licensee, contractor, manufacturer or supplier has been granted unescorted access to a nuclear power facility or to Safeguards Information by another licensee, based in part on criminal history records check under this section. In the case of temporary employees, fingerprints need not be taken so long as the individual has been fingerprinted within the last 180 days.

(4) All fingerprints obtained by the licensee under this seciton must be submitted to the Attorney General of the United States through the Commission.

(5) The licensee shall review the information received from the Attorney General and consider it in making a determination for granting unescorted access to the individual.

(6) A licensee shall use the information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access to the nuclear power facility or access to Safeguards Information.

(c) *Prohibitions.* (1) A licensee may not base a final determination to deny an individual unescorted access to the nuclear power facility or access to Safeguards Information solely upon:

(i) An arrest more than 1 year old for whcih there is no information of the disposition of the case; or

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[1] Insert date of final rule publication in Federal Register.

[2] Insert date 180 days after final rule publication in Federal Register.

(ii) An arrest that resulted in dismissal of the charge or an acquittal.

(2) A licensee may not use information received from a criminal history check obtained under this section in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

(d) *Procedures for processing of fingerprint checks.* (1) For the purpose of complying with this section, licensees shall submit 1 completed, legible standard fingerprint card (Form FD-258) supplied by the NRC for each individual requiring unescorted access to the nuclear power facility or access to Safeguards Information to the Director, Division of Security, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Criminal History Check Section. Copies of these forms may be obtained by writing to: Information and Records Management Branch (PMSS), U.S. Nuclear Regulatory Commission, Washington, DC 20555. The licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

(2) The Commission will review applications for criminal history checks for completeness. Any Form FD-258 containing omissions or evident errors will be returned to the licensee for corrections. No additional fee will be charged for fingerprint cards needed to replace returned incomplete or illegible fingerprint cards if the original fingerprint card is attached to the resubmittal.

(3) Fees for the processing of fingerprint checks are due upon application. Licensees shall submit payment with the application for the processing of fingerprints through corporate check, certified check, cashier's check, or money order made payable to "U.S. NRC", at the rate of $15.00 for each card. Combined payment for multiple applications is acceptable.

(4) The Commission will forward to the submitting licensee all data received from the Federal Bureau of Investigation as a result of the licensee's application(s) for criminal history checks, including the individual's fingerprint card.

(e) *Right to correct and complete information.* (1) Prior to any adverse action, the licensee shall make available to the individual the contents of records obtained from the Federal Bureau of Investigation for the purpose of assuring correct and complete information. Confirmation of receipt by the individual of this notification must be maintained by the licensee for a period of 3 years from the date of the notification.

(2) If after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes changes, corrections, or updating of the alleged deficiency, or to explain any matter in the record, the licensee shall inform the individual of proper procedures for revising the record or including explanation in the record. These procedures include direct application to the agency that contributed the questioned information or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537-9700 as set forth in 28 CFR 16.30 through 16.34. In the latter case, the Federal Bureau of Investigation then forwards the challenge to the agency that submitted the data requesting that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The licensee may not take final adverse action with respect to an individual based solely on information in the record that has been challenged by the individual as incorrect or incomplete until the individual has been afforded a reasonable amount of time to correct, complete, or explain the record or has declined to do so.

(f) *Protection of information.* (1) Each licensee who obtains a criminal history record on an individual under this section shall establish and maintain a system of files and procedures for protection of the record and the personal information from unauthorized disclosure.

(2) The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to have access to the information in performing assigned duties in the process of granting or denying unescorted access to the nuclear power facility or access ot Safeguards Information. No individual authorized to have access to the information may redisseminate the information to any other individual who does not have a need to know.

(3) The personal information obtained on an individual from a criminal history record check may be transferred to another licensee:

(i) Upon the individual's request to redisseminate the information contained in his/her file, and

(ii) If the gaining licensee verifies information such as name, date of birth, social security number, sex, and other applicable physical characteristics for identification, and,

(iii) If the individual was terminated within the previous 365 days, the termination was under favorable conditions.

(4) The licensee shall make criminal history records obtained under this section available for examination onsite by an authorized representative of the NRC to determine compliance with the regulations and laws.

(5) The licensee shall retain all fingerprint cards and criminal history records received from the FBI on an individual (including data indicating no record) for 3 years after termination or denial of unescorted access to the nuclear power facility or access to Safeguards Information.

Dated at Washington, DC this 5th day of November, 1986.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,
Secretary of the Commission.

[FR Doc. 86-25393 Filed 11-6-86; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CAS-RM-79-102]

Energy Conservation Program for Consumer Products; Proposed Rulemaking Regarding Test Procedures for Central Air Conditioners, Including Heat Pumps; Extension of Comment Period

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Extension of comment period.

SUMMARY: The Department of Energy (DOE) hereby extends the comment

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period for the notice of proposed rulemaking regarding test procedures for central air conditioners, including heat pumps, published in the **Federal Register** on October 7, 1986. (51 FR 35736). The comment period is hereby extended to January 30, 1987.

The purpose of this extension of the comment period, to January 30, 1987, is to allow interested parties sufficient time to review and comment on the proposed rule. Several representative organizations have communicated to DOE a need for this extension to provide time to prepare comments on the notice due to the complex nature of the proposed rule. The initial comment period would have ended on December 8, 1986, providing only 60 days for comments. DOE, in evaluating these requests, has determined that an extension in comment time is reasonable and in the best interests of all concerned. This extension will not adversely affect the scheduled adoption of the Final Rule.

DATES: Written comments (7 copies) in response to the notice of proposed rulemaking for central air conditioners, including heat pumps, must be received by January 30, 1987.

ADDRESSES: Written comments are to be submitted to: U.S. Department of Energy, Office of Conservation and Renewable Energy, Office of Hearings and Dockets, Central Air Conditioning Test Procedures, Docket No. CAS-RM-79-102, Room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9319.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station, CE-132, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station, GC-12, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9513

U.S. Department of Energy, Office of Hearings and Dockets, Forrestal Building, Room 6B-025, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9319

Issued in Washington, DC, November 3, 1986.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 86-25182 Filed 11-6-86; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-CE-53-AD]

Airworthiness Directives; Partenavia Costruzione Aeronautiche S.p.A. Models P 68, P 68B, P 68C, and P 68C-TC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to Partenavia Costruzione Aeronautiche S.p.A. Models P 68, P 68B, P 68C, and P 68C-TC airplanes which would require inspection of composite wing leading edge ribs for cracking or debonding of the leading edge skin, and the repair of any damage found. A case of cracks and debonding of wing leading edge ribs and leading edge skin on a Model P 68 airplane has been reported to Partenavia. These actions will prevent deformation of the airfoil and possible loss of control or structural failure of the aircraft.

DATE: Comments must be received on or before March 12, 1987.

ADDRESSES: Partenavia S/B No. 67, dated June 21, 1985, and Partenavia Service Instruction (SI) No. 21, dated August 30, 1985, applicable to this AD may be obtained from Partenavia Costruzioni Aeronautiche, S.p.A., via Cava, Naples, Italy; or the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86-CE-53-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m. Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Munro Dearing, FAA, Brussels Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Office, c/o American Embassy, 1000 Brussels, Belgium; Telephone 513.38.30, extension 2710/2711; or Mr. John P. Dow, Sr., FAA, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86-CE-53-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

A case was reported to Partenavia of cracks found in the wing leading edge ribs and debonding of the leading edge skin in a Partenavia Model P 68 airplane. As a result, Partenavia issued S/B No. 67, dated June 21, 1985, which describes a one time visual and tactile (by touch) inspection procedure to detect cracks and debonding. Partenavia SI No. 21, dated August 30, 1985, describes repair of damaged parts. The Registro Aeronautico Italiano (RAI) which has responsibility and authority to maintain the continuing airworthiness of these airplanes in Italy has issued RAI AD No. 85-135/P.68-34, dated November 25, 1985, and classified Partenavia S/B No. 67, dated June 21, 1985, and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under RAI registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the RAI combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this type design certificated for operation in the United States. The FAA has examined the available information related to the issuance of Partenavia S/B No. 67, dated June 21, 1985, Partenavia SI No. 21, dated August 30, 1985, and RAI AD No. 85–135/P.68–34, dated November 25, 1985, and the mandatory classification of this bulletin by the RAI. Based on the foregoing, the FAA has determined that the condition addressed by Partenavia S/B No. 67, dated June 21, 1985, Partenavia SI No. 21, dated August 30, 1985, and RAI AD No. 85–135/P.68–34, dated November 25, 1985, is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD would require inspection of the wing leading edges, leading edge wing ribs, and repair of any damage found.

The FAA has determined there are approximately 15 airplanes affected by the proposed AD. The cost of the inspection according to the proposed AD is estimated to be $140 per airplane. The total cost is estimated to $2,100 to the private sector. The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983), 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Partenavia Costruzione Aeronautiche, S.p.A.: Applies to Models P 68, P 68B, P 68C (Serial Numbers (S/N) 1 through S/N 250), and P 68C–TC (S/N 300—1TC through S/N 300–22TC) airplanes certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent possible loss of control and structural failure, accomplish the following:

(a) Within the next 100 hours time-in-service after the effective date of this AD, visually and tactilely (by touch) inspect the composite leading edge wing ribs for cracking, and the composite wing leading edge for debonding from the ribs of both wings using the procedure and locally fabricated tool described in the "INSTRUCTIONS" section of Partenavia Service Bulletin (S/B) No. 67, dated June 21, 1985. (The tool is used to exert force on the ribs to check for lack of stiffness by tactile inspection.) If a crack or debonding is found, prior to further flight remove the wing leading edge and repair the cracks or debonds as described by the repair "INSTRUCTIONS" in Partenavia SI No. 21, dated August 30, 1985.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Brussels Aircraft Certification Office, AEU–100, Europe, Africa, and Middle East Office, c/o American Embassy, 1000 Brussels, Belgium; Telephone 513.38.30, extension 2710/2711.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Partenavia Costruzione Aeronautiche, S.p.A., via Cava, Naples, Italy, or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 28, 1986.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 86–25139 Filed 11–6–86; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 842 3192]

Solar Age Industries, Inc.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, an Albuquerque, NM, manufacturer and seller of solar energy heaters from misrepresenting the efficiency and performance of its solar space heaters or any other kind of solar energy equipment, unless it can substantiate its claims. Additionally, respondent would be prohibited from using the phrase "up to" in energy-related claims, unless the upper limit of potential savings indicated in the claim can be achieved by an appreciable number of consumers.

DATE: Comments will be received until January 6, 1987.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave. NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/B–407, Michael Dershowitz, Washington, DC 20580. (202) 376–8720.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Solar space heaters, Trade practices.

Before Federal Trade Commission

In the matter of Solar Age Industries, Inc., a corporation.

[File No. 842 3192]

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Solar Age Industries, Inc., a corporation, and it now appearing that Solar Age Industries, Inc. hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It Is Hereby Agreed by and between Solar Age Industries, Inc., by its duly authorized officer, and its attorney and counsel for the Federal Trade Commission that:

1. Proposed respondent Solar Age Industries, Inc. is a corporation with its office and principal place of business located at

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6400 Uptown Boulevard, Northeast, Albuquerque, New Mexico 87110.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to-order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For purposes of this Order, the following definitions shall apply:

"Energy-related claim" means any general or specific, oral or written representation that, directly or by implication, describes or refers to energy savings, energy cost savings, area heating capability, efficiency or conservation, "payback," or "payback" potential.

A "competent and reliable test" means any scientific, engineering, laboratory, or other analytical report, study, or survey prepared by one or more persons with skill and expert knowledge in the field to which the material pertains and based on testing, evaluation and analytical procedures that ensure accurate, reliable and statistically meaningful results.

A "solar space heater" is a particular type of solar energy equipment. Specifically, it is equipment which typically consists of one or more rooftop collector panels, one hot and one cold air duct and a small inlet fan, and which is designed to collect, but not store, the sun's rays for supplemental heating of individual residences or other, small buildings. The term describes, *inter alia*, respondent's "Solar Age Model 37," also referred to by respondent as its "Hot Air Collector Kit."

Part I

It is ordered that respondent Solar Age Industries, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution of any solar space heater or any other solar energy equipment in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, in any manner that:

(1) More than a few consumers may be able to reduce their heating bills by 40%, or close to 40%, by using the Hot Air Collector Kit or any other such solar space heater, as defined herein.

(2) Any one consumer's experience with respondent's solar space heater reflects what other consumers will experience under circumstances they can reasonably foresee, unless such is the case.

(3) The Hot Air Collector Kit or any other such solar space heater will provide more than a few consumers enough heat by itself to heat 600–800 square feet of space in residences or small buildings.

(4) More than a few consumers may be able to save enough money on their heating bills by using the Hot Air Collector Kit by itself to recoup the retail cost of the Hot Air Collector Kit or any other such solar space heater which ranges in cost from $1,095 to $3,595, within an average of 4 years.

(5) Its solar collector is the highest Btu-rated solar collector per square foot, in the country, unless such is the case.

B. Making any energy-related claim for any solar space heater, or any other solar energy equipment, unless at the time that the claim is made, respondent possesses and relies upon a competent and reliable test or other objective material which substantiates the claim.

C. Making any energy-related claim which uses the phrase "up to" or words of similar import unless the maximum level of savings or performance can be achieved by an appreciable number of consumers; and, further, in any instances where consumers could not reasonably foresee the major factors or conditions affecting the maximum level of savings or performance, cease and desist from failing to disclose clearly and prominently the class of consumers who can achieve the maximum level of savings or performance.

D. Misrepresenting, directly or by implication, in any manner, the purpose, content, or conclusion of any test, study, analysis, rating or survey upon which respondents rely as substantiation for any energyrelated claim, or making any representation which is inconsistent with the results or conclusions of any such test, study, rating or survey.

Part II

It Is Further Ordered that respondent Solar Age Industries, Inc., a corporation, its successors and assigns, and its officers, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution of any solar space heater or any other solar energy equipment in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall, for at least three years from the date of the last dissemination of energy-related claims, maintain and upon request make available to Federal Trade Commission staff for inspection and copying, copies of:

1. All materials relied upon to substantiate any energy-related claim; and

2. All test reports, studies, surveys or demonstrations in their possession that contradict, qualify, or call into question any energy-related claim.

Part III

It Is Further Ordered that respondent shall:

A. Within thirty (30) days after the date of service of this Order, send the following material via first class mail to every person or firm that is a current distributor of respondent's solar energy equipment and thereafter to every person or firm that becomes a distributor during the first year from the date of service of this Order:

1. A copy of this Order, and

2. A copy of the cover letter attached to this Order as Attachment A, incorporated herein by reference.

B. Distribute a copy of this Order to each of respondent's operating divisions, and to each of its officers, agents, representatives or employees engaged in the preparation or placement of advertisements or other sales materials.

C. Supply to the Federal Trade Commission upon request the names and addresses of those parties to whom respondent distributed the material required by Paragraphs A and B of Part III of this Order.

Part IV

It Is Further Ordered that respondent shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this Order.

Part V

It Is Further Ordered that respondent shall, within sixty (60) days after this Order becomes final, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the Order.

Solar Age Letterhead

Re: Advertising Claims and Practices

Dear Solar Age Distributor: As a result of a Federal Trade Commission investigation of advertising claims for our Solar Age Model 37 Solar Space Heater (the Hot Air Collector Kit), we have entered into the enclosed Consent Order Agreement. The Agreement is for settlement purposes only and does not constitute an admission that Solar Age or its distributors violated the law. At issue in the investigation were a number of energy cost savings, performance and payback claims.

We agree to conform our future advertising practices to the standards set forth in this agreement, and to cease and desist from the use of all promotional material that may contain contrary claims. In order to insure that such claims will no longer be made, we request that you refrain from making them, either orally or in writing, and to advise your dealers to do so as well. Please forward to us any remaining literature relating to our products which may be in your possession or that of your dealers and which does not conform to the enclosed agreement.

Thank you very much for your assistance in this regard.

Sincerely,

Solar Age Industries, Inc.

Alan D. Schwanke,

President.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted subject to final approval an agreement to a proposed consent order from Solar Age Industries, Inc. (Solar Age).

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns advertising for a solar space heater called the "Hot Air Collector Kit" or Solar Age Model 37. Solar space heaters collect heat from the sun's rays in order to heat a room or small area in a residence or other building. They consist of one or two small rooftop collector panels but do not have the heat storage or distribution systems typical of larger traditional solar systems. Solar Age is a New Mexico corporation that manufactures the Model 37 solar space heater, which is sold by Solar Age distributors nationwide.

The Commission's complaint in this matter charges Solar Age with disseminating advertisements containing false and misleading representations concerning the solar space heater's limited energy savings potential; limited heating capability; the actual Btu output rating of its solar collector; and the product's actual cost payback period. According to the complaint, Solar Age also represented that it possessed a reasonable basis for its product performance and payback claims, when in fact, it does not have such a reasonable basis.

The consent order contains provisions designed to remedy the advertising violations charged, to prevent Solar Age from engaging in similar acts and practices in the future, and to deter Solar Age distributors from engaging in similar acts and practices.

Part I,A of the order prohibits Solar Age from making certain specific energy savings, heating capability, Btu rating and payback claims in the future. Specifically, Solar Age may not claim that more than a few consumers will be able to reduce their heating bills by 40% (or close to 40%) or heat 600–800 square feet using a solar space heater such as the Model 37. Nor may Solar Age represent that more than a few consumers will save enough money to recoup the cost of the Hot Air Collector Kit or other similar solar space heater within an average of 4 years. Further, Solar Age may not represent through the use of testimonials, that one consumer's experience with its solar space heater reflects what other consumers will experience, unless such is the case. The final provision of Part I,A of the order prohibits Solar Age from representing that its solar collector is the highest Btu output rated solar collector in the country, unless such is the case.

Under Part I,B of the proposed order, Solar Age must possess a competent and reliable test or other objective material substantiating any energy-related claim it wishes to make in the future for solar space heaters or other solar energy equipment. "Energy related claims," encompasses any representation as to energy savings, cost savings, heating capability, efficiency or conservation, or payback.

Part I,C limits Solar Age's use of "up to" type claims to those instances where the maximum level of savings or performance can be achieved by an appreciable number of consumers. Further, if the factors or conditions affecting performance cannot be reasonably forseen, Part I,C requires that those factors or conditions be disclosed. This provision, therefore, permits "up to" claims only under circumstances where they do not deceptively raise consumers' expectations about product performance.

Part I,D prohibits the company from misrepresenting or misusing the purpose, content, conclusion or results of any test, study, analyses, rating or survey.

Parts II, III and IV are standard order provisions requiring Solar Age to retain substantiation; disseminate the order to its distributors, officers and operating divisions; notify the Commission of changes in its corporate structure and report to the Commission on its compliance with the terms of the order.

The distribution requirement under Part III,A directs Solar Age to send a copy of the order to all of its distributors and remains in effect for one year from the issuance of the order. Thus, all current distributors and any distributors added during the next year will receive a copy of the order. Additionally, Part III,A requires that Solar Age send to its distributors a cover letter (attached to the order) explaining that the order is the result of a settlement agreement and asking that any non-conforming advertising material be returned to Solar Age.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 86–25140 Filed 11–6–86; 8:45 am]

BILLING CODE 6750-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-3107-2]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to disapprove a revision to the Illinois State Implementation Plan (SIP). The revision pertains to rules for continuously monitoring and recording the compliance status of facilities in certain stationary source categories. USEPA's action is based upon a request which was submitted by the State to satisfy the requirements of 40 CFR 51.19(e).

DATE: Comments on this revision and on the proposed USEPA action must be received by December 8, 1986.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Randolph O. Cano, at (312) 886-6035, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6035.

SUPPLEMENTARY INFORMATION: Section 51.19 of Title 40 of the Code of Federal Regulations (40 CFR) requires that State Implementation Plans provide for monitoring the status of compliance with rules and regulations which are part of the control strategy. Paragraph (e) requires legally enforceable procedures to require certain stationary sources subject to emission standards as part of an applicable plan to install, calibrate, maintain and operate equipment for continuously monitoring and recording emissions, and to provide other information as specified in 40 CFR Part 51 Appendix P.

To comply with this requirement, on February 25, 1985, the State of Illinois submitted to USEPA *35 ILLINOIS ADMINISTRATIVE CODE (35 IAC) Section 285)* as a proposed revision to the Illinois SIP. This rule was adopted by the Illinois Environmental Protection Agency (IEPA) on December 20, 1984, was published in the ILLINOIS REGISTER on January 4, 1985, and became effective at the State level on February 1, 1985.

USEPA has reviewed the State's submittal for conformance with the Federal requirements as specified in Appendix P of 40 CFR Part 51. A full discussion of USEPA's review is contained in an April 19, 1985, Technical Support Document which is available for inspection at the Region V office listed above. A discussion of the deficiencies identified in the regulation follows.

Deficiencies Identified in the Illinois Rule

35 IAC Section 285.101(a)

This section states the basis on which the State requires monitoring, recording, testing, and reporting of emissions from owners or operators of emission sources and pollution control equipment. It also states that these requirements shall be made a part of an operating permit issued to these sources. However, it imposes no requirements on owners and operators of emission sources except when the State requires the permittee to monitor and report the emissions.

In effect, section 285.101(a) exempts those sources specified under section 285.201 which do not have operating permits from complying with the requirements of the rule until the sources are permitted by the State. 40 CFR Part 51, Appendix P, specifies that continuous emission monitoring (CEM) and reporting is required for all source categories specified in Appendix P, Section 1.1, upon plan approval or promulgation, regardless of whether they have a valid operating permit. Further, section 285.101(a) imposes no specific requirements on owners or operators of emission sources in and of itself, but only through the permit mechanism. 40 CFR Part 51, Appendix P, section 1.1, requires owners or operators of emission sources for the applicable source category to install, calibrate, and maintain all monitoring equipment. For the above reasons, 35 IAC 285.101(a) is not approvable.

The State rule's exemption of sources which do not have operating permits is of particular concern to USEPA. Illinois law allows a source to operate without a valid operating permit while the provisions of the operating permit are being adjudicated. Under such a circumstance, a source could operate without a permit and escape the requirement for CEM which is required by 40 CFR 51.19(e) and Appendix P.

35 IAC Section 285.103—Applicability

Section (a) states that these rules shall be used by the IEPA as a guide to whether CEM requirements shall be included in the permits. This requirement is appealable to the Illinois Pollution Control Board (IPCB). Section (a) gives the State discretion to determine whether CEM is needed for those sources required under section 285.201. Although section 1.2 of Appendix P of 40 CFR Part 51 provides for exemptions from the CEM requirement, the State rule in allowing the IPCB to determine whether or not CEM is necessary goes will beyond USEPA's requirements and grants broader discretion in exempting sources from the CEM requirement than the minimum Federal requirements allow. Therefore, this part is not approvable.

This section also allows a CEM requirement under Appendix P for certain source categories to be appealed to the Illinios Pollution Control Board. 40 CFR Part 51 Appendix P, imposes mandatory requirements for CEM with very limited exemptions provided in section 1.2. The appeal option to the IPCB is a further basis for determining that this section is not approvable.

325 IAC Section 285.104—Compliance Dates

This section states that a schedule for installation and performance testing for CEM shall begin from the date the permit is issued and must be completed within 18 months, unless the State finds that a longer schedule is necessary. 40 CFR Part 51, Appendix P, section 1.1(2) requires that installation and performance testing for CEM be within 18 months of Federal plan approval or promulgation. Because the State compliance schedule for this requirement begins when the permit is issued, all sources subject to this requirement could delay installation of a CEM System beyond the time requirement of Appendix P.

Although section 1.3 of Appendix P of 40 CFR Part 51 provides for reasonable extensions of time for facilities unable to meet the required 18 month timeframe, the State's extensions go beyond what Appendix P allows. This section, therefore, is not approvable.

Proposed Rulemaking Action

USEPA proposes to disapprove the State's self monitoring rule in its entirety because a partial approval of the rule, while disapproving key provisions of the rule such as 35 IAC 285.103—Applicability, would make the self monitoring rule more stringent than ever intended by the State. Such partial approval is precluded by a Seventh Circuit Court of Appeals decision. In *Bethlehem Steel Corporation v. Gorsuch* 742 F.2d 1028 (7th Cir. 1984), the Court held that USEPA may not approve parts of a SIP and disapprove other parts if the effect of the action is to make the SIP stricter than the State ever intended.

Public comment is solicited on the proposed SIP revision and on USEPA's proposed rulemaking action to disapprove it. Public comments should be sent to the Region V office listed in the front of this **Federal Register** notice. Comments received by the date specified above will be considered in USEPA's final rulemaking.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposal or final rule on small entities. Under 5 U.S.C. 605(b), this requirement may be waived if USEPA certifies that the rule will not have a significant economic effect on a substantial number of small entities. Small entities include small business, small not-for-profit enterprises, and governmental entities with jurisdiction over population of less than 50,000.

USEPA believes that these rules, if finally disapproved, will not have a significant negative economic effect on a substantial number of small entities. The requirements of 40 CFR Part 51, Appendix P do not apply to sources which can be construed as small entities. Public comment is expressly solicited on any information to the contrary.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Authority: 42 U.S.C. 7401–7642.

Dated: March 31, 1986.

Valdas V. Adamkus,

Regional Administrator.

[**Editorial Note:** This document was received by the Office of the Federal Register on November 4, 1986.]

[FR Doc. 86–25194 Filed 11–6–86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-5-FRL-3107-1]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing rulemaking on a revision to the Illinois State Implementation Plan (SIP) for total suspended participates (TSP). The revision pertains to a temporary variance from the requirements of 35 Illinois Administrative Code (IAC) 212-462(e) until December 4, 1989, for Demeter, Incorporated (Demeter). USEPA's action is based upon a revision request which was submitted by the State pursuant to section 110 of the Clean Air Act (Act).

DATE: Comments on this revision and on the proposed USEPA action must be received by December 8, 1986.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Randolph O. Cano, at (312) 86–6035, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearbon Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano (312) 886–6035.

SUPPLEMENTARY INFORMATION: On January 29, 1986, the Illinois Environmental Protection Agency (IEPA) submitted a proposed revision to the Illinois SIP for December which operates a grain elevator in unincorporated Winnebago County. Winnebago County is classified as better than National Ambient Air Quality Standards (NAAQS) for the pollutant TSP.

The proposed SIP revision, if finally approved by USEPA, would allow Demeter a variance from the requirements of 35 IAC 212.462(e)[1] until December 4, 1989. 35 IAC 212.462(e) requires Demeter to file applications for construction and operating permits and to comply with the dump pit control requirements of 35 IAC 212.462(b),[2] because the firm's annual grain throughput increased 150 percent, from the 1984 annual grain throughput on which the original permit was based. This increase exceeds the rule's threshold value of a 30 percent increase.

In granting a variance from the requirements for Demeter's dump pit, the Illinois Pollution Control Board (IPCB) found that the requirement for Demeter to install a grain dust control system on its dump pit immediately would subject the firm to unreasonable hardship because of Demeter's low profitability over the prior several years. The IPCB Opinion and Order of the Board is only a temporary variance. It requires Demeter to install a dust control system to comply with the regulations by December 4, 1989.

USEPA has reviewed this proposed SIP revision for consistency with USEPA's policy on source specific SIP revisions, which is contained in a July 29, 1983, memorandum from Sheldon Meyers, then Director of the Office of Air Quality Planning and Standards, to the Directors of the Air Management Divisions. This policy requires that for a State to secure USEPA approval of a relaxation of a SIP in an attainment area and yet continue the overall approval status of its plan, the State must demonstrate that the SIP as a whole, despite the relaxation, would continue to provide for maintenance of the NAAQS. This policy, in effect, requires a current modeling demonstration, using reference modeling techniques and best available data.

Because the State's submittal in this matter did not include such a modeled demonstration of attainment, USEPA proposes to disapprove this proposed SIP revision for Demeter because the State has not demonstrated that it will not jeopardize attainment and maintenance of the TSP NAAQS, if the SIP revision were finally approved.

Public comment is solicited on the proposed SIP revision and on USEPA's proposed disapproval of the incorporation of it into the SIP. Public comments received by the data indicated above will be considered in the development of USEPA's final rulemaking action.

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[1] 35 IAC 212.462(e) was incorporated in the Illinois SIP as 203(d)(8)(F) on February 21, 1980 (45 FR 11233). Illinois has subsequently recodified its regulations. USEPA is rulemaking on a variance from Rule 203(d)(8)(F) because this is the regulation incorporated in the SIP.

[2] 35 IAC 212.462(b) was incorporated in the Illinois SIP as 203(d)(8)(B) on February 21, 1980 (45 FR 11233). Illinois has subsequently recodified its regulations. USEPA is rulemaking on a variance from Rule 203(d)(8)(B)(ii) because this is the regulation incorporated in the SIP.

Under 5 U.S.C. 605(b), USEPA has determined that this proposed action, if finally disapproved, will not have a significant economic impact on a substantial number of small entities. Only a single small entity is involved Demeter.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Authority: 42 U.S.C. 7401–7642.

Dated: June 26, 1986.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 86–25193 Filed 11–6–86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 60

[OAR–FRL–3085–9]

Standards of Performance for New Stationary Sources; Revision of Method 25 of Appendix A

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: This proposed rule would amend Method 25, "Determination of Total Gaseous Nonmethane Organic Emissions as Carbon," of Appendix A of 40 CFR Part 60. This method is being revised to improve its precision and reliability.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the revised method.

DATE: *Comments.* Comments must be received on or before January 21, 1987.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by November 28, 1986, a public hearing will be held December 22, 1986, beginning at 10:00 a.m. Persons interested in attending the hearing should call the contact mentioned under ADDRESSES to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by November 28, 1986.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE–131), Attention: Docket Number A–86–05. U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Mr. Gary McAlister, Emission Measurement Branch (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2237.

Docket. Docket No. A–86–05, containing supporting information used in developing the proposed rulemaking, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Roger T. Shigehara or Mr. Gary McAlister, Emission Measurement Branch (MD–19), Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2237.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

On October 3, 1980 (45 FR 65956), EPA published Method 25, "Determination of Total Gaseous Nonmethane Organic Emissions as Carbon." Shortly after publication, testers began to report erratic results with the method and suggested a number of different causes for the imprecision. As a result, EPA began a program to review the test method in March 1982. The EPA has completed the review and is now proposing revisions to Method 25, which will make the method simpler, more reliable, and more precise.

The results of the various studies on Method 25 are summarized in the following reports, which are included in the docket:

1. Evaluation of Trap Recovery Design, EMB Project No. 82SFS–1.
2. Preparation of Method 25 Sampling Equipment and Determination of Limit of Detection and Limit of Quantitation, EMB Project No. 82SFS–1.
3. Evaluation of Method 25 Condensate Trap Packing Material, EMB Project No. 82SFS–1.
4. Oxidation Catalyst Screening and Evaluation Study, ESED Project No. 82SFS1–4–2.
5. Quality Control Procedures Evualation, ESED Project No. 82SFS1–4–3.
6. Condensate Trap Development and Evaluation, ESED Project No. 82SFS1–4–4.
7. Trap Recovery Procedures Evaluation, ESED Project No. 82SFS1–4–5.
8. Evaluation of Particulate Filters, ESED Project No. 82SFS1–5–2.

The studies showed that the basic operating principle of Method 25 was sound, but some changes in equipment design and operating practices would improve the reliability of the method. These changes can best be discussed by dividing the method into three parts: Sampling, sample recovery, and analysis.

The major changes in the sampling equipment are the addition of a heated filter, a redesigned condensate trap, and a different packing material for the condensate trap. The purpose of the filter is to remove organic particulate matter from the sample and, thus, eliminate a potential source of imprecision. The filter is heated to a temperature of 120° C (248° F) to be consistent with Method 5 for particulate matter. The new trap design is a simple U-tube which may be more easily and cheaply produced than the current design. It also provides a faster and more complete sample recovery than the existing trap while showing equal collection efficiency. The new packing material is quartz wool, which shows better durability and collection efficiency than the currently specified stainless steel packing.

The major changes in the sample recovery system are a new oxidation catalyst, a simplified recovery system, and lower operating temperatures. The new oxisation catalyst has proven to be very durable and to provide 100 percent oxidation efficiency for a wide variety of organic compounds at much lower operating temperatures than the current catalyst. The redesigned recovery system has eliminated some of the tubing and valving and, thus, reduced the potential for sample loss during recovery and decreased recovery times. The lower temperatures for sample recovery will increase the life expectancy of the recovery system materials and simplify the operation of the system.

The major change in the sample analysis system is a new separation column for the nonmethane organics analyzer. This new column provides separation of carbon monoxide, carbon dioxide, and methane from a wider range of organic compounds than the currently specified column.

In addition to these major changes, there are a number of minor changes, particularly in the area of quality assurance and calibration.

This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard. Rather, the rulemaking would simply revise test procedures associated with emission measurement requirements that would apply irrespective of this rulemaking.

II. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed test method in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the "**ADDRESSES**" section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the "**ADDRESSES**" section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, DC (see "**ADDRESSES**") section of this preamble.

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials) [section 307(d)(7)(A)].

C. Office of Management and Budget Review

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This regulation is not major because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any written EPA responses are available in the docket.

D. Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this attached rule, if promulgated, will not have any economic impact on small entities because no additional costs will be incurred.

List of Subjects in 40 CFR Part 60

Air Pollution control, Intergovernmental relations, Reporting and Recordkeeping requirements, Incorporation by reference, Automobile surface coating, Large appliance surface coating, Beverage can coating, and Metal coil coating.

Dated: October 24, 1986.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

PART 60—[AMENDED]

It is proposed that 40 CFR Part 60 be amended by revising Method 25 of Appendix A as follows:

1. The authority citation for Part 60 continues to read as follows:

Authority: Sec. 101, 111, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. By revising Method 25 of Appendix A to read as follows:

Appendix A—Reference Method

* * * * *

Method 25—Determination of Total Gaseous Nonmethane Organic Emissions as Carbon

1. Applicability and Principle

1.1 Applicability. This method applies to the measurement of volatile organic compounds (VOC) as total gaseous nonmethane organics (TGNMO) as carbon in source emissions. Organic particulate matter will interfere with the analysis and, therefore, a particulate filter is required.

When carbon dioxide (CO_2) and water vapor are present together in the stack, they can produce a positive bias in the sample. The magnitude of the bias depends on the concentrations of (CO_2) and water vapor. As a guideline, multiply the (CO_2) concentration, expressed as volume percent, by the water vapor concentration. If this product does not exceed 100, the bias can be considered insignificant. For example, the bias is not significant for a source having 10 percent (CO_2) and 10 percent water vapor, but it might be significant for a source having 10 percent (CO_2) and 20 percent water vapor.

This method is not the only method that applies to the measurement of TGNMO. Costs, logistics, and other practicalities of source testing may make other test methods more desirable for measuring VOC contents of certain effluent streams. Proper judgment is required in determining the most applicable VOC test method. For example, depending upon the molecular weight of the organics in the effluent stream, a totally automated semicontinuous nonmethane organics (NMO) analyzer interfaced directly to the source may yield accurate results. This approach has the advantage of providing emission data semicontinuously over an extended time period.

Direct measurement of an effluent with a flame ionization detector (FID) analyzer may be appropriate with prior characterization of the gas stream and knowledge that the detector responds predictably to the organic compounds in the stream. If present, methane (CH_4) will, of course, also be measured. The FID can be applied to the determination of the mass concentration of the total molecular structure of the organic emissions under any of the following limited conditions: (1) Where only one compound is known to exist; (2) when the organic compounds consist of only hydrogen and carbon; (3) where the relative percentages of the compounds are known or can be determined, and the FID responses to the compounds are known; (4) where a consistent mixture of the compounds exists before and after emission control and only the relative concentrations are to be assessed; or (5) where the FID can be calibrated against mass standards of the compounds emitted (solvent emissions, for example).

Another example of the use of a direct FID is as a screening method. If there is enough information available to provide a rough estimate of the analyzer accuracy, the FID analyzer can be used to determine the VOC content of an uncharacterized gas stream. With a sufficient buffer to account for possible inaccuracies, the direct FID can be a useful tool to obtain the desired results without costly exact determination.

In situations where a qualitative/quantitative analysis of an affluent stream is desired or required, a gas chromatographic FID system may apply. However, for sources emitting numerous organics, the time and expense of this approach will be formidable.

1.2 Principle. An emission sample is withdrawn from the stack at a constant rate through a heated filter and a chilled condensate trap by means of an evacuated sample tank. After sampling is completed, the TGNMO are determined by independently analyzing the condensate trap and sample tank fractions and combining the analytical results. The organic content of the condensate trap fraction is determined by oxidizing the NMO to CO_2 and quantitatively collecting the effluent in an evacuated vessel; then a portion of the CO_2 is reduced to CH_4 and measured by an FID. The organic content of the sample tank fraction is measured by

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injecting a portion of the sample into a gas chromatographic column to separate the NMO from carbon monoxide (CO), CO_2 and CH_4; the NMO are oxidized to CO_2, reduced to CH_4, and measured by an FID. In this manner, the variable response of the FID associated with different types of organics is eliminated.

2. Apparatus

2.1 Sampling. The sampling system consists of a heated probe, heated filter, condensate trap, flow control system, and sample tank (Figure 25–1). The TGNMO sampling equipment can be constructed from commercially available components and components fabricated in a machine shop. The following equipment is required:

2.1.1 Heated Probe. 6.4-mm (1/4-in.) Outside diameter (OD) stainless steel tubing with a heating system capable of maintaining a gas temperature at the exit end of at least 129°C (265°F). The probe shall be equipped with a thermocouple at the exit end to monitor the gas temperature.

A suitable probe is shown in Figure 25–1. The nozzle is an elbow fitting attached to the front end of the probe while the thermocouple is inserted in the side arm of a tee fitting attached to the rear of the probe. The probe is wrapped with a suitable length of high temperature heating tape, and then covered with two layers of glass cloth insulation and one layer of aluminum foil.

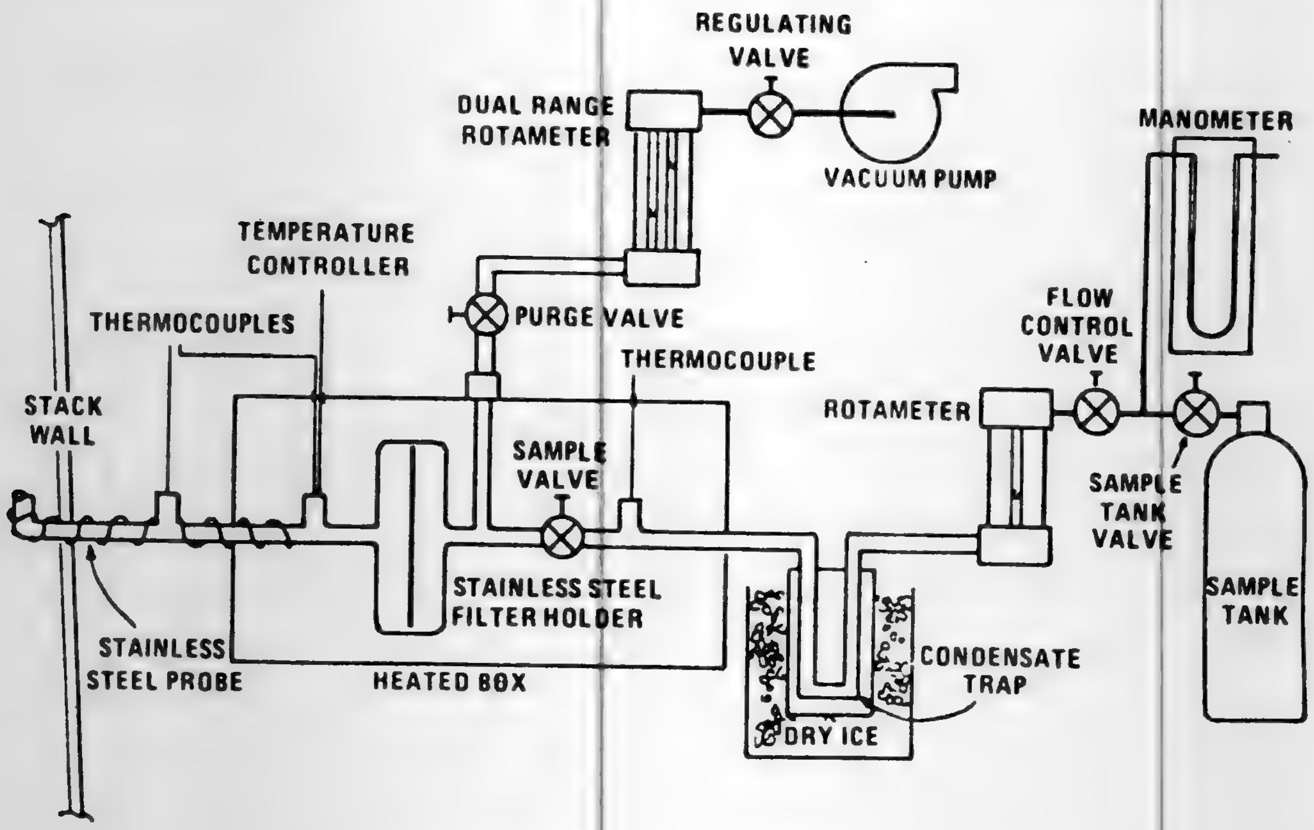
REGULATING VALVE
DUAL RANGE ROTAMETER
VACUUM PUMP
MANOMETER
TEMPERATURE CONTROLLER
THERMOCOUPLES
PURGE VALVE
FLOW CONTROL VALVE
THERMOCOUPLE
STACK WALL
ROTAMETER
SAMPLE VALVE
SAMPLE TANK VALVE
SAMPLE TANK
STAINLESS STEEL FILTER HOLDER
CONDENSATE TRAP
STAINLESS STEEL PROBE
HEATED BOX
DRY ICE

Figure 25-1. Sampling train.

Note.—If it is not possible to use a heating system for safety reasons, an unheated system with an in-stack filter may be a suitable alternative.

2.1.2 Filter Holder. 25-mm (15/16-in.) Inside diameter (ID) Gelman filter holder with 303 stainless steel body and 316 stainless steel support screen with the Viton O-ring replaced by a Teflon O-ring.

Note.—Mention of trade names or specific products does not constitute endorsement by the Environmental Protection Agency.

2.1.3 Filter Heating System. A metal box consisting of an inner and an outer shell separated by insulating material with a heating element in the inner shell capable of maintaining a gas temperature at the filter of 121±3°C (250±5°F).

A suitable heating box is shown in Figure 25–2. The outer shell is a metal box that measures 102 mm x 280 mm x 292 mm (4 in. x 11 in. x 11½ in.), while the inner shell is a metal box measuring 76 mm x 229 mm x 241 mm (3 in. x 9 in. x 9½ in.). The inner box is supported by 13-mm (½-in.) phenolic rods. The void space between the boxes is filled with fiberfrax insulation which is sealed in place by means of a silicon rubber bead around the upper sides of the box. A removable lid made in a similar manner, with a 25-mm (1-in.) gap between the parts, is used to cover the heating chamber.

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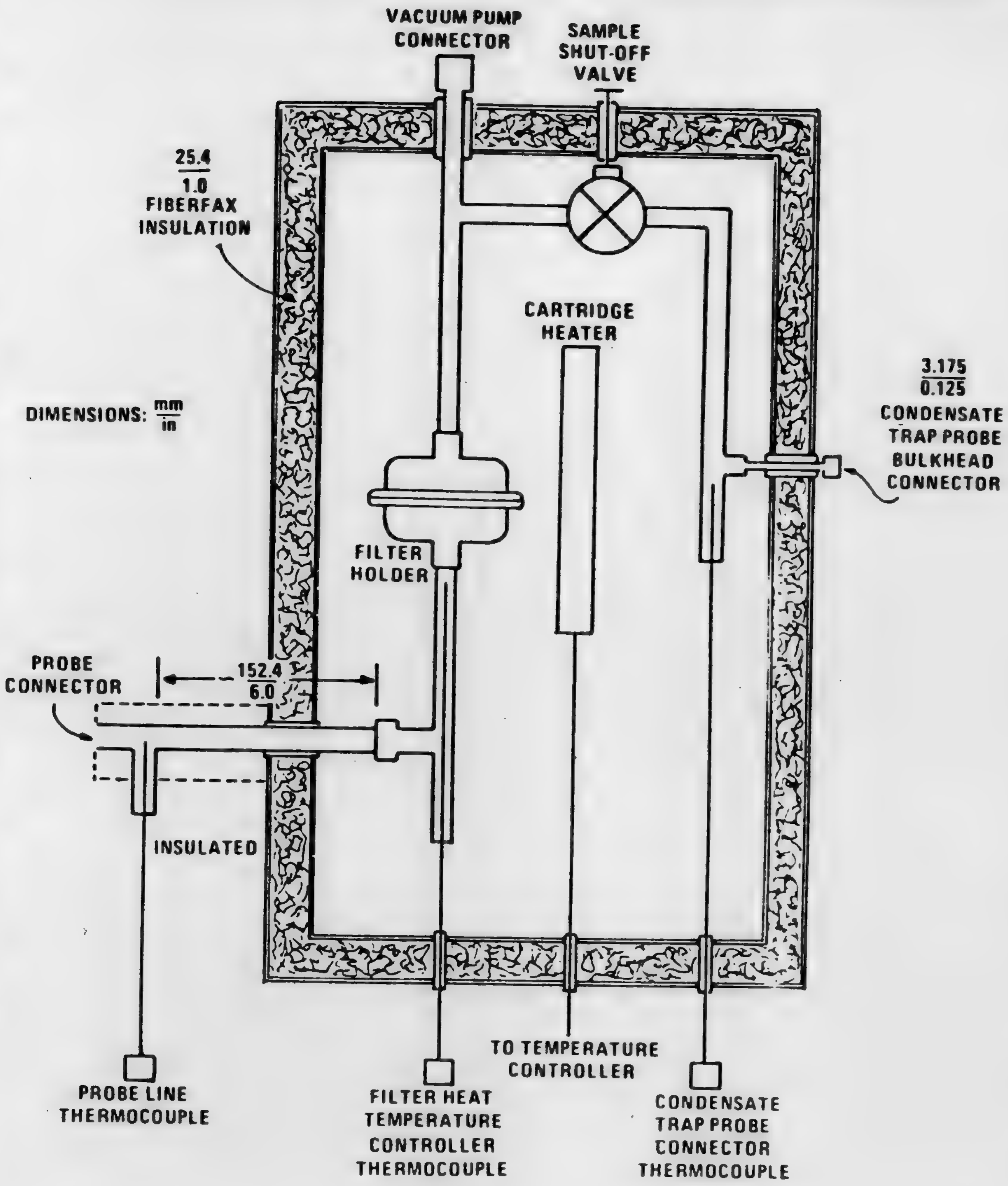
VACUUM PUMP CONNECTOR
SAMPLE SHUT-OFF VALVE
25.4 / 1.0 FIBERFAX INSULATION
CARTRIDGE HEATER
3.175 / 0.125 CONDENSATE TRAP PROBE BULKHEAD CONNECTOR
DIMENSIONS: mm / in
FILTER HOLDER
PROBE CONNECTOR
152.4 / 6.0
INSULATED
TO TEMPERATURE CONTROLLER
PROBE LINE THERMOCOUPLE
FILTER HEAT TEMPERATURE CONTROLLER THERMOCOUPLE
CONDENSATE TRAP PROBE CONNECTOR THERMOCOUPLE

Figure 25-2. Out-of-stack filter box.

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The inner box is heated with a 250-watt cartridge heater, shielded by a stainless steel shroud. The heater is regulated by a thermostatic temperature controller which is set to maintain a temperature of 121°C as measured by a thermocouple in the gas line just before the filter. An additional thermocouple is used to monitor the temperature of the gas behind the filter.

Note.—If it is not possible to use a heating for safety reasons, an unheated system with an in-stack filter may be a suitable alternative.

2.1.4 Condensate Trap. 9.5-mm (3/8-in.) OD 316 stainless steel tubing bent into a U-shape. Exact dimensions are shown in figure 25-3. The tubing shall be packed with coarse quartz wool, to a density of approximately 0.11 g/cc before bending. While the condensate trap is packed with dry ice in the Dewar, an ice bridge may form between the arms of the condensate trap making it difficult to remove the condensate trap. This problem can be prevented by attaching a steel plate between the arms of the condensate trap in the same plane as the arms to completely fill the intervening space.

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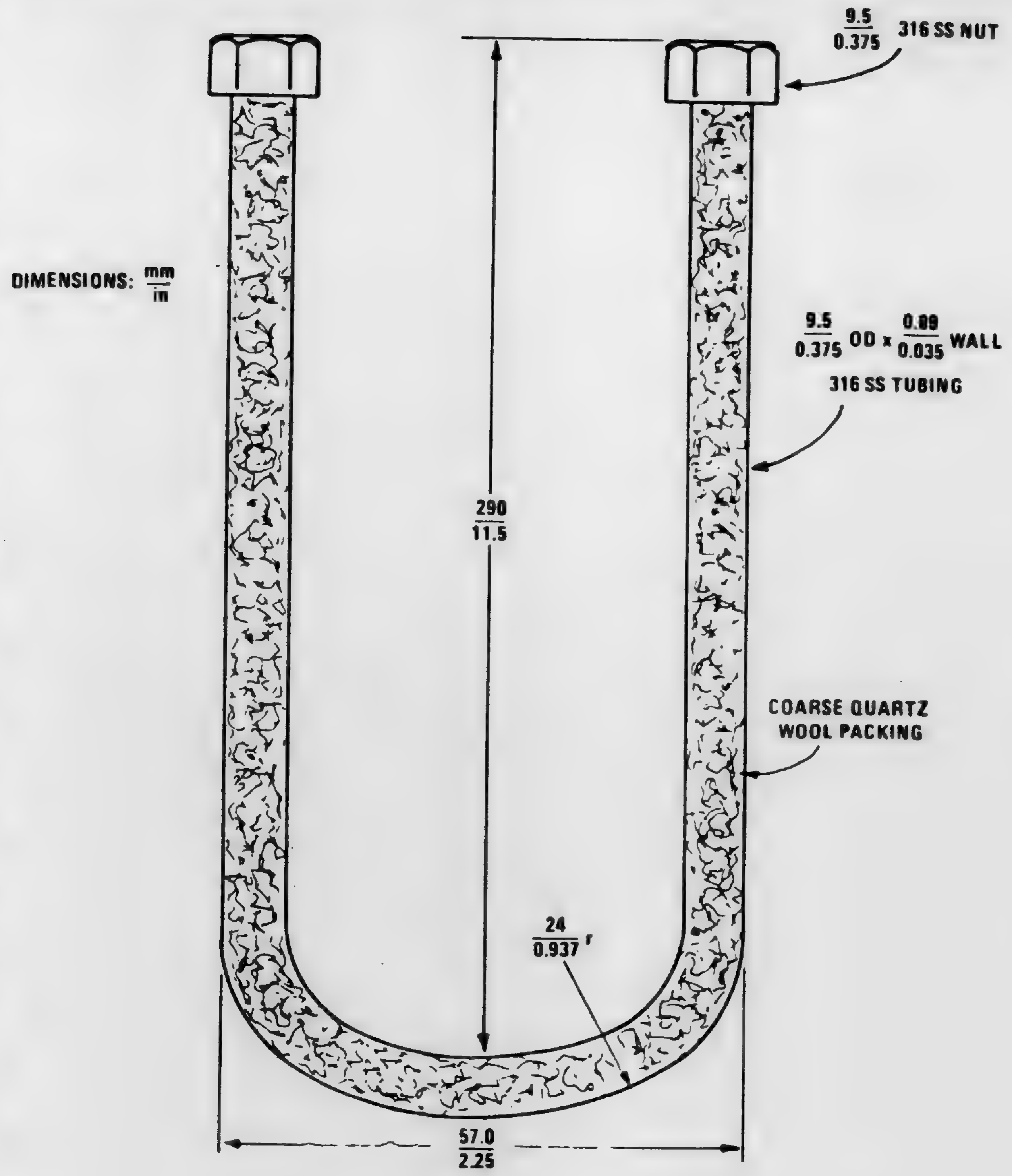
9.5
0.375 316 SS NUT
DIMENSIONS: mm
in
9.5
0.375 OD x 0.89
0.035 WALL
316 SS TUBING
290
11.5
COARSE QUARTZ
WOOL PACKING
24
0.937 r
57.0
2.25

Figure 25-3. Condensate trap.

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2.1.5 Valve. Stainless steel control valve for starting and stopping sample flow.

2.1.6 Metering Valve. Stainless steel valve for regulating the sample flow rate through the sample train.

2.1.7 Rotameter. Glass tube with stainless steel fittings, capable of measuring sample flow in the range of 60 to 100 cc/min.

2.1.8 Sample Tank. Stainless steel or aluminum tank with a minimum volume of 4 liters.

2.1.9 Mercury Manometer or Absolute Pressure Gauge. Capable of measuring pressure to within 1 mm Hg in the range of 0 to 900 mm.

2.1.10 Vacuum Pump. Capable of evacuating to an absolute pressure of 10 mm Hg.

2.2 Condensate Recovery Apparatus. The system for the recovery of the organics captured in the condensate trap consists of a heat source, oxidation catalyst, nondispersive infrared (NDIR) analyzer and an intermediate collection vessel (ICV). Figure 25–4 is a schematic of a typical system. The system shall be capable of proper oxidation and recovery, as specified in Section 5.1. The following major components are required:

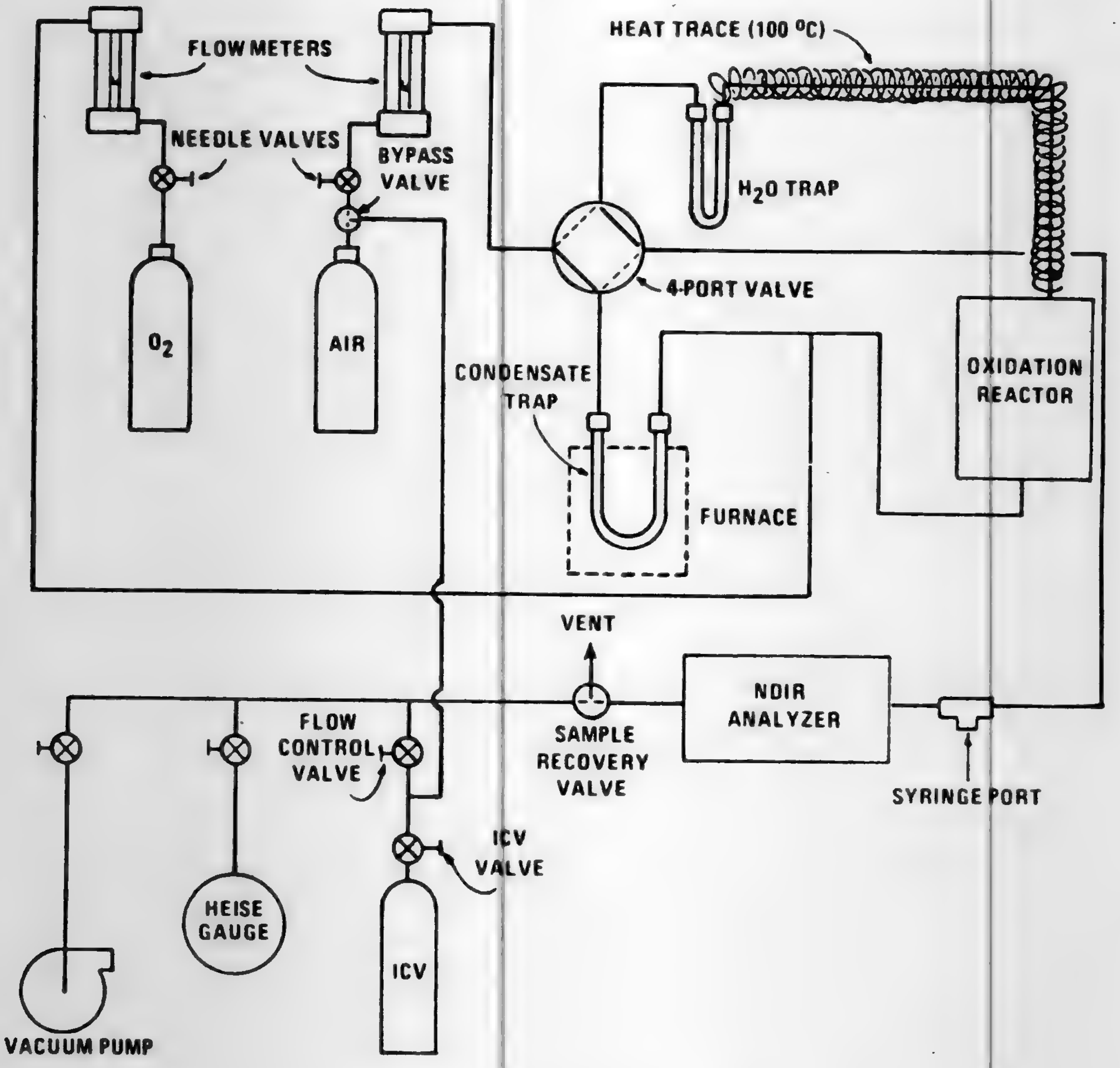
FLOW METERS
HEAT TRACE (100 °C)
NEEDLE VALVES
BYPASS VALVE
H_2O TRAP
4-PORT VALVE
O_2
AIR
CONDENSATE TRAP
OXIDATION REACTOR
FURNACE
VENT
NDIR ANALYZER
FLOW CONTROL VALVE
SAMPLE RECOVERY VALVE
SYRINGE PORT
ICV VALVE
HEISE GAUGE
ICV
VACUUM PUMP

Figure 25-4. Condensate recovery system.

2.2.1 Heat Source. Sufficient to heat the condensate trap (including connecting tubing) to a temperature of 200 °C. A system using both a heat gun and an electric tube furnace is recommended.

2.2.2 Heat Tape. Sufficient to heat the connecting tubing between the water trap and the oxidation catalyst to 100 °C.

2.2.3 Oxidation Catalyst. A suitable length of 9.5 mm (⅜-in.) OD Inconel 600 tubing packed with 15 cm (6 in.) of 3.2 mm (⅛ in.) diameter 19 percent chromia on alumina pellets. The catalyst material is packed in the center of the catalyst tube with quartz wool packed on either end to hold it in place. The catalyst tube shall be mounted vertically in a 650 °C tube furnace.

2.2.4 Water Trap. Leak proof, capable of removing moisture from the gas stream.

2.2.5 Syringe Port. A 6.4-mm (¼-in.) OD stainless steel tee fitting with a rubber septum placed in the side arm.

2.2.6 NDIR Detector. Capable of indicating CO_2 concentration in the range of zero to 5 percent, to monitor the progress of combustion of the organic compounds from the condensate trap.

2.2.7 Flow-Control Valve. Stainless steel, to maintain the trap conditioning system near atmospheric pressure.

2.2.8 Intermediate Collection Vessel. Stainless steel or aluminum, equipped with a female quick connect. Tanks with nominal volumes of at least 6 liters are recommended.

2.2.9 Mercury Manometer or Absolute Pressure Gauge. Capable of measuring pressure to within 1 mm Hg in the range of 0 to 900 mm.

2.2.10 Syringe. 10-ml gas-tight glass syringe equipped with an appropriate needle.

2.3 NMO Analyzer. The NMO analyzer is a gas chromatograph (GC) with backflush capability for NMO analysis and is equipped with an oxidation catalyst, reduction catalyst, and FID. Figures 25–5 and 25–6 are schematics of a typical NMO analyzer. This semicontinuous GC/FID analyzer shall be capable of: (1) Separating CO, CO_2, and CH_4 from NMO, (2) reducing the CO_2 to CH_4 and quantifying as CH_4, and (3) oxidizing the NMO to CO_2, reducing the CO_2 to CH_4 and quantifying as CH_4, according to Section 5.2. The analyzer consists of the following major components:

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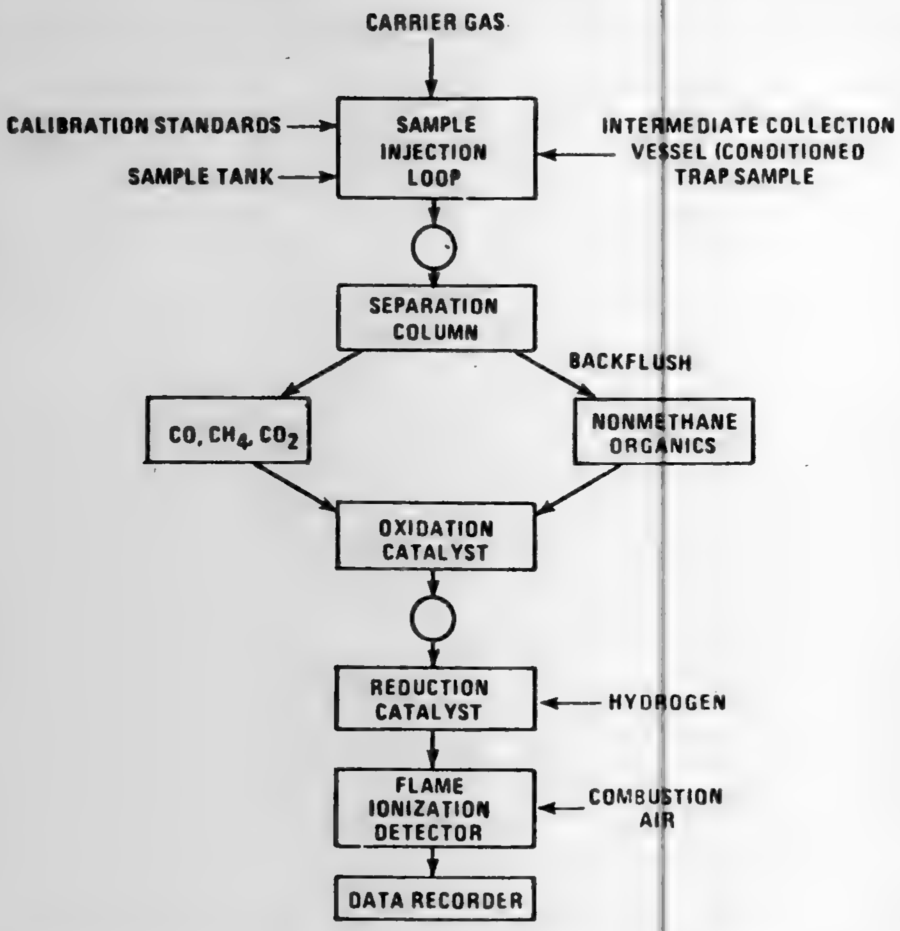
CARRIER GAS
CALIBRATION STANDARDS
SAMPLE TANK
SAMPLE INJECTION LOOP
INTERMEDIATE COLLECTION VESSEL (CONDITIONED TRAP SAMPLE
SEPARATION COLUMN
BACKFLUSH
CO, CH_4, CO_2
NONMETHANE ORGANICS
OXIDATION CATALYST
REDUCTION CATALYST
HYDROGEN
FLAME IONIZATION DETECTOR
COMBUSTION AIR
DATA RECORDER

Figure 25-5. Simplified schematic of nonmethane organic (NMO) analyzer.

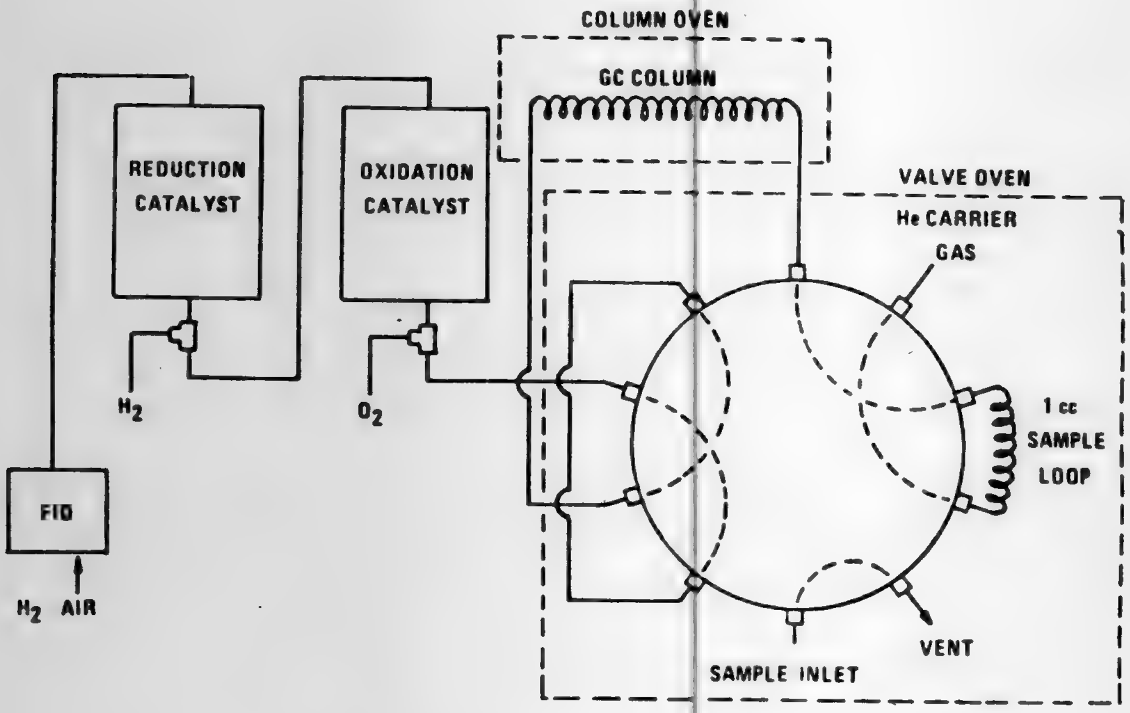
COLUMN OVEN
GC COLUMN
REDUCTION CATALYST
OXIDATION CATALYST
VALVE OVEN
He CARRIER GAS
1 cc SAMPLE LOOP
H_2
O_2
FID
H_2 AIR
VENT
SAMPLE INLET

Figure 25-6. Nonmethane organic analyzer (NMO).

BILLING CODE 6560-50-C

2.3.1 Oxidation Catalyst. A suitable length of 9.5-mm (⅜-in.) OD Inconel 600 tubing packed with 5.1 cm (2 in.) of 19 percent chromia on 3.2-mm (⅛-in.) alumina pellets. The catalyst material is packed in the center of the tube supported on either side by quartz wool. The catalyst tube must be mounted vertically in a 650 °C furnace.

2.3.2 Reduction Catalyst. A 7.6-cm (3-in.) length of 6.4-mm (¼-in.) OD Inconel tubing fully packed with 100-mesh pure nickel powder. The catalyst tube must be mounted vertically in a 400 °C furnace.

2.3.3 Separation Column(s). A 30-cm (1-ft) length of 3.2-mm (⅛-in.) OD stainless steel tubing packed with 60/80 mesh Unibeads 1S followed by a 61-cm (2-ft) length of 3.2-mm (⅛-in.) OD stainless steel tubing packed with 60/80 mesh Carbosieve G. The Carbosieve and Unibeads columns must be baked separately at 200 °C with carrier gas flowing through them for 24 hours before initial use.

2.3.4 Sample Injection System. A 10-port GC sample injection valve fitted with a sample loop properly sized to interface with the NMO analyzer (1-cc loop recommended).

2.3.5 FID. An FID meeting the following specifications is required:

2.3.5.1 Linearity. A linear response (±5 percent) over the operating range as demonstrated by the procedures established in section 5.2.3.

2.3.5.2 Range. A full scale range of 10 to 50,000 ppm CH_4. Signal attenuators shall be available to produce a minimum signal response of 10 percent of full scale.

2.3.6 Data Recording System. Analog strip chart recorder or digital integration system compatible with the FID for permanently recording the analytical results.

2.4 Other Analysis Apparatus.

2.4.1 Barometer. Mercury, aneroid, or other barometer capable of measuring atmospheric pressure to within 1 mm Hg.

2.4.2 Thermometer. Capable of measuring the laboratory temperature within 1 °C.

2.4.3 Vacuum Pump. Capable of evacuating to an absolute pressure of 10 mm Hg.

2.4.4 Syringes. 10-μl and 50-μl liquid injection syringes.

2.4.5 Liquid Sample Injection Unit. 316 SS U-tube fitted with an injection septum, see Figure 25–7.

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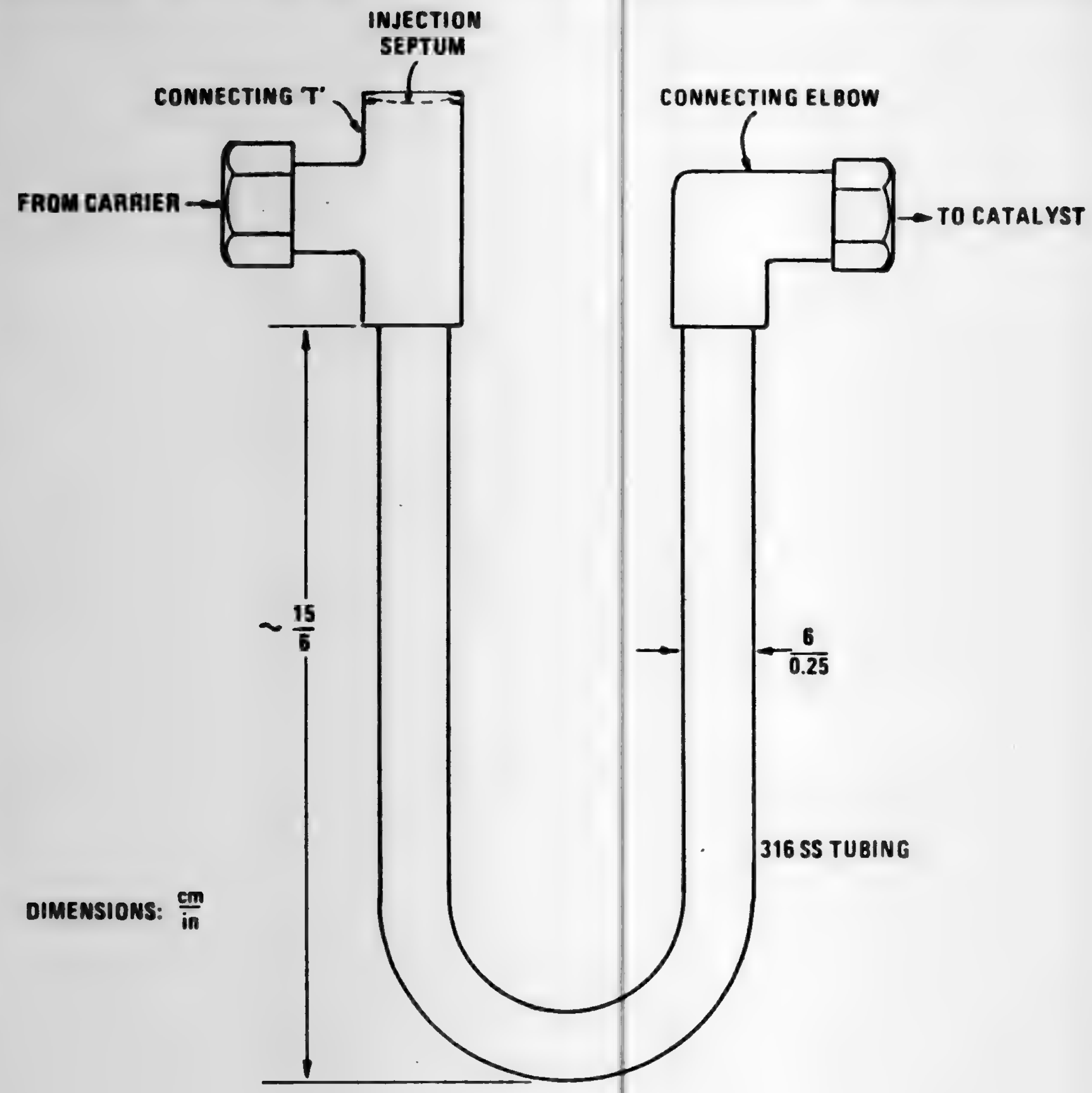
INJECTION SEPTUM
CONNECTING 'T'
CONNECTING ELBOW
FROM CARRIER
TO CATALYST
~ 15/6
6/0.25
316 SS TUBING
DIMENSIONS: cm/in

Figure 25-7. Liquid sample injection unit.

BILLING CODE 6560-50-C

3. *Reagents*

3.1 Sampling. The following are required for sampling:

3.1.1 Crushed Dry Ice.

3.1.2 Coarse Quartz Wool. 8 to 15 μm.

3.2 NMO Analysis. The following gases are needed:

3.2.1 Carrier Gases. Zero grade helium (He) and oxygen (O_2) containing less than 1 ppm CO_2 and less than 0.1 ppm C as hydrocarbon.

3.2.2 Fuel Gas. Zero grade hydrogen (H_2), 99.999 percent pure.

3.2.3 Combustion Gas. Zero grade air or O_2 as required by the detector.

3.3 Condensate Analysis. The following gases are needed:

3.3.1 Carrier Gas. Zero grade air, containing less than 1 ppm C.

3.3.2 Auxiliary O_2. Zero grade O_2 containing less than 1 ppm C.

3.3.3 Hexane. ACS grade, for liquid injection.

3.3.4 Decane. ACS grade, for liquid injection.

3.4 Calibration. For all calibration gases, the manufacturer must recommend a maximum shelf life for each cylinder (i.e., the length of time the gas concentration is not expected to change more than ±5 percent from its certified value). The date of gas cylinder preparation, certified organic concentration, and recommended maximum shelf life must be affixed to each cylinder before shipment from the gas manufacturer to the buyer. The following calibration gases are required.

3.4.1 Oxidation Catalyst Efficiency Check Calibration Gas. Gas mixture standard with nominal concentration of 1 percent methane in air.

3.4.2 FID Linearity and NMO Calibration Gases. Three gas mixture standards with nominal propane concentrations of 20 ppm, 200 ppm, and 3000 ppm, in air.

3.4.3 CO_2 Calibration Gases. Three gas mixture standards with nominal CO_2 concentrations of 50 ppm, 500 ppm, and 1 percent, in air.

Note.—Total NMO less than 1 ppm required for 1 percent mixture.

3.4.4 NMO Analyzer System Check Calibration Gases. Four calibration gases are needed as follows:

3.4.4.1 Propane Mixture. Gas mixture standard containing (nominal) 50 ppm CO, 50 ppm CH_4, 2 percent CO_2, and 20 ppm C_3H_8, prepared in air.

3.4.4.2 Hexane. Gas mixture standard containing (nominal) 50 ppm hexane in air.

3.4.4.3 Toluene. Gas mixture standard containing (nominal) 20 ppm toluene in air.

3.4.4.4 Methanol. Gas mixture standard containing (nominal) 100 ppm methanol in air.

4. *Procedure*

4.1 Sampling.

4.1.1 Sample Tank Evacuation and Leak Check. Evacuate the sample tank to 10 mm Hg absolute pressure or less. Then close the sample tank valve, and allow the tank to sit for 30 minutes. The tank is acceptable if a change in tank vacuum of less than 2 mm Hg is noted. The evacuation and leak check may be conducted either in the laboratory or the field.

4.1.2 Sample Train Assembly. Just before assembly, measure the tank vacuum using a mercury U-tube manometer. Record this vacuum, the ambient temperature, and the barometric pressure at this time. Close the sample tank value and assemble the sampling system as shown in Figure 25–1. Immerse the condensate trap body in dry ice. The point where the inlet tube joins the trap body should be 2.5 to 5 cm above the top of the dry ice.

4.1.3 Pretest Leak Check. A pretest leak check is required. Calculate or measure the approximate volume of the sampling train from the probe tip to the sample tank valve. After assembling the sampling train, plug the probe tip, and make certain that the sample tank valve is closed. Turn on the vacuum pump, and evacuate the sampling system from the probe tip to the sample tank valve to an absolute pressure of 10 mm Hg or less. Close the purge valve, turn off the pump, wait a minimum period of 10 minutes, and recheck the indicated vacuum. Calculate the maximum allowable pressure change based on a leak rate of 1 percent of the sampling rate using Equation 25–1, section 6.2. If the measured pressure change exceeds the calculated limit, correct the problem and repeat the leak check before beginning sampling.

4.1.4 Sample Train Operation. Unplug the probe tip, and place the probe into the stack such that the probe is perpendicular to the duct or stack axis; locate the probe tip at a single preselected point of average velocity facing away from the direction of gas flow. For stacks having a negative static pressure, seal the sample port sufficiently to prevent air in-leakage around the probe. Set the probe temperature controller to 129°C (265°F) and the filter temperature controller to 121°C (250°F). Allow the probe and filter to heat for about 30 minutes before purging the sample train.

Close the sample valve, open the purge valve, and start the vacuum pump. Set the flow rate between 60 and 100 cc/min, and purge the train with stack gas for at least 10 minutes. When the temperatures at the exit ends of the probe and filter are within their specified range, sampling may begin.

Check the dry ice level around the condensate trap, and add dry ice if necessary. Record the clock time. To begin sampling, close the purge valve and stop the pump. Open the sample valve and the sample tank valve. Using the flow control valve, set the flow through the sample train to the proper rate. Adjust the flow rate as necessary to maintain a constant rate (±10 percent) throughout the duration of the sampling period. Record the sample tank vacuum and flowmeter setting at 5-minute intervals (see Figure 25–8). Select a total sample time greater than or equal to the minimum sampling time specified in the applicable subpart of the regulation; end the sampling when this time period is reached or when a constant flow rate can no longer be maintained because of reduced sample tank vacuum.

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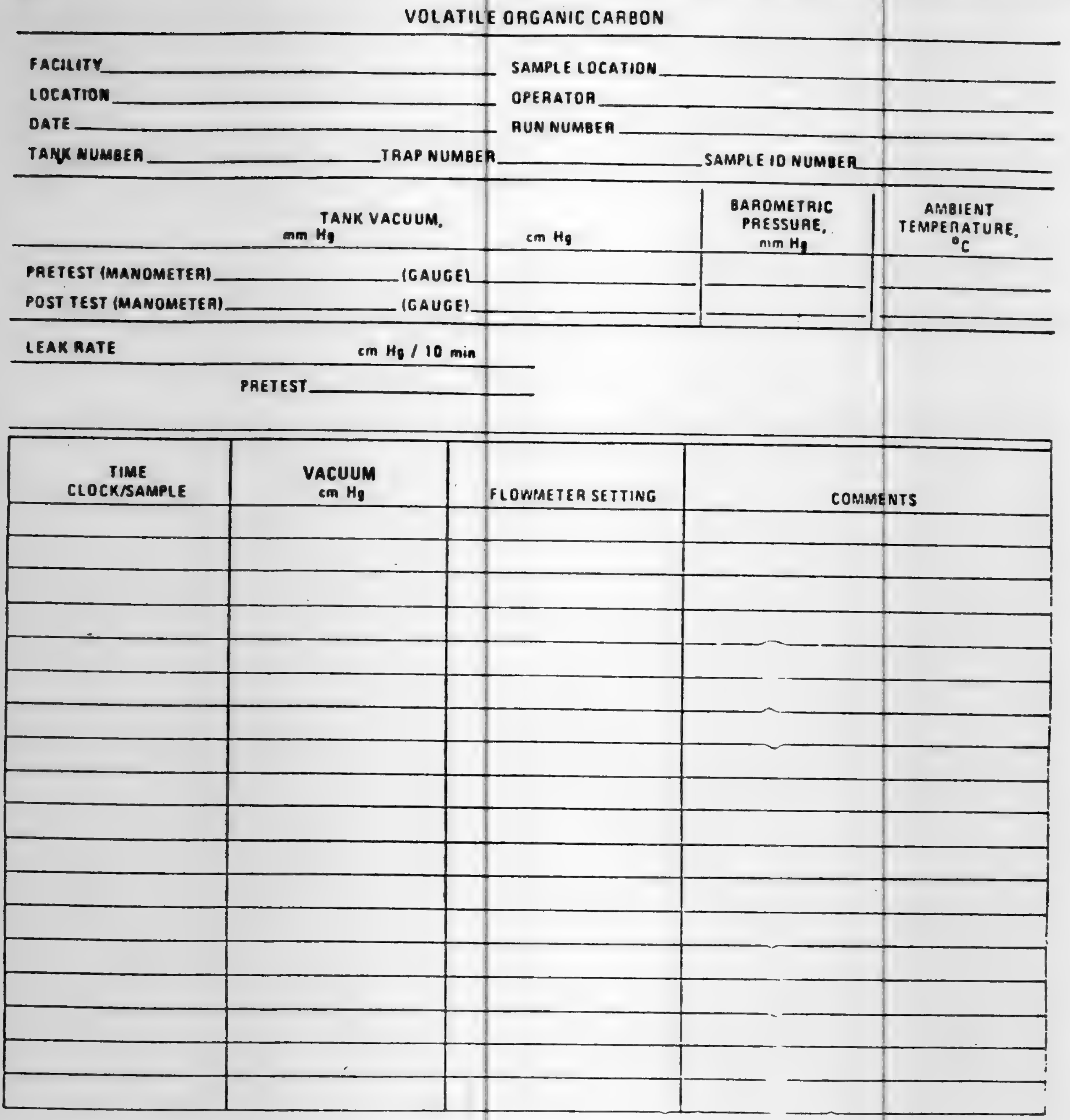

VOLATILE ORGANIC CARBON

FACILITY ____________ SAMPLE LOCATION ____________

LOCATION ____________ OPERATOR ____________

DATE ____________ RUN NUMBER ____________

TANK NUMBER ____________ TRAP NUMBER ____________ SAMPLE ID NUMBER ____________

	TANK VACUUM, mm Hg		cm Hg	BAROMETRIC PRESSURE, mm Hg	AMBIENT TEMPERATURE, °C
PRETEST (MANOMETER)		(GAUGE)			
POST TEST (MANOMETER)		(GAUGE)			

LEAK RATE cm Hg / 10 min

PRETEST ____________

TIME CLOCK/SAMPLE	VACUUM cm Hg	FLOWMETER SETTING	COMMENTS

Figure 25-8. Example field data form.

Note:—If sampling has to be stopped before obtaining the minimum sampling time (specified in the applicable subpart) because a constant flow rate cannot be maintained, proceed as follows: After closing the sample tank valve, remove the used sample tank from the sampling train (without disconnecting other portions of the sampling train). Take another evacuated and leak-checked sample tank, measure and record the tank vacuum, and attach the new tank to the sampling train. After the new tank is attached to the sample train, proceed with the sampling until the required minimum sampling time has been exceeded.

4.2 Sample Recovery. After sampling is completed, close the flow control valve, and record the final tank vacuum; then record the tank temperature and barometric pressure. Close the sample tank valve, and disconnect the sample tank from the sample system. Disconnect the condensate trap at the flowmetering system, and tightly seal both ends of the condensate trap. Do not include the probe from the stack to the filter as part of the condensate sample. Keep the trap packed in dry ice until the samples are returned to the laboratory for analysis. Ensure that the test run number is properly identified on the condensate trap and the sample tank(s).

4.3 Condensate Recovery. See Figure 25-9. Set the carrier gas flow rate, and heat the catalyst to its operating temperature to condition the apparatus.

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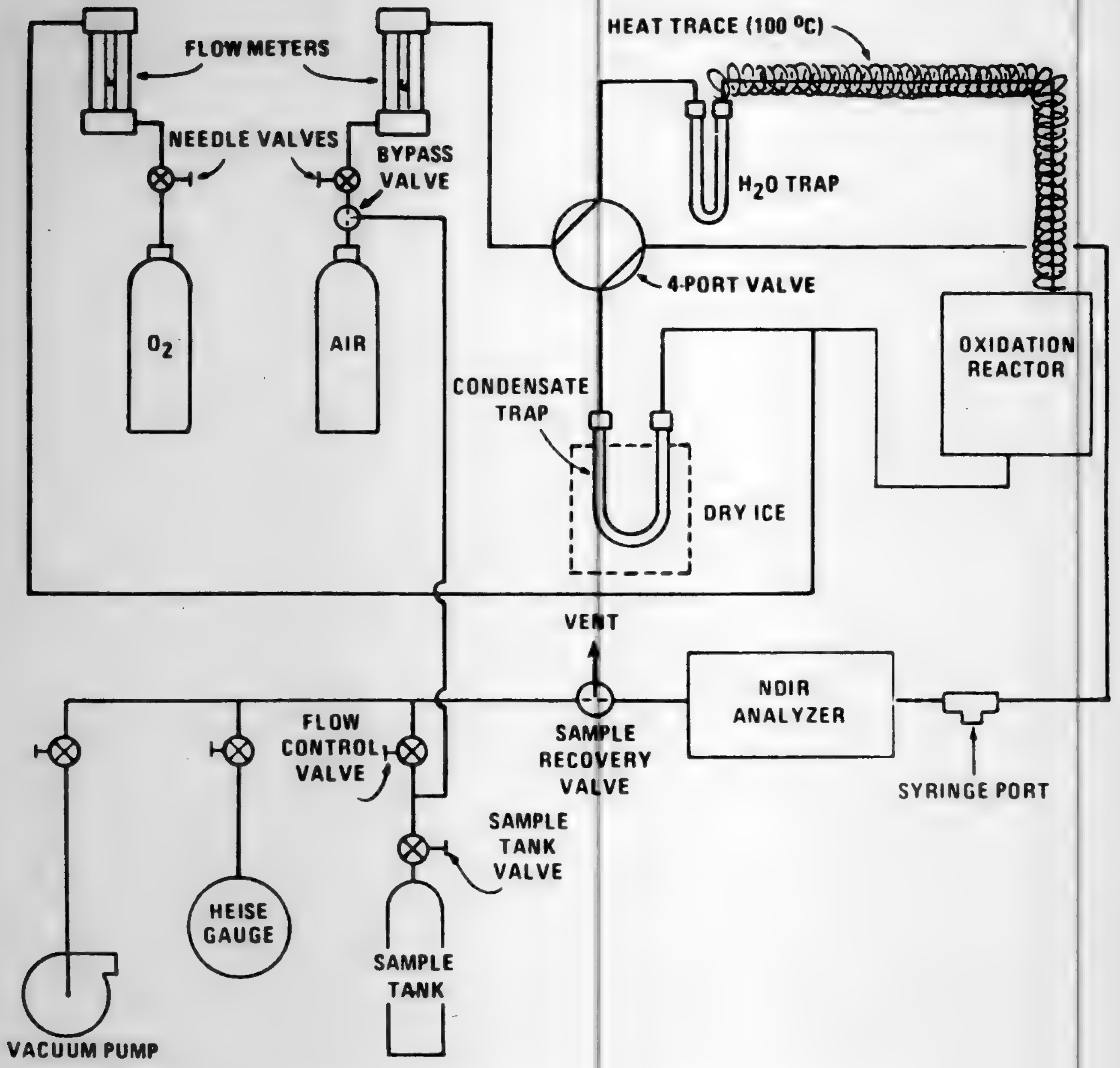
FLOW METERS
NEEDLE VALVES
BYPASS VALVE
O_2
AIR
HEAT TRACE (100 °C)
H_2O TRAP
4-PORT VALVE
OXIDATION REACTOR
CONDENSATE TRAP
DRY ICE
VENT
NDIR ANALYZER
SYRINGE PORT
FLOW CONTROL VALVE
SAMPLE RECOVERY VALVE
SAMPLE TANK VALVE
HEISE GAUGE
SAMPLE TANK
VACUUM PUMP

Figure 25-9. Condensate recovery system, CO_2 purge.

BILLING CODE 6560-50-C

4.3.1 D
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The system
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4.3.1.2
the carrier
to their no
cc/min, res
recovery v
syringe wi
effluent th
sample int
the CO_2 co
acceptable
than 10 pp
4.3.1.3
Check. Co
specified i
criterion of
necessary
proceeding.

4.3.1 Daily Performance Checks. Each day before analyzing any samples, perform the following tests:

4.3.1.1 Leak Check. With the carrier gas inlets and the flow control valve closed, install a clean condensate trap in the system, and evacuate the system to 10 mm Hg absolute pressure or less. Close the vacuum pump valve and turn off the vacuum pump. Monitor the system pressure for 10 minutes. The system is acceptable if the pressure change is less than 2 mm Hg.

4.3.1.2 System Background Test. Adjust the carrier gas and auxiliary oxygen flow rate to their normal valves of 100 cc/min and 150 cc/min, respectively, with the sample recovery valve in vent position. Using a 10-ml syringe withdraw a sample from the system effluent through the syringe port. Inject this sample into the NMO analyzer, and measure the CO_2 content. The system background is acceptable if the CO_2 concentration is less than 10 ppm.

4.3.1.3 Oxidation Catalyst Efficiency Check. Conduct a catalyst efficiency test as specified in section 5.1.2 of this method. If the criterion of this test cannot be met, make the necessary repairs to the system before proceeding.

4.3.2 Condensate Trap CO_2 Purge and Sample Tank Pressurization. After sampling is completed, the condensate trap will contain condensed water and organics and a small volume of sampled gas. This gas from the stack may contain a significant amount of CO_2 which must be removed from the condensate trap before the sample is recovered. This is accomplished by purging the condensate trap with zero air and collecting the purged gas in the original sample tank.

Begin with the sample tank and condensate trap from the test run to be analyzed. Set the four-port valve of the condensate recovery system in the CO_2 purge position as shown in Figure 25–9. With the sample tank valve closed, attach the sample tank to the sample recovery system. With the sample recovery valve in the vent position and the flow control valve fully open, evacuate the manometer or pressure gauge to the vacuum of the sample tank. Next, close the vacuum pump valve, open the sample tank valve, and record the tank pressure.

Attach the dry-ice-cooled condensate trap to the recovery system, and initiate the purge by switching the sample recovery valve from vent to collect position. Adjust the flow control valve to maintain atmospheric pressure in the recovery system. Continue the purge until the CO_2 concentration of the trap effluent is less than 5 ppm. CO_2 concentration in the trap effluent should be measured by extracting syringe samples from the recovery system and analyzing the samples with the NMO analyzer. This procedure should be used only after the NDIR response has reached a minimum level. Using a 10-ml syringe, extract a sample from the syringe port prior to the NDIR, and inject this sample into the NMO analyzer.

After the completion of the CO_2 purge, use the carrier gas bypass valve to pressurize the sample tank to approximately 1,060 mm Hg absolute pressure with zero air.

4.3.3 Recovery of the Condensate Trap Sample. See Figure 25–10. Attach the ICV to the sample recovery system. With the sample recovery valve in a closed position, between vent and collect, and the flow control and ICV valves fully open, evacuate the manometer or gauge, the connecting tubing, and the ICV to 10 mm Hg absolute pressure. Close the flow-control and vacuum pump valves.

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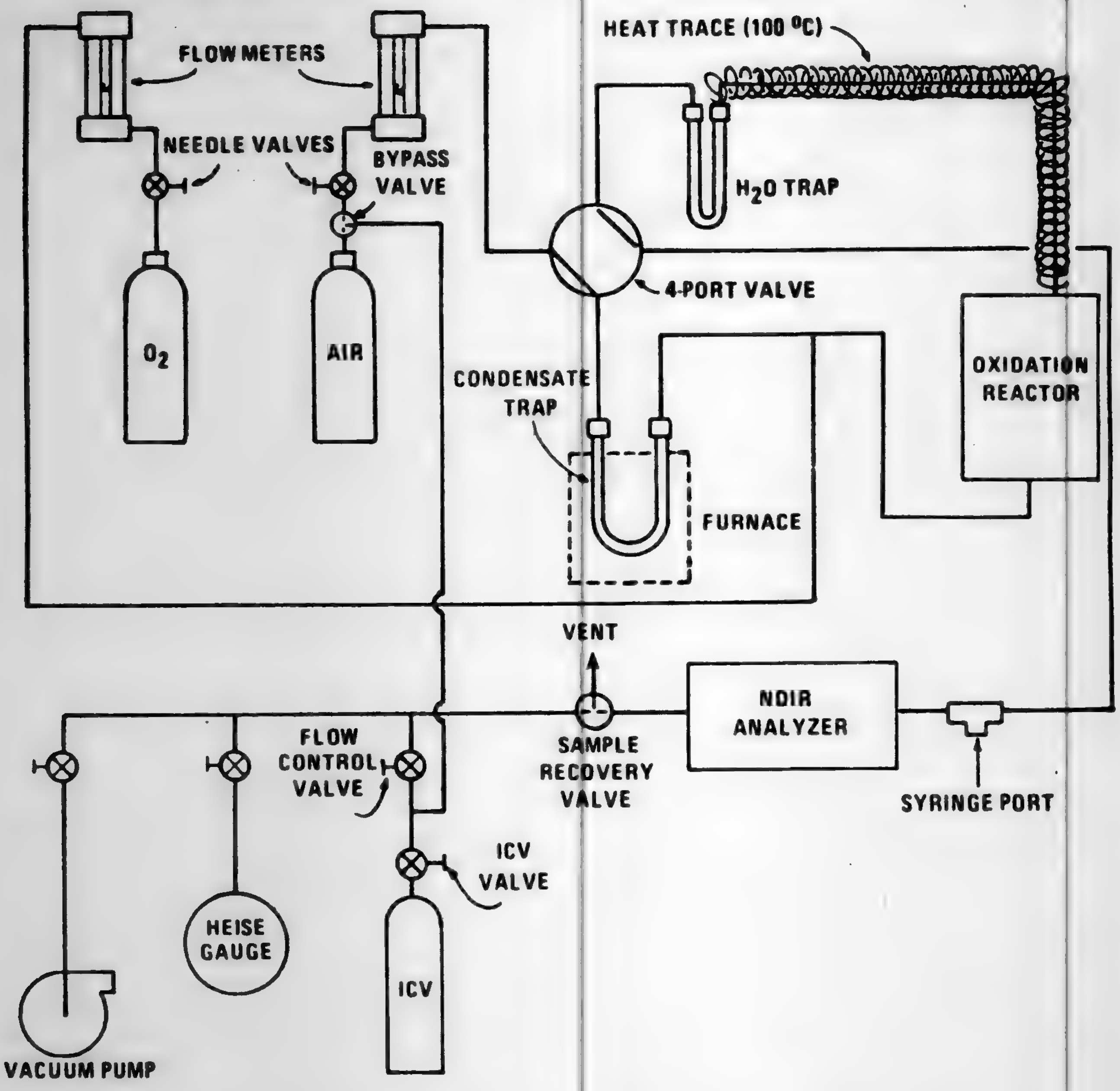
FLOW METERS
HEAT TRACE (100 °C)
NEEDLE VALVES
BYPASS VALVE
H_2O TRAP
4-PORT VALVE
O_2
AIR
CONDENSATE TRAP
OXIDATION REACTOR
FURNACE
VENT
NDIR ANALYZER
FLOW CONTROL VALVE
SAMPLE RECOVERY VALVE
SYRINGE PORT
ICV VALVE
HEISE GAUGE
ICV
VACUUM PUMP

Figure 25-10. Condensate recovery system, collection of trap organics.

BILLING CODE 6560-50-C

Begin auxiliary oxygen flow to the oxidation catalyst at a rate of 150 cc/min, then switch the four-way valve to the trap recovery position and the sample recovery valve to collect position. The system should now be set up to operate as indicated in Figure 25–10. After the manometer or pressure gauge begins to register a slight positive pressure, open the flow control valve. Adjust the flow-control valve to maintain atmospheric pressure in the system within 10 percent.

Now, remove the condensate trap from the dry ice, and allow it to warm to ambient temperature while monitoring the NDIR response. If after 5 minutes, the CO_2 concentration of the catalyst effluent is below 10,000 ppm, discontinue the auxiliary oxygen flow to the oxidation catalyst. Begin heating the trap by placing it in a furnace preheated to 200°C. Once heating has begun, carefully monitor the NDIR response to ensure that the catalyst effluent concentration does not exceed 50,000 ppm. Whenever the CO_2 concentration exceeds 50,000 ppm, supply auxiliary oxygen to the catalyst at the rate of 150 cc/min. Begin heating the tubing that connected the heated sample box to the condensate trap only after the CO_2 concentrate falls below 10,000 ppm. This tubing may be heated in the same oven as the condensate trap or with an auxiliary heat source such as a heat gun. Heating temperature must not exceed 200°C. If a heat gun is used, heat the tubing slowly along its entire length from the upstream end to the downstream end, and repeat the pattern for a total of three times. Continue the recovery until the CO_2 concentration drops to less than 10 ppm as determined by syringe injection as described under the condensate trap CO_2 purge procedure, section 4.3.2.

After the sample recovery is completed, use the carrier gas bypass valve to pressurize the ICV to approximately 1060 mm Hg absolute pressure with zero air.

4.4 Analysis. Before putting the NMO analyzer into routine operation, conduct an initial performance test. Start the analyzer, and perform all the necessary functions in order to put the analyzer into proper working order; then conduct the performance test according to the procedures established in section 5.2. Once the performance test has been successfully completed and the CO_2 and NMO calibration response factors have been determined, proceed with sample analysis as follows:

4.4.1 Daily Operations and Caliberation Checks. Before and immediately after the analysis of each set of samples or on a daily basis (whichever occurs first), conduct a calibration test according to the procedures established in section 5.3. If the criteria of the daily calibration test cannot be met, repeat the NMO analyzer performance test (Section 5.2) before proceeding.

4.4.2 Operating Conditions. The carrier gas flow rate is 29.5 cc/min He and 2.2 cc/min O_2. The column oven is heated to 85°C. The order of elution for the sample from the column is CO, CH_4, CO_2, and NMO.

4.4.3 Analysis of Recovered Condensate Sample. Purge the sample loop with sample, and then inject the sample. Under the specified operating conditions, the CO_2 in the sample will elute in approximately 100 seconds. As soon as the detector response returns to baseline following the CO_2 peak, switch the carrier gas flow to backflush, and raise the column oven temperature to 195°C as rapidly as possible. A rate of 30°C/min has been shown to be adequate. Record the value obtained for the condensible organic material (C_{cm}) measured as CO_2 and any measured NMO. Return the column oven temperature to 85°C in preparation for the next analysis. Analyze each sample in triplicate, and report the average C_{cm}.

4.4.4 Analysis of Sample Tank. Perform the analysis as described in section 4.4.3, but record only the value measured for NMO (C_{tm}).

4.5 Audit Samples. Analyze a set of two audit samples concurrently with any compliance samples and in exactly the same manner to evaluate the analyst's technique and the instrument calibration. The same analysts, analytical reagents, and analytical system shall be used for the compliance samples and the EPA audit samples; if this condition is met, auditing of subsequent compliance analyses for the same enforcement agency within 30 days is not required. An audit sample set may not be used to validate different sets of compliance samples under the jurisdiction of different enforcement agencies, unless prior arrangements are made with both enforcement agencies.

Calculate the concentrations of the audit samples in ppm using the specified sample volume in the audit instructions. (Note.—Indication of acceptable results may be obtained immediately by reporting the audit results in ppm and compliance results in ppm by telephone to the responsible enforcement agency.) Include the results of both audit samples, their identification numbers, and the analyst's name with the results of the compliance determination samples in appropriate reports to the EPA regional office or the appropriate enforcement agency during the 30-day period.

The concentration of the audit samples obtained by the analyst shall agree within 20 percent of the actual concentrations. Failure to meet the 20-percent specification may require retests until the audit problems are resolved. However, if the audit results do not affect the compliance or noncompliance status of the affected facility, the Administrator may waive the reanalysis requirement, further audits, or retests and accept the results of the compliance test. While steps are being taken to resolve audit analysis problems, the Administrator may also choose to use the data to determine compliance or noncompliance of the affected facility.

5. *Calibration and Operational Checks*

Maintain a record of performance of each item.

5.1 Initial Performance Check of Condensate Recovery Apparatus. Perform these tests before the system is first placed in operation, after any shutdown of 6 months or more, and after any major modification of the system, or at the specified frequency.

5.1.1 Carrier Gas and Auxiliary O_2 Blank Check. Analyze each new tank of carrier gas or auxiliary O_2 with the NMO analyzer to check for contamination. Treat the gas cylinders as noncondensible gas samples, and analyze according to the procedure in section 4.4.3. Add together any measured CH_4, CO, CO_2, or NMO. The total concentration must be less than 5 ppm.

5.1.2 Catalyst Efficiency Check. With a clean condensate trap installed in the recovery system, replace the carrier gas cylinder with the high level methane standard gas cylinder (section 3.4.1). Set the four-port valve to the recovery position, and attach an ICV to the recovery system. With the sample recovery valve in vent position and the flow-control and ICV valves fully open, evacuate the manometer or gauge, the connecting tubing, and the ICV to 10 mm Hg absolute pressure. Close the flow-control and vacuum pump valves.

After the NDIR response has stabilized, switch the sample recovery valve from vent to collect. When the manometer or pressure gauge begins to register a slight positive pressure, open the flow-control valve. Keep the flow adjusted so that atmospheric pressure is maintained in the system within 10 percent. Continue collecting the sample in a normal manner until the ICV is filled to a nominal gauge pressure of 300 mm Hg. Close the ICV valve, and remove the ICV from the system. Place the sample recovery valve in the vent position, and return the recovery system to its normal carrier gas and normal operating conditions. Analyze the ICV for CO_2 using the NMO analyzer; the catalyst efficiency is acceptable if the CO_2 concentration is within 2 percent of the methane standard concentration.

5.1.3 System Performance Check. Construct a liquid sample injection unit similar to design to the unit shown in Figure 25–7. Insert this unit into the condensate recovery and conditioning system in place of a condensate trap, and set the carrier gas and auxiliary O_2 flow rates to normal operating levels. Attach an evacuated ICV to the system, and switch from system vent to collect. With the carrier gas routed through the injection unit and the oxidation catalyst, inject a liquid sample (see sections 5.1.3.1 to 5.1.3.4) into the injection port. Operate the trap recovery system as described in section 4.3.3. Measure the final ICV pressure, and then analyze the vessel to determine the CO_2 concentration. For each injection, calculate the percent recovery using the equation in section 6.6.

The performance test is acceptable if the average percent recovery is 100 ± 5 percent with a relative standard deviation (section 6.9) of less than 2 percent for each set of triplicate injections as follows:

5.1.3.1 50 μl Hexane.
5.1.3.2 50 μl Hexane.
5.1.3.3 50 μl Decane.
5.1.3.4 50 μl Decane.

5.2 Initial NMO Analyzer Performance Test. Perform these tests before the system is first placed in operation, after any shutdown longer than 6 months, and after any major modification of the system.

5.2.1 Oxidation Catalyst Efficiency Check. Turn off or bypass the NMO analyzer reduction catalyst. Make triplicate injections of the high level methane standard (section

3.4.1.). The oxidation catalyst operation is acceptable if the FID response is less than 1 percent of the injected methane concentration.

5.2.2 Reduction Catalyst Efficiency Check. With the oxidation catalyst unheated or bypassed and the heated reduction catalyst bypassed, make triplicate injections of the high level methane standard (section 3.4.1). Repeat this procedure with both catalysts operative. The reduction catalyst operation is acceptable if the response under both conditions agree within 5 percent.

5.2.3 Analyzer Linearity Check and NMO Calibration. While operating both the oxidation and reduction catalysts, conduct a linearity check of the analyzer using the propane standards specified in section 3.4.2. Make triplicate injections of each calibration gas, and then calculate the average response factor (area/ppm C) for each gas, as well as the overall mean of the response factor values. The instrument linearity is acceptable if the average response factor of each calibration gas is within 2.5 percent of the overall mean value and if the relative standard deviation (section 6.9) for each set of triplicate injections is less than 2 percent. Record the overall mean of the propane response factor values as the NMO calibration response factor (RF_{NMO}).

Repeat the linearity check using the CO_2 standards specified in section 3.4.3. Make triplicate injections of each gas, and then calculate the average response factor (area/ppm C) for each gas, as well as the overall mean of the response factor values. Record the overall mean of the response factor values as the CO_2 calibration response factor (RF_{CO2}). The RF_{CO2} must be within 10 percent of the RF_{NMO}.

5.2.4 System Performance Check. Check the column separation and overall performance of the analyzer by making triplicate injections of the calibration gases listed in section 3.4.4. The analyzer performance is acceptable if the measured NMO value for each gas (average of triplicate injections) is within 5 percent of the expected value.

5.3 NMO Analyzer Daily Calibration.

5.3.1 CO_2 Response Factor. Inject triplicate samples of the high level CO_2 calibration gas (section 3.4.3), and calculate the average response factor. The system operation is adequate if the calculated response factor is within 5 percent of the RF_{CO2} calculated during the initial performance test (section 5.2.3). Use the daily response factor (DRF_{CO2}) for analyzer calibration and the calculation of measured CO_2 concentrations in the ICV samples.

5.3.2 NMO Response Factors. Inject triplicate samples of the mixed propane calibration cylinder (section 3.4.4.1), and calculate the average NMO response factor. The system operation is adequate if the calculated response factor is within 5 percent of the RF_{NMO} calculated during the initial performance test (section 5.2.4). Use the daily response factor (DRF_{NMO}) for analyzer calibration and calculation of NMO concentrations in the sample.

5.4 Sample Tank and ICV Volume. The volume of the gas sampling tanks used must be determined. Determine the tank and ICV volumes by weighing them empty and then filled with deionized distilled water; weigh to the nearest 5 g, and record the results. Alternatively, measure the volume of water used to fill them to the nearest 5 ml.

6. *Calculations*

All equations are written using absolute pressure; absolute pressures are determined by adding the measured barometric pressure to the measured gauge or manometer pressure.

6.1 Nomenclature.

C=TGMMO concentration of the effluent, ppm C equivalent.
C_c=Calculated condensible organic (condensate trap) concentration of the effluent, ppm C equivalent.
C_{cm}=Measured concentration (NMO analyzer) for the condensate trap ICV, ppm CO_2.
C_t=Calculated noncondensible organic concentration (sample tank) of the effluent, ppm C equivalent.
C_{tm}=Measured concentration (NMO analyzer) for the sample tank, ppm NMO.
F=Sampling flow rate, cc/min.
L=Volume of liquid injected, µl.
M=Molecular weight of the liquid injected, g/g-mole.
M_c=TGNMO mass concentration of the effluent, mg C/dsm³.
N=Carbon number of the liquid compound injected (N=12 for decane, N=6 for hexane).
P_f=Final pressure of the intermediate collection vessel, mm Hg absolute.
P_b=Barometric pressure, cm Hg.
P_{ti}=Gas sample tank pressure before sampling, mm Hg absolute.
P_t=Gas sample tank pressure after sampling, but before pressurizing, mm Hg absolute.
P_{tf}=Final gas sample tank pressure after pressurizing, mm Hg absolute.
T_f=Final temperature of intermediate collection vessel, °K.
T_{ti}=Sample tank temperature before sampling, °K.
T_t=Sample tank temperature at completion of sampling, °K.
T_{tf}=Sample tank temperature after pressurizing, °K.
V=Sample tank volume, m³.
V_t=Sample train volume, cc.
V_v=Intermediate collection vessel volume, m³.
V_s=Gas volume sampled, dsm³.
n=Number of data points.
q=Total number of analyzer injections of intermediate collection vessel during analysis (where k=injection number, 1 . . . q).
r=Total number of analyzer injections of sample tank during analysis (where j=injection number, 1 . . . r).
xi=Individual measurements.
x=mean value.
ρ=Density of liquid injected, g/cc.
θ=Leak check period, min.
ΔP=Allowable pressure change, cm Hg.

6.2 Allowable Pressure Change. For the pretest leak check, calculate the allowable pressure change:

Eq. 25-1

$$\Delta P = 0.01 \frac{F P_b \theta}{V_t}$$

6.3 Sample Volume. For each test run, calculate the gas volume sampled:

Eq. 25-2

$$V_s = 0.3857\ V \left[\frac{P_t}{T_t} - \frac{P_{ti}}{T_{ti}}\right]$$

6.4 Noncondensible Organics. For each sample tank, determine the concentration of nonmethane organics (ppm C):

Eq. 25-3

$$C_t = \left[\frac{\dfrac{P_{tf}}{T_{tf}}}{\dfrac{P_t}{T_t} - \dfrac{P_{ti}}{T_{ti}}}\right]\left[\frac{1}{r}\sum_{j=1}^{r} C_{tm_j}\right]$$

6.5 Condensible organics. For each condensate trap determine the concentration of organics (ppm C):

Eq. 25-4

$$C_c = 0.3857\ \frac{V_v\ P_f}{V_s\ T_f}\left[\frac{1}{q}\sum_{k=1}^{q} C_{cm_k}\right]$$

6.6 TGNMO. To determine the TGNMO concentration for each test run, use the following equation:

Eq. 25-5

$$C = C_t + C_c$$

6.7 TGNMO Mass Concentration. To determine the TGNMO mass concentration as carbon for each test run, use the following equation:

Eq. 25-6

$$M_c = 0.4993\ C$$

6.8 Percent Recovery. To calculate the percent recovery for the liquid injections to the condensate recovery and conditioning system use the following equation:

Percent recovery =

$$1.604 \frac{M}{L} \frac{V_v}{\rho} \frac{P_f}{T_f} \frac{C_{cm}}{N} \qquad \text{Eq. 25-7}$$

6.9 Relative Standard Deviation.

$$RSD = \frac{100}{\bar{x}} \frac{\Sigma (x_i - \bar{x})^2}{n - 1} \qquad \text{Eq. 25-8}$$

7. Bibliography

1. Salo, Albert E., Samuel Witz, and Robert D. MacPhee. Determination of Solvent Vapor Concentrations by Total Combustion Analysis: A Comparison of Infrared with Flame Ionization Detectors. Paper No. 75–33.2. (Presented at the 68th Annual Meeting of the Air Pollution Control Association. Boston, Massachusetts. June 15–20, 1975.) 14 p.

2. Salo, Albert E., William L. Oaks, and Robert D. MacPhee. Measuring the Organic Carbon Content of Source Emissions for Air Pollution Control. Paper No. 74–190. (Presented at the 67th Annual Meeting of the Air Pollution Control Association. Denver, Colorado June 9–13, 1974.) 25 p.

* * * * *

[FR Doc. 86–25192 Filed 11–6–86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[Gen. Docket No. 86–337]

Automatic Transmitter Identification Systems for Radio Transmitting Equipment; Extension of Deadlines for Comments and Replies

AGENCY: Federal Communications Commission.

ACTION: *Notice of proposed rulemaking and notice of inquiry:* Extension of deadlines for comments and reply comments.

SUMMARY: Acting under delegated authority, the Chief, Office of Engineering and Technology has issued on *Order* extending the comment and reply comment deadlines for the *Notice of Proposed Rulemaking and Notice of Inquiry* in General Docket No. 86–337, concerning an automatic transmitter identification system, published on September 10, 1986, 51 FR 32223.

This responds to extension requests from the Electronic Industries Association, the National Electrical Manufacturers Association, and the National Cable Television Association.

DATES: *Notice of Inquiry* comment deadline extended to January 19, 1987, and reply comment deadline extended to February 17, 1987. *Notice of Proposed Rulemaking* comment deadline extended to November 19, 1986, and reply comment deadline extended to December 19, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John Hudak, Field Operations Bureau (202) 632–6977.

Federal Communications Commission.

Thomas P. Stanley,

Chief Engineer.

[FR Doc. 86–25159 Filed 11–6–86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86–384, RM–5223; RM–5476]

Radio Broadcasting Services; Lompoc, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on petitions filed by Crystal Broadcasting, Inc. to substitute FM Channel 262B1 for Channel 265A and modify the license for Station KRQK–FM at Lompoc, California, and by Gold Coast Broadcasting, Inc. and Broadcast Management Consultants, Inc., licensee and assignee, respectively, of Station KXCC–FM, Lompoc, California, seeking to substitute FM Channel 281B1 for Channel 224A and to modify its license accordingly.

DATES: Comments must be filed on or before December 12, 1986, and reply comments on or before December 29, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Roger J. Metzler, Jr., Esq., Farrand, Malti, Cooper and Metzler, 701 Sutter St., San Francisco, California 94109 (Counsel for Crystal Broadcasting, Inc.); and Edgar W. Holtz, Esq. Hogan & Hartson, 815 Connecticut Ave. NW., Washington, DC 20006–4072 (Counsel for Broadcast Management Consultants, Inc.).

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, (202) 634–6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–384, adopted September 26, 1986, and released October 22, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–25160 Filed 11–6–86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86–386, RM–5449]

Radio Broadcasting Services; Kalkaska, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Northern Radio of Michigan, Inc., proposing the substitution of FM Channel 248C2 for Channel 249A at Kalkaska, Michigan, and modification of the license of Station WKLT–FM, to reflect the higher class of channel.

DATES: Comments must be filed on or before December 12, 1986, and reply comments on or before December 29, 1986.

ADDRESS: Federal Communications

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Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Thomas N. Frohock, McKenna, Wilkinson & Kittner, 1150 Seventeenth Street, NW., Washington, DC 20036 (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-386, adopted September 26, 1986, and released October 22, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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For information regarding proper filing precedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division Mass Media Bureau.

[FR Doc. 86-25161 Filed 11-6-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-388, RM-5385]

Television Broadcasting Services; Kenansville, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a proposal to assign UHF Television Channel 31 to Kenansville, Florida at the request of Meredith Corporation. The channel assignment could provide Kenansville with its first television service.

DATES: Comments must be filed on or before December 12, 1986, and reply comments on or before December 29, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Henry A. Solomon, Haley, and Bader and Potts, 2000 M Street, NW., Washington, DC (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-388, adopted September 30, 1986, and released October 22, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-25162 Filed 11-6-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR PART 650

[Docket No. 51222-6189]

Atlantic Sea Scallop Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA proposes and requests comment on this rule to implement a Secretarial Amendment which would: (1) Supersede Amendment 1 to the Fishery Management Plan for the Atlantic Sea Scallop Fishery (FMP), and (2) provide authority to the Director, Northeast Region, NMFS (Regional Director) to grant exemptions from the regulations for scientific research beneficial to the sea scallop resource or fishery. This action is intended to minimize fishing-related mortality on small scallops, and facilitate the development of an alternative management program for the fishery.

DATE: Comments on the Secretarial Amendment and this proposed rule must be received on or before December 19, 1986.

ADDRESSES: Copies of the Secretarial Amendment may be requested from and comments on this proposed rule and the Secretarial Amendment sent to Richard H. Schaefer, Acting Regional Director, National Marine Fisheries Service, 14 Elm Street, Gloucester, MA 01930. If commenting, please mark "Comments on the Scallop Secretarial Amendment" on the envelope.

FOR FURTHER INFORMATION CONTACT: Carol J. Kilbride, Resource Policy Analyst, 617-281-3600 extension 311.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the New England Fishery Management Council (Council) in consultation with the Mid-Atlantic and South Atlantic Fishery Management Councils. The final rule implementing the FMP (47 FR 35990, August 18, 1982) established a maximum average meat count standard with a range of 40 to 25 meats per pound, and a corresponding minimum shell height requirement for sea scallops landed in the shell. Enforcement of this standard was limited up to and including the point of first transaction in the United States.

The Council prepared Amendment 1 to the FMP which was approved by the Administrator of NOAA on October 17, 1985. Amendment 1 established a minimum weight standard, the four-ounce standard, and extended enforcement beyond the point of first transaction. Its purpose was to reduce the taking of small sea scallops. The final rule implementing Amendment 1 (50 FR 46069, November 6, 1985) was to become effective on January 1, 1986.

By an emergency rule (51 FR 206, January 3, 1986) and an extension of its effective date (51 FR 11927, April 8, 1986, and 51 FR 16520, May 5, 1986), NOAA delayed implementation of Amendment 1 for 180 days, as authorized by section 305(e) of the Magnuson Fishery Conservation and Management Act, in order to avert severe economic hardship in the fishery. The emergency rule continued the regulations implementing the original FMP.

On May 28, 1986, the Council voted unanimously to forestall the implementation of Amendment 1 through an emergency action, and to supersede it through a Secretarial Amendment. The Council believes that such action is necessary due to the tremendous number of small scallops recently recruited into the fishery. Their abundance and distribution will render industry compliance with the minimum weight standrd set by Amendment 1 very difficult. In addition, such a strict standard would lead to increased mortality of scallops as a result of dredging and discarding.

In order to provide the Secretary with adequate time to develop and implement the Secretarial Amendment, another emergency interim rule was promulgated to delay implementation of Amendment 1 for 180 days, from July 3 through December 29, 1986 (51 FR 24841, July 9, 1986; 51 FR 34644, September 30, 1986). This emergency rule continued the management measures originally established in the FMP and provided authority to the Regional Director to grant exemptions from the regulations for research purposes.

Amendment 1 has lost vitually all industry support as evidenced by testimony before the Council on April 22, 1986. If it were to be implemented against the will of the industry, there is the potential for widespread abandonment of any conservation measures. In response to industry concerns, the Council has begun to explore alternative management measures, such as gear modifications and closed areas, to replace the meat weight and shell height standards of Amendment 1 to the FMP. The Secretarial Amendment which this rule would implement is intended to ensure that the Council has adequate time to develop and analyze alternative management measures that are appropriate and acceptable to meet the objectives of the FMP. The research exemption provision of the Secretarial Amendment is intended to facilitate the development of alternative measures.

For the reasons stated above, (1) the revisions published in the final rule for Amendment 1 (51 FR 46071, November 6, 1985) affecting §§ 650.1, 650.2, 650.7, 650.20, 650.21, and 650.22, which have never come into effect, are hereby proposed to be withdrawn; and (2) authority is proposed to grant exemptions from the requirements of this part for research purposes.

Classification

Section (c)(2)(iii) of the Magnuson Act, as amended by Pub. L. 97–453, requires the Secretary of Commerce to publish proposed regulations within 30 days following submission of a Secretarial Amendment to the Council.

This action is categorically excluded, by NOAA Directive 02–10, from the requirement to prepare an environmental assessment.

The Administrator of NOAA has determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. The current regulatory measures of the FMP and their impacts are not changed by this action. Except for the research provisions, this action is identical to the management measures implemented in 1982.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because this action is simply a continuation of the regulatory measures currently in effect. As a result, a regulatory flexibility analysis was not prepared.

The Assistant Administrator for Fisheries, NOAA, had determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management program.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 650

Fisheries, Reporting and recordkeeping requirements.

Dated: November 4, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 650 is proposed to be amended as follows:

PART 650—[AMENDED]

1. The authority citation for 50 CFR Part 650 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. The entire regulatory text of Amendment 1 (50 FR 46069, November 6, 1985), presently in suspension, affecting §§ 650.1, 650.2, 650.7, 650.20, 650.21, and 650.22, is withdrawn.

3. The table of contents is amended by adding a new section title to read as follows:

Sec.
650.23 Research exemption.

4. A new § 650.23 is added, to read as follows:

§ 650.23 Research exemption.

(a) Upon the recommendation of the Council, the Regional Director may exempt any person or vessel from the requirements of this part for the conduct of research beneficial to the management of the sea scallop resource or fishery.

(b) The Regional Director may not grant such exemption unless it is determined that the purpose, design, and administration of the exemption is consistent with the objectives of the FMP, the provisions of the Magnuson Act, and other applicable law, and that granting the exemption will not—

(1) Have a detrimental effect on the sea scallop resource and fishery; or

(2) Create significant enforcement problems.

(c) Each vessel participating in any exempted research activity is subject to all provisions of this part except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Director to each vessel participating in the exempted activity. This letter must be carried aboard the vessel seeking in the benefit of such exemption.

[FR Doc. 86–25285 Filed 11–6–86; 8:45 am]

BILLING CODE 3510-22-M

VOL 51 ISS 216 NO 7 1986 UMI

Notices

Federal Register
Vol. 51, No. 216
Friday, November 7, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 86-356]

Availability of a Draft Environmental Impact Statement on the Rangeland Grasshopper Cooperative Management Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability; request for comment.

SUMMARY: This document gives notice of the availability for public comment of a Draft Environmental Impact Statement (EIS) on the Rangeland Grasshopper Cooperative Management Program (USDA-APHIS-DEIS-86-01). The draft EIS addresses the environmental impact of cooperative control measures for grasshoppers and Mormon crickets on Western rangeland. The draft EIS was sent to the Environmental Protection Agency (EPA) on October 31, 1986, by USDA pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969.

DATE: Comments concerning the draft EIS must be received on or before December 22, 1986.

ADDRESS: Submit written comments concerning the draft EIS to Charles H. Bare, Staff Officer, Field Operations, Support Staff, PPQ, APHIS, USDA, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments are in response to Docket Number 86-356. Comments received may be inspected at Room 663 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Copies of the draft EIS are available by mail except from locations designated by an asterisk.

Copies may be inspected at any of the following locations:

Plant Protection and Quarantine
Animal and Plant Health Inspection Service,
U.S. Department of Agriculture,
Room 302-E, Administration Building,
14th & Independence Avenue, NW.,
Washington, DC 20250

Plant Protection and Quarantine
Animal and Plant Health Inspection Service,
U.S. Department of Agriculture,
Room 663, Federal Building,
6505 Belcrest Road,
Hyattsville, MD 20782

Plant Protection and Quarantine
Animal and Plant Health Inspection Service,
U.S. Department of Agriculture,
7100 West 44th Avenue, Suite 102,
Wheat Ridge, CO 80033

Plant Protection and Quarantine
Animal and Plant Health Inspection Service,
U.S. Department of Agriculture,
83 Scripps Drive, Second Floor,
Sacramento, CA 95825

Plant Protection and Quarantine
Animal and Plant Health Inspection Service,
U.S. Department of Agriculture,
2100 Boca Chica Boulevard, Suite 400,
Brownsville, TX 78521

FOR FURTHER INFORMATION CONTACT: Charles H. Bare, Staff Officer, Field Operations Support Staff, PPQ, APHIS, USDA, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8295.

SUPPLEMENTARY INFORMATION:

Background

Grasshoppers and Mormon crickets are destructive native pests on rangeland, forage, and crops mainly in the States west of the Mississippi River. Infestations are often of such an extent as to be beyond the capability of individual ranchers or farmers to control. Additionally, the migratory and widespread nature of these pests makes coordination of cooperative control efforts across State boundaries essential. Therefore, the Department has, in conjunction with cooperating State Departments of Agriculture, provided direct supervision and leadership of grasshopper and Mormon cricket control programs.

A notice was published in the **Federal Register** on June 9, 1986, (51 FR 20950-20951) announcing the intent of the Department to prepare an EIS for the rangeland grasshopper cooperative management program. The notice also announced two public meetings, to provide the initial opportunity for involvement in the scoping process as the first step in the development of the draft EIS. Public meetings were held in Denver, Colorado, on July 8, 1986, and in Boise, Idaho, on July 10, 1986. Comments received during the scoping process have been addressed in the draft EIS.

The draft EIS addresses alternative methods of grasshopper control to be used in APHIS's cooperative programs beginning in 1987. The draft EIS indicates that the preferred alternative is integrated pest management (IPM). Under the preferred alternative, malathion, cabaryl, acephate sprays, carbaryl bait, and *Nosema locustae* bait would be available; testing will continue on other chemical and biological methods and on cultural/mechanical methods. Data base development based on survey results to enhance APHIS's outbreak prediction capabilities will also be tested. As methods in research become operational, APHIS would conduct environmental analyses tiered to this EIS for consideration in its program.

The draft EIS examines potential impacts on soils, vegetables, wildlife, water quality and aquatic systems, human health and worker safety, air quality, historic and cultural resources, visual resources, and noise levels. Potential adverse impacts would be avoided through adherence to the operational procedures and mitigation measures provided.

Copies of the draft EIS are available upon request. (See "**ADDRESSES**").

Done at Washington, DC., this 5th day of November 1986.

Donald F. Husnik,

Deputy Administrator Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 86-25392 Filed 11-6-86; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

National Forest System Lands; Geophysical Exploration; Rental Fee Policy; Rocky Mountain Region

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed fee policy for geophysical exploration activities.

SUMMARY: The Forest Service proposes to establish policy and procedures for determination of rental fees for geophysical exploration across National Forest System Lands within the Rocky Mountain Region. The Forest Service has coordinated this proposal with the International Association of Geophysical Contractors.

The proposal provides for a uniform rental fee for all types of geophysical exploration on National Forest System Lands administered by the Rocky Mountain Regional Forester. The fee is based upon average rental values of Federal oil and gas leases within the Region and adjacent areas and will be adjusted annually based upon average lease rentals and bonus bids received. The proposed policy is based upon sound business management principles, and as far as practicable, is in accordance with comparable commercial practices for establishing fair market rental fees.

DATE: Comments must be received by January 30, 1987.

ADDRESS: Send written comments to Gary E. Cargill, Regional Forester (2820), Forest Service, USDA, P.O. Box 25127, Denver, CO 80225.

The public may inspect comments received on this proposed policy in the office of the Director, Watershed, Soils, and Minerals Area Management Staff, Second Floor, Regional Office, 11177 West 8th Avenue, Lakewood, CO, between the hours of 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: William M. Robinson, (303) 236–9477.

SUPPLEMENTARY INFORMATION: The Rocky Mountain Region of the Forest Service administers approximately 1,500 miles of geophysical exploration activity annually. The activity is temporary and short-term in nature and results in no permanent facility, occupation, or development of the lands involved.

The Organic Administration Act of June 4, 1897, (30 Stat. 34, as amended, 16 U.S.C. 551) authorizes the Secretary of Agriculture to make rules and regulations to regulate the occupancy and use of the National Forests. Geophysical exploration is a type of special use under the regulations at 36 CFR Part 251, requiring approval of an authorized officer of the Forest Service. The Forest Service may issue permits to do preliminary mineral related and other geologic investigations and surveys on National Forest System Lands. Such permits may not authorize the type and intensity of exploration more properly conducted under leases, licenses, and permits issued by the U.S. Department of the Interior (USDI), under mining law surface use regulations issued by the Forest Service (36 CFR Part 228 C), or by land authorizations pursuant to reserved and outstanding mineral rights.

The Office of Management and Budget (OMB) Circular No. A–25, as amended and supplemented, requires agencies to establish user charges based on sound business management principles and to the extent feasible in accordance with comparable commercial practices. Charges need not be limited to the recovery of costs; they may produce net revenues to the Government.

In 1964, the Bureau of the Budget (predecessor to OMB) issued further guidelines in the *Natural Resources User Charges Study*, which provided for the use of Federal land as follows:

> . . . the Government should recover the fair market value of the use of Federal land resources. Competitive bidding will be used to establish the fair market value in all instances where an identifiable competitive interest exists. Where a competitive interest does not exist, fees should be comparable to those charged for the use of similar private lands. Fees and charges for long-term use should be established in such a manner as will allow for periodic timely adjustment.

The 1976 passage of the Federal Land Policy and Management Act (Pub. L. 94–579, 90 Stat. 2743 at 2745) reinforced long-standing Congressional support of fair market value as a basis for fees. Section 102(a) of the Act states that ". . . it is the policy of the United States that. . . the United States receive fair market value for the use of the public lands and their resources unless otherwise provided for by statute. . . ." Title V provides specific direction that fees for right-of-way uses and grants should reflect fair market values.

In accordance with these Acts and OMB directives, the Forest Service's special use regulations at 36 CFR 251.57 provide that special-use authorization shall require ". . . the payment in advance of an annual rental fee as determined by the authorized officer. The fee will be based upon the fair market value of the rights and privileges authorized as determined by appraisal or other sound business management principles."

The Forest Service Manual (FSM), section 2821.21, contained a recommended range of rates for various types of geophysical exploration and the Regional Foresters were authorized to establish other rates based on local activity. There was no reference to fair market value, but it stated that fees should be generally comparable to those charged by private landowners and other land management agencies in the area. Because the range of rates in FSM 2821.21 was not based upon a determination of fair market value it was superseded by the Forest Service Chief in Interim Directive No. 18, which directed all Regional Foresters to base fees for geologic exploration permits on fair market value as determined by appraisal or sound business management principles. Current fees are established on the basis of limited information regarding charges for crossing private lands in the vicinity of the National Forest System Lands. There has been debate and disagreement over the appropriateness of this method for establishing fees. The International Association of Geophysical Contractors (IAGC), an industry trade association, requested that the Forest Service review the permit fee setting process and work jointly with IAGC to establish a procedure for determining fair market values for geophysical exploration.

Review of the currently used basis for establishing geophysical permit fees showed that the market was unsatisfactory and did not lead to determination of fair market value. Problems with the private land-owner market data survey approach include:

1. Data from private landowners is difficult to obtain and many are very reluctant to divulge specific amounts of income received from geophysical operations on their lands.
2. Because there is no central location or registry from which fee data is available the FS has to individually contact each landowner and ask for information. This is a laborious and expensive process resulting in great expenditures of time with a relatively small return.
3. Many transactions with private landowners are verbal and there are no records which can be used to verify reported data. There are no State or local requirements for private landowners to file the fee data.
4. Private landowners commonly include entry or crossing fees, restoration, damages, and potential income losses in their charges. These are almost never separated in the reported data, making the actual land use portion of the charge very difficult to determine.
5. The other major Federal land management agency in the Region is the Bureau of Land Management. This agency does not impose a charge for geophysical exploration on lands it administers.
6. Most importantly, most private landowners that charge for geophysical activities do not own the mineral rights. Thus, in their view, the only way they can benefit from potential development of oil or gas resources is to charge for the use of the land. These charges often become exorbitant and cannot be realistically compared to the fees that an owner who has both surface and subsurface rights would require. Owners such as the Federal government who

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have both surface and subsurface rights have a vested interest in encouraging exploration of all types because discovery will provide direct benefits in the form of lease bonuses, royalties, and other shares in the mineral resource.

To resolve the issues the IAGC and the Forest Service agreed to work together to develop a procedure for establishing fair and reasonable fees for geophysical exploration of National Forest System Lands in the Rocky Mountain Region. The two organizations established a working group for this purpose. The group agreed that the procedure should be: (1) Simple, with a minimum of calculations needed for application; (2) based on easily obtained and verifiable data; (3) objective in nature and capable of being replicated with predictable results in a variety of locales; (4) easy to update and correct for market changes; (5) a set rate for a measure of geographical work; and, (6) fair and equitable to both the industry and the public interest. Sound business principle was defined as those common activities of the private sector which reflect competition, supply and demand, efficiency, and minimization of costs. The group determined that utilization of sound business principles would not require the use of formal appraisals for geophysical exploration permits. These permits are essentially an annual and temporary special use and appraisals were believed to be too expensive, time consuming and complex for this type of use.

The use of market data surveys to determine average charges assessed by private landowners and other Federal land management agencies was the first approach considered. The problems encountered with this approach have already been discussed. There are difficulties in obtaining reliable data from private landowners and disparities between private lands in which the mineral estate is not owned by the surface owner and Federal lands where both the surface and subsurface are owned. The group determined that other bases of fair market value needed to be established.

The industry members of the group suggested that the permit fee for geophysical work could be related to oil and gas lease bonus values. There is a well established and accepted direct relationship between fees charge for geophysical exploration and lease values which can be quantified and correlated. The average lease value, which includes bonuses, annual rental and lease fees, is an independent variable which can be related to the dependent variable, geophysical exploration charges. The formula which was developed is based upon private land lease values and private geophysical exploration fees. These data were provided by industry for typical geologic basins in the Rocky Mountain Region. The data are grouped and exhibit average lease bonuses, average geophysical permit fees and the caclulated ratio of permit fees to lease values for eleven combinations of industry and basin information. Each group of information was provided by one of the industry members of the group. In some cases several industry firms reported lease and permit values for the same geologic basin. To avoid disclosure of proprietary or confidential information the data is presented in the form of weighted averages for each source and basin; the individual firm names are deleted. The averages represented transactions on hundreds of miles of geophysical exploration and thousands of acres of private land leases. When the averages of the eleven groups of data are themselves averaged the result is a permit fee of $716 per mile and a lease value of $30 per acre. The modal ratio of permit to lease value for the eleven sample areas is 20:1.

Forest Service members provided data on Federal leases from the Powder River, San Luis, and Paradox Basins. Federal leases from 1981 to 1986 were examined and first year lease values were determined for each lease that issued during the period. There were 4,558 leases covering 3,898,170 acres. The total lease values, including the first year rental, filing fees, and competitive lease bonuses, was $38,321,658, or $9.83 per acre. When the 20:1 ratio is applied this value is multiplied by 20, yielding a geophysical permit rate of $196.60 per mile. There were alternative methods, such as applying the ratio only to competitive leases, which increased the permit fee considerably, but reduced the area on which it could be applied to a fraction of the land in Region 2.

The use of the lease value as the primary variable is believed to satisfy the requirement for a fair market base permit fee. The lease data includes competitive and non-competitive areas, the bonus amounts on the competitive areas is reflective of the market value of potential oil and gas discoveries. As more exploration occurs and additional discoveries are made the area of competitive leasing expands. These leases are issued in open competition to the highest bidder. The value of information of knowledge is directly related to the potential for a discovery and production; thus where discoveries have already been made the knowledge from geophysical exploration has much greater value than will similar exploration activities in a non-competitive area that has no discoveries. The value of information is directly related to the geophysical fee that will be charged in this system.

The matter of making adjustments or reductions for the unique characteristics of operating on NFS lands was considered. It was the consensus of the group that, no adjustments should be made. Also, the Team decided that the rate should be applied Region-wide, with no consideration for competitive and non-competitive lease areas. It was recognized that in some areas the resulting geophysical fee would be lower than it currently is, but in many other areas the fee is expected to be greater. The rate appears to be a fair and reasonable compensation for the use of the public land. Some private landowners rates are higher because they do not usually own the mineral rights, and they include compensation for factors such as damages, reclamation, restoration, and opportunity costs of uses foregone, which the permittee is directly responsible for when operating on NFS land. The recommended method has built-in adjustments for excluding these costs.

Using the permit/lease value ratio approach has substantial administrative advantages, compared to the traditional market data survey process. The cost of collecting data from private landowners is very time consuming and expensive. Several National Forests have attempted to solicit information regarding fees charged by neighboring landowners and have reported that it is a slow and tedious process, requiring several weeks of intensive effort to obtain only a few bits of information. The information is of doubtful validity and is very inconsistent from one landowner to another. Savings in administrative costs of this method over the market transaction method are estimated to be 670 person hours and $16,000 annually.

Summary of Proposed Geophysical Exploration Fee Procedure

Using lease bonus values and geophysical permit fees from industry transactions on private land a value ratio was developed. To determine fees for geophysical exploration on National Forest System lands the average value of Federal leases in three large geologic basins was determined from historical records. To arrive at the recommended Federal geophysical exploration fee the average Federal lease value is multiplied by the factor developed from the private industry values. For this proposal the calculated rate of $196.60 per mile was rounded to $200 per mile. The following example illustrates how the proposed permit fee is calculated.

Formula:
Average permit fee divided by average lease value equals lease value multiplier
Factors:
Private permit fees=$500/mile
Private lease value=$25/acre
Federal lease value=$10/acre
Calculation:
500 divided by 25 ×10=$200/mile

The proposed fee that results from the application of the above formula will be adopted for geophysical exploration permits where required for the National Forest System lands within the Rocky Mountain Region of the Forest Service. A fee of $200 per mile will be imposed to all types of geophysical exploration in which temporary disturbance and occupancy of the land occurs. Permittees will be responsible for necessary land reclamation and restoration and for complying with all requirements of applicable Federal and State laws. The permit fee imposed is a charge for rental of the land and does not include costs of reclamation, restoration, or compliance with applicable laws, such as identification and protection of cultural resources. It is proposed that the fee be reevaluated annually and that adjustments which reflect the current value of Federal oil and gas lease be made. New geophysical exploration permit fees will be effective as of the date the final notice is published.

Executive Order 12291 and Regulatory Flexibility Act:

This proposed rule has been reviewed in accordance with Executive Order 12291. It is does not meet the criteria for major regulations established in the Order. Based on information compiled by the Forest Service, it has been determined that this rule will have no significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. It has been determined that this action will not have a substantial economic impact on a substantial number of small entities. In the analysis of the administrative costs the Forest Service estimates that approximately 670 person hours and $16,000 will be saved annually as a result of the rule.

Paperwork Reduction Act

The proposed rule contains no information collection of recordkeeping requirement under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*). The rule reduces the burden on applicants for permits and imposes no additional requirement on applicants.

Dated: October 23, 1986.

S. H. Hanks,

Deputy Regional Forester.

[FR Doc. 86-25281 Filed 11-6-86 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES-030-07-4133-09; ES-00157]

Environmental Impact Statement; Mark Twain National Forest, Shannon and Oregon Counties, Missouri

AGENCY: Forest Service, Department of Agriculture and Bureau of Land Management (BLM), Department of the Interior.

ACTION: Notice of intent.

SUMMARY: The Department of Agriculture, Forest Service and Department of the Interior, Bureau of Land Management will prepare an environmental impact statement for a proposal to lease Federal minerals beneath the Mark Twain National Forest. The analysis will be the basis for the Forest Service's lease consent and BLM's lease issuance decisions.

FOR FURTHER INFORMATION CONTACT: Mr. Leon Kridelbaugh, Staff Officer for Lands, Minerals, Soil and Watershed, Mark Twain National Forest, 401 Fairgrounds Road, Rolla, Missouri 65401, telephone (314) 364-4621. Mr. Wink Hastings, Assistant District Manager for Energy and Minerals, Milwaukee District Office (BLM), P.O. Box 631, Milwaukee, Wisconsin 53201-0631, telephone (414) 291-4421.

SUPPLEMENTARY INFORMATION: USX has applied for two preference right leases for 3,743 acres of Federal minerals in the Mark Twain National Forest. The area is located in Shannon and Oregon Counties on the Winona Ranger District. Based on geologic information and industry interest, the study area will include the two lease applications and surrounding areas of possible future interest for mineral leasing.

The decisions to be made are whether or not to consent to and issue leases and, if so, under what terms and conditions. If a lease is issued, additional site specific environmental analysis, including public participation, will occur before any mineral activities will be permitted.

A range of alternatives will be considered including the denial of lease consent and issuance within the study area. Other alternatives will consider occupancy restrictions necessary to protect other resource values and uses. These restrictions will range from no occupancy to limited occupancy for the entire area. Alternatives will specify the kind of resource value and identify the area requiring occupancy restrictions.

Floyd J. Marita (FS) and G. Curtis Jones Jr. (BLM) are the responsible officials.

Federal, State and local agencies; potential developers; and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of those issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

The Forest Supervisor and Bureau of Land Management, Milwaukee District Manager will hold public meetings in Jefferson City and Winona, Missouri, December, 1986.

The U.S. Fish and Wildlife Service, National Park Service, U.S. Army Corps of Engineers, Missouri Department of Natural Resources and Missouri Department of Conservation will be invited to participate as Cooperating Agencies.

The analysis is expected to take about 10 months. The draft environmental impact statement should be available for public review by April, 1987. The final environmental impact statement is scheduled to be completed by August, 1987.

Written comments and suggestions concerning the analysis should be sent to B. Eric Morse, Forest Supervisor, Mark Twain National Forest, Rolla, Missouri, 65401 by December 31, 1986.

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Dated: October 31, 1986.

Duane G. Breon,

Acting Regional Forester, USDA Forest Service.

Dated: October 31, 1986.

G. Curtis Jones, Jr.,

Director, Eastern States Office, Bureau of Land Management.

[FR Doc. 86-25282 Filed 11-6-86; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-015]

Television Receivers, Monochrome and Color, From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by the petitioners and the respondents, the Department of Commerce has conducted an administrative review of the antidumping finding on television receivers, monochrome and color, from Japan. The review covers eight manufacturers and/or exporters of this merchandise to the United States, and generally the period April 1, 1981 through March 31, 1983. In compliance with three orders entered by the Court of International Trade, the review does not cover Matsushita Industrial Co., Ltd. or Victor Company of Japan and only covers Toshiba Corporation for the period April 1981 through March 1982. Although the Department completed a preliminary determination with respect to all firms covered in this notice on October 21, 1986, one of the orders issued by the Court of International Trade prevents the Department from publishing the preliminary results for Sharp. The review indicates the existence of dumping margins for some of the firms during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value.

When we received an inadequate response to our questionnaire, we used the best information available for assessment purposes.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 7, 1986.

FOR FURTHER INFORMATION CONTACT: Eugenio Parisi or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923/3601.

SUPPLEMENTARY INFORMATION:

Background

On June 10, 1985, the Department of Commerce ("the Department") published in the **Fedeal Register** (50 FR 24278) the final results of its last administrative review of the antidumping finding on television receivers, monochrome and color, from Japan (36 FR 4597, March 10, 1971). We began the current review of the finding under our old regulations. After the promulgation of our new regulations, the petitioners and respondents requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We published a notice of initiation of the antidumping duty administrative review on November 27, 1985 (50 FR 48825).

Scope of the Review

Imports covered by the review are shipments of television receiving sets, monochrome and color, and include but are not limited to projection televisions, receiver monitors, and kits (containing all the parts necessary to receive a broadcast television signal and produce a video image). Not included are certain monitors not capable of receiving a broadcast signal, certain combination units (combinations of television receivers with other electrical entertainment components such as tape recorders, radio receivers, etc.), and certain subassemblies not containing the components essential for receiving a broadcast television signal and producing a video image.

The review covers eight manufacturers and/or exporters of Japanese television receivers, monochrome and color, to the United States, and generally the period April 1, 1981 through March 31, 1983. In compliance with three orders issued by the Court of International Trade, the review does not cover Matsushita Electric Industrial Co., Ltd. and Victor Company of Japan. Toshiba Corporation is covered only for the period April 1, 1981 through March 31, 1982. Sharp is covered by this review through this particulary determination, and the Department will publish the preliminary results for Sharp as soon as the Court of International Trade permits it to do so.

We published tentative revocations for Sanyo and Sharp on August 16, 1983 (48 FR 37508), for Toshiba and Hitachi on September 27, 1983 (48 FR 44101), and for Otake on September 12, 1984 (49 FR 35821). These tentative revocations will cease to have any effect with respect to any firm for which a dumping margin as finally determined to exist for this review period.

United States Price

In calculating United States price, the Department used purchase price or exporter's sales price ("ESP"), both as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act"), as appropriate. Purchase price and exporter's sales price were based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in the United States. We made adjustments, where applicable, for ocean freight, marine insurance, U.S. and Japanese inland freight, U.S. and Japanese brokerage fees, Japanese customs clearance fees, wharfage, export license fees, forwarding and handling charges, discounts, royalties, rebates, commissions to unrelated parties, and the U.S. subsidiaries' selling expenses. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used either home market price or constructed value, as defined in section 773 of the Tariff Act. Home market price was based on the packed delivered price to related and unrelated purchasers in the home market. Constructed value was calculated as the sum of materials and fabrication costs, general expenses, profit, and packing. The amount added for general expenses was the statutory minimum of ten percent of the sum of materials and fabrication costs because actual general expenses for the period were less than that amount. The amount added for profit was the statutory minimum of eight percent of the sum of material and fabrication costs and general expenses because actual profit for the period was less than that amount. We accounted for taxes imposed in Japan, but rebated or not collected by reason of the exportation of the merchandise to the United States, by subtraction from home market price as best information available. Where applicable, we made adjustments for inland freight, rebates, credit expenses, discounts, warranties, advertising and sales promotion, royalties, differences in the physical characteristics of the merchandise, and packing. We made further adjustments, where applicable, for indirect selling expenses to offset commissions and U.S. selling expenses for ESP calculations. We disallowed a claim level-of-trade adjustment because the respondent did not demonstrate that distinct trade levels exist in the home and U.S. markets. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/Exporter	Time period	Margin (percent)
Fujitsu General Co.	4/81–3/82	2.54
	4/82–3/83	0.52
Funai Electric Co.	4/81–3/82	7.53
	4/82–3/83	32.69
Hitachi Co.	4/81–3/83	[1] 0*
Mitsubishi Electric Co.	4/81–3/82	0.01
	4/82–3/83	0.36
Nippon Electric Corp.	4/81–3/82	0.82
	4/82–3/83	15.48
Otake Trading Co.	4/82–3/83	0
Sanyo Electric Co.	4/81–3/82	0
	4/82–3/83	4.57
Sharp Corp.	4/80–3/81	[2]
	4/81–3/82	[2]
	4/82–3/83	[2]
Toshiba Corp.	4/81–3/82	[1] 0*

[1] No commercial shipments during the period.
[2] Not published.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary form the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the most recent of the above margins shall be required for these firms. Since the margin for Mitsubishi is less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties for this firm. For any shipments from Matsushita, Victor, Sharp, or Toshiba, the cash deposit will continue to be at the rate published in the final results of the last administrative review of each of these firms (50 FR 24278, June 10, 1985).

For any future entries of this merchandise from new exporter, not covered in this or prior reviews, whose first shipments occurred after March 31, 1983 and who is unrealated to any reviewed firm or any previously reviewed firm, a cash deposit of 32.69 percent shall be required. These deposit requirements and waiver are effective for all shipments of Japanese television receivers, monochrome and color, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: November 3, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-25251 Filed 11-6-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-020]

Titanium Sponge From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumpting duty administrative review.

SUMMARY: In response to requests by two respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on titanium sponge from Japan. The review covers two manufacturers and their exporters of this merchandise to the United States, and the period November 15, 1984 through October 31, 1985. The review indicates the existence of no dumping margins for one manufacturer/exporter combination and *de minimis* dumping margins for the second manufacturer/exporter combination during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 7, 1986.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro or Maureen Flannery, Office of Compliance International Trade Administration, U.S. Department of Commerce, Washington DC 20230; telephone: (202) 377-1130/3601.

SUPPLEMENTARY INFORMATION:

Background

On November 30, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 47053) an antidumping duty order on titanium sponge from Japan. Two respondents, Toho Titanium Co., Ltd. and Osaka Titanium Co., Ltd., requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on December 13, 1985 (50 FR 50933).

Scope of the Review

Imports covered by the review are shipments of unwrought titanium sponge. Titanium sponge is a porous, brittle metal which has a high strength-to-weight ratio and is highly ductile. It is an intermediate product used to produce titanium ingots, slabs, billets, plates and sheets. Titanium sponge is currently classifiable under item 629.1420 of the Tariff Schedules of the United States Annotated.

The review covers two manufacturers and their exporters of Japanese titanium sponge to the United States, and the period November 15, 1984 through October 31, 1985.

United States Price

In calculating United States price the Department used purchase price or exporter's sale price ("ESP"), as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act"), as appropriate. Purchase price was based on the packed f.o.b., c.i.f., c.i.f. duty paid, or delivered price to the first unrelated purchaser in the United States.

Exporter's sales price was based on the packed delivered price to the first unrelated purchaser in the United States. Where applicable, we made deductions for ocean freight, marine insurance, U.S. and foreign brokerage/handing fees, U.S. and foreign inland freight, U.S. and foreign insurance, U.S. customs duties, commissions to unrelated parties, and the parent's and U.S. subsidiary's selling expenses. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act,

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since there were sufficient home market sales of such or similar merchandise at or above the cost of production to provide a basis for comparison.

Sales to related purchasers were included if these sales were determined to be at prices equal to or greater than those of sales to unrelated purchasers. Home market price was based on the delivered packed price with adjustments, where applicable, for inland freight, insurance, rebates, warehousing, differences in the cost of packing and credit, and indirect selling expenses to offset U.S. commissions. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist for the period November 15, 1984 through October 31, 1985:

Manufacturer/exporter	Margin (pct)
Toho Titanium/Mitsui	0.06
Osaka Titanium/Sumitomo	0

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, because no dumping margin exists for Osaka Titanium/Sumitomo and the margin for Toho Titanium/Mitsui is less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties for these firms, as provided for by § 353.48(b) of the Commerce Regulations. For any shipments from the one known manufacturer and/or exporter not covered in this review, the cash deposit will continue to be at the rate published in the antidumping duty order for this firm (49 FR 47053, November 30, 1984). For any future entries of this merchandise from a new exporter, not covered in this review, whose first shipments occurred after October 31, 1985 and who is unrelated to any reviewed firm, no cash deposit shall be required. These deposit requirements and waiver are effective for all shipments of Japanese titanium sponge entered, or withdrawn from warehouse, for consumption on or after the date of publication on the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(2) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a; 50 FR 32556, August 13, 1985).

Dated: November 3, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-25252 Filed 11-6-86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by Exxon From an Objection by the California Coastal Commission

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Public comments solicited; correction.

SUMMARY: This document corrects a error contained in a request for public comments in the Exxon Santa Ynez Appeal filed under the Coastal Zone Management Act that appeared in the **Federal Register** of Friday, October 31, 1986 (51 FR 39778). This action is necessary to correct a typographical error in the description of one of the development options contained in Exxon's development and production plan.

FOR ADDITIONAL INFORMATION CONTACT: L. Pittman at (202) 673-5200.

The following correction is made in FR Doc. 86-24612 appearing on page 39778, column one, in the issue of October 31, 1986:

1. "80 million barrels of oil/day" is corrected to read "80 thousand barrels of oil/day".

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration]

Dated: October 4, 1986.

Daniel W. McGovern,

General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 86-25279 Filed 11-6-86; 8:45 am]

BILLING CODE 3510-08-M

Marine Mammals; Application for Permit: National Marine Fisheries Service, Northwest and Alaska Fisheries Center (P77#22)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217-222).

1. Applicant:

a. Name: National Marine Mammal Laboratory, Northwest and Alaska Fisheries Center.

b. Address: National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115.

2. Type of Permit: Scientific Research/Scientific Purposes.

3. Name and Number of Marine Mammals: An unspecified number of all cetaceans may be incidentally harassed during the course of observational studies.

4. Location of Activity: Worldwide, principally in the waters of the North Pacific and the Bering, Chukchi and Beaufort Seas.

5. Period of Activity: 5 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee on Scientific Advisers.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC;
Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802;
Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01950;
Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115;
Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and
Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Dated: November 3, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-25284 Filed 11-6-86; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increasing the Import Limit for Certain Cotton Textile Products Produced or Manufactured in Pakistan

October 31, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 31, 1986. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of March 9 and 11, 1982, as amended, between the Governments of the United States and Pakistan provides consultation levels for certain categories, such as Category 369pt. (all T.S.U.S.A. numbers in the Category except 366.1720, 366.1740, 366.1955 366.2020, 366.2040, 366.2420, 366.2440 and 366.2840), which may be adjusted upon agreement between the two governments. The Governments of the United States and Pakistan have agreed to further amend their bilateral agreement to increase this designated consultation level from 6,673,739 pounds to 6,934,609 pounds for the current agreement year which began on January 1, 1986 and extends through December 31, 1986 for goods exported during that period. The letter to the Commissioner of Customs which follows this notice implements this agreed increase.

A discription of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983,(48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

October 31, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 26, 1985, which directed you to prohibit entry of certain cotton textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

Effective on October 31, 1986, the directive of December 26, 1985 is hereby amended to increase the restraint limit previously established for cotton textile products in Category 369pt.[1] to 6,934 pounds.[2]

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(l).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-25249 Filed 11-6-86; 8:45 am]

BILLING CODE 3510-DR-M

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[1] In Category 369, all T.S.U.S.A. numbers except 366.1720, 366.1740, 366.1955, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2840).

[2] The level has not been adjusted to reflect any imports exported after December 31, 1985.

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Image Recognition Systems; Meeting

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Image Recognition Systems will meet in closed session on December 1, 1986 and January 28-29, 1987 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will study the current status and probable near- to medium-term development of computer-based image recognition systems with emphasis on the potential for further development in "smart weapons," especially those for attacking ground vehicles.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

November 4, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-25268 Filed 11-6-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Follow on Forces Attack; Meeting

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Follow on Forces Attack will meet in closed session on December 1-2, 1986 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will continue to review, in detail, classified material associated with conventional military capabilities in NATO to include special targeting requirements.

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In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

November 4, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-25269 Filed 11-6-86; 8:45 am]

BILLING CODE 3810-01-M

Per Diem; Rate, Changes

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DOD.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 136. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico and possessions of the United States. Bulletin Number 136 is being published in the Federal Register to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: November 1, 1986.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the Federal Register now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

Civilian Personnel Per Diem Bulletin Number 136 to the Heads of the Executive Departments and Establishments

Subject: *Maximum per diem Rates and actual Expense Reimbursement Ceilings For Official Travel in Alaska, Hawaii, The Commonwealth of Puerto Rico and Possessions of the United States By Federal Government Civilian Employees*

1. This bulletin is issued in accordance with Executive Order 12561, dated July 1, 1986, which delegates to the Secretary of Defense the authority of the President in 5 U.S. Code 5702 (a) to set maximum per diem rates and actual expense reimbursement ceilings for Federal civilian personnel traveling on official business in Alaska, Hawaii, The Commonwealth of Puerto Rico and possessions of the United States. When appropriate and in accordance with regulations issued by competent authority, lesser rates and ceilings may be prescribed.

2. The maximum per diem rates shown in the following table are continued from the preceding Bulletin Number 135 except for the cases identified by asterisks which rates are effective on the date of this Bulletin.

3. Each Department or establishment subject to these rates shall take appropriate action to disseminate the contents of this Bulletin to the appropriate headquarters and field agencies affected thereby.

4. The maximum per diem rates referred to in this Bulletin are:

Locality	Maximum Rate
Alaska:	
Adak[1]	110
Anaktuvuk Pass	145
Anchorage	122
Atqasuk	215
Barrow	144
Bethel	125
Cold Bay	120
Coldfoot	122
College	105
Cordova	143
Deadhorse	113
Dillingham	114
Dutch Harbor-Unalaska	127
Eielson AFB	165
Elmendorf	122
Fairbanks	105
Ft. Richardson	122
Ft. Wainwright	105
Juneau	109
Katmai National Park	145
Kenai	119
Ketchikan	113
King Salmon[3]	134
Kodiak	110
Kotzebue[3]	126
Murphy Dome[3]	105
Noatak	125
Nome	136
Noorvik	126
Petersburg	113
Point Hope	160
Point Lay	170
Prudhoe Bay	113
Sand Point	103
Shemya AFB[3]	30
Shungnak	125
Sitka-Mt. Edgecombe	113
Skagway	113
Spruce Cape	110
St. Mary's	100
Tanana	136
Valdez	136
Wainwright	165
Wrangell	113
Yakutat	100
All other localities[3]	91
American Samoa	81
Guam M.I.	93
Hawaii:	
Hawaii, Island of:	
Hilo	59
Other	64
Oahu	96
All other islands	64
Johnston Atoll[2]	25
Midway Islands[2]	13
*Puerto Rico:	
Bayamon:	
12-16—5-15	134
5-16—12-15	107
Carolina:	
12-16—5-15	134
5-16—12-15	107
Fajardo (including Luquillo):	
12-16—5-15	134
5-16—12-15	107
Ft. Buchanan (including GSA Service Center, Guaynabo):	
12-16—5-15	134
5-16—12-15	107
Roosevelt Roads:	
12-16—5-15	134
5-16—12-15	107
Sabana Seca:	
12-16—5-15	134
5-16—12-15	107
San Juan (including San Juan Coast Guard Units):	
12-16—5-15	134
5-16—12-15	107
All other localities	107
*Virgin Islands of U.S.:	
12-1—4-30	156
5-1—11-30	126
Wake Island[2]	20
All other localities	20

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[1] Commercial facilities are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler. For Adak, Alaska—when Government quarters are not utilized, and quarters are obtained at the [illegible] Construction, Inc. camp, a daily travel per diem allowance of $71.30 is prescribed to cover the cost of lodging, meals and incidental expenses at the facility.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

[3] On any day when U.S. Government or contractor quarters and U.S. Government or contractor messing facilities are used, a per diem rate of $13 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Cold Bay, Fort Yukon, Galena, Indian Mountain, King Salmon, Kotzebue, Murphy Dome, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

November 4, 1986.

[FR Doc. 86-25273 Filed 11-6-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Privacy Act of 1974; Amendments to Systems of Records Notice

AGENCY: Department of the Army, DOD.

ACTION: Notice of an amendment to a system of records.

SUMMARY: The Army proposes to amend one notice for a system or records subject to the Privacy Act of 1974. The specific changes to the notice being amended are set forth below followed by the system notice, as amended, published in its entirety.

DATES: This proposed action will be effective without further notice on December 8, 1986, unless comments are received which result in a contrary determination.

ADDRESS: Send comments to the system manager identified in the system notice.

FOR FURTHER INFORMATION CONTACT: Mr. Cliff Jones, HQDA DAIM–FAR–RI, Room 1138, Hoffman Building I, Alexandria, VA 22331–0301. Telephone: (202) 325–6044, Autovon: 221–6044.

SUPPLEMENTARY INFORMATION: The Army's systems of records notices inventory to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published to date in the **Federal Register** as follows:

FR Doc. 85–10237 (50 FR 22090) May 29, 1985 (Compilation)
FR Doc. 86–14867 (51 FR 23576) June 30, 1986
FR Doc. 86–19534 (51 FR 30900) August 29, 1986

The proposed amendment is not within the purview of the provisions of 5 U.S.C. 552a(o) which requires the submission of an altered system report.

Patricia H. Means,
OSD Federal Register Liaison Officer, Department of Defense.
November 4, 1986.

Amendment

A01304.22aDASG

System Name: Medical Research Volunteer Registry (51 FR 23576) June 30, 1986

Changes: Change the record system identification from A01304.22aDASG to A1304.22aDASG.

System Locations: Lines 18, 19, and 20 change "U.S. Army Institute of Surgical Research and Development Laboratory, Fort Detrick, Frederick, MD 21701–5010" to "U.S. Army Medical Bioengineering Research and Development Laboratory, Fort Detrick, Frederick, MD 21701–5010."

Lines 24, 25, and 26 change "U.S. Army Medical Research Institute of Infectious Defense, Fort Detrick, Frederick, MD 21701–5011" to U.S. Army Medical Research Institute of Infectious Diseases, Fort Detrick, Frederick, MD 21701–5011."

Retention and Disposal: Change "Records are destroyed when no longer needed for current operations" to "Records are destroyed after 65 years."

As amended,

System A01304.22aDAS6 reads as follows:

A1304.22aDASG

SYSTEM NAME:

Medical Research Volunteer Registry.

SYSTEM LOCATION:

Primary.

U.S. Army Medical Research and Development Command, Fort Detrick, Frederick, MD 21701–15012

Alternates.

Letterman Army Institute of Research, Presidio of San Francisco, CA 94129–6800
Walter Reed Army Institute of Research, Washington, DC 20307–5100
U.S. Army Aeromedical Research Laboratory, Fort Rucker, AL 36362–5000
U.S. Army Institute of Dental Research, Washington, DC 20307–5300
U.S. Army Institute of Surgical Research, Fort Sam Houston, TX 78234–6200
U.S. Army Medical Bioengineering Research and Development Laboratory, Fort Detrick, Frederick, MD 21701–5010
U.S. Army Medical Research Institute of Chemical Defense, Aberdeen Providing Ground, MD 21010–5425
U.S. Army Medical Research Institute of Infectious Diseases, Fort Detrick, Frederick, MD 21701–5011
U.S. Army Research Institute of Environmental Medicine, Natick, MA 01760–5007

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records of military members civilian employees, and non DoD civilian volunteers participating in current and future research sponsored by the U.S. Army Medical Research and Development Command.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Account Number, and other such information as necessary to locate the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 1071–1090; 44 U.S.C. 3101; E.O. 9397

PURPOSE(S)

To assure that the U.S. Army Medical Research and Development Command (USAMRDC) can contact individuals who participated in research conducted/sponsored by the Command in order to provide them with newly acquired information, which may have an impact on their health. To answer inquiries concerning an individual's participation in research sponsored/conducted by USAMRDC. To facilitate retrospective medical and/or scientific evaluations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To the Veterans Administration to assist in making determinations relative to claims for service-connected disabilities; and other such benefits. See also the "blanket routine uses" set forth at the beginning of the Army's listing.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

a. Laboatory-conducted research. Computer tapes are filed in the Laboratory.

b. Contractor-conducted research. Upon completion of research, files are turned over to the U.S. Army Medical and Development Command, Computer tapes are filed at the U.S. Army Medical Research and Development Command.

RETRIEVABILITY:

By SSN and name.

SAFEGUARDS:

Computerized records are accessed by the custodian of the records system, and by persons responsible for servicing the records system in the performance of their duties. Computer equipment and files are located in separate, secured area.

RETENTION AND DISPOSAL:

Records are destroyed after 65 years.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters, Department of the Army, Office of the Surgeon General, ATTN: DASG–RGZ (SGRD–HR), 5111 Leesburg Pike, Falls Church, VA 22041–3258.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether this system of records contains information about them should submit a written request to the system manager, furnishing full name, SSN, military status or other information verifiable from the record itself.

RECORDS ACCESS PROCEDURES:

Individuals seeking access to records in this system pertaining to them should submit a written request as indicated in "Notification Procedure," and furnish information required therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents are contained in AR 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

Information is obtained from medical research volunteers, and other medical research personnel assigned to the U.S. Army Medical Research and Development Command.

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SYSTEM EXEMPT FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 86–25274 Filed 11–6–86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF THE DEFENSE

Army Science Board; Closed Meeting; Effectiveness Review Panel on U.S. Army Human Engineering Laboratory

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)
Dates of Meeting: 12–13 November 1986
Times of Meeting: 0830–1600 hours
Places: U.S. Army Tank Automotive Command Warren, Michigan

Agenda

The Army Science Board's Effectiveness Review Panel on the US Army Human Engineering Laboratory (HEL) will visit TACOM for the purpose of interacting with the HEL user community. Representatives from TACOM, several project management offices and TRADOC schools will interact with the panel. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably interwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

John O. Roach II,
Army Liaison Officer with the Federal Register.

[FR Doc. 86–25297 Filed 11–6–86; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting; Ad Hoc Subgroup for Ballistic Missile Defense Follow-On

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)
Dates of Meeting: 12–13 November 1986
Times of Meeting: 0800–1700 hours
Places: Pentagon

Agenda

The Army Science Board Ad Hoc Subgroup for Ballistic Missile Defense Follow-On will meet for briefings and discussions on Theater Missile Defense and Terminal Imaging Radar. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably interwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

John O. Roach II,
Army Liaison Officer with the Federal Register.

[FR Doc. 86–25299 Filed 11–6–86; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Open Meeting; ETL Laboratory Effectiveness Review, Ad Hoc Subgroup

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)
Dates of Meeting: 13–14 November 1986
Time: 0900–1700 daily
Place: Society of American Military Engineers Old Towne, Alexandria

Agenda

The Army Science Board's Ad Hoc Subgroup, ETL Laboratory Effectiveness Review, will meet to finalize their report on this effort. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

John O. Roach II,
Army Liaison Officer with the Federal Register.

[FR Doc. 86–25298 Filed 11–6–86; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Open Meeting; Ad Hoc Subgroup on Chief of Staff's Task Force on Soldiers and Families

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)
Dates of Meeting: 17–20 November 1986
Time: 0900–1700 daily
Place: Eisenhower Metro Holiday Inn, Alexandria, VA

Agenda

The Army Science Board's Ad Hoc Subgroup on the Chief of Staff's Task Force on Soldiers and Families will be integrated into the Army Family Action Plan (AFAP) General Officer Steering Group and the AFAP Planning Conference which will address the concerns of soldiers and families in the Army. This forum will also provide the current status of issues in the Army Family Action Plan III. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

John O. Roach II,
Army Liaison Officer with the Federal Register.

[FR Doc. 86–25300 Filed 11–6–86; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

National Advisory and Coordinating Council on Bilingual Education; Meeting

AGENCY: National Advisory and Coordinating Council on Bilingual Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory and Coordinating Council on Bilingual Education. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: November 24, 1986 and November 25, 1986 9:15 a.m. until 5:00 p.m. The meeting will be conducted at the Holiday Inn, 550 "C" Street SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Anna Maria Farias, Designated Federal Official, Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue, SW., Washington, DC 20202, (202) 245–2600.

SUPPLEMENTARY INFORMATION: The National Advisory and Coordinating Council on Bilingual Education is established under section 752(a) of the Bilingual Education Act (20 U.S.C. 3262). NACCBE is established to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act and other laws affecting the education of limited English proficient populations. The meeting of the Council is open to the public.

The proposed agenda includes the following:

November 24, 1986

I. Roll Call
5
II. Minutes of Last Meeting
III. Welcoming Remarks and Introduction of New Members, Carol Pendas Whitten, Director
IV. Update on OBEMLA Activities, Anna Maria Farias, Deputy Director
V. Site Visits—Interim Report—Dr. Porter
VI. Subcommittee Report—Dr. Anderson
VII. Intergovernmental Cooperation Report—Dr. Leo Lopez
VIII. Subcommittee Assignments

November 25, 1986

IX. Recovene
X. Reports from Subcommittee
XI. Discussion of Annual Report—1987
Adjournment

Records are kept of all Council proceedings and are available for public inspection at the Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue, SW., Washington, DC 20202, Monday through Friday from 9:00 a.m.-5:30 p.m.

Dated: November 3, 1986.

Carol Pendas Whitten,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 86-25225 Filed 11-6-86; 8:45 am]

BILLING CODE 4000-01-M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before December 8, 1986.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426-7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) agency form number (if any); (4) frequency of collection; (5) the affected public; (6) reporting burden; and/or (7) recordkeeping burden; and (8) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: November 4, 1986.

Carlos U. Rice,

Acting Director, Information Technology Services.

Office of Planning Budget and Evaluation

Type of Review: New
Title: Analysis of Rehabilitation Programs in the Proprietary Sector
Agency Form Number: P75-8P
Frequency: Once only
Affected Public: State or local governments; Business or for-profit; and small businesses or organizations
Reporting Burden: Responses: 1241; Burden Hours: 1001
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: This study will collect data from private rehabilitation providers, insurance companies, corporations, state rehabilitation agencies and state workers' compensation agencies, to assist the Department in modifying the way in which public rehabilitation programs do business.

Office of Postsecondary Education

Type of Review: Extension
Title: Application for Grants Under the Training Program for Special Programs Staff and Leadership Personnel
Agency Form Number: ED 883
Frequency: Once only
Affected Public: Non-profit institutions
Reporting Burden: Responses: 60; Burden Hours: 2040
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: The Department of Education collects information from institutions who apply for training grants under the Training Program for Special Programs Staff and Leadership Personnel. This information is utilized by the Department to make grant awards.

Office of Elementary and Secondary Education

Type of Review: Revision
Title: Application for Civil Rights Technical Assistance and Training Desegregation Assistance Center Program
Agency Form Number: ED 296-2
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden: Responses: 30; Burden Hours: 1500
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: This application is used by non-profit institutions to apply for desegregation assistance center awards under Title IV of the Civil Rights Act of 1964. The Department needs this information to evaluate these proposed projects and set the amount of each award in accordance with program regulations.

Type of Review: Revision
Title: Application for Civil Rights Technical Assistance and Training State Educational Agency Program

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Agency Form Number: ED 296
Frequency: Annually
Affected Public: State or local governments
Reporting Burden: Responses: 50; Burden Hours: 1050
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: This application is used by State educational agencies to apply for assistance under Title IV of the Civil Rights Act of 1964. The Department uses this information to evaluate the proposed projects and make awards in accordance with program regulations.

[FR Doc. 86-25244 Filed 11-6-86; 8:45 am]

BILLING CODE 4000-1-M

Notice Inviting Applications for New Awards Under the Indian Education Act of 1972, as Amended, Part B—Educational Personnel Development for Fiscal Year 1987 (CFDA No. 84.061F)

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Correction: Notice inviting applications for new awards under the Indian Education Act of 1972, as amended, Part B—Educational Personnel Development for Fiscal Year 1987 (CFDA No. 84.061F).

SUMMARY: In the application notice published in the **Federal Register** on September 17, 1986, on page 33005, in the third column under "Project Period:" 12–36 months should be changed to read 12–24 months.

In addition, the amounts for stipends under this program were inadvertently omitted from the notice. The estimated maximum stipend for participants in projects in fiscal year 1987 will be $600 per month at the graduate level, and $375 per month at the undergraduate level. An estimated maximum allowance of $90 per month will be allowed for each dependent.

FOR FURTHER INFORMATION CONTACT: Elsie Janifer, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2177, Washington, DC 20202. Telephone: (202) 732-1918.

Program Authority: 20 U.S.C. 3385(d), 3385a.

Dated: November 3, 1986.

Lawrence F. Davenport,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 86-25242 Filed 11-6-86; 8:45 am]

BILLING CODE 4000-01-M

Application Notices Inviting Applications for New Awards for Fiscal Year 1987 Under the Indian Education Act of 1972, as amended; Part C—Planning Projects for Indian Adults (CFDA No. 84.062C); Part C—Pilot Projects for Indian Adults (CFDA 84.062D); and Part C—Demonstration Projects for Indian Adults (CFDA 84.062E); Withdrawal of Applications

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Withdrawal Notice.

SUMMARY: Application notices for fiscal year 1987 new awards were published on September 17, 1986 at 51 FR 33006–33007.

These application notices are withdrawn because no funds are available for these programs.

FOR FURTHER INFORMATION CONTACT: For further information contact Elsie Janifer, U.S. Department of Education, 400 Maryland Avenue SW., Room 2177, Washington, DC 20202, Telephone: (202) 732-1918.

Program authority: 20 U.S.C. 1211a(a).

Dated: November 3, 1986.

Lawrence F. Davenport,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 86-25243 Filed 11-6-86; 8:45 am]

BILLING CODE 4000-01-M

Office of Postsecondary Education

Guaranteed Student Loan Program and Plus Program; Special Allowance to Holders of Eligible Loans, Quarter Ending September 30, 1986

AGENCY: Department of Education.

ACTION: Notice of special allowance for quarter ending September 30, 1986.

The Assistant Secretary for Postsecondary Education announces a special allowance to holders of eligible loans made under the Guaranteed Student Loan Program (GSLP) or the PLUS Program. This special allowance is provided for under section 438 of the Higher Education Act of 1965 (the Act), as amended (20 U.S.C. 1087-1).

Pursuant to the requirements of section 252 of Pub. L. 99-177, Balanced Budget and Emergency Deficit Control Act of 1985 (popularly known as the Gramm-Rudman-Hollings Act), the President issued a sequestration order on February 4, 1986, directing implementation of the reductions contained in that law. Congress ratified and affirmed the order as law. Public Law 99-366; July 31, 1986. Section 256 of Pub. L. 99-177 provides that if a sequestration order is issued, the special allowance formula for loans after the order takes effect and before the end of the fiscal year is adjusted by reducing the rate provided in section 438(b)(2)(A)(iii) of the Higher Education Actg by .4 percent. The reduction will apply to the first four special allowance payments on loans made on or after March 1, 1986, and before October 1, 1986.

Except for loans subject to section 438(b)(2)(B) of the Act, 20 U.S.C. 1087-1(b)(2)(B), for the quarter ending September 30, 1986, the special allowance will be paid at the following rates:

	Applicable interest rate percent	Annual special allowance rate percent	Special allowance rate percent for quarter ending June 30, 1986
I. GSLP loans or PLUS loans made prior to October 1, 1981	7	2.25	0.5625
	9	0.25	0.0625
II. GSLP loans or PLUS loans made on or after October 1, 1981:			
A. Loans not subject to reduction order	7	2.15	0.5375
	8	1.15	0.2875
	9	0.15	0.0375
	12	0.00	0.00
	14	0.00	0.00
B. Loans subject to reduction order	7	1.75	0.4375
	8	0.75	0.1875
	9	0.00	0.00
	12	0.00	0.00

The Assistant Secretary determines the special allowance rate in the manner specified in the Act, for loans at each applicable interest rate by making the following four calculations:

(a) *Step 1.*

Determine the average bond equivalent rate of the 91-day Treasury Bill auctioned during the quarter for which this notice applies (5.65 percent for the quarter ending September 30, 1986);

(b) *Step 2.*

Subtract from that average the applicable interest rate (7, 8, 9, 12, or 14 percent) of loans for which a holder is requesting payment;

(c) *Step 3.*

(1) Add 3.5 percent to the remainder, and, in the case of loans made before October 1, 1981, round the sum upward to the nearest one-eighth of one percent; or

(2) Add 3.1 percent to the remainder, in case of loans subject to the reduction order pursuant to Pub. L. 99-177; and

(d) *Step 4.*

Divide the resulting percent in Step 3 (either (c)(1) or (c)(2), as applicable) by four.

FOR FURTHER INFORMATION CONTACT: Ralph B. Madden, Chief, Policy Section, Guaranteed Student Loan Branch, Division of Policy and Program Development, Department of Education on (202) 245-2475.

(Catalog of Federal Domestic Assistance No. 84-032, Guaranteed Student Loan Program and PLUS Program)

Dated: November 2, 1986.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 86-25245 Filed 11-6-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

[86-924]

Intent To Revise Transmission Rates To Become Effective October 1, 1987; Request for Recommendations and Suggestions

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of intent and request for recommendations. *BPA File No.:* TR-87. BPA requests that all comments and documents which become part of the Official Record compiled in the process of adjusting transmission rates contain the file number designation TR-87.

SUMMARY: Bonneville Power Administration (BPA) is in the initial stages of developing adjusted rates for the transmission of electric power of other entities over Federal facilities, which will become effective October 1, 1987. At this time BPA announces its intent to revise these rates and is seeking suggestions, advice, and recommendations from interested persons which can be used to assist in the development of BPA's proposals. BPA expects to have its initial proposed rates formulated in December 1986 and to issue an environmental assessment on the posposed adjustment in January 1987. BPA will then publish a notice of the proposed rates in the **Federal Register**.

The December notice will also announce BPA's proposed schedule for formal hearings as specified in section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (Pacific Northwest Power Act). A final schedule will be established by the Hearing Officer who presides over BPA's rate hearings. These hearings will give interested persons an opportunity to present both oral and written comments on the proposal.

DATES: Suggestions and recommendations concerning the development of proposed transmission rates will be accepted through 5 p.m., November 24, 1986. This proceeding is a general rate proceeding under procedures governing BPA rate hearings, March 5, 1986, 51 FR 7611. Pursuant to the ex parte limitations contained in these Procedures, BPA will not accept oral recommendations on substantive issues, except in meetings for which notice has been given.

Responsible Official: Ms. Shirley Melton, Director, Division of Rates, is the official responsible for the development of BPA rates.

ADDRESSES: Written comments should be submitted to Ms. Donna L. Geiger, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen S. Johnson, Public Involvement office, at the address listed above, 503-230-3478. Oregon callers outside Portland may use 800-452-8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800-547-6048. Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503-230-4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503-687-6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509-662-4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206-442-4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-522-6226.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.

Mr. Frederic D. Rettenmund, Boise District Manager, 550 West Fort Street, Room 376/Box 035, Boise, Idaho 83724, 208-334-9137.

SUPPLEMENTARY INFORMATION: BPA, an agency of the U.S. Department of Energy, owns and operates the Federal Columbia River Transmission System (FCRTS), which includes approximately 80 percent of the capacity of the high-voltage electric transmission system within the Pacific Northwest. The FCRTS integrates and transmits electric power from Federal and non-Federal generating units. BPA also provides interregional transmission services to its customers outside the Pacific Northwest. BPA is undertaking studies to support changes to the current transmission rates and rate designs.

The current rates apply to four types of transmission service which generally involve: (1) Firm transmission of electric power and energy from points of generation to loads or between other points of supply and delivery (current contracts provide this service for periods of up to 20 years); (2) firm transmission of electric power and energy on a postage-stamp rate basis; (3) nonfirm transmission of electric energy when there is available capacity; and (4) firm transmission of electric power and energy over specified transmission facilities. BPA also will examine the adequacy of current charges for other transmission related services, including services provided over BPA's intertie.

In this rate proceeding, BPA is considering alternative methods for developing its Southern Intertie rates which will supersede the current IS-85 rate. BPA is seeking recommendations on the development of intertie rates which will specifically address the following intertie services: (1) Nonfirm use of BPA's intertie, (2) firm, long-term (assured delivery) use for firm power sales, (3) firm, long-term (assured delivery) use, if granted, for capacity/energy and seasonal exchange contracts, and (4) firm, long-term (assured delivery) use, if granted, for Canadian resources.

Anticipated transmission rate adjustments are needed to cover changing FCRTS costs. Normally, transmission costs are small compared to a utility's total costs, and BPA expects that the increase in FCRTS revenues will have minimal impact on ultimate power costs to the consumer.

The present transmission rates have been approved by the Federal Energy Regulatory Commission (FERC) on an interim basis, effective July 1, 1985. BPA is seeking public comment in developing its transmission rate proposal. In order to be considered in the development of BPA's initial proposal, comments must be in writing and be submitted no later

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than 5 p.m., November 24, 1986. Oral communications should be for the purpose of requesting either status reports or procedural information. Following publication of the initial proposal in the **Federal Register** (on or about December 19, 1986), both general public field hearings and formal public hearings will be conducted by BPA. Written comments will also be accepted throughout the 7-month hearing process. A final comment deadline will be announced in a future **Federal Register** notice. BPA intends to prepare an environmental assessment (EA) on the proposed transmission rate adjustment and distribute the document for public and agency review and comment in January 1987. Based on the information in the EA and on comments received during public and agency review, the Department of Energy will determine whether to prepare a Finding of No Significant Impact. After completion of the environmental process and following the hearings, BPA will announce its final proposed transmission rates and submit them by August 1, 1987, to FERC for approval.

Issued in Portland, Oregon, on October 30, 1986.

Robert E. Ratcliffe,

Acting Administrator.

[FR Doc. 86–25125 Filed 11–4–86; 10:00 am]

BILLING CODE 6450-01-M

[86–925]

Intent To Revise Wholesale Power Rates To Become Effective October 1, 1987; Request for Recommendations and Suggestions

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of intent and request for recommendations. *BPA File No.:* WP–87. BPA requests that all comments and documents which become part of the Official Record compiled in the process of adjusting wholesale power rates contain the file number designation WP–87.

SUMMARY: Bonneville Power Administration (BPA) is in the initial stages of developing adjusted wholesale power rates which will become effective October 1, 1987. At this time, BPA announces its intent to revise its rates and is seeking suggestions, advice, and recommendations from interested persons which can be used to assist in the development of BPA's proposals. BPA expects to have its initial proposed rates formulated in December 1986 and to issue an environmental assessment on the proposed adjustment in January 1987. BPA will then publish a notice of the proposed rates in the **Federal Register**

The December notice will also announce BPA's proposed schedule for formal hearings as specified in section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (Pacific Northwest Power Act). A final schedule will be established by the Hearing Officer who presides over BPA's rate hearings. These hearings will give interested persons an opportunity to present both oral and written comments on the proposal.

DATES: Suggestions and recommendations concerning the development of proposed wholesale power rates will be accepted through 5 p.m., November 24, 1986. This proceeding is a general rate proceeding under procedures governing BPA rate hearings. March 5, 1986, 51 FR 7611. Pursuant to the ex parte limitations contained in these Rules, BPA will not accept oral recommendations on substantive issues, except in meetings for which notice has been given.

Responsible Official: Ms. Shirley Melton, Director, Division of Rates, is the official responsible for the development of BPA rates.

ADDRESS: Written comments should be submitted to Ms. Donna L. Geiger, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Kathleen S. Johnson, Public Involvement office, at the address listed above, 503–230–3478. Oregon callers outside Portland may use 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800–547–6048. Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206–442–4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6226.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Frederic D. Rettenmund, Boise District Manager, 550 West Fort Street, Room 376/Box 035, Boise, Idaho 83724, 208–334–9137.

SUPPLEMENTARY INFORMATION:

I. Background

BPA, an agency of the U.S. Department of Energy, is the Federal power marketing agency in the Pacific Northwest. BPA markets hydroelectric power from 30 U.S. Army Corps of Engineers and U.S. Bureau of Reclamation projects on the Columbia River and its tributaries, as well as thermal power it acquires from interests in the region. In addition, BPA owns, operates, and maintains the nation's largest high-voltage transmission system grid.

BPA supplies about 50 percent of the electric energy consumed in the Pacific Northwest and accounts for about 80 percent of the region's high-voltage transmission capacity. BPA sells power to 168 customers, including publicly, cooperatively, and privately owned utilities; Federal and state agencies; and direct-service industries (DSIs). The power is sold wholesale to BPA utility customers for resale to ultimate consumers, and is sold directly to BPA's industrial and Federal agency customers. In addition, BPA sells power that is surplus to the needs to the Pacific Northwest to customers outside the region.

The rates that BPA charges its customers must produce revenues that are sufficient to repay, with interest, the Federal investment in generation, conservation, and transmission facilities. Revenues must also pay BPA's operation and maintenance expenses, purchased power costs, and certain other miscellaneous expenses. Inflation and contract obligations have increased BPA's costs; and BPA revenues have been adversely affected by the reduced oil and gas prices, the continued flagging economy, and reduction in aluminum smelter loads.

BPA's last wholesale power rate adjustment became effective on an interim basis on July 1, 1985. The process for the 1987 wholesale power rate proposal will be similar to that used to develop the 1985 wholesale power rates. BPA is preparing revenue requirement studies to determine the extent to which anticipated revenue requirements for fiscal years 1988 and 1989 would exceed expected revenues collected under the current rates. Following a determination of the increase in revenues that will be necessary to meet revenue requirements, BPA will develop various studies to be used in designing rates. BPA will also assess the environmental effects of the proposed rates.

II. Major Issues

The development of BPA's rates is a complex process, raising numerous issues for resolution in the hearings process. The following is a brief explanation of several of the major issues that are expected to be addressed in the hearing. Some of these issues have been the subject of much discussion in previous BPA rate cases.

A. Revenue Requirement

BPA develops a Revenue Requirement Study that projects the costs of providing electricity and services to BPA's customers. The revenue requirement calculation will be a major factor in determining the overall level of BPA's proposed rates.

BPA has just completed its initial review of program levels for the FY 1988 and 1989 budgets. This public process has affected revenue requirement data for BPA's rate case. Accordingly, the Administrator will not reopen program level decisions in the rate case. However, further opportunity for informal public comment will be established outside the rate case.

B. Loads and Resources Determination

The energy and capacity loads and resources forecasted by BPA to occur during the forthcoming rate period determine BPA's forecasted power sales. Forecasted sales, combined with revenue requirements, determine the level of rates that must be charged in order to generate sufficient revenue.

C. Allocation of Costs

The rates charged each customer class reflect both the classification of costs between capacity and energy and the allocation of costs to a particular customer class. These determinations are proposed by BPA, and the parties to the rate case generally propose alternative cost classification and allocation schemes.

D. Special Rates

In the past, BPA has offered incentive rates to the Direct Service Industries (DSIs). Development and implementation of the Variable Industrial rate has eliminated future incentive rates to the aluminum smelter DSIs. Other sectors of the economy have requested special rates for economic reasons. BPA implemented a special rate for irrigators during the 1985 rate hearing. Economic conditions again may result in requests for additional special rates for irrigators and other groups.

E. Marketing Assumptions

Much of BPA's forecast of power sales depends on assumptions about certain marketing conditions. Because of the projected surplus of energy, BPA will continue to market power to the Pacific Southwest. Assumptions of future sales of surplus power and the prices for those sales play a key role in the level of rate adjustments. If BPA's assumptions are overly optimistic, the resulting rates could jeopardize BPA's ability to make scheduled payments to the Treasury.

F. Cost Recovery Adjustment Clause

BPA will attempt to mitigate its risks of underrecovering its costs in the event that its actual revenues and/or cost forecasts prove inaccurate. If the balance between revenues and costs during the rate period falls outside a predesignated range, BPA proposes that an adjustment to some or all power rates will be made to bring revenues back into balance with actual costs. The Cost Recovery Adjustment Clause may replace two adjustment clauses already in effect (Supply System and Exchange).

G. DSI Rates

The Variable Industrial rate (VI–86) has been developed by BPA and is now effective. The rate is available only to aluminum smelters and all Pacific Northwest smelters buy some or all of their power from BPA under the Industrial Firm Power (IP) rate. BPA has also developed an IP–PF Rate Link, via a separate 7(i) process, that links the Priority Firm and Industrial Power rate schedules. Linking the two rates will improve short and long-term planning for the DSIs.

H. Nonfirm Energy Sales and Rates

BPA's rates for and sales of nonfirm energy have recently become highly sensitive to the prices of oil and gas. Long-term resource decisions that affect the market for nonfirm energy are being made based on expectations about BPA's future nonfirm rates and other factors. BPA expects a significant amount of attention to be paid to the design of NF rates, the effect on marketability, and predictability of the rates to potential purchasers.

BPA also expects a significant amount of attention to be paid to assumed sales of nonfirm energy. Similar to assumptions of surplus power sales, assumptions of nonfirm sales play a key role in the level of rate adjustments and have a large impact on BPA's ability to make its projected payments to the Treasury.

In order to be considered in the development of BPA's initial proposal, suggestions and recommendations must be in writing and be submitted no later than 5 p.m., November 24, 1986. Oral communications should be for the purpose of requesting either status reports or procedural information. Following publication of the initial proposal in the **Federal Register** (on or about December 19, 1986), both general public field hearings and formal public hearings will be conducted by BPA. Written comments will also be accepted throughout the 7 month hearing process. A final comment deadline will be announced in a future **Federal Register** notice. BPA intends to prepare an environmental assessment (EA) on the proposed wholesale power rate adjustment and distribute the document for public and agency review and comment in January 1987. Based on the information in the EA and on comments received during public and agency review, the Department of Energy will determine whether to prepare a Finding of No Significant Impact. After completion of the environmental process and following the hearings, BPA will announce its final proposed wholesale power rates and submit them by August 1, 1987, to the Federal Energy Regulatory Commission for approval.

Issued in Portland, Oregon, on October 30, 1986.

Robert E. Ratcliffe,

Acting Administrator.

[FR Doc. 86–25124 Filed 11–4–86; 10:00 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

Algonquin Gas Transmission Co.; Application Proposing Changes in FERC Gas Tariff

[Docket No. RP87–14–000]

November 4, 1986.

Take notice that on October 31, 1986, Algonquin Gas Transmission Company ("Algonquin Gas"), 1284 Soldiers Road, Boston, Massachusetts 02135, filed revised tariff sheets reflecting proposed changes in its FERC Gas Tariff, pursuant to section 4 of the Natural Gas Act and Part 154 of the Commission's Regulations under the Natural Gas Act.

Algonquin Gas proposes that the filing take effect on December 1, 1986.

Algonquin Gas states that the filing would increase annual revenues by approximately $10.2 million. The Company asserts that the increased rates are required to provide revenues equal to the test period cost of service, when applied to the related test period quantities.

Algonquin Gas states that copies of its filing have been served upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-25255 Filed 11-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST86-2540-000 et al.]

Arkla Energy Resources et al.; Self-Implementing Transactions

November 4, 1986.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Subpart F of Parts 157 and 284 of the Commission's Regulations, and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA).[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline pursuant to § 284.102 of the Commission's Regulations.

A "C" indicates transportation by an intrastate pipeline pursuant to § 284.122 of the Commission's Regulations. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and expiration date for the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

An "F(157)" indicates transportation by an interstate pipeline for an end-user pursuant to § 157.209 of the Commission's Regulations.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(EU)" indicates transportation by an interstate pipeline company on behalf of an end-user pursuant to a blanket certificate issued under § 284.223 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "C/F(157)" indicates intrastate pipeline transportation, which is incidental to a transportation by an interstate pipeline to an end-user pursuant to a blanket certificate under 18 CFR 157.209. Similarly, a "G/F(157)" indicates such transportation performed by a Hinshaw Pipeline or distributor.

Any person desiring to be heard or to make any protest with reference to a transaction reflected in this notice should on or before November 17, 1986, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,
Acting Secretary.

Docket No. [1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST86-2540	Arkla Energy Resources	Arkansas Louisiana Gas Co	09-02-86	B		
ST86-2541	Arkla Energy Resources	Dayton Power and Light Co	09-02-86	B		
ST86-2542	Texas Gas Transmission Corp	Columbia Gas of Kentucky, Inc	09-02-86	B		
ST86-2543	Texas Gas Transmission Corp	Columbia Gas of Virginia, Inc	09-02-86	B		
ST86-2544	Texas Gas Transmission Corp	Columbia Gas of Pennsylvania, Inc	09-02-86	B		
ST86-2545	Texas Gas Transmission Corp	Columbia Gas of Maryland, Inc	09-02-86	B		
ST86-2546	Arkla Energy Resources	Arkansas Louisiana Gas Co	09-02-86	B		
ST86-2547	Trunkline Gas Co	Consumers Power Co	09-02-86	B		
ST86-2548	Panhandle Eastern Pipe Line Co	Central Illinois Public Service Co	09-02-86	B		
ST86-2549	El Paso Natural Gas Co	Pacific Gas and Electric Co	09-02-86	B		
ST86-2550	Louisiana Intrastate Gas Corp	Texas Gas Transmission Corp	09-02-86	C	01-30-87	00.00
ST86-2551	ONG Transmission Corp	ANR Pipeline Co	09-03-86	C	01-31-87	10.00
ST86-2552	Delhi Gas Pipeline Corp	Arkla Energy Resources	09-02-86	C		
ST86-2553	Arkla Energy Resources	Arkansas Louisiana Gas Co	09-02-86	B		
ST86-2554	Colorado Interstate Gas Co	MGTC, Inc	09-02-86	B		
ST86-2555	Arkla Energy Resources	Consumers Power Co	09-02-86	B		
ST86-2556	Arkla Energy Resources	Shreveport Intrastate Gas Trans., Inc	09-02-86	B		

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[1] Notice of these transactions does not constitute a determination that service will be approved.

Docket No. [1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST86-2557	Texas Eastern Transmission Corp	Elizabethtown Gas Co	09-02-86	B		
ST86-2558	Texas Eastern Transmission Corp	Brooklyn Union Gas co	09-02-86	B		
ST86-2559	Panhandle Eastern Pipe Line Co	Consumers Power Co	09-02-86	B		
ST86-2560	Trunkline Gas Co	Consumers Power Co	09-02-86	B		
ST86-2561	Trunkline Gas Co	UGI Corp., et al	09-02-86	B		
ST86-2562	Trunkline Gas Co	Consumers Power Co	09-02-86	B		
ST86-2563	Trunkline Gas Co	Consumers Power Co	09-02-86	B		
ST86-2564	Trunkline Gas Co	Consumers Power Co	09-02-86	B		
ST86-2565	Panhandle Eastern Pipe Line Co	Union Electric Co	09-02-86	B		
ST86-2566	Delhi Gas Pipeline Corp	Transwestern Pipeline Co	09-02-86	C		
ST86-2567	Panhandle Eastern Pipe Line Co	Producer's Gas Co	09-03-86	B		
ST86-2568	Panhandle Eastern Pipe Line Co	Getty Gas Gathering, Inc	09-03-86	B		
ST86-2569	Trunkline Gas Co	Consumers Power Co	09-03-86	B		
ST86-2570	Panhandle Eastern Pipe Line Co	Llano, Inc	09-03-86	B		
ST86-2571	Dow Pipeline Co	Natural Gas Pipeline Co., of America	09-08-86	C	02-06-87	10.13
ST86-2572	Trunkline Gas Co	Columbia Gas of Ohio, Inc., et al	09-08-86	B		
ST86-2573	Panhandle Eastern Pipe Line Co	Consumers Power Co	09-08-86	B		
ST86-2574	Panhandle Eastern Pipe Line Co	Quivira Gas Co	09-08-86	B		
ST86-2575	Arkla Energy Resources	Columbia Gas of Kentucky, Inc	09-08-86	B		
ST86-2576	Panhandle Eastern Pipe Line Co	Consumers Power Co	09-08-86	B		
ST86-2577	Panhandle Eastern Pipe Line Co	Consumers Power Co	09-08-86	B		
ST86-2578	Trunkline Gas Co	Consumers Power Co	09-08-86	B		
ST86-2579	Trunkline Gas Co	Gulf Coast Energy, Inc	09-08-86	B		
ST86-2580	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	09-08-86	B		
ST86-2581	Panhandle Eastern Pipe Line Co	Consumers Power Co	09-08-86	B		
ST86-2582	Trunkline Gas Co	Consumers Power Co	09-08-86	B		
ST86-2583	Trunkline Gas Co	Consumers Power Co	09-08-86	B		
ST86-2584	Seagull Energy Corp	Northern Natural Gas Co	09-08-86	C		
ST86-2585	Arkla Energy Resources	New Jersey Natural Gas Co	09-05-86	B		
ST86-2586	Mountain Fuel Resources, Inc	Mountain Fuel Supply Co	09-05-86	B		
ST86-2587	Arkla Energy Resources	Columbia Gas of Pennsylvania, Inc	09-05-86	B		
ST86-2588	Arkla Energy Resources	Columbia Gas of Virginia, Inc	09-05-86	B		
ST86-2589	Arkla Energy Resources	Columbia Gas of Maryland, Inc	09-05-86	B		
ST86-2590	Arkla Energy Resources	Brooklyn Union Gas Co	09-05-86	B		
ST86-2591	Texas Eastern Transmission Corp	Michigan Consolidated Gas Co	09-09-86	B		
ST86-2592	Texas Eastern Transmission Corp	Carrollton Utilities	09-09-86	B		
ST86-2593	Texas Eastern Transmission Corp	Consumer Power Co	09-09-86	B		
ST86-2294	Panhandle Eastern Pipe Line Co	Central Illinois Public Service Co	09-10-86	B		
ST86-2595	Trunkline Gas Co	Consumers Power Co	09-10-86	B		
ST86-2596	Panhandle Eastern Pipe Line Co	East Ohio Gas Co	09-10-86	B		
ST86-2597	ONG Transmission Co	Natural Gas Pipeline Co. of America	09-10-86	C	02-07-87	10.00
ST86-2598	Arkla Energy Resources	Columbia Gas of Ohio, Inc	09-08-86	B		
ST86-2599	Arkla Energy Resources	Columbia Gas of New York, Inc	09-08-86	B		
ST86-2600	Arkla Energy Resources	Arkla Energy Resources, (La intra. Seg.)	09-08-86	B		
ST86-2601	ANR Pipeline Co	Michigan Consolidated Gas Co	09-10-86	B		
ST86-2602	ANR Pipeline Co	Michigan Consolidated Gas Co	09-10-86	B		
ST86-2603	ANR Pipeline Co	Faustina Pipe Line Co	09-10-86	B		
ST86-2604	ONG Transmission Co	Arkla Energy Resources	09-11-86	C	02-08-87	10.00
ST86-2605	ONG Transmission Co	Panhandle Eastern Pipe Line Co	09-11-86	C	02-08-87	10.00
ST86-2606	ONG Transmission Co	Natural Gas Pipeline Co. of America	09-11-86	C	02-08-87	10.00
ST86-2607	United Gas Pipe Line Co	Eastex Gas Transmission	09-11-86	B		
ST86-2608	United Gas Pipe Line Co	City of Henderson, et al	09-11-86	B		
ST86-2609	Texas Gas Transmission Corp	Memphis Light, Gas and Water Division	09-11-86	B		
ST86-2610	Texas Gas Transmission Corp	City of Carrollton	09-11-86	B		
ST86-2611	Texas Gas Transmission Corp	Illinois Gas Co	09-11-86	B		
ST86-2612	Texas Gas Transmission Corp	Town of Covington	09-11-86	B		
ST86-2613	Columbia Gulf Transmission Co	Pontchartrain Natural Gas System	09-11-86	B		
ST86-2614	Columbia Gulf Transmission Co	Alabama-Tennessee Natural Gas Co	09-11-86	G		
ST86-2615	Valero Transmission Co	Trunkline Gas Co	09-12-86	C		
ST86-2616	Valero Transmission Co	El Paso Natural Gas Co	09-12-86	C		
ST86-2617	Trunkline Gas Co	Consumers Power Co	09-12-86	B		
ST86-2618	Panhandle Eastern Pipe Line Co	Ohio Valley Gas Corp	09-12-86	B		
ST86-2619	Trunkline Gas Co	Consumers Power Co	09-12-86	B		
ST86-2620	Trunkline Gas Co	Consumers Power Co	09-12-86	B		
ST86-2621	Panhandle Eastern Pipe Line Co	Consumers Power Co	09-12-86	B		
ST86-2622	Trunkline Gas Co	Consumers Power Co	09-12-86	B		
ST86-2623	Trunkline Gas Co	Consumers Power Co	09-12-86	B		
ST86-2624	Panhandle Eastern Pipe Line Co	Consumers Power Co	09-12-86	B		
ST86-2625	Trunkline Gas Co	Consumers Power Co	09-12-86	B		
ST86-2626	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	09-12-86	B		
ST86-2627	Transcontinental Gas Pipe Line Corp	Dayton Power and Light Co	09-12-86	B		
ST86-2628	Transcontinental Gas Pipe Line Corp	City of Danville	09-12-86	B		
ST86-2629	Transcontinental Gas Pipe Line Corp	Lynchburge Gas Co	09-12-86	B		
ST86-2630	Transcontinental Gas Pipe Line Corp	Wisconsin Natural Gas Co	09-12-86	B		
ST86-2631	Transcontinental Gas Pipe Line Corp	Wisconsin Public Service Co., et al	09-12-86	B		
ST86-2632	Transcontinental Gas Pipe Line Corp	Corpus Christi Gas Gathering, Inc	09-12-86	B		
ST86-2633	Transcontinental Gas Pipe Line Corp	City of Madison	09-12-86	B		
ST86-2634	Transcontinental Gas Pipe Line Corp	City of Buford	09-12-86	B		
ST86-2635	Transcontinental Gas Pipe Line Corp	Delmarva Power and Light Co	09-12-86	B		
ST86-2636	Transcontinental Gas Pipe Line Corp	Piedmont Natural Gas Co	09-12-86	B		
ST86-2637	Transcontinental Gas Pipe Line Corp	United Cities Gas Co., SC Div	09-12-86	B		
ST86-2638	Transcontinental Gas Pipe Line Corp.	City of Social Circle	09-12-86	B		
ST86-2639	Transcontinental Gas Pipe Line Corp.	Clinton Newberry Nat. Gas Authority	09-12-86	B		
ST86-2640	Transcontinental Gas Pipe Line Corp.	Bessemer City	09-12-86	B		
ST86-2641	Transcontinental Gas Pipe Line Corp.	Commission of Public Works, Greenwood	09-12-86	B		
ST86-2642	Transcontinental Gas Pipe Line Corp.	Rochester Gas & Electric Corp.	09-12-86	B		
ST86-2643	Transcontinental Gas Pipe Line Corp.	City of Hartwell	09-12-86	B		
ST86-2644	Transcontinental Gas Pipe Line Corp.	Tri-County Natural Gas Co.	09-12-86	B		
ST86-2645	Transcontinental Gas Pipe Line Corp.	City of Lexington	09-12-86	B		
ST86-2646	Transcontinental Gas Pipe Line Corp.	Southwestern Virginia Gas Co.	09-12-86	B		
ST86-2647	Transcontinental Gas Pipe Line Corp.	City of Shelby	09-12-86	B		
ST86-2648	Transcontinental Gas Pipe Line Corp.	City of Greer	09-12-86	B		

Docket No. [1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST86-2649	Transcontinental Gas Pipe Line Corp.	North Carolina Gas Service Co.	09-12-86	B		
ST86-2650	Transcontinental Gas Pipe Line Corp.	City of Covington	09-12-86	B		
ST86-2651	Transcontinental Gas Pipe Line Corp.	City of Clanton	09-12-86	B		
ST86-2652	Transcontinental Gas Pipe Line Corp.	City of Toccoa	09-12-86	B		
ST86-2653	Transcontinental Gas Pipe Line Corp.	Faustina Pipe Line Co.	09-12-86	B		
ST86-2654	Columbia Gulf Transmission Co.	North Mississippi Natural Gas Corp.	09-12-86	B		
ST86-2655	Mountain Fuel Resources, Inc.	Mountain Fuel Supply Co.	09-15-86	B		
ST86-2656	ONG Transmission Co.	ANR Pipeline Co.	09-15-86	C	02-12-87	10.00
ST86-2657	Panhandle Gas Co.	Columbia Gas of Ohio, Inc.	09-15-86	D		
ST86-2658	Panhandle Gas Co.	United Cities Gas Co.	09-15-86	D		
ST86-2659	Houston Pipe Line Co.	Consumers Power Co.	09-15-86	C		
ST86-2660	Shreveport Intrastate Gas Trans., Inc.	United Gas Pipe Line Co.	09-15-86	C	02-12-87	25.00
ST86-2661	Transcontinental Gas Pipe Line Corp.	City of Lawrenceville	09-15-86	B		
ST86-2662	Transcontinental Gas Pipe Line Corp.	City of Monroe	09-15-86	B		
ST86-2663	Transcontinental Gas Pipe Line Corp.	City of Commerce	09-15-86	B		
ST86-2664	Transcontinental Gas Pipe Line Corp.	Town of Thomaston	09-15-86	B		
ST86-2665	Transcontinental Gas Pipe Line Corp.	Town of Rockford	09-15-86	B		
ST86-2666	Transcontinental Gas Pipe Line Corp.	Maplesville Water & Gas Board	09-15-86	B		
ST86-2667	Transcontinental Gas Pipe Line Corp.	Public Service Electric and Gas Co.	09-15-86	B		
ST86-2668	Transcontinental Gas Pipe Line Corp.	Pontchartrain Natural Gas System	09-15-86	B		
ST86-2669	Transcontinental Gas Pipe Line Corp.	City of Winder	09-15-86	B		
ST86-2670	Transcontinental Gas Pipe Line Corp.	Baltimore Gas and Electric Co.	09-15-86	B		
ST86-2671	Transcontinental Gas Pipe Line Corp.	United Cities Gas Co.	09-15-86	B		
ST86-2672	Transcontinental Gas Pipe Line Corp.	City of Elberton	09-15-86	B		
ST86-2673	Transcontinental Gas Pipe Line Corp.	Town of Fountain Inn	09-15-86	B		
ST86-2674	Transcontinental Gas Pipe Line Corp.	City of Bowman	09-15-86	B		
ST86-2675	Transcontinental Gas Pipe Line Corp.	East Central Alabama Gas District	09-15-86	B		
ST86-2676	Transcontinental Gas Pipe Line Corp.	City of Royston	09-15-86	B		
ST86-2677	Louisiana Resources Co.	Bridgeline Gas Distribution Co.	09-15-86	C	02-12-87	35.08
ST86-2678	El Paso Natural Gas Co.	GGSI Gas Co.	09-15-86	B		
ST86-2679	El Paso Natural Gas Co.	El Paso Hydrocarbons Co.	09-15-86	B		
ST86-2680	Panhandle Gas Co.	Columbia Gas of Pennsylvania, Inc.	09-15-86	D		
ST86-2681	Delhi Gas Pipeline Corp.	Northern Natural Gas Co.	09-15-86	C	02-12-87	54.70
ST86-2682	Delhi Gas Pipeline Corp.	Northern Illinois Gas Co.	09-15-86	C	02-12-87	54.70
ST86-2683	Colorado Interstate Gas Co.	Pacific Gas and Electric Co.	09-15-86	B		
ST86-2684	Delhi Gas Pipeline Corp.	Northern Natural Gas Co.	09-15-86	C	02-12-87	54.70
ST86-2685	Delhi Gas Pipeline Corp.	Michigan Gas Utilities	09-15-86	C	02-12-87	61.17
ST86-2686	Delhi Gas Pipeline Corp.	Baltimore Gas and Electric Co.	09-15-86	D	02-12-87	54.70
ST86-2687	Delhi Gas Pipeline Corp	United Gas Pipe Line Co	09-15-86	C	02-12-87	54.31
ST86-2688	Delhi Gas Pipeline Corp	United Gas Pipe Line Co	09-15-86	C	02-12-87	54.31
ST86-2689	Delhi Gas Pipeline Corp	Tennessee Gas Pipeline Co	09-15-86	C	02-12-87	21.00
ST86-2690	Delhi Gas Pipeline Corp	Southern Natural Gas Co.	09-15-86	C	02-12-87	54.31
ST86-2691	Delhi Gas Pipeline Corp	Mississippi River Transmission Corp	09-15-86	C	02-12-87	46.78
ST86-2692	Delhi Gas Pipeline Corp	Columbia Gas Transmission Corp	09-15-86	C	02-12-87	46.78
ST86-2693	Delhi Gas Pipeline Corp	Northern Illinois Gas Co., et al	09-15-86	C	02-12-87	54.70
ST86-2694	Delhi Gas Pipeline Corp	Washington Gas Light Co	09-15-86	D	02-12-87	54.70
ST86-2695	Delhi Gas Pipeline Corp	Utah Gas Service Co	09-15-86	C	02-12-87	54.70
ST86-2696	Delhi Gas Pipeline Corp	Louisiana Industrial Gas Supply System	09-15-86	C	02-12-87	54.70
ST86-2697	Delhi Gas Pipeline Corp	Northern Natural Gas Co	09-15-86	C	02-12-87	54.70
ST86-2698	Delhi Gas Pipeline Corp	Northern Natural Gas Co	09-15-86	C	02-12-87	54.70
ST86-2699	Delhi Gas Pipeline Corp	Texas Eastern Transmission Corp	09-15-86	C	02-12-87	46.78
ST86-2700	Delhi Gas Pipeline Corp	Tennessee Gas Pipeline Co	09-15-86	C	02-12-87	54.31
ST86-2701	Delhi Gas Pipeline Corp	Mississippi River Transmission Corp	09-15-86	C	02-12-87	54.70
ST86-2702	Delhi Gas Pipeline Corp	Northern Natural Gas Co	09-15-86	C	02-12-87	54.31
ST86-2703	Delhi Gas Pipeline Corp	Wisconsin Natural Gas Co	09-15-86	C	02-12-87	54.70
ST86-2704	Delhi Gas Pipeline Corp	Transwestern Pipeline Co	09-15-86	C	02-12-87	54.70
ST86-2705	Delhi Gas Pipeline Corp	Tennessee Gas Pipeline Co	09-15-86	C	02-12-87	54.70
ST86-2706	Delhi Gas Pipeline Corp	Spindletop Gas Distribution System	09-15-86	C	02-12-87	46.78
ST86-2707	Delhi Gas Pipeline Corp	United Gas Pipe Line Co	09-15-86	C	02-12-87	54.31
ST86-2708	Colorado Interstate Gas Co	Greeley Gas Co	09-16-86	B	02-12-87	54.31
ST86-2709	Phenix Transmission Co	Panhandle Eastern Pipe Line Co	09-16-86	C		
ST86-2710	Transcontinental Gas Pipe Line Corp	Washington Gas Light Co	09-16-86	B	02-13-87	30.00
ST86-2711	Dow Pipeline Co	Michigan Consolidated Gas Co	09-17-86	C		
ST86-2712	Panhandle Eastern Pipe Line Co	Corning Natural Gas Corp	09-17-86	B		
ST86-2713	Panhandle Eastern Pipe Line Co	Indiana Gas Co	09-17-86	B		
ST86-2714	Panhandle Eastern Pipe Line Co	Central Illinois Public Service Co	09-17-86	B		
ST86-2715	Panhandle Eastern Pipe Line Co	Central Illinois Public Service Co	09-17-86	B		
ST86-2716	Panhandle Eastern Pipe Line Co	Illinois Power Co	09-17-86	B		
ST86-2717	Producer's Gas Co	ANR Pipeline Co	09-17-86	C	02-14-87	25.20
ST86-2718	Producer's Gas Co	Panhandle Eastern Pipe Line Co	09-17-86	C	02-14-87	25.20
ST86-2719	Producer's Gas Co	Southern California Gas Co	09-17-86	C	02-14-87	25.20
ST86-2720	Panhandle Eastern Pipe Line Co	Yankee Pipeline Co	09-18-86	B		
ST86-2721	ONG Transmission Co	Columbia Gas Transmission Corp	09-18-86	C	02-15-87	24.32
ST86-2722	Dow Pipeline Co	Michigan Consolidated Gas Co	09-18-86	C	02-15-87	10.13
ST86-2723	Seagull Energy Corp	Southern Natural Gas Co	09-08-86	C		
ST86-2724	Transcontinental Gas Pipe Line Corp	City of Union	09-19-86	B		
ST86-2725	Transcontinental Gas Pipe Line Corp	Utilities Board of Roanoke	09-19-86	B		
ST86-2726	Transcontinental Gas Pipe Line Corp	Pontchartrain Natural Gas System	09-19-86	B		
ST86-2727	Transcontinental Gas Pipe Line Corp	Baltimore Gas and Electric Co	09-19-86	B		
ST86-2728	Transcontinental Gas Pipe Line Corp	Blacksburg Natural Gas System	09-19-86	B		
ST86-2729	Texas Eastern Transmission Corp	New York State Electric and Gas Co	09-19-86	B		
ST86-2730	Texas Eastern Transmission Corp	Elizabethtown Gas Co	09-19-86	B		
ST86-2731	Texas Eastern Transmission Corp	Niagara Mohawk Power Corp	09-19-86	B		
ST86-2732	Texas Eastern Transmission Corp	Bishop Pipeline Corp	09-19-86	B		
ST86-2733	Texas Eastern Transmission Corp	East Ohio Gas Co	09-19-86	B		
ST86-2734	Texas Eastern Transmission Corp	Houston Pipe Line Co	09-19-86	B		
ST86-2735	Texas Eastern Transmission Corp	Niagara Mohawk Power Corp	09-19-86	B		
ST86-2736	Texas Eastern Transmission Corp	Niagara Mohawk Power Corp	09-19-86	B		
ST86-2737	Texas Eastern Transmission Corp	Philadelphia Electric Co	09-19-86	B		
ST86-2738	Transcontinental Gas Pipe Line Corp	Niagara Mohawk Power Corp	09-19-86	B		
ST86-2739	Transcontinental Gas Pipe Line Corp	City of Butler	09-19-86	B		
ST86-2740	Transcontinental Gas Pipe Line Corp	Utilities Board, Wedowee	09-19-86	B		

Docket No. [1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST86-2741	Transcontinental Gas Pipe Line Corp	City of Sugar Hill	09-19-86	B		
ST86-2742	Transcontinental Gas Pipe Line Corp	Fort Hill Natural Gas Authority	09-19-86	B		
ST86-2743	Transcontinental Gas Pipe Line Corp	Pennsylvania Gas and Water Co	09-19-86	B		
ST86-2744	Louisiana Resources Co	Transcontinental Gas Pipe Line Corp	09-22-86	C	02-19-87	35.06
ST86-2745	Panhandle Eastern Pipe Line Co	Consumers Power Co	09-22-86	B		
ST86-2746	Texas Gas Transmission Corp	Louisville Gas & Electric Co	09-22-86	B		
ST86-2747	Texas Gas Transmission Corp	Texas American Energy Corp	09-22-86	B		
ST86-2748	Texas Gas Transmission Corp	Indiana Gas Co	09-22-86	B		
ST86-2749	Texas Gas Transmission Corp	Orange and Rockland Util. et al	09-22-86	B		
ST86-2750	Texas Gas Transmission Corp	City of Carrollton	09-22-86	B		
ST86-2751	Natural Gas Pipeline Co. of America	Delhi Gas Pipeline Corp	09-23-86	B		
ST86-2752	Panhandle Eastern Pipe Line Co	Quivira Gas Co	09-23-86	B		
ST86-2753	Truckline Gas Co	Louisiana Intrastate Gas Corp	09-23-86	B		
ST86-2754	Trunkline Gas Co	Shreveport Intrastate Gas Trans., Inc	09-23-86	B		
ST86-2755	Columbia Gas Transmissioin Corp	Shenandoah Gas Co	09-23-86	B		
ST86-2756	Columbia Gas Transmission Corp	Frederick Gas Co	09-23-86	B		
ST86-2757	Columbia Gas Transmission Corp	Cabot Corp	09-23-86	B		
ST86-2758	Columbia Gulf Transmission Corp	Louisiana Intrastate Gas Corp	09-23-86	B		
ST86-2759	Columbia Gulf Transmission Corp	Dow Intrastate Gas Co	09-23-86	B		
ST86-2760	Consolidated Gas Transmission Corp	New York State Electric and Gas Co	09-24-86	B		
ST86-2761	Consolidated Gas Transmission Corp	Peoples Natural Gas Co	09-24-86	B		
ST86-2762	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	09-24-86	B		
ST86-2763	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	09-24-86	B		
ST86-2764	Consolidated Gas Transmission Corp	New York State Electric and Gas Co	09-24-86	B		
ST86-2765	Consolidated Gas Transmission Corp	Peoples Natural Gas Co	09-24-86	B		
ST86-2766	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	09-24-86	B		
ST86-2767	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	09-24-86	B		
ST86-2768	Consolidated Gas Transmission Corp	Rochester Gas & Electric Corp	09-24-86	B		
ST86-2769	Consolidated Gas Transmission Corp	New York State Electric and Gas Co	09-24-86	B		
ST86-2770	Consolidated Gas Transmission Corp	Hope Gas, Inc	09-24-86	B		
ST86-2771	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	09-24-86	B		
ST86-2772	Consolidated Gas Transmission Corp	New York State Electric and Gas Co	09-24-86	B		
ST86-2774	Consolidated Gas Transmission Corp	Peoples Natural Gas Co	09-24-86	B		
ST86-2775	Consolidated Gas Transmission Corp	Peoples Natural Gas Co	09-24-86	B		
ST86-2776	Consolidated Gas Transmission Corp	Peoples Natural Gas Co	09-24-86	B		
ST86-2778	Consolidated Gas Transmission Corp	East Ohio Gas Co	09-24-86	B		
ST86-2779	Consolidated Gas Transmission Corp	East Ohio Gas Co	09-24-86	B		
ST86-2780	Consolidated Gas Transmission Corp	Hope Gas, Inc	09-24-86	B		
ST86-2781	Consolidated Gas Transmission Corp	Rochester Gas & Electric Corp	09-24-86	B		
ST86-2782	Consolidated Gas Transmission Corp	Peoples Natural Gas Co	09-24-86	B		
ST86-2783	Consolidated Gas Transmission Corp	Rochester Gas & Electric Corp	09-24-86	B		
ST86-2784	Consolidated Gas Transmission Corp	River Gas Co	09-24-86	B		
ST86-2785	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	09-24-86	B		
ST86-2786	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	09-24-86	B		
ST86-2787	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	09-24-86	B		
ST86-2788	ONG Transmission Co	Natural Gas Pipeline Co of America	09-25-86	C	02-22-87	10.00
ST86-2789	Natural Gas Pipeline Co of America	Northern Indiana Public Service Co	09-25-86	B		
ST86-2790	Natural Gas Pipeline Co of America	Northern Illinois Gas Co	09-25-86	B		
ST86-2791	Natural Gas Pipeline Co of America	Northern Indiana Public Service Co	09-25-86	B		
ST86-2792	Natural Gas Pipeline Co of America	Northern Indiana Public Service Co	09-25-86	B		
ST86-2793	Texas Eastern Transmission Corp	Rochester Gas & Electric Corp	09-25-86	B		
ST86-2794	Texas Eastern Transmission Corp	Corpus Christi Industrial Pipeline Co	09-25-86	B		
ST86-2795	Trunkline Gas Co	Consumers Power Co	09-25-86	B		
ST86-2796	Trunkline Gas Co	Consumers Power Co	09-26-86	B		
ST86-2797	Trunkline Gas Co	Consumers Power Co	09-26-86	B		
ST86-2798	Transcontinental Gas Pipe Line Corp	Indiana Gas Co	09-26-86	B		
ST86-2799	Transcontinental Gas Pipe Line Corp	City of Laurens	09-26-86	B		
ST86-2800	Transcontinental Gas Pipe Line Corp	Alexander City	09-26-86	B		
ST86-2801	Transcontinental Gas Pipe Line Corp	Union Gas Co	09-26-86	B		
ST86-2802	Mustang Fuel Corp		09-26-86	C	02-23-87	30.46
ST86-2803	Mustang Fuel Corp		09-26-86	C	02-23-87	30.46
ST86-2804	Natural Gas Pipeline Co of America	Northern Illinois Gas Co	09-26-86	B		
ST86-2805	Natural Gas Pipeline Co of America	Northern Illinois Gas Co	09-26-86	B		
ST86-2806	Colorado Interstate Gas Co	Greeley Gas Co	09-29-86	B		
ST86-2807	Colorado Interstate Gas co	Llano, Inc	09-29-86	B		
ST86-2808	Houston Pipe Line Co	Emron Industrial Natural Gas Co	09-29-86	C		
ST86-2809	Houston Pipe Line Co	Niagara Mohawk Power Corp	09-29-86	C		
ST86-2810	Oasis Pipe Line Co	City of Long Beach	09-29-86	C		
ST86-2811	El Paso Natural Gas Co	LLano, Inc	09-30-86	B		
ST86-2812	El Paso Natural Gas Co	Southern California Gas Co	09-30-86	B		
ST86-2813	El Paso Natural Gas Co	Gas Co. of NM (Div. Public Serv. Co. NM)	09-30-86	B		
ST86-2814	Panhandle Eastern Pipe Line Co	Consumers Power Co	09-30-86	B		
ST86-2815	Panhandle Eastern Pipe Line Co	East Ohio Gas Co	09-30-86	B		
ST86-2816	Trunkline Gas Co	Intrastate Gathering Corp	09-30-86	B		
ST86-2817	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	09-30-86	B		
ST86-2818	Panhandle Eastern Pipe Line Co	Consumers Power Co	09-30-86	B		
ST86-2819	Panhandle Eastern Pipe Line Co	Phenix Transmission Co	09-30-86	B		
ST86-2820	Panhandle Eastern Pipe Line Co	Kokomo Gas and Fuel Co	09-30-86	B		
ST86-2821	Texas Eastern Transmission Corp	Yankee Pipeline Co	09-30-86	B		
ST86-2822	Texas Eastern Transmission Corp	Hope Gas, Inc	09-30-86	B		
ST86-2823	Texas Eastern Transmission Corp	Columbia Gas of Ohio, Inc., et al	09-30-86	B		
ST86-2824	Texas Eastern Transmission Corp	Channel Industries Gas Co	09-30-86	B		
ST86-2825	ONG Transmission Co	ANR Pipeline Co	09-30-86	C	02-27-87	10.00
Below are two revised petitions for rate approval. They are noticed at this time to give interested parties the appropriate 150-day comment period.						
ST86-2488	PGC Pipeline	Texas Gas Transmission Corp	09-17-87	C	02-14-87	21.50
ST86-2041	Supenn Pipeline Co	United Gas Pipeline, et al	09-18-87	C	02-15-87	20.72

[1] Notice of transactions does not constitute a determination that filings comply with Commission Regulations in accordance with Order No. 436 (Final Rule and Notice Requesting Supplemental Comments, 50 FR 42,372, 10/18/85).

[2] The Intrastate Pipeline has sought Commission approval of its transportation rate pursuant to Section 284.123(B)(2) of the Commission's Regulations (18 CFR 284.123(B)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 86-25256 Filed 11-6-86; 8:45 am]

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[Docket No. CP87-50-000]

Cabot Energy Supply Corp.; Application

November 4, 1986.

Take notice that on November 3, 1986, Cabot Energy Supply Corporation (Applicant), 125 High Street, Boston Massachusetts 02110, filed an application in Docket No. CP87-50-000 pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of imported liquefied natural gas (LNG) to its affiliate, Distrigas of Massachusetts Corporation (DOMAC), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell to DOMAC one cargo of LNG (approximately 1.9 trillion Btu) which would be purchased by Applicant from Total International Limited (Total), an affiliate of Total Compagnie Francaise Des Petroles. Applicant would purchase the single cargo of LNG from Total pursuant to an assignment by Applicant's affiliate, Distrigas Corporation (Distrigas) to CESCO and a supply agreement between Distrigas and Total dated August 29, 1986. The LNG cargo would be lifted at the Bontang LNG Plant, Indonesia, in mid-to-late November 1986, and would arrive at DOMAC's facilities at Everett, Massachusetts, approximately thirty-three days after departure from Indonesia. The C.I.F. price of the LNG delivered to the DOMAC terminal is $3.99 per MMBtu, which would be the price charged DOMAC by CESCO. The LNG proposed to be sold by CESCO to DOMAC would be sold by DOMAC to certain distribution company customers located in the Northeastern United States, in accordance with DOMAC's application under section 7 of the Natural Gas Act filed in Docket No. CP87-49-000.

Applicant requests the issuance of temporary authority by mid-November 1986 to make the sale, noting the demands of DOMAC's customers, the need to avoid an emergency situation in DOMAC's service area this coming winter, and the extended lead time required to arrange for transportation and importation of the LNG from the foreign supply source.

Applicant requests a shortened notice period where petitions to intervene or protests shall be filed within seven (7) days of this filing.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 10, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 86-25257 Filed 11-6-86; 8:45 am]
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[Docket No. CP87-49-000]

Distrigas of Massachusetts Corp.; Application

November 4, 1986.

Take notice that on November 3, 1986, Distrigas of Massachusetts Corporation (Applicant), 125 High Street, Boston, Massachusetts 02110, filed an application in Docket No. CP87-49-000 pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale of imported liquefied natural gas (LNG), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it proposes to sell one cargo consisting of approximately 1.9 trillion Btu of LNG due to arrive at Everett, Massachusetts, in mid-to-late December 1986. The LNG is to be purchased by Cabot Energy Supply Company (CESCO) from Total International, Limited (Total), an affiliate of Total Compagnie Francaise Des Petroles. CESCO is an affiliate of Applicant. Total and Distrigas have entered into a Supply Agreement dated August 29, 1986. The right to purchase LNG under that contract has been assigned to CESCO by Distrigas Corporation. Applicant states that it would sell the LNG to the following distribution company customers under its WS Rate Schedule at a rate of $4.67, including losses and uses: Bay State Gas Company, Essex County Gas Company, Fall River Gas Company, New Jersey Natural Gas Company, Providence Gas Company, South Jersey Gas Company, and Valley Gas Company.

Applicant requests the issuance of temporary authority by mid-November 1986 to make the sale, noting the demands of DOMAC's customers, the need to avoid an emergency situation in DOMAC's service area this coming winter, and the extended lead time required to arrange for transportation and importation of the LNG from the foreign supply source.

Applicant requests a shortened notice period were petitions to intervene or protests shall be filed within seven (7) days of this filing.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 10, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-25258 Filed 11-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-17-000]

East Tennessee Natural Gas Co.; Filing Changes in Rates

November 4, 1986.

Take notice that on October 31, 1986, East Tennessee Natural Gas Company (East Tennessee) tendered for filing changes to Original Volume No. 1 of its FERC Gas Tariff to be effective on December 1, 1986, consisting of the following revised tariff sheets:

Twenty-second Revised Sheet No. 4
First Revised Sheet No. 111
Second Revised Sheet Nos. 120, 192, 261 and 262
Fourth Revised Sheet Nos. 121 and 124.

The changes would increase non-gas revenues from jurisdictional sales by $6,494,969 based on the test period consisting of the twelve months ended July 31, 1986, adjusted for known and measurable changes through April 30, 1987. East Tennessee states that the increased rates are required to reflect increased plant and related expenses, a decline in sale volumes, changes in the cost of materials, supplies, wages and services, and other costs required to operate and maintain its pipeline system, and a claimed overall return of 14.06%. East Tennessee has also included in this filing Alternate Twenty-second Revised Sheet No. 4 to be effective in the event that the Commission in Docket No. RP82-124 orders that East Tennessee's minimum commodity bill be eliminated, thereby reducing East Tennessee's commodity billing determinants.

The changes also incorporate revisions to the tariff that are necessary to conform to East Tennessee's method of allocating demand costs on the basis of contract demands, to update its Index of Purchasers to reflect authorized revisions to various of its customers' contract demands, to conform the payment due date to the billing date provided for in the tariff and to clarify the form of Gas Sales Contract under the CD Rate Schedule.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-25259 Filed 11-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-16-000]

El Paso Natural Gas Co.; Direct Billing of Take-or-Pay Buy-Out Payments

November 4, 1986.

Take notice that on October 31, 1986, El Paso Natural Gas Company ("El Paso") tendered for filing, pursuant to section 4 of the Natural Gas Act and Part 154 of the Regulations issued thereunder by the Federal Energy Regulatory Commission ("Commission"), the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

First Revised Sheet No. 300
Original Sheet No. 366
Original Sheet No. 367
Original Sheet No. 368
Original Sheet Nos. 369 through 399.

El Paso states that the tendered tariff sheets, when accepted by the Commission an dpermitted to become effective, will establish a direct billing procedure which will permit El Paso to recover from its jurisdictional customers one-time buy-out payments made to suppliers as part of the renegotiation of take-or-pay contracts and/or in settlement of demands for prepayments under said contracts. Such direct billing will also apply to El Paso's nonjurisdictional customers to the extent the contract with such customers provides for this payment. The proposed direct billing provision, designated as section 21, Direct Billing of Take-or-Pay Buy-Out Payments, to the General Terms and Conditions of El Paso's First Revised Volume No. 1 Tariff, will remain in effect through the remainder of the term of El Paso's Stipulation and Agreement at Docket No. RP85-58-000; provided, however, the billing procedure specified therein will continue to be observed until the expiration of the final billing period applicable to the amortization of the take-or-pay buy-out payments.

Commencing July 1, 1986, El Paso will establish and maintain separate subaccounts for the accumulation of the jurisdictional portion of take-or-pay buy-out payments made during each six-month accumulation period. Accumulation periods will end December 31, and June 30, respectively. The accumulated balance as of the end of each accumulation period will then be amortized in equal amounts over the next following thirty-six month period. Amortization periods shall commence April 1 and October 1, respectively. Also commencing July 1, 1986, El Paso will establish and maintain separate subaccounts for the accumulation of interest on the remaining jurisdictional portion of unamortized take-or-pay buy-out payment balances during each six-month accumulation period, with the ending accumulated interest balance to be amortized in equal amounts over the next following six-month period commencing April 1 or October 1.

Commencing May 15, 1987, and on the 15th of each month thereafter, each customer will be billed for its allocable share, if any, of the accrued buy-out payment and interest amortization charges. A customer's allocable share, if any, of those chargs will be determined by multiplying the sum of the buy-out payment and accumulated interest amortization charges by a fraction, the numerator of which is that jurisdictional customer's purchase deficiency [1] and the denominator of which is the sum of the purchase deficiencies of all of El Paso's jurisdictional customers.

El Paso further states that having acquired a large base of gas reserve commitments to permit it to serve its traditional sales customers, El Paso now finds that its customers are not

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[1] The term "purchase deficiency" as utilized in the calculation of take-or-pay buy-out payments is defined as the amount by which the customer's average of its 1985 and 1986 purchases of gas in dekatherms from El Paso, inclusive of the customer's share of any released gas purchased from suppliers, is less than the customer's 1982 purchases of gas in dekatherms from El Paso.

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purchasing the volumes of gas from its base supply which are necessary to avoid supplier demands for prepayments. Particularly, since the first of this year, customer purchases have fallen so precipitously, and to such extraordinarily low levels, that the resulting potential take-or-pay exposure now threatens to grow beyond otherwise manageable levels. The subject tariff change is proposed as part of El Paso's effort to address this challenge.

El Paso requests that the Commission grant any and all waivers of its rules, regulations and orders as may be necessary to permit the tendered tariff sheets to become effective thirty (30) days after the date of filing.

El Paso states that copies of the instant filing have been served upon all of its interstate pipeline system customers and all interested State regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of this Chapter. All such motions or protests should be filed on or before November 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-25260 Filed 11-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C186-744-000 et al.]

Exxon Corp. et al.; Applications for Abandonment November 4, 1986

Take notice that each of the Applicants listed herein have filed applicatons pursuant to section 7 of the Natural Gas Act for authorization to abandon service, as described herein.

The circumstances presented in the applications meet the criteria for consideration on an expedited basis pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Lois D. Cashell,
Acting Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
C186-744-000 (C181-321), B, Oct. 22, 1986[1].	Exxon Corp., P.O. Box 2180, Houston, TX 77252-2180.	Valero Interstate Transmission Co., Kelsey Deep Field, Brooks County, TX.	(2)	
C187-79-000, B, Oct. 23, 1986	U.S. Oil and Gas, Inc., P.O. Box 9158, Houma, LA 70361.	United Gas Pipe Line Co., Hollywood Field, Terrebonne Parish, LA.	(3)	

[1] Additional information received October 27, 1986.

[2] Applicant, requests authorization to permanently abandon a sale of gas to Valero which is covered under a contract dated February 1, 1981, on file as Applicant's FERC Gas Rate Schedule No. 675. Applicant states that effective with the granting of abandonment authorization herein the contract will be terminated. Valero has agreed to the release of this gas by amendatory agreement to the contract dated June 1, 1986. Applicant states that it is subject to substantially reduced takes without payment, that potential deliverability is 100 Mcf per day, and that the gas is classified as replacement and recompletion gas. Applicant anticipates that the gas will be sold to industrial customers within the state of Texas.

[3] Applicant requests authorization for a limited-term abandonment of certain sales of gas to United for a period expiring October 1, 1988. The wells are listed as follows:
UP KRUM SU C; SOUTHDOWN #3-D;
LOW KRUM RB SUB; SOUTHDOWN #3;
UP KRUM RB SUD; SOUTHDOWN #4-D;
LOW KRUM RB SU C; SOUTHDOWN #4;
UP KRUM SUI; SOUTHDOWN #C-1-D;
LOW KRUM RB SUG; SOUTHDOWN #C-1;
UP KRUM SUF; SOUTHDOWN #6-D;
LOW KRUM RB SUE; SOUTHDOWN #6;
UP KRUM RB SUG: SOUTHDOWN #7-D;
LOW KRUM RB SUF: SOUTHDOWN #7.

Applicant states that the contract which is dated February 5, 1981, expires July 1, 1990. Applicant states it is subject to substantially reduced takes without payment. By letter agreement dated October 1, 1986, Unitd released the gas it does not desire to produce for a primary term expiring October 1, 1987, and month to month thereafter until cancelled by either party. Applicant states that the wells are capable of a deliverability of approximately 2,000 Mcf per day: and produce NGPA section 108(a) gas. Applicant states that it proposes to sell the gas in the intrastate market.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 86-25261 Filed 11-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C187-54-000 et al.]

Phillips Petroleum Co. et al.; Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates[1]

November 3, 1986.

Take notice that each of the Applications listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before November 18, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

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[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
C187-54-000 (C171-48), B, Oct. 8, 1986.	Phillips Petroleum Co., 336 HS&L Building, Bartlesville, OK 74004.	Transcontinental Gas Pipe Line Corp., Crowley Field, Acadia Parish, LA.	(1)	
C187-63-000 (C184-506), B, Oct. 15, 1986.	do	Columbia Gas Transmission Corp., Duson Field, Lafayette Parish, LA.	(2)	
C187-56-000 (G-11904), B, Oct. 10, 1986.	ARCO Oil and Gas Co., Division of Atlantic Richfield Co., P.O. Box 2819, Dallas, TX 75221.	Columbia Gas Transmission Corp., Bourg Field, La-Fourche Parish, LA.	(3)	
C187-57-000 (G3287), B, Oct. 10, 1986.	do	Natural Gas Pipeline Company of America, La Gloria Field, Brooks and Wells Counties, TX.	(4)	
C187-58-000 (C172-350), B, Oct. 10, 1986.	Mobil Exploration and Producing North America Inc., Nine Greenway Plaza—Suite 2700, Houston, TX 77046.	Florida Gas Transmission Co., Bayou Mallet Field, Acadia Parish, LA.	(5)	
C187-62-000 (G3894), B, Oct. 14, 1986.	ARCO oil and Gas Co., Division of Atlantic Richfield Co.	Texas Eastern Transmission Corp., San Domingo Field, Bee County, TX.	(6)	
C187-55-000, B, Oct. 9, 1986	Sandlin Oil Corp., 2300 Security Life Building, Denver, CO 80202.	Panhandle Eastern Pipe Line Co., SW/4 of Sec. 9-T2S-R63W, Adams County, CO.	(7)	
C161-1102-002, D, Oct. 20, 1986	Sun Exploration and Production Co., P.O. Box 2880, Dallas, TX 75221-2880.	Michigan Wisconsin Pipeline Co., Seiling Field, Major County, OK.	(8)	
C187-65-000, B, Oct. 20, 1986	Pecos River Gas Plant, Ltd., P.O. Box 4000, The Woodlands, TX 77387-4000.	El Paso Natural Gas Co., Tailgate of the White Ranch Plant, Chaves County, NM.	(9)	
C187-68-000, A, Oct. 20, 1986	do	Oxy Cities Service NGL, Inc., Twin Lakes Field, Chaves County, NM.	(10)	
C187-60-000, B, Oct. 15, 1986	Discovery Operating, Inc.	Cities Service Oil Co., Allison Penn Field, Lea County, NM.	(11)	
C187-66-000, B, Oct. 20, 1986	Coquina Oil Corp., P.O. Drawer 2960, Midland, TX 79702.	El Paso Natural Gas Co., N/2 Sec. 12-T10S-R29E, Chaves County, NM.	(12)	
C187-69-000 (C176-488), B, Oct. 20, 1986.	Anadarko Petroleum Corp., P.O. Box 1330, Houston, TX 77251-1330.	Mountain Fuel Resources, Inc., Spearhead Area, Converse County, WY	(13)	
C187-72-000, F, Oct. 22, 1986	Anadarko Petroleum Corp., (Succ. in Interest to Samedan Oil Corp., P.O. Box 1330, Houston, TX 77251-1330.	Transcontinental Gas Pipe Line Corp., Well A-3, Vermilion Block A-76, Offshore Louisiana.	(14)	
C187-73-000 (C166-107), B, Oct. 23, 1986.	BHP Petroleum (Americas) Inc., 1300 Post Oak Tower, 5051 Westheimer, Houston, TX 77056.	Natural Gas Pipeline Company of America, Camrick Field, Beaver County, OK.	(15)	
G-7643-008, D, Oct. 20, 1986	Mobil Oil Corp., Nine Greenway Plaza—Suite 2700, Houston, TX 77046.	Northern Natural Gas Co., Hugoton Field, Stevens County, KS.	(16)	
G-5716-032, D, Oct. 20, 1986	do	Northern Natural Gas Co., Hugoton Field, Finney, Seward and Stevens Counties, KS.	(16)	
C167-1085-004, D, Oct. 27, 1986	Sun Exploration and Production Co., P.O. Box 2880, Dallas, TX 75221-2880.	National Fuels Corp. and Oklahomas Natural Gas Gathering Corp., Ringwood Field, Major County, OK.	(8)	
C165-412-001 D, Oct. 23, 1986	ARCO Oil and Gas Co., Division of Atlantic Richfield Co., P.O. Box 2819, Dallas, TX 75221.	Texas Gas Transmission Corp., Bosco South Field, Acadia and Lafayette Parishes, LA.	(17)	
G-15541-000, D, Oct. 23, 1986	do	Texas Gas Transmission Corp., Terryville Field, Lincoln Parish, LA.	(17)	
C187-78-000 (C162-416), B, Oct. 23, 1986.	do	Trunkline Gas Co., Riceland and South Mermentau field, Acadia and Vermilion Parishes, LA.	(18)	
C187-77-000 (C167-557), B, Oct. 23, 1986.	do	Trunkline Gas Co., East Lake Arthur Field, Jefferson Davis Parish, LA.	(19)	
C187-76-000 (G-11229), B, Oct. 23, 1986.	do	United Gas Pipe Line Co., Gibson Field, Terrebonne Parish, LA.	(20)	
C187-80-000 (C160-62), B, Oct. 23, 1986.	do	Transco Gas Supply Co., East Cameron Block 96 and 97, Offshore Louisiana.	(21)	
C187-74-000 (C161-490-000), B, Oct. 23, 1986.	do	Transco Gas Supply Co., Eugene Island Block 242 and 243, Offshore Louisiana.	(21)	
C177-210-006, D, Oct. 23, 1986	ARCO Oil and Gas Co., Division of Atlantic Richfield Co.	Transco Gas Supply Co., N/2 High Island Block 138, Offshore Texas.	(22)	
G-9989-001, D, Oct. 14, 1986	Sun Exploration and Production Co., P.O. Box 2880, Dallas, TX 75221-2880.	Transcontinental Gas Pipe Line Corp., Kinder Field, Allen Parish, LA.	(23)	
C160-215-001, D, Oct. 17, 1986	Chevron U.S.A. Inc., P.O. Box 7309, San Francisco, CA 94120-7309.	Trunkline Gas Co., South Mermentau Field, Acadia Parish, LA.	(24)	
C175-181-001, D, Oct. 28, 1986	Cities Service Oil and Gas Corp., P.O. Box 300, Tulsa, OK 74102.	Trunkline Gas Co., N/2 Block 261, OCS-G-2306, South Marsh Island, Offshore Louisiana.	(25)	
C176-18-001, D, Oct. 28, 1986	do	do	(25)	
C173-340-001, D, Oct. 29, 1986	ARCO Oil and Gas Co., Division of Atlantic Richfield Co.	Mountain Fuel Resources, Inc., MAM Creek Field, Garfield County, CO.	(26)	
C187-75-000 (C177-210), B, Oct. 23, 1986.	do	Tranco Gas Supply Co., N/2 High Island Block 138, Offshore Texas.	(22)	
G-7168-000, D, Oct. 24, 1986	Chevron U.S.A Inc.	United Gas Pipe Line Co., Pistol Ridge Field, Forrest and Pearl Counties, MS.	(27)	
G-10827-001, D, Oct. 24, 1986	do	do	(27)	
C187-71-000, B, Oct. 21, 1986	Pelto Oil Co., 500 Dallas Street, Houston, TX 77002	Transwestern Pipeline Co., Twin Lakes Field, Chaves County, NM.	(28)	
C187-81-000, A, Oct. 21, 1986	do	Pecos River Gas Plant, Ltd., Twin Lakes Field, Chaves County, NM.	(29)	

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[1] The gas reserves covered under contract dated 6-10-70, have been depleted. There have been so sales from this lease since June, 1985.

[2] Phillips Petroleum Company has assigned all its interest to Vernon E. Faulconer, Inc., by assignment effective 2-1-86 and executed on 2-4-86.

[3] Sales have ceased from ARCO's acreage under Rate Schedule No. 166. All wells are plugged and abandoned and ARCO has no development plans. Leases have ben surrendered and ARCO no longer has an interest in acreage subject to contract dated 10-5-56.

[4] Deletion of acreage. ARCO has sold all its interest covered by its Certificate to Kenneth W. Cory, by Assignment effective 5-1-86. ARCO retained some mineral interests which were leased to the purchaser, from which ARCO will receive royalty payments only.

[5] Reserves depleted and contract terminated.

[6] Acreage subject to Rate Schedule No. 36 was assigned to Mr. W.S. Chesnutt effective 2-13-86.

[7] Sandlin Oil Corporation has drilled a new well on the SW/4 of Sec. 9-T2S-R63W, Adams County, Colorado and has contracted Panhandle for the purchase of said gas. Panhandle, due to their oversupply situation, has no interest in the gas and Sandlin desires to market said gas with another purchaser, Koch Hydrocarbon Company, who is willing to purchase said gas at a mutually agreeable price and a contract between Sandlin and Koch.

[8] Property sold to Bill Bowers.

[9] Pecos River Gas Plant, Ltd. can no longer economically treat and condition natural gas at the Pecos River Plant and sell the residue gas to El Paso Natural Gas Company.

[10] Applicant is filing under contract dated 7-16-86.

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[11] Cities Service Oil Company has abandoned the portion of their gas gathering system which services this well due to line deterioration.

[12] Coquina plugged & abandoned its Exxon Federal #1 well on 5-30-85, due to a depletion of recoverable reserves.

[13] By letter dated 12-16-85, Mountain Fuel gave Notice of Cancellation to be effective 365 days from 12-19-85.

[14] Effective May 19, 1985, Anadarko Production Company, as predecessor to Applicant, converted its overriding royalty interest attributable to Well No. A-3 to a 9.375 percent working interest.

[15] BHP Petroleum (Americas) Inc. has assigned all of its right, title and interest in all acreage under Rate Schedule No. 80 effective 10-1-83.

[16] To release gas for irrigation fuel.

[17] Purchaser's market-out price of $.322 per Mcf is unacceptable to ARCO. Pursuant to terms of the rollover contract, purchaser released the gas from the terms of the contract effective 7-23-86.

[18] ARCO's interest was assigned to Vernon E. Faulconer, effective 9-1-84.

[19] The last well covered by contract dated 9-28-66 was plugged and abandoned in 1983. Purchaser has concurred to terminate contract.

[20] The Gas Contract expired 7-1-80 and there has been no production since May, 1969. ARCO has no working interest in any acreage in subject field and has no plans for anymore leasing or production in this area.

[21] Acreage was assigned to Conoco, Inc., effective 6-1-86.

[22] Deletion of acreage. Applicant no longer holds an interest in the lease involved.

[23] Property sold to John W. McGowan.

[24] Acreage has been assigned to Vernon E. Faulconer and Amy H. Faulconer.

[25] Property assigned to Huffco Petroleum Corporation, Norse Petroleum (U.S.), Huthnance Drilling Contractors, Inc., and Mark Producing, Inc., executed 10-[illegible]-84.

[26] Deletion of acreage. ARCO released its interest in certain acreage under contract 3-20-64 and Rate Schedule No. 667.

[27] Acreage has been assigned to Gary L. Slade.

[28] Pelto Oil Company, as successor in interest to Stevens Operating Corporation (Stevens), requires authorization on behalf of Stevens to abandon the original service to transwestern for the small percentage of the Twin Lakes gas that remains subject to the Commission's jurisdiction under the NGA.

[29] Applicant is filing under contract dated 10-1-86.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 86-25254 Filed 11-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-523-000 and CP86-524-000]

Iroquois Gas Transmission System; Additional Extension of Time

October 31, 1986.

On September 3, 1986, the Commission issued its Notice of Intent to Prepare a Draft Environmental Impact Statement and Request for Comments on its Scope for the above-docketed proceeding. In a September 29, 1986 notice, the deadline for filing comments on the scope of the environmental analysis was extended from October 6, 1986 to November 20, 1986, in part because Iroquois Gas Transmission System (Iroquois) had not filed its final environmental report. Iroquois filed its 3-volume final environmental report on October 24, 1986.

Due to the amount of information contained in the Iroquois Final Environmental Report and the numerous comments at the Public Environmental Scoping meeting held in Torrington, Connecticut on October 28, 1986, Commission Chairman Martha O. Hesse extended the deadline for comments 45 days from October 28, 1986.

Therefore, notice is hereby given that an extension of time for the filing of comments in the above-docketed proceeding is granted to 5:00 PM on December 12, 1986. This extension should allow sufficient time for the parties to take the final environmental report into consideration in preparing their comments on the scope of the environmental impact of the project. To help the staff focus on environmental issues, commenters are encouraged to be as specific as possible on questions or concerns regarding the proposed and alternative routes.

Comments should reference Docket No. CP86-423-000 and be sent to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-25253 Filed 11-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-1-54-000,001]

Louisiana-Nevada Transit Co.; Proposed Changes in FERC Gas Tariff

November 4, 1986.

Take notice that on October 31 1986, Louisiana-Nevada Transit Company (Louisiana-Nevada) tendered for filing the following tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1:

Twelfth Revised Sheet No. 4 superseding Eleventh Revised Sheet No. 4

The proposed changes reflect a purchased gas cost adjustment under Louisiana-Nevada's Rate Schedules G-1 and X-2. The changes provide for a total adjustment of (.93) cents per MCF including a deferred gas cost adjustment of (6.10) cents per MCF, to amortize a deferred balance, and a cumulative cost of gas adjustment of 5.17 cents per MCF. An effective date of December 1, 1986 is requested.

Louisiana-Nevada states that copies of this filing were served on its jurisdictional customers and the Arkansas and Louisiana Public Service Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-25262 Filed 11-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA87-3-000]

Mobil Producing Texas and New Mexico Inc. and Mobil Exploration and Producing North America Inc.; Petition for Adjustment

Issued: November 3, 1986.

Take notice that on October 10, 1986, Mobil Producing Texas and New Mexico Inc. and Mobil Exploration and Producing North America Inc. (petitioners) filed with the Federal Energy Regulatory Commission a petition for waiver pursuant to Commission Order No. 399-A,[1] section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[2] and Subpart K of the Commission's Rules of Practice and Procedure.[3] Petitioners seek a waiver of that portion of their Btu refund obligation attributable to royalties paid to the United States for sales of gas from federal leases. Under Order No. 399, these refunds are due by November 5, 1986.[4]

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[1] Refunds Resulting from Btu Measurement Adjustments, 49 F.R. 46353 (Nov. 28, 1984), FERC Stats. and Regs. [Regulations Preambles 1982-1985] ¶ 30,612.

[2] 15 U.S.C. 3412(c) (1982).

[3] 18 CFR 385.1101-1117 (1986).

[4] 49 F.R. 37735 at 37740 (September 26, 1984), FERC Stats. & Regs. [Regulations Preambles 1982-1985] ¶ 30.597 at 31,150. In Order No. 399, the Commission established refund procedures for charges for natural gas above NGPA ceilings as a result of Btu measurements based on an "as delivered" water vapor content of the gas, rather than on a water staturated basis. In so doing, the Commission was implementing the decision in

Continued

Petitioners base their request for waiver on grounds that the United States Department of the Interior's Mineral Management Service (MMS) has denied petitioners' request for Btu refund amounts attributable to royalty interests under federal leases. MMS based its denial on its interpretation of the two-year statute of limitations in the Outer Continental Shelf Lands Act. MMS' decision has been appealed by petitioners to the Department of Interior's Board of Land Appeals. In the alternative, petitioners request an extension of the November 5, 1986, deadline until their controversy with MMS is resolved.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provision of Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-25263 Filed 11-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-1-55-000-001]

Mountain Fuel Resources, Inc.; Rate Change

November 4, 1986.

Take notice that Mountain Fuel Resources, Inc. (MFR) on October 31, 1986, tendered for filing and acceptance tariff sheets to its FERC Gas Tariff as follows:

Fifth Revised Sheet Nos. 12 and 14 to First Revised Volume No. 1 to be effective December 1, 1986, Sixth Revised Sheet No. 12 to First Revised Volume No. 1, First Revised Sheet No. 5 to Original Volume No. 1-A, and Fourth Revised Sheet No. 8 to Original Volume No. 3 to be effective January 1, 1987.

MFR states that these sheets provide for rates applicable to service which is subject to its Purchased Gas Adjustment (PGA) provision.

MFR further states that the purpose of this filing is two-fold. First, to adjust the purchase gas cost charge under MFR's sale-for-resale Rate Schedule CD-1; and second, to implement the Gas Research Institute (GRI) adjustment authorized in Docket No. RP86-117-000 to be effective January 1, 1987.

MFR's Fifth Revised Sheet No. 12 shows a Commodity Base Cost of Purchased Gas as adjusted at $2.29661/Dth for sales under Rate Schedule CD-1 which is $0.21935/Dth less than the currently effective rate of $2.51596/Dth. MFR's demand component of gas costs remains unchanged at $1.10944/McF as accepted and made effective in Docket No. TA86-2-55-002. MFR's Unrecovered Purchase Gas Cost Adjustment also remains unchanged at $(0.02157)/Dth.

MFR proposes to implement the GRI charge adjustment to be effective January 1, 1987. Sixth Revised Sheet No. 12 to First Revised Volume No. 1, First Revised Sheet No. 5 to Original Volume No. 1-A, and Fourth Revised Sheet No. 8 to Original Volume No. 3 of MFR's FERC Gas Tariff reflect the new GRI charge.

MFR has requested any necessary waivers of the Commission's Regulations to allow the tendered tariff sheets to become effective as proposed, and states that it has provided a copy of the filing to interested parties and state public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests will be filed on or before November 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-25264 Filed 11-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST85-385-001]

Producer's Gas Co.; Extension Report

November 4, 1986.

The company listed below has filed an extension report pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of its intention to continue sales of natural gas for an additional term of up to 2 years.[1]

The table below lists the name and address of the company selling pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A "D" indicates a sale by an intrastate pipeline extended under § 284.146.

Any person desiring to be heard or to make any protest with reference to said extension report should on or before November 17, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

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[1] Notice of this extension report does not constitute a determination that a continuation of service will be approved.

EXTENSION LIST [1] SEPTEMBER 15-30, 1986

Docket No.	Transporter/Seller	Recipient	Date filed	Part 284 subpart	Effective date	Expiration date [2]
ST85-385-001	Producer's Gas Co., 950 One Energy Square, Dallas, TX 75206.	El Paso Natural Gas Co.	09-18-86		01-05-87	

[1] This extension report was filed after the date specified by the Commission's Regulation, and shall be the subject of a further Commission order.

[2] The pipeline has sought Commission approval of the extension of this transaction. The 90-day Commission review period expires on the date indicated.

[FR Doc. 86-25265 Filed 11-6-86; 8:45 am]

BILLING CODE 6717-01-M

Interstate Natural Gas Association of Ameica v. Federal Energy Regulatory Commission, 716 F.2d 1 (D.C Cir. 1983), *cert. denied*, 465 U.S. 1108 (1984).

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[Docket No. RP87-13-000]

South Georgia Natural Gas Co.; Proposed Changes in FERC Gas Tariff

November 4, 1986.

Take notice that South Georgia Natural Gas Company (South Georgia) on October 31, 1986 tendered for filing proposed changes in its FERC Gas tariff, First Revised Volume No. 1. The proposed changes are based on the twelve-month period ending June 30, 1986, as adjusted, and would increase jurisdictional revenues by $1,525,020.

The Base Tariff Rates in this filing reflect South Georgia's cost of gas as reflected in its July 1, 1986 Purchased Gas Cost Adjustment. South Georgia states that it will file substitute tariff sheets reflecting any change in the cost of gas in South Georgia's PGA filing which becomes effective on or before the effective date of the tariff sheets in this filing.

South Georgia states that the principal reasons for the rate increase are increased operating costs and a reduction in the sales volume for the test year.

Additionally, South Georgia respectfully requests the Commission to grant such waivers of its regulations as may be necessary to allow the proposed tariff sheets to become effective December 1, 1986.

Copies of this filing have been served upon South Georgia's jurisdictional customers and interested State public service commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before November 12, 1986. Petitions will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-25266 Filed 11-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-15-000]

Trunkline Gas Co.; Proposed Changes

November 4, 1986.

Take notice that Trunkline Gas Company (Trunkline) on October 31, 1986 tendered for filing the revised tariff sheets as listed on the attached Appendices A and B,[1] which reflects an increase in rates. Trunkline requests an effective date of December 1, 1986 for the tariff sheets listed on Appendix A, and notes that this is the first phase of a proposed two-phase increase.

The filed tariff sheets implement a general rate increase of $42 million. Trunkline stated that the primary reason for the filing of these revised tariff sheets is to adjust Trunkline's rates for sales and transportation services to bring the revenues to be derived therefrom into line with total costs which have increased since Trunkline's previous base tariff rates became effective. Trunkline noted that in traditional cost areas management efficiency and cost control has reduced operating expenses from prior periods.

Trunkline states that the accompanying Statement of Nature, Reason and Basis for the Proposed Change in Rates outlines the various factors which have given rise to the rate adjustments for sales services and transportation services to which this section 4 filing applies. Trunkline also stated that it is not proposing any change in several of the significant factors underlying its rates. For example, the rates filed propose no change from the rate design of Trunkline's present sales rates which utilize the modified fixed and variable method adopted in the Docket No. RP83-93 proceeding. Trunkline also stated that no change is proposed in the rate of return on equity, even though additional risk causes capital for Trunkline to be more costly than heretofore. Other factors which remain unchanged in the present rate filing are Trunkline's depreciation rates.

Trunkline stated that with respect to the rates for sales service, the instant filing is based upon existing tariff structure and applies to the resale customers that Trunkline has been certificated to serve, with the exception of Illinois Power Company, a purchaser under Trunkline's P-1 Rate Schedule, which has discontinued that service and is no longer a customer (except for minor deliveries under the SG-2 Rate Schedule). All other customers are included in the Phase I rates reflected in the tariff sheets set forth in Appendix A. Trunkline stated that this rate filing also includes Phase II tariff sheets set forth in Appendix B which will be applicable in the event Mississippi River Transmission Company (MRT) loses its status as a purchaser as a result of Commission authorization pursuant to section 7(b) of the Natural Gas Act. The Phase II tariff sheets which would become effective if that event occurs prior to the end of the test period herein, April 30, 1987, are designed to produce the same revenue from sales customers as the Phase I tariff sheets, but would involve recovering from the remaining resale customers, and the transportation customers the $25 million of fixed costs assigned to MRT in the Phase I rates. Trunkline noted that it reserves the right to collect from MRT such costs in any appropriate proceedings relating to regulatory approval of the discontinuance of service to or by MRT.

Trunkline stated that the filing reflects representative projected transportation volume levels for all currently effective transportation services rendered under section 7(c) and Parts 157 and 284 of the Commission's Regulations.

Trunkline stated that in accordance with Ordering Paragraph (A)(i) of the Commission's Order dated August 29, 1986 in Docket No. TA86-3-30-000 and 001, it has included the additional carrying charges of $18 million offset by the $2.6 million overrecovery of the three year deferred account balance in Sub-Account 191.1005. Trunkline stated that the filing reflects a one-year recovery period for these deferred account carrying charges commencing December 1, 1986, and that it will reduce its rates at the end of the one-year period commencing with the effective date of these rates to reflect the removal of this special component of the demand rates.

Copies of this letter an enclosures are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before November 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the

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[1] Not printed in the **Federal Register**, but available from the Commission's Division of Public Reference.

Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-25267 Filed 11-6-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Crude Oil Overcharges Proposed Supplemental Order

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Proposed supplemental order.

SUMMARY: This Proposed Supplemental Order announces that the Office of Hearings and Appeals (OHA) will use the Department of Energy (DOE) policy enunciated at 51 F.R. 27899 (August 4, 1986) to distribute monies received from Marathon Petroleum Company (Marathon). Under that policy, monies remitted to settle alleged crude oil violations will be divided among the states, the Federal government, and eligible purchasers of refined products. This Proposed Supplemental Order also announces the proposed procedures by which eligible claimants may receive a portion of the Marathon crude oil monies.

DATE AND ADDRESS: Comments must be filed in duplicate by December 5, 1986 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a reference to Case No. KFX-0023.

FOR FURTHER INFORMATION CONTACT: Thomas Wieker, Deputy Director or Irene Bleiweiss, Attorney Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 252-2390 (Wieker) or (202) 252-2400 (Bleiweiss)

SUPPLEMENTARY INFORMATION: Notice is hereby given to the issuance of the Proposed Supplemental Order set out below. The Proposed Supplemental Order sets forth the procedures that the DOE has tentatively formulated to distribute monies obtained from Marathon Petroleum Company (Marathon). Marathon remitted monies to the DOE to settle possible pricing violations with respect to its sales of crude oil. The firm's payment is being held in an interest-bearing escrow account pending distribution by the DOE.

Distribution of the monies received from Marathon will be governed by the DOE's Statement of Modified Restitutionary Policy in Crude Oil Cases, which states that crude oil overcharge monies will be divided among the states, the federal government, and eligible purchasers of refined products. *See* 51 FR 27899 (August 4, 1986F). Proposed claims procedures are explained in the Proposed Supplemental Order.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments must be submitted by December 5, 1986 and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1:00 p.m. and 5:00 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: October 30, 1986.

George B. Breznay,
Director, Office of Hearings and Appeals.

PROPOSED DECISION AND ORDER

Supplemental Order

Name of Case: Marathon Petroleum Co.
Date of Filing: October 17, 1986.
Case Number: KFX-0023.

October 30, 1986.

On June 11, 1986 the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) issued a Decision and Order concerning distribution of alleged overcharge funds which Marathon Petroleum Company (Marathon) remitted to the DOE. *Marathon Petroleum Company,* 14 DOE ¶ 85,289 (1986) (*Marathon*). The OHA concluded that the $8,433,014 in crude oil monies in the *Marathon* case should be distributed in accordance with departmental policies concerning crude oil overcharges.[1] *Id.* at 88,509. However, since the departmental policy in effect at the time of the *Marathon* Decision did not authorize the submission of refund claims, the *Marathon* Decision did not establish claims procedures for the Marathon crude oil pool. Departmental policies were modified shortly after we issued that Decision, and we are issuing this Proposed Supplemental Order to propose claims procedures for the Marathon crude oil monies.

The DOE modified its policy of restitution concerning crude oil overcharges on July 28, 1986. *Statement Of Modified Restitutionary Policy In Crude Oil Cases,* 51 FR 27899 (August 4, 1986) (the Modified Policy). Under the Modified Policy, crude oil overcharge monies will be divided among the states, the federal government, and eligible purchasers of crude oil and refined products. On August 8, 1986 the OHA announced its intention to follow the Modified Policy. *Notice of Order Implementing Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges,* 51 FR 29689 (August 20, 1986).[2]

Refund Procedures

Under the Modified Policy, claimants who allege injury as a result of crude oil overcharges may file claims. The OHA will reserve 20 percent of crude oil overcharge funds to satisfy successful claims. *Mountain Fuel Supply Company,* 14 DOE ¶ 85,475 (1986) (*Mountain Fuel*). Refunds will be calculated on the basis of a per gallon refund amount derived by dividing the crude oil overcharge monies received by the total U.S. Consumption of Petroleum Products during the period of price control. *Id.* at 88,867-68. The per gallon refund amount for the Marathon crude oil refund pool is $.0000042.[3]

In order to receive a refund from the *Marathon* crude oil pool, we propose that a petroleum purchaser will be required to file an application for refund. The application should contain: (1) A short description of the applicant's business and use of petroleum products. If the applicant's business operated under more than one name the applicant should list these names; (2) a statement identifying the petroleum products which the applicant purchased during the period of crude oil price controls (August 19, 1973 through January 27, 1981), the number of gallons of each product purchased, and the total number of gallons on which the applicant bases its claim; (3) a description of the method

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[1] The total Marathon settlement was for $21,082,535.86 and resolved alleged violations of both crude oil and refined product regulations. The DOE determined that 40 percent of the settlement amount ($8,433,014) was attributable to alleged crude oil overcharges. *Marathon,* 14 DOE at 88,056.

[2] The OHA is evaluating comments to that notice.

[3] We derived this figure by dividing the crude oil monies received from Marathon ($8,433,014) by an estimate of the number of gallons of petroleum products consumed in the United States during the period August 1973 through January 1981 (2,020,997,335,000). *Cf.* "Petroleum Consumption for OECD Countries," *Monthly Energy Review),* Energy Information Administration, April 1986, page 109. Successful applicants will also receive their proportion of interest accrued.

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by which the applicant determined its purchase volumes. If the applicant used estimates it should describe its method of estimation; (4) a showing that the applicant was injured by the alleged overcharges; and (5) a statement that neither the applicant, its parents, subsidiaries, affiliates, successors nor assigns has waived any right it may have to receive a refund in this case.[4]

The OHA will evaluate applications for refund from purchasers of refined petroleum products using methods similar to those which the OHA has used to evaluate claims based on refined product overcharges pursuant to 10 CFR Part 205, Subpart V. *Mountain Fuel*, 14 DOE at 88,869. As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured by the alleged overcharges (i.e., that they did not pass the overcharges on to their own customers). *Id.* However, end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to be injured. *Greater Richmond Transit Company*, 15 DOE ¶ ——— (October 10, 1986). The standards for showing injury which the OHA has developed in analyzing and deciding non-crude oil claims will also apply to claims based on crude oil overcharges. *See, e.g., Dorchester Gas Corp.*, 14 DOE ¶ 85,240 (1986).

The 80 percent portion of the crude oil funds which is not reserved for direct restitution, as well as any portion of the 20 percent reserve which is not distributed, will be divided between the states and the federal government for indirect restitutionary purposes. Half of these funds will go to the states, in proportion to each state's consumption of petroleum products, and the other half will go to the federal government.[5] *See* "Calculation of Ratios For Distribution to States and Territories," *Final Settlement Agreement*, Exhibit H, *In Re: Department of Energy Stripper Well Exemption Litigation*, M.D.L. 378, (D. Kan. 1986) (reproduced at 6 Federal Energy Guidelines, ¶ 90,509 at 90,687).

Before taking the action we have proposed, we intend to publicize our proposal and to solicit comments on it. Comments regarding the tentative distribution process set forth in this Proposed Decision should be filed with the Office of Hearings and Appeals by December 5, 1986.

It is Therefore Ordered That:

The crude oil refund amount remitted to the Department of Energy by Marathon Petroleum Company pursuant to a Consent Order finalized on January 30, 1986, will be distributed in accordance with the foregoing Decision.

[FR Doc. 86-25183 Filed 11-6-86; 8:45 am]

BILLING CODE 6450-01-M

Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $9,663,400.36 (plus accrued interest) obtained from McAlester Fuel Company, Case No. KEF-0045. The OHA has tentatively determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Comments must be filed in duplicate within 30 days of publication of this notice in the **Federal Register** and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington DC 20585. All comments should display a reference to Case No. KEF-0045.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-2383.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute monies obtained from McAlester Fuel Company (McAlester). McAlester remitted monies to the DOE pursuant to a January 30, 1986 Judgment of the United States District Court for the District of North Dakota. The firm's payment is being held in an interest-bearing escrow account pending distribution by the DOE.

The DOE has tentatively decided that distribution of the monies received from McAlester will be governed by the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986). That policy states that crude oil overcharge monies will be divided among the states, the federal government, and eligible purchasers of crude oil and refined products.

Under the plan we are proposing, refunds to the states would be distributed in proportion to each state's consumption of petroleum products. Refunds to eligible purchasers would be based on the number of gallons of crude oil or refined products which they purchased and the extent to which they can demonstrate injury.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the addresss set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1:00 p.m. and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: October 27, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

October 27, 1986.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Case: McAlester Fuel Company
Date of Filing: June 30, 1986
Case Number: KEF-0045.

Under the procedural regulations of the Department of Energy (DOE) the Economic Regulatory Administration (ERA) may request that the Office of

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[4] Pursuant to the Settlement Agreement in *In Re Department Of Energy Stripper Well Litigation*, M.D.L. 378 (D. Kan.) escrow funds were established for refiners, resellers, retailers, agricultural cooperatives, airlines, privately owned utilities, surface transporters, and rail and water transporters. Firms which claim refunds for crude oil overcharges from those escrow funds waive their rights to receive refunds from Subpart V cases based on alleged crude oil overcharges.

[5] In this case the actual distribution will reflect a ratio of 25 percent to the state governments and 75 percent to the Federal government. Under the terms of the Stripper Well Settlement Agreement, the states received an advance of $200 million from funds which would otherwise have been disbursed to the DOE. In order to reimburse the DOE for this advance, the Settlement Agreement provides that for amounts which the OHA transfers to the state and federal governments in excess of $100 million, the DOE shall receive 75 percent and the states shall receive 25 percent. *Settlement Agreement*, Paragraph II.B.3.c.ii. This arrangement shall continue until the OHA has distributed $400 million under the 75/25 arrangement.

Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. Such procedures enable the DOE to refund monies to those injured by alleged violations of the DOE pricing regulations.

On June 30, 1986, the ERA filed a Petition for the Implementation of Special Refund Procedures with respect to crude oil overcharge funds obtained from McAlester Fuel Company (McAlester). The DOE received $9,663,400.36 from McAlester pursuant to a January 30, 1986 Judgment entered by the Unted States District Court for the District of North Dakota.[1] This Proposed Decision and Order sets forth OHA's tentative plan to distribute these funds. Comments are solicited.

The general guidelines which the OHA may use to formulate and implement a plan to distribute funds are set forth in 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE either cannot readily identify the persons who may have been injured as a result of alleged or adjudicated violations or cannot ascertain the amount of each person's injury. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82-597 (1981).

We have considered ERA's request to implement Subpart V procedures with respect to the monies received from McAlester and have determined that such procedures are appropriate. Accordingly, we will grant ERA's request.

The monies which McAlester remitted to the DOE settle alleged crude oil overcharge violations. Therefore, these cases are subject to the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, issued on July 28, 1986. 51 FR 27899 (August 4, 1986) (hereinafter referred to as the "MSRP"). The MSRP was issued in conjunction with the approval by the United States District Court for District of Kansas of a settlement agreement in *The DOE Stripper Well Litigation*, M.D.L. 378.[2] On August 8, 1986, the OHA announced its intention to follow the MSRP. 51 FR 29689 (August 20, 1986).

The MSRP provides that a refund process will be employed for restitution of alleged crude oil violation amounts held in escrow by the DOE or received in the future, using the special refund procedures codified at 10 CFR Part 205, Subpart V. Under that process, OHA will accept and process refund applications from persons who claim they were injured by alleged crude oil violations. Up to 20 percent of the alleged crude oil violation amounts will be reserved for such direct refunds to claimants who prove injury. The MSRP calls for the remaining 80 percent of the funds to be disbursed to the state and federal governments for indirect restitution. In addition, after all valid claims are paid, unclaimed funds from the claims reserve will be divided equally between the state governments and the federal government. The federal government's share of the unclaimed funds will ultimately be deposited into the general fund of the Treasury of the United States.

The OHA will institute a claims process, pursuant to the MSRP, for the $9.6 million involved in this proceeding. We have decided to reserve the full 20 percent of the alleged crude oil violation amount for direct restitution to claimants. The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used to evaluate claims based on alleged refined product overcharges pursuant to 10 CFR Part 205, Subpart V. *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986). As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured by the alleged violations (i.e. that they did not pass on alleged overcharges to their own customers). The standards for showing injury which the OHA has developed in analyzing non-crude oil claims will also apply to claims based on alleged crude oil violations. *Id.; see, e.g., Dorchester Gas Corp.*, 14 DOE ¶ 85,240 (1986). Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the money obtained from McAlester by the total consumption of petroleum products in the United States during the period of price controls.[3] Using this method, the refund amount in this case would be $.0000047815 per gallon. Successful applicants will also receive their proportion of accrued interest.

We propose that the remaining 80 percent of the funds—$7,730,720.29—be immediately disbursed to the State and Federal governments for indirect restitution. We propose to direct the DOE's Office of the Controller to segregate this amount and distribute $1,932,680.07 plus appropriate interest to the States and $5,798,040.22 plus appropriate interest to the Federal government.[4] Appendix A to this Decision lists the share (ratio) of the funds in the state account which each State will receive if these procedures are adopted.

Before taking the action we have proposed in this Decision, we intend to publicize our proposal and solicit comments on it. Comments regarding the tentative distribution process set forth in this Proposed Decision should be filed with OHA within 30 days of publication in the **Federal Register**.

It is therefore ordered that:

The refund amounts remitted to the Department of Energy by McAlester Fuel Company pursuant to the January 30, 1986 Judgment of the United States District Court for the District of North Dakota shall be distributed in accordance with the foregoing Decision.

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[1] McAlester entered into a consent order with the Federal Energy Administration on July 19, 1977, in order to settle certain claims that McAlester had violated the crude oil price regulations. On January 12, 1982, Conoco, Inc. (Conoco), a purchaser of crude oil from McAlester, filed a complaint against that firm in the North Dakota District Court. Conoco, Inc. v. McAlester Fuel Co., Civ. No. A3–82–3 (D. N.Dak.). The January 30, 1986 Judgment of that Court dismissed Conoco's complaint, enforced the provisions of the consent order, and ordered McAlester to pay the DOE over $10 million plus interest for disbursement pursuant to 10 CFR Part 205, Subpart V. All parties appealed the January 30 Judgment, but shortly thereafter they reached a settlement and sought dismissal of the appeals. The District Court ordered McAlester to satisfy the Judgment by depositing into a private escrow account $10,499,616.47 plus interest which accrued after April 30, 1986. The parties agreed, and the Court ordered, that 8.1% of these funds should be paid to Conoco in lieu of any rights Conoco might have to apply to the DOE for any part of the funds pursuant to Subpart V. The remaining 91.9% of the funds were transferred to the DOE to be subsequently distributed.

[2] For a detailed discussion of the events in the Stripper Well Litigation which brought about the MSRP, see *Stripper Well Exemption Litigation*, 14 DOE ¶ 85,382 (1986).

[3] It is estimated that 2,,020,997,335,000 gallons of petroleum products were consumed in the United States during the period August 1973 through January 1981. *Mountain Fuel*, 14 DOE at 88,868, n.4 (1986).

[4] This distribution reflects a ratio of 25 percent to the State governments and 75 percent to the Federal government. Under the terms of the Stripper Well Settlement Agreement, the states received an advance of $200 million from funds which would otherwise have been disbursed to the DOE. In order to reimburse the DOE for this advance, the Settlement Agreement provides that for amounts which the OHA transfers to the State and Federal governments in excess of $100 million, the DOE shall receive 75 percent and the states shall receive 25 percent. This arrangement shall continue until the OHA has distributed the next $400 million under the 75/25 arrangement. Settlement Agreement, Paragraph II.B.3.c.ii.

[Case No. KEF-0045]

Appendix A

CALCULATION OF RATIOS FOR DISTRIBUTION TO STATES AND TERRITORIES—M.D.L. 378

State	Consumption	Ratio
Alabama	626,803,320	.01534512450
Alaska	158,047,980	.0038692803
American Samoa	7,275,800	.00017810331
Arizona	418,984,930	.01025764719
Arkansas	519,811,670	.01272579770
California	3,739,318,300	.09154432453
Colorado	439,201,380	.01075233249
Connecticut	693,669,220	.01698259040
Delaware	193,932,730	.00474777469
District of Columbia	97,574,880	.00238877935
Florida	1,887,380,600	.04620307312
Georgia	909,619,850	.02226890861
Guam	60,186,000	.00147389185
Hawaii	280,655,260	.00687087703
Idaho	167,643,796	.00410418067
Illinois	1,876,159,080	.04593129065
Indiana	1,006,156,580	.02463227680
Iowa	532,229,530	.01302980821
Kansas	457,905,310	.01121023376
Kentucky	523,601,010	.01281858863
Louisiana	971,591,210	.02378606310
Maine	300,279,730	.00735131456
Maryland	731,363,020	.02790490359
Massachusetts	1,398,308,100	.03423278036
Michigan	1,391,772,990	.03407274419
Minnesota	708,914,590	.01735288297
Mississippi	557,788,510	.01365548081
Missouri	806,514,320	.01974472423
Montana	184,882,510	.00452621123
Nebraska	301,217,700	.00737427752
Nevada	165,454,200	.00405057600
New Hampshire	190,375,330	.00466066401

CALCULATION OF RATIOS FOR DISTRIBUTION TO STATES AND TERRITORIES—M.D.L. 378—Continued

State	Consumption	Ratio
New Jersey	1,507,862,710	.03691482302
New Mexico	267,574,460	.00655063871
New York	3,162,984,520	.07743502253
No. Mariana Islands	3,763,000	.00009212409
North Carolina	916,800,700	.02244470625
North Dakota	149,717,090	.00366530709
Ohio	1,534,904,170	.03757684000
Oklahoma	504,488,400	.01235068023
Oregon	404,894,790	.00991245364
Pennsylvania	1,901,863,900	.04656058461
Puerto Rico	389,132,000	.00952655624
Rhode Island	161,953,570	.00396487514
South Carolina	486,978,850	.01192199923
South Dakota	146,053,670	.00357562067
Tennessee	660,920,850	.01618036977
Texas	3,013,545,120	.07377626891
Utah	240,978,330	.00589952410
Vermont	97,762,860	.00239338678
Virgin Islands	188,963,000	.00462606316
Virginia	1,048,324,650	.02566461699
Washington	623,786,920	.01527127344
West Virginia	244,121,480	.00597647330
Wisconsin	718,698,070	.01759484593
Wyoming	166,569,650	.00407788395
Totals	40,847,079,480	1.00000000000

[FR Doc. 86-25185 Filed 11-6-86; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of October 3 Through 10, 1986

During the Week of October 3 through October 10, 1986, the applications for relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

October 29, 1986.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of October 3 through October 10, 1986]

Date	Name and location of applicant	Case No.	Type of submission
Oct. 6, 1986	Tenneco Oil Company Washington, DC	KEG-0001	Request for Special Redress. *If Granted:* The Office of Hearings and Appeals would reopen several proceedings in which exception relief was granted to Kern Oil and Refining Company.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund applicant	Case No.
9/25/86	E.B. Lynn/Chubby's Garage	RF246-6
10/3-10/86	Mobil Refund Applications	RF225-10329 Thru RF225-10347
10/3-10/86	Marathon Refund Applications.	RF250-1484 Thru RF250-1550
10/3-10/86	Surface Transporters Refund Applications.	RF270-110 Thru RF270-144
10/6/86	Bunge Corp.	RF271-25
10/6/86	Bunge Towing, Inc.	RF271-24
10/6/86	Providence and Worcester Railroad Co.	RF271-23
10/6/86	Power Transportation Co	RF271-22
10/6/86	Mid-America Transportation Co.	RF271-21
10/6/86	La Gloria/Columbia LNG Corp.	RF263-2
10/7/86	Farstad/Dale's Case Supply	RF261-5
10/7/86	River Parishes Co., Inc.	RF271-25
10/7/86	Gulf/Earl Lamar Millet	RF259-5
10/6/86	Little America Refining Co./Best Oil and Gas Co.	RF112-197
10/6/86	Inland Marine Co., Inc	RF271-26
10/6/86	Conoco/Service Station	RF220-420
10/6/86	Conoco/Rhodes Oil Co.	RF220-419
10/6/86	Conoco/G.L. Manuel Oil Co	RF220-418
10/6/86	Conoco/Wingfield's 271 Service.	RF220-417
10/6/86	Conoco/Leonard's Conoco	RF220-416
10/6/86	LARCO/Curt's Sinclair	RF112-196
10/6/86	La Gloria/Delta Oil Co	RF263-2

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/name of refund applicant	Case No.
10/8/86	La Gloria/Mothershead Oil Co., Inc.	RF263-3
10/8/86	La Gloria/J.L. Mothershead	RF263-4
10/9/86	Farstad/Gustafson Oil Co.	RF261-6
10/9/86	Gulf/Harry Russell	RF259-5
10/9/86	Gulf/Harry Russell	RF259-6
10/8/86	Delco/Pyramid Distributing Co., Inc.	RF248-6
10/10/86	Conoco/Joe's Conoco	RF220-421

[FR Doc. 86-25184 Filed 11-6-86; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for refunding to adversely affected parties $66,217 obtained as a result of consent orders which the DOE entered into with the following firms:

National Propane Corporation/
Conservative Gas Division
(Conservative) of New Hyde Park,
New York.

Parman Oil Corporation of Nashville,
Tennessee.

The funds are being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund of a portion of either the Conservative or the Parman consent order fund must be filed in duplicate on or before December 8, 1986. Applications should refer to the appropriate case number, HEF-0315 for Conservative, and HEF-0145 for Parman. Address applications to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Sharon Dennis, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6602

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision explains the procedures that the DOE has formulated to distribute to adversely affected parties the $66,217, plus accrued interest, that the DOE obtained under the terms of consent orders entered into with National Propane Corporation/Conservative Gas Division, and Parman Oil Corporation. Conservative and Parman provided these funds to settle all claims and disputes with the DOE regarding the manner in which each firm applied the federal price regulations to its sales of refined petroleum products; specifically, propane in the case of Conservative, and motor gasoline and No. 2 oil in the case of Parman. The Conservative consent order covered the firm's propane sales between November 1, 1973, and November 30, 1975; the Parman consent order covered the firm's motor gasoline and No. 2 oil sales between November 1, 1973, and February 29, 1976. Firms or individuals that purchased propane from Conservative or motor gasoline and/or No. 2 oil from Parman during these time periods may be eligible to receive a portion of the consent order funds.

The DOE solicited comments concerning the distribution of the consent order funds in two Proposed Decision and Orders, one for the Conservative case issued on July 24, 1986, and one for the Parman case issued on January 8, 1986. 51 FR 27588 (August 1, 1986). 51 FR 2559 (January 17, 1986). Following this, the DOE determined the final refund application procedures. The Decision describes the process by which purchasers of either firm may apply for refunds. A purchaser must submit monthly schedules of its propane purchases from Conservative or its motor gasoline and/or No. 2 oil purchases from Parman, and proof that it was injured by the alleged pricing violations of the firm from which it purchased product. Applicants claiming $5,000 or less, as well as all end user customers, need only document their purchase volumes to establish injury.

The specific information required in an Application for Refund is set forth in the Decision and Order. Applications will be reviewed provided they are filed within 90 days for the publication of this Decision and Order in the **Federal Register.**

Dated: Oct. 27, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Firms: National Propane Corporation/Conservative Gas Division. Parman Oil Corporation.

Dates of Filing: October 13, 1983. October 13, 1983.

Case Numbers: HEF-0135. HEF-0145.

October 27, 1986.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed Petitions for the Implementation of Special Refund Procedures in connection with consent orders entered into with National Propane Corporation, Conservative Gas Division (Conservative), and Parman Oil Corporation (Parman). This Decision and Order contains the procedures which the OHA has formulated to distribute the funds received pursuant to these consent orders.

I. Background

Both Conservative and Parman are "reseller-retailers" of refined petroleum products as that term was defined in 10 CFR 212.31. Conservative's home office is located in New Hyde Park, New York; Parman is located in Nashville, Tennessee. A DOE audit of each firm's records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. Subsequently, each firm entered into a separate consent order with the DOE. The consent orders refer to ERA's allegations of overcharges, but note that there were no findings that violations occurred. In addition, each consent order states that the subject firm does not admit that it committed any such violations. A brief discussion of other pertinent matters covered by each consent order follows.

In the Conservative proceeding, the DOE audit alleged that between November 1, 1973 and November 30, 1975, the firm committed pricing violations in its sales of propane. The Conservative consent order, executed on September 26, 1979, settled all claims and disputes between Conservative and the DOE regarding the firm's propane sales during the period covered by the audit. Under the terms of the consent order, Conservative agreed to pay a total settlement amount of $70,491, including interest, to cover alleged overcharges committed in its sales of propane during the consent order period. ERA ordered that the total settlement amount be divided between Conservative's various customer classes and be distributed by two different methods.[1] In connection with this settlement, all of Conservative's retail and certain of its wholesale customers received direct payments totaling $49,274. The remaining $21,217 represents the settlement of alleged overcharges on sales to Conservative's wholesale customers that were not included in the direct-payment schedule.[2] Conservative deposited that amount into an interest-bearing escrow account for ultimate distribution by the DOE.[3]

In the Parman proceeding, the DOE alleged that between November 1, 1973 and February 29, 1976, Parman committed certain pricing violations with respect to its sales of motor gasoline and No. 2 oil. In order to settle all claims and disputes between Parman and the DOE regarding the firm's sales of motor gasoline and No. 2 oil during the period covered by the audit, Parman and the DOE entered into a consent order on September 20, 1979. The consent order resolved a Notice of Probable Violation (NOPV) issued on December 2, 1976. Under the terms of the consent order, Parman agreed to deposit $45,000 into an interest-bearing escrow account for ultimate distribution by the DOE. The consent order was paid in full on October 26, 1979.[4]

II. Jurisdiction and Authority to Fashion Refund Procedures

The general guidelines which OHA may use to formulate and implement a

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[1] Apparently Conservative marketed its propane in cylinder and bulk form to ten separate customer categories at wholesale and retail prices.

[2] The purchasers eligible for refunds in the present proceeding are resellers which purchased bulk and cylinder propane, and wholesale dealers which purchased "bulk cylinder" propane from Conservative during the consent order period.

[3] As of September 30, 1986, the Conservative escrow account contained a total of $41,578.19, representing $21,217 in principal and $20,361.19 in accrued interest.

[4] As of September 30, 1986, the Parman escrow account contained a total of $88,940.12, representing $45,000 in principal and $43,940.12 in accrued interest.

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plan to distribute funds received as a result of an enforcement proceeding are set forth in 10 CFR Part 205, Subpart V. The Subpart V procedures may be used in situations where the DOE is unable either to readily identify those persons who might have been injured by any alleged overcharges or to ascertain the amount of such injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶82,508 (1981) (*Coline*), and *Office of Enforcement*, 8 DOE ¶82,597 (1981) (*Vickers*).

OHA issued Proposed Decisions and Orders (PD&Os) in the Conservative and Parman proceedings on July 24, 1986 and January 8, 1986, respectively. 51 FR 27,588 (August 1, 1986); 51 FR 2,559 (January 17, 1986). The PD&Os outline tentative plans for distributing refunds to parties that show that they were injured by the firms' alleged overcharges during the respective consent order periods. The PD&Os state that the basic purpose of the special refund proceeding is to make restitution for injuries experienced as a result of actual or alleged violations of the DOE regulations.

In order to notify all potentially affected parties, copies of the Proposed Decisions were published in the **Federal Register** and comments regarding the proposed procedures were solicited. In addition, copies of the PD&Os were sent to purchasers identified in the ERA audits and various petroleum dealers' associations. Comments were submitted in both proceedings on behalf of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, Utah, and West Virginia concerning the distribution of any funds remaining after refunds have been made to injured parties. At this time, we will not address comments regarding second-stage refunds. Procedures for apportioning remaining monies will depend upon the size of the fund. *See Coline*, 9 DOE at 85,055. Since we received no comments concerning the first stage procedures in either case, we will adopt the procedures as proposed.

III. Refunds To Identifiable Purchasers

In the first stage of the Conservative and Parman refund proceedings, we will distribute the funds in the escrow accounts to claimants that demonstrate that they were injured by the alleged overcharges. To be eligible to receive a refund, a purchaser must file an application, and, with the three exceptions outlined below, show the extent to which injury resulted from the alleged overcharges. To the extent that a firm or individual can establish injury, it will be eligible for a share of the monies in the appropriate consent order fund.

We will presume that purchasers of Conservative propane or Parman motor gasoline and/or No. 2 oil that are claiming small refunds ($5,000 or less) were injured by the alleged overcharges. In the absence of compelling material, we will also presume that spot purchasers were not injured. In addition, we find that end-users or ultimate consumers of Coservative propane or Parman motor gasoline and/or No. 2 oil whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges. Finally, we will not require a detailed demonstration of injury from regulated utilities or agricultural cooperatives that purchased Conservative propane or Parman motor gasoline and/or No. 2 oil and passed the alleged overcharges associated with those products through to their end-user members.[5] These presumptions and findings permit claimants to apply for refunds without incurring prohibitively high expenses. Prior OHA decisions explain additional reasons for adopting these presumptions and findings. *E.g., Peterson Petroleum, Inc.*, 13 DOE ¶85,191 at 88,508–10 (1985). The rationale for their use was also fully explained in the PD&Os. 51 FR 27588 at 27590–27591 (August 1, 1986); 51 FR 2559 at 2560–61 (January 17, 1986).

In both cases, a reseller or retailer which claims a refund in excess of $5,000 will be required to document its injury. While there are a variety of methods for making such a showing, a claimant is generally required to demonstrate (1) that it maintained a "bank" of unrecovered product costs, and (2) that market conditions would not permit it to pass on the increased costs to its customers in the form of higher selling prices.[6]

IV. Calculation of Refund Amounts

In both the Conservative and Parman proceedings, we will use a volumetric method to compute the refunds to eligible applicants.[7] This method presumes that, during the respective consent order periods, the alleged overcharges were dispersed evenly among all sales of motor gasoline and No. 2 oil made by Parman, and all sales of propane made by Conservative to the customer classes that were not previously refunded. Under the volumetric method, a claimant will be eligible for a refund equal to the number of gallons of Conservative propane or Parman motor gasoline and/or No. 2 oil that it purchased during the consent order period times the appropriate volumetric factor. The volumetric factor, or average per gallon refund, equals $0.002491 per gallon in the Conservative case, and $0.001227 per gallon in the Parman proceeding.[8]

We recognize that the impact on an individual purchaser could have been greater than that estimated by using the volumetric factor, and any purchaser may file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See Sid Richardson Carbon & Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984), and cases cited therein.

As in previous cases, only claims for at least $15 plus interest will be processed. We have found in the past that the cost of processing claims for less than $15 outweights the benefits of restitution. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

If valid claims in either of the two proceedings exceed the funds available in the particular escrow account, all refunds in that proceeding will be reduced proportionately. Actual refunds will be determined after analyzing all appropriate claims.

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[5] We will require such applicants to certify that they will pass any refund received through to their customers, to provide us with a full explanation of how they plan to accomplish this restitution, and to notify the appropriate regulatory body of their receipt of any refund money.

[6] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit evidence of injury beyond documentation of volumes purchased. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶85,029 at 88,125 (1982) (Ada).

[7] In view of the direct payments which Conservative made to all retail and certain wholesale customers, the Conservative PD&O proposed that such pruchasers be ineligible to receive refunds in this proceeding. Since no objections were received, we will adopt this proposal. A further payment to these firms on the basis of the sales covered by the audit would produce a double refund. However, if such a customer can show that it was also a purchaser of the propane sales covered in this proceeding, and that it did not previously receive a refund for such purchases, then that customer may apply for a refund on those purchases.

[8] The Conservative volumetric factor has been calculated from information contained in ERA's audit workpapers. The figure was derived by dividing the $21,217 in escrow by the 8,516,162 gallons of propane sold by Conservative to its previously unrefunded customers during the consent order period. The Parman volumetric is computed by dividing the $45,000 principal amount by the 36,683,566 gallons of motor gasoline and No. 2 oil which Parman sold throughout the consent order period.

V. Applications for Refund

Through the procedures described above, we will be able to distribute the Conservative and Parman consent order funds as equitably and efficiently as possible. Accordingly, we will now accept Applications for Refund from individuals and firms that purchased Conservative propane during the period November 1, 1973 through November 30, 1975, and Parman motor gasoline and/or No. 2 oil between November 1, 1973 and February 29, 1976. Eligible applicants include subsequent repurchasers as well as first purchasers.

There is no specific application form which must be used. In order to receive a refund, each claimant must submit the following information:

(1) A schedule of its monthly purchases of Conservative propane or Parman motor gasoline and/or No. 2 oil during the appropriate consent order period along with any relevant information necessary to support its claim in accordance with the presumptions and findings outlined above. If the applicant was an indirect purchaser it must also submit the name of its immediate supplier and indicate why it believes the product claimed was originally sold by Conservative or Parman;

(2) Whether the applicant has previously received a refund, directly or through price rollbacks, with respect to the alleged overcharges identified in the ERA audit underlying the proceeding in which it is claiming a refund;

(3) Whether there has been a change in ownership of the firm since the consent order period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund;

(4) whether the applicant is or has been involved as a party in any DOE enforcement proceedings or private actions filed under section 210 of the Economic Stabilization Act. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in the status while its Application for Refund is pending. *See* 10 CFR 205.9(d); and

(5) The name and telephone number of a person who may be contacted by this Office for additional information.

Finally, each applicant must include the following statement: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001.

All applications must be filed in duplicate and must be received within 90 days from the date of publication of this Decision and Order in the **Federal Register**. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any applicant which believes that its application contains confidential information must indicate this and submit two additional copies of its application from which the confidential information has been deleted. All applications should refer to the appropriate case number (HEF–0135 for Conservative and HEF–0145 for Parman) and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585.

It is therefore ordered that:

(1) Applications for Refund from the funds remitted to the Department of Energy by National Propane Corporation, Conservative Gas Division pursuant to the Consent Order executed on September 26, 1979, may now be filed.

(2) Applications for Refund from the funds remitted to the Department of Energy by Parman Oil Corporation pursuant to the Consent Order executed on September 20, 1979, may now be filed.

(3) All applications must be filed no later than 90 days after publication of this Decision and Order in the Federal Register.

Dated: October 27, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86–25179 Filed 11–6–86; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $15,907,465.76 (plus accrued interest) obtained as a result of a settlement agreement which the DOE entered into with Howard Oil Company, Inc. of Maspeth, New York (Case No. KEF–0008). The fund will be available to customers who purchased middle distillates and residual fuel oil from Howard during the settlement period.

DATE AND ADDRESS: Applications for refund of a portion of the settlement fund must be postmarked on or before February 5, 1987, and should be addressed to: Howard Oil Company Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All applications should conspicuously display a reference to Case No. KEF–0008.

FOR FURTHER INFORMATION CONTACT: Ted Hochstadt, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585 (202) 252–4921.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to a settlement agreement entered into by Howard Oil Company of Maspeth, New York and the DOE which settled possible regulatory violations in the firm's sales of middle distillates and residual fuel oil during the settlement period, August 1973 through January 27, 1981.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the settlement fund. The Proposed Decision and Order discussing the distribution of the settlement fund was issued on August 12, 1986. 51 FR 30420 (August 26, 1986).

As the Decision and Order indicates, applications for refunds from the settlement fund may now be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Applications will be accepted from customers who purchased middle distillates or residual fuel oils from Howard during the relevant settlement period. The specified information required in an application for refund is set forth in the Decision and Order. The Decision and Order reserves the question of the proper distribution of any remaining settlement funds until the first-stage claims procedure is completed.

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Dated: October 27, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

October 27, 1986.

Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: Howard Oil Company, Inc.
Date of Filing: October 28, 1985
Case Number: KEF–0008.

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on October 28, 1985. The petition requests that the OHA formulate and implement procedures for the distribution of funds received pursuant to a Settlement Agreement entered into by the DOE and Howard Oil Company, Inc. of Maspeth, New York (Howard).[1]

I. Background

Howard was a "reseller-retailer" of middle distillates and residual fuel oils as those terms were defined in 10 CFR 212.31, and was therefore subject to the Mandatory Petroleum Price Regulations. As a result of an ERA audit, the ERA alleged that Howard violated the price regulations in sales of middle distillates and residual fuel oil during 1973 and 1974 and also failed to pass through a refund made by Sun Oil Company (Sun) to Howard in 1974. On April 9, 1985, Howard entered into a Settlement Agreement with the DOE in a proceeding in the United States District Court for the Eastern District of New York. *DOE v. Howard Oil Co.*, Civ. No. 78–C–2002 (E.D.N.Y. Apr. 9, 1985). This agreement settled all disputes and claims between Howard and the DOE regarding the firm's compliance with the price regulations in sales of petroleum products during the the period from August 1973 through January 27, 1981. Specifically, Howard agreed to remit $15.4 million to the DOE for deposit in an interest bearing escrow account. Of that amount, $3 million was stated to be in settlement of the alleged overcharges by Howard in sales of middle distillates and residual fuel oil during 1973 and 1974; $4.5 million settled allegations regarding Howard's failure to pass through the refund received from Sun in 1974;[2] and $7.9 million was accrued interest on both Howard's alleged overcharges and the Sun refund through October 31, 1984.[3]

On August 12, 1986, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the settlement fund. 51 FR 30420 (August 26, 1986). We stated in the PD&O that the basic purpose of a special refund proceeding is to make restitution of injuries that were experienced as a result of actual or alleged violations of the DOE regulations. In order to effect restitition in this proceeding, we proposed to establish a claims procedure whereby applications for refund would be accepted from customers who can demonstrate that they are eligible to receive a refund from the monies remitted by Howard. We noted that the ERA audit files identify six wholesale customers and three groups of unidentified wholesale customers who purchased either middle distillates and/or residual fuel oil from Howard. The audit file also specifies the amounts these individual customers and classes of purchaser were allegedly overcharged. We specifically proposed to refund proportionate shares of the settlement fund to these customers.

In order to give notice to all potentially affected parties, a copy of the Proposed Decision was published in the **Federal Register** and comments were solicited regarding the proposed refund procedures. In addition, copies of the PD&O were mailed to potential claimants identified in the audit file whose addresses were available. None of Howard's customers submitted comments on the proposed procedures. Comments were submitted by the successor to Howard, Rossrock Company, Inc. (Rossrock),[4] and the States of Pennsylvania, California, Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia. Rossrock requests that any funds remaining after first stage claims have been satisfied be returned to Rossrock. All of the comments received from the States assert that they are the appropriate recipients of second-stage refunds. Furthermore, California suggests that the OHA at this time propose a second-stage refund procedure to avoid delay and "assist in the expeditious distribution of the funds that remain when the first stage is completed." Comments at 2. California reasons that the "OHA has ample experience upon which to base a proposal, at the outset of each refund proceeding." *Id.* Although we agree that the OHA has ample experience in the refund area, it is this experience which dictates to us that we wait until the first stage is complete before we propose second-stage procedures. Any proposals concerning residual funds would be premature since the amount remaining after all meritorious claims have been paid directly affects the appropriateness of the second-stage distribution scheme. *See Office of Enforcement*, 9 DOE ¶82,508 (1981). Therefore, we will not address the issues raised by Rossrock or the States concerning the disposition of any residual funds until all meritorious first stage claims have been paid.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. It is the DOE policy to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); Office of Enforcement, 8 DOE ¶ 82,597 (1981). As we stated in the PD&O, we have reviewed the record in the present case and have determined that a Subpart V proceeding is an appropriate mechanism for distributing the Howard settlement. We will therefore grant the ERA's petition and assume jurisdiction over this fund.

III. Refund Procedures

Since we have not received any adverse comments regarding our proposed refund procedures, we have determined that those procedures should be adopted. The distribution of refunds will take place in two stages. In the first stage refund monies will be refunded to those wholesale customers who purchased Howard middle distillates or residual fuel oil during the specific time periods described in the Settlement Agreement[5] and who demonstrate that they were injured by Howard's alleged actions. Such purchasers must file claims and document their purchases in order to be eligible for a portion of the settlement funds.

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[1] Other parties to the Settlement Agreement were York Oil Trading and Transport Company (York Oil); South Pacific Oil Company Limited (Sopac); Howard Ross, a principal stockholder and officer of Howard, York Oil and Sopac; H. Peter Ross, a principal stockholder and officer of York Oil and Howard; and Theodore Ross, a principal stockholder and officer of York Oil and Howard.

[4] Subsequent to the audit period, Howard Oil Company, Inc. changed its name to Rossrock Company, Inc.

[5] These time periods are described in Part IIIB, *infra.*

After meritorious claims are paid in the first stage, a second stage may become necessary to distribute any remaining funds. In determining the manner of indirect restitution, we will act in accordance with the provisions of the recently enacted Petroleum Overcharge Distribution and Restitution Act of 1986. *See* H.R. 5300, Title III, 99th Cong., 2d Sess., 132 Cong. Rec. H11319–21 (daily ed. October 17, 1986).

A. Refund Claimants. During the first stage of the refund process the settlement fund will be distributed to those customers of Howard who were injured by the alleged overcharges or by Howard's alleged failure to pass through the Sun refund. Since the Settlement Agreement allocates the refund monies to alleged violations during specific periods of time, we will limit eligibility to firms who purchased product that was sold by Howard during those periods. *See* Part IIIB, *infra*. We expect that claimants will fall into one of the following general categories: (i) Resellers, retailers and refiners (hereinafters collectively referred to as resellers) who resold Howard middle distillates and residual fuel oil, (ii) individuals or firms that consumed Howard petroleum products for their own use (end-users), or (iii) public utilities. The product purchased by these claimants will have been purchased directly from Howard, or from other firms in the chain of distribution leading back to Howard. In this case, the ERA audit files identified certain customers who may have been injured by Howard's allegedly wrongful actions. These parties are listed in the appendices to this Decision and Order. In our view, these identified customers are only some of the parties who were adversely affected, at least initially, by Howard's alleged overcharges or failure to distribute the Sun refund. We therefore will accept refund applications from the customers identified in the Appendices and any other parties who can demonstrate that they were injured by Howard's pricing practices.

1. *Reseller Showing of Injury.* As in prior refund proceedings, we will require claimants who were resellers of products purchased from Howard to demonstrate that during the settlement period they would have maintained their prices for the products at the same level had the alleged overcharges not occurred. While there are a variety of ways to make this showing, a reseller should generally demonstrate that, at the time it purchased the product from Howard, market conditions would not permit it to increase its prices to pass through to its customers the additional costs associated with the alleged overcharges.[6] *See OKC Corp./Hornet Oil Co.*, 12 DOE ¶ 85,166 (1985); *Tenneco Oil Co./Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982). In addition, a reseller claimant is generally required to show that it had a "bank" of unrecovered costs in order to demonstrate that it did not recover the increased costs associated with the alleged overcharges by increasing its own prices. As we noted in the PD&O, however, the maintenance of a bank does not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A.*, Inc., 10 DOE ¶ 85,014 (1982).

2. *Small Claims Presumption.* As stated in the PD&O, we recognize that making a detailed showing of injury may be too complicated and burdensome for resellers who purchased relatively small amounts of Howard petroleum products. For example, such firms may have limited accounting and data-retrieval capabilities and therefore may be unable to produce the records necessary to prove the existence of banks of unrecovered costs, or that they did not pass on the alleged overcharges to their own customers. We also are concerned that the cost to the applicant and to the government of compiling and analyzing information sufficient to make a detailed showing of injury not exceed the amount of the refund to be gained. In the past we have adopted a small claims presumption to assure that the costs of filing and processing a refund application do not exceed the benefits. *See, e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). We will adopt such a presumption in this case. Therefore, any reseller claiming a refund of $5,000 or less need only document its purchase volumes rather than make a detailed showing of injury in order to be eligible to receive a refund.[7]

3. *End-Users.* As in many other refund proceedings, we are making a finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges covered by the Howard settlement. Unlike regulated firms in the petroleum industry, members of this group were generally not subject to price controls during the audit peroid, and were not required to keep records which justified selling price increases by reference to cost increases. *See, e.g., Marion; Thornton Oil Corp.*, 12 DOE ¶ 85,112 (1984). For these reasons, an analysis of the impact of the increased cost of petroleum products on the final prices of non-petroleum goods and services would be beyond the scope of this special refund proceeding. See Office of Enforcement, 10 DOE ¶ 85,072 (1983); *see also Texas Oil and Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984) and cases cited therein. We have received no comments objecting to this finding. We will therefore adopt our proposal that end-users of Howard petroleum products need only document their purchase volumes to make a sufficient showing that they were injured by the alleged overcharges.

4. *Regulated Firms.* Firms whose prices for goods and services are regulated by a government agency, e.g., public utilities, will also not be required to make a detailed demonstration of injury in this case. Although these firms generally passed overcharges through to their customers, they generally would pass through any refunds as well. Therefore, we will require such applicants to certify that they will pass through any refund received to their customers, to provide us with a full explanation of how they plan to accomplish this restitution, and to explain how they will notify the appropriate regulatory body of their receipt of the refund money. *See Dorchester Gas Corp.*, 14 DOE ¶ 85,240 at 88,451 (1986).

5. *Spot Purchasers.* Resellers that made spot purchases from Howard will be ineligible to receive a refund, even a refund below the threshold level, unless they can make a showing that rebuts the presumption that they were not injured. As we have previously noted, a spot purchaser would not have made spot purchases of a firm's product at increased prices unless it was also to pass through to its customers the full amount of the firm's selling price. *See Vickers*, 8 DOE at 85,396–97. Accordingly, any reseller claimant who was a spot purchaser must submit evidence to rebut the spot purchaser and establish the extent to which it was injured by the spot purchase(s).

6. *$15 Minimum.* We will also establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See Uban Oil Co.*, 9

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[6] These alleged violations would have been committed by either Howard or by Sun and passed through by Howard.

[7] As in prior speical refund proceedings, reseller applicants whose purchase volume might qualify them for a larger refund may choose to limit their claims to $5,000 in lieu of making a detailed showing of injury.

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DOE ¶ 82,541 (1982); *See also* 10 CFR 205.286(b).

B. Calculation of Refund Amounts

We must further determine the proper method for dividing the settlement fund among successful applicants. The Settlement Agreement explicitly states that $3 million (plus interest) is intended as restitution for alleged overcharges by Howard during 1973 and 1974, and that $4.5 million (plus interest) is intended as restitution for Howard's failure to pass through to its customers Sun's 1974 refund for overcharges in sales of No. 2 oil and kerosene to Howard in November and December 1973.[8] Since the settlement comprises restitution for two very different types of allegation, we will establish separate refund pools based on these allegations. One refund pool will be for Howard's middle distillate and residual fuel oil customers during the period from August 19, 1973, when the price regulations went into effect, through December 31, 1974, and a second pool will be for the customers to whom Howard allegedly failed to pass through the Sun Oil refund to which they were entitled in sales of No. 2 oils and kerosene. *See Gull Industries, Inc.*, 14 DOE ¶ 85,381 (1986). The former pool totals $7,776,743.71 consisting of $3 million plus $4,776,743.71 interest which accrued on the alleged overcharges prior to payment to the DOE. The latter pool totals $8,130,722.05 consisting of $4.5 million plus $3,630,722.05 interest on the unpaid Sun refund accrued prior to payment.

1. *Claims Based Upon Howard's Alleged Overcharges.* The maximum potential refund for the identified firms listed in Appendix A will be based on the amounts they were allegedly overcharged, as indicated in the Howard audit files.[9] To calculate the size of each identified firm's potential refund, we will multiply the alleged overcharge amount for that claimant by 0.451478, a pro rata factor representing the portion of the total alleged overcharges that Howard remitted to the DOE pursuant to the Settlement Agreement.[10] In addition, successful applicants will receive a pro rata share of the interest which has accrued since the deposit of the funds into the escrow account.

For firms who were allegedly overcharged by Howard but who are not identified in the audit files, we will adopt a volumetric refund presumption. The pro rata, or volumetric, refund presumption assumes that alleged overcharges by a firm were spread equally over all gallons of product marketed by that firm. In the absence of better information this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. This presumption is rebuttable, however. A claimant which believes that it suffered a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. *See Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984).

Under the volumetric system we are adopting, a claimant will be eligible to receive a refund equal to the number of gallons of middle distillates and residual fuel oils purchased from Howard between August 19, 1973 through December 31, 1974, times the volumetric factor. The volumetric factor for this refund pool equals $0.008186 per gallon.[11] In addition, successful claimants will receive a proportionate share of the interest which has accrued since the deposit of the funds in the escrow account.

2. *Claims Based Upon the Sun Oil Refund.* The audit files show four identified purchasers and two groups of unidentified customers who allegedly did not receive their full share of the Sun refund from Howard. *See* n.7, *supra*. To calculate the size of each identified firm's potential refund, we will multiply the Sun refund amount designated for that claimant by 0.668646, a pro rata factor representing the portion of the total Sun refund amount that Howard remitted to the DOE pursuant to the settlement.[12] These potential refund amounts are set forth in Appendix B.[13] Also, successful applicants will receive a pro rata share of the interest which has accrued since the deposit of the funds in the escrow account.

The unidentified firms who are eligible for a portion of the Sun Oil refund consist of Howard wholesale customers that purchased kerosene in November 1974 or No. 2 oils in November or December 1973. The audit files set forth the total Sun refund amounts attributable to these two groups. Accordingly, in order to calculate refunds for claimants in these groups, we will adopt two volumetric refund amounts.[14] Based upon the information available to us, the volumertic refund amount for unidentified kerosene purchasers will be $0.381705 per gallon ($403,169.98 divided by 1,056,233 gallons). For unidentified No. 2 oil purchasers the volumetric refund amount will be $0.357903 per gallon ($343,644.97 divided by 960,161 gallons). Successful claimants will also receive a proportionate share of the interest which has accrued since the deposit of the funds into the escrow account.

IV. Application for Refund Procedures

These procedures should equitably and efficiently distribute the Howard Settlement fund. We shall now accept applications for refund from eligible wholesale customers who purchased middle distillates and/or residual fuel oil during the relevant time periods. All potential applicants should review the Appendices of this Decision and specify the refund pool(s) from which they are requesting a refund. There is no official application form. Applications for refund should be written or typed on business letterhead or personal stationery. The following information should be included in all applications for refund:

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[8] The Settlement Agreement, ¶ 2 states:

Howard Oil will pay the sum of $15,500,000 in full settlement of the above captioned civil action through November 1, 1984. Of that amount, $3,000,000 is paid as restitution to the Department of Energy on behalf of any customers of Howard Oil who may be entitled to refunds for alleged overcharges during 1973 and 1974; $4,500,000 is paid to the Department of Energy on behalf of customers of Howard Oil who may be entitled to refunds in connection with the refund received by Howard Oil from Sun Oil Company in 1974; $7,900,000 is paid on account of claims for accrued interest on the alleged overcharges and the Sun Oil refund through October 31, 1984 and $100,000 represent civil penalties to be paid to the Treasury of the United States.

We recognize that the time periods of the alleged violations described in this provision of the Settlement Agreement are not as comprehensive as the August 1973 through January 27, 1981 settlement period established by provision six of the Settlement Agreement. Nonetheless, as indicated above, we will follow the specific allocation terms of the Settlement Agreement.

[9] Although we recognize that the ERA audit files do not provide conclusive evidence as to the identity of all allegedly overcharged parties or the amount of money they should receive in a Subpart V proceeding, we will use this information in the present case as a basis for identifying overcharged customers and their potential refunds since it can be used to fashion a refund plan which will correspond closely to the injuries experienced. *See Marion.*

[10] The alleged overcharge amount upon which Howard's remittance was based included accrued interest through October 31, 1984.

[11] The $0.008186 volumetric factor was derived by dividing the $6,280,461.49 balance of this refund pool by 767,127,246, the total number of gallons of middle distillates and residual fuel oil sold by Howard to unidentified wholesale purchasers during the August 1973–December 1974 period.

[12] The Sun refund amount upon which Howard's remittance was based included accrued interest through October 31, 1984.

[13] Since York Oil is affiliated with Howard and was a party to the Settlement Agreement (*see* footnote 1), it and any other applicant similarly affiliated with Howard will be ineligible for refunds in this proceeding. *See Dalco Petroleum Inc.*, 14 DOE ¶ 85,248 at 88,468 (1986); *Bayside Fuel Oil Depot Corp.*, 13 DOE ¶ 85,139 at 88,381–82 (1985).

[14] These volumetric factors were derived by multiplying the aggregate Sun refund amounts attributable to the respective customer group by the pro-rated overcharge factor 0.668646, and then dividing each amount by the respective number of gallons of kerosene and No. 2 oils sold by Howard during the applicable time period.

1. The name of the settlement agreement firm, Howard Oil Company, Inc., the case number, KEF-0008, and the applicant's name should be prominently displayed on the first page.

2. The name, position title, and telephone number of a person who may be contacted by us for additional information concerning the application.

3. The manner in which the applicant used the Howard petroleum products, i.e., whether it was a reseller, end-user, or public utility.

4. The volume of Howard middle distillates and/or residual fuel oil that the applicant purchased in each month of the period for which it is claiming it was injured by Howard's alleged overcharges and/or failure to pass through the Sun refund.

5. If the applicant is a reseller who wishes to claim a refund in excess of $5,000, it should also:

(a) State whether it maintained banks of unrecouped product cost increases and furnish the OHA with quarterly bank calculations, and

(b) Submit evidence to establish that it did not pass through the alleged injury to its customers. For example, a firm may compare the prices it paid for Howard petroleum products with the prices paid for that product by its competitors to show that price increases to recover alleged overcharges were infeasible.

6. If the applicant is a regulated firm, e.g., a public utility, it must:

(a) Certify that it will pass through any refund received to its customers, and provide the OHA with a full explanation of how it plans to accomplish this restitution, and

(b) Explain how it will notify the appropriate regulatory body of the receipt of the refund money.

7. If an applicant purchased Howard middle distillates and/or residual fuel oil from a firm other than Howard, it must establish its basis for the belief that the product(s) originated with Howard and identify the reseller from whom the product(s) was purchased.

8. A statement of whether the applicant was in any way affiliated with Howard. If so, the applicant should state the nature of the affiliation.

9. A statement of whether there has been any change in ownership of the entity that purchased middle distillates and/or residual fuel oil from Howard since the end of the relevant time periods. If so, the name and address of the current (or former) owner should be provided.

10. A statement of whether the applicant is or has been involved as a party in any DOE or private section 210 enforcement actions. If these actions have been terminated, the application should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of the application for refund. *See* 10 CFR 205.9(d).

11. The following signed statement: I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief.

All applications for refund must be filed in duplicate and must be filed within 90 days after publication of this Decision and Order in the **Federal Register**. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1000 Independence Avenue, SW., Washington, DC. Any applicant that believes that its application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the material alleged to be confidential has been deleted, together with a statement specifying why the information is alleged to be privileged or confidential.

All applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

It is Therefore Ordered That:

(1) Applications for refund from the funds remitted to the Department of Energy by Howard Oil Company pursuant to the Settlement Agreement executed on April 9, 1985 may not be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

George B. Breznay,

Director, Office of Hearings and Appeals.

Date: October 27, 1986.

APPENDIX A

Customers allegedly overcharged by Howard	Potential refund
Melanol Corp.[1]	$833,496.77
Orange and Rockland Utilities, Inc.	371,839.19
Carbonit Curacao, N.V.[1]	218,599.32
Texaco Inc.	72,344.94
Unidentified Wholesale Customers (middle distillates, residual fuel) 8/19/73-12/31/74	[2] 6,280,461.49
Total	7.776,743.71

[1] Copies of the PD&O were sent to these firms but they were returned to this Office because of outdated addresses. These firms may still apply for refunds.

[2] $0.008186 per gallon.

APPENDIX B

Sun Oil refund customers	Potential refund
Melanol Corp.[1]	$6,087,024.41
Carbonit Curacao N.V.[1]	910,153.03
York Oil Trading & Transportation Co. Inc.[2]	345,815.87
Con Edison	40,913.79
Unidentified Wholesale Customers:	
Kerosene sold during 11/74	[3]403,169.98
No. 2 oils sold from 11/6/73-12/31/73	[4]343,644.98
Total	8,130,722.05

[1] Copies of the PD&O were sent to these firms but they were returned to this Office because of outdated addresses. These firms may still apply for refunds.

[2] See footnote 13 concerning eligibility.

[3] $0.381705 per gallon.

[4] $0.357903 per gallon.

[FR Doc. 86-25180 Filed 11-6-86; 8:45 am]

BILLING CODE 6450-1-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59230A; FRL-3105-2]

Certain Chemical Approval of Test Marketing Exemption

AGENCY: Office of Pesticides and Toxic Substances, Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-86-59. The test marketing conditions are described below.

EFFECTIVE DATE: October 23, 1986.

FOR FURTHER INFORMATION CONTACT: John G. Davidson, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Environmental Protection Agency, RM. E-613, 401 M St., SW., Washington, DC 20460, (202-382-3373).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds

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that the manufacture, processing, distribution in commerce, use, and disposal of the substance for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approved TME-86-59. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-86-59. A bill of lading accompanying each shipment must state that the use of the substance is restricted to those approved in the TME. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA.

1. The applicant must maintain records of the quantity of the TME substance produced.
2. The applicant must maintain records of dates of the shipments to the customer and the quantities supplied in each shipment.
3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T-86-59

Date of Receipt: September 9, 1986.

Notice of Receipt: September 19, 1986 (51 FR 33298).

Applicant: Confidential.

Chemical: (S) Maleic anhydride/tetrahydrofuran adduct and solution.

Use: (G) Open, non-dispersive use in resin systems.

Production Volume: Confidential.

Number of Customers: Confidential.

Worker Exposure: Manufacture; inhalation, a total of 4 workers, up to 2 hrs/day, up to 200 days/yr.

Test Marketing Period: Twelve Months.

Commencing on: October 23, 1986.

Risk assessment: No significant health concerns were identified. Therefore, the test market substance will not present any unreasonable risk of injury to health. EPA identified potential environmental concerns; however, no releases of the test market substance to the environment are anticipated. Therefore, under these conditions the test market substance will not pose any unreasonable environmental risk.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its findings that the test market activities will not present any unreasonable risk of injury to health or the environment.

Dated: October 23, 1986.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 86-24994 Filed 11-6-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51465D; FRL-3105-3]

Certain Chemical Premanufacture Notice; Termination of Review Period

AGENCY: Office Pesticides and Toxic Substances, Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is revoking the remaining portion of a 90-day extension of the review period for (PMN) P-83-677, under the authority of section 5(c) of the Toxic Substances Control Act (TSCA).

FOR FURTHER INFORMATION CONTACT: Eileen Gibson, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Environmental Protection Agency, Rm. E-609, 401 M St., SW., Washington, DC 20460, (202-382-3394).

SUPPLEMENTARY INFORMATION: The original 90-day review period for Premanufacture Notice (PMN) P-83-677 was scheduled to expire on July 26, 1983. EPA published a section 5(c) extension notice for the PMN, in the **Federal Register** of July 27, 1983 (48 FR 34121), to provide the Agency with sufficient time to issue an order under section 5(e). The Order would have prohibited the Company from manufacturing the PMN substance in, or importing it into, the United States pending the submission and evaluation of test data addressing the potential risk of injury to human health. The company suspended the notice review period and submitted more health data and other information. In light of this new data and information, EPA concluded that there were no longer significant concerns for the PMN substance. The review period, including the extension under section 5(c), is scheduled to expire October 21, 1986.

Therefore, EPA is revoking the remaining portion of the extended review, effective immediately.

Dated: October 8, 1986.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 86-24995 Filed 11-6-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3105-8]

Environmental Impact Statements and Regulations Prepared October 20 through 24, 1986; Availability of EPA Comments

Availability of EPA comments prepared October 20, 1986 through October 24, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. D-AFS-L65103-WA, Rating EC2, Wenatchee Nat'l Forest, Land and Resource Mgmt. Plan, WA. SUMMARY: EPA suggested more detailed direction be included in the Standards and Guidelines of the EIS/Plan to ensure adequate protection of water quality and beneficial uses. In particular, EPA suggested that the final documents include a specific commitment to collect necessary baseline data for fisheries and soils prior to initiating activities, and provide a more detailed monitoring program that both adequately addresses the plan's Standards and Guidelines and can rectify the significant data gaps existing for some of the Forest's resources.

ERP No. D-COE-G32051-TX, Rating EO2, Galveston Bay Area Navigation Improvements, Houston Ship and Galveston Channels, TX. SUMMARY: EPA's review has identified significant environmental impact with the HG50 proposal and believes such impacts can be avoided or significantly minimized with the selection of other or newly developed alternatives. The selection of the HG50 Plan was primarily based upon maximization of navigation benefits only. EPA believes this is inconsistent with the stated National planning objectives and would cause unnecessary environmental impact to Galveston Bay. EPA, therefore, objects to the selection of the HG50 Plan and recommends that the COE further evaluate the H45/G50 Plan as the preferred action.

ERP No. D-COE-K36088-CA, Rating EO2, Coyote Creek Flood Control Project, Facilities Construction, CA. SUMMARY: EPA expressed objections because the draft EIS Clean Water Act section 404(b)(1) evaluation is inadequate. EPA specifically objected to the selected "preferred alternative" since other "practicable alternatives, less damaging to the environment, were presented in the draft EIS. EPA also requested: (1) The final EIS provide more information and analysis on other practicable alternatives, and impacts to water quality, fish and wildlife of Coyote Creek; and (2) the cumulative impacts of other projects impacting Coyote Creek be more fully addressed, due to the limited amount of wetlands remaining in the southern San Francisco Bay region.

ERP No. D-FRC-G05045-00, Rating EU3, Lee Creek Hydroelectric and Water Supply Project, Construction and Operation, License, 404 Permit, AR and OK.

Summary

EPA has determined that the selected alternative, Lee Creek Reservoir and hydropower facility, has the potential to cause unacceptable adverse environmental impacts and severe water quality degradation to Lee Creek that could be avoided by other less costly and feasible alternatives. Also, the draft EIS did not adequately investigate all the alternatives including the use of Arkansas River water or groundwater as a water supply and did not adequately analyze the potentially significant environmental impacts of the total project which includes both Phase I and II of the construction and operation of Lee Creek Reservoir. Unless a satisfactory agreement is reached on the significant unresolved issues prior to the final EIS, this EIS is a candidate for referral to the Council on Environmental Quality.

ERP No. D-NRC-K2203-CA, Rating EC2, Humboldt Bay Powser Plant, Unit 3, Decommission, Approval, CA. SUMMARY: EPA has agreed that the proposed action (storage of spent fuel on-site for 30 years) appears to be a reasonable alternative, however, EPA noted that such storage was an interim measure only. EPA requested that NRC prepare a supplemental EIS on the final dismantling of the unit, once numerous technical and environmental issues were resolved. EPA also requested that the final EIS discuss the relationship of Humboldt decommissioning with other NRC rules such as NRC's proposed Decommissioning Criteria for nuclear facilities.

ERP No. D-USN-E11016-00, Rating EC2, Gulf Coast Strategic Homeporting, Dredging, Construction, Operation and Maintenance, FL, MS, AL, LA, and TX. SUMMARY: EPA is sensitive to the national security considerations which prompted the Navy's initiative to disperse this fleet of ships. EPA also noted that the magnitude of the project would require extensive mitigation for just the unavoidable environmental losses attendant to its implementation. Certain of the current selected alternatives foster a number of specific adverse impacts which EPA believes are neither sufficiently mitigated or unavoidable. In particular, EPA's concerns center on the Corpus Christi Ship Channel dredging and disposal activity, exclusive naval use of the Signing River Island at Pascagoula, and the plan to open water dispose of maintenance material within the confines of Mobile Bay.

Final EISs

ERP No. F-AFS-D65010-00, George Washington Nat'l Forest, Land and Resource Mgmt. Plan, WV and VA. SUMMARY: EPA determined that, while most of the concerns with the draft EIS were addressed in the final EIS, there were areas which will require further evaluation in the implementation of the management plan. These areas are: potential adverse water quality impacts from the proposed activities, revision in the categorization of streams, a more detailed mapping of the baseline conditions of the affected area, and a more detailed analysis of the impacts of timber harvesting on critical areas. EPA looks forward to staff involvement in the future development and implementation of the proposed activities.

ERP NO. F-BLM-J70007-UT, House Range Resource Area, Resource Mgmt. Plan, UT. SUMMARY: EPA supports the proposed action as being consistent with environmentally acceptable uses of the resource area. EPA recommended that grazing allotments presently in fair to poor condition or where known resource conflicts exist, either be withdrawn or allotments be reduced.

ERP No. F-FHW-B40061-VT, Chattenden County Circular Highway Construction, VT-127 to I-89, VT. SUMMARY: The final EIS is responsive to EPA's comments on the draft EIS. EPA will work with the project sponsors during design to achieve further reductions in wetland loss and mitigation for unavoidable losses.

ERP No. F-FHW-E-[illegible]-NC, NC-280 Improvement, NC-280 and NC-191 Intersection to I-26 Near Asheville Airport, Construction, 404 Permit, TVA 26A Permit, FAA Permit, NC. SUMMARY: EPA still has concerns about the project as the additional requested at the draft EIS stage was not provided or only partially provided. Information in a short follow-up letter or in the Record of Decision is therefore requested for noise abatement, aquatic ecology/fisheries, and secondary impacts.

ERP No. F-IBR-J35008-CO, Stagecoach Reservoir, Multipurpose Project, Construction, Upper Yampa River Valley, Yampa River, Loan, 10 and 404 Permits, CO. SUMMARY: EPA identified several incomplete responses to EPA concerns. Even though substantial improvements have been made over the draft EIS, resolution of wetlands mitigation, water quality management, and downstream fisheries habitat and channel stability concerns have been only partially achieved in the final EIS. Resolution of the wetlands and water quality management requirements are progressing outside of the EIS process.

ERP No. F-NRC-G06007-TX, South Texas Nuclear Power Plant, Units 1 and 2, Operating Licenses, Colorado R., TX. SUMMARY: The final EIS adequately responded to EPA comments issued on the draft EIS. EPA has not identified any new issues of concern with regard to the proposed action.

Regulation

ERP No. R-CGD-A52162-00, 46 CFR Part 150, Incinerator Vessels, Safety Rules (CGD 84-025) (51 FR 30241). SUMMARY: EPA believes that the proposed rule provides adequate environmental safeguards. EPA did, however, suggest clarification of some specific technical issues.

Dated: November 4, 1986.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 86-25229 Filed 11-6-86; 8:45 am]

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[ER-FRL-3106-7]

Environmental Impact Statements; Filed October 27, through 31, 1986; Availability

Responsible agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements

BEST COPY AVAILABLE

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Filed October 27, 1986 Through October 31, 1986, Pursuant to 40 CFR 1506.9.

EIS No. 860433, Draft, FHW, CA, CA-1 Highway Improvement, Carmel River Bridge to CA-17, CA-68/Pacific Grove Interchange, Monterey County, Due: January 11, 1987, Contact: C. Glenn Clinton (916) 551-1310.

EIS No. 860444, Final FHW, IL, US 51/FAP-412 Improvement, I-55 at Bloomington-Normal to IL-71 near Oglesby, Due: December 8, 1986, Contact: Jay Miller (217) 492-4600.

EIS No. 860445, Final, FHW, TN, TN Connector Route Construction, TN-6/US 31 to I-65, Maury and Williamson Counties, Due: December 8, 1986, Contact: Thomas Ptak (615) 736-5394.

EIS No. 860446, Report, COE, OK, Parker Lake, Muddy Boggy Creek Multipurpose Project, Effects of Dredged or Fill Material Discharges into Waters, Evaluation, Coal County, Contact: Richard Makinen (202) 272-0166.

EIS No. 860447, Final, AFS, NM, Carson National Forest, Land and Resource Management Plan, Due: December 8, 1986, Contact: John Bedell (505) 758-6200.

EIS No. 860448, Final, MMS, AL, MS, LA, TX, 1987 Central and Western Gulf of Mexico Outer Continental Shelf (OCS) Oil and Gas Sales Nos. 110 and 112, Lease Offering, Due: December 8, 1986, Contact: Archie Melancon (202) 343-6264.

EIS No. 860449, Final, BLM, WY, Lander Resource Area, Resource Management Plan, Due: December 8, 1986, Contact: Jack Kelly (307) 332-7822.

EIS No. 860450, FSuppl, FHW, RI, Woonsocket Industrial Highway/RI-99 Construction, I-295 Interchange to RI-146/RI-146A with Connection to RI-122/Mendon Road, Due: December 8, 1986, Contact: Gordan Hoxie (401) 528-4541.

EIS No. 860451, Draft, APH, SEV, PRO, 1987 Rangeland Grasshopper Cooperative Management Program, Due: December 22, 1986, Contact: Charles Bare (301) 436-8295.

Amended Notice

EIS No. 860392, Draft, AFS, CA, Mendocino National Forest, Land and Resource Management Plan, Due: February 2, 1987, Published FR 10-03-86—Review period extended.

EIS No. 860339, Draft, AFS, CA, Eldorado National Forest, Land and Resource Management Plan, Due: January 10, 1987, Published FR 8-29-86—Review period extended.

Dated: November 4, 1986.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 86-25228 Filed 11-6-86; 8:45 am]

BILLING CODE 6560-50-M

[SAB-FRL-3106-7]

Science Advisory Board Stratospheric Ozone Subcommittee; Open Meeting

Under Pub. L. 92-463, notice is hereby given of a two day meeting of the Stratospheric Ozone Subcommittee of the Science Advisory Board. The meeting will be held on November 24-25, 1986 at the Hyatt Regency Bethesda Hotel, 1 Bethesda Metro Center, Bethesda, MD 20814. The meeting will begin at 8:30 a.m. each day and will adjourn at approximately 3:00 p.m. on November 25.

This is the first meeting of the Stratospheric Ozone Subcommittee. The purpose of the meeting is to provide the Subcommitte with the opportunity to conduct an independent scientific review of the scientific adequacy of the assumptions, interpretations and conclusions of scientific information used by the U.S. Environmental Protection Agency in preparing its draft document

An Assessment of the Risks of Stratospheric Modification

The meeting is open to the public. Any member of the public wishing to attend or obtain information about the meeting should notify Dr. Terry F. Yosie, Director, Science Advisory Board or Mrs. Joanna Foellmer, secretary, at (202) 382-4126. Seating is limited, therefore, notification of your attendance must be received by November 14, 1986. Opportunity will be provided for members of the public to make oral presentations to the Subcommitte, and a total time of one hour is available for this purpose. Written scientific comments will be accepted in any form. Any member wishing to present oral comments should notify Dr. Yosie by close of business November 14, 1986. A copy of the Subcommittee roster is available upon request.

EPA submitted its draft document, *An Assessment of the Risks of Stratospheric Modification*, to the Science Advisory Board on October 23, 1986, and also has released it for public review and comment.

Until the SAB review is completed and the document revised, the Assessment will not represent the official views of EPA. The estimates of risks in the document and the numbers contained in it should be viewed as preliminary, and EPA requests that they not be cited or quoted.

The document contains no recommendations for risk management actions. Rather, it is a compilation of scientific assessments of risks. When reviewed and revised it will serve as the basis for EPA decisionmaking. Thus, the review that is now being initiated is solely a scientific review.

The Assessment builds on the atmospheric assessments conducted by the World Meteorological Organization, National Aeronautics and Space Administration, National Oceanic and Atmospheric Administration, the Chemical Manufacturers' Association, and other national and international scientific organizations. Much of this previous work has already been peer reviewed.

The Assessment addresses and integrates information in a variety of areas: Industrial emissions of trace gases that can modify the stratosphere; biogenic emissions of such gases; possible changes in atmospheric concentrations which may occur in response to these atmospheres; the response of ozone in the stratosphere to these changes; the response of the global climate system to stratospheric modification and trace gas build up; basal and squamous skin cancers; melanoma; immune suppression by ultraviolet radiation; crop and terrestial ecosystem effects; aquatic system effects; the effects of UV-B on polymers; the effects of UV-B on tropospheric air quality; sea level rise; and the effects of climate change.

In some cases qualitative assessments are made of these impact areas; in other cases quantitative estimates are made. In all cases, uncertainties are identified and their ramifications examined. An effort is made to examine how these areas are linked together so that the risks can be examined over time.

The reviewed and revised Assessment will serve as a basis for EPA to decide what regulations, if any, to adopt. EPA is scheduled to propose a decision on regulation of chlorofluorocarbons by May 1, 1987 and to make a final decision on such regulation by November 1, 1987. In addition, international negotiations are underway under the United Nations Environmental Programme to develop a protocol to limit chlorofluorocarbons globally.

The risk assessment document, *An Assessment of the Risks of Stratospheric Modification*, can be obtained by contacting Maria Tikoff, U.S. Environmental Protection Agency, PM-220, 401 M Street, SW., Washington, DC 20460 or by calling (202) 382-4036.

EPA's Office of Air and Radiation is also accepting public comment on the risk assessment document. Written comments should be submitted (in duplicate if possible) to: Central Docket Section (LE-130), Environmental Protection Agency, Attention: Docket No. A-86-18, 401 M Street, SW., Washington, DC 20460. Comments will be accepted until December 12, 1986.

A copy of the risk assessment document and comments received will be available for review at the Public Information Reference Unit, (202) 382-5926, EPA Headquarters Library, 401 M Street, SW., Washington, DC 20460, between the hours of 8:00 a.m. and 4:30 p.m. The same materials may also be found in Docket No. A-86-18. The docket is located at the above address in the West Tower Lobby, Gallery 1, and may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays. A reasonable fee may be charged by EPA for copying docket materials.

Dated: October 31, 1986.

Terry F. Yosie,

Director, Science Advisory Board.

Dated: October 31, 1986.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

[FR Doc. 86-25196 Filed 11-6-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

October 30, 1986

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB No.: 3060-0235

Title: Part 31—Uniform System of Accounts

Action: Extension

Respondents: Common carriers

Estimated Annual Burden: 234 Responses; 68 Recordkeepers; 3,326,284 Hours

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-25163 Filed 11-6-86; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Approved by Office of Management and Budget

October 30, 1986.

The following information collection requirement was approved by the Office of Mangement and Budget in accordance with the Paperwork Reduction Act of 1980, (44 U.C.S. 3507 et seq.) on September 30, 1986. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632-7513.

OMB Number: 3060-0166

Title: Part 42—Preservation of Records of Communication Common Carriers

Action: Revision

Respondents: Communication common carriers

Estimated Annual Burden: 68 Recordkeepers; 136 Hours

This information collection requirement has been approved for use through September 30, 1986.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-25164 Filed 11-6-86; 8:45 am]

BILLING CODE 6712-01-M

[Report No. CF-3]

Window Notice for the filing of FM Broadcast Applications

Released: October 28, 1986.

Notice is hereby given that applications for vacant FM broadcast allotment(s) listed below may be submitted for filing during the period beginning on the date of release of this public notice and ending December 8, 1986 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process. *See* § 73.3564(d)(5) of the Commission Rules.

Channel—244 A

Moab, UT

Channel—284 C

Garberville, CA

Channel—286 A

Sweet Home, OR

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-25165 Filed 11-6-86; 8:45 am]

BILLING CODE 6712-01-M

[REPORT NO. 1625]

Petitions for Reconsideration of Actions in Rulemaking Procedures

November 3, 1986.

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions must be filed within 15 days after publication of this Public Notice in the Federal Register. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Woodstock and Broadway, Virginia)

Number of petitions received: 1

Subject: Amendment of Part 97 of the Commission's Rules to Permit Volunteer-Examiner Coordinators (VEC's) to Maintain Pools of Questions for Amateur Operator Examinations. (PR Docket No. 85-196)

Number of petitions received: 1

Subject: WATS-Related and Other Amendments of Part 69 of the Commission's Rules. (CC Docket No. 86-1)

Number of petitions received: 1

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-25166 Filed 11-6-86; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Companion Broadcasting Service Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and State	File No.	MM Docket No.
A. Companion Broadcasting Service, Inc.; Andalusia, AL.	BPH-840919JC	86-401

BEST COPY AVAILABLE

Applicant, city, and State	File No.	MM Docket No.
B. Jeffrey Jerome Jackson and Michael Purnell, d/b/a Jackson-Purnell Broadcasting Co.; Andalusia, AL.	BPH-841226MG	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Comparative, A, B
2. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief Audio Services Division Mass Media Bureau.

[FR Doc. 86-25167 Filed 11-6-86; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Kimberly Harrison et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A. Kimberly Harrison; Galveston, TX.	BPH-840423IG	86-403
B. Irvin Davis, Galveston, TX.	BPH-841114ND	
C. Ellen Louise Gardner; Galveston, TX.	BPH-841114MN	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. City Coverage-FM, B, C
2. Air Hazard, B
3. Comparative, A, B, C
4. Ultimate, A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, D.C. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division Mass Media Bureau.

[FR Doc. 86-25168 Filed 11-6-86; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing, Charles J. Saltzman et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and State	File No.	MM Docket No.
A. Charles J Saltzman; Van Buren, IN.	BPH-850702MC	86-402
B. Marion College; Van Buren, IN.	BPH-850711MI	
C. Umberger Radio; Van Buren, IN.	BPH-850711MJ	
D. Marion Radio Corp.; Van Buren, IN.	BPH-850711ML	
E. Randall L (Ron) Houston; Van Buren, IN.	BPH-850712MP	
F. Altcom of Indiana, Inc.; Van Buren, IN.	BPH-850712MQ	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Main Studio, B
2. Air Hazard, A,C,F,
3. Comparative, ALL
4. Ultimate, ALL

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington D.C. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 86-25169 Filed 11-6-86; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Winstanley Broadcasting Inc. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A. Winstanley Broadcasting, Inc.; Panama City Beach, FL.	BPH-840210AS	86-392
B. Marcus D. Sloan and Herlinda Valdez Thompson d/b/a Gulf Coast Broadcasting; Panama City Beach, FL.	BPH-840226CA	
C. Jane O'Quinn and Kim E. Walker d/b/a Panama City Beach Broadcasters; Panama City Beach, FL.	BPH 840608IA	
D. Gulf Property and Investment Co., Inc.; Panama City Beach, FL.	BPH-840611IG	
E. Bay One Hundred, Inc.; Panama City Beach, FL.	BPH-840611IS	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify

whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, B, D
2. Comparative, A, B, C, D, E
3. Ultimate, A, B, C, D, E.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 86–25170 Filed 11–6–86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

The Bank of New York Co., Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 21, 1986.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Bank of New York Company, Inc.*, New York, New York; to acquire 100 percent of the voting shares of North American Bancorp, Inc., Garden City, New York, and thereby indirectly acquire Long Island Trust Company, N.A., Garden City, New York.

In connection with this application, Applicant also proposes to acquire NABAC Investment Services, Inc., Garden City, New York, and thereby engage in securities brokerage services, related securities credit activities pursuant to Regulation T and incidental activities such as offering custodial services, IRAs and management services pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 3, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–25143 Filed 11–6–86; 8:45 am]

BILLING CODE 6210-01-M

Citicorp; Proposal To Issue Variably Denominated Payment Instruments Having Unlimited Maximum Face Values

Citicorp, New York, New York, has applied, pursuant to § 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage directly or indirectly through its subsidiary, Citicorp Services Inc., Chicago, Illinois, in the issuance of variably denominated payment instruments without limitation as to their face amount. The Board previously has approved the issuance of certain payment instruments with no maximum limitation on their face amount but subject to a number of restrictions absent in the instant application. *Wells Fargo & Company*, 72 Federal Reserve Bulletin 148 (1986).

In the current proposal, Citicorp proposes to issue payment instruments through nonaffiliates as well as through its own depository institution subsidiaries. Where payment instruments are issued or sold by these nonaffiliates, Citicorp proposes that reserve requirements be eliminated. Where payment instruments with face amounts of over $10,000 are issued or sold by Citicorp affiliates, Citicorp would place only the excess over $10,000, rather than the entire face amount, in demand deposit accounts at Citicorp bank subsidiaries until the instruments are paid.

The issue presented by this application is whether the proposal is consistent with the policies expressed by the Board in its *Wells Fargo* order.

In its *Wells Fargo* order, the Board expressed concern that the issuance of such instruments by a bank holding company or its nonbanking subsidiaries with a face amount of over $10,000 could result in an adverse, possibly erosive, effect on the reserve base, and hence an adverse effect on monetary policy, because such instruments generally are not subject to transaction account reserve requirements. In that regard, the Board conditioned its approval of the proposal on a commitment that Wells Fargo cause to be deposited into a demand deposit account at its bank subsidiary all of the proceeds of any official check having a face value in excess of $10,000, thereby rendering the proceeds subject to reserve requirements. The Board also made its approval subject to its own continued evaluation of the activity's potentially adverse effects on monetary policy.

Citicorp contends that since its nonbanking competitors in this activity are not required to maintain reserves with respect to the instruments, Citicorp, which is so required, is at a competitive disadvantage. Citicorp claims that it cannot simultaneously comply with the reserve requirements and competitively price its services. Citicorp also argues that its proposal would not adversely affect monetary policy because: (1) The volume of third-party remittance service checks outstanding is only a small part of the total money supply; (2) seasonal

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fluctuation in the volume of remittance service balances is large but predictable, while irregular variations are modest; and (3) Citicorp plans to prepare frequent, timely reports of the amounts issued by bank and non-bank clients.

Interested persons may express their views in writing on the question of whether consummation of this proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."

Any views or requests for hearing should be submitted in writing and received by Williams W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than November 28, 1986. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, November 3, 1986.

James Mc Afee,

Associate Secretary of the Board.

[FR Doc. 86-25144 Filed 11-6-86; 8:45 am]

BILLING CODE 6210-01-M

First Hawaiian, Inc., Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 26, 1986.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Hawaiian, Inc.*, Honolulu, Hawaii; to acquire Crocker Financial Corporation, Ltd., Honolulu, Hawaii, and thereby engage in operating an industrial bank, Morris Plan bank, or industrial loan company pursuant to § 225.25(b)(2) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 3, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-25145 Filed 11-6-86; 8:45 am]

BILLING CODE 6210-01-M

First Mid-Illinois Bancshares, Inc., et al.; Notice of Applications To Engage de Novo in Permissible Nonbanking Activities

November 3,1986.

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later November 26, 1986.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Mid-Illinois Bancshares, Inc.*, Mattoon, Illinois; to engage de novo through its subsidiary Mid-Illinois Data Services, Inc., Mattoon, Illinois, in providing data processing services pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted in the State of Illinois.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Mission Valley Bancorp*, Pleasanton, California; to engage *de novo* in providing investment and financial advice in real estate development to non-depository institutions or individuals who would hold equity interests in real estate development projects as limited partners including project location, analysis, monitoring (contract and document review, site inspection, market analysis review, financial accounting, budgetary analysis and reporting to investor, pursuant to § 225.25(b)(4) of the Board's Regulation Y.

2. *The Tokai Bank, Ltd.*, Nagoya, Japan; to engage *de novo* through its subsidiary, Tokai Trust Company of New York, New York, New York, in trust company activities permissible under § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 3, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-25146 Filed 11-6-86; 8:45 am]

BILLING CODE 6210-01-M

First Union Corp.; Application To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 26, 1986.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Union Corporation*, Charlotte, North Carolina; to engage *de novo* through its subsidiary, First Union Brokerage Services, Inc., Charlotte, North Carolina, in the purchase and sale of precious metals (i.e. gold and silver bullion and coins) for the account of customers.

Board of Governors of the Federal Reserve System, November 3, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-25147 Filed 11-6-86; 8:45 am]

BILLING CODE 6210-01-M

Irving Bank Corp.

This notice corrects a previous **Federal Register** document (FR Doc. 86-23601), published at page 37494 of the issue for Wednesday, October 22, 1986.

Under the Federal Reserve Bank of New York, the entry for Irving Bank Corporation is corrected to read as follows:

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Irving Bank Corporation*, New York, New York; to engage *de novo* through its subsidiary, Irving Life Insurance Corporation, Phoenix, Arizona, in underwriting, as reinsurer, credit life insurance and credit accident and health insurance directly related to extensions of credit by banking and nonbanking subsidiaries of Applicant pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Comments on this application must be received by November 11, 1986.

Board of Governors of the Federal Reserve System, November 3, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-25148 Filed 11-6-86; 8:45 am]

BILLING CODE 6210-01-M

Sterling Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 26, 1986.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Sterling Bancorp, Inc.*, Eleanor, West Virginia; to acquire 100 percent of the voting shares of Milton Tri-County Bank, Milton, West Virginia.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *AmSouth Bancorporation*, Birmingham, Alabama; to merge with First Tuskaloosa Corporation, Tuscaloosa, Alabama, and thereby indirectly acquire The First National Bank of Tuskaloosa, Tuscaloosa, Alabama.

2. *Bank Corporation of Georgia*, Fort Valley, Georgia; to acquire 84 percent of the voting shares of Southern Bank and Trust Company, Savannah, Georgia. Comments on this application must be received by November 22, 1986.

3. *Citizens Bancorp, Investment, Inc.*, Lafayette, Tennessee; to acquire 80 percent of the voting shares of Dale Hollow Holding Company, Celina, Tennessee, and thereby indirectly acquire Bank of Celina, Celina, Tennessee.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Michigan Bank Corporation*, Zeeland, Michigan; to acquire 100 percent of the voting shares of State Savings Bank, Lowell, Michigan. Comments on this application must be received by November 24, 1986.

2. *Valley Bancorporation*, Appleton, Wisconsin; to acquire 100 percent of the voting shares of Suburban State Bank, Hartland, Wisconsin.

D. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

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1. *Ballard Kevil Bancorp, Inc.*, Kevil, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of The Kevil Bank, Kevil, Kentucky.

Board of Governors of the Federal Reserve System, November 3, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-25149 Filed 11-6-86; 8:45 am]

BILLING CODE 6210-01-M

[Docket No. R-0582]

Fees for Federal Reserve Bank Check Collection Services; Request For Comment

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comments.

SUMMARY: The Board is requesting public comment on a proposal to allow the Federal Reserve Banks to provide a redeposit service for low-dollar cash items that are returned unpaid. Under this service, Reserve Banks, following the instructions of their senders, would intercept low-dollar cash items being returned for insufficient or uncollected funds, and redeposit them for collection.

DATE: Comments must be received by December 18, 1986.

ADDRESS: Comments, which should refer to Docket No. R-0582, may be mailed to the Board of Governors of the Federal Reserve System 20th Street and Constitution Avenue NW., Washington, DC 20551, to the attention of Mr. William W. Wiles, Secretary, or delivered to Room B-2223 between 8:45 a.m. and 5:15 p.m. Comments may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding the Availability of Information, 12 CFR 261.6(a).

FOR FURTHER INFORMATION CONTACT: Earl G. Hamilton, Assistant Director (202/452-3879), or Gayle Thompson, Senior Analyst (202/452-2934), Division of Federal Reserve Bank Operations, or Earnestine Hill or Dorothea Thompson, Telecommunication Device for the Deaf (TDD) (202/452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Currently, approximately 42-44 billion checks are written each year. According to a study conducted by the Bank Administration Institute in 1985, slightly less than one per cent of all checks are returned unpaid. Of these, 53 per cent had a dollar value of less than $100. Many collecting institutions routinely redeposit for collection low-dollar checks returned for insufficient funds, because a large proportion of these items are paid upon their second presentment. The collecting institutions find this practice to be simpler and less expensive than returning the items to their depositing customers. Several years ago, institutions engaging in this practice requested that the Federal Reserve consider offering a service to accelerate this process.

In resonse to these requests, a pilot program was implemented in the St. Louis Federal Reserve District in July, 1984, to test the feasibility of accelerating the reclearing of certain low-dollar return items. The pilot was designed to determine what benefits could be provided to collecting institutions and the payments mechanism if the Reserve Banks were to intercept and redeposit these items on behalf of their senders.[1]

In May, 1985, based on encouraging results from the initial St. Louis program, the pilot was expanded to include the Atlanta and Cleveland Reserve Banks. The purpose of the expansion was to provide comparative data to enable the System to evaluate more accurately the benefits of the return item reclearing service.

During the pilot, the reclearing service was offered as an optional sevice to senders. The pilot Reserve Banks would intercept cash items below a specified dollar value [2] being returned for the first time due to insufficient or uncollected funds.

Thirty-three senders located in the three pilot Districts chose to participate in the pilot. The majority were in the original pilot District (St. Louis), where the service was provided to a cross-section of senders, including large commercial banks, small commercial banks, and thrifts.

Data collected by the three pilot Districts show that substantial proportions of the senders' return items are eligible for the reclearing service. In St. Louis and Cleveland, approximately 40 per cent of the items to be returned to the participating senders are eligible to be redeposited. In Atlanta, where the dollar cutoff for some institutions is higher, eligible volume is 55 per cent. Approximately 64 per cent of the recleared checks are paid on the second presentment in St. Louis. In Cleveland and Atlanta, the success rates are 57 and 58 per cent, respectively.

Results of the pilot indicate that the reclearing service can benefit senders by reducing the costs associated with low-dollar return items and by accelerating collection times. A survey of selected users of the pilot service found that depositor savings will vary based on the degree that special handling services are provided to corporate customers, procedures for charging the item back to the institution's depositors, and the overall volume of returned checks. While senders of all sizes indicated cost savings, large senders reported labor savings averaging $.034 per redeposited check. Other types of savings include fewer out-of-balance conditions and missing items, postage expense for notifying depositing customers of returned checks, and elimination of the need to expand their return items processing facilities.

The reclearing service accelerates presentment times for most returned checks by one day, because the item no longer travels back to the sender before being redeposited. Thus, for most of the returns that clear when redeposited, the time required for the check to be finally paid [3] is also reduced by at least one day. One pilot participant reported that the increased availability reduces clearing float costs by approximately $.021 per item.

One potential disadvantage to senders using the service is the delay in learning of each specific return. For those returned items that are not paid upon their second presentment, the sender will not be able to associate a particular returned item with a customer's account until it has received the actual item. This time delay could be several days. Nevertheless, the Board believes that this disadvantage is minimized because the dollar value of redeposited items is minimal, and in most cases the sender will still be able to recover the funds from its depositor. In any event, participation by senders will be voluntary, and those senders that believe this factor will be a serious disadvantage to them may opt not to participate.

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[1] A "sender" is an entity that sends items to a Federal Reserve Bank. A sender may be a depository institution, an international organization, a foreign correspondent, a branch or agency of a foreign bank, or another Reserve Bank. 12 CFR 210.2(k). As Reserve Banks will not be reclearing items for other Reserve Banks, they will be excluded from the meaning of the term "sender" when it is used in this notice.

[2] The dollar cutoff is $100 in St. Louis. Atlanta and Cleveland allow the sender to choose its own dollar cutoff. Experience in Cleveland indicates that $100 is favored by the majority of senders. In Atlanta, however, one sender elected to use a dollar cutoff of $900.

[3] "Final payment" occurs when the paying bank becomes accountable for an item under 12 CFR 210.9(a) and no longer has the right to recover payment under 12 CFR 210.12(a).

The experience of the pilot indicates that allowing Reserve Banks to offer this service on a voluntary basis could be beneficial to both the participating senders and the payments mechanism. Participating senders will have the opportunity to lower their cost and final payment of recleared items will be advanced by at least one day. To the extent that an optional reclearing service could make the processing of low-dollar returns more efficient, it could provide significant improvements for the overall return process. Removing these items from the return items processing at the senders and prior collecting institutions also allows these institutions more resources to devote to the processing of large-dollar returns.

The incremental costs to the Reserve Banks of providing this service are minimal. Because the service can be provided using existing equipment, incremental costs to the Reserve Banks consist primarily of labor costs associated with sorting, listing, balancing, and preparing the items for collection. To recover these costs, the Board proposes that the Federal Reserve Banks establish a two-part price structure for the service, consisting of a fixed daily fee for reclearing items up to a volume level specified by the Reserve Bank and a per item fee for any additional volume above the specified level. The fixed daily fee will recover from each participating sender the daily costs of ascertaining whether there are returns eligible for redeposit. Even if no eligible returns are found on a given day, the Reserve Bank should charge a fee for the service.

The Board is also proposing that Reserve Banks allow participating senders to select their own dollar limits for reclearable returns. Pilot experience suggests that, although preferences may vary considerably regarding the dollar threshold used to select items for automatic redeposit, most institutions would select a cutoff of $100 or less.

In its policy statement, "The Federal Reserve in the Payment System" August 14, 1984), the Board established a policy that before the Federal Reserve introduces a new service or a major service enhancement, all of the following criteria must be met:

> (1) The Federal Reserve must expect to achieve full recovery of costs over the long run.
>
> (2) The Federal Reserve must expect its provision of the service to yield a clear public benefit, including, for example . . . improving the efficiency of the payment mechanism or reducing the use of real resources. . . .
>
> (3) The service should be one that other providers alone cannot be expected to provide with reasonable effectiveness, scope, and equity.

The Board believes that the proposed low-dollar reclearing service meets all of these criteria:

(1) Reserve Banks will recover all costs associated with the service.

(2) The service will yield clear public benefits through improving the efficiency of the return item process and reducing the amount of real resources expended by collecting institutions in the return item process.

(3) For checks that are collected through the Federal Reserve, Reserve Banks alone can provide the service to their senders. Thus, while other collecting institutions can and do provide reclearing services for institutions that send items to them for collection, the Federal Reserve must provide this service for it to be available to institutions that choose to collect some or all of their cash items through a Reserve Bank.

Accordingly, the Board is proposing that Reserve Banks be permitted to offer a redeposit service for low-dollar cash items that are returned unpaid, and invites all interested members of the public to comment on all aspects of the proposed service.

By order of the Board of Governors of the Federal Reserve System, November 3, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-25142 Filed 11-6-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HSS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on October 31, 1986.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of packages.)

Centers for Disease Control

Subject: Prevention Practices in Adult Medicine—NEW—
Respondents: Individuals or households; Businesses or other for-profit

Food and Drug Administration

Subject: New Drug for Investigational Use—21 CFR 312—Reinstatement—(0910-0014)
Respondents: Businesses or other for-profit; Non-profit institutions; Small businesses or organizations

Office of the Assistant Secretary for Health

Subject: NCHS Laboratory-Based Questionnaire Research—NEW—
Respondents: Individuals or households
OMB Desk Officer: Bruce Artim

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-8650 for copies of package.)

Subject: Medicare Participating Physician or Supplier Agreement—Extension—(0938-0373) HCFA-460/463
Respondents: State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations
OMB Desk Officer: Fay S. Iudicello

Office of Human Development Services

(Call Reports Clearance Officer on 202-472-4415 for copies of package.)

Subject: Title XX of the Social Security Act, Social Services Block Grant Program—Extension—(0980-0125)
Respondents: State or local governments
OMB Desk Officer: Fay S. Iudicello

Social Security Administration

(Call Reports Clearance Officer on 301-594-5706 for copies of package.)

Subject: Request for Correction of Earnings Record—Extension—(0960-0029)
Respondents: Individuals or households
Subject: Modified Benefit Formula Questionnaire—Extension—(0960-0395)
Respondents: Individuals or households
OMB Desk Officer: Judy A. McIntosh

Copies of the above information collection clearance packages can be obtained by calling the Reports Clearance Officer on the number shown above.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503

ATTN: (name of OMB Desk Officer)

Dated: October 4, 1986.

Wallace O. Keene,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86-25247 Filed 11-6-86; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[FDA 225-86-2001]

Memorandum of Understanding Between the Export Inspection Service, Australia, and the Food and Drug Administration

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between the Export Inspection Service, Australia Department of Primary Industry (DPI), and FDA, U.S. Department of Health and Human Services. This MOU describes the cooperative methods that FDA and DPI will employ to assure that fresh frozen molluscan shellfish exported from Australia and offered for import into the United States are safe and wholesome and have been harvested, processed, transported, and labeled in accordance with the provisions of the National Shellfish Sanitation Program and the requirements of law.

DATE: The agreement became effective September 12, 1986.

FOR FURTHER INFORMATION CONTACT: Walter J. Kustka, Intergovernmental and Industry Affairs Staff (HFC-50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1583.

SUPPLEMENTARY INFORMATION: In accordance with § 20.108(c) (21 CFR 20.108(c)), which states that all agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing this memorandum of understanding.

Dated: October 31, 1986.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

Memorandum of Understanding Between the Food and Drug Administration, Department of Health and Human Services, United States of America and the Export Inspection Service, Department of Primary Industry, Australia, Concerning the Sanitary Control of Fresh Frozen Molluscan Shellfish Destined for Exportation From Australia to the United States

I. Purpose

The Food and Drug Administration (FDA) and the Department of Primary Industry (DPI) affirm by this memorandum their intention to cooperate in seeking to assure that fresh frozen molluscan shellfish exported from Australia and offered for import into the United States of America (U.S.) are safe and wholesome and have been harvested, processed, transported, and labeled in accordance with the provisions of the National Shellfish Sanitation Program (NSSP) and the requirements of the U.S. Federal Food, Drug, and Cosmetic Act, the U.S. Public Health Service Act, the U.S. Fair Packaging and Labeling Act, and the Australian Export Control Act. This memorandum defines the sanitation practices and administrative controls and describes the responsibilities of FDA and DPI in implementing these practices and controls. By this document, under the NSSP, FDA officially recognizes DPI as the authority for certifying shellfish shippers intending to export fresh frozen shellfish from Australia to the United States.

II. Background

The sanitary control of shellfish in interstate commerce in the United States is administered by FDA in cooperation with the American States under the NSSP. The NSSP provides the States and industry with a mechanism by which shellfish dealers can be "certified" as shipping shellfish that have been harvested, handled, and processed in conformity with the sanitation and administrative guidelines of the NSSP. In most instances, food control authorities rely on the integrity of the NSSP certification controls to determine the acceptability of the shellfish product.

FDA, the States, and many foreign control authorities recognize the substantial benefit that can result from the use of a similar procedure for imported shellfish. Therefore, it is FDA's policy to enter into memoranda of understanding with foreign control authorities willing to apply the sanitation and administrative controls of the NSSP to exported lots of shellfish that are to be offered for import to the United States. These agreements permit the foreign control authorities to certify foreign processors and shippers of fresh frozen shellfish and to have these dealers listed on FDA's "Interstate Certified Shellfish Shippers List" (ICSSL). FDA and American State authorities, in turn, will recognize these shipments as being certified under the NSSP.

Certification of foreign shellfish dealers exporting to the United States is normally limited to those dealers shipping fresh frozen products. This limitation is based on fishery conservation concerns over the possible introduction of exotic infectious organisms into U.S. fishery stocks from foreign fishery stocks. The processing and freezing of shellfish substantially reduce the possibility that such introductions will occur.

The sanitary control of shellfish in Australia is administered by DPI in cooperation with Australian State control agencies. DPI has authority under the Australian Export Control Act of 1982 to inspect shellfish processors preparing products for export, to set quality standards, and to certify compliance of export lots with these standards. Australian State public health and fishery authorities have jurisdiction under various Australian Federal and State public health and fishery regulations to survey and classify shellfish growing areas and to control harvesting and shipping operations. Laboratory support is provided by private laboratories under agreements with Australian Federal and State authorities.

III. Substance of Agreement

A. Definitions

1. *Advisory agencies.* Advisory agencies are the Australian Government Analytical Laboratories or other laboratories accredited by the Australian National Association of Testing Authorities that provide analytical support to shellfish control authorities associated with this memorandum.

2. *Central file.* Central file is the location where each shellfish sanitation authority stores and maintains program information, data, and reports.

3. *Enforcement agencies.* Enforcement agencies are the Department of Primary Industry (DPI) and the Australian State enforcement agencies having regulatory authority over the production, harvesting, processing, transport, classification, and export of certified shellfish to the United States under the terms of this memorandum.

4. *Lot.* A lot is a collection of primary containers or units of the same size, type, and style, produced under conditions as nearly uniform as possible, designated by a common container code or marking, and in any event, containing no more than a day's production.

5. *Shellfish.* Shellfish are edible species of oysters; clams, including cockles; and mussels.

6. *State enforcement agencies.* State enforcement agencies are the Australian State departments that have regulatory authority over the production, harvesting, transport, and processing of shellfish and the classification, monitoring, and control of harvest areas, and that have entered into an agreement with DPI for the purposes of this memorandum.

B. DPI Responsibilities

DPI will: 1. Develop and maintain interagency agreements and protocols with Australian State enforcement agencies to coordinate Australian Federal and State implementation of NSSP controls, as necessary.

2. Maintain NSSP required legal, administrative, and sanitation controls over shellfish exported by certified Australian

dealers by ensuring that Australian State enforcement agencies:

(a) Classify shellfish harvesting areas based upon comprehensive sanitation surveys;

(b) Prepare sanitation survey reports and maintain survey data in a central file;

(c) Update survey data annually and periodically review the classification status of each harvest area;

(d) License and supervise harvesting and relaying operations and provide proper source labeling for shellstock;

(e) Restrict harvesting of shellfish from unapproved areas and take appropriate enforcement action against violators; and

(f) Evaluate laboratory practices at least annually and encourage participation in FDA's voluntary quality assurance programs.

3. Inspect firms processing fresh frozen shellfish for export to ensure compliance with NSSP controls.

4. Certify dealers exporting fresh frozen shellfish that comply with NSSP requirements on an annual basis and notify FDA of the name, location, and certification number of those firms on Form FD–3038B, "Shellfish Certification."

5. Cancel the certificate of any firm operating out of compliance with the requirements of the NSSP, utilizing shellfish from nonapproved areas, or shipping shellfish that do not conform to the requirements of the U.S. Federal Food, Drug, and Cosmetic Act and the U.S. Public Health Service Act.

6. Ensure that all containers of each lot of fresh frozen shellfish certified for export are identified with the shipper's address, certification number, and lot number or code, together with all other information required by the U.S. Federal Food, Drug and Cosmetic Act, the U.S. Public Health Service Act, and the U.S. Fair Packaging and Labeling Act.

7. Maintain a central file of program records including but not necessarily limited to sanitation survey reports, inspection reports, laboratory evaluation reports, and enforcement actions. These records are made available to FDA for review upon request.

8. Provide inspection results, as appropriate, and other program information, including FDA evaluation reports, interpretations, and laboratory quality assurance program information, to Australian State enforcement and advisory agencies.

9. Review periodically, but at least annually before recertification, the level of conformity to NSSP requirements that is being enforced by DPI and the Australian State enforcement and advisory agencies and provide a report of the review to FDA as necessary, or at least annually.

10. Provide FDA with information about current or potential new public health problems affecting shellfish intended for export to the United States.

11. Make travel arrangements in Australia for, and conduct joint inspections with, FDA evaluation officers at FDA's request. Meet transportation expenses in Australia of FDA officials making inspections in accordance with this memorandum.

C. FDA Responsibilities

FDA will: 1. Recognize Australia as a participant in the NSSP with full rights to participate in national workshops, cooperative research programs, seminars, training courses, and other NSSP activities; to make recommendations for changes or improvements in the procedures, methods, standards, and guidelines of the NSSP; and to have DPI certify Australian dealers for inclusion in FDA's ICSSL.

2. Publish the names, locations, and certification numbers of Australian shellfish shippers certified by DPI in the monthly publication of the ICSSL upon receipt of Form FD–3038B.

3. Provide limited training and technical assistance to enforcement agency personnel in shellfish sanitation program administration, laboratory procedures, and growing area classification procedures upon request of DPI and subject to availability of funds for such purposes.

4. Inform DPI of the reasons for any FDA detentions of certified frozen shellfish shipments from Australia. Additional information that FDA will provide shall include, but not necessarily be limited to:

(a) Commodity identification;

(b) Commodity code, lot, and certification number;

(c) Name and address of the shipper;

(d) Sampling procedure;

(e) Methods of analysis and confirmation; and

(f) Administrative guidelines.

5. Advise DPI of any questions that FDA has received from U.S. food control officials concerning the safety or wholesomeness of frozen shellfish imported into the United States from Australia. Upon receiving such questions, FDA will seek to determine the reason for the problems and will inform DPI of any action taken under American State and local laws or regulations with regard to such frozen shellfish imports.

6. Participate with DPI in joint evaluations of the Australian shellfish sanitation program as it pertains to certifying dealers. Joint evaluations normally will be conducted at 2-year intervals to ascertain Australia's level of conformity with the requirements of the NSSP and the responsibilities specified in this memorandum. FDA will pay round trip transportation expenses between the United States and Australia and the per diem of the members of the FDA evaluation team while in Australia.

7. Facilitate the exchange of information between DPI and U.S. Federal and State agencies concerned with the introduction and proliferation of exotic infectious organisms that might be carried by Australian shellfish.

D. Shared Responsibilities

DPI and FDA will: 1. Exchange information through nominated liaison officers concerning significant proposed and final changes in program operations and procedures including:

(a) Methods and procedures for sampling;

(b) Methods of analysis;

(c) Methods of confirmation;

(d) Administrative guidelines, tolerances, specification standards, and nomenclature;

(e) Reference standards; and

(f) Inspection procedures.

Final changes will be considered incorporated into the appropriate provisions of this memorandum 90 days after receipt unless written objection is provided to the other party.

2. Provide written notification to the other party of any changes in liaison officers. Changing liaison officers will not otherwise constitute a change in the provisions of this memorandum.

E. References

1. U.S. Department of Health and Human Services (formerly U.S. Department of Health, Education, and Welfare), PHS, National Shellfish Sanitation Program, Manual of Operations: Part I *Sanitation of Shellfish Growing Areas*, 1965 Revision; Part II *Sanitation of the Harvesting and Processing of Shellfish*, 1965 Revision; Part III *Public Health Service Appraisal of State Shellfish Sanitation Programs*, 1965 Revision, PHS Publication No. 33.

2. Association of Official Analytical Chemists, Official Methods of Analysis, 14th Ed., Association of Official Analytical Chemists, Inc., 1111 North 19th St., Suite 210, Arlington, VA 22209, U.S.A., 1984.

3. Food and Drug Administration, "Interstate Certified Shellfish Shippers List," published monthly and distributed to food control officials and other interested persons by FDA, Center for Food Safety and Applied Nutrition, Shellfish Sanitation Branch (HFF–344), 200 C St. SW., Washington, DC 20204.

4. Federal Food, Drug, and Cosmetic Act, 1938, as amended, U.S. Code, Title 21.

5. Public Health Service Act, as amended, U.S. Code, Title 42.

6. Fair Packaging and Labeling Act, Pub. L. 89–755, approved November 3, 1966.

7. American Public Health Association, Recommended Procedures for the Examination of Seawater and Shellfish, 4th Ed., 1970, APHA, Inc., 1015 15th St. NW., Washington, DC 20036.

8. Food and Drug Administration, "Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding Human Food," regulations, 21 CFR Part 110.

9. Food and Drug Administration, "Definitions and Standards for Food," "Fish and Shellfish" regulations, 21 CFR Part 161.

10. Food and Drug Administration, "Specific Administrative Decisions Regarding Interstate Shipments," "Shellfish," 21 CFR 1240.60.

11. Food and Drug Administration, "Food Service Sanitation on Land and Air Conveyances, and Vessels," "Special Food Requirements," 21 CFR 1250.26.

12. Export Control Act, 1982.

13. Prescribed Goods (Orders) Regulations.

14. Prescribed Goods (General) Orders.

15. Fish Orders.

IV. Participating Parties

A. Export Inspection Service, Department of Primary Industry, Edmund Barton Bldg., Canberra ACT 2600, Australia.

B. Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, U.S.A.

V. Liaison Officers

A. For Department of Primary Industry: Director (Fish Export Standards), (currently David Walter), Export Inspection Service, Department of Primary Industry, Canberra

ACT 2600, Australia, Telephone: 062–725399, Telex: 62188.

B. For Food and Drug Administration: Chief, Shellfish Sanitation Branch, (currently J. David Clem), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0149.

VI. Period of Agreement

This agreement will become effective upon acceptance by both parties and will remain in effect indefinitely. It may be modified by mutual consent or terminated by either party upon a 30-day advance written notice to the other.

Dated: June 9, 1986.

Approved and accepted for the Department of Primary Industry of Australia.

P.H. Langhorne,

Director, Export Inspection Service.

Dated: September 12, 1986.

Approved and accepted for the Food and Drug Administration, Department of Health and Human Services, United States of America.

John M. Taylor,

Acting Associate Commissioner for Regulator Affairs.

[FR Doc. 86–25153 Filed 11–6–86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86P–0367]

Petition Requesting 10 Years' Exclusivity for Divalproex Sodium

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: In keeping with agency policy, the Food and Drug Administration (FDA) is announcing the filing of a petition requesting a period of 10 years' marketing exclusivity under section 505(j)(4)(D)(i) and (c)(3)(D)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)(4)(D)(i) and (c)(3)(D)(i)) for divalproex sodium, an antiepileptic drug. The agency previously has accorded divalproex sodium a period of 2 years' exclusivity under section 505(j)(4)(D)(v) and (c)(3)(D)(v) of the act. FDA is giving notice of the filing of this petition to all interested persons because, should FDA decide to grant the petition, this decision may affect the date when approval for marketing of generic versions of divalproex sodium may be made effective.

DATE: Comments by December 8, 1986.

ADDRESS: Requests for a copy of the petition and written comments regarding the petition to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Carol A. Kimbrough, Center for Drugs and Biologics (HFN–364), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8046.

SUPPLEMENTARY INFORMATION: On September 24, 1984, the President signed into law the Drug Price Competition and Patent Term Restoration Act of 1984 (the 1984 Amendments). The 1984 Amendments amend the Federal Food, Drug, and Cosmetic Act authorizing, among other things, the agency to accept abbreviated new drug applications (ANDA's) for most previously approved new drug products. This legislation also provides for extending the term of a patent which claims a product, use, or method of manufacture that was subject to a regulatory review period in accordance with the act. Further, the 1984 Amendments provide for periods of exclusive marketing of certain new drug products submitted in an application (or a supplement to an application) under section 505(b) of the act. An ANDA or application described in section 505(b)(2) of the act for such a drug may not be submitted (under some provisions) or its approval made effective (under other provisions) until the period of "exclusive" marketing ends.

The new drug products that have been granted "exclusivity" under one of the several exclusivity provisions of the 1984 Amendments are set forth in the volume entitled "Approved Prescription Drug Products with Therapeutic Equivalence Evaluations" (the list) and its monthly supplements. In addition, the period of "exclusivity" is shown. Further, the list also shows those products that are covered by a patent and when the patent expires.

The agency believes that all exclusivity information appearing in the list is correct, and expects that such information appearing in any future supplements to the list will also be correct. However, interested persons may disagree with the agency's findings and believe that FDA has excluded exclusivity information that should have been included, or included exclusivity information that should have been excluded. Accordingly, FDA has established a policy that, whenever an interested person submits a citizen petition requesting such inclusion or exclusion, the agency will publish a notice in the **Federal Register** of the availability of the petition. This publication is constructive notice to all interested persons that they may be affected by the petition and gives them an opportunity to submit their comments on the petition to the agency. Persons potentially affected include holders of approved ANDA's or approved applications described in section 505(b)(2) of the act, the effective dates of which might be changed by a decision to grant the petition, persons who have pending ANDA's or applications described in section 505(b)(2) of the act or who contemplate submitting such applications that, when approved, would have effective dates that will be determined by the decision on the petition or, in some cases, persons whose right to submit such applications may be affected.

Although the agency has made an initial determination that divalproex sodium is entitled only to 2 years' exclusivity, in accordance with the policy above, FDA is announcing the filing of a petition submitted on behalf of Abbott Laboratories (Abbott), requesting that divalproex sodium be accorded 10 years' exclusivity. Abbott, which has submitted both a petition for exclusivity (86P–0367/CP) and a petition for stay (86P–0367/PSA), requests that FDA reconsider its determination on exclusivity for divalproex sodium. Abbott states that the drug should be accorded 10 years' exclusivity under section 505(j)(4)(D)(i) and (c)(3)(D)(i) of the act. Abbott asks for a stay of approval of ANDA's and applications described in section 502(b)(2) of the act for potential generic divalproex sodium products pending issuance of a response to its citizen petition, and for 30 days afterward if the citizen petition is denied.

FDA is reviewing the merits of this petition and, by this notice, is giving anyone who may be affected by this petition an opportunity to submit comments within 30 days.

Interested persons may, on or before December 8, 1986, submit to the Dockets Management Branch (address above) written comments on the petition. These comments will be considered in preparing an agency response to the petition. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Requests for a single copy of the petition should be sent to the Dockets Management Branch.

Dated: November 3, 1986.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-25152 Filed 11-6-86; 8:45 am]

BI' LING CODE 4160-01-M

Office of Human Development Services

Federal Council on the Aging; Meeting

Agency Holding the Meeting: Federal Council on the Aging.

Time and Date: Meeting begins at 9:30 am and ends at 5:00 pm on Wednesday, November 19, 1986 and begins at 9:30 am and ends at 3:00 pm on Thursday, November 20, 1986.

Place: Department of Health and Human Services, HHS North Building, 330 Independence Avenue SW., Washington, DC 20201, OIG Conference Room, 5542 (Fifth Floor).

Status: Meeting is open to the public.

Contact Persons: Pete Conroy, Room 4243, HHS North Building, 245-2451.

The Federal Council on the Aging was established by the 1973 Amendments to the Older Americans Act of 1965 (Pub. L. 93029, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health and Human Services, the Commissioner on Aging and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to the Federal Advisory Committee Act (Pub. L. 92-453, 5 U.S.C. App. 1, section 10, 1976) that the Council will hold a meeting on November 19 and 20, 1986 from 9:30 am-5:00 pm and from 9:30 am-3:00 pm respectively in Room 5542 in the Health and Human Services North Building, 330 Independence Avenue SW., Washington, DC 20201.

The agenda will include: An update on the Administration on Aging programs by Commissioner, Carol Fraser Fisk; an outline of ACTION senior programs by Director, Donna M. Alvarado; a briefing on the Administration for Native Americans by Commissioner, W. "Lynn" Engles; a roundtable with representatives of veterans organizations on the subject of the contributions to seniors at the community level by veterans belonging to the American Legion, Veterans of Foreign Wars, and Disabled American Veterans. A representative of the Veterans Administration will also participate. In addition, a substantial amount of time will be devoted to FCoA committee meetings and reports.

Dated: November 3, 1986.

Ingrid Azvedo,

Chairperson, Federal Council on the Aging.

[FR Doc. 86-25246 Filed 11-6-86; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Availability of the Draft Supplement to the Final Environmental Impact Statement (DSEIS) for Noxious Weed Control in Five Northwestern States; Idaho, Montana, Oregon, Washington and Wyoming

AGENCY: U.S. Department of the Interior, Bureau of Land Management.

ACTION: Notice of availability of the Draft Supplement to the Final Environmental Impact Statement for noxious weed control in five northwestern states (DSEIS).

DATE: Comments will be accepted until January 5, 1987.

ADDRESS: Comments should be sent to: Noxious Weed Team Leader, Bureau of Land Management (935), P.O. Box 2965, Portland, OR 97208.

FOR FURTHER INFORMATION CONTACT: Steve Ellis, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, ID 83707, Telephone (208) 334-9516.

SUPPLEMENTARY INFORMATION: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, BLM has prepared a draft supplement to the final environmental impact statement for noxious weed control in the States of Idaho, Montana, Oregon, Washington and Wyoming.

The DSEIS provides more discussion on possible impacts to the human environment from the chemical treatment portion of the proposed program. Many portions of the final EIS (FEIS) have not been changed or readdressed because BLM considers them to be adequately covered in the FEIS.

All of the references in the References Cited section of the DSEIS are on file and may be reviewed during office hours (7:30 am-4:15 pm) at the BLM Oregon State Office (Lloyd Center Tower, 16th floor, 825 NE Multnomah Street, Portland, Oregon). Please call Lynne Hamilton (503-231-6268) for an appointment to review any of this material. Copies of material without copyright protection may be acquired at standard copying fees of $0.25 per page.

A limited number of individual copies of the draft EIS may be obtained upon request to any BLM District or State Office in the five states.

Dated: October 29, 1986.

Charles W. Luscher,

State Director.

[FR Doc. 86-25171 Filed 11-6-86; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Alaska Region: Availability of the Draft Environmental Impact Statement and Locations and Dates of Public Hearings; Proposed Beaufort Sea Lease Sale 97 (January 1988)

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Minerals Management Service (MMS) has prepared a draft Environmental Impact Statement (EIS) relating to the proposed 1988 Outer Continental Shelf oil and gas lease sale of available unleased blocks in the Beaufort Sea. The proposed Beaufort Sea Sale 97 will offer for lease approximately 21.2 million acres. The draft EIS contains, among other things, an evaluation pursuant to section 810, Alaska National Interest Lands Conservation Act (ANILCA).

Single copies of the draft EIS can be obtained from the Regional Director, Minerals Management Service, Alaska Region, 949 East 36th Avenue, Anchorage, Alaska 99508-4302, Attention: Public Information. Copies can also be requested by telephone, (907) 261-4435.

Copies of the draft EIS will also be available for inspection in the following public libraries; Arctic Environmental Information and Data Center, University of Alaska, 707 A Street, Anchorage, Alaska; Army Corps of Engineers Library, U.S. Department of Defense, Anchorage, Alaska; Alaska Resources Library, U.S. Department of the Interior, Anchorage, Alaska; University of Alaska, Anchorage Consortium Library, 3211 Providence Drive, Anchorage, Alaska: Fairbanks North Star Borough Public Library (Noel Wien Library), 1215 Cowles Street, Fairbanks, Alaska; Elmer E. Rasmuson Library, 310 Tanana Drive, Fairbanks, Alaska; Alaska State Library, Juneau, Alaska; Alaska Field Operation Center Library, U.S. Department of Interior, Bureau of Mines, Juneau, Alaska; Juneau Memorial Library, 114-4th Street, Anchorage, Alaska; Kenai Community Library, 163 Main Street Loop, Kenai, Alaska; University of Alaska-Juneau Library, 11120 Glacier Highway, Juneau, Alaska; Kettleson Memorial Library, Sitka, Alaska; Soldotna Public Library, 235 Binkley

Street, Soldotna, Alaska; Alakanuk Public Library, Alakanuk, Alaska; North Slope Borough School District Library/Media Center, Barrow, Alaska; Brevig Mission Community Library, Brevig Mission, Alaska; Buckland Public Library, Buckland, Alaska; Davis Menadelook Memorial H.S. Library, Diomede, Alaska; Elim Community Library, Elim, Alaska; Northern Alaska Environmental Center Library, 218 Driveway, Fairbanks, Alaska; University of Alaska, Fairbanks, Institute of Arctic Biology, 311 Irving Building, Fairbanks, Alaska; Gambell Community Library/Learning Center, Gambell, Alaska; Golovin Community Library, Golovin, Alaska; Kaveolook School Library, Kaktovik, Alaska; Kiana Elementary School Library, Kiana, Alaska; McQueen School Library, Kivalina, Alaska; George Francis Memorial Library, Kotzebue, Alaska; Koyuk City Library, Koyuk, Alaska; Kegoayah Kozga Public Library, Nome, Alaska; Noorvik Elementary/High School Library, Noorvik, Alaska; Tikigaq Library, Point Hope, Alaska; Savoonga Community Library, Savoonga, Alaska; Shaktoolik School Library, Shaktoolik, Alaska; Nellie Weyiouanna Ilisaavik Libray, Shishmaref, Alaska; Stebbins Community Library, Stebbins, Alaska; Ticasuk Library, Unalakleet, Alaska; Kingikme Public Library, Wales, Alaska; and Nuiqsut Library, Nuiqsut, Alaska.

In accordance with 30 CFR 256.26, the MMS will hold pubic hearings to receive comments and suggestions relating to the EIS. The hearings are also being held for the purpose of receiving comments and suggestions regarding subsistence pursuant to ANILCA.

The hearings will be held on the following dates and times indicated:

December 8, 1986

North Slope Borough Assembly Chambers, Barrow, Alaska, 7:30 p.m.

December 9, 1986

City Office, Wainwright, Alaska, 6:30 p.m.

Decebmer 10, 1986

Community Center, Kaktovik, Alaska, 8:30 p.m.

December 11, 1986

Community Center, Nuiqsut, Alaska, 7:30 p.m.

December 17, 1986

University Plaza Building, 949 East 36th Avenue, Room 601, Anchorage, Alaska, 12 noon.

The hearings will provide the Secretary of the Interior with information from Government agencies and the public which will help in the evaluation of the potential effects, including effects on subsistence uses, of the proposed lease sale.

Interested individuals, representatives of organizations, and public officials wishing to testify at the hearings are asked to contact the Regional Director at the above address or Richard Roberts by telephone, (907) 261–4662, by Friday, December 5, 1986.

Time limitation may make it necessary to limit the length of oral presentation to 10 minutes. An oral statement may be supplemented by a more complete written statement which may be submitted to a hearing official at the time of oral presentation or by mail until Janaury 6, 1987. This will allow those unable to testify at a public hearing an opportunity to make their views known and for those presenting oral testimony to submit supplemental information and comments.

Comments concerning the draft EIS will be accepted until January 6, 1987, and should be addressed to the Regional Director, Minerals Management Service, Alaska Region, 949 East 36th Avenue, Anchorage, Alaska 99508–4302.

Dated: November 4, 1986.

William D. Bettenberg,

Director, Minerals Management Service.

Approved

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 86–25272 Filed 11–6–86; 8:45 am]

BILLING CODE 4310–MR–M

Proposed Offshore Oil and Gas Lease Sale 91, Northern California; Public Meetings

AGENCY: Department of the Interior, Minerals Management Service, Pacific OCS Region.

ACTION: Announcement of public scoping meetings for Proposed Offshore Oil and Gas Lease Sale 91, northern California, and the close of the written scoping comment period.

SUMMARY: This notice announces two public scoping meetings to be held regarding the proposed Offshore Oil and Gas Lease Sale 91, northern California. The purpose of these scoping meetings is to indicate the area to be studied, gather public information, identify sale related issues and concerns, and reveiw the offshore leasing process. The first meeting will take place in Ft. Bragg, California, the second meeting will take place in Eureka, California. In addition, this announcement identifies the close of the written scoping comment period as December 10, 1986.

DATES: The public meeting in Ft. Bragg, CA, will be held December 2, 1986, the public meeting in Eureka, CA, will be held December 4, 1986. Both meetings will begin at 9 a.m. and continue until 8 p.m. or until all information is received. The written scoping comment period closes December 10, 1986.

ADDRESSES: The public meeting on December 2, 1986, will be held at the Eagle's Lodge, 210 North Corry Street, Ft. Bragg, CA. The public meeting on December 4, 1986, will be held at the Red Lion Inn, Redwood Ballroom, 1929 4th Street, Eureka, CA. Any written scoping comments should be sent to the address below.

FOR FURTHER INFORMATION CONTACT: Steven R. Alcorn, Chief, Environmental Assessment Section, Office of Leasing and Environment, Minerals Management Service, 1340 West Sixth Street, Los Angeles, CA 90017, (213) 894–6741, or FTS 798–6741.

SUPPLEMENTARY INFORMATION: On February 13, 1986, MMS published notices in the **Federal Register** (Volume 51, Number 30) announcing the Call for Information and Nominations and the Notice of Intent to Prepare an Environmental Impact Statement (EIS) for the proposed Oil and Gas Lease Sale 91, Offshore Northern California. This began the pre-lease process leading to the lease sale tentatively scheduled for February, 1989, and opened the public scoping period. To ensure that the public concerns and issues are identified, and to assist the technical staff preparing the EIS in incorporating these concerns into the pre-lease process, two public scoping meetings are scheduled. At these meetings concerned citizens, interest groups, representatives of governmental agencies and the oil industry, will have the opportunity to meet individually with MMS technical staff to discuss issues of concern, and to hear a brief overview of the offshore leasing program. The written scoping comment period formally ends on December 10, 1986. There will be several other periods prior to the lease sale where the public will have opportunities to comment on both the EIS and the proposal, including the period following the release of the draft EIS.

Dated: October 29, 1986.

William E. Grant,

Regional Director, Pacific OCS Region, Minerals Management Service.

[FR Doc. 86–25271 Filed 11–6–86; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Intention to Negotiate Concession Contract; Lake Mead Ferry Service, Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Lake Mead Ferry Service, Inc., authorizing it to continue scheduled and unscheduled sightseeing, tourboat and group charter facilities and services for the public at Lake Mead National Recreation Area, for a period of approximately fifteen (15) years from the date of execution through September 30, 2001.

The contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act, and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on September 30, 1985, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand-delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Western Regional Office, 450 Golden Gate Avenue, San Francisco, California 94102, for information as to the requirement of the proposed contract.

Dated: October 2, 1986.

W. Lowell White,

Acting Regional Director, Western Region.

[FR Doc. 86-25294 Filed 11-6-86; 8:45 am]

BILLING CODE 4310-70-M

Revision of Park Boundary; Sagamore Hill National Historic Site, NY

Whereas, the Act of July 25, 1962 (76 Stat. 217) authorized the Secretary of the Interior to acquire Sagamore Hill consisting of not to exceed ninety acres at Cove Neck, Oyster Bay, Long Island, New York and the improvements thereon together with the furnishings and other contents, of the structures; and

Whereas, lands, interests in lands, and improvements thereon, described in and conveyed to the United States by the Theodore Roosevelt Association by deed dated July 8, 1963, which was recorded on July 10, 1963 in the Office of the Clerk of the County of Nassau, New York in Liber 7179 at Page 353, conveyed 78.00 acres; and

Whereas, Sagamore Hill National Historic Site was established by publication of notice thereof in the **Federal Register** dated July 15, 1963 and filed on July 18, 1963; and

Whereas, lands and interests in lands described in and conveyed to the United States by the Trust for Public Land by deed dated December 26, 1984 which was recorded on March 4, 1985 in the Office of the Clerk of the County of Nassau, New York in Liber 9623 at Page 118 conveyed 5.02 acres with funds appropriated by Pub. L. 98-473 dated October 12, 1984.

Therefore pursuant to section 3 of the Act of July 25, 1962, notice is given that the boundary of Sagamore Hill National Historic Site has been revised to include the 5.02 acre tract identified and described as Tract 01-102 on Land Status Map numbered 419/92,000, Segment 01, Sheet 1 of 1 dated April, 1974 prepared by the Land Resources Division of the North Atlantic Region, National Park Service.

The map is on file and available for inspection in the office of the North Atlantic Region, Land Resources Division, Boston, Massachusetts and in the office of the National Park Service, Department of the Interior, 18th and C Streets, Washington, DC 20240.

Dated: October 15, 1986.

Herbert S. Cables, Jr.,

Regional Director, North Atlantic Region.

[FR Doc. 86-25292 Filed 11-6-86; 8:45 am]

BILLING CODE 4310-70-M

Ferry Service Operators Sought; Between Patchogue, NY, and Watch Hill site, Fire Island National Seashore, NY

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that the Department of the Interior, through the Director of the National Park Service, is seeking parties interested in providing ferry service for passengers and freight between Patchogue, New York, and the Watch Hill site within Fire Island National Seashore, New York. The National Park Service proposes to negotiate a concession contract with the best qualified offeror for a period of ten years from Janaury 1, 1987, through December 31, 1996.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal must be postmarked or hand delivered on or before the sixtieth (60th) day following the formal release of the information and application document to be considered and evaluated. This release is expected within two weeks of the date of this notice or sooner.

Interested parties should contact Mr. David Luschinger, Concession Specialist, Fire Island National Seashore, 120 Laurel Street, Patchogue, New York 11772, for a copy of the Statement of Requirements, including information as to the requirements of the proposed contract and application materials.

This contract has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

Dated: October 28, 1986.

Samuel H. Reck,

Acting Regional Director, North Atlantic Region.

[FR Doc. 86-25290 Filed 11-6-86; 8:45 am]

BILLING CODE 4310-70-M

Ferry Service Operators Sought; Between Long Island, NY, and Sailor's Haven Site, Fire Island National Seashore, NY

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that the Department of the Interior, through the Director of the National Park Service, is seeking parties interested in providing ferry service for passengers and freight between Long Island, New York, and the Sailor's Haven site within Fire Island National Seashore, New York. The National Park Service proposes to negotiate a concession contract with the best qualified offeror for a period of ten years from January 1, 1987, through December 31, 1996.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal must be postmarked or hand delivered on or before the sixtieth (60th) day following the formal release of the information and application document to be considered and evaluated. This release

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is expected within two weeks of the date of this notice or sooner.

Interested parties should contact Mr. David Laschinger, Concession Specialist, Fire Island National Seashore, 120 Laurel Street, Patchogue, New York 11772, for a copy of the Statement of Requirements, including information as to the requirements of the proposed contract and application materials.

This contract has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

Dated: October 28, 1986.

Samuel H. Reck,

Acting Regional Director, North Atlantic Region.

[FR Doc. 86-25291 Filed 11-6-86; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701-TA-283 and 731-TA-364 (Preliminary)]

Certain Acetylsalicylic Acid (Aspirin) From Turkey

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 701-TA-283 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Turkey of acetylsalicylic acid (aspirin), containing no additives other than starch, and not imported in tablets, capsules, or similar forms for direct human consumption, provided for in item 410.72 of the Tariff Schedules of the United States, which are alleged to be subsidized by the Government of Turkey.

The Commission also gives notice of the institution of preliminary antidumping investigation No. 731-TA-364 (Preliminary) under section 733(a) of the act (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or establishment of an industry in the United States is materially retarded, by reason of imports from Turkey of the subject merchandise which is alleged to be sold in the United States at less than fair value.

As provided in sections 703(a) and 733(a) of the act, the Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in this case by December 15, 1986.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: October 31, 1986.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202-523-0296), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to petitions filed on October 31, 1986, by Monsanto Co., St. Louis, Missouri.

Participation in the Investigations

Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 202.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on November 20, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Larry Reavis (202-523-0296) not later than November 17, 1986, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before November 25, 1986, a written statement of information pertinent to the subject of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority

These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: November 3, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–25141 Filed 11–6–86; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 1052(b).

A.1. Parent corporation and address of principal office:

a. Burlington Industries, Inc., 3330 West Friendly Avenue, P.O. Box 21207, Greensboro, NC 37420.

2. Wholly owned subsidiaries which will participate in the operations, and address of its principal offices, and state and country of incorporation:

a. B.I. Transportation, Inc., Tucker Street Extension, P.O. Box 691, Burlington, NC 27216–0691; Incorporated in the State of Delaware
b. Burlington Canada Inc., 205 Bouchard Boulevarad, Dorvale, Quebec H9S 1A9; Incorporated in Canada
c. Textile Morelos, S.A. de C.V., San Juan del Aguila No. 401, Cuetnazaca, Motelos, Mexico; Incorporated in Mexico
d. Noblis-Lees, S.A. de C.V., Calzada Ermita-Ixtapalapa, No. 401 local "C", Colonial Unidad Modelo, Mexico 13 D.F. Mexico; Incorporated in Mexico
e. C.H. Masland & Sons, Spring Road 1 Box 40, Carlisle, PA 17013; Incorporated in the State of Pennsylvania

B.1. Parent corporation and address of principal office: Contico International, Inc., 1101 No. Warson Road, St. Louis, MO 63132

2. Wholly owned subsidiaries which will participate in the operation, address of their respective principal offices:

a. Pol-Tex International, Inc., 13830 Hatcherville Road, Mont Belvieu, TX 77580
b. John's International, Inc., 305 North Frisco, Winters, TX 79657

C.1. Parent corporation and address of principal office: Dean Foods Co., 3600 North River Road, Franklin Park, Illinois 60131; A Delaware Corporation.

2. Wholly-owned subsidiaries which will participate in the operation, and address of their respective principal offices:

a. Creamland Dairies, Inc., 1911 Second Street, NW., P.O. Box 22067, Albuquerque, New Mexico 87125; A New Mexico Corporation
b. Bowman Dairy Co., Inc., 3600 North River Road, Franklin Park, Illinois 60131; A Delaware Corporation
c. Carnival Ice Cream Co., Box 305, St. Maarten, Netherlands Antilles; A Netherlands Antilles Corporation
d. Dean Foods International Corp., 3600 North River Road, Franklin Park, Illinois 60131; A Delaware Corporation
e. Dean International Sales Corp., 3600 North River Road, Franklin Park, Illinois 60131; An Illinois Corporation
f. Bell Dairy Products, Inc., P.O. Box 2588, 201 University, Lubbock, Texas 79408; A Texas Corporation
g. Budlong Pickle Co., Inc., 857 School Place, Green Bay, Wisconsin 54303; An Illinois Corporation
h. Dean Dairy Products Co., RFD #1, P.O. Box 69, Orangeville Road, Sharpsville, Pennsylvania; A Pennsylvania Corporation
i. Dean Food Products Co., 2040 Madison Avenue, P.O. Box 41259, Memphis, Tennessee 38104; A Tennessee Corporation
j. Dean Milk Co., Inc., 4420 Bishop Lane, Louisville, Kentucky 40218; A Kentucky Corporation
k. DFC Transportation Co., 12007 Smith Drive, Huntley, Illinois 60142; A Delaware Corporation
l. Gandy's Dairies, Inc., 332 Pulliam Street, San Angelo, Texas 76903, and P.O. Box 992, San Angelo, Texas 76902; A Texas Corporation
m. Green Bay Food Co., 857–897 School Place, P.O. Box 19057, Green Bay, Wisconsin 54303; A Wisconsin Corporation
n. Hart's Dairy, Inc., 2330 Anderson Avenue, P.O. Box 2337, Ft. Myers, Florida 33901; A Florida Corporation
o. The Larsen Co., 520 North River Street, Green Bay, Wisconsin 54307; A Wisconsin Corporation
p. Liberty Dairy, 530 North River Street, Evart, Michigan 46931; A Michigan Corporation
q. McCadam Cheese Co., Inc., 12 Annette Street, Heuvelton, New York 13654; A New York Corporation
r. St. Thomas Egg Co., Inc., No. 7–1 Estate Street, Joseph and Rosendahl, St. Thomas, Virgin Islands 00801; A Virgin Islands Corporation
s. DFC Transportation Systems International, Inc., 3600 North River Road, Franklin Park, Illinois 60131; An Illinois Corporation
t. Gill Edge Farms, Inc., 302 South Porter, Norman, Oklahoma 73070; An Oklahoma Corporation
u. Juice Services, Inc., Blackstone Valley Way, 146–295 Industrial Park, P.O. Box 304, Lincoln, Rhode Island 02865; A Rhode Island Corporation
v. T.G. Lee Foods, Inc., 315 N. Bumby Avenue, P.O. Box 3033, Orlando, Florida 30802; A Florida Corporation
w. McArthur Dairy, Inc., 6851 N.E. Second Avenue, Miami, Florida 33138; A Florida Corporation
x. Park-it Market Corp., 3600 North River Road, Franklin Park, Illinois 60131; A Delaware Corporation
y. St. Thomas Dairies, Inc., P.O. Box 4800, CHA, Charlotte Amalie, St. Thomas, Virgin Islands; A Virgin Islands Corporation
z. St. Thomas Corp., 3600 North River Road, Franklin Park, Illinois 60131; A Delaware Corporation
aa. Ye Olde Tavern Cheese Co., Inc., 3949–53 West Lake Street, Chicago, Illinois 60624; An Illinois Corporation
bb. Ryan Milk of Pa., Inc., P.O. Box 554, 53 Canal Street, Greenville, Pennsylvania 16125; A Pennsylvania Corporation
cc. Ryan Milk Co., Inc., P.O. Box 1175, East Chestnut Street, Murray, Kentucky 42071; A Kentucky Corporation
dd. Heifetz Pickling Co., 11821 Westline Industrial Dr., St. Louis, Missouri 63141; A Missouri Corporation
ee. South Keys Distributing, Inc., 6851 NE Second Avenue, Miami, Florida 33138; A Florida Corporation
ff. Amboy Packaging Co., P.O. Box 529, 820 Palmyra Avenue, Dixon, Illinois 61021; An Illinois Corporation
gg. Fieldcrest Foods, Inc., 3600 North River Road, Franklin Park, Illinois 60131; An Illinois Corporation

D.1. Parent corporation and address of principal office: Thomas Supply Co., Rt. 12, Cumming, Georgia 30130. (Thomas Supply Co. is a Georgia corporation.)

2. Wholly-owned subsidiaries which will participate in the operation, and state(s) of incorporation: T.P. Lumber Sales Co., Rt. 12, Cumming, Georgia 30130. (T.P. Lumber Sales Co. is incorporated under the laws of the State of Georgia and is 100% owned by Thomas Supply Company.)

Noreta R. McGee,

Secretary.

[FR Doc. 86–25188 Filed 11–6–86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into a new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

A abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the OMB reviewer, Nancy wentzler, telephone (202) 395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment Standards Administration

CM–1173

On occasion

Businesses or other for-profit; Non-profit institutions; Small businesses or organizations

75,000 responses; 18,750 hours; 1 form

This is a computer generated document sent to medical providers who submitted incomplete information on the HCFA–1500 or UB–82. This document describes errors made on the HCFA–1500 or UB–82 and requests correct information.

Extension

Occupational Safety and Health Administration

Acrylonitrile

1281–0126; OSHA–2500

On occasion

Businesses or other for profit

21 responses; 9,302 hours

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to acrylonitrile (AN). Employers must monitor employee exposure to AN, keep employee exposures within permissible limits, and provide medical exams, training and other information about AN to employees.

Signed at Washington, DC, this 4th day of November, 1986.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 86–25241 Filed 11–6–86; 8:45 am]

BILLING CODE 4510-27-M

State Unemployment Compensation Laws Approval and Certification to the Secretary of the Treasury

In accordance with the provisions of section 3304(c) of the Internal Revenue Code of 1954 (26 U.S.C. 3304(c)), I hereby certify the following named States to the Secretary of the Treasury for the 12-month period ending on October 31, 1986, in regard to the unemployment compensation laws of those States which heretofore have been approved under the Federal Unemployment Tax Act:

Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Virgin Islands, Washington, West Virginia, Wisconsin, and Wyoming.

This certification is for the maximum normal credit allowable under section 3302(a) of the Code.

Signed at Washington, DC, on October 31, 1986.

William E. Brock,

Secretary of Labor.

[FR Doc. 86–25172 Filed 11–6–86; 8:45 am]

BILLING CODE 4510-30-M

Certification of State Unemployment Compensation Laws to the Secretary of the Treasury

In accordance with the provisions of paragraph (1) of section 3303(b) of the Internal Revenue Code of 1954 (26 U.S.C. 3303(b)(1)), I hereby certify the unemployment compensation laws of the following named States, which heretofore have been certified pursuant to paragraph (3) of section 3303(b) of the Code, to the Secretary of the Treasury for the 12-month period ending on October 31, 1986.

Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Virgin Islands, West Virginia, Wisconsin, and Wyoming.

This certification is for the maximum additional credit allowable under section 3302(b) of the Code.

Signed at Washington, DC, on October 31, 1986.

William E. Brock,

Secretary of Labor

[FR Doc. 86–25173 Filed 11–6–86; 8:45 am]

BILLING CODE 4510-30-M

Bureau of Labor Statistics

Labor Research Advisory Council Committees; Meetings and Agenda

The regular fall meetings of committees of the Labor Research Advisory Council will be held on November 18, 19, and 20. The meetings will be held in Rooms S-4512 and N-5437 A and B, of the Frances Perkins Department of Labor Building, 200 Constitution Avenue NW., Washington, DC.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with a respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members.

The meetings of the Committee on Productivity, Technology and Economic Growth and the Committee on Foreign Labor Statistics will be combined. The schedule and agenda of the meetings are as follows:

Tuesday, November 18, Room S-4215

9:30 a.m.—Committee on Wages and Industrial Relations

1. Review of work in progress
2. PATC Expansion: First year results
3. Employee Benefits Survey (EBS): An update on results and plans
4. Proposed compensation cost levels for the Employment Cost Index
5. Other business

Wednesday, November 19, Rooms N-5437 A and B

9:30 a.m.—Committee on Prices and Living Conditions

1. CPI Revision status report
2. Publication plans for semiannual CPI's
3. Rebasing of indexes
4. Other business

Wednesday, November 19, Rooms N-5437 A and B

1:30 p.m.—Committee on Productivity, Technology, and Economic Growth and the Committee on Foreign Labor Statistics

1. Developmental work on measures of productivity for hospitals
2. Extension of hours worked study to 2-digit industries
3. Study of energy price increases effects on life of capital equipment
4. BLS international training program
5. Declining earning hypothesis
6. Update on the projections cycle
7. Review of deindustrialization analysis
8. International comparision of unemployment

Thursday, November 20, Rooms N-5437 A and B

9:30 a.m.—Committee on Occupational Safety and Health Statistics

1. Annual Survey results
2. Status of National Academy of Sciences panel
3. Records audit
4. Guidelines/outreach
5. Health Interview Survey follow-up
6. State health department project

Thursday, November 20, Rooms N-5437 A and B

1:30 p.m.—Committee on Employment Structure and Analysis

1. The 1987 budget and program plans
2. Update on the Mass Layoff Report and dislocated worker data
3. Review of findings of May 1985 data on work schedules
4. Plans for the National Longitudinal Survey
5. Findings of the BLS survey of contracting-out by industry
6. Other business.

The meetings are open. It is suggested that persons planning to attend as observers contact Henry Lowenstern, Executive Secretary, Labor Research Advisory Council on (Area Code 202) 523-1327.

Signed at Washington, DC, this 3rd day of November 1986.

Janet L. Norwood,

Commissioner of Labor Statistics,

[FR Doc. 86-25177 Filed 11-6-86; 8:45 am]

BILLING CODE 4510-24-M

Request for Comments on Changes in Local Area Unemployment Statistics (LAUS) Procedures; Republication

[Editorial Note.—The following document was originally published at page 39818 in the issue of Friday, October 31, 1986. The document is being republished in its entirety because of typesetting errors]

AGENCY: Bureau of Labor Statistics, Labor.

ACTION: Request for comments on proposed changes in local area unemployment statistics methodology.

SUMMARY: With the completion of various research projects and the receipt of numerous comments and simulations for a number of research areas, the Bureau of Labor Statistics intends to introduce methodological improvements in the procedures for developing local area unemployment statistics. Proposals to improve the procedures include the mandatory introduction of an updated procedure for multi-county employment disaggregation and an improved procedure for the estimation of unemployed exhaustees. Optional methodological revisions are proposed in estimation of agricultural employment and the estimation of Federal and Railroad unemployment.

DATE: Comments must be submitted on or before December 1, 1986.

ADDRESS: Send comments to: U.S. Department of Labor, Bureau of Labor Statistics, 441 G Street NW., Room 2083, Washington, DC 20212.

FOR FURTHER INFORMATION CONTACT: Sharon Brown 202-523-1807.

SUPPLEMENTARY INFORMATION:

Dated at Washington, DC, this 24th day of October, 1986.

Janet L. Norwood,

Commissioner.

[FR Doc. 86-24668 Filed 10-30-86; 8:45 am]

BILLING CODE 1505-01-M

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications, and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume II:

Texas:	
TX86-39	pp. 944a–944c.
TX86-40	pp. 944d–944f.
TX86-41	pp. 944g–944i.
TX86-42	pp. 944j–944l.
TX86-43	pp. 944m–944o.
TX86-44	pp. 944p–944r.
TX86-45	pp. 944s–944u.
TX86-46	pp. 944v–944x.
TX86-47	pp. 944y–944aa.
TX86-48	pp. 944ab–944ad.
TX86-49	pp. 944ae–944ag.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

Massachussetts:	
MA86-1 (January 3, 1986)	pp. 347–349.
MD86-2 (January 3, 1986)	p. 391.
MD86-11 (January 3, 1986)	p. 411.
MD86-15 (January 3, 1986)	p. 420.
Pennsylvania:	
PA86-10 (January 3, 1986)	p. 880.
PA86-12 (January 3, 1986)	p. 888.
PA86-14 (January 3, 1986)	pp. 895–896.

Volume II:

Iowa:	
IA86-1 (January 3, 1986)	p. 24.
IA86-2 (January 3, 1986)	p. 29.
IA86-5 (January 3, 1986)	pp. 43–44 p., 47.
Louisiana:	
LA86-4 (January 3, 1986)	p. 357.
LA86-5 (January 3, 1986)	pp. 360, 363, p. 366.
Minnesota:	
MN86-7 (January 3, 1986)	p. 507.
MN86-8 (January 3, 1986)	p. 526.
New Mexico:	
NM86-1 (January 3, 1986)	pp. 638–638a, p. 639, pp. 641–642, pp. 645, 649.
Ohio:	
OH86-1 (January 3, 1986)	pp. 661–674.
OH86-2 (January 3, 1986)	pp. 676, 678, pp. 680–684, p. 691.
OH86-28 (January 3, 1986)	pp. 752–753.
OH86-29 (January 3, 1986)	pp. 756–758, pp. 760–765, pp. 768–784, pp. 794–795.
Texas:	
TX86-27 (January 3, 1986)	pp. 910–912.
TX86-28 (January 3, 1986)	pp. 913–915.
TX86-29 (January 3, 1986)	pp. 916–918.
TX86-30 (January 3, 1986)	pp. 919–921.
TX86-31 (January 3, 1986)	pp. 923–924.
TX86-32 (January 3, 1986)	pp. 926–927.
TX86-33 (January 3, 1986)	pp. 928–930.
TX86-34 (January 3, 1986)	pp. 931–933.
TX86-35 (January 3, 1986)	pp. 934–935.
TX86-36 (January 3, 1986)	pp. 937–938.
TX86-37 (January 3, 1986)	pp. 939–941.
TX86-38 (January 3, 1986)	pp. 942–944.
Listing by Location (index)	p. xxxviii, pp. xli-xlvi.
Listing by Decision (index)	pp. lvi-lviii.

Volume III:

Washington:	
WA86-9 (January 3, 1986)	pp. 3675f–365g.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 80 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S.
Government Printing Office, Washington,
DC 20402, (202) 783-3238

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 31st Day of October 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86-25012 Filed 11-6-86; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

[TA-W-17,415]

Burlington Industries, Inc., Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 10, 1986 applicable to all workers of the Domestics Division, Burlington Industries, Inc., Sherman, Texas. The certification notice will soon be published in the **Federal Register**.

The company provided additional information to the Department indicating that production continued after the July 1, 1986 termination date and that several workers are currently still involved in closing down the plant. The intent of the certification is to cover all workers at the Sherman, Texas plant of Burlington Industries, Inc. who are affected by the decline in production and sales of greige sheeting fabric related to import competition. The notice, therefore, is amended by deleting the termination date.

The amended notice applicable to TA-W-17,415 is hereby issued as follows:

"All workers of the Sherman, Texas plant of the Domestic Division of Burlington Industries, Inc., who became totally or partially separated from employment on or after April 29, 1985 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 28th day of October 1986.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 86-25174 Filed 11-6-86; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; BTA Producers, et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the data on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 17, 1986.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address show below, not later than November 17, 1986.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 27th day of October 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

(Petitioner (union/workers/firm)	Location	Data received	Date of petition	Petition No.	Articles produced
BTA Producers (Workers)	Midland, TX	10/14/86	9/15/86	TA-W-18, 436	Curde oil and natural gas.
Donlin Sportswear, Inc. (Workers)	New Tazewell, TN	10/14/86	10/7/86	TA-W-18, 437	Means flammel shirts, ladies blouses, dresses and skirts.
Pennsylvania Mines Corp. (UMW)	Barnesboro, PA	10/14/86	9/4/86	TA-W-18, 438	Coal.
Herman Lowensteen, Inc. (Workers)	Johnston, NY	10/16/86	10/9/86	TA-W-18, 439	tanning of leather.
Perfection Services, (Workers)	Laredo, TX	10/14/86	10/6/86	TA-W-18, 440	Inspection of pipes at oil drilling sites.
BWAB, Inc. (Workers)	Sidney, MT	10/9/86	9/22/86	TA-W-18, 441	Oil
Halliburton Services (Workers)	Flora, IL	10/14/86	10/6/86	TA-W-18, 442	Cementing pipe in the ground, stimulating and fracturing oil wells.
Welex (Workers)	Houston, TX	10/7/86	9/26/86	TA-W-18, 443	Oil well logging.
American Motors, Inc. (UAW)	Toledo, OH	10/7/86	9/26/86	TA-W-18, 444	Automobiles/Jeeps.
Baker Packers (Workers)	Beaumont, TX	10/9/86	10/1/86	TA-W-18, 445	Packers, safety values.
Russell Newman Mfg. Co. (Workers)	Saint Jo, TX	10/9/86	10/1/86	TA-W-18, 446	Sleep wear and lingerie.
Air Equipment Rental Inc. (Workers)	Victoria, TX	10/9/86	10/1/86	TA-W-18, 447	Provides crews and equipment in the installation of casting in oil.
Dana Corp. Spicer Axle Division (UAW)	New Castle, IN	10/1/86	9/29/86	TA-W-18, 448	Castings for use in making up the axle for light to heavy truck markets.
Monsanto Co. #1 Plant, (Workers)	Nitro, WV	10/14/86	10/9/86	TA-W-18, 449	Rubber chemicals.
Todd Pacific Shipyards (Workers)	Seattle, WA	10/7/86	9/4/86	TA-W-18, 450	Ship building.
Bowen Tools, Inc (Workers)	Houston, TX	10/10/86	10/6/86	TA-W-18, 451	Oil well fishing tools.
Carter Day Co. (Workers)	Minneapolis, MN	10/7/86	9/30/86	TA-W-18, 452	Grain cleaning and porcessing equipment.
Mundy Maintenance Circle, Inc. (Workers)	Houston, TX	10/10/86	10/7/86	TA-W-18, 453	Installed oil pipeline.
Daniel International Corp. (Workers)	Greenville, SC	10/10/86	10/7/86	TA-W-18, 454	Installed oil pipeline.
Lockheed Marine (Workers)	Seattle WA	10/7/86	9/8/86	TA-W-18, 455	Ship building.
Modern Machine Shop Inc. (Workers)	Laredo, TX	10/9/86	10/2/86	TA-W-18, 456	Structural steel.
Torrington/Fafnir (Company)	Arkadelphia, AR	10/9/86	10/7/86	TA-W-18, 457	Anti-friction bearings.
Alpha Consulting, Inc., Pintex Petroleum Corp. (Workers)	Boulder, CO	10/1/86	9/8/86	TA-W-18, 458	Oil drilling.
L.E. Jones Co. (UAW)	Menominee, MI	10/10/86	9/29/86	TA-W-18, 459	Insert values.
Estate of William G. Helis, a Partnership (Workers)	Denver, CO	10/14/86	9/4/86	TA-W-18, 460	Oil and gas exploration.
Micro Components Tech (Workers)	St. Paul, MN	10/10/86	10/8/86	TA-W-18, 461	Equipment for testing and handling integrated circuits.
Dresses Atlas (Workers)	Alice, TX	10/14/86	10/7/86	TA-W-18, 462	Oil drilling.
U-Joints, Inc. (Workers)	Odessa, TX	10/14/86	10/61/86	TA-W-18, 463	Drive lines for oil field truck.
Lee Company (Workers)	Sulphur Springs, TX	10/17/86	10/9/86	TA-W-18, 464	Blue jeans.
Pride Oil Well Service (Workers)	Alice TX	10/16/86	10/1/86	TA-W-18, 465	Extraction of raw petroleum.
Texaco Producing, Inc. Houston District (Workers)	Bellaire, TX	10/16/86	9/25/86	TA-W-18, 466	Oil and gas exploration.
Halliburton Services (Workers)	Amarillo, TX	10/16/86	10/9/86	TA-W-18, 467	Tools for packing oil.
CMC Energy (Workers)	Alice, TX	10/7/86	10/1/86	TA-W-18, 468	Oil gas producer.
Worcester Controls Corp. (USWA)	Boylston, MA	10/20/86	10/9/86	TA-W-18, 469	Ball values.
Weyenberg Shoes (UFCW)	Beaver Dam, WI	10/20/86	10/14/86	TA-W-18, 470	Men's shoes.
T.R.J. Corp. (Firm)	Abilene, TX	10/20/86	10/13/86	TA-W-18, 471	Contract oil well drilling.
American Drilling and Exploration Co. Inc. (Firm)	Corpus Christi, TX	9/15/86	9/10/86	TA-W-18, 472	Contract oil well drilling.

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APPENDIX—Continued

(Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Hughes Production Tool (now Huges Production Equipment) (Workers).	Huntsville, TX	10/20/86	10/6/86	TA-W-18, 473	Manufactures of oilfield equipment.
Kerr-McGee Corp. (Workers)	Oklahoma City, OK	10/20/86	9/30/86	TA-W-18, 474	Oil and natural gas exploration service.
Gray Tool Co. (Workers)	Houston, TX	10/20/86	10/14/86	TA-W-18, 475	Manufactures land and offshore oil equipment.
Lance Drilling Corp. (Workers)	Laredo, TX	10/9/86	10/3/86	TA-W-18, 476	Contract oil driling.
Emphasis Oil Operations (Workers)	Russell, KS	10/8/86	10/2/86	TA-W-18, 477	Contract oil drilling.
Armco Tubular Division (Workers)	Logan, OH	10/9/86	10/6/86	TA-W-18, 478	Tubular pipes.
Hockensmith Corp. (USW)	Penn., PA	10/9/86	10/6/86	TA-W-18, 479	Cast iron ingot molds.
Drilling Chemicals, Inc. (Firm)	Carthage, TX	9/15/86	9/9/86	TA-W-18, 480	Sells oilfield chemicals.
Lloyd Schoenheit Truck and Tractor Service, Inc. (Workers).	Grayville, IL	9/17/86	9/9/86	TA-W-18, 481	Moves drilling rigs and field equipment.

[FR Doc. 86-25175 Filed 11-6-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-17,748]

Glen Irvan Corp., Affirmative Determination Regarding Application for Reconsideration

By an application dated September 29, 1986, the company requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on behalf of workers and former workers at the Glen Irvan Corporation, Penfield, Pennsylvania. The determination was published in the **Federal Register** on October 3, 1986 (51 FR 35440).

The application claims that imports of cheaper oil adversely affected the sale of coal from the Glen Irvan Corporation to utility companies.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 28th day of October 1986.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 86-25175 Filed 11-6-86; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-86-138-C]

Big Diamond Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Big Diamond Coal Company, 1744 Grand Avenue, Tower City, Pennsylvania 17980 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Big Diamond Slope (I.D. No. 36-07554) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed, they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 8, 1986. Copies of the petition are available for inspection at that address.

Dated: October 30, 1986.

Patricia W. Silvey,

Director, Office of Standard, Regulations and Variances.

[FR Doc. 86-25232 Filed 11-6-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-72-C]

Black Thunder Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Black Thunder Coal Company, 299-C Luke Fidler, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its Black Thunder Slope No. 1 (I.D. No. 36-06759) located in Northumberland County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-contained self-rescue device approved by the Secretary which is adequate to protect such person for one hour or longer.

2. The mine is always damp to wet. The only electrical equipment, which are pumps, is located at the foot of the slope.

3. Petitioner states that the distance from the mine portal to the actual working face is less than 2,000 feet. The mine can be evacuated in less than 15 minutes.

4. Petitioner states that the devices are too heavy, bulky, and cumbersome to be worn while working or in the narrow confines of the slope gun boat which serves as a mantrip at the mine.

5. Sections of the mine are subjected to freezing temperature making constant availability of the devices questionable. In addition, the wet mine conditions make it difficult to locate a suitable dry storage location for the self-rescuers.

6. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 8, 1986. Copies of the petition are available for inspection at that address.

Dated: October 28, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-25233 Filed 11-6-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-123-C]

Canada Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Canada Coal Company, Inc., P.O. Box 2686, Pikeville, Kentucky 41501 has filed a petition to modify the application of 30 CFR 75.900 (low- and medium-voltage circuits serving three-phrase alternating current equipment, circuit breakers) to its No. 2 Mine (I.D. No. 15-02410) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that low- and medium-voltage power circuits serving three-phrase alternating current equipment be protected by suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained and that such breakers be equipped with devices to provide protection against under-voltage, grounded phase, short circuit, and overcurrent.

2. As an alternate method, petitioner proposes to use a vacuum contactor of no less interrupting capacity than that provided by the circuit breaker to obtain undervoltage protection in lieu of a circuit breaker. Overcurrent and short circuit protection will continue to be provided by the circuit breaker. Ground fault circuits will be altered to maintain the vacuum contactor in the off condition until faulted power circuits are acknowledged. Ground monitoring and ground fault circuitry will be directed to the control of the coil of the vacuum contactor. Undervoltage release will be obtained by the nature of contactors and relays, which drop out at 40 to 50 percent of the rated coil voltage. The vacuum contactor will be placed in the power boxes in the space presently used for the spare circuit breaker.

3. Prior to each conveyor belt start-up, an audible alarm will be sounded for 15 seconds that can be heard throughout the affected system. All start-up horns will operate on 120 VAC or less, and all remote control voltage will be 120 VAC or less.

4. All affected personnel will be trained in the circuit plans used at these locations.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 8, 1986. Copies of the petition are available for inspection at that address.

Dated: October 28, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-25234 Filed 11-6-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-121-C]

Olaf Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Olaf Coal Company, 1475 Scott Street, Kulpmont, Pennsylvania 17839 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its No. 1 Slope (I.D. No. 36-07469) located in Northumberland County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute. The minimum quantity of air in any coal mine reaching each working face shall be 3,000 cubic feet a minute.

2. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine. Ignition, explosion, and mine fire history are nonexistent for the mine. There is no history of harmful quantities of carbon monoxide and other noxious or poisonous gases.

3. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

4. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners and cause extremely uncomfortable damp and cold conditions in the mine.

5. As an alternate method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 8, 1986. Copies of the petition are available for inspection at that address.

BEST COPY AVAILABLE

Dated: October 30, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-25235 Filed 11-6-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-88-C]

Peabody Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Peabody Coal Company, 301 North Memorial Drive, P.O. Box 373, St. Louis, Missouri 63166 has filed a petition to modify the application of 30 CFR 75.1403-9 (shelter holes) to its Sunnyhill No. 9 North Mine (I.D. No. 33-01069) located in Perry County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that shelter holes should be provided on track haulage roads at intervals of not more than 105 feet.
2. When the mine opened in 1969, extraction was by the conventional method of mining. The results of blasting and weathering have taken their toll on top conditions used for shelter holes, and many falls have occurred in many of the crosscuts and adjacent crosscuts.
3. As an alternate method, petitioner proposes to extend shelter hole intervals to 500 feet.
4. In support of this request, petitioner states that—
   (a) Vehicle operators will be instructed to slow down and sound warning devices, insuring right of way to persons working in the track entry; and
   (b) Clearance on the walkway side of the track entry will be at least 24 inches from the farthest projection of normal traffic, except where the installation of roof support prohibits such clearance, in which case pedestrians will always have the right of way.
4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 8, 1986. Copies of the petition are available for inspection at that address.

Dated: October 28, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-25236 Filed 11-6-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-137-C]

Peabody Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Peabody Coal Company, P.O. Box 1990, Henderson, Kentucky 4240-1990 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Camp No. 11 Mine (I.D. No. 15-08357) locted in Union County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.
2. The mine uses a continuous haulage coal loading system on units number one and number six. Each system consists of two mobile bridge units which are used to complete the belt linkage from the continuous miner. The mobile bridge units do not operate inby the last open crosscut.
3. Mining conditions at unit number one consist of rolling bottom and a seam height of 60 inches, which is decreased 6 inches by use of crossbars for roof support, and will continue to decrease as mining progresses. Unit number six consists of rolling bottom and a seam height of 52 inches, which is decreased 6 inches by use of crossbars for roof support.
4. Petitioner states that the use of a cab or canopy on the mine's equipment would result in a diminution of safety for the miners affected because it would restrict the equipment operator's vision, and limit the operator's mobility hampering the operator's ability to exit from the machine in an emergency.
5. In addition, the rolling bottoms at both units would cause the cab or canopy to strike roof bolts. The very nature of a continuous haulage system, causes operators to be near the rib while the unit is in active operation. The use of a cab or canopy would expose miners to injury because of their proximity to the rib.
6. The equipment operator's lack of vision would result in curtains being displaced and thus affect the ventilation plan.
7. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 8, 1986. Copies of the petition are available for inspection at that address.

Dated: October 30, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-25237 Filed 11-6-86; 8:45 am]

BILLION CODE 4510-43-M

[Docket No. M-86-131-C]

Southern Ohio Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Southern Ohio Coal Company, P.O. Box 490, Athens, Ohio 45701 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Meigs No. 2 Mine (I.D. No. 33-01173) located in Meigs County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires, trolley feeder wires, high-voltage cables and transformers shall not be located inby the last open crosscut and shall be kept at least 150 feet from pillar workings.
2. The main roof in the mine consists primarily of competent limestone.
3. As an alternate method, petitioner proposes to locate trolley wires, trolley feeder wires, and high-voltage cables between 100 and 150 feet from longwall panels.
4. In support of this request, petitioner states that a row of permanent stoppings will be constructed between longwall panels and any trolley wires, trolley feeder wires, and high-voltage cables located between 100 and 150 feet from longwall panels. The stoppings will be 6" x 8" x 16" concrete blocks and plastered on the intake or high pressure side with an approved sealant for coating masonry block stoppings. These stoppings will be examined on a weekly basis.
5. Petitioner states that the proposed alternate method will provide the same

degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 2203. All comments must be postmarked or received in that office on or before December 8, 1986. Copies of the petition are available for inspection at that address.

Dated: October 29, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-25238 Filed 11-6-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-132-C]

Southern Ohio Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Southern Ohio Coal Company, P.O. Box 490, Athens, Ohio 45701 has filed a petition to modify the application of 30 CFR 75.1002-1(a) (location of other electric equipment; requirements for permissibility) to its Meigs No. 2 Mine (I.D. No 33-01173) located in Meigs County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that electric equipment other than trolley wires, trolley feeder wires, high-voltage cables, and transformers be permissible and maintained in permissible condition when such electric equipment is located within 150 feet from pillar workings.
2. The main roof in the mine consists primarily of competent limestone.
3. As an alternate method, petitioner proposes to locate nonpermissible electric equipment between 100 and 150 feet from longwall panels.
4. In support of this request, petitioner states that a row of permanent stoppings will be constructed between longwall panels and any trolley wires, trolley feeder wires, and high-voltage cables located between 100 and 150 feet from longwall panels. The stoppings will be 6" × 8" × 16" concrete blocks and plastered on the intake or high pressure side with an approved sealant for coating masonry block stoppings. These stoppings will be examined on a weekly basis.
5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 8, 1986. Copies of the petition are available for inspection at that address.

Dated: October 29, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-25239 Filed 11-6-86; 8:45am]

BILLING CODE 4510-43-M

[Docket No. M-86-11-M]

Southern Paving Co.; Petition for Modification of Application of Mandatory Safety Standard

Southern Paving Company, Box 819, Moab, Utah 84532 has filed a petition to modify the application of 30 CFR 56.14001 (moving machine parts) to its Southern Paving Pit (I.D. No. 42-01457) located in Grand County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that gears; sprockets; chains; drive, head, tail, and takeup pulleys; flywheels; couplings; shafts; sawblades; fan inlets; and similar exposed moving machine parts which may be contacted by persons, and which may cause injury to persons, shall be guarded.
2. There is a 8 and ½ foot drive line, 7 feet off the ground to a cross shaft on the crusher through which V-belts drive a 6 foot bull wheel and the jaws and rolls. In this immediate area are two jaw fly wheels. In the event of a U-joint failure on the drive line, it could destroy its guard with the whipping action and increase the potential hazard to workers anywhere in the area.
3. As an alternate method, petitioner proposes to install a six-foot chain link fence around the drive-line/bull wheel section of the crusher, which is in a common 10 foot by 20 foot area. Therefore, during operation, no workers can come into this area, thereby omitting the danger. The crusher operator is on the opposite side of the crusher from this area at all times with no access to this designated area.
4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 8, 1986. Copies of the petition are available for inspection at that address.

Dated: October 27, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-25240 Filed 11-6-86; 8:45 am]

BILLING CODE 4510-43-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-321]

Georgia Power Co., et al.; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nucler Regulatory Commission (the Commission) has denied in part a request by the licensee for an amendment to Facility Operating License No. DPR-57, issued to the Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia (the licensee), for operation of the Edwin I. Hatch Nuclear Plant, Unit 1 (the facility), located in Appling County, Georgia.

The amendment, as proposed by the licensee, modified the Hatch Unit 1 Technical Specifications, section 3.7 to delete Tables 3.7-2, 3.7-3 and 3-7-4. These Tables contain lists of primary containment penetrations and containment isolation valves. It also deletes the reference to a specific revision of Appendix J. The licensee's application for the amendment was dated March 5, 1979 and supplemented February 7, 1984. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on April 25, 1984 (49 FR 17860). All of the requested changes were granted, except the request to delete Tables 3.7–2, 3.7–3 and 3.7–4.

Notice of Issuance of Amendment No. 131 will be published in the Commission's Bi-Weekly **Federal Register** Notice.

The portion of the application which requested deletion of Tables 3.7–2, 3.7–3 and 3.7–4 was denied.

The request to delete Tables 3.7–2, 3.7–3 and 3.7–4 was found to be unacceptable because they provide guidance in measuring the compliance of the licensee with the requirements of Appendix J and because deletion would be contrary to current Standard Technical Specifications.

The licensee was notified of the Commission's denial of this request by letter dated.

By December 8, 1986, the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Bruce W. Churchill, Equire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20036.

For further details with respect to this action, see (1) the application for amendment dated March 5, 1979, as supplemented February 7, 1984, and (2) the Commission's letter to Georgia Power Company dated October 30, 1986, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC., and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia. A copy of Item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of BWR Licensing.

Dated at Bethesda, Maryland, this 30th day of October, 1986.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, BWR Project Directorate No. 2, Division of BWR Licensing.

[FR Doc. 86–25288 Filed 11–6–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–321]

Georgia Power Co. et al. (Edwin I. Hatch Nuclear Plant, Unit No. 1); Exemption

I

The Georgia Power Company (GPC or the licensee) and three other co-owners are the holders of Facility Operating License No. DPR–57 which authorizes operation of the Edwin I. Hatch Nuclear Plant, Unit 1 (Hatch 1 or the facility) at steady state reactor power levels not in excess of 2436 megawatts thermal. The facility is a boiling water reactor located at the licensee's site in Appling County, Georgia. The license is subject to all rules and regulations and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Section 50.54(b) of 10 CFR 50 requires that primary reactor containments for water cooled power reactors be subject to the requirements of Appendix J to 10 CFR Part 50. Appendix J contains the leakage test requirements, schedules, and acceptance criteria for tests of the leak-tight integrity of the primary reactor containment and systems and components which penetrate the containment. Appendix J was published on February 14, 1973, and by letter dated August 7, 1975, the Commission requested GPC to review the containment leakage testing program for the facility and to provide a plan for achieving full compliance where necessary.

GPC responded on August 28, 1975, by stating that the containment leak rate test program for Hatch 1 had been reviewed and the program was in full compliance with Appendix J. However, in a letter dated November 16, 1977, GPC reported that in formulating a test program for the Edwin I. Hatch Nuclear Plant, Unit 2 (Hatch 2) it discovered that the Hatch 1 program needed to be updated. Consequently, proposed changes to the Hatch 1 Technical Specifications were also submitted in the November 16, 1977 letter. In response to GPC's proposed changes, the Commission issued Amendment No. 53 to Facililty Operating License No. DPR–57 for Hatch 1 on April 12, 1978. In its letter of April 12, 1978, the Commission indicated that Amendement No. 53 did not resolve all of GPC's proposed changes but that they would be reviewed as part of the review of the Hatch 2 program.

Subsequently, on March 5, 1979, GPC submitted an updated containment leak rate test program which was developed utilizing the recently-approved test program for Hatch 2. In addition to providing the updated program, the March 5, 1979, letter also provided proposed changes to the Technical Specifications for Hatch 1 and proposed piping modifications, both of which were necessary for the full implementation of the updated program.

Since GPC developed this updated test program by comparing each penetration at Hatch 1 with its similar penetration at Hatch 2 and applying the same guidelines used to develop the Hatch 2 program, the updated test program at Hatch 1 should meet all the requirements of 10 CFR Part 50, Appendix J. To ensure that the guidelines utilized in the development of the Hatch 2 program were properly carried over and applied to Hatch 1, the updated Hatch 1 program was independently reviewd in detail by our contractor, the Franklin Research Center (FRC). FRC prepared a Technical Evaluation Report (TER) "Containment Leakage Rate-Testing—Edwin I Hatch Nuclear Plant Unit 1" dated April 22, 1982, documenting the results of its review of GPC's March 5, 1979 submittal.

The TER identified six proposed test items as exceptions to the requirements of Appendix J and determined that exemptions to the requirements of Appendix J were required as to these six items. These items concern: (1) Isolation valves tested with water (2) main steam isolation valves (MSIVs) (3) airlocks (4) closed systems outside containment (5) transversing incore probe system and (6) control rod drive lines. However, additional staff review, documented in the Safety Evaluation Report (SER), has shown that only the MSIV test item is an exception to the Appendix J requirements and that the other five items are in compliance with Appendix J. This additional staff review included consideration of additional information concerning items 4 and 5 above that was provided by the licensee in a May 14, 1986 submittal.

III

Appendix J to 10 CFR 50 requires leak rate testing of BWR main steam isolation valves (MSIVs) (Paragraph II.H.4) at Pa, the peak calculated containment pressure related to the design-basis accident (Paragraph II.C.2). Further, Appendix J requires that the measured leak rates be included in the summation of the leak rates for the local leak rate tests of all penetrations and valves subject to Type B and C tests (Paragraph III.C.3).

The licensee proposes to leak test the MSIVs at a reduced pressure and exclude the measured leakage from the combined local leak rate test results.

Each main steam line is provided with two MISVs that are oriented to seal in the direction of post-accident containment atmosphere out-leakage. The design of the MSIVs is such that testing in the reverse direction tends to unseat the valve. Simultaneous testing of the two valves, at design pressure, by pressurizing between the valves, would lift the disc of the inboard valve and result in a meaningless test. The proposed test calls for a test pressure of 28 p.s.i.g. (one-half of Pa) to avoid lifting the disc of the inboard valve. The total observed leakage through both valves (inboard and outboard) is then conservatively assigned to the penetration. The staff concludes that this procedure is acceptable based on the conservative test direction for the inboard valve. Furthermore, excluding the leakage from the summation for the local leak rate tests is acceptable because a separate leakage rate acceptance criterion of 11.5 standard cubic feet per hour is used for the MSIVs. The separate limit of 11.5 scfh was also included in the original facility Technical Specifications. This separate limit was found acceptable during the operating license review for Hatch 1, as discussed in Section 5.4.4 of the SER, dated May 11, 1973, and Supplement No. 1 to the SER, dated December 10, 1973. The radiological consequence of this separate leakage was considered generically as described by Regulatory Guide 1.96, "Design of Main Steam Isolation Valve Leakage Control Systems for Boiling Water Reactor Nuclear Power Plants," Rev. 1, dated June 1976, which recommended the installation of a supplemental control system for plants with construction permits issued after March 1, 1970, but concluded that the Hatch 1 plant and other plants for which construction permits were issued prior to March 1, 1970 did not need to add such a leakage control system.

Pursuant to Final Rule 10 CFR 50.12 (50 FR 50764) published on December 12, 1985, the special circumstances for granting this exemption have been identified, as follows. The purpose of the requirements to leak test the MSIVs at Pa is to assure that pressure conditions during testing represent pressure conditions that could be experienced in a design-basis accident so that potential leakage during a design-basis accident will be identified adequately during testing. However, as noted above, application of this requirement to valves with configurations similar to these MSIVs tends to unseat the valves and give meaningless results and would not serve the underlying purpose of the rule. The proposed alternate test, while at a somewhat reduced pressure, conservatively treats the resulting leakage indication and provides a more meaningful indication of potential leakage across the valves. Accordingly, with respect to the exemption from the requirement for full pressure testing, application of the rule in this instance would not serve the underlying purpose of the rule.

The purpose of the requirement to include the measured leak rates of the MSIVs in the summation of the local leak rate tests for all of the penetrations and valves subject to Type B and C tests is to assure that there is adequate margin between the detected combined valve leakage and the leakage limit. Experience has demonstrated that adequate margin can be maintained even if leakage from MSIVs is considered separately and subject to a separate specific leakage restriction of 11.5 standard cubic feet per hour. Accordingly, with respect to the exemption from the requirement to combine the result of all valve leakage tests, application of the rule in this instance is not necessary to achieve the underlying purpose of the rule. Consequently, special circumstances described by 10 CFR 50.12(a)(2)(ii) exist in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule in that the licensee has proposed an acceptable alternative test method that accomplishes the intent of the regulation.

The staff concludes that leak testing the MSIVs in the way described above is an acceptable alternative to the requirements of Appendix J, and that an exemption to Appendix J is justified and acceptable.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security; furthermore, in accordance with 10 CFR 50.12(a)(ii) special circumstances, as discussed above, are present. Therefore, the Commission hereby grants the exemption identified above.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (51 FR 36762).

A copy of the Commission's concurrently issued Safety Evaluation related to this action is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 30th day of October, 1986.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Division of BWR Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 86–25287 Filed 11–6–86; 8:45 am]

BILLING CODE 7590-01-M

Illinois Municipal Electric Agency; Reevaluation and Affirmation of No Significant Change Finding

Notice is hereby given that the Illinois Municipal Electric Agency has requested a reevaluation by the Director of the Office of Nuclear Reactor Regulation of the "Finding of No Significant Antitrust Change" pursuant to the operating license antitrust review of the Braidwood Station Unit 1. After further review by my staff, I have decided not to change my finding.

A copy of my finding, the request for reevaluation, and my reevaluation are available for public examination and copying, for a fee, at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Dated at Bethesda, Maryland, this 29th day of October 1986.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 85–25289 Filed 11–6–85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–410]

Niagara Mohawk Power Corp., et al.; of Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission or NRC), has issued Facility Operating License No. NPF–54 to Niagara Mohawk Power Corporation, acting for itself and as agent for Rochester Gas and Electric Corporation, Central Hudson Gas and Electric Corporation, New York State Electric and Gas Corporation, and Long Island Lighting Company (the licensees) which authorizes operation of the Nine Mile Point Nuclear Station Unit 2 (the facility), at reactor core power levels not in excess of 3323 megawatts thermal in accordance with the provisions of the

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License, the Technical Specifications and the Environmental Protection Plan with a condition currently limiting operation to five percent of full power (166 megawatts thermal). Authorization to operate beyond five percent of full power will require specific Commission approval.

The Nine Mile Point Nuclear Station Unit 2 is a boiling water nuclear reactor located on the southeast shore of Lake Ontario in the town of Scriba, Oswego County, New York. The license is effective as of the date of issuance.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on May 13, 1983 (48 FR 21680).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see (1) Facility Operating License No. NPF–54, with Technical Specifications (NUREG–1193) and the Environmental Protection Plan; (2) the report of the Advisory Committee on Reactor Safeguards, dated March 11, 1985; (3) the Commission's Safety Evaluation Report, dated February 1985 (NUREG–1047), and Supplements 1 through 4; (4) the Final Safety Analysis Report and Amendments thereto; (5) the Environmental Report and supplements thereto; and (6) the Final Environmental Statement dated May 1985 (NUREG–1085).

These items are available for inspection at the Commission's Public Document Room located at 1717 H Street, NW., Washington, DC 20555 and at the Penfield Library, State University College, Oswego, New York 13126. A copy of Facility Operating License No. NPF–54 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of BWR Licensing. Copies of the Safety Evaluation Report and Supplements 1 through 4 (NUREG–1047) and the Final Environmental Statement (NUREG–1085) may be purchased at current rates from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082 or by calling (202) 275–2060 or (202) 275–21712.

Dated at Bethesda, Maryland this 31st day of October 1986.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, BWR Project Directorate No. 3, Division of BWR Licensing.

[FR Doc. 86–25286 Filed 11–6–86; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Order No. 718; Docket No. A87–3]

Wallpack Center, New Jersey 07881 (Anna Doremus et al., Petitioners), Notice and Order Accepting Appeal and Establishing Procedural Schedule

Issued November 3, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Bonnie Guiton, Vice-Chairman; John W. Crutcher; Henry R. Folsom; Patti Birge Tyson.

Docket Number: A87–3

Name of Affected Post Office: Wallpack Center, NJ 07881

Name(s) of Petitioner(s): Anna Doremus, *et al.*

Type of Determination: Closing

Date of Filing of Appeal Papers: October 29, 1986

Categories of Issues Apparently Raised:

1. Effect on the community [39 U.S.C. 404(b)(2)(A)].
2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before November 13, 1986.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

Docket No. A87–3, Wallpack Center, NJ 07881

October 29, 1986: Filing on Petition.

November 3, 1986: Notice and Order of Filing of Appeal.

November 24, 1986: Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)].

December 3, 1986: Petitioners' Participant Statement or Initial Brief [*see* 39 CFR 3001.115 (a) and (b)].

December 23, 1986: Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].

January 7, 1987: Petitioners' Reply Brief should petitioners choose to file one [*see* 39 CFR 3001.115(d)].

January 14, 1987: Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].

February 26, 1987: Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 86–25154 Filed 11–6–86; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

Extension

17 CFR Part 257

[File No. 270–252]

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Part 257 under the Public Utility Holding Company Act of 1935, Preservation and destruction of records of registered public utility holding companies and of mutual and subsidiary service companies.

Comments should be submitted to OMB Desk Officer: Sheri Fox, Office of Information and Regulatory Affairs,

Office of Management and Budget,
Room 3235 NEOB, Washington, DC
20503.

Jonthan G. Katz,
Secretary.

October 30, 1986.

[FR Doc. 86-25198 Filed 11-6-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15387; File No. 812-6496]

Bank Leu Ltd. and Leu Finance (North America) Inc.; Application

October 30, 1986.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Bank Leu Ltd. ("Leu") Finance (North America) Inc. ("Finance").

Relevant 1940 Act Section: Exemption requested under section 6(c) from all provision of the 1940 Act.

Summary of Application: Applicants seek an order exempting them from all provisions of the 1940 Act in connection with the issuance and sale of their debt securities in the United States.

Filing Date: The application was filed on October 8, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on November 24, 1986. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of services by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Leu or Finance, c/o F. Sedgwick Brown, Esq., Lord, Day & Lord, 25, Broadway New York, NY 10004.

FOR FURTHER INFORMATION CONTACT: Philip J. Niehoff, Esq., (202) 272-2048, or H.R. Hallock, Jr., Esq., (202) 272-3030 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations

1. Leu was chartered as a bank in Zurich, Switzerland in 1755. It is one of the big five Swiss commercial banks. As of December 31, 1985, it had assets of approximately $6.5 billion, deposits of $3.3 billion and capital funds (including reserves) of $430 million (based on the exchange rate on December 31, 1985—approximately 2 Swiss francs for each U.S. dollar). In addition to its offices in the City and Canton of Zurich, it also has banking subsidiaries in Geneva and Basle. Its foreign offices include a branch in New York, subsidiaries in Nassau, the Bahamas, Luxembourg and London and a representative office in Tokyo.

2. Leu's Principal business, similar to that of major U.S. banks, is deposit-taking and loan-making. As of December 31, 1985, approximately 85% of its total liabilities and net worth consisted of deposits (including due-to-banks). Its loans and advances totalled approximately $1.8 billion, representing a wide variety of loans and borrowers. Cash and due-from-banks were approximately 49% of its total assets. Its principal other assets, bills and money market papers and securities, were approximately 10% of its total assets. In addition to taking deposits and making loans and advances, Leu engages in other banking and bank-related activities typical of the world's major international banks, including: investment advisory and custodial services, foreign exchange, precious metals trading, and underwriting in the Swiss and Euro-capital markets.

3. As a Swiss bank, Leu is subject to the Swiss Federal Law Relating to Banks and Savings Banks of November 8, 1934/March 11, 1971 and its Implementing Ordinance of May 17, 1972 as amended on December 1, 1980. These regulations are administered by the Federal Banking Commission and the Swiss National Bank through mandatory annual audits, specific capital requirements and specific liquidity requirements. This regulatory structure is comparable to that imposed on U.S. banks.

4. Finance was organized under the laws of the State of Delaware. All of its outstanding capital stock is owned by Leu. It was organized as a means for Leu to sell commercial paper to, among others, certain U.S. institutional purchasers that are limited to purchasing obligations of domestic issuers. Finance's sole business will be issuing debt obligations, the proceeds of which will be provided to Leu. It will not issue any common or capital stock except for that already owned by Leu. Substantially all of Finance's assets will consist of amounts receivable from Leu.

5. The Applicants propose to issue or sell, in the United States, unsecured prime quality commercial paper notes ("notes"). The notes will arise out of, or the proceeds will be used to finance, Leu's current transactions. The notes will qualify for the exemption from registration under the the Securities Act of 1933, as amended ("1933 Act"), provided by section 3(a)(3) of that Act. They will not be issued or sold until U.S. counsel gives an opinion that the notes qualify for the exemption. Leu and Finance do not request SEC review or approval of U.S. counsel's opinion letter regarding the availability of the exemption and the SEC expresses no opinion as to the availability of the exemption.

6. The notes will be issued in bearer form and denominated in U.S. dollars. They will be issued in minimum denominations of $100,000. They will be sold to a commercial paper dealer in the United States ("dealer") that will re-offer them in the United States as principal to institutional investors and entities and individuals that normally purchase commercial paper notes. The notes will not be advertised or otherwise offered for sale to the general public. An announcement of the issuance of the notes may be as a matter of public record only.

7. Applicants will ensure that the dealer will provide each offeree of the notes, prior to purchase, with a memorandum which briefly describes the business of Leu, including its most recent publicly available fiscal year-end balance sheet and profit and loss statement audited in the manner customarily done by its statutory auditors for financial statements contained in its Annual Report. The memorandum will describe any differences that are material to investors between the accounting principles applied in the preparation of the financial statements and "generally accepted accounting principles" employed by U.S. banks. The memorandum and financial statements will be at least as comprehensive as those customarily used by U.S. bank holding companies in offering commerical paper in the United States and will be updated promptly to reflect material changes in Leu's financial condition.

8. Prior to issuance, the notes will receive one of the two highest investment grade ratings from at least two "nationally recognized statistical rating organizations" that are not

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affiliated persons, as that term is defined in the 1940 Act, of Leu. Applicants' U.S. counsel will certify that the rating has been obtained. A rating need not be obtained, however, if, in the opinion of U.S. counsel, after taking into consideration the doctrine of "integration" referred to in Rule 502 under the 1933 Act and various releases and no-action letters made public by the Commission, an exemption from registration is available under section 4(2) of the 1933 Act.

9. Leu will unconditionally guarantee the payment of principal, interest, and premium, if any, on the notes issued or sold by Finance. The notes, whether direct liabilities of Leu or unconditionally guaranteed obligations of Finance, will rank *pari passu* among themselves, prior to equity securities of Leu and equally with all other unsecured indebtedness of Leu, including liabilities to depositors, except that, under Swiss Banking Law, savings deposits at Leu up to Swiss Franc 10,000 per deposit will have priority over the notes.

10. Leu may appoint a bank or other financial institution in the United States as Applicants' authorized agent to issue and pay the notes. Leu will appoint the financial institution, Finance, Leu's U.S. counsel, or some other U.S. person that normally acts in such a capacity to accept any process that may be served in any action based on a note by a noteholder in any State or Federal court. The authorized agent will not be a trustee for the noteholders. Leu and Finance will expressly accept the jurisdiction of any State or Federal court in the City and State of New York in any action based on the notes. The appointment of an agent for service of process and consent to jurisdiction will be irrevocable until all amounts due and to become due on the notes have been paid by Leu.

11. Leu may offer other debt securities, but not shares of its capital stock in the United States. Finance may also offer other debt securities in the United States that will be unconditionally guaranteed by Leu. The proceeds of Finance's offerings will be deposited with, or loaned to, Leu.

12. Any future offerings of Applicants' securities in the United States will be done on the basis of disclosure documents at least as comprehensive in their description of Leu, its business and its financial condition as those customarily used by U.S. bank holding companies offering similar securities under similar circumstances. They undertake to ensure that each offeree that indicates an interest in the securities will be provided with the disclosure documents prior to any sale of the securities to the offeree. Any future offerings registered under the 1933 Act will be made by the use of a disclosure document and in the manner required by the 1933 Act and and the rules and regulations thereunder.

13. Leu will appoint a U.S. person as its agent for services of process in any action based on the securities and instituted in any State or Federal court by any holder of the securities. Leu and Finance will expressly accept the jurisdiction of State and Federal courts in the City and State of New York in any action based on the securities. The appointment of an agent for service of process and consent to jurisdiction will be irrevocable until all amounts due or to become due on the securities have been paid.

14. Leu and Finance will obtain a rating for any future offerings of its debts securities (except deposits) under the conditions described in paragraph 8, above.

15. Approval of the application is both necessary and appropriate in the public interest. If Leu were registered as an investment company, it would not be permitted to engage in many of the activities which it and other foreign banks engage, such as underwriting government securities and foreign enchange. This would effectively preclude Leu from selling its debt securities in the United States. Such a result is both inherently inequitable and in direct conflict with the objective of the International Banking Act of 1978. That Act was intended to place U.S. and foreign banks on an equal basis in their transactions in the United States. Approval of the application would also provide an alternate source of U.S. dollars to Leu. An exemption is consistent with the protection of investors because Leu is already subject to a regulatory framework that affords sufficient investor protection. An exemption is also consistent with the purposes of the 1940 Act. Congress foresaw that entities that did not pose the problems associated with investment companies would come within the definition of "investment company" contained in the 1940 Act. It therefore provided a means section 6(c) for the SEC to exempt those types of entities from the 1940 Act. Leu is a closely regulated banking entity with investments and objectives totally different from the investment companies at which the 1940 Act is directed and for which its substantive provisions are neither necessary nor suitable.

16. The rationale for an exemption under section 6(c) for Leu extends to Finance because of the close relationship between the two companies and because the obligations of Finance will in effect be obligations of Leu. Finance's sole business is and will continue to be operating as a financing vehicle for Leu.

Applicants' Conditions

The Applicants agree that if an order is granted it will be expressly conditioned on the representations set forth above and more fully described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Johathan G. Katz,

Secretary.

[FR Doc. 86-25209 Filed 11-6-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15377; File No. 812-3469]

The Light Street Income Fund, Inc.; Application

October 27, 1986.

Notice is hereby given that The Light Street Income Fund, Inc. ("Applicant"), 100 Light Street, Baltimore, Maryland 21201, a registered open-end management investment company, filed an application on August 11, 1986 for an order, pursuant to section 8(f) of the Investment Company Act of 1940 ("Act"), declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and rules thereunder for the applicable provisions thereof.

Applicant, a Maryland corporation, states that it filed a Notification of Registration and a Registration Statement on May 20, 1982. On that date, it registered an indefinite number of shares of common stock under the Securities Act of 1933. Applicant's initial public offering of common stock commenced on August 5, 1982.

Applicant represents that on May 15, 1986, its Board of Directors declared advisable a merger of Applicant with and into United States Fidelity and Guaranty Company ("USF&G"), a Maryland corporation. A similar authorization in regard to the proposed merger was made by USF&G's Board of Directors at its regular meeting on May 7, 1986. The proposed merger was approved at a special meeting on May 27, 1986, by the vote required under the Maryland General Corporation Law and the Act. On June 30, 1986, following the filing of appropriate Articles of Merger with the State of Maryland, Applicant was merged with and into USF&G. On such date, USF&G was the sole shareholder of Applicant's common stock. All shares of Applicant's common stock outstanding immediately prior to the merger were cancelled and, by operation of state law, Applicant ceased to have a separate legal existence. Applicant represents that USF&G is an insurance company as such term is used under section 3(c)(3) of the Act, and, accordingly, is exempt from the definition of an "investment company" under the Act.

According to the application, all fees and expenses incurred by Applicant in connection with the merger are being borne by USF&G as successor to Applicant. All of Applicant's liabilities have been assumed by USF&G. Applicant is not a party to any litigation or administrative proceedings. Applicant is not now engaged and does not propose to engage in any business activities other than those necessary for the winding up of its affairs.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than November 17, 1986 at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-25210 Filed 11-6-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15384; File No. 812-6445]

Application and Opportunity for Hearing; Massachusetts Mutual Life Insurance Co. et al.

October 30, 1986.

Notice is hereby given that the Massachusetts Mutual Life Insurance Company "Mass Mutual"), a mutual life insurance Company organized under the laws of Massachusetts, and two separate investment accounts of Mass Mutual, Massachusetts Mutual Variable Annuity Separate Account 1 ("Separate Account 1"), and Massachusetts Mutual Variable Annuity Account 2 ("Separate Account 2") filed an application on August 4, 1986 and an amendment thereto on October 7, 1986, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act"), exempting Applicants from the provisions of sections 26(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit the deduction of a daily mortality and expenses risk charge ("risk charge") in connection with certain flexible and single premium individual variable annuity contracts (the "Contracts") described below. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act and the rules thereunder for a statement of the relevant provisions.

Applicants request exemption from sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to deduct from Separate Accounts 1 and 2 a risk charge equal to an effective annual rate of up to 1.25 percent of the net assets attributable to the Contracts. Applicants state that the mortality component (.40 percent) of the risk charge is intended to compensate Mass Mutual for assuming the risk that its actuarial estimates of mortality rates built into the Contracts' guaranteed annuity rates may prove inadequate, and that the expense component (.85 percent) of the risk charge is intended to compensate Mass Mutual for assuming the risk that the contingent deferred sales charge and the administrative charges may be insuffícent to cover sales and administrative expenses associated with the sale and maintenance of the Contracts.

Applicants state that they will deduct two administrative charges: an annual $30 charge (which may be increased by Mass Mutual to no more than $50) for the accumulated value of each contract and a daily charge assessed against the assets of Separate Accounts 1 and 2 at an annualized rate of .15 percent.

Applicants state that the sales charge is calculated as a percent of the amount redeemed or the accumulated value of the Contract at maturity. Under the flexible premium contracts the charge is 8 percent in the first four contract years and 4 percent in the next four contract years. Under the single premium contracts it is 5 percent in the first contract year and declines 1 percent per year until it becomes 1 percent in the fifth contract year.

Applicants state that they compute variable and fixed annuity benefits using a different mortality table for each. Applicants state that for computing minimum fixed income payments, the Contracts provide that the Company will use mortality rates from the 1983 Table "a" with Projection G for thirty years and with female rates set back for five years. For variable income payments, the Contracts provide that the Company will use mortality rates based on the 1971 Individual Annuity Mortality Table projected to decrease 1½% annually from 1971.

Applicants represent that the mortality and expense risk charge is reasonable in relation to the risks assumed by Mass Mutual under the Contracts and within the range of industry practice for comparable annuity contracts issued by other insurance companies. This representation is based on Mass Mutual's analysis of publicly available information about such other contracts, taking into consideration the particular annuity features of the comparable contracts, including such factors as current charge levels, charge level or annuity rate guarantees, the manner in which the charges are imposed and the markets in which the Contracts will be offered. Applicants state that Mass Mutual has incorporated the identity of the products analyzed and its analysis, including its methodology and results, into a memorandum which it will maintain and make available to the Commission or its staff upon request. Applicants represent that the deferred sales charge assessed in connection with certain partial or total redemptions or at maturity may be insufficient to cover all costs of distributing the Contracts. Applicants state that if the actual amounts derived from the surrender charge prove insufficient to cover actual expenses, the deficiency will be met from Mass Mutual's general corporate funds, which could include amounts derived from the risk charge that exceed the expenses the charge was designed to cover. Applicants represent that Mass Mutual has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Separate Accounts and the owners of Contracts. Applicants further state that the basis for this conclusion has been incorporated into a memorandum which Mass Mutual will maintain and make available to the Commission or its staff upon request.

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Mass mutual also represents that the assets of Separate Accounts 1 and 2 will be invested only in a management investment company which undertakes, in the event it should adopt a plan for financing distribution expenses pursuant to Rule 12b-1 of the Act, to have such plan formulated and approved by a board of directors or trustees, the majority of whom are not "interested persons" of the management company within the meaning of section 2(a)(19) of the Act.

Notice is further given that any person wishing to request a hearing on the application may, not later than November 25, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his or her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-25211 Filed 11-6-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15379; 812-6477]

North Side Capital Corp.; Application for Collateralized Mortgage Obligations

October 28, 1986.

Notice Is Hereby Given that North Side Capital Corporation ("Applicant") 1100 North Market Street, Suite 780, Wilmington, Delaware 19890, filed an application on September 11, 1986, for an order, pursuant to section 6(c) of the Investment Company Act of 1940, (the "Act") exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of representations contained therein, which are summarized below, and to the Act for the relevant provisions thereof.

Applicant states that it was incorporated for the limited purpose of acquiring, owning, holding and pledging Mortgage Certificates (as described below), issuing and selling series of bonds secured by such Mortgage Certificates ("Bonds") and engaging in activities incidental thereto. Applicant represents that the Bonds will be separately secured by collateral consisting primarily of mortgage pass-through certificates ("GNMA" Certificates") which are fully guaranteed as to principal and interest by the Government National Mortgage Association ("GNMA"), mortgage participation certificates ("FHLMC Certificates") issued and guaranteed by the Federal Home Loan Mortgage Corporation ("FHLMC") and/or guaranteed mortgage pass-through certificates ("FNMA Certificates") issued and guaranteed by the National Mortgage Association ("FNMA"). As used herein, "Mortgage Certificates" means GNMA, FHLMC and/or FNMA Certificates. The Mortgage Certificates assigned to secure a series of Bonds may or may not represent the entire beneficial interest in the related mortgage pools.

According to the application, each series of the Bonds will be issued pursuant to an indenture (the "Indenture") between Applicant and an independent trustee (the "Trustee"). Indentures for each public offering will be qualified under the provisions of the Trust Indenture Act of 1939. The Mortgage Certificates securing each series of Bonds will be assigned to and held by the Trustee or its nominee, in registered or book-entry form, and the Trustee will have a first perfected security interest in all such Mortgage Certificates.

Applicant anticipates that the Mortgage Certificates securing each series of Bonds will be acquired by Applicant using the net proceeds of sale of such Bonds. Except for the limited power to substitute Mortgage Certificates as described below, Applicant will not be permitted to release from the lien of the Indenture such Mortgage Certificates assigned to secure a series of Bonds until such Bonds are paid.

Applicant represents that except when exercising remedies following default (and except for substitutions of Mortgage Certificates), the Trustee will not be permitted to release from the lien of the Indenture any Mortgage Certificates which are required to collateralize Applicant's Bonds. Pursuant to the Indenture, the proceeds of the Mortgage Certificates held by the Trustee pending distribution to Bondholders may only be invested in United States obligations, cash equivalents, and other investments meeting requirements of the rating agencies rating the Bonds of such series. The Bonds will be structured so that the cash flow generated by the Mortgage Certificates and the reinvestment earnings thereon, together with the other collateral pledged to secure the Bonds, will be sufficient to provide for the full and timely payment of principal and interest on the Bonds. It is anticipated that the cash flow from the Mortgage Certificates and other collateral securing a series of Bonds will be sufficient to pay principal and interest on the Bonds when due to Bondholders.

In addition to the Mortgage Certificates, the other collateral pledged to secure the Bonds will include a separate collection account ("Collection Account") for each series of Bonds and may include a reserve fund ("Reserve Fund"). A Reserve Fund would consist of cash, a letter of credit, other eligible investments ("Eligible Investments"), or a combination thereof in an amount which, together with reinvestment earnings thereon, would be sufficient to cover any potential cash flow shortfall related to any Mortgage Certificates. The amount held in such Reserve Fund for any series of Bonds is expected to be insubstantial relative to the total amount of the Collateral securing such series of Bonds. The Collection Account for each series will be established by the Trustee for receipt of all monthly principal and interest distributions on the Mortgage Certificates securing the series, reinvestment income thereon, and any initial deposit required by the prospectus supplement. Amounts in the Collection Account will be invested by the Trustee in Eligible Investments, which include, among other investments, obligations of the United States or any agency thereof, federal funds, certificates of deposit, highest rated commercial paper, time deposits and banker's acceptances sold by eligible commercial banks, certain purchase agreements, securities having ratings acceptable to the rating agencies rating the Bonds, and guaranteed investment contracts. Such Collection Account investments will mature on or prior to the next payment date for the series, and will thus be available to make required payments on the Bonds of such series.

Certain series of Bonds may provide for optional and mandatory redemptions on terms specified for each series of Bonds. A series may provide for mandatory redemptions if, due to low reinvestment yields and/or substantial payments of principal on the mortgage loans underlying the Mortgage Certificates, it is determined that the cash anticipated to be in the Collection

Account, as defined in the Indenture, might not be sufficient to make the required payments on the Bonds. Bondholders will not be entitled to compel the liquidation of the Mortgage Certificates in order to redeem the Bonds prior to maturity.

Applicant asserts that it is not the type of entity the Act was intended to regulate. Since the Mortgage Certificates are guaranteed by agencies or instrumentalities of the United States, the Applicant maintains that the Bond investor is protected whether or not each of the Mortgage Certificates represents the entire beneficial interest in the related mortgage pool. Furthermore, Applicant submits that the requested exemption will increase its ability to purchase Mortgage Certificates and that the public interest will therefore be served by expanding the sources of funds available to finance the purchase and retention of Mortgage Certificates and, thereby, the sources of funds available for the housing finance needs of the nation. Applicant further submits that it will exercise no investment discretion with respect to the Mortgage Certificates assigned as collateral for each series of Bonds except for its limited ability to substitute collateral. Also, the Trustee is permitted to invest the cash proceeds of the Mortgage Certificates only in United States obligations and other investments which meet the criteria of the rating agency or agencies rating the Bonds specified in the Indenture, and only for the limited period of time between receipt of such proceeds and payment to Bondholders. Applicant states that, under these circumstances, a Bondholder's risk and return will in no material respect depend upon the ability of Applicant to successfully invest and reinvest amounts distributed on the Mortgage Certificates.

Applicant has consented to the imposition of the following conditions with respect to the requested order:

(1) Each series of Bonds will be registered under the Securities Act of 1933 ("Securities Act"), unless offered in a transaction exempt from registration pursuant to section 4(2) of the Securities Act.

(2) The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. However, the mortgage collateral underlying the Bonds (whether owned by Applicant or pledged pursuant to collateralized obligations) will be limited to Mortgage Certificates (the "Mortgage Collateral").

(3) If new Mortgage Collateral is substituted, the substitute Mortgage Collateral must: (i) Be of equal or better quality than, and insured or guaranteed to the same extent as, the Mortgage Collateral replaced; (ii) have similar payment terms and cash flow as the Mortgage Collateral replaced; and (iii) meet the conditions set forth in paragraphs (2) and (4). In addition, new Mortgage Collateral may not be substituted for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as Mortgage Collateral. In no event may any new Mortgage Collateral be substituted for any substitute Mortgage Collateral.

(4) All Mortgage Certificates, funds, accounts or other collateral securing a series of Bonds ("Bond Collateral") will be held by the Trustee or on behalf of the Trustee by an independent custodian. The custodian may not be an affiliate (as the term "affiliate" is defined in Securities Act Rule 405, 17 CFR 230.405) of the Applicant. The Bond Trustee will be provided with a first priority perfected security or lien in and to all collateral for the Bonds.

(5) Each series of Bonds will be rated in the highest bond rating category by at least one nationally recognized statistical rating organization that is not affiliated with the Applicant. The Bonds will not be considered redeemable securities within the meaning of section 2(a)(32) of the Act.

(6) No less often than annually, an independent public accountant will audit the books and records of the Applicant and, in addition, will report on whether the anticipated payments of principal and interest on the Mortgage Collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's report(s) will be provided to the Trustee.

Applicant requests that the Commission exempt it from all provisions of the Act. Applicant submits that the exemptive relief requested is "necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act" because it is not an entity to which the provisions of the Act were intended to be applied and its activities will enhance the national goal expressly articulated by Congress of expanding financing for housing.

Notice Is Further Given that any interested person wishing to request a hearing on the application may, not later than November 20, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for such request, and the specific issues, if any, of fact or law that are disputed to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-25212 Filed 11-6-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15390; File No. 812-6454]

Application and Opportunity for Hearing; Phoenix Mutual Life Insurance Co. et al

October 31, 1986.

Notice is hereby given that Phoenix Mutual Life Insurance Company (the "Company"), Phoenix Equity Planning Corporation ("Equity Planning"), and Phoenix Mutual Variable Universal Life Account ("VUL Account"), (referred to collectively herein as "Applicants") at One American Row, Hartford, Connecticut 06115, filed an application on August 11, 1986, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicants and certain transactions from sections 2(a)(32), 22(c), 26(a)(2), 27(c)(1), 27(c)(2) and 27(d) of the Act, and from Rule 6e-3(T) (b)(12), (b) (13) and Rule 22c-1 thereunder, to the extent necessary, as described in the application. All interested persons are referred to the application on file with the Commission for a statement of Applicants' representations, which are summarized below, and are referred to the Act and the rules thereunder for a statement of the relevant statutory provisions.

Applicants state that the Company is a mutual life insurance company chartered in the State of Connecticut and is admitted to do business in forty-nine states, the District of Columbia, Canada, the Virgin Islands and Puerto Rico. The Company is the depositor and sponsor for VUL Account, a segregated investment account of the Company, which is registered under the Act as a unit investment trust. Equity Planning will be the distributor for the VUL Account. Applicants state that VUL Account was established for the purpose

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of funding individual flexible premium variable life insurance contracts (the "Contracts"), as defined in paragraph (c)(1) of Rule 6e–3(T). Applicants are relying on the provisions of Rule 6e–3(T) in issuing the Contracts. Under the Contracts, neither the timing nor the amount of premium payments are fixed by Phoenix Mutual. Also, the death benefit may, and the cash value will, increase or decrease based upon the investment performance of amounts allocated to the sub-accounts of VUL Account.

Applicants state that under the Contract, net premiums are allocated, according to the instructions of the owner of the Contract ("Contractowner"), among the sub-accounts of VUL Account. Each sub-account of VUL Account will invest exclusively in shares of a corresponding portfolio of The Big Edge Series Fund (the "Fund"), an open-end management investment company. Shares of the Fund are also expected to be sold to another separate account of Phoenix Mutual in connection with certain variable annuity contracts.

Applicants state that as a general condition to the requested order, they agree that to the extent the final version of Rule 6e–3 (or any other rule adopted as the final version of Rule 6e–3(T)) imposes terms or conditions on the granting of exemptive relief of the nature requested n the application, Applicants shall take such steps as may be necessary to comply with that rule. Applicants assert the relief requested in the application meets the standards of section 6(c), is well precedented, and involves technical matters and matters unforeseen when Rule 6e–3(T) was adopted. Applicants state that the Contract provides for the deduction from cash value of a deferred acquisition expense charge ("Acquisition Expense Charge"). According to the application, a pro-rata portion of the Acquisition Expense Charge is deducted from the Contract's cash value on a monthly basis during the first ten Contract Years. The unpaid balance of the Acquisition Expense Charge is payable upon lapse of the Contract or its surrender. In addition, Applicants state that a portion of any unpaid Acquisition Expense Charge is deducted in connection with a partial surrender.

Applicants state that the total amount of the Acquisition Expense Charge under the Contract is the sum of three elements. Applicants state that the first element is a sales charge equal to 5.5% of the issue premium. According to the application, the other two elements of the Acquisition Expense Charge are (i) a charge equal to the premium tax assessed in connection with the Policy and (ii) a cost-based administrative charge to reimburse Phoenix Mutual for administrative costs it incurs in issuing the Contract. Applicants state that since the premium tax portion of the charge is at cost, the amount accessed will be different in various states and municipalities. Applicants state that the amount of the issue administrative charge element of the Acquisition Expense Charge is equal to 1.0% of the issue premium.

Applicants recognize that it could be argued that the deduction of an administrative charge or a charge for premium taxes upon a full or partial surrender could result in an impermissible deduction from the cash value of the VUL Account, or in the redemption of the Contract in an amount less than its net asset value. Applicants request exemption from sections 2(a)(32), 22(c), 26(c), 27(c)(1), 27(c)(2) and Rules 6e–3(T)(b)(12), 6e–3(T)(b)(iii) and 22c–1 to the extent necessary to permit the administrative charge for issuance expenses and premium taxes to be deducted on full or partial surrender of the Contract's cash value. Applicants represent that the administrative charge element is cost-based and is not expected to produce a profit, and that the premium tax element will equal the actual tax, if any, charged by a state or other governmental entity. Applicants submit that imposition of the issue administrative charge and premium tax charge in the form of a deferred charge as part of the Acquisition Expense Charge, is much more favorable to the Contractowner than the deduction of these charges from premiums paid—the conventional way of imposing such charges. First, Applicants assert that the amount of the Contractowner's investment in VUL Account is not reduced as it would be if these charges were taken in full in the first Contract Year. Second, Applicants represent that the total amount charged to any Contractowner is no greater than it would be if these charges were taken in full in the first Contract Year. Finally, Applicants state that the fact that the entire amount of the charges has not been deducted will favorably affect the amount of the death benefit under the Contract during the first ten Contract Years since cash value will be greater.

Applicants represent that the administrative charge and premium tax elements of the Acquisition Expense Charge are the same amounts as would have been imposed under the Contract if the expense of issuing the Contract and the premium taxes had been recovered through a front-end charge. In particular, Applicants represent that the administrative charge and premium tax elements of the Acquisition Expense Charge do not take into account the time-value of money (which would increase the charge to factor in the investment cost to Phoenix Mutual of deferring the charge). As a result, Applicants submit that Contractowners will obtain the advantages described above, which arise from the deferred nature of the charge, without incurring any additional cost.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than November 26, 1986 at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–25213 Filed 11–6–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–15382; File No. 812–6466]

Application and Opportunity for Hearing; The Prudential Insurance Co. of America et al

October 30, 1986.

Notice is hereby given that the Prudential Insurance Company of America ("Prudential"), the Prudential Variable Contract Account–10 ("VCA–10") and The Prudential Variable Contract Account–11 ("VCA–11") (referred to collectively as "Applicants"), located at Prudential Plaza, Newark, NJ 07101, filed an application on August 29, 1986, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") granting exemption from the provisions of Rule 11a–2(e) under the Act and of section 22(d) of the Act, to the extent necessary to permit certain offers of exchange. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act and the rules thereunder for a statement of the relevant provisions.

Applicant states that Prudential is a mutual life insurance company organized under the laws of the State of New Jersey and that VCA–10 and VCA–11 (referred to collectivley as the "Accounts") are separate accounts of Prudential established for the purpose of funding certain group annuity variable contracts (the "Contracts") issued by Prudential. Both VCA–10 and VCA–11 are registered under the Act as open-end management invested companies.

Applicant states that the Contracts (and a companion-fixed dollar annuity contract) are issued to employers and associations ("Contractholders"). Applicants state that no sales charge is deducted from participants' contributions under the Contracts as they are made. Applicants state that a deferred sales charge will in some circumstances be assessed in the event of a full or partial withdrawal of contributioins from participants' VCA–10 or VCA–11 accumulation accounts. The deferred sales charge assessed at the time of each such withdrawal is a specified percentage of the lesser of (i) the participants's total contributions (not previously withdrawn[1] to the Account of contract from with the withdrawal is made or (ii) the amount withdrawn. Applicants explain that the specified percentages vary depending on the number of years the participant has participated under the Contracts and the different kinds of retirement arrangement funded by the Contracts.

Application state that the deferred sales charge is designed to reimburse Prudential for sales expenses, such as compensation paid to sales personnel, costs of advertising and sales promotions, prospectus costs, and costs of sales administration. Applicants also state that, traditionally, these expenses are recouped through a sales load deducted from contributions when they are made, but the deferred sales charge is preferable from the standpoint of the investor because it permits investment of the entire contribution and, in many cases, permits withdrawal without the imposition of any sales charge whatsoever.

Applicants further state that Prudential has since 1968 offered variable contracts providing for participation in the Prudential Variable Contract Account–2 ("VCA–2"), which is registered under the Act as an open-end management investment company. Applicants explain that Contracts providing for participation in VCA–2 have been issued to employers and associations in connection with tax-deferred annuities. Contracts providing for participation in VCA–2 have generally been issued along with a separate, companion fixed-dollar annuity contract and are collectively referred to as Prudential's Group Tax-Deferred Annuity Program (the "TDA Program").

According to the Applicants, Prudential deducts a sales charge from contributions to VCA–2 made on behalf of participants in the TDA Program before those contributions are invested in VCA–2. Applicants state that the maximum sales charge is 4%, which may drop to 2.5% under terms described in the application. Applicants further state that they propose to offer to TDA Program participants employed by TDA Contractholders who also purchase the Contracts, the opportunity to exchange their interests in the TDA Program for interests in the Contracts.

Applicants represent that the proposed exchanges would be made without any charge to the TDA Program participants. Participants' interests withdrawn from VCA–2 and any companion fixed-dollar annuity contract in connection with the exchange would be invested at net asset value in VCA–10 or VCA–11 as directed by the participant. Applicants state that amounts invested in the Contracts as a result of the exchange would be considered to be contributions to the receiving Accounts for purpose of calculating the contingent deferred sales load upon subsequent withdrawals from the Contracts. However, because a front-end sales load would already have been paid on such amounts, Applicants would not charge any contingent deferred sales load on contributions withdrawn from the Accounts and Contracts until the participant had withdrawn an amount of contribution equal to the amount the participant had transferred from the TDA Program. Applicants represent that amounts transferred would be considered to be the first amounts withdrawn from a participant's account under the Contracts.

Applicants further state that for Participants who transfer all or a part of their interests in the TDA Program to the Contracts the calculation of the deferred sales load would be made using as a starting date the date of their first contribution to the TDA Program. This adjustment would apply to withdrawals of all contributions made under the Contracts which are in excess of and are made after the initial transfer of the participant's interest from the TDA Program to the Contracts.

Applicants state that they seek exemption from the provisions of Rule 11a–2(e) to the extent necessary to make their proposed offers because the language of the rule might be read to require that the offering account track, in each instance where a withdrawal is made after the exchange, whether any of the withdrawal is attributable to purchase payments made for the exchanged security (or appreciation thereon) transferred in connection with the exchange. Applicants state that they will allow TDA Program participants to withdraw from the Contracts the total amount transferred from the TDA Program, without payment of deferred sales charges that might otherwise be charged upon such withdrawals. All withdrawals of contributions under the Contracts, regardless of whether those withdrawals may be traced to purchase payments transferred in connection with the exchange or to subsequent contributions, would be made without imposition of a deferred sales charge until the total amount withdrawn equalled the amount transferred.

Applicants further state that they proposed to institute the foregoing procedure because TDA participants who exchange their interests will always be assured that their first withdrawals from the Contracts will be free of any deferred sales charge, as long as those withdrawals do not exceed the amount transferred in connection with the exchange, even though the withdrawals might actually consist of contributions made to the Contracts subsequent to the exchange transfer.

Applicants state that their proposed system comports with the policies underlying Rule 11a–2, which are to prevent charging duplicative sales loads as the result of an exchange from a separate account with a front-end sales load to one with a deferred sales load. Applicants state that their procedure might in some instances result in the charging of a sales load on the withdrawal of contributions traceable to the exchange of interests in VCA–2, but that this will only happen where the

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[1] Applicants clarified this representation in a letter wherein they represent that amounts not previously withdrawn are calculated on a first-in-first-out basis, and that deferred sales loads will never be calculated on any appreciation attributable to purchase payments made for interests in Prudential's VCA–2 which may be exchanged for interests in VCA–10 and VCA–11 in connection with the Contracts.

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participant in question has already received an earlier and offsetting benefit in the form of a waiver of sales loads which otherwise would have been payable on previous withdrawals consisting of contributions made subsequent to the exchange.

Applicants further seek exemption from section 22(d) of the Act to the extent necessary to permit the years of Contract participation, for purposes of the deferred sales charge, to be calculated from a participant's first contribution to the TDA Program, rather than from his or her first contribution under the Contracts.

Applicants state that the objectives of section 22(d) would not be impaired if Applicants are permitted to give participants who transfer all or part of their interests to the Contracts credit for their years of participation in the TDA Program. Applicants state that their proposal would not unfairly discriminate against other Contract owners or participants since transferring TDA Program participants are properly distinguishable from other Contract participants. Applicants further state their belief that sales expenses related to contributions from transferring TDA Program participants shall be lower than those related to future contributions from other Contract participants.

Notice is further given that any interested persons wishing to request a hearing on the application may, no later than November 25, 1986 at 5:30 p.m., do so by submitting a written request setting forth the nature of his or her interest, the reasons for his or her request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After this date, an order disposing of the application will be issued unless the Commission orders hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 86-25214 Filed 11-6-86; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-23751; File No. SR-MSE-86-7]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Stock Exchange, Incorporated ("MSE") Relating to Automatic Execution of Agency Limit Orders Under MSE's MAX System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 22, 1986, the Midwest Stock Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Article XX, Rule 34 of the Rules of the Midwest Stock Exchange, Incorporated is hereby amended as follows:

Additions italicized—[Deletions Bracketed]

ARTICLE XX.—MAKING EXCHANGE CONTRACTS

Guaranteed Execution System

Rule 34. No change in text.

. . . *Interpretations and Policies:*

.01 Specialists shall be provided the opportunity to elect an alternative method by which agency limit orders are automatically executed under the Midwest Automated Execution System (MAX System). Specialists electing to utilize this alternative method will continue to be subject (except as modified herein) to the existing rules and procedures governing the execution of agency limit orders pursuant to the MAX System. Once a specialist elects to utilize this alternative method, all agency limit orders entered through MAX will be executed pursuant hereto. Where a specialist subsequently elects to cease utilization of this alternative method, reasonable prior notice thereof must be provided to the Exchange. Agency limit orders submitted pursuant to this alternative method shall be automatically executed subject to the following requirements:

(a) Agency limit orders will be automatically executed when the best consolidated quote system bid is equal to the limit order sell price or the best consolidated quote system offer is equal to the limit order buy price,

(b) Agency limit order execution as provided herein shall occur only under those circumstances where the best consolidated quote size is equal to or greater than the size of the limit order, and

(c) Agency limit orders submitted pursuant hereto will execute only at such time as a last sale has occurred at, or better than the limit order price.

This alternative method shall be available to electing specialists between the hours of 9:00 a.m. and 2:45 p.m. CST only. Specialists not electing to utilize this alternative method will continue to be subject to the existing rules and procedures governing the execution of agency limit orders under the MAX System.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, MAX agency limit orders are automatically executed only where there has been a price penetration of the limit in the primary market. The effect of the current rule is that orders entitled to a fill because the market is at the limit price presently will not automatically execute under MAX. In these situations, the specialist must manually execute such limit orders.

This method will be limited to MAX orders only, will apply only to specialists electing to utilize it, and will be effective only between the hours of 9:00 a.m. and 2:45 p.m. This change will enable agency limit orders to execute automatically once the limit price touches the market and the other applicable criteria are met.

The purpose of this proposed change is to provide customers of specialists in certain situations, e.g., high volume periods, with the ability to receive automatic execution of their agency limit orders rather than manual execution as is presently the case.

The proposed rule change is consistent with Section 6 of the Securities Exchange Act of 1934 in that it protects investors by providing automatic executions at the best consolidated quote.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organizaiton. All submissions should refer to the file number in the caption above and should be submitted by November 28, 1986.

For the Commission, by the division of Market Regulation, pursuant to delegated authority.

Dated: October 24, 19865.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-25199 Filed 11-6-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23752; File No. SR-NASD-86-28]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to an Amendment to the By-Laws

Pursuant to section 19(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 21, 1986 the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Article VII, Section 8 of the NASD By-Laws to preclude members of the Board of Governors who are absent from meetings of the Board from voting by proxy on issues before the Board.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis, for, the Proposed Rule Change

(a) *Purpose.* The proposed amendment codifies NASD policy that members of the Board of Governors who are absent from a meeting of the Board may not vote by proxy on issues before the Board. Questions have arisen from time to time on the NASD's policy in this area and this amendment has been proposed to avoid further confusion. The proposed amendment is consistent with the law in Delaware, the NASD's state of incorporation.

(b) *Basis.* The proposed amendment is consistent with the provisions of section 15A(b)(6) of the Securities Exchange Act of 1934, as amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Association does not foresee any burden on competition by this proposed rule change not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to detemine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 28, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17. CFR 200.30-3(a) (12).

Dated: October 27, 1986.

Jonathan G. Katz,

Secretory.

[FR Doc. 86-25200 Filed 11-6-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23754; File No. SR-NASD-86-29]

Self-Regulatory Organizations; Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Amendment to Article III, Section 28 of the Rules of Fair Practice

Pursuant to section 19(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 21, 1986 the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The following is the full text of a proposed amendment to Article III, section 28 of the National Association of Securities Dealers, Inc.'s ("NASD") Rules of Fair Practices. (New language is italicized; deleted language is bracketed).

Transactions for [Personnel of Another Member] or by Associated Persons

Determine Adverse Interest

(a) A member ("executing member") who knowingly executes a transaction for the purchase or sale of a security for the account of a person associated with another member ("employer member"), or for any account over which such associated person has discretionary authority, shall use reasonable diligence to determine that the execution of such transaction will not adversely affect the interests of the employer member.

Obligations of Executing Member

(b) Where an executing member knows that a person associated with an employer member has or will have a financial interest in, or discretionary authority over, any existing or proposed account carried by the executing member, the executing member shall:

(1) Notify the employer member in writing, prior to the execution of a transaction for such account, of the executing member's intention to open or maintain such an account;

(2) Upon written request by the employer member, transmit duplicate copies of confirmations, statements, or other information with respect to such account; and

(3) Notify the person associated with the employer member of the executing member's intention to [transmit] *provide the notice and* [the] information required by paragraphs (1) and (2) of this subsection (b).

Obligations of Associated Persons [Associated] Concerning an Account With a Member

[(d)] (*c*) A person associated with a member who opens an account or places an order for the purchase or sale of securities with [any other] *another* member, shall[, where such associated person has a financial interest in such transaction and/or any discretionary authority over such account] notify the executing member of his or her association with [an] *the* employer member [regardless of any other function, capacity, employment or affiliation of such associated person. If]; *provided, however, that if* the account [is] *was* established prior to the association of [such] *the* person with [an] *the* employer member, the associated person shall notify the executing member promptly after becoming so associated.

Obligations of Associated Persons Concerning an Account With an Investment Adviser, Bank, or Other Financial Institution

(*d*) *A person associated with a member who opens a securities account or places an order for the purchase or sale of securities with a domestic or foreign investment adviser, bank, or other financial institution, except a member, shall:*

(*1*) *Notify his or her employer member in writing, prior to the execution of any initial transaction, of the intention to open the account or place the order; and*

(*2*) *Upon written request by the employer member, request in writing and assure that the investment adviser, bank, or other financial institution provides the employer member with duplicate copies of confirmations, statements, or other information concerning the account or order; provided, however, that if an account subject to this subsection (d) was established prior to a person's association with a member, the person shall comply with this subsection promptly after becoming so associated.*

(*e*) *Subsections (c) and (d) of this section shall apply only to an account or order in which an associated person has a financial interest or with respect to which such person has discretionary authority.*

Exemption for Transactions in Investment Company Shares and Unit Investment Trusts

[(c)] (*f*) The provisions [of subsection (b)] of this section shall not be applicable to transactions in *unit investment trusts and* variable contracts or redeemable securities of companies registered under the Investment Company Act of 1940, as amended, or to accounts which are limited to transactions in such securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below.

The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Board of Governors approved amending Article III, Section 28 of the Rules of Fair Practice to require any associated person to notify his or her employer member when opening a securities account with an investment adviser, bank or other financial institution or before placing an order to buy or sell securities with such an organization. The amendment would apply to any account or transaction in which the associated person has a financial interest or discretionary authority. The amendment would also require associated persons to arrange for the employer member to receive duplicate confirmations and account statements upon request. The amendment was approved to help member firms discharge their supervisory responsibility over the securities activities conducted in their associated persons personal securities accounts.

The NASD believes this amendment is consistent with section 15A(b)(6) of the Securities Exchange Act of 1934, as amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the rule proposal will impose no borden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

A total of 13 comment letters were received. Of these, nine expressed unqualified approval. Two comments suggested amending the transactional exemption to include unit investment trusts, direct participation programs and other products not subject to free-riding and withholding restrictions or market manipulation, and shares of money market funds, certificates of deposit and like instruments. One of these comments suggested adopting requirements similar to NYSE Rule 407 to avoid unnecessary correspondence between the associated person and his or her member firm. One comment suggested that expansion to investment advisers and other financial institutions was too broad and placed an unnecessary burden on compliance by broker-dealers. One comment favored the approach but questioned the consequences if the associated person failed to notify the broker-dealer. An informal comment noted that under subsection (d)(1) a literal reading might require notice for each transaction, even though a blanket notice had already been given. Lastly, one comment suggested that the proposal placed an unnecessary burden on broker-dealers that outweighed any benefits. This comment suggested that the rule should be limited to securities transactions. To accomplish this, it recommended to securities transactions. To accomplish this, it recommended deleting the language in paragraph (d)(1) after the word "transaction" and limiting paragraph (d)(2) to require duplicate copies of confirmations and statements.

In response to the comments received, the Board adopted three changes to the proposed amendments:

1. Unit investment trusts were added to the transactional exemption contained in the rule.
2. The rule was changed to reflect its applicability to an initial transaction only.
3. An affirmative obligation was imposed on the associated person to notify his or her member firm.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 28, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30 3(a)(12).

Dated: October 28, 1986.

Jonathan G. Katz,
Secretary.

[FR Doc. 86-25201 Filed 11-6-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23750; File No. SR-NSCC-86-12]

Self-Regulatory Organizations; Filing of Proposed Rule Change by National Securities Clearing Corp. Relating to an Amendment to National Securities Clearing Corporation's ("NSCC") Rules and Fee Structure Regarding the Release of Clearing Data

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 1,1986, NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The rule change is set forth in the Important Notice attached as Exhibit 1.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC's present discount policy, when revenues exceed costs, is to discount certain fees. NSCC has determined that, in certain cases, while revenues may exceed costs, it is not appropriate to discount fees for a new service that would otherwise be eligible for a discount, until the development costs for the service have been recovered.

Accordingly, the purpose of this rule change is to notify participants that the Automated Customer Account Transfer Service fees are ineligible for a discount until NSCC has recovered its development costs for the Service.

Insofar as the proposed rule change provides for the equitable allocation of reasonable fees among its participants, it is consistent with the requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder applicable to NSCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No comments on the proposed rule change have been solicited or recieved. NSCC will notify the Securities and Exchange Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the 1934 Act and subparagraph (3) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of

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such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the 1934 Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 28, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 24, 1986.

Jonathan G. Katz,

Secretary.

Exhibit 1

IMPORTANT

September 30, 1986

A 2620

P&S 2155

To: All Participants

Attention: Managing Partners/Officers, Cashiers, Manager Purchase and Sale Department

Subject: Elimination of ACAT Service Fee Discount

National Securities Clearing Corporation's ("NSCC") present discount policy, when revenues exceeds costs, is to discount certain fees. NSCC has determined however that, in certain circumstances, while revenues may exceed costs, a discount should not be applied to a new service until the development costs for the service have been recovered. NSCC has determined that this policy should be applied to the Automated Customer Account Transfer ("ACAT") Service Fees. Accordingly, effective with fees for the month of October, 1986, until NSCC recovers development costs for the Service, the ACAT Service fees will no longer be discounted.

Questions regarding ACAT Service fees and the discount policy should be directed to the undersigned at (212) 510-0416.

John F. Elberfeld,

Senior Vice President.

[FR Doc. 86-25202 Filed 11-6-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23758; File No. SR-NSCC-86-13]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change of National Securities Clearing Corp.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 8, 1986, NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The rule change is set forth in the Member's Agreement attached to NSCC's filing as Exhibit 1.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the purposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

International Securities Clearing Corporation ("ISCC") is a wholly-owned subsidiary of NSCC. In order to provide comparison, settlement and ancillary services for United States issues to members of Foreign Financial Institutions (as defined in ISCC Rule 1) with whom ISCC has entered into a link agreement, ISCC will become a Member of NSCC.

The purpose of the proposed rule change is to modify NSCC's Member's Agreement in order to limit ISCC's liability for pro-rata charges pursuant to Rule 4, to those losses or liabilities attributable to transactions between Members of ISCC and members of the Foreign Financial Institutions with whom ISCC has established links. By limiting ISCC's liabilities, it will foster cooperation and coordination with persons engaged in the clearance and settlement of foreign transactions because it will encourage participation in ISCC by foreign clearing corporations and exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not perceive that the purposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Paticipants, or Others

No comments on the proposed rule change have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the 1934 Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such purposed rule change, the Commission may summarily abrogate such rule change it it appears to the Commission at such action. It is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the 1934 Act.

IV. Soliciation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the purposed rule change that are filed with the Commission, and all written communications relating to the purposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 28, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 29, 1986.

Jonathan G. Katz,
Secretary.

[FR Doc. 86-25203 Filed 11-6-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23743; File No. SR-NYSE-86-30]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc., Relating to Amendment to Rule 431, "Margin Requirements"

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 6, 1986, the New York Stock Exchange, Inc. (the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to revise Rule 431, "Margin Requirements," to establish specific margin requirements for certain privately issued mortgage related securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to revise Rule 431, "Margin Requirments," to extablish specific margin requirements for certain privately issued mortgage related securities.

In 1984, Congress enacted the Secondary Mortgage Market Enhancement Act ("SMMEA") for the express purpose of broadening the market for mortgage related securities and encouraging more extensive involvement in that market by the private sector. In part, SMMEA sought to accomplish that goal by reducing the regulatory advantages of federaly sponsored agency (e.g., the Government National Mortgage Association ("GNMA") and the Federal National Mortgage Association ("Fannie Mae")) mortgage related securities ("agency issues") over privately issued mortgage related securities ("private issues").

SMMEA, in part, created a class of privately issued "mortgage related securities," defined by section 3(a)(41) of the Act, which were provided with a series of regulatory reforms, including exemption from the margin requirements of section 7 of the act for payment on original purchases for 180 days. Currently, most "mortgage related securities," as defined by section 3(a)(41), are fully collateralized by agency issues and therefore may be viewed as essentially agency issues repackaged. Some section 3(a)(41) mortgage related securities are directly backed by mortgages without federally sponsored agency backing. However, for any security to be deemed a mortgage related security for the purposes of section 3(a)(41), and thereby be eligible for the reforms provided by SMMEA, the security must be rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization and therefore must meet various requirements concerning geographical diversity, size of loans, and loan to value ratios and must carry pool and other insurance in specified amounts.

Rule 431 currently does not contain specific margin requirements for section 3(a)(41) mortgage related securities. Rather, such securities (if eligible for margining under Regulation T of the Board of Governors of the Federal Reserve System ("Regulation T")) are subject to the margin requirement for non-convertible corporate debt securities of 25% of market value (proposed to be reduced to 20% of market value with a minimum requirement of 7% of principal amount, pending Commission approval (see File No. SR-NYSE-86-4)).[1] Agency issues, however, are subject to the margin requirement for exempt securities of 5% of principal amount (proposed to be replaced by a sliding scale of 1-6% of principal amount depending on maturity, pending Commission approval (see File No. SR-NYSE-86-4)).

The Exchange is proposing to revise Rule 431 to establish a margin requirement of 5% of market value for mortgage related securities as defined by section 3(a)(41) of the Act carried in exempt accounts.[2] Private issues carried in non-exempt accounts and mortgage related securities not meeting the section 3(a)(41) definition would continue to be subject to the margin requirement for other non-covertible corporate debt securities, if marginable under Regulation T. The Exchange's proposal is in response to the enactment of SMMEA, the development and evolution of a sizeable market in private issues, and the determination that Rule 431 does not adequately address the credit risks associated with such issues. The Exchange believes that the proposed 5% margin requirement for section 3(a)(41) mortgage related securities carried in exempt accounts is appropriate because of the following factors:

1. The desirability of coordinating the requirements of Rule 431 with the Congressional policies expressed by SMMEA, in particular the goal of reducing the regulatory advantages of agency issues over private issues.

2. The determination that the credit risks of agency issues and mortgage related securities as defined by section 3(a)(41) were substantially similar.

3. The results of a volatility study conducted by the Exchange staff covering a two year period, which determined that a 5% margin requirement for section 3(a)(41) mortgage related securities carried in exempt accounts would create a 99%

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[1] For notice of the filing, *see* Securities Exchange Act Release No. 22875 (February 7, 1986); 51 FR 5819 (February 18, 1986).

[2] An exempt account would be defined in Rule 431 as a member organization, non-member broker/dealer, "designated account" (i.e., the account of a bank, trust company, insurance company, investment trust, state or political subdivison thereof, charitable or nonprofit educational institution regulated under the laws of the United States or any state, or pension or profit sharing plan subject to the Employee Retirement Income Security Act of 1974 or of an agency of the United States or of a state or a political subdivision thereof) or any person having net tangible assets of at least sixteen million dollars.

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confidence level (i.e., a margin level sufficient to respond to the credit risk associated with ordinary market fluctuations in the price of the security 99% of the time).

4. The limitation on the types of accounts to which the requirement would be applicable (i.e., exempt accounts), which serves to ensure the relative creditworthiness and financial sophistication of such eligible accounts.

The proposed rule change is consistent with the requirements of the Act in that it is designed to protect investors and the public interest, in accordance with section 6(b)(5) of the Act, by ensuring that the Exchange's margin requirements adequately reflect current regulatory and credit risk concerns. In addition, the change is consistent with section 7(a) of the Act, and the rules and regulations of the Board of Governors of the Federal Reserve System enacted pursuant to that provision, in that it is designed for the purpose of preventing the excessive use of credit for the purchase or carrying of securities. The proposal is also consistent with and furthers the purposes of SMMEA by reducing the margin related regulatory advantages of agency issues over section 3(a)(41) mortgage related securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change from members, participants, or others.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 28, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 22, 1986.

Jonathan G. Katz,
Secretary.

Additions Italicized—Exhibit 1 [1]

Margin Requirements

Rule 431. (a) through (3)(2)(B) Unchanged

(C) Non-Convertible Corporate Debt Securities.—On any positions in non-convertible corporate debt securities, which are listed or traded on a registered national securities exchange or qualify as an "OTC margin bond", as defined in § 220.2(r) of Regulation T of the Board of Governors of the Federal Reserve System, the margin to be maintained shall be 20% of the current market value or 7% of the principal amount, whichever amount is greater, *except on mortgage related securities as defined in section 3(a)(41) of the Securities Exchange Act of 1934 the margin to be maintained for an exempt account shall be 5% of the current market value.*

For purposes of this paragraph (e)(2)(C), an exempt account shall be defined as a member organization, non-member broker/dealer, "designated account" or any person having net tangible assets of at least sixteen million dollars.

(e)(2)(D) through Supplementary Material .10 Unchanged

[FR Doc. 86-25204 Filed 11-6-86; 8:45 am]

BILLING CODE 8010-01-M

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[1] This exhibit sets forth Rule 431 as previously proposed to be revised, pending Securities and Exchange Commission approval (see File No. SR-NYSE-86-4).

[Release No. 34-23747; File No. SR-NYSE-86-19]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc. Relating to the Extension of the Effectiveness of NYSE Rule 103A From June 30, 1986 to March 31, 1987

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 27, 1986, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule change would extend the effectiveness of NYSE Rule 103A until March 31, 1987. Rule 103A authorizes the Market Performance Committee of the NYSE to withdraw NYSE approval of a member's registration as specialist in one or more stock(s) if the specialist has consistently received evaluations by Floor brokers on the quarterly Specialist Performance Evaluation Questionnaire ("SPEQ") which are below a level of acceptable performance as specified in the Rule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed rule change is to extend the effectiveness of Rule 103A to March 31, 1987.

Prior to that time the Exchange intends to enhance, codify, and file with the Commission its procedures for specialist performance review and counseling. That filing will also reiterate the Exchange's request that Rule 103A be approved as a permanent rule of the Exchange.

As described in more detail in File No. SR–NYSE–81–11, Rule 103A authorizes the Market Performance Committee of the NYSE to withdraw NYSE approval of a member's registration as specialist in one or more stocks if the specialist has consistently received evaluations by Floor brokers on the quarterly Specialist Performance Evaluation Questionnaire ("SPEQ") which are below a level of acceptable performance as specified in the Rule.

As described in File No. SR–NYSE–85–14, the Exchange conducted a pilot program to test revisions to the current Specialist Performance Evaluation Questionnaire and its associated processes. The revisions included changes to the design and content of the SPEQ questionnaire itself, the sampling method by which brokers are selected to rate particular units, and the scoring and analysis methodology. The pilot program has been successfully completed and the Exchange believes that the revised SPEQ provides enhancements which make the specialist performance evaluation process more effective. Hence, effective for the first quarter of 1986 evaluation period, the revised SPEQ replaced the "old" SPEQ as the key element of the Exchange's specialist performance evaluation process.

As noted above, one of the revisions in the SPEQ process is a new method of scoring and analyzing the results. However, the numeric standards currently in place in Rule 103A (as described in paragraph 103A.10) to measure acceptable levels of performance are not applicable to the new scoring system. The Exchange acknowledges that until such time as new standards and procedures are drafted and approved by the Commission, the Exchange cannot initiate reallocation proceedings against a specialist unit under Rule 103A based on the performance evaluations a unit receives on the revised SPEQ.

The Exchange believes that additional experience is needed with the data produced by the revised SPEQ before appropriate standards as to acceptable performance can be developed.

However, the exchange is requesting this extension of Rule 103A, in part, because it views the Rule as providing a basis for on-going performance improvement initiatives, such as counseling of specialist units by the Market Performance Committee, which has proven to be effective in improving both individual and overall specialist performance on the Exchange. The Exchange intends that the Market Performance Committee will continue its counseling procedures during the period when appropriate standards as to acceptable performance are being developed.

In addition, the Exchange is requesting Rule 103A be extended as the Options Specialist Performance Information Questionnaire (attached hereto as Exhibit A) based upon the "old" equity SPEQ, conforms to the seven-point scoring and analysis methodology defined in existing Rule 103A.10. Therefore, the standard of acceptable performance described in the Rule remains applicable for the Options Specialist Performance Information Questionnaire and would provide a basis for the Exchange to initiate reallocation proceedings against an options specialist unit under Rule 103A. The Exchange may at a future date, based on experience, adopt the revised equity SPEQ for the options specialist performance evaluation process, subject, obviously, to Commission approval.

Upon completion of the development of acceptable standards of performance, the Exchange expects to file with the Commission all pertinent details of a revised specialist performance review and counselling procedure, and reiterate its request that Rule 103A (with such amendments as may be appropriate at that time) be approved as a permanent rule of the Exchange.

(2) Basis Under the Act for Proposed Rule Change

The statutory basis for the rule change in section 6(b)(5) of the Securities Exchange Act of 1934 as amended ("the Act") which, among other things, requires Exchange rules to be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

This rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act in order that the Rule 103A pilot program may continue in its revised format without interruption. The Exchange states that the program has proven to be an effective means of improving specialist performance, thereby adding to the overall quality of the NYSE market.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof because the proposed revisions to the Exchange's Rule 103A pilot represent potentially significant improvements to the program that may enhance incentives toward improved specialist performance. The Commission believes, therefore, that the Exchange's specialist evaluation procedures should continue uninterrupted in order that the Exchange may gain additional experience with its revised procedures.

The Commission, however, has two continuing concerns regarding the pilot and has expressed these to the Exchange.[1] First, as noted above, the Exchange has not yet developed a revised numerical standard for a minimum level of acceptable performance on the revised SPEQ, principally because the Exchange has not had the necessary experience with new data to develop revised standards. The Commission expects that the Exchange will submit such revised standards prior to filing for permanent approval of the program or requesting

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[1] *See* letters from Richard S. Ketchum, Director, Division of Market Regulation, to John J. Phelan, Chairman, NYSE, and Henry Poole, General Counsel, NYSE, dated July 30 and August 1, 1986, respectively, and letter from Robert J. Birnbaum, President and Chief operating Officer, NYSE, dated August 15, 1986.

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an extension beyond March 31, 1987. As noted above, until such time as appropriate standards are filed by the Exchange and approved by the Commission, the Exchange will be unable to commence reallocation proceedings under Rule 103A.

In addition, the Commission continues to be concerned over the absence of a relative standard of performance in the Rule 103A pilot.[2] The Commission believes that the incorporation of a relative standard of performance would be the single most effective means of strengthening the Exchange's evaluation program. The Commission expects, and the Exchange has represented, that it will review this recommendation prior to filing for permanent approval of the program of requesting an extension beyond March 31, 1987.

Nonetheless, the Commission believes that the proposed changes in the SPEQ, evaluating broker screener data and performance standards are likely to result in a more effective evaluation program and should be implemented on a pilot basis. The changes were recommended in a thorough study of the program conducted by an outside statistical consulting firm,[3] and were tested by the NYSE on a limited experimental basis.[4] The Exchange has stated that the revisions have enhanced the effectiveness of the program, and the Commission believes they should now be fully implemented into the Rule 103A pilot.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the file number in the caption above and should be submitted by November 28, 1986.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 23, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-25205 Filed 11-6-86; 8:45 am]

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[Release No. 34-23764; File No. SR-PSDTC-86-10]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Pacific Securities Depository Trust Company Amending Its Schedule of Fees and Charges

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 22, 1986, the Pacific Securities Depository Trust Company ("PSDTC") filed with the Commission the proposed rule change described below. The Commission is publishing this notice to solicit comments on the proposed rule change.

PSDTC's proposed rule change amends its schedule of fees and charges with respect to rejected reclaims, as set forth below. (Italics indicate language to be added.)

Reclaims

- $5.00 for each reclaim initiated by a participant using same day delivery vs. payment or delivery vs. free settlements.
- *$50.00 to the original deliverer for rejecting a valid reclaim.*
- *$50.00 for submitting an invalid or incomplete reclaim.*

PSDTC states that reclaims are the return of a book entry movement made in its Delivery Versus Payment ("DVP") system within the previous 72 hours. Rejected reclaims are classified into three categories: (1) *Valid Reclaims*—reclaims that should not have been rejected because they are the return of a delivery; (2) *Invalid Reclaims*—movements which should not have been submitted as a reclaim because they are regular deliveries made during the reclaim cycle; and (3) *Incomplete Reclaims*—reclaims that were validly rejected because the information provided by the participant is insufficient or inaccurate.

PSDTC states that rejected reclaims create operational problems and additional expense because of special handling outside the normal processing cycle. The imposition of a charge is intended to deter rejected reclaims and to offset the cost of processing them.

Furthermore, PSDTC states that the proposed rule change is consistent with section 17A(b)(3)(D) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges.

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the change if it appears to the Commission that it is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth St., NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth St., NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of PSDTC. All submissions should refer to File No. SR-PSDTC-86-10 and should be submitted by November 28, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 31, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-25206 Filed 11-6-86; 8:45 am]

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[2] The Commission has expressed this concern to the Exchange on numerous occasions. *See, e.g.*, letters from Douglas Scarff, Director, Division of Market Regulation, to John J. Phelan, Jr., President, NYSE, dated November 10, 1981, and August 18, 1982. *See also* note 1, *supra*, citing the most recent letters.

[3] *See* report by Opinion Research Corporation ("ORC") dated August, 1984, attached as Exhibit B to File No. SR-NYSE-85-14.

[4] The Exchange recently has conducted a "pilot within a pilot" to test the ORC recommendations. *See* Securities Exchange Act Release No. 22036, May 18, 1985, 50 FR 21007, May 21, 1985.

[Release No. 34-23757; File No. SR-PSE-85-22]

Self/Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Stock Exchange, Incorporated, Relating to Member Organizations' Fidelity Bond Coverage

On August 19, 1985, the Pacific Stock Exchange, Incorporated ("PSE") submitted to the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, a proposed rule change that would modify requirements found in Rule IX, sections 7 and 8 of the PSE's By-Laws governing blanket bonds and fidelity bonds that must be maintained by PSE member organizations to cover their respective partners, officers and employees. The proposal (i) eliminates the PSE's existing bonding requirement with respect to organizations that do not do business with the public or clear transactions for other members, or that are members of another self-regulatory organization ("SRO") subject to that SRO's bonding requirement; (ii) eliminates the separate categories of "broker's blanket bond" and "fidelity bond" and requires PSE member firms to maintain fidelity bond coverage only; (iii) requires that fidelity bond coverage extend to limited partners who are also employees and to outside organizations that provide electronic data processing services and the handling of United States Government securities in bearer form; and (iv) revises the schedule of required minimum coverage amounts. At the request of the Commission's staff, the PSE clarified its requirement that a member organization's bonding requirement be recomputed on an annual basis and agreed to retain the requirements found in Section 7(d) that members obtain greater coverage where experience or the nature of the business warrants such coverage and that members notify the PSE in writing if such coverage is entirely or partially cancelled.[1]

The proposed rule change was noticed in Securities Exchange Act Release No. 22365 (August 28, 1985), 50 FR 35899 (September 4, 1985). No comments were received.

In its filing, the PSE states that the purpose of this proposed rule change is to relieve those member organizations that are members of one or more other SROs and thereby subject to those SRO's respective bonding requirements from possible duplicative costs and administrative burdens; to exempt from coverage those member organizations which neither transact business with the public nor clear transactions for other Exchange members or member organizations; and to cause the PSE's bonding requirement to be consistent with the rules and practices of other SROs, such as the Midwest, Boston and New York ("NYSE") Stock Exchanges.[2]

In light of the fact that the PSE's proposed changes to its fidelity bonding requirement serve to conform the PSE's fidelity bond requirement to those of other SROs, and since the proposed rule change is consistent with section 6(b)(5) of the Act in that it is intended to prevent fradulent and manipulative acts and practices, and to protect investors and the public interest, and is not designed to permit unfair discrimination between brokers or dealers who are members of the PSE, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 29, 1986.

Jonathan G. Katz,
Secretary.

[FR Doc. 86-25207 Filed 11-6-86; 8:45 am]

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[1] Letter from Kenneth J. Marcus, Staff Attorney, PSE, to Ellen Dry, Division of Market Regulation, SEC, dated September 8, 1986. In a subsequent letter dated October 16, 1986 from Mr. Marcus to Ms. Dry, the PSE clarified language in the rule proposal with respect to bonding requirements of outside organizations that provide electronic data processing services and that handle U.S. Government securities in bearer form.

[2] The NYSE has filed with the Commission (File No. SR-NYSE-83-13) a proposal which would alter the basis upon which bond requirements for NYSE members are determined. Before the Commission acts on this proposal, the staff has requested the NYSE to provide further information on the potential impact of its proposal on member firms.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

October 30, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Texas American Bancshares Inc.
Common Stock, $5.00 Par Value (File No. 7-9314)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 21, 1986 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 86-25208 Filed 11-6-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24226]

Filings Under the Public Utility Holding Company Act of 1935

October 30, 1986.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Public Utility Holding Company Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 24, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy

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on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Consolidated Natural Gas Company (70–7291)

Consolidated Natural Gas Company ("Consolidated"), Four Gateway Center, Pittsburgh, Pennsylvania 15222, a registered holding company, has filed a declaration pursuant to sections 6(a), 7 and 12(b) of the Act and Rule 45 thereunder.

Consolidated proposes to terminate an existing revolving credit agreement with The Chase Manhattan Bank, N.A. ("Chase"), (January 8, 1982 (HCAR No. 22362)), and to enter into a new credit agreement ("Agreement") with Chase, acting for itself and as agent for other banks. Under the Agreement, each bank will make loans up to the maximum of its commitment to Consolidated from time to time through December 30, 1991. During this period, Consolidated may borrow, pay or prepay and reborrow up to the limit of each bank's commitment.

Under the Agreement, these revolving credits may be converted to three-year term loans on December 31, 1991. At that time also, each bank will make a term loan to Consolidated in an amount not exceeding its commitment as of that date. All such term loans will be evidenced by promissory notes of Consolidated maturing no later than December 31, 1994.

During the revolving credit period under the Agreement, Consolidated will make loans in the form of revolving credit advances to subsidiary companies. These loans will be evidenced by letter agreements payable to Consolidated on or before June 30, 1992 and will bear interest at a rate based upon and substantially equal to the effective cost of money to Consolidated under the Agreement. Following the conversion by Consolidated of its revolving credit loans into term loans, revolving credit advances to subsidiary companies will be converted into term loans, evidenced by promissory notes with maturities substantially the same as those of the Consolidated notes.

The Southern Company (70–7292)

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, has filed a declaration pursuant to sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

Southern proposes to issue and sell from time-to-time, through December 31, 1988, pursuant to an exception from competitive bidding: (1) A maximum of 10 million shares of its authorized but unissued common stock, par value $5 per share (HCAR No. 23777, July 31, 1985), in addition to the balance of 14,260,316 previously approved shares to its Dividend Reinvestment and Stock Purchase Plan; and (2) a maximum of 1 million shares of its authorized but unissued common stock, par value $5 per share, plus the balance of 2,411,874 shares also authorized by the Commission in HCAR No. 23777 to the employee Savings Plan for The Southern Company System.

Monongahela Power Company, et al. (70–7312)

Monongahela Power Company ("Monongahela"), 1310 Fairmont Avenue, Fairmont, West Virginia 26554, The Potomac Edison Company ("Potomac Edison"), Downsville Pike, Hagerstown, Maryland 21740 and West Penn Power Company ("West Penn"), 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601 (collectively, "Companies"), wholly owned electric utility subsidiaries of Allegheny Power System, Inc., a registered holding company, have filed an application pursuant to section 6(b) of the Act and Rule 50(a)(5) thereunder.

By orders dated June 7, 1985 (HCAR No. 23719) and October 8, 1986 (HCAR No. 24210), the Companies were authorized to issue short-term notes to commercial banks and to dealers in commercial paper from time to time through December 31, 1986, in aggregate principal amounts not exceeding $75 million, $70 million and $80 million at any one time outstanding for Monongahela, Potomac Edison and West Penn, respectively. As of September 30, 1986, the Companies had no short-term debt outstanding.

The Companies now propose to issue and sell to certain commercial banks and dealers in commercial paper from time to time through June 30, 1988, their respective short-term promissory notes, in aggregate principal amounts not exceeding $75 million, $76 million and $132 million at any one time outstanding for Monongahela, Potomac Edison and West Penn, respectively. These amounts include any notes which may remain outstanding under the previously mentioned orders of the Commission. No Company will permit the amount of its short-term debt outstanding at any one time to exceed the limits set forth in its corporate charter.

The Companies each request that the proposed issuance of sale of notes to dealers in commercial paper be excepted from the competitive bidding requirements of Rule 50, pursuant to Rule 50(a)(5).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–25215 Filed 11–6–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–15386; File No. 812–6494]

SSI Equity Associates, L.P., SSI Partners, L.P.; Application

October 30, 1986.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (Act).

Applicants: SSI Equity Associates, L.P. ("Partnership"); SSI Partners, L.P. ("General Partner").

Relevant Section of Act: Section 6(c).

Summary of Application: The Partnership and the General Partner seek an order to exempt the Partnership, formed at the direction of Kohlberg Kravis Roberts and Co. ("KKR") in connection with a management buyout of Safeway Stores, Incorporated ("Safeway"), from all provisions of the Act.

Filing Date: October 7, 1986.

Hearing or Notification of Hearing. If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on November 21, 1986. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549;

Applicants, 9 West 57th Street, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: George Martinez, Attorney (202) 272–3024, or H.R. Hallock, Jr., Special Counsel (202) 272–3030, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from either the Commission's Public Reference Branch in person or the Commission's commercial copier (800) 231–3282 (in Maryland (201) 253–4300).

Applicants' Representations

The Partnership is a Delaware limited partnership formed at the direction of KKR as part of a series of transactions pursuant to which KKR intends to effect a management buyout of Safeway. The General Partner of the Partnership is also a Delaware limited partnership and affiliated with KKR. KKR, a New York limited partnership, is engaged in finding, financing and investing, through affiliates, in management buyouts. Safeway Stores Holding Corporation ("Holdings"), a Delaware corporation, was also formed at the direction of KKR in connection with the Safeway acquisition and has, among others, a direct wholly owned subsidiary known as SSI Merger Corporation ("Merger Sub").

Holdings, Merger Sub and Safeway have entered into a merger agreement dated July 25, 1986 ("Merger Agreement"), pursuant to which, on August 29, 1986, Holdings acquired approximately 73% of the outstanding Safeway common stock through a tender offer ("Offer") by a wholly owned subsidiary of Holdings. Upon the approval and adoption of the Merger Agreement by at least two-thirds of the Safeway common stockholders and the satisfaction of certain other matters, Merger Sub will be merged with and into Safeway ("Merger"). The business of Safeway will continue to be conducted under the name "Safeway" through Holdings and its subsidiaries.

Holdings expects to raise a portion of the financial requirements of the Merger through registered public offerings of securities ("Securities") and the sale of certain warrants, including warrants to the Partnership ("Warrants"). The sole business of the Partnership will be to acquire, hold and eventually dispose of the Warrants and, if exercised, underlying shares of common stock of Holdings ("Warrant Shares"). The Warrants will entitle the Partnership to purchase for $22,284,800 an aggregate of 11,142,400 Warrant Shares, approximately 12% of the outstanding shares of Holdings on a fully diluted basis, at an exercise price of $2.00 per share (subject to possible adjustments).

Purchasers ("Limited Partners") of interests in the Partnership ("Limited Partnership Interests") will contribute approximately $1,654,646 in cash to the Partnership and will be given corresponding capital accounts. The General Partner will contribute $16,714. With the capital of $1,671,360, the Partnership will purchase the Warrants from Holdings.

The General Partner has decided to register, under the Securities Act of 1933 ("1933 Act"), the offering of the Limited Partnership Interests because it might be concluded that the offering of the Limited Partnership Interests should be integrated with the registered offerings of Securities. Despite the fact that the Limited Partnership Interests will have been sold pursuant to a public offering, Applicants expect that only highly sophisticated investors will be permitted to invest in the Partnership. Only parties to whom Securities are offered and their affiliates will be offered Limited Partnership Interests. It is expected that these investors, or their affiliates, will purchase some combination of Securities and Limited Partnership Interests in a substantial amount and will invest no more than 5% of their total assets in the Limited Partnership Interests. Investors which have a net worth are expected to have a minimum positive net worth of $1 million. Upon completion of the initial public offering of the Limited Partnership Interests, the Partnership will not make another offering of Limited Partnership Interests or of any other kind of security whatsoever. In no event will the Limited Partnership Interest have more than 100 beneficial owners within the meaning of section 3(c)(1) of the Act.

Transfers of Limited Partnership Interests are subject to the prior approval of the General Partner, which may be withheld in its sole discretion if such transfer requires registration under the 1933 Act or constitutes a sale to the public for purposes of any state securities laws or otherwise. In circumstances where an exemption from registration is available, or where the proposed transfer is not a public sale, a Limited Partner may transfer a Limited Partnership Interest if the Limited Partner provides satisfactory documentation establishing the basis for such exemption to the General Partner. However, Applicants represent that no transfer shall be effective if giving effect to such transaction would cause the aggregate number of Limited Partners to exceed 100 and if at such time the Partnership would be subject to regulation under the Act.

The management of the Partnership will be the full and complete responsibility of the General Partner. Limited Partners will have no control over the Partnership's sole asset, the Warrants and, if any, the Warrant Shares. The General Partner has broad authority to perform any acts necessary, proper, convenient or advisable to effectuate the purposes of the partnership agreement governing the Partnership ("Partnership Agreement") including when, whether and at what price the Warrants will be sold, when the Warrants will be exercised (subject to certain restrictions), when and at what price any Warrant Shares will be sold or how any Warrant Shares will be voted. Applicants contend that the General Partner and the holders of the Limited Partnership Interests share a common and overriding interest in maximizing the appreciation of the value of the common stock of Holdings because the General Partner's compensation from the Partnership depends exclusively on such appreciation and the subsequent realization of profits.

If the General Partner, at any time after the Partnership Agreement permits, determines or is required to exercise the Warrants, each Limited Partner shall have the right, but not the obligation, to provide its pro rata share of the exercise price of the Warrants. Assuming that all of the Warrants are exercised and that each Limited Partner elects to make the maximum optional additional capital contribution ("Additional Contribution"), the maximum amount of the Additional Contribution payable in respect of each Limited Partnership Interest would be $222.85. A Limited Partner who determines not to make an Additional Contribution will not be able to participate in the profits or losses of the Partnership based upon the exercise of such Warrants or the holding and disposition of the Warrant Shares. Limited Partners may not withdraw or demand distribution of any of their capital contributions prior to dissolution. Applicants state that the risk of the Limited Partners cannot exceed the initial purchase price of the Limited Partnership Interests, while the potential return is a pro rata share of the capital appreciation of the Holdings common stock which, pursuant to the Warrants, the Partnership has the option to purchase.

In support of their exemption request, Applicants submit that regulation of the Partnership under the Act is not necessary to accomplish the Act's

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objectives and policies, that the Partnership falls within the intent, if not the letter, of the exemption contained in section 3(c)(1) of the Act, that the Partnership has been structured so as to maximize the protection of investors, and that it is in the public interest that sophisticated investors desiring to invest in the Partnership be permitted to do so. In requesting an exemption from the Act, Applicants do not seek Commission approval or endorsement of the terms of the Offer, the Merger or the related financing thereof in particular or of management buyouts in general.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–25216 Filed 11–6–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–15381; File No. 812–6426]

Sears Investment Trust, Dual Value Series I, et al.; Application for an Order Granting Exemptions Approving Certain Affiliated Transactions and Granting Confidential Treatment

October 29, 1986.

Notice is hereby given that the Sears Investment Trust, Dual Value Series 1, subsequent series of the Dual Value Series and similar series of the Sears Investment Trust (collectively, "Trusts"), Dean Witter Reynolds Inc. ("Sponsor"), the sponsor of the Trusts, and Dean Witter Convertible Securities Trust, Dean Witter Developing Growth Securities Trust, Dean Witter Dividend Growth Securities Inc., Dean Witter High Yield Securities Inc., Dean Witter Industry-Valued Securities Inc., Dean Witter Natural Resources Development Securities Inc., Dean Witter Option Income Trust, Dean Witter Tax-Exempt Securities Inc., Dean Witter U.S. Government Securities Trust and Dean Witter World Wide Investment Trust and any future fixed income or equity mutual funds that are part of the group of mutual funds managed by the Sponsor through its InterCapital Division ("Funds", collectively with Sponsor and Trusts, "Applicants"), 101 Barclay Street, New York, NY 10048, filed an application on July 3, 1986, and an amendment thereto on October 15, 1986, requesting an order, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicants, to the extent necessary, from the provisions of sections 12(d)(1), 14(a) and 22(d) of the Act, pursuant to section 17(d) of the Act and of Rule 17d–1 thereunder, permitting certain affiliated transactions, and, pursuant to section 45(a) of the Act, granting confidential treatment to the Sponsor's profit and loss statements. With respect to prospective relief sought on behalf of future Trusts, Applicants undertake that such relief shall be availed of upon the same terms and conditions set forth in the application. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the relevant provisions.

According to the application, the Sears Investment Trust will be comprised of unit investment trusts registered or to be registered under the Act and the Funds are registered as open-end management investment companies under the Act. Each Trust will be governed by an Indenture and a master trust agreement ("Agreement") to be entered into by the Sponsor, an independent third party bank or trust company acting as trustee ("Trustee") and an independent third party acting as evaluator ("Evaluator"). Pursuant to such Agreement, Applicants state that the Sponsor will deposit with the Trustee securities consisting of (1) shares of one Fund per Trust and (2) stripped U.S. government obligations, or certificates of interest or receipts for or other evidences of an ownership interest thereof ("zero-coupon obligations" collectively with Fund shares, "Securities"), which the Sponsor will have accumulated for such purpose. Simultaneously with such deposit the Trustee will deliver to the Sponsor registered certificates for units representing the entire beneficial ownership of each Trust ("Units"). Following the declaration of effectiveness of a Trust's registration statement under the Securities Act of 1933 and clearance under applicable state law, the Units will be offered for sale to the public by the Sponsor at the public offering price described in the applicable prospectus.

Applicants represent that in acquiring the Securities, the following factors are considered: (i) The nature of the Trust and (ii) where appropriate given the nature and purposes of the Trust, (a) the quality of the Securities (based on the Sponsor's judgment as to the potential for dividends or growth taking into account an appraisal relating to the maintenance and growth of earnings in light of the past performance of the issuer); (b) the yield and price of the Securities relative to other securities of comparable quality and maturity, and (c) diversification of the issuer and location of the issuer taking into account the availability or the market of the securities that meet the Trust's quality, yield and price criteria. Applicants also represent that each Trust's assets will consist of the Securities, accrued and undistributed income, dividends, capital gains and undistributed cash.

Applicants state that the purpose of the Trusts is to provide preservation of capital and the opportunity for capital appreciation. Accordingly, each Trust will contain a sufficient amount of zero-coupon obligations to ensure that, at the specified maturity date for such Trust, investors purchasing Units on the initial date of deposit of Securities ("Deposit Date") will receive back the approximate total amount of their original investment in such Trust, including the sales charge. Applicants note that, although it is possible that investors who purchase Units on a date other than the Deposit Date may be able to purchase Units at a price that would result in their receipt of an amount at maturity approximately equal to their purchase price, the only date when such result can be predicted with reasonable certainty is the Deposit Date. Applicants state that, even if the Fund shares deposited in a Trust were valueless at maturity, investors who purchased Units on the Deposit Date would receive back the amount of their original investment because the principal value of the maturing zero-coupon obligations would approximately equal the original purchase price of Units.

With respect to the operation of each Trust, Applicants represent that shares of one of the Funds will be sold at net asset value for deposit in any one Trust. Applicants also represent that, because Fund shares have their net asset values calculated daily and this value is readily available to the Sponsor, no evaluation fee will be charged with respect to determining the value of Fund shares that constitute part of a Trust's portfolio. An evaluation fee will be charged, however, with respect to that portion of a Trust's portfolio that consists of zero-coupon obligations.

Applicants state that investors may be provided a reinvestment vehicle for distributions made during the life of a Trust whereby a Unitholder may elect to invest such distributions directly in Fund shares underlying a Trust. Applicants also state that such reinvestment will be permitted upon maturity of a Trust. In either case, the Fund shares will be registered in the Unitholder's name and will not become part of a Trust's assets.

According to the application, all of the Funds except Dean Witter High Yield Securities Inc. and Dean Witter Tax-

Exempt Securities Inc. have adopted plans of distribution in accordance with Rule 12b–1 under the Act. Recognizing that the Sponsor will receive a sales charge in connection with the sale of Trust Units, Applicants represent that the Sponsor will rebate to the Trustee the 12b–1 fees it receives on Fund shares attributable to the Fund shares held by the Trusts. Applicants further represent that the rebated 12b–1 fees will be distributed on a monthly basis by the Sponsor to the Trustee who will then allocate such amounts to the Unitholders' accounts for distribution to Unitholders.

Applicants state that the Sponsor intends to maintain a secondary market for Units of each Trust, although it is not legally obligated to do so. Applicants believe that the existence of such a secondary market will reduce or eliminate the number of Units tendered for redemption and, thus, alleviate the necessity to sell portfolio securities to meet redemption obligations. In the event that the Sponsor does not maintain a secondary market, Applicants state that underlying Fund shares will be sold first to meet redemption obligations. To ensure that the benefit of the zero-coupon obligations is not impaired, Applicants also state that the Agreement provides that the Sponsor will not instruct the Trustee to sell zero-coupon obligations from any Trust's portfolio until the Fund shares held therein have been liquidated, unless the Sponsor is able to sell such zero-coupon obligations and still maintain at least the original proportional relationship to Unit value. According to the application, the Agreement also provides that zero-coupon obligations may not be sold to meet Trust expenses.

Applicants state that their proposal is structured to eliminate the pyramiding of expenses and control problems contemplated by section 12(d)(1) of the Act and that the unit investment trust format is uniquely adaptable to avoiding the concerns that section 12(d)(1) addresses. In this regard, Applicants note that each of the Funds sold with a front-end sales charge will sell shares to each Trust and to Unitholders in connection with reinvestments at net asset value. Moreover, pursuant to Applicants' requested order, the Funds propose to waive any applicable contingent deferred sales load ("CDSL") on all redemptions of Fund shares that have been invested in a Trust's portfolio. Applicants also point out that there will be no duplicative evaluation fees because the evaluation fee for Fund shares held by a Trust will be waived. In addition, the Sponsor will rebate to each Trust the 12b–1 fees that otherwise would be imposed on Fund shares while such shares are held by a Trust. Finally, Applicants state that because a unit investment trust has an unmanaged portfolio, there will be no duplicative advisory fees charged as there would be in the case where a managed mutual fund purchased shares of other managed mutual funds. Applicants assert that the costs and expenses of the administration and operation of the Trusts and the Funds will be reduced by the proposed arrangement.

Addressing the potentially abusive control problems resulting from concentration of voting power in a fund holding company, Applicants represent that the Agreement governing the Trusts will provide that the Trustee must vote all shares of a Fund held in a Trust in the same proportion as all other shares of that Fund, which are not held by the Trust, are voted. Regarding the threat of large-scale redemptions, Applicants believe that this concern is alleviated by permitting the Trustee to sell Fund shares only when necessary to meet redemption obligations (which will only occur if the Sponsor is not maintaining a secondary market) or in the unlikely event that distributions from the underlying Fund shares are insufficient to meet the Trustee's expenses. Applicants also note that after the Deposit Date neither the Trustee nor the Sponsor will have any discretionary authority to determine when to sell Fund shares nor will they have the ability to substitute shares of another Fund for those already deposited. To further alleviate the concerns contemplated by section 12(d)(1) of the Act, Applicants undertake not to permit more than 10 percent of a Fund's shares to be held in a single Trust, and to structure the Trusts so that their maturity dates will occur at least thirty days apart from one another.

With respect to the approval sought pursuant to section 17(d) of the Act and Rule 17d–1 thereunder in connection with the purchase of Fund shares by the Trusts, it is submitted and the Trusts will be structured to eliminate as many potential areas of concern regarding affiliate transactions as possible. For example, Applicants state that there will be no duplication of sales charges with respect to the Fund shares and Trust Units because Fund shares will be sold at net asset value. Applicants also state that there will be no overlapping management or evaluation fees because there is no management fee at the Trust level and the evaluation fee with respect to that portion of the Trust's portfolio represented by Fund shares will be waived. Applicants submit that, in light of the restrictions imposed in connection with the proposed transactions, neither the Funds nor the Trusts will be disadvantaged by the arrangement and that each stands to gain significant benefits from the proposed transaction. Applicants further submit that the arrangement is consistent with the provisions, policies and purposes of the Act and that the concerned investment companies will not participate on a basis that is less advantageous than that of any other participant.

In connection with the requested exemption from section 14(a) of the Act, Applicants assert that because the Sponsor will deposit Securities into each Trust having a net worth in excess of $100,000, the proposed arrangement will be in compliance with section 14(a). Applicants recognize, however, that by withdrawing certificates representing the entire beneficial interest in each Trust prior to a public offering, the Sponsor could be deemed to be reducing the net worth of each Trust below the requirements of section 14(a). The Sponsor agrees to distribute to each investor his or her pro-rata share of the net worth of each Trust and will refund, on demand without reduction, all sales charges to purchasers of Units of a Series if, within ninety days from the time that Series becomes effective under the 1933 Act, the net worth of such Series shall be reduced to less than $100,000 or if the Series shall have been terminated. The Sponsor further agrees to instruct the Trustee on the Deposit Date of each Trust that in the event that redemptions by the Sponsor of Units, constituting a part of the unsold Units shall result in that Series having a net worth of less than 40 percent of the aggregate value of Securities originally deposited in the Trust, the Trustee shall terminate the Series in the manner provided in the Agreement and distribute to each investor his or her pro-rata share of the Trust assets and refund any sales charges on demand and without deduction.

Applicants also request an exemption from section 22(d) of the Act to permit the waiver of any otherwise applicable CDSL on: (a) Redemptions by the Sears Investment Trust of any of its holdings of the Funds; and (b) redemptions by investors of their holdings of the Funds attributable to their (i) reinvestment of proceeds of the zero coupon obligations at maturity of a Trust, (ii) transfer of registration at maturity of (or upon

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dissolution) a Trust, of the proportionate number of Fund shares from the Trust to the investor and (iii) reinvestment, if any, of Trust distributions made during the life of a Trust. Applicants note that imposition of the CDSL on the above-described redemptions of Fund shares would be duplicative to investors in the Trusts and, accordingly, would raise concerns under section 12(d)(1) of the Act regarding the pyramiding of expenses. Applicants submit that waiver of the CDSL will not harm the Funds or their remaining shareholders or unfairly discriminate among shareholders or purchasers of Fund shares. Applicants represent that the Funds will fully disclose the waiver provision in the applicable prospectuses.

Applicants also seek an order pursuant to section 45(a) of the Act, granting confidential treatment to the Sponsor's profit and loss statements contained in documents filed with the Commission by the Trusts. Applicants believe that public disclosure of the Sponsor's profit and loss statements is neither necessary nor appropriate in the public interest or for the protection of investors. In this regard, Applicants state that investors in the Trusts are not offered an opportunity to acquire any interest in the Sponsor and that the Sponsor will function solely as underwriter of the Trusts and perform only the limited duties described in the Agreement. Accordingly, Applicants assert that there is no legitimate interst on the part of Unitholders in the public disclosure of the Sponsor's profit and loss statement and that disclosure of the Sponsor's financial operations will not enhance or diminish the prospect for an orderly payment on a Trust's underlying Securities.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than November 20, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reason for such request, and the issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request shall be served personally or by mail upon each of the Applicants at the address stated above. Proof of such service (by affidavit or, in case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued, unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-25217 Filed 11-6-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15389; File No. 811-3920]

The Sector Investment Fund, Inc.; Application

October 31, 1986.

AGENCY: Securities and Exchange Commission (SEC).

ACTION: Notice of application under the Investment Company Act of 1940 ("1940 Act").

Applicant: The Sector Investment Fund, Inc. ("Sector").

Relevant 1940 Act Section and Rule: The application was filed under section 8(f) and Rule 8f-1.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company on the basis that all of its shareholders have redeemed their shares and it intends to dissolve.

Filing Date: October 10, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on November 25, 1986. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Sector, 220 East 42nd, Street, New York, NY 10017.

FOR FURTHER INFORMATION CONTACT: Philip J. Niehoff, Esq., (202) 272-2048, or H.R. Hallock, Jr., Esq., (202) 272-3030 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicant's Representations

1. Sector is a Maryland Corporation. It is currently in good standing under the laws of that state. It is registered under the 1940 Act as an open-end, non-diversified management investment company. It filed a registration statement under section 8(b) of the Act on December 2, 1983. It also filed a registration statement under the Securities Act of 1933 in order to make a public offering of common stock. The registration statement became effective on April 6, 1984.

2. On May 7, 1986, Sector's Board of Directors adopted resolutions approving and directing Sector's liquidation and dissolution.

3. On or about May 16, 1986, Sector informally notified all of its shareholders of its intent to terminate operations, liquidate, and dissolve. On that date, it had assets of $3.5 million and had outstanding 167,999.372 shares of its common stock which were held by 37 shareholders. All of its shareholders subsequently redeemed their shares receiving the then-current net asset value.

4. All of Sector's portfolio securities were sold in open market transactions in connection with shareholder redemptions. No assets were transferred to a trust for the benefit of any Sector security holders. Because all Sector shareholders redeemed their shares prior to Sectors liquidation and dissolution, no shareholder vote is required.

5. Sector has no liabilities. All legal expenses and disbursements incurred in connection with its liquidation and dissolution will be borne by its principal underwriter, Smilen Investment Research and Management Corporation.

6. Sector is not a party in any litigation or administrative proceeding. It is not engaged in any activities other than those necessary to wind-up its affairs. It intends to file articles of dissolution with the Secretary of State of Maryland and will have its authority to transact business as a foreign corporation in the State of New York withdrawn.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-25218 Filed 11-6-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15386; (File No. 812-6447)]

Southwestern Bell Capital Corp. Filing of Application for an Order Exempting Applicant From All Provisions

October 31, 1986.

Notice is hereby given that Southwestern Bell Capital Corporation ("Applicant"), One Bell Center, St. Louis, Missouri 63101, filed an application on August 6, 1986, and amendments thereto on October 16, 1986 and October 28, 1986, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all provisions of the Act. All interested persons are referred to the Application on file with the Commission for a statement of the representations therein, which are summarized below and to the Act for the text of those provisions of the Act relevant to the Application.

According to the application, Applicant, a Delaware corporation, is a wholly-owned subsidiary of Southwestern Bell Corporation (the "Corporation"), also a Delaware corporation. The Corporation is one of seven regional holding companies (collectively, the "RHCs") formed by AT&T pursuant to its Plan of Reorganization (the "Plan") approved by the United States District Court for the District of Columbia (the "Court") in conjunction with the settlement by AT&T and the Department of Justice ("DOJ") of antitrust litigation brought by the DOJ. The settlement is embodied in the Modification of Final Judgments (the "MFJ") agreed to by AT&T and the DOJ and entered by the Court after certain changes required by the Court had been made.

Applicant represents that the Corporation owns Southwestern Bell Telephone Company (the "Telephone Company"), a telephone operating company, which is subject to regulation by public utilities or public service commissions in each of the states in which it operates. In addition, the Telephone Company is regulated as to interstate matters by the Federal Communications Commission (the "FCC"). The Corporation also engages in other business activities as permitted under the MFJ and pursuant to waivers obtained thereunder from the Court, through the activities of various subsidiaries ("Diversified Subsidiaries"). The application states that additional waiver requests are pending and more waivers may be sought in the future. Applicant represents that neither the Corporation nor any of the Diversified Subsidiaries which is to obtain financing through the Applicant is an investment company under section 3(a) of the 1940 Act.

The application states that as of December 31, 1985, the Corporation had total assets of $19.5 billion and as of June 30, 1986, the Corporation's total assets were $19.5 billion. For the year ended December 31, 1985, the Corporation had net income of $996.2 million and revenue of $7.9 billion, and for the six month period ended June 30, 1986, the Corporation's net income and revenue were $484.0 million and $3.9 billion, respectively. In the year ended December 31, 1985, the Telephone Company declared payable $844.5 million in cash dividends to the Corporation.

Applicant represents that its sole business will be to provide funds which the Corporation will use to finance its diversification activities and the activities of the Diversified Subsidiaries. Applicant states it will offer and sell debt securities in the United States, European and other overseas markets (the "Securities") and, in turn, loan the proceeds to the Corporation and the Diversified Subsidiaries. The Applicant also represents that all loans by it to the Corporation and the Diversified Subsidiaries will bear interest equal to that which the Applicant is required to pay to obtain funds through its corresponding borrowings, plus a small mark-up sufficient to cover operating costs. Further, Applicant states that the amounts and maturity of these loans will allow it to make timely payments of principal and interest on its borrowings. According to the application, Applicant will remit to the Corporation at least 85% of the cash or cash equivalents raised by Applicant as soon as practicable after receipt thereof, but in no event later than six months after Applicant receives such cash or cash equivalents. Applicant represents that it will not issue voting securities to any person other than the Corporation, and that it will not hold securities other than Government securities and other securities as permitted by Rule 3a-5(a)(6).

Applicant represents that the MFJ limits the lines of business which may be engaged in by the RHCs (or their subsidiaries). Pursuant to the MFJ, the Court has held that the RHCs may be permitted to engage in certain new competitive ventures (such as many of the activities of the Diversified Subsidiaries) under certain circumstances, so long as any guarantee of obligations owned in Securities issued to finance the activities thereof would not grant recourse against the stock or assets of the Telephone Company. Applicant represents that the Corporation is therefore prohibited from guaranteeing obligations owed on Securities issued by or for the benefit of such Diversified Subsidiaries if the guarantee would permit resource against the stock or assets of the Telephone Company.

Applicant states that before it issues any Securities, the Corporation and the Applicant will enter into a Support Agreement (the "Support Agreement"). Pursuant to the Support Agreement, the Corporation will agree to cause the Applicant to maintain a positive tangible net worth (as determined in accordance with generally accepted accounting principles) and, if the Applicant is unable to pay when due principal, interest and premium if any, owed by it in connection with the Securities, then the Corporation shall provide funds to the Applicant to assure that the Applicant will be able to pay when due such principal, interest and premium, if any. Applicant also represents that the Support Agreement will provide that in the event of any default by the Corporation in meeting its obligations under such Support Agreement, or in the event of default by the Applicant in the timely payment of principal, interest, and premium, if any, owed on any Securities, holders of Securities or, if applicable, a trustee acting on their behalf shall be entitled to proceed directly against the Corporation, so long as no holder of Securities or trustee acting on their behalf will have recourse to or against the stock or assets of the Telephone Company.

Applicant further represents that the Support Agreement will also provide that the Corporation shall own all of the outstanding voting capital stock of the Applicant throughout the term of the Support Agreement, that without the written consent of all the holders of the then outstanding Securities the Support Agreement may not be modified or amended in ways less favorable to holders of Securities than the existing agreement, and that it may be terminated only after all outstanding Securities have been retired.

Applicant states that the Securities are expected to consist of short-term, intermediate-term and long-term debt securities to be offered and sold either in transactions exempt from the registration requirements of the Securities Act of 1933 (the "1933 Act") or in public offerings of securities registered under the 1933 Act. The Applicant further represents that, in the case of a public offering of any of its securities not exempt from the

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registration requirements of the 1933 Act, Applicant and the Corporation will, prior to offering such securities, file a registration statement under the 1933 Act with the Commission and will not sell such securities until the registration statement is declared effective by the Commission and any related identure is qualified under the Trust Indenture Act of 1939 to the extent required thereunder. Applicant futher represents that it and the Corporation will comply with the prospectus delivery requirements of the 1933 Act in connection with the offering and sale of such Securities.

The Applicant represents that, in the case of an offering of securities not requiring registration under the 1933 Act, it will provide each offeree with disclosure materials which will include a description of the business of the Corporation and other data of the character customarily supplied in such offerings. In the event of subsequent offerings, those materials will be updated at the time thereof to reflect material changes in the financial condition of the Corporation and its subsidiaries, taken as a whole. Further, prior to any issuance and sale of Applicant's debt Securities in the United States capital market, Applicant represents that such Securities shall have received one of the three highest investment grade ratings from at least one nationally recognized rating organization. No such rating shall be required, however, if Applicant's counsel opines that an exemption from registration is available with respect to such issue and sale under section 4(2) of the 1933 Act.

Applicant asserts that it was formed to function as a financing conduit for the diversification activites of the Corporation and the Diversified Subsidiaries, and to advance the efficient administration and management of financing activities for the Corporation and certain of the Diversified Subsidiaries. The Applicant states that it meets all of the requirements for the Rule 3a–5 exemption under the Act except for the rule's requirement that the securities issued by a finance subsidiary be unconditionally guaranteed by its parent company. The Applicant argues that the Corporation's execution and delivery of the Support Agreement provides a satisfactory alternative to an unconditional guarantee of the Securities since the Support Agreement enables purchasers of the Securities to proceed directly against the Corporation in the event of a failure by the Applicant to pay principal, interest or premium, if any, when due on the Securities, limited only so as to exclude the stock or assets of the Telephone Company. Applicant states that, despite this limitation, funds available to satisfy the Corporation's obligations under the Support Agreement include dividends paid by the Telephone Company, as well as the revenue and assets of the Corporation and the Diversified Subsidiaries other than the stock or assets of the Telephone Company. Therefore, Applicant argues that the Support Agreement enables purchasers of Applicant's debt instruments to look ultimately to the Corporation, not the Applicant, for repayment. In addition, the Applicant points out that, given the limitations of the MFJ and the subsequent orders in which the Court has restricted the kind of guarantee that the Corporation is able to provide to the Applicant, by means of the Support Agreement the Corporation intends to support the Securities with all legally available assets. By means of the Support Agreement, the Corporation will make available to the holders of the Securities the same assets which would be available to the holders of the Corporation's own securities used to fund the Corporation's similar diversification activities, and thus Applicant argues that the Support Agreement will put the purchasers in the same position as if the Corporation itself had issued the Securities directly.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than November 20, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–25219 Filed 11–6–86; 8:45 am]

BILLING CODE 8010-01-M

[Release NO. IC–15383; 812–6489]

Winthrop Focus Funds; Application October 30, 1986.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption and approval under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Winthrop Focus Funds ("Applicant").

Relevant 1940 Act Sections: Exemption requested under Section 6(c) from the provisions of section 2(a)(32), 2(a)(35), 22(c) and 22(d) and Rule 22c–1 and approval requested under section 11(a).

Summary of Application: Applicant seeks an order to permit it to assess and waive a contingent deferred sales charge on redemptions of its initial and future series or classes of shares, and to permit certain offers of exchange of its shares.

Filing Dates: The application was filed on October 1, 1986, and amended on October 22 and 24, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on November 24, 1986. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, Washington, DC 20549. Applicant, c/o Deborah R. Schumer, Esq., 140 Broadway, New York, NY 10005.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari (202) 272–2847 or Special Counsel Brion R. Thompson (202) 272–3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which may be contacted at (800) 231–3282 (in Maryland (301) 253–4300).

Applicant's Representations

1. Applicant is an open-end, diversified, management investment company that was organized as a business trust under the laws of the Commonwealth of Massachusetts on November 26, 1985. On March 4, 1986, Applicant filed with the SEC (A) a Notification of Registration on Form N–8A pursuant to section 8(a) of the 1940 Act and (B) a Registration Statement on Form N–1A under the 1940 Act and the Securities Act of 1933, as amended. Applicant is currently composed of two series—the Growth Fund and the Bond Fund (collectively, the "Funds").

2. Shares of each Fund are proposed to be distributed by Donaldson Lufkin & Jenrette Securities Corporation ("DLJ Securities Corp."). Wood, Struthers and Winthrop Management Corp. ("Wood, Struthers & Winthrop"] will serve as the investment manager to each Fund. Wood, Struthers & Winthrop is a wholly-owned subsidiary of DLJ Securities Corp. which is a wholly-owned subsidiary of Donaldson, Lufkin & Jenrette, Inc., which in turn is an indirect wholly-owned subsidiary of The Equitable Life Assurance Society of the United States.

3. Shares of each Fund will be offered and sold without the reduction of a sales charge at the time of the purchase. However, certain redemptions of shares of the Funds will be subject to a contingent deferred sales charge (the "Charge"). The proceeds of the Charge will be paid to DLJ Securities Corp. and will be used by DLJ Securities Corp. in whole or in part to defray costs incurred in connection with the sale of Applicant's shares.

4. The Charge will only be assessed on a redemption by a shareholder that reduces the current net asset value of the shareholder's account in the relevant Fund to an amount lower than the total dollar amount of payments by the shareholder for the purchase of shares of the Fund made by the shareholder during the preceding four years. In the event that at the time of purchase payments made, the Charge will be assessed on the then current value of the purchase payments.

5. No Charge will be assessed to the extent that the net asset value of the shares redeemed by a shareholder did not exceed (A) the net asset value of shares of the Fund purchased more than four years prior to the redemption ("Old Share Value"), (B) the current net asset value of shares of the Fund purchased through reinvestment of dividends or capital gains distributions ("Reinvestment Share Value"), and (C) increases in the net asset value of the shares of the Fund above the total amount of purchase payments made in respect of the Fund during the preceding four years, as adjusted to exclude the amount of appreciation therein compensating for a decrease in value below said purchse payments ("Appreciation Value").

In effecting a particular redemption request, Applicant will first redeem an amount that represents Appreciation Value. If the amount of the requested redemption exceeded Appreciation Value, Applicant will next redeem an amount that represents Reinvestment Share Value. If the amount of the redemption exceeded the sum of Appreciation Value and Reinvestment Share Value, Applicant will then redeem an amount that represents Old Share Value. The amount by which a redemption exceeds the total of Appreciated Value, Reinvestment Share Value and Old Share Value will be subject to the Charge.

6. The amount of the Charge assessed will depend on the number of years that the shareholder has held the shares from which an amount is being redeemed. Such charge will be 4% in the first year, 3% in the second year, 2% in the third year, 1% in the fourth year, and no charge thereafter. All purchase payments for shares of a Fund made by a shareholder during a month will be aggregated and deemed to have been made on the last day of the preceding month. The amount of the Charge (if any) will be calculatd by first determining the date on which the purchase that is the source of the redemption was made, and then applying the appropriated percentage to the amount of the redemption subject to the Charge.

7. Shares of one Fund may be exchanged for shares of another Fund or for shares of either Alliance Government Reserves or Alliance Tax-Exempt Reserves (collectively, the "Alliance Money Market Funds"). Each exchange will be made on the basis of relative current net asset value per share next determined after receipt of an order for exchange.

8. No Charge will be assessed on exchanges of shares between Funds at the time of the exchange. For purposes of assessing the Charge at the time of redemption of such exchanged shares, the purchase date for the exchanged shares will be assumed to be the date on which the initial shares were purchased and not the date of exchange. In addition, no Charge will be assessed on the exchange of shares of the Funds which are reinvested and retained in either of the Alliance Money Market Funds. The Charge would be deferred until the shareholder ultimately redeems the shares of the Alliance Money Market Funds that were acquired in exchange for shares of the Funds. However, an exchange of shares of the Funds into either of the Alliance Money Market Funds will stop the running of the four year holding period until such shares are exchanged back into one of the Funds.

9. The Charge will be waived on redemptions by the following persons or entities: (A) Shareholders of record (as of date on or near the effective date of Applicant's Registration Statement) of Neuwirth Fund, Inc., Pine Street Fund, Inc. and deVegh Mutual Fund, Inc., each of which is a diversified, no-load, open-end management investment company to which Wood, Struthers and Winthrop provides investment advisory services; (B) redemptions effected by investment advisory clients of Wood, Struthers and Winthrop; (C) redemptions effected by (i) officers, employees and directors of Wood, Struthers and Winthrop and any of its directly or indirectly wholly owned subsidiaries or any entity by which Wood, Struthers and Winthrop is directly or indirectly owned ("Related Entities"), (ii) officers, directors or trustees of any investment company for which Wood, Struthers and Winthrop or any of its Related Entities serves as investment adviser or distributor, (iii) IRAs, Keogh plans and employee benefit plans for persons in (i) and (ii) above, and (iv) spouses, siblings, children or grandparents of persons in (i) and (ii) above, and trusts of which those individuals are beneficiaries; (D) redemptions effected by shareholders of an investment company registered under the 1940 Act, which receives shares of one or more of the Funds in connection with the combination of the investment company with Applicant by merger, acquisition or transfer of assets or by any other transaction; and (E) redemptions effected pursuant to Applicant's right to liquidate involuntarily a shareholder's account in any Fund with a current net asset value of less than $500. In applying any waiver of the Charge, Applicant will comply with the disclosure and other requirements of Rule 22d–1 under the 1940 Act.

10. Applicant proposes to finance its distribution expenses under a distribution services agreement adopted under Rule 12b–1 under the 1940 Act (the "Distribution Agreement"). Under the Distribution Agreement, Applicant will pay a distribution fee to DLJ Securities Corp. for its expenses incurred in connection with the offering of shares of the Funds. DLJ Securities

Corp's distribution fee will be accured daily and paid monthly by Applicant with respect to the Funds at the annual rate of up to 1.00% of the average daily net assets of each Fund for which the Distribution Agreement is in effect. The Trustees of Applicant will consider receipts from the Charge obtained by DLJ Securities Corp. in connection with their annual review of the Distribution Agreement.

11. Any additional series or classes of shares Applicant may offer in the future will be operated in a manner substantially similar to the manner described above with respect to Applicant's Funds provided, however, that the distribution fee which would be payable to DLJ Securities Corp. could be lower than, equal to or higher than the fee to be paid by Winthrop.

12. The Charge and any waivers, deferrals or other variations are fair and euitable to Applicant's shareholders while at the same time giving them necessary flexibility in their financial planning. Further, the order requested is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Moreover, such waivers, deferrals or variations of the Charge will not harm Applicant's remaining shareholders or unfairly discriminate among shareholders or purchasers.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-25220 Filed 11-6-86; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-15665]

Application and Opportunity for Hearing; Union Pacific Corp.

November 4, 1986.

Notice Is Hereby Given that Union Pacific Corporation (the "Applicant" or the "Company") has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939, as amended (the "Act"), for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeships of Citibank, N.A. ("Citibank") under certain indentures of Union Pacific Corporation, which were heretofore qualified under the Act or exempt from registration under the Securities Act of 1933, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Citibank from acting as trustee under any of such indentures.

The Company has outstanding, as of July 16, 1986, the following debt securities secured by the following identures, in each case, between the Company and Citibank as trustee, all of which are the subject of this application:

(i) $4,800,100 principal amount of 4¾% Convertible Debentures Due 1999 issued under an indenture dated April 1, 1969 (the "1969 Indenture");

(ii) $250,000,000 principal amount of 11⅞% Sinking Fund Debentures Due 2010 issued under an indenture dated September 1, 1980 (the "1980 Indenture");

Citibank is also trustee of the following:

(iii) $1,000,000 principal amount of Adjustable Rate Industrial Development Bonds Series 1984 issued under an indenture dated August 1, 1984 (the "1984 Indenture") between Salt Lake County, Utah and Citibank, which are guaranteed by the Company and the proceeds from sale of which were loaned to Rocky Mountain Energy Company, a wholly owned subsidiary of the Company;

(iv) $8,000,000 principal amount of Adjustable Rate Pollution Control Revenue Bonds Series 1985 issued under an indenture dated December 1, 1985 (the "1985 Indenture") between Albany County, Wyoming and Citibank, the proceeds from sale of which were loaned to Union Pacific Railroad Company, a wholly owned subsidiary of the Company with repayment guaranteed by the Company;

(v) $150,000,000 principal amount of 8.4% Sinking Fund Debentures Due 2001, issued under an indenture dated March 1, 1976 (the "1976 Indenture");

On April 30, 1986, Morgan Guaranty Trust Company of New York (the "Resigning Trustee') gave written notice to the Company of its intention to resign as trustee under the 1976 Indenture effective upon appointment of a successor trustee. On July 15, 1986, the Company appointed Citibank as successor trustee, which appointment Citibank accepted as of that date.

Section 310(b) of the Act, contained in section 6.08 of the 1969 Indenture and section 608 of the 1976 and 1980 Indentures, provides in part that if a trustee under an indenture qualified under the Act has or acquires any conflicting interest, it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign.

Pursuant to section 608 of the 1976 Indenture, Citibank shall not be deemed to have a conflicting interest by reason of being a trustee under another indenture or indentures under which any other securities of the Company are outstanding if the Company shall have sustained the burden of proving, on application for hearing thereon, that the trusteeships of Citibank under the 1976 Indenture and such other indenture or indentures are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Citibank from acting as trustee under one of such indentures.

The Company's obligations with respect to the debentures issued under the 1969, 1976 and 1980 Indentures and the Company's obligation as a guarantor with respect to the revenue bonds issued under the 1984 and 1985 Indentures are in each case wholly unsecured and rank *pari passu* with each other.

There is no default under the 1969, 1976, 1980, 1984 or 1985 or indenture.

Such differences as exist among the Indentures referred to herein and the respective obligations of the Company as principal obligor under the 1969, 1976 and 1980 Indentures and as guarantor with respect to the revenue bonds issued under the 1984 and 1985 Indentures are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Citibank from acting as successor trustee under the 1976 Indenture.

The Applicant has waived notice of hearing, any right to a hearing on the issues raised by the application, and all rights to specify procedures under the Rules of Practice of the Commission with respect to its application.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application on file in the offices of the Commission at 450 Fifth Street, NW., Washington, DC 20549 under File No. 22-15665.

Notice Is Further Given that an order granting the application may be issued by the Commission at any time on or after November 24, 1986, unless prior thereto a hearing upon the application is ordered by the Commission, as provided in clause (ii) of section 310(b)(1) of the Act. Any interested person may, no later than November 24, 1986, at 5:30 p.m. Eastern Standard Time, in writing, submit to the Commission his views or any additional facts bearing upon this application or the desirability of a hearing thereon or request notification if the Commission should order a hearing. Any such communication or request should be addressed to: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC

20549 and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact and law raised by the application that he desires to controvert.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-25270 Filed 11-6-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 86-11-7; Dockets 38040, 38073,38955, 39074, 40302, and 40649]

Global International Airways Corp.; Proposed Revocation Certificates

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order revoking the certificates of Global International Airways Corporation, issued under sections 401 and 418 of the Federal Aviation Act.

DATE: Persons wishing to file objections should do so no later than November 25, 1986.

ADDRESSES: Responses should be filed in Dockets 38040, 38073, 38955, 39074, 40302, and 40649 and addressed to the Documentary Services Division, Department of Transportation, 400 7th Street, SW., Room 4107, Washington, DC 20590 and should be served on the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Janet A. Davis, Special Authorities Division, P-47, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 366-2340.

Dated: November 4, 1986.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86-25275 Filed 11-6-86; 8:45 am]

BILLING CODE 4910-62-M

[Order 86-11-6]

Monarch Aviation, Inc., d.b.a. Monarch Airlines; Fitness Determination

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination, order to show cause.

SUMMARY: The Department of Transportation is proposing to find that Monarch Aviation, Inc. d/b/a/ Monarch Airlines, is fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Special Authorities Division, P-47, Department of Transportation, 400 7th Street, SW., Room 6420, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than November 25, 1986.

FOR FURTHER INFORMATION CONTACT: Michael Lane, Special Authorities Division, Department of Transportation, 400 7th Street, SW., Washington, DC 20590 (202) 366-2341.

Dated: November 4, 1986.

Matthew W. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86-25276 Filed 11-6-86; 8:45 am]

BILLING CODE 4910-62-M

[Docket 44380]

Seattle/Portland—Japan Service Review Case; Postponement of Prehearing Conference

Served: October 30, 1986.

Notice is hereby given that the prehearing conference in the above-entitled matter scheduled to be held on November 10, 1986 is postponed until November 17, 1986, at 10:00 a.m. (local time) in Room 5332, 400 7th Street, SW., Washington, DC, before the undersigned administrative law judge.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 86-25189 Filed 11-6-86; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE-86-19]

Petition for Exemption; Summary of Petitions Received; American Trans Air and Chalk International Airlines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I). The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. The comment period for these petitions for exemption has been shortened in order to allow the agency to consider public comments and act on these petitions prior to the approaching compliance date established by the Federal Aviation Regulations. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before November 14, 1986.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ——, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on November 5, 1986.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
25098	American Trans Air	14 CFR 121.310	To allow petitioner a 1-month extension from the compliance date of November 26 for meeting emergency exit lighting requirements.
25062	Chalk International Airlines	14 CFR 121.310	To allow petitioner a 6-month, one-time extension from the compliance date of November 26 for meeting emergency exit lighting requirements.

[FR Doc. 86-25369 Filed 11-5-86; 3:00 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: November 3, 1986.

The Department of Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7313, 1201 Constitution Avenue, NW., Washington, DC 20220.

Office of the Secretary

OMB Number: 1505-0058
Form Number: None
Type of Review: Reinstatement
Title: Confidential Information for the Secretary of the Treasury
Clearance Officer: Douglas J. Colley (202) 566-6671, Office of the Secretary, Room 7221, ICC Building, 1201 Constitution Avenue, NW., Washington, DC 20220
OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Douglas J. Colley,
Departmental Reports, Management Office.

[FR Doc. 86-25277 Filed 11-6-86; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: October 31, 1986.

The Department of Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7313, 1201 Constitution Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: IRS Form 8587
Type of Review: New
Title: Election by Qualified Retailer Under section 4041(n)

OMB Number: 1545-0409
Form Number: IRS Form 211
Type of Review: Extension
Title: Application for Reward for Original Information

OMB Number: 1545-0796
Form Number: IRS Form 6524
Type of Review: Extension
Title: Office of Chief Counsel Application
Clearance Officer: Garrick Shear (202) 566-6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Douglas J. Colley,
Departmental Reports, Management Office.

[FR Doc. 86-25278 Filed 11-6-86; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Goya Paintings in Spanish Private Collections and the National Gallery of Art" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art in Washington, DC, beginning on or about November 15, 1986, to, on or about January 4, 1987, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: November 5, 1986.

Joseph A. Blundon,
Acting Deputy General Counsel.

[FR Doc. 86-25460 Filed 11-6-86; 11:08 am]

BILLING CODE 8230-01-M

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[1] A copy of this list may be obtained by contacting Mr. John Lindburg of the Office of the General Counsel of USIA. The telephone number is 202-485-7976, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 51, No. 216
Friday, November 7, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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Overseas Private Investment Corporation	5

1

COMMISSION ON CIVIL RIGHTS

November 5, 1986.

PLACE: 1121 Vermont Avenue, NW., Room 512, Washington, DC 20425.

DATE AND TIME: Thursday, November 13, 1986, 9:00 a.m.–5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes for September 26 and October 24, 1986 Meetings
III. Staff Director's Report
  A. Status of Funds
  B. Personnel Report
  C. Office Directors' Reports
IV. New Directions for Civil Rights—(Vice Chairman Friedman's discussion memo)
V. Report on Indian Hearing
VI. Civil Rights Developments in the Western States Region

PERSON TO CONTACT FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications Division (202) 376–8312.

William H. Gillers,
Solicitor, 376–8339.

[FR Doc. 86–25395 Filed 11–7–86; 3:57 pm]

BILLING CODE 6335-01-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 10:00 a.m. (eastern time) Tuesday, November 18, 1986.

PLACE: Suite 900, Skyline II Building, 5203 Leesburg Pike, Falls Church, Virginia 22041.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED:

Closed

Agency Adjudication and Determination on the Record of Federal Agency Discrimination Complaint Appeals

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634–6748.

This Notice Issued and dated November 5, 1986.

Cynthia C. Matthews,
Executive Officer, Executive Secretariat.

[FR Doc. 86–25373 Filed 11–5–86; 3:27 pm]

BILLING CODE 6750-06-M

3

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday November 12, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS OF BE CONSIDERED:

Summary Agenda

Because of its routine, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed exemption from Regulation AA (Unfair or Deceptive Acts or Practices) for the state of Wisconsin. (Proposed earlier for public comment; Docket No. R–0570)

Discussion Agenda

2. Proposed amendment to Regulation Z (Truth in Lending) regarding disclosures for adjustable rate mortgages.

3. Proposals regarding structured format for wire transfer of funds. (Proposed earlier for public comment; Docket No. R–0575)

4. Proposals regarding a two-tiered pricing structure for check collection services. (Proposed earlier for public comment; Docket No. R–0532)

5. (A) Proposals regarding consolidation of priced service activities across District lines (proposed earlier for public comment; Docket No. R–0555); and (B) publication for comment of proposed factors for evaluating future inter-District consolidations.

6. Any items carried forward from a previously announced meeting.

Note. This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: November 5, 1986.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 86–25352 Filed 11–5–86; 8:45 am]

BILLING CODE 6210-01-M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 12:00 noon, Wednesday, November 12, 1986, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: Novevember 5, 1986.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 86–25353 Filed 11–5–86; 1:42 pm]

BILLING CODE 6210-01-M

5

OVERSEAS PRIVATE INVESTMENT CORPORATION

CHANGE IN MEETING DATE: Due to the lack of a quorum, the Board of Directors meeting scheduled for November 13, 1986 has been postponed until December 18, 1986 at 10:00 a.m. The agenda and all other information about the meeting published in the **Federal Register** on

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October 31, 1986 remain the same. However, if any new items are added to the agenda in the interim, appropriate notification will be sent to the Federal Register for publication prior to the meeting.

CONTACT PERSON FOR INFORMATION: Information with regard to the meeting may be obtained from the Secretary of the Corporation at (202) 457–7007.

Mildred A. Osowski,

Corporate Secretary.

November 5, 1986.

[FR Doc. 86–25394 Filed 11–5–86; 3:46 pm]

BILLING CODE 3210–01–M

federal register

Friday
November 7, 1986

Part II

Environmental Protection Agency

40 CFR Part 260 et al.
Hazardous Waste Management System; Land Disposal Restrictions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 264, 265, 268, 270, and 271

[SWH-FRL 3089-5]

Hazardous Waste Management System; Land Disposal Restrictions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is today promulgating its approach to implementing the congressionally mandated prohibitions on the land disposal of hazardous waste. This action is responsive to amendments to the Resource Conservation and Recovery Act (RCRA), enacted through the Hazardous and Solid Waste Amendments of 1984 (HSWA).

Today's notice establishes procedures for setting treatment standards for hazardous wastes, for granting nationwide variances from statutory effective dates, for granting extensions of effective dates on a case-by-case basis, for evaluating petitions for a variance from the treatment standard, and for evaluating petitions demonstrating that continued land disposal of hazardous wastes is protective of human health and the environment.

In addition, EPA is promulgating specific treatment standards and effective dates for hazardous wastes included in the first phase of the land disposal prohibitions: certain dioxin and solvent-containing hazardous wastes. EPA also is promulgating the Toxicity Characteristic Leaching Procedure (TCLP) for use in determining whether these wastes meet the applicable treatment standards. Extensions of the effective date for certain categories of these wastes are also promulgated in today's rule.

Prohibitions on underground injection of these wastes are on a different schedule and are being addressed in a different rulemaking. The treatment standards, however, will apply when the restrictions are effective.

DATE: This final rule is effective November 8, 1986, except for the provisions in §§ 268.30(b) and 268.31(a), which will become effective on November 8, 1988.

ADDRESSES: The official record for this rulemaking under Docket Number LDR-3 is located in the RCRA Docket (Sub-basement), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding legal holidays. The public must make an appointment to review docket materials by calling Mia Zmud at (202) 475-9327 or Kate Blow at (202) 382-4675 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: For general information about this rulemaking contact the RCRA Hotline, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (800) 424-9346 (toll free) or (202) 382-3000 in the Washington, DC metropolitan area.

For information on specific aspects of this rule contact: Stephen R. Weil or Jacqueline W. Sales, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202) 382-4770.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Background

A. Summary of Hazardous and Solid Waste Amendments of 1984
  1. Solvents and Dioxins
  2. California List
  3. Scheduled Wastes
  4. Newly Listed Wastes
B. Summary of the Proposed Rule
  1. Determination of Section 3004(m) Treatment Standards
  2. Variance Based on Lack of National Capacity
  3. Petition Process
  4. Storage of Prohibited Wastes

II. Summary of Today's Final Rule

A. Regulatory Framework
B. Applicability
  1. Scope of Land Disposal Restrictions
  2. CERCLA Response Action and RCRA Corrective Action Wastes
  3. Air Emissions
C. Section 3004(m) Treatment Standards
D. Petition Procedures for Demonstrating Land Disposal to be Protective of Human Health and the Environment ("No-migration" Petitions)
E. Variance from the Treatment Standard
F. National Variance from the Effective Date
G. Case-by-Case Extensions
H. Storage of Prohibited Wastes
I. Treatment Standards and Effective Dates for Solvents
J. Treatment Standards and Effective Dates for Dioxins
K. Rationale for Immediate Effective Dates

III. Agency Response to Major Comments on Proposed Rule

A. Applicability
  1. Open Burning and Open Detonation
  2. Wastes Produced by Small Quantity Generators
B. Treatment Alternatives (BDAT)
  1. BDAT Expressed as a Performance Standard
  2. Process Variability
  3. Criteria for Well-Designed and Operated Treatment Systems
C. Capacity
  1. Capacity for Waste-as-Fuel
  2. Commercial vs. Private Capacity
  3. Permitted Facility vs. Interim Status Facility Capacity
  4. Existing Facility vs. Planned Facility Capacity
  5. National vs. Regional Capacity
D. Petitions Demonstrating Land Disposal of Untreated Waste is Protective
  1. Generic Petitions for Sites with Similar Hydrogeologic Properties
  2. Conditional Petition Approval Based on *Prima Facie* Evidence
  3. Eligibility for Petitions
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I. Background

A. Summary of Hazardous and Solid Waste Amendments of 1984

The Hazardous and Solid Waste Amendments of 1984 (HSWA), enacted on November 8, 1984, impose substantial new responsibilities on those who handle hazardous waste.

In particular, the amendments prohibit the continued land disposal of untreated hazardous wastes beyond specified dates, "unless the Administrator determines that the prohibition . . . is not required in order to protect human health and the environment for as long as the wastes remain hazardous . . ." (RCRA sections 3004 (d)(1), (e)(1), (g)(5), 42 U.S.C. 6924 (d)(1), (e)(1), (g)(5)). Congress established a separate schedule in section 3004(f) for making determinations regarding the disposal of dioxins and solvents in injection wells.

Wastes treated in accordance with treatment standards set by EPA under section 3004(m) of RCRA are not subject to the prohibitions and may be land disposed. The statute requires EPA to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized" (RCRA section 3004(m)(1), 42 U.S.C. 6924(m)(1)).

Land disposal prohibitions are effective immediately upon promulgation unless the Agency sets another effective date based on the earliest date that adequate alternative treatment, recovery, or disposal capacity which is protective of human health and the environment will be available (RCRA sections 3004(h) (1) and (2), 42 U.S.C. 6924(h) (1) and (2)). However, these effective date variances may not exceed 2 years beyond the applicable statutory deadline. In addition, two 1-year case-by-case extensions of the effective date may be granted under certain circumstances.

For the purposes of the land disposal restrictions program, the legislation specifically defines land disposal to include, but not be limited to, any placement of hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome or salt bed formation, or underground mine or cave (RCRA section 3004(k), 42 U.S.C. 6924(k)).

Congress also has prohibited the storage of any hazardous waste that is subject to a prohibition from one or more methods of land disposal unless "such storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal" (RCRA section 3004(j), 42 U.S.C. 6924(j)).

There also is a statutory exemption from the land disposal restrictions for the treatment of wastes in a surface impoundment, provided that the impoundments meet minimum technological requirements (with limited exceptions) and that treatment residues that do not meet the treatment standard(s) are removed within 1 year of the entry of the waste into the impoundment (RCRA section 3005(j)(11)(A)(B), 42 U.S.C. 6925(j)(11)(A)(B)).

The legislation sets forth a series of deadlines for Agency action. At certain deadlines, further land disposal of a particular group of hazardous wastes is prohibited if the Agency has not set treatment standards under section 3004(m) for such wastes or determined, based on a case-specific petition, that there will be no migration of hazardous constituents from the unit for as long as the wastes remain hazardous. Other deadlines cause conditional restrictions

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on land disposal to take effect if treatment standards have not been promulgated or if a petition has not been granted. In any case, where EPA does not set a treatment standard for a waste by the statutory date, it is not precluded from later promulgating a treatment standard for that waste. Similarly, where EPA has set a treatment standard, it is not precluded from revising that standard after the statutory date through rulemaking procedures. The relevant statutory deadlines are explained in detail in the following units.

1. Solvents and Dioxins

Effective November 8, 1986, the statute prohibits further land disposal (except by deep well injection) of the following wastes: dioxin-containing hazardous wastes numbered F020, F021, F022, and F023,[1] and solvent-containing hazardous wastes numbered F001, F002, F003, F004, and F005. (RCRA sections 3004 (e)(1), (e)(2), 42 U.S.C. 6924 (e)(1), (e)(2)). These wastes are listed in 40 CFR 261.31.

If EPA fails to set treatment standards or grant petitions for solvent- and dioxin-containing wastes by the statutory deadline, such wastes are prohibited from land disposal as of that deadline (other than in injection wells, where the prohibition is effective as of August 8, 1988). If EPA has set treatment standards, wastes that meet the level or are treated by the specified method may be land disposed. Wastes subject to a successful petition may also continue to be land disposed.

2. California List

Effective July 8, 1987 (32 months from November 8, 1984), the statute prohibits disposal (except with respect to deep well injection) for the following wastes, listed or identified under RCRA section 3001:[2]

a. Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing free cyanides at concentrations greater than or equal to 1,000 mg/l.

b. Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing the following metals (or elements) or compounds of these metals (or elements) at concentrations greater than or equal to those specified below:

(1) Arsenic and/or compounds (as As) 500 mg/l;

(2) Cadmium and/or compounds (as Cd) 100 mg/l;

(3) Chromium (VI) and/or compounds (as Cr VI) 500 mg/l;

(4) Lead and/or compounds (as Pb) 500 mg/l;

(5) Mercury and/or compounds (as Hg) 20 mg/l;

(6) Nickel and/or compounds (as Ni) 134 mg/l;

(7) Selenium and/or compounds (as Se) 100 mg/l;

(8) Thallium and/or compounds (as Tl) 130 mg/l.

c. Liquid hazardous wastes having a pH less than or equal to 2.0.

d. Liquid hazardous wastes containing polychlorinated biphenyls (PCBs) at concentrations greater than or equal to 50 ppm.

e. Hazardous wastes containing halogenated organic compounds in total concentrations greater than or equal to 1,000 mg/kg. (RCRA sections 3004(d) (1) and (2), 42 U.S.C. 6924(d) (1) and (2)).

If EPA fails to set treatment standards or grant petitions by July 8, 1987, for wastes appearing on the California List, these wastes will be prohibited from land disposal (other than in injection wells, where the applicable statutory deadline is August 8, 1988).

EPA will propose treatment standards for California List wastes in a future **Federal Register** notice.

During the period ending November 8, 1988 (48 months from November 8, 1984), disposal of contaminated soil or debris resulting from a response action taken under sections 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (Superfund), or a corrective action required under Subtitle C of RCRA, is not subject to any land disposal prohibition or treatment standard for F001–F005 solvent wastes, dioxin-containing wastes, and wastes covered by the California List. (RCRA sections 3004 (d)(3), (e)(3), 42 U.S.C. 6924 (d)(3), (e)(3)).

3. Scheduled Wastes

Section 3004(g) of RCRA (42 U.S.C. 6924(g)) requires the Agency to set a schedule for making land disposal restriction decisions for all hazardous wastes listed as of November 8, 1984, under RCRA section 3001. This list excludes solvent and dioxin wastes prohibited under section 3004(c) and California List wastes prohibited under section 3004(d). EPA submitted this schedule to Congress on May 28, 1986 (51 FR 19300).

RCRA section 3004(g)(6) (42 U.S.C 6924(g)(6)) provides that if EPA fails to set treatment standards or grant petitions by the statutory deadline for any hazardous waste according to the schedule, such hazardous waste may be disposed of in landfills or surface impoundments only in facilities in compliance with the minimum technological requirements set forth in RCRA section 3004(o), 42 U.S.C. 6924(o)).[3] If EPA fails to set treatment standards or grant a petition for any of the scheduled listed wastes by May 8, 1990, all such wastes will be prohibited from land disposal.

4. Newly Listed Wastes

The land disposal prohibitions apply to all hazardous wastes under RCRA section 3001 as of November 8, 1984, the date of enactment of HSWA. For any hazardous waste identified or listed under RCRA section 3001 after November 8, 1984, EPA is required to make land disposal restriction determinations within 6 months of the date of identification or listing (RCRA section 3004(g)(4), 42 U.S.C. 6924(g)(4)). However, the statute does not impose an automatic prohibition on land disposal if EPA misses a deadline for any newly listed or identified waste.

B. Summary of the Proposed Rule

On January 14, 1986, EPA proposed to establish a framework by which treatment standards for hazardous wastes restricted from land disposal would be established. EPA also proposed treatment standards and effective dates (dates by which wastes must be treated or be prohibited from land disposal unless subject to a successful petition) for the first class of hazardous wastes—solvents and dioxins—to be evaluated under the proposed framework (51 FR 1602).

1. Determination of Section 3004(m) Treatment Standards

In developing treatment standards under RCRA section 3004(m), the Agency proposed an approach using technology-based levels in conjunction with risk-based standards (screening levels). The technology-based levels were derived from the performance of the best demonstrated available technologies (BDAT). Performance of treatment processes was evaluated based upon the leachability of the residuals of such treatment in the land disposal environment. The screening levels specified maximum concentration levels of individual hazardous constituents in extracts of hazardous wastes. The Agency also noted that air emissions contamination was not addressed in the proposed framework. However, when work was completed on the air model, more stringent screening levels would be set, if necessary, to protect this media.

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[1] The final dioxin rulemaking (50 FR 1978, January 14, 1985) contains three waste codes, F026, F027, and F028, not specified in the statute. The additional waste codes are a result of reorganization and do not represent a substantive departure from the waste codes enumerated in section 3004(e)(1).

[2] This list is based on regulations developed by the California Department of Health Services for hazardous waste land disposal restrictions in the State of California. Thus, it has become known as the "California List."

[3] In this situation, placement of such wastes in other types of land disposal units (e.g., deep injection wells) would not be precluded by section 3004(g)(6). See Vol. 130, *Cong. Rec.* S9192 (daily ed., July 25, 1984).

To ensure that the total risks to human health and the environment were not increased as a result of implementing the land disposal restrictions, the Agency proposed to compare the risks of managing wastes in land disposal units with the risks of managing wastes in alternative treatment technologies. Treatment technologies found to pose greater risks than those posed by land disposal of the waste would be considered unavailable for purposes of establishing RCRA section 3004(m) treatment standards.

The proposed rule set treatment standards in the following way. If application of BDAT treatment resulted in concentration levels equal to or lower than the screening levels, the Agency proposed to issue the screening level as the treatment standard, capping off required BDAT treatment at these protective levels. If application of BDAT treatment resulted in levels less stringent than the screening levels, but BDAT realized substantial reductions in toxicity or mobility and did not pose greater risks than land disposal, then the technology-based level would become the treatment standard and the screening level would remain as a goal that could be reached as new technologies emerged.

The Agency proposed to apply this framework to the waste codes specified in section 3004(e) (i.e., F020–F023, F026 and F027 [4] for dioxin-containing wastes, and F001–F005 and the corresponding constituents listed in 40 CFR 261.33 (e) and (f) for solvent-containing wastes [5]). The screening levels for dioxin-containing wastes were below established detection limits achievable using standard EPA analytical methods, thus, the Agency proposed treatment standards based on the detection limits. The proposed treatment standards for solvents were derived from screening levels and the potential effects of solvents on synthetic and clay liners.

The Agency requested comments on an alternative approach, that of establishing treatment standards under RCRA section 3004(m) based solely on the performance of the best demonstrated available technology (BDAT).

2. Variance Based on Lack of National Capacity

Because no incinerator or thermal treatment facility has been approved by EPA to treat dioxin-containing wastes, the Agency proposed to grant a 2-year national variance for all dioxin-containing wastes subject to the restrictions. The Agency also proposed to grant a 2-year nationwide variance for F001–F005 solvent wastes containing less than 1 percent (by weight) total organic constituents, and solvent-contaminated soils, because of capacity limitations on alternative treatment, recovery, and disposal technologies.

3. Petition Process

The Administrator is authorized to find that land disposal of a particular waste will be protective of human health and the environment if an interested person demonstrates, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the land disposal unit or injection zone for as long as the wastes remain hazardous (RCRA sections 3004 (d)(1), (e)(1), and (g)(5), 42 U.S.C. (d)(1), (e)(1), and (g)(5)). Under the proposed rule, this demonstration was to be made in the form of a petition to the EPA Regional Administrator or authorized State program director. The applicant would have been required to prove that a specified waste could be contained safely in a particular type of disposal unit. The Agency proposed that the "no migration . . . for as long as the wastes remain hazardous" standard could be met if the petitioner demonstrated that, by the time the constituent reached a point of potential human exposure, or a sensitive environment, it would be at a concentration level that did not threaten human health and the environment.

4. Storage of Prohibited Wastes

Section 3004(j) of RCRA specifies that any waste that is prohibited from one or more methods of land disposal also is prohibited from storage unless the storage is solely to accumulate sufficient quantities of the waste to allow for proper recovery, treatment, or disposal. The Agency interprets the statute to provide that the storage prohibition does not apply to wastes that have been treated in accordance with treatment standards or that have been subject to a successful petition demonstration. EPA proposed that generators and treatment, storage, and disposal facilities be allowed to accumulate prohibited wastes on-site for up to 90 days.

II. Summary of Today's Final Rule

A. Regulatory Framework

The Agency is finalizing the regulatory framework for implementing the land disposal restrictions and promulgating treatment standards and associated effective dates for certain solvent- and dioxin-containing wastes.

By each statutory deadline, the Agency will promulgate the applicable treatment standards under Part 268 Subpart D for each hazardous waste. After the standards are effective, wastes may be disposed of in a Subtitle C facility if they meet the applicable treatment standard.

After the effective dates of the prohibitions, wastes that do not comply with the applicable treatment standards will be prohibited from continued placement in land disposal units unless a petition has been granted by the Administrator under § 268.6 demonstrating that continued management of specific hazardous wastes in land disposal units is protective of human health and the environment for as long as the waste remains hazardous. EPA may provide an extension of the statutory effective date under § 268.5.

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[4] The Agency omitted F028 from the proposed rule because it is the residue from the thermal treatment of soils contaminated with other dioxin-containing wastes. This was an error, as this waste also is required to meet the treatment standard. F028 is included in today's final rule.

[5] The solvent wastes are listed as P022, U002, U031, U037, U052, U057, U070, U080, U112, U117, U121, U140, U151, U158, U161, U169, U196, U210, U211, U220, U226, U228 and U239.

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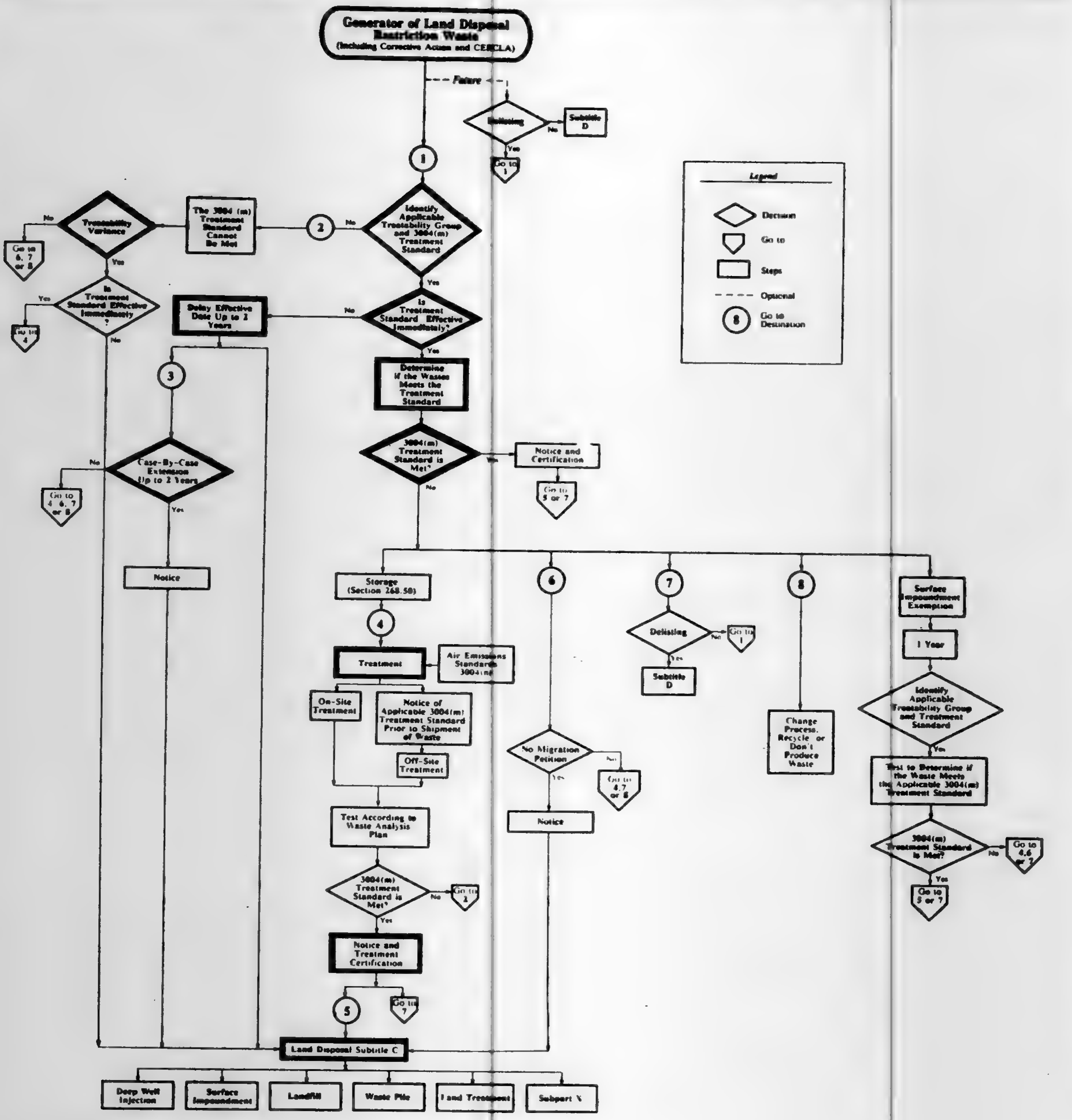
Generator of Land Disposal Restriction Waste (Including Corrective Action and CERCLA)
Future
Delisting
No
Subtitle D
Yes
Go to 1
1
Identify Applicable Treatability Group and 3004(m) Treatment Standard
No
2
The 3004 (m) Treatment Standard Cannot Be Met
Treatability Variance
No
Go to 6, 7 or 8
Yes
Is Treatment Standard Effective Immediately?
Yes
Go to 4
No
Is Treatment Standard Effective Immediately?
No
Delay Effective Date Up to 2 Years
3
Case-By-Case Extension Up to 2 Years
No
Go to 4, 6, 7 or 8
Yes
Notice
Yes
Determine if the Wastes Meets the Treatment Standard
3004(m) Treatment Standard is Met?
Yes
Notice and Certification
Go to 5 or 7
No
Storage (Section 268.50)
4
Treatment
Air Emissions Standards 3004(n)
On-Site Treatment
Notice of Applicable 3004(m) Treatment Standard Prior to Shipment of Waste
Off-Site Treatment
Test According to Waste Analysis Plan
3004(m) Treatment Standard is Met?
No
Go to 2
Yes
Notice and Treatment Certification
5
Go to 7
6
No Migration Petition
No
Go to 4, 7 or 8
Yes
Notice
7
Delisting
No
Go to 1
Yes
Subtitle D
8
Change Process, Recycle or Don't Produce Waste
Surface Impoundment Exemption
1 Year
Identify Applicable Treatability Group and Treatment Standard
Yes
Test to Determine if the Waste Meets the Applicable 3004(m) Treatment Standard
3004(m) Treatment Standard is Met?
No
Go to 4, 6, or 7
Yes
Go to 5 or 7
Land Disposal Subtitle C
Deep Well Injection
Surface Impoundment
Landfill
Waste Pile
Land Treatment
Subpart X
Legend
Decision
Go to
Steps
Optional
8 Go to Destination

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B. Applicability

1. Scope of Land Disposal Restrictions

The definition of land disposal is not being limited to placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave as specifically identified in RCRA section 3004(k). The Agency also considers placement in concrete vaults or bunkers intended for disposal purposes as methods of waste management subject to the land disposal restrictions, as proposed. The Agency, however, is departing from the proposed rule with respect to open detonation. For purposes of clarification, the final rule notes that the Agency interprets any reference to open detonation to include open burning (see Unit III.A.). The Agency has concluded that these methods do not constitute land disposal, except in cases where the residuals from open detonation and open burning of explosives continue to exhibit one or more of the characteristics of hazardous waste.

The Agency interprets the land disposal restriction adopted in today's final rule as applying prospectively to the affected hazardous wastes. In other words, hazardous wastes placed into land disposal units after the effective date are subject to the prohibitions, but wastes land disposed prior to the applicable effective date do not have to be removed or exhumed for treatment. Similarly, the Agency interprets the restrictions on storage of prohibited wastes to apply only to wastes placed in storage after the effective date of an applicable land disposal restriction. If, however, wastes subject to land disposal restrictions are removed from either a storage or land disposal unit after the effective date, subsequent placement of such wastes in or on the land would be subject to the restrictions and treatment provisions.

The provisions of today's final rule also apply to wastes produced by generators of 100 to 1000 kilograms of hazardous waste in a calendar month.

The land disposal restrictions apply to both interim status and permitted facilities. All permitted facilities are subject to the restrictions, regardless of existing permit conditions, because the provisions of RCRA require compliance by all facilities even though the requirements are not specifically referenced in the permit conditions. The land disposal restrictions supersede 40 CFR 270.4(a), which currently provides that compliance with a RCRA permit constitutes compliance with Subtitle C.

2. CERCLA Response Action and RCRA Corrective Action Wastes

Under section 3004(e)(3) Congress provided a 48-month exemption (until November 1988) from the land disposal restriction provisions for disposal of contaminated soil and debris from CERCLA 104 and 106 response actions and RCRA corrective actions. Because of this statutory exemption, today's final rule is not applicable to these wastes. The exemption covers the disposal of any soil and debris wastes under section 3004 (d) and (e). All other CERCLA response action wastes and RCRA corrective actions wastes are subject to this rule.

CERCLA response actions and RCRA corrective actions often address waste matrices different than those associated with industrial waste processes on which this rule is primarily based. These waste matrices are different in terms of chemical/physical composition, concentrations, and media within and among sites. The Agency anticipates that treatability variances may be needed for some soils, debris, and other similar wastes. Therefore, before November 8, 1988, the Agency plans to perform additional characterization of soils and debris and other similar wastes and, where necessary, amend the treatment standards by adding additional standards specifically for these wastes.

Today's final rule provides a 2-year national variance for wastes from CERCLA response actions and RCRA corrective actions that are not soil and debris. These wastes must be disposed of in facilities that are in compliance with the requirements of section 3004(o).

CERCLA and RCRA soil and debris wastes include but are not limited to soils, dirt, and rock as well as materials such as contaminated wood, stumps, clothing, equipment, building materials, storage containers, and liners. In many cases soils and debris will be mixed with liquids or sludges. The Agency will determine on a case-by-case basis whether all or portions of such mixtures should be considered soil or debris.

3. Air Emissions

The framework for restricting wastes from land disposal focuses primarily on the relationship between the land disposal of hazardous waste and ground water quality. However, the Agency also is concerned with air emissions from land disposal of these wastes. The Agency plans to address the issue of releases to the air in a broad context in response to various provisions in RCRA including section 3001 (characterization of waste as hazardous) and section 3004 (restriction of waste from land disposal and standards for air emissions from land disposal).

Historically, the Agency has developed and promulgated rules under section 3001 of RCRA classifying wastes as hazardous based on the potential of these wastes to cause harm to human health and the environment if managed improperly. These determinations have included the potential for harm as a result of reactivity, ignitability, corrosivity, and toxicity via the ground water or surface water pathway. While the Agency has consistently maintained that exposure from air emissions is a potential problem for wastes that are treated and disposed improperly, work to develop a characteristic based on potential for air contamination has not as yet been completed. The Agency plans, however, to propose an air toxicity characteristic in the future to provide a more complete definition of hazardous waste, including a list of hazardous constituents that are of concern based on their potential for air contamination.

In conjunction with the development of an air toxicity characteristic, the Agency also plans to propose criteria and performance standards for air emissions in its development of treatment standards for wastes in accordance with section 3004(m). The development of these criteria is tied to the characterization of wastes as hazardous and that portion of the land disposal restrictions framework related to the risks posed by air emissions from best treatment technologies.

Both the air toxicity characteristic and the criteria for treatment standards based on air emissions are related to both the development of air emission standards under section 3004(n) and the petition demonstration for continued land disposal under section 3004(d). With respect to the former, section 3004(n) requires the Administrator to promulgate standards for the control and monitoring of air emissions from treatment, storage and disposal facilities. These standards are currently under development.

In establishing a framework for dealing with air emissions under the RCRA statute, the Agency must also develop criteria under section 3004 (d), (e), and (g) for determining when the statutory standard of "no migration of hazardous constituents from the disposal unit or injection zone for as long as the waste remains hazardous" has been met. As with other portions of the statute dealing with air emissions, the standards and criteria to be applied to the petition demonstration are closely

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related to the factors and criteria to be used to determine when a waste should be managed as hazardous under section 3001 of RCRA. EPA expects that the technical analysis of air emissions that will provide a basis for future rulemaking under sections 3001 and 3004(n) will also be used as a guide in making decisions on petitions addressing air emissions concerns.

Implementation of two portions of the regulatory program, nevertheless, must proceed as the air strategy is being developed. These include the issuance of permits to treatment, storage and disposal facilities and the establishment of corrective action requirements as a part of those permits. In these cases, it is expected that air contamination from operating and closed facilities will be addressed on a case-by-case basis as part of the permit process.

C. Section 3004(m) Treatment Standards

As discussed earlier, the Agency proposed two major approaches to setting treatment standards under section 3004(m). The first approach involved development of treatment standards based on either technology- or risk-based screening levels. The second approach was based entirely on technology-based standards expressed as BDAT. The Agency is promulgating the second approach as the framework under which disposal of solvents, dioxins, and the scheduled wastes will be evaluated.

The risk-based methodology proposed by the Agency considered the degree of hazard posed by wastes land disposed in Subtitle C facilities. This led to the development of "maximum acceptable contaminant concentrations" (or screening levels), which were based on the recognition that the potential for harm to human health and the environment will differ depending on the toxicity, mobility, and persistence of the waste stream. This approach also recognized that in some cases, any single technology-based level may provide more protection than is necessary, while in other cases, may provide insufficient safeguards for human health and the environment. Moreover, under the proposed approach, relatively "low hazard" wastes could be considered suitable for land disposal without any treatment at all.

Although a number of comments on the proposed rule favored the first approach; that is, the use of screening levels to "cap" treatment that can be achieved under BDAT, several commenters, including eleven members of Congress, argued strongly that this approach did not fulfill the intent of the law. They asserted that because of the scientific uncertainty inherent in risk-based decisions, Congress expressly directed the Agency to set treatment standards based on the capabilities of existing technology.

The Agency believes that the technology-based approach adopted in today's final rule, although not the only approach allowable under the law, best responds to the above-stated comments. Accordingly, the final rule establishes treatment standards under RCRA section 3004(m) based exclusively on levels achievable by BDAT. The Agency believes that the treatment standards will generally be protective of human health and the environment. Levels less stringent than BDAT may also be protective.

The plain language of the statute does not compel the Agency to set treatment standards based exclusively on the capabilities of existing technology. RCRA section 3004(m) requires EPA to "promulgate regulations specifying those levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized" (42 U.S.C. 6924(m)). By calling for standards that minimize threats to human health and the environment, the statute clearly allows for the kind of risk-based standard originally proposed by the Agency. However, the plain language of the statute does not preclude a technology-based approach. This is made clear by the legislative history accompanying the introduction of the final section 3004(m) language. The legislative history provides that "[T]he requisite levels of [sic] methods of treatment established by the Agency should be the best that has been demonstrated to be achievable" and that "[T]he intent here is to require utilization of available technology in lieu of continued land disposal without prior treatment" (Vol. 130, *Cong. Rec.* 9178, (daily ed., July 25, 1984)). Thus, EPA is acting within the authority vested by the statute in selecting to promulgate a final regulation using its proposed alternative approach of setting treatment standards based on BDAT.

The Agency believes that its major purpose in adopting the risk-based approach of the proposal (i.e., to allow different standards for relatively low-risk, low-hazard wastes) may be better addressed through changes in other aspects of its regulatory program. For example, EPA is considering the use of its risk-based methodologies to characterize wastes as hazardous pursuant to section 3001.

D. Petition Procedures for Demonstrating Land Disposal To Be Protective of Human Health and the Environment ("No-migration" Petitions)

In carrying out the directives of RCRA sections 3004 (d)(1), (e)(1), and (g)(5), the Agency proposed to consider petitions to allow land disposal of restricted wastes, provided that petitioners demonstrated that any migration from the disposal site would be at concentrations that did not pose a threat to human health and the environment.

Today's final rule adopts the statutory language requiring petitioners to demonstrate "to a reasonable degree of certainty that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous." The Agency will allow continued land disposal of hazardous wastes without further treatment only where it can be demonstrated, to a reasonable degree of certainty, that the statutory standard will be met.

Since the Agency expects that there will be relatively few cases in which this demonstration can be made, and, therefore, that relatively few petitions might be submitted for review, the Agency is requiring that petitions be submitted to the Administrator rather than to permit writers in authorized States or Regional EPA offices as originally proposed. As noted in the proposed rule, a petition may be submitted at any time prior to or after the effective date of the ban (see Unit IV.G.). However, submission of a petition will not stay the effective date of the prohibitions.

E. Variance From the Treatment Standard

The Agency recognizes that there may exist unique wastes that cannot be treated to the levels specified as the treatment standard (or, in some cases, by the method specified). In such cases, generators or owners/operators may submit a petition to the Administrator requesting a variance from the treatment standard. Today's final rule includes procedures for obtaining such a variance (see Unit IV.H.). Following a restriction effective date and while the Agency is reviewing the request for a variance, the generator may not land dispose the waste. Alternatively, continued land disposal in surface impoundments meeting the standards of § 268.4(a)(3) may be feasible for some wastes.

F. National Variance From the Effective Date

The Agency has the authority to grant national variances to the effective date based upon a lack of capacity to treat the wastes. The new effective date of the prohibition is to be established based on the earliest date on which treatment capacity that is protective of human health and the environment will be available. In no case can this extension be longer than 2 years. During the period of such a variance, the waste is not subject to the land disposal restrictions or any requirements relating to such restrictions. However, during the period of such an extension, the wastes must be managed in facilities that are in compliance with the requirements of section 3004(o) (42 U.S.C. 6924(o)).

G. Case-by-Case Extensions

The Agency will consider granting up to a 1-year extension (renewable once) of a ban effective date if the applicant demonstrates that a binding contract has been entered into to construct or otherwise provide alternative capacity that cannot reasonably be made available by the applicable effective date due to circumstances beyond the applicant's control. The Agency is departing from the procedures outlined in the proposed rule by deleting the proposed cancellation penalty clause for contracts to construct or provide capacity. The final rule makes it clear that in demonstrating that capacity cannot reasonably be available the applicant may show that it is not feasible to provide such capacity (see Unit IV.F.). During the period that the extension is in place, the waste is not subject to the land disposal restrictions; thus, the successful applicant also is exempt from the prohibition on storage under § 268.50. However, during the period of the extension, the wastes must be disposed of in facilities meeting the requirements of RCRA section 3004(o) (42 U.S.C. 6924(o)).

H. Storage of Prohibited Wastes

The Agency proposed a 90-day storage limit to allow the generator and owner/operator of a hazardous waste treatment, storage, or disposal facility time to accumulate sufficient quantities of wastes to allow for proper recovery, treatment, and disposal. Commenters to the rule stated that 90 days was insufficient and more time should be allowed for storage. In today's final rule the Agency is removing the 90-day storage limit for owners/operators. Owners/operators may store restricted wastes as needed to accumulate sufficient quantities to allow for proper recovery, treatment, and disposal. However, where storage occurs beyond one year, the owner/operator bears the burden of proving that such storage is solely for the purpose of accumulating sufficient quantities to allow for proper recovery, treatment, or disposal. Generators who need to store restricted wastes for periods in excess of the accumulation time limits in 40 CFR 262.34 must obtain interim status and eventually a permit. The Agency is maintaining the proposed 10-day storage limit for restricted waste at transfer facilities. The prohibition on storage applies to restricted wastes, and does not apply to wastes that meet the treatment standard or are the subject of a successful petition under § 268.6 or extension under § 268.5.

I. Treatment Standards and Effective Dates for Solvents

The Agency proposed to establish treatment standards for F001, F002, F003, F004, and F005 solvent wastes and their corresponding P and U wastes (40 CFR 261.3 (e) and (f)) using screening levels and a liner protection threshold. Today's rule, however, addresses only the F001 through F005 solvent wastes (including solvent mixtures). The Agency will evaluate the P and U solvent wastes in accordance with the schedule for listed wastes. In today's rule, the Agency is promulgating technology-based treatment standards for the F001–F005 solvents. The Agency also is promulgating the effective dates for F001–F005 solvent wastes essentially as proposed, with modifications to the range of applicable wastes. The land disposal restrictions become effective on November 8, 1986, for all F001–F005 solvent wastes, with the exception of the following wastes which will receive a 2-year variance that extends the effective date for the land disposal restrictions to November 8, 1988:

(1) The generator of the solvent waste is a small quantity generator of 100–1000 kilograms of hazardous waste per month; or

(2) The solvent waste is generated from any response action taken under sections 104 or 106 of CERCLA or any RCRA corrective action, except where the waste is contaminated soil or debris not subject to the provisions of this chapter until November 8, 1988; or

(3) The solvent waste is a solvent-water mixture, a solvent-containing sludge, or a solvent-contaminated soil (non-CERCLA or RCRA corrective action) containing less than 1 percent total F001–F005 solvent constituents listed in Table CCWE of § 268.41.

J. Treatment Standards and Effective Dates for Dioxins

The proposed rule set treatment standards for dioxin-containing wastes (F020, F021, F022, F023, F026, F027) below the current detection limit of 1 ppb for each of the chlorinated dibenzo-p-dioxins (CDDs) and chlorinated dibenzofurans (CDFs) (i.e., all isomers of tetra-, penta-, and hexachlorodibenzo-p-dioxins and dibenzofurans, respectively), and the applicable detection limits for the specified chlorophenols.[8] The proposed standards required that these constituents be below the 1 ppb limit in the waste extract before being land disposed. Wastes having concentrations that meet or exceed the 1 ppb limit may be treated in accordance with the criteria established for incineration (40 CFR 264.343 and 265.352), and thermal treatment (40 CFR 264. 383) for dioxins. The Agency is promulgating the dioxin treatment standards as proposed (see Unit VI). The Agency also is setting treatment standards for F028, which was not included in the proposed rule.

As proposed, the Agency is establishing a 2-year national variance from the effective date for all dioxin-containing wastes covered under today's final rule. Accordingly, treatment standards for dioxin-containing wastes will not take effect until November 8, 1988.

K. Rationale for Immediate Effective Dates

Today's rule provides for an effective date of November 8, 1986. It is clear from the statute that today's rule must go into effect no later than the effective date of the prohibition on solvents and dioxins in section 3004(e). Absent any regulations, the prohibition on solvents and dioxins in section 3004(e) takes effect automatically on November 8, 1986. Therefore, November 8, 1986 is the latest date for EPA to promulgate regulations that will prevent the "hammer" in section 3004(e) from falling. Section 3004(h) of RCRA provides that a prohibition in regulations under section 3004 (d), (e), (f), or (g) takes effect immediately upon promulgation. For section 3004(e), that date is November 8, 1986. Moreover, section 3004(m) provides that regulations setting treatment standards

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[8] In addition to CDDs and CDFs, the constituents of concern for the dioxin-containing wastes also include 2,4,5-trichlorophenol, 2,4,6-trichlorophenol, 2,3,4,6-tetrachlorophenol, and pentachlorophenol (see Appendix VII to *Part* 261). The treatment standards for these constituents are 50, 50, 100, and 10 ppb, respectively.

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must have the same effective date as the applicable regulation promulgated under subsection (d), (e), (f), and (g). Therefore, since the statute clearly provides that the regulations implementing section 3004(e) go into effect on November 8, 1986, EPA finds that good cause exists under section 3010(b)(3) of RCRA to provide for an effective date of November 8, 1986. For the same reason, EPA finds that there is good cause under section 553(d)(3) of the Administrative Procedure Act, 5 U.S.C. § 553(d)(3), to waive the requirement that regulations be published at least 30 days before they become effective.

III. Agency Response to Major Comments on Proposed Rule

EPA received approximately 200 comments responding to the proposed rule. Comments were submitted by treatment, storage, and disposal (TSDF) facilities, environmental organizations, trade associations, companies, State and Federal regulatory agencies, and private citizens.

The Agency received considerable comment on all aspects of the proposed rule. In today's final rule, major comments on applicability, treatment alternatives (BDAT), capacity, petitions, storage, CERCLA interface, solvents, and dioxins are addressed. Responses to comments not addressed in today's rule are available in the background document to this rulemaking (see Comment Response Background Document For the Land Disposal Restrictions Volume I, November 7, 1986), available in the RCRA docket.

The Agency received numerous comments on the ground water back calculation model used in developing health-based screening levels. However, because the approach promulgated in today's rule does not employ screening levels, the Agency is not addressing these comments in the final rule. The Agency does anticipate using similar models in future regulatory actions. We will address the issues raised by the applicable comments in these future rulemaking activities.

A. Applicability

1. Open Burning and Open Detonation

The majority of the commenters were opposed to the inclusion of open detonation and open burning as forms of land disposal. It was argued that these two methods of waste management are treatment rather than disposal, as supported by the standards in 40 CFR 265.382 for owners and operators who thermally treat explosive wastes using open detonation or open burning. The commenters stated that most wastes handled in this manner are hazardous because they exhibit the characteristic of reactivity (i.e., they are explosive), and when these wastes are open burned or detonated they are rendered nonreactive. The commenters also indicated that no other available technologies provide a safer alternative to handling these wastes.

Although the Agency did not specifically address open burning in the proposed rule, current EPA regulations classify both open detonation and open burning as types of thermal treatment under Subpart D of Part 265. Because open detonation and open burning are similar waste management methods for treatment of explosive wastes, the same regulatory requirements apply to both methods under 40 CFR 265.382. Therefore, we believe that considering open burning in conjunction with open detonation for purposes of this final rule is reasonable and consistent with the current regulatory structure.

Upon reevaluation, the Agency agrees that open burning and open detonation of explosive wastes does not constitute land disposal. EPA does not believe that Congress intended to prohibit these activities because open burning and open detonation are not included in the definition of land disposal in section 3004(k). They are primarily treatment processes that typically result in by-products which are no longer reactive and, therefore, are not considered hazardous. The Agency also agrees with commenters that open detonation and open burning may be the only safe waste management method for handling explosive wastes.

In view of these considerations, the Agency has concluded that the land disposal restrictions program is not applicable to open detonation and open burning.

2. Wastes Produced by Small Quantity Generators

While EPA is authorized to vary standards for small generators under RCRA section 3001(d), this authority is circumscribed by the need to protect human health and the environment. The Agency has carefully considered the risks posed by land disposal of small generator wastes and has weighed these against the impacts of the land disposal restrictions on these generators. Given the smaller aggregate amounts of hazardous waste produced by small generators, it is arguable that the relative risks of land disposal to human health and the environment are lower. However, the major concern with land disposal is the toxicity of the waste rather than the quantity. As EPA explained in a recent rulemaking imposing certain RCRA regulatory requirements on generators of 100 to 1000 kg of hazardous waste per month, data from EPA's National Small Quantity Hazardous Waste Generator Survey indicate that both small and large quantity generators produce many of the same types of waste and use many of the same waste management practices. 50 FR 31285 (Aug. 1, 1985). Therefore, it is appropriate to include wastes produced by small quantity generators in the land disposal prohibitions.

B. Treatment Alternatives (BDAT)

1. BDAT Expressed as a Performance Standard

Generally, commenters supported the Agency's interpretation of section 3004(m) regarding the criteria for the selection of BDAT. The statute specifies that BDAT may be expressed as either a performance standard or a method of treatment. Wherever possible, the Agency prefers to establish BDAT treatment standards as performance standards rather than adopting an approach that would require the use of specific treatment methods. To date, all treatment technologies considered as BDAT can result in a wide range of performance values depending on the operation of the technology. EPA believes performance standards ensure that the technology is properly operated. Additionally, the Agency believes concentration-based performance standards offer the regulated community greater flexibility to develop and implement compliance strategies as well as incentive to develop innovative treatment technologies.

2. Process Variability

One commenter asserted that normal process variability has not been accounted for in the Agency's calculation of treatment standards. The commenter urged the Agency to calculate variability factors which account for variations in influent composition, system performance, sampling and analytical test methods, and site specific conditions. The commenter further stated that the variability factors should be used to develop BDAT treatment standards on a daily maximum basis.

The Agency agrees with the comments that treatment standards need to incorporate a variability analysis. Since variability in performance occurs even at facilities that are well designed and well operated, EPA believes it is appropriate to include such an analysis in the development of BDAT treatment standards. This analysis is not intended to account for performance differences which occur as a result of treating a waste that is significantly different in composition or for differences which occur from improper or poor treatment of the same waste. Instead, incorporation of a variability factor into the development of a BDAT standard is intended to account for variations which arise from mechanical limitations in the equipment used to maintain treatment parameters at the proper setting, small variations in the waste, and variations in analytical test methods.

The variability factor, as outlined in the Notice of Availability of Data (see 51 FR 31783, September 5, 1986), is the ratio of the calculated 99th percentile concentration, C_{99}, to the mean treatment concentration. A detailed discussion of the statistical calculation used to account for process variability is provided in Unit IV.A.

3. Criteria for Well-Designed and Operated Treatment Systems

One commenter asserted that the Agency should document in the record its rationale for evaluating and editing data based on the performance of the treatment system. The commenter stated that the Agency should not simply presume that well designed and operated treatment systems are those that achieve the lowest performance values but should instead consider the effects of the characteristics of the waste on treatment performance. The Agency is aware that the level of treatment achievable is dependent upon the physical and chemical characteristics of the waste. Accordingly, it is necessary for the Agency to assess design and operating parameters in determining whether a system is performing well, in addition to its consideration of the performance value achieved. Because the parameters that comprise a well-designed and operated system will vary for each technology, it is difficult for EPA to generalize the specific parameters that need to be examined. Whenever the Agency has little or no data on the design and operation of the system, the Agency will evaluate the constituent concentrations in the waste before and after treatment and use engineering judgment to determine whether the system is performing well. The Agency also will use a statistical outlier analysis to confirm engineering judgment. The statistical analysis to be used was published in the **Federal Register** on September 5, 1986 (51 FR 31783). The rationale the Agency used for editing performance data can be found in the technical support documents.

C. Capacity

1. Capacity for Waste-as-Fuel

Several commenters argued that EPA did not consider waste-as-fuel as a treatment alternative in estimating capacity. As one commenter pointed out, this is a potentially large treatment option that cannot be ignored. EPA did not consider this alternative because the data were not available. Since the November 14, 1986, proposed rule the Agency has received waste-as-fuel data from the "Telephone Verification Survey of Commercial Facilities that Manage Solvents" (August 1986). Data from this survey were noticed for public comment on September 5, 1986 (51 FR 31798) and have been included in capacity estimates for today's final rule.

2. Commercial vs. Private Capacity

Several commenters stated that EPA should not consider private capacity as available alternative treatment capacity. They explained that private facilities may not be willing to accept off-site wastes because liability could be considerable, permit conditions may prohibit accepting off-site waste, or on-site capacity may be fully committed to nonhazardous wastes.

EPA recognizes the issues raised by commenters and agrees that private capacity should not automatically be considered as available alternative treatment capacity. However, when there is insufficient available commercial treatment capacity, EPA plans to consider the potential for private facilities to become commercial facilities. EPA will include private capacity if there is sufficient evidence that the private facilities plan to accept off-site wastes. Because limited information exists on the planned public availability of current private capacity, EPA has no basis for including private capacity in total capacity estimates for solvents and dioxins subject to today's final rule.

3. Permitted Facility vs. Interim Status Facility Capacity

Several commenters stated that only existing permitted treatment facilities should be considered in estimating available capacity. They argued that interim status facilities may not receive final permits and consequently may not provide available capacity.

In calculating available capacity for solvents and dioxins, EPA included capacity that is currently available from some interim status facilities and all permitted facilities. The interim status facilities included did not notify the Agency of an intent to close and, therefore, can be expected to provide capacity for the November 8, 1986, effective date. In future capacity determinations, EPA will assess, on a case-by-case basis, the number of interim status facilities expected to accept wastes.

4. Existing Facility vs. Planned Facility Capacity

Several commenters stated that only existing, permitted facilities should be considered in estimating available capacity, because it is uncertain whether "planned" facilities will be on-line by the effective date of the restrictions with approval to operate from Federal, State, and local agencies. EPA will include planned capacity only when there is sufficient evidence that the planned facilities will be fully operational by the effective date of the prohibitions. In the case of solvents and dioxins, such evidence does not exist; therefore, planned facilities have not been included in the capacity estimates for today's rule.

5. National vs. Regional Capacity

Several commenters stated that EPA should determine available capacity under section 3004(h)(2) on a regional basis rather than on a national basis, and variances should be regionalized based on the availability of treatment. These commenters stated that it is realistic to assume that economic and transportation problems affect the availability of alternative capacity for a particular generator. They pointed out that national capacity for some treatment technologies is based on a few high-volume treatment facilities, and emphasized the need for Federal, State, and local efforts to construct more waste treatment facilities.

EPA recognizes these problems. However, the legislative history (S. Rep. No. 284, 98th Cong., 1st Sess. 19.(1983)), clearly states that "the available capacity determination is to be done on a national basis" in order to prevent a situation in which regions obtaining variances would become the "dumping ground" for wastes generated in regions implementing the land disposal restrictions. Accordingly, EPA believes that national capacity determinations under section 3004(h)(2) are more in accord with the statutory intent.

D. Petitions Demonstrating Land Disposal of Untreated Waste is Protective

1. Generic Petitions for Sites With Similar Hydrogeologic Properties

Several commenters suggested that the Agency accept generic petitions that address similar management techniques

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for the same or similar wastes in hydrogeologic settings with similar characteristics. Commenters felt that a generic petition, once approved, would allow all such sites where the same or similar wastes were managed with a similar technique to automatically receive approval for land disposal without individual petition demonstrations.

RCRA sections 3004 (d)(1), (e)(1), and (g)(5) do not preclude the submission of generic petitions. However, as a practical matter, the usefulness of the generic petition is limited, since a petition demonstration must include site- and waste-specific data (see § 268.6 (a) and (b)). Accordingly, petitioners must demonstrate that each scenario covered under the generic petition is similar. For example, a demonstration that the hydrogeological characterization of sites is similar would require a detailed assessment of each site addressed in the petition. As a result, the Agency expects few, if any, generic petitions.

2. Conditional Petition Approval Based on Prima Facie Evidence

Several commenters expressed concern over the possibility that land disposal restrictions would become effective prior to Agency rulings on petitions, causing disruption in waste disposal activities. To prevent this situation, the commenters suggested that approval of a petition be granted on the basis of superficial evidence of compliance with the statutory standard. The Agency would perform a brief review of the petition for completeness, and would then grant conditional approval until such time that a full technical review could be completed. Other commenters argued that the statute requires a demonstration that the statutory standard is met, not merely an application for petition approval. It would not be possible, according to these commenters, for the Agency to grant approval for such a demonstration without a full technical review.

Other commenters suggested that the statute provides the Agency with the flexibility of granting a 2-year extension of the effective date, pursuant to section 3004(h)(2) upon receipt of prima facie evidence that the "no migration" standard has been met. Commenters argued that this superficial showing of evidence would satisfy the requirements of the extension to identify the adequate alternative disposal capacity that protects human health and the environment.

The Agency agrees with those commenters who stated that the statute calls for a positive demonstration that the statutory standard is met, which implies that a full review of the petition has been made. Thus, the Agency will not grant a conditional variance for disposal of untreated restricted waste in a Subtitle C unit based on a superficial review of the evidence. The Agency will only make the decision regarding the granting of a variance after an in-depth review of a fully developed no migration demonstration submitted by the petitioner.

Under section 3004(h), the Agency is allowed to set different effective dates for the restrictions based on lack of available capacity for treatment, recovery, or disposal. The Agency does not believe that submission of a petition request is relevant to such a finding.

3. Eligibility for Petitions

The Agency requested comment on an approach limiting eligibility for petitions to those wastes for which no alternative treatment is available. Several commenters objected to this approach, stating that the statute and the legislative history do not limit eligibility for petitions.

Other commenters agreed with this approach for several reasons. They argued that the statute clearly reflects congressional intentions that restricted wastes be treated prior to land disposal. They also argued that rendering ineligible those wastes that can be treated to meet a BDAT standard fulfills the spirit of the law and gives a clear signal to industry to plan for expanded treatment capacity. Additionally, they noted that this approach would reduce the burden on the Agency and the States for petition review, so that resources could be devoted to petitions for untreatable wastes.

The Agency continues to believe that the better reading of the law allows no basis for limiting eligibility for the petition process in the manner discussed. RCRA sections 3004 (d), (e) and (g) set up the petition process as a clear albeit limited alternative treatment prior to land disposal of hazardous wastes. Accordingly, the final regulations do not limit eligibility for petitioners.

E. Storage of Prohibited Wastes

A number of commenters argued that because transporters, recyclers, or treatment facilities often give priority to larger volumes of waste or even refuse to take small quantities, more than 90 days are needed to accumulate sufficient quantities.

All of the comments received regarding the proposed storage limit for waste treatment, storage, and disposal stated that 90 days is inadequate. Some commenters stated that additional time is needed because some waste streams are accumulated more slowly than others. More specifically, one commenter presented the case of a plant that generates a very small amount of spent solvents (e.g., one drum every three months), but is not a small quantity generator due to other nonrestricted waste streams. Because of the small amounts generated, the turnaround time during which waste is accumulated to an amount sufficient for a transporter to pick up consistently takes longer than the 90-day period. Additionally, another commenter stated that because halogenated solvents are often blended with other materials before incineration, the 90-day period will be insufficient due to the evaluations and trial burns that will be required for these new blends of wastes. Other commenters cited the frequent back-ups and delays at treatment facilities that may require storage for more than 90 days; however, these factors are not directly relevant to the statute, which allows storage only for the purpose of accumulating sufficient quantities necessary to facilitate proper recovery, treatment, or disposal.

The alternatives suggested by commenters ranged from setting a storage limit of 180 days to not limiting the storage period. The majority of commenters suggested that the Agency establish a 1-year storage limit. Several of these commenters stated that the provision should be similar to the existing speculative accumulation provision in 40 CFR 261.1(b)(8). This provision allows for a material to be accumulated for recycling provided that during the calendar year (commencing January 1) at least 75 percent of the material accumulated at the beginning of the time period is recycled or is transferred to a different site for recycling.

In the proposed rule, the Agency allowed treatment, storage, and disposal facilities the same time periods for accumulating restricted wastes in tanks and containers as specified under 40 CFR 262.34 for large quantity generators accumulating hazardous waste prior to shipment off-site for treatment or disposal. Effective September 22, 1986, generators of 100–1000 kg/mo can store hazardous waste for 180 or 270 days depending on transportation distances. (See 51 FR 10175 (March 24, 1986).) For hazardous waste storage facilities operating under interim status or a RCRA permit, the Agency proposed a 90-day limit for the storage of restricted wastes.

After considering the length of an appropriate storage limit, the Agency agrees with the commenters that 90 days may not be sufficient time to accumulate quantities necessary to facilitate proper recovery, treatment and disposal of restricted wastes. However, the Agency does not believe that the storage time permissible at a waste management facility should be indefinite but, rather, must have some limit because the legislative history indicates that Congress' concern in enacting this provision was to foreclose the possibility of using long-term storage as a means of avoiding a land disposal prohibition. (S. Rep. No. 284, 98th Cong., 1st Sess. 18 (1983).)

The Agency disagrees with the commenters who felt that a system similar to the speculative accumulation provision (40 CFR 261.1(b)(8)) should be implemented for the storage of restricted wastes. The speculative accumulation provision is designed to determine when a material becomes a waste and relies on assumptions that the materials will be continuously removed from storage. The Agency does not believe that this provision is applicable to the storage of restricted wastes.

The Agency believes that a storage limit of up to one year should generally provide sufficient time for an owner/operator to accumulate sufficient quantities to facilitate proper recovery, treatment, or disposal of restricted hazardous wastes while meeting the intent of Congress to prohibit long-term storage as a means of avoiding the land disposal restrictions. The burden is on the Agency to demonstrate that storage of restricted wastes for periods less than or equal to one year is not in compliance with the storage provisions. The Agency also recognizes that there may be instances where one year does not provide sufficient time to accumulate such quantities. Therefore, the Agency will allow an owner/operator to store restricted wastes beyond one year. Although the owner/operator is not required to submit any data or application to EPA, in the event of an enforcement action, the burden of proving compliance with § 268.50(b) is on the owner/operator. The Agency believes that this is reasonable because the record for this rulemaking indicates that less than one year should be sufficient. This provision does not apply to situations where back-ups at treatment or recovery facilities, operational difficulties, and repairs and maintenance result in additional delays.

Comments received on the proposed 90-day limit on the length of storage of restricted wastes also indicate that a substantial number of generators without permits or interim status will need to accumulate restricted wastes for more than 90 days to comply with Part 268.

Section 3005(e) allows generators to apply for facility interim status if their accumulation will exceed the time limits of 40 CFR 262.34, as long as the storage is necessary to comply with the land disposal restrictions. 40 CFR 270.70(a) codifies that provision. This section provides that facilities "in existence on the effective date of statutory or regulatory changes . . . that render the facility subject to the requirement to have a permit" may qualify for interim status if they make the appropriate application. A generator who is accumulating hazardous wastes in tanks or containers before the effective date of today's rule, is "in existence" and may qualify for interim status provided that the above stated requirements are met. Section 3005(e)(1) allows interim status only where new regulatory requirements subject an existing facility to permitting requirements. It is not intended to provide an opportunity for a facility to newly engage in hazardous waste management.

Generators who need to obtain interim status should submit a Part A application to the Agency as provided in Part 270. In the Part A application, the generator must demonstrate that the additional accumulation time is necessary as a result of the land disposal restrictions of Part 268.

The Part A must be submitted to the Agency by the deadline specified in § 270.10(e). Note that the § 270.10(e) deadline is the earlier of the following two alternative dates: (1) Six months after publication of regulations which first require the facility to comply with Part 265, or (2) thirty days after the date they first become subject to the standards in Part 265. It is expected that the deadline for most, if not all, of the large quantity generators will be established by the second alternative. By operation of 40 CFR 270.10(e)(ii), the generator becomes first subject to the permitting requirements when he exceeds the generator accumulation time limit. For example, the generator would be required to submit the Part A within 30 days after the 90-day accumulation period ends. Therefore, it is critical that any generator who will be newly subject to the interim status requirements becomes familiar with the Part 270 requirements and submit a Part A application on time.

The Agency believes that generators will ship restricted wastes off-site in accordance with the 90-day provision in 40 CFR 262.34 whenever possible in order to remain subject only to the generator standards. Generators applying for interim status must comply with the applicable requirements of Part 265. Furthermore, if requested by the Administrator, the facility will be required to submit to Part B permit application.

The Agency received only one comment addressing the proposed 10-day storage limit for transporters of restricted wastes. The commenter stated that 10 days would be insufficient because it does not allow for unexpected back-ups and delays. Although such situations may occur, the Agency does not have data indicating that such delays occur frequently so as to create a serious problem. Therefore, the rule being promulgated today maintains the 10-day limit for the storage of restricted waste at a transfer facility to allow for activities incidental to normal transporter practices.

To implement the storage provision, the Agency is requiring owners/operators to comply with the same requirements for dating containers as set forth for generators under 40 CFR 262.34(a)(2). The Agency believes that the restrictions on the storage of wastes under § 268.50 are consistent with the intent of Congress to preclude the possibility of using long-term storage as a means of avoiding a land disposal prohibition and are sensitive to the time constraints of the regulated community expressed by the commenters.

F. CERCLA Interface

1. 48-Month Exemption for CERCLA Wastes That Are Soil or Debris

Several commenters requested clarification of § 268.1(c)(3), namely the scope of the 48-month exemption for certain CERCLA wastes (soil or debris) from the solvents and dioxins land disposal restrictions. It was suggested that this exemption should be defined to include all CERCLA bulk wastes. In addition, it was questioned whether State-ordered, State-funded, or private party-funded response action wastes are granted the same exemption.

The Agency does not believe the 48-month exemption can be interpreted to include CERCLA bulk wastes that are clearly not contaminated soil or debris. CERCLA soil and debris have been defined to include, but not be limited to, soil, dirt, and rock as well as natural and manufactured materials such as contaminated wood, stumps, clothing, equipment, building materials, storage containers, and liners. In many cases, soil or debris will be mixed with liquids

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or sludges. The Agency considers liquid- or sludge-containing wastes, including bulk wastes that are not contaminated soil or debris, generated by a CERCLA response action, to be subject to the land disposal restriction requirements. However, a variance from the land disposal restriction requirements, based on insufficient treatment capacity, was granted for these restricted wastes until November 1988. The Agency is preparing guidance that will further define CERCLA soil and debris wastes in order to assist the regulated community in determining which wastes are covered under the exemption. In addition, before November 8, 1988, the Agency will further analyze the solvent and dioxin treatment standards to determine if these standards are applicable to contaminated soil or debris.

Only those wastes that result from CERCLA Fund-financed actions (section 104) and the exercise of CERCLA's enforcement authority (section 106) are included in the exemption. Response action wastes that result from State-ordered, State-funded, or private party-funded responses taken under the authority of CERCLA or exclusive of this authority are not included in the exemption. Relevant sections of the National Contingency Plan (NCP, 50 FR 47912, November 20, 1985) that address these distinctions include Subpart F, § 300.62 (State participation) and § 300.71 (other party responses). Wastes not included in the exemption and prohibited from land disposal are subject to the schedule imposed by the land disposal restriction requirements. Responses generating these wastes may be preauthorized under section 111 of CERCLA (see § 300.25 of the NCP) and, if so, are eligible for the recovery of certain costs under CERCLA section 107. Other party responses under NCP § 300.71(a)(4) are required to comply with all legally applicable or relevant, and appropriate requirements. RCRA clearly states that the exemption applies to all CERCLA soil and debris land disposed before November 8, 1988. After this date, these wastes will be managed in accordance with the requirements of the land disposal restrictions applicable to CERCLA wastes.

2. Capacity Shortfall Due to CERCLA Wastes

Several commenters stated that the Agency had not adequately evaluated the effect on treatment capacity of CERCLA wastes. As indicated in Unit V, CERCLA capacity estimates have been revised to incorporate the results of a recently completed EPA analysis of future volumes of wastes resulting from CERCLA responses. A variance has been granted for CERCLA wastes, that are not soil or debris, until November 8, 1988. The Agency acknowledges that CERCLA demand for treatment capacity may compete with generator demand for the same treatment capacity. However, the Agency's "Off-Site Policy" for disposing CERCLA waste contains stringent criteria that could render some existing capacity unavailable for the management of CERCLA wastes.

G. Solvents

1. Definition of Solvent Wastes

A number of commenters stated that the scope of the land disposal restrictions for solvent-containing wastes extends beyond congressional intent. In particular, the commenters stated that the land disposal restrictions rule should address only F001–F005 hazardous wastes (regulated as of July 1, 1983) specified in section 3004(e). Another specific concern raised by the commenters was that the impacts of including the P and U hazardous wastes as listed in 40 CFR 261.33 (e) and (f), respectively, have not been adequately assessed; therefore, these wastes should not be included in the first class of solvent-containing wastes (i.e., F001–F005) subject to the land disposal restrictions.

In proposing treatment standards for solvent-containing wastes, the Agency included the corresponding commercial chemical products and off-specification species (P and U hazardous wastes) as listed in 40 CFR 261.33 (e) and (f), respectively, and solvent mixtures containing 10 percent or more of the listed solvents (pursuant to the solvent mixtures rule, 50 FR 53315, December 31, 1985). The Agency proposed to exercise its statutory authority under section 3004(g) [7] and include the corresponding P and U wastes with decisions on the F001–F005 wastes because the data indicate that these wastes may pose hazards similar to the spent solvents when disposed in Subtitle C facilities.

However, we are continuing to gather data to better define and characterize the P and U wastes and to assess treatment and recycling capacity for these wastes. Because the Agency agrees with the commenters that we do not have sufficient data to promulgate treatment standards for these wastes by the November 8, 1986, deadline, we will postpone decisions on the P and U wastes until we address the lists of scheduled wastes.

With respect to solvent mixtures, the provisions under section 3004(g)(4) require the Agency to make a determination within six months whether to subject newly identified or listed hazardous wastes to the land disposal restrictions (the statute does not impose an automatic prohibition if the Agency misses the deadline). Because six months have already elapsed since the Agency promulgated the final rule to bring certain spent solvent mixtures into the hazardous waste system,[8] the Agency is including solvent mixtures in today's rule.

2. Impacts on Small-Quantity Generators and Small-Volume Wastes

Several comments were received concerning the impacts of the land disposal restrictions on small-quantity generators and small-volume waste types. One commenter was concerned that the economic impacts on small-quantity generators of solvents have not been adequately assessed.

An assessment of the economic impacts on small-quantity generators from land disposal restrictions affecting solvent-containing wastes is included in the "Regulatory Analysis of Proposed Restrictions on Land Disposal of Certain Solvent Wastes." Total small-quantity generator costs attributed to the land disposal restrictions were found to be significant, but the costs and associated economic impacts for individual facilities were found to be small. Overall, based on economic ratios that were determined for small-quantity generators that dispose of solvent-containing wastes, the land disposal restrictions appeared not to impose significant economic burdens on these generators.

3. Disposal of Lab Packs Containing Solvents

Several commenters addressed disposal of small quantities of solvent-containing wastes in lab packs.

Commenters requested that solvent-containing lab packs be exempt from the land disposal restrictions. They stated that such an exemption would be consistent with existing exemptions under 40 CFR 264.316 and would allow the disposal of only small quantities of solvent wastes.

Another commenter questioned whether the entire lab pack is banned from land disposal if all the packaged wastes are not solvents. Alternatively, the commenter proposed to remove restricted solvents before land disposal of the lab pack.

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[7] Section 3004(g) requires that the Administrator shall, "not later than the date specified in the schedule . . . promulgate final regulations prohibiting one or more methods of land disposal."

[8] The Agency promulgated the solvent mixtures final rule on December 31, 1985. The rule became effective on January 30, 1986 (see 50 FR 53315).

Neither the legislative history nor the statute indicates that lab packs can be excluded from the land disposal restrictions if they contain solvents designated as F001–F005 or other restricted wastes. Under the approach promulgated in today's rule, listed solvents are subject to the land disposal restrictions. If a lab pack contains these restricted wastes, the entire lab pack is subject to the land disposal restrictions. As a practical matter this means that the lab pack may not be land disposed unless the solvents or other restricted wastes are removed before land disposal, the solvents in the lab pack meet the treatment standard, or a successful petition demonstration has been made under § 268.6.

H. Dioxins

1. Quantity of Dioxin-Containing Wastes Generated

Several commenters argued that the Agency underestimated the actual quantity of dioxin-contaminated soil subject to the proposed rule. Specifically, one commenter argued that EPA did not take into consideration the dioxin-contaminated sites in the States of Arkansas, New Jersey, and New York in developing the estimate for the quantity of dioxin-contaminated soil in the U.S.

In the proposed rule, EPA acknowledges that the estimated quantity of dioxin-contaminated soil present in the U.S. was derived by assessing estimates for such contaminated soil from the State of Missouri. At this time, the Agency does not have data to determine more accurately the total quantity of dioxin-contaminated soil from sites in the U.S. other than the State of Missouri. Thus, EPA decided to estimate the quantity of dioxin-contaminated soil nationwide based solely on the data provided for the State of Missouri. In making this determination, the Agency should have noted that the estimated quantity of 1.1 billion pounds for dioxin-contaminated soil was accurate within a range of ±20 percent. If this quantity is understated, then the Agency acknowledges that the national estimate is also underestimated. However, such an underestimation would have no effect on the decisions made in today's rule regarding capacity because there is inadequate disposal or treatment capacity even for substantially lower quantities of dioxin-containing wastes.

2. Treatment Standard for Dioxin-Containing Wastes

One commenter argued that as the analytical methodology improves, increasing amounts of materials which might contain insignificant levels of dioxins would be prohibited from land disposal.

The treatment standard for the listed dioxin-containing wastes is based on the current limits of technology available to treat dioxin-containing wastes. The treatment standard for these wastes was proposed at the detection limit afforded by test method 8280 for the CDDs and CDFs in waste extracts because current analytical techniques are not capable of detecting dioxin-containing wastes at the levels achievable by incineration. Research analytical methods indicate that incineration to six 9s destruction removal efficiency (DRE) can achieve reduction in the treatment residuals five to seven orders of magnitude from those concentrations in the starting material. The treatment standard of 1.0 ppb however, represents the routinely achievable detection limit for the CDDs and CDFs using test method 8280. (See 51 FR 19862.)

If additional data become available which demonstrate a lower detection limit for these dioxin wastes, the treatment standard may be revised as necessary.

Lowering the detection limit and changing the subsequent treatment standard will not prohibit significantly increased amounts of materials containing low concentrations of dioxins from land disposal. The prescribed toxicity characteristic leaching procedure (TCLP) is designed to determine the leachability of both organic and inorganic contaminants present in liquid, solid, and multiphase wastes. The constituents of concern in the listed dioxin-containing wastes are not mobile, and are generally in low concentrations. The treatment standard would have to be significantly lower than 1 ppb in order to significantly increase the amount of material that does not meet the treatment standard (before any treatment). In addition, to the extent that incineration achieves 99.999 percent (six 9s) destruction removal efficiency (DRE) (as required under the dioxins listing rule), a lowering of the detection limit will only verify that treatment is achieving levels far below the standard method detection limit. As the detection limit approaches the actual treatment level, the Agency will lower the treatment standard to that level.

3. Land Disposal Restrictions Effective Date

Several commenters addressed EPA's proposal to delay the effective date for the land disposal restrictions for dioxin-containing wastes. All commenters agreed that the 2-year variance to the effective date was necessary because of a lack of available treatment capacity. The commenters also argued that unless treatment capacity is available by the effective date, they will be confronted with an unavoidable noncompliance situation due to the limitations on storage of resticted wastes.

The Agency, in today's rule, is granting the maximum 2-year variance allowed under section 3004(h)(2) for the listed dioxin-containing wastes. At the present time, there is no data to show that treatment capacity for dioxin-containing wastes will not be available after the effective date, or after the additional two 1-year extensions which are available to generators on a case-by-case basis.

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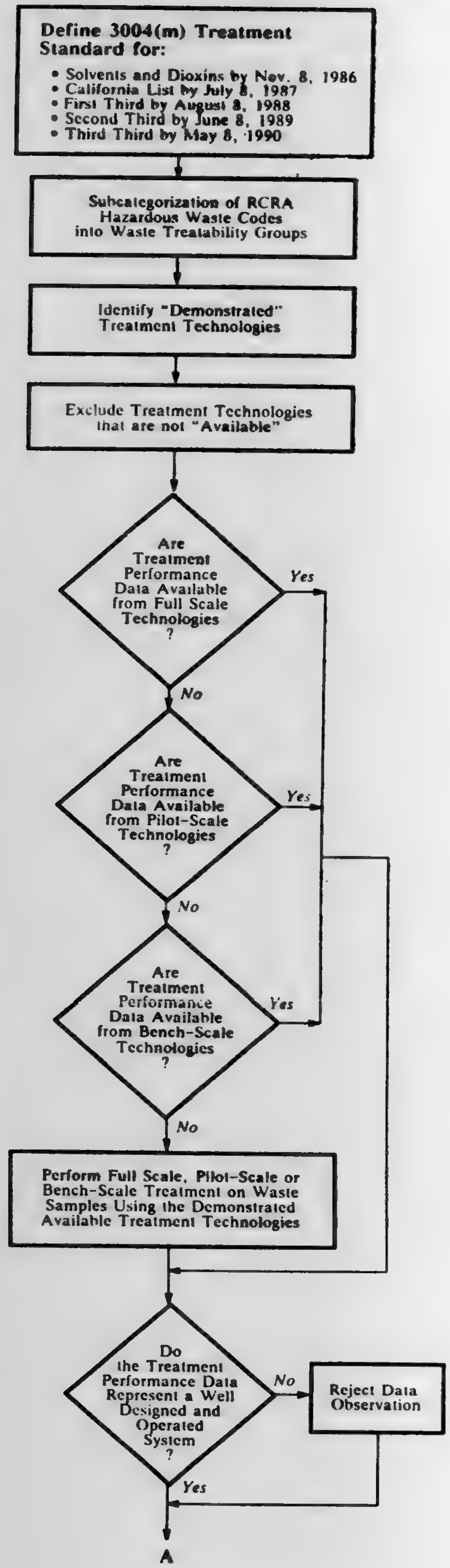
Define 3004(m) Treatment Standard for:
• Solvents and Dioxins by Nov. 8, 1986
• California List by July 8, 1987
• First Third by August 8, 1988
• Second Third by June 8, 1989
• Third Third by May 8, 1990
Subcategorization of RCRA Hazardous Waste Codes into Waste Treatability Groups
Identify "Demonstrated" Treatment Technologies
Exclude Treatment Technologies that are not "Available"
Are Treatment Performance Data Available from Full Scale Technologies ?
Yes
No
Are Treatment Performance Data Available from Pilot-Scale Technologies ?
Yes
No
Are Treatment Performance Data Available from Bench-Scale Technologies ?
Yes
No
Perform Full Scale, Pilot-Scale or Bench-Scale Treatment on Waste Samples Using the Demonstrated Available Treatment Technologies
Do the Treatment Performance Data Represent a Well Designed and Operated System ?
No
Reject Data Observation
Yes
A

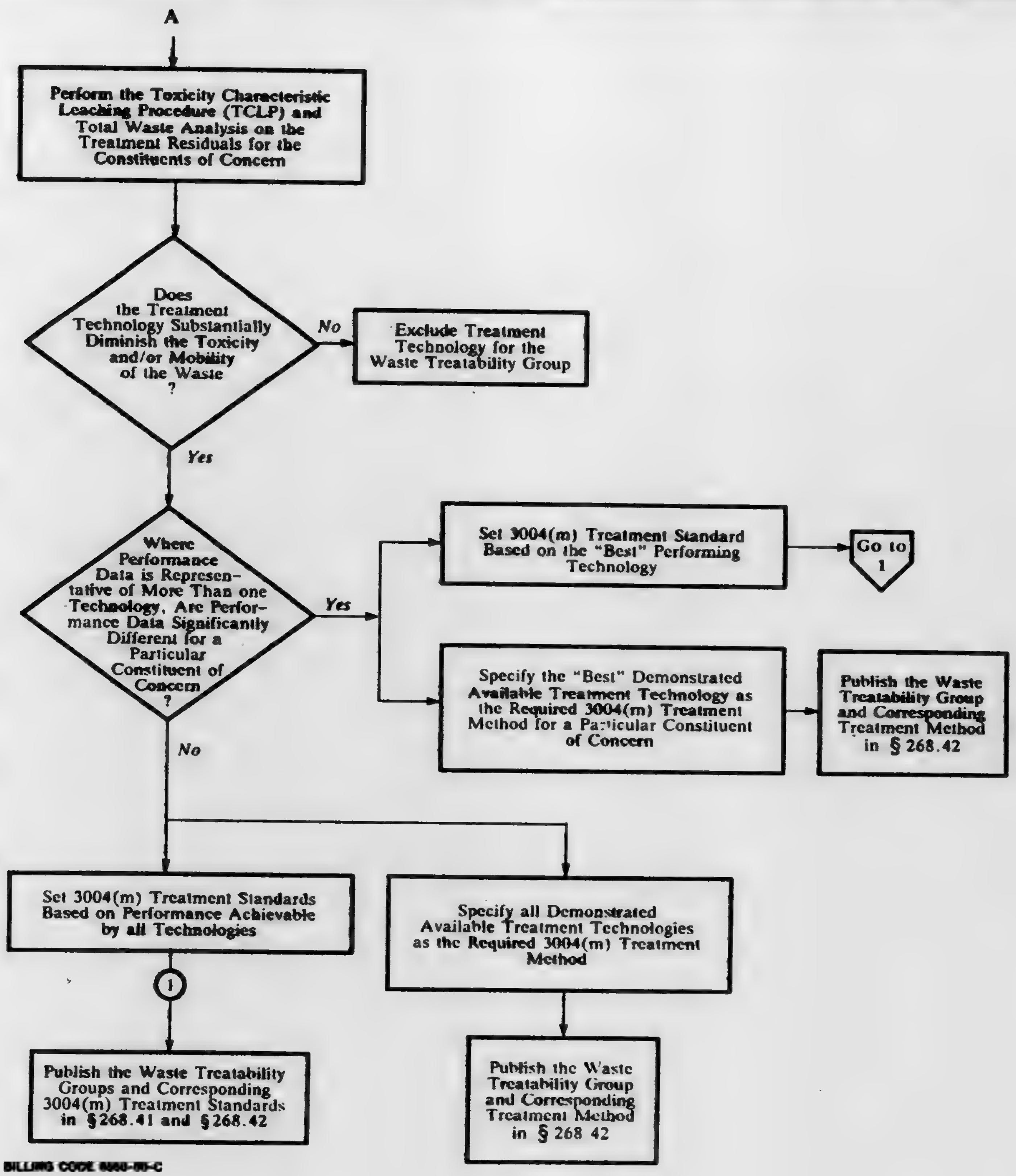
A
Perform the Toxicity Characteristic Leaching Procedure (TCLP) and Total Waste Analysis on the Treatment Residuals for the Constituents of Concern
Does the Treatment Technology Substantially Diminish the Toxicity and/or Mobility of the Waste ?
No
Exclude Treatment Technology for the Waste Treatability Group
Yes
Where Performance Data is Representative of More Than one Technology, Are Performance Data Significantly Different for a Particular Constituent of Concern ?
Yes
Set 3004(m) Treatment Standard Based on the "Best" Performing Technology
Go to 1
Specify the "Best" Demonstrated Available Treatment Technology as the Required 3004(m) Treatment Method for a Particular Constituent of Concern
Publish the Waste Treatability Group and Corresponding Treatment Method in § 268.42
No
Set 3004(m) Treatment Standards Based on Performance Achievable by all Technologies
1
Publish the Waste Treatability Groups and Corresponding 3004(m) Treatment Standards in § 268.41 and § 268.42
Specify all Demonstrated Available Treatment Technologies as the Required 3004(m) Treatment Method
Publish the Waste Treatability Group and Corresponding Treatment Method in § 268 42

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IV. Detailed Analysis of the Final Regulatory Framework

A. Determination of Best Demonstrated Available Treatment Technologies (BDAT)

This section establishes the framework under which treatment standards based on the Best Demonstrated Available Technology will be developed in accordance with 3004(m).

1. Waste Treatability Groups

Fundamental to waste treatment is the concept that the type of treatment technology used and the level of treatment achieved depend on the physical and chemical characteristics of the waste. In the proposed rule, the Agency discussed establishing broad "waste treatability groups" based on similar physical and chemical properties (e.g., metal-bearing sludges or wastes containing cyanides in order to account for differences in types of treatment used and effectiveness of treatment on different wastes. While not directly addressing this approach, commenters stated that the proposed solvent treatment standards did not account for waste matrix effects. These commenters suggested that waste matrix effects could be considered by pooling all available data on the applicable constituents from the plants sampled, presumably without regard to the varying treatability of the specific wastes sampled or the design and operation of the treatment system.

EPA disagrees with this approach because the use of such a pooled data set would result in the establishment of an artificially high treatment standard. This would occur because the broad range of treatment levels associated with numerous waste matrices will yield a high variability factor. The approach of pooling all treatment data would actually result in the masking of different waste matrices as opposed to accounting for matrix effects as suggested by the commenter. While EPA believed, that waste matrix effects were considered in the proposed solvent standards, EPA recognizes, nonetheless, that these effects may not have been fully accounted for in the proposed standards. The Agency anticipates that in future rulemakings, treatment groups could require further subdivision to more fully account for waste matrix effects subject to the availability of sufficient resources. In any event, EPA remains convinced that waste matrix effects are best accounted for by establishing treatability groups and subgroups wherever possible. The legislative history of 3004(m) supports this approach by providing that treatment determinations do not have to be made only by waste code and by authorizing EPA to establish "generic" treatment standards for similar wastes (130 Congressional Record section 9179, daily edition July 25, 1984).

EPA believes that in addition to the types of treatability groups described in the proposed rule, grouping and subgrouping wastes by industry or manufacturing process may be used to account for waste matrix effects on treatment performance (i.e. similar manufacturing operations appear to generate wastes with similar treatability characteristics). For example, in today's rule, EPA has sufficient data to create a separate treatability group for wastewaters containing spent methylene chloride generated by the pharmaceutical industry. However, while the Agency believes that industry-specific analyses will generally account for waste matrix effects, some wastes (*e.g.*, contaminated soils) cannot be categorized by industry. Therefore, EPA may also establish treatability groups for wastes from unknown sources. Finally, as noted in the proposal, EPA intends to focus on the constituents in sections 3004 (d), (e), and (g) and Appendix VIII to Part 261.

2. Determination of "Demonstrated" Treatment Technologies

EPA proposed to determine which technologies are "demonstrated" for a specific waste by studying available data on the types of treatment (including recycling methods) currently used to treat a representative sample of wastes falling within a waste treatability group. To make this determination, EPA proposed first to examine wastes treated by full-scale treatment technologies. A technology may be demonstrated if currently used to treat wastes within the group or wastes judged to be similar. EPA proposed not to consider treatment demonstrated on the basis of insufficient or inadequate full-scale data, for example, if the facility was not designed to remove the constituent or the facility was not well operated. If the treatment of these wastes (or wastes judged to be similar) was not demonstrated by any full scale facility, EPA proposed to study data from pilot-scale and bench-scale treatment operations to determine if a technology was demonstrated. Some commenters were concerned, however, with the use of pilot-scale and bench-scale operations as the basis for determining whether a technology was demonstrated. The Agency agrees with the commenters position that its determinations should not be based on emerging and innovative technologies. This would be in violation of the intent of the statute as indicated in the legislative history; "[t]he requisite levels of [sic] methods of treatment established by the Agency should be the best that has been demonstrated to be achievable" and not a "BAT-type process which contemplates technology-forcing standards." (Vol. 130 Cong. Rec. S9178 (daily ed., July 25, 1984). To the extent that bench- and pilot-scale data represent such emerging and innovative technologies, the Agency believes the proposed approach was too broad. Therefore, today's final rule represents a change in the definition of demonstrated in response to comments. To be considered a "demonstrated" treatment technology for purposes of the final rule, a full scale facility must be known to be in operation for the waste or similar wastes. EPA is amending the proposed approach to the extent that the Agency will not, at this initial stage, examine data to see if the data from the treatment facility represents a well-designed and operated system, because this factor is more appropriately taken into account when evaluating the performance of the treatment operations. EPA believes that this procedure will address the issues raised by commenters who were concerned that the Agency specify the design and operating parameters upon which determinations were made. Accordingly, if no full scale treatment operations are known to exist for a waste or wastes with similar treatability characteristics, the Agency will be unable to identify any "demonstrated" treatment technologies for the waste and, accordingly, the waste will be completely prohibited from continued placement in land disposal units (unless handled in accordance with the exemption and variance provisions promulgated in today's final rule). The Agency is, however, committed to establishing new treatment standards as soon as new or improved treatment processes become demonstrated as full-scale operations.

While, the Agency did not consider pilot- and bench-scale operations in identifying "demonstrated" treatment technologies for solvents and dioxins, in certain circumstances, data from these operations may continue to be used by the Agency in evaluating the performance of demonstrated full scale treatment operations for certain wastes. A more detailed discussion of the circumstances that would prompt the use of data from pilot- or bench-scale operations in assessing treatment performance, as well as the manner in which such data will be used, is presented below.

3. Determination of "Available" Treatment Technologies

EPA proposed the following criteria for "available" treatment technologies: (1) The technology does not present a greater total risk than land disposal; (2) if the technology is a proprietary or patented process it can be purchased from the proprietor; and (3) the technology provides substantial treatment. Today's final rule includes an additional criteria in the determination of "available" treatment technologies. Treatment technologies that are prohibited under section 3004(n) because of air emissions will be excluded as "available" technologies for purposes of establishing treatment standards.

EPA will not set treatment standards based on a technology that does not meet the above criteria. Thus, the decision to classify a technology as "unavailable" may have a direct impact on the treatment standard. If the best technology is unavailable, the treatment standard would have to be based upon the next best treatment technology that was determined to be available. To the extent that the resulting treatment standards are less stringent, greater concentrations of hazardous constituents in the treatment residuals could be placed in land disposal units.

There may also be circumstances where EPA concludes that for a given waste none of the demonstrated treatment technologies are "available" for purposes of establishing the treatment standards. These wastes will be prohibited from continued placement in or on the land unless managed in accordance with the exemption and variance provisions promulgated in today's final rule. The Agency, however, is committed to establishing new treatment standards as soon as new or improved treatment processes become "available".

a. *Treatment technologies that present greater total risks than land disposal methods.* As explained in the proposed rule, EPA will evaluate the risks associated with treatment technologies and land disposal methods. Based on a comparative risk assessment, those technologies that are found to present greater total risks than land disposal of the untreated waste will be excluded (i.e., considered "unavailable") as a basis for establishing treatment standards.

If all demonstrated treatment technologies are determined to present greater risks than land disposal for the waste treatability group, the Agency will not be able to identify any "available" treatment technologies and, accordingly, will not set a treatment standard for that group. As a result of such a determination, the waste will be prohibited from land disposal unless managed in accordance with the exemptions and variance provisions in today's final rule or a new or improved technology emerges that is determined not to pose greater total risks than direct land disposal. Treatment technologies identified as riskier than land disposal and, therefore, classified as unavailable for purposes of establishing standards may still be used by facilities in complying with treatment standards expressed as performance levels. EPA is committed to developing sufficient regulatory controls or prohibitions over the design and operation of these technologies to ensure that their use in complying with the treatment standards do not result in increased risks to human health and the environment.

b. *Proprietary or patented processes.* If the demonstrated treatment technology is a proprietary or patented process that is not generally available, EPA will not consider the technology in its determination of the treatment standards. In the proposed rule, EPA explained that proprietary or patented processes will be considered available if the Agency determines that the treatment method can be purchased from the proprietor or is commercially available treatment. The services of the commercial facility offering this technology can often be purchased, although the technology itself cannot. In these cases, the Agency proposed that the technology should be considered "available" to treat wastes generated by those other than the owner of the proprietary process.

EPA received some comments supporting and others disagreeing with this approach. The comments objecting to this approach stated that EPA should use the best demonstrated treatment regardless of its commercial availability and thereby, provide strong financial incentives for development of new technologies on the grounds that excluding such technologies from the analysis may result in less stringent treatment standards. The Agency believes, however, that its proposal represents a reasonable compromise that is intended to exclude only those technologies that would not be made available even with strong regulatory and economic incentives. Therefore, EPA intends to retain the position expressed in the proposed regulation that proprietary technology that cannot be purchased or is not commercially available treatment cannot be the basis for the treatment standard. The Agency will review the availability of proprietary or patented processes on a case-by-case basis.

Treatment technologies classified as proprietary are unavailable for the purposes of establishing the treatment standards but may still be used by facilities in complying with treatment standards expressed as performance levels.

c. *Substantial treatment.* In order to be considered "available", a demonstrated treatment technology must "substantially diminish the toxicity" of the waste or "substantially reduce the likelihood of migration of hazardous constituents" from the waste in accordance with section 3004(m). By requiring that substantial treatment be achieved in order to set a treatment standard, the statute ensures that all wastes are adequately treated before being placed in or on the land, and that the Agency does not require a treatment method that provides little or no environmental benefit. As part of the proposed regulation, the Agency stated that treatment will always be deemed substantial if it results in nondetectable levels of the hazardous constituents of concern in the TCLP extract or if the technology can achieve the protective screening concentration levels. Although the screening level approach has been eliminated in today's rule, EPA still intends to evaluate whether or not a treatment technology provides substantial treatment on a case-by-case basis when the treatment technology does not achieve nondetectable constituent concentrations in the residual. This approach is necessary due to the difficulty in establishing a meaningful guideline that can be applied broadly to the many wastes and technologies that will be considered. As stated in the proposed regulation, EPA will consider the following factors in an effort to evaluate whether or not a technology is substantial on a case-by-case basis:

(i) Number and types of constituents treated;

(ii) Performance (concentration of the constituents in the treatment residuals); and

(iii) Percent of constituents removed.

Several commenters objected to this approach. These commenters believed that EPA should have a standard by which to judge whether a technology is simply "treatment for treatment's sake." Although EPA is sympathetic to this concern, no workable suggestions for a standard were provided. The Agency believes that there will be ample opportunity for comment on EPA's

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individual BDAT decisions as they are developed. Futhermore, available EPA data show that few, if any, demonstrated technologies will not achieve a high percentage of removal, destruction, or immobilization in the wastes for which they are demonstrated. As a result, the Agency finds no alternative to the approach as proposed (omitting, of course, consideration of the no-longer used screening levels).

If none of the demonstrated treatment technologies achieve substantial treatment of a waste, the Agency cannot establish treatment standards for the constituents of concern in that waste.

4. Collection and Analysis of Performance Data

a. *Collection of performance data.* Once the demonstrated available treatment technologies have been determined for a waste treatability group, the Agency will collect data representing treatment performance and information on the design and operation of the treatment system. In developing technology-based standards for today's final rule, treatment performance is evaluated using the TCLP. The Agency, in future land disposal restrictions rulemakings, may consider using a total waste analysis as the basis for determining treatment standards.

Wherever possible, the Agency will evaluate treatment technologies using full-scale systems. If performance data from properly designed and operated full-scale treatment methods for a particular waste or waste judged to be similar are not available, EPA will use data from pilot-scale operations. Similarly, where pilot-scale data cannot be obtained, EPA will use data from bench-scale treatment operations. Whenever bench- and pilot-scale data are used, EPA may explain the use of such data in the preamble or background documents and will request comments on the use of such data. When data on treatment performance for a particular waste or similar wastes are judged by EPA to be insufficient, EPA will generate data and information through sampling and analysis regarding the operational parameters and performance of the demonstrated available treatment technologies.

The Agency realizes that in some instances all wastes represented by a particular waste code may not be included in the analysis, therefore, the possibility exists that some unique waste matrices may not be considered in establishing the treatment standard. EPA is providing the opportunity for interested parties to petition the Agency for variances to the treatment standards based on a demonstration that the treatment standards for a particular waste cannot be attained (see Unit IV.H.). The variance process allows the applicant to present information which, if properly considered when the treatment standard was originally developed, would have required EPA to create a separate treatability subgroup for the waste (see the relevant BDAT background document for information regarding the technologies used to develop the standard).

b. *Treatment design and operation.* The Agency will not establish treatment standards using performance data that are determined not to be representative of a well-designed and operated treatment system. The effectiveness of a particular treatment technology will depend, to a significant extent, on how well the system is designed and operated. In the proposed rule, the Agency stated its intention to use only treatment data from well-designed and operated systems. Commenters criticized the Agency for not specifying the parameters on which these determinations were made. Today's rule does not represent a change from the proposed rule with regard to EPA's consideration of the design and operation of treatment in developing treatment standards. Instead, we have revised the BDAT background document to better explain EPA's rationale for data editing with regard to the design and operation of the treatment system. It is difficult for EPA to generalize on the specific parameters that will be examined because parameters that comprise a well designed and operated system will vary for each technology. EPA intends to explain the factors considered in connection with individual regulatory packages. For example, some of the critical design and operating parameters for steam stripping include the number of equilibrium stages in the column, the temperature at which the unit is designed to operate, and how well the design temperature is controlled. In evaluating performance data from a steam stripping operation, the Agency would examine the design specifications (e.g. the basis for selecting the number of stages and design temperature) for the treatment unit in order to determine the extent to which the hazardous constituents could be expected to volatilize. After the design specifications are established, the Agency would collect data (e.g., hourly readings of the column temperature) throughout the operation of the treatment process demonstrating that the unit was operating according to design specifications. If the data collected varies considerably from the design requirements, it could form the basis of a determination that the treatment was improperly operated. If the temperature data show, for example, that for significant periods of time the temperature varied considerably from the design requirements, the Agency would not use this data to determine the levels of performance achievable by BDAT.

Ideally, for all treatment data EPA will have associated design and operating data. However, because treatment performance data are limited, EPA may use treatment performance data for which there are few or no associated design and operating data. In these instances, EPA will use engineering judgement based on a comparison of constituent concentrations before and after treatment to determine whether the data reflect a well-designed and operated treatment system. The Agency will also use a statistical outlier analysis to confirm the engineering analysis. An outlier in a data set is an observation that is significantly different from the trend in the data. The measure of difference is determined by the statistical method known as the Z-score. The Z-score is calculated by dividing the difference between the data point and the average of the data set by the standard deviation. For data that are normally distributed, 95.5 percent (or two standard deviations) of the measurements will have a Z-score between −2.0 and 2.0. A data point outside this range is not considered to be representative of the population from which the data are drawn. The Agency requested comment on this analysis in its September 5, 1986 Notice of Availability (51 FR 31783). A comprehensive discussion of this statistical method can be found in many statistics texts (see, for example, *Statistical Concepts and Methods* by Bhattacharyya and Johnson, 1977, John Wiley Publications, NY). The Agency believes this approach is reasonable in view of statutory time constraints.

5. Identification of "Best" Demonstrated Available Treatment Technologies and Determination of Treatment Standards

In the proposed regulation, EPA based the calculation of the treatment standards on the mean of all data points after rejection of outliers by inspection. Commenters criticized the proposed method to setting treatment standards stating that: (1) EPA did not account for process variability; (2) the Agency did not explain how it would assess whether a treatment system was well designed and operated; and (3) the Agency did not explain how it would determine treatment standards where more than one technology applied to a waste. In response to these comments, EPA revised its methodology for establishing treatment standards. The revised approach incorporates several statistical methods that were presented in EPA's Notice of Availability, September 5, 1986 (51 FR 31783).

a. *Analysis of variance.* EPA is using the statistical method known as analysis of variance in the determination of the level of performance that represents BDAT. This method provides a measure of the differences between data sets. If the differences are not statistically different, the data sets are said to be homogeneous.

This method may be used in two cases. The first case is where more than one technology can be used to treat a waste. In this case, the analysis of variance method would be used to determine whether BDAT would represent a level of performance achieved by only one technology or represent a level of performance achievable by more than one or all of the technologies.

If the Agency found that the levels of performance for one or more technologies are not statistically different (i.e., the data sets are homogeneous), EPA would average the long term performance values achieved by each technology and then multiply this value by the largest variability factor associated with any of the acceptable technologies. If EPA found that one technology performs significantly better (i.e., the data sets are not homogeneous), BDAT would be the level of performance achieved by the best technology multiplied by its variability factor.

The second case where the analysis of variance may be used is where different wastes with common constituents are treated with the same technology. The Agency could use this statistical method to determine whether separate BDAT values should be established for each waste or whether the levels of performance are homogeneous and, therefore, amenable to a single concentration level for a given constituent.

To determine whether any or all of the treatment performance data sets are homogeneous using the analysis of variance method, it is necessary to compare a calculated "F value" to what is known as a "critical value". These critical values are available in most statistics texts (see for example, *Statistical Concepts and Methods* by Bhattacharyya and Johnson, 1977, John Wiley Publications, NY).

Where the F value is less than the critical value, all treatment data sets are homogeneous. If the F value exceeds the critical value, it is necessary to perform a "pair wise F" test to determine if any of the sets are homogeneous. The "pair wise F" test would be done for all of the various combinations of data sets using the same method and equation as the general F test.

The F value is calculated as follows:

(i) All data need to be logtransformed.

(ii) The sum of the data points for each data set are computed (Ti).

(iii) The statistical parameter known as the sum of the squares between data sets (SSB) is computed:

$$SSB = \sum_{i=i}^{k} \frac{Ti^2}{n_i} \qquad \frac{Ti^2}{N}$$

where:

k=number of treatment technologies
n_i=number of data points for technology i
N=number of data points for all technologies
T=sum of data points for all technologies

(iv) The sum of the squares within data sets (SSW) is computed:

$$SSW = \sum_{i=1}^{k} \sum_{j=1}^{ni} x^2_{i,j} - \sum_{i=1}^{k} \frac{Ti}{ni}^2$$

where:

x_{ij}=the observations (j) for treatment technology (i)

(v) The degrees of freedom corresponding to SSB and SSW are calculated. For SSB, the degrees of freedom is given by k–1. For SSW, the degrees of freedom is given by N–k.

(vi) Using the above parameters, the F value is calculated as follows:

$$F = \frac{MSB}{MSW}$$

where:

MSB=SSB/(k–1) and
MSW=SSW/(N–k).

A computational table summarizing the above parameters is shown below.

COMPUTATIONAL TABLE FOR THE F VALUE

Source	Sum of squares	Degrees of freedom	Mean square	F
Between	SSB	k–1	MSB=SSB/k–1	MSB/MSW
Within	SSW	N–k	MSW=SSW/N–k	

b. *Process variability.* Since variability in performance principally arises from inherent mechanical limitations in maintaining control parameters at the optimum setting, calculation of the treatment standard now incorporates a process variability factor. An example of process variability would be an automatic pH control system used to maintain the proper pH range for precipitation of a toxic metal. In this system, a pH sensing device provides a signal to the controller that the pH is not at the set point (i.e., the optimum design point). The controller then changes (either pneumatically or electrically) the position of the valve that supplies the reagent(s) used to adjust pH. The Agency would consider such a system to be well-operated provided that it is properly designed, calibrated, and maintained. Nevertheless, this system cannot be operated without any variation in the level of performance. Control valves are not manufactured in such a way that they can precisely add the exact amount of reagent needed to be at the set point; either too much or too little reagent will be added. Also, there is a lag time between the time when the sensing device detects a problem and the time that the controller adjusts the valve to the correct position. Additionally, there can be process upsets that require greater changes to the system corresponding to greater variations in performance. Another source of variability will occur during the analysis of the treatment samples. Finally, it is acknowledged that EPA approved methods will exhibit some degree of variability in test results for identical samples. All of the above variations can be expected to occur at well designed and operated treatment facilities. Therefore, setting treatment standards utilizing a variability factor should be viewed not as "relaxing" 3004(m) requirements, but rather as a function of the normal variability of the treatment processes. A plant will have to be designed to meet the mean achievable treatment performance level in order to be assured that the performance levels remain within the limits of the treatment standard. The Agency will calculate a variability factor for each constituent of concern

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within a waste treatability group using the statistical calculation presented in the Notice of Availability. The equation for calculating the variability factor, as shown below, is the same as has been used by EPA for the development of numerous regulations in the Effluent Guidelines Program under the Clean Water Act.

$$VF = \frac{C_{99}}{MEAN}$$

where:

VF = Estimate of daily maximum variability factor determined from a sample population of daily data

C_{99} = Estimate of performance values for which 99 percent of the daily observations will be below. C_{99} is calculated using the following equation: $C_{99} = \mathrm{Exp}(\bar{y} + 2.33Sy)$ where $\bar{y}$ and Sy are the mean and standard deviation, respectively, of the logtransformed data.

mean = average of the individual performance values.

EPA is establishing this figure as a daily maximum because the Agency believes that on a day-to-day basis the waste should meet the applicable treatment standards. In addition, establishing this requirement makes it easier to check compliance on a single day. The 99th percentile is appropriate because it accounts for almost all process variability.

6. Dilution Prohibition

In the proposed rule, EPA recognized that successful implementation of the land disposal restrictions program required that dilution be prohibited as a partial or complete substitute for adequate treatment of restricted wastes. The legislative history indicates that such a prohibition "is particularly important where regulations are based on concentrations of hazardous constituents." (H.R. Rep. No. 198, Part I, 98th Cong., 1st Sess. 38 (1983)).

The commenters unanimously support a prohibition on dilution. Their comments indicate a concern with dilution after the waste is generated but before the applicable treatment standard and effective date have been determined, and after the treatment standard has been determined but before the residuals are land disposed. It should be noted that this prohibition does not affect provisions in other EPA regulations which may allow dilution for other purposes.

a. *Dilution before determination of the applicable treatment standard and effective date.* One commenter urged EPA to prohibit dilution to avoid an effective date. Today's rule does not include this provision. EPA's proposed prohibition was limited to dilution for the purpose of substituting for adequate treatment under section 3004(m). A prohibition on dilution for the purpose of avoiding an effective date is outside the scope of this proposal and, therefore, would have to be the subject of a separate proposal. However, as noted in the waste analysis section to today's rule, the applicable treatment standards are to be determined by generators in accordance with § 268.7.

b. *Dilution to meet the treatment standards.* One commenter suggested that EPA reiterate that dilution with non-aqueous agents (e.g., flyash, sawdust, or other materials) is also prohibited. The Agency agrees and intends that the addition of any other material, either liquids or non-liquids, is prohibited as a substitute for treatment under section 3004(m).

Several commenters expressed concern that some treatment processes (e.g., equalization ponds), which require the addition of other materials to physically or chemically treat the wastes, would be prohibited. As stated in the preamble to the proposed rule (51 FR 1680), the Agency recognizes that many treatment methods require the addition of reagents. These reagents, however, produce physical or chemical changes and do not merely dilute the hazardous constituents into a larger volume of waste so as to lower the constituent concentration. In establishing BDAT, EPA considered dilution which is a normal part of the production process or a necessary part of the process to treat a waste. The legislative history indicates that this is consistent with congressional intent (see S. Rep. No. 284, 98th Cong., 1st Sess. 17 (1983)). In prohibiting dilution as a substitute for adequate treatment, the Agency does not intend to prevent the regulated community from adding materials that are necessary to facilitate proper treatment in meeting treatment standards (e.g., adding lime to neutralize or precipitate a waste prior to further treatment). In addition, EPA does not intend to disrupt or alter the normal and customary practices of properly operated treatment facilities. For example, treatment facilities could mix compatible wastes in order to treat (e.g., incinerate) at capacity levels rather than treating wastes in small batches.

c. *Dilution of residuals.* One commenter recommended that the language of the prohibition should be modified to reflect that the prohibition on dilution also applies after treatment. In particular, wastes meeting Subpart D treatment standards must not be mixed with wastes that do not meet such standards in order to achieve the treatment standard for the mixture. EPA agrees with the commenter and intends that this type of dilution after treatment or at any other time is prohibited under § 268.3. The Agency believes that the language in § 268.3 prohibiting dilution "as a substitute for adequate treatment to achieve compliance with Subpart D" is sufficiently broad enough to cover this scenario.

EPA is adopting the proposed prohibition with the following modifications. First, the prohibition extends to transporters and handlers which were inadvertently excluded from the proposed prohibition. Since the proposal cited legislative history which included the transportation and handling stages within the prohibition as the basis for § 268.3, the Agency believes that the favorable comments indicate support for such a modification which conforms more closely to congressional intent. In addition, support for the prohibition was very broad and did not indicate any intent to treat transporters or handlers differently. EPA believes that this modification is reasonable and necessary in order to implement this provision.

Second, the prohibition extends only to the act of dilution itself. The Agency's proposed language would have prohibited "attempted dilution" but not dilution itself. This is clearly not what was intended by EPA. Overall, the commenters who supported the prohibition expressed concern with the act of dilution.

B. Comparative Risk Assessment and Available Treatment Alternatives

1. Proposed Use of Comparative Risk Assessment

EPA proposed the use of comparative risk analyses as part of its evaluation of treatment technologies in conjunction with establishing treatment standards. As described in the proposed rule, a number of criteria affect the determination of "available" treatment technologies for the purpose of setting treatment standards. Among the criteria considered is whether application of a treatment technology (including land disposal of treatment residuals) poses greater risks to human health and the environment than those posed by direct land disposal of the waste. Comparative risk analyses were proposed to prevent situations in which regulations restricting hazardous wastes from land disposal would encourage treatment technologies posing greater risks to human health and the environment than risks posed by direct land disposal.

2. Agency Response to Comments

The majority of the comments supported the concept of conducting comparative risk assessments. However, several comments strongly opposed this concept. Both sets of commenters had specific criticisms and suggestions.

The commenters who objected to the use of comparative risk assessment stated that EPA does not have the authority under RCRA to conduct such analyses. The Agency disagrees with the commenters. The Agency interprets the provisions in section 3004(m) to direct EPA to set treatment standards which minimize threats to the "environment" as applying to all media (i.e., air, land, and water). Because there is no language indicating that this term does not include all media, accordingly, EPA does not believe that the section 3004(m) standard can be read to preclude comparative risk analyses. Therefore, EPA believes that Congress did not intend that risks to human health and the environment be increased as a result of implementation of the land disposal prohibitions. The national policy provision in section 1003 supports this approach in stating that hazardous wastes should be treated in order to minimize the present and future threat to human health and the environment. Moreover, this provision, as well as the legislative history (e.g., H.R. Rep. No. 198, Part I, 98th Cong., 1st Sess. 32 (1983)), does not focus merely on the risks of land disposal, but instead demonstrates a concern for the toxicity and mobility of hazardous wastes in all media. EPA believes that it is desirable, reasonable, and consistent with the intent of Congress to include comparative risk assessments in the determination of available technologies for purposes of setting technology-based treatment standards.

One commenter felt that the use of comparative risk assessments are reasonable, but questioned whether it is appropriate to use worst case scenarios in assessing the relative risks. The suggested approach is to utilize a "middle-of-the-road" scenario in evaluating risks at both land disposal and alternative treatment facilities. In response to the comment, the Agency is not using best or worst case scenarios. Instead, EPA has chosen to analyze several land disposal and treatment facilities which represent high, medium, and low exposure sites. High risk, low risk, and representative waste streams were modeled through each of these facilities in order to capture the entire range of waste site scenarios.

Several commenters were critical of EPA's proposal to evaluate population risk in assessing comparative risks. The Agency believes it useful to consider population in comparative risk analyses because it can identify sources of increased risks where a comparison with the Maximum Exposed Individual (MEI) risks may not do so. For example, the MEI risks of incinerating certain wastes may be low in comparison to the MEI risks of land disposal. This could be due to few people living in the immediate path of an incinerator plume. The Agency does, however, want to consider cases where there may be a larger population affected by incinerator emissions.

One commenter was concerned that the treatment methods for a given waste may be riskier in absolute terms than the treatment method for another waste. Their concern was that the riskier technology could be used to define the treatment standard as long as the process poses comparatively less risk than land disposal. In the context of ensuring that the land disposal restrictions do not shift higher risks to other media, the Agency maintains that comparative risk analyses are not the proper vehicle for making absolute risk determinations. The analyses are aimed at assessing whether the land disposal of a given waste or waste stream will pose relatively greater risks than alternative treatment technologies. As stated above, if the alternative treatment method is determined to be less risky than land disposal it will be used in the determination of BDAT. The Agency does, however, have the authority to impose additional controls on the technology if it later determines that the actual risks are unacceptable. Such a determination could lead to either a modification of the BDAT standard or the imposition of additional standards on treatment facilities.

3. Use of Comparative Risk Assessment in the Final Framework

Results of the comparative risk analysis will not be used to allow continued land disposal of untreated hazardous waste. As discussed in section A of this unit, treatment technologies that are determined to pose greater risks than direct land disposal of a waste will be considered "unavailable" as a basis for establishing the treatment standard for the waste.

C. Application of Standards

1. Leaching Procedure

a. *Final decision.* The Agency proposed to use the Toxicity Characteristic Leaching Procedure (TCLP) to determine whether applicable treatment standards have been met. Although EPA is changing its overall approach in today's final rule (i.e., from risk-based decisions to technology-based decisions), the Agency will continue to require the use of the TCLP to determine whether a waste requires treatment or when a treated waste meets the applicable treatment standards. Today the Agency is promulgating the TCLP with improvements and modifications based on the comments received on the proposed rule, as well as applicable comments received on the Toxicity Characteristic (TC) proposed rule (51 FR 21648, June 13, 1986). The Agency is promulgating the TCLP in today's final rule specifically for evaluation of the solvent and dioxin-containing wastes. The revised TCLP is promulgated as Appendix I to Part 268.

Because the Agency is continuing to investigate other means of defining BDAT (e.g., a definition based on the concentration of hazardous constituents in the waste, at least in the case where treatment is based on destruction), EPA will make decisions regarding the applicability of the TCLP to other restricted wastes according to the final schedule for land disposal restrictions which was promulgated on May 28, 1986. In addition, the Extraction Procedure (EP) will continue to be used in determining which nonlisted wastes are hazardous in accordance with the EP toxicity characteristic (40 CFR 261.24). The Agency expects to promulgate the TC by early 1988.

b. *Response to comments.* The general comments EPA received on the leaching test as it applies to its use in this rulemaking, and EPA's response to these comments are summarized below. Technical and procedural comments on the TCLP, and related issues are summarized and addressed in a background document supporting the use of the TCLP in today's final rule (Ref. 3). The background document also summarizes modifications to the TCLP based on further evaluation of the procedure.

(1) Use of the TCLP is premature. Many of the commenters argued that use of the TCLP was premature. Reasons that were given include: (i) An inadequate amount of time was given to evaluate the method and its impact on current waste management practices, due to the unavailability of test equipment; (ii) the institution of a new test would impose unreasonable delays on treatment facilities who need to test the wastes prior to disposal; and (iii) the test had not been properly validated.

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EPA does not believe that these concerns are sufficient reasons to prevent the use of the TCLP in today's regulation. In view of the statutory deadlines, EPA was aware that the time available for public review of the leaching test would be relatively short. As a result, during the course of developing and evaluating the TCLP, public presentations were held to familiarize interested parties with the test procedure, in order to facilitate their evaluation of the test.

In addition, most of the equipment needed to conduct the TCLP is the same as that used for the existing EP. The only "new" equipment is the Zero-Headspace Extractor (ZHE) and ancillary equipment (e.g., TEDLAR bags and gas-tight syringes) needed for evaluation of volatile organic compounds.

In addition to the data and information made available to the public in the January 14, 1986 proposal, information on the development and evaluation of the TCLP was provided in the toxicity characteristic proposed rule. Further supporting information on the leaching test was also provided through notices of availability of reports on July 9, 1986 (51 FR 24856) and September 19, 1986 (51 FR 33297). EPA received over 150 comments on the TCLP in response to these proposals and notices. These comments were considered in issuing today's final rule. EPA, therefore, does not agree with the commenter's claim that they have not had adequate opportunity to evaluate the method. The Agency believes that adequate data has been developed and noticed for public comment to allow generators to adequately evaluate the procedure.

Another general concern expressed by commenters related to the belief that the institution of a new test would present unreasonable delays on treatment facilities. Although there may be some delay, EPA does not believe that this would be caused by the introduction of a new testing protocol or a protocol requiring new equipment. Some form of waste analysis is required in order to implement the land disposal restrictions rule. EPA anticipates that the institution of a new protocol will not cause delays beyond those required to perform any waste characterization. The procedures used in conducting the TCLP are very similar to the existing EP. Therefore, the Agency expects that laboratories familiar with the EP protocol should have little problem conducting the TCLP.

Commenters also expressed concern that the TCLP was not ready for application because the method had not been properly tested or validated. The TCLP has been the subject of an extensive evaluation. EPA has completed both intra- and inter-laboratory (collaborative) studies of method reproducibility using a variety of wastes. Industry groups and commercial laboratories participated in EPA's TCLP collaborative evaluation. In addition, the Electric Power Research Institute (EPRI) also evaluated the TCLP in a collaborative study. Finally, six industry associations submitted data to the Agency from a collaborative study of the TCLP. (The results of these studies are detailed in the TCLP Background Document supporting today's rule (Ref. 3)). Based on all these efforts, EPA believes that the test has been sufficiently evaluated.

(2) The TCLP is inappropriate for use in the land disposal restriction's rule. Approximately one third of all commenters addressing the leaching test argued that it is inappropriate for such use. Specifically, these commenters argued that the method would be inappropriate as a means to evaluate Subtitle C hazardous wastes because it was developed based on a municipal/industrial waste codisposal scenario.

They specifically pointed out that hazardous waste landfills do not contain municipal wastes and, therefore, that the leaching medium within these landfills was unlikely to contain acetate or acetic acid, common degradation products of decomposing refuse. These commenters further suggested that a water leaching medium would be more representative of a Subtitle C disposal facility.

Several commenters also disagreed with application of the TCLP because of other differences between Subtitle C and Subtitle D land disposal facilities. They asserted that Subtitle C facilities differ in design from municipal facilities in several respects, including minimization of surface and ground water intrusion and containment of accumulated fluids through the 30-year post-closure period beyond the operating life of the facility. They pointed out that well-engineered hazardous waste land disposal units provide a physical-chemical environment that is significantly different from the municipal landfill.

EPA recognizes that RCRA Subtitle C and Subtitle D facilities differ in many respects. However, commenters generally addressed only the fairly narrow example of a well engineered Subtitle C landfill that accepts treated wastes or that is dedicated to a particular waste. Subtitle C facilities include not only these types of landfills but also existing facilities which may be unlined or which may contain a variety of untreated wastes. The current regulations do not prohibit the landfilling of mildly acidic wastes, nor is it uncommon to put liquid acidic wastes in surface impoundments. Thus, a significant number of facilities may not conform to the model suggested by the commenters. In view of these differences, EPA does not believe the commenters have shown that it is unreasonable to assume that wastes in a Subtitle C environment may be subject to mildly acidic conditions. In view of these factors, and considering the time constraints imposed on the Agency's issuance of land disposal regulations, EPA believes it is justified in using the TCLP for the wastes covered by today's rule.

In this regard, it is important to note that the leaching of the organics covered by today's rule is not significantly effected by minor changes to the predominantly aqueous leaching media used in the TCLP (Ref. 24). Thus, the Agency believes it is being prudent in not introducing yet another leaching test for regulatory application.

(3) Effect of the TCLP on constituents other than solvents and dioxins. Because today's final rule addresses only solvents and dioxins, EPA is not responding to those comments dealing with inorganics at this time. EPA has received substantial comment regarding the TCLP's use of a "stronger" leaching fluid for wastes of moderate to high alkalinity, and the need for particle size reduction of all wastes, including monolithic materials. A detailed discussion is available in the TCLP background document.

(4) Potential laboratory capacity shortfall. Several commenters, anticipating that the TCLP may eventually be required as a result of both the land disposal restrictions program and the toxicity characteristic, were concerned over a potential laboratory capacity shortfall. They indicated that commercial laboratories are currently backlogged with work, and that TCLP requirements under both rules would make the situation critical.

We disagree with these commnenters. Many commercial laboratories are presently performing TCLP analyses. For example, over 20 laboratories were involved in EPA's TCLP collaborative effort. In addition, EPA is aware that laboratories have been in the process of gearing-up to perform TCLP analyses, primarily in anticipation that the TCLP will be required as part of both the land disposal restrictions rule and the toxicity characteristic. In addition, due to the phased approach for the restrictions rule, and the fact that the toxicity characteristic will not be promulgated until early 1988, EPA believes that the laboratory capacity problem will not be as severe as commenters suggest. By the time the toxicity characteristic becomes effective, EPA believes that sufficient laboratory capacity should exist to conduct the required analyses. Several commenters agreed with EPA, indicating that there are (or would be) a sufficient number of laboratories that will be able to perform the TCLP.

(5) TCLP reproducibility. EPA also received substantial comments regarding the precision or reproducibility of the TCLP, most of which were critical of the method's precision. While specific comments regarding method precision are addressed in the TCLP background document, the outcome of EPA's general evaluation of these comments is presented below.

The relevant question with respect to method precision is; "is the method sufficiently precise for its intended application?" In other words, given a particular waste, can the same conclusions derived from results of running the TCLP in one laboratory (i.e., are treatment levels exceeded) be reached in other laboratories. EPA believes that the TCLP is sufficiently precise in this application, as indicated below.

A total of three separate multi-laboratory collaborative evaluations of the precision of the TCLP were conducted (Ref. 3). One of these evaluations was sponsored by the Electric Power Research Institute (EPRI), and was limited to investigating the precision of the method for inorganic parameters and dealt specifically with utility industry wastes. This study is unique in that it attempted to determine the relative contribution to total variability due to the three major components of variability; sampling variability, analytical variability, and variability due to the TCLP itself. EPRI also conducted side by side comparisons of the EP to the TCLP. This study was similar to a study EPRI did on the EP in 1979 (Ref. 3).

EPRI's evaluation concluded in general, that the TCLP's reproducibility was equal to or greater than that of the EP (Ref. 3). More significantly, EPRI found that the most frequently encountered source of variability in the TCLP extracts was the analytical variability associated with analysis of duplicate extracts by different laboratories. EPRI, however, also indicated that the interpretation of results may depend on the statistical approach used to analyze the data. Nevertheless, it appears that regardless of how data are interpreted, analytical variability can account for a major source of variability in results.

EPA's collaborative study addressed the conventional bottle extraction (i.e., for metals, semi-volatile organics, and pesticides and herbicides) and the Zero-Headspace Extractor (ZHE) used for volatile organics. The results of this study, noticed in the September 21, 1986 **Federal Register**, presented the full results of the evaluation for the conventional extraction, and a summary of the results for the ZHE extraction. This report has since been finalized. The general conclusion reached in this study was that "the TCLP could be applied consistently by a diverse group of organizations."

The third collaborative effort was sponsored by six industry trade associations, and dealt with both the conventional bottle extraction and the ZHE. This study also compared the precision of the EP to the TCLP, and, like the EPRI study, concluded that the precision of the TCLP was approximately the same as, or slightly better than, that of the EP. This study further concluded, however, that the TCLP procedure was not a precise test, but attributed the major source of variability to the "lack of homogeneity of wastes and the resulting difficulty in obtaining representative samples . . ." One comment received, however (from one of the participating trade associations), concluded that the association's study seemed to be consistent with the EPA effort in that the data for metals and non-volatile organics showed adequate reproducibility, and that the "*preliminary*" data for volatile organics also indicated adequate reproducibility.

EPA believes that these three efforts adequately demonstrate the precision of the TCLP, and also support EPA's contention that precision over the existing EP has been improved. Specifically, these studies show that considering the variability contributed by both sampling and analytical variability, the TCLP can be applied consistently among laboratories with reasonable precision.

Nevertheless, EPA agrees with the conclusion in the industry association study that sampling variability is likely to be the most significant contribution to total variability. (EPA is also concerned, to a lesser extent, with the contribution of analytical variability.) Further, EPA believes that sampling variability may actually be more of a problem than indicated in these studies. Whereas extra efforts are usually made in collaborative studies to minimize variability due to the samples, such efforts are not always entirely successful. When sampling for waste analyses or characterizations, it is likely that sample representativeness will not receive the same close attention that it receives during collaborative efforts.

EPA believes that the best way to deal with the variability problem is to take multiple "representative" samples of wastes following a well-developed sampling plan, and to subject these samples to the intended analyses. Following fairly simple and fundamental statistical concepts, the results can then be subjected to a statistical evaluation designed to determine whether applicable regulatory levels are exceeded with a certain degree of confidence (e.g., the upper limit of the 90 percent confidence interval). This approach is detailed in Chapter 9 of EPA's 3rd edition of its solid waste testing manual (Test Methods For Evaluating Solid Waste—SW-846), which is complete with several easy ways to follow example (Ref. 3).

(6) Applicability of the TCLP to multi-phasic (oily) wastes. EPA has also received substantial comment on the applicability of the TCLP to oily wastes. Commenters were both concerned that the TCLP would not distinguish "liquid" oils from solid materials, resulting in little or no filtration of oil through the TCLP's glass fiber filter (GFF), and that the TCLP's GFF would treat these oils as liquids, resulting in too much oil passing through the filter. These commenters further criticized the TCLP because it treated aqueous liquids and non-aqueous (oily) liquids in an identical manner, when these commenters perceived these liquids to behave differently in the environment.

Materials which filter through the GFF are defined as liquids and are analyzed directly, whereas the "solid" portion of the waste (i.e., that portion which does not pass through the GFF) is extracted with an amount of extraction fluid equal to twenty times its weight. This differentiation is especially critical for oily wastes (which are known to pose filtration problems, especially with the EP's membrane filter), as exceedance of the treatment level can depend very heavily on whether the "liquid oil" within the waste is defined as a liquid (passes through the GFF and is analyzed directly), or is defined as a solid (does not filter and is extracted with twenty times its weight of extraction fluid).

EPA agrees that this is a difficult issue and believes that it is important that the TCLP be capable of indicating the movement of oily material, as these materials have been known to migrate from wastes.

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Data is available which suggests that the TCLP's GFF more readily passes oily material than does the EP's membrane filter. In developing the TCLP, EPA investigated eleven wastes in its lysimeter evaluations, three of which were oily wastes (Ref. 24). During this phase of the research, it was demonstrated that oil is capable of migrating from the "solid" matrix of the waste as droplets.

While the GFF was selected mainly for operational reasons, the research also indicated that it was consistently more efficient at detecting contamination due to movement of the oil than was the EP's membrane filter. The GFF is therefore expected to provide a more reasonable differentiation between liquids and solids.

While the GFF then, is an improvement upon the EP's membrane filter, in terms of its ability to pass oils, EPA is continuing to investigate if the TCLP's filtration regime should be altered to better predict movement of the oily phase of a waste. Upon completion of these evaluations, EPA may propose modifications to the TCLP specifically for wastes containing oily or other non-aqueous liquids. In the meantime, given the GFF's ability to better indicate the movement of oil, EPA believes that the TCLP's filtration regime will be sufficiently capable of indicating whether oily wastes meet the treatment levels.

(7) Complexity of TCLP. Several commenters were also concerned that the TCLP is too complex and too dependent on the use of skilled personnel and specialized equipment like the ZHE. Many of these commenters suggested changes to the ZHE protocol. Commenters further asserted that the procedure was overly burdensome, especially for wastes containing solids and multiple liquid phases.

As indicated previously, the TCLP involves two separate procedures with differing equipment. The conventional bottle extraction conducted for "non-volatile" constituents is much simplified over the EP protocol. In fact, one of the conclusions of the EPRI collaborative TCLP study was that "the main advantage of the TCLP appears to be in the ease of use." The TCLP extraction for volatiles, involving the ZHE, is agreeably more complicated than the conventional extraction. The two protocols, however, are very similar, and EPA believes that analysts familiar with the EP method will have little problem, successfully conducting the TCLP. As with any new procedure, there will be some learning involved, especially with regard to the ZHE device. Familiarization with the device should be fairly rapid, however.

EPA has also taken steps to simplify the procedure, both on our own further evaluation of the method, and in response to the comments received on the method. EPA is also considering further simplification of the ZHE protocol, as indicated in the background document. Finally, while EPA believes that the protocol can be successfully run by technicians and analysts, as with any waste characterization (including the EP), the oversight of skilled chemists is always essential.

(8) Operational difficulty of the TCLP with some waste types. EPA has received many comments addressing the operational difficulties perceived in performing the TCLP on some waste types. For example, EPA is aware that the TCLP will be more difficult to perform on wastes containing immiscible liquid phases, and on wastes which contain low percent solids (e.g., <5 percent solids). EPA is also aware that the ZHE device may be difficult to clean after extraction of a particularly contaminated waste.

To help generators in dealing with these problems in a consistent manner, EPA is in the process of preparing a guidance section for the TCLP, that will offer suggestions on the best way to deal with these problems. In addition, this guidance will offer suggested reporting forms for recording results, and will also contain helpful suggestions in dealing with minor problems. This guidance section will accompany the method when it is published in SW-846. The background document supporting the TCLP provides more detail regarding the content of the guidance section, along with responses to comments addressing technical and procedural issues (Ref. 3).

(9) Specific wastes and compounds. Many commenters also expressed their concern that application of the TCLP would be inappropriate for their specific wastes. These commenters, however were most concerned with inorganic constituents and the effect of the acetic acid (used in the TCLP) on these constituents. These commenters asserted that their wastes were not managed in municipal landfills (which the acetic acid is designed to simulate) and thus, that the use of acetic acid would be inappropriate. As mentioned earilier, since today's rule applies only to solvents and dioxins, and since the TCLP is only used in the rule as a monitoring technique, EPA is not responding to these comments at this time.

Similar comments were received which assert that reproducibility testing performed on the TCLP should have been done with "their wastes." EPA would like to reemphasize that these were two outside evaluations of the TCLP (Ref. 3). Nonetheless, EPA believes that it would be unnecessary to conduct precision studies on all wastes that may be subject to the TCLP. This would be a waste of resources. Rather, in precision studies, it is more important to test a range of wastes, in terms of physical and chemical characteristics. Between all the investigations conducted on the TCLP, a wide variety of wastes have been tested, including those that would sufficiently challenge the procedure, such as oily (multi-phasic) wastes. This is important, as many of these commenters were specifically referring to oily wastes. EPA believes that the TCLP has been sufficiently tested on a variety of wastes.

Other commenters were concerned that the TCLP would be inefficient at extracting chlorinated (volatile) compounds, as they observed that during the research EPA conducted to develop the TCLP, chlorinated compounds were extracted in the laboratory procedure at levels significantly less than the levels expected (Ref. 24). EPA acknowledged the poor extraction of volatile compounds in general during this research. These results led EPA to the conclusion that volatiles were being lost to the headspace within the conventional (bottle) extraction and as a result of the air pressure filtration. Consequently, the Agency determined that a device which precludes headspace and enables the use of piston pressure for liquid/solid separation was necessary, and the Zero-Headspace Extractor was developed to minimize the loss of volatiles.

2. Testing and Recordkeeping

Under the framework being finalized today, determination of whether a hazardous waste treatment residue requires further treatment prior to land disposal generally depends on whether the concentration of constituents in an extract from the waste (using the TCLP) exceeds the applicable treatment standards. Because this determination is critical to the scheme, EPA is imposing certain waste testing/analysis requirements.

In the proposed rule, the Agency solicited comments on the issue of who should bear responsibility for testing restricted wastes and certifying that the wastes meet the applicable treatment standards. The commenters were equally divided on these issues. Some commenters believed that the generator should be responsible for testing, certification, and recordkeeping. Others agreed with the proposed approach requiring the disposal facility to certify that the wastes meet the treatment standards.

Because the approach promulgated today does not cap BDAT with screening levels, more wastes will require treatment to meet the specified treatment standards. The Agency believes that the shift towards treatment of restricted wastes will place an increased responsibility on treatment facilities to ensure that treated wastes meet the specified treatment standard. Although the provisions in section 3004(m)(2) place the ultimate responsibility on the disposal facility to ensure that only wastes which meet the treatment standards are land disposed, the Agency believes that testing and certification by the treatment facility is critical to implemention of the regulatory program. Thus, the Agency is requiring that the treatment facility provide waste analysis data showing that a waste meets the applicable treatment standard to ensure that only wastes which meet the standards will be transported to disposal facilities. In cases where the generator is shipping a waste directly to the disposal facility (i.e., the waste naturally meets the treatment standard, or has been treated on-site), the generator is responsible for testing and recordkeeping. However, the disposal facility has the ultimate responsibility to ensure that all restricted wastes meet applicable treatment standards before being land disposed. The disposer also is required to maintain all records.

The rules promulgated today are not intended to shift responsibility for improper disposal to the generator. Of course, nothing in these rules prevents the generator and disposer from entering into a private agreement to allocate liability in the event that prohibited wastes are land disposed.

a. *Generator requirements.* For today's final rule, the generator of a restricted waste must notify the treatment facility in writing of the appropriate treatment standard for the waste. The generator may make this determination based on waste analysis data, knowledge of the waste, or both. Where this determination is based solely on the generator's knowledge of the waste, the Agency is requiring that the generator maintain in the facility operating record all supporting data used to make this certification. A waste analysis must be conducted if there is reason to believe that the composition of the waste has changed or if the treatment process has changed. The notification must specify the EPA Hazardous Waste Number, the applicable treatment standard, the manifest number associated with the shipment of waste, and the waste analysis data (if available). The notice must be placed in the operating record of the treatment facility along with a copy of the manifest. Generators who are also treatment, storage, and disposal facilities must place the same information in the operating record, although a formal notification and manifest is not required.

According to the provisions in § 268.7, a generator who determines that a waste can be land disposed without treatment must submit to the disposal facility a certification statement and a notice which contains the EPA Hazardous Waste Number, the manifest number, the applicable treatment standard(s), and the waste analysis data (if available) or cross references to relevant data submitted at an earlier time. The certification is required only in cases where the generator is representing that the waste meets the treatment standard. Generators who dispose on-site must put the same information in the operating record (except for the manifest number).

b. *Treatment facility requirements.* The treatment facility is responsible for treating the restricted waste to the level specified in the applicable treatment standard. An off-site treatment facility must obtain the required data from the generator prior to treatment and place that data in the operating record.

Treatment residues must be tested prior to land disposal according to the requirements of the treatment facility's waste analysis plan to determine if treatment has achieved the required levels.

For instance, if the waste analysis plan calls for testing of each batch of waste from an incineration process, these data must be submitted to the land disposal facility along with the certification statement. If a particular generator's waste does not vary and is consistently treated by the same treatment facility using the same treatment process, the treatment facility's waste analysis plan may require less frequent testing of the treatment residue. It should be emphasized that a waste analysis must be conducted if there is any reason to believe that the composition of the waste has changed or if the treatment process has changed.

Each waste shipment must be accompanied by a certification statement including cross references to any relevant data submitted at an earlier time, and a notice which includes the EPA Hazardous Waste Number, the manifest number, the applicable treatment standard(s), and waste analysis data (if available). The disposal facility must place the certification notice and accompanying data in the operating record. A treatment facility that disposes on-site must put the same information in the operating record (except for the manifest number).

c. *Land disposal facility requirements.* The disposal facility, which is ultimately responsible for verifying that only wastes meeting the treatment standards are land disposed, must maintain all documentation that the waste has been treated in accordance with the standards. If generation, treatment, and disposal all occur at the same site, all testing records must be placed in the operating record. The Agency believes that this approach will produce the desired result—an assurance that wastes placed in land disposal units have met the applicable treatment standards.

The testing and recordkeeping requirements promulgated in today's rule do not relieve the generator of his responsibility under 40 CFR 262.20 to designate a facility on the manifest which is permitted to accept the waste for off-site management.

d. *Implementation of final rule.* To implement the additional waste testing/analysis standards, the Agency has included a reference to the requirements of 40 CFR Part 268 in the general waste analysis requirements of 40 CFR 264.13 (a)(1) and (b)(6) for permitted facilities, and in 40 CFR 265.13 (a)(1) and (b)(6) for interim status facilities. Consistent with the current approach to waste analysis requirements in Parts 264 and 265, the Agency has added these specific waste analysis requirements in today's final rule that must be incorporated into the general waste analysis as a separate section in Part 268. The Agency has also revised the operating record requirements in 40 CFR 264.73 and 40 CFR 265.73 to indicate that waste analyses conducted pursuant to such requirements must be recorded and maintained in the land disposal facility's operating record.

e. *Waste analysis.* Wastes must be tested in accordance with a facilities waste analysis plan. Where treatment standards are expressed as a concentration in a waste extract, EPA is requiring that the TCLP be used to determine whether the waste meets the treatment standard (see Appendix I to Part 268). Guidance on methods for waste sampling and analysis is provided

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in *Test Methods for Evaluating Solid Wastes,* 2nd Edition, EPA Document SW–846, 1982, as amended. In addition, guidance on the preparation of waste analysis plans is provided in *Waste Analysis Plans, A Guidance Manual,* September 1984. A revised edition of this waste analysis plan (WAP) guidance is forthcoming.

The current WAP guidance describes four basic components of the waste analysis plan. It discusses how the owner or operator of a treatment, storage, or disposal facility should describe:

(1) Specific wastes that will be managed;

(2) Waste-associated properties that are of concern in ensuring safe and effective management;

(3) Specific waste parameters that must be quantified before waste is accepted for treatment, storage and/or disposal;

(4) Methods and frequency of sampling and analysis required to obtain the data on waste characterization and the attendant quality control/quality assurance procedures.

For the purposes of compliance with the land disposal restrictions rule, a waste analysis plan for an off-site disposal facility must address the procedures for screening incoming shipments of waste to ensure that wastes received conform to the certification made by the generator or treatment facility. That is, the waste analysis plan must address the procedures necessary for determining whether an extract of the waste or treated waste meets the treatment standards.

These testing requirements for treatment residuals apply to generators who treat, store, and dispose onsite. Less frequent testing may be appropriate when there are fewer and less variable waste streams at combined facilities, but waste must be tested if the composition or treatment method changes. In developing these waste analysis plans, the Agency recommends that the land disposal facilities follow the general guidelines in the WAP guidance.

For each waste stream, the waste constituents regulated under the land disposal restrictions rule must be comprehensively analyzed. Although the frequency of testing will depend to some extent upon the variability of the waste stream, the Agency recommends that a comprehensive analysis of each waste stream be performed at least annually by the generator or treater. When the comprehensive analysis is performed, however, it must contain data on all the applicable constituents in Subpart D so that the owner/operator will be able to determine whether the waste meets all applicable treatment standards. If the owner/operator of the land disposal facility does not receive this information in writing from the generator or treatment facility, he must perform the analysis to determine whether the waste meets the treatment standards according to the waste analysis plan. The test results of this comprehensive analysis must be placed in the land disposal facility's operating record.

The Agency believes that this approach is consistent with existing industry practice. Off-site land disposal facilities already require extensive waste analysis information from the generator or treatment facility before they initially accept hazardous wastes for disposal.

Finally, by requiring that all waste analyses be placed in the operating record, the owners/operators will be able to demonstrate compliance with the waste analysis requirements in § 268.7.

Where the treatment standard for the applicable waste is a specified method of treatment, the last facility to treat the waste must send a certification to the land disposal facility that the waste has been treated using the specified technology. The certification, which is to be placed in the land disposal facility's operating record, must include the statement required under § 268.7(b)(1).

3. RCRA Facilities Operating Under a Permit or Interim Status

These regulations, when they become effective, will place an increased demand on existing hazardous waste treatment facilities. EPA believes that it is important for these facilities to have the regulatory flexibility to add restricted wastes to their treatment inventories quickly. This flexibility is necessary to permit the prompt treatment of restricted wastes.

Treatment facilities operating under interim status are generally provided with the flexibility to handle new wastes by 40 CFR 270.72, which specifies permissible changes during interim status. Under this section, interim status facilities may add new wastes, increase design capacity (if they can demonstrate a lack of available capacity), or make changes in treatment, storage, or disposal processes (if the changes are necessary to comply with Federal regulations or State or local laws). 40 CFR 270.72(e), however, limits these changes to alterations and expansions of a facility that do not exceed 50 percent of the capital cost of a comparable new facility. In cases where changes exceed 50 percent, the changes cannot be made until the facility receives a RCRA permit.

In the preamble to the proposed rule, the Agency requested comments on whether an amendment to 40 CFR 270.72 is necessary to provide interim status facilities the flexibility to manage restricted wastes. EPA received few comments recommending such a change, however, the commenters did not provide data indicating that this provision would prevent modifications needed in order to comply with today's rule. The Agency is reviewing this issue and will modify 40 CFR 270.72, if needed, by promulgating a rule at a later date. However, at this time, we believe that 40 CFR 270.72 allows sufficient flexibility for interim status facilities to readily manage restricted wastes.

Treatment facilities operating under a permit have significantly less flexibility to make changes than interim status treatment facilities. Under current regulations, these facilities may add new wastes or change treatment, storage, or disposal processes, usually through major permit modifications. Major permit modifications, which are substantially the same as permit issuance procedures, require a draft permit, public notice and comment, and opportunity for a public hearing. In many cases, these procedures can be time-consuming and may discourage facilities from changing permit conditions to treat restricted wastes, thereby limiting available treatment capacity.

To provide greater flexibility to permitted facilities, the Agency proposed to allow treatment facilities to manage restricted wastes not listed in their permit after a minor permit modification (51 FR 1692). The EPA received several comments on this issue. In general, industry supported the increased flexibility provided in the proposed rule. Environmentalists, however, argued that permit modifications which permit management of new wastes should not be granted without the opportunity for at least abbreviated public notice and comment. They stated, however, that certain restrictions should be placed on new wastes that could be added to a permit through minor modification procedures.

After reviewing these comments the EPA has decided to add a new section (40 CFR 270.42(o)) to allow permit holders greater flexibility in treating restricted wastes. Under this new provision, owners and operators of treatment facilities may treat restricted wastes not listed in their permits after Federal or State approval of a minor permit modification request. However, in response to public comments and to ensure that changes made under this provision are in fact minor, the EPA has restricted the scope of 40 CFR 270.42(o) in several important respects.

First, new waste must be treated in accordance with the treatment standards issued under Subpart D of Part 268. This will ensure that the treatment is appropriate for the restricted waste. Second, as suggested by the commenters, minor permit modifications are not allowed under this provision if treatment of the new waste will present substantially different risks from the risks associated with wastes listed in the permit. For example, a facility not already permitted to handle acutely hazardous or reactive wastes would not be allowed to treat such wastes under this provision. Finally, under this provision, treatment of the new waste cannot involve any permit changes other than the addition of waste codes and administrative or technical changes necessary to handle the waste, such as changes in the waste analysis plan. Changes in treatment processes or the addition of new treatment processes will continue to require a major permit modification.

This amendment to the minor modification requirements should provide flexibility to permitted facilities treating restricted wastes. It should be emphasized, that the modifications allowed under this provision are significantly limited and they apply only to restricted wastes as described above. The purpose of the amendment is to allow the prompt treatment of restricted wastes in accordance with the land disposal restrictions standards and to increase available treatment capacity. Without these changes, the EPA believes that the ability of permitted facilities to treat restricted wastes promptly will be significantly reduced.

Because of the conditions limiting the applicability of this provision, any permit modifications made under it will be minor. For this reason the EPA does not believe that public notice and comment procedures are necessary, just as they are not required for other minor permit modifications. Such procedure would eliminate the flexibility provided by the minor modification procedures and could complicate or delay treatment of restricted wastes.

The EPA acknowledges that 40 CFR 270.42(o) only partially addresses the difficulties that will be faced by permitted facilities seeking to treat restricted wastes. In particular, it does not allow the modification of existing treatment processes or the addition of new treatment processes to handle restricted wastes. The Agency believes that such changes raise more complicated issues than does the addition of waste codes. However, the Agency is exploring this issue as part of an overall review of the minor permit modification regulations. The EPA is now conducting regulatory negotiations on minor modifications, announced on July 16, 1986 in the **Federal Register**, (51 FR 25739), and anticipates issuing a proposed rule revising this regulation in 1987.

D. Determination of Alternative Capacity And Ban Effective Dates

RCRA section 3004(h)(2) states that the Agency may grant a nationwide variance of up to 2 years from the statutory effective date if adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment is not available. EPA will consider several factors when calculating alternative capacity and when determining the length of any variance from the effective dates of the restrictions. These factors are discussed below.

1. Effective Dates

EPA will develop estimates of treatment capacity needed versus capacity available to determine if current capacity for alternative treatment, recovery, and disposal technologies is adequate to manage restricted wastes. These estimates will be developed from currently available data on capacity requirements and technology capacity.

If capacity is available, the prohibition will go into effect immediately. If capacity is not available, the Administrator may set an alternative effective date on the basis of the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment becomes available. Establishment of the effective date will not be affected by the processing of petitions under section 3004 (d), (e), and (g). The relationship between the variance to the effective date and the case-by-case extension under section 3004(h)(3) is discussed later in this unit.

2. Regional and National Capacity

The Agency will determine both the quantity of restricted waste generated and the capacity of alternative treatment, recovery, and disposal technologies on a nationwide basis. If there is a significant shortfall in capacity to treat all of the restricted waste, the Agency will extend the effective date of the prohibitions. If national capacity is only slightly lacking, EPA may grant case-by-case effective date extensions while allowing the nationwide prohibition to go into effect immediately. If national capacity is sufficient, the prohibition will become effective immediately, even if, for instance, the only capacity for a waste generated in California is located in Ohio.

Many commenters urged EPA to make regional instead of national estimates of required and available capacities. However, the national approach is consistent with congressional intent. The Senate legislative history provides that "the available capacity determination is to be done on a national basis" (S. Rep. No. 284, 98th Cong., 1st Sess. 19 (1983)). That is, the effective date of the prohibitions for a given waste should not vary from region to region because one region has sufficient alternative capacity and another does not. If land disposal were prohibited in only a portion of the country, it is possible that waste generated in one region would be transported outside of that region and land disposed elsewhere. As the Senate report points out, those regions of the country in which land disposal is allowed might become the "dumping ground" for wastes generated in regions where land disposal is banned (S. Rep. No. 284, 98th Cong., 1st Sess. 19 (1983)).

3. The Nationwide Variance and the Case-By-Case Extension

In cases where EPA has not granted a nationwide variance, it is not precluded from granting case-by-case effective date extensions. It may be more desirable to grant case-by-case extensions to specific applicants who lack alternative capacity than to allow everyone, even those for whom alternatives are available, to continue to land dispose restricted wastes. This approach is consistent with congressional intent to prohibit land disposal at the earliest possible time.

EPA also may grant variances of less than 2 years, even though not all facilities under construction will be completed. Wastes requiring the capacity from uncompleted facilities also could be handled by case-by-case extensions, without allowing continued land disposal nationwide.

If the Agency proposes an immediate effective date, it will accept applications for case-by-case extensions before the final rule is promulgated so the extensions will be effective when the final rule is published in the **Federal Register**. EPA will consider information provided by case-by-case extension applicants as well as comments submitted during the public comment

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period, in determining whether to grant a nationwide variance in the final rule.

The Agency will consider the possibility of granting a nationwide variance after the prohibition becomes effective if available data (including data from case-by-case extension applications) indicate that nationwide capacity is inadequate. EPA also will consider whether it should shorten the period of a nationwide variance based on new information showing that nationwide capacity is adequate. However, after EPA promulgates a nationwide effective date, this date is not likely to be amended because it is unlikely that Federal rulemaking activities could be completed in significantly less than 2 years.

4. Determination of Capacity Requirements by Waste Treatability Group

In general, EPA will develop treatment standards for waste groups derived from the physical/chemical characteristics of the restricted wastes. EPA also will determine the quantities of wastes that require specific treatment of recovery methods by waste treatability group. These treatability groups will enable EPA to compare required capacity (capacity demand) with available capacity (capacity supply). In addition, EPA will consider other increases in capacity demand generated by emergency and remedial responses, and to the extent possible, the impact of other final rulemakings that affect availability of or demand for treatment capacity. As necessary, EPA will set different effective dates for different waste groups or subdivisions of waste groups.

In some cases, the same technology will apply to several waste groups that must be regulated in the same or in sequential rulemakings. However, total capacity may not be sufficient to treat all of these groups of wastes. In such cases, the Agency will subdivide the waste groups in order to use all available treatment capacity on specific subgroups so as to implement the restrictions as quickly as possible. Under this approach, as much waste as possible would be prohibited immediately.

5. Definition of Available Capacity

In estimating available capacity, the Agency will consider current on-line facilities, which include permitted facilities and facilities operating under RCRA interim status, and planned facilities and capacity extensions that will be on-line by the effective date of a land disposal prohibition.

Current on-line facilities consist of off-site and on-site facilities, including both stationary and mobile facilities which have been approved by Federal, State, and local agencies to operate and accept certain wastes. Facilities operating under RCRA interim status meet these criteria, and therefore will be included in the capacity determination. Some commenters disagreed with this approach, suggesting that interim status facilities may not receive final permits. However, unless EPA receives notification of intent to close an interim status facility, the Agency will assume continued operation of a facility throughout the permitting process and continued available capacity on the effective date of a prohibition.

Planned facilities are facilities that are under development or under construction. Planned facilities include new off-site and on-site treatment, recovery, and disposal facilities, as well as planned capacity additions or expansions to existing facilities.

Some commenters questioned the validity of including planned facilities in estimates of available capacity. They stated that the Agency could not make accurate predictions about such capacity. The Agency will consider planned capacity only if it is reasonably certain that the facility will be on-line by the effective date of a prohibition. To predict whether a facility will be on-line in time, EPA will consider the time needed to complete the facility, including reasonable estimates of time needed to site the facility, obtain permits, construct, and test. In most cases, EPA will consider the capacity of planned facilities only when all permits required for construction have been approved and sufficient additional evidence of intent to build are available (such as contracts issued for construction). Planned capacity was not included in the estimates of available capacity for solvents and dioxins.

6. Definition of Alternative Treatment Capacity

The Agency believes that treatment technologies that will achieve the standards established under section 3004(m) can be considered available treatment capacity under the provision in section 3003(h)(2).

Section 3004(m) directs EPA to establish standards based on treatment that will minimize long- and short-term threats to human health and the environment. The Agency believes that this provision generally will be satisfied by technologies classified as BDAT. In most cases, treatment levels or methods based on BDAT are expected to fully protect human health and the environment. Accordingly, technologies that form the basis for such standards are candidates for the capacity evaluation under section 3004(h) (2) and (3).

In those cases where standards based on BDAT are not deemed to be fully protective of human health and the environment, the Agency may, as a matter of policy, exercise its discretionary authority not to extend the effective date of a prohibition in cases where the existing capacity of fully protective technologies, coupled with the existing capacity of treatment technologies that meet BDAT , is adequate to address the restricted wastes.

The Agency believes that this approach is consistent with Congressional intent. The section 3004(h) variance is intended to encourage the development of protective alternative treatment, recovery,and disposal capacity. (S. Rep. No. 284, 98th Cong., 1st Sess. 18 (1983), H.R. Rep. No. 198, 98th Cong., 1st Sess. 37 (1983)). However, in cases where BDAT is not fully protective, the regulated community will have little incentive to develop protective alternative treatment methods during the variance period in light of the fact that, at the end of any such variance, hazardous waste may be land disposed if the wastes comply with less protective technology-based standards. In such a case, the effect of the variance would simply be to delay compliance with BDAT and not, as Congress intended, to provide limited additional time for the development of protective alternative technologies.

Treatment methods that are not identified as the basis for BDAT for the waste group being considered also will be included in the capacity determination, as long as EPA judges that the method can achieve the treatment standards for the wastes in question and will pose less risk than land disposal. EPA believes that this approach is consistent with the congressional intent to ban hazardous wastes from land disposal at the earliest possible date, as discussed earlier.

7. Definition of Alternative Recovery and Disposal Capacity

In assessing available capacity, the Agency will consider the capacity of all on-line recovery and disposal facilities that are protective of human health and the environment. These include disposal facilities for which EPA has granted a site-specific petition demonstrating no migration of hazardous constituents for as long as the wastes remain hazardous (but not facilities where a petition is pending, but not granted). Planned facilities, including expansion of existing facilities, also will be considered where appropriate.

However, alternative land disposal methods (e.g., deep well injection) will not be considered as available capacity for a restricted waste unless EPA has determined that such methods of disposal are fully protective of human health and the environment. Therefore, EPA will not consider underground injection to be available disposal capacity, until the Agency has determined whether the injection of such wastes is fully protective of human health and the environment. Although EPA is not including underground injection into deep wells in its capacity determinations this does not preclude its use for disposal of these wastes before August 1988.

8. Estimation of Capacity

EPA will estimate the annual unused or surplus capacity of alternative treatment, recovery, and disposal facilities that is available nationwide to manage wastes restricted from land disposal. The Agency will compare nationwide capacity (capacity supply) to the quantities of restricted waste generated annually nationwide (capacity demand).

Surplus capacity will be expressed as throughput capacity. Because data on unused throughput may be difficult to obtain in some instances, EPA may use other available information to calculate capacity, such as the difference between practical maximum design capacity and capacity currently utilized. As discussed earlier, when information is available, EPA will consider both current surplus capacity and planned capacity when calculating surplus capacity. However, today's final rule considers only current surplus capacity because data on planned capacity were not available.

Current surplus capacity is defined as present capacity which is not being used. Surplus capacity can be any of the following:

(i) Commercially available.

(ii) Private capacity which can be used to process additional waste produced by the facility.

(iii) Private capacity, where the owner is willing and able to accept wastes from other generators, i.e., to provide commercial services.

EPA assumes that commercial facilities are willing to accept wastes that they are capable of treating. In cases where commercial capacity is inadequate, EPA will consider the likelihood that available private capacity not needed to process additional waste produced by the facility will be converted to commercial capacity. However, due to limited information on the availability of private capacity for solvents and dioxins, EPA has considered only commercial capacity for this rulemaking.

In today's final rule, capacity estimates are based on currently available information, including the "National Survey of Hazardous Waste Generators and Treatment facilities regulated under RCRA in 1981" (OSW RIA Mail Survey, RCRA LDR-2 docket for the proposal), a 1986 EPA study on incinerator and cement kiln capacity (Ref. 15), a 1984 survey of the National Association of Solvent Recyclers (Ref. 6), and the 1986 EPA National Screening Survey of Hazardous Waste Facilities (Ref. 21). The Agency is developing a new survey of commercial and private treatment facilities which will address the concerns of commenters who pointed out the need for an updated data base. EPA intends to use data from this survey in making capacity determinations for future rulemakings.

9. Applicability of the Minimum Technological Requirements

Section 3004(h)(4) provides that during the period of a national variance under (h)(2) or a case-by-case extension under (h)(4), the waste may be disposed in a landfill or surface impoundment only if the facility is in compliance with section 3004(o).

E. Exemption for Treatment in Surface Impoundments

The Agency proposed to exempt treatment surface impoundments from the land disposal restrictions under the conditions specified in section 268.4. This exemption is authorized by sections 3005(j)(11)(A) and (B). EPA received few comments on the proposed interpretation of sections 3005(j)(11)(A) and (B). Most commenters criticized EPA's general approach as being too restrictive, though some commenters viewed it as too lenient. Some commenters suggested that the Agency not allow treatment of restricted wastes in surface impoundments. After careful review and consideration of the comments, EPA still believes that its proposed approach is the most defensible and logical reading of the statutory language and is consistent with congressional intent. Therefore, the Agency is promulgating exemption for treatment in surface impoundments essentially as proposed.

Under today's final rule, a waste that otherwise would be prohibited from one or more methods of land disposal may be treated in a surface impoundment that meets certain technological requirements as long as treatment residuals that do not meet the applicable treatment standard are removed within 1 year of the entry of the waste into the impoundment.

The provision applies only to restricted wastes and not to wastes that meet the treatment standards established under section 3004(m), or that have been exempted from the effective date of the prohibition by a case-by-case extension or have been exempted from the ban through the petition process. Such wastes are not considered "prohibited" wastes and, accordingly, may be given additional treatment in a surface impoundment without complying with the restrictions imposed by section 3005(j)(11)(B). This provision also applies to both permitted and interim status surface impoundments used for the treatment of hazardous wastes. For the purpose of this rulemaking, EPA considers the term "surface impoundment" to include both single units and series of surface impoundments. The Agency believes that Congress did not intend to preclude the use of a series of impoundments.

1. Sampling and Removal of Treatment Residuals

Within 1 year after a restricted waste is placed in an impoundment, representative samples of the treatment residuals must be tested to determine whether they meet the applicable treatment standards. Sampling techniques are detailed in the *Waste Analysis Plans, A Guidance Manual*, September 1984 (ref. 8). The sampling plan must be designed such that the sludge and supernatant (liquid portion) are tested separately, rather than mixed to form a homogeneous sample. If the treatment residuals meet the applicable treatment standard, they remain subject to regulation under Subtitle C of RCRA but are no longer restricted wastes and may remain in the surface impoundment for disposal. Treatment residuals that exceed the treatment standards must be removed at least annually from the time the waste is first placed in the impoundment. These residuals may not be placed in any other surface impoundment for subsequent management.

Treatment impoundments do not necessarily have to be drained in order to remove treatment residuals. (See Vol. 130, *Cong. Rec.* S13815, (daily ed. October 5, 1984)). In the case where the treatment residual is a liquid, that residual may be removed by pumping. If the volume flowing annually through an impoundment (or series of impoundments) is greater than the

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volume of the impoundment, this flow-through constitutes removal of the supernatant for purposes of this requirement. However, as stated earlier, any treatment residual that exceeds the applicable treatment standards and, therefore, must be removed annually from the impoundment or series of impoundments, may not be placed in any other surface impoundment for subsequent management.

The two general methods available for removing residuals with a lower water content, such as sludges and solids, are excavation and dredging. The technique used depends upon such variables as surface impoundment design characteristics (e.g., shape, surface area, depth, presence of liner, type of liner), waste characteristics and type, and accessibility of the impoundment.

One commenter argued that the annual removal requirements does not address the potential for damage to the liner. The Agency recognizes that there is a potential for liner damage during the removal process. However, the annual removal requirement is a statutory standard under section 3005(j)(11)(B). The Agency may issue guidance at a later date regarding removal requirements such as testing for liner damage and prohibiting certain types of removal methods.

2. Applicability of Minimum Technological Requirements

Under today's final rule, an owner/operator operating an impoundment under the treatment surface impoundment exemption must certify to the Administrator that the impoundment meets the liner, leachate collection system, and ground water monitoring requirements imposed by section 3004(o)(1), unless the impoundment qualifies for certain exemptions.[9] A surface impoundment is exempted from liner and leachate collection system requirements if the impoundment has at least one liner that is not leaking, is located more than one-quarter mile from an underground source of drinking water, and is in compliance with certain ground water monitoring requirements in section 3005(j)(2), or if it is demonstrated that there will be no migration of any hazardous constituent to ground water or surface water at any future time according to section 3005(j)(4). (See "Interim Status Surface Impoundments Retrofitting Variances Guidance Document," EPA/530-SW-86-017, July 18, 1986, for information concerning the requirements specified in RCRA sections 3005(j)(2) and (j)(4).) An owner or operator of an existing surface impoundment must apply to the Administrator prior to November 8, 1986, to be considered for waivers of the minimum technological requirements.

Several commenters suggested that EPA also should allow an owner/operator to treat restricted wastes in a surface impoundment if they are exempt from the minimum technological requirements under sections 3005(j)(3) or (13). (Paragraph (j)(3) pertains to certain wastewater treatment units; paragraph (j)(13) pertains to certain impoundments subject to corrective action requirements.) However, in specifying the requirements in section 3005(j)(11)(A) for surface impoundments that are used to treat restricted wastes, Congress specifically included only the section 3005(j)(2) and (4) exemptions to the minimum technological requirements. Therefore, only these two exemptions are included in the final rule. Accordingly, an impoundment that was granted an exemption from the minimum technological requirements under sections 3005(j)(3) or (13), nonetheless, would be prohibited from treating restricted wastes.

F. Case-By-Case Extensions

According to section 3004(h)(3), in cases where adequate alternative treatment, recovery, or disposal capacity cannot reasonably be made available by the effective date, any person who generates or manages a restricted hazardous waste may submit an application to the Administrator for an extension of the effective date if such alternative capacity can be provided at a later date. Pursuant to this provision, the Agency proposed to allow a case-by-case extension of the effective date if the applicant can demonstrate that he has entered into a binding contract to construct or otherwise provide such alternative treatment, recovery or disposal capacity. The applicant must also demonstrate that, due to circumstances beyond his control, such alternative capacity reasonably cannot be made available by the applicable effective date. In the event that an extension is granted, an applicant is exempted from the land disposal restrictions, including the conditional prohibition on storage under § 268.50. Any landfill or surface impoundment receiving waste during the extension must comply with the ground water monitoring, liner, and leachate collection system requirements in § 268.4(a)(3).

The majority of the commenters supported the proposed approach for case-by-case extensions. However, the Agency received comments requesting modifications to several aspects of the proposed rule. Section 268.5 of today's final rule incorporates the procedures for case-by-case extensions essentially as proposed, but with modifications based on these comments.

1. Demonstrations Included in Applications

a. *The applicant has made a good-faith effort to locate and contract with alternative technologies nationwide.* EPA proposed to require applicants to make a good-faith effort to locate available capacity before being granted a case-by-case extension. Section 3004(h)(3) requires that the applicant demonstrate a binding contractual commitment to provide capacity and show that "such" capacity (i.e., the capacity contracted for) cannot reasonably be made available by the effective date. Thus, there is no requirement on the face of the statute that the applicant be denied an extension if alternate capacity is currently available. As noted in the proposal, however, the legislative history to the original Senate bill suggests that requiring facilities to investigate available capacity is consistent with congressional intent. Thus, the good-faith showing provided in today's rule, though not statutorily required, is consistent with the legislative history and is within the Agency's authority.

The applicant may provide copies of correspondence with commercial facilities that leave rejected the waste on the basis of waste composition or capacity shortages as part of the demonstration for § 268.5(a)(1) and (a)(3).[10] EPA's "1985 Hazardous Waste Treatment Directory" (available at no charge in limited quantities from the RCRA/Superfund Hotline or available for sale through the National Technical Information Service (NTIS) as PB86 #178431/AS) lists commercial treatment and recycling facilities that are identified from the Hazardous Waste Data Management Systems (HWDMS). A more up-to-date list of commercial treatment and recycling facilities is being prepared from data gathered from the 1986 National Screening Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities. The new Treatment Facility Directory prepared from this screening questionnaire is expected to be available in November, 1986.

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[9] EPA construes section 3005(j)(11)(A) to impose an additional condition on the treatment of hazardous wastes in surface impoundments under section 3005(j)(11)(B).

[10] In cases where a waste cannot be treated by the BDAT method or to the specified level using BDAT, the generator or owner/operator may petition the Agency for a variance from the treatment standard under § 268.44.

b. *Binding contractual commitment.* One commenter argued that the use of the case-by-case extension would be limited to on-site alternative capacity because of the requirement in § 268.5(a)(2) for a binding contractual commitment. EPA disagrees with the commenter. The Agency believes that the requlation is consistent with the statutory provision which requires that the applicant enter into a binding contractual commitment "to construct or *otherwise provide* alternative . . . capacity" (emphasis added). In other words, a generator may enter into a binding contractual commitment with a commercial facility to guarantee that the capacity to manage his waste will be available at the commercial facility. This demonstration requires a commercial facility to agree that alternative capacity under development at the facility is set aside for the applicant's waste. One commenter argued that, in such situations, the generator would not be a party to the contractual commitment to construct the facility. EPA agrees with the comment, but the point is not relevant since the generator would have a contract with a commercial facility which will provide the needed alternative capacity.

One commenter argued that State law defines binding contractual commitments, therefore, the Agency does not need to judge whether the penalties for cancelling the contract are adequate. EPA agrees with the commenter. Accordingly, the Agency is amending the regulatory language by deleting the stipulation for a cancellation penalty clause.

c. *Lack of capacity is beyond the applicant's control.* For technologies under construction, the applicant may document the completion schedule, including dates already passed, (e.g., date of permit application submission) to demonstrate that the technology cannot be made available by the effective date. This schedule, if available, also will be used by the Agency to identify key target dates that should be discussed in progress reports.

Several commenters stated that the legislative history allows EPA to consider economic factors in evaluating requests for case-by-case extensions. The Agency agrees that the statutory language can be construed to allow an applicant to show that if would not be feasible to use existing capacity. Although the legislation as enacted did not include House of Representatives language expressly providing a variance based on "severe economic hardship," the conference report did add language allowing for a demonstration that adequate alternative capacity cannot "reasonably" be made available by the effective date. Therefore, in making its determinations concerning the availability of such alternative capacity, EPA will consider the feasibility of providing alternative capacity during the period of the requested extension in order to determine whether capacity reasonably is available. The determination of feasibility may involve consideration of the technical and practical difficulties associated with providing alternative capacity.

d. *The capacity will be sufficient to manage all of the waste covered by the application.* One commenter stated that research and development activities generate variable amounts of waste, so it may be difficult to prove that alternative capacity will be sufficient for all the wastes covered by an extension. EPA recognizes that the amount of waste affected by the land disposal regulations may vary according to economic conditions and unforeseen changes in quantities of waste produced or in consitituents present in the waste. However, the Agency expects applicants to plan to provide adequate capacity for all wastes expected to be affected by the restriction decisions. Therefore, EPA expects applicants to make capacity determinations on the basis of the maximum volume of waste expected to be subject to the land disposal restrictions.

The Agency is requiring under § 268.5(a)(4) that the applicant provide information (e.g., waste quantities and operating capacity) to demonstrate that, after the extension, sufficient capacity will exist for the waste covered by the application for extension. EPA will not grant an extenion in cases where alternative capacity is not being provided for the entire volume of waste addressed in the application.

The Agency will grant extensions to applicants demonstrating planned changes to a process that eliminate wastes, decrease volume, or render a waste treatable. Any waste not eliminated by process changes instituted as a result of the extension must be sent to other specified capacity.

e. *Detailed schedule for providing capacity.* The completion schedule, if available, will be used to identify the dates and events that should be addressed in the progress reports. Progress reports should indicate either the existence of alternate capacity that will be available according to the time frame outlined or the circumstances causing delays in the schedule and the efforts required to compensate for the loss of time. If capacity is not available near the end of the first extension, the applicant must request a renewal of the extension, not to exceed one year. In cases where it is obvious that the schedule to provide capacity will exceed one year, the request for a second extension should be straightforward, since the second extension was foreseen from the start.

f. *Document locations with adequate capacity to manage waste during an extension.* The applicant must demonstrate that sufficient capacity will exist during the extension to store, dispose of, or otherwise manage the waste. This demonstration must include the location of all off-site waste management facilities and a short description of the porocesses that will be used for waste management during the extension (e.g., storage in on-site tanks). The identification of off-site facilities that will accept the waste during the extension should be part of the demonstration. This information will be shared with the States and will be available for inspection in the event of a public hearing on the extension decision.

g. *Any surface impoundment or landfill managing wastes during an extension must meet the requirements of § 268.5(h)(2).* During the period of a national variance under section 3004(h)(2) or a case-by-case extension under section 3004(h)(4), the waste may be managed in a landfill or a surface impoundment in compliance with section 3004(o). This section, enacted as part of the 1984 amendments to RCRA, imposes minimum technological requirements on certain new landfill and surface impoundment units, and on replacements and lateral expansions of existing units. The proposed rule would have construed section 3004(h) to require the unit to comply with the requirements set out in section 3004(o). Thus, the proposal would have required existing units to comply with section 3004(o) requirements during the period of a variance, even though the plain language of section 3004(o) exempts such units.

Upon reconsideration, however, EPA believes that the proposed interpretation is not the appropriate reading of the statutory language. On its face, the statute requires the "facility" to be in compliance with section 3004(o). The facility includes the area within the property boundary and encompasses all waste management units (both new and existing). Accordingly, a straightforward reading of the statute would provide that the facility is in compliance with section 3004(o) as long as the new units, lateral expansions and replacements referred to in section 3004(o) are in compliance with the requirements of that section. Because existing units are excluded from section 3004(o), they would also not be required to comply with the minimum technological requirements under section 3004(h)(4). Section 3004(h)(4) thus makes clear that obtaining a variance from the effective date of the land disposal prohibitions does not relieve the owner or operator of a disposal facility of the obligation to comply with the technical requirements independently imposed by other statutory provisions.

In addition, this interpretation is reasonable in view of the fact that the alternative capacity under consideration in today's rule includes treatment in surface impoundments that meet the requirements of section 3005(j)(11). These requirements include double liners (with limited exceptions). Construing section 3004(h) to require minimum technological requirements for all units would mean that a prohibited waste that was granted a variance from the effective date due, in part, to a lack of double-lined surface impoundment capacity would nonetheless have to be disposed of in an impoundment in compliance with section 3004(o). EPA believes that the statute should not be construed to require such an illogical result. Therefore, today's rule requires that the facility be in compliance with the regulatory provisions that incorporate the requirements of section 3004(o).

2. Where To Send Extension Applications

A petitioner should submit one copy of the application for extension to the applicable land disposal restrictions effective dates to:

The Administrator, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

An additional copy marked "Extensions" should be submitted to:

Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Applications containing confidential information should be sent with only the inner envelope marked "Extensions" and "Confidential Business Information" and with the contents marked in accordance with the requirements of 40 CFR Part 2 (41 FR 36902, September 1, 1976, as amended by 43 FR 40000).

3. Review of Applications for an Extension

Several commenters recommended that the Agency establish regulatory time constraints for reviewing extension applications under § 268.5(e). One commenter specifically requested deadlines similar to those for evaluation of delisting petitions pursuant to section 3001(f)(2). In particular, they stated that the Agency should impose internal processing deadlines for review of extension applications and set a limit on the period for public comment. Although EPA fully understands the need to grant extensions before the effective date of the land disposal restrictions, EPA will not commit to establishing a set response time for extension applications for several reasons.

First, EPA cannot anticipate the level of resources necessary to process applications. As of August 8, 1986, three months before the statutory restrictions on solvents become effective, EPA had received only one request for an extension, despite one comment predicting extensive use of this provision. Second, experience with the permitting and delisting processes has shown that the review process often includes several requests for clarification or additional information before an application is considered completed. Turnaround time regarding deficiencies can vary depending on the responsiveness of the applicants. Finally, time required for consultation with the affected States is difficult to predict.

While the Agency will not specifically limit its internal review period, EPA has recommended that applicants submit extension requests at least six months before an effective date (when possible) to provide a reasonable opportunity to process applications before the effective date. To further expedite the review process, the Agency will limit the public comment period to 30 days.

Under some circumstances, capacity under development will not become available until after a national variance expires. In these situations, persons requiring an extension should submit an application as soon as the capacity shortage is identified.

4. Applicability of Case-by-Case Extensions

One commenter stated that EPA shoud grant case-by-case extensions only in cases where a national capacity shortfall exists. The Agency disagrees with the commenter. The case-by-case extension process was intended to cover those rare situations when an individual applicant can demonstrate that capacity will not be reasonably available to him even if national capacity is otherwise sufficient. As stated earlier, the variance is based on the "feasibility" of providing alternative capacity.

5. Length of the Case-by-Case Extension and Renewals

As discussed in the proposed rule, case-by-case extensions cannot extend beyond 48 months from the statutory land disposal restriction dates. Therefore, extensions will not exceed the following dates:

November 8, 1990, for certain listed dioxin-containing and solvent wastes;
July 8, 1991, for wastes identified as California List wastes;
August 8, 1992, for the first third of the listed hazardous wastes;
June 8, 1993, for the second third of the listed hazardous wastes; and
May 8, 1994, for the remaining hazardous wastes, including characteristic hazardous wastes.

On the applicable effective date, a restricted waste is subject to the provisions of Part 268 until a case-by-case extension is granted. For example, if a person requests an extension on January 8, 1987, for a solvent waste restricted from land disposal on November 8, 1986, the waste is restricted from land disposal from November 8, 1986, until the extension is granted. The extension would not exceed the November 8, 1990, deadline.

The effective date for certain newly listed wastes may fall after the May 8, 1990, date for scheduled wastes. Such wastes may require extensions beyond the May 8, 1994, date. EPA expects that the short duration of the extensions (not to exceed two years) will encourage generators of hazardous waste to minimize the quantity of hazardous waste subject to the land disposal restrictions. Generators should explore changes in process substitution, materials recovery, recycling and reuse, and alternative treatment as alternative methods of complying with the land disposal restrictions. EPA has prepared a report to Congress for presentation during November 1986, on waste minimization which identifies some waste minimization practices.

6. Consultation With Affected States

All states will be notified via **Federal Register** announcement of tentative decisions to permit extensions for restricted wastes. States that anticipate that they may be affected by a specific extension should contact EPA. EPA then consult with appropriate agencies in the affected States as required by section 3004(h)(3). EPA expects that states most interested in extension decisions will be those in which the waste was generated, those accepting waste during the extension period, and those with capacity under development. Applicants can expedite the review process by submitting information outlining how the wastes will be managed in each of the affected States as part of the demonstrations under § 268.5 (a)(4), (a)(6), and (a)(7).

G. Evaluation of Petitions Demonstrating Land Disposal To Be Protective of Human Health and the Environment

The statutory standard for evaluation of these petitions requires that the applicable land disposal method be protective of human health and the environment. The statute further specifies that a method of land disposal may not be determined to be protective unless it has been demonstrated, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous. (RCRA section 3004(d), 42 U.S.C. 2964(d)(1)).

In demonstrating "no migration," the petitioner must take into consideration the likely effects of long-term geologic processes and climatic phenomena, such as, but not limited to, earthquakes and floods, and any other events that can be reasonably predicted. The petitioner should not assume that any man-made barriers or engineered systems will satisfy the "no migration" standard, because artificial barriers alone cannot be relied upon to provide the long-term assurances that the statutory standard requires. However, these units may satisfy the standard when the petitioner is requesting temporary storage of restricted waste on the land.

The Agency has identified three scenarios that may satisfy the requirements of the statutory standard of "no migration". The first involves a situation where environmental parameters are such that no detectable migration of hazardous constituents would occur from the disposal unit. For example, this scenario may occur when a waste consisting of relatively immobile hazardous constituents is placed in a monofill located in an arid climate with no ground water recharge. Another example involves placement of a small volume of compatible waste in a massive and stable salt dome formation. The second would rely on an active chemical or physical process, such as the neutralization of a corrosive waste in a surface impoundment, where no hazardous waste remains in the unit. This is especially applicable to characteristic wastes. The third involves the temporary storage of hazardous waste in a land-based unit, such as an indoor waste pile, where engineered containment systems are effective over the period the waste remains in storage.

The "no migration" standard clearly would be violated in a situation where unacceptable concentrations of hazardous constituents are occurring at the waste management boundary, even though the concentration at a potential receptor site some distance from the waste management boundary is below an applicable health-based level.

The Agency, generally, will deny a petition where there is a history of continuing mismanagement of hazardous waste at the disposal unit as evidenced by State or EPA monitoring and on-site inspection reports.

1. Procedures for Submitting and Reviewing Petitions

The Agency proposed that petition review would eventually be the responsibility of either the EPA Regional offices or authorized States. Upon reevaluation, the Agency believes that there will be relatively few petitions submitted. Accordingly, the Agency is requring that applicants submit petitions to the Administrator.

The five general steps of the petition review process involve the submittal of the petition, Agency review of the petition, notice of the Agency's tentative decision in the **Federal Register**, a 30-day public comment period, and notice of the Agency's final decision in the **Federal Register**. (See § 268.6.) Two copies of the petition should be submitted (by registered mail) to the Administrator. The Agency will initially review a petition for completeness. Once a petition is considered complete, it will be reviewed on the basis of the technical information supplied. The Agency will publish in the **Federal Register** a tentative decision to grant or deny a petition. The Agency will consider public comments and any new data submitted during the comment period. The Agency will then publish its final decision in the **Federal Register**.

During the petition review period, petition applicants are required to comply with all restrictions on land disposal of the waste. The receipt of a petition by the Agency does not delay the effective date of any restrictions applicable to the waste.

H. Treatability Variance

1. Basis for Establishing a Treatability Variance

Several commenters recognized that there may be particular waste streams that cannot be treated to the level (or by the method) specified by the treatment standard. The Agency agrees with these commenters, and is establishing a procedure to evaluate petitions for a variance from the treatment standard.

The Agency envisions that wastes may be subject to a treatability variance in cases where the treatment standard for a particular waste cannot be met because the waste does not fit into one of the BDAT treatability groups. A particular waste may be significantly different from the wastes considered in establishing treatability groups because the waste contains a more complex matrix which makes it more difficult to treat. For example, complex mixtures may be formed when a restricted waste is mixed with other waste streams by spills or other forms of inadvertent mixing. As a result, the treatability of the restricted waste may be altered such that it cannot meet the applicable treatment standard. In such a case, generators or owners/operators may petition the Agency for an alternative treatment standard.

On September 5, 1986, the Agency published a Notice of Availability of Data in the **Federal Register** (51 FR 31783) outlining its authority under section 7004(a) to act on petitions to amend or repeal any regulation under RCRA and requesting comments on a procedure by which petitions for a variance from the treatment standard would be evaluated. Commenters on the Notice of Availability generally supported the concept of a variance from the treatment standard. Two commenters specifically supported providing variances through a rulemaking procedure, while another commenter, though recognizing EPA's authority to amend the treatment standards by rulemaking, urged the Agency to adopt a more streamlined variance procedure similar to that used in other EPA rules. Commenters also suggested specific criteria to be considered in evaluating variance petitions.

EPA agrees that the Agency has the authority to choose between a rulemaking and a variance procedure when considering the unique aspects of wastes that were not considered in developing the treatment standards. Nothing in the language or legislative history of the statute suggests that Congress intended to preclude EPA from adopting a variance procedure once the Agency has issued treatment regulations under section 3004(m).

The Agency is promulgating procedures for a variance from the treatment standard under § 268.44 of today's rule. Essentially, the new provision will allow applicants to use procedures similar to those now used for rulemaking petitions under 40 CFR

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260.20. In light of the comments, however, EPA intends to issue a proposal asking for further comments on the option of using a variance procedure rather than a rulemaking. Because there was insufficient time prior to today's rule to fully consider all issues relating to the establishment of a variance procedure, EPA believes it is more appropriate to request additional comments. Similarly, EPA will consider additional comments on the appropriate criteria by which to evaluate variance requests in the context of the future rulemaking. In the meantime, this preamble outlines some criteria that EPA believes should be considered by applicants for a variance from the treatment standard.

2. Demonstrations Included in a Petition

Variance petitions must demonstrate that the treatment standard established for a given waste cannot be met. This demonstration can be made by showing that attempts to treat the waste by available technologies were not successful, or through appropriate analyses of the waste which demonstrate that the waste cannot be treated to the specified levels. Variances will not be granted based on a showing that adequate BDAT treatment capacity is unavailable. Such demonstrations can be made according to the provisions in § 268.5 for case-by-case extensions of the effective date.

The Agency will consider granting generic petitions provided that representative data are submitted to support a variance for each facility covered by the petition.

Petitioners should submit at least one copy to:

The Administrator, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

An additional copy marked "Treatability Variance" should be submitted to:

Chief, Waste Treatment Branch, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Petitions containing confidential information should be sent with only the inner envelope marked "Treatability Variance" and "Confidential Business Information," and the contents marked in accordance with the requirements of 40 CFR Part 2 (41 FR 36902, September 1, 1976, amended by 43 FR 40000).

The petition should contain the following information:

(1) The petitioner's name and address;

(2) A statement of the petitioner's interest in the proposed action;

(3) name, address, and EPA identification number of the facility generating the waste, and the name and telephone number of the plant contact;

(4) The process(es) and feed materials generating the waste and an assessment of whether such process(es) or feed materials may produce a waste that is not covered by the demonstration;

(5) A description of the waste sufficient for comparison with the wastes considered by the Agency in developing BDAT, and an estimate of the average and maximum monthly and annual quantities of waste covered by the demonstration; (Note: The petitioner should consult the appropriate BDAT background document for determining the characteristics of the wastes considered in developing treatment standards.)

(6) If the waste has been treated, provide a description of the system used for treating the waste, including the process design, operating conditions and an explanation of the reasons the treatment standards are not achievable or are based on inappropriate technology for treating the waste; (Note: The petitioner should refer to the appropriate BDAT background document as guidance for determining the design and operating parameters that the Agency used in developing treatment standards.)

(7) A description of the alternative treatment systems examined by the petitioner (if any), a description of the treatment system deemed appropriate by the petitioner for the waste in question, and, as appropriate, the concentrations in the treatment residual or extract of the treatment residual (using the TCLP) that can be achieved by applying such treatment to the waste;

(8) The dates of the sampling and testing;

(9) A description of the methodologies and equipment used to obtain representative samples;

(10) A description of the sample handling and preparation techniques, including techniques used for extraction, containerization, and preservation of the samples; and

(11) A description of the tests performed (including results).

After receiving a petition for a variance, the Administrator may request any additional information or waste samples which he may require to evaluate and process the petition.

Additionally, all petitioners must certify that the information provided to the Agency is accurate under § 268.4(b).

In determining whether a variance would be granted, the Agency will first look at the design and operation of the treatment system being used. If EPA determines that the technology and operation are consistent with BDAT, the Agency will evaluate the waste to determine if the waste matrix and/or physical parameters are such the BDAT properly reflects treatment of the waste.

In cases where more than one technology is applicable to a waste, the petitioner would have to demonstrate that the treatment standard cannot be met using any of the technologies, or that none of the technologies is appropriate for treatment of the waste. After the Agency has made a determination on the petition, the Agency's findings will be published in the **Federal Register**, followed by a 30-day period for public comment. After review of the public comments, EPA will publish its final determination in the **Federal Register** as an amendment to the treatment standards in Part 268 Subpart D.

V. Treatment Standards for Solvents

A. Introduction

On May 19, 1980 (45 FR 33119), the Agency listed 27 commonly used organic solvents as hazardous wastes when spent or discarded. The solvents were listed as EPA Hazardous Waste Nos. F001, F002, F003, F004, and F005. The listed solvents include certain spent halogenated and non-halogenated solvents, and still bottoms from the recovery of these solvents. Due to the manner in which the F001–F005 listings were originally structured, a major regulatory loophole was created by the Agency. As written, the listings only covered the pure form or the commercial grades of these solvents. Therefore, the Agency amended the listing to include mixtures containing a total of 10 percent or more (by volume) of one or more of the listed solvents, as published in the **Federal Register**, December 31, 1985 (50 FR 53315).

In the proposed rule to the land disposal restrictions, several commenters requested that the Agency clarify the scope of the spent solvent listings. The commenters stated that confusion exists regarding specifically what wastes are covered by the solvent listings. The Agency recognizes this problem and has incuded the following discussion in today's rule to provide further clarification of the F001–F005 solvent listings.

The spent solvent listings cover only those solvents that are used for their solvent properties—that is to solubilize (dissolve) or mobilize other constituents. For example, solvents used in degreasing, cleaning, fabric scouring; as diluents, extractants, reaction and synthesis media; and similar applications are covered under the listing (when "spent"). A solvent is considered spent when it has been used and is no longer fit for use without being regenerated, reclaimed, or otherwise reprocessed.

Manufacturing process wastes where solvents were used as reactants or ingredients in the formulation of commercial chemical products are not covered by the listings. The products themselves also are not covered. See the original solvent listing background document (Novermber 14, 1980) available in the RCRA docket.

Today's final rule does not include treatment standards for the commercial chemical products, manufacturing chemical intermediates and off-specification commercial chemical products (P and U wastes) that correspond to the F001–F005 spent solvent wastes. These wastes will be addressed according to the schedule promulgated on May 28, 1986 (51 FR 19300). The final rule also does not cover the four newly listed solvents in the F001–F005 listing: benzene, 2-ethoxyethanol, 2-nitropropane, and 1,1,2-trichloroethane (51 FR 6537). The Agency currently is gathering data to fully characterize and evaluate these wastes. We expect to make decisions on these additional solvents when we address the first group of scheduled wastes.

In today's rule, the Agency is promulgating treatment standards for the following F001–F005 solvent constituents listed in Table CCWE:

tetrachloroethylene
trichloroethylene
methylene chloride
1,1,1-trichloroethane
carbon tetrachloride
chlorobenzene
1,1,2-trichloro-1,2,2-trifluoroethane
ortho-dichlorobenzene
trichlorofluoromethane
xylene
acetone
ethyl acetate
ethyl benzene
ethyl ether
methyl isobutyl ketone
n-butyl alcohol
cyclohexanone
methanol
cresols (cresylic acid)
toluene
isobutanol
carbon disulfide
nitrobenzene
pyridine
methyl ethyl ketone

Lab packs containing these solvents also are subject to the treatment standards promulgated in today's final rule.

The treatment standards become effective on November 8, 1986, for all F001 through F005 solvent wastes which do not meet any of the criteria established for a national two-year variance. Solvent wastes that meet at least one of the criteria are subject to the variance and will be restricted from land disposal effective November 8, 1988. The criteria are:

1. The generator of the solvent waste is a small quantity generator of 100–1000 kilograms of hazardous waste per month.

2. The solvent waste is generated from any response action taken under CERCLA or any corrective action taken under RCRA, except where the waste is contaminated soil or debris not subject to the provisions of this chapter until November 8, 1988.

3. The solvent waste is a solvent-water mixture, a solvent-containing sludge, or a solvent-contaminated soil (non-CERCLA or RCRA corrective action) containing less than 1 percent total F001–F005 solvent constituents listed in Table CCWE of § 268.41.

B. Treatment Standards For F001–F005 Spent Solvents

This unit describes the industries affected by the land disposal restrictions for the F001–F005 spent solvents and the demonstrated technologies which the Agency determined to be available. The unit further describes how the Agency developed treatment standards for these wastes.

1. Industries Affected

The Agency has identified a variety of industries which generate waste subject to the land disposal restrictions for F001–F005 spent solvents. Much of the F001–F005 spent solvents, as defined in 40 CFR 261.31, are generated from manufacturing operations where solvents are used as reactant carriers or for surface preparation. Such industries include pharmaceutical plants, semiconductor facilities, printing plants, and plastic and synthetic resin manufacturers. Another large group of spent solvent wastes is generated by paint and ink formulating facilities when tanks containing solvent-based materials are cleaned. Machine shops also generate significant amounts of solvents from degreasing operations. A further description of these industries and the characteristics of the wastes generated is presented in EPA's "BDAT Background Document for F001–F005 Spent Solvents" (Ref. 4).

2. Demonstrated Technologies for F001–F005 Spent Solvents

As presented in the proposed rule, the demonstrated treatment technologies for F001–F005 spent solvents are:

(1) Batch distillation
(2) Thin film evaporation
(3) Fractionation
(4) Incineration
(5) Steam stripping
(6) Biological treatment
(7) Carbon adsorption
(8) Air stripping
(9) Wet air oxidation

All of these technologies are demonstrated and commercially available. EPA has determined that none have been found to be riskier than land disposal. (See Unit IV.B. for a detailed discussion.)

Below is a brief description of each of these technologies and their general applicability to treatment of spent solvents. The BDAT background document provides a detailed discussion of these technologies.

a. *Batch distillation.* Batch distillation is used to separate various organic compounds from a contaminated spent solvent mixture in order to collect and reuse the individual compounds. The separation is accomplished by the addition of heat which causes the more volatile compounds to vaporize. Batch distillation generally is used in cases where the recovered solvent has sufficient economic value to offset the costs associated with the operation of the distillation system. As a consequence, batch distillation is generally applied to spent solvent wastes that are highly concentrated and yield significant amounts of material upon separation. This technology has been demonstrated for F001–F005 spent solvent wastes as well as those judged to be similar. EPA estimates that at least 400 facilities perform full-scale batch distillation on-site or as commercial treatment.

This technology yields a residue that contains a high amount of suspended solids, is quite viscous, and may require subsequent incineration. The level of performance achieved by this technology will depend on the temperature and duration of the distillation process.

b. *Thin film evaporation.* This technology is also a demonstrated distillation process. Thin film evaporation differs from batch distillation in that the waste stream for thin film evaporation must contain considerably less suspended solids. Use of this technology results in an overhead stream which almost always can be

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reused as a solvent and a bottom stream which often is used as fuel for incinerators. Depending on the suspended solids level of the waste, treatment using thin film evaporation may result in a residue that requires land disposal. EPA has identified several full-scale facilities using thin film evaporation of waste solvents.

c. *Fractionation.* This technology also is a demonstrated distillation process. It differs from batch distillation and thin film evaporation in that it is designed to achieve a finer separation than these other treatment technologies. It would be used when there are recoverable quantities of more than one solvent in a waste. Generally, fractionation will result in multiple product streams while generating minimal amounts of residue to be land disposed. Fractionation is practiced by full scale facilities on spent solvent wastes.

d. *Incineration.* Incineration is a well demonstrated technology commonly used to treat spent solvent wastes. The Agency estimates that there are over 200 full-scale incinerators for hazardous wastes, many of which incinerate F001–F005 spent solvents. This technology destroys the organic fraction of the spent solvents by oxidation to carbon dioxide and water vapor. Chlorinated organics are converted to carbon dioxide, water vapor, and hydrochloric acid vapor.

Incineration generates one or two residual wastes that need to be land disposed depending on whether the incinerator includes air emission controls. The residual wastes are the incinerator ash and the scrubber sludges or air emission control dust. The vast majority of incinerator residue that will require land disposal is generated by rotary kiln incinerators that burn spent solvent wastes containing high concentrations of solids.

e. *Steam stripping.* While steam stripping is a distillation process, the technology is significantly different from the distillation processes previously discussed both from the standpoint of the type of wastes treated and the design and operation of the process. Steam stripping is used by a number of facilities to reduce organic concentration in dilute spent solvent wastes containing mostly water. As such, the stripped solvent is not generally recovered in commercially viable quantities. Data from the Agency's screening questionnaire for capacity showed that 17 full-scale facilities performed steam stripping of spent solvent wastes and that three facilities perform steam stripping specifically on F001–F005 spent solvents.

f. *Biological treatment.* Biological treatment is a demonstrated technology which involves the use of microorganisms to degrade spent solvent compounds. There are a number of different types of biological treatment processes. These processes include aerobic treatment such as activated sludge systems, aerated lagoons, and trickling filters, facultative degradation in waste stabilization ponds, and anaerobic digestion. In aerobic systems, organic compounds are degraded to carbon dioxide and water. Anaerobic processes convert organic wastes into methane and carbon dioxide. Facultative systems alternate between aerobic and anaerobic treatment.

Biological treatment residues include treated water and a biomass sludge. The sludge is a mixture of dead and living microorganisms containing nonbiodegradable inorganic compounds, as well as any organics that are not degraded (i.e. refractory organics) and are adsorbed by the biomass. Depending on the composition of the spent solvent wastewater, the biomass sludge may require treatment prior to land disposal. Treatment could consist of chemical fixation for metals and/or incineration for the organic compounds.

g. *Carbon adsorption.* Carbon adsorption is the use of specially prepared carbon granules (activated carbon) to remove contaminants from wastewaters. Carbon adsorption is applicable to wastewaters containing low concentrations of F001–F005 spent solvent wastes. The spent solvent wastes are removed by adsorption onto the carbon surface. The affinity that a particular spent solvent compound has for carbon will depend on the type of carbon used and the properties of the compound. The residues from carbon adsorption include spent carbon and treated wastewater. Once the quality of the treated wastewater approaches a predetermined level the spent carbon can be regenerated and reused or destroyed in an incinerator. This technology is generally used in combination with steam stripping or biological treatment. This technology is demonstrated for F001–F005 spent solvent wastewaters as well as those judged to be similar.

h. *Air stripping.* Air stripping uses forced air to remove low concentrations of volatile organic compounds, such as solvents, from wastewater. During air stripping, air and wastewater are brought into contact with each other for the purpose of transferring the volatile organic compounds from the wastewater to the air. Transfer is caused by a concentration gradient of the volatile organic compounds, which tends to move these compounds in a direction that will equalize the concentration in the air with that in the water. Air stripping has been used to treat contaminated ground water containing F001–F005 spent solvent constituents. This technology was not chosen as the basis of any BDAT treatment standards for reasons presented in the BDAT background document.

i. *Wet air oxidation.* Wet air oxidation utilizes elevated temperature and pressure to oxidize dissolved or suspended organic contaminants in wastewaters. The wastewater is fed to the wet air oxidation treatment system by a high-pressure pump. It is then mixed with compressed air and passed through a heat exchanger. The heated waste-air mixture exits the exchanger and enters a reactor where oxygen from the compressed air reacts with organic contaminants in the waste to form carbon dioxide and water vapor.

This technology has full scale applications but primarily in areas other than treatment of spent solvent wastes. The Agency is aware of one facility that treats F001–F005 spent solvent wastewater. Unlike the other technologies discussed, this technology was not considered a demonstrated technology at proposal. Subsequent to proposal, we received additional data showing this technology to be demonstrated for F001–F005 spent solvent wastes.

3. Determination of Treatment Standards (BDAT) for Spent Solvents

a. *Data base.* The majority of the data used in developing BDAT for F001–F005 solvents were from full scale treatment. The Agency included some pilot- and bench-scale data from treatment technologies which are also demonstrated on a full scale basis. Below is a description of all available treatment data by technology.

—For biological treatment, the Agency analyzed full scale treatment data from 28 plants in the organic chemicals, plastics, and synthetic fibers industries which manufacture, in total, over 200 different products. These data were from treatment of wastes containing F001–F005 constituents as a result of process contamination. While the waste are not included in EPA's definition of spent solvent wastes, the Agency believes that these wastes are similar to spent solvent wastes. The Agency has biological treatment data on carbon tetrachloride, chlorobenzene, cresols, 1,2-dichlorobenzene, ethylbenzene, methylene chloride, nitrobenzene, tetrachloroethylene, toluene, trichloroethylene, 1,1,1-trichloroethane, and trichlorofluoromethanes.

- For steam stripping, the Agency analyzed full scale data from four plants and pilot scale data on treatment of contaminated ground water. The full scale data represented treatment of F001–F005 spent solvents at one plant; the remaining three plants were treating wastes containing F001–F005 consitituents generated as process contaminants. The Agency analyzed steam stripping data on ethylbenzene, methylene chloride, methyl isobutyl ketone, nitrobenzene, toluene, 1,1,1-trichloroethane, and trichloroethylene.
- For carbon adsorption, EPA analyzed full scale data from four plants and pilot scale data from two plants. At one of these full scale plants, carbon adsorption is used after biological treatment. The Agency obtained data on chlorobenzene, 1,2-dichlorobenzene, methylene chloride, nitrobenzene, toluene, and trichloroethylene from this facility. At another full scale plant, carbon adsorption follows steam stripping. The Agency obtained data on nitrobenzene and toluene from this facility. In the third case, EPA has full scale data from a plant in the pesticides industry which generates wastewater containing cresols. EPA has full scale data for process wastewater containing cresol at the fourth plant. Pilot scale data for trichloroethylene are available on treatment of contaminated drinking water. Pilot scale data are also available for methylene chloride, toluene, and xylene on treatment of runoff water from a waste disposal site.
- For wet air oxidation, the Agency analyzed pilot-scale data for methylene chloride, methanol, methyl ethyl ketone, tetrachloroethylene, toluene, 1,1,1-trichloroethane, and xylene. These data were submitted as part of a comment on the proposed rule.
- For air stripping, EPA analyzed pilot scale data from treatment of ground water contaminated with 1,1,1-trichloroethane, trichloroethylene, methyl isobutyl ketone, toluene, tetrachloroethylene, and ethylbenzene.
- The Agency also analyzed the extract of incinerator ash for ten incinerators at nine facilities. All incinerators were operating full scale and treating a variety of wastes including spent solvents. The F001–F005 constituents for which data were available are acetone, carbon disulfide, chlorobenzene, 1,2-dichlorobenzene, ethylbenzene, methylene chloride, methyl ethyl ketone, methyl isobutyl ketone, nitrobenzenes, tetrachloroethylene, toluene, 1,1,1-trichloroethane, trichloroethylene and xylene.

b. *Analysis of data and establishment of treatability group.* The Agency reviewed all available treatment data to determine if any data represented treatment from a system that was not well designed or operated. Consistent with the general framework for BDAT, such data were deleted (the BDAT background document provides a detailed analysis of the Agency's rationale for such data editing). The Agency then calculated average performance values for each specific waste treated with a particular technology. In cases where the Agency had data on treatment of the same or similar wastes using more than one technology, we performed an analysis of variance test to determine if one of the technologies performed significantly better. In cases where a particular technology performed better, the treatment standard was based on the best technology. If one of the technologies did not perform significantly better, we averaged the performance values and multiplied this value by the highest variability factor to derive the treatment standard.

In several cases, the Agency analyzed data from the treatment of different wastes containing the same constituent of concern but achieving significantly different levels of performance. The Agency established a separate treatability group in cases where the data and information on the waste were sufficient to do so. Within any treatability group, however, the Agency used the highest treatment value reflecting well designed and operated treatment to establish BDAT. EPA believes that this approach ensures that the treatment standard can be achieved by facilities managing F001–F005 solvents with a wide range of waste matrices.

As proposed, the Agency established a separate treatability group for spent solvent wastewaters. For purposes of defining applicability of the treatment standards for wastewater continuing F001–F005 spent solvents, wastewaters are defined as solvent-water mixtures containing total organic carbon of one percent or less. Within the general wastewater category, available data supported a separate treatability group for spent methylene chloride from the pharmaceutical industry. For spent solvents other than wastewaters, the Agency was not able to identify additional treatability groups.

c. *Development of the F001–F005 spent solvent treatment standards.* The Agency determined that available data support the establishment of the final treatment standards as shown for the treatability groups in Table 1. Consistent with the general framework, we believe that each treatment standard ensures substantial treatment of F001–F005 spent solvents. A discussion of our rationale for determining substantial treatment can be found in the BDAT background document.

In cases where data for F001–F005 spent solvents were not available to establish BDAT, the Agency evaluated the wastes to determine if treatment values could be transferred. EPA believes that based on chemical structure BDAT treatment values can be transferred to F001–F005 constituents, except for carbon disulfide, where data are unavailable. Chemical structure, especially as related to functional groups, is used to predict how organic compounds will react with other compounds and under various conditions. The structural groups considered by the Agency for F001–F005 spent solvents are halogenated aliphatics, halogenated alkenes, halogenated aromatics, ketones, alcohols non-halogenated aromatics, ethers, esters, phenols, and organic sulfur compounds. In the case of carbon disulfide, the Agency relied on Henry's Law constants to assess transfer of performance.

The Agency is aware that within similar structure groups compounds can exhibit a range of physical and chemical properties that affect treatability. EPA believes, however, that structure is the best method available at this time for estimating treatability. To best account for the range of physical and chemical properties that affect treatment within a structural group, the Agency will transfer treatment performance from the highest treatment value observed within the structural group.

In some instances, treatment standards were derived using analytical quantification levels that the Agency believes may not represent quantification levels over the entire range of F001–F005 spent solvents subject to today's final rule. In such instances, EPA increased the treatment standard to a level reflective of the quantification level which we believe

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can be achieved for all F001–F005 spent solvents. Any changes made to the treatment standards as a result of quantification levels can be found in the BDAT development document.

The Agency proposed treatment standards for each of the F001–F005 constituents listed in Table CCWE of Subpart D in the proposed rule. During the comment period, the Agency obtained additional data which were summarized in the Notice of Availability of Data (51 FR 31783, September 5, 1986). EPA also reevaluated existing data using a number of statistical methods. These methods were also outlined in the Notice of Availability. Finally, the Agency revised the proposed data editing procedure which excluded data when the influent value less than the screening level (generally 2.0 ppm). In today's final rule all data are used provided influent concentrations are above quantification levels.

The departure from the proposed rule which most affected the final treatment standards is the incorporation of a variability factor. The BDAT background document contains all data used to develop the treatment standards and a discussion of procedures used to evaluate these data in determining BDAT for each constituent of concern within a treatability group.

TABLE 1.—TREATMENT STANDARDS (AS CONCENTRATIONS IN THE TREATMENT RESIDUAL EXTRACT)

[Note: The technologies shown are the basis of the treatment standards. They are not required to be used in meeting the treatment standards.]

Constituents of F001-F005 spent solvent wastes	Waste treatability groups for F001-F005 spent solvent wastes (mg/l)			
	Wastewater	Technology basis [1]	Wastewater generated by pharmaceutical plants [2]	All other [3]
Acetone	[4] 0.05	SS		0.59
n-Butyl alcohol	5.00	SS		[4] 5.00
Carbon disulfide	1.05	SS		4.81
Carbon tetrachloride	[4] 0.05	B		0.96
Chlorobenzene	0.15	B&AC		[4] 0.05
Cresols (cresylic acid)	2.82	AC		0.75
Cyclohexanone	[4] 0.125	SS		0.75
1,2-Dichlorobenzene	0.65	B&AC		[4] 0.125
Ethyl acetate	[4] 0.05	SS		0.75
Ethylbenzene	[4] 0.05	B		0.053
Ethyl ether	[4] 0.05	SS		0.75
Isobutanol	[4] 5.00	SS		[4] 5.00
Methanol	[4] 0.25	SS		0.75
Methylene chloride	0.20	B	12.7	0.96
Methyl ethyl ketone	[4] 0.05	SS		0.75
Methyl isobutyl ketone	[4] 0.05	SS		0.33
Nitrobenzene	0.66	SS&AC		[4] 0.125
Pyridine	1.12	B&AC		0.33
Tetrachloroethylene	0.079	B		[4] 0.05
Toluene	1.12	B&AC		0.33
1,1,1-Trichloroethane	1.05	SS		0.41
1,1,2-Trichloro-1,2,2,-trifluoroethane	1.05	SS		0.96
Trichloroethylene	0.062	B&AC		0.091
Trichlorofluoromethane	[4] 0.05	B		0.96
Xylene	[4] 0.05	AC		0.15

[1] In some instances other technologies achieved somewhat lower treatment values, but waste characterization data were insufficient to identify separate treatability groups. Refer to the BDAT background document for a detailed explanation of the determination of the treatment standards.

SS=stream stripping
B=biological treatment
AC=activated carbon

[2] Wastewaters generated by pharmaceutical plants must be treated to the standards given for all other wastewaters except in the case of methylene chloride.

[3] The treatment standards in this treatability group are based on incineration.

[4] These treatment values represent the lowest level at which EPA can support analytical quantification over the range of wastes that will be subject to this rule. The treatment standards as derived from the data are somewhat lower because of the lower quantification levels associated with the treatment residuals actually tested. The data and the calculation of treatment standards not accounting for quantification limits are shown in the BDAT background document.

C. Comparative Risk Assessment Determinations for F001–F005 Spent Solvents

As discussed in the preamble to the proposed rule, the initial comparative risk studies of solvent wastes using EPA's RCRA Risk-Cost Analysis (WET) Model indicated that the best demonstrated treatment technologies do not pose total risks to human health and the environment greater than those posed by the direct land disposal for most categories of solvent wastes subject to today's rulemaking (i.e., all solvent wastes except metal-bearing solvents). Results of the analysis are summarized in the preamble to the proposed rule (See 51 FR 1720). More detailed information is available in the Background Document for the Comparative Risk Assessment (Ref. 5).

Because results of the WET model analysis indicated that incineration of metal-bearing solvent wastes in some situations may lead to increased risks to human health or the environment, the Agency has conducted a detailed analysis of these risks. Results of the detailed analysis (Ref. 5) indicate that in most cases direct land disposal of metal-bearing wastes is more risky than incineration. These risks, however, are not expected to occur for thousands, and in some cases, millions of years. The detailed analysis also demonstrates that in some cases incineration of these wastes is more risky than land disposal when compared to the performance of a well-operated and engineered unit located in a geographical area that provides optimal containment (e.g., compacted clay).

The Agency stated in the proposed rule that whenever it is uncertain that a technology is riskier than land disposal, the Agency will consider the treatment "available" for determining BDAT and will develop data to support additional regulatory controls. Therefore, because the risk assessment does not indicate that incineration generally is more risky than direct land disposal, the Agency is classifying incineration as available for the purpose of establishing the treatment standard for metal-bearing solvent wastes. It is not possible for the Agency to establish additional regulatory requirements on metals emissions from incineration of metal-bearing solvent wastes within the statutory deadline for solvents waste, because the Agency lacks sufficient data on the feasibility of reducing metals emissions by waste pretreatment or incinerator controls.

However, the Agency has initiated a program under the authority of section 3004(n) (42 U.S.C. 6924(n)) to develop regulatory controls for metal emissions from incineration of hazardous wastes, including solvent wastes. EPA plans to publish a proposed rule by 1987 and a final rule by 1988. The Agency believes that development and implementation of this regulatory program will ensure that incineration of metal-bearing solvent wastes will be protective of human health and the environment.

D. Treatment and Recycling Capacity for Solvents

1. Quantity of Wastes Land Disposed

EPA estimates that 2,859 million gallons per year of solvent wastes are managed in units defined as land disposal under today's rule. This represents a significant increase over the 1,210 million gal/yr estimated in the proposed rule. In the proposed rule, EPA's estimate included all wastes designated as F001, F002, F003, F004, F005, the corresponding commercial chemical products, off-specification products (P and U wastes), mixtures of these waste codes, and spent solvents from small quantity generators.

For today's rule, EPA has made several modifications to its estimate. First, as explained previously, the Agency decided not to promulgate the land disposal restrictions for those wastes designated as P and U wastes. The estimate of the total quantity of solvent wastes covered under today's rule, therefore, does not include the 11.2 million gal/yr of P and U wastes which previously were included in the proposed rule.

A second modification is more significant. The quantity estimate in the proposed rule included wastes that were mixtures of F001, F002, F003, F004, F005, and P and U wastes, but did not include those wastes that were reported as mixtures of F001–F005 with other nonsolvent waste codes. These waste quantities were not included in the proposed rule because EPA believed that a relatively small solvent portion of these mixtures could be segregated from a much larger component of the nonsolvent wastes. This assumption was based on limited descriptions of these wastes provided by some generators indicating that these wastes primarily were dilute solvent-water mixtures. In the proposal, EPA also determined that the resultant quantity of concentrated segregated solvent wastes could not be estimated properly due to the lack of concentration data for these particular solvent waste mixtures prior to segregation. Although EPA has not changed its position that the quantity of segregable solvent wastes cannot be accurately estimated, it is assuming that the entire quantity of these mixtures would require alternative treatment capacity. This is consistent with several comments indicating that EPA had grossly underestimated the quantity of wastes identified as solvent-water mixtures and generally had underestimated the other types of concentrated solvent wastes. Based on these comments, EPA believes it may have overestimated the ability of generators to separate the concentrated solvents from the nonsolvent components (primarily water) without treatment. This change results in an increase in solvent-water mixtures land disposed of 1,663 million gal/yr and an increase in quantity for all other waste types land disposed of 19 million gal/yr.

A third modification involved correction of invalid data used at proposal. The OSW RIA Mail Survey of Treatment, Storage, and Disposal Facilities regulated in 1981 was the primary source of quantity data for the proposed rule and for today's rule. Because some facilities indicated that they handled very large volumes of waste or were suspect because somewhat large quantities of recyclable organic liquids were being land disposed, EPA decided to verify whether these facilities had made an error in the data submitted. EPA performed follow-up inquiries to these facilities in order to confirm the descriptions of the physical/chemical forms of the wastes managed. These responses were the subject of a request for comment published September 5, 1986 (51 FR 31783).

Some of the facilities indicated that they no longer handled these wastes. However, EPA does not believe that these reported full or partial closures can be extrapolated accurately to the entire 1981 survey population because of the site-specific nature of these closures. Therefore, updating the survey for closures would require more extensive follow-up by EPA. EPA believes such broad modification to the survey, in order to extrapolate these closures to the universe of facilities, would unreasonably disrupt the statistical reliability of the 1981 survey.

However, EPA does believe that these telephone responses support very limited changes to the descriptions of wastes at five facilities in the data base. The responses from two facilities indicated that a 172.6 million gal/yr waste and a 28.3 million gal/yr waste that had been identified in the survey as organic liquids were actually solvent-water mixtures. Another response from a different facility indicated that a 2.6 million gal/yr waste that had been identified as an organic sludge was actually a solvent-water mixture that had been treated in an impoundment. This waste also had been double-counted as being handled in a landfill. Two additional wastes treated in impoundments also had been double-counted as being disposed in landfills. Therefore, the quantities of these wastes which were subtracted from the total quantity of waste landfilled and subtracted from the total.

A fourth change to EPA's estimate is based on EPA's determination that those wastes from the 1981 RIA Mail Survey that were not described should have been added to the total organic liquids land disposed rather than distributing the wastes to all physical/chemical forms. EPA believes that assuming the undescribed waste quantities are organic liquids is more consistent with the type of wastes identified as the basis for listing these solvent wastes as hazardous. Spent solvents and still bottoms usually are pumpable organic liquids. This modified assumption increases the estimated quantity of organic liquids by approximately 15 million gal/yr, and reduces to solvent-water estimate by an equal amount. This quantity represents a total of six wastes at two facilities.

Two final changes were made to the quantity of waste from small quantity generators and CERCLA actions. The 8.7 million gal/yr of solvent wastes from small quantity generators increased from the estimate of 7.8 million gal/yr in the proposed rule as a result of correcting a calculation error. More importantly, the proposed rule contained no quantity estimates for increases in solvent wastes anticipated to result from removal and/or remedial actions taken by the Agency under CERCLA or RCRA corrective action. For today's rule, this has been estimated to be 21.7 million gal/yr based on a recently completed EPA analysis of future land disposal. These quantities are explained in greater detail in Appendix B of the Background Document to today's rule (Ref. 2). Therefore, the overall total quantity of wastes including small quantity generator and CERCLA wastes is increased to 2,859 million gal/yr for today's rule.

2. Reanalysis of Land Disposal Practices Used

EPA has reanalyzed the 1981 data accounting for all of the changes described in the previous section. Complete analysis of the data is provided in the background document to support today's rule (Ref. 2). The following table indicates how the total quantity of wastes estimated in the previous section is distributed among the various land disposal management techniques covered under today's rule. These figures do not include wastes which were deep well injected.

land disposal practice	Quantity (million gal/yr)
Treated in surface impoundments	2,485.4
Stored in surface impoundments	309.2
Disposed in surface impoundments	8.00
Waste piles	0.78
Land application	0.001
Landfill	55.5
Total land disposed	2,858.881

3. Comments on EPA's Estimates

Several commenter objected to EPA's use of the 1981 RIA Mail Survey for estimation of the volumes of wastes land disposed, based on their belief that these data underestimate the quantity of hazardous waste which is being land

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disposed annually. As explained earlier, EPA agrees that the quantity of solvent wastes identified as solvent-water mixtures was underestimated. Inclusion of the additional mixed solvent wastes has increased the total quantity of solvent-water mixtures to 2,652 million gal/yr. Nevertheless, EPA believes that the 1981 data is currently the only readily available source for estimating the quantities based on the physical/chemical characteristics that influence the selection of applicable treatment technologies.

Several commenters suggested that EPA use other data sources such as Part A applications, Part B applications, RCRA Biennial reports, and various state and regional reports. EPA agrees with the commenters that the data contained in these sources are more recent, than the 1981 data. However, none of the sources provide data that readily allow EPA to estimate national quantity of solvent wastes land disposed by individual management units and by physical/chemical forms.

One commenter also contended that EPA's 1981 data grossly underestimated the quantities of hazardous waste which were being land disposed; this statement was based on privately collected data from 725 facilities in standard industrial classification (SIC) code 2800 (Chemicals and Allied Products Manufacturers). The data indicated that this industry treated and disposed of approximately 202 million tons of hazardous waste per year. Since EPA estimated only 240 million tons per year for all hazardous waste facilities, the commenter believes that EPA underestimated the total quantity of hazardous waste. However, the same commenter acknowledged that EPA estimated that this same industry managed 66 percent of the total. These figures, when multiplied together, yield a total quantity of 158 million tons per year for this particular industry (SIC 2800). EPA does not believe that 158 million tons per year is a gross underestimation of 202 million tons per year. EPA's estimate was lower than the commenter's quantity estimate, but by only 22 percent.

However, the commenter did not indicate whether the privately collected quantity figures were for RCRA hazardous wastes or all wastes considered hazardous by state and local authorities. EPA's estimates of waste quantities specifically exclude hazardous wastewaters which are exempt from RCRA (such as those treated solely in tanks and subsequently discharged under NPDES permits). It was not clear that the commenter's estimate of 202 million tons per year of wastes treated and disposed includes or excludes these wastewaters. The same commenter provided more recent data, also based on an independent survey of this industry, that indicated the total amount of hazardous waste treated and disposed by responding plants in 1985 was 278.5 million tons per year (276.8 million tons per year of wastewater and 1.7 million tons per year of solid waste). Of the solid wastes treated and disposed, 0.57 million tons per year were landfilled, 0.52 million tons per year were incinerated, 0.46 million tons per year were disposed in surface impoundments, and 0.18 million tons per year were treated by other methods. The corresponding 1981 EPA estimates for all hazardous waste were, 3.0 million tons per year of hazardous waste landfilled, 1.7 million tons per year incinerated, 19 million tons per year disposed in surface impoundments, and 17 million tons per year treated by other means. EPA believes that these data, which represent significantly larger quantities of solid waste being land disposed, further indicate that EPA estimates of quantities of wastes being land disposed are reasonable and are not grossly underestimated.

4. Summary of Quantities Requiring Capacity

Based on the 1981 RIA Mail Survey quantity data presented in the previous section, EPA estimates that a total of 19.0 million gal/yr of pumpable organic solvent wastes will require incineration capacity, 3.4 million gal/yr will require distillation capacity, and 15.3 million gal/yr will require fuel substitution capactity.

EPA also estimates that 21.7 million gal/yr of solvent-containing sludge mixtures will require some form of high solids combustion treatment, such as rotary kiln incineration.

A total quantity of 2,481 million gal/yr of solvent wastes described as solvent-water mixtures also will require some form of wastewater treatment. The following table summarizes this information.

Alternative treatment technology	Quantity requiring capacity (million gal/yr)
Distillation	3.4
Fuel Substitution	15.3
Incineration	19.0
Solvent-containing sludge treatment	21.7
Wastewater treatment	2,481.0

These quantities do not include the 8.7 million gal/yr of solvent wastes from small quantity generators, nor do they include the 20.2 million gal/yr increase in solvent wastes anticipated to be generated from remedial and removal actions taken under CERCLA and RCRA correction action. The waste characterization data which would be necessary to assign treatment technologies for these two waste sources are very limited. Although it is possible that all small quantity generator wastes may have to go to incineration, EPA believes that a more reasonable approach is to extrapolate the waste characterization data from the 1981 survey to the total quantity by applying the ratio of quantities which were directed to each technology. Since the solvent wastes from small quantity generators are not anticipated to include solvent-water mixtures nor any solvent-inorganic sludge mixtures, the ratio developed from the distillation, fuel substitution, and incineration quantities have been applied:

Alternative treatment technology	Capacity required (million gal/yr)
Distillation	0.8
Fuel Substitution	3.5
Incineration	4.4

All 16.1 million gal/yr of increased capacity needed for RCRA corrective action and the 4.1 million gal/yr for CERCLA responses has been assigned to incineration based on studies of current projects.

5. Comments on Types of Treatment Required

Solvent wastes identified as F001, F002, F003, F004, and F005 typically are described as spent solvents or still bottoms as specifically identified in the listing for these waste codes. However, these waste code designations are used to identify wastes which are regulated as F001–F005 wastes as a result of the mixture rule (in 40 CFR 261.3), i.e., a spill residue or combination of solvent wastes with other wastes or materials, such as wastewater, soil, organic or inorganic sludges.

In the preamble to the proposed rule, EPA made clear its assumption that those wastes that are solvent-water mixtures are indeed F001–F005 wastes that are derived from the mixture rule in 40 CFR 261.3. The Agency also assumed that these wastes contain less than 1.0 percent total organic carbon and approximately 99 percent water. This is consistent with EPA's guidance in defining wastewater as a waste with primarily water and a small amount of contaminants. In addition, several of the large volume, solvent-water mixtures identified in the TSDF mail survey specifically described their wastes as containing 99 percent water.

Several commenters suggested that defining solvent-water mixtures as those wastes containing less than 1.0 percent total organics would exclude many non-hazardous wastewaters which they indicate typically can contain greater than 1.0 percent total organics. One commenter suggested that the level be raised to 4.0 percent total organics. However, none of these commenters submitted any data substantiating these comments.

Another commenter stated that EPA had overestimated the concentrations of solvents in wastes identified as wastewaters. The commenter supplied data on wastes containing part per million levels of individual solvent constituents. EPA believes that the commenter had misinterpreted EPA's intended use of these data. EPA recognizes that there are many wastewaters that contain only parts per million or even parts per billion levels of individual solvent constitutents. However, EPA used a summation of the individual solvent concentrations to arrive at the estimations of total solvent concentrations in wastewaters classified as F001–F005. EPA has established a definition of solvent-water mixtures based on this maximum solvent concentration that it believes is representative of this type of waste. As explained in the proposed rule, the Agency believes this assumption is corroborated by data that indicate that the majority of wastewaters from the organic chemicals manufacturing industry being treated in surface impoundments contains less than 1.0 percent total solvents.

In the proposed rule, the Agency selected the analysis of total organic carbon (TOC) as a surrogate analysis for the total solvent concentration. Several commenters objected to the use of the TOC test because it measures both hazardous and nonhazardous organics, and is not appropriate for nonliquids. While the Agency recognizes that there is no standard method which specifically defines a total solvent concentration in wastewater, there do exist several standard methods for the individual solvent constitutents for which the F001–F005 solvent wastes are listed (40 CFR 261 Appendix VII). These individual solvent concentrations then can be summed to yield a total solvent concentration for a particular waste. The Agency never intended to include nonhazardous wastes or wastewaters in this rule, and the Agency agrees with the commenters that there may exist nonhazardous wastes and wastewaters with greater than 1.0 percent total organic carbon. Therefore, the Agency has reevaluated its position on the method for determining that an F001, F002, F003, F004, and F005 waste is considered a solvent-water mixture (wastewater). For the purposes of today's rule, the Agency is defining an aqueous solvent waste as any F001, F002, F003, F004, and F005 solvent waste that is primarily water and contains either (1) less than 1.0 percent total organic carbon or (2) less than 1.0 percent total solvents (defined as the arithmetic summation of the individual solvent concentrations for those constituents for which all of these waste codes are listed in 40 CFR 261 Appendix VII, as determined by GC or GC/MS methods in accordance with the appropirate standard methods for those constitutents and waste type). The Agency still believes that the total organic carbon analysis provides an inexpensive screening technique for identifying some F001 through F005 wastes as solvent-water mixtures. However, those facilities that have wastes that exceed a total organic carbon content of 1.0 percent can elect to utilize the more rigorous measurement of less than 1.0 percent total solvent concentration. This choice of methods is intended for use as a screening procedure only to identify those F001, F002, F003, F004, and F005 solvent wastes that are to be designated as a solvent-water mixture. For the purposes of today's rule, the Agency does not intend this definition to be used to classify a wastewater as a hazardous solvent waste. However, this does not preclude the Agency from modifying or clarifying this definition in the future.

In a similar manner, the Agency believes that the 1.0 percent total solvent concentration can be extended to define the solvent wastes that are primarily inorganic sludges or soils. The Agency recognizes that there is no standard method for the analysis of total organic carbon in inorganic solids and thus, is establishing the use of the analysis for the individual solvent constituents in inorganic sludges and soils for the determination of 1.0 percent total solvents. For the purposes of today's rule, the Agency therefore, is defining solvent-inorganic sludge mixtures and solvent-contaminated soil as any F001, F002, F003, F004, and/or F005 solvent waste which is primarily inorganic and contains no greater than 1.0 percent total organic carbon or no greater than 1.0 percent total solvents (defined as the arithmetic summation of the individual solvent concentrations for those constituents for which all of these waste codes are listed in 40 CFR 261 Appendix VII, as determined by GC or GC/MS methods in accordance with the appropriate standard methods for those constituents and waste type). The Agency believes that this is consistent with congressional intent to ban high concentration wastes, whenever capacity shortfalls are demonstrated to exist.

All other F001, F002, F003, F004, and/or F005 solvent wastes by nature of these definitions exceed either 1.0 percent total solvent concentration or exceed 1.0 percent total organic carbon and are, therefore, not considered to be solvent-water mixtures, solvent-inorganic sludges mixtures, or solvent-contaminated soils.

E. Unused Capacity of Solvent Treatment and Recycling Facilities

EPA estimated that solvent wastes restricted from land disposal as a result of today's final rule will be directed to incineration and wastewater treatment methods that can achieve the treatment standards. Some solvent wastes will also be directed to recycling methods, including distillation and blending as fuel. In this unit, EPA estimates the unused capacity that is currently available to treat or recycle solvent wastes.

As explained in Unit V., private treatment, recycling, and disposal capacity will be considered in two circumstances: (1) If a private owner or operator plans to accept restricted waste commercially on or before the effective date of the restrictions; or (2) when a private owner or operator has excess capacity. At this time, EPA does not have complete information on the extent to which these circumstances will occur. The Agency plans to conduct a treatment, storage, and disposal facility (TSDF) survey in the near future which it hopes will provide comprehensive data on the availability of private capacity to manage hazardous wastes that are prohibited from land disposal. However, for the purposes of this rulemaking, the determinations of the capacity to treat and recycle solvent wastes will be based on unused capacity at facilities that are or will be offering commercial services by November 1986.

1. Capacity for Wastewater Treatment

BDAT wastewater treatment methods for solvent-water mixtures are biological degradation, steam stripping, and carbon adsorption. In addition, other technologies, such as resin adsorption,

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although not BDAT, may be capable of meeting the treatment standards for some wastes. All of the treatment methods are referred to as tank treatment under the RCRA TSDF regulations.

For the proposed rule, the OSW RIA Mail Survey was EPA's only source of information concerning the unused capacity at tank treatment facilities. However, the RIA Mail Survey was not designed to evaluate capacity of specific tank treatment systems. It requested information on total tank treatment capacity, but did not request information for specific tank treatment systems. Thus, within the time constraints for the proposed rule, the Agency was unable to determine available capacity for each treatment system. Accordingly, to prepare the proposed rule, the Agency estimated the total unused treatment tank capacity at commercial facilities that managed solvents. This unused capacity was estimated to be 112 million gallons. In the proposed rule, EPA stated that these commercial facilities managed other hazardous wastes, and that the Agency could not determine the portion of the 112 million gallons of unused treatment capacity that was available to treat solvent wastes.

EPA, however, recently has completed a comprehensive analysis of additional data from the RIA data base for these commercial facilities and has identified the specific types of tank treatment. This new analysis of the RIA Mail Survey data indicates that very little of the tank system capacity at the survey facilities was designed for treatment of solvent wastes. Because of the very limited data on treatment capacity for solvents in the RIA Mail Survey data base, EPA decided to use the 1986 National Screening Survey, which contains data on all facilities, to identify facilities that manage solvents. These facilities were contacted in the August 1986 "Telephone Verification Survey of Commercial Facilities That Manage Solvents" (51 FR 31786). This new data base reveals that there is one extremely large commercial facility that offers biological treatment for solvents, at an available capacity of about 2 billion gallons/yr. In addition, one commercial facility that offers steam stripping for solvents, and two commercial facilities offer carbon adsorption for solvents. These four facilities represent the entire capacity available for wastewater treatment for solvents.

2. Capacity for Incineration

For the proposed rule, EPA estimated that unused commercial incineration capacity is less than 25.6 million gallons per year. This calculation was based on the maximum design capacity of operational commercial incinerators and a utilization rate of 80 percent (Ref. 2). Some commenters stated that incineration capacity was limited to a very few commercial facilities, and that available capacity would not be adequate for the restricted solvent wastes. In response to these concerns, EPA used the results of the 1986 National Screening Survey to verify the commercial status of incinerator facilities and reevaluate the capacity at commercial facilities. Of the 14 commercial incinerators included in the incinerator capacity analysis for the proposed rule, three no longer offer commercial incinerator services. However, one other facility now offers commercial incinerator services. In addition, four of these facilities plan to have a new commercial incinerator operating in 1987, and another company plans to complete a large new incinerator facility in 1987. None of the facilities indicated that they planned to close in 1987. Based on the new data, EPA concludes that there are currently 12 commercial incinerator facilities, and that the number of commercial incinerator facilities will remain fairly constant or increase over the next two years. Even if an existing commercial incinerator facility closes, EPA believes, based on the pattern of construction indicated by the data, that it is reasonable to assume that another facility will begin operation of a new incinerator.

In addition to verifying the status of the commercial incinerator facilities, EPA obtained some additional data on design capacity and utilization. Using the available data for each facility, EPA estimates that the available incineration capacity at these facilities is approximately 28 million gallons per year. This estimate is slightly more than the estimate used for the proposed rule. When information was not available on the utilization rate, the calculation was based on a utilization rate of 80%.

Because there will be an increased demand for incineration capacity for CERCLA wastes that are not covered by this rule (i.e., wastes other than F001–F005), not all of this 28 million gallons per year capacity will be available for the restricted solvent wastes. Data from site analyses conducted by EPA show that the increased demand for off-site commercial incineration of non-solvent CERCLA wastes that will require capacity is 5.4 million gallons per year. Therefore, the available incineration capacity for the restricted solvent wastes is 22.6 million gallons per year.

3. Capacity for Fuel Substitution

Commenters expressed concern that in the proposal rule, EPA did not include capacity estimates for fuel substitution. A commenter stated that fuel substitution is a potentially very large source of alternative capacity and should be included in the capacity estimates for the final rule. EPA recognizes the importance of fuel substitution but did not have a sufficient data base to develop estimates for the proposed rule. Since the proposal, EPA has developed a new data base from the 1986 National Screening Survey. This information was included in the Notice of Availability on September 5, 1986. The new data base shows that at least 20 hazardous waste management facilities use hazardous waste as fuel. The available capacity for fuel substitution at these facilities is approximately 24 million gallons. Because many facilities that are not regulated hazardous waste management facilities recycle hazardous waste as fuel, the available capacity for fuel substitution is greater than 24 million gallons.

4. Capacity for Distillation

In the proposed rule, EPA estimated that the unused capacity for distillation is 225 million gallons per year. Several commenters questioned the applicability of some distillation systems to the restricted solvent wates. EPA recognizes that not all waste may be acceptable for all systems. However, the additional distillation capacity needed for the restricted solvent wastes is only 4 percent of the available capacity. Therefore, EPA assumes that it is reasonable to expect that there is adequate distillation capacity for the restricted solvents.

F. Determination of the Effective Date

Comparison of the data developed in Sections D and E above results in the demand and capacity estimates in the following table:

ESTIMATES OF DEMAND AND AVAILABLE CAPACITY

Treatment or Recovery Technology	Unused Capacity (Millions of Gallons Per Year)	Capacity Needed (Total)
Wastewater	2,103.0	2481.0
Incineration	22.6	85.3
Fuel Substitution	24.0	18.8
Distillation	225.0	4.2

Analysis of the demand and capacity shows that available wastewater treatment and incineration capacity for solvent wastes will be exhausted by this regulation but capacity for fuel substitution and distillation will remain. As explained previously, the capacity required for small quantity generator wastes cannot be determined precisely, therefore, the Agency has distributed the capacity demand for these wastes between incineration, distillation and fuel substitution based on the relative demand projected for those technologies. EPA has assigned the entire capacity demand for CERCLA response action and RCRA corrective action wastes to incineration because this technology is currently projected to be the alternative technology used during the next year for the majority of these wastes. As a result of this analysis, EPA has clearly identified the basis for extension of the effective date for at least some wastes requiring incineration and wastewater treatment.

In order to address the shortage of incineration capacity, EPA is granting a two year national variance to CERCLA response action and RCRA corrective action wastes (20.2 million gal/year), solvent-containing sludges and solids (21.7 million gal/year) and small quantity generator wastes (4.4 million gal/year) requiring incineration. This combination of variances should provide full utilization of available incineration capacity. The demand for wastewater treatment capacity cannot be similarly segregated because of EPA's limited data base. Therefore, EPA will grant a variance to all solvent wastewaters because of the significant capacity deficiency identified.

VI. Treatment Standards for Dioxin-Containing Wastes

A. Introduction

Today's final rule for dioxins adopts most of the provisions of the proposed rule and outlines EPA's response to major comments received on the proposal.

Under today's rule, wastes identified by the hazardous waste codes F020, F021, F022, F023, F026, F027, and F028 must be treated to a level below 1 ppb in the waste extract for each of the following specific categories of CDDs and CDFs [11]:

HxCDD—hexachlorodibenzo-p-dioxins
HxCDF—hexachlorodibenzofurans
PeCDD—pentachlorodibenzo-p-dioxins
PeCDF—pentachlorodibenzofurans
TCDD—tetrachlorodibenzeno-p-dioxins
TCDF—tetrachlorodibenzofurans

One ppb is the routinely achievable detection limit using method 8280 of SW–846 [12] (40 CFR 261 Appendix X).

These listed wastes also must be treated below the detection limits for 2,4,5-trichlorophenol, 2,4,6-trichlorophenol, 2,3,4,6-tetrachlorophenol, and pentachlorophenol. The detection limits for these constituents are 50, 50, 100, and 10 ppb, respectively in the waste extracts using method 3510/8270 identified in the SW–846.

Wastes that meet the applicable treatment standards may be disposed in a RCRA Subtitle C land disposal facility which has been fully permitted and has an approved waste management plan, in accordance with the dioxin-listing rule (50 FR 1978). Dioxin-containing wastes at or exceeding the detection limit for these constituents of concern in the waste extracts using the TCLP must be treated in accordance with the requirements specified in the dioxin-listing rule, specifically incineration (40 CFR 264.343 and 40 CFR 265.352) or thermal treatment (40 CFR 265.383) to six 9s destruction and removal efficiency (DRE), or tank treatment (40 CFR 264.200) (if such treatment can achieve concentrations of CDDs, CDFs and certain chlorophenols to below detection in the extracts from the treatment residuals).

EPA is also granting the maximum two-year variance to the effective date of the land disposal restrictions for dioxin-containing wastes because of a finding that there is a lack of capacity to treat and dispose of these wastes. Thus, the effective date of this final rule is November 8, 1988. These wastes are subject to all special management requirements specified in the dioxin-listing rule and the minimum technological requirements of section 3004(o).

In the proposed rule, the Agency did not set treatment standards for EPA Hazardous Waste No. F028 (residuals resulting from incineration or thermal treatment of soil contaminated with F020, F021, F022, F023, F026, and F027). It was stated in the proposal that F028 is a treatment residual from incineration or thermal treatment of dioxin-containing soil to six 9s DRE. Because incineration is the best technology identified to treat dioxin-containing wastes, the Agency concluded, that in most cases, the F028 waste would meet the treatment standard. The Agency recognizes that there may be instances in which this is not the case. Accordingly, EPA now believes that it erred in concluding that all F028 wastes would meet the designated treatment standard of no detection. Instead, it is appropriate to require that F028 wastes, like other dioxin-containing wastes, be tested to determine whether detectable levels of specific categories of CDDs and CDFs and certain chlorophenols are present in the extracts from the waste or treatment residuals. The final rule has been modified to reflect this change.

B. Summary of Regulations Affecting Land Disposal of Dioxin-Containing Wastes

In the dioxin-listing rule, EPA also specified additional management standards relating to land disposal of these wastes. Specifically, the Agency prohibited the management of the listed dioxin-containing wastes at interim status land disposal facilities. There are exceptions for interim status surface impoundments holding wastewater treatment sludges that are created in the impoundments as part of the plant's wastewater treatment system and interim status waste piles that meet the requirements of 40 CFR 264.250(c)).

The dioxin-listing rule also establishes special management standards for dioxin-containing wastes in permitted land disposal facilities intending to manage these wastes. These facilities are required to submit a waste management plan to address the additional design and operating measures over and above those in Part 264 which the facility intends to adopt to prevent migration of the waste. The plan is to be submitted by the owner or operator of the disposal facility as part of the Part 264 permit application (see 50 FR 1979 for additional information).

The Agency believes that such a waste management plan will help provide assurance that these wastes are properly managed in a land disposal situation. It should be noted, however, that under today's rule, these requirements apply only to the land disposal of dioxin-containing wastes that meet the treatment standard. Also, these standards do not supersede the minimum technology requirements

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[11] The following acronyms and definitions are used: PCDDs—all isomers of all chlorinated dibenzo-p-dioxins. PCDFs—all isomers of all chlorinated dibenzofurans. CDDs—and CDFs—isomers of tetra-, penta-, and hexachlorodibenzo-p-dioxins and -dibenzofurans, respectively. TCDDs and TCDFs—all isomers of the tetrachlorodibenzo-p-dioxins and -dibenzofurans, respectively. TCDD and TCDF—the respective 2,3,7,8-isomers. The prefixes Tr, T, Pe, and Hx denote the tri-, tetra-, penta-, and hexachlorodioxin and -dibenzofuran congeners, respectively.

[12] In test method 8280, the proposed quantification level for dioxin in water is 10 ppt. However, due to the interferences inherent in leachate samples and the variability of waste matrices, the Agency considers that, generally, dioxin wastes subject to today's rule will have a detection limit of 1 ppb. It should be noted that because the treatment standard for dioxins is set at "no detection" it is important to calibrate to the levels specified in 8280.

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imposed by section 3004(o). All the prohibitions established under the dioxin-listing rule remain in effect even if the wastes meet the treatment standard.

C. Analysis of Treatment Technologies for Dioxin-Containing Wastes and Determination of BDAT

1. Applicable Treatment Technologies

The dioxin-listing rule establishes standards for incineration and certain thermal treatment. It states that incinerators burning the listed CDD/CDF-containing wastes must achieve a destruction and removal efficiency of six 9s, in addition to the other standards contained in 40 CFR 264.343 and 265.352.

In the dioxin-listing rule, the Agency acknowledged that there are presently a number of emerging thermal treatment technologies that may be applicable for the treatment of dioxin-containing wastes in order to render them nonhazardous (or at least, less hazardous). However, in the absence of performance standards, such treatment units would not be allowed, and this would stifle and discourage the development of new treatment alternatives for these very toxic wastes. Accordingly, the Agency revised the dioxin-listing rule to allow for interim status thermal treatment units to treat the dioxin-containing wastes if it has been certified that the units meet the applicable performance standards in 40 CFR 264.383 (including six 9s DRE for principal organic hazardous constituents (POHCs)).

The dioxin-listing rule also requires special management practices for the treatment and storage of dioxin-containing wastes in tanks. Secondary containment will be required as a permit condition for all tanks that treat or store CDD- and CDF-containing wastes. Specifically, the dioxin-listing rule requires the owners/operators of tank facilities storing or treating CDD- and CDF-containing wastes to provide EPA with the following information in its permit application specifying: the precise design of the secondary containment system and its accompanying leak detection method; the choice of construction material and specifications; and whether additional run-on or precipitation controls are needed to preserve the system's integrity. These technical requirements are specified in 40 CFR 270.16(g) and must be addressed by each individual facility in its RCRA permit application. This information will be evaluated by the EPA before a permit is issued.

As was stated in the proposal, the Agency is aware of much research currently being conducted to develop and evaluate treatment technologies applicable to dioxin-containing wastes. In the proposal, the Agency presented a list of treatment technologies that were in one of three stages of development or consideration. Recently available information and data have allowed the Agency to revise this list. Additional information on the technologies under evaluation for the treatment of these wastes is available in the background docket for today's rule.

The Agency will continue to gather data and information on these and other emerging technologies in order to evaluate their future potential as applicable technologies for the treatment of dioxin-containing wastes. As stated in today's rule however, any technology for the treatment of dioxin-containing waste must be done in accordance with the dioxin-listing rule. Many of the technologies being analyzed are thermal treatments, or can be conducted in tanks, including infrared heating and chemical detoxification.

2. Comparative Risk Assessment Determinations for Dioxin-Containing Waste

In support of today's rule, the Agency conducted a more detailed comparative risk analysis on soils contaminated with 2, 3, 7, 8-TCDD, still bottoms contaminated with dioxins and toluene, and unused formulations of pentachlorophenol contaminated with dioxins. A detailed characterization of each waste stream is available in the regulatory impact analysis for dioxin-containing waste (Ref. 9).

The analysis of the comparative risks of land disposal and incineration to six 9s DRE indicates that both technologies potentially result in insignificant risks to human health. Land disposal presents very low risks provided that run-off or wind dispersal of contaminated particles is prevented, and dioxin-containing wastes are not co-disposed with other materials that may mobilize the dioxins (e.g., solvents). Regulations previously established (50 FR 1979) governing the management of dioxin-containing wastes are likely to prevent such releases. Similarly, incineration to six 9s DRE is likely to destroy all of the constitutents of concern in these wastes and is also not predicted to present significant risks.

It is possible that, in some cases, incineration may result in greater risks than land disposal. This could occur if incinerator scrubber waters containing undetectable levels of dioxins were discharged untreated to surface waters. However, EPA believes this is unlikely because facilities incinerating dioxin-containing wastes will likely be required under the Clean Water Act to treat the scrubber water prior to discharge, and because treatment of scrubber water by carbon absorption should be effective in preventing releases of dioxin contaminants.

Provided that the discharge of untreated scrubber water is prohibited, restricting land disposal of contaminated soils will likely result in increases in total population risks and decreases in risk to the most exposed individuals (MEI). Under the same conditions (i.e., incineration to six 9s DRE and prohibitions on untreated scrubber water discharge), restricting the land disposal of still bottoms may result in an increase in total population risks, but would significantly reduce the maximum MEI risk. For unused formulations of pentachlorophenol, both the total population and health risk would be significantly reduced by incineration at six 9s DRE.

It should be noted that the greatest risks to human health resulting from the land disposal restriction are likely to be caused by changes in the extent of transportation and handling of dioxin-containing wastes. The comparative risk analysis shows that risks from transportation and handling of dioxin-containing wastes are typically much greater than the risk posed from land disposal or incineration. The Agency however, is not able to predict whether transportation distances and the extent of handling will increase or decrease as a result of this rule.

Because the risk assessment does not indicate that incineration is clearly more risky than direct land disposal, the Agency is classifying incineration at six 9s DRE as available for the purpose of establishing the treatment standard for dioxin-containing waste.

3. Demonstrated Technologies and Determination of BDAT

The only sufficiently demonstrated technology for the treatment of dioxin-containing wastes is incineration. Data from the field demonstration of EPA's Mobile Incineration System (MIS) on F020, F022, F023, F026, and F027 wastes at the Denney Farm site in McDowell, Missouri indicate that an incineration unit operating at six 9s DRE is capable of treating dioxin-containing wastes and the constituents of concern subject to this rule to non-detectable levels.

Although the field demonstration at Denney Farm did not include the burning of F021 wastes, the Agency believes that the existing data from the MIS field demonstration and other available data show that similar non-detectable levels of CDDs, CDFs and pentachlorophenol would occur as the result of incineration at six 9s DRE. As stated in the proposed rule, six 9s DRE for dioxin-containing waste is determined using a POHC with a lower heat of combustion than the CDDs and CDFs contained in the waste. The more difficult a waste is to incinerate, the lower its heat of combustion. Conversely, a constituent with a high heat of combustion is easier to incinerate. In the case of the F021 waste, the Agency believes that six 9s DRE can be achieved for the CDDs and CDFs in these wastes, since F021 wastes and CDDs and CDFs have similar degrees of incinerability (heats of combustion).

The Agency has also determined that incinerators operating in accordance with the performance standards specified in 40 CFR 761.70 for PCB wastes, namely six 9s destruction, also meet the demonstrated component of the BDAT standard. For more information on this determination, the reader is referred to the preamble discussion in the proposed rule (51 FR 1730–1735).

Incineration to six 9s DRE achieves lower concentrations of CDDS, CDFs and certain chlorophenols in the treatment residuals than incineration to four 9s DRE (current standard for all RCRA hazardous waste except dioxin-containing wastes). The efficiency of incineration has been demonstrated by the successful dioxin burn at six 9s DRE in the EPA MIS at the Denney Farm Site in McDowell, Missouri and the incineration of PCB wastes at six 9s destruction at a number of facilities. Data indicate that residuals resulting from the incineration of CDDs and CDFs at six 9s DRE contain these toxicants at concentrations about five to seven orders of magnitude less than those in the starting material. For example, solid residues resulting from the incineration at six 9s DRE of dioxin wastes containing 10 ppm TCDD may be expected to contain less than .1 ppb TCDD. Additional data from the incineration of dioxin-containing wastes at six 9s DRE show no detectable levels of CDDs/CDFs or the chlorophenols in the residuals. Most of the analysis was conducted in accordance with the methods specified in SW–846 (method 8280). (40 CFR 261, Appendix X)

Additional data indicate that incinerators operating as six 9s DRE achieved extremely low concentrations of CDDs, CDFs, and PCBs in the treatment residuals, in most cases, far below those levels measured with standard analytical techniques. Detailed information on the determination of BDAT is available in the preamble discussion in the proposed rule.

D. Determination of Alternative Capacity and Effective Dates

1. Required Alternative Treatment Capacity for Dioxin-Containing Wastes

Approximately 14.7 million pounds (6,650 metric tons) of dioxin-containing wastes are presently covered by the dioxin-listing rule. (Ref. 9). These wastes are primarily associated with the past production and manufacturing use of tri- and tetrachlorophenol and current manufacturing uses of pentachlorophenol. The Agency believes that the quantity of dioxin-containing wastes currently generated and subject to today's land disposal restriction rule amounts to 3 million pounds annually (1,350 metric tons). For the purposes of this rulemaking, the Agency estimates that approximately 1 billion pounds (500,000 metric tons) is dioxin-contaminated soil. This assessment is taken from an estimate that 1.1 billion pounds of dioxin-contaminated soil exist in the State of Missouri. See the background docket for additional information. The Agency is continuing to evaluate the universe of these wastes. As better information becomes available, the Agency will revise its estimates accordingly. Additional information on the quantity estimates of dioxin-containing wastes subject to the land disposal restriction can be found in the regulatory impact analysis for this rule.

2. Treatment, Disposal, and Recovery Capacity Currently Available

Under the dioxin-listing rule, facilities which intend to treat or dispose of dioxin-containing waste must do so in accordance with the special management standard specified in the rule (50 FR 1978). Currently, Agency information on the activities of generators and treatment, storage, and disposal facilities indicate that there is no available disposal or recovery capacity for dioxin-containing wastes. In addition, there are no Agency approved incinerators or other thermal treatment units to treat dioxin-containing wastes. Although several petitions have been received by the Agency, no incineration or thermal treatment units have been certified/permitted as required in the dioxin-listing rule.

Owners/operators of incinerators approved to burn PCB's pursuant to the provisions of the Toxic Substances Control Act, may wish to apply for certification. As pointed out earlier, PCB incinerators are a logical choice to burn these wastes because they are required to meet the same performance standard (six 9s DRE) required under the dioxin-listing rule. There are currently three commercial incinerators approved under TSCA to burn PCBs. In addition to these units, several other incinerators under development may be available (contingent on certification) for treating CDD- and dioxin-containing wastes. However, the Agency has no indication whether or when any of these or any other facility will be able to treat dioxin-containing wastes.

The Agency has full confidence in the safeguards provided by the required management standards. EPA is committed to move rapidly to assure that approved capacity is available to properly manage the listed dioxin-containing wastes. Agency efforts in this area include identifying facilities that can properly manage dioxin-containing wastes, and encouraging owners and operators to apply for the necessary Federal, State, and local permits. The EPA Regional offices will work closely with these facilities to expedite their permit applications.

VII. State Authority

A. Applicability of Rules in Authorized States

Under section 3006, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR Part 271.

Before the November 8, 1984, RCRA amendments, a State with final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed under RCRA take effect in authorized States at the same time that they take effect in

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nonauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt the newly enacted RCRA provisions as State law to retain final authorization, these provisions are effective in authorized States in the interim.

Today's rule is promulgated pursuant to sections 3004 (d) through (k), and (m), of RCRA (42 U.S.C. 6924). Therefore, it is being added to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to the newly enacted RCRA provisions and take effect in all States, regardless of their authorization status. States may apply for either interim of final authorization for the provisions in Table 1, as discussed in the following section. Table 2 in 40 CFR 271.1(j) is being modified also to indicate that this rule is a self-implementing provision of the RCRA amendments.

B. Effect on State Authorizations

As noted above, EPA will implement today's rule in authorized States until their programs are modified to adopt these rules and the modification is approved by EPA. Because the rule is promulgated pursuant to the RCRA amendments, a State submitting a program modification may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that the interim authorization will expire on January 1, 1993 (see 40 CFR 271.24(c)).

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes, and must subsequently submit the modification to EPA for approval. The deadline for State program modifications for today's final rule is July 1, 1989, if regulatory changes are necessary, or July 1, 1990, if statutory changes are necessary. These deadlines can be extended in exceptional cases (see 40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may have requirements similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program EPA will work with States under agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after the effective date of these regulations may be approved without including equivalent standards. However, once authorized, a State must modify its program to include standards substantially equivalent or equivalent to EPA's within the time periods discussed above.

C. State Implementation

There are three unique aspects of today's rule which affect State implementation and impact State actions on the regulated community:

1. Under Part 268, Subpart C, EPA is promulating land disposal restrictions for all generators and disposers of certain types of hazardous waste. In order to retain authorization, States must adopt the regulations under this Subpart since State requirements can be no less stringent than Federal requirements.

2. Also under Part 268, EPA may grant a national variance from the effective date of land disposal prohibitions for up to 2 years if it is found that there is insufficient alternative capacity to land disposal. Under § 268.5, case-by-case extensions of up to 1 year (renewable for an additional year) may be granted for specific applicants lacking adequate capacity.

The Administrator of EPA is solely responsible for granting variances to the effective date because these determinations must be made on a national basis. In addition, it is clear that section 3004(h)(3) intends for the Administrator to grant case-by-case extensions after consulting the affected States, on the basis of national concerns which only the Administrator can evaluate. Therefore, States cannot be authorized for this aspect of the program.

3. EPA may grant petitions of specific duration to allow land disposal of certain hazardous waste where it can be demonstrated that there will be no migration of hazardous constituents for as long as the waste remains hazardous.

States which have the authority to impose prohibitions may be authorized under section 3006 to grant petitions for exemptions from bans. Decisions on site-specific petitions do not require the national perspective required to prohibit waste or grant extensions. In accordance with section 3004(i), EPA will publish notice of the State's final decision on petitions in the **Federal Register**.

One commenter argued that EPA should publish all petitions submitted by authorized States, as well as publish final decisions. EPA does not believe that section 3004(i) mandates this result. In order to be authorized to administer the petition process, a State will have to adopt notice and comment requirements equivalent to those in today's rules. Publication of the final decision in the **Federal Register** will satisfy the need to inform the general public by informing the public of which facilities are allowed to receive prohibited waste, and by informing other applicants as to the types of petitions that have been accepted.

States are free to impose their own disposal prohibitions if such actions are more stringent or broader in scope than Federal programs (RCRA section 3009 and 40 CFR 271.1(i)). Where States impose bans which contravene an EPA action, such as granting a case-by-case extension or petition, the more stringent State prohibitions governs and EPA's action is without meaning in the State.

VIII. Effects of the Land Disposal Restrictions Program on Other Environmental Programs

A. Discharges Regulated Under the Clean Water Act

Compliance with land disposal restriction requirements does not relieve facility owners of the obligation to comply with all other Federal, State, and local environmental requirements, including the requirements of the Clean Water Act. Under the Clean Water Act, facility owners must comply with all applicable pretreatment requirements (for discharges to a publicly owned treatment works) and all requirements of an NPDES permit (for discharges to surface water).

The Agency recognizes that generators and treaters of hazardous wastes may choose to dispose of restricted wastes using non-RCRA disposal options.

Two disposal options regulated under the Clean Water Act are direct discharge to surface waters and indirect discharge to publicly owned sewage treatment works (POTWs). Decisions to discharge restricted solvent wastes using these options will depend upon a number of factors including the physical form of the waste, the degree of pretreatment required prior to discharge, State and local regulations, and the cost of disposal. The Agency conducted an analysis to determine the impact of the land disposal restrictions on these alternative disposal methods (Ref. 10). The analysis focused primarily on the discharge of solvent wastes to POTWs because the Agency lacked data to analyze the impacts from spent solvent wastes discharged directly to receiving waters. However, inadequate data on these above mentioned factors precluded the Agency from conducting a quantitative assessment of the potential effect of the land disposal restrictions on increased demand for disposal to POTW's.

The results of the analysis indicated that the quantity of F001–F005 solvents discharged to POTWs could potentially increase as much as five times, although it is likely that the actual increase will be much less. The analysis also demonstrated that the discharge of solvent constitutents to POTWs will probably result in some exposure to humans. However, the risks to public health and the environment from these discharges could not be determined.

B. Discharges Regulated Under the Marine Protection, Research, and Sanctuaries Act

Two options regulated under the Marine Protection, Research, and Sanctuaries Act (MPRSA) (33 U.S.C. 1401 et seq.) are ocean dumping and ocean-based incineration. EPA is in the process of revising the MPRSA regulations. If the Agency were to relax the current regulations, there could be increased demand for ocean-based waste management due to the impact of the land disposal restrictions. If, for example, the regulations were revised to allow the issuance of permits to applicants whose wastes fail to comply with one or more of the MPRSA environmental criteria but who successfully demonstrate a need for the permit, the demand for ocean disposal could increase substantially.

The Agency conducted an analysis of the potential shift in demand for ocean disposal (ocean dumping or ocean-based incineration) resulting from the restrictions on land disposal of solvent, dioxin, and California list wastes. The results are described in "Assessment of Impacts of Land Disposal Restrictions on Ocean Dumping and Ocean Incineration of Solvents, Dioxins, and California List Wastes" (Ref. 12). This assessment is based on a methodology to score and rank waste streams for relative acceptability for ocean disposal, supplemented with an analysis of cost factors and capacity constraints.

The scoring/ranking methodology is based on technical requirements (e.g., physical form and heating value) and MPRSA environmental criteria (e.g., constituent concentrations, toxicity, solubility, density, and persistence of the waste) associated with ocean disposal of hazardous waste. The capacity analysis assumes that those wastes least acceptable for ocean disposal will be treated or disposed of by land-based methods. The cost analysis assumes that additional land-based treatment capacity would be built to treat waste streams for which the costs of land-based treatment would be less than the costs of ocean disposal (including on land transportation to a port located on the East Coast).

The results of the cost/capacity analysis indicates that, as a result of the land disposal restrictions, approximately 9.2 million gallons per year of solvent wastes and 1.2 million gallons per year of dioxin wastes potentially could create demand for ocean dumping and ocean-based incineration. Such demands result from capacity short-falls of land-based incineration and the relatively lower cost of ocean dumping and ocean-based incineration, taking into account the costs of transportation on land. These results estimate the demand that may be created if the ocean dumping regulations are revised to allow the issuance of permits for wastes that do not comply with MPRSA environmental criteria, because the analysis did not take into account technical requirements or environmental criteria.

The Agency expanded the cost/capacity analysis to eliminate those wastes that do not meet technical requirements or MPRSA criteria. The results of that analysis indicated that none of the solvent and dioxin waste streams identified as likely to create potential demand for ocean disposal in the cost/capacity analysis would be acceptable for ocean dumping, based on existing ocean dumping regulations. Conversely, all the waste streams identified by the cost/capacity analysis would be acceptable for ocean-based incineration, based on technical requirements and the proposed ocean incineration regulations.

C. Air Emissions Regulated Under the Clean Water Act

Many of the technologies capable of achieving the treatment standard for a restricted waste may result in cross-media transfer of hazardous constituents into the air. Examples would be air-stripping of volatile organics from wastewater and incineration of metal-bearing spent solvents. Unless air controls are added, these technologies may result in transfer of organics and metals, respectively, to the atmosphere.

The Agency has undertaken several efforts to address the potential problem, as discussed in the comparative risk assessment section. The Agency has initiated a program to address metal emissions from incinerators. EPA also has initiated two programs under section 3004(n) to address air emissions from other sources. The first program will address leaks from equipment, such as pumps, valves, and vents from units processing concentrated organics waste streams. Several units identified as BDAT in this rulemaking, batch distillation, thin film evaporation, fractionation, and incineration, would process waste streams with greater than ten percent organics and would be covered by this rulemaking. The Agency expects to propose these standards in November 1986. The second program under section 3004(n) will address all remaining sources of air emissions, such as residual air emissions from land disposal units and non-land disposal sources (e.g., tanks and waste transfer and handling). These standards are scheduled to be proposed in November 1987, and promulgated in November 1988.

IX. Implementation of the Part 268 Land Disposal Restrictions Program

As a result of the regulations being promulgated today under Part 268, several options will be available to the generator or owner/operator of a treatment, storage, and disposal facility for the management of restricted hazardous wastes. In order to provide direction to those who manage restricted hazardous wastes, the following decision-making sequences are offered for determining appropriate waste management procedures. This unit provides references to applicable 40 CFR Parts 264 and 265 requirements as well as Part 268 requirements for implementation of the various waste management options. The Agency expects to produce an expanded version of this section as guidance to the regulated community.

All of the sequences in the generator's decision-making process must commence with a determination as to whether the hazardous waste is listed in Part 268 Subpart C. If the hazardous

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waste is not a restricted waste, it is not subject to land disposal restrictions under Part 268. It must, nevertheless, be managed in accordance Parts 264 and 265.

Sequence 1: Waste Characterization

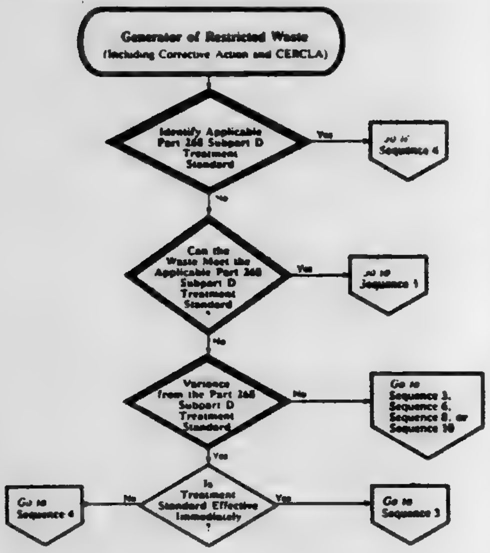
Generator of Restricted Waste (Including Corrective Action and CERCLA)
Identify Applicable Part 268 Subpart D Treatment Standard
Yes
Go to Sequence 4
No
Can the Waste Meet the Applicable Part 268 Subpart D Treatment Standard ?
Yes
Go to Sequence 1
No
Variance from the Part 268 Subpart D Treatment Standard
No
Go to Sequence 3, Sequence 6, Sequence 8, or Sequence 10
Yes
Go to Sequence 4
No
Is Treatment Standard Effective Immediately ?
Yes
Go to Sequence 3

Sequence 1 in the generator's decision-making process commences with a determination of the appropriate treatability group and corresponding Part 268 Subpart D treatment standard (§§ 268.41, 268.42, or 268.43). The Agency is requiring that applicable Part 268 Subpart D treatment standards for a restricted waste be determined at the point of generation. To require otherwise would allow the generator to dilute waste in order to circumvent an effective date or otherwise alter the applicable treatment standard. The Part 268 Subpart D treatment standards are expressed either as performance standards in the waste extract in § 268.41, as required treatment methods in § 268.42, or as concentrations in the waste in § 268.43. After the generator establishes the applicable Part 268 Subpart D treatment standard, the next step in the sequence is to determine the effective date of the applicable treatment standard. EPA has the discretionary authority to delay the effective dates of the Part 268 treatment standards on the basis of available national treatment capacity. Determinations as to the adequacy of treatment capacity for restricted wastes are based on the quantity of restricted wastes generated and the available capacity of alternative treatment, recovery, and disposal technologies. For those wastes where EPA determines that alternative capacity is adequate, the treatment standards will take effect immediately upon promulgation. When the Part 268 Subpart D treatment standards are expressed as concentrations in the waste extract (§ 268.41), the need for treatment depends upon the nature and concentration of the hazardous constituents. This will be determined either through analysis of constituents in the waste extract specified in § 268.7, using the Toxicity Characteristic Leaching Procedure (Appendix I to Part 268) or through knowledge of the hazardous constituents in the waste extract based on the materials and the manufacturing processes generating the waste. Where the Part 268 Subpart D treatment standards are specified as a required method (§ 268.42), it is not necessary for the generator to determine the concentration of the hazardous constituents in the waste or waste extract. When the Part 268 Subpart D treatment standards are expressed as concentrations in the waste (§ 268.43), the need for treatment is determined either through analysis of the hazardous constituents in the waste, as specified in § 268.7 or through knowledge of the hazardous constituents in the waste based on the materials and the manufacturing processes generating the waste.

Sequence 2: Wastes That Naturally Meet Part 268 Subpart D Treatment Standard

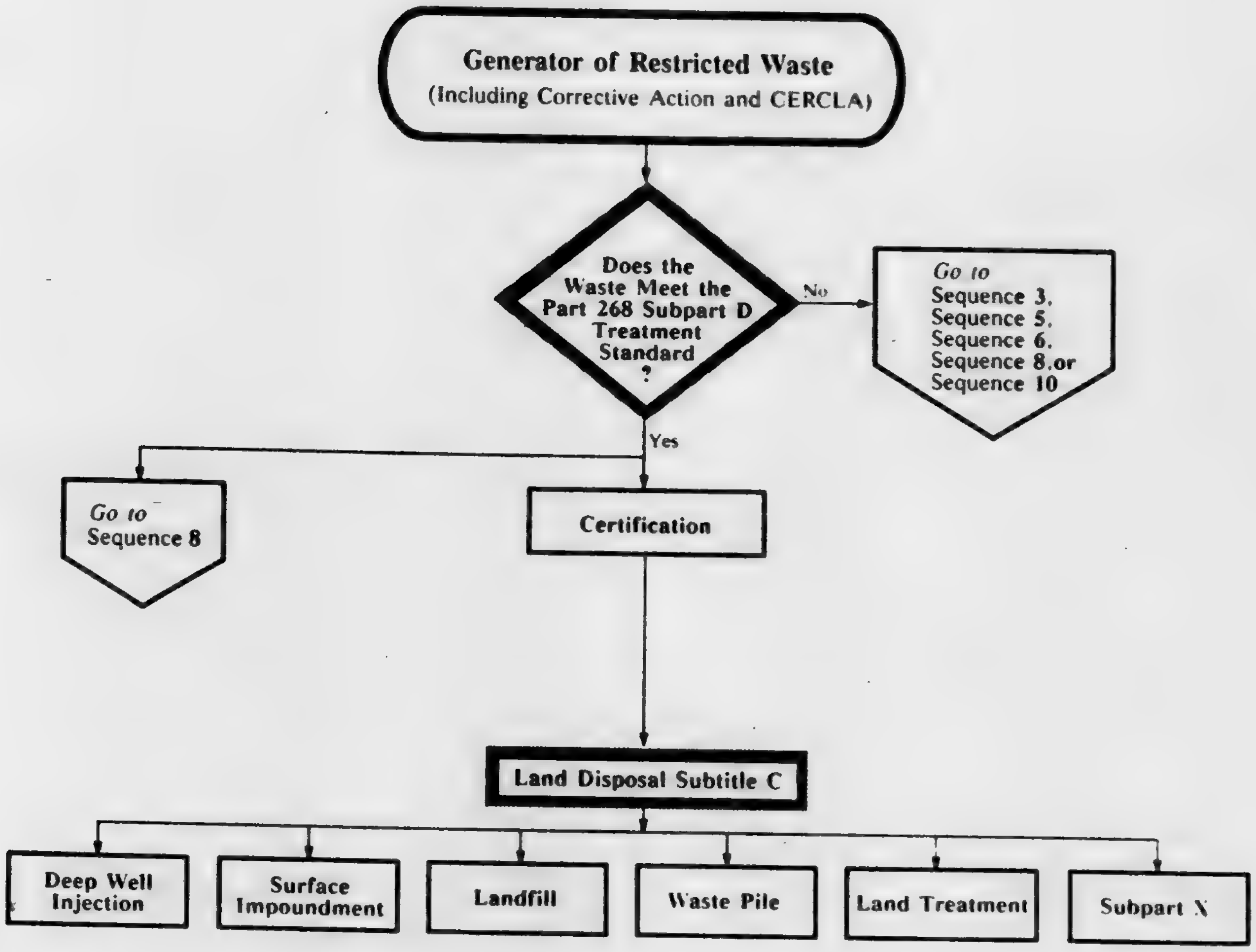
Generator of Restricted Waste
(Including Corrective Action and CERCLA)
Does the Waste Meet the Part 268 Subpart D Treatment Standard ?
No
Go to Sequence 3, Sequence 5, Sequence 6, Sequence 8 or Sequence 10
Yes
Go to Sequence 8
Certification
Land Disposal Subtitle C
Deep Well Injection
Surface Impoundment
Landfill
Waste Pile
Land Treatment
Subpart X

Sequence 2 in the generator's decision-making process commences with the determination that the concentration of hazardous constituents in the waste is lower than the applicable Part 268 Subpart D treatment standard. Therefore, the waste is exempt from the statutory prohibition on land disposal.

The generator must submit a notice (§ 268.7(a)(2)(i)) and include: (1) EPA Hazardous Waste Number; (2) the applicable treatment standard; (3) the manifest number associated with the shipment of waste; and (4) waste analysis data, where available. The generator must also submit a certification statement to the land disposal facility as required under § 268.7(a)(2)(ii). The land disposal facility must verify the records submitted by the generator in accordance with the facility's waste analysis plan. A generator that also operates an on-site land disposal facility must put the same information (except for the manifest number) as would be in the notice (§ 268.7(a)(2)(i)) in the operating record of the land disposal facility.

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Sequence 3: Treatment of Restricted Wastes

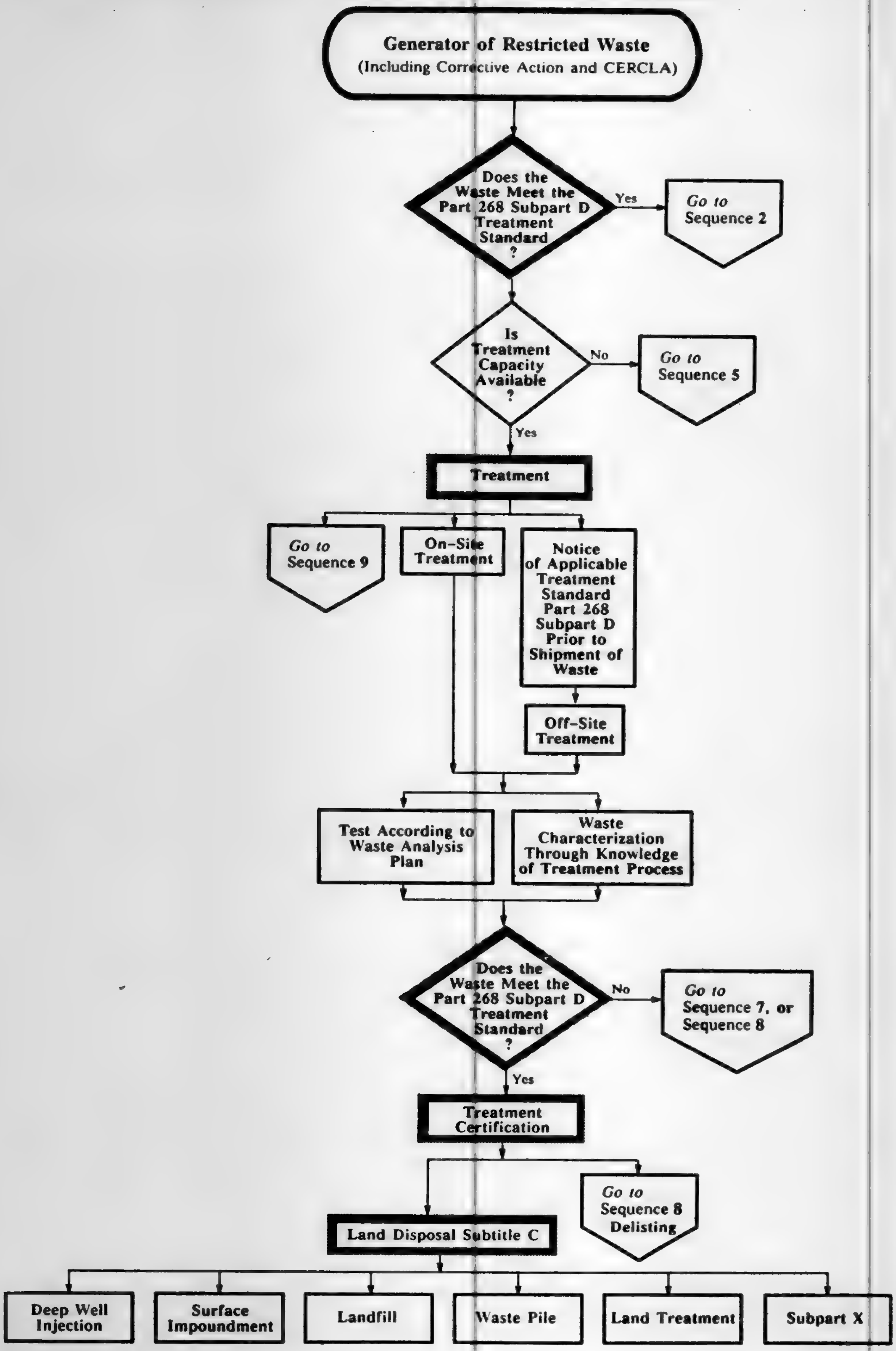
Generator of Restricted Waste
(Including Corrective Action and CERCLA)
Does the Waste Meet the Part 268 Subpart D Treatment Standard ?
Yes
Go to Sequence 2
Is Treatment Capacity Available ?
No
Go to Sequence 5
Yes
Treatment
Go to Sequence 9
On-Site Treatment
Notice of Applicable Treatment Standard Part 268 Subpart D Prior to Shipment of Waste
Off-Site Treatment
Test According to Waste Analysis Plan
Waste Characterization Through Knowledge of Treatment Process
Does the Waste Meet the Part 268 Subpart D Treatment Standard ?
No
Go to Sequence 7, or Sequence 8
Yes
Treatment Certification
Go to Sequence 8 Delisting
Land Disposal Subtitle C
Deep Well Injection
Surface Impoundment
Landfill
Waste Pile
Land Treatment
Subpart X

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Sequence 3 in the generator's decision-making process commences with one of the following determinations: (1) The concentration of hazardous constituents in the waste extract exceeds the applicable § 268.41 treatment standard; (2) the waste must be treated in accordance with the treatment method required under § 268.42; or (3) the concentration of hazardous constituents in the waste exceeds the applicable § 268.43 treatment standard. In each case, continued placement of the restricted waste in land disposal units as of the applicable effective date specified in Part 268 Subpart C is prohibited.

Generators may store restricted wastes on site in containers and tanks according to the provisions in section 268.50 prior to treatment. This storage is solely for the purpose of the accumulation of such quantities of hazardous waste as is necessary to facilitate proper, recovery, treatment, or disposal.

The generator must treat the restricted waste in either an on-site or off-site treatment facility with interim status or a RCRA permit that is allowed to accept the restricted waste (as specified in 40 CFR Part 270).

An off-site treatment facility must obtain a notice from the generator specifying the EPA Hazardous Waste Number, the applicable treatment standard, and the manifest number associated with the shipment of waste § 268.7(a)(1)). This notice must be placed in the operating record of the treatment facility along with a copy of the manifest. Generators who are also treatment, storage, or disposal facilities must place the same information in the operating record of the facility, although a formal notice and manifest are not required. The testing and recordkeeping requirements promulgated in today's rule do not relieve the generator of his responsibilities under 40 CFR 262.20 to designate a facility on the manifest which is permitted to accept the waste for off-site management.

The determination that the treatment residue meets the applicable § 268.41 treatment standard can be made through knowledge of the hazardous constituents in the waste extract based on the processes used in the treatment of the waste or by analyzing the treatment residuals according to the waste analysis plan using the Toxicity Characteristic Leaching Procedure (Part 268, Appendix I). The determination that the treatment residue meets the applicable § 268.43 performance standard can be made through knowledge of the hazardous constituents in the waste based on the processes used in the treatment of the water or by analyzing the treatment residuals according to the waste analysis plan. In either case, if the concentration of hazardous constituents in the treatment residual extract exceeds § 268.41 treatment performance standards, or the concentration of hazardous constituents in the residual exceeds § 268.43 treatment standards, additional treatment must be performed before land disposal is permitted. Generators, transporters, handlers, storage facilities, or treatment facilities may not dilute restricted wastes as a substitute for adequate treatment to meet §§ 268.41 or 268.43 treatment standards. Such actions will be considered a violation of the dilution prohibition. In particular, wastes meeting Part 268 Subpart D treatment standards must not be mixed with wastes that do not meet such standards in order to achieve the treatment standard for the mixture (§ 268.3). EPA does not intend to disrupt or alter the normal and customary practices of properly operated treatment facilities. Treatment facilities can mix compatible wastes in order to treat at capacity levels. However, the concentration of a hazardous constituent in the treatment residual must not exceed the concentration of the most stringent applicable §§ 268.41 or 268.43 treatment standard for any given constituent.

When shipping the treatment residue to an interim status or RCRA permitted land disposal facility, the treatment facility must certify (as specified in § 268.7(b)(2)) that the treatment residue meets the applicable treatment standards in §§ 268.41, or 268.43, or has been treated using the required method in § 268.42 and, therefore, is no longer a restricted waste. The treater must also send a notice to the land disposal facility and include the EPA Hazardous Waste Number, the applicable treatment standard, the manifest number associated with the shipment of waste, and waste analysis data from treatment residues where available as specified in § 268.7(b)(1).

If the treatment residuals meet the delisting criteria, the generator or treatment facility may petition the Agency for a site-specific delisting pursuant to the provisions in 40 CFR 260.22. Delisted residuals can be managed in subtitle D facilities.

In some cases, the generator or treatment facility may conclude that it is technically infeasible to meet the §§ 268.41 or 268.43 treatment performance standards established for the waste. If a waste cannot meet the applicable treatment standards, the generator may petition EPA for a treatability variance under § 268.44 (See Sequence 7: Variance From a Treatment Standard, for a detailed discussion.

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Sequence 4: National Capacity Variance

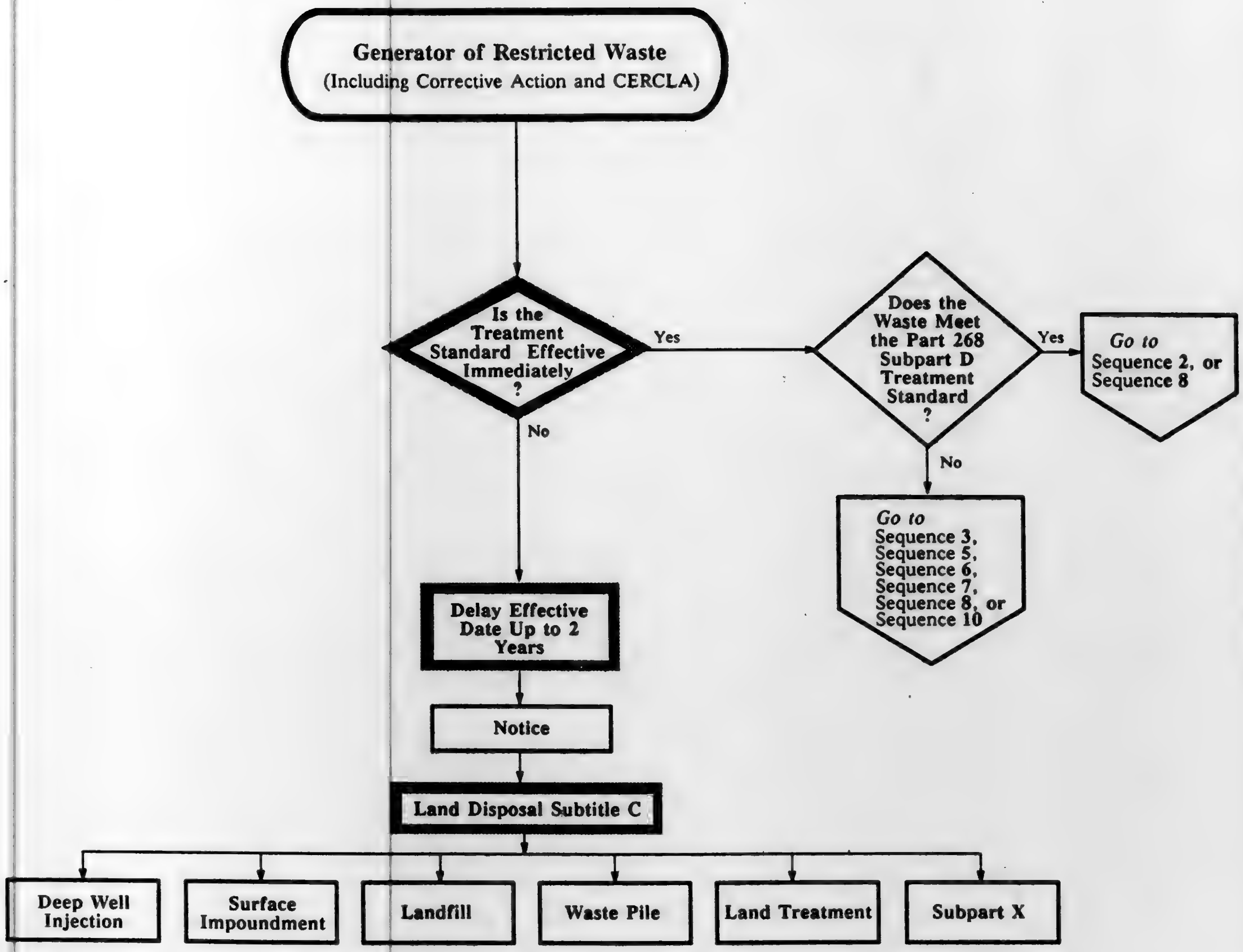
Generator of Restricted Waste
(Including Corrective Action and CERCLA)
Is the Treatment Standard Effective Immediately ?
Yes
No
Does the Waste Meet the Part 268 Subpart D Treatment Standard ?
Yes
Go to Sequence 2, or Sequence 8
No
Go to Sequence 3, Sequence 5, Sequence 6, Sequence 7, Sequence 8, or Sequence 10
Delay Effective Date Up to 2 Years
Notice
Land Disposal Subtitle C
Deep Well Injection
Surface Impoundment
Landfill
Waste Pile
Land Treatment
Subpart X

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Sequence 4 in the generator's decision-making process commences for those wastes where the Agency has made the determination that capacity is not adequate on a nationwide basis. The Agency will exercise the discretion granted to it under Section 3004(h)(2) and authorize a nationwide variance of up to two years from the statutory effective date. The purpose of granting a national variance is to provide time for development of additional treatment, recovery or disposal capacity. Those wastes that EPA determines are eligible for nationwide variances are specified in Part 268 Subpart C.

During the national variance, the generator must send a notice (as specified in § 268.7(a)(3)) to the land disposal facility indicating that EPA has granted an extension of time in which to comply with the applicable Part 268 Subpart D treatment standard. At the end of the national variance, the Part 268 Subpart D treatment standards takes effect and the generator must follow any of the following sequences: Sequence 3: Treatment of a Restricted Waste, Sequence 5: Case-by-Case Extensions, Sequence 6: No Migration Petition, Sequence 8: Delisting, or Sequence 10: Change Production Process, Recycle or Don't Produce Waste.

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Sequence 5: Case-by-Case Extensions

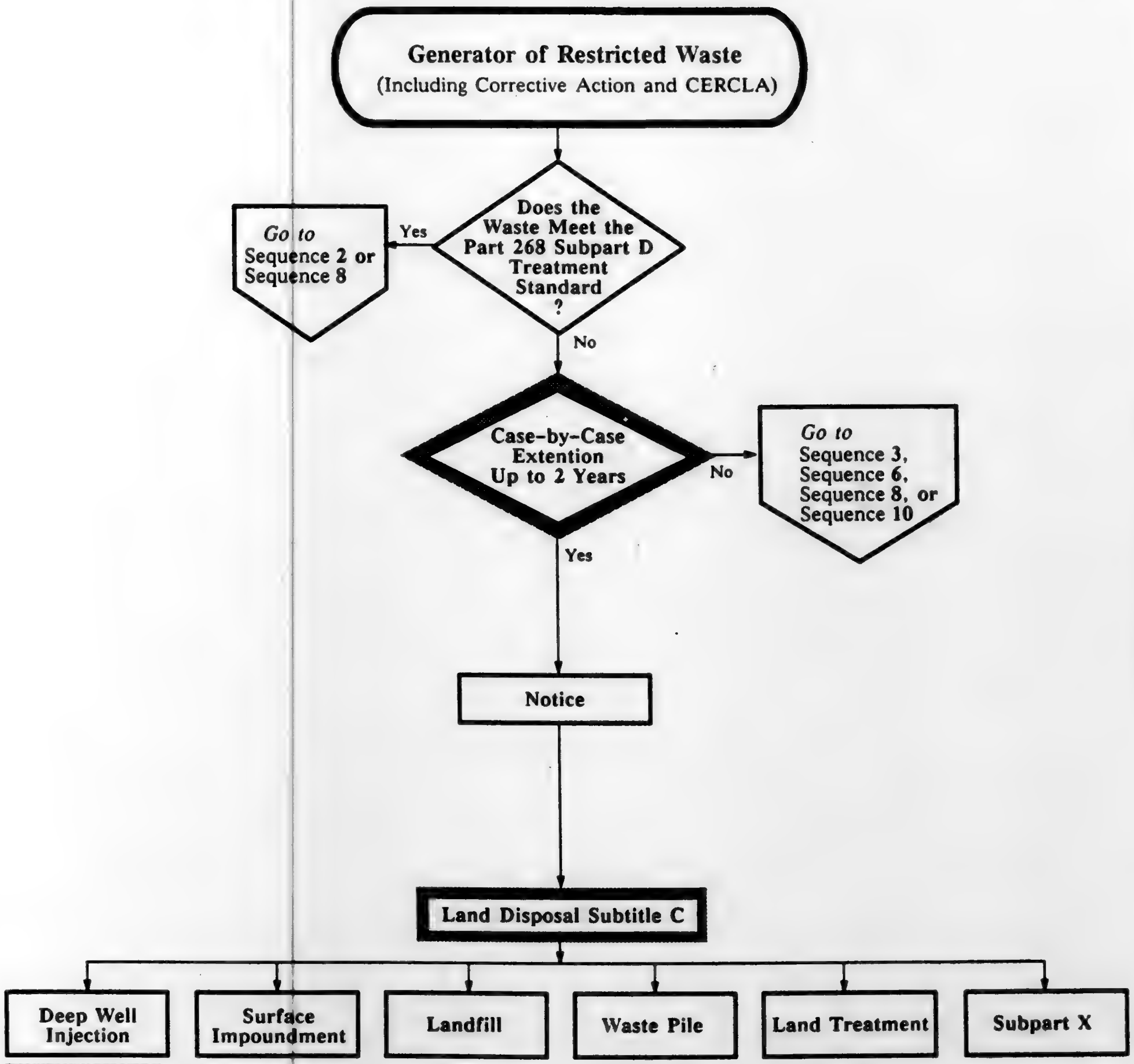
Generator of Restricted Waste
(Including Corrective Action and CERCLA)
Does the Waste Meet the Part 268 Subpart D Treatment Standard ?
Yes
Go to Sequence 2 or Sequence 8
No
Case-by-Case Extention Up to 2 Years
No
Go to Sequence 3, Sequence 6, Sequence 8, or Sequence 10
Yes
Notice
Land Disposal Subtitle C
Deep Well Injection
Surface Impoundment
Landfill
Waste Pile
Land Treatment
Subpart X

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Sequence 5 in the generator's decision-making process commences with a determination that the restricted waste does not comply with the applicable §§ 268.41 or 268.43 treatment standards or that the waste must be treated in accordance with the treatment method required under § 268.42. Continued placement of the restricted waste in land disposal units as of the applicable effective date, as specified in Part 268 Subpart C, is prohibited. The generator may submit an application to EPA, as specified in § 268.5, for an extension of time in which to comply with the Part 268 Subpart D treatment standards by demonstrating binding contractual commitments to construct or otherwise obtain access to alternative treatment, recovery or disposal capacity and that such capacity is not available by the date that the Subpart D treatment standards take effect due to circumstances beyond his control. Case-by-case extensions may be granted by EPA for two 1-year periods. The extension does not become effective until the notice of approval appears in the **Federal Register** as specified in § 268.5(e). The generator must forward a notice, as specified in § 268.7(a)(3), stating that the waste is exempt from the land disposal restrictions to the Subtitle C land disposal facility receiving the restricted waste.

If the generator is denied a case-by-case extension, the next step in this sequence is the consideration of the following waste management options: the generator must successfully find available treatment capacity (Sequence 3), submit a no migration petition (Sequence 6), submit a delisting petition (Sequence 8), change his production processes, or recycle so that restricted wastes are no longer generated (Sequence 10).

Sequence 6: No Migration Petition

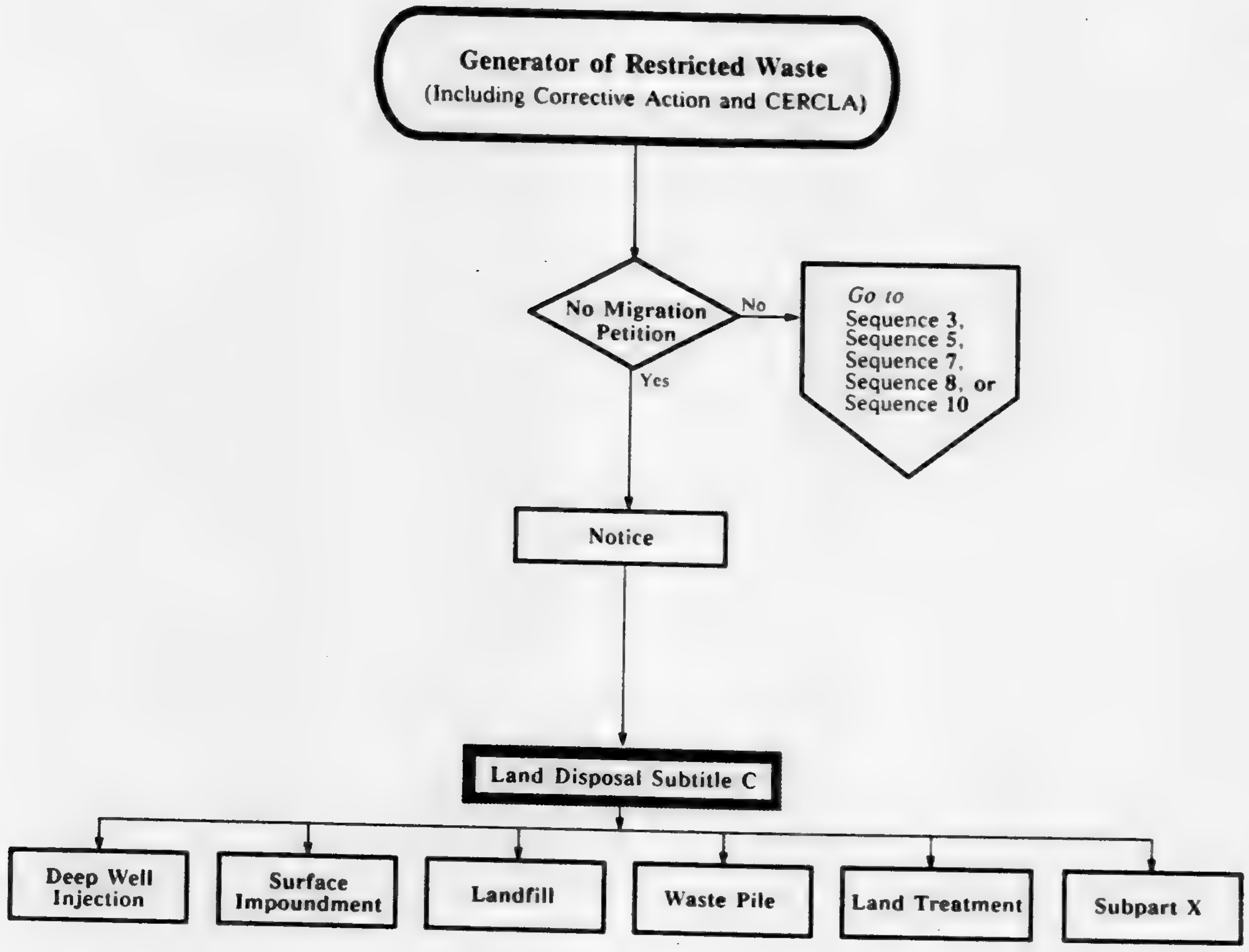
Generator of Restricted Waste
(Including Corrective Action and CERCLA)
No Migration Petition
No
Go to
Sequence 3,
Sequence 5,
Sequence 7,
Sequence 8, or
Sequence 10
Yes
Notice
Land Disposal Subtitle C
Deep Well Injection
Surface Impoundment
Landfill
Waste Pile
Land Treatment
Subpart X

Sequence 6 of the generator's decision-making process commences with a determination that the waste does not meet the §§ 268.41 of 268.43 treatment standards or that the waste must be treated by the method required in § 268.42 Wastes that do not comply with applicable §§ 268.41 or 268.43 treatment standards or are not treated by the method required in § 268.42 will be prohibited from continued placement in land disposal units as of the applicable effective date, unless the generator in conjunction with a Treatment, Storage, and Disposal Facility (TSDF) or a TSDF submits a no migration petition. The petition as specified in § 268.6 must demonstrate that there will be no migration of hazardous constituents from the continued land disposal of particular restricted hazardous wastes at a specific land disposal unit for as long as the waste remains hazardous. The land disposal facility must have either interim status or a RCRA permit, as required in 40 CFR Part 270, to manage the waste. The no migration petition will be a difficult demonstration, but the Agency has identified the following three scenarios that may satisfy the requirements of the statutory standard of "no migration": (1) A situation where environmental parameters are such that no detectable migration of hazardous constituents would occur from the disposal unit; (2) a situation where an active process is taking place rendering the waste non-hazardous; or (3) a situation where hazardous waste is being stored temporarily in a waste pile where engineered controls are sufficient to prevent migration in the short term. Although the Agency is not providing guidance on the no migration petition at this time, it is, however, offering the opportunity for preapplication meetings as assistance in preparing a no migration petition. As a result of such a meeting both the Agency and the petitioner will gain a better understanding of what must be included in the petition and the probability of developing a successful petition. An approved petition allows the land disposal of specific restricted wastes at a specific site. A facility must observe approval in the **Federal Register** (§ 268.6(g)) before it can land dispose a restricted waste. The generator must forward a notice as specified in § 268.7(a)(3) staring that the waste is exempt from the land disposal restrictions to the Subtitle C facility receiving the restricted waste.

Where a no migration petition is not granted, the generator may follow courses of action in accordance with the following sequences: Sequence 3: Treatment of a Restricted Waste, Sequence 5: Case-By-Case Extensions, Sequence 7: Variance From a Treatment Standard, Sequence 8: Delisting, or Sequence 10: Change Production Process, Recycle, or Don't Produce the Waste.

Sequence 7: Variance From a Treatment Standard

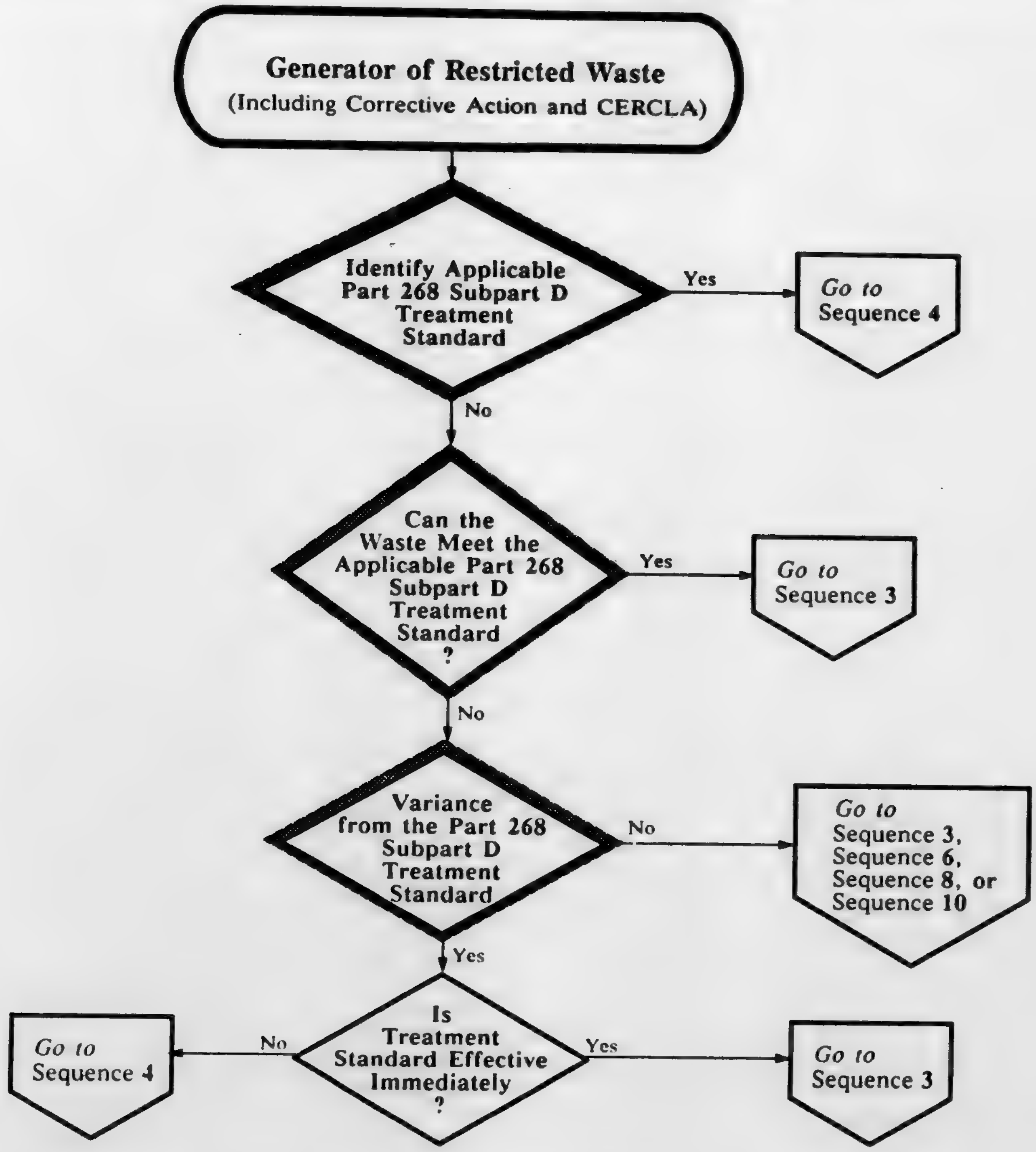
Generator of Restricted Waste
(Including Corrective Action and CERCLA)
Identify Applicable Part 268 Subpart D Treatment Standard
Yes
Go to Sequence 4
No
Can the Waste Meet the Applicable Part 268 Subpart D Treatment Standard ?
Yes
Go to Sequence 3
No
Variance from the Part 268 Subpart D Treatment Standard
No
Go to Sequence 3, Sequence 6, Sequence 8, or Sequence 10
Yes
Is Treatment Standard Effective Immediately ?
No
Go to Sequence 4
Yes
Go to Sequence 3

Sequence 7 of the generator's decision-making process begins when a generator determines that he cannot treat the waste to the Part 268 Subpart D treatment standard as specified in §§ 268.41, 268.42, or 268.48. The generator may submit a petition for a variance from the treatment standard as specified under § 268.44. The Agency envisions that wastes may be subject to a treatability variance in cases where a waste is not treatable to the level or by the method specified in the treatment standard. This may occur when a waste is significantly different from the wastes considered in establishing the treatment standard either because the waste matrix is complex and more difficult to treat or the waste contains higher concentrations of the hazardous constituents. The information as specified in §§ 268.44 must be included in the petition for a variance from a Part 268 Subpart D treatment standard.

When the Agency grants a variance from a treatment standard, it must subsequently make a national capacity determination regarding the availability of appropriate treatment capacity for that waste. For those wastes where EPA determines that capacity for the appropriate treatment technology is adequate, the performance standard set as a result of the variance from the treatment standard will take effect immediately upon promulgation. Otherwise, the Agency will grant a national capacity variance (Sequence 4) of up to two years during which time the continued placement of untreated waste in land disposal facilities regulated under Subtitle C of RCRA will be allowed.

Where a variance from a treatment standard is not granted, the waste may be managed in accordance with Sequence 3: Treatment of Restricted Wastes, Sequence 5: Case-By-Case Extension, Sequence 6: No Migration Petition, Sequence 8: Delisting, and Sequence 10: Change Production Process, Recycle, or Don't Produce the Waste.

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Sequence 8: Delisting

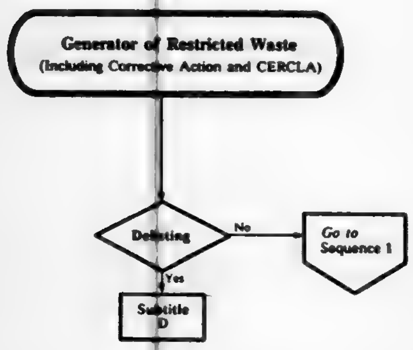
Generator of Restricted Waste
(Including Corrective Action and CERCLA)
Delisting
No
Go to Sequence 1
Yes
Subtitle D

Sequence 8 commences with the generator's determination that the waste is restricted (40 CFR Part 268 Subpart C). Upon evaluation of the available waste management options, and possibly after treatment (including treatment not meeting the treatment standards of §§ 268.41–268.43) the generator may decide to submit a petition to EPA for a site-specific delisting, pursuant to the provisions in 40 CFR 260.22. Delisted wastes are no longer considered hazardous and may be disposed in a Subtitle D facility.

The generator may choose to submit a delisting petition to the Agency after the restricted waste has been treated to the Part 268 Subpart D treatment standard as well as after the denial of any of the exceptions to achieving the Part 268 Supart D treatment standard.

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Sequence 9: Surface Impoundment Exemption

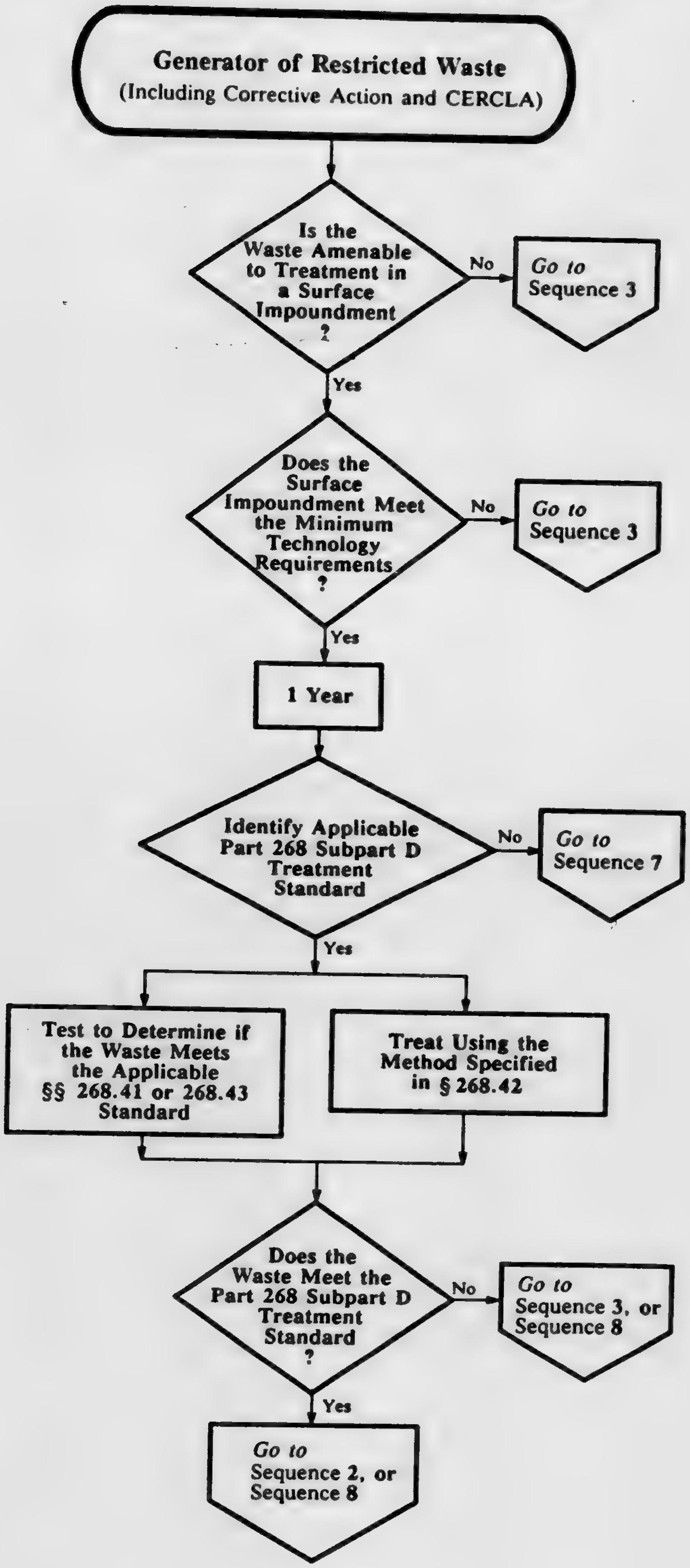
Generator of Restricted Waste
(Including Corrective Action and CERCLA)
Is the Waste Amenable to Treatment in a Surface Impoundment ?
No
Go to Sequence 3
Yes
Does the Surface Impoundment Meet the Minimum Technology Requirements ?
No
Go to Sequence 3
Yes
1 Year
Identify Applicable Part 268 Subpart D Treatment Standard
No
Go to Sequence 7
Yes
Test to Determine if the Waste Meets the Applicable §§ 268.41 or 268.43 Standard
Treat Using the Method Specified in § 268.42
Does the Waste Meet the Part 268 Subpart D Treatment Standard ?
No
Go to Sequence 3, or Sequence 8
Yes
Go to Sequence 2, or Sequence 8

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Sequence 9 in the generator's decision-making process commences with a determination by the generator that the restricted waste does not comply with the applicable Part 268 Subpart D treatment standard and will be prohibited from continued placement in land disposal units as of the applicable effective date. The generator may treat in an interim status or RCRA permitted surface impoundment meeting the minimum technology requirements in accordance with 40 CFR 264.221(c) and 265.221(a) and that is in compliance with 40 CFR Part 264 or 265 Subpart F as applicable (*i.e.*, it has been constructed with two or more liners, and a leachate collection system, and is in compliance with ground water monitoring requirements). On an annual basis, the facility must identify the treatability group and Part 268 Subpart D treatment standard applicable to the contents of the surface impoundment. If the applicable Part 268 Subpart D treatment standard is specified in § 268.42, the contents of the surface impoundment must be treated using the required method.

A request for a variance from the treatment standards, (as specified in § 268.44), set under Part 268 Subpart D may be submitted if in the identification of an applicable Part 268 Subpart D treatability group the response is negative.

The need for treatment depends on the concentration of the hazardous constituents in the waste extract as specified in § 268.41 or on the concentration of the hazardous constituents in the waste itself as specified in § 268.43. Therefore, the facility must analyze the contents of the surface impoundment annually in accordance with § 268.4(a)(2). Impoundment residues that do not meet the applicable Part 268 Subpart D treatment standards (§§ 268.41 or 268.43) must be removed and managed as a restricted waste, and cannot be further treated in a surface impoundment. The options available for management of the restricted waste are as discussed in Sequence 3: Treatment of Restricted Wastes, Sequence 6: No Migration Petition, and Sequence 8: Delisting.

Surface impoundment residues that meet the applicable Part 268 Subpart D treatment standard are exempt from the statutory prohibitions on land disposal. The residue may remain in the impoundment or may be otherwise land disposed in a Subtitle C facility. If the residue remains in the surface impoundment, certification that the hazardous waste complies with the treatment standard must be put in the operating record of the land disposal unit. Residues that are removed and land disposed off-site must be accompanied with the notice and certification as specified in § 268.7(a)(2).

Sequence 10: Change Production Process, Recycle or Don't Produce the Waste

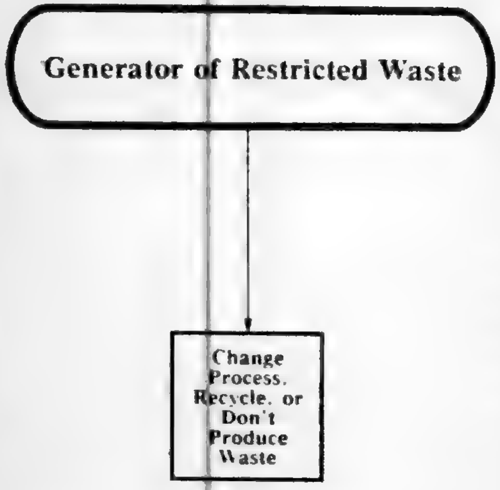
Generator of Restricted Waste
Change Process, Recycle, or Don't Produce Waste

Sequence 10 of the generator's decision-making process represents an opportunity that always presents itself to any generator of hazardous wastes; the decision to change production processes or to recycle wastes so that restricted hazardous wastes are no longer produced. Waste minimization is strongly encouraged.

X. Regulatory Requirements

A. Regulatory Impact Analysis

Executive Order 12291 requires EPA to assess the effect of contemplated Agency actions during the development of regulations. Such an assessment consists of a quantification of the potential benefits and costs of the rule, as well as a description of any beneficial or adverse effects that cannot be quantified in monetary terms.

In addition, Executive Order 12291 requires that regulatory agencies prepare an analysis of the regulatory impact of major rules. Major rules are defined as those likely to result in:

1. An annual cost to the economy of $100 million or more; or

2. A major increase in costs or prices for consumers or individual industries; or

3. Significant adverse effects on competition, employment, investment, productivity, innovation, or international trade.

The Agency has performed an analysis of the rule to assess the economic effect of associated compliance costs. Based on this analysis, EPA has determined that restricting the land disposal of solvent and dioxin wastes will constitute a major rule as defined by Executive Order 12291, because the total annualized cost of this rule is $152.4 million. In consequence, EPA has prepared a regulatory impact analysis of this rule.

The remainder of Unit X describes the economic analysis performed by EPA in support of today's final rule.

1. Cost and Economic Impact Methodology

EPA has assessed the cost and potential economic effects of today's rule and of the major regulatory alternatives. For its analysis of solvent wastes, EPA has examined two alternatives to today's final rule. The first alternative is to codify the statutory prohibition on land disposal of affected wastes. This approach would prohibit the land disposal of all solvent wastes at any concentration. The second approach is to use risk-based screening levels in the development of treatment standards. Costs and benefits of both these alternatives are described in more detail in the regulatory impact analysis of restricting solvents from land disposal.

For dioxin wastes, no less stringent alternative could be examined, because the dioxin listing requires incineration to six 9s DRE or the application of a thermal technology of equivalent performance.

The methodology for establishing total costs and impacts involves three steps. First, EPA estimates the population of facilities and waste management practices which will be affected. Next, total social costs of the regulation are derived by adding costs for individual facilities. Finally, economic impacts on affected facilities are assessed.

a. Affected population and practices. The affected population is the total number of hazardous waste treatment, storage and disposal facilities (TSDFs) and generators land disposing of affected wastes either directly at the generation site or indirectly through the purchase of commercial land disposal services. This group's waste management practices are assessed to identify costs of managing wastes and incremental cost increases attributable to today's rule.

The number of facilities that land dispose of affected wastes was determined using the EPA's 1981 RIA

Mail Survey.[13] Waste quantities and management practices for facilities responding to the Mail Survey are scaled up to represent the national population by means of weighting factors developed for the Survey. EPA estimates that 74 facilities comprise the total national population of commercial and noncommercial facilities land disposing of affected wastes on-site.

EPA estimates that generators sending more than 1,000 kilograms per month of waste off-site for management add an additional 5,511 plants. Generators of less than 1,000 kilograms per month were not included in the 1981 Survey because they were considered exempt at that time.

Because the 1984 RCRA amendments direct EPA to lower the exemption for small quantity generators (SQGs) from 1,000 to 100 kilograms per month by March 31, 1986, SQGs generating between 100 and 1,000 kilograms of waste per month for off-site disposal are also included in the affected population. The Agency estimates that SQGs add 14,400 plants to the affected population. Plant and waste specific data on this group are derived from EPA's Small Quantity Generator Survey.

Current management practices for these groups include the cost of compliance with regulations which have taken effect since 1981. In particular, EPA adjusted waste management practices as reported in 1981 to reflect compliance with the provisions of 40 CFR Part 264 of RCRA. In making this adjustment, the Agency assumes facilities elect the least costly legal methods of compliance.

b. Development of costs. Once waste quantity, type and method of treatment are known for the affected population, EPA estimates costs of compliance for individual facilities. The Agency developed facility-specific costs in two components, which are weighted and then summed to estimate total national costs of the rule. The first component of the total compliance cost is incurred annually for operation and maintenance (O&M) of alternative modes of waste treatment and disposal. The second component of the compliance cost is a capital cost, which is an initial outlay incurred for construction and depreciable assets. Capital costs are restated as annual values using a capital recovery factor based on a real cost of capital of 7 percent. These annualized costs are then added to yearly O&M costs to derive an annual equivalent cost. This is EPA's estimate of the impact of the regulation on annual firm cashflow.

c. Economic Impact Analysis. (1) Non-Commercial TSDFs and SQGs. Economic impacts on non-commercial facilities and SQGs are assessed in several steps. First, a general screening analysis compares facility-specific incremental costs to financial information about firms, disaggregated by Standard Industrial Classification (SIC) and number of employees per facility. This comparison generates two ratios, which are used to identify facilities likely to experience adverse economic effects. The first is a ratio of individual facility compliance costs to costs of production. A change exceeding five percent is considered to imply a substantial adverse economic effect on a facility. The second is a "coverage" ratio, relating cash from operations to cost of compliance. For this ratio, a value of less than 20 is considered to represent a significant adverse impact.

Once facilities experiencing adverse impacts are identified using the two screening ratios, more detailed financial analysis is performed to verify the results and focus more closely on affected firms. For this subset of facilities, the coverage ratio is adjusted to allow a portion of costs to be passed through. Economic effects on facilities are examined assuming product price increases of one and five percent are possible. Those facilities for which the coverage ratio is less than two are considered likely to close.

(2) Commercial TSDFs. Commercial TSDFs are defined here as those facilities which accept fees in exchange for managing wastes generated elsewhere. For this group of facilities, there exists no Census SIC from which to draw financial information. Two SICs which we might use as proxies, 4953 and 4959, do not distinguish between financial data for hazardous waste treatment firms and for firms managing municipal wastes. Consequently, our analysis of economic effects on commercial facilities is qualitative.

(3) Generators of large quantities of wastes. EPA's analysis of the effects of this rule on generating plants disposing of large quantities of affected wastes off-site assumes that commercial facilities can entirely pass on to them the costs of compliance with this regulation in the form of higher prices for waste management services. Because of data limitations in the Mail Survey, EPA has not developed plant-specific waste characterization, treatment methods, and compliance costs for generators, as it has for TSDFs. Our analysis of the economic effects of the rule on this group uses Survey data to develop model plants generating average, maximum and minimum waste quantities. This allows EPA to assess the range of possible effects on generating plants.

2. Costs and Economic Impacts

a. Total costs and economic impacts for solvent wastes. Total annualized compliance costs for facilities currently land disposing of solvent wastes are $147 million. Commercial TSDFs account for 62 percent of this total, while non-commercial TSDFs account for the balance. Although SQGs constitute 72 percent of the total population of TSDFs and generators of solvent waste, they account for only 12 percent of the total costs. These costs are not adjusted for the effect of taxation, which is merely a transfer from one sector of the economy to another. Costs are stated in 1985 dollars.

Economic effects have been assessed for both non-commercial and commercial facilities. Non-commercial facilities are those which do not accept fees in exchange for management and disposal of wastes generated by other plants. Among the 48 non-commercial facilities, twelve appear likely to be significantly affected because of compliance costs imposed by this rule. Based on further analysis, three of these twelve facilities seem likely to close. Employment effects associated with these potential closures amount to 224 jobs lost.

Among commercial facilities (i.e., those which manage the wastes of other firms for a fee) direct effects were impossible to assess due to the lack of any appropriate Standard Industrial Classification code (SIC) from which to draw Census financial data. Therefore, EPA's analysis has assumed that commercial facilities will be able to pass the increased costs of regulatory compliance on to their customers in the form of higher prices. The cost of compliance with today's rule is thus assumed to fall on consumers of commercial hazardous waste management services, and a qualitative assessment of economic effects on commercial facilities is performed.

We estimate that 26 commercial facilities will incur incremental costs as a result of today's final rule. Forty percent of these commercial facilities

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[13] EPA conducted the RIA Mail Survey of hazardous waste generators and TSDFs to determine waste management practices in 1981. The survey included both generators of hazardous wastes and facilities treating, storing, or disposing of wastes. Facilities that handled less than 1000 kilograms of waste per month were not regulated in 1981 and thus, are not included in the data. For more information see the "National Survey of Hazardous Waste Generators and Treatment, Storage and Disposal Facilities Regulated under RCRA in 1981," (April 1984).

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offer a range of hazardous waste management services, including land-based disposal, storage and treatment. For these facilities, the increased demand this rule will create for more highly-price treatment services may actually increase firm financial viability. For the 27 percent of commercial facilities which offer solely land-based management of restricted wastes, on the other hand, the increased emphasis on treatment prior to land disposal may reduce demand for these services. It was not possible to characterize the remaining 33 percent of commercial facilities based on services offered.

Based on RIA Mail Survey data, the five industrial sectors which send the majority of the solvent waste to each commercial facility have been identified. Actual plants generating these wastes cannot be identified using Mail Survey data. Therefore, EPA examines economic effects on generating plants using model plants generating minimum, maximum and average quantities for each sector identified in the RIA Mail Survey. Ratios of the compliance costs to costs of production, and gross margin to compliance costs are examined for each of the five sectors which sends affected waste to each of these 26 facilities. This procedure is intended to bound the range of economic effects likely to occur among generating plants. Economic effects presented in this unit are based on average waste quantities.

This analysis identifies 98 industrial sectors, representing 5,511 plants, generating solvent waste for off-site commercial management. Of these 5,511 plants, 1,004 may experience significant economic impacts. Among the most adversely affected plants are manufacturers of fabricated metals products (SIC 34). This sector includes 718 significantly affected facilities. Other affected sectors include SIC 33, primary metals products, in which 167 plants may close, and SIC 28, the chemical industry, in which 42 plants may close. Based on further analysis, 79 of these facilities appear likely to close. Job loss associated with these closures amounts to 5,240 jobs in the plating and polishing industry and 187 in the industrial inorganic chemicals industry. Total annualized costs for the 14,400 small quantity generators of solvent wastes are $18 million. Based on the estimated cost for off-site incineration, maximum incremental compliance charges for any individual SQG will not exceed $13,200 annually. Economic ratios were examined for all SQGs in each sector identified in the EPA survey as generating solvent wastes. Based on this examination, EPA identified 975 facilities which may be significantly affected by compliance costs of this rule. On closer examination, no SQGs appeared likely to close as a result of costs imposed by this rule.

b. Total costs and economic impacts for dioxin wastes. Total annualized compliance costs for the approximately 47 non-soil sources of dioxin wastes are $3.2 million. Costs for managing that portion of the estimated 1.1 billion pounds of existing dioxin-contaminated soil for which this regulation will require BDAT treatment are $2.2 million. A preliminary study of dioxin-contaminated soils suggests that only 5 percent of the total quantity will require incineration, and the costs reflect this finding. Ninety-five percent of these soils, EPA estimates, will not be subject to restrictions on land disposal because they will meet the treatment standard.

Economic effects appear most significant for plants in SIC 2869 as a result of the restriction of dioxin wastes. This sector manufactures industrial organic chemicals, with major products such as solvents, noncyclic organics, and polyhydric alcohols. One plant may close as a result of restrictions in this group. Other affected SIC sectors include 2879, in which one plant may close. SIC 2879 includes plants manufacturing pesticides and agricultural chemicals for household and farm use.

3. Benefits and Cost-Effectiveness of the Restrictions Rule

a. Benefits and cost-effectiveness of restricting land disposal of solvent-containing wastes. The Agency performed a benefits analysis that assessed the incremental reductions in human health effects taking into account net changes in risk resulting from the use of alternative solvent waste management practices. Based on this analysis of relative risks, it was determined that substantial reductions in both average and maximum health risks are possible when alternative technologies to land disposing solvent wastes are used. Incineration and distillation of halogenated (F001 and F002) solvent wastes result in substantial reductions in human health risk when compared to disposal of such wastes in land disposal units. Incineration reduces average risks by a minimum of four orders of magnitude from the levels for landfills, a factor that is similarly reflected by the reductions in risk to the most exposed individual (MEI). Risk reductions for halogenated solvent wastes disposed in surface impoundments are also substantial. For the non-halogenated wastes, although risk levels were substantially reduced, the reduction in human health risk were less significant, since initial levels were often below the Acceptable Daily Intake (ADI).

Benefits attributable to the restrictions on solvent wastes have also been assessed by the Agency in another regulatory impact analysis prepared in support of the overall land disposal restrictions program (see "Draft Regulatory Analysis of Proposal Restrictions on Land Disposal of Hazardous Wastes" in the RCRA docket entitled LDR–2). Relevant data on the restricted F001–F005 wastes provided in this analysis may be summed to obtain a total incremental benefit (number of cases of cancer or cancer-equivalence avoided) of 116 cases avoided or annualized benefits for solvents equal to 1.66 cases avoided. Division of the total annualized cost of the solvents land disposal restrictions, $147 million, by the annualized cases avoided, 1.66, determines that the cost of the regulation is $88.7 million per cancer case avoided.

The benefits in both RIA documents discussed above may be underestimated in this analysis because the estimates are based solely on the adverse human health effects resulting from exposure to the solvent constituents in these wastes. Other benefit considerations, specifically environmental benefits, risks from minimization of liner degradation, and risks attributable to mobilization of other toxic constituents land disposed with solvents, were not evaluated. Since the benefits analysis is based only on the toxicity of the solvents themselves, the benefits of the land disposal restrictions for spent solvent wastes may be significantly underestimated.

b. Benefits and cost-effectiveness of restricting land disposal of dioxin-containing wastes. The assessment of risk associated with today's rule depends to a significant degree on assumptions regarding baseline disposal practices and on the population exposed to releases from land disposal. These assumptions and their effect on the benefit estimates are discussed in detail in the supporting RIA (Ref. 9).

Based on the assumptions regarding incineration performances and baseline practices that effectively minimize risks, it appears that reductions in expected health effects would be insignificant for many of the affected dioxin wastes. Baseline MEI risks for some dioxin wastes were high and would be reduced significantly by incineration. The benefits of the rule depend strongly on whether discharge of untreated scrubber water (with undetectable levels of dioxin) from incinerators are likely to occur and whether spills and run-off from landfill or incineration facilities are likely to result in contamination of surface waters. Such surface water contamination, however, is not expected to occur. Although the rule may not reduce expected levels of health effects for many types of dioxin wastes, it may reduce the uncertainty about potential risks associated with the current regulatory status for dioxins.

Quantification of the incremental benefits for restricting land disposal of dioxin wastes results in a calculated annualized dioxin benefit value of zero cases avoided, though as noted above, this risk estimate is very dependent on assumptions about population exposed and treatment of scrubber waters from incinerators (of which there are currently none), and may significantly underestimate actual risk reductions.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the Administrator certifies that the rule will not have a significant economic effect on a substantial number of small entities.

EPA has examined the rule's potential effect on small business as required by the Regulatory Flexibility Act, and has concluded that this regulation will not have a significant effect on a substantial number of small entities. As a result of this finding, EPA has not prepared a formal Regulatory Flexibility Analysis in support of this rule. The following discussion summarizes the methodology used in the small business analysis and the findings on which the conclusions above are based. More detailed information is available in the documents assembled in the record prepared in support of this rulemaking.

1. Economic Impact on Small Businesses

EPA evaluated the economic effect of today's rule on small businesses, which are defined as those facilities employing fewer than 50 persons. Because of data limitations, this small business analysis excludes generators of large quantities of affected wastes. The universe of small businesses that were examined in the analysis here includes two groups: all TSDFs employing fewer than 50 people, and all SQGs which are also small businesses. Eleven TSDFs are small businesses. None of these exceed threshold values on the cost of production ratio. Twenty-five percent (twelve out of 48) of all non-commercial facilities are expected to experience adverse economic effects.

Of the total of 14,400 small quantity generators examined in this analysis, the vast majority (10,395 or 72 percent) are also small businesses. A total of 58 SQGs (or .6 percent of small businesses SQGs) exceeded threshold values on the cost of production ratio. For the population of small businesses as a whole, less than one percent are likely to be affected.

The small business analysis performed for sources of dioxin wastes revealed that no plants employing fewer than 50 persons experience significant economic effects as a result of costs imposed by this regulation.

2. Certification of Finding That No Regulatory Flexibility Analysis Is Required

This rule was submitted to the Office of Management and Budget (OMB) for review, as required by Executive Order 12291. EPA performed an analysis, described above, to determine whether this rule would impose significant costs on small entities (see U.S. EPA, 1985). Results of the analysis indicate that this rule will not have a significant economic impact on a substantial number of small entities.

Accordingly, I hereby certify that this regulation will not have a significant impact on a substantial number of small entities. Therefore, this regulation does not require a Regulatory Flexibility Analysis.

C. Review of Supporting Documents and Response to Public Comment

1. Review of Supporting Documents

The primary source of information on current land disposal practices and industries affected by restrictions on solvent waste is EPA's 1981 National Survey of Hazardous Waste Generators and Treatment, Storage and Disposal Facilities (referred to in this preamble as the "RIA Mail Survey"). Waste stream characterization data and engineering costs of waste management are based on the Mail Survey and on reports by the Mitre Corporation "Composition of Hazardous Waste Streams Currently Incinerated," (April 1983), and U.S. EPA "The RCRA Risk-Cost Analysis Model," (March 1984). The survey of Small Quantity Generators has been the major source of data on this group. EPA's Office of Research and Development developed estimates of the type and quantity of wastes containing dioxins and meeting the listing definitions for these wastes.

For financial and value of shipment information for the general screening analysis, 1982 Census data was used, adjusted by 1983 Annual Census of Manufactures data. Producer price indices were also used to restate 1983 dollars in 1985 terms.

2. Response to Comments

Several commenters contend that EPA has grossly understated the total costs of this rule because the Agency failed to consider product substitution. In particular, commenters were concerned that some producers of certain inputs to other end products may suffer as downstream manufacturers switch to inputs which generate less hazardous waste.

EPA disagrees with the commenters' statement that the total cost of the rule is understated. In fact, because EPA's analysis does not allow for longer term market adjustments such as product substitution, it overstates total costs. The switch to products and inputs which generate less hazardous waste will undoubtedly cause short-term dislocation and economic hardship, both to the suppliers of highly polluting inputs and to the manufacturers forced by higher waste treatment costs to switch to higher cost inputs.

Other commenters argue that the Agency has not sufficiently balanced cost and risk in designing regulations restricting land disposal. EPA believes that its consideration of costs and benefits has been comprehensive and consistent with Executive Order 12291.

One commenter stated the EPA's assessment that land disposal restrictions on solvent wastes did not constitute a major rule was incorrect. EPA agrees with the commenter. Based on the Agency's reassessment of treatment costs, EPA now considers this final rule to be major by the criteria given in Executive Order 12291.

Another commenter expressed concern that restricted wastes will compete with non-restrictive wastes for alternative capacity. Given the cost differential between direct land disposal, which EPA is prescribing for regulated waste, and treatment through incineration or other treatment technology, it is likely that restricted wastes will use what limited incineration capacity exists.

The commenter correctly points out that the increased demand for waste treatment services may have the effect of driving up the price of these services, thus making it uneconomic for non-

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restricted wastes to be treated in BDAT treatments. EPA also believes it likely that alternative capacity will be rationed through the medium of price, and that producers of non-restricted wastes may find the new price prohibitive. This effect of establishing treatment priorities is expected to prevent the use of limited incineration capacity on non-restricted wastes which do not present the environmental dangers associated with restricted wastes.

Finally, some commenters objected that EPA did not consider economic achievability in setting treatment standards. Economic achievability is not a consideration for rulemaking under RCRA.

D. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., requires that the information collection requirements of proposed and final rules be submitted to the Office of Management and Budget (OMB) for approval. OMB has approved the information collection requirements contained in this rule and assigned the OMB Control Number 2050–0062

This rule modifies another information collection requirement that has been approved by OMB under the Paperwork Reduction Act and given the number 2050–0012. The appropriate changes to these requirements have been approved by OMB.

XI. References

Background Documents

(1) U.S. EPA. "Background Document for Solvents, to Support Land Disposal Restrictions, Vol. I." U.S. EPA, OSW, Washington, DC, 1986.

(2) U.S. EPA. "Background Document for Solvents, to Support Land Disposal Restrictions, Vol. II." U.S. EPA, OSW, Washington, DC, 1986.

(3) U.S. EPA. "Background Document for Toxicity Characteristic Leaching Procedure: Final TCLP Response to Technical and Procedural Comments Pursuant to the Final Land Disposal Restrictions Rule for Solvents and Dioxins." U.S. EPA, OSW, Washington, DC, 1986.

(4) U.S. EPA. "BDAT Background Document for F001–F005 Spent Solvents." U.S. EPA, OSW, Washington, DC, 1986.

(5) U.S. EPA. "Comparative Risk Case Study for Metal-Bearing Solvent Wastes." U.S. EPA, OSW, Washington, DC, 1986.

(6) U.S. EPA. "Thermal Treatment Background Information, to Support Land Disposal Restrictions." U.S. EPA, OSW, Washington, DC, 1986.

Guidance Documents

(7) U.S. EPA. "Interim Status Surface Impoundments Retrofitting Variances Guidance Document." U.S. EPA, OSW, Washington, DC, EPA/530–SW–86–017, 1986.

(8) U.S. EPA. "Waste Analysis Plans, A Guidance Manual." U.S. EPA, OSW, Washington, DC, 1984.

Regulatory Impact Analysis

(9) U.S. EPA. "Regulatory Analysis of Restrictions on Land Disposal of Certain Dioxin-Containing Wastes." U.S. EPA, OSW, Washington, DC, 1986.

(10) U.S. EPA. "Regulatory Analysis of Restrictions on Land Disposal of Certain Solvent Wastes." U.S. EPA, OSW, Washington, DC, 1986.

Other References

(11) Acurex Corp. "Characterization of Hazardous Waste Incineration Residuals." U.S. EPA, Contract No. 68–03–3241, 1986.

(12) ICF, Inc. "Assessment of Impacts of LDR on Ocean Disposal of Solvents, Dioxins, and California List Wastes." U.S. EPA, OSW, EPA Contract No, 68–01–7259, 1986.

(13) ICF, Inc. "Scoping Analysis for RCRA Section 3005(j)(11)." U.S. EPA, OSW, EPA Contract No. 68–01–6621, 1985.

(14) Industrial Economics. "Regulatory Analysis of Waste-As-Fuel Technical Standards." Prepared for U.S. EPA, OSW, Washington, DC, 1986.

(15) Mitre Corp. "Incineration and Cement Kiln Capacity for Hazardous Waste Treatment." U.S. EPA, OSW, Washington, DC, 1986.

(16) NATO Committee. "NATO–CCMS Pilot Study on Disposal of Hazardous Wastes." Annex V., NATO Committee on the Challenges of Modern Society, Brussels, Belgium, 1981.

(17) Radian Corp. "Follow-Up Survey of Selected Facilities." U.S. EPA, Washington, DC, 1986.

(18) Reed, R.J. *North American Combustion Handbook, 1978.*

(19) U.S. EPA. "Analysis of the Quantity of Waste from CERCLA Actions." Raw Data. U.S. EPA, OERR, Washington, DC, 1986.

(20) U.S. EPA. "Development Document for Effluent Limitations Guidelines and Standards for the Pharmaceutical Manufacturing Point Source Category." U.S. EPA, OW, Washington, DC, EPA/440–1–83/084, pp. 120–130, 1983.

(21) U.S. EPA. "Telephone Verification Survey of Commercial Facilities That Manage Solvents." Compiled by Pope-Reid Assoc. and Radian Corp., U.S. EPA, OSW, Washington, DC, 1986.

(22) U.S. EPA. "RCRA Method 8280 for the Analysis of Polychlorinated Dibenzo-*P*-Dioxins and Polychlorinated Dibenzofurans." U.S. EPA, OSW, Washington, DC, September 15, 1986.

(23) Friedman, Paul (U.S. EPA, Office of Solid Waste), Memorandum entitled "Detection Limit of 8280 in TCLP Leachate." September 26, 1986.

(24) U.S. EPA. "Background Document for Proposed Toxicity Characteristic Leaching Procedure." U.S. EPA, OSW, Washington, DC, March 10, 1986.

List of Subjects in 40 CFR Parts 260, 261, 262, 264, 265, 268, 270, and 271

Administrative practice and procedure, Confidential business information, Environmental protection, Hazardous materials, Hazardous materials transportation, Hazardous waste, Imports, Indian lands, Insurance, Intergovernmental relations, Labeling, Packaging and containers, Penalties, Recycling, Reporting and recordkeeping requirements, Security measures, Surety bonds, Waste treatment and disposal, Water pollution control, Water supply.

Lee M. Thomas,
Administrator.

For reasons set out in the preamble, Chapter I of Title 40 is amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

I. In Part 260:

1. The authority citation for Part 260 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001 through 3007, 3010, 3014, 3015, 3017, 3018, and 3019, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, and 6939).

§§ 260.1, 260.2, 260.3, 260.10, 260.20 [Amended]

2. By inserting in the first sentence "and 268" after the phrase "Parts 260 through 265" in the following places:

a. 40 CFR 260.1 (a) and (b)(1) through (4).

b. 40 CFR 260.2(a).

c. 40 CFR 260.3 introductory text.

d. 40 CFR 260.10 introductory text.

e. 40 CFR 260.20(a).

§ 260.2 [Amended]

3. In § 260.2, paragraph (b) is amended by inserting "and 268" after the phrase "Parts 260 through 266".

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

II. In Part 261:

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

§§ 261.1, 261.4, 261.20, 261.30 [Amended]

2. By adding the Part number "268," after the phrase "Parts 262 through 265" in the following places:

a. 40 CFR 261.1(a) introductory text;

b. 40 CFR 261.4(c);

c. 40 CFR 261.20(b); and

d. 40 CFR 261.30(c).

§ 261.1 [Amended]

3. In § 261.1, paragraph (a)(1) is amended by inserting ", 268" after the phrase "Parts 262 through 266".

§ 261.4 [Amended]

4. By removing from paragraph (d)(1) introductory text of § 261.4 the Part number "267" and inserting the Part number "268" in its place.

§ 261.5 [Amended]

5. In § 261.5 paragraphs (b), (c), (e) introductory text, and (f)(2) are amended by inserting ", 268," after the phrase "Parts 262 through 266".

6. In § 261.5 paragraph (g)(2) is amended by inserting ", 268," after the phrase "Parts 263 through 266".

§ 261.6 [Amended]

7. In § 261.6 paragraph (a)(3) introductory text is amended by inserting Part number "268," after the phrase "Part 262 through 266 or Parts".

8. By revising paragraph (c)(1) of § 261.6 to read as follows:

§ 261.6 Requirements for recyclable materials.

* * * * *

(c)(1) Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of Subparts A through L of Parts 264 and 265, and under Parts 124, 266, 268, and 270 of this Chapter and the notification requirements under section 3010 of RCRA, except as provided in paragraph (a) of this section. (The recycling process itself is exempt from regulation.)

* * * * *

§ 261.7 [Amended]

9. In § 261.7 paragraphs (a) (1)(ii) and (2)(ii) are amended by adding the Part number "268," after the phrase "Parts 261 through 265, or Part".

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

III. In Part 262:

1. The authority citation for Part 262 continues to read as follows:

Authority: Secs. 1006, 2002, 3001, 3002, 3003, 3004, 3005, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6906, 6912, 6922 through 6925, and 6937).

Subpart A—General

2. In § 262.11, paragraph (d) is added to read as follows:

§ 262.11 Hazardous waste determination.

* * * * *

(d) If the waste is determined to be hazardous, the generator must refer to Parts 264, 265, 268 of this chapter for possible exclusions or restrictions pertaining to management of his specific waste.

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

IV. In Part 263:

1. The authority citation for Part 263 is revised to read as follows:

Authority: Secs. 2002(a), 3002, 3003, 3004 and 3005 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 and as amended by the Quiet Communities Act of 1978, (42 U.S.C. 6912a, 6922, 6923, 6924, 6925).

Subpart A—General

§ 263.12 [Amended]

2. By inserting ", 268" after the phrase "Parts 270, 264, and 265".

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

V. In Part 264:

1. The authority citation for Part 264 continues to read as follows:

Authority: Secs. 1006, 2002, 3004, and 3005 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912, 6924, and 6925).

Subpart B—General Facility Standards

2. In § 264.13, by revising paragraphs (a)(1) and (b)(6) and adding paragraph (b)(7) to read as follows:

§ 264.13 General waste analysis.

(a)(1) Before an owner or operator treats, stores, or disposes of any hazardous waste, he must obtain a detailed chemical and physical analysis of a representative sample of the waste. At a minimum, this analysis must contain all the information which must be known to treat, store, or dispose of the waste in accordance with the requirements of this part or of Part 268 of this chapter or with the conditions of a permit issued under Part 270 and Part 124 of this chapter.

* * * * *

(b) * * *

(6) Where applicable, the methods which will be used to meet the additional waste analysis requirements for specific waste management methods as specified in §§ 264.17, 264.314, 264.341 and 268.7 of this chapter.

(7) For surface impoundments exempted from land disposal restrictions under § 268.4(a), the procedures and schedules for:

(i) The sampling of impoundment contents;

(ii) The analysis of test data; and,

(iii) The annual removal of residue which does not meet the standards of Part 268 Subpart D of this chapter.

* * * * *

Subpart E—Manifest System, Recordkeeping, and Reporting

3. In § 264.73, by revising paragraph (b)(3) and adding paragraphs (b)(10) through (b)(14) to read as follows:

§ 264.73 Operating record.

* * * * *

(b) * * *

(3) Records and results of waste analyses performed as specified in §§ 264.13, 264.17, 264.314, 264,341, 268.4(a), and 268.7 of this chapter.

* * * * *

(10) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to § 268.5 or a petition pursuant to § 268.6, and the notice required by a generator under § 268.7(a)(3);

(11) For an off-site treatment facility, a copy of the notice required by a generator under § 268.7(a)(1);

(12) For an on-site treatment facility, the information contained in the notice required by a generator under § 268.7(a)(1), except for the manifest number;

(13) For an off-site land disposal facility, a copy of the notice and certification required by the owner or operator of a treatment facility under § 268.7(b) (1) and (2), or a copy of the notice and certification required by the generator under § 268.7(a)(2), whichever is applicable; and

(14) For an on-site land disposal facility, the information contained in the notice required undeer § 268.7(a)(2), except for the manifest number, or the information contained in the notice required by a treater under § 268.7(b)(1), except for the manifest number, whichever is applicable.

(Approved by Office of Management and Budget under control number 2050–0012)

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT STORAGE AND DISPOSAL FACILITIES

VI. In Part 265:

1. The authority citation for Part 265 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, 3005 and 3015 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935).

Subpart B—General Facility Standards

2. In § 265.13, paragraphs (a)(1) and (b)(6) are revised and paragraph (b)(7) is added to read as follows:

§ 265.13 General waste analysis.

(a)(1) Before an owner or operator treats, stores, or disposes of any hazardous waste, he must obtain a detailed chemical and physical analysis of a representative sample of the waste. At a minimum, this analysis must contain all the information which must be known to treat, store, or dispose of the waste in accordance with the requirements of this part and Part 268 of this chapter.

* * * * *

(b) * * *

(6) Where applicable, the methods which will be used to meet the additional waste analysis requirements for specific waste management methods as specified in §§ 265.193, 265.225, 265.252, 265.273, 265.314, 265.341, 265.375, 265.402 and 268.7 of this chapter.

(7) For surface impoundments exempted from land disposal restrictions under § 268.4(a) of this chapter, the procedures and schedule for:

(i) The sampling of impoundment contents;

(ii) The analysis of test data; and,

(iii) The annual removal of residue which does not meet the standards of Part 268 Subpart D of this chapter.

Subpart E—Manifest System, Recordkeeping, and Reporting

3. In § 265.73, by revising paragraph (b)(3) and adding paragraphs (b)(8) through (b)(12) to read as follows:

§ 265.73 Operating record.

* * * * *

(b) * * *

(3) Records and results of waste analysis and trial tests performed as specified in §§ 265.13, 265.193, 265.225, 265.252, 265.273, 265.314, 265.341, 265.375, 265.402, 268.4(a) and 268.7 of this chapter.

* * * * *

(8) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to § 268.5, or a petition pursuant to § 268.6 and the notice required by a generator under § 268.7(a)(3).

(9) For an off-site treatment facility, the notice required by a generator under § 268.7(a)(1);

(10) For an on-site treatment facility the information contained in the notice required by a generator under § 268.7(a)(1), except for the manifest number.

(11) For an off-site land disposal facility, the notice and certification required by the owner or operator of a treatment facility under § 268.7(b) or the certification required by the generator under § 268.7(a)(2), whichever is applicable;

(12) For an on-site land disposal facility, the information contained in the notice required by a generator under § 268.7(a)(2), except for the manifest number, or the information contained in the notice required by the treatment facility under § 268.7(b)(2), except for the manifest number, whichever is applicable.

(Approved by Office of Management and Budget under control number 2050–0012)

PART 268—LAND DISPOSAL RESTRICTIONS

VII. In Part 268:

1. The authority citation for Part 268 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6924).

2. By adding Subparts A, C, D, and E to Part 268 to read as follows:

Subpart A—General

268.1 Purpose, scope, and applicability.
268.2 Definitions applicable to this part.
268.3 Dilution prohibited as a substitute for treatment.
268.4 Treatment surface impoundment exemption.
268.5 Procedures for case-by-case extensions to an effective date.
268.6 Petitions to allow land disposal of a waste prohibited under Subpart C of Part 268.
268.7 Waste analysis.

* * * * *

Subpart C—Prohibitions on Land Disposal

268.30 Waste specific prohibitions—Solvent wastes.
268.31 Waste specific prohibitions—Dioxin-containing wastes.

Subpart D—Treatment Standards

268.40 Applicability of treatment standards.
268.41 Treatment standards expressed as concentrations in waste extract.
268.42 Treatment standards expressed as specified technologies.
268.43 Treatment standards expressed as waste concentrations. [Reserved]
268.44 Variance from a treatment standard.

Subpart E—Prohibitions on Storage

268.50 Prohibitions on storage of restricted wastes.
Appendix I to Part 268—Toxicity Characteristic Leaching Procedure (TCLP)
Appendix II to Part 268—Treatment Standards (As Concentrations in the Treatment Residual Extract)

Subpart A—General

§ 268.1 Purpose, scope and applicability.

(a) This part identifies hazardous wastes that are restricted from land disposal and defines those limited circumstances under which an otherwise prohibited waste may continue to be land disposed.

(b) Except as specifically provided otherwise in this part or Part 261 of this chapter, the requirements of this part apply to persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities.

(c) Prohibited wastes may continue to be land disposed as follows:

(1) Persons have been granted an extension from the effective date of a prohibition pursuant to § 268.5, with respect to those wastes covered by the extension;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition; or

(3) Until November 8, 1988, land disposal of contaminated soil or debris resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or a corrective action required under the Resource Conservation and Recovery Act.

(4) Small quantity generators of less than 100 kilograms of hazardous waste per month, as defined in § 261.5 of this chapter.

§ 268.2 Definitions applicable to this part.

(a) When used in this part the following terms have the meanings given below:

"Hazardous constituent or constituents" means those constituents listed in Appendix VIII to Part 261 of this chapter.

"Land disposal" means placement in or on the land and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, underground mine or cave, concrete vault or bunker intended for disposal purposes, and placement in or on the land by means of open detonation and open burning where the residues continue to exhibit one or more of the characteristics of hazardous waste. The term "land disposal" does not encompass ocean disposal.

(b) All other terms have the meanings given under §§ 260.10, 261.2, 261.3, or 270.2 of this chapter.

§ 268.3 Dilution prohibited as a substitute for treatment.

No generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a restricted waste or the residual from treatment of a restricted waste as a substitute for adequate treatment to achieve compliance with Subpart D of this part.

§ 268.4 Treatment surface impoundment exemption.

(a) The requirements of this part do not apply to persons treating hazardous wastes in a surface impoundment or series of impoundments provided that:

(1) Treatment of such wastes occurs in the impoundment;

(2) The residues of the treatment are analyzed, as specified in § 268.7, to determine if they meet the applicable treatment standards in § 268.41. The sampling method, specified in the waste analysis plan under § 264.13 or § 265.13, must be designed such that representative samples of the sludge and the supernatant are tested separately rather than mixed to form homogeneous samples. The treatment residues (including any liquid waste) that do not meet the treatment standards promulgated under Subpart D of this part, or are not delisted under § 260.22 of this chapter, must be removed at least annually. These residues may not be placed in any other surface impoundment for subsequent management. If the volume of liquid flowing through the impoundment or series of impoundments annually is greater than the volume of the impoundment or impoundments, this flow-through constitutes removal of the supernatant for the purpose of this requirement. The procedures and schedule for the sampling of impoundment contents, the analysis of test data, and the annual removal of residue which does not meet the Subpart D treatment standards must be specified in the facility's waste analysis plan as required under §§ 264.13 or 265.13 of this chapter;

(3) The impoundment must meet the design requirements of § 264.221(c) or § 265.221(a) of this chapter, regardless that the unit may not be new, expanded, or a replacement, and be in compliance with applicable ground water monitoring requirements of Subpart F of Part 264 or Part 264 of this chapter unless:

(i) Exempted pursuant to § 264.221 (d) or (e) of this chapter, or to § 265.221 (c) or (d) of this chapter; or,

(ii) Upon application by the owner or operator, the Administrator has granted a waiver of the requirements on the basis that the surface impoundment:

(A) Has at least one liner, for which there is no evidence that such liner is leaking;

(B) Is located more than one-quarter mile from an underground source of drinking water; and

(C) Is in compliance with generally applicable ground water monitoring requirements for facilities with permits; or,

(iii) Upon application by the owner or operator, the Administrator has granted a modification to the requirements on the basis of a demonstration that the surface impoundment is located, designed, and operated so as to assure that there will be no migration of any hazardous constituent into ground water or surface water at any future time.

(4) The owner or operator must submit to the Regional Administrator a written certification that the requirements of § 268.4(a)(3) have been met and submits a copy of the waste analysis plan required under § 268.4(a)(2). The following certification is required:

I certify under penalty of law that the requirements of 40 CFR 268.4(a)(3) have been met for all surface impoundments being used to treat restricted wastes. I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

§ 268.5 Procedures for case-by-case extensions to an effective date.

(a) Any person who generates, treats, stores, or disposes of a hazardous waste may submit an application to the Administrator for an extension to the effective date of any applicable restriction established under Subpart C of this Part. The applicant must demonstrate the following:

(1) He has made a good-faith effort to locate and contract with treatment, recovery, or disposal facilities nationwide to manage his waste in accordance with the effective date of the applicable restriction established under Subpart C of this Part;

(2) He has entered into a binding contractual commitment to construct or otherwise provide alternative treatment, recovery (e.g., recycling), or disposal capacity that meets the treatment standards specified in Subpart D;

(3) Due to circumstances beyond the applicant's control, such alternative capacity cannot reasonably be made available by the applicable effective date. This demonstration may include a showing that the technical and practical difficulties associated with providing the alternative capacity will result in the capacity not being available by the applicable effective date;

(4) The capacity being constructed or otherwise provided by the applicant will be sufficient to manage the entire quantity of waste that is the subject of the application;

(5) He provides a detailed schedule for obtaining required operating and construction permits on an outline of how and when alternative capacity will be available;

(6) He has arranged for adequate capacity to manage his waste during an extension and has documented in the application the location of all sites at which the waste will be managed; and

(7) Any waste managed in a surface impoundment or landfill during the extension period will meet the requirements of paragraph (h)(2) of this section.

(b) An authorized representative signing an application described under paragraph (a) of this section shall make the following certification:

I certify under penalty of law that I have personally examined and that I am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(c) After receiving an application for an extension, the Administrator may request any additional information which he deems as necessary to evaluate the application.

(d) An extension will apply only to the waste generated at the individual facility covered by the application and will not apply to restricted waste from any other facility.

(e) On the basis of the information referred to in paragraph (a) of this section, after notice and opportunity for comment, and after consultation with appropriate State agencies in all affected States, the Administrator may grant an extension of up to 1 year from the effective date. The Administrator may review this extension for up to 1 additional year upon the request of the applicant if the demonstration required in paragraph (a) of this section can still be made. In no event will an extension extend beyond 24 months from the applicable effective date specified in Subpart C of Part 268. The length of any extension authorized will be determined by the Administrator based on the time required to construct or obtain the type of capacity needed by the applicant as described in the completion schedule discussed in paragraph (a)(5) of this section. The Administrator will give public notice of the intent to approve or deny a petition and provide an opportunity for public comment. The final decision on a petition will be published in the **Federal Register.**

(f) Any person granted an extension under this section must immediately notify the Administrator as soon as he has knowledge of any change in the conditions certified to in the application.

(g) Any person granted an extension under this section shall submit written progress reports at intervals designated by the Administrator. Such reports must describe the overall progress made toward constructing or otherwise providing alternative treatment, recovery or disposal capacity; must identify any event which may cause or has caused a delay in the development of the capacity; and must summarize the steps taken to mitigate the delay. The Administrator can revoke the extension at any time if the applicant does not demonstrate a good-faith effort to meet the schedule for completion, if the Agency denies or revokes any required permit, if conditions certified in the application change, or for any violation of this chapter.

(h) Whenever the Administrator establishes an extension to an effective date under this section, during the period for which such extension is in effect:

(1) The storage restrictions under § 268.50(a)(1) do not apply; and

(2) Such hazardous waste may be disposed of at a facility only if each new landfill or surface impoundment unit, each replacement of an existing landfill or surface impoundment unit, and each lateral expansion of an existing landfill or surface impoundment unit at the facility is in compliance with the following requirements:

(i) The landfill, if the interim status, is in compliance with the requirements of Subpart F of Part 265 and § 265.301 (a), (c), and (d) of this chapter; or,

(ii) The landfill, if permitted, is compliance with the requirements of Subpart F of Part 264 and § 264.301 (c), (d) and (e) of this chapter;

(iii) The surface impoundment, if in interim status, is in compliance with the requirements of Subpart F of Part 265 and § 265.221 (a), (c), and (d) of this chapter regardless that the unit is not new, expanded or a replacement; or,

(iv) The surface impoundment, if permitted, is in compliance with the requirements of Subpart F of Part 264 and § 264.221 (c), (d) and (e) of this chapter.

(j) Pending a decision on the application the applicant is required to comply with all restrictions on land disposal under this part once the effective date for the waste has been reached.

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§ 268.6 Petitions to allow land disposal of a waste prohibited under Subpart C of Part 268.

(a) Any person seeking an exemption from a prohibition under Subpart C of this part for the disposal of a restricted hazardous waste in a particular unit or units must submit a petition to the Administrator demonstrating, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous. The demonstration must include the following components:

(1) An identification of the specific waste and the specific unit for which the demonstration will be made;

(2) A waste analysis to describe fully the chemical and physical characteristics of the subject waste;

(3) A comprehensive characterization of the disposal unit site including an analysis of background air, soil, and water quality.

(b) The demonstration referred to in paragraph (a) of this section must meet the following criteria:

(1) All waste and environmental sampling, test, and analysis data must be accurate and reproducible to the extent that state-of-the-art techniques allow;

(2) All sampling, testing, and estimation techniques for chemical and physical properties of the waste and all environmental parameters must have been approved by the Administrator;

(3) Simulation models must be calibrated for the specific waste and site conditions, and verified for accuracy by comparison with actual measurements;

(4) A quality assurance and quality control plan that addresses all aspects of the demonstration must be approved by the Administrator; and,

(5) An analysis must be performed to identify and quantify any aspects of the demonstration that contribute significantly to uncertainty. This analysis must include an evaluation of the consequences of predictable future events, including, but not limited to, earthquakes, floods, severe storm events, droughts, or other natural phenomena.

(c) Each petition must be submitted to the Administrator.

(d) Each petition must include the following statement signed by the petitioner or an authorized representative:

I certify under penalty of law that I have personally examined and an familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(e) After receiving a petition, the Administrator may request any additional information that reasonably may be required to evaluate the demonstration.

(f) If approved, the petition will apply to land disposal of the specific restricted waste at the individual disposal unit described in the demonstration and will not apply to any other restricted waste at that disposal unit, or to that specific restricted waste at any other disposal unit.

(g) The Administrator will give public notice in the **Federal Register** of the intent to approve or deny a petition and provide an opportunity for public comment. The final decision on a petition will be published in the **Federal Register.**

(h) The term of a petition granted under this section shall be no longer than the term of the RCRA permit if the disposal unit is operating under a RCRA permit, or up to a maximum of 10 years from the date of approval provided under paragraph (g) of this section if the unit is operating under interim status. In either case, the term of the granted petition shall expire upon the termination or denial of a RCRA permit, or upon the termination of interim status or when the volume limit of waste to be land disposed during the term of petition is reached.

(i) Prior the Administrator's decision, the applicant is required to comply with all restrictions on land disposal under this part once the effective date for the waste has been reached.

(j) The petition granted by the Administrator does not reliveve the petitioner of his responsibilities in the management of hazardous waste under 40 CFR Part 260 through Part 271.

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§ 268.7 Waste analysis.

(a) The generator must test his waste or an extract developed using the test method described in Appendix I of this part, or using knowledge of the waste to determine if the waste is restricted from land disposal under this part.

(1) If a generator determines that he is managing a restricted waste under this part and the waste requires treatment prior to land disposal, for each shipment of waste the generator must notify the treatment facility in writing of the appropriate treatment standard set forth in Subpart D of this part. The notice must include the following information:

(i) EPA Hazardous Waste Number;

(ii) The corresponding treatment standard;

(iii) The manifest number associated with the shipment of waste; and

(iv) Waste analysis data, where available.

(2) If a generator determines that he is managing a restricted waste under this part, and determines that the waste can be land disposed without further treatment, for each shipment of waste he must submit, to the land disposal facility, a notice and a certification stating that the waste meets applicable treatment standards.

(i) The notice must include the following information:

(A) EPA Hazardous Waste Number;

(B) The corresponding treatment standard;

(C) The manifest number associated with the shipment of waste;

(D) Waste analysis data, where available.

(ii) The certification must be signed by an authorized representative and must state the following:

> I certify under penalty of law that I personally have examined and am familiar with the waste through analysis and testing or through knowledge of the waste to support this certification that the waste complies with the treatment standards specified in 40 CFR Part 268 Subpart D. I beleive that the information I submitted is true, accurate and complete. I am aware that there are significant penalties for submitting a false certification, including the possibility of a fine and imprisonment.

(3) If a generator's waste is subject to a case-by-case extension under § 268.5, a petition under § 268.6, or a nationwide variance under Subpart C, he must forward a notice to the land disposal facility receiving his waste, stating that the waste is exempt from the land disposal restrictions.

(b) For wastes with treatment standards expressed as concentrations in the waste extract (§ 268.41), the owner or operator of the treatment facility must test the treatment residues according to the waste analysis plan under §§ 264.13 or 265.13, or an extract development using the test method described in Appendix I of this part to assure that the treatment residues extract meet the applicable treatment standards.

(10) A notice must be sent to the land disposal facility which includes the following information:

(i) EPA Hazardous Waste Number;

(ii) The corresponding treatment standard:

(iii) The manifest number associated with the shipment of waste; and

(iv) Waste analysis data, where available.

(2) The treatment facility must submit a certification for each shipment of waste or treatment residue of a restricted waste to the land disposal facility stating that the waste or treatment residue has been treated to the performance standards specificed in Subpart D.

(i) For wastes with treatment standards expressed as concentrations in the waste extract or in the waste (§§ 268.41 or 268.43), the certification must be signed by an authorized representative and must state the following:

> I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification and that, based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the treatment process has been operated and maintained properly so as to achieve the performance levels specified in 40 CFR Part 268 Subpart D without dilution of the prohibited waste. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

(ii) For wastes with treatment standards expressed as technologies (§ 268.42), the certification must be signed by an authorized representative and must state the following:

> I certify under penalty of law that the waste has been treated in accordance with the requirements of 40 CFR 268.42. I am aware that there are signficant penalties for submitting a false certification, including the possibility of fine and imprisonment.

(c) The owner or operator of any land disposal facility accepting any waste subject to restrictions under this part must have records of the notice and certification specified in either pargraph (a) or (b) of this section and obtain waste analysis data through testing of the waste to determine that the wastes are in compliance with the applicable treatment standards in § 268.41.

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Subpart C—Prohibitions on Land Disposal

§ 268.30 Waste specific prohibitions—Solvent wastes.

(a) Effective November 8, 1986, the spent solvent wastes specified in 40 CFR 261.31 as EPA Hazardous Waste Nos. F001, F002, F003, F004, and F005, are prohibited from land disposal (except in an injection well) unless one or more of the following conditions apply:

(1) The generator of the solvent waste is a small quantity generator of 100–1000 kilograms of hazardous waste per month; or

(2) The solvent waste is generated from any response action taken under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) or any corrective action taken under the Resource Conservation and Recovery Act (RCRA), except where the waste is contaminated soil or debris not subject to the provisions of this chapter until November 8, 1988; or

(3) The solvent waste is a solvent-water mixture, solvent-containing sludge, or solvent-contaminated soil (non-CERCLA or RCRA corrective action) containing less than 1 percent total F001–F005 solvent constituents listed in Table CCWE of § 268.41 of this part.

(b) Effective November 8, 1988, the F001–F005 solvent wastes listed in paragraphs (a) (1), (2), and (3) of this section are prohibited from land disposal. Between November 8, 1986, and November 8, 1988, wastes included in paragraphs (a) (1), (2), and (3) of this section may be disposed of in a landfill or surface impoundment only if the facility is in compliance with the requirements specified in § 268.5(h)(2).

(c) The requirements of paragraphs (a) and (b) of this section do not apply if:

(1) The wastes are treated to meet the standards of Subpart D of this part; or

(2) The wastes are disposed at a facility that has been granted a petition under § 268.6; or

(3) An extension has been granted under § 268.5.

§ 268.31 Waste specific prohibitions—Dioxin—containing wastes.

(a) Effective November 8, 1988, the dioxin-containing wastes specified in 40 CFR 261.31 as EPA Hazardous Waste Nos. F020, F021, F023, F026, F027, and F028, are prohibited from land disposal.

(b) The requirements of paragraph (a) of this section do not apply if:

(1) The wastes are treated to meet the standards of Subpart D of this part; or,

(2) The wastes are disposed at a facility that has been granted a petition under § 268.6; or

(3) An extension has been granted under § 268.5.

(c) Between November 8, 1986, and November 8, 1988, wastes included in paragraph (a) of this section may be disposed of in a landfill or surface impoundment only if the facility is in compliance with the requirements specified in § 268.5(h)(2).

Subpart D—Treatment Standards

§ 268.40 Applicability of treatment standards.

A restricted waste identified in this subpart may be land disposed without further treatment only if an extract of the waste or of the treatment residual of the waste developed using the test method of Appendix I of this part does not exceed the value shown in Table CCWE of § 268.41 for any hazardous constituent listed in Table CCWE for that waste. A restricted waste for which a treatment technology is specified under § 268.42(a) may be land disposed after it is treated using that specified technology or an equivalent treatment method approved by the Administrator under the procedures set forth in § 268.42(b).

§ 268.41 Treatment Standards expressed as concentrations in waste extract.

(a) Table CCWE identifies the restricted wastes and the concentrations of their associated hazardous constituents which may not be exceeded by the extract of a waste treatment residual developed using the test method in Appendix I of this part for the allowable land disposal of such waste. (Appendix II of this part provides Agency guidance on treatment methods that have been shown to achieve the Table CCWE levels for the respective wastes. Appendix II is not a regulatory requirement but is provided to assist generators and owners/operators in their selection of appropriate treatment methods.)

TABLE CCWE—CONSTITUENT IN WASTE EXTRACT

F001—F005 spent solvents	Concentration (in mg/l)	
	Wastewaters containing spent solvents	All other spent solvent wastes
Acetone	0.05	0.59
n-Butyl alcohol	5.0	5.0
Carbon disulfide	1.05	4.81
Carbon tetrachloride	.05	.96
Chlorobenzene	.15	.05
Cresols (and cresylic acid)	2.82	.75
Cyclohexanone	.125	.75
1,2-dichlorobenzene	.65	.125
Ethyl acetate	.05	.75
Ethyle benzene	.05	.053
Ethyl ether	.05	.75
Isobutanol	5.0	5.0
Methanol	.25	.75
Methylene chloride	.20	.96
Methylene chloride (from the pharmaceutical industry	12.7	.96
Methyl ethyl ketone	0.05	0.75
Methyl isobutyl ketone	0.05	0.33
Nitrobenzene	0.66	0.125
Pyridine	1.12	0.33
Tetrachloroethylene	0.079	0.05
Toluene	1.12	0.33
1,1,1-Trichloroethane	1.05	0.41
1,2,2-Trichloro-1,2,2-trifluroethane	1.05	0.96
Trichloroethylene	0.062	0.091
Trichlorofluoromethane	0.05	0.96
Xylene	0.05	0.15

F020–F023 and F026–F028 dioxin containing wastes	Concentration
HxCDD—All Hexachlorodibenzo-p-dioxins	< 1 ppb
HxCDF—All Hexachlorodibenzofurans	< 1 ppb
PeCDD—All Pentachlorodibenzo-p-dioxins	< 1 ppb
PeCDF—All Pentachlorodibenzofurans	< 1 ppb
TCDD—All Tetrachlorodibenzo-p-dioxins	< 1 ppb
TCDF—All Tetrachlorodibenzofurans	< 1 ppb
2,4,5–Trichlorophenol	< 0.05 ppm
2,4,6-Trichlorophenol	< 0.05 ppm
2,3,4,6-Tetrachlorophenol	< 0.10 ppm
Pentachlorophenol	< 0.01 ppm

(b) When wastes with differing treatment standards for a constituent of concern are combined for purposes of treatment, the treatment residue must meet the lowest treatment standard for the constituent of concern.

§ 268.42 Treatment standards expressed as specified technologies.

(a) The following wastes must be treated using the identified technology or technologies, or an equivalent method approved by the Administrator.

(1) [Reserved]

(b) Any person may submit an application to the Administrator demonstrating that an alternative treatment method can achieve a level of performance equivalent to that achieved by methods specified in paragraph (a) of this section. The applicant must submit information demonstrating that his treatment method will not present an unreasonable risk to human health or the environment. On the basis of such information and any other available information, the Administrator may approve the use of the alternative treatment method if he finds that the alternative treatment method provides a level of performance equivalent to that achieved by methods specified in paragraph (a) of this section. Any approval must be stated in writing and may contain such provisions and conditions as the Administrator deems appropriate. The person to whom such certification is issued must comply with all limitations contained in such determination.

§ 268.43 Treatment standards expressed as waste concentrations. [Reserved]

§ 268.44 Variance from a treatment standard.

(a) Where the treatment standard is expressed as a concentration in a waste or waste extract and a waste cannot be treated to the specified level, or where the treatment technology is not appropriate to the waste, the generator or treatment facility may petition the Administrator for a variance from the treatment standard. The petitioner must demonstrate that because the physical or chemical properties of the waste differs significantly from wastes analyzed in developing the treatment standard, the waste cannot be treated to specified levels or by the specified methods.

(b) Each petition must be submitted in accordance with the procedures in § 260.20.

(c) After receiving a petition for variance from a treatment standard, the Administrator may request any additional information or samples which he may require to evaluate the petition. Additional copies of the complete petition may be requested as needed to send to affected states and Regional Offices.

(e) The Administrator will give public notice in the **Federal Register** of the intent to approve or deny a petition and provide an opportunity for public comment. The final decision on a variance from a treatment standard will be published in the **Federal Register.**

(f) A generator, treatment facility, or disposal facility that is managing a waste covered by a variance from the treatment standards must comply with the waste analysis requirements for restricted wastes found under § 268.7.

(g) During the petition review process, the applicant is required to comply with all restrictions on land disposal under this part once the effective date for the waste has been reached.

Subpart E—Prohibitions on Storage

§ 268.50 Prohibitions on storage of restricted wastes.

(a) Except as provided for in paragraph (b) of this section, the storage

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of hazardous wastes restricted from land disposal under Subpart C of this Part is prohibited, unless the following conditions are met:

(1) A generator stores such wastes on-site solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and the generator complies with the requirements in § 262.34 of this chapter. (A generator who is in existence on the effective date of a regulation under this part and who must store hazardous wastes for longer than 90 days due to the regulations under this Part becomes an owner/operator of a storage facility and must obtain a RCRA permit. Such a facility may qualify for interim status upon compliance with the regulations governing interim status under 40 CFR 270.70).

(2) An owner/operator of a hazardous waste treatment, storage, or disposal facility stores such wastes solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal provided that each container or tank is clearly marked to identify its contents and the date it entered storage.

(3) A transporter may store manifested shipments of such wastes at a transfer facility for 10 days or less.

(b) An owner/operator of a treatment, storage or disposal facility may store such wastes for up to one year unless the Agency can demonstrate that such storage was not solely for the purpose of accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal.

(c) A owner/operator of a treatment, storage or disposal facility may store such wastes beyond one year; however, the owner/operator bears the burden of proving that such storage was solely for the purpose of accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal.

(d) The prohibition in paragraph (a) of this section does not apply to the wastes which are the subject of an approved petition under § 268.6 or an approved case-by-case extension under § 268.5.

(e) The prohibition in paragraph (a) of this section does not apply to hazardous wastes that meet the treatment standards specified under §§ 268.41, 268.42 and 268.43 or the treatment standards specified under the variance in § 268.44.

Appendix I to Part 268—Toxicity Characteristic Leaching Procedure (TCLP)

1.0 SCOPE AND APPLICATION

1.1 The TCLP is designed to determine the mobility of both organic and inorganic contaminants present in liquid, solid, and multiphasic wastes.

1.2 If a total analysis of the waste demonstrates that individual contaminants are not present in the waste, or that they are present but at such low concentrations that the appropriate regulatory thresholds could not possibly be exceeded, the TCLP need not be run.

2.0 SUMMARY OF METHOD (see Figure 1)

2.1 For liquid wastes (i.e., those containing insignificant solid material), the waste, after filtration through a 0.6- to 0.8-um glass fiber filter, is defined as the TCLP extract.

2.2 For wastes comprised of solids or for wastes containing significant amounts of solid material, the particle-size of the waste is reduced (if necessary), the liquid phase, if any, is separated from the solid phase and stored for later analysis. The solid phase is extracted with an amount of extraction fluid equal to 20 times the weight of the solid phase. The extraction fluid employed is a function of the alkalinity of the solid phase of the waste. A special extractor vessel is used when testing for volatiles (See Table 1). Following extraction, the liquid extract is separated from the solid phase by 0.6- to 0.8-um glass fiber filter filtration.

2.3 If compatible (i.e., multiple phases will not form on combination), the initial liquid phase of the waste is added to the liquid extract, and these liquids are analyzed together. If incompatible, the liquids are analyzed separately and the results are mathematically combined to yield a volume-weighted average concentration.

3.0 INTERFERENCES

3.1. Potential interferences that may be encountered during analysis are discussed in the individual analytical methods.

4.0 APPARATUS AND MATERIALS

4.1 *Agitation apparatus:* An acceptable agitation apparatus is one which is capable of rotating the extraction vessel in an end-over-end fashion (See Figure 2) at 30 ± 2 rpm. Suitable devices known to EPA are identified in Table 2.

4.2 *Extraction Vessel:*

4.2.1 Zero-Headspace Extraction Vessel (ZHE). This device is for use *only* when the waste is being tested for the mobility of volatile constituents (see Table 1). The ZHE is an extraction vessel that allows for liquid/solid separation within the device, and which effectively precludes headspace (as depicted in Figure 3). This type of vessel allows for initial liquid/solid separation, extraction, and final extract filtration without having to open the vessel (see Step 4.3.1). These vessels shall have an internal volume of 500 to 600 mL and be equipped to accommodate a 90-mm filter. Suitable ZHE devices known to EPA are identified in Table 3. These devices contain viton O-rings which should be replaced frequently.

For the ZHE to be acceptable for use, the piston within the ZHE should be able to be moved with approximately 15 psi or less. If it takes more pressure to move the piston, the O-rings in the device should be replaced. If this does not solve the problem, the ZHE is unacceptable for TCLP analyses and the manufacturer should be contacted.

The ZHE should be checked after every extraction. If the device contains a built-in pressure gauge, pressurize the device to 50 psi, allow it to stand unattended for 1 hour, and recheck the pressure. If the device does not have a built-in pressure gauge, pressurize the device to 50 psi, submerge it in water, and check for the presence of air bubbles escaping from any of the fittings. If pressure is lost, check all fittings and inspect and replace O-rings, if necessary. Retest the device. If leakage problems cannot be solved, the manufacturer should be contacted.

4.2.2 When the waste is being evaluated for other than volatile contaminants, an extraction vessel that does not preclude headspace (e.g., a 2-liter bottle) is used. Suitable extraction vessels include bottles made from various materials, depending on the contaminants to be analyzed and the nature of the waste (see Step 4.3.3). It is recommended that borosilicate glass bottles be used over other types of glass, especially when inorganics are of concern. Plastic bottles may be used only if inorganics are to be investigated. Bottles are available from a number of laboratory suppliers. When this type of extraction vessel is used, the filtration device discussed in Step 4.3.2 is used for initial liquid/solid separation and final extract filtration.

4.2.3 Some ZHEs use gas pressure to actuate the ZHE piston, while others use mechanical pressure (see Table 3). Whereas the volatiles procedure (see Section 9.0) refers to pounds-per-square inch (psi), for the mechanically actuated piston, the pressure applied is measured in torque-inch-pounds. Refer to the manufacturer's instructions as to the proper conversion.

4.3 *Filtration Devices:* It is recommended that all filtrations be performed in a hood.

4.3.1 Zero-Headspace Extractor Vessel (see Figure 3): When the waste is being evaluated for volatiles, the zero-headspace extraction vessel is used for filtration. The device shall be capable of supporting and keeping in place the glass fiber filter, and be able to withstand the pressure needed to accomplish separation (50 psi).

Note.—When it is suspected that the glass fiber filter has been ruptured, an in-line glass fiber filter may be used to filter the material within the ZHE.

4.3.2 Filter Holder: When the waste is being evaluated for other than volatile compounds, a filter holder capable of supporting a glass fiber filter and able to withstand the pressure needed to accomplish separation is used. Suitable filter holders range from simple vacuum units to relatively complex systems capable of exerting pressures of up to 50 psi or more. The type of filter holder used depends on the properties of the material to be filtered (see Step 4.3.3).

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These devices shall have a minimum internal volume of 300 mL and be equipped to accommodate a minimum filter size of 47 mm (Filter holders having an internal capacity of 1.5 L or greater and equipped to accommodate a 142 mm diameter filter are recommended). Vaccum filtration is only recommended for wastes with low solids content (<10%) and for highly granular (liquid-containing) wastes. All other types of wastes should be filtered using positive pressure filtration. Filter holders known to EPA to be suitable for use are shown in Table 4.

4.3.3 Materials of Construction: Extraction vessels and filtration devices shall be made of inert materials which will not leach or absorb waste components. Glass, polytetrafluoroethylene (PTFE), or type 316 stainless steel equipment may be used when evaluating the mobility of both organic and inorganic components. Devices made of high-density polyethylene (HDPE), polypropylene, or polyvinyl chloride may be used only when evaluating the mobility of metals. Borosilicate glass bottles are recommended for use over other types of glass bottles, especially when inorganics are constituents of concern.

4.4 *Filters:* Filters shall be made of borosilicate glass fiber, shall contain no binder materials, and shall have an effective pore size of 0.6– to 0.8–um, or equivalent. Filters known to EPA to meet these specifications are identified in Table 5. Pre-filters must not be used. When evaluating the mobility of metals, filters shall be acid-washed prior to use by rinsing with 1.0 N nitric acid followed by three consecutive rinses with deionized distilled water (a minimum of 1–L per rinse is recommended). Glass fiber filters are fragile and should be handled with care.

4.5 *pH meters:* Any of the commonly available pH meters are acceptable.

4.6 *ZHE extract collection devices:* TEDLAR® bags or glass, stainless steel or PTFE gas tight syringes are used to collect the initial liquid phase and the final extract of the waste when using the ZHE device. The devices listed are recommended for use under the following conditions.

4.6.1 If a waste contains an aqueous liquid phase or if a waste does not contain a significant amount of non-aqueous liquid (i.e., <1% of total waste), the TEDLAR® bag should be used to collect and combine the initial liquid and solid extract. The syringe is not recommended in these cases.

4.6.2 If a waste contains a significant amount of non-aqueous initial liquid phase (i.e., >1% of total waste), the syringe or the TEDLAR® bag may be used for both the initial solid/liquid separation and the final extract filtration. However, analysts should use one or the other, not both.

4.6.3 If the waste contains no initial liquid phase (is 100% solid) or has no significant solid phase (is 100% liquid), either the TEDLAR® bag or the syringe may be used. If the syringe is used, discard the first 5 mL of liquid expressed from the device. The remaining aliquots are used for analysis.

4.7 *ZHE extraction fluid transfer devices:* Any device capable of transferring the extraction fluid into the ZHE without changing the nature of the extraction fluid is acceptable (e.g., a constant displacement pump, a gas tight syringe, pressure filtration unit (See Step 4.3.2), or another ZHE device).

4.8 *Laboratory balance:* Any laboratory balance accurate to within ±0.01 grams may be used (all weight measurements are to be within ±0.1 grams).

5.0 REAGENTS

5.1 *Reagent water:* Reagent water is defined as water in which an interferent is not observed at or above the method detection limit of the analyte(s) of interest. For non-volatile extractions, ASTM Type II water, or equivalent meets the definition of reagent water. For volatile extractions, it is recommended that reagent water be generated by any of the following methods. Reagent water should be monitored periodically for impurities.

5.1.1 Reagent water for volatile extractions may be generated by passing tap water through a carbon filter bed containing about 500 grams of activated carbon (Calgon Corp., Filtrasorb-300 or equivalent).

5.1.2 A water purification system (Millipore Super-Q or equivalent) may also be used to generate reagent water for volatile extractions.

5.1.3 Reagent water for volatile extractions may also be prepared by boiling water for 15 minutes. Subsequently, while maintaining the water temperature at 90± 5°C, bubble a contaminant-free inert gas (e.g., nitrogen) through the water for 1 hour. While still hot, transfer the water to a narrow-mouth screw-cap bottle under zero-headspace and seal with a Teflon-lined septum and cap.

5.2 1.0 N Hydrochloric acid (HCl) made from ACS reagent grade.

5.3 1.0 N Nitric acid (HNO_3) made from ACS reagent grade.

5.4 1.0 N Sodium hydroxide (NaOH) made from ACS reagent grade.

5.5 Glacial acetic acid (HOAc) ACS reagent grade.

5.6 *Extraction fluid:*

5.6.1 Extraction fluid #1: This fluid is made by adding 5.7 mL glacial HOAc to 500 mL of the appropriate water (see Step 5.1), adding 64.3 mL of 1.0 N NaOH, and diluting to a volume of 1 liter. When correctly prepared, the pH of this fluid will be 4.93 ± 0.05.

5.6.2 Extraction fluid #2: This fluid is made by diluting 5.7 mL glacial HOAc with ASTM Type II water (see Step 5.1) to a volume of 1 liter. When correctly prepared, the pH of this fluid will be 2.88 ± 0.05.

Note.—It is suggested that these extraction fluids be monitored frequently for impurities. The pH should be checked prior to use to ensure that these fluids are made up accurately.

5.7 Analytical standards shall be prepared according to the appropriate analytical method.

6.0 SAMPLE COLLECTION, PRESERVATION, AND HANDLING

6.1 All samples shall be collected using an appropriate sampling plan.

6.2 At least two separate representative samples of a waste should be collected. If volatile organics are of concern, a third sample should be collected. The first sample is used in several preliminary TCLP evaluations (e.g., to determine the percent solids of the waste; to determine if the waste contains insignificant solids (i.e., the waste is its own extract after filtration); to determine if the solid portion of the waste requires particle-size reduction; and to determine which of the two extraction fluids are to be used for the non-volatile TCLP extraction of the waste). These preliminary evaluations are identified in Section 7.0. The second and, if required, third samples are extracted using the TCLP non-volatile procedure (Section 8.0) and volatile procedure (Section 9.0), respectively.

6.3 Preservatives shall not be added to samples.

6.4 Samples can be refrigerated unless refrigeration results in irreversible physical change to the waste (e.g., precipitation).

6.5 When the waste is to be evaluated for volatile contaminants, care should be taken to minimize the loss of volatiles. Samples shall be taken and stored in a manner to prevent the loss of volatile contaminants. If possible, it is recommended that any necessary particle-size reduction should be conducted as the sample is being taken (See Step 8.5).

6.6 TCLP extracts should be prepared for analysis and analyzed as soon as possible following extraction. If they need to be stored, even for a short period of time, storage shall be a 4° C, and samples for volatiles analysis shall not be allowed to come into contact with the atmosphere (i.e., no headspace). See Section 10.0 (QA requirements) for acceptable sample and extract holding times.

7.0 PRELIMINARY TCLP EVALUATIONS

The preliminary TCLP evaluations are performed on a minimum 100 gram representative sample of waste that will not actually undergo TCLP extraction (designated as the first sample in Step 6.2). These evaluations include preliminary determination of the percent solids of the waste; determination of whether the waste contains insignificant solids, and is therefore, its own extract after filtration; determination of whether the solid portion of the waste requires particle-size reduction; and determination of which of the two extraction fluids are to be used for the non-volatile TCLP extraction of the waste.

7.1 *Preliminary determination of percent solids:* Percent solids is defined as that fraction of a waste sample (as a percentage of the total sample) from which no liquid may be forced out by an applied pressure, as described below.

7.1.1 If the waste will obviously yield no free liquid when subjected to pressure filtration (i.e., is 100% solids) proceed to Step 7.4.

7.1.2 If the sample is liquid or multiphasic, liquid/solid separation to make a preliminary determination of percent solids is required. This involves the filtration device described in Step 4.3.2 and is outlined in Steps 7.1.3 through 7.1.9.

7.1.3 Pre-weigh the filter and the container that will receive the filtrate.

7.1.4 Assemble the filter holder and filter following the manufacturer's instructions.

Place the filter on the support screen and secure.

7.1.5 Weigh out a representative subsample of the waste (100 gram minimum) and record the weight.

7.1.6 Allow slurries to stand to permit the solid phase to settle. Wastes that settle slowly may be centrifuged prior to filtration. Centrifugation is to be used only as an aid to filtration. If used, the liquid should be decanted and filtered followed by filtration of the solid portion of the waste through the same filtration system.

7.1.7 Quantitatively transfer the waste sample to the filter holder (liquid and solid phases). If filtration of the waste at 4° C reduces the amount of expressed liquid over what would be expressed at room temperature then allow the sample to warm up to room temperature in the device before filtering.

Note.—If waste material (>1% of original sample weight) has obviously adhered to the container used to transfer the sample to the filtration apparatus, determine the weight of this residue and subtract it from the sample weight determined in Step 7.1.5 to determine the weight of the waste sample that will be filtered.

Gradually apply vacuum or gentle pressure of 1–10 psi, until air or pressurizing gas moves through the filter. If this point is not reached under 10 psi, and if no additional liquid has passed through the filter in any 2-minute interval, slowly increase the pressure in 10-psi increments to a maximum of 50 psi. After each incremental increase of 10-psi, if the pressurizing gas has not moved through the filter, and if no additional liquid has passed through the filter in any 2-minute interval, proceed to the next 10-psi increment. When the pressurizing gas begins to move through the filter, or when liquid flow has ceased at 50 psi (i.e., filtration does not result in any additional filtrate within any 2-minute period), filtration is stopped.

Note.—Instantaneous application of high pressure can degrade the glass fiber filter and may cause premature plugging.

7.1.8 The material in the filter holder is defined as the solid phase of the waste, and the filtrate is defined as the liquid phase.

Note.—Some wastes, such as oily wastes and some paint wastes, will obviously contain some material that appears to be a liquid. But even after applying vacuum or pressure filtration, as outlined in Step 7.1.7, this material may not filter. If this is the case, the material within the filtration device is defined as a solid. The original filter is *not* to be replaced with a fresh filter under any circumstances. Only one filter is used.

7.1.9 Determine the weight of the liquid phase by subtracting the weight of the filtrate container (See Step 7.1.3) from the total weight of the filtrate-filled container. The weight of the solid phase of the waste sample is determined by subtracting the weight of the liquid phase from the weight of the total waste sample, as determined in Step 7.1.5 or 7.1.7. Record the weight of the liquid and solid phases. Calculate the percent solids as follows:

$$\text{Percent solids} = \frac{\text{Weight of solid (Step 7.1.9)}}{\text{Total weight of waste (Step 7.1.5 or 7.1.7)}} \times 100$$

7.2 *Determination of whether waste is liquid or has insignificant amounts of solid material:* If the sample obviously has a significant amount of solid material, the solid phase must be subjected to extraction; proceed to Step 7.3 to determine if the waste requires particle-size reduction (and to reduce particle-size, if necessary). Determine whether the waste is liquid or has insignificant amounts of solid material (which need not undergo extraction) as follows:

7.2.1 Remove the solid phase and filter from the filtration apparatus.

7.2.2 Dry the filter and solid phase at 100±20° C until two successive weighings yield the same value within ±1%. Record final weight.

Note.—Caution should be taken to insure that the subject solid will not flash upon heating. It is recommended that the drying oven be vented to a hood or appropriate device.

7.2.3 Calculate the percent dry solids as follows:

$$\text{Percent: dry solids} = \frac{\text{Weight of dry waste and filter} - \text{tared weight of filter}}{\text{Initial weight of waste (Step 7.1.5 or 7.1.1)}} \times 100$$

7.2.4 If the percent dry solids is less than 0.5%, consult Step 6.2 and proceed to Section 8.0 if non-volatiles in the waste are of concern, and to Section 9.0 if volatiles are of interest. In this case, the waste, after filtration is defined as the TCLP extract. If the percent dry solids is greater than or equal to 0.5%, and if the non-volatile TCLP is to be performed, return to the beginning of this Section (7.0) with a new representative waste sample, so that it can be determined if particle-size reduction is necessary (Step 7.3), and so that the appropriate extraction fluid may be determined (Step 7.4) on a fresh portion of the solid phase of the waste. If only the volatile TCLP is to be performed, see the Note in Step 7.4.

7.3 *Determination of whether the wastes requires particle-size reduction (particle-size is reduced during this Step):* Using the solid portion of the waste, evaluate the solid for particle-size. If the solid has a surface area per gram of material equal to or greater than 3.1 cm ^{2}, or is smaller than 1 cm in its narrowest dimension (e.g., is capable of passing through a 9.5-mm (0.375-inch) standard sieve), particle-size reduction is not required (proceed to Step 7.4). If the surface area is smaller or the particle-size larger than described above, the solid portion of the waste is prepared for extraction by crushing, cutting, or grinding the waste to a surface area or particle-size as described above.

Note.—Surface area requirements are meant for filamentous (e.g., paper, cloth) and similar waste materials. Actual measurement of surface area is not required; nor is it recommended.

7.4 *Determination of appropriate extraction fluid:* If the solid content is greater than or equal to 0.5% of the waste and if TCLP extraction for non-volatile constituents will take place (Section 8.0), determination of the appropriate fluid (Step 5.6) to use for the non-volatiles extraction is performed as follows.

Note.—TCLP extraction for volatile constituents entails using only extraction fluid #1 (Step 5.6.1). Therefore, if TCLP extraction for non-volatiles extraction is not required, proceed to section 9.0.

7.4.1 Weigh out a small subsample of the solid phase of the waste, reduce the solid (if necessary) to a particle-size of approximately 1mm in diameter or less, and transfer 5.0 grams of the solid phase of the waste to a 500-mL beaker of Erlenmeyer flask.

7.4.2 Add 96.5 mL of reagent water (ASTM Type II) to the beaker, cover with a watchglass, and stir vigorously for 5 minutes using a magnetic stirrer. Measure and record the pH. If the pH is <5.0, extraction fluid #1 is used. Proceed to Section 8.0.

7.4.3 If the pH from Step 7.4.2 is >5.0, add 3.5 mL 1.0 N HCl, slurry briefly, cover with a watchglass, heat to 50 °C, and hold at 50 °C for 10 minutes.

7.4.4 Let the solution cool to room temperature and record the pH. If the pH is <5.0, use extraction fluid #1. If the pH is >5.0, use extraction fluid #2. Proceed to Section 8.0.

7.5 The sample of waste used for performance of this Section shall *not* be used any further. Other samples of the waste (see Step 6.2) should be employed for the Section 8.0 and 9.0 extractions.

8.0 PROCEDURE WHEN VOLATILES ARE NOT INVOLVED

Although a minimum sample size of 100 grams (solid and liquid phases) is required, a larger sample size may be more appropriate, depending on the solids content of the waste sample (percent solids, see Step 7.1), whether the initial liquid phase of the waste will be miscible with the aqueous extract of the solid, and whether inorganics, semivolatile organics, pesticides, and herbicides are all analytes of concern. Enough solids should be generated for extraction such that the volume

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of TCLP extract will be sufficient to support all of the analyses required. If the amount of extract generated by the performance of a single TCLP extraction will not be sufficient to perform all of the analyses to be conducted, it is recommended that more than one extraction be performed and that the extracts from each extraction be combined and then aliquoted for analysis.

8.1 If the waste will obviously yield no liquid when subjected to pressure filtration (i.e., is 100% solid, see Step 7.1), weigh out a representative subsample of the waste (100 gram minimum) and proceed to Step 8.9.

8.2 If the sample is liquid or multiphasic, liquid/solid separation is required. This involves the filtration device described in Step 4.3.2 and is outlined in Steps 8.3 to 8.8.

8.3 Pre-weigh the container that will receive the filtrate.

8.4 Assemble the filter holder and filter following the manufacturer's instructions. Place the filter on the support screen and secure. Acid wash the filter if evaluating the mobility of metals (See Step 4.4).

Note.—Acid washed filters may be used for all non-volatile extractions even when metals are not of concern.

8.5 Weigh out a representative subsample of the waste (110 gram minimum) and record the weight. If the waste was shown to contain <0.5% dry solids (Step 7.2), the waste, after filtration is defined as the TCLP extract. Therefore, enough of the sample should be filtered so that the amount of filtered liquid will support all of the analyses required of the TCLP extract. For wastes containing >0.5% dry solids (Steps 7.1 or 7.2), use the percent solids information obtained in Step 7.1 to determine the optimum sample size (100 gram minimum) for filtration. Enough solids should be generated after filtration to support the analyses to be performed on the TCLP extract.

8.6 Allow slurries to stand to permit the solid phase to settle. Wastes that settle slowly may be centrifuged prior to filtration. Centrifugation is to be used only as an aid to filtration. If used, the liquid should be decanted and filtered followed by filtration of the solid portion of the waste through the same filtration system.

8.7 Quantitatively transfer the waste sample (liquid and solid phases) to the filter holder (see Step 4.3.2). If filtration of the waste at 4° C reduces the amount of expressed liquid over what would be expressed at room temperature, then allow the sample to warm up to room temperature in the device before filtering.

Note.—If waste material (>1% of the original sample weight) has obviously adhered to the container used to transfer the sample to the filtration apparatus, determine the weight of this residue and subtract it from the sample weight determined in Step 8.5, to determine the weight of the waste sample that will be filtered.

Gradually apply vacuum or gentle pressure of 1–10 psi, until air or pressurizing gas moves through the filter. If this point is not reached under 10 psi, and if no additional liquid has passed through the filter in any 2-minute interval, slowly increase the pressure in 10-psi increments to maximum of 50 psi. After each incremental increase of 10 psi, if the pressurizing gas has not moved through the filter, and if no additional liquid has passed through the filter in any 2-minute interval, proceed to the next 10-psi increment. When the pressurizing gas begins to move through the filter, or when the liquid flow has ceased at 50 psi (i.e., filtration does not result in any additional filtrate within a 2-minute period), filtration is stopped.

Note.—Instantaneous application of high pressure can degrade the glass fiber filter and may cause premature plugging.

8.8 The material in the filter holder is defined as the solid phase of the waste, and the filtrate is defined as the liquid phase. Weigh the filtrate. The liquid phase may now be either analyzed (see Step 8.13) or stored at 4 °C until time of analysis.

Note.—Some wastes, such as oily wastes and some paint wastes, will obviously contain some material that appears to be a liquid. But even after applying vacuum or pressure filtration, as outlined in Step 8.7, this material may not filter. If this is the case, the material within the filtration device defined as a solid and is carried through the extraction as a solid. The original filter is *not* to be replaced with a fresh filter under any circumstances. Only one the filter is used.

8.9 If the waste contains <0.5% dry solids (see Step 7.2), proceed to Step 8.13. If the waste contains >0.5% dry solids (see Step 7.1 or 7.2), and if particle-size reduction of the solid was needed in Step 7.3, proceed to Step 8.10. If particle-size reduction was not required in Step 7.3, quantitatively transfer the solid material into the extractor vessel, including the filter used to separate the initial liquid from the solid phase. Proceed to Step 8.11.

8.10 The solid portion of the waste is prepared for extraction by crushing, cutting, or grinding the waste to a surface area of particle-size as described in Step 7.3. When the surface area of particle-size has been appropriately altered, quantitatively transfer the solid material into the extractor vessel, including the filter used to separate the initial liquid from the solid phase.

Note.—Sieving of the waste through a sieve that is not Teflon coated should not be done due to avoid possible contamination of the sample. Surface area requirements are meant for filamentous (e.g., paper, cloth) and similar waste materials. Actual measurement of surface area is not recommended.

8.11 Determine the amount of extraction fluid to add to the extractor vessel as follows:

$$\text{Weight of extraction fluid} = \frac{20 \times \%\ \text{solids (Step 7.1)} \times \text{weight of waste filtered (Step 8.5 or 8.7)}}{100}$$

Slowly add this amount of appropriate extraction fluid (see Step 7.4) to the extractor vessel. Close the extractor bottle tightly (it is recommended that Teflon tape be used to ensure a tight seal), secure in rotary extractor device, and rotate at 30±2 rpm for 18±2 hours. Ambient temperature (i.e., temperature of room in which extraction is to take place) shall be maintained at 22±3 °C during the extraction period.

Note.—As agitation continues, pressure may build up within the extractor bottle for some types of wastes (e.g., limed or calcium carbonate containing waste may evolve gases such as carbon dioxide). To relieve excess pressure, the extractor bottle may be periodically opened (e.g., after 15 minutes, 30 minutes, and 1 hour) and vented into a hood.

8.12 Following the 18±2 hour extraction, the material in the extractor vessel is separated into its component liquid and solid phases by filtering through a new glass fiber filter, as outlined in Step 8.7. For final filtration of the TCLP extract, the glass fiber filter may be changed, if necessary, to facilitate filtration. Filter(s) shall be acid-washed (see Step 4.4) if evaluating the mobility of metals.

8.13 The TCLP extract is now prepared as follows:

8.13.1 If the waste contained no initial liquid phase, the filtered liquid material obtained from Step 8.12 is defined as the TCLP extract. Proceed to Step 8.14.

8.13.2 If compatible (e.g., multiple phases will not result on combination), the filtered liquid resulting from Step 8.12 is combined with the initial liquid phase of the waste as obtained in Step 8.7. This combined liquid is defined as the TCLP extract. Proceed to Step 8.14.

8.13.3 If the initial liquid phase of the waste, as obtained from Step 8.7, is not or may not be compatible with the filtered liquid resulting from Step 8.12, these liquids are not combined. These liquids, collectively defined as the TCLP extract, are analyzed separately, and the results are combined mathematically. Proceed to Step 8.14.

8.14 Following collection of the TCLP extract, it is recommended that the pH of the extract be recorded. The extract should be immediately aliquoted for analysis and properly preserved (metals aliquots must be acidified with nitric acid to pH <2; all other aliquots must be stored under refrigeration (4 °C) until analyzed). The TCLP extract shall be prepared and analyzed according to appropriate analytical methods. TCLP extracts to be analyzed for metals, other than mercury, shall be acid digested. If the individual phases are to be analyzed separately, determine the volume of the individual phases (to ±0.5%), conduct the appropriate analyses, and combine the results mathematically by using a simple volume-weighted average:

$$\text{Final Analyte Concentration} = \frac{(V_1)(C_1)+(V_2)(C_2)}{V_1+V_2}$$

where:

V_1 = The volume of the first phase (L).
C_1 = The concentration of the contaminant of concern in the first phase (mg/L).
V_2 = The volume of the second phase (L).
C_2 = The concentration of the contaminant of concern in the second phase (mg/L).

8.15 The contaminant concentrations in the TCLP extract are compared with the thresholds identified in the appropriate regulations. Refer to Section 10.0 for quality assurance requirements.

9.0 PROCEDURE WHEN VOLATILES ARE INVOLVED

The ZHE device is used to obtain TCLP extracts for volatile analysis only. Extract resulting from the use of the ZHE shall not be used to evaluate the mobility of non-volatile analytes (e.g., metals, pesticides, etc.).

The ZHE device has approximately a 500-mL internal capacity. Although a minimum sample size of 100 grams was required in the Section 8.0 procedure, the ZHE can only accommodate a *maximum* of 25 grams of solid (defined as that fraction of a sample from which no liquid (additional) may be forced out by an applied pressure of 50 psi), due to the need to add an amount of extraction fluid equal to 20 times the weight of the solid phase.

The ZHE is charged with sample only once and the device is not opened until the final extract (of the solid) has been collected. Repeated filling of the ZHE of obtain 25 grams of solid is not permitted. The initial filtrate should be weighed and then stored at 4 °C until either analyzed or recombined with the final extract of the solid.

Although the following procedure allows for particle-size reduction during the conduct of the procedure, this could result in the loss of volatile compounds. If possible (e.g., particle-size may be reduced easily by crumbling), particle-size reduction (See Step 9.2) should be conducted on the sample as it is being taken. If necessary, particle-size reduction may be conducted during the procedure.

In carrying out the following steps, do not allow the waste, the initial liquid phase, or the extract to be exposed to the atmosphere for any more time than is absolutely necessary. Any manipulation of these materials should be done when cold (4° C) to minimize loss of volatiles.

9.1 Pre-weigh the (evacuated) container which will receive the filtrate (See Step 4.6), and set aside. If using a TEDLAR® bag, all liquid must be expressed from the device, whether it be for the initial or final liquid/solid separation, and an aliquot taken from the liquid in the bag, for analysis. The containers listed in Step 4.6 are recommended for use under the following conditions.

9.1.1 If a waste contains an aqueous liquid phase or if the waste does not contain a significant amount of non-aqueous liquid (i.e., <1% of total waste), the TEDLAR® bag should be used to collect and combine the initial liquid and solid extract. The syringe is not recommended in these cases.

9.1.2 If a waste contains a significant amount of non-aqueous initial liquid phase (i.e., >1% of total waste), the syringe or the TEDLAR® bag may be used for both the initial solid/liquid separation and the final extract filtration. However, analysts should use one or the other, not both.

9.1.3 If the waste contains no initial liquid phase (is 100% solid) or has no significant solid phase (is 100% liquid), either the TEDLAR® bag or the syringe may be used. If the syringe is used, discard the first 5 mL liquid expressed from the device. The remaining aliquots are used for analysis.

9.2 Place the ZHE piston within the body of the ZHE (it may be helpful first to moisten the piston O-rings slightly with extraction fluid). Adjust the piston within the ZHE body to a height that will minimize the distance the piston will have to move once the ZHE is charged with sample (based upon sample size requirements determined from Section 9.0, Step 7.1 and/or 7.2). Secure the gas inlet/outlet flange (bottom flange) onto the ZHE body in accordance with the manufacturer's instructions. Secure the glass fiber filter between the support screens and set aside. Set liquid inlet/outlet flange (top flange) aside.

9.3 If the waste is 100% solid (see Step 7.1), weigh out a representative subsample (25 gram maximum) of the waste, record weight, and proceed to Step 9.5.

9.4 If the waste was shown to contain <0.5% dry solids (Step 7.2), the waste, after filtration is defined as the TCLP extract. Enough of the sample should be filtered so that the amount of filtered liquid will support all of the volatile analyses required. For wastes containing >0.5% dry solids (Steps 7.1 and/or 7.2), use the percent solids information obtained in Step 7.1 to determine the optimum sample size to charge into the ZHE. The appropriate sample size recommended is as follows:

9.4.1 For wastes containing <5% solids (see Step 7.1), weigh out a representative 500 gram sample or waste and record the weight.

9.4.2 For wastes containing >5% solids (see Step 7.1), the amount of waste to charge into the ZHE is determined as follows:

$$\text{Weight of waste to charge ZHE} = \frac{25}{\text{\% solids (Step 7.1)}} \times 100$$

Weigh out a representative subsample of the waste of the appropriate size and record the weight.

9.5 If particle-size reduction of the solid portion of the waste was required in Step 7.3, proceed to Step 9.6. If particle-size reduction was not required in Step 7.3, proceed to Step 9.7.

9.6 The waste is prepared for extraction by crushing, cutting, or grinding the solid portion of the waste to a surface area or particle-size as described in Step 7.3. Wastes and appropriate reduction equipment should be refrigerated, if possible, to 4 °C prior to particle-size reduction. The means used to effect particle-size reduction must not generate heat in and of itself. If reduction of the solid phase of the waste is necessary, exposure of the waste to the atmosphere should be avoided to the extent possible.

Note.—Sieving of the waste is not recommended due to the possibility that volatiles may be lost. The use of an appropriately graduated ruler is recommended as an acceptable alternative. Surface area requirements are meant for filamentous (e.g., paper, cloth) and similar waste materials. Actual measurement of surface area is not recommended.

When the surface area or particle-size has been appropriately altered, proceed to Step 9.7.

9.7 Waste slurries need not be allowed to stand to permit the solid phase to settle. Wastes that settle slowly shall not be centrifuged prior to filtration.

9.8 Quantitatively transfer the entire sample (liquid and solid phases) quickly to the ZHE. Secure the filter and support screens into the top flange of the device and secure the top flange to the ZHE body in accordance with the manufacturer's instructions. Tighten all ZHE fittings and place the device in the vertical position (gas inlet/outlet flange on the bottom). *Do not* attach the extraction collection device to the top plate.

Note.—If waste material (>1% of original sample weight) has obviously adhered to the container used to transfer the sample to the ZHE, determine the weight of this residue and subtract it from the sample weight determined in Step 9.4, to determine the weight of the waste sample that will be filtered.

Attach a gas line to the gas inlet/outlet valve (bottom flange) and, with the liquid inlet/outlet valve (top flange) open, begin applying gentle pressure of 1–10 psi (or more if necessary) to force all headspace (into a hood) slowly out of the ZHE device. At the first appearance of liquid from the liquid inlet/outlet valve, quickly close the valve and discontinue pressure. If filtration of the waste at 4°C reduces the amount of expressed liquid over what would be expressed at room temperature, then allow the sample to warm up to room temperature in the device before filtering. If the waste is 100% solid (see Step 7.1), slowly increase the pressure to a maximum of 50 psi to force most of the headspace out of the device and proceed to Step 9.12.

9.9 Attach the evacuated pre-weighed filtrate collection container to the liquid inlet/outlet valve and open the valve. Begin applying gentle pressure of 1–10 psi to force the liquid phase into the filtrate collection container. If no additional liquid has passed through the filter in any 2-minute interval, slowly increase the pressure in 10-psi increments to a maximum of 50 psi. After each incremental increase of 10 psi, if no additional liquid has passed through the filter in any 2-minute interval, proceed to the next 10-psi increment. When liquid flow has ceased such that continued pressure filtration at 50 psi does not result in any additional filtrate within any 2-minute period, filtration is stopped. Close the liquid inlet/outlet valve, discontinue pressure to the piston, and disconnect the filtrate collection container.

Note.—Instantaneous application of high pressure can degrade the glass fiber filter and may cause premature plugging.

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9.10 The material in the ZHE is defined as the solid phase of the waste and the filtrate is defined as the liquid phase.

Note.—Some wastes, such as oily wastes and some paint wastes, will obviously contain some material that appears to be a liquid. But even after applying pressure filtration, this material will not filter. If this is the case, the material within the filtration device is defined as a solid and is carried through the TCLP extraction as a solid.

If the original waste contained <0.5% dry solids (see Step 7.2), this filtrate is defined as the TCLP extract and is analyzed directly. Proceed to Step 9.15.

9.11 The liquid phase may now be either analyzed immediately (see Steps 9.13 through 9.15) or stored at 4 °C under minimal headspace conditions until time of analysis. The weight of extraction fluid #1 to add to the ZHE is determined as follows:

$$\text{Weight of extraction fluid} = \frac{\text{20\% solids (Step 7.1)} \times \text{weight of waste filtered (Step 9.4 or 9.8)}}{100}$$

9.12 The following steps detail how to add the appropriate amount of extraction fluid to the solid material within the ZHE and agitation of the ZHE vessel. Extraction fluid #1 is used in all cases (see Step 5.6).

9.12.1 With the ZHE in the vertical position, attach a line from the extraction fluid reservior to the liquid inlet/outlet valve. The line used shall contain fresh extraction fluid and should be preflushed with fluid to eliminate any air pockets in the line. Release gas pressure on the ZHE piston (from the gas inlet/outlet valve), open the liquid inlet/outlet valve, and begin transferring extraction fluid (by pumping or similar means) into the ZHE. Continue pumping extraction fluid into the ZHE until the appropriate amount of fluid has been introduced into the device.

9.12.2 After the extraction fluid has been added, immediately close the liquid inlet/outlet valve and disconnect the extraction fluid line. Check the ZHE to ensure that all valves are in their closed positions. Physically rotate the device in an end-over-end fashion 2 or 3 times. Reposition the ZHE in the vertical position with the liquid inlet/outlet valve on top. Put 5–10 psi behind the piston (if necessary) and slowly open the liquid inlet/outlet valve to bleed out any headspace (into a hood) that may have been introduced due to the addition of extraction fluid. This bleeding shall be done quickly and shall be stopped at the first appearance of liquid from the valve. Re-pressurize the ZHE with 5–10 psi and check all ZHE fittings to ensure that they are closed.

9.12.3 Place the ZHE in the rotary extractor apparatus (if it is not already there) and rotate the ZHE at 30±2 rpm for 18±2 hours. Ambient temperature (i.e., temperature of room in which extraction is to occur) shall be maintained at 22±3 °C during agitation.

9.13 Following the 18±2 hour agitation period, check the pressure behind the ZHE piston by quickly opening and closing the gas inlet/outlet valve and noting the escape of gas. If the pressure has not been maintained (i.e., no gas release observed), the device is leaking. Check the ZHE for leaking as specified in Step 4.2.1, and redo the extraction with a new sample of waste. If the pressure within the device has been maintained, the material in the extractor vessel is once again separated into its component liquid and solid phases. If the waste contained an initial liquid phase, the liquid may be filtered directly into the same filtrate collection container (i.e., TEDLAR® bag) holding the initial liquid phase of the waste, unless doing so would create multiple phases, or unless there is not enough volume left within the filtrate collection container. A separate filtrate collection container must be used in these cases. Filter through the glass fiber filter, using the ZHE device as discussed in Step 9.9. All extract shall be filtered and collected in the TEDLAR® bag is used, if the extract is multiphasic, or if the waste contained an initial liquid phase (see Steps 4.6 and 9.1).

Note.—An in-line glass fiber filter may be used to filter the material within the ZHE when it is suspected that the glass fiber filter has been ruptured.

9.14 If the original waste contained no initial liquid phase, the filtered liquid material obtained from Step 9.13 is defined as the TCLP extract. If the waste contained in initial liquid phase, the filtered liquid material obtained from Step 9.13 and the initial liquid phase (Step 9.9) are collectively defined as the TCLP extract.

9.15 Following collection of the TCLP extract, the extract should be immediately aliquoted for analysis and stored with minimal headspace at 4 °C until analyzed. The TCLP extract will be prepared and analyzed according to the appropriate analytical methods. If the individual phases are to be analyzed separately (i.e., are not miscible), determine the volume of the individual phases (to ±0.5%), conduct the appropriate analyses, and combine the results mathematically by using a simple volume-weighted average:

$$\text{Final Analyte Concentration} = \frac{(V_1)(C_1)+(V_2)(C_2)}{V_1+V_2}$$

where:

V_1 = The volume of the first phases (L).

C_1 = The concentration of the contaminant of concern in the first phase (mg/L).

V_2 = The volume of the second phase (L).

C_2 = The concentration of the contaminant of concern in the second phase (mg/L).

9.16 The contaminant concentrations in the TCLP extract are compared with the thresholds identified in the appropriate regulations. Refer to Section 10.0 for qualify assurance requirements.

10.0 QUALITY ASSURANCE REQUIREMENTS

10.1 All data, including quality assurance data, should be maintained and available for reference or inspection.

10.2 A minimum of one blank (extraction fluid #1) for every 10 extractions that have been conducted in an extraction vessel shall be employed as a check to determine if any memory effects from the extraction equipment are occurring.

10.3 For each analytical batch (up to twenty samples), it is recommended that a matrix spike be performed. Addition of matrix spikes should occur once the TCLP extract has been generated (i.e., should not occur prior to performance of the TCLP procedure). The purpose of the matrix spike is to monitor the adequacy of the analytical methods used on the TCLP extract and for determining if matrix interferences exist in analyte detection.

10.4 All quality control measures described in the appropriate analytical methods shall be followed.

10.5 The method of standard addition shall be employed for each analyte if: 1) recovery of the compound from the TCLP extract is not between 50 and 150%, or 2) if the concentration of the constituent measured in the extract is within 20% of the appropriate regulatory threshold. If more than one extraction is being run on samples of the same waste (up to twenty samples), the method of standard addition need be applied only once and the percent recoveries applied to the remainder of the extractions.

10.6 Samples must undergo TCLP extraction within the following time period after sample receipt: Volatiles, 14 days; Semi-Volatiles, 40 days; Mercury, 28 days; and other Metals, 180 days. Extraction of the solid portion of the waste should be initiated as soon as possible following initial solid/liquid separation. TCLP extracts shall be analyzed after generation and preservation within the following periods: Volatiles, 14 days; Semi-Volatiles, 40 days; Mercury, 28 days; and other Metals, 180 days.

TABLE 1.—VOLATILE CONTAMINANTS [1]

Compound	CAS No.
Acetone	67–64–1
n-Butyl alcohol	71–36–3
Carbon disulfide	75–15–0
Carbon tetrachloride	56–23–5
Chlorobenzene	108–90–7
Methylene chloride	75–09–2
Methyl ethyl ketone	78–93–3
Methyl isobutyl ketone	108–10–1
Tetrachloroethylene	127–18–4
Toluene	108–88–3
1,1,1-Trichloroethane	71–55–6
Trichloroethylene	79–01–6
Trichlorofluoromethane	75–69–4
Xylene	1330–20–7

[1] Includes compounds identified in the Land Disposal Restrictions Rule. If any or all of these compounds are of concern, the zero-headspace extractor vessel shall be used. If other (non-volatile) compounds are of concern, the conventional bottle extractor shall be used.

TABLE 2.—SUITABLE ROTARY AGITATION APPARATUS [1]

Company	Location	Model
Associated Design and Manufacturing Company.	Alexandria, VA (703) 549–5999.	4-vessel device, 6-vessel device
Lars Lande Manfacturing.	Whitmore Lake, MI (313) 449–4116.	10-vessel device, 5-vessel device
IRA Machine Shop and Laboratory.	Santurce, PR (809) 752–4004.	16-vessel device
EPRI Extractor		6-vessel device [2]
REXNORD	Milwaukee, WI (414) 643–2850.	6-vessel device

TABLE 2.—SUITABLE ROTARY AGITATION APPARATUS [1]—Continued

Company	Location	Model
Analytical Testing and Consulting Services, Inc.	Warrington, PA (215) 343–4490.	4-vessel device

[1] Any device that rotates the extraction vessel in an end-over-end fashion at 30±2 rpm is acceptable.

[2] Although this device is suitable, it is not commercially made. It may also require retrofitting to accommodate ZHE devices.

TABLE 3.—SUITABLE ZERO-HEADSPACE EXTRACTOR VESSELS

Company	Location	Model No.
Associated Design & Manufacturing Co.	Alexandria, VA, (703) 549–5999	3740–ZHB, Gas Pressure Device.
Millipore Corp.	Bedford, MA, (800) 225–3384	SD1 P581 C5, Gas Pressure Device.
Analytical Testing & Consulting Services, Inc.	Warrington, PA, (215) 343–4490	C102, Mechanical Pressure Device.

TABLE 4.—SUITABLE FILTER HOLDERS [1]

Company	Location	Model	Size
Nuclepore Corp.	Pleasanton, CA, (800) 882–7711	425910 410400	142 mm. 47 mm.
Micro Filtration Systems	Dublin, CA, (415) 828–6010	302400	142 mm.
Millipore Corp.	Bedford, MA, (800) 225–3384	YT30142HW XX1004700	142 mm. 47 mm.

[1] Any device capable of separating the liquid from the solid phase of the waste is suitable, providing that it is chemically compatible with the waste and the constituents to be analyzed. Plastic devices (not listed above) may be used when only inorganic contaminants are of concern. The 142 mm size filter holder is recommended.

TABLE 5.—SUITABLE FILTER MEDIA

Company	Location	Model	Pore size [1]
Whatman Laboratory Products, Inc.	Clifton, NJ, (201) 773–5800	GFF	0.7

[1] Nominal pore size.

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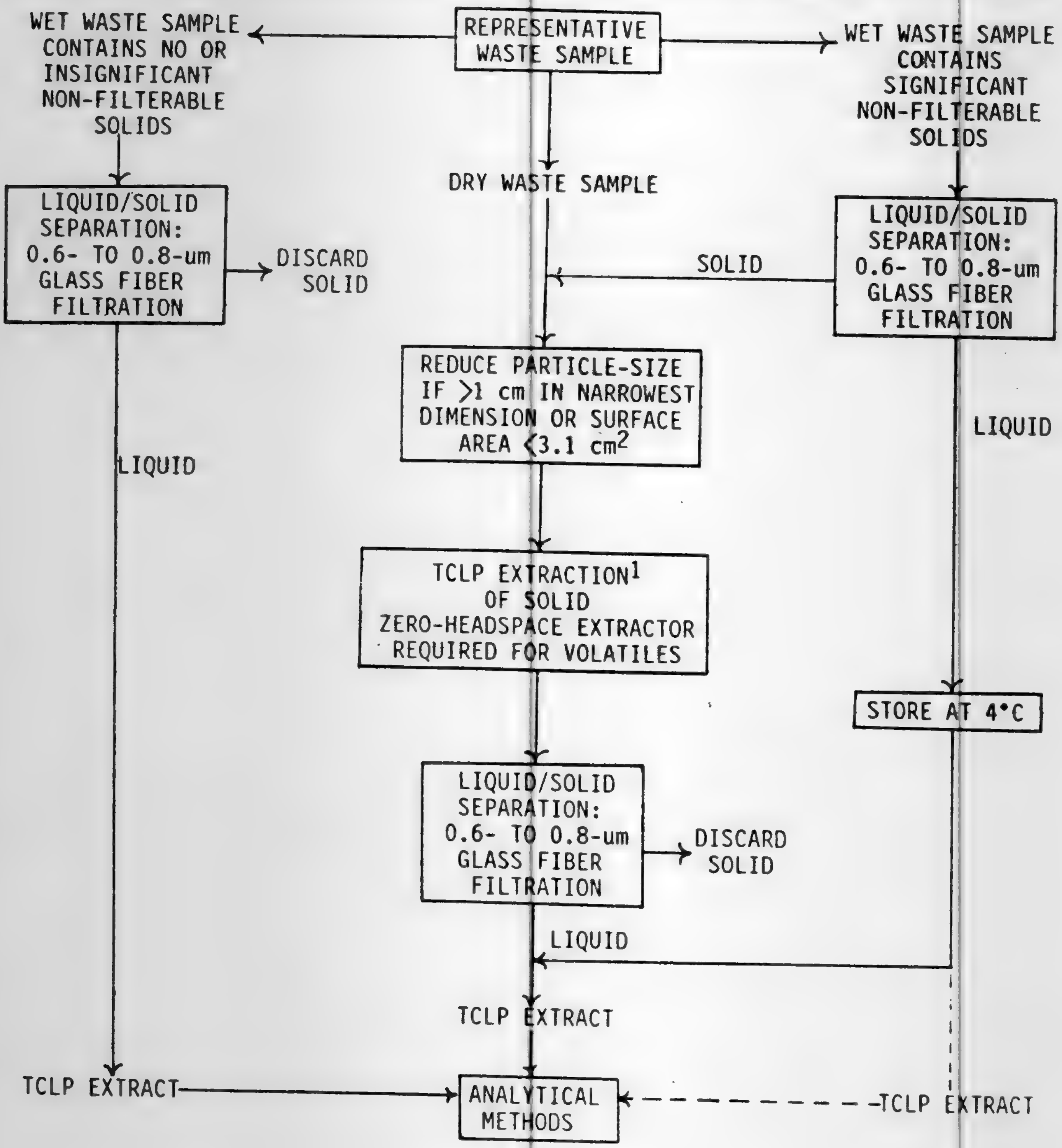
REPRESENTATIVE WASTE SAMPLE
WET WASTE SAMPLE CONTAINS NO OR INSIGNIFICANT NON-FILTERABLE SOLIDS
WET WASTE SAMPLE CONTAINS SIGNIFICANT NON-FILTERABLE SOLIDS
DRY WASTE SAMPLE
LIQUID/SOLID SEPARATION: 0.6- TO 0.8-um GLASS FIBER FILTRATION
DISCARD SOLID
SOLID
LIQUID/SOLID SEPARATION: 0.6- TO 0.8-um GLASS FIBER FILTRATION
REDUCE PARTICLE-SIZE IF >1 cm IN NARROWEST DIMENSION OR SURFACE AREA <3.1 cm2
LIQUID
LIQUID
TCLP EXTRACTION1 OF SOLID ZERO-HEADSPACE EXTRACTOR REQUIRED FOR VOLATILES
STORE AT 4°C
LIQUID/SOLID SEPARATION: 0.6- TO 0.8-um GLASS FIBER FILTRATION
DISCARD SOLID
LIQUID
TCLP EXTRACT
TCLP EXTRACT
ANALYTICAL METHODS
TCLP EXTRACT

---

[1] The extraction fluid employed is a function of the alkalinity of the solid phase of the waste.

FIGURE 1: TCLP FLOWCHART

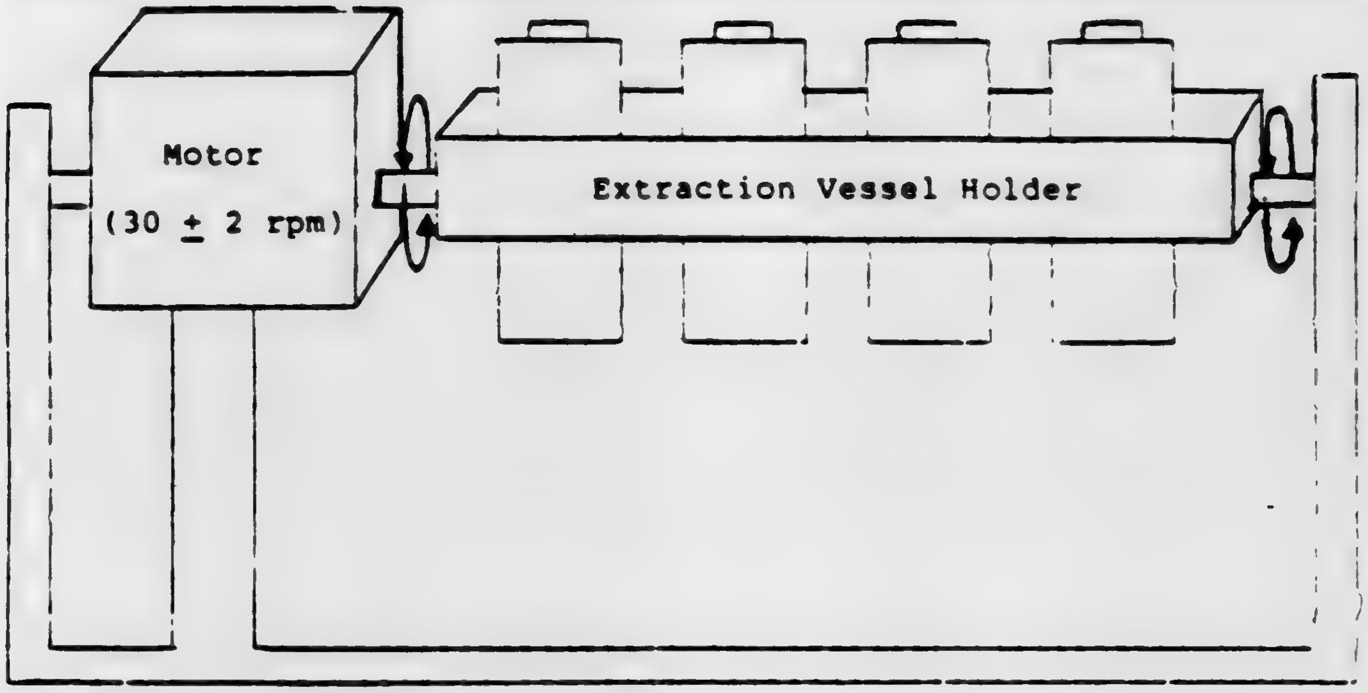
Motor
(30 ± 2 rpm)
Extraction Vessel Holder

Figure 2: Rotary Agitation

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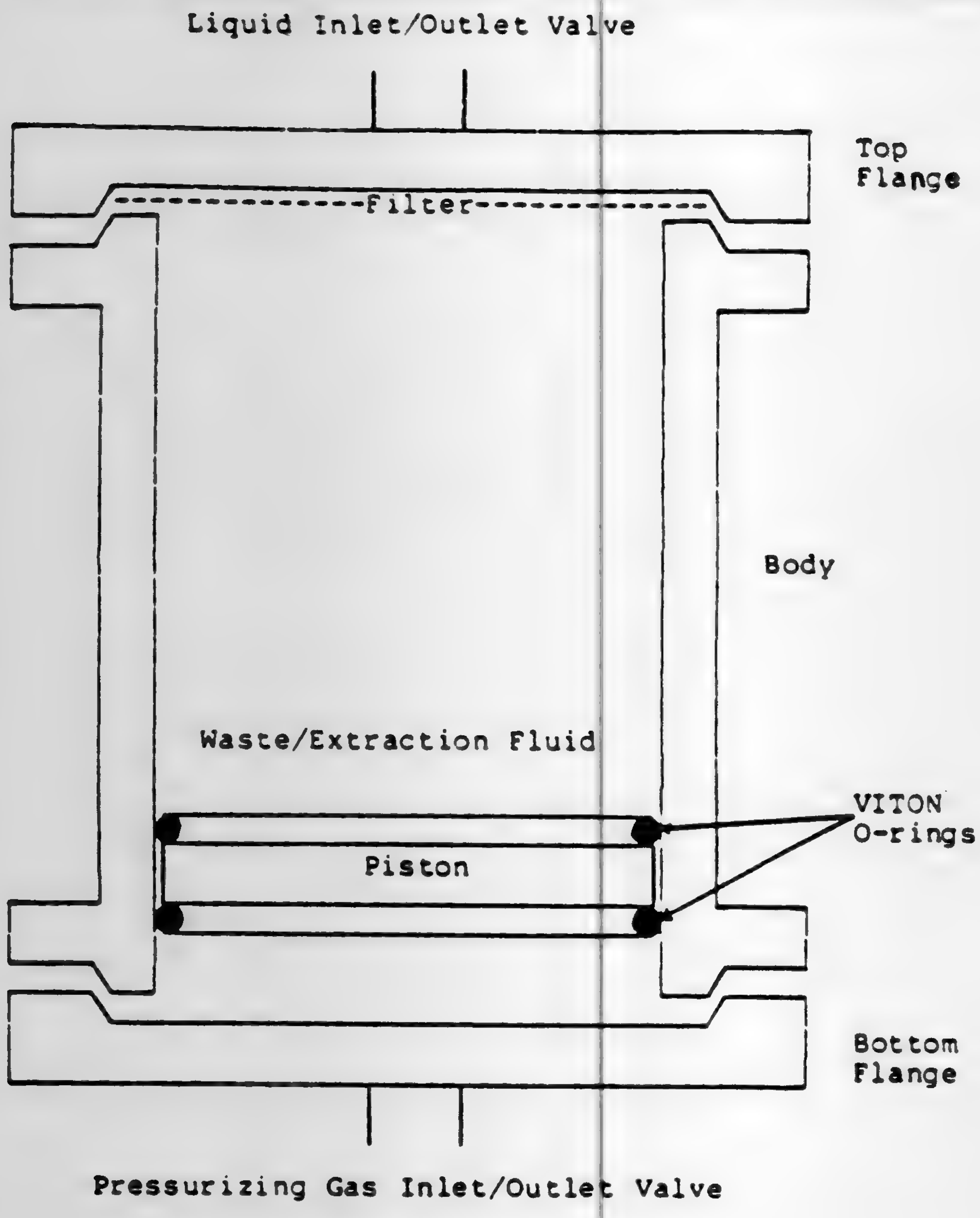
Liquid Inlet/Outlet Valve
Top Flange
Filter
Body
Waste/Extraction Fluid
VITON O-rings
Piston
Bottom Flange
Pressurizing Gas Inlet/Outlet Valve

Figure 3: Zero-Headspace Extraction Vessel

APPENDIX II TO PART 268—TREATMENT STANDARDS (AS CONCENTRATIONS IN THE TREATMENT RESIDUAL EXTRACT)

[Note: The technologies shown are the basis of the treatment standards. They are not required to be used in meeting the treatment standards]

Constituents of FOO1–FOO5 Spent Solvent Wastes	Waste Treatability Groups For FOO1–FOO5 Spent Solvent Wastes (mg/l)			
	Wastewater	Technology Basis [1]	Wastewater Generated by Pharmaceutical Plant [2]	All Other [3]
Acetone	0.05	SS		0.59
n-Butyl Alcohol	5.00	SS		5.00
Carbon disulfide	1:05	SS		4.81
Carbon tetrachloride	0.05	B		0.96
Chlorobenzene	0.15	B&AC		0.05
Cresols (cresylic acid)	2.82	AC		0.75
Cyclohexanone	0.125	SS		0.75
1,2-Dichlorobenzene	0.65	B&AC		0.125
Ethyl acetate	0.05	SS		0.75
Ethylbenzene	0.05	B		0.053
Ethyl ether	0.05	SS		0.75
Isobutanol	5.00	SS		5.00
Methanol	0.25	SS		0.75
Methylene chloride	0.20	B	12.7	0.96
Methyl ethyl ketone	0.05	SS		0.75
Methyl isobutyl ketone	0.05	SS		0.33
Nitrobenzene	0.66	SS&AC		0.125
Pyridine	1.12	B&AC		0.33
Tetrachloroethylene	0.079	B		0.05
Toluene	1.12	B&AC		0.33
1,1,1-Trichloroethane	1.05	SS		0.41
1,1,2-Trichloro-1,2,2-trifluoroethane	1.05	SS		0.96
Trichloroethylene	0.062	B&AC		0.091
Trichlorofluoromethane	0.05	B		0.96
Xylene	0.05	AC		0.15

[1] In some instances other technologies achieved somewhat lower treatment values but waste characterization data were insufficient to identify separate treatability groups. Refer to the BDAT background document for a detailed explanation of the determination of the treatment standards.
SS = steam stripping
B = biological treatment
AC = activated carbon

[2] Wastewaters generated by pharmaceutical plants must be treated to the standards given for all other wastewaters except in the case of methylene chloride.

[3] The treatment standards in this treatability group are based on incineration.

PART 270—EPA-ADMINISTERED PERMIT PROGRAMS; THE HAZARDOUS WASTE PERMIT PROGRAM

VIII. In Part 270:

1. The authority citation for Part 270 continues to read as follows:

Authority: Secs. 1006, 2002, 3005, 3007, 3019 and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912, 6925, 6927, 6939 and 6974), unless otherwise noted.

Subpart B—Permit Applications

2. In § 270.14, paragraph (b)(21) is added to read as follows:

§ 270.14 Contents of Part B: General requirements.

* * * * *

(b) * * *

(21) For land disposal facilities, if a case-by-case extension has been approved under § 268.5 or a petition has been approved under § 268.6, a copy of the notice of approval for the extension or petition is required.

* * * * *

Subpart C—Permit Conditions

3. In § 270.32, paragraph (b)(1) is revised to read as follows:

§ 270.32 Establishing permit conditions.

* * * * *

(b)(1) Each RCRA permit shall include permit conditions necessary to achieve compliance with the Act and regulations, including each of the applicable requirements specified in Parts 264 and 266 through 268 of this chapter. In satisfying this provision, the Administrator may incorporate applicable requirements of Parts 264 and 266 through 268 of this chapter directly into the permit or establish other permit conditions that are based on these parts.

Subpart D—Changes to Permits

4. In § 270.42, paragraph (o) is added to read as follows:

§ 270.42 Minor modifications of permits.

* * * * *

(o) Allow treatment of hazardous wastes not previously specified in the permit if:

(1) The hazardous waste has been prohibited from one or more methods of land disposal under Part 268 Subpart C and treatment standards have been established under Part 268 Subpart D;

(2) Treatment is in accordance with the standards established under § 268.41, or a variance established under § 268.44 of this part;

(3) Handling and treatment of the restricted waste will not present risks substantially different from those of wastes listed in the permit; and

(4) Federal or State approval of a minor permit modification request is granted. No permit changes can occur except for the addition of new waste codes and administrative or technical changes necessary to handle new wastes. Changes in treatment processes or physical equipment may not be made under this paragraph.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

IX. In Part 271:

1. The authority citation for Part 271 continues to read as follows:

Authority: Secs. 1006, 2002(a) and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6905, 6912(a), and 6926).

Subpart A—Requirements for Final Authorization

2. In § 271.1 paragraph (j) is amended by adding the following entry to Table 1 in chronological order by the date of publication.

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Date of promulgation	Title of regulation	Federal Register reference	Effective date
*	*	*	*
[Date of publication of the final rule in the Federal Register].	Land Disposal Restrictions for solvents and dioxins.	51 FR [insert Federal Register, page numbers].	Nov. 8, 1986.

3. In § 271.1 paragraph (j) is further amended by adding the date of publication and the **Federal Register** page numbers to the following entry in Table 2.

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

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TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
*	*	*	*
Nov. 8, 1986...	Land disposal prohibitions on dioxins and F001–F005 solvents.	3004(e)	[*Insert date of publication*], 51 FR [*insert Federal Register page numbers*].
*	*	*	*

[FR Doc. 86–25224 Filed 11–6–86; 8:45 am]

BILLING CODE 6560-50-M

federal register

Friday
November 7, 1986

Part III

Environmental Protection Agency

40 CFR Parts 51 and 52
Air Quality Implementation Plans; Restructuring SIP Preparation Regulations; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[AD-FRL-3044-2]

Air Quality Implementation Plans; Restructuring SIP Preparation Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rulemaking restructures and consolidates the existing regulations for the development of State implementation plans (SIP's) to attain the national ambient air quality standards (NAAQS). At present, these regulations are complex, not well organized, and contain many obsolete provisions. The EPA deletes obsolete provisions and rewrites the regulations in a new, shorter, and better organized format. States using the new regulations to prepare SIP's will find them current and easier to follow. The regulations also have a flexible structure into which future requirements can be more easily included.

EFFECTIVE DATE: December 8, 1986.

FOR FURTHER INFORMATION CONTACT: Ted Creekmore or Joseph Sableski, Plans Guidelines Section, MD-15, Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5697 commercial or 629-5697 FTS.

SUPPLEMENTARY INFORMATION:

Background

On October 11, 1983 (48 FR 46152), EPA proposed to restructure and consolidate regulations for the development of SIP's. These regulations are found in 40 CFR Part 51, "Requirements for Preparation, Adoption, and Submittal of Implementation Plans;" and 40 CFR Part 52, "Approval and Promulgation of Implementation Plans."

Since Part 51 was promulgated in 1971, many substantive revisions have been made. Almost every portion has been revised or added to. Revisions have been forced into the existing format, often making the whole regulation more confusing. As a result, users—mainly the State and local air pollution control agencies—have difficulty finding and understanding applicable requirements in the regulations.

Thus, today's action revises the regulations to:

1. Remove obsolete materials and reporting requirements,
2. Condense and clarify complicated and detailed requirements,
3. Develop a structure that would allow users to find easily applicable requirements, and
4. Provide for future requirements and changes.

To accomplish these goals, EPA deletes obsolete materials and restructures the remaining regulations in a new format (shown in Table 1 of this action). The new format provides for better organization and flexibility for adding or changing future SIP requirements. To implement the new format, EPA developed a master plan to restructure 40 CFR Part 51. As shown in Table 1, the new format expands the Part 51 structure to include more topical headings; these will act as guideposts in locating applicable requirements. This is accomplished by having more subparts than currently appear in Part 51. For instance, where now there is only one section for prevention of air pollution episodes (§ 51.16), there will be a whole subpart that contains several sections—one for classification of regions for episode plans, one for levels of significant harm, one for contingency plans, and one for reevaluation of episode plans. Furthermore, the use of section subdivisions below the third order is significantly reduced.

A more extensive discussion of the rulemaking may be found in the October 11, 1983, proposal which may be used as a reference in studying today's rulemaking.

Restructuring Form

This action includes two tables to help identify and explain the restructured sections as follows:

(1) Derivation Table and Master Plan (Table 1). This table shows the origin of each new section and gives the master restructuring plan.

(2) Distribution Table (Table 2). This table indicates where each original section fits into the new restructured format.

Revisions to 40 CFR Part 52 and Other Revisions

This action includes changes in the cross-references to separate provisions of the existing regulations in Part 52 and unrestructured portions of Part 51. The cross-references are made to the same or equivalent provisions in the restructured regulations.

Relationship of Action to Existing SIP's and Nonattainment Requirements

The EPA does not anticipate that this action will have any significant impact on existing SIP's. The EPA is promulgating very few substantive changes to Part 51. The majority of these changes remove material that was intended to serve as guidance to the States in preparing their plans. The EPA does not intend to require States to "clean up" their SIP's by removing or revising outdated material such as original emission inventories. States may make such revisions as their resources permit. Where SIP's refer to the former Part 51 citations, EPA will interpret those citations as referring to the new citations in Part 51 as codified pursuant to this action and as cross-referenced in Table 2. EPA also reminds States of the generally accepted interpretation that a State regulation that references a Federal regulation remains unchanged if the Federal regulation is revised subsequent to adoption of the State regulation.

The EPA also does not anticipate that this action will have any appreciable impact on SIP revisions submitted to meet the requirements of Part D, Title I of the Clean Air Act (Act). Part D contains new requirements for areas which did not attain the standards within the deadlines established by the 1970 amendments. The only regulations EPA has promulgated that incorporate Part D requirements concern new source review. The EPA is not promulgating changes to the new source review rules. For the remaining Part D requirements, EPA issued nonregulatory guidance. It is beyond the scope of the rulemaking to address the provisions of Part D of the Act, and EPA is not incorporating any of this guidance into Part 51 at this time.

Public Comments

Comments were received from 16 sources including individuals, businesses, local governments, and environmental groups. This document provides a summary of responses to major comments. Responses to these as well as other comments may be found in Docket Number A-81-25 listed under IV-F-1.

Definition of Reasonably Available Control Technology (RACT) [§ 51.100(o)]

The existing Part 51 regulations contain only two provisions that use the term "RACT"—namely, §§ 51.13(b) and 51.31(c) [§§ 51.110(c) and 51.341 in the restructured proposal]. Section 51.13(b) establishes a presumption that 3 years is a reasonable time for attainment of a secondary NAAQS if RACT would bring about attainment. Section 51.31(c) allows an extension of the deadline for submission of a SIP for a secondary NAAQS but only upon a showing that more than RACT is necessary for attainment. The Part 51 regulations separately define RACT in § 51.1(o) largely by reference to Appendix B that gives examples of RACT technology. The EPA promulgated both of these provisions and the definition of RACT simultaneously in the early 1970's.

Several years later, EPA used the term RACT in a different context as part of its effort to remedy the widespread persistence of NAAQS violations. In 1976 and then in the months following the enactment of Part D in 1977, EPA stated more elaborate and specific provisions of RACT. The EPA, however, never attempted to incorporate those provisions, nor any of the requirements of Part D relating to existing sources, into the Part 51 regulations.

The proposed definition of RACT was intended only to codify existing policy. It included provisions of RACT from guidance for nonattainment plans (Part D of the Act) because EPA believed this guidance was established and accepted. However, upon reexamination of the proposed definition, EPA has concluded it went too far by attempting to include Part D provisions. The purpose of this rulemaking is merely to streamline and recodify the existing requirements of the Part 51 regulations, not to incorporate parameters of Part D into those regulations. The definition of RACT, therefore, should reflect, as near as possible, only what EPA intended the term to mean originally for the purposes of §§ 51.13(b) and 51.31(c). Thus the definition is changed to read as follows:

"Reasonably available control technology" means devices, systems, process modifications, or other apparatus or techniques that are reasonably available taking into account (1) the necessity of imposing such controls in order to attain and maintain a national ambient air quality standard, (2) the social environmental and economic impact of such controls, and (3) alternative means of providing for attainment and maintenance of such standard. (This provision defines RACT for the purposes of §§ 51.110(c)(2) and 51.341(b) only.)

There was some concern by commenters that the proposed deletion of Appendix B, "Example of Emission Limitation Attainable With Reasonably Available Technology" would affect the application of RACT to various regulatory castegories such as visible emissions. This action in no way affects the application of RACT to any regulatory, industry, or source category. As discussed in the proposed rulemaking, deleting guidance appendices which are frequently changing eliminates the need to constantly update Part 51. The EPA proposed deleting Appendix B because many of the limitations for source categories have changed, and up-to-date RACT guidance on emission limitations for specific sources is available through various guidance documents.

Air Quality Maintenance Provisions

The comments on our suggestions of possible revisions to the air quality maintenance provision indicated that any revisions would be the subject of much controversy. Thus, EPA intends to make no revision to the maintenance regulations of Subpart D in this action except to renumber section references therein, but will consider options for future revisions. The EPA may eventually incorporate Subpart D into Subpart G, "Control strategy." This may involve rewriting Subpart D as part of Subpart G or redesignating Subpart D as a new Subpart Ga.

Section 51.100, Definitions

Commenters suggested revising § 51.100(n)(7) through (9) to better reflect today's transportation plans requirements. They wanted to delete example measures such as "commuter taxes" and "gasoline rationing" since they are unlikely to be implemented. They wanted to revise the term "parking restrictions" and read "preferential parking requirements" in order to shift emphasis from restriction to incentive methods. They suggested other changes such as adding the phrase "and motor vehicle trips" to recognize the need for measures that reduce trips and the related emissions associated with the cold-start and hot-soak modes. Some of the examples of transportation control measures in paragraphs (n)(7) through (9) have largely been superseded by other measures to control emissions from transportation sources. The EPA believes it would be appropriate to replace paragraphs (n)(7) through (9) with a general reference to other transportation control measures. The reference would include those measures listed in section 108(f) of the Act as examples of transportation measures that a State may adopt. The regulations have been modified accordingly.

One commenter recommended changing the definition of transportation control measures at § 51.100(r) to include only highway or transit-related measures on the grounds that measures decreasing emissions from individual motor vehicles, referenced in the existing definition, are actions not under the jurisdiction of Federal or State transportation agencies. The commenter also recommended that the proposed definition be expressed in more general terms. Whether or not measures are under the jurisdiction of a transportation control agency is not a relevant consideration so long as the measure is enforceable by the State. Moreover, EPA believes that the existing definition, which includes "any measure. . ." that is directed toward reducing emissions of air pollutants from transportation sources,. . . ." is sufficiently general. Thus, EPA is retaining the existing definition of "transportation control measure," except that the measures listed in section 108(f) are being referenced as examples rather than including the example measures in the existing regulation.

It was suggested that § 51.100 (s) through (w) should be deleted because the transportation-related terms defined in these sections are no longer used in Appendix M, "Transportation Control Supporting Data Summary," which EPA proposed to delete. The EPA agrees with the commenter and has deleted these paragraphs.

Section 51.104, Revisions

Another commenter suggested EPA amend § 51.104(a) to add a requirement that plans shall be revised when necessary to "otherwise comply with any additional requirements established under the Act as amended in 1977." This language is a quote from section 110(a)(2) H of the Act. The EPA agrees with this comment and has amended section 51.104(a) to track the language of section 110(a)(2)(H). Section 51.104(a) now requires that a plan be revised to take into account a finding by the Administrator that the plan is substantially inadequate to comply with any applicable additional requirements established under the Clean Air Act Amendments of 1977.

A commenter noted that we had proposed to delete § 51.4(b)(6) and stated that this would result in dropping requirements for local planning, transportation, and economic development agencies to be informed of air quality maintenance plan proposals. This section was inadvertently dropped in the proposal and is restored in this rulemaking.

Section 51.110, Attainment and Maintenance of National Standards

One commenter felt that the language in the proposed § 51.110(a) inappropriately presupposes that further emission reductions will be necessary in every case in order to achieve or maintain the national standards, contrary to the existing § 51.12(a), (b). It was EPA's intention to use language similar to § 51.12(a) and to require emissions reductions only to the degree necessary for attainment and

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maintenance of the NAAQS. Section 51.110(a) states, "Each plan must set forth a control strategy that provides emission reduction necessary for attainment and maintenance of national air quality standards." The section further states that emission reductions must be sufficient to offset future increases in emissions. The EPA believes that these statements do not presuppose that further reductions will be necessary in every case. However, as a clarification, we have revised section 110(a) to explain that the control strategy must provide the degree of emission reduction necessary to attain and maintain the standards, and that the reductions must offset "any" increases that "are expected to" result from growth.

Section 51.118, Additional Provisions for Lead

One commenter stated that their agency has not been reporting data to EPA in hazardous and trace emissions systems (HATREMS) coding forms. The commenter felt that the requirement that lead emissions be submitted on HATREMS coding forms was contrary to our remarks in the proposal when we indicated that we do not need to specify the content or format of point and area source data. The EPA agrees that the regulation need not specify the format for submission of point and area data. The commenter recommended that EPA modify the requirement to at least allow States greater flexibility as to the format for submitting data. Accordingly, we have modified § 51.118(e) to specify that the data should include the information identified in the HATREMS forms, but need not be in the format of those forms.

Subpart H, Prevention of Air Pollution Emergency Episodes

A commenter suggested that EPA revise the propsed § 51.153, "Reevaluation of episode plans," to provide an alternate minimum schedule on which episode plans would be reevaluated. The proposal requires States to reevaluate their priority classification every 5 years to determine if changes are needed. The 5 year review would coincide with EPA's review of an ambient air quality standard or promulgation of a revised standard. If the evaluation indicates in priority classification, the proposal calls for appropriate changes in the emergency episode plan(s) within 1 year after EPA publishes its determination with regard to pollutant reassessment in the Federal Register. The commenter felt the regulation should require reassessment of the priority classification whenever a standard was tightened.

If there is no change tightening the standard after EPA review, the reevaluation should be required every 5 years or after EPA review, whichever is later. After studying this issue further, EPA believes that it is not necessary to specify minimum requirements for States to reevaluate their priority classification and episode plans. Under current legal authority, EPA may require States to revise their episode plans when necessary. Indeed, States should already be periodically reevaluating the adequacy of their episode plans. When an EPA revision to an air quality standard impacts episode planning, EPA will set forth minimal criteria for reevaluations of episode plans at that time. Such changes might include a revision to the significant harm levels or priority classification criteria. Thus, § 51.153(b) is deleted and not included in the promulgation. However, EPA is retaining § 51.153(a) which has a general requirement for periodic reevaluation of priority classification for episode plans and retaining the requirement that the episode plans be revised if the priority classification changes.

One commenter noted that in rewriting the old § 51.3 into Subpart H, the provision that "each region will be classified separately with respect to each of the pollutants considered (Sulfur dioxide . . . ozone)" was deleted. The EPA has added an introduction to clarify the intent of the regulation and has included this phrase.

Subpart I, Review of New Sources and Modifications

A commenter opposed the proposal to drop requirements for States to notify EPA of permitting actions for all minor sources and for all sources outside nonattainment areas [§ 51.161(d)] on the grounds that new source review is a central part of the prevention of significant deterioration (PSD) and the air quality maintenance plan process and that notification is needed for EPA oversight. The provisions governing PSD procedures, § 51.24, require States to notify EPA of permitting actions for major sources outside nonattainment areas. The deletion from § 51.161(d) did not affect those requirements, only the notification requirements for minor sources. However, EPA agrees that where State or local agency review of new or modified minor sources is required, it should be notified of permitting action for such sources. The very fact that such sources are subject to review indicates that it would be appropriate to require that EPA be notified of permitting actions on such sources for oversight purposes. Moreover, a large number of minor sources could have a significant cumulative effect on air quality. Thus, under the authority of sections 110 and 301 of the Act, the proposed § 51.161(d) has been modified so that it now is essentially identical to existing § 51.18(h)(4). Hence, EPA will require reporting of all State permitting actions, as required in the existing SIP regulations.

Appendices

In the October 11, 1983, proposed regulations, EPA proposed deleting several appendices from Part 51 (A through K, M through O, and R) for two reasons. First, EPA stated that the necessary guidance in Part 51 is available from other EPA publications. For example, guidance on emission inventories, monitoring, and diffusion modeling is routinely updated by EPA through guidelines readily available to the public. Guidance issued by EPA is listed in the "Air Programs Reports and Guidelines Index" which includes an index of current technical and guideline documents prepared by EPA over the past several years. The "Air Programs Policy and Guidance Notebook" provides additional guidance materials. Both of these guidelines are distributed to State and local agencies. Copies are available for public inspection and copying at the Public Information Reference Unit at EPA's office in Washington, DC, and at EPA Regional Offices. Secondly, many of the existing appendices are obsolete because EPA policy has changed since their original proposal. Rapid changes in SIP policy and the difficulty in promulgating timely revisions to Part 51 have led EPA to develop guidelines rather than revise the Part 51 appendices. One commenter felt that deleting these appendices will create significant uncertainties about the legally binding effects of EPA guidance. They suggested we update them and remove obsolete material, not delete them.

The EPA believes it would be unduly burdensome to update the appendices. The guidelines are constantly being updated, and some of the appendices would become obsolete in a short period of time. In addition, most of the appendices have performed their function by assisting the States when the initial SIP's were developed. The only major reason for leaving them in Part 51 would be for historical purposes. Finally, publishing guidance in appendices to the regulations would not necessarily make the guidance more legally binding. For these reasons, today's action deletes the appendices as proposed.

Appendix L

A commenter pointed out that the location of a phrase in §§ 1.1(b), 1.1(c), and 1.1(d) of Appendix L is misleading. The phrase appears after "NO_2-," and reads as follows: "NO_2-24-hour average and meteorological conditions are such that pollutant concentrations can be expected to remain at the above levels for twelve (12) or more hours, or in the case of ozone, the situation is likely to recur within the next 24 hours unless control actions are taken." The commenter pointed out that this phrase applies to all five pollutants, not just to NO_2 as its location would imply. Thus, the phrase should be separated from its inclusion under the NO_2 subtitle. The EPA believes the commenter is correct and has made the appropriate clarification in today's action.

Deletion of Reporting Requirements

One commenter opposed deleting the reporting requirements of § 51.326, "Reportable revisions," and § 51.328, "Plan prescribed actions," because they felt each section required a formal report that each citizen could easily read and also provided greater assurance that the information covered by the sections would be made available. The EPA believes that the burden on the States of including in the annual report all substantive plan revisions that otherwise need not be submitted for approval is small and that such information may be useful to EPA and the public. Accordingly, § 51.326 is being retained to ensure that EPA is apprised of all substantive plan revisions as a matter of course. The EPA believes that it would be more appropriate to acquire the information covered by § 51.328 only on an as needed basis through program and grant mechanisms. The commenter has offered no reason as to why a citizen would need the information covered by § 51.328. In any event, a citizen presumably would be able to obtain such information directly from the States. Thus, this action retains § 51.326 and deletes § 51.328.

Other Revisions to the Rulemaking

In our review of the proposal, we determined that several minor changes were necessary to make the regulation read better and to correct inadvertent errors. These changes are listed as follows:

1. The proposal did not redesignate or restructure § 51.12(e) through (i) which refer to maintenance plans because no change in maintenance provisions was proposed. The final action redesignates § 51.12(e) through (i) as § 51.110(h) through (l). No revisions are made in these sections. This redesignation improves the organization of the regulation by including these sections in the new format.

2. The proposal did not redesignate or restructure § 51.24, Prevention of significant deterioration, because EPA intended to do this in a separate rulemaking. The final action redesignates § 51.24 as § 51.166 under the new format in the new source review subpart. No revisions are made to this section. This redesignation improves the organization of the regulation by including § 51.124 in the new format.

3. The EPA noticed a typographical error in § 51.104(b). The first sentence should read, "The State must *revise* the plan within 60 days . . . ." not "The State must *review* the plan, etc." The promulgation corrects this error.

4. The EPA decided that § 51.113(a) is a duplication of § 51.112(b)(1). There is no need for a "procedures" subdivision. Thus, EPA incorporated § 51.113(b) as § 51.112(b)(4) and deleted the proposed § 51.113.

5. The EPA noted that the last two sentences of the proposed § 51.161(d) stated "For pollutants where no designations are established, such as for lead, a copy of the notice is required for all major sources. The definition of a major source for lead is given in § 51.100(k)(2)." In these two sentences, the term "major" was incorrectly proposed and is replaced with the term "point" in this action.

6. The EPA has restructed § 51.260(a)(2) to more closely convey the meaning of existing § 51.15(a). Also, in reviewing § 51.260(a)(3), EPA noted it reads "Categories of other sources" which was inadvertently changed from the original version. Section 51.260(a)(3) should read "Categories of such sources." This revision is made in the final action.

Ongoing Revisions

Several commenters were concerned that we are not restructuring various portions of Part 51 because they are currently undergoing revision. They referred to amendments in § 51.18, "Review of new sources and modifications," proposed on August 25, 1983 (48 FR 38742), and revisions in the stack height provisions (§ 51.164) mandated by the court. Since this restructuring package was proposed, the following Part 51 regulations have been promulgated:

1. 49 FR 43202, October 26, 1984. Regulations adding a new paragraph in § 51.18 involving fugitive emissions of stationary sources.

2. 50 FR 27892, July 8, 1985. Regulations revising §§ 51.1, 51.12, and 51.18 involving stack height provisions.

3. 51 FR 11414, April 2, 1986. Regulations adding new sections in §§ 51.1 and 51.12 involving intermittent control systems.

These provisions have been incorporated into the restructured subparts unchanged as promulgated, except that headings, titles, and numbering have been changed to fit into the new format.

Revisions to Part 52

As mentioned earlier, this action includes nomenclature changes in Part 52 where cross-references to Part 51 are made. In addition, some of the Part 52 provisions are obsolete and are deleted in this action.

Sections 52.828(b) and 52.2078(b) have been rescinded since they concern primarily 1-year extensions for compliance that were allowed under section 110(f) of the Act prior to 1977 Amendments. Section 110(f) affect any authority the States of Iowa and Rhode Island may have to issue any abatement orders that are permitted under the Act as amended in 1977.

Environmental, Economic, and Energy Impact Assessments

Under Executive Order (E.O.) 12291, EPA must judge whether a regulation is major and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on the environment, energy, competition, employment, investment, productivity innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This regulation was submitted to the Office of Management and Budget (OMB) for review under E.O. 12291. Any comments from OMB and any EPA responses to the comments are available in Docket A–81–25.

Pursuant to the provisions of U.S.C. 605(b), I hereby certify that the attached rule will not have a significant economic impact on small entities because no additional costs will be incurred. This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 U.S.C. 3501 et seq.

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Judicial Review

The following regulatory amendments are nationally applicable, and this action is based on determination of nationwide scope and effect. Therefore, under section 367(b)(1) of the Act, judicial review may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petition for review must be filed on or before January 6, 1987.

TABLE 1.—DERIVATION TABLE AND MASTER PLAN TO RESTRUCTURE 40 CFR PART 51

New designation section No. and title	Old designation section No. and title
Subpart F Procedural Requirements	
51.100 Definitions	51.1 Definitions.
51.101 Stipulations	51.2 Stipulations.
51.102 Public hearings	51.4 Public hearings.
51 103 Submission of plans	51.5 Submission of plans.
51 104 Revisions	51.6 Revisions. 51.34 Variances.
51.105 Approval of plans	51.8 Approval of plans.
Subpart G Control Strategy	
51.110 Attainment and Maintenance of National Standards	51.10 General requirements (portion). 51.12 Control strategy: General (portion). 51 13 Control strategy: SO_x & PM (portion). 51.14 Control strategy: CO, HC, Ox & NO_2 (portion). 51.80 Demonstration of attainment: Pb (portion).
51.111 Description of control measures	51.14 Control strategy: CO, HC, Ox, & NO_2 (portion). 51.87 Measures: Pb.
51.112 Demonstration of adequacy	51.13 Control strategy: SO_x & PM (portion). 51.14 Control strategy: CO, HC, Ox, & NO_2 (portion). 51.80 Demonstration of attainment: Pb (portion). 51.82 Air quality data (portion).
51.113 Time period for demonstration of adequacy	51.10 General requirements (portion). 51.81 Emissions data: Pb (portion).
51.114 Emissions data and projections	51.13 Control strategy: SO_x & PM (portion). 51.14 Control strategy: CO, HC, Ox, & NO_2 (portion). 51.81 Emissions data: Pb (portion).
51.115 Air quality data and projections	51.13 Control strategy : SO_x & PM (portion). 51.14 Control strategy: CO, HC, Ox, & NO_2 (portion). 51.82 Air quality data: Pb (portion).
51.116 Data availability	51.10 General requirements (portion). 51.86 Data availability: Pb.
51.117 Additional provisions for lead	51.80 Demonstration of attainment: Pb (portion). 51.81 Emissions data: Pb (portion). 51.82 Air quality data: Pb (portion). 51.83 Certain urbanized areas: Pb. 51.84 Areas around significant point source: Pb. 51.85 Other areas: Pb. 51.86 Data bases: Pb (portion).
51.118 Stack height provisions	51.12 Control strategy: General (portion).
51.119 Intermittent control systems	51.12 Control strategy: General (portion).
51.120–51.135 Reserved for new requirements as set forth in the Act	
51.136–51.140 Reserved for maintenance of PSD increment provisions	
Subpart H Prevention of Air Pollution Emergency Episodes (§§ 51.150 to 51.159)	51.3 51.16 Classification of regions. Prevention of air pollution emergency episodes.
Subpart I Review of New Sources and Modifications (§§ 51.160 to 51.169)	51.18 51.24 Review of new sources and modifications. Prevention of significant deterioration.
Subpart J Air Quality Surveillance (§§ 51 190 to 51.209) (Promulgated 5/10/79)	51.17 Air quality surveillance.
Subpart K Source surveillance (§§ 51.210 to 51.229)	51.19 Source surveillance.
Subpart L Legal Authority (§§ 51.230 to 51.239)	51.11 Legal authority.
Subpart M Intergovernmental consultation (§§ 51.240 to 51.259) (Promulgated 6/18/79)	51.21 Intergovernmental cooperation.
Subpart N Compliance Schedules (§§ 51.260 to 51.279)	51.15 Compliance schedules.
Subpart O Miscellaneous Plan Content Requirements	
51.280 Resources 51.281 Copies of rules and regulations 51.282 Reserved 51.283 Reserved 51.284 Public notification (Promulgated 5/10/79)	51.20 Resources. 51.22 Rules and regulations.
Subpart P Visibility protection (§§ 51.300 through 51.319) (Promulgated 12/2/80)	
Subpart Q Reports (§§ 51.320 through 51.339)	51.7 Reports.
Subpart R Extensions (§§ 51.340 through 51.369)	51.30 Request for 2-year extension. 51.31 Request for 18-month extension.
Revoked	51.1 Definitions (obsolete portions). 51.3 Classification of regions (as applicable to control strategies). 51.4 Public hearings (obsolete portions). 51.5 Submission of plans; preliminary review of plans (obsolete portions). 51.23 Exceptions. 51.32 Request for 1-year postponement. 51.33 Headings and appeals relating to request for one year postponement. 51.326 Reportable revisions. 51.328 Plan prescribed actions. Appendix A Air quality estimation. Appendix B Examples of emission limitations attainable with reasonably available control technology. Appendix C Major pollutant source. Appendix D Pollutant emissions inventory summary. Appendix E Point source data. Appendix F Area source data. Appendix G Emission inventory summary. Appendix H Air quality data summary. Appendix K Control agency functions. Appendix M Transportation Control Supporting Data Summary. Appendix N Emissions Reductions Achievable Through Inspection, Maintenance and Retrofit of Light Duty Vehicles. Appendix O [Untitled]. Appendix R Agency functions for air quality maintenance area plans.

NA—Not applicable.

TABLE 2.—DISTRIBUTION TABLE

Old section	New section
51.1(a) through (nn) All paragraph designations are the same and have the same paragraph designation *except* those which are listed below.	51.100(a-nn).
51.1(a)	51.100(a) New citations added.
51.1(j)	51.100(j). Definition of local agency deleted. 51.1 includes two definitions of "local agencies." EPA considers 51.100(g) a better definition. A new 51.100(j) is added which defines the term "plan."
51.1(k)(1)	51.100(k)(1) The term "Volatile Organic Compound" (VOC) replaces the term "Hydrocarbons."
51.1(k)(1)(i,ii)	51.1 Point source definition updated.
51.1(k)(1)(iii)	Unnecessary, Appendix C is deleted in this action.
51.1(1)	51.1Reference to Appendix D removed; reference to inventory techniques updated.
51.1(m)	51.100(m) revised.
51.1(o)	51.100(o) revised.
51.2	51.101.
51.3	51.50, streamlined.
51.4 All paragraphs are the same and are restructured with the same paragraph numbers except as noted below.	51.102.
51.4(a), (e)	51.102(a), (e) rewritten.
51.4(b)(4)	51.102(b)(4) rewritten.
51.4(b)(6)	Unnecessary, redundant.
51.4(f)	Deleted, obsolete.
51.5 All paragraphs are the same and restructured with the same paragraph numbers except as noted below	51.103.
51.5(a)	Rewritten; "Note" deleted.
51.5(d), (e)	Deleted, redundant.
51.6	51.104.
51.6(b) through (f)	51.104 (b) through (f) rewritten.
51.8	51.105.
51.10(a)	51.110(g) rewritten.
51.10(b)	51.110(b), (d).

TABLE 2.—DISTRIBUTION TABLE—Continued

Old section	New section
51.10(c)	51.110(c)(1), (d).
51.10(d)	51.110(e), revised.
51.10(e)	51.116(c).
51.11(a)	51.230.
51.11a(1-6)	51.230(a) through (f).
51.11(b)	Unnecessary provisions for transportation plans, obsolete.
51.11(c)	51.231(a).
51.11(d)(1)	51.231(b).
51.11(d)(2)	51.231(c).
51.11(e)	51.232(a).
51.11(f)	51.232(b).
51.12(a)	51.110(a).
51.12(b)	51.110(a), (c).
51.12(c)	Deleted, redundant.
51.12(d)	51.110(f).
51.12(e)	51.110(h).
51.12(f)	51.110(i).
51.12(g)	51.110(j).
51.12(h)	51.110(k).
51.12(i)	51.110(l).,
51.12(j)	51.118(a).
51.12(k)	51.118(b).
51.12(l)	51.118(c).
51.12(m)	51.119(a).
51.12(n)	51.119(b).
51.13(a)	51.110(b).
51.13(b)	51.110(c).
51.13(c)	51.115(c).
51.13(d)	Deleted, example region approach.
51.13(e)(1) phrase "in the example regions to which it applies."	Deleted, example region approach.
Rest of 51.13(e)(1)	51.112(a).
51.13(e)(2)(i,ii)	Air Programs Reports and Guidelines Index.
51.13(e)(2)(iii)	51.112(a) and (b).
51.13(e)(3)(i)	51.112(b)(4), Air Programs Reports and Guidelines Index.
51.13(e)(3)(ii)	51.114(a).
51.13(e)(3)(iii)	51.112(b)(3), rewritten.
51.13(f,g)	51.114(a), 51.115(a) Portions related to example region approach deleted.
51.14(a)(1)	51.110(a), Rewritten, reference to priority of regions deleted.
51.14(a)(2)	51.111.
51.14(b)	Unnecessary.
51.14(c)(1)	51.112(a).
51.14(c)(2) and (5) through (7)	Air Programs Reports and Guidelines Index.
51.14(c)(5)	51.112(a).
51.14(c)(6)	51.112(b)(4).
51.14(c)(8)	51.115(d).
51.14(c)(9)	Reference to hydrocarbon standard which has been revoked, deleted.
51.14(d)	51.114(a).
51.14(e)	51.115.
51.14(f)	Air Programs Reports and Guidelines Index.
51.14(g)	Obsolete.
51.14(h)	Air Programs Reports and Guidelines Index.
51.15(a)(1)	51.260(a), (b).
51.15(b)(1)	51.261(a).
51.15(b)(2)	51.261(b).
51.15(c)	51.262(a).
51.16(a)	51.151.
51.16(b)	51.152(a).
51.16(d)	Deleted, obvious.
51.16(e)	51.152(b).
51.16(f)	Obsolete.
51.16(g)	51.152(c).
51.16(h)	51.152(d).
51.18(a)	51.160(a).
51.18(b)	51.160(b).
51.18(c)	51.160(c).
51.18(d)	51.160(d).
51.18(e)	51.162.
51.18(f)	51.160(e).
51.18(g)	51.163.
51.18(h)	51.161.
51.18(i)	Obsolete, refers to Appendix O, guidance on indirect source review.
51.18(j)	51.165(a).
51.18(k)	51.165(b).
51.18(l)	51.164.
51.19 (Introduction)	51.210.
51.19(a)	51.211.
51.19(b), (c)	51.212.
51.19(d)	51.213.
51.19(e)	51.214(a).
51.19(e)(1)	51.214(b).
51.19(e)(2)	51.214(c).
51.19(e)(3)	51.214(d).
51.19(e)(4)	51.214(e).
51.19(e)(5)	51.214(f).
51.19e(6)	Obsolete, deleted.
51.20	51.280.
51.22	51.281.
51.23	Unnecessary.
51.24	51.166.
51.30	51.340.
51.31	51.341.
51.32	Deleted, no longer in Clean Air Act (CAA).
51.33	Deleted, no longer in CAA.
51.34	51.104(g).
51.80(a)	51.110(b), 51.118(a).
51.80(b)	51.112(a).
51.80(c)	51.112(b).
51.81(a)	51.117(e).
51.81(b)	51.113(a).
51.81(c)	51.112(b)(1).
51.81(d)	51.114(c).
51.82(a)	51.115(b), 51.117(d)(1).
51.82(b)	51.117(b)(3).
51.82(c)	51.112(b)(3).
51.83	51.117(c)(1).
51.84	51.117(a), (c)(2).
51.85	51.117(c)(3).
51.86(a)	51.112(b)(5).
51.86(b)	51.117(e)(2).
51.86(c)	51.117(d)(1,2).
51.87	51.111.
51.88	51.116(a), (b).
51.326, 51.328	Deleted, report requirement no longer needed.

List of Subjects

40 CFR Part 51

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Hydrocarbon, Carbon monoxide.

40 CFR Part 52

Air pollution control, Ozone, Sulfur Oxides, Nitrogen dioxide, lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Dated: October 6, 1986.

Lee M. Thomas,

Administrator.

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

EPA amends Title 40, Chapter I, Part 51, of the Code of Federal Regulations as follows:

1. The authority citation for Part 51 continues to read as follows:

Authority: Sec. 110, 301(a) of the Clean Air Act as amended, 42 U.S.C. 7410, 7601(a).

2. Whenever the term "hydrocarbon(s)" appears in Part 51 it is changed to read "VOC(s)".

Subpart A (§§ 51.1–51.8)—[Removed and Reserved]

3. Subpart A (consisting of §§ 51.1 through 51.8) is removed and reserved.

Subpart B—[Reserved]

4. In Subpart B, § 51.12 (e) through (i) are redesignated as § 51.110 (h) through (l), § 51.24 is redesignated as § 51.166 (under Subpart I), and §§ 51.10 through 51.23 are removed and reserved.

Subpart C (§§ 51.30–51.34)—[Removed and Reserved]

5. Subpart C (consisting of §§ 51.30 through 51.34) is removed and reserved.

Subpart E (§§ 51.80–51.88)—[Removed and Reserved]

6. Subpart E (consisting of §§ 51.80 through 51.88) is removed and reserved.

7. Subpart F (consisting of §§ 51.100 through 51.105) is added to read as follows:

Subpart F—Procedural Requirements

Sec.
51.100 Definitions.
51.101 Stipulations.
51.102 Public hearings.
51.103 Submission of plans; preliminary review of plans.
51.104 Revisions.
51.105 Approval of plans.

Subpart F—Procedural Requirements

§ 51.100 Definitions.

As used in this part, all terms not defined herein will have the meaning given them in the Act:

(a) "Act" means the Clean Air Act (42 U.S.C. 7401 *et seq.*, as amended by Pub. L. 91–604, 84 Stat. 1676 Pub. L. 95–95, 91 Stat., 685 and Pub. L. 95–190, 91 Stat., 1399.)

(b) "Administrator" means the Administrator of the Environmental Protection Agency (EPA) or an authorized representative.

(c) "Primary standard" means a national primary ambient air quality standard promulgated pursuant to section 109 of the Act.

(d) "Secondary standard" means a national secondary ambient air quality standard promulgated pursuant to section 109 of the Act.

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(e) "National standard" means either a primary or secondary standard.

(f) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a facility, building, structure, or installation which directly or indirectly result or may result in emissions of any air pollutant for which a national standard is in effect.

(g) "Local agency" means any local government agency other than the State agency, which is charged with responsibility for carrying out a portion of the plan.

(h) "Regional Office" means one of the ten (10) EPA Regional Offices.

(i) "State agency" means the air pollution control agency primarily responsible for development and implementation of a plan under the Act.

(j) "Plan" means an implementation plan approved or promulgated under section 110 of 172 of the Act.

(k) "Point source" means the following:

(1) For particulate matter, sulfur oxides, carbon monoxide, volatile organic compounds (VOC) and nitrogen dioxide—

(i) Any stationary source the actual emissions of which are in excess of 90.7 metric tons (100 tons) per year of the pollutant in a region containing an area whose 1980 "urban place" population, as defined by the U.S. Bureau of the Census, was equal to or greater than 1 million.

(ii) Any stationary source the actual emissions of which are in excess of 22.7 metric tons (25 tons) per year of the pollutant in a region containing an area whose 1980 "urban place" population, as defined by the U.S. Bureau of the Census, was less than 1 million; or

(2) For lead or lead compounds measured as elemental lead, any stationary source that actually emits a total of 4.5 metric tons (5 tons) per year or more.

(l) "Area source" means any small residential, governmental, institutional, commercial, or industrial fuel combustion operations; onsite solid waste disposal facility; motor vehicles, aircraft vessels, or other transportation facilities or other miscellaneous sources identified through inventory techniques similar to those described in the "AEROS Manual series, Vol. II AEROS User's Manual," EPA-450/2-76-029 December 1976.

(m) "Region" means an area designated as an air quality control region (AQCR) under section 107(c) of the Act.

(n) "Control strategy" means a combination of measures designated to achieve the aggregate reduction of emissions necessary for attainment and maintenance of national standards including, but not limited to, measures such as:

(1) Emission limitations.

(2) Federal or State emission charges or taxes or other economic incentives or disincentives.

(3) Closing or relocation of residential, commercial, or industrial facilities.

(4) Changes in schedules or methods of operation of commercial or industrial facilities or transportation systems, including, but not limited to, short-term changes made in accordance with standby plans.

(5) Periodic inspection and testing of motor vehicle emission control systems, at such time as the Administrator determines that such programs are feasible and practicable.

(6) Emission control measures applicable to in-use motor vehicles, including, but not limited to, measures such as mandatory maintenance, installation of emission control devices, and conversion to gaseous fuels.

(7) Any transportation control measure including those transportation measures listed in section 108(f) of the Clean Air Act as amended.

(8) Any variation of, or alternative to any measure delineated herein.

(9) Control or prohibition of a fuel or fuel additive used in motor vehicles, if such control or prohibition is necessary to achieve a national primary or seconary air quality standard and is approved by the Administrator under section 211(c)(4)(C) of the Act.

(o) "Reasonably available control technology" (RACT) means devices, systems process modifications, or other apparatus or techniques that are reasonably available taking into account (1) the necessity of imposing such controls in order to attain and maintain a national ambient air quality standard, (2) the social, environmental and economic impact of such controls, and (3) alternative means of providing for attainment and maintenance of such standard. (This provision defines RACT for the purposes of §§ 51.110(c)(2) and 51.341(b) only.)

(p) "Compliance schedule" means the date or dates by which a source or category of sources is required to comply with specific emission limitations contained in an implementation plan and with any increments of progress toward such compliance.

(q) "Increments of progress" means steps toward compliance which will be taken by a specific source, including:

(1) Date of submittal of the source's final control plan to the appropriate air pollution control agency;

(2) Date by which contracts for emission control systems or process modifications will be awarded; or date by which orders will be issued for the purchase of component parts to accomplish emission control or process modification;

(3) Date of initiation of on-site construction or installation of emission control equipment or process change;

(4) Date by which on-site construction or installation of emission control equipment or process modification is to be completed; and

(5) Date by which final compliance is to be achieved.

(r) "Transportation control measure" means any measure that is directed toward reducing emissions of air pollutants from transportation sources. Such measures include, but are not limited to, those listed in section 108(f) of the Clean Air Act.

(s)-(w) [Reserved]

(x) "Time period" means any period of time designated by hour, month, season, calendar year, averaging time, or other suitable characteristics, for which ambient air quality is estimated.

(y) "Variance" means the temporary deferral of a final compliance date for an individual source subject to an approved regulation, or a temporary change to an approved regulation as it applies to an individual source.

(z) "Emission limitation" and "emission standard" mean a requirement established by a State, local government, or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

(aa) "Capacity factor" means the ratio of the average load on a machine or equipment for the period of time considered to the capacity rating of the machine or equipment.

(bb) "Excess emissions" means emissions of an air pollutant in excess of an emission standard.

(cc) "Nitric acid plant" means any facility producing nitric acid 30 to 70 percent in strength by either the pressure or atmospheric pressure process.

(dd) "Sulfuric acid plant" means any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, or acid sludge, but does not include facilities where conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.

(ee) "Fossil fuel-fired steam generator" means a furnance or bioler used in the process of burning fossil fuel for the primary purpose of producing steam by heat transfer.

(ff) "Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

(gg) "A stack in existence" means that the owner or operator had (1) begun, or caused to begin, a continuous program of physical on-site construction of the stack or (2) entered into binding agreements or contractual obligations, which could not be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed within a reasonable time.

(hh)(1) "Dispersion technique" means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

(i) Using that portion of a stack which exceeds good engineering practice stack height:

(ii) Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

(iii) Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

(2) The preceding sentence does not include:

(i) The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

(ii) The merging of exhaust gas streams where:

(A) The source owner or operator demonstrates that the facility was originally designed and constructed with such merged gas streams;

(B) After July 8, 1985 such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emission limitation for the pollutant affected by such change in operation; or

(C) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the reviewing agency shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the reviewing agency shall deny credit for the effects of such merging in calculating the allowable emissions for the source;

(iii) Smoke management in agricultural or silvicultural prescribed burning programs;

(iv) Episodic restrictions on residential woodburning and open burning; or

(v) Techniques under § 51.100(hh)(1)(iii) which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

(ii) "Good engineering practice" (GEP) stack height means the greater of:

(1) 65 meters, measured from the ground-level elevation at the base of the stack:

(2)(i) For stacks in existence on January 12, 1979, and for which the owner or operator had obtained all applicable permits or approvals required under 40 CFR Parts 51 and 52.

$H_g=2.5H$,

provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation:

(ii) For all other stacks,

$H_g=H + 1.5L$

where

H_g=good engineering practice stack height, measured from the ground-level elevation at the base of the stack,

H=height of nearby structure(s) measured from the ground-level elevation at the base of the stack.

L=lesser dimension, height or projected width, of nearby structure(s)

provided that the EPA, State or local control agency may require the use of a field study or fluid model to verify GEP stack height for the source; or

(3) The height demonstrated by a fluid model or a field study approved by the EPA State or local control agency, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

(jj) "Nearby" as used in § 51.100(ii) of this part is defined for a specific structure or terrain feature and

(1) for purposes of applying the formulae provided in § 51.100(ii)(2) means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 km (½ mile), and

(2) for conducting demonstrations under § 51.100(ii)(3) means not greater than 0.8 km (½ mile), except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height (H_t) of the feature, not to exceed 2 miles if such feature achieves a height (H_t) 0.8 km from the stack that is at least 40 percent of the GEP stack height determined by the formulae provided in § 51.100(ii)(2)(ii) of this part or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

(kk) "Excessive concentration" is defined for the purpose of determining good engineering practice stack height under § 51.100(ii)(3) and means.

(1) for sources seeking credit for stack height exceeding that established under § 51.100(ii)(2) a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to the prevention of significant deterioration program (40 CFR 51.166 and 52.21), an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under this part shall be prescribed by the new source

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performance standard that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the authority administering the State implementation plan, an alternative emission rate shall be established in consultation with the source owner or operator.

(2) for sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under § 51.100(ii)(2), either (i) a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects as provided in paragraph (kk)(1) of this section, except that the emission rate specified by any applicable State implementation plan (or, in the absence of such a limit, the actual emission rate) shall be used, or (ii) the actual presence of a local nuisance caused by the existing stack, as determined by the authority administering the State implementation plan; and

(3) for sources seeking credit after January 12, 1979 for a stack height determined under § 51.100(ii)(2) where the authority administering the State implementation plan requires the use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984 based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970 based on the aerodynamic influence of structures not adequately represented by the equations in § 51.100(ii)(2), a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects that is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

(ll)–(mm) [Reserved]

(nn) Intermittent control system (ICS) means a dispersion technique which varies the rate at which pollutants are emitted to the atmosphere according to meteorological conditions and/or ambient concentrations of the pollutant, in order to prevent ground-level concentrations in excess of applicable ambient air quality standards. Such a dispersion technique is an ICS whether used alone, used with other dispersion techniques, or used as a supplement to continuous emission controls (i.e., used as a supplemental control system).

§ 51.101 Stipulations.

Nothing in this part will be construed in any manner:

(a) To encourage a State to prepare, adopt, or submit a plan which does not provide for the protection and enhancement of air quality so as to promote the public health and welfare and productive capacity.

(b) To encourage a State to adopt any particular control strategy without taking into consideration the cost-effectiveness of such control strategy in relation to that of alternative control strategies.

(c) To preclude a State from employing techniques other than those specified in this part for purposes of estimating air quality or demonstrating the adequacy of a control strategy, provided that such other techniques are shown to be adequate and appropriate for such purposes.

(d) To encourage a State to prepare, adopt, or submit a plan without taking into consideration the social and economic impact of the control strategy set forth in such plan, including, but not limited to, impact on availability of fuels, energy, transportation, and employment.

(e) To preclude a State from preparing, adopting, or submitting a plan which provides for attainment and maintenance of a national standard through the application of a control strategy not specifically identified or described in this part.

(f) To preclude a State or political subdivision thereof from adopting or enforcing any emission limitations or other measures or combinations thereof to attain and maintain air quality better than that required by a national standard.

(g) To encourage a State to adopt a control strategy uniformly applicable throughout a region unless there is no satisfactory alternative way of providing for attainment and maintenance of a national standard throughout such region.

§ 51.102 Public hearings.

(a) Except as otherwise provided in paragraph (c) of this section, States must conduct one or more public hearings on the following prior to adoption and submission to EPA of:

(1) Any plan or revision of it required by § 51.104(a).

(2) Any individual compliance schedule under (§ 51.260).

(3) Any revision under § 51.104(d).

(b) Separate hearings may be held for plans to implement primary and secondary standards.

(c) No hearing will be required for any change to an increment of progress in an approved individual compliance schedule unless such change is likely to cause the source to be unable to comply with the final compliance date in the schedule. The requirements of §§ 51.104 and 51.105 will be applicable to such schedules, however.

(d) Any hearing required by paragraph (a) of this section will be held only after reasonable notice, which will be considered to include, at least 30 days prior to the date of such hearing(s):

(1) Notice given to the public by prominent advertisement in the area affected announcing the date(s), time(s), and place(s) of such hearing(s);

(2) Availability of each proposed plan or revision for public inspection in at least one location in each region to which it will apply, and the availability of each compliance schedule for public inspection in at least one location in the region in which the affected source is located;

(3) Notification to the Administrator (through the appropriate Regional Office);

(4) Notification to each local air pollution control agency which will be significantly impacted by such plan, schedule or revision;

(5) In the case of an interstate region, notification to any other States included, in whole or in part, in the regions which are significantly impacted by such plan or schedule or revision.

(6) In the case of hearings on AQMA plans:

(i) Notification to the chief executives of affected local governments, planning agencies, transportation agencies, environmental control agencies, economic development agencies, and any other affected States, and

(ii) Public notice of alternative analysis and plan development procedures approved under § 51.63.

(e) The State must prepare and retain, for inspection by the Administrator upon request, a record of each hearing. The record must contain, as a minimum, a list of witnesses together with the text of each presentation.

(f) The State must submit with the plan, revision, or schedule a certification that the hearing required by paragraph (a) of this section was held in accordance with the notice required by paragraph (d) of this section.

(g) Upon written application by a State agency (through the appropriate Regional Office), the Administrator may approve State procedures for public hearings. The following criteria apply:

(1) Procedures approved under this section shall be deemed to satisfy the requirement of this part regarding public hearings.

(2) Procedures different from this part may be approved if they—

(i) Ensure public participation in matters for which hearings are required; and

(ii) Provide adequate public notification of the opportunity to participate.

(3) The Administrator may impose any conditions on approval he or she deems necessary.

§51.103 Submission of plans, preliminary review of plans.

(a) The State makes an official submission to the Administrator when it delivers five copies of the plan to the appropriate Regional Office and a letter to the Administrator giving notice of such action. The State must adopt the plan and the Governor or his designee, must submit it to the Administrator as follows:

(1) For any primary standard, or revision thereof, within 9 months after promulgation of such standard.

(2) For any secondary standard, or revision thereof, within 9 months after promulgation of such secondary standard or by such later date prescribed or by such later date prescribed by the Administrator under Subpart R of this part.

(b) Upon request of a State, the Administrator will provide preliminary review of a plan or portion thereof submitted in advance of the date such plan is due. Such requests must be made in writing to the appropriate Regional Office and must be accompanied by five copies of the materials to be reviewed. Requests for preliminary review do not relieve a State of the responsibility of adopting and submitting plans in accordance with prescribed due dates.

§ 51.104 Revisions.

(a) The plan shall be revised from time to time, as may be necessary, to take account of:

(1) Revisions of national standards,

(2) The availability of improved or more expeditious methods of attaining such standards, such as improved technology or emission charges or taxes, or

(3) A finding by the Administrator that the plan is substantially inadequate to attain or maintain the national standard which it implements, or to otherwise comply with any applicable additional requirements established under the Clean Air Act Amendments of 1977.

(b) The State must revise the plan within 60 days following notification by the Administrator under paragraph (a)(3) of this section, or by such later date prescribed by the Administrator after consultation with the State.

(c) States may revise the plan from time to time consistent with the requirements applicable to implementation plans under this part.

(d) The States must submit any revision of any regulation or any compliance schedule under paragraph (c) of this section to the Administrator no later than 60 days after its adoption.

(e) The State must identify and describe revisions other than those covered by paragraphs (a) and (d) of this section.

(f) EPA will approve revisions only after applicable hearing requirements of § 51.102 have been satisfied.

(g) In order for a variance to be considered for approval as a revision to the State implementation plan, the State must submit it in accordance with the requirements of this section.

§51.105 Approval of plans.

The Administrator will approve any plan, or portion thereof, or any revision of such plan, or portion thereof, if he or she determines that it meets the requirements of the Act. Revisions of a plan, or any portion thereof, will not be considered part of an applicable plan until such revisions have been approved by the Administrator in accordance with this part.

8. a. Subpart G (consisting of §§ 51.110 through 51.119) is added to read as follows:

§ 51.12 [Amended]

b. Paragraphs (e) through (i) of § 51.12 are redesignated as paragraphs (h) through (l) of § 51.110.

Subpart G—Control Strategy

51.110 Attainment and maintenance of national standards.
51.111 Description of control measures.
51.112 Demonstration of adequacy.
51.113 Time period for demonstration of adequacy.
51.114 Emissions data and projections.
51.115 Air quality data and projections.
51.116 Data availability.
51.117 Additional provisions for lead.
51.118 Stack height provisions.
51.119 Intermittent control systems.

Subpart G—Control Strategy

§ 51.110 Attainment and maintenance of national standards.

(a) Each plan must set forth a control strategy that provides the degree of emission reductions necessary for attainment and maintenance of the national air quality standards. The emission reductions must be sufficient to offset any increases in air quality concentrations that are expected to result from emission increases due to projected growth of population, industrial activity, motor vehicle traffic, or other factors.

(b) Each plan providing for the attainment of a primary standard or revision of it must do so as expeditiously as practicable. The attainment period must not be longer than three years after the date of the Administrator's approval of the plan, unless the State obtains an extension under Subpart R of this part. Each plan must also provide for the maintenance of the standard after it has been attained.

(c)(1) Each plan must provide for the attainment of a secondary standard within a reasonable time after the date of the Administrator's approval of the plan, and must provide for the maintenance of the standard after it has been attained.

(2) "Reasonable time" is defined in two ways as follows:

(i) "Reasonable time" for attainment of a secondary standard must not be more than three years from plan submission unless the State shows that good cause exists for postponing application of the control technology. This definition applies only in a region where the degree of emission reduction necessary for attainment of the secondary standard can be achieved through the application of reasonably available control technology.

(ii) "Reasonable time" will depend on the degree of emission reduction needed for attainment of the secondary standard and on the social, economic, and technological problems involved in carrying out a control strategy adequate for attainment of the secondary standard. This definition applies only in a region where application of reasonably available control technology will not be sufficient for attainment of the secondary standard in three years.

(d) Each plan providing for the attainment of a primary or secondary standard must specify the projected attainment date.

(e) The plan for each Region must have adequate provisions to ensure that stationary sources from within that Region will not:

(1) Prevent attainment and maintenance of any national standard in any portion of an interstate Region or any other Region.

(2) Interfere with measures required to be included in the applicable implementation plan for any such Region to prevent significant deterioration of air quality or to protect visibility.

(f) For purposes of developing a control strategy, data derived from measurements of existing ambient levels of a pollutant may be adjusted to reflect the extent to which occasional natural

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or accidental phenomena, e.g., dust storms, forest fires, industrial accidents, demonstrably affected such ambient levels during the measurement period.

(g) During developing of the plan, EPA encourages States to identify alternative control strategies, as well as the costs and benefits of each such alternative for attainment or maintenance of the national standard.

* * * * *

§ 51.111 Description of control measures.

Each plan must set forth a control strategy which includes the following:

(a) A description of each control measure that is incorporated into the plan, and a schedule for its implementation.

(b) Copies of the enforceable laws and regulations to implement the measures adopted in the plan.

(c) A description of the administrative procedures to be used in implementing each control measure.

(d) A description of enforcement methods including, but not limited to:

(1) Procedures for monitoring compliance with each of the selected control measures,

(2) Procedures for handling violations, and

(3) A designation of agency responsibility for enforcement of implementation.

§ 51.112 Demonstration of adequacy.

(a) Each plan must demonstrate that the measures, rules, and regulations contained in it are adequate to provide for the timely attainment and maintenance of the national standard that it implements. The adequacy of a control strategy shall be demonstrated by means of a proporational model or dispersion model or other procedure which is shown to be adequate and appropriate for such purposes.

(b) The demonstration must include the following:

(1) A summary of the computations, assumptions, and judgments used to determine the degree of reduction of emissions (or reductions in the growth of emissions) that will result from the implementation of the control strategy.

(2) A presentation of emission levels expected to result from implementation of each measure of the control strategy.

(3) A presentation of the air quality levels expected to result from implementation of the overall control strategy presented either in tabular form or as an isopleth map showing expected maximum pollutant concentrations.

(4) A description of the dispersion models used to project air quality and to evaluate control strategies.

(5) For interstate regions, the analysis from each constituent State must, where practicable, be based upon the same regional emission inventory and air quality baseline.

§ 51.113 Time period for demonstration of adequacy.

(a) The demonstration of the adequacy of the control strategy to attain a primary standard required under § 51.112 must cover the following periods:

(1) At least three years from the date by which the Administatator must approve or disapprove the plan, if no extension under Subpart R is granted, or

(2) At least five years from the date by which the Administrator must approve or disapprove the plan. If an extension under Subpart R is granted.

(b) The demonstration of adequacy to attain a secondary standard required under § 51.112 must cover the period of time determined to be reasonable under § 51.110(c) for attainment of such secondary standard.

§ 51.114 Emissions data and projections.

(a) Except for lead, each plan must contain a detailed inventory of emissions from point and area sources. Lead requirements are specified in § 51.117. The inventory must be based upon measured emissions or, where measured emissions are not available, documented emission factors.

(b) Each plan must contain a summary of emission levels projected to result from application of the new control strategy.

(c) Each plan must identify the sources of the data used in the projection of emissions.

§ 51.115 Air quality data and projections.

(a) Each plan must contain a summary of data showing existing air quality.

(b) Each plan must:

(1) Contain a summary of air quality concentrations expected to result from application of the control strategy, and

(2) Identify and describe the dispersion model, other air quality model, or receptor model used.

(c) Actual measurements of air quality must be used where available if made by methods specified in Appendix C to Part 58 of this chapter. Estimated air quality using appropriate modeling techniques may be used to supplement measurements.

(d) For purposes of developing a control strategy, background concentration shall be taken into consideration with respect to particulate matter. As used in this subpart, background concentration is that portion of the measured ambient levels that cannot be reduced by controlling emissions from man-made sources.

(e) In developing an ozone control strategy for a particular area, background ozone concentrations and ozone transported into an area must be considered. States may assume that the ozone standard will be attained in upwind areas.

§ 51.116 Data availability.

(a) The State must retain all detailed data and calculations used in the preparation of each plan or each plan revision, and make them available for public inspection and submit them to the Administrator at his request.

(b) The detailed data and calculations used in the preparation of plan revisions are not considered a part of the plan.

(c) Each plan must provide for public availability of emission data reported by source owners or operators or otherwise obtained by a State or local agency. Such emission data must be correlated with applicable emission limitations or other measures. As used in this paragraph, "correlated" means presented in such a manner as to show the relationship between measured or estimated amounts of emissions and the amounts of such emissions allowable under the applicable emission limitations or other measures.

§ 51.117 Additional provisions for lead.

In addition to other requirements in §§ 51.100 through 51.116 the following requirements apply to lead. To the extent they conflict, there requirements are controlling over those of the proceeding sections.

(a) *Control strategy demonstration.* Each plan must contain a demonstration showing that the plan will attain and maintain the standard in the following areas:

(1) Areas in the vicinity of the following point sources of lead: Primary lead smelters, Secondary lead smelters, Primary copper smelters, Lead gasoline additive plants, Lead-acid storage battery manufacturing plants that produce 2,000 or more batteries per day. Any other stationary source that actually emits 25 or more tons per year of lead or lead compounds measured as elemental lead.

(2) Any other area that has lead air concentrations in excess of the national ambient air quality standard concentration for lead, measured since January 1, 1974.

(b) *Time period for demonstration of adequacy.* The demonstration of adequacy of the control strategy required under § 51.112 may cover a longer period if allowed by the appropriate EPA Regional Administrator.

(c) *Special modeling provisions.* (1) For urbanized areas with measured lead concentrations in excess of 4.0 $\mu g/m^3$, quarterly mean measured since January 1, 1974, the plan must employ the modified rollback model for the demonstration of attainment as a minimum, but may use an atmospheric dispersion model if desired. If a proportional model is used, the air quality data should be the same year as the emissions inventory required under the paragraph e.

(2) For each point source listed in § 51.117(a), that plan must employ an atmospheric dispersion model for demonstration of attainment.

(3) For each area in the vicinity of an air quality monitor that has recorded lead concentrations in excess of the lead national standard concentration, the plan must employ the modified rollback model as a minimum, but may use an atmospheric dispersion model if desired for the demonstration of attainment.

(d) *Air quality data and projections.* (1) Each State must submit to the appropriate EPA Regional Office with the plan, but not part of the plan, all lead air quality data measured since January 1, 1974. This requirement does not apply if the data has already been submitted.

(2) The data must be submitted in accordance with the procedures and data forms specified in Chapter 3.4.0 of the "AEROS User's Manual" concerning storage and retrieval of aerometric data (SAROAD) except where the Regional Administrator waives this requirement.

(3) If additional lead air quality data are desired to determine lead air concentrations in areas suspected of exceeding the lead national ambient air quality standard, the plan may include data from any previously collected filters from particulate matter high volume samplers. In determining the lead content of the filters for control strategy demonstration purposes, a State may use, in addition to the reference method, X-ray fluorescence or any other method approved by the Regional Administrator.

(e) *Emissions data.* (1) The point source inventory on which the summary of the baseline lead emissions inventory is based must contain all sources that emit five or more tons of lead per year.

(2) Each State must submit lead emissions data to the appropriate EPA Regional Office with the original plan. The submission must be made with the plan, but not as part of the plan, and must include emissions data and information related to point and area source emissions. The emission data and information should include the information identified in the Hazardous and Trace Emissions System (HATREMS) point source coding forms for all point sources and the area source coding forms for all sources that are not point sources, but need not necessarily be in the format of those forms.

§ 51.118 Stack height provisions.

(a) The plan must provide that the degree of emission limitation required of any source for control of any air pollutant must not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique, except as provided in § 51.118(b). The plan must provide that before a State submits to EPA a new or revised emission limitation that is based on a good engineering practice stack height that exceeds the height allowed by § 51.100(ii) (1) or (2), the State must notify the public of the availabilty of the demonstration study and must provide opportunity for a public hearing on it. This section does not require the plan to restrict, in any manner, the actual stack height of any source.

(b) The provisions of § 51.118(a) shall not apply to (1) stack heights in existence, or dispersion techniques implemented on or before December 31, 1970, except where pollutants are being emitted from such stacks or using such dispersion techniques by sources, as defined in section 111(a)(3) of the Clean Air Act, which were constructed, or reconstructed, or for which major modifications, as defined in §§ 51.165(a)(1)(v)(A), 51.166(b)(2)(i) and 52.21(b)(2)(i), were carried out after December 31, 1970; or (2) coal-fired steam electric generating units subject to the provisions of section 118 of the Clean Air Act, which commenced operation before July 1, 1957, and whose stacks were construced under a construction contract awarded before February 8, 1974.

§ 51.119 Intermittent control systems.

(a) The use of an intermittent control system (ICS) may be taken into account in establishing an emission limitation for a pollutant under a State implementation plan, provided:

(1) The ICS was implemented before December 31, 1970, according to the criteria specified in § 51.119(b).

(2) The extent to which the ICS is taken into account is limited to reflect emission levels and associated ambient pollutant concentrations that would result if the ICS was the same as it was before December 31, 1970, and was operated as specified by the operating system of the ICS before December 31, 1970.

(3) The plan allows the ICS to compensate only for emissions from a source for which the ICS was implemented before December 31, 1970, and, in the event the source has been modified, only to the extent the emissions correspond to the maximum capacity of the source before December 31, 1970. For purposes of this paragraph, a source for which the ICS was implemented is any particular structure or equipment the emissions from which were subject to the ICS operating procedures.

(4) The plan requires the continued operation of any constant pollution control system which was in use before December 31, 1970, or the equivalent of that system.

(5) The plan clearly defines the emission limits affected by the ICS and the manner in which the ICS is taken into account in establishing those limits.

(6) The plan contains requirements for the operation and maintenance of the qualifying ICS which, together with the emission limitations and any other necessary requirements, will assure that the national ambient air quality standards and any applicable prevention of significant deterioration increments will be attained and maintained. These requirements shall include, but not necessarily be limited to, the following:

(i) Requirements that a source owner or operator continuously operate and maintain the components of the ICS specified at § 51.119(b)(3) (ii)-(iv) in a manner which assures that the ICS is at least as effective as it was before December 31, 1970. The air quality monitors and meteorological instrumentation specified at § 51.119(b) may be operated by a local authority or other entity provided the source has ready access to the data from the monitors and instrumentation.

(ii) Requirements which specify the circumstances under which, the extent to which, and the procedures through which, emissions shall be curtailed through the activation of ICS.

(iii) Requirements for recordkeeping which require the owner or operator of the source to keep, for periods of at least 3 years, records of measured ambient air quality data, meteorological information acquired, and production data relating to those processes affected by the ICS.

(iv) Requirements for reporting which require the owner or operator of the source to notify the State and EPA within 30 days of a NAAQS violation pertaining to the pollutant affected by the ICS.

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(7) Nothing in this paragraph affects the applicability of any new source review requirements or new source performance standards contained in the Clean Air Act or 40 CFR Subchapter C. Nothing in this paragraph precludes a State from taking an ICS into account in establishing emission limitations to any extent less than permitted by this paragraph.

(b) An intermittent control system (ICS) may be considered implemented for a pollutant before December 31, 1970, if the following criteria are met:

(1) The ICS must have been established and operational with respect to that pollutant prior to December 31, 1970, and reductions in emissions of that pollutant must have occurred when warranted by meteorological and ambient monitoring data.

(2) The ICS must have been designed and operated to meet an air quality objective for that pollutant such as an air quality level or standard.

(3) The ICS must, at a minimum, have included the following components prior to December 31, 1970:

(i) *Air quality monitors.* An array of sampling stations whose location and type were consistent with the air quality objective and operation of the system.

(ii) *Meteorological instrumentation.* A meteorological data acquisition network (may be limited to a single station) which provided meteorological prediction capabilities sufficient to determine the need for, and degree of, emission curtailments necessary to achieve the air quality design objective.

(iii) *Operating system.* A system of established procedures for determining the need for curtailments and for accomplishing such curtailments. Documentation of this system, as required by paragraph (n)(4), may consist of a compendium of memoranda or comparable material which define the criteria and procedures for curtailments and which identify the type and number of personnel authorized to initiate curtailments.

(iv) *Meteorologist.* A person, schooled in meteorology, capable of interpreting data obtained from the meteorological network and qualified to forecast meteorological incidents and their effect on ambient air quality. Sources may have obtained meteorological services through a consultant. Services of such a consultant could include sufficient training of source personnel for certain operational procedures, but not for design, of the ICS.

(4) Documentation sufficient to support the claim that the ICS met the criteria listed in this paragraph must be provided. Such documentation may include affidavits or other documentation.

9. Subpart H (consisting of §§ 51.150 through 51.153) is added to read as follows:

Subpart H—Prevention of Air Pollution Emergency Episodes

51.150 Classification of regions for episode plans.
51.151 Significant harm levels.
51.152 Contingency plans.
51.153 Reevaluation of episode plans.

Subpart H—Prevention of Air Pollution Emergency Episodes

§ 51.150 Classification of regions for episode plans.

(a) This section continues the classification system for episode plans. Each region is classified separately with respect to each of the following pollutants: Sulfur oxides, particulate matter, carbon monoxide, nitrogen dioxide, and ozone.

(b) "Priority I Regions" means any area with greater ambient concentrations than the following:

(1) Sulfur dioxide—100 $\mu g/m^3$ (0.04 ppm) annual arithmetic mean; 455 $\mu g/m^3$ (0.17 ppm) 24-hour maximum.

(2) Particulate matter—95 $\mu g/m^3$ annual geometric mean; 325 $\mu g/m^3$ 24-hour maximum.

(3) Carbon monoxide—55 mg/m^3 (48 ppm) 1-hour maximum; 14 mg/m^3 (12 ppm) 8-hour maximum.

(4) Nitrogen dioxide—100 $\mu g/m^3$ (0.06 ppm) annual arithmetic mean.

(5) Ozone—195 $\mu g/m^3$ (0.10 ppm) 1-hour maximum.

(c) "Priority IA Region" means any area which is Priority I primarily because of emissions from a single point source.

(d) "Priority II Region" means any area which is not a Priority I region and has ambient concentrations between the following:

(1) Sulfur Dioxides—60–100 $\mu g/m^3$ (0.02–0.04 ppm) annual arithmetic mean; 260–445 $\mu g/m^3$ (0.10–0.17 ppm) 24-hour maximum; any concentration above 1,300 $\mu g/m^3$ (0.50 ppm) three-hour average.

(2) Particulate matter—60–95 $\mu g/m^3$ annual geometric mean; 150–325 $\mu g/m^3$ 24-hour maximum.

(e) In the absence of adequate monitoring data, appropriate models must be used to classify an area under paragraph (b) of this section. Information on these models may be found through the "Air Programs Reports and Guidelines Index," EPA-150/2-82-016. With respect to carbon monoxide, ozone, and nitrogen dioxide, any area whose urban population as defined in the most recent U.S. Bureau of the Census, exceeds 200,000 will be classified Priority I.

(f) Areas which do not meet the above criteria are classified Priority III.

§ 51.151 Significant harm levels.

Each plan for a Priority I region must include a contingency plan which must, as a mimimum, provide for taking action necessary to prevent ambient pollutant concentrations at any location in such region from reaching the following levels:

Sulfur dioxide—2.620 $\mu g/m^3$ (1.0 ppm) 24-hour average.

Particulate matter—1,000 $\mu g/m^3$ (24-hour average.

Sulfur dioxide and particulate matter combined—product of sulfur dioxide in ug/m^3 24-hour average, and particulate matter in ug/m^3 24-hour average equal to 490×10^3.

Carbon monoxide—57.5 mg/m^3 (50 ppm) 8-hour average; 86.3 mg/m^3 (75 ppm) 4-hour average; 144 mg/m^3 (125 ppm) 1-hour average.

Ozone—1,200 ug/m^3 (0.6 ppm) 2-hour average.

Nitrogen dioxide—3.750 ug/m^3 (2.0 ppm) 1-hour average; 938 ug/m^3 (0.5 ppm) 24-hour average.

§ 51.152 Contingency plans

(a) Each contingency plan must—

(1) Specify two or more stages of episode criteria such as those set forth in Appendix L to this part, or their equivalent;

(2) Provide for public announcement whenever any episode stage has been determined to exist; and

(3) Specify adequate emission control actions to be taken at each episode stage. (Examples of emission control actions are set forth in Appendix L.)

(b) Each contingency plan for a Priority I region must provide for the following:

(1) Prompt acquisition of forecasts of atmospheric stagnation conditions and of updates of such forecasts as frequently as they are issued by the National Weather Service.

(2) Inspection of sources to ascertain compliance with applicable emission control action requirements.

(3) Communications procedures for transmitting status reports and orders as to emission control actions to be taken during an episode stage, including procedures for contact with public officials, major emission sources, public health, safety, and emergency agencies and news media.

(c) Each plan for a Priority IA and II region must include a contingency plan that meets, as a minimum, the requirements of paragraphs (b)(1) and (b)(2) of this section. Areas classified Priority III do not need to develop episode plans.

(d) Notwithstanding the requirements of paragraphs (b) and (c) of this section, the Administrator may, at his discretion—

(1) Exempt from the requirements of this section those portions of Priority I, IA, or II regions which have been designated as attainment or unclassifiable for national primary and secondary standards under section 107 of the Act; or

(2) Limit the requirements pertaining to emission control actions in Priority I regions to—

(i) Urbanized areas as identified in the most recent United States Census, and

(ii) Major emitting facilities, as defined by section 169(1) of the Act, outside the urbanized areas.

§ 51.153 Reevaluation of episode plans.

(a) States should periodically reevaluate priority classifications of all Regions or portion of Regions within their borders. The reevaluation must consider the three most recent years of air quality data. If the evaluation indicates a change to a higher priority classification, appropriate changes in the episode plan must be made as expeditiously as practicable.

10. Sections 51.160 through 51.165 are added, and § 51.166 is designated from § 51.24 to comprise Subpart I. The table fo contents for Subpart I and the newly added sections read as follows:

Subpart I—Review of New Sources and Modifications

51.160 Legally enforceable procedures.
51.161 Public availability of information.
51.162 Identification of responsible agency.
51.163 Administration procedures.
51.164 Stack height procedures.
51.165 Permit requirements.
51.166 Prevention of significant deterioration of air quality.

Subpart I—Review of New Sources and Modifications

§ 51.160 Legally enforceable procedures.

(a) Each plan must set forth legally enforceable procedures that enable the State or local agency to determine whether the construction or modification of a facility, building, structure or installation, or combination of these will result in—

(1) A violation of applicable portions of the control strategy; or

(2) Interference with attainment or maintenance of a national standard in the State in which the proposed source (or modification) is located or in a neighboring State.

(b) Such procedures must include means by which the State or local agency responsible for final decisionmaking on an application for approval to construct or modify will prevent such construction or modification if—

(1) It will result in a violation of applicable portions of the control strategy; or

(2) It will interfere with the attainment or maintenance of a national standard.

(c) The procedures must provide for the submission, by the owner or operator of the building, facility, structure, or installation to be constructed or modified, of such information on—

(1) The nature and amounts of emissions to be emitted by it or emitted by associated mobile sources;

(2) The location, design, construction, and operation of such facility, building, structure, or installation as may be necessary to permit the State or local agency to make the determination referred to in paragraph (a) of this section.

(d) The procedures must provide that approval of any construction or modification must not affect the responsibility to the owner or operator to comply with applicable portions of the control strategy.

(e) The procedures must identify types and sizes of facilities, buildings, structures, or installations which will be subject to review under this section. The plan must discuss the basis for determining which facilities will be subject to review.

(f) The procedures must discuss the air quality data and the dispersion or other air quality modeling used to meet the requirements of this subpart.

§ 51.161 Public availability of information.

(a) The legally enforceable procedures in § 51.160 must also require the State or local agency to provide opportunity for public comment on information submitted by owners and operators. The public information must include the agency's analysis of the effect of construction or modification on ambient air quality, including the agency's proposed approval or disapproval.

(b) For purposes of paragraph (a) of this section, opportunity for public comment shall include, as a minimum—

(1) Availability for public inspection in at least one location in the area affected of the information submitted by the owner or operator and of the State or local agency's analysis of the effect on air quality;

(2) A 30-day period for submittal of public comment; and

(3) A notice by prominent advertisement in the area affected of the location of the source information and analysis specified in paragraph (b)(1) of this section.

(c) Where the 30-day comment period required in paragraph (b) of this section would conflict with existing requirements for acting on requests for permission to construct or modify, the State may submit for approval a comment period which is consistent with such existing requirements.

(d) A copy of the notice required by paragraph (b) of this section must also be sent to the Administrator through the appropriate Regional Office, and to all other State and local air pollution control agencies having jurisdiction in the region in which such new or modified installation will be located. The notice also must be sent to any other agency in the region having responsibility for implementing the procedures required under this subpart. For lead, a copy of the notice is required for all point sources. The definition of point for lead is given in § 51.100(k)(2).

§ 51.162 Identification of responsible agency.

Each plan must identify the State or local agency which will be responsible for meeting the requirements of this subpart in each area of the State. Where such responsibility rests with an agency other than an air pollution control agency, such agency will consult with the appropriate State or local air pollution control agency in carrying out the provisions of this subpart.

§ 51.163 Administrative procedures.

The plan must include the administrative procedures, which will be followed in making the determination specified in paragraph (a) of § 51.160.

§ 51.164 Stack height procedures.

Such procedures must provide that the degree of emission limitation required of any source for control of any air pollutant must not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique, except as provided in § 51.118(b). Such procedures must provide that before a State issues a permit to a source based on a good engineering practice stack height that exceeds the height allowed by § 51.100(ii) (1) or (2), the State must notify the public of the availability of the demonstration study and must provide opportunity for public hearing on it. This section does not require such procedures to restrict in any manner the actual stack height of any source.

§ 51.165 Permit requirements.

(a) State Implementation Plan provisions satisfying sections 172(b)(6) and 173 of the Act shall meet the following conditions:

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(1) All such plans shall use the specific definitions. Deviations from the following wording will be approved only if the state specifically demonstrates that the submitted definition is more stringent, or at least as stringent, in all respects as the corresponding definition below:

(i) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Act.

(ii) "Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the *Standard Industrial Classification Manual, 1972,* as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

(iii) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(iv)(A) "Major stationary source" means:

(*1*) Any stationary source of air pollutants which emits, or has the potential to emit 100 tons per year or more of any pollutant subject to regulation under the Act, or

(*2*) Any physical change that would occur at a stationary source not qualifying under paragraph (a)(1)(iv)(A)(*1*) as a major stationary source, if the change would constitute a major stationary source by itself.

(B) A major stationary source that is major for volatile organic compounds shall be considered major for ozone

(C) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this paragraph whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(*1*) Coal cleaning plants (with thermal dryers);

(*2*) Kraft pulp mills;

(*3*) Portland cement plants;

(*4*) Primary zinc smelters;

(*5*) Iron and steel mills;

(*6*) Primary aluminum ore reduction plants;

(*7*) Primary copper smelters;

(*8*) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(*9*) Hydrofluoric, sulfuric, or nitric acid plants;

(*10*) Petroleum refineries;

(*11*) Lime plants;

(*12*) Phosphate rock processing plants;

(*13*) Coke oven batteries;

(*14*) Sulfur recovery plants;

(*15*) Carbon black plants (furnace process);

(*16*) Primary lead smelters;

(*17*) Fuel conversion plants;

(*18*) Sintering plants;

(*19*) Secondary metal production plants;

(*20*) Chemical process plants;

(*21*) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(*22*) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(*23*) Taconite ore processing plants;

(*24*) Glass fiber processing plants;

(*25*) Charcoal production plants;

(*26*) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and

(*27*) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

(v)(A) "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act.

(B) Any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone.

(C) A physical change or change in the method of operation shall not include:

(*1*) Routine maintenance, repair and replacement;

(*2*) Use of an alternative fuel or raw material by reason of an order under sections 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(*3*) Use of an alternative fuel by reason of an order or rule section 125 of the Act;

(*4*) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(*5*) Use of an alternative fuel or raw material by a stationary source which;

(*i*) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 12, 1976 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Subpart I or § 51.166, or

(*ii*) The source is approved to use under any permit issued under regulations approved pursuant to this section;

(*6*) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or regulations approved pursuant to 40 CFR Part 51 Subpart I or 40 CFR 51.166.

(*7*) Any change in owenership at a stationary source.

(vi)(A) "Net emissions increase" means the amount by which the sum of the following exceeds zero:

(1) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(2) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(B) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs;

(C) An increase or decrease in actual emissions is creditable only if:

(*1*) It occurs within a reasonable period to be specified by the reviewing authority; and

(*2*) The reviewing authority has not relied on it in issuing a permit for the source under regulations approved pursuant to this section which permit is in effect when the increase in actual emissions from the particular change occurs.

(D) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(E) A decrease in actual emissions is creditable only to the extent that:

(*1*) The old level of actual emission or the old level of allowable emissions whichever is lower, exceeds the new level of actual emissions;

(*2*) It is federally enforceable at and after the time that actual construction on the particular change begins; and

(*3*) The reviewing authority has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR Part 51 Subpart I or the state has not relied on it in demonstrating attainment or reasonable further progress;

(*4*) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(F) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(vii) "Emissions unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the the Act.

(viii) "Secondary emissons" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction of operation of the major stationary source of major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(ix) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

(x) "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutions, a rate of emissions that would equal or exceed any of the following rates:

Pollutant Emissions Rate

Carbon monoxide: 100 tons per year (tpy)
Nitrogen oxides: 40 tpy
Sulfur dioxide: 40 tpy
Particulate matter: 25 tpy
Ozone: 40 tpy of volatile organic compounds
Lead: 0.6 tpy

(xi) "Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(A) The applicable standards set forth in 40 CFR Part 60 or 61;

(B) Any applicable State Implementation Plan emissions limitation including those with a future compliance date; or

(C) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

(xii)(A) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit as determined in accordance with paragraphs (a)(1)(xii)(B) through (D) of this section.

(B) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The reviewing authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(C) The reviewing authority may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(D) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(xiii) "Lowest achievable emission rate" means, for any source, the more stringent rate of emissions based on the following:

(A) The most stringent emissions limitation which is contained in the implementation plan of any State for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(B) The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within or stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

(xiv) "Federally enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State Implementation Plan, and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to this section, 40 CFR Part 51 Subpart I, or § 51.166.

(xv) "Begin actual construction" means in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(xvi) "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(A) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(B) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(xvii) "Necessary preconstruction approvals or permits" means those Federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable State Implementation Plan.

(xviii) "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

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(2) Each plan shall adopt a preconstruction review program to satisfy the requirements of sections 172(b)(6) and 173 of the Act for any area designated nonattainment for any national ambient air quality standard under 40 CFR 81.300 *et seq.* Such a program shall apply to any new major stationary source or major modification that is major for the pollutant for which the area is designated nonattainment, if the stationary source or modification would locate anywhere in the designated nonattainment area.

(3)(i) Each plan shall provide that for sources and modifications subject to any preconstruction review program adopted pursuant to this subsection the baseline for determining credit for emissions reductions is the emissions limit under the applicable State Implementation Plan in effect at the time the application to construct is filed, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where:

(A) The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within a designated nonattainment area for which the preconstruction review program was adopted; or

(B) The applicable State Implementation Plan does not contain an emissions limitation for that source or source category.

(ii) The plan shall further proivide that:

(A) Where the emissions limit under the applicable State Implementation Plan allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential;

(B) For an existing fuel combustion source, credit shall be based on the allowable emissions under the applicable State Implementation Plan for the type of fuel being burned at the time the application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date. The reviewing authority should ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches.

(C) Emissions reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels may be credited, provided that the work force to be affected has been notified of the proposed shutdown or curtailment. Source shutdowns and curtailments in production or operating hours occurring prior to the date the new source application is filed generally may not be used for emissions offset credit. However, where an applicant can establish that it shut down or curtailed production after August 7, 1977, or less than one year prior to the date of permit application whichever is earlier, and the proposed new source is a replacement for the shutdown or curtailment credit for such shutdown or curtailment may be applied to offset emissions from the new source.

(D) No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977; (This document is also available from Mr. Ted Creekmore, Office of Air Quality Planning and Standards, (MD-15) Research Triangle Park, NC 27711.))

(E) All emission reductions claimed as offset credit shall be federally enforceable;

(F) Procedures relating to the permissible location of offsetting emissions shall be followed which are at least as stringent as those set out in 40 CFR Part 51 Appendix S section IV.D.

(G) Credit for an emissions reduction can be claimed to the extent that the reviewing authority has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR Part 51 Subpart I or the State has not relied on it in demonstration attainment or reasonable further progress.

(4) Each plan may provide that the provisions of this paragraph do not apply to a source or modification that would be a major stationary source or major modification only if fugitive emission to the extent quantifiable are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or citric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

(5) Each plan shall include enforceable procedures to provide that:

(i) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provision of the plan and any other requirements under local, State or Federal law.

(ii) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of regulations approved pursuant to this section shall apply to the source or modification as though construction had not yet commenced on the source or modification;

(b) Each plan shall adopt a preconstruction review permit program or its equivalent to satisfy the requirements of section 110(a)(2)(D)(i) of the Act for any area designated as attainment or unclassifiable for any national ambient air quality standard under 40 CFR 81.300 *et seq.* Such a program or its equivalent shall apply to any new major stationary source or major modification that would locate in a designated attainment or the unclassifiable area and would exceed the significant increments specified in section III.A. of the Emission Offset Interpretive Ruling Appendix S to this part.

§ 51.166 Prevention of significant deterioration of air quality.

* * * * *

11. Subpart K (consisting of §§ 51.210 through 51.214), Subpart L (consisting of §§ 51.230 through 51.232), and subpart N (consisting of §§ 51.260 through 51.262) are added to read as follows:

Subpart K—Source Surveillance

Sec.
51.210 General.
51.211 Emission reports and recordkeeping.
51.212 Testing, inspection, enforcement, and complaints.
51.213 Transportation control measures.
51.214 Continuous emission monitoring.

Subpart L—Legal Authority

51.230 Requirements for all plans.
51.231 Identification of legal authority.
51.232 Assignment of legal authority to local agencies.

* * * * *

Subpart N—Compliance Schedules

51.260 Legally enforceable compliance schedules.
51.261 Final compliance schedules.
51.262 Extension beyond one year.

Subpart K—Source Surveillance

§ 51.210 General.

Each plan must provide for monitoring the status of compliance with any rules and regulations that set forth any portion of the control strategy. Specifically, the plan must meet the requirements of this subpart.

§ 51.211 Emission reports and recordkeeping.

The plan must provide for legally enforceable procedures for requiring owners or operators of stationary sources to maintain records of and periodically report to the State—

(a) Information on the nature and amount of emissions from the stationary sources; and

(b) Other information as may be necessary to enable the State to determine whether the sources are in compliance with applicable portions of the control strategy.

§ 51.212 Testing, inspection, enforcement, and complaints.

The plan must provide for—

(a) Periodic testing and inspection of stationary sources; and

(b) Establishment of a system for detecting violations of any rules and regulations through the enforcement of appropriate visible emission limitations and for investigating complaints.

§ 51.213 Transportation control measures.

(a) The plan must contain procedures for obtaining and maintaining data on actual emissions reductions acheived as a result of implementing transportation control measures.

(b) In the case of measures involving inspection, maintenance, or retrofit, these data must include the results of an emission surveillance program designed to determine actual average per vehicle emissions reductions attributable to inspection, maintenance, and/or retrofit.

(c) In the case of measures based on traffic flow changes or reductions in vehicle use, the data must include observed changes in vehicle miles traveled and average speeds.

(d) The data must be maintained in such a way as to facilitate comparison of the planned and actual efficacy of the transportation control measures.

§ 51.214 Continuous emission monitoring.

(a) The plan must contain legally enforceable procedures to—

(1) Require stationary sources subject to emission standards as part of an applicable plan to install, calibrate, maintain, and operate equipment for continuously monitoring and recording emissions; and

(2) Provide other information as specified in Appendix P of this part.

(b) The procedures must—

(1) Identify the types of sources, by source category and capacity, that must install the equipment; and

(2) Identify for each source category the pollutants which must be monitored.

(c) The procedures must, as a minimum, require the types of sources set forth in Appendix P of this part to meet the applicable requirements set forth therein.

(d)(1) The procedures must contain provisions that require the owner or operator of each source subject to continuous emission monitoring and recording requirements to maintain a file of all pertinent information for at least two years following the date of collection of that information.

(2) The information must include emission measurements, continuous monitoring system performance testing measurements, performance evaluations, calibration checks, and adjustments and maintenance performed on such monitoring systems and other reports and records required by Appendix P of this part.

(e) The procedures must require the source owner or operator to submit information relating to emissions and operation of the emission monitors to the State to the extent described in Appendix P at least as frequently as described therein.

(f) (1) The procedures must provide that sources subject to the requirements of paragraph (c) of this section must have installed all necessary equipment and shall have begun monitoring and recording within 18 months after either—

(i) The approval of a State plan requiring monitoring for that source; or

(ii) Promulgation by the Agency of monitoring requirements for that source.

(2) The State may grant reasonable extensions of this period to sources that—

(i) Have made good faith efforts to purchases, install, and begin the monitoring and recording of emission data; and

(ii) Have been unable to complete the installation within the period.

Subpart L—Legal Authority

§ 51.230 Requirements for all plans.

Each plan must show that the State has legal authority to carry out the plan, including authority to:

(a) Adopt emission standards and limitations and any other measures necessary for attainment and maintenance of national standards.

(b) Enforce applicable laws, regulations, and standards, and seek injunctive relief.

(c) Abate pollutant emissions on an emergency basis to prevent substantial endangerment to the health of persons, i.e., authority comparable to that available to the Administrator under section 305 of the Act.

(d) Prevent construction, modification, or operation of a facility, building, structure, or installation, or combination thereof, which directly or indirectly results or may result in emissions of any air pollutant at any location which will prevent the attainment or maintenance of a national standard.

(e) Obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require recordkeeping and to make inspections and conduct tests of air pollution sources.

(f) Require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the State on the nature and amounts of emissions from such stationary sources; also authority for the State to make such data available to the public as reported

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and as correlated with any applicable emission standards or limitations.

§ 51.231 Identification of legal authority.

(a) The provisions of law or regulation which the State determines provide the authorities required under this section must be specifically identified, and copies of such laws or regulations be submitted with the plan.

(b) The plan must show that the legal authorities specified in this subpart are available to the State at the time of submission of the plan.

(c) Legal authority adequate to fulfill the requirements of § 51.230 (e) and (f) of this subpart may be delegated to the State under section 114 of the Act.

§ 51.232 Assignment of legal authority to local agencies.

(a) A State government agency other than the State air pollution control agency may be assigned responsibility for carrying out a portion of a plan if the plan demonstrates to the Administrator's satisfaction that the State governmental agency has the legal authority necessary to carry out the portion of plan.

(b) The State may authorize a local agency to carry out a plan, or portion thereof, within such local agency's jurisdiction if—

(1) The plan demonstrates to the Administrator's satisfaction that the local agency has the legal authority necessary to implement the plan or portion of it; and

(2) This authorization does not relieve the State of responsibility under the Act for carrying out such plan, or portion thereof.

Subpart N—Compliance Schedules

§ 51.260 Legally enforceable compliance schedules.

(a) Each plan shall contain legally enforceable compliance schedules setting forth the dates by which all stationary and mobile sources or categories of such sources must be in compliance with any applicable requirement of the plan.

(b) The compliance schedules must contain increments of progress required by § 51.262 of this subpart.

§ 51.261 Final compliance schedules.

(a) Unless EPA grants an extension under Subpart R, compliance schedules designed to provide for attainment of a primary standard must—

(1) Provide for compliance with the applicable plan requirements as soon as practicable; or

(2) Provide for compliance no later than the date specified for attainment of the primary standard under;

(b) Unless EPA grants an extension under Subpart R, compliance schedules designed to provide for attainment of a secondary standard must—

(1) Provide for compliance with the applicable plan requirements in a reasonable time; or

(2) Provide for compliance no later than the date specified for the attainment of the secondary standard under § 51.110(c).

§ 51.262 Extension beyond one-year.

(a) Any compliance schedule or revision of it extending over a period of more than one year from the date of its adoption by the State agency must provide for legally enforceable increments of progress toward compliance by each affected source or category of sources. The increments of progress must include—

(1) Each increment of progress specified in § 51.100(q); and

(2) Additional increments of progress as may be necessary to permit close and effective supervision of progress toward timely compliance.

(b) [Reserved]

Subpart O—Miscellaneous Plan Content Requirements [Amended]

12. Sections 51.280 and 51.281 are added to Subpart O to read as follows:

§ 51.280 Resources.

Each plan must include a description of the resources available to the State and local agencies at the date of submission of the plan and of any additional resources needed to carry out the plan during the 5-year period following its submission. The description must include projections of the extent to which resources will be acquired at 1-, 3-, and 5-year intervals.

§ 51.281 Copies of rules and regulations.

Emission limitations and other measures necessary for attainment and maintenance of any national standard, including any measures necessary to implement the requirements of Subpart L must be adopted as rules and regulations enforceable by the State agency. Copies of all such rules and regulations must be submitted with the plan. Submittal of a plan setting forth proposed rules and regulations will not satisfy the requirements of this section nor will it be considered a timely submittal.

13. Subpart R consisting of §§ 51.340 and 51.341 is added as follows:

Subpart R—Extensions

Sec.
51.340 Request for 2-year extension.
51.341 Request for 18-month extension.

Subpart R—Extensions

§ 51.340 Request for 2-year extension.

(a) The Governor of a State may, at the time of submission of a plan to implement a primary standard, request the Administrator to extend, for a period not exceeding 2 years, the 3-year period prescribed by the Act for attainment of the primary standard in such region.

(b) Any such request regarding an interstate region must be submitted jointly with the requests of Governors of all States in the region, or shall show that the Governor of each State in the region has been notified of such a request.

(c) Any such request regarding attainment of a primary standard must be submitted together with a plan which shall:

(1) Set forth a control strategy adequate for attainment of such primary standard.

(2) Show that the necessary techology or alternatives will not be available soon enough to permit full implementation of such control strategy within such 3-year period, i.e., one or more emission sources or classes of sources will be unable to comply with applicable portions of the control strategy.

(3) Provide for attainment of such primary standard as expeditiously as practicable, but in no case later than 5 years after the date of the Administrator's approval of such plan.

(d) Any showing pursuant to paragraph (c) of this section must include the following:

(1) A clear identification of stationary emission sources or classes of moving sources which will be unable to comply with the applicable portions of such control strategy within a 3-year period because the necessary technology or alternatives will not be available soon enough to permit such compliance.

(2) A clear identification and justification of any assumptions made with the respect to the time at which the necessary technology or alternatives will be available.

(3) A clear identification of any alternative means of attainment of such primary standard which were considered and rejected.

(4) A showing that stationary emission sources or classes of moving sources other than those identified pursuant to paragraph (d)(1) of this section will be required to comply, within such 3-year period, with any applicable portions of such control strategy.

(5) A showing that reasonable interim control measures are provided for in

such plan with respect to emissions from the source(s) identified pursuant to paragraph (d)(1) of this section.

§ 51.341 Request for 18-month extension.

(a) Upon request of the State made in accordance with this section, the Administrator may, whenever he determines necessary, extend, for a period not to exceed 18 months, the deadline for submitting that portion of a plan that implements a secondary standard.

(b) Any such request must show that attainment of the secondary standards will require emission reductions exceeding those which can be achieved through the application of reasonably available control technology.

(c) Any such request for extension of the deadline with respect to any State's portion of an interstate region must be submitted jointly with requests for such extensions from all other States within the region or must show that all such States have been notified of such request.

(d) Any such request must be submitted sufficiently early to permit development of a plan prior to the deadline in the event that such request is denied.

§ 51.327 [Amended]

14. Section 51.327 is amended by changing the term "§ 51.6" to "§ 51.104."

§ 51.328 [Removed and reserved]

15. Section 51.328 is removed and reserved.

Appendices A through H, K, M O, and R [Removed and Reserved]

16. Appendices A through H, K, M, O, and R are removed and reserved.

Appendix L [Amended]

17. The first paragraph of Appendix L is revised to read as follows:

Appendix L—Example Regulations for Prevention of Air Pollution Emergency Episodes

The example regulations presented herein reflect generally recognized ways of preventing air pollution from reaching levels that would cause imminent and substantial endangerment to the health of persons. States are required under Subpart H to have emergency episodes plans but they are not required to adopt the regulations presented herein.

* * * * *

18. In Appendix L, section 1.1(b) is amended by changing the term "Ozone (O_2)=200 ug/m³ (0.1ppm) 1-hour average" to "Ozone (O_3)=400 ug/m³ (0.2 ppm)-hour average."

19. In Appendix L, section 1.1 (b), (c), and (d) the paragraphs for NO_2 are revised and a paragraph is added to read as follows:

* * * * *

(b) * * *

NO_2–1130 μg/m³ (0.6ppm) 1-hour average, 282 μg/m³ (0.15 ppm) 24-hour average.

In addition to the levels listed for the above pollutants, meterological conditions are such that pollutant concentrations can be expected to remain at the above levels for twelve (12) or more hours or increase, or in the case of ozone, the situation is likely to reoccur within the next 24-hours unless control actions are taken.

(c) * * *

NO_2–2260 μg/m³ (1.2 ppm), 1-hour average; 565 μg/m³ (0.3 ppm), 24-hour average.

In addition to the levels listed for the above pollutants, meterological conditions are such that pollutant concentrations can be expected to remain at the above levels for twelve (12) or more hours or increase, or in the case of ozone, the situation is likely to reoccur within the next 24-hours unless control actions are taken.

(d) * * *

NO_2–3,000 μg/m³ (1.6 ppm), 1-hour average; 750 μg/m³ (0.4 ppm), 24-hour average.

In addition to the levels listed for the above pollutants, meterological conditions are such that pollutant concentrations can be expected to remain at the above levels for twelve (12) or more hours or increase, or in the case of ozone, the situation is likely to reoccur within the next 24-hours unless control actions are taken.

§§ 51.61 and 51.166 [Amended]

20. The following sections are amended by removing the reference to "§ 51.4" and replacing it with "§ 51.102": § 51.61(e), § 51.166(a)(5), (g)(2)(i).

§§ 51.40 and 51.41 [Amended]

21. The following sections are amended by removing the reference to "§ 51.12(f)" and replacing it with "§ 51.110(i)": § 51.40(a), (b), § 51.41.

22. The following sections are amended by removing the reference to "§ 51.12(i)" and replacing it with "§ 51.110(l)": § 51.40(a), (b), § 51.41.

§§ 51.54 and 51.166 [Amended]

23. The following sections are amended by removing the reference to "§ 51.18" and replacing it with "Subpart I": § 51.54(e)(b)(17), § 51.166(b)(2)(iii)(*e*)(*1*), (b)(2)(iii)(*f*).

§51.166 [Amended]

24. The following paragraphs are amended by removing the reference to "§ 51.24" and replacing it with "§51.166": § 51.166(b)(2)(iii)(*e*)(*1*), (b)(2)(iii)(*e*)(*2*), (b)(2)(iii)(*f*), (b)(14)(i)(*b*), (b)(14)(ii)(*a*), (b)(15)(ii)(*b*), (b)(17), (f)(3), (i)(9).

Appendix P—[Amended]

25. In Appendix P, section 1.0 is amended by removing the reference to "§ 51.19(e)" and replacing it with "§ 51.165(b)":

26. In Appendix P, section 4.0 is amended by removing the reference to "§ 51.19(e)(3) and (4)" and replacing it with "§ 51.214(d) and (e)":

Appendix S—[Amended]

27. In Appendix S, the following sections are amended by removing the reference to "§ 51.18" and replacing it with "Subpart I": I, II. (A)(5)(iii)(*f*), II. (A)(5)(iii)(*e*)(*1*), II. (A)(12.

28. In Appendix S, section III.A is amended by removing the reference to "§ 51.18(k)" and replacing it with "§ 51.165(b)":

29. In Appendix S, the following sections are amended by removing the reference to "§ 51.24" and replacing it with "§ 51.166": II. (A)(5)(iii)(*e*)(*1*), II. (A)(12), II. (A)(5)(iii)(*f*).

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Title 40, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

§ 52.771 [Amended]

1A. The following paragraphs are amended by removing the references to "§ 51.3(a)," and § 51.3(b)" and replacing them with "§ 51.150": § 52.771(b), (c), (d).

PART 52—[AMENDED]

2. The following sections are amended by removing the reference to "§ 51.4" and replacing it with "§ 51.102": § 52.21(f)(1), (g)(2)(i), § 52.876(c)(2), § 52.1602(a), § 52.2056(a), § 52.2080(b)(3), § 52.2232(d), § 52.2345(a), § 52.2282(a).

§ 52.1487 [Amended]

3. The following section is amended by removing the reference to "§ 51.4 (a)(2)" and replacing it with "§ 51.102 (a) and (e)": § 52.1487(a).

§ 52.497 and 52.2056 [Amended]

4. The following sections are amended by removing the reference to "§ 51.5" and replacing it with "§ 51.103:" § 52.497(a), § 52.2056(a).

5. The following sections are amended by removing the reference to "§ 51.6" and replacing it with "§ 51.104": § 52.55(a), § 52.240(f)(1), § 52.576(a), § 52.677(b), § 52.730(c), § 52.776(c), § 52.825(c), § 52.828(b)(1)(iii), § 52.876(c), § 52.927(c), § 52.980(a), § 52.980(b), (c), § 52.980(d), § 52.1175(e), § 52.1274(a), § 52.1335(a), § 52.1425(a), § 52.1626(b), § 52.1774(a), § 52.1830(a).

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§ 52.2078(b)(iii), § 52.2080(a), (b)(1)(iii), § 52.2123(b), § 52.2435(a), § 52.2578(d).

§§ 52.828 and 52.2078 [Amended]

6. The following sections are amended by removing the reference to "§ 51.8" and replacing it with "§ 51.105": § 52.828(b)(1)(iii), § 52.2078(b)(1)(iii).

§ 52.2424 [Amended]

7. The following section is amended by removing the reference to "§ 51.10(b)" and replacing it with "§ 51.110(b)(d)": § 52.2424(a).

§ 52.795 [Amended]

8. The following section is amended by removing the reference to "§ 51.10(d)" and replacing it with "§ 51.110(e)": § 52.795(c).

9. The following sections are amended by removing the reference to "§ 51.10(e)" and replacing it with "§ 51.116(c)": § 52.73(a), § 52.178(a), § 52.224(a), (c), § 52.525(a), § 52.624(a), § 52.925(a), § 52.1113(a), § 52.1224(a), § 52.1277(a), § 52.1324(a), § 52.1378(a), § 52.1473(a), § 52.1526(a), § 52.1574(a), § 52.1623(a), § 52.2024(a), § 52.2073(a), § 52.2274(a), § 52.2374(a), § 52.2573(a), § 52.2725(a).

§ 52.74 [Amended]

10. The following section is amended by removing the reference to "§ 51.11" and replacing it with "§ 51.230": § 52.74(a).

§ 52.74 and 52.2224 [Amended]

11. The following sections are amended by removing the reference to "§ 51.11(a)(2)" and replacing it with "§ 51.230(b)": § 52.74(a)(1)(iv), (a)(2)(i), § 52.2224(c), (d), (e).

12. The following sections are amended by removing the reference to "§ 51.11(a)(3)" and replacing it with "§ 51.230(c)": § 52.74(a)(2)(v), § 52.225(a), § 52.1325(b)(5)(i), § 52.2224(a).

13. The following sections are amended by removing the reference to "§ 51.11(a)(4)" and replacing it with "§ 51.230(d)": § 52.74(b), § 52.324(c), § 52.775(2)(i), (a)(7)(iii), (a)(8)(ii), (a)(9)(i), (a)(10)(iii), § 52.874(c), § 52.1275(a), § 52.1325(c), § 52.2124(d), § 52.2224(b).

14. The following sections are amended by removing the reference to "§ 51.11(a)(5)" and replacing it with "§ 51.230(e)": § 52.74(a)(1)(i), (a)(2)(ii), § 52.775(a)(1)(i), (a)(2)(ii), (a)(3)(i), (a)(4)(i), (a)(5)(i), (a)(6)(i), (a)(7)(i), (a)(9)(ii), (a)(10)(i), § 52.1325(b)(1)(i), (b)(2)(i), (b)(2)(ii), (b)(3)(i), (b)(4)(i), (b)(5)(ii), § 52.2074(a).

15. The following sections are amended by removing the reference to "§ 51.11(a)(6)" and replacing it with "§ 51.230(f)": § 52.74(a)(1)(ii), (a)(1)(iii), (a)(2)(iii), (a)(2)(iv), (c), § 52.775(a)(5)(ii), § 52.179(a), § 52.225(b), § 52.324(a), § 52.526(a), § 52.625(a), § 52.674(a), § 52.775(a)(1)(ii), (a)(2)(iii), (a)(3)(ii), (a)(4)(ii), (a)(6)(ii), (a)(7)(ii), (a)(8)(i), (a)(9)(iii), (a)(10)(ii), § 52.1325(b)(4)(ii), (b)(5)(iii), (a)(11)(i), § 52.874(a), (b)(1)(i), (b)(2)(i), (b)(3)(i), § 52.924(a), § 52.1074(a), § 52.1275(b), (b)(1)(ii), (b)(2)(iii), § 52.1379(a), § 52.1575(a), § 52.2025(a), § 52.2074(b), § 52.2173(a), § 52.2333(a), § 52.2373(a), § 52.2574(a), § 52.2726(a).

16. The following sections are amended by removing the reference to "§ 51.11(b)" and replacing it with "Subpart L":§ 52.74(a)(2)(iv), § 52.784(a), § 52.1227(a), § 52.1974(a).

§ 52.2430 [Amended]

17. The following section is amended by removing the reference to "§ 51.11(c)" and replacing it with "§ 51.231(a)":§ 52.2430(a).

18. The following sections are amended by removing the reference to "§ 51.11(f)" and replacing it with "§ 51.232(b)":§ 52.775(a), § 52.874(b), § 52.1325(b), § 52.2430(b), § 52.2475(a).

§ 52.2678 [Amended]

19. The following section is amended by removing the reference to "§ 51.12(a)" and replacing it with "§ 51.110(a)": § 52.2678(a).

20. The following sections are amended by removing the reference to "§ 51.12(e)" and replacing it with "§ 51.110(h)":§ 52.95(a), § 52.182(a), § 52.431(a), § 52.497(a), § 52.631(a), § 52.735(a), § 52.792(a), § 52.883(b), § 52.1115(a), § 52.1602(a), § 52.1883(a), § 52.2056(a), § 52.2176(a), § 52.2232(a), § 52.2345(a).

21. The following sections are amended by removing the reference to "§ 51.12(e) and (f)" and replacing it with "§ 51.110(h) and (i)":§ 52.59(a), § 52.95(b), § 52.143(a), § 52.182(b), § 52.267(a), § 52.341(a), § 52.379(a), § 52.431(b), § 52.497(b), § 52.529(a), § 52.580(a), § 52.631(b), § 52.682(a), § 52.735(b), § 52.792(b), § 52.832(a), § 52.883(a), (b), § 52.929(a), § 52.1028(a), § 52.1115(b), § 52.1178(a), § 52.1229(a), § 52.1279(a), § .1338(a), § .1381(a), § 52.1528(a), § 52.1602(b), § 52.1688(a), § 52.1777(a), § 52.1827(a), § 52.1883(b), § 52.1927(a), § 52.1986(a), § 52.2249(a), § 52.2056(b), § 52.2082(a), § 52.2129(a), § 52.2176(b), § 52.2232(b), § 52.2302(a), § 52.2345(b), § 52.2379(a), § 52.2449(a), § 52.2496(a), § 52.2526(a), § 52.2580(a), § 52.2631(a), § 52.2674(a), § 52.2728(a), § 52.2778(a), § 52.2826(a).

22. The following sections are amended by removing the reference to "§ 51.13(e)" and replacing it with "Subpart G":§ 52.57(a), § 52.125(a) (1) (b), § 52.126(a), § 52.133(c), § 52.227(a), § 52.675(a) (1), § 52.676(a)(1), § 52.776(a), § 52.1475(a), § 52.1476(a), § 52.1678(d), § 52.1880(a), § 52.1881(a), § 52.1976(a), § 52.2678(a), § 52.2731(a), § 52.2780(a).

§§ 52.794, 52.1117 and 52.2525 [Amended]

23. The following sections are amended by removing the reference to "51.13(e)(1)" and replacing it with "§ 51.112(a)":§ 52.794(b), § 52.1117(b), § 52.2525(a),

24. The following sections are amended by removing the reference to "§ 51.14," and replacing it with "Subpart G":§ 52.269(a), § 52.729(a), § 52.777(a), (b), § 52.784(a), § 52.785(a), § 52.1227(a), § 52.1486(a), § 52.1676(a), § 52.1877(a).

§§ 52.2431 [Amended]

25. The following section is amended by removing the reference to "§ 51.14(c)" and replacing it with "§ 51.112":§ 52.2431 (d),

26. The following paragraphs are amended by removing the references to "§ 51.14(a)(2)," "§ 51.14(a)(1) (b) and (c)," "§ 51.14(a)(2) (iii), and (iv) and replacing them with "§ 51.111":§ 52.2431(a), (b), (c).

27. The following sections are amended by removing the reference to "§ 51.15" and replacing it with "Subpart N": § 52.07(a), § 52.20, § 52.55(a), § 52.84(b), § 52.240(e), (f)(1), (f)(2), § 52.429(a), § 52.524(c), § 52.576(a), § 52.626(a), § 52.677(b), (c) § 52.730(c), (d), § 52.778(c), (d), § 52.825(c), § 52.876(c) (1) and (2), § 52.927(c), § 52.980(a), (b), (c), (d), § 52.1023(a), § 52.1125(a), (b), § 52.1175(e), § 52.1274(a), § 52.1335(a), (b), § 52.1425(a), § 52.1482(b), (c), § 52.1524(a), (c), (d), § 52.1577(e), § 52.1626(b), § 52.1774(a), § 52.1830(a), § 52.1975(b), § 52.2036(a), § 52.2077(b), (c), (d), § 52.2123(b), § 52.2223(c), (d), (f), § 52.2376(a), § 52.2435(a), § 52.2481(b), § 52.2524(c), § 52.2578(d), § 52.2578(e), § 52.2625(a), § 52.2730(a).

§§ 52.828 and 52.2078 [Amended]

28. The following sections are amended by removing the reference to "§ 51.15b (1) and (2)" and replacing it with "§ 51.261 (a) and (b)": § 52.828(1)(i), § 52.2078(b)(1)(i).

29. The following sections are amended by removing the reference § 51.15(b)" and replacing it with "§ 51.261": § 52.240(b), § 52.828(b)(1)(iii), § 52.1577(b), § 52.1677(a).

30. The following sections are amended by removing the reference to "§ 51.15 (b) and (c)" and replacing it with "§ 51.261 and 51.262(a)": § 52.84(d)(10), § 52.255(g), § 52.256(i), § 52.524(b)(7), § 52.730(b)(4),

§ 52.927(b)(6), § 52.1175(d)(4), § 52.1975(c)(12), § 52.2078(b)(iii), § 52.2223(e)(18), § 52.2285(g), § 52.2438(g), § 52.2439(i), § 52.2524(b)(10), § 52.2578(c)(4).

31. The following sections are amended by removing the reference to "§ 51.15(c)" and replacing it with "§ 51.262(a)": § 52.84(a), § 52.240(a), § 52.524(a), § 52.677(a), § 52.730(a), § 52.778(a), § 52.927(a), § 52.1080(a), § 52.1175(c), § 52.1524(b), § 52.1577(c), § 52.1626(a), § 52.1677(b), (c), § 52.1975(a), § 52.2077(a), § 52.2223(b), § 52.2481(a), § 52.2524(a), § 52.2578(b).

§ 52.274 [Amended]

32. The following sections are amended by removing the reference to "§ 51.16" and replacing it with "Subpart H": § 52.274(a), (b), (e), (h), (g).

§ 52.2227 [Amended]

33. The following section is amended by removing the reference to "§ 51.16(b)(3)" and replacing it with "§ 51.152(a)": § 52.2227.

34. The following sections are amended by removing the reference "§ 51.18" and replacing it with "Subpart I": § 52.10, § 52.21(b)(2)(iii)(*e*)(*1*), (b),(2)(iii)(*f*), (b),(17), § 52.24(f)(5)(iii)(*e*)(*1*), (f)(5)(iii)(*e*)(*2*), (f)(5)(iii)(*f*), (f)(6)(iii), (f)(6)(v)(*c*), (f)(12), § 52.78(a), § 52.129(e), § 52.232(a)(1)(i), (a)(5)(i)(A), § 52.426(a), § 52.574(a), § 52.629(a), § 52.780(e), § 52.878(a), § 52.1124(a), § 52.1225(a), § 52.1276(a), § 52.1328(a), § 52.1578(a), § 52.1824(a), § 52.2125(a), § 52.2228(a), § 52.2579(a), § 52.2623(a), § 52.2724(a), § 52.2824(a).

§§ 52.233 and 52.780 [Amended]

35. The following sections are amended by removing the reference to "§ 51.18(a)" and replacing it with "§ 51.160(a)": § 52.233(c), § 52.780(a).

§§ 52.129 and 52.233 [Amended]

36. The following sections are amended by removing the reference to "§ 51.18(c)" and replacing it with "§ 51.160(a)": § 52.129(b), § 52.233(c)(d).

§§ 52.1124 and 52.1879 [Amended]

37. The following sections are amended by removing the reference to "§ 51.18(h)" and replacing it with "§ 51.161": § 52.1124(c), § 52.1879(c).

§§ 52.24 and 52.688 [Amended]

38. The following sections are amended by removing the reference to "§ 51.18(j)" and replacing it with § 51.165(a)":, § 52.24(j)(2), § 52.688(b)(2).

39. The following sections are amended by removing the reference to "§ 51.19(a)" and replacing it with "§ 51.211": § 52.130(a), § 52.234(a), § 52.1479(a), § 52.2075(a).

40. The following sections are amended by removing the references to "§ 51.19(b)," and "§ 51.19(c) and replacing them with "§ 51.212": § 52.234(b), (c), § 52.794(a), (b), § 52.1077(a), § 52.2030(b), (c).

41. The following sections are amended by removing the reference to "§ 51.19(d)" and replacing it with "§ 51.213": § 52.130(b), § 52.479(b), § 52.2298(b), § 52.2427(c), § 52.2477(a).

42. The following sections are amended by removing the reference to "§ 51.19(e)" and replacing it with "§ 51.214": § 52.130 (d), (e), § 52.234(e), § 52.796(a), § 52.1479(b), § 52.1680(a), § 52.2684(a).

43. The following sections are amended by removing the reference to "§ 51.20" and replacing it with "§ 51.280": § 52.135(a), § 52.175(a), § 52.978(a), § 52.2031(a), (b), § 52.2483(a).

44. The following sections are amended by removing the reference to "§ 51.21," and replacing it with "Subpart M": § 52.80(a), § 52.1579(a), § 52.2032 (a), (b), § 52.2433(a).

45. The following sections are amended by removing the references to "§ 51.22," and "51.22(b)" and replacing it with "§ 51.281": § 52.125 (a)(1), (b), § 52.126 (a), (c), § 52.133(c), § 52.272(a), § 52.795(b), § 52.988(a), § 52.1082 (a), (b), § 52.1635(a), § 52.2436 (a), (b).

§§ 52.21 and 52.24 [Amended]

46. The following sections are amended by removing the reference to "§ 51.24" and replacing it with "§ 51.166": § 52.21 (b)(2)(iii)(*e*)(*1*), (b)(2)(iii)(*e*)(*2*), (b)(2)(iii)(*f*), (b)(17), (f)(3), § 52.24 (f)(5)(iii)(*e*)(*1*), (f)(5)(iii)(*f*), (f)(12).

§§ 52.1331 and 52.2428 [Amended]

47. The following sections are amended by removing the reference to "§ 51.30" and replacing it with "§ 51.340": § 52.1331(a), § 52.2428 (a), (b).

§ 52.782 [Amended]

48. The following section is amended by removing the reference to "§ 51.31(c)" and replacing it with "§ 51.341": § 52.782(a).

49. The following sections are amended by removing the reference to Appendix N and replacing it with "Subpart G": § 52.88(a)(5), § 52.89(a)(4), § 52.90(a)(3), § 52.91(a)(3), § 52.786(a)(3), § 52.1878(a)(2), § 52.2038(a)(4), § 52.2039(a)(3), § 52.2337(a)(3), § 52.2485(a)(4), § 52.2491(a)(3).

§ 52.235 [Removed]

50. The following section is removed: § 52.235.

§ 52.230 [Amended]

51. Section 52.230(a) is amended by revising the first portion to read as follows: "The requirements of § 52.14(c)(3) of this chapter as of September 22, 1972 (47 *FR* 1983), are not met since the . . . ."

§ 52.828 [Amended]

52. Section 52.828(b)(1)(iii) is amended by placing a period after "and (c)" and by removing "and, if applicable, § 51.32 (a) through (e) of this chapter."

§ 52.876 [Amended]

53. Section 52.876(a) is amended by revising the first portion to read as follows: "The requirements of § 51.260 and of § 51.15(a)(2) of this chapter as of September 19, 1976 (40 *FR* 43216), are not met since the . . . ."

§ 52.1576 [Amended]

54. Section 52.1576(a) is amended by revising the first portion to read as follows: "The requirements of § 52.14(c)(3) of this chapter as of May 8, 1974 (39 *FR* 16346), are not met since the . . . ."

§ 52.1676 [Amended]

55. Section 52.1676(a) is amended by revising the first portion to read as follows: "The requirements of § 52.14(c)(3) of this chapter as of May 8, 1974 (39 *FR* 16347), are not met since the . . . ."

§ 52.2078 [Amended]

56. Section 52.2078(b)(1)(iii) is amended by placing a period after "and (c)" and by removing "and, if applicable, § 51.32 (a) through (e) of this chapter."

§ 52.2682 [Amended]

57. Section 52.2682(a) is amended by revising the first portion to read as follows: "The requirements of § 52.17(a)(2) of this chapter as of December 19, 1978 (43 *FR* 59067), are not met since the . . . ."

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November 7, 1986

Part IV

Information Security Oversight Office

32 CFR Part 2003

National Security Information; Standard Forms; Final Rule

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INFORMATION SECURITY OVERSIGHT OFFICE

32 CFR Part 2003

National Security Information; Standard Forms

AGENCY: Information Security Oversight Office (ISOO).

ACTION: Final rule.

SUMMARY: This amendment to 32 CFR Part 2003 provides for the use of an alternative Classified Information Nondisclosure Agreement to be executed by non-Government personnel as a condition of access to classified information. It also updates other provisions on the use of the nondisclosure agreements.

EFFECTIVE DATE: November 7, 1986.

FOR FURTHER INFORMATION CONTACT: Steven Garfinkel, Director, ISOO. Telephone: (202) 535-7251.

SUPPLEMENTARY INFORMATION: This amendment to 32 CFR Part 2003 is issued pursuant to section 5.2(b)(7) of Executive Order 12356. ISOO has coordinated this amendment with those agencies that will be primarily affected by it.

List of Subjects in 32 CFR Part 2003

Classified information, Executive orders, Information, National security information, Security information.

32 CFR Part 2003 is amended as follows:

PART 2003—NATIONAL SECURITY INFORMATION—STANDARD FORMS

1. The authority citation for 32 CFR Part 2003 continues to read:

Authority: Sec. 5.2(b)(7) of E.O. 12356.

Subpart A—General Provisions

2. Section 2003.3 is revised to read as follows:

§ 2003.3 Waivers.

Except as specifically provided, waivers from the mandatory use of the standard forms prescribed in Subpart B may be granted only by the Director of ISOO. The Director of ISOO will be responsible for ensuring that all waivers that necessitate changes to a standard form are cleared with the General Services Administration's Information Resources Management Service (41 CFR 201-45.5).

Subpart B—Prescribed Forms

3. Section 2003.20 is revised to read as follows:

§ 2003.20 Classified Information Nondisclosure Agreement: SF 189; Classified Information Nondisclosure Agreement (Industrial/Commercial/Non-Government): SF 189-A.

(a) SF 189 and SF 189-A are nondisclosure agreements between the United States and an individual. An individual is to execute either the SF 189 or the SF 189-A, as appropriate, before the United States Government may authorize that individual access to classified information.

(b) All employees of executive branch departments, and independent agencies or offices must sign SF 189 before being authorized access to classified information.

(c) All Government contractor, licensee, and grantee employees, or other non-Government personnel requiring access to classified information in the performance of their duties, must sign either SF 189 or SF 189-A before being authorized access to classified information.

(d) Agencies may require other persons, who are not included under paragraph (b) or (c) of this section, to execute SF 189 or SF 189-A before receiving access to classified information.

(e) Only the National Security Council may grant a waiver from the use of SF 189 or SF 189-A. To apply for a waiver, an agency must submit its proposed alternative nondisclosure agreement to the Director of ISOO, along with a justification for its use. The Director of ISOO will request a determination about the alternative agreement's enforceability from the Department of Justice prior to making a recommendation to the National Security Council. An agency that has received a waiver from the use of SF 189 need not seek a waiver from the use of SF 189-A, if the employees of its contractors, licensees and grantees, and other non-Government personnel are required to sign a nondisclosure agreement identical or comparable to the agreement for which a waiver has been granted. (Also see 32 CFR 2003.3 and 41 CFR 201-45.5.)

(f) Each agency must retain its executed copies of SF 189 and SF 189-A in file systems from which the agreements can be expeditiously retrieved in the event that the United States must seek their enforcement. The copies or legally enforceable facsimiles of them must be retained for 50 years following their date of execution. An agency may permit its contractors, licensees and grantees to retain the executed agreements of their employees during the time of employment. Upon the termination of employment, the contractor, licensee or grantee shall deliver the SF 189 or SF 189-A of that employee to the Government agency primarily responsible for his or her classified work.

(g) An authorized representative of a contractor, licensee, grantee, or other non-Government organization, acting on behalf of the United States, may witness the execution of SF 189 or SF 189-A by another non-Government employee, provided that an authorized United States Government official subsequently accepts by signature the SF 189 or SF 189-A on behalf of the United States. Also, an employee of a United States agency may witness the execution of the SF 189 or SF 189-A by an employee, contractor, licensee or grantee of another United States agency, provided that an authorized United States Government official subsequently accepts by signature the SF 189 or SF 189-A on behalf of the United States.

(h) The national stock number for the SF 189 is 7540-01 161-1869. The national stock number for the SF 189-A is 7540-01-237-2597.

Dated: November 4, 1986.

Steven Garfinkel,

Director, Information, Security Oversight Office

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Part V

Department of Energy

10 CFR Part 961

Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste; Proposed Rulemaking

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DEPARTMENT OF ENERGY

10 CFR Part 961

[Docket No. OCRWM-NOPR-86-202]

Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: On April 18, 1983, the Department of Energy (DOE) published a rule which established the Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste (standard disposal contract) to be used by the DOE in furnishing disposal services to the owners or generators of spent nuclear fuel and/or high-level radioactive waste (48 FR 16590). On December 6, 1985, the U.S. Court of Appeals for the District of Columbia ruled that the ongoing 1.0 mill per kilowatt hour (1M/KWH) fee in DOE's standard disposal contract should be based on net generation of electricity rather than gross generation of electricity as adopted in the final rule (*Wisconsin Electric Power Co. et al.* v. *Hodel*, 778 F.2d 1). In response to this decision, DOE is publishing for comment conforming amendments to Article I.13 and Appendix G of the standard disposal contract.

DATES: Written comments must be received on or before December 8, 1986, 4:30 p.m.

ADDRESS: Comments should be addressed to Samuel Rousso, Office of Civilian Radioactive Waste Management, Department of Energy, Docket No. OCRWM-NOPR-86-202, 1000 Independence Avenue SW., Room GB-270, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Alan B. Brownstein, Office of Civilian Radioactive Waste Management, Department of Energy, 1000 Independence Avenue SW., Room GB-270, Washington, DC 20585 (202) 252-1652

Christopher T. Jedrey, Office of Procurement Operations, Department of Energy, 1000 Independence Avenue SW., Room 1J-027, Washington, DC 20585 (202) 252-1009

Robert Mussler, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue SW., Room 6A-113, Washington, DC 20585 (202) 252-6947

SUPPLEMENTARY INFORMATION:

I. Background
II. Proposed Rule
III. Comment Procedures
  A. Written Comments
  B. Public Hearing
IV. Procedural Requirements
  A. Executive Order 12291
  B. Regulatory Flexibility Act
  C. National Environmental Policy Act
  D. Paperwork Reduction Act

I. Background

The Nuclear Waste Policy Act of 1982, enacted on January 7, 1983 (hereinafter referred to as "the Act," Pub. L. 97-425, 96 Stat. 2201 (42 U.S.C. 10101 et seq.)), provides a comprehensive framework for disposing of commercial spent nuclear fuel (SNF) and high-level radioactive waste (HLW) of domestic origin. Section 302 of the Act required the DOE and each owner or generator (hereinafter referred to as "utility" or "purchaser") of SNF and/or HLW to execute, by June 30, 1983, a standard disposal contract under which DOE will accept and dispose of such material.

On April 18, 1983, the DOE published its final rule which established the standard disposal contract (48 FR 16590). Article I.13 defined "kilowatt hours generated" as "electricity generated by nuclear fuel at a civilian nuclear power reactor specified in Appendix A hereto as measured at the output terminals of the turbine generator including an equivalent amount of electricity for any process heat generated by the reactor and used other than at the reactor" [gross generation].[1] Article VIII.A.1 and B.1 used this definition as a basis for calculating the ongoing 1M/KWH fee.⅛

By its decision on December 6, 1985, the U. S. Court of Appeals for the District of Columbia held that the definition of "kilowatt hours generated" was invalid, in part, on the grounds that section 302(a)(2) of the Act meant to establish disposal charges based on electricity "generated and sold," i.e., "net" generation. Subsequent to the U.S. Court of Appeals ruling, the DOE informed all utilities having disposal contracts by letter dated January 23, 1986, that:

(1) Utilities should immediately calculate their future quarterly payments based on net generation rather than gross generation as had been the practice; and

(2) Utilities should not make adjustments on their own to their regular quarterly submittals for past overpayments.

The DOE letter of January 23, 1986, also defined net generation for fee calculation purposes as:

> "The gross electrical output of the unit measured at the output terminals of the turbine generator minus the normal station service loads during the gross hours of the reporting period, expressed in megawatt hours. Negative quantities should not be used. If there is no net positive value for the period, enter zero."

This definition, which was taken from the existing instructions for completing Annex A of Appendix G of the standard disposal contract, was selected on an interim basis to expedite implementing the Court order. DOE recognized that several definitions of net generation are currently used by the Federal Government and electric utility industry, all of which result in different calculations for net generation and therefore would affect a utility's ongoing fee obligation. In addition, DOE recognized that different methods exist for calculating net generation regardless of which definition is ultimately selected and that this would also affect a utility's fee obligation.

DOE has reviewed and analyzed all utilities' payments of the ongoing fee made during the second quarter of Fiscal Year 1986, based on the definition and instructions provided in its January 23, 1986, letter. The review has shown that utilities used different methods and calculation techniques to develop their net generation data which caused the ongoing fee payments to the Nuclear Waste Fund to vary among utilities. Most of the differences found could be attributed to different treatment by utilities of negative megawatt hour (MWH) values reported during periods of low or no station-power generation. In essence, during such periods the normal flow of electricity is reversed and non-unit/station-generated electricity for station use is supplied from outside the station (e.g., the utility's transmission grid). This non-station-generated electricity could potentially serve to offset the MWH on which the fee is based.

Based on its review and analysis, the DOE sent a subsequent letter to utilities on June 13, 1986, that clarified how, on an interim basis, net generation should be calculated, subject to completion of the rulemaking process to amend the standard disposal contract. It directed that in calculating net generation, gross generation should not be offset by any electricity generated off-site or non-nuclear electricity generated on-site. This letter also established procedures for utilities to take a credit on their subsequent quarterly payments for overpayment of the ongoing fee since April 7, 1983. The utilities were also informed that such credits would not be considered final until completion of the rulemaking process and final verification of net generation data.

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[1] Definition as corrected on May 24, 1983 (48 FR 23160).

DOE has since reviewed and analyzed all utility ongoing fee payments for the third quarter of Fiscal Year 1986 based on the instructions in the June 13, 1986, letter. The results have shown that the vast majority of utilities were able to calculate net generation consistent with DOE instructions using existing data and metering equipment.

II. Proposed Rule

As set forth below, the purpose of this proposed rule is to amend the standard disposal contract consistent with the court ruling that the ongoing fee should be based on net generation.

Proposed § 961.11 (amended) sets forth changes to the contract necessary to implement the payment of the ongoing fee based on net generation:

Article I—Definitions—Specifies the revised definition of "kilowatt hours generated" to mean net generation. Appendix G—Remittance Advice (RA) for Payment of Fees—Revises both the RA form and the Annex A to Appendix G form currently used by utilities [3] to reflect payment based on net generation. The Annex A form instructions have also been changed to reflect the proposed calculation procedures for identifying net generation for fee calculation purposes. In addition, three data items are proposed for elimination since they deal with equivalent electric energy generation (process heat) which is no longer applicable. With respect to the calculation of net generation, the DOE proposes that at all times when station use exceeds station generation, the resulting negative values should be treated as zero for fee calculation purposes. Non-nuclear electricity generated on-site should not be deducted from gross generation unless included in the gross generation data. In those cases involving a multi-unit nuclear station, DOE proposes that when at least one nuclear unit is operating (generation from at least one unit exceeds station use), electricity generated from that unit shall be assumed to be supplying the normal nuclear station load whether or not it can be separately metered. The DOE believes this is a reasonable assumption which will allow utilities to avoid the expense of adding costly metering equipment.

III. Comment Procedures

A. Written Comments

Interested persons are invited to participate in this proposed rulemaking by submitting comments no later than December 8, 1986, to the address indicated in the "**ADDRESS**" section of this notice and should be identified on the outside envelope and on the document with the designation: "Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste." Ten copies should be submitted.

All comments received will be available for public inspection in the DOE Reading Room, Room 1E–190, James E. Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Any information or data considered confidential by the person furnishing it must be so identified and submitted in writing. DOE reserves the right to determine the confidential status of the information or data and to treat the information or data in accordance with its determination.

B. Public Hearing

DOE believes that the amendments proposed in this Notice present no substantial issues of fact or law and are unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses. Accordingly, DOE is not scheduling a public hearing as provided by section 501(c) of the Department of Energy Organization Act (DOE Act) (Pub. L. 95–91, 42 U.S.C. 7191) and the Administrative Procedure Act (Pub. L. 89–554, 5 U.S.C. 553). If a significant number of persons request an opportunity for oral presentation of views, data and arguments, a public hearing could be held after public notice.

IV. Procedural Requirements

A. Executive Order No. 12291

Under Executive Order 12291 agencies are required to determine whether proposed rules are major rules as defined in the Order. DOE has reviewed this proposed rule and has determined that it is not a major rule because: it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

B. Regulatory Flexibility Act

In accordance with Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., DOE finds that sections 603 and 604 of the said Act do not apply to this rule because, if promulgated, it will not have a significant economic impact on a substantial number of small entities. This finding is based on the fact that the parties to the contract, who are owners or generators of spent nuclear fuel or high-level radioactive waste, are not small entities.

C. National Environmental Policy Act

Execution of amendments to the standard contract proposed in this rulemaking will not commit DOE to any specific activities not already prescribed by the Nuclear Waste Policy Act. Activities allowed under the Act will receive appropriate environmental review at the proper time, i.e., when such activities are proposed in accordance with the process established in the Act. Therefore, DOE has concluded that the proposed rulemaking does not give rise to any action not already prescribed by the Act and, thus, is not a proposal for a major Federal action significantly affecting the quality of the human environment. Accordingly, preparation of either an environmental assessment or an environmental impact statement is not required.

D. Paperwork Reduction Act

In accordance with section 3504(h) of the Paperwork Reduction Act of 1980 (Pub. L. 96–511), this proposed rule has been submitted to the Office of Management and Budget (OMB). The current Remittance Advice and Annex A forms were previously approved by OMB under control number 1901–0260. Comments on the information collection requirements of this proposal should be submitted both to the DOE address noted above and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Vartkes Broussalian.

List of Subjects in 10 CFR Part 961

Government contracts, Nuclear materials, Nuclear powerplants and reactors, Radiation protection, Waste treatment and disposal.

In consideration of the foregoing, it is proposed that Part 961, Chapter III of Title 10, Code of Federal Regulations be amended as set forth below.

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[3] Current forms are modified versions of the original forms published on April 18, 1983 (48 FR 16590). Copies of the modified forms are available upon request to members of the public who need them to respond to this Notice.

Issued in Washington, DC, November 3, 1986.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

PART 961—[AMENDED]

1. The authority citation for Part 961 continues to read as follows:

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254) and Sec. 302, Pub. L. 97–425, 96 Stat. 2257 (42 U.S.C. 10222).

2. The Contract in § 961.11 is proposed to be amended by revising Article I, paragraph 13, and Appendix G to the Contract, including Annex A to Appendix G as set forth below. Annex B to Appendix G remains unchanged.

§ 961.11 Text of the Contract.

* * * * *

Article I—Definitions

* * * * *

13. The term "kilowatt hours generated" means the gross electrical output produced by a civilian nuclear power reactor measured at the output terminals of the turbine generator minus the normal on-site nuclear station service loads during the time electricity is being generated, expressed in megawatt hours.

* * * * *

BILLING CODE 6450-01-M

APPENDIX G

NWPA-830G

U.S. DEPARTMENT OF ENERGY
Germantown, MD 20874

STANDARD REMITTANCE ADVICE FOR PAYMENT OF FEES

This information is being collected under mandatory authorities vested in the U.S. Department of Energy under Public Law 97-425. Late filing, failure to file or to otherwise comply with the instructions provided may result in interest penalties as provided by Article VIII, C. of the Contract for Disposal of Spent Nuclear Fuel and/or High Level Radioactive Waste.

For information concerning confidentiality of information see Item 6 of the instructions.

1.0 IDENTIFICATION INFORMATION

1.1 Purchaser Information
(a) Name ____
(b) Address ____
(c) City, State
& Zip Code ____
1.2 Contact Person
(a) Name ____
(b) Telephone (Include Area Code) ____

1.3 Contract Number: ____
1.4 Period Covered by this Remittance Advice
(a) From ____ (Month/Day/Year) to ____ (Month/Day/Year)
(b) Number of Days in Covered Period: ____
(c) Date of This Payment:

Month	Day	Year

2.0 SPENT NUCLEAR FUEL (SNF) FEE

2.1 Number of Reactors Covered ____
2.2 Total Purchaser Obligation as of April 7, 1983 $
2.3 Date of First Payment:

Month	Day	Year

2.4 10-Year Treasury Note Rate as of the Date of First Payment %
2.5 Unpaid Balance prior to this payment $____

2.6 Option Chosen ____
2.7 Fee Data
(a) Principal ____
(b) Interest ____
(c) Total Spent Nuclear Fuel Fee Transmitted with this Payment ____

3.0 ELECTRICITY GENERATION (MILLS Per KILOWATT HOUR, M/KWH) FEE

3.1 Number of Reactors Covered: ____
3.2 Total Net Electricity Generated (megawatt hours) (Sum of Line 2.3 from All Annex A's) ____
3.3 Current Fee Rate ____ (M/KWH)

3.4 Total Electricity Generation (M/KWH) FEE Transmitted with this payment ____

4.0 UNDERPAYMENT/LATE PAYMENT (As notified by DOE)

Type of Payment (a)	Date of Notification (Month/Day/Year) (b)	DOE Invoice Number (c)	Date of Payment Transmittal (Month/Day/Year) (d)	Interest Paid (e)	Amount Transmitted (f)
4.1 SNF Underpayment					
4.2 Electricity Generation Underpayment					
4.3 TOTAL UNDERPAYMENT					
4.4 SNF Late Payment					
4.5 Electricity Generation Late Payment					
4.6 TOTAL LATE PAYMENT					

5.0 OTHER CREDITS CLAIMED (Attach Explanation)

Enter the Total Amount Claimed for all Credits $(____)

6.0 TOTAL REMITTANCE

6.1 Total Spent Nuclear Fuel Fee Transmitted (from 2.7(c)) $____
6.2 Total Electricity Generation Fee (from 3.4) $____
6.3 Total Underpayment (from 4.3(f)) $____
6.4 Total Late Payment (from 4.6(f)) $____
6.5 Total Credits (from 5.0) $____
6.6 TOTAL REMITTANCE (Sum of 6.1 through 6.4 less 6.5) $____

7.0 CERTIFICATION

I certify that the information contained herein and appended hereto is true and accurate to the best of my knowledge

Name Date Signature

TITLE 18 USC 1001 makes it a crime for any person to knowingly and willfully make to any department or agency of the United States any false, fictitious, or fraudulent statements as to any matter within its jurisdiction.

Copy Distribution: White, DOE-Controller; Canary, DOE-OCRWM; Pink, DOE-EIA; Goldenrod, Utility Copy

DEPARTMENT OF ENERGY
Germantown, MD 20874

STANDARD REMITTANCE ADVICE FOR PAYMENT OF FEES

General Information

1. Purpose.
Standard Remittance Advice (RA) form is designed to serve as the source document for entries into the Department's accounting records to transmit data from Purchasers concerning payment of their contribution to the Nuclear Waste Fund.

2. Who Shall Submit.
The RA must be submitted by purchasers who signed the Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste and will participate in the Nuclear Waste Fund. Submit Copy 1, 2, and 3 to DOE, Office of the Controller, Cash Management Division and retain Copy 4.

3. Where to Submit.
Purchasers shall forward completed RA to:

U.S. Department of Energy
Office of the Controller
Special Accounts and Payroll Division (C-216 Gtn)
Box 500
Germantown, MD 20874-0500

Request for further information, additional forms, and instructions may be directed to the address above or by telephone to (301) 353-4014

4. When to Submit.
For electricity generated on or after 4-7-83 fees shall be paid quarterly by the Purchaser and must be received by DOE not later than the close of business on the last business day of the month following the end of each assigned three month period.

Payment is by electronic wire transfer only.

5. Sanctions.
The timely submission of RA by a Purchaser is mandatory. Failure to file may result in late penalty fees as provided by Article VIII, Section C of the Contract for Disposal of Spent Nuclear Fuel and/or High Level Radioactive Waste.

6. Provisions Regarding the Confidentiality of Information.
The information contained on these forms may be (i) information which is exempt from disclosure to the public under the exemption for trade secrets confidential commercial information specified in the Freedom of Information Act of 5 USC 522(b) (4) (FOIA) or (ii) prohibited from public release by 18 USC 1905. However, before a determination can be made that particular information is within the coverage of either of these statutory provisions, the person submitting the information must make a showing satisfactory to the Department concerning its confidential nature.

Therefore, respondents should state briefly and specifically (on an element-by-element basis if possible), in a letter accompanying submission of the form why they consider the information concerned to be a trade secret or other proprietary information, whether such information is customarily treated as confidential information by their companies and the industry, and the type of competitive hardship that would result from disclosure of the information. In accordance with the provisions of 10CFR 1004.11 of DOE's FOIA regulations, DOE will determine whether any information submitted should be withheld from public disclosure.

If DOE receives a response and does not receive a request, with substantive justification, that the information submitted should not be released to the public, DOE may assume that the respondent does not object to disclosure to the public of any information submitted on the form.

A new written justification need not be submitted each time the NWPA-830G is submitted if:

a. views concerning information items identified as privileged or confidential have not changed: and

b. a written justification setting forth respondent's views in this regard was previously submitted.

In accordance with the cited statutes and other applicable authority, the information must be made available, upon request, to the Congress or any committee of Congress, the General Accounting Office, and other Federal agencies authorized by law to received such information.

INSTRUCTIONS FOR COMPLETING STANDARD REMITTANCE ADVICE FOR PAYMENT OF FEES

Section 1.0 *Identification Information*

1.1 Name of Purchaser as it appears on the contract, the mailing address, state and zip code.

1.2 Name and telephone number of person responsible for the completion of this form.

1.3 Contract identification number as assigned by Department of Energy (DOE).

1.4 Period covered by this advice and date of this payment. Any period different from the assigned three month period should be explained on a separate attachment.

Section 2.0 *Spent Nuclear Fuel (SNF) Fee*

2.1 Enter the number of reactors for which the Purchaser had irradiated fuel as of midnight between 6/7 April 1983 (equal to the number of Annex B Forms attached).

2.2 Total amount owed to the Nuclear Waste Fund for spent fuel used to generate electricity prior to April 7, 1983. (See Annex B for calculation.)

2.3 Self explanatory.

2.4 Ten year Treasury Note rate on the date the payment is made, to be used if payments are being made using the 40 quarter option, or if lump sum payment is made after June 30, 1985.

2.5 Unpaid balance before this payment is made.

2.6 Enter the payment option (1, 2, or 3) chosen. The selection of payment option must be made within two years of contract execution.

2.7 Total payment of fee which this advice represents. Show principal, interest, and total.

Section 3.0 *Electricity Generation (M/KWH) Fee*

3.1 Enter the number of reactors the operations of which the Purchaser is reporting on during the reporting period (equal to the number of Annex A Forms attached).

3.2 Enter total net electricity generated during the reporting period from all reactors being reported. This is the sum of such figures from all Annex A forms attached, expressed in megawatt hours.

3.3 Current Fee Rate as provided by DOE (initially 1.0 M/KWH which is equal to 1.0 $/MWH).

3.4 Total Electricity Generation (M/KWH) Fee represented by this advice.

Section 4.0 *Underpayment/Late Payment (as notified by DOE)*

4.1-4.6 Self explanatory.

Section 5.0 *Other Credits Claimed*

Represents all items for which a Purchaser may receive credit, as specified in the Contract.

Section 6.0 *Total Remittance*

6.1-6.6 This section is a summary of the payments made in the previously mentioned categories with this remittance.

Section 7.0 *Certification*

Enter the name and title of the individual your company has designated to certify the accuracy of the data. Sign the "Certification" block and enter the current date.

NWPA-830G

ANNEX A TO APPENDIX G

ANNEX A
to
Standard Remittance Advice for Payment of Fees
Quarterly Electricity Generation Report

- Please read all instructions before completing form.
- Complete a separate Annex A for each reactor
- Submit Annex A's quarterly with Standard Remittance Advice

1.0 Identification Information

1.1 Purchaser Information
 (a) Name ________
 (b) Address ________
 ____
 (c) Utility ID number ☐☐

1.2 Contact Person
 (a) Name ________
 (b) Telephone (Include area code)
 ____

1.3 Reactor Name/ID (From Code List Provided by DOE)
 (a) Name ________
 (b) ID Code ☐☐

1.4 Contract Identification Number
____

1.5 Period Covered
 (a) From ________ to ________
 (Mo/day/yr) (Mo/day/year)
 (b) Number of days covered Period: ________
 (c) Date of this submission:

Month	Day	Year

2.0 Electricity Generation Fee Calculation

2.1 Gross Thermal Energy Generated (MWH) ________
2.2 Gross Electrical Energy Generated (MWH) ________
2.3 Net Electrical Energy Generated (MWH) ________
2.4 Current Fee Rate (mills/KWH = $/MWH) ________
2.5 Current Fee Due for this Reactor (Dollars) ________
Sum for All Reactors Enter on Line 3.4 of RA

INSTRUCTIONS FOR COMPLETING ANNEX A TO STANDARD REMITTANCE ADVICE FOR PAYMENT OF FEES

Section 1.0 *Identification Information*

1.1 Utility name, address, and ID number. The ID number comes from Table 1 of these instructions.

1.2 Contact person for additional information on data submitted in this annex

1.3 Reactor name/ID number. Enter the name of the Reactor covered in this annex. Only reactor may be covered in this annex—even if the utility operates more than one reactor. The reactor ID number may be found in Table 1 of these instructions.

1.4 Self-explanatory

1.5a The dates shown should be days for which electrical output is reported. For example, for the last 3 month period of 1983, the report should show:

From 10 1 83 to 12 31 83
(Mo/Day/Yr) (Mo/Day/Yr)

1.5b Enter the total number of days in the report period. For example, from the above example show:

Number of days covered period: 92

1.5c Self-explanatory

Section 2.0 *Electricity Generation Fee Calculation*

2.1 Gross Thermal Energy Generated (MWH). The thermal output of the nuclear steam supply system during the gross hours of the reporting period, expressed in megawatt hours.

2.2 Gross Electrical Energy Generated (MWH). The gross electrical output of the unit measured at the output terminals of the turbine-generator during the gross hours of the reporting period, expressed in megawatt hours.

2.3 Net Electrical Energy Generated (MWH). The gross electrical output of the unit measured at the output terminals of the turbine-generator minus the normal on-site nuclear station service loads during the times electricity is being generated, expressed in megawatt hours. At all times when station use exceeds station generation, the resulting negative values should be treated as zero for fee calculation purposes. On-site non-nuclear generated electricity should not be deducted from the gross generation unless included in the gross generation. For multi-unit stations, the utility can assume that when at least one nuclear unit is operating and when generation from that one unit exceeds the nuclear station's use, the electricity from that unit is supplying the normal nuclear station load, whether or not the electricity has been metered separately.

2.4 Current Fee Rate (mills/KWH = $/MWH). Initially 1.0 mills/KWH or 1.0 dollars/MWH. The units mills/KWH are exactly equivalent to dollars/MWH. Enter here on line 3.3 of the Remittance Advice.

2.5 Current Fee Due (dollars). The product of items 2.3 and 2.4. The Current Fee Due for this reactor must be added to the Current Fee Due for all other reactors operated by the Purchaser and the sum entered on line 3.4 of the Remittance Advice.

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federal register

Friday
November 7, 1986

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1, 43, 45, 61, 91, 133, and 135

Rotorcraft Regulatory Review Program Amendment No. 5; Operations and Maintenance; Final Rule

VOL 51 ISS 216 NO 7 1986 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 43, 45, 61, 91, 133, and 135

[Docket No. 24550; Amdts. 1–33, 43–25, 45–16, 61–77, 91–196, 133–9, and 135–20]

Rotorcraft Regulatory Review Program Amendment No. 5; Operations and Maintenance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends and updates the operations and maintenance requirements pertaining to rotorcraft and establishes a new Class D rotorcraft-load combination. Amendments affect certain sections of Parts 1, 43, 45, 61, 91, 133 and 135 of the Federal Aviation Regulations that apply to rotorcraft.

EFFECTIVE DATE: January 6, 1987.

FOR FURTHER INFORMATION CONTACT: Marian Clemens or Thomas Stuckey, Project Development Branch (AFS–850), General Aviation and Commercial Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267–8150.

SUPPLEMENTARY INFORMATION:

Background

On January 5, 1979, the Federal Aviation Administration (FAA gave notice of its Rotorcraft Regulatory Review Program and invited all interested persons to submit proposals for consideration during a forthcoming Rotorcraft Regulatory Review Conference (Notice 79–1; 43 FR 23925). Such a Rotorcraft Regulatory Review Conference was held on December 10–14, 1979, in New Orleans, Louisiana. A subsequent Rotorcraft Regulatory Review Meeting was held August 16–20, 1980, in Washington, DC.

After the conference and meeting, the FAA developed plans to publish a series of five notices of proposed rulemaking. The first notice included proposals dealing with the applicability sections of Parts 27 and 29 of the Federal Aviation Regulations (FAR), plus Instrument Flight Rules (IFR) certification and icing criteria. These were subsequently adopted as a final rule effective March 2, 1983 (48 FR 4374; January 31, 1983). The second notice addressed airworthiness standards for type certification of normal and transport category rotorcraft. Amendments based upon that notice were subsequently published in the **Federal Register** on November 6, 1984 (49 FR 44422), and were effective December 6, 1984. The third notice, which covers powerplant proposals, and the fourth notice, covering airframe proposals, are still in preparation.

These amendments, the fifth in the series, are based on Notice of Proposed Rulemaking (NPRM) No. 85–8 published in the **Federal Register** on March 13, 1985 (50 FR 10144). All interested persons have been given an opportunity to participate in the making of these amendments, and due consideration has been given to all matters presented.

Discussion of Comments

The public comments are discussed below on a section by section basis. The references following each discussion relate to proposals and committees associated with the Regulatory Review Conference.

Section 1.1 General definitions.

The proposal to amend § 1.1 by revising the definition of "rotorcraft-load combination" and defining a "Class D rotorcraft-load" received no adverse comments. It is adopted as proposed in Notice No. 85–8.

Ref: Proposals 4.506, 507, 526, 527, 532, and 534; Committee III.

Section 43.3 Persons authorized to perform maintenance, preventive maintenance, rebuilding, and alterations.

The proposed amendment would permit a Part 135 certificate holder that operates rotorcraft in remote sites to allow an appropriately trained and authorized pilot to perform preventive maintenance as defined in Part 1 of this chapter and as listed in Appendix A to Part 43. Commenters strongly support this proposal. Numerous exemptions to the current regulations that allow such maintenance have been in effect for some time. To date, preventive maintenance performed under these exemptions has been extremely successful without any known misuse and has resulted in reducing the operating cost of helicopters operating in remote areas.

One commenter suggests that the term "remote area" be further defined to prevent misuse of the intent of this authorization. A remote area can be considered as an area out of the way, far removed from normal support services, or not easily accessible by land or sea. For example, offshore oil derricks, villages in the tundra area of Alaska, and mining sites in the upper Sierra Nevada would normally be considered remote. Any additional explanation is not appropriate for the regulations. Accordingly, § 43.3(h) is adopted as proposed.

Ref: Proposal 424; Committee III.

Section 43.15 Additional performance rules for inspections.

When this rule was initially proposed in Notice No. 85–8, the progressive inspection was inadvertently omitted. To correct this error, the word "progressive" was inserted in § 43.15(c)(3) between the words "100-hour" and "inspection."

Several commenters recommend that § 43.15(c) (2) and (3) be consolidated into one paragraph and that reference to aircraft type be changed to "a powered aircraft." Consolidation would not make the regulation any clearer. Emphasis on the fact that both reciprocating-engine-powered aircraft and turbine-engine-powered aircraft require runups will help to clarify the intent of the present rule, which does not explicitly address turbine-engine-powered aircraft. Thus, the structure of the proposed rule is retained.

Commenters also express the view that the proposal would add confusion as to who should actually runup and/or start the aircraft engine to perform the required runup. As proposed, the regulation could be interpreted as requiring that the person who does the runup be the same person who approves the aircraft for return to service, even though that person may not be qualified to run the engine or engines. The rule requires that the person approving an aircraft for return to service be the person who shall perform the runup to determine satisfactory performance in accordance with the manufacturer's recommendation. If that person is qualified to return the aircraft to service, that person should also be qualified to perform the runup as required. Two other commenters recommend that, for rotorcraft, the person performing the runup should be a qualified pilot. They argue that when the engines of a helicopter with a fully articulated rotor system are runup, safety dictates that a pilot should perform that runup in case the rotorcraft becomes airborne. The FAA disagrees. Experience has shown that a mechanic who can approve the return of the helicopter to service should be able to safely runup the helicopter, exercising normal caution and good judgment. Section 43.15(c) (2) and (3) is amended as proposed.

Ref: Proposal 429; Committee III.

Part 43, Appendix A—Major Alterations, Major Repairs, and Preventive Maintenance

All commenters referring to Part 43, Appendix A, strongly concur with the proposal, which would amend the Appendix by adding routine checks or replacement of fuel and oil strainers and filters and magnetic chip detectors under the category of preventive maintenance. The changes to Part 43, Appendix A, are adopted as proposed.

Ref: Proposals 431 and 432; Committee III.

Section 45.14 Identification of critical components.

One commenter proposes that the rule be amended to allow the omission of markings when the Administrator finds that a part is too small or that it is otherwise impractical to mark a part with any of the information required by the rule. The regulation for the marking of critical/life limited components is not new. The only change is that such marking must be made permanent and legible. The FAA has always recognized that some parts "on condition" and removed at overhaul due to wear, tolerance excesses, etc., are not suitable for permanent marking and do not have finite lives approved by the FAA. Further, such parts are not individually specified in the Maintenance Manual Limitations or Continued Airworthiness Document. Thus, such parts need not be permanently marked. Therefore, § 45.14 is amended as proposed.

Ref: Proposal 433; Committee III.

Section 61.3 Requirement for certificates, ratings, and authorizations.

It was the intent of the Rotor 5 review to include authority for Category II operations for rotorcraft. The NPRM inadvertently omitted some of the changes necessary to implement this new authorization; therefore, several changes have been made to the final rule. One such change is the removal of the word "airplane" and its replacement by the word "aircraft" in § 61.3(g). Another is the addition of Part 135 to the flush paragraph after paragraph (f)(2).

Section 61.21 Duration of Category II pilot authorization.

No public comments were received on § 61.21, and the rule is amended as proposed.

Section 61.55 Second-in-command qualifications.

The rule will extend the second-in-command pilot qualifications to include helicopters that are type certificated for more than one required pilot flight crewmember. The proposed rule refers to "required flight crewmember." One commenter points out that unless the word "pilot" is inserted, the rule could be construed to include flight engineers. Since this is not the intent and the omission of the word "pilot" was unintentional, the FAA agrees with the suggestion and the rule is changed accordingly.

The portion of the rule pertaining to an "aircraft" simulator has been changed to "airplane" simulator to reflect the current rule. The FAA had proposed to permit the use of an "aircraft" simulator; however, the technology for helicopter simulation has not developed as rapidly as the technology for airplane simulation. The FAA will continue to develop guidelines for approval of rotorcraft simulation, and this issue will be addressed in another rulemaking action.

Ref: Proposal 438; Committee III.

Section 61.57 Recent flight experience: Pilot in command.

Section 61.67 Category II pilot authorization requirements.

Section 61.87 Requirements for solo flight.

Section 61.105 Aeronautical knowledge.

Section 61.107 Flight proficiency.

No public comments were received on § 61.57, § 61.67, § 61.87, § 61.105, or § 61.107, and they are amended as proposed.

Section 61.113 Rotorcraft rating: Aeronautical experience.

Regarding the requirements for a helicopter class rating for a private pilot's license, one commenter suggests that the number of takeoffs and landings required in paragraph (a)(1)(ii) should be reduced to five or, alternatively, that the phrase "en route phase of flight" should be deleted. According to the commenter, if each landing/takeoff operation is separated by an en route phase of flight, an undue economic burden would be placed on the student since "the majority of these operations will be airport-to-airport." The commenter also points out that in some parts of the western United States, suitable night landing areas may be separated by distances in excess of 50 miles.

The FAA has not accepted the requested change for the following reason: The proposed aeronautical experience requirements were discussed at the conference, and it was the consensus that these specific experience requirements are needed to adequately train and prepare a private pilot applicant for a class rating in present-day rotorcraft. It should also be noted that ten takeoffs and landings are required for a private pilot's certificate in an airplane, which is less difficult to operate than a helicopter. It is the position of the FAA that, by increasing the level of aeronautical experience for helicopters, the agency is promoting increased levels of safety. The requirement for ten takeoffs and landings is therefore adopted in the final rule.

The phrase "en route phase of flight" is a necessary part of the regulation, designed to prevent the applicant from merely lifting the helicopter above a given spot, hovering, and then returning it to that spot to achieve the required number of takeoffs and landings. Eliminating the requirement for an "en route phase of flight" would enable the applicant to circumvent the need to demonstrate an ability to maneuver the helicopter successfully at night in all phases of flight.

This requirement will not result in an undue economic burden. Contrary to the assumption made by the commenter that the majority of these operations would be airport-to-airport, a "takeoff and landing separated by an en route phase of flight" could be comprised of a takeoff, a short flight in the vicinity of the takeoff point, and a landing at the same place as the takeoff. An example would be a flight around the landing pattern. The "en route phase of flight" is intended to relate to the need for certain piloting skills. Demonstration of these skills may be accomplished without flying over long distances. There is nothing in the regulation that requires an applicant to fly from one airport to another. The flight hours and maneuvers required in paragraph (a)(1)(ii) are necessary for safety and do not pose an unnecessary economic burden. Consequently, the rule is adopted as proposed.

An objection was raised to the proposed requirement for 15 hours of flight instruction in a gyroplane. This requirement is necessary to ensure a level of proficiency needed for safe operation of the aircraft. Accordingly, the proposed rule is adopted.

Ref: Proposals 448, 449, and 450; Committee III.

Section 61.125 Aeronautical knowledge.

No public comments were received on § 61.125, and it is amended as proposed.

Section 61.127 Flight proficiency.

This section sets forth the operations that must be performed successfully to demonstrate the flight proficiency

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required to obtain a commercial pilot certificate. Among the maneuvers required for a helicopter commercial rating is rapid descent with power and recovery.

A number of objections were received regarding this rule. The commenters believe that a strong potential exists for an inexperienced student to be given a check ride by a check pilot not proficient in that particular helicopter. They express fear that this situation could lead to an accident in the event the maneuver is allowed to progress beyond reasonable limits. They question the benefit of requiring this maneuver during a check ride and suggest, alternatively, that settling with power be considered accomplished if the maneuver is signed in the student's log book by that student's instructor.

The FAA agrees that this maneuver may place the student and check pilot at undue risk. Under present Parts 27 and 29, neither the manufacturer nor the FAA demonstrates or evaluates entry or recovery from "settling with power" as part of the aircraft certification. Consequently, it is inappropriate to require the performance of an inflight maneuver that neither the manufacturer nor the FAA is required to observe during aircraft certification.

Delegation to the student's instructor of the FAA responsibility for ensuring that a certain level of flight proficiency has been attained is not the solution to this problem. Instead, the applicant must demonstrate the ability to recognize and recover from imminent entry into settling with power, rather than to actually enter the flight regime from which it may be difficult to recover.

Accordingly, the final rule incorporates this requirement.

Ref: Proposal 453; Committee III.

Section 61.131 Rotorcraft ratings: Aeronautical experience.

A commenter suggests that commercial helicopter pilot applicants be required to have instrument flight training. The FAA does not agree with this position for several reasons. First, most helicopter operations are and will be conducted in Visual Flight Rules (VFR) conditions. In addition, the flight characteristics of rotorcraft are such that, if weather conditions begin to deteriorate, a pilot may easily and rapidly adjust altitude and direction or, if necessary, find a suitable landing site. Encountering IFR conditions in a rotorcraft is therefore not analogous to the same situation in an airplane, where suitable landing sites are far less numerous and altitude restrictions may be greater. Furthermore, there are fewer rotorcraft properly equipped for instrument flight than airplanes, making training and testing more difficult.

If a pilot wants to conduct operations in IFR conditions, the pilot can obtain an instrument rating. To require all commercial helicopter applicants to be trained in instrument flight would pose an unnecessary burden on the public.

Another commenter objects to the number of required hours for helicopter pilot-in-command flight. The commenter states that the requirements are reasonable for an upgrade from a private to a commercial certificate but excessive for a move from a commercial airplane to a commercial helicopter certificate. According to the commenter, most applicants will need more than 15 hours of flight instruction, and these hours are more important at this stage than pilot-in-command time. It is, therefore, suggested that the requirements be changed to 35 hours of flight instruction and 15 hours of pilot-in-command time.

Two commenters also state that the requirements for crosscountry helicopter flight are excessive, especially for those applicants who already have a commercial pilot certificate with an airplane rating. One of the commenters believes that the act of cross-country flying is not different in a helicopter than in an airplane and, therefore, the requirements should be relaxed for those applicants who hold a commercial pilot certificate with an airplane rating. The other suggests that, since helicopters are short-haul aircraft compared to airplanes, the 50 nautical mile requirement for cross-country flight should be reduced to 25 nautical miles.

The FAA does not concur with these suggestions. The requirements are necessary to demonstrate a proficiency commensurate with the subject rating. The current rule, which requires 10 hours of pilot-in-command time for commercial rotorcraft applicants, is outdated. In addition, as the world leader in training helicopter pilots, the United States is obligated to ensure that the terms of the International Civil Aviation Organization (ICAO) Convention are met. The requirement for 35 hours of pilot-in-command time is consistent with ICAO standards and is clearly reasonable for operations conducted by individuals accepting remuneration for their services.

The cross-country flight-time experience is introduced in these rules to align these minimums with ICAO standards. A cross-country flight in an airplane is not identical to a cross-country flight in a helicopter. A helicopter, with its different flight characteristics, is more affected by wind, which must be taken into consideration during the flight planning process. The wind effect becomes more significant over longer distances. In addition, piloting a helicopter, without the aid of an autopilot, is clearly more challenging when the pilot is, at the same time, attempting to navigate cross-country. Thus, the requirement for cross-country flight for an airplane commercial certificate cannot be substituted for the helicopter cross-country flight requirement.

Another commenter objects to the aeronautical experience required of an applicant for a commercial pilot certificate with a gyroplane class rating. The FAA agrees with the commenter that the proposed minimum flight hours are excessive. The regulation as proposed would impose the same hour requirements for a gyroplane class rating as for a helicopter class rating: 50 hours of flight time in a gyroplane/helicopter; 15 hours of gyroplane/helicopter flight instruction time; and 35 hours of pilot-in-command time in a gyroplane/helicopter. The commenter has operated under an exemption to the requirements contained in paragraphs (b) (3) and (4) since 1983. The exemption reduces the respective requirements for a gyroplane class rating to: 25 hours of flight time in a gyroplane; 10 hours of flight instruction in a gyroplane; and 15 hours of pilot-in-command time in a gyroplane. In granting this exemption, the FAA determined that the requirements could be reduced without adversely affecting safety. The FAA now reaffirms this finding and has amended § 61.131(b) accordingly.

Ref: Proposal 454; Committee III.

Section 61.159 Rotorcraft rating: Aeronautical knowledge.

No public comments were received on § 61.159, and it is amended as proposed.

Section 61.161 Rotorcraft rating: Aeronautical experience.

Proposed § 61.161(b)(4) is clarified by adding the word "performing" before the phrase "the duties of a pilot in command." The remainder of § 61.161 is adopted as proposed.

Section 61.163 Rotorcraft rating: Aeronautical skill.

The portion of the proposed rule pertaining to an approved rotorcraft simulator or training device has been deleted. Helicopter simulation issues will be addressed in a separate rulemaking action.

Section 61.165 Rotorcraft rating: Additional category ratings.

Part 61, Appendix A—Practical Test Requirements for Airplane Airline Transport Pilot Certificates and Associated Class and Type Ratings

No public comments were received on § 61.165 or Appendix A. They are amended as proposed.

Part 61, Appendix B — Practical Test Requirements for Rotorcraft Airline Transport Pilot Certificates With a Helicopter Class Rating and Associated Type Ratings

The phrase "ground control approach" in proposed paragraph III(c) has been changed to "surveillance or precision radar approach" to agree with the terminology used in the Airman's Information Manual.

One commenter suggests that in paragraph I(d), the phrase "in accordance with operating limitations" be changed to "in accordance with the Rotorcraft Flight Manual procedures." The commenter notes that power assurance procedures are not operating limitations and are placed in the Rotorcraft Flight Manual in the normal procedures or performance section. The comment is valid, and the language of the final rule has been changed accordingly.

The utility of requiring circling approaches as part of the practical test requirements for rotorcraft airline transport pilot certificates was the subject of another comment. The commenter suggests deleting section III(d) based on the view that a circle-to-land maneuver after completion of an instrument approach is remarkably simple and hazard free.

The FAA does not accept this argument. Performing the circle-to-land maneuver after completion of an instrument approach procedure may not always be simpler in a helicopter than it is in an airplane, depending upon the airport environment, weather, and other traffic. A circling approach basically involves different procedures than straight-in approaches. It is, therefore, appropriate for the FAA to require a demonstrated proficiency in executing the maneuver.

A number of commenters strongly object to other maneuvers and procedures required for rotorcraft airline transport pilot ratings. They question the safety and practicality of performing such maneuvers as simulated engine failure and autorotative landings during takeoffs and landings; settling with power; and demonstration of certain emergency procedures. They argue that the FAA inspector on a check ride may be inexperienced with the aircraft and, therefore, might not be able to ensure a safe recovery from these procedures. One commenter also notes that some insurance companies specifically exclude coverage of the aircraft if autorotative landings are involved. The commenters suggest that these maneuvers not be required during a check ride but, rather, that they be considered accomplished if there is an indication in the student's log book by that student's instructor pilot that, the student has demonstrated adequate proficiency.

As mentioned in the discussion under § 61.127, the FAA agrees that settling with power should not be a requirement for any flight check. Therefore, the requirement of proposed Part 61, Appendix B IV(b), has also been changed so that the applicant need only demonstrate a recognition of and recover from imminent flight in the regime referred to as "settling descent with power."

The FAA maintains that all of the other maneuvers and procedures specified in Part 61, Appendix B, should be performed as part of the check ride. It is the responsibility of the FAA to ensure that an applicant for a particular rating is sufficiently competent to maintain a high degree of safety throughout all flight regimes. The standards are even higher for those certificates that enable the successful applicant to offer services for financial remuneration. Thus, it would be inappropriate for the FAA to delegate this responsibility and only require a log book entry by a flight instructor indicating adequate proficiency.

Furthermore, FAA flight inspectors are trained for flight check duties in the category of aircraft in which they conduct flight checks. Also, if an aircraft insurer objects to the routine performance of certain procedures, such as autorotative landings, a one-day waiver can usually be obtained to enable the applicant to take a flight check ride. Finally, if a maneuver or procedure is too dangerous for performance in the aircraft, a prohibition against such activity will appear in the flight manual. Therefore, this maneuver or procedure would not be required in that Particular aircraft.

Ref: Proposals 434, 456, 458, 463, 464, 466, and 471 through 480; Committee III.

Section 91.2 Certificate of authorization for certain Category II operations.

No comments were received on the proposal to amend § 91.2 to afford small helicopter operators the opportunity of applying for Category II instrument approach authorization. To clarify the application of § 91.2, the proposed language is revised in the final rule by substituting the word "aircraft" for "airplane" and by deleting the phrase "and helicopters," thereby excluding large helicopters as well as large airplanes from the authorization to deviate from the applicable requirements for Category II operations.

Section 91.23 Fuel requirements for flight in IFR conditions.

Section 91.23 requires 45 minutes of reserve fuel for all aircraft operating in IFR conditions and ceiling and visibility requirements of 2,000 feet and 3 miles for determining if an alternate airport is needed. The proposal contained in Notice No. 85-8 would reduce the IFR reserve fuel requirement for helicopters from 45 minutes to 30 minutes. It would also lower the minimum ceiling from 2,000 feet to 1,000 feet and lower the visibility minimum from 3 statute miles to 1 statute mile as criteria for determining if an alternate airport is needed.

Five of the seven commenters expressing views on this proposal fully support the proposed changes. One commenter, however, opposes the proposal, not only for lowering fuel reserve from 45 minutes to 30 minutes for helicopters, but for reducing the ceiling and visibility requirements used to determine whether an alternate airport is needed. This commenter expresses the view that the proposal would not only provide little usefulness to the helicopter operator, but would significantly lessen the degree of safety that exists with the current rules. The commenter suggests that helicopter operators do not need relief from the fuel requirement rules in § 91.23 for flight in IFR conditions but would be better served by modifying § 91.83 concerning alternate airport selection requirements. A suggested amendment to § 91.83 to accomplish this recommendation was proposed. Amendments to § 91.83 were not considered in Notice No. 85-8; therefore, any changes affecting the substance of that section are not within the scope of this rulemaking.

Another commenter, though supporting the reduction of the required fuel reserve to 30 minutes for helicopters, questions the reduction of the ceiling and visibility requirements that determine the need for an alternate airport.

The FAA has sufficient experience with operations conducted under Special Federal Aviation Regulation (SFAR) 29, which reduces the required

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fuel reserve to 30 minutes for helicopters, to conclude that such a reduction will not lower the level of safety that has been established. This proposal would allow operators greater flexibility and utilization of their helicopters in the IFR environment. Accordingly, § 91.23(a)(3) is adopted as proposed.

The question of weather minimums defined in paragraph (b)(2) has been analyzed in some detail. Subsequent to the recommendations developed at the Rotorcraft Regulatory Review Conference and Review Meeting, the FAA undertook an investigation to examine methods of providing a data base of weather information pertinent to the requirements and qualifications for alternate airports. The increased risk of ceilings and visibilities falling below landing minimums at several U.S. cities was quantified as a function of lowered visibility and ceiling requirements defined in paragraphs (b)(2) (i) and (ii). The study utilized climatology data and weather deterioration models to calculate the probability that an airport would be below precision and nonprecision approach minimums. This investigation and study resulted in a report entitled "Weather Deterioration Models Applied to Alternate Airport Criteria," dated September 1981 (FAA-RD-81-92). The report reaches several preliminary but convincing conclusions. One of these directly related to the limitations defined in § 91.23(b)(2) is: "Any reduction in alternate airport requirements should be offset by limiting the duration of the flights for which the reduced requirements apply. It is recommended that reduced requirements only apply to flights whose flight time is two hours or less." The proposal in Notice No. 85-8 to reduce the ceiling and visibility requirement, however, has no such limitation of flight time as considered necessary by the report. In light of this evidence, the ceiling and visibility requirements for helicopters contained in paragraphs (b)(2) (i) and (ii) remain unchanged from the previous rule.

Ref: Proposals 483 and 484; Committee III.

Section 91.116 Takeoff and landing under IFR: General.

No unfavorable comments were received on the proposal to amend § 91.116 to establish a separate takeoff minimum of one-half mile visibility for helicopters. One commenter writing on this section recommends that takeoff minimums be established for all Part 91 operations as are landing minimums under this section. Such a suggestion is not a part of the rotorcraft review and is outside the scope of this rulemaking.

Ref: Proposal 494; Committee III

Section 91.171 Altimeter system and altitude reporting equipment tests and inspections.

No comments were received on the proposed changes to § 91.171, and the rule is amended as proposed.

Part 91, Appendix A—Category II Operations: Manual, Instruments, Equipment and Maintenance

One of the purposes of the Rotor 5 rulemaking was to enable rotorcraft to perform Category II operations. In the NPRM, changes that would have made this new authority possible were inadvertently omitted. These changes are now included in the final rule. In Part 91, Appendix A, this change has been accomplished by removing the word "airplane" and replacing it with the word "aircraft" wherever "airplane" appears.

Section 133.1 Applicability.

One comment was received regarding the rotorcraft external load operations requirements of paragraph (c)(4). The commenter suggests eliminating the requirement for a Rotorcraft External-Load Operator Certificate for customer acceptance flights. The commenter argues that it is not logical for the FAA to eliminate the requirements for a Rotorcraft External-Load Operator Certificate during the development phase and demonstration of compliance with requirements of Parts 27, 29, and 133 and continue to require a Rotocraft External-Load Operator Certificate for customer acceptance flights. The FAA disagrees with this reasoning. When a manufacturer offers such rides to the public, a higher degree of safety should be required. These customer passengers have a right to know that the safety of the flight on which they are about to embark has been reviewed by the FAA. The language proposed for paragraph (c)(4) is therefore adopted in the final rule.

Section 133.1(c)(5), as proposed, reiterated the exclusion of air carriers from rotorcraft external-load certification rules. The FAA has eliminated this exclusion from the final rule for the following reasons. The exclusion eliminates the applicability of all of Subpart B. Contained within Subpart B is § 133.19(a)(2), which requires aircraft to meet certification requirements of Subpart D, including § 133.43, Structures and design. Similarly, neither § 133.21 nor § 133.23 would be applicable to air carrier operators conducting external-load operations. It would therefore be possible for a pilot who had met the proficiency and skill requirements under Part 135 to not have the experience, knowledge, and skill required to conduct safely an external-load operation under Part 133.

This is not the intent of the regulation. Air carrier and external-load operations are so dissimilar in function that a separate pilot certification process should be required of an air carrier when requesting external-load approval. For this reason, the proposed § 133.1(c)(5) has been deleted from the final rule.

Regarding proposed § 133.1(c)(6), one commenter suggests that only external-load operations conducted by a U.S. military organization for purely military purposes or for operations that cannot be conducted by a certificated commercial operator be exempt from the certification rules. The commenter cites a growing trend of use of public aircraft in competition with bona fide certificated commercial operators that is placing commercial operators at an alleged unfair disadvantage. The commenter further claims that when operations that could be performed by a commercial operator within the limits of his certificate are performed by the military, the public is entitled to the same level of safety. The commenter also suggests that the exclusion be removed from all other operators of public aircraft when conducting external-load operations.

In response to these suggested changes, the FAA notes that according to section 601 of the Federal Aviation Act of 1958, the Administrator is empowered to promote safety of flight of "civil aircraft," defined in section 101(17) of the Act as "any aircraft other than a public aircraft." Thus, public-use aircraft are, by definition, already excluded from § 133.1. The language of proposed § 133.1(c)(6) is not a change in existing regulations; it merely makes explicit the exclusion of public-use aircraft from applicability. The rule is adopted as proposed and renumbered as § 133.1(c)(5).

The number of persons to be carried in Class D rotorcraft-load combinations (§ 133.1(d)) is an issue for several commenters. One commenter states that "person" should be changed to "persons" so that the rule would provide for more than one person to be hoisted into and out of helicopters. The commenter, however, adds that these persons should be hoisted one at a time.

The rule, as written, does not limit the number of persons that can be hoisted into and out of helicopters. Therefore, no change to the rule is necessary to respond to the commenter's point.

Regarding the number of persons that can be carried at one time, the FAA does not want to place any restrictions on this number at the present time. (See additional discussion on this issue in relation to proposed § 133.35(b)).

Ref: Proposals 4, 506, 507, 526, 527, 532, and 534; Committee III.

Section 133.11 Certificate required.

Section 133.13 Duration of certificate.

Section 133.21 Personnel.

Section 133.23 Knowledge and skill.

Section 133.25 Amendment of certificate.

Section 133.27 Availability, transfer, and surrender of certificate.

Section 133.31 Emergency operations.

No public comments were received on § 133.11, § 133.13, § 133.21, § 133.23, § 133.25, § 133.27, or § 133.31; they are amended as proposed.

Section 133.33 Operating rules.

A commenter suggests a new paragraph for this section. The purpose is to exclude the flight operations checks in § 133.33(c)(4) to (6) if the external load is to be moved only a short distance and at translational speeds just above a hover. The stated rationale is that loads are often carried only vertically with little or no horizontal movement. The commenter argues that the requirement for forward flight tests to determine controllability is superfluous and unnecessary in these cases.

The FAA does not agree that the suggested additional paragraph is needed. Revised § 133.33(c) clearly states that those flight-operational checks will be required "as the Administrator determines are appropriate to the rotorcraft-load combination." Those flight tests that are "superfluous and unnecessary" would not be required.

The requirement in § 133.33(d)(1) for submitting and gaining approval for a plan for each rotorcraft external-load operation over congested areas presents problems for one commenter, who claims that much business would be lost to ground-based competition while the rotorcraft operator attempts to comply with the regulation. The commenter notes that the detail contained in the proposed regulations is more appropriate for an advisory circular or handbook. If some type of plan is deemed necessary, the commenter suggests that the helicopter operator be required to submit to the FAA district office a plan that provides details of steps to be taken to conduct the operation without hazard to persons and property. The plan should be given to the district office before the operation, and the chief pilot or assistant chief pilot would have to certify that the operation would be conducted safely.

The FAA is responsible for developing procedures designed to ensure that external-load operations over congested areas are conducted safely and, through inspection and surveillance activities, to make certain that such procedures are followed. The FAA cannot delegate this oversight responsibility to those who actually conduct the operations, and consequently, has not adopted the suggested change.

The FAA also disagrees with the statement that the regulations go beyond the scope of a normal rulemaking and are more appropriate for an advisory circular or handbook. On the contrary, the regulation provides only guidelines on the types of components comprising a plan of the kind required. Details regarding specific information to be included in each component of the plan would be more appropriately the subject of an advisory circular or handbook. As for the issue of delay, the FAA will attempt to act on any submitted plan in an expeditious manner; however, the FAA cannot compromise safety to promote any given helicopter operation.

One commenter finds the language of § 133.33(f) too restrictive and suggests a change so that a person could conduct operations under IFR within the confines of a control zone when under the terms of a special VFR clearance or otherwise specifically approved by the Administrator. The rationale is that an external-load operation conducted in IFR conditions within a control zone is viable and safe under the terms of a special VFR clearance.

The FAA does not agree. The conduct of an external-load operation in IFR conditions is of sufficiently high risk that the FAA reserves the right to approve each operation. In fact, to clarify that the rule applies to all operations conducted under IFR and not only those in IFR meteorological conditions, the final rule has been changed to read "under IFR" instead of "in IFR conditions."

Finally, it should be noted that the operator has not been precluded from conducting operations under the terms of a special VFR clearance. However, approval from the Administrator will be required for a special VFR clearance to conduct external-load operations.

One commenter proposes the deletion of subparagraph (e) because, it is argued, § 91.119(d) specifically excludes helicopters from "hard numbers." The FAA chooses not to delete this language because it serves as a clarification of the § 133.33 rules as they pertain to helicopter operations. The language of § 133.33 is consistent with § 91.119(d).

Section 133.35 Carriage of persons.

One commenter proposes the following addition to § 133.35(a):

"(5) Is a person which forms a part of or is associated with a Class D external-load."

This language is redundant with the provisions already in the rule. The language proposed in Notice No. 85–8 clearly permits a person to be associated with a Class D external-load. The final rule, therefore, is adopted as proposed.

There were a number of comments on § 133.35(b) regarding the persons to be carried as a Class D load and the distance over which they can be transported. One commenter states that there should be restrictions on how many persons should be carried at a time, suggesting that the number be limited to one. Others object to the carriage of any person in a hoist outside the aircraft for any distance.

In contrast, one commenter proposes an exclusion from paragraph (b) for those operations where persons are carried externally but are not intended to be hoisted inside the helicopter, such as the transfer of workers from a boat alongside a well-head to the well-head proper. Another commenter claims that it is too restrictive to limit a Class D load to one person, citing the successful experiments with 10-man Billy Pugh nets in rescue operations.

Proposed § 133.35(b) has been deleted on the basis that it is too restrictive to implement a blanket restriction on the number of persons carried as a Class D load and the distance over which these persons can be carried. Rather than specify limits in a regulation, the FAA will give appropriate guidance for Class D external-load operations to FAA district offices. The conditions under which an operator can carry persons externally will be included in that operator's approved Operations Specification. Proposed § 133.35(c) has been redesignated as § 133.35(b) in the final rule.

Ref: Proposal 532; Committee III.

Section 133.37 Crewmember training, currency, and testing requirements.

No public comments were received on § 133.37. However, there is a potentially confusing use of the terms "class" and "type" in paragraph (c) in conjunction with external-load operations. The

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operation referred to relates to a particular class of external-load operation in a particular type of aircraft. No class of aircraft is intended to be specified. Accordingly, the rule has been amended to clarify the intent. Also, the proposed requirement for testing within the past 12 calendar months has been deleted.

Section 133.41 Flight characteristics requirements.

No public comments were received on § 133.41, and it is adopted as proposed.

Section 133.45 Operating limitations.

One commenter notes that the proposed rule would eliminate all multiengine helicopters certificated under Part 27 and those certificated as Category B under Part 29 from conducting Class D operations. The FAA has considered this effect; however, the appropriate level of safety dictates a higher standard of airworthiness requirements for conducting Class D operations. Therefore, the rule requires multiengine Category A rotorcraft for Class D operations.

Section 133.47 Rotorcraft-load combination flight manual.

Section 133.51 Airworthiness certification.

Section 135.1 Applicability.

Section 135.23 Manual contents.

Section 135.39 Management personnel qualifications.

Section 135.117 Briefing of passengers before flight.

No public comments were received on § 133.47, § 133.51, § 135.1, § 135.23, § 135.39, or § 135.117, and they are adopted as proposed.

Section 135.159 Equipment requirements: Carrying passengers under VFR at night or under VFR-over-the-top conditions.

One commenter, noting that the requirements of § 135.159 serve to underline the need for training of helicopter pilots in instruments, proposes that a radio altimeter with a visual or aural warning be required in addition to gyroscopic flight instruments. No justification other than the need for instrument training is given by the commenter. No safety justification is given for the proposal. Further, requirement of such a radio altimeter was not included in Notice No. 85-8, and the public has not had the opportunity to comment on an item of equipment that could have a considerable economic impact on some helicopter operators. Accordingly, the proposal is not accepted.

Another commenter points out that the proposed amendment to § 135.159 is somewhat confusing and does not completely solve the problem of determining what instruments are appropriate for the safe operation of helicopters under VFR at night. The FAA agrees, and the organization for § 135.159 has been modified. Though the regulation adopted is basically the same as proposed in Notice No. 85-8, the rule as adopted has been clarified to provide a clear and more meaningful presentation of the requirements.

Ref: Proposal 552; Committee III.

Section 135.167 Emergency equipment: Extended overwater operation.

No adverse comments were received on the proposal. One commenter, however, expresses concern that the proposed regulation did not recognize the high incidence of puncturing of liferafts on ditching. That commenter believes the text should stipulate an adequate design requirement versus the number of passengers anticipated. Proposed language was offered as an addition to the proposal to ensure that there were no sharp projections on the aircraft that might puncture survival equipment. The FAA has determined that this is not necessary. This regulation must be read in context with all of the regulations in this chapter, particularly those certification regulations for design requirements for aircraft and equipment. Such basic design requirements are adequate to ensure inadvertent puncturing of survival equipment or difficulties that could arise during a ditching situation.

Paragraph (b)(3)(i) was revised by deleting the word "approved." The FAA will provide guidelines for the contents of survival kits through advisory material rather than set specific standards to which all kits should conform. Air Carrier Operations Bulletin 9-59 provides such guidance. Section 135.167 is adopted as revised.

Ref: Proposal 555; Committee III.

Section 135.173 Airborne thunderstorm detection equipment requirements.

Section 135.181 Performance requirements: Aircraft operated over-the-top or in IFR conditions.

No public comments were received on § 135.173 or § 135.181, and they are adopted as proposed.

Section 135.223 IFR: Alternate airport requirements.

This proposal reduces helicopter fuel reserve requirements from 45 minutes to 30 minutes for flights in IFR conditions. It is closely related to proposed § 91.167 concerning fuel requirements for flight in IFR conditions. The commenters who oppose the reduction of such requirements in Part 91 also oppose the proposed change in the operating rules of Part 135. However, the majority of commenters strongly support the proposal. As previously stated, the FAA has gained sufficient experience in SFAR 29 operations to conclude that reducing the required fuel reserve to 30 minutes for helicopters will not compromise safety. Accordingly, § 135.223 is adopted as proposed.

Ref: Proposal 562; Committee III.

Section 135.227 Icing conditions: Operating limitations.

No adverse comments were received on this proposal to amend § 135.227 to allow helicopters to fly in icing conditions when the aircraft has been type certificated and appropriately equipped for operations in icing conditions. In this regard, it should be noted that at least one helicopter is now so certificated. Thus, it is appropriate to amend the operating rule to allow the use of such helicopters in icing conditions. Section 135.227 has been amended accordingly.

Ref: Proposal 564; Committee III.

Section 135.429 Required inspection personnel.

One commenter objects to proposed § 135.429(d), arguing that a person whose competency as a mechanic has not been certified should not be performing maintenance on or inspecting an air carrier aircraft. The commenter does not agree with the argument that remote area operations require unique and innovative accommodations to allow a pilot to perform such inspections on helicopters.

The FAA disagrees. The pilot training under the regulations for utilization of this section requires the same level of competency as an inspector at the home base to ensure safety in all circumstances, particularly in the unique situations that may arise at "remote" localities. In addition, the remaining requirements of this section ensure that the procedures developed for this situation are tightly controlled. Another commenter suggests that "remote areas" be further defined. This issue has been discussed in conjunction with the proposal affecting § 43.3. Section 135.429(d) is adopted as proposed.

Ref: Proposal 568; Committee III.

Economic Summary

The revised rules are expected to have immediate economic impact. All costs and savings data have been inflated [1] to 1985 dollars from the original 1982 dollars data appearing in the regulatory analysis for the NPRM. These data were derived by the FAA from estimates of industry conditions in late 1981 obtained by research on representative operator groups (operating under Parts 91, 133, 135, 137 and 141), which comprise the rotorcraft industry. A 5 percent profit margin factor was used to derive increased profits and lost profits from revenue increases or decreases, respectively. Cost savings are presumed to increase profits by an equal amount.

The 43 regulatory changes in Notice No. 85-8, which were determined to have a negligible or no technical impact, and consequently a negligible or no economic impact, are listed in Table 2, "Rotorcraft Regulatory Review Program Notice No. 85-8 Rule Changes Having Negligible Or No Economic Impact." Many of these changes are either editorial or clarifying in nature. In addition, some changes incorporate into regulations what has become the current practice of the FAA or industry. The assessment of their economic impacts is based on current industry practice, agency experience, and the explanations given under each rule change in the preamble for this rule. No estimates of specific costs or savings are made for these groups of proposals, and the proposed changes are not further discussed in the economic evaluation except where referenced in the table to Appendix A. Additional discussion to that given in the preamble for those eight referenced changes is given in Appendix A of the Regulatory Evaluation.

The remaining operation and maintenance changes in Notice No. 85-8 are determined to have an impact, but the impact is not considered to be major under the procedures and criteria prescribed by Executive Order 12291 or significant under the Department of Transportation Regulatory Policies and Procedures (46 FR 11034; February 26, 1979), and the changes will not have a significant economic impact on a substantial number of small entities. A discussion of and tables for the benefits and costs (savings) of the eight changes shown in Table 1 and a regulatory flexibility determination for the impacts on small business entities for each of the four changes having an adverse economic impact are presented below.

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[1] The Department of Commerce's December 1985 implicit price deflator for the period 1982–1985 was used to inflate the costs and savings data for this analysis.

TABLE 1.—COST AND SAVINGS OF NOTICE NO. 85-8 RULE CHANGES HAVING AN ECONOMIC IMPACT

FAR section and rule changes	Industry cost (savings)	Principal reason(s)
Part 43: Appendix A: Major alterations, major repairs and preventive maintenance.	($461,000 recurring annual cost decrease) ($25,000 annual profit increase).	Reduced expense to transport and use mechanics in remote areas; reduced rotorcraft downtime.
91.23: Fuel requirements for IFR flight	($542,000 recurring annual cost decrease)	Reduced operational costs from carrying less fuel.
133.021: Pilots	($537,000 recurring annual cost decrease)	Reduced cost from not having to transport chief pilot to field locations.
133.41: Flight characteristics requirements	($380,000 recurring annual cost decrease) ($2,100 annual profit increase).	Reduced number of operational flight checks.
133.51: Airworthiness certification	($116,000 annual cost decrease) ($10,000 annual profit increase).	Reduced paperwork and administrative costs.
135.159: Equipment requirements	$681,000 one-time cost increase, $70,000 recurring annual cost, $3,400 one-time lost profit, $18,000 annual lost profit.	Purchase and installation of Attitude and Heading indicators for rotorcraft now operated under Exemption 2695B. Maintenance cost for instruments; one-time loss for downtime associated with installation; annual loss for some operators stopping night flight instead of purchasing instruments.
135.173: Airborne thunderstorm detection equipment requirements.	$153,000 one-time cost increase, $16,000 recurring annual cost [1].	Purchase, installation and maintenance of minimum thunderstorm detection (TDX) equipment. It is equipment meeting intent and requirement of rule change for rotorcraft now operating under Exemption 2695B.[1]
135.429: Required inspection personnel	$117,000 one-time cost [2] ($281,000 recurring annual cost decrease) or ($262,000 net annualized cost decrease—10 years, 10 pct capital recovery).	Relieved work requirements for work done at remote areas or sites. One-time cost for some operators to install more extensive system of maintenance.[2]

[1] This estimate can vary from no cost to industry estimate shown. The decision to install TDX equipment or to cease flying depends on the prevailing thunderstorm weather occurrence in the area of normal operations and the flexibility an operator has to delay revenue flights until weather improves and to reschedule time into other time periods.

[2] The one-time cost accrues to a limited number of operators currently utilizing Exemption 2695B, which permits maintenance under § 135.411(a)(1) instead of § 135.411(a)(2). If only the exemption itself were removed, industry may have recurring cost increases. However, the change provides the primary benefit of the exemption to § 135.411(a)(2), and almost all of the expected recurring costs for them would not be incurred.

TABLE 2.— ROTORCRAFT REGULATORY REVIEW PROGRAM

[Notice No. 85-8 Rule changes having negligible or no economic impact]

FAR Section	Economic impact
FAR Part 1: 1.1	No impact—definition.
FAR Part 43:	
43.3	Impact considered with Part 43 Appendix A.
43.15	Negligible costs.
FAR Part 45: 45.14.	Negligible costs (Also see Appendix A in this evaluation).
FAR Part 61:	
61.55	Negligible costs (Also see Appendix A in this evaluation).
61.57	No impact—clarification.
61.87	Negligible costs.
61.105	Negligible costs.
61.107	Negligible costs.
61.113	Negligible costs (Also see Appendix A in this evaluation).
61.125	Negligible costs.
61.127	No impact.
61.131	Negligible costs (Also see Appendix A in this evaluation).
61.159	Negligible costs.
61.161	Negligible savings.
61.163	Negligible costs (Also see Appendix A in this evaluation).
61.165	No impact.
Appendix A	No impact—clarification.
Appendix B	Negligible costs (Also see Appendix A in this evaluation.
FAR Part 91:	
91.2	No impact.
91.116	Negligible savings.
91.171	Negligible costs.
FAR Part 133:	
133.1	Negligible savings.
133.11	No impact—clarification.
133.13	No impact—clarification.
133.23	Negligible savings.
133.25	No impact—clarification (see 133.51).
133.27	No impact—clarification (see 133.25).
133.31	No impact—clarification.
133.33	No impact—clarification.
133.35	Negligible savings.
133.37	No impact—optional standard—see 133.1 (Also see Appendix A in this evaluation).
133.39	No impact.
133.45	Negligible savings.
133.47	No impact—clarification (see 133.45).
FAR Part 135:	
135.1	Negligible savings.
135.23	No impact—clarification.
135.39	Negligible savings.
135.117	Negligible savings.
135.167	Negligible costs (Also see Appendix A in this evaluation).
135.181	Negligible savings.
135.223	Negligible savings.
135.227	No impact—clarification.

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Benefits and Costs (Savings)

In addition to editorial changes to and clarification of the present regulations, benefits are likely to accrue from other changes in this notice. Five changes (Part 43, Appendix A; §§ 91.167, 133.21, 133.41, and 133.51) will provide operational and maintenance cost savings to Parts 91, 133, and/or 135 operators. Three changes will cause incurring of new costs. One of these, § 135.429, has an initial one-time cost but will provide a net annual cost decrease through relieved inspection work requirements. The other two, §§ 135.159 and 135.173, increase passenger safety. The costs of these will impact Part 135 operators currently provided relief from the present regulations by using Exemption 2695B.

For a complete discussion of the above, see the copy of the economic evaluation in the Docket, or request a copy from the individual listed under "**FOR FURTHER INFORMATION CONTACT.**"

International Trade Impact Analysis

With the exception of three negligible cost changes that affect both airplanes and rotorcraft, this rulemaking action implements changes to the regulations governing only the operation and maintenance of rotorcraft in the United States. It should not impact U.S. services in foreign countries nor have a significant impact on foreign services in the United States. In regard to foreign services, for one example, persons authorized to conduct operations in the United States as a foreign air carrier are issued operations specifications in accordance with the requirements of Part 129 of the Federal Aviation Regulations. Therefore, the FAA cannot discern what impact, if any, this regulation would have on international trade.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure, among other things, that small entities are not unduly affected by Government regulations.

The RFA requires agencies to prepare regulatory flexibility analyses of rules that may have a "significant economic impact on a substantial number of small entities." Thus, the first step in conducting a regulatory flexibility analysis is to determine whether any rule change has a significant economic impact on a substantial number of small entities. The number of businesses and all other estimates used in the following determination have been derived from information and data obtained through industry research on representative rotorcraft operators.

Three changes—§ 135.159, Equipment requirements; § 135.173, Airborne thunderstorm detection equipment; and § 135.429, Required inspection personnel—impose an additional cost on some Part 135 operators. The cost imposed by the three changes is due to the planned expiration of FAA Exemption 2695F and the impact of its removal on those operators now holding the exemption. By examining the exemption holding status of the rotorcraft operators now eligible for relief from the particular rule requirement, two tests can be used to determine whether or not a substantial number of them are significantly impacted.

The RFA requirements are triggered if 34 percent of the operators using the exemption to meet the requirements of § 135.159 (96 operators out of an estimated 286 who conduct night operations) incur an annualized cost increase greater than $3,300. As further explained below, the analysis indicates that these conditions are not met for any of these changes.

Section 135.173 Airborne thunderstorm detection equipment requirements.

Although the rule change will be relieving because the requirement for thunderstorm detection equipment for VFR operations has been modified to allow helicopter flight without the equipment under certain conditions, one group of small rotorcraft operators will be adversely affected. These are the operators who use Exemption No. 2695F, which permits the operation of rotorcraft of ten passenger seats or more under VFR (day or night) without thunderstorm detection equipment.

An estimated 41 small operators own or operate rotorcraft with 10 or more passenger seats. An estimated 9 of these 41 use the exemption and are directly affected, but only 6 will incur an annualized economic impact greater than $3,300 when the exemption is removed.[2] Because these six comprise only 15 percent of the affected population, a regulatory flexibility analysis of the exemption from the requirements of § 135.173 is not required.

Section 135.429 Required inspection personnel.

Currently, a limited number of small operators of rotorcraft with passenger seating configurations of 10 seats or more use the exemption, which permits such operators to utilize the maintenance requirements of § 135.411(a)(1) for 9 passenger seats or less instead of § 135.411(a)(2) for their rotorcraft. When the exemption is removed, these operators may incur costs to install a more extensive system of maintenance for 10 plus passenger rotorcraft, but the change to § 135.429 will also retain most of the annual benefits that these operators achieved under the exemption to § 135.411(a)(2).

An estimated 41 small operators own or operate rotorcraft with 10 passenger seats or more. Six of these use the exemption and will be directly affected when the exemption is removed. Even if all six incurred an annualized economic impact greater than $3,300, these six would comprise only 15 percent of the affected population. Therefore, a regulatory flexibility analysis for removal of the exemption from the requirements of § 135.411(a)(2) is not required.

Section 135.159 Equipment requirements: Carrying passengers under VFR at night or under VFR over-the-top conditions.

This rule requires that, for § 135.159, FAA Exemption No. 2695B be rescinded. The exemption permits the operation of rotorcraft with a maximum certificated takeoff weight of 6,000 pounds or less at night under VFR without the following instruments:

(a) Slip skid indicator;

(b) Gyroscopic bank and pitch (attitude) indicator; and

(c) Gyroscopic direction (heading) indicator.

An estimated 254 small operators conduct night operations and have one or more of the subject size aircraft in their fleet. Of these 254 operators, an estimated 104 would be directly affected by removal of the exemption. However, further industry research indicates that of the 120 operators who use the exemption, only 59 will experience an annualized cost greater than $3,300 when the exemption is removed. Because these 59 operators comprise only 23 percent of the 254 operators who are subject to the proposed regulation (they fly at night), a regulatory flexibility analysis is not required for removal of Exemption No. 2695F from the requirements of § 135.159.

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[2] The analysis was measured with information obtained from industry research made for a stricter rule proposal removing the exemption for this FAR, and the estimate is therefore conservative; that is, the magnitude of impact for each operator is expected to be less.

In addition to the above economic impacts, the final rule is expected to have beneficial effects on many small businesses. These also are discussed in detail in the Regulatory Flexibility Analysis contained in Appendix B of the Regulatory Evaluation which has been placed in the docket. A summary of these beneficial effects follows.

Section 133.21 Personnel.

The objective of these rules is to eliminate external-load accidents due to inadequate pilot competence in performing particular operations. Two methods of ensuring such pilot competence (which can be combined) are to require experience, such as through a "trainee" pilot working a certain amount of time with a "qualified" pilot, and through pilot testing by a qualified examiner. The proposal would permit pilot testing to be carried out by FAA employees, designated examiners, or individuals within the particular company performing the external-load operation. Present regulations provide for such testing only by the Chief Pilot.

An estimated 179 external-load operators are potentially affected by this rule. Almost all may be assumed to be small. Benefits may be considered roughly proportional to fleet size, although variations may be expected due to operating territory and other factors. Therefore, to the extent that small operators have smaller fleets than large ones, the $481,000 projected annual cost savings may be expected to average no more than $2,687 per affected operator.

Industry research indicates that over 40 percent of Part 133 certificate holders also hold Part 135 certificates. The total fleet size distribution of Part 133 operators is unknown. Regardless of whether or not it resembles the distribution of the Part 135 fleet. The relatively high maximum average impact suggests that the threshold of economic impact significance could very well be exceeded by one-third of the potentially affected small operators.

Section 133.41 Flight characteristics requirements.

The objective of these rules is to reduce accidents resulting from the use of particular combinations of rotorcraft models with certain external loads and external-load attaching devices. Many such combinations of rotorcraft models, external loads, and external-load attaching devices pose a significant risk of accident even when under the control of a competent pilot. The FAA concludes that confidence in the external-load operation can only be maintained when each possible rotorcraft-load combination is successfully demonstrated at least once.

An estimated 164 external-load rotorcraft operators are potentially affected by this rule. Almost all may be considered small. Benefits may be considered roughly proportional to fleet size, although variations may be expected due to fleet diversity and other factors. Therefore, to the extent that small operators have smaller fleets than large ones, the $340,000 projected annual cost savings and $2,000 annual profit increase for all affected carriers combined may be expected to be no greater than $2,085 per potentially affected small operator, on average.

As stated previously, industry research indicates that somewhat over 40 percent of Part 133 certificate holders also hold Part 135 certificates. The size of the average impact, however, suggests that the threshold of economic impact significance could well be exceeded by one-third of the potentially affected small operators. Section 133.41 is closer to the borderline in this regard than § 133.21.

Cumulative Economic Impact

The changes to Part 43, Appendix A, and §§ 91.23, 133.21, 133.41, 133.51, 135.169, 135.173, and 135.429 refer to different, but partially overlapping, categories of operators. The following eight changes are considered to have overlapping impacts:

(1) Part 43, Appendix A—Part 135 operators serving remote areas.

(2) Section 91.23—Part 91 operators (not holding Part 135 certificates) flying to some extent under IFR.

(3) Section 133.21—Part 133 operators in general.

(4) Section 133.41—Part 133 operators in general.

(5) Section 133.51—Part 133 operators in general.

(6) Section 135.159—Part 135 operators flying to some extent VFR at night.

(7) Section 135.173—Part 135 operators using rotorcraft with 10 seats or more.

(8) Section 135.429—Part 135 operators using rotorcraft with 10 seats or more.

Although the first and second categories are, by definition, separate from each other, there exists no operator survey data that would allow the determination or reliable estimation of the actual extent to which each of the other categories overlaps. It is possible to estimate, however, whether or not it is likely that the number of operators experiencing a significant cumulative net economic impact (beneficial or detrimental) from all eight of these rules would constitute one-third or more of the total of individual potentially affected operators, given the (separate) distributions of fleet size for Part 135 and non-Part 135 operators. The determination can be made by assuming operator impact is proportional to operator fleet size.

The total of individual operators potentially affected by any of the rules may be estimated as follows:

Part 135 operators, including all in proposal categories (1), (6), (7), and (8), and 42 percent of those in categories (3), (4), and (5). Note.—It is estimated that 42.4 percent of Part 133 operators also hold Part 135 certificates	358
Non-Part 135 certificate holders, including 57.6 percent of those in proposal categories (3), (4), and (5)	393
Total	751

This estimate maximizes the extent of "overlapping" among relevant categories and increases the chance of one-third or more of the total individual operators' experiencing a significant cumulative net impact. This is the case because some of the overlapping considered above is not necessarily the most likely representation of actual practice. For example, Part 91 operators that fly under IFR may well not also engage in Part 133 operations, which are generally carried out under VFR. Even with maximum overlapping of potentially affected small operator categories and given the relatively large number of non-Part 135, and even Part 135, operators that have single-craft or very small fleets, an estimated 217 out of 751 would be expected to bear a significant cumulative impact from the eight rules. The remaining 534 would not be significantly impacted. The number of small operators expected to be impacted would be less than one-third of the total of such operators unless at least 120 of those operators were eliminated by being designated "large" operators. Therefore, it is reasonable to expect that the cumulative net economic impact (beneficial or detrimental) of these rules would not reach significant levels for one-third or more potentially affected small operators.

The determination is sensitive to assumptions made concerning: (1) The number of proposal category (2) operators eliminated as "large" entities, and (3) the fleet size of "small operators."

Conclusion

A final regulatory flexibility analysis is not required for the revisions being made to §§ 135.159, 135.173, and 135.429. For each of the revisions, the annualized cost is not greater than $3,300 for more than one-third of the operators who would be affected by the revised regulation. In view of the above, the regulatory changes herein will not have a significant economic impact on a substantial number of small entities.

Reporting and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in this amendment have previously been approved by the Office of Management and Budget and have been assigned Control No. 2120–0044.

Conclusion

This rule upgrades rotorcraft certification and operational requirements and allows operators to utilize rotorcraft more fully. Therefore, the FAA has determined that this rule is not major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Based on the Regulatory Flexibility determinations discussed in this document, I certify that this rule will not have a significant economic impact on a substantial number of small entities. The regulatory evaluation of this rule is contained in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

List of Subjects

14 CFR Part 1

Air safety, Safety, Aviation safety, Air transportation, Air carriers, Aircraft, Rotorcraft, Helicopters.

14 CFR Part 43

Air carriers, Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 45

Air safety, Safety, Aviation safety, Air transportation, Transportation, Helicopters, Rotorcraft.

14 CFR Part 61

Airmen, Aircraft pilots, Pilots, Transportation, Air safety, Safety, Aviation safety, Air transportation, Aircraft, Helicopters, Rotorcraft.

14 CFR Part 91

Air carriers, Aviation safety, Safety, Aircraft, Aircraft pilots, Pilots, Air transportation, Cargo.

14 CFR Part 133

Aircraft, Airworthiness, Pilots.

14 CFR Part 135

Air carriers, Aviation safety, Safety, Air transportation, Air taxi, Airworthiness, Cargo, Pilots, Airmen, Aircraft, Transportation, Helicopters.

Adoption of the Amendment

In consideration of the foregoing, Parts 1, 43, 45, 61, 91, 133, and 135 of the Federal Aviation Regulations (14 CFR Parts 1, 43, 45, 61, 91, 133, and 135) are amended as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

1. The authority citation for Part 1 is revised to read as set forth below, and the authority citations following each of the sections of Part 1 are removed:

Authority: 49 U.S.C. 1347, 1348, 1354(a), 1357(d)(2), 1372, 1421 through 1430, 1432, 1442, 1443, 1472, 1510, 1522, 1652(e), 1655(c), 1657(f), 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. By amending § 1.1 by revising the introductory paragraph of the definition of "Rotorcraft-load combination" and by adding a new paragraph (4) to read as follows:

§ 1.1 General definitions.

* * * * *

"Rotorcraft-load combination" means the combination of a rotorcraft and an external-load, including the external-load attaching means. Rotorcraft-load combinations are designated as Class A, Class B, Class C, and Class D, as follows:

* * * * *

(4) "Class D rotorcraft-load combination" means one in which the external-load is other than a Class A, B, or C and has been specifically approved by the Administrator for that operation.

* * * * *

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

3. The authority citation for Part 43 is revised to read as set forth below, and the authority citations following each of the sections of Part 43 are removed:

Authority: 49 U.S.C. 1354, 1421 through 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

4. By amending § 43.3 by redesignating paragraph (h) as paragraph (i) and by adding a new paragraph (h) to read as follows:

§ 43.3 Persons authorized to perform maintenance, preventive maintenance, rebuilding, and alterations.

* * * * *

(h) Notwithstanding the provisions of paragraph (g) of this section, the Administrator may approve a certificate holder under Part 135 of this chapter, operating rotorcraft in a remote area, to allow a pilot to perform specific preventive maintenance items provided—

(1) The items of preventive maintenance are a result of a known or suspected mechanical difficulty or malfunction that occurred en route to or in a remote area;

(2) The pilot has satisfactorily completed an approved training program and is authorized in writing by the certificate holder for each item of preventive maintenance that the pilot is authorized to perform;

(3) There is no certificated mechanic available to perform preventive maintenance;

(4) The certificate holder has procedures to evaluate the accomplishment of a preventive maintenance item that requires a decision concerning the airworthiness of the rotorcraft; and

(5) The items of preventive maintenance authorized by this section are those listed in paragraph (c) of Appendix A of this part.

* * * * *

5. By amending § 43.15 by revising the introductory text of paragraph (c)(2) and by adding a new paragraph (c)(3) to read as follows:

§ 43.15 Additional performance rules for inspections.

* * * * *

(c) * * *

(2) Each person approving a reciprocating-engine-powered aircraft for return to service after an annual or 100-hour inspection shall, before that approval, run the aircraft engine or engines to determine satisfactory performance in accordance with the manufacturer's recommendations of—

* * * * *

(3) Each person approving a turbine-engine-powered aircraft for return to service after an annual, 100-hour, or progressive inspection shall, before that approval, run the aircraft engine or engines to determine satisfactory performance in accordance with the manufacturer's recommendations.

* * * * *

6. By amending Part 43, Appendix A, by revising paragraph (c)(23) and by adding new paragraph (c)(30) to read as follows:

Appendix A—Major Alterations, Major Repairs, and Preventive Maintenance

* * * * *

(c) * * *

(23) Cleaning or replacing fuel and oil strainers or filter elements.

* * * * *

(30) Removing, checking, and replacing magnetic chip detectors.

PART 45—IDENTIFICATION AND REGISTRATION MARKING

7. The authority citation for Part 45 is revised to read as set forth below, and the authority citations following each of the sections of Part 45 are removed:

Authority: 49 U.S.C. 1348, 1354, 1401, 1402, 1421, 1423, 1522, 1655(c); (Revised Pub. L. 97–449, January 12, 1983).

8. By revising § 45.14 to read as follows:

§ 45.14 Identification of critical components.

Each person who produces a part for which a replacement time, inspection interval, or related procedure is specified in the Airworthiness Limitations section of a manufacturer's maintenance manual or Instructions for Continued Airworthiness shall permanently and legibly mark that component with a part number (or equivalent) and a serial number (or equivalent).

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

9. The authority citation for Part 61 is revised to read as set forth below, and the authority citations following each of the sections of Part 61 are removed:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

§ 61.3 [Amended]

10. By revising § 61.3 by amending paragraph (f)(2) by removing the phrase "airline transport pilot certificate (airplane)" and replacing it with the phrase "appropriate airline transport pilot certificate"; by amending the flush paragraph after (f)(2) by removing the phrase "Part 121" and replacing it with the phrase "Parts 121 and 135"; and by amending paragraph (g) by removing the word "airplane" wherever it appears and replacing it with the word "aircraft".

§ 61.21 [Amended]

11. By amending § 61.21 by removing the word "airplane" and inserting the word "aircraft" in its place each time it appears in the section.

12. By amending § 61.55 by revising the section title, the introductory text of paragraphs (a) and (b), and paragraphs (b)(1), (b)(2) (i) and (ii), and (d)(1) through (d)(3) to read as follows:

§ 61.55 Second-in-command qualifications.

(a) Except as provided in paragraph (d) of this section, no person may serve as second in command of an aircraft type certificated for more than one required pilot flight crewmember unless that person holds—

* * * * *

(b) Except as provided in paragraph (d) of this section, no person may serve as second in command of an aircraft type certificated for more than one required pilot flight crewmember unless, since the beginning of the 12th calendar month before the month in which the pilot serves, the pilot has, with respect to that type of aircraft—

(1) Become familiar with all information concerning the aircraft's powerplant, major components and systems, major appliances, performance and limitations, standard and emergency operating procedures, and the contents of the approved aircraft flight manual or approved flight manual material, placards, and markings.

(2) * * *

(i) Three takeoffs and three landings to a full stop in the aircraft as the sole manipulator of the flight controls; and

(ii) Engine-out procedures and maneuvering with an engine out while executing the duties of a pilot in command. For airplanes, this requirement may be satisfied in a simulator acceptable to the Administrator.

* * * * *

(d) * * *

(1) Meets the pilot in command proficiency check requirements of Part 121, 125, 127, or 135 of this chapter;

(2) Is designated as the second in command of an aircraft operated under the provisions of Part 121, 125, 127, or 135 of this chapter; or

(3) Is designated as the second in command of an aircraft for the purpose of receiving flight training required by this section and no passengers or cargo are carried on that aircraft.

* * * * *

13. By amending § 61.57 by adding the word "calendar" before the word "months" in the flush paragraph following paragraph (a)(2) and in paragraphs (e)(1) and (e)(2) and by revising the introductory text of paragraph (a) to read as follows:

§ 61.57 Recent flight experience: Pilot in command.

(a) *Flight review.* No person may act as pilot in command of an aircraft unless, within the preceding 24 calendar months, that person has—

* * * * *

§ 61.67 [Amended]

14. By amending § 61.67 by removing the word "airplane" and inserting the word "aircraft" in its place each time it appears in the section.

15. By amending § 61.87 by redesignating paragraphs (c)(2) (v), (vi), and (vii) as paragraphs (c)(2) (vi), (vii), and (viii), respectively; by revising the heading of (c)(2); by revising (c)(2)(ii); by adding a new paragraph (c)(2)(v); and by revising redesignated paragraph (c)(2)(viii) and paragraph (c)(3) to read as follows:

§ 61.87 Requirements for solo flight.

* * * * *

(c) * * *

(2) *In rotorcraft other than single-place gyroplanes.*

* * * * *

(ii) Ground maneuvering and runups;

* * * * *

(v) Rapid decelerations (helicopters only);

* * * * *

(viii) Simulated emergency procedures, including autorotational descents with a power recovery or running landing in gyroplanes, a power recovery to a hover in single-engine helicopters, or approaches to a hover or landing with one engine inoperative in multiengine helicopters.

* * * * *

(3) *In single-place gyroplanes.*

(i) Flight preparation procedures, including preflight inspection and powerplant operation;

(ii) Ground maneuvering and runups;

(iii) Straight and level flight, turns, climbs, and descents;

(iv) Navigation by ground references, airport traffic patterns, and collision avoidance procedures;

(v) Normal takeoffs and landings;

(vi) Simulated emergency procedures, including autorotational descents with a power recovery or a running landing; and

(vii) At least three successful flights in a gyroplane under the observation of a qualified instructor. Items in paragraphs (c)(3) (iii) and (iv) of this section may be accomplished in a dual-control helicopter or gyroplane. Instruction must be given by a flight instructor who is authorized to give instruction in helicopters or gyroplanes, as appropriate.

* * * * *

16. By amending § 61.105 by revising paragraph (a) to read as follows: by removing paragraph (b); and by redesignating paragraphs (c), (d), and (e) as (b), (c), and (d), respectively.

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§ 61.105 Aeronautical knowledge.

* * * * *

(a) *Airplanes and rotorcraft.* (1) The accident reporting requirements of the National Transportation Safety Board and the Federal Aviation Regulations applicable to private pilot privileges, limitations, and flight operations for airplanes or rotorcraft, as appropriate, the use of the "Airman's Information Manual," and FAA advisory circulars;

(2) VFR navigation using pilotage, dead reckoning, and radio aids;

(3) The recognition of critical weather situations from the ground and in flight, the procurement and use of aeronautical weather reports and forecasts;

(4) The safe and efficient operation of airplanes or rotorcraft, as appropriate, including high-density airport operations, collision avoidance precautions, and radio communication procedures; and

(5) Basic aerodynamics and the principles of flight which apply to airplanes or rotorcraft, as appropriate.

* * * * *

17. By amending § 61.107 by revising paragraphs (b)(4), (5) and (6) and by adding new paragraph (b)(7) to read as follows:

§ 61.107 Flight proficiency.

* * * * *

(b) * * *

(4) Cross-country flying, using pilotage, dead reckoning, and radio aids, including one 1-hour flight;

(5) Operations in confined areas and on pinnacles, rapid decelerations, landings on slopes, high-altitude takeoffs, and run-on landings;

(6) Night flying, including takeoffs, landings, and VFR navigation; and

(7) Simulated emergency procedures, including aircraft and equipment malfunctions, approaches to a hover or landing with an engine inoperative in a multiengine helicopter, or autorotational descents with a power recovery to a hover in single-engine helicopters.

* * * * *

18. By revising § 61.113 to read as follows:

§ 61.113 Rotorcraft rating: Aeronautical experience.

An applicant for a private pilot certificate with a rotorcraft category rating must have at least the following aeronautical experience:

(a) *For a helicopter class rating,* 40 hours of flight instruction and solo flight time in aircraft, including at least—

(1) 20 hours of flight instruction from an authorized flight instructor, 15 hours of which must be in a helicopter, including—

(i) 3 hours of cross-country flying in helicopters;

(ii) 3 hours of night flying in helicopters, including 10 takeoffs and landings, each of which must be separated by an en route phase of flight;

(iii) 3 hours in helicopters in preparation for the private pilot flight test within 60 days before that test; and

(iv) A flight in a helicopter with a landing at a point other than an airport; and

(2) 20 hours of solo flight time, 15 hours of which must be in a helicopter, including at least—

(i) 3 hours of cross-country flying in helicopters, including one flight with a landing at three or more points, each of which must be more than 25 nautical miles from each of the other two points; and

(ii) Three takeoffs and landings in helicopters at an airport with an operating control tower, each of which must be separated by an en route phase of flight.

(b) *For a gyroplane class rating,* 40 hours of flight instruction and solo flight time in aircraft, including at least—

(1) 20 hours of flight instruction from an authorized flight instructor, 15 hours of which must be in a gyroplane, including—

(i) 3 hours of cross-country flying in gyroplanes;

(ii) 3 hours of night flying in gyroplanes, including 10 takeoffs and landings; and

(iii) 3 hours in gyroplanes in preparation for the private pilot flight test within 60 days before that test; and

(2) 20 hours of solo flight time, 10 hours of which must be in a gyroplane, including—

(i) 3 hours of cross-country flying in gyroplanes, including one flight with a landing at three or more points, each of which must be more than 25 nautical miles from each of the other two points; and

(ii) Three takeoffs and landings in gyroplanes at an airport with an operating control tower.

(c) An applicant who does not meet the night flying requirement in paragraphs (a)(1)(ii) or (b)(1)(ii) of this section is issued a private pilot certificate bearing the limitation "night flying prohibited." This limitation may be removed if the holder of the certificate demonstrates compliance with the requirements of paragraphs (a)(1)(ii) or (b)(1)(ii) of this section, as appropriate.

19. By amending § 61.125(b) by removing the word "and" in paragraph (b)(3); by removing the period at the end of paragraph (b)(4) and inserting "; and" in its place; and by adding a new paragraph (b)(5) to read as follows:

§ 61.125 Aeronautical knowledge.

* * * * *

(b) * * *

(5) Basic aerodynamics and principles of flight which apply to rotorcraft and the significance and use of performance charts.

* * * * *

20. By amending § 61.127 by removing the word "and" at the end of paragraph (b)(7); by revising paragraphs (b)(5) and (8); and by adding a new paragraph (b)(9) to read as follows:

§ 61.127 Flight proficiency.

* * * * *

(b) * * *

(5) Recognition of and recovery from imminent flight at critical/rapid descent with power (settling with power);

* * * * *

(8) Operations in confined areas and on pinnacles, rapid decelerations, landing on slopes, high-altitude takeoffs, and run-on landings; and

(9) Simulated emergency procedures, including failure of an engine or other component or system, and approaches to a hover or landing with one engine inoperative in multiengine helicopters, or autorotational descents with a power recovery to a hover in single-engine helicopters.

* * * * *

21. By revising § 61.131 to read as follows:

§ 61.131 Rotorcraft ratings: Aeronautical experience.

An applicant for a commercial pilot certificate with a rotorcraft category rating must have at least the following aeronautical experience as a pilot:

(a) *For a helicopter class rating,* 150 hours of flight time, including at least 100 hours in powered aircraft, 50 hours of which must be in a helicopter, including at least—

(1) 40 hours of flight instruction from an authorized flight instructor, 15 hours of which must be in a helicopter, including—

(i) 3 hours of cross-country flying in helicopters;

(ii) 3 hours of night flying in helicopters, including 10 takeoffs and landings, each of which must be separated by an en route phase of flight;

(iii) 3 hours in helicopters preparing for the commercial pilot flight test within 60 days before that test; and

(iv) Takeoffs and landings at three points other than airports; and

(2) 100 hours of pilot-in-command flight time, 35 hours of which must be in a helicopter, including at least—

(i) 10 hours of cross-country flying in helicopters, including one flight with a landing at three or more points, each of which must be more than 50 nautical miles from each of the other two points; and

(ii) Three takeoffs and landings in helicopters, each of which must be separated by an en route phase of flight, at an airport with an operating control tower.

(b) *For a gyroplane class rating,* 150 hours of flight time in aircraft, including at least 100 hours in powered aircraft, 25 hours of which must be in a gyroplane, including at least—

(1) 40 hours of flight instruction from an authorized flight instructor, 10 hours of which must be in a gyroplane, including at least—

(i) 3 hours of cross-country flying in gyroplanes;

(ii) 3 hours of night flying in gyroplanes, including 10 takeoffs and landings; and

(iii) 3 hours in gyroplanes preparing for the commercial pilot flight test within 60 days before that test; and

(2) 100 hours of pilot-in-command flight time, 15 hours of which must be in a gyroplane, including at least—

(i) 10 hours of cross-country flying in gyroplanes, including one flight with a landing at three or more points, each of which is more than 50 nautical miles from each of the other two points; and

(ii) Three takeoffs and landings in gyroplanes at an airport with an operating control tower.

22. By revising § 61.159 to read as follows:

§ 61.159 Rotorcraft rating: Aeronautical knowledge.

An applicant for an airline transport pilot certificate with a rotorcraft category and a helicopter class rating must pass a written test on—

(a) So much of this chapter as relates to air carrier rotorcraft operations;

(b) Rotorcraft design, components, systems, and performance limitations;

(c) Basic principles of loading and weight distribution and their effect on rotorcraft flight characteristics;

(d) Air traffic control systems and procedures relating to rotorcraft;

(e) Procedures for operating rotorcraft in potentially hazardous meteorological conditions;

(f) Flight theory as applicable to rotorcraft; and

(g) The items listed under paragraphs (b) through (m) of § 61.153.

23. By revising § 61.161 to read as follows;

§ 61.161 Rotorcraft rating: Aeronautical experience.

(a) An applicant for an airline transport pilot certificate with a rotorcraft category and helicopter class rating must hold a commercial pilot certificate, or a foreign airline transport pilot or commercial pilot certificate with a rotorcraft category and helicopter class rating issued by a member of ICAO, or be a pilot in an armed force of the United States whose military experience qualifies that pilot for the issuance of a commercial pilot certificate under § 61.73.

(b) An applicant must have had at least 1,200 hours of flight time as a pilot, including at least—

(1) 500 hours of cross-country flight time;

(2) 100 hours of night flight time, of which at least 15 hours are in helicopters;

(3) 200 hours in helicopters, including at least 75 hours as pilot in command, or as second in command performing the duties and functions of a pilot in command under the supervision of a pilot in command, or any combination thereof; and

(4) 75 hours of instrument time under actual or simulated instrument conditions of which at least 50 hours were completed in flight with at least 25 hours in helicopters as pilot in command, or as second in command performing the duties of a pilot in command under the supervision of a pilot in command, or any combination thereof.

24. By revising § 61.163 to read as follows:

§ 61.163 Rotorcraft rating: Aeronautical skill.

(a) An applicant for an airline transport pilot certificate with a rotorcraft category and helicopter class rating, or additional aircraft rating, must pass a practical test on those maneuvers set forth in Appendix B of this part in a helicopter. The FAA inspector or designated examiner may modify or waive any maneuver where necessary for the reasonable and safe operation of the rotorcraft being used and may combine any maneuvers and permit their performance in any convenient sequence to determine the applicant's competency.

(b) Whenever an applicant for an airline transport pilot certificate with a rotorcraft category and helicopter class rating does not already have an instrument rating, the applicant shall, as part of the practical test, comply with § 61.65(g).

25. By amending § 61.165 by removing paragraph (b); by redesignating paragraph (c) as (b); and by revising the introductory text of both paragraphs (a) and redesignated (b) to read as follows:

§ 61.165 Additional category ratings.

(a) *Rotorcraft category with a helicopter class rating.* The holder of an airline transport pilot certificate (airplane category) who applies for a rotorcraft category with a helicopter class rating must meet the applicable requirements of §§ 61.159, 61.161, and 61.163 and—

* * * * *

(b) *Airplane rating.* The holder of an airline transport pilot certificate (rotorcraft category) who applies for an airplane category must comply with §§ 61.153, 61.155 (except § 61.155(b)(1)), and 61.157 and—

* * * * *

26. By amending Part 61 by revising the title of Appendix A to read as follows:

Appendix A—Practical Test Requirements for Airplane Airline Transport Pilot Certificates and Associated Class and Type Ratings

* * * * *

27. By amending Part 61 by adding a new Appendix B to read as follows:

Appendix B—Practical Test Requirements for Rotorcraft Airline Transport Pilot Certificates with a Helicopter Class Rating and Associated Type Ratings

Throughout the maneuvers prescribed in this appendix, good judgment commensurate with a high level of safety must be demonstrated. In determining whether such judgment has been shown, the FAA inspector or designated pilot examiner who conducts the check considers adherence to approved procedures, actions based on analysis of situations for which there is no prescribed procedure or recommended practice, and qualities of prudence and care in selecting a course of action. The successful outcome of a procedure or maneuver will never be in doubt.

Maneuvers/Procedures

The maneuvers and procedures in this appendix must be performed in a manner that satisfactorily demonstrates knowledge and skill with respect to—

(1) The helicopter, its systems, and components;

(2) Proper control of airspeed, direction, altitude, and attitude in accordance with procedures and limitations contained in the approved Rotorcraft Flight Manual, checklists, or other approved material appropriate to the rotorcraft type; and

(3) Compliance with approved en route, instrument approach, missed approach, ATC, and other applicable procedures.

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I. Preflight

(a) *Equipment examination (oral).* The equipment examination must be repeated if the flight maneuvers portion is not satisfactorily completed within 60 days. The equipment examination must cover—

(1) Subjects requiring a practical knowledge of the helicopter, its powerplants, systems, components, and operational and performance factors;

(2) Normal, abnormal, and emergency procedures and related operations and limitations; and

(3) The appropriate provisions of the approved helicopter Flight Manual or manual material.

(b) *Preflight inspection.* The pilot must—

(1) Conduct an actual visual inspection of the exterior and interior of the helicopter, locating each item and explaining briefly the purpose of inspecting it; and

(2) Demonstrate the use of the prestart checklist, appropriate control system checks, starting procedures, radio and electronic equipment checks, and the selection of proper navigation and communications radio facilities and frequencies before flight.

(c) *Taxiing.* The maneuver includes ground taxiing, hover taxiing (including performance checks),.and docking procedures, as appropriate, in compliance with instructions issued by ATC, the FAA inspector, or the designated pilot examiner.

(d) *Powerplant checks.* As appropriate to the helicopter type in accordance with the Rotorcraft Flight Manual procedures.

II. Takeoffs

(a) *Normal.* One normal takeoff from a stabilized hover which begins when the helicopter is taxied into position for takeoff.

(b) *Instrument.* One takeoff with instrument conditions simulated at or before reaching 100 feet above airport elevation.

(c) *Crosswind.* One crosswind takeoff from a stabilized hover, if practical under the existing meteorological, airport, and traffic conditions.

(d) *Powerplant failure.* (1) For single-engine rotorcraft, one normal takeoff with simulated powerplant failure.

(2) For multiengine rotorcraft, one normal takeoff with simulated failure of one engine—

(i) At an appropriate airspeed that would allow continued climb performance in forward flight; or

(ii) At an appropriate airspeed that is 50 percent of normal cruise speed, if there is no published single-engine climb airspeed for that type of helicopter.

(e) *Rejected.* One normal takeoff that is rejected after simulated engine failure at a reasonable airspeed, determined by giving due consideration to the helicopter's characteristics, length of landing area, surface conditions, wind direction and velocity, and any other pertinent factors that may adversely affect safety.

III. Instrument Procedures

(a) *Area departure and arrival.* During each of these maneuvers, the applicant must—

(1) Adhere to actual or simulated ATC clearances (including assigned bearings or radials); and

(2) Properly use available navigation facilities.

(b) *Holding.* This maneuver includes entering, maintaining, and leaving holding patterns.

(c) *ILS and other instrument approaches.* The instrument approach begins when the helicopter is over the initial approach fix for the approach procedure being used (or turned over to the final controller in case of a surveillance or precision radar approach) and ends when the helicopter terminates at a hover or touches down or where transition to a missed approach is completed. The following approaches must be performed:

(1) At least one normal ILS approach.

(2) For multiengine rotorcraft, at least one manually controlled ILS approach with a simulated failure of one powerplant. The simulated engine failure should occur before initiating the final approach course and continue to a hover to touchdown or through the missed approach procedure.

(3) At least one nonprecision approach procedure that is representative of the nonprecision approach procedure that the applicant is likely to use.

(4) At least one nonprecision approach procedure on a letdown aid other than the approach procedure performed under subparagraph (3) of this paragraph that the applicant is likely to use.

(d) *Circling approaches.* At least one circling approach must be made under the following conditions:

(1) The portion of the circling approach to the authorized minimum circling approach altitude must be made under simulated instrument conditions.

(2) The approach must be made to the authorized minimum circling approach altitude followed by a change in heading and the necessary maneuvering (by visual reference) to maintain a flight path that permits a normal landing on a runway at least 90 degrees from the final approach course of the simulated instrument portion of the approach.

(3) The circling approach must be performed without excessive maneuvering and without exceeding the normal operating limits of the rotorcraft. The angle of bank should not exceed 30 degrees.

(e) *Missed approaches.* Each applicant must perform at least two missed approaches with at least one missed approach from an ILS approach. At the discretion of the FAA inspector or designated examiner, a simulated powerplant failure may be required during any of the missed approaches. The maneuvers may be performed either independently or in conjunction with maneuvers required under section III or V of this appendix. At least one must be performed in flight.

IV. In-flight Maneuvers

(a) *Steep turns.* At least one steep turn in each direction must be performed. Each steep turn must involve a bank angle of 30 degrees with a heading change of at least 180 degrees but not more than 360 degrees.

(b) *Settling with power.* Demonstrate recognition of and recovery from imminent flight at critical/rapid descent with power. For the purpose of this maneuver, settling with power is reached when a perceptive buffet or other indications of imminent settling with power have been induced.

(c) *Powerplant failure.* In addition to the specific requirements for maneuvers with simulated powerplant failures, the FAA inspector or designated examiner may require a simulated powerplant failure at any time during the check.

(d) Recovery from unusual attitudes.

V. Approaches and Landings

(a) *Normal.* One normal approach to a stabilized hover or to the ground must be performed.

(b) *Instrument.* One approach to a hover or to a landing in sequence from an ILS instrument approach.

(c) *Crosswind.* One crosswind approach to a hover or to the ground, if practical under the existing meteorological, airport, or traffic conditions.

(d) *Powerplant failure.* For a multiengine rotorcraft, maneuvering to a landing with simulated powerplant failure of one engine.

(e) *Rejected.* Rejected landing, including a normal missed approach procedure at approximately 50 feet above the runway. This maneuver may be combined with instrument or missed approach procedures, but instrument conditions need not be simulated below 100 feet above the runway or landing area.

(f) *Autorotative landings.* Autorotative landings in a single-engine helicopter. The applicant may be required to accomplish at least one autorotative approach and landing from any phase of flight as specified by the FAA inspector or designated examiner.

VI. Normal and Abnormal Procedures

Each applicant must demonstrate the proper use of as many systems and devices listed below as the FAA inspector or designated examiner finds are necessary to determine that the applicant has a practical knowledge of the use of the systems and devices appropriate to the helicopter type:

(a) Anti-icing or deicing systems.

(b) Autopilot or other stability augmentation devices.

(c) Airborne radar devices.

(d) Hydraulic and electrical systems failures or malfunctions.

(e) Landing gear failures or malfunctions.

(f) Failure of navigation or communications equipment.

(g) Any other system appropriate to the helicopter as outlined in the approved Rotorcraft Flight Manual.

VII. Emergency Procedures

Each applicant must demonstrate the proper emergency procedures for as many of the emergency situations listed below as the FAA inspector or designated examiner finds are necessary to determine that the applicant has adequate knowledge of, and ability to perform, such procedures:

(a) Fire or smoke control in flight.

(b) Ditching.

(c) Evacuation.

(d) Operation of emergency equipment.

(e) Emergency descent.

(f) Any other emergency procedure outline in the approved Rotorcraft Flight Manual.

PART 91—GENERAL OPERATING AND FLIGHT RULES

28. The authority citation for Part 91 is revised to read as set forth below, and the authority citations following each of the sections of Part 91 are removed:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

§ 91.2 [Amended]

29. By amending § 91.2 by substituting the word "aircraft" for "airplane" after the phrase "for the operation of small" and changing the word "find" to "finds" after the phrase "Category II operations, if he".

30. By amending § 91.23 by revising paragraph (a)(3) to read as follows:

§ 91.23 Fuel requirements for flight in IFR conditions.

(a) * * *

(3) Fly after that for 45 minutes at normal cruising speed or, for helicopters, fly after that for 30 minutes at normal cruising speed.

* * * * *

31. By amending § 91.116 by revising the title, revising the first clause in the introductory text of paragraph (f), revising paragraph (f)(1), and adding paragraph (f)(3) to read as follows:

§ 91.116 Takeoff and landing under IFR: General.

* * * * *

(f) *Civil airport takeoff minimums.* Unless otherwise authorized by the Administrator, no person operating an aircraft under Part 121, 125, 127, 129, or 135 of this chapter * * *

(1) For aircraft, other than helicopters, having two engines or less—1 statute mile visibility.

* * * * *

(3) For helicopters—1/2 statute mile visibility.

* * * * *

§ 91.171 [Amended]

32. By amending § 91.171 by inserting the words "or helicopter" after the word "airplane" each time it appears in paragraphs (a), (b)(1), (b)(2)(iv), and (d).

Appendix A—[Amended]

33. By amending Part 91, Appendix A, by removing the word "airplane" and replacing it with the word "aircraft" wherever it appears and by removing the words "General Aviation District Office" in section 1(a) and inserting in its place the words "Flight Standards District Office."

PART 133—ROTORCRAFT EXTERNAL-LOAD OPERATIONS

34. The authority citation for Part 133 is revised to read as set forth below, and the authority citations following each of the sections of Part 133 are removed:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1427; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

35. By amending § 133.1 by revising paragraph (b) and adding paragraphs (c) and (d) to read as follows:

§ 133.1 Applicability.

* * * * *

(b) Operating and certification rules governing the conduct of rotorcraft external-load operations in the United States by any person.

(c) The certification rules of this part do not apply to—

(1) Rotorcraft manufacturers when developing external-load attaching means;

(2) Rotorcraft manufacturers demonstrating compliance of equipment utilized under this part or appropriate portions of Part 27 or 29 of this chapter;

(3) Operations conducted by a person demonstrating compliance for the issuance of a certificate or authorization under this part;

(4) Training flights conducted in preparation for the demonstration of compliance with this part; or

(5) A Federal, State, or local government conducting operations with public aircraft.

(d) For the purpose of this part, a person other than a crewmember or a person who is essential and directly connected with the external-load operation may be carried only in approved Class D rotorcraft-load combinations.

36. By amending § 133.11 by revising paragraph (b) to read as follows:

§ 133.11 Certificate required.

* * * * *

(b) No person holding a Rotorcraft External-Load Operator Certificate may conduct rotorcraft external-load operations subject to this part under a business name that is not on that certificate.

§ 133.13 [Amended]

37. By amending § 133.13 by placing a period after the word "renewed" and by removing the phrase ", except that a certificate issued before June 25, 1977 expires on August 10, 1979."

38. By amending § 133.21 by revising the title; by revising paragraph (b); and by adding new paragraph (c) to read as follows:

§ 133.21 Personnel.

* * * * *

(b) The applicant must designate one pilot, who may be the applicant, as chief pilot for rotorcraft external-load operations. The applicant also may designate qualified pilots as assistant chief pilots to perform the functions of the chief pilot when the chief pilot is not readily available. The chief pilot and assistant chief pilots must be acceptable to the Administrator and each must hold a current Commercial or Airline Transport Pilot Certificate, with a rating appropriate for the rotorcraft prescribed in § 133.19.

(c) The holder of a Rotorcraft External-Load Operator Certificate shall report any change in designation of chief pilot or assistant chief pilot immediately to the FAA certificate-holding office. The new chief pilot must be designated and must comply with § 133.23 within 30 days or the operator may not conduct further operations under the Rotorcraft External-Load Operator Certificate unless otherwise authorized by the FAA certificate-holding office.

39. By amending § 133.23 by adding a new paragraph (b)(5) and by revising the introductory text of paragraph (c) to read as follows: By removing the introductory text of paragraph (c)(6); by removing "; and" in paragraph (c)(6)(i) and inserting a period in its place; and by redesignating amended paragraphs (c)(6) (i) and (ii) as (c) (6) and (7), respectively.

§ 133.23 Knowledge and skill.

* * * * *

(b) * * *

(5) Appropriate rotorcraft-load combination flight manual.

(c) The test of skill requires appropriate maneuvers for each class requested. The appropriate maneuvers for each load class must be demonstrated in the rotorcraft prescribed in § 133.19.

* * * * *

40. By amending § 133.25 by designating the current undesignated text as paragraph (a); by removing from redesignated paragraph (a) the phrase "a rotorcraft or" after the words "amendment of the applicant's certificate, to add or delete"; by amending paragraph (a) by removing the phrase "§§ 133.19, 133.21, and 133.23," and inserting the phrase "§§ 133.19 and 133.49," in its place; and by adding a new paragraph (b) to read as follows:

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§ 133.25 Amendment of certificate.

* * * * *

(b) The holder of a rotorcraft external-load certificate may apply for an amendment to add or delete a rotorcraft authorization by submitting to the certificate-holding FAA district office a new list of rotorcraft, by registration number, with the classes of rotorcraft-load combinations for which authorization is requested.

41. By amending § 133.27 by revising paragraph (a) to read as follows:

§ 133.27 Availability, transfer, and surrender of certificate.

(a) Each holder of a rotorcraft external-load operator certificate shall keep that certificate and a list of authorized rotorcraft at the home base of operations and shall make it available for inspection by the Administrator upon request.

* * * * *

42. By revising § 133.31 to read as follows:

§ 133.31 Emergency operations.

(a) In an emergency involving the safety of persons or property, the certificate holder may deviate from the rules of this part to the extent required to meet that emergency.

(b) Each person who, under the authority of this section, deviates from a rule of this part shall notify the Administrator within 10 days after the deviation. Upon the request of the Administrator, that person shall provide the certificate-holding FAA district office a complete report of the aircraft operation involved, including a description of the deviation and reasons for it.

§ 133.33 [Redesignated as § 133.39]

43. By redesignating § 133.33 as § 133.39.

44. By adding a new § 133.33 to read as follows:

§ 133.33 Operating rules.

(a) No person may conduct a rotorcraft external-load operation without, or contrary to, the Rotorcraft-Load Combination Flight Manual prescribed in § 133.47.

(b) No person may conduct a rotorcraft external-load operation unless—

(1) The rotorcraft complies with § 133.19; and

(2) The rotorcraft and rotorcraft-load combination is authorized under the Rotorcraft External-Load Operator Certificate.

(c) Before a person may operate a rotorcraft with an external-load configuration that differs substantially from any that person has previously carried with that type of rotorcraft (whether or not the rotorcraft-load combination is of the same class), that person must conduct, in a manner that will not endanger persons or property on the surface, such of the following flight-operational checks as the Administrator determines are appropriate to the rotorcraft-load combination:

(1) A determination that the weight of the rotorcraft-load combination and the location of its center of gravity are within approved limits, that the external load is securely fastened, and that the external load does not interfere with devices provided for its emergency release.

(2) Make an initial liftoff and verify that controllability is satisfactory.

(3) While hovering, verify that directional control is adequate.

(4) Accelerate into forward flight to verify that no attitude (whether of the rotorcraft or of the external load) is encountered in which the rotorcraft is uncontrollable or which is otherwise hazardous.

(5) In forward flight, check for hazardous oscillations of the external load, but if the external load is not visible to the pilot, other crewmembers or ground personnel may make this check and signal the pilot.

(6) Increase the forward airspeed and determine an operational airspeed at which no hazardous oscillation or hazardous aerodynamic turbulence is encountered.

(d) Notwithstanding the provisions of Part 91 of this chapter, the holder of a Rotorcraft External-Load Operator Certificate may conduct (in rotorcraft type certificated under and meeting the requirements of Part 27 or 29 of this chapter, including the external-load attaching means) rotorcraft external-load operations over congested areas if those operations are conducted without hazard to persons or property on the surface and comply with the following:

(1) The operator must develop a plan for each complete operation, coordinate this plan with the FAA district office having jurisdiction over the area in which the operation will be conducted, and obtain approval for the operation from that district office. The plan must include an agreement with the appropriate political subdivision that local officials will exclude unauthorized persons from the area in which the operation will be conducted, coordination with air traffic control, if necessary, and a detailed chart depicting the flight routes and altitudes.

(2) Each flight must be conducted at an altitude, and on a route, that will allow a jettisonable external load to be released, and the rotorcraft landed, in an emergency without hazard to persons or property on the surface.

(e) Notwithstanding the provisions of Part 91 of this chapter, and except as provided in § 133.45(d), the holder of a Rotorcraft External-Load Operator Certificate may conduct external-load operations, including approaches, departures, and load positioning maneuvers necessary for the operation, below 500 feet above the surface and closer than 500 feet to persons, vessels, vehicles, and structures, if the operations are conducted without creating a hazard to persons or property on the surface.

(f) No person may conduct rotorcraft external-load operations under IFR unless specifically approved by the Administrator. However, under no circumstances may a person be carried as part of the external-load under IFR.

45. By adding a new § 133.35 to read as follows:

§ 133.35 Carriage of persons.

(a) No certificate holder may allow a person to be carried during rotorcraft external-load operations unless that person—

(1) Is a flight crewmember;

(2) Is a flight crewmember trainee;

(3) Performs an essential function in connection with the external-load operation; or

(4) Is necessary to accomplish the work activity directly associated with that operation.

(b) The pilot in command shall ensure that all persons are briefed before takeoff on all pertinent procedures to be followed (including normal, abnormal, and emergency procedures) and equipment to be used during the external-load operation.

46. By adding a new § 133.37 to read as follows:

§ 133.37 Crewmember training, currency, and testing requirements.

(a) No certificate holder may use, nor may any person serve, as a pilot in operations conducted under this part unless that person—

(1) Has successfully demonstrated, to the Administrator knowledge and skill with respect to the rotorcraft-load combination in accordance with § 133.23 (in the case of a pilot other than the chief pilot or an assistant chief pilot who has been designated in accordance with § 133.21(b), this demonstration may be made to the chief pilot or assistant chief pilot); and

(2) Has in his or her personal possession a letter of competency or an appropriate logbook entry indicating

compliance with paragraph (a)(1) of this section.

(b) No certificate holder may use, nor may any person serve as, a crewmember or other operations personnel in Class D operations conducted under this part unless, within the preceding 12 calendar months, that person has successfully completed either an approved initial or a recurrent training program.

(c) Notwithstanding the provisions of paragraph (b) of this section, a person who has performed a rotorcraft external-load operation of the same class and in an aircraft of the same type within the past 12 calendar months need not undergo recurrent training.

47. By amending § 133.41 by revising the first sentence of paragraph (a) and the introductory text of (c) and by revising paragraph (c)(5) to read as follows:

§ 133.41 Flight characteristics requirements.

(a) The applicant must demonstrate to the Administrator, by performing the operational flight checks prescribed in paragraphs (b), (c), and (d) of this section, as applicable, that the rotorcraft-load combination has satisfactory flight characteristics, unless these operational flight checks have been demonstrated previously and the rotorcraft-load combination flight characteristics were satisfactory. * * *

* * * * *

(c) *Class B and D rotorcraft-load combinations:* The operational flight check must consist of at least the following maneuvers:

* * * * *

(5) Demonstrating appropriate lifting device operation.

* * * * *

48. By amending § 133.45 by removing paragraph (a); by redesignating paragraphs (b), (c), (d), and (e) as paragraphs (a), (b), (c), and (d), respectively; and by adding a new paragraph (e) to read as follows:

§ 133.45 Operating limitations.

* * * * *

(e) The rotorcraft-load combination of Class D may be conducted only in accordance with the following:

(1) The rotorcraft to be used must have been type certificated under transport Category A for the operating weight and provide hover capability with one engine inoperative at that operating weight and altitude.

(2) The rotorcraft must be equipped to allow direct radio intercommunication among required crewmembers.

(3) The personnel lifting device must be FAA approved.

(4) The lifting device must have an emergency release requiring two distinct actions.

49. By amending § 133.47 by revising paragraph (c)(2) to read as follows:

§ 133.47 Rotorcraft-load combination flight manual.

* * * * *

(c) * * *

(2) Precautionary advice regarding static electricity discharges for Class B, Class C, and Class D rotorcraft-load combinations; and

* * * * *

50. By revising § 133.51 to read as follows:

§ 133.51 Airworthiness certification.

A Rotorcraft External-Load Operator Certificate is a current and valid airworthiness certificate for each rotorcraft type certificated under Part 27 or 29 of this chapter (or their predecessor parts) and listed by registration number on a list attached to the certificate, when the rotorcraft is being used in operations conducted under this part.

PART 135—AIR TAXI OPERATOR AND COMMERCIAL OPERATORS

51. The authority citation for Part 135 is revised to read as set forth below, and the authority citations following each of the sections of Part 135 are removed:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

52. By amending § 135.1 by revising paragraph (b)(4)(vi) to read as follows:

§ 135.1 Applicability.

* * * * *

(b) * * *

(4) * * *

(vi) Powerline or pipeline patrol, or similar types of patrol approved by the Administrator;

* * * * *

53. By amending § 135.23 by revising paragraph (a) to read as follows'

§ 135.23 Manual contents.

* * * * *

(a) The name of each management person required under § 135.37(a) who is authorized to act for the certificate holder, the person's assigned area of responsibility, the person's duties, responsibilities, and authority, and the name and title of each person authorized to exercise operational control under § 135.77;

* * * * *

54. By amending § 135.39 by revising paragraph (b)(2)(i) to read as follows:

§ 135.39 Management personnel qualifications.

* * * * *

(b) * * *

(2) * * *

(i) Hold a current, commercial pilot certificate with an instrument rating. If an instrument rating is not required for the pilot in command under this part, the chief pilot must hold a current, commercial pilot certificate; and

* * * * *

55. By amending § 135.117 by revising paragraph (c) and adding new paragraphs (d), (e), and (f) to read as follows:

§ 135.117 Briefing of passengers before flight.

* * * * *

(c) The oral briefing required by paragraph (a) of this section shall be given by the pilot in command or a crewmember.

(d) Notwithstanding the provisions of paragraph (c) of this section, for aircraft certificated to carry 19 passengers or less, the oral briefing required by paragraph (a) of this section shall be given by the pilot in command, a crewmember, or other qualified person designated by the certificate holder and approved by the Administrator.

(e) The oral briefing required by paragraph (a) shall be supplemented by printed cards which must be carried in the aircraft in locations convenient for the use of each passenger. The cards must—

(1) Be appropriate for the aircraft on which they are to be used;

(2) Contain a diagram of, and method of operating, the emergency exits; and

(3) Contain other instructions necessary for the use of emergency equipment on board the aircraft.

(f) The briefing required by paragraph (a) may be delivered by means of an approved recording playback device that is audible to each passenger under normal noise levels.

56. By amending § 135.159 by revising paragraphs (a) through (f) and by adding new paragraphs (g) and (h) to read as follows:

§ 135.159 Equipment requirements: Carrying passengers under VFR at night or under VFR over-the-top conditions.

* * * * *

(a) A gyroscopic rate-of-turn indicator except on the following aircraft:

(1) Helicopters with a third attitude instrument system usable through flight attitudes of ±80 degrees of pitch and ±120 degrees of roll and installed in accordance with § 29.1303(g) of this chapter.

(2) Helicopters with a maximum certificated takeoff weight of 6,000 pounds or less.

(b) A slip skid indicator.

(c) A gyroscopic bank-and-pitch indicator.

(d) A gyroscopic direction indicator.

(e) A generator or generators able to supply all probable combinations of continuous in-flight electrical loads for required equipment and for recharging the battery.

(f) For night flights—

(1) An anticollision light system;

(2) Instrument lights to make all instruments, switches, and gauges easily readable, the direct rays of which are shielded from the pilots' eyes; and

(3) A flashlight having at least two size "D" cells or equivalent.

(g) For the purpose of paragraph (e) of this section, a continuous in-flight electrical load includes one that draws current continuously during flight, such as radio equipment and electrically driven instruments and lights, but does not include occasional intermittent loads.

(h) Notwithstanding provisions of paragraphs (b), (c), and (d), helicopters having a maximum certificated takeoff weight of 6,000 pounds or less may be operated until January 6, 1988, under visual flight rules at night without a slip skid indicator, a gyroscopic bank-and-pitch indicator, or a gyroscopic direction indicator.

57. By amending § 135.167 by redesignating paragraph (b) as (c); by revising paragraphs (a) (1) and (2); and by adding a new paragraph (b) to read as follows:

§ 135.167 Emergency equipment: Extended overwater operations.

* * * * *

(a) * * *

(1) An approved life preserver equipped with an approved survivor locator light for each occupant of the aircraft. The life preserver must be easily accessible to each seated occupant.

(2) Enough approved liferafts of a rated capacity and buoyancy to accommodate the occupants of the aircraft.

(b) Each liferaft required by paragraph (a) of this section must be equipped with or contain at least the following:

(1) One approved survivor locator light.

(2) One approved pyrotechnic signaling device.

(3) Either—

(i) One survival kit, appropriately equipped for the route to be flown; or

(ii) One canopy (for sail, sunshade, or rain catcher);

(iii) One radar reflector;

(iv) One liferaft repair kit;

(v) One bailing bucket;

(vi) One signaling mirror;

(vii) One police whistle;

(viii) One raft knife;

(ix) One CO_2 bottle for emergency inflation;

(x) One inflation pump;

(xi) Two oars;

(xii) One 75-foot retaining line;

(xiii) One magnetic compass;

(xiv) One dye marker;

(xv) One flashlight having at least two size "D" cells or equivalent;

(xvi) A 2-day supply of emergency food rations supplying at least 1,000 calories per day for each person;

(xvii) For each two persons the raft is rated to carry, two pints of water or one sea water desalting kit;

(xviii) One fishing kit; and

(xix) One book on survival appropriate for the area in which the aircraft is operated.

* * * * *

58. By amending § 135.173 by redesignating paragraphs (b), (c), (d), and (e) as (c), (d), (e), and (f), respectively; by amending redesignated paragraph (c) by inserting the phrase "or (b)" after the words "required by paragraph (a)"; by revising paragraph (a); and by adding a new paragraph (b) to read as follows:

§ 135.173 Airborne thunderstorm detection equipment requirements.

(a) No person may operate an aircraft that has a passenger seating configuration, excluding any pilot seat, of 10 seats or more in passenger-carrying operations, except a helicopter operating under day VFR conditions, unless the aircraft is equipped with either approved thunderstorm detection equipment or approved airborne weather radar equipment.

(b) After January 6, 1988, no person may operate a helicopter that has a passenger seating configuration, excluding any pilot seat, of 10 seats or more in passenger-carrying operations, under night VFR when current weather reports indicate that thunderstorms or other potentially hazardous weather conditions that can be detected with airborne thunderstorm detection equipment may reasonably be expected along the route to be flown, unless the helicopter is equipped with either approved thunderstorm detection equipment or approved airborne weather radar equipment.

* * * * *

59. By amending § 135.181 by redesignating paragraphs (b) and (c) as (c) and (d), respectively, and by adding a new paragraph (b) to read as follows:

§ 135.181 Performance requirements: Aircraft operated over-the-top or in IFR conditions.

* * * * *

(b) Notwithstanding the restrictions in paragraph (a)(2) of this section, multiengine helicopters carrying passengers offshore may conduct such operations in over-the-top or in IFR conditions at a weight that will allow the helicopter to climb at least 50 feet per minute with the critical engine inoperative when operating at the MEA of the route to be flown or 1,500 feet MSL, whichever is higher.

* * * * *

60. By amending § 135.223 by revising paragraph (a)(3) to read as follows:

§ 135.223 IFR: Alternate airport requirements.

(a) * * *

(3) Fly after that for 45 minutes at normal cruising speed or, for helicopters, fly after that for 30 minutes at normal cruising speed.

* * * * *

61. By amending § 135.227 by redesignating paragraphs (c) and (d) as (d) and (e), respectively; by amending newly designated paragraph (e) by inserting the phrase "the restrictions in paragraphs (b), (c), and (d)" in place of "the restrictions in paragraphs (b) and (c)"; and by adding a new paragraph (c) to read as follows:

§ 135.227 Icing conditions: Operating limitations.

* * * * *

(c) No pilot may fly a helicopter under IFR into known or forecast icing conditions or under VFR into known icing conditions unless it has been type certificated and appropriately equipped for operations in icing conditions.

* * * * *

62. By amending § 135.429 by redesignating paragraph (d) as (e) and by adding a new paragraph (d) to read as follows:

§ 135.429 Required inspection personnel.

* * * * *

(d) In the case of rotorcraft that operate in remote areas or sites, the Administrator may approve procedures for the performance of required inspection items by a pilot when no other qualified person is available, provided—

(1) The pilot is employed by the certificate holder;

(2) It can be shown to the satisfaction of the Administrator that each pilot authorized to perform required inspections is properly trained and qualified;

(3) The required inspection is a result of a mechanical interruption and is not a part of a certificate holder's continuous airworthiness maintenance program;

(4) Each item is inspected after each flight until the item has been inspected by an appropriately certificated mechanic other than the one who originally performed the item of work; and

(5) Each item of work that is a required inspection item that is part of the flight control system shall be flight tested and reinspected before the aircraft is approved for return to service.

* * * * *

Issued in Washington, DC on October 31, 1986.

Donald D. Engen,
Administrator.

[FR Doc. 86-25001 Filed 11-6-86; 8:45 am]

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Part VII

Department of Energy

Office of Hearings and Appeals

Implementation of Special Refund Procedures; Notice

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DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $25 million obtained as a result of a consent order which the DOE entered into with Getty Oil Company, a major integrated refiner. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund of a portion of the Getty consent order funds must be filed in duplicate and must be received by June 30, 1987. All applications should refer to Case Number HEF–0209 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Sharon Dennis, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to a consent order entered into by the DOE and Getty Oil Company (Getty), and its subsidiary Skelly Oil Company, which settled all claims and disputes between Getty and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of refined petroleum products during the period August 19, 1973 through December 31, 1978 (consent order period). A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the Getty consent order funds was issued on December 13, 1985, 50 FR 51984 (December 20, 1985), and February 18, 1986, 51 FR 5790 (February 18, 1986).

The Decision sets forth procedures and standards that the DOE has formulated to distribute the contents of an escrow account funded by Getty pursuant to the consent order. The DOE has decided to accept Applications for Refund from firms and individuals that purchased refined petroleum products sold by Getty and Skelly during the consent order period. Eligible applicants include indirect customers as well as first purchasers. In order to receive a refund, a claimant may submit all of the required information listed in the Decision. In order to assist applicants, the DOE has attached as an Appendix to the Decision a suggested format that contains all of the required information.

As the accompanying Decision and Order indicates, Applications for Refund may now be filed by customers that purchased petroleum products sold by Getty during the consent order period. Applications will be accepted provided they are filed in duplicate and received no later than June 30, 1987.

Dated: October 24, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

October 24, 1986.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Getty Oil Co.
Date of Filing: October 13, 1983.
Case No.: HEF–0209.

On October 13, 1983, the Economic Regulatory Administration (ERA) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) concerning a December 3, 1979 consent order which ERA entered into with Getty Oil Company (Getty). In its Petition, ERA requests that OHA formulate and implement special procedures to make refunds to parties that were injured by the alleged regulatory violations settled in the Getty consent order.

I. Background

Getty was an integrated refiner of crude oil and petroleum products during the period of federal price controls and was therefore subject to the Mandatory Petroleum Price and Allocation Regulations set forth at 6 CFR Part 150, and 10 CFR Parts 210, 211 and 212. The ERA conducted an extensive audit of Getty's operations—and those of its wholly-owned affiliate, Skelly Oil Company (generally referred to collectively as Getty)[1]—for the period August 19, 1973 through December 31 1978. As a result of this audit, ERA contended in a number of administrative and judicial proceedings that Getty had violated applicable DOE price and allocation regulations in its sales of crude oil and petroleum products. On December 3, 1979, ERA and Getty executed a consent order that, with the exception of three enumerated issues, settled all compliance disputes involving the firm's regulated operations during the period August 19, 1973 through December 31, 1978 (hereinafter referred to as the consent order or settlement period).[2] Getty agreed in the consent order to deposit $25 million into an escrow account for subsequent distribution by DOE to Getty customers and to reduce by $50 million its banks of unrecovered product costs. *See generally* 10 CFR 212.83(e); Consent Order ¶ 5.[3] In return, ERA agreed to end all its challenges to Getty's compliance with the federal petroleum regulations except for the three issues listed in the consent order. The Getty consent order specifically pointed out that "[E]xecution of this Consent Order constitutes neither an admission by Getty nor a finding by Special Counsel or DOE that Getty has violated any statutes or applicable regulations of the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, or the Department of Energy." Consent Order ¶ 11.

On October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures concerning the Getty settlement fund. In a Proposed Decision and Order (PD&O) issued on December 13, 1985, OHA tentatively accepted jurisdiction over the Getty settlement fund and set forth for public comment proposed refund procedures. *See* 50 FR 51984 (December 20, 1985). The purpose of this determination is to review the proposed procedures in light of the comments which we received and to adopt final procedures, including a suggested application format, for the filing of first-stage refund applications by individuals and firms that purchased Getty refined petroleum products during the consent order period. Since we will not make a determination as to the distribution of any funds remaining after the payment of injured parties in the first stage until all of the first stage claims have been paid, we will not address comments concerning second-stage procedures until that time.

---

[1] During the consent order period, Getty exercised indirect control over Skelly. It owned a 3.56 percent interest in Skelly and an 87.93 percent interest in Mission Corporation (Mission), which in turn held a 72.53 percent interest in Skelly. Getty and Skelly were generally considered by the agency to be a single "firm" pursuant to 10 CFR 212.83(b). The ERA audit covered all of both firms' regulated activities during the consent order period.

[2] The three issues exempted from the consent order are: (i) A June 27, 1978 Notice of Probable Violation (NOPV) involving crude oil production at Getty's Kern River field (this enforcement proceeding was subsequently administratively closed by ERA); (ii) the Decision and Order in Getty Oil Co., 1 DOE ¶ 80,102 (1977), and Getty Oil Co. v. DOE, 539 F.Supp. 1204 (D.Del., 1983), *aff'd*, 749 F.2d 734 (Temp. Emer. Ct. App. 1984), *cert. denied*, 105 S. Ct. 1176 (1985)), concerning certain crude oil exchanges with Standard Oil Company of Ohio; and (iii) issues relating to the propriety of the costs reported by Getty or its predecessors for interaffiliate purchases of natural gas liquids or natural gas liquid products or shrinkage costs under 10 CFR Part 212, Subpart K.

[3] The amount of escrowed funds currently held in an interest-bearing account with the United States Treasury had grown to $48,418,826.10 as of September 30, 1986.

II. Jurisdiction and Authority to Fashion Refund Procedures

The DOE procedural regulations at 10 C.F.R Part 205, Subpart V, provide that the OHA may, upon petition by ERA, formulate and implement special procedures by which refunds may be made to injured persons. In the PD&O, we tentatively determined that we should assume jurisdiction over the Getty settlement fund. We noted that during the consent order period Getty was a producer of crude oil, a natural gas plant operator, and a refiner and marketer of a full slate of petroleum products in 43 states. We observed that the ERA audits which preceded the consent order alleged a substantial number of refiner pricing formula violations, the effects of which would have been distributed throughout all sales of Getty's petroleum products. We therefore concluded that a Subpart V proceeding would be appropriate to distribute the Getty settlement fund. No commenter has challenged this conclusion and, accordingly, we accept jurisdiction to administer this consent order fund.

III. Proposed Refund Procedures

In the December 13, 1985 PD&O, after reviewing publicly available, relevant marketing information, the Getty audit files, and proprietary data reported to the Energy Information Administration (EIA) by Getty, we found that most potential claimants would likely be firms and individuals that purchased Getty refined products, rather than crude oil purchasers.[4] We proposed the adoption of general presumptions and findings that had been used successfully in prior refund proceedings. The first presumption, the "volumetric presumption," stated that the maximum refund available to a particular applicant would be that proportion of the total consent order fund equal to the volume of Getty purchases made by the applicant divided by all sales of covered products by Getty during the settlement period. We have set the Getty volumetric factor at $0.001526 per gallon, which we will use to divide the settlement monies among applicants who demonstrate that they are eligible to receive refunds.[5] The other presumptions and findings contained in the PD&O included: (i) The presumption that spot purchasers were unlikely to have been injured by their purchases of Getty products; (ii) the presumption that consignee agents were not injured; (iii) the presumption that regulated industries and agricultural cooperatives need not prove absorption of injury provided they certify that any refunds received will be passed through to their customers; (iv) the presumption that resellers and retailers seeking refunds of $5,000 or less for their purchases of products other than motor gasoline were injured (the small claims presumption); (v) a standard for establishing injury for larger claimants which required showings of banks of unrecovered product costs and inability to pass through increased prices during the consent order period; (vi) a finding that ultimate consumers of products other than motor gasoline were injured in their purchases of Getty products. We also suggested that we would apply to allocation claims, *i.e.,* claims by firms alleging injury due to a failure by Getty to furnish product which it was obliged to supply pursuant to the DOE mandatory allocation regulations, 10 CFR Part 211, the standards used in related refund cases. *See, e.g., Tenneco Oil Co./Research Fuels, Inc.* 10 DOE ¶ 85,012 (1982).

We also proposed the adoption of level-of-distribution presumptions for Getty motor gasoline purchases which were based upon Getty-specific pricing data for a portion of the consent order period. That data formed the basis for certain tentative inferences about the absorption of alleged overcharges by Getty's resellers. Under these presumptions, a reseller applicant that elected to use the presumption would receive 93 percent of its volumetrically allocated refund amount for volumes of Getty motor gasoline sold at retail, without having to provide proof of injury beyond purchase volumes. The presumption level for resellers' volumes sold to customers other than end users (*i.e.,* at dealer tankwagon (DTW) prices) was 7 percent; the level-of-distribution percentage for consumers that purchased from resellers was also set at 7 percent. We noted that the data available to us regarding Getty's middle distillate and related refined product prices was too indefinite to use as the basis for the adoption of level-of-distribution presumptions for those products. We therefore solicited comments and information on appropriate level-of-distribution presumptions for middle distillates, propane, and other refined products.

The PD&O was first published in the Federal Register on December 20, 1985, and comments were requested by February 18, 1986. *See* 50 FR 51964 (December 20, 1985). Under the disclosure agreement with EIA under which OHA received Getty-specific price information that formed a basis for our tentative determinations, OHA was obliged to delete confidential data from the copy of the PD&O which was published. Texaco Inc., Getty's successor, later agreed to the publication of a complete version of the PD&O, but requested that disclosure of the underlying data be restricted to persons who entered into a protective order limiting use of the data to this refund proceeding. On February 18, 1986, a complete copy of the PD&O was published and the comment period was extended to March 20, 1986. See 51 FR 5789 (February 18, 1986). Only one party requested a protective order under which it would receive the underlying data and that request was denied because it was untimely and because disclosure of the information was unlikely to produce any useful comments. *See Geraldine H. Sweeney,* 14 DOE ¶ 82,501 (1986).

IV. Comments on the Proposed Procedures

The PD&O was mailed to a variety of organizations representing a broad spectrum of potential Getty refund applicants. Eight parties filed comments, of which two are states. These two comments concern second-stage refund procedures and will not be considered until the first-stage refunds are completed.

A. *Overall Refund Procedures.* The National Council of Farmers Cooperatives (NCFC) generally objected to the PD&O's failure to include procedures for crude oil claims. In the PD&O, we noted that the majority of the enforcement issues underlying the Getty consent order related to Getty's activities as a refiner and seller of refined petroleum products. In fact, the few crude oil issues raised during the Getty audit were either reserved for separate treatment or did not represent a significant part of the negotiations which led to the settlement. *See* PD&O, 50 FR at 51936. *Compare Conoco, Inc.*, 13 DOE ¶ 85,316 (1985) (separate claims pool and refund process established for crude oil claims where consent order specified that it included allegations of crude oil overcharges). The NCFC has not provided any evidence or even any specific argument as to why the tentative determination to limit the claims process to refined products customers was incorrect. The focus of this Subpart V proceeding is the restitution of funds to "injured parties." See 10 CFR 205.280(a). Our review of the audit record in this proceeding confirms the judgment that the consent order which led to this proceeding focused on Getty's sales of refined products; thus, the injured parties to receive remedies in this proceeding are those that purchased refined products from Getty. Accordingly, we reject the suggestion that procedures for refunds to purchasers of crude oil from Getty be adopted in this proceeding.

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[4] Refined product pricing violations were the focus of the Getty consent order. *See, e.g.,* March 31, 1978 Notice of Probable Violation (alleging overstatement of costs due to excessive shipping costs). The audit underlying the consent order included relatively few crude oil issues. *See* PD&O, 50 FR at 51936.

[5] The volumetric factor was computed by dividing the consent order fund ($25,439,677.90) by the number of gallons of refined products which Getty and Skelly sold during the consent order period (16,667,296,701 gallons). In addition to principal, claimants will receive a portion of the interest which has accrued since the Getty funds were received by the DOE. Interest in the Getty account is currently almost equal to the principal. For example, a firm receiving a volumetric refund of $3,000 would receive an additional $2,909 in interest.

The NCFC also requests that cooperatives be exempted from the spot purchaser presumption as they were in *Husky Oil Co.*, 13 DOE ¶ 85,045 (1985). In *Husky*, we held that, to the extent that a cooperative's spot purchases were resold to its member/owners, we would not apply the general presumption that spot purchasers were not injured by their purchases. *See also Sid Richardson Carbon and Gasoline Co./MFA Oil Co.*, 14 DOE ¶ 85,339 (1986). As in other refund proceedings, cooperatives will be required to certify that they will pass on to their members any refunds pertaining to any Getty products that they resold to their members. As a result, any refunds made on the basis of spot purchases will flow to the ultimate consumers of the products that, under the spot purchaser presumption, are presumed to have borne the brunt of alleged overcharges associated with product purchased on a spot basis. Accordingly, we will adopt the NCFC's suggestion and exempt cooperatives from the spot purchaser presumption to the extent their spot purchases were resold to member/owners.[6]

Geraldine H. Sweeney, a motorist, National Freight, Inc., an interstate trucking company, and RJG Cab, Inc., a taxicab company (collectively styling themselves as the surface transportation end users), included among their comments their objection to the PD&O's limitation of claims to refined products that were subject to federal price controls. For example, the PD&O provided that applicants could only receive refunds for middle distillates purchased between August 19, 1973, and June 30, 1976, the date when middle distillate prices were decontrolled. The surface transporters contend that the OHA had previously concluded that refiner overcharges affected all refined products, not just those subject to federal price controls, in *Report of the Office of Hearings and Appeals, In re The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan. filed June 21, 1985), Fed. Energy Guidelines ¶ 90,507 (1985) (the OHA Stripper Well Report). The group therefore requests that OHA permit claims to be made by end users of all products, controlled and uncontrolled.

We are unable to accept this suggestion. It would be inconsistent with the purpose of this proceeding to permit claims to be made for products that were not covered by the terms of the consent order. The purpose of this proceeding is to formulate procedures for distributing funds obtained through DOE's enforcement proceedings. Those enforcement proceedings necessarily involve only controlled products since without price or allocation controls, there could be no regulatory violations. The language which the surface transporters cite from the OHA Stripper Well Report refers to a different situation. That report involved an analysis of the impact of crude oil overcharges on the refining industry as a whole, and the focus was on absorption or passthrough of those overcharges in sales of any products by refiners. Thus decontrol of certain products during the period of price controls was irrelevant. Here, the alleged regulatory violations involved in this case could only have occurred on controlled products. We therefore reject the suggestion that purchasers of uncontrolled products be permitted to file claims for those purchases.

Skelgas Service Center, Ltd., a retailer of Skelly propane located in Rhinelander, Wisconsin, filed comments endorsing the volumetric allocation of refund money for propane claimants. The firm also suggested that successful reseller applicants should be required to pass on any refunds received to their customers. Before we could consider such a requirement, we would have to conclude that propane resellers as a group likely passed on all alleged Getty overcharges to their customers, were not injured by any alleged overcharges, and thus are not themselves entitled to a refund. There is no material in the record to support such a conclusion and, in fact, our experience in other refund proceedings has been to the contrary. *See, e.g., MAPCO, Inc./Vanguard Petroleum Corp.*, 14 DOE ¶ 85,267 (1986). Consequently, we are unable to adopt Skelgas Service's suggestion that propane resellers be required to pass on all refunds.

B. Motor Gasoline Presumptions. Three groups of resellers and one consumer representative filed comments on the proposed level-of-distribution presumptions of injury for motor gasoline. Energy Watch, Inc., which represents several independent Getty retailers, urged adoption of the PD&O without modification and obliquely criticized the comments of those who suggested revisions as being based upon self-serving and unrepresentative pricing data. The Getty/Skelly Brand Committee of the Petroleum Marketers Association of America (PMAA), which represents approximately 200 Getty wholesalers, filed comments arguing that the data underlying the PD&O's analysis was faulty and proposing an alternative methodology of determining injury based upon data which it had collected from its members. The National Association of Texaco Wholesalers, Inc., which represents approximately 300 Getty/Skelly independent jobbers who converted to the Texaco brand when Texaco acquired Getty, generally supported the PMAA analysis, stating that it agreed with data supplied to the association by its members.

Subsequently, the PMAA filed additional comments suggesting that the Getty motor gasoline procedures be modified to comport with procedures OHA adopted in a recent refund proceeding, *Marathon Oil Company*, 14 DOE ¶ 85,269 (1986). (In *Marathon* we allowed each reseller applicant (including retailers) for a refined products refund to elect whether its claim would be governed by the $5,000 small claims presumption or the overall reseller level-of-distribution presumption.) Finally, the aforementioned surface transportation end users, on their own behalf and as purported representatives of all surface transportation end users, criticized the PD&O's marginal analysis of probable injury for resellers and proposed that an alternative analysis based upon testimony offered to OHA in the Stripper Well Litigation be substituted. *See* the OHA Stripper Well Report. As we shall discuss below, we have concluded that the PMAA's observations concerning the data utilized in the PD&O are accurate and that the alternate data which it provided is more reliable than the EIA data discussed in the PD&O. We will substantially revise the proposed refund procedures for motor gasoline in accordance with these findings.

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[6] Sales to non-members will be treated like sales by any other reseller.

The PD&O compared the wholesale, DTW and retail prices for motor gasoline which Getty reported to the EIA during the consent order period, with the national average refiner prices at the same levels of distribution. From this comparison it appeared that Getty's wholesale and retail motor gasoline prices were always lower than the national average, while its DTW price was about the same. On this basis we proposed the conclusion that throughout the settlement period, profit margins for Getty jobbers selling at DTW were better than average and profit margins for jobbers and retailers were generally depressed. It also appeared that consumers of Getty motor gasoline enjoyed lower than average prices during most of the consent order period. Although the proposed conclusions varied substantially from the findings in other refiner refund proceedings, in the absence of any other material pertaining to Getty's pricing, we proposed that specified presumptions of injury for motor gasoline refund applicants should be based upon this material and the claimant's position in the chain of distribution. Since there was little or no price information pertaining to Getty's sales of middle distillates and natural gas liquid products (NGLPs), no level-of-distribution presumptions were proposed for those products. Instead, the PD&O solicited data from commenters that might lead to such presumptions.

In its comments, the PMAA presented substantial evidence consisting of statistical summaries of Getty price data which it had gathered from approximately 100 Getty jobbers. The PMAA's submission also included the underlying data and solicitation forms used in its survey. That material showed that the wholesale prices which Getty had actually charged these jobbers for motor gasoline differed significantly from the prices which Getty reported to the EIA.[7] The material included the prices that the jobbers had paid Getty for regular and premium motor gasoline and diesel fuel during the consent order period. According to PMAA, a comparison of these prices with those reported by *Platt's Oil Price Handbook and Oilmanac (Platt's)* for the appropriate region, shows that the jobbers absorbed far more overcharges than indicated by the Getty/EIA data. In fact, the level of injury alleged by the PMAA on the basis of this data is approximately five times greater than that produced by the EIA data. Furthermore, the PMAA data conforms more closely to our experience in other refiner refund proceedings. *See, e.g., Standard Oil Company (Indiana),* 10 DOE ¶ 85,048 (1982) *(Amoco); Mobil Oil Corp.,* 13 DOE ¶ 85,339 (1985) *(Mobil).*

Our own comparison of the PMAA data with the EIA data which were used in the preliminary analysis of the PD&O confirms that the PMAA data are more reliable for our purposes. The EIA data used weighted averages of the prices of each grade of motor gasoline reported by Getty. As a result, certain inconsistencies and peculiarities in the prices reported by Getty for individual grades of gasoline were hidden. Once these individual prices reported for the different grades of gasoline are examined, the unreliability is apparent. For example, in addition to the problems identified by the PMAA,[8] the wholesale price which Getty reported for regular gasoline during the relevant period frequently exceeded the wholesale prices reported for premium and/or unleaded motor gasoline. Obviously, since regular gasoline should always have been sold at the lowest of the prices reported for the three fuels, the underlying data and thus the weight-averaged data relied on in the PD&O cannot be accurate.

In contrast, the summary (and underlying) data provided by the PMAA is not marked by anomalies like the Getty/EIA data and utilizes well-known, reliable sources often employed by OHA. For example, the PMAA has used *Platt's* for its price comparisons, a highly reliable reference for regional wholesale prices. *See, e.g., Husky Oil Co./Montana Petroleum Marketing Co.,* 14 DOE ¶ 85,270 (1986) (gasoline and diesel fuel); *Belridge Oil Co./Chevron, U.S.A.,* 14 DOE ¶ 85,389 (1986) (propane). In addition, the PMAA's proposed alternative analysis is based upon data provided by approximately one-half of its 200 Getty wholesale members, a substantial portion of the eligible jobber claimants.[9] Furthermore, we have examined the raw data actually provided by all of the PMAA members which responded to the PMAA survey, including some information which was not used in the summary because the respondent did not provide data for the entire consent order period.[10] We also reviewed all of the compilations that the PMAA used in its proposed alternative analysis, and find all of the material to be consistent, both within the data set and with our experience with refined products markets.[11] We also performed the same analysis as done by PMAA and confirmed its results.[12] Moreover, the results of the PMAA survey and analysis are very similar to our experience in other refund proceedings. *See, e.g., Amoco; Mobil.* On the basis of these factors, we have concluded that in establishing a presumption of injury for jobber purchasers of Getty motor gasoline, the PMAA material should be substituted for the data which Getty reported to the EIA. Based upon our analysis of this material, we find that Getty jobbers incurred injury in their purchases of Getty motor gasoline in the range of 37.6 to 45.3 percent.

In view of these conclusions regarding the EIA wholesale pricing data, we also reconsidered the DTW and retail prices which Getty had reported to EIA. The DTW prices were, on the whole, unexceptionable, generally following national average prices. However, the Getty retail price data were irregular. For example, Getty did not report any price data for its retail sales of regular leaded motor gasoline until February 1977, the same month that Skelly's retail sales were first included with the Getty reports. Since regular leaded motor gasoline should have been the lowest priced automotive fuel, it is difficult to understand how the retail motor gasoline price which Getty reported for months prior to February 1977—based upon an average of only the higher unleaded regular and premium gasoline prices—could have consistently been $0.03 to $0.05 *lower* than the national average price data which included regular gasoline. This price data also shares some of the difficulties which led us to reject the Getty jobber data. Consequently, we have concluded that the preliminary determinations of injury for retailers in the PD&O should be revised.

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[7] The PMAA had obtained the Getty-specific EIA price data under the Freedom of Information Act pursuant to a protective order entered in Mobil Oil Corp. v. DOE, No. CA 84–1683 (D.D.C., July 10, 1984). The PMAA has submitted a letter indicating that Getty's successor, Texaco Inc., has authorized PMAA to use this confidential material in the Getty refund proceeding.

[8] The PMAA pointed out several counter-intuitive aspects of the EIA data which cast doubt on the entire data set. For example, it noted that according to the EIA data, Getty's wholesale premium gasoline sales volumes fell about 25 percent from January to February 1977 and then doubled in March. There is no apparent explanation for such an anomaly. In addition, Getty's reported gasoline prices prior to February 1977 consisted entirely of premium and no-lead grades, although presumably the firm produced regular gasoline at its refining operations.

[9] The PMAA claims that the total number of eligible jobber claimants is approximately four hundred.

[10] Not all of the PMAA members responded to the association's survey and not all of the respondents furnished data for the entire consent order period.

[11] We therefore reject Energy Watch, Inc.'s unsupported assertions that the data submitted by the PMAA is self-serving and unrepresentative.

[12] In reviewing the PMAA's analysis, we found that price data from one jobber whose motor gasoline prices were markedly different from others reporting in the same marketing region had been included in the summary presentation. In addition, the averages calculated for some marketing regions may have been slightly skewed by the inclusion of data provided by this jobber and a number of other jobbers that did not report prices for the entire consent order period. Therefore, we recalculated the summary material to eliminate these problems and found that the results of the analysis were not materially altered.

Neither the PMAA nor the retailer representative, Energy Watch, Inc., provided any information showing actual DTW prices paid or retail prices charged in sales of Getty motor gasoline during the consent order period. The PMAA suggests we utilize the cost absorption presumption adopted in *Marathon* in which a reseller claimant may elect to limit its claim to $5,000, or the amount obtained by applying a presumed absorption percentage figure to its claim, whichever is larger. Claims above $5,000 automatically have applied to them the cost absorption presumption, up to $50,000, unless the applicant provides a detailed demonstration of injury in support of its full volumetric share. Claimants seeking refunds of more than $50,000 were required to provide more extensive proof of injury, including banks of unrecovered product cost increases and evidence that price increases were not passed through in resales to customers.

Using the *Marathon* procedures, a reseller claimant in this proceeding would qualify for the maximum small claims refund of $5,000 if it documents purchases of approximately 50,400 gallons of controlled Getty/Skelly products per month throughout the consent order period, or a total of 3,276,540 gallons. This has obvious advantages. Utilizing this provision will afford most retailers the opportunity to apply for a refund based on their purchase volumes without having to provide detailed information concerning injury. In the *Marathon* proceeding we have found this methodology to be fair, efficient and cost-effective, and we have determined that we will adopt it in this case as well.

For larger reseller and retailer motor gasoline claims, however, we will adopt a level-of-distribution percentage. Because EIA's retail Getty price data is both incomplete and flawed and no other Getty-specific material has been provided or is otherwise available, we must look elsewhere for a valid absorption presumption. After surveying all other refiner refund proceedings, it appears that for our purposes, the *Amoco* case is the most similar to the present proceeding. Amoco's sales were concentrated in the Eastern and Midwestern regions of the United States, as were Getty/Skelly's, and the Amoco consent order period most closely corresponds to the Getty settlement period. Furthermore, the percentage of absorption of injury adopted for retailers in *Amoco* was 40 percent. We note that the 40 percent figure falls within the middle of the range of injury calculated for jobbers based upon the alternative PMAA data set. For these reasons we will adopt a 40 percent level-of-distribution figure for claims by retailers and wholesalers.[13] As stated, these presumptions may be rebutted in favor of an actual showing of injury at a greater level.

C. Other Revisions to the Proposed Procedures. As noted, in the PD&O we requested that responsible industry representatives provide data upon which presumptions of injury for purchasers of middle distillates, propane and other refined products might be based. The PMAA responded by providing diesel fuel price data obtained from 42 of its members. Although not as conclusive as its motor gasoline survey, the diesel fuel analysis provided by the PMAA has the same indicia of reliability. As stated in the PD&O, the price data reported by Getty to the EIA was erratic and not of sufficient duration to allow an injury analysis. In contrast, the prices reported by the PMAA follow a rational pattern and extend over the entire period of price controls for middle distillates. As with the motor gasoline analysis, the association has compared the prices reported by its members with those found in the relevant *Platt's* listing for each reporting jobber. We have concluded from our examination of the materials submitted and the analysis presented by the PMAA that the diesel fuel data form a reliable basis for a presumption of injury for all middle distillates. We will therefore adopt a percentage presumption of injury for sales of middle distillates to jobbers in the range proposed by the PMAA (35 to 67 percent). The mid-point of that range is approximately 50 percent, which for ease of administration we shall adopt for claims above $5,000.

No industry representative came forward with price data for sales of Getty NGLPs for the consent order period. This is unfortunate, inasmuch as additional data would be very useful. The record indicates that Getty's propane sales were substantial—they represented about 17 percent of Getty's total refined product sales and involved at least 1,000 dealers. Moreover, the Getty audit file indicates that issues concerning Getty's natural gas processing operations and NGLP sales were integral to the settlement negotiations. Under those circumstances, and in view of our experience in other proceedings, we find that there is a high probability that purchasers of Getty propane and other NGLPs experienced injury in their purchases of these products. The presumption of injury for small claims will apply to Getty's NGLP customers, and in order to provide larger claimants for other products, we have determined that a mid-range absorption percentage should be adopted. We have surveyed other NGLP refund cases in which claimants have documented their injury by providing evidence of banks of unrecouped product cost increases and of competitive disadvantage due to uncompetitive prices and have found that their "success ratio" (amount claimed versus amount proven) ranges from 20 to 100 percent. We will adopt 60 percent, the middle of that range, as the presumption percentage for mid-level reseller and retailer NGLP claimants. NGLP reseller and retailer applicants claiming above $5,000 may utilize this presumption percentage and will be granted refunds up to $50,000 upon a showing of their purchase volumes. As in *Marathon*, claimants seeking amounts larger than $50,000 will be required to document injury by showing banks and competitive disadvantage.

V. Summary

In summary, we have substantially revised the motor gasoline claims procedures proposed in the PD&O because the information that Getty had reported to the EIA, upon which we based our tentative conclusions, was unreliable. Instead, for motor gasoline and middle distillates we have substituted data furnished by the Petroleum Marketers Association of America. This data, while not drawn from as large a sample as that of EIA, is reliable and more closely accords with reliable industry indices and our own experience with refined products markets during the consent order period. Based upon these materials, we have calculated percentage figures that approximate injury experienced by resellers of these products. Similarly, we have used information gleaned from recent refund applications filed by NGLP resellers to estimate a reasonable percentage figure to approximate their experience during the period of federal price controls. These percentage presumptions of injury further the needs of individual claimants, many of whom lack records to substantiate specific injury, for an equitable method of obtaining redress for that injury, and OHA's need to formulate an equitable, efficient means of distributing refund monies to injured parties.

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[13] As in *Marathon*, end users of Getty motor gasoline will be permitted to receive 100 percent of their volumetric refund share, as will end users of other Getty refined products.

In order to obtain a refund, an applicant must provide its purchase volumes of Getty or Skelly product during the consent order period and must identify its position in the distribution chain. Applicants whose total claim falls under the $5,000 small claims presumption—which is applied to an applicant's total purchases of all Getty products, not on a product-by-product basis—as well as end users of all covered products, are only required to furnish proof of their volume of purchases from Getty. For larger motor gasoline claims—above $5,000—resellers and retailers, including refiners who resold the Getty product, may elect to receive either $5,000 or 40 percent of their volumetric amount, whichever is larger, up to $50,000. Similarly, large middle distillate resellers and retailers may elect between the larger of $5,000 or 50 percent of their volumetric amount, up to $50,000, and large NGLP resellers and retailers will be eligible for $5,000 or 60 percent of their volumetric amount, up to $50,000. Firms seeking refunds greater than $50,000, as well as applicants attempting to rebut the level-of-distribution percentages in favor of a full volumetric refund, will be required to furnish their banks of unrecovered product costs and evidence showing that they were prevented by competitive conditions from passing through Getty price increases to their customers. As always, claimants which allege a level of injury greater than that established by either the level-of-distribution percentages or the volumetric methodology may present in their refund applications evidence of their specific injury. Consumers, cooperatives, and regulated industries will receive 100 percent of the volumetric amount allocated to their purchases of all Getty covered products. Detailed procedures for filing a refund application appear in Section VI and the Appendix.

VI. Final Refund Procedures

Based upon the foregoing, we have determined to adopt the revised refund procedures therein for firms seeking refunds based upon their purchases of Getty and Skelly refined petroleum products during the consent order period. In the Appendix to this Decision, we set forth a suggested application format which may be used by all applicants. Gasoline retailer applicants using the suggested form must file a separate form for *each gasoline station* for which a refund is requested. All applicants using the suggested form must file a separate form for *each product* for which a refund is requested. We will accept all applications that contain the information necessary to process a claim, whether or not the suggested form is used. For those claimants not using the suggested form, the information that must be included in an application is set forth below.

1. An application for refund must be printed or typed, signed by the applicant, and specify that it pertains to the Getty Oil Company Special Refund Proceeding, Case No. HEF–0209.

2. Each applicant should furnish its name, street or post office address, and its telephone number. If the applicant is a business firm, it should furnish all other names under which it operated during the period for which the claim is being filed.

3. Each applicant should specify how it used the product—*i.e.,* whether it was a refiner, reseller, retailer or an end user.

4. Each applicant must submit a monthly purchase schedule for Getty purchases during the consent order period, August 19, 1973 through December 31, 1978.

5. If an applicant purchased Getty refined products from a reseller, it must establish its basis for belief that the product originated with Getty and identify the reseller from whom the product was purchased. Indirect purchasers who either fall within a class of applicant whose injury is presumed, or who can prove injury, may be eligible for a refund if the reseller of Getty products passed through the alleged Getty overcharges to its own customers.

6. The application for refund should contain the name, address, and telephone number of the person who prepared the application. If the preparer was someone other than the applicant, the applicant should furnish us with the name and telephone number of a contact person familiar with the facts set forth in the application who we may contact for additional information concerning the application. Unless otherwise specified, the refund check will be issued to the preparer.

7. Each applicant must indicate whether it or a related firm has authorized any individual to file any other refund application in the Getty refund proceeding on its behalf, and if so attach an explanation.

8. If the applicant is affiliated or associated with Getty in any manner, it must so indicate and provide information explaining the nature of its relationship with the consent order firm.

9. If the applicant has been involved in enforcement proceedings brought by the DOE, it must provide a summary of the present status of the proceeding, or if the matter is no longer pending, it must indicate how the proceeding was resolved.

10. If the applicant is a firm which did not actually purchase gasoline from Getty but is a successor to a Getty customer, the applicant must provide evidence establishing that it, rather than Getty's former customer, is entitled to a refund.

11. Each application must include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001.

12. All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585. Any applicant who believes that its application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the confidential information has been deleted, together with a statement specifying why any such information is privileged or confidential.

13. Applications should be sent to:
Office of Hearings and Appeals,
Department of Energy, 1000
Independence Avenue, SW.,
Washington, DC 20585.

14. Applications must be filed no later than June 30, 1987. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284 and the procedures set forth in this Decision and Order.

It Is Therefore Ordered That:

(1) Applications for Refunds from the fund remitted to the Department of Energy by Getty Oil Company pursuant to the consent order executed on December 3, 1979, may now be filed.

(2) All applications must be filed no later than June 30, 1987.

Dated: October 24, 1986.

George B. Breznay,
Director, Office of Hearings and Appeals.

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APPENDIX

RF265-__________
DOE Use Only

Suggested Format for Application for Getty Refund--HEF-0209

(Separate Application for Each Product Please)

1. Name of applicant firm during refund period: ____________________

Address during refund period (August 19, 1973 --December 31, 1978) ____________________
____

2. To whom should refund check be made out? ____________________
____

Address to which check should be sent: ____________________
____
____

Contact Person: ____________________

Telephone: (______) ____________________

3. (a) Type of applicant:

__________ Gas Station __________ Consumer

____________________ Other (please specify the nature of your business)

(b) If you are a reseller-retailer and the total refund requested by your firm and all affiliated entities on Getty/Skelly products exceeds $5,000, do you elect the level-of-distribution presumption for calculating your refund?

________ Yes ________ No

(c) If you do not elect the presumption of injury, or if using the presumptive level of injury your refund exceeds $50,000, attach a demonstration of your firm's injury, as described in the Decision and Order.

4. (a) Total gallonage for which refund is requested (from page 3) ____________________

(b) Product (e.g., motor gasoline, diesel): ____________________

5. Was the product you bought Getty/Skelly-branded? ________ Yes ________ No

6. Were you supplied by Getty/Skelly directly? ________ Yes ________ No

If yes, provide Getty/Skelly customer number here: ________________

If no to Items 4 and 5, attach an explanation of why you believe the product was sold by Getty/Skelly.

7. Name of your immediate suppliers(s) during refund period: ________________________

Address: ________________________

____

____

Telephone: (____) ________________

8. Have you been a party or are you currently a party in a DOE enforcement action or private Section 210 action? If yes, attach an explanation.

________ Yes ________ No

9. Have you or a related firm filed any other application for refund involving any Getty/Skelly product? If yes, attach an explanation.

________ Yes ________ No

10. Have you or a related firm authorized any individual(s) other than those identified on this form to file an application on your behalf? If yes, attach an explanation.

________ Yes ________ No

11. Were you a consignee agent? (A consignee agent distributed products for Getty/Skelly, but did not own them. Getty/Skelly specified the price, and gave the agent a commission.)

________ Yes ________ No

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a jail sentence, a fine, or both, pursuant to 18 U.S.C. § 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application form which will be placed in the OHA Public Reference Room.

________________________ Date

________________________ Signature of Applicant

________________________ Title

Name of Applicant: ______________________

MONTHLY PURCHASE VOLUMES OF ____________

	1973	1974	1975	1976	1977	1978
January	*******					
February	*******					
March	*******					
April	*******					
May	*******					
June	*******					
July	*******					
August						
September						
October						
November						
December						
Yearly Total						

GRAND TOTAL FOR THIS PRODUCT: ____________ GALLONS

NOTE: Refunds will be computed at the rate of $0.001526 per gallon, plus accrued interest. Claims for less than $15.00 will not be processed (9,830 gallons total purchases).

DO NOT INCLUDE ANY PURCHASES OF PRODUCT AFTER THAT PRODUCT'S DATE OF DECONTROL:

Product	Date Decontrolled
Naptha-Based Jet Fuel	October 1, 1976
Naphthas	September 1, 1976
Middle Distillates	July 1, 1976
Residual Fuels	June 1, 1976
Ethane and Asphalt	April 1, 1974

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Part VIII

Environmental Protection Agency

40 CFR Parts 260, 264, and 270

Hazardous Waste Management System; Standards for Owners and Operators of Miscellaneous Units; Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 264, and 270

[SW-FRL-3062-8]

Hazardous Waste Management System; Standards for Owners and Operators of Miscellaneous Units

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Resource Conservation and Recovery Act (RCRA) authorizes the Environmental Protection Agency (EPA) to issue standards applicable to owners and operators of hazardous waste management facilities. Over the past several years, the Agency has promulgated standards for specific types of treatment, storage, and disposal units including containers, tanks, surface impoundments, waste piles, land treatment units, landfills, incinerators, underground injection wells, and research, development, and demonstration facilities. However, some hazardous waste management technologies are not covered by the existing permitting standards. Owners and operators of facilities utilizing these technologies cannot obtain the RCRA permits necessary to operate these miscellaneous units.

To fill this gap, the Agency is today proposing a new set of standards, under Subpart X of Part 264, that is applicable to owners and operators of new and existing hazardous waste management units not covered under the existing regulations. This will enable the Agency, and the States that adopt equivalent authorities, to issue permits to miscellaneous waste management units.

DATES: The Agency will accept comments on these proposed rules on or before December 22, 1986.

ADDRESS: Send original comments plus two copies to: Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Comments should be identified as follows: F-86-SPXP-FFFFF.

The public docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for viewing from 9:00 a.m. to 3:30 p.m., Monday through Friday, excluding holidays. Call Mia Zmud at 475-9327 or Kate Blow at 382-4675 for appointments.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* RCRA/Superfund Hotline, Office of Solid Waste (WH-563C), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone (800) 424-9346, or (202) 382-3000.

For questions on the technical aspects of this proposed rule contact: Ossi Meyn, Land Disposal Branch, Waste Management Division, Office of Solid Waste (WH-565E), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone (202) 382-4654.

SUPPLEMENTARY INFORMATION:

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  B. Need for the Proposed Subpart X
  C. Consideration of Comments Received on the July 26, 1982, Preamble Section (47 FR 32281)
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  B. Regulatory Flexibility Act
  C. Paperwork Reduction Act
XI. List of Subjects

I. Authority

These proposed rules are issued under authority of sections 1006, 2002(a), and 3001 through 3013 of the Solid Waste Disposal Act (SWDA), as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6901 *et seq.*

II. Background

A. Development of the Hazardous Waste Regulatory Program

Under section 3004 of RCRA, the Environmental Protection Agency (EPA) must establish such standards, applicable to owners and operators of hazardous waste management facilities, as may be necessary to protect human health and the environment. These standards establish the duties of and provide the basis for issuing permits to the owners and operators of hazardous waste treatment, storage, and disposal facilities under section 3005 of RCRA. The Agency has promulgated these regulations in stages. On May 19, 1980 (45 FR 33221), the Agency issued regulations establishing administrative requirements for certain types of hazardous waste management, general provisions for facility owners and operators, permitting procedures for hazardous waste management facilities, and procedures for state program authorization. On January 12, 1981 (46 FR 2802), the Agency issued regulations establishing technical standards and permitting requirements for certain storage and treatment facilities. On January 23, 1981 (46 FR 7678) and June 24, 1982 (47 FR 27516) the Agency issued technical standards for hazardous waste incinerators. On April 7, 1982 (47 FR 15032) and April 16, 1982 (47 FR 16544), the Agency issued regulations for demonstrating financial responsibility. On July 26, 1982 (47 FR 32274), the Agency promulgated technical and permitting standards for new and existing treatment, storage, and disposal facilities on land, including surface impoundments, waste piles, land treatment units, and landfills. On July 15, 1985 (50 FR 28702), the Agency amended its hazardous waste management rules to codify several statutory changes required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). These changes included revisions to the technical requirements for land treatment, storage, and disposal facilities, revisions to the permitting requirements for all treatment, storage, and disposal facilities, and limitations on the placement of hazardous waste in salt dome formations, salt bed formations, underground mines, and caves. In addition, these amendments included new rules that allow for the permitting of certain research, development, and demonstration (RD&D) facilities.

The Federal rules pertaining to the management of hazardous waste are codified in 40 CFR Parts 260 through 266, 270, 271, and 124. In brief, Part 260 contains definitions; Part 261 defines what is a hazardous waste; and Parts 262 and 263 contain generator and transporter requirements, respectively. The permitting provisions of the RCRA hazardous waste management program are structured as follows:

1. Part 264—Establishes permitting standards for facility performance, design, operation, and location. These requirements are applied through RCRA permits in the form of specific conditions. Once a permit is issued, an owner's or operator's compliance with the conditions of the permit during the permit's term will constitute compliance, for purposes of enforcement, with Subtitle C of RCRA.

2. Part 265—Establishes interim standards that apply to all existing facilities that have notified the Agency of their regulated activities, as required under section 3010 of RCRA. These "interim status" standards apply until the Agency has approved or disapproved issuance of a final RCRA permit or when it is terminated under the HSWA provision for loss of interim status. The provisions of Subpart G and H still apply, however, to facilities that have lost interim status. (49 FR 46094)

3. Part 270—Establishes definitions and basic requirements for all RCRA permits administered by the Agency. It spells out in detail who must apply for a permit; the information and data necessary in permit applications; the general conditions that must be incorporated into permits; the circumstances under which permits may be revised, reissued, and terminated; and the circumstances under which special forms of permits may be issued, among other requirements.

4. Part 271—Establishes the requirements for final authorization of State hazardous waste programs to be administered in lieu of the Agency's program, and the procedures for the Agency approval, revision, and withdrawal of a State program. It includes specific requirements regarding permits and permit applications as administered under approved State programs.

5. Part 124—Establishes the procedures to be followed in making permit decisions under several Agency permitting programs including the RCRA hazardous waste program. It specifies provisions for public participation; consolidated review and issuance of two or more permits for the same facility or activity; compilation of administrative records; the effective dates of permits; and appeals from permit decisions and stays of contested conditions, among others.

B. Need for the Proposed Subpart X

Current promulgated regulations in 40 CFR Part 264 and other Parts regulate many types of hazardous waste management units. These include: Containers, tanks, surface impoundments, waste piles, land treatment units, landfills, and incinerators under specific subparts of Parts 264 and 265; research development, and demonstration (RD&D) facilities under Part 270; and underground injection wells in the Underground Injection Control (UIC) Program under the Safe Drinking Water Act in 40 CFR Part 146.

The Agency is aware, however, that certain hazardous waste management practices and certain technologies (including those that may be developed in the future) do not fit the description of any of the units covered by the existing regulations. For example, thermal treatment of hazardous waste in units other than incinerators, boilers, or industrial furnaces may not be permitted because such units are not now covered by Parts 264, 265, or 266. This means that existing units of these types, currently regulated under Part 265, may not receive a RCRA permit. Perhaps more significantly, new units may not be constructed. The Agency has received a number of requests for standards to allow the construction of new hazardous waste management units not now covered by Part 264.

Although the Agency has issued regulations for the major hazardous waste management technologies and practices, there are gaps in the coverage of the regulations. Subpart X will cover miscellaneous units and will essentially complete the coverage of hazardous waste management units. For existing units, the Agency believes that application of more specific Part 264 standards through a permit may provide better protection. Furthermore, some types of new units that cannot now be constructed may reduce risks to human health and the environment from the management of hazardous waste. Therefore, the Agency regards today's proposal as a step towards increasing the protection of human health and the environment, while also allowing flexibility for technological development and innovations.

C. Consideration of Comments Received on the July 26, 1982 Preamble Section (47 FR 32281)

In the preamble to the July 26, 1982 hazardous waste management regulations, the Agency outlined additional regulatory activities that the Agency was considering under 40 CFR Part 264 to improve the management of hazardous waste. A major activity discussed in that notice was the promulgation of standards for units not then covered by Part 264 regulations. At that time, the Agency solicited comments on the appropriate approach for standards for such units. The Agency also solicited comments on what types of facilities were in existence, or likely to come into existence, that were not then covered by Part 264 regulations.

The Agency received a limited number of comments in regard to the July 26, 1982, preamble discussion. Several respondents indicated that regulations for miscellaneous units would not be necessary and suggested that such units could easily be handled by the Director of the hazardous waste management program on a case-by-case permitting basis using interim standards under 40 CFR Part 267. Although the Agency agrees that certain portions of Part 267 would be appropriate for regulating miscellaneous units, the Part 267 requirements are inappropriate because they were limited to four specific types of land disposal facilities (landfills, surface impoundments, land treatment units, and injection wells). In contrast to the Part 267 rules, Subpart X will not be limited to land disposal units.

In addition, the Part 267 standards were designed to be temporary to allow for the permitting under interim status of new land disposal facilities while final Part 264 standards were being developed. The Part 267 standards for surface impoundments, land treatment units, and landfills were superseded by the Part 264 standards on January 26, 1983, and the Part 267 standards applicable to Class I underground injection wells expired on February 13, 1983. At present, there are no facilities that are subject to the Part 267 standards.

Several respondents favored the development of a new subpart for units not covered under the existing subparts of Part 264, but urged the Agency to develop and implement hazardous waste standards on an industry-by-industry basis or on a waste-by-waste basis for miscellaneous waste management units. This approach would be similar to that used in developing

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effluent guidelines under the Clean Water Act. The Agency considered the suggested approach but decided that development of industry-specific or waste-specific standards would be unnecessarily resource-intensive and could result in standards that did not cover all miscellaneous units. Further, the commenters' suggested approach would have been a departure from the general framework of the Agency's current hazardous waste regulatory program. However, at some future time the Agency may be able to make waste-specific and industry-specific modifications to the regulations, where appropriate.

D. Scope of Subpart X

The Agency is proposing to regulate units that are not in any way covered by a subpart under Part 264 or 146. For example, units that do not fit the definitions of any of the units covered by the standards of Part 264 or 146 would be regulated as miscellaneous units. Specifically, if a new type of unit was developed that did not fit the definition of tank, container, surface impoundment, waste pile, land treatment unit, landfill, incinerator, boiler, industrial furnace or underground injection well, it would be regulated under Subpart X. An example of such a unit may be a thermal treatment unit, such as a wet-air oxidation device, that is not an incinerator or other Part 264 unit. Another example may be a long-term retrievable storage unit that is not a waste pile, landfill, or other Part 264 unit. With one exception, the Agency is not considering altering the jurisdiction of any other subpart in Part 264 or 146 and they will remain unaffected. The exception relates to some types of units that may currently fall within the definition of the term "landfill" in § 260.10. Under existing regulations, "landfill" is a broad category including many units not covered under other subparts of Part 264 or 146. It includes some, but not all, miscellaneous units proposed to be covered by this rule. The Agency is considering amending the definition of "landfill" so that it excludes these miscellaneous units. Issues pertaininq to the redefinition of the terms "landfill" are discussed in Section V below.

Subpart X will not supersede or replace any specific restrictions on activities contained in another subpart or provide a vehicle for escaping from those restrictions. For example, 40 CFR 264.175 provides that container storage areas must have a secondary containment system to drain and remove leakage. Persons who do not wish to install a secondary containment system may not evade this requirement for a container storage facility by seeking a permit under Subpart X.

Likewise, miscellaneous units permitted under Subpart X that are also defined as "land disposal" under the land disposal restriction requirements of Part 268 (see proposed rule at 51 FR 1602) do not avoid the restrictions on land disposal of untreated or improperly treated hazardous waste. For example, although the use of an underground mine, cave, or formation for the placement of hazardous waste may, under some circumstances, be considered a miscellaneous unit, such a unit would also be subject to the Part 268 land disposal restrictions since it is defined as "land disposal" by RCRA. Therefore, any hazardous waste placed into a miscellaneous "land disposal" unit must be treated prior to land disposal in compliance with a treatment standard promulgated under Part 268 unless the owner or operator demonstrates, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the unit for as long as the waste remains hazardous. The remainder of this section describes units that are proposed to be covered under Subpart X and those that are not.

1. Units Proposed to Be Covered Under Subpart X

Because the Agency intends Subpart X to cover "miscellaneous" units, including future technologies, the Agency cannot provide a definitive list of the units that will be covered under the subpart. However, the Agency is aware of several types of units that may receive permits issued under Subpart X.

a. Disposal of Hazardous Waste Underground. Under certain circumstances, e.g., in underground mines under proper geologic conditions, persons may be able to safely and protectively dispose of containerized hazardous waste or bulk non-liquid hazardous waste. To the extent that these activities are underground injection in a well, they would be covered under RCRA by the UIC permit-by-rule (40 CFR 270.1(c)(1)(i)). Placement in underground mines that is not covered by a UIC permit could be subject to Subpart X standards.

b. Deactivated Missile Silos. Treatment, storage, and disposal of hazardous waste in deactivated missile silos that are not tanks, containers, underground injection wells, or landfills are not now covered under Part 264 standards. Such silos would, therefore, be considered miscellaneous units.

c. Thermal Treatment Units Other Than Incinerators. A number of different types of thermal treatment units, including combustion and noncombustion types, are in operation today and have potential application to hazardous waste treatment. In addition to incinerators and boilers, units employing processes such as molten-salt pyrolysis, calcination, wet-air oxidation, and microwave destruction are classified as thermal treatment units. In the case of incinerators, the Agency has determined performance capabilities and has established regulations requiring specific levels of performance in Subpart O of Parts 264 and 265. Many noncombustion-type thermal treatment units are not covered under Part 264 regulations and have not yet been evaluated by the Agency to determine their technological capabilities. Many of these units have not yet operated on a commercial scale, but owners of some of these units are expected to seek RCRA hazardous waste facility permits in the future for commercial operation. The criteria of Subpart X would provide an appropriate basis for permitting existing and new units of these types.

d. Open Burning/Open Detonation of Explosive Wastes. Hazardous waste units that conduct open burning or open detonation of waste explosives (as defined in § 265.382) are other types of miscellaneous units covered by today's proposal. These units are neither typical thermal treatment units, nor are they incinerators. The Agency promulgated interim status standards applicable to open burning and open detonation units in Subpart P of Part 265 (§ 265.382) on May 19, 1980 (45 FR 33251). These standards consist primarily of an environmental performance standard and a table of minimum safe distances from the property of others that must be maintained when waste explosives are disposed of by open burning or open detonation. Because such units are not now covered by Part 264, permitting these units under Subpart X is appropriate.

e. Certain Chemical, Physical, and Biological Treatment Units. Hazaroous waste management units that treat hazardous waste by chemical, physical, or biological methods in other than tanks, surface impoundments, and land treatment units during interim status are covered under Subpart Q of Part 265. However, there are no regulations under Part 264 to cover existing or new units in this category. The proposed new Subpart X regulations will, therefore, be used to regulate these units.

f. Disposal into or on Water. It is conceivable that an owner or operator may want to dispose of hazardous waste by placing such wastes into or on surface water, but the Agency currently lacks RCRA standards for such activity. Placement of hazardous waste into or on water is likely to be an industrial wastewater point source discharge, subject to regulation under section 402 of the Clean Water Act and subject to permitting under that Act. As such, they are not "solid wastes" under 40 CFR 261.4 (and, therefore, they are not "hazardous wastes" regulated under the RCRA regulations). Ocean disposal of hazardous waste and related operations are covered by a RCRA permit-by-rule (40 CFR 270.1(c)(1)(iii)). However, there may be some water disposal activities that are not covered by the exclusion or the permit-by-rule. Subpart X could be appropriate for such activities, if they can be conducted in a manner that is protective of human health and the environment.

g. Research in Miscellaneous Units. Like other subparts of Part 264, Subpart X could also apply to research in miscellaneous units. At present, research and development on processes or units covered under Part 264 (e.g., research on an experimental process in a standard tank or in an innovative tank) may be permitted, assuming that the experimental process or tank design was not so different as to render Part 264 standards inapplicable. Alternatively, the process or unit could be eligible for a permit under the Agency's new research authority under 40 CFR 270.65. The Agency believes that persons who want to conduct research in a unit not now covered by Part 264 standards, but who do not wish to be bound by the limitations of a permit issued under § 270.65 (e.g., a shorter permit term), may find Subpart X an attractive alternative.

2. Units Not Covered Under Subpart X or Units for Which Subpart X Permits Will Not Be Issued

a. Treatment, Storage, and Disposal in Units Currently Regulated Under Parts 264 and 146. Under today's proposal, treatment, storage, or disposal in units now regulated under Part 264 or 146 could not be permitted under Subpart X. Instead, these units must be permitted using the standards established under the applicable subparts of Part 264 or 146. For example, placement of hazardous waste in a tank or surface impoundment for treatment is covered under Subpart J or K, respectively, and must be permitted using those standards. In the future, however, the Agency may consider and apply, using the authority of section 3005(c)(3), the criteria for protection of human health and the environment contained in Subpart X in addition to the Subparts J and K requirements when issuing a permit for the treatment of hazardous waste in a tank or surface impoundment; that is, in issuing a Subpart J or K permit, the Regional Administrator (or State Director) may impose permit conditions on treatment activities based on the criteria for protection of human health and the environment proposed today. Similarly, the Agency may use its section 3005(c)(3) authority to apply these criteria in issuing permits for other types of treatment facilities.

b. Open Burning of Non-Explosive Hazardous Waste. Although, by its terms, Subpart X applies to all units not covered under Part 264, including open burning and open detonation of non-explosive hazardous waste, the Agency believes that open burning of such waste cannot be conducted in a manner that is protective of human health and the environment. The Agency made this finding in 1980 in promulgating the general ban on open burning of non-explosive hazardous waste (40 CFR 265.382), and has no new information to suggest that its conclusion should be revised. The Agency, therefore, intends to deny any permit applications it receives under Subpart X for such activities.

c. Units Excluded from Permitting Under Parts 264 and 270. Certain units are specifically excluded from permitting under the Part 264 and Part 270 standards. For example, publicly owned treatment works and ocean disposal activities are not permitted under Part 264 standards as they are covered by permits-by-rule (see 40 CFR 264.1 (c) and (e)). Another example is operation of a waste water treatment unit (40 CFR 264.1(g)(6)). These units continue to be excluded from Part 264 standards and would not be subject to other subparts of Part 264, including Subpart X.

The Agency requests comment on the scope of Subpart X and the types of activities and units that should be permitted under Subpart X.

III. Alternative Approaches Considered

In developing Subpart X for miscellaneous waste management units, the Agency examined six alternative regulatory approaches. These included design and operating standards, technical performance standards, containment standards, facility-specific risk assessment, environmental performance standards, and a combination of these alternatives.

A. Design and Operating Standards

Design and operating standards would require installation of specific equipment or use of particular processes. A major advantage of specific design and operating requirements is that they clearly define for the regulated community what is required for a specific type of waste management unit. However, this approach for Subpart X would require significant Agency time and resources and might omit newly developing technologies. To some extent, design and operating requirements tend to restrict and stifle technological advances and innovations. Because of these disadvantages, the Agency has decided not to propose specific design and operating standards for Subpart X. However, as the Agency's understanding of the technology, efficiency, and safety of each of the various classes of hazardous waste management units improves, and as some methods become widely utilized and accepted, the Agency may examine the possibility of using specific design or operating requirements for certain classes of these units.

B. Technical Performance Standards

This regulatory approach would involve the establishment of specific engineering objectives and allow the permit applicant to develop a design or set of practices to achieve the objective. This approach would allow somewhat greater permitting flexibility and require fewer Agency resources than design and operating standards, however, it is likely that some new technologies could not be permitted under this approach because of the specificity of the engineering objectives.

C. Containment Standards

Another approach the Agency considered was the development of performance standards that would require containment of hazardous waste within certain boundaries. A regulation based upon containment could specify a period of time within which hazardous constituents could not be released from a waste management unit into the surrounding environment. The goal of this standard is the containment of hazardous wastes within a confined area for a finite time. While such an approach may prevent environmental contamination under some hydrogeological conditions, the Agency is concerned that it may only delay contamination in others. In addition, total containment in all media may not always be necessary to protect human health and the environment. The use of this regulatory approach would be difficult, because of the variety of waste management units to be regulated under the proposed subpart; the problems of

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defining surface and subsurface boundaries in a general rule that is applicable to all miscellaneous units (e.g., some thermal treatment units and deep mine excavations); and controversy over appropriate time periods. Therefore, the Agency is not proposing to use containment standards, alone; however, some permits issued under today's proposal may indeed be based on containment and include containment design and operation features such as liners, barriers, or a combination of containment features and geological siting considerations.

D. Facility-specific Risk Assessment

The Agency's evolving policy is to assess more explicitly the risks involved in its decisions—both regulatory and permitting. The Agency believes that the unique character and small number of miscellaneous units makes them excellent candidates for facility-specific risk assessments. Miscellaneous units may pose unique combinations of wastes, location, and technology that are not addressed by our existing regulations.

Under this regulatory approach the permit applicant would be required to perform fate and transport analyses and human health and environmental risk assessments based on the RCRA goal of protecting human health and the environment. The permit writer would determine the design and operating standards necessary to address the major risks identified at the site-specific unit.

Since the cost of such a risk analysis could be extremely high, the Agency is seeking detailed comments on the appropriate extensiveness of such an analysis. Approaches to risk analysis could be similar to the Exposure Assessments required under section 3019 of RCRA, to the demonstrations required for Alternate Concentration Limits (ACL) under Subpart F of Part 264, or the petition process for variances from land disposal bans, as proposed in the Federal Register on January 14, 1986 (51 FR 1759).

E. Environmental Performance Standards

Such performance standards seek to set either numerical health and environmental standards or non-numerical performance requirements. These standards may take the form of numerical exposure specifications (such as the allowable concentration of a chemical at the points of human exposure), pollutant limits in environmental media (that is, concentrations of chemicals permitted to be released to the environment), or general objectives or goals to serve as a guide for protecting human health and the environment.

F. Combination of Approaches

This approach would combine the appropriate elements of all five previously discussed alternatives, and apply them on a case-by-case basis. The miscellaneous units would be located, designed, constructed, operated, maintained, and closed in a manner that would assure protection of human health and the environment through the prevention of any releases that may have adverse effects on ground-water quality, surface-water quality, air quality, and on the surface or subsurface environment in the area surrounding the miscellaneous unit.

In the permitting process, selected features of design and operating, technical performance, containment, and environmental performance standards, as well as the risk-based approach, may be specified so that the overall objective of the protection of human health and the environment is satisfied. For example, for some units, liners may be specified in addition to limits on the concentrations of chemicals to be released to the environment on the basis of risk. Appropriate models may be used in some cases for such determinations.

IV. The Agency's Proposed Approach

After evaluating various alternatives, the Agency has decided to propose regulations for miscellaneous units based upon the last approach described above: A combination of the above-discussed regulatory alternatives. Such standards would provide performance objectives for protecting human health and the environment and guide evaluation of permit applications. The performance objectives require permit applicants to evaluate potential environmental impacts of their facility, and demonstrate that the ground water, surface water, air, and the surface and subsurface environments will not be contaminated to the point of causing adverse effects on human health or the environment. As understanding of a particular hazardous waste management technology improves, the Agency may refine its regulations by issuing specific design and operating standards for a particular type of a unit. For example, the Agency may develop certain operating requirements for open burning and open detonation units, if the knowledge and experience with these units can be developed into unit-specific standards.

In addition, in the permit development and review process, specific design, operation, monitoring, or performance requirements may be included in the permit. Applicability of these requirements will be determined on a case-by-case basis and the rationale for their applicability will be provided in each permit. In certain cases, the design and operation of a Subpart X unit may resemble that of a specific type of unit now regulated under RCRA (e.g., an incinerator). To the extent that they are applicable, the requirements under the existing unit-specific subpart (e.g., Part 264, Subpart O, Incinerators) will be applied to the unit through the permit.

The regulatory scheme proposed by the Agency offers several distinct advantages. First, it allows the Agency to address a full range of environmental issues raised by a particular waste management situation without waiting to establish specific design and operating conditions or other standards. By identifying a set of general environmental objectives and specific factors to be considered, the Agency allows development of permits that are responsive to various ground-water, surface-water, and air quality concerns as well as complex natural processes in the surface and subsurface environments that may arise at each site. Second, general standards allow more flexibility in addressing the range of potential human health and environmental effects presented by various types of waste management units than an approach that relies on specific design and operating standards. A particular design or operating requirement may be inappropriate due to the special nature of a miscellaneous waste management unit. More importantly, such requirements may not be stringent enough in some cases to protect human health and the environment or may result in unnecessary over-control in other cases. Environmental performance standards allow the permit-issuing authority to tailor each permit to the particular circumstances and risks presented by a particular miscellaneous waste management unit, based on the nature of the technology and waste material, and site location or hydrogeologic characteristics.

In evaluating all relevant health and environmental impacts from a miscellaneous unit, the Agency will be able to ensure that the activities at the unit will protect human health and the environment. It is possible that the Agency may conclude that the management of hazardous waste in a particular unit will not adequately protect human health and the environment. In that case, the Agency will issue a notice of intent to deny a Subpart X permit, explaining the reasons in detail. Permit procedures, including procedures for denying a permit, are covered by 40 CFR Part 124.

The major disadvantage of the proposed approach is that the bulk of the design, construction, operation, monitoring, and closure specifications will be developed and specified through the permit process. As discussed above, the Agency will review and adopt or modify relevant requirements from Subparts I through O of Part 264, as appropriate. As permitting or research experience and knowledge is gained, the Agency also plans to develop guidances for specific types of facilities (e.g., the Agency plans to issue guidance on open burning and open detonation of certain wastes, and on emplacement of wastes in certain massive geologic formations such as salt domes).

When units are permitted under Subpart X of Part 264, the Agency also proposes to require compliance with Subparts A through H, except Subpart F, for all units. Each applicant will be required to address the requirements of general facility standards, preparedness and prevention, contingency plan and emergency procedures, the manifest system, recordkeeping and reporting, closure and post-closure, and financial requirements. Comprehensive ground-water monitoring under Subpart F may not be necessary for all types of Subpart X units. Applicants should address the potential for ground-water contamination. Where such contamination is possible, the applicant must comply with the requirements of Subpart F. The applicant must demonstrate that the hazardous waste management unit's location, design, construction, operation, monitoring, maintenance, and closure enable the unit to meet the performance standards. In this way, the permit applicant will demonstrate that the unit will be protective of human health and the environment. In addition, the Director has discretion to determine which other subparts are generally applicable to a particular miscellaneous unit (e.g., Subpart J for tank-like units).

The Agency is developing other regulations that will affect permitting under Subpart X and other Subparts of Part 264. These include the land disposal ban regulations under section 3004 (b) through (m) (discussed earlier) and the corrective action requirements of section 3004 (u) and (v) of HSWA. The corrective action requirements apply to permitting Subpart X units by law. Because the corrective action requirements are broadly applicable and because miscellaneous units do not appear to present unique factors for implementation of these new regulations, the Agency expects that corrective action requirements will apply to Subpart X units and facilities in the same manner that they apply to other units and facilities.

The Agency seeks comments on the proposed permit procedure and on the type of information that applicants must submit. The Agency also seeks comments on the type of guidance that would be beneficial to the permit applicant and the permit writer. The Regional Administrator would be responsible for issuing the permit. The Agency would establish a special headquarters group to review initially the small number of highly technical applications likely to result. The review group would include specialists from headquarters, EPA laboratories, Regions, and States. The review process provides for a close consultation with the Regions and the States. There would also be special training courses for the permit writers in the Regions and States. The Agency believes that this is the most efficient way to use its own scarce, specialized personnel.

V. Amendments to Part 260: Definitions

The Agency is proposing the addition of one definition, "miscellaneous unit", and requesting comments on the revision of the existing definition of "landfill" in § 260.10.

The Agency uses the term "miscellaneous unit" in the proposed regulation to refer to hazardous waste management units used to treat, store, or dispose of hazardous waste that do not fit the current definitions of container, tank, surface impoundment, waste pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, or underground injection well.

The Agency is also requesting comments on its proposal to clarify the definition of a landfill. The Agency is today proposing to amend the definition of landfill but is not today publishing a new proposed definition as regulatory language. As explained below, the amendment of the definition will be complicated, and the Agency is inviting comment on how the definition may be changed to reflect the ideas and goals discussed in this section. In section 264.10, the definition of a landfill constitutes a catch-all category for certain units that do not fit within the definition of other land disposal units. Landfill "means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a land treatment facility, a surface impoundment, or an injection well." (40 CFR 260.10). Because the Agency intends Subpart X to apply to miscellaneous units and not Subpart N, the Agency is today proposing to redefine "landfills" to apply to a discrete category of units. Miscellaneous units will therefore, become the "catch-all category".

Redefining landfill is complicated by the fact that Parts 264 and 265 have different applicability. Like Part 264, Part 265 provides standards for certain units that are relatively narrowly defined (e.g., tanks, containers, surface impoundments, and incinerators). However, Part 265 also contains standards for three categories of units that cover a wide variety of hazardous waste technologies. Thermal treatment standards (Subpart P of Part 265) cover units that thermally treat hazardous waste in devices other than incinerators. Subpart Q of Part 265 covers chemical, physical, or biological treatment in units other than tanks, surface impoundments, and land treatment facilities. Subpart N of Part 265 covers landfills (a broad term). Subparts N, P, and Q, therefore, serve as catch-all categories for Part 265. By contrast, Part 264 does not contain Subparts equivalent to P and Q; only Subpart N (Part 264) is a broad category, due to the definition of landfill. Therefore, one goal of the redefinition of landfill is to ensure that in Part 264, Subpart X and not Subpart N will apply to units that are now covered in Part 265 by Subparts P and Q. In other words, when an interim status unit now covered by Subparts P and Q is to receive a Part 264 permit, it should be governed by the permitting standards of Subpart X, and not by those that apply to landfills.

A second, complementary goal in redefining "landfill" is to ensure that landfills, as generally conceived, remain covered by Subpart N of Part 264 and are not inadvertently subjected to Subpart X standards. Landfills must remain subject to the standards of Subpart N for two practical reasons. First, the Agency promulgated the Subpart N standards specifically for landfills and believes that these standards are most appropriate for these units. Second, a change in the applicable standards would create significant and unnecessary administrative burdens for those persons who are in the process of writing a permit or who are preparing a permit application, or those persons who have already received a landfill permit.

Today, the Agency is proposing to redefine "landfill," consistent with the goals outlined above, in order to identify more precisely the types of waste management practices included within

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this category. Instead of proposing specific regulatory language, the Agency is presenting several elements that would limit the existing definition of "landfill." Any or all of these alternatives could be added to the existing definition in order to make it more specific.

First, landfills generally use earthen materials for support. This characteristic distinguishes landfills from tanks, which are constructed primarily of non-earthen materials.

Second, landfills are used for disposal, rather than for treatment. Landfills should be distinguished from other, specialized types of waste management processes that are defined primarily by the type of treatment they provide, such as thermal treatment. The Agency realizes that the term "primarily" is not precise and could require that case-by-case judgments be made as to whether a particular unit should be viewed as a landfill. However, it would not be accurate to state that landfills are used only for disposal and not for treatment, in as much as the broad definition of "treatment" includes many activities that could take place in a landfill.

Third, landfills are used primarily to contain the waste placed in them. This distinguishes landfills from land treatment units and other treatment technologies (such as open burning) in which the wastes are not usually contained in a unit. However, one concern the Agency has regarding the concept of "containment" is that an owner or operator who wishes to avoid the technical requirements for landfills in Subpart N and section 3004(o)(1) of RCRA (such as double liner and leachate collection systems) could attempt to qualify under Subpart X merely by claiming that the unit did not, in fact, "contain" the waste. The Agency invites comment on how the provision could be drafted to avoid this result.

Finally, the Agency could expressly exclude from the definition of "landfill" any practices that should not be included as landfills, such as thermal treatment, or chemical or biological treatment. The Agency recognizes that some of these processes can occur in landfills. Therefore, because waste management practices at landfills are not uniform, it is difficult to develop a generic definition that is specific enough to exclude these units yet general enough to include the practices that commonly occur at landfills. A list of such practices would clearly eliminate some questions about the scope of the definition.

The Agency requests comments on the advantages and disadvantages of the alternatives discussed above, and on any other language that could serve to further refine the definition of "landfill". In addition, there may be cases where a unit appears to have most or all of the characteristics of a conventional landfill (or surface impoundment, tank, etc.) but there is some question about whether it fits within the technical definition. How should the Agency determine whether such a unit is covered by the other definitions, or is more appropriately classified as a miscellaneous unit. For example, should there be a presumption that a unit that arguably fits within the definition of "landfill" should be regulated as such? This would put the burden on the owner or operator to demonstrate that a particular process should not be regulated as a landfill. Or should the Agency allow such units to be regulated under Subpart X but draw heavily on the relevant subparts (such as Subpart N for landfills) when establishing standards for these units?

The Agency also requests comments on whether the new definition of "landfill" should be applicable only to Part 264. Currently, as noted above, Subparts P and Q of Part 265 establish standards for many of the processes that would be classified as miscellaneous units under Part 264. Arguably, then, a new definition of "landfill" is not needed for purposes of Part 265. However, if the new definition of landfill is applied to interim status landfills, the Agency requests comments on whether any interim status units that are "landfills" under the current definition and are regulated as landfills under Part 265 would continue to be regulated as landfills and not under Subpart P or Q or be excluded from Part 265 regulation altogether.

VI. Amendments to Part 264: The Proposed Subpart X Regulation For Miscellaneous Units

The regulations proposed today under 40 CFR Part 264 apply to miscellaneous waste management units that are used to treat, store, or dispose of hazardous waste. Conforming changes to accommodate the addition of Subpart X are proposed for Part 264, Subparts B, E, G, and H. These changes merely serve to make the general requirements of Part 264 applicable to miscellaneous units.

The Agency intends the general facility requirements of Part 264, Subparts A through E, G, and H, to apply to miscellaneous units. These subparts now apply to the conventional types of hazardous waste management units already regulated under Part 264 that are covered under Subparts I through O. This approach contrasts with that of Part 264, Subpart F, Ground-water Protection Requirements. Subpart F now applies to only certain types of hazardous waste management units ("regulated units") that have a potential for migration of waste to ground water. The Agency will require miscellaneous units to comply with Subpart F (or sections of Subpart F) only when necessary to protect human health and the environment. In the case of miscellaneous units, Subpart F will apply to units that have a potential for contamination of ground water. This approach is implemented through the new § 264.602, which is explained below.

It should be noted that the term "Director" has been substituted for "Regional Administrator". Director means the Regional Administrator or the State Director in an authorized State, as the context requires. This change conforms to the terminology selected for use in other recent amendments to the hazardous waste management regulations.

The proposed standards for miscellaneous units are discussed below, section-by-section.

A. Section 264.600—Applicability

This section limits the applicability of the regulations of Subpart X to owners and operators of miscellaneous hazardous waste management units. By use of the term "miscellaneous", this section incorporates the definition of miscellaneous unit from § 260.10.

B. Section 264.601—Environmental Performance Standards

The most important features of the proposed regulations for new and existing miscellaneous waste management units are the environmental performance standards set forth in § 264.601. Section 3004 of RCRA requires that standards applicable to owners and operators of treatment, storage, and disposal facilities be those "necessary to protect human health and the environment." In § 264.601, the Agency has translated this overall goal into a set of objectives providing a guide for owners and operators of miscellaneous units and for permit writers. Under § 264.601, miscellaneous units managing hazardous waste must protect ground water, surface water, and air quality and limit surface and subsurface migration. These objectives represent the principal areas of human health and environmental concern, and are appropriate for guiding permit decisions.

The Agency does not view § 264.601 as a set of specifications that will directly apply to all owners and operators of miscellaneous units. Rather, § 264.601 provides a general set of objectives that will guide the permit applicant (owner/operator), the Agency, and the public in evaluating the acceptability of each unit and the adequacy of the unit design and operation to mitigate risk. The permit applicant is expected to propose the specifications for location, design, construction, operation, monitoring, maintenance, closure, and, where appropriate, post-closure care. Detailed analysis of each factor in § 264.601 may not be necessary in a permit application, depending on its relevance to the type of unit under consideration. All of the factors identified in § 264.601, however, should be considered and their relevance addressed in the application. Based on the information about the environmental impacts, specific conditions beyond those suggested by the applicant may be included by the Agency in the permit. Once issued, the permit governs where a unit is to be located and how it is to be designed, constructed, operated, monitored, maintained, and closed. Each of the three groups of objectives are discussed in more detail below.

1. Ground Water and Subsurface Migration. Contamination of ground water and the subsurface environment is a major concern under RCRA. Section 264.601(a), therefore, provides for the prevention of any releases that may have adverse effects on ground-water quality and the subsurface environment due to the migration of contaminants. The regulation lists nine factors to be considered in assessing the potential for adverse effects on ground-water quality and the subsurface environment.

The first factor includes the volume and physical and chemical characteristics of the waste itself. The volume and concentration of the waste placed in the unit determines the maximum amount and concentration of waste that may enter the ground water. Physical and chemical characteristics determine (1) the toxicity of the waste; (2) the ability of the waste to be contained, immobilized, degraded, or attenuated or to migrate in various soils and materials; and (3) the probability of undesirable reactions taking place among wastes or between wastes and liners or other containment structures.

The second, third, and fourth factors are the hydrogeological characteristics of the unit and surrounding land, the regional land-use patterns, and the quantity and direction of ground-water flow, respectively. These three factors affect the movement of waste constituents in the environment and, thus, are of crucial importance in assessing the impact on human health and the environment. The hydrogeological factors determine the changes in water quality in the site area due to human activities. Land-use patterns can change hydrogeologic characteristics, which determine migration to and distribution of wastes in ground water.

The fifth factor is proximity to and withdrawal rates of current and potential ground-water users. While drinking water is probably the most crtical use, agricultural and industrial uses of ground water are also of concern. Clearly, water that is contaminated by hazardous waste leachate may be harmful regardless of the particular application. Current and potential uses should be considered, in addition to information on State ground-water planning and regulatory efforts. Additionally, any changes in ground-water withdrawal rates or patterns can alter the rates of ground-water movement, which influence the rates of migration of contaminants to exposure points.

The sixth factor focuses on the existing ground-water quality and sources of contamination other than the miscellaneous unit. This factor is relevant for predicting future ground-water uses and the incremental risk of the new unit.

The seventh and eighth factors are the potential for impacts on human health and damage to animals, plants, and physical structures caused by exposure to waste constituents, respectively. Potential adverse impacts on humans, plants, and animals depend on many factors including the concentration, quantity, toxicity, and transport of the waste constituents.

The ninth factor is movement of waste constituents in the subsurface. Subsurface migration of wastes is a type of environmental degradation apart from contamination of ground water. The Love Canal incident provides a classic example. There, waste constituents migrated from a landfill into the basements of nearby homes. Direct human exposure resulted from physical contact with waste and inhalation of volatile contaminants. The potential adverse effects of subsurface migration of waste constituents must be considered in addition to any direct effects on surface water and ground water. The same factors that influence ground-water protection are significant when considering subsurface migration.

Both the saturated and unsaturated zones must be considered in evaluating the potential for subsurface migration. This requires knowledge of the characteristics of the waste in the unit and the hydrogeology of the surrounding area. The patterns of land use in the area, including proximity to residential buildings, are particularly important here, as illustrated in the example above. In particular, the potential for migration of waste constituents into subsurface physical structures must be considered. This requirement is included in factor nine.

Also considered in factor nine is the migration of wastes to the soil root zone of food-chain crops and other vegetation. With such migration, phytotoxicity may occur, as in the case with heavy metals at high concentrations. More importantly, roots may absorb certain hazardous constituents that the plant may uptake and pass into the human food chain.

2. Surface Water and Surface Soils. The surface water ecosystem is easily polluted and difficult to cleanse. Improper disposal of hazardous wastes can have immediate, far-reaching, and long-term effects on both surface waters and surface soils. Therefore, § 264.601(b) addresses the prevention of any release that may have adverse effects on surface waters and surface soils. Many of the same factors that influence ground-water protection and minimize risk from subsurface migration of waste constituents are significant for the protection of surface water and surface soils. Therefore, the sections listed in § 264.601(b) are similar to those in § 264.601(a).

The volume and the characteristics of the waste in the units is the first factor to be evaluated. The volume of waste and its chemical and physical properties determines the potential for contamination of surface water and surface soils.

The effectiveness of containment structures should be considered in the second factor because surface waters and surface soils may be contaminated by ground-water migration and by overland flow of waste constituents. Precipitation run-on and run-off controls and subsurface structures should be considered, including liners, dikes, diversion ditches, and cut-off walls.

The third, fourth, fifth, and sixth factors require considerations of the hydrogeology and climate of the area, including evaluation of the topography, rainfall patterns, characteristics of ground-water flow, and the proximity of a unit to surface waters. These factors determine the distribution and degree of surface water and surface soil contamination.

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The seventh, eighth, and ninth factors pertain to patterns of surface water and land use, existing surface water and surface soil quality, other sources of contamination, and water quality standards. Information on patterns of use, present quality, and other contamination will provide insight into the likelihood of health or environmental impacts. Water quality standards provide numerical and narrative criteria, tied to particular uses of water bodies, that should guide the Agency, permit applicants, and the public in evaluating the acceptability of managing waste in a particular unit.

Impacts on human health, animals, plants, and physical structures by waste constituents that enter surface waters must also be analyzed and addressed in the tenth and eleventh factors.

3. Air. Some waste management units may present a significant potential for adverse effects on air quality. Section 264.601(c) requires the prevention of any releases that may have adverse effects on air quality and lists various factors important in protecting air quality.

The first factor considers the volume and characteristics of the waste in the unit, and the potential to react or evaporate to form gaseous, aerosol, or particulate products that enter the atmosphere.

The second factor considers the effectiveness of systems and structures to prevent gaseous, aerosol, or particulate emissions.

The third factor considers the operating parameters of the unit that make air emissions likely and create a potential for toxic or explosive gases, aerosols, or particulates to be produced.

The fourth and fifth factors take into account the atmospheric, meteorologic, and topographic conditions of the site location, the existing air quality, and sources of contamination near the site.

The sixth and seventh factors assess the potential adverse impacts on human health, plants, animals, and physical structures. Of special concern is the inhalation of hazardous constituents by humans exposed to air emissions from these units.

C. Section 264.602—Monitoring, Analysis, Inspection, Response, and Reporting

Each miscellaneous waste management unit must have a monitoring program that includes, where appropriate, a ground-water, surface water, soils, and air quality monitoring system. (Alternatives to ambient air monitoring and analysis may include analysis of waste, emission measurements, and periodic monitoring with portable detectors.) A monitoring program must include procedures for sampling, analysis and evaluation of data, suitable response procedures, and a regular inspection schedule. This requirement is intended to ensure that the permit specifies all monitoring, inspection, and response activities and the frequency at which these activities are to be conducted. Including these specifications in the permit will enable the owner or operator to monitor in order to prevent violation of permit requirements and prevent damage, and will enable the oversight agency, through inspections and enforcement, to assess whether the unit is in compliance with the permit and, therefore, with the requirements of § 264.601.

Since each miscellaneous unit covered by this section may be distinctive in its design, operation, and location, the Agency is leaving the specifications, as well as the extent, of the monitoring, inspection, and response program to the evaluation of the permitting official. At a minimum, the monitoring program for a miscellaneous unit should be capable of determining the unit's impacts on ground water in the uppermost aquifer, surface water, and air quality, and the extent of surface and subsurface contaminant migration, to the extent monitoring in each media is necessary, to ensure compliance with § 264.601. The program should consider the following: (1) Depth and location of monitoring wells necessary to obtain representative samples of constituents in various media, (2) constituents to be monitored and the frequency of monitoring, (3) procedures to maintain the integrity of monitoring devices, (4) sample collection and preservation procedures, (5) analytical methods used for sampling and analysis, (6) appropriate procedures for the evaluation of data from the monitoring program, and (7) appropriate response procedures for cases where the monitoring program indicates that the unit is not in compliance with § 264.601.

The monitoring, inspection, and response program under a Subpart X permit will include requirements linking inspections and monitoring of the unit to the appropriate response. The Agency will consider the Part 264 Subpart F standards for ground-water monitoring, protection, and corrective action as guidelines for establishing a ground-water program at appropriate Subpart X units.

The owner or operator of each miscellaneous waste management unit covered by this section shall comply with biennial reporting requirements specified under § 264.75. These requirements are the same as those in effect for all hazardous waste treatment, storage, and disposal facilities that are specifically regulated under Part 264.

D. Section 264.603—Post-closure Care

Owners and operators of miscellaneous units permitted under Subpart X that dispose of hazardous wastes must, in addition to complying with the post-closure standards of Subpart G of Part 264, continue to meet the environmental performance standards of § 264.601 that applied in the operating period during the post-closure care period. This requirement is included to ensure that units used for disposal are maintained properly after closure. This requirement would also be applicable to treatment and storage units that cannot completely remove or decontaminate soils or ground water at closure. Maintaining the unit during this period must be based upon procedures that are specified in a written post-closure plan, as required in § 264.118. Where appropriate, the post-closure plan is to include monitoring, response, and maintenance procedures.

VII. Amendments to Part 270: Permit Requirements

A. General Permit Requirements

Application and review requirements for permitting hazardous waste management facilities under RCRA are contained in Part 270. All owners and operators of units that treat, store, or dispose of hazardous waste in miscellaneous units must obtain permits under the Part 270 regulations. Subpart X applicants must comply with the general application requirements, including the Part A permit requirements, the Part B general application requirements of § 270.10, and the Part B specific information requirements. Part 270 regulations specify what information owners and operators of facilities must submit in their permit applications to demonstrate compliance with the Part 264 standards (both the general standards in Subparts A through H, except F, and the specific standards in Subpart X). The general information requirements in Part 270 apply to all owners and operators of miscellaneous units.

B. Specific Information Requirements for Miscellaneous Units

The specific information requirements for miscellaneous units proposed to be included in § 270.23 are intended to clarify and define the type of unit that is being permitted. The applicant must describe the unit, its physical characteristics, materials of construction, and dimensions. The bulk of the application is expected to contain

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detailed plans and engineering reports describing how the unit will be located, designed, constructed, operated, maintained, monitored, inspected and closed to comply with the requirements of §§ 264.601 and 264.602. The plan should include a detailed process development-type plan. For certain treatment units, such as an enclosed thermal treatment process, the applicant may be required to perform trial burns, similar to the type of testing required of incinerators, to demonstrate the effectiveness of the treatment process. Where releases to air, surface water, or ground water are possible, the applicant is expected to provide detailed hydrologic, geologic, and meteorologic assessments and maps for the region surrounding the site. Applications for disposal units must contain a description of the plans to comply with post-closure requirements of § 264.603.

Information on the potential pathways of exposure of humans or environmental receptors to hazardous waste or hazardous constituents and on the potential magnitude and nature of such exposures must be contained in the permit application. In addition, for any treatment unit, any reports on demonstrations of the effectiveness of the treatment based on laboratory, bench-scale, pilot-scale, or field data should be submitted.

If the unit to be permitted involves a waste treatment process or technology that is to be demonstrated at a bench-scale or a pilotscale before constructing and operating the unit at full-scale, there are several options available to the permit applicant. If the demonstration is short-term and will be conducted in a unit that is not land-based, a Research, Development, and Demonstration permit may be appropriate. If the demonstration may be long-term (i.e., may eventually be used as a commercial-scale treatment process), or the unit is land-based, a permit may be obtained under Subpart X.

If a multi-stage demonstration project is to be permitted under Subpart X, there are two possible permitting strategies that are available. A single permit that covers the entire demonstration could be written. Alternatively, a series of permits could be issued corresponding to the various stages of development of the process. Each permit would terminate with the completion of the relevant stage, and a new permit issued for the succeeding stage, based upon an evaluation of the results of the concluded stage. The exact permitting strategy to be used would be determined by the permit writer, based upon the type of treatment process and the demonstration.

A detailed description of the unit should include more information than is required for units regulated by other Subparts of Part 264 because the nature of each miscellaneous unit can vary a great deal. Additional information may be required on how a unit's design, construction, location, operation, maintenance, inspection, and closure characteristics are developed to meet the requirements of the environmental performance standards. (See proposed § 270.23 (e).)

C. Conforming Changes

Conforming changes are being proposed in other sections of Part 270 to accommodate the new Subpart X regulations. The Agency is not proposing to make changes to the Part 124 permit processing procedures. Issuance of permits for miscellaneous units would be subject to Part 124 in the same manner as other hazardous waste permits.

VIII. Solicitation of Public Comments

The Agency solicits comments on today's proposed regulations and the supporting rationale provided in the preamble. In addition to the overall approach of Subpart X, the areas on which the Agency specifically requests comments are as follows:

1. What types of units not addressed in Subparts I through O of Part 264 are currently in existence, or likely to be developed in the future? Which of these units are not appropriately addressed under the proposed Subpart X rules?
2. Are some types of miscellaneous units suitable for coverage under a special set of design and operating standards? If so, what special standards should apply and why?
3. Are the environmental performance standards of § 264.601 adequate to evaluate the protection of human health and the environment? Should all of these standards apply to all types of miscellaneous units?

IX. Applicability to State Hazardous Waste Management Programs

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, the Agency may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, the Agency retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to HSWA, a State with final authorization administered its own hazardous waste program rather than the Agency administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and the Agency could not issue permits for any facilities in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in non-authorized States. The Agency is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

B. Effect on State Authorizations

Today's announcement proposes standards that are not effective in authorized States since the requirements are not being imposed pursuant to HSWA. Thus, the requirements will be applicable only in those States that do not have interim or final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State Law.

The Agency is in the process of promulgating amendments to the requirements for State hazardous waste programs. The final rule specifies deadlines for State program modifications and makes other changes to the existing regulations to implement the state authorization provisions of HSWA.

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to include equivalent standards within a year of promulgation of these standards if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. Under proposed changes to this regulation, the State program must be modified by July 1 of each year to reflect all changes to the Federal program occurring during

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the 12 months preceding the previous July 1. These deadlines can be extended in certain cases (40 CFR 271.21(e)(3)). Once the Agency approves the modification, the State requirements become RCRA Subtitle C requirements.

States with authorized RCRA programs may already have requirements similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to carry out these requirements in lieu of the Agency until the State program modification is submitted for Agency approval. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law.

States that submit official applications for final authorization less than 12 months after promulgation of these standards may be approved without including equivalent standards. However, once authorized, a State must modify its program to include equivalent standards within the time period discussed above. The process and schedule for revision of State programs is described in 40 CFR 271.21.

The Agency is precluded from issuing permits to new units in States authorized to implement RCRA in lieu of the Agency. However, 40 CFR 264.1(f)(2) provides an exception to this preclusion: the Agency may issue permits in authorized States if the unit was not regulated under RCRA at the time of the State's authorization and if standards for permitting the unit were promulgated *after* the State received final authorization. Thus, according to this provision, the Agency may issue a permit to a new facility under Subpart X in an authorized State. However, the Agency's permitting authority would cease once the State modified its program, in accordance with § 271.21(e), to reflect the Federal Subpart X standards.

If a unit has been operating in an authorized State under State interim status (granted as a result of a protective filing, for example), that facility would continue to operate under interim status until the State is authorized to implement Subpart X. In this instance, the Agency could not issue permits under Subpart X in the State.

X. Regulatory Analyses

A. Executive Order 12291: Regulatory Impact Analysis

Under Executive Order 12291, the Agency must judge whether a regulation is "major" and, thus, subject to the requirement of a Regulatory Impact Analysis. The notice published today is not major because: the rule will not result in an effect on the economy of $100 million or more, will not result in increased costs or prices, will not have significant adverse effects on competition, employment, investment, productivity, and innovation, and will not significantly disrupt domestic or export markets. Therefore, the Agency does not expect today's rule to be subject to a Regulatory Impact Analysis under the Executive Order.

The proposed regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires each Federal agency to consider the effects of their regulations on small entities, and examine alternatives that may reduce these effects. With respect to today's proposal, there is no means of anticipating exactly how many miscellaneous units, if any, will be owned and operated by small entities. In general, the Agency believes that the large amounts of capital required and technical complexity necessary to establish safe and secure miscellaneous units will mean that larger entities will predominate.

Consequently, the Agency certifies that this regulation will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Anyone interested in commenting on the information collection requirements should submit comments to the Office of Information and Regulatory Affairs; OMB; 726 Jackson Place NW., Washington, DC 20503 marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

XI. List of Subjects

40 CFR Part 260

Administrative practice and procedure, Confidential business information, Hazardous materials, Waste treatment and disposal.

40 CFR Part 264

Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal.

40 CFR Part 270

Administrative practice and procedure, Reporting and recordkeeping requirements, Hazardous materials, Waste treatment and disposal, Water pollution control, Water supply, Confidential business information.

Dated: October 29, 1986.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, Parts 260, 264, and 270 of Chapter I of Title 40 of the Code of Federal Regulations are proposed to be amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for Part 260 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001 through 3007, 3010, 3014, 3015, 3017, 3018, 3019, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974].

2. Section 260.10 is amended by adding the following definition in alphabetical order to read as follows:

§ 260.10 Definitions.

* * * * *

"Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, waste pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, or underground injection well.

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

3. The authority citation for Part 264 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C 6905, 6912(a), 6924, and 6925].

4. Section 264.10 is amended by revising paragraph (b) to read as follows:

§ 264.10 Applicability.

* * * * *

(b) Section 264.18(b) applies only to facilities subject to regulation under Subparts I through O and Subpart X of this part.

5. Section 264.15 is amended by revising the last sentence of paragraph (b)(4) to read as follows:

§ 264.15 General inspection requirements.

* * * * *

(b) * * *

(4) * * * At a minimum, the inspection schedule must include the terms and frequencies called for in §§ 264.174, 264.194, 264.226, 264.253, 264.254, 264.303, 264.347, and 264.602, where applicable.

* * * * *

6. Section 264.18 is amended by revising the introductory text of paragraph (b)(1)(ii) to read as follows:

§ 264.18 Location standards.

* * * * *

(b) * * *

(i) * * *

(ii) For existing surface impoundments, waste piles, land treatment units, landfills, and open burning/open detonation units, no adverse effects on human health or the environment will result if washout occurs, considering:

* * * * *

7. Section 264.73 is amended by revising paragraph (b)(6) to read as follows:

§ 264.73 Operating record.

* * * * *

(b) * * *

(6) Monitoring, testing, or analytical data where required by Subpart F and §§ 264.226, 264.253, 264.254, 264.276, 264.278, 264.280, 264.303, 264.309, 264.347, and 264.602;

* * * * *

8. Section 264.90 is amended by adding a new paragraph (d) to read as follows:

§ 264.90 Applicability.

* * * * *

(d) Regulations in this Subpart may apply to miscellaneous units when necessary to comply with §§ 264.601 through 264.603.

9. Section 264.111 is amended by revising paragraph (c) to read as follows:

§ 264.111 Closure performance standard.

* * * * *

(c) Complies with the closure requirements of this Subpart including, but not limited to, the requirements of §§ 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, and 264.601 through 264.603.

10. Section 264.112 is amended by revising paragraph (a)(2) to read as follows:

§ 264.112 Closure plan; amendment of plan.

(a) * * *

(2) The Regional Administrator's approval of the plan must ensure that the approved closure plan is consistent with §§ 264.111 through 264.115 and the applicable requirements of §§ 264.90 *et seq.*, 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, and 264.601. Until final closure is completed and certified in accordance with § 264.115, a copy of the approved plan and all approved revisions must be furnished to the Regional Administrator upon request, including request by mail.

* * * * *

11. Section 264.114 is amended by revising the first sentence to read as follows:

§ 264.114 Disposal or decontamination of equipment, structures, and soils.

During the partial and final closure periods, all contaminated equipment, structures, and soils must be properly disposed of or decontaminated unless otherwise specified in §§ 264.228, 264.258, 264.280, or 264.310, or under the authority of § 264.601 and § 264.603. * * *

12. Section 264.117 is amended by revising paragraphs (a)(1)(i) and (a)(1)(ii) to read as follows:

§ 264.117 Post-closure care and use of property.

(a) * * *

(1) * * *

(i) Monitoring and reporting in accordance with the requirements of Subparts F, K, L, M, N, and X of this part; and

(ii) Maintenance and monitoring of waste containment systems in accordance with the requirements of Subparts F, K, L, M, N, and X of this part.

* * * * *

13. Section 264.118 is amended by revising paragraphs (b)(1) and (b)(2)(i) and (b)(2)(ii) to read as follows:

§ 264.118 Post-closure plan; amendment of plan.

* * * * *

(b) * * *

(1) A description of the planned monitoring activities and frequencies at which they will be performed to comply with Subparts F, K, L, M, N, and X of this part during the post-closure care period; and

(2) * * *

(i) The integrity of the cap and final cover or other containment systems in accordance with the requirements of Subparts K, L, M, N, and X of this part; and

(ii) The function of the monitoring equipment in accordance with the requirements of Subparts F, K, L, M, N, and X of this part; and

* * * * *

14. Section 264.142 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 264.142 Cost estimate for closure.

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in §§ 264.111 through 264.115 and applicable closure requirements in §§ 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, and 264.601 through 264.603.

* * * * *

15. Section 264.144 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 264.144 Cost estimate for post-closure care.

(a) The owner or operator of a disposal surface impoundment, disposal miscellaneous unit, land treatment unit, or landfill unit, or of a surface impoundment or waste pile required under §§ 264.228 and 264.258 to prepare a contingent closure and post-closure plan, must have a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure regulations in §§ 264.117 through 264.120, 264.228, 264.258, 264.280, 264.310, and 264.603.

* * * * *

16. Section 264.147 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 264.147 Liability requirements.

* * * * *

(b) *Coverage for nonsudden accidental occurrences.* An owner or operator of a surface impoundment, landfill, land treatment facility, or miscellaneous disposal unit which is used to manage hazardous waste, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. * * *

* * * * *

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17. Part 264 is amended by adding Subpart X consisting of §§ 264.600 through 264.999 to read as follows:

Subpart X—Miscellaneous Units

Sec.
264.600 Applicability.
264.601 Environmental performance standards.
264.602 Monitoring, analysis, inspection, response, and reporting.
264.603 Post-closure care.
264.604 through 264.999 [Reserved]

Subpart X—Miscellaneous Units

§ 264.600 Applicability.

The requirements in this subpart apply to owners and operators of facilities that treat, store, or dispose of hazardous waste in miscellaneous units, except as § 264.1 provides otherwise.

§ 264.601 Environmental performance standards.

A miscellaneous unit must be located, designed, constructed, operated, maintained, and closed in a manner that will ensure protection of human health and the environment. Permits for miscellaneous units are to contain such terms and provisions as necessary to protect human health and the environment, including, but not limited to, as appropriate, design and operating requirements, detection and monitoring requirements, and requirements for responses to releases of hazardous waste or hazardous constituents from the unit. Protection of human health and the environment includes, but is not limited to:

(a) Prevention of any releases that may have adverse effects on ground-water quality or that may have adverse effects due to migration of waste constituents in the subsurface environment considering:

(1) The volume and physical and chemical characteristics of the waste in the unit, including its potential for migration through soil, liners, or other containing structures;

(2) The hydrologic and geologic characteristics of the unit and the surrounding area;

(3) The patterns of land use in the region;

(4) The quantity and directions of ground-water flow;

(5) The proximity to and withdrawal rates of current and potential ground-water users;

(6) The existing quality of ground water, including other sources of contamination and their cumulative impact on the ground water;

(7) The potential for health risks caused by human exposure to waste constituents;

(8) The potential for damage to domestic animals, wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

(9) The potential for deposition or migration of waste constituents into subsurface physical structures, and into the root zone of food-chain crops and other vegetation;

(b) Prevention of any release that may have adverse effects on surface water quality or that may have adverse effects due to migration of waste constituents onto the soil surface considering:

(1) The volume and physical and chemical characteristics of the waste in the unit;

(2) The effectiveness and reliability of containing, confining, and collecting systems and structures in preventing migration;

(3) The hydrological characteristics of the unit and the surrounding area, including the topography of the land around the unit;

(4) The patterns of precipitation in the region;

(5) The quantity, quality, and directions of ground-water flow;

(6) The proximity of the unit to surface waters;

(7) The current and potential uses of nearby surface waters and any water quality standards established for those surface waters;

(8) The existing quality of surface water and surface soils, including other sources of contamination and their cumulative impact on surface water and surface soils;

(9) The patterns of land use in the region;

(10) The potential for health risks caused by human exposure to waste constituents; and

(11) The potential for damage to domestic animals, wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(c) Prevention of any releases that may have adverse effects on air quality considering:

(1) The volume and physical and chemical characteristics of the waste in the unit, including its potential for the emission of gases, aerosols, and particulates, and their dispersal;

(2) The effectiveness and reliability of systems and structures to reduce or prevent emissions of hazardous constituents to the air;

(3) The operating characteristics of the unit;

(4) The atmospheric, meteorologic, and topographic characteristics of the unit and the surrounding area;

(5) The existing quality of the air, including other sources of contamination and their cumulative impact on the air;

(6) The potential for health risks caused by human exposure to waste constituents;

(7) The potential for damage to domestic animals, wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents.

§ 264.602 Monitoring, analysis, inspection, response, and reporting.

Monitoring, testing, analytical data, inspections, response, and reporting procedures and frequencies must ensure compliance with §§ 264.601, 264.15, 264.33, 264.75, 264.76, and 264.77.

§ 264.603 Post-closure care.

A miscellaneous unit that is a disposal unit must be maintained in a manner that complies with § 264.601 during the post-closure care period. In addition, if a treatment and storage unit has contaminated soils or ground water that cannot be completely removed or decontaminated during closure, then that unit must also meet the requirements of § 264.601 during post-closure care. The post-closure plan under § 264.118 must specify the procedures that will be used to satisfy this requirement.

§§ 264.604 through 264.999 [Reserved]

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

18. The authority citation for Part 270 continues to read as follows:

Authority: Secs. 1006, 2002, 3005, 3007, 3019, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912, 6925, 6927, 6939, and 6974).

19. Part 270 is amended by adding to the Table of Contents a listing in Subpart B for § 270.23 as follows:

Subpart B—Permit Application

* * * * *

270.23 Specific Part B information requirements for miscellaneous units.

20. Section 270.14 is amended by revising paragraphs (b)(5) and (b)(13) to read as follows:

§ 270.14 Contents of Part B: General requirements.

* * * * *

(b) * * *

(5) A copy of the general inspection schedule required by § 264.15(b). Include, where applicable, as part of the inspection schedule, specific

requirements in §§ 264.174, 264.194, 264.226, 264.254, 264.273, 264.303, and 264.602.

* * * * *

(13) A copy of the closure plan and, where applicable, the post-closure plan required by §§ 264.112 and 264.118. Include, where applicable, as part of the plans, specific requirements in §§ 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, 264.601, and 264.603.

* * * * *

21. Part 270 is amended by adding a new § 270.23 to read as follows:

§ 270.23 Specific Part B information requirements for miscellaneous units.

Except as otherwise provided in § 264.600, owners and operators of facilities that treat, store, or dispose of hazardous waste in miscellaneous units must provide the following additional information:

(a) A detailed description of the unit being used or proposed for use, including the following:

(1) Physical characteristics, materials of construction, and dimensions of the unit;

(2) Detailed plans and engineering reports describing how the unit will be located, designed, constructed, operated, maintained, monitored, inspected, and closed to comply with the requirements of §§ 264.601 and 264.602;

(3) For disposal units, a detailed description of the plans to comply with the post-closure requirements of § 264.603.

(b) Detailed hydrologic, geologic, and meteorologic assessments and land-use maps for the region surrounding the site that address and assure compliance of the unit with each factor in the environmental performance standards of § 264.601.

(c) Information on the potential pathways of exposure of humans or environmental receptors to hazardous waste or hazardous constituents and on the potential magnitude and nature of such exposures.

(d) For any treatment unit, a report on a demonstration of the effectiveness of the treatment based on laboratory or field data.

(e) Any additional information determined by the Director to be necessary for evaluation of compliance of the unit with the environmental performance standards of § 264.601.

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Part IX

Department of the Interior

Bureau of Reclamation

43 CFR Part 426

Acreage Limitation; Proposed Rule and Notice of Public Workshops and Hearings

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DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 426

Acreage Limitation Rules and Regulations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Proposed rule.

SUMMARY: The proposed rules revise the existing rules for the administration of the Reclamation Reform Act of 1982. The rules are being revised primarily to add provisions for administering section 203(b) of the act. Section 203(b) mandates that after April 12, 1987, parties remaining subject to prior law must pay the full-cost rate for irrigation water delivered to land leased in excess of a landholding of 160 acres. The proposed rules also clarify and expand upon provisions in the existing rules.

DATES: Comments on the proposed rules must be submitted on or before January 6, 1987. Public hearings on the proposed rules are being scheduled and will be announced in the **Federal Register** once dates and places have been established.

ADDRESSES: Written comments on the proposed rules must be submitted to Phillip T. Doe, Chief, Acreage Limitation Branch; Bureau of Reclamation; E&R Center, Code D-410; P.O. Box 25007; Denver, CO 80225.

FOR FURTHER INFORMATION CONTACT: Phillip T. Doe; telephone (303) 236-8065.

SUPPLEMENTARY INFORMATION:

Background

The Reclamation Reform Act of 1982 (RRA), title II, Pub. L. 97-293 (96 Stat. 1263), was signed into law by President Reagan on October 12, 1982. The act is the culmination of an effort to modernize Reclamation law that began with the 95th Congress. The act makes a number of changes to prior Reclamation law but retains the basic principle of limiting the amount of land in ownership which may receive water deliveries from Relcamation projects. The act makes a major change to prior law by introducing the concept of full-cost pricing for some water deliveries.

Current Rules

Final rules and regulations for implementing the Reclamation Reform Act were published in the **Federal Register** on December 6, 1983 (48 FR 54768). However, during that rulemaking process, the Department of the Interior (DOI) decided not to include provisions for implementing section 203(b) of the act. Section 203(b), commonly known as the "hammer clause," mandates that after April 12, 1987, parties remaining subject to prior law must pay the full-cost rate for irrigation water delivered to land leased in a landholding in excess of 160 acres. DOI's decision to publish rules without provisions for implementing section 203(b) was made in response to concerns regarding the constitutionality of that section. During the rulemaking process, segments of the public voiced strong objection to section 203(b), maintaining that this provision jeopardized water districts' financing abilities and abrogated existing contracts between water districts and the United States. However, since Congress has not repealed section 203(b), it is necessary for the DOI to take actions to incorporate this provision of the law in the rules and regulations.

Implementation of Section 203(b)

Since the RRA was enacted in 1982, considerable attention has focused on section 203(b), not only because of the question of constitutionality, but also because of the question of how that section should be implemented when it becomes effective in 1987. The main 203(b) issues that have been raised are: (1) Does the 160-acre full-cost pricing threshold apply to individuals and entities on a westwide or a district-by-district basis? and (2) At what point are a husband and wife subject to prior law required to pay the full-cost rate for irrigation water to leased land—when the landholding exceeds 160 acres or when it exceeds 320 acres?

In a June 12, 1986, opinion, the DOI Solicitor's Office concluded that the Secretary is required to apply section 203(b) on a westwide basis and to limit a husband and wife, as well as all other forms of holding under prior law, to a 160-acre full-cost pricing threshold for leased land. The proposed rules reflect these conclusions and add minor changes necessary for implementing section 203(b).

Other Changes

In addition to adding changes for administering section 203(b), other changes have been made to reflect DOI Solicitor opinions and Bureau of Reclamation (Bureau) policies which have been developed since the current rules were published. The Bureau thinks it is important that these decisions be incorporated in the proposed rules so that all water users will be aware of the criteria and procedures that apply to the operation of their landholdings. For example, as a result of a recent policy decision, landholders have an additional 15 days after changing their landholdings in which to submit new reporting forms to their water districts. This, and all other changes made because of recently developed policies, have been so identified in the next subsection entitled "Specific Proposed Changes."

The Bureau is also proposing to make other changes for the purpose of clarifying, expanding upon, and correcting certain provisions in the current rules. The existing rules represent the first set of rules promulgated for implementing not only the RRA, but also prior Reclamation law dating back to 1902. Both the RRA and prior law encompass many different issues, a number of which are extremely complex. Based on the Bureau's experience with the Reclamation program since the current rules became effective, we recognize the need for providing a clearer understanding of the Bureau's policies and procedures regarding many of these issues. For that reason, we have added language to the proposed rules to reflect established practices, rewritten passages which have caused confusion or misunderstanding, and corrected errors that were first noticed after the current rules were published.

Specific Proposed Changes

The following summary identifies the specific changes the Bureau proposes to make to the current rules. It also identifies those editorial changes which could be of more than passing interest to some parties.

Section 426.4(e).—In the definition of "discretionary provisions," the words "title II of" were added in front of the words "Pub. L. 97-293" to provide a more exact reference. Because of this change, it is redundant to include these words after every use of the term "discretionary provisions." Therefore, "of title II," as used with the term "discretionary provisions," has been deleted throughout the rules. A similar change has also been made to the definition of "nondiscretionary provisions" in § 426.4(u).

Section 426.4(i).—In the past, different terms have been used by the various interests both within and outside government to describe excess land which has gone from excess status to nonexcess status and which is burdened by a deed covenant. This has resulted in confusion and misunderstanding. To rectify this, we have coined the phrase "formerly excess land" and used it, where appropriate, in the proposed rules. Therefore, it is necessary for the term to appear in the definition section.

Section 426.4(m).—The wording in the definition of "irrigable land" was revised to make the term easier to understand.

Section 426.4(n).—In the past, some landholders have mistakenly thought that irrigable land was considered to be irrigation land only if it were actually being irrigated. To eliminate this misunderstanding, we have added clarifying language to the definition of irrigation land.

Section 426.4(q).—The definition of "landholding" has been revised so that it refers not only to qualified and limited recipients, but also to recipients subject to prior law. The last sentence of the definition, which states that attribution is not required if a landholder's interest is 4 percent or less, has been deleted because (1) the sentence does not really define "landholding" and (2) such land, in fact, is attributable to an individual or entity's holdings. The fact that the Bureau does not require landholders to report such holdings under certain circumstances is an issue that is not germane to the definition of landholding.

Section 426.4(r).—With implementation of section 203(b), the meaning of "lease," as differentiated from that of other types of farm operation agreements, will become very important to landholders. Therefore, we have included its definition, as already found in the text of § 426.7, in the definition section.

Section 426.4(v).—"Non-full-cost entitlement" is a new term which we propose to use throughout the rules to describe the maximum number of acres a landholder may irrigate with less than full-cost water. Therefore, this term has been included in the definition section.

Section 426.4(w).—In the current rules, the term "contract rate" is often used when, in fact, a rate higher than the contract rate must be paid in cases where (1) the land is held by an individual who has become subject to the discretionary provisions and (2) the district's contract rate does not cover full O&M costs. To cover such situations, we have replaced the term "contract rate," where appropriate, with the term "non-full-cost rate." Therefore, it was necessary to add this term to the definition section.

Section 426.4(x).—It is important that we establish a uniform meaning for the word "operator," as used throughout the rules. Therefore, a definition for this term has been added to the definition section.

Section 426.4(z).—For the sake of brevity and to provide a term parallel to "qualified recipient," the term "prior law recipient" has been added throughout the rules to replace the phrase "individuals or entities subject to prior law." Therefore, we have added this new term to the definition section.

Section 426.5(a)(1).—New language is necessary to specifically point out that landholders in districts subject to contracts in existence on October 12, 1982, may be required to pay higher water rates with implementation of section 203(b).

Section 426.5(a)(2).—The following six changes have been made in this paragraph: (1) To avoid redundancy in the first and second sentences, the first sentence in this section was deleted. (2) In the second sentence, the words "have an existing contract with the United States" were crossed out so that this requirement is stated more accurately. That is, districts which enter new contracts must became subject to the discretionary provisions. This is true even for those districts that had no previous contract with the United States. (3) We have added the cross reference "§ 425.5(a)(3)(ii)" in order to be complete in listing exceptions to the requirement that districts must become subject to the discretionary provisions upon entering a new contract. (4) The discretionary provisions apply to districts, not contracts; therefore, the wording in the third sentence was changed to reflect this fact. (5) In the past, there has been some confusion as to whether individual entity members become subject to the discretionary provisions when the entity holds land in a district which become subject to those provisions. To make it clear that such individuals are affected by the district's contract actions, we have added the words "including individual entity members" to the fourth sentence. For the same reason, we have also added this phrase to § 426.5(a)(3) (i) and (ii) (6) Some individuals and entities in districts which have become subject to the discretionary provisions may not be able to become qualified or limited recipients (for example, nonresident aliens and entities not established under States or Federal law.) New language was added to this section, and also § 426.5(a)(3) and 426.5(d)(1), to cover these instances.

Section 426.5(a)(3) (i).—Since all contractors are automatically subject to some provisions in Pub. L. 97–293, it is not accurate to say "contracts amended for conformance to Pub. L. 97–293." More accurately, contracts are amended to conform to only the discretionary provisions of Pub. L. 97–293. Thus, the first sentence of this section was revised to reflect this fact.

Section 426.5(a)(3)(ii)(F).—This provision, which addresses water transfers in relationship to additional and supplemental benefits, has been expanded to show that (1) the Bureau will not approve transfers if, in the final analysis, the transfer results in increased operating losses or any decrease in capital payment to the United States, and (2) the recipients of transferred water must pay a rate which is at least equal to the actual O&M costs or the full-cost rate in those cases where, for whatever reason, the recipients would have been subject to such costs had the water not been considered transferred water. The first addition has been made so that the rules ensure adequate cost recovery to the United States. The latter addition simply emphasizes what is required by section 203(b), 205, and/or 208 of the RRA in the pricing of water.

Section 426.5(d)(1).—When the current rules were written, the Bureau assumed that an irrevocable election by an entity would also bind individual members of that entity. However, the Solicitor's opinion of February 27, 1984, concluded that an irrevocable election binds only the elector. Therefore, two sentences were added to the end of this section to reflect that opinion. Other provisions of the rules affected by the opinion have also been changed accordingly.

Section 426.5(e).—New language was added to the first paragraph to specifically point out that landholders in districts subject to contracts in existence on October 12, 1982, may be required, because of implementation of section 203(b), to pay higher water rates beginning April 12, 1987. The new language in this paragraph eliminates the need for the third paragraph in this section, so we propose to delete it.

Section 426.6(b)(1).—The current wording in example 2 gives the impression that the 160 acres Farmer X purchased when he was subject to prior law became ineligible to receive irrigation water after Farmer X became subject to the discretionary provisions. we have revised the language to correct this unintended meaning.

Section 426.6(b)(1), example 3.—The following two changes have been made in this paragraph: (1) Throughout this example and the rest of the rules, the working "land receiving irrigation water" has been changed to "irrigation land." This change has been made because in the past some readers have incorrectly interpreted the current wording to mean that irrigable land not being irrigated at any one particular instant does not count against a landowner's entitlement. (2) Example 3 has also been revised to make it clear that the reason Farmer Z, a nonresident alien, is permitted to place his land under recordable contract and sell it at fair market value is because he owned that land before the district became subject to the discretionary provisions.

Section 426.6(b)(2), example 1.—Currently, the rules state that the husband and wife in this example are not eligible to receive irrigation water on any other owned land because they already receive water on 960 acres. However, under certain circumstances, the couple would be able to receive irrigation water on additional land; for example, land under recordable contract. We have revised the wording to allow for such circumstances.

Section 426.6(b)(3).—The following four changes have been made in this paragraph: (1) Currently, the rules provide that no member in a legal entity which is a qualified recipient may own more than 960 acres (640 acres for a limited recipient). However, in an entity which makes an irrevocable election, if an individual member remains subject to prior law, he may, in fact, receive irrigation water on no more than 160 acres. Language was revised to reflect this. See also the discussion for changes made in § 426.5(d)(1). (2) The word "westwide" was added to make it clear that a qualified recipient entity's ownership entitlement is applied on a westwide rather than district-by-district basis. (3) The last part of this paragraph was changed to make it clear that while, for obvious reason, the U.S. citizenship/U.S. residency requirements do not apply to a qualified recipient legal entity, they do apply to members of such an entity if the entity becomes subject to the discretionary provisions by virtue of a district contract action. (4) In the current rules, the requirement that a subsidiary's landholding counts against the parent corporation's entitlement is spelled out only in one of the examples under limited recipients. In the proposed rules, we have made the requirement more obvious by adding it to the main body of this section. Changes similar to those discussed in the four preceding items have also been made in § 426.6(c) which addresses ownership entitlements for limited recipients.

Section 426.6(b)(3), example 1.—In the current rules, this example is confusing because the reader cannot tell how the entity became a qualified recipient. If the reader assumes the district has amended its contract, the logically, but incorrectly, he could also assume from the present wording that part owners of legal entities are not affected when a district amends its contract. The example was revised to make it clear that entity members become subject to the discretionary provisions because of the district's contract amendment.

Section 426.6(b)(3), example 2.—Nonresident aliens in amending districts cannot meet the qualifications for becoming qualified recipients. The example was corrected to reflect this fact.

Section 426.6(b)(3), examples 3 and 4.—These new examples were added to illustrate: (1) The effect on a qualified recipient entity's ownership entitlement if some or all of the individual members remain subject to prior law, and (2) ownership entitlement determinations for qualified recipients in parent/subsidiary corporation situations.

Sections 426.6 (b)(4) and (d)(6).—During the past three years, there has been confusion and uncertainty regarding treatment of irrigation land held in trusts. To provide uniform treatment, the proposed rules spell out the Bureau's newly established policy for attribution of trust land.

Section 426.6(b)(4), example 3.—In the past, this example has caused some readers to misinterpret the rules of attribution in certain trust situations. The source of confusion stemmed from the fact that the example does not specify whether the landowner's daughter is a dependent or a nondependent. We have added language to make it clear that the daughter is a nondependent, and therefore, the trust land is counted against her ownership entitlement rather than her father's.

Section 426.6(d)(1), example 2.—The Bureau proposes to adopt a new policy whereby prior law recipients can make land purchased into excess status eligible, provided they become subject to the discretionary provisions within certain time frames. Therefore, we have revised this example to incorporate the proposed policy.

Section 426.6(d)(2).—We have added additional language to this section to make it clear that a husband and wife under prior law cannot receive irrigation water on 320 acres unless each holds equal interest in the land they own jointly. This requirement is new to the rules; however, it reflects Bureau policy established many years before enactment of the RRA.

Section 426.6(d) (2), (3), (4), (5).—The current rules contain no examples illustrating ownership entitlement situations for prior law recipients. To clarify this section and to be consistent with our treatment of qualified and limited recipients, examples were added to each of these subsections.

Section 426.6(d) (3) and (4).—Currently, these two paragraphs provide that no member of a prior law tenancy-in-common or partnership is eligible to receive irrigation water on more than 160 acres. That is not always correct. If individual members of such entities have become subject to the discretionary provisions, they may receive irrigation water on only 160 acres through their interest in the prior law entity; however, their overall entitlement is 960 rather than 160 acres. Language was added to reflect this fact.

Section 426.6(d)(4).—The current rules are silent as to the ownership entitlement for a prior law partnership in which the partners do not have separable interests and the right to alienate these interests. In response to questions we have received in this regard, the proposed rules spell out that in such arrangements the entire partnership may own and receive irrigation water on a maximum of 160 acres. This provision reflects the Bureau's long established policy for treatment of such partnerships.

Section 426.6(d)(5).—The current rules state that all prior law corporations have a 160-acre entitlement. However, that statement does not take into account the exception to that rule. That is, a subsidiary corporation does not have an entitlement separate from that of its parent corporation. Thus, a statement explaining the exception has been added to this subsection.

Section 426.6(g).—Changes were made to this paragraph to clarify how the discretionary provisions apply in cases of multidistrict ownerships.

Section 426.6(h).—Changes were needed here to clarify the present wording; i.e., landowners who purchase themselves into excess status cannot automatically make such land eligible through the redesignation process.

Section 426.7(a).—With implementation of section 203(b), it is particularly important for landholders to know whether or not a farm operation agreement will be considered a lease. Therefore, we have elaborated on the kind of operations that will not be considered leases; that is, legitimate custom farming operations and arrangements for nonreclamation dependent activities. All other farm operations will be considered leases unless the Secretary determines otherwise.

Section 426.7(b).—Additional language has been added to this section requiring all farm operation agreements to be in writing and to be made available for inspection at the Secretary's request. This is a new requirement which we think is warranted because the Bureau must have some means whereby it can determine or not a farm operation agreement is, in reality, a lease.

Section 426.7(c).—We have expanded this paragraph to give a more detailed explanation of how to determine if land is subject to full-cost pricing. The revised explanation reflects the following new provisions: (1) The current rules provide that a landholder who exceeds his non-full-cost entitlement must first select his owned land for receipt of water at the contract rate before selecting leased land for contract rate water. In response to requests by water users, the Bureau requested the DOI Solicitor's Office to review and determine whether it is permissible, from a legal standpoint, for landholders to reverse the order of selection if they choose to do so. In a June 12, 1986, opinion, the Solicitor concluded that the Secretary may permit landholders increased flexibility in selecting that land which will be assessed the full-cost rate. The rules have been revised to reflect that conclusion. This means that a landholder may select his full-cost acres from any of the nonexempt eligible acreage in his holding. (2) The June 12, 1986, opinion also concluded, in contrast with the Bureau's current policy, that only that owned land which actually receives irrigation water must be counted when determining how many acres in a landholding are subject to the full-cost water rate. Since this conclusion revises our current policy, we have included it in the proposed rules. (3) We have also added that irrigation land will be counted toward a landholder's non-full-cost entitlement on a cumulative basis in any one water year. Without such a stipulation, landholders in districts that irrigate on a year-round basis would be able to receive Federal subsidies in excess of their non-full-cost entitlements. (4) Congress mandated that full-cost charges be collected from the parties to whom such charges are attributable rather than being averaged over the district. Language has been added to emphasize this point. (5) We have also added a provision that provides that irrigation water may be delivered at a non-full-cost rate to land in excess of a landholder's non-full-cost entitlement only if the landholder can demonstrate to the Secretary that such land should not be subject to full-cost pricing. We think that this provision is warranted because unless landholders are held responsible for providing proof in such cases, it would be almost impossible for the Bureau to determine if their landholdings are in compliance with the full-cost pricing provisions of the RRA.

Section 426.7(c)(2).—In order to accurately reflect the wording used in section 205(a)(3) of the RRA, the last part of the following phrase, "limited recipients who received irrigation water prior to October 1, 1981," has been changed throughout the rules to read, "on or before October 1, 1981."

Section 426.7(c)(3) and examples 1–4.—This paragraph and examples were added because of implementation of section 203(b). Based on the Solicitor's June 12, 1986, opinion, the new provisions apply section 203(b) on a westwide, rather than a district-by-district basis. The new provisions also limit a husband and wife, and all forms of holding under prior law, to the receipt of non-full-cost water on a total of no more than 160 acres of leased land. However, it should be noted that after the advent of section 203(b), a husband and wife will still be eligible to receive subsidized water on 320 acres of owned land. In fact, all owned land that was eligible under prior law for subsidized water, regardless of the form of ownership, remains eligible upon implementation of section 203(b), provided it is owner operated.

Section 426.7(d) and example.—In the past, some landholders did not realize that (1) they became subject to the discretionary provisions by virtue of the fact that they leased land in a district which had become subject to the discretionary provisions, and that (2) they remain subject to the discretionary provisions if they reenter farming in a reclamation district after disposing of their present ownership or leasehold interest in a district subject to the discretionary provisions. Additional language was added to clarify these two points.

Section 426.7(e)(1)(i).—Currently, the rules do not address the amortization period used for calculating full-cost rates in cases where water service rates are designed to completely repay applicable Federal expenditures in a specific time period. Therefore, we have added a sentence to this paragraph to reflect current practice in such situations. That is, in these cases, the specified time period may be used as the amortization period for full-cost calculations related to these expenditures; however, such an amortization period may not exceed the payback period authorized by Congress.

Section 426.7 (f)(1)(ii) and (f)(2).—The wording in both paragraphs has been revised so that it will accurately reflect the language in section 205 of the RRA for calculating interest rates for full cost. Section 203(b) requires that a higher interest rate be used when computing full cost for prior law recipients than for landholders who become qualified recipients before April 13, 1987. However, the Bureau has decided that prior law recipients will not be locked into the higher interest rate should they become subject to the discretionary provisions after April 12, 1987. This decision has been added to the rules.

Section 426.7(g)(1).—The following two changes have been made in this paragraph: (1) The current rules provide that a proportional rate scheme must be used in charging full cost in districts which levy water delivery charges on a per acre-foot basis. In response to requests received from water districts, we have revised this section so that use of the proportional rate scheme is now optional. If districts prefer, they are now permitted to assess full-cost and non-full-cost charges directly, based on each landholder's full-cost and non-full-cost acreage. However, when this method is used, assessments must be made based on the assumption that equal amounts of water per acre are being delivered to full-cost and non-full-cost land. Such a requirement is necessary to ensure that landholders do not irrigate land selected to pay full cost with non-full-cost water. This change is also reflected in paragraph (g)(3) of this section. (2) Because of implementation of section 203(b), districts will need to look at both reporting and certification forms to determine how much land should be assessed a full-cost rate. Therefore, it was necessary to add "reporting forms" to this section.

Section 426.7(g)(2), example.—Presently, it is not clear whether Operator Y in this example is subject to the discretionary provisions. Since this example would not be correct if the reader thinks the operator is a prior law recipient, we have added the words "qualified recipient" so that there can be no confusion about the applicability of this example.

Section 426.8 (a) and (b).—We have revised paragraph (a) and example 1 so that when a district amends its contract solely for the purpose of conforming to the discretionary provisions, any positive difference that exists between a district's overall contract rate and the O&M costs will be maintained during the term of a district's contract. Furthermore, this change means that the Bureau will continue its policy of reviewing all contract provisions (including the contract water rate) when districts become subject to the discretionary provisions because of an amendment which provides additional and supplemental benefits. Because of this revision, example 2 in paragraph (a)

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of the current rules is no longer applicable, and therefore has been revised to illustrate how the contract rate would be adjusted in those cases where the amending district's current rate does not cover full O&M costs. Additions similar to those made in paragraph (a) have also been made in paragraph (b), which addresses payment of O&M costs for irrevocable electors.

Section 426.8(c).—The current rules state that districts which do not amend their contracts to become subject to the discretionary provisions are required to pay O&M charges in accordance with the terms of their existing contracts. However, that statement will no longer be accurate when section 203(b) becomes effective. That is, beginning April 13, 1987, prior law districts are required to collect full O&M costs for any land in their district which becomes subject to full cost. We have revised this section to reflect this fact.

Section 426.9(b)(5), example.—The current rules give the impression that Farmer X must dispose of any excess land which cannot be included in his entitlement through an equivalency determination. Revisions were made to show that Farmer X also has the option of keeping the excess land in his holding and not receiving irrigation water on it.

Section 426.9(h).—Additional language was added to emphasize the fact that land under recordable contract does not need to be sold at an approved price if it becomes part of a landowner's nonexcess designation as a result of an equivalency determination. In the past, there has been some confusion about this point.

Section 426.10.—Throughout this section, we have established the requirement that not only owners and lessees, but all farm operators, are subject to certification and reporting requirements. By requiring the declaration of all farm operation agreements, the Bureau will be aware of situations in which full-cost payments are potentially due, depending on whether the farm operation agreement is found to be, in fact, a lease. If, following the Bureau's review, a farm operation agreement is found *not* to be a lease, then none of the requirements of the RRA pertaining to leases, including full-cost, will apply.

Section 426.10(b).—We have received several comments since the current rules were published requesting the Bureau to revise the provision which requires prior law recipients to attest that they are in compliance with the ownership limitations of Reclamation law. These commentors maintain that, because of this requirement, landholders who are not totally knowledgeable about Reclamation law could become easy targets for accusations of perjury should information on their forms be found incorrect. We believe this is a valid concern, and therefore, have revised the wording so that landowners and operators are only required to provide information pertinent to their compliance with Reclamation law.

Section 426.10(c).—The following two changes have been made in this paragraph: (1) In the past, some landholders mistakenly thought that irrigable land was only to be reported on the forms if it were actually receiving irrigation water. To avoid this misunderstanding in the future, we have specified that landowners and operators must disclose information about all irrigable land, even if it is not being irrigated. (2) The current rules refer to only qualified and limited recipients when addressing the requirments for identifying members of a multiownership arrangement; however, these same requirements also apply to prior law recipients. Therefore we have revised this paragraph to include prior law recipients.

Section 426.10(d).—Based on comments received from water users, the Bureau recently established a policy to meliorate the reporting requirements for landowners and operators who change their landholdings in some way. By that policy, such landowners and operators are given an additional 15 days in which to submit new forms to their districts. This paragraph has been revised so that all owners and operators will be aware of this fact.

Section 426.10(g).—The current wording could easily be interpreted to mean that districts can destroy all certification and reporting forms after three years; however, that is not what was intended. In those cases where landholders file the much shorter verification form, the last fully completed certification or reporting form must also be kept on file, even if this form is more than three years old. Language has been revised to clarify this requirement.

Section 426.10(j).—The current rules provide that irrigation land becomes ineligible to receive irrigation water if a landowner or operator fails to submit the required certification or reporting forms. We propose to add a new provision requiring that a higher rate, which would be established by the Secretary, be paid should irrigation water be delivered despite this prohibition. It should be noted that all landholders are able to avoid the proposed penalty simply by completing the required forms. Furthermore, the penalty would not apply to those landholders who choose not to complete the forms, so long as no irrigation water is delivered to land in their holding. The Bureau believes this measure is necessary to ensure compliance with the requirements of law.

Section 426.10(k).—In the current rules, section 224(c) was inadvertently omitted when citing the sections of the RRA which refer to the collection of information necessary for administering the act. Therefore, we have added that section number to the proposed rules.

Section 426.10(l).—We have added an additional paragraph to reflect the Solicitor's conclusion that the certification and reporting forms are subject to the provisions of the Privacy Act.

Section 426.11(a).—We have revised the first and last sentences in this paragraph to clarify the fact that land in excess of the maximum ownership entitlements is not considered to be excess land if it has, for some reason, been exempted from acreage limitation.

Section 426.11(b).—Now that certification and reporting forms have been designed and are in place, nonexcess land designations are made, as a general rule, in accordance with instructions on the forms, not with provisions in district contracts. We have modified this paragraph to reflect this fact.

Section 426.11(b)(3).—The current rules do not give a detailed explanation of the redesignation process. This has resulted in confusion and misunderstanding. Therefore, we have added new language for clarification purposes.

Section 426.11(b)(4).—In 1976, the Commissioner established a policy wherein an individual may buy excess land, to be held as nonexcess, up to his full entitlement only once. We believe it is important for the Bureau to carry out this policy because it helps to ensure that the benefits of the program are distributed widely. Therefore, this continuing policy has been incorporated in the proposed rules.

Section 426.11 (c) and (d).—In the current rules, paragraph (c) describes how land can regain its eligibility to receive irrigation water in those cases where the land became ineligible prior to October 12, 1982. This forgiveness provision, however, becomes null and void on April 12, 1987. Therefore, we have deleted it. (Prior to April 12, 1987, all prior law districts will be given notice of the impending expiration date.) Paragraph (d) in the current rules, which addresses treatment of excess land not under recordable contract, has also been deleted. This provision is now incorporated in the new paragraph (c).

Treatment of ineligible land is a complicated and confusing topic because such land can regain eligibility in several different ways depending on (1) whether a landowner is subject to the discretionary provisions or prior law, (2) whether the land was acquired before or after the district's first contract with the United States, and (3) how the land became ineligible. Therefore, we have replaced the current paragraphs (c) and (d) with two new paragraphs giving a detailed explanation under each of the various scenarios. The provisions contained in these two paragraphs, for the most part, represent the Bureau's current practice for treatment of ineligible land. However, § 426.11(c)(2)(i) does reflect one recent policy decision. Currently, land purchased in excess of a landowner's ownership entitlement cannot become eligible to receive irrigation water while in the holding of that landowner. However, the Bureau's new policy will permit land purchased into excess status to become eligible to receive irrigation water, provided the landowner becomes subject to the discretionary provisions within certain time frames. Section 426.11(f) has also been revised to conform with this new policy.

Section 426.11(e).—The following three changes were made in this paragraph: (1) The first sentence gives the impression that all excess land can become eligible to receive irrigation water as long as it is placed under recordable contract. However, that is not always the case. For example, a landowner is not permitted to purchase himself into excess status and then make that land eligible by placing it under recordable contract. Therefore, a proviso has been added to this sentence. (2) Qualified and limited recipients must pay full O&M costs for all land in their holding, including land under recordable contract. We have added language to emphasize this fact. (3) Based on the Solicitor's June 12, 1986, opinion, the Bureau is now permitting landholders to pay the full-cost rate for owned land before leased land. This means that, in most cases, a landowner may choose to pay full cost for land under recordable contract. Since this is a new concept, we have spelled it out in the proposed rules.

Section 426.11(f).—Some States permit water rights to be sold separately from the land. When the United States enters a recordable contract with a landowner in these States, the landowner may not be eligible to get project water because of district bylaws. Therefore, we have added provisions to protect the United States in such situations.

Section 426.11(g).—The following two changes were made in this paragraph: (1) A sentence has been added to clarify the fact that the 10-year deed covenant requiring Secretarial price approval no longer applies once a recordable contract is amended to take advantage of the increased ownership entitlements under the discretionary provisions. (2) Based on the wording in section 209(c) of the RRA, the Solicitor has determined that recordable contracts entered into after October 12, 1982, may not be amended to conform to the expanded ownership entitlements of the discretionary provisions. We have added language to this paragraph to reflect the Solicitor's opinion.

Section 426.11(h).—Since the current rules were published, the following issue has been the subject of many debates between banking interests and the Bureau: Does the 10-year deed covenant requiring Secretarial price approval for land acquired from excess status apply to lenders when such land is acquired through involuntary foreclosure? The Commissioner recently made a policy cut on this matter which we think will satisfy the concerns of both the lending institutions and the United States. That is, in the case of foreclosure or deed in lieu of foreclosure, the deed covenant remains in effect; however, with the approval of the Secretary, lenders may sell such land at a price exceeding the excess land value in those cases where an operational loan is outstanding on the date of foreclosure. This decision, which we propose to incorporate in this paragraph and paragraph (a) of § 426.10, allows landholders and lenders greater latitude in obtaining needed operational loans, but yet checks the potential for abuse by providing for Bureau oversight.

Section 426.11(i)(4).—The current rules provide that land held under extended recordable contract by a prior law recipient may continue to receive irrigation water at the contract water rate. However, when that provision was written, it did not take into account recordable contracts in districts with water rates which do not cover full O&M costs. In such districts, we propose that the full O&M rate must be paid for water deliveries to land under extended recordable contracts.

Section 426.11(k).—Because of questions we have received during the past 3 years regarding the applicability of this provision, we realize that the wording for the paragraph needs to be modified to clarify its intent. Therefore, we have added language to stress that land which becomes excess or ineligible because of westwide application or other requirements of the RRA, can be placed under recordable contract and sold without Secretarial price approval only if such land had been eligible to receive irrigation water under prior law. This provision does not apply to land which becomes excess or ineligible in a district which first becomes subject to Reclamation law by entering a contract after October 12, 1982.

Section 426.12.—The regulations for appraisals of excess land also apply to appraisals of formerly excess land. Therefore, the words "formerly excess" have been added, where appropriate, throughout § 426.12.

Section 426.13(a)(2).—We have added language to the first sentence of this paragraph so it is clear exactly which provisions of Reclamation law will no longer apply when districts pay out their construction charge obligation. The proposed wording reflects the language used in section 213 of the RRA.

Section 426.13(a)(3).—The first two sentences were revised so that they will accurately reflect the wording used in section 215 of the RRA to describe temporary water supplies which can be considered exempt from acreage limitation.

Section 426.13(a)(4).—The following two changes have been made in this paragraph: (1) With implementation of section 203(b), payment of full cost for isolated tracts will now apply to those landholders under prior law as well as to those under the discretionary provisions. The wording in this paragraph has been modified to reflect this fact. (2) The second to the last sentence in this paragraph has been corrected to show that full cost applies to tracts in excess of a landowner's non-full-cost entitlement, not ownership entitlement.

Section 426.13(a)(5).—The following two changes have been made in this paragraph: (1) We have added a sentence to reflect a policy decision issued after the current rules were published. That policy requires prior law districts with outstanding construction charge obligations to become subject to the discretionary provisions as a condition for receipt of a Rehabilitation and Betterment (R&B) loan. (2) The current rules do not address how a district is treated if it is not a beneficiary of a Reclamation project but wishes to receive an R&B loan. However, since this type of situation does occur, we have added a sentence to spell out the Bureau's policy in such cases. That is, such districts can only become eligible for an R&B loan if Congress authorizes the program and

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the district agrees to become subject to the discretionary provisions.

Section 426.15(a) and (b).—When the current rules were written, the Bureau interpreted section 219 of the RRA to mean that religious and charitable organizations must meet the three criteria listed in that section in order to be eligible to receive irrigation water. However, in a May 14, 1985, opinion, the Solicitor interpreted section 219 somewhat differently. The Solicitor concluded that religious and charitable organizations are still eligible to receive irrigation water even if they cannot meet these criteria because of leasing. However, in such cases, the organization (including all its subdivisions) will be treated as any other prior law or limited recipient and will lose the rather generous ownership entitlement afforded in section 219. The Solicitor's conclusions have been incorporated in the proposed rules.

Section 426.16(a).—In addition to the changes which were discussed under section 426.11(h), language has been added to this paragraph to make it clear that during the 5-year grace period for receiving irrigation water, the full-cost rate must be paid for involuntarily acquired land if the land is part of a lessee's selection of full-cost land.

Section 426.16(a)(3).—The current rules do not address the treatment of land which was ineligible before it was involuntarily acquired by another party. However, because of the questions we have received in this regard, we have added provisions to spell out the treatment of such land. That is, such land remains ineligible unless (1) the new owner is or becomes subject to the discretionary provisions, (2) the land is nonexcess in the owner's holding, and (3) the deed to the land contains the 10-year deed requiring Secretarial sale price approval.

Section 426.16(d).—Several general rules apply to all involuntary acquisitions but were not included in § 426.16 of the current rules. We think it is important that readers be aware of these rules and so we have added a new paragraph which provides that (1) a landholder does not become subject to the discretionary provisions by virtue of the fact that he acquires irrigation land involuntarily from a landowner who had been subject to the discretionary provisions and (2) when land is involuntarily acquired through inheritance, the 5-year eligibility period for receiving irrigation water begins on the date of the devisor's death.

Section 426.17 (a) and (b).—The paragraphs which address irrigation land held by governmental agencies were meant to apply to all levels of government, including the Federal government. However, when the current rules were written, "Federal government" was inadvertently omitted from two of the paragraphs. This error has been corrected in the proposed rules.

Section 426.17(c) and example 2.—The following two changes have been made in this paragraph: (1) Some readers have incorrectly interpreted this provision to mean that a landholder has an entitlement for land leased from a governmental agency which is separate and distinct from his basic ownership entitlement. We have revised the language to clarify its intent. That is, land leased from a governmental agency plus land owned by a landholder must not exceed the landholder's basic ownership entitlement in order for the leased land to be eligible for irrigation water. (2) The current rules do not contain an example illustrating the leasing of Government-owned land to a prior law recipient; therefore, we have added such an example to the proposed rules.

Section 426.18(a).—In order to protect the United States, we have added a provision which states that commingling provisions in existing contracts shall remain in effect upon contract renewal only if the provisions are consistent with the Bureau's current rules and policies for commingling.

Section 426.18(b).—The words "Federally financed facilities" have been replaced with the words "Federally subsidized facilities" so that the Bureau will be able to permit the joint use of project facilities for project and nonproject water without imposing acreage limitation. That is, we can allow nonproject water to become free of acreage limitation if a district pays the actual cost, including interest, for its share of the distribution facilities. This new policy will not apply to Federal water—only non-Federal water in Federal facilities.

Section 426.19.—The following two changes have been made in this paragraph: (1) Because of the reference to the Water Supply Act in section 210(b) of the RRA, it is necessary for some districts to address M&I (Municipal and Industrial) water supply activities in their water conservation plans. Language has been added to the rules so that water districts will be aware of this requirement. (2) In the past, some water districts did not realize they were required to submit their water conservation plans to the Bureau because the submittal requirement is not specifically stated in the current rules. So that there will be no doubt about this requirement in the future, we have added it to the proposed rules.

Section 426.21(d).—The new language added to this paragraph reflects a policy decision issued since the current rules were published. By that decision, a prior law district that has not completed its construction charge obligation must become subject to the discretionary provisions as a condition for receipt of a Small Reclamation Projects Act (SRPA) loan.

Section 426.21(e).—We have added this new paragraph because it is important that water districts are aware that a contract under general Reclamation law is the controlling contract in those cases where districts have both an SRPA loan contract and a contract under general Reclamation law.

Section 426.22.—This paragraph was added in response to questions regarding the validity of Solicitors' decisions made prior to enactment of the RRA. That is, past legal opinions remain in force unless they have been superseded or modified by provisions in the RRA, the courts or subsequent legal opinions, or the rules or regulations for implementing the RRA.

Section 426.23.—A new section has been added to the rules to make concrete the Secretary's authority to determine whether proposed actions are within the intent of Reclamation law or are attempts to circumvent the law.

Executive Order 12291

The DOI has determined that the proposed rules do not constitute a major rule under Executive Order 12291; therefore, a Regulatory Impact Analysis is not required and has not been prepared.

National Environmental Policy Act Compliance

A draft environmental assessment and draft FONSI (finding of no significant impact), which examine the environmental impacts of four alternative approaches for administering section 203(b) of the RRA, have been prepared and are available for public review. Copies of these documents may be obtained upon request from the Bureau offices located in Boise, Idaho; Sacramento, California; Boulder City, Nevada; Salt Lake City, Utah; Amarillo, Texas; Billings, Montana; Denver, Colorado; and Washington, DC. Comments on the assessment and FONSI may be incorporated with comments on the proposed rules. Decisions on the final disposition of these documents will be made following the public review process.

Small Entity Flexibility Analysis

The proposed rules will not have a significant economic effect on a substantial number of small entities. The main economic impacts of the proposed rules will occur as a result of implementation of section 203(b). Section 203(b) applies only to landholders who remain subject to prior law and who lease land in excess of a landholding of 160 acres. Of the farms remaining subject to the provisions of prior Reclamation law, approximately 67 percent are small entities of 160 acres or less in size. Section 203(b) will not apply to these farms. Furthermore, it is expected that most farm operators will elect to come under the discretionary provisions of the RRA in 1987 in an effort to minimize the impacts of the full-cost pricing provisions of section 203(b). Upon electing, the provisions of section 203(b) will not be applicable to them.

Paperwork Reduction Act

The information requirements contained in § 426.10 have been either approved by or submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 et seq.

Authors

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Distribution Table

The following distribution table is provided to show where provisions from the current rules are located in the proposed rules.

Old	New
426.1	426.1.
426.2	426.2.
426.3	426.3.
426.4(a)	426.4(a).
426.4(b)	426.4(b).
426.4(c)	426.4(c).
426.4(d)	426.4(f).
426.4(e)	426.4(e).
426.4(f)	426.4(f).
426.4(g)	426.4(g).
426.4(h)	426.4(h).
New provision	426.4(i).
426.4(i)	426.4(j).
426.4(j)	426.4(k).
426.4(k)	426.4(l).
426.4(l)	426.4(m).
426.4(m)	426.4(n).
426.4(n)	426.4(o).
426.4(o)	426.4(p).
426.4(p)	426.4(q).
New provision	426.4(r)
426.4(q)	426.4(s).
426.4(r)	426.4(t).
426.4(s)	426.4(u).
New provision	426.4(v).
New provision	426.4(w).
New provision	426.4(x).
426.4(t)	426.4(y).
New provision	426.4(z).
426.4(u)	426.4(aa).
426.4(v)	426.4(bb).
426.4(w)	426.4(cc).
426.4(x)	426.4(dd).
426.4(y)	426.4(ee).
426.4(z)	426.4(ff).
426.4(aa)	426.4(gg).
426.4(bb)	426.4(hh).
426.5(a)	426.5(a).
426.5(b) through (e)(2)	426.5 (b) through (e)(2).
426.5(e)(3)	Deleted.
426.6	426.6.
426.7(a) through (c)(2)	426.79 (a) through (c)(2).
New provision	426.7(c)(3).
426.7(d) and (e)	426.7(c).
426.7(f)	Deleted.
426.7(g)	426.7(d).
426.7(h)	426.7(e).
426.7(i)	426.7(f).
426.7(j)(1)	426.7(g)(1).
426.7(j)(2)	426.7(g)(2).
New provision	426.7(g)(3).
426.7(k)	426.7(h).
426.8	426.8.
426.9	426.9.
426.10(a) through (k)	426.10 (a) through (k).
New provision	426.10(1).
426.11(a) through (b)(3)	426.11 (a) through (b)(3).
426.11(b)(4)	426.11 (c)(1) and (c)(2).
New provision	426.11(b)(4)
426.11(c)	Deleted.
New provisions	426.11 (c), (c)(1), and (c)(2).
426.11(d)	426.11(c).
New provisions	426.11 (d), (d)(1), (d)(2), and (d)(3).
426.11(e) through (h)(1)	426.11 (e) through (h)(1).
New provision	426.11(h)(2).
426.11(i), (j), and (k)	426.11(i), (j), and (k).
426.12	426.12.
426.13	426.13.
426.14	426.14.
426.15	426.15.
426.16(a) and (a)(1)	426.16 (a) and (a)(1).
New provision	426.16(a)(2).
New provision	426.16(a)(3).
426.16(b) and (c)	426.16 (b) and (c).
New provision	426.16(d).
426.17	426.17.
426.18	426.18.
426.19	426.19.
426.20	426.20.
426.21(a), (b), and (c)	426.21 (a), (b), and (c).
New provision	426.21(d).
New provision	426.21(e).
426.22	426.22.
426.23	426.24.

List of Subjects in 43 CFR Part 426

Irrigation, Reclamation, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, it is proposed to amend Title 43, Chapter I, of the Code of Federal Regulations by revising Part 426 to read as set forth below.

Dated: November 3, 1986.

Donald Paul Hodel,

Secretary, Department of the Interior.

PART 426—RULES AND REGULATIONS FOR PROJECTS GOVERNED BY FEDERAL RECLAMATION LAW

Sec.
426.1 Objectives.
426.2 Applicability.
426.3 Authority.
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426.8 Operation and maintenance charges.
426.9 Class 1 equivalency.
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426.11 Excess land.
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426.14 Residency.
426.15 Religious and charitable organizations.
426.16 Involuntary acquisition of land.
426.17 Land held by governmental agencies.
426.18 Commingling.
426.19 Water conservation.
426.20 Public participation.
426.21 Small reclamation projects.
426.22 Decisions and appeals.
426.23 Severability.

Authority: Administrative Procedure Act, 60 Stat. 237, 5 U.S.C. 552; the Reclamation Reform Act of 1982, Pub. L. 97–293, title II, 96 Stat. 1263; and the Reclamation Act of 1902, as amended and supplemented, 32 Stat. 388, (43 U.S.C. 371 35 et seq.).

§ 426.1 Objectives.

Reclamation law establishing terms and conditions pursuant to which project water may be supplied is designed:

(a) To provide viable farm opportunities on land receiving Reclamation project water.

(b) To distribute widely the benefits from the Reclamation program.

(c) To preclude the accrual of speculative gain in the disposition of excess land.

(d) To require reimbursement to the Federal government of the full cost of providing irrigation water to landholdings which exceed established limits.

§ 426.2 Applicability.

(a) These proposed regulations are published for public comment. These rules are effective 30 days from publication of the final rules.

(b) These regulations apply to all irrigation land subject to the acreage limitation and full-cost provisions of Reclamation law. (Included are excess land, whether under recordable contract or not, and nonexcess land.)

(c) Sections 426.5 through 426.12 of these regulations apply variously to all districts subject to the acreage limitation and full-cost provisions of Reclamation law. The way in which they apply depends upon whether the district has (1) a contract which was in force on October 12, 1982, (2) a contract which was amended after October 12, 1982, or (3) a contract which was entered into after October 12, 1982. Application of these sections will also vary depending upon whether an individual or entity

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subject to Reclamation law has made an irrevocable election to conform to the discretionary provisions of the Reclamation Reform Act of 1982.

(d) The remainder of these rules, §§ 426.13 through 426.23, may not apply to all districts, but if they do apply, they apply equally.

(e) In many cases, hypothetical examples illustrating the application of a specific rule have been provided. This approach is in direct response to the public's expressed need. The examples provided should not be construed, however, as being exclusive interpretations of a rule. They are provided only as an interpretative tool.

§ 426.3 Authority.

These rules and regulations are written under the authority vested in the Secretary by the Congress in the Administrative Procedure Act, 60 Stat. 237, 5 U.S.C. 552; the Reclamation Reform Act of 1982, Pub. L. 97–293, 96 Stat. 1263; and the Reclamation Act of 1902, as amended and supplemented, 32 Stat. 388 (43 U.S.C. 371, et seq.).

§ 426.4 Definitions.

As used in these rules:

(a) The term "arable land" means land which, when farmed in adequate size units for the prevailing climatic and economic setting and provided with essential onfarm improvements, will generate sufficient income under irrigation to pay farm production expenses; provided a return to the farm operation, labor, management, and capital; and at least pay the operation, maintenance, and replacement costs of related project irrigation and drainage facilities.

(b) The term "contract" means any repayment or water service contract between the United States and a district providing for the payment of construction charges to the United States normal operation, maintenance, and replacement costs pursuant to Federal Reclamation law. All water service and repayment contracts are considered contracts even if the contract does not specifically identify that portion of the payment which is to be attributed to operation and maintenance and that which is to be attributed to construction.

(c) The term "contract rate" means the repayment or water service rate that is set forth in a contract that is to be paid by a district to the United States.

(d) The term "dependent" means any natural person within the meaning of the term dependent in the Internal Revenue Code of 1954 (26 U.S.C. 152) as well as the regulations issued thereunder, as both read on October 12, 1982.

(e) The term "discretionary provisions" refers to sections 203 through 206 of Title II of Pub. L. 97–293.

(f) The term "district" means any individual or any legal entity established under State law which has entered into a contract or is eligible to contract with the Secretary for irrigation water. This definition includes entities which contract for construction or improvement of water storage and/or delivery facilities.

(g) The term "excess land" means irrigation land, other than exempt land, owned by any landowner in excess of the maximum ownership limitation under the applicable provision of Reclamation law.

(h) The term "exempt land" mans irrigation land in a district to which the acreage limitation and pricing provisions of Reclamation law do not apply.

(i) The term "formerly excess land" means that irrigation land which has gone from excess status to nonexcess status as the result of sale or some other legal means and which is burdened by a 10-year deed convenant requiring Secretarial sale price approval.

(j) The term "full cost" means an annual rate as determined by the Secretary that shall amortize the expenditures for construction properly allocable to irrigation facilities in service, including all operation and maintenance deficits funded, less payments, over such periods as may be required under Federal Reclamation law or applicable contract provisions, with interest on both accruing from October 12, 1982, on costs outstanding at that date, or from the date incurred in the case of costs arising subsequent to October 12, 1982. When used in these regulations, the term "full-cost rate" means the foregoing "full-cost" charges plus actual operation, maintenance, and replacement costs required under Federal Reclamation law.

(k) The term "individual" means any natural person, including his or her spouse, and including other dependents as defined and interpreted in the Internal Revenue Code of 1954 (26 U.S.C. 152), as well as the regulations issued thereunder as both read on October 12, 1982; provided, that with respect to the ownership limitations established by prior law, the term individual does not include his or her spouse or dependents.

(l) The term "irrevocable election" means the legal instrument which landowner or lessee uses to make his or her owned and/or leased irrigation land subject to the discretionary provisions. The election is binding on the elector and the irrigation land in his or her holding, but will not be binding on a subsequent landholder of that land.

(m) The term "irrigable land" means arable land under a specific project plan for which a water supply is, can be, or is planned to be provided, and for which facilities necessary for sustained irrigation are provided, or are planned to be provided. For the purpose of determining the areas to which acreage limitations are applicable, it is that acreage possessing permanent irrigated crop production potential, after excluding areas occupied by and currently used for homesites, farmstead buildings, and corollary permanent structures, such as feedlots, equipment storage yards, and similar facilities, together with roads open for unrestricted use by the public. Areas used for field roads, farm ditches and drains, tailwater ponds, temporary equipment storage, and other improvements subject to change at will by the landowner, are included in the irrigable acreage.

(n) The term "irrigation land" means all irrigable land, regardless of whether it is receiving irrigation water, and other land receiving irrigation water.

(o) The term "irrigation water" means water made available for agricultural purposes from the operation of Reclamation project facilities pursuant to a contract with the Secretary.

(p) The term "landholder" means a qualified, limited, or prior law recipient who owns and/or leases land subject to the acreage limitation and pricing provisions of Federal Reclamation law.

(q) The term "landholding" means all irrigation land owned and leased directly by a qualified, limited, or prior law recipient, and also any irrigation land held by the recipient through any legal entity, in proportion to the recipient's interest in the legal entity.

(r) The term "lease" means a contract by which one party (the landlord or lessor) gives to another (the tenant or lessee) the use and/or possession of land (including, in some cases, associated building, machinery, etc.) for a specified time and for agreed upon payments (cash or other considerations), and by which the lessee assumes an economic interest in some part of the operation and management of the leased land.

(s) The term "legal entity" means any business or property ownership arrangement established under State or Federal law, including, but not limited to, corporations, partnerships, associations, joint tenancies, and tenancies-in-common.

(t) The term "limited recipient" means any legal entity established under State or Federal law benefiting more than 25 natural persons. In these rules, the term "limited recipient" does not include legal entities which are prior law recipients.

(u) The term "nondiscretionary provisions" refers to sections 209 through 230 of Title II of Pub. L. 97–293. These provisions of the law are of general application and became effective immediately upon enactment. These provisions apply to all individuals and districts regardless of whether they are subject to the discretionary provisions.

(v) The term "non-full-cost entitlement" means the maximum acreage a landholder may irrigate with less than full-cost irrigation water.

(w) The term "non-full-cost rate" means all water rates other than full-cost rates. Non-full-cost rates are paid for irrigation water made available to land in a landholder's non-full-cost entitlement.

(x) The term "operator" means a person who operates a farm by either doing or supervising the work and by making day-to-day operating decisions. Lessees are included within the meaning of the term "operator."

(y) The term "prior law" means the Act of June 17, 1902 (32 Stat. 388), and acts supplementary thereto and amendatory thereof which were in effect prior to the enactment of the Reclamation Reform Act of 1982, Pub. L. 97–293 (96 Stat. 1263) as that law is amended or supplemented by the Reclamation Reform Act of 1982 (Pub. L. 97–293).

(z) The term "prior law recipient" means individuals or entities which have not become subject to the discretionary provisions.

(aa) The term "project" means any Reclamation or irrigation project, including incidental features thereof, authorized by Federal Reclamation law, or constructed by the United States pursuant to such law, or in connection with which there is a repayment or water service contract executed by the United States pursuant to such law, or any project constructed by the Secretary through the Bureau of Reclamation for the reclamation of lands.

(bb) The term "qualified recipient" means an individual who is a citizen of the United States or a resident alien thereof or any legal entity established under State or Federal law which benefits 25 natural persons or less. In these rules, the term "qualified recipient" does not include individuals or legal entities which are prior law recipients.

(cc) The term "Reclamation fund" means a special fund established by the Congress under the Reclamation Act of June 17, 1902, as amended, for the receipts from the sale of public lands and timber, proceeds from the Mineral Leasing Act, and certain other revenues. The Congress makes appropriations from this fund for the investigation, construction, operation, and administration of Bureau of Reclamation projects. Collections from water users for reimbursable costs of these projects are returned to the fund unless Congress has specified otherwise for specific projects.

(dd) The term "recordable contract" means a written contract between the Secretary and a landowner capable of being recorded under State law, providing for the sale or disposition of land held in excess of the ownership limitations of Federal Reclamation law.

(ee) The term "resident alien" means any natural person within the meaning of the term as defined in the Act of June 27, 1952 (66 Stat. 163).

(ff) The term "Secretary" means the Secretary of the Interior or his designee.

(gg) The term "title II" refers to sections 201 through 230 of Pub. L. 97–293, without differentiation between the discretionary and nondiscretionary provisions of that law.

(hh) The terms "westside" or "Reclamation wide" mean the 17 Western States in which Reclamation projects are located, namely: Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.

§ 426.5 Contracts.

(a) *In general.* Title II will be applied to repayment and water service contracts (hereafter contracts) by the following rules:

(1) *Contracts in force on October 12, 1982.* Contracts in force on October 12, 1982, which have not been amended to conform to the discretionary provisions shall continue in effect, provided, however, that full-cost rates for irrigation water may be applicable, as set forth in § 426.7(c)(3), to certain individuals and entities in these districts. In these rules, individuals or entities which have not become subject to the discretionary provisions are termed "prior law recipients."

(2) *New contracts.* Districts which enter into a new contract after October 12, 1982, shall be subject to all provisions of title II, except as provided in §§ 426.5(a)(3)(ii) and 426.13(a)(3). The execution date of the new contract determines the date upon which the discretionary provisions apply to the district. In these rules, individuals and entities (including individual entity members) who are subject to the provisions of new contracts are termed either "qualified recipients" or "limited recipients," provided they meet the requirements for being such recipients, as set forth in § 426.4(t) and (bb).

(3) *Amended contracts.* (i) Contracts amended for conformance to the discretionary provisions. Contracts which are amended at the request of the district to conform with the discretionary provisions need be amended only to the extent required for conformance with that title. A district shall be subject to the discretionary provisions from the date the district's request is submitted to the Secretary. The district's request to the Secretary must be accompanied by a duly adopted resolution dated and signed by the governing board of the district obligating the district to take, in a timely manner, the action required by applicable State law to amend its contract. In these rules, individuals and entities (including individual entity members) subject to the provisions of these contracts are termed either "qualified recipients" or "limited recipients," provided they meet the requirements for being such recipients, as set forth in § 426.4(t) and (bb).

(ii) Contracts amended to provide additional or supplemental benefits. All contracts which are amended after October 12, 1982, to provide a district supplemental or additional benefits, shall be amended at the same time to conform to the discretionary provisions. The date that the contract amendment is executed by the Secretary will establish the date for determining the application of the discretionary provisions. All contract actions will be construed as providing supplemental or additional benefits except those actions which do not require the United States to expend significant funds, to commit to significant additional water supplies, or to substantially modify contract payments due the United States. More specifically, the following shall not be considered to provide additional or supplemental benefits:

(A) The construction of those facilities for conveyance of irrigation water that were contracted for by the district on or before October 12, 1982;

(B) Minor drainage and construction work contracted for under a preexisting repayment contract;

(C) O&M (operation and maintenance) payments, excluding R&B (Rehabilitation and Betterment) loan payments;

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(D) The deferral of payments, provided the deferral is for a period of 12 months or less;

(E) A temporary supply of irrigation water as set forth in § 426.13(a)(3);

(F) The transfer of water on an annual basis from one district to another, provided that (*1*) both districts have contracts with the United States, (*2*) the rate paid by the district receiving the transferred water is the higher of the applicable water rate for either district, and provided further that the rate paid does not result in any increased operating losses to the United States above those which would have existed in the absence of the transfer and the rate paid does not result in any decrease in capital repayment to the United States below that which would have existed in the absence of the transfer, (*3*) the existing contracts allow for such transfers, and (*4*) the recipients of the transferred water pay a rate for the water which is at least equal to the actual O&M costs or the full-cost rate in those cases where, for whatever reason, the recipients would have been subject to such costs had the water not been considered transferred water; and

(G) Additional contract actions which the Secretary determines do not provide additional or supplemental benefits.

In these rules, individuals and entities (including individual entity members) subject to the provisions of these contracts are termed either "qualified recipients" or "limited recipients," provided they meet the requirements for being such recipients, as set forth in § 426.4 (t) and (bb).

(b) *Standard article for contract amendments.* New contracts executed after October 12, 1982, or contracts which are amended to conform to the discretionary provisions shall contain the following provision:

> The parties agree that the delivery of irrigation water or use of Federal facilities pursuant to this contract is subject to Reclamation law, as amended and supplemented, including but not limited to the Reclamation Reform Act of 1982 (Pub. L. 97-293).

(c) *Master contract-subcontract arrangements.* In cases where contractual arrangements involve several districts and the United States in a master contract-subcontract type of arrangement, an amendment to a subdistrict contract to conform to the discretionary provisions will not affect the terms of the master contract or other subdistrict contracts in the contractual agreement nor will it impose any of the requirements of the discretionary provisions on other contracting entities in that arrangement.

(1) The application of this rule may be illustrated by the following:

Example (1). District A, along with six other irrigation districts, is a member of a water conservancy district which has entered into a master contract with the United States. District A also has a subcontract with the conservancy district to which the United States is a party. Given the foregoing conditions, District A may amend its subcontract to conform to the discretionary provisions without making it necessary for the conservancy district or other subcontracting entities within the conservancy district to so amend.

Example (2). The Riverside Water Conservancy District has a contract with the United States for the delivery of irrigation water. The district also has contracts with six subcontracting entities for the delivery of irrigation water. However, the United States is not a party to these subcontracts. Given these circumstances, only the conservancy district has the authority to amend its contract to conform to the discretionary provisions. If it so amends, all the subcontracting entities automatically become subject to the discretionary provisions.

(d) *Individual elections to conform to the discretionary provisions*—(1) *Individual election.* Landowners or lessees who meet the requirements for becoming either a qualified or limited recipient, as set forth in § 426.4 (t) and (bb), may elect to become subject to the discretionary provisions even if the district has not taken action to become subject to the discretionary provisions. The individual election is effected by executing an irrevocable election in a form provided by the Secretary. The landholder exercising the election shall be considered a qualified or limited recipient, as appropriate, and all irrigation land in the recipient's landholding shall be subject to the discretionary provisions. The election shall be binding on the elector and the irrigation land in his or her holding but will not be binding on a subsequent landholder of that land. The irrevocable election by a legal entity is binding only upon that entity and not on the members of that entity. Similarly, an irrevocable election by a member of a legal entity binds only that member making the election and not the entity.

(2) *Disposition of irrevocable election forms.* The recipient's irrevocable election form shall be filed with the Bureau of Reclamation and shall be accompanied by a completed certification form, the contents of which are discussed in § 426.10. The Bureau shall forward the completed forms to each district in which the elector owns or leases land. Such forms shall be retained by the district(s).

(3) *District reliance on election information.* The district shall be entitled to rely on the information contained in the election form without being required to make an independent investigation of the information.

(e) *Time limits*—(1) *District amendments.* There are no time limits on when a district may request its contract be amended to conform to the discretionary provisions, provided, should a district not amend its contract to conform to the discretionary provisions by April 12, 1987, the full-cost rate must be paid by prior law recipients for irrigation water to land in excess of their 160-acre non-full-cost entitlement, as set forth in § 426.7(c)(3).

(2) *Individual elections.* There are also no time limits on when an individual landowner or lessee may make an irrevocable election.

§ 426.6 Ownership entitlement.

(a) *In general.* Ownership entitlement is determined by whether the landowner is a "qualified recipient," a "limited recipient," or a "prior law recipient." All irrigation land shall be considered in the ownership computations except as stipulated in paragraphs (e) and (f) of this section.

(b) *Qualified recipient entitlement.* Except as provided in paragraph (b)(4) of this section and in §§ 426.9 and 426.11, a qualified recipient is entitled to irrigate a maximum of 960 acres of owned land with irrigation water. This entitlement applies on a westwide basis. All individual ownership and multiownership arrangements are qualified recipients provided they meet the following conditions:

(1) *Individual landowners.* All individual landowners are qualified recipients if they are citizens of the United States or resident aliens thereof and have met the contract requirements for a qualified recipient as set forth in § 426.5. As such, they are entitled to receive irrigation water for use on a maximum of 960 acres of owned land on a westwide basis and owned land under recordable contract for the term of that contract term.

(i) The application of this rule may be illustrated by the following:

Example (1). Farmer X is a citizen of the United States and receives irrigation water on 160 acres owned in District A. District A amends its contract to conform to the discretionary provisions. Farmer X automatically becomes a qualified recipient by virtue of the district decision and is entitled to receive irrigation water on a maximum of 960 acres of irrigation land in his ownership.

Example (2). Farmer Y is a citizen of Germany, but has taken up permanent residency in the United States. Farmer Y owns 160 acres in District A and desires to purchase an additional 800 acres. District A has not amended its contract to conform to the discretionary provisions. Farmer Y, however, decides to execute an irrevocable election. After the election, Farmer Y becomes eligible to receive irrigation water on 960 acres of owned land. This eligibility as a qualified recipient remains in force so long as Farmer Y, as a resident alien, maintains permanent residency in the United States. If Farmer Y were to become a United States citizen, his eligibility as a qualified recipient would, of course, remain in force.

Example (3). Farmer Z is a citizen and resident of Switzerland. Farmer Z owns 160 acres of irrigation land in District A. District A amends its contract to conform to the discretionary provisions. Because Farmer Z, as an individual nonresident alien, cannot meet the requirements of either a qualified recipient or limited recipient and because he owned the irrigation land prior to the district's contract amendment, Farmer Z may, as set forth in § 426.11(k), place the land under recordable contract and receive irrigation water at the non-full-cost rate for 5 years. (If the land were not placed under recordable contract or had Farmer Z not acquired the irrigation land prior to the district's contract amendment, the 160 acres owned would be ineligible for service until such time as it was sold to an eligible buyer or Farmer Z took up permanent residency in the United States.)

(2) *Husband and wife.* A husband and wife, and all dependents, are considered as one individual landowner. They are considered to be a qualified recipient and are entitled to irrigate a maximum of 960 acres of owned land on a westwide basis with irrigation water, provided, either husband or wife is a citizen of the United States or a resident alien thereof and the contract requirements as set forth in § 426.5 have been met.

(i) The application of this rule may be illustrated by the following:

Example (1). Farmer X and her husband are a qualified recipient by virtue of an irrevocable election. They own in joint tenancy 960 acres of land eligible for irrigation water. They are in compliance with the ownership entitlement applicable to a qualified recipient.

Example (2). Farmer Y and Farmer Z are a married couple, and each owns 480 acres of irrigation land under separate title in District A. District A has amended its contract to conform to the discretionary provisions. Even though the land is held in separate title, Farmer Y and Farmer Z have reached the limits of eligibility to receive irrigation water as a qualified recipient.

(3) *Multiownership arrangements.* All multiownership legal entities are considered to be qualified recipients, provided that: the ownership is a legal entity established under State or Federal law, the entity does not benefit more than 25 natural persons, and the entity has met the contract requirements for a qualified recipient as set forth in § 426.5. As a qualified recipient, the entity is eligible to receive irrigation water on a maximum of 960 acres of land owned westwide, provided no member of the entity through this or in combination with any other ownership arrangement receives irrigation water on land owned in excess of his or her individual ownership entitlement under Reclamation law. The requirement of U.S. citizenship or U.S. residency for aliens applies to individual members of a multiownership legal entity if the entity becomes subject to the discretionary provisions by virtue of district action as set forth in § 426.5 (a)(2) or (a)(3). However, if the entity becomes subject to the discretionary provisions through an irrevocable election, this requirement does not apply to those members who remain subject to prior law. Irrigation land held by a subsidiary is counted against the ownership entitlement of its parent entity.

(i) The application of this rule may be illustrated by the following:

Example (1). XYZ Farms is a general partnership comprised of four individuals who own equal and separable interest in the 960-acre partnership. The district in which the partnership's land is located has amended its contract to become subject to the discretionary provisions. All other requirements as set forth in § 426.6(b)(3) have also been met. Therefore, XYZ Farms satisfies the requirements for a qualified recipient and may receive irrigation water for all 960 acres in its ownership. Moreover, the members of the partnership are also qualified recipients and each may receive irrigation water on 720 acres or less in some ownership or ownerships other than XYZ Farms.

Example (2). Six brothers who are citizens and residents of Canada are equal shareholders in a family corporation comprised of 160 acres of irrigation land. The district in which they own the land amends its contract to become subject to the discretionary provisions. As a result, the corporation's land is not eligible to receive irrigation water on a permanent basis because the partners are not U.S. citizens or resident aliens. However, because the land was eligible in the corporation's ownership before the district amended its contract, it may, as set forth in § 426.11(k), place the land under recordable contract and receive irrigation water at the non-full-cost rate for 5 years. If the 160 acres had not been acquired prior to the district's amendment or if the land were not placed under recordable contract, it would be ineligible to receive irrigation water until such time as the brothers became residents of the United States or until the land was sold to an eligible buyer.

Example (3). Farmers X, Y, and Z, who are citizens of the United States, have formed a partnership in which each farmer holds an equal interest. The partnership presently owns 160 acres in District A and wishes to purchase an additional 800 acres in this same district. Since District A has not amended its contract to become subject to the discretionary provisions, the partnership executes an irrevocable election. Even though the partnership has made an election, Farmers X, Y, and Z remain subject to prior law and cannot exceed their individual entitlements of 160 acres. Therefore, assuming that none of the partners owns irrigation land outside his interest in the corporation, the maximum entitlement for the partnership is 480 acres. However, the partnership can realize the 960-acre entitlement under the discretionary provisions if the partners also make individual irrevocable elections or District A amends its contract to become subject to the discretionary provisions.

Example (4). Corporation P was established under California State law and has three stockholders—A, B, and C. The stockholders all own equal shares in Corporation P and all are citizens of the United States. Corporation S, which was also established under California State law, is a U.S. subsidiary wholly owned by parent Corporation P. Corporation S owns 160 acres in District A. The only irrigation land held by Corporation P is owned through its subsidiary, Corporation S. District A has not amended its contract to become subject to the discretionary provisions. Therefore, Corporation P, including its subsidiary, has reached the ownership entitlement limitation for receiving irrigation water. Subsequently, Corporation S wishes to purchase and receive irrigation water on an additional 800 acres. In order to be eligible, the corporation, its wholly owned subsidiary, and each of the stockholders must make an irrevocable election.

(4) *Trusts.* An individual or corporate trustee holding land in a fiduciary capacity is not subject to the ownership or full-cost pricing limitations imposed by title II nor any other provisions of Federal Reclamation law. However, the interest of each beneficiary (qualified or limited recipient) in trust land in combination with other land he or she may own shall not exceed the ownership entitlement of title II unless the land is under recordable contract. Irrigation land held in any form of trust will be attributed to the grantor in those cases where the trust arrangement has not been reviewed and approved by the Secretary. The following trust criteria will apply to those trusts that are reviewed: Irrigation land held in revocable or underwritten grantor trusts, grantor sprinkling trusts, or other forms of trusts not specifically identifying the interests of the trust beneficiaries shall be attributed to the landholding of the grantor. In the case of testamentary trusts, irrevocable grantor trusts, and any other form of irrevocable trusts, irrigation land shall be attributed to the landholding of the beneficiaries in

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accord with the individual interests specified therein except that the interest of any beneficiary who in the previous tax year was a dependent, as specified in the Internal Revenue Code of 1954 (26 U.S.C. 152), will be attributed to the individual claiming such dependent. For the purpose of applying these rules, a conservatorship or other arrangement in which a fiduciary relationship is created, shall be considered to be a trust. The Secretary will not approve any trust arrangement until he has been provided with a copy of the trust agreement, a copy of the most recent Federal tax return of the grantor and each benficiary of the trust, and separate affidavits from the grantor and each beneficiary. In the affadavit, the form of which will be provided by the Secretary, the grantor and each beneficiary must affirm their dependency/nondependency status, and that if the terms of the trust should change for any reason, including Internal Revenue Service audit or review, the parties involved will notify the Secretary of the change.

(i) The application of this rule may be illustrated by the following:

Example (1). Bank X is the trustee for five trusts, each of which has more than one beneficiary. The trusts contain 1,280, 960, 640, 800, and 400 acres, respectively. The land in the trusts is in districts which have amended their contracts to conform to the discretionary provisions. Since the ownership and pricing limitations of title II do not apply to Bank X as trustee for the trusts, all 4,080 acres in the five trusts are eligible to receive irrigation water at the contract rate. However, if a benficiary owned land or had other trust land which, when combined with his beneficiary interest in the subject trust, caused him to exceed the 960-acre ownership limitation, that beneficiary would be required to designate the nonexcess land for which irrigation water could be supplied.

Example (2). Farmer X, a qualified recipient, establishes a testamentary trust by placing 640 acres of this land receiving irrigation water in a trust for his minor child upon his death. Farmer X designates his brother as trustee for the trust. The land is located in a district which has amended its contract to come under the discretionary provisions. The brother, who is designated as trustee for the trust, owns 800 acres in the same district which receives an irrigation water supply. Farmer X dies, and the testamentary trust he has established is activated. The brother, as trustee, is entitled to receive irrigation water for the land in trust as well as the land he owns. Note: The land placed in the testamentary trust by Farmer X would be counted against his entitlement during his lifetime as long as the land remained in his ownership.

Example (3). Farmer X, a qualified recipient, owns 960 acres eligible to receive irrigation water. He decides to place 160 acres of this land in a living trust with his daughter, who is not a dependent, as the life tenant. The 160 acres of trusted land shall be counted against the daughter's entitlement.

(c) *Limited recipient entitlement.* Except as provided in paragraph (b)(4) of this section and in §§ 426.9 and 426.11, a limited recipient is entitled to irrigate a maximum of 640 acres of owned land with irrigation water. This entitlement applies on a westwide basis. All legal entities established under State or Federal law benefiting more than 25 persons are limited recipients provided they have met the contract requirements for a limited recipient as set forth in § 426.5. The requirement of U.S. citizenship or U.S. residency for aliens applies to members in a limited recipient if the member holds more than a 4 percent interest in the entity and if the entity owns irrigation land in a district(s) which becomes subject to the discretionary provisions as set forth in § 426.5 (a)(2) or (a)(3). In no case does this requirement apply to prior law recipients who are members in a limited recipient which becomes subject to the discretionary provisions by virtue of an irrevocable election. No member of a limited recipient, through his or her interest in such entity or in combination with any other ownership arrangement, shall receive irrigation water for use on land owned in excess of his or her individual ownership entitlement under Reclamation law. Irrigation land held by a subsidiary entity is counted against the ownership entitlement of its parent entity.

(1) The application of this rule may be illustrated by the following:

Example (1). ABC Fertilizer Company is a corporation registered in Nebraska and owns 640 acres in District A. District A has amended its contract to conform to the discretionary provisions. ABC Fertilizer Company benefits more than 25 persons and therefore automatically becomes a limited recipient. Furthermore, since the company became subject to the discretionary provisions through a district contract action rather than through an irrevocable election, those individuals who hold interest in the company automatically become qualified recipients, provided they are U.S. citizens or resident aliens. As a limited recipient, all 640 acres of owned land in the corporation are eligible to receive irrigation water.

Example (2). XYZ Land Company, a corporation benefiting more than 25 persons and registered in the State of California, owns 320 acres in District A. In the absence of district action, the company makes an irrevocable election to conform to the discretionary provisions. Thereby XYZ Land Company becomes a limited recipient and is entitled to receive irrigation water on a maximum of 640 acres of owned land. In this case, the individual stockholders are not required to also execute irrevocable elections in order for XYZ Land Company to realize its maximum entitlement because the acreage attributable to each stockholder's interest in the corporation does not exceed the stockholders' individual 160-acre entitlement under prior law.

Example (3). CDE Development Company is a corporation with more than 25 shareholders which chose to incorporate in the Greater Antilles. CDE Development Company buys 160 acres in a district which has amended its contract to conform to the discretionary provisions. However, until such time as CDE Development Company establishes itself as a legal entity under State or Federal law, none of its land is eligible for irrigation water. Had CDE Development Company owned the 160 acres prior to the district's amendment, it could have received irrigation water on the land for 5 years, as set forth in § 426.11(k).

Example (4). Corporation X owns 640 acres in District A as does Corporation Y. Both are subsidiaries of Corporation Z. District A has amended its contract to conform to the discretionary provisions. The landholdings of Corporation X and Y, since they are subsidiaries of Corporation Z, are counted against the entitlement of the parent corporation, Corporation Z. Corporation Z is a limited recipient; therefore, only 640 acres of the 1,280 acres are eligible to receive irrigation water.

(d) *Prior law recipients*—(1) *Individuals.* Individuals are entitled to receive irrigation water on a maximum of 160 acres owned in each district; provided, the land was acquired on or before December 6, 1979. The 160-acre entitlement for an individual applies on a westwide basis to all land acquired after December 6, 1979.

(i) The application of this rule may be illustrated by the following:

Example (1). Farmer X owns 160 acres of irrigation land in each of four districts. None of the districts in which Farmer X owns land has amended its contract to conform to the discretionary provisions, and Farmer X held title to the land prior to December 6, 1979. Thus, Farmer X remains eligible to receive irrigation water on the 640 acres owned in the four different districts.

Note.—If title to the irrigated land changes hands, the 160-acre westwide entitlement will automatically apply to the transferred land.

Example (2). Farmer Y owns 160 acres in each of two nonamending districts, and all of the acreage is eligible for irrigation water by virtue of the fact Farmer Y owned the land prior to December 6, 1979. On January 1, 1983, Farmer Y purchases another 160 acres of Farmer Z's nonexcess land which is located in a third nonamending district. The land newly purchased in this district becomes ineligible for service until such time as it is sold to an eligible buyer at a price approved by the Secretary or Farmer Y becomes subject to the discretionary provisions as set forth in § 426.11(c)(2)(i).

(2) *Husband and wife.* A husband and wife, or surviving spouse until remarriage, and entitled to receive

irrigation water on a maximum of 320 acres of land jointly owned in each district; provided, each spouse holds an equal interest and provided further that the land was acquired on or before December 6, 1979. The 160-acre entitlement for an individual (320 acres for husband and wife) applies on a westwide basis to all land acquired after December 6, 1979.

(i) The application of this rule may be illustrated by the following:

Example. Farmer X and his wife own 320 acres of irrigation land in District A and also 320 acres in District B. The couple purchased both parcels of land in 1976. Districts A and B remain subject to prior law, and Farmer X and his wife have not made an irrevocable election. Since the land was purchased prior to December 6, 1979, Farmer X and his wife are entitled to receive irrigation water on all 320 acres in each district. The couple has reached the limit of their ownership entitlement for receiving irrigation water in these two districts.

(3) *Tenants-in-common.* Each individual in a tenancy-in-common subject to prior law is entitled to receive irrigation water on a maximum of 160 acres owned through his or her interest in the tenancy. A prior law recipient may receive irrigation water, through this interest and any other ownership arrangements, on no more than 160 acres owned in each district; provided, the land was acquired on or before December 6, 1979. The 160-acre entitlement for an individual (320 acres for a married couple) applies on a westwide basis to all land acquired after December 6, 1979. An individual subject to the discretionary provisions, through his or her interest in a prior law tenancy and any other ownership arrangements, may receive irrigation water on no more than 960 acres westwide.

(i) The application of this rule may be illustrated by the following:

Example. Farmer X and Farmer Y have formed a tenancy-in-common in which each holds equal interest. The tenancy owns 320 acres of irrigation land in District A. District A has not amended its contract to become subject to the discretionary provisions. Both Farmers X and Y own irrigation land only through their interests in the tenancy; however, Farmer Y wishes to purchase additional land in the district so he makes an irrevocable election.

Since the tenancy remains subject to prior law, Farmers X and Y may each receive irrigation water on a maximum of 160 acres through their interests in the entity. Therefore, the tenancy's 320 acres remain eligible to receive irrigation water, but the tenancy and Farmer X have both reached the limits of their ownership entitlements under prior law. However, as a qualified recipient, Farmer Y may receive irrigation water on an additional 800 acres of land owned either as an individual or through other ownership arrangements.

(4) *Partnerships.* Each individual who is a partner in a partnership subject to prior law is entitled to receive irrigation water on a maximum of 160 acres owned through his or her interest in the partnership, provided each partner has a separable interest in the partnership and the right to alienate that interest. A prior law recipient may receive irrigation water, through this interest and any other ownership arrangements, on no more than 160 acres in each district, provided the land was acquired on or before December 6, 1979. A partner subject to the discretionary provisions, through his or her interest in the partnership and any other ownership arrangements, may receive irrigation water on no more than 960 acres westwide. A partnership in which each partner does not have a separable interest and the right to alienate that interest is entitled to receive irrigation water on a maximum of 160 acres of land owned by the partnership.

(i) The application of this rule may be illustrated by the following:

Example. XYZ Farms, a partnership comprised of four individuals who hold equal and separable interests in the partnership, owns 960 acres of irrigation land located in District A. District A has not amended its contract to become subject to the discretionary provisions. XYZ Farms and two of the partners are subject to prior law; the other two partners have made irrevocable elections. Neither XYZ Farms nor any of the partners own irrigation land outside the partnership. Based on these facts, each partner may own and receive irrigation water on a maximum of 160 acres through the partnership. Therefore, 640 of XYZ Farms' 960 acres are entitled to receive irrigation water. The two partners who have made irrevocable elections may each purchase and receive irrigation water on another 800 acres outside the partnership in order to complete their individual 960-acre ownership entitlement for qualified recipients.

(5) *Corporations.* All corporations, except subsidiaries of parent corporations, are considered to be individual entities and as such are entitled to receive irrigation water on a maximum of 160 acres owned in each district; provided, the land was acquired on or before December 6, 1979. The 160-acre entitlement applies on a westwide basis for all land acquired after December 6, 1979. No shareholder in a corporation through his or her interest in the corporation and any other ownership arrangement shall receive irrigation water on land owned in excess of his or her individual entitlement under Reclamation law. Irrigation land held by a subsidiary entity is counted against the ownership entitlement of its parent entity.

(i) The application of this rule may be illustrated by the following:

Example (1). Two brothers are the sole stockholders and hold equal shares in Corporation XYZ. The corporation owns 160 acres of irrigation land in District A. District A has not amended its contract to become subject to the discretionary provisions and neither the brothers nor the corporation has made an irrevocable election. Thus, the corporation has reached its ownership entitlement for receiving irrigation water under prior law. Based on their 50 percent interests in the corporation, 80 acres will be counted against each of the two brothers' individual entitlements. Each brother may also purchase and receive irrigation water on another 80 acres outside the corporation to complete his individual 160-acre ownership entitlement.

Example (2). Corporation ABC owns 320 acres in District A. Corporation ABC's two shareholders, FArmer X and Farmer Y, hold equal interests in the corporation. Both District A and Farmer X are subject to prior law; however, Farmer Y is a qualified recipient by virtue of having made an irrevocable election. As a corporation subject to prior law, only 160 of Corporation ABC's 320 acres are eligible to receive irrigation water. Eighty acres of the corporation's ownership is attributed to each shareholder. As a prior law recipient, Farmer X may receive irrigation water on another 80 acres of irrigation land through ownership arrangements outside the corporation in order to complete his individual 160-acre ownership entitlement. To complete his 960-acre ownership entitlement as a qualified recipient, Farmer Y may receive irrigation water on an additional 880 acres outside the corporation.

Example (3). Corporation P and Corporation S, which are established under Canadian law, each owns 160 acres of irrigation land in District A. Corporation S is a wholly owned subsidiary of Corporation P. District A has not amended its contract to become subject to the discretionary provisions. Since Corporation S is a subsidiary of Corporation P, its entitlement is counted against Corporation P. Therefore, only 160 acres of the 320 acres are eligible to receive irrigation water.

(6) *Trusts.* Land held by an individual or corporate trustee in a fiduciary capacity is not subject to the ownership limitations imposed by prior law. However, the interest of each beneficiary (prior law recipient) in the trust land in combination with other land he or she may own shall not exceed the ownership entitlement of prior law. The trust criteria set forth in paragraph (b)(4) of this section also apply to irrigation land held in trust by prior law recipients.

(e) *Exemptions from ownership limitation.* Irrigation land owned in districts which have been exempted,

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§ 426.13(a) (1) and (2), will not be counted against ownership entitlement. Neither will isolated tracts, § 426.13(a)(4), be counted against ownership entitlement.

(f) *How ownership entitlement is to be computed.* With the exception of land under recordable contract, § 426.11(e), all designated nonexcess land, § 426.11(b), and all acreage receiving irrigation water on other than a temporary or short-term basis, as defined in § 426.13(a)(3), from a Reclamation project in a district which is subject to acreage limitation shall be counted against the appropriate ownership entitlement; i.e., qualified recipient, limited recipient, prior law recipient.

(1) The principles of this rule may be illustrated by the following:

Example (1). Farmer X, a qualified recipient, owns 1,400 acres in District A and has designated 960 acres as nonexcess and eligible to receive irrigation water. Even though Farmer X may not irrigate all 960 acres every year, all of the designated acreage is counted against his entitlement.

Example (2). Farmer Y, a qualified recipient, owns 640 acres of irrigation land in District A. Farmer Y also owns 320 acres which are not in a district, but Farmer Y has entered into a 10-year contract with the United States for irrigation water for that land. All 960 acres of irrigation land must be counted for purposes of determining ownership entitlement.

Example (3). Farmer Z, a prior law recipient, owns 160 acres in District A. This acreage was classified as to its arability during project planning and only 120 acres were deemed irrigable and eligible to receive irrigation water. Some years subsequent to this determination, Farmer X installed a center pivot irrigation system and now irrigates 160 acres with the same amount of water as he once used to irrigate 120 acres. For purposes of entitlement, all 160 acres must be counted.

(g) *Multidistrict ownerships.* Landowners may own irrigation land in more than one district (multidistrict ownerships). If any one of the districts in which a landowner owns land becomes subject to the discretionary provisions, the multidistrict landowner automatically becomes subject to the discretionary provisions. Thus, the irrigation land owned by that recipient in all districts becomes subject to the acreage entitlement of a qualified or limited recipient, provided the landowner can meet the requirement for being such a recipient. Similarly, if a landowner with multidistrict ownership makes an irrevocable election in one district, the irrigation land he or she owns in all districts becomes subject to the discretionary provisions. If all districts in which a prior law recipient holds irrigation land remain subject to prior law, the 160-acre ownership entitlement shall apply on a district-by-district basis, provided the land was acquired prior to December 6, 1979. If any of the owned land was acquired after December 6, 1979, its eligibility will be determined on a westwide basis.

(1) The application of this rule may be illustrated by the following:

Example (1). Landowner X is a U.S. citizen and owns 160 acres of irrigation land in each of Districts A, B, C, and D. District A amends its contract to conform to the discretionary provisions. Thereby, Landowner X automatically becomes a qualified recipient by virtue of the fact he is a U.S. citizen and is entitled to receive irrigation water on 960 acres owned westwide. Since, in this case, Landowner X's total present ownership is 640 acres, he would be entitled to receive irrigation water on another 320 acres owned.

Example (2). Landowner Y is a citizen of the United States and owns 160 acres of irrigation land in each of Districts A, B, C, D, E, and F. In the absence of district action, Landowner Y makes an irrevocable election in District A. By this action, Landowner Y automatically becomes a qualified recipient and all owned irrigation land in Districts B, C, D, E, and F must be included in his ownership entitlement. Since in this case the Landowner Y already owns 960 acres of irrigation land, he has reached his maximum ownership entitlement.

Note: For examples illustrating application of the multidistrict rule to prior law recipients, see examples 1 and 2 in paragraph (d)(1) of this section.

(h) *Loss of eligibility.* (1) An owner who presently owns irrigation land and acquires additional irrigation land shall lose eligibility on any newly purchased land that exceeds the owner's entitlement unless, in the case of land for which irrigation water is not available because facilities have not been constructed to provide such water, the land is placed under recordable contract when facilities become available. If irrigation facilities are available to land which is purchased in excess of an owner's entitlement, eligibility can be reestablished if the land is sold at a price approved by the Secretary to an eligible buyer or, if the land was eligible in the hands of the seller, the sale is canceled. If a prior law recipient purchases nonexcess land which becomes excess in his landholding, the land can regain eligibility if the landowner becomes subject to the discretionary provisions and redesignates such land up to his entitlement, as nonexcess, as set forth in § 426.11(c)(2)(i).

(i) The principles of this rule are illustrated by the following:

Example. Farmer X meets all of the criteria for a qualified recipient, as set forth in § 426.6(b)(1). Farmer X irrigates 960 acres of owned land in District A as he is entitled to do. Subsequent to his determination of eligibility, Farmer X buys, in District B, 320 acres of irrigation land which had been designated as nonexcess when held by the previous owner. All land purchased by Farmer X in District B thereby becomes ineligible for service until such time as the sale is canceled or Farmer X sells the farm in District B at a price approved by the Secretary. If the 320 acres which Farmer X purchased had never received irrigation water and were in an area for which water distribution facilities had not been constructed, Farmer X could, as provided for in § 426.11(e), place the 320 acres under recordable contract when facilities became available to serve the land.

§ 426.7 Leasing and full-cost pricing.

(a) *What constitutes a lease.* A lease is a contract by which one party (the landlord or lessor) gives to another (the tenant or lessee) the use and/or possession of land (including, in some cases, associated buildings, machinery, etc.) for a specified time and for agreed upon payments (cash or other consideration). The lessee assumes an economic interest in the operation and management of the leased land. All farming operations exceeding the full-cost acreage thresholds specified in paragraph (c) of this section will be considered to be leasing arrangements unless otherwise determined by the Secretary, with the following exceptions:

(1) *Legitimate custom farming operations.* Custom farming is the performance of services on a farm such as land preparation, seeding, cultivating, applying pesticides, and harvesting for hire with remuneration on a unit of work basis. A custom farming arrangement shall be considered a lease, unless the compensation for such work is paid at a unit of work rate customary in the area and is in no way dependent upon the amount of the crop produced, and the person or entity performing the custom farming has no interest, directly or indirectly in the crop on the farm by taking any risk in the production of the crop, sharing in the proceeds of the crop, or granting or guaranteeing the financing of the crop.

(2) *Nonreclamation dependent activities.* A contract arrangement for nonreclamation dependent activities which allows for limited use of the land shall not be considered a lease. Examples of such activities are incidental grazing or use of crop residue from irrigated crops grown on the land. Land which is subleased (the lessee transfers his or her interest to a sublessee) will be attributed to the landholding of the sublessee.

(b) *The form and provisions of a lease*—(1) *Present leases.* All leases and agreements concerning the operation of a farm must be in writing and be made available by the leaseholders or operators to the Secretary for inspection at the Secretary's request. The term of the lease may not exceed 10 years, including any exercisable option, except in the case of a lease of land for the production of perennial crops having an average life of more than 10 years. In that case, the lease may be for a period of time equal to the average life of the perennial crop, as determined by the Secretary, provided the lease does not exceed 25 years.

(2) *Written leases in existence prior to October 12, 1982.* Land under written leases which were in existence prior to October 12, 1982, and which have a remaining term of longer than 10 years will become ineligible to receive irrigation water after October 12, 1992, unless the leased land is used for the production of perennial crops having an average life of more than 10 years. In that case, the leased land may be eligible for a period of time equal to the average life of the perennial crop, as determined by the Secretary, provided the lease does not exceed 25 years.

(c) *Full-cost acreage thresholds.* There is a limit on the amount of land for which a landholder may receive irrigation water at a non-full-cost rate. The maximum acreage a landholder may irrigate with less-than-full-cost irrigation water is called the landholder's non-full-cost entitlement. All owned or leased land receiving irrigation water counts against a landholder's non-full-cost entitlement, with the following exceptions: exempt land, except for isolated tracts, as provided in § 426.13(a)(4); and land acquired through involuntary processes, as provided in § 426.16. All land counted against a landholder's non-full-cost entitlement shall be counted on a cumulative basis during any one water year. A landholder in excess of the non-full-cost entitlement may select, from nonexempt eligible land in the holding, that land which will be subject to the full-cost rate. That selection may include owned land, leased land, land under recordable contract, or a combination of all three. However, land under recordable contract may not be selected as land subject to the full-cost rate if such land is already subject to full-cost pricing under an extended recordable contract as provided in § 426.11(i)(4). Once a landholder reaches the limits of his or her non-full-cost entitlement during a water year, the selection of non-full-cost land is binding for the remainder of that water year. Land subject to full-cost pricing due to the status of either the owner or the lessee can receive irrigation water only at full cost. Irrigation water may be delivered at a non-full-cost rate to land held in excess of a landholder's non-full-cost entitlement only if the landholder can demonstrate to the Secretary that such land should not be subject to full-cost charges. If such claims are made based on the belief that applicable farm operation agreements do not constitute leases, the parties involved must provide the Secretary with the documentation he deems necessary to substantiate that the operation exists as claimed and is thereby exempted from full cost. Districts shall collect full-cost rates from those landholders to whom such costs are attributable rather than averaging the costs over the entire district.

(1) *Non-full-cost entitlement for qualified recipients.* The non-full-cost entitlement for qualified recipients is 960 acres, or the class 1 equivalent thereof. The full-cost rate must be paid for irrigation water delivered to all eligible land held in excess of a qualified recipient's non-full-cost entitlement, except for (i) land subject to a recordable contract unless as otherwise provided in §§ 426.11(e) and 426.11(i)(4); (ii) exempt land other than isolated tracts, as provided in § 426.13(a)(4); and (iii) land acquired through involuntary processes, as provided in § 426.16.

(i) The application of this rule may be illustrated as follows:

Example (1). Farmer X, a qualified recipient, receives irrigation water on 900 of the 960 acres of irrigation land in his ownership in District A. Farmer X leases and receives irrigation water on another 320 acres in District B. Since Farmer X receives water on 260 acres in excess of his non-full-cost entitlement, he must select 260 acres—whether owned land, leased land, or a combination of both, and pay the full-cost rate for water delivered to that land.

Example (2). Farmer Y, a qualified recipient, owns and receives irrigation water on 960 acres in District A. Farmer Y decides to lease all 960 acres to another qualified recipient, Farmer Z. Farmer Z, however, already farms 960 acres receiving irrigation water. Therefore, the full-cost rate would have to be paid for irrigation water delivered to 960 acres of Farmer Z's landholding.

Example (3). Landholder X, a qualified recipient, owns 500 acres of irrigation land in District A which receives irrigation water and which he leases to another farmer. Landholder X also leases and receives irrigation water on another 960 acres in District B. Thus, there are 500 acres in Landholder X's total landholding which receive irrigation water in excess of his 960-acre non-full-cost entitlement and for which a full-cost rate must be paid.

Example (4). Landholder Y, a qualified recipient, receives irrigation water on 960 acres owned in District A and 600 acres leased in District B. At the beginning of the water year, Landholder Y selects 360 owned acres plus 600 leased acres to receive irrigation water at the non-full-cost rate. He pays the full-cost rate for water delivered to the remaining 600 acres. In July, Landholder Y terminates the lease on the 600 acres of leased land which are part of his non-full-cost entitlement. However, since non-full-cost acreage is counted against one's entitlement on a cumulative basis during any one water year, Landholder X has already reached the limits of his non-full-cost entitlement for this water year. Therefore, Landholder Y may not replace those 600 non-full-cost acres, even though they no longer receive irrigation water, with 600 acres from his full-cost land. Landholder Y must pay the full-cost rate for irrigation water delivered to any other land he irrigates during that water year.

Example (5). Landholder Z, a qualified recipient, owns and irrigates 1,120 acres, 160 of which are subject to a non-extended recordable contract. Landholder Z also irrigates 160 acres leased from another party All of Landholder Z's landholding, a total of 1,280 acres, counts against his non-full-cost entitlement; therefore, he is in excess of his non-full-cost entitlement by 320 acres. However, the 160 acres under recordable contract are technically not subject to full-cost pricing, so Landholder Z need select only 160 acres from his total landholding for full-cost pricing.

(2) *Non-full-cost entitlement for limited recipients.* The non-full-cost entitlement for limited recipients that received irrigation water on or before October 1, 1981, is 320 acres or the class 1 equivalent thereof. The non-full-cost entitlement for limited recipients that did not receive irrigation water on or prior to October 1, 1981, is zero. The full-cost rate must be paid for irrigation water delivered to all eligible land held in excess of a limited recipient's non-full-cost entitlement, except for (i) land subject to a recordable contract unless as otherwise provided in §§ 426.11(c) and 426.11(i)(4); (ii) exempt land other than isolated tracts, as provided in § 426.13(a)(4); and (iii) land acquired through involuntary processes, as provided in § 426.16.

(i) The application of this rule may be illustrated by the following:

Example (1). ABC Farms is a limited recipient which owns and was receiving irrigation water on 640 acres in District A prior to October 1, 1981. Of the total, 480 acres were and continue to be under a nonextended recordable contract. ABC Farms may continue to receive irrigation water at the non-full-cost rate on the 640 acres until the end of the recordable contract period. It may also amend the recordable contract to allow it to own and receive irrigation water on 640 acres owned without termination of its benefits. If it amends the recordable contract, it will be allowed to receive irrigation water at the non-full-cost rate on 320 acres, but it must pay the full-cost rate on the additional 320 acres owned.

Example (2). XYZ Farms, a limited recipient, owns 640 acres of land eligible to receive irrigation water. The purchase of the land took place after October 1, 1981, and XYZ Farms was not receiving irrigation water on any other land on or before October 1, 1981. Therefore, in order for XYZ Farms to receive irrigation water for any eligible land, it must pay the full-cost rate for that water.

Example (3). FGH Fertilizer Company, a limited recipient, buys 160 acres of land receiving irrigation water in District A. The purchase of the land is made subsequent to October 1, 1981. However, the company was receiving irrigation water on 160 leased acres in District B prior to October 1, 1981. Therefore, the 160 acres recently purchased are eligible to receive irrigation water at the non-full-cost rate. If FGH Fertilizer Company buys or leases additional land, the company would have select and pay the full-cost rate for any irrigation water delivered to land in excess of its 320-acre non-full-cost entitlement.

Example (4). The XYZ Corporation, a limited recipient, owns 640 acres of irrigation land in District A. Since the corporation was receiving irrigation water prior to October 1, 1981, it is entitled to irrigate 320 acres at the non-full-cost rate and 320 acres at the full-cost rate. If the corporation were to lease the owned land subject to full cost to another, the full-cost rate would still apply.

(3) *Non-full-cost entitlement for prior law recipients.* There is no full-cost pricing requirement until April 13, 1987, for prior law recipients, unless their land becomes subject to full-cost pricing through leasing to or from a party subject to the discretionary provisions. However, as of April 13, 1987, the non-full-cost entitlement for prior law recipients is 160 acres westwide. The full-cost rate must be paid for irrigation water delivered to all eligible land held in excess of a prior law recipient's non-full-cost entitlement, except for (i) land subject to a recordable contract unless as otherwise provided in §§ 426.11(e) and 426.11(i)(4); (ii) exempt land other than isolated tracts, as provided in § 426.13(a)(4); (iii) land acquired through involuntary processes, as provided in § 426.16; and (iv) owned land held as nonexcess under § 426.6(d). However, in lieu of leased land, a prior law recipient may pay full cost for any owned land in his landholding, provided it is eligible and nonexempt.

(i) The application of this rule may be illustrated by the following:

Example (1). Farmer X and his wife receive irrigation water on 160 owned acres of irrigation land and on 40 leased acres in District A. District A has not amended its contract to become subject to the discretionary provisions and Farmer X and his wife have not made an irrevocable election. Since Farmer X and his wife receive irrigation water on 40 acres in excess of their 160-acre non-full-cost entitlement, the couple must select 40 acres in their landholding and, beginning April 13, 1987, pay the full-cost-rate for water delivered to that land. If Farmer X and his wife make an irrevocable election or if District A amends its contract to become subject to the discretionary provisions, the couple would thereby become a qualified recipient with a non-full-cost entitlement of 960 acres. Since their landholding is within that entitlement, Farmer X and his wife would be able to receive irrigation water at the non-full-cost rate on all 200 acres.

Example (2). Farmer X and his wife own 320 acres of irrigation land in District A. They also lease 320 acres of irrigable land in District A and another 640 acres of irrigable land in District B. Districts A and B have not amended their contracts to become subject to the discretionary provisions and Farmer X and his wife have not made an irrevocable election. The couple receives irrigation water on all land in their landholding. In order to determine the number of full-cost acres in their landholding, Farmer X and his wife must count all of their owned land plus all of their leased land, for a total of 1,280 acres. At first glance, it appears that there are 1,120 acres in excess of the couple's non-full-cost entitlement. However, since 160 of those acres are within the couple's ownership entitlement as prior law recipients, the number of full-cost acres is actually 960 (1,120−160). Therefore, Farmer X and his wife must select 960 acres in their landholding and, beginning April 13, 1987, pay the full-cost rate for water delivered to that land.

Example (3). Four brothers hold equal and separable interests in a partnership they have formed. The partnership owns 160 acres of irrigation land in District A and also leases another 320 acres from Farmer Y in District B. All land in the partnership's landholding receives irrigation water. The partnership and Districts A and B remain subject to prior law. Unless the partnership becomes subject to the discretionary provisions prior to April 13, 1987, as of that date, the full-cost rate must be paid for irrigation water delivered to 320 acres in its landholding.

Example (4). Farmer X, a prior law recipient, owns 5,000 acres of irrigation land in District A, 4,840 of which are under recordable contract. He receives irrigation water on all this land and also on another 320 acres which he leases in this same district. Beginning on April 13, 1987, Farmer X will be receiving irrigation water on 5,160 acres (5,320−160) in excess of his non-full-cost entitlement. However, his recordable contract land is technically not subject to full-cost pricing; therefore, Farmer X must select 320 acres (5,160−4,840) for full-cost pricing. Although his recordable contract land is technically not subject to full-cost pricing, Farmer X may, at his option, select part or all of the 320 full-cost acres from the land under recordable contract in lieu of his nonexcess or leased land.

(d) *Multidistrict landholding.* If a landholder has multidistrict landholdings and any one of those districts becomes subject to the discretionary provisions, the landholder automatically becomes a qualified or limited recipient and irrigation land owned or leased in all districts and receiving water must be included in determining the landholder's non-full-cost entitlement. Furthermore, a qualified or limited recipient remains such a recipient even after he disposes of his ownership or leasehold interest in land within a district(s) subject to the discretionary provisions. In no case, however, shall a prior law recipient become a qualified or limited recipient by virtue of leasing irrigation land from a lessor who has made an irrevocable election.

(1) The application of this rule may be illustrated by the following:

Example. In District A, Farmer X owns 160 acres receiving irrigation water. In District B he receives irrigation water on another 800 acres leased from Farmer Y. District A is subject to prior law; however, District B has amended its contract to become subject to the discretionary provisions. Because Farmer X leases land in a district subject to the discretionary provisions and because he is a U.S. citizen, he becomes a qualified recipient. On the other hand, if Farmer Y had become subject to the discretionary provisions by virtue of an irrevocable election and District B had remained subject to prior law, Farmer X would have also remained subject to prior law. Under this second set of circumstances, Farmer X would have been required to pay, beginning April 13, 1987, the full-cost rate for irrigation water deliveries to 800 acres of land in his holding.

(e) *Calculating full cost*—(1) *What constitutes full cost.* As set forth in § 426.4, the term "full cost" means an annual rate as determined by the Secretary that shall amortize the expenditures for construction properly allocable to irrigation facilities in service, including all operation and maintenance deficits funded, less payments, over such periods as may be required under Federal Reclamation law or applicable contract provisions, with interest on both accruing from October 12, 1982, on costs outstanding at that date, or from the date incurred in the case of costs rising subsequent to October 12, 1982. Operation, maintenance, and replacement charges required under Federal Reclamation law shall be collected in addition to the full-cost payment.

(i) *Amortization period.* The amortization period for calculating the full-cost rate shall be the remaining balance of the repayment period for the district as specified in its repayment contract. However, in those cases, such as in water service contracts, where payment by a district through its existing contract term will not fully discharge its obligation for repayment of construction costs and where, in accordance with the project authorization the district must renew its water service contract, the district may extend the amortization period for the calculation of full costs by renegotiating its current water service contract at the time it amends its contract to conform to the discretionary provisions. The amortization period may extend up to the expiration date of the new contract, and the term of the new contract cannot exceed the payback period authorized by Congress. In cases where water services rates are designed to completely repay applicable Federal expenditures in a specific time period, that time period may be used as the amortization period for full-cost calculations related to these expenditures. Such an amortization period may not exceed the payback period authorized by Congress.

(ii) *Allocable construction expenditures.* For determining full cost, the construction costs properly allocable to irrigation are those Federal project costs which have been assigned to irrigation within the overall allocation of total project construction costs. Total project construction costs include all direct expenditures necessary to install or implement a project, such as planning, design, land, rights-of-way, water-rights acquisitions, construction expenditures, interest during construction, and when appropriate, transfer costs associated with services provided from other projects.

(iii) *Facilities in service (irrigation).* Facilities in service are those facilities which are in operation and providing irrigation services.

(iv) *Operation and maintenance deficits funded.* O&M deficits funded are the annual O&M costs including project-use pumping power allocated to irrigation which have been federally funded and which have not been paid by the irrigation contracting entity.

(v) *Payments.* In calculating the payments which have been received, all receipts and credits applied to repay or reduce allocated irrigation construction costs in accordance with Reclamation law, policy, and applicable contract provisions shall be considered. These may include:

(A) Direct repayment contract revenues,

(B) Net water service contract income,

(C) Contributions,

(D) Ad valorem taxes, and

(E) Other miscellaneous revenues and credits excluding power and M&I (municipal and industrial) revenues.

(vi) *Unpaid balance.* The unpaid balance is the irrigation allocated construction cost plus cumulative federally funded O&M deficits, less payments.

(2) *Calculating the full-cost rate.* The Secretary will calculate a district's full-cost rate using accepted accounting procedures. The definition of "full cost" contained in title II does not recover interest charges retroactively before October 12, 1982, but interest charges on the unpaid full cost do accrue from the date of the act. The full-cost rate for amended contracts will be determined as of the date of enactment. The full-cost rate for districts which enter into contracts after the date of enactment will be determined at the time the new contract is executed. For repayment contracts, the full-cost rate will fix equal payments over the amortization period. For water service contracts, the full-cost rate will fix equal payments per acre-foot of projected water deliveries over the amortization period. If there are additional construction expenditures or the cost allocated to irrigation changes, then a new full-cost rate will be determined. The Secretary will notify the respective districts of changes in the full-cost rate at the time he notifies the district of other payments due the United States.

(i) The application of this rule may be illustrated by the following:

Example (1). District A contains 90,000 irrigable acres. The construction costs allocated to irrigation for the project and to be repaid by District A amount to $240 million. As of October 12, 1982, the district's accumulated repayments are $174 million, the unpaid obligation on District A's repayment contract is $66 million, and 11 years remain on its contract term. The established annual contract rate is $66.67 per acre. This amount repays the outstanding balance of the contractual obligation in 11 years. As of October 12, 1982, the unpaid balance for full cost is $66 million (allocated cost, less payments) or $733.33 per acre, and the applicable interest rate is determined to be 7½ percent. Therefore, the equal annual payments for full cost would be $100.24. This payment is calculated using standard amortization tables and is equivalent to the annual payment necessary to retire a debt of $733.33 at a 7½ percent rate of interest over 11 years. This rate will apply regardless of when District A amends its contract.

Example (2). District B has a water service contract which establishes a rate of $6.50 an acre-foot for 90,000 acre-feet of water delivered to the district, a rate which is fixed over the remaining 10 years of the contract term. Currently, $1.00 of the $6.50 rate is used to pay annual O&M charges. The remainder is credited to the repayment of irrigation construction costs, although inflation over the next 10 years is expected to leave a $5.00 per acre-foot payment to irrigation, averaged over the remaining 10 years. The construction costs to be repaid from irrigation revenues and assignable to be repaid by the land in District B are $24 million, and the district has paid $15.5 million of those costs to date. As of October 12, 1982, the accumulated payments credited to repayment on construction are $15.5 million. The unpaid balance for full cost is $8.5 million ($24 million less $15.5 million), and the applicable interest rate is determined to be 7½ percent. Amortizing the unpaid balance over the remaining contract term of 10 years results in an annual full-cost rate of $1,384,016, or $15.38 per acre-foot. Normal O&M charges would be collected annually in addition to this rate. Upon expiration of the current contract, the district expects to enter into a subsequent water service contract in order to expand its water deliveries. If District B desires to amortize its unpaid balance for full cost over a longer period than 10 years, it can choose to renegotiate its existing contract before the current contract expires to bring it into conformance with current Bureau policy. When the district renegotiates its contract, the unpaid balance for full cost could be reamortized, at the district's option, for any period up to the term of the new water service contract, which cannot exceed the repayment period authorized by Congress. For example, suppose the new water service contract runs for 18 years and is executed immediately. If the district chooses to amortize full cost over the longest permissible repayment period (18 years), then the full-cost rate would be $10.88 per acre-foot. If the district chooses to amortize over 15 years, the full-cost rate would be $11.96 per acre-foot, assuming the unpaid costs remain the same.

Example (3). District C contains 90,000 irrigable acres, and the construction costs allocated to irrigation for the project and assignable to be repaid amount to $240 million. As of October 12, 1982, the accumulated repayments of the district are $174 million. The district's repayment obligation is $200 million. (The $40 million difference between construction costs allocated to irrigation and the repayment obligation is scheduled to be paid from other project revenues.) The unpaid obligation on District C's repayment contract is $26 million, and 11 years remain on its contract term. The annual rate established by the contract is $26.26 per acre. This amount repays the outstanding balance of the contractual obligation in 11 years. As of October 12, 1982, the unpaid balance for full cost is $66 million (allocated cost, less payments) or $733.33 per acre, and the applicable interest rate is determined to be 7½ percent. Therefore, the equal annual payment for full cost would be $100.24 per acre.

(f) *Interest rate calculations for full cost.* Indetermining full cost, the interest rates to be used will be determined by the Secretary of the Treasury as follows:

(1) *Qualified recipients and limited recipients who were receiving irrigation water on or before October 1, 1981.* (i) The interest rates for expenditures made on or before October 12, 1982, shall be the greater of 7-1/2 percent per annum or the weighted average yield of all

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interest-bearing marketable issues sold by the Treasury during the fiscal year in which the expenditures were made by the United States.

(ii) The interest rate for expenditures made after October 12, 1982, shall be the arithmetic average of (A) the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for 15 years from the date of issuance at the beginning of the fiscal year in which the expenditures are made and (B) the weighted average yield on all interest-bearing marketable issues sold by the Treasury during the fiscal year preceding the fiscal year in which the expenditures are made.

(2) *Limited recipients not receiving irrigation water on or before October 1, 1981 and all recipients subject to prior law after April 12, 1987.* The interest rate shall be determined as of the fiscal year preceding the fiscal year in which expenditures are made except that the interest rate for expenditures made before October 12, 1982, shall be determined as of October 12, 1982. The interest rate shall be based on the arithmetic average of (i) the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for 15 years from the date of issuance and (ii) the weighted average yield on all interest-bearing marketable issues sold by the Treasury.

Note.—Prior law recipients who become subject to the discretionary provisions after April 12, 1987, will then become eligible for the full-cost interest rate specified in paragraph (f)(1) of this section.

(g) *Proportional charges for full-cost water.* (1) For those water delivery charges levied by a district per acre-foot of irrigation water delivered, as compared to per acre of land, the district must, except as provided in § 426.7(g)(3), levy a proportional charge for water delivered to a landholding in that district which reflects the relative amounts of non-full-cost and full-cost water rate land in the farm operation. The proportional rate will be equal to the weighted average of the non-full-cost rate and the full-cost rate in proportion, respectively, to the acres of land which receive irrigation water at the non-full-cost rate and the acres of land which receive irrigation water at full cost. Such a district shall calculate the proportional rate for each water user based upon the information provided in the certification or reporting forms furnished to the district pursuant to § 426.10. The district shall make no adjustment in the proportional rate applicable to any landholding unless the cumulative acreage receiving irrigation water during any water year changes, or the acreage receiving irrigation water changes between water years.

(2) Use of the proportional rate removes the necessity of separately assigning irrigation water amounts to those portions of landholdings that are eligible to receive water at the non-full-cost and full-cost rate. Water bills or other district records will set forth the non-full-cost rate, the full-cost water rate, and the amount of acreage to which each applies, as well as the proportional rate.

(i) The application of this rule may be illustrated by the following:

Example. District A has a water service contract which specifies a rate of $4.00 per acre-foot for irrigation water. The full-cost rate plus annual O&M costs is determined to be $16.00. If Operator Y, a qualified recipient, has a landholding of 1,000 acres, he will pay a proportional rate for water of $4.48 per acre-foot of water delivered anywhere in his landholding (96 percent of $4.00 plus 4 percent of $16.00). This rate is equal to the weighted average of the previous contract rate and the full-cost rate, where the weights are the respective acreages of land eligible to receive water at the contract rate and at full cost. If Operator Y uses 3 acre-feet of water per acre, total water charges will be $13,440 per year (1,000×3×$4.48). If Operator Y reduces the size of his operation by 30 acres, then the proportional water charge will be $4.12, and his total water charges for using 3 acre-feet per acre will be $12,000, or $1,440 less than with the 1,000-acre operation. This reduction in water charges is equal to the full-cost rate of $16.00×3×30.

(3) In lieu of the proportional rate scheme set forth in paragraphs (g) (1) and (2) of this section, districts levying water charges on a per-acre foot basis may, at their option, assess full-cost and non-full-cost charges to landholders directly, based on each landholder's full-cost and non-full-cost acreage; provided, that if the proportional rate is not used in such cases, assessments to any landholder must be based on the assumption that equal amounts of water have been or will be delivered per acre to full-cost and non-full-cost land.

(i) The application of this rule may be illustrated by the following:

Example. District B, a water service contractor, has a contract rate for irrigation water of $4.00 per acre-foot, and a full-cost rate of $16.00 per acre-foot. Farmer X, a qualified recipient, owns and irrigates 960 acres in District B, and leases 40 acres served with irrigation water from another party. A total of 3,000 acre-feet or irrigation water are delivered to Farmer X's operation in a certain year. District B has chosen not to use a proportional rate to assess full-cost charges and must, therefore, assume that 3 acre-feet of irrigation water per acre were delivered to Farmer X's entire 1,000-acre operation. The total charges assessed to Farmer X are given by (960×3×$4.00) + (40×3×$16.00), for a total assessment of $13,440.

(h) *Disposition of revenues obtained through full-cost rates.* The interest and full-cost revenues, less the appropriate non-full-cost rate, shall be credited to the Reclamation fund unless otherwise provided by law. The portion of the full-cost rate, which would have been collected if the land had not been subject to full cost, shall be credited to the annual payments due under contractual obligation from the district.

§ 426.8 Operation and maintenance charges.

(a) *Districts with new or amended contracts.* A district which becomes subject to the discretionary provisions as set forth in § 426.5(a)(2) and (a)(3), will be required to pay annually the actual O&M costs chargeable to the districts. They are to be paid to the United States on a schedule that is acceptable to the Secretary. O&M costs shall include minor replacement costs for facilities funded during the year. Each year the Secretary shall estimate and advise the district of its O&M charges, and the price of irrigation water will be modified, if necessary, to reflect any changes in O&M costs. The difference between the estimated and actual O&M costs, as determined at the end of the annual period, will be reflected through adjustment of the following year's O&M charges. One effect of this provision is that if a district's contract rate, less the O&M costs of delivering water, is positive at the time a district amends its contract solely for the purpose of becoming subject to the discretionary provisions, that positive difference will continue to be paid annually to the United States, in addition to any adjusted O&M costs, during the remaining term of the contract. Major replacement costs, such as those caused by disaster, obsolescence, or otherwise will be capitalized under regular Bureau accounting practices.

(1) The principles of this rule may be illustrated by the following:

Example (1). A district amends its water service contract for the sole purpose of conforming to the discretionary provisions. Prior to its amendment, the water service contract obligated the district to pay a rate of $3.50 per acre-foot for water for the remaining 10 years of its 30-year contract term. At the time of contract amendment, $3.00 of the contract rate are needed to pay current O&M costs. If the district's O&M costs increase by $0.50 per acre-foot from $3.00 to $3.50 per acre-foot in the year after the district's amendment, then the current $3.50 rate will be adjusted to $4.00 to reflect the $0.50 increase in O&M costs. If the district's O&M costs increase by $0.25 per acre-foot the following year, the district's rate would be $4.25 per acre-foot. Similar adjustments to O&M costs would continue throughout the remaining term of the district's contract. One effect of these adjustments is that, subsequent to amendment and continuing throughout the remaining contract term, the district's annual payments will be $0.50 per acre-foot higher than its actual O&M costs.

Example (2). A district amends its water service contract for the sole purpose of conforming to the discretionary provisions. Prior to its amendment, the district's contract obligated it to pay a rate of $3.00 per acre-foot of water for the remaining 10 years of its 30-year contract. At the time of contract amendment, the district's actual O&M costs are $6.50 per acre-foot. Since the current contract rate of $3.00 does not cover these O&M costs, the district's rate will be increased to $6.50. If the district's O&M costs increase by $.50 per acre-foot the following year, the district's rate would then be adjusted to $7.00 per acre-foot.

Example (3). A district's repayment contract obligates it to pay $4.00 per acre for the remaining 5 years of its 40-year contract. It is also obligated under the terms of its contract to pay the full O&M costs due the United States on an annual basis in addition to its repayment obligation. If the district were to amend its contract to conform to the discretionary provisions, no change in its present repayment arrangement with the United States would be necessary since under the terms of its contract it is already paying its full O&M costs on an annual basis.

Note: Although the district's contract repayment rate would not change, it would be further obligated because of the amendment to conform to the discretionary provisions to collect full-cost payments from landholders whose holdings make them subject to such payments.

(b) *Landholders who make irrevocable elections.* Landholders who make an irrevocable election (thereby becoming limited or qualified recipients) must pay their portion of the full O&M costs annually for land in their landholding. The district(s) in which the recipient's landholding is situated shall be required to collect from the recipient his or her portion of the full O&M charges due and to forward such collections to the United States. If the district's contract rate, less the O&M costs of delivering water, is positive at the time of the election, that positive difference will continue to be paid annually to the United States, in addition to any adjusted O&M costs, during the remaining term of the contract.

(c) *Districts remaining under prior law.* Beginning April 13, 1987, districts remaining subjects to prior law, in addition to collecting full cost for water delivered to land subject to full cost as set forth in § 426.7(c)(3), must also collect the full O&M rate for such land.

§ 426.9 Class 1 equivalency.

(a) *In general.* Upon the request of any district having a contract which conforms to the discretionary provisions, or as provided in paragraph (g) of this section, the Bureau of Reclamation shall make a class 1 equivalency determination for that district. This determination will establish for the district the acreage of land with lower productive potential (classes 2, 3, and 4) that would be necessary to be equivalent in productive potential to the most suitable land in the local agricultural economic setting (class 1). Once these determinations have been made, individual landowners with classes 2, 3, and 4 land will have the right to an increased acreage entitlement equivalent in productive potential to 960 acres of class 1 land, in the case of a qualified recipient, or 640 acres of class 1 land, in the case of a limited recipient.

(b) *Data requirements and use.* Class 1 land and land in lower classes shall be identified on a district basis by the Bureau of Reclamation using a standard approach in which the land classification for the entire district is considered. Equivalency factors shall then be computed for the district and applied to specific tracts within individual landholdings. If adequate land classification data are not available, they shall be developed using standard procedures as set forth in Reclamation Instructions Series 110, Part 115, Land Resources Investigations; and Series 510, Land Classification Techniques and Standards. Economic data will be developed using procedures found in Reclamation Instructions Series 110, Part 116, Economic Investigations.

(1) *Definition of class 1 land.* Class 1 land is defined and will be classified as that irrigable land within a particular agricultural economic setting which: (i) Most completely meets the various parameters and specifications established for irrigable land classes; (ii) has the relatively highest level of suitability for continuous, successful irrigation farming; and (iii) is estimated to have the highest relative productive potential measured in terms of net income per acre (reflecting both productivity and costs of production). The objective is to establish the acreage of each of the lower classes of land which is equal in productive potential (measured in terms of net farm income) to 1 acre of class 1 land. All land that has not been classified will be considered class 1 land for the purposes of determining acreage entitlement under these rules until such time as the land has actually been classified.

(2) *How land classes are determined.* The extent and location of class 1 land and land in lower land classes in a district have been, or will be, determined by the Bureau of Reclamation, taking into account the influence of economic and physical factors upon the productive potential of the land lying within the district. These factors include, but are not limited to: the physical and chemical characteristics of the soil, topography, drainage status, costs of production, land development costs, water quality and adequacy, elevation, crop adaptability, and length of growing season and their effect on agricultural practices.

(3) *Level of detail.* Acceptable levels of detail for land classification studies to be utilized in making class 1 equivalency determinations for a given district shall be evaluated on the basis of the physical and agricultural economic characteristics of the area. In areas for which no current classification exists or the existing classification is unacceptable, the level of detail of the land classification to be made will never be greater than that required to make class 1 equivalency determinations where the sole purpose of the classification is such a determination.

(4) *Economic studies.* The economic studies related to class 1 equivalency determinations will measure net farm income by land classes within the district. Net farm income shall be determined by the disposable income accruing to the farm operator's labor, management, and equity from the sale of farm crops and livestock produced on irrigated land after all fixed and variable costs of production, including costs of irrigation service, are accounted for. Net farm income will be the measure of productivity to establish equivalency factors reflecting the acreage of each of the lower classes of land which is equal in productive potential to 1 acre of class 1 land.

(5) *Equivalency factors.* Equivalency factors shall be determined by comparing the weighted average farm size required to produce a given level of income on each of the lower classes of land with the farm size required to produce that income level on class 1 land.

(i) The principles of this rule may be illustrated by the following:

Example. Farmer X has a total landholding of 1,300 acres in District A. That acreage includes 800 acres of class 1 land, 300 acres of class 2 land, and 200 acres of class 3 land. The equivalency factors for the district have been determined to be: class 1=1.0, class 2=1.20, and class 3=1.50. Using these equivalency factors, the following landholding in terms of class 1 equivalency would apply:

Class 1 800 acres divided by 1.0=800 acres class 1 equivalent
Class 2 300 acres divided by 1.2=250 acres class 1 equivalent
Class 3 200 acres divided by 1.5=133 acres class 1 equivalent

Thus, Farmer X's total landholding of 1,300 acres is equal to 1,183 acres of class 1 land in terms of productive capacity. It will be necessary for him to declare the equivalent of 223 acres of class 1 land (1,183 acres minus 960 acres), as excess and ineligible to receive irrigation water while in his landholding. This can be accomplished in any of several ways. If Farmer X desires to maximize his actual acreage, he declares 223 acres of class 1 land as excess and designates 577 acres of class 1, 300 acres (250 acres class 1 equivalent) of class 2, and 200 acres (133 acres class 1 equivalent) of class 3 as nonexcess and eligible to receive irrigation water. This would result in a total of 1,077 actual acres which would equal 960 acres of class 1 land in production capacity. Or he could maximize his holding of class 1 and 2 lands by designating as nonexcess 800 acres of class 1 land and 192 acres (192 divided by 1.2=160 acres class 1 equivalent) of class 2 land. This total landholding of 992 acres would, again, be equal in productive capacity to 960 acres of class 1 land. In the latter case, all 200 acres of Farmer X's class 3 land and 108 acres of his class 2 land would be considered excess and ineligible to receive irrigation water in his landholding.

(6) *Special considerations.* For equivalency purposes, all irrigable land will be classified as either class 1, class 2, or class 3; no other classifications are permissible. Class 4 and special-use land classes will be allocated to one of these three classes on a case-by-case basis.

(c) *Scheduling.* District requests for equivalency determinations will be scheduled by region, with the Regional Director of each of the six regions of the Bureau of Reclamation having responsibility for such scheduling. Generally, requests will be honored on a first-come-first-served basis. However, if requests exceed the region's ability to fulfill them expeditiously, priority will be given on the basis of greatest immediate need.

(d) *Land classification costs.* The Bureau of Reclamation has provided basic land classification data as part of the project development process since 1924. Where the Secretary determines that acceptable land classification data are not available for making requested class 1 equivalency determinations and where the provision of these data was the responsibility of the Bureau of Reclamation during the project development process, such data will be made available at Bureau of Reclamation expense. Districts in projects authorized for construction prior to 1924 must pay one-half the costs of new land classification studies required to make accurate equivalency determinations.

(e) *Economic study cost.* The cost of performing new or additional economic studies and computations inherent in the equivalency process shall be the responsibility of the requesting district.

(f) *Appeals.* When basic land classification data are available for a district, but the district does not agree with its accuracy or asserts that the data have become outdated, the district may request, and the Bureau of Reclamation may perform, a reclassification under the authority contained in the Reclamation Project Act of 1939 (Pub. L. 76–260). The requesting district shall pay for one-half of the cost of performing such reclassifications and the full cost of all other studies inherent in the equivalency process.

(g) *Individual requests.* Individual requests for class 1 equivalency determinations will be accepted if the individual landowner, in the absence of district action, has made an irrevocable election to come under the discretionary provisions and if the district agrees to pay for the determination for the entire district. (The arrangement between the landowner and the district to pay the cost of the equivalency determination does not involve or concern the United States.) Requests for equivalency must be made by or through the district. Equivalency will be applied only to that land which is the subject of an individual election for which equivalency has been requested.

(1) The application of this rule may be illustrated by the following:

Example (1). A district with an existing contract decides not to amend its contract to come under the discretionary provisions. However, an individual landowner within the district may make an irrevocable election to come under these provisions. The landowner can request equivalency through the district, and the district may request the Secretary to make the equivalency determinations for the entire district. The district would be required to pay the United States for the cost of making the equivalency determination. The payment of the costs between the landowner and the district would be a district matter. The application of equivalency would be available only to the landowner(s) who exercise an irrevocable election.

Example (2). A district decides to amend its contract to come under the discretionary provisions, but it elects not to request equivalency. Thus, individual landholders within the district are not entitled to equivalency until after the district makes the equivalency request and the Bureau of Reclamation has acted upon that request.

(h) *Excess land.* Until a final determination has been made by the Bureau of Reclamation on the district's request for equivalency, all land exceeding the basic ownership entitlement for qualified or limited recipients must be under recordable contract in order to be eligible for irrigation water. Once the determination has been made, the qualified recipient may withdraw land from the recordable contract in order to reach an acreage equivalent to 960 acres of class 1 land, and the limited recipient may withdraw land from the recordable contract in order to reach an acreage equivalent to 640 acres of class 1 land. The requirement that land under recordable contract be sold at a price approved by the Secretary does not apply to land which is withdrawn from a recordable contract and included as part of a landowner's nonexcess land as a result of an equivalency determination.

(1) *Protection during classification.* The Bureau of Reclamation will protect the excess landowner's property interests by ensuring that equivalency determinations are completed in advance of maturity dates on recordable contracts, provided the district's request for an equivalency determination was made at least 6 months prior to the maturity of the recordable contract and the district fulfills its obligations under § 426.9 of these rules.

(2) *Protection during appeal.* In cases of equivalency determination appeals, the Secretary will not undertake the sale of the reasonable increment of the excess land under matured recordable contract which could be affected by a reclassification as long as that appeal is determined by the Secretary not to be an attempt to thwart the sale of excess land.

(i) *Full-cost charges.* Once the Bureau of Reclamation has acted upon the district's request and made a final equivalency determination, the full-cost water pricing structure would not come into effect until the total landholding westwide exceeds the qualified or limited recipient's non-full-cost entitlement with equivalency. During the time when the determinations were being made, however, the full-cost rate would be assessed on land receiving water in excess of the qualified or limited recipient's non-full-cost entitlement without equivalency. If the qualified or limited recipient's basic entitlement is increased because of the equivalency determination, he or she shall be reimbursed any overcharges which were paid during the period between the time of the request for an equivalency determination and the

Bureau of Reclamation's final determination.

(1) The principles of this paragraph may be illustrated by the following:

Example (1). Landholder X is a qualified recipient who owns no land, but leases 1,100 acres in a district which has requested equivalency. The land leased is a mix of classes 1, 2, and 3 land. During the time the equivalency determination was being made, Landholder X would be required to pay the full-cost water rate on 140 acres (1,100 acres leased minus the basic 960-acre non-full-cost entitlement) if he elected to continue to receive irrigation water on that land. Once the equivalency determinations had been completed, Landowner X would be entitled to lease the equivalent of 960 acres of class 1 land at the non-full-cost rate (something greater than 960 acres). Landowner X would also be reimbursed for full-cost payments made for land which became nonexcess as a result of the equivalency determination.

Example (2). Landholder Y is a limited recipient who owns 600 acres of irrigation land and leases another 160 acres in District A. District A has requested and received an equivalency determination. However, Landholder Y was not receiving project water on or before October 1, 1981. Thus, even with equivalency, he would be required to pay the full-cost water rate for all land served in his landholding. (If landholder Y had been receiving project water on or before October 1, 1981, he would have been entitled to receive water on the equivalent of 320 acres of class 1 land at the non-full-cost rate. Deliveries on the remaining 440 acres or less, would be at the full-cost rate.)

(j) *Multidistrict landholdings.* A landholder with holdings in more than one district is entitled to equivalency only in those districts which have requested equivalency (or are already subject to equivalency). That part of the landholding in a district or districts not requesting equivalency will be counted as class 1 land for purposes of overall entitlement.

(1) The application of this rule may be illustrated by the following:

Example (1). Landholder X is a qualified recipient and owns 320 acres in each of three districts. One of those districts, District A, requests and receives an equivalency determination. From the equivalency determination, Landholder X is shown to own the equivalent of 240 acres of class 1 land in District A. Landholder X is therefore entitled to buy and receive irrigation water on an additional 80 acres of irrigation land in some other district or he could lease 80 acres in some other district and receive irrigation water for it at the non-full-cost rate. In District A itself, Landholder X could buy an additional 80 acres of class 1 land or something greater than 80 acres of class 2 or 3 land. If Landholder X preferred to lease in District A, he could lease 80 acres of class 1 land or something greater than 80 acres of class 2 or 3 land and receive irrigation water for that leased land at the non-full-cost rate.

Example (2). Landholder Y owns 1,200 acres in District A and 160 acres in District B. Landholder Y is a qualified recipient and has designated 800 acres in District A as nonexcess and put the 400 acres of excess land under recordable contract so that it can be irrigated while still in his ownership. Subsequent to this nonexcess land designation, District A requests and receives an equivalency determination. Landholder Y is then free to withdraw excess land from recordable contract to take advantage of the equivalency determination in District A. Landholder Y, when able to show good cause, may even redesignate the nonexcess land under recordable contract, § 426.11(b), if an appraisal of the excess land has not already been requested and performed. The maturity date as determined in the original contract, however, would not change.

(k) *Existing equivalency determinations.* In districts where equivalency was a provision of project authorization, those equivalency factor determinations will be honored as originally calculated unless the district requests a reclassification.

§ 426.10 Certification and reporting requirements.

(a) *Certification.* Landowners and operators within a district which has a contract that conforms to all provisions of title II shall furnish the district, in a form provided by the Bureau of Reclamation, a certificate declaring the irrigation land that they own and operate and providing other information pertinent to their compliance with Reclamation law.

(1) *Irrevocable electors.* Landowners or lessees who, in the absence of district action, have made an irrevocable election to be subject to title II must also certify through the nonamending district that they are in compliance. In districts where landholders pay less than full O&M costs, electors shall also file a statement signed by any lessor or lessee from whom or to whom the elector leases irrigation land. The statement shall establish the lessor's or lessee's concurrence with the inclusion of his or her irrigation land in the elector's landholding which will be subject to the discretionary provisions and, therefore, payment of full O&M costs.

(b) *Reporting.* Prior law landowners and operators must report through the district on the irrigation land in their ownership and the extent and conditions of any leases or farm operation agreements. They must declare the irrigation land that they own and operate, and provide other information pertinent to their compliance with Reclamation law. The reporting form will be provided to the district by the Bureau of Reclamation.

(c) *Certification and reporting from data requirements.* (1) Certification and reporting forms will require a full disclosure of irrigation land owned and operated in all districts, regardless of whether it is receiving irrigation water; the identification of the operator or operators of that land; the number of acres leased; the terms of any lease; and in the case of certification forms, certification that the rent paid reflects the reasonable value of the irrigation water to the productivity of the land. The Secretary may require the parties to any lease or farm operation agreement to submit to him or her a complete copy of that lease or farm operation agreement.

(2) All members of an entity composed of 25 or fewer individuals must be identified on the certification or reporting form. An entity composed of more than 25 individuals, however, is not required to identify its participants or shareholders, provided no participant owns more than 4 percent of the recipiency. If a participant owns more than 4 percent of an entity composed of more than 25 individuals, he or she must be identified on the certification or reporting form.

(d) *Schedule for completing certification and reporting forms.* Certification and reporting forms will be required as a condition for the receipt of irrigation water except as provided in paragraph (f) of this section. They will be required on an annual basis. If a landholder's ownership or operation arrangements change in some way, the landholder shall notify the district office, either verbally or in writing, within 15 days of the change and submit new certification or reporting forms within 30 days of the change.

(e) *Short form availability.* If no change has occurred in a landownership or operation arrangement between annual certification and reporting dates, a short verification form will be available for completion to satisfy the certification or reporting requirement. This form will make it possible for the landowner or operator to simply validate that the information contained on the last fully completed form is still accurate.

(f) *Exemptions.* Landowners and operators whose total irrigation land westwide is 40 acres or less are exempt from the certification and reporting requirements.

(g) *District participation.* Each district shall be required to make the necessary blank certification and/or reporting forms available to district landowners and operators and to keep the current certification and reporting forms on file and available for Bureau of Reclamation inspection. All superseded certificates and reports shall be retained by the

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district for 3 years and thereafter may be destroyed by the district, except that the last fully completed certification and reporting form (other than the verification form) must always be kept on file with the current verification form so that all the landowners' and operators' land may be identified. Additionally, each district will be required to summarize the information contained on these documents and submit the summary to the Bureau of Reclamation annually. The summary form to be used by the district will be provided by the Bureau of Reclamation. The district shall notify the Bureau of Reclamation of any discrepancies in the certification and reporting forms.

(h) *Auditing.* The Secretary may conduct filed audits, as necessary, to ensure compliance with title II.

(i) *False statements.* The following statement will be included in all certification and reporting forms:

> Under the provisions of 18 U.S.C. 1001, it is a crime punishable by 5 years imprisonment or a fine of up to $10,000, or both, for any person knowingly and willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction.

False statement by the landowner or operator will result also in loss of eligibility. Eligibility could only be regained upon the approval of the Secretary.

(j) *Failure to report.* Failure to submit the required certification or reporting form to the district will result in loss of eligibility to receive irrigation water by the individual landowner or operator. Eligibility will be regained once the required form is submitted to the district. Furthermore, should for any reason, any irrigation water be delivered despite the above prohibition, landholders shall be subject to such penalties as may be prescribed by the Secretary and shall be required to pay a Secretarially established rate for such water.

(k) *OMB approval.* The information collection requirements contained in this section have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance Nos. 1006–0004, 1006–0005, 1006–0006. The information is being collected to comply with sections 206, 224(c), and 228 of the act. These sections require that, as a condition to the receipt of irrigation water, each landowner and lessee in a contracting entity which is subject to the acreage limitation provisions of Reclamation law, as amended and supplemented by the RRA, will furnish to his or her district annually a certificate/report which indicates that he or she is in compliance with the provisions of Reclamation law. The information collected on each landholding will be summarized by the district and submitted to the Bureau in a form prescribed by the Secretary. Completion of these forms is required to obtain the benefit of irrigation water.

(l) *Application of Privacy Act of 1974.* The information submitted in accordance with the certification and reporting requirement is subject to the provisions of the Privacy Act of 1974. As a condition to the execution of a contract, the Secretary shall require the inclusion of a standard contract article providing that the district agrees to comply with the Privacy Act of 1974 and 43 CFR Part 2, Subpart D, in maintaining the landholder certification and reporting forms.

§ 426.11 Excess land.

(a) *In general.* As set forth in § 426.4(g), "excess land" means irrigation land, other than exempt land, owned in excess of the maximum allowable acreage under Reclamation law. In determining excess land, all irrigation land in all districts held by any landowner shall be considered. Delivery of irrigation water to excess lands is allowed only if any one of the following conditions applies:

(1) The excess land has been placed under recordable contract by the landowner, or

(2) The land was involuntarily acquired into excess status through inheritance, foreclosure, or other similar involuntary process.

(b) *Designation of nonexcess land.* The owner of excess land shall designate that portion of his or her irrigation land that is to be considered nonexcess, in accordance with the instructions on the certification and reporting forms. If a landowner does not make a designation on these forms, designation shall be in accordance with provisions in the district's repayment or water service contract, provided designation procedures are specified in the contract and the entire landholding is in one district.

(1) *Designation procedures when not established by contract.* If designation provisions are not specified in the district contract, the landowner must designate that portion of the land in the ownership which is to constitute the nonexcess entitlement within 30 days of a Secretarial notification to the district and that landowner. The designation will take into account all irrigation land owned by the landowner. If the landowner fails to make the nonexcess designation within 30 days, the district shall make the designation within 30 days thereafter. If the district does not make the required designation, the Secretary shall then make the designation.

(2) *Designation procedures if land is owned in more than one district.* If the land in the ownership is situated in more than one district, the landowner has 60 days from the date of notification to the district and the landowner to make the designation. The Secretary shall make the designation for the landowner if designation is not made within 60 days.

(3) *Status of nonexcess land and redesignation.* The nonexcess designation, whether made by the landowner, the district, or the Secretary, will be binding on the land and will be filed with the district and the Bureau of Reclamation. These regulations governing excess land will apply to the excess land resulting from that designation. A landowner may redesignate his or her nonexcess land from excess land in the ownership in accordance with the following procedures: Redesignations may be made without the approval of the Secretary in those cases where (i) the excess land becomes eligible to receive irrigation water as a result of a landowner becoming subject to the discretionary provisions as set forth in paragraphs (c)(1) and (c)(2) of this section, (ii) recordable contracts are amended to conform to the expanded acreage limitations of the discretionary provisions as set forth in paragraph (g) of this section, or (iii) the excess land becomes eligible to receive irrigation water as a result of equivalency determinations, § 426.9. All other situations involving redesignation of nonexcess land from excess land must be approved by the Secretary. A redesignation appeal will not be approved if it is being used for the purpose of achieving, through repeated redesignation, an effective farm size in excess of that permitted by Reclamation law. Except in those cases where a landowner becomes subject to the discretionary provisions as described in paragraph (c)(2) of this section, land purchased into excess status cannot be made eligible to receive irrigation water through the redesignation process. Furthermore, excess land in an ownership may not be designated as nonexcess once an owner sells some or all of the land in his or her current nonexcess designation. When a redesignation involves an exchange of nonexcess land for excess land, a landowner who is not eligible for equivalency must make an equal exchange of acreage through the

redesignation. If the landowner is eligible for equivalency, the redesignation may be made on the basis of equivalent acres.

(i) The application of this rule may be illustrated by the following:

Example (1). Landowner X owns 1,200 acres of irrigation land in District A. He purchased this land before the district entered its first repayment contract with the United States. Landowner X becomes a qualified recipient by virtue of an irrevocable election and designates 960 of his 1,200 acres as nonexcess. Because Landowner X purchased the 1,200 acres before the district entered a contract for an irrigation water supply, he is not considered as having purchased himself into excess status. Therefore, with the approval of the Secretary, Landowner X may redesignate the 240 acres, which are now excess, as nonexcess and eligible to receive irrigation water, provided he redesignates 240 acres of presently nonexcess land as excess.

Example (2). Landowner Y is a U.S. citizen and a qualified recipient by virtue of District A's contract amendment to conform to the discretionary provisions. Landowner Y purchased 1,400 acres of irrigation land in this district before the district entered a repayment contract to receive an irrigation water supply. After the district's amendment, Landowner X designates 960 acres of this land as nonexcess. Subsequent to this designation, the district requests and receives an equivalency determination. All 1,400 acres of Landowner Y's land is class 3 land, and in District A, 1 acre of class 1 land is equal to 1.4 acres of class 3 land. With equivalency, Landowner Y may irrigate 1,344 acres of class 3 land in District A. Thus, he may redesignate everything in his ownership as nonexcess except for 56 acres. In the future, if Landowner Y sells some of his 1,344 acres of nonexcess land, he may not designate any of the 56 excess acres as nonexcess.

(4) *Acquisition of excess land.* A landowner may purchase or otherwise acquire excess and formerly excess land at a Secretarially approved price, to be held as nonexcess, up to his or her ownership entitlement and resell such land at fair market value only once. Once a landowner has reached this limit, any additional land acquired from excess or formerly excess status becomes ineligible to receive irrigation water until it is sold to an eligible buyer at a Secretarially approved price as set forth in § 426.12.

(i) The application of this rule may be illustrated by the following:

Example. Farmer Y, who owns irrigation land in excess of his ownership entitlement, sells 960 acres of his excess land to Farmer X, a qualified recipient, at a Secretarially approved price. Farmer X owns no other irrigation land and designates the 960 acres as nonexcess and eligible to receive irrigation water in his ownership. After the 10-year period of the deed covenant expires, Farmer X sells the 960 acres at fair market value and purchases another 960 acres of irrigation land located in yet another district. Farmer X purchases the latter parcel at a Secretarially approved price because the land was excess in the seller's holding. However, since Farmer X has already reached his 960-acre limit for recapturing the fair market value of land purchased at a Secretarially approved price, the newly purchased land is not eligible to receive irrigation water while in his holding. In order to regain eligibility, the land must be sold to an eligible buyer at a Secretarially approved price. Farmer X may purchase and receive irrigation water on another 960 acres, provided it is bought from nonexcess status.

(c) *Treatment of land ineligible under prior law.* Irrigation land ineligible under prior law will be treated as follows:

(1) *Irrigation land owned on the date of a district's first repayment or water service contract.* Irrigation land owned on the date of the district's first water service or repayment contract and which becomes ineligible for service because it is in excess of the ownership limitations under prior law may be made eligible as follows: The landowner can become subject to the discretionary provisions through either an irrevocable election or a contract amendment by the district and may designate the excess land, up to his or her entitlement, as nonexcess. If the landowner does not become subject to the discretionary provisions, or if there is any excess land remaining after the landowner becomes subject to the discretionary provisions, the excess land can be made eligible by placing it under recordable contract, provided the period for executing recordable contracts under the district's contract has not expired. The excess land can also be sold to an eligible buyer at a Secretarially approved price, as set forth in § 426.12, or redesignated as nonexcess with the approval of the Secretary, as set forth in paragraph (b)(3) of this section.

(i) The principles of this rule may be illustrated by the following:

Example (1). Landowner Z is a resident alien and owns 480 acres of irrigation land in District A. Landowner Z has designated 160 acres as nonexcess, and it is receiving irrigation water. Following this designation, District A amends its contract to conform to the discretionary provisions. As a result of the district amendment, Landowner Z satisfies the requirements for a qualified recipient and may designate all 480 acres owned as nonexcess.

Example (2). Landowner Y and his wife own 1,200 acres of irrigation land in District B which is subject to prior law. They owned this land even before District B entered into a repayment contract with the United States. Landowner Y and his wife have designated 320 acres as nonexcess and eligible to receive irrigation water. The remaining 880 acres are excess and ineligible to receive irrigation water. This excess land cannot be placed under recordable contract because the 10-year grace period for executing recordable contracts, as provided in the district's contract, has expired.

Landowner Y makes an irrevocable election to conform to the discretionary provisions. By that election, Landowner Y becomes a qualified recipient, and is entitled to own and receive irrigation water on 960 acres. Landowner Y's remaining 240 acres can become eligible if he sells it to an eligible buyer at an approved price or redesignates it, with the approval of the Secretary, as nonexcess.

(2) *Irrigation land acquired after the date of a district's first repayment or water service contract.* Irrigation land acquired by a landowner after the date of a district's first repayment or water service contract and which is ineligible for service under prior law may become eligible as follows:

(i) *Nonexcess land purchased into excess.* Land which is ineligible because it was purchased from nonexcess status into excess status during an irrigation season may become eligible to receive irrigation water if the landowner becomes subject to the discretionary provisions within 60 days from the date of purchase and redesignates the land, up to his entitlement, as nonexcess. If nonexcess land is purchased into excess status during the nonirrigation season, the landowner has 30 days after the start of the next irrigation season to make the land eligible by becoming subject to the discretionary provisions. In either case, the excess land does not become eligible until after the landowner becomes subject to the discretionary provisions. Once these time limits have expired, eligibility can be regained through conformance to the discretionary provisions only with the approval of the Secretary. If the landowner does not become subject to the discretionary provisions in accordance with these procedures, or if there is any excess land remaining after the landowner becomes subject to the discretionary provisions, the excess land can regain eligibility as follows: Irrigation land acquired from nonexcess status into excess status after irrigation water was available to the land can regain eligibility if either the sale is canceled or the land is sold to an eligible buyer in a sale or transfer at a price and on terms approved by the Secretary. If the land was acquired into excess before irrigation water was available to it, the land can be placed under recordable contract when the water supply becomes available.

(ii) *Excess land acquired without price approval and other ineligible land.* Land which is ineligible because it was

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acquired from excess status without Secretarial price approval or because the landowner did not comply with some other requirements of law as determined by the Secretary can regain eligibility if it is sold to an eligible buyer at a price approved by the Secretary. Land purchased without Secretarial price approval can also regain eligibility if the sale price is reformed to conform to the excess land value.

(A) The principle of this rule may be illustrated by the following:

Example (1). Landowner Z is a resident alien and owns 160 acres of irrigation land in District A. District A is subject to prior law. During the current irrigation season, Landowner Z purchases an additional 160 acres which had been designated nonexcess while in the landholding of the seller. Since Landowner Z has purchased himself into excess status, the newly purchased land becomes ineligible to receive irrigation water in his holding. However, 3 weeks later, Landowner Z makes an irrevocable election. Since he meets the requirements of a qualified recipient and since he has become subject to the discretionary provisions within 60 days after he purchased himself into excess, Landowner Z may designate the newly purchased 160 acres as nonexcess. As a qualified recipient, he may also purchase and receive irrigation water on another 640 acres of eligible land.

Example (2). In 1986, Landowner X bought 160 acres of irrigation land from excess status in District A. Landowner X, however, failed to get sale price approval from the Secretary. This land is ineligible for service in his holding unless the seller is willing to reform the sale price to conform to the excess land value. If the price is not reformed, the 160 acres must be sold to an eligible buyer at a Secretarially approved price in order to be eligible for irrigation water.

(d) *Irrigation land which becomes ineligible under the discretionary provisions.* Irrigation land which becomes ineligible under the discretionary provisions shall be treated as follows:

(1) In a district which first becomes subject to Reclamation law because it enters a repayment or water service contract after October 12, 1982, irrigation land owned on the date of the district's contract and which is in excess of the ownership limitations under the discretionary provisions can be made eligible if it is: (i) Placed under recordable contract, provided the period for executing recordable contracts under the district's contract has not expired; (ii) sold to an eligible buyer in a sale or transfer at a price and on terms approved by the Secretary; or (iii) redesignated as nonexcess with the approval of the Secretary as set forth in paragraph (b)(3) of this section.

(2) In a district which first becomes subject to the ownership limitations of Reclamation law after October 12, 1982, if irrigation land for which a water supply is available is acquired from nonexcess status into excess status after the date of the district's contract, it shall remain ineligible until the sale is canceled or the land is sold to an eligible buyer at a price and on terms approved by the Secretary. If irrigation water was not available to such land at the time of purchase, the land can be placed under recordable contract when the water becomes available. In such districts, if land is ineligible because it was purchased from excess status without price approval, eligibility can be regained if the sale price is reformed to conform to a Secretarially approved price or if the land is sold to an eligible buyer at a price approved by the Secretary.

(3) In a district which was once subject to prior law but which has become subject to the discretionary provisions, irrigation land which becomes ineligible after the discretionary provisions are applicable, can be made eligible in the same ways described in the preceding paragraph, § 426.1(d)(2).

(i) The principle of these rules may be illustrated by the following:

Example. In 1980, Landowner X, a U.S. citizen, buys 1,920 acres of land in District A. In addition to its own water supply, District A wishes to receive supplemental irrigation water. Therefore, it enters into a water service contract with the United States on May 14, 1984. Thereby, the landowners in the district become subject to the discretionary provisions. As a qualified recipient, Landowner X may receive irrigation water on any 960 acres which he designates as nonexcess. The remaining 960 acres are excess and ineligible for service until Landowner X places the land under recordable contract, sells it to an eligible buyer at a price approved by the Secretary, or receives Secretarial approval to redesignate the land as nonexcess.

If Landowner X had purchased the 1,920 acres in 1985, rather than before the date of the district's contract, he still would have been able to designate 960 acres as nonexcess and eligible to receive irrigation water. However, the remaining 960 acres of excess land would not have been eligible until sold to an eligible buyer at a Secretarially approved price. The excess acres could not have been placed under recordable contract unless irrigation water had not been available when the land was purchased.

(e) *Recordable contracts.* Excess land may become eligible to receive irrigation water if the owner enters into a recordable contract with the Secretary, provided such excess land is eligible to be placed under recordable contract. The excess owner must agree to dispose of the excess land, excluding mineral rights and easements, to an eligible owner under terms and conditions and at a sale price approved by the Secretary in accordance with § 426.12. The period allowed for the disposition of excess land under recordable contracts executed after October 12, 1982, may not exceed 5 years from the date the recordable contract is executed by the Secretary (except for the Central Arizona Project where the disposition period provided will be 10 years from the date water becomes available to the land). Water deliveries may begin on the date the Secretary receives a written request from the landowner to execute a recordable contract. The landowner has 20 working days from that date to execute the recordable contract unless the Secretary waives the 20-day limitation. Land placed under recordable contract may receive irrigation water at the rate specified in the contract of the district so long as it is in the landholding of the landowner, and in the case of qualified and limited recipients, the contract rate covers at least the annual O&M costs. However, land under recordable contract which is leased to another may become subject to the full-cost provisions because the lessee's landholding exceeds the specified non-full-cost entitlement. Furthermore, if a landowner with land under recordable contract exceeds his or her non-full-cost entitlement, nothing precludes the landowner from selecting land under recordable contract as the land for which the full-cost rate must be paid, unless such land is already subject to full-cost pricing under an extended recordable contract as set forth in § 426.11(i)(4).

(1) The principles of this rule may be illustrated by the following:

Example (1). Landowner X is a qualified recipient and owns 1,400 acres of irrigation land in District A. The landowner places 440 acres under recordable contract so that he may receive irrigation water at the non-full-cost rate on all owned land in the district. Subsequently, Landowner X leases the 440 acres under recordable contract to Landholder Y who is a limited recipient that did not receive irrigation water prior to October 1, 1981. Therefore, the full-cost rate must be paid for irrigation water delivered to the 440 leased acres. Leasing the land to Landholder Y does not affect other terms of the recordable contract.

Example (2). Farmer X owns 1,280 acres of irrigation land in District A. District A, which is subject to prior law, has a fixed-rate water service contract which no longer covers actual O&M costs. Farmer X has designated 160 acres of his land as nonexcess and has placed the remaining 1,120 acres under recordable contract. This means that Farmer X is able to receive irrigation water at the contract rate on all his owned land.

Subsequently, District A amends its contract to become subject to the discretionary provisions. As provided in § 426.11(g), Farmer X withdraws 600 acres from under recordable contract and redesignates that land as part of his 960-acre entitlement as a qualified recipient. Since Farmer X is now a qualified recipient, full O&M costs must be paid for all land in his landholding, including the 320 acres remaining under recordable contract.

(f) *Restriction on placing excess land under recordable contract*—(1) *Land acquired into excess.* Except as provided in § 426.6(h), if a landowner acquires irrigation land for which irrigation water is available and by so doing places himself or herself in excess status, the landowner shall not be permitted to place the land so acquired under recordable contract. Such excess land can only regain eligible status as described in paragraphs (c)(2) and (d)(2) and (3) of this section.

(2) *Water rights separated from land.* In those cases where the Bureau provides a supplemental water supply to districts located in States which permit water rights to be separated from the land to which it has been historically applied, excess land cannot be placed under recordable contract if the applicable water rights have been sold separately from the land. If the applicable water rights remain with the excess land, the land may be placed under recordable contract. However, in these cases, the recordable contract shall provide that if, in the future, the water rights are sold separately from the land, the United States will terminate the recordable contract, the subject land will become ineligible for irrigation water, and the United States will be under no obligation to sell, appraise, or administer this land. In addition, such recordable contracts shall stipulate that the delivery of irrigation water is subject to applicable State, local, or other regulations.

(g) *Recordable contracts in effect prior to October 12, 1982.* Recordable contracts executed prior to October 12, 1982, will continue in effect. However, landowners with such existing recordable contracts may request that their contracts be amended to conform to the expanded ownership limitations contained in title II. The Secretary shall amend those contracts accordingly if (1) the district enters into a new or amended contract which conforms to the discretionary provisions or (2) the excess landowner makes an individual election. The disposition period for such amended recordable contracts shall not be extended except as provided in paragraph (i) of this section. If a landowner becomes subject to the discretionary provisions and amends his or her nonexcess designation to include land that had been under recordable contract, such land shall not be subject to the 10-year deed covenant requiring Secretarial sale price approval as set forth in paragraph (h) of this section. Recordable contracts entered into after October 12, 1982, may not be amended to conform to the expanded ownership entitlements of the discretionary provisions.

(h) *Price approval on excess or formerly excess land*—(1) *Deed covenant.* In order for land acquired from excess status, whether under recordable contract or not, to be eligible to receive irrigation water, the following covenant controlling the sale price of such land must be placed in the deed transferring the land to the purchaser, except as provided in paragraphs (j) and (k) of this section.

> For a period of 10 years from the date of this deed, sale by the landowner and his or her assigns of these lands for any value that exceeds the sums of the value of newly added improvements plus the value of the land as increased by market appreciation unrelated to the delivery of irrigation water will result in the ineligibility of this land to receive Federal project water. This covenant is to satisfy the requirements in section 209(f)(2) of Pub. L. 97–293.

(2) *Operational loans for formerly excess land.* The Secretary may approve sales of formerly excess land for an amount exceeding the value authorized by the deed covenant only for the limited purpose of allowing recovery of any operational loans outstanding on the date of foreclosure. This provision shall apply only if (i) the formerly excess land had been used by the owner/operator to secure an operational loan and (ii) the sole purpose of such loan was to provide operating farm capital for the owner/operator.

(i) *Extension of disposition periods for recordable contracts.* Owners of excess land under recordable contract who were prevented from selling their excess land because of Secretarial moratorium or court order shall be allowed an additional period of time to sell their excess land under recordable contract.

(1) *Westlands Water District, California.* After the order of the court in National Land for People v. Andrus or any similar court order, if any, is lifted and the Secretary again commences processing the sales of excess land under recordable contract, landowners with such land in the Westlands Water District, California, will be allowed a period of time equal to the time remaining on that recordable contract on August 13, 1976, to sell land under recordable contract. The Secretary will notify the affected landowners as to applicable dates.

(i) The principles of this rule may be illustrated by the following:

Example. A landowner in the Westlands Water District entered into a recordable contract on October 13, 1972. The recordable contract provided for a 10-year disposition period which would end on October 13, 1982. On August 13, 1976 (the date of the court-ordered moratorium on processing sales of excess land in the Westlands District), there were 6 years and 2 months remaining in the disposition period. Assuming the court-ordered moratorium is lifted and the Secretary commences processing sales of excess land in the Westlands Water District on January 1, 1984, the disposition period for the recordable contract will be extended for 6 years and 2 months from that date or to March 1, 1990. The contract will mature at that time and the Secretary's power-of-attorney to sell the land will vest.

(2) *All other districts.* A moratorium on processing sales of excess land was issued by the Secretary on June 27, 1977. This moratorium applied to all landowners with recordable contracts in all districts other than the Westlands Water District. The Commissioner of Reclamation delayed sales by other directives. Landowners affected by these actions will be given an additional period of time to dispose of their land. The extension shall be calculated from the date that processing sales of excess land is resumed and shall be equal to the time remaining on the recordable contract when the moratorium was imposed. The resumption date shall be determined by the Secretary, and he shall notify all affected landowners.

(i) The principles of this rule may be illustrated by the following:

Example. A landowner in District A entered into a recordable contract on June 27, 1975. The recordable contract provided for a 10-year disposition period which would end June 27, 1985. The landowner was prevented from selling the land under recordable contract by the Secretarial moratorium of June 27, 1977. At that date, the recordable contract had a remaining disposition period of 8 years. The disposition period for the recordable contract will be extended 8 years from the date processing sales is resumed. The resumption date shall be determined by the Secretary.

(3) *How extensions of recordable contracts are to be accomplished.* The Secretary shall prepare and execute amendatory agreements to extend recordable contracts for the appropriate period of time. The amendatory agreement will establish the new maturity date for the recordable contract and will be recorded by the Secretary in the official records of the county in which the land covered by the

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recordable contract is located. A copy of the amendatory agreement will also be sent to the affected landowner by the Secretary.

(4) *Water rates for land under extended recordable contracts.* Land under recordable contract which is held by a water user not subject to the discretionary provisions may continue to receive irrigation water at the higher of the contract water rate or the full O&M rate for the extended term of the contract, except as provided in § 426.11(e). Land under recordable contract which is held by a qualified or limited recipient may continue to receive irrigation water deliveries at the non-full-cost rate for the original disposition period of the recordable contract. The water rate for land under recordable contract held by a qualified or limited recipient during an extended contract period shall be determined as follows: The non-full-cost rate shall apply until the date 18 months after the date the Secretary resumes the processing of excess land sales, or until the extended contract period expires, whichever occurs first, and after the date 18 months from the date the Secretary resumes the processing of excess land sales, water deliveries shall be made at the full-cost rate for the duration of the extended contract period.

(i) The principles of this rule may be illustrated by the following:

Example (1). Landowner X entered into a recordable contract on June 27, 1972. The recordable contract provided for a 10-year disposition period which ended on June 27, 1982. However, Landowner X was prevented from selling the land by the Secretarial moratorium of June 27, 1977. The district in which the land is located amended its contract to conform to the discretionary provisions on January 1, 1983. Since Landowner X had 5 years remaining on the original recordable contract when the moratorium was imposed, the contract will be extended for 5 years from the date the processing of the sale is resumed. The resumption date will be determined by the Secretary. Landowner X must pay the full-cost rate, however, for any irrigation water delivered to the land under recordable contract beginning 18 months from the date the moratorium is lifted.

Example (2). Landowner Y entered into a recordable contract with a 10-year disposition period on June 27, 1976. Landowner Y was prevented from selling the land by the Secretarial moratorium of June 27, 1977. At that time, 9 years remained in the disposition period of the recordable contract. The district in which the land is located amended its contract to conform with the discretionary provisions on January 1, 1983. The Secretary resumes the processing of the excess land sale on January 1, 1984. The original disposition period of the recordable contract expires on June 27, 1986, which is more than 18 months after the Secretary resumed the processing of the excess land sale. Therefore, Landowner Y must pay the full-cost rate for water deliveries to that land beginning June 27, 1986, for the duration of the extended contract period. The extended contract period will expire on January 1, 1993, 9 years after the Secretary resumed the processing of the excess land sale.

(j) *Sale of excess land under recordable contract by the Secretary.* All recordable contracts shall provide that a power-of-attorney shall vest in the Secretary to sell the land under recordable contract if the landowner does not dispose of the excess land within the period specified. The land shall be deemed "disposed of" for this purpose if the landowner has complied with all requirements for the sale of excess land under these rules within the period specified, whether the Secretary gives his final approval of the sale within that period or thereafter. The Secretary shall conduct such excess land sales, once the power-of-attorney has vested. The Secretary shall use the following procedures:

(1) *Surveys.* A qualified surveyor shall make a land survey when determined necessary by the Secretary. The cost of the survey initially will be paid by the United States and added to the sale price for the land. The cost shall be reimbursed to the United States from the proceeds of the sale.

(2) *Appraisals.* The Secretary shall appraise the excess land to determine the approvable sale price. The cost of the appraisal shall be paid by the United States. Such cost shall be added to the approved sale price and shall be reimbursed to the United States out of the proceeds of the sale.

(3) *Advertising.* The Secretary shall advertise the sale of the property in the newspapers within the county in which the land lies, in farm journals, in other similar publications, and by other public notices he determines advisable. The notices shall state (i) the minimum acceptable sale price for the property (which equals the appraised value plus the cost of the appraisal, survey, and advertising), (ii) that the land will be sold by auction for cash or on terms acceptable to the landowner to the highest bidder whose bid equals or exceeds the minimum acceptable sale price, and (iii) the date for such sale (which shall not exceed 90 days from date of the advertisement). The advertisement costs for the sale will be added to the sale price for the land and reimbursed to the United States from the sale proceeds.

(4) *Distribution of proceeds.* The proceeds from the sale of the land shall be paid first, to the landowner in the amount of appraised value; second, to costs due the United States for costs of the survey, appraisal, advertising, etc.; and third, to the United States any remaining proceeds, which will be credited to the Reclamation fund or other funds as prescribed by law.

(5) *Closing.* The sale of the excess land shall be closed by the Secretary when all sale arrangements have been completed. The Secretary shall execute a deed conveying the land to the purchaser. There shall be no requirement for a covenant in the deed, paragraph (h) of this section, restricting the resale of the land.

(6) *Water deliveries.* Excess land under matured recordable contracts will be eligible to continue to receive irrigation water at the current applicable rate until the land is sold by the Secretary.

(k) *Land which becomes excess or ineligible because of westwide application or enforcement of other requirements of law.* Irrigation land which was subject to prior law and which was nonexcess and eligible to receive irrigation water under that law may become either (1) excess because of the westwide application of acreage limitation for qualified or limited recipients or (2) ineligible because of the restriction on delivery of water to nonresident aliens and entities not established under State or Federal law. To remain eligible for water, such land, up to the amount which was nonexcess and eligible under prior law, must be placed under recordable contract as provided in paragraph (e) of this section. The recordable contract in such situations shall be modified to permit the landowner to sell the excess land to an eligible purchaser without price approval by the Secretary. The deed conveying the excess land shall not contain the standard covenant, as set forth in paragraph (h) of this section, requiring price approval by the Secretary for a period of 10 years following initial sale. The land shall be sold in accordance with the procedures established in paragraph (j) of this section if the Secretary's power-of-attorney to sell the land vests. In these situations, the excess or ineligible land shall also become eligible to receive irrigation water if it is sold to an eligible buyer. Those acres which were held as nonexcess and eligible under prior law may be sold at fair market value. The provisions in this paragraph do not apply to land in districts which first entered a contract with the United States after October 12, 1982. In such districts, excess land can only gain eligibility as described in paragraphs (d)(1) and (d)(2) of this section. Land that becomes ineligible in these districts because it is owned by nonresident aliens or by an entity not established under state or Federal law can be placed under a recordable contract requiring Secretarial price approval, as set forth in paragraph (e) of this section, only if the land was acquired before the date of the district's contract. If the land was acquired after the date of the district's contract, it must be sold to an eligible buyer at an approved price in order to regain eligibility.

(l) This rule may be illustrated by the following:

Example (1). Landowner X and his wife are U.S. citizens, and own 320 acres of irrigation land designated as nonexcess in each of Districts A, B, C, and D. In June of 1980, Landowner X purchased an additional 280 acres in District E. District A amends its contract to conform to title II. Landowner X and his wife automatically and without benefit of choice become a qualified recipient and as such are entitled to irrigate no more than 960 acres westwide with irrigation water. Their present ownership exceeds their 960-acre ownership entitlement by 600 acres. Since the 280 acres in District E were purchased after December 6, 1979, that land was ineligible to receive irrigation water even under prior law. Therefore, no part of that parcel can be placed under recordable contract and the land remains ineligible until sold to an eligible buyer at an approved price. The remaining 320 excess acres, however, had been eligible under prior law. Therefore, that land can continue to receive irrigation water if Landowner X sells it to an eligible buyer or places the land under recordable contract. In either case, Landowner X could sell the land at fair market value.

Example (2). Corporation X, which was established under the laws of Switzerland, is owned by two shareholders who are citizens and residents of Switzerland. The corporation owns 480 acres of irrigation land in District A and has designated 160 acres as nonexcess and eligible to receive irrigation water. District A amends its contract to conform to the discretionary provisions. Thereby, Corporation X becomes ineligible to receive irrigation water as a qualified recipient because it is not established under State or Federal law and because its shareholders are citizens and residents of Switzerland. However, since 160 acres of its land were eligible to receive irrigation water under prior law, this land will continue to be eligible if it is placed under recordable contract or sold to an eligible buyer. The 160 acres, whether or not under recordable contract, may be sold at fair market value; however, the 320 acres which were excess under prior law remain ineligible until sold to an eligible buyer at an approved price.

Example (3). Corporation W, which is owned by two shareholders who are citizens and residents of Norway, purchased 480 acres of irrigation land in District A. Subsequent to the purchase, District A entered its first contract with the United States, thereby becoming subject to the discretionary provision. Corporation W, however, is not eligible to receive irrigation water as a qualified recipient because its shareholders are not U.S. citizens or resident aliens. Since Corporation W's land had never been subject to prior law, it does not come under the purview of § 426.11(k). However, since the land was purchased before the date of the district's contract, the corporation can receive irrigation water on a temporary basis by placing the land under recordable contract requiring Secretarial sale price approval. In order for the land to become eligible to receive irrigation water on a permanent basis, the shareholders must become citizens or residents of the United States or Corporation W must sell the land to an eligible buyer at an approved price.

§ 426.12 Excess land appraisals.

(a) *In general.* The following regulations shall apply to all appraisals of excess land and formerly excess land except when the excess land is subject to a recordable contract and/or a contract which was in force on October 12, 1982, and these regulations are inconsistent with the provisions of those contracts.

(1) All appraisals of excess land and formerly excess land will be based on the fair market value of the land at the time of appraisal without reference to the construction of the irrigation works. Standard appraisal procedures including the income, comparable sales, and cost methods shall be used as applicable. Nonproject water supply factors as provided in paragraph (a)(3) of this section shall be considered as appropriate.

(2) Improvements shall be appraised on the basis of their contributory fair market value as of the date of appraisal, using standard appraisal procedures.

(3) The nonproject water supply factors of: (i) Ground-water pumping lift, (ii) surface water supply, (iii) water quality, and (iv) trends associated with paragraph (a)(3)(i), (ii) and (iii) of this section shall be considered by the appraiser where appropriate. The Bureau of Reclamation, in conjunction with the district, if it so desires, shall develop the water supply and trend information. Landowners who own excess land or formerly excess land and prospective buyers may submit information relevant to these determinations to the district or the Bureau of Reclamation. The Bureau of Reclamation may also conduct public meetings and forums and solicit input from other sources to obtain data that may be considered in developing the ground-water trend information. Data submitted may include historic geological data, changing crops and cropping patterns, and other factors associated with the nonproject water supply. If the Bureau of Reclamation and the district cannot reach agreement on the data within 60 days, the Secretary shall review and update the trend information as he deems necessary and make all final determinations considering the data provided by the Bureau of Reclamation and the district. These data will be provided to appraisers and shall be considered in the appraisal process. Ecah appraisal will clearly explain how the data were used in the valuation of the land.

(4) The date of appraisal shall be the date of last inspection by the appraiser(s) unless there is an existing signed instrument such as an option, contract for sale, agreement for sale, etc., affecting the property, in which case the date of appraisal will be the date of such instrument.

(b) *When appraisals are to be made.* Appraisals of excess land or formerly excess land shall be made upon request of the landowner(s) or when required by the Secretary. If a request for an appraisal is not received from the landowner(s) within 6 months of the maturity date of the recordable contract, the Secretary may initiate the appraisal.

(c) *Appraiser selection and appraisal cost.* Each appraisal of excess land or formerly excess land shall be made by a qualified appraiser selected by the Secretary except as provided in paragraph (d) of this section. The cost of the first appraisal shall be paid by the United States. When the excess land or formerly excess land is sold, the cost of the first appraisal shall be added to the sale price and reimbursed to the United States by the purchaser of that land. Any costs associated with additional appraisals requested by an owner of such land shall be paid by that landowner, provided the value of the land established by a reappraisal does not exceed the value established in the first appraisal by more than 10 percent. However, if the difference in the appraisal values exceeds 10 percent, the United States will pay for the reappraisal.

(d) *Appeals.* A landowner who owns excess or formerly excess land may request a second appraisal if the landowner disagrees with the first appraisal. The second appraisal shall be prepared by a panel of three qualified appraisers, one designated by the United States, one designated by the district, and the third designated jointly by the first two. This appraisal shall be binding on both parties after review and approval as provided in paragraph (e) of this section. As such, it fixes the maximum sale price of the land.

(e) *Review process.* All appraisals of excess land and formerly excess land

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shall be reviewed by the Bureau of Reclamation for technical accuracy and compliance with these rules and regulations, applicable portions of Uniform Appraisal Standard for Federal Land Acquisition—Interagency Land Acquisition Conference 1973, Reclamation Instructions, and any detailed instructions provided by the Secretary setting conditions applicable to an individual appraisal.

§ 426.13 Exemptions.

(a) *In general.* The following are exempt from acreage limitation, pricing, and other provisions of Federal Reclamation law as indicated:

(1) *Corps of Engineers projects.* Land receiving an agricultural water supply from Corps of Engineers projects is exempt from title II and other provisions of Reclamation law unless it has, by Federal statute, explicitly been designated, made a part of, or integrated with a Federal Reclamation project or the Secretary has provided project works for the control or conveyance of an agricultural water supply from the Corps project to the subject land. This exemption does not relieve district agricultural water users from obligations, pursuant to contracts with the Secretary, to repay their share of construction, O&M, and contract administration costs of the Corps project allocated to conservation or irrigation storage. The Secretary shall determine the exemption status for land receiving an agricultural water supply from Corps of Engineers projects. He shall notify affected districts of the exemption status of that land. District repayment or water service contracts containing provisions imposing acreage limitation for those lands served from Corps projects which are exempt will be amended to delete those provisions at the request of the district.

(2) *Reclamation projects.* Land in districts shall be exempt from the ownership and full-cost pricing provisions of Reclamation law when the district has repaid all obligated construction costs for project facilities for that land in accordance with the terms of the district's contract with the United States. Payments by periodic installments over the contract repayment term, as well as lump-sum and accelerated payment allowed in the district's contract, shall qualify the district or individual for exemption. An individual landowner will be exempt upon repayment of construction charges allocated to that owner's land, if provided for in a contract with the United States. When a district has discharged its obligation to repay construction costs for project facilities, the Secretary shall notify the district that it is exempt from acreage limitation and the full-cost provisions of law; however, such an exemption shall not relieve a district or individual from paying, on an annual basis, the O&M costs chargeable to that district or individual. At the request of an owner of a landholding for which repayment has occurred, the Secretary shall provide a certificate to that owner acknowledging the landholding is free of the ownership and full-cost pricing limitations of Federal Reclamation law. The certification and reporting requirements for acreage limitation and full-cost pricing will no longer apply to districts or landholders for exempt land. The continuation of the exemption will be considered on a case-by-case basis if additional construction funds for the project are requested.

(3) *Temporary supplies of water.* Supplies of water made possible as a result of an unusually large water supply not otherwise storable for project purposes or infrequent and otherwise unmanaged floodflows of short duration can be made available to land without regard to the acreage limitation and full-cost provisions of Federal Reclamation law for a temporary period not to exceed 1 year in the following manner: Such water supplies can be made available by the Secretary as temporary supplies to excess land. The Secretary shall announce the availability of such temporary supplies to districts. Districts desiring deliveries of such temporary water supplies to excess land shall request the Secretary to make such deliveries. Upon approval by the Secretary, the district shall be notified of the availability of the temporary supply and the conditions for its use. The temporary supply of water shall be delivered under contracts not to exceed 1 year in accordance with existing policies and priorities. Such deliveries must not have any adverse effect on other authorized project purposes. The Secretary shall determine the price, if any, a district is to be charged and other conditions that may apply for such temporary water deliveries.

(4) *Isolated tracts.* Isolated tracts which can be farmed economically only if included in a larger farming operation shall not be subject to the ownership limitations of Federal Reclamation law. However, full cost shall apply to water deliveries to isolated tracts that are in excess of the landowner's non-full-cost entitlement. Isolated tract determinations shall be made by the Secretary at the request of the landowner.

(5) *Rehabilitation and Betterment Programs.* R&B (Rehabilitation and Betterment) loans, pursuant to the R&B Act of October 7, 1949, as amended, are not considered loans for construction, but rather loans for maintenance, including replacements which cannot be financed currently; provided, that the project for which the loan is requested or made is a project authorized under Federal Reclamation law prior to the submittal of the request for an R&B loan to the Bureau of Reclamation by or for the district. Because funds advanced for R&B loans do not constitute construction charges, they are not to be considered in determining whether the obligation of a district for the repayment of the construction costs of project facilities used to make project water available for delivery to such land has been discharged by the district. A loan for an R&B program shall not be the basis for reinstating acreage limitation in a district which has completed payment of its construction obligation nor for increasing the construction obligation of the district and extending the period during which acreage limitation will apply to that district. However, if a district subject to prior law has not completed payment of its construction cost obligation and enters into an R&B loan repayment contract after October 12, 1982, the district shall become subject to the discretionary provisions. If a district which is not the beneficiary of a water supply from a Federal project seeks an R&B loan, it can only become eligible for such a loan if Congress authorizes the program and the district agrees to become subject to all provisions of title II.

§ 426.14 Residency.

(a) Residency is not a requirement for the delivery of irrigation water from Reclamation project facilities. Existing recordable contracts and certificates containing provisions requiring the purchaser of excess land to be a resident or agree to become a resident within a specified time period shall be revised to delete this requirement.

§ 426.15 Religious and charitable organizations.

(a) *Ownership entitlement under the discretionary provisions.* Each parish, congregation, school, ward, or similar organization of a religious or charitable organization which is exempt from taxation under section 501 of the Internal Revenue Code of 1954, and owns or operates landholdings in Federal Reclamation projects, will be treated as a qualified recipient: Provided, (1) that either the district in which the land is situated enters into a new or amended contract, or the religious or charitable organization or its subdivision owning or operating land in the district elects to come under the discretionary provisions; (2) that the agricultural produce and the proceeds of sales of such produce are used only for charitable purposes; (3) that the land is operated by the individual religious or charitable entity or organization (or subdivisions); and (4) that no part of the net earnings of the religious or charitable entity or organization (or subdivision) shall accrue to the benefit of any private shareholder or individual. If a religious or charitable organization subject to the discretionary provisions does not meet the last three criteria in this paragraph, the entire organization, including all of its subdivisions, will be treated as one limited recipient as set forth in § 426.6(c).

(b) *Ownership entitlement under prior law.* The provisions of the prior law will apply if neither the district nor the religious or charitable organization or its subdivision elects to conform to the discretionary provisions. Each parish, ward, congregation, or other subdivision of the organization shall be considered an individual under prior law, provided it meets the last three criteria set forth in paragraph (a) of this section. If the organization does not meet those three criteria, the entire organization, including all of its subdivisions, will be treated as one corporation subject to prior law as set forth in § 426.6(d)(5).

(1) The principles of this rule may be illustrated by the following:

Example (1). A charitable organization which meets the requirements of title II has subdivisions in each of five different districts. Each of these districts amends its contract to conform to the discretionary provisions. Therefore, each subdivision is entitled to own and farm 960 acres of irrigation land.

Example (2). A religious organization which meets the requirements of title II has subdivisions in each of Districts A, B, C, and D. Each subdivision operates 800 acres of irrigation land. Districts A and B amend their respective contracts to conform to the discretionary provisions; therefore, the subdivisions in Districts A and B are entitled to own or operate 960 acres of irrigation land. Districts C and D do not amend their contracts to conform to the discretionary provisions and remain subject to the acreage restrictions contained in the prior law. The subdivisions in Districts C and D, however, make individual elections to conform to the discretionary provisions and are therefore entitled to own or operate 960 acres of irrigation land.

(c) *Affiliated farm management.* A religious or charitable organization or its subdivision which elects to conform to the discretionary provisions or owns or operates land in a district which enters into a new or amended contract may retain its status as a qualified recipient and still affiliate with a more central organization of the same faith in farm operation and management. Affiliated farm management shall be permitted regardless of whether the subdivision is the owner of record of the land being operated.

(1) The principles of this rule may be illustrated by the following:

Example. A religious organization holds title to 1,280 acres in District A and 1,280 acres in District B. The acreage in District A is operated jointly by two subdivisions and the acreage in District B is operated by three subdivisions in separate farms of 300, 300, and 680 acres. Farm operations are coordinated by the religious organization through managers at each farm. Each subdivision is a qualified recipient and entitled to operate 960 acres of irrigation land. The religious organization is entitled to own the acreage being operated by its affiliated subdivisions in each district.

(d) *Leasing.* The full-cost provisions dealing with leased land shall apply to religious or charitable organizations or their subdivisions.

(1) The principles of this rule may be illustrated by the following:

Example. A charitable organization has subdivisions in each of Districts A, B, C, and D. Each of these districts has amended its contract to conform to the discretionary provisions. Each subdivision in Districts A, B, and C owns and operates 800 acres of irrigation land. The subdivision in District D owns and operates 960 acres and leases another 160 acres, all of which are receiving irrigation water. The subdivision in District D is obligated to pay the full cost for irrigation water delivered to 160 acres in its landholding.

§ 426.16 Involuntary acquisition of land.

(a) *Nonexcess land.* Nonexcess land acquired involuntarily will be treated as follows:

(1) *Land not subject to deed covenant.* Nonexcess land which is not subject to a 10-year deed covenant requiring Secretarial sale price approval and which becomes excess because it is acquired through involuntary foreclosure (or similar involuntary process) in satisfaction of a debt, by gift, or through inheritance is eligible to receive irrigation water in the new ownership for a period of 5 years. The new owner will be required during the 5-year period to pay a rate for the water which is equal to the rate paid by the former owner, unless the land becomes subject to full-cost pricing through leasing. Although land acquired from nonexcess status involuntarily may be sold at any time by the new owner without approval by the Secretary, it will become ineligible to receive irrigation water after 5 years and will remain ineligible until it has been sold to an eligible owner. Such land may not be placed under recordable contract by the new owner.

(i) The application of this rule can be illustrated by the following:

Example. Farmer X owns 160 acres of irrigation land in District A. District A has not amended its contract to become subject to the discretionary provisions. Farmer X inherits another 480 acres of irrigation land in District B through settlement of his uncle's estate. District B has amended its contract to become subject to the discretionary provisions. Even though Farmer X has reached the limits of his individual ownership entitlement under prior law, since the 480 inherited acres had been designated nonexcess and eligible in his uncle's ownership, the land continues to be eligible to receive irrigation water for a period of 5 years in Farmer X's ownership. However, since this land is located in a district subject to the discretionary provisions, the price of water delivered to this land must include at least full O&M costs, and if the land is leased to another landholder, the full-cost rate may apply, depending on whether the lessee has exceeded his non-full-cost entitlement. Farmer X also has the option of selling the 480 acres at any time at full market value. As explained in paragraph (d) of this section, Farmer X would not become subject to the discretionary provisions by virtue of the fact that he involuntarily acquired land from a landowner subject to the discretionary provisions. However, Farmer X has the option of becoming subject to the discretionary provisions through an irrevocable election. If he chooses this option, he can then include the 480 acres as part of his 960-acre ownership entitlement as a qualified recipient.

(2) *Land subject to deed covenant*—(i) *Eligibility.* Formerly excess land, as defined in § 426.4(i), which becomes excess because it is acquired through bona fide involuntary foreclosure (or similar involuntary process) in satisfaction of a debt, by gift, or through inheritance is eligible to receive irrigation water for 5 years at a rate equal to the rate paid by the former owner, unless the land becomes subject to full-cost pricing through leasing. After 5 years, the land will become ineligible to receive irrigation water until it has been sold to an eligible buyer. However, formerly excess land does not become eligible to receive irrigation water for 5 years if the land is involuntarily acquired through foreclosure or in satisfaction of a debt by the party which originally sold the land from excess status or by any other party which was previously subject to the deed covenant requiring sale price approval. Except to allow for the maturing of a planted crop, if any, the land in these cases becomes ineligible when returned to the seller's

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ownerhsip, unless otherwise determined by the Secretary.

(ii) *Application of deed covenant.* Formerly excess land which is acquired involuntarily, whether it becomes excess or nonexcess in the new owner's holding, remains subject to the 10-year deed covenant requiring sale price approval. Such land may be sold at a price exceeding its excess land value without affecting its eligibility to receive irrigation water only if the land had been used to secure an operational loan as set forth in § 426.11(h)(2). Formerly excess land acquired involuntarily may not be placed under recordable contract. (Also see § 426.11(h).)

(A) The application of this rule can be illustrated by the following:

Example (1). Farmer X, a qualified recipient who owns 500 acres of irrigation land, purchases 160 acres of excess land from Farmer Y. Farmer X designates this 160 acres as nonexcess, eligible to receive irrigation water. The deed transferring the land contains the 10-year deed covenant requiring Secretarial sale price approval. Farmer X finances this purchase through Bank ABC. In addition, Farmer X uses the value of the newly purchased land as collateral in securing a loan to obtain operating capital. Subsequently, Bank ABC forecloses on Farmer X's 160 acres. The bank may receive irrigation water on this land for a period of 5 years at the same price which was paid by Farmer X, unless the land becomes subject to full-cost pricing through leasing. In addition, with the Secretary's approval, the bank may sell the land at a value equal to the excess land value plus the outstanding balance on the operational loan without affecting the land's eligibility to receive irrigation water. However, the deed covenant remains in effect and applies to subsequent purchasers of this land.

Example (2). Farmer X owns 160 acres of excess irrigation land in District A. He decides to sell this land to his neighbor, Farmer Y, an eligible buyer. Farmer X provides Farmer Y with the financing necessary for the purchase. The deed transferring the land to Farmer Y contains the 10-year covenant requiring sale price approval. The 160 acres of formerly excess land becomes eligible to receive irrigation water in Farmer Y's ownership. Subsequent to the purchase, Farmer Y fails to meet his financial obligation to Farmer X. Consequently, the land once again becomes part of Farmer X's ownership by foreclosure. Since this land was excess and ineligible while in Farmer X's ownership, it remains ineligible when involuntarily reacquired by him unless a crop has already been planted. In that case, the land may receive irrigation water until the crop matures. Furthermore, the deed covenant requiring price approval remains in effect if Farmer X decides to resell the land.

(3) *Ineligible land.* Irrigation land which is involuntarily acquired and which was ineligible in the holding of the former owner remains ineligible to receive irrigation water in the holding of the new owner, unless (i) the new owner is or becomes a qualified or limited recipient, (ii) the land becomes nonexcess in the new ownership, and (iii) the deed to the land contains the 10-year covenant requiring Secretarial price approval, commencing when the land becomes eligible to receive irrigation water. If all these conditions are not met, the land remains ineligible until sold to an eligible buyer at an approved price and the 10-year covenant requiring Secretarial price approval must be placed in the deed transferring the land to the buyer.

(i) The principle of this rule can be illustrated by the following:

Example (1). Farmer X owns 860 acres of irrigation land in District A. District A has amended its contract to become subject to the discretionary provisions. Farmer X's Father dies and Farmer X inherits another 160 acres of irrigation land through settlement of his father's estate. While in his father's ownership, these 160 acres were not eligible for irrigation water because they had been purchased from excess without Secretarial price approval. However, since Farmer X is subject to the discretionary provisions and has not realized his 960-acre ownership entitlement as a qualified recipient, he may designate 100 acres of the inherited land as nonexcess and eligible for water deliveries. The deed to this land must contain the 10-year covenant requiring sale price approval. The remaining 60 inherited acres are excess and ineligible in Farmer X's ownership. To regain eligibility, this land must be sold to an eligible buyer at an approved price.

Example (2). Farmer X, who is subject to prior law, owns 2,880 acres of irrigation land, 320 acres of which he has designated as nonexcess and eligible to receive irrigation water (husband and wife entitlement). The remaining 2,560 acres are excess and have not been placed under recordable contract. Farmer X makes an irrevocable election and designates 640 of his excess acres as nonexcess. Subsequently, Farmer X gift deeds the remaining 1,920 excess acres to his 2 nondependent sons—960 acres to each. Since neither of these sons owns any other irrigation land and were nondependents prior to the gift transfer, the land becomes nonexcess in their ownership. However, before the land can become eligible to receive irrigation water, each of the sons must make an irrevocable election to become subject to the discretionary provisions and the deed to the land must contain a 10-year covenant requiring Secretarial price approval.

(b) *Excess land under recordable contract.* Excess land which is under recordable contract and which is acquired by involuntary foreclosure or other involuntary process may continue to receive irrigation water under the terms of the recordable contract. However, the new owner must agree to assume the recordable contract and execute an assumption agreement provided by the Secretary. Such land will be eligible to receive irrigation water for 5 years from the date it was acquired involuntarily or for the remainder of the recordable contract period, whichever is longer. The sale of such land shall be under terms and conditions set forth in the recordable contract and must be satisfactory to and at a price approved by the Secretary.

(1) The application of this rule can be illustrated by the following:

Example. Landowner X, a qualified recipient, owns 960 acres of irrigation land in District A. Landowner X inherits 640 acres of land in District B from his grandfather. The inherited land was placed under a 10-year recordable contract by his grandfather 7 years ago. Landowner X signs an agreement to assume his grandfather's recordable contract; however, even though the original recordable contract term expires in 3 years, since the land was involuntarily acquired, it remains eligible to receive irrigation water for an additional 2 years in Farmer X's ownership. Within that 5-year period, however, Farmer X must sell the land at a Secretarially approved price.

(c) *Mortgaged land.* Mortgaged land which changes from nonexcess into excess after the mortgage is recorded and is subsequently acquired by the lender by involuntary foreclosure or similar involuntary process of law or by bona fide conveyance in satisfaction of the mortgage, (1) is eligible to receive irrigation water in the new ownership for a period of 5 years or until transferred to an eligible landowner, whichever occurs first, and (2) may be sold at its fair market value. During the 5-year period the water rate will be the same as it was for the former owner, unless the land becomes subject to full-cost pricing through leasing.

(d) *Other.* A party acquiring irrigation land involuntarily shall not become subject to the discretionary provisions by virtue of the fact that the former owner had been subject to the discretionary provisions. When irrigation land is involuntarily acquired through inheritance, the 5-year eligibility period for receiving irrigation water on the newly acquired land begins on the date of the devisor's death.

§ 426.17 Land held by governmental agencies.

(a) *Acreage limitation.* Irrigation land held by States, political subdivisions or agencies thereof, and agencies of the Federal Government, which are farmed primarily for a nonrevenue producing function, as determined by the Secretary, shall not be subject to the acreage limitation and full-cost provisions of Federal Reclamation law.

(b) *Sales.* Irrigation land held by States, political subdivisions or agencies thereof, and agencies of the Federal Government, may be sold without price approval. Once sold, such land will be eligible to receive irrigation water provided the purchaser meets the eligibility requirements to own land and receive irrigation water.

(c) *Leasing.* States, political subdivisions or agencies thereof, and agencies of the Federal Government may lease irrigation land they own or control to an eligible landholder, provided that the irrigation land leased from such entities plus any irrigation land owned by the landholder does not exceed the landholder's basic entitlement under Federal Reclamation law (960 acres for a qualified recipient, 640 acres for a limited recipient, or 160 acres for a prior law recipient, unless otherwise provided by law).

(1) The principles of this rule may be illustrated by the following:

Example (1). Farmer X is a qualified recipient in the State of Colorado and owns and irrigates 160 acres of land with irrigation water. The State of Colorado may lease Farmer X an additional 800 acres of State-owned land which will make up the balance of Farmer X's basic entitlement. Farmer X is still entitled, however, to lease additional acreage which may be irrigated at full cost provided that additional acreage is not owned by a governmental agency.

Example (2). In 1976, Farmer X purchased 100 acres of irrigation land in District A and 100 acres in District B. Districts A and B remain subject to prior law and Farmer X has not made an irrevocable election. Since Farmer X purchased the land prior to December 6, 1979, all 200 acres are eligible to receive irrigation water. In addition, Farmer X wants to lease 60 acres of irrigation land from the State of Colorado. If he does so, the leased land will be ineligible to receive irrigation water because Farmer X already owns in excess of the basic 160-acre entitlement for prior law recipients. However, if Farmer X becomes a qualified recipient through either a contract amendment by the district or an irrevocable election, he will be entitled to receive irrigation water on not only the 60 acres he wishes to lease from the State, but also on another 700 acres of irrigation land, whether in his ownership or leased from another party, including a governmental agency.

§ 426.18 Commingling.

(a) *Existing commingling provisions in contracts.* Provisions in repayment and water service contracts entered into prior to October 1, 1981, which define project and nonproject water or describe the delivery of project water through nonproject facilities or nonproject water through project facilities, shall continue in effect. They shall apply to renewed contracts the district enters into with the United States as well, provided they are consistent with the provisions in paragraph (b) of this section.

(b) *Establishment of commingling provisions in contracts.* (1) New, amended, or renewed contracts may provide that irrigation water may be commingled with agricultural water from other sources in nonfederally subsidized facilities when standards can reasonably be established to assure on a volumetric basis that the water requirements of eligible lands are sufficient to utilize the full supply of irrigation water. The provisions of Federal Reclamation law and these regulations will be applicable only to the irrigation water under these circumstances.

(2) Commingling irrigation water and water from other sources in federally subsidized facilities will make the water from other sources subject to Federal Reclamation law and these regulations unless otherwise provided by the Secretary.

(3) Acquisition of irrigation water from federally subsidized facilities by exchange shall not subject such water to Federal Reclamation law and these regulations if no material benefit results from the exchange.

(i) The principles of this rule may be illustrated by the following:

Example. District A has water rights to divert water from a river. These water rights are adequate to meet its requirements. It is located immediately adjacent to a federally subsidized facility. District B is located immediately adjacent to the river but several miles from the Federal facility. Rather than construct several miles of conveyance facility, District B contracts with District A to allow its water rights water to flow down the river for use by District B. Water from the federally subsidized facility is in turn delivered to District A. District A is not subject to Federal Reclamation law and these regulations by virtue of this exchange. District B, however, is subject to Federal Reclamation law and these regulations since it is the beneficiary of the exchange; i.e., a water supply.

§ 426.19 Water conservation.

(a) *In general.* The Secretary shall encourage the full consideration and incorporation of prudent and responsible water conservation measures in all districts and for the operations by non-Federal recipients of irrigation and M&I (municipal and industrial) water from Federal Reclamation projects.

(b) *Development of a plan.* Districts that have entered into repayment contracts or water service contracts according to Federal Reclamation law or the Water Supply Act of 1958, as amended (43 U.S.C. 390b), shall develop and submit to the Bureau of Reclamation a water conservation plan which contains definite objectives which are economically feasible and a time schedule for meeting those objectives. In the event the contractor also has provisions for the supply of M&I water under the authority of the Water Supply Act of 1958 or has invoked a provision of that act, the water conservation plan shall address both the irrigation and M&I water supply activities.

(c) *Federal assistance.* The Bureau of Reclamation will cooperate with the district, to the extent possible, in studies to identify opportunities to augment, utilize, or conserve the available water supply.

§ 426.20 Public participation.

(a) *In general.* The Bureau of Reclamation will publish notice of proposed irrigation or amendatory irrigation contract actions in newspapers of general circulation in the affected area at least 60 days prior to contract execution. The Bureau of Reclamation announcements of irrigation contract actions will be published in newspapers of general circulation in the areas determined by the Bureau of Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation requirements do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. The Secretary or the district may invite the public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act if the Bureau determines that he contract action may or will have "significant" environmental effects.

(1) Each public notice or news release shall include, as appropriate, (i) a brief description of the proposed contract terms and conditions being negotiated; (ii) date, time, and place of meeting or hearings; (iii) the address and telephone number of a Bureau employee to address inquiries and comments; and (iv) the period of time in which comments will be accepted.

(2) Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

(3) Advance notice of meetings or hearings will be furnished to those parties that have made a timely written

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request for such notice to the appropriate regional or project office of the Bureau of Reclamation.

(4) All written correspondence regarding proposed contracts will be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act [80 Stat. 383], as amended.

(5) Written comments on a proposed contract or contract action must be submitted to the appropriate Bureau of Reclamation officials at locations and within time limits set forth in the advance public notices.

(6) All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

(7) Copies of specific proposed contracts may be obtained from the appropriate Regional Director or his designated public contact as they become available for review and comment.

(8) In the event modifications are made in the form of proposed contracts, the appropriate Regional Director shall determine whether republication of the notice and/or extension of the 60-day comment period is necessary. Factors which shall be considered in making such a determination shall include, but are not limited to: (i) The significance of the impact(s) of the modification and (ii) the public interest which has been expressed over the course of the negotiations. As a minimum, the Regional Director shall furnish revised contracts to all parties which requested the contract in response to the initial public notice.

§ 426.21 Small reclamation projects.

(a) Small Reclamation Projects Act (SRPA) loan contracts entered into after October 12, 1982, shall be subject to the provisions of the Act of August 6, 1956 (43 U.S.C. 422e) as amended by section 223 of Pub. L. 97–293.

(b) SRPA loans which were entered into prior to October 12, 1982, shall continue to be subject to the provisions of that loan contract, provided that the loan contract may be amended at the request of the non-Federal party to conform to the Act of August 6, 1956, as amended by section 223 of Pub. L. 97–293, and provided further that no other provision of the loan contract shall be altered, modified, or amended without the consent of the non-Federal party.

(c) No other section of these regulations shall be deemed applicable to SRPA loans.

(d) In districts which have a water service or repayment contract in addition to an SRPA contract, the SRPA loan is not to be considered in determining whether the district has discharged its construction cost obligation for project facilities. Neither shall an SRPA loan be the basis for reinstating acreage limitation in a district which has completed payment of its construction cost obligation nor for increasing the construction obligation of the district and extending the period during which acreage limitation will apply to that district. However, if a district subject to prior law has not completed payment of its construction cost obligation and applies for an SRPA loan after October 12, 1982, the district shall be required to become subject to the discretionary provisions as a condition for receipt of an SRPA loan.

(e) In a district which has both an SRPA loan contract and a contract as defined in § 426.4(b), [(for example, a repayment contract, a water service contract, or a distribution system loan contract (Pub. L. 84–130)], the requirements applicable to such contracts are not superseded by the SRPA contract.

(1) The application of this rule can be illustrated by the following:

Example. District A has entered into both a repayment contract and an SRPA loan contract. In 1983, District A amended its SRPA loan contract pursuant to section 223 of title II in order to increase its threshold for noninterest-bearing water deliveries for its owners to 960 acres for a qualified recipient and 320 acres for a limited recipient. However, District A has not amended its repayment contract to become subject to the discretionary provisions, and is, therefore, still subject to the acreage limitations of prior law. Even though its SRPA contract permits an increased threshold for interest payments, until District A becomes subject to the discretionary provisions, it may not deliver irrigation water to land in an ownership in excess of 160 acres (320 acres for a married couple), except in those cases where such land is under recordable contract, is owned by an individual who has made an irrevocable election, or commingling provisions in the district's contract, allow nonproject water to be delivered to excess land, see § 426.18.

§ 426.22 Decisions and appeals.

Unless otherwise provided by the Secretary, the Regional Director shall make any determination required under these rules and regulations. A party directly affected by such determination may appeal in writing to the Commissioner of the Bureau of Reclamation within 30 days of receipt of the Regional Director's determination. The time for appeal may be extended by the Secretary. The affected party shall have an additional 30 days thereafter within which to submit a supporting brief or memorandum to the Commissioner. The Regional Director's determination will be held in abeyance until the Commissioner has reviewed the matter and rendered a decision. Legal opinions which address excess land issues and which were in effect prior to enactment of title II remain in force unless they were (a) superseded by specific provisions in title II, (b) reversed or modified by the courts or subsequent legal opinions, or (c) are not consistent with specific provisions in these rules and regulations.

Pertinent addresses are shown below:

Commissioner, Bureau of Reclamation, Department of the Interior, 18th and C Streets, NW., Washington DC 20240
Regional Director, Pacific Northwest Region, Bureau of Reclamation, 550 West Fort Street, PO Box 043, Boise ID 83724
Regional Director, Mid-Pacific Region, Bureau of Reclamation, Federal Office Building, 2800 Cottage Way, Sacramento CA 95825
Regional Director, Lower Colorado Region, Bureau of Reclamation, Nevada Highway and Park Street, PO Box 427, Boulder City NV 89005
Regional Director, Upper Colorado Region, Bureau of Reclamation, 125 South State Street, PO Box 11568, Salt Lake City UT 84147
Regional Director, Southwest Region, Bureau of Reclamation, 714 South Tyler, Amarillo TX 79101
Regional Director, Missouri Basin Region, Bureau of Reclamation, 316 North 26th Street, PO Box 2553, Billings MT 59103

§ 426.23 Scheme or device.

If a person adopts or participates in adopting any scheme or device which is designed to evade or which has the effect of evading these rules and regulations, the person's entitlement will be recast to reflect the true situation and such person may be subject to penalties deemed appropriate by the Secretary.

§ 426.24 Severability.

If any provision of these rules or the applicability thereof to any person or circumstances is held invalid, the remainder of these rules and the application of such provisions to other persons or circumstances shall not be affected thereby

[FR Doc. 86–25305 Filed 11–6–86; 8:45 am]

BILLING CODE 4310-09-M

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43 CFR Part 426

Acreage Limitation Rules and Regulations; Notice of Public Workshops and Hearings on Proposed Rulemaking

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public workshops and hearings.

SUMMARY: Notice is hereby given that the Bureau of Reclamation will conduct public hearings to receive testimony on the proposed rules and regulations on acreage limitation. Workshops to review the changes made to the existing rules and regulations will be held at each hearing location the evening preceding the hearing, with the exception of Washington, DC. These rules are being revised to implement section 203(b) of the Reclamation Reform Act of 1982 and for other reasons.

DATES: See **SUPPLEMENTARY INFORMATION** section below.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Phillip T. Doe; telephone (303) 236-8065.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation, Department of the Interior, published rules and regulations for acreage limitation in the December 6, 1983, **Federal Register**. These rules are being revised to implement section 203(b) of the RRA and for other reasons. Notice is hereby given that the Bureau of Reclamation will conduct public hearings to receive testimony on the proposed rules and regulations. The testimony received at these hearings will be considered in preparing the revised rules for acreage limitation.

Comments are due on or before January 6, 1987. Workshops to review the changes made to the existing rules and regulations will be held at each hearing location the evening preceding the hearing, with the exception of Washington, DC. The dates and locations are shown below. All workshops will begin at 7 p.m. and all hearings will begin at 9 a.m. The workshops will continue until all issues have been aired, and the hearings will continue until all testimony has been heard.

The workshops and hearings will be held at the locations shown below.

Workshops and hearings will be held at each location. Workshops will be held the evening preceding the hearings at the locations shown below:

Grand Junction, Colorado—Mesa College, William Campbell College Center, Boettcher Room, 12th and Elm, Grand Junction, Colorado—workshop, November 19—hearing, November 20.

Salt Lake City, Utah—Shilo Inn, 206 SW Temple, Salt Lake City, Utah—workshop, November 20—hearing, November 21.

Richland, Washington—Hanford House, 802 George Washington Way, Richland, Washington—workshop, November 21—hearing, November 22.

Bend, Oregon—River House Motor Inn, 3075 NW Highway 97, Bend, Oregon—workshop, November 23—hearing, November 24.

Boise, Idaho—The Red Lion Motor Inn—Riverside, 29th and Chinben, Boise (Garden City), Idaho—workshop, November 24—hearing, November 25.

Albuquerque, New Mexico—Holiday Inn Mid-town, 2020 Menaul Blvd., Atrium Rooms 1 and 2, Albuquerque, New Mexico—workshop, December 3—hearing, December 4.

Amarillo, Texas—Fifth Season Inn West, Amarillo Room, 6801 I–40 West, Amarillo, Texas—workshop, December 4—hearing, December 5.

Phoenix, Arizona—Fiesta Inn, Galleria "C" Conference Room, 20100 S. Priest, Tempe, Arizona—workshop, December 8—hearing, December 9.

Yuma, Arizona—Yuma Airport Travel Lodge, 711 E. 32nd Street, Yuma, Arizona—workshop, December 9—hearing, December 10.

Visalia, California—Visalia Convention Center, Kaweah Room, 303 E. Acequia Street, Visalia, California—workshop, December 10—hearing, December 11.

Sacramento, California—Beverly Garland, Theater Room, 1780 Tribute Road, Sacramento, California—workshop, December 11—hearing, December 12.

Willows, California—Memorial Hall, 525 W. Sycamore, Willows, California—workshop, December 12—hearing, December 13.

Billings, Montana—Northern Hotel, Rimrock Room, N. 28th Street (Broadway) and 1st Avenue N., Billings, Montana—workshop, December 15—hearing, December 16.

North Platte, Nebraska—Holiday Inn, Buffalo Room, Intersection of I–80 and Hwy. 83, North Platte, Nebraska—workshop, December 16—hearing, December 17.

Washington, DC.—Department of the Interior, Room 7000A, Main Interior Building, 18th and C Street NW., Washington, DC.—hearing—December 19.

Open and free discussions will be allowed at the workshops each evening preceding the hearings. However, at the hearings, oral statements will be limited to 10 minutes. Hearing speakers will not be permitted to trade their time to obtain a longer oral presentation; however, the hearings officer may allow any person additional time after all other comments have been heard. Speakers will be scheduled according to the time preference mentioned in their letter or telephone request, whenever possible. Any scheduled speaker not present when called will lose his or her privilege in the scheduled order, but will be recalled after all the scheduled speakers have been heard. Speaker requests will be scheduled up to 2 working days preceding the hearings and any subsequent request will be handled on a first-come-first-served basis following the scheduled presentations.

Individuals or organizations wishing to speak at the hearings or desiring additional information should contact the appropriate office listed below:

Hearing: Richland, Washington; Bend, Oregon; and Boise, Idaho.

Contact: Regional Director, Pacific Northwest Region, Bureau of Reclamation, 550 West Fort Street, Box 043, Boise, Idaho 83724, (208) 334–1160.

Hearing: Visalia, Sacramento, and Willows, California.

Contact: Regional Director, Mid-Pacific Region, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, (916) 978–5040.

Hearing: Phoenix and Yuma, Arizona.

Contact: Regional Director, Lower Colorado Region, Bureau of Reclamation, Nevada Highway and Park Street, Box 427, Boulder City, Nevada, (702) 293–7651.

Hearing: Salt Lake City, Utah and Grand Junction, Colorado.

Contact: Regional Director, Upper Colorado Region, Bureau of Reclamation, 125 S. State Street, Box 11568, Salt Lake City, Utah, (801) 524–5438.

Hearing: Albuquerque, New Mexico and Amarillo, Texas.

Contact: Regional Director, Southwest Region, Bureau of Reclamation, Commerce Building, 714 S. Tyler, Suite 201, Amarillo, Texas, (806) 378–5426.

Hearing: Billings, Montana and North Platte, Nebraska.

Contact: Regional Director, Missouri Basin Region, 316 North 26th Street, Box 2553, Billings, Montana, (406) 657–6411.

Hearing: Washington, DC.

Contact: Commissioner, Bureau of Reclamation, Attention: Code 420, 18th and C Streets, NW, Washington, DC 20240, (202) 343–5204.

Those wishing to supplement their testimony with a written statement or preferring to submit testimony should address their statements to: Phillip Doe, Bureau of Reclamation, E&R Center, Code D–410, PO Box 25007, Denver, Colorado 80225.

Dated: November 4, 1986.

C. Dale Duvall,

Commissioner.

[FR Doc. 86–25313 Filed 11–6–86; 8:45 am]

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Friday
November 7, 1986

Part X

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 907

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling; Final Rule

7 CFR Part 910

Lemons Grown in California and Arizona; Limitation of Handling; Final Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 633]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 633 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period November 7 through 13, 1986. Such action is needed to balance the supply of fresh navel oranges with the demand for such period, due to the marketing situation confronting the orange industry.

DATE: Regulation 633 (§ 907.933) is effective for the period November 7 through 13, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202-447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This rule is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1986-1987 adopted by the Navel Orange Administrative Committee. The committee met publicly on November 4, 1986, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a vote of 10 to 1, a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that demand is good for large-sized oranges and weak for small-sized oranges.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. To effectuate the declared purposes of the act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Agricultural Marketing Service, Marketing agreements and orders, California, Arizona, Oranges (Navel).

PART 907—[AMENDED]

1. The authority citation for 7 CFR Part 907 continues to read:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 907.933 Navel Orange Regulation 633 is hereby added to read:

§ 907.933 Navel Orange Regulation 633.

The quantities of navel oranges grown in California and Arizona which may be handled during the period November 7 through November 13, 1986, are established as follows:

(a) District 1: 1,200,000 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons.

Dated: November 5, 1986.

Joseph A. Gribbin,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86-25407 Filed 11-6-86; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 910

[Lemon Regulation 534]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 534 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 280,000 cartons during the period November 9 through November 15, 1986. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 534 (§ 910.834) is effective for the period November 9 through November 15, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This regulation is consistent with the marketing policy for 1986–1987. The committee met publicly on November 4, 1986, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a vote of 13 to 0, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market for lemons has slowed down.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, and Lemons.

PART 910—[AMENDED]

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.834 is added to read as follows:

§ 910.834 Lemon Regulation 534.

The quantity of lemons grown in California and Arizona which may be handled during the period November 9 through November 15, 1986, is established at 260,000 cartons.

Dated: November 5, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–25406 Filed 11–6–86; 8:45 am]

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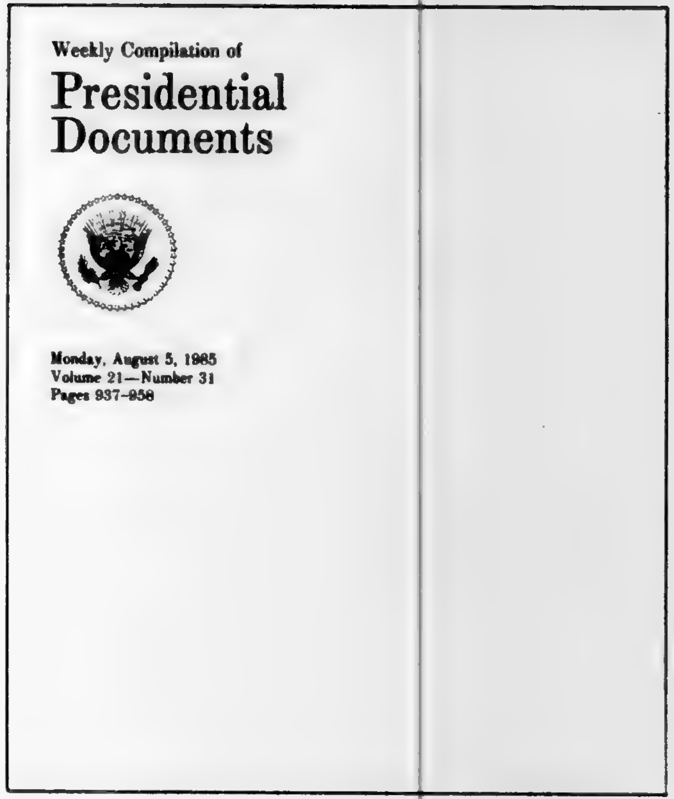
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Monday, August 5, 1985
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WHO:	The Office of the Federal Register
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WHY·	To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN:	November 18 at 9:30 a.m.
WHERE:	National Archives Theater, 8th and Pennsylvania Avenue NW., Washington, DC
RESERVATIONS:	Laurice Clark, 202-523-3419.

NEW YORK, NY

WHEN:	December 5 at 10:00 a.m.,
WHERE:	Room 305A, 26 Federal Plaza, New York, NY
RESERVATIONS:	Arlene Shapiro or Stephen Colon, New York Federal Information Center, 212-264-4810.

PITTSBURGH, PA

WHEN:	December 8 at 1:30 p.m.,
WHERE:	Room 2212, William S. Moorehead Federal Building, 1000 Liberty Avenue, Pittsburgh, PA
RESERVATIONS:	Kenneth Jones or Lydia Shaw
Pittsburgh.	412-644-INFO
Philadelphia	215-597-1707 1709

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Rules and Regulations

Federal Register
Vol. 51, No. 217
Monday, November 10, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Change in Minimum Size Requirement for Dancy Tangerines

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action will increase the minimum size requirement for Dancy tangerines from size 210 ($2\frac{5}{16}$ inches) to size 176 ($2\frac{6}{16}$ inches) shipped from the production area to any point in the continental United States, Canada, or Mexico. Smaller tangerines generally tend to be less flavorful than larger tangerines and are discounted when shipped in volume with larger sizes. This can have a price depressing effect on larger, more flavorful tangerines. This action is expected to result in the smaller Dancy tangerines being left on the trees longer to be shipped later in the season after they have attained further size and improved flavor.

EFFECTIVE DATE: November 4, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

Pursuant to requirement set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (the Act, 7 U.S.C. 601–674), and rules promulgated thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 95 handlers of Florida citrus subject to regulation under the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida. In addition, there are approximately 15,000 producers in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers may be classified as small entities.

This final rule will increase the minimum size requirement for Dancy tangerines which may be shipped from the production area from size 210 ($2\frac{5}{16}$ inches) to size 176 ($2\frac{6}{16}$ inches).

Smaller tangerines are often not as flavorful as larger sizes early in the season and generally do not provide the same level of consumer satisfaction. In addition, when ample supplies of larger sizes of tangerines are available for shipment, disposition of the smaller sizes can be accomplished only at a substantial price discount. This tends to depress the market for all sizes and adversely impacts grower returns. This action is expected to result in Dancy tangerines being left on the trees longer to attain further growth and improved flavor in the interest of producers and consumers.

In 1986–87, fresh Dancy tangerine shipments are expected to total 500,000 boxes, compared with 446,000 boxes in 1985–86, and 380,000 boxes in 1984–85. Only about 56 percent of the Dancy tangerine crop was shipped fresh in 1985–86; most of the balance was shipped for processing. These percentages are based on the portion of the crop that attained size 210 and larger during the marketing season. The Florida Citrus Administrative Committee estimated that about 7 percent of the 1986–87 season fresh Dancy tangerine shipments would be size 210's in the absence of this final rule. Size 210 Dancy tangerines comprised about 7.3 percent of the fresh shipments in 1985–86, 8.1 percent in 1984–85, and 5.9 percent in 1983–84. Hence, the size 210's generally account for a relatively small proportion of total fresh Dancy tangerine shipments.

Furthermore, while the regulation will not permit shipment of size 210 Dancy tangerines outside the production area to any point in the continental United States, Canada, or Mexico, not all of the 210's will be subject to regulations. For example, shipments within the production area or to charitable institutions, relief agencies, commercial processors, and certain gift packages and minimum quantities as well as shipments for animal feed will not be subject to this regulation.

This final rule will not impose any significant additional costs on growers or handlers. Any additional costs to handlers and growers of implementing this regulation will be offset by the benefits derived from improved returns to growers and handlers in the production area while at the same time providing fresh markets with a ready supply of slightly larger, more flavorful Dancy tangerines.

This action is being issued under the marketing agreement and Order No. 905 (7 CFR Part 905), both as amended, regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. The agreement and order are effective under the Act. These actions were recommended unanimously by the Citrus Administrative Committee. The committee works with USDA in administering the marketing agreement and order program.

Notice of the proposed rulemaking was published in the **Federal Register** on October 20, 1986 (51 FR 37191). The comment period ended on October 30, 1986; no comments were received. The final rule is the same as the proposed rule except that the effective date is November 4, 1986, instead of October 31, 1986. The later effective date reflects the date of issuance for the final rule.

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The handling regulation for all citrus, including Dancy tangerines, covered under this marketing order is included in Florida Citrus Regulation 6. Florida Citrus Regulation 6 (7 CFR 905.306) was issued on a continuing basis (46 FR 60170; December 8, 1981) subject to modification, suspension, or termination upon recommendation by the committee and approval by the Secretary. Florida Citrus Regulation 6 was last amended for Dancy tangerines effective January 9, 1984 (49 FR 1467; January 12, 1984). Section 905.306(a) provides that no handler shall ship between the production area and any point outside that area in the continental United States, Canada, or Mexico, certain varieties of citrus unless the variety meets the applicable minimum grade and size requirements. For Dancy tangerines shipped on or after August 20, 1984, the minimum grade was U.S. No. 1 and the minimum size was size 210 (2 4/16 inches).

The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida oranges, grapefruit, tangerines, and tangelos. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

This action will increase the minimum size requirement of Florida Dancy tangerines from size 210 (2 4/16 inches) to size 176 (2 9/16 inches). The amendment of the minimum size requirement reflects the committee's and the Department's appraisal of the need to increase the size requirement applicable to domestic shipments of Dancy tangerines. This action recognizes the current supply and demand for such fruit and is necessary to prevent smaller, less flavorful tangerines from entering fresh markets.

This action will prevent the shipment of small size tangerines early in the season which can have a price depressing effect on larger, more flavorful tangerines. Smaller tangerines tend to be less flavorful than larger tangerines and generally do not provide the same level of consumer satisfaction. Ample supplies of larger size Dancy tangerines are expected to be available to meet market needs this year. Total Florida tangerine production is expected to increase over last year's level by 10 percent and fresh shipments, estimated at 1.2 million boxes, are expected to increase by nearly 14 percent. In addition, competing specialty citrus varieties from Florida, including Temples, tangelos, and K-early citrus are also expected to show an increase in production with fresh shipments estimated to increase about 13 percent. When heavy volumes of small tangerines are shipped with larger sizes in years of ample supply, the small sizes are discounted in the marketplace and this tends to depress the market for all sizes.

In addition, per capita fresh citrus consumption declined slightly during last year. It is anticipated that there will be an increase in per capita consumption during the 1986–87 season primarily due to increased citrus production.

This action is expected to result in Dancy tangerines being left on the trees longer to attain further growth and improved flavor. The smaller Dancy tangerines will mature but need to be left on the tree longer to develop acceptable flavor.

The rule will also delete obsolete dates and references to minimum diameter and grade for Dancy tangerines which appear in Table I of § 905.306(a).

Based on the recommendation and information submitted by the Citrus Adminstrative Committee, and upon other available information, it is hereby found that regulation of Florida Dancy tangerines, as hereinafter provided, will tend to effectuate the declared policy of the Act.

It is hereby further found that good cause exists for not postponing the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because: (1) Shipments of the 1986–87 Dancy tangerine crop already have begun; (2) to maximize benefits to handlers, producers, and consumers, this action should apply to as many 1986–87 crop shipments as possible; and (3) no useful purpose would be served by delaying the effective date of this action.

List of Subjects in 7 CFR Part 905

Marketing agreements and orders, Florida, Grapefruit, Oranges, Tangelos, Tangerines.

PART 905—[AMENDED]

1. The authority citation for 7 CFR Part 905 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. The provisions of § 905.306 would be amended by revising the following entry in paragraph (a), Table I, applicable to domestic shipments, to read as follows:

§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation 6, Amendment 40.

(a) * * *

TABLE I

Variety (1)	Regulation Period (2)	Minimum grade (3)	Diameter (inches) (4)
*	*	*	*
Tangerines: Dancy.	On or after November 4, 1986	U.S. No. 1	2 9/16
*	*	*	*

* * * * *

Dated: November 4, 1986.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–25390 Filed 11–7–86; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1097

Milk in the Memphis, Tennessee Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rules.

SUMMARY: This action suspends, for the months of October through December 1986, the pool supply plant provisions of the Memphis, Tennessee milk order. The suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that has been asked to furnish supplemental milk to meet the increasing fluid milk needs of distributing plants that are regulated under the Memphis order. The supply that Mid-Am has available to meet such needs is milk received at the cooperative's supply balancing plants which handle the reserve milk supplies associated with distributing plants regulated under the Southwest Plains order. Because the individual-handler pool Memphis order provides a low minimum shipping level to qualify pool supply plants, shipments from the cooperative's balancing plants would subject them to regulation under that order. This would result in a reduction of returns to Mid-Am's producers and disrupt their normal association with the Southwest Plains order. This action will allow the reserve milk supplies and the supplemental shipments for fluid uses to

continue to be regulated under the Southwest Plains order during the three-month period.

EFFECTIVE DATE: November 10, 1986 for the months of October through December, 1986.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued October 21, 1986; published October 24, 1986 (51 FR 37733).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action tends to ensure that dairy farmers will continue to have their milk regulated and priced under the order covering the market which is the primary outlet for their milk and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in Memphis, Tennessee marketing area.

Notice of the proposed rulemaking was published in the Federal Register on October 24, 1986 (51 FR 37733) concerning a proposed suspension of certain provisions of the order. Interested persons were given an opportunity to file written data, views, and arguments thereon. No views opposing the proposal were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for the months of October through December 1986 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1097.7, paragraph (b) in its entirety.

Statement of Consideration

This action makes inoperative, for the months of October-December 1986, that portion of the order's fluid milk plant definition which provides for a pool supply plant. The order currently regulates a plant that ships in excess of 70,000 pounds of milk (about two loads) per month to pool distributing plants.

The suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that in mid-September began to furnish supplemental milk to meet the fluid milk needs of bottling plants that are regulated under the Memphis order. The additional milk for Memphis bottling plants is necessary because of the increased Class I sales by such plants as a result of the recent closing of bottling plants located at Springfield, Missouri, and Paragould, Arkansas. Greater supplemental shipments will be necessary during the months of October-December because of the normal seasonal decrease in milk production in such months and further reductions this year as a result of the whole-herd buyout program.

The most feasible milk supply that Mid-Am has available to supply the fluid needs of Memphis handlers is associated with the cooperative's reserve processing (balancing) plants that are located in southwestern Missouri and regulated under the Southwest Plains order. However, since the individual-handler pool Memphis order provides a low minimum shipping standard for pool supply plants, shipments from Mid-Am's balancing plants would result in the regulation of such plants under the Memphis order. If this were to occur, the Memphis order individual-plant price to producers supplying the balancing plants would be significantly below the Southwest Plains marketwide blend price, thereby reducing the returns to Mid-Am's dairy farmers. Furthermore, if dairy farmers lose their association with the Southwest Plains market during any month of the September-November period, they may not be producers under the Southwest Plains order during the months of February-July 1987.

Two of Mid-Am's plants that are pooled as balancing plants under the Southwest Plains order almost became regulated under the Memphis order on the basis of shipments during the latter half of September. As the cooperative continues to supply Memphis handlers with increased supplemental shipments to meet fluid milk needs, the balancing plants would likely become regulated under the Memphis order during the months of October-December 1986. The suspension will allow the southwest Missouri balancing plants and the milk of dairy farmers associated with such plants to continue to be regulated under the Southwest Plains order and facilitate the shipment of the market's reserve milk supplies to fluid milk plants in Memphis.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing in that it will ensure that dairy farmers will continue to have their milk regulated and priced under the order covering the market which is the primary outlet for their milk and thereby receive the benefits that accrue from such pooling and pricing;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded an opportunity to file written data, views or arguments concerning this proposal to suspend. No comments in opposition to the proposal were received.

Therefore, good cause exists for making this order effective upon publication in the Federal Register.

List of Subjects in 7 CFR Part 1097

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provisions of § 1097.7 of the Memphis, Tennessee order are hereby suspended for the months of October-December 1986 as follows:

PART 1097—MILK IN THE MEMPHIS, TENNESSEE MARKETING AREA

1. The authority citation for 7 CFR Part 1097 continues to read as follows:

Authority: (Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

§ 1097.7 [Suspended in part]

2. In 7 CFR Part 1097, paragraph (b) of § 1097.7 is suspended in its entirety.

Signed at Washington, DC, on: November 6, 1986.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 86-25481 Filed 11-7-86; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Parts 1900, 1941, 1943, 1945, 1955, 1962, 1965, and 1980

Controlled Substances Production Control; Section 1764 of the "Food Security Act of 1985"

AGENCY: Farmers Home Administration, USDA.

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ACTION: Final rule with request for comments.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to prohibit assistance to applicants/borrowers who have been convicted under Federal or State laws of planting, cultivating, growing, producing, harvesting, or storing a controlled substance after December 23, 1985. This action is being taken to implement section 1764 of the Food Security Act of 1985 (Pub. L. 99-198). The intended effect is to prohibit assistance to applicant/borrowers who have been convicted under Federal or State laws of planting, cultivating, growing, producing, harvesting, or storing a controlled substance after December 23, 1985.

DATES: Final rule effective November 10, 1986. Comments must be submitted on or before December 10, 1986.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. All written comments will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: James A. Flickinger, Special Assistant to the Assistant Administrator, Farmer Programs, Farmers Home Administration, USDA, Room 5019, South Agriculture Building, Washington, DC 20250, Telephone: (202) 447-4671.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be nonmajor, because there will not be an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans, Farm Operating Loans, and Farm Ownership Loans are excluded with the exception of nonfarm enterprise activity from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loan Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940-J.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.416—Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Discussion of the Major Issues of the Final Rule

The provisions of section 1764 of the Food Security Act of 1985 (the Act) (Pub. L. 99-198) require FmHA to implement regulations regarding penalties relating to the production of controlled substances. The intended effect is to penalize those who have been convicted of producing, harvesting or storing controlled substances.

The term controlled substance is further identified in 21 CFR Part 1308. FmHA is issuing to its field offices the applicable schedules of 21 CFR Part 1308 as Exhibit C to Subpart A of Part 1941 of this chapter (available in any FmHA Office).

As provided in the Act FmHA amends its Farmer Program regulations so that if an individual or an entity's member has been convicted after December 23, 1985, under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance in any crop year, such an individual or the entity itself shall be ineligible for Farmer Program loans and certain servicing actions for that year and the four succeeding crop years. Applicants will attest on the applicable FmHA form that as individuals or that its members, if an entity, have not been convicted of such a crime after December 23, 1985. A decision to reject an application because of such conviction is not appealable because it is required by statute. Further details are in the regulations.

Section 1764 of the Act required that regulations implementing its provisions be issued not later than 180 days after the date that the Food Security Act of 1985 was enacted. The date of enactment was December 23, 1985. FmHA did not meet this deadline due to the need to issue regulations implementing other provisions of the Act in as timely a fashion as possible to cover the Spring lending season. Although the deadline was not met, FmHA is still compelled to make a good faith effort to issue regulations as soon as it can to implement section 1764. That is why the action being taken is a final rule and why it is being implemented immediately. However, the fact that the deadline in section 1764 was missed should not have an adverse impact on anyone because the effect of the regulations will not affect, for example, anyone whose loan has already been closed or even approved but not yet closed and because the final rule only contains what is required by section 1764. The assistance denied to anyone convicted of planting, cultivating, growing, producing, harvesting, or storing a controlled substance after December 23, 1985, includes an insured or guaranteed loan, a subordination, a transfer and assumption, and a credit sale of inventory property. To approve an insured or guaranteed loan to anyone so convicted would be a clear violation of section 1764. To grant a subordination request so that a borrower may obtain additional financing is the equivalent of FmHA extending credit itself because FmHA would then take a lien position junior to what it had, and that is why subordinations are considered prohibited assistance. Transfers and assumptions are included because loan assistance continues, although to a new borrower. Credit sales are included because they are extensions of financial assistance to buyers in FmHA inventory property. Even though this is a final rule, FmHA is providing a 30-day comment period because this is a new area for FmHA and comments from the public could be insightful. The comments will be considered and changes to the final rule may or may not be made, depending on the substance of the comments received. It is the policy of this Department that rules relating to public property, grants, benefits or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. It is found upon good cause that notice and other public procedure with respect to this final rule action are impractical, and good cause is found for making this final rule effective less than 30 days after publication in the **Federal Register**.

List of Subjects

7 CFR Part 1900

Appeals, Credit, Loan programs—Housing and community development.

7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture.

7 CFR Part 1943

Credit, Loan programs—Agriculture, Water resources.

7 CFR Part 1945

Agriculture, Disaster assistance.

7 CFR Part 1955

Government acquired property, Sale of Government acquired property, Surplus Government property.

7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—Agriculture, Rural areas.

7 CFR Part 1965

Foreclosure, Loan programs—Agriculture, Rural areas.

7 CFR Part 1980

Agriculture, Loan programs—Agriculture.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1900—GENERAL

1. The authority citation for Part 1900 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Farmers Home Administration Appeal Procedure

2. Section 1900.53 is amended by adding paragraph (a)(17) to read as follows:

§ 1900.53 Decisions which are not appealable.

(a) * * *

(17) Denial of assistance (including a subordination request or transfer and assumption) because of a conviction under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance. "Controlled substance" is defined in Exhibit C to Subpart A of Part 1941 of this chapter (available in any FmHA office).

* * * * *

PART 1941—OPERATING LOANS

3. The authority citation for Part 1941 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Operating Loan Policies, Procedures, and Authorizations

4. Section 1941.12 is amended by adding an introductory paragraph to read as follows:

§ 1941.12 Eligibility requirements.

In accordance with the Food Security Act of 1985 (Pub. L. 99-198) after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to this subpart and is available in any FmHA office, for the definition of "controlled substance") prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 410-1, "Application for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. A decision to reject an application for this reason is not appealable. In addition, the following requirements must be met:

* * * * *

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

5. The authority citation for Part 1943 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Insured Farm Ownership Loan Policies, Procedures and Authorizations

6. Section 1943.12 is amended by adding an introductory paragraph to read as follows:

§ 1943.12 Farm ownership loan eligibility requirements.

In accordance with the Food Security Act of 1985 (Pub. L. 99-198) after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A or Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 410-1, "Application for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. A decision to reject an application for this reason is not appealable. In addition, the following requirements must be met:

* * * * *

Subpart B—Insured Soil and Water Loan Policies, Procedures and Authorizations

7. Section 1943.62 is amended by adding an introductory paragraph to read as follows:

§ 1943.62 Soil and Water Loan eligibility requirements.

In accordance with the "Food Security Act of 1985" (Pub. L. 99-198) after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member, stockholder, partner, or a joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 410-1, "Application for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. A decision to reject an application for this reason is not appealable. In addition, the following requirements must be met:

* * * * *

PART 1945—EMERGENCY

8. The authority citation for Part 1945 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart D—Emergency Loan Policies, Procedures, and Authorizations

9. Section 1945.162 is amended by adding an introductory paragraph to read as follows:

§ 1945.162 Eligibility requirements.

In accordance with the "Food Security Act of 1985" (Pub. L. 99–198) after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year, in which the individual or member, stockholder, or partner of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 410–1, "Application for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. A decision to reject an application for this reason is not appealable. In addition, the following requirements must be met:

* * * * *

PART 1955—PROPERTY MANAGEMENT

10. The authority citation for Part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Disposal of Inventory Property

11. Section 1955.105 is amended by adding a paragraph heading to the existing text, designating it as paragraph (a), and adding a new paragraph (b) to read as follows:

§ 1955.105 Real property affected (CONACT).

(a) *Loan types.* * * *

(b) *Controlled substance conviction.* In accordance with the "Food Security Act of 1985" (Pub. L. 99–198) after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to a credit sale approval in any crop year, the individual or entity shall be ineligible for a credit sale for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 410–1, "Application for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. A decision to reject a credit sale for this reason is not appealable.

PART 1962—PERSONAL PROPERTY

12. The authority citation for Part 1962 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Servicing and Liquidation of Chattel Security

13. Section 1962.30 is amended by adding paragraphs (b)(7) and (d)(3) to read as follows:

§ 1962.30 Subordination and waiver of FmHA liens on chattel security.

* * * * *

(b) * * *

(7) In accordance with the Food Security Act of 1985 (Pub. L. 99–198) after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C of Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to the issuance of the subordination in any crop year the individual or entity shall be ineligible for a subordination for the crop year, in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 410–1, "Application for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. A decision to reject a subordination request for this reason is not appealable.

* * * * *

(d) * * *

(3) Items 1, 22, 23 and 24 will be completed on Form FmHA 410–1.

* * * * *

14. Section 1962.34 is amended by revising the introductory paragraph to read as follows:

§ 1962.34 Transfer of chattel security and EO property and assumption of debts.

Chattel and EO property may be transferred to eligible or ineligible transferees who agree to assume the outstanding loan, subject to the provisions set out in this section. A transfer and assumption may also be made when one or more of the borrowers or the former spouse and co-obligor of a divorced borrower withdraws from the operation or dies. The transfer of accounts secured by real estate or both real estate and chattels will be processed under Subpart A of Part 1965 of this chapter. The transferor (borrower) must be sent Form FmHA 1924–14, "Notice—Farmer Program Borrower Servicing Options Including Deferral and Borrower Responsibilities," as soon as the borrower contacts the County Supervisor inquiring about a transfer. In accordance with the Food Security Act of 1985 (Pub. L. 99–198) after December 23, 1985, if a loan is being transferred and assumed by an eligible or ineligible transferee, and if an individual or any member, stockholder, partner, or joint operator of an entity transferee is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C of Subpart A of Part 1941of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to the approval of the transfer and assumption in any crop year, the individual or entity shall be ineligible for a transfer and assumption of a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Transferee applicants will attest on Form FmHA 410–1, "Application for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. A decision to reject an application for transfer and assumption for this reason is not appealable.

* * * * *

PART 1965—REAL PROPERTY

15. The authority citation for Part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only cases.

16. Section 1965.12 is amended by revising the introductory paragraph to read as follows:

§ 1965.12 Subordination of FmHA mortgage to permit refinancing, extension, increase in amount of existing prior lien, to permit a new prior lien, or to permit reamortization.

See § 1965.34(e) of this subpart for requirements concerning subordinations of non-program (NP) loans. In accordance with the Food Security Act of 1985 (Pub. L. 99–198) after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to the issuance of the subordination in any crop year, the individual or entity shall be ineligible for a subordination for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants for subordinations will attest on Form FmHA 465–1, "Application for Partial Release, Subordination, or Consent," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. A decision to reject an application for subordination for this reason is not appealable.

* * * * *

17. Section 1965.27 is amended by revising the introductory paragraph and the introductory paragraph of paragraph (b) to read as follows:

§ 1965.27 Transfer of real estate security.

When the mortgage requires the consent of the FmHA to any proposed sale or other transfer of real estate security, the borrower should be reminded that before firm agreements have been reached with a purchaser of all or a portion of the security, the borrower and purchaser should contact the County Supervisor concerning the proposed sale. Farmer program loan borrowers must be sent Form FmHA 1924–14 within 3 working days after the borrower contacts the County Supervisor inquiring about a transfer. If a proposed sale would not result in the FmHA accounts being paid in full at the time of sale the County Supervisor should explain thoroughly the requirements of this section and §§ 1965.13 or 1965.26 of this subpart, as appropriate. When the transferor is receiving a substantial down payment for the sale of the property, the purchaser must be required to contact other sources of credit in an effort to secure a loan for repayment of the FmHA loan(s) in full. If an NP loan is involved, § 1965.34 of this subpart also applies. When real estate security, mortgage requires FmHA consent to the sale and the transaction cannot be approved under the appropriate sections of this subpart, the account will be liquidated as required in § 1965.26 of this subpart, or will be handled in accordance with § 1965.27(g) of this subpart. In accordance with the Food Security Act of 1985 (Pub. L. 99–198) after December 23, 1985, if a loan is being transferred and assumed by an eligible or ineligible transferee, and if an individual or any member, stockholder, partner, or joint operator of an entity transferee is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to the approval of the transfer and assumption in any crop year, the individual or entity shall be ineligible for a transfer and assumption of a loan for the crop year in which the individual, or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Transferee applicants will attest on Form FmHA 410–1, "Application for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. A decision to reject an application for transfer and assumption for this reason is not appealable.

* * * * *

(b) *General policies.* The following general policies will be applicable when an FmHA borrower transfers, or proposes to transfer, real estate which is security for an FmHA loan(s). The loan account(s) will be assumed by use of Form FmHA 1965–13, "Assumption Agreement for Farmer Program Loans," or Form FmHA 1965–15, "Assumption Agreement Single Family Housing Loan(s)."

* * * * *

PART 1980—GENERAL

18. The authority citation for Part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Farmer Program Loans

19. Section 1980.123 is amended by redesignating paragraphs (c) through (o) as (d) through (p) and adding a new paragraph (c) to read as follows:

§ 1980.123 Transfer and assumption of Farmer Program loans.

* * * * *

(c) In accordance with the Food Security Act of 1985 (Pub. L. 99–198) after December 23, 1985, if an individual transferee or any member, stockholder, partner, or joint operator of an entity transferee is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to the approval of the transfer and assumption in any crop year, the individual or entity shall be ineligible for a transfer and assumption for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 449–6, "Application for Guaranteed loan," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. A decision to reject an application for transfer and assumption for this reason is not appealable.

* * * * *

20. Section 1980.175 is amended by adding an introductory paragraph (b) to read as follows:

§ 1980.175 Operating loans.

* * * * *

(b) *Loan eligibility requirements.* In accordance with the Food Security Act of 1985 (Pub. L. 99–198) after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C of Subpart A of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to the issuance of the loan note guarantee or the contract of guarantee in any crop year, the individual or entity shall be ineligible for a guranteed loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and

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the four succeeding crop years. Applicants will attest on Form FmHA 449–6, "Application for Guaranteed Loan," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. A decision to reject an application for this reason is not appealable. In addition, the following requirements must be met:

* * * * *

21. Section 1980.180 is amended by adding an introductory paragraph (c) to read as follows:

§ 1980.180 Farm ownership loans.

* * * * *

(c) *Farm ownership loan eligibility requirements.* In accordance with the Food Security Act of 1985 (Pub. L. 99–198) after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to the issuance of the loan note guarantee or the contract of guarantee in any crop year, the individual or entity shall be ineligible for a guaranteed loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 449–6, "Application for Guaranteed Loan," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. A decision to reject an application for this reason is not appealable. In addition, the following requirements must be met:

* * * * *

22. Section 1980.185 is amended by adding an introductory paragraph to (c) to read as follows:

§ 1980.185 Soil and Water loans.

* * * * *

(c) *Soil and Water Loan eligibility requirements.* In accordance with the Food Security Act of 1985 (Pub. L. 99–198) after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to the issuance of the loan note guarantee or the contract of guarantee is any crop year, the individual or entity shall be ineligible for a guaranteed loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 449–6, "Application for Guaranteed Loan," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. A decision to reject an application for this reason is not appealable. In addition, the following requirements must be met:

* * * * *

Dated: September 29, 1986.

Kathleen W. Lawrence,

Under Secretary for Small Community and Rural Development.

[FR Doc. 86–25328 Filed 11–7–86; 8:45 am]

BILLING CODE 3410–07–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. C–3201]

Max Factor & Co.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Stamford, Conn. Cosmetics company to make promotional allowances available on proportionally equal terms to all of its customers, and in particular, to make alternatives, such as handbills or other in-store promotional activities, available to customers for whom its basic promotional plans are not usable or economically feasible. Respondent is required to notify all its customers that the promotional payments and alternatives are available.

DATE: Complaint and Order issued October 15, 1986.[1]

FOR FURTHER INFORMATION CONTACT: Paul W. Turley, Director, Los Angeles Regional Office, Federal Trade Commission, 11000 Wilshire Blvd., Los Angeles, CA 90024. (213) 209–7890.

SUPPLEMENTARY INFORMATION: On Friday, March 21, 1986, there was published in the **Federal Register**, 51 FR 9836, a proposed consent agreement with analysis In the Matter of Max Factor & Co., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No Comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.15 Business status, advantages, or connections; § 13.15–5 Advertising and promotional services; § 13–20 Business methods and policies; § 13.160 Promotional sales plans. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–20 Disclosures.

List of Subjects in 16 CFR Part 13

Cosmetics, Promotional allowances, Trade practices.

(Sec. 6, 38 Stat. 712; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 2, 49 Stat. 1526; 15 U.S.C. 45, 13)

Emily H. Rock,

Secretary.

[FR Doc. 86–25338 Filed 11–7–86; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 13

[Dkt. No. 9201]

Electronic Systems International, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In Settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Norcross, Ga. Manufacturer and marketer of "SavIt" duty cyclers to cease making unsubstantiated representations as to the efficiency of its products or services. Additionally, respondents are required to request all dealers of its products to refrain from making the challenged claims and to

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[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th St. and Pa. Ave. NW., Washington, DC 20580.

recall all promotional material that does not conform to the proposed order.

DATE: Complaint issued Nov. 1, 1985. Order issued October 30, 1986[*].

FOR FURTHER INFORMATION CONTACT: FTC/B-407, Michael Dershowitz, Washington, DC 20580. (202) 376-8720.

SUPPLEMENTARY INFORMATION: On Wednesday, Aug. 20, 1986, there was published in the **Federal Register**, 51 FR 29664, a proposed consent agreement with analysis In the Matter of Electronic Systems International, Inc., a corporation, and Gene B. Patterson, individually and as an officer of said corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions of objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form comtemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist as set forth in the proposed consent agreement, in disposition of this processing.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows; Subpart—Advertising Falsely of Misleadingly: § 13.10 advertising falsely or misleadingly; § 13.170 Qualities or properties of product or service; 13.170-34 Economizing or saving; § 13.190 Result; § 13.205 Scientific or other relevant facts; § 13.210 Scientific tests. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-45 Maintain records; § 13.533-45(a) Advertising substantiation. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1710 Qualities or properties; § 13.1730 Results; § 13.1740 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Duty cyclers, Energy savings, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 86-25337 Filed 11-7-86; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 33-6673, 34-23767, 35-24230, 39-2048, IC-15392, and IA-1046]

Revision of Fee Schedule for Records Services

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of rule amendments.

SUMMARY: The Securities and Exchange Commission is revising § 200.80e Appendix E, which sets forth the schedule for fees for records services and designates the service contractor to provide copies of public documents filed with the Commission. The revisions reflect increases in the rates charged to the public by Bechtel Information Services ("Bechtel"), 15740 Shady Grove Road, Gaithersburg, Maryland 20877, pursuant to the terms of Bechtel's contract with the Commission. In addition, the Commission is revising its schedule of charges for information requested under the Freedom of Information Act ("FOIA"). These revisions will bring these fees more into conformance with current costs for responding to requests for records services.

EFFECTIVE DATE: November 10, 1986.

FOR FURTHER INFORMATION CONTACT: Cecelia A. Charles, Acting Director, Office of Consumer Affairs and Information Services, 202-272-7440; Jeanne Carter, Edgar Counsel, Executive Director's Office, 202-272-3557.

SUPPLEMENTARY INFORMATION: On May 20, 1985, the Commission awarded a contract for microfilm production and dissemination of the Commission's public documents to Bechtel Information Services. Pursuant to the terms of the Commission's contract with Bechtel, prices may be revised annually consistent with annual increases in the contractor's costs of production as demonstrated by submission to the Commission of annual audited statements of contractor costs and contingent upon prior approval by the Commission. As a result of increased costs of production the Commission is permitting Bechtel to raise the rates it charges.

In addition, the Commission is revising its schedule of charges for attestation services and searching for information requested under the Freedom of Information Act. The Commission has not increased its charges under FOIA in a number of years. The staff search rate is out of date. It is based on the salary of a GS-10, step one, as of 1965, when the rate was last set. The staff specialists responsible for performing most searches are either GS-9 or GS-11 personnel involved in processing FOIA requests. Additional searching is performed by professional staff in the operating divisions. The Commission is therefore instituting an updated two-tier fee based on the hourly rates for staff at GS-9 and GS-12 grade levels. In addition, the Commission is increasing the charge to produce an attestation with the Commission seal to more accurately reflect the actual cost of performing the service.

In a recent study conducted by *Access Reports/Freedom of Information* newsletter, the Commission ranked near the bottom of the list of Federal agencies in terms of the percentage of actual FOIA costs recovered. According to the study, the Commission currently recovers only 0.5 percent of its actual FOIA costs. In contrast, the Federal Reserve Board recovers 50 percent of its costs, the Environmental Protection Agency recovers 22 percent, and the Office of Personnel Management recovers 13.3 percent.

The specific changes to § 200.80e are as follows:

a. The paragraph captioned *"Searching and attestation services"* is amended to include two separate rates for searches based upon the level of the employee conducting the search. Also, the hourly search rates have been increased from $2.50 per half hour to $5.00 per half hour for a GS 9-11 employee and $7.50 per half hour for a GS-12 or above employee conducting the search. In addition, the cost of attestation has increased to $4.00. Finally, the street address of the Securities and Exchange Commission has been added.

b. The paragraph captioned *"Regular service"* is amended to reflect an earlier increase in the cost for paper to paper or microfiche to paper copying, shipped within seven calendar days to $0.20 per page.

c. A new paragraph captioned *"Freedom of Information Act Requests"* has been added.

d. The paragraph captioned *"Watching service"* is amended by changing the shipping time of hard copies of customer-specified originals from 4 p.m. on the day following contractor receipt of original to within one working day of contractor receipt of original. The price of a paper copy will be based on the response time of the contractor. Microfiche service is now referred to in the paragraph and will

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[*] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th St. & Pa. Ave., NW., Washington, DC 20580.

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cost $5.00 per fiche. A sentence has been added to the paragraph regarding additional charges for the watching service.

e. The paragraph captioned *"Public reference copying facilities"* reflects that customer operated paper-to-paper and fiche-to-paper copiers will now cost $0.17 per page unless the copying machine is coin operated. In that case, the per page cost will increase to $0.20. On-site demand service is raised to $0.30 per page. Reference has been added for contractor copying on a first come, first served basis at a cost of $0.23 per page.

The Commission finds, in accordance with the Administrative Procedure Act [5 U.S.C. 553(b)(3)(A)], that this revision relates solely to agency organization, procedures, or practices. It is therefore not subject to the provisions of the Administrative Procedure Act, requiring notice and opportunity for comment. Accordingly, it is effective upon publication in the **Federal Register**.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Freedom of Information, Privacy, Securities.

Statutory Basis

The Commission amends § 200.80e of Title 17, Chapter II, of the Code of Federal Regulations pursuant to the Securities Exchange Act of 1934 and particularly section 23(a) thereof, 15 U.S.C. 78w(a).

Text of Amendments

Title 17, Chapter II of the CFR is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for Part 200 Subpart D continues to read as follows:

Authority: 80 Stat. 383, as amended, 31 Stat. 54, secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855; 5 U.S.C. 552, 15 U.S.C. 77s, 78w, 79t, 77sss, 80a–37, 80b–11, * * *.

2. Section 200.80e is amended by revising the paragraphs captioned "Searching and attestation services", "Regular service", "Watching service", and "Public reference copying facilities", and by adding a new paragraph captioned "Freedom of Information Act requests." The paragraphs captioned "Facsimile copies of documents", "Priority service", and "Subscription services and microfiche copies" are unchanged. § 200.80e is revised to read as follows:

§ 200.80e Appendix E—Schedule of fees for records services.

Searching and attestation services. Locating and making available records requested for inspection or copying (including over-head costs):

First one-half hour—No Fee; each additional one-half hour or fraction thereof—GS 9–11 employee conducting search: $5.00; GS 12 or above employee conducting search: $7.50.

Attestation with Commission Seal (in addition to other fees, if any): $4.00.

Payment for the above services must be made by check or money order payable to: "Treasury of the United States." Address mailed payments to:

Comptroller, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

Facsimile copies of documents—Facsimiles of public documents filed with the Commission and retained as hard copy records or as microfiche are provided by a service contractor at rates established by a contract between the contractor and the Commission. All requests for regular service facsimile copies should be directed to the Public Reference Branch, Securities and Exchange Commission, Washington, DC 20549. Requests for priority services may be directed to the service contractor, or to the Public Reference Branch. Requests for watching services should be directed to the service contractor. Cost estimates with respect to any regular or priority copying job will be supplied upon request by the Public Reference Branch.

Copies will be sent directly to the purchaser by the service contractor unless attestation is requested. The purchaser will be billed by the contractor for the costs of the copies plus postage or other delivery charges, if any. Payment of all copying charges must be made to the contractor, not to the SEC, in the manner specified on the contractor's invoice. The purchaser will be billed separately by the Commission for searching and attestation charges, if any, at the rates noted above.

Paper-to-paper facsimile copies may range from 8½" x 11" to 14" in size, regardless of the size of the original, and are subject to 25% reduction to accommodate oversized originals if the resulting copies remain legible. If two or more facsimile copies must be made from oversize originals, the customer will match and join the copies and be billed for them at the unit page charge for each copy produced. If facsimile copies are to be certified by the SEC, the copies will have a left margin at least 1 inch. Fiche-to-paper blowback copies will be 8½" x 11", including clear 6-point bold type characters if the original paper that was filmed was itself legible.

The following type of dissemination services are available. The stated time for delivery in each case begins to run only after receipt of the material by the contractor; if files cannot immediately be made available by the Commission, the time of shipment will be affected. The contractor maintains files of most materials.

Regular service. Hard (facsimile) copies of original hard copies, or from microfiche accessible to the contractor, will be shipped within seven calendar days after order and material are received by the contractor—each page—$0.20. (Delivery costs and applicable sales taxes are additional).

Freedom of Information Act Requests. Hard (facsimile) copies of original hard copies, will be shipped within seven calendar days after order and material are received by the contractor—each page—$0.15. (Delivery costs and applicable sales taxes are additional). This service is available only for documents not available in the Commission's Public Reference Room or through the contractor's dissemination services.

Priority Service. Hard (facsimile) copies of originals or microfiche or other hard copies received by the Contractor by the close of the business day will be shipped by the close of business of the following day exclusive of weekends and holidays—each page—$0.30. (Delivery costs and sales tax, where applicable, are additional).

Watching service. Hard (facsimile) whole copies of customer-specified original or originals will be shipped within one working day of contractor receipt of original (customer advance order), exclusive of weekends or holidays—each page—$0.30, microfiche service—$5.00 per fiche. Additional charges for the watching service have been added and are available from the contractor. (Delivery costs and applicable sales taxes are additional).

Public reference copying facilities. In addition to the demand order facsimile copying services described above, the service contractor maintains customer operated paper-to-paper and fiche-to-paper copiers in the public reference rooms of the Commission in Washington, DC, New York and Chicago. These machines can be used to make immediate copies of material for inspection in those offices at a cost of $0.17 per page. Coin operated self-service machines will cost $0.20 per page. (Sales taxes, when applicable, are additional.) The service contractor will also make paper copies on a highspeed fiche-to-paper copier from fiche retrieved by customers from film located in the Washington, DC reference room. The onsite service is intended to provide to the extent possible 5-minutes demand service. The cost is $0.30 per page, plus applicable sales taxes. In addition, copying by the contractor in the reference rooms on a first come, first served basis is provided for $0.23 per page, plus applicable sales taxes.

Subscription services and microfiche copies. The contractor offers certain paper or 24x microfiche subscription services pursuant to the contract. The microfiche copies (24X reduction, 60 frames, titled and indexed) and paper copies are offered through a variety of subscription and demand order services. The cost of subscription services varies according to the types of service and volume. Packages currently on microfiche and on paper include registration statements and prospectuses under the Securities Act of 1933, registration and listing applications under the Securities Exchange Act of 1934, annual reports to shareholders, definitive proxies and information statements, tender offers and acquisition reports, and filings on Forms 6–K, 8–K, 10K, 10–Q, 20–F, and N–SAR, under the Securities Exchange Act of 1934 and the Investment Company Act of 1940. Subscriptions may be for specified documents or in various combinations and groupings and may be specified either by company name or by major stock exchanges.

The contractor supplying these services will supply information and price lists upon request. Please address requests for information and all orders for subscription services, priority and watching services, and microfiche copies to: Bechtel Information Services, 15740 Shady Grove Road, Gaithersburg, MD 20877–1454 (Telephone: toll free 1–800–231–DATA or (301) 258–4300).

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

November 3, 1986.

[FR Doc. 86–25398 Filed 11–7–86; 8:45 am]

BILLING CODE 8010-01-M

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17 CFR Part 202

[Release Nos. 33–6674; 34–23776; 35–24231; IC–15395; IA–1048]

Remittance of Fees to Lockbox

AGENCY: Securities and Exchange Commission.

ACTION: Readoption of temporary rule.

SUMMARY: The Commission has readopted for ten months a temporary rule, adopted in June 1984, which permits filing and other fees to be remitted to a U.S. Treasury designated lockbox depository located in Pittsburgh, Pennsylvania. This action will permit registrants to continue to use the procedures specified by the temporary rule pending the Commission's consideration of whether to adopt proposed amendments to the rule that were published in the **Federal Register** in February, 1986.

EFFECTIVE DATE: November 10, 1986 to September 1, 1987.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Jackson, Special Counsel, (202–272–2700), Office of the Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In Securities Act Release No. 6540, dated June 27, 1984 [49 FR 27306], the Commission adopted a temporary amendment to § 202.3a, to permit filing fees to be remitted to a lockbox depository. Under these amendments, filers may continue to transmit fees along with filings or may transmit required fees to a lockbox depository in Pittsburgh, Pennsylvania either by mail or wire transfer. When the temporary amendments were adopted, the Commission stated that it would consider whether to eliminate payment of fees directly to the Commission and instead mandate payment of fees to a lockbox.

On February 13, 1986, the Commission issued a release that proposed the permanent adoption of § 202.3a as well as amendments which would change its provisions from permissive to mandatory. The Commission also issued a notice, on January 30, 1986, of the extension of the temporary rule to November 1, 1986. Pending its consideration of the staff's recommendation concerning the proposed changes, the Commission has determined that temporary § 202.3a should be readopted for an additional ten months (to September 1, 1987).

Administrative Procedure Act

The Commission finds, in accordance with the Administrative Procedure Act, 5 U.S.C. 553(b)(A), that temporary rule 202.3a relates solely to agency organization, procedure or practice and, therefore, advance notice and opportunity for comment is unnecessary in connection with this action.

List of Subjects in 17 CFR Part 202

Administrative practice and procedure, Investigations, Securities.

Text of Amendment

Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 202—INFORMAL AND OTHER PROCEDURES

1. The authority citation for part 202 continues to read as follows:

Authority: 65 Stat. 290, 31 U.S.C. 483a; 48 Stat. 74, 15 U.S.C. 77f.(b) and 77f.(c), as amended; 48 Stat. 881, 15 U.S.C. 78ee, as amended.

2. Section 202.3a is added as follows:

§ 202.3a Instructions for filing fees.

Payment of fees required by the following rules shall be made according to the directions listed in this part: § 230.111 (17 CFR 230.111), § 240.0–9 (17 CFR 240.0–9), § 250.107 (17 CFR 250.107), § 270.0–8 (17 CFR 270.0–8) and § 275–203–3(b) (17 CFR 275.203–3(b)). Effective August 15, 1984, all such fees may be transmitted to a U.S. Treasury designated lockbox in Pittsburgh, Pennsylvania, by either mail or wire transfer; or may be transmitted directly to the Commission at 450 Fifth Street NW., Washington, DC 20549. If a filer selects the lockbox method of transmitting fees, payments in the form of personal check, money order, certified check, cashier's check, or wire transfer will be considered received by the Commission at the time of their receipt by the lockbox depository. Personal checks will continue to be unacceptable for filings under the Securities Act of 1933. The following instructions are for lockbox transmittals only.

(a) *Mail.* Fees transmitted by mail must be addressed to the Securities and Exchange Commission, Post Office Box 360055M, Pittsburgh, PA 15251. Checks and money orders are to be made payable to the Securities and Exchange Commission. Checks must contain the following information for each individual filing (preferably on the front of the check): Filing company's name, IRS identification number, form type, amendment (if applicable), and Commission file number, if known. Filers should include the specific payment being sent for each filing if a check contains payments for multiple filings. Each response should be clearly labeled to indicate the data element to which it refers, *e.g.*, "IRS #: 53–0040540."

(b) *Wire.* Filers who wish to wire filing fee payments to the lockbox must contact their respective banks to determine the specific procedures utilized by each bank for wire transfer of funds. In addition, filers must inform their banks that the wire is to be sent to the Mellon Bank, American Banker's Association number *043000261*, that the Securities and Exchange Commission account number at Mellon is *910–8739*, and that the Commission is the recipient. The wire transfer must contain the following data elements (clearly identified) for each individual filing: filing company's name, dollar amount, IRS identification number, form type, amendment (if applicable), and Commission file number, if known. Filers should include the specific payment being sent for each filing if a wire transfer contains payments for multiple filings. Wire transfers will be accepted from 9 a.m. to 3 p.m. weekdays (excluding holidays).

By the Commission.

Dated: November 5, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–25476 Filed 11–7–86; 8:45 am]

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17 CFR Part 240

[Rel. No. 34–23677; File No. S7–5–86]

Depository Shipment Control List Transfer Instructions; Definition of Item

Correction

In FR Doc. 86–23089 beginning on page 36547 in the issue of Tuesday, October 14, 1986, make the following correction:

On page 36547, first column, in the **SUPPLEMENTARY INFORMATION**, fourth line, "14Ad–1" should read "17Ad–1".

BILLING CODE 1505–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 103

[T.D. 86–196]

Exchange of Information With Foreign Agencies

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide the Commissioner of Customs or his designee with authority to authorize officers of the Customs Service to exchange information with foreign customs and law enforcement agencies pursuant to bilateral and multilateral obligations or whenever such exchanges are necessary to assist in U.S. investigations or judicial and quasi-judicial proceedings. This amendment is necessary to implement a section of the recently enacted Anti-Drug Abuse Act of 1986, Pub. L. 99–570.

EFFECTIVE DATE: November 10, 1986.

FOR FURTHER INFORMATION CONTACT: Doris Robinson, Regulations Control and Disclosure Law Division (202–566–8681).

SUPPLEMENTARY INFORMATION:

Background

On October 27, 1986, the President signed into law the "Anti-Drug Abuse Act of 1986" (Pub. L. 99–570), ("the Act") which provides for a wide range of programs and measures to enhance efforts to counteract the problem of drug abuse in the U.S. Among these measures are several dealing with increased enforcement of drug laws and interdiction of drug trafficking.

In particular, titles I through III of the new law relate to drug law enforcement measures. Titles II and III address the significant changes made to the customs laws, including other laws enforced by the Customs Service.

One such change, contained in section 3127 of the Act, amends the Tariff Act of 1930 (19 U.S.C. 1201 *et seq.*), by adding a new section 628 (19 U.S.C. 1628), providing for the exchange of information or documents with foreign customs and law enforcement agencies. Pursuant to new section 628, the exchange is allowed if the Secretary of the Treasury reasonably believes the exchange of information is necessary to:

(1) Ensure compliance with any law or regulation enforced or administered by the Customs Service;

(2) Administer or enforce multilateral or bilateral agreements to which the U.S. is a party;

(3) Assist in investigative, judicial and quasi-judicial proceedings in the U.S.; and

(4) An action comparable to any of those described in paragraphs (1) through (3) undertaken by a foreign customs or law enforcement agency, or in relation to a proceeding in a foreign country.

The information may be provided to the foreign customs or law enforcement agencies only if the Secretary of the Treasury obtains assurances from these agencies that such information will be held in confidence and used only for the law enforcement purposes for which it was provided. No information may be provided to any foreign customs or law enforcement agency that has violated any of these assurances.

Part 103, Customs Regulations (19 CFR Part 103), concerns the availability of information provided the public under the Freedom of Information Act, as amended (5 U.S.C. 552). This part supplements regulations of the Department of the Treasury contained in 31 CFR Part 1, concerning public access to records, provides procedures by which the public may obtain access to records maintained by Customs, and includes provisions governing the release of certain information to the press and the giving of testimony or the production of Customs Service documents in court proceedings.

To implement section 3127 of the Anti-Drug Abuse Act of 1986, a new § 103.18, Customs Regulations (19 CFR 103.18), is being added to Part 103, to provide for the exchange of information between the Customs Service and foreign customs or law enforcement agencies. This new § 103.18 tracks the language of section 3127, but delegates the authority to authorize the exchange of information to the Commissioner of Customs or his designee. Accordingly, it conforms the regulations to the new law.

Inapplicability of Public Notice and Delayed Effective Date Provisions

Inasmuch as this amendment involves a foreign affairs function of the U.S., implements a statutory requirement, and involves a matter in which the public is not directly involved, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary, and pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Executive Order 12291

Because this document involves a foreign affairs function it is not subject to E.O. 12291.

Regulatory Flexibility Act

This document is not subject to the provisions of sections 603 and 604 of Title 5, United States Code, as added by section 3 of Pub. L. 96–354, the "Regulatory Flexibility Act." That Act does not apply to any regulation, such as this, for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or any other statute.

Drafting Information

The principal author of this document was Susan Terranova, Regulations Control Branch, Office of Regulations and Rulings, S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 103

Freedom of information.

Amendment to the Regulations

Part 103, Customs Regulations (19 CFR Part 103), is amended as set forth below.

PART 103—AVAILABILITY OF INFORMATION

1. The authority citation for Part 103 is revised to read as follows:

Authority: 5 U.S.C. 301, 552; 19 U.S.C. 66, 1624, 31 U.S.C. 9701, Pub. L. 99–570.

2. Part 103 is further amended by adding a new § 103.18, to read as follows:

§ 103.18 Release of information to foreign agencies.

(a) The Commissioner or his designee may authorize Customs officers to exchange information or documents with foreign customs and law enforcement agencies if the Commissioner or his designee reasonably believes the exchange of information is necessary to—

(1) ensure compliance with any law or regulation enforced or administered by Customs;

(2) administer or enforce multilateral or bilateral agreements to which the U.S. is a party;

(3) assist in investigative, judicial and quasi-judicial proceedings in the U.S.; and

(4) an action comparable to any of those described in paragraphs (a) (1) through (3) of this section undertaken by a foreign customs or law enforcement agency, or in relation to a proceeding in a foreign country.

(b)(1) Information may be provided to foreign customs and law enforcement agencies under paragraph (a) of this section only if the Commissioner or his designee obtains assurances from such agencies that such information will be held in confidence and used only for the law enforcement purposes for which such information is provided to such agencies by the Commissioner or his designee.

(2) No information may be provided under paragraph (a) of this section to any foreign customs or law enforcement agency that has violated any assurances described in paragraph (b)(1) of this section.

William von Raab,
Commissioner of Customs.

Approved: November 5, 1986.

Francis A. Keating,
Assistant Secretary of the Treasury.

[FR Doc. 86-25486 Filed 11-7-86; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 918

Approval of the Abandoned Mine Land Reclamation Plan for the State of Louisiana Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: On February 3, 1986, the State of Louisiana submitted to OSMRE its proposed Abandoned Mine Land Reclamation (AMLR) plan under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). After opportunity for public comment and review of the plan submission, the Assistant Secretary for Land and Minerals Management of the Department of the Interior has determined that the Louisiana Abandoned Mine Land Reclamation Plan meets the requirements of SMCRA and the Secretary's regulations. Accordingly, the Assistant Secretary is approving the Louisiana plan.

EFFECTIVE DATE: This rule is effective December 10, 1986.

ADDRESSES: Copies of the full text of the proposed Louisiana plan are available for review during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 333 W. Fourth Street, Room 3432, Tulsa, OK 74103
State of Louisiana, Department of Natural Resources, Office of Conservation, 625 North 4th Street, Baton Rouge, LA 70804
Office of Surface Mining Reclamation and Enforcement, Administrative Record, 1100 L Street, NW., Rm 5315, Washington, DC 20240

FOR FURTHER INFORMATION CONTACT: Charles V. Smith, Program Manager, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Washington, DC 20240, telephone (202) 343-3376.

SUPPLEMENTARY INFORMATION:

General Background of the Abandoned Mine Land Reclamation Program

Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*, establishes an abandoned mine land reclamation program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining.

This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation under the program are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or Federal law.

Each State, having within its borders coal mined lands eligible for reclamation under Title IV of SMCRA, may submit to the Department a State reclamation plan demonstrating its capability for administering an abandoned mine reclamation program. Title IV provides that the Department may approve the plan once the State has an approved regulatory program under Title V of SMCRA. If the Department determines that a State has developed and submitted a program for reclamation and has the necessary State legislation to implement the provisions of Title IV, the Department shall grant the State exclusive responsibility and authority to implement the provisions of the approved plan. Section 405 of SMCRA (30 U.S.C. 1235) contains the requirements for State reclamation plans.

The Secretary has adopted regulations that specify the content requirements of a State reclamation plan and the criteria for plan approval (30 CFR Part 884, 43 FR 49932 through 49947, October 25, 1978). Under those regulations, the Director of the Office of Surface Mining Reclamation and Enforcement is required to review the plan and solicit and consider comments. If the State plan is disapproved, the State may modify and resubmit the plan at any time.

Upon approval of the State reclamation plan, the State may submit to the Office on an annual basis, a grant application for funds to be expended in that State on specific reclamation projects which are necessary to implement the State reclamation plan as approved. Such annual requests are reviewed and approved by OSMRE in compliance with the requirements of 30 CFR Part 886.

To codify information applicable to individual States under SMCRA, including decisions on State reclamation plans, OSMRE has established Subchapter T to 30 CFR Chapter VII. Subchapter T consists of Parts 900 through 950. Provisions relating to Louisiana are found in 30 CFR Part 918.

Background on the Louisiana Abandoned Mine Plan Submission

On August 2, 1984, a cooperative agreement between the Louisiana Department of Natural Resources and the Office of Surface Mining Reclamation and Enforcement was approved. The purpose of this agreement was to assure that information required for the preparation of the Louisiana Abandoned Mine Reclamation plan would be assembled.

On February 3, 1986, the State of Louisiana submitted to OSMRE its proposed AML reclamation plan. After a series of interagency discussions, notice of receipt of the submission initiating the plan review was published on April 4, 1986 (51 FR 11586). The announcement requested public comments until May 5, 1986. Eight comments were received.

A public hearing on the plan was held by the Louisiana Department of Natural Resources (DNR) on June 13, 1986. A State comment period was held open until June 20, 1986. No comments were received from the general public.

Subsequent to the hearing, OSMRE representatives met with DNR officials to discuss amendments and modifications to the plan. DNR submitted AML plan amendments to OSMRE on July 7, 1986.

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The completed plan is available for review during regular business hours at all locations listed above in "ADDRESSES."

The administrative record on the Louisiana plan is available for review during regular business hours at the OSMRE administrative record office listed above under "ADDRESSES."

Assistant Secretary's Findings

1. In accordance with section 405 of SMCRA the Assistant Secretary finds that Louisiana has submitted a plan for reclamation of abandoned mines and has the ability and necessary legislation to implement the provisions of Title IV of SMCRA.

2. The Assistant Secretary has determined, pursuant to 30 CFR 884.14, that: (a) The Louisiana Department of Natural Resources has the policies and administrative structure necessary to carry out the plan;

(b) the plan meets all the requirements of 30 CFR Chapter VII, Subchapter R;

(c) the State has an approved regulatory program, and

(d) the plan is in compliance with all applicable State and Federal laws and regulations.

3. The Assistant Secretary has solicited and considered the view of Federal agencies having an interest in the plan as required by 30 CFR 884.13(a)(2). These agencies include: The U.S. Department of the Interior, Geological Survey (USGS), U.S. Department of the Interior, Fish and Wildlife Service (FWS), U.S. Department of the Interior, Bureau of Mines (BOM), U.S. Department of Agriculture, Forest Service (FS), Soil Conservation Service (SCS), Department of Energy (DOE), Federal Regional Council (FRC), and the Environmental Protection Agency (EPA).

Disposition of Comments

The following comments received on the Louisiana plan during the public comment period were considered in the Assistant Secretary's evaluation of the Louisiana plan as indicated:

(1) The FWS commented that a biological opinion under section 7(a) of the Endangered Species Act on the Proposed State AML program is needed for the Louisiana AML program as addressed under Part B(3)(a) of the 1983 Memorandum of Understanding between FWS and OSMRE. This opinion is being prepared by the FWS. OSMRE and the State agree that a biological opinion is appropriate.

(2) The FWS recommended that a provision should be made in the plan for periodic updating of the list of endangered and threatened species. OSMRE agrees with this recommendation. The State has amended the plan to include such a provision.

(3) The FWS recommended that provisions be made in the plan to verify the presence/absence of listed species within any area which could be affected by an AML project. OSMRE agrees with this recommendation. The State has included such a provision in the plan.

(4) The SCS commented that in § 884.13, the plan should clarify the fact that priorities for reclamation apply to both coal and non-coal projects. OSMRE agrees with this comment. The State has clarified the reclamation priorities accordingly.

(5) The SCS commented that the plan should include a statement that the State will coordinate its reclamation activity with the SCS as well as other Federal agencies. OSMRE agrees with this comment. The State has modified its plan accordingly.

(6) The EPA commented that reclamation activity could impact certain waters that are within the jurisdiction of section 404 of the Clean Water Act. If so, a permit may be required from the U.S. Army Corps of Engineers. Early coordination should be made with the Corps of Engineers to alleviate unnecessary delays. In the event an environmental impact statement or environmental assessment is needed, documentation of impacts on wetlands within the Corps' jurisdiction should be made. OSMRE agrees that such a statement in the plan would avoid possible confusion over jurisdiction in the future. The State has amended the plan accordingly.

(7) The EPA commented that the plan should ensure that any abandoned mine reclamation activity will fully comply with the permitting and environmental review requirements established under sections 402 and 306 of the Clean Water Act. Any discharges into waters of the United States may require a National Pollutant Discharge Elimination System (NPDES) permit. Therefore, early coordination should be afforded to EPA. OSMRE agrees with this comment. The State has amended the plan accordingly.

(8) The Advisory Council on Historic Preservation commented that little information is presented in the plan concerning the treatment of historic properties for achieving compliance with section 106 of the National Historic Preservation Act and its implementing regulations (36 CFR Part 800). OSMRE agrees with the comment. The State has added a discussion to the plan on how compliance with 36 CFR Part 800 will be accommodated.

Additional Findings

The Office of Surface Mining Reclamation and Enforcement has examined this rulemaking under section 1(b) of Executive Order No. 12291 (February 17, 1981), and has determined that, based on available quantitative data, it does not constitute a major rule. The reasons underlying this determination are as follows:

(1) Approval will not have an effect on costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; and

(2) Approval will not have adverse effects on competition, employment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rulemaking has been examined pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and OSMRE has determined that the rule will not have significant economic effects on a substantial number of small entities. The reason for this determination is that approval will not have demographic effects, direct costs, nonquantifiable costs, competitive effects, enforcement costs or aggregate effects on small entities.

The Assistant Secretary has determined that the Louisiana Abandoned Mine Land Reclamation plan will not have a significant effect on the quality of the human environment because the decision relates only to policies, procedures and organization of the State's Abandoned Mine Land Reclamation program. Therefore, under the Department of Interior Manual (DM) 516.2.3(A)(10), the Assistant Secretary's decision on the Louisiana plan is categorically excluded from the National Environmental Policy Act requirements. As a result, no environmental assessment or environmental impact statement (EIS) has been prepared on this action. It should be noted that a programmatic EIS was prepared by OSMRE in conjunction with the implementation of Title IV. Also an environmental analysis or an EIS will be prepared for the approval of grants for the abandoned mine lands reclamation projects under 30 CFR Part 886.

List of Subjects in 30 CFR Part 918

Coal mining, Reclamation, Surface mining, Underground mining, Reclamation plan.

Dated: November 3, 1986.

J. Steven Griles,

Assistant Secretary, Land and Minerals Management.

Therefore, Part 918 is amended as follows:

PART 918—LOUISIANA

1. The authority citation for Part 918 is revised to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.)

2. Section 918.20 is added to read as follows:

§ 918.20 Approval of Louisiana Abandoned Mine Land Reclamation Plan.

The Louisiana plan, as submitted and revised, is approved. Copies of the approved program are available at the following locations:

Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office,
333 W. Fourth Street, Room 3432,
Tulsa, OK 74103

State of Louisiana, Department of Natural Resouces, Office of Conservation, 625 North 4th Street,
Baton Rouge, LA 70804

[FR Doc. 86-25226 Filed 11-7-86; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 948

Extension of Deadlines for the West Virginia Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of a request from the State of West Virginia to extend the deadlines for submission of a number of required amendments to its permanent regulatory program (hereinafter referred to as the West Virginia program). Accordingly, West Virginia will now have until April 15, 1987 to submit the required statutory amendments and materials satisfying the remaining conditions of program approval.

EFFECTIVE DATE: November 10, 1986.

FOR FURTHER INFORMATION CONTACT: James C. Blankenship Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301. Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

On March 3, 1980, West Virginia submitted its proposed permanent regulatory program, which the Secretary of the Interior disapproved on October 22, 1980, following a review in accordance with the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and 30 CFR Part 732 (45 FR 69249–69271). On December 19, 1980, West Virginia resubmitted its proposed program, which the Secretary approved on January 21, 1981. Information concerning the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and an explanation of the initial conditions of approval of the West Virginia program can be found in the January 21, 1981 **Federal Register** (46 FR 5915–5956). Subsequent actions concerning proposed amendments and the conditions of approval are codified at 30 CFR 948.11, 948.12, 948.13, 948.15 and 948.16.

II. Submission of Extension Request

The July 11, 1985 **Federal Register** contained two notices announcing the approval, with certain exceptions, of two sets of program amendments submitted by West Virginia (50 FR 28316 through 28342). In his decision concerning the West Virginia Energy Act, the Director required that, no later than March 15, 1986, West Virginia submit copies of statutory revisions to correct or otherwise eliminate nine grammatical, codification and reference citation errors, as listed at 30 CFR 948.16(c).

In his decision concerning the second amendment package, which contained revised regulations and associated materials, the Secretary removed nine conditions of program approval and revised the six remaining conditions as codified at 30 CFR 948.11(a) (1), (8), (19), (38), (39) and (41). As revised, the conditions require that, by January 11, 1986, West Virginia submit additional proposed amendments to correct deficiencies concerning stability analyses for coal mine waste piles, inspection requirements for coal mine waste piles, inspection requirements for coal mine waste disposal areas, compliance information requirements for permit applications, critical habitats of threatened and endangered species with respect to coal exploration permit applications, revegetation success standards and evaluation techniques, and the issuance of show cause orders for patterns of violations.

By letter of November 5, 1985, West Virginia submitted draft proposed changes designed to address these conditions and required amendments as well as certain provisions of the amendments originally found inconsistent with Federal requirements (Administrative Record No. WV 705). By letter of December 10, 1985, OSMRE notified the State that, while the proposed changes themselves appeared to be acceptable, additional materials were needed to fully satisfy all outstanding concerns (Administrative Record No. WV 706). On February 10, 1986, West Virginia notified OSMRE that because of legislative scheduling problems, it would be unable to meet the January 11, 1986 deadline for addressing the conditions and that it would probably be unable to meet the March 15, 1986 deadline for the required statutory amendments (Administrative Record No. WV 707). The letter further stated that, if the legislature failed to act on the proposed regulatory changes, emergency regulations would be filed to address the conditions.

On March 15, 1986, the 1986 session of the legislature adjourned without acting upon the proposed amendments. On May 27, 1986, OSMRE requested that the State proceed with promulgation of emergency regulations and supply a new schedule for final resolution of all requirements. On June 30, 1986, West Virginia responded that the legislature had revised the procedures and restricted the circumstances under which emergency regulations could be filed, and that it did not believe the current situation justified an emergency filing (Administrative Record No. WV 709). Furthermore, the letter stated a desire to address those issues as part of the regulatory reform review process, rather than submitting them to the legislature as an amendment package separate from the changes which will be needed as a result of that process. To provide adequate time for preparation and consideration by the 1987 session of the legislature, West Virginia requested that the submission deadlines for both the conditions and the required amendments be extended until April 15, 1987.

III. Public Comment

The Secretary solicited public comment and provided opportunity for a public hearing on the proposed extensions in the September 11, 1986 **Federal Register** (51 FR 32338–32339). Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), comments were also solicited from various Federal agencies. The comment period closed on October 14, 1986 without receipt of any comments. Since no one requested an

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opportunity to testify at a public hearing, no hearing was held.

IV. Secretary's Determination

In consideration of the legislative schedule and the State requirement for legislative approval of all permanent regulations, and in the interest of consolidation of the rulemaking process, as discussed in the section of this notice entitled "Submission of Extension Request," the Secretary has determined that an extension of the deadlines for submission of materials satisfying the remaining conditions of program approval and the required statutory amendments is warranted. Therefore, he is extending the submission deadlines until April 15, 1987.

V. Additional Determinations

1. Compliance With the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 948

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: November 3, 1986.

J. Steven Griles,

Assistant Secretary, Land and Minerals Management.

PART 948—WEST VIRGINIA

30 CFR Part 948 is amended as follows:

1. The authority citation for Part 948 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

§948.11 [Amended]

2. In § 948.11, paragraphs (a)(1), (a)(8), (a)(19), (a)(38), (a)(39) and (a)(41), remove the date "January 11, 1986" and add, in its place, "April 15, 1987."

§ 948.16 [Amended]

3. In § 948.16, paragraph (c) introductory text, remove the date "March 15, 1986" and add, in its place, "April 15, 1987."

[FR Doc. 86–25227 Filed 11–7–86; 8:45 am]

BILLING CODE 4310-05-M

POSTAL SERVICE

39 CFR Parts 221, 222, 223, and 244

Miscellaneous Organizational Changes

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The primary purposes of this final rule are to reflect (1) the creation of a new senior level position at Headquarters, that of Associate Postmaster General, and (2) a realigned management structure at Headquarters and in the field aimed at putting decisionmaking and management expertise closer to the mailing public. Certain minor and editorial changes are also made to the regulations.

EFFECTIVE DATE: December 10, 1986.

FOR FURTHER INFORMATION CONTACT: Fred J. Hintenach (202) 268–4179.

SUPPLEMENTARY INFORMATION:

List of Subjects in 39 CFR Parts 221, 222, 223, and 244

Organization and functions (Government agencies), Authority delegations (Government agencies), Postal Service.

PART 221—GENERAL PRINCIPLES OF ORGANIZATION

1. The authority citation for Part 221 is revised to read as follows:

Authority: 39 U.S.C. 201, 202, 203, 204, 206, 401(2), 402, 403, 404.

2. In § 221.2, paragraph (a) is revised to read as follows:

§ 221.2 Board of Governors of the Postal Service.

(a) The Board of Governors directs the exercise of the powers of the Postal Service; reviews the practices and policies of the Postal Service; and directs and controls its expenditures.

* * * * *

3. In paragraph (c) of § 221.3, strike out "agency" and insert "agent" in lieu thereof, and revise paragraph (a) to read as follows:

§ 221.3 Postmaster General.

(a) The Postmaster General (PMG) is the chief executive officer of the Postal Service and is responsible for its overall operation. The PMG is named and can be removed by a majority of the nine Governors.

* * * * *

4. Redesignate §§ 221.5, 221.6, and 221.7 as §§ 221.6, 221.7 and 221.8, respectively; add new § 221.5 and revise redesignated §§ 221.6, 221.7 and 221.8 to read as follows:

§ 221.5 Associate Postmaster General.

(a) The Associate Postmaster General is appointed and can be removed by the Postmaster General.

(b) The Associate Postmaster General is required to perform all tasks as assigned by the Postmaster General.

§ 221.6 Groups and departments.

(a) Postal Service Headquarters is divided into six major groups: Human Resources, Finance and Planning, Facilities and Supply, Management Information and Research Technology, Operations Support, and Marketing and Communications. Each group is headed by a Senior Assistant Postmaster General (SAPMG). The SAPMG for Finance and Planning reports directly to the Postmaster General. The SAPMG for Operations Support reports directly to the Deputy Postmaster General. The SAPMGs for Facilities and Supply, Management Information and Research Technology, Human Resources, and Marketing and Communications report directly to the Associate Postmaster General. The SAPMGs are responsible for the following activities within their assigned areas:

(1) Program planning, direction, and review;

(2) Establishment of policies, procedures, and standards; and

(3) Operational determinations not within the full jurisdiction of field officers.

(b) Groups are divided into departments or offices headed by either Assistant Postmasters General (APMGs) or Directors. The heads of these departments and offices report to and are responsible for assisting the SAPMGs in carrying out their assigned activities.

(c) Certain other Headquarters units report directly to the Postmaster General. These include the Law Department, headed by the General Counsel, and the Inspection Service Department, headed by the Chief Postal Inspector. The Executive Assistant to the Postmaster General also reports directly to the Postmaster General.

(d)(1) The Corporate Executive Committee is composed of the Postmaster General, the Deputy Postmaster General, and the Associate Postmaster General. Its purpose is to assist the Postmaster General in establishing management policy and objectives and approving major plans, programs and budgets.

(2) The Corporate Program Committee is composed of the Senior Assistant Postmasters General and the General Counsel. Its purpose is to consider capital investments and other budgetary items, to review program proposals going to the Corporate Executive Committee and program status reports from four Program Area Committees.

(e) Statements of the functions of the various groups, departments, and offices can be found in Part 224 of this chapter.

§ 221.7 Postal Regions.

(a) There are five Postal Regions. Each region is headed by a Regional Postmaster General (RPMG) who reports to the Deputy Postmaster General, and has overall responsibility for operational activities (except those reserved to Headquarters) of the Postal Service within the region.

(b) Each RPMG's office includes five functions—Operations Support, Marketing and Communications, Finance, Planning, and Human Resources. Each regional function is headed by a Regional Director who reports to the RPMG.

(c)(1) Postal regions are composed of field divisions headed by field division general managers/postmasters whose organizational units are in turn composed of management sectional centers (MSCs) headed by MSC managers or MSC managers/postmasters, large independent post offices headed by postmasters, and bulk mail centers (BMCs) headed by BMC managers.

(2) Each field division general manager/postmaster reports to the RPMG, and has line responsibility for postal operations (except those reserved to Headquarters and regions) in the division area, the MSCs, independent post offices, and BMCs within the division area.

(3) Each MSC manager/postmaster reports to a field division general manager/postmaster, and has line responsibility for postal operations (except those reserved to Headquarters and regions) within the MSC area.

(4) Each BMC manager reports to a field division general manager/postmaster, and has line responsibility for postal operations (except those reserved to Headquarters and regions) within the BMC.

(5) The Airport Mail Facilities at JFK New York and O'Hare Field, Chicago, are headed by operations managers who report to their field division general managers/postmasters.

§ 221.8 Officers.

(a) Officers serve at the pleasure of the Postmaster General. The following officers are appointed by the Postmaster General:

(1) Associate Postmaster General;
(2) Senior Assistant Postmasters General;
(3) Assistant Postmasters General;
(4) The General Counsel and Deputy General Counsel;
(5) The Consumer Advocate;
(6) The Chief Postal Inspector;
(7) The Judicial Officer;
(8) The Executive Assistant to the Postmaster General;
(9) The Treasurer; and
(10) The Regional Postmasters General.

(b) The number of SAPMGs and APMGs is set by resolution of the Board of Governors.

PART 222—DELEGATIONS OF AUTHORITY

5. The authority citation for Part 222 is revised to read as follows:

Authority: 39 U.S.C. 203, 204, 401(2), 402, 403, 404, 409.

6. In § 222.1, revise paragraphs (a), (c), and the first sentence of (e) to read as follows:

§ 222.1 Authority for delegation.

(a) The Postmaster General is empowered to authorize any employee or agent of the Service to exercise any function vested in the Postal Service, in the PMG, or in any other Postal Service employee.

* * * * *

(c) When, by reason of absence, disability, or vacancy in office, neither the Postmaster General nor the Deputy Postmaster General can act as Postmaster General, the first available official on the following list will do so:

(1) Associate Postmaster General;
(2) Senior Assistant Postmaster General, Operations Support.

* * * * *

(e) The Associate Postmaster General; the SAPMGs; the General Counsel; the Chief Postal Inspector; and the Executive Assistant to the Postmaster General, act for the Postmaster General on assigned matters. * * *

* * * * *

§ 222.2 [Amended]

7. In § 222.2, in paragraph (a) and in the second sentence of paragraph (b), strike out "shall" and insert "must" in lieu thereof.

8. Section 222.3 is revised to read as follows:

§ 222.3 Contents of delegations.

(a) Delegations of authority shall ordinarily be made by position title rather than by name of the individual involved. An officer or executive acting in the absence of a principal has the principal's full authority.

(b) When authority is delegated to an officer, the officers above that officer shall have the same authority. Delegated authority shall not extend to aides except when an aide serves on an acting basis (see paragraph (a) of this section) or unless the aide is specifically authorized by the superior to exercise such authority.

(c) A delegation must agree with the law and regulations under which it is made and contain such specific limiting conditions as may be appropriate.

9. Section 222.4 is revised to read as follows:

§ 222.4 Redelegation.

(a) Except as otherwise prohibited by law, or by a regulation that expressly prohibits redelegation, or by the terms of the delegation:

(1) Heads of groups, departments, or offices at Headquarters are authorized to redelegate any authority vested in them.

(2) Regional Postmasters General or heads of regional departments are authorized to redelegate any authority vested in them subject to the condition that redelegation to members of a regional staff must be consistent with the then current regional organizational structure.

(3) Field division general managers/postmasters are authorized to redelegate, subject to or within guidelines issued by the RPMG, any authority vested in them, provided that

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the redelegation is consistent with the current organizational structure.

(4) Postal data center (PDC) directors are authorized to redelegate any authority vested in them.

(5) Heads of MSCs and other field installations are authorized to redelegate to members of their respective staffs any authority vested in them.

10. In § 222.5, in the introductory text of paragraph (a) strike out "administer oaths" and insert "administer oaths of office for employment" in lieu thereof; in paragraph (a)(1) strike out "Employee and Labor Relations" and insert "Human Resources" in lieu thereof; in paragraph (a)(7) strike out "PMS—16 and above and PES positions" and insert "EAS–16 and above," in lieu thereof; in paragraph (b) strike out "Employee and Labor Relations" and insert "Human Resources" in lieu thereof; and revise paragraph (c) to read as follows:

§ 222.5 [Amended]

* * * * *

(c) *Transfers of accountability.* In addition to other personnel authorized under this section, associate office coordinators at field divisions, and postal system examiners at MSCs may administer oaths of office for employment at any post office in conjunction with transfers of accountability.

11. In § 222.6, paragraph (c) is designated as introductory text and revised to read as follows:

§ 222.6 [Amended]

* * * * *

(c) *Postmasters' authority.* Postmasters are required, empowered, and authorized, when requested, to administer oaths with a like force and effect as officials having a seal, as follows:

12. Section 244.1(a)(1) through (a) (4) and 244.1(b) and (c) are redesignated §§ 222.6(c)(1) through (c)(4) and 222.6(d) and (e) respectively.

§ 222.7 [Amended]

13. In § 222.7, in paragraphs (a)(3), (c)(2), and (c)(3) strike out "Finance" and insert "Finance and Planning" in lieu thereof.

§ 222.8 [Amended]

14. In § 222.8, in paragraph (a)(3) strike out "Finance, or his designee" and insert "Finance and Planning, or designee" in lieu thereof, and in paragraph (c)(3) strike out "or his designees" and insert "or designees" in lieu thereof.

15. In § 222.9, revise the heading, the introductory text of paragraph (a), and paragraph (b) to read as follows:

§ 222.9 Delegation of authority to the Senior Assistant Postmaster General, Finance and Planning.

(a) *Delegation.* The Senior Assistant Postmaster General, Finance and Planning, may take final action on:

* * * * *

(b) *Redelegation.* The Senior Assistant Postmaster General, Finance and Planning, is authorized to redelegate all or part of the authority vested by paragraph (a) of this section to such other officers or executives as deemed appropriate.

§ 222.10 [Amended]

16. In § 222.10, in the heading and in the body of the regulation strike out "Director, Office of International Postal Affairs" and insert "APMG, International Postal Affairs Department" in lieu thereof.

PART 223—RELATIONSHIPS AND CHANNELS OF COMMUNICATION

17. The authority citation for Part 223 is added to read as follows, and the authority citations following the sections in Part 223 are removed as follows:

Authority: 39 U.S.C. 203, 204, 401(2), 402, 403, 404.

18. In § 223.1, in paragraph (a) strike out "Employee and Labor Relations" wherever appearing, and "Finance Group", and insert "Human Resources" and "Information Resource Management Department" respectively in lieu thereof; remove paragraph (d) and redesignate paragraph (e) as paragraph (d); in the heading of paragraphs (c) and redesignated (d) strike out "District Offices" and insert "Field Divisions" in lieu thereof; in paragraphs (c) and redesignated (d) strike out "District Managers" and insert "field division general managers/postmasters" in lieu thereof; and revise paragraph (b) to read as follows:

§ 223.1 [Amended]

* * * * *

(b) *Between Postal Region Offices and Field Divisions.* The Regional Postmaster General shall provide guidance and direction to the respective field division general managers/postmasters within the region with the assistance of Regional Directors and their staffs in their areas of specialization.

* * * * *

19. In § 223.2, in paragraph (a)(1) strike out "Employee and Labor Relations" the second time it appears and insert "Human Resources" in lieu thereof; in paragraph (a)(2) strike out "Information Resource Management Department" and insert "APMG, Information Resource Management Department" in lieu thereof; in paragraph (a)(4) strike out the comma after "Law Department" and insert "and" in lieu thereof, and strike out ", and Public and Employee Communications Department"; in paragraph (c) strike out "Finance Group" wherever appearing and insert "Finance and Planning Group" in lieu thereof; and revise paragraph (b) to read as follow:

§ 223.2 [Amended]

* * * * *

(b) *Regional Offices and Installations.* The regular channels of communication are:

(1) Associate office postmasters, to and from MSC managers or MSC managers/postmasters.

(2) MSC managers or MSC managers/postmasters, to and from field division general managers/postmasters.

(3) BMC managers, to and from field division general managers/postmasters.

(4) Field division general managers/postmasters, to and from their Regional Postmasters General.

(5) Heads of other postal installations, to and from their designated superiors as appropriate.

* * * * *

PART 244—[REMOVED]

20. Part 244 is removed.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 86–25318 Filed 11–7–86; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–9–FRL–3106–2]

Approval and Promulgation of Implementation Plans; Insular Territory of the Commonwealth of the Northern Mariana Islands; Lead Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: The Insular Territory of the Commonwealth of the Northern Mariana Islands (CNMI) has submitted their

Territorial Implementation Plan for lead (Pb). This plan consists of a negative declaration and new source review (NSR) rules. It provides for the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) for Pb. Today's notice approves the negative declaration portion of the plan, as authorized by the Clean Air Act. EPA will solicit public comment on the NSR portion of the submittal in a separate **Federal Register** action.

DATES: This action is effective January 9, 1987, unless notice is received by December 10, 1986, that someone wishes to submit adverse or critical comments.

ADDRESSES: Comments should be sent to: Kevin Golden, Chief, Technical Evaluation Section, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105.

Copies of the negative declaration and supporting documentation are available for public inspection during normal business hours at the EPA Region 9 office (address below) and at the following location:

Commonwealth of the Northern Mariana Islands, Department of Public Health and Environmental Services, Division of Environmental Quality, Dr. Torres Hospital, Saipan, Mariana Islands 96950.

EPA Library, Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kevin Golden, telephone: (415) 974-7640, FTS: 454-7640.

SUPPLEMENTARY INFORMATION:

Background

On October 5, 1978 (43 FR 46256) EPA promulgated National Ambient Air Quality Standards (NAAQS) for Pb. On December 15, 1982 the Governor CNMI submitted their Territorial Implementation Plan for Pb as required by section 110 of the Clean Air Act.

Discussion

CNMI has no significant stationary sources of Pb. Automobiles are the major contributors to Pb emissions, estimated at 1.16 tons/year in 1982 on Saipan. In such areas, Federal regulations that limit the Pb content of gasoline have resulted, and will continue to result, in attainment and maintenance of the NAAQS for Pb.

The Territorial Implementation Plan consists of a negative declaration and a NSR provision for Pb. The NSR portion of the plan will be the subject of a separate **Federal Register** proposal. The negative declaration was submitted based upon the fact that CNMI has no Pb polluting industries and a minimal amount of automobile generated Pb emissions. The above implementation plan elements, though minimal, satisfy the applicable requirements of 40 CFR Part 51 for Pb. Although the NSR rules were adopted with proper public hearing, CNMI failed to hold a public hearing on the negative declaration. EPA does not regard this failure as so material in these unique circumstances as to warrant disapproval of the plan. Judging from the substantive merits and simplicity of the plan, disapproval solely on the basis of this failure would have no significant or practical value. The failure is *de minimis*.

EPA Action

EPA is taking final action under section 110 of the Clean Air Act to approve the negative declaration for Pb as part of the Territorial Implementation Plan for CNMI.

Direct Final

EPA's approval of the negative declaration for Pb is being done without prior proposal because the action is not considered to be controversial. The public should be advised that this action will be effective 60 days from the date this approval is published in the **Federal Register**. However, if notice is received by EPA within 30 days indicating that someone wishes to submit adverse or critical comments, this approval action will be withdrawn and a subsequent notice will be published before the effective date. The subsequent notice will indefinitely postpone the effective date, modify the final action to a proposed action, and establish a comment period.

Regulatory Process

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 9, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

Under 5 U.S.C. section 605(b), I certify that SIP approvals do not have a significant economic impact on a substantial number of small entities (46 FR 8709).

List of Subjects in 40 CFR Part 52

Air pollution control, Lead.

Dated: October 5, 1986.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. 40 CFR Part 52 is amended by adding Subpart FFF consisting of § 52.2900 to read as follows:

Subpart FFF—Commonwealth of the Northern Mariana Islands

§ 52.2900 Negative declaration.

(a) Air Pollution Implementation Plan for the Commonwealth of the Northern Mariana Islands.

(1) Letter of December 15, 1982, from the Governor to EPA, which is a negative declaration indicating no major lead sources and continued attainment and maintenance of the National Standards for lead.

[FR Doc. 86-25106 Filed 11-7-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Parts 52 and 62

[A-1-FRL-3107-7]

Approval and Promulgation of Implementation Plans; Massachusetts; Correction Notice; Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Certification of No Designated Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is codifying the certification that no sulfuric acid plants that emit sulfuric acid mist are located in the Commonwealth of Massachusetts. Additionally, a correction is being made to Table 52.1167, "EPA-approved Massachusetts Rules and Regulations." The intended effect of this action is to codify this information in 40 CFR Part 62 and 40 CFR Part 52.

EFFECTIVE DATE: This action will be effective January 9, 1987, unless notice is received by December 10, 1986 that adverse or critical comments will be submitted.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2313, JFK Federal Building, Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public

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inspection during normal business hours at the Environmental Protection Agency, Room 2313, JFK Federal Bldg., Boston, MA 02203; and Department of Environmental Quality Engineering, Division of Air Quality Control, One Winter Street, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Lorenzo Thantu (617) 223–4880; FTS 223–4880.

SUPPLEMENTARY INFORMATION:

Certification of No Designated Facilities

Pursuant to section 111(d) of the Clean Air Act, EPA promulgated regulations at 40 CFR Part 60, Subpart B, which require states to submit plans to control emissions of "designated pollutants" from "designated facilities." In the event that a state does not have a particular "designated facility" located within its boundaries, EPA requires that a negative declaration be submitted.

On February 18, 1986, the Commonwealth of Massachusetts submitted a negative declaration letter to the EPA which certified that with the shutdown of Monsanto's Industrial Chemicals Company's sulfuric acid unit in Everett, Massachusetts there are no existing sulfuric acid production plants within its boundaries subject to the requirements of 40 CFR Part 60, Subpart B. By submitting this negative declaration letter, the Commonwealth of Massachusetts has fulfilled its responsibility for submitting state plans as required by 40 CFR 60.23.

The Administrator is approving this negative declaration under 40 CFR Part 62, Subpart W since the submittal meets the requirements of section 111(d) of the Clean Air Act and 40 CFR Part 60, Subpart 8, "Adoption and Submittal of State Plans for Designated Facilities."

Final Action

EPA is codifying a certification that no sulfuric acid plants are located in the Commonwealth of Massachusetts at 40 CFR 62.5351.

EPA is codifying this information without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective December 10, 1986.

Correction to 40 CFR 52.1167, Table of EPA Approved Massachusetts Rules and Regulations

On September 25, 1985, an addition to the Table of EPA-Approved Massachusetts Rules and Regulations found at 40 CFR 52.1167 was to be codified. That codification was done incorrectly as an amendment replacing the entire Table rather than as an addition to that Table. The addition to the Table found at 40 CFR 52.1167 should be codified as follows:

Under 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 10, 1986. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

List of Subjects

40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, and Reporting and Recordkeeping requirements.

40 CFR Part 62

Air pollution control, Administrative practice and procedure and Reporting and Recordkeeping requirements.

Note.—Incorporation by reference of the State Implementation Plan for the Commonwealth of Massachusetts was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: October 17, 1986.

Lee M. Thomas,
Administrator.

PART 62—[AMENDED]

Part 62 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart W—Massachusetts

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Subpart W is amended by adding § 62.5351 as follows:

Sulfuric Acid Mist Emissions From Existing Sulfuric Acid Plants

§ 62.5351 Identification of Plan—Negative Declaration.

On February 18, 1986, the Commonwealth of Massachusetts submitted a letter certifying that there are no existing sulfuric acid plants in the Commonwealth of Massachusetts.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

§ 52.1167 [Amended]

2. Section 52.1167 is amended to add the following entries to the table of EPA-Approved Rules and Regulations.

TABLE 52.1167—EPA APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/ unapproved sections
310 CMR 7.00	Definitions	Feb. 14, 1985	Sept. 25, 1985	50 FR 38804	64	Motor vehicle fuel.
*	*	* *	*	*	*	
310 CMR 7.02(12) (c) and (d)	Gasoline Tank Trucks	Feb. 14, 1985 and May 22, 1985.	Sept. 25, 1985	50 FR 38804	64	Tank trucks.
*	*	* *	*	*	*	

[FR Doc. 86–25343 Filed 11–7–86; 8:45 am]

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40 CFR Part 62

[A-6-FRL-3107-4]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Arkansas; Compliance Schedules for Total Reduced Sulfur From Kraft Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice approves the Compliance Schedule portion of the Arkansas plan for controlling total reduced sulfur (TRS) emissions from existing kraft pulp mills which was submitted by the Governor on November 25, 1985. On September 12, 1984, EPA approved Arkansas' plan for controlling TRS from existing kraft pulp mills. As part of the plan the state agreed to submit the Compliance Schedules, in accordance with 40 CFR 60.24, for each of the seven affected mills, after public hearings were held as prescribed in § 60.23. The schedules specify final compliance dates and enforceable increments to be as expeditiously as practicable but not more than six years from approval of the state regulations; i.e., October 12, 1990.

EFFECTIVE DATE: This action will be effective on January 9, 1987 unless notice is received by December 10, 1986 that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments on this action should be addressed to Thomas H. Diggs of the EPA Region 6, Air Programs Branch, SIP/New Source Section (address below). Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-AN), 1201 Elm Street, Dallas, Texas 75270

Arkansas Department of Pollution Control and Ecology, Division of Air Pollution Control, 8001 National Drive, Little Rock, Arkansas 72209

FOR FURTHER INFORMATION CONTACT: Gregg C. Guthrie, Air Programs Branch, EPA Region 6, 1201 Elm Street, Dallas, Texas 75270, telephone (214) 767-1597, or (FTS) 729-1597. Reference Docket File Number AR-86-3.

SUPPLEMENTARY INFORMATION: On September 12, 1984, EPA approved (effective October 12, 1984) Arkansas' plan for controlling TRS emissions from existing kraft pulp mills pursuant to section 111(d) of the Clean Air Act (See 49 FR 35771). On November 25, 1985, the Governor of Arkansas, after adequate notice and public hearings, submitted the Compliance Schedules for the state's plan for controlling TRS emissions from the seven affected kraft pulp mills.

The Arkansas plan for controlling TRS emissions requires kraft pulp mills to comply with the emission limits as expeditiously as practicable, but not more than six years from approval of the state regulations; i.e., October 12, 1990, as discussed in the Evaluation Report for the February 28, 1983, State 111(d) Plan submittal.[1] The mills were required to submit proposed compliance schedules to the Arkansas Department of Pollution Control and Ecology (ADCPE) for review. The schedules are required to include increments of progress, a description of control technology, and compliance test methods and test frequency for each emission source.

The ADPCE approved each schedule between the dates of July 29, 1985, and September 25, 1985. The State adopted the schedules to establish final compliance dates and enforceable increments of progress for TRS from the pulp paper industry.

EPA reviewed each schedule and developed an evaluation report,[2] which is based on the requirements of § 111(d) of the Clean Air Act of 1977, as amended and 40 CFR Part 60 Subpart B. This evaluation report is available for inspection by interested parties during normal business hours at the EPA Region 6 Office and the other addresses above.

Table 1 summarizes the final compliance dates of the applicable equipment for each of the seven affected mills.

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[1] EPA Review of Arkansas' 111(d) plan for the Control of Total Reduced Sulfur from Kraft Pulp Mills and Addendum to EPA Review of Arkansas 111(d) Plan for Total Reduced Sulfur.

TABLE 1.—FINAL COMPLIANCE CERTIFICATION DATES

	Recovery furnace	Digester system	Multiple-effect evaporator system	Lime kiln	Black liquor oxidation system	Small dissolving tank
Arkansas Kraft Corp., Morrilton	Oct. 31, 1985	Dec. 31, 1989	In compliance	Dec. 31, 1989	N/A	Oct. 31, 1985.
Georgia Pacific Corp., Crossett	New source standard	Dec. 31, 1987	New source standard	New source standard	New source standard	New source standard.
International Paper Co., Camden	Sept. 30, 1988	July 30, 1988	July 30, 1988	July 30, 1988	N/A	July 30, 1988.
International Paper Co., Pine Bluff	Oct. 31, 1988	Oct. 31, 1988	Oct. 31, 1988	Oct. 31, 1988	Oct. 31, 1988 if needed	Jan. 31, 1988 or Dec. 31, 1987.
Nekoosa Paper Inc., Ashdown	July 31, 1990	July 31, 1987	July 31, 1987	New source standard	Dec. 30, 1988	In compliance.
Potlatch Corp., McGehee	In compliance	In compliance	In compliance	In compliance	N/A	June 30, 1990.
Weyerhaeuser Paper Co., Pine Bluff	June 30, 1986	Feb. 28, 1989	Feb. 28, 1989	Feb. 28, 1989	N/A	Sept. 30, 1986 or June 30, 1986.

Final Action

By this notice, EPA is approving the Arkansas Compliance Schedule for the Control of TRS emissions from kraft pulp mills as meeting the requirements of section 111(d) of the Clean Air Act and of 40 CFR Part 60 Subpart B.

EPA has reviewed this addition to the Arkansas Plan for controlling TRS emission from kraft pulp mills and is approving it as submitted. This action is taken without prior proposal because the change is non-controversial and EPA anticipates no adverse comments on it. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days of publication that someone wishes to submit adverse or critical comments, this action will be withdrawn and a subsequent notice will be published before the effective date. The subsequent notice will withdraw the final action and will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 9, 1986. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2).).

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 62

Air pollution control, Fluoride, Sulfur, Administrative practice and procedure, Intergovernmental relations, Reporting and recordkeeping requirements, Phosphate, Aluminum, Fertilizers, Paper and paper products industry, Sulfuric oxides, Sulfuric acid plant.

Dated: October 17, 1986.

Lee M. Thomas,

Administrator.

PART 62—[AMENDED]

Part 62 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart E—Arkansas

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642

2. In Subpart E—Arkansas, a new § 62.866 is added to read as follows:

§ 62.866 Compliance schedule.

The Compliance Schedules were submitted on December 16, 1985, by the Governor to control total reduced Sulfur emissions from the seven kraft pulp mills identified in § 62.865(a). The schedules specify final compliance dates and enforceable increments to be as expeditiously as practicable but not more than six years from approval of the state regulations; i.e., October 12, 1990.

[FR Doc. 86–25344 Filed 11–7–86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[A-6-FRL-3107-5]

Designation of Areas for Air Quality Planning Purposes; State of Texas; Nueces and San Patricio Counties for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice approves the Texas Air Control Board (TACB) January 27, 1986, request to redesignate the ozone (O_3) nonattainment area of Nueces County and the unclassifiable area of San Patricio County to attainment. On April 18, 1986, the TACB submitted additional information to their request. EPA is also amending the Texas O_3 chart by adding one Air Quality Control Region (AQCR) numbered 218. AQCR 218 was inadvertently not included in the latest publication of Title 40 CFR. Therefore, EPA is requesting this AQCR be

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[2] EPA Evaluation Report for the Compliance Schedules for the Control of Total Reduce Sulfur Emissions from Kraft Pulp Mills.

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included in the next publication of Title 40 CFR.

EFFECTIVE DATE: This action will be effective on January 9, 1987, unless notice is received by December 10, 1986 that someone wishes to submit adverse or critical comments.

ADDRESSES: Notice for comments may be submitted to Thomas H. Diggs at the EPA Region 6 Office address listed below.

Copies of the documents relevant to this action are available for inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Public Information Reference Unit, EPA Library Rm. 2404, 401 M Street SW., Washington, DC 20460
U.S. Environmental Protection Agency Region 6, Library, 1201 Elm Street, Dallas, Texas 75270
Texas Air Control Board, 6330 Hwy. 290 East, Austin, Texas 78723

FOR FURTHER INFORMATION CONTACT: Gregg C. Guthrie, SIP New Source Section, Air, Pesticides and Toxics Division, Environmental Protection Agency Region 6, 1201 Elm Street, Dallas, Texas 75270, (214) 767-1597 or (FTS) 729-1597. Reference Docket No. TX-86-02.

SUPPLEMENTARY INFORMATION: On January 27, 1986, pursuant to section 107(d)(5) of the Clean Air Act (CAA), the TACB submitted a request to redesignate the O_3 nonattainment area of Nueces County and the unclassifiable area of San Patricio County to attainment. On April 18, 1986, the TACB submitted additional information to their request. EPA reviewed the request and developed an evaluation report,[1] which is available for inspection during normal business hours at the EPA Region 6 office and the other addresses listed above.

The request satisfies all of the necessary criteria for redesignations. For nonattainment areas, this data includes the most recent three years of quality assured representative ambient air quality data showing no violations (two exceedances in any one year constitute a violation) and evidence of an implemented control strategy that EPA has fully approved. For unclassifiable areas, the requirement is one year of monitoring data showing no violations.

Nueces County has two continuous O_3 monitors. Site 25 has had one exceedance of the O_3 standard in the last 3 years. Site 25 was established in June 1981, and is located at the Corpus Christi State School on Airport Road. Site 26 has had no exceedances since it was established in June 1984. The redesignation is based on the three years of data from Site 25.

The TACB submitted the Texas State Implementation Plan (SIP) on March 30, 1979. The SIP was approved by the EPA on March 25, 1980. The SIP contained a control strategy for Nueces County that has been implemented and continues to be in effect.

For the 1979 SIP a design value, based on O_3 measurements for 1975 through 1978, for Nueces County was calculated at 0.14 ppm using the Empirical Frequency Distribution method. This method was described in the January 1979 EPA document, "Guideline for Interpretation of Ozone Air Quality Standards." The State used the design value in the modified version of the linear rollback technique to determine the percent emission reduction required in order to demonstrate attainment. Values of 0.10 ppm and 0.06 ppm were chosen to represent the present level of transported ozone, and the future level of transported ozone, respectively. The required percentage of emission reduction to show attainment for Nueces County was less than one percent.

Reductions from Stationary Sources were achieved through TACB Regulation V entitled, "Control of Air Pollution from Volatile Organic Compounds". Mobile source emission reductions were achieved through the Federal Motor Vehicle Control Program (FMVCP). Anticipated emission reduction from the FMVCP and the application of Reasonably Available Control Technology (RACT) were calculated at 35.0% for Nueces County in the 1979 Texas SIP.

To redesignate San Patricio County from unclassifiable to attainment does not involve any regulatory change. The formal table containing the designation status is not changed since the attainment and unclassifiable designations are combined for ozone. Only one year of data showing no more than one exceedance per year is required to redesignate from unclassifiable to attainment. The data has been presented and is satisfactory and complete.

Final Action

Based upon EPA's review of the State's request, EPA is redesignating Nueces and San Patricio Counties to attainment for O_3. This action is taken without prior proposal because the changes are non-controversial and EPA anticipates no adverse comments on them. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days of publication that someone wishes to submit adverse or critical comments, this action will be withdrawn and a subsequent notice will be published before the effective date. The subsequent notice will withdraw the final action and will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 9, 1987. This action may not be challenged later in a proceeding to enforce its requirements. (See 307(b)(2)).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas

Dated: October 17, 1986.

Lee M. Thomas,
Administrator.

40 CFR Part 81 is amended as follows:

PART 81—[AMENDED]

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. In § 81.344 the attainment status designation table for Texas—Ozone (O_3) is amended by revising the entry AQCR 214 and adding AQCR 218 to read as follows:

§ 81.344 Texas.

* * * * *

OZONE

[Texas—(O_3)]

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
* * * * *		
AQCR 214:		
Nueces County		X
Victoria County	[1]X	
Remainder of AQCR		X

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[1] EPA Review of Texas' Request to Redesignate Nueces and San Patricio Counties to attainment for O_3.

OZONE—Continued

[Texas—(O₃)]

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
* * * * *		
AQCR 218:		
Ector County		X
Remainder of AQCR		X
* * * * *		

[1] EPA designation replaces State designation.

[FR Doc. 86-25345 Filed 11-7-86; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-40

[FPMR Temp. Reg. A-30]

Use of Contract Airline/Rail Passenger Service Between Selected Cities/Airports

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This regulation prescribes policies and procedures governing the use of U.S. certified carriers which are under contract with the General Services Administration (GSA) to furnish Federal employees and other persons authorized to travel at Government expense with scheduled airline/rail passenger service between selected cities/airports.

DATES: Effective date: October 1, 1986.

Expiration date: September 30, 1987, unless sooner revised or suspended.

FOR FURTHER INFORMATION CONTACT: Charles T. Angelo, Director, Travel and Transportation Management Division (FTS/ (703) 557-1261).

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12551 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-40

Freight, Government property management, Moving of household goods, Office relocations, Transportation.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of the Subchapter A to read as follows:

Federal Property Management Regulations, Temporary Regulation A-30

September 23, 1986.

To: Heads of Federal agencies

Subject: Use of contract airline/rail passenger service between selected cities/airports.

1. *Purpose.* This regulation prescribes policies and procedures governing the use of U.S. certificated carriers in furnishing Government employees and other persons authorized to travel at Government expense with scheduled airline/rail passenger service between selected U.S. and international cities/airports at reduced fares.

2. *Effective date.* This regulation is effective October 1, 1986.

3. *Expiration date.* This regulation expires September 30, 1987, unless sooner revised or superseded.

4. *Background.* The General Services Administration (GSA) has entered into new contracts with U.S. certificated carriers to furnish airline/rail passenger transportation for official Government travel between selected U.S. and international cities/airports at reduced rates. In some cases, the contracts apply to individual airports in cities served by more than one airport. Pub. L. 99-272 amended section 306(f) of the Rail Passenger Service Act (45 U.S.C. 546(f)) to allow the National Railroad Passenger Corporation (AMTRAK) to "participate in the contract air program . . . where service provided by the Corporation is competitive as to rates and total trip times." The policies and procedures, which are subject to change with each contract cycle, have been set out as an attachment to this regulation. GSA will issue revisions to these policies and procedures as supplements to this regulation by transmitting replacement pages to the attachment.

5. *Applicability.* This regulation is mandatory only to the extent provided in the attachment; services may be offered to other persons at the option of carriers under contract.

6. *Comments.* Comments or recommendations concerning this regulation and its provisions may be submitted to the General Services Administration, FBT, Washington, DC 20406.

7. *Effect on other directives.* This regulation cancels FPMR Temporary Regulation A-22 and supplements thereto.

T.C. Golden,

Administrator of General Services.

Attachment A

1. *General.* This regulation prescribes policies and procedures governing the use of U.S. certificated carriers which are under contract with GSA to furnish Federal employees and other persons authorized to travel at Government expense with scheduled airline/rail passenger service between selected U.S. and international cities/airports at reduced fares. The carriers under contract (hereafter referred to as contractors), the contract fares, and the selected city and airport pairs to which the contract fares apply are not identified in this regulation, but are contained in the Federal Travel Directory, a monthly publication to be used in conjuction with this regulation. Noncontract carriers may be used between the selected cities/airports under conditions specified in par. 9.

2. *Federal Travel Directory.* The Federal Travel Directory (FTD) is published monthly by GSA and the Department of Defense to provide up-to-date information to Federal travelers on fares, schedules, and coverage of individual cities/airports. Government employees should order copies of the FTD through their appropriate headquarters administrative offices. The FTD is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; for ordering information, telephone the Central Order Desk on (202) 783-3238 and ask for the Federal Travel Directory, GPO Stock Number 722-006-00000-3.

3. *Applicability.*

a. This regulation is mandatory for all executive agencies (except the Department of Defense (DOD)) and other Federal agencies subject to the authority of the Administrator of General Services pursuant to the Federal Property and Administrative Services Act of 1949, as amended, and 5 U.S.C. 5701 and 5721, et seq. (Uniformed members and civilian employees of DOD are subject to the procedures established in the Military Traffic Management Regulation AR 55-355/NAVSUPINST 4600.70/MCO P4600.14A/DLAR 4500.3.)

b. The following persons are exempt from the mandatory use of this

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regulation; however, they are authorized to obtain services under this regulation at the option of the contractors when seating space is available:

(1) Uniformed members of the Public Health Service, the National Oceanic and Atmospheric Administration, and the U.S. Coast Guard;

(2) Members and employees of the U.S. Congress;

(3) Employees of the judicial branch of the Government;

(4) Employees of the U.S. Postal Service;

(5) Foreign service officers;

(6) Cost-reimbursable contractors working for the Government; and

(7) Employees of any agency having independent statutory authority to prescribe travel allowances and who are not subject to the provisions of 5 U.S.C. 5701 through 5709.

4. *Alternate use of noncontract rail or bus service.* Notwithstanding the provisions of this regulation, noncontract rail or bus service may be used when the agency determines that these modes are advantageous to the Government (cost, energy, and other factors considered) and compatible with the requirements of the travel mission. (See ch. 1-2.2c(1)(b)(iii), Federal Travel Regulations.)

5. *Responsibility of contractors.*

a. Contractors are not required to furnish services if, at the time of the request for service, the scheduled carrier's conveyance is fully loaded; nor shall contractors be required to furnish any additional aircraft or railcars to satisfy the transportation requirement. Contractors will provide the official Government traveler with services that are the same as those provided to their commercial passengers in scheduled jet or rail coach service, subject to the rules and procedures published in tariffs filed with the Airline Tariff Publishing Company or contained in the contractors' contracts of carriage.

b. In describing unrestricted contract fares, contractors will use the designator "YCA." The contractors will describe restricted contract fares by using a three-letter designator in which the last two characters will always consist of the letters "CA" (e.g., *QCA).*

c. Contractors will issue prepaid tickets at no charge to Federal agencies when such tickets are requested by the Government in accordance with the provisions of par. 6. This service, commonly known as prepaid ticket advice (PTA), includes notification between carriers' offices by electronic means or mail that a requestor in one location has purchased and requested issuance of prepaid transportation tickets to a person in another location. Generally, this service is used for Federal travelers who are located in remote areas or at long distances from airports or rail terminals and do not have immediate access to a ticket issuing facility.

6. *Procedures for obtaining service.*

a. Except as provided in subpars. b, c, and g of this paragraph, contract airline/rail passenger service shall be ordered by the issuance of a U.S. Government Transportation Request (GTR) (Standard Form 1169), either directly to contractors or indirectly to Traffic Management Centers (TMCs) established by GSA as provided in FPMR Temporary Regulation A-24. (See par. 7 on the use of TMCs.)

b. Agencies and departments participating in GSA's travel and transportation expense payment system are authorized to use GSA contractor-issued charge cards to the extent provided in FPMR Temporary Regulation A-25 and supplements. These charge cards may be presented to contractors, TMCs, airline and AMTRAK ticket counters, or agency travel officers, as appropriate and in accordance with agency policies and procedures implementing the charge card program.

c. In limited circumstances when a traveler uses cash to procure service under FPMR 101-41.203-2, the traveler shall be prepared to authenticate the trip as official travel. When cash is used, the contractors listed in the FTD have the option of furnishing services at either the contract or noncontract fare. If only one contract is awarded for a city/airport pair and the contractor does not provide a contract fare with the use of cash, the traveler shall procure service from a carrier offering the lowest fare. If more than one carrier has been awarded a contract for a city/airport pair, the traveler shall observe the order of contractor succession in selecting a contractor which provides a contract fare with the use of cash; if none of the contractors provides a contract fare with the use of cash, the traveler shall procure service from the carrier offering the lowest fare and which will accept cash. Cash or personal credit cards shall not be used to circumvent the Government's contracts.

d. When a reservation for contract service is requested, the fare basis shall be identified as "YCA" (unrestricted) or "CA" (restricted), as appropriate, and the contractor's ticket agent shall be instructed to apply the appropriate fare basis and contract fare. Agencies using teletype ticketing equipment shall examine airline tickets to determine if the tickets contain the correct fare or whether they should be canceled and new tickets issued. Tickets picked up at the airline ticket office shall be verified to ensure that the proper fare is shown on the ticket.

e. Contract fares apply only for the city-airport pairs named in the FTD, and are not applicable to or from intermediate points. However, the contract fares are applicable in conjunction with other published fares or other contract fares. Contract fares shall not be used for personal travel taken in connection with official travel.

f. When a city/airport pair published in the FTD indicates that only one contract is awarded and the contractor subsequently offers a fare lower than its contract fare for the same service, the ordering agency may elect to use the lower fare if it is compatible with the agency's travel requirements. Promotional, restricted, and those special fares offered by the contractor and applicable only to Government employees on official travel (commonly known as status fares) may be used if the traveler can meet the qualifying restrictions to obtain such fares.

g. When the FTD indicates that separate contract fares apply for specific airports in selected cities served by more than one airport, travelers may (without further justification) use the airport which best meets their needs.

h. Cost-reimbursable contractors, traveling in performance of a Government contract and with proper identification from the contracting agency, are authorized to obtain contract fares if the contractor agrees to the arrangement. Cost-reimbursable contractors may obtain the GSA contract fares through the use of a GTR, contract number, cash, or a personal credit card. The FTD identifies the contractors which agree to furnish transportation services to cost-reimbursable contractors at the GSA contract fares when documentation and payment conditions noted in the FTD are met.

7. *Use of Traffic Management Centers (TMCs).* TMCs are commercial travel offices operated by travel agents under contract with GSA or by a Scheduled Airlines Traffic Office (SATO) under contract with GSA. These travel agents and SATOs are responsible for providing and arranging all travel services required by the participating agencies.

a. When GTRs are used, the TMCs are assigned GTR numbers by each participating agency and these GTR numbers shall be shown on all transportation tickets issued.

b. When GSA contractor-issued charge cards or Government Travel

System (GTS) accounts are used, travel management services will be furnished as provided in FPMR Temporary Regulation A-25. (See the FTD for the location of TMCs.)

8. *Progressive airline awards for the same city/airport pair.* When progressive awards are made for the same city/airport pair, the contractors are listed in the FTD in priority order from the contractor (primary) offering the lower YCA fare to the contractor (secondary) offering the next higher YCA fare. Except as otherwise provided in this paragraph, agencies shall obtain contract services in the order of contractor priority specified in the FTD.

a. Where the contractor offers both a YCA fare and a restricted fare (e.g., QCA) for the same city/airport pair, the FTD lists both fares and describes the qualifying conditions for obtaining the restricted fare. The availability of a lower restricted fare by a secondary contractor does not remove the Government's obligation to request service from the primary contractor. Agencies may use the secondary contractor's restricted fare only if the exceptions noted in subpar. b of this paragraph indicate that the use of the secondary contractor is justified. For example, if the primary contractor listed in the FTD offers a YCA fare of $90 and the secondary contractor offers a YCA fare of $100 and an QCA fare of $80, the QCA fare of $80 may be used only if the primary contractor with the lower YCA fare of $90 is displaced for reasons noted in subpar. b of this paragraph.

b. The secondary contractor may be used when:

(1) Seating space or the scheduled flight of the primary contractor is not available in time to accomplish the purpose of the travel, or the scheduled flight would require the traveler to incur unnecessary overnight lodging expense;

(2) The primary contractor's flight schedule for the travel involved is inconsistent with the Government's policy of scheduling travel to the maximum extent practicable during normal working hours (for further information, see the Federal Personnel Manual, Supplement 990-2); or

(3) Based on a cost comparison, the primary contractor's fare, when added to such factors as ground transportation, lost productive time, allowable overtime, and additional overnight lodging expense, would result in higher costs to the Government than the costs resulting from the use of the secondary contractor.

c. When a contractor offers a commercial fare lower than its Government contract fare, the ordering agency may use the lower fare provided the qualifications for obtaining the lower fare are compatible with the agency's travel requirements and provided a cost comparison of total costs prescribed in subpar. b(3) of this paragraph justifies a change in the order of contractor succession. By offering the general public a fare lower than its contract fare, the contractor assumes the status of a noncontract carrier and the provisions of par. 9 apply.

9. *Use of noncontract carriers for listed city/airport pairs.*

a. Heads of agencies are authorized to approve the use of noncontract carriers for city/airport pairs listed in the FTD when their use is justified under the conditions specified in subpar. b of this paragraph. This authority may be delegated provided appropriate guidelines in the form of regulations or other written instructions are furnished the designee. Redelegations of authority shall be limited. Delegation and redelegation of authority shall be held to as high an administrative level as practicable to ensure adequate consideration and review of the circumstances requiring the use of noncontract carriers. Justification for the use of noncontract carriers will be authorized on individual travel orders (if known before travel begins) or approved on vouchers (if not known before travel begins).

b. Use of noncontract carriers for city/airport pairs listed in the FTD is justified when:

(1) Seating space or the scheduled service of the contractor is not available in time to accomplish the purpose of the travel, or the scheduled service would require the traveler to incur overnight lodging expense;

(2) The contractor's schedule for the travel involved is inconsistent with the Government's policy of scheduling travel to the maximum extent practicable during normal working hours; or

(3) Based on a cost comparison (see note),

(a) A restricted or unrestricted coach fare available to the general public is lower than the contract fare or other fare offered by the contract carrier, all other cost factors being equal; or

(b) Use of a noncontract coach fare available to the general public would, when added to such factors as ground transportation, lost productive time, allowable overtime, and additional overnight lodging expense, result in lower costs to the Government than the costs that would accrue if comparable cost factors were added to the contract fare.

Note. When making cost comparisons:

a. YDG, MDG, or other fares restricted to Government employees shall not be used;

b. Promotional/restricted fares offered by noncontract carriers to the general public may be used provided:

(1) The traveler can meet all qualifying restrictions associated with such fares, and

(2) The service provided by the noncontract carrier is equal to or better than that of the contractor with respect to enroute trip times;

c. Agencies should take into account any penalty fee a carrier may impose when reservations for promotional/restricted fares and canceled or changed; and

d. The traveler and/or the traveler's agency, at the time reservations are made or travel is performed (whichever occurs first), shall demonstrate conclusively that the contractor did not offer the same fare cited in the cost comparison. Justification for using the noncontract carrier shall be shown on the travel authorization or travel voucher, as provided in subpar. 9a.

10. *Traveler liability.* In the absence of specific authorization or approval stated on or attached to the travel authorization or travel voucher, the traveler shall be responsible for any difference in cost that may result from the traveler's unauthorized use of noncontract service or the failure to observe the order of contractor succession. The traveler's indebtedness to the Government shall be the difference between the price of the service used and the lowest contract fare applicable to the travel involved.

[FR Doc. 86-25324 Filed 11-7-86; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2910

[AA-320-06-4211-02-2410; Circular No. 2590]

Airport Leasing Procedures; Amendments

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: The final rulemaking makes a number of amendments to the existing regulations which change the terms for annual rental, provide for an application filing fee which more accurately reflects current administrative costs for the processing of applications, and revise

the procedures in the regulations to streamline them and make them more efficient. The final rulemaking also amends existing regulations at 43 CFR Subpart 2911 to remove provisions relating to withdrawal of public lands for beacon lights and air navigation facilities which were repealed by the Federal Land Policy and Management Act of 1976.

EFFECTIVE DATE: December 10, 1986.

ADDRESS: Inquiries or suggestions should be sent to: Director (320), Bureau of Land Management, Room 3642, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT:
Gary L. Rowe, (202) 343–8693;
Robert C. Bruce, (202) 343–8735.

SUPPLEMENTARY INFORMATION: A proposed rulemaking amending the existing regulations on airport leases was published in the **Federal Register** on August 20, 1985 (50 FR 33578), with a 60-day comment period. Comments were received from nine sources, six from Federal agencies, one from a State, one from the private sector and one from the environmental sector.

Most of the comments were directed to specific provisions of the proposed rulemaking. Those sections and the action taken on the comments are discussed in this preamble. Only those sections that were the subject of comments are discussed. Some of the comments were concerned with procedural processes that are more properly the subject of inclusion in the Bureau of Land Management's Manual and directive system. After this rulemaking becomes final, a manual addressing these issues will be prepared and published.

Nearly all of the comments pointed out the typographical error in § 2911.0–3 of the proposed rulemaking. As suggested in the comments, the date of the Act has been changed from 1982 to 1928 by the final rulemaking. The final rulemaking also amended all of the other sections where the citation for the Act of May 24, 1928 appears.

Several comments were directed to § 2911.0–5 of the proposed rulemaking. One comment, which has been adopted by the final rulemaking, pointed out that the term "Secretary" is not used in the regulation and the definition should be deleted.

A few of the comments recommended that the definition of the term "applicant" as it appeared in the proposed rulemaking be amended for clarification. After careful review of the comments on this term, the final rulemaking has amended the term.

One of the comments recommended that 2911.0–8 of the proposed rulemaking be amended to remove public lands designated as wilderness study areas from the lands that are available for leasing for an airport. This recommendation has not been adopted by the final rulemaking because at the time of the filing of an application for airport rental, the authorized officer can use existing authority to determine if the lands applied for should be protected and the lease denied because of their status as wilderness study area lands.

One of the comments questioned the need for the heading of § 2911.1 of the proposed rulemaking, and recommended that § 2911.1 be deleted. The final rulemaking has adopted this recommendation, deleting § 2911.1 and renumbering § 2911.1–1 as § 2911.1.

Section 2911.1–1 of the proposed rulemaking, which has been renumbered § 2911.1 by this final rulemaking, was the subject of numerous comments, several of which have been adopted by the final rulemaking. A comment suggested that the final rulemaking insert immediately after the phrase "Bureau of Land Management" the phrase "District office having jurisdiction over the lands under lease" in renumbered § 2911.1(b). This clarifying amendment has been adopted by the final rulemaking. Another comment on this section suggested that renumbered § 2911.1(c) be amended to make it clear that the rental must be paid on "or before" the due date. This suggestion also has been adopted by the final rulemaking. Another comment suggested that for clarity, the final rulemaking rewrite renumbered § 2911.1(e). After careful review of the language of the section in the proposed rulemaking and the recommendations contained in the comments, the section has been rewritten by the final rulemaking.

Several comments were received on §§ 2911.2, 2911.2–1, 2911.2–2, 2911.2–3 and 2911.2–4 of the proposed rulemaking. A couple of the comments recommended that the heading of § 2911.2–1 of the proposed rulemaking be changed to read "preapplication activity" and that reference to the term "proposal" be removed from §§ 2911.2–1 and 2911.2–2 of the proposed rulemaking. These changes would make the procedures in the airport lease regulations consistent with other regulations that cover applications for the disposal of the public lands. The final rulemaking has adopted the recommendations and §§ 2911.2–1 and 2911.2–2 have been rewritten to make them similar to those in other land disposal regulations. Another change recommended by the comments and adopted by the final rulemaking is the addition of language that specifies the type of land description that is required in an application for lands for airport rental. As recommended in a comment, the final rulemaking has amended § 2911.2–2 of the proposed rulemaking to remove the phrase "recordation and service fee" and replace it with the phrase "filing fee" which is a more accurate description of the fee paid with the application and makes this regulation consistent with other regulations requiring the payment of a filing fee. The final rulemaking also makes this change in § 2911.2–3 of the proposed rulemaking.

Finally, the final rulemaking has adopted a recommendation contained in the comments that language be added to § 2911.2–2 of the proposed rulemaking covering the action to be taken if the granting of the airport lease results in the cancellation of a grazing permit or lease or a reduction in grazing acreage.

Section 2911.2–3 of the proposed rulemaking was the subject of several comments which recommended changes. One comment pointed out that the proposed rulemaking was not specific as to the publication that would begin the running of the 45-day comment period. In response to this comment, the final rulemaking provides that the comment period shall begin with the publication of the notice of realty action in the **Federal Register.** A couple of comments made the point that the proposed rulemaking did not specifically provide that statutory requirements, such as compliance with the provisions of the National Environmental Policy Act of 1969, be met prior to the issuance of an airport lease. The final rulemaking has added language to § 2911.2–3 of the proposed rulemaking that clarifies that an airport lease will not be issued until the authorized officer has received the filing fee and that all statutory and regulatory requirements have been fulfilled.

Several of the comments pointed out that the notice of realty action provided in the proposed rulemaking did not segregate the lands covered by an airport lease application for entry under the public lands laws, including the mining laws, and recommended that the final rulemaking provide for segregation. The final rulemaking has adopted these recommendations and has added a paragraph (b) to § 2911.2–3 of the proposed rulemaking which provides for segregation of the public lands upon the publication of the notice of realty action.

Editorial and grammatical changes as needed also have been made.

The principal author of this final rulemaking is Gary Rowe, Division of Lands, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

This final rulemaking will have no significant impact on an applicant for an airport lease on public lands, whether the applicant is large or small.

The final rulemaking contains no information collection requirements requiring the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 2910

Airports, Alaska, Mines, Public lands, Recreation areas, Waste treatment and disposal.

Under the authority of the Act of May 24, 1928, as amended (49 U.S.C. Appendix, 211–213) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Part 2910, Group 2900, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

J. Steven Griles,
Assistant Secretary of the Interior.
October 21, 1986.

PART 2910—[AMENDED]

1. Part 2910 is amended by adding an authority citation to read:

Authority: 49 U.S.C. Appendix, 211–213, 43 U.S.C. 869 et seq. 48 U.S.C 360, 361.

2. Part 2910 is amended by revising Subpart 2911 to read:

Subpart 2911—Airport

Sec.
2911.0–1 Purpose.
2911.0–3 Authority.
2911.0–5 Definitions.
2911.0–8 Lands available for leasing.
2911.1 Terms and conditions.
2911.2 Procedures.
2911.2–1 Preapplication activity.
2911.2–2 Applications.
2911.2–3 Report by Administrator, Notice of Realty Action.
2911.2–4 Execution of lease.

Authority: 49 U.S.C. 211; 43 U.S.C. 1701 et seq.

Subpart 2911—Airport

§ 2911.0–1 Purpose.

This subpart sets forth procedures for issuance of airport leases on the public lands.

§ 2911.0–3 Authority.

The Act of May 24, 1928, as amended (49 U.S.C. Appendix, 211–213), authorizes the Secretary of the Interior to lease for use as a public airport, any contiguous unreserved and unappropriated public lands not to exceed 2,560 acres in area.

§ 2911.0–5 Definitions.

As used in this subpart, the term:

(a) "Act" means the Act of May 24, 1928, as amended (49 U.S.C. Appendix, 211–213).

(b) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this subpart.

(c) "Administrator" means the Administrator of the Federal Aviation Administration.

(d) "Applicant" means any individual who is a citizen of the United States; a group or association of citizens of the United States; any corporation, organized under the laws of the United States or of any State, authorized to conduct business in the State in which the land involved is located; or a State or political subdivisions or instrumentality thereof, including counties and municipalities; who submits an application for an airport lease under this subpart.

(e) "Public airport" means an airport open to use by all persons without prior permission of the airport lessee or operator, and without restrictions within the physical capacities of its available facilities.

§ 2911.0–8 Lands available for leasing.

Any contiguous unreserved and unappropriated public lands, surveyed or unsurveyed, not exceeding 2,560 acres in area, may be leased under the provisions of the Act, subject to valid existing rights under the public land laws.

§ 2911.1 Terms and conditions.

(a) The lessee shall, within 1 year from the date of issuance of the lease, equip the airport as required by the Administrator and file a report thereof in the Bureau of Land Management District office having jurisdiction over the lands under lease.

(b) At any time during the term of the lease, the Administrator may have an inspection made of the airport, and if the the airport does not comply with the ratings set by the Federal Aviation Administration, the Administrator shall submit a written statement describing the deficiencies to the Bureau of Land Management District office having jurisdiction over the lands under lease for appropriate action.

(c) The authorized officer may cancel, in whole or in part, a lease issued under the Act for any of the following reasons: Lessee failure to use the leased premises or any part thereof for a period of at least 6 months; use of the property or any part thereof for a purpose other than the authorized use; failure to pay the annual rental in full on or before the date due; failure to maintain the premises according to the ratings set by the Federal Aviation Administration; failure to comply with the regulations in this part or the terms of the lease.

(d) Leases under the Act shall be for a period not to exceed 20 years and may be renewed for like periods.

(e) Annual rental for leases to any citizen of the United States, any group or association of citizens, or any corporation organized under the laws of the United States or any State shall be at appraised fair market rental, with a minimum annual rental payment of $100. State or political subdivisions thereof, including counties and municipalities, shall pay to the lessor an annual rental calculated at the appraised fair market value of the rental of the property less 50%, with a minimum annual rental payment of $100. In fixing the rentals, consideration shall be given to all pertinent facts and circumstances, including use of the airport by government departments and agencies. Rental of each lease shall be reconsidered and revised at 5-year intervals to reflect current appraised fair market value. The first annual rental payment shall be made prior to issuance of the lease. All subsequent payments shall be paid on or before the anniversary date of issuance of the lease.

(f) The lessee shall agree that all departments and agencies of the United States operating aircraft shall have free and unrestricted use of the airport and, with the approval of the authorized officer, such departments or agencies shall have the right to erect and install therein such structures and improvements as are deemed advisable by the heads of such departments and agencies. Whenever the President may deem it necessary for military purposes, the Secretary of the Army may assume full control of the airport.

(g) The lessee shall submit to the Administrator for approval regulations governing operations of the airport.

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§ 2911.2 Procedures.

§ 2911.2–1 Preapplication activity.

Persons seeking to lease public lands under this subpart shall first consult with the authorized officer in the District or Resource Area Office in which the lands are located. Such consultation is necessary to determine land availability and conformity of proposed use with approved land use plans, explain associated statutory and regulatory requirements, familiarize the potential applicant with respective management responsibilities, set forth the application processing procedures for the proposed action, and identify potential conflicts. Upon completion of the consultation, persons seeking to lease public lands for a public airport may submit an application for consideration by the authorized officer.

§ 2911.2–2 Applications.

(a) Each application shall clearly describe the lands applied for by legal subdivisions and/or by metes and bounds and contain a plan of development and use signed by the applicant or by a duly authorized agent or officer of the applicant. When required by the authorized officer, the application shall include copies of the appropriate State, county, or municipal airport licenses or permits, as well as such additional States and local clearances as may be required.

(b) Each application shall be accompanied by a non-refundable filing fee of $100. Each applicant shall also be required to pay the cost of publication of a Notice of Reality Action in the **Federal Register** and a newspaper of general circulation in the area in which the lands are located.

(c) If approval of an application results in cancellation of a grazing permit of lease or a reduction in grazing acreage, the provisions of § 4110.4–2 of this title shall apply.

§ 2911.2–3 Report by Administrator; Notice of Realty Action.

(a) Upon receipt of the application, the authorized officer shall send 1 copy to the Administrator for a determination concerning what fuel facilities, lights, and other furnishings are necessary to meet the rating set by that agency. After receiving the report of the Administrator, and before making a determination to issue a lease, the authorized officer shall publish a Notice of Realty Action in the **Federal Register** and in a newspaper of general circulation in the area of the lands to be leased. The notice shall provide 45 days from the date of publication in the **Federal Register** for comments by the public. Comments shall be sent to the office issuing the notice. The notice shall not be published until the authorized officer has received the filing fee from the applicant and is satisfied that all statutory and regulatory requirements have been met.

(b) The notice of realty action may segregate the lands or interests in lands to be conveyed to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the notice of realty action shall terminate either upon issuance of a document of conveyance of 1 year from the date of publication in the **Federal Register**, whichever occurs first.

§ 2911.2–4 Executive of lease.

Upon receipt the payments required by § 2911.2–2(b) of this title and not less than 45 days following the publications required by § 2911.2–4 of this title, the authorized officer shall make a decision on the application and, if the application is approved, issue the lease.

[FR Doc. 86–25222 Filed 11–7–86; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 61095–6195]

Foreign Fishing; Groundfish of the Bering Sea and Aleutian Islands Area

Correction

In FR Doc. 86–23877 beginning on page 37408 in the issue of Wednesday, October 22, 1986, make the following corrections: On page 37409, in the third column, in the second paragraph, in the first line, insert "proceed" after "BSAI"; in the fifteenth line, "groundfishing" should read "groundfish fishing".

BILLING CODE 1505-01-M

Proposed Rules

Federal Register
Vol. 51, No. 217
Monday, November 10, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 83-ASW-33]

Airworthiness Directives; Societe Nationale Industrielle Aerospatiale (SNIAS) Model SA315, SE3160, SA316, and SA319 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD) which imposes a finite service life for certain original and repaired main gearbox support "A" frame assemblies installed on Aerospatiale Model SA315, SE3160, SA316, and SA319 series helicopters. This proposed amendment is needed to remove the finite life for certain "A" frames when used on a Model SE3160 helicopter for the reason that these "A" frames have been determined to have an unlimited service life when used on Model SE3160 helicopters.

DATE: Comments must be received on or before December 8, 1986.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: FAA, Southwest Region, Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, Texas 76106, or delivered in duplicate to the above address, Room 158, Building 3B.

Comments delivered must be marked: Docket No. 83-ASW-33.

Comments may be inspected at Room 158, Building 3B, between the hours of 8 a.m. and 4:30 p.m. weekdays, except Federal holidays.

The applicable service information may be obtained from Aerospatiale Helicopter Corporation, 2710 Forum Drive, Grand Prairie, Texas 75051, Attention: Customer Support. These documents may be examined at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: John Varoli, Manager, Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium APO New York 09667, or James H. Major, Rotorcraft Standards Staff, Aircraft Certification Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone number (817) 624-5117.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 83-ASW-33." The postcard will be date/time stamped and returned to the commenter.

This notice proposes to amend Amendment 39-4787 (49 FR 2239), AD 84-01-03, which currently imposes a finite service life for certain original and repaired main gearbox support "A" frame assemblies and requires replacement of certain affected assemblies within 50 hours' time in service for Aerospatiale Model SA315, SA316, and SA319 series helicopters. The service life varies from 1,600 to 11,000 hours. The AD requires compliance with Aerospatiale service bulletins. The AD presently contains an incorporation by reference statement.

After issuing Amendment 39-4787, the FAA determined that the finite service life for certain "A" frame assemblies used on Model SE3160 helicopters may be increased from 11,000 hours to unlimited hours' time in service. Aerospatiale Alouette Service Bulletin (SB) No. 01.49, Revision 1, contains this information. Therefore, the FAA proposes to amend Amendment 39-4787 by incorporating by reference the information in SB No. 01.49, Revision 1, dated May 30, 1986. An unlimited service life for certain specific "A" frames when used on the Model SE 3160 helicopters is proposed. The FAA also found an editorial error in the service bulletin and AD concerning a model designation. These refer to SA316 series; the correct designations are the SE3160 and SA316 series. In addition, the applicability statement and paragraph (b) would be changed to add or correct the Model to SE3160.

The FAA has determined that this proposed regulation only involves one helicopter model of which fourteen are registered in the United States, and it relieves a requirement for this model. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, and Incorporation by reference.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending Amendment 39–4787 (49 FR 2239), AD 84–01–03, as follows:

a. Revise the applicability statement by adding "SE3160" between SA315 and SA316.

b. Revise paragraph (b) and its note paragraph to read as follows:

* * * * *

(b) For Models SE3160, SA316, and SA319 series helicopters, comply with Alouette SB No. 01.49, Revision 1, dated May 30, 1986, within 50 hours' time in service after the effective date of this AD amendment. This bulletin establishes a finite service life for certain identified original and repaired "A" frame assemblies for these helicopters and permits only one-time replacement/repair of an eye end-fitting on each "A" frame assembly. Replacing a repair eye end-fitting with another repair eye end-fitting is prohibited.

Note.—Revision A of the service bulletin establishes for the Model SE3160 an 11,000-hour service life limit for certain original and repaired "A" frames and a 5,500-hour service life limit for certain other original and repaired "A" frames. Revision 1, dated May 30, 1986, instituted on Model SE3160 helicopters an unlimited service life for original "A" frames whose serial number is preceded by letters other than "RO". (Frames with RO serial numbers retain the 11,000-hour and 5,500-hour service life). For Model SE3160 helicopters, a repair eye end-fitting is limited to 5,500 hours service life.

For the Models SA316B and C and SA319B helicopters, the service bulletin, Revision A and 1, retains the present 3,200 or 1,600-hour service life limit for certain original and repaired "A" frames and eye end-fittings and establishes a 1,600-hour service life for certain other original and repair eye end-fittings.

* * * * *

Issued in Fort Worth, Texas, on October 23, 1986.

C.R. Melugin, Jr.

Director, Southwest Region.

[FR Doc. 86–25303 Filed 11–7–86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86–AWA–40]

Proposed Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to Notice of Proposed Rulemaking and extension of comment period.

SUMMARY: This notice announces extension of the comment period on an NPRM which proposes to establish an Airport Radar Service Area at Shreveport Regional Airport, LA, as published in the Federal Register on October 1, 1986 (51 FR 35140). Also, the date and name of the hotel of the informal airspace meeting are changed.

DATES: Comments must be received on or before February 13, 1987; Informal Airspace Meeting will be held January 14, 1987.

ADDRESSES: Send comments on the proposal in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC–204], Airspace Docket No. 86–AWA–40, 800 Independence Avenue, SW., Washington, DC 20591.

Informal Airspace Meeting beginning at 7:00 p.m. will be held at: Chez Vous Motor Inn (formerly Quality Inn), 5215 Monkhouse Drive, Shreveport, LA

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Robert G. Burns, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9253.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of the1r comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86–AWA–40." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport Radar Service Areas.

Extension of Comment Period

The comment period for Airspace Docket No. 86–AWA–40 as it applies to Shreveport Regional Airport, LA, is extended to close on February 13, 1987.

(Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.)

Issued in Washington, DC, on October 31, 1986.

Harold H. Downey,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–25304 Filed 11–7–86; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of Territorial and International Affairs

15 CFR Part 303

[Docket No. 61090-6190]

Proposed Limit on Duty-Free Insular Watches in Calendar Year 1987

AGENCIES: Import Administration, International Trade Administration, Department of Commerce; Office of Territorial and International Affairs, Department of the Interior.

ACTION: Proposed rule and request for comments.

SUMMARY: This action invites the comments of interested persons on a proposal to establish the total quantity of duty-free insular watches and watch movements for 1987 at 6,000,000 units and to divide this amount among the three insular possessions of the United States and the Northern Mariana Islands. We propose to do this by amending § 303.14(e), which now permits a total of 6,500,000 units distributed among the three insular possessions and the Northern Mariana Islands.

DATE: Comments must be received on or before December 26, 1986.

ADDRESS: Address written comments to Frank Creel, Director, Statutory Import Programs Staff, Room 1523, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, Program Assistant, Statutory Import Programs Staff, Room 1523, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230.; (202) 377-1660

SUPPLEMENTARY INFORMATION: The insular possessions watch industry provision in section 210 of Pub. L. 97-446 (96 Stat. 2331) (1983) (19 U.S.C. 1202 note) requires the Secretary of Commerce and the Secretary of the Interior, acting jointly, to establish a limit on the the quantity of watches and watch movements which may be entered free of duty during each calendar year. The law also requires the Secretaries to establish the shares of this limited quantity which may be entered from the Virgin Islands, Guam, American Samoa and the Northern Mariana Islands. Regulations on the establishment of these quantities and shares are contained in §§ 303.3 and 303.4 of title 19, Code of Federal Regulations (19 CFR 303.3 and 303.4).

The Departments propose to establish for calendar year 1987 a total quantity and respective territorial shares as shown in the following table;

Virgin Islands	4,000,000
Guam	1,000,000
American Samoa	500,000
Northern Mariana Islands	500,000
Total	6,000,000

Compared with the total quantity established for 1986 (51 FR 14980; April 22, 1986), this amount would be a decrease of 500,000 units. The proposed Virgin Islands territorial shares would be decreased by 500,000 units. The proposed shares for Guam, American Samoa, and the Northern Mariana Islands would not change.

Our reasons for proposing these amounts are as follows:

(1) There are no producers in American Samoa and the Northern Mariana Islands. This proposal would establish these territories' shares at the minimum required by the statute.

(2) There is only one producer in Guam, and the amount we propose is consistent with the needs of the existing producer and with the existing set-aside of 500,000 units for possible allocation to new firms in Guam.

(3) We expect total Virgin Islands shipments in 1987 to be between 3 and 3.5 million units. The amount we propose is consistent with the acticipated needs of the existing producers along with a set-aside of 500,000 units for possible allocation to new firms in the Virgin Islands.

Classification: Executive Order 12291

In accordance with Executive Order 12291 (46 FR 13193, February 19, 1981), the Department of Commerce and the Interior have determined that this rule does not constitute a "major rule" as defined by section 1(b) of the Order. It is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Therefore, preparation of a Regulatory Impact Analysis is not required.

This regulation was submitted to the Office of Management and Budget for review, as required by Executive Order 12291.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the General Counsel of the Department of Commerce has certified that this action will not have a significant economic impact on a substantial number of small entities. Fewer than ten entities are directly affected by this action. The commercial benefits of the program governed by these regulations, for entities both directly and indirectly affected, are less than $10 million per year.

Paperwork Reduction Act

This rule does not contain information collection requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 15 CFR Part 303

Imports, Customs duties and inspection, Watches and jewelry, Marketing quotas, Administrative practice and procedure, Reporting and recordkeeping requirements, American Samoa, Guam, Virgin Islands, Northern Mariana Islands.

PART 303—[AMENDED]

For reasons set forth above, we propose to amend Part 303 as follows:

1. The authority citation for Part 303 continues to read as follows:

Authority: Pub. L. 97-446, 96 Stat. 2329, 2331 (19 U.S.C. 1202 note); Pub. L. 94-241, 90 Stat. 263 (48 U.S.C. 1681 note).

2. Section 303.14 is amended by revising paragraph (e) to read as follows:

§ 303.14 Allocation factors and miscellaneous provisions.

* * * * *

(e) *Territorial shares.* The shares of the total duty exemption are 4,000,000 for the Virgin Islands, 1,000,000 for Guam, 500,000 American Samoa, and 500,000 for the Northern Mariana Islands.

Dated: November 3, 1986.

Joseph A. Spetrini,

Acting Deputy to the Deputy Assistant Secretary for Import Administration.

Richard T. Montoya,

Assistant Secretary for Territorial and International Affairs.

[FR Doc. 86-25384 Filed 11-7-86; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 3

Temporary Licenses for Guaranteed Introducing Broker Applicants

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing to amend Part 3 of its regulations to authorize the National Futures Association ("NFA") to issue temporary licenses to apparently qualified applicants for registration with the Commission as an introducing broker, on essentially the same terms that temporary licenses currently may be issued to applicants for registration as an associated person of a Commission registrant. This authority would be limited to those introducing broker applicants guaranteed by a futures commission merchant ("FCM") pursuant to Commission rule 1.10(j), 17 CFR 1.10(j) (1986).

DATE: Comments must be submitted on or before December 10, 1986.

ADDRESS: Comments should be submitted to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Michael A. Watkins, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: By letter dated August 28, 1986, the National Futures Association has submitted for approval, pursuant to section 17(j) of the Commodity Exchange Act ("Act"), proposed amendments to NFA Bylaw 305, Schedule A, Section I which, if approved, would authorize NFA to issue temporary licenses to apparently qualified applicants for registration with the Commission as an introducing broker. This authority would extend only to introducing broker applicants guaranteed by an FCM pursuant to Commission rule 1.10(j), 17 CFR 1.10(j) (1986).[1] The proposed amendments provide that a temporary license may be issued to an applicant for registration as a guaranteed introducing broker on essentially the same terms that a temporary license currently may be issued to an applicant for registration as an associated person ("AP") of a Commission registrant.[2]

As originally proposed by NFA, the amendments did not require an FCM to perform a preliminary background investigation of a guaranteed introducing broker applicant, nor explicitly require an FCM to supervise directly such person. By letter dated February 10, 1986, the Division requested from NFA additional information to determine whether authorizing temporary licenses for qualified applicants for registration as a guaranteed introducing broker would be consistent with Commission policy in this regard as set forth in 49 FR 8208, 8209 (March 5, 1984).[3] In this connection, the Division requested NFA to consider whether NFA would be prepared to adopt rules to require an FCM to perform preliminary fitness examinations of introducing broker applicants to be guaranteed by it and to require an FCM to supervise directly such guaranteed introducing brokers. In addition, the Division asked that NFA address why the benefits that may be achieved by extending temporary licensing to guaranteed introducing broker applicants outweight the potential disruptions to both customers and employees of the introducing broker that may result from the termination of an ongoing business.

In its response dated April 23, 1986, NFA replied that a rule requiring FCMs to conduct a preliminary fitness investigation is unnecessary. Under both Commission and NFA rules, an FCM is liable for the conduct of an introducing broker which it guarantees.[4] Therefore, as a matter of sound business practice, NFA believed that FCMs would conduct such fitness examinations.

With respect to direct supervision, NFA stated that the rule to which the Division referred is already in place. Because a guaranteed introducing broker is an agent of its guarantor FCM, NFA Compliance Rule 2-9, which requires each NFA member to supervise diligently its agents, currently requires an FCM to supervise the conduct of its guaranteed introducing brokers.[5]

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[1] NFA originally submitted amendments to provide for temporary licensing of guaranteed introducing brokers by letter dated December 3, 1985. As discussed below, following an exchange of correspondence between the staff of the Division of Trading and Markets ("Division") and NFA, these amendments were withdrawn.

[2] A copy of the proposed amendments may be obtained from the Commission's Office of the Secretariat at the address stated above.

[3] The Division's letter to NFA dated February 10, 1986 states, in pertinent part:

> [W]hen the Commission adopted its temporary license regulations, it determined to limit its authority in this regard to applicants for registration as an associated person. Specifically, the Commission stated:
>
> [T] granting of a temporary license is particularly appropriate for an applicant for registration as an AP because such an applicant must be sponsored by another registrant which must conduct a preliminary fitness check of the applicant and must directly supervise the applicant's conduct.
>
> 49 FR 8209 (March 5, 1984).
>
> With respect to other categories of registrant, the Commission stated:
>
> In contrast, other registrants are not subject to such scrutiny or direct supervision. In addition, the Commission is concerned that if a temporary license were granted to applicants other than APs, the applicant would be able to commence business, hire employees and, in the case of an FCM, accept customer funds subject to a subsequent determination by either the Commission or the NFA to deny registration. The Commission, therefore, concludes that the potential disruptions to both customers and employees which might result from interrupting an ongoing business outweigh the benefits which might be achieved by extending the applicability of the temporary licensing provisions to such applicants.
>
> *Id.*

[4] Specifically, NFA's letter to the Division dated April 23, 1986 states:

> [A] guarantee agreement entered into by an FCM and an IB is analogous to AP sponsorship. The purpose of a guarantee agreement is to enable the IB to meet the alternative adjusted net capital requirement and to protect the customers of the IB. A guarantee agreement provides that the FCM which is a party thereto guarantees performance by the IB of, and becomes jointly and severally liable for, all obligations of the IB . . . with respect to the solicitation of and transactions involving all customer and option customer accounts of the IB entered into on or after the effective date of the agreement.
>
> Given the potential liability for damages of an FCM that is party to a guarantee agreement . . . it can be reasonably expected that an FCM will subject its potential guaranteed IBs to a close preliminary background examination. . . . [T]he preliminary background examination that would be conducted by an FCM would at least equal the scope of the preliminary background check that is required of registrants that sponsor applicants for registration as APs under current Commission regulations.
>
> The motivation to make a thorough background check is further strengthened by the fact that NFA Compliance Rule 2-23 makes the liability of the guarantor Member FCM clear in a disciplinary context: "Any Member FCM which enters into a guarantee agreement, pursuant to CFTC Regulation 1.10(j), with a Member IB, shall be jointly and severally subject to discipline under NFA Compliance Rules for acts and omissions of the Member IB which violate NFA requirements occurring during the term of the guarantee agreement". . . . [Therefore, t]he [guarantor] FCM has no safe harbor to avoid either civil or disciplinary liability for the acts of its guaranteed IBs.

[5] NFA's letter to the Division dated April 23, 1986 further states:

> NFA believes that a guarantor FCM would supervise the activities of its guaranteed IBs given the potential liability of the FCM under the guarantee agreement. NFA Compliance Rule 2-9, however, makes this duty of a guarantor FCM explicit[:] . . . "Each Member shall diligently supervise its employees and agents in the conduct of their commodity futures activities for or on behalf of the Member."

Finally, NFA asserted that the termination of a temporary license of an introducing broker would be no more disruptive to customers and employees than a decision by an FCM to close a branch office. In particular, the customer accounts solicited by the introducing broker would continue to be serviced by the FCM. This contrasts with the burden placed on introducing broker applicants that must invest substantial time, money and effort to establish a business plan prior to filing an application and thereafter be subject to a minimum period of eight to ten weeks of forced idleness pending registration.

By letter dated May 14, 1986, the Division informed NFA that the Division had considered the information furnished by NFA in its April 23, 1986 letter and was satisfied that NFA Compliance Rule 2-9 would ensure the direct supervision by its guarantor FCM of an introducing broker that has received a temporary license. Further, the benefits to be derived from temporary licensing of guaranteed introducing brokers are not outweighed by the potential disruptions to customers and employees of a guaranteed introducing broker whose temporary license is terminated.[6] However, the Division stated that the requirement that a guarantor FCM conduct a preliminary background investigation of an introducing broker applicant should be established by rule and that NFA should not rely solely upon the business judgment of its member FCMs. A regulatory requirement, in the Division's view, would ensure that such background investigations are undertaken, since failure to do so may result in an NFA disciplinary action. At the same time, based upon NFA's own analysis, the requirement that such an investigation be conducted should not impose any additional burden upon guarantor FCMs.

Further, the Division requested that NFA consider amending its proposal to require that, as a condition of issuing a temporary license to an applicant for registration as a guaranteed introducing broker, NFA also receive from the applicant's guarantor FCM a certification to the effect that, with respect to the introducing broker applicant and any principals thereof, (1) the FCM has verified the information on the Forms 8-R filed with NFA which relate to the education and employment history of the applicant, if appropriate, and its principals, and (2) to the best of the FCM's knowledge, information and belief, all of the publicly available information supplied by the applicant and its principals on the Form 7-R and Forms 8-R, as appropriate, is accurate and complete. The rule amendments submitted by NFA contain these requirements.

The Commission has reviewed the proposed rule amendment and NFA's response to the Division's request for additional information and is satisfied that the amendments are consistent with the bases for issuing temporary licenses as adopted by the Commission. Therefore, the Commission is prepared to approve NFA's proposed amendments and, in that connection, is proposing amendments to its own rules governing the issuance of temporary licenses.[7] The Commission notes that section 17(j) of the Act generally provides that any amendment to the rules and regulations of a registered futures association must be consistent with and not otherwise in violation of the Act or Commission regulations promulgated thereunder.[8] Therefore, since the Commission's rules currently permit the issuance of temporary licenses for associated person applicants only,[9] these rules must be amended in order to authorize NFA to issue temporary license to introducing broker applicants.

In addition, the NFA amendments provide that a guarantee agreement will become effective upon the issuance of a temporary license to an introducing broker applicant, in conflict with the provisions of Commission rule. 1.10(j)(3), which provide that the guarantee agreement will become effective upon registration being granted.[10] Therefore, the Commission's own rules in this regard must be amended before the proposed rules submitted by NFA can be approved by the Commission.[11]

As noted above, the Commission is proposing to authorize temporary licenses for apparently qualified applicants for registration as an introducing broker on essentially the same terms as those governing the issuance of temporary licenses to associated persons. Thus, proposed rule 3.44(a) provides that the Form 7-R submitted by the applicant and the Forms 8-R submitted on behalf of the applicant, if a sole proprietor, and the principals (including the branch office managers) of the applicant each must not contain any "Yes" answers to the Disciplinary History portion of the application indicating that the person maybe subject to a statutory disqualification from registration. Fingerprint cards on behalf of each individual, except a principal with a current application on file, must accompany the Form 8-R.

In addition, the applicant must submit a properly completed guarantee agreement in accordance with the provisions of Commission rule 1.10(j) and a certification by the FCM that has guaranteed the applicant that (1) the FCM has verified the information on each Form 8-R with respect to the education and employment history of the individual on whose behalf the Form 8-R is filed and (2) to the best of the FCM's knowledge, information and belief, all of the publicly available information supplied on each application form is accurate and complete.

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[6] In this connection, the Division emphasized that, if any employee of a guaranteed introducing broker is acting in the capacity of an associated person pursuant to a temporary license, that temporary license would terminate upon the termination of the temporary license of its sponsor. *See* Commission rule 3.42(a)(2), 17 CFR 3.42(a)(2) (1986). Furthermore, such employee would not be entitled to use the special registration procedures in Commission rules 3.12(d) and 3.16(d), 17 CFR 3.12(d) and 3.16(d) (1986).

[7] Since the rules the Commission is proposing would permit the implementation of NFA rules that have been thoroughly considered by NFA's futures commission merchant and introducing broker advisory committees, the Commission has concluded that a twenty-one day comment period is reasonable.

Moreover, because the proposed rules essentially relieve a restriction, the Commission may determine that the amendments may take effect on less than thirty days notice. *See* section 4(c) of the Administrative Procedure Act, 5 U.S.C. 553(d).

[8] 7 U.S.C. 21(j) (1982).

[9] *See* Commission rules 3.40-3.43, 17 CFR 3.40-3.43 (1986).

[10] Commission rule 1.10(j)(3), 17 CFR 1.10(j)(3) (1986), provides in pertinent part:

A guarantee agreement filed in connection with an application for initial registration as an introducing broker in accordance with the provisions of § 3.15(a) of this chapter shall become effective upon the granting of registration to the introducing broker. A guarantee agreement filed other than in connection with an application for initial registration as an introducing broker shall become effective as of the date agreed to by the parties.

[11] Moreover, because the Act provides that registration is with the Commission, the Commission believes it is essential that the minimum substantive requirements for registration or, in this instance, for the issuance of a temporary license to a qualified applicant, should be established by the Commission and set forth in the Commission's regulations. Maintenance of the Commission's own rules in this regard will facilitate Commission review of NFA registration rules in determining whether such rules are inconsistent with the Act and will also provide the most appropriate vehicle for amending the requirements for registration if the Commission determines to do so.

In this connection, however, the Commission's position is not that NFA's registration rules are required to conform to the Commission's rules in every respect. To the contrary, NFA has the authority under section 8a(10) of the Act to supplement those rules with additional procedural or substantive requirements, *e.g.*, proficiency testing, provided such requirements are not inconsistent with the Act or any rule, regulation or order of the Commission thereunder.

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Proposed rule 3.44(b) makes clear that, notwithstanding the provisions of Commission rule 1.10(j), the effective date of a guarantee agreement is the date a temporary license is granted, not the date registration is granted. Further, at the request of NFA, the proposed rule also provides that the failure of an applicant to respond to a request for additional information with respect to an application or to resubmit a fingerprint card will be considered a withdrawal of the application, and the temporary license will terminate. Proposed § 3.44(c).

Proposed rule 3.45 confirms that an introducing broker applicant that receives a temporary license is subject to all of the provisions of the Act and rules and regulations thereunder applicable to a registered introducing broker, including reparations under section 14 of the Act. The rule further provides that a guaranteed introducing broker that has received a temporary license may terminate the agreement and enter into a guarantee agreement with a new FCM by providing written notice to NFA at least ten days before the agreement is terminated. A copy of the new guarantee agreement must be submitted at the same time.

As with a temporary license for an associated person, the rules provide that a guaranteed introducing broker's temporary license will terminate five days after service of notice that the applicant may be found subject to a statutory disqualification from registration. In addition, a temporary license will terminate upon the termination of the applicant's guarantee agreement, unless a new agreement is filed in accordance with proposed rule 3.45. As noted above, a temporary license will also terminate if the applicant fails to respond to an NFA request for additional information or a fingerprint card. Proposed § 3.46. Upon termination, of course, the applicant may no longer act in any capacity requiring registration as an introducing broker.

Finally, proposed rule 3.47 provides that a temporary license will become a registration upon the earlier of a determination by NFA that the applicant is qualified for registration or the expiration of six months from the date of its issuance. Receipt of a temporary license, however, confers no right to such registration.

Related Matters

A. Paperwork Reduction Act

The Commission has submitted to the Director of the Office of Management and Budget ("OMB"), pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), an explanation and details of the information collection and recordkeeping requirements which would be necessary to implement these proposals. Any person wishing to comment on the information collection requirements should contact Katie Lewin, Office of Management and Budget, Room 3235, NEOB, Washington, DC 20503. Telephone: (202) 395-7231. Copies of the information collection submission to OMB are available from Joseph G. Salazar, Commodity Futures Trading Commission Clearance Officer, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-9735.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et. seq.*, requires that agencies, in proposing rules, consider the impact of these rules on small businesses. The direct impact of the proposed amendments to Part 3 of its regulations affect FCMs and introducing brokers. In this connection, the Commission has previously determined that futures commission merchants should not be considered small entities for purposes of the RFA. Specifically, the Commission found that with respect to FCMs, based upon the fiduciary nature of FCM/customer relationships, as well as the requirement that FCMs meet minimum financial requirements, FCMs should be excluded from the definition of a small entity.[12] Accordingly, the requirements of the RFA do not apply to FCMs. Moreover, when the Commission first adopted rules governing introducing brokers, it stated that it would "evaluate within the context of a particular rule proposal whether all or some introducing brokers should be considered to be small entities and, if so, to analyze the economic impact on introducing brokers of any such rule at the time." [13] In this connection, the Commission notes that the requirements set forth in the proposed rules impose no additional requirements on applicants for registration as an introducing broker. Thus, if adopted, this proposal would not have a significant economic impact on guaranteed introducing brokers. Therefore, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Nonetheless, the Commission specifically requests comment on the impact the proposed rule may have on small entities.

List of Subjects in 17 CFR Part 3

Registration requirements, Conditional registration, Temporary licenses, Statutory disqualifications, Authority delegations, Fingerprinting, Associated persons, Floor brokers, Introducing brokers, Commodity trading advisors, Commodity pool operators, Futures commission merchants, Leverage transaction merchants, Petitions for review.

In consideration of the foregoing, the Commission hereby proposes to amend Part 3 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 3—REGISTRATION

1. The authority citation for Part 3 continues to read as follows:

Authority: Secs. 2(a)(1), 4, 4b, 4c, 4d, 4e, 4f, 4g, 4h, 4i, 4k, 4m, 4n, 4o, 4p, 6, 8, 8a, 14, 15, 17 and 19 of the Commodity Exchange Act, 7 U.S.C. 2 and 4, 6, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a and 13b, 12, 12a, 18, 19, 21 and 23 (1982).

2. Sections 3.44–3.47 are proposed to be added to Subpart B to read as follows:

Subpart B—Temporary Licenses

* * * * *

§ 3.44 Temporary licensing of applicants for guaranteed introducing broker registration.

(a) Notwithstanding any other provisions of these regulations, and pursuant to the terms and conditions of this subpart, the National Futures Association may grant a temporary license to any applicant for registration as an introducing broker upon the contemporaneous filing with the National Futures Association of:

(1) A properly completed guarantee agreement (Form 1-FR Part B) from a futures commission merchant which is eligible to enter into such an agreement pursuant to § 1.10(j)(2) of this chapter;

(2) A Form 7-R properly completed in accordance with the instructions thereto, the Disciplinary History portion of which contains no "Yes" answers indicating that the applicant may be subject to a statutory disqualification under section 8a(2) through 8a(4) of the Act;

(3) A Form 8-R for the applicant, if a sole proprietor, and each principal (including each branch office manager) thereof, properly completed in accordance with the instructions thereto, the Disciplinary History portion of which contains no "Yes" answers

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[12] *See* 47 FR 18618, 18619 (April 30, 1982).

[13] *See* 48 FR 35248, 35276 (August 3, 1983).

indicating that the applicant may be subject to a statutory disqualification under sections 8a(2) through 8a(4) of the Act;

(4) A signed and dated certification from the futures commission merchant that has executed the guarantee agreement required by paragraph (a)(1) of this section, signed by an appropriate person as defined in § 1.10(j)(1) of this chapter, stating that:

(i) The futures commission merchant has verified the information on the Forms 8–R filed pursuant to paragraph (a)(3) of this section which relate the education and employment history of the applicant's principals (including each branch office manager) thereof during the preceding five years; and

(ii) To the best of the futures commission merchant's knowledge, information, and belief, all of the publicly available information supplied by the applicant and its principals and each branch office manager of the applicant on the Form 7–R and Form 8–R, as appropriate, is accurate and complete; and

(5) The fingerprints of the applicant, if a sole proprietor, and of each principal (including each branch office manager) thereof on fingerprint cards provided by the National Futures Association for that purpose: *Provided*, That a principal who has a current Form 8–R or Form 94 on file with the Commission or the National Futures Association is not required to submit a fingerprint card if the principal is not otherwise required to be registered as an associated person of the applicant.

(b) Notwithstanding the provisions of § 1.10(j) of this chapter, the effective date of a guarantee agreement filed in accordance with paragraph (a)(1) of this section is the date upon which the temporary license is granted by the National Futures Association.

(c) An applicant that fails to respond timely to a request by the National Futures Association for clarification or explanation of any information set forth in the application of the applicant or any principal (including any branch office manager) thereof or for the resubmission of a fingerprint card will be deemed to have withdrawn its registration application and the temporary license issued to such applicant and any associated person thereof shall terminate immediately.

§ 3.45 Restrictions upon activities.

(a) Subject to the provisions of § 3.46 of this subpart and all of the obligations imposed on such registrants under the Act (in particular, section 14 thereof) and the rules, regulations and orders thereunder, an applicant for registration as an introducing broker who has received written notification that a temporary license has been granted may act in the capacity of a guaranteed introducing broker.

(b) An applicant for registration as an introducing broker who has received a temporary license may be guaranteed by a futures commission merchant other than the futures commission merchant which provided the initial guarantee agreement described in § 3.44(a)(1) of this subpart: *Provided*, That, at least 10 days prior to the effective date of the termination of the existing guarantee agreement in accordance with the provisions of § 1.10(j)(4)(ii) or (j)(5) of this chapter, or such other period of time as the National Futures Association may allow for good cause shown, the applicant files with the National Futures Association (1) written notice of such termination and (2) a new guaranteed agreement with another futures commission merchant effective the day following the last effective date of the existing guarantee agreement.

§ 3.46 Termination.

(a) A temporary license shall terminate:

(1) Five days after service upon the applicant of a notice by the National Futures Association that the applicant for registration may be found subject to a statutory disqualification from registration; or

(2) Immediately upon termination of the applicant's guarantee agreement in accordance with § 1.10(j)(4)(ii) or (j)(5) of this chapter, unless a new guarantee agreement is filed in accordance with § 3.45(b) of this subpart; or

(3) Upon failure of an applicant to respond timely to a request by the National Futures Association for clarification of information set forth in the application of the applicant or any principal (including any branch office manager) thereof or for the resubmission of a fingerprint card pursuant to § 3.44(c) of this subpart.

(b) Upon termination, the applicant may not engage in any activity which requires registration as an introducing broker.

§ 3.47 Relationship to registration.

(a) A temporary license shall not be deemed to be a registration or to confer any right to such registration.

(b) Unless a temporary license has terminated, a temporary license shall become a registration upon the earlier of:

(1) A determination by the National Futures Association that the applicant is qualified for registration as an introducing broker; or

(2) The expiration of six months from the date of its issuance.

§§ 3.48 and 3.49 [Reserved]

Issued in Washington, DC on November 4, 1986, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86–25322 Filed 11–7–86; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 150

[Docket No. 86N–0019]

Fruit Jelly and Fruit Preserves and Jams; Termination of Consideration of Codex Standard

Correction

In FR Doc. 86–24395 beginning on page 39546 in the issue of Wednesday, October 29, 1986, make the following corrections:

On page 39546, in the second column, the second line from the bottom should read, "the U.S. standards of identity and establishing U.S. standards of quality and fill of". On the same page, in the third column, in the second complete paragraph, in the second line, "all" should read "at", in the third line, "no" should read "not", and in the ninth line, "40" should read "401".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 625

[FHWA Docket No. 86–17]

Design Standards for Highways; Standard Specifications for Highway Signs, Luminaires and Traffic Signals

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Highway Administration (FHWA) is proposing to adopt for application on Federal-aid projects revised specifications for structural supports for highway signs, luminaires and traffic signals. Current specifications are contained in the publication entitled "Standard Specifications For Structural Supports For Highway Signs, Luminaires and

Traffic Signals, AASHTO 1975," which is incorporated by reference in 23 CFR Part 625. The American Association of State Highway and Transportation Officials (AASHTO) has approved a 1985 edition of this publication. The FHWA is not soliciting comments on whether the 1985 edition (Revised Specifications) should be adopted in whole or in part and/or modified in any way for use on Federal-aid projects.

DATE: Comments must be received on or before May 11, 1987.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 86-17, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street SW., Washington, DC. 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m. ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: James H. Hatton, Highway Engineer, Office of Engineering (202) 366-1329, or Michael Laska, Office of Chief Counsel (202) 366-1383. Office hours are from 9:00 a.m. to 5:30 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The standards, policies, and standard specifications that have been approved by the FHWA for application on all Federal-aid highway projects have been incorporated by reference in 23 CFR 625.4. One of the documents incorporated by reference in this section is the publication entitled "Standard Specifications For Structural Supports For Highway Signs, Luminaires, and Traffic Signals, AASHTO 1975." In May 1985 AASHTO approved a new edition (Revised Specifications). Many of the standards, policies, and standard specifications approved by the FHWA and incorporated by reference in 23 CFR 625 were developed and issued by AASHTO. Revisions made to such documents must be independently reviewed and adopted by the FHWA, as appropriate, for use on Federal-aid projects. The publications issued by AASHTO significantly influence the highway design policies of State and local transportation agencies. Because it is to the advantage of all parties concerned to have a single and uniform policy on design criteria regardless of funding source (i.e., Federal, State, or local), the AASHTO has submitted copies of the Revised Specifications to the FHWA with a request that FHWA take whatever action it deems necessary to have the document approved for use on Federal-aid projects.

The primary reasons for development of the Revised Specifications by AASHTO and subsequent adoption for application by FHWA include: to incorporate the latest available research findings on design concepts; to include the latest design, materials, and safety guidelines for the construction of structural supports; and to provide a more definitive and complete document on structural support construction.

Summary of Revised Specifications

The Revised Specifications are divided into sections which address: general features of design; application and consideration of loads; method of analysis; steel, aluminum, and prestressed concrete design, including corresponding allowable unit stress; criteria to determine acceptability of breakaway supports; foundations and their design criteria; details of design; use of timber; and an accompanying commentary covering each section. The significant changes are discussed in detail below.

Section 1. The 1975 edition referred to the need to shield overhead sign supports when placed within 30 feet of the edge of the traveled way. The 1985 edition clarifies that these supports should be shielded wherever warranted. Also, the horizontal clearance from the rail to the face of the support has been clarified to demonstrate that this distance is measured from the back of the rail to the face of the supports.

Section 2. Wind drag coefficients for hexdecagonal, square and diamond shapes have been added in an attempt to more accurately apply expected wind load forces on structural supports. Information from wind tunnel tests suggests these drag coefficients should now be used in designing structural supports. This should result in a design procedure that incorporates the latest research findings.

Section 3. New requirements are established regarding telescopic field splices for high level lighting supports. Also, changes in the requirements for the use of anchor bolts include: optional use of cut or rolled threads; sizing of bolts due to combined loading of shear and tension; and increases in the allowable unit stresses. These changes should permit the structural designer more flexibility in specifying hardware and will give the industry more flexibility in supplying that hardware. Research indicates that the use of anchor bolts of design yield strengths approximately equal to or less than that used for the vertical support should result in the fatigue strength of anchor bolts still not being less than the fatigure strength of the pole.

Section 4. New requirements have been added regarding: width to thickness ratios of compression elements, penetration criteria for longitudinal seam welds, and silicon content of structural steel to be galvanized. These changes have been included to ensure that the structure is as safe, reliable, and economical as possible.

Section 5. The allowable unit stresses for aluminum alloy members have been increased. The stresses allowed are now in conformance with building type structures rather that those for bridge type structures. This will result in more consistency between the factors of safety of aluminum structures and steel structures.

Section 6. Changes in the design of prestressed concrete materials include: a new equation for allowable stresses under severe corrosive exposure conditions, such as coastal areas; a revised ultimate strength design procedure; and recommendations on the use of epoxy coated reinforcement. These changes are expected to merely extend the life expectancy of prestressed concrete materials.

Section 7. There are two substantive changes to the breakaway support criteria. One is a lowering of the weight of the crash test vehicle from 2,250 pounds to 1,800 pounds and a corresponding change in acceptance criterion. The move to an 1,800-pound vehicle was in recognition that the 2,250-pound vehicle is no longer representative of the small car in today's vehicle fleet. Satisfactory dynamic performance under the 1975 specifications was indicated when the maximum change in momentum for the 2,250-pound vehicle was 1,100-pound-seconds when striking a breakaway support at speeds from 20 m.p.h. to 60 m.p.h. This implied a change-of-velocity limit of 15.7 feet/second. The new edition has a change-of-velocity limit of 15.0 feet/second for an 1,800-pound vehicle. Although the change-of-velocity criterion has not been significantly reduced, reducing the weight of the test vehicle to 1,800 pounds makes the criterion more demanding. (The change in velocity for an 1,800-pound vehicle should be expected to be greater than it would be for a 2,250-pound vehicle in activating the same breakaway support.) Through a mathematical analysis one can infer that breakaway hardware just meeting the 1975 implicit change-of-velocity criterion of 15.7 feet/second will likely produce a change in velocity of 19.7 feet/second in the lighter test vehicle required under the new specification. Since the new limit is 15.0

feet/second, it is expected that some currently accepted breakaway hardware may not meet a 15.0 feet/second criterion with the 1,800-pound vehicle.

A second substantive change to this section is the introduction of a 4-inch maximum stub height criterion—the height to be measured above an imaginary 60-inch chord connecting points on the ground either side of a breakaway support. This clearance requirement is intended to ensure design and installation practices that will avoid unsafe vehicle undercarriage snagging. The 4 inches was obtained from examining the clearance heights of light vehicles. The 60-inch dimension is the typical track width of small vehicles in today's fleet.

Section 8. There are no significant changes to this section from the 1975 edition.

Section 9. Suggested deflection criteria for cantilever supports has been added to aid those wishing to control deflection for esthetic purposes. Under the new AASHTO specifications, supports for small roadside signs would be exempt from the minimum thickness requirement for steel support. Experience has indicated that small roadside sign supports not meeting the minimum thickness requirements in the 1975 edition have sufficient durability and that they may have safety advantages.

The FHWA, through this notice of proposed rulemaking, is requesting comments on specific elements of the criteria contained in the Revised Specifications, as well as the effect of such criteria on the Federal-aid highway program. The FHWA will concurrently review the proposed revisions. Based on this review and on a careful analysis of the public comments received, a final rule will be issued adopting all or part of the Revised Specifications. If, at the time of issuance of the final rule, the Revised Specifications contain material not acceptable to the FHWA, such material will be noted and excluded and, as required, alternative criteria will be adopted for use on Federal-aid projects. Copies of the Revised Specifications may be purchased from the AASHTO, 444 North Capitol Street NW., Suite 225, Washington, DC 20590. Also, the Revised Specifications will be placed in FHWA Docket 86-17 and will be available for inspection at the times and address provided under the heading "Address."

To assist in determining whether currently accepted hardware meets the Revised Specifications, FHWA has agreed to conduct limited testing *of previously accepted luminaire hardware.* Tests with an 1,800-pound vehicle and impacts at 20 m.p.h. and 60 m.p.h. will be sponsored by FHWA, provided suppliers submit the hardware free-of-charge. When testing is completed, a supplemental Notice will be published summarizing the test results and requesting public comment thereto.

Regulatory Impact

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. The FHWA has also determined that the expected impact of these proposed revisions will not be significant. This determination is based on the fact that, although the Revised Specifications contain standards which in some cases have been clarified, modified, or revised, the basic structural support design criteria will remain essentially the same. As has been stated in this preamble, the Revised Specifications have been prepared to reflect the latest findings regarding materials, safety practices, and construction methods. The manufacturers of structural support materials may be minimally affected by the Revised Specifications. Based on information available at this time, the FHWA hereby certifies that this proposed action, if promulgated, will not have a significant economic impact on a substantial number of small entities. For a more complete discussion of potential impacts, please refer to the draft Regulatory Evaluation which has been prepared and is available for inspection and copying in the public docket at the times and address provided under the heading "Address."

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

List of Subjects in 23 CFR Part 625

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Reporting requirements.

In consideration of the foregoing, the Federal Highway Administration proposes to amend Chapter 1 of Title 23, Code of Federal Regulations, Part 625 as set forth below.

Issued on: October 31, 1986.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

The FHWA proposes to amend 23 CFR Part 625 as follows:

PART 625—DESIGN STANDARDS FOR HIGHWAYS

1. The authority citation for Part 625 continues to read as follows:

Authority: 23 U.S.C. 109, 315, and 402; 49 CFR 1.48(b).

2. In § 625.4, paragraph (b)(5) is revised to read as follows:

§ 625.4 Standards, policies, and standard specifications.

* * * * *

(b) * * *

(5) Standard Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals, AASHTO 1985.(3)

* * * * *

[FR Doc. 86-25327 Filed 11-7-86; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 250 and 256

Outer Continental Shelf; Oil, Gas and Sulphur Operations

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: This notice reopens the comment period for the notice of proposed rulemaking concerning the consolidation of Minerals Management Service's (MMS) rules governing oil, gas, and sulphur operations in the Outer Continental Shelf (OCS). The reopening permits submission of comments which were not submitted during the original comment period.

DATES: Comments must be hand-delivered or postmarked no later than November 25, 1986.

ADDRESSES: Written comments must be mailed or hand-delivered to the Department of the Interior; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646, Room 6A110; Reston, Virginia 22091.

FOR FURTHER INFORMATION CONTACT: John V. Mirabella, Telephone: (703) 648-7816.

SUPPLEMENTARY INFORMATION: On March 18, 1986, MMS published a notice of proposed rulemaking in the **Federal Register** (51 FR 9316) to consolidate into one document the currently multitiered rules that govern oil, gas, and sulphur operations in the OCS. The proposed rule restructures MMS's requirements currently contained in regulations at 30 CFR Parts 250 and 256 and OCS Orders for each of the four OCS Regions. The comment period was originally open through June 16, 1986, and was subsequently extended through September 15, 1986. The MMS has received numerous comments in response to this proposed rule including several letters which were received after the closing date of the comment period. In view of the importance of the proposed rule changes, MMS wishes to be able to consider comments received from as many interested parties as possible. However, MMS recognizes that other parties may have reviewed the proposed rule and possibly even prepared comments but did not submit them on the assumption that they would not have arrived before the close of the comment period. To provide all parties with an equal opportunity to comment on the proposed rule, MMS is reopening the comment period and will consider all those received to date as well as any additional comments submitted by November 25, 1986. Comments previously submitted to MMS will be considered and should not be resubmitted. Persons choosing to submit comments at this time should ensure that the comments are received or postmarked by the date specified above.

Dated: November 3, 1986.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 86-25329 Filed 11-7-86; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 166

[DoD Directive 7700.15]

Reporting Procedures on Defense Related Employment

ACTION: Proposed rule.

SUMMARY: This part is designed to establish criteria and procedures for reports required of certain former and retired military officers, former civilian officers and employees of the Department of Defense presently employed by defense contractor, and former officers and employees of defense contractors presently employed by the Department of Defense. It is being formulated to implement 10 U.S.C. 2397 which has come into effect since the last DoD Directive 7700.15 was issued on October 30, 1970 and amended most recently on June 14, 1986.

DATE: Comments due by December 10, 1986.

ADDRESS: Comments should be submitted to the Department of Defense Office of General Counsel, Office of Legal Counsel, Pentagon, Washington, DC 20301-1600.

FOR FURTHER INFORMATION CONTACT: David W. Ream or Captain Randi E. DuFresne, Department of Defense, Office of General Counsel, Office of Legal Counsel, Pentagon, Washington, DC 20301-1600. Telephone 202/695-3272.

SUPPLEMENTARY INFORMATION: DoD Directive 7700.15 was issued on October 30, 1970 (32 CFR Part 166) and amended most recently on June 14, 1986. Since that time, 10 U.S.C. 2387 has been passed and many suggestions for more efficient construction of DD Form 1878 have been offered by processors of the form. The new law changes the requirement, previously imposed and the suggestions expose weaknesses in the old form that need improvement. This area of standards of conduct is dynamic and constantly evolving thereby requiring that at current set of guidelines be provided to DoD personnel concerning the responsibilities related to their employment.

List of Subjects in 32 CFR Part 166

Conflict of interests, Defense Department Government employee, Government procurement, Reporting and recordkeeping requirements.

Accordingly, 32 CFR Part 166 is proposed to be revised as follows:

PART 166—REPORTING PROCEDURES ON DEFENSE RELATED EMPLOYMENT

Sec.
166.1 Reissuance and purpose.
166.2 Applicability and scope.
166.3 Definitions.
166.4 Policy.
166.5 Responsibilities.
166.6 Procedures.
166.7 Other reporting requirements.
166.8 Report of DoD and defense related employment as required by 10 U.S.C. 2397 (DD Form 1787)
166.9 Department of Defense contractors receiving negotiated contract awards of $10 million or more.

Authority: Sec. 410, 83 Stat. 210; 50 U.S.C. 1436.

§ 166.1 Reissuance and purpose.

(a) This part establishes criteria and procedures for reports required of certain former and retired military officers and former civilian officers and employees of the Department of Defense presently employed by defense contractors, and former officers and employees of defense contractors presently employed by the Department of Defense.

(b) This part establishes monitoring and enforcement procedures and assigns responsibilities.

(c) This part reissues 32 CFR Part 166 to implement 10 U.S.C. 2397.

§ 166.2 Applicability and scope.

The provisions of this part apply to all DoD personnel and to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to as "DoD components"), including nonappropriated fund activities. It also applies to certain former officers and employees of DoD components.

§ 166.3 Definitions.

Contract. Agreement between any component of the Department of Defense and a business entity or individual for the acquisition by the Department of goods, services, or both. Only contracts (including the net amount of modifications to, and the exercise of options under, the contract) that involve at least $25,000 are included.

Defense Contractor. Any individual, firm, corporation, partnership, association, or other legal entity that enters into a contract directly with the Department of Defense to furnish services, supplies, or both, including construction, to the Department of Defense. Subcontractors are excluded, as are subsidiaries unless they are separate legal entities that contract directly with the Department of Defense in their own names.

Employment (and all variations). Used in a broad sense to include services performed as a consultant or otherwise, part-time or full-time, either for a defense contractor or a DoD Component.

Former Military Officer. Reserve officers not on active duty are included in the meaning of this phrase.

Retired Military Officer. Any officer entitled to receive military retired pay, even though such pay may be waived.

§ 166.4 Policy.

(a) Pursuant to statute a reporting requirement is imposed on two classes of individuals:

(1) Each person who has left service or employment with a DoD Component, who:

(i) Is a retired military officer or former military officer who served on active duty at least 10 years and who held, for any period during that service, the pay grade of 0–4 or above, or a former civilian officer or employee whose pay rate at any time during the three year period prior to the end of DoD service or employment was equal to or greater than the minimum GS–13 rate at that time;

(ii) Within the two year period following service or employment with a DoD Component, is employed by a defense contractor who, during the year preceding employment, was awarded $10,000,000 or more in DoD contracts; and

(iii) Is employed by the defense contractor at a pay rate of $25,000 per year or more.

(2) Each civilian officer and employee of a DoD Component who:

(i) Is employed at a pay rate equal to or greater than the minimum GS–13 rate;

(ii) Within the two year period prior to the effective date of service or employment with the DoD Component, was employed by a defense contractor who, during either year, was awarded $10,000,000 or more in DoD contracts; and

(iii) Was employed by that contractor at a pay rate of $25,000 per year or more at any time during employment,

(b) Each reporting individual shall provide, in the prescribed form, detailed information on the nature of the duties performed during the prior fiscal year for DoD Components and for defense contractors, including statements describing any disqualification action taken by the individual concerning defense contractors. Reports shall be submitted to the individual's present or former DoD Component in accordance with DoD Component procedures. See § 166.8 for the proper form.

(c) Current DoD officers and employees shall file a report within 30 days after entering service or employment with any DoD Component. Former DoD officers and employees shall file an initial report within 90 days after the date on which the individual began employment with the defense contractor. Former DoD officers and employees shall file subsequent reports each time, during the two year period after service or employment with the DoD Component ended, that the person's duties with the defense contractor significantly change or the person begins employment with another defense contractor. Such subsequent reports shall be filed within 30 days after the date of the change.

(d) The reports shall be used by the Department of Defense to educate personnel on standards of conduct, to monitor compliance with pre-departure disqualification rules, to identify potential violators of post government service employment restrictions, and for other appropriate purposes.

(e) An administrative penalty of up to $10,000 is available to enforce compliance with the reporting requirement of this Directive. Imposition of the penalty shall follow appropriate due process procedures, including a hearing for any person charged with violation who requests a hearing.

§ 166.5 Responsibilities.

(a) The *Head of Each DoD Component* shall:

(1) Identify a Designated Agency Ethics Official (DAEO) pursuant to DoD Directive 5500.7,[1] "Standards of Conduct" and

(2) Delegate to the DAEO authority to administer the provisions of this part as part of the DoD Component's ethics program.

(3) Promulgate regulations implementing the requirements of the statute and this part.

(b) The *Designated Agency Ethics Official* shall:

(1) Educate present DoD Component members regarding reporting requirements;

(2) Take aggressive action to obtain reports from former component members; this shall include mailing annual reminders to last known address of each former official;

(3) Review individual reports to ensure completeness;

(4) Evaluate information regarding possible violations of this part, impose appropriate penalties, and make determinations in writing in accordance with applicable due process procedures;

(5) Ensure that a list of individuals who report during the prior fiscal year and a copy of each report are provided to the DoD General Counsel no later than February 28 of each year.

(c) The *Assistant Secretary of Defense (Comptroller)* shall prepare an annual report listing the defense contractors that have been awarded $10,000,000 or more in DoD contracts during the fiscal year and publish the report in the **Federal Register** not later than December 15 after the end of the fiscal year. Persons subject to the filing requirement may rely upon the annual report to identify those contractors whose employees and former employees are subject to the provisions of this part.

(d) The *DoD General Counsel* shall:

(1) Receive the lists and copies of individual reports from each DoD Component and compile the information,

(2) No later than April 1 of each year, prepare a list of individuals who filed reports for the preceding fiscal year, listed by groups under the names of the appropriate DoD Component, and submit it to the President of the Senate and to the Speaker of the House of Representatives,

(3) Maintain copies of the lists and individual reports and make them available to the public for inspection during regular working hours.

(4) Provide legal guidance and assistance to the DAEO for DoD, and to the legal counsel for the DAEOs of all DoD components.

§ 166.6 Procedures.

(a) DoD Components shall establish administrative procedures for submission, review and approval of individual reports and for compiling and submission of the information to the DoD General Counsel who shall establish administrative procedures for receipt, compilation, and submission to Congress, of the reported information. See § 166.5.

(b) DoD Components shall establish procedures to evaluate information regarding possible violations of this Directive and to impose appropriate penalties. DoD Components shall establish procedures for holding requested hearings.

(c) Suspected violators shall be reported to the DAEO of the DoD Component of which the suspected individual is a former or present member. DoD personnel shall cooperate with official investigations of possible violations.

§ 166.7 Other Reporting Requirements.

(a) The reports prescribed by this part are in addition to the reports required from retired regular officers (DD Form 1357) and tbe financial disclosure reports required of certain civilian employees and active duty military officers (DD Form 1555 and Standard Form 278). See DoD Directive 5500.7.

(b) The reporting requirement set out in this part has been assigned Report Control Symbol ______.

BILLING CODE 3810-01-M

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[1] Copies may be obtained, if needed from the U.S. Naval Publications and Form Center, Attn: Code 301, 5801 Tabor Avenue, Philadelphia, PA 19120.

VOL 51 ISS 217 NO 10 1986 UMI

§166.8- REPORT OF DoD AND DEFENSE RELATED EMPLOYMENT
AS REQUIRED BY
10 U.S.C. §2397

OMB Approval
No.____________

IF ADDITIONAL SPACE IS REQUIRED
USE BLANK SHEETS OF PAPER REFERENCING ITEM NUMBERS BELOW

1.NAME (Last - First - MI)

2.SOCIAL SECURITY NO. ☐☐☐-☐☐-☐☐☐☐

3.HOME ADDRESS
a.Telephone
area code ☐☐☐- ☐☐☐☐
b.Street
c.City
d.State
e.Zip Code ☐☐☐☐☐☐☐☐☐

4.a.IS THIS AN INITIAL REPORT ☐ YES ☐ NO
b.IF THIS IS NOT AN INITIAL REPORT: Check one
☐ THIS SUBSEQUENT REPORT DUE TO CHANGE IN DUTIES
☐ THIS SUBSEQUENT REPORT DUE TO CHANGE IN EMPLOYER

PART I
FORMER OFFICER OR EMPLOYEE OF DoD NOW EMPLOYED BY CONTRACTOR ONLY

5.RETIRED MILITARY - O4 or above ☐ YES ☐ NO Grade ☐☐
FORMER MILITARY - O4 or above ☐ YES ☐ NO Grade ☐☐
RETIRED CIVILIAN paid as GS/13 or above ☐ YES ☐ NO Grade ☐☐
FORMER CIVILIAN paid as GS/13 or above ☐ YES ☐ NO Grade ☐☐

6.
	day	month	year
a.DATE OF TERMINATION OF DoD SERVICE OF EMPLOYMENT			
b.DATE OF EMPLOYMENT WITH DEFENSE CONTRACTOR			

7.IS YOUR ANNUAL SALARY WITH DEFENSE CONTRACTOR $25,000 OR ABOVE? ☐ YES ☐ NO amount $ ______

8.NAME OF DEFENSE CONTRACTOR EMPLOYER

9.WORK ADDRESS
a.Telephone
area code ☐☐☐- ☐☐☐☐
b.Street
c.City
d.State
e.Zip Code ☐☐☐☐☐☐☐☐☐

10.CONTRACTOR POSITION
a. ☐ Administrator
☐ Researcher
☐ Contract Officer
☐ Manager
☐ Consultant
☐ Other

b.Specific Title(s)

c.YOU MUST PROVIDE A DETAILED DESCRIPTION OF YOUR DUTIES ON A SEPARATE SHEET. Include specifics on contracts or actions related to duties held in ALL former DoD positions that are reported in #11, below. See instructions.

11.FORMER DoD POSITION
a. ☐ Administrator
☐ Researcher
☐ Contract Officer
☐ Manager
☐ Consultant
☐ Other

b.Specific Title and Organization

c.YOU MUST PROVIDE A DETAILED DESCRIPTION OF YOUR DUTIES ON A SEPARATE SHEET. Report information requested in #11 a.,b. and c. for each former DoD position held within 2 years prior contractor position. See instructions.

DD FORM 1787 (Draft)

12. DESCRIBE ANY DoD DISQUALIFICATION ACTIONS Within Two Years Prior To Contractor Employment

PART II
FORMER EMPLOYEES OF CONTRACTORS NOW DoD OFFICERS OR EMPLOYEES ONLY

13.	day	month	year
a. DATE OF TERMINATION WITH DEFENSE CONTRACTOR			
b. DATE OF EMPLOYMENT OR SERVICE WITH DoD			

14. IS YOUR ANNUAL SALARY WITH DoD AT A RATE EQUAL TO OR ABOVE GS/13? ☐ YES ☐ NO amount $ ☐

15. NAME OF DoD ORGANIZATION(S) by which employed within last two years

16. WORK ADDRESS
a. Telephone area code ☐☐☐ ☐☐☐-☐☐☐☐
b. Street
c. City
d. State
e. Zip Code ☐☐☐☐☐-☐☐☐☐

17. CURRENT DoD POSITION
a.
☐ Administrator
☐ Researcher
☐ Contract Officer
☐ Manager
☐ Consultant
☐ Other

b. Specific Title(s)

c. **YOU MUST PROVIDE A DETAILED DESCRIPTION OF YOUR DUTIES ON A SEPARATE SHEET.** Include specifics on contracts or actions related to duties held in ALL contractor positions that are reported in #18, below. See instructions.

18. CONTRACTOR POSITION
a.
☐ Administrator
☐ Researcher
☐ Contract Officer
☐ Manager
☐ Consultant
☐ Other

b. Specific Title(s)

c. **YOU MUST PROVIDE A DETAILED DESCRIPTION OF YOUR DUTIES ON A SEPARATE SHEET.** Report information requested in #18 a., b. and c. for each contractor position held within 2 years prior your current position. See instructions

PART III
ALL FILERS CERTIFY

19. I CERTIFY THAT THE ABOVE INFORMATION IN TRUE, COMPLETE, AND CORRECT TO THE BEST OF MY KNOWLEDGE. I ALSO CERTIFY I HAVE READ AND UNDERSTAND DoD DIRECTIVE 7700.15 OR IMPLEMENTING REGULATIONS AND I WILL FILE A NEW REPORT OF DoD AND DEFENSE RELATED EMPLOYMENT WITHIN 30 DAYS AFTER THE INFORMATION IN THIS REPORT HAS CEASED TO BE ACCURATE.

SIGNATURE

DATE

PRIVACY ACT STATEMENT

This information in this report is required by 10 U.S.C. §2397. Each report will be reviewed by Department of Defense officials to determine compliance with the intent of the Act. Information derived from the reports, including names of reporting individuals nd their current and former employers, shall be provided annually to the Congress. The reports themselves shall be available for review by members of the public and may otherwise be made available as authorized by law.

DD FORM 1787 (Draft)

BILLING CODE 3810-01-C

Knowing or willful failure to file or report information required to be reported by this law, or falsification of information, may subject you to administrative penalty of up to $10,000 pursuant to regulations promulgated by the Secretary of Defense. Knowing or willful falsification of information required to be filed may also subject you to criminal prosecution under 18 U.S.C. § 1001, leading to a fine of not more than $10,000 or imprisonment for not more than five years or both.

Instructions

The following categories of individuals must file this report:

Category I

Each person who has left service or employment with a DoD Component, who:

a. is a retired military officer or former military officer who served on active duty at least 10 years and who held, for any period during that service, the grade of O–4 or above, or a former civilian officer or employee whose pay at any time during the three year period prior to the end of DoD service or employment was equal to or greater than the minimum rate for a GS–13 at that time;

b. within the two year period following service of employment with a DoD Component, is employed by a defense contractor who, during the year preceding employment, was awarded $10,000,000 or more in DoD contracts; and

c. is employed by the defense contractor at a pay rate of $25,000 per year or more.

Category II

Each civilian officer and employee of a DoD Component who:

a. is employed at a pay rate equal to or greater than the minimum rate for GS–13;

b. within the two year period prior to the beginning of service or employment with the DoD Component, was employed by a defense contractor who, during either year, was awarded $10,000,000 or more in DoD contracts; and

c. was employed by that contractor at a pay rate of $25,000 per year or more at any time during employment.

Reports shall be submitted to the individual's present or former DoD Component in accordance with DoD Component procedures. Current DoD officers and employees shall file a report within 30 days after entering employment or service with any DoD Component. Former DoD officers and employees shall file an initial report within 90 days after the date on which the individual began employment with the defense contractor. Former DoD officers and employees shall file subsequent reports each time, during the two year period after service or employment with the DoD Component ended, that the person's duties with the defense contractor significantly change or the person begins employment with another defense contractor. Such reports shall be filed within 30 days after the date of the change.

1. through 3. Provide the appropriate information.

4. Check "yes" if this is the first DD Form 1787 you have filed ever and go on to item #5. Check "no" if you have filed a DD Form 1787 in the past and answer #4.b. and 4.c. (be sure to provide the filing dates for all prior reports).

Part I. This part only applies to individuals in category I, above.

5. Check the box(es) which indicates your status and include the highest grade or rank you held prior to leaving your DoD position. Keep in mind that the requirement to file DD Form 1787 is imposed on former and retired civilian employees who have been paid at a rate equal to or greater than the minimum rate *at the time* for a GS–13 *at any time during the three year period prior to termination* from the last DoD position.

6. Provide the requested dates. If you are no longer employed by the defense contractor, provide the date of termination on a separate sheet referencing this item number.

7. Indicate whether your annual salary with the defense contractor is above $25,000 by checking "yes" or "no." The law also requires you to provide the actual amount of your annual salary.

8. and 9. Provide the appropriate information for your defense contractor employer.

10. Indicate your position with the defense contractor by checking the box(es) next to the title that best describes your position. Also provide your specific title(s). YOU ARE REQUIRED TO PROVIDE A DETAILED DESCRIPTION OF YOUR SPECIFIC DUTIES ON A SEPARATE SHEET OF PAPER REFERENCING THIS ITEM NUMBER. YOU MUST PROVIDE THE NAMES AND DETAILS FOR ALL CONTRACTS AND ACTIONS THAT RELATE IN ANY WAY TO YOUR DUTIES IN ALL FORMER DoD POSITIONS HELD WITHIN THE TWO YEARS PRIOR TO THE BEGINNING OF YOUR EMPLOYMENT WITH THE DEFENSE CONTRACTOR. ALL THESE FORMER DoD POSITIONS MUST BE REPORTED IN ITEM #11. For a two year period following the termination of your last position with a DoD Component, you are required to file a new DD Form 1787 each time your duties with the defense contractor change significantly and each time you become employed by a new defense contractor.

11. Indicate your former DoD position by checking the box(es) next to the title that best describes your position. Also provide your specific title(s). YOU ARE REQUIRED TO PROVIDE A DETAILED DESCRIPTION OF YOUR SPECIFIC DUTIES ON A SEPARATE SHEET OF PAPER REFERENCING THIS ITEM NUMBER. YOU MUST PROVIDE THE NAMES AND DETAILS FOR ALL CONTRACTS AND ACTIONS THAT RELATE IN ANY WAY TO YOUR POSITION WITH THE DEFENSE CONTRACTOR REPORTED IN ITEM #10. If you held more than one DoD position during the two years prior to the beginning of your employment with the defense contractor, provide all the information requested in #11 a., b. and c. for each DoD position on a separate sheet of paper referencing this item number.

12. If there were any DoD disqualification actions related to you during the two years prior to your defense contractor employment, describe the actions in detail.

Part II. This part only applies to individuals in category II, above.

13. Provide the appropriate information.

14. Indicate whether your annual salary with the DoD Component is equal to or above the minimum rate for a GS–13 by checking "yes" or "no." The law also requires you to provide the actual amount of your annual salary.

15. and 16. Provide the appropriate information for your DoD Component organization.

17. Indicate your DoD position by checking the box(es) next to the title that best describes your position. Also provide your specific title(s) and include your organization code letters. YOU ARE REQUIRED TO PROVIDE A DETAILED DESCRIPTION OF YOUR SPECIFIC DUTIES ON A SEPARATE SHEET OF PAPER REFERENCING THIS ITEM NUMBER. YOU MUST PROVIDE THE NAMES AND DETAILS FOR ALL CONTRACTS AND ACTIONS THAT RELATE IN ANY WAY TO YOUR DUTIES IN ALL FORMER DEFENSE CONTRACTOR POSITIONS HELD WITHIN THE TWO YEARS PRIOR TO THE BEGINNING OF YOUR SERVICE OR EMPLOYMENT WITH THE DoD COMPONENT. ALL THESE FORMER DEFENSE CONTRACTOR POSITIONS MUST BE REPORTED IN ITEM #18.

18. Indicate your former position with the defense contractor by checking the box(es) next to the title that best describes your position. Also provide your specific title(s). YOU ARE REQUIRED TO INCLUDE A DETAILED DESCRIPTION OF YOUR SPECIFIC DUTIES ON A SEPARATE SHEET OF PAPER REFERENCING THIS ITEM NUMBER. YOU MUST INCLUDE NAMES AND DETAILS FOR ALL CONTRACTS AND ACTIONS THAT RELATE IN ANY WAY TO YOUR DUTIES WITH YOUR DoD COMPONENT REPORTED IN ITEM #17. If you have been employed by more than one defense contractor during the two years prior to the beginning of your service or employment with the DoD Component, provide all information requested in item #18 a., b. and c. for each defense contractor position on a separate sheet of paper referencing this item number.

Part III. All filers must certify this report by signing and dating.

You will need to use separate sheets of paper. Please be careful to reference each item number carefully.

§ 166.9 Department of defense contractors receiving negotiated contract awards of $10 million or more.

Fiscal Year 1985:
- 3 A Industries, Inc.
- A & S Tribal Industries
- A A I Corp.
- A C S Construction Co. of Miss.
- A L M, Inc.
- A M General Corp.
- A R C Corp.
- A T & T Information Systems
- A T & T Technologies, Inc.
- A V W Electronic Systems, Inc.
- Abbott Products, Inc.
- Abex Corp.
- Accent General, Inc.
- Accudyne Corp.

Action Mfg. Co.
Accurex Corp.
Addsco Industries, Inc.
Advance Computer Communications
Advanced Marine Enterprises
Advanced Technology, Inc.
Aero Corp.
Aerojet General Corp.
Aerojet Strategic Propulsion
Aerojet Tactical Systems
Aerojet Techsystems
Aeroquip Corp.
Aerospace Corp., The
Aerospace Technologies, Inc.
Alascom, Inc.
All Bann Enterprises, Inc.
Allen Corp. of America
Alliance Properties, Inc.
Allied Signal Corp.
Allis Chalmers Distribution Svc.
Altama Delta Corp.
Alvarado Construction, Inc.
Amber Refining, Inc.
Amerada Hess Corp.
American Airlines, Inc.
American Automar, Inc.
American Cyanamid Co., Inc.
American Development Corp.
American Electronic Laboratories, Inc.
American Express Co.
American Management Systems, Inc.
American President Lines, Ltd.
American Satellite Co.
American Systems Corp.
American Telephone & Telegraph Co.
American Trans Air, Inc.
Amertex Enterprises, Ltd.
Ametek, Inc.
Amex Systems, Inc.
Amoco Corp.
Ampex Corp.
Amron Corp.
Amstar Technical Products Co.
Analysis & Technology, Inc.
Analytic Sciences Corp., The
Analytic Services, Inc.
Analytical Systems Engnr. Corp.
Analytics, Inc.
Anderson, Arthur & Co.
Arcwel Corp.
Argosystems, Inc.
Arinc Research Corp.
Arkla, Inc.
Arrow Airways, Inc.
Aryana Corp.
Ashland Oil, Inc.
Assurance Technology Corp.
Astronautics Corp. of America
Atlantic Dry Dock Corp.
Atlantic Marine, Inc.
Atlantic Research Corp.
Atlantic Richfield Co.
Atlas Processing Co.
Austin Co., The
Automated Data Management, Inc
Automated Machine Products, Inc.
Automated Sciences Group, Inc.
Automation Industries, Inc.
Avco Corp.
Avondale Shipyards, Inc.
Aydin Corp.
Ayer N W, Inc.
B B N Communications Corp.
B D M Corp.
B D M International, Inc.
B E I Electronics, Inc.
B P North America Petroleum, Inc.
B S I Corp.
Ball Corp.
Baltimore Gas & Electric Co.
Barnes & Reinecke, Inc. (Del.)
Bataco Industries, Inc.
Bates, Ted Worldwide, Inc.
Bath Iron Works Corp.
Battelle Memorial Institute
Bay City Marine, Inc.
Bay Tankers, Inc.
Beacon Oil Co.
Beech Aerospace Services, Inc.
Beech Aircraft Corp.
Bell Aerospace Textron
Bell Helicopter—Boeing, JV
Bell Helicopter Textron, Inc.
Bell Telephone Labs, Inc.
Belleville Shoe Mfg. Co.
Bendix Corp., The
Bendix Field Engineering Corp.
Beretta USA Corp.
Beta Systems Velco Filter
Betac Corp.
Bethlehem Steel Corp.
Blue Cross & Blue Shield of RI
Blue Cross of Washington & Alaska, Inc.
Bodenhamer Building Corp.
Boeing Aerospace Co.
Boeing Co., The
Boeing Computer Services
Boeing Technical Operations
Bolt Beranek & Newman, Inc.
Booz Allen & Hamilton, Inc.
Borg Warner Corp.
Brunswick Corp.
Bulova Systems & Instruments Corp.
Bunker Ramo Corp.
Burnside Ott Aviation Training Center
Burroughs Corp.
Butler Associates, Inc.
Butt & Head, Inc.
C 3, Inc.
C A S, Inc.
C Construction Co., Inc.
C D I Marine Co.
C F M International, Inc
C F S Air Cargo
CACI, Inc.
CACI, Inc. Federal
Caddell Construction Co., Inc.
Cadillac Gage Co.
Calcasieu Refining Co., Inc.
California Microwave, Inc.
California Pacific Associates
Calspan Corp.
Caltex Oil Products Co.
Caltex Petroleum Corp.
Campbell Soup Co.
Carbon Hill Mfg. Co.
Carnation Co.
Carnegie Mellon University
Carolina Power & Light Co.
Case, J I Co.
Caterpillar Tractor Co.
Cates Construction, Inc.
Central Gulf Lines, Inc.
Century Brass Products, Inc.
Cerberonics, Inc.
Cessna Aircraft Co., Inc.
Chamberlain Mfg. Corp.
Chaparral Industries, Inc.
Charles Stark Draper Laboratories, Inc.
Chevron U S A, Inc.
Chromalloy American Corp.
Chrysler Corp.
Cincinnati Electronics Corp.
Cleveland Pneumatic Co.
Coastal Dry Dock & Repair Corp.
Coastal Industries, Inc.
Coastal Refining & Marketing
Cobro Corp.
Coca Cola Co.
Colt Industries, Inc.
Columbia Research Corp.
Comarco, Inc.
Command Control & Communications Corp.
Communication Mfg. Co.
Comptek Research, Inc.
Computer Sciences Corp.
Computervision Corp.
Comsat General Corp.
Conner Brothers Construction Co.
Conoco, Inc.
Container Research Corp.
Contel Page Systems, Inc.
Continental Maritime San Diego
Control Data Corp.
Cornell University
Coronado Technology, Inc.
Crane Co.
Cray Research, Inc.
Cubic Corp.
Cummins Engine Co., Inc.
Curtiss Wright Corp.
Dart & Kraft, Inc.
Dart Industries, Inc.
Dataproducts New England, Inc.
Dawson Construction Co., Inc.
Day & Zimmerman, Inc.
Day & Zimmerman, Inc. & Basil, FE JV
Dayron Corp.
Defense Research, Inc.
Del Mfg. Co., Inc.
Del Monte Corp.
Delta Industries, Inc.
Designers & Planners, Inc.
Developmental Sciences, Inc.
Devils Lake Sioux Mfg. Corp.
Dewey Electronics Corp.
Diagnostic Retrieval Systems, Inc.
Diamond Shamrock Chemicals Co.
Digital Equipment Corp.
Dresser Industries, Inc.
Dual Motors, Inc.
Dun & Bradstreet Corp.
Dynalectron Corp.
Dynamac Corp.
Dynamic Industries Corp.
Dynamic Systems, Inc.
Dynamics Corp. of America
Dynamics Research Corp.
E Systems, Inc.
E G & G Washington Analytical Services Center
E S L, Inc.
Eagle Technology, Inc.
Eastman Kodak Co.
Eaton Corp.
Edcar Industries, Inc.
Edo Corp.
Educational Computer Corp.
El Paso Electric Co.
Electro Methods, Inc.
Electronic Data Systems Corp.
Electrospace Systems, Inc.
Emco, Inc.
Emerson Electric Co.
Engineered Air Systems, Inc.
Engineering Research, Inc.

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Enginetics Corp.
Environmental Elements Corp.
Environmental Research Institute, Michigan
Essex Corp.
Evaluation Research Corp.
Evergreen Intl. Airlines
Ex-Cell-O Corp.
Exxon Co. U.S.A.
Exxon Corp.
F M C Corp.
F N Mfg., Inc.
Fairchild Industries, Inc.
Fairchild Weston Systems, Inc.
Falcon Systems, Inc.
Farmers Union Central
Farrell Lines, Inc.
Federal Cartridge Corp.
Federal Data Corp.
Federal Data System Corp.
Federal Electric Corp.
Figgie International, Inc.
Flight Systems, Inc.
Florida Power & Light Co.
Flow General, Inc.
Flying Tiger Line, Inc., The
Ford Aerospace & Communications
Four Phase Systems, Inc.
Freedom Industries, Inc.
G & M Oil Co., Inc.
G K S, Inc.
G T E Communications Systems Corp.
G T E Products Corp., Del.
G T E Service Corp.
G T E Sylvania, Inc.
Garrett Corp., The
Gary Refining Co.
Gates Learjet Corp.
Gayston Corp.
General Defense Corp.
General Dynamics Corp.
General Dynamics Land Systems
General Electric Co.
General Foods Corp.
General Instrument Corp., Del.
General Motors Corp.
General Research Corp.
General Ship Corp.
General Signal Corp.
Gentex Corp.
Geodynamics Corp.
Georgia Tech Research Corp.
Getty Oil Co.
Giant Industries, Inc.
Gladieux Refinery, Inc.
Global Associates, A Joint Venture
Golden Mfg. Co., Inc.
Goodrich, B F Co., The
Goodyear Aerospace Corp.
Goodyear Tire & Rubber Co.
Goolsby Building Corp.
Gortons of Gloucester
Gould Defense Systems, Inc.
Gould, Inc.
Greenhut Construction Co., Inc.
Grey Advertising, Inc.
Grumman Aerospace Corp.
Gulf & Western Industries, Inc.
Gulf Refining & Marketing
Gulf Stream America Corp.
Gulf Tool Corp.
H & H Meat Products, Inc.
H L J Construction & Mgt. Group
H R B Singer, Inc.
H R Textron, Inc.
Halter Marine, Inc.
Hamilton Technology, Inc.
Harley Davidson Motor Co., Inc.
Harris Corp.
Harsco Corp.
Hawaiian Electric Co., Inc.
Hawaiian Independent Refinery
Hawaiian Telephone Co.
Hayes International Corp.
Hazeltine Corp.
Heckethorn Mfg. Co.
Hensel Phelps Construction Co.
Hercules, Inc.
Hess Oil Virgin Island Corp.
Hewlett Packard Co.
Hollingsworth, John R. Co.
Holmes & Narver, Inc.
Holmes & Narver Services Co., Inc.
Holston Defense Corp.
Honeycomb Co. of America
Honeywell, Inc.
Honeywell Information Systems
Horizons Technology, Inc.
Howell Corp.
Howmet Turbine Components Corp.
Hudson Institute, Inc.
Hughes Aircraft Co.
Hughes Communication Services
Hunt Oil Co.
Hycor, Inc.
Hydraulics International, Inc.
Hyster Co.
I C I Americas, Inc.
I I T Research Institute
I T T Avionics & Westinghouse JV
I T T Corp.
Inco, Inc.
Industrial Acoustics Co.
Informatics General Corp.
Information Spectrum, Inc.
Ingersoll Rand Co.
Institute for Defense Analyses
Integrated Systems Analysts
Intercontinental Mfg. Co., Inc.
Interlisearch
Intermetrics, Inc.
Intermountain Construction Co.
Intermouth International Oil, Inc.
International Business Machines
International Terminal Operating Co.
Interstate Electronics Corp.
Irvin Industries, Inc.
Israel Aircraft Industries
Itek Corp.
Jacksonville Shipyards, Inc.
Jaycor
Jersey Central Power & Light Co.
Johns Hopkins University
Jones Group, Inc., The
Jowett, Inc.
JR Son, Inc.
Jungclaus Campbell Co., Inc.
K D I Precision Products, Inc.
Kaiser Aerospace & Electronics Co.
Kaiser, Henry J., Co.
Kaman Aerospace Corp.
Kaman Sciences Corp.
Kansas Power & Light Co., Inc.
Keco Industries, Inc.
Kemenash, D. & Associates, Inc.
Kenco Refining Inc.
Kern Oil and Refining Co.
Key Airlines, Inc.
Kidde, Inc.
Kisco Co., Inc.
Koch Fuels, Inc.
Kollmorgen Corp.
Kvass Construction Co., Inc.
L S I Avionic Systems Corp.
L T V Aerospace & Defense Co.
L T V Corporation, The
Laguna Industries, Inc.
Laketon Refining Corp.
Landoll Corp.
Lanson Industries, Inc.
Lear Siegler, Inc.
Lewis Management Services Co.
Libby Corp.
Lite Industries, Inc.
Little, Arthur D., Inc.
Litton Industries, Inc.
Litton Systems, Inc.
Lockheed Corp.
Lockheed Electronics Co., Inc.
Lockheed Missiles & Space Co., Inc.
Lockheed Shipbuilding & Construction
Lockley Mfg. Co., Inc.
Loggins Meat Co.
Logicon, Inc.
Logistics Management Institute
Loral Electro Optical Sys.
Loral Electronics Corp.
Louis J. Sportswear, Inc.
Louisville Gas & Electric Co., Inc.
Lucas Industries, Inc.
Lundy Electronics & Systems, Inc.
Lykes Bros. Steamship Co., Inc.
M/A Com, Inc.
M/A Com Linkabit Corp.
Mac H B, Inc.
Magnavox Advance Products System Co.
Magnavox Government & Industrial Electronics Co.
Maitland Bros., Co.
Management & Technical Services Co.
Mantech International Corp.
Mapco, Inc.
Mapco Petroleum, Inc.
Mar, Inc.
Maremont Corp.
Marine Transport Lines, Inc.
Marinette Marine Corp.
Marquardt Co., Inc.
Martin Marietta Corp.
Martin Marietta, Diehl Co's., Thorn & Thomson, JV
Martin Marietta Ordnance System
Marvin Engineering Co., Inc.
Mason & Hanger Silas Mason Co., Inc.
Mason Chamberlain, Inc.
Massachusetts Institute of Technology
Maxima Corp., The
Maxwell Laboratories, Inc.
McCarty Corp., The
McDonnell Douglas Corp.
McDonnell Douglas Helicopter
McLaughlin Research Corp.
McMullen, John J. Associates, Inc.
McRae Industries, Inc.
Merck & Co., Inc.
Metal Trades, Inc.
Metro Machine Corp.
Michael Industries, Inc.
Michelson Organization
Microwave Laboratories, Inc.
Midland Ross Corp.
Milcom Systems Corp.
Miltope Corp.
Mine Safety Appliances Co.
Minnesota Mining & Mfg. Co.
Minowitz Mfg. Co., Inc.
Mission Research Corp.

Mit Con, Inc.
Mitre Corp., The
Mitsui & Co. USA, Inc.
Mobil Oil Corp.
Moog, Inc.
Morton Thiokol, Inc.
Moss Point Marine, Inc.
Motorola, Inc.
Murdock Engineering Co., Texas
N C R Corp.
N I Industries, Inc.
N I West, Inc.
N L Industries, Inc.
Nabisco Brands, Inc.
National Airlines, Inc., Del.
National Power Corp.
National Steel & Shipbuilding Co.
National Systems Management
Navajo Refining Co.
Needham, Inc.
Nero & Associates, Inc.
New Mexico State University
Newberg Brinderson, A Joint Venture
Newhall Refining Co., Inc.
Newport News Shipbuilding & Dry Dock Co.
Nichols Research Corp., Inc.
Nordam
Norden Systems, Inc.
Norfolk Shipbuilding & Dry Dock Corp.
North American Philips Corp.
North Atlantic Industries, Inc.
Northern Telecom, Inc., Del.
Northrop Corp.
Northrop Services, Inc.
Northrop Worldwide Aircraft Services, Inc.
Northwest Airlines, Inc.
Northwest Marine Iron Works
Nuclear Metals, Inc.
O A O Corp.
O R I, Inc.
Ocean Technology, Inc.
Ogden Bulk Transport, Inc.
Olin Corp.
Omni Spectra, Inc.
Optic Electronic Corp.
Oshkosh Truck Corp.
P P G Industries, Inc.
P R B Associates, Inc.
P S I Mobile Products, Inc.
Paccar, Inc.
Pacer Systems, Inc.
Pacific Construction
Pacific Refining Co.
Pacific Sierra Research Corp.
Pan American World Airways, Inc.
Pan American World Services, Inc.
Papago Chemicals, Inc.
Parker Hannifin Corp.
Parsons, Ralph M. Co., The
Pennsylvania Shipbuilding Co.
Pennsylvania State University
Perceptronics, Inc.
Percor, Inc.
Perkin Elmer Corp., The
Peterson Builders, Inc.
Phibro Salomon, Inc.
Philip Morris, Inc.
Philips Electronic Instruments
Phillips Petroleum Co.
Physics International Co.
Picker International, Inc.
Planning Research Corp.
Pneumo Corp.
Polorn Products-Bloomsberg, Inc.
Potomac Electric Power Co.
Power Conversion, Inc.
Presearch, Inc.
Pride Refining, Inc.
Procter & Gamble Co., The
Propper International, Inc.
Prudential Lines, Inc.
Public Service Co. of New Mexico
Puerto Rico Sun Oil Company, Inc.
Purdy Corp.
Purvis Systems, Inc.
Q E D Systems, Inc.
Quality Apparel Co.
Questech, Inc.
Quintron Systems, Inc.
R & D Associates
R C A Corp.
R C A Global Communications
R F Products, Inc.
R G I, Inc.
R M I, Inc., Advance Marine
Radian Corp.
Rand Corp., The
Rantoul, Village of
Raymond Brown Root-Mowlin
Raymond Engineering, Inc.
Raytheon Co.
Raytheon Service Co.
Refinery Associates, Inc.
Reflectone, Inc.
Remington Arms Co., Inc.
Resource Consultants, Inc.
Rexon Technology Corp.
Reynolds, R J Industries, Inc.
Reynolds, R J Tobacco Co.
Roberts, J R Corp.
Rockwell International Corp.
Roebbelen Engineering
Rohr Industries, Inc.
Rolls-Royce, Inc.
Rolm Corp.
Rosemount, Inc.
Rosenblatt, M & Son, Inc.
Ryan & Associates, Inc.
Ryan Walsh Stevedoring Co.
S Cubed
S C I Systems, Inc.
S K F Industries, Inc.
S M S Data Products Group, Inc.
S R I International
Saft America, Inc.
Sage Systems, Inc.
San Antonio, City of
Sanders Associates, Inc.
Santa Barbara Research Center
Sargent Fletcher Co.
Sargent Industries of Del., Inc.
Scallop Corp.
Scanoil International S A Inc.
Schafer, W J Associates, Inc.
Science Applications Intnl., Inc.
Scientific Atlanta, Inc.
Scientific Support Systems
Sea Land Service, Inc.
Sea Mobility, Inc.
Selma Apparel Corp.
Semcor Corp.
Serv Air, Inc.
Service Engineering Co.
Shell Oil Co.
Sheller Globe Corp.
Siemens Capital Corp.
Sierra Research Corp.
Simmonds Precision Products
Simplex Wire & Cable Co.
Sinclair Marketing, Inc.
Singer Co., The
Sippican, Inc.
Smith Industries
Softech, Inc.
Sohio Supply Co.
Solar Turbines, Inc.
Soltek of San Diego
Sonicraft, Inc.
Sooner Defense of Florida, Inc.
South Carolina Electric & Gas Co.
South Central Bell Telephone Co.
Southeast Machine Co.
Southern Air Transport, Inc.
Southern Dredging Co., Inc.
Southern Union Co.
Southwest Marine, Inc.
Southwest Research Institute
Southwestern Bell Telephone Co.
Space Communication Co.
Space Data Corp.
Sparta, Inc.
Sparton Corp.
Spears Associates, Inc.
Sperry Corp.
Standard Container Co,
Standard Mfg. Co.
Stanford, Leland Jr., University
Stanford Telephone, Inc.
Stearns, Roger, Inc.
Steuart Petroleum Co.
Stewart Warner Corp.
Sun Chemical Corp.
Sun Refining & Marketing Co.
Sundstrand Corp.
Sundland Refining Corp.
Superior Engineers Electronic Co.
Support Systems Associates, Inc.
Supreme Beef Processors, Inc.
Survival Technology, Inc.
Sverdrup Technology, Inc.
Swedlow, Inc.
Swift & Co.
Sygnetron Protection Systems
Syscon Corp.
System Development Corp.
Systematics General Corp.
Systems & Applied Sciences Corp.
Systems Management American, Inc.
Systems Research Laboratories, Inc.
T & G Construction Co., Inc.
T R W, Inc.
T S C Corp.
T W Oil (Houston), Inc.
Taurio Corp.
Techdyn Systems Corp.
Technology Applications, Inc.
Tektronix, Inc.
Teledyne, Inc.
Teledyne Industries, Inc.
Teledyne Microwave
Telephonics Corp.
Telos Computing, Inc.
Tempo, Inc.
Tetra Tech., Inc.
Texaco, Inc.
Texas Instruments, Inc.
Texas Power & Light Co.
Texas, State of
Therm, Inc.
Thompson, J. Walter Co.
Tilley Construction & Engineers
Todd Pacific Shipyards Corp.
Todd Shipyards Corp.
Tracor Aerospace Austin, Inc.
Tracor, Inc.
Tracor Marine, Inc.

Tracor MBA
Tradax Petroleum America, Inc.
Trans World Airlines, Inc.
Transamerica Airlines, Inc.
Transamerica Delaval, Inc.
Treadwell Corp.
Trepte Construction Co.
Tri-Ex Tower Corp
Triad Microsystems, Inc.
Triple A Machine Shop, Inc.
Turbo Compressor Technologies
Turtle Mountain Mfg. Co.
U S Oil & Refining Co.
U T L Corp.
Ultrasystems, Inc.
Unidynamics Corp.
Unified Industries, Inc.
Union Carbide Corp.
Union Oil Co. of California
Uniroyal, Inc.
United Airlines Aircrew Training
United Chem Con Corp.
United States Lines, Inc.
United Technologies Corp.
United Technologs Auto Holdings
United Telecontrol Elect., Inc.
Universal Energy Systems, Inc.
Universal Hydraulics, Inc.
Universal Maritime Service
University of California
University of Dayton
University of Illinois
University of Maryland, Inc.
University of New Mexico, The
University of Southern California
University of Texas System
Usibelli Coal Mine, Inc.
Utah Power & Light Co.
Utah State University
V S E Corp.
Valleydale Packers, Inc.
Valmac Industries, Inc.
Varian Associates, Inc.
Varo, Inc.
Veda, Inc.
Verac, Inc.
Vessel Charters, Inc.
Vickers, Inc.
Vitro Corp.
Voest Alpine Trading USA Corp.
W F Industries
Walters E & Co., Inc.
Wang Laboratories, Inc.
Wardoco, Inc.
Washington, University of
Watkins Johnson Co.
Wedtech Corp.
Wellco Enterprises, Inc.
West Systems
Western Gear Corp.
Western Research Corp.
Western Trading Co.
Western Union International
Western Union Telegraph Co.
Westinghouse Electric Corp.
White Engines, Inc.
Whittaker Corp.
Williams International Corp.
Williams Steel Industries, Inc.
Wilson Machine Co.
Winfield Mfg. Co., Inc.
Wisconsin Physicians Service Insurance
Wolf, L Co.
Woods Hole Oceanographic Institute
Woodward Governor Co.
World Airways, Inc.
Wyoming Refining Co.
Xerox Corp.
Zantop International Airlines, Inc.
Zenith Electronics Corp.

Linda M. Lawson,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
November 5, 1986.

[FR Doc. 86-24877 Filed 11-7-86; 8:45 am]

BILLING CODE 3810-01-M

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32 CFR Part 231a

[DoD Instruction 1000.10]

Procedures Governing Credit Unions on DoD Installations

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This amendment proposes to modify procedures for lease of land to credit unions that construct buildings on DoD installations. The present § 231a.5(j)(3) (51 FR 6535) provides that once leases expire and title to leasehold improvements passes to the Government, credit unions that meet the membership criterion shall be accorded free rent, utilities and services. This proposed amendment permits DoD Components to negotiate for (1) extension of leases prior to expiration and (2) credit union payment of rent, maintenance, utilities and services once title to leasehold improvements passes to the Government.

DATE: Written comments must be received by December 10, 1986.

ADDRESS: Directorate for Banking, Office of the Deputy Assistant Secretary of Defense (Management Systems), The Pentagon, Room 1A658, Washington, DC 20301-1100.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald L. Adolphi, 202-697-8281.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 231a

Credit unions, Defense credit unions.

PART 231a—[AMENDED]

Accordingly, 32 CFR Part 231a is proposed to be amended as follows:

1. The authority citation for Part 231a continues to read as follows:

Authority: 10 U.S.C. 136.

2. Section 231a.5(j) is revised to read as follows:

§231a.5 [Amended]

* * * * *

(j) Leases of Government land.

(1)–(2) [Reserved]

(3) Subject to the Secretarial determination required by 10 U.S.C. 2667, the terms of an existing real estate lease may be extended, prior to the expiration of the lease, at fair market rental value. In consideration for this extension, the credit union shall agree to continue maintaining the premises and paying for utilities and services furnished in accordance with DoD Directive 4000.6.

(4) When, under the terms of a lease, title to improvements passes to the Government, and the credit union expresses an interest in continued occupancy, arrangements shall be made by lease for such occupancy. The lease may require the credit union to (1) pay fair market rental value for land underlying the improvements and (2) maintain the premises and pay for utilities and services furnished in accordance with DoD Directive 4000.6.

* * * * *

Linda M. Lawson,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
November 5, 1986.

[FR Doc. 86-25336 Filed 11-7-86; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A3-FRL-3098-6; Docket No. AM022DE]

Approval and Promulgation of Implementation Plans; Approval of Revisions to the Delaware State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing approval of revisions to the Delaware Regulations Governing the Control of Air Pollution, Regulation No. XXIV, Control of Volatile Organic Compound Emissions, Section 9 Surface Coating Operations. The headings in Table I and I(a) are amended by deleting the word "yearly" from "yearly average." Both automobile assembly plants, Chrysler Corporation in Newark and General Motors Corporation in Wilmington, will be affected by this revision. In addition, two new Reasonably Available Control Technology (RACT) standards are proposed for the zinc-rich primer and urethane chip-resistant primer. These standards of 4.0 and 4.5 lbs. VOC/gallon less water, respectively, will pertain only to Chrysler Corporation in Newark at the present time.

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The Environmental Protection Agency is reproposing these revisions to the Delaware Regulations Governing the Control of Air Pollution because the proposed **Federal Register** notice which was published on July 17, 1986 contained several errors. EPA is now withdrawing the July 17, 1986 **Federal Register** notice and republishing the proposed notice in its entirety today.

DATE: Comments must be submitted on or before December 10, 1986.

ADDRESSES: Copies of these amendments and the accompanying support documents are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Air Programs Branch, 841 Chestnut Building, Philadelphia, PA 19107, Attn: Esther Steinberg (3AM11)

Delaware Department of Natural Resources and Environmental Control, Air Resources Section, 89 Kings Highway, P.O. Box 1401, Dover, DE 19901

All comments on the proposed revision submitted within 30 days of this Notice will be considered and should be addressed to Mr. David L. Arnold, Chief, DELMARVA/DC Section at the above Region III address. Please reference the EPA docket number found in the heading of this Notice.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia H. Stahl, (215) 597-9337, at the Region III address above. The commercial and FTS numbers are the same.

SUPPLEMENTARY INFORMATION: On December 18, 1985, the State of Delaware submitted a request to amend Regulation No. XXIV, Control of Volatile Organic Compound Emissions, section 9, Surface Coating Operations. This amendment proposes revisions to Tables I and I(a) by deleting the word "yearly" from the headings "yearly average" in both tables. The deletion of "yearly" removes the current confusion associated with these tables since the footnotes to these tables clearly limit the compliance determination for automobile and light duty truck coatings to the arithmetic average of all colors at any time. This revision will affect the two automobile assembly plants in Delaware, Chrysler Corporation in Newark and General Motors in Wilmington. The use of averaging only pertains to automobile and light duty truck coatings as footnoted in Tables I and I(a). Automobile and light duty truck coatings may be averaged within a category but not across categories. Both EPA and Delaware agree that all other surface coatings in these tables must comply individually with the applicable standard.

In addition, two new standards under enamel coatings in Table I are proposed. The proposed standard for zinc-rich primer is 4.0 lbs. VOC/gallon less water. The proposed standard for urethane chip-resistant primer is 4.5 lbs. VOC/gallon less water. The final compliance date for both standards is December 31, 1985. The urethane chip-resistant primer is defined as a coating baked at or below 250° F and is applied, while wet and without individual bake curing, after the primer and immediately before the topcoat. Neither of these coatings were considered at the time of the development of EPA's Control Technology Guidelines (CTG) for Automobile and Light Duty Truck Surface Coating Operations. EPA has determined that these standards now represent Reasonably Available Control Technology (RACT) for these two coatings. The technical support document contains detailed information regarding the development of these RACT standards. The increase in VOC emissions allowed by these RACT limits are not expected to adversely impact the EPA approved demonstration of attainment for Delaware. These emissions will be subtracted from Delaware's growth allowance. Currently, only Chrysler Corporation in Newark will be affected by the adoption of the standards for zinc-rich primer and urethane chip-resistant primer. The General Motors Wilmington Plant is not using a zinc-rich primer at this time and the definition of the urethane chip-resistant primer here restricts the application of this standard to Chrysler's current type of operation.

The proposed changes will affect Tables I and I(a). The word "YEARLY" is deleted from the table heading, "YEARLY AVERAGE" in both Tables I and I(a). The two new standards for zinc rich primer and urethane chip-resistant primer are added under the enamel coatings category below the standard for final repair primer. A footnote (5) will be added for the urethane chip-resistant primer and will read:

> This coating is baked at or below 250° F and is applied, while wet and without individual bake curing, after the primer and immediately before the topcoat.

Conclusion

EPA's decision to propose approval to delete the word "yearly" from the headings in Tables I and I(a) and adopt new RACT standards for zinc-rich primer and urethane chip-resistant primer is based on a determination that these revisions are consistent with current EPA policy and that they comply with the Clean Air Act.

The public is invited to submit comments to the EPA Region III address above on whether or not the proposed revisions should be approved.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. section 605(b), the Regional Administrator has certified that the proposed revisions will not have a significant economic impact on a substantial number of small entities. *See* 46 FR 8709, January 27, 1981.

List of Subjects in 40 CFR Part 52

Air pollution control.

Authority: 42 U.S.C. 7401-7642

Dated: October 9, 1986.

James M. Seif,

Regional Administrator.

[FR Doc. 86-25347 Filed 11-7-86; 8:45 am]

BILLING CODE 6560-50-M

VOL 51 ISS 217 NO 10 1986 UMI

Notices

Federal Register
Vol. 51, No. 217
Monday, November 10, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of International Cooperation and Development

Agribusiness Promotion Council; Meeting

Notice is hereby given that the Committee on Transportation and Infrastructure of USDA's Agribusiness Promotion Council, advisory group to the Secretary of Agriculture on matters pertaining to the Caribbean Basin, will meet on November 18, 1986 from 5:00 to 7:00 p.m., at the Hyatt Regency Hotel in Miami, Florida. The Committee meeting will be held in conjunction with the Caribbean/Central American Action's (C/CAA) 10th Anniversary Miami Conference on the Caribbean. The agenda will consist of discussions regarding transportation difficulties and concerns as they relate to the Caribbean Basin and Central American countries. The status of the recommendations made at January's meeting in Washington, DC. will be also be addressed. The meeting will be open to the public. Written statements may be submitted to Joan S. Wallace, Administrator, USDA/OICD Room 3047—South Building, Washington, DC 20250-4300, until November 10, 1986.

Richard E. Lyng,

Secretary.

November 4, 1986.

[FR Doc. 86-25391 Filed 11-7-86; 8:45 am]

BILLING CODE 3410-DP-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

ATBCB Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of ATBCB meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (ATBCB) has scheduled a meeting to be held from 10:00 to 12 noon, on Wednesday, November 19, 1986, to take place in Department of Transportation (DOT) Conference Room 2230, 400 Seventh Street, SW., Washington, DC.

Items on the Agenda

FY 1986 Annual Report to the President and Congress; proposed preamble and MGRAD provisions for detectable warnings; and proposed preamble and MGRAD provisions for leased facilities.

DATE: Wednesday, November 19, 1986—10:00-12 noon.

ADDRESS: Department of Transportation Conference Room 2230, 400 Seventh Street, SW., Washington, DC.

Committees of the ATBCB will meet on Monday afternoon and all day Tuesday, November 17 and 18, 1986. The Research Committee will meet in DOT Conference Room 3200. All other committees will meet in DOT Conference Room 2230, 400 Seventh Street, SW.

FOR FURTHER INFORMATION CONTACT: Larry Allison, Special Assistant for External Affairs (202) 245-1591 (voice or TDD).

Margaret Milner,

Executive Director.

[FR Doc. 86-25323 Filed 11-7-86; 8:45 am]

BILLING CODE 8820-BP-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Travel and Tourism Administration
Title: Survey of International Air Travelers
Form No.: Agency: N/A; OMB: 0605-0007
Type of request: Revision of a currently approved collection
Burden: 165,600 respondents; 24,840 reporting hours
Needs and Uses: This survey provides consumer marketing data on international travelers to and from the United States which allows USTTA to identify and analyze specific foreign travel markets.
Affected public: Individuals
Frequency: On occasion
Respondent's obligation: Voluntary
OMB desk officer: Sheri Fox, 395-3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: November 5, 1986.

Ed Michals,

Departmental Clearance Officer, Information Management Division, Office of Information Resources Management.

[FR Doc. 86-25379 Filed 11-7-86; 8:45 am]

BILLING CODE 3510-CW-M

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration
Title: National Estuarine Reserve Research System
Form No.: Agency: N/A; OMB: 0648-0121
Type of request: Extension of the expiration date of a currently approved collection
Burden: 99 respondents; 12,567 reporting hours
Needs and uses: The Coastal Zone Management Act of 1972, as amended, authorizes the Secretary of Commerce to make grants to coastal states to acquire, develop, or operate National Estuarine Research Reserves (previously called Estuarine Sanctuaries). Applications are required for the National Oceanic and Atmospheric Administration to

determine if the proposal for funding meets the standards of the law.

Affected public: States

Frequency: On occasion; quarterly; semiannually; and annually

Respondent's obligation: Required to obtain or retain a benefit

OMB desk officer: Sheri Fox, 395–3785

Agency: National Oceanic and Atmospheric Administration

Title: Issuance of Certificates to U.S. Fishermen from the Republic of Colombia

Form No.: Agency: N/A; OMB: 0648–0142

Type of request: Extension of the expiration date of a currently approved collection

Burden: 25 respondents; 8 reporting hours

Needs and uses: In 1972 the U.S. and the Republic of Colombia entered into a treaty which provides certain fishing rights to nationals and vessels of the U.S. The information collected from U.S. fishermen by the National Marine Fisheries Service is provided to Colombia. The Colombian government uses the information to issue certificates to fish in designated areas of the Caribbean Sea under their jurisdiction.

Affected public: Businesses or other for profit institutions; small businesses or organizations

Frequency: Annually

Respondent's obligation: Required to obtain or retain a benefit

OMB desk officer: Sheri Fox, 395–3785

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: November 5, 1986.

Ed Michals,

Departmental Clearance Officer, Information Management Division, Office of Information Resources Management.

[FR Doc. 86–25380 Filed 11–7–86; 8:45 am]

BILLING CODE 3510-CW-M

[Docket Nos. 5661–01; 5661–02]

Kurt Behrens; Delta-Avia Fluggerate GmbH, Respondents; Order Vacating Temporary Denial Order

By Order of February 1, 1985, 50 F.R. 5288 (February 7, 1985), two respondents and seven related parties have been temporarily denied U.S. export privileges. This temporary denial order of February 1, 1985 was issued pursuant to the authority of § 388.19 of the Export Administration Regulations (currently codified at 15 CFR Parts 368–399 (1986)).

The two respondents denied U.S. export privileges by the temporary denial order are the following:

Kurt Behrens, Elisabethbrunnen 5, 5442 Mendig, Federal Republic of Germany

Delta-Avia Fluggerate GmbH, with addresses at Heliport, D–5405 Ochtendung, Federal Republic of Germany

and

Flugplatz, D–5406 Winningen, Federal Republic of Germany

The seven related parties who are now denied U.S. export privileges by this temporary denial order are the following:[1]

Arnold A. Semler, Inc., 11347 Vanowen Street, North Hollywood, California 91605

Associated Industries, 11347 Vanowen Street, North Hollywood, California 91605

and

6855 Tujunga Avenue, North Hollywood, California 91605

Associated Air Services, 16700 Roscoe Boulevard, Van Nuys, California 91406

Arnold A. Semler, 12049 Iredell, Studio City, California 91604

Ronald H. Semler, General Manager, Associated Industries, 6855 Tujunga Avenue, North Hollywood, California 91605

Monte Barry Semler, Director, International Marketing, Associated Industries, 6855 Tujunga Avenue, North Hollywood, California 91605

Spedition Killewald Expotrans GmbH, Heidestrasse 16–22, 1000 Berlin 21, Federal Republic of Germany

The U.S. Department of Commerce has moved to vacate this temporary denial order. Based on this motion and on the record of this proceeding, the motion is granted.

Accordingly, it is hereby ordered that, effective immediately, the temporary denial order of February 1, 1985 is vacated.

A copy of the instant Order shall be served on each of the above-named two respondents and on each of the above-named seven related parties, and shall be published in the **Federal Register**.

Dated: November 5, 1986.

Thomas W. Hoya,

Administrative Law Judge.

[FR Doc. 86–25358 Filed 11–7–86; 8:45 am]

BILLING CODE 3510-DP-M

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[1] The temporary denial order was modified for related parties on two occasions. First, on June 28, 1985 it was modified to delete National Helicopter Service and Engineering Company as as related party (50 F.R. 24001, July 8, 1985). Second, on August 29, 1985 it was modified to provide that Arnold A. Semler, Inc., Associated Industries, Arnold A. Semler, Ronald H. Semler, and Monte Barry Semler were denied U.S.-export privileges only as to U.S.-origin helicopters, helicopter parts, and specially-designed accessories for helicopters. These related parties were also authorized to apply, on a case-by-case basis, for authorization to engage in export-related transactions involving Hughes/Schweizer model 300C helicopters, 300C helicopter parts, and specially-designed accessories for model 300C helicopters (50 F.R. 36128, September 5, 1985).

International Trade Administration

[A–351–603]

Final Determination of Sales at Less Than Fair Value; Brass Sheet and Strip From Brazil

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined the brass sheet and strip from Brazil are being, or are likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to continue to suspend liquidation of all entries of brass sheet and strip from Brazil that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margins as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: November 10, 1986.

FOR FURTHER INFORMATION CONTACT: Jess Bratton or Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–3963 or 377–5288.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that brass sheet and strip from Brazil are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)). We made fair value comparisons on sales of the class or kind or merchandise to the United

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States by the sole respondent during the period of investigation, October 1, 1985 through March 31, 1986. Comparisons were based on United States price and foreign market value, furnished by petitioners. We have found the average margin for the company investigated to be 40.62 percent, *ad valorem*.

Case History

On March 10, 1986, we received a petition in proper form filed by American Brass, Bridgeport Brass Company, Chase Brass and Copper Company, Hussey Metals Division, the Miller Company, Olin Corporation—Brass Group, and Revere Copper Products, Inc., domestic manufacturers of brass sheet and strip, and by the International Association of Machinists and Aerospace Workers, International Union—Allied Industrial Workers of America (AFL-CIO), Mechanic Educational Society of America (Local 56), and United Steelworkers of America (AFL/CIO-CLC). The petition was filed on behalf of the U.S. industry that casts, rolls, and finishes brass sheet and strip. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that these imports materially injure, or threaten material injury to, a U.S. industry.

We determined that the petition contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated such an investigation on March 31, 1986 (51 FR 11774, April 7, 1986), and notified the ITC of our action. On April 24, 1986, the ITC determined that there is a reasonable indication that imports of brass sheet and strip from Brazil materially injure a U.S. industry (USITC Pub. No. 1837).

On April 18, 1986, we presented an antidumping duty questionnaire to Eluma Corporation (Eluma), which accounts for virtually all exports of the subject merchandise to the United States. We requested a response in 30 days. On May 19, 1986, at the request of Eluma, we granted a 14-day extension of the due date for the questionnaire response. We received a response on June 5. On June 26, we requested additional information from Eluma. We received supplemental responses on July 10, August 4, and August 15, 1986.

On August 18, 1986, we made an affirmative preliminary determination (August 22, 1986, 51 FR 30092).

On September 11, 1986, Eluma requested that the final determination be postponed until 135 days after the preliminary determination and that verification of the questionnaire response also be postponed. On October 3, 1986, counsel for Eluma wrote to notify us that Eluma was not prepared to participate in a verification of its response and was, therefore, withdrawing its request for a postponement of the final determination.

As required by the Act, we afforded interested parties an opportunity to submit oral and written comments. No request for a hearing was made.

Scope of Investigation

The products covered by this investigation are brass sheet and strip, other than leaded brass and tin brass sheet and strip, currently provided for under the *Tariff Schedules of the United States Annotated, (TSUSA)* item numbers 612.3960, 612.3982, and 612.3986.

The chemical composition of the products under investigation is currently defined in the Copper Development Association (C.D.A.) 200 series or the Unified Numbering System (U.N.S.) C20000 series. Products whose chemical composition are defined by other C.D.A. or U.N.S. series are not covered by this investigation.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price, based on the best information available, with the foreign market value, also based on the best information available. We used the best information available as required by section 776(b) of the Act, because we did not receive a verifiable response.

United States Price

We calculated the purchase price of brass and strip on the basis of the best information available which is the ex-factory prices provided by petitioners. These prices were based on actual sales or offers made by a Brazilian producer and on monthly average unit values derived from the Bureau of Census import statistics. Petitioners arrived at ex-factory prices by deducting, where appropriate, estimated charges for ocean freight, insurance, and U.S. inland freight.

Foreign Market Value

We calculated the foreign market value of brass sheet and strip on the basis of the best information available which is the ex-factory prices furnished by petitioners. These prices were based on a Brazilian producer's ex-factory prices in the home market. After having reviewed the petition, we determined that it contained sufficient information on which to make a circumstance of sale adjustment for credit expenses. Accordingly, we made an adjustment for difference in circumstance of sales for credit expenses pursuant to § 353.15 of our regulations.

Verification

Respondent did not permit the verification of its response as required by section 776(a) of the Act.

Petitioners' Comments

Comment No. 1: Petitioners argue that, in the absence of a verifiable response, the final determination in this case must be based upon the best information otherwise available. The petitioners recommend that the data contained in their petition be used for this purpose, as was done in the preliminary determination, and that the preliminary rate of 42.25 percent be adopted as the final weighted-average margin of dumping as well.

DOC Response: We agree that the data contained in the petition should be used as the best information available. A review of the petition, however, reveals that it contains sufficient information on which to make a circumstance of sale adjustment. (See "Foreign Market Value" section of this notice.)

Comment No. 2: Petitioners argue that the Department erred when, after the preliminary determination, it directed the United States Customs Service to reduce the bond requirement for antidumping duties by the amount of the *de minimis* export subsidy preliminarily found in the companion countervailing duty investigation of brass sheet and strip from Brazil since there was no bonding requirement for the export subsidy in that case. Petitioners request that this error be rectified and not be repeated after the final determination.

DOC Position: The export subsidy found in the final determination of the countervailing duty investigation of brass sheet and strip from Brazil, issued concurrently herewith, is not *de minimis*. Therefore, we must direct the United States Customs Service to reduce the bond requirement for antidumping duties by this amount. (See the "Suspension of Liquidation" section of this notice.)

Suspension of Liquidation

In accordance with section 735(d) of the Act, we are directing the U.S.

Customs Service to continue to suspend liquidation of all entries of brass sheet and strip from Brazil that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The United States Customs Service shall require a cash deposit or the posting of a bond on all such entries equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price, which was 40.62 percent of the entered value of the merchandise. The suspension of liquidation will remain in effect until further notice.

Article VI.5 of the General Agreement on Tariffs and Trade provides that "[n]o product shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act, which prohibits assessing dumping duties on the portion of the margin attributable to export subsidies. In the final countervailing duty determination on brass sheet and strip from Brazil, issued concurrently herewith, we have found export subsidies. Since dumping cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Thus, the amount of the export subsidies will be subtracted for deposit or bonding purposes from the dumping margins.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten to injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on brass sheet and strip from Brazil entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

November 3, 1986.

[FR Doc. 86-25386 Filed 11-7-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-603]

Final Determination of Sales at Less Than Fair Value; Brass Sheet and Strip From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that brass sheet and strip from the Republic of Korea are being, or are likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to continue to suspend liquidation of all entries of brass sheet and strip from the Republic of Korea that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margins as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: November 10, 1986.

FOR FURTHER INFORMATION CONTACT: John J. Kenkel or John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-5404 or 377-3965.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that brass sheet and strip from the Republic of Korea are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(d) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b). We made fair value comparisons on sales of the class or kind of merchandise to the United States by the sole respondent during the period of investigation, October 1, 1985 through March 31, 1986. Comparisons were based on United States price and foreign market value, based on home market prices. We have found the weighted-average margin for the company investigated to be 7.17 percent, *ad valorem*.

Case History

On March 10, 1986, we received a petition in proper form filed by American Brass, Bridgeport Brass Company, Chase Brass and Copper Company, Hussey Metals Division, the Miller Company, Olin Corporation—Brass Group, and Revere Copper Products, Inc., domestic manufactures of brass sheet and strip, and by the International Union—Allied Industrial Workers of America (AFL-CIO), Mechanics Educational Society of America (Local 56), and United Steelworkers of America (AFL/CIO-CLC). The petition was filed on behalf of the U.S. industry that casts, rolls, and finishes brass sheet and strip. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from the Republic of Korea are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

We determined that the petition contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated such an investigation on March 31, 1986 (51 FR 11775, April 7, 1986), and notified the ITC of our action. On April 24, 1986, the ITC determined that there is a reasonable indication that imports of brass sheet and strip from the Republic of Korea materially injure a U.S. industry (USITC Pub. No. 1837).

On April 18, 1986, we presented an antidumping duty questionnaire to Poongsan Metal Corporation (PMC), which accounts for at least 60 percent of exports of the subject merchandise to the United States. We requested a response in 30 days. On May 19, 1986, at the request of PMC, we granted an extension of the due date for the questionnaire response until June 9, 1986. We received a response on June 9. On July 1, 1986, we requested additional information from PMC. We received supplemental information on July 14, 1986.

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On August 18, 1986, we made an affirmative preliminary determination (August 22, 1986, 51 FR 30086).

As required by the Act, we afforded interested parties an opportunity to submit oral and written comments. None of the parties requested a hearing. However, they did submit written briefs addressing the issues in this investigation.

Scope of Investigation

The products covered by this investigation are brass sheet and strip, other than leaded brass and tin brass sheet and strip, currently provided for under the *Tariff Schedules of the United States Annotated, (TSUSA)* item numbers 612.3960, 612.3982, and 612.3986.

The chemical composition of the products under investigation is currently defined in the Copper Development Association (C.D.A.) 200 series or the Unified Numbering System (U.N.S.) C20000 series. Products whose chemical composition are defined by other C.D.A. or U.N.S. series are not covered by this investigation.

Fair Value Comparison

In order to determine whether sales of the subject merchandise to the United States were made at less than fair value, we compared the United States purchase price with the foreign market value, based on home market prices.

For this merchandise, there are two types of sales: tolled and non-tolled. In tolled sales, the brass mill's customer provides the mill with the copper and/or zinc, or scrap, purchased from another source, which the mill converts into brass sheet or strip. The mill charges its customer only for the value of the conversion. In non-tolled sales, the brass mill produces brass sheet and strip from its own stocks of copper and zinc.

We have decided that the most accurate comparison is, when possible, to compare tolled sales to tolled sales and non-tolled sales to non-tolled sales. This type of "apples-to-apples" comparison achieves the most accurate results. If we were to compare the prices of tolled to non-tolled sales, extensive adjustments would have to be made. For example, if the U.S. transaction is a non-tolled sale, we would have to adjust home market prices for tolled sales so that they would reflect in addition the cost of the metal inputs. In the opposite situation, home market prices for non-tolled sales would somehow have to be adjusted downward.

These adjustments would present a serious administrative burden and raise methodological issues. Moreover, the tolling charge appears to be directly dependent on the quality of the metal inputs. Thus, to make the adjustment would require us to examine each transaction to determine the quality of the inputs. On methodological grounds, such adjustments raise the issue of how to allocate profit between the material inputs and processing activities when adding or subtracting material costs.

Accordingly, since there were no tolled sales in the United States, we did not ask the respondent to provide information on home market tolled sales. Therefore, we compared prices of non-tolled sales in the United States to non-tolled sales in the home market.

United States Price

As provided for in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price, since the merchandise was sold to unrelated purchasers prior to inportation into the United States. We calculated the purchase price based on the c.i.f., packed price to unrelated purchasers in the United States.

We made deductions, where appropriate, for foreign inland freight and insurance, brokerage in the Republic of Korea and the United States, ocean freight, marine insurance, bank charges, and U.S. inland freight. We added duty drawback to the United States price.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on c. & f. packed home market prices. We made deductions, where appropriate, for inland freight. We made adjustments for differences in circumstances of sale for credit expenses, advertising and warranty costs pursuant to § 353.15 of our regulations. We subtracted home packing cost and added U.S. packing cost.

We established separate categories of "such or similar" merchandise, pursuant to section 771(16)(C) of the Act, on the basis of form of material (sheets or strips). In order to select the most similar products within a "such or similar" category, we grouped the merchandise on the basis of grade (chemical composition), dimensions, and special finishes. We also compared merchandise that is sold to the United States in coil form with the merchandise that is sold in the home market in coil form. Similarily, we compared U.S. sales of cut-to-length merchandise with home market sales of cut-to-length merchandise.

Where there were no identical products in the home market with which to compare products to the United States, we made adjustments to similar merchandise to account for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act. These adjustments were based on differences in the costs of materials, direct labor and directly related factory overhead.

Certain claims were disallowed in calculating foreign market value. PMC claimed an adjustment in the home market for a handling fee paid to a related company. Because of their relationship, we consider the claimed expenses to be indirect selling expenses of PMC and we did not adjust for it.

The petitioners requested that we made an adjustment for U.S. warehousing expenses. We found that these expenses were indirect in nature and, accordingly, we did not make an adjustment.

Currency Conversion

In calculating foreign market value, we made currency conversions from Korean won to U.S. dollars in accordance with § 353.56(a) of our regulations, using the certified daily exchange rates furnished by the Federal Reserve Bank of New York.

Verification

As provided in section 776(a) of the Act, we verified all information provided by the respondent, using standard verification procedures, including examination of accounting records and original source documents containing relevant information on selected sales.

Petitioners' Comments

Comment #1: Petitioners contend that the Department should have requested information from the other Korean producer of brass sheet and strip. Also, the Department should have included all of Poongsan's U.S. sales transactions in its analysis. The Department cannot justify sampling the U.S. sales transactions in this investigation in light of the requirements of section 620 of the Trade and Tariff Act of 1984.

DOC Response: We disagree. There is no requirement that the Department examine all relevant exporters or sales. The Department's regulations merely require that we examine at least 60 percent of the imports in question, 19 CFR 353.38, and we have done so in this proceeding. In this investigation, Poongsan represented over 97 percent of all imports of brass sheet and strip. Thus, there is no need to examine all the exporters. Secondly, we do not view allowing the respondent not to report exporter's sales price and other small sales for certain alloys as sampling. We disregarded these sales for reasons of administrative convenience, having concluded that these few sales would not add to the accuracy of our analysis.

Comment #2: Alloy 85/15 (85 percent copper and 15 percent zinc) sold in the United States is not sold in the home market. The Department should, for comparison purposes, use the 90/10 alloy in the home market which is most like, in terms of alloy content and from a technical standpoint, the product sold in the United States, instead of alloy 70/30 which was used in the preliminary determination.

DOC Response: We disagree. In accordance with the statute, we have decided that alloy 70/30 is "similar" merchandise to alloy 85/15. The content of zinc and copper in the alloys is not determinative by itself of whether one alloy is more similar to another. Also, 90/10 alloy produced by Poongsan is not more like 85/15 than 70/30 from a technical standpoint. Rather, 70/30 and 90/10 produced by Poongsan are equally similar to 85/15 from a technical standpoint.

Moreover, Poongsan's production runs for 85/15 are closer in size to those of 70/30 than to 90/10. The larger production runs of the 70/30 are more appropriate than smaller runs of 90/10, which would show higher costs in part because of the small size of the runs rather than solely because of the differences in the physical characteristics of the merchandise itself.

Comment #3: The respondent's gauge groupings are too broad and do not accurately reflect the physical differences in merchandise or the manufacturing costs associated with producing the merchandise. Therefore, petitioners urge the Department to use petitioners' gauge cost data as the best information available.

DOC Response: We disagree. The overwhelming majority of sales by Poongsan are of the smaller gauge groupings. These smaller gauge groupings, as delineated by Poongsan, are comparable to those suggested by the petitioners. The larger gauges represent few sales by Poongsan; moreover, Poongsan's gauge groupings appear to reflect accurately the costs and associated physical differences of the merchandise.

Comment #4: The Department should not allow Poongsan's duty drawback claim since it has failed to demonstrate that the amount of the duty drawback refund is tied directly to payment of import duties on inputs contained in the merchandise. In addition, Poongsan has failed to show that it used only imported dutiable inputs. Finally, Poongsan has not accounted for wastage and domestically-sourced scrap in the production process in calculating its claim.

DOC Response: We disagree. Poongsan established a sufficient link between the import duties paid and the refund granted. *Huff Corp.* v. *United States* 632 F. Supp. 50 (C.I.T., 1986). We thoroughly verified Poongsan's duty drawback claim and found no discrepancies. No domestic scrap is used in the manufacture of the product—only imported dutiable inputs are utilized. Wastage is provided for in the computation of duty drawback. Therefore, we used Poongsan's figure in our analysis.

Comment #5: Poongsan's claimed physical difference in merchandise adjustment for material costs may not be net of all duties. If not, then they should be deducted before making any comparisons.

DOC Response: We disagree. At verification we found that Poongsan's journals, invoices and records detailed the costs of the materials exclusive of duties. In accordance with our practice, we added the Korean import duty into the cost of the product before calculating the proper adjustment for physical differences in the merchandise.

Comment #6. The Department should deny Poongsan's home market warranty expense claim because it could not substantiate the fabrication costs associated with remaking returned merchandise.

DOC Response: We disagree. However, since we could not directly verify the fabrication expense associated with warranty costs, we have used the best information available instead. We subtracted materials cost, which was verified, and our statutory minimum 10 percent for selling, general and administrative expenses and eight percent for profit. We considered the remainder as the fabrication cost and used it in our calculation of the home market warranty costs.

Comment #7: The Department should reject Poongsan's home market advertising expense claim to the extent that it is based on advertising of a general nature.

DOC Response: We disagree. An exception to the "directly related" requirement exists for advertising expenditures. Advertising expenses which are deductible from foreign market value may be of a fixed or variable nature and may be institutional in nature or tied to the specific product, but they must be expenses which are undertaken on behalf of the ultimate customer. We verified that certain advertising expenses met these criteria. Therefore, we have allowed those expenses.

Comment #8: The Department should make a circumstance of sale adjustment for U.S. warehousing expenses on a sale-by-sale basis instead of averaging the costs over all sales.

DOC Response: We disagree. The warehousing of merchandise was not done under contractual obligation to the purchasers but merely to position the merchandise for immediate delivery into the U.S. market. Therefore, we do not consider it to be a direct selling expense and have not made any adjustment for it.

Comment #9: Petitioners believe that all U.S. inland freight charges may not be included in the data submitted by Poongsan. Specifically, they question whether inland freight charges from the U.S. port to the warehouse and from the warehouse to the customer have been included. If not, the Department should use the best information available in calculating this adjustment.

DOC Response: We verified that all U.S. inland freight charges are included in the response. In a number of instances, U.S. inland freight is included in the ocean freight charge.

Comment #10: In calculating the credit expense on U.S. sales, the Department should use Poongsan's interest rate in Korea, not the rate obtained by Pan Metal in the United States, and that rate should only cover the period of investigation. Since Poongsan appears to be financing these sales, its interest rate is the appropriate one to use.

DOC Response: We agree. When making comparisons based on purchase price, it is generally our policy to use the home market interest rate to compute the U.S. credit expense and then only for the period of investigation.

Comment #11: The Department should be certain that all short-term loans in the home market are included in the home market interest rate, especially any loans denominated in U.S. dollars.

DOC Response: The average short-term interest rate used by the Department in its calculations included all of Poongsan's short-term debt that was outstanding during the period of investigation.

Comment #12: Poongsan's average turnover ratio of accounts receivable should be based only on the products under investigation and should not include other items, particularly if they enjoyed a longer payment period.

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DOC Response: The average turnover ratio may include some products other than brass sheet and strip. However, given the manner in which payment records were maintained, there was no way of determining the payment periods attributable to individual products nor was there any way to exclude payment records relating to products other than brass sheet and strip.

Comment No. 13: The Department should adjust downward the age of Poongsan's accounts receivable to account for the average time between reciept of payment and payment of taxes.

DOC Response: We agree. This is the methodology used by the respondent and we accepted it.

Comment No. 14: The Department should deny the commission paid by Poongsan to a related company to cover its expenses for document handling charges because it is merely an intracompany transfer of funds. If the Department does allow it, then it should be offset by U.S. indirect selling expenses in accordance with § 353.15(c) of the Commerce regulations.

DOC Response: We agree. The Department generally has not permitted circumstance of sale adjustments for such things as handling fees paid to related parties. The Department generally permits adjustments for commissions directly related to specific sales only when the sales are made at arm's-length and deemed to be a direct selling expense. In this situation, we found that this was neither an arm's length transaction nor a direct selling expense.

Comment No. 15: The Department should deduct the fee paid by Poongsan for its export licenses from the U.S. sales price.

DOC Response: We disagree. Poongsan did not pay any fee for its export licenses.

Comment No. 16: Poongsan, in its revised computer printout, has failed to include document handling charges paid to U.S. banks. The Department should include these charges in its analysis.

DOC Response: We disagree. Poongsan provided all data concerning bank charges and we included them in our analysis.

Comment No. 17: Poongsan has failed on a number of U.S. sales to provide brokerage charges and to submit full U.S. inland freight expenses. If this information is not provided, the Department should use the best information available.

DOC Response: We disagree. Poongsan has reported and we have verified all data.

Respondent's Comments

Comment No. 1: Korean won is the appropriate currency for reporting home market sales to original equipment manufacturers because PMC actually received won. To the extent these values are denominated in U.S. dollars, it is solely for the administrative convenience of the purchasers.

DOC Response: We disagree. The documentation reviewed at verification clearly shows that the sales in question were made in U.S. dollars. Merely because Poongsan chose to convert the dollars to won does not alter this fact.

Comment No. 2: Home market warranty costs are properly calculated and should be used by the Department in its analysis. The Department should deduct the fabrication cost and selling, general and administrative expenses as the warranty cost.

DOC Response: We disagree. We have allowed a home market warranty expense but in the absence of verified data, we have subtracted from the selling price of the brass sheet and strip the statutory minimum 10 percent selling, general and administrative expense and eight percent profit in addition to the actual material cost to arrive at a figure for fabrication expense.

Comment No. 3: The Department's verification report states the incorrect U.S. interest rate. Respondent contends that a slightly lower rate, as shown in the verification exhibits, was the number actually verified and should be used. Also, the interest rate should not be calculated solely for the period of investigation but should include the later period in which payments by U.S. cutomers were made.

DOC Response: The Department has not used the U.S. interest expense of Pan Metal. Rather, we have followed our normal practice in purchase price situations and used Poongsan's average home market interest expense for short-term loans outstanding during the period of investigation.

Comment No. 4: The Department correctly used alloy 70/30 sold in the home market as the basis for difference in merchandise adjustments regarding U.S. sales of alloy 85/15. Petitioners wrongly assert that the annealing processes of 70/30 and 90/10 are different, when, in fact, they are the same. The only manufacturing difference between 70/30 and 90/10 is in the relative content of copper and zinc. One is not different than the other from a technical standpoint. In addition, the costs for 90/10 are distorted by the very small volume produced and short production runs, whereas the production runs of 70/30 and 85/15 are more similar and less distortive.

DOC Response: We agree. See our response to Petitioners' *Comment No. 2.*

Comment No. 5: Subsequent to verification, respondent has discovered that one U.S. transaction was incorrectly included in the sales list. Respondent contends that the size of this item does not fall within the scope of investigation and, therefore, should not be included in the Department's calculations.

DOC Response: We disagree. We have included it in our calculations because it does fall within the scope of the investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of brass sheet and strip from the Republic of Korea that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register.** The United States Customs Service shall require a cash deposit or the posting of a bond on all such entries to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price, as shown in the table below. The suspension of liquidation will remain in effect until further notice. The margins are follows:

Manufacturer/seller/exporter	Weighted average margin percentage
Poongsan Metal Corporation	7.17
All others	7.17

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not dislose such information either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days of the publication of this notice.

If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on brass sheet and strip from the Republic of Korea entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1763d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

November 3, 1986.

[FR Doc. 86-25385 Filed 11-7-86; 8:45 am]

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[C-351-604]

Final Affirmative Countervailing Duty Determination; Brass Sheet and Strip From Brazil

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Brazil of brass sheet and strip. The estimated net subsidy is 6.13 percent *ad valorem*. However, consistent with our policy of taking into account program-wide changes that occur before our preliminary determination, we are adjusting the cash deposit rate to reflect changes in the Preferential Working Capital Financing for Exports program. We have notified the U.S. International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to suspend liquidation of all entries of brass sheet and strip from Brazil that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit or bond equal to 3.47 percent *ad valorem*.

EFFECTIVE DATE: November 10, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas Bombelles, Bradford Ward or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-3174, 377-2239 or 377-2438.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Brazil of brass sheet and strip. For purposes of this investigation, the following programs are found to confer subsidies:

- Preferential Working Capital Financing for Exports;
- Income Tax Exemption for Export Earnings;
- Export Financing Under the CIC-CREGE 14-11 Circular; and
- Import Duty Exemption Under Decree-Law 1189 of 1979.

We determine the estimated net subsidy to be 6.13 percent *ad valorem*, and the cash deposit rate to be 3.47 percent *ad valorem*, for all manufacturers, producers, or exporters of brass sheet and strip from Brazil.

Case History

On March 10, 1986, we received a petition in proper form from American Brass, Bridgeport Brass Corporation, Chase Brass & Copper Company, Hussey Copper Ltd., the Miller Company, Olin Corporation-Brass Group, and Revere Copper Products, Inc., domestic manufacturers of brass sheet and strip, and from the International Association of Machinists and Aerospace Workers, International Union—Allied Industrial Workers of America (AFL-CIO), Mechanics Educational Society of America (Local 56), and the United Steelworkers of America (AFL-CIO/CLC), filed on behalf of the United States industry producing brass sheet and strip.

In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Brazil of brass sheet and strip, directly or indirectly, receive subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a United States industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on March 31, 1986, we initated such an investigation (51 FR 11776, April 7, 1986). We stated that we expected to issue a preliminary determination by June 3, 1986.

Since Brazil is entitled to an injury determination under section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Brazil materially injure, or threaten material injury to, a United States industry. Therefore, we notified the ITC of our initiation. On April 24, 1986, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil of brass sheet and strip (51 FR 16235, May 1, 1986).

On April 9, 1986, we presented a questionaire to the Government of Brazil in Washington, DC, concerning the petitioner's allegations, and we requested a response by May 9, 1986. On April 30, 1986, upon request of respondent, we granted additional time to submit a response. On May 16, 1986, we received a response to our questionaire.

We received information on two producers and exporters in Brazil of brass sheet and strip that exported to the United States during the review period. These are Laminacao Nacional de Metais S.A. (Laminacao) and Eluma S.A. Industria e Comercio (Eluma). Based on information obtained at verification, Laminacao and Eluma account for substantially all exports of brass sheet and strip to the United States.

We issued a negative preliminary determination on June 3, 1986 (51 FR 20864, June 9, 1986).

On June 6, 1986, petitioners filed a request for extension of the deadline of the final determination in this investigation to correspond with the date of the final determination in the antidumping duty investigation of the same products from Brazil. Pursuant to section 705(a)(1) of the Act, as amended by section 606 of the Trade and Tariff Act of 1984, on July 3, 1986, we granted an extension of the deadline date for the final determination to coincide with the deadline for the final determination in the antidumping duty investigation of the same products from Brazil (51 FR 25380, July 14, 1986). We verified the questionaire response in Brazil from June 23 through June 27, 1986. Petitioners and respondents submitted briefs on September 26 and October 3, 1986, addressing the issues arising in this investigation.

Scope of Investigation

The products covered by this investigation are brass sheet and strip, other than leaded brass and tin brass

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sheet and strip, currently provided for under the *Tariff Schedules of the United States Annotated* (TSUSA) item numbers 612.3960, 612.3982, and 612.3986. The chemical compositions of the products under investigation are currently defined in the Copper Development Association (C.D.A.) 200 series or the Unified Numbering Systems (U.N.S.) C20000 series. Products whose chemical compositions are defined by other C.D.A. or U.N.S. series are not covered by this investigation.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These general principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order" (49 FR 18006, April 26, 1984).

For purposes of this final determination, the period for which we are measuring subsidies ("the review period") is calendar year 1985. Based upon our analysis of the petition, the responses to our questionnaire, our verification, and the comments filed by the parties, we determine the following:

I. Programs Determined to Constitute Subsidies

We determine that subsidies are being provided to manufacturers, producers, or exporters in Brazil of brass sheet and strip under the following programs:

A. *Preferential Working Capital Financing for Exports.* The Carteria do Comercio Exterior (Foreign Trade Department or CACEX) of the Banco do Brasil administers a program of short-term working capital financing for the purchase of inputs. These working capital loans were originally authorized by Resolution 674. On January 1, 1984, Resolution 674 was superseded by Resolution 882, which was itself substantially amended by Resolution 950 on August 21, 1984 and by Resolution 1009 in May 1985.

Eligibility for this type of financing is determined on the basis of past export performance or an acceptable export plan. The amount of available financing is calculated by making a series of adjustments to the dollar value of exports. During the review period, the maximum level of eligibility for such financing was 20 percent of the adjusted value of exports.

Following approval by CACEX of their applications, participants in the program receive certificates representing portions of the total dollar amount for which they are eligible. The certificates are presented to banks in return for cruzeiros at the exchange rate in effect on the date of presentation. Certificates must be used within 12 months of the date of issue and loans incurred as a result of their use must be repaid within 18 months of that date. Use of a certificate establishes a loan obligation with a term of up to one year (360 days).

The interest rate ceiling was raised from 40 to 60 percent on loans obtained under Resolution 674 on June 11, 1983. This interest rate is well below our commercial benchmark rate for short-term loans in Brazil, which is the short-term discount rate for accounts receivable in Brazil, published in *Analise/Business Trends* magazine. On January 1, 1984, Resolution 882 changed the payment date for both the principal and interest to the expiration date of the loan.

On August 21, 1984, Resolution 950 made this working capital financing available from commercial banks at prevailing market rates, with interest calculated at the time of repayment. Under Resolution 950, the Banco do Brasil paid the lending institution an equalization fee of up to 10 percent of the interest (after monetary correction). Resolution 950 was amended by Resolution 1009 in May 1985 and the equalization fee was increased to 15 percent of the interest (after monetary correction). Therefore, if the interest rate charged to the borrower is less than full monetary correction plus 15 percent, the Banco do Brasil pays the lending bank the difference, up to 15 percent. The lending bank passes the 15 percent equalization fee on to the borrower in the form of a reduction in the interest due. Receipt of the equalization fee by the borrower reduces the interest rate on these working capital loans below the commercial rate of interest. Resolution 950/1009 loans are also exempt from the Imposto sobre Operacoes Financieras (Tax on Financial Operations or IOF), a tax charged on all domestic financial transactions in Brazil.

Since receipt of working-capital financing under Resolution 674/950/1009 is contingent on export performance, and provides funds to borrowers at preferential rates, we determine that this program confers an export subsidy.

During the review period, one exporter of brass sheet and strip repaid loans on the criteria set forth in Resolution 674. To determine the *ad valorem* subsidy bestowed by this program during the review period, we compared the interest paid by the respondent during the review period to what would have been paid under the benchmark. We allocated the benefit over total exports of the two brass sheet and strip producers, which resulted in an estimated net subsidy of 5.40 percent *ad valorem*.

During the review period, this same exporter received new loans under this program whose terms were set by Resolution 950/1009. Interest on these loans were payable after the review period. It is the Department's policy to take into account program-wide changes in calculating a duty deposit rate when complete information on that program is available, in order to reflect the most current rate of subsidization. Therefore, we have calculated a subsidy rate for duty deposit purposes based on the interest rate rebate provided for under Resolution 950/1009. See "Certain Carbon Steel Products from Brazil: Final Affirmative Countervailing Duty Determination" (49 FR 17988, April 26, 1984).

At verification, we found that the company that had received Resolution 674/950/1009 loans used the maximum amount of financing for which it is eligible. Therefore, in order to calculate the benefit for duty deposit purposes, we multiplied the value of this company's 1985 exports by the 20 percent eligibility rate and the sum of the equalization fee and the IOF. We then allocated the benefit over the total value of all 1985 exports, resulting in an estimated net subsidy of 2.74 percent *ad valorem* for duty deposit purposes.

B. *Income Tax Exemption for Export Earnings.* Under Decree-Laws 1158 and 1721, Brazilian exporters are eligible for an exemption from income tax on the portion of profits attributable to export revenue. Because this exemption is tied to exports and is not available for domestic sales, we determine that it constitutes an export subsidy.

Both of the respondent companies used this exemption on their corporate income tax forms filed in 1985. The companies determined their net taxable income and deducted the exemption for export earnings from that income to lower their tax liability. They then used losses carried forward from previous years to offset further tax liability. Because both companies used the income tax exemption for export earnings to reduce their taxable income, as reported on their tax returns filed during the review period, we determined that both companies received a countervailable benefit.

In order to calculate the benefit from this program, we multiplied the value of the reduction in taxable income through use of the exemption by the nominal corporate income tax rate of 35 percent.

We allocated that benefit over the total value of all exports, resulting in an estimated net subsidy of 0.64 percent *ad valorem.*

C. *Export Financing Under the CIC-CREGE 14–11 Circular.* Under its CIC-CREGE 14–11 Circular (14–11), the Banco do Brasil authorizes 180- and 360-day cruzeiro loans for export financing, on the condition that companies applying for these loans negotiate fixed-level exchange contracts with the bank. Companies obtaining a 360-day loan must negotiate exchange contracts with the bank in an amount equal to twice the value of the loan. Companies obtaining a 180-day loan must negotiate an exchange contract equal to the amount of the loan. Loans under this program are also exempt from the IOF.

One company received one 14–11 loan on which interest was paid during the review period. We compared the interest charged on the 14–11 loan to our short-term loan benchmark for Brazil, *i.e.*, the nominal discount rate on accounts receivable. This comparison shows that the rate on the 14–11 loan is below the benchmark. Because 14–11 loans are available only to exporters and since the interest charged is less than the benchmark, we determine that the 14–11 loan constitutes an export subsidy.

In order to calculate the benefit from this program, we multiplied the principal of the 14–11 loan by the difference between our benchmark rate and the interest rate charged on the 14–11 loan, adjusted by the value of the IOF exemption. We allocated that benefit over the total value of all exports, resulting in an estimated net subsidy of 0.02 percent *ad valorem.*

D. *Import Duty Exemption Under Decree-Law 1189 of 1979.* At verification, we discovered that one of the companies under investigation had imported spare parts for machinery and certain other equipment free of the normal import duty. This duty exemption was granted under a provision of Decree-Law 1189 of 1979, which allows for the duty-free importation of certain merchandise which will be used in the production of export goods. Decree-Law 1189 has since been repealed, but one of the respondents had a certain value of unexpired eligibility which it used during the review period.

Because the exemption from import duty is contingent upon export production, we determine that this program constitutes an export subsidy. In order to calculate the benefit, we divided the total value of import duties not paid by the total value of all 1985 exports, resulting in an estimated net subsidy of 0.07 percent *ad valorem.*

II. Program Determined not to Constitute a Subsidy

We determine that subsidies are not being provided to manufacturers, producers, or exporters in Brazil of brass sheet and strip under the following program:

A. *Regional Bank Financing.* Petitioners alleged that the Government of Brazil provides financing on terms inconsistent with commercial considerations to the brass sheet and strip industry through regional development banks, such as the Banco do Desenvolimento de Espirito Santo (Development Band of Espirito Santo or BANDES). According to information gathered at verification, neither company had BANDES loans.

However, also at verification, we discovered that one of the companies under investigation had a loan from the Banco Do Desenvolvimento de Estado de Sao Paulo (the Development Bank of the State of Sao Paulo, or BADESP). This was a loan for a pollution control project for which the funds came partly from the World Bank and partly from BADESP.

We verified that these loans are made to all types of companies in the state of Sao Paulo to control air, water and/or solid waste pollution. Because such financing is not limited to a specific enterprise or industry, or group of enterprises or industries, we determine that this loan does not constitute a subsidy.

III. Programs Determined Not to be Used

We determine that manufacturers, producers, or exporters in Brazil of brass sheet and strip did not use the following programs which were listed in our notice of "Initiation of Countervailing Duty Investigation: Brass Sheet and Strip from Brazil" (51 FR 11776, April 7, 1986):

A. *Resolution 330 of the Banco Central do Brasil.* Resolution 330 provides financing for up to 80 percent of the value of the merchandise placed in a specified bonded warehouse and destined for export. We verified that neither of the respondents received benefits under this program during the review period.

B. *The BEFIEX Program.* The Comissao para a Consessao de Beneficios Fiscais a Programas Especiais de Exportacao (Commission for the Granting of Fiscal Benefits to Special Export Programs or BEFIEX) grants at least three categories of benefits to Brazilian exporters:

- First, under Decree-Law 77.065, BEFIEX may reduce by 70 to 90 percent import duties and the Imposto sobre Produtos Industrializados (Tax on Industrial Products or IPI) on the importation of machinery, equipment, apparatus, instruments, accessories and tools necessary for special export programs approved by the Ministry of Industry and Trade, and may reduce by 50 percent import duties and the IPI tax on imports of components, raw materials and intermediary products;
- Second, under article 13 of Decree No. 72.1219, BEFIEX may extend the carry-forward period for tax losses from four to six years; and
- Third, under Article 14 of the same decree, BEFIEX may allow special amortization of pre-operational expenses related to approved products.

We verified that neither of the respondents used this program during the review period.

C. *The CIEX Program.* Decree-Law 1428 authorized the Comissao para Incentivos a Exportacao (Commission for Export Incentives or CIEX) to reduce import taxes and the IPI tax up to ten percent on certain equipment for use in export production.

We verified that neither of the respondents used this program during the review period.

D. *Accelerated Depreciation for Brazilian-Made Capital Equipment.* Pursuant to Decree-Law 1137, any company which purchases Brazilian-made capital equipment and has an expansion project approved by the Conselho do Desenvolvimento Industrial (Industrial Development Council or CDI) may depreciate this equipment at twice the rate normally permitted under Brazilian tax laws.

We verified that neither of the respondents used this program during the review period.

E. *Incentives for Trading Companies.* Under Resolution 643 of the Banco Central do Brasil, trading companies can obtain export financing similar to that obtained by manufacturers under Resolution 950.

We verified that neither of the respondents used this program during the review period.

F. *The PROEX Program.* Short-term credits for exports are available under the Programa de Financiamento a Producao para a Exportacao (Export Production Financing Program or PROEX), a loan program operated by Banco Nacional do Desenvolvimento Economico e Social (National Bank of Economic and Social Development or BNDES).

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We verified that neither of the respondents used this program during the review period.

G. *Resolutions 68 and 509 (FINEX) Financing.* Resolutions 68 and 509 of the Conselho Nacional Do Comercio Exterior (National Foreign Trade Council or CONCEX) provide that CACEX may draw upon the resources of the Fundo de Financiamento a Exportacao (Export Financing Fund or FINEX) to extent dollar-denominated loans to both exporters and United States buyers of Brazilian goods. Financing is granted on a transaction-by-transaction basis.

We verified that neither of the respondents used this program during the review period.

H. *Loans Through the Apoio o Desenvolvimento Technologica a Empresa Nacional (ADTEN).* Petitioners allege that the Government of Brazil maintains, through the Financiadora de Estudos Projectos (Financing of Research Projects or FINEP), a loan program, ADTEN (Support of the Technological Development of National Enterprises), the provides long-term loans on terms inconsistent with commercial considerations to encourage the growth of industries and development of technology.

We verified that neither of the respondents used this program during the review period.

I. *Exemption of IPI Tax and Customs Duties on Imported Equipment (CDI).* Under Decree-Law 1428, the Conselho do Desenvolvimento Industrial (Industrial Development Council or CDI) provides for the exemption of 80 to 100 percent of the customs duties and 80 to 100 percent of the IPI tax on certain imported machinery for projects approved by the CDI. The recipient must demonstrate that the machinery or equipment for which an exemption is sought was not available from a Brazilian producer. The investment project must deemed to be feasible and the recipient must demonstrate that there is a need for added capacity in Brazil.

We verified that neither of the respondents used this program during the review period.

IV. Program Determined To Have Been Terminated

IPI Export Credit Premium

Until recently, Brazilian exporters of manufactured products were eligible for a tax credit on the IPI. The IPI export credit premium, a cash reimbursement paid to the exporter upon the export of otherwise taxable industrial products, was found to constitute a subsidy in previous countervailing duty investigations involving Brazilian products. After having suspended this program in December 1979, the Government of Brazil reinstated it on April 1, 1981.

Subsequent to April 1, 1981, the credit premium was gradually phased out in accordance with Brazil's commitment pursuant to Article 14 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs, and Trade ("the Subsidies Code"). Under the terms of "Portaria" (Notice) of the Ministry of Finance No. 176 of September 12, 1984, the credit premium was eliminated effective May 1, 1985. We verified that the companies under investigation received no IPI export credit premiums after that date.

Accordingly, we determine that this program has been terminated and no benefits under the program are accruing to current exports of brass sheet and strip to the United States.

V. Program Determined Not To Exist

Preferential Pricing for Electricity

Petitioners alleged that the Government of Brazil provides electricity at preferential prices to manufacturers, producers, and exporters of brass sheet and strip in Brazil. According to information gathered at verification, the brass sheet and strip producers under investigation paid normal published rates for all electricity consumed and we found no evidence of the existence of any schedule of preferential electricity rates.

Petitioners' Comments

Comment 1: Citing to the Court of International Trade's decision in *Carlisle Tire & Rubber Co. v. United States* (Ct. Int'l Trade, 1986), petitioners assert that if the final determination were to yield an *ad volorem* subsidy amount of less than 0.50 percent, and were the amount considered *de minimis*, then the Department would be required to explain why it had reached this conclusion. Petitioners also request that, if the final determination in this investigation is affirmative, the Department suspend liquidation retroactive to the publication of the preliminary determination.

DOC Position: Since the *ad valorem* subsidy rate is greater than 0.50 percent, the issue of whether a rate of less than 0.50 percent would be *de minimis* in this case is moot. Further the Department does not believe that it has the authority to suspend liquidation retroactively under these circumstances, nor have petitioners cited any statutory provision which might confer such authority.

Comment 2: Petitioners argue that the Department improperly deducted the preliminary countervailing duty subsidy amount for the antidumping duty margain for purposes of the bonding requirements after the preliminary determination, even though the countervailing duty rate was *de minimis* and no bonding was required.

DOC Position: This issue is addressed in the comment section of the final determination in the antidumping duty investigation of brass sheet and strip from Brazil published concurrently with this notice.

Comment 3: Petitioners argue that the companies' use of the income tax exemption for export earnings resulted in a countervailable benefit. Petitioners contend that the benefit to the companies is the value of the exemption claimed multiplied by the corporate tax rate of 35 percent instead of an effective tax rate of 25.9 percent.

DOC Position: We agree. See our response to Respondents' Comment 6, *Infra.*

Comment 4: Petitioners argue that the Department should find the loan issued pursuant to the Banco do Brasil's CIC–CREGE 14–11 circular to be countervailable in our final determination. Petitioners further contend that the Department should calculate the benefit by multiplying the interest rate differential (the difference between the CIC–CREGE interest rate and the sum of the benchmark and the 1.5 percent of IOF tax on financial transactions) by the loan amount and duration of the loan.

DOC Position: We agree that this loan is countervailable. For discussion of our subsidy calculation, see "Export Financing Under the CIC–CREGE 14–11 Circular," *supra.*

Comment 5: Petitioners argue that the loans issued to the respondent companies by the Banco Nacional de Habitacao (National Housing Bank or BNH) are countervailable domestic subsidies because they are targeted to the "industry that produces construction materials" and because such loans are provided on terms inconsistent with commercial considerations. Petitioners contend that the loans should be countervailed by allocating the benefit over the total sales of Eluma's non-ferrous sector.

DOC Position: We disagree. BNH financing is extended not only to companies directly involved in construction but also to firms which manufacture, transport and supply any type of construction material. Thus, eligible firms are members of a wide variety of industries involved in wide-ranging economic activities.

Therefore, these loans are not provided to "a specific enterprise or industry, or group of enterprises or industries" under the countervailing duty law. Accordingly, we do not find that BNH loans are countervailable and, therefore, need not address whether the loans are provided on terms inconsistent with commercial considerations.

Comment 6: Petitioners argue that the respondent companies apparently adjust their sales revenues for inflation thereby artificially diluting the impact of the countervailable subsidies they receive.

DOC Position: Petitioners have misinterpreted our verification reports. Respondents' export sales are adjusted for an exchange gain resulting from the lag in fixing the dollar-cruzeiro exchange rate between the date of export and the date of receipt of funds. Continued devaluation of the Brazilian cruzeiro against the dollar increases the number of cruzeiros per dollar between the date of export and the date the exchange contract is concluded. This is standard accounting practice for foreign exchange transactions. Respondents' domestic sales are not adjusted in this manner nor are they adjusted for inflation.

Comment 7: Petitioners argue that the loan to one respondent for pollution control should be countervailed, at least to the extent that the funds are provided from BADESP monies. Petitioners contend that these loans are not generally available within the state of Sao Paulo.

DOC Position: We disagree. We verified that pollution control loans under this program are not limited to a specific enterprise or industry, or group thereof. Therefore, these loans are not countervailable. See also our discussion under "Regional Bank Financing," *supra*.

Comment 8: Petitioners argue that the Department improperly limited its verification of alleged subsidization of capital equipment to the review period and did not inquire as to whether benefits were received on capital equipment purchased before that time. Petitioners also contend that, because verification was not conducted at the companies' facilities, the Department was prevented from identifying foreign equipment and verifying whether all normal import charges were paid.

DOC Position: The programs referred to by petitioners are those providing an exemption or reduction in import duties and/or taxes on imported capital equipment. Consistent with our policy, we have only investigated whether benefits were provided in the review period because these are recurring benefits. Recipients of duty and tax reductions or exemptions under BEFIEX, CIEX, and CDI could anticipate receiving the benefits year after year. Therefore, we allocate benefits under programs like these to the year of receipt with the result that there is no need to investigate or verify possible benefits received in years preceding the review period. For a discussion of our treatment of recurring benefits see "Final Affirmative Countervailing Duty Determination: Live Swine and Fresh, Chilled and Frozen Pork Products from Canada" (50 FR 25097, 25099, June 17, 1985).

With regard to petitioners' argument concerning verification at company facilities, we obtained sufficient documentation at verification to establish that no import charges and/or taxes were exempted for imports of equipment under the BEFIEX, CIEX, or CDI program.

Comment 9: Petitioners argue that the Department should countervail the benefit received by the respondent companies under the IPI export credit premium. Petitioners contend that despite the Department's policy reasons for not countervailing a programwide change, the respondents did in fact receive a competitive advantage for one-third of the review period.

DOC Position: We disagree. The IPI export credit premium was terminated effective May 1, 1985 and neither company receive benefits under this program after April 1985. When a subsidy program is terminated prior to our initiation, and companies may no longer received benefits as of the date of the termination, we do not include the value of the benefits received under such terminated programs from our subsidy calculations because any entries potentially subject to duties are not benefitting from the program. Also, such treatment encourages the termination of subsidy programs by countries subject to investigation.

Comment 10: Petitioners argue that the Department should subtract the value of the IPI export credit premium received during the review period from export and total sales before calculating the subsidy rates in this investigation.

DOC Position: We agree. Consistent with our practice in past Brazilian countervailing duty investigations, we have deducted the value of the IPI export credit premium from sales values in calculating our subsidy rate.

Comment 11: Petitioners argue that the respondents might be subsidized through duty suspension and excessive allowance or rebates of import duties on imported raw materials.

DOC Position: This allegation was not submitted to the Department until approximately three months after our verification of the questionnaire response and one month before our final determination was due. Accordingly, we were unable to verify the existence of such potential subsidization for this final determination. However, petitioners may resubmit this allegation during any administrative review under section 751 of the Act that may be requested.

Comment 12: Petitioners argue that the Department's "program-wide change" policy should not prevent us from calculating the benefit from the loans under the Resolution 674 program according to their actual interest rates rather than using the 15 percent interest rate differential of the Resolution 950/1009 program. Petitioners also contend that the Department should include the value of the IOF tax in calculating the benefit from these loans.

DOC Position: Since we verified that Resolution 674/950/1009 loans were used during the review period, we have calculated a subsidy rate measuring the benefit received during the review period from these loans. However, as we have done in past Brazilian countervailing duty investigations, we have taken into account the program-wide change in this program and set the duty deposit rate on the basis of the Resolution 950/1009 program. Both calculations included the amount of the IOF exemption in valuing the subsidy. See "Final Affirmative Countervailing Duty Determination: Certain Heavy Iron Construction Castings from Brazil" (51 FR 9491, March 19, 1986).

Respondents' Comments

Comment 1: Respondents argue that the Department correctly calculated the benefit from the loans under Resolution 674/950/1009 in our preliminary determination except insofar as the value of the IOF tax was included in the amount of interest savings. Respondents contend that if the IOF tax were applicable to these working capital loans, it would be an indirect tax on exports not countervailable under the General Agreement on Tariffs and Trade.

DOC Position: We disagree that the value of the IOF tax exemption should not be included in our benefit calculation. Since all domestic financing transactions are subject to the IOF tax, it is appropriate that we reflect the exemption of Resolution 674 and 950 loans from the IOF as part of the subsidy in order to measure the full benefit provided under this program.

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Moreover, we do not view the IOF as a tax on the production or distribution of the product. See also our discussion under "Preferential Working Capital Financing for Exports," *supra*.

Comment 2: Respondents argue that the Department appropriately used an "historic" utilization rate in calculating the benefit from loans issued under the Resolution 950 export financing program instead of an unverified potential maximum eligibility in the preliminary determination. Respondents further argue that the Department should not use short-term commercial rates as its benchmark for calculating the benefit from the Resolution 950 export financing program as suggested by petitioners. Respondents contend that the 15 percent equalization fee is the maximum benefit the borrower can receive, making the stated interest rate on the loan irrelevant.

DOC Position: At verification we saw that the one company which used this program borrowed the maximum amount for which it was eligible. Therefore, in this case, the "historic" utilization is the same as the maximum eligibility rate established in Resolution 950 (*i.e.*, 20 percent of the adjusted value of exports). As we have in prior Brazilian countervailing duty investigations, we have calculated the duty deposit rate on the basis of the 15 percent interest equalization fee, plus the one and one-half percent IOF tax exemption.

Comment 3: Respondents argue that loans issued pursuant to the Banco do Brasil's CIC-CREGE 14–11 circular do not constitute a government program and, therefore, cannot confer a subsidy on exports of the subject merchandise. Respondents contend that the Banco do Brasil receives no financial support from the Government of Brazil and operates the program consistently with commercial considerations. Respondents further argue that the Department incorrectly valued the subsidy in the preliminary determination by including the IOF tax, and by using an average annual interest rate, based on a monthly compounded rate.

DOC Position: We disagree. Our determination that the CIC-CREGE 14–11 program provides countervailable benefits is based on (1) the fact that under Brazilian law the Banco do Brasil, which administers this program, acts as the Government of Brazil's financial agent, and (2) respondents' failure to demonstrate that the program does not provide preferential loans to exporters. Furthermore, we consider that it is appropriate to include the IOF tax in our benchmark since the IOF tax is imposed on all domestic financial transactions. With respect to the benchmark, consistent with our past methodology and the "Subsidies Appendix," we used an average annual benchmark rate against which to compare the interest rate on this loan.

Comment 4: Respondents assert that the Department correctly concluded in the preliminary determination that there is no countervailable benefit from the income tax exemption for export earnings because (a) the previous years' tax losses of the companies were not generated by this exemption, (b) the companies did not use this exemption to reduce their tax liability, and (c) no cash savings accrued to the companies during the review period.

DOC Position: We disagree. The fact that the respondent companies did not pay any corporate income taxes in 1985 is irrelevant. The income tax exemption for export earnings was used to reduce taxable income before any tax liability was calculated. Therefore, use of the exemption benefitted exports during the review period.

Further, the effect of a loss carry-forward provision is also irrelevant in determining the benefit since the companies opted to use the countervailable program, rather than a generally available loss carry-forward program, to reduce taxable income. Lastly, countervailable benefits are not limited to cash savings. See section 771(5) of the Act. See also our discussion under "Income Tax Exemption for Export Earnings," *supra*.

Comment 5: Respondents argue that the carry forward of tax losses for four years is generally available and therefore not countervailable.

DOC Position: We agree. We are not countervailing the use of the loss carry-forward provisions of the Brazilian tax law.

Comment 6: Respondents argue that, if the Department finds the income tax exemption for export earnings to be countervailable, we should calculate the benefit using the effective corporate tax rate of 25.9 percent instead of the stated rate of 35 percent. Respondents contend that all Brazilian companies with taxable income may invest in corporate funds as allowed by Brazilian law, effectively reducing their income tax rate. Respondents further argue the Department should use total sales as the denominator in calculating any benefits instead of export sales.

DOC Position: We disagree. The respondent companies paid no taxes during the review period, and, therefore, did not take advantage of those elements of the tax system which allow the effective rate to differ from the nominal tax rate. Whether the companies would have invested in funds to reduce their effective tax rate if they had had any tax liability is entirely speculative. Therefore, we used the nominal tax rate of 35 percent in our calculation of the benefit from this program.

With regard to allocating the tax benefits over total sales, as we have stated in prior Brazilian determinations, when a firm must report to be eligible for benefits under a subsidy program, and when the amount of the benefit received is tied directly or indirectly to the firm's level of exports, that program confers an export subsidy. Therefore, the Department will continue to allocate the benefits under this program over export revenues instead of total revenues.

Comment 7: Respondents argue that the loans from the BNH are not countervailable because they are not limited to a specific enterprise or industry or group of enterprises or industries, and are made on terms consistent with commercial considerations.

DOC Position: We agree that the BNH loans held by respondents are not limited to a specific enterprise or industry, or group thereof. See our response to Petitioners' Comment 5, *supra*.

Comment 8: Respondents argue that the Department correctly issued a negative preliminary determination in this investigation based on a finding of a *de minimis* subsidy despite petitioners' arguments citing *Carlisle Tire & Rubber Co. v. United States*.

DOC Position: As noted in our response to Petitioners' Comment 1, *supra*, this issue is moot.

Comment 9: Respondents argue that the Department has no authority to suspend liquidation retroactively to the publication date of its preliminary determination, as suggested by petitioners.

DOC Position: We agree that the Department has no authority under these circumstances to suspend liquidation retroactively.

Comment 10: Respondents argue that the adjustments made to the companies' export sales receipts are proper and in accord with accepted accounting principles. The adjustments are made to account for the difference between the nominal amount of the sale and the actual amount of cruzerios received as a result of the lag in fixing the foreign currency-cruzerio exchange rate.

DOC Position: We agree. See our response to Petitioners' Comment 6, *supra*.

Comment 11: Respondents argue that the regional development bank loan held by one respondent is not countervailable because it was given under a pollution control project whch is not limited to a specific enterprise or industry or group of enterprises or industries.

DOC Position: We agree that the loan supplied by BADESP is not countervailable. See our response to Petitioners' Comment 7 supra, and our determination on this program under "Program Determined Not to Constitute a Subsidy," *supra.*

Comment 12: Respondents argue that the Department has verified that no imports of capital equipment received a partial or full exemption of the IPI tax and import duties. Respondents also contend that any alleged exemptions from import taxes or duties in years prior to the period of investigation are irrelevant to this investigation according to the Department's current practice.

DOC Position: We verified that no benefits under any of the import duty exemption programs were received by the companies under investigation during the review period except as discussed under "Import Duty Exemption Under Decree-Law 1189 of 1979," *supra.*

Comment 13: Respondents argue that the Department has verified that the IPI export credit premium was eliminated effective May 1, 1985, and that the companies under investigation did not receive funds under this program beyond the cessation date of the program. Therefore, respondents contend that the IPI export credit premium is properly not countervailable.

DOC Position: We agree. See our response to Petitioners' Comment 12 and our discussion under "Program Determined to Have Been Terminated," *supra.*

Comment 14: Respondents argue that the duty-suspension program or rebates on the import of raw matrials are not countervailable. Respondents contend that petitioners' allegations that raw material imports are either not physically incorporated or benefit from excessive rebates of import charges are unsupported by the record. Furthermore, respondents argue that petitioners' new allegations concerning duty drawback and other programs are untimely and improper as they have not been filed with the International Trade Commission as required by 19 CFR 355.26(e).

DOC Position: Petitioners' allegations were untimely and could not be considered for the purpose of this final determination. See our response to Petitioners' Comment 11, *supra.*

Verification

In accordance with section 776(a) of the Act, we verified the informaton used in making our final determination. During verification, we followed standard verification procedures, including meeting with government officials, inspection of documents and ledgers, and tracing the information in the responses to source documents, accounting ledgers, and financial statements.

Suspension of Liquidation

In accordance with section 705(c)(1)(B) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Brazil which are entered, or wthdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to require a cash deposit or bond equal to 3.47 percent *ad valorem* for each entry of this merchandise.

ITC Notification

In accordance with section 705(c) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 75 days after the date of this determination. If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the supension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury exists, we will issue a contervailing duty order, directing Customs officers to assess a countervailing duty on all entries of brass sheet and strip from Brazil entered, or withdrawn from warehouse, for consumption as described in the "Suspension of Liquidation" section of this notice.

This notice is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

November 3, 1986.

[FR Doc. 86–25386 Filed 11–7–86; 8:45 am]

BILLING CODE 3510-DS-M

[C–427–603]

Extension of the Deadline Date for the Final Countervailing Duty Determination; Brass Sheet and Strip From France

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have extended the deadline date for the final determination in the countervailing duty investigation of brass sheet and strip from France to correspond to the date of the final determination in the antidumping duty investigation of the same products from France. The final determination will be made no later than January 5, 1987.

EFFECTIVE DATE: November 10, 1986.

FOR FURTHER INFORMATION CONTACT: Mary Martin or Barbara Tillman, (202–377–2830 or 377–2438), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On March 10, 1986, we received antidumping and countervailing duty petitions filed by American Brass, Bridgeport Brass Corporation, Chase Brass and Copper Company, Hussey Copper Ltd., the Miller Company, Olin Corporation-Brass Group, and Revere Copper Products, Inc., domestic manufacturers of brass sheet and strip, and the International Association of Machinists and Aerospace Workers, the International Union, Allied Industrial Workers of America (AFL–CIO), the Mechanics Educational Society of America (Local 56), and the United Steelworkers of America (AFL–CIO/CLC) (petitioners), on brass sheet and strip from Brazil and France. We also received antidumping petitions against the same products from Brazil, France, Canada, Italy, the Federal Republic of Germany, Sweden, and the Republic of Korea.

In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the

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antidumping petitions alleged that imports of brass sheet and strip are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act) and that these imports materially injure, or threaten material injury to, a U.S. industry.

In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the countervailing duty petitions alleged that manufacturers, producers, or exporters of brass sheet and strip directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

On March 31, 1986, we initiated a countervailing duty investigation to determine whether certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in France of brass sheet and strip (51 FR 11778, April 7, 1986).

On April 24, 1986, the U.S. International Trade Commission (ITC) determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of brass sheet and strip from France. We made a preliminary affirmative countervailing duty determination on June 3, 1986 (51 FR 20867, June 9, 1986).

Based upon the request of the petitioners, we extended the deadline dates for the final determination in the countervailing duty investigations of brass sheet and strip from Brazil and France to correspond to the date of the final determinations in the antidumping duty investigations of the same products pursuant to section 705(a)(1) of the Act, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98–573) (51 FR 25379, July 14, 1986).

On September 16, 1986, Trefimetaux S.A., respondent in the antidumping and countervailing duty investigations of brass sheet and strip from France, requested a postponement of the final antidumping duty determination until not later than the 135th day after publication of our preliminary determination, pursuant to section 735(a)(2)(A) of the Act.

On October 23, 1986, we postponed the date of the antidumping duty determination until not later than January 5, 1987. In a letter dated October 27, 1986, counsel for petitioners expressed opposition to the extension of the countervailing duty investigation of brass sheet and strip from France to correspond with the extended final determination deadline in the antidumping duty investigation of the same products from France. In past cases, once petitioners invoked section 606, this election has applied for the balance of the countervailing duty investigation, regardless of subsequent extensions in the applicable antidumping determination[s]. See *Postponement of Final Antidumping Duty Determination and Countervailing Duty Determination: Offshore Platform Jackets and Piles from the Republic of Korea* (50 FR 52823, December 26, 1985); *Postponement of Final Countervailing and Antidumping Duty Determinations: Oil Country Tubular Goods from Israel* (51 FR 36442, October 10, 1986). Similarly, in this case, since petitioners unconditionally elected to exercise their option to invoke the procedures of section 606 we have determined that that election should apply to the balance of the investigation. Accordingly, we are extending the date of the final countervailing duty determination in brass sheet and strip from France until not later than January 5, 1987.

The ITC is being advised of this postponement, in accordance with section 705(d) of the Act. This notice is published pursuant to section 705(d) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

November 3, 1986.

[FR Doc. 86–25389 Filed 11–7–86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Coastal Zone Management Programs and Estuarine Sanctuaries State Programs; Alaska; Extension of Comment Period

AGENCY: Extension of comment period on Bristol Bay Coastal Management Program Environmental Assessment.

Location: Bristol Bay, Alaska.

Notice of the availability and provision for a 30-day comment period on the above noted Environmental Assessment appeared in the **Federal Register** on October 16, 1986, 51 FR 36836. In response to a request to extend the comment period, the Office of Ocean and Coastal Resource Management hereby provides notice that the comment period has been extended 10 days. Please submit any written comments by November 28, 1986 to:

Peter L. Tweedt, Director, Office of
Ocean and Coastal Resource
Management, 1825 Connecticut
Avenue, NW., Washington, DC 20235,
(202) 673–5111.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration.

Dated: October 4, 1986.

James P. Blizzard,

Acting Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 86–25333 Filed 11–7–86; 8:45 am]

BILLING CODE 3510-08-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request Public Comment on Bilateral Textile Consultations With the Government of Japan to Review Trade in Categories 335, 612pt., 666pt., and 645/646

November 5, 1986.

On September 30, 1986, the Government of the United States, under Article 3 of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973, as further extended by Protocol dated July 31, 1986, requested consultations with the Government of Japan with respect to women's, girls' and infants' cotton coats in Category 335, lightweight polyester filament fabric in Category 612 pt. (only TSUSA numbers 338.5010, .5011, .5012, .5013, .5014, .5015, .5016, .5017, .5018, .5019, .5020, and .5021, man-made fiber blankets in Category 666pt. (only TSUSA numbers 363.2562, 363.8506, and 363.8509), and man-made fiber sweaters in Category 645/646, produced or manufactured in Japan.

The purpose of this notice is to advise the public that, if no solution is agreed upon consultations between the two governments, the Committee for the implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the foregoing categories, produced or manufactured in Japan and exported to the United States during the twelve-month period which began on September 30, 1986 and extends through September 29, 1987 at levels of 105,247 dozen (Category 335), 100,000,000 square yards (Category 612 pt.), 540,832 pounds (Category 666 pt.) and 141,393 dozen (Category 645/646).

Summary market statements concerning these categories follow this notice.

Anyone wishing to comment or provide data for information regarding the treatment of these categories, under Article 3 of the MFA, or to comment on domestic production or availability of textile products included in the categories, is invited to submit such comments or information in ten copies to Mr. William H. Houston III, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Japan Market Statement

Category 335—Womens, Girls' and Infants' Cotton Coats

September 1986.

Summary and Conclusions

U.S. imports of Category 335 from Japan were 77,803 dozen during the first seven months of 1986, approximately 26 percent above the 61,889 dozen imported during the same period of 1985.

The U.S. market for Category 335 has been disrupted by imports. The sharp and substantial increase in imports from Japan is contributing to this disruption.

U.S. Production and Market Share

U.S. production of women's, girls' and infants' cotton coats declined by nearly 28 percent from 661 thousand dozen in 1983 to 477 thousand dozen in 1985. The U.S. manufacturers' share of this market declined from 29 percent in 1983 to 19 percent in 1985.

U.S. Imports and Import Penetration

U.S. imports of Category 335 increased 24 percent from 1.6 million dozen in 1983 to 2.0 million dozen in 1985. Imports are up 18 percent through the first seven months of 1986 compared to the same period a year ago. The ratio of imports to domestic production rose from 247 percent in 1983 to 423 percent in 1985.

Duty-Paid Value and U.S. Producer Price

Approximately 67 percent of Category 335 imports from Japan during the first seven months of 1986 entered under three TSUSA Numbers: 384.3753—women's cotton corduroy suit-type coats and jackets, not knit, not ornamented; 384.3769—women's cotton corduroy coats and jackets other than suit-type, not knit, not ornamented, and 384.3777—women's other cotton coats not knit, not ornamented. These coats entered the U.S. at duty-paid landed values below U.S. producers' prices for comparable coats.

Japan Market Statement

Category 612 Pt.—Woven Lightweight Polyester Filament Fabrics

September 1986.

Summary and Conclusion

U.S. imports of Category 612 Pt.—lightweight polyester filament fabric—from Japan during the year ending July 1986 were 187 million square yards up 25 percent from the 150 million square yards imported a year earlier. Imports during the first seven months of 1986 reached 114 million square yards, 20 percent above the January–July 1985 level. Japan is the largest supplier of Category 612 Pt.—lightweight polyester filament fabric—accounting for 59 percent of 1986 imports.

The U.S. market for polyester lightweight filament fabric has been disrupted by imports. Japan's position as the major supplier of these fabrics makes it a major contributor to the U.S. market disruption.

Production and Market Share

U.S. production of lightweight polyester filament fabrics dropped 7 percent from 1,048 million square yards in 1984 to 975 million square yards in 1985. The U.S. producers' share of the lightweight polyester filament fabric market dropped to 77 percent in 1985.

Imports and Import Penetration

U.S imports of Category 612 Pt.—lightweight polyester filament fabrics—from all sources increased in 1985 to a record level 297 million square yards. Imports for the first seven months of 1986 were up 11 percent over the comparable period in 1985. The ratio of imports to domestic production increased from 26 percent in 1984 to 31 percent in 1985.

Duty Paid Values and U.S. Producers' Prices

The duty-paid landed values of Category 612—lightweight polyester filament fabrics—from Japan are below the U.S. producers prices for comparable fabrics. Approximately 47 percent of Japan's trade of lightweight polyester filament fabrics during January–July 1986 were non-textured, finished fabrics imported under TSUSA numbers 338.5915 and 338.5917.

Japan Market Statement

Category 666—Man-Made Fiber Blankets, Including Nonwovens

September 1986.

Summary and Conclusion

U.S. imports of Category 666—man-made fiber blankets—from Japan amounted to 571 thousand pounds during the year ending July 1986, up 94 percent from a year earlier. Imports in 1985 were 479 thousand pounds, two and a half times the amount imported in 1984.

The U.S. market for man-made fiber blankets is being disrupted by imports and imports from Japan contributed to the market disruption. Continuation of the growth of imports from Japan would further the disruption.

Production and Market Share

U.S. production of man-made fiber blankets experienced a substantial decline in 1985. Man-made fiber blanket production dropped from 50 million pounds in 1984 to 38 million pounds in 1985, a 24 percent decline.

The market for man-made fiber blankets increased four percent in 1985 over its 1984 level. However, there was a distinct drop in the U.S. producers' share of the market. In 1984 the domestic producers provided 99 percent of the market; in 1985, they provided only 73 percent.

Import and Import Penetration

U.S. imports of Category 666—man-made fiber blankets—from all sources increased 34-fold in 1985 to a record level 14.5 million pounds. The ratio of imports to domestic production increased from less than one percent in 1984 to 38 percent in 1985.

Duty Paid Values and U.S. Producers Price

The duty-paid landed values of Category 666—man-made fiber blankets—from Japan are below the U.S. producers prices for comparable blankets. Approximately 65 percent of Japan's Category 666—man-made fiber blankets—during January–July 1986 were imported under TSUSA number 363.2562.

Japan Market Statement

Category 645/646—Man-Made Fiber Sweaters

September 1986.

Summary and Conclusions

U.S. imports of Category 645/646 from Japan were 156,895 dozen during the year ending July 1986, compared to the 151.178 dozen imported a year earlier. During the first seven months of 1986, man-made fiber sweater imports from Japan were 90,969 dozen compared to 89,485 dozen imported during the same period of 1985.

The U.S. market from Category 645/646 has been disrupted by imports and imports from Japan are contributing to this disruption.

U.S. Production and Market Share

U.S. production of man-made fiber sweaters declined 18 percent between 1983 and 1985 to 5,947 thousand dozen. The U.S. producers' share of this market declined from 40 percent in 1983 to 33 percent in 1985.

U.S. Imports and Import Penetration

U.S. imports of Category 645/646 grew from 10,775 thousand dozen in 1983 to 12,167 thousand dozen in 1985, a 13 percent increase. Year ending July 1986 imports of Category 645/646 reached 12,525 thousand dozen, 13 percent higher than the level imported during the year ending July 1985.

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Category 645/646 imports are up five percent through the first seven months of 1986. The ratio of imports to domestic produciton increased from 149 percent in 1983 to 205 percent in 1985.

Duty-Paid Value and U.S. Producers' Price

Approximately 84 percent of Category 645/646 imports from Japan during the first seven months of 1986 entered under three TSUSA Nos.: 384.8069—infant boys', over 24 months, man-made fiber knit sweaters, not ornamented; TSUSA No. 384.8071—other infants' man-made fiber knit sweaters, not ornamented; and TSUSA No. 384.8073—women's and girls' man-made fiber knit sweaters, not ornamented. These sweaters entered the U.S. at duty-paid landed values below U.S. producers' prices for comparable sweaters.

[FR Doc. 86–25378 Filed 11–7–86; 8:45 am]

BILLING CODE 3510-DR-M

Increasing the Import Limit for Certain Cotton, Wool and Man-Made Fiber Apparel Products Produced or Manufactured in the Republic of Korea

November 5, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 10, 1986. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

On December 23, 1985 a notice was published in the **Federal Register** (50 FR 52356) announcing establishment of limits for certain specified categories of cotton, wool, and man-made fiber textile products, including Categories 359 pt. (cotton vests in TSUSA numbers 381.0258, 381.0554, 381.3949, 381.5800, 381.5920, 381.0451, 384.0648, 384.0650, 384.0651, 384.3449, 384.3450, 384.4300, 384.4421, and 384.4422), 442 (wool skirts), 459–W (woven headwear in TSUSA numbers 702.7500 and 702.8000), 636 (man-made fiber dresses), 641 (women's, girls' and infants' blouses and shirts, not knit, of man-made fibers), 642 (skirts and culottes of man-made fibers), and 659–C (coveralls in TSUSA numbers 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607 and 384.9310), produced or manufactured in Korea and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986. Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 1, 1982, as amended, between the Governments of the United States and the Republic of Korea, and at the request of the Government of the Republic of Korea, swing is being applied to the limits for Categories 442, 459–W, 636, 641, 642 and 659–C, increasing them for the current agreement year. The limit for Category 359–V is being reduced to 1,171,316 pounds to account for the increases applied to the other categories. In the letter which follows this notice, the Chairman of CITA directs the Commissioner of Customs to adjust the designated limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textiles Agreements.

Committee for the Implementation of Textile Agreements

November 5, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 18, 1985, which directed you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in Korea and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

Effective on November 10, 1986, the directive of December 18, 1985 is hereby further amended to adjust the import restraint limits for the following categories:[1]

Category	Adjusted 12-mo limit [1]
359–V [2]	1,171,316 pounds.
442	46,527 dozen.
459–W [3]	195,228 pounds.
636	230,454 dozen.
641	1,076,227 dozen.
642	83,765 dozen.
659–C [4]	596,654 pounds.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1985.

[2] In Category 359, only TSUSA numbers 381.0258, 381.0554, 381.3949, 381.5800, 381.5920, 381.0451, 384,0648, 384.0650, 384.0651, 384.3449, 384.3450, 384.4300, 384.4421, and 384.4422.

[3] In Category 459, only TSUSA numbers 702.7500, 702.8000.

[4] In Category 659, only TSUSA numbers 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607 and 384.9310.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–25359 Filed 11–7–86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Ada Board Environment Panel; Meeting

ACTION: Notice of meeting.

SUMMARY: A meeting of the Ada Board Environment Panel will be held Tuesday, 18 November 1986 from 5:00 p.m. to 9:00 p.m. at the Marriott Hotel in Charleston, West Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Erhard Ploedereder, Tartan Laboratories, 477 Melwood Avenue, Pittsburgh, PA 15213, (412) 621–2210.

Patricia H. Means,

Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

November 5, 1986.

[FR Doc. 86–25335 Filed 11–7–86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Procurement and Assistance Management Directorate; Restriction of Eligibility for Grant Award; Tennessee State University

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b) it has renewed on a restricted eligibility basis its grant to Tennessee State University for continued effort in measuring the impact of special building procedures on energy conservation. The renewal is for a one-year period and is in the amount of $200,000.

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[1] The bilateral agreement, as amended, provides, among other things, that: (1) During any agreement year specific limits or sublimits may be exceeded by certain designated percentages, provided a corresponding reduction in equivalent square yards is made in one or more other specific limits; (2) under specified conditions specific limits and sublimits may be adjusted for carryforward not to exceed 10 percent; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

Procurement Request No. 05-86CE27438.001

Project Scope: The Tennessee State University was awarded the grant on September 14, 1984, and has been performing the defined effort since September 16, 1984; therefore, renewal of the grant is based on Tennessee State University having access to the established unique data source and its established analytical procedure to collect, analyze, and evaluate the energy usage data. Eligibility for continuation of the grant effort is, therefore, restricted to the Tennessee State University.

FOR FURTHER INFORMATION CONTACT: Frederick H. Abel, CE-13, Office of Buildings and Community Systems, U.S. Department of Energy, 1000 Independence Avenue, SW., Forrestal Building, Washington, DC 20585, Telephone Number: (202) 252-3495.

Issued in Oak Ridge, Tennessee, September 15, 1986.

Peter D. Dayton,

Director, Procurement and Contracts Division.

[FR Doc. 86-25354 Filed 11-7-86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 86-49-NG]

CEPEX, Inc.; Order Approving Blanket Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of order approving a blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting blanket authorization to CEPEX, Inc. (CEPEX), to import Canadian natural gas on a short-term basis. The order issued in ERA Docket No. 86-49-NG authorizes CEPEX to import up to 50 MMcf per day of Canadian natural gas over a two-year term beginning on the date of first delivery of the import.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 31, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-25355 Filed 11-7-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-66; OFP Case No. 66021-9327-20,21-24]

Order Granting Power Resources, Inc. Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order granting exemption.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or the "Act"), to Power Resources, Inc. of Houston, Texas ("Petitioner"). The permanent cogeneration exemption permits the use of natural gas as the primary energy source, for the proposed cogeneration facility to be located at Big Springs, Texas. The final exemption order and detailed information are provided herein.

DATE: The order shall take effect on January 9, 1987.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-093, Washington, DC 20585, Telephone (202) 252-4708

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252-6749

SUPPLEMENTARY INFORMATION: The facility for which Power Resources, Inc. is requesting a permanent exemption will be a topping-cycle facility, construction of which is scheduled to commence in late 1986. The primary energy source of the facility will be natural gas and refinery off-gas. The facility's two combustion turbine generators and steam turbine generator (and fourth turbine used to produce shaft power) will have a combined maximum net output of 12.8 MW during the final stage of project development. All of the electrical output of the facility will be sold to Texas Utilities Electric Company.

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the **Federal Register** on September 19, 1986, (51 FR 19387), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing.

The comment period closed on November 3, 1986; no comments were received and no hearing was requested.

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that the petitioner has satisfied the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to Power Resources, Inc., to permit the use of natural gas as the primary energy source for its cogeneration facility.

Pursuant to section 702(c) of the Act of 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC, on November 4, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-25356 Filed 11-7-86; 8:45 am]

BILLING CODE 6450-01-M

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Federal Energy Regulatory Commission

[Docket Nos. ER87-48-000 et al.]

Dayton Power & Light Co. et al.; Electric Rate and Corporate Regulation Filings

November 4, 1986.

Take notice that the following filings have been made with the Commission:

1. Dayton Power & Light Co.

[Docket No. ER87-48-000]

Take notice that on October 27, 1986, The Dayton Power & Light Company (DP&L) tendered for filing an executed Purchase and Resale Agreement (Agreement) between DP&L and the City of Celina (Celina), Ohio.

The proposed Agreement allows Celina to purchase energy requirements from third parties who will use existing Interconnection Agreement Rate schedules to deliver the energy requirements to DP&L for delivery to Celina.

Comment date: November 14, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Iowa Power & Light Co.

[Docket No. ER87-49-000]

Take notice that on October 27, 1986, Iowa Power & Light Company (Iowa Power) tendered for filing a Notice of Cancellation of a Letter Agreement (Agreement) between Iowa Power and Union Electric Company (Union Electric) designated as Iowa Power and Light Company Supplement No. 7 to Rate Schedule FPC No. 35.

Iowa Power states that the Agreement expired on its own terms on August 30, 1986; that the Notice of Cancellation was mailed to Union Electric, the only purchaser from Iowa Power under the Agreement; and that the filing was mailed to Union Electric and the Iowa State Utilities Board.

Iowa Power requests an effective date of August 30, 1986 and therefore requests a waiver of the Commission's notice requirements.

Comment date: November 14, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Pacific Gas and Electric Co.

[Docket No. ER86-107-004]

Take notice that on October 20, 1986 Pacific Gas and Electric Company (PGandE) tendered for filing proposed changes to Rate Schedule FERC No. 84, FERC No. R-2, FERC No. 90, FERC No. 89, and FERC No. R-1. These changes are to certain rates, terms, and conditions concerning those services rendered by PGandE under the settlement agreements between PGandE and Northern California Power agency (NCPA), CPNational Corporation (CPN), Resort Improvement District No. 1 (RID#1), Shasta Dam Area Public Utility District (Shasta), and City of Redding (Redding), (Settlement Agreements). These Settlement Agreement were part of the settlement agreements approved by the Federal Energy Regulatory Commission (FERC) on June 19, 1986 in Docket Nos. ER86-107-001 and ER86-107-002.

The Settlement Agreement with each customer embodies the agreement between PGandE and the customer on the procedure and mechanism designed to recover amounts due PGandE as result of rate changes based on certain California Public Utilities Commission (CPUC) and FERC decisions.

As a result of certain CPUC decisions, PGandE proposes to refund $41,433, $387, $209 and $136,120 for the calendar year 1985 to CPN, RID#1, Shasta, and NCPA respectively. PGandE also proposes to adjust the rates for CPN, RID#1, Redding, and Shasta which were accepted in Docket Nos. ER86-107-001 and ER86-107-002 to reflect CPUC decisions for 1985 Attrition, 1986 Attrition, Humboldt Bay Retirement, and Helms Pumped Storage Plant costs.

PGandE also includes proposed changes to the Fuel Cost Adjustment (FCA). The proposed changes allow for a calculation of the FCA in months when no energy has been purchased during a prior 12 month period. The changes will be reflected in Part VIII of the Settlement Agreements with CPN, RID#1, and Shasta; Part VI of the Settlement Agreement with Redding; and Part V of the Settlement Agreement with NCPA.

The proposed changes to the rates, terms and conditions in the Settlement Agreements also include revisions for the Diablo Canyon Unit Nos. 1 and 2 in Part VI of the Settlement Agreement with Redding.

Using 1986 billing determinants, the proposed rate changes would result in an estimated yearly revenue increase of $429,502.

Copies of this filing were served upon NCPA, CPN, RID#1, Redding, and Shasta and the Public Utilities Commission of the State of California.

Comment date: November 17, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Pacific Power & Light Company, an Assumed Business Name of PacifiCorp

[Docket No. ER87-51-000]

Take notice that Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, on October 27, 1986, tendered for filing, in accordance with § 35.12 of the Commission's Regulations a Power Sales Agreement dated August 1, 1986, between Pacific and Puget Sound Power & Light Company (Puget).

Pacific requests waiver of the Commission's Notice requirements to permit this rate schedule to become effective August 1, 1986, which it claims is the date of commencement of service.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission of the state of Washington and Puget.

Comment date: November 14, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Pacific Power & Light Company

[Docket No. ER85-757-001]

Take notice that on October 14, 1986, Pacific Power & Light Company (Pacific) tendered for filing a compliance report in accordance with the Commission's order directing Bonneville Power Administration (Bonneville) to correct Pacific's general plant functionalization error in order to conform to both the Average System Cost (ASC) methodology and the treatment used in other filings.

Pacific states that the effect of this correction is to increase the Phase-in ASC by $103,000 or .94 mills per kilowatt hour effective October 1, 1984. The correction will also increase the Phase II ASC by $205,000 or .07 mills per kilowatt hour to 27.46 mills per kilowatt hour effective July 1, 1985.

Comment date: November 17, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Tampa Electric Co.

[Docket No. ER86-455-000]

Take notice that on October 20, 1986, Tampa Electric Company (Tampa Electric) tendered for filing an amended cost support schedule showing a change in the daily capacity charge for its scheduled interchange service provided under interchange agreements with Florida Power Corporation, Florida Power & Light Company, Florida Municipal Power Agency, Fort Pierce Utilities Authority, Jacksonville Electric Authority, Orlando Utilities Commission, Sebring Utilities Commission, Seminole Electric Cooperative, and the City of Gainesville, Kissimme, Lakeworth, Lakeland, St. Cloud, Starke, Tallahassee, and Vero Beach, Florida. The amended cost support schedule supersedes one of the cost support schedules tendered initially in this docket. The amended schedule reflects deletion of a portion of the Big

Bend No. 4 generating unit costs from the cost basis for the daily capacity charge, resulting in a lesser charge.

Tampa Electric requests that the revised daily capacity charge be made effective as of May 1, 1986, and therefore requests waiver of the Commission's notice requirements.

A copy of the filing, as amended, has been served upon each of the above-named parties to interchange agreements with Tampa Electric as well as the Florida Public Service Commission.

Comment date: November 14, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Public Service Corp.

[Docket No. ER87-50-000]

Take notice that on October 27, 1986, Wisconsin Public Service Corporation ("the company") of Green Bay, Wisconsin, filed a supplement to its service agreement with Wisconsin Public Power Incorporated System ("WPPI"). The service agreement supplement relates to the company's FERC Electric Tariff, Original Volume No. 2 for all requirements service and contains provisions relative to the location of electric metering at the City of Eagle River. The filing does not change the level of the company's rates or affect terms and conditions other than those related to the said metering location.

The Company asks that the supplemental agreement be given a November 3, 1986 effective date so that the transfer of certain substation facilities from the company to the City of Eagle River may take place, and that metering at the new location may commence on that date pursuant to the parties' agreement. The company represents the WPPI joins in the request for a November 3, 1986 effective date and also supports the filing which the company has made. The company states that it has furnished copies of the filing to WPPI and the Wisconsin Public Service Commission.

Comment date: November 14, 1986, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-25366 Filed 11-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-33-000 et al.]

Panhandle Eastern Pipe Line Co. et al.; Natural Gas Certificate Filings

November 3, 1986.

Take notice that the following filings have been made with the Commission:

1. Panhandle Eastern Pipe Line Co.

[Docket No. CP87-33-000]

Take notice that on October 22, 1986, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP87-33-000 a request pursuant to § 157.205 and § 157.212 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct, own and operate an additional delivery point for the use of the Kansas Power and Light Company (KPL) near Tipton, Missouri, under the blanket certificate issued in Docket No. CP83-83-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle states that it will deliver up to 30 Mcf of gas per day to KPL at this new delivery point (Tipton #2). Panhandle also states that it and KPL will reassign 30 Mcf of gas per day currently delivered to KPL at its existing Harrisonville delivery point to the new Tipton #2 delivery point and that the total maximum daily delivery obligation remains unchanged. Panhandle asserts the proposed facilities, estimated to cost $2,800, consist of a meter and appurtenant facilities near Tipton, Missouri to effectuate deliverance to KPL.

Comment date: December 18, 1986, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Co. Division of Enron Corp.

[Docket No. CP85-615-001]

Take notice that on October 10, 1986, Northern Natural Gas Company, Division of Enron Corporation (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-615-001, a petition to amend the order issued January 16, 1986, in Docket No. CP85-615-000 pursuant to section 7(c) of the Natural Gas Act so as to authorize Northern to transport gas in Matagorda Island Area Blocks 711 and 712, offshore Louisiana (MAT 711 and 712) for Tennessee Gas Pipeline Company (Tennessee) on behalf of Tennessee's producer in MAT 711 and 712, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

Northern states that in Docket No. CP85-615-000 it was authorized to transport up to 20,000 Mcf per day (Mcfd) on a firm basis (and overrun volumes in excess of 20,000 Mcfd on an interruptible basis) for Tennessee for a term of eight years. It is indicated that Northern receives such gas in MAT 713, transports the gas through its interest in the Matagorda Offshore Pipeline System (MOPS) and ultimately redelivers the gas to Channel Industries (Channel) for Tennessee's account at the intersection of MOPS and Channel's A/S pipeline near Tivoli, Refugio County, Texas. Northern now proposes to amend the existing authorized service so it may transport not only MAT 711 and 712 gas being purchased by Tennessee for system supply but also MAT 711 and 712 gas reserved by Tennessee's producer or released by Tennessee to its producer. Thus Northern proposes to transport for Tennessee on behalf of its producer. No change in receipt or delivery points is proposed nor is any change proposed in the existing transportation volume or rate.

Comment date: November 24, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. K N Energy, Inc.

[Docket No. CP83-140-004]

Take notice that on October 20, 1986, K N Energy, Inc. (K N), Post Office Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP83-140-004, a petition to amend the order issued March 16, 1983, in Docket Nos. CP83-140-000 and CP83-140-001, as amended, pursuant to section 7(c) of the Natural Gas Act so as to authorize K N to use the automatic authorization procedure set forth in § 157.200(a)(1) of the Regulations to construct and operate sales taps to make direct retail sales to customers located on or near its transmission facilities with delivery requirements of less than 200,000,000 Btu equivalent of natural gas per day, all as more fully set forth in the petition to amend on file

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with the Commission and open to public inspection.

K N states that automatic authorization to tap its transmission lines and to install appurtenant facilities would permit it to make direct sales pursuant to its obligations as a local distribution company to small commercial, residential, agricultural and industrial users located on or near its transmission facilities without the cost and delay inherent in the preparation, filing for, and approval of requests for authorization under the prior notice provisions of § 157.205 of the Regulations. K N states that due to the delays inherent in the prior notice procedure it has lost opportunities to provide sales to retail customers. K N further states that delays in gas service for home heating purposes could constitute a threat to health and safety and for farmers that require gas for irrigation could result in crop loss or other economic harm. K N states that the filing fee of $1,400 for prior notice filings combined with the expenditure of $850 to $1,150 to install each tap is significant, that it has tried to mitigate such costs by combining requests for gas service into one application, but such cost cutting efforts only serve to further delay service. K N states that to the extent filing fees must be added to a customer's tap fee, it may result in gas service becoming uneconomical to rural customers. Finally, K N states that the Commission's goal of monitoring the attachment of new retail customers is adequately protected by the 200,000,000 Btu equivalent per day limitation and by the annual reporting mechanism provided by § 157.211(a) of the Commission's Regulations.

Comment date: November 24, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Consolidated Gas Transmission Corp.

[Docket No. CP87–32–000]

Take notice that on October 21, 1986, Consolidated Gas Transmission Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP87–32–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on an interruptible basis for Dayton Power and Light Company (Dayton Power), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests continued authority pursuant to an August 28, 1986 limited-term transportation agreement to provide an interruptible transportation service for Dayton Power of up to 25,000 dt equivalent of natural gas per day through August 31, 1987. It is stated that the transportation may continue year to year if either party does not terminate the agreement by providing 30 days written notice. Applicant states that it would charge Dayton Power a rate not greater than the maximum rate or less than the minimum rate set forth in its Rate Schedule TI.

Applicant states that it would receive the gas at various locations on its system and deliver the gas to an existing interconnection with Dayton Power located in Warren County, Ohio. Applicant also states that no new or additional facilities would be needed.

Comment date: November 24, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–25367 Filed 11–7–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. QF87–42–000, et al.]

Brassua Hydroelectric Limited Partnership, Inc., et al; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

November 3, 1986.

Comment date: December 10, 1986, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Brassua Hydroelectric Limited Partnership

[Docket No. QF87–42–000]

On October 23, 1986, Brassua Hydroelectric Limited Partnership (Applicant), c/o Swift River/Hafslund Company, General Partner, of 10 Harbor Street, Danvers, Massachusetts 01923 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 3.4 megawatt hydroelectric

facility will be located in Somerset County, Maine.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligiblility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

2. Gabriel Mills Energy Co.

[Docket No. QF87-18-000]

On October 16, 1986, Gabriel Mills Energy Company (Applicant), of 711 West 38th Street, Suite D-2, Austin, Texas 78705 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located near Liberty Hill, Texas. The facility will consist of natural gas fired reciprocating engine generating units. Waste heat from the engines will be used for a greenhouse application. The electric power generating capacity will be 2.0 MW. The primary energy source will be natural gas. Installation of the facility was scheduled to begin in 1986.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-25368 Filed 11-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF87-42-000 et al.]

Yarp Restaurant, Inc., et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

October 30, 1986.

Comment date: December 10, 1986, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Yarp Restaurant, Inc.

[Docket No. QF87-12-000]

On October 15, 1986, Yarp Restaurant, Inc. (Applicant), of 285 Mamaroneck Avenue, White Plains, New York 10605 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in White Plains, New York. The facility will consist of one (1) diesel engine-generator unit and necessary heat recovery system. Thermal energy will be used for space heating and domestic hot water. The electric power production capacity will be 270 kilowatts. The primary energy source will be No. 2 diesel oil. The date of installation was September 15, 1986.

2. Westmoreland Coal Co., Bullitt Coal Prep. Plant

[Docket No. QF86-1093-000]

On October 20, 1986, Westmoreland Coal Company (Applicant), of Drawer A and B, Big Stone Gap, Virginia 24219, submitted for filing an application for certification of a facility as a qualifying small production facility pursuant to § 292.207 of the Commission's regulations. No determiniation has been made that the submittal constitutes a complete filing.

The small power production facility will be located adjacent to the Applicant's Bullitt coal preparation plant on Route 23 near Appalachia, Wise County, Virginia. The facility will consist of a fluidized bed combustion boiler, steam turbine generator, and related auxiliary equipment. Applicant states that the primary energy source of the facility will be "waste" in the form of bituminous coal refuse fines produced by the Bullitt coal preparation plant. The electric power production capacity of the facility will be 20 megawatts.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the approriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kennth F. Plumb,

Secretary.

[FR Doc. 86-25369 Filed 11-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-1-51-000,001]

Great Lakes Gas Transmission Co.; Proposed Changes in F.E.R.C. Gas Tariff Under Purchased Gas Adjustment Clause Provisions

November 5, 1986.

Take notice that Great Lakes Gas Transmission Company (Great Lakes), on October 31, 1986 tendered for filing Third Revised Sheet Nos. 57(i) and 57(ii) and Thirteenth Revised Sheet No. 57-A to its FERC Gas Tariff, First Revised Volume No. 1, proposed to be effective November 1, 1986.

Third Revised Sheet Nos. 57(i) and 57(ii) reflect a purchase gas cost surcharge resulting from maintaining unrecovered purchased gas cost accounts for the period commencing March 1, 1986 and ending August 31, 1986.

Thirteenth Revised Sheet No. 57-A reflects the estimated incremental pricing surcharge for the six month period commencing November 1, 1986 and ending April 30, 1987. No incremental costs are estimated for this period.

These tariffs sheets also reflect changes in Great Lafkes gas purchase cost applicable to sales to Michigan Consolidated Gas Company (Mich Con), ANR Pipeline Company (ANR), Natural Gas Pipeline Company of America (Natural), Michigan Power Company (Michigan Power), Peoples Natural Gas Company (Peoples), Inter-City Gas Corporation (Inter-City) and for the cost of gas used by Great Lakes to render all of its sales and transportation services. These changes are a result of either

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pricing index mechanisms or renegotiations between the parties.

Great Lakes requests an effective date of November 1, 1986 for the tariff sheets submitted herewith so as to be in conformity with the semi-annual effective date as provided for in its tariff. Accordingly, Great Lakes requests waiver of the 30-day notice requirement of the provisions of § 154.38 (d)(4)(iv)(a) of the Commission's Regulations and any other necesary waivers so as to permit the above tariff sheets to become effective on the requested effective date.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests will be considered by the Commissioner in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–25370 Filed 11–7–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-1-56-000,001]

Valero Interstate Transmission Co.; Change in Rates Pursuant To Purchased Gas Cost Adjustment Provisions

November 5, 1986.

Take notice that on October 31, 1986, Valero Interstate Transmission Company ("Vitco") tendered the following tariff sheets for filing containing changes in rates pursuant to purchased gas cost adjustment provisions:

8th Revised Sheet No. 6, Superseding 7th Revised Sheet No. 6, To FERC Gas Tariff, Original Volume No. 2
3th Revised Sheet No. 14.2, Superseding 2nd Revised Sheet No. 14.2, To FERC Gas Tariff, Original Volume No. 1.

Vitco states that the rates stated on 8th Revised Sheet No. 6 and 3rd Revised Sheet No. 14.2 reflects the change in purchased gas costs based on the six months ended August 31, 1986.

The change in rate to Rate Schedule S–1, FERC Gas Tariff, Original Volume No. 2 includes an increase in purchased gas cost of 22.66¢ per MMBtu and a surcharge of 13.88¢ per MMBtu. The rate for Rate Schedule S–2 includes an increase in purchased gas cost of 13.31¢ per MMBtu and no surcharge. The rate for Rate Schedule S–3 includes a decrease in purchased gas cost of 90.57¢ per MMBtu and a negative surcharge of 16.04¢ per MMBtu. The surcharge in each Rate Schedule is designed to eliminate the balance in the deferred purchased gas cost account.

The proposed effective date for the above filings is December 1, 1986. Vitco requests a waiver of any Commission regulations or orders which would prohibit implementation by December 1, 1986.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR) 384.211 and 385.214). All such petitions or protests should be filed on or before November 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–25371 Filed 11–7–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-1-57-000,001]

Western Transmission Co.; Proposed Changes

November 5, 1986.

Take notice that Western Transmission Corporation (Western), on November 3, 1986, tendered for filing as part of its FPC Gas Tariff, Original Volume No. 1, the following sheet: Twenty Eighth Revised Sheet No. 3–A, superseding Twenty Seventh Revised Sheet No. 3–A.

There are no proposed changes to the monthly charges for purchased gas to Colorado Interstate Gas Company, Western's sole jurisdictional customer, pursuant to the provisions of Section 18 of Western's FPC Gas Tariff, Original Volume No. 1.

The proposed effective date of the above tariff sheet is December 1, 1986.

Copies of this filing have been served upon Colorado Interstate Gas Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–25372 Filed 11–7–86; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-777-DR]

Amendment to Notice of Major-Disaster Declaration; Montana

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Montana (FEMA–777–DR), dated October 14, 1986, and related determinations.

DATE: October 30, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3616.

Notice: The notice of a major disaster for the State of Montana, dated October 14, 1986, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 14, 1986: Blaine, Garfield, McCone, Phillips, Rosebud, and Valley Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516 Disaster Assistance)

Dave McLoughlin,

Deputy Associate Director, State, and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 86–25314 Filed 11–7–86; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217-011023.

Title: Hyundai Merchant Marine Co., Ltd./Hanjin Container Lines, Ltd. Space Charter Agreement.

Parties:

Hyundai Merchant Marine Co., Ltd.

Hanjin Container Lines, Ltd.

Synopsis: The proposed agreement would replace and restructure an existing agreement (Agreement No. 217-010703) between the parties and would permit them to exchange vessel slots for monetary or other consideration determined on a slot-basis as needed. The parties have requested a shortened review period.

Agreement No.: 224-011024.

Title: Charleston Terminal Agreement.

Parties:

South Carolina State Ports Authority (Port)

Lykes Bros. Steamship Co., Inc. (Lykes)

Synopsis: The proposed agreement would permit the Port to assess Lykes reduced rate of wharfage as consideration for specified amounts of container cargo to be generated by Lykes on an annual basis. The agreement would remain in effect for three years.

By Order of the Federal Maritime Commission.

Dated: November 5, 1986.

Joseph C. Polking,

Secretary.

[FR Doc. 86-25357 Filed 11-7-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notice; Acquisition of Banks or Bank Holding Companies

The notificants listed in this notice have applied for the Board's approval under the Change in Bank Control Act (12 U.S.C.1817(j)) and § 225.41 of the Board's Regulation Y (12 C.F.R. 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors.

Comments regarding these applications must be received not later than November 25, 1986.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Clinton Bank & Trust Company Employee Stock Ownership Stock Bonus Trust*, Clinton, Louisiana; to acquire 22.61 percent of the voting shares of Clinton Bancshares, Inc., Clinton, Louisiana, and thereby indirectly acquire Clinton Bank and Trust Company, Clinton, Louisiana.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Leon E. Langemeier*, Clarence G. Lohrenz, and Harold J. Lohrenz; to each acquire 33.33 percent of the voting shares of The Bridger Company, Billings, Montana, and thereby indirectly acquire Bank of Bridger, Bridger, Montana.

Board of Governors of the Federal Reserve System, November 4, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-25315 Filed 11-7-86; 8:45 am]

BILLING CODE 6210-01-M

First Ohio Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 28, 1986.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First Ohio Bancshares, Inc.*, Toledo, Ohio; to acquire 100 percent of the voting shares of The Home Banking Company, Gibsonburg, Ohio. Comments on this application must be received by December 1, 1986.

2. *Wesbanco, Inc.*, Wheeling, West Virginia; to acquire 100 percent of the voting shares of South Hills Bank, Charleston, West Virginia.

3. *Wesbanco, Inc.*, Wheeling, West Virginia; to acquire 100 percent of the voting shares of Wirt County Bank, Elizabeth, West Virginia.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Highlands Bankshares, Inc.*, Petersburg, West Virginia; to acquire 100 percent of the voting shares of The Capon Valley Bank, Wardensville, West Virginia.

Board of Governors of the Federal Reserve System, November 4, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-25316 Filed 11-7-86; 8:45 am]

BILLING CODE 6210-01-M

Westpac Banking Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR

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225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 25, 1986.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Westpac Banking Corp.*, Sydney, Australia; to acquire Wepco Holding Company, Inc., New York, New York, and thereby indirectly acquire William E. Pollock Government Securities, Inc., New York, New York; William E. Pollock Money Markets, Inc., New York, New York; William E. Pollock & Co., Inc., New York, New York; Cincinnati Mortgage Corporation, Cincinnati, Ohio; and one percent of Liberty Brokerage, Inc., New York, New York; and thereby engage in underwriting and dealing in direct obligations of the United States and its agencies; purchasing and selling for its own account financial futures and options on the securities list above; entering in to repurchase and reverse repurchase transactions with respect to obligations of the United States, general obligations of any state or any political subdivision thereof and other obligations list in 12 U.S.C. 24; underwriting and dealing in bankers acceptances, and negotiable certificates of deposit; making, acquiring and servicing mortgage loans; and underwriting and dealing in state and local general obligation bonds and revenue bonds for housing, university, or dormitory purposes pursuant to 12 U.S.C. 24(7) pursuant to §§ 225.25(b)(16) and (1) of the Board's Regulation Y. These activities will be conducted in the United States and Western Europe.

Board of Governors of the Federal Reserve System, November 4, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-25317 Filed 11-7-86; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR A-40, Supp. 21]

Federal Travel Regulations; Subsistence Expense Basis For Areas Outside CONUS

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of changes to Federal travel regulations.

SUMMARY: GSA has issued GSA Bulletin FPMR A-40, Supplement 21, transmitting changed pages amending the Federal Travel Regulations (FTR), FPMR 101-7, to permit agencies to authorize or approve travel on an actual subsistence expense basis to areas outside the conterminous United States (CONUS) under certain special or unusual circumstances.

EFFECTIVE DATE: The revised provisions transmitted by Supplement 21 are effective for travel performed on or after July 1, 1986.

FOR FURTHER INFORMATION CONTACT: Staff members, Regulations and Policy Division FTS 557-1253 or 557-1256 (for non-FTS use AC 703).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Background

Public Law 99-234 (99 Stat. 1756), January 2, 1986, among other things, amended 5 U.S.C. 5702 to rescind the statutory ceilings imposed on actual subsistence expense reimbursement for official travel in locations outside the conterminous United States and authorized the President to set such rates.

By Executive Order No. 12561, July 1, 1986, the President delegated authority to the Secretaries of Defense and State to establish maximum rates for the reimbursement of actual and necessary expenses of official travel for Federal civilian employees performing official travel in localities outside CONUS.

Explanation of changes

Supplement 21 amends the FTR by revising reserved paragraph 1-8.3b to implement the maximum daily actual subsistence expense rates prescribed by the Departments of Defense and State under Executive Order 12561 for travel in nonforeign and foreign areas, respectively, and by establishing certain actual subsistence expense reimbursement limitations. Conditions warranting approval and other provisions in Part 1-8 governing actual expense reimbursement are applicable to travel outside CONUS as well as within CONUS.

Accordingly, the Federal Travel Regulations are amended as follows:

Chapter 1. Travel Allowances

1. Authority: (Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); Executive Order No. 11609, July 22, 1971; 5 U.S.C. 5707)

Part. 8. Reimbursement of Actual Subsistence Expenses

2. Paragraph 1-8.3b is revised to read as follows:

1-8.3. Maximum daily rates and reimbursement limitations.

* * * * *

b. *Travel outside CONUS.*

(1) *Maximum daily rates.* For travel outside CONUS, the maximum daily rate for subsistence expenses shall not exceed the amount prescribed by the Departments of Defense and State, respectively, for nonforeign and foreign areas as set forth in (a) or (b), below, whichever is greater:

(a) 150 percent of the applicable maximum per diem rate (rounded to the next higher dollar) prescribed under 1-7.2b or c; or

(b) $50 plus the applicable maximum per diem rate prescribed under 1-7.2b or c.

(2) *Reimbursement limitation.* When the actual subsistence expenses incurred during any one day are less than the maximum daily rate authorized, the employee shall be reimbursed only for the lesser amount. Expenses incurred and claimed (including those for fractional days) shall be reviewed and allowed only to the extent determined to be necessary and reasonable by the agency (1-8.5b). Reimbursement for meals and incidental expenses generally should not exceed 50 percent of the maximum daily rate authorized under (1), above. When appropriate, however, agencies may establish a different limitation.

* * * * *

Dated: October 14, 1986.

Terence Golden,

Administrator of General Services.

[FR Doc. 86-25325 Filed 11-7-86; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86M-0387]

Paco Pharmaceutical Services, Inc.; Premarket Approval of Charter Labs Cleaning Solution for Sensitive Eyes

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Paco Pharmaceutical Services, Inc., Lakewood, NJ, for premarket approval, under the Medical Device Amendments of 1976, of the CHARTER LABS CLEANING SOLUTION for SENSITIVE EYES. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by December 10, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On June 16, 1986, Paco Pharmaceutical Services, Inc., Lakewood, NJ 08701, submitted to CDRH an application for premarket approval of the CHARTER LABS CLEANING SOLUTION for SENSITIVE EYES indicated for use to clean soft (hydrophilic) contact lenses.

On July 18, 1986, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On September 5, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

The labeling of the CHARTER LABS CLEANING SOLUTION for SENSITIVE EYES states that the solution is indicated for use to clean soft (hydrophilic) contact lenses. Manufacturers of soft (hydrophilic) contact lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the **Federal Register** of the approval of a new solution for use with an approved soft contact lens, the manufacturer of each lens shall correct its labeling to refer to the new solution at the next printing or at such other time as CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 10, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 31, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86-25320 Filed 11-7-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86M-0402]

Telectronics Proprietary Limited; Premarket Approval of PASAR® Model 4171 Pulse Generator, Model 4601 Programmer, and Model 4401 Simulator

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Telectronics Proprietary Limited, Lane Cove, Australia, for premarket approval, under the Medical Device Amendments of 1976, of the PASAR® Model 4171 Pulse Generator, Model 4601 Programmer, and Model 4401 Simulator. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by December 10, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management

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Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Donald F. Dahms, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301-427-7594.

SUPPLEMENTARY INFORMATION: On November 8, 1985, Telectronics Proprietary Limited of Lane Cove, Australia, submitted to FDA an application for premarket approval of the PASAR® Model 4171 Pulse Generator, Model 4601 Programmer, and Model 4401 Simulator. The device system is indicated for use in patients who have complicated heart rhythm disorders who have undergone an electrophysiologic study workup and have been found to have AV nodal reentry or a Wolff-Parkinson-White accessory pathway refractory period of greater than 300 milliseconds. The patient's supraventricular tachycardia (SVT) must have been successfully reverted using either the PASAR® Model 4401 Simulator or a commercially available simulator using similar parameters. The successful termination must always have occurred from the atrium.

On May 23, 1986, the Circulatory Systems Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On September 30, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Donald F. Dahms (HFZ-450), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 10, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 31, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86-25319 Filed 11-7-86; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Council on Graduate Medical Education; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of December 1986:

Name: Council on Graduate Medical Education.

Date and Time: December 4-5, 1986, 8:30 a.m.

Place: Auditorium, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201

The entire meeting is open.

Purpose: Provides advice and recommendations to the Secretary and to the Committees on Labor and Human Resources, and Finance of the Senate and the Committees on Energy and Commerce and Ways and Means of the House of Representatives, with respect to (A) the supply and distribution of physicians in the United States; (B) current and future shortages of physicians in medical and surgical specialties and subspecialties; (C) issues relating to foreign medical graduates; (D) appropriate Federal policies regarding (A), (B), and (C) above; (E) appropriate efforts to be carried out by medical and osteopathic schools, public and private hospitals and accrediting bodies regarding matters in (A), (B), and (C) above; and (F) deficiencies in the needs for improvements in, existing data bases concerning supply and distribution of, and training programs for physicians in the United States.

Agenda: The first meeting will tentatively include welcome and opening remarks; Department Perspective; Congressional perspective; the role of the Council; Staff and Program Support for the Council; Issue Forum A: Physician Manpower; Issue Forum B: Graduate Medical Education Overview; Election of Chairperson; Issue Forum C: Foreign Medical School Graduates; Issue Forum D: Graduate Medical Education—Financing; and Discussion of Preliminary Action Plan for First Report.

Anyone requiring information regarding the subject Council should contact Mr. Paul Schwab, Executive Secretary, Council on Graduate Medical Education, Health Resources and Services Administration, Room 14-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-2033.

Agenda items are subject to change as priorities dictate.

Dated: November 3, 1986.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 86-25321 Filed 11-7-86; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Eye Institute; Board of Scientific Counselors, NEI; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Eye Institute, December 1-2, 1986, Building 31, NEI Conference Room 6A33, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on December 1 from 8:30 a.m. until approximately 8:00 p.m. for general remarks by the Institute's Scientific Director on matters concerning the intramural programs of the National Eye Institute. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on December 1 from approximately 3:00 p.m. until recess and on December 2 from 8:30 a.m. until adjournment for the review, discussion, and evaluation of individual projects conducted by the Ophthalmic Genetics and Pediatrics Sections of the Clinical Branch and the Laboratory of Mechanisms of Ocular Diseases. These evaluations and discussions could reveal personal information concerning individuals associated with the projects, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Consequently, this meeting is concerned with matters exempt from mandatory disclosure.

Ms. Kay Valeda, Committee Management Officer, National Eye Institute, Building 31, Room 6A03, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4903, will provide summaries of the meeting and rosters of committee members.

Substantive program information may be obtained from Dr. Jin Kinoshita, Scientific Director, National Eye Institute, Building 31, Room 6A04, National Institutes of Health, Bethesda, Maryland, 20892 (301/496-7483).

Dated: October 29, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-25306 Filed 11-7-86; 8:45 am]

BILLING CODE 4140-01-M

National Eye Institute; Vision Research Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Vision Research Review Committee, National Eye Institute, November 20-21, 1986, Conference Room 8, Building 31, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on November 20 from 8:30 a.m. to 9:30 a.m. for opening remarks and discussion of program guidelines. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 9:30 a.m. on November 20 until recess and on November 21 from 8:30 a.m. until adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Kay Valeda, Committee Management Officer, National Eye Institute, Building 31, Room 6A-03, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4903, will provide summaries of the meeting and rosters of committee members.

Dr. Catherine Henley, Review and Special Projects Officer, Extramural and Collaborative Programs, National Eye Institute, Building 31, Room 6A-06, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-5561, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.867, Retinal and Choroidal Diseases Research; 13.868, Corneal Diseases Research; 13.869, Cataract Research; 13.870, Glaucoma Research; and 13.871, Sensory and Motor Disorders of Visual Research; National Institutes of Health.)

Dated: October 29, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-25307 Filed 11-7-86; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Cancer Therapeutics Program Project Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Therapeutics Program Project Review Committee, National Cancer Institute, National Institutes of Health, December 4, 1986, Holiday Inn-Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852. This meeting will be open to the public on December 4, from 8:30 a.m. to 9:00 a.m. to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on December 4th, from approximately 9:00 a.m. until adjournment for the review, discussion and evaluation of grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301) 496-5708, will provide summaries of the meeting and roster of committee members, upon request.

Dr. Suzanne E. Fisher, Executive Secretary, Cancer Therapeutics Program Project Review Committee, National Cancer Institute, Westwood Building, Room 834, National Institutes of Health, Bethesda, Maryland 20892 (301 496-2330) will furnish substantive program information.

Dated: October 29, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-25308 Filed 11-7-86; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-86-1643; FR 2282]

Community Development Block Grant Program for Indian Tribes and Alaskan Native Villages; Correction

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of application deadline for funds under the CDBG Program for Indian Tribe and Alaskan Native Villages for fiscal year 1987; correction.

SUMMARY: This document corrects the date for submission of Region V applications for funds under the Community Development Block Grant Program for Indian Tribe and Alaskan Native Villages for fiscal year 1987, that appeared on page 36758 in the Federal Register of Wednesday, October 15, 1986 (51 FR 36758).

FOR FURTHER INFORMATION CONTACT: Mr. Leroy P. Gonnella, Office of Program Policy Development, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 755-6092. (This is not a toll-free number.)

Accordingly, the following correction is being made to the Table in FR Doc. 86–23197, on page 36759 in column one:

Final Date for Submission of Applications:

Offices	Applications must be submitted no later than [1]
Region V, OIP	Feb. 28, 1987.

[1] Applications must be received or postmarked no later than the date specified above. Applications received or postmarked after the deadline will not be considered.

Dated: November 5, 1986.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 86–25397 Filed 11–7–86; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Closure of Anchorage District Office

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice; closing of Anchorage District Office Public Room.

SUMMARY: The BLM Anchorage District Office Public Room will be closed in accordance with the Alaska State Office Reorganization. Information and assistance concerning BLM Land records and programs will continue to be provided at the BLM Public Room, Alaska State Office (Anchorage Federal Building) 701 C Street, Anchorage, Alaska 99513.

EFFECTIVE DATE: January 23, 1987.

FOR FURTHER INFORMATION CONTACT: Jean Rivers-Council, Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513, (907) 271–5960.

Wayne A. Boden,

District Manager.

[FR Doc. 86–25381 Filed 11–7–86; 8:45 am]

BILLING CODE 4310-JA-M

[CO-070-07-4322-10-2410]

Colorado; Grand Junction District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of Grand Junction District Grazing Advisory Board.

SUMMARY: Notice is hereby given that a meeting of the Grand Junction District Grazing Advisory Board will be held on Thursday, December 11, 1986. The meeting will convene in the conference room at the Bureau of Land Management Office, 50629 Highway 6 and 24, Glenwood Springs, Colorado, at 9:00 a.m.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include: (1) Introductions, (2) minutes of the previous meeting, (3) new or revised allotment management plans, (4) weed control, (5) signing authority for checks on advisory board project work, (6) non-use and subleasing policies, (7) need to change advisory board contributions to projects in certain countries, (8) BLM policy on use of herbicides, (9) agreement for use of water on the Fish Park Pipeline, (10) status of current project work, (11) new advisory board project proposals, (12) public presentations, and (13) arrangements for the next meeting.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3:00 and 3:30 p.m. or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506, by December 9, 1986.

Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager. Minutes of the Board meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within thirty (30) days following the meeting.

Further information on the meeting may be obtained at the above address or by calling (303) 243–6552.

Dated: October 31, 1986.

Dick Freel,

District Manager, Grand Junction District.

[FR Doc. 25428 Filed 11–7–86; 8:45 am]

BILLING CODE 4310-JB-M

[NV-943-07-4220-11; (Nev-059798)]

Proposed Continuation of Withdrawal; Nevada

October 27, 1986.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: By **Federal Register** notice published on May 1, 1986 (51 FR 16233) the Bureau of Reclamation proposed that 2,263.71 acres of withdrawn land for the Robert B. Griffith Water Project (RBGWP) be continued for an additional 20 years. The May 1986 proposal is hereby revised to continue 9,729.97 acres. The land will remain closed to surface entry and mining, but has been and will remain open to mineral leasing.

DATE: Comments should be received by February 9, 1987.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, Nevada State Office, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, Nevada State Office, (702) 784–5481.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation proposes that a portion of the existing land withdrawal made by Public Land Order 3512 of December 7, 1964, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Mount Diablo Meridian, Nevada

T. 21 S., R. 62 E.,
  Sec. 23, NE¼, NE¼NW¼, E½SE¼;
  Sec. 24, All;
  Sec. 25, N½NE¼, SE¼NE¼, NE¼NW¼.
T. 21 S., R. 63 E.,
  Sec. 19, lots 3 and 4, E½SW¼;
  Sec. 28, SE¼NE¼, N½NW¼, W½SW¼, SE¼SW¼, SE¼;
  Sec. 29, N½NE¼, NW¼, S½S½;
  Sec. 30, lots 1, 2 and 4, NE¼, E½NW¼, SE¼SW¼, S½SE¼;
  Sec. 34, lots 1 to 6, inclusive, W½NE¼, W½.
T. 22 S., R. 63 E.,
  Sec. 1, lots 5, 6, 7 and 8, S½N½, S½;
  Sec. 2, lots 5, 6, 7 and 8, S½N½, S½;
  Sec. 3, lots 5, 6, 7 and 8, S½N½, S½;
  Sec. 10, 14, 15 and 22, All;
  Sec. 23, W½;
  Sec. 26, W½;
  Sec. 35, All.
T. 23 S., R. 63 E.,
  Sec. 2, lots 3, 5, 6, 7, 11 to 15, inclusive, lot 18, S½SW¼;
  Sec. 11, lot 1, that portion lying west of land deeded to the City of Boulder City, Nevada, by quitclaim deed dated January 4, 1960, lot 2.
T. 22 S., R. 63½ E.,
  Sec. 1, lots 1 to 6, inclusive, S½NE¼, SE¼.

The area described contains 9,729.97 acres in Clark County.

The purpose of continuing 2,263.71 acres is to protect the construction, operation and maintenance of certain salinity control units associated with the Robert B. Griffith Water Project (RBGWP) (formerly known as the Southern Nevada Water Project). This project supplies southern Nevada with water from the Colorado River. The proposed continuation of 7,466.26 acres is for the Southern Nevada Systems Capacity Study. This study involves investigating alternatives for meeting future peak delivery capacity problems with RBGWP and other existing water supply systems in southern Nevada. Among the alternatives are potential expansion of the River Mountain Tunnel; a recharge basin in Henderson, Nevada; and related conveyance routes. Also under consideration, is the potential recharging of Colorado River water in the Eldorado Basin. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the Nevada State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 86–25310 Filed 11–7–86; 8:45 am]

BILLING CODE 4310-HC-M

[NV-943-07-4220-10; (N-43342)]

Proposed Withdrawal and Opportunity for Public Meeting; Nevada

October 27, 1986.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The FAA proposes to withdraw 52.5 acres of public land for the installation and operation of a VHS direction finder at Orvada, Nevada, in support of a nation-wide air navigational control system. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATE: Comments and requests for a public meeting should be received by February 9, 1987.

ADDRESS: Comments and meeting requests should be sent to: State Director, Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM, Nevada State Office, (702) 784–5481.

On August 22, 1986, the Federal Aviation Administration filed an application to withdraw the following described public land, subject to valid existing rights, from settlement, sale, location or entry under the nondiscretionary public land laws, including the mining laws:

Mount Diablo Meridian, Nevada

T. 41 N., R. 35 E.,
  Sec. 27, NW¼NE¼NW¼NW¼, W½NW¼NW¼, W½SW¼NW¼, NW¼SE¼SW¼NW¼, S½SE¼SW¼NW¼, SW¼SW¼SE¼NW¼.

The area described contains 52.5 acres in Humboldt County, Nevada.

The purpose of the withdrawal is for the use of the land by the Federal Aviation Administration for a VHS direction finder in support of air traffic operations. This facility will provide position orientation to aircraft flying between Reno, Nevada, and Boise, Idaho, and a vast area of North Central Nevada. The withdrawal is necessary to provide and secure a clear zone with a 1000 foot radius extending from the direction finder.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestion, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or cancelled, or the withdrawal is approved prior to that date. Temporary uses which will be permitted during this segregative period are grazing and wildlife habitat management. Other licenses, permits, cooperative agreements or discretionary land use authorizations of a temporary nature may be allowed on the lands if compatible with the intent of the proposed withdrawal with the approval of an authorized officer of the Bureau of Land Management.

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 86–25309 Filed 11–7–86; 8:45 am]

BILLING CODE 4310-HC-M

[NV-943-07-4220-10 (N-43390)]

Proposed Withdrawal and Opportunity for Public Meeting; Nevada

October 27, 1986.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The FAA proposes to withdraw 207 acres of public land for the installation and operation of a Vortac facility in support of air traffic operations. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATE: Comments and request for a public meeting should be received by February 9, 1987.

ADDRESS: Comments and meeting requests should be sent to: State Director, Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM, Nevada State Office, (702) 784–5481.

On March 6, 1986, the Federal Aviation Administration filed an application to withdraw the following described public land, subject to valid existing rights, from settlement, sale, location or entry under the nondiscretionary public land laws, including the mining laws:

Mount Diablo Meridian, Nevada

A portion of section 14, Township 26 N., Range 30 E., Pershing County, Lovelock, Nevada, owned by the Bureau of Land Management, and more specifically described as follows:

Beginning at the north west corner of section 14, thence S. 62°46′25″ E. 3883.05 feet, to the hill top, said point to be center of the proposed VORTAC site, thence N. 89°53′35″ E. 1500.0 feet, said point being the true point of beginning (P.O.B.). From the true point to beginning, proceed:

S. 0°6′25″ E. 1500.0 feet, thence S. 89°53′35″ W. 3000.0 feet thence N. 0°6′25″ W. 3000.0 feet, thence N. 89°53′35″ E. 3000.0 feet, thence S. 0°6′25″ E. 1500.0 feet, back to the P.O.B.

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The area described contains 206.60 acres in Pershing County, Nevada.

The purpose of the withdrawal is for the use of the land by the Federal Aviation Administration for a Vortac facility in support of the National Airspace System. The system consists of air navigation facilities, communications facilities and support equipment which provides a means for the safe and expeditious movement of air traffic throughout the United States. The withdrawal is necessary for the establishment, operation, maintenance and protection of the facility.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the Federal Register at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or cancelled, or the withdrawal is approved prior to that date. Temporary uses which will be permitted during this segregative period are grazing and wildlife habitat management. Other licenses, permits, cooperative agreements or discretionary land use authorizations of a temporary nature may be allowed on the lands if compatible with the intent of the proposed withdrawal with the approval of an authorized officer of the Bureau of Land Management.

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 86-25311 Filed 11-7-86; 8:45 am]

BILLING CODE 4310-HC-M

[U-52625-AT]

Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease U-52625-AT for lands in Carbon County, Utah, was timely filed and required rentals and royalties accruing from May 1, 1986, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this Notice.

Having met all the requirements for reinstatement of lease U-52625-AT as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective May 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Orval L. Hadley,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-25330 Filed 11-7-86; 8:45 am]

BILLING CODE 4310-DQ-M

[U-38977-E]

Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease U-38977-E for lands in San Juan County, Utah, was timely filed and required rentals and royalties accruing from March 1, 1986, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this Notice.

Having met all the requirements for reinstatement of lease U-38977-E as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective March 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Orval L. Hadley,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-25331 Filed 11-7-86; 8:45 am]

BILLING CODE 4310-DQ-M

[U-55713]

Utah; Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease U-55713 for lands in Summit County, Utah, was timely filed and required rentals and royalties accruing from July 1, 1986, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this Notice.

Having met all the requirements for reinstatement of lease U-55713 as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective July 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Orval L. Hadley,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-25332 Filed 11-7-86; 8:45 am]

BILLING CODE 4310-DQ-M

[NV-943-07-4220-10 (N-42735)]

Proposed Withdrawal and Opportunity for Public Meeting; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The FAA proposes to withdraw 60 acres of public land for the installation and operation of a VHS direction finder near Beatty, Nevada, in support of air traffic operations for the McCarran International Airport in Las Vegas. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATE: Comments and request for a public meeting should be received by February 9, 1987.

ADDRESS: Comments and meeting requests should be sent to: State Director, Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM, Nevada State Office, (702) 784–5481.

On September 18, 1985, the Federal Aviation Administration filed an application to withdraw the following described public land, subject to valid existing rights, from settlement, sale, location or entry under the nondiscretionary public land laws, including the mining laws:

Mount Diablo Meridian, Nevada

T. 13 S., R. 47 E.,
  Sec. 17, W½E½SW¼SE¼, W½SE¼NW¼SE¼;
  Sec. 20, W½NE¼NW¼NE¼, SW¼NW¼NE¼, S½NE¼NW¼, SE¼NW¼NW¼.

The area described contains 60 acres in Nye County, Nevada.

The purpose of the withdrawal is for the use of the land by the Federal Aviation Administration for a VHS direction finder near Beatty, Nevada, in support of air traffic operations for the McCarran International Airport in Las Vegas. The withdrawal is necessary to provide and secure a clear zone with a 1000 foot radius extending from the direction finder.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will segregated as specified above unless the application is denied or cancelled, or the withdrawal is approved prior to that date. Temporary uses which will be permitted during this segregation period are grazing, wildlife habitat management, development of oil and gas reserves without surface occupancy and licenses, permits, cooperative agreements or other discretionary land use authorizations of a temporary nature that are compatible with the intent of the proposed withdrawal will be allowed on the lands with the approval of an authorized officer of the Bureau of Land Management.

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 86–25303 Filed 11–7–86; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

Intent To Prepare an Environmental Impact Statement; Reelfoot Lake, TN

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Fish and Wildlife Service (FWS) intends to gather information necessary for the preparation of an Environmental Impact Statement (EIS) on the effects of alternative water level management regimes at Reelfoot Lake, Tennessee that could result from modifying the existing lease and cooperative management agreement between the Fish and Wildlife Service and the Tennessee Wildlife Resources Agency. A public meeting will also be held regarding this proposal and the preparation of the EIS. This notice is being furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are solicited.

DATES: Written comments should be received by December 10, 1986. A public scoping meeting will be held in Tiptonville, Tennessee on November 18, 1986.

ADDRESSES: Comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service (ARW/PC), 75 Spring Street, SW., Atlanta, Georgia 30303.

The public scoping meeting on November 18, 1986, will be held at 7:00 p.m. at the Reelfoot Lake State Park Museum, Lake Road, Tiptonville, TN 38079. Detailed directions to the meeting location may be obtained by calling the Refuge Manager, Reelfoot National Wildlife Refuge, 901–538–2481, or by writing to the Regional Director at the address above.

FOR FURTHER INFORMATION CONTACT: Jeffery M. Donahoe (ARW/PC), Fish and Wildlife Biologist, 75 Spring Street, SW., Atlanta, Ga 30303, 404–331–3551 or FTS 242–3551.

SUPPLEMENTARY INFORMATION: Jeffery M. Donahoe is the primary author of this document.

The Fish and Wildlife Service, Department of the Interior, proposes to modify the existing lease from the Tennessee Wildlife Resources Agency that allows the FWS to manage the water control structure and portions of the national wildlife refuge.

The FWS will consider the following alternative methods of approaching the proposed action.

Alternative 1—No Action

With this alternative, management would continue as in the past, both with respect to water levels and other programs. The surface elevation of the lake would continue to be maintained as close to 282.2 feet m.s.l. (mean sea level) as possible; water would be released any time the lake is above 282.2 feet m.s.l. and the gates would be closed any time the lake is below that level. The forest habitat management program, and wildlife management programs on the refuge would continue as in the past.

Alternative 2

Modify the lease to unconditionally return water management responsibilities to the State by excluding the water control structure from the provisions of the lease.

A number of different management options would be available to the State under this alternative. The options that could be implemented by the State would include any of the following:

Option A. Continue Current Management Practices

This option would entail the same management practices as described in Alternative 1—No Action.

Option B. Drawdown

The drawdown option would involve lowering the lake level 5.8 ft (from 282.2 feet m.s.l. to 276.4 feet m.s.l.) to expose approximately 50% of the lake bottom to drying by the sun. The principal objective would be cosolidation of lake sediments and resulting improvements in fish habitat. The drawdown would start on June 1 and be completed by July 15. A minimum of 120 days would be allowed for drying, thus allowing refilling to begin somewhere between November 1 and November 15. The lake would be refilled to 283.2 feet m.s.l. and held at that level until June 1 of the following year, at which time any of a number of other water management strategies might be followed. While the lake was drawn down, existing channels would be cleaned and new channels would be cut as necessary to ensure proper drainage and drying. Annual vegetation (e.g., annual ryegrass or millet) would be seeded on the exposed lake bed to prevent growth of undesirable vegetation and provide food for waterfowl. Small impoundments (200+ acres) would be constructed on the upper lake fingers to provide food for waterfowl arriving prior to the refilling of the lake. Drawdowns would be repeated as needed every 5 to 10 years; specific decisions concerning timing would be made on the basis of monitoring physical and biological conditions resulting from the first drawdown.

Option C. Drawdown Plus Excavation

The drawdown alternative would be implemented as described above. In addition, dried sediment would be excavated from certain critical areas while the lake was down. The purpose of excavation would be to increase water depth in certain areas where movement of boats is now difficult and also to provide additional sediment retention capacity. Actual identification of specific areas to be excavated might not be possible until a drawdown was underway.

Option D. Water Level Fluctuation

The level of Reelfoot Lake would be managed more dynamically than in the past, depending on the natural moisture regime in particular years. The intent would be to manage for *at least* a 2-ft. Fluctuation each *year*. For example, in a wet year, this fluctuation might be from 284.0 feet m.s.l. to 820.0 feet m.s.l. High water levels would generally occur in winter and spring; low levels would occur in the summer. This alternative could be implemented by itself or in the years between drawdowns as described in options B & C.

Option E. State Law

Under this option, which is described in Public Chapter No. 670 of the Public Acts of 1986 recently enacted by the Tennessee Legislature, the lake level would be managed much as it is now, but at a higher level. Gates on the control structure would be opened only when the lake surface elevation was above 283.6 feet m.s.l.; otherwise, they would remain closed. The lake would still drain over the control structure until the surface elevation reached 282.2 feet m.s.l. The exact implications of this strategy have not been determined; however, it is generally believed that peak lake levels would be somewhat higher than in the past, while low levels would be similar to those observed in the past, but for shorter periods of time.

Alternative 3—Implement New Water Management Procedure Under Current Lease

This alternative is similar to Alternative 2 except that the FWS would retain control of the water control structure but would implement a more dynamic water management regime. The management options available to the FWS would be similar to those under Alternative 2 with the exception that any water level manipulation would not exceed 3 feet above or below 282.2 feet m.s.l.

Alternative 4—Modify the lease from the State to include the following:

A. The spillway would be excluded from the lease and returned to State control, subject to stipulations by the FWS.

B. The boundaries of the lands currently leased from TWRA and administered as a national wildlife refuge would be revised to improve the effectiveness of the refuge management program and also to increase the State's flexibility in implementing new water level management programs at Reelfoot Lake.

C. Increase the term of lease to August 28, 2036, a period of 20 additional years beyond the current lease provision.

D. Supplement the revised lease with a simultaneously-entered cooperative agreement which would specify responsibilities and duties of each agency, and which would be reviewed for needed revision at least every 5 years.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 et seq.), NEPA Regulations (40 CFR Parts 1500 through 1508), other appropriate Federal regulations, and FWS procedures for compliance with those regulations.

We estimate the DEIS will be made available to the public by June 15, 1987.

Dated: November 4, 1986.

James W. Pulliam, Jr.,

Regional Director.

[FR Doc. 86-25497 Filed 11-7-86; 8:45 am]

BILLING CODE 4310-55-M

Nation Park Service

Chesapeake & Ohio Canal National Historical Park Commission; Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act that a meeting of the Chesapeake and Ohio Canal National Historical Park Commission will be held Saturday, December 6, 1986, at 1:00 p.m. at the Grace Episcopal Church, 1041 Wisconsin Avenue NW., Georgetown, DC.

The Commission was established by Pub. L. 91-664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Miss Carrie Johnson, Chairman, Arlington, Virginia
Mr. Carl L. Shipley, Washington, D.C.
Ms. Polly Bloedorn, Bethesda, Maryland
Mr. James B. Coulter, Annapolis, Maryland
Mrs. Constance Lieder, Baltimore, Maryland
Mr. William H. Ansel, Jr., Romney, West Virginia
Mr. Silas Starry, Shepherdstown, West Virginia
Mr. John D. Millar, Cumberland, Maryland
Mr. Rockwood H. Foster, Washington, D.C.
Mr. Barry Passett, Washington, D.C.
Ms. Barbara Yeaman, Brookmont, Maryland
Ms. Joan LaRock, Lovettsville, Virginia
Ms. Elise Heinz, Arlington, Virginia
Ms. Marjorie Stanley, Silver Spring, Maryland
Mrs. Minny Pohlmann, Dickerson, Maryland
Dr. James H. Gilford, Frederick, Maryland
Mr. R. Lee Downey, Williamsport, Maryland
Mr. Edward K. Miller, Hagerstown, Maryland.

Matters to be discussed at this meeting include:

1. Old and new business
2. Superintendent's report
3. Committee reports, Plans and Projects Committee, Recreation Policies and Issues Committee, Resource Protection Committee
4. Public comments

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Richard L. Stanton, Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at Park Headquarters, Sharpsburg, Maryland.

Dated: November 4, 1986.

Lowell V. Sturgill,

Acting Regional Director, National Capital Region.

[FR Doc. 86-25409 Filed 11-6-86; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the Seventy-Ninth meeting of the Board for International Food and Agricultural Development (BIFAD) on November 25, 1986.

The purposes of the meeting are to discuss responses to the Administrator's questionnaire on Title XII, to hear a report on JCARD and to hear and discuss a presentation on the Michigan State Report on Africa Food Security.

The Meeting will be held at 8:45 a.m. and adjourn at 12:00 p.m. on November 25, 1986. The meeting will be held in the Pan American Health Organization Building, 525 23rd Street NW., Washington, DC 20037. Any interested person may attend, and may present oral statements in accordance with procedures established by the Board, and to the extent the time available for the meeting permits.

Erven J. Long, Director, Research and University Relations, Bureau for Science and Technology, Agency for International Development, is designated as AID Advisory Committee Representative at this meeting. It is suggested that those desiring further information write to him in care of the Agency for International Development, International Development Cooperation Agency, Washington, DC 20523, or telephone him at (703) 235-8929.

Dated: November 5, 1986.

Erven J. Long,

A.I.D. Advisory Committee Representative, Board for International Food and Agricultural Development.

[FR Doc. 86-25396 Filed 11-7-86; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30930]

The Midland Terminal Co., Exemption to Lease

The Midland Terminal Company has filed a notice of exemption to lease the railroad right-of-way owned by J&L Specialty Products Corporation (J&L) and located within the confines of J&L's steel plant in the Borough of Midland, Beaver County, Pennsylvania. Comments must be filed with the Commission and served on: Thomas M. Thompson, Esquire, Buchanan Ingersoll, Professional Corporation, 57th Floor, 600 Grant Street, Pittsburgh, PA 15219, Henry M. Wick, Jr., Esquire, Wick, Rich, Fluke & Streiff, 1610 Two Chatham Center, Pittsburgh, PA 15219, and James D. Barontini, Esquire, Law Department, The Midland Terminal Company, 3600 Second Avenue, Pittsburgh, PA 15219.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Dated: October 24, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86-25404 Filed 11-7-86; 8:45 am]

BILLING CODE 7035-01-M

[No. MC-C-30006]

Quaker Oats Co.; Transportation Within Texas and California; Petition for Declaratory Order

AGENCY: Interstate Commerce Commission.

ACTION: Notice of filing of petition for declaratory order.

SUMMARY: The Quaker Oats Company, a producer of grocery and food products, seeks institution of a declaratory order proceeding to determine whether the following movements of food products are interstate or intrastate in nature: (1) From storage facilities in Texas and California to customers at other points in each State, respectively, after prior movements from out-of-State manufacturing facilities; and (2) from a manufacturing facility at Dallas, TX, to a customer at El Paso, TX, via the shortest direct route passing through New Mexico.

Quaker is joined in its petition by Custom Carriers, Inc., Iowa Continental Shippers, Inc., C.H. Robinson Company, and Wagonmaster Transportation Co.

DATES: Persons interested in participating in this proceedings should so advise the Commission in writing by November 25, 1986.

A list of interested parties will then be compiled and served. Petitioners will have 10 days from the service date of that list to serve each party on the list and the Commission with a copy of each of their comments. Other parties will then have 35 days from the service date of the service list to submit their comments to the Commission and to petitioners' representatives. Petitioners will have 50 days from the service date of the service list to reply.

ADDRESS: Send an original and, if possible, 10 copies of comments referring to No. MC-C-30006 to: Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

Send one copy of comments to each petitioners' representatives:

William P. Jackson, Jr., P.O. Box 1240, Arlington, VA 22210

Florence Wishman, 3649 Conflans Rd., Suite 122, Irving, TX 75061

Owen P. Gleason, 7525 Mitchell Rd., Eden Prairie, MN 55344

Michael L. Springer, 2524 E. Fender Ave., Suite I, Fullerton, CA 92631.

FOR FURTHER INFORMATION CONTACT:

Paul W. Schach, (202) 275-7885

or

Louis E. Gitomer, (202) 275-7691.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. Infosystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC, 20423, or call 289-4357 (DC Metropolitan areas) or toll-free (800) 424-5403.

Decided: October 28, 1986.

By the Commission, chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Chairman Gradison and Commissioner Lamboley commented with separate expressions. Vice

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Chairman Simmons would have set this proceeding for oral hearing.

Noreta R. McGee,

Secretary.

[FR Doc. 86–25403 Filed 11–7–86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–18 (Sub–90X)]

The Chesapeake & Ohio Railway Co.; Abandonment Exemption; Hocking County, OH

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by The Chesapeake and Ohio Railway Company of 6.30 miles of track in Hocking County, OH, subject to standard labor protection.

DATES: This exemption is effective on December 10, 1986. Petitions to stay must be filed by November 25, 1986, and petitions for reconsideration must be filed by December 5, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB–18 (Sub–No. 90X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Patricia Vail, 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area), or toll-free (800) 424–5403.

Decided: November 3, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 86–25405 Filed 11–7–86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

November 6, 1986.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The name and telephone number of the Agency Clearance Officer (from whom a copy of the form/supporting documents is available); (2) the office of the agency issuing the form; (3) the title of the form; (4) the agency from number, if applicable; (5) how often the form must be filled out; (6) who will be required or asked to report; an estimate of the number of responses; (7) an estimate of the total number of respondents; (8) an estimate of the total number of hours needed to fill out the form; (9) an indication of whether Section 3504(h) of Pub. L. 96–511 applies; and, (10) the name and the telephone number of the person or office responsible for the OMB review. Copies of the proposed form(s) and the supporting documentation may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions regarding the item(s) contained in this list should be directed to the reviewer listed at the end of each entry and to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

Department of Justice, Agency Clearance Officer: Larry E. Miesse, 202/633–4312; Deputy Agency Clearance Officer: Daphne Holden, 202/633–5356.

New Collection

(1) Larry E. Miesse, 202/633–4312 (alt. Daphne Holden, 633–5356)
(2) Office for Victims of Crime, Office of Justice Programs, Department of Justice
(3) VICTIM ASSISTANCE PROGRAM SURVEY FOR THE NATIONAL VICTIMS RESOURCE CENTER DATA BASE (Mailing)
(4) N/A
(5) Annual
(6) State or local governments. Survey will enable National Victims Resource Center to collect information on victim assistance programs throughout the United States that provide direct services to victims of crime.
(7) 1800 respondents
(8) 900 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Larry E. Miesse, 202/633–4312 (alt. Daphne Holden, 633–5356)
(2) Immigration and Naturalization Service, Department of Justice
(3) PETITION TO CLASSIFY NONIMMIGRANT AS TEMPORARY WORKER OR TRAINEE
(4) I–128B
(5) On occasion
(6) Individuals or households, businesses or other for-profit. Section 101(a)(15)(H) and (L), and 214 requires the use of this form by employers to petition to classify nonimmigrant as temporary worker or trainee.
(7) 23,958 respondents
(8) 23,958 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

(1) Larry E. Miesse, 202/633–4312 (alt. Daphne Holden, 633–5356)
(2) Immigration and Naturalization Service, Department of Justice
(3) APPLICATION FOR WAIVER OF THE FOREIGN RESIDENCE REQUIREMENT OF SECTION 212(e) OF THE IMMIGRATION AND NATIONALITY ACT
(4) I–612
(5) On occasion
(6) Individuals or households. Information used to determine eligibility of applicants for a waiver.
(7) 1,300 respondents
(8) 433 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

(1) Larry E. Miesse, 202/633–4312 (alt. Daphne Holden, 633–5356)
(2) Immigration and Naturalization Service, Department of Justice
(3) APPLICATION BY REFUGEE FOR WAIVER OF GROUNDS OF EXCLUDABILITY
(4) I–602
(5) On occasion
(6) Individuals or households. Information used to determine eligibility for waivers and to report to Congress on the reasons for granting waivers.
(7) 2,500 respondents
(8) 625 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

(1) Larry E. Miesse, 202/633-4312 (alt. Daphne Holden, 633–5356)
(2) Immigration and Naturalization Service, Department of Justice
(3) REQUEST FOR INFORMATION FROM SELECTIVE SERVICE FILES
(4) N–422
(5) On occasion

(6) Individuals or households. Form is necessary to obtain information from Selective Service to determine eligibility for naturalization as provided for in the Immigration and Nationality Act.
(7) 2,000 respondents
(8) 322 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

(1) Larry E. Miesse, 202/633-4312 (alt. Daphne Holden, 633–5356)
(2) Immigration and Naturalization Service, Department of Justice
(3) APPLICATION FOR REMOVAL
(4) I–243
(5) On occasion
(6) Individuals or households. Needed to determine eligibility of an applicant under Section 250 of the Immigration and Nationality Act, which provides that an alien in the United States who has fallen into distress or needs public aid, may apply for removal from the United States.
(7) 22 respondents
(8) 4 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

(1) Larry E. Miesse, 202/633-4312 (alt. Daphne Holden, 633–5356)
(2) Immigration and Naturalization Service, Department of Justice
(3) REQUEST FOR RECOGNITION AS A NON-PROFIT RELIGIOUS, CHARITABLE, SOCIAL SERVICE, OR SIMILAR ORGANIZATION
(4) G–27
(5) On occasion
(6) Individuals or households, businesses or other for-profit, non-profit institutions, small businesses or organizations. Form is used to determine the qualifications of persons or organizations desiring accreditation to represent aliens during immigration proceedings as provided in Section 292 of the Immigration and Nationality Act.
(7) 50 respondents
(8) 4 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

(1) Larry E. Miesse, 202/633-4312 (alt. Daphne Holden, 633–5356)
(2) Immigration and Naturalization Service, Department of Justice
(3) REQUEST FOR DETERMINATION THAT PROSPECTIVE IMMIGRANT IS AN INVESTOR
(4) I–526
(5) On occasion
(6) Individuals or households. Used to determine if a prospective immigrant is an investor.
(7) 1 respondent
(8) 1 burden hour
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

(1) Larry E. Miesse, 202/633-4312 (alt. Daphne Holden, 633–5356)
(2) Immigration and Naturalization Service, Department of Justice
(3) APPLICATION FOR A NEW NATURALIZATION OR CITIZENSHIP PAPER
(4) N–565
(5) On occasion
(6) Individuals or households. Form used to determine if applicant is eligible for issuance of replacement document.
(7) 8,000 respondents
(8) 2,000 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4814

Larry E. Miesse,
Department Clearance Officer, Department of Justice.

[FR Doc. 86-25334 Filed 11-7-86; 8:45 am]
BILLING CODE 4410-10-M

Drug Enforcement Administration

Importation of Controlled Substances; Registration; Arenol Chemical Corp.

By Notice dated August 8, 1986, and published in the **Federal Register** on August 15, 1986; (51 FR 29334), Arenol Chemical Corporation, 40–33 23rd Street, Long Island City, New York 11101, made application to the Drug Enforcement Administration to be registered as an importer of Phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: November 4, 1986.

Gene R. Haislip,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-25361 Filed 11-7-86; 8:45 am]
BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Notice of Registration; Arenol Chemical Corporation

By Notice dated August 8, 1986, and published in the **Federal Register** on August 15, 1986; (51 FR 29334), Arenol Chemical Corporation, 40-33 23rd Street, Long Island City, New York 11101, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below.

Drug	Schedule
Amphetamine, its salts, optical isomers, and salts of its optical isomers (1100).	II
Methamphetamine, its salts, isomers, and salts of its isomers (1105).	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: November 4, 1986.

Gene R. Haislip,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-25362 Filed 11-7-86; 8:45 am]
BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration; Ciba-Geigy Pharmaceuticals Division et al.

By Notice dated September 16, 1986 and published in the **Federal Register** on September 22, 1986; (51 FR 33668), Pharmaceuticals Division, Ciba-Geigy Corporation, Regulatory Compliance, SEF 1030G, 556 Morris Avenue, Summit, New Jersey 07901, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: November 4, 1986

Gene R. Haislip,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-25363 Filed 11-7-86; 8:45 am]
BILLING CODE 4410-09-M

Manufacturer of Controlled Substances Registration; Du Pont Pharmaceuticals

By Notice dated September 16, 1986, and published in the **Federal Register** on

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ISS 217
NO 10
1986
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September 22, 1986; [51 FR 33868], Du Pont Pharmaceuticals, 1000 Stewart Avenue, Garden City, New York 11530, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Oxycodone (9143)	II
Hydrocodone (9193)	II
Oxymorphone (9652)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: November 4, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86–25364 Filed 11–7–86; 8:45 am]

BILLING CODE 4410-09-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 and 50–318]

Baltimore Gas & Electric Co.; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Prior Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR–53 and DPR–69 issued to the Baltimore Gas and Electric Company (the licensee), for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, located in Calvert County, Maryland.

The proposed amendments would modify Technical Specification Limiting Condition For Operation 3.1.1.4 by raising the upper limit for moderator temperature coefficient (MTC) above 70% Rated Thermal Power (RTP) from the current limit of less positive than +0.2 E–4 delta k/k/°F to a proposed limit of less positive than + (1.16–.66 P) E–4 delta k/k/°F where P is the Fraction of Rated Power.

The increase in MTC to less than +0.50 E–4 at 100% RTP necessitates the changing of the reactor coolant system (RCS) pressure limit for the safety analysis of the feed line break event concurrent with a loss of A.C. power. The previous safety analysis for this event had an RCS pressure limit of 2750 psig (110% of design pressure). The proposed safety analysis RCS pressure limit is 3000 psig (120% of design pressure). This increase is based upon the low probability of occurence of the event.

This proposed TS revision is in partial response to the licensee's application for amendments dated July 31, 1986. The remaining issues associated with the July 31, 1986 application will be addressed in separate actions.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By December 10, 1986, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding; but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Ashok C. Thadani: (Petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to D. A. Brune, Jr., General Counsel, Baltimore Gas & Electric Company, P.O. Box 1475, Baltimore, Maryland 21203, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated July 31, 1986 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Calvert County Library, Prince Frederick, Maryland.

Dated at Bethesda, Maryland, this 4th day of November 1986.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, PWR Project Directorate #8 Division of PWR Licensing-B.

[FR Doc. 86-25410 Filed 11-7-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-483]

Union Electric Co. (Callaway Plant, Unit 1); Notice of Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Union Electric Company (the Licensee) to withdraw part of its May 17, 1985, amendment application for the Callaway Plant, Unit 1, located in Callaway County, Missouri. The withdrawn part of the proposed amendments would have permitted an extension to perform Type C tests on 59 containment isolation valves and editorial changes to valve function descriptions and system designators in Table 3.6-1 of the Technical Specifications. The Commission issued a Notice of Consideration of Issuance of the Amendment in the **Federal Register** on July 3, 1985 (50 FR 27510). By letter dated September 29, 1986, the licensee withdrew part of its application for the proposed amendment. The Commission has determined that permission to withdraw part of the May 17, 1985, application for amendment should be granted.

For further details with respect to this action, see (1) the application for amendment dated May 17, 1985, (2) the licensee's letter dated September 29, 1986, withdrawing part of the application for amendment, and (3) our letter dated November 5, 1986. All of the above documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Fulton City Library, 709 Market Street, Fulton, Missouri 65251 and the Olin Library of Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Dated at Bethesda, Maryland, this 5th day of November 1986.

For the Nuclear Regulatory Commission.

B.J. Youngblood,

Director, PWR Project Directorate #4, Division of PWR Licensing-A.

[FR Doc. 86-25411 Filed 11-7-86; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22-15965]

Application and Opportunity For Hearing; Citicorp

November 5, 1986.

Notice is hereby given that Citicorp (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeships of United States Trust Company of New York (the "Trust Company") under four existing indentures, three Pooling and Servicing Agreements each dated as of July 1, 1986 and two Pooling and Servicing Agreements each dated as of August 1, 1986 ("the Agreements") under which certificates evidencing interests in a pool of mortgage loans have been issued, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trust Company from acting as Trustee under either of such indentures or the Agreements.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest it shall within ninety days after ascertaining that it has such a conflicting interest, either eliminate the conflicting interest or resign as trustee. Subsection (1) of section 310(b) provides, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture which securities of an obligor upon the indenture securities are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of the subsection another indenture under which other securities of the same obligor are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under both the qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under one of such indentures.

The Applicant alleged that:

(1) The Trust Company currently is acting as Trustee under four indentures in which the Applicant is the obligor. The indenture dated as of February 15, 1972 involved the issuance of Floating Rate Notes due 1989, the indenture dated as of March 15, 1977 involved the issuance of various series of unsecured and unsubordinated Notes, the indenture dated as of August 25, 1977 involved the issuance of Rising-Rate Notes, Series A and the indenture dated as of April 21, 1980 involved the issuance of various series of unsecured and unsubordinated Notes. Said indentures were filed as, respectively, Exhibits 4(a), 2(b), 2(b), and 2(a) to Applicant's respective Registration Statements Nos. 2-42915, 2-58355, 2-59396 and 2-64862 filed under the Securities Act of 1933, and have been qualified under the Trust Indenture Act of 1939. Said four indentures are hereinafter called the Indentures and the securities issued pursuant to the Indentures are hereinafter called the Notes.

(2) The Applicant is not in default in any respect under the Indentures or under any other existing indenture.

(3) On July 24, 1986, the Trust Company entered into a Pooling and Servicing Agreement dated as of July 1, 1986 (the "1986-H Agreement") with Citibank, N.A., Originator and Servicer, and Citicorp Homeowners, Inc., under which they were issued on July 24, 1986 Mortgage Pass-Through Certificates, Series 1986-H 10.00% Pass-Through Rate (the Series 1986-H Certificates"), which evidence fractional undivided interests in a pool of conventional one-to-four-family mortgage loans (the "1986-H Mortgage Pool") originated and serviced by Citibank, N.A. and having adjusted principal balances aggregating $74,875,168.36 at the close of business on July 1, 1986, which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1986-H Certificates. On July 24, 1986, Applicant, the parent of Citibank, N.A., entered into a guaranty of even date (the "1986-H Guaranty") pursuant to which applicant agreed, for the benefit of the holders of the Series 1986-H Certificates, to be liable for 6.5% of the initial aggregate principal balance of the 1986-H Mortgage Pool and for lesser amounts in later years pursuant to the

provision of the 1986–H Guaranty. The 1986–H Guaranty states the applicant's obligations thereunder rank *pari passu* with all unsecured and unsubordinated indebtedness of Applicant, and accordingly, if enforced against Applicant, the 1986–H Guaranty would rank on a parity with the obligations evidenced by the Notes. The Series 1986–H Certificates were registeed under the Securities Act of 1933 (Registration Statement on Forms S–11 and S–3, File No:. 33–6358) as part of a delayed or continuous offering of $2,000,000,000 aggregate amount of Mortgage Pass-Through Certificates pursuant to Rule 415 under the Act. The Series 1986–H Certificates were offered by a Prospectus Supplement dated July 9, 1986, supplemental to a Prospectus dated July 9, 1986. The 1986–H Agreement has not been qualified under the Trust Indenture Act of 1939.

(4) On July 28, 1986, the Trust Company entered into a Pooling and Servicing Agreement dated as of July 1, 1986 (the "1986–I Agreement") with Citibank, N.A., Originator and Servicer, and Citicorp Homeowners, Inc., under which there were issued on July 28, 1986, Mortgage Pass-Through Certificates, Series 1986–I 9.50% Pass-Through Rate (the "Series 1986–I Certificates"), which evidence fractional undivided interests in a pool of conventional one-to-four-family mortgage loans (the "1986–I Mortgage Pool") originated and serviced by Citibank, N.A. and having adjusted principal balances aggregating $75,552,240.88 at the close of business on July 1, 1986, which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1986–I Certificates. On July 28, 1986, Applicant, the parent of Citibank, N.A., entered into a Guaranty of even date (the "1986–I Guaranty") pursuant to which Applicant agreed, for the benefit of the holders of the Series 1986–I Certificates, to be liable for 7.00% of the initial aggregate principal balance of the 1986–I Mortgage Pool and for lesser amounts in later years pursuant to the provision of the 1986–I Guaranty. The 1986–I Guaranty states that Applicant's obligations thereunder rank *pari passu* with all unsecured and unsubordinated indebtedness of Applicant, and accordingly, if enforced against Applicant, the 1986–I Guaranty would rank on a parity with the obligations evidenced by the Notes. The Series 1986–I Certificates were registered under the Securities Act of 1933 (Registrant Statement on Forms S–11 and S–3, File No. 33–6358) as part of a delayed or continuous offering of $2,000,000,000 aggregate amount of Mortgage Pass-Through Certificates pursuant to Rule 415 under the Act. The Series 1986–I Certificates were offered by a Prospectus Supplemental dated July 10, 1986 supplemental to Prospectus dated July 9, 1986. The 1986–I Agreement has not been qualified under the Trust Indenture Act of 1939.

(5) On July 28, 1986, the Trust Company entered into a Pooling and Servicing Agreement dated as of July 1, 1986 (the "1986–J Agreement") with Citibank, N.A., Originator and Servicer, and Citicorp Homeowners, Inc., under which there were issued on July 28, 1986 Mortgage Pass-Through Certificates, Series 1986–J 10.00% Pass-Through Rate (the "Series 1986–J Certificates"), which evidence fractional undivided interests in a pool of conventional one-to-four-family mortgage loans (the "1986–J Mortgage Pool") originated and serviced by Citibank, N.A. and having adjusted principal balances aggregating $119,385,653.63 at the close of business on July 1, 1986, which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1986–J Certificates. On July 28, 1986, Applicant, the parent of Citibank, N.A., entered into a guaranty of even date (the "1986–J Guaranty") pursuant to which applicant agreed, for the benefit of the holders of the Series 1986–J Certificates, to be liable for 7.00% of the initial aggregate principal balance of the 1986–J Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1986–J Guaranty. The 1986–J Guaranty states that Applicant's obligations thereunder rank *pari passu* with all unsecured and unsubordinated indebtedness of Applicant, and accordingly, if enforced against Applicant, the 1986–J Guaranty would rank on a parity with the obligations evidenced by the Notes. The Series 1986–J Certificates were registered under the Securities Act of 1933 (Registration Statement on Forms S–11 an S–3, File No. 33–6358 as part of a delayed or continuous offering of $2,000,000,000 aggregate amount of Mortgage Pass-Through Certificates pursuant to Rule 415 under the Act. The Series 1986–J Certificates were offered by a Prospectus Supplement dated July 16, 1986, supplemental to a Prospectus dated July 9, 1986. The 1986–J Agreement has not been qualified under the Trust Indenture Act of 1939.

(6) On August 26, 1986, the Trust Company entered into a Pooling and Servicing Agreement dated as of August 1, 1986 (the 1986–K Agreement") with Citibank, N.A., Originator and Servicer, and Citicorp Homemakers, Inc., under which there were issued on August 26, 1986, Mortgage Pass-Through Certificates, Series 1986–K 9.50% Pass-Through Rates (the "Series 1986–K Certificates"), which evidence fractional undivided interests in a pool of conventional one-to-four-family mortgage loans (the 1986–K Mortgage Pool") originated and services by Citibank, N.A. and having adjusted principal balances aggregating $76,666,366.75 at close of business on August 1986, which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1986–K Certificates. On August 26, 1986, Applicant, the parent of Citibank, N.A., entered into a Guaranty of even date (the "1986–K Guaranty") pursuant to which Applicant agreed, for the benefit of the holders of the Series 1986–K Certificates, to be liable for 7.00% of the initial aggregate principal balance of the 1986–K Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1986–K Guaranty. The 1986–K Guaranty states that Applicant's obligations thereunder rank *pari passu* with all unsecured and unsubordinated indebtedness of Applicant, and accordingly, if enforced against Applicant, the 1986–K Guaranty would rank on a parity with the obligations evidenced by the Notes. The Series 1986–K certificates were registered under the Securities Act of 1933 (Registration Statement on Forms S–11 and S–3, File No. 33–6358) as part of a delayed or continuous offering of $2,000,000,000 aggregate amount of Mortgage Pass-Through Certificates pursuant to Rule 415 under the Act. The Series 1986–K Certificates were offered by a Prospectus Supplement dated August 14, 1986 supplemental to a Prospectus dated July 9, 1986. The 1986–K Agreement has not been qualified under the Trust Indenture Act of 1939.

(7) On August 26, 1986, the Trust Company entered into a Pooling and Servicing Agreement dated as of August 1, 1986 (the "1986–L Agreement") with Citibank N.A., Originator and Servicer, and Citicorp Homeowners, Inc., under which these were issued on August 26, 1986 Mortgage Pass-Through Certificates, Series 1986–L 9.50% Pass-Through Rate (the "Series 1986–L Certificates"), which evidence fractional undivided interests in a pool of conventional one-to-four-family mortgage loans (the "1986–L Mortgage Pool") originated and serviced by Citibank, N.A. and having adjusted principal balances aggregating $98,775,532.57 at the close of business on

August 1, 1986, which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1986–L Certificates. On August 28, 1986, Applicant, the parent of Citibank, N.A., entered into a guaranty of even date (the "1986–L Guaranty") pursuant to which applicant agreed, for the benefit of the holders of the Series 1986–L Certificates, to be liable for 6.50% of the initial aggregate principal balance of the 1986–L Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1986–L Guaranty. The 1986–L Guaranty states that Applicant's obligations thereunder rank *pari passu* with all unsecured and unsubordinated indebteness of Applicant, and accordingly, if enforced against Applicant, the 1986–L Guaranty would rank on a parity with the obligations evidenced by the Notes. The Series 1986–L Certificates were registered under the Securities Act of 1933 (Registration Statement on Forms S–11 and S–3, File No. 33–6358 as part of a delayed or continuous offering of $2,000,000,000 aggregate amount of Mortgage Pass-Through Certificates pursuant to Rule 415 under the Act. The Series 1986–L Certificates were offered by a Prospectus Supplement dated August 19, 1986, supplemental to a Prospectus dated August 19, 1986. The 1986–L Agreement has not been qualified under the Trust Indenture Act of 1939.

The 1986–H Agreement, the 1986–I Agreement, the 1986–J Agreement, the 1986–K Agreement and the 1986–L Agreement are hereinafter called the 1986 Agreements and the 1986–H Guaranty, the 1986–I Guaranty, the 1986–J Guaranty, the 1986–K Guaranty and the 1986–L Guaranty are hereinafter called the 1986 Guarantees.

(B) The obligations of Applicant under the Indentures and the 1986 Guarantees are wholly unsecured, are unsubordinated and rank *pari passu*. Any differences that exist between the provisions of the Indentures and the 1986 Guarantees are unlikely to cause any conflict of interert among the trusteeships of the Trust Company under the 1986 Agreements.

(9) The Applicant has waived notice of hearing, waived hearing, and waived any and all rights to specify procedures under Rule 8(b) of the Commission's Rules of Practice in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, File No. 22–15985, which is a public document on file in the office of the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC.

Notice is Further Given that any interested person may, not later than November 24, 1986, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by said application which he desires to controvert, or may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549.

At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission,

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–25402 Filed 11–7–86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34–23771; File No. SR–PHLX 86–35]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Use of the Uniform Application For Securities Industry Registration or Transfer (Form U–4).

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 30, 1986, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. (PHLX) hereby announces as a proposed rule change the use of Form U–4.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change reflects the PHLX's current use and commitment to future use of Form U–4 as part of its registration and over-sight of member firm personnel. The Exchange finds the use of the Form in connection with the National Association of Securities Dealers, Inc.'s Central Registration Depository (CRD) system an efficient method of reviewing and tracking the continuous and frequent entry and movement of individuals in the securities industry as well as changes in their employment histories.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments on the proposed rule change were neither solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PHLX consents, the Commission will: (A) by order approve such proposed rule change, or, (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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IV. Solicitation

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 1, 1986. For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

November 3, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-25401 Filed 11-7-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-23770; File No. SR-PHLX-86-35]

Self-Regulartory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 19, 1986 the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX") proposes to extend for an additional 60 days a pilot which would permit the PHLX to reduce Canadian dollar ("CD") customer margin for short positions in CD currency options to the options premium plus 1% of the underlying contract value (See, SR-PHLX 86-19 which was approved in Releases No. 34-23445, July 16, 1986.)

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

By Release No. 34-23445, the Securities and Exchange Commission ("Commission") approved the above referenced rule change for a 60 day period during which the PHLX agreed to conduct a study of foreign currency margin requirements. On August 18, 1986, the PHLX submitted its study to the Commission. The PHLX believes that the study supports full approval of reduced margin for CD options. However, in order to allow time for Commission review of the study and notice of the reduced margin for CD options for further public comment, the PHLX requests that the Commission extend temporary approved of the above referenced rule change for an additional 60 day period.

The proposed rule change is consistent with Section 6(b)(5) of the Securities Exchange Act of 1934 in that it will facilitate transactions in securities, remove impediments to and perfect the mechansim of a free and open market and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition. Further, by reducing margin for CD options, the proposed rule change will address a disparity in regulation between CD options which are traded in a securities environment and those which are traded in a futures environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof because the proposal extends a pilot program previously approved by the Commission,[1] and will allow the Commission sufficient time to fully evaluate the pilot. The Exchange states that the reduced margin requirement for CD currency options continues to maintain a 95% confidence level, perviously identified by the Commission as appropriate for margin on short options positions [2] and continues of correlate margin to risk exposure. During the 60 day extension, the Commission will review the PHLX's study of foreign currency margin requirements, along with the Exchange's experience under the pilot, and will decide on the appropriateness of permanent approval.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section,

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[1] *See* Securities Exchange Act Release No. 23445 (July 16, 1986), 51 FR 26469 (July 23, 1986).

[2] *See* Securities Exchange Act Release No. 22469 (September 28, 1985), 51 FR 40633 (October 4, 1985).

450 Fifth Street, NW Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 1, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 3, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-25400 Filed 11-7-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending October 31, 1986.

The following applications for certificates of public convenience and necessity and foreign air carrier permits filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 44450

Date Filed: October 27, 1986.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 24, 1986.

Description: Application of Soundair Corporation, pursuant to section 402 of the Act and Subpart Q of the Regulations, requests a foreign air carrier permit to operate a class 9-2 International Regulator Specific Point commercial air service to transport persons, goods and mail between Toronto, Ontario, Canada, and Cincinnati, Ohio, U.S.A., using fixed wing aircraft in Group C.

Docket No. 44452

Date Filed: October 27, 1986.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 24, 1986.

Description: Application of Lufthansa pursuant to section 402 of the Act and Subpart Q of the Regulations, for an amendment of its foreign air carrier permit so as to authorize it to engage in foreign air transportation of persons, property and mail between a point or points in the Federal Republic of Germany and Washington, DC.

Docket No. 44462

Date Filed: October 29, 1986.

Due Date for Answers, Conforming Application, or Motions to Modify Scope: November 26, 1986.

Description: Application of Million Air, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations, requests an amendment of its certificate of public convenience and necessity authorizing it to perform scheduled all-cargo service between United States, on the one hand, and Paraguay, on the other hand.

Docket No. 44465

Date Filed: October 30, 1986.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 28, 1986.

Description: Application of Soundair Corporation pursuant to section 402 of the Act and Subpart Q of the Regulations, requests a foreign air carrier permit to operate two class 9-2 International Regular Specific Point commercial air services, carrying on business under the firm name and style of Commuter Express, to transport persons, goods and mail, using fixed wing aircraft as certified as capable of carrying no more than 60 passengers and having a maximum payload of no more than 13,000 pounds, between Toronto, Ontario, Canada, and Toledo, Ohio and Youngstown/Akron, Ohio, U.S.A.

Phyllis T. Kaylor,

Chief, Documentary Service Division.

[FR Doc. 86-25376 Filed 11-7-86; 8:45 am]

BILLING CODE 4910-62-M

Aviation Proceedings; Agreements Filed During the Week Ending October 31, 1986

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 44457

Parties: Air Traffic Conference of America.

Date Filed: October 28, 1986.

Subject: Application of Air Traffic Conference of America pursuant to section 412 of the Act requests approval of amendments to the following Air Traffic Conference Resolutions:

Resolutions	Title
10.45	Standard Interline Passenger Procedures—Appendix "A".
20.09	Computer Ticket.
20.10	Transitional Automated Ticket.
20.13	Automated Ticket/Boarding Pass (ATB) Agents.
20.15	Transitional Automated Ticket—Agents.
20.17	Transitional Automated Ticket—Scheduled Airlines Traffic Office, Inc. (SATO).
20.20	Air Transportation Exchange Order For Use by Agent.
20.25	Revalidation Sticker.
30.50	Interline Baggage Handling and Processing.
30.300	Automated Ticket/Boarding Pass—(ATB).
64.10	Standard Specifications for Optical Scanning, Transitional Automated Ticket (TAT) Automated Ticket/Boarding Pass (ATB) Agents.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-25375 Filed 11-7-86; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration Radio Technical Commission for Aeronautics (RTCA), Special Committee 150; Minimum System Performance Standards for Vertical Separation Above Flight Level 290; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 150 on Minimum System Performance Standards for Vertical Separation above Flight Level 290 to be held on December 3-5, 1986, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Remarks; (2) Approval of the Thirteenth Meeting's Minutes; (3) Report of Working Group Activities; (4) Update on Data Collection Programs; (5) Development of MSPS; (6) Task Assignments; (7) Other Business; and (8) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 30, 1986.

Wendie F. Chapman,

Designated Officer

[FR Doc. 86-25302 Filed 11-7-86; 8:45 am]

BILLING CODE 4810-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB For Review

Dated: November 5, 1986.

The Department of Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7313, 1201 Constitution Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0014

Form Number: IRS Form 637

Type of Review: Revision

Title: Registration for Tax-Free Transactions Under Chapters 31 and 32 of the Internal Revenue Code

Clearance Officer: Garrick Shear, (202) 566-6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Robert Neal, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Douglas J. Colley,

Departmental Reports Management Office.

[FR Doc. 86-25399 Filed 11-7-86; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 33-86]

Treasury Notes of Series H-1993; Interest Rate

Washington, October 29, 1986.

The Secretary announced on October 28, 1986, that the interest rate on the notes designated Series H-1993, described in Department Circular—Public Debt Series—No. 33-86 dated October 22, 1986, will be 7⅛ percent. Interest on the notes will be payable at the rate of 7⅛ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 86-25416 Filed 11-7-86; 8:45 am]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 34-86]

Treasury Notes of November 15, 1989, Series T-1989

Washington, October 30, 1986.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $10,000,000,000, of United States securities, designated Treasury Notes of November 15, 1989, Series T-1989 (CUSIP No. 912827 UE O), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated November 17, 1986, and will accrue interest from that date, payable on a semiannual basis on May 15, 1987, and each subsequent 6 months on November 15 and may 15 through the date that the principal becomes payable. They will mature November 15, 1989, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC. 20239, prior to 1:00 p.m., Eastern Standard time, Tuesday, November 4, 1986. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, November 3, 1986, and received no later than Monday, November 17, 1986.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent requried to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender alloted will be determined and each successful competitive bidders will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes alloted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes alloted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, November 17, 1986. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, November 13, 1986. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes alloted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, November 17, 1986. When payment has been submitted with the tender and the purchase price of the Notes alloted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes alloted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes alloted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes alloted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pleged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 86-25413 Filed 11-6-86; 9:29 am]

BILLING CODE 4810-40-M

[Department Circular—Public Dept Series—No. 35-86]

Treasury Notes of November 15, 1996, Series D-1996

Washington, October 30, 1986.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,750,000,000 of United States securities, designated Treasury Notes of November 15, 1996, Series D-1996 (CUSIP No. 912827 UF 7), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes

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may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated November 15, 1986, and issued November 17, 1986. Payment for the Notes will be based on the price equivalent to the bid yield determined in accordance with this circular, plus accrued interest from November 15, 1986, to November 17, 1986. Interest on the Notes is payable on a semiannual basis on May 15, 1987, and each subsequent 6 months on November 15 and May 15 through the date that the principal becomes payable. They will mature November 15, 1996, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. A Note may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, and transfer of Principal and Interest Components are set forth in section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Notes in their fully constituted form; the description of the separate Principal and Interest Components is set forth in Section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Standard time, Wednesday, November 5, 1986. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, November 4, 1986, and received no later than Monday, November 17, 1986.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federal-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all other must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 97.750. That stated rate of interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1 The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1 Settlement for the Notes alloted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement must include accrued interest from November 15, 1986, to November 17, 1986. The amount of accrued interest will be determined after the auction, and investors will be notified of the amount. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5 must be made or completed on or before Monday, November 17, 1986. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, November 13, 1986. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note accounts on or before Monday, Novemer 17, 1986. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2 In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3 Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tendered form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. Separability of Principal and Interest

6.1 Under the Treasury's STRIPS program (Separate Trading of Registered Interest and Principal of Securities), a Note may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The components of a Note are: each future semiannual interest payment (hereafter referred to as an Interest Component); and the principal payment (hereafter referred to as the Principal Component). Each Interest Component and Principal Component shall have its own CUSIP number and designation, which are set forth in Attachment A hereto.

6.2 In order for a Note to be separated into the components described in section 6.1., the par amount of the Note must be in an amount which, based on the stated interest rate of the Note, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. The minimum and multiple par amount required to obtain the separate components for this offering will be provided in the public announcement of the amount and yield range of accepted bids for the Notes. The chart in Attachment B hereto provides the minimum and multiple par amounts required to separate a security into components at various stated interest rates. Separation of Notes into their components may be effected at any time from the issue date until maturity. A request to obtain the separate components must be made to the Federal Reserve Bank maintaining the account for the Notes. Normally, any such request shall be executed by the Federal Reserve Bank within 3 business days after it is received.

6.3. The Principal Component will be payable on November 15, 1996.

6.4. Each Interest Component will be payable on its particular due date designated in Attachment A hereto.

6.5. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

6.6 Once a Note has been separated into its components, each Interest Component and the Principal Component may be maintained and transferred in multiples of $1,000, regardless of the par amount initially required for separation or the resulting amount of each Interest Component.

6.7 Once there is a disposition of any amount of an Interest Component or of a Principal Component, the holder of the Note will be considered for tax purposes to have stripped the amount of principal allocable to the amount of the components disposed of as of the date such first disposition occurs, both the retained amount allocable to the stripped principal and the amount disposed of are thereafter treated as discount obligations, and the holders of such are subject to periodic income inclusion and other provisions of the Internal Revenue Code of 1954.

6.8. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies at such time and such value as will be determined by the Secretary of the Treasury. They will not be acceptable in payment of Federal taxes.

6.9 Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Notes separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

7.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

7.3. The Notes issued under this circular shall be obligations of the United States, whether held in the full constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

7.4. Attachments A and B are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

ATTACHMENT A

CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Notes of November 15, 1996, Series D–1996, CUSIP No. 912827 UF 7

The Principal Component is designated (Interest Rate) Treasury

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Principal (TPRN) Series D–1996 due November 15, 1996, CUSIP No. 912820 AH 0.

INTEREST COMPONENTS

Designation	CUSIP No. 912833	Designation	CUSIP No. 912833
Treasury Interest (TINT) Due		Treasury Interest (TINT) Due	
May 15, 1987	EJ 5	May 15, 1992	EU 0
Nov. 15 1987	EK 2	Nov. 15, 1992	EV 8
May 15, 1988	EL 0	May 15, 1993	EW 6
Nov. 15, 1988	EM 8	Nov. 15, 1993	EX 4
May 15, 1989	EN 6	May 15, 1994	EY 2
Nov. 15, 1989	EP 1	Nov. 15, 1994	EZ 9
May 15, 1990	EQ 9	May 15, 1995	FA 3
Nov. 15, 1990	ER 7	Nov. 15, 1995	FB 1
May 15, 1991	ES 5	May 15, 1996	FC 9
Nov. 15, 1991	ET 3	Nov. 15, 1996	FD 7

BILLING CODE 4810-40-M

ATTACHMENT B

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1000.

COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)
5.000	40000.00	1000.00	10.125	1600000.00	81000.00	15.250	800000.00	61000.00
5.125	1600000.00	41000.00	10.250	800000.00	41000.00	15.375	1600000.00	123000.00
5.250	800000.00	21000.00	10.375	1600000.00	83000.00	15.500	400000.00	31000.00
5.375	1600000.00	43000.00	10.500	400000.00	21000.00	15.625	64000.00	5000.00
5.500	400000.00	11000.00	10.625	320000.00	17000.00	15.750	800000.00	63000.00
5.625	320000.00	9000.00	10.750	800000.00	43000.00	15.875	1600000.00	127000.00
5.750	800000.00	23000.00	10.875	1600000.00	87000.00	16.000	25000.00	2000.00
5.875	1600000.00	47000.00	11.000	200000.00	11000.00	16.125	1600000.00	129000.00
6.000	100000.00	3000.00	11.125	1600000.00	89000.00	16.250	160000.00	13000.00
6.125	1600000.00	49000.00	11.250	160000.00	9000.00	16.375	1600000.00	131000.00
6.250	32000.00	1000.00	11.375	1600000.00	91000.00	16.500	400000.00	33000.00
6.375	1600000.00	51000.00	11.500	400000.00	23000.00	16.625	1600000.00	133000.00
6.500	400000.00	13000.00	11.625	1600000.00	93000.00	16.750	800000.00	67000.00
6.625	1600000.00	53000.00	11.750	800000.00	47000.00	16.875	320000.00	27000.00
6.750	800000.00	27000.00	11.875	320000.00	19000.00	17.000	200000.00	17000.00
6.875	320000.00	11000.00	12.000	50000.00	3000.00	17.125	1600000.00	137000.00
7.000	200000.00	7000.00	12.125	1600000.00	97000.00	17.250	800000.00	69000.00
7.125	1600000.00	57000.00	12.250	800000.00	49000.00	17.375	1600000.00	139000.00
7.250	800000.00	29000.00	12.375	1600000.00	99000.00	17.500	80000.00	7000.00
7.375	1600000.00	59000.00	12.500	16000.00	1000.00	17.625	1600000.00	141000.00
7.500	80000.00	3000.00	12.625	1600000.00	101000.00	17.750	800000.00	71000.00
7.625	1600000.00	61000.00	12.750	800000.00	51000.00	17.875	1600000.00	143000.00
7.750	800000.00	31000.00	12.875	1600000.00	103000.00	18.000	100000.00	9000.00
7.875	1600000.00	63000.00	13.000	200000.00	13000.00	18.125	320000.00	29000.00
8.000	25000.00	1000.00	13.125	320000.00	21000.00	18.250	800000.00	73000.00
8.125	320000.00	13000.00	13.250	800000.00	53000.00	18.375	1600000.00	147000.00
8.250	800000.00	33000.00	13.375	1600000.00	107000.00	18.500	400000.00	37000.00
8.375	1600000.00	67000.00	13.500	400000.00	27000.00	18.625	1600000.00	149000.00
8.500	400000.00	17000.00	13.625	1600000.00	109000.00	18.750	32000.00	3000.00
8.625	1600000.00	69000.00	13.750	160000.00	11000.00	18.875	1600000.00	151000.00
8.750	160000.00	7000.00	13.875	1600000.00	111000.00	19.000	200000.00	19000.00
8.875	1600000.00	71000.00	14.000	100000.00	7000.00	19.125	1600000.00	153000.00
9.000	200000.00	9000.00	14.125	1600000.00	113000.00	19.250	800000.00	77000.00
9.125	1600000.00	73000.00	14.250	800000.00	57000.00	19.375	320000.00	31000.00
9.250	800000.00	37000.00	14.375	320000.00	23000.00	19.500	400000.00	39000.00
9.375	64000.00	3000.00	14.500	400000.00	29000.00	19.625	1600000.00	157000.00
9.500	400000.00	19000.00	14.625	1600000.00	117000.00	19.750	800000.00	79000.00
9.625	1600000.00	77000.00	14.750	800000.00	59000.00	19.875	1600000.00	159000.00
9.750	800000.00	39000.00	14.875	1600000.00	119000.00	20.000	10000.00	1000.00
9.875	1600000.00	79000.00	15.000	40000.00	3000.00	20.125	1600000.00	161000.00
10.000	20000.00	1000.00	15.125	1600000.00	121000.00	20.250	800000.00	81000.00

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[Department Circular—Public Debt Series—No. 36-86]

Treasury Bonds of 2016

Washington, October 30, 1986.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,250,000,000 of United States securities, designated Treasury Bonds of 2016 (CUSIP No. 912810 DX 3), hereafter referred to as Bonds. The Bonds will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Bonds and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Bonds may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Bonds may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Bonds will be dated November 15, 1986, and issued November 17, 1986. Payment for the Bonds will be based on the price equivalent to the bid yield determined in accordance with this circular, plus accrued interest from November 15, 1986, to November 17, 1986. Interest on the Bonds is payable on a semiannual basis on May 15, 1987, and each subsequent 6 months on November 15 and May 15 through the date that the principal becomes payable. They will mature November 15, 2016, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Bonds are subject to all taxes imposed under the Internal Revenue Code of 1954. The Bonds are exempt from all taxation now or hereafter on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Bonds will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Bonds will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000 and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. A Bond may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, and transfer of Principal and interest Components are set forth in sections 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Bonds in their fully constituted form; the description of the separate Principal and interest components is set forth in Section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Bonds offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Standard time, Thursday, November 6, 1986. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, November 5, 1986, and received no later than Monday, November 17, 1986.

3.2. The par amount of Bonds bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above. Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Bonds applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 92.750.

That stated rate of interest will be paid on all of the Bonds. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Bonds specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and delivery

5.1. Settlement for the Bonds allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement must include accrued interest from November 15, 1986, to November 17, 1986. The amount of accrued interest will be determined after the auction, and investors will be notified of the amount. Settlement on Bonds allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, November 17, 1986. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, November 13, 1986. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Bonds allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, November 17, 1986. When payment has been submitted with the tender and the purchase price of the Bonds allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Bonds allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Bonds allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Bond being purchased. In any such case, the tender form used to place the Bonds allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS program (Separate Trading of Registered Interest and Principal of Securities), a Bond may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The components of a Bond are: each future semiannual interest payment (hereafter referred to as an Interest Component); and the principal payment (hereafter referred to as the Principal Component). Each Interest Component and Principal Component shall have its own CUSIP number and designation, which are set forth in Attachment A hereto.

6.2. In order for a Bond to be separated into the components described in section 6.1., the par amount of the Bond must be in an amount which, based on the stated interest rate of the Bond, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. The minimum and multiple par amount required to obtain the separate components for this offering will be provided in the public announcement of the amount and yield range of accepted bids for the Bonds. The chart in Attachment B hereto provides the minimum and multiple par amounts required to separate a security into components at various stated interest rates. Separation of Bonds into their components may be effected at any time from the issue date until maturity. A request to obtain the separate components must be made to the Federal Reserve Bank maintaining the account for the Bonds. Normally, any such request shall be executed by Federal Reserve Bank within 3 business days after it is received.

6.3. The Principal Component will be payable on November 15, 2016.

6.4. Each Interest Component will be payable on its particular due date designated in Attachment A hereto.

6.5. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

6.6. Once a Bond has been separated into its components, each Interest Component and the Principal Component may be maintained and transferred in multiples of $1,000, regardless of the par amount initially required for separation or the resulting amount of each Interest Component.

6.7. Once there is a disposition of any amount of an Interest Component or of a Principal Component, the holder of the Bond will be considered for tax purposes to have stripped the amount of principal allocable to the amount of the components disposed of as of the date such first disposition occurs. Both the retained amount allocable to the stripped principal and the amount disposed of are thereafter treated as discount obligations, and the holders of such are subject to periodic income inclusion and other provisions of the Internal Revenue Code of 1954.

6.8. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies at such time and such value as will be determined by the Secretary of the Treasury. They will not be acceptable in payment of Federal taxes.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Bonds separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Bonds.

7.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Bonds. Public

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announcement of such changes will be promptly provided.

7.3. The Bonds issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Bonds.

7.4. Attachments A and B are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A

CUSIP NUMBERS AND DESIGNATIONS FOR THE PRINCIPAL COMPONENT AND INTEREST COMPONENTS OF TREASURY BONDS OF NOVEMBER 15, 2016, CUSIP NO. 912810 DX 3

[The Principal Component is designated (interest Rate) Treasury Principal (TPRN) 2016 due Nov. 15, 2016, CUSIP No. 912803 AK 9]

Interest Components

Designation	CUSIP No. 912833	Designation	CUSIP No. 912833
Treasury interest (TINT) due:		Treasury interest (TINT) 2016 due:	
May 15, 1987	EJ 5	May 15, 2002	FQ 8
Nov. 15, 1987	EK 2	Nov. 15, 2002	FR 6
May 15, 1988	EL 0	May 15, 2003	FS 4
Nov. 15, 1988	EM 8	Nov. 15, 2003	FT 2
May 15, 1989	EN 6	May 15, 2004	FU 9
Nov. 15, 1989	EP 1	Nov. 15, 2004	FV 7
May 15, 1990	EQ 9	May 15, 2005	FW 5
Nov. 15, 1990	ER 7	Nov. 15, 2005	FX 3
May 15, 1991	ES 5	May 15, 2006	FY 1
Nov. 15, 1991	ET 3	Nov. 15, 2006	FZ 8
May 15, 1992	EU 0	May 15, 2007	GA 2
Nov. 15, 1992	EV 8	Nov. 15, 2007	GB 0
May 15, 1993	EW 6	May 15, 2008	GC 8
Nov. 15, 1993	EX 4	Nov. 15, 2008	GD 6
May 15, 1994	EY 2	May 15, 2009	GE 4
Nov. 15, 1994	EZ 9	Nov. 15, 2009	GF 1
May 15, 1995	FA 3	May 15, 2010	JU 5
Nov. 15, 1995	FB 1	Nov. 15, 2010	JV 3
May 15, 1996	FC 6	May 15, 2011	JW 1
Nov. 15, 1996	FD 7	Nov. 15, 2011	JX 9
May 15, 1997	FE 5	May 15, 2012	JY 7
Nov. 15, 1997	FF 2	Nov. 15, 2012	JZ 4
May 15, 1998	FG 0	May 15, 2013	KA 7
Nov. 15, 1998	FH 8	Nov. 15, 2013	KB 5
May 15, 1999	FJ 4	May 15, 2014	KC 3
Nov. 15, 1999	FK 1	Nov. 15, 2014	KD 1
May 15, 2000	FL 9	May 15, 2015	KE 9
Nov. 15, 2000	FM 7	Nov. 15, 2015	KF 6
May 15, 2001	FN 5	May 15, 2016	KH 2
Nov. 15, 2001	FP 0	Nov. 15, 2016	KK 5

BILLING CODE 4810-35-M

ATTACHMENT B

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1000.

COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)
5.000	40000.00	1000.00
5.125	1600000.00	41000.00
5.250	800000.00	21000.00
5.375	1600000.00	43000.00
5.500	400000.00	11000.00
5.625	320000.00	9000.00
5.750	800000.00	23000.00
5.875	1600000.00	47000.00
6.000	100000.00	3000.00
6.125	1600000.00	49000.00
6.250	32000.00	1000.00
6.375	1600000.00	51000.00
6.500	400000.00	13000.00
6.625	1600000.00	53000.00
6.750	800000.00	27000.00
6.875	320000.00	11000.00
7.000	200000.00	7000.00
7.125	1600000.00	57000.00
7.250	800000.00	29000.00
7.375	1600000.00	59000.00
7.500	80000.00	3000.00
7.625	1600000.00	61000.00
7.750	800000.00	31000.00
7.875	1600000.00	63000.00
8.000	25000.00	1000.00
8.125	320000.00	13000.00
8.250	800000.00	33000.00
8.375	1600000.00	67000.00
8.500	400000.00	17000.00
8.625	1600000.00	69000.00
8.750	160000.00	7000.00
8.875	1600000.00	71000.00
9.000	200000.00	9000.00
9.125	1600000.00	73000.00
9.250	800000.00	37000.00
9.375	64000.00	3000.00
9.500	400000.00	19000.00
9.625	1600000.00	77000.00
9.750	800000.00	39000.00
9.875	1600000.00	79000.00
10.000	20000.00	1000.00
10.125	1600000.00	81000.00
10.250	800000.00	41000.00
10.375	1600000.00	83000.00
10.500	400000.00	21000.00
10.625	320000.00	17000.00
10.750	800000.00	43000.00
10.875	1600000.00	87000.00
11.000	200000.00	11000.00
11.125	1600000.00	89000.00
11.250	160000.00	9000.00
11.375	1600000.00	91000.00
11.500	400000.00	23000.00
11.625	1600000.00	93000.00
11.750	800000.00	47000.00
11.875	320000.00	19000.00
12.000	50000.00	3000.00
12.125	1600000.00	97000.00
12.250	800000.00	49000.00
12.375	1600000.00	99000.00
12.500	16000.00	1000.00
12.625	1600000.00	101000.00
12.750	800000.00	51000.00
12.875	1600000.00	103000.00
13.000	200000.00	13000.00
13.125	320000.00	21000.00
13.250	800000.00	53000.00
13.375	1600000.00	107000.00
13.500	400000.00	27000.00
13.625	1600000.00	109000.00
13.750	160000.00	11000.00
13.875	1600000.00	111000.00
14.000	100000.00	7000.00
14.125	1600000.00	113000.00
14.250	800000.00	57000.00
14.375	320000.00	23000.00
14.500	400000.00	29000.00
14.625	1600000.00	117000.00
14.750	800000.00	59000.00
14.875	1600000.00	119000.00
15.000	40000.00	3000.00
15.125	1600000.00	121000.00
15.250	800000.00	61000.00
15.375	1600000.00	123000.00
15.500	400000.00	31000.00
15.625	64000.00	5000.00
15.750	800000.00	63000.00
15.875	1600000.00	127000.00
16.000	25000.00	2000.00
16.125	1600000.00	129000.00
16.250	160000.00	13000.00
16.375	1600000.00	131000.00
16.500	400000.00	33000.00
16.625	1600000.00	133000.00
16.750	800000.00	67000.00
16.875	320000.00	27000.00
17.000	200000.00	17000.00
17.125	1600000.00	137000.00
17.250	800000.00	69000.00
17.375	1600000.00	139000.00
17.500	80000.00	7000.00
17.625	1600000.00	141000.00
17.750	800000.00	71000.00
17.875	1600000.00	143000.00
18.000	100000.00	9000.00
18.125	320000.00	29000.00
18.250	800000.00	73000.00
18.375	1600000.00	147000.00
18.500	400000.00	37000.00
18.625	1600000.00	149000.00
18.750	32000.00	3000.00
18.875	1600000.00	151000.00
19.000	200000.00	19000.00
19.125	1600000.00	153000.00
19.250	800000.00	77000.00
19.375	320000.00	31000.00
19.500	400000.00	39000.00
19.625	1600000.00	157000.00
19.750	800000.00	79000.00
19.875	1600000.00	159000.00
20.000	10000.00	1000.00
20.125	1600000.00	161000.00
20.250	800000.00	81000.00

[FR Doc. 86-25415 Filed 11-6-86; 9:29 am]

BILLING CODE 4810-40-C

Internal Revenue Service

[Delegation Order No. 221]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: This delegation order authorizes the responsible official within the Internal Revenue Service the authority to grant an extension of a waiver of the magnetic media reporting requirements for filing of certain information returns to taxpayers who submit a written request for approval of an extension or a waiver of the filing requirements. Text of the delegation order appears below.

EFFECTIVE DATE: October 29, 1986.

FOR FURTHER INFORMATION CONTACT: Hugo Santora, D:R:P:L, Room 3611, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone: (202) 566–7575, (Not a Toll-Free Telephone Number).

Ophelia W. Burton,

Director, Program Planning and Review Staff.

Delegation Order

Order Number. 221

Effective Date:

Authority to Grant an Extension or a Waiver of Certain Magnetic Media Report Requirements

1. Pursuant to the authority vested in the Commissioner of the Internal Revenue Service by 26 CFR 1.6081–1, 26 CFR 301.7701–9 and 26 CFR 301.6011–2, it is hereby delegated to the Director, National Computer Center the authority to grant extensions of time to file information returns on magnetic media or waivers of magnetic media reporting requirements for information returns. This authority can only be exercised in situations where the taxpayer has provided prescribed documentation containing the reason for the request and it is sufficient to warrant the approval of an extension or a waiver of the filing requirements.

2. This authority may be redelegated no lower than Magnetic Media Specialists.

3. To the extent that authority previously exercised consistent with this order may require ratification, it is hereby affirmed and ratified.

Dated: October 24, 1986.

James I. Owens,

Deputy Commissioner.

[FR Doc. 86–25385 Filed 11–7–86; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB)
Date of meeting: 25 November 1986
Times of meeting: 0800–1630 hours
Place: Pentagon

Agenda

The Army Science Board's Ad Hoc Subgroup for the Army Combat Models will meet to coordinate a final draft report. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86–25570 Filed 11–7–86; 8:45 am]

BILLING CODE 3710-08-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–102 (Sub-12)]

Missouri-Kansas-Texas Railroad Co.; Abandonment in Labette and Neosho Counties, KS; Notice of Findings

The Commission has issued a certificate authorizing the Missouri-Kansas-Texas Railroad Company to abandon its 25.6-mile rail line between Parsons (milepost B–2.15) and Chanute, (milepost B–27.76) in Labette and Neosho Counties, KS. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA". Any previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Noreta R. McGee,

Secretary.

[FR Doc. 86–25554 Filed 11–7–86; 8:45 am]

BILLING CODE 7035-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 217
Monday, November 10, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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Federal Deposit Insurance Corporation 1

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FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, November 4, 1986, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a discussion of a matter involving jurisdiction under the Federal Deposit Insurance Act.

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsection (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(9)(B)).

Dated: November 5, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-25468 Filed 11-6-86; 11:50 am]

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Part II

Department of Education

34 CFR Parts 682 and 683

Guaranteed Student Loan and PLUS Programs; Final Regulations

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DEPARTMENT OF EDUCATION

34 CFR Parts 682 and 683

Guaranteed Student Loan and PLUS Programs

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for the Guaranteed Student Loan Program (GSLP) and the PLUS Program. These regulations cover the administration of the GSLP and PLUS Programs administered by State and private nonprofit guarantee agencies, the Federal Insured Student Loan Program (FISLP), and the Federal PLUS Program. These regulations incorporate recent statutory changes, and implement various policy initiatives intended to prevent loan defaults and to effect repayment of loans once default has occurred. Currently, the GSLP and PLUS Programs are covered by separate, though similar, regulations. The Secretary is consolidating the regulations of the two programs into one part.

These regulations clarify and simplify the requirements governing the GSLP and PLUS Programs, effect regulatory relief, including the reduction of paperwork and compliance burdens, provide for the improved administration of the programs, and reduce waste, fraud and abuse.

These regulations do not reflect changes to the authorizing legislation for the GSLP and PLUS Programs made by the Higher Education Amendments of 1986 recently enacted by the Congress. Regulations to implement those changes will be issued as soon as possible.

EFFECTIVE DATES: These regulations become effective either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments, except as noted below. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

Section 682.213, which prohibits the use of the rule of 78's, becomes effective six months after the effective date of these regulations. This provision will only affect those loans for which repayment has not begun as of that date.

Section 682.303, which requires the use of the average daily or actual accrual methods for computing interest benefits and special allowance billing by lenders, is effective on July 1, 1987.

Section 682.410(b)(3), which establishes collection procedures to be exercised by a guarantee agency on loans for which it pays a default claim, is effective for loans on which an agency pays default claims on or after March 10, 1987.

Section 682.411, which establishes due diligence requirements for lenders in the collection of guarantee agency loans, is effective for loans on which the first day of delinquency occurs on or after March 10, 1987.

FOR FURTHER INFORMATION CONTACT: Paula Husselmann or Patricia Beavan, Guaranteed Student Loan Branch, Division of Policy and Program Development, Office of Student Financial Assistance, Department of Education, Room 4310, ROB-3, 7th and D Streets, SW., Washington, DC 20202, telephone number (202) 245-2475.

SUPPLEMENTARY INFORMATION: These regulations revise and streamline the existing regulations and consolidate 34 CFR Part 682 (GSLP regulations) and 34 CFR Part 683 (PLUS Program regulations) into one part. These regulations comply with the provisions of Executive Order 12291 by reducing burdens where possible, eliminating unnecessary duplication and clarifying the intent of existing rules. These regulations make a number of changes designed to reduce defaults and to increase collections on loans that, nevertheless, go into default. Recent statutory changes were also incorporated into these regulations.

In order to reduce further the unnecessary duplication of regulations that apply to all title IV student assistance programs, these regulations delete a number of definitions and existing rules and replace them with cross-references to the Student Assistance General Provisions Regulations (34 CFR Part 668).

Subpart B consolidates provisions common to the GSL, FISL and PLUS Programs. Some guarantee agency provisions under Subpart D were revised to include provisions common to the FISL and guarantee agency programs. The FISL sections then reference the guarantee agency sections. Within a given subpart, the numbering of sections may have changed. Below is a list showing some of the changes in section numbers and content from the NPRM to these regulations:

NPRM	Final regulations
§ 682.204	§ 682.209(e).
§§ 682.205–682.206	§§ 682.212–682.213.
§ 682.305	Deleted.
§ 682.401(b) (1) and (2)	§ 682.204.
§ 682.506 (b)–(e)	§ 682.204.
§ 682.507	§ 682.205.
§ 682.508 (a)–(c)	§ 682.206.
§ 682.508 (f) and (g)	§ 682.207.
§ 682.509	§ 682.208.
§§ 682.510–682.512	§§ 682.209–682.211.
§§ 682.513–682.514	§§ 682.507–682.508.
§ 682.515	§ 682.412.
§§ 682.516–682.522	§§ 682.509–682.515.

Revisions to the Notice of Proposed Rulemaking

In the preamble to the Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** of September 4, 1985, 50 FR 35964–36013, the Secretary requested comment on regulating the management practices and structure of State lenders or State secondary markets that are closely affiliated with guarantee agencies, often under identical management.

In view of public comment, the Secretary has decided not to implement final regulations related to management practices of guarantee agencies. Some existing organizational structures have been created under applicable laws and legislative authorities of the various States, and may require State legislation to be altered. In addition, the proposal, which deals with structural matters such as the make-up of boards of directors, might conflict with some provisions of State law.

The Secretary believes, based on comments received, that substantial statutory and regulatory authority exists for monitoring and sanctioning the programs—including remedial actions taken to adequately protect the Federal Government. Additionally, all 50 States have existing laws governing conflict of interests between entities. However, if in the future it appears that these safeguards are inadequate, the Secretary will reconsider promulgating regulations in this area.

Some significant changes have been made to the NPRM. Most of these changes reduce the burden that these regulations place on schools, lenders and guarantee agencies. The following is a listing of significant changes. A full discussion of the changes is contained in the Appendix—Summary of Comments and Responses.

Subpart B—General Provisions

Section 682.200 Definitions.

- The Secretary removed the definition of "enrolled" from these regulations, and intends to place it in the Student Assistance General Provisions Regulations instead. The Secretary has also revised § 682.605 (§ 682.604 of the NPRM) of these regulations, which governs how an institution processes a borrower's loan proceeds, to provide that an institution may credit the borrower's account up to 21 days, and release loan proceeds directly to a borrower up to 10 days, prior to the first day of classes of the period of enrollment for which the loan is intended.

- The Secretary has clarified that aid awarded under the ROTC and Selected Reserve Educational Assistance programs is to be considered in determining a student's estimated financial assistance.

Section 682.205 Disclosure requirements.

- The Secretary has deleted the requirement in the proposed regulations that certain disclosures be made in the promissory note. The Secretary is revising the proposed regulations to provide the lender and guarantee agency with the greatest amount of flexibility by permitting the required disclosures to be made at any time before disbursement. This change was proposed in § 682.507 of the NPRM.

Subpart C—Federal Payments of Interest and Special Allowance

Section 682.300 Payment of interest benefits on a GSLP Loan.

- The Secretary has revised the proposed regulations to extend the number of days a lender is eligible for interest benefits and special allowance payments on an uncashed loan check, from 90 to 120 days.

Section 682.302 Payments of special allowance on a GSLP or PLUS Program Loan.

- The Secretary has revised § 682.300(b)(2) and § 682.302(d)(1) of the proposed regulations to terminate a lender's eligibility for interest benefits and special allowance payments on a loan when the loan ceases to be eligible for reinsurance coverage by the Secretary. This change was made primarily to address a lender's violation of its due diligence duties under § 682.411 where the agency's guarantee remains in effect, but the loan is no longer eligible for reinsurance by the Secretary.

Section 682.303 Methods for computing interest benefits and special allowance.

- The Secretary has retained the proposed regulations that prohibit the use of the average quarterly balance method for interest benefits and special allowance billing because this method is not a precise means of determining the amount of interest benefits and special allowance that has accrued on a loan. The Secretary does, however, recognize commenters' concerns regarding the difficulty of immediate implementation of the requirements for the use of average daily or actual accrual methods and, accordingly, is postponing the effective date of these provisions until July 1, 1987.

Subpart D—Guarantee Agency Programs

Section 682.401 Basic program agreement.

- The Secretary has revised the proposed regulations to provide that although an agency must submit to the Secretary its regulations, procedures and other substantive program materials whenever they are revised, the Secretary's approval is not needed before most are implemented. The Secretary will, however, continue, as provided in existing regulations, to require agencies to submit those documents and policies for his review to protect the Federal fiscal interest and to assist agencies in carrying out their programs. Prior approval of the application forms, promissory notes, and write-off criteria and procedures will be required.

Section 682.404 Federal reinsurance agreement.

- The proposed regulations have been revised to incorporate provisions of the Student Financial Assistance Technical Corrections Act of 1986 (Pub. L. 99–320) that permit an agency to be reimbursed for the administrative costs of supplemental preclaim assistance for default prevention, as part of its reinsurance payment on a defaulted loan. These reimbursement amounts, like other reinsurance payments, will be determined in part by each agency's default rate.

Section 682.410 Fiscal, administrative, and enforcement requirements.

- The Secretary has revised the proposed due diligence procedures that an agency must follow to delete the requirement that an agency file suit in all cases; this change has been made to respond to commenters' concerns that this procedure may not always be cost-effective or appropriate.

- The Secretary deleted the term "geographical area" from § 682.410(c)(1)(ii) of the proposed regulations, which governs an agency's on-site program reviews at its schools, because this term limited the distance within which an agency must conduct those reviews.

Subpart F—Requirements, Standards, and Payments for Participating Schools

Section 682.602 Providing employment data to prospective students.

- The Secretary has deleted this section of the proposed regulations in response to commenters that the requirement is burdensome and expensive. It appears that the paperwork burden imposed by this requirement would outweigh the protection provided to students against misrepresentations by vocational schools as to the success of their graduates in obtaining employment.

Section 682.605 Determining the date of a student's withdrawal.

- The Secretary has deleted the requirement in the proposed regulations that the school include the specific day of withdrawal in determining the student's withdrawal date for the purpose of reporting to lenders. However, for all other purposes, including refunds, the "day-specific" rules are retained.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and its own review as discussed in the Appendix of Comments and Responses, the Department has determined that the regulations in this document may require the transmission of certain information that is also being gathered by other agencies or authorities of the United States. However, the Department either does not have statutory authority to obtain this information or the information is not currently available in a form usable by the Department.

List of Subjects in 34 CFR Part 682

Administrative practice and procedures, Colleges and universities, Education loan programs—education, Student Aid, Vocational education.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the

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line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance Number 84.032, Guaranteed Student Loan Program and PLUS Program)

Dated: November 5, 1986.

William J. Bennett,

Secretary of Education.

The Secretary amends Parts 682 and 683 of title 34 of the Code of Federal Regulations as follows:

PART 683—[REMOVED]

1. Part 683 is removed.

2. Subparts A–G and Appendices A and C of Part 682 are revised to read as follows:

PART 682—GUARANTEED STUDENT LOAN AND PLUS PROGRAMS

Subpart A—Purpose and Scope

Sec.
682.100 The Guaranteed Student Loan and PLUS Programs.
682.101 Participation in the Guaranteed Student Loan and PLUS Programs.
682.102 Obtaining and repaying a loan.
682.103 Applicability of subparts.

Subpart B—General Provisions

682.200 Definitions.
682.201 Eligible borrowers.
682.202 Permissible charges by lenders to borrowers.
682.203 Statement of Educational Purpose.
682.204 Maximum loan amounts.
682.205 Disclosure requirements.
682.206 Due diligence in making a loan.
682.207 Due diligence in disbursing a loan.
682.208 Due diligence in servicing a loan.
682.209 Repayment of loans.
682.210 Deferment.
682.211 Forbearance.
682.212 Prohibited transactions.
682.213 Prohibition against the use of the Rule of 78's.

Subpart C—Federal Payments of Interest and Special Allowance

682.300 Payment of interest benefits on a GSLP loan.
682.301 Eligibility of borrowers for interest benefits on GSLP loans.
682.302 Payments of special allowance on a GSLP or PLUS Program loan.
682.303 Methods for computing interest benefits and special allowance.
682.304 Procedure for payment of interest benefits and special allowance.

Subpart D—Guarantee Agency Programs

682.400 Agreements between a guarantee agency and the Secretary.
682.401 Basic program agreement.
682.402 Death, disability, and bankruptcy payments.
682.403 Federal advances for claim payments.
682.404 Federal reinsurance agreement.
682.405 Supplemental Federal reinsurance.
682.406 Conditions of reinsurance coverage.
682.407 Administrative cost allowances for guarantee agencies.
682.408 GSLP loan disbursement through a guarantee agency escrow agent.
682.409 Mandatory assignment by guarantee agencies of defaulted loans to the Secretary.
682.410 Fiscal, administrative, and enforcement requirements.
682.411 Due diligence by lenders in the collection of guarantee agency loans.
682.412 Consequences of the failure of a borrower or student to establish eligibility.
682.413 Remedial actions.
682.414 Records, reports, and inspection requirements for guarantee agency programs.

Subpart E—Federal Insured Student Loan Program and Federal PLUS Program

682.500 Circumstances under which loans may be guaranteed by the Secretary.
682.501 Extent of Federal guarantee under the FISLP and the Federal PLUS Program.
682.502 The application to be a lender.
682.503 The guarantee contract.
682.504 Issuance of Federal loan guarantees.
682.505 Insurance premium.
682.506 Limitations on maximum loan amounts.
682.507 Due diligence in collecting a loan.
682.508 Assignment of a loan.
682.509 Special conditions for filing a claim.
682.510 Determination of the borrower's death, total and permanent disability, or bankruptcy.
682.511 Procedures for filing a claim.
682.512 Determination of amount of loss on a claim.
682.513 Factors affecting coverage of a loan under the loan guarantee.
682.514 Procedures for receipt or retention of payments where the lender has violated program requirements for FISLP or Federal PLUS Program loans.
682.515 Records, reports, and inspection requirements for FISLP and Federal PLUS Program lenders.

Subpart F—Requirements, Standards, and Payments for Participating Schools

682.600 Agreement between an eligible school and the Secretary for participation in the Guaranteed Student Loan and PLUS Programs.
682.601 Agreement between the Secretary and a school that makes or originates loans.
682.602 Correspondence school schedule requirements.
682.603 Certification by a participating school in connection with a loan application.
682.604 The borrower's loan proceeds.
682.605 Determining the date of a student's withdrawal.
682.606 Refund policy.
682.607 Payment of a refund to a lender.
682.608 Termination of a school's lending eligibility.
682.609 Remedial actions.
682.610 Records, reports, and inspection requirements for participating schools.

Subpart G—Limitation, Suspension, or Termination of Lender Eligibility Under the Guaranteed Student Loan Program and the PLUS Program

682.700 Purpose and scope.
682.701 Definitions of terms used in this subpart.
682.702 Effect on participation.
682.703 Informal compliance procedure.
682.704 Emergency action.
682.705 Suspension proceedings.
682.706 Limitation or termination proceedings.
682.707 Appeals in a limitation or termination proceeding.
682.708 Evidence of mailing and receipt dates.
682.709 Reimbursements, refunds, and offsets.
682.710 Removal of limitation.
682.711 Reinstatement after termination.

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Appendix A to Part 682—Standards for Acceptable Refund Policies by Participating Schools.

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Appendix C to Part 682—Procedures for Curing Violations of the Due Diligence in Collection and Timely Filing of Claims Requirements Applicable to FISLP and Federal PLUS Program Loans and for Repayment of Interest and Special Allowance Overbillings.

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

Subpart A—Purpose and Scope

§ 682.100 The Guaranteed Student Loan and PLUS Programs.

(a) This part governs two programs in which lenders use their own funds to make loans to enable students to pay the costs of attending postsecondary schools:

(1) The Guaranteed Student Loan Program (GSLP), which encourages the making of loans to undergraduate, graduate, and professional students.

(2) The PLUS Program, which encourages the making of loans to independent undergraduate students, graduate and professional students, and parents of dependent undergraduate students to help pay for the students' cost of education.

(b)(1) A guarantee agency guarantees lenders against losses due to default by the borrower on GSLP and PLUS Program loans. If the guarantee agency meets certain Federal requirements, the guarantee agency is reimbursed by the Secretary for all or part of the default claims it pays.

(2) The Secretary guarantees lenders against losses, within the GSLP, on Federal Insured Student Loan Program (FISLP) loans and, within the PLUS Program, on Federal PLUS Program loans. The FISLP and the Federal PLUS Program are authorized to operate in

States not served by a guarantee agency program. In addition, the FISLP is authorized, under limited circumstances, to operate in States in which a guarantee agency program does not serve all eligible students.

(Authority: 20 U.S.C. 1071 to 1087–2)

§ 682.101 Participation in the Guaranteed Student Loan and PLUS Programs.

(a) Banks, savings and loan associations, credit unions, pension funds, insurance companies, schools, and State and private nonprofit agencies may make loans.

(b) Educational institutions, including most colleges, universities, graduate and professional schools, and many vocational, technical, and correspondence schools, are eligible to participate as schools enabling an eligible student or parent to obtain a loan to pay for the student's costs of education.

(c) Students who meet certain requirements, including enrollment at a participating school, may borrow under the GSLP and the PLUS Program. Parents of eligible dependent undergraduate students may borrow under the PLUS Program.

(Authority: 20 U.S.C. 1071 to 1087–2)

§ 682.102 Obtaining and repaying a loan.

(a) *GSLP application.* Generally, to obtain a GSLP loan, a student completes an application and submits it to the school for certification. After the school certifies the application, the application is submitted to a participating lender. If the lender decides to make the loan, the lender obtains a loan guarantee from a guarantee agency or the Secretary.

(b) *PLUS Program application.* Generally, to obtain a PLUS Program loan, a student completes an application and submits it to the school for certification. If the loan is to be made to the student's parent(s), both the student and the parent(s) complete the application before submitting it to the school. After the school certifies the application, the application is submitted to a participating lender. If the lender decides to make the loan, the lender obtains a loan guarantee from a guarantee agency or the Secretary.

(c) *Repaying a loan.* (1) *General.* Generally, the borrower is obligated to repay the full amount of the loan, collection costs chargeable to the borrower, and any interest not payable by the Secretary. The borrower's obligation to repay is cancelled if the borrower dies, becomes totally and permanently disabled, or has the loan discharged in bankruptcy.

(2) *GSLP repayment.* Generally, a borrower is not required to make any payments on a GSLP loan during the time the borrower is in school. In most cases the Secretary pays the interest on the borrower's behalf during the time the borrower is in school. When the borrower ceases to be enrolled on at least a half-time basis, a grace period begins during which no payments are required. At the end of the grace period, the repayment period begins. During the repayment period the borrower pays both the principal and the interest accruing on the loan.

(3) *PLUS repayment.* The Secretary does not pay the interest on a PLUS Program loan on behalf of the borrower. The first payment is due on a PLUS Program loan within 60 days after the loan is disbursed.

(4) *Default.* If a borrower defaults on a loan, the guarantee agency or the Secretary reimburses the lender for the amount of its loss. The guarantee agency or the Secretary then collects the amount owed from the borrower.

(Authority: 20 U.S.C. 1071 to 1087–2)

§ 682.103 Applicability of subparts.

(a) Subpart B contains general provisions that are applicable to all GSLP and PLUS Program participants.

(b) Guarantee agency programs are also subject to Subparts C, D, F, G and H.

(c) The FISLP and the Federal PLUS Program are also subject to Subparts C, E, F, G, and H.

(d) Schools are specifically addressed in Subpart F.

(Authority: 20 U.S.C. 1071 to 1087–2)

Subpart B—General Provisions

§ 682.200 Definitions.

(a) The following definitions are set forth in the Student Assistance General Provisions, 34 CFR Part 668:

Academic year
Campus-based Programs
Clock hour
College Work-Study Program
Dependent student
Enrolled
Guaranteed Student Loan Program
Independent student
Institution of higher education
National Direct Student Loan Program
Pell Grant Program
PLUS Program
Secretary
State
State Student Incentive Grant Program
Supplemental Educational Opportunity Grant Program
Vocational school

(b) The following definitions also apply to this part: *Act:* Title IV, Part B of the Higher Education Act of 1965, as amended, 20 U.S.C. 1071, *et seq.*

Actual interest rate: The annual interest rate a lender charges on a loan, which may be equal to or less than the applicable interest rate on that loan.

Applicable interest rate: The maximum annual interest rate that a lender may charge under the Act on a loan.

Borrower: A student or parent to whom a GSLP or PLUS Program loan is made.

Co-maker: One of two individuals who are joint borrowers on a PLUS Program loan and who are equally liable for repayment of the loan.

Default: The failure of a borrower to make an installment payment when due, or to meet other terms of the promissory note under circumstances where the Secretary or guarantee agency finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay, provided that this failure persists for—

(1) 180 days for a loan repayable in monthly installments; or

(2) 240 days for a loan repayable in less frequent installments.

Disbursement: The transfer of loan proceeds by a lender to a borrower, a school, or an escrow agent by issuance of a check or by electronic funds transfer.

Endorser: A signer of a promissory note who is secondarily liable for a loan obligation.

Escrow agent: A guarantee agency that receives the proceeds of a GSLP loan as an agent of an eligible lender for the purpose of transmitting those proceeds to the borrowers.

Estimated cost of attendance: (1) Except as provided in paragraph (2) of this definition, the tuition and fees applicable to a student, plus the school's estimate of other expenses reasonably related to attendance at that school, for the period of enrollment for which the loan is sought. These expenses may include, but are not limited to: reasonable transportation and commuting costs; costs for room, board, books, and supplies; the insurance premium for the loan; and, if applicable, the origination fee for the loan. These expenses may not include the purchase of a motor vehicle.

(2) For a student enrolled in a correspondence study program, only the contract price of the program, the insurance premium for the loan, and, if applicable, the origination fee for the loan. However, other costs described in paragraph (1) of this definition incurred by the student in fulfilling a required period of residential training in connection with the correspondence

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study program may also be included in the estimated cost of attendance.

Estimated financial assistance: The estimated amount of assistance that a student has been or will be awarded during the period of enrollment for which the loan is sought from Federal, State, institutional or other scholarship, grant, work, or loan programs, including but not limited to—

(1) Any Social Security benefits paid to, or on account of, the student that would not be paid if he or she were not a student;

(2) Veterans' educational benefits paid under chapters 30, 31, 32, 34, and 35 of title 38 of the United States Code;

(3) Educational benefits paid under chapters 106 and 107 of title 10 of the United States Code (Selected Reserve Educational Assistance Program);

(4) Reserve Officer Training Corps (ROTC) scholarships and subsistence allowances awarded under Chapter 2 of title 10 and Chapter 2 of title 37 of the United States Code;

(5) The estimated amount of other Federal student financial aid, including but not limited to Pell Grants and campus-based aid, which the student would be expected to receive if the student applied, whether or not the student has applied for that aid; and

(6) GSLP and PLUS loan proceeds withheld by the lender and applied towards an origination fee or insurance premium, if these costs are included in computing the borrower's estimated cost of attendance.

Foreign school: A school not located in a State.

Full-time student: (1) A student enrolled in an institution of higher education (other than a student enrolled in a program of study by correspondence) who is carrying a full-time academic workload as determined by the school under standards applicable to all students enrolled in that student's particular program. The student's workload may include any combination of courses, work, research or special studies, whether or not for credit, that the school considers sufficient to classify the student as a full-time student; or

(2) A student enrolled in a vocational school (other than a student enrolled in a program of study by correspondence) who is carrying a workload of not less than 24 clock-hours per week or 12 semester or quarter hours of instruction, or its equivalent.

Grace period: The period that begins on the day on which a GSLP borrower ceases to be enrolled as at least a half-time student (or a full-time student, if so required by the applicable guarantee agency) at a participating school and ends on the day that the repayment period begins. See also "Post-deferment grace period."

Graduate or professional student: A student who—

(1) Is enrolled in a program or course above the baccalaureate level at an institution of higher education or is enrolled in a program leading to a first professional degree;

(2) Has completed the equivalent of at least three years of full-time study at an institution of higher education, either prior to entrance into the program or as part of the program itself; and

(3) Is not receiving Title IV aid as an undergraduate student for the same period of enrollment.

Guarantee agency: A State or private nonprofit organization that has an agreement with the Secretary to administer a loan guarantee program under the Act.

Half-time student: A student who is enrolled in a participating school, is carrying an academic workload that amounts to at least one-half the workload of a full-time student, as determined by the school, and is not a full time student. A student enrolled solely in an eligible program of study by correspondence is considered a half-time student.

Holder: An eligible lender in possession of a GSLP or PLUS Program loan.

Legal guardian: An individual appointed by a court to be a "guardian" of a person and specifically required by the court to use his or her financial resources for the support of that person.

Lender: (1) The term "eligible lender" is defined in section 435(g) of the Act.

(2) With respect to a National or State chartered bank, a mutual savings bank, a savings and loan association, or a credit union—

(i) The term "subject to examination and supervision" means "subject to examination and supervision in its capacity as a lender;" and

(ii) The term "does not have as its primary consumer credit function the making or holding of loans made to students under this part" means—

(A) Does not, in any calendar year, make or purchase GSLP or PLUS Program loans that total more than one-half of its consumer credit loan dollar volume for that year, including home mortgages; and

(B) Does not, at any time, hold GSLP or PLUS Program loans that total more than one-half of its consumer credit loan portfolio, including home mortgages.

(3) The corporate parent or other owner of a school that qualifies as an eligible lender under section 435(g)(1)(E) of the Act is not an eligible lender unless the corporate parent or owner itself qualifies as an eligible lender under section 435(g) of the Act.

National credit bureau: A credit reporting agency with a service area that emcompasses more than a single state or region of the country.

National of the United States: (1) A citizen of the United States; or

(2) As defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

Origination: A special relationship between a school and a lender, in which the lender delegates to the school, or to an entity or individual affiliated with the school, substantial functions or responsibilities normally performed by lenders before making loans. In this situation, the school is considered to have "originated" a loan made by the lender. The Secretary determines that "origination" exists if, for example—

(1) A school determines who will receive a loan and the amount of the loan; or

(2) The lender has the school verify the identity of the borrower or complete forms normally completed by the lender.

Origination fee: A fee which a lender is allowed to charge a GSLP borrower under section 438 of the Act.

Parent: A student's mother, father, or legal guardian. A parent by adoption is considered to be a student's mother or father.

Participating school: A school that has entered into an agreement with the Secretary under § 682.600.

Post-deferment grace period: For a loan made prior to October 1, 1981, a period of six consecutive months beginning on the day following the last day of an authorized deferment period.

School: (1) An educational institution that is—

(i) An institution of higher education or a vocational school, as those terms are defined in 34 CFR Part 668; or

(ii) With respect to students who are nationals of the United States, a school outside the United States that is comparable to an institution of higher education or to a vocational school and that has been approved by the Secretary for purposes of the GSLP and the PLUS Program.

(2) The term includes only those individual units or programs within a school that have been determined by the Secretary to meet all the requirements for school eligibility.

(3) A school that employs or uses commissioned salespersons to promote the availability of the GSLP or the PLUS

Program is not eligible to participate in those programs. For this purpose—

(i) A "commissioned salesperson" is one who receives compensation in any form or amount that is related to, or calculated on the basis of, student applications for enrollment, student enrollments, or student acceptances for enrollment; and

(ii) "Promote the availability" means providing prospective or enrolled students with application forms, names of eligible lenders, or other information designed to encourage persons to finance their education with a GSLP or PLUS Program loan. This term does not include providing general financial aid information to prospective or enrolled students.

School lender: A school, other than a correspondence school, that has been approved as a lender and has entered into a contract of guarantee under this part with the Secretary or a similar agreement with a guarantee agency.

State lender: In any State, a single State agency or private nonprofit agency designated by the State that has been approved as a lender and has entered into a contract of guarantee under this part with the Secretary or a similar agreement with a guarantee agency.

Totally and permanently disabled: The inability to work and earn money because of an impairment that is expected to continue indefinitely or result in death.

Undergraduate student: A student who is enrolled at a school in a course or program of study, at or below the baccalaureate level, that usually does not exceed four academic years, or is up to five academic years in length and is designed to lead to a first degree. A student enrolled in any other length program is considered an undergraduate student for only the first four academic years.

(Authority: 8 U.S.C. 1101; 20 U.S.C. 1070 to 1087-2, 1088-1098, 1141)

§ 682.201 Eligible borrowers.

(a) *Student borrower.* A student is eligible to receive a GSLP loan, and an independent undergraduate student or a graduate or professional student is eligible to receive a PLUS Program loan, if the student—

(1) Is enrolled or accepted for enrollment on at least a half-time basis at a participating school, and meets the requirements of paragraph (c) of this section;

(2) Provides his or her social security number;

(3) Authorizes the school in writing to pay directly to the lender that portion of any refund of school charges that is allocable to the loan, in accordance with 34 CFR Part 668;

(4) Meets the qualifications pertaining to citizenship and residency status, set forth in paragraph (d) of this section;

(5) Meets the qualifications concerning defaults and overpayments, set forth in paragraphs (e) and (f) of this section;

(6) Complies with the requirements pertaining to registration with the Selective Service, set forth in 34 CFR Part 668;

(7) Complies with the requirements for submission of a Statement of Educational Purpose, set forth in § 682.203; and

(8) In the case of an undergraduate student who seeks a GSLP loan for the cost of attendance at a school that participates in the Pell Grant Program, receives a preliminary or final determination from the school of the student's eligibility or ineligibility for a Pell Grant.

(b) *Parent borrower.* A parent is eligible to receive a PLUS Program loan if the parent—

(1) Is borrowing to pay for the educational costs of a dependent undergraduate student who meets all of the qualifications set forth in paragraphs (a) (1) through (6) of this section;

(2) Provides his or her social security number;

(3) Meets the qualifications pertaining to citizenship and residency status set forth in paragraph (d) of this section;

(4) Meets the qualifications concerning defaults and overpayments set forth in paragraphs (e) and (f) of this section; and

(5) Complies with the requirements for submission of a Statement of Educational Purpose set forth in § 682.203.

(c) *Enrollment status.* To be eligible as a student or a borrower under the GSLP or the PLUS Program, a student must—

(1) If currently enrolled, be maintaining satisfactory progress, as determined by the school;

(2) If enrolled or accepted for enrollment in a foreign school, be a national of the United States; and

(3) If enrolled in a flight school program at a vocational school or an institution of higher education, meet the additional requirements set forth in paragraph (g) of this section.

(d) *Citizenship and residency status.* Each borrower, and each student for whom a parent is borrowing, must be—

(1) A national of the United States;

(2) A permanent resident of the United States and must provide evidence from the Immigration and Naturalization Service of that status;

(3) In the United States for other than a temporary purpose and must provide evidence from the Immigration and Naturalization Service of intent to become a citizen or permanent resident;

(4) A permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands; or

(5) A citizen of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau.

(e) *Effect of default on eligibility.* (1) Except as provided in paragraph (e)(2) of this section, a person is ineligible to be a borrower under the GSLP or PLUS Program if that person, or the student for whom a parent is borrowing, is in default on any loan made under any title IV student financial assistance program identified in 34 CFR Part 668. For loans made under the National Direct Student Loan Program, the term "default" is defined in 34 CFR Part 674.

(2) If a borrower, or student for whom a parent is borrowing, is in default, as set forth in paragraph (e)(1) of this section, the borrower may receive a GSLP or PLUS Program loan only if the person who is in default has made satisfactory arrangements with the holder of the loan to repay the defaulted loan.

(3) The school may rely on the borrower's or student's written statement that he or she is not in default, unless the school has information to the contrary.

(4) The Secretary does not consider either a loan that is discharged in bankruptcy or a defaulted loan that is paid-in-full after default to be in default for purposes of this section.

(f) *Effect of overpayment of a grant on eligibility.* (1) Except as provided in paragraph (f)(2) of this section, a person is ineligible to be a borrower under the GSLP or PLUS Program if that person, or the student for whom a parent is borrowing, is liable for an overpayment on any grant made under any Title IV student assistance program identified in 34 CFR Part 668.

(2) If the borrower, or the student for whom a parent is borrowing, is liable for an overpayment on a grant, as set forth in paragraph (f)(1) of this section, the borrower may receive a GSLP or PLUS Program loan only if the person who is liable for the overpayment meets the following conditions:

(i) *Overpayment of a Pell Grant.* If the borrower, or the student for whom a parent is borrowing, has been overpaid on a Pell Grant, the borrower may still be eligible under the GSLP or PLUS Program if—

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(A) The borrower, or the student for whom a parent is borrowing, is otherwise eligible; and

(B) The overpayment can be eliminated in the award year (as defined in 34 CFR Part 690) in which it occurred by adjusting the subsequent Pell Grant payments for that award year.

(ii) *Overpayment of a Pell Grant due to a school error.* If the borrower, or the student for whom a parent is borrowing, has been overpaid as a result of a school error, and the overpayment cannot be eliminated by adjusting subsequent Pell Grant payments in the award year, the borrower may still be eligible under the GSLP or PLUS Program if—

(A) The borrower, or the student for whom a parent is borrowing, is otherwise eligible; and

(B) The person who received the overpayment acknowledges in writing the amount of the Pell Grant overpayment and agrees to repay it within six months from the date of the acknowledgment.

(iii) *Overpayment on a Supplemental Educational Opportunity Grant.* If the borrower, or the student for whom a parent is borrowing, is overpaid on a Supplemental Educational Opportunity Grant, the borrower may still be eligible under the GSLP or PLUS Program if—

(A) The borrower, or the student for whom a parent is borrowing, is otherwise eligible; and

(B) An adjustment in subsequent financial aid payments (other than Pell Grants) eliminates the overpayment in the same award year (as defined in 34 CFR Part 676) in which it occurred.

(g) *Additional eligibility requirements for a student attending flight school.* To be eligible as a student or a borrower under the GSLP or the PLUS Program for enrollment in a flight school program at a vocational school or an institution of higher education, a student must—

(1) Plan to pursue or be pursuing a full-time program leading to commercial flight ratings;

(2) Have completed ground school training or be taking it concurrently with flight training;

(3) Hold a private pilot's certificate or have sufficient flight hours to qualify for that certificate; and

(4) Hold at least a Class II medical certificate.

(Authority: 20 U.S.C. 1077, 1078, 1082, 1085, 1091)

§ 682.202 Permissible charges by lenders to borrowers.

The charges that lenders may impose on borrowers, either directly or indirectly, are limited to the following:

(a) *Interest.* (1) Applicable interest rates under the GSLP:

(i) The applicable interest rate on a GSLP loan for a borrower who, on the date the promissory note is signed, does not have an outstanding balance on a previous GSLP loan is—

(A) Seven percent for a loan covering a period of instruction beginning before January 1, 1981;

(B) Nine percent for a loan covering a period of instruction beginning on or after January 1, 1981, but before September 13, 1983; or

(C) Eight percent for a loan covering a period of instruction beginning on or after September 13, 1983.

(ii) The applicable interest rate on a GSLP loan for a borrower who, on the date the promissory note evidencing the loan is signed, has an outstanding balance on a previous GSLP loan, is the applicable interest rate on the previous loan.

(2) Applicable interest rates under the PLUS Program: (i) The applicable interest rate on a PLUS Program loan is—

(A) Nine percent for a loan made on or after January 1, 1981, but before October 1, 1981;

(B) Fourteen percent for a loan made on or after October 1, 1981, but before November 1, 1982; or

(C) Twelve percent for a loan made on or after November 1, 1982.

(3) Under both the GSLP and the PLUS Program a lender may charge a borrower an actual rate of interest that is less than the applicable interest rate specified in paragraphs (a)(1) or (a)(2) of this section.

(b) *Capitalization.* (1) Under a guarantee agency program, a lender may add accrued interest and unpaid insurance premiums on a loan to the borrower's unpaid principal balance if so authorized by the guarantee agency. This increase in the principal balance of a loan is called "capitalization." A guarantee agency's policy, with respect to capitalization, may not permit capitalization that is not permitted under paragraphs (b)(2) and (b)(3) of this section.

(2) Under the FISLP and the Federal PLUS Program, a lender may capitalize interest that has accrued—

(i) During the in-school period or grace period, if capitalization is expressly authorized by the promissory note;

(ii) During a period of authorized deferment;

(iii) During a period of forbearance, as permitted under § 682.211; or

(iv) During the period from the date the first installment payment was due until it was made.

(3) A lender may capitalize accrued interest under paragraphs (b)(2)(i) through (iii) of this section no more frequently than once a year, except that capitalization is again permitted when repayment is required to begin or resume. A lender may capitalize accrued interest under paragraph (b)(2)(iv) of this section only on the date repayment of principal actually begins.

(c) *Origination fee for a GSLP loan.* Under the GSLP a lender—

(1) May charge a borrower an origination fee not to exceed the maximum rate specified by Federal statute.

(2) May deduct the origination fee from the proceeds of the loan;

(3) Shall, in the case of a loan disbursed in multiple installments, deduct a *pro rata* portion of the fee from each disbursement;

(4) Shall refund the portion of the origination fee previously deducted from the loan or multiply-disbursed portion thereof by a credit against the borrower's loan balance if—

(i) The loan check is returned uncashed to the lender;

(ii) The loan is repaid-in-full within 120 days of disbursement;

(iii) The loan check has not been cashed within 120 days of disbursement; or

(iv) The loan proceeds disbursed by electronic funds transfer in accordance with § 682.207(b)(ii)(B) have not been released from the restricted account maintained by the school within 120 days of disbursement.

(d) *Insurance premium.* The insurance premium is a charge made by the guarantee agency or the Secretary to the lender, incident to the guarantee the lender receives against default by the borrower. If the insurance premium is provided for in a borrower's promissory note, a lender may charge the borrower the amount of the insurance premium paid by the lender to the guarantor.

(e) *Late charges.* (1) If authorized by the borrower's promissory note, the lender may require the borrower to pay a late charge under the circumstances described in paragraph (e)(2) of this section. This charge may not exceed six cents for each dollar of each late installment.

(2) The lender may require the borrower to pay a late charge if the borrower—

(i) Fails to pay all or a portion of a required installment payment within 10 days after it is due; and

(ii) Fails to provide written evidence that verifies the borrower's eligibility for an authorized deferment of the payment.

(f) *Collection charges.* (1) If provided for in the borrower's promissory note, the lender may require that the borrower pay costs incurred by the lender or its agent in collecting installments not paid when due, including, but not limited to—

(i) Attorney's fees;

(ii) Court costs;

(iii) Telegrams; and

(iv) Long distance telephone calls.

(2) The costs referred to in paragraph (f)(1) of this section may not include normal collection costs associated with preparing letters or notices or with making personal contacts with the borrower (*e.g.*, local telephone calls).

(Authority: 20 U.S.C. 1077, 1078, 1079, 1082, 1087–1)

§ 682.203 Statement of Educational Purpose.

No loan may be made under this Part until the borrower submits to the lender a written Statement of Educational Purpose, on a form approved by the Secretary, certifying that the loan proceeds will be used solely for costs of attendance at the school that the borrower, or the student on whose behalf a parent is borrowing, is or will be attending.

(Authority: 20 U.S.C. 1082, 1091)

§ 682.204 Maximum loan amounts.

(a) *GSLP annual limits.* The total amount a student may borrow in any academic year of study under the GSLP, including the FISLP, may not exceed—

(1) $2,500 in the case of an undergraduate student, including any amounts borrowed under the PLUS Program in the case of an independent undergraduate student, but not more than the lesser of $2,500 or half the estimated cost of attendance, for a loan made by a State lender or made or originated by a school to a student who—

(i) Is enrolled in the first academic year of undergraduate study; and

(ii) Was not previously enrolled in an undergraduate program; or

(2) $5,000 in the case of a graduate or professional student.

(b) *GSLP aggregate limits.* The aggregate guaranteed unpaid principal amount of all GSLP loans made to a student may not exceed—

(1) $12,500, in the case of an undergraduate student, including any amounts borrowed under the PLUS Program in the case of an independent undergraduate student; or

(2) $25,000, in the case of any graduate or professional student, including loans for undergraduate study.

(c) *PLUS Program annual limits.* The total principal amount of all PLUS Program loans made to, or for the benefit of, an eligible student for any academic year of study may not exceed—

(1) $2,500, including any amounts borrowed by the student under the GSLP, in the case of an independent undergraduate student;

(2) $3,000, in the case of a graduate or professional student; or

(3) $3,000, in the case of a parent borrower.

(d) *PLUS Program aggregate limits.* The aggregate guaranteed unpaid principal amount of all PLUS Program loans made to or for the benefit of an eligible student may not exceed—

(1) $12,500, including any amounts borrowed by the student under the GSLP, in the case of an independent undergraduate student;

(2) $15,000, in the case of a graduate or professional student; or

(3) $15,000, in the case of a parent borrower.

(Authority: 20 U.S.C. 1075, 1078, 1078–1, 1078–2, 1079, 1082, 1089)

§ 682.205 Disclosure requirements.

(a) A lender shall disclose the following information to a borrower either before or at the time of the first disbursement on the loan:

(1) The lender's name, and the address to which correspondence with the lender and payments should be sent;

(2) The principal amount of the loan;

(3) The amount of any charges, including the origination fee and the insurance premium, collected by the lender at the time of or before disbursement of the loan, and an indication of whether those charges are deducted from the proceeds of the loan or paid separately by the borrower;

(4) The actual interest rate;

(5) The annual and aggregate maximum amounts that may be borrowed;

(6) A statement that information concerning the loan, including the date of disbursement and the amount of the loan, will be reported to a credit bureau or a credit reporting agency;

(7) An explanation of when repayment of the loan is required and when the borrower is required to pay the interest that accrues on the loan;

(8) The minimum and maximum number of years in which the loan must be repaid and the minimum amount of required annual payments;

(9) An explanation of any special options the borrower may have for consolidating or refinancing the loan;

(10) A statement that the borrower has the right to prepay all or part of the loan at any time, without penalty;

(11) A statement describing the circumstances under which repayment of the loan or interest that accrues on the loan may be deferred;

(12) A statement of availability of the Department of Defense program for repayment of loans on the basis of military service, as provided for in 10 U.S.C. 2141, note;

(13) The definition of "default" found in § 682.200, and the consequences to the borrower of a default, including a statement concerning likely litigation and a statement that the default will be reported to a credit bureau or a credit reporting agency;

(14) An explanation of the possible effects of accepting the loan on the eligibility of the student for other forms of student financial assistance;

(15) An explanation of any costs the borrower may incur in the making or collection of the loan; and

(16) In the case of a GSLP or student PLUS loan, a statement that the loan proceeds will be transmitted to the school for delivery to the borrower.

(b) The lender shall also disclose the information listed in this paragraph in a written statement provided to the borrower at or prior to the beginning of the repayment period. The lender shall make the disclosures during the grace period, in the case of a FISLP loan. Should the borrower enter the repayment period without the lender's knowledge, the lender shall provide the required disclosures to the borrower immediately upon discovering that the borrower has entered the repayment period. The lender shall disclose—

(1) The lender's name, and the address to which correspondence with the lender and payments should be sent;

(2) The scheduled date upon which the repayment period is to begin;

(3) The estimated balance, including the estimated amount of interest to be capitalized, owed by the borrower as of the date upon which the repayment period is to begin, or the date of the disclosure, whichever is later;

(4) The actual interest rate on the loan;

(5) An explanation of any fees which may accrue or be charged to the borrower during the repayment period;

(6) The borrower's repayment schedule, including the due date of the first installment and the number, amount, and frequency of payments;

(7) An explanation of any special options the borrower may have for consolidating or refinancing the loan;

(8) The estimated total amount of interest to be paid on the loan, assuming that payments are made in accordance with the repayment schedule; and

(9) A statement that the borrower has the right to prepay all or part of the loan at any time, without penalty.

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(c) The lender shall provide the information required to be disclosed by paragraphs (a) and (b) of this section at no cost to the borrower.

(Authority: 20 U.S.C. 1078–2, 1082, 1083a);

(Approved by OMB under control number 1840–0538)

§ 682.206 Due diligence in making a loan.

(a) *General.* (1) The loan-making process includes processing the loan application and other required forms, approving the borrower for a loan, determining the loan amount, explaining to the borrower his or her responsibilities under the loan, completing and having the borrower sign the promissory note, and disbursing the loan proceeds.

(2) Except as may be authorized by the Secretary, a lender may not delegate its loan-making functions to a school unless the school has an origination relationship with the lender. If that relationship exists, the lender may rely in good faith upon statements of the borrower contained in the loan application, but may not rely upon statements made by the school in the application. A non-school lender that does not have an origination relationship with a school may rely in good faith upon statements of both the borrower and the school that are contained in the application. Except as provided in Part 668, Subpart E, a school lender may rely in good faith upon statements made by the borrower in the loan application.

(b) *Processing forms.* Before disbursing a loan, a lender must determine that all required forms have been accurately completed by the borrower, the student, the school, and the lender. A lender may not ask the borrower to sign any form before all information requested from the borrower on that form has been supplied.

(c) *Approval of borrower and determination of loan amount.* (1) A lender may make a loan only to an eligible borrower. To the extent authorized by paragraph (a)(2) of this section, the lender may determine the borrower's eligibility based on the information provided on the application by the school, the borrower, and, if the borrower is a parent, the student on whose behalf the loan is sought.

(2) In determining the amount of the loan to be made, within the limitations of § 682.204, the lender shall review the data on the student's cost of attendance and estimated financial assistance that is provided on the application form. In no case may the loan amount exceed the student's estimated cost of attendance, less estimated financial assistance, for the academic period for which the loan is intended.

(d) *Promissory note.* (1) The lender shall obtain from the borrower an executed legally-enforceable promissory note for each loan as proof of the borrower's indebtedness.

(2) A lender may not add any clauses to, or modify any provisions of, the most current promissory note provided by the guarantor without the guarantor's prior approval.

(3) The lender shall give the borrower a copy of each executed note.

(e) *Security, endorsement, and co-makers.* (1) A FISLP or Federal PLUS Program loan shall be made without security or endorsement.

(2) A Federal PLUS Program loan may be made to two eligible parents who agree to be jointly liable for repayment of the loan as co-makers.

(f) *Loan disbursement.* A lender shall disburse funds as required by § 682.207.

(Authority: 20 U.S.C. 1077, 1078–2, 1079, 1080, 1082, 1083, 1085)

§ 682.207 Due diligence in disbursing a loan.

(a) (1) This section prescribes procedures for lenders to follow in disbursing GSLP and PLUS Program loans. With respect to FISLP and Federal PLUS Program loans, references to the "guarantee agency" in this section mean the "Secretary."

(2) The requirements of paragraphs (b)(1) (ii) and (iv) of this section must be satisfied either by the lender or by an escrow agent with which the lender has an agreement pursuant to § 682.408. The lender must comply with paragraph (b)(1)(iii) of this section whether or not it disburses to an escrow agent.

(b)(1) In disbursing a loan, a lender—

(i) May not disburse a loan prior to the issuance of the guarantee commitment for the loan by the guarantee agency, except with the agency's prior approval;

(ii) Shall disburse loan proceeds by—

(A) A check that is made payable to the borrower, or, if required by the guarantor, is made co-payable to the borrower and the school identified on the loan application, and requires the personal endorsement or other written approval of the borrower in order to be cashed; or

(B) If authorized by the guarantor, electronic funds transfer to an account of the student's school that requires the written approval of the borrower for the release of funds from the account; and

(iii) Shall not disburse loan proceeds earlier than is reasonably necessary to meet the student's cost of attendance for the period for which the loan is made, and in no case, without the Secretary's prior approval, earlier than 30 days prior to the date on which the student is scheduled to enroll; and

(iv) Shall disburse—

(A) Directly to the school, in the case of a student borrower; or

(B) Directly to the borrower, in the case of a parent borrowing on behalf of an eligible student, and shall notify the school of the amount of the loan within 30 days of the date on which the first disbursement on the loan is made.

(2) Neither a lender nor a school may obtain a borrower's power of attorney or other authorization to endorse or otherwise approve the cashing of a loan check or approve the release of funds disbursed by electronic funds transfer, nor may a borrower provide this power of attorney or authorization to anyone else.

(c) (1) Multiple disbursement requirements: A lender shall disburse GSLP and PLUS Program loans made to student borrowers in multiple installments if—

(i) The amount of the loan is $1,000 or more; and

(ii) On the date of the first disbursement, the time remaining in the period of enrollment for which the loan is made is greater than six months, one semester, two quarters, or 600 clock hours.

(2) Multiple disbursement procedures: In multiply disbursing a loan, a lender shall disburse as follows:

(i) Disbursement must be in two or more installments.

(ii) No installment may exceed one-half of the loan.

(iii) At least one-third of the period of enrollment for which the loan is made must elapse before the second installment is disbursed.

(3) For purposes of this paragraph, a lender shall consider all loans made for the same period of enrollment as a single loan.

(d) (1) Under certain circumstances, a lender, with the prior approval of the guarantee agency, may disburse after the student has ceased to be enrolled on at least a half-time basis or after the expiration date of the guarantee commitment.

(2) A guarantee agency may approve a lender's request to disburse under these circumstances only if the loan proceeds will be used for the student's cost of attendance for the period of enrollment for which the loan was intended and during which the student was actually enrolled on at least a half-time basis.

(3) If the lender, after receiving the guarantee agency's prior approval, makes a late disbursement, the lender

shall give notice of that approval to the school at the time the lender sends the loan proceeds to the school.

(Authority: 20 U.S.C. 1077, 1078, 1078–2, 1079, 1080, 1082, 1083, 1085)

§ 682.208 Due diligence in servicing a loan.

(a) The loan servicing process includes reporting to credit bureau organizations, responding to borrower inquiries, and establishing the terms of repayment.

(b) For any GSLP or PLUS Program loan, a lender shall promptly report to at least one credit bureau—

(1) The date of disbursement and the amount of the loan;

(2) Information concerning the collection of the loan, including the repayment status of the loan; and

(3) The date the loan is fully repaid by, or on behalf of, the borrower or discharged by reason of the borrower's death, bankruptcy, or total and permanent disability.

(c) (1) A lender shall respond on a timely basis to written inquiries and other communications from a borrower and any endorser on a loan.

(2) When a lender learns that a GSLP borrower is no longer enrolled at a participating school on at least a half-time basis, the lender shall promptly contact the borrower in order to establish the terms of repayment.

(d)(1) A lender shall follow the procedures in § 682.412 whenever it learns that the borrower, or, if applicable, the student on whose behalf a parent has borrowed—

(i) Did not qualify for all or a portion of a loan made under this part; or

(ii) Has received a GSLP loan subject to payment of Federal interest benefits as provided under § 682.301, but is in fact ineligible for some or all of those interest benefits.

(2) For purposes of § 682.412(f), the term "guarantee agency" means the Secretary in the case of a FISLP or Federal PLUS Program loan.

(Authority: 20 U.S.C. 1077, 1078, 1078–2, 1079, 1080, 1082, 1085)

(Reporting and recordkeeping requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 1840–0538)

§ 682.209 Repayment of loans.

(a) *Conversion of a loan to repayment status.* (1) For a PLUS Program loan, the repayment period begins on the day the loan is disbursed. The first payment is due within 60 days after the date of disbursement.

(2) Except as provided in paragraphs (a) (3) and (4) of this section, for a GSLP loan the repayment period begins—

(i) For a borrower with a loan for which the applicable interest rate is seven percent per year, not less than nine nor more than twelve consecutive months following the date on which the borrower is no longer enrolled on at least a half-time basis at an eligible school. The length of this grace period is determined by the lender for loans made under the FISLP, and by the guarantee agency for loans guaranteed by the agency; and

(ii) For a borrower with a loan for which the applicable interest rate is eight or nine percent per year, six consecutive months following the month in which the borrower is no longer enrolled on at least a half-time basis at an eligible school.

(3) For a borrower of a GSLP loan who is a correspondence student, the grace period specified in paragraph (a)(2) of this section begins on the earliest of the date—

(i) The borrower completes the program;

(ii) The borrower falls 60 days behind the due date for submission of a scheduled assignment, according to the schedule required in § 682.602. However, the school may permit one restoration to in-school status for a student who falls 60 days behind the due date for submission of a particular assignment if the student states in writing, within the 60-day period, an intention to continue in the program and an understanding that the required lessons must be submitted on time; or

(iii) That is 60 days following the latest allowable date established by the school for completing the program in the schedule required under § § 682.602.

(4) For a GSLP loan, the repayment period begins prior to the end of the grace period, if the borrower requests and is granted a repayment schedule that so provides. In this event, a borrower may not further utilize the grace period.

(5) The repayment schedule may provide for substantially equal installment payments or for installment payments that increase in amount over the repayment period. If a graduated repayment schedule is established, it may not provide for any single installment that is more than three times greater than any other installment.

(6) (i) Subject to paragraphs (a)(6) (ii) through (iv) of this section, a lender shall allow a borrower at least five years, but not more than ten years, to repay a loan, calculated from the beginning of the repayment period. Except in the case of a FISLP loan made for a period of enrollment beginning on or after July 1, 1986, the lender shall require a borrower to fully repay a GSLP loan within 15 years after it is made.

(ii) If the borrower receives an authorized deferment or is granted forbearance, as described in §§ 682.210 or 682.211, respectively, the periods of deferment or forbearance are excluded from determinations of the 5-, 10- and 15-year periods.

(iii) If the minimum annual repayment required in paragraph (c) of this section would result in complete repayment of the loan in less than five years, the borrower is not entitled to the full 5-year period.

(iv) Prior to the beginning of the repayment period the borrower may request and be granted by the lender a repayment period of less than five years. At any time, subject to paragraph (a)(6)(iii) of this section, and without the lender's consent, the borrower may subsequently have the total repayment period extended to a minimum of five years.

(b) *Prepayment.* The borrower may prepay the whole or any part of a loan at any time without penalty. Unless the borrower requests that the lender credit the prepayment to future installments, the lender shall credit the entire prepayment to unpaid principal.

(c) *Minimum annual payment.* (1)(i) Subject to paragraphs (c)(1) (ii) and (iii) of this section, during each year of the repayment period a borrower's total payments to all holders of the borrower's GSLP or PLUS Program loans must total at least $600 or the unpaid balance of all loans, including interest, whichever amount is less.

(ii) If the borrower and the lender agree, the amount paid may be less.

(iii) If the borrower and the borrower's spouse have one or more GSLP or PLUS Program loans, their combined annual payment must meet the requirement of paragraph (c)(1)(i) of this section.

(2) The provisions of paragraphs (c)(1)(i) and (ii) of this section may not result in an extension of the 10- or 15-year maximum repayment periods unless forbearance, as described in § 682.211, has been approved.

(d) *Supplemental repayment schedule.* (1) In the case of a loan made by a school lender, the lender and the borrower may agree on a supplemental repayment schedule, with the prior approval of the Secretary, that would supplement the regular repayment schedule described in paragraph (a)(5) of this section.

(2) The supplemental repayment schedule may be based on other than equal or graduated payments. For example, the supplemental repayment

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schedule may base the amount of the borrower's payment on the borrower's income.

(3) The borrower may not insist upon the establishment of a supplemental repayment schedule. The lender may not insist upon the establishment of a supplemental repayment schedule unless the lender obtained the borrower's written consent to enter into one at the time the loan was made.

(e) *Treatment by lenders of borrower's refunds received from schools.*

(1) A lender shall treat a payment of a borrower's refund received by the lender from a school as a credit against the amount owed by the borrower on the borrower's loan.

(2) (i) If a lender receives a refund payment from a school on a loan that is no longer held by that lender, the lender shall promptly transmit the amount of the refund payment to the holder to whom it assigned the loan, with an explanation of the source of the payment.

(ii) Upon receipt of a refund transmitted under paragraph (e)(2)(i) of this section, the holder of the loan shall promptly provide written notice to the borrower that the holder has received the refund.

(Authority: 20 U.S.C. 1077, 1078, 1078–2, 1079, 1082, 1085)

§ 682.210 Deferment.

(a) *Borrower eligibility.* (1) Except in the case of a loan received by a parent borrower under the PLUS Program on or after August 15, 1983, a borrower is entitled to have periodic installment payments of principal deferred during authorized periods after the beginning of the repayment period.

(2) For a loan made before October 1, 1981, the borrower is also entitled to have periodic installment payments of principal deferred during the six-month period (post-deferment grace period) that commences after the completion of each deferment period or combination of those periods.

(3) Interest accrues and is paid by the borrower during the deferment period, and the post-deferment grace period, if applicable, unless, in the case of a GSLP loan, the loan was determined to be eligible for interest benefits under § 682.301 when the loan was made.

(4) In order to receive a deferment, the borrower must request the deferment and provide the lender with all documentation required to establish eligibility for a specific type of deferment.

(5) An authorized deferment period begins on the date the condition entitling the borrower to a deferment first exists, but not more than—

(i) Sixty days before the date the lender receives the request and documentation required under paragraph (a)(4) of this section for an unemployment deferment; and

(ii) Six months before the date the lender receives the request and documentation required under paragraph (a)(4) of this section for all other deferments.

(6) An authorized deferment period ends on the earlier of—

(i) The date the condition establishing the borrower's eligibility for the deferment ends; or

(ii) The date when the condition entitling the borrower to a deferment has continued to exist for the maximum amount of the time allowed for a specific deferment.

(7) A lender may not deny a deferment to which the borrower is entitled, even though the borrower may be delinquent, but not in default, in making required installment payments. The 180- or 240-day period required to establish a default does not run during the deferment and post-deferment grace periods. When the deferment and, if applicable, post-deferment grace period expires, a borrower resumes any delinquent status that existed when the deferment period began.

(8) A borrower whose loan is in default is not eligible for a deferment as to that loan, unless the borrower has made satisfactory repayment arrangements with the holder of the loan.

(9) The borrower must inform the lender when the condition entitling the borrower to a deferment no longer exists.

(b) *Authorized deferments.* Deferment is authorized during periods when a borrower is engaged in—

(1) (i) Full-time study at a participating school, unless the borrower is not a national of the United States and is pursuing a course of study at a foreign school; or

(ii) Full-time study at a school which meets the definition of an institution of higher education or a vocational school and is operated by an agency of the Federal Government (*e.g.*, the service academies), unless the borrower is not a national of the United States and is pursuing a course of study at a foreign school;

(2) Study under an eligible graduate fellowship program, as described in paragraph (c) of this section;

(3) Up to three years of active duty status in the United States Armed Forces or service as an officer in the Commissioned Corps of the United States Public Health Service;

(4) Up to three years of service under the Peace Corps Act (if the borrower has agreed to serve for a term of at least one year);

(5) Up to three years of service as a full-time volunteer under Title I of the Domestic Volunteer Service Act of 1973 (ACTION programs) (if the borrower has agreed to serve for a term of at least one year);

(6) Up to three years of full-time volunteer service, which the Secretary has determined is comparable to service referred to in paragraphs (b)(4) and (b)(5) of this section, for a tax-exempt organization, as described in paragraph (d) of this section;

(7) Conscientiously seeking, but unable to find, full-time employment in the United States over a single period of up to 12 months, as described in paragraph (e) of this section;

(8) Pursuing a rehabilitation training program for disabled individuals, as described in paragraph (f) of this section;

(9) Up to two years of service as an intern, as described in paragraph (g) of this section; or

(10) Up to three years during which the borrower is temporarily totally disabled, as described in paragraph (h) of this section, or during which the borrower is unable to secure employment because the borrower is caring for a spouse who is temporarily totally disabled, as described in paragraph (i) of this section.

(c) *Graduate fellowship deferment.* To qualify for a deferment for study in a graduate fellowship program, a borrower must provide the lender with a statement from an official of the borrower's fellowship program certifying that—

(1) The fellowship program—

(i) Provides sufficient financial support to graduate fellows to allow for full-time study for at least six months;

(ii) Requires a written statement from each applicant explaining the applicant's objectives before the award of that financial support; and

(iii) Requires a graduate fellow to submit periodic reports, projects, or other evidence of the fellow's progress; and

(2) The borrower—

(i) Holds at least a baccalaureate degree conferred by an institution of higher education;

(ii) Is engaged in full-time study, which may be independent of an educational or cultural institution, in an academic or professional subject area for which the borrower has shown an interest and ability; and

(iii) Has been recommended by an institution of higher education for acceptance into the graduate fellowship program.

(d) *Full-time volunteer service for a tax-exempt organization deferment.* To qualify for a deferment for full-time volunteer service, for a tax-exempt organization, comparable to volunteer service in the Peace Corps or full-time volunteer service in a program administered by the ACTION agency, a borrower must provide the lender with a statement from an official of the borrower's volunteer program certifying that—

(1) The borrower serves in an organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954;

(2) The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions;

(3) The borrower's compensation (including a subsistence allowance) does not exceed the compensation received by a full-time volunteer in the Peace Corps or in a program administered by the ACTION agency;

(4) The borrower, as part of his or her duties, does not give religious instruction, conduct worship services, engage in religious proselytizing, or engage in fund-raising to support religious activities; and

(5) The borrower has agreed to serve on a full-time basis for a term of at least one year.

(e) *Unemployment deferment.* (1) To qualify for an unemployment deferment, a borrower must provide the lender with a written request for the deferment. To continue the deferment for more than three months, the borrower must provide an additional request before the end of each three-month period. Each request must be signed by the borrower and dated, and must contain—

(i) A statement from the borrower describing the borrower's conscientious search for full-time employment, including for at least three attempts to secure employment during that three-month period—

(A) The name of the firm contacted;

(B) The name of the person contacted; and

(C) The firm's address and phone number.

(ii) The borrower's latest permanent home address and, if applicable, the borrower's latest temporary address;

(iii) Certification from the borrower that the borrower has registered with a public or private employment agency, if one is accessible, specifying its name and address and the date of registration therewith; and

(iv) The borrower's agreement to notify the lender promptly when full-time employment is obtained.

(2) A borrower may qualify for an unemployment deferment whether or not the borrower has been previously employed.

(3) For purposes of this section, full-time employment involves at least 30 hours of work per week and is expected to last at least three months.

(4) An unemployment deferment is not justified if the borrower refuses to seek employment in kinds of positions or at salary and responsibility levels for which the borrower feels overly qualified by virtue of education or previous experience.

(f) *Rehabilitation training program deferment.* To qualify for a rehabilitation training deferment, the borrower must be receiving, or be scheduled to receive, services under a program designed to rehabilitate disabled individuals, and must provide the lender with the following documentation:

(1) A certification from the rehabilitation agency that the borrower is either receiving or scheduled to receive rehabilitation training services from the agency.

(2) A certification from the rehabilitation agency that the rehabilitation program—

(i) Is licensed, approved, certified, or otherwise recognized as providing rehabilitation training to disabled individuals by—

(A) A State agency with responsibility for vocational rehabilitation programs;

(B) A State agency with responsibility for drug abuse treatment programs;

(C) A State agency with responsibility for mental health services programs;

(D) A State agency with responsibility for alcohol abuse treatment programs; or

(E) The Veterans Administration; and

(ii) Provides or will provide the borrower with rehabilitation services under a written plan that—

(A) Is individualized to meet the borrower's needs;

(B) Specifies the date on which the services to the borrower are expected to end; and

(C) Is structured in a way that requires a substantial commitment by the borrower to his or her rehabilitation. The Secretary considers a substantial commitment by the borrower to be a commitment of time and effort that would normally prevent an individual from engaging in full-time employment either because of the number of hours that must be devoted to rehabilitation or because of the nature of the rehabilitation. For the purposes of this paragraph, full-time employment involves at least 30 hours of work per week.

(g) *Internship deferment.* (1) An eligible internship program is a supervised training program that—

(i) Is required in order for the borrower to begin professional practice or service, *e.g.,* medical residency;

(ii) Requires the borrower to hold at least a bachelor's degree before beginning the internship program; and

(iii) A State licensing agency requires completion of before certifying the individual for professional practice or service.

(2) To qualify for an internship deferment, the borrower must provide to the lender the following certifications:

(i) A statement from an official of the appropriate State licensing agency that the internship program meets the provisions of paragraph (g)(2) of this section.

(ii) A statement from the organization with which the borrower is undertaking the internship program certifying—

(A) The acceptance of the borrower into its internship program; and

(B) The anticipated dates on which the borrower will begin and complete the program.

(h) *Temporary total disability deferment.* (1) To qualify for a temporary total disability deferment, a borrower must give the lender a certification, from a physician who is a doctor of medicine or osteopathy and legally authorized to practice, that the borrower is temporarily totally disabled.

(2) For purposes of this section, a borrower who is "temporarily totally disabled" is one who, by reason of injury or illness, has become unable to attend school or to work and earn money during a period of at least 60 days needed to recover from the injury or illness.

(3) A borrower is not considered temporarily totally disabled on the basis of a condition that existed before he or she applied for the loan, unless the borrower's condition has substantially deteriorated since he or she submitted the loan application so as to render the borrower temporarily totally disabled.

(i) *Spouse's temporary total disability deferment.* (1) To qualify for a deferment given to a borrower whose spouse is temporarily totally disabled, a borrower must give the lender—

(i) A certification from a physician who is a doctor of medicine or osteopathy and legally authorized to

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practice, that the borrower's spouse is temporarily totally disabled; and

(ii) A certification from the borrower that the borrower is unable to secure employment because the borrower is providing nursing or similar services to the borrower's spouse that the spouse requires due to the injury or illness.

(2) For the purposes of this section, a spouse who is "temporarily totally disabled" is one who, by reason of injury or illness, has become unable to work and earn money during a period of at least 60 days needed to recover from the injury or illness, and who, during that special period, requires nursing or similar services.

(Authority: 20 U.S.C. 1077, 1078, 1078–2, 1082, 1085)

(Approved by OMB under control number 1840–0538)

§ 682.211 Forbearance.

(a) (1) The Secretary encourages a lender to grant forbearance for the benefit of a borrower in order to prevent the borrower from defaulting on the borrower's repayment obligation. "Forbearance" means permitting the temporary cessation of payments, allowing an extension of time for making payments, or accepting smaller payments than were previously scheduled.

(2) A lender may grant forbearance of payments of principal and interest under paragraph (b) of this section whenever—

(i) Poor health or other personal problems affect the ability of the borrower to make scheduled payments; or

(ii) The borrower's payments of principal are deferred under § 682.210 and the Secretary does not pay interest benefits on behalf of the borrower under § 682.301.

(3) If two borrowers are liable for repayment of a PLUS Program loan as co-makers, the lender may grant forbearance only when the ability of both borrowers to make scheduled payments has been impaired.

(4) If payments of interest are forborne, they may be capitalized as provided in § 682.202(b).

(b) A lender may grant forbearance on terms that are consistent with the minimum annual payment requirement and the 10- and 15-year maximum repayment periods if the lender and borrower agree in writing to the new terms, or, in the case of forbearance of interest during a period of deferment, if the lender informs the borrower at the time the deferment is granted that interest payments are to be forborne.

(c) A lender may grant forbearance for a period of up to one year at a time on terms that are inconsistent with the minimum annual repayment and the 10- and 15-year maximum repayment periods if—

(1) The lender reasonably believes that the borrower intends to repay the loan but is currently unable to make payments in accordance with the terms of the loan note, and the lender states the basis for its belief in writing and maintains that statement in its loan file on that borrower;

(2) Both the borrower and an authorized official of the lender agree in writing to the forbearance; and

(3) Where the forbearance involves the postponement of all payments, the lender contacts the borrower at least once every three months during the period of forbearance in order to remind the borrower of the outstanding obligation to repay.

(d) The lender shall maintain evidence in the borrower's loan file that the forbearance has been agreed to by both the lender and the borrower.

(Authority: 20 U.S.C. 1078, 1078–2, 1080, 1082)
(Reporting and recordkeeping requirements contained in paragraph (d) were approved by the Office of Management and Budget under control number 1840–0538)

§ 682.212 Prohibited transactions.

(a) No points, premiums, payments, or additional interest of any kind may be paid or otherwise extended to any eligible lender or other party in order to—

(1) Secure funds for making loans; or

(2) Induce a lender to make loans to either the students or the parents of students of a particular school or a particular category of students or their parents.

(b) The following are examples of transactions which, if entered into for the purposes described in paragraph (a) of this section, are prohibited:

(1) Cash payments by or on behalf of a school made to a lender or other party.

(2) The maintaining of a compensating balance by or on behalf of a school with a lender.

(3) Payments by or on behalf of a school to a lender of servicing costs on loans that the school does not own.

(4) Payments by or on behalf of a school to a lender of unreasonably high servicing costs on loans that the school does own.

(5) Purchase by or on behalf of a school of stock of the lender.

(6) Payments ostensibly made for other purposes.

(c) Except when purchased by the Student Loan Marketing Association, an agency of any State functioning as a secondary market, or in other circumstances approved by the Secretary, notes, or any interest in notes, shall not be sold or otherwise transferred at discount if the underlying loans were made—

(1) By a school; or

(2) To students or parents of students attending a school by a lender having common ownership with that school.

(d) Except to secure a loan from the Student Loan Marketing Association or an agency of a State functioning as a secondary market or in other circumstances approved by the Secretary, a school or a lender, with respect to a loan made to a student, or a parent of a student, attending a school having common ownership with the lender, may not pledge a loan made under the GSLP or PLUS Program as security for any loan bearing aggregate interest and other charges in excess of the sum of the interest rate applicable to the loan plus the rate of the then most recently-prescribed special allowance under § 682.302.

(e) The prohibitions described in paragraphs (a), (b), (c), and (d) of this section apply to any school or lender which would be a party to the proscribed transactions.

(f) This section does not preclude a buyer of loans made by a school from obtaining from the seller of those loans a warranty that—

(1) Covers future reductions by the Secretary or a guarantee agency in computing the amount of loss payable on default claims filed on the loans, where the reductions are attributable to an act or failure to act on the part of the seller or previous holder; and

(2) Does not cover matters for which a purchaser is charged with responsibility under this part, such as due diligence in collecting loans.

(g) Section 490(c) of the Act provides that any person who knowingly and willfully makes an unlawful payment to an eligible lender as an inducement to make, or to acquire by assignment, a loan guaranteed under the GSLP or PLUS Program shall, upon conviction thereof, be fined not more than $1,000 or imprisoned not more than one year, or both.

(Authority: 20 U.S.C. 1082, 1097)

§ 682.213 Prohibition against the use of the Rule of 78's.

For purposes of the calculations required by this part, a lender shall not use the Rule of 78's to calculate the outstanding principal balance of a loan.

(Authority: 20 U.S.C. 1082)

Subpart C—Federal Payments of Interest and Special Allowance

§ 682.300 Payment of interest benefits on a GSLP loan.

(a) *General.* The Secretary pays a lender a portion of the interest on a GSLP loan on behalf of a borrower who qualifies under § 682.301. This payment is known as interest benefits.

(b) *Covered interest.* (1) The Secretary pays interest benefits on an eligible GSLP loan for interest accruing—

(i) During all periods prior to the beginning of the repayment period, except as provided in paragraph (b)(2) of this section;

(ii) During any period when the borrower has an authorized deferment, and, if applicable, a post-deferment grace period; and

(iii) During the repayment period for loans described in paragraph (d)(2) of this section.

(2) The Secretary's obligation to pay interest benefits on an otherwise eligible loan terminates on the earlier of—

(i) The date the borrower's loan is repaid;

(ii) The date the loan check is returned uncashed to the lender;

(iii) The 120th day after the date of disbursement, if the loan check has not been cashed on or before that date, or if the loan proceeds disbursed by electronic funds transfer in accordance with § 682.207(b)(1)(ii)(B) have not been released from the restricted account maintained by the school on or before that date;

(iv) The date of default by the borrower;

(v) The date the borrower's loan is discharged by a bankruptcy court;

(vi) The date the lender determines that the borrower has died or has become totally and permanently disabled; or

(vii) The date the loan ceases to be guaranteed or ceases to be eligible for reinsurance under this part, regardless of whether the lender has filed a claim for loss on the loan with the guarantor.

(3) Section 682.413(a) sets forth the circumstances under which a lender may be required to repay interest benefits received on a loan guaranteed by a guarantee agency.

(c) *Interest not covered.* Interest benefits do not cover—

(1) Interest on interest added to principal, except for interest capitalized in accordance with § 682.202(b);

(2) Interest for which the borrower is not otherwise liable; or

(3) Interest paid on behalf of the borrower by a guarantee agency.

(d) *Rate.* (1) Except as provided in paragraph (d)(2) of this section, the Secretary pays the lender the actual interest rate on the outstanding principal balance of an eligible GSLP loan, provided that the actual interest rate does not exceed the applicable interest rate.

(2) For a loan disbursed prior to December 15, 1968, or subject to a binding commitment made prior to that date, the Secretary pays an amount during the repayment period equivalent to three percent per year of the unpaid principal amount of the loan.

(Authority: 20 U.S.C. 1078, 1082)

§ 682.301 Eligibility of borrowers for interest benefits on GSLP loans.

(a) *General.* (1) If a student's adjusted gross family income is $30,000 or less, the student qualifies for interest benefits for the amount of his or her GSLP loan.

(2) If the student's adjusted gross family income is more than $30,000, the student qualifies for interest benefits if the institution he or she attends or is planning to attend determines that the student demonstrates financial need for the loan.

(i) If the student demonstrates financial need for a loan of less than $500, or of more than $1,000, the student qualifies for interest benefits for the loan amount for which the student has demonstrated financial need.

(ii) If the student demonstrates financial need for a loan between $500 and $1000, the student qualifies for interest benefits on a loan of up to $1,000.

(b) *Application for interest benefits.* To apply for interest benefits, the student shall submit to the lender his or her loan application. The application must include a certification from the student's institution of the following information:

(1) The estimated cost of attendance for the student for the academic period for which the loan is intended.

(2) The estimated financial assistance for the student for the academic period for which the loan is intended.

(3) The adjusted gross family income of the student's family.

(4) The student's expected family contribution if his or her adjusted gross family income exceeds $30,000.

(5) The amount of the student's need for a loan as determined by the institution pursuant to paragraph (e) of this section.

(c) *Adjusted gross family income.* (1) The institution shall determine the adjusted gross family income of the student's family based upon data provided, and certified to, by each person whose income is required to be considered.

(2) As used in this section, "adjusted gross family income of the student's family" means "adjusted gross income," as defined in section 62 of the Internal Revenue Code, as reported on the 1985 Federal income tax return(s) of—

(i) The student;

(ii) The student's spouse, if any; and

(iii) The student's mother and father, unless the school determines that, at the time the student applies for the loan, the student is an "independent student."

(3) A dependent student whose parents are divorced or separated shall comply with the following procedures for reporting a parent's adjusted gross income to determine the adjusted gross family income:

(i) Include only the income of the parent with whom the student resided for the greater portion of the 12-month period preceding the date of application.

(ii) If paragraph (c)(3)(i) of this section does not apply, include only the income of the parent who provided the greater portion of the student's support for the 12 month period preceding the date of application.

(iii) If neither paragraph (c)(3)(i) nor (c)(3)(ii) of this section applies, include only the income of the parent who provided the greater support for the period commencing January 1, 1985, and ending 12 months prior to the date of application.

(4) If one of the parents has died, a dependent student shall include only the income of the surviving parent. If both parents have died, the student shall not report any parental income for those parents even if the parent(s) had income.

(5) The following rule applies if either a parent whose income is taken into account under paragraph (c)(3) of this section, or a parent who is a widow or widower and whose income is taken into account under paragraph (c)(4) of this section, has remarried. The income of that parent's spouse is included in determining the adjusted gross family income if, in 1985 or 1986, the dependent student—

(i) Has received or will receive financial assistance of more than $750 from that spouse; or

(ii) Has lived or will live for more than six weeks in the home of the parent and that spouse.

(6) The income of the student's spouse is not included in determining the adjusted gross family income for a student who is divorced or separated, or whose spouse has died.

(d) *Independent student.* As used in this section, "independent student" means a student who meets the criteria

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in 34 CFR 668.1a. All other students are considered to be dependent students.

(e) *Determination of need.* (1) If the student's adjusted gross family income exceeds $30,000, the institution shall determine the student's need for a loan by subtracting from the student's "estimated cost of attendance," as defined in § 682.200, his or her—

(i) "Estimated financial assistance," as defined in § 682.200; and

(ii) Expected family contribution, as determined under paragraph (f) of this section.

(2) The student shall certify the accuracy of any information he or she provides to the institution that is necessary to determine need.

(3) The Secretary may require that family members whose incomes are included in the student's adjusted gross family income under paragraph (c) of this section provide copies of the relevant Federal income tax return(s) and other pertinent documents to support the student's application for interest benefits.

(f) *Determination of expected family contribution.* For a student who seeks a loan for a period of instruction beginning on or after July 1, 1986, but not later than June 30, 1987, the institution shall calculate his or her expected family contribution as follows:

(1) If the student has been awarded financial assistance for award year 1986–87 (July 1, 1986–June 30, 1987) under the National Direct Student Loan (NDSL), College Work-Study (CWS), or Supplemental Educational Opportunity Grant (SEOG) program at the time he or she applies for a Guaranteed Student Loan, the student's expected family contribution is his or her expected family contribution as calculated for the NDSL, CWS or SEOG program.

(2) If the student has not been awarded financial assistance under the campus-based programs for award year 1986–87 at the time he or she applies for a GSLP loan the student's expected family contribution must be determined under either—

(i) A need analysis system approved by the Secretary for the academic year for which the loan is sought for the campus-based programs; or

(ii) The tables found in Appendix B if the adjusted gross income of the student and his or her family, after taking the provisions of paragraph (g) of this section into account, is more than $30,000 and less than $75,000.

(g) In calculating a student's expected family contribution under paragraph (f) of this section—

(1) The institution shall exclude any taxable and nontaxable income realized from the proceeds of a sale of farm or business assets if—

(i) The sale of the farm or business assets results from a voluntary or involuntary foreclosure, forfeiture, or bankruptcy; and

(ii) The institution uses a need analysis system approved by the Secretary for the campus-based programs to calculate the student's expected family contribution; and

(2) The institution shall exclude any taxable income realized from the proceeds of a sale of farm or business assets if—

(i) The sale of the farm or business assets results from a voluntary or involuntary foreclosure, forfeiture, or bankruptcy; and

(ii) The institution uses the tables set forth in Appendix B to calculate the student's expected family contribution.

(Authority: 20 U.S.C. 1078, 1082, 1089)

§ 682.302 Payments of special allowance on a GSLP or PLUS Program loan.

(a) *General.* The Secretary pays a special allowance to a lender on an eligible GSLP or PLUS Program loan. The special allowance is a percentage of the average unpaid principal balance, including interest capitalized in accordance with § 682.202(b), computed in accordance with paragraph (c) of this section.

(b) *Eligible loans.* All GSLP and PLUS loans otherwise meeting program requirements are eligible for special allowance payments, except for GSLP loans disbursed on or after October 1, 1981 that do not qualify for interest benefits under § 682.301.

(c) *Rate.* (1) Except as provided in paragraphs (c) (2) and (3) of this section, the special allowance rate for an eligible loan during a three-month period is calculated by—

(i) Determining the average of the bond equivalent rates of the 91-day Treasury bills auctioned during the three month period;

(ii) Subtracting the applicable interest rate for that loan;

(iii) Adding three and one-half percent to the resulting percentage;

(iv) For a loan made prior to October 1, 1981, rounding the result upward to the nearest one-eighth of one percent; and

(v) Dividing the resulting percentage by four.

(2) In the case of an eligible loan subject to the requirements of section 252 of Pub. L. 99–177, the Balanced Budget and Emergency Deficit Control Act of 1985, the rate specified in paragraph (c)(1)(iii) of this section is reduced to the greater of three percent or the specified rate less four-tenths of one percentage point.

(3)(i) The special allowance rate payable for a three-month period on an eligible loan made or guaranteed on or after October 1, 1980 that was made or purchased with funds obtained from the issuance of obligations, the income from which is exempt from taxation under the Internal Revenue Code of 1954, is one-half the rate determined under paragraphs (c) (1) or (2) of this section, but not less than—

(A) Two and one-half percent per year on eligible loans for which the applicable interest rate is seven percent;

(B) One and one-half percent per year on eligible loans for which the applicable interest rate is eight percent; or

(C) One-half of one percent per year on eligible loans for which the applicable interest rate is nine percent.

(ii) The rate established in paragraph (c)(3)(i) of this section also applies to a loan made or purchased with funds obtained from—

(A) Collections or default reimbursements on, or interest or other income pertaining to, a loan described in paragraph (c)(3)(i) of this section; or

(B) The investment of the funds described in paragraph (c)(3)(ii)(A) of this section.

(d) *Termination of special allowance payments on a loan.* (1) The Secretary's obligation to pay special allowance on a loan terminates on the earliest of the date—

(i) The borrower's loan is repaid or the borrower's loan check is returned uncashed to the lender;

(ii) The lender receives payment on a claim for loss on the loan;

(iii) The loan ceases to be guaranteed or ceases to be eligible for reinsurance under this part, regardless of whether the lender has filed a claim for loss on the loan with the guarantor;

(iv) Ninety days after the borrower's default on the loan, unless the lender files a claim for loss on the loan with the guarantor prior to that 90th day; or

(v) One hundred twenty days after the date of disbursement, if the loan check has not been cashed on or before that date, or if the loan proceeds disbursed by electronic funds transfer in accordance with § 682.207(b)(1)(ii)(B) have not been released from the restricted account maintained by the school on or before that date.

(2) Section 682.413(a) sets forth the circumstances under which a lender may be required to repay special allowance received on a loan guaranteed by a guarantee agency.

(e) (1) Except as otherwise provided in Subpart H of this Part, the Secretary pays a special allowance on a loan made or acquired with the proceeds of an obligation the interest income from which is exempt from taxation under the Internal Revenue Code only if the Secretary has approved—

(i) The Plan for Doing Business of the Authority which issued the obligation, if the obligation was issued after December 31, 1980; and

(ii) The justification of need for the obligation, if the obligation was issued after August 14, 1983.

(2) As used in this paragraph, proceeds of a tax-exempt obligation include collections, reimbursements from guarantors, interest received, and receipts from the sale of loans financed with the original proceeds of that obligation.

(3) The Secretary pays a special allowance to an Authority at the rate prescribed in paragraph (c)(1) or (c)(2) of this section on a loan made or acquired with the proceeds of a tax-exempt obligation after the loan is pledged or otherwise transferred in consideration of funds derived from sources other than a tax-exempt obligation and—

(i) The prior tax-exempt obligation is retired; or

(ii) The prior tax-exempt obligation is defeased by means of obligations which the Authority certifies in writing to the Secretary bear a yield which does not exceed the yield permitted under 26 CFR 1.103–14 with regard to investments of proceeds of a tax-exempt refunding obligation.

(Authority: 20 U.S.C. 1082, 1087–1)

§ 682.303 Methods for computing interest benefits and special allowance.

(a) *General.* The Secretary pays a lender interest benefits and special allowance on eligible loans on a quarterly basis. These calendar quarters end on March 31, June 30, September 30, and December 31 of each year. A lender may use either the average daily balance method or the actual accrual method to determine the amount of interest benefits payable on its loans. A lender shall use the average daily balance method to determine the balance on which the Secretary computes the amount of special allowance payable on its loans.

(b) *Average daily balance method for interest benefits.* (1) Under this method, the lender adds the unpaid principal balance outstanding on all loans qualifying for interest benefits at each actual interest rate for each day of the quarter, and divides the sum by the number of days in the quarter. The resulting figure is the average daily balance for qualified loans outstanding at each actual interest rate.

(2) The lender computes the interest benefits due on all qualified loans at each actual interest rate by multiplying the average daily balance thereof by the actual interest rate, multiplying this result by the number of days in the quarter, and then dividing this result by the actual number of days in the year or 365.25 days. A lender who chooses to divide by 365.25 days must do so for four consecutive years.

(c) *Actual accrual method for interest benefits.* (1) Under this method, the lender computes the total unpaid principal balance outstanding on all qualified loans at each actual interest rate on each day of the quarter, multiplies this result by the actual interest rate, and divides this result by the actual number of days in the year or 365.25 days. A lender who chooses to divide by 365.25 days must do so for four consecutive years.

(2) The interest benefits due for a quarter is the sum of the daily interest benefits due, computed under paragraph (c)(1) of this section, for each day of the quarter.

(d) *Average daily balance method for special allowance.*

(1) To compute the average daily balance outstanding for special allowance purposes, the lender adds the unpaid principal balance outstanding on all qualified loans at each applicable interest rate for each day of the quarter and divides this sum by the number of days in the quarter. The resulting figure is the average daily balance for the quarter.

(2) The Secretary computes the special allowance payable to a lender based upon the average daily balance computed by the lender under paragraph (d)(1) of this section.

(Authority: 20 U.S.C. 1078, 1082, 1087–1)

§ 682.304 Procedure for payment of interest benefits and special allowance.

(a) *General.* (1) To receive payments of interest benefits and special allowance, a lender must submit quarterly reports to the Secretary on a form provided or prescribed by the Secretary.

(2) The Secretary reduces the amount of interest benefits and special allowance payable to the lender by the amount of origination fees the lender was authorized to collect during the quarter under § 682.202(c), whether or not the lender actually collected that amount. The Secretary increases the amount of interest benefits and special allowance payable to the lender by the amount of origination fees refunded to borrowers during the quarter under § 682.202(c).

(3) The lender shall report, on the quarterly report required by paragraph (a)(1) of this section, the amount of origination fees it was authorized to collect, and the amount of those fees refunded to borrowers, during the quarter covered by the report.

(4) If a lender sells or otherwise transfers a loan within the calendar quarter in which the loan is disbursed, either the lender making the loan or the new holder may report the amount of the origination fee to the Secretary. In either case, the lender making the loan and any subsequent holder are jointly and severally liable for payment of the origination fee to the Secretary.

(b) *Penalty interest.* (1)(i) If the Secretary does not pay interest benefits or special allowance within 30 days after the Secretary receives an accurate, timely, and complete request for payment from a lender, the Secretary pays the lender penalty interest.

(ii) The payment of interest benefits or special allowance shall be deemed to occur, for purposes of this paragraph, when the Secretary—

(A) Authorizes the Treasury Department to pay the lender;

(B) Credits the payment due the lender against a debt which the Secretary determines is owed the Secretary by the lender; or

(C) Authorizes the Treasury Department to pay the amount due the lender to another Federal agency for credit against a debt that the agency has determined is owed it by the lender.

(2) Penalty interest is an amount that accrues daily on interest benefits and special allowance due to the lender. The penalty interest is computed at the daily rate of the sum of—

(i) The interest rate applicable to the eligible loans on which payment is requested; and

(ii) The special allowance rate on those loans computed under § 682.302(c) for the quarter for which payment is requested.

(3) The Secretary pays penalty interest from the later of—

(i) The 31st day after the final day of the quarter covered by the request for payment; or

(ii) The 31st day after the Secretary's receipt of an accurate, timely, and complete request for payment from the lender.

(4) Penalty interest continues to accrue through the day the Secretary pays the interest benefits and special allowance at issue, in accordance with paragraph (b)(1)(ii) of this Section.

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(5) A request for interest benefits and special allowance is considered timely only if it is received by the Secretary within 90 days following the end of the quarter to which the request pertains.

(6) A request for interest benefits and special allowance is not considered accurate if it requests payments to which the lender is not entitled under § 682.300–§ 682.303, or includes loans that the Secretary has directed the lender in writing to exclude from the request.

(Authority: 20 U.S.C. 1078, 1082, 1087–1)

(Reporting and recordkeeping requirements contained in paragraph (a)(3) were approved by the Office of Management and Budget under control number 1840–0538)

Subpart D—Guarantee Agency Programs

§ 682.400 Agreements between a guarantee agency and the Secretary.

(a) The Secretary enters into agreements with a guarantee agency whose loan guarantee program meets the requirements of this subpart. The agreements enable the guarantee agency to participate in the GSLP and the PLUS Program and to receive the various payments and benefits incident to that participation.

(b) There are five agreements:

(1) *Basic program agreement.* In order to participate in the GSLP and the PLUS Program a guarantee agency must have a basic program agreement. Under this agreement—

(i) Borrowers whose GSLP loans are guaranteed may qualify for interest benefits that are paid to the lender on the borrower's behalf;

(ii) Lenders under the guarantee agency program may receive special allowance payments from the Secretary, and have death, disability, and bankruptcy claims paid by the Secretary through the guarantee agency; and

(iii) The guarantee agency may apply for the primary administrative cost allowance, and for the other agreements described in this section.

(2) *Federal advances for claim payments agreement.* A guarantee agency must have a Federal advance for claim payments agreement to receive and use Federal advances to pay default claims.

(3) *Reinsurance agreement.* A guarantee agency must have a reinsurance agreement to receive reimbursement from the Secretary for at least 80 percent of its losses on default claims.

(4) *Supplemental reinsurance agreement.* A guarantee agency must have a supplemental reinsurance agreement to receive reimbursement from the Secretary for up to 100 percent of its losses on default claims.

(5) *Secondary administrative cost allowance agreement.* A guarantee agency must have a secondary administrative cost allowance agreement to receive that allowance.

(c) The Secretary's execution of an agreement does not indicate acceptance of any current or past standards or procedures used by the agency.

(d) All of the agreements are subject to subsequent changes in the Act or the regulations that apply to the GSLP or the PLUS Program.

(Authority: 20 U.S.C. 1072, 1078–1, 1078–2, 1082, 1087, 1087–1)

§ 682.401 Basic program agreement.

(a) In order to participate in the GSLP and the PLUS Program, a guarantee agency must enter into a basic agreement with the Secretary.

(b) In the basic agreement, the guarantee agency must agree to ensure that its loan guarantee program meets the following requirements at all times:

(1) *Aggregate loan limits.* The aggregate guaranteed unpaid principal amount for all GSLP and PLUS Program loans made to a borrower may not exceed the amounts set forth in § 682.204 (b) and (d).

(2) *Annual amounts.* (i) The annual loan amount authorized for an academic year must be at least $1,000, but may not exceed the amounts set forth in § 682.204 (a) and (c).

(ii) If the program guarantees loans to an eligible half-time student borrower or to a parent borrower on behalf of an eligible half-time student, the annual loan amount authorized for an academic year must be at least $500.

(iii) A guarantee agency may make the loan amounts authorized under paragraphs (b)(2)(i) and (ii) of this section applicable for either—

(A) A period that does not exceed 12 months; or

(B) A period in which the student earns the amount of credit in the student's program of study required by the student's school as the amount necessary for the student to advance in academic standing as normally measured on an academic year basis (for example, from freshman to sophomore) or, in the case of schools using clock hours, completion of at least 900 clock hours.

(iv) In no case may the amount of the loan exceed the student's estimated cost of attendance for the academic period for which the loan is intended, less estimated financial assistance.

(3) *Duration of borrower eligibility.* (i) A student borrowing under the GSLP or the PLUS Program, and a parent borrowing on behalf of a student under the PLUS Program, must be eligible to borrow for any year of the student's study at a participating school; and

(ii) Loans must be available to or on behalf of any student for at least six academic years of study or the equivalent.

(4) *Borrower responsibilities.* (i) The borrower shall promptly notify the lender of any change of name or address.

(ii) The borrower shall give to the lender, as part of the loan application process—

(A) A statement, described in § 682.203, that the loan will be used for the cost of the student's attendance;

(B) Information that provides a basis for determining that the borrower is eligible for the loan;

(C) Information concerning the borrower's outstanding GSLP and PLUS Program loans, and, if the borrower is a parent, information on the outstanding GSLP and PLUS Program loans made to or on behalf of the student;

(D) A statement of the sources and amount of other financial assistance from Federal, State, institutional or other scholarship, grant, work, or loan programs, that the student has received or expects to receive for the period of enrollment for which the loan is intended;

(E) A statement from the student authorizing the school to release information relevant to the student's eligibility to borrow or to have a parent borrow on the student's behalf (e.g., the student's enrollment status, financial assistance, and employment records); and

(F) Information from the school that provides a basis for determining that the student qualifies as an eligible student and the maximum amount that may be borrowed by or on behalf of the student.

(5) *Loan disbursement.* The guarantee agency shall require that a lender disburse loan funds as required by § 682.207.

(6) *Insurance premiums.* (i) The guarantee agency may charge the lender an insurance premium on each loan. The guarantee agency may use the proceeds of this charge only to guarantee loans and to cover costs incurred by the guarantee agency in the administration of its loan guarantee program. The lender may deduct this charge from the borrower's loan proceeds. The guarantee agency may not use the proceeds of this charge to make incentive payments to lenders or to increase yields to lenders.

(ii) The amount of the insurance premium may not exceed one percent per year of the unpaid principal balance of the loan, excluding interest or other charges the lender may have added to the principal balance.

(iii) The lender shall refund to the borrower, by a credit against the borrower's loan balance, all or a part of the insurance premium paid by the borrower on a GSLP loan under the following circumstances:

(A) The premium, or the portion thereof attributable to a portion of a multiply-disbursed loan, must be refunded if the loan check is returned uncashed to the lender.

(B) The premium must be refunded if the loan is repaid in full, or the loan check has not been cashed within 120 days of disbursement, or the loan proceeds disbursed by electronic funds transfer in accordance with § 682.207(b)(1)(ii)(B) have not been released from the restricted account maintained by the school on or before that date.

(C) If the insurance premium is charged for a period extending beyond one year after the borrower's anticipated graduation date, the insurance premium must be refunded to the borrower in accordance with paragraph (b)(6)(iv) of this section.

(iv) (A) If a borrower graduates or withdraws from school before the anticipated graduation date, the amount of any insurance premium on a GSLP loan attributable to the repayment period must be recomputed to take into account the declining principal balance of the loan. Any refund due the borrower as a result of this computation must be treated as a prepayment of the insurance premium for a later period, if a premium will be required for that period, or as a repayment of principal.

(B) If a borrower defaults, the amount of any insurance premium attributable to subsequent periods must be credited first to accrued interest and then to the principal balance of the loan.

(C) If a borrower prepays the entire unpaid balance of the loan, the amount of any insurance premium attributable to a period following the date of prepayment by two or more years must be refunded to the borrower.

(v) The insurance premium for a PLUS Program loan need not be refunded under any circumstances.

(7) *Guarantee liability.* The guarantee agency shall guarantee at least 80 percent of the unpaid principal balance of each loan guaranteed.

(8) *Guarantee agency administration.* In the case of a State loan guarantee program administered by a State government, the program must be administered by a single State agency, or by one or more private nonprofit institutions or organizations under the supervision of a single State agency. For this purpose, "supervision" includes, but is not limited to, setting policies and procedures, and having full responsibility for the operation of the program.

(9) *Loan assignment.* (i) The guarantee agency shall allow a loan to be assigned only to—

(A) An eligible lender;

(B) The guarantee agency, in the case of a borrower's default, death, total and permanent disability, or filing of a bankruptcy petition; or

(C) The Secretary.

(ii) For the purpose of this paragraph, "assigned" means any kind of transfer of an interest in the loan, including a pledge of such an interest as security.

(10) *Standards and procedures.*

(i) The guarantee agency shall establish, disseminate to concerned parties, and enforce standards and procedures for—

(A) Ensuring that all lenders in its program meet the definition of "eligible lender" in section 435(g)(1) of the Act;

(B) School and lender participation in its program;

(C) Limitation, suspension, or termination of school and lender participation;

(D) The exercise of due diligence by lenders in making, servicing, and collecting loans; and

(E) The timely filing by lenders of default, death, disability, and bankruptcy claims.

(ii) The guarantee agency shall ensure that its program, and all participants in its program, at all times meet the requirements of Subparts B, C, D and F of this Part.

(11) The guarantee agency shall establish and follow a system and procedures for monitoring the enrollment status of a student borrower that include, at a minimum—

(i) Transmitting a student status confirmation request to the school for completion at least semi-annually; and

(ii) Reporting to the current holder of the loan, within 60 days of receipt of the completed request from the school, any change in the student's enrollment status that triggers—

(A) The commencement of the borrower's grace period; or

(B) The commencement or resumption of the borrower's immediate obligation to make scheduled payments.

(12) The guarantee agency shall submit, or require its lenders to submit, upon the Secretary's request, information the Secretary deems necessary for determining the amount of interest benefits and special allowance payable on the agency's guaranteed loans.

(13) The guarantee agency shall require lenders to submit to the agency the information necessary for the agency to complete the reports required by § 682.414(b).

(c) (1) The guarantee agency shall ensure that it, or an eligible lender described in section 435(g)(1)(D) of the Act, serves as a lender of last resort in its State.

(2) The lender of last resort shall make a GSLP loan to any eligible student who—

(A) Qualifies for interest benefits, pursuant to § 682.301 for a loan amount of at least $200; and

(B) Has been otherwise unable after conscientious efforts to obtain a loan from another eligible lender for the same period of enrollment.

(3) The guarantee agency, or an eligible lender described in § 435(g)(1)(D) of the Act, may make a loan required by this paragraph through an agreement with an eligible lender.

(d) (1) The guarantee agency shall submit to the Secretary its application forms, promissory notes, and write-off criteria and procedures. The agency shall not use these materials until the Secretary approves them.

(2) The guarantee agency shall promptly submit to the Secretary its regulations, statements of procedures and standards, and other materials that substantially affect the operation of the agency's program whenever changes or new materials are proposed. Except as provided in paragraph (d)(1) of this section, the agency may use these materials unless and until the Secretary disapproves them.

(3) The guarantee agency shall ensure that all program materials meet the requirements of Federal and State law.

(Authority: 20 U.S.C. 1078, 1078–2, 1082)

(Reporting and recordkeeping requirements contained in paragraph (b)(4) were approved by the Office of Management and Budget under control number 1840–0538)

§ 682.402 Death, disability, and bankruptcy payments.

(a) *General.* (1) References in this section to death and disability claims relate only to loans made after December 14, 1968. If a borrower who received a loan covered by a reinsurance agreement prior to December 15, 1968, dies or becomes totally and permanently disabled, the Secretary reimburses the guarantee agency under the provisions of § 682.404.

(2) If a PLUS Program loan was obtained by two parents as co-makers and only one of the borrowers dies,

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becomes totally and permanently disabled, or has his or her loan obligation discharged in bankruptcy, the other borrower remains obligated to repay the loan.

(3) The Secretary does not pay a death, disability, or bankruptcy claim if a default claim for the loan previously has been disapproved by the guarantee agency, or if the loan would not qualify either for payment of a default claim or for reinsurance payments.

(b) *Death.* (1) If an individual borrower dies, the borrower's obligation to make any further payments of principal and interest on the loan is cancelled.

(2) The lender may determine that a borrower has died on the basis of a death certificate or other proof of death that is acceptable under applicable State law. If a death certificate or other acceptable proof of death is not available, the borrower's obligation on the loan is cancelled only upon a determination by the guarantee agency on the basis of other evidence that the agency finds conclusive.

(3) Once the lender has determined that the borrower has died, the lender may not attempt to collect on the loan from the borrower's estate or from any endorser.

(4) The lender shall return to the sender any payments received from the estate or paid on behalf of the borrower after the date of the borrower's death.

(c) *Total and permanent disability.* (1) If the lender determines that an individual borrower is totally and permanently disabled, the borrower's obligation to make any further payments of principal and interest on the loan is cancelled. A borrower is not considered totally and permanently disabled on the basis of a condition that existed before he or she applied for the loan, unless the borrower's condition has substantially deteriorated since he or she submitted the loan application, so as to render the borrower totally and permanently disabled.

(2) After being notified by the borrower or the borrower's representative that the borrower claims to be totally and permanently disabled, the lender shall promptly request that the borrower or the borrower's representative obtain a certification from a physician who is a doctor of medicine or osteopathy and legally authorized to practice, on a form provided or approved by the Secretary, that the borrower is totally and permanently disabled. The lender shall continue collection until it receives the certification or receives a letter from a physician stating that the certification has been requested and that additional time is needed to determine if the borrower is totally and permanently disabled. After receiving the physician's certification or letter, the lender may not attempt to collect from the borrower or any endorser.

(3) After receiving the physician's certification described in paragraph (c)(2) of this section, the lender shall return any payments that it received from or on behalf of the borrower after the date the borrower or the borrower's representative notified the lender of the borrower's claim described in paragraph (c)(2) of this section.

(4) If the lender determines that a loan owed by a borrower who claims to be totally and permanently disabled is not eligible for cancellation for that reason, or if the lender has not received the physician's certification, described in paragraph (c)(2) of this section, within 60 days of the receipt of the physician's letter described in paragraph (c)(2) of this section, the lender shall resume collection and shall be deemed to have exercised forbearance of payment of both principal and interest from the date the lender received the physician's letter described in paragraph (c)(2) of this section, and may capitalize, in accordance with § 682.202(b), any interest payments forborne.

(d) *Bankruptcy.* (1) If an individual borrower's repayment obligation on a loan is discharged in bankruptcy, the Secretary assumes the borrower's liability for unpaid principal and interest on the loan.

(2) The lender shall determine that a borrower has filed a bankruptcy petition on the basis of a notice of the first meeting of creditors received from the bankruptcy court.

(3) Once a lender determines that a borrower has filed a bankruptcy petition, the lender may not attempt to collect on the loan, except as required by paragraph (d)(4)(ii) of this section, and shall file a proof of claim with the bankruptcy court within 30 days after the lender receives notice of the first meeting of creditors.

(4) (i) If the loan has not been in repayment for at least five years (exclusive of any applicable suspension of the repayment period) on the date the lender receives notice of the first meeting of creditors, the lender shall hold the loan and promptly inquire of the bankruptcy court whether a petition to have the loan obligation declared dischargeable in bankruptcy on grounds of undue hardship (hereinafter referred to as a "hardship petition") has been filed by the borrower.

(ii) If the lender determines, based on its inquiry under paragraph (d)(4)(i) of this section, that the borrower has not filed a hardship petition, the lender shall continue to hold the loan, and not attempt collection, until the bankruptcy action is concluded. Thereafter, the lender shall treat the loan as if the lender had exercised forbearance as to repayment of principal and interest from the date of the borrower's filing of the bankruptcy petition until the date the lender is notified that the bankruptcy action is concluded.

(iii) The lender shall file a bankruptcy claim on the loan with the guarantee agency, in accordance with paragraph (e) of this section, if—

(A) The borrower has filed a petition for relief under Chapter 13 of the Bankruptcy Code;

(B) The loan has been in repayment for more than five years (exclusive of any applicable suspension of the repayment period); or

(C) The loan has been in repayment for less than 5 years (exclusive of any applicable suspension of the repayment period) and the lender determines that the borrower has filed a hardship petition.

(e) *Claim procedures for a loan held by a lender.*

(1) *Documentation.* A lender shall provide the guarantee agency with the following documentation when filing a death, disability, or bankruptcy claim:

(i) The original promissory note.

(ii) The loan application.

(iii) In the case of a death claim, those documents that formed the basis for the determination of death.

(iv) In the case of a disability claim, a copy of the certification of disability described in paragraph (c)(2) of this section.

(v) In the case of a bankruptcy claim—

(A) Evidence that a bankruptcy petition has been filed, written evidence of the lender's efforts to determine if the borrower filed a hardship petition, an assignment to the guarantee agency of the lender's proof of claim, and all pertinent documents sent to or received from the bankruptcy court by the lender; and

(B) A statement of any facts of which the lender is aware that may form the basis for an objection or exception to the discharge of the borrower's loan obligation in bankruptcy, and all documents supporting those facts.

(2) *Filing deadlines.* As a condition for obtaining payment, a lender shall comply with the following requirements for filing death, disability, and bankruptcy claims:

(i) A lender must file a death or disability claim with the guarantee agency within 60 days after the lender determines that a borrower has died or is totally and permanently disabled, in accordance with the procedures in paragraphs (b) and (c) of this section.

(ii) A lender must file a bankruptcy claim with the guarantee agency—

(A) Within 30 days after the lender receives notice of the first meeting of creditors in a borrower's bankruptcy proceeding, if the loan has been in repayment for more than 5 years (exclusive of any applicable suspension of the repayment period);

(B) Within 30 days after the lender determines that the borrower has filed a hardship petition, if the loan has been in repayment for less than 5 years (exclusive of any applicable suspension of the repayment period); or

(C) Within 30 days after receiving notice of the first meeting of creditors, if the borrower files a petition for relief under Chapter 13 of the Bankruptcy Code.

(f) *Payment of death, disability, and bankruptcy claims by the guarantee agency.*—(1) *General.* After determining that a death, disability, or bankruptcy claim is valid, the guarantee agency shall pay the lender the amount of loss in accordance with this paragraph.

(2) *Amount of loss to be paid on a claim.* (i) The amount of loss to be paid on a death, disability, or bankruptcy claim is equal to the unpaid balance of principal and interest in accordance with paragraph (f)(3) of this section.

(ii) The unpaid balance of principal may include interest capitalized in accordance with § 682.202(b).

(3) *Payment of interest.* If the guarantee covers unpaid interest, the payment of an approved claim covers the unpaid interest that accrues during the following periods:

(i) During the period before the claim is filed, not to exceed the period provided for in paragraph (e)(2) of this section for filing the claim.

(ii) During a period not to exceed 30 days following the return of the claim to the lender by the guarantee agency for additional documentation necessary for the claim to be approved by the guarantee agency.

(iii) During the period required by the guarantee agency to approve the claim and to authorize payment.

(g) *Treatment of loans acquired by the guarantee agency through the payment of bankruptcy claims to lenders.*

(1) After payment of a bankruptcy claim to a lender, the guarantee agency shall diligently contest the discharge of the loan by the bankruptcy court. Once the dischargeability of the loan has been decided in a bankruptcy action, the guarantee agency shall—

(i) Submit the bankruptcy claim to the Secretary for reimbursement, if the loan is discharged; or

(ii) Treat the loan as if forbearance had been exercised as to repayment of principal and interest from the date of filing of the bankruptcy petition until the date the court held the loan to be non-dischargeable, if the court so held, and either—

(A) Require the lender that filed the claim to repurchase the loan; or

(B) Permit another eligible lender to purchase the loan.

(2) In the case of a claim submitted under paragraph (g)(1)(i) of this section, the Secretary pays the guarantee agency the amount of loss that the guarantee agency paid the lender on the bankruptcy claim, plus interest that accrues through the earlier of—

(i) The date the Secretary authorizes payment to the guarantee agency; or

(ii) Sixty days after the date of discharge.

(h) *Claim procedures for loans held by a guarantee agency.*

(1) The Secretary pays a death, disability, or bankruptcy claim on a loan held by a guarantee agency after the agency has paid a default claim to the lender thereon only under the following circumstances:

(i) The guarantee agency determines that the borrower has died, become totally and permanently disabled since applying for the loan, or had the loan obligation discharged in bankruptcy, in accordance with the procedures set forth in paragraphs (b)–(d) of this section. For purposes of this paragraph, references to the "lender" in paragraphs (b)–(d) of this section mean the guarantee agency.

(ii)(A) In the case of a PLUS Program loan, when the guarantee agency determines the borrower (or each of the co-makers) has died, become totally and permanently disabled since applying for the loan, or had the repayment obligation discharged in bankruptcy, within 10 years of the date the loan was made, exclusive of periods of deferment or periods of forbearance granted by the lender that extended the 10-year maximum repayment period; or

(B) In the case of a GSLP loan, when the guarantee agency determines the borrower has died, become totally and permanently disabled since applying for the loan, or had the loan discharged in bankruptcy, within 15 years of the date the loan was made, exclusive of periods of deferment or periods of forbearance granted by the lender that extended the 15-year maximum repayment period;

(iii) The guarantee agency has not written off the loan as uncollectible in accordance with the procedures established by the agency pursuant to § 682.410(b)(4)(x); and

(iv) The guarantee agency has exercised due diligence in the collection of the loan, in accordance with the procedures established by the agency pursuant to § 682.410(b)(4), until the borrower (or each of the co-makers) died, became totally and permanently disabled, or had the loan discharged in bankruptcy.

(2)(i) The Secretary pays the guarantee agency a percentage of the outstanding principal and interest that is equal to the complement of the reinsurance percentage paid on the loan. Interest includes interest that accrues during the lesser of—

(A) The period from the date the guarantee agency determines that the borrower (or each of the co-makers) died, became totally and permanently disabled, or had the loan discharged in bankruptcy, until the Secretary authorizes payment; or

(B) Sixty days.

(ii) In addition, the Secretary pays the guarantee agency for any unpaid interest that the agency paid as part of the default claim and for which the agency was not previously reimbursed by the Secretary.

(i) *Payments.* If the guarantee agency receives any payments from or on behalf of the borrower on a loan on which the Secretary previously paid a bankruptcy claim, the guarantee agency shall remit 100 percent of these payments to the Secretary.

(j) *Suspension of repayment.* For purposes of this section, the term "applicable suspension of the repayment period" means any period of time during which the lender did not require the borrower to make payments (e.g., periods of deferment or forbearance).

(Authority: 20 U.S.C. 1078–2, 1082, 1087)

(Reporting and recordkeeping requirements contained in paragraph (e)(1) were approved by the Office of Management and Budget under control number 1840–0538)

§ 682.403 Federal advances for claim payments.

(a) The Secretary makes an advance to a guarantee agency that has a reinsurance agreement. The advance may be used only to pay guarantee claims. The Secretary makes an advance to—

(1) A State guarantee agency; or

(2) One or more private nonprofit guarantee agencies in a State if, during a fiscal year—

(i) The State does not have a guarantee agency program;

(ii) The Secretary consults the chief executive officer of the State and finds it

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unlikely that the State will have a program for that year; and

(iii) Each private nonprofit guarantee agency—

(A) Agrees to establish at least one office in the State with sufficient staff to handle written and telephone inquiries from students, eligible lenders, and other persons in the State;

(B) Agrees to encourage maximum commercial lender participation within the State, and to conduct periodic visits to at least the major lenders within the State;

(C) Agrees that the benefit of its loan guarantees will not be denied to students because of their choice of schools or lack of need; and

(D) Certifies that it is not an eligible educational institution, and that it does not have substantial affiliation with any eligible educational institution.

(b) A guarantee agency must apply in order to receive an initial advance.

(c)(1) An advance may be made to a new guarantee agency for each of five consecutive calendar years. A new agency is an agency that entered into a basic agreement on or after October 12, 1976, or that was not actively carrying on a loan guarantee program on or before October 12, 1976.

(2) (i) A guarantee agency may request that the initial advance be made on a specified date. The Secretary pays subsequent advances on the same date of four succeeding years that the initial advance was made.

(ii) An additional advance may be made to a private nonprofit guarantee agency only if the agency continues to qualify under paragraph (a) of this section.

(d) The Secretary makes an advance on terms and conditions specified in a Federal advances for claim payments agreement between the Secretary and the guarantee agency.

(e) In the case of a private nonprofit guarantee agency, the "outstanding insurance obligation," referred to in section 422(c)(4) of the Act, is determined separately for each State for which the agency has received an advance under this section.

(Authority: 20 U.S.C. 1072, 1082)

§ 682.404 Federal reinsurance agreement.

(a) (1) The Secretary may enter into a reinsurance agreement with a guarantee agency that has a basic program agreement. Under a reinsurance agreement, the Secretary reimburses the guarantee agency for 80 percent of its losses on default claim payments to lenders. This agreement is a prerequisite for the supplemental reinsurance agreement, under which the Secretary reimburses the guarantee agency for up to 100 percent of those losses.

(2) For the purpose of this section and § 682.405, "losses" means—

(i) The amount of unpaid principal and accrued interest the agency pays on a default claim filed by a lender on a reinsured loan, minus payments made by, or on behalf of, the borrower after the lender's claim is paid and before the Secretary reimburses the agency; and

(ii) An amount, not to exceed the lesser of $100 or two percent of the amount of unpaid principal the agency pays on a default claim, expended by the agency for the administrative costs of supplemental preclaim assistance for default prevention as defined in section 428(c)(6) of the Act, to the extent the agency has not been reimbursed for those costs under paragraph (e)(2)(ii) of this section or § 682.407.

(3) (i) Death and disability claims on loans made prior to December 15, 1968, are covered by the reinsurance agreement. The guarantee agency is not required to attempt to collect the loan from the borrower or the borrower's estate after the borrower dies or becomes totally and permanently disabled.

(ii) Death and disability claims on loans made after December 14, 1968, are not covered by the reinsurance agreement. Bankruptcy claims also are not covered. The Secretary's payments on these death, disability, and bankruptcy claims are addressed in § 682.402.

(4) A guarantee agency's loss on a loan that was outstanding when a reinsurance agreement was executed is covered by the reinsurance agreement only if the default on the loan occurs after the effective date of the agreement.

(b) In deciding whether to enter into or extend a reinsurance agreement, or, if an agreement has been terminated, whether to enter into a new agreement, the Secretary considers the adequacy of—

(1) Efforts by the guarantee agency and the lenders to which it provides guarantees to collect outstanding loans;

(2) Efforts by the guarantee agency to make GSLP and PLUS Program loans available to all eligible borrowers; and

(3) Other relevant aspects of the guarantee agency's program operations.

(c) The reinsurance agreement contains terms and conditions that the Secretary finds necessary to promote the purposes of the GSLP and the PLUS Program and to protect the United States from unreasonable risks of loss.

(d) A reinsurance agreement provides that payments made to a guarantee agency by a borrower must first be applied to the payment of all accrued interest, then to repayment of principal, then to payment of the agency's administrative costs of supplemental preclaims assistance for default prevention, and then to payment of other charges.

(e) (1) If a borrower makes payments on a loan after the Secretary has paid a reinsurance claim on that loan, the agency shall pay to the Secretary the Secretary's equitable share of those payments.

(2) For the purpose of this section and § 682.405, "the Secretary's equitable share" means that portion of borrower payments, attributable to principal, interest and administrative costs of supplemental preclaims assistance for default prevention, which remains after the agency has deducted—

(i) An amount equal to the complement of the reinsurance percentage which was in effect when the reinsurance payment was made by the Secretary; and

(ii) An amount, not exceeding 30 percent of borrower payments, expended by the agency for the administrative costs of collection of loans, the administrative costs of preclaim assistance for default prevention, the administrative costs of supplemental preclaims assistance for default prevention, and the administrative costs of monitoring the enrollment status of students and repayment status of borrowers, to the extent the agency has not been reimbursed for these costs under paragraph (a)(2) of this section or § 682.407.

(3)(i) The terms "administrative costs of collection of loans," "administrative costs of preclaim assistance for default prevention," and "administrative costs of supplemental preclaims assistance for default prevention," as used in this paragraph, are defined in section 428(c)(6) of the Act. The term "administrative costs of monitoring the enrollment status of students and repayment status of borrowers," as used in this paragraph, has the same meaning as "administrative costs of monitoring the enrollment and repayment status of students," as defined in section 428(c)(6) of the Act, except that the reference to repayment status, in cases where the borrower is a parent, refers to that of the parent borrower.

(ii) The term "overhead costs" used in those definitions includes space and utilities costs.

(4) Unless the Secretary approves otherwise, the guarantee agency shall pay to the Secretary the Secretary's equitable share of borrower payments

within 60 days of its receipt of the payments.

(5) If a guarantee agency, in determining the Secretary's equitable share of borrower payments, includes as an administrative cost a portion of the price of an asset it buys and—

(i) If the agency subsequently sells that asset, the agency shall promptly repay to the Secretary a percentage of the sale proceeds equal to the percentage of the original purchase price of the asset paid by the Secretary; or

(ii) If the agency subsequently converts the asset to a use unrelated to its GSLP or PLUS loan guarantee program, the agency shall promptly repay to the Secretary a percentage of the fair market value of the asset equal to the percentage of the original purchase price of the asset paid by the Secretary.

(Authority: 20 U.S.C. 1078, 1078–2, 1082)

§ 682.405 Supplemental Federal reinsurance.

(a) (1) The Secretary may enter into a supplemental reinsurance agreement with a guarantee agency that has a reinsurance agreement and that meets the requirements of this section. Under a supplemental reinsurance agreement, the Secretary reimburses the guarantee agency for up to 100 percent of its losses, with the following exceptions:

(i) When the total of reinsurance claims paid by the Secretary to a guarantee agency during any fiscal year reaches five percent of the amount of loans in repayment at the end of the preceding fiscal year, the Secretary's reinsurance payment on a default claim subsequently paid by the guarantee agency during that fiscal year equals 90 percent of its losses.

(ii) When the total of reinsurance claims paid by the Secretary to a guarantee agency during any fiscal year reaches nine percent of the amount of loans in repayment at the end of the preceding fiscal year, the Secretary's reinsurance payment on a default claim subsequently paid by the guarantee agency during that fiscal year is 80 percent of its losses.

(2) For purposes of this paragraph, the total of reinsurance claims paid by the Secretary to a guarantee agency during any fiscal year does not include amounts paid on claims by the guarantee agency—

(i) On loans considered in default under § 682.412(f); or

(ii) Under a policy established by the agency that is consistent with § 682.509(a)(1).

(3) Notwithstanding paragraph (a)(1) of this section, for a guarantee agency that entered into a basic program agreement under section 428(b) of the Act after September 30, 1976, or was not actively carrying on a loan guarantee program covered by a basic program agreement on October 1, 1976, the Secretary pays 100 percent of its losses under a supplemental reinsurance agreement during five consecutive fiscal years beginning with the first year of its operation. The Secretary monitors programs of this type and, if an agency does not prudently administer its program, the Secretary may determine that it does not continue to qualify for this exception.

(b) For purposes of this section—

(1) "Amount of loans in repayment" means the original principal amount of all loans guaranteed by the agency minus—

(i) The original principal amount of loans on which—

(A) The borrower has not yet reached the repayment period;

(B) Payment in full by the borrower has been made; or

(C) The borrower was in deferment status at the time repayment was scheduled to begin, and remains in deferment status; and

(ii) The amount paid by the agency for guarantee claims on loans, exclusive of claims paid—

(A) On loans considered in default under § 682.412(f); or

(B) Under a policy established by the agency that is consistent with § 682.509(a)(1).

(2) "Losses" is defined in § 682.404(a).

(3) "The Secretary's equitable share" is defined in § 682.404(e).

(c) (1) If a guarantee agency enters into a supplemental reinsurance agreement for both the GSLP and the PLUS Program, the agency must include its loans under both programs in calculating the Secretary's reinsurance payment percentage and the amount of loans in repayment.

(2) If a guarantee agency that has a reinsurance agreement for PLUS loans and GSLP loans under § 682.404 enters into a supplemental reinsurance agreement for one, but not both, of the programs, the guarantee agency must maintain separate records for each program sufficient to enable the Secretary to determine—

(i) The reinsurance percentage payable by the Secretary on reinsurance claims filed by the agency under each program; and

(ii) The Secretary's equitable share of borrower payments, as defined in § 682.404(e), received after payment by the Secretary of reinsurance claims under each program.

(d)(1) The supplemental reinsurance agreement requires that—

(i) The agency shall ensure that the program requirements of paragraph (e) of this section are continuously met;

(ii) An agreement may be renewed only if the agency's program complies with all the terms of the agreement and all pertinent provisions of the Act and applicable regulations; and

(iii) Before the Secretary pays a supplemental reinsurance claim, the guarantee agency must submit to the Secretary the quarterly report required by the Secretary for the previous quarter ending September 30, containing complete and accurate data, in order for the Secretary to calculate the amount of loans in repayment at the end of the preceding fiscal year.

(2) A supplemental reinsurance agreement may contain other requirements that the Secretary finds necessary.

(e)(1) *GSLP loan maximums.* (i) The maximum annual amount of a GSLP loan that a guarantee agency guarantees for an eligible student who is carrying at least a half-time workload for an academic year or its equivalent must be the maximum loan amount specified in § 682.204(a).

(ii) The maximum aggregate unpaid principal amount of GSLP loans that a guarantee agency guarantees for an eligible student must be the maximum amounts specified in § 682.204(b).

(2) *PLUS Program loan maximums.* (i) The maximum annual amount, attributable to one or more PLUS Program loans, that the agency guarantees for or on behalf of an eligible student who is carrying at least a half-time workload for an academic year or its equivalent, must be—

(A) The maximum loan amounts specified in § 682.204(c) (1) and (2); and

(B) At least $2,500 but not more than $3,000, in the case of a parent borrower on behalf of each eligible student.

(ii) The maximum aggregate unpaid principal, attributable to PLUS Program loans, that the agency guarantees for or on behalf of an eligible student must be—

(A) The amounts specified in § 682.204(d) (1) and (2); and

(B) At least $12,500 but not more than $15,000, in the case of a parent borrower on behalf of each eligible student.

(3) *Guarantee liability.* The guarantee agency shall guarantee 100 percent of the unpaid principal of each loan guaranteed.

(4) *School eligibility.* Except in the case of correspondence schools, a guarantee agency's eligibility criteria for the participation of schools in its program may not be more stringent than those for the FISLP and the Federal

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PLUS program. However, the agency may exclude a school from its program if—

(i) The school's eligibility is limited, suspended, or terminated by the Secretary under 34 CFR Part 668, or by the agency under standards and procedures approved by the Secretary; or

(ii) There is a State constitutional prohibition affecting the school's eligibility.

(5) *School lender provisions.* (i) The agency shall provide that a school may be a lender in its program under reasonable criteria unless—

(A) The school's lending eligibility has been limited, suspended, or terminated by the Secretary under § 682.606 or Subpart G of this part, or by the agency under standards and procedures approved by the Secretary; or

(B) There is a State constitutional prohibition affecting the school's lending eligibility.

(ii) The agency may not guarantee a loan made by a school lender that is not located in the geographic area that the agency serves.

(6) *Out-of-State schools.* The agency shall guarantee GSLP or PLUS loans for eligible borrowers who are legal residents of the State where the agency operates, but who attend participating schools out of the State, or, in the case of parent borrowers, are legal residents of the State where the agency operates, but are borrowing on behalf of students attending participating schools out of the State. In guaranteeing these loans, the agency must not impose any restrictions not applicable to borrowers who are legal residents of the State attending in-State schools, or to parent borrowers who are legal residents of the State and are borrowing for students attending in-State schools.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1082)

§ 682.406 Conditions of reinsurance coverage.

(a) The Secretary makes a reinsurance payment on a loan to a guarantee agency only if—

(1) The lender exercised due diligence in making, disbursing and servicing the loan, as prescribed by rules of the agency;

(2)(i) The loan check was cashed within 120 days after disbursement; or

(ii) The loan proceeds disbursed by electronic funds transfer in accordance with § 682.207(b)(1)(ii)(B) have not been released from the restricted account maintained by the school on or before that date.

(3) The lender exercised due diligence in collecting the loan through collection efforts meeting the requirements of § 682.411;

(4) The loan was in default before the agency paid a default claim filed thereon;

(5) The lender filed a default claim thereon with the guarantee agency within 90 days of default;

(6) The lender satisfied all conditions of guarantee coverage set by the agency unless the agency reinstated guarantee coverage on the loan, following the lender's failure to satisfy such a condition, pursuant to policies and procedures established by the agency.

(7) The agency paid a default claim filed by the lender thereon with the agency within 90 days of the date the lender filed the claim;

(8) The agency submitted a request for the payment no earlier than 90 days following default, on a form required by the Secretary; and

(9) The agency and lender complied with all other Federal requirements with respect to the loan.

(b) Notwithstanding paragraph (a) of this section, the Secretary may waive his right to refuse to make a reinsurance payment when, in the Secretary's judgment, the best interests of the United States so require.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1082)

§ 682.407 Administrative cost allowances for guarantee agencies.

(a)(1) The Secretary pays to a guarantee agency having a basic program agreement a primary administrative cost allowance and, to an agency having a reinsurance agreement, a secondary administrative cost allowance.

(2) Payments of allowances under this section to a guarantee agency for any fiscal year, for each administrative cost allowance, equal one-half of one percent of the total principal amount of loans guaranteed by the agency during that fiscal year.

(b)(1) The guarantee agency must submit an application for each allowance to the Secretary by January 1 of the fiscal year for which it is requesting the allowance.

(2) In addition to other information and assurances that the Secretary may reasonably require, the application must contain—

(i) Information showing the agency's ability to collect loans and provide preclaim assistance to its lenders, including descriptions of staff size and activities in these areas;

(ii) An estimate of the costs that will be eligible for payments under this section;

(iii) Assurances that sufficient administrative and fiscal procedures, including an independent audit, conducted in accordance with § 682.410(b)(1), will be used to ensure that administrative cost allowances are used in accordance with the provisions of this section;

(iv) A report of the most recent audit, conducted in accordance with § 682.410(b)(1), submitted in a format satisfactory to the Secretary;

(v) Assurances that the guarantee agency will furnish any further information, including estimates, that the Secretary may reasonably require to carry out the provisions of this section;

(vi) For the primary allowance only, an estimate of the total amount of new loan volume expected to be guaranteed during the fiscal year; and

(vii) For the secondary allowance only, assurances that the agency's program—

(A) Meets and will continue to meet all the requirements contained in § 682.405(e) for a supplemental reinsurance agreement;

(B) Guarantees GSLP or PLUS loans for eligible students who are not legal residents of the State where the agency operates, but who attend participating schools in the State, other than correspondence schools, without imposing any restrictions not imposed on legal residents of the State who attend schools in the State other than correspondence schools; and

(C) Guarantees PLUS loans to parent borrowers who are not legal residents of the State where the agency operates, but who are borrowing for students attending participating schools in the State, other than correspondence schools, without imposing any restrictions not imposed on residents of the State who borrow for students attending schools in the State, other than correspondence schools.

(4) The Secretary's payment of the secondary allowance establishes an agreement between the Secretary and the guarantee agency with respect to the assurances contained in the application.

(c)(1) A guarantee agency may use the administrative cost allowances only to meet administrative costs related to the GSLP and the PLUS Program.

(2) A guarantee agency may not use the administrative cost allowances to meet costs—

(i) Taken into account by the agency under the formula for determining the "Secretary's equitable share" of borrower payments made after the Secretary has paid reinsurance claims to the agency under § 682.404(e); or

(ii) For which the agency has been, or will be, reimbursed from a source other than the payment provided by this section.

(3) If a guarantee agency uses the allowances paid under this section to pay for a portion of the price of an asset it buys and—

(i) If the agency subsequently sells that asset, the agency shall promptly repay to the Secretary a percentage of the sale proceeds equal to the percentage of the original purchase price of the asset paid for with the allowances; or

(ii) If the agency subsequently converts the asset to a use unrelated to its GSLP or PLUS loan guarantee program, the agency shall promptly repay to the Secretary a percentage of the fair market value of the asset equal to the percentage of the original purchase price of the asset paid for with the allowances.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1082)

(Reporting and recordkeeping requirements contained in paragraph (b)(2) were approved by the Office of Management and Budget under control number 1840-0538)

§ 682.408 GSLP loan disbursement through a guarantee agency escrow agent.

(a) *General.* (1) A guarantee agency may act as an escrow agent for the purpose of receiving GSLP loan proceeds disbursed by an eligible lender, other than a school or State lender, and transmitting those proceeds to borrowers, if the lender and guarantee agency have entered into an agreement for this purpose.

(2) In its capacity as escrow agent, the guarantee agency may—

(i) Commingle the proceeds of the GSLP loans paid to it pursuant to an escrow agreement;

(ii) Invest the GSLP loan proceeds only in obligations of the Federal Government or obligations that are insured or guaranteed by the Federal Government; and

(iii) Retain for its own use interest or other earnings on those investments.

(b) *Disbursement by the lender.* Subject to § 682.207(b)(1)(iii), the lender may disburse the loan proceeds to the escrow agent using any method agreed to by the escrow agent and the lender.

(c) *Transmittal of loan proceeds to a school by the escrow agent.* The escrow agent shall transmit loan proceeds received from a lender under this section to the school in accordance with the requirements of § 682.207(b)(1) (ii) and (iv) no later than 30 days after receipt of the funds from the lender.

(d) *Return of untransmitted proceeds.* The escrow agent shall return any untransmitted proceeds of a loan to the lender within 15 working days after learning that the student has not enrolled, or has ceased to be enrolled, on at least a half-time basis for the period of enrollment for which the loan was intended.

(Authority: 20 U.S.C. 1078, 1082)

§ 682.409 Mandatory assignment by guarantee agencies of defaulted loans to the Secretary.

(a) When the Secretary determines that such action is necessary to protect the Federal fiscal interest, the Secretary may direct a guarantee agency to assign to the Secretary for collection a defaulted loan on which the Secretary has made a payment under §§ 682.404 or 682.405. In making this determination, the Secretary considers all relevant information available to the Secretary, including any information and documentation submitted by the guarantee agency.

(b)(1) When a guarantee agency assigns a defaulted loan to the Secretary under this section, the agency releases all rights and title to that loan. The Secretary does not pay the guarantee agency any compensation for a loan assigned under this section.

(2) The agency does not share in any amounts received by the Secretary on a loan assigned under this section, regardless of the reinsurance percentage paid on the loan or the agency's previous collection costs.

(c)(1) A guarantee agency shall assign a loan to the Secretary under this section at such time, in such a manner, and with such documentation as the Secretary may require.

(2) The documents that the assignor agency shall submit with a loan include, but are not limited to—

(i) The loan application;

(ii) The promissory note; and

(iii) The payment and collection histories for the loan.

(3) The guarantee agency shall execute an assignment to the United States of America of all right, title, and interest in the promissory note evidencing a loan assigned under this section.

(d) Assignment of a loan does not affect calculation of any default rate under this Part. However, the Secretary accounts, in calculations of relevant default rates, for any collections achieved by the Secretary on loans assigned by an agency.

(Authority: 20 U.S.C. 1078, 1078-2, 1082)

(Reporting and recordkeeping requirements contained in paragraph (c) were approved by the Office of Management and Budget under control number 1840-0538)

§ 682.410 Fiscal, administrative, and enforcement requirements.

(a) *Fiscal requirements.* A guarantee agency shall establish, at a minimum, the following fiscal procedures:

(1) The guarantee agency shall establish and maintain a reserve fund to which the guarantee agency shall credit—

(i) Federal advances obtained under, and matching funds required by, section 422(a) of the Act;

(ii) Funds appropriated by a State for the agency's loan guarantee program;

(iii) Federal advances obtained under § 682.403;

(iv) Funds received by the guarantee agency as loan insurance premiums;

(v) Administrative cost allowances received by the guarantee agency under § 682.407;

(vi) Funds received by the guarantee agency for the agency's loan guarantee program from gift, grant, or other sources;

(vii) Funds collected on defaulted loans;

(viii) Death, disability, bankruptcy, and reinsurance payments received from the Secretary; and

(ix) Funds earned from investments under paragraph (a)(5) of this section.

(2) Except as provided in paragraphs (a)(3) and (a)(4) of this section, a guarantee agency may use the assets of the reserve fund established under paragraph (a)(1) of this section only to—

(i) Guarantee loans under the guarantee agency's loan guarantee program;

(ii) Pay default claims;

(iii) Pay death, disability, and bankruptcy claims;

(iv) Refund overpayments of insurance premiums;

(v) Pay to the Secretary the Secretary's equitable share of borrower payments; and

(vi) Repay advances made by the Secretary.

(3) Except as provided in paragraph (a)(4) of this section, a guarantee agency may also use loan insurance premiums, administrative cost allowances, interest or investment earnings, and funds described in paragraph (a)(1)(vi) of this section for payments necessary for the proper administration of the guarantee agency's loan guarantee program.

(4)(i) The guarantee agency may use the amount of Federal advances identified in paragraph (a)(1)(iii) of this section, and interest or other earnings on those advances, only to pay default claims.

(ii) The guarantee agency shall account separately for the funds

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described in paragraph (a)(4)(i) of this section.

(5) The guarantee agency may invest the assets of the reserve fund described in paragraph (a)(1) of this section only in low-risk securities, such as obligations issued or guaranteed by the United States or a State, and shall exercise the level of care in that investment required of a fiduciary charged with the duty of investing the money of others.

(6) If the guarantee agency uses loan insurance premiums or funds earned from investments under paragraph (a)(5) of this section to buy an asset and—

(i) If the agency subsequently sells that asset, the agency shall promptly deposit into the reserve fund described in paragraph (a)(1) of this section a percentage of the sale proceeds equal to the percentage of the original purchase price of the asset paid with the insurance premiums and investment earnings; or

(ii) If the agency subsequently converts the asset to a use unrelated to its GSLP or PLUS loan guarantee program, the agency shall promptly deposit into the reserve fund described in paragraph (a)(1) of this section a percentage of the fair market value of the asset equal to the percentage of the original purchase price paid with the insurance premiums or investment earnings.

(b) *Administrative requirements.* A guarantee agency shall establish, at a minimum, the following administrative procedures:

(1) The guarantee agency shall arrange for an independent biennial financial and compliance audit of the agency's guaranteed loan program that meets each of the following requirements:

(i) The audit must examine the agency's compliance with the Act, applicable regulations, and agreements entered into under this part.

(ii) The audit must examine the agency's financial management of its loan guarantee program.

(iii) The audit must be conducted in accordance with the general standards and the standards for financial and compliance audits of the United States General Accounting Office's (GAO) *Standards for Audit of Governmental Organizations, Programs, Activities and Functions.* Procedures for audits are contained in audit guides developed by, and available from, the Office of the Inspector General of the Department. These audit guides do not impose any requirements beyond those imposed under applicable statutes and regulations, and GAO's *Standards.*

(iv) The audit must be conducted not less frequently than once every two years, and must be submitted to the Secretary within six months of the end of the audit period. The first audit must cover the agency's activities for a period beginning no later than the effective date of this requirement. Each subsequent audit must cover the agency's activities for a period beginning no later than the end of the period covered by the preceding audit.

(v) With regard to a guarantee agency that is an agency of a State government, an audit conducted in accordance with 31 U.S.C. 7502 satisfies the requirements of this paragraph for the period covered by the audit.

(2) The guarantee agency shall charge interest on the amount for which the Secretary has paid a reinsurance claim to the guarantee agency, at a rate that is the greater of—

(i) The rate established by the terms of the original promissory note; or

(ii) The rate provided for by State law.

(3) The guarantee agency shall promptly report to all national credit bureaus—

(i) The date of default;

(ii) Information concerning collection of the loan, including the repayment status of the loan; and

(iii) The date the loan is fully repaid by or on behalf of the borrower or discharged by reason of the borrower's death, bankruptcy or total and permanent disability.

(4)(i) The guarantee agency shall engage in at least the collection efforts described in paragraphs (b)(4) (iii)–(ix) of this section on a loan on which it pays a default claim filed by a lender.

(ii)(A) The periods of time set forth in paragraphs (b)(4) (iii)–(vii) of this section refer to the number of days that elapse from the date the agency pays a default claim on a loan or, in the case of a borrower whom the agency locates through the use of skip tracing under paragraph (b)(4)(xii) of this section, the number of days that elapse from the date the agency obtains the borrower's correct address. References to the "borrower" include all endorsers on a loan.

(B) Upon receipt of a payment from a borrower, the agency is not required to follow the specific collection efforts described in paragraphs (b)(4) (iii)–(vii), but shall diligently attempt to collect the loan for 60 days following receipt of the payment. If no subsequent payments are received during the 60-day period, the agency shall resume its use of the collection efforts described in this paragraph (b)(4), treating the first day after the end of the 60-day period as the first day of the period described in paragraph (b)(4)(iv) of this section.

(iii) One–45 days: During this period, the agency shall—

(A) Send a written notice to the borrower stating that the agency has paid a default claim filed by the lender on the loan, and has taken assignment of the loan. In addition, the notice must forcefully demand that the borrower immediately commence repayment of the loan, and must inform the borrower that the agency will report the default to all national credit bureaus, thereby damaging the borrower's credit rating, may institute a civil suit against the borrower to compel repayment of the loan, and may refer the debt to the Department for collection by offset against Federal income tax refunds due the borrower; and

(B) Diligently attempt to contact the borrower by telephone to demand repayment of the loan.

(iv) Forty-six–90 days: During this period the agency shall—

(A) Diligently attempt to contact the borrower by telephone to demand repayment of the loan; and

(B) Send a written notice to the borrower demanding that the borrower immediately commence repayment of the loan, and informing the borrower that the default has been reported to a credit bureau and that the borrower's credit rating has thereby been damaged.

(v) Ninety-one–135 days: During this period, the agency shall—

(A) Diligently attempt to contact the borrower by telephone to demand repayment of the loan; and

(B) Send one additional collection letter at least as forceful as the notice described in paragraph (b)(4)(iii)(A) of this section.

(vi) One hundred thirty-six–180 days: During this period, the agency shall send a written notice to the borrower forcefully demanding repayment in full on the loan, and indicating that it is the final notice the borrower will receive before the agency may institute a civil suit to compel repayment of the loan;

(vii) One hundred eighty-one–225 days: During this period, but not sooner than 30 days after sending the notice described in paragraph (b)(4)(vi) of this section, the agency shall institute a civil suit against the borrower for repayment of the loan, unless the agency determines, and documents in the borrower's file, that—

(A) The cost of litigation would exceed the likely recovery if litigation were commenced; or

(B) The borrower does not have the means to satisfy a judgment on the debt, or a substantial portion thereof.

(viii)(A) If the agency does not institute a civil suit against the borrower for repayment of the loan as a result of a determination made pursuant to paragraph (b)(4)(vii)(B) of this section, the agency shall conduct diligent semi-annual inquiries to determine if the borrower has since acquired the means to satisfy a judgment on the debt, or a substantial portion thereof.

(B) If the agency determines that the borrower has acquired the means to satisfy a judgment on the debt, or a substantial portion thereof, and that the cost of litigation would not exceed the likely recovery if litigation were commenced, then if subsequent collection efforts are not successful, the agency shall, no later than 60 days after the determination, institute a civil suit against the borrower for repayment of the loan.

(C) Determinations made pursuant to this paragraph must be documented in the borrower's file.

(ix)(A) The agency shall diligently attempt to enforce a judgment obtained against a borrower respecting a loan. If, after doing so, the agency is unable to obtain full satisfaction of the judgment because the borrower lacks the means to pay, the agency shall conduct diligent semi-annual inquiries to determine if the borrower has since acquired the means to satisfy the remainder of the judgment.

(B) If the agency determines that the borrower has acquired the means to satisfy the remainder of the judgment, the agency shall, not later that 60 days thereafter, notify the borrower in writing of its intention to resume enforcement efforts on the judgment unless the borrower makes payment in full on all outstanding amounts.

(C) If the borrower does not make payment in full within 30 days of the date the agency sends the notice described in the preceding paragraph, the agency shall, within 30 days thereafter, institute civil proceedings to enforce the remainder of the judgment.

(x) The agency may discontinue conducting the semi-annual inquiries concerning a borrower's means required by paragraphs (b)(4) (viii) and (ix) of this section only in accordance with write-off criteria and procedures approved by the Secretary.

(xi) Not withstanding paragraphs (b)(4) (vii)–(x), the agency shall file a civil suit against the borrower for repayment of the loan, or to enforce a judgment obtained thereon, prior to the date on which the applicable statute of limitations elapses unless the agency—

(A) Determines, and documents in the borrower's file, that the cost of litigation would exceed the likely recovery if litigation were commenced; or

(B) Has previously written off the debt in accordance with write-off criteria and procedures approved by the Secretary.

(xii) Not later than 10 days after its receipt of information indicating that it does not know the borrower's current address, or the 60th day after its payment of a default claim on a loan, whichever is later, the agency shall diligently attempt to locate the borrower through the use of all available skip-tracing techniques, including, but not limited to, any skip-tracing assistance available from the Internal Revenue Service, credit bureaus, and State motor vehicle departments.

(c) *Enforcement requirements.* A guarantee agency shall take such measures, and establish such controls, as are necessary to ensure its vigorous enforcement of all Federal, State, and guarantee agency requirements applicable to its loan guarantee program, including, at a minimum, the following:

(1) Conducting comprehensive biennial on-site program reviews of at least—

(i) Each participating lender whose loan volume guaranteed by the agency in the preceding year—

(A) Equaled or exceeded two percent of the total of all loans guaranteed in that year by the agency; or

(B) Was one of the ten largest among lenders whose loans were guaranteed in that year by the agency; and

(ii) Each participating school whose students received, or benefitted from, loans guaranteed by the agency in the preceding year, the total amount of which—

(A) Equaled or exceeded two percent of the total of all loans guaranteed in the preceding year by the agency; or

(B) Was one of the ten largest among schools whose students received or benefitted from loans guaranteed in that year by the agency.

(2) Seeking prompt repayment of all funds found in those reviews to have been improperly retained by the participants, and monitoring the implementation by participants of corrective actions required by the agency as a result of those reviews.

(3) Adopting procedures for identifying fraudulent loan applications.

(4) Undertaking, or arranging with State or local law enforcement agencies for, the prompt and thorough investigation of all allegations and indications of criminal or other programmatic misconduct, including violations of Federal law or regulations, by its program participants.

(5) Promptly reporting all of the allegations and indications having a substantial basis in fact, and the scope, progress, and results of the agency's investigations thereof, to the Secretary.

(6) Referring appropriate cases to State or local authorities for criminal prosecution or civil litigation.

(7) Cooperating with all program reviews, investigations, and audits conducted by the Secretary relating to the agency's loan guarantee program.

(Authority: 20 U.S.C. 1078, 1078–1, 1082, 1097)

§ 682.411 Due diligence by lenders in the collection of guarantee agency loans.

(a) In the event of delinquency on a loan guaranteed by a guarantee agency, the lender shall engage in at least the collection efforts described in paragraphs (c)–(h) of this section.

(b) For purposes of this section, delinquency on a loan begins on the first day after the due date of the first missed payment not later made, or 30 days after the day the lender discovers that the borrower has entered the repayment period, whichever is later. If a payment is made late, the first day of delinquency is the day after the due date of the next missed payment not later made.

(c) One—30 days delinquent: During this period, the lender shall send at least two written notices or collection letters to the borrower informing the borrower of the delinquency and urging the borrower to make payments sufficient to eliminate the delinquency.

(d) Thirty-one—60 days delinquent: During this period, the lender shall make diligent efforts to contact the borrower by telephone. If the lender is unable, despite those efforts, to reach the borrower by telephone, the lender shall send at least two forceful collection letters to the borrower urging the borrower to cure the delinquency. The letters shall also warn the borrower that, if the delinquency is not cured, the lender will assign the loan to the guarantee agency which in turn will report the default to a credit bureau, thereby damaging the borrower's credit rating, and may bring suit against the borrower to compel repayment of the loan.

(e) Sixty-one—150 days delinquent: During each thirty-day period comprising this period, the lender shall again make diligent efforts to contact the borrower by telephone. During each thirty-day period, if the lender is unable, despite those efforts, to reach the borrower by telephone, the lender shall send at least one more collection letter no less forceful than those described in paragraph (d) of this section.

(f) One hundred fifty-one—180 days delinquent: During this period, the lender shall send a final demand letter to the borrower, unless the borrower's

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address is unknown, requiring repayment of the loan in full and notifying the borrower that a default will be reported to all national credit bureaus. The lender shall allow the borrower at least 30 days to respond to the final demand letter and to make payments sufficient to bring the loan out of default before filing a default claim on the loan or reporting that default to a credit bureau.

(g) Within 10 days of its receipt of information indicating it does not know the borrower's current address, the lender shall diligently attempt to locate the borrower, through the use of normal commercial skip-tracing techniques. These efforts shall include, but not be limited to, contacting the endorser, relatives, references, and any other individuals and entities identified in the borrower's loan file.

(h) If the agency that guaranteed the loan offers preclaims assistance, the lender shall request that assistance within 10 days of the date that assistance is first available from the agency.

(Authority: 20 U.S.C. 1078, 1078–1, 1082, 1087–1)

(Approved by OMB under control number 1840–0538)

§ 682.412 Consequences of the failure of a borrower or student to establish eligibility.

(a) The lender shall immediately send a final demand letter to the borrower, as required by § 682.411(g), when it learns that the borrower or, if applicable, the student on whose behalf a parent has borrowed—

(1) Did not qualify for all or a portion of a loan made under this part; or

(2) Has received a GSLP loan subject to payment of Federal interest benefits as provided under § 682.301, but is in fact ineligible for some or all of those interest benefits.

(b) The lender shall neither bill the Secretary nor be entitled to interest benefits on a loan after it learns that one of the conditions described in paragraph (a) of this section exists with respect to the loan.

(c) In the final demand letter, transmitted under paragraph (a) of this section, the lender shall demand that, within 30 days, the borrower repay in full the principal amount of the ineligible portion of the loan, accrued interest thereon, and all interest benefits paid by the Secretary thereon.

(d) If the borrower repays the amounts described in paragraph (c) of this section within the 30-day period, the lender shall, on its next quarterly interest billing submitted under § 682.304, refund to the Secretary the interest benefits repaid by the borrower, and all other interest benefits previously billed to the Secretary on the ineligible portion of the loan.

(e) If the borrower repays to the lender the principal amount of the ineligible portion of the loan, the lender shall treat that payment as a prepayment on the loan.

(f) If a borrower fails to comply with the terms of a final demand letter described in paragraph (a) of this section, the loan shall be considered in default. The lender shall, on its next quarterly interest request submitted under § 682.304, refund the interest paid on the ineligible portion of the loan by the Secretary, and the lender shall file a default claim thereon with the guarantee agency for the entire unpaid balance of principal and accrued unpaid interest within the time specified in § 682.406(a)(4).

(Authority: 20 U.S.C. 1077, 1078, 1078–2, 1082)

(Reporting and recordkeeping requirements contained in paragraph (c) were approved by the Office of Management and Budget under control number 1840–0538)

§ 682.413 Remedial actions.

(a) The Secretary requires a lender to repay interest benefits and special allowance on a loan guaranteed by a guarantee agency—

(1) For any period beginning on the date of a failure by the lender, with respect to the loan, to comply with any of the requirements set forth in § 682.406(a)(1)–(a)(5) and (a)(9);

(2) For any period beginning on the date of the lender's failure, with respect to the loan, to meet a condition of guarantee coverage established by the guarantee agency, to the date, if any, on which the guarantee agency reinstated the guarantee coverage pursuant to policies and procedures established by the agency;

(3) For any period as to which the lender, with respect to the loan, violates the requirements of Subpart C of this part; and

(4) For any period beginning on the day after the Secretary's obligation to pay special allowance on the loan terminates under § 682.302(d).

(b) The Secretary requires a guarantee agency to repay reinsurance payments on a loan—

(1) If the lender or the agency failed to meet the requirements of § 682.406(a); or

(2) If the agency failed to exercise due diligence in collection of the loan in accordance with procedures established under § 682.410(b)(4).

(c) In addition to requiring repayment of reinsurance payments pursuant to paragraph (b) of this section, the Secretary may take one or more of the following remedial actions against a guarantee agency that makes an incomplete or incorrect statement in connection with any agreement entered into under this part, or violates any applicable Federal requirement:

(1) Require the repayment by the agency of payments made to the agency.

(2) Withhold payments to the agency.

(3) Limit the terms and conditions of the agency's continued participation in the GSLP or PLUS Program.

(4) Suspend or terminate agreements with the agency.

(5) Require repayment from the agency of any related payments which the Secretary has become obligated to make to others.

(d) The Secretary's decision to require repayment of funds by a lender or agency, to withhold funds from an agency, or to limit, suspend, or terminate an agency's GSLP or PLUS Program participation, does not become final until the Secretary provides the lender or agency with written notice of the intended action and an opportunity to be heard thereon. However, the Secretary may withhold payments from an agency or suspend an agreement with an agency prior to giving notice and an opportunity to be heard if the Secretary finds that emergency action necessary to prevent substantial harm to Federal interests.

(e) Notwithstanding paragraphs (a)–(d) of this section, the Secretary may waive the right to require repayment of funds by a lender or agency if, in the Secretary's judgment, the best interests of the United States so require.

(f) Once final, the Secretary's decision to require repayment of funds or to take other remedial action against a lender or guarantee agency under this section is conclusive and binding on the lender or agency. (Note: A decision by the Secretary under this section is subject to judicial review under 5 U.S.C. 706 and 41 U.S.C. 321–322.)

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1082, 1087–1, 1097)

§ 682.414 Records, reports, and inspection requirements for guarantee agency programs.

(a) *Records.* (1) A guarantee agency shall keep the records required by this section and such other records as are necessary to document fully the accuracy of reports required by this subpart and the right of the agency to receive or retain payments made by the Secretary under this part.

(2) The guarantee agency shall retain records for each loan for at least five years after the loan is paid in full or has been determined to be uncollectable in accordance with the agency's write-off

procedures. For the purposes of this section, the term "paid in full" includes loans paid by the Secretary on account of the borrower's death or permanent and total disability, or discharge of the loan in bankruptcy.

(3)(i) The guarantee agency shall require a participating lender to keep complete and accurate records of each loan that it holds, including but not limited to the records described in paragraph (a)(3)(ii) of this section. The records must be organized in such a way as to permit ready identification of the current status of each loan.

(ii) The lender shall keep—

(A) The loan application;

(B) The original promissory note, including the repayment instruments, until the loan is fully repaid, after which a copy is required;

(C) The repayment schedule;

(D) A record of each disbursement of loan proceeds;

(E) Notices of changes in a borrower's address and status as at least a half-time student;

(F) Evidence of the borrower's eligibility for a deferment;

(G) The documents required for the exercise of forbearance;

(H) Documentation of the assignment of the loan;

(I) A payment history showing the date and amount of each payment received from or on behalf of the borrower, and the amount of each payment which was attributed to principal and to interest;

(J) A collection history, showing the date and subject of each communication between the lender and the borrower or endorser relating to collection of a delinquent loan, each communication between the lender and a credit bureau regarding the loan, each effort to locate a borrower whose address was unknown at any time and each request by the lender for preclaims assistance on the loan; and

(K) Any additional records that are necessary to document the validity of a claim against the guarantee or the accuracy of reports submitted under this part.

(iii) A lender shall retain the records required for each loan for not less than five years following the date the loan is repaid in full by the borrower or the lender is reimbursed on a claim. However, in particular cases the Secretary or the guarantee agency may require the retention of records beyond this minimum period.

(4)(i) A guarantee agency or lender may store the records specified in paragraphs (a)(3)(ii)(C)–(K) of this section on microfilm or computer format.

(ii) A lender or guarantee agency holding a promissory note shall retain the original note until the loan is paid in full or assigned to the Secretary. When a loan is paid in full by the borrower, the lender or guarantee agency shall either return the original note to the borrower or notify the borrower, under a procedure that is alternatively acceptable under State law, that the loan is paid in full, and retain a copy for the prescribed period.

(iii) Either the lender or guarantee agency shall retain the original loan application or a copy.

(b) *Reports.* A guarantee agency shall submit to the Secretary the following reports:

(1) A report concerning the status of the agency's reserve fund and the operation of the agency's loan guarantee program, at such time and in the manner that the Secretary may reasonably require. The Secretary does not pay the agency amounts that are dependent upon data contained in the report until a complete and accurate report is received.

(2) Annually, for each State in which it operates, a report of the total guaranteed loan volume, default volume, and default rate for each of the following categories of originating lenders on all loans guaranteed after December 31, 1980:

(i) Schools.

(ii) State or private nonprofit lenders.

(iii) Commercial financial institutions (banks, savings and loan associations, and credit unions).

(iv) All other types of lenders.

(3) For a guarantee agency with a supplemental reinsurance agreement, by July 1 of each year, a report on—

(i) Its eligibility criteria for school lenders;

(ii) Its procedures for the limitation, suspension, and termination of schools and lenders;

(iii) A list of all schools that applied for lender eligibility in the preceding 12 months and a summary of the action taken on those applications;

(iv) A list of all school lenders participating in the agency's program;

(v) A description of any actions taken in the preceding 12 months to limit, suspend, or terminate the participation of a school or lender in the agency's program; and

(vi) The steps the agency has taken to ensure its compliance with § 682.410(c) (2)–(6), including the identity of any law enforcement agency with which the agency has made arrangements for that purpose.

(4) Any other information concerning the loan insurance program, at such frequency as determined by the Secretary.

(c) *Inspection requirements.* (1) A guarantee agency shall give the Secretary or the Secretary's designee access to its records in order to verify the correctness of the reports described in paragraph (b) of this section, or the right of the agency to receive or retain payments made by the Secretary under this part.

(2) A guarantee agency shall require in its agreement with a lender, or in its published rules or procedures, that the lender, or its agent, give the Secretary or the Secretary's designee and the guarantee agency access to the lender's records in order to verify the accuracy of the information provided by the lender pursuant to § 682.401(b) (12) and (13), and the right of the lender to receive or retain payments made under this part.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1082, 1087–1)

(Reporting and recordkeeping requirements contained in paragraph (a)(3) and (b)(2) were approved by the Office of Management and Budget under control number 1840–0538)

Subpart E—Federal Insured Student Loan Program and Federal PLUS Program

§ 682.500 Circumstances under which loans may be guaranteed by the Secretary.

(a) The Secretary may guarantee all—

(1) FISLP and Federal PLUS Program loans made by lenders located in a State in which no State or private nonprofit guarantee agency has in effect an agreement with the Secretary under § 682.401 to serve as guarantor in that State;

(2) Federal PLUS Program loans made by lenders in a State in which a State or private nonprofit guarantee agency has in effect an agreement with the Secretary under § 682.401 but does not provide a loan guarantee program for PLUS borrowers; and

(3) FISLP loans made by lenders located in a State in which a guarantee agency program is operating but is not reasonably accessible to students who meet the agency's residency requirements.

(b) The Secretary may guarantee FISLP loans made by a lender located in a State where a guarantee agency operates a program that is reasonably accessible to students who meet the residency requirements of that program only for—

(1) A student who does not meet the agency's residency requirements;

(2) A lender who is not able to obtain a guarantee from the guarantee agency for at least 80 percent of the loans the

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lender intends to make over a 12-month period because of the agency's residency requirements;

(3) With the approval of the guarantee agency, a student who has previously received from the same lender a FISLP loan that has not been repaid; or

(4) All students at a school located in the State, if the Secretary finds that—

(i) No single guarantee agency program is reasonably accessible to students at that school, as compared to students at other schools during a comparable period of time; and

(ii) Guaranteeing loans made in the State to students attending that school would significantly increase the access of students at that school to GSLP loans. The Secretary may guarantee loans made to those students by a lender in that State if—

(A) The guarantee agency does not recognize the school as being eligible, but the school is eligible under the FISLP; or

(B) A majority of the persons enrolled at the school meet the conditions of student eligibility for FISLP loans, but are not recognized as eligible under the guarantee agency program.

(c) For purposes of paragraph (b) of this section, a lender is considered to be located in the same State as a school if the lender—

(1) Has a relationship with the school such that the school will be considered to have originated loans made to students at that school;

(2) Has a majority of its voting stock held by the school; or

(3) Has common ownership or management with the school and more than 50 percent of the loans made by that lender are made to students at that school.

(d) As a condition for guaranteeing loans under the FISLP, the Secretary may require the lender to submit evidence of circumstances that would justify loan guarantees under the provisions of this section.

(e) With regard to a school lender which has entered into an agreement with the Secretary under § 682.601, the Secretary denies loan guarantees on the basis of this section only if the Secretary first determines that all eligible students at that school who make a conscientious effort to obtain a loan from another lender will find a loan to be reasonably available. For purposes of this paragraph, the determination of loan availability is based on studies and surveys which the Secretary considers satisfactory.

(Authority: 20 U.S.C. 1071, 1073, 1078–2, 1082)

§ 682.501 Extent of Federal guarantee under the FISLP and the Federal PLUS Program.

(a) *General.* Except as provided in paragraph (b) of this section, the Secretary's guarantee liability on any FISLP loan or Federal PLUS Program loan is 100 percent of the unpaid principal balance and, to the extent permitted under § 682.512, accrued interest.

(b) *Special provisions for State lenders.* (1) Except as described in paragraph (b)(2) of this section, the Secretary's guarantee liability is less than 100 percent under the following conditions:

(i) When the total of default claims under the FISLP and the Federal PLUS Program paid by the Secretary to a State lender during any fiscal year reaches five percent of the amount of the FISLP and Federal PLUS Program loans in repayment at the end of the preceding fiscal year, the Secretary's guarantee liability on a claim subsequently paid during that fiscal year is 90 percent of the amount of the unpaid principal balance plus accrued interest.

(ii) When the total of default claims under the FISLP and the Federal PLUS Program paid by the Secretary to a State lender during any fiscal year reaches nine percent of the amount of the FISLP and Federal PLUS Program loans in repayment at the end of the preceding fiscal year, the Secretary's guarantee liability on a claim subsequently paid during that fiscal year is 80 percent of the amount of the unpaid principal balance plus accrued interest.

(iii) For purposes of this paragraph, the total default claims paid by the Secretary during any fiscal year does not include paid claims filed by the lender under the provisions of § 682.208(d) or § 682.509.

(2) The potential reduction in guarantee liability does not apply to a State lender during the first Federal fiscal year of its operation as a lender under either the FISLP or the Federal PLUS Program, and during each of the four succeeding fiscal years.

(3) For the purposes of this section, the term "amount of the FISLP and Federal PLUS Program loans in repayment" means the original principal amount of all FISLP and Federal PLUS Program loans guaranteed by the Secretary less—

(i) The original principal amount of loans on which—

(A) Under the FISLP, the borrower has not yet reached the repayment period;

(B) Payment in full has been made by the borrower; or

(C) The borrower was in deferment status at the time repayment of principal was scheduled to begin, and remains in deferment status; and

(ii) The amount paid by the Secretary for default claims on loans, exclusive of paid claims filed by the lender under § 682.208(d) or § 682.509.

(4) For the purposes of this paragraph, payments by the Secretary on a loan that the original lender assigned to a subsequent holder are considered payments made to the original lender.

(5) State lenders shall consolidate FISLP and Federal PLUS Program loans for the purpose of calculating the amount of the Secretary's guarantee liability under this section.

(Authority: 20 U.S.C. 1075, 1078–2, 1082)

§ 682.502 The application to be a lender.

(a) In order to be considered for participation in the FISLP and the Federal PLUS Program, a lender must submit an application to the Secretary.

(b) In determining whether to enter into a guarantee contract with an applicant, and, if so, what the terms of the contract will be, the Secretary considers—

(1) Whether the applicant meets the definition of an "eligible lender" in section 435(g)(1) of the Act and the definition of "lender" in § 682.200;

(2) Whether the applicant is capable of complying with the regulations in this part as they apply to lenders;

(3) Whether the applicant is capable of implementing adequate procedures for making, servicing, and collecting loans;

(4) Whether the applicant has had prior experience with a similar Federal, State, or private nonprofit student loan program, and the amount and percentage of loans that are currently delinquent or in default under that program;

(5) The financial resources of the applicant; and

(6) In the case of a school that is seeking approval as a lender, its accreditation status (with the preferred condition being accredited).

(c) The Secretary may require an applicant to submit sufficient materials with its application so that the Secretary may fairly evaluate it in accordance with the criteria in this section.

(d) Denial of participation: (1) If the Secretary decides not to approve the application for an insurance contract, the reason for the decision is included in the Secretary's response.

(2) The Secretary provides an opportunity for the lender to meet with a designated Department official if the lender wishes to appeal the Secretary's decision.

(3) However, the Secretary need not explain the reasons for the denial, or grant the lender an opportunity to appeal, if the lender submits its application within 6 months of a previous denial.

(Authority: 20 U.S.C. 1078–2, 1079, 1082)

§ 682.503 The guarantee contract.

(a)(1) To participate in the FISLP and Federal PLUS Program, a lender must hold a guarantee contract with the Secretary. No loan is guaranteed unless it is covered by such an agreement.

(2) In general, under a guarantee contract, the lender agrees to comply with all laws, regulations, and other requirements applicable to its participation as a lender in the FISLP and the Federal PLUS Program. In return the Secretary agrees to guarantee each eligible FISLP and Federal PLUS Program loan held by the lender against the borrower's default, death, total and permanent disability, or bankruptcy.

(3) The Secretary may include in a contract a limit on the duration of the contract and the number or amount of FISLP or Federal PLUS Program loans the lender may make or hold.

(b)(1) Except as otherwise approved by the Secretary, a guarantee contract with a school lender limits the FISLP and Federal PLUS Program loans made by that school lender that will be covered by the Federal guarantee to those loans made to students, or to parents borrowing on behalf of students, who are—

(i) In attendance at that school;

(ii) In attendance at other schools under the same ownership as that school; or

(iii) Employees or dependents of employees, or whose parents are employees, of that school lender or other schools under the same ownership, under circumstances the Secretary considers appropriate for loan guarantees.

(2) A limit imposed under paragraph (b)(1) of this section on a school lender that makes loans to students, or to parents of students, in attendance at other schools under the same ownership, or to employees, or to dependents or parents of employees of those other schools, may be imposed on a school-by-school basis.

(Authority: 20 U.S.C. 1078–2, 1079, 1082)

§ 682.504 Issuance of Federal loan guarantees.

(a) A lender having a guarantee contract shall submit an application to the Secretary for a Federal loan guarantee on each intended loan that the lender determines to be eligible for a guarantee. The application must be on a form prescribed by the Secretary. The Secretary notifies the lender whether the loan can be guaranteed and the amount of the guarantee. No disbursement on a loan made prior to the Secretary's approval of that loan is covered by the guarantee.

(b) The Secretary issues a guarantee on a FISLP or Federal PLUS Program loan in reliance on the implied representations of the lender that all requirements for the initial eligibility of the loan for guarantee coverage have been met. As described in § 682.513, the continuance of the guarantee is conditioned upon compliance by all holders of the loan with the regulations in this part. The delegation of functions to a servicing agency or another party does not relieve the lender of its responsibilities in the making, servicing, and collecting of a FISLP or Federal PLUS Program loan.

(Authority: 20 U.S.C. 1078–2, 1079, 1082)

§ 682.505 Insurance premium.

(a) *General.* The Secretary charges the lender an insurance premium for each loan that is guaranteed.

(b) *Rate.* The rate of the insurance premium is one-fourth of one percent per year of the loan principal, excluding interest or other charges that may have been added to the principal.

(c) *FISLP loans—insurance premium calculation.* (1) The insurance premium for FISLP loans is calculated by—

(i) Counting the number of months beginning with the month following the month in which each disbursement on the loan is to be made and ending 12 months after the borrower's anticipated graduation from the school for attendance at which the loan is sought;

(ii) Dividing one-fourth of one percent of the principal amount of the loan by 12; and

(iii) Multiplying the result obtained in paragraph (c)(1)(i) of this section by that obtained in paragraph (c)(1)(ii) of this section.

(2) In cases where the lender disburses the loan in multiple installments, the insurance premium is calculated for each disbursement from the month following the month that the disbursement is made.

(d) *PLUS loans—insurance premium calculation.* The insurance premium for a Federal PLUS Program loan is calculated by—

(1) Using the actual repayment period as a base;

(2) Amortizing the loan in monthly installments over the repayment period;

(3) Determining one-fourth of one percent of each monthly declining principal balance; and

(4) Totalling the monthly amounts derived in paragraph (d)(3) of this section.

(e) *Collection from lenders.* (1) The Secretary may bill the lender for the insurance premium or may require the lender to pay the insurance premium to the Secretary at the time of disbursement of the loan. At the Secretary's discretion, the Secretary may alternatively collect the insurance premium by offsetting it against amounts payable by the Secretary to the lender.

(2) The Secretary's guarantee on a loan ceases to be effective when the lender fails to pay the insurance premium within 60 days of the date payment is due. The Secretary may, however, excuse late payment of an insurance premium, and reinstate the guarantee coverage on a loan, if the Secretary is satisfied that—

(i) The loan is not in default and the borrower is not delinquent in making installment payments; or

(ii) The loan is in default, or the borrower is delinquent, under circumstances where the borrower has entered the repayment period without the lender's knowledge.

(f) *Collection from borrowers.* The lender may pass along the cost of the insurance premium to the borrower. If it does so, the insurance premium must be deducted from each disbursement of the loan in an amount proportionate to that disbursement's contribution to the premium amount.

(g) Refund provisions. The insurance premium is not refundable by the Secretary, and need not be refunded by the lender to the borrower, even if the borrower prepays, defaults, dies, becomes totally and permanently disabled, or files a petition in bankruptcy.

(Authority: 20 U.S.C. 1077, 1078–2, 1079, 1082)

§ 682.506 Limitations on maximum loan amounts.

The Secretary does not guarantee a FISLP or Federal PLUS Program loan in an amount that would—

(a) Result in an annual loan amount in excess of the student's estimated cost of attendance for the academic period for which the loan is intended less the estimated financial assistance awarded for that period; or

(b) Result in an annual or aggregate loan amount in excess of the permissible annual and aggregate loan limits described in § 682.204.

(Authority: 20 U.S.C. 1075, 1078, 1078–2, 1082, 1089)

§ 682.507 Due diligence in collecting a loan.

(a) *General.* (1) A lender shall exercise due diligence in the collection of a loan with respect to both a borrower and an endorser. In order to exercise due diligence, a lender shall implement the procedures described in this section when a borrower fails to make an installment payment when due.

(2) If two borrowers are liable for repayment of a Federal PLUS Program loan as co-makers, the lender shall follow these procedures with respect to both borrowers.

(3) For purposes of this section, the borrower's delinquency begins on the day after the due date of an installment payment not paid when due, except that if the borrower entered the repayment period without the lender's knowledge, the delinquency begins 30 days after the day the lender discovers that the borrower has entered the repayment period.

(b) *Initial delinquency.* When a borrower is delinquent in making a payment, the lender shall remind the borrower within 15 working days of the date the payment was due by means of a letter, notice, telephone call, or personal contact. If payments do not begin or resume, the lender shall attempt to contact the borrower at least six more times at regular intervals during the remainder of the six-month period that started on the due date of the delinquent payment.

(c) *Skip-tracing assistance.* (1) Whenever a lender does not know the borrower's current address, the lender shall promptly attempt to locate the borrower through normal commercial collection techniques, including contacting all individuals and entities named in the borrower's loan application. If these efforts are unsuccessful, the lender shall promptly attempt to learn the borrower's current address through use of the Department of Education's skip-tracing assistance.

(2) If the lender does not know the borrower's address when a borrower is first delinquent in making a payment, but subsequently obtains the borrower's address prior to the date on which the loan goes into default, the lender shall attempt to contact the borrower in accordance with paragraph (b) of this section, with the first contact occurring within 15 days of the date the lender obtained knowledge of the borrower's address, and shall attempt to contact the borrower at least once during each succeeding 30-day period until default.

(d) *Preclaims assistance.* When the borrower is 60 days delinquent in making a payment, the lender shall request preclaims assistance from the Department of Education. This preclaim assistance consists of sending a series of letters to the borrower, urging the borrower to contact the lender and begin or resume payments.

(e) *Final demand letter.* A lender shall send a final demand letter to the borrower at least 30 days before the lender files a default claim. The lender shall allow the borrower at least 30 days to respond to the final demand letter. However, a lender need not send a final demand letter to a borrower whose address is unknown.

(f) *Litigation.* (1) If a loan is in default and the lender determines that the borrower or an endorser has the ability to repay the loan, the lender may bring suit against the borrower or the endorser to recover the amount of the unpaid principal and interest together with reasonable attorneys' fees.

(2) Prior to bringing suit the lender shall—

(i) Obtain the Secretary's approval; and

(ii) Notify the borrower or endorser in writing that it has received the Secretary's approval to bring suit on the loan, and that, unless the borrower or endorser makes payments sufficient to bring the account out of default, the lender will seek a judgment under which the borrower or endorser will be liable for payment of reasonable attorneys' fees and court costs in addition to the unpaid principal and interest on the loan. The lender shall mail the notice to the borrower or endorser by certified mail, return receipt requested.

(3) The lender may bring suit if the borrower or endorser does not make payments sufficient to bring the account out of default within 10 days following the date of delivery of the notice described in paragraph (f)(2)(ii) of this section to the borrower or endorser indicated on the receipt.

(4) A lender may first apply the proceeds of any judgment against its reasonable attorneys' fees and court costs, whether or not the judgment provides for these fees and costs.

(Authority: 20 U.S.C. 1078–2, 1079, 1080, 1081, 1082, 1085)

(Approved by OMB under control number 1840–0538)

§ 682.508 Assignment of a loan.

(a) *General.* A FISLP or Federal PLUS Program note may not be assigned except to another eligible lender. In this section, "seller" means any kind of assignor, "buyer" means any kind of assignee, and "assignment" means any kind of transfer, including assignment as security.

(b) *Procedure.* (1) A note assigned from one lender to another must be made subject to a blanket endorsement together with other notes being assigned or must individually bear effective words of assignment. Either the blanket endorsement or the note must be signed and dated by an authorized official of the seller.

(2) The buyer shall—

(i) Notify the Secretary of the assignment if the right to receive special allowance has been assigned; and

(ii) Ensure that the borrower is notified promptly if the assignment results in the borrower being required to make installment payments, or to direct other matters connected with the loan, to a party other than the party with whom the borrower dealt before the assignment. The buyer shall include in the notice to the borrower a clear statement of all the borrower's rights and responsibilities which arise from the assignment of the loan, including a statement regarding the consequences of making payments to the seller or any prior holder of the loan, subsequent to receipt of the notice.

(c) *Risks assumed by the buyer.* (1) General rules: Upon acquiring a note, a new holder assumes responsibility for the consequences of any previous violation of applicable statutes or regulations or the terms of the note. Neither a FISLP note nor a Federal PLUS Program note is a negotiable instrument, and a subsequent holder of such a note is not a holder in due course. If the borrower has a valid legal defense that could be asserted against the original holder, the borrower can also assert the defense against the new holder. If the new holder files a default claim on a loan, the Secretary denies the default claim if there was a legal defect affecting the initial validity or guarantee eligibility of the loan and to the extent of the borrower's legal defenses. When a new holder files a claim on a loan, it shall provide the Secretary with the same documentation that would be required of the original lender.

(2) Special additional rules for assignment of loans made or originated by a school: The buyer of a loan is not entitled to rely on statements made by a school that made or originated that loan. In addition, the Secretary considers any unpaid tuition refund that was due to the student under § 682.606, before the first assignment of a loan that was made or originated by a school, as having been paid to the subsequent holder on the borrower's behalf.

(d) *The Secretary's approval.* The approval of the Secretary is required prior to the assignment of a note to an eligible lender that has not entered into a contract of insurance with the Secretary under § 682.503.

(e) *Trustee responsibility.* A lender to whom a loan is assigned in its capacity as a trustee assumes responsibility for complying with all applicable statutory and regulatory requirements imposed on any other holder of a loan.

(f) *Warranty.* (1) Nothing in this section precludes the buyer of a loan from obtaining a warranty from the seller covering certain future reductions by the Secretary in computing the amount of guaranteed loss, if any, on a claim filed on the loan.

(2) The warranty may only cover reductions which are attributable to an act or failure to act of the seller or other previous holder.

(3) The warranty may not cover matters the buyer is responsible for under the regulations in this part.

(Authority: 20 U.S.C. 1078–2, 1079, 1080, 1082)

(Reporting and recordkeeping requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 1840–0538.)

§ 682.509 Special conditions for filing a claim.

(a) A lender shall cease collection activity on a loan and file a claim with the Secretary within the time specified in § 682.511(e)(3), when—

(1) The lender learns that the school, in which the student on whose behalf the loan was made was enrolled, terminated its teaching activities involving that student during the academic period covered by the loan; or

(2) The Secretary directs that the claim be filed.

(b) A lender may not, as a result of a claim filed with the Secretary under this section, make a report to any credit bureau or other third party concerning the borrower's failure to repay the loan.

(Authority: 20 U.S.C. 1078–2, 1080, 1082)

§ 682.510 Determination of the borrower's death, total and permanent disability, or bankruptcy.

(a) The procedures in § 682.402 (a)–(d) for determining whether a borrower has died, become totally and permanently disabled, or filed a bankruptcy petition, apply to the FISLP and Federal PLUS Program.

(b) References to the "guarantee agency" in § 682.402 (b)(2) and (d)(4) mean the Secretary.

(Authority: 20 U.S.C. 1078–2, 1082, 1087)

§ 682.511 Procedures for filing a claim.

(a) *Filing a claim application.* (1) A lender may file a claim against the Secretary's guarantee on a FISLP or Federal PLUS Program loan for any of the following reasons:

(i) The loan is in default, as defined in § 682.200.

(ii) Any of the conditions exist for filing a claim without collection efforts, as set forth in § 682.206(d) or § 682.509.

(iii) The borrower has died, become totally and permanently disabled, or filed a bankruptcy petition, as determined by the lender in accordance with § 682.510.

(2) If a PLUS Program loan was obtained by two eligible parents as co-makers, the reason for filing a claim thereon must hold true for both parents.

(3) A lender may file a claim against the Secretary's guarantee only on a form provided by the Secretary. The lender must attach to the claim all documents required by the Secretary. If the lender fails to do so, the Secretary denies the claim.

(b) *Documentation required for claims.* (1) The Secretary requires a lender to submit the following documentation with all claims:

(i) The original promissory note.

(ii) The loan application.

(iii) The repayment instrument, in the case of a FISLP loan.

(iv) A payment history, as described in § 682.414(a)(3)(ii)(I), if any payments have been made.

(v) A collection history, as described in § 682.414(a)(3)(ii)(J).

(vi) A copy of the final demand letter, if required by § 682.507(e).

(vii) The original or a copy of all correspondence addressed to, from, or on behalf of the borrower that is relevant to the loan, whether that correspondence involved the original lender, a subsequent holder, or a servicing agent.

(viii) If applicable, evidence of the lender's requests to the Department of Education for skip-tracing assistance under § 682.507(c), and for preclaims assistance under § 682.507(d).

(ix) Any additional documentation that the Secretary deems relevant to a claim.

(2) The documentation requirements for death, total and permanent disability, or bankruptcy claims in § 682.402(e)(1) apply to the FISLP and the Federal PLUS Program. References to the "guarantee agency" in § 682.402(e)(1) mean the Secretary.

(c) *Assignment of note.* The Secretary's payment of a claim is contingent upon receipt from the lender of an assignment to the United States of America of all rights, title, and interest of the lender in the note underlying the claim. The lender shall also agree to reimburse the Secretary for any overpayments of interest benefits or special allowance that the Secretary may have made respecting the loan.

(d) *Bankruptcy subsequent to default.* If the lender files a default claim on a loan and subsequently receives a notice of the first meeting of creditors in the proceeding of the borrower in bankruptcy, the lender shall promptly forward that notice to the Department of Education. Under these circumstances the lender shall not file a proof of claim with the bankruptcy court.

(e) *Claim filing deadlines.* To obtain payment of a claim, a lender shall comply with the following deadlines:

(1) *Default claims.* Unless the lender has already filed suit against the borrower in accordance with § 682.507(f), it shall file a default claim on a loan with the Secretary within 90 days after default. For a claim filed pursuant to § 682.206, the lender shall file a claim within 90 days following transmission of the final demand letter sent pursuant to § 682.412(d), if the borrower failed to comply with the terms thereof within 30 days of such transmission.

(2) *Death, total and permanent disability, or bankruptcy claims.* The claim filing deadlines in § 682.402(e)(2) apply to the FISLP and the Federal PLUS Program. References to the "guarantee agency" in § 682.402(e)(2) mean the Secretary.

(3) *Special condition claims.* In the case of a special condition claim filed pursuant to § 682.509, the lender shall file a claim with the Secretary within 90 days of the date the lender determines that the conditions set forth in § 682.509(a)(1) exist, or the date the Secretary directs that the claim be filed pursuant to § 682.509(a)(2).

(Authority: 20 U.S.C. 1078–2, 1080, 1082, 1087);

(Approved by OMB under control number 1840–0538)

§ 682.512 Determination of amount of loss on a claim.

(a) *Default claims.*—(1) *Amount of loss.* The amount of loss to be paid on a default claim depends upon the date the Secretary received the application for a guarantee commitment on the loan. If the application was received—

(i) Prior to July 1, 1972, or from August 19, 1972 through February 28, 1973, the amount of loss to be paid on a valid claim is equal to the unpaid balance of the original principal loan amount disbursed; or

(ii) From July 1 through August 18, 1972, or after February 28, 1973, the amount of the loss to be paid on a valid claim is equal to the unpaid balance of the principal and interest in accordance with paragraph (a)(2) of this section. The unpaid principal amount of the loan may

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include capitalized interest to the extent authorized by § 682.202.

(2) *Payment of interest.* If the guarantee covers unpaid interest, the payment of a valid claim covers the unpaid interest that accrues during the following periods:

(i) During the period before the claim is filed, not to exceed the period provided for in § 682.511(e) for filing the claim.

(ii) During a period not to exceed 30 days following the return of the claim to the lender by the Secretary for additional documentation necessary for the claim to be approved by the Secretary.

(iii) During the period, after the claim is filed, which is required by the Secretary to approve the claim and to authorize payment.

(b) *Death, total and permanent disability or bankruptcy claims.* (1) In the case of a death or disability claim, the amount of loss to be paid on a valid claim—

(i) Is equal to the unpaid balance of the original principal loan amount disbursed, if the loan was disbursed prior to December 15, 1968; or

(ii) Is calculated in accordance with § 682.402 (f)(2) and (f)(3) if the loan was disbursed after December 14, 1968.

(2) In the case of a bankruptcy claim, the amount of loss is calculated in accordance with § 682.402 (f)(2) and (f)(3).

(3) In § 682.402(f)(3) the "guarantee agency" means the Secretary.

(c) *Special rules for a loan acquired by assignment.* Except as provided in paragraph (d)(2) of this section, if a claim is filed by a lender that obtained a loan by assignment, that lender is not entitled to any payment under this section greater than that to which a previous holder would have been entitled. For example, the Secretary deducts from the claim any amounts that are attributable to payments made by the borrower to a prior holder of the loan before the borrower received proper notice of the assignment of the loan.

(d) *Special rules for loans made by a school lender.* (1) If the loan for which a claim is filed was made by a school and the claim is filed by the school, the Secretary deducts from the claim—

(i) An amount equal to any unpaid refund that the school owes the student to whom or on whose behalf the loan was made under § 682.606; or

(ii) An amount which bears the same ratio to the total amount of the claim as the amount of educational services that the student was unable to complete, because the school terminated its teaching activities during the period for which the loan was obtained, bears to the total educational services which the student would have received, during the period for which the loan was obtained, had the school not terminated its teaching activity.

(2) If the loan for which a claim is filed was originally made by a school, but the claim is filed by another lender that obtained the note by assignment, the Secretary deducts from the claim the amount determined—

(i) Under paragraph (d)(1)(i) of this section that was due the student prior to the assignment of the loan; or

(ii) Under paragraph (d)(1)(ii) of this section.

(e) *Special rule for loans originated by a school.* A loan that is originated by a school is treated, for purposes of paragraph (d) of this section, as if it were a loan made and still held by the school.

(Authority: 20 U.S.C. 1078–2, 1080, 1082, 1087)

§ 682.513 Factors affecting coverage of a loan under the loan guarantee.

(a)(1) In determining whether to approve for payment a claim against the Secretary's guarantee, the Secretary considers matters affecting the enforceability of the loan obligation, and whether the loan was made and administered in accordance with the Act and applicable regulations.

(2) The Secretary deducts from a claim any amount that is not a legally enforceable obligation of the borrower, except to the extent that the defense of infancy applies.

(3) Except as provided in § 682.509 the Secretary does not pay a claim unless—

(i) All holders of the loan have complied with the requirements of this part, including, but not limited to, those concerning due diligence in the making, servicing, and collecting of a loan;

(ii) The current holder has complied with the deadlines for filing a claim established in § 682.511(e); and

(iii) The current holder complies with the requirements for submitting documents with a claim as established in § 682.511(b).

(b) Except as provided in § 682.509, the Secretary does not pay a death, disability, or bankruptcy claim for a loan after a default claim for that loan has been disapproved by the Secretary or if it would not be payable as a default claim by the Secretary.

(c) The Secretary's determination of the amount of loss payable on a default claim under this part, once final, is conclusive and binding on the lender that filed the claim. (Note: A determination of the Secretary under this section is subject to judicial review under 5 U.S.C. 706 and 41 U.S.C. 321–322.)

(Authority: 20 U.S.C. 1078–2, 1079, 1080, 1082)

§ 682.514 Procedures for receipt or retention of payments where the lender has violated program requirements for FISLP or Federal PLUS Program loans.

(a) The Secretary may waive the right to recover or refuse to make an interest benefits, special allowance, or claim payment, or may permit a lender to cure certain defects in a specified manner if, in the Secretary's judgment, the best interests of the United States so require.

(b) To receive payment on a default claim or to resume eligibility to receive interest benefits and special allowance on a loan as to which a lender has committed a violation of the requirements of this part regarding due diligence in collection or timely filing of claims, the lender shall meet the conditions described in Appendix C to this Part.

(Authority: 20 U.S.C. 1078–2, 1080, 1082)

§ 682.515 Records, reports, and inspection requirements for FISLP and Federal PLUS Program lenders.

(a) *Records.* (1) A lender shall keep complete and accurate records of each loan that it holds, including but not limited to the records described in § 682.414(a)(3)(ii). The records must be organized in such a way as to permit ready identification of the current status of each loan.

(2) A lender shall retain the records required for each loan for not less than five years following the date the loan is repaid in full by the borrower or the lender is reimbursed on a claim. However, in particular cases the Secretary may require the retention of records beyond this minimum period.

(3)(i) The lender may store the records specified in § 682.414(a)(3)(ii)(C)–(K) on microfilm or computer format.

(ii) The holder of the promissory note shall retain the original note and repayment instrument until the loan is fully repaid. At that time the lender shall return the original note and repayment instrument to the borrower, and retain copies for the prescribed period.

(iii) The lender shall retain the original or a copy of the loan application.

(b) *Reports.* A lender shall submit reports to the Secretary at the time and in the manner that the Secretary may reasonably require.

(c) *Inspections.* Upon request, a lender or its agent shall afford the Secretary, the Comptroller General of the United States, and any of their authorized representatives, access to its records in order to verify the accuracy of its reports or the lender's compliance with the Act and applicable regulations.

(Authority: 20 U.S.C. 1077, 1078, 1078–2, 1079, 1080, 1082)

(Reporting and recordkeeping requirements contained in paragraph (a) were approved by the Office of Management and Budget under control number 1840–0538)

Subpart F—Requirements, Standards, and Payments for Participating Schools

§ 682.600 Agreement between an eligible school and the Secretary for participation in the Guaranteed Student Loan and PLUS Programs.

(a) *General.* Participation of a school in the GSLP and the PLUS Program means that the school's students are eligible to receive GSLP and PLUS Program loans. To participate in the GSLP and the PLUS Program under either the FISLP, the Federal PLUS Program, or a guarantee agency program, a school shall—

(1) Establish its basic eligibility as an institution of higher education or a vocational school as defined in 34 CFR Part 668 through certification by the Secretary; and

(2) Enter into a written program participation agreement with the Secretary that is signed by an appropriate official of the school on a form approved by the Secretary.

(b) *Program participation agreement.* The school, in the program participation agreement, promises to comply with the applicable provisions of—

(1) The Act and the regulations in this part; and

(2) The Student Assistance General Provisions, 34 CFR Part 668.

(c) *Appeal of denial or limitations.* (1) If the Secretary denies a request for an agreement or approves only limited participation in the GSLP or the PLUS Program by a school—

(i) The reason for the decision is included in the Secretary's response to the request; and

(ii) The Secretary provides an opportunity for the school to meet with a designated Department official to appeal that decision.

(2) The Secretary does not, however, grant an opportunity for appeal, or give reasons for denying the participation or approving only the limited participation of a school, if the school submits its request within six months of a previous denial or limited approval.

(d) *Foreign schools.* A foreign school is required to comply with the provisions of the regulations in this part only to the extent determined by the Secretary.

(Authority: 20 U.S.C. 1078–2, 1082, 1094)

§ 682.601 Agreement between the Secretary and a school that makes or originates loans.

(a) *General.* A school must have an agreement with the Secretary in order to make or originate loans under either the GSLP or the PLUS Program.

(b) *Contents of the agreement.* An agreement to allow a school either to make or to originate loans must contain the following terms:

(1) The school will not make or originate loans which would be outstanding to or on behalf of more than 50 percent of its undergraduates in attendance at that school on at least a half-time basis, unless the Secretary waives this rule pursuant to paragraph (d) of this section.

(2) The school will inform any undergraduate student, who has not previously obtained a loan that was made or originated by the school and who seeks to obtain that loan, that he or she must first make a good faith effort to obtain a loan from a commercial lender.

(3)(i) The school will not make or originate a loan for an academic period to a student described in paragraph (b)(2) of this section until the student provides the school with evidence under paragraph (c) of this section of denial of a loan by a commercial lender for the same academic period.

(ii) In determining whether a school has complied with the requirement set forth in paragraph (b)(3)(i) of this section, the Secretary may take into consideration any patterns reflected by the letters of denial or the students' sworn statements referred to in paragraph (c) of this section that indicate that the school has not given sufficient counseling to students to seek loans from a commercial lender first. An example of an unacceptable pattern would be if all denials of loans to a school's students were made by a small number of lenders.

(4) The school will not make or originate a loan for an academic year in excess of the lesser of $2,500 or half the estimated cost of attendance to a student who—

(i) Is in the first academic year of study as an undergraduate; and

(ii) Was not previously enrolled in an undergraduate program.

(c) *Establishing a loan denial by a commercial lender.* (1) To verify that a borrower has sought and been denied a loan from a commercial lender, pursuant to paragraph (b)(3) of this section, the school shall obtain from the borrower—

(i) A written statement from a commercial lender indicating that the lender denied the borrower a loan for that academic period; or

(ii) The borrower's sworn statement, indicating both the refusal of a loan by a commercial lender and the lender's refusal to provide a written statement of the denial.

(2) If the borrower's statement is used to establish the denial of a loan, the statement must include—

(i) The name and address of the lender that denied the loan;

(ii) The approximate date on which the loan was denied;

(iii) The name and telephone number of the official who communicated the denial to the borrower; and

(iv) The borrower's signature.

(3) If the school determines that the denial of a loan to an eligible borrower by a commercial lender is based upon the lender's refusal to lend more than a part of the amount requested by the borrower, the school may either—

(i) Make or originate a loan to the borrower for the entire amount; or

(ii) Supplement the loan that the commercial lender is willing to make with a second loan to the borrower.

(d) *Waiver of the 50 percent lending limit.* A school may request the Secretary to waive the 50 percent lending limit described in paragraph (b)(1) of this section if adherence to that limit would create a substantial hardship for the school's present or prospective students. The Secretary determines whether to grant the school a waiver after considering—

(1) The extent to which the school provides, and expects to continue providing, educational opportunities to economically disadvantaged students, as measured by the percentage of those students enrolled at the school who—

(i) Are in families that fall within the "low-income family" category used by the Bureau of the Census;

(ii) Would not be able to enroll, or continue their enrollment, at that school without GSLP or PLUS Program loans made or originated by the school; and

(iii) Would not be able to obtain a comparable education at another school;

(2) The extent to which the school offers academic programs that—

(i) Are unique in the geographical area the school serves; and

(ii) Would not be available to some students if the school adhered to the 50 percent lending limit; and

(3) The quality of the school's—

(i) Management of student financial assistance programs; and

(ii) Conformance with sound business practices.

(Authority: 20 U.S.C. 1075, 1078, 1078–2, 1082, 1083)

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(Reporting and recordkeeping requirements contained in paragraph (c) were approved by the Office of Management and Budget under control number 1840–0538)

§ 682.602 Correspondence school schedule requirements.

(a) A school offering a course of study by correspondence shall establish a schedule for submission of lessons by its students, which must be given to a prospective student prior to that student's enrollment.

(b) The school shall include in its schedule—

(1) The number of lessons in the course;

(2) The intervals at which lessons are to be submitted;

(3) The date by which the course is to be completed; and

(4) The period of time within which any resident training must be completed.

(c) The school's schedule must conform to the requirements set forth in paragraph (b) of the definition of "vocational school" in 34 CFR 668.4.

(Authority: 20 U.S.C. 1078–2, 1082)

(Reporting and recordkeeping requirements contained in paragraph (a) were approved by the Office of Management and Budget under control number 1840–0538)

§ 682.603 Certification by a participating school in connection with a loan application.

(a) A school shall certify that the information it provides in connection with a loan application about the borrower and, in the case of a parent borrower, the student for whom the loan is intended, is complete and accurate. Except as provided in 34 CFR Part 668 Subpart E, a school may rely in good faith upon statements made on the application by the student.

(b) The information to be provided by the school about the borrower making application for the loan pertains to—

(1) The borrower's eligibility for a loan as determined in accordance with § 682.201;

(2) The student's estimated cost of attendance for the period for which the loan is sought;

(3) The student's estimated financial assistance for the period for which the loan is sought; and

(4) For a GSLP loan, the student's eligibility for interest benefits, as determined in accordance with § 682.301.

(Authority: 20 U.S.C. 1077, 1078, 1078–2, 1082, 1085, 1094)

(Reporting and recordkeeping requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 1840–0538)

§ 682.604 The borrower's loan proceeds.

(a) *Purpose.* This section establishes rules governing a school's processing of a borrower's loan proceeds. The school shall also comply with any rules for processing a loan contained in 34 CFR Part 668.

(b) *General.* (1) Except in the case of a PLUS Program loan to a parent borrower, GSLP or PLUS Program loan proceeds are sent directly to the school by the lender.

(2) Except in the case of a late disbursement under paragraph (e) of this section, a school may release the proceeds of a loan made under this part only to a student who the school determines, after it receives the proceeds of the loan from the lender, has maintained eligibility in accordance with the provisions of § 682.201.

(c) *Processing of the loan proceeds by the school.* (1) Except as provided in paragraph (d)(3) of this section, when a school receives a borrower's loan proceeds, it shall hold the funds until the student has registered for classes for the period of enrollment for which the loan is intended, and then follow the procedures in paragraph (c)(2) of this section.

(2)(i) After the student has registered, if the loan proceeds are disbursed by means of a check which requires the endorsement only of the student, the school shall promptly deliver the check to the student in accordance with paragraph (d)(2) of this section.

(ii) If the loan proceeds are disbursed by means of a check which requires the endorsement of both the student and the school, the school shall—

(A) Endorse the check on its own behalf and, after the student has registered, promptly deliver it to the student in accordance with paragraph (d)(2) of this section; or

(B) Obtain the student's endorsement on the check, endorse the check on its own behalf and, after the student has registered, credit the student's account, in accordance with paragraph (d)(1) of this section, and deliver the remaining loan proceeds to the student in accordance with paragraph (d)(2) of this section.

(3) If the loan proceeds are disbursed by electronic transfer to an account of the school on behalf of a borrower in accordance with § 682.207(b)(1)(ii)(B), the school shall, not more than 30 days prior to the first day of classes of the period of enrollment for which the loan is intended, obtain the student's written authorization for the release of the funds, and, after the student has registered, either—

(i) Deliver the proceeds to the student in accordance with paragraph (d)(1) of this section; or

(ii) Credit the student's account in accordance with paragraph (d)(1) of this section and deliver the remaining loan proceeds to the student in accordance with paragraph (d)(2) of this section.

(4) A school may not release the proceeds of a loan made under this part to a borrower for whom a financial aid transcript is required under 34 CFR Part 668 and has not been received, except as permitted by Part 668. If a required financial aid transcript has not been received for a borrower for whom the school has received the proceeds of a GSLP or PLUS Program loan within 45 days of that receipt, and release of the proceeds to the borrower is therefore prohibited by 34 CFR Part 668, the school shall immediately return the loan proceeds to the lender.

(d) *Applying the loan proceeds.* (1)(i) For purposes of paragraphs (c)(2)(ii)(B) and (c)(3)(ii) of this section, the earliest an institution may credit a registered student's account is three weeks before the first day of classes of the period of enrollment for which the loan is intended.

(ii) The school may credit a registered student's account with only those loan proceeds covering costs of attendance owed to the school by the student for which substantially all of the school's students incurring those costs have been billed, and any additional loan proceeds that the student requests in writing that the school retain in order to assist the student in managing his or her loan funds for the remainder of the academic year.

(2) For purposes of paragraphs (c)(2)(i), (c)(2)(ii)(A), and (c)(3) of this section, the earliest an institution may deliver loan proceeds to a registered student is 10 days before the first day of classes of the period of enrollment for which the loan is intended.

(3) If the school determines that the student has not registered, the school shall return the loan proceeds to the lender within 30 days of this determination.

(4) If a registered student withdraws or is expelled prior to the first day of classes of the period of enrollment for which the loan is intended, or if the school is unable to document that the student attended class during that period, the school shall return to the lender—

(i) Any loan proceeds credited directly by the school to the student's account; and

(ii) Any loan proceeds delivered to the student and subsequently paid by the student to the school.

(e) *Processing a late disbursement.* (1) For the purpose of this paragraph, a disbursement is late if the school receives the student's loan proceeds from the lender either—

(i) After the end of the period of attendance for which the loan was made (*i.e.,* after the expiration date of the guarantee commitment); or

(ii) Before the end of the academic period for which the loan was made, but after the student ceased to be enrolled at the school on at least a half-time basis.

(2) If a late disbursement is accompanied by a notice from the lender that the late disbursement has been approved by the guarantor under § 682.207(d), the school shall follow the procedure described in paragraph (c)(2) of this section.

(3) If a late disbursement is not accompanied by the notice described in paragraph (e)(2) of this section, the school shall—

(i) Return the loan proceeds to the lender within 30 days of its determination that one of the conditions described in paragraph (e)(1) of this section exists;

(ii) Send with the loan proceeds—

(A) A notice that one of the conditions described in paragraph (e)(1) of this section exists; and

(B) If applicable, information concerning the student's date of withdrawal and costs of attendance owed the school for the period in which the student was enrolled on at least a half-time basis; and

(iii) Advise the student that the lender may, in accordance with the procedures in § 682.207(c), redisburse funds for the student's costs of attendance incurred before the existence of one of the conditions described in paragraph (e)(1) of this section.

(Authority: 20 U.S.C. 1078, 1078–2, 1082)

(Reporting and recordkeeping requirements contained in paragraph (e) were approved by the Office of Management and Budget under control number 1840–0538)

§ 682.605 Determining the date of a student's withdrawal.

(a) *Purpose.* This section establishes rules for how a school shall determine the date on which a student to whom or on whose behalf a loan has been made under this part withdraws from the school, for the purpose of calculating the amount of a refund due the student from the school and reporting to the lender that the student has withdrawn.

(b) *The withdrawal date.* (1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, the student's withdrawal date is the earlier of—

(i) The date the student notifies the school of the student's withdrawal, or the date of withdrawal specified by the student, whichever is later; or

(ii) The date of withdrawal, as determined by the school.

(2) If the student has not returned to school at the expiration of a leave of absence approved under paragraph (c) of this section, the student's withdrawal date is the date of the first day of the leave of absence.

(3) If the student is enrolled in a program of study by correspondence, the student's withdrawal date is normally 60 days after the due date of a required lesson that the student failed to submit in accordance with the schedule for lessons established under § 682.602. However, if the student establishes in writing, within the 60-day period, a desire to continue in the program and an understanding that the required lessons must be submitted on time, the school may restore that student to in-school status for purposes of the loan made under this part. The school shall not grant the student more than one restoration to in-school status on this basis.

(4) For the purpose of a school's reporting to a lender, a student's withdrawal date is the month and year of the withdrawal date determined under paragraphs (b)(1)–(b)(3) of this section.

(c) *Leaves of absence.* A student who has been absent from school and has been granted a leave of absence by a school, in accordance with this paragraph, is not considered to have withdrawn from school for purposes of this section. In any twelve-month period, a school may grant no more than a single leave of absence to a student, provided that—

(1) The student has made a written request to be granted a leave of absence;

(2) The leave of absence involves no additional charges by the school to the student; and

(3) The leave of absence does not exceed—

(i) Sixty days; or

(ii) Six months, under either of the following circumstances:

(A) The school is not a correspondence school and the school's next period of enrollment after the start of the leave of absence would begin more than 60 days after the first day of the leave of absence.

(B) The leave of absence is requested because of the student's medically determinable condition, in which case the student must provide the school with a written recommendation from a physician for a leave of absence longer than 60 days.

(Authority: 20 U.S.C. 1078–2, 1082, 1094)

§ 682.606 Refund policy.

(a) *General.* (1) A school shall have a fair and equitable refund policy under which the school shall make a refund of unearned tuition, fees, and room and board charges to a student who received a GSLP or PLUS Program loan, or whose parent received a PLUS Program loan on behalf of the student, if the student—

(i) Does not register for the period of attendance for which the loan was intended; or

(ii) Withdraws or otherwise fails to complete the period of enrollment for which the loan was made.

(2) The school shall provide a written statement containing its refund policy to a prospective student prior to the student's enrollment, and shall make its policy known to currently enrolled students. The school shall include in its statement the procedures that a student must follow to obtain a refund. If the school changes its refund policy, it shall ensure that all students are made aware of the new policy.

(b) *Fair and equitable refund policy.* A school's refund policy is fair and equitable if that policy conforms with—

(1) The requirements of applicable State law; and

(2)(i) Specific refund standards established by the school's nationally recognized accrediting agency and approved by the Secretary; or

(ii) If no such standards exist, the specific refund policy standards contained in Appendix A to this part, or the refund policy standards set by another association of institutions of postsecondary education and approved by the Secretary.

(Authority: 20 U.S.C. 1078–2, 1082, 1094)

§ 682.607 Payment of a refund to a lender.

(a) *General.* By applying for a GSLP or PLUS Program loan, a borrower authorizes the school to pay directly to the lender that portion of a refund from the school that is allocable to the loan. A school—

(1) Shall pay that portion of the student's refund that is allocable to a GSLP or PLUS Program loan to—

(i) The original lender; or

(ii) A subsequent holder, if the loan has been transferred and the school knows the new holder's identity; and

(2) Shall provide simultaneous written notice to the borrower and, if the borrower is a parent, to the student on whose behalf the loan was made, when

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the school pays a refund to a lender on behalf of that student.

(b) *Allocation of refund.* In determining what portion of a student's refund for an academic period is allocable to a loan received by the borrower for the same academic period, the school shall follow the procedures established in 34 CFR Part 668.

(c) *Timely payment.* A school shall pay each refund that is due—

(1) Within 30 days after the date of the student's withdrawal from the school, as determined in accordance with § 8682.605(b)(1)–(b)(3); or

(2) In the case of a student who does not return to school at the expiration of an approved leave of absence under § 682.605(c), within 30 days after the last day of that leave of absence.

(d) *Transition requirements.* In the event of a school's closure, termination, suspension of operations, or change in ownership, the school or its successors shall make provisions for compliance with the requirements of this section with regard to students who obtained, or on whose behalf parents obtained, loans for periods of attendance at the school that began prior to the school's change in status.

(Authority: 20 U.S.C. 1078–2, 1082, 1094)

§ 682.606 Termination of a school's lending eligibility.

(a) *General.* The Secretary terminates a school's eligibility to make loans under this part, if the school reaches the 15 percent limit on loan defaults described in paragraph (b) of this section.

(b) *The 15 percent limit.* (1) The Secretary terminates a school's eligibility to make loans if, at the end of each of the two most recent consecutive fiscal years for which data are available, the total amount of loans described in paragraph (b)(1)(i) of this section is equal to or greater than 15 percent of the total amount of loans described in paragraph (b)(1)(ii) of this section:

(i) The original principal amount of all loans the school has ever made that went into default during that period.

(ii) The original principal amount of all loans the school has ever made, including loans in deferment status that—

(A) Were in repayment status at the beginning of that period; or

(B) Entered repayment status during that period.

(2) In making the determination under this section, the Secretary considers the status of all GSLP and PLUS Program loans made by the school, whether the loans are held by the school or by a subsequent holder.

(c) *Exception based on hardship.* The Secretary does not terminate a school's lending eligibility under paragraphs (a) and (b) of this section if the Secretary determines that the termination would result in a hardship for the school or its students. The Secretary makes this determination if the school shows that—

(1) Termination is not justified in light of recent improvements the school has made in its collection capabilities that will cause the school's loan delinquency rate to improve within the next year. Examples of these improvements include—

(i) Adopting more efficient collection procedures; or

(ii) Employing increased collection staff; or

(2) Termination would cause a substantial hardship to the school's current or prospective students or their parents based on—

(i) The extent to which the school provides, and expects to continue to provide, educational opportunities to economically disadvantaged students, as measured by the percentage of students enrolled at the school who—

(A) Are in families that fall within the "low-income family" category used by the Bureau of the Census;

(B) Would not be able to enroll, or continue their enrollment, at that school without a loan from the school; and

(C) Would not be able to obtain a comparable education at another school;

(ii) The extent to which the school offers academic programs that—

(A) Are unique in the geographical area that the school serves; and

(B) Would not be available to some students if they or their parents could not obtain loans from the school; and

(iii) The quality of improvements the school has made in its—

(A) Management of student financial assistance programs; and

(B) Conformance with sound business practices.

(d) *Termination procedures.* (1) The Secretary does not terminate the lending eligibility of a school under this section until the school has been notified of the impending action and has had an opportunity for a hearing.

(2) The Secretary or a Department of Education official designated by the Secretary begins a termination action by sending a notice to the school. The notice is sent by certified mail with return receipt requested. The notice—

(i) Informs the school of the intent to terminate the school's lending eligibility because of the school's default experience;

(ii) Specifies the proposed effective date of the termination as the following October 1; and

(iii) Informs the school that it has 15 days to—

(A) Submit any written material it wants considered in determining whether its lending eligibility should be terminated under paragraphs (a) and (b) of this section, including written material in support of a hardship exception under paragraph (c) of this section; or

(B) Request a hearing to show why the school's lending eligibility should not be terminated.

(3) If the school does not request a hearing but submits written material, the Secretary or the designated official considers that material and notifies the school as to whether the termination action will be taken.

(4) The Secretary or the designated official (presiding officer) schedules the date and place of a hearing for a school that has requested a hearing. The date of the hearing is at least 15 days from the date of receipt of the request. The presiding officer—

(i) Conducts the hearing;

(ii) Considers all written material presented before the hearing and any other material presented during the hearing; and

(iii) Determines if termination of the school's lending eligibility is warranted.

(5) The decision of the presiding officer, in the event that the school has submitted written material but has not requested a hearing, is subject to review by the Secretary.

(e) *Effects of termination.* A school that has its lending eligibility terminated under this section may not—

(1) Make further loans under this part unless it has entered into a new lending agreement with the Secretary under § 682.601; or

(2) Enter into a new guarantee agreement with the Secretary until at least one year after the school's lending eligibility has been terminated under this section.

(f) *Schools under the same ownership.* If a school makes a loan to students or parents of students in attendance at other schools under the same ownership, the Secretary may make the determinations required by this section by—

(1) Treating all of the schools as one school; or

(2) Treating each school on an individual basis.

(Authority: 20 U.S.C. 1078–2, 1082, 1085)

§ 682.609 Remedial actions.

(a) The Secretary requires a school to repay to the Secretary funds paid by the Secretary to other program participants if the Secretary determines that the payment resulted, in whole or in part, from—

(1) The school's violation of a Federal statute or regulation; or

(2) The school's negligent or willful false certification.

(b) The Secretary's decision to require repayment of funds by a school, to withhold funds from a school, or to limit, suspend or terminate a school's GSL or PLUS Program participation, does not become final until the Secretary provides the school with written notice of the intended action and an opportunity to be heard. However, the Secretary may withhold payments from a school or suspend an agreement with a school prior to giving notice and an opportunity to be heard if the Secretary finds that emergency action necessary to prevent substantial harm to the Federal interest.

(c) Notwithstanding paragraph (a) of this section, the Secretary may waive the right to require repayment of funds by a school if, in the Secretary's judgment, the best interest of the United States so requires.

(d) Once final, the Secretary's decision to require repayment of funds or to take other remedial action against a school under this section is conclusive and binding on the school. (Note: A decision by the Secretary under this section is subject to judicial review under 5 U.S.C. 706 and 41 U.S.C. 321–322.)

(Authority: 20 U.S.C. 1078–2, 1082, 1094)

§ 682.610 Records, reports, and inspection requirements for participating schools.

(a) *General.* Each school shall—

(1) Establish and maintain proper administrative and fiscal procedures and all necessary records as set forth in the regulations in this part and in 34 CFR Part 668 in order to—

(i) Protect the rights of students and parent borrowers;

(ii) Protect the United States from unreasonable risk of loss; and

(iii) Comply with any specific requirements in those regulations; and

(2) Submit all reports required by this part and 34 CFR Part 668 to the Secretary.

(b) *Loan record requirements.* In addition to records required by 34 CFR Part 668, for each loan received under this part by or on behalf of its students, a school shall maintain a copy of the loan application and a record of—

(1) The name of the lender;

(2) The address of the lender;

(3) The amount of the loan and the period of attendance for which the loan was intended;

(4) The data used to construct an individual student budget or the school's itemized standard budget used in calculating the student's estimated cost of attendance;

(5) The amount of the student's tuition and fees paid for the loan period and the date the student paid the tuition and fees;

(6) In the case of a GSLP loan for which the borrower applies for interest benefits under § 682.301, the data used to determine the student's adjusted gross family income and the student's expected family contribution, and the corresponding certification by the school to the lender;

(7) In the case of a GSLP loan—

(i) The date the school received each loan disbursement and the amount of that disbursement;

(ii) The date the school endorsed each loan check; and

(iii) The date or dates of transmittal of the loan proceeds by the school to the student; and

(8) A record of the student's job placement, if known.

(c) *Student status reports.* A school shall—

(1) Upon receipt of a student confirmation report form from the Secretary or a similar status confirmation report form from any guarantee agency, complete and return, within 30 days of receipt, that report to the Secretary or the guarantee agency, as appropriate; and

(2) Promptly notify the lender—

(i) When the school discovers that a student who has received a GSLP loan has ceased to be enrolled on at least a half-time basis and it does not expect to submit, within the next 60 days, its next student confirmation report to the Secretary or the guarantee agency;

(ii) When the school discovers that a PLUS Program loan has been made to or on behalf of a student who has been accepted for enrollment at that school but who fails to enroll on at least a half-time basis for the period for which the loan was intended; or

(iii) When the school discovers that a full-time student to whom a PLUS Program loan was made has ceased to be enrolled on a full-time basis.

(d) *Record-retention requirements.* Unless otherwise directed by the Secretary, the school or its successors—

(1) Shall keep all records required under the regulations in this part for five years following the last day of the period for which the loan was intended;

(2) Shall keep for five years after their completion copies of reports and other forms used by the school relating to the GSLP or the PLUS Program;

(3) Shall provide, in the event of the school's closure, termination, suspension, or change of ownership, for the retention of the records and reports required by the regulations in this part and for access by the Secretary or his authorized representatives to those records and reports; and

(4) May keep records and copies of reports on microfilm or in computer format.

(e) *Inspection requirements.* Upon request, a school shall afford the Secretary, a guarantee agency, and any of their authorized representatives, access to its records in order to verify the accuracy of its reports or the school's compliance with the Act and applicable regulations.

(Authority: 20 U.S.C. 1078–2, 1082, 1094)

(Reporting and recordkeeping requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 1840–0538)

Subpart G—Limitation, Suspension, or Termination of Lender Eligibility Under the Guaranteed Student Loan Program and the PLUS Program

§ 682.700 Purpose and scope.

(a) This subpart governs the limitation, suspension, or termination of the eligibility of an otherwise eligible lender to participate in the GSLP and the PLUS Program. The regulations in this subpart apply to a lender that violates any statutory provision governing the GSLP or the PLUS Program or any regulations, special arrangements, agreements, or limitations prescribed under the GSLP or the PLUS Program. These regulations apply to lenders that participate in a guarantee agency program as well as lenders that participate in the FISLP or the Federal PLUS Program.

(b) This subpart does not apply—

(1) To a determination that an organization fails to meet the definition of "eligible lender" in § 435(g)(1) of the Act or the definition of "lender" in § 682.200;

(2) To a school's loss of lending eligibility under § 682.608; or

(3) To an administrative action by the Department of Education based on any alleged violation of—

(i) The Family Educational Rights and Privacy Act of 1974 (Section 438 of the General Education Provisions Act), which is governed by 34 CFR Part 99;

(ii) Title VI of the Civil Rights Act of 1964, which is governed by 34 CFR Parts 100 and 101;

(iii) Section 504 of the Rehabilitation Act of 1973 (relating to discrimination on the basis of handicap), which is governed by 34 CFR Part 104; or

(iv) Title IX of the Education Amendments of 1972 (relating to sex discrimination), which is governed by 34 CFR Part 106.

(c) This subpart does not supplant any rights or remedies that the Secretary may have against participating lenders under other authorities.

(Authority: 20 U.S.C. 1078–2, 1080, 1082, 1094)

§ 682.701 Definitions of terms used in this subpart.

The following definitions are used in this subpart:

Designated Departmental official: An official of the Department of Education to whom the Secretary has delegated the responsibility for initiating and pursuing limitation, suspension, or termination proceedings.

Limitation: The continuation of a lender's eligibility subject to compliance with special conditions established by the Secretary as the result of a limitation or termination proceeding.

Suspension: The removal of a lender's eligibility for a specified period of time or until the lender fulfills certain requirements.

Termination: The removal of a lender's eligibility for an indefinite period of time.

(Authority: 20 U.S.C. 1078–2, 1080, 1082, 1094)

§ 682.702 Effect on participation.

(a) Limitation, suspension, or termination proceedings do not affect a lender's responsibilities, or rights to benefits and claim payments, that are based on the lender's prior participation in the program, except as provided in paragraph (c) of this section and in § 682.709.

(b) Effect of limitation: A limitation imposes on a lender—

(1) A limit on the number of total amount of GSLP or PLUS Program loans that a lender may make, purchase, or hold;

(2) A limit on the number of total amount of GSLP or PLUS Program loans a lender may make to, or on behalf of, students at a particular school; or

(3) Other reasonable requirements or conditions, including those described in § 682.709.

(c) Effect of termination: After the effective date of the termination of a lender's eligibility, the Secretary does not guarantee new loans made by that lender or pay interest benefits, special allowance, or reinsurance on new loans guaranteed by a guarantee agency after that date. The Secretary may also prohibit the lender from making further disbursements on a loan for which a guarantee commitment has already been issued.

(Authority: 20 U.S.C. 1078–2, 1080, 1082, 1094)

§ 682.703 Informal compliance procedure.

(a) The Secretary may use the informal compliance procedure in paragraph (b) of this section if the Secretary receives a complaint or other reliable information indicating that a lender may be in violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(b) Under the informal compliance procedure, the Secretary gives the lender a reasonable opportunity to—

(1) Respond to the complaint or information; and

(2) Show that the violation has been corrected or submit an acceptable plan for correcting the violation and preventing its recurrence.

(c) The Secretary does not delay limitation, suspension, or termination procedures during the informal compliance procedure if—

(1) The delay would harm the GSLP or the PLUS Program; or

(2) The informal compliance procedure will not result in correction of the alleged violation.

(Authority: 20 U.S.C. 1078–2, 1080, 1082, 1094)

§ 682.704 Emergency action.

(a) The Secretary, or a designated Departmental official, may take emergency action to stop the issuance of guarantee commitments and the payment of interest benefits and special allowance to a lender if the Secretary—

(1) Receives reliable information that the lender is in violation of applicable laws, regulations, special arrangements, agreements, or limitations;

(2) Determines that immediate action is necessary to prevent the likelihood of substantial losses by the Federal Government, parents, or students; and

(3) Determines that the likelihood of loss exceeds the importance of following the procedures for limitation, suspension, or termination.

(b) The Secretary begins an emergency action by notifying the lender, by certified mail with return receipt requested, of the action and the basis for the action.

(c) The effective date of the action is the date the notice is mailed to the lender.

(d)(1) An emergency action does not exceed 30 days unless a limitation, suspension, or termination proceeding is begun before that time expires.

(2) If a limitation, suspension, or termination proceeding is begun before the expiration of the 30-day period—

(i) The emergency action may be extended until completion of the proceeding, including any appeal to the Secretary; and

(ii) The Secretary provides, upon the request of the lender, an opportunity for the lender to demonstrate that the emergency action is unwarranted.

(Authority: 20 U.S.C. 1078–2, 1080, 1082, 1094)

§ 682.705 Suspension proceedings.

(a) *Scope.* (1) A suspension removes a lender's eligibility under the GSLP and the PLUS Program, and the Secretary does not guarantee or reinsure a new loan made by the lender during a period not to exceed 60 days from the effective date of the suspension, unless—

(i) The lender and the Secretary agree to an extension of the suspension period, if the lender has not requested a hearing; or

(ii) The Secretary begins a limitation or a termination proceeding.

(2) If the Secretary begins a limitation or a termination proceeding before the suspension period ends, the Secretary may extend the suspension period until the completion of that proceeding, including any appeal to the Secretary.

(b) *Notice.* (1) The Secretary, or a designated Departmental official, begins a suspension proceeding by sending the lender a notice by certified mail with return receipt requested.

(2) The notice—

(i) Informs the lender of the Secretary's intent to suspend the lender's eligibility for a period not to exceed 60 days;

(ii) Describes the consequences of a suspension;

(iii) Identifies the alleged violations on which the proposed suspension is based;

(iv) States the proposed effective date of the suspension, which is at least 20 days after the date of mailing of the notice;

(v) Informs the lender that the suspension will not take effect on the proposed effective date if the Secretary receives, at least five days prior to that date, a request for a hearing or written material showing why the suspension should not take effect; and

(vi) Asks the lender to correct any alleged violations voluntarily.

(c) *Hearing.* (1) If the lender does not request a hearing but submits written material, the Secretary, or a designated Departmental official, considers the material and—

(i) Dismisses the proposed suspension; or

(ii) Notifies the lender of the effective date of the suspension.

(2) If the lender requests a hearing within the time specified in paragraph (b)(2)(v) of this section, the Secretary schedules the date and place of the

hearing. The date is at least 15 days after receipt of the request from the lender. No proposed suspension takes effect until a hearing is held.

(3) The hearing is conducted by a presiding officer who—

(i) Ensures that a written record of the hearing is made;

(ii) Considers relevant written material presented before the hearing and other relevant evidence presented during the hearing; and

(iii) Issues a decision, based on findings of fact and conclusions of law, that may suspend the lender's eligibility only if the presiding officer is persuaded that the suspension is warranted by the evidence.

(4) The formal rules of evidence do not apply, and no discovery, as provided in the Federal Rules of Civil Procedure, is required.

(5) The presiding officer shall base findings of fact only on evidence considered at or before the hearing and matters given official notice.

(6) The initial decision of the presiding officer is mailed to the lender.

(7) The Secretary reviews the decision of the presiding officer. The Secretary affirms a decision of the presiding officer imposing a suspension unless it is clearly unsupported by the evidence. The Secretary affirms a decision declining to impose a suspension if the Secretary believes suspension is not warranted by the evidence. The Secretary notifies the lender of the Secretary's decision by mail.

(8) A suspension takes effect on either the date that the notice of a decision imposing the suspension is mailed to the lender, or on the original proposed effective date started in the notice sent under paragraph (b) of this section, whichever is later.

(Authority: 20 U.S.C. 1078–2, 1080, 1082, 1094)

§ 682.706 Limitation or termination proceedings.

(a) *Notice.* (1) The Secretary, or a designated Departmental official, begins a limitation or termination proceeding, whether or not a suspension proceeding has begun, by sending the lender a notice by certified mail with return receipt requested.

(2) The notice—

(i) Informs the lender of the Secretary's intent to limit or terminate the lender's eligibility;

(ii) Describes the consequences of a limitation or termination;

(iii) Identifies the alleged violations on which the proposed limitation or termination is based;

(iv) States the limits which may be imposed, in the case of a limitation proceeding;

(v) States the proposed effective date of the limitation or termination, which is at least 20 days after the date of mailing of the notice;

(vi) Informs the lender that the limitation or termination will not take effect on the proposed effective date if the Secretary receives, at least five days prior to that date, a request for a hearing or written material showing why the limitation or termination should not take effect; and

(vii) Asks the lender to voluntarily correct any alleged violations.

(b) *Hearing.* (1) If the lender does not request a hearing but submits written material, the Secretary, or a designated Departmental official, considers the material and—

(i) Dismisses the proposed limitation or termination; or

(ii) Notifies the lender of the effective date of the limitation or termination.

(2) If the lender requests a hearing within the time specified in paragraph (a)(2)(vi) of this section, the Secretary schedules the date and place of the hearing. The date is at least 15 days after receipt of the request from the lender. No proposed limitation or termination takes effect until a hearing is held.

(3) The hearing is conducted by a presiding officer who—

(i) Ensures that a written record of the hearing is made;

(ii) Considers relevant written material presented before the hearing and other relevant evidence presented during the hearing; and

(iii) Issues an initial decision, based on findings of fact and conclusions of law, that may limit or terminate the lender's eligibility if the presiding officer is persuaded that the limitation or termination is warranted by the evidence.

(4) The formal rules of evidence do not apply, and no discovery, as provided in the Federal Rules of Civil Procedure, is required.

(5) The presiding officer shall base findings of fact only on evidence considered at the hearing and matters given official notice.

(6) If a termination action is brought against a lender, and the presiding officer concludes that a limitation is more appropriate, the presiding officer may issue a decision imposing one or more limitations on a lender rather than terminating the lender's eligibility.

(7) The initial decision of the presiding officer is mailed to the lender.

(8) Any time-schedule specified in this section may be shortened with the approval of the presiding officer and the consent of the lender and the Secretary or designated Department official.

(9) The presiding officer's initial decision automatically becomes the Secretary's final decision 20 days after it is issued, unless the lender or designated Department official appeals the decision to the Secretary within this period.

(Authority: 20 U.S.C. 1078–2, 1080, 1082, 1094)

§ 682.707 Appeals in a limitation or termination proceeding.

(a) If the lender or designated Departmental official appeals the initial decision of the presiding officer in accordance with § 682.706(b)(9), the Secretary—

(1) Sets a time period for the appealing party to submit additional written material, including exceptions to the initial decision, proposed findings and conclusions, and supporting briefs and statements;

(2) Sets a time by which the opposing party must respond; and

(3) Issues a final decision affirming, modifying, or reversing the initial decision, including a statement of the reasons for the Secretary's decision.

(b) Any party submitting material to the Secretary must provide a copy to each party that participates in the hearing.

(c) If the presiding officer's initial decision would limit or terminate the lender's eligibility, it does not take effect pending the appeal, unless the Secretary determines that a stay of the effective date would seriously and adversely affect the GSLP, the PLUS Program, students, or parents.

(Authority: 20 U.S.C. 1078–2, 1080, 1082, 1094)

§ 682.708 Evidence of mailing and receipt dates.

(a) All mailing dates and receipt dates referred to in this subpart are evidenced by the original receipts from the U.S. Postal Service.

(b) If a lender refuses to accept a notice mailed under this subpart, the Secretary considers the notice as being received on the date that the lender refuses to accept the notice.

(Authority: 20 U.S.C. 1078–2, 1080, 1082, 1094)

§ 682.709 Reimbursements, refunds, and offsets.

(a) As part of a limitation or termination proceeding, the Secretary, or a designated Departmental official, may require a lender to take reasonable corrective action to remedy a violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(b) The corrective action may include payment to the Secretary or recipients designated by the Secretary of any

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funds, and any interest thereon, that the lender improperly received, withheld, disbursed, or caused to be disbursed.

(c) If a final decision requires a lender to reimburse or make any payment to the Secretary, the Secretary may offset the amount due against any interest benefits, special allowance, or other payments due to the lender.

(Authority: 20 U.S.C. 1078–2, 1080, 1082, 1094)

§ 682.710 Removal of limitation.

(a) A lender may request removal of a limitation imposed in accordance with the regulations in this subpart at any time more than 12 months after the effective date of the limitation.

(b) The request must be in writing and must show that the lender has corrected any violations on which the limitation was based.

(c) Within 60 days after receiving the request, the Secretary—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to other limitations.

(d)(1) If the Secretary denies the request or establishes other limitations, the lender, upon request, is given an opportunity to show why all limitations should be removed.

(2) A lender may continue to participate in the GSLP and the PLUS Program, subject to any limitation imposed by the Secretary under paragraph (c)(3) of this section, pending a decision by the Secretary on a request under paragraph (d)(1) of this section.

(Authority: 20 U.S.C. 1078–2, 1080, 1082, 1094)

§ 682.711 Reinstatement after termination.

(a) A lender whose eligibility has been terminated by the Secretary in accordance with the regulations in this subpart may request reinstatement of its eligibility at any time more than 18 months after the effective date of the termination.

(b) The request must be in writing and must show that—

(1) The lender has corrected any violations on which the termination was based; and

(2) The lender meets all requirements for eligibility.

(c) A school lender whose eligibility as a participating school has been terminated under 34 CFR Part 668, may not be considered for reinstatement as a GSLP or PLUS Program lender until it is reinstated as a participating school. However, the school may request reinstatement as both a school and a lender at the same time.

(d) Within 60 days after receiving a request for reinstatement, the Secretary—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to limitations.

(e)(1) If the Secretary denies the lender's request, or allows reinstatement subject to limitations, the lender, upon request, is given an opportunity to show why its eligibility should be reinstated and all limitations removed.

(2) A lender, whose eligibility to participate in the GSLP and the PLUS Program is reinstated subject to limitations imposed by the Secretary pursuant to paragraph (d)(3) of this section, may participate in those programs, subject to those limitations, pending a decision by the Secretary on a request under paragraph (e)(1) of this section.

(Authority: 20 U.S.C. 1078–2, 1080, 1082, 1094)
(Reporting and recordkeeping requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 1840–0538)

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Appendix A To Part 682—Standards for Acceptable Refund Policies by Participating Schools

For purposes of § 682.606(b), the Secretary considers guidelines VI, VII, and VIII of the following document to be acceptable elements of a fair and equitable school refund policy. The document, which is reproduced in its entirety for the convenience of the reader, was developed by the National Association of College and University Business Officers. The document does not affect a school's obligation to comply with other Department of Education regulations.

Policy Guidelines for Refund of Student Charges

(I) *The governing board of the institution should review and approve the schedule of all institutional charges and refund policies applicable to students.* The pricing of services and refund policies have important consequences to students, parents, the institution, and society; as such, pricing and refund policies should receive board attention and approval.

(II) *Institutions should seek consumer views in the process of establishing and amending charge and refund structures.* Decisions regarding institutional funds are ultimately the sole responsibility of the institution's legally designated fund custodians. However, consumer concerns do affect decision making, and involving consumers in decision making related to charges and refunds is a desirable approach for assessing student needs and creating public awareness of institutional requirements.

(III) *Institutions should publish a current schedule of all student charges, a statement of the purpose for such charges, and related refund policies, and have them readily available free of charge to current and prospective students.* Students and parents have a right to know what charges they will be expected to pay and what will or will not be refunded. They also have a right to know what services accompany payment to the charges. Informational materials published free for students and prospective students are ideal for this purpose.

(IV) *Institutions should clearly designate all optional charges as "optional" in all published schedules and related materials. Clearly, charges that the mandatory and charges that are optional must be plainly differentiated in all printed materials.* Also, the institution should state clearly in its schedule if a charge is optional for some students but required for others. Statements accompanying the schedule may include institutional endorsements of the optional program or service.

(V) *Institutions should clearly identify charges and deposits that are nonrefundable as "nonrefundable" on all published schedules.* Institutions determine on an individual basis which of their charges are refundable or non-refundable. In general, admission fees, application fees, laboratory fees, facility and student activity fees, and other similar charges are not refundable. These fees are generally charged to cover the cost of activities such as processing applications and other student information, reserving academic positions, and establishing the limits of institutional programs and services, reserving housing space, and otherwise setting the fixed costs of the institution for the coming academic periods.

Institutions determine on an individual basis which of their deposits are refundable or nonrefundable. Some deposits will be nonrefundable or will be credited to a student's account (e.g. tuition deposits). Others are refundable according to the terms of the deposit agreement (e.g., deposits for breakage).

(VI) *Institutions should refund housing rental charges, less a deposit, so long as written notification of concellation is made prior to well-publicized date that provides reasonable opportunity to make the space available to other students.* Written notification on or before the beginning of the term of the contract is necessary to ensure utilization of housing units. During the term of the contract, room charges are generally not refundable. However, based on the program offered, space availability, debt service requirements, State and local laws, and other individual circumstances, institutions may provide for some more flexible refund guideline for housing.

(VII) *Institutions should refund board charges in full, less a deposit, if written notification of cancellation is made prior to a well-publicized date that falls on or before the beginning of the term of the contract. Subsequent board charges should be refunded on a pro rata basis less a withdrawal fee.* It is reasonable to make a refund for those goods and services not consumed. The withdrawal charge should reflect that portion of an institution's costs that are fixed for the term of the contract.

(VIII) *The institutional tuition refund policy for an academic period should include the following minimum guidelines:*

A. *The institution should refund 100 percent of the tuition charges, less a deposit fee, if written notification of cancellation is made prior to a well-publicized date that falls on or before the first day of classes.*

B. *The institution should refund at least 25 percent of the tuition charge if written notification of withdrawal is made during the first 25 percent of the academic period.* It is reasonable to refund tuition charges on a sliding scale if a student withdraws from his or her program prior to the end of the first 25 percent of the academic period unless state law imposes a more restrictive refund policy.

(IX) *The institution should assess no penalty charges where the institution, as opposed to the student is in error. The institution has assessed charges in error.* Penalty charges, such as those involving late registration fees, change of schedule fees, late payment fees, should not be assessed if it is determined that the student is not responsible for the action causing the charge to be levied.

(X) *Institutions should advise students that any notifications of withdrawal or cancellation and requests for refund must be in writing and addressed to the designated institution officer.* A student's written notification of withdrawal or cancellation and request for a refund provides an accurate record of transactions and also ensures that such request will be processed on a timely basis. Acceptance of oral requests is an undesirable practice.

(XI) *Institutions should pay or credit refunds due on a timely basis.* The definition of "timely basis" should include the time required to process a formal student request for refund, to process a check if required, and to allow for mail delivery, when necessary. If an institution has a policy that a refund of an inconsequential amount will not be made, this policy should be published in part of all materials related to refund policies.

(XII) *Institutions should publicize, as a part of their dissemination of information on charges and refunds, that an appeals process exists for students or parents who feel that individual circumstances warrant exceptions from published policy. The informational materials should include the name, title, and address of the official responsible.* Although charges and refund policies should reflect extensive consideration of student and institutional needs, it will not be possible to encompass in these structures the variety of personal circumstances that may exist or develop. Institutions are required to provide a system of due process to their students, and charges and refund policies are legitimately a part of that process. Students and parents should be informed regularly of procedures for requesting information concerning exceptions to published policies.

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Appendix C to Part 682—Procedures for Curing Violations of the Due Diligence in Collection and Timely Filing of Claims Requirements Applicable to FISLP and Federal PLUS Program Loans and for Repayment of Interest and Special Allowance Overbillings [Bulletin L-77a]

Note: The following is a reprint of Bulletin L-77a, issued on January 7, 1983, with minor modifications made to reflect changes in the program regulations since the date. All references to "the date of this bulletin" herein refer to that date. All references made to the Federal Insured Student Loan Program (FISLP) shall be understood to include the Federal PLUS Program. The bulletin includes references to the 120- and 180-day default periods that used to apply to GSLP and PLUS Program loans. Public Law 99-272 established new default periods of 180 and 240 days (as set out in 34 CFR 682.200 of these regulations) for all new loans and many existing ones. Although the discussion in this Appendix C refers to the 120- and 180-day default periods, it is equally applicable to the new 180- and 240-day default periods. Finally, references to sections of the regulations published on September 17, 1979 (44 FR 53916) are so noted. All other citations refer to the current regulations.

Introduction

This bulletin prescribes procedures for lenders to use (1) to cure violations of the requirements for due diligence in collection ("the diligence") and timely filing of claims under the Federal Insured Student Loan Program (FISLP), and (2) to repay interest and special allowance overbillings made on loans evidencing such violations. *See* 34 CFR 682.507, 682.511.[1] These procedures allow for the reinstatement of a lender's eligibility for interest and special allowance and claim payments on loans evidencing such violations, under specified circumstances. These procedures apply to loans for which the first day of the 120-day or 180-day default period occurred on or after October 21, 1979 (the effective date of the September 17, 1979, regulations), *whether or not* the loans have previously been submitted as claims to the Secretary.

The due diligence and timely filing requirements governing the FISLP were established in response to requests from some lenders for more detailed regulatory guidance on the proper handling of FISLP loans. Despite the promulgation of these provisions, a number of lenders have failed to exercise the requisite care in their treatment of these loans, thereby increasing the risk of default thereon and, in many cases, prejudicing the Secretary's ability to collect from the borrowers. At the time the current due diligence and timely filing rules were issued, the Secretary anticipated that violations of these rules would be so infrequent as to permit requests for cures to be handled individually. *See* 44 FR 53916 (September 17, 1979). However, the unexpectedly high incidence of violations of these rules has made continued case-by-case treatment of all cure requests administratively unmanageable. After carefully considering the views of lenders and other program participants, the Secretary has decided to exercise his authority under 20 U.S.C. 1082(a) (5), (6), and 34 CFR 682.517(g) (1979), and institute uniform procedures by which lenders with loans involving violations of the due diligence or timely filing requirements may cure these violations.

Due Diligence

Except as provided in 34 CFR 682.509(e)(3) (1979), collection activity is required to begin immediately upon delinquency by the borrower in honoring the repayment obligation. This holds true whether or not the borrower received a repayment schedule or signed a repayment agreement. Under 34 CFR 682.200, default on a FISLP loan occurs when a borrower fails to make a payment when due, provided this failure persists for 120 days for loans payable in monthly installments, or for 180 days for loans payable in less frequent installments. If, however, the lender has added the optional provision to the promissory note requiring the borrower to execute a repayment agreement not later than 120 days prior to the expiration of the grace period (*See* 34 CFR 682.509(e)(3), (1979), the loan entered repayment prior to September 4, 1985 (*see* 50 FR 35970), the lender sends the agreement to the borrower 150 days or more before the end of the grace period, and the agreement is not executed before the end of the grace period, default occurs at that time. *See* 34 CFR 682.510(b)(ii) (1979). One exception to this rule is as follows: if the holder of the loan is not the lender that made the loan, the holder may choose to forego enforcement of the optional 120-day provision in the note.

The 120/180 day default period applies regardless of whether payments were missed consecutively or intermittently. For example, if the borrower, on a loan payable in monthly installments, makes his January 1st payment on time, his February 1st payment two months late (April 1st), his March 1st payment three months late (June 1st), and makes no further payments, the default period begins on February 1st, with the first delinquency, and ends on August 1st, when the April 1st payment becomes 120 days past due. The lender must treat the payment made on April 1st as the February 1st payment, since the February 1st payment had not been made prior to that time. Similarly, the lender must treat the payment made on June 1st as the March 1st payment, since the March payment had not been made prior to that time. *Note:* Lenders are strongly encouraged to exercise forbearance, *prior* to default, for the benefit of borrowers who have missed payments intermittently but have otherwise indicated willingness to repay their loans. *See* 34 CFR 682.211. The forebearance process helps to reduce the incidence of default, and serves to emphasize for the borrower the importance of compliance with the repayment obligation.

Timely Filing

The 90-day filing period applicable to FISLP default claims is set forth in 34 CFR 682.511(e) (1) and (3). The 90-day filing period begins at the end of the 120/180 day default period. The lender must file a default claim on a loan in default by the end of the filing period, unless the borrower brings the account current before the end of the filing period. In such a case, the lender may choose not to file a claim on the loan at that time.

In addition, for any loan less than 210 days delinquent on the date of this bulletin, the lender need not file a claim on that loan

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[1] All references to the program regulations are to Part 682 of Title 34 of the Code of Federal Regulations (34 CFR Part 682).

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before the 210th day of delinquency (120-day default period plus 90-day filing period) if the borrower brings the account less than 120 days delinquent before such 210th day. Thus, in the above example, if the borrower makes the April 1st payment on August 2nd, the 90-day filing period continues to run from August 1st, unless the loan was less than 210 days delinquent on the date of this bulletin. If the loan was less than 210 days delinquent on the date of this bulletin, then the August 2nd payment makes the loan 91 days delinquent, and the lender may, but need not file a default claim on the loan at that time. If, however, that loan again becomes 120 days delinquent, the lender must file a default claim within 90 days thereafter (unless the loan is again brought to less than 120 days delinquent prior to the end of that 90 day period). If other words, for any loan less than 210 days delinquent on the date of this bulletin, the Secretary will permit a lender to treat payments made during the filing period as "curing" the default it such payments are sufficient to make the loan less than 120 days delinquent.

If a lender fails to comply with either the due diligence or timely filing requirements, the affected loan ceases to be insured; that is, the lender loses its right to receive interest benefits, special allowance and claim payments thereon. Some examples of violations of the due diligence requirements are set out in section I.C. below.

I. Cure Procuredures

A. Definitions

The following definitions apply to terms used throughout Section I of this bulletin.

"Full payment" means payment by the borrower, or another person (other than the lender) on the borrower's behalf, in an amount at least as great as the monthly payment amount required under the existing terms of the loan, "exclusive of any forbearance agreement in force at the time of the default. (For example, if the original repayment schedule or agreement called for payments of $30 per month, but a forbearance agreement was in effect at the time of default that allowed the borrower to pay $15 per month for a specified time, and the borrower defaulted in making the reduced payments, a "full payment" would be $30, or two $15 payments in accordance with original repayment schedule or agreement.)

"Reinstatement" with respect to insurance coverage means the reinstatement of the lender's right to receive default, death, disability, or bankruptcy claim payments for the unpaid principal balance of the loan and for unpaid interest accruing on the loan after the date of reinstatement. Upon reinstatement of insurance, the borrower regains the right to receive forbearance or deferments, as appropriate. For purposes of this bulletin, "reinstatement" with respect to insurance on a loan does not include reinstatement of the lender's right to receive interest and special allowance payments on that loan. Reinstatement of the lender's rights to receive interest and special allowance payments is addressed in Section I.B. 1. below.

B. General

1. *Resumption of Interest and Special Allowance Billing on Loans Involving Due Diligence or Timely Filing Violations.* For any loan on which a cure is attempted under this bulletin, the lender may resume billing for interest and special allowance on the loan only for periods following the earlier of (1) its receipt of the equivalent of three full payments thereon, after the date of this bulletin or the date of the violation, whichever is later, or (2) receipt by the borrower of an authorized deferment, after reinstatement of insurance coverage.

2. *Reservation of the Secretary's Right to Strict Enforcement.* While this bulletin allows cures to be attempted for particular violations in specified ways, the Secretary retains the option of refusing to permit or recognize cures in cases where, in the Secretary's judgment, a lender has committed an excessive number of severe violations of the due diligence or timely filing rules, and in cases where the best interests of the program otherwise require strict enforcement of these requirements. More generally, this bulletin states the Secretary's general policy and is not intended to limit in any way the authority and discretion afforded the Secretary by statute or regulation.

3. *Interest and Special Allowance Repayment and Certification Required as a Condition for the Secretary Recognition of a Cure.* The Secretary has commenced a concerted effort to recoup all excess interest and special allowance payments made on loans involving due diligence or timely filing violations. Accordingly, the Secretary will not recognize cures for such violations until the lender has filed an executive Interest and Special Allowance Certification Form (Attachment A) with the Division of Certification and Program Review of the regional office responsible for the State in which the lender maintains its principal place of business. Additionally, the lender must enclose a photocopy of the certification with each "cured" claim it files.

4. *Applicability of the Cure Procedures to Particular Classes of Loans.* The cure procedures outlined in this bulletin apply only to a loan for which the first day of the 120/180 day default period that ended with default by the borrower occurred on or after October 21, 1979, and which involve violations *only* of the due diligence and/or timely filing requirements.

The cure procedures applicable to loans involving due diligence violations also apply to loans involving violations of both the timely filing and due diligence requirements.

5. *Excusal of Certain Due Diligence Violations.* A lender whose claim was previously denied *solely* for violation of the timely filing rule, and who is permitted to cure that violation under the procedures set out in this bulletin, will not be required to utilize the procedures for curing due diligence violations, or to repay interest and special allowance improperly received from the Secretary as a result of a due diligence violation for periods prior to the timely filing violation. This applies even if, upon submission of the "cured" claim, the Secretary discovers that evidence of due diligence violations appeared in the file of the previously rejected claim.

The Secretary will also excuse a due diligence violation by a lender if the account was brought current by the borrower (or another, other than the lender, on the borrower's behalf) prior to the 120th/180th day of the delinquency period during which the violation occurred.

6. *Treatment of Accrued Interest on "Cured" Claims.*—a. *Due Diligence Violations.* For any default claim involving "cured" violations of the due diligence rules, the Secretary will not reimburse the lender for any unpaid interest accruing after the first day of the 120/180 day period that culminated in default, and prior to the date of reinstatement of insurance coverage.

For any loan involving "cured" due diligence violations, the lender may capitalize unpaid interest accruing on the loan from the commencement of the 120/180 day default period to the date of the reinstatement of insurance coverage. See sections I.C. and D. below. However, if the lender later files a claim on that loan, the lender must deduct this capitalized interest from the amount of the claim. This deduction must be reflected in column 15 on the OE Form 1207, Lender's Application for Insurance Claim on Federal Insured Student Loan, filed with the claim evidencing the cure.

b. *Timely Filing Violations.* For any default claim involving "cured" violations of the timely filing rules, the Secretary will not reimburse the lender for any unpaid interest accruing after the end of the 120/180 day default period that culminated in default, and prior to the date of reinstatement of insurance coverage.

For any default claim involving a "cured" timely filing violation, if insurance coverage is later reinstated, the lender may capitalize unpaid interest accruing on the loan from the commencement of the original 120/180 day default period to the date of the reinstatement of insurance coverage. See sections I.C. and D. below. However, if the lender later files a claim, on that loan, the lender must deduct this capitalized interest from the amount of the claim, except that the lender need not deduct from the claim unpaid interest that accrued on the loan during the original 120/180 day default period. This deduction must be reflected in Column 15 of the OE Form 1207, Lender's Application for Insurance Claim on Federal Insured Student Loan filed with the claim evidencing the cure.

Some timely filing cures will not reinstate insurance coverage. For treatment of accrued interest in such cases, see Section I.D.1.c.

7. *Documents to be Submitted with "Cured" Claims.* The Secretary requests that any lender submitting a claim on a loan involving "cured" violations identify the claim as such with a note in the claim file stapled to the new OE Form 1207.

For all "cured" claims, the lender must submit:

- For loans on which a claim was previously rejected, all documents sent by the regional office with the original claim (when the claim was rejected and returned to the lender), including without limitation, the original OE Form 1207 and all documents showing the reason(s) for the original rejection;

- All documents ordinarily required in connection with the submission of a default claim, including, without limitation, the promissory note, which must bear a valid assignment to the United States of America;
- A new OE Form 1207;
- All documents showing that the lender has complied with the applicable cure procedures and requirements; and
- A copy of the Interest and Special Allowance Certification form (Attachment A).

C. Cures for Violations of the Due Diligence in Collection Requirements (34 CFR 682.507)

A violation of the due diligence in collection rules occurs when a lender fails to meet requirements found in 34 CFR 682.507. For example, a violation occurs if the lender fails to:

- Remind the borrower of the date a missed payment was due within 15 days of delinquency;
- Attempt to contact the borrower and any endorser at least 3 times at regular intervals during the rest of the 120/180 day default period;
- Request pre-claims assistance from the Department of Education;
- Request skip-tracing assistance from the Secretary, if required, or
- Send a final demand letter to the borrower exercising the option to accelerate the due date for the outstanding balance of the loan, unless the lender does not know the borrower's address as of the 90th day of delinquency.

1. *Reinstatement of Insurance Coverage.* In the case of a due diligence violation, the lender may utilize either of the two procedures described below for obtaining reinstatement of insurance coverage on the loan. After the date of this bulletin, or after the date of the violation, whichever is later:

(a) the lender obtains a new repayment agreement signed by the borrower which complies with the ten and fifteen year repayment limitations set out in 34 CFR 682.209(a)(6); or

(b) the lender obtains 3 full payments. If the borrower later defaults, the lender must submit evidence of these payments (*e.g.* copies of the checks) with the claim.

2. *Borrower Deemed Current As of Date of Cure.* On the date the lender receives a signed copy of the new repayment agreement, or receives the third (curing) payment, insurance coverage on the loan is reinstated, and the borrower shall be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to FISLP borrowers. If the borrower later becomes delinquent in repayment, the lender shall follow the collection procedures set out in 34 CFR 682.507, and the timely filing requirements set out in 34 CFR 682.511.

D. Cures for Violations of the Timely Filing Requirements (34 CFR 682.511)

1. *Default Claims.—a. Reinstatement of Insurance Coverage.* In order to obtain reinstatement of insurance coverage on a loan in the case of a timely filing violation, the lender must first locate the borrower after the date of this bulletin, or after the date of the violation, whichever is later (see Section I.D.1.d. for description of acceptable evidence of location). Then, the lender must send to the borrower, at the address at which the borrower was located, (i) a new repayment agreement, to be signed by the borrower, which complies with the ten and fifteen year repayment limitations set out in 34 CFR 682.209(a)(6), along with (ii) a collection letter indicating in strong terms the seriousness of the borrower's delinquency and its potential effect on his or her credit rating if repayment is not commenced or resumed.

If, within 30 days after the lender sends these items, the borrower fails to make a full payment or to sign and return the new repayment agreement, the lender shall, within 5 working days thereafter, send the borrower a copy of the attached "8-Hour" collection letter, on the lender's letterhead. (See Attachment B).

b. *Borrower Deemed Current Under Certain Circumstances.* If, within 45 days after the lender sends the new repayment agreement to the borrower for signature, the borrower makes a full payment or signs and returns the new repayment agreement, insurance coverage on the loan is reinstated. The borrower shall be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to FISLP borrowers. If the borrower later becomes delinquent in repayment, the lender shall follow the collection steps set out in 34 CFR 682.507 and the timely filing requirements set out in 34 CFR 682.511.

c. *Borrower Deemed in Default Under Certain Circumstances.* If the borrower does not make a full payment, or sign and return the new repayment agreement, within 45 days after the lender sends the new repayment agreement, the lender shall deem the borrower to be in default. The lender shall then file a default claim on the loan accompanied by acceptable evidence of location (see I.D.I.d below), within 30 days after the end of such 45-day period. Although insurance coverage is not reinstated on loans involving these circumstances, the Secretary will honor default claims submitted in accordance with this paragraph, on the outstanding principal balance of such loans, and on unpaid interest accruing on the loan during the 120/180 day default period.

d. *Acceptable Evidence of Location.* Only the following documentation is acceptable as evidence that the lender has located the borrower:

(i) Postal receipt signed by the borrower not more than 25 days prior to the date on which the lender sent the new repayment agreement, indicating acceptance of correspondence from the lender by the borrower at the address shown on the receipt; *or*

(ii) A completed "Certification of Borrower Location" form (Attachment C).

2. *Death, Disability, and Bankruptcy Claims.* Lenders may immediately resubmit any death or disability claim which was rejected solely for failure to meet the 60 day timely filing requirement (*see* 34 CFR 685.511(e)(2)). However, the Secretary will not pay any such claim if, before the date the lender determined that the borrower died or was totally and permanently disabled, the lender had violated the due diligence or timely filing requirements applicable to default claims with respect to that loan. Interest that accrued on the loan after the expiration of the 60-day filing period remains uninsured by the Secretary, and the lender must repay all interest and special allowance received on the loan for periods after the expiration of the 60-day filing period.

The Secretary has determined that, in the vast majority of cases, the failure of a lender to comply with the timely filing requirement applicable to *bankruptcy* claims causes irreparable harm to the Secretary's ability to contest the discharge of the loan by the court, or to otherwise collect from the borrower. Therefore, the Secretary has decided not to permit cures for violations of the timely filing requirement applicable to bankruptcy claims, except when the lender can demonstrate that the bankruptcy action has concluded and that the loan has not been discharged in bankruptcy. In that case, the lender shall treat the loan as in default. The Secretary will honor a default claim later filed on such a loan only if the lender has met the cure requirements set out in Section I.C. above for due diligence violations.

II. Repayment of Interest and Special Allowance on Loans Evidencing Violations of the Due Diligence or Timely Filing Requirements.

A. General Rule

It has always been the Secretary's interpretation of the FISLP statute and regulations that a lender's right to receive interest and special allowance payments on a FISLP loan terminates immediately following the lender's violation of the due diligence or timely filing requirements. This applies whether or not the lender has filed a claim on the loan. In other words, lenders may receive interest and special allowance only on loans which are insured by the Secretary. Since these violations result in the termination of insurance, they also result in the termination of FISLP benefits.

B. Cessation of Billing on Loans Evidencing Violations of the Due Diligence or Timely Filing Requirements

Any lender currently billing the Secretary for interest and special allowance on a loan that the lender *knows* involves a due diligence or timely filing violation must cease doing so immediately. However, except in connection with the certification described below, lenders are not required at this time to review their loan portfolios for due diligence and timely filing violations.

C. Determination of Amounts of Interest and Special Allowance That Must Be Repaid

1. *Due Diligence Violations.* In the case of due diligence violations, it is often difficult to ascertain the precise date on which a violation occurred. For the administrative ease of the Secretary and lenders, the Secretary has decided to waive his right to recoup interest and special allowance

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payments made to a lender for periods between the date of a due diligence violation and the end of the 120/180 day default period. However, any lender that has received interest and/or special allowance payments from the Secretary for periods after the end of the 120/180 day default period on a loan that the lender *knows* involves a due diligence violation must promptly repay those amounts.

2. *Timely Filing Violations.* In the case of timely filing violations, the lender loses its right to receive interest and special allowance payments as of the expiration of the applicable timely filing period. Therefore, any lender that has received interest and/or special allowance payments from the Secretary for periods following the end of the applicable timely filing period on a loan that the lender *knows* involves a timely filing violation must repay those amounts.

3. *Situations in Which a Lender May Have Received Interest Benefits for Periods During Which a Loan was Uninsured.* Because most due diligence violations, and all timely filing violations, occur after termination of the grace period, interest payments are ordinarily not affected by such violations. However, there are three types of situations in which a lender may have received interest payments from the Secretary to which it was not entitled due to a due diligence or timely filing violation.

a. *Promissory notes that include a requirement that the borrower sign a repayment agreement no later than 120 days prior to the expiration of the grace period.* In such cases, a due diligence violation may occur during the grace period, when the lender may otherwise have been eligible to receive interest benefits. However the lender need not repay that interest to the Secretary. *See* II.C.1. above.

b. *Deferment Periods.* A due diligence violation may occur prior to a deferment period when the lender would otherwise have been eligible to receive interest benefits.

c. *Loans Made Prior to December 15, 1968.* A loan disbursed prior to December 15, 1968, and which qualified for payment of Federal interest benefits at the time the loan was disbursed, qualifies for payment of a 3 percent interest subsidy on the unpaid principal balance during the entire repayment period, provided the loan remains insured. In the case of such a loan, a due diligence or timely filing violation terminates the lender's eligibility for the 3 percent payments.

D. Procedures for Repayment of Federal Interest Benefits and Special Allowance Received by a Lender for Periods During Which a Loan Was Uninsured

A Lender must make the repayments of interest and/or special allowance discussed in II.C, above, by way of an adjustment during the two quarters immediately following the discovery of the violation. These adjustments must be reported in a format similar to that in Attachment D, and must not be reported on the normal Lender's Request for Interest and Special Allowance (ED Form 799) submission. Lenders are requested not to send a check with the adjustment, the overpaid amount will be deducted by the Secretary from the lender's next regular interest and special allowance payment. The adjustment must state the quarters for which the adjustment is being made, and the total dollar amounts of all loans involved in the adjustment. In addition, for five years after any loan for which an adjustment is made is repaid in full, the lender shall retain a record of the basis for the adjustment showing the amount(s) of the overbilling(s) repaid, the violation(s) giving rise to the overbilling(s), and the date it used for cessation of interest and/or special allowance eligibility in calculating the overbilled amount. *See* 34 CFR 682.515(a)(2). Completed adjustment forms should be sent to the following address: Student Loan Processing Center, P.O. Box 2640, Norfolk, Virginia 23501.

Attachments.

Attachment A—Interest and Special Allowance Certification Form

I, (name) __________, as a duly authorized official of (lender name and address) __________, hereby certify on behalf of this institution as follows:

(1) After consulting with all appropriate employees, agents, and servicers of this institution responsible for the collection of, and the filing of claims on, FISLP loans. I have determined that this institution has not knowingly delayed filing claims on FISLP loans evidencing violations of the due diligence, timely filing or other requirements for the purpose of continuing to bill the Secretary of Education or his predecessors for interest benefits or special allowance thereon, nor will this institution do so in the future.

(2) This institution will thoroughly review all FISLP loans for which claims were denied for violation of the due diligence in collection or timely filing regulations, 34 CFR 682.511 and .516 (1979) respectively or the current regulations, 34 CFR 682.507 and .511, respectively. The purpose of this review will be to determine how much interest and special allowance the Secretary has paid this institution on these loans for the period(s) during which they were uninsured due to these violations. This institution will repay any and all such amounts so determined by way of an adjustment to one of the next two quarterly interest and special allowance billings (ED Form 799).

(3) This institution will retain all records and upon request will provide the Secretary of Education with all information required by Bulletin L-77a in connection with repayment of interest and special allowance overbillings.

Signature of Employee _______________
Date _______________
Lender identification Number _______________

BILLING CODE 4000-01-M

Attachment B

NOTICE

____
Date

TO:

____
Social Security Number

You have previously been notified that you are severely delinquent in repaying your Guaranteed Student Loan. This notice is our final effort to remedy this delinquency. You must contact us at ________________ within

48 HOURS

Failure to act upon this notice will result in transfer of your account to the Federal Government.

____
Official of Lender

____
Title

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Attachment C   Certification of Borrower Location

As an employee or agent of ______________________________
Name and Address of Lender

I hereby certify as follows:

1. On ______________, I spoke with or received written communication
   Date
   from (copy attached):
   (circle a or b)
   (a) the borrower on the loan underlying this default claim; or
   (b) a parent, spouse, or sibling of the borrower.

2. The borrower, parent, spouse, or sibling represented to me that the borrower's address and telephone number are -- ______________________________
   Address and Telephone Number

3. Within 15 days thereafter, this institution sent the borrower a new repayment agreement along with a collection letter of the type described in section I.D.1.a.ii of Bulletin L-77a, dated January 7, 1983, to the address set out in '2)' above.

4. (Applicable only if 1(b), above, is used) The letter and agreement referenced in 3, above, has not been returned undelivered.

____
Name of Borrower

____
Borrower's SSN

____
Signature of Employee or Agent

____
Typed Name of Employee or Agent

____
Title of Employee or Agent

____
Date

____
Lender Identification Number

CURE PROCEDURE
Attachment D
Repayment of Interest Benefits and Special Allowance

NAME OF LENDER, I.D. NUMBER, ADDRESS (STREET, CITY, STATE, ZIP CODE)

EMPLOYER IDENTIFICATION NUMBER:

LENDER'S TELEPHONE NUMBER: (   )

(1) BILLING PERIOD (CHECK ONE)
1 ☐ ANNUAL
2 ☐ SEMIANNUAL
3 ☐ QUARTERLY

(2) BILLING PERIOD ENDING (CHECK ONE)
1 ☐ MARCH 31
2 ☐ JUNE 30
3 ☐ SEPTEMBER 30
4 ☐ DECEMBER 31
YEAR 19 ______

(3) METHOD (CHECK ONE)
1 ☐ ACTUAL ACCRUAL
2 ☐ AVERAGE DAILY BALANCE
3 ☐ AVERAGE QUARTERLY BALANCE

INTEREST ADJUSTMENTS (Enter only those Adjustments occurring as a result of Lender Bulletin #77a)

☒ DECREASED $______

SPECIAL ALLOWANCE ADJUSTMENTS

Loans made before October 1, 1981:

QTR. ENDING MM/DD/YY	%	AVERAGE PRINCIPAL BALANCE BALANCE PREVIOUSLY REPORTED	SHOULD HAVE BEEN REPORTED	DIFFERENCE IN AVERAGE PRINCIPAL BALANCE
/ /	9%			
	7%			
/ /	9%			
	7%			
/ /	9%			
	7%			
/ /	9%			
	7%			
/ /	9%			
	7%			
/ /	9%			
	7%			

Loans made on or after October 1, 1981:

/ /	14%			
	12%			
	9%			
	8%			
	7%			
/ /	14%			
	12%			
	9%			
	8%			
	7%			

NOTE: Do not submit this form concurrent with the submission of ED Form 799, "Lender's Request for Interest and Special Allowance." Lenders are required to maintain a copy of this form for their records.

BEST COPY AVAILABLE

Appendix—Summary of Comments and Responses

[Editorial Note: This Appendix will not appear in the Code of Federal Regulations.]

Subpart A—Purpose and Scope

Section 682.102 Obtaining and repaying a loan.

Comment: Several commenters objected to the description of the application process contained in § 682.102 of the NPRM. Many commenters recommended that this section of the regulations be revised to allow the use of electronic data transmission technology and a different sequential flow of paper or data among the student, school, lender and agency. A number of the commenters believed that the application process as described precludes the use of a combined form for the loan application and the promissory note. Many of the commenters recommended that the school be permitted to mail the application directly to the lender to prevent potential fraudulent alteration by the borrower of the school certification.

Response: No change has been made. The intent of Subpart A is to provide the reader with general information about the GSL and PLUS programs and the types of information contained in the ensuing subparts. Accordingly, the provisions of § 682.102 are general descriptions of the process of obtaining and repaying a loan and, therefore, are not to be considered requirements governing the application process. Where possible, the regulations have been written to accommodate electronic processing and combined applications and promissory notes. A school may mail an application directly to a lender.

Section 682.103 Applicability of subparts.

Comment: One commenter recommended that guarantee agency programs be exempt from the provisions of Subpart G and Appendix C because agencies already have established their own limitation, suspension and termination procedures and cure procedures for violations of agency rules regarding due diligence and timely filing of claims.

Response: No change has been made. The Secretary is extending coverage of Subpart G, which formerly governed only the Secretary's authority to limit, suspend or terminate a lender's eligibility to participate in the FISL Program, to include a lender's eligibility to participate in a guarantee agency program. The extension by the Secretary of Subpart G to guarantee agency lenders is not intended to relieve guarantee agencies of the duty to establish and implement their own limitation, suspension and termination procedures. The Secretary believes, however, that the integrity of these programs requires that the Secretary also have the ability to control, through limitation, suspension, and termination actions, the participation of lenders in all guarantee agency programs of lenders who violate program requirements.

Appendix C does not apply to guarantee agency programs. As noted in the preamble to the NPRM, however, the Secretary will use Appendix C as a guide in reviewing "cure policies" that agencies propose to use.

Subpart B—General Provisions

Section 682.200 Definitions.

"Disbursement"

Comment: Several commenters requested that this definition be modified to reflect the provisions in § 682.605 of the NPRM, which would have required that checks be made co-payable to the institution and the borrower and sent to the institution.

Response: A change has been made. The Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272; April 7, 1986) prohibits the Secretary from requiring that checks be made jointly payable to the borrower and the school. The final regulations have been revised to reflect that statutory change. The definition of disbursement has been revised to delete the specific rules governing the disbursement of a loan and is now defined as the transfer of loan proceeds by a lender to a borrower, a school, or an escrow agent. The specific requirements for disbursing a loan are now found in § 682.207 of the final regulations.

"Endorser"

Comment: A number of commenters objected to the use of the word "endorser" to describe a signer of a promissory note who is secondarily liable on the loan. One commenter suggested that since the regulations frequently refer to a borrower or school as "endorsing" a loan check, it is confusing to use the term "endorse" to describe a completely different concept. Several of these commenters recommended that the word "co-signer" be substituted for the word "endorser," since they believed that it is the term most frequently used in the GSL and PLUS programs to describe a secondarily-liable signer of the note.

Response: A change has been made. The Secretary has clarified the definition of the term "endorser" by indicating that it refers to the signer of the *promissory note.* Thus, endorsement of a *loan check* by an institution does not make the institution secondarily liable for the loan obligation. Only endorsers who sign promissory notes are liable for the repayment of loans.

"Enrolled"

Comment: Numerous commenters opposed the proposal to amend the definition of "enrolled" to require that students have attended classes in order to be considered enrolled and eligible to receive GSLP loan proceeds for an academic period. Commenters remarked that adoption of this proposal would place a considerable administrative burden on institutions, many of which do not have procedures for checking class attendance. Many commenters disagreed with the Secretary's perception that this proposal would reduce the likelihood of students using GSLP loan proceeds for non-educational purposes. These commenters felt that, if a student intended to use the proceeds of a loan for non-educational purposes, he or she would simply attend the first class, cash the loan check and then leave school.

Response: A change has been made. The Secretary has removed the definition of "enrolled" from these regulations. The definition will be published in 34 CFR Part 668 shortly. In addition, the Secretary has revised, in § 682.604 of these final regulations, the rules under which an institution processes a borrower's loan proceeds so that an institution may release loan proceeds directly to a student up to 10 days prior to the first day of classes of the period of enrollment for which the loan is intended.

"Estimated Cost of Attendance"

Comment: Many commenters objected to the exclusion of the purchase of an automobile from a student's estimated cost of attendance. Several commenters remarked that in some instances, such as medical or nursing students doing clinical rotation or students commuting from distant rural areas where no public transportation is available, the purchase of an automobile could be considered a reasonable expense. A number of commenters argued that, with this provision, the Secretary has undermined confidence in the discretion of the financial aid officer to allow selective decisions in these areas.

Response: No change has been made. In determining a student's estimated cost of attendance, an institution should calculate those expenses reasonably related to the student's attendance at that institution for the period for which the loan is sought. The institution may include reasonable amounts related to transportation expenses which a student might be expected to incur during the period for which the loan is intended. The Secretary does not believe that the purchase price of a motor vehicle is a reasonable transportation expense.

Comment: Two commenters opposed the inclusion of interest on previous student loans as an expense related to a current loan period. These commenters objected to the addition of expenses to a cost of attendance figure that, in many cases, already exceeds available aid and other resources. They felt that it is unwise to encourage students to borrow to pay off previous debts. Several commenters supported the inclusion of interest on previous student loans as an expense related to a current loan period.

Response: A change has been made. Interest on previous student loans that accrues during the period of enrollment for which the new loan is intended is not a cost of attendance for that period.

"Estimated Financial Assistance"

Comment: A number of commenters objected to the requirement that, in determining a student's estimated financial assistance, the institution must include all Federal student financial aid which the student would be expected to receive if he or she applied, whether or not the student has applied for such aid. The commenters objected to this requirement on the grounds that, in some cases, the data would not be available for the institution to estimate realistically such eligibility. Several commenters expressed concern that the Secretary was requiring students to apply for aid under the Campus-Based and Pell Grant Programs prior to applying for a GSL or PLUS Program loan. These commenters indicated that this requirement would result in an increased workload for institutions and

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would cause unnecessary delays in processing GSL and PLUS loan applications.

Response: No change has been made. The Secretary believes that in order to assure that students do not receive aid in excess of their cost of education it is important that, prior to certifying a GSL application, an institution provide an estimate of the financial aid which a student is eligible to receive. Public Law 99–272 requires an institution to make a determination of the student's Pell Grant eligibility (in the case of an undergraduate student) prior to certifying a GSLP application. To comply with this requirement, the institution will have information available that will enable it to estimate the amount of aid for which a student is eligible under the Pell Grant and Campus-Based programs. In the case of a student for whom the institution is not required to make a determination of Pell Grant eligibility, the Secretary expects the institution to make its estimate based solely on the information which it has available to it at the time the GSL application is being certified. The institution can base its estimate on the information which the student has provided in conjunction with the application. The institution will not incur any liability if, after having provided a reasonable estimate in good faith, it is later found to be inaccurate for some reason (*e.g.*, a student receives a scholarship which the institution could not have anticipated). It should be noted, however, that if an institution provides an unreasonably low estimate which enables the student to receive more aid than he or she is otherwise entitled to receive, the Secretary may impose a liability against the institution for losses incurred by the Federal Government.

Comment: One commenter suggested that aid awarded under the ROTC and Chapter 106 of the Veterans' Administration (VA) benefits programs be considered in determining a student's estimated financial assistance.

Response: A change has been made. The Secretary concurs with the commenter and has revised the regulations accordingly. The Secretary wishes to point out that this is not a change in the Department of Education's policy. The regulation is being revised merely to include what has been the Secretary's interpretation of the Act and GSLP and PLUS Program regulations.

Comment: One commenter objected to the inclusion of aid from State or private loan programs in determining a student's estimated financial assistance. The commenter believed that only aid received through federally-supported sources should be included in this calculation.

Response: No change has been made. The Act requires that all loans or assistance received by a borrower be included in calculating estimated financial assistance. The basic principle used to determine if a resource is considered "estimated financial assistance" is whether the student would be eligible for such assistance if he or she were not a student. These State and privately-supported loan programs exist to provide aid to individuals to be used to pay their educational expenses. Not to include assistance received from such resources as "estimated financial assistance" would enable some individuals to obtain funds in excess of their costs of education.

Comment: Several commenters expressed concern that the VA does not report the number of months of entitlement during which a veteran will receive educational benefits. These commenters asked for guidance in calculating the amounts of these benefits when determining a veteran's estimated financial assistance.

Response: No change has been made. The school may rely in good faith on statements made by the student regarding the time periods during which the student will receive VA benefits unless the institution has conflicting information, in which case the conflicting information must be resolved.

Comment: One commenter requested that the Secretary retain in these regulations the provision in the prior rules indicating that resources or financial support from a student or a student's family may not be considered as financial assistance.

Response: No change has been made. The introductory language contained in the definition excludes financial support from a student or a student's family. Therefore, the Secretary believes it is unnecessary to exclude specifically those sources of support not included in the definition.

Comment: A number of commenters objected to including in the definition of "estimated financial assistance" those loan proceeds which the lender withheld and applied towards the borrower's origination fee and insurance premium, if these amounts were included in the borrower's cost of attendance.

Response: No change has been made. A financial aid administrator has the option of excluding or including origination fees and insurance premiums in the calculation of the estimated cost of attendance. These fees and premiums are generally paid by the student with the proceeds of the GSL. The Secretary presumes that if the fees are included in the cost of attendance, the financial aid administrator expects the student to receive a GSL to pay them. Therefore, the fees must also be considered financial assistance. If the fees are not included in the estimated cost of attendance, no loan proceeds withheld by the lender for these fees should be included in the calculation of the student's "estimated financial assistance."

"Full-time Student"

Comment: One commenter requested that this definition reflect which offices or individuals within the institution may certify a student's enrollment status.

Response: No change has been made. The Secretary sees no reason to regulate institutions to designate the individuals and offices responsible for certifying enrollment status. Generally, though, this responsibility is part of the registrar's function.

Comment: Two commenters requested clarification regarding the classification of students enrolled in both undergraduate and graduate courses.

Response: No change has been made. While generally it is the prerogative of the institution to decide if the students described are considered undergraduate or graduate students, a student can only be considered a graduate student for GSLP and PLUS Program purposes if that student meets the regulatory definition of a graduate or professional student. An institution should have a written policy, which is administered uniformly, concerning these situations. It should be noted, however, that the definition of "graduate or professional student" precludes a student from being simultaneously considered a graduate student, for purposes of the GSLP and PLUS Program, and an undergraduate student, for purposes of other title IV student assistance programs.

"Grace Period"

Comment: Several commenters did not understand why, under this definition, the grace period begins on the day on which a borrower ceases to be enrolled as at least a half-time student, while §§ 682.401(b)(10)(ii)(C) and 682.510 of the NPRM imply that the grace period begins on the day the borrower ceases to be enrolled at least half-time (*i.e.*, is day-specific) for 7% loans, and on the month following the month in which the borrower ceases to be enrolled at least half-time (*i.e.*, is month-specific) for 8% and 9% loans.

Response: No change has been made. A borrower's grace period begins the day the borrower ceases attending an eligible institution on at least a half-time basis. For 8% and 9% loans, a borrower's repayment period begins (*i.e.* the grace period *ends*) six months after the month in which the borrower ceases attending an eligible institution on at least a half-time basis. For 7% loans, a borrower's repayment period begins (*i.e.* the grace period *ends*) nine to twelve months after the day on which the borrower ceases half-time attendance. In other words, the grace period start date is day-specific for all loans. The grace period ending date, and thus the repayment period start date, is month-specific for 8% and 9% loans. The grace period ending date, and thus the repayment period start date, is day-specific for 7% loans if the grace period is 12 months, but may be month-specific if the grace period is less than 12 months.

"Holder"

Comment: Several commenters recommended that, since secondary loan markets and guarantee agencies are eligible lenders, they should be included in this definition.

Response: No change has been made. The NPRM did not propose to alter any existing policies regarding this definition. The NPRM merely refers to a "holder" as an "eligible lender in possession of a GSLP or PLUS Program loan." The entities to which the commenters referred are covered under the definition of "lender."

"Lender"

Comment: Several commenters questioned the deletion in the NPRM of the requirement in current regulations that a lender may not make or hold GSLP loans that total more than one-half of its consumer credit loan dollar volume (the 50% rule).

Response: A change has been made. The 50% rule in the definition of "lender" was inadvertently omitted from the NPRM and has been reinstated in these final regulations.

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This definition has also been expanded to include the Secretary's existing interpretation of that rule.

"Origination"

Comment: Several commenters expressed concern that under this definition the Secretary determines that "origination" exists if a school determines who will receive a loan and the amount of the loan, or the lender has the school verify the identity of the borrower or completes forms normally completed by the lender. The commenters argued that since proposed disbursement procedures require the lender to mail the check directly to the institution for delivery, the institution, before delivering the loan proceeds to the borrower, would have to verify the identity of the borrower for the lender. The commenters noted that it would therefore be necessary for each eligible institution to enter into an origination agreement with the Secretary.

Response: No change has been made. Loan origination functions are those activities that occur prior to a lender's making a loan to a borrower. An institution is not considered to have originated a loan merely because, prior to delivering a check to a borrower, it verifies the identity of the borrower.

"Parent"

Comment: One commenter recommended that since a step-parent is considered in establishing dependency status, it would be beneficial to include "step-parent" in this definition.

Response: No change has been made. A step-parent is not considered in establishing a student's dependency status. A step-parent is considered in determining a family's *adjusted gross income* once a student has been determined to be dependent on one of his or her parents and that parent has remarried. Neither is a step-parent eligible to borrow on behalf of his or her step-child under the PLUS program unless that step-parent is also a legal guardian.

"School"

Comment: One commenter suggested that a school's eligibility be institution-wide rather than limited to particular programs offered by the school. The commenter remarked that, while guarantors and financial aid administrators are aware of what institutions have been approved by the Secretary, they are not aware of which specific programs offered by these institutions the Secretary has approved. The commenter felt that many ineligible loans are therefore being made and guaranteed.

Response: No change has been made. An institution is notified by a letter from the Department of Education that it is eligible to particpate in the GSLP. Included in the letter is information concerning which programs offered by the institution are or are not eligible. It is the institution's responsibility to certify only applications submitted by students enrolled in eligible programs at the institution. The Secretary has always had the right to recover from a school any Federal funds it pays to lenders and guarantors on GSL and PLUS loans made to borrowers on behalf of students enrolled in ineligible programs, if the school certified that the borrower was enrolled in an eligible program. In those circumstances the school's false certification would be negligent at a minimum, because the school knew that the program was ineligible. *See also* § 682.609 of the final regulations.

Section 682.201 Eligible borrowers.

Comment: Several commenters indicated that students should be required to be enrolled in an "eligible program" rather than to be enrolled or accepted for enrollment on at least a half-time basis at a participating school. This would bring the GSLP and PLUS program into line with the other title IV student assistance programs.

Response: No change has been made. The statute requires that, in order to receive a GSL or PLUS loan, a student must be enrolled at least half-time in a participating school. A school's participation in the GSL and PLUS programs is limited to the programs that have been determined to be eligible. The Secretary, notes that, unlike the Pell Grant program, this does not mean that the student must be enrolled in a program which leads to a degree or certificate.

Comment: Several commenters were opposed to the requirement that a student authorize the school in writing to pay a refund directly to the lender. They suggested that this requirement duplicates § 682.608(a) of the NPRM, which states that "by applying for a GSLP the borrower authorizes the school to pay a refund directly to the lender."

Response: No change has been made. Section 682.201 (a) and (b) of the final regulations provides eligibility requirements for borrowers, one of which is that the borrower must authorize in writing the school to pay directly to the lender that portion of any refund of school charges that is allocable to the loan. Section 682.607(a) of the final regulations describes the method by which this requirement is satisfied through the GSL application process. Schools are therefore not required to obtain an additional authorization.

Comment: Some commenters stated that guarantee agencies should be required to notify a school when a former student of the school defaults on a loan.

Response: No change has been made. The Secretary is reluctant to impose such a burdensome requirement on agencies when the benefits of doing so are not immediately evident. It should be noted, however, that Pub. L. 99–272 authorizes guarantee agencies to provide such information to schools.

Comment: Several commenters indicated that § 682.201(c)(1) of the NPRM, which states that to be eligible for a GSL or PLUS loan, a student, if currently enrolled, must be maintaining satisfactory academic progress as determined by the school, would result in a duplication of effort. This provision requires that a school verify that a student is maintaining satisfactory academic progress when it completes its portion of the loan application, and § 682.604(b)(4) of the NPRM would require the school to verify that information again before it releases loan proceeds to the student.

Response: No change has been made. The requirement of § 682.201(c)(1) of the final regulations is not a change from current regulations, which state that, if currently enrolled, the student must be maintaining satisfactory academic progress as determined by the school. However, § 682.604(b)(2) of the final regulations does reflect a new requirement that, before a school can release the proceeds of a loan, the student must have maintained eligibility as required under § 682.201(c)(1) of the final regulations. The Secretary believes the additional requirement is necessary to ensure that only eligible students receive loan proceeds. A student's eligibility may change between the date the application was certified and the date the GSL loan proceeds are disbursed. This is particularly likely in the case of loans that are disbursed in more than one installment (*i.e.,* multiply disbursed). Prior to releasing the loan proceeds, the school is required to determine again if the borrower is maintaining satisfactory academic progress, in accordance with the system established by the school pursuant to 34 CFR 668.16.

Comment: Several commenters supported the Secretary's proposal, in § 682.201(d) and § 682.603, that the borrower provide evidence from the Immigration and Naturalization Service (INS) of permanent resident status. However, the commenters requested clarification concerning what evidence from INS is acceptable.

Response: No change has been made. Most GSL applications also identify in the application instructions the type of documentation that must be provided. The Secretary believes that the documentation is necessary to ensure that students do not receive aid to which they are not entitled.

Comment: Several commenters agreed with the Secretary's proposal in § 682.201(e), which would make a student ineligible for an additional GSLP or PLUS Program loan if the student (or parent, if applicable) is in default on a GSL, PLUS or NDSL Program loan or owes a refund on a State Student Incentive Grant (SSIG), Supplemental Educational Opportunity Grant (SEOG) or Pell grant for attendance at *any* school. Many commenters expressed concern that defaulted GSLs would be required to be reported on a student's financial aid transcript which would create delays and cash flow problems for students. Some commenters felt that implementation would be impossible without the availability of information regarding a borrower's previous default history.

Response: No change has been made. An institution is only required to report on a financial aid transcript default information for GSL and PLUS loans if the institution is aware of the default status. When a student applies for a loan the student must certify that he/she is not in default on another loan, and the school may rely upon that certification statement unless the school has information to the contrary. Proposed revisions to 34 CFR 668 would require a school to obtain a student's financial aid transcript prior to releasing GSL or PLUS loan proceeds to the student or to a parent borrower on the student's behalf.

Section 682.202 Permissible charges by lenders to borrowers.

Comment: Some commenters objected to the Secretary's proposal that lenders be allowed to capitalize interest no more than once a year. Other commenters argued that capitalization should be permitted at least semi-annually since many lenders grant forbearance in six-month intervals. Some commenters felt that the frequency of capitalization should be determined by the guarantee agency.

Response: No change has been made. Capitalization significantly increases costs to the student and the Federal Government. For this reason the Secretary wishes to limit the frequency with which a lender may capitalize interest. Lenders may continue to capitalize interest that accrues during periods of forbearance or deferment in accordance with these regulations.

Comment: Several commenters suggested that the regulations should permit capitalization when a loan is purchased by a secondary market.

Response: No change has been made. The Secretary does not believe that a borrower should be charged more interest, or that the Secretary should be liable to make special allowance payments on an increased loan balance, simply because a loan is transferred from one holder to another.

Comment: Several commenters expressed concern with the Secretary's proposal in § 682.202(b)(2)(iv) of the NPRM, which would permit lenders to capitalize interest from the date the first installment payment was due until it was made. These commenters argued that lenders would be unable to produce a disclosure of finance charges and a repayment schedule that accurately reflect the amount of interest to be capitalized since they do not always know the date the first payment will be made.

Response: No change has been made. Lenders are not required to capitalize this interest, but may do so in accordance with policies established by the guarantee agency. Section 682.205(b)(3) of the final regulations requires a lender to disclose to a borrower the *estimated* amount of interest to be capitalized.

Comment: Many commenters objected to the Secretary's proposal in § 682.202(c) of the NPRM to permit lenders to deduct the entire origination fee from the first disbursement of loan proceeds. Commenters suggested that students would be unnecessarily burdened at the beginning of the year, when most expenses are incurred, if the entire fee were deducted from the first disbursement.

Response: A change has been made. Public Law 99–272 requires origination fees to be deducted proportionately from each disbursement.

Comment: Many commenters agreed that the origination fee should be refunded to the borrower if the check for the entire loan or multiply disbursed portion is returned to the lender uncashed. While many commenters also agreed that the origination fee should be refunded to the borrower if, within a certain number of days, the loan is repaid in full, the commenters did not believe that 60 days was a sufficient period of time to allow for repayment in full. Several commenters thought that the 60-day limit was inconsistent with the 90-day limit allowed under § 682.300(b)(2)(iii) of the NPRM for interest benefits and special allowance payments on loans for which checks have not been cashed. The commenters contended that if the lender is eligible for interest benefits and special allowance payments for 90 days, then the borrower should also be eligible for a refund of the origination fee during the same period.

Response: A change has been made. The Secretary has extended the number of days specified in § 682.202(c)(4) of the final regulations during which the origination fee will be refunded from 60 to 120 days. In addition, the period of time specified in § 682.300(b)(2)(iii) of the final regulations during which the Secretary will pay interest benefits and special allowance to lenders on uncashed loan checks has been extended from 90 to 120 days. The Secretary has decided to make the two time frames consistent to eliminate the need for lenders to collect the origination fees from the borrowers after a loan is canceled because the check was not cashed.

Comment: Several commenters suggested that costs associated with locating a borrower (*e.g.,* skip-tracing costs), including fees paid to governmental and non-governmental agencies, fees paid to credit bureaus for address information, express or certified mail charges, and other charges associated with skip-tracing, be included on the list of collection costs that a lender may charge a borrower.

Response: No change has been made. Skip-tracing costs are considered collection costs and may be charged to the borrower, subject to the limits specified in § 682.202(f) of the final regulations, which excludes such items as local telephone calls.

Section 682.203 Statement of Educational Purpose.

Comment: Some commenters argued that the Statement of Educational Purpose is a part of the application process, during which the school determines the student's eligibility and, therefore, that § 682.203 of the NPRM, which requires the statement, is redundant and should be eliminated.

Response: No change has been made. Section 682.203 of the final regulations reflects the statutory requirement that a borrower provide a Statement of Educational Purpose to the lender as a condition for eligibility to participate in the GSL and PLUS Programs. The Statement of Educational Purpose is included as part of the student certification in GSL and PLUS applications, and, therefore, the borrower satisfies the requirement contained in this section by signing the application.

Section 682.205 Disclosure requirements.

Comment: Several commenters expressed concern that the disclosure requirements as proposed would preclude the use of a combined application/promissory note form. The commenters argued that there is no way of knowing the loan amount for which a student will qualify at the time a combined application/promissory note form is completed by the borrower.

Response: A change has been made. The Secretary has deleted the proposed requirement that certain disclosures be made in the promissory note in order to provide the lenders and guarantee agencies with maximum flexibility.

Section 682.209 Repayment of loans.

Comment: Several commenters disagreed with the Secretary's proposal, found in § 682.207(b) of the NPRM, to require a lender to credit prepayments that it receives against the principal amount of the loan. Most of these commenters agreed that this requirement is burdensome to lenders with automated servicing systems that treat prepayments as credits toward future installments due unless otherwise requested by the borrower.

Response: No change has been made. Both the proposed rules and final regulations require lenders to credit prepayments to principal only when the borrower does not request that the credits be credited to future installments. If the borrower does not specifically request the prepayment to be credited to future installments, the Secretary believes the borrower should receive the greatest monetary benefit of the prepayment in order to encourage such payments.

Comment: Two commenters suggested that the Secretary include deferment under what is now § 682.209(c)(2) of the final regulations since both deferments and forbearance are included in calculating the 10- or 15-year maximum repayment period.

Response: No change has been made. Section 682.209(c)(2) of the final regulations relates only to minimum annual payments. This section prohibits a lender from establishing an annual payment which would result in an extension of the 10- or 15-year maximum repayment period unless forbearance, as described in § 682.211 of the final regulations, has been approved. Since a deferment cannot affect the amount of a borrower's payment, deferments are not included in this provision. However, § 682.209(a)(6) of the final regulations governs the period of time during which a borrower must repay a loan, and stipulates that if the borrower receives an authorized deferment or is granted forbearance, as described in § 682.210 and § 682.211 of the final regulations, the periods of deferment or forbearance are excluded from determinations of the 5-, 10- and 15-year repayment periods.

Comment: One commenter pointed out a conflict between §§ 682.510(a)(3) and 682.606(b)(3) of the NPRM, which specify the period of time during which a student enrolled in a course of study by correspondence may request a restoration of in-school status after failing to submit a scheduled lesson when due.

Response: A change has been made. The Secretary has amended the language of the pertinent sections, §§ 682.209(a)(3) and 682.605(b)(3) of the final regulations, to require the student to make the request for restoration to in-school status within 60 days after the due date of a scheduled lesson that the student failed to submit.

Comment: Several commenters recommended that language be included in the regulations to distinguish between loans

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that have the $360 minimum annual repayment and loans that have the $600 minimum annual repayment. One commenter suggested including the applicable effective dates to make the distinction.

Response: No change has been made. The Secretary believes that it is unnecessary to include in the final regulations the $360 minimum annual repayment provision, since no new loans will be governed by that provision. All loans to which the $360 minimum annual payment applies currently have that provision included as a term of the promissory note.

Comment: Several commenters suggested that the regulations should specify that the beginning of the repayment period is day-specific for 7% loans and month-specific for 8% and 9% loans.

Response: No change has been made. The beginning of the repayment period (*i.e.*, the end of the grace period) on 7% loans is day-specific only if the lender allowed the borrower a 12-month grace period. However, if the borrower received a 6-, 9-, 10- or 11-month grace period, the beginning of the repayment period may be month-specific. If a lender allowed a 12-month grace period to be month-specific, the 12-month statutory maximum would be violated.

Comment: One commenter questioned the proposed requirement that both the school and the holder of the loan notify the borrower of a tuition refund paid by the school to the original lender.

Response: No change has been made. Section 682.209(e) of the final regulations applies only if a lender receives a refund from a school, and that lender is no longer the current holder of the loan. In such cases, the lender must transmit the refund to the current holder of the loan, and the current holder must provide written notice to the borrower that the refund payment has been received. The purpose of this provision is to inform the borrower that a refund which was sent to the original lender was subsequently received by the current holder.

Section 682.210 Deferment.

Comment: Several commenters stated that the 60 days for which a deferment may be granted retroactively, under what is now § 682.210(a)(5) of the final regulations, is too short a period to allow borrowers to obtain the required certifications. The commenters argued that this policy will lead to a significant increase in defaults, because borrowers will fail to submit the deferment documentation on time.

Response: A change has been made. The Secretary has amended § 682.210(a)(5) to allow all deferments, except the unemployment deferment, to be granted retroactively up to six months. The 60-day limit will continue to apply to the unemployment deferment. The Secretary believes that unlimited retroactive deferments have been an administrative burden to lenders. The six month and 60-day limits will minimize the adverse effect on lenders of having to adjust the borrower's account retroactive to the first day that the condition entitling the borrower to deferment began. In many cases, lenders have not been notified of deferments until after the conditions entitling borrowers to deferments no longer existed. This provision should also encourage borrowers to submit required deferment documents more promptly.

Comment: One commenter recommended that schools that are eligible to participate in the GSL and PLUS programs, but choose not to, should be allowed to certify the required documents for purposes of an in-school deferment.

Response: No change has been made. Section 487(a) of the Act specifies that, in order to be an eligible institution for purposes of any program authorized under title IV of the Act (except for SSIG), a school must enter into a participation agreement with the Secretary. Therefore, only participating schools may certify deferment forms for purposes of the GSL and PLUS programs.

Comment: Section 682.511(a)(8) of the NPRM proposed to prohibit a borrower who is in default from qualifying for a deferment until the account has been brought current with the lender. One commenter suggested that, instead, a borrower whose loan is in default not be eligible for a deferment until the borrower brings the account to less than 60 days past due, by means of either a payment or a forbearance requested in accordance with what is now § 682.211.

Response: A change has been made. A borrower may receive a deferment on a loan that is in default if the borrower has made arrangements, satisfactory to the holder of the loan, to repay the loan.

Comment: One commenter suggested that the regulations clarify whether or not an in-school deferment must be documented in writing or whether the lender may confirm the deferment orally with the school.

Response: A change has been made. Section 682.210(a)(4) now requires the borrower to provide the lender with all documentation required to establish eligibility for a deferment. This requirement would *not* be met if the lender orally confirms the borrower's in-school status with the school and so notes in the borrower's file. The Secretary provides a deferment form (ED Form 1188) for use under the FISLP to provide written documentation for all deferments. Guarantee agencies generally provide lenders with a comparable deferment form.

Comment: One commenter recommended that the regulations describe the conditions under which a student can be considered full-time while enrolled part-time in each of two or more eligible schools.

Response: No change has been made. It has always been the Secretary's policy to consider a student to be enrolled full-time at a participating school if he or she is enrolled less than full-time at two or more participating schools, as long as one school certifies the student's eligibility for the deferment, *i.e.*, that the combined enrollment at all schools constitutes full-time status.

Comment: One commenter suggested that § 682.511(i) of the NPRM, "Spouse's temporary total disability," be expanded to include all dependents of a borrower. The commenter argued that this revision would recognize that borrowers must often care for other family members who are temporarily totally disabled.

Response: No change has been made. The regulation reflects the statute, which only provides for a deferment for a borrower engaged in the care of a spouse who is temporarily totally disabled. However, a lender has the option under § 682.211 to grant forbearance to a borrower whose ability to make scheduled payments has been temporarily impaired by personal problems such as the illness of a dependent.

Comment: Several commenters suggested that unemployment deferments be renewable every six months, as specified in current regulations, rather than every three months.

Response: No change has been made. Because a borrower's employment status is subject to rapid and unexpected change, the Secretary believes that it is necessary to verify that the borrower is still unemployed and actively seeking employment at least once every three months.

Comment: One commenter suggested that the Secretary delete § 682.511(g)(3)(i) of the NPRM, now § 682.210(g)(3)(i), which requires that, to get an internship deferment, a borrower must provide the lender with a statement from an official of the appropriate State licensing agency that the internship program in which the borrower participates is one which the agency requires before certifying an individual for professional practice or service. The commenter stated that internship program administrators know enough about the legal requirements of their professions to be able to certify to this fact competently.

Response: No change has been made. In reviewing requests for the approval of internship programs, often from program administrators, the Secretary has noted that, contrary to the assertions of these administrators, the programs often do not meet the requirements specified in § 682.210(g)(2). Since a State licensing agency is responsible for the licensure of individuals in a particular profession, the Secretary has concluded that an official of that agency should certify that the internship program meets the requirements of § 682.210(g)(2). The program administrator must then certify, pursuant to § 682.210(g)(3), that the borrower is actually serving in that program.

Comment: One commenter noted that the regulation cites medical residency as an eligible internship program. The commenter noted that the minimum medical residency is three years in length while internship deferments are only two years.

Response: No change has been made. The two-year time limit for internship deferments is mandated by the statute. *See* 20 U.S.C. 1078(b)(1)(M)(vi) and 1078–2(a)(1).

Section 682.211 Forbearance.

Comment: Several commenters objected to deleting from prior regulations the requirement for a written forbearance agreement between the borrower and the lender.

Response: A change has been made. The Secretary has reinstated the requirement for a written forbearance agreement. A written forbearance agreement between the borrower and the lender is necessary to preclude any misunderstanding and to serve as a protection for both parties. Written forbearance agreements are especially important to a review of a lender's collection efforts on defaulted loans by the agencies or the Secretary.

Comment: One commenter suggested that the lender be given discretion to disregard all the rules of forbearance under certain circumstances. The commenter argued that the guarantee agencies need to retain flexibility to handle a situation in which the forbearance is agreed to orally but the form has been left unsigned by the borrower.

Response: No change has been made. The Secretary believes that the requirements of § 682.211 are general enough to accommodate most circumstances. If the forbearance agreement is not signed by the borrower, the forbearance would not be in effect until the borrower's signature was obtained.

Comment: One commenter objected to the requirement under § 682.209(c)(1), now § 682.211(c)(1), that, in order to grant forbearance, the lender must reasonably believe that the borrower intends to repay the loan, but is currently unable to do so. The commenter argued that it would be impossible for the lender to prove that the borrower intends to repay the loan.

Response: No change has been made. A lender is not required to *prove* that the borrower intends to repay the loan. A lender is only required to make a reasoned judgement that the borrower intends to honor the repayment obligation.

Section 682.212 Prohibited transactions.

Comment: One commenter suggested that a clause be added to this section to prohibit agents of lending institutions, particularly insurance companies, from earning commissions on sales of other services offered by the lender that are coupled with a promise by the lender to make a GSLP or PLUS Program loan in the future.

Response: No change has been made. The Secretary shares these concerns and is currently considering various alternatives for addressing these issues by regulation.

Section 682.213 Prohibition against the use of the rule of 78's.

Comment: Several commenters agreed with the proposal to prohibit the use of the rule of 78's. However, several commenters questioned what loans would be affected and thought that the rule should apply only to new loans. One commenter also suggested that the rule apply to loans entering repayment after the effective date of the regulation. Another commenter suggested that, for purposes of special allowance, lenders should be allowed to continue to calculate balances using the rule of 78's. Some commenters argued that the rule of 78's is used for computing all interest due by means of a pre-computed system. To change methods would result in the loss of substantial income. Some commenters pointed out that smaller lenders would have problems implementing this proposal.

Response: No change has been made. The Secretary appreciates the concerns expressed by the commenters. While lenders are encouraged to implement this provision immediately, they will not be required to do so until six months after the effective date of the regulation package (See the "Effective Dates" section of the preamble to these final regulations.) This provision will only affect those loans for which repayment has not begun as of that date.

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Section 682.300 Payment of interest benefits on a GSLP loan.

Comment: While there was some support for the proposal to limit the payment of interest benefits and special allowance on a loan for which the check remains uncashed to 90 days, many commenters objected to the proposal. The commenters argued that the proposal would create an unreasonable administrative burden for lenders since few checks remain uncashed and not returned to the lender in a timely manner. Other commenters indicated that the proposal would unfairly penalize lenders when schools are slow in returning uncashed checks. Moreover, the commenters believed that implementation of this proposal may decrease lender participation in the program. A number of commenters recommended that the Secretary use a longer period than 90 days.

Response: A change has been made. The Secretary is extending the number of days a check may remain uncashed and continue to be eligible for interest and special allowance benefits from 90 to 120 days. The Secretary believes that loan funds should be made available to a borrower at the time they are needed to pay educational costs. Accordingly, § 682.207(b)(9)(iv) prohibits a lender from disbursing a loan more than 30 days prior to the beginning of the academic period for which the loan is intended. If a loan check has not been cashed by a borrower within 120 days of the date of disbursement, it is reasonable to conclude that the funds are no longer needed by the borrower to pay educational expenses, and therefore the Secretary ceases to pay Federal subsidies on the loan. Failure by a borrower or school to return a loan check within 120 days does not penalize a lender, since these regulations authorize the lender to bill for interest benefits and special allowance for up to 120 days for loan checks that are not cashed.

Section 682.302 Payments of special allowance on a GSLP or PLUS Program loan.

Comment: One commenter recommended that § 682.302(d)(1)(iii) be revised to clarify that a lender's eligibility for special allowance payments ceases when the loan no longer qualifies for reinsurance payments by the Secretary.

Response: A change has been made. The Secretary has amended this section to terminate a lender's eligibility for special allowance payments by the Secretary on a loan when it ceases to be eligible for reinsurance coverage by the Secretary, so that both interest benefits and special allowance payments terminate at the same time.

Comment: One commenter requested a clarification of how a lender would know when a loan ceases to be guaranteed by a guarantee agency or reinsured by the Secretary. Another commenter indicated that it is a burden on the guarantor to determine the time at which the loan ceases to be guaranteed and to inform the lender in a timely manner.

Response: No change has been made. A loan ceases to be guaranteed when it no longer meets the conditions for guarantee coverage established by the guarantee agency. A loan no longer qualifies for reinsurance coverage when it ceases to meet the conditions established in § 682.406. It is not necessary for a guarantee agency to identify a violation of a condition for its guarantee coverage and notify the lender of that violation in order for the guarantee coverage on a loan to be terminated. The termination is automatic upon a lender's violation of a condition for guarantee coverage. Since the lender is presumed to know these conditions, it also should know when it has violated them.

Comment: One commenter believed it should be made clear that if a lender files a claim with a guarantee agency prior to the 90th day after the borrower's default, the lender should continue receiving special allowance payments up until the day the lender receives payment on that claim from the guarantee agency.

Response: No change has been made. Special allowance payments cease on default claims on the earlier of the date the lender receives payment on the claim or the date the loan ceases to qualify for reinsurance coverage. The maximum period of time for which a loan qualifies for reinsurance, and thus for which a lender qualifies for special allowance payment on the loan, after default by the borrower, is 90 days after the default claim is filed with the guarantor, provided the claim is filed within 90 days following the borrower's default. These regulations do not preclude a lender from collecting from a guarantee agency any lost income that resulted from a guarantee agency's failure to pay a claim within 90 days.

Section 682.303 Methods for computing interest benefits and special allowance.

Comment: Some commenters supported the elimination of the average quarterly balance method for interest and special allowance billing by lenders. One commenter indicated that most holders will benefit from the average daily or actual accrual method. Numerous commenters strongly opposed the elimination of the average quarterly balance method. The commenters' objections were based on the belief that other methods of computing interest and special allowance payments are burdensome, both for lenders that compute interest and special allowance payments without using an automated system, and for lenders that use automated systems (since computer programming changes will be costly). Many of the commenters recommended that the Secretary specifically address the problem of loan transfers in another way rather than eliminating the average quarterly balance method.

Response: No change has been made. The final regulations do not provide for the use of the average quarterly balance method for interest and special allowance billing

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because this method is not a precise means of determining the amount of interest and special allowance that has accrued on a loan portfolio. In the early years of the GSLP, the Secretary allowed the use of the average quarterly balance method because loan volume was considerably smaller than today. Thus, the financial impact of the imprecision of this method on the Government was negligible. This is no longer the case.

Comment: Many commenters requested that implementation of the prohibition against the use of the average quarterly balance method be delayed for a year.

Response: A change has been made. The Secretary has decided to postpone the effective date of this provision to allow lenders sufficient time to modify, or develop, procedures for billing for interest and special allowance payments under the new requirements. The effective date for this change may be found in the preamble to these regulations.

Comment: Many commenters objected to the proposal requiring the use of 365 days (or 366 in a leap year) in determining interest benefits under the average daily balance method or the actual accrual method. The commenters stated that a 365.25-day year represents no difference in cost to the Federal Government over a four-year period and should be allowed in order to eliminate the need to change interest billing systems to accommodate leap years.

Response: A change has been made. The Secretary has revised the regulations to allow for the use of either a 365.25-day year or the actual number of days in a year for the purpose of calculating the amount of interest benefits and special allowance payable to a lender by the Secretary. However, if a lender chooses to use a 365.25-day year, it must do so for four consecutive years.

Comment: Several commenters asked if the use of a 30-day month and 360-day year would be permissible in calculating interest benefits payable by the Secretary.

Response: No change has been made. The permissible methods for calculating interest and special allowance benefits payable by the Secretary are described in § 682.303 of the final regulations. In determining the average daily balance (§§ 682.303(b)(1) and 682.303(d)(1)), the actual number of days in the month and quarter must be used.

Subpart D—Guarantee Agency Programs

Section 682.401 Basic program agreement.

Comment: Several commenters objected to the requirement, found in § 682.401(b)(2)(i) of the NPRM, that the minimum loan amount authorized for a full-time student must be $1000. Some argued that it is unfair to burden students with a loan amount in excess of unmet need. Others argued that $1000 is too large a figure, suggesting that $500 would be more appropriate. Another commenter thought it unreasonable to require a $1000 minimum loan amount in the case of a full-time student applying for a loan for a period of less than one academic year in length.

Response: No change has been made. This requirement is not substantively different from previous regulatory requirements and is mandated by section 428(b)(1)(A) of the Act. The commenters misunderstood the intent of the rule. The final regulations *do not* require that loans must be in an amount of at least $1000; the final regulations merely require a guarantee agency that does not have a Supplemental Reinsurance Agreement with the Secretary to establish a policy that the maximum loan amount which it will guarantee will be no less than $1000.

Comment: Several commenters were critical of § 682.401(b)(4)(ii)(C) of the NPRM, which would require borrowers to supply, as part of the loan application, information regarding the borrower's and, if appropriate, the borrower's parents' outstanding student loans made under title IV of the Act. Several commenters contended that collecting information on the National Direct Student Loan Program (NDSLP) loans is unneccessary, since the school already has that information. One commenter suggested that the Secretary should specify the information to be included about PLUS Program and NDSLP loans. Several commenters objected to any requirement that PLUS Program parent borrowers disclose information about their children's student loans since they might not be aware of those loans. One commenter wondered if the proposed requirement meant that parent borrowers under the PLUS Program will be required to disclose *their* NDSLP loans.

Response: A change has been made. The requirement that borrowers provide information concerning their NDSL Program loans has been deleted. The requirement that borrowers provide information about their GSL and PLUS Program loans has been retained. The purpose of this requirement is to ensure that borrowers do not exceed the annual and aggregate loan limits and to provide information to enable lenders to counsel borrowers regarding their accumulated debts. In the case of a parent borrowing a PLUS loan, the parent is required to provide information concerning the student's outstanding loans in connection with the PLUS program loan application. In practice, the student will ordinarily provide this information on the application form, which the parent will then certify. The Secretary believes it is reasonable to require that a parent borrowing on behalf of a student become aware of that student's outstanding loan obligations.

Comment: Many commenters objected to the proposed requirement in § 682.401(b)(5) of the NPRM that all loan checks (other than those made for students to attend school outside the United States, or PLUS loans to parents) be made jointly payable to both the borrower and the school, and be sent to the school. Many commenters suggested that the same benefits for the program are achieved by either making loan checks jointly payable or by requiring checks to be sent to the school, and that requiring both is therefore unnecessary. Several commenters urged that guarantee agencies be allowed to exercise their discretion in deciding if loan checks should be made jointly payable. One commenter suggested that schools should be given the option to decline the use of jointly payable checks. One commenter argued that the jointly payable check requirement eliminates any need for holding a loan check until after classes commence, as was proposed in § 682.605(c) of the NPRM.

Response: A change has been made. Among the many changes in the GSLP mandated by Pub. L. 99-272, several provisions addressed some of the concerns of the commenters. The statute now prohibits the Secretary from requiring the use of jointly payable checks; it does not, however, prohibit a guarantee agency from requiring the use of jointly payable checks in its program. The statute also requires that GSL and PLUS Program checks be sent to the schools, including foreign schools, for delivery to borrowers. The final regulations have been amended to reflect these statutory changes.

Comment: Several commenters expressed apprehension over the provisions found in § 682.401(b)(6)(iii)–(iv) of the NPRM, which specify circumstances requiring refund of the insurance premium. One commenter complained that the administrative burden of examining each paid-in-full loan to determine if a portion of the insurance premium is refundable is too great to be justified.

Response: No change has been made. Section 682.401(b)(6) of the final regulations authorizes a guarantee agency to charge an insurance premium to the lender. That section further stipulates the circumstances under which insurance premiums must be refunded. Neither the NPRM nor the final regulations require each paid-in-full loan to be examined to determine if a portion of the insurance premium is refundable. The Secretary has decided to refund the origination fee on a loan which is either paid-in-full within 120 days or cancelled because the check was not cashed. The final regulations require a guarantee agency to refund the insurance premium on such loans. This will establish a uniform policy for all agencies and will ensure that no default claim is submitted by a lender for the amount of the insurance premium only. The costs incident to the submission and review of such claims far exceed their amount. The remaining requirements found in § 682.401(b)(6) of the final regulations require the refund of an insurance premium charged to cover the anticipated repayment period when the loan is not outstanding during the period for which the insurance premium was charged. That requirement continues an existing one, which ensures that the actual insurance premium paid by the borrower does not exceed the regulatory maximum.

Comment: One commenter was critical of the provision in § 682.401(b)(9) of the NPRM, which requires a guarantee agency to allow a loan to be assigned only to certain parties. The commenter stated that policing such assignments is a responsibility which is beyond the ability of guarantee agencies to perform.

Response: No change has been made. Current regulations contain the same requirement concerning assignment. The Secretary believes it is the responsibility of each guarantee agency to ensure that GSL and PLUS Program loans are held only by eligible lenders.

Comment: Several commenters suggested that § 682.401(b)(9)(ii)(B) of the NPRM should not limit loans assigned to the guarantee agency to cases of a borrower's default, death, total and permanent disability or filing of a bankruptcy petition.

Response: No change has been made. GSL and PLUS Program loans cannot be routinely assigned to a guarantee agency because, under the Act, an agency is an eligible lender only for purposes of making consolidation loans or when the agency serves as a lender of last resort.

Comment: Several commenters asked the Secretary to clarify the status of loans pledged as collateral, including possibly as collateral for State funds deposited into a lending institution, since such loans would be affected by the provision in § 682.401(b)(9)(ii) of the NPRM, which defines "assigned" to include loans pledged as security.

Response: No change has been made. Since, under the Act, only eligible lenders may receive program benefits, the pledge of a GSLP or PLUS program loan to an ineligible lender confers on the ineligible lender no right to receive those benefits. The ineligible lenders may not be aware of this. For this reason, the Secretary believes it is necessary to prohibit such pledges entirely. Accordingly, loans may not be pledged as collateral except to an eligible lender.

Comment: Several commenters suggested that the Secretary delete the proposed requirement, found in § 682.401(b)(10)(i)(D) of the NPRM, that a guarantee agency must establish, disseminate and enforce standards and procedures for approval of forbearance since standards for forbearance were included in § 682.512 of the NPRM and apply to guarantee agency programs.

Response: A change has been made. The Secretary has deleted the requirement as suggested by the commenters. Final regulations governing forbearance are provided in § 682.211 of the final regulations and apply to both the guarantee agency and the FISL programs.

Comment: Several commenters suggested that the Secretary could reduce the burden on schools by mandating in what was § 682.401(b)(11) of the NPRM uniform procedures for use by all guarantee agencies in monitoring enrollment status.

Response: No change has been made. The final regulations require that guarantee agencies develop systems to monitor student enrollment status, as was proposed in the NPRM. The Secretary is concerned with the administrative burden that might be imposed on schools if each agency adopts a different monitoring system. The National Council of Higher Education Loan Programs (NCHELP) has established a committee which is developing a uniform system for monitoring student enrollment status. A pilot project utilizing this system was conducted by NCHELP in the Spring of 1986. The committee is evaluating the success of the pilot and is attempting to resolve the technical and administrative problems encountered. The Secretary is greatly interested in the establishment of a single system for monitoring student enrollment status in order to reduce reporting burdens on schools and intends to consider the results of the NCHELP pilot project in developing future regulations in this area.

Comment: Many commenters disapproved of the proposed requirement, found in § 682.401(c) of the NPRM, that prohibits guarantee agencies from using forms, procedures, regulations and other materials until they have been reviewed and approved by the Secretary. Many commenters suggested that the provision should be amended to provide for implied approval of documents not acted on within a given period of time (*e.g.*, 30 to 60 days). Several commenters suggested that the regulations should mandate that the Secretary must review documents within a given period of time. One commenter thought that agency materials could be reviewed by the Secretary during an agency's annual program review. Another commenter recommended that the Secretary mandate a standard loan application for all agencies, which would eliminate the need for the Secretary to review over fifty separate applications.

Response: A change has been made. The Secretary is requiring a guarantee agency to obtain the Secretary's approval of its application forms, promissory notes, and write-off criteria and procedures before using them. Prior approval of the application forms and promissory notes is necessary because these forms are central to the GSL and PLUS programs and affect all program participants. Prior approval of write-off criteria and procedures is required to ensure that agencies exercise due diligence in collecting loans they hold. An agency is also required to submit to the Secretary its regulations, procedures and other substantive program materials whenever they are revised, but the Secretary's approval is not needed before they are implemented. The Secretary is interested in the development of a single application form to be used by all guarantee agencies, and is reviewing various technical and programmatic alternatives in this area. Such an approach (*i.e.*, a single application) would presumably be desirable from the perspective of schools and lenders dealing with multiple guarantee agencies.

Section 682.402 Death, disability, and bankruptcy payments.

Comment: Several commenters stated that guarantee agencies retain copies of the loan application at the time the loan is approved. Therefore, there is no need to require that a copy of the loan application be included with the claim.

Response: No change has been made. The Secretary retained this provision because all agencies do not have a uniform policy of retaining a copy of the application at the time the loan is approved. The Secretary does not object, however, if a guarantee agency retains the application at the time of guarantee on the lender's behalf, and does not require that a copy be submitted with a death, disability, or bankruptcy claim.

Comment: One commenter stated that there is no provision for the treatment of bankruptcy when the borrower is in the in-school, grace, or deferment periods, because the borrower is not in default during those times.

Response: A change has been made. Under the final regulations, a lender is required to hold a loan on which a borrower has filed bankruptcy if the borrower has not been in repayment for at least five years, unless a hardship petition has been filed by the borrower with the bankruptcy court. If the borrower has been in repayment for longer than five years, the lender must file a bankruptcy claim with the guarantor. The regulations have been changed to reflect current Federal bankruptcy law. Loans on which lenders have ceased collection activity due to the borrower's filing of bankruptcy, but which are not later discharged, will be considered as having been in forbearance status until the outcome of the bankruptcy proceedings is known.

Section 682.404 Federal reinsurance agreement.

Comment: Several commenters objected to the proposed amendment to the Federal reinsurance agreement in § 682.404(d) of the NPRM that would require agencies to apply payments of defaulted borrowers to accrued interest first. They argued that defaulted borrowers would become discouraged if they did not see their principal balance reduced, thus making them less likely to continue making payments. Some commenters suggested that agencies should to be given the option of applying payments to either accrued interest or principal first as they were previously. Several commenters objected to the proposed requirement because agencies would incur administrative costs in having to reprogram their computer systems.

Response: No change has been made. The Secretary is requiring payments to be applied to accrued interest first because borrowers who default and have their payments applied to principal first would otherwise pay less over the life of the loan than would borrowers who do not default. This would be unfair to borrowers who honor their repayment obligations.

Comment: Several commenters suggested that guarantee agencies that use collection agents would have difficulty remitting to the Secretary his equitable share of borrower payments within 60 days of receipt, as required by § 682.404(e)(4) of the NPRM. They suggested that the agency should be allowed an additional 30 days from the collection agents' receipt of funds.

Response: No change has been made. The final regulations clarify that the Secretary is entitled to his equitable share in a timely manner, irrespective of the guarantee agency's collection procedures. The Secretary emphasizes that the 60 days begins on the day the borrower's payment is received, whether by the guarantee agency or by its agent. Sixty days is a sufficient period for a guarantee agency to perform the administrative functions necessary to account for and remit the Secretary's equitable share. This requirement is no different from current regulations.

Comment: Several commenters objected to the proposed requirement in § 682.404(e)(5) of the NPRM that a guarantee agency must transmit to the Secretary his fair share of an asset which the agency purchased with the Secretary's assistance and which is subsequently sold by the agency. They charged that the word "assets" is vague and broad. They argued further that the Secretary

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is overreaching his authority by imposing such a requirement. (This comment also applies to § 682.407(b)(3) of the NPRM.)

Response: No change has been made. The Secretary is entitled to a portion of the proceeds of any asset a guarantee agency sells or converts to a non-GSL or non-PLUS use, if the cost, or a portion of the cost, of the asset was claimed as an expense under § 682.404(e)(5) (retention of collections), § 682.407(b)(3) (administrative cost allowance), or § 682.410(a)(6) (insurance premiums and investment earnings). Indeed, this is implicit in the notion that these funds may be used to pay only an agency's *costs* of the GSLP and PLUS Program. The Secretary is owed the same proportion of the liquidation price or fair market value, if applicable, as the proportion of the purchase price that the Secretary paid. The term "asset" is indeed a broad one, as it must be to protect the Federal interest adequately. The term includes equipment, supplies, and all other property whether real or personal, tangible or intangible.

Section 682.406 Conditions of reinsurance coverage.

Comment: One commenter stated that it should be made clear that if an agency fails to pay a claim within 90 days from the date the lender files the claim, the agency should be responsible for sums due the lender, including accrued interest and special allowance benefits.

Response: No change has been made. The refusal of the Secretary to pay a reinsurance claim because of violations by a guarantee agency does not affect that agency's responsibility to honor a lender's default claim. In addition, these regulations do not preclude a lender from collecting from a guarantee agency any lost income that resulted from a guarantee agency's failure to pay a claim within 90 days.

Section 682.408 GSLP loan disbursement through a guarantee agency escrow agent.

Comment: Several commenters objected to the disbursement requirements proposed in § 682.408 of the NPRM. Several commenters stated that disbursements should not be required to be equal, if it can be shown that unequal disbursements will better assist the borrower in meeting educational costs as they arise. In addition, a number of commenters suggested that loans for periods of enrollment of less than 600 clock hours, one quarter, six months, or for amounts of $1250 or less, should be exempt from the disbursement provisions. One commenter noted that multiple disbursements or co-payable checks are not feasible for borrowers attending foreign schools. This commenter recommended that the Secretary include a provision for disbursement by the escrow agent by means of a single check, made payable only to the borrower. Some commenters opposed the provision that loan proceeds be received no later than 30 days after the beginning of each academic period.

Response: A change has been made. This section has been revised to reflect requirements of Pub. L. 99–272 which mandate that lenders disburse a loan in two or more installments if the loan is for $1000 or more, and the period of enrollment is more than six months, one semester, two quarters or 600 clock hours. A loan to a student attending a foreign school is not exempt from the multiple disbursement provisions of the law. The Secretary has revised these final regulations to delete the requirement for co-payable checks, in accordance with the mandate of Pub. L. 99–272. These regulations contain provisions which allow an escrow agent to disburse loan proceeds on behalf of an eligible lender. Loans disbursed by an escrow agent are also subject to the multiple disbursement requirements, and must be transmitted to the school no later than 30 days after receipt of the funds from the lender.

Comment: One commenter questioned the applicability of the requirements of § 682.408 of the NPRM to disbursements by wire transfer. This commenter wanted to know at what point the account would be credited and if the borrower would have to sign an endorsement form.

Response: A change has been made. Public Law 99–272 provides that loan disbursements may be made by means of checks payable to and requiring the personal endorsement of borrowers or by other means payable to and requiring the certification by borrowers. The change in the regulation authorizes the disbursement of loan proceeds by wire transfer to the escrow agent, and from the escrow agent to the school, if authorized by guarantee agency policy.

Comment: Several commenters stated that it is inconsistent to require escrow agents to return any untransmitted proceeds of a loan to the lender within 15 working days after learning that the student has not enrolled or is no longer enrolled at least half-time, when schools are allowed 30 days to refund to lenders.

Response: No change has been made. An escrow agent, unlike a school, is not required to determine the amount of a refund which is allocable to the loan. The escrow agent needs only to determine the amount of the borrower's loan that has not previously been transmitted to the school, and return that amount to the lender. The Secretary believes, therefore, that it is appropriate to provide a school with more time to process a refund to a lender than is provided to an escrow agent.

Comment: Several commenters objected to the requirement that a lender, upon disbursing funds to an escrow agent, must give simultaneous written notice to the borrower. Some of the commenters argued that this requirement will only add to the lender's expenses, create confusion among borrowers, and increase administrative burdens for lenders and escrow agents.

Response: A change has been made. The Secretary agrees with the commenters and has deleted the proposed requirement.

Comment: Some commenters objected to the proposal that would authorize guarantee agencies to establish an escrow system. Several commenters supported allowing a school to become an escrow agent for loans made to its students.

Response: No change has been made. Section 428(i) of the Act authorizes the establishment of escrow systems. Under the revised requirements, a lender may only disburse a loan to an escrow agent at such time and in such amount as the lender could disburse to a school. Thus, the escrow system concept makes sense only where the loan proceeds are disbursed to an entity other than the school.

Section 682.409 Mandatory assignment by guarantee agencies of defaulted loans to the Secretary.

Comment: Several commenters expressed reservations about the assignment procedures and documentation that would be required for loans that the Secretary selects for assignment. Many commenters were critical of the broad language used in the section, because they feared that the Secretary could require an agency to assign all defaulted loans in its portfolio, regardless of the status of the loans. One commenter suggested that agencies should be allowed to appeal the Secretary's decision.

Response: No change has been made. One purpose of mandatory assignment of defaulted loans is to facilitate the use of the most effective, cost-efficient collection methods available. The Federal Government has available to it a number of collection tools which are not available to guarantee agencies, including the authority to offset Federal income tax refunds. One of the main factors that the Secretary intends to consider in determining which loans will be assigned is the relative cost-effectiveness of agency collection efforts compared to those which will be applied to assigned loans by the Secretary. Since it is difficult to foresee which loans, or types of loans, could be collected by the Secretary more successfully than by guarantee agencies (given the changing characteristic of loan portfolios over time, the varying sucess of different agencies in loan collection, and the availability to the Federal Government only of additional collection tools, *etc.*), the Secretary has retained flexibility to require assignment of defaulted loans.

Comment: Many commenters argued that a guarantee agency is entitled to a percentage of the funds collected by the Secretary on assigned loans equal to the percentage of the reinsurance claim not paid by the Secretary. They suggested that the Secretary should also reimburse agencies for collection costs incurred on a loan prior to assignment.

Response: No change has been made. The statute does not require the Secretary to remit to an agency any portion of funds collected on a loan assigned to the Secretary, nor does the statutory scheme suggest that this would be appropriate as a policy matter.

Comment: Several commenters insisted that assigned loans should be removed from an agency's default rate calculation for purposes of determining the agency's reinsurance percentage.

Response: No change has been made. Loans assigned to the Secretary will continue to be included in the default rate calculation because they remain in default, regardless of who is performing collection activity, and are, therefore, relevant to an assessment of the agency's performance and of program trends. However, the Secretary will exclude the amount of collections received by the

Secretary on assigned loans from an agency's cumulative net default rate calculation. Because of collection tools available only to the Federal Government, agencies may, accordingly, reasonably expect that assignment would lead to lower default rates than would occur without assignment.

Section 682.410 Fiscal, administrative, and enforcement requirements.

Comment: Several commenters strongly objected to the proposed provisions imposing specific due diligence requirements for guarantee agencies to follow in collecting defaulted loans. Some of the commenters noted that these requirements provide no flexibility to the guarantee agency in weighing the costs against the benefits of particular collection efforts in particular cases, especially the requirement that the agency file suit in all cases.

Response: A change has been made. The Secretary has deleted the proposed requirement that guarantee agencies file suit on all accounts that are not in repayment after 180 days of collection efforts by the guarantee agency. The Secretary believes, however, that litigation and the threat of litigation are valuable collection tools, and that they should be an integral part of any diligent collection effort. Accordingly, the Secretary has revised the final regulations to require periodic evaluation of the borrower's ability to pay, to identify those accounts on which the guarantee agency must institute a civil suit. The Secretary has, however, retained the other specific collection requirement in this section. The Secretary believes that these requirements reflect the minimal level of effort necessary to protect the Federal fiscal interest in diligent loan collection.

Comment: One commenter questioned whether the requirements for guarantee agencies' due diligence in collection, found in § 682.410(b)(3) of the NPRM, pertains only to the guarantee agency or also to agents of the guarantee agency.

Response: This subpart of the final regulations regulates the activities of guarantee agencies. An agency may choose to contract with other parties to perform activities on its behalf, but the agency remains responsible for complying with the regulations.

Comment: Several commenters objected to agencies being required to conduct on-site program reviews at participating schools. Some of the commenters believed this to be a duplication of effort, because schools are currently being reviewed by the Federal government.

Response: No change has been made. It is the intent of the Secretary that guarantee agencies have primary responsibility for monitoring and ensuring the compliance of their program participants (*i.e.*, lenders and schools). Although the Secretary plans to continue to conduct some lender and school reviews, most future program reviews will involve the guarantee agencies.

Comment: Several commenters strongly objected to the requirement that a guarantee agency reserve fund include all of the funds and the fund sources listed in this section. Several of the commenters pointed out that gifts and grants, for example, are sometimes provided for a specific purpose.

Response: A change has been made. The Secretary has amended the final regulations to allow gifts and grants to be used for the administration of a guarantee agency's loan program. The Secretary believes that all funds generated as a result of a guarantee agency's administration of its loan guarantee program should be reserved for use by that guarantee agency in performing its duties as a guarantee agency. The Secretary does not believe it appropriate that the guarantee agency program be used to raise funds for purposes unrelated to the loan guarantee program. In addition, the Secretary believes that the amount of insurance premiums charged by a guarantee agency to borrowers should reflect that agency's need for funds to administer its loan guarantee program. If a guarantee agency has excess funds available to it, the Secretary urges it to repay Federal advances or, if the guarantee agency has no outstanding advances, reduce the amount of insurance premiums charged to borrowers.

Comment: Several commenters objected to the provision that would require the guarantee agency to invest the assets of the reserve fund only in low-risk securities. Some of the commmenters believed that this provision should be less restrictive.

Response: No change has been made. The reserve fund is meant to support the guarantee agency's loan program. Therefore, the assets of the reserve fund should not be invested in securities which entail a high risk of loss.

Comment: Several commenters objected to the provision that would require the guarantee agency to report a default to a credit bureau. Some of the commenters stated that there would be dual reporting of the same default would result.

Response: No change has been made. Public Law 99–272 requires guarantee agencies to report a default to credit bureaus. In addition, that law requires lenders to report disbursements to credit bureaus. The final regulations reflect those statutory changes.

Comment: Several commenters objected to the provision that would require a guarantee agency to charge interest on defaulted loans for which the Secretary has paid reinsurance. Another commenter requested an interpretation of how this provision is affected by State usury laws, or other State laws, that might limit the interest rate charged by an agency.

Response: No change has been made. The Secretary strongly believes that borrowers should not receive a financial benefit from defaulting on their loans. Therefore, the Secretary has retained the requirement in the final regulations that all guarantee agencies charge interest on defaulted loans. The Secretary does not believe that State usury laws will conflict with this requirement because, under the final regulations, borrowers must be charged interest at the higher of the rate stated in the borrower's promissory note or the rate permitted by State law. The Secretary notes that many States permit the rate of interest specified in a promissory note to be increased upon the entry of a judgment on the debt.

Comment: Several commenters pointed out that the term "geographic area" in § 682.410(c)(1)(ii) of the NPRM requires definition, because of multi-State guarantors and possible adjacent State jurisdictions.

Response: A change has been made. The term "geographic area" has been deleted. Guarantee agencies are responsible for monitoring the compliance of their program participants regardless of geographic proximity to the guarantee agency.

Comment: Several commenters stated that the proposed provisions for adopting procedures to identify fraudulent loan applications were too vague.

Response: No change has been made. The Secretary has not prescribed specific procedures that guarantee agencies must adopt in order to permit each agency the flexibility to establish procedures that are most effective for that agency. At a minimum, agencies should have controls in their systems that identify invalid Social Security numbers, and procedures for the treatment of information received from the Secretary on borrowers who have exceeded loan limits or defaulted on loans guaranteed under other agencies' programs.

Section 682.411 Due diligence by lenders in the collection of guarantee agency loans.

Comment: Several commenters criticized various aspects of § 682.411 of the NPRM, which would establish minimum collection requirements for lenders participating in guarantee agency programs. Several commenters agreed with the principle of due diligence, but did not believe the Secretary should prescribe specific actions on specific days. A few commenters found the requirements too lenient. Several commenters believed that these requirements should not apply to agencies with more stringent requirements. Several commenters suggested that the rules governing agency lenders should not be more stringent than those applied to FISL lenders.

Response: No change has been made. Over time a wide diversity of due diligence policies has developed among agencies. While some agencies have developed policies designed to ensure that lenders undertake all reasonable collection efforts prior to submitting default claims, others have been very lax, both in the formulation and enforcement of their policies. The Secretary is alarmed at the rising costs of defaults in recent years. The requirements set forth in these final regulations represent the minimum level of effort that lenders must undertake in collecting loans in order for agencies to qualify for reinsurance payments. These regulations do not prohibit a guarantee agency from adopting more stringent requirements. These standards will help to protect the Federal government from unreasonable risks of loss and will improve the collections of loans nationwide. The Secretary does not believe it is necessary at this time to change the FISL due diligence procedures for lenders because loans are no longer being made under the FISLP.

Comment: Several commenters suggested that telephone contacts are more effective than written notices. Several commenters

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requested clarification of what constitutes diligent effort to make telephone contact.

Response: No change has been made. By these final regulations the Secretary is merely prescribing the minimum efforts that lenders must undertake in collecting on loans, in order for an agency to qualify for reinsurance payments. The mixture of telephone and written contacts required should not be interpreted as limiting collection efforts. If a lender finds that telephone contacts are more effective than written contacts, the lender is encouraged to increase the number of such telephone contacts. To qualify for reinsurance payments, however, the guarantee agency must require its lenders to adhere to the minimum number of written and telephone contacts set forth in the final regulations. Diligent efforts to make telephone contact include, but are not limited to, attempting to contact a borrower at different times of day, on different days of the week.

Comment: Several commenters requested that the Secretary tolerate some minor violations of the deadlines by which a lender must complete a collection activity (*e.g.*, a 30-day letter sent on the 31st day should not cause a loan to become unreinsured).

Response: No change has been made. The time frames established in the final regulations are set at 30-day intervals. By establishing the time-frames in this manner, the Secretary provides lenders with sufficient flexibility to perform the required activities at any time during the prescribed intervals. The requirements set forth in the regulations are the minimum requirements with which a lender must comply in order for a guarantee agency to receive reinsurance on a loan. The regulations do not prohibit either a guarantee agency from requiring additional activities by its lenders or a lender from performing additional activities that it considers effective.

Comment: One commenter suggested that, for purposes of § 682.411(b) of the NPRM, in the event of a late payment by the borrower, the first day of the delinquency period should be the day after the due date of the next missed payment rather than the due date itself.

Response: A change has been made. The language concerning the effect of late payments on delinquency has been changed to reflect the commenter's suggestion.

Comment: One commenter asserted that 30 days is too brief a period of time for a lender to recognize that a loan has entered the repayment period and that 60 days is a more reasonable period.

Response: No change has been made. The Secretary believes that 30 days is adequate time for a lender to recognize that a loan has entered the repayment period, particularly since lenders are not required to obtain signed repayment schedules from borrowers. Though the Secretary recognizes that a reasonable amount of time is required for a lender to recognize that a loan has entered the repayment period, any delay in repayment extends the period of time the loan is outstanding and thereby increases special allowance costs on the loan.

Comment: One commenter suggested that it would be impossible for a lender to begin skip-tracing activity within 10 days of discovery of a skip, as was proposed in § 682.411(g) of the NPRM.

Response: No change has been made. The Secretary is requiring only that a lender begin skip-tracing activity within 10 days of discovery, not that those efforts be completed in 10 days. The Secretary believes that it is essential to begin skip-tracing activity as soon as possible after discovery of a skip, so that the chances of locating the borrower are enhanced.

Comment: One commenter suggested that § 682.411(h) of the NPRM was unclear and should be revised to require the lender to request pre-claim assistance at the *earlier* of the 90th day of delinquency or as soon as assistance is available from the agency.

Response: A change has been made. The final regulations have been changed to require lenders to request pre-claim assistance as soon as it is available. If a guarantee agency offers such assistance at the 60th day of delinquency, for example, the lender must request it at that time.

Section 682.412 Consequences of the failure of a borrower or student to establish eligibility.

Comment: Several commenters objected to the proposal to require lenders to take specific action on loans to borrowers who failed to establish eligibility, because schools are not held responsible for loans made to, or interest paid on behalf of, ineligible borrowers.

Response: No change has been made. However, by including a requirement that the lender demand that a borrower repay loan funds for which the borrower was not eligible, the Secretary does not intend to imply that the Secretary will not impose a fine against a school, if appropriate, under 34 CFR 668.75. Also, the Secretary may choose, if appropriate, to recover Federal funds paid on such a loan from the school, under § 682.609 of the final regulations, or from the borrower.

Comment: One commenter objected to the proposal that would require lenders to adjust their interest billing for interest paid by the borrower as a result of the final demand letter.

Response: No change has been made. The interest that is paid by the borrower is reimbursement of interest improperly paid to the lender by the Secretary on the borrower's behalf. These final regulations, therefore, require this repaid interest to be reimbursed to the Secretary on the lender's next quarterly interest billing form.

Comment: Several commenters objected to the proposal to require lenders to demand full repayment of an ineligible loan because the commenters believed that this action forces a borrower into default.

Response: No change has been made. The Secretary provides the borrower with an opportunity to repay fully, within 30 days of the final demand letter, the amount for which the borrower was ineligible. The Secretary only requires a lender to file a default claim on the full amount of the loan if a borrower fails to comply with the terms of the final demand letter. In any case, an ineligible borrower is, by definition, not permitted to receive or retain loan funds at all, under the Act.

Section 682.413 Remedial actions.

Comment: Several commenters suggested that § 682.413 of the NPRM should provide for specific, reasonable and appropriate sanctions only in the case of specific, identifiable and material violations.

Response: No change has been made. The Secretary believes that the remedial actions in § 682.413 of the final regulations *are* specific, reasonable and appropriate. The Secretary has no intention of applying them where violations are unidentifiable. The Secretary is authorized to recover payments to which program participants were not entitled due to program violations. If the Secretary finds it necessary to limit, suspend or terminate a lender or an agency, or to recover or withhold payments, he will do so only after the affected party is granted notice and an opportunity to be heard.

Subpart E—Federal Insured Student Loan Program and Federal PLUS Program

Section 682.507 Due diligence in collecting a loan.

Comment: Two commenters noted that § 682.513(f) (1) and (2) of the NPRM would allow the lender to file a lawsuit against the borrower to recover the amount of the loan, together with attorneys' fees. The commenters asked if, in connection with a default claim later filed on the loan, the Secretary will reimburse the lender for attorneys' fees incurred by the lender.

Response: No change has been made. Section § 682.202(f)(1) of the final regulations allows the lender to charge the borrower for collection costs incurred by the lender or its agent in collecting installments not paid when due, if the borrower's promissory note included a provision to that effect. The Secretary provides a lender participating in the FISLP with the authority to institute a civil suit against a borrower for recovery of amounts owed. In addition, a lender may first apply payments received from a borrower in satisfaction of a judgment against the lender's attorneys' fees and court costs. In the event that the lender is unsuccessful in recouping such costs from the borrower, however, the Secretary will not reimburse the lender for such costs.

Section 682.510 Determination of the borrower's death, total and permanent disability, or bankruptcy.

Comment: Several commenters objected to the requirement in § 682.517(b) of the NPRM for returning payments a lender receives between the date the lender is notified of a borrower's claim of total and permanent disability and the date the lender receives the physician's certification of the borrower's total and permanent disability.

Response: No change has been made. Section 437(a) of the Act requires the Secretary to discharge the liability of a borrower who becomes totally and permanently disabled. The Secretary believes it is reasonable to conclude that a borrower who submits a physician's certification of total and permanent disability was, in fact, disabled at the time he or she notified the lender of his or her disability. The Secretary, therefore, is requiring in these final regulations that the lender return to the borrower payments received between the date a lender is notified of a borrower's claim of total and permanent disability and the date the lender receives the physician's certification. The lender may add the amount of such payments to the claim for reimbursement by the Secretary.

Comment: One commenter noted that a typographical error may exist in § 682.517(b)(2) of the NPRM, which states that the lender shall continue collection on an account on which a borrower has notified the lender that he or she is totally and permanently disabled. Section 682.517(b)(4) of the NPRM states that the lender shall *resume* collection if the lender determines that the borrower's loan is not eligible for cancellation due to total and permanent disability or if the lender has not received a physician's certification, giving the impression that collection activity has ceased. Previous regulations instructed the lender to cease collection for 60 days while awaiting receipt of the physician's certification. The commenter believed that § 682.517(b)(2) of the NPRM should read, "The lender shall discontinue collection. . . ."

Response: No change has been made. Section 682.402(c)(2) of the final regulations requires the lender to continue collection *until* it receives the certification or receives a letter from a physician stating that the certification has been requested and that additional time is needed to determine if the borrower is totally and permanently disabled. After receiving the physician's certification or letter, the lender may not attempt to collect from the borrower or any endorser. Section 682.402(c)(4) of the final regulations requires the lender to resume collection if the lender has not received the certification within 60 days of receipt of the letter promising the certification.

Section 682.511 Procedures for filing a claim.

Comment: Several commenters objected to the Secretary's proposed language ". . . if a lender fails to submit all required documents, the Secretary denies the claim . . . ." The commenters believed that the term "denies" is too restrictive and prefer the current language ". . . may result in the claim not being honored. . . ."

Response: No change has been made. The required documentation enables the Secretary to determine if the debt is legally enforceable, and to determine if the lender has complied with the Act and regulations. Failure to submit the required documentation would prevent the Secretary from determining, for example, if due diligence has been properly exercised on the claim. The Secretary has reserved the right under § 682.514 of these regulations to make claim payments despite defects in a claim, if the best interests of the United States so require.

Comment: One commenter stated that it would be a logistical nightmare to retain each relevant piece of correspondence or to retrieve all such documents from microfilm in order to file a claim. The commenters recommended that the Secretary accept instead a computer-generated collection history.

Response: No change has been made. The Secretary believes that a computer-generated collection history alone does not provide enough information to determine if adequate due diligence has been performed by the lender. A computer-generated collection history with samples of standardized letters sent to borrowers, however, is acceptable, if the letters did not require the insertion of information as to the status of the loan which, if incorrect, could confuse the borrower or otherwise reduce the effectiveness of the letters as collection tools. For example, a "form" letter that materially misstates the extent of the borrower's delinquency or the amount owed on the loan may have little positive effect on the borrower's willingness to repay the loan or could even reduce it.

Comment: One commenter objected to the proposal requiring bankruptcy claims to be filed within 30 days after the lender receives notice of the first meeting of creditors. The commenter noted that the notice of the first meeting of creditors usually goes to the lender, who in turn must send it to the lender's servicer if, as is often true, the lender uses such a servicer. Therefore, the commenter argued, the 30-day reduction in the time for filing bankruptcy claims allowed under current regulations is not warranted.

Response: No change has been made. Since there is limited time available for the Secretary to file a protest to the discharge of a loan in bankruptcy, the Secretary must receive assignment of a loan that is the subject of a bankruptcy claim as soon as possible after the bankruptcy action is filed.

Section 682.513 Factors affecting coverage of a loan under the loan guarantee.

Comment: One commenter objected to the language in § 682.520(a)(3)(i) of the NPRM which would require that all holders of the loan must have complied with the requirements of this part, including, but not limited to those concerning due diligence in the making, servicing, and collecting of a loan, in order for the Secretary to pay a default claim. The commenter argued that this requirement creates a risk for secondary markets. The Secretary could identify a minor compliance error on the part of an original holder and deny a claim payable to the current holder, who had fully complied with all applicable requirements. The commenter suggested that § 682.513 of the NPRM ought to be rewritten to include a standard of materiality governing the circumstances under which the loan would lose its guarantee coverage as a result of the prior holder's error.

Response: No change has been made. The Secretary believes that defects in a loan are the responsibility of the holder submitting a request for claim payment on that loan. However, there is nothing to preclude the buyer of a loan from obtaining a warranty from the seller covering certain future reductions by the Secretary in computing the amount of loss on a claim, thereby protecting the buyer from loss due to violations by the seller.

Subpart F—Requirements, Standards, and Payments for Participating Schools

Section 682.601 Agreement between the Secretary and a school that makes or originates loans.

Comment: One commenter suggested that parents of students should be included in § 682.601(b)(1) of the NPRM in order to permit this section to be applicable to the PLUS Program.

Response: A change has been made. The section has been revised so that the 50% lending rule, applicable to loans made or originated by a school, applies to loans received by undergraduate students in attendance at the school, and to loans received by parents on behalf of undergraduate students in attendance at the school. However, waiver of the 50% lending limit under § 682.601(d) continues to be based upon the hardship for the students at the school, not their parents.

Section 682.602 Providing employment data to prospective students (Found only in Notice of Proposed Rulemaking).

Comment: Several commenters recommended that the requirement for providing employment data to prospective students would be more beneficial if the information provided was based on "graduates" or "individuals" who have completed a specific program. Two commenters felt that the provision was appropriate for schools that offer only vocational or trade programs, but it was burdensome and expensive for public community colleges that offer vocational and trade programs. One commenter suggested that, for institutions which have a university-wide placement service open to all prospective graduates, an option should be provided in regulations whereby an institution could refer students to the placement office, rather than providing written information. A few commenters suggested that this section be deleted.

Response: A change has been made. It appears that the paperwork burden imposed by this requirement would outweigh the protection provided to students against misrepresentations by vocational schools as to the success of their graduates in obtaining employment. The Secretary has decided to delete this section in its entirety.

Section 682.603 Certification by a participating school in connection with a loan application.

Comment: One commenter suggested that, because of the increasing use of electronic applications, the wording in this section should be revised to read that a "school shall provide accurate and complete information about the student making application for a loan," in lieu of "fill out the portion of a loan application."

Response: A change has been made. The Secretary has revised the language to address the commenter's concern.

Section 682.604 The borrower's loan proceeds.

Comment: While numerous commenters objected to the GSL or PLUS check being

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made jointly payable to the student and school and sent directly to the school, other commenters supported the change. Many commenters suggested that this procedure will delay processing and delivery of student loan proceeds and will create undue administrative burdens. Some commenters expressed concern over the security of checks since they cannot be deposited until endorsed. Some expressed concern that this provision gives too much authority to schools and could result in abuse by some schools. Many commenters believed that this provision will assure that the school receives tuition and fees and that the loan will be used solely for educational purposes. Many commenters believed that this provision will give the school greater control over delivery of funds to students, thereby reducing defaults, program costs, fraud and abuse. Several commenters recommended sending the check to the school but making it payable only to the student.

Response: A change has been made. Pub. L. 99-272, § 16012, prohibits the Secretary (but not guarantee agencies) from requiring that checks be made jointly payable to the borrower and the school. The final regulations have been revised to reflect that statutory change.

Comment: Numerous commenters objected to the requirement for verifying a student's satisfactory academic progress before loan proceeds are released. Many commenters expressed concern that this requirement would create an administrative burden when applied to multiple disbursements and to schools that operate on a quarter, as opposed to a semester, system. Many commenters suggested that the current practice of verifying a student's GSL eligibility based on satisfactory academic progress at the time of certification of the loan application is sufficient. Some commenters expressed concern that this requirement may negatively affect students, since many students plan for their educations based on assurances, received at the time of application, that funds will be available. Some commenters argued that, since a student's academic progress is determined at the time of application, the school can easily comply with this requirement using the records upon which that initial determination was based. Some commenters noted that, since grades are not known until after the semester is over, a second verification of satisfactory progress prior to the end of the semester would serve no purpose, and that, in any case, schools would be able to stop the disbursement of checks for succeeding semesters to students who, subsequent to certification of the application, fail to meet progress requirements. Some commenters argued that the benefits of the provision far outweigh its costs. One commenter questioned whether the proposal could also be interpreted to require that a school determine whether the borrower is maintaining satisfactory academic progress before disbursing the second disbursement of a multiply-disbursed loan.

Response: No change has been made. Other title IV programs require that the school verify satisfactory progress before releasing funds. The Secretary sees no reason why the disbursement of a GSL or a PLUS loan should be treated differently. This provision applies not only to the first disbursement of a multiply-disbursed loan, but also to all subsequent disbursements. Institutions are not required to develop systems separate from those established pursuant to 34 CFR 668.16 for monitoring the academic progress of a GSL or PLUS student borrower in courses in which the student is currently enrolled. However, after receiving and prior to releasing any loan proceeds, the institution must use that system to determine if the borrower is maintaining satisfactory progress.

Comment: One commenter noted that, under the current requirements in § 682.607(e) of the prior regulations, the student had the option of requesting in writing that an institution retain additional loan proceeds in order to assist the student in budgeting his or her funds. The commenter suggested that this option be incorporated into the new regulations.

Response: A change has been made. The language that allows schools to retain additional loan proceeds to assist students in budgeting, if so requested by the students in writing, was inadvertently omitted from the NPRM. Therefore, the provision has been restored, and is now in § 682.604(d).

Comment: One commenter stated that §§ 682.605 (c)(2) and (d) of the NPRM imply that the school can retain amounts the student owes the school for any prior period of study and for items such as traffic violations and property damage charges.

Response: No change has been made. The definition of "estimated cost of attendance" clearly states that the loan is to cover those expenses reasonably related to attendance at that school for the period for which the loan is sought. Therefore, a school may not apply any portion of the borrower's loan proceeds for the current loan period to any outstanding obligations from a prior period nor to items unrelated to attendance, such as traffic violations and property damage charges.

Comment: Several commenters requested clarification of when the 30-day period in which a school must return an uncashed loan check to the lender under § 682.605(d) of the NPRM begins, since there is no time limit established for a school's determination that a student has not enrolled as expected (now registered). The commenters expressed concern that enrollment could be delayed for various reasons such as the unavailability of required classes or various academic problems. One commenter envisioned a situation where GSL checks would be repeatedly returned to lenders and reissued because of other proposed changes which delay GSL processing (*e.g.*, collecting default information prior to disbursement, or verification requirements). Several commenters urged that determination of non-enrollment and the return of checks be based on the institutional deadline for student registration. One commenter suggested that the language be changed to ". . . the school shall return the check to the lender within 30 days of the beginning of the enrollment period of the academic term for which the loan was intended or within 30 days of the receipt of the check, whichever is later." A few commenters agreed with the 30-day check return proposal; however, many commenters opposed the change from 40 days in current regulations to 30 days in the NPRM for return of an uncashed borrower's loan check to a lender.

Response: No change has been made. The Secretary is not prescribing a deadline by which a school must determine that a student has not registered, but is encouraging schools to make this determination as early as possible in the academic period. A loan check that is not cashed within 120 days of issuance causes serious repercussions (*e.g.*, the lender is forced to cease billing for interest subsidy and special allowance payments even though it still has a loan check outstanding). The school should already have a mechanism in place to determine that the student has not registered. However, the Secretary is not attempting to standardize the internal procedures used by schools to make this determination.

Section 682.605 Determining the date of a student's withdrawal.

Comment: One commenter requested clarification concerning disbursement during a leave of absence. The regulations state that the student is not considered withdrawn. The commenter questioned whether loan proceeds could be released to the borrower during the leave of absence.

Response: No change has been made. Section 682.605 provides that a student who has been granted a leave of absence is not considered withdrawn only for purposes of reporting a withdrawal date to a lender or for calculating the amount of a refund due to the student from the school. However, when a school receives a GSL check for a student who has been granted a leave of absence, the school may not release the check to the student, but must return the check to the lender. At the expiration of the leave of absence, the lender may redisburse the check under the late disbursement procedures, provided the student maintains eligibility.

Comment: The majority of comments on this section did not support the Secretary's proposal to require the school to determine a "day-specific" withdrawal date. The commenters stated that many students do not officially withdraw, but drop to less than half-time status, or leave school without following the withdrawal instructions of the school. Determination of withdrawal in such cases cannot be made immediately. School policies for determining a student's date of withdrawal vary widely. One commenter urged consistency in the requirements for determination of a withdrawal date.

Response: A change has been made. The Secretary agrees with the commenters that students often do not always follow the school's withdrawal procedures, and therefore it can be difficult to determine the actual day a student withdraws from school. Consequently, the requirement that the school include the specific day of withdrawal in determining the student's withdrawal date has been deleted for the purpose of reporting to lenders. However, for all other purposes, including refunds, the Secretary has decided to retain the "day-specific" rule, out of fairness to the borrowers and to protect Federal fiscal interests.

Comment: Two commenters strongly urged that this section should remove any relationship between the withdrawal date and the amount of the refund. Two commenters expressed concern over the term "withdrawal." They believed that a clearer definition is needed. They further suggested that the withdrawal date should not be the last date of attendance but the earlier of the date the student informs the school or the date the school discovers that the student has withdrawn. The 30-day refund period, it was suggested, would then start with the date of the school's discovery of the student's withdrawal. One commenter asked about procedures where the withdrawal is the "first day of the leave of absence." The commenter asked what would happen if the student returned to school at less than half-time status (*i.e.,* is the student eligible or entitled to funds, deferments, etc.).

Response: No change has been made. This section does not specify the amount of a refund a school must make, but sets forth requirements for determining the date of withdrawal to be used in applying the school's refund policy. As specified in § 682.605(b) of the final regulations, the student's withdrawal date is the earlier of (1) the date the student notifies the school of withdrawal or the date of withdrawal specified by the student, whichever is later, or (2) the date the school determines that the student has withdrawn.

Comment: Several commenters objected to the single leave of absence limitation. They stated that different schools define the term "leave of absence" differently. Thus, this provision would create a standard for students who receive GSL or PLUS aid that is different from that for students who do not receive that aid. Many commenters also argued that it is not appropriate to limit leaves of absence for illness, or for other conditions over which the school and student have no control. Denial of a second leave of absence would cause the individual to be considered withdrawn by the school and force him or her into repayment at a time when he or she is least able to repay, perhaps creating an unnecessary default.

Response: A change has been made. The final regulations have been changed to recognize one leave of absence of up to 60 days, and in certain cases up to six months, during each twelve-month period. The Secretary believes this revision provides a school with sufficient flexibility to address the needs of its students. It is the Secretary's intent that leaves of absence be granted for short periods of time during which students are unable to attend school for personal or medical reasons. However, before granting a leave of absence, the Secretary expects schools to reasonably conclude that the student intends to return to school at the expiration of the leave of absence.

Section 682.606 Refund policy.

Comment: A few commenters said it was unnecessarily rigid to require the school to provide to students a written statement of its refund policy *prior* to the student's acceptance for initial enrollment. Prior to acceptance, the applicant is not a student or recipient of student financial aid.

Response: A change has been made. The final regulations have been revised to require a school to provide a prospective student with its refund policy prior to the student's enrollment, instead of prior to the student's acceptance for initial enrollment. The Secretary's concern is that the school's refund policy be provided to a prospective student before any funds are paid to the school by the student.

Section 682.607 Payment of a refund to a lender.

Comment: A few commenters were in favor of the reduction from 40 days to 30 days of the time within which a school must pay a refund to a lender. Other commenters suggested that the period be made longer. Several commenters argued that the added burden of a reduction of ten days will leave no time for unexpected delays, computer problems, consideration of State regulations and school operating procedures, check writing cycles, the involvement of more than one office in the refund process, and time for "final" billing computations by the school.

Response: No change has been made. The Secretary believes 30 days is sufficient time for a school to calculate the amount of a refund and pay the refund to the borrower's lender. The Secretary is concerned with the length of time a refund is due and unpaid, because the Secretary is continuing to pay interest benefits and special allowance on those funds even though they are no longer needed by the borrower to pay educational expenses.

Comment: One commenter requested a clarification of whether the 30-day refund period is measured in calendar days, working days or school days.

Response: No change has been made. Unless otherwise noted, "day-specific" periods discussed in these regulations refer to calendar days.

Section 682.608 Termination of a school's lending eligibility.

Comment: Two commenters suggested that the termination provision should not be limited to schools that participate as lenders. All schools with very high default rates should be considered for suspension from participation in the GSL and PLUS programs. The guarantee agency should have the authority to suspend such schools from the program.

Response: No change has been made. This section applies to those schools that participate as lenders in the GSL or PLUS programs. 34 CFR 668 establishes rules for the suspension, limitation or termination of a school's participation in the title IV student assistance programs. In addition, guarantee agencies have the authority to limit, suspend or terminate (L/S/T) a school's participation, in accordance with its L/S/T procedures established pursuant to § 682.401(b)(10)(i)(C).

Section 682.610 Records, reports, and inspection requirements for participating schools.

Comment: Several commenters objected to requiring the school to maintain a copy of the loan application, since this requirement does not take into account the various procedures established by certain guarantee agencies regarding the electronic transmittal of application data and the fact that the schools may not have an exact copy.

Response: No change has been made. This provision does not necessarily require the school to maintain an exact copy of the borrowers's application in those instances where the guarantee agency or other agent uses the electronic transmittal of data. The school may instead keep the loan application data in computer format.

Subpart G—Limitation, Suspension, or Termination of Lender Eligibility Under the Guaranteed Student Loan Program and the Plus Program

Section 682.700 Purpose and scope.

Comment: The Secretary received support from several commenters for the Limitation, Suspension and Termination (L/S/T) provisions under Subpart G. However, one commenter objected to the proposal as unnecessary and duplicative. One commenter indicated that some guarantee agencies and nonprofit private corporations must follow administrative practices and procedures established by State law, and thus may not be able to comply with the provisions of this Subpart that apply FISL L/S/T standards to lenders under guarantee agencies' programs.

Response: No change has been made. The provisions of Subpart G reflect the procedures the Secretary uses to limit, suspend or terminate (L/S/T) lenders participating in the FISLP or a guarantee agency program. They do not apply to L/S/T actions undertaken by guarantee agencies. The Secretary believes it necessary to retain independent authority to terminate a lender from the entire program. A guarantee agency is required to establish its own procedures for L/S/T of lenders participating in its program. If a guarantee agency chooses, it may adopt the procedures established in this section.

[FR Doc. 86-25231 Filed 11-7-86; 8:45 am]

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Part III

Department of Transportation

Coast Guard

33 CFR Parts 151 and 158

Control of Residues and Mixtures Containing Oil or Noxious Liquid Substances; Extension of the Comment Period

46 CFR Parts 98, 151, 153, and 172

Pollution Rules for Ships Carrying Hazardous Liquids; Extension of Comment Period for Proposed Rules

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DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 85-010]

33 CFR Parts 151 and 158

Control of Residues and Mixtures Containing Oil or Noxious Liquid Substances

AGENCY: Coast Guard, DOT.

ACTION: Extension of the comment period.

SUMMARY: This notice extends the comment period on proposed rules to implement the Annex II port and terminal backpressure requirements and reception facility requirements of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, (MARPOL 73/78) published in the **Federal Register** of September 26, 1986 (51 FR 34332). The extended comment period is provided to satisfy requests for additional time to review the proposed rules. The comment period is scheduled to close on November 10, 1986. Due to the significance of the proposed rules, the Coast Guard believes it is important to allow parties with relevant comments additional time to evaluate the proposal.

DATE: The comment period is extended until November 24, 1986.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/22) (CGD85-010) U.S. Coast Guard, Washington, DC 20593-0001. Comments will be available for inspection or copying at the Marine Safety Council (G-CMC/22), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001 between 8:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Copies of the draft evaluation and the environmental assessment may also be inspected or copied at that address or obtained by a written request to the same address. To expedite processing, requests for the draft evaluation and the environmental assessment should be submitted separately from any comments submitted.

FOR FURTHER INFORMATION CONTACT: Lieutenant Timothy M. Mallon, Office of Marine Safety, Security, and Environmental Protection, (G-MPS-3), telephone 202-267-0494. Normal working hours are between 7:00 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: In order to avoid unnecessary submittals, the Coast Guard is providing the following additional information. The list of Oil-like Category C and D NLS substances which is in Table 2 of the proposed rule will be revised in the final rule to be consistent with Annex II of MARPOL 73/78. The revised table follows:

Table 2—List of Category C and D Oil-like NLSs That May be Carried Under 33 CFR Part 151

Category C

Cyclohexane
P-Cymene
Diethyl Benzene
Dipentene
Dodecyl benzene
Ethyl benzene
Heptene (mixed isomers)
1-Hexene
2-Methyl-1-pentene
n-Pentane
Pentene, all isomers
Phenylxylylethane
Propylene dimer
Tetrahydro naphthalene
Toluene
Xylenes

Category D

Alkylbenzene (C_9 to C_{17}) straight or branched chain
Butene oligomer
Diisopropyl naphthalene
Dodecane
Ethylcyclohexane
Isopentane
Nonane
Octane
n-Parafins (C_{10} to C_{20})

The Coast Guard intended to limit applicability of the proposed rules to ports and terminals that unload Category A, B, or C NLS cargo from ships. As written, the proposed rules would apply to ports and terminals loading and unloading Category A, B, C or D NLS cargo from ships. To be consistent with the international requirements, the final rule will apply to ports and terminals that unload Category A, B, or C NLS cargo from ships. Terminals that unload Category B or C NLS cargo from ships will be required to make arrangements to reduce the backpressure to facilitate efficient stripping operations.

As written, the conditions at which the backpressure requirements in proposed 33 CFR 158.330 would be evaluated are not clear. The Coast Guard will clarify in the final rule that this requirement be met at mean low tide with the height of the ship's manifold 10 feet above the surface of the water.

Dated: November 6, 1986.

J.W. Kime,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 86-25550 Filed 11-7-86; 11:35 am]

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46 CFR Parts 98, 151, 153, and 172

[CGD 81-101]

Pollution Rules for Ships Carrying Hazardous Liquids

AGENCY: Coast Guard, DOT.

ACTION: Extension of comment period for proposed rules.

SUMMARY: This notice extends the public comment period on proposed rules to implement Annex II of the 1978 Protocol to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78), published in the **Federal Register** of September 26, 1986 (51 FR 34350). The Coast Guard is extending the comment period because a number of people have requested additional time to evaluate the proposal.

In the preamble of the proposal, the Coast Guard stated its intention that the proposal not exceed the standards in MARPOL 73/78. Several comments received to date have pointed out that the proposal appears to apply damage stability and other requirements of the IMO Bulk Chemical Code and International Bulk Chemical Code to fixed and floating drilling rigs and platforms. This would exceed the requirements of MARPOL 73/78, which was not intended. The final rule will be clarified to correct this problem.

DATE: The public comment period is extended to November 24, 1986.

ADDRESSES: Comments should be submitted to: Commandant (G-CMC/21) (CGD 81-101), United States Coast Guard, Washington, DC 20593. Between the hours of 8:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays, comments may be delivered to and will be available for inspection or copying at the Marine Safety Council (G-CMC/21), Room 2110, United States Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. The Regulatory Impact Assessment is available at this same location.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Query, Office of Marine Safety, Security, and Environmental Protection, telephone (202)-267-1217. Normal working hours are from 7:30 am until 4:00 pm, Monday through Friday, except Federal holidays.

Dated: November 6, 1986.

J.W. Kime,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 86-25558 Filed 11-7-86; 11:35 am]

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Part IV

The President

Executive Order 12573—Amending Executive Order No. 11157 as It Relates to Incentive Pay for Hazardous Duty

BEST COPY AVAILABLE

Presidential Documents

Executive Order 12573 of November 6, 1986

Amending Executive Order No. 11157 as It Relates to Incentive Pay for Hazardous Duty

By the authority vested in me as President of the United States of America by Section 301(a) of Title 37 of the United States Code, and in order to further define duties involving exposure to toxic pesticides and to define an additional category of hazardous duty, it is hereby ordered as follows:

Section 1. (a) Executive Order No. 11157 of June 22, 1964, as amended, is further amended by adding at the end of subsection (h) of Section 109 of Part I, the following sentence:

"The use of solid fumigant formulations, such as aluminum phosphide, magnesium phosphide and calcium cyanide, in the outdoor control of burrowing animals does not qualify a member for incentive pay under this subsection."

(b) Executive Order No. 11157 is further amended by adding at the end of Section 109 of Part I, the following new subsection:

"(j) The term "the handling of chemical munitions (or components of such munitions)" shall be construed to mean duty performed by members as a primary duty which routinely requires (1) direct physical handling of toxic chemical munitions incident to storage, maintenance, testing, surveillance, assembly, disassembly, demilitarization, or disposal of said munitions; (2) direct physical handling of chemical surety material, as defined by the Secretary concerned, incident to manufacture, storage, testing, laboratory analysis, detoxification, or disposal of said material; (3) direct physical handling of toxic chemical munitions incident to technical escort of shipments of said munitions; (4) direct physical handling of chemical surety material, as defined by the Secretary concerned incident to technical escort of shipments of said material. The term does not include the handling of the individual components of binary chemical agents or munitions. The term does not include user handling incident to loading, firing, or otherwise launching the toxic chemical munitions nor field storage operations during hostilities. The term also excludes the handling of Research, Development, Testing and Evaluation Dilute Solutions of toxic chemicals as defined by the Secretary concerned. It also excludes the handling of riot control agents, chemical defoliants and herbicides, smoke, flame and incendiaries, and industrial chemicals. The entitlement to the pay provided for in this subsection is based upon the performance of such duty that has the potential for accidental exposure to chemical agents and not upon actual quantifiable exposure to such agents. Therefore, neither the construction of the term nor the receipt of pay provided for in this subsection may be construed as indicating that any person entitled to such pay actually has been exposed to chemical agents contrary to the provisions of any statute, executive order, rule, or regulations relating to the health and safety which is applicable to the uniformed services."

Sec. 2. The amendment made by this Order to Executive Order No. 11157 relating to chemical munitions shall be effective as of October 1, 1985. The amendment made by this Order to Executive Order No. 11157 relating to highly toxic pesticides shall be effective immediately upon signature.

Ronald Reagan

THE WHITE HOUSE,
November 6, 1986.

[FR Doc. 86-25572
Filed 11-7-86; 11:49 am]
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[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[6] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

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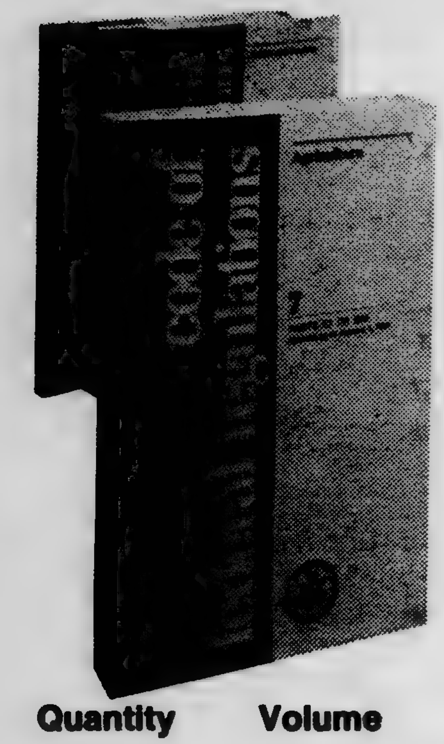

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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WHERE: National Archives Theater,
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RESERVATIONS: Laurice Clark, 202-523-3419.

NEW YORK, NY

WHEN: December 5 at 10:00 a.m.,

WHERE: Room 305A, 26 Federal Plaza,
New York, NY

RESERVATIONS: Arlene Shapiro or Stephen Colon,
New York Federal Information Center,
212-264-4810.

PITTSBURGH, PA

WHEN: December 8 at 1:30 p.m.,

WHERE: Room 2212, William S. Moorehead Federal
Building, 1000 Liberty Avenue,
Pittsburgh, PA

RESERVATIONS: Kenneth Jones or Lydia Shaw
Pittsburgh: 412-644-INFO
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Presidential Documents

Title 3—

The President

Proclamation 5566 of November 7, 1986

Centennial of the Birth of David Ben-Gurion

By the President of the United States of America

A Proclamation

David Ben-Gurion, first Prime Minister of Israel, was born one hundred years ago, on October 16, 1886. From his boyhood, an independent Israel was his dream. He never wavered in pursuit of that dream; he worked all his life long to establish the State of Israel and to build and strengthen it. He succeeded.

Every quality we associate with statesmanship was David Ben-Gurion's—wisdom, tremendous ability, great resourcefulness—but none more so than the vision and the determination that propelled him decade after decade. Israel's existence is a true testament to the spirit and the deeds of David Ben-Gurion. He would have wanted no other legacy.

Among the many links between the United States and Israel are principles that were dear to David Ben-Gurion. The Declaration of Independence of the State of Israel, a milestone in the life of Ben-Gurion, echoes the American Declaration of Independence in its recognition of the equality of every human being.

In order to honor the celebration of the centennial of the birth of David Ben-Gurion and the values of freedom and democracy we share with Israel, the Congress, by Senate Joint Resolution 422, has authorized and requested the President to issue a proclamation designating 1986 as the centennial of the birth of David Ben-Gurion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim 1986 as the centennial of David Ben-Gurion's birth, and I urge all Americans to take note of this commemoration and join in the celebration of the birth of this great statesman. I also applaud the David Ben-Gurion Centennial Committee of the United States of America in its work promoting the year-long celebration of David Ben-Gurion and his achievements.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of November, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-25679
Filed 11-10-86; 11:00 am]
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Presidential Documents

Proclamation 5567 of November 7, 1986

National Hospice Month, 1986

By the President of the United States of America

A Proclamation

Hospice care is a humanitarian way for terminally ill people to approach the end of their lives in comfort with appropriate, competent, and compassionate care in an environment of personal individuality and dignity.

In a hospice, care is provided by an interdisciplinary team of physicians, nurses, social workers, pharmacists, psychological and spiritual counselors, and other community volunteers trained in the hospice concept of care. Physical, emotional, and spiritual needs of patient and family are treated, with special attention to their pain and grief.

Hospices are rapidly becoming full partners in the Nation's health care system. Medicare provides a hospice benefit, as do many private insurance carriers. But there remains a great need to increase public awareness about the benefits of hospice care.

The Congress, by Senate Joint Resolution 317, has designated the month of November 1986 as "National Hospice Month" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of November 1986 as National Hospice Month. I urge all government agencies, the health care community, private organizations, and the people of the United States to observe that month with appropriate forums, programs, and activities designed to encourage national recognition of hospice care.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of November, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-25680
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Presidential Documents

Proclamation 5568 of November 7, 1986

National Arts Week, 1986

By the President of the United States of America

A Proclamation

Wherever Americans are, there are the arts. The arts are central to human expression. The arts enlighten us and please us. America has long loved the arts, and we study, practice, appreciate, and patronize them in our theatres, museums, galleries, schools, and communities.

We also generously support the arts and desire to make them as widely available as possible. A typically American consortium—informal and effective—of individuals, corporations, foundations, and taxpayers provides financial support to artists to augment revenues raised directly from patrons.

It is most fitting that we take time to celebrate the arts of our Nation, to honor our artists, and to express our appreciation to everyone who patronizes the arts. And as we celebrate the arts, we celebrate and give thanks for our freedom, the only atmosphere in which artists can truly create and in which art is truly the expression of the soul.

Let us join together during National Arts Week to celebrate the arts of our Nation and in pledging to continue this magnificent partnership of artist and patron so as to enrich the soul and the heart of our people forever.

The Congress, by Senate Joint Resolution 304, has designated the week of November 16 through November 22, 1986, as "National Arts Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of November 16 through November 22, 1986, as National Arts Week. I encourage the people of the United States to observe the week with appropriate ceremonies, programs, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of November, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-25661]
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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 421

[Amdt. No. 1; Doc. No. 0101A]

Cotton Crop Insurance Regulations

Correction

In FR Doc. 86-24241 beginning on page 37890 in the issue of Monday, October 27, 1986, make the following corrections:

§ 421.7 [Corrected]

1. On page 37891, in § 421.7(d) in the middle column, in paragraph a., in the second line, "planning" should read "planting".
2. In the same column, in paragraph 5.c., in the fifth line, "1988" should read "1986".

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FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y Docket No. R-0557]

Capital Guidelines; Perpetual Debt as Primary Capital and Limits on Perpetual Debt, Preferred Stock and Mandatory Convertible Securities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rulemaking.

SUMMARY: Capital adequacy is one of the critical factors the Board of Governors of the Federal Reserve System is required to analyze in taking action on various types of applications, such as mergers and acquisitions by bank holding companies, and in the conduct of the Board's various supervisory activities related to the safety and soundness of individual banks, bank holding companies and the banking system. To provide additional flexibility in the capital structure of the financial institutions it regulates, the Board proposed in November 1985 (50 FR 47754) to treat "perpetual debt" as a form of primary capital. The Board has decided to amend its Capital Adequacy Guidelines ("Guidelines") (12 CFR Part 225 Appendix A) to treat perpetual debt securities that meet certain criteria as primary capital for bank holding companies (but not state member banks). The Board also has decided to adopt, with modifications, its proposal to limit the combined amount of mandatory convertible instruments, perpetual preferred stock and perpetual debt that may qualify as primary capital.

EFFECTIVE DATE: These amendments to the Capital Guidelines are effective November 4, 1986. The Board has chosen to state its capital policies in the form of guidelines rather than as a formal regulation. Consequently, a delayed effective date is not required.

FOR FURTHER INFORMATION CONTACT: Anthony G. Cornyn, Assistant Director (202/452-3354), or Robert Marshak, Financial Analyst (202/452-3450), Division of Banking Supervision and Regulation, or James E. Scott, Senior Counsel (202/452-3513), or Conrad Bahlke, Attorney (202/452-3707), Legal Division, or for users of Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3244), Board of Governors of the Federal Reserve System, Washington, DC.

SUPPLEMENTARY INFORMATION:

1. Background

Reasons for Revision of the Guidelines

Perpetual Debt. In announcing its revised Capital Adequacy Guidelines in April 1985, 50 FR 16057, 16064 (1985), the Board deferred for further study the issue of whether to treat perpetual debt securities as primary capital. Since that time there has been a continued interest in the issue. Banking organizations located in the United Kingdom have issued several billion dollars in perpetual debt notes that have qualified as primary capital under guidelines originally adopted by the Bank of England in 1985 and revised and formalized in March 1986. In addition, in June 1985, the Canadian Inspector General of Banks issued a statement that would permit debentures with a minimum maturity of 99 years to qualify as "base" (primary) capital. Several Canadian banks have since issued qualifying perpetual debt. While no United States banking organizations have issued perpetual debt securities, several have expressed an interest in issuing such securities, particularly through subsidiaries located in those countries in which tax treatment is more certain.

The Board has decided to adopt, with some modifications, its proposal to permit perpetual debt securities issued by a bank holding company or its banking or nonbanking subsidiaries to qualify as primary capital on a consolidated basis for the bank holding company. The Board has concluded that perpetual debt securities, as defined in the revised Guidelines, can serve the purposes or perform the functions of primary capital.

In addition, perpetual debt provides bank holding companies with added flexibility in maintaining minimum and adequate levels of capital. Perpetual debt may also provide certain bank holding companies with a comparatively inexpensive alternative form of capital on a limited basis. Finally, primary capital treatment of perpetual debt will permit domestic bank holding companies and their overseas subsidiaries to compete more effectively with banking institutions domiciled or operating in those countries that treat perpetual debt as a form of capital.

While the advantages of primary capital treatment for perpetual debt would also apply to the capital structure of state member banks, the Board, in the interest of uniform treatment of all federally supervised banks, has declined to consider perpetual debt as primary capital for an issuing state chartered bank that is a member of the Federal Reserve System. Banks may issue perpetual debt securities, however; and the parent holding company of a member bank that issues such securities to a third party may treat such securities as primary capital on a consolidated basis within the limits of the Guidelines.

Limits on Perpetual Preferred Stock. The Board has adopted, with increased limits, its proposal to limit the amount of perpetual preferred stock, mandatory convertible notes and perpetual debt that may be counted as primary capital by a bank holding company. The Board continues to believe that excessive

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reliance on these types of capital exposes a bank holding company to potential financial problems. For example, these types of instruments require predetermined, preferential, and often cumulative payments that could limit an organization's financial flexibility in the event it encounters serious and protracted weaknesses in earnings. In addition, excessive use of such instruments could place control of an organization in the hands of individuals with an extremely limited financial stake in that organization. These concerns, together with a belief that common equity should remain the dominant form of any banking organization's capital, have prompted the Board to limit reliance by bank holding companies on non-common-equity forms of primary capital. While the Board believes the same limits should be applied to state member banks, the Board is also concerned about maintaining uniform capital requirements for all federally regulated banks. Thus, the Board will continue to assess the level of the limited forms of primary capital—perpetual preferred stock, mandatory convertible securities, and perpetual debt—on a case-by-case basis for state member banks.

Summary of the Amendments to the Capital Guidelines

Perpetual Debt. The Board has revised its Capital Adequacy Guidelines to permit perpetual debt instruments to qualify as primary capital, subject to the following conditions and limitations:

1. The instrument must be unsecured and, if issued by a bank, the instrument must also be subordinated to the claims of depositors.
2. The instrument may not provide the noteholder with any right to demand repayment of the principal (even if non-payment of interest occurs) except in the event of bankruptcy, insolvency, or reorganization.
3. The issuer shall not voluntarily redeem the securities without the approval of the Federal Reserve, except that the issuer may redeem the securities if the securities are simultaneously replaced by a like amount of common or perpetual preferred stock of the issuer or the issuer's parent company.
4. The instrument must contain a provision that allows the issuer to defer (it may also allow the issuer to eliminate or reduce) interest payments on perpetual debt in the event, and at the same time, that dividends on all outstanding common and preferred stock of the issuer (or in the case of a guarantee by the parent company, the dividends of the parent company's common and preferred stock) have been eliminated.
5. If the instrument is issued by a bank holding company or subsidiary with substantial operations, then the instrument must convert automatically to common or perpetual preferred stock of the issuer in the event that the issuer's retained earnings and surplus accounts become negative. (In the case in which the perpetual debt issued by a bank or a subsidiary with substantial operations is guaranteed by a parent, conversion may be deferred until a guarantor's retained earnings and surplus accounts become negative.) If issued by a company without substantial operations that is a subsidiary of a bank holding company or bank, then the instrument must convert automatically to common or preferred stock of the issuer's parent in the event that the retained earnings and surplus accounts of the issuer's parent become negative.
6. The amount of perpetual debt that may qualify as primary capital is limited to a maximum of 20 percent of primary capital, depending on other limited forms of primary capital as set forth below.

Limits on Perpetual Preferred Stock, Perpetual Debt and Mandatory Convertible Securities. In consideration of the arguments advanced by many commenters, the Board has increased the proposed limits on the amount of perpetual preferred stock, perpetual debt and mandatory convertible securities that may be included as primary capital for bank holding companies. The combined amount of these three instruments that may qualify as primary capital is 33⅓ percent of the total amount of all forms of primary capital (including these instruments). This figure, which equals 50 percent of primary capital on a net basis (i.e. total primary capital excluding these three forms of capital), represents an increase from the proposal, which would have permitted 33⅓ percent of primary capital on a net basis, or 25 percent of all forms of primary capital on a gross basis.

In addition, the revised Guidelines will limit, for bank holding companies, perpetual debt and mandatory convertible securities to 20 percent of the total amount of all forms of primary capital (including such instruments). This figure, which equals 25 percent of primary capital on a net basis (excluding such instruments), represents an increase from the existing limit for bank holding companies on mandatory convertible securities of 20 percent of *net* primary capital. The Guidelines will retain, however, the requirement that equity commitment notes, a type of mandatory convertible security treated as primary capital for bank holding companies only, be permitted to qualify as primary capital in an amount not to exceed one-half of the amount of mandatory convertible securities that would qualify as primary capital under the revised Guidelines—that is in an amount not to exceed 10 percent of all forms of primary capital, including mandatory convertible securities.

No qualifying perpetual preferred stock issued, or in the process of being issued, on or before November 20, 1985, shall be ineligible for primary capital status solely by reason of the fact that, on the effective date of this amendment to the Guidelines, the amount of any of such preferred stock exceeds the limits imposed in the revised Guidelines.

2. Comments Received

The Board's proposal to allow perpetual debt to qualify as primary capital and to limit certain non-common equity forms of primary capital was announced on November 14, 1985. During the comment period, which ended January 17, 1986, the proposal drew comments from thirty-two commercial banking organizations, three bank trade associations, and the state banking departments of Pennsylvania and New Jersey. Eight of the regional Federal Reserve Banks also commented on the proposal.

The commenters generally limited their remarks to three specific questions: (1) Whether to afford primary capital treatment to perpetual debt; (2) whether the proposed conditions or criteria to ensure that perpetual debt securities meet the objectives of primary capital will serve that purpose without unduly restricting the marketability or increasing the cost to the issuer of the securities; and (3) whether the proposed limitations on the amount of preferred stock, perpetual debt and mandatory convertible securities that could qualify as primary capital are necessary and reasonable. Some commenters also addressed the issue whether there is sufficient interest in issuing perpetual debt.

Perpetual Debt

Virtually all commenters supported the treatment of perpetual debt as primary capital, noting that the proposed instrument contains key features of primary capital—subordination, permanence, and loss absorption capability—and that it permits banking organizations additional flexibility in their efforts to achieve and maintain adequate levels of capital. The two commenters opposing the treatment of perpetual debt as primary capital did so on the basis that the instruments would be more akin to debt than equity.

There were substantive comments on each of the proposed conditions or criteria to ensure that perpetual debt would retain the characteristics of primary capital. While the commenters generally supported the need for such conditions or constraints on perpetual debt securities, there was significant opposition to several of the criteria viewed as having a materially adverse impact on the marketability of perpetual debt.

The first of the criteria that received significant adverse comment was the proposed requirement for Federal Reserve approval prior to redemption of perpetual debt securities. Several commenters pointed out that a bank holding company can redeem up to ten percent of its equity securities in a given year without prior regulatory approval and that such prior approval for redemption of debt securities would impair the speed and timing necessary for an effective redemption.

Some commenters also objected to the requirement that bank holding companies that issue perpetual debt must reserve the right to reduce, defer or eliminate interest on perpetual debt if common or preferred stock dividends are reduced or eliminated. (The issuing bank holding company would not be required to take such action, but only to reserve the right to take such action if it chose). Some commenters thought this condition would severely restrict the marketability of a perpetual debt instrument, while others maintained that it would encourage tax authorities to view perpetual debt as a form of equity and to treat the interest payments associated with these securities as nondeductible expenses.

The Board also received negative comments on the proposed requirement for actual conversion of perpetual debt to equity in the event that the retained earnings and surplus of the issuer or the issuer's parent become negative. Commenters suggested such conversion is a lengthy proceeding requiring adjustment of authorized shares to reflect fluctuations in value. They pointed out that the Bank of England does not require actual conversion in the case of insolvency, but, more simply, the treatment of perpetual debt noteholders as equity holders.

Limit on Perpetual Preferred Stock

The strongest opposition to the proposed amendments to the Guidelines was directed at the proposal to limit the combined amount of mandatory convertible securities, perpetual debt and perpetual preferred stock that may qualify as primary capital. Commenters focused on the proposal to include perpetual preferred stock within the blanket limit on non-common-equity capital, since perpetual preferred stock is the only one of the three instruments to have been previously treated as primary capital without limit as to amount. Commenters argued that perpetual preferred stock possesses the basic characteristics of equity capital, including permanence, subordination and an ability to eliminate or defer dividends. Commenters suggested that, in many cases, fixed dividend schedules make preferred stock a cheaper form of capital than common stock with its fluctuating dividends. Commenters further suggested that neither state corporate law nor the accounting profession distinguishes between common and preferred stock as forms of equity.

Some commenters suggested that preferred stock provides a meaningful financing alternative for smaller institutions that lack access to the public equity market. Others suggested that preferred stock is a valuable estate planning tool for smaller institutions.

Some commenters suggested that the Board should address the issue of financial flexibility directly rather than by limiting preferred stock, and they suggested an absence of abuses to justify the restriction. Finally, many commenters suggested that the Board raise the blanket limit above the proposed level of 33 percent of primary capital net of these instruments or, in the alternative, that the Board remove the blanket limit and impose a limit on preferred stock apart from those limits on perpetual debt or mandatory convertible securities.

3. Resolution of Major Issues

Treatment of Perpetual Debt as Primary Capital

The Board has adopted the proposed amendment to its Capital Guidelines that would treat as primary capital for a bank holding company perpetual debt securities issued by the holding company or an affiliate in accordance with certain specific conditions or criteria. The Board believes that, with the limitations and conditions imposed in the amended Guidelines, perpetual debt can meet the underlying objectives of primary capital, *i.e.*, to serve as a buffer for individual banking organizations in times of poor performance, to promote the safety of depositors' funds, and to support the reasonable growth of banking organizations.

The Board finds merit in the comments that suggest that perpetual debt possesses many of the characteristics of primary capital. Perpetual debt is permanent in that it cannot be redeemed by noteholders except in the extraordinary event of insolvency, bankruptcy or reorganization. It may not be retired by the issuer without the prior approval of the Federal Reserve, except if converted to, exchanged for, or simultaneously replaced by common or perpetual preferred stock. It has the ability to absorb losses, since interest on the debt issue may be deferred and the holders of the debt treated as equity shareholders when serious difficulties arise. Finally, if issued by a bank, the claims of perpetual debt noteholders must be subordinated to the rights of depositors. Thus, the Board concludes that perpetual debt serves the basic purpose of capital by adding a measure of safety to an issuing institution.

While this reasoning is equally applicable to the treatment of perpetual debt as primary capital for banks, and while the Board proposed to permit both bank holding companies and state chartered banks that are members of the Federal Reserve System to treat perpetual debt as primary capital, the Board has decided to afford such treatment only to bank holding companies in order to preserve uniform capital treatment for all federally supervised banks, a primary goal of the 1985 revisions to the Guidelines. The Board will study the experience of bank holding companies in issuing perpetual debt, and it will defer any decision on the treatment of perpetual debt as capital for state member banks in an effort to coordinate its position with that of the Comptroller of the Currency and the Federal Deposit Insurance Corporation.

It should be noted that although perpetual debt issued by a state member bank will not count as primary capital of the bank, it will be considered on a consolidated basis as primary capital of the holding company if such debt is held by an unaffiliated third party. In other words, a state member bank subsidiary or a foreign bank subsidiary of a bank holding company located in the United States may issue perpetual debt that will be treated as capital of the holding company.

Since the primary capital status of perpetual debt is predicated upon these instruments providing the basic safety features of equity, the Board has adopted certain criteria to ensure that a perpetual debt issue achieves these benefits. A perpetual debt issue must meet these criteria in order to qualify as primary capital.

Criterion I—Unsecured and Subordinated. To qualify as primary capital, perpetual debt instruments must be unsecured, and, if issued by a bank, the instrument must also be subordinated to the claims of depositors. This requirement is designed to be, at a minimum, as stringent as the requirements for long-term, subordinated debt that may qualify as secondary capital. In order to provide the maximum protection for depositors and secured creditors, the holders of perpetual debt should not be permitted to encumber the assets of the issuer or its affiliates and should rank as general creditors of the issuer. The perpetual debt instrument should not create any priority or accelerated payment of interest or principal in the event that the issuer encounters financial difficulties. It should not place or attempt to place perpetual debt holders ahead of other general or subordinated creditors. This criterion, however, would not prohibit a parent company of the issuer from guaranteeing the debt, provided the debt remained subordinated.

Criterion 2—Right to Repayment of Principal Limited to Bankruptcy, Insolvency or Reorganization. To qualify as primary capital, the perpetual debt instrument must limit the right of the holder to repayment of the principal only in the case of insolvency, bankruptcy or a financial reorganization that would impair the rights of noteholders. In the case of the nonpayment of interest, the instrument should limit the noteholder's rights to repayment of the interest accrued and owing rather than acceleration of interest payments or repayment of the principal amount of the debt. Moreover, while a noteholder may also have recourse to the bankruptcy courts, the perpetual debt instrument must provide that failure to pay interest on the note shall not in and of itself trigger bankruptcy. Finally, the debt instrument may not contain cross-default clauses that provide that other obligations of the issuer become immediately due and owing in the event of any default in the payment of interest on the perpetual debt.

These provisions are designed to ensure that the proceeds of the perpetual debt issue remain available to the issuer while that entity remains a viable concern. In the event the issuer encounters financial difficulties short of insolvency that impair interest payments, the noteholders may not exacerbate those difficulties by accelerating repayment of the debt.

Moreover, the noteholders should not be permitted to gain a determination of bankruptcy or insolvency prematurely solely on the basis of a failure to pay interest on the perpetual debt in a timely fashion. The Board is concerned with the suggestion of certain commenters that restrictions on the repayment of the debt principal would encourage noteholders to seek a determination of bankruptcy as a means of forcing repayment of the debt before it is converted to equity (criterion 5). The Board recognizes this problem, but it believes that the bankruptcy laws provide adequate protection from an unwarranted or premature finding of insolvency.

Criterion 3—Voluntary Redemption Only With Federal Reserve Approval. In order to ensure that the funds raised by a perpetual debt issue remain with the issuer to fulfill the purposes of capital, the debt instrument must require any voluntary redemption of the debt issue to be subject to prior approval by the Federal Reserve. The revised Guidelines provide for an exception to this prior approval requirement in the case in which the debt is converted to, exchanged for, or simultaneously replaced by perpetual preferred or common stock. The pledge of proceeds over time to redeem perpetual debt, as in the case of mandatory convertible securities, will not be an acceptable means of avoiding the requirement of prior Board approval. Nothing contained in this criterion shall preclude the debt instrument from providing for redemption of the debt in exchange for the common stock or perpetual preferred stock of the issuer at the option of the holder of the debt—even in the case in which such redemption is not accompanied by a general redemption of all such debt.

Several commenters argued that Federal Reserve approval should not be required because timing is critical in a redemption decision and delay for the purpose of regulatory approval could increase the cost of redemption or even eliminate the viability of the redemption. The Board considered this point, but decided to retain the prior approval requirement because the need to maintain the permanence of perpetual debt in order to serve the purposes of capital outweighs the concern for some additional flexibility for the issuer. In addition, the Board notes that prior approval is required for redemption of all mandatory convertible securities as well as for all capital instruments issued by state member banks. There is no strong evidence that the prior approval process in those cases has proved burdensome.

Criterion 4—Deferred Interest Payments. The revised Guidelines provide that an issuer of perpetual debt must reserve the right, at a minimum, to defer interest payments on perpetual debt in the event that dividend payments on all outstanding common and preferred stock of the issuer are eliminated. In the case in which the issuing entity is a bank or other subsidiary with substantial operations (as opposed to a nonoperating subsidiary established for purposes of raising funds or issuing collateralized securities) and the perpetual debt issue is guaranteed by a parent of the issuer, the Guidelines permit deferral of interest to be triggered by elimination of stock dividends by the guarantor. In the case in which the issuing entity is a nonoperating company, the deferral of interest is always triggered by the elimination of stock dividends by the parent organization.

These requirements differ from the proposal that was put out for comment in two respects. First, the issuer must only reserve the right in the debt instrument to defer interest rather than to reduce or eliminate such interest altogether. (The debt agreement, of course, may impose such measures, although they are not required in order to gain primary capital treatment.) This modification will make perpetual debt more closely approximate cumulative preferred stock, more closely parallel the requirements of the Bank of England in its guidelines involving perpetual debt, and contribute to the marketability and reduce the cost to the issuer of the debt.

Deferral of interest payments provides the issuer with the ability to limit cash outflows related to perpetual debt in times of severe financial problems. The more severe measures of reduction or elimination of interest payments do not appear to be necessary to preserve perpetual debt as an instrument that provides the protection of capital at a time when the issuer is experiencing severe financial difficulties.

A second change from the proposed regulation involves the conditions under which the deferral of interest may be invoked by the issuer. The Board first proposed that the debt instrument permit the issuer to limit interest payments whenever dividends on common and preferred stock were reduced or eliminated. The revised Guidelines now require that the debt instrument provide the issuer with the right to *defer* dividends only when all common and preferred stock dividends are *eliminated.* The Board adopted this position in response to comments suggesting that perpetual debt would be more marketable and less costly if the contingencies that could trigger deferral of interest were more limited and less likely to occur. At the same time, retention of the deferral feature would help to ensure that perpetual debt would remain available in time of serious difficulty.

Several commenters argued that the Board should go even further and not require any type of contingency clause for deferral of interest. These commenters argued that such a clause would cause certain foreign tax authorities to treat interest payments as a nondeductible dividend distribution, thereby making these instruments less marketable overseas, where initially such debt is most likely to be issued. While the Board is interested in providing added flexibility in achieving and maintaining adequate primary capital by permitting bank holding companies to issue perpetual debt at a reasonable cost, the Board cannot permit primary capital treatment for instruments that do not provide a substantial measure of safety and soundness for the issuer. While limiting the scope of the interest payment remedies to deferral rather than elimination and also limiting the contingencies that trigger this remedy, the Board continues to believe that perpetual debt must offer equity-like safety features. One key feature is the ability of the issuer, in extreme circumstances, to reduce cash outflows related to perpetual debt. Thus, the Board rejected arguments for recision of the interest deferral contingency clause.

Criterion 5—Conversion to Equity. The revised Guidelines require that a perpetual debt instrument must provide for automatic conversion of the debt to equity of the issuer or the issuer's parent in the event that the retained earnings and surplus of the issuer or the bank holding company parent become negative. Specifically, if the perpetual debt is issued directly by a bank holding company or by its subsidiary bank or other subsidiary with substantial operations, the perpetual debt must convert to common or perpetual preferred stock of the issuing entity when the surplus and retained earnings of the issuing entity become negative. If the parent of the issuer guarantees the perpetual debt of an operating subsidiary, the perpetual debt must convert to common or perpetual preferred stock of the operating subsidiary or of the parent as provided in the debt instrument. Moreover, such conversion must be triggered when the surplus and retained earnings of the issuing entity become negative or, if specifically provided in the perpetual debt instrument, conversion may instead be triggered when the surplus and retained earnings of the parent guarantor become negative.

If the perpetual debt is issued by a nonoperating subsidiary of a bank holding company or bank (that is, a funding subsidiary or one formed to issue securities), the perpetual debt must convert to common or perpetual preferred stock of the nonoperating subsidiary's parent when the surplus and retained earnings of the parent become negative, regardless of whether the parent guarantees the issue.

In effect, these provisions broaden the equity base of an issuing entity and reduce financial risk to that entity, as they permit the issuing entity to absorb losses and to possibly remain a viable concern at a time when it faces severe financial problems. Concerns about the continued viability of an entity may be lessened when a parent has guaranteed the perpetual debt of a nonoperating subsidiary; thus, the revised Guidelines do not require that the perpetual debt of an operating subsidiary immediately convert to the equity of the issuing subsidiary at the time the subsidiary experiences difficulties. At that time, the parent may take action to assume the obligations of the issuing subsidiary and it is then the parent's condition that would trigger conversion.

Several commenters urged the Board not to require actual conversion of perpetual debt to equity, but merely to require, as does the Bank of England, that the debt instrument treat noteholders as shareholders in cases in which an issuer's or parent's surplus and earnings become negative. These commenters noted that the Board's proposed requirement of actual conversion was more stringent than the standard of the Bank of England, and that actual conversion may trigger additional expenses and raise additional issues such as the need for regulatory filings due to a change in control and the need to authorize and adjust shares for conversion.

The Board acknowledges the practical difficulties involved in the actual conversion of perpetual debt to equity. However, the Board believes that actual conversion is necessary because it enables an organization to absorb losses, on a going concern basis, for the issuer (or parent) prior to actual bankruptcy.

Limits on Perpetual Preferred Stock, Mandatory Convertible Securities and Perpetual Debt

Limits Imposed. In response to a substantial number of adverse comments, the Board has eased the limits contained in its proposal. The revised Guidelines limit the combined amount of perpetual preferred stock, mandatory convertible securities and perpetual debt that may qualify as primary capital to 33⅓ percent of the gross amount of all forms of primary capital, including these three types of instruments.[1] This limit is an increase over the November 1985 proposal of 25 percent of gross primary capital.[2]

In addition, the revised Guidelines also limit the amount of mandatory convertible securities and perpetual debt that may qualify as primary capital to 20 percent of the gross amount of all forms of primary capital, including these instruments. This amount represents an increase over the limit in the current Guidelines of 16⅔ percent of gross primary capital which is for mandatory convertible securities alone (stated as 20 percent of primary capital excluding mandatory convertible securities). This increase will permit even those bank holding companies that are at the present limit of qualifying mandatory convertible securities to have the opportunity to issue perpetual debt.

Finally, the Board has decided to retain the limit on equity commitment notes, a type of mandatory convertible security, that may be included as primary capital for bank holding companies. The Guidelines previously stated that limit as 10 percent of primary capital exclusive of mandatory convertible securities or one-half of the amount of all mandatory convertible notes that may be treated as primary capital. The revised Guidelines, for the purposes of clarity and consistency, continue to limit the amount of equity commitment notes to one-half of all types of mandatory convertible securities that may be treated as primary capital. The revised Guidelines, therefore, permit capital treatment for equity commitment notes up to 10 percent of the gross amount of all forms of primary capital of the bank holding company, including mandatory convertible securities.

Reasons for the Limits. The Board believes that common equity should remain the dominant form of capital because it provides the greatest measure of safety to the issuing institution. That safety is found in a number of factors. First, as a general rule common equity offers greater financial flexibility. The dividends on common equity generally

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[1] In its proposal the Board stated the proposed limits in net form—*i.e.*, excluding the instruments being limited. This became confusing as the Board proposed limits on different combinations of instruments, thereby requiring a different means of computing the net percentage in each case. Accordingly, the limits in the revised Guidelines are defined more simply in gross terms.

[2] Stated in net terms, the revised Guidelines would allow 50 percent of net primary capital, excluding these three instruments, to be treated as primary capital, an increase over the 33⅓ percent of net primary capital that the Board proposed to permit.

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are voted by the directors who can assess the financial condition of the bank holding company—and are not predetermined by contract as are the interest and dividends on the three instruments subject to the limitation. Generally, therefore, the dividends on common stock may be eliminated more easily. In addition, dividends on common equity are not cumulative as the interest or dividends on the limited capital instruments are likely to be. Dividends on common stock are generally payable after the interest and dividends on the limited debt instruments and preferred stock are paid. In short, the Board continues to believe, as it stated in its Policy Statement on Payment of Cash Dividends, 72 Federal Reserve Bulletin 26 (1986): "Excessive reliance on preferred stock should be avoided, since reliance could limit an organization's flexibility in the event it encounters serious and protracted earnings weaknesses."

An additional safety feature is that reliance on common equity as the dominant form of capital will generally help to insure that the ownership of the bank holding company remains with those with the most significant investment in the company. The Board has had a longstanding policy with respect to applications under the Bank Holding Company Act of requiring those in control of a corporation to have a substantial investment so as to guard against absentee ownership or lack of prompt attention to the problems a company may encounter. Under the Board's Policy Statement on the Formation of Small One-Bank Holding Companies, Appendix B to Regulation Y, 12 CFR Part 225, for example, the Board has interpreted the minimum down payment requirement of 25 percent so that controlling shareholders rather than minority shareholders must meet the down payment. The limits on non-common-equity forms of primary capital are designed to address the same types of concerns.

The treatment of perpetual debt and mandatory convertible securities as primary capital, together with additional reliance in some cases on preferred stock, means there is a greater potential for placing voting control of an organization in the hands of individuals with a very limited financial stake in the organization. The Board has decided to formalize the procedure it has applied on a case-by-case basis of limiting reliance on preferred stock or other non-common-equity forms of capital. See *Croesus Partners I, Inc.*, 72 Federal Reserve Bulletin 45 (1986). While the Board acknowledges that in a given case any limit may appear arbitrary, the Board emphasizes that the limits are being placed in Capital Guidelines rather than in regulations so that bank holding companies may rely upon objective standards while permitting individual companies to demonstrate the need in a particular case for the Board to apply a more flexible measure.

This concern for added flexibility has prompted the Board to raise the proposed limits on the non-common-equity forms of capital. The Board has also applied different limits for perpetual preferred stock and the debt forms of primary capital in recognition of the arguments of some commenters that preferred stock ought to be distinguished from the debt instruments since it possesses more of the characteristics of common equity capital and provides a greater measure of safety to the issuer than debt.

Grandfathering Status of Previously-Issued Perpetual Preferred Securities. The Board has adopted the grandfathering treatment of perpetual preferred securities embodied in the November proposal. Under this grandfathering clause, all qualifying perpetual preferred stock issued as of November 20, 1985, the date of the proposal's publication in the **Federal Register** will count as primary capital, even if such action would place the bank holding company above the limit in the amended Guidelines. Moreover, to the extent that a bank holding company issued perpetual preferred stock after the grandfathering date, but had taken meaningful steps to issue those securities before such date, including filing with an appropriate government agency or signing binding contracts, the Board will give consideration to conferring grandfather status upon those securities.

Several commenters urged the Board to move the grandfather date forward, either to the date of publication of the final rule or beyond. To do otherwise, they argued, would be unfair and would disrupt the capital planning process. The Board believes that the increase in the combined limits from 25 percent to 33 percent of primary capital on a gross basis together with the clear notice of the grandfather date in the proposal provides enough leeway to avoid any difficulties in the capital planning process. Moreover, to avoid disruption, the Board will consider grandfathering any issue in which meaningful steps to issue such securities had occurred before the cutoff date.

It should be noted that grandfathering merely means that, to the extent that previously issued perpetual preferred stock, when considered together with properly issued mandatory convertible securities, exceeds the newly imposed limit on non-common-equity instruments, such preferred stock will continue to be treated as primary capital. Such preferred stock is not excluded, however, in computing the limits.

The Board believes that the revisions to the Capital Guidelines relating to limits on non-common-equity forms of capital in general, and preferred stock in particular, should be equally applicable to bank holding companies and banks. Nevertheless, the Board has not applied these changes to state member banks absent a parallel action by the Comptroller of the Currency and Federal Deposit Insurance Corporation with respect to other federally regulated banks. The Board will monitor the effects of these revisions on bank holding companies and, based on that experience, it will continue to discuss with the other federal banking agencies application of these revisions to banks on a uniform basis.

It should also be noted that the Board will carefully scrutinize the use of preferred stock by state member banks on a case-by-case basis. The Board also notes that the 20 percent limit on the treatment of mandatory convertible securities (on a net basis exclusive of such securities) by state member banks remains in the Guidelines.

Regulatory Flexibility Analysis Act. The Board certifies that the adoption of these proposals is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The amendment to the Capital Adequacy Guidelines will provide more flexibility in meeting the previously required minimum capital standards through the use of an additional capital instrument. The Board has grandfathered, for capital purposes, that perpetual preferred stock issued or in the process of being issued prior to the announcement of this proposal, and thus it has precluded any adverse impact on the capital position of small bank holding companies as a result of the limits imposed on the amount of perpetual preferred stock that may be considered primary capital. In addition, the Board has raised the limit on preferred stock over that proposed in November 1985, and it has declined to apply the limit through its Capital Guidelines to state member banks.

This amendment does not duplicate, overlap or conflict with any existing federal laws and regulations governing state member banks and bank holding companies.

List of Subjects in 12 CFR Part 225

Banks, banking, Federal Reserve System, Holding companies, Capital adequacy, State member banks.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority for Part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1843(c)(8), 1844(b), 3106, 3108, 3907, 3909.

2. The portion of Appendix A entitled "Definition of Capital to be used in Determining Capital Adequacy of Bank Holding Companies and State Member Banks" is amended by adding "perpetual debt" to the list of primary capital components, by removing footnote 3, and by adding a new subsection entitled "Limits on Non-common-Equity Forms of Primary Capital" to follow the list of primary capital components. The added and revised portions of Appendix A read as follows:

Appendix A—Capital Adequacy Guidelines for Bank Holding Companies and State Member Banks

* * * * *

Definition of Capital to be Used in Determining Capital Adequacy of Bank Holding Companies and State Member Banks

Primary capital components:

The components of primary capital are:

—Common stock,
—Perpetual preferred stock (preferred stock that does not have a stated maturity date and that may not be redeemed at the option of the holder),
—Surplus (excluding surplus relating to limited-life preferred stock),
—Undivided profits,
—Contingency and other capital reserves,
—Mandatory convertible instruments,[2]
—Allowance for possible loan and lease losses (exclusive of allocated transfer risk reserves),
—Minority interest in equity accounts of consolidated subsidiaries,
—Perpetual debt instruments (for bank holding companies but not for state member banks).

Limits on Certain Forms of Primary Capital

Bank Holding Companies. The maximum composite amount of mandatory convertible securities, perpetual debt, and perpetual preferred stock that may be counted as primary capital for bank holding companies is limited to 33.3 percent of all primary capital, including these instruments. Perpetual preferred stock issued prior to November 20, 1985 (or determined by the Federal Reserve to be in the process of being issued prior to that date), shall continue to be included as primary capital.

The maximum composite amount of mandatory convertible securities and perpetual debt that may be counted as primary capital for bank holding companies is limited to 20 percent of all primary capital, including these instruments. The maximum amount of equity commitment notes (a form of mandatory convertible securities) that may be counted as primary capital for a bank holding company is limited to 10 percent of all primary capital, including mandatory convertible securities. Amounts outstanding in excess of these limitations may be counted as secondary capital provided they meet the requirements of secondary capital instruments.

State Member Banks. The composite limitations on the amount of mandatory convertible securities and perpetual preferred stock (perpetual debt is not primary capital for state member banks) that may serve as primary capital for bank holding companies shall not be applied formally to state member banks, although the Board shall determine appropriate limits for these forms of primary capital on a case-by-case basis.

The maximum amount of mandatory convertible securities that may be counted as primary capital for state member banks is limited to 16⅔ percent of all primary capital, including mandatory convertible securities. Equity commitment notes, one form of mandatory convertible securities, shall not be included as primary capital for state member banks, except that notes issued by state member banks prior to May 15, 1985, will continue to be included in primary capital. Amounts of mandatory convertible securities in excess of these limitations may be counted as secondary capital if they meet the requirements of secondary capital instruments.

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3. That portion of Appendix A entitled "Criteria Applicable to Both Types of Mandatory Convertible Securities" is amended by removing paragraph (b) and footnote 4 and redesignating paragraphs (c) through (f) as paragraphs (b) through (e). Footnotes 5 and 6 are redesignated as footnotes 3 and 4.

4. That portion of Appendix A entitled "Additional Criteria Applicable to Equity Commitment Notes" is amended by deleting paragraph (d) and by redesignating footnotes 7 and 8 as footnotes 5 and 6.

5. Appendix A is amended by adding the following paragraphs at the end of the Appendix.

Criteria for Determining the Primary Capital Status of Perpetual Debt Instruments of Bank Holding Companies

1. The instrument must be unsecured and, if issued by a bank, must be subordinated to the claims of depositors.

2. The instrument may not provide the noteholder with the right to demand repayment of principal except in the event of bankruptcy, insolvency, or reorganization. The instrument must provide that nonpayment of interest shall not trigger repayment of the principal of the perpetual debt note or any other obligation of the issuer, nor shall it constitute prima facie evidence of insolvency or bankruptcy.

3. The issuer shall not voluntarily redeem the debt issue without prior approval of the Federal Reserve, except when the debt is converted to, exchanged for, or simultaneously replaced in like amount by an issue of common or perpetual preferred stock of the issuer or the issuer's parent company.

4. If issued by a bank holding company, a bank subsidiary, or a subsidiary with substantial operations, the instrument must contain a provision that allows the issuer to defer interest payments on the perpetual debt in the event of, and at the same time as the elimination of dividends on all outstanding common or preferred stock of the issuer (or in the case of a guarantee by a parent company at the same time as the elimination of the dividends of the parent company's common and preferred stock). In the case of a nonoperating subsidiary (a funding subsidiary or one formed to issue securities), the deferral of interest payments must be triggered by elimination of dividends by the parent company.

5. If issued by a bank holding company or a subsidiary with substantial operations, the instrument must convert automatically to common or perpetual preferred stock of the issuer when the issuer's retained earnings and surplus accounts become negative. If an operating subsidiary's perpetual debt is guaranteed by its parent, the debt may convert to the shares of the issuer or guarantor and such conversion may be triggered when the issuer's or parent's retained earnings and surplus accounts become negative. If issued by a nonoperating subsidiary of a bank holding company or bank, the instrument must convert automatically to common or preferred stock of the issuer's parent when the retained earnings and surplus accounts of the issuer's parent become negative.

By order of the Board of Governors of the Federal Reserve System, November 3, 1986.

William W. Wiles,

Secretary of the Board.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-156-AD; Amdt. 39-5466]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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[2] See the definitional section below that lists the criteria for mandatory convertible instruments to qualify as primary capital.

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SUMMARY: This amendment amends an existing airworthiness directive (AD) which requires inspection of trailing edge flap tracks for cracking on certain Boeing Model 747 airplanes. This amendment incorporates a decrease in the inspection intervals from 1,000 landings to 300 landings for the fourth fastener from the forward end of the flap track. This action is prompted by eight recent reports of cracking adjacent to the fourth fastener hole prior to the current 1,000 landing inspection interval. This recent service experience has shown that the present 1,000 landing inspection interval is inadequate. Cracking could lead to failure of the flap track and separation of the flap, which could result in partial loss of controllability of the airplane.

DATE: Effective December 18, 1986.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM-120S; telephone (206) 431-1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to amend Airworthiness Directive AD 84-19-02 to require inspection for cracking of the fourth fastener hole from the forward end of the trailing edge flap track at intervals of 300 landings, and subsequent repair, if necessary, was published in the **Federal Register** on August 4, 1986 (51 FR 27874). The comment period for the proposal closed on September 25, 1986.

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

On behalf of its members, the Air Transport Association (ATA) of America stated that it had no objection to the proposed rule change.

After careful review of the available data, the FAA has determined that air safety and the public interest require the amendment of the rule as proposed.

It is estimated that 101 airplanes of U.S. Registry will be affected by this AD, that it will take approximately 40 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $161,000 for the initial inspection cycle.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A final evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending AD 84-19-02, Amendment 39-4917 (49 FR 36819; September 20, 1984), as amended by Amendment 39-5314 (51 FR 18308; May 19, 1986), by revising paragraph A. to read as follows:

"A. Within 300 landings after the effective date of this Amendment, unless accomplished within the last 300 landings, and at intervals thereafter not to exceed 300 landings, visually inspect the flap track lower flanges and vertical webs at the front end for cracks adjacent to bolts number 1 through 4 in accordance with Boeing Alert Service Bulletin 747-57A2229, Revision 2, dated June 6, 1986, or later FAA-approved revisions. Cracked parts must be replaced prior to further flight.

Note.—These bolts pass through both the flap track and the front end of the fail-safe bar. Inspection of the flap track may be performed by borescope through access holes in the flap track fairing adjacent to the front of the track. The proper location and diameter for the access holes is provided in the service bulletin."

All persons affected by this rule who have not already received the service bulletin from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective December 18, 1986.

Issued in Seattle, Washington, on November 4, 1986.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 86-25419 Filed 11-10-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-ANM-29]

Alteration of Redmond, OR, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action is necessary to alter the Redmond, Oregon, Transition Area prompted by a recent change to the description of a Federal airway in the vicinity of Portland, Oregon.

EFFECTIVE DATE: 0901, UTC, December 18, 1986.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM-534, Federal Aviation Administration, Docket No. 86-ANM-29, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2534

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to Part 71.181 of the Federal Aviation Regulations amends the Redmond, Oregon, Transition Area by changing that airspace described as bounded by "east on V-121N" to "east on V-269." This change is necessary as a result of Airspace Docket No. 86-ANM-15 which renumbered V-121N to V-269. In addition, an editorial change is necessary to change the Juniper, Washington, MOA to the Juniper, Oregon, MOA. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor amendment in which the public would not be particularly interested. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of The Amendment

Part 71—[Amended]

Accordingly, pursuant to the authority delegated to me, Part 71 of Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Redmond, Oregon—[Amended]

That airspace extending upward from 700 feet above the surface within 2 miles north and 13.5 miles south of the Redmond VORTAC 059° radial to 33 miles east of the VORTAC; within 2 miles each side of a 230° bearing from the center of the 5-mile radius circle centered on Roberts Field Airport extending from the radius of the 5-mile circle to 10 miles southwest of the airport; within 2 miles each side of Redmond VORTAC 162° radial extending from the VORTAC to 5 miles south of the VORTAC; within 2 miles each side of the Redmond VORTAC 281° radial extending from the VORTAC to 5 miles west of the VORTAC; and within 4 miles each side of the Redmond VORTAC 014° radial, extending from 15 miles north of the VORTAC to 35 miles north; that airspace extending upward from 1,200 feet above the surface within a 37-mile radius of the VORTAC between the 006° and 048° radials; within a 31-mile radius of the VORTAC between the 48° radial and a line 6 miles west of and parallel to the 189° radial; that airspace extending upward from 1,700 feet above the surface within a line beginning at Redmond, Oregon, VORTAC, extending north on V-25 to The Dalles, Oregon, VORTAC, east on V-112 to Pendleton, Oregon, VORTAC, southeast on V-4 to Baker, Oregon, VORTAC, southwest on V-357 to Lakeview, Oregon, VORTAC, west on V-122 to Klamath Falls, Oregon, VORTAC, northwest on V-452 to Eugene, Oregon, VORTAC, east on V-269 to Redmond, Oregon, VORTAC, excluding that airspace within Federal airways, the Juniper, Oregon, MOA; the Lakeview Additional Control Area; the Baker, Oregon; Klamath Falls, Oregon; Pendleton, Oregon; The Dalles, Oregon; and Burns, Oregon, Transition Areas.

Issued in Seattle, Washington, on November 4, 1986.

William E. O'Neill,

Acting Manager, Air Traffic Division Northwest Mountain Region.

[FR Doc. 86-25417 Filed 11-10-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 25118; Amdt. No. 1333]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591.

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National

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Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on October 31, 1986.

John S. Kern,
Director of Flight Standards.

Adoption of the Amendment

PART 97—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983; and 14 CFR 11.49(b) (2)).

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective December 18, 1986

Melbourne, FL—Melbourne Regional, VOR RWY 9R, Amdt. 18
Melbourne, FL—Melbourne Regional, VOR RWY 27L, Amdt. 11
Melbourne, FL—Melbourne Regional, LOC BC RWY 27L, Amdt. 8
Melbourne, FL—Melbourne Regional, NDB RWY 9R, Amdt. 13
Melbourne, FL—Melbourne Regional, ILS RWY 9R, Amdt. 8
Sarasota/Bradenton, FL—Sarasota-Bradenton, VOR RWY 14, Amdt. 15
Sarasota/Bradenton, FL—Sarasota-Bradenton, VOR RWY 22, Amdt. 9
Sarasota/Bradenton, FL—Sarasota-Bradenton, VOR RWY 32, Amdt. 6
Sarasota/Bradenton, FL—Sarasota-Bradenton, NDB RWY 32, Amdt. 4
Sarasota/Bradenton, FL—Sarasota-Bradenton, ILS RWY 14, Amdt. 2
Sarasota/Bradenton, FL—Sarasota-Bradenton, ILS RWY 32, Amdt. 3
Rockford, IL—Greater Rockford, VOR RWY 12, Amdt. 2
Rockford, IL—Greater Rockford, LOC BC RWY 18, Amdt. 13
Rockford, IL—Greater Rockford, NDB RWY 36, Amdt. 23
Rockford, IL—Greater Rockford, ILS RWY 36, Amdt. 26
Rockford, IL—Greater Rockford, RADAR-1, Amdt. 5
Covington/Cincinnati, OH, KY—Greater Cincinnati Intl, ILS RWY 36, Amdt. 32
Baltimore, MD—Baltimore Washington Intl, ILS RWY 10 Amdt. 12
Baltimore, MD—Baltimore Washington Intl, ILS RWY 33L, Amdt. 4
Caro, MI—Caro Muni, VOR/DME–A, Amdt. 3
Warroad, MN—Warroad Intl-Swede Carlson Field, NDB RWY 31, Amdt. 4
Akron, OH—Akron-Canton Regional, VOR RWY 23, Amdt. 6
Akron, OH—Akron-Canton Regional, ILS RWY 1, Amdt. 33
Akron, OH—Akron-Canton Regional, ILS RWY 19, Amdt. 3
Akron, OH—Akron-Canton Regional, ILS RWY 23, Amdt. 6
Akron, OH—Akron-Canton Regional, RADAR–1, Amdt. 17

. . . Effective October 28, 1986

Obyan, N Mariana Islands—Saipan Intl, NDB RWY 7, Amdt. 4
Obyan, N Mariana Islands—Saipan Intl, NDB/DME RWY 7, Amdt. 2
Obyan, N Mariana Islands—Saipan Intl, NDB/DME RWY 25, Amdt. 2
Obyan, N Mariana Islands—Saipan Intl, ILS/DME RWY 7, Amdt. 3

. . . Effective October 23, 1986

Tuscaloosa, AL—Tuscaloosa Muni, VOR RWY 22, Amdt. 11
Tuscaloosa, AL—Tuscaloosa Muni, NDB RWY 4, Amdt. 8
Tuscaloosa, AL—Tuscaloosa Muni, ILS RWY 4, Amdt. 10
Big Lake, AK—Big Lake, VOR RWY 6, Amdt. 5
Rangeley, ME—Rangeley Muni, NDB–A, Amdt. 1
Corvallis, OR—Corvallis Muni, ILS RWY 17, Amdt. 1

. . . Effective October 22, 1986

North Myrtle Beach, SC—Grand Strand, VOR RWY 5, Amdt. 17
North Myrtle Beach, SC—Grand Strand, VOR/DME or TACAN RWY 5, Amdt. 3
North Myrtle Beach, SC—Grand Strand, VOR RWY 23, Amdt. 16
North Myrtle Beach, SC—Grand Strand, VOR/DME or TACAN RWY 23, Amdt. 2
North Myrtle Beach, SC—Grand Strand, NDB RWY 23, Amdt. 8
North Myrtle Beach, SC—Grand Strand, ILS RWY 23, Amdt. 7

[FR Doc. 86–25420 Filed 11–10–86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 270

[Docket No. RM86–3–000]

Ceiling Prices, Old Gas Price Structure; Supension of Effectiveness of Good Faith Negotiation Procedures Under Order No. 451

Issued: October 31, 1986.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Partial Suspension of Final Rule.

SUMMARY: On June 6, 1986, the Commission issued Order No. 451 establishing an alternative maximum lawful ceiling price for old gas. Order No. 451 also established a "good faith negotiation rule" with which first sellers must comply before collecting a higher price under any contract in effect on July 18, 1986, absent voluntary renegotiation of the contract to permit collection of a higher price. Order No. 451 became effective July 18, 1986. However, no producer was permitted to make a

nomination request under the good faith negotiation rule until November 1, 1986.

In order to assure that no party is required to renegotiate a contract under the good faith negotiation rule before the Commission has resolved the issues raised on rehearing, the Commission is suspending until December 18, 1986, the effectiveness of the provision under which a producer is permitted to make a nomination request until December 18, 1986.

DATES: This order was effective October 31, 1986; § 270.201(b)(1)(i) is suspended as of October 31, 1986.

FOR FURTHER INFORMATION CONTACT: Richard Howe, Jr., Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (202) 357-8303.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve; Order postponing effectiveness of good faith negotiation procedures under Order No. 451.

On June 6, 1986, the Commission issued Order No. 451[1] establishing an alternative maximum lawful ceiling price for old gas. Order No. 451 also established a "good faith negotiation rule" with which first sellers must comply before collecting a higher price under any contract in effect on July 18, 1986, absent voluntary renegotiation of the contract to permit collection of a higher price.[2] Order No. 451 became effective July 18, 1986. However, no producer was permitted to make a nomination request under the good faith negotiation rule until November 1, 1986.[3]

On July 3 and 7, 1986, the Commission received sixty timely requests for rehearing of Order No. 451. Among other matters, rehearing applicants challenge the legality of various aspects of the good faith negotiation rule and request numerous clarifications concerning its operation. The Commission cannot give full and reasoned consideration to all the issues raised on rehearing by November 1, 1986. In order to assure that no party is required to renegotiate a contract under the good faith negotiation rule before the Commission has resolved the issues raised on rehearing, the Commission is postponing the date on which a producer is permitted to make a nomination request until December 18, 1986. All other aspects of Order No. 451 remain in effect. Our action today does not constitute, and is not intended to be, an expression of the Commission's position on any of the issues raised in the petitions on rehearing.

The Commission orders:

The effectiveness of the date on which a producer is permitted to make a nomination request under the good faith negotiation rule in Order No. 451 (18 CFR 270.201) is hereby postponed until December 18, 1986.

By the Commission. Commissioner Trabandt concurred with a separate statement attached.

Kenneth F. Plumb,

Secretary.

Therefore, in 18 CFR Part 270, § 270.201(b)(1)(i) is suspended until December 18, 1986.

Ceiling Prices; Old Gas Pricing Structure

Docket No. RM86-3-000

(Issued October 31, 1986)

Concurring Opinion of Commissioner Charles A. Trabandt

I would note that the sole legal effect of this order is simply to delay the earliest date upon which a producer may initiate the good faith negotiation (GFN) procedures in Order No. 451 from November 1, 1986, until December 18, 1986. The concept of GFN procedures was proposed originally by Secretary of Energy Herrington in his November 18, 1985, Notice of Proposed Rulemaking to eliminate vintage pricing of old gas. The concept was subsequently adopted by the Commission with certain modifications in Order No. 451, providing for initiation of the procedures at any time after October 31, 1986. I am persuaded that a brief delay is a responsible action if rehearing will not be complete by November 1.

The order on rehearing must address, *inter alia,* numerous requests for modification and clarification of the GFN procedures, including the technical procedural steps, and aspects of the rights and obligations of parties subject to GFN. Consequently, I agree that it is prudent to provide here for a modest pause while we complete action on rehearing, in order that all parties will have advance notice of our decisions prior to the actual initiation of any GFN.

I would emphasize, however, that my support for this order is based on my belief that our action here constitutes nothing more than a brief delay in the initiation of GFN. I am satisfied that the Commission recognizes and appreciates fully the need to provide as early as possible certainty and predictability for all parties subject to GFN, in order to allow them to proceed in a timely manner with required planning of business operations and regulatory activities under Order No. 451. Consequently, I would anticipate that the Commission will proceed promptly to complete rehearing of Order No. 451.

Further, I also am satisfied that our action here is not intended and should not be construed as any abandonment of or departure from the commitment to the fundamental objectives and principles of Order No. 451, including the GFN concept. I would not be able to support this order if I had any doubt about the intent of the order or its impact on that commitment. I also would not support the order if I believed there was any risk that the GFN procedures, which are the heart of Order No. 451, would become a virtual hostage to any lengthy, extended delay in completing rehearing. Rather, as noted above, I am confident the Commission will complete rehearing in the near future.

Finally, it has been almost a year since Secretary Herrington first proposed the GFN concept to eliminate vintage-based pricing of old gas. I have strongly supported Commission action on the Secretary's initiative since it was first proposed. I believe it is appropriate at this time to make a final decision on that proposal. The modest pause in implementing GFN resulting from this order should not and must not impede our progress in achieving that objective.

For the above reasons, I concur in this order.

Charles A. Trabandt,

Commissioner.

[FR Doc. 86-25076 Filed 11-10-86; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Part 271

[Docket No. RM80-53]

National Gas Ceiling Prices; Maximum Lawful Prices and Inflation

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order of the director, OPPR.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.307(k), the Director of the Office of Pipeline and Producer Regulation revises and publishes the maximum lawful prices prescribed under Title I of the Natural Gas Policy Act (NGPA) for the months of November, and December, 1986 and January, 1987. Section 101(b)(6) of the NGPA requires that the Commission compute and publish the maximum lawful prices before the beginning of each month for which the figures apply.

EFFECTIVE DATE: November, 1, 1986.

FOR FURTHER INFORMATION CONTACT: Raymond A. Beirne, Acting Director, OPPR (202) 357-8500.

Issued: October 24, 1986.

Section 101(b)(6) of the Natural Gas Policy Act of 1978 (NGPA) requires that the Commission compute and make available maximum lawful prices and inflation adjustments prescribed in Title I of the NGPA before the beginning of any month for which such figures apply.

Pursuant to this requirement and § 375.307(k) of the Commission's regulations, which delegates the publication of such prices and inflation adjustments to the Director of the Office of Pipeline and Producer Regulation, the maximum lawful prices for the months of November, and December, 1986 and January, 1987, are issued by the publication of the price tables for the applicable quarter. Pricing tables are found in § 271.101(a) of the Commission's regulations. Table I of § 271.101(a) specifies the maximum lawful prices for gas subject to NGPA sections 102, 103(b)(1)(2), 105(b)(3), 106(b)(1)(B), 107(c)(5), 108 and 109. Table II of § 271.101(a) specifies the maximum lawful prices for sections 104 and 106(a) of the NGPA. Table III of § 271.102(c) contains the inflation adjustment factors. The maximum lawful prices and the inflation adjustment factors for the periods prior to November, 1986 are found in the tables in §§ 271.101 and 271.102.

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[1] 51 FR 22,168 (June 18, 1986).

[2] 18 CFR 270.201.

[3] 18 CFR 270.201(b)(1)(i).

List of Subjects in 18 CFR Part 271

Natural gas.

Raymond A. Beirne,

Acting Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

1. The authority citation for Part 271 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 et seq.; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. 553.

§ 271.101 [Amended]

2. Section 271.101(a) is amended by inserting the maximum lawful prices for November, and December 1986 and January, 1987 in Tables I and II.

TABLE I.—NATURAL GAS CEILING PRICES

[Other than NGPA §§ 104 and 106(a)]

Subpart of part 271	NGPA section	Category of gas	Maximum lawful price per MMBtu for deliveries in— Nov. 1986	Dec 1986	Jan. 1987
B	102	New Natural Gas, Certain OCS Gas [4]	$4.403	$4.431	$4.459
C	103(b)(1)	New Onshore Production Wells [5]	3.141	3.151	3.161
	103(b)(2)	New Onshore Production Wells [5]	3.772	3.791	3.810
E	105(b)(3)	Intrastate Existing Contracts	4.330	4.354	4.378
F	106(b)(1)(B)	Alternative Maximum Lawful Price for Certain Intrastate Rollover Gas [1]	1.796	1.802	1.808
G	107(c)(5)	Gas Produced from Tight Formations [3]	6.282	6.302	6.322
H	108	Stripper Gas	4.716	4.746	4.776
I	109	Not Otherwise covered	2.601	2.609	2.617

[1] Section 271.602(a) provides that for certain gas sold under an intrastate rollover contract the maximum lawful price is the higher of the price paid under the expired contract, adjusted for inflation or an alternative Maximum Lawful Price specified in this Table. This alternative Maximum Lawful Price for each month appears in this row of Table I. Commencing January 1, 1985, the price of some intrastate rollover gas is deregulated. (See Part 272 of the Commission's regulations.)

[3] The maximum lawful price for tight formation gas is the lesser of the negotiated contract price of 200% of the price specified in Subpart C of Part 271. The maximum lawful price for tight formation gas applies on or after July 16, 1979. (See § 271.703 and § 271.704.)

[4] Commencing January 1, 1985, the price of natural gas finally determined to be new natural gas under section 102(c) is deregulated. (See Part 272 of the Commission's regulations.)

[5] Commencing January 1, 1985, the price of some natural gas finally determined to be natural gas produced from a new, onshore production well under section 103 is deregulated. (See Part 272 of the Commission's regulations.)

TABLE II.—NATURAL GAS CEILING PRICES: NGPA §§104 and 106(A)

[Subpart D, Part 271]

Category of natural gas and type of sale or contract	Maximum lawful price per MMBtu for deliveries made in— Nov. 1986	Dec. 1986	Jan. 1987
Post-1974 gas: [2] All producers	$2.601	$2.609	$2.617
1973–1974 Biennium gas:			
Small producer	2.199	2.206	2.213
Large producer	1.680	1.685	1.690
Interstate Rollover gas. All producers	.967	.970	.973
Replacement contract gas or recompletion gas:			
Small producer	1.233	1.237	1.241
Large producer	.948	.951	.954
Flowing gas:			
Small producer	.625	.627	.629
Large producer	.525	.527	.529
Certain Permian Basin gas:			
Small producer	.735	.737	.739
Large producer	.651	.653	.655
Certain Rocky Mountain gas:			
Small producer	.735	.737	.739
Large producer	.625	.627	.629
Certain Appalachian Basin gas:			
North subarea contracts dated after 10-7-69	.594	.596	.598
Other contracts	.549	.551	.553
Minimum rate gas: [1] All producers	.326	.327	.328

[1] Prices for minimum rate gas are expressed in terms of dollars per Mcf, rather than MMBtu.

[2] This price may also be applicable to other categories of gas. (See § 271.402, 271.602.)

3. Section 271.102(c) is amended by inserting the inflation adjustment for the months of November, and, December 1986, and January, 1987 in Table III.

TABLE III.—INFLATION ADJUSTMENT

Month of delivery	Factor [1]
1986:	
November	1.00311
December	1.00311
1987:	
January	1.00311

[1] By which price in preceding month is multiplied.

[FR Doc. 86–25479 Filed 11–10–86; 8:45 am]

BILLING CODE 6717-01-M

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 874

Assignment of Federal Employees' Group Life Insurance by Federal Judges

Correction

In FR Doc. 86-24256 beginning on page 39361 in the issue of Tuesday, October 28, 1986 make the following correction:

874.301 [Corrected]

On page 39364, in § 874.301, in the first column, in the last line, "October" should read "November".

BILLING CODE [illegible]

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-6-FRL-3167-3]

Approval and Promulgation of Implementation Plans, Arkansas; Permit Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This notice proposes to approve a revision to the Arkansas State Implementation Plan (SIP) which: (1) gives the Arkansas Department of Pollution Control and Ecology (ADPC&E) the legal authority to establish and collect fees for environmental permits; and (2) implements a fee system for air permits issued by the ADPC&E. This action is in response to section 110(a)(2)(K) of the Clean Air Act which requires States to include a permit fee system in their SIPs.

The Governor of Arkansas submitted the SIP revision to EPA on December 16, 1985. Review of the revision indicates that Arkansas has met the requirements of section 110(a)(2)(K) of the Clean Air Act.

EFFECTIVE DATE: This action will be effective on January 12, 1987, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments on this action should be addressed to Thomas Diggs of the EPA Region 6 Air Programs Branch, SIP/NSR Section (address below). Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

U.S. Environmenal Protection Agency, Region 6, Air Programs Branch (6T-AN), 1201 Elm Street, Dallas, Texas 75270

Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC

Arkansas Department of Pollution Control and Ecology, Division of Air Pollution Control, 8001 National Drive, Little Rock, Arkansas 72209.

FOR FURTHER INFORMATION CONTACT: Bill Deese, Air Programs Branch, EPA Region 6, 1201 Elm Street, Dallas, Texas 75270, telephone (214) 767-9832 or (FTS) 729-9832. Reference Docket File Number AR-86-2.

SUPPLEMENTARY INFORMATION: Section 110(a)(2)(K) of the Clean Air Act requires the States to include a permit fee system in their SIPs. The States are required to collect fees from owners or operators of major stationary sources for permits issued pursuant to the Clean Air Act. The fees should be sufficient to cover the reasonable costs of reviewing and acting upon any application for such a permit and the cost of implementing and enforcing the terms and conditions of any such permit (excluding court costs and other costs associated with any enforcement action).

The Environmental Protection Agency (EPA) in 1981 developed a "Permit Fee Guideline" to assist States with the preparation of revisions to their SIPs which address the permit fee requirement. The guideline includes a review of the Clean Air Act requirements for permit fees; legislative history and relevant court cases; costs to be considered; basic program implementation considerations; and examples of fee systems in effect around the country. According to the guideline document, the states are given considerable flexibility in selecting the types of fees they could use to recover permit-related expenses. The guideline states on page 3 that, "[a]t a minimum, fess should be collected, for permits required under the Act, from major stationary sources as defined in section 302(j) of the Act, and as further defined under section 169(l) for prevention of significant deterioration, and section 169A(g)(7) for visibility protection."

The Arkansas 74th General Assembly passed Act 817 of 1983. Act 817 of 1983 added sections 82-1916 thru 82-1921 to the Arkansas Statutes to give the ADPC&E the legal authority to eastablish and collect fees for environmental permits. The Arkansas Commission on Pollution Control and Ecology adopted ADPC&E Regulation No. 9 (Regulations for Development and Implementation of a Permit Fee System for Environmental Permits Issued by the Department of Pollution Control and Ecology) on November 16, 1984, after public notice and hearing. ADPC&E Regulation No. 9 fulfills a requirement of Arkansas Act 817 of 1983 by implementing a fee system for environmental permits issued by the ADPC&E.

The Governor of Arkansas on December 16, 1985, submitted Act 817 of 1983 and ADPC&E Regulation No. 9 to Region 6 EPA as a revision to the Arkansas SIP. Only those parts of ADPC&E Regulation No. 9 related to air permits are to be included in the SIP. Region 6 EPA has reviewed the SIP revision and found it, along with the existing Arkansas SIP, to satisfy all the requirements of section 110(a)(2)(K) of the Clean Air Act.

Final Action

By this notice, EPA is approving Arkansas Act 817 of 1983 and the portions of ADPC&E Regulation No. 9 relating to air permits as meeting the requirements of section 110(a)(2)(K) of the Clean Air Act.

EPA has reviewed this revision to the Arkansas SIP and is approving it as submitted. This action is taken without prior proposal because the change is non-controversial and EPA anticipates no adverse comments on it. The public should be advised that this action will be effective 60 days from the date of this Federal Register notice. However, if notice is received within 30 days of publication that someone wishes to submit adverse or critical comments, this action will be withdrawn and a subsequent notice will be published before the effective date. The subsequent notice will withdraw the final action and will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 12, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the

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requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Incorporation by reference.

Note.—Incorporation by reference of the State Implementation Plan for the State of Arkansas was approved by the Director of the Federal Register on July 1, 1982.

Dated: October 17, 1986.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter 1, Title 40

40 CFR Part 52 is amended as follows:

Subpart E—Arkansas

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.170 is amended by adding paragraph (c)(24) as follows:

§ 52.170 Identification of plan.

* * * * *

(c) * * *

(24) A revision to the Arkansas Plan of Implementation for Air Pollution Control was submitted by the Governor on December 16, 1985.

(i) *Incorporation by reference.* (A) Act 817 of 1983 (permit fees) adopted March 25, 1983. Act 817 of 1983 added sections 82–1916 thru 82–1921 to the Arkansas Statutes. (B) Arkansas Department of Pollution Control and Ecology Regulation No. 9 (Regulations for Development and Implementation of a Permit Fee System for Environmental Permits) adopted by the Arkansas Commission on Pollution Control and Ecology on November 16, 1984. Only those portions of Regulation No. 9 related to air permits are incorporated.

[FR Doc. 86–25340 Filed 11–10–86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86–13; RM–5063; RM–4962]

Radio Broadcasting Services; Ringgold, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 270A to Ringgold, Georgia, as a first FM service, at the request of Bedros D. Daghlian. Additionally, a conflicting petition to allot Channel 270A to Dawnville, Georgia, as a first FM service at the request of Maria Teresa Spina, has been denied. Both petitioners and Marshall M. Brady, Jr. filed comments in the proceeding. Under our priorities for evaluating conflicting proposals, Ringgold should be favored as the more populous community. The transmitter site for Channel 270A at Ringgold is restricted to at least 7.8 kilometers (4.9 miles) east of the city. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 8, 1986; The window period for filing applications will open on December 9, 1986, and close on January 7, 1987.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–13, adopted October 15, 1986, and released October 31, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transportation Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the table of allotments, the entry for Ringgold, Georgia is amended to add Channel 270A.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–25442 Filed 11–10–86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86–77; RM–4935]

Radio Broadcasting Services; Mattoon, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 267A to Mattoon, Illinois, as a second FM service, at the request of Randall J. and Cathaleen R. Miller.

With this action, this proceeding is terminated.

EFFECTIVE DATE: December 8, 1986; the window period for filing applications will open on December 9, 1986, and close on January 7, 1987.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, (202) 634–6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–77, adopted October 6, 1986, and released October 31, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the table of allotments, in the entry for Mattoon, Illinois, Channel 267A is added.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–25443 Filed 11–10–86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86–50, RM–5140]

Radio Broadcasting Services; McCook, NE

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channels 230C2 and 253C2 to McCook, Nebraska, as the community's third and fourth local FM services, at the request of Donna Good and Jerry Kautz. Channel 230C2 does not require the imposition of any site restriction. Channel 253C2 requires a site restriction of 8.0 kilometers (5.0 miles) north to avoid a short-spacing to the proposed allocation of Channel 250 to Colby, Kansas. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 8, 1986. The period for filing applications will open on December 9, 1986, and close on January 7, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-50, adopted October 7, 1986, and released October 31, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202(b) [Amended]

1. In § 73.202(b), the table of allotments is amended by revising the entry for McCook, Nebraska, by adding Channels 230C2 and 253C2.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-25444 Filed 11-10-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-254, RM-4990]

Radio Broadcasting Services; Aiken, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 258C2 for Channel 257A at Aiken, South Carolina, and modifies the license of Station WNEZ(FM), Aiken, to specify the higher powered channel, at the request of Aiken Radio, Inc. The substitution of channels could provide expanded radio service to the Aiken area. Channel 258C2 at Aiken requires a site restriction of 22.8 kilometers (14.2 miles) northwest. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 8, 1986.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85-254, adopted October 9, 1986, and released October 31, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the table of allotments is amended, in the entry for Aiken, South Carolina, by deleting Channel 257A and adding Channel 258C2.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-25445 Filed 11-10-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-150; RM-5232, 5474]

Radio Broadcasting Services; Loudon and Oliver Springs, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 256A to Loudon, Tennessee, and Channel 254A to Oliver Springs, Tennessee, at the request of Loudon Broadcasters, Inc., and Oliver Springs Broadcasting Company, respectively. A second FM service could be provided to Loudon and a first FM service at Oliver Springs. A site restriction of 3.5 kilometers (2.1 miles) northeast of Loudon is required. A site restriction of 9.9 kilometers (6.2 miles) northwest of Oliver Springs is required. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 8, 1986; The window period for filing applications will open on December 9, 1986, and close on January 7, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-150, adopted October 15, 1986, and released October 31, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202(b) [Amended]

2. Section 73.202(b), the table of allotments, in the entries for Loudon, Tennessee, Channel 256A is added and Oliver Springs, Tennessee, Channel 254A is added.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-25446 Filed 11-10-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

48 CFR Part 5350

Department of the Air Force Federal Acquisition Regulation Supplement (AFFARS); Extraordinary Contractual Actions

AGENCY: Department of the Air Force, Department of Defense.

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ACTION: Final rule.

SUMMARY: FAR Subpart 50.4 is being supplemented by the Air Force to prescribe specific requirements for requesting indemnification and to iterate the criteria used for evaluating these requests.

EFFECTIVE DATE: August 21, 1986.

FOR FURTHER INFORMATION CONTACT: Major Tom Holubik, HQ USAF/RDCS, Pentagon, Washington, DC 20330-5040, (202) 697-6400.

SUPPLEMENTARY INFORMATION:

A. Background

AFFARS Subpart 5350.4 implements Air Force policy on Pub. L. 85-804, E.O. 10789 as amended, and FAR Subpart 50.4, by listing the specific criteria for making, evaluating and approving requests for indemnification.

B. Public Comments

On December 4, 1985, a notice of the proposed rule was published in the **Federal Register** (50 FR 49708) requesting Government agencies, private firms, associations and the general public to submit comments to be considered in the formulation of the final rule. As a result of the notice, 3 comments were received and considered.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501, et. seq.

D. Regulatory Flexibility Act

The addition of AFFARS Subpart 5350.4 will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1985 (5 U.S.C. 601, et. seq.) because historically no small entity has been indemnified under Pub. L. 85-804 by the Air Force. Indemnification under Pub. L. 85-804 for nuclear or unusually hazardous risks has, in the past, been granted to large aerospace contractors for major weapon systems.

List of Subjects in 48 CFR Part 5350

Government procurement.

Therefore, Title 48 of the Code of Federal Regulations is amended by establishing Chapter 53 and Part 5350 as set forth below:

CHAPTER 53—DEPARTMENT OF THE AIR FORCE FEDERAL ACQUISITION REGULATION SUPPLEMENT

Subchapter G—Contract Management

PART 5350—EXTRAORDINARY CONTRACTUAL ACTIONS

Subpart 5350.4—Residual Powers

Sec.

5350.401 Standards for use.
5350.401-90 Indemnification under Pub. L. 85-804.
5350.403 Special procedures for unusually hazardous or nuclear risks.
5350.403-1 Indemnification requests.
5350.403-2 Action on indemnification requests.
5350.403-90 Analysis for indemnification requests.

Authority: 5 U.S.C. 301 and FAR 1.301.

Subpart 5350.4—Residual Powers

5350.401 Standards for use.

5350.401-90 Indemnification under Public Law 85-804.

(a) Only the Secretary can grant indemnification under Pub. L. 85-804 and E.O. 10789 as amended.

(b) The Air Force will consider indemnifying contractors under this authority when the risk arises out of an instrumentality or activity which is unusually hazardous or nuclear in nature with risk of loss so potentially great that the contractor's financial and productive capabilities would be severely impaired or disrupted. The indemnified risk shall be precisely defined and directly related to the intrinsically hazardous or nuclear nature of the instrumentality or activity, or to the potentially catastrophic loss. Indemnification may extend beyond the period of contract performance only when the potential for devastating financial loss may result from normal use of the product. Indemnification shall not be provided for other forms of "product liability" beyond that resulting from the unusually hazardous or nuclear risks initially defined in the contract.

(c) In addition to (b) above, the Air Force will consider indemnifying contractors against unusually hazardous or nuclear risks with a potential for catastrophic loss for the purpose of furthering programmatic aims in the interest of the national defense. Providing indemnification to further programmatic aims will be considered for only exceptional compelling circumstances. Programmatic aims include, but are not limited to, assuring or obtaining competition, avoiding prohibitive insurance costs or where obtaining insurance is precluded by the release of classified information. Reducing or eliminating the insurance costs charged directly to a program does not in itself establish that insurance costs are prohibitive. Any request for indemnification for programmatic aims must clearly identify the programmatic purposes to be served and how indemnification will serve those purposes.

5350.403 Special procedures for unusually hazardous or nuclear risks.

5350.403-1 Indemnification requests.

Contractor requests for indemnification shall also include the following information:

(a) The risks for which indemnification is sought must be precisely defined and directly related to the intrinsically hazardous or nuclear nature of the instrumentality or activity or to the potentially catastrophic loss. Requests shall focus on only those risks for which insurance is not reasonably available at a reasonable cost or for which indemnification is necessary to further programmatic purposes.

(b) The risks must be related to a specific time-frame for which indemnification is required, and must indicate whether the time-frame extends beyond contract performance.

(c) The purposes to be served by indemnifications must be clearly identified and the needs for indemnification substantiated so that the scope and nature of the request may be fully evaluated.

5350.403-2 Action on indemnification requests.

(a)(1) Prior to recommending indemnification, contracting officers shall ascertain that the contractor maintains financial protection in the form of liability insurance in amounts considered to be prudent in the ordinary course of business within the industry. In addition, the contractor shall submit evidence, such as a certificate of insurance or other customary proof of insurance, that such insurance is either in force or is available and will be in force during the indemnified period. A copy of the latest report on the contractor's insurance issued by the cognizant Government reviewing activity (i.e., AFPRO, DCAS, etc.) shall be submitted with the request for indemnification. The fact that insurance will be a direct cost to the program will not in itself be cause for a determination that financial protection is not reasonably available, although the cost of such insurance over and above the contractor's usual and customary cost for insurance will be considered.

(2) Notwithstanding (1) above, there may be cases in which the Air Force will determine to indemnify the contractor only against losses in excess of an identified dollar amount.

(3) Whether certain risks are unusually hazardous or nuclear in nature requires a reasoned judgement based on the facts and circumstances of each case. Considerations which will assist in making that determination include—

(i) Understanding the nature of the risk for which indemnification is being requested and its relation to the product or activity;

(ii) Assuring there is a clear, precise definition of the unusually hazardous or nuclear risk;

(iii) Ascertaining the time-frame for indemnification;

(iv) Identifying the programmatic objectives for providing the indemnification requested such as assuring competition, avoiding prohibitive insurance costs, assuring contractor performance of essential services, or assuring protection of contractors from catastrophic loss where, for security reasons, adequate information cannot be disclosed to insuring activities to establish insurance coverage; and

(v) Determining that the indemnification provided serves the identified programmatic purposes.

(4) Contracting officers shall also assure that the contractor has an adequate, existing, and on-going industrial safety program prior to recommending indemnification. If indemnification is to extend into the period of use of the supplies or equipment, the contracting officer shall assure that the contractor has and maintains adequate system design, production engineering, and quality control procedures and systems. A copy of the current safety report issued by the cognizant Government reviewing activity (i.e., AFPRO, DCAS, etc.) shall be submitted with the request for indemnification.

(5) Requests for indemnification shall be considered on a case-by-case basis and must be supported by all of the data required by FAR 50.403 and this Supplement.

(6) Requests that are based on programmatic objectives shall be submitted over the signature of the Commander or not lower than the Vice Commander of the MAJCOM.

(7) Requests for indemnification authority shall be submitted through channels to HQ USAF/RDC.

(b) Upon receipt of authority to indemnify the agreed upon risk, and prior to inclusion of the appropriate indemnification clause in the contract, the contractor shall provide the PCO with a copy of the certificate of insurance, the policy or other binder evidencing that the insurance coverage required is current and in effect.

5350.403-90 Analysis for indemnification requests.

The following information and analysis shall be included to supplement the information required by FAR 50.403-2:

(a) A clear, precise definition of the risk in establishing the relationship of the system/equipment to the intrinsically hazardous or nuclear nature of the instrumentality or activity.

(b) For risks arising from instrumentalities or activities which are unusually hazardous or nuclear in nature, elaborate on the "unusually" hazardous versus hazardous nature. Many private sector activities are hazardous and a clear distinction must be shown.

(c) Dates or measurable activities (e.g., delivery of the last unit) when indemnification will start and stop.

(d) Define the programmatic objectives that cannot be otherwise accomplished and identify the programmatic consequences if indemnification is not granted.

(e) Discuss any deductibles and apportionment of loss provisions in applicable insurance coverages.

(f) When indemnification is to extend beyond acceptance and into the period of use, requests shall include a determination that the contractor has adequate system design, production engineering, and quality control procedures and systems.

(g) A determination by the Commander of the buying activity that indemnification is required to satisfy the programmatic objectives.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-25422 Filed 11-10-86; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 86-02; Notice 2]

Federal Motor Vehicle Safety Standards for Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA); DOT.

ACTION: Final rule.

SUMMARY: This notice adopts amendments to Safety Standard No. 108 to allow motor vehicles including motorcycles to be equipped with Type A and Type E headlamps with a simplified mounting system intended to improve the incidence of correct headlamp aim. The headlamps are designated Type G and Type H. The retaining ring and mounting ring assembly used to hold the headlamp in place are eliminated. The new mounting system incorporates integral mounting/aiming tabs on the body of the headlamp and permits the headlamp to attach directly to the aiming screws, and thus the car body.

EFFECTIVE DATE: November 12, 1986.

ADDRESS: Petitions for reconsideration should refer to the docket number and notice number and be submitted to: Administrator, NHTSA, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Rulemaking, National Highway Traffic Safety Administration, Washington, DC 20590 (202-366-5281).

SUPPLEMENTARY INFORMATION: On December 20, 1984, Chrysler Corporation petitioned the National Highway Traffic Safety Administration for rulemaking to amend 49 CFR 571.108 Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment* to allow the use of a new mounting system it had developed for plastic headlamps. According to Chrysler, its new system reduces vehicle weight, is less costly, and simplifies headlamp aim and replacement. The headlamps and their mounting system continue to meet all applicable performance requirements of Standard No. 108, including vibration, corrosion, and photometrics. The agency granted Chrysler's petition, and on March 25, 1986, published a notice of proposed rulemaking (51 FR 10237).

Until 1983, headlamp systems specified by Standard No. 108, consisted of sealed beam headlamps, rings for mounting and aiming purposes, and rings for retaining the headlamps. At that time Standards No. 108 was amended to permit the replaceable bulb headlamp in which the size and shape are left to the manufacturer's design and thereby vary significantly from that of traditional sealed beam lamps. Attendant with this styling freedom was the freedom to mount the lamps in whatever manner the designer chose though continuing to meet aim performance requirements. The method that has evolved is the placement of

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mounting tabs and ball joints on the rear of the reflector area. These integral mounting tabs attach to the screws and pivots which are the headlamp's aim adjustment mechanism, and the traditional metal mounting and retaining rings are eliminated.

Chrysler's petition expands the use of such integral mounting/aiming systems from replaceable bulb headlamps to two types of sealed beam headlamps. As the Notice of Proposed Rulemaking observed, the new mounting system, which Chrysler calls the "Intregral Mount Sealed Beam Headlamp System" eliminates the traditional metal retaining ring and metal mounting ring assembly used to hold a sealed beam headlamp in the vehicle. This simplified mounting system incorporates integral mounting/aiming tabs on the body of the sealed beam headlamp and permits the headlamp to attach directly to the aiming screws, and thus the car body. Chrysler wishes to introduce this integral mounting system on headlamps which are physically and functionally similar to the Type A, the four lamp, small rectangular, headlamp system, and the Type E, the two lamp, small rectangular headlamp system. Because the mounting system would be an integral part of the headlamp, the headlamps so manufactured would not be interchangeable with Type A or Type E sealed beam headlamps. Therefore, Type A and Type E headlamp systems incorporating such an integral mount would be considered a "new" system and would need a designation to differentiate them from standard Type A and Type E systems. Accordingly, Chrysler suggested Type G and Type H as the new designations.

The two major changes to the standard desired by Chrysler deal with the dimensional aspects of sealed beam headlamp design related to interchangeability features and the lamp system nomenclature. Chrysler suggested permitting vehicles to be equipped with two Type 1G1 and two Type 2G1, or two Type 2H1 headlamps, designed to conform to the dimensional requirements and the applicable performance requirements normally required of existing sealed beam headlamps and headlamp systems.

Chrysler attributed the following benefits to the simplified mounting system:

- Weight savings of one half pound per headlamp over existing plastic sealed beam headlamp systems. This will enhance fuel economy.
- Simplified headlamp replacement; only two screws (instead of four) required to remove the lamp and install its replacement.
- Lamp reaim upon replacement is unnecessary if the aiming screws are not disturbed. Chrysler claims that, because it has specified a certain close relationship between the aiming pads and the mounting tabs/mounting ball, lamp aim will be unaffected by replacement.
- Simplified aiming process because fewer adjustments are necessary for proper aim than current aiming systems. Chrysler also claims that headlamp aiming, when re-aiming is necessary, will be performed better, faster and more willingly.

In support of some of those claims, Chrysler provided pertinent data. For example, to demonstrate the improvement in aimability, Chrysler performed an aim deviation test where integral mount lamp assemblies were exercised through the full range of aim adjustment, vertically or horizontally. Chrysler found that the mean vertical aim deviation with the integral mount system was 32 percent of that of the standard Chrysler headlamp mounting system and 14 percent of the mean deviation in the horizontal axis.

Chrysler specified a close relationship in the aiming and mounting planes so that replacement lamps will achieve essentially the same aim as the originals. The petitioner offered data which show the variability in aim when standard sealed beam lamps are replaced, and when integral mount sealed beam lamps are replaced. The standard lamps had a mean aim deviation of 1.262 inches horizontal and 3.374 inches vertical. The integral mount lamps had a mean aim deviation of 0.799 inch horizontal and 0.879 inch vertical. This shows a replacement aim error improvement of 31 percent horizontal and 74 percent vertical for the samples tested. Based on the results, Chrysler argued that the new system can be replaced without reaim. This is in distinct contrast to most existing sealed beam lamps which often require reaim upon replacement.

To assure that proper interchangeability occurs with sealed beam headlamps incorporating the integral mounting system, Chrysler submitted drawings which prescribe the necessary interchangeability dimensions and features (proposed as Figures 17 and 18). These figures also require that the nearly-identical Type 2G1 and the 1G1, be designed with a different spacing on the mounting tabs to assure non-interchangeability since one is a lower beam lamp and the other is an upper.

Additionally, Chrysler stated that the new headlamp systems will be designed to conform to all applicable tests as met by existing sealed beam lamps. This would include lamp retention, torque deflection, aim adjustment, inward force, connector tests, and photometry tests.

After review of the new mounting system, NHTSA tentatively concluded that it offers the potential for improved headlamp aim at the time of the vehicle's manufacture with the possibility of no further reaim during the life of the vehicle, even upon headlamp replacement. This would provide an enhancement of motor vehicle safety, though the benefits cannot be quantified. To achieve these benefits, when the lamp systems go into production, they must achieve the same level of aim performance that the prototypes achieved. If production tolerances closely approximate those of the prototypes, the system will be likely to remain properly aimed over the vehicle's life, and fulfill Chrysler's expectations for it.

Therefore, NHTSA proposed on March 25, 1986, amendments of the nature Chrysler requested, however, the system would be a modification of all Type A and Type E headlamps and not just those with plastic lenses. NHTSA also proposed that Type G and Type H be available for use on motorcycles, though benefits for that application are less clear.

Seven comments were received on the proposal. The new headlamps and mounting system were endorsed by Ford Motor Company, Chrysler, GE, and Volkswagen of America. Ford and Chrysler suggested a clarification of the torque deflection test to specify that a second reading on the thumb wheel shall be taken. The agency concurs, and the rule adopts this suggestion. General Electric stated that the consumer's best interests are not necessarily served by the action, because it is unlikely that retail automotive parts outlets will stock presumably low-demand Type G and Type H headlamps. While this may be true, the new headlamps should be available from the parts departments of all dealers who sell vehicles equipped with the new headlamps, and the consumer's search for a replacement lamp need not compromise safety. Corning also opposed the new system for the same reason. Stanley Electric Co., and Koito also raised the issue of proliferation. Both Koito Electric Co. and Stanley objected to the proposal because it covers a design of a proprietary nature, and that its use, at least in the United States should be on a royalty-free basis. After reviewing these comments, Chrysler filed a statement in the docket on June 10, 1986, that "all manufacturers of motor vehicles, headlamps or headlamp components" wishing to manufacture or use the new system "will be granted royalty-free non-exclusive licenses to use the mounting system upon request, under U.S. patents and U.S. patent applications . . . to the extent that use of the mounting system is necessary to employ the proposed optional headlamp system on motor vehicles regulated by the U.S. Motor Vehicle Safety Standards." NHTSA has therefore decided to adopt the rule as proposed.

NHTSA has considered this rule and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation" or significant under Department of Transportation regulatory policies and procedures. The economic impact is expected to be minimal and therefore, a regulatory evaluation has not been prepared. Since use of the headlamps is optional, the rule will not impose additional requirements or costs but will permit manufacturers greater flexibility in use of headlighting systems.

NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act. The rule may have a small positive effect on the human environment since the weight and quantity of materials used in the manufacture of headlamps will be reduced.

The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and headlamps, those affected by the rule are generally not small businesses within the meaning of the Regulatory Flexibility Act. Finally, small organizations and governmental jurisdictions will not be significantly affected since the price of new vehicles, headlamps, and aimer adjusters will be minimally impacted.

Because this amendment relieves a restriction and because of the necessity of vehicle, headlamp, and bulb manufacturers to plan production and distribution on an orderly basis, the agency finds that an immediate effective date is in the public interest.

The engineer and lawyer primarily responsible for this rule are Jere Medlin and Taylor Vinson, respectively.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 continues to read:

Authority: 15 U.S.C. 1392, 1401, 1403, 1417; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

In consideration of the foregoing, 49 CFR 571.108 Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment* is amended as follows:

2. In paragraph S4.1.1.34 the following are added to the chart of headlighting types.

System	Headlamp type	Number of headlamps
*	* * *	*
7	Type 1G1 and Type 2G1	1 lamp each.
8	Type 2H1	1 lamp.

3. New paragraphs S4.1.1.47 and S4.1.1.48 are added to read:

S4.1.1.47 Instead of being equipped with a headlamp system specified in Table I and Table III, a passenger car, multipurpose passenger vehicle, truck, or bus manufactured on or after September 1, 1986, may be equipped with a Type G headlamp system consisting of two type 1G1 and two type 2G1 headlamps or a Type H headlamp system consisting of two type 2H1 headlamps that are designed to conform to the following requirements:

(a) The dimensions specified in Figures 21 and 22.

(b) The requirements of SAE Standard J579c, *Sealed Beam Headlamp Units for Motor Vehicles*, December 1978.

(c) The requirements of SAE Standard J580 AUG79, *Sealed Beam Headlamp Assembly*, with the following exceptions:

(1) Sections 2.2, 2.3, 4, 6.3 and 6.5

(2) In place of Sections 6.3 and 6.5, the following requirements shall be met:

(i) *Retention Test.* The sealed beam unit shall remain held securely in its design position after 20 replacements.

(ii) *Torque Deflection Test.* The headlamp assembly to be tested shall be mounted in the designed vehicle position and set at nominal aim (0.0). A special adaptor (Figure 18) for the deflectometer of Figure 3 shall be clamped onto the headlamp assembly. A torque of 20 lb.-in. (2.25 N-m) shall be applied to the headlamp assembly through the deflectometer, and a reading on the thumb wheel shall be taken. The torque shall be removed and a second reading on the thumb wheel shall be taken. The difference between the two readings shall not exceed 0.30 degree.

S4.1.1.48 The lens of each headlamp designed to conform with paragraph S4.1.1.47 shall be marked with the symbol "DOT" (either horizontally or vertically) which shall constitute certification that the headlamp conforms to applicable Federal motor vehicle safety standards, and with one of the following designations as appropriate:

(a) A lens for a headlamp, nominal size 100 x 165 mm, incorporating an upper beam only and meeting the upper beam performance requirement of SAE J579c December 1978, Table 2, Upper Beam, shall be labeled 1G1.

(b) A lens for a headlamp, nominal size 100 x 165 mm, incorporating both an upper beam and a lower beam meeting the performance requirements of SAE J579c December 1978, Table 2 Upper Beam and Lower Beam shall be labelled 2G1.

(c) A lens for a headlamp, nominal size 100 x 165 mm, incorporating both an upper beam and a lower beam meeting the performance requirements of SAE J579c December 1978, Table 1 shall be labelled 2H1.

4. Figures 18, 21, and 22 are added as follows:

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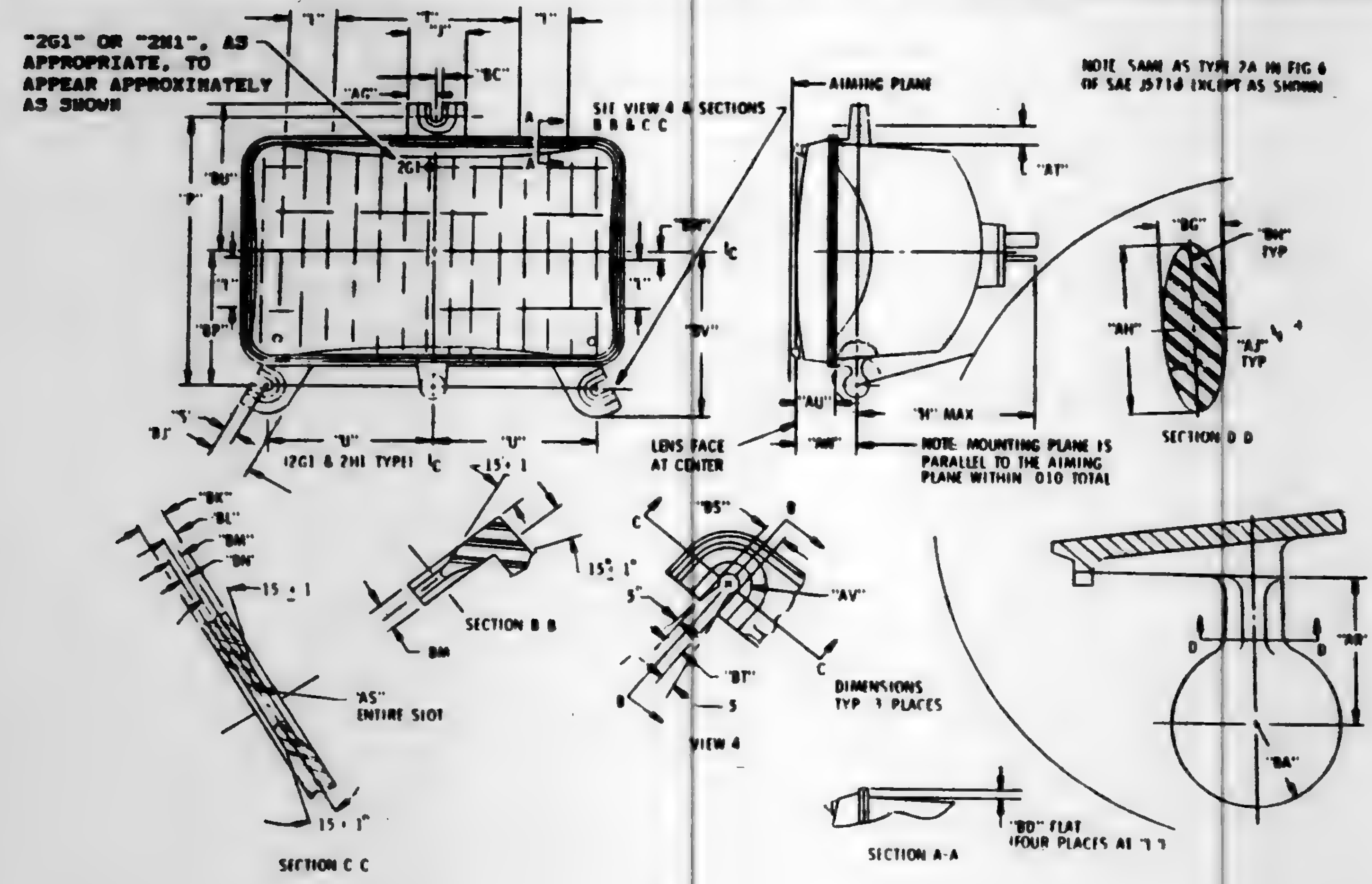
"2G1" OR "2H1", AS APPROPRIATE, TO APPEAR APPROXIMATELY AS SHOWN
"T"
"J"
"T"
"BC"
"AG"
2G1
A
A
SEE VIEW 4 & SECTIONS B B & C C
"BU"
"P"
"T"
"BP"
"BW"
℄
"T"
"BV"
"S"
"BJ"
"U"
"U"
(2G1 & 2H1 TYPE) ℄
15° ± 1
LENS FACE AT CENTER
AIMING PLANE
"AT"
"AU"
"AW"
"H" MAX
NOTE: MOUNTING PLANE IS PARALLEL TO THE AIMING PLANE WITHIN .010 TOTAL
NOTE: SAME AS TYPE 2A IN FIG 6 OF SAE J571d EXCEPT AS SHOWN
"BG"
"BH" TYP
"AH"
"AJ" TYP
SECTION D D
"BK"
"BL"
"BM"
"BN"
15 ± 1
"AS" ENTIRE SLOT
15 ± 1°
SECTION C C
15° ± 1°
SECTION B B
BM
C
"BS"
B
"AV"
5°
"BT"
C
B
5
DIMENSIONS TYP 3 PLACES
VIEW 4
D
D
"AR"
"BA"
"BD" FLAT (FOUR PLACES AT "T")
SECTION A-A

LETTER	IN	mm	LETTER	IN	mm
H MAX	3.499 ± 0.015	88.868 ± 0.381	BA	0.220 SPHER. R	5.59 SPHER. R
J	1.00 ± 0.015	25.40 ± 0.381	BC	0.197 ± 0.005	5.004 ± 0.127
L	1.25 MIN	31.75	BD	0.040 MIN	1.016 MIN
P	4.80 ± 0.026	121.92 ± 0.660	BG	0.150 ± 0.010	3.81 ± 0.254
S	0.250 ± 0.005	6.35 ± 0.127	BH	0.032R	0.813R
T	2.26 ± 0.01	57.40 ± 0.25	BJ	0.720 ± 0.015	18.288 ± 0.381
U	2.82 ± 0.015	71.63 ± 0.381	BK	0.125 ± 0.005	3.175 ± 0.127
AG	0.500 ± 0.01	12.70 ± 0.25	BL	0.062 ± 0.005	1.575 ± 0.127
AH	0.410 ± 0.010	10.414 ± 0.254	BM	0.064 ± 0.004	1.62 ± 0.102
AJ	0.42 ± 0.010	10.668 ± 0.254	BN	0.032 ± 0.004	0.813 ± 0.102
AR	0.37 MIN	9.40 MIN	BP	2.45 ± 0.015	62.23 ± 0.381
AS	0.03R + 0.0, -0.03	0.76R + 0.0, -0.76	BS	0.178, 0.181 DIA	4.521, 4.597 DIA
AT	0.230 MIN	5.84 MIN	BT	0.174, 0.176	4.420, 4.470
AU	0.66 ± 0.040	16.76 ± 1.02	BU	2.73 ± 0.015	69.342 ± 0.381
AV	0.20 ± 0.010	5.08 ± 0.254	BV	2.980 ± 0.015	75.692 ± 0.381
AW	1.100 ± 0.040	27.94 ± 1.02	BW	0.160 ± 0.01	4.06 ± 0.25

Fig. 18 - Dimensional Specifications for Integral Mount Sealed Beam Headlamps, Types G and H

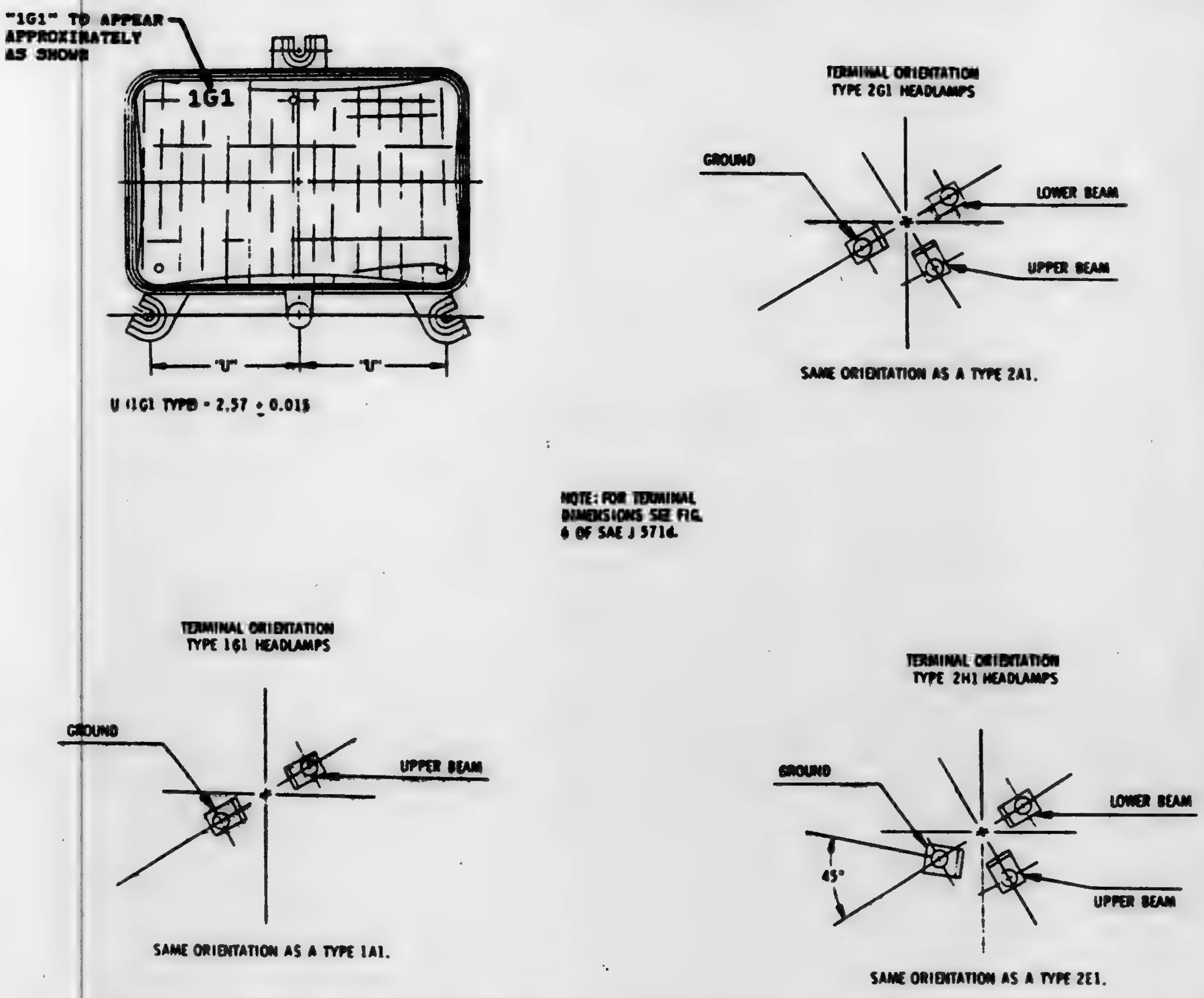
"1G1" TO APPEAR APPROXIMATELY AS SHOWN
1G1
"U"
"U"
U (1G1 TYPE) = 2.57 ± 0.015
TERMINAL ORIENTATION TYPE 2G1 HEADLAMPS
GROUND
LOWER BEAM
UPPER BEAM
SAME ORIENTATION AS A TYPE 2A1.
NOTE: FOR TERMINAL DIMENSIONS SEE FIG. 6 OF SAE J 571d.
TERMINAL ORIENTATION TYPE 1G1 HEADLAMPS
GROUND
UPPER BEAM
SAME ORIENTATION AS A TYPE 1A1.
TERMINAL ORIENTATION TYPE 2H1 HEADLAMPS
GROUND
LOWER BEAM
UPPER BEAM
45°
SAME ORIENTATION AS A TYPE 2E1.

Fig. 21 - Non-Interchangeability Configurations for Integral Mount Sealed Beam Headlamps, Types G and H

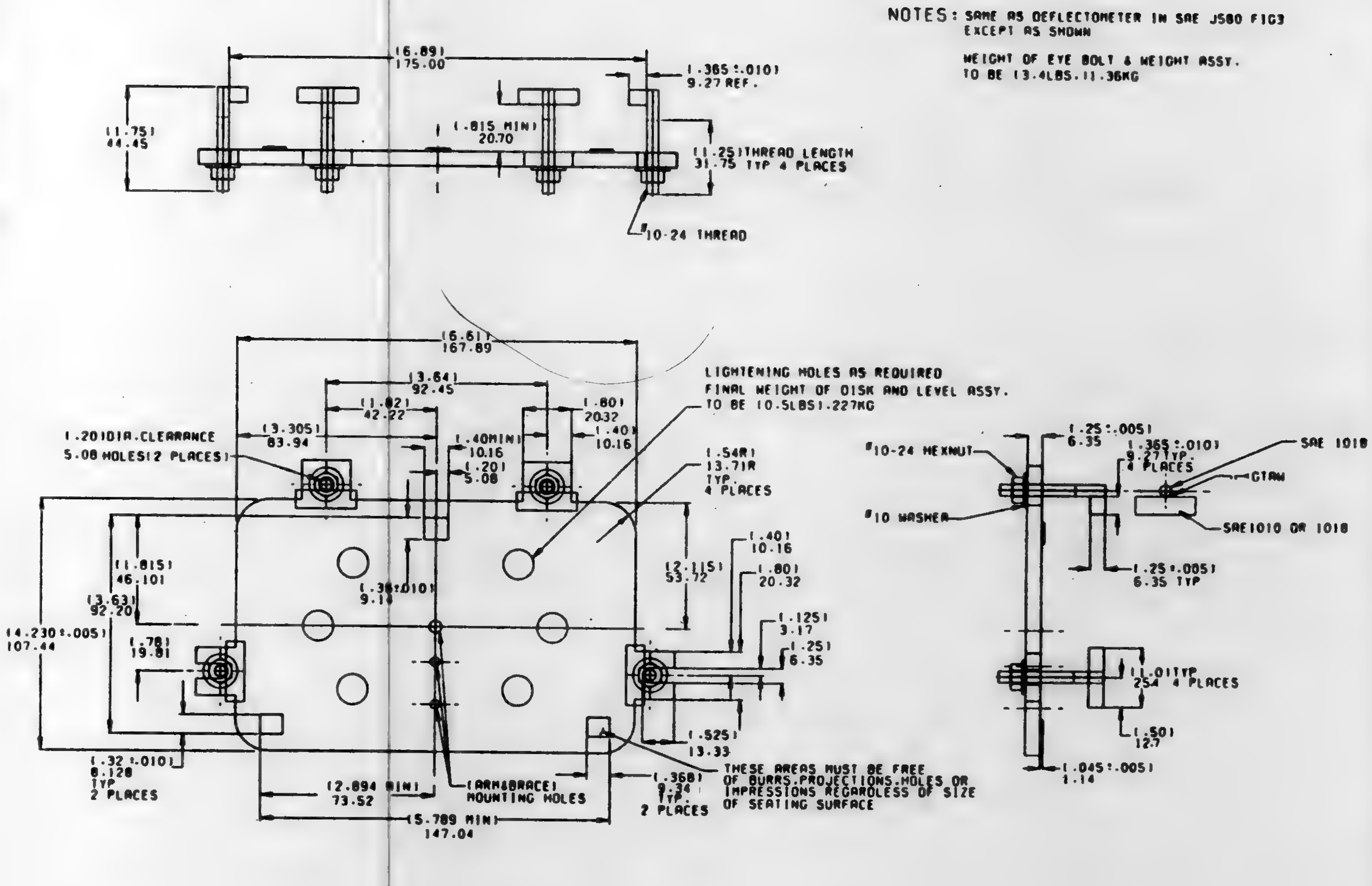
NOTES: SAME AS DEFLECTOMETER IN SAE J580 FIG3
EXCEPT AS SHOWN
WEIGHT OF EYE BOLT & WEIGHT ASSY.
TO BE (3.4LBS.)1.36KG
(6.89)
175.00
(.365±.010)
9.27 REF.
(1.75)
44.45
(.815 MIN)
20.70
(1.25)THREAD LENGTH
31.75 TYP 4 PLACES
#10-24 THREAD
(6.61)
167.89
(3.64)
92.45
(1.82)
42.22
(.80)
20.32
(.40)
10.16
(.20)DIA.CLEARANCE
5.08 HOLES(2 PLACES)
(3.305)
83.94
(.40MIN)
10.16
(.20)
5.08
LIGHTENING HOLES AS REQUIRED
FINAL WEIGHT OF DISK AND LEVEL ASSY.
TO BE (0.5LBS).227KG
(.54R)
13.71R
TYP.
4 PLACES
(.815)
46.10
(3.63)
92.20
(4.230±.005)
107.44
(.78)
19.81
(.36±.010)
9.14
(2.115)
53.72
(.40)
10.16
(.80)
20.32
(.125)
3.17
(.25)
6.35
(.525)
13.33
(.32±.010)
8.128
TYP
2 PLACES
(2.894 MIN)
73.52
(ARM&BRACE)
MOUNTING HOLES
(5.789 MIN)
147.04
(.368)
9.34
TYP.
2 PLACES
THESE AREAS MUST BE FREE
OF BURRS.PROJECTIONS.HOLES OR
IMPRESSIONS REGARDLESS OF SIZE
OF SEATING SURFACE
#10-24 HEXNUT
#10 WASHER
(.25±.005)
6.35
(.365±.010)
9.27TYP.
4 PLACES
SAE 1018
GTAW
SAE1010 OR 1018
(.25±.005)
6.35 TYP
(.01)TYP
.254 4 PLACES
(.50)
12.7
(.045±.005)
1.14

Fig 22 - Deflectometer Adaptor for Torque Deflection Tests on Type G and H Headlamp Systems

Issued on November 4, 1986.

Diane K. Steed,

Administrator.

[FR Doc. 86–25377 Filed 11–6–86; 4:35 pm]

BILLING CODE 4910–59–M

Proposed Rules

Federal Register
Vol. 51, No. 218
Wednesday, November 12, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-198-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9-10, -20, -30, -40, and C-9 (Military) Series Airplanes, Fuselage Numbers 1 through 619

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) which would require inspections for cracks and installation of stiffeners on 11 rudder ribs located aft of the rudder front spar on certain McDonnell Douglas DC-9 series airplanes. This proposal is prompted by reports of cracks in the rib flanges and rudder skins. If this condition is not corrected, outer skin cracks may develop and progress to a point where the structural integrity of the rudder is affected.

DATE: Comments must be received no later than January 5, 1987.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-198-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-L65 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6319.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-198-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

Four operators have reported that X-ray inspections revealed cracks in the rudder rib flanges on McDonnell Douglas Model DC-9 series airplanes having logged as few as 5,000 hours. McDonnell Douglas' analyses and tests determined that the cracking resulted from acoustically induced vibration. If this condition is not corrected, outer skin cracks may develop and progress to a point where the structural integrity of the rudder would be jeopardized; this could result in the loss of rudder effectiveness. Installation of stiffeners on the rudder ribs will strengthen the rudder and minimize the potential for crack development.

McDonnell Douglas has issued DC-9 Service Bulletin 55-23, Revision 4, dated September 8, 1986, which describes a repetitive inspection program to inspect for cracks, and describes procedures for the installation of stiffeners on 11 rudder ribs located aft of the rudder front spar.

Since this condition is likely to exist or develop on other airplanes of this same type design, an airworthiness directive (AD) is proposed which would require repetitive inspections and repair, if necessary, in accordance with McDonnell Douglas DC-9 Service Bulletin 55-23. Installation of rib stiffeners in accordance with Service Bulletin 55-23, or replacement of all affected ribs with new production .040-inch thick 2024-T42 aluminum ribs, would constitute terminating action for the repetitive inspections.

It is estimated that 619 airplanes of U.S. registry would be affected by this AD, that it would take approximately 85 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,104,600.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model DC-9 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator,

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the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC–9–10, –20, –30, –40, and C–9 (Military) series airplanes, Fuselage Numbers 1 through 619, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent outer skin cracks of the rudder and subsequent damage to adjacent structure, within 1,800 landings, or 9 months, after the effective date of this AD, whichever occurs earlier, accomplish the following, unless already accomplished within the last 1,200 landings:

A. Radiographically inspect rudder ribs for cracks, in accordance with McDonnell Douglas DC–9 Service Bulletin 55–23, Revision 4, dated September 8, 1986, hereinafter referred to as S/B 55–23, or later FAA-approved revisions, and accomplish the following:

1. If no cracks are found, accomplish repetitive inspections at intervals not to exceed 3,000 landings, until such time as the requirements of paragraph A.3., below, are accomplished.

2. If cracks are found, accomplish one of the following, as applicable:

a. For cracks in rudder ribs only:

(1) If one rib is found cracked and the total length of crack does not exceed one-half the length of the cracked rib, perform repetitive inspections for rudder skin crack(s) in accordance with S/B 55–23, at intervals not to exceed 150 landings, until such time as the requirements of paragraph A.3., below, are accomplished.

(a) If the rib crack exceeds one half the length of the cracked rib, accomplish the requirements of paragraph A.2.b.(1), below.

(b) If skin crack(s) are found, accomplish the requirements of paragraph A.2.b., below.

(2) If two adjacent ribs are found cracked and the total length of cracks for each rib does not exceed 6.0 inches, perform repetitive inspections for rudder skin cracks in accordance with S/B 55–23, at intervals not to exceed 150 landings, until such time as the requirements of paragraph A.3., below, are accomplished.

(a) If the rib crack exceeds 6.0 inches, accomplish the requirements of paragraph A.2.b.(1), below.

(b) If a skin crack(s) is found, accomplish the requirements of paragraph A.2.b., below.

(3) If two alternate ribs are found cracked, and the total length of the cracks does not exceed 16.0 inches, perform repetitive inspections for rudder skin cracks in accordance with S/B 55–23, at intervals not to exceed 150 landings until such time as the requirements of paragraph A.3., below, are accomplished.

(a) If the rib cracks exceed 16.0 inches, accomplish the requirements of paragraph A.2.b.(1), below.

(b) If a skin crack is found, accomplish the requirements of paragraph A.2.b., below.

(4) If more than two ribs are found cracked, notwithstanding the crack lengths, accomplish the requirements of paragraph 2.b.(1), below.

b. For cracks found in the rudder skin, or rudder rib and skin, accomplish the following:

(1) Before further flight, accomplish repairs to cracked rib(s) in accordance with S/B 55–23, or later FAA-approved revisions.

(2) Upon completing repairs to cracked rib(s), accomplish skin repair in accordance with McDonnell Douglas DC–9 Structural Repair Manual, Section 55–03.

3. Installation of rib stiffeners in accordance with S/B 55–23, or replacement of all affected ribs with new production .040-inch thick 2024–T42 aluminum ribs, constitutes terminating actions for the repetitive inspections required by this AD.

B. Alternate means of compliance which provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Upon the request of an operator, an FAA Maintenance Inspector, subject to prior approval of the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for that operator.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes with rudder rib cracks only (within the limits of this AD) to a base in order to comply with the requirements of this AD. For airplanes with rudder skin cracks, the rudder must be repaired or replaced prior to next flight.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–L65 (54–60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on November 4, 1986.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–25418 Filed 11–10–86; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS–FRL–3107–6]

Certification Program for Trading and/or Banking of Oxides of Nitrogen and Diesel Particulate Emission Credits for Heavy-Duty Engines; Public Workshop and Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public workshop and extension of comment period.

SUMMARY: This notice announces the scheduling of a public workshop on the concept of a certification program for the trading and/or banking of oxides of nitrogen and diesel particulate emission credits for heavy-duty engines and extends the period for comments on EPA's staff report and economic analysis on this subject. These credits could be used by the manufacturers as part of their efforts to demonstrate compliance with the heavy-duty engine emission standards for these pollutants and would complement the emissions averaging program in place for these pollutants beginning in the 1991 model year. The notice of report availability and request for comments on these materials was first published on September 8, 1986 (51 FR 31959).

DATES: A public workshop on the issues raised in EPA's staff report and economic analysis will be held on January 22, 1987. The workshop will convene at 9:30 a.m., and will adjourn at such a time as is necessary to complete the testimony and discussions which will follow.

Those parties wishing to provide a prepared response to the issues raised in EPA's analysis should inform the person indicated under **FOR FURTHER INFORMATION CONTACT** not later than one week prior to the workshop. It is also requested that a copy of the prepared response be provided to the person indicated under **FOR FURTHER INFORMATION CONTACT** not later than a week prior the workshop.

In order to insure full consideration in the Agency's analysis of comments on the trading and banking concepts, all comments on the staff report, economic analysis, and responses to issues raised in the public workshop should be submitted in writing by February 23, 1987.

ADDRESSES: The public workshop will be held in the Conference Room of the Environmental Protection Agency, Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan 48105.

Single copies of the staff paper and the economic analysis reports are still available and may be obtained by contacting: Ms. Jacqueline L. Whelchel, Emission Control Technology Division, U.S. EPA, 2565 Plymouth Road, Ann Arbor, MI 48105, 313-668-4423.

Those persons desiring to provide written comments on EPA's analyses and other issues raised at the workshop should submit those comments in duplicate directly to the person indicated under **FOR FURTHER INFORMATION CONTACT.** Commenters desiring to submit proprietary information should clearly distinguish such information from other comments to the greatest extent possible, and label it "Confidential Business Information."

Information covered by such a proprietary claim will be disclosed by EPA only to the extent and by means of the procedures set forth in the 40 CFR Part 2. If no claim of confidentiality accompanies the information when it is received by EPA, it may be made available to the public without further notice to the commenter.

FOR FURTHER INFORMATION CONTACT: Mr. Glenn W. Passavant, Emission Control Technology Division (SDSB-12), U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, (313-668-4408).

SUPPLEMENTARY INFORMATION: In the **Federal Register** notice announcing the availability of the trading and banking reports, EPA stated its intent to hold a public workshop on the trading and banking concepts following a review of public comments on EPA's reports. Subsequently, however, EPA has received a request from the Engine Manufacturers Association (EMA) seeking a 90-day extension to the comment period provided for the EPA reports. While EMA's rationale for seeking an extension to the comment period is reasonable, EPA does not desire that project development be delayed a full 90 days to accommodate EMA's request. Therefore, EPA has adjusted the scheduling of the workshop to address the concern about a delay in project development and yet also grant EMA's request.

The primary purpose for the workshop is to provide an opportunity for interested parties to publicly address the issues raised in the EPA reports in an open forum where follow-up discussion among all participants is possible. This follow-up discussion will cover issues raised in the EPA reports, and those raised by the participants in their prepared responses.

To facilitate discussions at the workshop each party making a prepared response should bring multiple copies of their testimony for use by the other participants.

To ensure a successful workshop, full participation by all interested parties is essential. EPA encourages a maximum level of participation both in the development and presentation of prepared responses and active participation in the follow-up discussion.

The full participation of heavy-duty engine manufacturers is critical to the success of the workshop, since they are likely to have substantial comment and suggestions on the issues and analysis described in the EPA reports, and in the long term would be the parties most affected by any trading/banking program which EPA may implement. Thus EPA requests that all heavy-duty engine manufacturers provide prepared responses for the workshop and participate fully in any follow-up discussions.

The previously mentioned September 8, 1986 **Federal Register** notice contains a summary of the major issues raised in the EPA reports. At a minimum EPA requests that all parties address these issues in their prepared responses, but comments on any issue are welcome.

Following the public workshop, the comment period on the EPA reports and issues raised at the workshop will be open for 30 days. Therefore the comment period is extended to February 23, 1987.

Dated: October 31, 1986.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 86-25346 Filed 11-10-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 6E3347/P402; FRL-3106-3]

Pesticide Tolerance for O,O-Diethyl O-(2-Isopropyl-6-Methyl-4-Pyrimidinyl) Phosphorothioate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for residues of the insecticide *O,O*-diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate (referred to in the preamble of the document as "diazinon") in or on the raw agricultural commodity ginseng. The proposed regulation to establish a maximum permissible level for residues of diazinon in or on ginseng was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number [PP 6E3347/P402], should be received on or before December 12, 1986.

ADDRESS: By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person, bring comments to: Rm 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Jack Housenger, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1806).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 6E3347 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the Agricultural Experiment Stations of Kentucky and Wisconsin.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the insecticide diazinon in or on the raw agricultural commodity ginseng at 0.75 part per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A National Cancer Institute (NCI) bioassay, based on 2-year oncogenicity studies in rats and mice, which were negative for oncogenicity at all levels tested (400 and 800 ppm in rats, equivalent to 20 milligrams (mg)/kilogram (kg) and 40 mg/kg) and 100 and 200 ppm in mice, equivalent to 15 mg/kg and 30 mg/kg in mice.

2. A multigeneration rat reproduction study with a no-observed-effect level (NOEL) of 4 ppm (equivalent to 0.4 mg/kg/day).

3. A 108-week monkey feeding study with a cholinesterase (ChE) NOEL of 1.0 ppm (equivalent to 0.05 mg/kg/day).

4. A 90-day rat feeding study with a plasma ChE NOEL of 0.5 ppm (equivalent to 0.025 mg/kg/day).

5. A 90-day dog feeding study with a plasma ChE NOEL of 0.02 mg/kg/day.

6. A 2-year dog feeding study with a ChE NOEL not demonstrated at the lowest dose tested (180 ppm, equivalent to 4 mg/kg/day).

7. A 2-year rat feeding study with a ChE NOEL not demonstrated at the lowest dose tested (10 ppm, equivalent to 0.5 mg/kg/day).

8. A rat teratology study negative for teratogenic effects at 100 mg/kg.

9. A rabbit teratology study negative for teratogenic and fetotoxic effects at 100 mg/kg (highest dose tested) during days 6 to 18 of gestation.

10. A hen demyelination study which was negative at 200 ppm.

The acceptable daily intake (ADI), based on the 90-day dog feeding study (NOEL of 0.02 mg/kg/day for plasma cholinesterase inhibition) and using a 10-fold safety factor, is calculated to be 0.002 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 0.12 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.007012 mg/day; the current action will increase the TMRC by 0.0003375 mg/day (0.96 percent) and will utilize 0.28 percent of the ADI.

The nature of the residues is adequately understood and an adequate analytical method, gas chromatography, is available for enforcement purposes. An analytical method for enforcing this tolerance has been published in the Pesticide Analytical Manual (PAM), Volume II. No secondary residues in meat, milk, poultry, or eggs are expected since ginseng is not considered a livestock feed commodity. There are presently no actions pending against the continued registration of this chemical.

On January 15, 1986, a Notice of Special Review and Preliminary Determination (51 FR 1842) to cancel registration and deny application for uses of diazinon on golf courses and turf farms was published. This action was based on a serious hazard to birds and a potential hazard to fish with the application of granular diazinon to large expanses of turf. Given the small size of ginseng sites, the high degree of disturbance caused by growers tending the crop by hand, and the shade structures over the plants, ginseng does not appear to offer very attractive wildlife habitat.

Based on the information and data considered, the Agency concludes that the tolerance will protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 6E3347/P402]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recordkeeping and reporting requirements.

Dated: October 23, 1986.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.153 is amended by adding and alphabetically inserting the raw agricultural commodity ginseng to read as follows:

§ 180.153 O,O-Diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Ginseng	0.75
* * * * *	

[FR Doc. 86-25107 Filed 11-10-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[OPP-300154; FRL-3107-9]

Raw Agricultural Commodities; Definitions and Interpretations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that 40 CFR 180.1 be amended by adding a definition for the term "tolerance with regional registration." This definition applies only to tolerances supported by residue data from specific growing regions on specific raw agricultural commodities.

DATES: Comments, identified by the document control number [OPP-300154], should be received on or before December 12, 1986.

ADDRESS: By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection

Agency, 401 M St. SW., Washington, DC 20460

In person, bring comments to: Rm 236, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Jack Housenger, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460

Office location and telephone number: Rm. 716B, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1806)

SUPPLEMENTARY INFORMATION: This document proposes that 40 CFR 180.1 be amended by adding a definition for the term "tolerance with regional registration."

In the **Federal Register** of March 10, 1982 (47 FR 10211), EPA announced that it would consider for approval tolerances for minor uses, based on residue data from geographically limited areas. The Agency stated at that time that the development of residue data from all geographical regions where the crop is grown could delay efforts to obtain tolerances for minor uses. Regional registration restricts the use of the pesticide product to the geographical area for which sufficient residue data have been submitted and approved. In order to expand the usage, the registrant must submit residue data that are representative of the expanded use area. Additional information regarding data required to support tolerances for regional registration is provided in a policy statement published in the **Federal Register** of April 2, 1986 (51 FR 11341).

Since regional registrations are geographically restricted, as determined by the residue data submitted in support of the pesticide tolerance, the Agency has decided that it will be useful to distinguish a tolerance for regional registration in a separate subsection of the tolerance rule. Any tolerance established for pesticide residues resulting from use pursuant to a regional registration will be listed in a separate subsection under 40 CFR 180.101 through 180.999, as appropriate, and will be therein designated "tolerance with regional registration." The subsection will identify any tolerance established for regional registration and will refer the reader to the definition for "tolerance with regional registration" in 40 CFR 180.1(n).

The language which EPA is proposing to add to 40 CFR 180.1 is as follows:

> The term "tolerances with regional registration" means any tolerance which is established for pesticide residues resulting from the use of the pesticide pursuant to a regional registration. Such a tolerance is supported by residue data from specific growing regions for a raw agricultural commodity. Individual tolerances with regional registration are designated in separate subsections in 40 CFR 180.101 through 180.999, as appropriate. Additional residue data which are representative of the proposed use area are required to expand the geographical area of usage of a pesticide on a raw agricultural commodity having an established "tolerance with regional registration." Persons seeking geographically broader registration of a crop having a "tolerance with regional registration" should contact the appropriate EPA product manager concerning additional residue data required to expand the use area.

Any interested person may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) or the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300154]. All written comments filed in response to this rule will be available in the Information Services Section at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

As required by Executive Order 12291, the EPA has determined that this rule is not a "Major" rule and, therefore, does not require a regulatory impact analysis.

The Office of Management and Budget has reviewed this action and determined that the requirements of section 3 of Executive Order 12291 have been satisfied.

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat 1165, 5 U.S.C. 601 *et seq.*) and it has been determined that it will not have an economic impact on a substantial number of small entities. Accordingly, I hereby certify that the proposed regulation does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 31, 1986.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1 is amended by adding paragraph (n) to read as follows:

§ 180.1 Definitions and interpretations; tolerances for residues.

* * * * *

(n) The term "tolerance with regional registration" means any tolerance which is established for pesticide residues resulting from the use of the pesticide pursuant to a regional registration. Such a tolerance is supported by residue data from specific growing regions for a raw agricultural commodity. Individual tolerances with regional registration are designated in separate subsections in 40 CFR 180.101 through 180.999, as appropriate. Additional residue data which are representative of the proposed use area are required to expand the geographical area of usage of a pesticide on a raw agricultural commodity having an established "tolerance with regional registration." Persons seeking geographically broader registration of a crop having a "tolerance with regional registration" should contact the appropriate EPA product manager concerning additional residue data required to expand the use area.

[FR Doc. 86-25348 Filed 11-10-86; 8:45 am]

BILLING CODE 6560-50-M

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket No. 85-93; FCC 86-416]

Common Carrier Services; Investigation of Equal Access Rate Elements Filed Pursuant to Waivers

AGENCY: Federal Communications Commission.

ACTION: Order Designating Issues for Investigation.

SUMMARY: The Federal Communications Commission has issued an Order designating the issues for Investigation in CC Docket No. 85–93, a docket established by the Common Carrier Bureau to investigate tariff revisions filed by the local exchange carriers (LECs) to provide for a separate rate element for equal access cost recovery. The Common Carrier Bureau permitted those tariffs to become effective subject to future investigation and granted interim waivers of Part 69 of the Commission's Rules, 47 CFR Part 69, to permit the LECS to use separate equal access rate elements. In setting the issues for investigation, the Commission narrowed the scope of the investigation from that originally outlined by the Common Carrier Bureau in the Orders granting the waivers and permitting the tariffs to become effective. The Commission also concluded that because carriers' earnings for the time period after October 1, 1985 will be included in the CC Docket No. 84–800 comprehensive examination of the LECs' overall rate of return, it need not examine those earnings in this separate investigation. Therefore, in this investigation, the Commission has required that cost and revenue data be filed by only those LECs whose equal access cost recovery rate elements were in effect prior to October 1, 1985.

DATES: Direct cases are due on December 19, 1986 and oppositions to Direct cases or comments on Direct cases are due no later than January 16, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554

FOR FURTHER INFORMATION CONTACT: Marjorie S. Bertman, Attorney, Common Carrier Bureau, (202) 632–6917.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order designating Issues in CC Docket No. 85–93, adopted October 6, 1986 and released October 21, 1986. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M St., NW., Washington, DC. The Complete text of this decision may also be purchased from the Commission's copy contractors International Transcription Service, (202) 857–3800, 2100 M St., NW., Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

CC Docket No. 85–93 was initiated by the Common Carrier Bureau of April 3, 1985 to investigate those tariffs filed pursuant to interim waivers of Part 69 of the Commission's Rules that permitted the local exchange carriers (LECs) to use separate rate elements to recover equal access costs. In establishing this Docket, the Bureau subjected the carriers to accounting orders and indicated that the specific issues to be investigated would be designated after the Commission's action on the Federal-State Joint Board's recommendation as to the appropriate jurisdictional separations factor for equal access costs. On January 7, 1986, the Commission adopted the Joint Board's recommendation that equal access be separated on the basis of the relative state and interstate minutes of use of equal access facilities provided by local exchange carriers (LECs), or "access minutes." In the instant Order, the Commission has designated the issues in the investigation.

The Commission concludes in this Order that a rulemaking proceeding should be instituted to determine whether a separate equal access element should be established as a permanent part of the Part 69 access rules, and indicates that it expects to adopt a Notice of Proposed Rulemaking dealing with that issue in a few months. Because of its decision to institute a rulemaking, the Commission narrowed the scope of the investigation from that originally outlined by the Bureau when it permitted the first separate rate elements to take effect and established this investigation. The investigation will focus on whether the revenues generated by the interim separate equal access rate elements permitted the carriers to earn a total return in excess of that authorized for the end office and transport rate elements.

The Commission indicates that in this investigation it will examine the rates of return for only those carriers with equal access rate elements in effect prior to October 1, 1985 since it will be examining the rate of return for any equal access rates in effect during the time period from October 1, 1985 through December 31, 1986 according to procedures established in CC Docket No. 84–800. In this investigation the Commission will determine whether the carriers with equal access rate elements would have experienced a shortfall in combined revenues from the end office (Line Termination, Local Switching and Intercept) and transport elements during the relevant period in the absence of an additional charge for equal access. The Commission states that if such a shortfall would have existed, it will need to determine whether the revenues from the equal access elements exceeded the shortfall. The Commission has required carriers that had equal access rate elements in effect prior to October 1, 1985 to file cost and revenue data as specified in the Order. Direct cases are due on December 19, 1986 and Oppositions to Direct Cases or Comments on Direct Cases are due no later than January 16, 1987.

Ordering Clauses

It is therefore ordered that all parties subject to this investigation shall file their Direct Cases responding to the issues set forth in para. 12, *supra*, no later than December 19, 1986.

It is further ordered that the Petition for Suspension and Investigation filed by American Telephone and Telegraph Company against Bell Atlantic Telephone Companies Transmittal No. 43, Southern Bell Telephone and Telegraph Company Transmittal No. 1364, Illinois Bell Telephone Company Transmittal No. 800, Indiana Bell Telephone Company Transmittal No. 798, Michigan Bell Telephone Company Transmittal No. 582, New England Telephone and Telegraph Company Transmittal No. 792, Ohio Bell Telephone Company Transmittal No. 716, Pacific Bell Transmittal No. 1152, Southwestern Bell Telephone Company Transmittal No. 1350 and Wisconsin Bell, Inc., Transmittal No. 618 is denied.

Federal Communications Commission.

William Tricarico,

Secretary.

[FR Doc. 86–25447 Filed 11–10–86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Parts 74 and 78

[MM Docket No. 86–405; FCC 86–453]

Relaxing of Operational and Licensing Requirements; Notice of Inquiry

AGENCY: Federal Communications Commission.

ACTION: Notice of Inquiry.

SUMMARY: This action initiates a review of the operational and licensing requirements for auxiliary stations operated by broadcast and cable

entities. Specifically, it explores the feasibility of blanket frequency authorization for mobile or portable Broadcast Auxiliary Service (BAS) users. Such a relaxation would allow mobile or portable BAS users greater flexibility and would provide for more effective use of the increasingly limited BAS spectrum.

DATE: Comments are due by March 4, 1987. Reply comments are due by June 18, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Hank VanDeursen, Mass Media Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 74

Radio broadcasting, Television broadcasting.

47 CFR Part 78

Cable television.

The Commission has proposed relaxing the operational and licensing requirements for remote pickup stations, aural broadcast auxiliary stations, television broadcast auxiliary stations (BAS), low power auxiliary stations, and cable television relay stations.

Noting the success of existing BAS frequent coordination programs, particularly in relation to mobile operations where real-time coordination is necessary, the FCC concluded that relaxing the rules would provide more flexible licensing procedures, thus, reducing the paperwork now required in the Broadcast Auxiliary Services' licensing process.

Comments are due by May 4, 1987. Reply comments are due by June 18, 1987.

Specifically, the FCC is considering blanket frequency authorizations for mobile or portable operation on any frequency in bands they are permitted to use, rather than being licensed for specific frequencies.

Action by the Commission October 16, 1986, by Notice of Inquiry (FCC 86-456). Commissioners Flower (Chairman), Quello, Dawson, Patrick and Dennis.

For further information contact Hank VanDeursen at (202) 632-9660.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-25448 Filed 11-10-86; 8:45 am]

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VOL
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Notices

Federal Register
Vol. 51, No. 218
Wednesday, November 12, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-050-07-4322-14]

Las Vegas District Grazing Advisory Board Meeting; Nevada

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Las Vegas District Grazing Advisory Board will be held Thursday, December 11, 1986. The meeting will be in the Las Vegas BLM District Office conference room at 4765 West Vegas Drive and will begin at 10:00 a.m.

The agenda is as follows: 1. Election of advisory board officers; 2. Reading and approval of minutes from preceding meeting; 3. Range improvement program review and update; 4. CRMP process, program update; 5. Rangeland implementation program update; 6. Desert tortoise task force update; 7. BLM-USFS interchange update; 8. Grazing fee update; 9. Wild horse and burro program update; 10. Arrangements for next District Grazing Advisory Board meeting; 11. Public comments; 12. Other range and board business.

The meeting is open to the public. Interested persons may make oral comments to the board during the public comment period on the day of the meeting or they may file written statements for the board's consideration during the meeting. Anyone wishing to make an oral statement to the board must notify the District Manager, Bureau of Land Management, 4765 West Vegas Drive (P.O. Box 26559), Las Vegas, Nevada 89126, by December 6, 1986. Depending on the number of persons wishing to make an oral statement, the District Manager may establish a per-person time limit. Summary minutes of the board meeting will be maintained at the Las Vegas District Office. The minutes will be available for public inspection during regular office hours (7:30 a.m. to 4:15 p.m.) within 30 days after the meeting.

Dated: November 6, 1986.

Ben F. Collins,
District Manager.

[FR Doc. 86-25666 Filed 11-10-86; 10:38 am]

BILLING CODE 4310-HC-M

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

National Poundage Quota Determination for 1986-Crop Peanuts

AGENCY: Agriculture Stabilization and Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of determination.

SUMMARY: This notice affirms the determinations made with respect to the 1986-crop national poundage quota for peanuts, including the holding of, and results of the producer referendum on whether producers favor or disfavor poundage quotas, and the cancellation of certain determinations for peanuts published on November 15, 1985 (50 FR 47239).

EFFECTIVE DATE: The effective date of this affirmation is November 12, 1986.

FOR FURTHER INFORMATION CONTACT: Gypsy Banks, Agricultural Economist, Agricultural Stabilization and Conservation Service, USDA, Room 3732-South Building, P.O. Box 2415, Washington, DC 20013, (202) 447-5953. A final regulatory impact analysis describing the impact of implementing this determination is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice of determination has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified "not major". It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, industries, Federal, State, or local governments or geographical regions, or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to complete with foreign-based enterprises in domestic or export markets

The title and number of the Federal assistance program that this final rule applies to are: Title—Commodity Loans and Purchases: Number 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this determination since ASCS is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this determination.

This program/activity is not subject to the provisions of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The statutory deadline for proclaiming the national poundge quota and holding the poundage quota referendum was December 15, 1985. Because the determinations affirmed in this notice are derived from the Food Security Act of 1985 (Pub. L. 99-198) and that Act was not enacted until December 23, 1985, it was determined that public comment was not practicable with respect to the determinations affirmed in this notice.

The permanent provisions of section 358 of the Agricultural Adjustment Act of 1938 provide for the setting of a national marketing quota, a national acreage allotment and for announcement of individual farm allotments for peanuts for each respective crop year. The farm allotment and national marketing quota provisions of that subsection were suspended with respect to the 1982-85, crops by the provisions of the Agriculture and Food Act of 1981, Pub. L. 97-98. Since the 1981 amendments applied only to those crops, the permanent provisions of the 1938 Act would have, but for additional amendments to that Act, required the establishment of marketing quota and farm allotments for the 1986 crop. Accordingly, a notice was published in the **Federal Register** on November 15, 1985 (50 FR 47239) which, pursuant to section 358 set forth final determinations for a national marketing quota for the 1986 crop and a national acreage allotment for the 1986 crop. That same notice also set forth proposed determinations regarding the method of apportioning national acreage allotments to states and individual farms, the setting of state acreage allotment reserves, the date and method of conducting a marketing quota referendum for the 1986–1988 crops of peanuts, and the price support level for the 1986 crop.

Because new legislation was pending, Congress provided, through an interim statute (Pub. L. 99–157), enacted on November 15, 1985, for a postponement of the marketing quota referendum for peanuts which had been scheduled to be conducted by mail ballot in a period from December 9, 1985, through December 13, 1985.

The Secretary of Agriculture December 6, 1985, announced in accordance with the interim legislation, a postponement of the marketing quota referendum. Therefore, on December 23, 1985, the Food Security Act of 1985 (Pub. L. 99–198) was enacted. That Act, like the 1981 Act, suspended the permanent provisions of the 1938 Act regarding marketing quotas and farm allotments. Rather, as with the 1982–1985 crops, the 1938 Act, as amended by the 1985 Act, provides for setting of "poundage" quotas as opposed to "marketing" quotas. Section 358(q) provides that a national poundage quota for each of the marketing years 1986–1990 shall be announced by the Secretary by December 15 of each such marketing year.

The marketing year for the 1986 crop, as is specified in section 359(m) of the 1938 Act, as amended, begins on August 1, 1986. The 1938 Act, as amended, also provided for the holding of a referendum by December 15, 1985, or whether producers are in favor of, or opposed to, poundage quotas. Pursuant to the 1985 amendments, on January 8, 1986, the Secretary announced a national poundage quotas of 1,355,500 short tons on a farmers stock basis. The Secretary also announced on that date that he had rescinded the national acreage allotment and the national marketing quota previously proclaimed for the 1986 crop. Further, the Secretary announced on January 8, 1986 that peanut growers would vote January 27–31, 1986, in a mail referendum to decide whether poundage quotas and price support would continue for peanut crop for the next five years. The referendum was thereafter conducted on those dates. Section 358(u) of the 1938 Act provides that the referendum shall be conducted among producers "engaged in the production of quota peanuts in the calendar year in which the referendum is held." The referendum was conducted among those producers using, to the extent practicable, the voter eligibility standards set forth in 7 CFR Part 717. Of the 21,456 votes cast, 20,904 or 97.4 percent favored quotas and a loan program for the next five crop years. These determinations are affirmed in this notice.

1. Section 358(q)(1) of the 1938 Act as amended by the 1985 Act requires that the national poundage quota for any of the 1986 through 1990 marketing years shall be established at a level equal to the quantity of peanuts which the Secretary estimates will be devoted in the marketing year to domestic edible seed and related use except that the national poundage quota for any such marketing year may not be less than 1,100,000 tons. The 1986 quota was set at 1,355,500 tons based upon the following data:

ESTIMATED DOMESTIC EDIBLE USE FOR THE 1986–1987 MARKETING YEAR, MOST LIKELY U.S. WEATHER

Item	Tons
Domestic	1,121,000
Seed	99,000
Related use (crushing residual)	135,500
Total	1,355,500

2. Section 358(u)(1) of the 1938 Act, as amended, provides that if as many as two-thirds of the producers voting in the referendum vote in favor of poundage quotas, no referendum shall be held with respect to quotas for the second, third and fifth years of the period. Since the 1985 Act was not enacted until December 23, 1985, the referendum required by the 1985 amendments was held as early as practicable and will be treated as having been held in calendar year 1985. Section 108B Agricultural Act of 1949, as amended by the 1985 Act, provides that notwithstanding any other provision of law, no price support may be made available by the Secretary for any crop of peanuts with respect to which poundage quotas have been disapproved by producers. As more than two-thirds of the producers voting in the referendum held January 27–31, 1986, were in favor of poundage quotas, poundage quotas and price support under the terms of the 1938 and 1949 Acts shall be in effect for the 1986–1990 crops. In addition, no further referendum will be held for the 1986–1990 period.

3. Since the 1985 amendments made the provisions of section 358(b) and related "permanent" provisions of the 1938 Act inapplicable to the 1986–1990 crops, the final and proposed determinations published by the Secretary for peanuts on November 15, 1985, have been cancelled.

Determinations

A. Accordingly:

1. The national poundage quota for the 1986 crops of peanuts has been established at a level of 1,355,500 tons (farmers stock basis).

2. The referendum required by section 358(u) of the 1938 Act to be conducted with respect to the 1986–1990 crops of peanuts was held January 27–31 by mail ballot among producers engaged in the production of quota peanuts in calendar year 1985. As more than two-thirds of those voting favored quotas, poundage quotas and price support will be in effect for the 1986–1990 crops as provided in the Agricultural Adjustment Act of 1938, as amended, and Agricultural Act of 1949, as amended. No further referendum shall be held with respect to peanut poundage quotas for the 1986–1990 crops of peanuts.

3. The national marketing quota, and national acreage allotment established for the 1986 crop of peanuts as set forth in the determination published on November 15, 1985 (50 FR 47239) are cancelled.

B. The statutory authority for these determinations are: Sec. 358, 55 Stat. 88, as amended (U.S.C. 1358); Sec. 108B of the Agricultural Adjustment Act of 1949 as added by section 705 of the Food Security Act of 1985 (Pub. L. 99–198).

Signed at Washington, DC, on October 28, 1986.

Milton J. Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 86–25506 Filed 11–10–86; 8:45 am]

BILLING CODE 3410-05-M

Commodity Credit Corporation

National Average Support Rates for 1986-Crop Peanuts Quota and Additional Peanuts: Sales Policy

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of determination.

SUMMARY: This notice affirms determinations with respect to: (1) the national average support rate for 1986-crop quota peanuts; (2) the national average support rate for 1986-crop additional peanuts; (3) the Commodity Credit Corporation (CCC) domestic edible, export, and domestic crushing sales policy for the 1986–1990 crops of peanuts; and, (4) the CCC minimum export edible sales price for 1986-crop additional peanuts. These

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determinations were announced by the Secretary of Agriculture on February 14, 1986, March 5, 1986, and April 22, 1986.

These determinations are made pursuant to the Agricultural Act of 1949, as amended (hereinafter referred to as "the Act"), and the Agricultural Adjustment Act of 1938, as amended (hereinafter referred to as the "1938 Act").

EFFECTIVE DATE: April 22, 1986.

FOR FURTHER INFORMATION CONTACT: Gypsy Banks, Agricultural Economist, Agricultural Stabilization and Conservation Service, USDA, Room 3732-South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–5953. A final regulatory impact analysis describing the impact of implementing this determination is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice of determination has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512–1 and has been classified "not major". It has been determined that these program provisions will not result in: (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, industries, Federal, State, or local governments or geographical regions, or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program that this final rule applies to are: Title—Commodity Loans and Purchases: Number 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this determination since ASCS is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this determination.

Public comment was not practicable with respect to the price support determinations contained in this notice, nor for the 1986-crop sales policy determination which was announced early to permit industry planning. As to the sales policy for the 1987–90 crops, comment has been determined to be unnecessary. The policy for those crops is unchanged from previous years.

The 1985 amendments to the Act change the provisions governing national average price support levels for the 1986 through 1990 crops of quota and additional peanuts by adding Section 108B to the Act.

A discussion of the determinations affirmed in this notice follows:

A. National Average 1986-Crop Quota Support Rate

Section 108B(1)(B)(i) of the Act requires that the average 1986 support rate for quota peanuts be the 1985 level ($559 per ton) adjusted by any percentage increase in the index of prices paid by producers for commodities and services, interest, taxes and wage rates during the period beginning with calendar year 1981 and ending with calendar year 1985, as determined by the Secretary.

Section 108B(1)(E) of the Act requires the Secretary to announce the level of support for quota peanuts no later than February 15 preceding the marketing year for the crop for which the level of support is being determined.

The Department of Agriculture's Index of Prices Paid by Farmers for Commodities and Services, Interest, Taxes, and Farm Wage Rates is the major measure of changes in the prices of items used in production of crops and livestock and family living and was used to adjust the 1985 quota support level.

The monthly Indexes of Prices Paid (1977=100) average 163 for calendar year 1985 compared with an average of 150 for 1981, an increase of 8.67 percent. This percentage increase applied to the 1985 level of $559 per ton equals $48.47 per ton. That amount added to the 1985 quota support level brought the 1986 level to $607.47 per ton.

B. National Average 1986-Crop Additional Support Rate

In accordance with section 108B(2)(A) of the Act, the following three factors were taken into consideration in determining the national average support rate for 1986-crop additional peanuts:

1. *Demand for peanut oil and meal.* The expected quantity of peanuts available for crushing in 1986/87 marketing year (August 1, 1986, through July 31, 1987), a residual of edible use was determined to be 431,000 thousand tons compared with 422,500 thousand tons for 1985/86 marketing year. Expected peanut oil and meal prices were determined to be an average of 25 cents per pound and $151 per ton, respectively, for the 1986/87 marketing year.

2. *Expected Prices of Other Vegetable Oils and Meals.* In 1985/86, world production of oilseeds was estimated to total 214 million tons, 3 percent higher than for 1984/85. The increase in U.S. soybean production is the biggest factor in the increase. Soybeans account for 48 percent of world oilseed production while peanuts account for only 11 percent. Because of soybean dominance, soybeans set the demand-supply-price pattern for oilseeds.

U.S. soybean production for 1985/86 increased 13 percent to 2,099 million bushels and it was determined that the higher production and carryover stocks would increase supply 18 percent, about 1 percent below the previous high. The estimated 1985/86 supply ranks as the third highest on record. The 10 percent projected increase in use will not offset increased supplies and carryout stocks will continue to rise.

It was further determined that soybean oil prices would likely drop in 1985/86 because of large supplies of vegetable oils relative to demand. Prices were estimated to range from 18 to 22 cents per pound, compared with 29.5 cents per pound for 1984/85. Soybean meal prices were estimated to range from $125 to $155 per ton for 1985/86, compared with $125 per ton for 1985/85.

Soybean acreage may drop slightly in 1986 from 1985. It was determined that the estimated drop in production would not offset high carryin stock and total supply would continue to remain near the 1982 record. However, if the expected growth in demand is realized carryout stocks would be reduced.

For the 1986/87 marketing year, soybean oil prices were projected about 5 percent below 1985/86 and soybean meal prices are projected down slightly from the estimate for 1985/86. Total use of oil and meal was expected to be up 2 to 3 percent.

3. *Demand for Peanuts in Foreign Markets.* The demand for U.S. peanuts in foreign markets was expected to strengthen slightly. It was determined that the U.S. would be expected to supply 437,000 short tons to the export market in the 1986/87 maketing year compared with an estimated 430,000 tons for 1985/86.

Section 108B(2)(A) provides, further, that the support rate for additional peanuts must be established at a level estimated to ensure no loss to CCC from the sale or disposal of additional peanuts placed under loan. Peanuts are pooled by type and other factors and separate pools are maintained for quota and additional peanuts. Subject to the pool offset provisions of sections 108B(3)(B) and 108B(4), net gains from a pool are redistributed to producers, while net losses are absorbed by CCC.

The additional peanut support level was announced on February 14, 1986.

Section 108B(2)(B) required that the announcement be made by February 15. Based on the consideration of the market factors set forth above, it was determined that the estimated average crushing price for additional loan collateral peanuts from the 1986-crop would be $209.34 per ton. Because of the possibility that all price supported additional peanuts would be sold for domestic crushing at competitive prices, and given estimated CCC's handling and related costs of $59.59 per ton, the support level was set at $149.75 per ton. That level, like the quota level, is an average. Under section 403 of the Act, adjustments can be made for quality and other factors. Such adjustments have been addressed in a separate notice. Also, other adjustments required or permitted by law may be made.

C. CCC Sales Policy

1. Domestic edible use. Section 407 of the Act provides, generally, that CCC may sell peanuts owned or controlled by CCC at not less than 105 percent of the current support price, plus reasonable carrying charges.

Section 359(r)(1) of the 1938 Act provides, further, that support peanuts shall be made available for domestic edible use at prices not less than costs including inspection, warehousing and shrinkage, plus 100 percent of the quota loan rate if sold upon delivery by harvest and with written consent of the producer; plus 105 if sold after delivery but by December 31; and plus 107 percent if sold after December 31. Domestic edible use, as defined in the 1938 Act, includes all food uses (except crushing), all seed use, and all on-the-farm use.

Since the inception of the two-price program in 1978, quota peanuts have been sold by CCC for domestic edible use at no less than costs, plus 105 percent of the quota loan rate if sold by December 31, and 107 percent of the quota loan rate if sold after December 31. This policy has made sales of additional peanuts and quota peanuts consistent.

2 Export. Section 407 Act exempts exports sales of peanuts owned or controlled by CCC from minimum price restrictions. However, since 1974, in accordance with U.S. trade policy, no export sales have been made at less than the loan rate plus costs. Since 1978, quota peanuts have been sold for all export use at no less than the quota loan rate plus costs.

Additional peanuts for export edible use have been sold at no less than a fixed price established each year, ranging from $400 to $475 per ton. The minimum price was set to try to maximize producer income from additional peanuts for export. For several years prior to 1982, contract prices for additional peanuts were near the minimum sales price for that use. However, for three out of the four years since 1982, the average contract price has been well below the minimum sales price and few were sold for export out of the price support inventory.

As annouced in a February 14 press release and clarified in the March 5 press release, the original determination for the 1986-crop was that additional peanuts for the 1986–1990 crops would be sold by CCC for export edible use at no less than the lower of (1) $400 per ton, or (2) 102 percent of the average contract price by type for "Segregation 1" additional peanuts delivered under contract, plus costs (including inspection, warehousing and shrinkage), for such marketing year, as determined by CCC. "Segregation 1" peanuts are peanuts meeting certain quality criteria.

However, after this policy was announced, early contracting of 1986-crop additional peanuts slowed. For that reason, on April 22, the policy changed to a minimum price of $400 per ton. That price applies only to the 1986-crop. Prices for subsequent crops of additional peanuts for sales for export edible use will be announced later.

Consistent with export policy, quota and additional peanuts have been sold for export crushing at no less than the applicable loan rate, plus costs. That policy will be continued for the 1986–90 crops. Such peanuts must be fragmented prior to export to avoid entry into the edible market.

3. Domestic crushing. Section 407 of the Act also exempts domestic crushing sales from minimum sales price restrictions. Since 1976, sales for domestic crushing have been made anually by CCC at competitive bid prices.

Oil produced from CCC's domestic crushing sales has recently equaled 81 percent of domestic oil consumption. Since 1982 there has been no requirement that oil from CCC domestic crushing sales be used domestically.

Since the only purpose of this notice is to affirm the determinations anounced by or on behalf of the Secretary on February 14, March 5, and April 22, 1986, with respect to the 1986 levels of support for quota and additional peanuts and the CCC sales policy, it has been determined that no further public rulemaking is required the following:

Determinations

A. National Average 1986-Crop Quota Support Rate

The national average level of support for the 1986 crop of quota peanuts has been determined to be $607.47 per ton. This level of support is applicable to eligible 1986 crop farmers stock peanuts in bulk or in bags, net weight basis.

B. National Average 1986-Crop Additional Support Rate

The national average level of support for the 1986 crop of additional peanuts has been determined to be $149.75 per ton. This level of support is applicable to eligible 1986-crop farmers stock peanuts in buik or in bags, net weight basis.

C. CCC Sales Policy

1. *Applicability.* Except as indicated this sales policy shall be applicable to 1986–90 crop farmers stock peanuts in bulk or in bags, net weight basis, which are: (1) owned byb CCC, or (2) peanuts which are taken into inventory pursuant to section 108B of the Agricultural Act of 1949 by a producer association on behalf of its members as collateral for price-support loans made available by CCC.

2. *Sales of quota and additional peanuts for domestic edible use for the 1986–1990 crops.* Sales of peanuts for domestic edible use, including use as seed, will be made by CCC at prices not less than those required to cover all handling costs incurred with respect to such peanuts for such items as inspection, warehousing, shrinkage, and other expenses, plus, in the case of quota or additional peanuts, not less than 105 percent of the quota loan rate if sold after delivery by the producer but not later than December 31, or less than 107 percent of the quota loan rate if sold later than December 31. In the case of additional peanuts ony, the price shall be all applicable handling costs plus 100 percent of the quota loan rate if the peanuts are sold and paid for during the harvest season upon delivery by and with written consent of the producer. Those sales referred to in the preceding sentence shall be permitted only in accordance with regulations in 7 CFR Part 1446 and 7 CFR Part 729.

3. *Sales of quota peanuts for export edible use and export crushing for the 1986–1990 crops.* Sales of quota peanuts for export edible and export crushing uses will be made by CCC at not less than all costs incurred with respect to such peanuts for such items as inspection, warehousing, shrinkage, and other expenses, plus 100 percent of the quota loan rate. Quota peanuts sold for export crushing shall be fragmented

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prior to export in accordance with the CCC sales contract.

4. *Sales of 1986-crop additional peanuts for export edible use.* The minimum price for sales for export edible use of 1986-crop additional peanuts is $400 per ton.

5. *Sales of additional peanuts for export crushing for the 1986–1990 crops.* Sales of additional peanuts for export crushing will be made by CCC at not less than all handling costs incurred with respect to such peanuts for such items as inspection, shrinkage, warehousing, and other expenses, plus 100 percent of the additional peanuts loan rate for the 1986–1990 crops of peanuts. Additional peanuts sold for export crushing shall be fragmented prior to export in accordance with the CCC sales contract.

6. *Sales of quota and additional peanuts for domestic crushing for the 1986–1990 crops.* Sales of quota and additional peanuts for domestic crushing will be made by CCC at competitive prices with unrestricted use of the oil produced from these peanuts, except that the oil may not be exported to a country involved in U.S. trade suspension.

Signed at Washington, DC, on October 29, 1986.

Milton J. Hertz,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 86–25507 Filed 11–10–86; 8:45 am]

BILLING CODE 3410-05-M

Packers and Stockyards Administration

[P & S Docket No. 6763]

Victor L. Kent & Sons, Inc.; Notice of Complaint, Order of Suspension, and Hearing

Notice is hereby given that on November 5, 1986, the Packers and Stockyards Administration, United States Department of Agriculture, filed a "Complaint, Order of Suspension, and Notice of Hearing", the contents of which are as follows:

> By reason of a preliminary investigation conducted by the Packers and Stockyards Administration, this proceeding is instituted under the provisions of Title III of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*) (hereinafter "the Act").
>
> I
>
> (a) Victor L. Kent & Sons, Inc., hereinafter referred to as the respondent, is a corporation whose principal place of business is located at Route 430, Mayville-Sherman Road, Sherman, New York 14781.
>
> (b) The respondent is, and at all times material herein was:
>
> (1) Engaged in the business of conducting and operating the Victor L. Kent & Sons, Inc., stockyard, a posted stockyard subject to the Act;
>
> (2) Engaged in the business of selling livestock in commerce on a commission basis at the stockyard and buying and selling livestock in commerce for its own account; and
>
> (3) Registered with the Secretary of Agriculture as a market agency to sell livestock on a commission basis and as a dealer to buy and sell livestock for its own account.
>
> II
>
> On September 24, 1986, respondent posted Tariff No. 2 at its stockyard which set proposed changes in the stockyard rates to become effective on September 30, 1986. Among the changes proposed was the deletion of a selling charge to consignors of slaughter cattle and the addition of a "Buyer's Fee" of $10.00 per animal to be assessed to buyers of slaughter cattle.
>
> III
>
> There is reason to believe that the proposed changes in the rates charged constitute an unfair, unreasonable and unjustly discriminatory rate or charge in violation of sections 305 and 307(a) of the Act (7 U.S.C. 206, 208(a)).
>
> IV
>
> On October 1, 1986, the Administrator, Packers and Stockyards Administration, ordered that the effective date of the Proposed Tariff No. 2 be suspended and deferred for a period of thirty (30) days from its effective date.
>
> V
>
> It is hereby ordered pursuant to section 306 of the Act (7 U.S.C. 207) that the implementation of the practice described in paragraph II above is hereby suspended and deferred for an additional period not to exceed 30 days.
>
> It is further ordered that for the purpose of determining whether in fact the practice described in paragraph II above does or will violate the Act, a hearing concerning the matters set forth herein will be held before an administrative law judge of the Department at a time and place to be specified at a later date, of which respondent will receive adequate notice. At such hearing, the respondent and all other interested parties will have the right to appear and present such evidence with respect to the matters and things set forth herein as may be relevant and material.
>
> It is further ordered that copies hereof shall be served upon the parties.

Any and all interested persons who may wish to appear and present evidence relative to the issues in this proceeding shall give notice by filing a statement to that effect that the Hearing Clerk, United States Department of Agriculture, Washington, DC 20250, within 20 days of the date of the publication hereof in the **Federal Register**.

Done at Washington, DC, this 6th day of November 1986.

B.H. (Bill) Jones,

Administrator, Packers and Stockyards Administration.

[FR Doc. 86–25506 Filed 11–10–86; 8:45 am]

BILLING CODE 3410-KD-M

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Financial Assistance Application Announcements; Massachusetts

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY. The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first twelve months is estimated at $217,700 for the project performance of March 1, 1987 to February 29, 1988. The MBDC will operate in the Boston, Mass. Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $217,700 in Federal funds and a minimum of $38,418 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and

technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continued. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

DATES: Closing date: The closing date for applications is December 15, 1986. Applications must be postmarked on or before December 15, 1986.

ADDRESS: New York Regional Office, Minority Business Development Agency, 26 Federal Plaza, Room 3720, New York, New York 10278, Area Code/ Telephone Number, (212) 264–3262.

FOR FURTHER INFORMATION CONTACT: Gina A. Sanchez, Regional Director New York Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development, Catalog of Federal Domestic Assistance)

Dated: November 5, 1986.

Gina A. Sanchez,

Regional Director, New York Regional Office.

[FR Doc. 86–25474 Filed 11–10–86; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

[Modification No. 1 to Permit No. 473]

Marine Mammals Permit Modification; Washington Department of Game (P250A)

Notice is hereby given that, pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Permit No. 473 issued to the Washington Department of Game, Marine Mammal Investigations, 600 North Capitol Way, GJ–11, Olympia, Washington 98504–0091 on June 15, 1984 (49 FR 25892) is modified as follows:

Sections A.3–7 are added:

3. Sixty (60) harbor seals (*Phoca vitulina*) may be injected with isotopes of either oxygen-18 and tritium or deuterated water each year.

4. These seals may be held for approximately 3-hours on the haulout and blood sampled before being released.

5. After a minimum of 3 to 5 days these seals may be recaptured and blood sampled. At this time they would be reinjected with tritiated water followed by a final blood sample 3 hours later.

6. Forty (40) of the seals authorized in A.3 may have depth or dive recorders attached.

7. Captured seals may be administered an intermuscular injection of tetracycline at a dosage of 2–5 mg/lb body weight.

Section B.1 is deleted and replaced by:

1. This research shall be conducted in the areas and for the purposes set forth in the application and modification request.

Section B.7 is added:

7. The Holder shall submit a report on the preliminary study that is conducted to assess the feasibility of recapturing specific harbor seals which indicates that individuals can be recaptured with a minimum of harassment to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235. Based on this review the Assistant Administrator, in consultation with the Northwest Region, may authorize the use of doubly-labeled water and the applying of depth recorders.

This modification became effective November 4, 1986.

Documents submitted in connection with the above Permit and modification are available for review in the following offices:

Protected Species Division, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC; and

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115.

Dated: November 5, 1986.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 86–25471 Filed 11–10–86; 8:45 am]

BILLING CODE 3510-22-M

[P20F]

Marine Mammals; Issuance of Permit to Dr. Kenneth S. Norris, Dr. Randall S. Wells, and Dr. William T. Doyle

On January 22, 1986, notice was published in the **Federal Register** (51 FR 2936) that an application had been filed by Dr. Kenneth S. Norris, Dr. Randall S. Wells, and Dr. William T. Doyle, Institute of Marine Sciences, Long Marine Laboratory University of California, Santa Cruz, California 95064, to freeze-brand, roto-tag, blood sample, radio tag, and extract teeth from Pacific white-sided dolphins *(Lagenorhynchus obliquidens)* for scientific research.

Notice is hereby given that on November 5, 1986 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805 Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dated: November 5, 1986.

James E. Douglas, Jr.

Deputy Assistant Administrator for Fisheries. National Marine Fisheries Service.

[FR Doc. 86–25470 Filed 11–10–86; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Equal Opportunity Management Institute Board of Visitors; Advisory Committee Meeting

The Defense Equal Opportunity Management Institute (DEOMI) Board of Visitors will meet at Patrick Air Force Base, Florida, 11–12 December 1986.

The purposes of the meeting will be to update Board Members on curriculum and support matters at DEOMI, orient new members of the Board of Visitors, and to report on the status and progress of the Joint Service Occupational Survey project.

The meeting will convene at 8:00 a.m. on 11 December 1986 and adjourn on 12 December 1986 at 12:00 m. The meeting is open to the public. For further

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information, contact the DEOMI Public Affairs Office at (305) 494-6096/6017.

November 6, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-25509 Filed 11-10-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Computer Applications to Training and Wargaming; Meetings

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Computer Applications to Training and Wargaming will meet in closed session on December 12-13, 1986 at Eglin Air Force Base, Florida.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will study how to integrate anticipated advances in computer technology with ongoing simulation efforts, supporting training and wargaming for joint warfighting.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

November 6, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-22510 Filed 11-10-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

November 4, 1986.

The USAF Scientific Advisory Board Directorate of Engineering and Services Advisory Group will meet at the Air Force Office of Scientific Research, Bolling AFB, Wash DC on December 2, 1986 from 9:00 a.m. to 11:30 a.m.; at Headquarters Air Force Systems Command, Andrews AFB, MD on December 2, 1986 from 1:30 p.m. to 4:30 p.m.; and at Headquarters Tactical Air Command, Langley AFB, VA on December 3, 1986 from 9:00 a.m. to 4:00 p.m.

The purpose of the meeting is for Airlift Panel to review, discuss and evaluate the mechanisms by which laboratory products are transitioned to the field. The meeting will include classified discussions on technology issues.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-25424 Filed 11-10-86; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

November 4, 1986.

The USAF Scientific Advisory Board Ad Hoc Committee on Minuteman III Penetration Aids will meet at the Pentagon, Washington DC on December 10-11, 1986 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to review, discuss and evaluate the effectiveness of penetration aids proposed for the Minuteman III.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-25425 Filed 11-10-86; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

National Advisory Committee on Acreditation and Institutional Eligibility; Meeting

AGENCY: Department of Education.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a public meeting of the National Advisory Committee on Accreditation and Institutional Eligibiliity. It also describes the functions of the Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of its opportunity to attend and to participate.

DATES: December 1, 1986, 8:00 a.m. until 5:30 p.m. and December 2, 8:00 a.m. until 5:30 p.m. local time. Requests for oral presentations before the Committee must be received on or before November 24, 1986. Written comments may be submitted at any time prior to the meeting and will be considered by the Advisory Committee.

ADDRESS: Georgetown Marbury Hotel, 3000 M Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Leslie W. Ross, Chief, Agency Evaluation Branch, 400 Maryland Avenue SW. (Room 3030, ROB-3), U.S. Department of Education, Washington, DC. 20202 (202) 732-3486.

SUPPLEMENTARY INFORMATION: The National Advisory committee on Accreditation and Institutional Eligibility is authorized by section 1205 of the Higher Education Act as amended by Pub. L. 96-374 (20 U.S.C. 1145). The Committee advises the Secretary of Education regarding his responsibility to publish a list of nationally recognized accrediting agencies and associations, State agencies recognized for the approval of public postsecondary vocational education, and State agencies recognized for the approval of nurse education.

The Committee also advises the Scretary of Education regarding policy affecting both recognition of accrediting and approval bodies, and institutional eligibility for participation in Federal funding programs.

The meeting on December 1-2 will be open to the public. The Advisory Commitee will review petitions and interim reports by the following accrediting agencies relative to continued recognition by the Secretary of Education. The Committee will also hear presentations by representatives of these petitioning agencies and interested third parties. Finally, Chairman Donald Stewart will present the recommendations of the NACAIE "Working Group" to strengthen the "Secretary's Recognition procedures for National Accreditation Bodies and State Agencies." The Agencies having petitions and interim reports pending before the Committee are:

Petitions for Recognition as Nationally Recognized Accretiting Agencies and Associations

A. Petitions for Renewal of Recognition

Accrediting Council on Education in Journalism and Mass Communications

American Association of Bible Colleges

American Association of Nurse Anesthetists
American Dietetic Assocation
American Medical Association, Committee on Allied Health Education and Accreditation, in cooperation with review committees for:
  Diagnostic Medical Sonogrpahy
  Electroencephalographic Technologist
  Ophthalmic Medical Assistant
  Perfusionist
Association for Clinical Pastoral Education
Council on Social Work Education
National Accreditation Council for Agencies Serving the Blind and Visually Handicapped
National Association of Schools of Dance
National Architectural Accrediting Board

B. Interim Reports

Accrediting Commission on Education for Health Services Administration
American Osteopathic Association
Commission on Opticianry Accreditation
Council for Noncollegiate Continuing Education
National Association of Trade and Technical Schools
National Council for Accreditation of Teacher Education
Western Association of Schools and Colleges, Accrediting Commission for Schools

Petitions for Recognition as State Agencies for the Approval of Public Postsecondary Vocational Education

A. Petitions for Renewal of Recognition

Delaware State Board of Education
Office of the Superintendent of Public Instruction, State of Washington

B. Interim Reports

Missouri State Board of Education
New Jersey State Department of Education
Utah State Board for Vocational Education

Petition for Recognition as a State Agency for the Approval of Nurse Education

A. Interim Report

Maryland State Board of Examiners of Nurses

In addition to the review of the above petitions and interim reports, the Advisory Committee will review a request by the Department of the Army for a recommendation concerning authority of the Judge Advocate General's School to award the degree of Master of Laws (LL.M.)

Requests for oral presentations before the Committee should be submitted in writing to Leslie W. Ross (address above). Requests should include the names of all persons seeking an appearance, the organization they represent and the purpose for which the presentation is requested. Requests should be received on or before November 24, 1986. Time constrains may limit oral presentations. However, all written materials will be considered by the Advisory Committee.

A record will be made of the proceedings of the meeting and will be available for public inspection at the Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 3030, ROB-3), Washington, DC, from the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday.

Signed at Washington, DC, on November 6, 1986.

Dated: November 5, 1986.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 86-25482 Filed 11-10-86; 8:45 am]

BILLING CODE 4000-01-M

National Advisory Board on International Education Programs; Meeting

AGENCY: National Advisory Board on International Education Programs.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule of a forthcoming meeting of the National Advisory Board on International Education Programs. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is also intended to notify the general public of their opportunity to attend.

DATES: December 1, 2, 1986.

ADDRESS: Hyatt-Arlington Hotel, 1325 Wilson Boulevard, Arlington, Virginia 22209-9990.

FOR FURTHER INFORMATION CONTACT: Harry M. Gardner, Postsecondary Relations Staff, ROB-3, Room 4082, 400 Maryland Avenue, SW., Washington, DC 20202 (202-732-3547).

SUPPLEMENTARY INFORMATION: The National Advisory Board on International Education Programs is established under section 621 of the Higher Education Act of 1965, as amended, by the Education Amendments of 1980 (Pub. L. 96-374; 20 U.S.C. 1131). Its mandate is to advise the Secretary of Education on the conduct of the programs under this title.

This meeting of the National Advisory Board on International Education Programs is open to the public.

The agenda: The Board will examine the Title VI Sections of Pub. L. 99-498, The Higher Education Amendments of 1986, and the issues for which the Department is obliged to draft regulations. Also, general Board business for 1987 will be discussed.

The afternoon of December 2, the Board will conduct an on-site visit to the Foreign Service Institute, 1400 Key Boulevard, in Arlington.

Records are kept on the Board proceedings and are available for public inspection at the Office of Postsecondary Relations Staff, from 8:00 a.m. to 4:00 p.m., ROB-3, 7th & D Streets, SW., Room 3915, Washington, DC.

Signed at Washington, DC, on Nov. 5, 1986.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 86-25483 Filed 11-10-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA-C&E-86-57; OFP Case No. 53146-3797-20-21-22]

Acceptance of Petition for Exemption and Availability of Certification by Virginia Electric and Power Co., Richmond, VA

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance.

SUMMARY: On September 25, 1986, Virginia Electric and Power Company (Virginia Power or the petitioner) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting two (2) permanent exemptions based on the "lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum" for 2 proposed 210 megawatt combined cycle gas turbine generating units to be built at Virginia Power's Chesterfield Power Station in Chesterfield County, Virginia, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning

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for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules setting forth criteria and procedures for petitioning for this type of exemption from the prohibitions of Title II of FUA are found in 10 CFR 503.37.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the "**SUPPLEMENTARY INFORMATION**" section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before December 29, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA-C&E-86-50 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-093, Washington, DC 20585, Telephone (202)252-8233.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202)252-6947.

SUPPLEMENTARY INFORMATION: Virginia Power proposes to install a total of 2 (210 MW each) combined cycle gas turbine generators at its Chesterfield Power Station (units 7 & 8 respectively).

The first combined cycle unit will be constructed in two phases. The first phase will involve installation of one combustion turbine and related support equipment. For Unit 7, this phase will be completed in 1990. The second phase will involve the addition of a heat recovery steam generator (HRSG) and steam turbine to the combustion turbine. The second phase of construction for Unit 7 will be completed by 1991. The method of constructing Unit 8 has not yet been determined, but at this time the unit is scheduled for completion in 1992.

The combined cycle powerplant will burn natural gas as its primary fuel to drive a combustion turbine-generator. The exhaust will feed to a two-pressure HRSG. High pressure steam from the HRSG will drive a steam turbine-generator. Steam exhaust will be circulated to the reheater section of the HRSG and then piped to the intermediate and low pressure section of the steam turbine and then to the deaerating condenser.

Section 212(a)(1)(A)(ii) of the Act provides for a permanent exemption due to lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. To qualify the petitioner must certify that:

(1) A good faith effort has been made to obtain an adequate and reliable supply of an alternate fuel for use as a primary energy source of the quality and quantity necessary to conform with the design and operational requirements of the proposed unit;

(2) The cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source during the useful life of the proposed unit as defined in § 503.6 (cost calculation) of the regulations;

(3) No alternate power supply exists, as required under § 503.8 of the regulations;

(4) Use of mixtures is not feasible, as required under § 503.9 of the regulations; and

(5) Alternative sites are not available, as required under § 503.11 of the regulations.

In accordance with the evidentiary requirements of § 503.32(b) (and in addition to the certifications discussed above), the petitioner has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of: (1) An Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment.

If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that Virginia Power is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on November 3, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-25464 Filed 11-10-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-54; OFP Case No. 67004-9032-21-24]

Order Granting United States Borax & Chemical Corp. Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order granting exemption.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or the "Act"), to United States Borax & Chemical Corporation (U.S. Borax). The permanent cogeneration exemption permits the use of natural gas as the

primary energy source, for the proposed cogeneration facility to be located at Boron, California. The final exemption order and detailed information are provided in the "**SUPPLEMENTARY INFORMATION**" section below.

DATES: The order shall take effect on January 5, 1987.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Myra L. Couch, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-093, Washington, DC 20585, Telephone (202) 252-6769

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building—Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252-6749.

SUPPLEMENTARY INFORMATION: The facility for which U.S. Borax is requesting a permanent cogeneration exemption is a 45 MW combined cycle gas turbine in addition to its existing cogeneration facility in Boron, California, which will generate electrical power for sale to Southern California Edison and produce steam to be used in U.S. Borax Refinery. The system will consist of a gas turbine, heat recovery steam generator, and extracting/condensing steam turbine-generator. The facility will burn natural gas and will be capable of utilizing #2 oil as a back-up fuel.

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the **Federal Register** on September 16, 1986, (51 FR 32826), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing.

The comment period closed on October 31, 1986; no comments were received and no hearing was requested.

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that U.S. Borax has satisfied the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to U.S. Borax, to permit the use of natural gas as the primary energy source for its cogeneration facility.

Pursuant to section 702(c) of the Act of 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before January 5, 1987.

Issued in Washington, DC, on November 3, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-25465 Filed 11-10-86; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of a total of $1,797,191.59 (plus accrued interest) obtained from five crude oil resellers or producers: O.B. Mobley, Jr. (Case No. HEF-0499), Gulf Energy and Development Corp. (Case No. HEF-0568), Amcole Energy Corp. (Case No. HEF-0585), Texas Arkansas, Colorado and Oklahoma Oil Purchasing Corp. (Case No. KEF-0036) and Petroleum Supply, Inc. and Donald L. Ragland (Case No. KEF-0046). The OHA has tentatively determined that the funds will be distributed in accordance with the DOE's Statement of Modified Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Comments must be filed in duplicate within 30 days from the date of publication of this notice in the Federal Register and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All comments should display a reference to the applicable case number.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals 1000 Independence Avenue SW., Washington, DC 20585 (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatiely formulated to distribute monies obtained from five crude oil resellers or producers: O.B. Mobley, Jr., Gulf Energy and Development Corp., Amcole Energy Corp., Texas, Arkansas, Colorado and Oklahoma Oil Purchasing Corp., and Petroleum Supply, Inc. and Donald L. Ragland. These firms remitted monies to the DOE to settle possible pricing violations with respect to their sales of crude oil. The firms' payments are being held in an interest-bearing escrow account pending distribution by the DOE.

The DOE has tentatively decided that distribution of the monies received from the five consent order firms will be governed by the DOE's Statement of Modified Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986). That policy states that crude oil overcharge monies will be divided among the states, the federal government, and eligible purchasers of petroleum products.

Under the plan we are proposing, refunds to the states would be distributed in proportion to each state's consumption of petroleum products. Refunds to eligible purchasers would be based on the number of gallons of crude oil or refined products which they purchased and the extent to which they can demonstrate injury.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1:00 p.m. and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Washington, DC 20585.

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Dated: November 4, 1986.

George B Breznay,

Director, Office of Hearings and Appeals.

November 4, 1986.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Firms: O.B. Mobley, Jr.; Gulf Energy and Development Corp; Amcole Energy Corp.; Texas, Arkansas, Colorado and Oklahoma Oil Purchasing Corp.; and Petroleum Supply, Inc. and Donald L. Ragland.

Dates of Filings: April 5, 1984; March 7, 1985; May 31, 1985; May 6, 1986; and July 10, 1986.

Case Numbers: HEF-0499; HEF-0568; HEF-0585; KEF-0036; and KEF-0046.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. *See* 10 CFR Part 205, Subpart V. Such procedures enable the DOE to refund monies to those injured by alleged violations of the DOE pricing regulations.

This proceeding involves five Petitions for the Implementation of Special Refund Procedures which the ERA filed with the OHA with respect to funds obtained from O.B. Mobley, Jr. (Mobley), Gulf Energy and Development Corp. (Gulf Energy), Amcole Energy Corp. (Amcole), Texas, Arkansas, Colorado and Oklahoma Oil Purchasing Corp. (TACO), Petroleum Supply, Inc. and Donald L. Ragland Corp. (PSI).[1] TACO and PSI were "resellers" of crude oil; the other remaining three consent order firms were "producers" of crude oil. All were subject to the provisions of the DOE's Mandatory Petroleum Price Regulations. The consent orders which are the subject of these refund proceedings all involve alleged crude oil pricing violations. The combined amount of principal in escrow totals $1,797,191.59. Pending distribution, these funds are being held in escrow by the DOE in an interest-bearing account administered by the Department of the Treasury.[2] This Decision and Order proposes procedures by which the OHA will distribute these funds. Comments are solicited on these proposed procedures.

The general guidelines which the OHA may use to formulate and implement a plan to distribute funds are set forth in 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of alleged or adjudicated violations or to ascertain the amount of each person's injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82, 597 (1981).

We have considered the ERA's requests to implement Subpart V procedures with respect to the monies received from the five consent order firms and have determined that such procedures are appropriate. Accordingly, we will grant the ERA's requests.

Since the monies which the consent order firms remitted to the DOE settle alleged crude oil regulatory violations, we propose that the funds be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges issued on July 28, 1986. 51 FR 27899 (August 4, 1986) (hereinafter referred to as "the DOE Policy"). Under that policy up to 20 percent of alleged crude oil violation amounts will be reserved to satisfy valid claims by eligible purchasers of crude oil and refined petroleum products. Remaining funds are to be disbursed to the state and federal governments for indirect restitution, in accordance with the provisions of the recently enacted Petroleum Overcharge Distribution and Restitution Act of 1986. *See H.R.* 5300, Title III, 99th Cong., 2d Sess., Cong. Rec. H11319–21 (daily ed. October 17, 1986). In the present case, we have decided to reserve the full 20 percent—$359,438.32—of the alleged crude oil violation amounts for direct refunds to purchasers of refined petroleum products and crude oil who prove that they were injured by the alleged crude oil violations.[3] The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used to evaluate claims based on alleged refined product overcharges pursuant to 10 CFR Part 205, Subpart V. *See Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986).

As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured by the alleged violations (i.e., that they did not pass on alleged overcharges to their own customers). The standards for showing injury which the OHA has developed in analyzing non-crude oil claims will also apply to claims based on alleged crude oil violations. *See, e.g., Dorchester Gas Corp.*, 14 DOE ¶ 85,240 (1986). Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the money available in each escrow subaccount by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). Appendix A shows the per gallon principal volumetric refund amount for each of these five consent order firms. The total of the principal volumetric amounts for these proceedings is $0.0000008893.[4] In addition, after all valid claims are paid, unclaimed funds from the 20 percent claims reserve will be divided equally between federal and state governments. The federal government's share of the unclaimed funds will ultimately be deposited into the general fund of the Treasury of the United States.

We propose that the remaining 80 percent of the funds—$1,437,753.27—be immediately disbursed to the federal and state governments for indirect restitution. We propose to direct the DOE's Office of the Controller to segregate this amount and distribute $359,438.32 plus appropriate interest to the States and $1,078,314.95 plus appropriate interest to the federal government.[5] Refunds to the States will

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[1] The funds were obtained by the DOE in accordance with consent orders executed between the DOE and the firms on the following dates: Mobley—September 23, 1985, Gulf Energy—May 16, 1984, Amcole—September 24, 1984, TACO—September 23, 1983, and PSI—May 21, 1986.

[2] As of September 30, 1986, the total amount in escrow equals $2,178,944.64, including interest.

[3] On July 7, 1986, the United States District Court for the District of Kansas approved the Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378, 3 Fed. Energy Guidelines ¶ 26,563. That Settlement Agreement resolves a number of matters, including the distribution of funds collected by the Court and the distribution of alleged crude oil violation amounts collected by the DOE in other cases. Under the Settlement Agreement firms which apply for a portion of the Stripper Well Exemption Litigation funds generally must sign a waiver releasing their claims to a portion of the crude oil funds to be distributed by the OHA. Settlement Agreement, Part III.

[4] The volumetric refund amount will increase due to the accrual of interest on each fund. To assist claimants in calculating their potential refund, we set forth the volumetric refund amount including interest as of September 30, 1986 in Appendix A.

[5] The Stripper Well Exemption Litigation Settlement Agreement provides that for amounts transferred by OHA to the federal and state governments in excess of $100 million, of the next $400 million, the DOE shall receive 75 percent and the States shall receive 25 percent. Settlement

Continued

be in proportion to the consumption of petroleum products in each state during the period of price controls. Appendix B to this Decision lists the share (ratio) of the funds in the state account which each state will receive if these procedures are adopted.

Finally, we note that in an Order implementing the DOE Policy, the OHA solicited comments and objections regarding the proper application of the DOE Policy to all present and future OHA refund proceedings involving alleged crude oil violations. 51 FR 29689 (August 20, 1986). Comments and objections on the DOE Policy were due by September 19, 1986. These comments are currently being considered.

It is therefore ordered that:

The refund amounts remitted pursuant to consent orders by the firms identified in Appendix A to this Decision and Order shall be distributed in accordance with the foregoing Decision.

APPENDIX A

Firm and Consent Order No.	OHA Case No.	Principal in escrow	Principal volumetric	Volumetric as of Sept. 30, 1986
O.B. Mobley, Jr., 640C10000Z	HEF-0499	$1,095,622.15	$0.0000005421	$0.0000006723
Gulf Energy and Development Corp. 610C00418Z	HEF-0568	316,695.15	.0000001567	.0000001899
Amcole Energy Corp., 600C20060Z	HEF-0565	244,874.29	.0000001212	.0000001402
Texas, Arkansas, Colorado & Oklahoma Oil Purchasing Corp. 6A0X00258Z.	KEF-0036	40,000.00	.0000000198	.0000000254
Petroleum Supply, Inc. and Donald L. Ragland 640X00334Z.	KEF-0046	100,000.00	.0000000495	.0000000504
Total		$1,797,191.59	$0.0000008893	$0.0000010782

Twenty Percent of Total Principal for Direct Refunds: $359,438.32.
Eighty Percent of Total Principal for Indirect Restitution: $1,437,753.27.
States' Share for Indirect Restitution: $359,438.32.
Federal Government's Share for Indirect Restitution: $1,078,314.95.

APPENDIX B

[Calculation of ratios for distribution to States and territories—M.D.L. 378]

State	Consumption	Ratio
Alabama	626,803,570	0.01534512450
Alaska	158,047,980	.00386926023
American Samoa	7,275,000	.00017810331
Arizona	418,994,930	.01025764719
Arkansas	519,811,670	.01272579770
California	3,739,318,300	.09154432453
Colorado	439,201,380	.01075233249
Connecticut	693,689,220	.01698259040
Delaware	193,932,730	.00474777469
District of Columbia	97,574,660	.00238877835
Florida	1,887,260,600	.04620307312
Georgia	909,619,880	.02226890081
Guam	60,196,000	.00147369185
Hawaii	280,655,260	.00687087703
Idaho	167,643,780	.00410418057
Illinois	1,876,159,060	.04593129065
Indiana	1,006,156,560	.02463227660
Iowa	532,229,530	.01302980621
Kansas	457,905,310	.01121023378
Kentucky	523,601,010	.01281856663
Louisiana	971,591,210	.02378606310
Maine	300,279,730	.00735121456
Maryland	731,383,020	.01790490359
Massachusetts	1,398,309,100	.03423278036
Michigan	1,391,772,090	.03407274419
Minnesota	708,814,590	.01735288297
Mississippi	557,796,510	.01365548081
Missouri	806,514,320	.01974472423
Montana	184,882,510	.00452621123
Nebraska	301,217,700	.00737427752
Nevada	165,454,200	.00405057600
New Hampshire	190,375,330	.00466066401
New Jersey	1,507,862,710	.03691462302
New Mexico	267,574,460	.00655063871
New York	3,162,994,520	.07743502253
No. Mariana Islands	3,763,000	.00009212409
North Carolina	916,800,700	.02244470625
North Dakota	149,717,090	.00366530709
Ohio	1,534,904,170	.03757684000
Oklahoma	504,486,400	.01235066023
Oregon	404,894,790	.00991245384
Pennsylvania	1,901,863,900	.04656058461
Puerto Rico	389,132,000	.00952655824

APPENDIX B—Continued

State	Consumption	Ratio
Rhode Island	161,953,570	.00396487514
South Carolina	486,978,850	.01192198623
South Dakota	146,053,670	.00357562087
Tennessee	660,920,850	.01618036977
Texas	3,013,545,120	.07377626891
Utah	240,978,330	.00589952410
Vermont	97,762,860	.00239338678
Virgin Islands	188,953,000	.00462586316
Virginia	1,048,324,650	.02566461699
Washington	623,796,920	.01527127344
West Virginia	244,121,480	.00597647330
Wisconsin	718,698,070	.01759484503
Wyoming	166,569,650	.00407788395
Totals	40,847,079,480	1.00000000000

[FR Doc. 86-25440 Filed 11-10-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PF-472; FRL-3106-2]

Petition for Pesticide Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of a pesticide petition proposing exemption from the requirement of a tolerance for the insect pheromone isomate-M (Z-8-dodecen-1-yl acetate; E-8-dodecen-1-yl acetate; Z-8-dodecen-1-ol) in or on the agricultural commodities nectarines and peaches.

ADDRESS: By mail, submit comments identified by the document control number [PF-472] at the following address:

Information Services Section (TS-757C), (Attn: Product Manager (PM) 17), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to Information Services Section (TS-757C), Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. Written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Arturo Castillo, Product Manager (PM) 17, Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2690).

SUPPLEMENTARY INFORMATION: EPA received pesticide petition 6F3377 from Biocontrol Ltd., 146 Palermin St., Warwick, Queensland 4370, Australia. U.S. Agent: John W. Kennedy Consultants, Inc., American Bank Bldg., Suite 406, Laurel, MD 20707, proposing that 40 CFR Part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of the insect pheromone isomate-M (Z-8-dodecen-1-yl acetate; E-8-dodecen-1-yl acetate; Z-8-dodecen-1-ol) in or on the agricultural commodities nectarines and peaches.

(21 U.S.C. 346a)

Agreement, Paragraph II.B.3.c.ii. On August 4, 1986, the OHA transferred $104,061,950.61 to the state and federal governments. *Stripper Well Exemption Litigation*, 14 DOE ¶ 85,382 (1986).

Dated: October 30, 1986.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-25349 Filed 11-10-86; 8:45 am]

BILLING CODE 6560-50-M

[PF-473; FRL-3108-1]

Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of food and feed additive petitions proposing establishment of regulations permitting residues of certain pesticide chemicals in or on certain food and feed commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF-473] at the following address:

Information Services Section (TS-757C), (Attn: Emergency Response and Minor Use Section), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Information Services Section (TS-757C), Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. Written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Donald R. Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716B, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA has received food and feed additive (FAP) petitions as follows from the Interregional Research Project No. 4 (IR-4) National Director, Dr. R.H. Kupelian, New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, proposing the establishment of regulations permitting residues of certain pesticide chemicals in or on certain feed and food commodities in accordance with the Federal Food, Drug, and Cosmetic Act.

1. *FAP 6H5516.* Proposes amending 21 CFR 193.43 by establishing a regulation permitting the combined residues of the insecticide carbofuran (2,3-dihydro-2,2-dimethyl-7-benzofuranyl-N-methylcarbamate), its carbamate metabolites 2,3-dihydro-2,2-dimethyl-3-hydroxy-7-benzofuranyl-N-methylcarbamate and 2,3-dihydro-2,2-dimethyl-3-oxo-7-benzofuranyl-N-methylcarbamate, and its phenolic metabolites 2,3-dihydro-2,2-dimethyl-7-benzofuranol, 2,3-dihydro-2,2-dimethyl-3-oxo-7-benzofuranol, and 2,3-dihydro-2,2-dimethyl-3,7-benzofurandiol in or on the food commodity dry hops at 1.0 part per million (ppm) (of which no more than 0.1 ppm are carbamates) resulting from application of the pesticide to the growing crop.

2. *FAP 6H5516.* Proposes amending 21 CFR 561.67 by establishing a regulation permitting the combined residues of carbofuran and its metabolites in or on the animal feed commodity spent hops at 1.0 ppm (of which no more than 0.1 ppm is carbamates) resulting from application of the pesticide to the growing crop.

3. *FAP 6H5504.* Proposes amending 21 CFR 193.253 by establishing a regulation permitting the combined residues of the fungicide iprodione [3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide], its isomer 3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide and its metabolite 3-(3,5-dichlorophenyl) 2,4-dioxo-1-imidazolidinecarboxamide in or on the food commodity dry ginseng at 4 ppm resulting from application of the pesticide to the growing crop.

4. *FAP 7H5517.* Proposes amending 21 CFR part 193 by establishing a regulation permitting the combined residues of the herbicide terbacil (3-tert-butyl-5-chloro-6-methyluracil) and its metabolites 3-tert-butyl-5-chloro-6-hydroxymethyluracil, 6-chloro-2,3-dihydro-7-hydroxymethyl-3,3-dimethyl-5H-oxazolo (3,2-a) pyrimidin-5-one, and 6-chloro-2,3-dihydro-3,3,7-trimethyl-5H-oxazolo (3,2-a) pyrimidin-5-one (calculated as terbacil) in or on the food commodity prunes at 0.15 ppm resulting from application of the pesticide to the growing crop.

(21 U.S.C. 346a)

Dated: October 30, 1986.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-25350 Filed 11-10-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-66129A; FRL-3108-7]

Carbon Tetrachloride; Intent To Cancel Registrations of Pesticide Products Containing Carbon Tetrachloride

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intent to Cancel.

SUMMARY: Carbon tetrachloride is currently present as an active ingredient in pesticide products registered for use as fumigants on stored grain, in flour milling and grain processing plants, and on encased museum specimens not on public display. Carbon tetrachloride has been shown to pose significant risks to humans including both a risk of acute and subacute poisoning and an oncogenic risk. In addition, significant concentrations of carbon tetrachloride are present in the atmosphere, in part due to the use of the chemical as a pesticide, and may contribute to the breakdown of the atmosphere's ozone layer. Benefits of continued use of carbon tetrachloride as a pesticide are limited. There are alternatives available for most sites where it has been used. Based on these factors, the Environmental Protection Agency has determined that continued registration of pesticide products containing carbon tetrachloride as an active ingredient for use at any site, except for use on museum specimens, would cause an unreasonable adverse effect on the environment. Accordingly, the Agency is issuing this Notice of Intent to Cancel all registrations of pesticide products labelled for use on any site other than encased museum specimens.

DATE: A request for a hearing by a registrant or applicant must be received by December 12, 1986 or 30 days from receipt by mail of this Notice, whichever is the later applicable deadline. A request for a hearing from any other adversely affected person must be received by December 12, 1986.

ADDRESS: Requests for a hearing must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Douglas G. McKinney, Special Review Branch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1006, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-5488).

SUPPLEMENTARY INFORMATION:

I. Introduction

Carbon tetrachloride (CCl_4), also known as perchloromethane and tetrachloromethane, has been used in registered pesticides since 1946. Products containing CCl_4 are currently registered for use on museum specimens, and for use on grain and grain processing equipment. EPA issued a notice of rebuttable presumption against registration (RPAR) of all pesticide products containing carbon tetrachloride, which was published in the **Federal Register** of October 15, 1980 (45 FR 68534), because these pesticides met or exceeded two basic risk criteria set forth in 40 CFR 162.11(a)(3): Oncogenic effects in experimental mammalian species and chronic or delayed liver and kidney toxic effects in humans and experimental animals.

In this notice EPA is announcing its intent to cancel the registrations of all pesticide products containing carbon tetrachloride except a single product registered for use on encased museum specimens. This notice is divided into nine units. Unit I is this introduction. Unit II, entitled "Legal Background," provides a general discussion of the regulatory framework within which this action is taken. Units III and IV summarize the risk and benefit deterimations, respectively, concerning the uses of carbon tetrachloride, except for use on museum specimens. Unit V discusses the encased museum specimen use site. Unit VI sets forth the regulatory actions initiated by this notice. Unit VII contains the comments of the Secretary of Agriculture and the Scientific Advisory Panel. Unit VIII, entitled "Procedural Matters," provides a brief discussion of the procedures to be followed in responding to this Notice. Unit IX contains a list of references.

II. Legal and Regulatory Background

In order to obtain a registration for a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), an applicant for registration must demonstrate that a pesticide satisfies the statutory standard for registration. For an unconditional registration, that standard requires, among other things, that the pesticide perform its intended function without causing "unreasonable adverse effects on the environment" (FIFRA section 3(c)(5)). The term "unreasonable adverse effects on the environment" is defined as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide" (FIFRA section 2(bb)). This standard requires a finding that the benefits of each use of the pesticide justify the risks of use, when the pesticide is used in compliance with the terms and conditions of registration or in accordance with commonly recognized practices.

The burden of proving that a pesticide satisfies the statutory standard is on the proponents of registration and continues as long as the registration remains in effect. Under section 6 of FIFRA, the Administrator may cancel the registration of a pesticide or require modification of the terms and conditions of registration whenever it is determined that the pesticide causes unreasonable adverse effects on the environment. The Agency created the Special Review process (formerly called the RPAR process) to facilitate the identification of pesticide uses which may not satisfy the statutory standard for registration and to provide an informal procedure to gather and evaluate information about the risks and benefits of these uses.

EPA regulations in effect in 1980 provided that a Rebuttal Presumption Against Registration, (now referred to as a Special Review) be initiated if a pesticide satisfies any of several risk criteria. (The regulations in force in 1980, 40 CFR 162.11, have since been revised and recodified in 40 CFR Part 154.) The Agency announces that a Special Review has been commenced by issuing a notice for publication in the **Federal Register.** Registrants and other interested persons are invited to review the data upon which the review is based and to submit data and information to show the Agency's initial determination of risk was in error, or to show that use of the pesticide is not likely to result in any significant risk to humans or the environment. In addition, commenters may submit evidence as to whether the economic, social and environmental benefits of the use of the pesticide outweigh the risks of use.

In determining whether the use of a pesticide poses unacceptable risks, the Agency considers possible changes to the terms and conditions of registration which can reduce risks, and the impacts of such modifications on the benefits of use. If the Agency determines that such changes reduce risks to the level where the benefits outweigh the risks, it may require that such changes be made in the terms and conditions of the registrations. Alternatively, the Agency may determine that no change in the terms and conditions of a registration will adequately assure that use of the pesticide will not cause an unreasonable adverse effect. In either case, the Agency will issue a Notice of Intent to Cancel existing registrations and a Notice of Denial of any pending applications for registrations of such products. Actual cancellation may be avoided by making the specified corrections to existing registrations as set forth in the Notice, if possible. Adversely affected persons may also request a hearing on the cancellation of a specified registration and use, and, if they do so in a legally effective manner, that registration and use will be maintained pending a decision at the close of an administrative hearing.

III. Summary of Risk Determination

The Agency has evaluated the available data regarding the risks of continued use of carbon tetrachloride. Detailed discussions of these risks are presented in the PD-1 and in the "Health Assessment Document for Carbon Tetrachloride" (Ref. 16). This unit summarizes the risk determinations for all uses of carbon tetrachloride, excluding the use for encased museum specimens.

A. Chemical and Physical Properties

Carbon tetrachloride is a chlorinated hydrocarbon compound with the molecular formula CCl_4. It is a clear, colorless, nonflammable liquid with a moderately strong odor similar to that of chloroform. CCl_4 is slightly soluble in water, soluble in alcohol and acetone, and miscible in benzene, chloroform and ether (Ref. 13). Its density is 1.59 gm/l at 4°C which is greater than the density of water; therefore, under certain conditions, large amounts spilled into water may settle and not volatilize. CCl_4 is highly volatile with a vapor pressure of 115.2 mm Hg at 25°C.

Carbon tetrachloride is produced commercially from the chlorination of various chemicals including methane, propane, ethane, propylene, or carbon disulfide.

B. Acute and Subchronic Toxicity

Date indicate that CCl_4 is toxic to humans and animals following inhalation, ingestion, or dermal administration. The central nervous system, liver, and kidneys are primarily affected as a result of acute and subchronic exposure to CCl_4. Also,

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sporadic cases of ocular toxicity have occurred following subchronic exposure to CCl_4 vapors.

Animals surviving acute doses of CCl_4 showed liver damage and, in some cases, kidney damage. The effects were reported to be dose related. Further, subchronic studies and, as discussed in the next section, chronic studies of CCl_4 exposure in rats, monkeys, rabbits, dogs, and guinea pigs demonstrated liver, kidney, sciatic nerve, optic nerve and ocular muscle damage. These animal studies provide dose/response data and identify a causal relationship between CCl_4 exposure and the toxic response (Ref. 16).

The effects of human exposure to CCl_4 have been documented in case reports. CCl_4 causes damage to the liver, lungs, kidneys, and central nervous system in humans primarily as a result of high oral or inhalation exposures. Other effects, such as biochemical alterations, nausea, and headaches, result from lower exposures and can occur with other health hazards attributed to higher exposures (Ref. 16).

C. Oncogenic Effects

Carbon tetrachloride has long been known to be a potential human carcinogen. Carcinogenic response to exposure to CCl_4 has been documented in rats, mice, and hamsters. Both the International Agency for Research on Cancer (IARC) and the National Cancer Institute (NCI) identified CCl_4 as an animal carcinogen (Ref. 9). EPA has previously concluded that carbon tetrachloride is a "suspect human carcinogen" (Ref. 16). Although numerous studies have shown the oncogneic potential of CCl_4, the Agency has based its conclusions primarily on five of these studies.

The National Cancer Institute used CCl_4 as a positive control in bioassays on chloroform, trichloroethane, and trichloroethylene, using B6C3F1 mice (Ref. 9). Male and female B6C3F1 mice were administered doses of 1250 or 2500 mg/kg b2 CCl_4 by gavage, 5 times per week for 78 weeks. Most male and female mice treated with CCl_4 died before termination of the study. Hepatocellular carcinomas were found in practically all mice receiving CCl_4, including those dying before termination of the test. The first carcinomas were observed in low dose female mice at 16 weeks, in high dose female mice at 19 weeks, in low dose males at 46 weeks, in high dose males at 26 weeks; compared to 90 weeks for control females and 72 weeks for control males.

In performing bioassays in Osborne-Mandel rats for chloroform, trichlorethane and trichlorethylene, the National Cancer Institute again used carbon tetrachloride as a positive control (Ref. 9). Carbon tetrachloride in these studies was administered five times a week by gavage at two dose levels (47 and 95 mg/kg in males; 80 and 159 mg/kg in females) to 50 animals of each sex and dose. The treatment resulted in some toxicity (cirrhosis, fatty liver) and death.The incidence of hepatocellular carcinomas was increased in animals exposed to carbon tetrachloride when compared to pooled controls. These results were statistically significant, however, only in the low dose females. However, it is likely that many animals apparently died before tumors could develop. Other studies have indicated the carcinogenic potential of carbon tetrachloride in rats exposed to subcutaneous injection (Ref. 11).

A bioassay in Syrian golden hamsters was conducted in which carbon tetrachloride dissolved in corn oil was administered by gavage for 30 weeks (Ref. 2). The study was part of a survey to gauge the response of hamsters to chemicals shown to be carcinogenic in other species. Accordingly, the test group exposed to carbon tetrachloride was relatively small (20 hamsters), but the historical control groups were relatively large (254 hamsters received no treatment, 80 hamsters were gavaged with corn oil alone). Some of the hamsters exposed to carbon tetrachloride died during the course of the experiment; the remainder were sacrificed at 55 weeks. The hamsters dying up to the 42nd week all showed signs of cirrhosis and hyperplastic nodules, but did not show carcinomas. The 10 hamsters, however, who survided past the 43rd week all has liver cell carcinomas; many of the animals has multiple carcinomas. Liver cell carcinomas were not observed in any of the 334 control animals.

Case reports of human carcinomas developing years after exposure to high levels of carbon tetrachloride are suggestive, but are not adequate to prove an association between human carcinogenic hazard and exposure to carbon tetrachloride (Ref. 16). A study investigating the effect of solvent vapors, including carbon tetrachloride, on a group of environmentally exposed people concluded there was a causal relationship between such exposure and the existence of an abnormal incidence of malignant lymphoma (Ref. 9). However, the results of the study are not conclusive regarding the carcinogenicity of carbon tetrachloride due to concomitant exposure to other chemicals and difficulty with study techniques. An epidemiology study of a group occupationally exposed to carbon tetrachloride also revealed a slight excess of liver cancer, but does not adequately demonstrate the carcinogenic effect of carbon tetrachloride (Ref. 16).

In conclusion, there is evidence that carbon tetrachloride may be a human carcinogen based upon the following: (1) Positive findings in mice in the NIC bioassay in which carbon tetrachloride was used as the positive control (Ref. 9), (2) the hamster study by Della Porta et al. (Ref. 2), and (3) the rat studies by Reuber and Glover and NCI (Refs. 11 and 12). The overall weight of the evidence, considering both the animal and human studies, place carbon tetrachloride in the B2 category of EPA's classification scheme. Carbon tetrachloride, therefore, is regarded as a probable human carcinogen.

C. Exposure

Carbon tetrachloride has been used primarily as a liquid fumigant to control insects in stored grain. CCl_4 is also used as a fumigant in grain and processing plants and in encased museum specimens in storage. Prior to suspension of CCl_4 registrations under FIFRA section 3(c)(2)(B) for failure to provide data required to support continued registration, annual pesticidal usage was about 25 million pounds with nearly the entire amount being used to treat about 5 percent of the U.S. grain production.

There are two primary routes by which humans may be exposed to CCl_4. The general public may be exposed to CCl_4 through ingestion of food fumigated with CCl_4 and through the environment. Persons applying CCl_4 may be exposed dermally and through inhalation.

For the general public, the EPA Health Assessment Document for Carbon Tetrachloride (Ref. 16) estimated exposure at 9 mg/yr; 4 mg/yr from dietary intake including food and water, and 5 mg/yr from the atmosphere.

For applicators using carbon tetrachloride, exposure largely depends on the type of protective clothing used and the number of days fumigation is done. For applicators using extensive protective clothing (e.g., impermeable gloves and respirators which remove organic vapors) exposure is low. For applicators without adequate protective clothing, exposure is expected to be substantial.

One study (Ref. 10) provides data to estimate CCl_4 exposure. In this study a mixture of 80 percent carbon tetrachloride and 20 percent carbon disulfide was applied to grain by spray, and air samples were taken. Three separate groups of workers were involved. The first group, the applicators who sprayed the fumigant, generally wore respirators. The second group was the personnel who tended the pump and barrels. The third group consisted of individuals who inspected the grain and corn after the fumigation process was completed. Members of the latter two groups did not usually wear respiratory protection.

The first set of air samples was taken during fumigation of the grain in cylindrical bins, quonset huts, and other storage buildings. Out of a total of 36 measurements from six sites, 14 ranged from 0 to 1,500 ppm CCl_4 8 from 1,501 to 4,500 ppm, 9 from 4,501 to 15,000 ppm 5 exceeded 15,000 ppm. The latter five values, taken during fumigation of 18-foot cylindrical bins, exceeded 6,000 ppm of CS_2, for a total vapor concentration of over 20,000 ppm for CS_2, and CCl_4. Vapor concentration in excess of 20,000 ppm organic vapor exceeds the capacity of the respirator canister to remove the vapors. These high exposures may be attributable to the tendency of heavy fumigant vapors to roll down the inside of the bin and collect at the bottom where the fumigators stood.

The second exposure area measured was the working area occupied by the fumigation crew members whose responsibility included tending the pumps, opening barrels, metering the fumigant, and performing related duties. Breathing zone samples for these individuals ranged from 0 to 19,000 ppm of CCl_4. Due to the nature of the work these men performed, great variations in both concentration and duration of exposure were experienced. This range, therefore, was arrived at by calculation of weighted exposures.

The third group of samples was taken after the grain fumigation in order to determine potential exposure of grain inspectors. Concentrations of CCl_4 near or above the OSHA ceiling concentration value of 25 ppm were found after 7 days. CCl_4 residues in air samples from bins were measured at 80 to 135 ppm after 2 days, 16 to 60 ppm after 7 days, and 16 to 19 ppm after 15 days. This wide range of concentrations of CCl_4 vapors in the different bins probably resulted from the bins having different degrees of air tightness.

No data are available on the potential for dermal and inhalation exposure of workers in sites not directly related to the site of fumigation (e.g., warehouse employees and ship loading crews). However, exposure of such workers to CCl_4 could reasonably be expected because of CCl_4 residues remaining in the area.

Residues of carbon tetrachloride in or on grain and grain products resulting from commercial use of grain fumigant mixtures containing CCl_4 (flour, mixes, pasta, corn meal, bran, germ, and middlings) showed that 89 percent of the samples had residues <150 ppb while 96 percent had residues <999 ppb. The level of CCl_4 was reduced upon processing wheat grain by 66 percent for flour, 60 percent for bran, none for germ, and 57 percent for middlings. Residues in the ready-to-eat commodities were <10 ppb in 90 percent of the samples, <20 in 95 percent, <30 in 97 percent and <50 in 99 percent of those samples. It can be estimated that <2 percent of CCl_4 used on commercially fumigated grains may be retained in or on ready-to-eat commodities.

Residues in raw grain (mostly wheat) ranged from <10 to 9,000 ppb with a median residue of 14 ppb. Eightly-nine percent of the samples had residues <999 ppb.

Carbon tetrachloride is a probable human carcinogen and use has been shown to cause other toxic effects, such as liver toxicity including necrosis and cirrhosis. It has also been shown to be a possible mutagen. Because continued registration has the potential to lead to the exposure of the general population to CCl_4, continued registration of CCl_4 poses a risk of increased human cancer to the general population. Persons exposed to higher levels due to occupational exposure are subject to higher cancer risks as well as other toxic and mutagenic effects.

E. Indirect Ecosystem Effects

Possible indirect ecosystem effects of CCl_4 may result from modification to stratospheric ozone. By preventing most potentially harmful ultraviolet radiation (UV–B radiation) from penetrating to the earth's surface, the ozone layer acts as an important shield to protect humans and the environment.

The possibility that the production, use, and release of the chlorofluorocarbons CFC11 and CFC12 could cause depletion of stratospheric ozone was first theorized in a 1974 article in "Nature" by Molina and Rowland (Ref. 14). They hypothesized that the stability of CFC11 anc CFC12 ensured that they would decompose only when they reach the stratosphere and are photodissociated. The released chlorine atoms would enter into catalytic chains which destroy ozone molecules. In 1975 they stated that the stratospheric behavior of CCl_4 should be similar to that of CFC11 and CFC12, and that it could potentially pose a similar hazard to stratospheric ozone.

If a net depletion of total-column ozone (i.e., the total quantity of ozone encountered by radiation penetrating from the top of the atmosphere to the earth's surface at any given location) occurred, more UV–B radiation would penetrate to the earth's surface.

Possible health and environmental effects of exposure to increased UV–B radiation could include: Increases in melanoma and non-melanoma skin cancer, suppression of the human immune system, decreases in the productivity of commercially important crops and aquatic organisms, and accelerated degradation of polymeric materials.

The Agency announced its "Stratospheric Ozone Protection Plan" in the **Federal Register** of January 10, 1986 (51 FR 1257). The notice describes recent activities related to the protection of the stratospheric ozone layer and outlines EPA's program plan for future examination of the issue. The plan places considerable emphasis on the work of other Federal agencies including the National Aeronautics and Space Administration (NASA) and the National Institutes of Health (NIH); and complementary international efforts including the United Nations. For further information on the EPA program plan, consult the **Federal Register** notice.

IV. Summary of Benefits

Carbon tetrachloride is a liquid fumigant which is neither flammable nor explosive. It is used as a diluent to decrease the fire and/or explosive hazard associated with the use of carbon disulfide and ethylene dichloride as well as to increase the volatility and distribution of methyl bromide and chloropicrin.

Carbon tetrachloride's major pesticidal usage was for insect control in stored grain. This use comprised 99 percent of the estimated annual usage during the 1970's and early 1980's. The remaining minor uses included: fumigation in flour milling and grain and flour processing plants and fumigation of encased museum specimens. With the exception of the use of CCl_4 in museums, all registrations for pesticide products containing CCl_4 have been voluntarily cancelled or have been suspended pursuant to section 3(c)(2)(B) of FIFRA. The economic analysis identifies: The uses of CCl_4, quantities utilized, registered alternatives and their availability, the change in pesticide costs associated with the use of alternatives, and the regulatory impact upon crop production and retail prices where possible.

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EPA reviewed all rebuttal comments for fundamental information needed to perform an economic impact analysis of CCl_4 on a site/pest basis. These data (e.g., quantity used, units treated, comparative efficacy of the use of the next best alternative) were often not reported or were reported in an unusable manner. In an attempt to clarify rebuttal comments from the PD–1 and to derive the data needed to quantify the benefits from CCl_4 use, EPA and USDA economists contacted various individuals in the pesticide industry, the USDA Cooperative Extension Services, State agriculture departments, county agricultural commissioners, and other sources.

This analysis relies upon biological data and information relative to pest species and their control as summarized by the USDA/State/EPA Carbon Tetrachloride Assessment Team. In addition, other data and information developed for previous studies involving sites of CCl_4 usage were also used. Estimates of the annual usage of CCl_4 and the costs of alternative treatment practices were based on a variety of government, industry and private sources as well as previous studies involving CCl_4.

The general approach taken in this analysis was to evaluate impacts of shifting to alternatives at the user level (e.g., increased cost of pest control to individual users) in affected areas and then projecting impacts at the commodity and consumer levels. Economic impacts on users were estimated on a per unit treated basis as well as in the aggregate for a given geographic area. Social/community effects were not investigated in detail because either generally low levels of impacts upon users and consumers were indicated in the economic impact analyses or data necessary to conduct the analysis were not available.

The alternatives considered in this analysis were pesticides identified as the most likely to be adopted by users now treating with CCl_4. All alternatives used for the site/pest combinations in the analysis are currently registered by EPA and are included in available pest control recommendations for the major CCl_4 use sites.

A. Grain Storage Uses

During the 1981–84 period, approximately 1.8 to 2.1 million gallons of CCl_4 liquid grain fumigants were used annually. This volume contained about 23.8 to 27.7 million pounds active ingredient of CCl_4 and treated about 745 to 870 million bushels of grain stored on and off farms. This quantity represents approximately 3 to 6 percent of the grain produced during that period.

Without the use of CCl_4-containing liquid grain fumigant, the major fumigants available will fall into two classes: solid formulations containing aluminum phosphide and magnesium phosphide, which produce phosphine gas; and, liquified gas formulations containing only methyl bromide or methyl bromide in combination with chloropicrin. Because of their acute toxicity, aluminum phosphide, magnesium phosphide, methyl bromide and chloropicrin are restricted for use only by or under the direct supervision of certified pesticide applicators.

Methyl bromide is an extensively used fumigant in many circumstances. Methyl bromode is not flammable, is active at relatively low temperatures, penetrates well, and kills all stages of insects. Its utilization to control pests of stored grain in on-farm situations is, however, quite limited. In part, this is because greater levels of expertise and care are required for its use than are for most other materials used to control insect pests of stored grain. Recirculation facilities should be used when large bulks of grain are to be treated. Methyl bromide also is not especially effective for grain storage in older, loosely built structures used for grain storage because the gas cannot be contained. Methyl Bromide is only used by itself for commodity fumigation; all other use formulations must contain 0.25 to 2 percent chloropicrin as a warning agent because of chloropicrin's disagreeable odor.

Chloropicrin is a liquid fumigant which was first used to control stored grain pests during World War I. It is slow acting, difficult to vaporize, disagreeable to handle, its vapors cling tenaciously, and it can adversely affect the ability of seed to germinate. It is not flammable and has remarkable powers of penetration. Currently, chloropicrin has limited use as a single active ingredient material, and probably finds its greatest utility as a warning agent added to other fumigants, methyl bromide in particular.

Aluminum phosphide and magnesium phosphide are also very effective fumigants, and, in general, the use of phosphides and methyl bromide complement one another. Where short exposure periods are necessary and/or the moisture content of the grain is lower than 11 percent, methyl bromide will be the fumigant of choice. For bulk stored grain, aluminum phosphide is the material of choice. The efficiency and the ease of use are expected to result in the continued expansion of use of aluminum and magnesium phosphide.

Aluminum and magnesium phosphide are active against all stages of insects, but are also highly acutely toxic to man and other animals. When brought into contact with high moisture air, or with water, they also can be highly explosive. With aluminum phosphide and magnesium phosphide formulations, effective fumigation of bulk grain requires the moisture content to be higher than 12 to 13 percent. For this reason, these formulations are especially useful for protecting corn, which is harvested and stored at a higher moisture level than wheat or other small grain. In general, rather long exposures to this gas are required for efficacy. The minimum time of treatment is usually 72 hours. Systems of application have been devised which permit the automated treatment of grains as they are being placed into bulk storage.

In addition to the usage of grain fumigants for remedial treatment of insect infestations, several grain protectants are available for preventive treatment of stored grains. Registered grain protectants include malathion, which has been the most widely used protectant, synthesized pyrethrins, silicon dioxide, diatomaceous earth, and *Bacillus thuringiensis*.

EPA recently registered two new brain protectants. In June 1985, chlorpyrifos-methyl (Reldan®) was registered for use on wheat, oats, barley, and rice and in August 1986, pirimiphos-methyl (Actellic®) was registered for use on corn and grain sorghum. Pirimiphos-methyl is also registered to treat certain grains for export to countries which have approved the import of these treated grains. These registrations are supported by the full complement of test data needed to satisfy current registration requirements under FIFRA. Chlorpyrifos-methyl and pirimiphos-methyl are applied to grain entering storage or transport containers, using mechanically assisted application methods. Under certain conditions, a single application of chlorpyrifos-methyl or pirimiphos-methyl is expected to provide extended residual protection from insect infestations for several months.

In addition to registered grain protectants and fumigants, a variety of other practices are available for insect control on stored grains. These include modified atmospheres in sealed bins or silos, such as using carbon dioxide, nitrogen, and combustion gases to displace atmospheric oxygen and kill insects. Non-chemical measures include hermetic sealing of bins to limit penetration by insects and create an environment without sufficient oxygen to support insect life. Drying and heating or cooling of grains to temperatures high or low enough to suppress insect activity are other non-chemical measures. Many of these preventive and remedial non-chemical and chemical practices can be combined as appropriate in integrated pest management (IPM) strategies. Also, gamma radiation is approved for use on wheat and wheat flour and may find more extensive practical application in the future.

If CCl_4 were cancelled for use as a component of liquid grain fumigants, current users of CCl_4 on farms could choose to use alternatives or possibly not treat. As previously discussed, major alternatives include the phosphine-producing materials (aluminum phosphide and magnesium phosphide), methyl bromide, and grain protectants.

To evaluate the economic effects of the unavailability of CCl_4, it was assumed that CCl_4 was cancelled and that rational economic behavior governed ensuing user behavior. Two likely use situations were developed to estimate a range of economic impacts. Situation I assumed that the majority of CCl_4 users would treat their grain with available alternatives. Situation II assumed the majority of CCl_4 users would not treat, but would accept the discounts at market due to insect damage and/or infestation. In Situation I, the cancellation of CCl_4 would result in nationwide farm level costs of about $250,000 to $290,000 annually ($2.2 to $2.5 million saved in decreased treatment costs offset by $2.7 to $2.8 million in losses from discounted grain). Under Situation II, control costs would decline by $9.8 to $11.4 million annually but discounts of $36.3 to $38.0 million would leave a net loss of $26.6 to $31.0 million annually. Based on the information available and the recent market conditions, Situation I is believed to approximate most closely potential user behavior and the economic effects of a cancellation.

The economic impact on individual farmers is highly uncertain and dependent on a multitude of conditions and factors. Use of phosphine-producing material could result in changes in treatment costs ranging from an increase of $0.62 per thousand bushels to a decrease of $11.73 per thousand bushels depending on the amount and type of alternative used. The use of methyl bromide could result in increased costs ranging from $0.74 to $13.09 per 1,000 bushels treated, depending on the CCl_4 formulation and application rate used.

In summary, the loss of CCl_4-based materials for use on grain stored on farms is not expected to have significant national, regional or local economic effects. Alternatives are registered and are currently being used at comparable or lower costs. Current users of CCl_4 products may adopt pre-storage treatments with grain protectants and/or improve preliminary sanitation practices. Because no significant economic impacts are anticipated, it can be concluded that raw, processed and finished product prices would not change as a result of cancelling CCl_4.

B. Grain Storage use Off Farms

CCl_4 has been used to fumigate grain at elevators, warehouses, and port terminals. Precise data on the locations and quantities of use are unknown. An estimated 35 percent of annual usage of CCl_4 (8.3 to 9.7 million pounds A.I.) is believed to have been used to fumigate 261 to 304 million bushels of grain annually at all off-farm locations.

If CCl_4 is cancelled for use in fumigating grain stored at off-farm sites, CCl_4 users would most likely utilize one of the phosphine-producing materials or impossibly methyl bromide. As previously discussed. These materials are widely available, efficacious and in current use.

The loss of CCl_4-containing liquid grain fumigants for use in off-farm locations is not expected to cause serious economic effects. Alternatives are efficacious, available and currently being used to treat grain. The cost of treatment with alternative methods will be comparable or lower than current CCl_4 treatment costs. Because alternatives are available and efficacious, the quality and quantity of grain available in the market will not be affected by a cancellation of CCl_4. No impacts on consumers of grain-based products are expected as the result of cancelling CCl_4 for use in off-farm storage.

C. Grain Milling Uses

CCl_4 is registered for use as a spot fumigant in grain mills to control stored grain insects in milling machinery. Currently, one product containing 30 percent CCl_4 and 70 percent ethylene dichloride is registered for spot treatment of milling machinery. The estimated commerical usage of this product is less than 1,000 pounds. This product has not been widely used because the volume of liquid required per application can clog the machinery when the mills are restarted following fumigation. Historically, the preferred product for spot-treatment was a combination of ethylene dibromide/methyl bromide. All EDB products, however, were cancelled from 1983 to 1984.

Alternative means of insect control in grain milling equipment include the use of other registered pesticides (i.e., methyl bromide and aluminum phosphide) and increased diligence in cleaning and sanitation of the mill machinery. The use of improved sanitation practices and available chemicals will probably increase labor requirements for insect control in mills.

If CCl_4 is cancelled for use as a spot treatment of flour milling equipment, the milling industry will probably adopt the use of other registered products in combination with non-chemical insect control strategies. Because CCl_4-containing products have not been widely used as a spot fumigant to control insects in the grain milling industry, a cancellation of this use is not expected to have significant economic effects on users and consumers. Thus, the loss of CCl_4-based material for use on grain stored off-farm is not expected to have significant national, regional, or local economic effects.

V. Encased Museum Specimens

Carbon tetrachloride is registered for use on encased museum specimens in storage to prevent infestation of dermestid beetles and similar pests. If CCl_4 is unavailable, the potential for more serious problems with these pests will exist.

Encased museum specimens are non-renewable public resources. Irreparable damage may potentially result from increased infestations if CCl_4 is not available. The Agency has decided that the continued use of CCl_4 has important benefits for use in museums. The Smithsonian Institution expressed a desire to continue the use of CCl_4 for this purposed when it assisted the manufacturer in developing protective measures for museum applicators of carbon tetrachloride.

The alternatives currently registered for museum fumigation are: 2,2-dichlorovinyl dimethyl phosphate (DDVP), napthalene (NAPH), methyl bromide (MB), and ethylene oxide (ETO). Only NAPH is specifically registered for use on encased museum specimens. ETO and MB may not be used in individual museum specimen cases, but may be applied to museum specimens within a fumigation chamber. DDVP is registered for use in public buildings and/or institutions which also includes museums. Of the pesticides considered as alternatives DDVP is the

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most widely used for museum sites. The variable costs of application per museum case are lower for DDVP. However, it is not considered to be as effective as CCl_4. Thus, it is possible that increased insect infestations would arise with reliance on DDVP in the absence of CCl_4.

The label precautions for application of CCl_4 to encased museum specimens call for use of carbon-containing gas masks which effectively remove all respirable carbon tetrachloride. At the time of application, a gas monitor is used to indicate levels of carbon tetrachloride. Removal of the masks or subsequent use of museum cases is not allowed if the gas monitor shows levels of CCl_4 above 5 ppm. Additionally, the label instructions were revised in accordance with the Label Improvement Program for fumigants, PR 84-5 and PR 85-6.

The continued registration of CCl_4 as a fumigant for encased museum specimens will help ensure that potentially irreplacable museum specimens are protected. The current label instructions are sufficient to reduce applicator exposure. The benefits from using this product are believed to outweigh the risks. Therefore, registration of products for this use will be allowed to continue.

VI. Initiation of Regulatory Action

Based on the information on risks and the information on benefits of the different uses of CCl_4 summarized in this document, EPA had determined that benefits of continued registration do not justify the risks associated with continued use of carbon tetrachloride for food uses and that the continued registration of pesticide products containing carbon tetrachloride for use on stored grain and grain processing and milling equipment pose unreasonable adverse effects on the environment, including man. The Agency has considered changes in the conditions of registration to limit the risks of these products. The risks attributable to continued use of CCl_4 are largely associated with the exposure to residues of this chemical in the diet. These residues cannot be eliminated by changes in the use pattern because any use of CCl_4 for treatment of raw agricultural, processed or finished products must result in some contamination of the treated product. Moreover, although protective clothing requirements can be specified for persons occupationally exposed to CCl_4, these steps will not mitigate the dietary risks to the general public. Thus, the Agency has determined there is no modification of the terms and conditions of registration which can justify continued registration of products containing carbon tetrachloride.

Accordingly, EPA is issuing this Notice of Intent to Cancel the registrations of all pesticide products containing carbon tetrachloride, except Vulcan Formula 72 (EPA Registration Number 5382-2) which is registered only for use on encased museum specimens. This use will be allowed to continue because the current label instructions are sufficient to reduce applicator exposure and the risks from using this product are outweighed by the benefits.

If no hearing is timely requested this Notice of Intent to Cancel will become an effective order of cancellation. It will then be unlawful for any person in the Unitd States to distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver to any person any product whose registration is cancelled by this Notice.

VII. Comments of the Secretary of Agriculture, Scientific Advisory Panel and the Response of the Environmental Protection Agency

USDA had no objection to the cancellation of the grain uses of CCl_4 since all uses had been voluntarily cancelled or suspended. The comments in their entirety are as follows:

April 28, 1986.

Mr. Steven Schatzow
Director, Office of Pesticide Programs, U.S. Environmental Protection Agency, Washington, DC 20460

Dear Mr. Schatzow: This is in response to your letter of April 10 concluding the special review for carbon tetrachloride.

Based upon the fact that all grain fumigant uses of this chemical have either been voluntarily cancelled or suspended, the Department offers no objection to the finalization of these cancellation actions.

Sincerely,

Charles L. Smith,
Coordinator, Pesticide and Pesticide Assessment.

The Scientific Advisory Panel waived its right to review the position document proposing cancellation of CCl_4 products.

No comments were received in response to the **Federal Register** Notice of April 23, 1986 (51 FR 15372).

VIII. Procedural Matters

This Notice announces the Agency's intent to cancel the registrations of pesticide products containing carbon tetrachloride. Registrants of the affected products and other adversely affected persons are entitled to request an administrative hearing to contest the Agency's decision to cancel registration. Unless a hearing is properly requested with regard to a particular registration in accordance with the procedures specified in this Notice, the registrations will be cancelled. This unit of the notice explains how a hearing may be requested, the consequences of requesting or failing to request a hearing in accordance with the procedures specified in this Notice, and instructions regarding the use of existing stocks.

A. Procedure for Requesting a Hearing

To contest the regulatory actions (including the provisions governing existing stocks) set forth by this Notice, registrants of products affected by this Notice may request a hearing within 30 days of receipt of this Notice, or within 30 days from publication of this Notice in the **Federal Register**, whichever occurs later. Any other peson adversely affected by the cancellation action described in this Notice, may request a hearing within 30 days of publication of this Notice in the **Federal Register**.

Any person who requests a hearing must file the request in accordance with the procedures established by FIFRA and the Agency's Rules of practice Governing Hearings (40 CFR Part 164). These procedures require, among other things, that all requests must identify the specific registrations by registration numbers and the specific uses of the pesticide product for which a hearing is requested. All requests for a hearing must be received by the Hearing Clerk within the applicable 30-day period. Failure to comply with these requirements will result in denial of the request for a hearing. Requests for a hearing should also be accompanied by objections that are specific for each use of the pesticide product for which a hearing is requested.

Requests for a hearing must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

B. Consequences of Filing or Failing to File a Hearing Request

1. Consequences of Filing a Timely and Effective Hearing Request

If a hearing on any action initiated by this Notice is requested in a timely and effective manner, the hearing will be governed by the Agency's Rules of Practice for hearings under FIFRA section 6 (40 CFR Part 164). In the event that a hearing is properly requested and actively pursued, each cancellation action concerning the specific registered product(s) which is the subject of the hearing will not become effective except pursuant to an order of the Administrator at the conclusion of the hearing. The hearing will be limited to the specific registrations or applications for which the hearing is requested.

2. Consequences of Failure to File in a Timely and Effective Manner

If a hearing concerning the cancellation of the registration of a specific pesticide product subject to this Notice is not requested by the end of the applicable 30-day period, registration of that product will be cancelled.

C. Use of Existing Stocks

Registrations which this notice proposes to cancel have all been previously suspended under section (3)(c)(2)(B) of FIFRA. Registrants of these products have received a suspension letter from the Agency which contains instructions regarding the use of existing stocks. Therefore, the Agency has decided that, for the purposes of this proposed action, the existing stocks provisions in the applicable suspension letters would be applied to the suspended products which the Agency now proposes to cancel.

D. Separation of Functions

The Agency's rules of practice forbid anyone who may take part in deciding this case, at any stage of the proceeding (hereinafter "the judicial staff") from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives (40 CFR 167.7).

Accordingly, the following Agency offices, and the staffs thereof, are designated as the judicial staff to perform the judicial function of the Agency in any administrative hearing on this Notice of Intent to Cancel: the Administrator, the Deputy Administrator, the members of the immediate office of the Administrator and Deputy Administrator, the Office of the Administrative Law Judge, and the Office of the Judicial Officer.

IX. References

(1) American National Standards Institute (1967) American Standard Maximum Acceptable Concentration of Carbon Tetrachloride. New York 237.17.

(2) Della Porta, G.; Terracini, B; Shulik, P. (1961) Induction with Carbon Tetrachloride of Liver Cell Carcinomas in Hamsters. JNCI 26:855–863.

(3) Edwards, J. et al. (1942) Induction of the Carbon Tetrachloride Hepatoma In Strain L Mice. JNCI 3:297.

(4) Eschenbrenner, A.B.; Oliller E. (1946) Liver Necrosis and the Induction of Carbon Tetrachloride Hepatomas in Strain A Mice. JNCI 6:325–341.

(5) **Federal Register** (1980a) Carbon Tetrachloride, Pesticide Programs; Rebuttable Presumption Against Registration and Continued Registration of Certain Pesticide Products. October 15, 1980. p. 68534–68584.

(6) Fowler, J.S.L. (1969) Carbon Tetrachloride Metabolism in the Rabbit Br. J. Pharmacol. 37:733–737.

(7) National Academy of Sciences (1978) Panel on Low Molecular Weight Halogenated Hydrocarbons of the Coordinating Committee for Scientific and Technical Assessments of Environmental Pollutants. Chloroform, Carbon Tetrachloride, and Other Halomethanes: An Environmental Assessment. Washington, DC.

(8) National Academy of Sciences (1982) Cause and Effects of Stratospheric Ozone Reduction and Update. Washington, DC.

(9) National Cancer Institute (1976a) Report on the Carcinogenesis Bioassay of Chloroform. Carcincogenesis Program, Division of Cancer Cause and Prevention. March 1, 1976.

(10) Paulus, H.J.; Lippman, M. Cohen, A.E. (1957) Evaluation of potential health hazards in fumigation of shelled corn with a mixture of carbon disulfide and carbon tetrachloride. Am. Ind. Hygiene Assoc. Quar. 16:345–50.

(11) Reuber, M.D.; Glover E.L. (1967a) Hyperplastic and Early Neoplastic Lesions of the Liver in Buffalo Strain Rats of Various Ages Given subcutaneous Carbon Tetrachloride JNCI 38:891.

(12) Reuber, M.D.; Glover E.L. (1970) Cirrhosis and Carcinoma of the Liver in Male Rats Given Subcutaneous Carbon Tetrachloride. JNCI 44:419–427.

(13) Pesticide Chemical Use Polkin Profile for Carbon Tetrachloride. Tracor Jitco, Inc. EPA Contract 68–014968. March 1980.

(14) Weisburger, E.K. (1977) Carcinogenicity Studies on Halogenated Hydrocarbons. Environ. Health Perspect. 21:7–16

(15) U.S. Environmental Protection Agency (July 1985) Office of Air Quality Planning and Standards. (EPA–450/3–85–018)

(16) U.S. Environmental Protection Agency (September 1984) Research and Development Health Assessment Document for Carbon Tetrachloride. Final Report. (EPA 600/8–82–001F)

The references are part of the docket for this document, under OPP–66129A. They are available for inspection in Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, Virginia, from 8 a.m. to 4 p.m. Monday through Friday, excluding legal holidays.

Dated: November 3, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 86–25503 Filed 11–10–86; 8:45 am]

BILLING CODE 6560-50-M

[OPP–30275; FRL–31078]

Biocontrol LTD.; Application To Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to conditionally register the pesticide product "Isomate-M (Pheromone Dispencers)", containing active ingredients not included in any previously registered product pursuant to the provision of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by December 12, 1986.

ADDRESS: By mail submit comments identified by the document control number [OPP–30275] and the file symbol (53575–R) to:

Information Services Section (TS–757C), Program Management and Support Division, Attn: Product Manager (PM) 17, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2, Attn: PM 17, Registration Division (TS–767C), Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Arturo Castillo, PM 17, (703–557–2690).

SUPPLEMENTARY INFORMATION: Biocontrol Ltd., 148 Palermin St., Warwick, Queensland 4370, Australia. U.S. Agent: John W. Kennedy Consultants, Inc., American Bank Bldg., Suite 406, Laurel, MD 20207, has submitted an application to EPA to conditionally register the pesticide product Isomate-M (Pheromone Dispencers), EPA File Symbol 53575–R, containing the active ingredients Z-8-dodecen-1-yl acetate; E-8-dodecen-1-yl

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acetate; Z-8-dodecen-1-ol at 92.0, 5.3, and .8 percent respectively, pursuant to the provision of section 3(c)(4) of FIFRA. The application proposes that the product be classified for general use to control oriental fruit moths on nectarines and peaches. Notice of receipt of this application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application. Written comments filed pursuant to this notice, will be available in the program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703-557-3262), to ensure that the file is available on the date of intended visit.

(7 U.S.C. 136)

Dated: October 30, 1986.

James W. Akerman,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-25351 Filed 11-10-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59792; FRL-3108-6]

Toxic and Hazardous Substances; Certain Chemical Premanufacture Notices

AGENCY: Office of Pesticides and Toxic Substances, Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of five such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 87-14 and 87-15—November 13, 1986.

Y 87-16, 87-17 and 87-18—November 17, 1986.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 87-14

Importer. Confidential.

Chemical. (G) Polyester resin.

Use/Production. (G) Resin for photo copy or open, non-dispersive use. Import range: 100,000 to 500,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Processing: Inhalation.

Environmental Release/Disposal. Release to air.

Y 87-15

Importer. Confidential.

Chemical. (G) Polyester resin.

Use/Import. (G) Resin for photo copy or open, non-dispersive use. Import range: 100,000 to 500,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Processing: Inhalation.

Environmental Release/Disposal. Release to air.

Y 87-16

Manufacturer. Confidential.

Chemical. (G) Alkyd.

Use/Production. (G) Coating. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Y 87-17

Manufacturer. Confidential.

Chemical. (G) Alkyd.

Use/Production. (G) Coating. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Y 87-18

Importer. Confidential.

Chemical. (G) Aromatic cycloaliphatic alkyl polyester.

Use/Import. (S) Resin for use in coating formulations. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Dated: November 3, 1986.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 86-25504 Filed 11-10-86; 8:45 am]

BILLING CODE 6560-50-M

[POTS-51648; FRL-3108-5]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Office of Pesticides and Toxic Substances, Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of forty-two such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 87-106, 87-107 and 87-108—January 21, 1987.

P 87-109, 87-110, 87-111, 87-112, 87-113, 87-114, 87-115, 87-116, 87-117 and 87-118—January 24, 1987.

P 87-119, 87-120, 87-121, 87-122, 87-123, 87-124, 87-125, 87-126, 87-127, 87-128, 87-129, 87-130, 87-131, 87-132 and 87-133—January 25, 1987.

P 87-134, 87-135, 87-136, 87-137, 87-138, 87-139, 87-140, 87-141, 87-142, 87-143, 87-144, 87-145, 87-146 and 87-147—January 27, 1987.

Written comments by:

P 87-106, 87-107 and 87-108—December 22, 1986.

P 87-109, 87-110, 87-111, 87-112, 87-113, 87-114, 87-115, 87-116, 87-117 and 87-118—December 25, 1986.

P 87-119, 87-120, 87-121, 87-122, 87-123, 87-124, 87-125, 87-126, 87-127, 87-128, 87-129, 87-130, 87-131, 87-132 and 87-133—December 26, 1986.

P 87-134, 87-135, 87-136, 87-137, 87-138, 87-139, 87-140, 87-141, 87-142, 87-143, 87-144, 87-145, 87-146 and 87-147—December 28, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-51648]" and the specific PMN number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the mnaufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87-106

Importer. Nachem, Inc.

Chemical. (S) A mixture of 2-(4-hydroxyphenyl)-2-(4-hydroxy-3-sulfophenyl) propane; 2,2-bis(4-hydroxy-3-sulfophenyl) propane; 2,2-bis (4-acetoxyphenyl) propane; 2-(4-acetoxyphenyl)-2-(4-acetoxy-3-sulfophenyl) propane; and 2,2-bis (4-acetoxy-3-sulfophenyl) propane.

Use/Impact. (S) Industrial additive for tin plating. Import range: 84,000 to 100,000 lbs/yr.

Toxicity Data. Irritation: Skin—Irritant, Eye—Servere irritant.

Exposure. Processing: Dermal, a total 1 worker per shift, 3 shifts/day.

Environmental Release/Disposal. No data submitted.

P 87-107

Manufacturer. Monsanto Co.

Chemical. (G) Oxazine resin solution.

Use/Production. (G) Paint additive. Prod. range: Confidential.

Toxicity Data. Acute oral: >5g/kg; Acute dermal: >5g/kg; Irritation: Skin—Non-irritant, Eye—Slight.

Exposure. Manufacture: Dermal.

Environmental Release/Disposal. No release. Disposal by incineration.

P 87-108

Manufacturer. Vista Chemical Co.

Chemical. (G) Boehmite alumina.

Use/Production. (G) Degree at containment: Contained uses; open, non-dispersive use; dispersive use; highly dispersive use. Prod. range: Confidential.

Toxicity Data. No data on PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 87-109

Importer. Confidential.

Chemical. (G) Perfluoroalkyl ester.

Use/Import. (G) Stabilizer. Import range: Confidential.

Toxicity Data. Acute oral: 42.984 g/kg; Ames test: Negative.

Exposure. No data submitted.

Environmental Release/Disposal. Minimal release.

P 87-110

Importer. Confidential.

Chemical. (G) Alicyclic derivative of a nitrogen heterocycle.

Use/Production. (G) Destructive. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 87-111

Manufacturer. Confidential.

Chemical. (G) Nitrogen heterocycle derivative.

Use/Production. (G) Destructive. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 87-112

Manufacturer. Confidential.

Chemical. (G) Substituted tartaric acids, sodium salts.

Use/Production. (G) Component in consumer and commercial products. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 87-113

Manufacturer. Confidential.

Chemical. (G) Substituted tartaric acids, calcium-sodium salts.

Use/Production. (S) Site limited and commercial isolated intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: <24.5 g/kg; Irritation: Eye—Non-irritant.

Exposure. Confidential.

Environmental Release/Disposal. No release.

P 87-114

Manufacturer. Confidential.

Chemical. (G) Substituted tertiary phosphine.

Use/Production. (G) Extractant of transuranic elements. Prod. range: Confidential.

Toxicity Data. Acute oral: 5,000 mg/kg; Acute dermal: 2,000 mg/kg; Irritation: Skin—Mild, Eye—Irritant.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 87-115

Manufacturer. H. B. Fuller Co.

Chemical. (S) Polymer of polypropylene glycol; diphenylmethanediisocyanate; and polymethylene polyphenyl isocynate.

Use/Production. (S) Industrial adhesive, coating. Prod. range: Confidential.

Toxicity Data. No data on PMN substance submitted.

Exposure. Manufacture: A total of 6 workers, up to 1 hr/day, up to 18 days/yr.

Environmental Release/Disposal. 2 kg/batch released to land and 36 kg/batch to air. Disposal by Publicly Owned Treatment Work (POTW).

P 87-116

Manufacturer. Amspec Chemical Corporation.

Chemical. (G) Trialkanolamine zirconate.

Use/Production. (G) Crosslinker. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal.

Environmental Release/Disposal. No data submitted.

P 87-117

Manufacturer. Chattem Incorporated.

Chemical. (G) Modified trioxyaluminum alkaneate.

Use/Production. (S) Industrial gelling agent for printing ink vehicles. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 4 workers, up to 1 hr/day, up to 5 days/yr.

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Environmental Release/Disposal. Confidential. Disposal by POTW.

P 87-118

Manufacturer. Confidential.

Chemical. (G) Saturated polyester resin.

Use/Production. (G) General metals coil coating polyester. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. No release.

P 87-119

Importer. Confidential.

Chemical. (G) Sulfophenyl azo naphthyl dye.

Use/Import. (S) Industrial colorant for paper. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: Dermal.

Environmental Release/Disposal. No data submitted.

P 87-120

Importer. Confidential.

Chemical. (G) Sulfo substituted phenyl azo naphthyl dye.

Use/Import. (S) Industrial colorant for paper. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing, dermal.

Environmental Release/Disposal. No data submitted.

P 87-121

Manufacturer. NL Industries, Incorporated.

Chemical. (G) Polyamide resin.

Use/Production. (G) Open, non-dispersive manner. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. No data submitted.

P 87-122

Manufacturer. NL Industries, Incorporated.

Chemical. (G) Polyamide resin.

Use/Production. (G) Open, non-dispersive manner. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. No data submitted.

P 87-123

Manufacturer. Confidential.

Chemical. (G) Polyether modified carbodiimide.

Use/Production. (G) Cross linking agent for carboxylated polymers. Prod. range: Confidential.

Toxicity Data. No data on PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 87-124

Manufacturer. Bedoukian Research, Inc.

Chemical. (S) Bicyclo[2.2.1]heptane-2-methanol, 5,6-dimethyl-(1-methylethenyl).

Use/Production. (S) Industrial fragrance, soap, and detergent component. Prod. range: 1,000 to 1,500 kg/yr.

Toxicity Data. No data on PMN substance submitted.

Exposure. Manufacture: Dermal, a total 10 workers, up to .5 hr/day, up to 20 days/yr.

Environmental Release/Disposal. Minimal release to air.

P 87-125

Manufacturer. Bedoukian Research, Inc.

Chemical. (S) Bicyclo[2.2.1]heptane-2-methanol, 5,6-dimethyl-(1-methylethenyl) acetate.

Use/Production. (S) Industrial fragrance, soap, and detergent component. Prod. range: 1,000 to 1,500 kg/yr.

Toxicity Data. No data on PMN substance submitted.

Exposure. Manufacture: Dermal, a total 10 workers, up to .5 hr/day, up to 20 days/yr.

Environmental Release/Disposal. Minimal release to air.

P 87-126

Importer. Confidential.

Chemical. (G) Methyl-methyleneimidazole derivative of copper phthalocyanine, compound with substituted propionic acid.

Use/Import. (S) Industrial colorant. Import range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 87-127

Importer. Confidential.

Chemical. (G) Sodium salt of a [(substituted heteromonocyclicamino-sulfophenyl) azo]-[(substituted dissulfocarbomonocyclyl) azo]-substituted carbopolycyclicpolysulfonic acid.

Use/Import. (S) Industrial colorant. Import range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Ames test: Non-mutagenic.

Exposure. Confidential.

Environmental Release/Disposal. No data submitted.

P 87-128

Manufacturer. Confidential.

Chemical. (G) Polymer of styrene with mixed alkyl acrylates and methacrylates.

Use/Production. (S) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: Dermal, a total of 5 workers, up to 1 hr/day, up to 30 days/yr.

Environmental Release/Disposal. 1 to 10 kg/batch release to land. Disposal at a class A dumpsite.

P 87-129

Manufacture. Confidential.

Chemical. (S) Amines C_{12-14}-tert alkyl, ethoxylated, compound with dodecylbenzenesulfonic acid.

Use/Production. (G) Surfactant. Prod range: 9,800 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 6 workers, up to 4 hrs/day, up to 8 days/yr.

Environmental Release/Disposal. 0.2 to 50 kg/batch released to water. Disposal by POTW.

P 87-130

Manufacture. Confidential.

Chemical. (S) Amines, C_{12-14}-tert alkyl, ethoxylated, compound with isooctadecanoic acid.

Use/Production. (G) Industrial surfactant. Prod. range: 3,900 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 6 workers, up to 4 hrs/days, up to 8 days/yr.

Environmental Release/Disposal. 0.2 to 50 kg/batch released to water. Disposal by POTW.

P 87-131

Importer. Confidential.

Chemical. (G) Disubstituted anthraquinone.

Use/Production. (S) Industrial colorant for polymer. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: Dermal and inhalation.

Environmental Release/Disposal. No data submitted.

P 87-132

Importer. Confidential.

Chemical. (G) o-Acetoacetanisidide, nitrophenylazo substituted.

Use/Import. (G) Colorant for paints and inks. Import range: Confidential.

Toxicity Data. Acute oral: > 10,000 mg/kg; Irritation: Skin—Slight; Eye—Slight, Ames test: Non-mutagenic.

Exposure. Confidential.
Environmental Release/Disposal. No data submitted.

P 87–133

Manufacturer. Confidential.
Chemical. (G) Sulfurized hydrocarbon/acid.
Use/Production. (G) Industrial lubricant additive. Prod. range: 50,000 to 200,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

P 87–134

Importer. Dynamit Nobel Chemicals.
Chemical. (G) Reaction product of an alkyl dicarboxylic acid/alkane diols, polyester with an acrylate prepolymer.
Use/Import. (S) Industrial radiation curable adhesive resins. Import range: 5,000 to 50,000 kg/yr.
Toxicity Data. > 2,000 mg/kg; Acute dermal: Mild; Skin sensitization: Moderate sensitizer.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 87–135

Importer. Dynamit Nobel Chemicals.
Chemical. (G) Reaction product of alkyl and aryl dicarboxylic acids/alkane polyols polyester with an acrylate prepolymer.
Use/Import. (S) Industrial radiation curable adhesive resins. Import range: 5,000 to 50,000 kg/yr.
Toxicity Data. Acute oral: > 2,000 mg/kg; Acute dermal: Mild Skin sensitization: Extreme sensitizer.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 87–136

Importer. Dynamit Nobel Chemicals.
Chemical. (G) Reaction product of alkyl carboxylic acids/alkane polyols polyester with an acrylate prepolymer.
Use/Import. (S) Industrial radiation curable adhesive resins. Import range: 5,000 to 50,000 kg/yr.
Toxicity Data. Acute oral: > 2,000 mg/kg; Acute dermal: Mild Skin sensitization: Strong sensitizer.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 87–137

Importer. Dynamit Nobel Chemicals.
Chemical. (G) Reaction product of aryl and alkyl dicarboxylics/alkane diol/ester polyester with an acrylate prepolymer.
Use/Import. (S) Industrial radiation curable adhesive resins. Import range: 5,000 to 50,000 kg/yr.
Toxicity Data. Acute oral: > 2,000 mg/kg; Acute dermal: Mild; Skin sensitization: Strong sensitizer.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 87–138

Importer. Dynamit Nobel Chemicals.
Chemical. Reaction product of alkyl and aryl dicarboxylics/alkane diol/ester polyester with an acrylate prepolymer.
Use/Import. (S) Industrial radiation curable adhesive resins. Import range: 5,000 to 50,000 kg/yr.
Toxicity Data. Acute oral: > 2,000 mg/kg; Acute dermal: Mild; Skin sensitization: Strong sensitizer.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 87–139

Importer. Dynamit Nobel Chemicals.
Chemical. (G) Reaction product of aryl and alkyl dicarboxylics/alkane polyols/ester polyester with an acrylate prepolymer.
Use/Import. (S) Industrial radiation curable adhesive resins. Import range: 5,000 to 50,000 kg/yr.
Toxicity Data. Acute oral: > 2,000 mg/kg; Acute dermal: Mild; Skin sensitization: Strong sensitizer.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 87–140

Manufacturer. Alkaril Chemicals, Inc.
Chemical. (G) N,N,-Bis(substituted imidazolino) alkyl stearamide.
Use/Production. (G) Isolatable intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 87–141

Manufacturer. The Upjohn Co.
Chemical. (G) Aminohydroxy substituted benzenesulfonamide.
Use/Production. (G) Contained use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 2 workers, up to 2 hrs/day, up to 25 days/yr.
Environmental Release/Disposal. Less than 0.1 kg/batch released to air. Disposal by incineration.

P 87–142

Manufacturer. The Upjohn Co.
Chemical. (G) Hydroxyamino substituted benzene sulfonamide.
Use/Production. (G) Contained use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 2 workers, up to 2 hrs/day, up to 25 days/yr.
Environmental Release/Disposal. Less than 0.1 kg/batch released to air. Disposal by incineration.

P 87–143

Manufacturer. The Upjohn Co.
Chemical. (G) Hydroxyamino substituted benzenesulfonic acid.
Use/Production. (G) Contained use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 2 workers, up to 2 hrs/day, up to 25 days/yr.
Environmental Release/Disposal. Less than 0.1 kg/batch released to air. Disposal by incineration.

P 87–144

Manufacturer. The Upjohn Co.
Chemical. (G) Hydroxyamino substituted benzenesulfonyl chloride.
Use/Production. (G) Contained use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 2 workers, up to 2 hrs/day, up to 25 days/yr.
Environmental Release/Disposal. Less than 0.1 kg/batch released to air. Disposal by incineration.

P 87–145

Manufacturer. Confidential.
Chemical. (S) 3,4-Dihydro-3-methyl-2H-1, 4-benzoxazine.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 2 persons/shift, up to 2 hrs/day, 180 days/yr.
Environmental Release/Disposal. Trace per/batch released to air. Disposal by incineration.

P 87–146

Manufacturer. Confidential.
Chemical. (S) 1-(2-Nitrophenoxy)-2-propanone.
Use/Production. (S) Site limited intermediate in the production of another chemical intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 5 persons/shift, up to 8 hrs/day, 180 days/yr.
Environmental Release/Disposal. Less than 0.5 kg/batch released to land. Disposal by approved landfill.

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P 87–147

Manufacturer. The Goodyear Tire and Rubber Co.

Chemical. (S) 2-(2-Hydroxy-3-tert-butyl-5-methylbenzyl)-4-methyl-6-tert-butylphenyl methacrylate.

Use/Production. (S) Industrial polymer stabilizer, polymerizable monomer. Prod. range: 45,400 to 226,800 kg/yr.

Toxicity Data. Acute oral > 5,000 mg/kg; Irritation: Skin - Non-irritant; Eye - Slight to moderate; Ames test: Non-mutagenic.

Exposure. Manufacture: Dermal, a total of 12 workers, up to 12 hrs/day, up to 150 days/yr.

Environmental Release/Disposal. Minimal release to air and water. Disposal by biological treatment system and incineration.

Dated: November 3, 1986.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 86–25505 Filed 11–10–86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

November 4, 1986.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Doris Benz, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB No.: 3060–0046
Title: Application for New or Modified Common Carrier Radio Station Authorization Under Part 22
Form No.: FCC 401
Action: Revision
Estimated Annual Burden: 99,700 Responses; 797,600 Hours.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–25451 Filed 11–10–86; 8:45 am]

BILLING CODE 6712-01-M

John T. Galanses et al.; Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and State	File No.	MM Docket No.
A. John T. Galanses & Betsy Ann Abrue Vasquez De Lopez, d/b/a Charleston County Wireless Co.; Folly Beach, SC.	BPH-840816ID	86–396
B. Charleston Communications; Folly Beach, SC.	BPH-841029IA	
C.J. Allen Washington; Folly Beach, SC.	BPH-841030IW	
D. Levi E. Willis, II; Folly Beach, SC.	BPH-841031IB	
E. Folly Beach Communications, Inc.; Folly Beach, SC.	BPH-841031IC	
F. Joanne Brehm; Folly Beach, SC.	BPH-841031IE	
G. Ogden Broadcasting of South Carolina, Inc.; Folly Beach, SC.	BPH-841031IF	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. City Coverage–FM, D, F
2. Air Hazard, F
3. Comparative, A,B,C,D,E,F,G
4. Ultimate, A,B,C,D,E,F,G

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 86–25454 Filed 11–10–86; 8:45 am]

BILLING CODE 6712-01-M

Ed Ver Schure Communications; Applications for Consolidated Proceeding

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and State	File No.	MM Docket No.
A. Ed Ver Schure Communications, Inc.; Saugatuck, MI.	BPH-841120MB	86–406
B. James J. McCluskey; Saugatuck, MI.	BPH-850118MA	
C. James Phillips and Colleen Phillips; Saugatuck, MI.	BPH-850124MF	
D. Dunes Broadcasting, Inc.; Saugatuck, MI.	BPH-850228MH([1])	

[1] Dismissed.

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, B
2. Comparative, A,B,C
3. Ultimate, A,B,C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 203), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW.,

Washington, DC 20037 (Telephone No. (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 86-25455 Filed 11-10-86; 8:45 am]

BILLING CODE 6712-01-M

United Video Inc., et al.; Proceedings Terminated

In the Matter of:

United Video Inc., Revised Rates for Microwave Service; Tariff F.C.C. No. 4. Transmittal Nos. 44 and 45—Docket No. 20198.

Western Tele-Communications, Inc., Revised Rates for Microwave Service to Broadcast and Cable Television Customers in Wyoming, Idaho and Montana; Tariff F.C.C. No. 3, Transmittal No. 38—Docket No. 20493

American Television and Communications Corporation, Revisions to Tariff F.C.C. No. 2, Transmittal No. 17—Docket No. 21047

United WEHCO, Inc., Revised for Microwave Service, Tariff F.C.C. No. 1, Transmittal No. 14—Docket No. 21145

American Television Relay, Inc., Tariff F.C.C. No. 8, Transmittal No. 78—CC Docket No. 78-24

Western Union Telegraph Co., Tariff F.C.C. Nos. 254 and 261, Transmittal Nos. 6986 and 6992—Docket No. 20098

RCA Global Communications, Inc., Tariff F.C.C. Nos. 93 and 94, Transmittal Nos. 3922, 3955, and 3965

RCA Alaska Communications, Inc., Tariff F.C.C. No. 1, Transmittal No. 54

RCA American Communications, Inc., Revisions to Tariff F.C.C. No. 1 Fixed Term Transponder Service, Transmittal No. 61—CC Docket No. 78-68

American Satellite Corporation, Revisions to Tariff F.C.C. No. 1, Transmittal No. 45—CC Docket No. 78-70

To Western Union Telegraph Co., Revisions to Tariff F.C.C. No. 261, Pertaining to Video Channel Service, Transmittal No. 7314—CC Docket No. 78-99

RCA American Communications, Inc., Revisions to Tariff F.C.C. No. 1, Transmittal Nos. 78, 80 and 83

Order

Proceedings Terminated

Adopted: October 7, 1986.
Released: October 16, 1986.

By the Commission:

1. The captioned dockets, opened between 1974 and 1978, were established to investigate various other common carrier (OCC) tariff filings. Several of these dockets involve population or subscriber sensitive rate structures for microwave transmission of television signals to cable television systems. The remaining dockets deal with revisions to tariffs for domestic satellite services. Each of the captioned dockets was dererred pending the development of policies in the *Competitive Carrier* rulemaking.[1] We have determined that no further action is required in these dockets.

2. Accordingly, IT IS ORDERED that Docket No. 20198, Docket No. 20493, Docket No. 21047, Docket No. 21145, CC Docket No. 78-24, Docket No. 20098, CC Dockect No. 78-68, CC Dockect No. 78-70, and CC Docket No. 78-99 ARE TERMINATED.

Federal Communications Commission

William J. Tricarico,

Secretary.

[FR Doc. 86-25456 Filed 11-10-86; 8:45 am]

BILLING CODE 6712-01-M

[Gen. Docket No. 86-336]

Scrambling of Satellite Television Signals

AGENCY: Federal Communications Commission.

ACTION: *Notice of Inquiry;* extension of deadline for reply comments.

SUMMARY: Acting under delegated authority, the Chief, Office of Plans and Policy has issued an *Order* extending the reply comment deadline for the *Notice of Inquiry* in General Docket No. 86-336. 51 F.R. 30267 (August 25, 1986). This action is in response to an extension request from the National Cable Television Association.

DATE: Reply comment deadline extended to November 10, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554

FOR FURTHER INFORMATION CONTACT: Jonathan D. Levy, Office of Plans and Policy, (202) 653-5940.

Federal Communications Commission.

Peter K. Pitsch,

Chief, Office of Plans and Policy.

[FR Doc. 86-25450 Filed 11-10-86; 8:45 am]

BILLING CODE 6712-01-M

ITU World Administrative Radio Conference Advisory Committee; Meeting

November 4, 1986.

Advisory Committee for the ITU World Administrative Radio Conference on the Use of the Geostationary Satellite Orbit and the Planning of the Space Services Utilizing It (Space WARC Advisory Committee), working group meeting.

Working Group C: Other Bands—Services

Chairman: S.E. Probst (703) 471-2245

Vice Chairman: David Long (703) 790-7701

Date: Monday, November 24, 1986

Time: 9:30 a.m.

Location: Federal Communications Commission, 1919 M Street NW., Room 535, Washington, DC 20554

Agenda: (1) Review progress to date; (2) Additional work assignments.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-25452 Filed 11-10-86; 8:45 am]

BILLING CODE 6712-01-M

Travel Reimbursement Authority; Publishing of Report

AGENCY: Federal Communications Commission.

ACTION: Publishing of report on travel reimbursement authority.

SUMMARY: In Pub. L. 97-259, the Congress authorized the Federal Communications Commission to accept reimbursement from non-government organizations for travel of employees of the Commission. The Federal Communications Commission must keep records of such travel by each event and prepare a report of all reimbursements allowed and provide copies of each report to the Senate Committee on Appropriations, House Committee on Appropriations, Senate Committee on Commerce, Science and Transportation, and the House Committee on Energy and Commerce. This must be done until September 30, 1987. In addition, the Federal Communications Commission must publish each report in the Federal Register until September 30, 1987.

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[1] *See* Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, CC Docket No. 79,252, Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979); First Report and Order, 85 FCC 2d 1 (1980); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981); Second Report and Order, 91 FCC 2d 59 (1982), recon. denied, 93 FCC 2d 54 (1983); Further Notice of Proposed Rulemaking, 47 Fed. Reg. 17308 (1982), Third Further Notice of Proposed Rulemaking, 48 Fed. Reg. 28292 (1983); Third Report and Order, 48 Fed Reg. 46791 (1983); Fourth Report and Order, 95 FCC 23 554 (1983), Fourth Further Notice of Proposed Rulemaking, 49 Fed Reg. 11856 (1984); Fifth Report and Order, 98 FCC 2d 1191 (1984); Sixth Report and Order, 99 FCC 2d 1020, (1985); vacated and remanded, MCI Telecommunications Corp. v. FCC, 765 F.2d 1186 (D.C. Cir 1985). The captioned dockets were deferred in the following orders; United Video, Inc., 49 FCC 2d 878 (1974); Western Telecommunications, Inc., 55 FCC 2d 203 (1976); American Television and Communications Corporation, 62 FCC 2d 171 (1976); United WEHCO, Inc., 63 FCC 2d 741 (1977); American Television Relay, 67 FCC 2d 527 (1978), and RCA American Communications, Inc. 69 FCC 2d 426 (1978).

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DATE: This report is for the period from July 1, 1986 through September 30, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Geoffrey Sherman, Office of the Managing Director, (202) 632-6900.

SUPPLEMENTARY INFORMATION: The report for the period July 1, 1986 through September 30, 1986 is as follows:

Federal Communications Commission.

William J. Tricarico,

Secretary

Federal Communications Commission Travel Reimbursement Program, July 1, 1986–September 30, 1986

Summary Report

Total Number of Sponsored Events: 23.

Total Number of Sponsoring Organizations: 22.

Total Number of Commissioners/Employees Attending: 26.

Total Amount of Reimbursement Expected:

Transportation	$5,398.79
Subsistence	4,091.05
Other Expenses	695.18
Total	10,185.02

Individual Event Reports Attached.

Sponsoring Organization: National Association of Broadcasters, 1771 N Street NW., Washington, DC 20036.

Date of the Event: September 10–12, 1986.

Description of the Event: To participate in "Radio 86" sponsored by the National Association of Broadcasters in New Orleans, LA.

Commissioners Attending: Commissioner Patricia Dennis.

Other Employees Attending: James McKinney, Chief, Mass Media Bureau; Robert Cleveland, Physical Scientist, Office of Engineering & Technology.

Amount of Reimbursement:

Transportation	$662.00
Subsistence	807.50
Other Expenses	64.00
Total	1,533.50

Sponsoring Organization: The American Radio Relay League, Inc., Administrative Headquarters, Newington, CT 06111.

Date of the Event: September 5–7, 1986.

Description of the Event: Present FCC forum at the American Radio Relay League National Convention in San Diego, CA.

Commissioners Attending: N/A.

Other Employees Attending: Raymond Kowalski, Supervisory Attorney-Adviser, Private Radio Bureau; Michael Fitch, Deputy Chief, Private Radio Bureau.

Amount of Reimbursement:

Transportation	$474.00
Subsistence	490.12
Other Expenses	66.27
Total	1,030.39

Sponsoring Organization: Southern New England Telephone, 227 Church Street, New Haven, CT 06506.

Date of the Event: July 17, 1986.

Description of the Event: To conduct a one-day training session on Part 61, FCC rules for filing tariff in New Haven, CT.

Commissioners Attending: N/A.

Other Employees Attending: Kathie Kneff, Public Utilities Specialist, Common Carrier Bureau.

Amount of Reimbursement:

Transportation	$180.00
Subsistence	75.53
Other Expenses	28.94
Total	284.47

Sponsoring Organization: Maryland-Delaware Cable TV Association, Inc., Suite 1106, The Belvedere, Baltimore, MD 21202.

Date of the Event: July 10, 1986.

Description of the Event: To speak at seminar sponsored by the Delaware, Maryland, D.C. Cable TV Association in Baltimore, MD.

Commissioners Attending: N/A.

Other Employees Attending: Emily Williams, General Attorney, Common Carrier Bureau; Bertram Weintraub, General Attorney, Common Carrier Bureau.

Amount of Reimbursement:

Transportation	$33.00
Subsistence	0
Other Expenses	3.00
Total	36.00

Sponsoring Organization: Heron, Burchette, Ruckert & Rothwell, 1025 Thomas Jefferson Street NW., Washington, DC 20007.

Date of the Event: September 13–16, 1986.

Description of the Event: To attend the IEEE Symposium and participate in a panel discussion on FCC Rules for equipment authorization and computing devices in San Diego, CA.

Commissioners Attending: N/A.

Other Employees Attending: Art Wall, Supervisory Electronics Engineer, Office of Engineering & Technology.

Amount of Reimbursement:

Transportation	0
Subsistence	$334.12
Other Expenses	0
Total	334.12

Sponsoring Organization: National Association of Regulatory Utility Commissioners, P.O. Box 684, Washington, DC 20444-0684.

Date of the Event: July 29, 1986.

Description of the Event: Participate in the NARUC Tech II Program in San Diego, CA.

Commissioners Attending: N/A.

Other Employees Attending: Susan O'Connell, Attorney-Advisor, Common Carrier Bureau.

Amount of Reimbursement:

Transportation	$446.00
Subsistence	67.00
Other Expenses	34.40
Total	547.40

Sponsoring Organization: California Broadcasters Association, 1127 11th Street, Suite 730, Sacramento, CA 95814.

Date of the Event: July 28–29, 1986.

Description of the Event: To address the summer convention of the California Broadcasters Association in Monterey, CA.

Commissioners Attending: Commissioner Dennis Patrick.

Other Employees Attending: N/A.

Amount of Reimbursement:

Transportation	$259.50
Subsistence	80.76
Other Expenses	49.19
Total	389.45

Sponsoring Organization: Rocky Mountain Telecommunications Association, P.O. Box 694, 1603 Capitol, Cheyenne, WY 82001.

Date of the Event: September 10, 1986.

Description of the Event: To attend the annual convention of the Rocky Mountain Telecommunications Association, Inc. in Colorado Springs, CO.

Commissioners Attending: N/A.

Other Employees Attending: Carl Lawson, Deputy Bureau Chief—Policy, Common Carrier Bureau.

Amount of Reimbursement:

Transportation	$274.00
Subsistence	136.00

Other Expenses	17.42
Total	427.42

Sponsoring Organization: Chadbourne & Parke, 1101 Vermont Avenue NW., Washington, DC 20005.

Date of the Event: September 19, 1986.

Description of the Event: To participate in the International Bar Association's annual conference in New York, NY.

Commissioners Attending: N/A.

Other Employees Attending: Jack Smith, General Counsel.

Amount of Reimbursement:	
Transportation	$110.00
Subsistence	0
Other Expenses	40.50
Total	150.50

Sponsoring Organization: AT&T, 1120 20th Street NW., Suite 1000, Washington, DC 20036.

Date of the Event: July 29, 1986.

Description of the Event: To speak at AT&T's Marketing Services Conference in Newark, NJ.

Commissioners Attending: N/A.

Other Employees Attending: Peter Pitsch, Chief, Office of Plans and Policy.

Amount of Reimbursement:	
Transportation	$110.00
Subsistence	16.50
Other Expenses	9.96
Total	136.46

Sponsoring Organization: Cincinnati Bell Telephone, 201 E. Fourth St., P.O. Box 2301, Cincinnati, OH 45201.

Date of the Event: September 5, 1986.

Description of the Event: To conduct a one-day training session on Part 61, FCC rules for filing tariffs in Cincinnati, OH.

Commissioners Attending: N/A.

Other Employees Attending: Kathie Kneff, Public Utilities Specialist, Common Carrier Bureau.

Amount of Reimbursement:	
Transportation	$282.00
Subsistence	74.50
Other Expenses	10.90
Total	367.40

Sponsoring Organization: Mr. Peter Huber, P.C., 103 8th Street, NW., Washington, DC 20032.

Date of the Event: September 8–10, 1986.

Description of the Event: To discuss and observe an electronic mail system in San Francisco, CA.

Commissioners Attending: N/A.

Other Employees Attending: Florence Setzer, Industry Economist, Office of Plans & Policy.

Amount of Reimbursement:	
Transportation	$356.00
Subsistence	187.00
Other Expenses	29.96
Total	572.96

Sponsoring Organization: United States Telephone Association, 900 19th Street NW., Suite 800, Washington, DC 20006–2102.

Date of the Event: September 8–11, 1986.

Description of the Event: To participate in the United States Telephone Association's Public Relations Seminar and to give a presentation on "Deregulating the Telephone Industry" in Williamsburg, VA.

Commissioners Attending: N/A.

Other Employees Attending: Stephen Goodman, Supervisory Attorney-Adviser, Common Carrier Bureau.

Amount of Reimbursement:	
Transportation	$67.24
Subsistence	83.00
Other Expenses	0
Total	150.24

Sponsoring Organization: Ohio Telephone Association, 150 East Broad Street, Columbus, Ohio 43215.

Date of the Event: September 16, 1986.

Description of the Event: To address the Ohio Telephone Association's Convention in Huron, OH.

Commissioners Attending: N/A.

Other Employees Attending: Dan Grosh, General Attorney, Common Carrier Bureau.

Amount of Reimbursement:	
Transportation	$138.00
Subsistence	100.00
Other Expenses	100.00
Total	338.00

Sponsoring Organization: Taft Broadcasting Company, 1906 Highland Avenue, Columbus, Ohio 45219.

Date of the Event: September 25–28, 1986.

Description of the Event: To participate and attend the Taft Broadcasting Management Conference in Aspen, CO.

Commissioners Attending: Commissioner James Quello.

Other Employees Attending: N/A.

Amount of Reimbursement:	
Transportation	$419.00
Subsistence	392.00
Other Expenses	20.00
Total	831.00

Sponsoring Organization: United States Telephone Association, 900 19th Street NW., Suite 800, Washington, DC 20006–2102.

Date of the Event: September 30, 1986.

Description of the Event: To appear as a speaker on the topic of "Joint and Common Costs" for the Affiliated Interests Witness Committee Seminar in Williamsburg, VA.

Commissioners Attending: N/A.

Other Employees Attending: Kenneth Moran, Supervisory Electronics Engineer, Common Carrier Bureau.

Amount of Reimbursement:	
Transportation	$77.90
Subsistence	12.50
Other Expenses	0
Total	90.40

Sponsoring Organization: Dun & Bradstreet Corporation, One Diamond Hill Road, Murray Hill, NJ 07974–0027.

Date of the Event: September 22, 1986.

Description of the Event: To speak at the Dun & Bradstreet "Telecommunications Users Group Conference" in White Haven, PA.

Commissioners Attending: N/A.

Other Employees Attending: Gerald Vaughan, Deputy Bureau Chief-Operations, Common Carrier Bureau.

Amount of Reimbursement:	
Transportation	$108.65
Subsistence	25.00
Other Expenses	0
Total	133.65

Sponsoring Organization: Bell Atlantic, 1133 Twentieth Street, NW., Suite 810, Washington, DC 20036.

Date of the Event: September 29, 1986.

Description of the Event: To attend Bell Atlantic's Legal Conference in Greenbriar, WVA.

Commissioners Attending: N/A.

Other Employees Attending: Thomas Sugrue, Chief, Policy & Program Planning Division, Common Carrier Bureau.

Amount of Reimbursement:	
Transportation	$268.00
Subsistence	50.00
Other Expenses	30.00
Total	348.00

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Sponsoring Organization: Ameritech Services, 1900 East Golf Road, Schaumburg, IL 60195.

Date of the Event: September 15–16, 1986.

Description of the Event: To address the Ameritech-Carrier Conference in Traverse City, MI.

Commissioners Attending: N/A.

Other Employees Attending: Jerald Fritz, Chief of Staff, Office of the Chairman.

Amount of Reimbursement:	
Transportation	$338.00
Subsistence	97.50
Other Expenses	0
Total	435.50

Sponsoring Organization: Michigan Association of Broadcasters, 1020 Long Blvd., Suite 12, Lansing, MI 48910.

Date of the Event: August 20–23, 1986.

Description of the Event: Participate in the Michigan Association of Broadcasters' convention in Traverse City, MI.

Commissioners Attending: Commissioner James Quello.

Other Employees Attending: N/A.

Amount of Reimbursement:	
Transportation	$398.00
Subsistence	195.00
Other Expenses	150.00
Total	743.00

Sponsoring Organization: Alaska Broadcasters Association, P.O. Box 102424, Anchorage, AK 99510.

Date of the Event: August 17–21, 1986.

Description of the Event: Participate in the Alaska Association of Broadcasters' annual convention in Anchorage, AK.

Commissioners Attending: Commissioner James Quello.

Other Employees Attending: N/A.

Amount of Reimbursement:	
Transportation	0
Subsistence	$466.56
Other Expenses	0
Total	466.56

Sponsoring Organization: Telocator Network of America, 2000 M. Street NW., Suite 230, Washington, DC 20036.

Date of the Event: September 9–12, 1986.

Description of the Event: To attend the 38th annual convention of Telocator Newtwork of America in Atlanta, GA.

Commissioners Attending: N/A.

Other Employees Attending: Kevin Kelley, Supervisory Attorney Advisor, Common Carrier Bureau.

Amount of Reimbursement:	
Transportation	$138.00
Subsistence	261.00
Other Expenses	25.15
Total	424.15

Sponsoring Organization: California Cable TV Association, 4341 Piedmont Avenue, P.O. Box 11080, Oakland, CA 94611.

Date of the Event: July 28–30, 1986.

Description of the Event: To address the Board of Directors meeting of the California Cable TV Association in Lake Tahoe, California.

Commissioners Attending: Commissioner Dennis Patrick.

Other Employees Attending: N/A.

Amount of Reimbursement:	
Transportation	$259.50
Subsistence	139.46
Other Expenses	15.49
Total	414.45

[FR Doc. 86–25453 Filed 11–10–86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010676–018.

Title: Mediterranean/U.S.A. Freight Conference.

Parties:

Achille Lauro
C.I.A. Venezolana de Navegacion
Compania Trasatlantica Espanola, S.A.
Costa Line
Farrell Lines, Inc.
"Italia" de Navigazione, S.p.A.
Jugolinija
Jugooceanija
Lykes Lines
Nedlloyd Lines
Sea-land Service, Inc.
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would reduce the notification period required for independent action from 10 calendar days to 48 hours, excluding Saturdays, Sundays and holidays, for rate or service items or freight forwarder compensation pertaining to the conference's Italian range only until December 31, 1986. The parties have requested a shortened review period.

By order of the Federal Maritime Commission.

Dated: November 6, 1986.

Joseph C. Polking,

Secretary.

[FR Doc. 86–25484 Filed 11–10–86; 8:45 am]

BILLING CODE 6730-01-M

Tampa Port Authority Terminal Agreements; Erratum

The **Federal Register** Notice of October 6, 1986 (Vol. 51, No. 193, page 35560) stated that Agreements No. 224–002810–004, 024–003079–008, 024–003079–009, 224–011007, 224–011008, 224–011009, 224–011010, 224–011011, 224–011012 and 024–011013 were filed pursuant to section 5 of the Shipping Act of 1984. The notice should have stated that they were also filed pursuant to section 15 of the Shipping Act, 1916.

Interested parties may inspect and may request a copy of each agreement and supporting statement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit protests and comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 20 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Filing Party: H.E. Welch, Director of Traffic, Tampa Port Authority, Post

Office Box 2192, 811 Wynkoop Road, Tampa, Florida 33601.

By Order of the Federal Maritime Commission.

Dated: November 5, 1986.

Joseph C. Polking,

Secretary.

[FR Doc. 86-25486 Filed 11-10-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Citizens Financial Group, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 1, 1986.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Citizens Financial Group, Inc.*, New Haven, Missouri; to acquire Gerding Insurance Agency, New Haven, Missouri, and thereby engage in selling and servicing multi-line life and casualty insurance products in a community with a population of less than 5,000 pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in the State of Missouri.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First United Bancshares, Inc.*, Ord, Nebraska; to acquire the assets of Ord Insurance Agency, Ord, Nebraska, and Wolbach Insurance Agency, Wolbach, Nebraska, and indirect control of Grant Insurance Agency, Grant, Nebraska, and thereby engage in general insurance agency activities in Ord, Wolbach, and Grant, Nebraska, all towns of fewer than 5,000 inhabitants, pursuant to exemption C of the Garn-St Germain Act, 12 U.S.C. 1843(c)(8)(C), and § 225.25(b)(8)(iii) of the Board's Regulation Y, 12 CFR 225.25(b)(8)(iii). Comments on this application must be received by November 24, 1986.

Board of Governors of the Federal Reserve System, November 5, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-25437 Filed 11-10-86; 8:45 am]

BILLING CODE 6210-01-M

Mountaineer Bankshares of West Virginia, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments legarding each of these applications.must be received not later than December 1, 1986.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Mountaineer Bankshares of West Virginia, Inc.*, Martinsburg, West Virginia; to acquire 100 percent of the voting shares of The Bank of Wadestown, Fairview, West Virginia.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Citizens Southern Bancshares, Inc.*, Vernon, Alabama; to become a bank holding company by acquiring 80 percent of the voting shares of Citizens State Bank, Vernon, Alabama.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Old National Bancorp*, Evansville, Indiana; to merge with GCB Bancorp, Princeton, Indiana, and thereby indirectly acquire Gibson County Bank, Princeton, Indiana.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Financial Bancshares, Inc.*, Topeka, Kansas; to acquire Financial Diversified Investment Corporation, Topeka, Kansas, and thereby indirectly acquire First Bank of Wetmore, Wetmore, Kansas.

Bank operates a general insurance agency from its premises which are located in a community of less than 5,000. Applicant is currently a one bank holding company and its present subsidiary bank, The Kansas State Bank in Holton, Holton, Kansas, is also located in a community with a population of less than 5,000.

Board of Governors of the Federal Reserve System, November 5, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-25438 Filed 11-10-86; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notice—Acquisition of Banks or Bank Holding Companies; Calvin Poole et al.

The notificants listed in this notice have applied for the Board's approval

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under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors.

Comments regarding these notices must be received not later than November 26, 1986.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Calvin Poole*, Elisha Poole, Juanita Poole, Calvin Poole, III, and Thomas Poole, all of Greenville, Alabama; to acquire an additional 1.38 percent of the voting shares of The First National Bancorp of Greenville, Inc., Greenville, Alabama, and thereby indirectly acquire The First National Bank of Greenville, Greenville, Alabama.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Mr. Charles R. Leffler, Jr.*; to acquire an additional 25.86 percent of the voting shares of Dean Holbein & Associates, Inc., Lincoln, Nebraska, and thereby indirectly acquire The Security State Bank, Holbrook, Nebraska.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Larry Napoleon Cooper*, Shreveport, Louisiana; to acquire at least 4.99 percent of the voting shares of BankAmerica Corporation, San Francisco, California, and thereby indirectly acquire Bank of America N.T.&S.A., San Francisco, California, and Seattle First National Bank, Seattle, Washington.

Board of Governors of the Federal Reserve System, November 5, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-25436 Filed 11-10-86; 8:45 am]

BILLING CODE 6210-01-M

United Banks of Colorado, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 26, 1986.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *United Banks of Colorado, Inc.*, Denver, Colorado; to acquire 100 percent of the voting shares of IntraWest Financial Corporation, Denver, Colorado, and thereby indirectly acquire IntraWest Bank of Southglenn, N.A., Littleton, Colorado; IntraWest Bank of Aurora, N.A., Aurora, Colorado; IntraWest Bank of Boulder, N.A., Boulder, Colorado; IntraWest Bank of Colorado Springs, N.A., Colorado Springs, Colorado; IntraWest Bank of Bear Valley, N.A., Denver, Colorado; IntraWest Bank of Arapahoe, N.A., Englewood, Colorado; IntraWest Bank of Fort Collins, N.A., Fort Collins, Colorado; IntraWest Bank of Grand Junction, Grand Junction, Colorado; IntraWest Bank of Greeley, N.A., Greeley, Colorado; IntraWest Bank of Highlands Ranch, N.A., Highlands Ranch, Colorado; IntraWest Bank of Southwest Plaza, N.A., Littleton, Colorado; IntraWest Bank of Montrose, N.A. Montrose, Colorado; IntraWest Bank of Northglenn, N.A., Northglenn, Colorado; IntraWest Bank of Pueblo, N.A., Pueblo, Colorado; IntraWest Bank of Steamboat Springs, N.A., Steamboat Springs, Colorado; IntraWest Bank of Sterling, Sterling, Colorado.

In connection with this application, United Acquisition Subsidiary, Inc., Denver, Colorado, has also applied to become a bank holding company by merging with IntraWest Financial Corporation, Denver, Colorado.

In addition, Applicants will also indirectly acquire IntraWest Insurance Agency, Inc., and thereby engage in acting as agent for the sale of credit related life, accident and health insurance under § 225.25(b)(8) of the Board's Regulation Y; IntraWest Insurance Company, and thereby engage in underwriting credit-related life, accident and health insurance pursuant to § 225.25(b)(9) of the Board's Regulation Y; IntraWest Mortgage Company, and thereby engage in conducting mortgage banking activities under § 225.25(b)(1) of the Board's Regulation Y and arranging commercial real estate equity financing under § 225.25(b)(14) of the Board's Regulation Y; and IntraWest Leasing Company, and thereby engage in leasing real and personal property under § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 5, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-25439 Filed 11-10-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 85N-0547]

Allergenic Substances; Policy on Licensure of Oral Products Intended to Determine Allergies, Products Intended as Adjuncts to Allergy Skin Tests, and Materials Intended for Patch Tests of Humans

Correction

In FR Doc. 86-21338, beginning on page 33664 in the issue of Monday, September 22, 1986, make the following corrections:

1. On page 33665, in the third column, in the fourth line of the first complete paragraph, "petroleum" should read "petrolatum".

2. On page 33666, in the first column, in the first line of the second complete paragraph, insert "should be accompanied by an establishment license application" after the word "application".

BILLING CODE 1505-01-M

National Institutes of Health

National Cancer Institute; Frederick Cancer Research Facility Advisory Committee; Rescheduled Meeting

The notice of the meeting of the Frederick Cancer Research Facility Advisory Committee, November 21, 1986, published in the **Federal Register** on September 16 (51 FR 32850) is hereby amended. The FCRF Advisory Committee, November 21, will be rescheduled for December 16, 1986, due to complications of other commitments by several members of the committee. For further information, please contact Dr. Cedric W. Long, Executive Secretary, Frederick Cancer Research Facility Advisory Committee, National Cancer Institute, Frederick Cancer Research Facility, Bldg. 427, Frederick, Maryland 21701, (301-698-1108).

Dated: November 3, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-25478 Filed 11-10-86; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; President's Cancer Panel; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the President's Cancer Panel, December 15, 1986, at the University of Chicago Cancer Research Center, Chicago, Illinois 60637.

The entire meeting will be open to the public from 8:30 a.m. to adjournment. Agenda items include reports by the Chairman, President's Cancer Panel, and discussions to obtain information regarding center programs supported by the National Cancer Institute. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of Panel members, upon request.

Dr. Elliott Stonehill, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, Room 11A23, National Institutes of Health, Bethesda, Maryland 20892 (301/496-1148) will furnish substantive program information.

Dated: November 3, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-25477 Filed 11-10-86; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Notice of OMB Circular A-76 Studies and Efficiency Reviews

AGENCY: Department of the Interior.

ACTION: Notice of OMB Circular A-76 Studies and Efficiency Reviews.

SUMMARY: OMB Circular A-76 requires agencies to publish annually their schedules for conducting A-76 studies and efficiency reviews. The following supplements the Department of the Interior notice of Fiscal Year 1987 A-76 studies and efficiency reviews, which was published in the Federal Register on October 1, 1986. The Department plans to conduct A-76 studies and in-house efficiency reviews of the activities shown below. Other activities may be added to this listing and published in the **Federal Register** later.

ADDRESS: Department of the Interior, Office of Management Analysis, Room 5119, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen M. Stewart at (202) 343-6633.

SUPPLEMENTARY INFORMATION: A-76 studies and efficiency reviews are very detailed and labor intensive. The time required to complete a study or review depends on the size of the activity, its geographic location and dispersion, and its organizational and functional complexity. Invitations for bid or requests for proposal will be published in the Commerce Business Daily when the solicitation stage of an A-76 study is reached, or when contractor support is required to conduct a study or review.

Bureau contracting offices do not maintain consolidated bidders' lists.

A-76 Studies

Bureau of Reclamation

—Grand Coolee Project Office (WA), Warehousing/Stock Handling, study start, 3/1/87

Bureau of Indian Affairs

—Facilities and Quarters Operations and Maintenance (20 sites), study start, 10/20/86

Efficiency Reviews

Minerals Management Service

—Systems Administration Branch (CO), review start, 11/28/86

Richard S. Bari,

Director, Office of Management Analysis.

[FR Doc. 86-25426 Filed 11-10-86; 8:45 am]

BILLING CODE 4310-RK-M

Bureau of Land Management

Organization, Functions, and Authority Delegations; Anchorage District Office

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice; Acceptance of Mining Claim Recordation Filings, Affidavits of Annual Labor, Notices of Intent to Hold.

SUMMARY: Notice is hereby given that the Bureau of Land Management, Anchorage District Office, will no longer accept mining claim recordations, affidavits of annual labor, and notices of intent to hold. The mining claim case files currently held at the Anchorage District Office will be transferred to the Alaska State Office, 701 C Street, Anchorage, Alaska 99513.

All future recordations, affidavits of annual labor and notices of intent to hold will continue to be received at the Alaska State Office, 701 C Street, Anchorage, Alaska 99513 and the Fairbanks Support Center, 1541 Gaffney Road, Fairbanks, Alaska 99703.

This action is in accordance with the BLM Alaska's Reorganization.

EFFECTIVE DATE: Close of business December 30, 1986.

FOR FURTHER INFORMATION CONTACT: Catherine Crawford, Bureau of Land Management, 6881 Abbott Loop Road,

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Anchorage, Alaska 99507-2599, Phone (907) 267-1214.

Wayne A. Boden,

District Manager.

[FR Doc. 86-25382 Filed 11-10-86; 8:45 am]

BILLING CODE 4310-JA-M

[CA-943-07-4212-13]

Exchange of Public Lands in Lassen and Modoc Counties, CA; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: CA-12436 and CA 19657, correction of notice of realty action; exchange of public lands in Lassen and Modoc Counties, California.

SUMMARY: All references to case serial number CA-12436 in the **Federal Register** Notices of June 13, 1986 (51 FR 21632-21633) and of October 28, 1986 (51 FR 39428) are hereby changed to case serial number CA-19657. In addition, the name of the exchange proponent/private landowner is hereby changed from Lyneta Ranches to John Hancock Mutual Life Insurance Company, c/o Lyneta Ranches P.O. Box 1397, Alturas, CA 96101. This change is due to a transfer of ownership.

ADDRESS: Susanville District Manager, Bureau of Land Management, 705 Hall Street, Susanville, California 96130.

C. Rex Cleary,

District Manager.

[FR Doc. 86-25472 Filed 11-10-86; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-06-4520-12 C-12-86]

California, Filing of Plat of Survey

November 3, 1986.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

San Bernardino Meridian, San Bernardino County

T. 6 N., R 7 W.

2. This supplemental plat of section 18, Township 6 North, Range 7 West, San Bernardino Meridian, California, based upon the plat approved June 19, 1856, and the plat accepted September 3, 1926, was accepted October 3, 1986.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This supplemental plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 86-25430 Filed 11-10-86; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-07-4520-12, Group 849]

California; Filing of Plat of Survey

November, 3, 1986.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Lassen Country

T. 32 N., R. 11 E.

2. This plat representing the dependent resurvey of a portion of the subdivisional lines, and a portion of the adjusted record meanders of Eagle Lake, the survey of the subdivision of sections 22, 26, and 27, and the metes-and-bounds survey of the Leon Bly, Eagle Lake Irrigation Project Tunnel, Township 32 North, Range 11 East, Mount Diablo Meridian, California, under Group No. 849, California, was accepted September 30, 1986.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 86-25431 Filed 11-10-86; 8:45 am]

BILLING CODE 4310-40-M

[A-21218]

Notice of Realty Action Noncompetitive Sale of Public Land in La Paz County, AZ

The following described public lands have been examined and found suitable for direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 at not less than the appraised fair market value. This is a renewal of the intitial notice which was published in the **Federal Register** on Thursday, February 6, 1986, Vol. 51, No. 25, p. 4657.

Gila and Salt River Meridian

T. 7 N., R. 19 W.

Sec. 13, SW¼.

The above described land contains 160 acres more or less.

The original realty action became the final determination of the Department of the Interior and the lands will be offered for sale to La Paz County for sanitary landfill and maintenance yard purposes when all is proper.

Detailed information concerning patent reservations, as well as conditions of the sale, is available for review at the Yuma District Office, Bureau of Land Management, 3150 Winsor Avenue, Yuma, Arizona 85365.

Publication of this notice in the **Federal Register** continues to segregate the public land from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent or 270 days from the date of publication, whichever occurs first.

Dated: November 3, 1986.

J. Darwin Snell,

District Manager.

[FR Doc. 86-25429 Filed 11-10-86; 8:45 am]

BILLING CODE 4310-32-M

[NM-930-07-5101-09-FG25]

Arizona Interconnection Project—345 kV Transmission Line; Environmental Impact Statement

AGENCY: Bureau of Land Management (BLM),D Interior.

ACTION: Notice of Availability of the Draft Management Framework Plan Amendment/Environmental Impact Statement (MFPA/EIS).

SUMMARY: El Paso Electric Company has applied to the BLM for a right-of-way for a 345 kV transmission line. Pursuant to section 102(2)(c) of the National Environmental policy Act of 1969, BLM in conjunction with the U.S. Forest Service (USFS), has prepared a Draft MFPA/EIS for the proposed El Paso 345 kV, Arizona Interconnection Project, Springerville to Deming transmission line. The Draft was prepared to evaluate several alternative routes. El Paso proposes to build and operate a 210-mile long, single circuit 345 kV transmission line from the existing Springerville switchyard near Springerville, Arizona, to the Luna substation near Deming, New Mexico. Major components of the project would include the transmission line and installation of more substation equipment at the existing Luna substation.

DATE: Written comments on the Draft must be received by February 12, 1987, and must be sent to: Bureau of Land Management, Las Cruces District Office, 1800 Marquess Street, Las Cruces, New Mexico 88005.

ADDRESS: Public hearings to receive comments on the Draft MFPA/EIS and the adequacy of the impact analysis will be held at the following locations:

Public hearing locations	Date and time
Reserve Community Center, across street from high school, Reserve New Mexico 87830.	Jan. 13, 1987, 2:00.
Convention Center, 501 Macadoo Street, Truth or Consequences, New Mexico 87901.	Jan. 14, 1987, 7:00.
Public Service Company conference room, 420 Gold Street, Deming, New Mexico 88030.	Jan. 15, 1987, 7:00.

FOR FURTHER INFORMATION CONTACT: Juan Padilla, Bureau of Land Management, Las Cruces District Office, 1800 Marquess Street, Las Cruces, New Mexico 88005, (505) 525-8228 or FTS-571-8312.

Individuals wishing copies of the Draft should contact the above-named individual.

SUPPLEMENTARY INFORMATION: Public reading copies are available for review at the main public libraries in Tucson, Arizona, El Paso, Texas, and in New Mexico: Las Cruces, Socorro, Silver City, Alamogordo, Albuquerque, Deming, Truth or Consequences, Santa Fe, and at the High School Library in Reserve.

In addition, copies of the Draft MFPA/EIS may be inspected at the following locations:

Bureau of Land Management, Public Affairs, Interior Bldg., 18th and C Street, NW., Washington DC 20240
Bureau of Land Management, Las Cruces District Office, 1800 Marquess Street, Las Cruces, NM 88005
Bureau of Land Management, New Mexico State Office, Ark Plaza, Bldg. C, 2025 Pacheco Street, Santa Fe, NM 87501
Forest Service, Gila National Forest, 2610 North Silver Street, Silver City, NM 88061.

Dated: November 3, 1986.

Monte G. Jordan,

Acting State Director.

[FR Doc. 86-25427 Filed 11-10-86; 8:45 am]

BILLING CODE 4310-FB-M

[NM-57802]

Realty Action; Exchange of Mineral Values in San Juan and McKinley Counties, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action on a mineral exchange with Cerrillos Land Company.

SUMMARY: Pursuant to section 504(a) of Pub. L. 96-550 of December 19, 1980 (94 Stat. 3228) and section 206(a) of Pub. L. 94-579 of October 21, 1976 (90 Stat. 2756), the following described Federal coal interests have been determined to be suitable for disposal by exchange.

New Mexico Principal Meridian

	Acres
Township 15 North, Range 7 West: ...	
Sec. 18: Lots 1-4, E½, E½W½	650.04
Sec. 20: All	650.79
Sec. 22: Lots 1 and 5, NE¼, E½NW¼	272.51
Sec. 28: NE¼NE¼, W½NE¼, NW¼, N½SW¼	364.67
Sec. 30: Lots 1-4, E½, E½W½	647.71
Subtotal	2,585.72
Township 15 North, Range 8 West:	
Sec. 22: SE¼NE¼, S½	363.12
Sec. 24: All	652.83
Sec. 26: All	646.78
Sec. 28: E½NE¼, SE¼SW¼, SE¼	279.05
Sec. 34: N½, NE¼SE¼	362.76
Subtotal	2,304.54
Total	4,890.26

In exchange for these Federal coal interests, the United States will acquire the following described coal interests from Cerrillos Land Company.

	Acres
Township 15 North, Range 6 West:	
Sec. 19: Lots 1-4, SE¼SE¼	152.71
Sec. 29: Lots 1-8, W½E½, W½	688.66
Subtotal	841.37
Township 15 North, Range 7 West:	
Sec. 3: Lots 1-11, S½NE¼, SE¼NW¼, E½SW¼, SE¼	632.70
Sec. 9: NE¼	161.93
Sec. 11: W½	319.39
Subtotal	1,114.02
Township 16 North, Range 7 West:	
Sec. 23: S½SW¼, SW¼SE¼	121.46
Sec. 27: Lots 1-8, NE¼, NE¼NW¼,S½NW¼, N½S½	600.24
Sec. 33: E½NE¼, NE¼SE¼	118.30
Sec. 35: W½NW¼, SW¼, W½SE¼	319.24
Subtotal	1,159.24
Township 15 North, Range 8 West:	
Sec. 5: Lots 3 and 4, S½NW¼, S½	485.74
Sec. 7: Lot 1, NE¼, E½NW¼, N½SE¼, SE¼SE¼	402.97
Sec. 17: NE¼NE¼, W½NE¼, NW¼, E½SW¼, NW¼SW¼, SE¼SE¼, W½SE¼	526.07
Subtotal	1,414.78
Township 16 North, Range 8 West:	
Sec. 21: All	649.98
Sec. 29: All	643.76
Sec. 31: E½, SE¼NW¼, E½SW¼	440.30
Subtotal	1,734.04
Total	6,263.45

In addition to the above coal interests, the United States will also acquire from Cerrillos Land Company all the mineral estate they own in the following areas, situated in the Chaco Cultural National Historic Park.

Chaco Park Additions

	Acres
1. Southern Addition (02-129):	
Township 21 North, Range 11 West:	
Sec. 21: All	640.00
Sec. 22: All	640.00
Sec. 23: All	640.00
Sec. 25: All	640.00
Sec. 26: NE¼	160.00
2. Northern Addition (02-116): Township 21 North, Range 10 West: Sec. 9: All	640.00
3. Chacra Mesa:	
Township 21 North, Range 10 West (02-113):	
Sec. 33: That portion within the E½ of Sec. 33 lying north and east from the 6,400', mean sea level elevation, contour line.	135.40
Township 20 North, Range 10 West (02-106):	
Sec. 3: That portion within the northeast quarter of Sec. 3 lying northeasterly from the 6,400', mean sea level elevation, contour line.	50.20
Township 20 North, Range 10 West (02-101):	
Sec. 12: That portion within the northern ½ and southeastern ¼ of Sec. 12 which lies northeasterly from the 6,400', mean sea level elevation, contour line.	192.40
Subtotal	3,738.00

Outlying Archaeological Protection Sites

1. Toh-la-kai: Township 17 North, Range 18 West: Sec. 33: SW¼SE¼SE¼	10.00

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	Acres
2. Indian Creek: Township 20 North, Range 13 West: Sec. 7: Lot 2, SE¼NW¼, W½SW¼NE¼	98.61
3. Bee Burrow: Township 19 North, Range 11 West: Sec. 29: SW¼SE¼	40.00
4. Upper Kin Klizhin:	
Township 20 North, Range 11 West:	
Sec. 22: NE¼NE¼	40.00
Sec. 23: W½NW¼NW¼	20.00
5. Kin Nizhoni: Township 13 North, Range 9 West: Sec. 9, that portion of the E½ which lies north of the Ambrosia Lake Road right-of-way; and the easterly 360 feet of the E½W½ which lies north of the Ambrosia Lake Road right-of-way.	260.08
6. Haystack: Township 13 North, Range 10 West: Sec. 21: E½W½NE¼SE¼, E½NE¼SE¼, E½SW¼SE¼NE¼, SE¼SE¼NE¼	45.00
7. Andrews Ranch: Township 14 North, Range 11 West: Sec. 33: All	640.00
Subtotal	1,151.69
Total acreage in Chaco Park and Outliers	4,998.69

The purpose of the exchange is to consolidate the coal ownership into blocks that will promote the orderly development of coal by allowing for more logical and economical mining of both the Cerrillos and Federal coal resources. Mining costs will be reduced on both blocks of land and potential environmental impacts caused by inefficient mining practices will also be reduced.

A consolidated block is more likely to be leased than a checkerboard offering of Federal coal. In addition, it is believed that the offering of a larger consolidated block will create more interest and competition in the bidding on the tracts and thus potentially create a higher return to the United States when leased.

Enhanced recovery of the coal resource will also result from the exchange because fewer boundary pillars will be necessary. The United States will receive coal with a more favorable stripping ratio than it will relinguish. Considering the contiguous blocks of coal available and the improved stripping ratio, it is likely that the per acre bonus bids offered for the coal would be larger than for the checkerboard coal as it currently exists.

Public Law 96–550 authorized the Secretary of the Interior to acquire private interests within the boundaries of the Chaco Cultural National Historic Park and the Chaco Culture Archeological Protection Sites. The acquisition of 4,890 acres of mineral estate within the Park and Protection Sites will provide greater Federal control over mineral exploration and development on the lands involved.

A value analysis of the coal interests to be exchanged has been made. Based on this analysis, the coal the United States is receiving from Cerrillos is estimated to be worth 12 percent more than the coal that Cerrillos is receiving from the United States. Cerrillos Land Company has agreed to complete the exchange as if the 2 blocks are equal in value. In addition, Cerrillos has not requested any compensation for the mineral interests they will convey in the Chaco Park and the Outlier Protection Sites. Other benefits that will accrue to the United States as a result of the exchange included an agreement with Santa Fe Coal Company to provide services to switch coal over their existing private railroad spur for future Federal lessees if the lessees can not otherwise obtain reasonable access to alternate transportation facilities. Cerrillos has also agreed to provide drill hole data on the offered lands to the United States and will transfer existing surface owner consents for the benefit of future coal lessees.

FOR FURTHER INFORMATION CONTACT: Information pertaining to the exchange, including the environmental assessment, mineral evaluation report and land report is available for public review at the Albuquerque District Office, 435 Montano N.E., Albuquerque, New Mexico 87107.

SUPPLEMENTARY INFORMATION: The public minerals identified for disposal are located about twenty miles northeast of Grants. They were identified in the 1981 Chaco Management Framework Plan update as being in a likely surface mining area with no special multiple use consideration.

The exchange will be made subject to:

1. All valid existing rights of record.

2. The reservation to the United States of all minerals except coal in the Federal estates being transferred.

3. The reservation to the Cerrillos Land Company of all minerals except coal in the 6,263 acres of private estate being transferred in the Lee Ranch West, Middle and East Tracts.

4. This exchange is consistent with Bureau of Land Management policies and planning and has been discussed with State and local officials.

DATE: For a period of 45 days from the date of this publication, interested parties may submit comments to the Bureau of Land Management, at the above address. Comments will be evaluated by the New Mexico State Director, BLM, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this Notice of Realty Action will become the final decision of the Department of the Interior.

Dated: November 5, 1986.

L. Paul Applegate,
District Manager.

[FR Doc. 86–25489 Filed 11–10–86; 8:45 am]

BILLING CODE 4310-FB-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Alaska OCS Region; Approval of Outer Continental Shelf Official Protraction Diagrams

1. Notice is hereby given that, effective with this publication, the following revised Outer Continental Shelf Official Protraction Diagrams, approved on the dates indicated, are available at the Minerals Management Service, Alaska OCS Region, Anchorage, Alaska. In accordance with Title 30, Code of Federal Regulations, these protraction diagrams are the basic record for the description of mineral and oil and gas lease sales in the geographic area represented.

OUTER CONTINENTAL SHELF PROTRACTION DIAGRAMS

Description		Revised date
NO 1–4	Zhemchug Spur	Aug. 22, 1986.
NO 2–3	Zhemchug Gully	Do.
NO 2–4	St. Paul North	Do.
NO 2–5	St. Paul Spur	Do.
NO 2–7	St. George Canyon	Do.
NO 3–3	Cape Newenham West	Do.
NO 3–5	St. Paul East	Do.
NO 3–6	Bristol Bay North	Do.
NO 3–7	St. George East	Do.
NO 5–8	Albatross Bank	Do.
NO 6–4	Dall Seamount	Do.
NO 6–5	Kodiak Seamount	Do.
NO 6–7	Surveyor Sea Channel	Do.
NO 6–8	Ely Seamount	Do.
NN 2–2	Pribilof Canyon	Do.
NR 2–2	Tison	Do.
NR 2–4	Studds	Do.
NR 3–1	Karo	Do.
NS 6–7	Canada Basin	Do.
NS 6–8		Do.

2. Copies of these diagrams are for sale at two dollars ($2.00) per sheet by the Records Manager, Minerals Management Service, Alaska OCS

Region, 949 E. 36th Ave., Suite 510, Anchorage, Alaska 99508. Checks or money orders should be made payable to the Department of the Interior—Minerals Management Service.

Alan D. Powers,

Regional Director.

[FR Doc. 86-25473 Filed 11-10-86; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Availability of Final Environmental Impact Statement for Proposed Development and Production Plan for the Cities Service San Miguel Project (Lease OCS-P 0409)

AGENCY: U.S. Department of the Interior (DOI), Minerals Management Service (MMS), Pacific Outer Continental Shelf (OCS) Region.

ACTION: Notice of Availability for Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR).

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the Minerals Management Service, County of San Luis Obispo, California State Lands Commission, California Coastal Commission, and County of Santa Barbara have prepared a joint EIS/EIR for the proposed San Miguel Project which covers the development of OCS oil and gas resources offshore San Luis Obispo and Santa Barbara Counties, California. The EIS/EIR includes an evaluation of the potential effects of the proposed development by Cities Service for the San Miguel Project as well as anticipated future development of oil and gas resources in the Northern Santa Maria Basin area.

Single copies of the Final EIS/EIR can be obtained from San Luis Obispo County, Planning Department, County Government Center, San Luis Obispo, California 93408.

The Final EIS/EIR will be available in three volumes as specified:

Volume I—FEIS/EIR
Volume II—Appendices including Responses to Comments
Volume III—Technical Appendices.

Copies of this document will also be available for review in the following public libraries:

Minerals Management Service, Public Affairs Office, 1340 W. Sixth Street, Los Angeles, CA 90017
CA State Polytechnic Library, Government Documents & Maps, San Luis Obispo, CA 93401
San Luis Obispo City/County Library, 888 Morro Street, San Luis Obispo, CA 93401
Santa Maria Public Library, 420 Broadway Street, Santa Maria, CA 93454
Beverly Pettijohn, State Library, Government Publications, P.O. Box 2037, Sacramento, CA 95814
Santa Barbara Public Library, 40 E. Anapamu Street, Santa Barbara, CA 93101
Ventura County Library, 651 E. Main Street, Ventura, CA 93001
County of Los Angeles, Public Library, Government Publications Unit, 330 W. Temple Street, Los Angeles, CA 90012
Long Beach Public Library, Government Publications Dept., Ocean Blvd. & Pacific Avenue, Long Beach, CA 90802
Government Public Library, University of California at Santa Barbara, Santa Barbara, CA 93117
U.S. Department of the Interior, Div. of Information and Library Services, 18th and C Streets NW., Washington, DC 20240.

The technical files and air quality technical appendix may be obtained individually or as a unit at the following locations:

Minerals Management Service, Santa Maria District Office, 222 W. Carmen Lane, Suite 201, Santa Maria, CA 93454
San Luis Obispo County Courthouse, County Government Center, San Luis Obispo, CA 93408
California State Clearinghouse, 1400 Tenth Street, Room 121, Sacramento, CA 95814
San Luis Obispo City/County Library, 888 Morro Street, San Luis Obispo, CA 93401
Santa Barbara Public Library, 40 E. Anapamu Street, Santa Barbara, CA 93101.

Should further information be required contact Frank Manago at (213) 894-7098 or Mary Elaine Warhurst at (213) 894-4480.

William E. Grant,

Regional Director, Pacific OCS Region.

[FR Doc. 86-25433 Filed 11-10-86; 8:45 am]

BILLING CODE 4310-MR-M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395-7313, with copies to Norman J. Hess; Acting Chief, Rules, Orders, and Standards Branch; Offshore Rules and Operations Division; Mail Stop 646, Room 6A110; Minerals Management Service; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: Inspecting and Reporting of Progress and Results of Activities Conducted under Permits, 30 CFR 251.7

Abstract: Respondents provide the Minerals Management Service (MMS) with a status report that enables MMS to verify that permit requirements are met, estimate completion dates, and determine the quality of data acquired by persons operating under a permit for geological and geophysical exploration for mineral resources and scientific research in the Outer Continental Shelf (OCS).

Bureau Form Number: None

Frequency: Monthly and other

Description of Respondents: Federal OCS permittees

Annual Responses: 1,400

Annual Burden Hours: 36,000

Bureau Clearance Officer: Dorothy Christopher, (703) 435-6213.

Dated: October 24, 1986.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 86-25432 Filed 11-10-86; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 1, 1986. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by November 28, 1986.

Carol D. Shull,

Chief of Registration, National Register.

ALASKA

Ketchikan Borough

Ketchikan, *Ayson Hotel,* 301-305 Stedman S.

CALIFORNIA

Alameda County

Berkeley, *Church of the Good Shepherd-Episcopal,* 1001 Hearst St. at Ninth St.

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CONNECTICUT

New Haven County

North Branford, *Howd-Linsley House*, 1795 Middleton Ave.

INDIANA

Marion County

Indianapolis, *Tee Pee Restaurant*, 3820 Fall Creek Blvd.

MICHIGAN

Kent County

Grand Rapids, *Villa Maria*, 1315 Walker, NW.

Lapeer County

Imlay City, *Murphy, Richard-Walter Walker House*, 430 S. Almont Ave.

Livingston County

Howell, *Howell Downtown Historic District*, Roughly bounded by Clinton, Barnard, Sibley, and Chestnut Sts.

Wexford County

Cadillac, *Mitchell, Charles T., House*, 118 N. Shelby St.

NEBRASKA

Adams County

Hastings, *Victory Building*, Second at St. Joseph Ave.

Buffalo County

Kearney, *St. Luke's Protestant Episcopal Church*, 2304 Second Ave.

Custer County

Dowse, William R., House

Hall County

Grand Island, *Bartenbach, H. J., House*, 720 W. Division

Grand Island, *Evangelische Lutherische Dreienigkeit Kirche*, 512 E. Second St.

Keya Paha County

Springview, *Keya Paha County High School*, Off NE 12

Lancaster County

Lincoln, *Christian Record Building*, 3705 S. Forth-eighth St.

Lincoln, *Scottish Rite Temple*, 332 Centennial Mall S.

NEW HAMPSHIRE

Belkap County

Meredith, *First Free Will Baptist Church in Meredith*, Winona Rr.

Carroll County

Sandwich, *Lower Corner Historic District*, NH 109

Grafton County

Lyme, *Lyme Center Historic District*, 34–55 Dorchester Rd.

Hillsborough County

Manchester, *Harrington—Smith Block*, 18–52 Hanover St.

Manchester, *Old Post Office Block*, 54–72 Hanover St.

Strafford County

Somersworth, *Queensbury Mill*, 1 Market St.

NEW YORK

Erie County

Buffalo, *Parkside West Historic District (Olmsted Parks and Parkways TR)*, Roughly bounded by Amherst St., Nottingham Terrace, Middlesex Rd., and Delaware Ave.

NORTH CAROLINA

Rockingham County

Eden, *Central Leaksville Historic District*, Roughly bounded by Lindsay, Monroe, Jay, Washington, and Kemp Sts.

Eden, *Spray Industrial Historic District*, Roughly bounded by Warehouse, Rhode Island, River Dr.,

Washburn Rd., Smith River, E. Early Ave., and Church

Reidsville, *First Baptist Church (former)*, 401 S. Scales St.

Reidsville, *Jennings—Baker House (Reidsville MRA)*, 608 Vance St.

Reidsville, *North Washington Avenue Workers' Houses (Reidsville MRA)*, E side of 300 blk. N. Washington Ave.

Reidsville, *Reidsville Historic District (Reidsville MRA)*, Roughly bounded by W. Morehead, Southern

Railway tracks, Lawson Ave., Main, Piedmont, Vance and Lindsey Sts.

Reidsville, *Richardson Houses Historic District (Reidsville MRA)*, NW side of Richardson Dr. between Coach Rd. and Woodland Dr.

WASHINGTON

Lewis County

Centralia, *Birge, George E., House*, 715 E. St.

[FR Doc. 86–25511 Filed 11–10–86; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–288 (Final)]

Erasable Programmable Read Only Memories (EPROM's) from Japan; Antidumping Investigation and Hearing

AGENCY: United States International Trade Commission.

ACTION: Continuation of final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

EFFECTIVE DATE: October 30, 1986.

FOR FURTHER INFORMATION CONTACT: Judith Zeck (202–523–0339), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background

On July 30, 1986, the United States Department of Commerce suspended its antidumping investigation concerning erasable programmable read only memories (EPROM's) from Japan (51 FR 28253, August 6, 1986). Accordingly, on August 6, 1986, pursuant to section 734(f)(1)(B) of the Tariff Act of 1930 (19 U.S.C. 1673c(f)(1)(B), the United States International Trade Commission suspended its antidumping investigation on EPROM's from Japan (51 FR 29708, August 20, 1986). On August 26, 1986, however, a request to continue the investigation was filed with Commerce and the Commission pursuant to section 734(g)(2) of the Tariff Act of 1930 (19 U.S.C. 1673c(g)(2)) by counsel for petitioners. On October 30, 1986, Commerce published its final affirmative determination of sales at less than fair value (LTFV) (51 FR 39680, October 30, 1986). The Commission must therefore make its final injury determination by December 15, 1986. The Commission hereby gives notice of the continuation of investigation No. 731–TA–288 (Final), and of the scheduling of a hearing to be held in connection with the subject investigation.

Staff Report

A public version of the prehearing staff report in this investigation was placed in the public record on July 18, 1986, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on November 19, 1986 at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on November 10, 1986. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on November 12, 1986 in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is November 12, 1986.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on November 25, 1986. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before November 25, 1986.

A signed orginal and fourteen (14) copies of each submissions must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR 207), and Part 201, subparts A through E (19 CFR Part 201).

Authority

This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: November 6, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-25578 Filed 11-7-86; 12:47 pm]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30875]

The Denver and Rio Grande Western Railroad Co.; Exemption for Relocation Over Burlington Northern Railroad Co.

On October 10, 1986, Denver and Rio Grande Western Railroad Company (DRGW) filed a notice of exemption under 49 CFR 1180.2(d)(5) to relocate a line of railroad. The project is intended to give DRGW bridge trackage rights over an alternate route to be created from a line segment of the Burlington Northern Railroad Company (BN) in Denver, CO.[1]

The parties have reached an agreement to facilitate the line's relocation. Among other things, the agreement pertains to land and trackage acquisitions and the responsibilities for bearing the costs for new track construction and track realignments. The project will result in the construction of a double track corridor in Denver. The purpose of the project is to permit the parties to eliminate wasteful duplication of facilities in a congested terminal.

Joint projects involving the relocation of a line of railroad which do not disrupt service to shippers are exempt from 49 U.S.C. 11343. The proposed relocation will not affect any shippers because no operational or service changes are involved. Accordingly, the relocation meets the criteria of 49 CFR 1180.2(d)(5).

Because a portion of DRGW's operations will be conducted over a line owned by BN, we shall impose the labor protective conditions set forth in *Mendocino Coast Ry., Inc.—Lease and Operate*, 354 I.C.C. 732 (1978), as modified in 360 I.C.C. 653 (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Decided: November 4, 1986.

By the Commission, Jane F. MacKall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86-25475 Filed 11-10-86; 8:45 am]

BILLING CODE 7035-01-M

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[1] Applicant indicated that the project will also involve the construction of two short segments of connecting track. To commence construction, applicant must seek approval under 49 U.S.C. 10901 or an exemption under 49 U.S.C. 10505 from prior approval requirements.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Water Act; Sanitary District of Hammond, IN

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on October 29, 1986, a proposed consent decree in *United States* v. *Sanitary District of Hammond Indiana*, Civ. No. H83-0423, was lodged with the United States District Court for the Northern District of Indiana. This agreement resolves a judicial enforcement action brought by the United States against the Sanitary District for violations of the Clean Water Act at its wastewater treatment facility in Hammond, Indiana.

The proposed consent decree provides that the Sanitary District will undertake a compliance program designed to eliminate the discharge of any pollutants into the Grand Calumet River and to achieve compliance with the provisions of its NPDES permit in the shortest possible time. Interim remedial measures include the immediate cessation of any further discharges to the on-site sludge lagoons; the repair and stabilization of the sludge lagoons to prevent further leaks or discharges; and the removal and disposal of a sufficient quantity of sludge from the lagoons to assure that no further overflow or leakage from the lagoons will occur. Long term remedial measures include the construction of new sludge dewatering facilities at the wastewater treatment plant by December 30, 1986, and the selection and use of a permanent sludge disposal method consisting of land application and landfilling, rather than disposal in the on-site lagoons. The District is required to prepare a study of options for the complete or partial removal of the existing sludge lagoons by September 30, 1987, and to develop an operation and maintenance procedure for the lagoons until their ultimate fate has been determined. Finally, the District will implement a pretreatment program. Final compliance is to be achieved by October 30, 1987. The Decree contains reporting requirements and provides for stipulated penalties of up to $10,000 per day for failure to meet compliance program deadlines. Finally, the District

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has agreed to pay a civil penalty of $50,000 to the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Sanitary District Hammond, Indiana*, D.J. Ref. 90-5-1-1-1956.

The proposed consent decree may be examined at the office of the United States Attorney or the regional office of the Environmental Protection Agency as follows:

U.S. Attorney

U.S. Attorney, Northern District of Indiana, 312 Federal Building, 507 State Street, Hammond, Indiana 46320

EPA

Office of Regional Counsel, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinios 60604

A copy of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division

FR Doc. 86-25434 Filed 11-10-86; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 86-35]

Fazal Ahmad, M.D., P.C., Revocation of Registration

On March 24, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Fazal Ahmad, M.D., P.C., (Respondent), of 4200 Avenue K, Apt. 3G, Brooklyn, New York 11212. The Order to Show Cause sought to revoke DEA Certificate of Registration AF7426174, and deny any pending applications for renewal. The statutory bases for seeking the revocation and denial of any pending aplications for renewal are: (1) On numerous occasions in 1982 and 1983, Respondent sold several prescriptions for Quaalude, a Schedule II controlled substance at the time, for other than a legitimate medical purpose; (2) On three occasions in 1984, Respondent sold several prescriptions for Quaalude and Lotusate, a Schedule III controlled substance, for other than a legitimate purpose; (3) On March 26, 1985, in the New York Supreme Court for New York County, Respondent was convicted of 33 counts of medicaid fraud.

Respondent, through counsel, requested a hearing on the issues raised in the Order to Show Cause. The matter was docketed before Administrative Law Judge Francis L. Young.

Subsequent to the issuance of the Order to Show Cause in this matter, Government counsel learned that although Respondent is licensed to practice medicine in the State of New York, he is not currently registered to do so. Based upon Respondent's lack of state registration, he is not currently authorized to handle controlled substances in the State of New York. As a result, Government counsel filed a motion to amend the Order to Show Cause to include lack of state authorization as a ground for revoking Respondent's registration and for denying any pending applications for renewal. In the same motion, Government counsel also filed a Motion for Summary Disposition on the same ground.

Respondent did not file an answer or an opposition to the Government's motions. The Administrative Law Judge granted the Government's motion to amend in the Order to Show Cause. No hearing was set in this matter since Respondent did not dispute his lack of state authorization to handle controlled substances.

Based upon Respondent's lack of state authorization to handle controlled substances, the Administrative Law Judge recommended that the Administrator revoke Respondent's registration and deny any pending applications for renewal.

The Administrator does not have statutory authority under the Controlled Substances Act to issue or maintain a registration of a registrant who is not authorized to handle controlled substances in the State in which he currently is registered or in which he seeks registration. See 21 U.S.C. 823(f). This Administrator, as did his predecessors, has consistently so held. See *Emerson Emory, M.D.*, Docket No. 85-46, 51 Fed. Reg. 9543 (1986); *Avner Kauffman, M.D.*, Docket No. 85-8, 50 Fed. Reg. 34208 (1985); *Agostino Carluci, M.D.*, Docket No. 82-20, 49 Fed. Reg. 33184 (1984); *Kenneth K. Birchard, M.D.*, 48 Fed. Reg. 33778 (1983).

In cases, such as this, where a Respondent is not authorized to handle controlled substances in the State in which he conducts his practice, a motion for summary disposition should be granted. It is well settled that when no question of fact exists, or when the material facts are agreed, there is no need to conduct an administrative hearing or proceeding. See *United States v. Consolidated Mines and Smelting Co., Ltd.*, 445 F.2d 432, 453 (9th Cir. 1971).

In this instance, since Respondent is not authorized to handle controlled substances in the State of New York, the Administrator cannot maintain his DEA Certificate of Registration and must deny any pending applications for renewal. Since Respondent did not dispute the fact that he is not properly authorized to handle controlled substances in the State of New York, there was no need to conduct an administrative hearing in the matter.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), orders that DEA Certificate of Registration AF7426174, previously issued to ordered that any pending applications for renewal executed by Dr. Ahmad, be and they hereby are, denied.

This order is effective November 12, 1986.

Dated: November 6, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86-75488 Filed 11-10-86; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-4]

Anne L. Hendricks, M.D.; Revocation of Registration

On December 11, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Anne L. Hendricks, M.D. (Respondent), of Plantation, Florida. The Order to Show Cause proposed to revoke DEA Certificate of Registration AH0152239, previously issued to Respondent, and to deny any pending applications for renewal of that registration, for reason that Respondent's continued registration was inconsistent with the public interest. The Order to Show Cause alleged that Respondent prescribed certain controlled substances to three patients in excessive quantities, knowing that the patients were physically or mentally dependent on such drugs, and without keeping adequate medical records.

Respondent, through counsel, requested a hearing on the issues raised in the Order to Show Cause. A hearing in this matter was held before Administrative Law Judge Francis L. Young, on April 15, 1986, in Miami, Florida.

The following three issues were raised and considered at the administrative hearing: (1) Whether there is a lawful or statutory basis for the revocation of Respondent's DEA Certificate of Registration, and for the denial of Respondent's pending application for renewal, for reason that the issuance of such registration is inconsistent with the public interest, as determined by the factors listed in 21 U.S.C. 823(f); (2) Whether the Administrator of DEA, in the exercise of his discretion and in light of all of the facts and circumstances in the record before him, ought to revoke Respondent's registration and deny her pending application for renewal of such registration; and (3) Whether or not the controlled substances referred to in the Order to Show Cause issued in this matter were appropriately prescribed in relationship to the medical needs of Respondent's alleged patients.

Based upon the testimony and evidence elicited at the administrative hearing in this matter, the Administrative Law Judge found that Respondent has been a practicing physician for forty-three years. Between 1980 and 1984, in addition to maintaining a private practice, Respondent also worked with Hospice, Inc., a Florida health care program which treats terminally ill patients for chronic pain.

The Administrative Law Judge further found that Respondent had prescribed large quantities of Dilaudid, a Schedule II controlled substance used primarily for treating chronic pain in terminally ill patients, for three alleged patients, none of whom were terminally ill, nor did they appear to be suffering from any type of chronic pain. One such "patient," Deboroah Nye, was known by police to be a drug dealer. Respondent claimed that she prescribed large quantities of Dilaudid to Mrs. Nye because she was beaten regularly by her husband. Respondent claimed that she was treating the other two "patients" for chronic back pain. The Administrative Law Judge did not find Respondent's justification for prescribing large quantities of controlled substances to any of the three "patients" at all credible.

The Administrative Law Judge further found that the quantities of controlled substances prescribed by Respondent for the three "patients" were excessive. Based upon prescription records, the Administrative Law Judge concluded that if the "patients" had taken all of the controlled substances prescribed for them, they would have to take an average of one to two dosage units per hour, twenty-four hours a day, seven days a week, for more than a year.

In addition, the Administrative Law Judge found that on November 9, 1984, the Florida Board of Medical Examiners concluded that Respondent's prescribing, with respect to the three alleged patients, was inappropriate or in excessive quantities, that Respondent knew or should have known that the patients were physicially or mentally dependent on the controlled substances she prescribed to them, that Respondent knew or should have known that the patients were obtaining the controlled substances either to fulfill a drug dependency or to illegally divert those drugs to other persons, and that Respondent failed to keep written medical records for her course of treatment of these patients. Based upon these findings, the Florida Board of Medical Examiners concluded that Respondent violated five sections of the Florida statutes by prescribing controlled substances other than in the course of her professional practice, by failing to prescribe controlled substances in good faith, by making untrue representations in the practice of medicine, by failing to keep written medical records, and by committing gross or repeated malpractice or failing to practice with an acceptable level of skill. The Board suspended Respondent's license to practice medicine for one year; the suspension was stayed and Respondent was placed on probation for five years, fined $3,000.00, and prohibited from handling Schedule II controlled substances during the term of her probation.

Based upon the testimony and evidence presented at the administrative hearing, the Administrative Law Judge concluded that Respondent indeed prescribed large quantities of dangerous controlled substances to the three alleged patients outside the course of medical practice. He also determined that based upon Respondent's improper prescribing practices, there is a lawful basis for revoking her DEA Certificate of Registration and denying her pending application for renewal, based upon the public interest considerations listed in 21 U.S.C. 823(f). Finally, the Administrative Law Judge recommended that, in the exercise of his discretion, and in light of the facts and circumstances in the record before him, the Administrator should revoke Respondent's current DEA Certificate of Registration and deny her pending application for renewal.

After reviewing the entire record in this proceeding, the Administrator accepts all of the findings and recommendations of the Administrative Law Judge.

The Administrator finds that Respondent's prescribing practices clearly were not medically acceptable and such practices presented a serious danger to the public health and safety. Thus, the Administrator concludes that maintaining Respondent's DEA Certificate of Registration would be wholly inconsistent with the public interest. Therefore, the Administrator concludes that in order to protect the public interest, Respondent's current DEA Certificate of Registration must be revoked and the pending application for renewal must be denied.

Having concluded that there is a lawful basis for the revocation of Respondent's registration and for the denial of the pending application for renewal, and having further concluded that under the facts and circumstances presented in this case, the registration should be revoked and the applications for renewal be denied, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him under 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) hereby orders that DEA Certificate of Registration AH0152239, previously issued to Anne L. Hendricks, M.D., be, and it hereby is revoked. The Administrator further orders that Respondent's application for renewal, be, and it hereby is denied.

This order is effective December 12, 1986.

Dated: November 6, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86-25487 Filed 11-10-86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Revised Final Planning Estimates for Program Year (PY) 1986; Basic Labor Exchange Activities Under the Wagner-Peyser Act

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces revised final planning estimates for PY

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1986 basic labor exchange activities provided under the Wagner-Peyser Act.

FOR FURTHER INFORMATION CONTACT: Robert A. Schaerfl, Director, United States Employment Service (Attention: TEESS), 200 Constitution Avenue, NW., Room N-4470, Washington, DC 20210. Telephone: (202) 535-0157.

SUPPLEMENTARY INFORMATION: Final planning estimates for PY 1986 basic labor exchange activities authorized under the Wagner-Peyser Act were announced in the Federal Register on May 29, 1986. These estimates reflected the withholding of $3,911,000 appropriated for PY 1986. Public Law 99-500 directs the Department to distribute these funds; therefore, $744,135,000 will become available for distribution to States. This excludes $14,000,000 withheld to finance postage expenses associated with public employment service activities.

The allocation methodology is unchanged from the final planning estimates published on May 29, 1986.

Further information regarding the allocation methodology is available upon request.

Signed at Washington, DC, on November 4, 1986.

Roger D. Semerad,

Assistant Secretary of Labor.

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION, OFFICE OF FINANCIAL CONTROL AND MANAGEMENT SYSTEMS, REVISED FINAL PY 1986 WAGNER-PEYSER ALLOTMENTS TO STATES, 10-01-1986

	Basic Formula	3% distribution			Total allotment [3]
		Step 1 [1]	Step 2 [2]	Total	
Alabama	11,140,476	0	527,997	527,997	11,668,473
Alaska	7,061,254	1,027,850	0	1,027,850	8,089,104
Arizona	8,207,421	0	0	0	8,207,421
Arkansas	6,982,802	0	742,446	742,446	7,725,248
California	74,249,950	0	0	0	74,249,950
Colorado	9,274,951	0	0	0	9,274,951
Connecticut	8,768,714	0	0	0	8,768,714
Delaware	2,015,992	0	62,507	62,507	2,078,499
District of Columbia	5,195,434	0	552,403	552,403	5,747,837
Florida	28,930,036	0	0	0	28,930,036
Georgia	15,940,843	0	0	0	15,940,843
Hawaii	2,779,954	0	295,578	295,578	3,075,532
Idaho	5,883,280	856,381	0	856,381	6,739,661
Illinois	35,303,417	0	0	0	35,303,417
Indiana	16,173,334	0	0	0	16,173,334
Iowa	8,871,706	0	943,283	943,283	9,814,989
Kansas	6,418,713	0	0	0	6,418,713
Kentucky	10,750,432	0	0	0	10,750,432
Louisiana	13,657,237	0	0	0	13,657,237
Maine	3,498,731	509,282	0	509,282	4,008,013
Maryland	11,381,574	0	70,931	70,931	11,452,505
Massachusetts	14,967,227	0	123,827	123,827	15,091,054
Michigan	28,116,389	0	328,456	328,456	28,444,845
Minnesota	12,094,263	0	0	0	12,094,263
Mississippi	7,701,466	0	818,857	818,857	8,520,323
Missouri	13,882,884	0	0	0	13,882,884
Montana	4,807,847	699,840	0	699,840	5,507,687
Nebraska	5,778,086	841,070	0	841,070	6,619,156
Nevada	4,673,733	680,318	0	680,318	5,354,051
New Hampshire	2,619,787	0	0	0	2,619,787
New Jersey	20,560,795	0	0	0	20,560,795
New Mexico	5,395,249	785,343	0	785,343	6,180,592
New York	53,533,395	0	5,691,930	5,691,930	59,225,325
North Carolina	16,345,733	0	148,362	148,362	16,494,095
North Dakota	4,895,826	712,646	0	712,646	5,608,472
Ohio	31,691,208	0	0	0	31,691,208
Oklahoma	12,240,005	0	1,301,416	1,301,416	13,541,421
Oregon	8,567,493	0	910,938	910,938	9,478,431
Pennsylvania	32,849,884	0	139,429	139,429	32,989,313
Puerto Rico	9,262,226	0	0	0	9,262,226
Rhode Island	2,581,975	0	269,257	269,257	2,851,232
South Carolina	8,827,042	0	0	0	8,827,042
South Dakota	4,524,869	658,649	0	658,649	5,183,518
Tennessee	13,367,928	0	0	0	13,367,928
Texas	45,812,204	0	0	0	45,812,204
Utah	9,896,439	1,440,545	0	1,440,545	11,336,984
Vermont	2,119,708	308,549	0	308,549	2,428,257
Virginia	15,286,693	0	0	0	15,286,693
Washington	12,592,580	0	0	0	12,592,580
West Virginia	5,568,100	364,949	0	364,949	5,933,049
Wisconsin	13,829,330	0	0	0	13,829,330
Wyoming	3,510,613	511,011	0	511,011	4,021,624
Formula total	719,997,008	9,396,433	12,927,617	22,324,050	742,321,058
Guam	348,197	0	0	0	348,197
Virgin Islands	1,465,745	0	0	0	1,465,745
National total	721,810,950	9,396,433	12,927,617	22,324,050	744,135,000

[1] Funds are allocated to the 13 states whose relative share decreased from PY 1985 to the PY 1986 basic formula amount and which have a civilian labor force (CLF) below one million and are below the median CLF density. These states held harmless at 100% of their PY 1985 relative share.

[2] The balance of the 3% funds are distributed to the remaining 16 states losing in relative share from PY 1985 to the PY 1986 basic formula amount.

[3] Hold harmless provisions required under section 6(b) of the Wager-Peyser Act, as amended, are maintained at the revised allotment level.

[FR Doc. 86-25500 Filed 11-10-86; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Virginia State Standards; Notice of Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations prescribed procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On September 28, 1976, notice was published in the **Federal Register** (41 FR 42655) of the approval of the Virginia State plan and the adoption of Subpart EE to Part 1952 containing the decision.

The Virginia State plan provides for the adoption of all Federal standards as State standards after comments and public hearing. Section 1952.370 of Subpart EE sets forth the State's schedule for the adoption of Federal standards. By letters dated February 6, 1986, March 10, 1986 and July 16, 1986 from Commissioner Carol Amato, Virginia Department of Labor and Industry to Linda R. Anku, Regional Administrator, and incorporated as part of the plan the State submitted State standards identical to (1) 29 CFR Part 1917, pertaining to Marine Terminals as published in the **Federal Register** on July 5, 1983 (48 FR 30909); (2) 29 CFR 1910.1047, pertaining to Ethylene Oxide Standard as published in the **Federal Register** on June 22, 1984 (49 FR 25796); (3) 29 CFR Part 1910, Subpart T, pertaining to amendments to the Commercial Diving Standard as published in the **Federal Register** on January 9, 1985 (50 FR 1046); (4) 29 CFR 1910.1029, pertaining to amendments to the Coke Oven Emissions Standards as published in the **Federal Register** on September 13, 1985 (50 FR 37352); (5) 29 CFR 1910.243, pertaining to amendments to the Power Lawnmowers Standards as published in the **Federal Register** on February 1, 1985 (50 FR 4648); (6) 29 CFR 1910.1047, pertaining to amendments to the Ethylene Oxide Standard; Labeling Requirements as published in the **Federal Register** on October 11, 1985 (50 FR 41491); (7) 29 CFR 1910.1200, pertaining to amendments to the Hazard Communication Standard; Trade Secrets, as published in the **Federal Register** on November 27, 1985 (50 FR 48750); and (8) 29 CFR 1910.1043, pertaining to amendments to the Cotton Dust Standard as published in the **Federal Register** on December 13, 1985 (50 FR 51120). These standards are contained in Virginia Code, section 40.1–22(5). Virginia Occupational Safety and Health Standards were promulgated after public hearings on August 2, 1985, November 19, 1985, and April 30, 1986. The Marine Terminals Standard and the Ethylene Oxide Standard were effective November 1, 1985. The amendments to the Commercial Diving Standard, Coke Oven Emissions Standard, Power Lawnmowers Standard and the Ethylene Oxide Standard were effective April 2, 1986. The amendments to the Hazard Communication Standard and the Cotton Dust Standard were effective June 25, 1986.

2. Decision

Having reviewed the State submission in comparison with the Federal standards it has been determined that the State standards are identical to the Federal standards and accordingly are approved.

3. Location of supplement for inspecton and copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 3535 Market Street, Suite 2100, Philadelphia, PA 19104; Office of the Commissioner of Labor and Industry, 205 North Fourth Street, Richmond, VA 23241.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Virginia State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

a. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

b. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective November 12, 1986.

(Sec. 18, Pub. L. 91–956, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Philadelphia, Pennsylvania, this 22nd day of October, 1986.

Linda R. Anku,

Regional Administrator.

[FR Doc. 86–25498 Filed 11–10–86; 8:45 am]

BILLING CODE 4510-26-M

Wage and Hour Division

Certificates Authorizing the Employment of Learners at Special Minimum Wages

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act (52 Stat. 1062, as amended; U.S.C. 214), Reorganization Plan No. 6 of 1950 (3 CFR 1949–53 Comp., p. 1004), and Administrative Order No. 1–76 (41 FR 18949), the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the Act. For each certificate, the effective and expiration dates, number or proportion of learners and the principal product manufactured by the establishment are as indicated. Conditions on occupations, wage rates, and learning periods which are provided in certificates issued under the supplemental industry regulations cited in the captions below are as established in those regulations.

The following normal labor turnover certificate was issued under the apparel industry learner regulations (29 CFR 522.1 to 522.9, as amended and 522.20 to 522.25, as amended):

Bland Sportswear, Inc., Bland, VA; 7–24–86 to 7–23–87; 10 learners. (Men's and boy's shirts)

The following normal labor turnover certificates were issued under the knitted industry regulations (29 CFR 522.1 to 522.9, as amended and 522.30 to 522.35, as amended.)

Louis Gallet, Inc., Uniontown, PA; 8–12–86 to 8–11–87; 5 learners. (Ladies' sweaters)

Junior Form Lingerie, Inc., Boswell, PA; 8–23–86 to 8–22–87; 5 percent of the total number of factory production workers for normal labor turnover purposes. (Ladies' underwear and sleepwear)

Each learner certificate has been issued upon the representations of the

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employer which, among other things, were that employment of learners at special minimum wages is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available.

The certificate may be annulled or withdrawn as indicated therein, in the manner provided in 29 CFR Part 528. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof on or before November 28, 1986.

Signed at Washington, DC, this 5th day of November 1986.

Raymond G. Cordelli,

Director, Division of FLSA Operations.

[FR Doc. 86-22499 Filed 11-10-86; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 86-90]

Intent To Grant an Option Agreement for an Exclusive Patent; Advanced Interventional Systems, Inc. License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant an Option Agreement for an exclusive patent license.

SUMMARY: NASA hereby gives notice of intent to grant an Option Agreement to Advanced Interventional Systems, Inc., of Palo Alto, California, for an option on a limited, exclusive, royalty-bearing, revocable license to practice the inventions as described in U.S. Patent Application No. 727,931 for a "Magnetically Switched Power Supply Systems for Lasers," filed on April 29, 1985, and U.S. Patent Application No. 790,594 for a "Multiplex Electric Discharge Gas Laser System," filed October 23, 1985, by the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed option agreement will be for a limited period of time and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the option agreement unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentation. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the option agreement.

DATE: Comments to this notice must be received by January 12, 1987.

ADDRESS: National Aeronautics and Space Administration, Code GP Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. R. Dennis Marchant (202) 453-2430.

Dated: October 23, 1986.

John E. O'Brien,

General Counsel.

[FR Doc. 86-25435 Filed 11-10-86; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR Part 73, Physical Protection of Plants and Materials: Requirements For Criminal History Checks, 10 CFR 73.57.

3. The form if applicable: FD-258.

4. How often the collection is required: On occasion.

5. Who will be required or asked to report: Licensees requesting criminal history data on individuals requiring unescorted access to nuclear power plants or access to Safeguards Information.

6. An estimate of the number of responses: 86,666.

7. An estimate of the total number of hours needed to complete the requirement or request: 31,208.

8. An indication of whether section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: Section 606 of Pub. L. 99-399 "The Omnibus Diplomatic Security and Anti-Terrorism Act of 1986," requires criminal history checks of individuals who will be granted unescorted access to the nuclear power plant or access to Safeguards Information.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer Jefferson B. Hill, (202) 395-7340.

The NRC Clearance Office is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland, this 5th day of November 1986.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 86-25492 Filed 11-10-86; 8:45 am]

BILLING CODE 7590-01-M

Specialist Meeting on Improving Technical Specifications for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

A specialist meeting on Improving Technical Specifications for Nuclear Power Plants will be held in Madrid, Spain from Septemer 7-11, 1987. The meeting is sponsored by the Organization for Economic Cooperation and Development (ECD) Nuclear Energy Agency (NEA). The purposes of the meeting are:

a. To exchange experiences in the application of current technical specifications in NEA Member countries;

b. To exchange information on the programmes currently in progress in Member countries for improving or better justifying technical specifications; and

c. To look for measures to further improve plant safety and availability by upgrading, optimizing, or homogenizing technical specifications in Members countries.

The meeting will be broken down into three parts: General presentations on the current status of technical specifications in Member countries, presentations on specific subjects related to technical specifications, and presentations and discussions on longer-term future trends for improving technical specifications. An optional visit to Almarza nuclear power plant in Caceres (one day) or Tecnaton Training Center in Madrid (half-day) will be organized for Septemer 11, 1987.

Organizations are invited to submit paper(s) for presentation at the meeting. An abstract of not more thn 500 words should clearly outline the subject matter and principal conclusions of the paper. Ten copies of abstracts should be sent to Nuclear Safety Division, OECD Nuclear Energy Agency, 38 Boulevard Suchet, F-75016 Paris, France by December 15, 1986. Papers on the following areas are specifically solicited:

1. Surveillance testing;
2. Limiting conditions for operation
3. Action statements and allowed outage time for testing, maintenance or after failure;
4. Preventive maintenance during plant operation;
5. Requirements related to changes in operational modes at the plant or system level;
6. Definition of terms used in technical specifications;
7. Bases and justifications for technical specifications;
8. Administrative specifications;
9. Format of technical specifications; and
10. Tools used by utilities to monitor compliance with technical specifications.

Discussions may cover experiences and problems encountered in dealing with one or more of the topics listed above, as well as improvements made or techniques developed to assess the validity of technical specifications (e.g., relationships with other reliability assurance measures or PSA, reliability engineering methods, etc.). Presentations are expected from regulatory bodies, utilities, NSSS vendors, architect engineers, and research institutes.

Participation in the meeting is restricted, and it may be attended only by persons knowledgeable in relevant technical areas and upon nomination through national delegates to CSNI or active members of L'Union Internationale des Producteurs et Distributeurs d'Energie Electrique (UNIPEDE). For additional information regarding the meeting please write Mr. Edward J. Butcher, U.S. Nuclear Regulatory Commission, Washington, DC 20555 or call (301) 492–4710.

Dated: November 5, 1986.

Edward J. Butcher,

Chief, Technical Specifications Coordination Branch, Division of Human Factors Technology, NRR.

[FR Doc. 86–25493 Filed 11–10–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–440]

Cleveland Electric Illuminating Co. et al., Perry Nuclear Power Plant, Unit 1; Exemption

I

Cleveland Electric Illuminating Company (CEI), Duquesne Light Company, Ohio Edision Company, Pennsylvania Power Company, and Toledo Edison Company (the Licensees) are the holders of Facility Operating License No. NPF–45 which authorizes operation of Perry Nuclear Power Plant, Unit No. 1, (the facility) at steady-state reactor power levels not in excess of 3579 megawatts thermal. Pending Commssion approval, operation is restricted to power levels not to exceed 5% of full power (178 megawatts thermal). The license provides, among other things, that it is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect. The facility includes a boiling water reactor and is located at the licensees' site in Lake County, Ohio.

II

Section 50.54(q) of 10 CFR Part 50 requires a licensee authorized to operate a nuclear power reactor to follow and maintain in effect emergency plans which meet the standards of 10 CFR 50.47(b) and the requirements of Appendix E to 10 CFR Part 50. Section IV.F.I of Appendix E requires that a full participation exercise which tests as much of the licensee, state and local emergency plans as is reasonably achievable without mandatory public participation shall be conducted for each site at which a power reactor is located for which the first operating license for that site is issued after July 13, 1982. This exercise shall be conducted within 1 year before the issuance of the first operating license for full power and prior to operation above 5% of rated power of the first reactor, and shall include participation by each state and local government within the plume exposure pathway EPZ and each state and local government within the ingestion exposure pathway EPZ.

The "underlying purpose" of the Appendix E, section IV.F.1 requirement is to ensure that an adequate state of emergency response capability is demonstrated through the conduct of an emergency preparedness exercise and is maintained until the full-power licensing requirements regarding priodic exercises become effective.

III

By letter dated October 30, 1986, CEI, acting for all of the licensees, requested an exemption from the requirements of section IV.F.1 of Appendix E, so that operation of the facility can proceed above 5% of its rated power, upon issuance of a full power operating license by the Commission, without conducting another emergency preparedness exercise. The licensees' request was submitted in response to a determination by the Federal Emergency Management Agency (FEMA) that the exercise conducted on April 15, 1986 did not satisfy the criteria for full participation by the State of Ohio.

A full participation exercise involving the testing of applicant, state and local emergency plans for Perry was conducted on November 28, 1984, in expectation that a full power operating license would be issued within one year. The onsite portion of the November 28, 1984 exercise was observed and evaluated by the NRC and documented in Inspection Report No. 50–440/84–24 (DRSS); 50–441/84–22 (DRSS). There were no significant deficiencies in onsite preparedness identified as a result of the exercise. The offsite portion of the November 28, 1984 exercise was observed and evaluated by FEMA and representatives of the member agencies of the FEMA Region V Regional Assistance Committee. FEMA provided its report of the exercise on January 31, 1985. In this report there were no "Category A" deficiencies identified as a result of the exercise. (Category A deficiencies were defined as deficiencies of the type that would cause a finding that offsite emergency preparedness was not adequate to provide reasonable assurance that appropriate protective measures can be taken to protect the health and safety of the public in the vicinity of the plant in the event of a radiological emergency). On May 23, 1985, FEMA reported that the State of Ohio's schedule of corrective actions for the inadequacies identified in the exercise was adequate. In Supplement No. 7 of the NRC staff's Safety Evaluation Report (SSER 7), the staff concluded that the state of onsite and offsite preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at the Perry Nuclear Power Plant. This conclusion was based on: (i) The March 1, 1984 FEMA findings and determinations on the adequacy of state and local emergency plans; (ii) the successful testing of those plans during the November 28, 1984 exercise; and (iii) on the NRS assessment of the adequacy of the applicants' onsite emergency plan and preparedness.

Since the November 28, 1984 full participation exercise at Perry, the State of Ohio has fully participated in a July 1985 exercise at Davis-Besse. There were no deficiencies identified by FEMA that would lead to a negative finding as a result of the July 1985 exercise at Davis-Besse. In addition, the State partially participated in the November 20, 1985 licensee only exercise for the Perry Plant, to the extent that a State representative actively took part at the near site

Emergency Operations Facility (EOF) in protective action decisionmaking and offsite sampling, the Joint Public Information Center was activated and coordination with State representatives was demonstrated, and communications were maintained between the licensee, State and local Emergency operations Centers (EOCs).

On April 15, 1986, CEI conducted an exercise for the Perry Plant involving substantial participation by the State of Ohio and full participation by the Counties of Lake, Geauga and Ashtabula. The onsite portion of the April 15, 1986 exercise was observed and evaluated by the NRC and documented in Inspection Report No. 50–440/86009 (DRSS); 50–441/86003 (DRSS). There were no significant emergency preparedness deficiencies in either the November 20, 1985 exercise or the April 15, 1986 exercise.

FEMA's report of the April 15, 1986 offsite exercise, dated September 5, 1986, characterized this exercise as a joint, full participation exercise for the Ashtabula, Geauge and Lake Counties in Ohio, and a partial participation exercise for the State of Ohio.

FEMA's report of September 5, 1986, identifies 18 objectives selected by the State of Ohio to be demonstrated during the exercise. These objectives included the following 10 key response functions (CEI's letter of October 30, 1986):

- Activation and Staffing;
- Emergency Operations Management;
- Facilities;
- Communications;
- Dose Assessment and Protective Recommendations;
- Public Alerting and Instructions;
- Protective Actions;
- Radiological Exposure Control;
- Media Relations; and
- Field Monitoring.

Although the exercise was a partial participation exercise with respect to the state, FEMA found that 17 of the 18 objectives were adequately addressed while one objective in the area of field monitoring, specifically radiological sampling sites, required corrective action. However, FEMA found no deficiencies that would lead to a negative finding as a result of the April 15, 1986 exercise. On September 11, 1986, FEMA reported that the State of Ohio's schedule of corrective action for the area of field monitoring inadequacy was adequate. The April 15, 1986 exercise included extensive FEMA evaluation, involving 7 evaluators (out of 21 total) for the State of Ohio and also included representation in the EOC from the Ohio Environmental Protection Agency and the Ohio Disaster Services Agency, with additional state personnel at other locations during the exercise. The results of the April 15, 1986 exercise, which are documented in the FEMA report, demonstrate that an adequate state of offsite emergency preparedness has been maintained. Further, by memorandum dated November 4, 1986, FEMA stated that granting this exemption would not alter the FEMA finding that there is reasonable assurance that adequate protective measures can be taken in the event of a radiological emergency at the Perry Nuclear Power Plant. Thus, the underlying objective of the rule has been met. Consequently, an additional full participation exercise prior to operation above 5% of power is not necessary.

In the exercise exemption request, CEI specifies that the next scheduled exercise for Perry is an onsite exercise in May 1987 with participation by the state and counties limited to communication interface. In addition, the next scheduled exercise for Perry for full participation by the state and counties is May 1988. CEI went on further to point out that, with exercises currently scheduled by the state at other sites in early 1987, the scheduling of another full participation exercise at Perry in May 1987 or earlier would place an unnecessary burden on state and county resources.

IV

Based on its review of the licensees' exemption request, the NRC Staff finds that the following factors support granting the requested exemption:

1. The conduct of a full participation emergency preparedness exercise in November 1984 where the staff identified no significant deficiencies in onsite preparedness and leading to a favorable FEMA finding on offsite preparedness.

2. Full participation by the State of Ohio in the exercise at Davis-Besse in July 1985, the planned full participation by the state in the scheduled exercise at Perry in May 1988, and the state of preparedness exhibited by the State of Ohio during the April 15, 1986 exercise.

3. The full participation of local response organizations in exercises at Perry in November 1984 and April 1986.

Based on the foregoing, the staff concludes tht an adequate state of emergency preparedness has been demonstrated and maintained, thereby meeting the underlying purpose of the rule. This constitutes the special circumstances described in 10 CFR 50.12(a)(2)(ii).

The Commission has determined that, pursuant to 10 CFR 50.12, the exemption requested by the licensees' letter dated October 30, 1986, as discussed above, is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security.

Accordingly, the Commission hereby approves the following exemption: "Perry Nuclear Power Station, Unit No. 1, is exempt from the requirements of 10 CFR Part 50, Appendix E, Section IV.F. for the conduct of an offsite full participation emergency preparedness exercise, provided that such an exercise is conducted before or during May 1988."

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (51 FR 40361). This Exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 6th day of November 1986.

For The Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Division of BWR Licensing, Office of Nuclear Reactor Regulations.

[FR. Doc. 25495 Filed 11–10–86; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-321 and 50-366]

Georgia Power Co., et al.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Prior Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR–57 and NPF–5 issued to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia (the licensees), for operation of the Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2, located in Appling County, Georgia.

In accordance with the licensees; application for amendments dated September 9, 1986, the amendments would modify the Technical Specifications for Hatch Units 1 and 2 to:

(1) Lower the minimum river water level required for continued plant operation.

(2) Provide a requirement for determination of the river level at a point downstream of the temporary weir when it's in place.

(3) Lower the minimum river water level for which increased frequency of river level surveillance is required.

(4) Amend the Bases to reflect these changes.

The amendment would also modify the Technical Specifications for Hatch Unit 1 only to remove the flow throttling requirements for the plant service water system pump that are currently required at lower river water levels.

Prior to issuance of the proposed license amendments the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By December 12, 1986, the licensees may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing confernce scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Were petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Mr. Daniel R. Muller: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (Publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street NW., Washington, DC, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearings will not be entertained absent a determination by the Commission, the presiding officer or the president Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated September 9, 1986 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Dated at Bethesda, Maryland this 30th day of September 1986.

For The Nuclear Regulatory Commission.

Daniel R. Muller,

Director, BWR Project Directorate #2, Division of BWR Licensing.

[FR Doc. 86-25491 Filed 11-10-86; 8:45am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-321 and 50-366]

Georgia Power Co. et al.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendments Nos. 123 and 66 to Facility Operating Licenses Nos. DPR-57 and NPF-5, issued to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia (the licensee), which revised the Technical Specifications for operation of the Edwin I. Hatch Nuclear Plant, Units 1 and 2 (the facility) located in Appling County, Georgia. The amendments are effective as of the date of issuance and shall be implemented within 60 days.

The amendments a) permit use of Banked Position Withdrawal Sequences for the first 50 percent of control rod withdrawal; b) remove the linear mass restriction of 15.2 grams of Uranium-235 per centimeter for fuel assemblies stored in the fuel pool; c) eliminate specific mechanical descriptions of fuel assemblies; d) provide Maximum Average Planar Linear Heat Generation limit curves for several new fuel assemblies; and, e) make several editorial changes.

The application for the amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on June 30, 1986 (51 FR 23611). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact related to the

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action and has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributable to the action significantly beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facilty.

For further details with respect to the action see (1) the application for amendments dated April 15, as supplemented July 25, 1986, (2) Amendments Nos. 123 and 66 to Facility Operating Licenses Nos. DPR-57 and NPF-5, (3) the Commission's related Safety Evaluation, and (4) the Environmental Assessment dated October 23, 1986. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington DC, and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of BWR Licensing.

Dated at Bethesda, Maryland this 31st day of October, 1986.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, BWR Project Directorate #2, Division of BWR Licensing.

[FR Doc. 86-25490 Filed 11-10-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-13889; License No. 21-18576-01; EA 86-79]

Progressive Engineering Consultants of Grand Rapids, Inc.; Order Imposing Civil Monetary Penalties

I

Progressive Engineering Consultants of Grand Rapids, Incorporated (the licensee) is the holder of License No. 21-18576-01 issued by the Nuclear Regulatory Commission (the Commission). The license authorizes the licensee to operate its facility in accordance with the conditions specified therein.

II

A routine NRC safety inspection of the licensee's activities was conducted during the period March 13 through April 7, 1986. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with Commission requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties was served upon the licensee by letter dated May 30, 1986. The Notice states that nature of the violations, the provisions of the Nuclear Regulatory Commission's requirements that the licensee had violated, and the amount of civil penalties proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalties with two letters dated June 24 and July 1, 1986, respectively.

III

After consideration of the licensee's responses and statements of fact, explanation, and arguments regarding remission or mitigation contained therein, as set forth in the Appendix to this Order, the Director, Office of Inspection and Enforcement, has determined that the violations occurred as stated and that the penalties proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalties should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2282, Pub. L. 96-295, and 10 CFR 2.205, It Is Hereby Ordered That:

> The licensee pay civil penalties in the amount of Five Hundred Dollars ($500) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasury of the United States and mailed to the Director, Office of Inspection and Enforcement, USNRC, Washington, DC 20555.

V

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement, USNRC, Washington, DC 20555. A copy of the hearing request also shall be sent to the Assistant General Counsel for Enforcement, Office of the General Counsel, USNRC, Washington, DC 20555 and to the Regional Administrator, Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. If the licensee fails to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearings shall be:

(a) Whether the licensee violated the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalties referenced in Section II above; and

(b) Whether on the basis of such violations this Order should be sustained.

Dated at Bethesda, Maryland, this 5th day of November 1986.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

Appendix—Evaluation and Conclusion

By letters dated June 24 and July 1, 1986, the licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalties dated May 30, 1986. In its response, the licensee admits the violations occurred as described in the Notice, but requests mitigation of the civil penalties based upon extenuating circumstances which were responsible for some of the violations, its prompt corrective actions, and the fact that this is its first enforcement action. Provided below are (1) a restatement of each violation, (2) a summary of the licensee's response regarding each violation, (3) NRC's evaluation of the licensee's response, and (4) NRC's conclusion.

Restatement of Violation A

License Condition No. 12 requires that licensed material shall be used by, or under the supervision and in the physical presence of, individuals who have attended the Device Manufacturer's Training Course for gauge users and who have been designated by the licensee's Radiation Protection Officer.

Contrary to the above, since August 1984, the licensee has allowed individuals to use licensed material contained in moisture/density gauges which were not under the supervision and in the physical presence of an authorized gauge user and who had not attended the Device Manufacturer's Training Course.

Licensee's Response

The licensee admits that the violation occurred, but states that the reason for the violation was that the licensee was unaware of the precise wording of License No. 12. The licensee indicates that individuals who used the applicable gauges had been instructed on the proper use of the gauge, and states that, in the future, gauge users will be trained by attending the gauge manufacturer's training course.

NRC Evaluation

The NRC staff expects the licensee to be familiar with the conditions and requirements of its byproduct material license, and requires, as a minimum, that the users of licensed material attend the Device Manufacturer's Training Course, or be under the supervision and in the physical presence of an individual who has attended the course. The licensee's commitment to have all gauge users attend the manufacturer's training course constitutes the minimum corrective action necessary to bring it into compliance with the byproduct material license. The violation occurred as stated, and mitigation of the civil penalty based on prompt and extensive corrective action is not warranted.

Restatement of Violation B

10 CFR 30.41(a) requires that no licensee shall transfer byproduct material except as authorized pursuant to this section. 10 CFR 30.41(b)(5) requires that byproduct material may be transferred to any person authorized to receive such byproduct material under terms of a specific license or a general license or their equivalents issued by the Atomic Energy Commission, the Commission or an Agreement State or otherwise authorized pursuant to 10 CFR 30.41.

Contrary to the above, in January 1986, the licensee transferred byproduct material (a Troxler moisture/density gauge) to an individual who was not authorized to receive byproduct material under the terms of a specific license or a general license or their equivalents issued by the Atomic Energy Commission, the Commission or an Agreement State or otherwise authorized pursuant to 10 CFR 30.41.

Licensee's Response

The licensee admits that the violation occurred, but states that the Troxler moisture/density gauge was transferred to an individual who, until late 1985, was licensed to possess and use the Troxler gauge and who had attended the Troxler training course on gauge use. The licensee's corrective actions consisted of recovering the gauge and assuring that only certified individuals employed by the licensee will use the gauges in the future.

NRC Evaluation

The licensee admits the violation in that, at the time of the transfer of the gauge, the individual did not possess a license from the Commission or an Agreement State to possess and use the gauge. This represents noncompliance with 10 CFR 30.41(b)(5) because transfer of the gauge to the individual was unauthorized. Further, the gauge was not returned until several weeks after the violation was brought to the attention of the licensee by the NRC inspector. The NRC staff does not consider the circumstances surrounding the licensee's recovery of the gauge to constitute prompt or extensive corrective actions. The licensee's actions were the minimal corrective actions required to preclude similar violations in the future. Therefore, mitigation of any of the civil penalty associated with Violation B is not warranted.

Restatement of Violation C

License Condition No. 18 requires that the duties of the Radiation Protection Officer shall include those items listed in Item No. 5 of the NRC guide entitled, "A Guide for Preparation of Byproduct Material Applications for the Use of Sealed Sources in Portable and Semiportable Gauging Devices." Item No. 5(f) requires that the Radiation Protection Officer will periodically review the terms and conditions of the license for compliance with NRC regulations, requirements, and license conditions.

Contrary to the above, as of the March 13, 1986 inspection, the Radiation Protection Officer failed to perform any periodic review of the terms and conditions of the license for compliance with NRC regulations, requirements, and license conditions.

Licensee's Response

The licensee admits that the periodic review of the licensed program by the Radiation Protection Officer was not performed. The licensee explains that the reviews were waived partially because of the numerous personnel changes in the Radiation Protection Officer position and the total inactivity of the gauges until late 1984. Corrective actions described by the licensee include the initiation of an events calendar which will help the Radiation Protection Officer identify the frequency for performance of certain required duties. Also, the licensee states that it would be asking RAD Services, Inc., a consulting firm, to assist in all departments that involve the nuclear gauges.

NRC Evaluation

The NRC staff does not consider numerous personnel changes in the Radiation Protection Officer position under any circumstances to be justification for failing to comply with NRC requirements. As long as licensed material is possessed by a licensee, the NRC staff expects the licensee to operate in accordance with the requirements of its license. The NRC staff also does not consider the licensee's corrective actions associated with this violation to be particularly prompt. While the NRC staff agrees that the services of RAD Services, Inc. will add another audit mechamism to assure the radiation protection program is administered as required, the implementation of this audit mechanism did not occur until mid-August 1986, four months after the violations were identified. Although the licensee's corrective actions should prevent recurrence of the violation, the actions cannot be considered prompt in responding to NRC identified problems. The violation occurred as stated, and mitigation of any of the civil penalty associated with Violation C is not warranted.

Restatement of Violation D

10 CFR 20.201(b) requires that the licensee make such surveys as may be necessary for compliance with all sections of Part 20 and are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present. As defined in 10 CFR 20.201(a), "survey" means an evaluation of the radiation hazards incident to the production, use, release, disposal, or presence of radioactive materials or other sources of radiation under a specific set of conditions.

Contrary to the above, since August 1985, the licensee did not make surveys or evaluations nor did the licensee provide personnel monitoring devices (film badges) to determine whether exposures to individuals using moisture/density gauges would be within the occupational dose limits of 10 CFR 20.101(a).

Lincensee's Response

The licensee admits that the violation occurred, but explains the reason that users of the mosture/density gauges were not provided film badges is that it was told by Troxler (gauge manufacturer) that film badges were not required. The licensee's corrective action is to obtain film badges for the gauges users and to assure that any new users of the gauges receive film badges.

NRC Evaluation

The NRC staff expects the licensee to be familiar with NRC requirements and the conditions of its license. Had the licensee been familiar with the license and with the requirements of 10 CFR 20.201 (a) and (b), the licensee would

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have been aware of the rquirement for personnel monitoring devices since the license to possess and use the Troxler gauge is issued by the NRC and not the gauge manufacturer. Because the licensee admits the violation, and because its corrective actions consist only of those measures required to bring itself into compliance with the requirements of the license, mitigation of any of the civil penalty associated with Violation D is not warranted.

Restatement of Violation E

License Condition No. 13 requires that each sealed source containing licensed material, other than hydrogen-3, with a half-life greater than 30 days, and in any form other than gas, shall be tested for leakage and/or contamination at intervals not to exceed six months.

Contrary to the above, the licensee failed to perform sealed source leak tests every six months as required on a sealed source containing licensed material other than hydrogen-3, with a half-life greater than 30 days and in a form other than gas. Specifically, the licensee performed leak tests only in December 1978, November 1984, and April 1986 on a sealed source (Serial Number NG–601) containing americium–241 and cesium–137.

Licensee's Response

The licensee admits that leak tests of the americium-241 and cesium-137 sources were not performed every six months as required. The licensee states that a series of tests was missed while the gauges were in use. The licensee also attributes this violation to the improper filing of leak test reports in some cases and the fact that the gauges were not used for several years during which time leak tests were not peformed. Corrective action by the licensee consisted of the implementation of a proper filing system, an events calendar, and contracting the consultation services of RAD Services, Inc.

NRC Evaluation

After careful consideration of the licensee's assertion that the sources were stored and thereby not used during the 1978–1984 time frame, the NRC staff concludes that License Condition No. 13.A(3) provides an exemption from leak testing when the sources are being stored. Should the licensee produce the misfiled leak test reports for calendar year 1985, this will demonstrate no violation occurred for that time period. However, because the licensee admits that one series of leak tests was entirely missed, a violation of NRC requirements still occurred.

Regarding the licensee's corrective action, the creation of an events calendar and implementation of a proper filing system by the licensee is no more than would be ncessary to bring the licensee into compliance. Further, the hiring of a consultant, RAD Services, Inc., did not occur until approximately four months after the violations were identified to the licensee at the April 15, 1986 enforcement conference. Therefore, these corrective actions are neither prompt nor extensive, and mitigation of any of the civil penalty amount associated with Violation E is not warranted.

Restatement of Violation F

10 CFR 71.5(a) required that each licensee who transports licensed material outside the confines of its plant or other place of use shall comply with the applicable regulations of the Department of Transportation in 49 CFR Parts 170–189.

(1) 40 CFR 172.101(a) references the Hazardous Materials Table which specifies requirements pertaining to the packaging, labeling, and transportation of hazardous materials.

Column 5(b) of that table specifies that radioactive material special form, not otherwise specified, shall be packaged according to 49 CFR 173.415 and 173.416. Those regulations authorize DOT Specification 7A packages for shipment if they do not contain quantities exceeding A_1. The A_1 limit for special form cesium-137 is 30 curies.

Contrary to the above, from August 1984 until the date of the inspection, radioactive material consisting of moisture density gauges containing cesium-137 not in excess of A_1 limits was transported outside the confines of the licensee's facility without being packaged in a DOT Specification 7A package as specified in the Hazardous Materials Table.

(2) 49 CFR 177.817(a) requires that a carrier may not transport a hazardous material unless it is accompanied by a shipping paper that is prepared in accordance with 49 CFR 172.201, 172.202 and 172.203.

Contrary to the above, from August 1984 until the date of the inspection, the licensee shipped hazardous material (moisture/density gauges containing cesium-137 and americium-241) to various temporary job sites without shipping papers prepared in accordance with 49 CFR 172.201, 172.202 and 172.203.

Licensee's Response

The licensee admits the violation. The licensee asserts that the reason for shipping the gauges without proper shipping containers was due to an inadequate number of approved shipping containers. The licensee's corrective action is to obtain additional approved shipping containers so there will be one available for each unit. The licensee states that shipping papers were not provided each time the gauges were shipped because individuals were unaware of the requirements of 49 CFR 172.201, 172.202 and 172.203, and a poor filing system was in place. Corrective action consists of appointing one individual to direct the nuclear gauge division of the company and the acquisition of consulting services from RAD Services, Inc.

NRC Evaluation

The NRC staff expects the licensee to familiarize itself with the requirements of the license upon receipt, and lack of awareness of the requirements is not an excuse for noncompliance. Although the licensee's corrective actions are expected to bring the licensee into compliance, none of the actions described by the licensee are considered prompt or extensive by the NRC staff. The violation occurred as stated, and mitigation of any of the civil penalty amount associated with Violation F is not warranted.

Restatement of Violation G

License Condition No. 10 requires that licensed material shall be used only at the licensee's facility located at 2920 Fuller Ave., N.E., Grand Rapids, Michigan and at temporary job sites of the licensee located throughout the State of Michigan.

Contrary to the above, in April 1985, the licensee moved its permanent facility, where it was authorized to use and store licensed material, from 2920 Fuller Ave., Grand Rapids, Michigan to 2942 Fuller Avenue, N.E., Grand Rapids, Michigan and had not sought an amendment to its license to authorize this change.

Licensee's Reponse

The licensee admits the address was changed without notifying the NRC of the change. The licensee states that the violation involved a simple move within the same office complex, and resulted from an oversight of the Radiation Protection Officer. The licensee's corrective action consists of amending the license to reflect the change of address and contracting the services of RAD Services, Inc. to aid in maintaining compliance with the license requirements.

NRC Evaluation

Although the change of address consisted only of a move across the street, this would not negate the requirement that the licensee seek an amendment to its license to authorize this change. Any address change, no matter what the circumstances, requires a license amendment to reflect the change. Although the change in address may not have been considered significant by the licensee, the NRC must assess the qualifications of facilities in order to determine the appropriateness of the facility. The licensee's failure to notify the NRC of this move denied the NRC an opportunity to review the new facility's qualifications. The NRC staff considers the licensee's corrective actions the necessary actions required to bring the licensee into compliance with this requirement. Therefore, its actions were neither unusually prompt nor extensive, and mitigation of any civil penalty amount associated with Violation E is not warranted.

Restatement of Violation H

10 CFR 19.11 (a) and (c) require that current copies of Part 19, Part 20, the license, license conditions, or documents incorporated into the license by reference, license amendments and operating procedures, as well as Form NRC-3, "Notice of Employees," be posted.

10 CFR 19.11(b) requires that the licensee may post a notice describing the documents and their location if posting of the documents is not practicable.

Contrary to the above, on March 13, 1986, neither the documents required by 10 CFR 19.11 (a) and (c) nor a notice describing the documents and their locations were posted.

Licensee Response

The licensee states that it was unaware of the requirements of 10 CFR 19.11 (a), (b), and (c). The licensee's corrective action consisted of posting the required documents and notices and acquiring the consultation services of RAD Services, Inc.

NRC Evaluation

The NRC expects the licensee to be familiar with the requirements of its by-product material license. If licensee management had become familiar with the license requirements, it would have been aware of the requirements of 10 CFR 19.11 (a), (b), and (c). Further, the consultant did not conduct its first site audit until the week of August 10, 1986, actions not considered prompt by the NRC staff. Therefore, since the licensee's corrective actions were neither prompt nor extensive and are considered the minimum actions necessary to comply with the requirements of § 19.11 (a), (b), and (c), mitigation of any of the civil penalty amount associated with Violation H is not warranted.

NRC Conclusion

The NRC staff has concluded that all of the violations did occur as originally stated in the May 30, 1986, Notice of Violation and Proposed Imposition of Civil Penalties. The NRC does not agree that extenuating circumstances resulted in violations of license requirements, but has concluded that the violations occurred as a result of the licensee's failure to exercise adequate control and oversight over its radiation safety program and its failure to familiarize itself with the requirements of its license and NRC regulations. The NRC does not consider any of the licensee's corrective actions unusually prompt or extensive, as these corrective actions were the minimum actions which the NRC would expect a licensee to undertake in order to bring it into compliance. Because this is the licensee's first inspection, there is no prior inspection history or history of prior performance, thus no basis exists for reduction of the base civil penalty for prior good performance in the area of concern. Therefore, since the licensee has not provided a sufficient basis for mitigation of the civil penalties, the NRC staff has concluded that civil penalties in the amount of $500 be imposed.

[FR Doc. 86-25494 Filed 11-10-86; 8:45 am]

BILLING CODE 7590-01-M

UNITED STATES CLAIMS COURT

[Congressional Reference No. 2-84]

Order Establishing Deadline for the Filing of Claims for Additional Compensation by Persons Who Owned Ranch Units in the Area of the White Sands Missile Range, New Mexico

On November 16, 1984, the United States Senate referred Senate Bill 2761, together with Senate Resolution 405 and accompanying papers, to the Chief Judge of the United States Claims Court, under 28 U.S.C. 1492 and 2509 (1982). Senate Bill 2761 was entitled "A bill for the relief of the White Sands ranchers of New Mexico." The Chief Judge was directed to report to the Senate of the United States, at the earliest practicable date, giving such findings of fact and conclusions thereon as shall be sufficient to inform the Congress of the nature and character of the demand as a claim, legal or equitable, against the United States or a gratuity and the amount, if any, legally or equitably due from the United States to the claimants.

On November 16, 1984, the Clerk of the Court issued notices to the then known claimants of the docketing of the Senate documents and accompanying papers referred to above. This procedure was necessary because no claimants were identified in the formal Senate documents and papers transmitted to the Chief Judge. These notices advised that claimants had ninety (90) days, or to and including February 14, 1985, to file petitions setting forth claims within the purview of Congressional Reference Case No. 2-84.

On February 11, 1985, some 159 individuals, denominating themselves as the "White Sands Ranchers of New Mexico", and responding to the notices of November 16, 1984, filed a complaint in this Court, asking the Court to make such findings of fact and conclusions as shall be sufficient to inform the Congress of the nature of their claims and the amount legally or equitably due from the United States to the plaintiffs.

As it appears from the pleadings and other representations of the parties before the Court that there may be persons similarly situated who are not numbered among the claimants so identified and who may not have received notice of the action of the Senate, as reflected in S. 2761 and S. Res. 405, it has been determined that additional notice should be given, and additional time granted, for the filing of petitions in Congressional Reference Case No. 2-84.

The purpose of the Order issued herein, and its publication in the Federal Register this date, is to establish a definitive and final date on which petitions in Congressional Reference Case No. 2-84 will be received.

Accordingly, in the interest of fairness to and concern for all claimants, and in the interest of effective, speedy and efficient administration of the handling of this Congressional Reference case, it is hereby ORDERED, That all individuals (or heirs or assignees of individuals) who owned ranching units in the area of the White Sands Missile Range, New Mexico, and whose ranching units (or a portion of whose ranching units) were taken for war and national defense purposes after 1941 and are now part of that missile range, and who consider themselves not to have been fairly compensated for the loss of their property, are allowed an extension of time to and including

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January 31, 1987, in which to file and have docketed with the Clerk of the United States Claims Court their complaints in Congressional Reference Case No. 2–84. No complaint by any such claimant will be accepted for filing in this matter subsequent to *February 28, 1987.*

John P. Wiese,

Hearing Officer, United States Claims Court.

[FR Doc. 86–25421 Filed 11–10–86; 8:45 am]

BILLING CODE 2410-01-M

UNITED STATES INFORMATION AGENCY

University Affiliations Program; Application Notice for Fiscal Year 1987; Correction

AGENCY: United States Information Agency.

ACTION: Eligible countries: correction.

SUMMARY: In FR Vol. 51, No. 206 in the issue of Friday, October 24, 1986, beginning on page 37814, make the following corrections:

On page 37815, under "Eligibility", in the second column, on the twelfth line, add: "Tanzania" to the *No discipline priorities* paragraph; and on the thirty-third line, add: "Panama" to the *Communications; Primary and Secondary Education; Social Sciences* paragraph.

Dated: November 5, 1986.

William Dant,

Coordinator, University Affiliations Program, United States Information Agency.

[FR Doc. 86–25457 Filed 11–10–86; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joe Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: November 5, 1986.

By direction of the Administrator.

Robert W. Schultz,

Director, Office of Information Management and Statistics.

Extension

1. Department of Veterans Benefits.
2. Verification of pursuit of course leading to standard college degree.
3. VA form 22–6553.
4. On occasion.
5. State or local governments; non-profit institutions; and small businesses or organizations.
6. 325,680 responses.
7. 54,280 hours.
8. Not applicable.

Extension

1. Department of Veterans Benefits.
2. Request for organizational data from builder.
3. VA form letter 26–312.
4. On occasion.
5. Businesses or other for-profit.
6. 10,000 responses.
7. 5,000 hours.
8. Not applicable.

Revision

1. Department of Veterans Benefits.
2. Application for dependency and indemnity compensation by parent(s).
3. VA form 21–535.
4. On occasion.
5. Individuals or households.
6. 20,880 responses.
7. 25,056 hours.
8. Not applicable.

[FR Doc. 86–25469 Filed 11–10–86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 218
Wednesday, November 12, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on November 10, 1986, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Auberger, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 (703–883–4010).

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this special meeting of the Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

1. Regulations:
    Consideration of Amendments to Part 620: Disclosure to Stockholders
    Consideration of Amemdments to Part 621: Accounting and Reporting Requirements
*2. Examination and Enforcement Matters

*Closed Session—exempt pursuant to 5 U.S.C. 552b(c) (4), (8) and (9). l

Dated: November 5, 1986.

Marvin Duncan,

Acting Chairman, Farm Credit Administration.

[FR Doc. 86–25590 Filed 11–7–86; 1:57 pm]

BILLING CODE 6705-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act," (5 U.S.C. 552b), notice is hereby given that at 4:40 p.m. on Wednesday, November 5, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to adopt a resolution: (1) Making funds available for the payment of insured deposits made in Sedgwick County Bank, Julesburg, Colorado, which had been closed by the State Bank Commissioner for the State of Colorado on Wednesday, November 5, 1986, (2) accepting the bid of The First National Bank of Julesburg, Julesburg, Colorado, for the transfer of the insured and fully secured or preferred deposits of the closed bank, and (3) designating The First National Bank of Julesburg as the agent for the Corporation for the payment of insured and fully secured or preferred deposits of the closed bank.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in Room 6020 of the FDIC Building located at 550—17th Street, NW., Washington, DC

Dated: November 6, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86–25573 Filed 11–7–86; 12:21 pm]

BILLING CODE 6714-01-M

FEDERAL ENERGY REGULATORY COMMISSION

November 5, 1986.

TIME AND DATE: 9:00 a.m., November 12, 1986.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. (A) Docket Nos. RP86–45–002 through 014, El Paso Natural Gas Co.
    (B) Docket No. CP86–649–000, El Paso Natural Gas Co.
2. (A) Docket No. RP85–206–000, Northern Natural Gas Co., Division of Enron Corp.
    (B) Docket No. CP86–435–000, Northern Natural Gas Co., Division of Enron Corp.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Acting Secretary, Telephone (202) 357–8400.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86–25524 Filed 11–7–86; 10:27 am]

BILLING CODE 6717-01-M

FEDERAL RESERVE SYSTEM, BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, November 17, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 7, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–25621 Filed 11–7–86; 3:54 pm]

BILLING CODE 6210-01-M

INTERNATIONAL TRADE COMMISSION

[USITC SE–86–40]

TIME AND DATE: Tuesday, November 18, 1986 at 2:00 p.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. No. 701–TA–282 (P) and 731–TA–350/353 (P) (Steel forged crankshafts from Brazil, the Federal Republic of Germany, Japan, and the United Kingdom)—briefing and vote.
6. Any items left over from previous agenda.

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CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

Kenneth R. Mason,
Secretary.
November 6, 1986.

[FR Doc. 86–25592 Filed 11–7–86; 1:45 pm]
BILLING CODE [illegible]

POSTAL SERVICE (BOARD OF GOVERNORS)

Notice of Vote To Close Meeting

At its meeting on November 4, 1986, the Board of Governors of the United States Postal Service unanimously voted to close to public observation its meeting scheduled for December 1, 1986, in Washington, DC. The meeting will concern consideration of the Postal Rate Commission's Recommended Decision on Destination–BMC Parcel Post.

(Docket No. MC86–1)

The meeting is expected to be attended by the following persons: Governors Camp, Griesemer, McConnell, McKean, Nevin, Peters, Ryan and Setrakian; Postmaster General Tisch; Deputy Postmaster General Strange; Secretary to the Board Harris; General Counsel Cox; and Counsel to the Governors Califano.

The Board determined that pursuant to section 552b(c)(10) of Title 5, United States Code, and § 7.3(j) of Title 39, Code of Federal Regulations, discussion of the matter is exempt from the open meeting requirement of the Government in the Sunshine Act, [5 U.S.C. 552b(b)], because it is likely to specifically concern the participation of the Postal Service in a civil action or proceeding or the litigation of a particular case involving a determination on the record after opportunity for a hearing.

In accordance with section 552b(f)(1) of Title 5, United States Code, and § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(10) of Title 5, United States Code, and § 7.3(j) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

David H. Harris,
Secretary.

[FR Doc. 86–25544 Filed 11–7–86; 10:40 am]
BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [51 FR 37819 October 24, 1986].

STATUS: Closed meetings.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Tuesday, October 21, 1986.

CHANGE IN THE MEETING: Additional items.

The following item was considered at a closed meeting held on Tuesday, October 28, 1986, at 2:30 p.m.

Consideration of *amicus* participation.

The following items were considered at a closed meeting held on Thursday, October 30, 1986, following the 10:00 a.m. open meeting:

Settlement of injunctive action.
Formal order of investigation.
Consideration of *amicus* participation.

Commissioner Peters, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David H. Potel at (202) 272–2014.

Shirley E. Hollis,
Assistant Secretary.
November 5, 1986.

[FR Doc. 86–25566 Filed 11–7–86; 11:21 am]
BILLING CODE 8010-01-M

federal register

Wednesday
November 12, 1986

Part II

Department of Labor

Mine Safety and Health Administration

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30 CFR Part 15

Requirements for Approval of Explosives and Sheathed Explosive Units; Proposed Rule

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 15

Requirements for Approval of Explosives and Sheathed Explosive Units

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the Mine Safety and Health Administration's (MSHA) existing regulations for approval of explosives and would add new requirements for approval of sheathed explosive units. The proposed revisions would upgrade existing provisions consistent with current technology, eliminate duplicative and unnecessary provisions, reorganize the existing requirements, and provide alternative methods of compliance where possible.

DATE: Written comments must be submitted on or before January 12, 1987.

ADDRESS: Send written comments to the Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Associate Assistant Secretary for Mine Safety and Health, MSHA, Phone (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Background

MSHA is proposing to revise the existing requirements for approval of explosives and add new requirements for approval of sheathed explosive units. These revisions are proposed pursuant to section 508 of the Federal Mine Safety and Health Act of 1977.

On July 9, 1982, MSHA published an Advance Notice of Proposed Rulemaking (ANPRM) in the Federal Register (47 FR 30025) which announced a comprehensive review of the underground coal mining standards in 30 CFR Part 75 and solicited public comments. As part of the review, MSHA specifically sought comment on blasting and explosives standards and related approval regulations.

On June 5, 1984, MSHA published a notice in the Federal Register (49 FR 23281) which announced the availability of its preproposal draft of revisions to the approval requirements for explosives, sheathed explosive units, and related blasting equipment, and scheduled a public conference. The public conference was held July 11, 1984, in Pittsburgh, Pennsylvania, and was well attended by representatives of the mining community. MSHA has received written comments regarding its preproposal draft from affected manufacturers and other segments of the mining community.

The Agency's proposed rule addresses the comments received and is consistent with Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

II. Discussion of the Proposed Rule

A. General Discussion

MSHA's existing regulations governing the approval of explosives have not been revised since 1961. Since that time, technological advances have led to the development of new types of explosives suitable for use in underground mines. Analytical techniques used by MSHA and the Bureau of Mines in testing and evaluating explosives have advanced comparably. MSHA is proposing to update the existing regulations to reflect this state-of-the-art technology and to delete obsolete provisions.

A new section of the proposed rule would establish requirements for the approval of sheathed explosive units. The sheathed unit, intended for use without being confined in a borehole, is designed so that it will not ignite a flammable mixture of methane and/or coal dust when fired. It has been developed for use in dislodging loose roof slabs and overhangs, rock-fall leveling, slab or boulder breaking and other situations where the unconfined application of explosives would be appropriate to improve mine conditions. The proposal contains a new gallery test, applicable to explosives, which would provide for evaluation of explosives under conditions that are more representative of actual conditions in underground mines.

The proposed rule also would delete the existing provisions in Part 15 which describe the blasting practices that must be followed in underground coal mines. These provisions would be addressed in revisions being proposed to the safety standards in 30 CFR Part 75, (51 FR 17284, May 9, 1986).

In a separate rulemaking, 30 CFR Part 7 (51 FR 4686, February 6, 1986) MSHA is proposing that the applicant or a third party conduct the required testing according to test procedures set forth by the Agency for specific products and require certification of test results by the applicant. MSHA specifically solicits comments as to whether the Agency should continue testing for approval of explosives or if the testing proposed under Part 15 might more appropriately be included as a subpart under Part 7. The Agency is especially interested in information concerning the industry's capability with regard to facilities for conducting the required tests for approval of explosives.

In its proposed rule on Part 7, the Agency included provisions addressing "post-approval product audits" and "revocation" (of approvals). Members of the affected mining community have made several constructive suggestions during the Part 7 public hearings which were conducted on July 24 and 29, 1986, (51 FR 23559), and related comment periods which closed on August 12, 1986. In refining the pertinent provisions for Part 15, the information obtained by MSHA during these earlier proceedings has been recognized as an important source for structuring the Agency's position in this proposed rule. While the specific provisions proposed in this rulemaking represent a modification of those originally proposed in Part 7, the Agency's posture on these issues with respect to Part 7 will be reflected when Part 7 is published as a final rule. As the rulemaking process evolves, it is MSHA's intention to maintain consistency regarding this aspect of regulatory policy.

The term "permissible" that is used in the existing standards has been replaced with the term "approved" in the proposal. MSHA believes that the terminology used to identify products which have been approved by the Agency should be standardized. At the present time, terms such as "permissible", "accepted", and "certified" are used in 30 CFR Parts 11 through 36 to identify products which have been approved by MSHA. The necessary changes would be made in the appropriate parts as they are revised during the Agency's Regulatory Review Program.

Tests and evaluations made under this part will be performed for MSHA by the U.S. Department of the Interior, Bureau of Mines (Bureau). The Bureau testing facility is located near Pittsburgh, Pennsylvania.

B. Section-by-Section Discussion

Section 15.1 Purpose and effective dates.

This provision is derived from existing § 15.1 and would revise and simplify the statement of purpose and more accurately reflect the scope of the proposal. It would apply to underground coal mines and certain underground metal and nonmetal gassy mines.

Several commenters raised the issue of how the new rules, if adopted, would affect the approval status of explosives that are currently approved. At this stage in the rulemaking process, MSHA believes that the new approval requirements should apply only to explosives that are submitted for approval after the effective date of the rule. In order to allow for a period of transition to the new requirements, the Agency has proposed a delay of one year after publication of the final rule for the explosives approval requirements in Subpart B. Another approach the Agency is considering is to have Subpart B become effective 30 days after the effective date of the final rule, and let existing Part 15 remain in effect for a period of one year. With this approach the applicant could elect either to submit an approval application under the existing or the new requirements. Under the proposal, Subpart A, containing general provisions, and Subpart C, setting forth approval requirements for sheathed explosive units, would be effective 30 days after publication of the final rule so that sheathed explosive units could be made available for use in underground mines as soon as possible. All applications for approval or extensions of approval for explosives submitted after one year would be subject to the new requirements. Explosives previously approved for which no changes are sought would not be affected by this rule.

MSHA solicits comment on this issue, particularly on the potential benefits that may be obtained by retaining the existing requirements for the one year phase-in period.

Section 15.2 Definitions.

The proposed definitions are intended to make the proposal clear and more readily understandable.

Applicant. This term which is derived from the existing standards, identifies the party seeking approval of an explosive or sheathed explosive unit under this part.

Approval. This term would replace the existing phrase "certificate of approval" used to describe a document issued by MSHA which states that an explosive or sheathed explosive unit meets the requirements of this part and which authorizes the use of an approval marking identifying the explosive or sheathed explosive unit as approved.

Explosive. This definition would revise the existing definition to more clearly indicate the type of products for which this part is intended. The existing definition referring to "blasting devices as defined in Part 17 of this subchapter", has not been included in the proposal since these devices are no longer manufactured or used in underground mines.

Extension of Approval. This phrase which is new, is used to identify a written document issued by MSHA that indicates that a change to a previously approved explosive or sheathed explosive unit has been tested and/or examined and meets the requirements of this part. It is based on existing terminology that is used when changes are made on products approved in accordance with 30 CFR Parts 18 through 36.

Post-approval product audit. This term is new and is used to describe MSHA's examination or testing of approved explosives or sheathed explosive units to determine whether the products have been manufactured as approved.

Sheath. This term, which is new, is used to describe that portion of a sheathed explosive unit which will be dispersed to form a flame inhibiting cloud upon firing of the explosives contained in the sheathed unit.

Sheathed explosive unit. A phrase used to describe an explosive device that can be fired without being confined in a borehole. It is designed so that it will not ignite a flammable mixture of methane or coal dust when fired.

Test detonator. The new definition for a test detonator identifies the types of detonators that will be used to test explosives submitted for approval under this part. This would replace the existing definition which specifies that test detonators contain a base charge of 0.25 ±0.02 gram of pentaerythritol tetranitrate (PETN). These detonators are no longer being manufactured for commercial use.

The definitions in the existing standards for "basic specifications", "poisonous gases", "ingredients", "Bureau", "MESA", and "MSHA" are not included in the proposal because they are commonly known throughout the mining community. The definition in the preproposal draft for "manufacturing site survey" is also deleted because this term is not included in the proposal.

Section 15.3 Observers at tests and evaluations.

The proposal is derived from existing § 15.9 and would clarify the provisions regarding observers and participants at tests and evaluations conducted under this part. The proposal is intended to protect proprietary information which could be available to observers at tests and evaluations.

The proposal provides that only MSHA and Bureau of Mines personnel, representatives of the applicant, and such other persons agreed upon by MSHA and the applicant would be permitted to be present during the tests and evaluations conducted under this part. In response to comments, this provision has been changed from the preproposal draft requirement which referred to "government personnel." This change clarifies MSHA's intention that only necessary persons be present when the tests and evaluations are conducted. This would minimize the possibility of any inadvertent release of proprietary information.

A provision that addressed consultation between a prospective applicant and personnel at MSHA's Approval and Certification Center, which appeared in this section of the preproposal draft, has been deleted in the proposal. MSHA will continue to provide appropriate consultation services, but the Agency does not believe that this is a matter which needs to be addressed by regulation.

Section 15.4 Application procedures and requirements.

This proposal, which is derived from existing §§ 15.3 and 15.15, addresses procedures and requirements for requesting approval of an explosive or sheathed explosive unit. Provisions in the preproposal draft which specified that applications be in English and requiring the applicant to assign an application number have been deleted. Consistent with current practices, applications received that are in a language other than English, or which are otherwise not readily understandable, will be returned to the applicant for clarification. The assignment of an application number is an internal administrative matter which need not be addressed in the rule.

The proposed rule would omit provisions concerning the fees to be charged for approval of explosives and sheathed explosive units. In a separate rulemaking, MSHA is proposing a new Part 5, Fees for Testing, Evaluation, and Approval of Mining Products (51 FR 12966, April 16, 1986). That proposal would update the existing system for charging fees and set forth the basis on which MSHA would compute fees for all approval-related services for which the Agency incurs a cost, including application processing, testing, and the issuance of approvals and extensions of approval. It would provide that MSHA publish a notice in the Federal Register announcing the availability of the current fee schedule by January of each year.

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The proposal would organize the application procedures into the three kinds of approval actions an applicant may request under Part 15: (1) Original approval, (2) subsequent approval of a similar product, and (3) extension of approval.

In requesting an original approval, i.e., the first time an applicant seeks approval for an explosive or sheathed explosive unit, MSHA would require the submission of information necessary to evaluate all facets of the explosive or sheathed explosive unit as they relate to the approval requirements. If, after receipt of an original approval, the applicant requests subsequent approval of a similar product or an extension of approval for the original product, the applicant would not be required to submit documentation duplicative of previously submitted information. Only information relative to changes in the previously approved product would be required, avoiding unnecessary paperwork.

The proposal would retain the existing requirement that MSHA approve changes in the specifications of a previously approved explosive or sheathed explosive unit. This would avoid changes being made that could affect the safe performance of the explosives.

The proposal would revise the existing requirement concerning assignment of different brand or trade names for approved explosives when a change involves the chemical composition of the explosives. Under the proposal, MSHA may require a new or changed explosive or sheathed explosive unit to be distinguishable from those associated with the former composition. This change recognizes that methods, other than different brand or trade names, could be used to identify products which perform differently. The existing provision specifies that, when a change in composition is approved, the former composition shall not be used again unless reapproved by MSHA. The Agency does not believe that reapproval of an explosive or sheathed explosive unit, which otherwise performs safely, is necessary merely because of a name change.

The existing requirement that the strength of the explosive be determined by the ballistic mortar test has been deleted in the proposal. MSHA has determined that it is not essential to know the strength of the explosive to determine whether the explosive will perform safely. In addition, of the numerous field samples of approved explosives that have been tested over the last ten years, all were found to be in compliance with the strength requirements. This was true even when the field samples were not in compliance with other specifications of the approval.

Section 15.5 Test samples.

This proposal would revise and update the provisions of existing §§ 15.5 and 15.6 concerning the shipment, quantity, and quality of explosives and sheathed explosive units to be submitted for testing. The proposal would retain, with clarifying changes, provisions from the existing regulations that prohibit shipment of samples until notification from MSHA; require storage of samples in a magazine for at least 30 days prior to testing; and establish when test samples would not be tested because of their chemical composition or condition.

The existing requirement that 100 pounds of 1¼ inch diameter by 8-inch length cartridges of explosives be submitted for testing has been changed to 150 pounds. This increased quantity of explosives would be necessary in order to conduct the additional new minimum firing temperature tests that are included in the proposal. In response to several comments, the requirement that applicants submit explosive cartridges in 8-inch lengths is not included in the proposal. This would provide applicants the flexibility to submit samples that are representative of the cartridge lengths that will be manufactured.

One commenter suggested that explosive cartridges with aluminum clips be permitted. This commenter stated that the hazard of incendivity associated with aluminum clips is not sufficient to warrant their exclusion. It is generally recognized by the mining community, however, that aluminum can present an incendivity hazard, particularly when contacting rusty metal, and should not be used in areas where there is a possibility of igniting methane or coal dust. At this stage of the rulemaking process, the Agency does not believe that explosive cartridges with aluminum clips should be permitted. Additional comments are solicited on this issue.

Several commenters addressed the use of perchlorate in approved explosives, one suggesting that it be prohibited. Another commenter recommended that quantities of perchlorate greater than specified in the preproposal draft be permitted if no adverse reaction is observed in the drop-weight impact test. Perchlorate is used to improve the low temperature performance of approved explosives. Research conducted by the Bureau of Mines reveals that the use of perchlorate in approved explosives does not result in instability of the explosive when the amount of perchlorate does not exceed the limitations specified in the proposal. The proposal provides that explosives that have no aluminum content and are composed of more than 5 percent water would be permitted to contain up to 5 percent perchlorate. MSHA recognizes that these specific requirements may, in certain instances, be limiting and specifically requests information and data on this issue.

A commenter suggested that the preproposal draft requirement for explosives to be stored in a magazine for 30 days before testing be revised to require that the explosives be at least 30 days old, based on the manufacturer's code date. The proposed storage provision is intended to expose the explosives to conditions that would be similar to those expected in the mining environment before they are tested. Explosives that are a certain age which have been kept in a controlled environment may not fully accomplish this purpose.

Section 15.6 Issuance of approval.

This proposal is derived from existing § 15.13 and specifies the actions that would be taken by MSHA after tests and evaluations have been completed on explosives and sheathed explosive units. MSHA would issue an approval to the applicant and assign an approval number or notify the applicant that approval is denied. An applicant would not be allowed to represent the explosives or sheathed explosive units as approved until MSHA has issued the approval.

Several commenters suggested that the proposal require MSHA to complete all approval actions within 90 days. At this point, the Agency does not believe that it should establish a time limit for the testing and evaluation of explosives due to the complexity and variables involved in the approval process. Concerning the timing of the approval process, MSHA is aware that excessive delay could have an adverse affect on the quality and integrity of the product being tested. Streamlining internal approval procedures is an MSHA priority. The Agency solicits information and experience encountered by manufacturers on the types of problems that have contributed to delays in the present approval process.

Section 15.7 Quality assurance.

This proposal is derived from existing § 15.14, except paragraph (b) which is new, and would require that the approval-holder implement certain basic quality control measures for approved explosives and sheathed explosive units. The MSHA approval label is relied upon in the mining community as an indication that the product is safe for use in mines. Under the proposal, the approval-holder would be required to manufacture the product in accordance with the specifications of the approval and report to MSHA any knowledge of products distributed that do not comply with the approval.

As part of the approval application, the preproposal draft would have required applicants to submit detailed quality control plans for acceptance by MSHA. It also would have required that quality control inspection and testing instructions be submitted for MSHA acceptance. MSHA would have reviewed and accepted the plan and the instructions prior to their implementation. Any changes to them would also have been subject to MSHA acceptance. Many commenters objected to these draft provisions, stating that their quality control plans contain proprietary information, that such a requirement would be unnecessarily burdensome, and that submitting changes in the plans for MSHA acceptance would delay implementing needed changes.

MSHA continues to believe that there is a need for quality control in the production of approved products. For this reason, the proposal retains the basic requirement that approved products be manufactured in accordance with the approval. The design and implementation of the quality assurance program to accomplish this, however, would be the manufacturer's responsibility and not be subject to review or acceptance by MSHA.

While MSHA believes that adherence to the proposed requirements for quality assurance would provide substantial protection against the distribution of defective products, MSHA recognizes that this could occur. The proposal, therefore, would require the approval-holder to report to the Agency any knowledge of explosives or sheathed explosive units that have been distributed which do not meet the approval requirements or specifications. This knowledge could come from the results of internal audits, reports from users, or other sources. Upon receiving such a report, MSHA would work with the approval-holder to implement appropriate corrective action.

The preproposal draft provided that MSHA could conduct manufacturing site surveys before and after issuance of an approval to determine whether or not the applicant was complying with the accepted quality control program. Some commenters objected to this draft provision stating that such surveys were unnecessary and that the practices in an applicant's manufacturing facilities are not a legitimate area of MSHA concern. At this stage in the rulemaking process, MSHA believes that the proposed emphasis on product auditing by the Agency would provide the necessary assurance that approved products are in compliance with the technical requirements, and would uncover problems in the quality assurance program which were not detected by the approval-holder. In addition, MSHA agrees that management of the manufacturing process is the responsibility of the approval-holder. For these reasons, the draft provision for manufacturing site surveys is not retained in the proposal.

Section 15.8 Approval marking.

This proposal is derived from existing § 15.14 and provides for labeling of approved explosives and sheathed explosive units. The proposal would retain the existing requirement that approved explosives be marketed only under the brand or trade name in the approval, as well as the requirement that the wrapper of each cartridge bear a label indicating that the explosive is approved. These requirements would also apply to sheathed explosive units.

The preproposal draft provision which would have required that each case of approved explosives and sheathed explosive units be labeled with the minimum firing temperature has been deleted in the proposal. Although the proposal retains the performance requirement for a minimum firing temperature, MSHA believes that the manner in which this information is conveyed to the mining industry is an appropriate matter that should be determined by the explosive manufacturers and need not be addressed by regulation.

The existing requirement for a case-insert, warning the user that the explosive is approved only when used in conformance with the requirements of Part 15, is not included in the proposed rule. MSHA believes that requirements governing the use of explosives are appropriately included in related safety standards and should not be addressed in requirements for approval of explosives.

Section 15.9 Disclosure of information.

The proposal is derived from existing §§ 15.9 and 15.17 which address the disclosure of information on explosives tested and evaluated under Part 15. MSHA intends to continue the current practice of treating information on product specifications and performance as proprietary information and will protect its disclosure to the fullest extent consistent with The Freedom of Information Act, FOIA (5 U.S.C. 552). Under the proposal, MSHA would notify the applicant of requests for product information received by MSHA and would provide the manufacturer the opportunity to present its position on disclosure. Information identified by the manufacturer as proprietary would not be disclosed, unless, as mandated by FOIA, MSHA determines that disclosure will further the public interest and will not impede the discharge of any of the functions of the Agency.

In response to the preference of several commenters, the term "confidential commercial information" which appeared in the preproposal draft has been changed to "proprietary information".

Provisions from the existing regulation concerning MSHA publication of lists and other information on approved explosives are not included in the proposed rule. The dissemination of information that is non-confidential need not be addressed by these regulations. At this time, however, MSHA intends to continue to provide the mining community with this information. The draft provisions that addressed "changes after approval" which appeared in this section of the preproposal draft have been included in proposed § 15.4.

Section 15.10 Post-approval product audit.

This proposal is derived from existing § 15.20 and public comments from MSHA's proceedings on 30 CFR Part 7. It would include requirements for post-approval product audits. While the use of quality assurance during the manufacturing process would help assure the mining community that explosives and sheathed explosive units meet the approval requirements, MSHA believes there is also a need for independent evaluation of these products on a random basis. For this reason, the proposal provides that approved explosives and sheathed explosive units be subject to periodic audit by MSHA for the purpose of determining conformity with the technical requirements upon which the approval was based.

Under the proposal, approved explosives or sheathed explosive units could be obtained for audit from the approval-holder or from sources other than the manufacturer such as mine suppliers or distributors. However, the

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approval-holder may be required to provide, at no cost to MSHA, one case of explosives or 25 sheathed explosive units no more than once a year except for cause.

When approved explosives or sheathed explosive units are requested by MSHA for audit, the Agency would arrange with the approval-holder to examine and evaluate samples of them at a mutually agreed upon time and location and permit the approval-holder to observe any audit-related tests conducted. This examination and evaluation could take place at an MSHA facility, at the manufacturer's plant or distribution center, or at any other place agreed upon by MSHA and the approval-holder.

All explosives or sheathed explosive units audited by MSHA would be selected by the Agency as representative of those distributed for use in mines. In addition, the proposal would allow the approval-holder to obtain any final evaluation report resulting from such audits.

In determining which approved explosives or sheathed explosive units would be subject to audit at any particular time, MSHA would consider a variety of factors. These may include, for example, whether the manufacturer had previously produced the approved product or similar products, whether the approved product is new or part of a new product line, or whether the approved product is intended for a unique application or limited distribution. Other considerations may be product complexity, the manufacturer's previous product audit results, product population in the mining community, and the time since the last audit or since the product was first approved.

As indicated earlier, no more than once a year, except for cause, an approval-holder would be required to make available to MSHA for audit approved explosives or sheathed explosive units at no cost. Based on MSHA's experience, the Agency anticipates few instances in which more than one case of explosives or 25 sheathed explosive units would be required from any one manufacturer in any one year. There are several events, however, which may demonstrate or cause MSHA to believe that an explosive or sheathed explosive unit does not meet the technical requirement upon which the approval was based. For example, MSHA may have verified complaints about the safe functioning of an explosive or sheathed explosive unit, have evidence of changes that have not been approved, need to retest an explosive or sheathed explosive unit with which an audit test indicated a problem, or need to verify that corrective action required previously by MSHA has been taken. Because the use of the approval marking obligates the approval-holder to manufacture the explosives and sheathed explosive units according to the technical requirements upon which the approval was based, MSHA believes that, when there is cause, the approval-holder should provide additional explosives or sheathed explosive units at no cost to the Agency.

Several commenters indicated that shipping small quantities of explosives would impose unreasonable costs on manufacturers because most major carriers base their tariffs on a 7,500 or 10,000 pound minimum for shipment of Class A explosives. Under the proposal, the site where a post-approval audit is to be conducted would be mutually agreed upon by the applicant and MSHA. This approach would permit some audits to be made in locations, such as the manufacturing site or distribution center, where shipment of the products would not be necessary. When shipment of the explosives or sheathed explosive units is necessary, MSHA believes that most applicants would ship them in the same vehicles as other shipments of explosives to customers or to their regional supply magazines.

The preproposal draft provision that would have required the approval-holder to take "all actions required by MSHA" when a product fails to comply with the technical requirements during an MSHA audit, has been deleted from the proposal. When deficiencies are found during MSHA audits of approved products, MSHA will continue to require that the manufacturer take necessary actions to address the problem. These actions could include, but are not limited to, the approval-holder recalling the lot or batch of explosives or sheathed explosive units involved, issuing user notices, or revocation of the approval by MSHA. (See discussion on revocation procedures below.) MSHA believes that this authority is an integral part of the approval process.

Section 15.11 Revocation.

This proposal is derived from existing § 15.16 and public comments from MSHA's proceedings on 30 CFR Part 7. The proposal has been modified to state that revocation could be based on either failure of the product to comply with technical requirements upon which the approval was based, or evidence that the product presents a hazard when used in a mine.

The preproposal draft provision, which specified that failure to comply with the accepted quality control plan or inspection and testing instructions would be a basis for the revocation of an approval, has been deleted in the proposal. As discussed earlier under the proposal, the quality control plan and inspection and testing instructions would not be required to be approved or accepted by MSHA.

Several commenters recommended that revocation procedures require MSHA to fully describe the "cause" of a revocation action and include an appeal process to provide the approval-holder with an opportunity to challenge the basis for such action. MSHA has long recognized that the approvals it issues are "licenses" as that term is defined in section 551 of the Administrative Procedure Act (APA). As such, pursuant to section 558(c) of the APA, the licensee or approval-holder must be accorded certain protections prior to revocation of an approval. These include being provided (1) a written notice of the intent to revoke with an explanation of the specific reasons for the proposed revocation, (2) an opportunity to demonstrate or achieve compliance with the technical requirements for approval, and (3) an opportunity for a hearing upon request. Therefore, consistent with the APA and current Agency policy, these protections have been incorporated into the proposal and appear in subparagraphs (b) and (c) of proposed § 15.11 on revocation.

Also in accord with the APA is subparagraph (d) of proposed § 15.11. This provision permits the Agency to suspend an approval without *prior* notification if a product poses an imminent hazard to the safety or health of miners. It is based on language in section 558(c) of the APA which provides an exception to prior notification, ". . . in cases . . . in which public health, interest, or safety requires otherwise." In imminent hazard situations the Agency would still provide the approval-holder with APA type protections. However, due to the potentially critical nature of the situation, the approval may be suspended to ensure the safety and health of any affected miners.

Section 15.20 Technical requirements.

This proposal is derived from existing §§ 15.10, 15.11, 15.12 and 15.21, except for paragraphs (g)(1), (g)(2), and (h), which are new. The proposal sets forth the technical requirements for approved explosives.

Paragraph (a) would require the chemical composition of the explosive, as determined by MSHA analysis, to conform to the composition furnished by the applicant. If in conformance, the applicant's composition description would be incorporated into the approval and would be the standard to determine compliance with the approval during MSHA audits.

Paragraph (b) would require the explosive to detonate completely in the rate-of-detonation test. This test is intended to determine whether the explosive has a tendency to misfire or partially detonate. The test is conducted on an unconfined 50-inch column of 1¼ inch diameter cartridges and on the same quantity of the smallest diameter cartridge less than 1¼ inch submitted by the applicant. This and other tests involving initiation would be conducted with a test detonator.

A commenter suggested that each explosive cartridge be required to detonate at the same rate in the rate-of-detonation test in order to avoid detonation rate variations in the same column of explosive cartridges. MSHA is not aware of any data or any information that indicates that such testing would produce meaningful information.

Paragraph (c) would require that the air-gap sensitivity of the explosive be at least 2 inches at the minimum firing temperature and at least 3 inches at a temperature between 68 and 86 °F. This proposed requirement would permit evaluation of whether the explosive will transmit detonation across a small air gap to another explosive cartridge in the column. The air-gap sensitivity is determined in the explosion-by-influence test using the 7-inch cartridge method. The 7-inch cartridge method is conducted with two 8-inch cartridges. One inch is cut off the end of each cartridge. The cartridges are placed in a paper tube, the cut ends facing each other, with the appropriate 2-inch or 3-inch air gap between them. Then, one cartridge is fired to test the effect of the detonation on the other. This test method represents a modification of the existing halved-cartridge method.

In response to comments, the proposal would recognize different sensitivities in the air-gap test at different temperatures. Under the proposal, an air-gap sensitivity of 2 inches would be required at the minimum firing temperature and 3 inches would be required at temperatures of 68 to 86 °F. This is consistent with existing §§ 15.12 and 15.21, which require an air-gap sensitivity of 3 inches in the initial approval test, but allows an air-gap sensitivity of 2 inches for field samples of approved explosives.

The minimum firing temperature at which the air-gap sensitivity would be conducted would be that proposed by the applicant or 41 °F, whichever is lower. Thus, under the proposal, explosives would be required to perform adequately at a temperature as low as 41 °F. If specified by the applicant, the explosives would be tested at a lower temperature. The lowest temperature at which the explosive passes the test would be specified in the approval.

Paragraph (d) specifies the performance that would be required for an explosive in gallery test 7. The proposed test demonstrates whether the explosive will ignite an explosive mixture of methane and air. Gallery test 7 is conducted by firing, one at a time from the borehole of a steel cannon, at least 20 explosive charges of varying weights. The explosives are primed with a test detonator and stemmed and tamped. This test is conducted in air containing 7.7 to 8.3 percent natural gas and at a temperature between 68 and 86 °F.

A commenter suggested that gallery test 7 and other gallery tests be performed on samples of explosives identical to those intended to be marketed for use in underground mines. MSHA agrees and has addressed this concern by specifying in the proposal that gallery test 7 be conducted on explosives that include wrappers and seals.

Paragraph (e) specifies the performance that would be required for an explosive in gallery test 8. The proposed test demonstrates whether the explosive will ignite an explosive mixture of methane and air in which bituminous coal dust has been predispersed. The proposed test is conducted by firing, one at a time from the borehole of a steel cannon, at least 10 unstemmed explosive charges of varying weights. The explosives are primed with a test detonator and tamped. This test is conducted in 640 cubic feet of air containing 3.8 to 4.2 percent natural gas, into which 8 pounds of bituminous coal dust has been predispersed. The air is at a temperature between 68 and 86° F.

The proposed gallery test 8 would replace existing gallery test 4, which provides for coal dust to be placed on shelves in the gallery, rather than being predispersed. The new test conditions would facilitate improved quantitative comparisons of explosive incendivity.

One commenter suggested that a test be established to evaluate the phenomenon of dynamic pressure desensitization or "channel effect" in a column of explosives. This effect, which can contribute to misfires, may result from excessive space between the cartridge and the borehole walls, or from the close proximity of an adjacent borehole. Both could cause a pressure wave to inhibit the detonation of the explosive cartridges. At this stage in the rulemaking process, MSHA is not aware of any reliable test that could be used for determining the sensitivity of explosives to this occurrence.

Paragraph (f) would establish the requirements for the performance of an explosive in the pendulum-friction test. The test would demonstrate whether the explosive is unduly sensitive to impact and friction. The explosive is required to show "no perceptible reaction" under the conditions of the test. "No perceptible reaction", as used in the proposal, means the explosive does not burn, explode, or exhibit a local crackling. The test apparatus consists of an "A" frame, a weighted pendulum to which a steel or hard fiber-faced shoe is attached, and a steel anvil. The explosive sample is placed on the anvil and the pendulum is adjusted and released from a height of 59 inches.

Paragraph (g) prescribes the tests that would be conducted when a change is proposed to an approved explosive. A change involving cartridge diameter or length would require MSHA examination to determine what tests if any, would be required to evaluate the proposed change. A change to a cartridge diameter smaller than the smallest diameter cartridge covered by the approval would require that the rate-of-detonation and explosion-by-influence tests be conducted. This testing would enable MSHA to determine whether the approved explosive in the smaller diameter cartridges would continue to perform in accordance with the approval.

A commenter suggested that the requirement for the explosion-by-influence test be deleted because testing done for the original approval on 1¼ inch diameter cartridges is sufficient to ensure reliable detonation of approved explosives. In MSHA's experience, however, detonation is not always reliable with certain explosive formulations when used in small diameter cartridges.

Paragraph (h) would give MSHA the flexibility to approve an explosive that incorporates technology for which the tests or performance requirements of the proposal are not appropriate. An approval would be issued under this provision only if it is determined by testing and evaluation that the explosive performs as safely as an explosive that meets the requirements of the proposed

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rule. MSHA would develop appropriate tests and performance requirements when the explosive is submitted for approval. Variations in the test and evaluation methods would continue to emphasize the critical aspects of approved explosives, including stable chemical formulation and protection against ignition of an explosive atmosphere. This clarifying revision reflects MSHA's primary concern with the safe performance of explosives in the mining environment, rather than their design.

In response to comments on the preproposal draft, the proposed rule deletes the reference to "new" technology. While the most likely application of the provision would be to explosives technology developed in the future, the provision is intended also to apply to existing technology not previously incorporated in approved explosives.

One commenter objected to inclusion of this provision in the proposed rule because approval of an explosive under tests and criteria not contained in the rule would be improper. The commenter indicated that all approval requirements should be promulgated through rulemaking. At this stage in the rulemaking process, MSHA believes that the flexibility provided by the proposal is needed so that MSHA's explosives approval program can best serve the needs of safety in a timely manner. MSHA foresees use of this provision only to accommodate innovation in the formulation of explosives. At the time MSHA issues an approval under this section, the Agency would make the criteria used to test and evaluate the product available to the mining community. The Agency specifically requests additional comment on the cost impact of these technical requirements for the production of approved explosives.

The existing requirement in § 15.12(*f*) that limits the volume of poisonous gases to 2.5 cubic feet per pound of explosive has not been retained in the proposal. MSHA believes the hazards associated with toxic gases are appropriately addressed in 30 CFR 75.301 and 75.302 which require that concentrations of noxious or poisonous gases not exceed the current threshold limit values (TLV) as specified by the American Conference of Governmental Industrial Hygienists. The Agency solicits information and data on potential benefits that may be obtained by retention of this provision.

Section 15.21 Tolerances for Ingredients

This proposal is derived from existing § 15.21 and prescribes the limits of variation from the composition set forth in the approval of an approved explosive.

In response to comments, the preproposal draft provisions which would have established a tolerance of ±0.5 percent for aluminum and physical sensitizing agents is not included in the proposal. Commenters stated that the analytical methods used to determine the aluminum content in an explosive are subject to greater variations than ±0.5 percent and that inherent variations in the manufacturing process make adherance to this tolerance unrealistic. Further, they stated that physical sensitizers may be in the form of density reducing agents which are not necessarily added during the manufacturing process as a certain percentage of the explosive formulation. MSHA recognizes that a tolerance of plus or minus ±0.5 percent for these ingredients would permit only a small variation in the explosive formulation and may not be appropriate in all situations. Aluminum and physical sensitizers can affect the safe performance of an approved explosive, however, MSHA believes that a specific tolerance should be established for these ingredients. Under the proposal, however, the applicant would be allowed to establish a tolerance for these ingredients which would be based on applicant data or experience.

The proposal would retain the tolerances specified in the existing standards for carbonaceous materials, moisture, and other ingredients contained in the explosive formulation. Explosives manufactured within these tolerances have historically proven to be safe for use. To assure that these tolerances appropriately address various explosive formulations, however, MSHA specifically requests comment on whether they should be retained. The Agency also requests data and information pertaining to tolerances for aluminum and physical sensitizers.

Section 15.22 Tolerances for performance, wrapper and specific gravity

This proposal is derived from existing § 15.21 and prescribes the limits of variation for rate-of-detonation and specific gravity of the explosive for the weight of wrapper. Under the proposal, the explosive would be required to be manufactured in accordance with each specified tolerance.

Section 15.30 Technical requirements

This proposal is new and sets forth the technical requirements for approved sheathed explosive units.

Paragraph (a) specifies that the sheathed explosive unit could contain no more than 1½ pounds of approved explosive. This quantity of explosives is the maximum amount used in the prototype units designed and tested by the Bureau of Mines, which were found to be adequate for all situations where sheathed explosives are likely to be used. MSHA specifically solicits comment on whether this amount of explosives is appropriate under all circumstances.

Paragraph (b) would require that the chemical composition of the sheath, as determined by MSHA analysis, conforms to the composition furnished by the applicant. If in conformance, the applicant's composition description would be incorporated in the approval and would be the standard to determine compliance with the approval during MSHA audits.

Paragraph (c) sets forth proposed requirements for the detonator well for the sheathed explosive unit. The detonator well would allow the detonator to be securely inserted into the unit in order to provide for reliable detonation.

Paragraph (d) would specify performance requirements for the outer covering of the sheathed explosive unit to ensure that the unit is durable and appropriate for use in underground mines. Units would be subjected to a drop test to determine whether the contents are susceptible to shifting or damage under conditions comparable to those likely to be encountered in underground mines.

Paragraph (e) specifies the performance requirements for sheathed explosive units in gallery tests 9, 10, 11, and 12. The sheathed explosive units would be subjected to 10 trials of each gallery test and would be required to detonate completely without causing any ignition of methane or coal dust.

Gallery test 9 would be conducted with 3 sheathed explosive units placed 2 feet apart on a concrete slab in an explosive methane-air atmosphere. The test provides for evaluation under conditions simulating the blasting of fallen rock in an underground mine.

Gallery test 10 would be conducted with 3 sheathed explosive units in the same arrangement as in gallery test 9 in an explosive methane-air atmosphere in which bituminous coal dust has been predispersed.

Gallery test 11 would be conducted with 3 sheathed explosive units arranged in a triangular pattern in a simulated crevice formed by two concrete slabs. The test would be conducted in an explosive methane-air atmosphere under conditions simulating blasting of an overhanging roof slab.

Gallery test 12 would be conducted with 3 sheathed explosive units arranged in a triangular pattern in a corner formed by three steel plates. The test would be conducted in an explosive methane-air atmosphere under conditions simulating blasting along a rib where compression and reflection of the explosive shock wave are produced.

A commenter suggested that gallery tests 9, 11, and 12 also be conducted in an atmosphere containing predispersed bituminous coal dust. The commenter believes that because of the possibility of sheathed explosive units being used in inadequately rock-dusted areas, the likelihood of a dust ignition should be evaluated in approving the units. MSHA believes, however, that the methane-air and methane-coal dust-air atmosphere specified in the gallery tests are easier to ignite than coal dust alone and would provide a more stringent test of the units incendivity than the tests proposed by the commenter.

Paragraph (f) would require that each of 10 sheathed explosive units detonate completely when fired at the minimum firing temperature established for the explosive used in the unit. The test evaluates the effect of temperature on the sensitivity of the explosive and the performance of the flame-inhibiting material in the unit.

Paragraph (g) would give MSHA the flexibility to approve a sheathed explosive unit that incorporates technology for which the tests or performance requirements of the proposal are not appropriate. An approval would be issued under this provision only if it is determined by testing and evaluation that the unit performs as safely as one that meets the requirements of the proposed rule. Under the proposal, MSHA would develop the appropriate tests and performance requirements when the sheathed explosive unit is submitted for approval. Variations in the test and evaluation methods would continue to emphasize the critical aspects of sheathed explosive units, including stable chemical formulation, durable construction, and protection against ignition of an explosive atmosphere. This clarifying revision reflects MSHA's primary concern with the safe performance of sheathed explosive units in the mining environment, rather than with their design.

In response to comments on the preproposal draft, the proposed rule deletes the reference to "new" technology. While the most likely application of the provision would be to explosives technology developed in the future, the provision is intended also to apply to existing technology not previously incorporated in approved sheathed explosive units.

One commenter objected to inclusion of this provision in the proposed rule because approval of a sheathed explosive unit under tests and criteria not contained in the rule would be improper. The commenter indicated that all approval requirements should be promulgated through rulemaking. At this stage in the rulemaking process, MSHA believes that the flexibility provided by the proposal is needed so that MSHA's explosives approval program can best serve the needs of safety in a timely manner. MSHA foresees use of this provision only to accommodate innovation in sheathed explosive units. The Agency specifically requests additional comment on this issue.

Section 15.31 Tolerances for Ingredients

This proposal is new and would prescribe the limits of variation from the composition of the sheath set forth in the approval of the sheathed explosive unit. Under the proposal, the tolerance for each ingredient in the sheath would be required to be within the tolerance specified in Table I. The tolerances specified in Table I are derived from the existing requirements for ingredients in explosives. MSHA believes that these tolerances are also appropriate for sheathed explosive units. MSHA solicits any information and data on this issue.

Section 15.32 Tolerances for weight of explosive, sheath, wrapper and specific gravity.

This proposal is new and would prescribe the limits of variation for certain characteristics of the sheathed explosive unit. Under the proposal, the sheathed explosive unit would be required to be manufactured in accordance with the specified tolerances.

Derivation Table

The following derivation table lists: (1) Each section number of the proposed rule; and (2) the number of the existing regulation from which the proposal is derived.

DERIVATION TABLE

New section	Old section
15.1	15.1.
15.2	15.2.
15.3	15.9.
15.4	15.3 and 15.15.
15.5	15.5 and 15.6.
15.6	15.13.
15.7(a)	15.14.
15.7(b)	New.
15.8	15.14.
15.9	15.9 and 15.17.
15.10	15.20.
15.11	15.16.
15.20(a)	15.11.
15.20 (b), (c), (d), (e), (f), (g)(3).	15.10, 15.11, 15.12 and 15.21.
15.20 (g)(1), (g)(2), (h)	New.
15.21	15.21.
15.22	15.21.
15.30	New.
15.31	New.
15.32	New.

Distribution Table

The following distribution table lists: (1) Each section number of the existing regulation; and (2) the section number of the proposed rule which contains provisions derived from the corresponding existing section.

DISTRIBUTION TABLE

Old section	New section
15.1	15.1.
15.2	15.2.
15.3	15.4.
15.4	Part 5.
15.5	15.5.
15.6 (a), (b), (c), (d)	15.5.
15.6(e)	Remove.
15.7	Remove.
15.8	Remove.
15.9	15.3 and 15.9.
15.10 (a)(1), (b)(1), (b)(3), (b)(4), (b)(5), (b)(6), (b)(7).	15.20.
15.10 (a)(2), (b)(2)	Remove.
15.11	15.20(a).
15.12 (a), (b), (c), (d), (e), (g), (h).	15.20.
15.12(f)	Remove.
15.13	15.6.
15.14 (a), (b), (c)	15.8.
15.14(d)	Remove.
15.14(e)	15.7(a).
15.15	15.4.
15.16	15.11.
15.17	15.9.
15.18	Remove.
15.19 (a), (b), (c)	Part 75.
15.19 (d), (e)	Remove.
15.20	15.10.
15.21 (a)(1), (a)(3), (a)(4), (a)(5), (a)(6), (b)(5).	15.20.
15.21 (a)(2), (b)(4)	Remove.
15.21 (b)(1), (b)(2)	15.21.
15.21 (b)(3), (b)(6), (b)(7)	15.22.
15.22	Remove.
15.23	Remove.
15.24	Remove.
The Federal Mine Safety Code (as incorporated by § 15.19 (e)).	Part 75.

III. Drafting Information

The persons principally responsible for preparing this proposed rule are: Harry C. Verakis, Technical Support, MSHA; Earnest C. Teaster, Jr. and Helen B. Caraway, Office of Standards,

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Regulations, and Variances, MSHA; and David M. Melnick, Office of the Solicitor, Department of Labor.

IV. Executive Order 12291 and Regulatory Flexibility Act

In accordance with Executive Order 12291, an initial regulatory flexibility analysis has been developed by the Agency for the purpose of comparing the potential cost associated with the proposed rule with the cost of existing requirements for approval of explosives for underground coal mines. In this analysis, summarized below, MSHA has determined that the proposed rule would not result in major cost increases nor have an effect of $100,000,000 or more on the economy. Therefore, the rule is not within the criteria for a major rule and a Regulatory Impact Analysis is not required.

The Regulatory Flexibility Act requires that agencies evaluate and include, wherever possible, compliance alternatives that minimize any adverse impact on small businesses when developing regulatory proposals. This proposed rule would introduce alternative compliance methods to the existing regulations. In addition, the proposals would clarify compliance responsibilities and adopt performance-oriented rules when possible.

There are only six explosive manufacturers in the United States who produce approved explosives. Five employ over 100 people. Of these five, one is a multinational corporation. MSHA has determined that the proposed rule would not have a significant economic impact on a substantial number of small entities. The Agency, therefore, certifies that this action will not impact significantly on small business entities. However, as stated earlier, the Agency has prepared an initial regulatory flexibility analysis and estimates that the cost for industry compliance with existing requirements is $82,980 compared to $87,621 for Subpart A (General Provisions) of the proposal.

Costs for Subparts B and C have not been definitively quantified. The Agency solicits specific comment on any aspect of the regulatory flexibility analysis which is available on request.

V. Paperwork Reduction Act

Six manufacturers of MSHA-approved explosives produce about 100 different approved explosives. These manufacturers submit about 25 applications for some type of explosives approval per year. Approximately 12 approvals are issued each year and about 13 applications are denied approval. MSHA estimates that applications for approval require an average of five hours labor to prepare. The burden per application remains essentially the same under the proposal as under the existing requirement. MSHA estimates that the total annual recordkeeping burden under the proposal may increase slightly, primarily due to the introduction of sheathed explosive units.

Paperwork requirements for Part 15 are approved under OMB control number 1219-0066 which covers all of MSHA's equipment testing requirements in 30 CFR Parts 11 through 36. Part 15, which relates to explosives approval, currently specifies that the applicant submit a statement in duplicate explaining the nature and composition of the explosive. The proposed rule streamlines the process by specifically stating the information required for approval and describes how extensions of approval may be obtained.

The proposal would retain the existing requirement that the wrapper of each cartridge and each case of explosives bear a label indicating that the explosive is approved by MSHA. The proposal would extend these requirements to also apply to sheathed explosive units. In addition, the proposal would require that the detonator well on each explosive unit be marked.

MSHA believes that manufacturers would label explosive cartridges and cases with the brand or trade name and they would also label sheathed explosive units and detonator wells. MSHA, therefore, has associated no cost with these requirements.

The paperwork requirement contained in the proposed standard has been submitted to OMB for review under Section 3504(h) of the Paperwork Reduction Act of 1980 (Pub. L. 96-511). Comments on the proposed paperwork provisions should be sent directly to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) Room 3208, 726 Jackson Place, NW., Washington, DC 20746, Attention: Desk Officer for MSHA.

List of Subjects in 30 CFR Part 15

Administrative practice and procedure, Explosives, Mine safety and health, Underground mining.

Dated: November 6, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

Accordingly, it is proposed to amend Chapter I of Title 30, Code of Federal Regulation by revising Part 15 to read as follows:

PART 15—REQUIREMENTS FOR APPROVAL OF EXPLOSIVES AND SHEATHED EXPLOSIVE UNITS

Subpart A—General Provisions

Sec.
15.1 Purpose and effective dates.
15.2 Definitions.
15.3 Observers at tests and evaluations.
15.4 Application procedures and requirements.
15.5 Test samples.
15.6 Issuance of approval.
15.7 Quality assurance.
15.8 Approval marking.
15.9 Disclosure of information.
15.10 Post-approval product audit.
15.11 Revocation.

Subpart B—Explosives

15.20 Technical requirements.
15.21 Tolerances for ingredients.
15.22 Tolerances for performance, wrapper, and specific gravity.

Subpart C—Sheathed Explosive Units

15.30 Technical requirements.
15.31 Tolerances for ingredients.
15.32 Tolerances for weight of explosive, sheath, wrapper, and specific gravity.

Authority: 30 U.S.C. 957.

Subpart A—General Provisions

§ 15.1 Purpose and effective dates.

This part sets forth the requirements for approval of explosives and sheathed explosive units to be used in underground coal mines and certain underground metal and nonmetal gassy mines. Subpart B is effective beginning [insert date 1 year from publication of final rule] and Subparts A and C are effective beginning [insert date 30 days after the publication date of the final rule].

§ 15.2 Definitions.

The following definitions apply in this part:

Applicant. An individual or organization that manufactures or controls the production of an explosive or a sheathed explosive unit and who applies to MSHA for approval of that explosive or sheathed explosive unit.

Approval. A document issued by MSHA which states that an explosive or sheathed explosive unit meets the requirements of this part and which authorizes the use of an approval marking identifying the explosive or sheathed explosive unit as approved.

Explosive. A substance, compound, or mixture, the primary purpose of which is to function by explosion.

Extension of Approval. A document issued by MSHA which states that the change to a product previously approved by MSHA under this part meets the requirements of this part and which authorizes the continued use of the approval marking after the appropriate extension number has been added.

Post-approval product audit. Examination, testing, or both by MSHA of approved products selected by MSHA to determine whether those products meet the requirements of the approval.

Sheath. A chemical compound or mixture incorporated as a separate layer over an explosive in a sheathed explosive unit and which is intended to form a flame inhibiting cloud on detonation of the explosive.

Sheathed explosive unit. A device consisting of an approved explosive covered by a sheath of flame inhibiting material encased in a sealed covering.

Test detonator. A detonator that is commercially available for use in underground coal mines.

§ 15.3 Observers at tests and evaluations.

Only personnel of MSHA and the Bureau of Mines, U.S. Department of the Interior, representatives of the applicant, and other such persons as agreed upon by MSHA and the applicant shall be present during tests and evaluations conducted under this part.

§ 15.4 Application procedures and requirements.

(a) *Application.* Request for an approval or an extension of approval shall be sent to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, P.O. Box 251, Industrial Park Road, Triadelphia, West Virginia 26059.

(b) *Fees.* Fees calculated in accordance with Part 5 of this chapter shall be submitted in accordance with § 5.20.

(c) *Original approval for explosives.* Each application for approval of an explosive shall include—

(1) A technical description of the explosive, including the chemical composition of the explosive with tolerances for each ingredient;

(2) The brand or trade name under which the applicant will market the explosive;

(3) The lengths and diameters of explosive cartridges for which approval is requested;

(4) The proposed minimum firing temperature of the explosive; and

(5) The name, address, and telephone number of the applicant's representative responsible for answering any questions regarding the application.

(d) *Original approval for sheathed explosive units.* Each application for approval of a sheathed explosive unit shall include—

(1) A technical description of the sheathed explosive unit which includes the chemical composition of the sheath, with tolerances for each ingredient, and the types of material used for the outer covering;

(2) The minimum thickness, weight, and specific gravity of the sheath and outer covering;

(3) The brand or trade name, weight, specific gravity, and minimum firing temperature of the explosive approved to be used in the units;

(4) The ratio of the weight of the sheath to the weight of the explosive; and

(5) The name, address, and telephone number of the applicant's representative responsible for answering any questions regarding the application.

(e) *Subsequent approval of a similar explosive or sheathed explosive unit.* Each application for approval of an explosive or sheathed explosive unit similar to one for which the applicant already holds an approval shall include—

(1) The approval number of the product which most closely resembles the new one;

(2) The information specified in paragraphs (b) and (c) of this section for an original approval, except that any document which is the same as the one listed by MSHA in the prior approval need not be submitted but shall be noted in the application; and

(3) An explanation of all changes from the existing approval.

(f) *Extension of an approval.* (1) Any change in an approved explosive or sheathed explosive unit from the specification on file at MSHA shall be submitted for approval prior to implementing the change.

(2) Each application for an extension of approval shall include—

(i) The MSHA-assigned approval number for the explosive or sheathed explosive unit for which the extension is sought;

(ii) A description of the proposed change to the approved explosive or sheathed explosive unit; and

(iii) The name, address, and telephone number of the applicant's representative responsible for answering any questions regarding the application.

(3) MSHA will determine what tests, additional information, samples, or material, if any, are required to evaluate the proposed change.

(4) When a change involves the chemical composition of an approved explosive or sheathed explosive unit which affects the firing characteristics, MSHA may require the explosives or sheathed explosive units to be distinguished from those associated with the former composition.

§ 15.5 Test samples.

(a) *Submission of test samples.* (1) The applicant shall not submit explosives or sheathed explosive units to be tested until requested to do so by MSHA.

(2) The applicant shall submit 150 pounds of 1¼ inch diameter cartridges.

(3) If approval is requested for cartridges in diameters less than 1¼ inches, the applicant shall submit an additional 50 cartridges of each smaller diameter.

(4) If approval is requested for cartridges in diameters larger than 1¼ inches, the applicant shall submit an additional 10 cartridges of each larger diameter.

(5) If approval is requested for cartridges in more than one length, the applicant shall submit an additional 10 cartridges for each additional length and diameter combination.

(6) Each applicant seeking approval of sheathed explosive units shall submit 140 units.

(b) *Storage.* Explosives and sheathed explosive units will be stored in a magazine for at least 30 days before gallery tests are conducted. This storage period would determine how explosives would react when exposed to conditions similar to those in the mining environment.

(c) *Condition and composition.* (1) Explosives and sheathed explosive units will not be tested that—

(i) Contain chlorites, chlorates, or substances that will react over an extended time and cause degradation of the explosive or sheathed explosive unit;

(ii) Are chemically unstable;

(iii) Show leakage; or

(iv) Use aluminum clips to seal the cartridge.

(2) Explosives without aluminum and which contain more than 5 percent water shall not contain more than 5 percent perchlorate.

(i) Explosives that contain less than 5 percent water shall not contain any perchlorate.

(ii) Explosives containing aluminum shall not contain any perchlorate.

§ 15.6 Issuance of approval.

(a) After completing the evaluation and testing provided for by this part, MSHA will issue an approval or a notice that approval is denied.

(b) An applicant shall not advertise or otherwise represent an explosive or sheathed explosive unit as approved until MSHA has issued an approval.

§ 15.7 Quality assurance.

(a) Applicants granted an approval or an extension of approval under this part shall manufacture the explosive or sheathed explosive unit as approved.

(b) Applicants shall report to the MSHA Approval and Certification Center, Office of Quality Assurance, any knowledge of explosives or sheathed explosive units that have been distributed that do not meet the specifications of the approval.

§ 15.8 Approval marking.

(a) An approved explosive or sheathed explosive unit shall be marketed only under the brand or trade name specified in the approval.

(b) The wrapper of each cartridge and each case of approved explosives shall be legibly labeled as follows:

"[insert brand or trade name], MSHA approved Explosive".

(c) The outer covering of each sheathed explosive unit and each case of approved sheathed explosive units shall be legibly labeled as follows:

"[insert brand or trade name], MSHA approved Sheathed Explosive Unit".

§ 15.9 Disclosure of information.

(a) All information concerning product specifications and performance submitted to MSHA by the applicant shall be considered proprietary information.

(b) MSHA will notify the applicant of requests for disclosure of the information concerning their product and shall give the applicant an opportunity to provide MSHA with a statement of its position prior to any disclosure.

§ 15.10 Post-approval product audit.

(a) Approved explosives or sheathed explosive units shall be subject to periodic audits by MSHA for the purpose of determining conformity with the technical requirements upon which the approval was based. Any approved explosive or sheathed explosive unit which is to be audited shall be selected by MSHA and be representative of those distributed for use in mines. The approval-holder may obtain any final evaluation report resulting from such audits.

(b) No more than once a year except for cause, the approval holder, at MSHA's request, shall make one case of explosives or 25 sheathed explosive units available at no cost to MSHA for an audit which would be held at a mutually agreeable site and time. The approval-holder may observe any audit-related tests conducted during this audit.

(c) An approved product shall be subject to audit for cause at any time the agency believes that it is not in compliance with the technical requirements upon which the approval was based.

§ 15.11 Revocation.

(a) MSHA may revoke for cause an approval issued under this part if the product—

(1) Fails to meet the applicable technical requirements; or

(2) Creates a hazard when used in a mine.

(b) Prior to revoking an approval, the approval-holder shall be informed in writing of MSHA's intention to revoke. The notice shall—

(1) Explain the specific reasons for the proposed revocation; and

(2) Provide the approval-holder an opportunity to demonstrate or achieve compliance with the product approval requirements.

(c) Upon request, the approval-holder shall be afforded an opportunity for a hearing.

(d) If a product poses an imminent hazard to the safety or health of miners, the approval may be immediately suspended without a written notice of the agency's intention to revoke. The suspension may continue until the revocation proceedings are completed.

Subpart B—Explosives

§ 15.20 Technical requirements.

(a) *Chemical composition.* The chemical composition of the explosive shall be within the tolerances furnished by the applicant.

(b) *Rate-of-detonation test.* The explosive shall propagate completely in the rate-of-detonation test. The test is conducted with a test detonator on—

(1) A 50-inch column of 1¼ inch diameter cartridges; and

(2) A 50-inch column of the smallest diameter cartridges less than 1¼ inches submitted for testing.

(c) *Air-gap sensitivity.* The air-gap sensitivity of the explosive shall be at least 2 inches at the minimum firing temperature and 3 inches at a temperature between 68 and 86 °F, and the explosive shall propagate completely.

(1) Air-gap sensitivity of the explosive is determined in the explosion-by-influence test using the 7-inch cartridge method. The air-gap sensitivity is determined for 1¼ inch diameter cartridges and each cartridge diameter smaller than 1¼ inches. Explosives are initiated with a test detonator.

(2) The test is conducted at a temperature between 68 and 86 °F and at the minimum firing temperature proposed by the applicant, or 41 °F, whichever is lower. The test temperature at which the explosive propagates completely will be specified in the approval as the minimum firing temperature at which the explosive is approved for use.

(d) *Gallery test 7.* The explosive shall yield in gallery test 7 a value of at least 450 grams for the lower 95 percent confidence limit (L_{05}) on the weight for 50 percent probability of ignition (W_{50}) and shall propagate completely. The L_{05} and W_{50} values for the explosive are determined by using the Bruceton up-and-down method. A minimum of 20 trials are made with explosive charges of varying weights, including wrapper and seals. Each charge is primed with a test detonator, then tamped and stemmed with one pound of dry-milled fireclay into the borehole of a steel cannon. The cannon is fired into air containing 7.7 to 8.3 percent of natural gas. The air temperature is between 68 and 86 °F.

(e) *Gallery test 8.* The explosive shall yield in gallery test 8 a value of at least 350 grams for the weight for 50 percent probability of ignition (W_{CDG}) and shall propagate completely. The (W_{CDG}) value for the explosive is determined using the Bruceton up-and-down method. A minimum of 10 tests are made with explosive charges of varying weights, including wrapper and seals. Each charge is primed with a test detonator, then tamped into the borehole of a steel cannon. The cannon is fired into a mixture of 8 pounds of bituminous coal dust predispersed into 640 cubic feet of air containing 3.8 to 4.2 percent of natural gas. The air temperature is between 68 and 86 °F.

(f) *Pendulum-friction test.* The explosive shall show no perceptible reaction in the pendulum-friction test with the hard fiber-faced shoe. Ten trials of the test are conducted by releasing the steel shoe from a height of 59 inches. If there is evidence of sensitivity, the test is repeated with the hard fiber-faced shoe.

(g) *Cartridge diameter and length changes.* (1) For proposed changes to an approved explosive involving only cartridge diameter or length, MSHA will determine what tests, if any, will be required.

(2) When a proposed change to an approved explosive involves a smaller diameter than that specified in the approval, the rate-of-detonation and air-gap sensitivity tests will be conducted.

(3) No test will be conducted on cartridges with diameters the same as or smaller than those that previously failed to detonate in the rate-of-detonation test.

(h) *Modification of requirements.* MSHA may approve an explosive that incorporates technology for which the requirements of this part are not applicable, if the Agency determines by testing and evaluation that the explosive performs as safely as those which meet the requirements of this part.

§ 15.21 Tolerances for ingredients.

Tolerances for each ingredient in an explosive, which are expressed as a percentage of the total explosive, shall not exceed the following:

(a) Aluminum and physical sensitizers—The tolerances established by the applicant;

(b) Carbonaceous materials—±3 percent; and

(c) Moisture and other ingredients—The tolerances specified in Table I.

TABLE I.—TOLERANCES FOR MOISTURE AND OTHER INGREDIENTS

Quantity of ingredient (as percent of total explosive or sheath)	Tolerance percent (±)
0 to 5.0	1.2
5.1 to 10.0	1.5
10.1 to 20.0	1.7
20.1 to 30.0	2.0
30.1 to 40.0	2.3
40.1 to 50.0	2.5
50.1 to 55.0	2.8
55.1 to 100.0	3.0

§ 15.22 Tolerances for performance, wrapper, and specific gravity.

(a) The rate of detonation of the explosive shall be within ±15 percent of that specified in the approval.

(b) The weight of wrapper per 100 grams of explosive shall be within ±2 grams of that specified in the approval.

(c) The apparent specific gravity of the explosive shall be within ±7.5 percent of that specified in the approval.

Subpart C—Sheathed Explosive Units

§ 15.30 Technical requirements.

(a) *Quantity of explosive.* The sheathed explosive unit shall contain not more than 1½ pounds of an approved explosive.

(b) *Chemical composition.* The chemical composition of the sheath shall be within the tolerances furnished by the applicant.

(c) *Detonator well.* The sheathed explosive unit shall have a detonator well that—

(1) Is protected by a sealed covering;

(2) Permits an instantaneous detonator to be inserted in the unit with the explosive portion of the detonator completely imbedded in the explosive;

(3) Is provided with a means of securing the detonator in the well; and

(4) Is clearly marked.

(d) *Drop test.* The outer covering of the sheathed explosive unit shall not tear or rupture and the internal components shall not shift position or be damaged in the drop test.

(1) The drop test is conducted on at least 10 sheathed explosive units. Each unit is dropped on its top, bottom, and edge from a height of 6 feet onto a concrete surface. The drop test is performed with the unit at the minimum firing temperature established for the explosive used in the unit.

(2) At least four units which have been drop-tested will be cut open and examined.

(3) At least six units which have been drop-tested will be subjected to gallery test 9 and 10 as provided in paragraphs (e)(1) and (e)(2) of this section.

(e) *Gallery tests.* No sheathed explosive unit shall cause an ignition in gallery tests 9, 10, 11, or 12. Ten trials in each gallery test shall be conducted and each sheathed explosive unit shall propagate completely in all tests.

(1) Gallery test 9 is conducted in each trial with three sheathed explosive units placed in a row 2 feet apart. One of the trials is conducted with sheathed explosive units which have been subjected to the drop test as provided in paragraph (d)(3) of this section. The units are placed on a concrete slab, primed with test detonators and fired in air containing 7.7 to 8.3 percent natural gas or 8.7 to 9.3 percent methane. The air temperature is between 41 and 86 °F.

(2) Gallery test 10 is conducted in each trial with three sheathed explosive units placed in a row 2 feet apart. One of the trials is conducted with sheathed explosive units which have been subjected to the drop test as provided in paragraph (d)(3) of this section. The units are placed on a concrete slab, primed with test detonators and fired in air containing 3.8 to 4.2 percent natural gas, or 4.3 to 4.7 percent methane, mixed with 0.2 ounces per cubic foot of predispersed bituminous coal dust. The air temperature is between 41 and 86 °F.

(3) Gallery test 11 is conducted in each trial with three sheathed explosive units arranged in a triangular pattern with the units in contact with each other. The units are placed in a simulated crevice formed between two square concrete slabs, each measuring 24 inches on a side and 2 inches in thickness. The crevice is formed by placing one slab on top of the other and raising the edge of the upper slab at least 4 inches. The sheathed explosive units are primed with test detonators and fired in air containing 7.7 to 8.3 percent natural gas or 8.7 to 9.3 percent methane. The air temperature is between 41 and 86 °F.

(4) Gallery test 12 is conducted in each trial with three sheathed explosive units arranged in a triangular pattern with the units in contact with each other. The units are placed in a corner formed by three square steel plates, each measuring 24 inches on a side and one inch in thickness. The sheathed explosive units are primed with test detonators and fired in air containing 7.7 to 8.3 percent natural gas or 8.7 to 9.3 percent methane. The air temperature is between 41 and 86 °F.

(f) *Detonation test.* Each of 10 sheathed explosive units shall propagate completely when fired at the minimum firing temperature for the explosive. The units are initiated with test detonators.

(g) *Modification of requirements.* MSHA may approve a sheathed explosive unit that incorporates technology for which the requirements of this part are not applicable, if the Agency determines by testing and evaluation that the sheathed explosive unit performs as safely as those which meet the requirements of this part.

§ 15.31 Tolerances for ingredients.

Tolerances established by the applicant for each ingredient in the sheath shall not exceed the tolerances specified by Table I of § 15.21 of this part.

§ 15.32 Tolerances for weight of explosive, sheath, wrapper, and specific gravity.

(a) The weights of the explosive, the sheath, and the outer covering shall be within ±7.5 percent of that specified in the approval.

(b) The ratio of the weight of the sheath to that of the explosive shall be within ±7.5 percent of that specified in the approval.

(c) The specific gravity of the explosive and sheath shall be within ±7.5 percent of that specified in the approval.

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Office of Fossil Energy

Clean Coal Technology Program Announcement; Notice

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DEPARTMENT OF ENERGY

Office of Fossil Energy

Clean Coal Technology Program Announcement

Introduction

The United States Department of Energy (DOE), Office of Fossil Energy (FE), is issuing this Announcement pursuant to Pub. L. No. 99–500, the Department of the Interior and Related Agencies Appropriations Act, 1987, which requires that DOE solicit brief Statements of Interest in, and Informational Proposals for, projects employing emerging clean coal technologies that are capable of retrofitting, repowering, or modernizing existing facilities. The Act further provides that projects submitted in response to this Program Announcement must meet the cost-sharing criteria provided for the Clean Coal Technology Program in Pub. L. No. 99–190. DOE expects to analyze the information submitted and to prepare two reports to Congress. The first report is due by March 6, 1987, and will consist of a summary of the responses received based on the completed forms provided in this Announcement. The second report, which will be transmitted to the Congress within 120 days from the deadline for responses to this Announcement, will contain the analyses and assessments described in the "Objective" section of this Announcement.

It should be emphasized that DOE has no monies to fund any of the projects that may be proposed, does not anticipate funding any proposals pursuant to this Announcement, and cannot reimburse submitters for any expenses they may incur in responding to this Announcement. This solicitation is being conducted, as required by law, so that Congress may have additional information with which to consider the need for further funding in support of a second competitive clean coal technology solicitation.

This Announcement is open to emerging clean coal technologies for all market applications, including electric utility, industrial, commercial, transportation, and residential markets. Examples of eligible technologies include, but are not limited to, the following generic emission reduction technologies and processes or combinations that include one or more of these technologies or processes:

1. Coal cleaning,
2. Dry sorbent injection,
3. (a) Partial stack gas scrubbing, or (b) Advanced scrubbing techniques,
4. Nitrogen oxides controls, and
5. Repowering of existing equipment.

For purposes of this Announcement, while a proposed demonstration may be at a greenfield site or an existing facility, in all instances the technology to be demonstrated must be capable of retrofitting, repowering, or modernizing existing facilities. Retrofitting, repowering, or modernizing includes modifications to an existing power producing or consuming unit (e.g., industrial processes) to enable it to use, or continue to use, coal or a coal-based fuel to accomplish some stated purpose (e.g., convert from oil or gas to coal, reduce emissions, extend life, or increase capacity). For projects involving a retrofit to a coal-based fuel, the project may include modifications to the power-producing unit as well as the facility to produce the fuel. Proposals and Statements of Interest are not limited to those connected with electric power generating technologies.

Note, however, that this Announcement is not open to emerging clean coal technology projects that duplicate either current or previous demonstrations, or the nine projects selected for award of cooperative agreements pursuant to the February 17, 1986, Program Opportunity Notice (PON) for Clean Coal Technology Demonstration Projects (DE–PS01–86FE60966) (see Section entitled "Previous Respondents").

Previous Respondents

Prospective submitters are advised that previous respondents to either the November 1984 "Program Announcement for Information Regarding Emerging Clean Coal Technologies," also known as the "Section 321" announcement, or the aforementioned February 17, 1986, PON, are welcome to submit a Statement of Interest or Informational Proposal in response to this Announcement. Respondents may propose projects previously submitted or similar projects, if such projects otherwise satisfy the requirements set forth in this Announcement including, but not limited to, the proscription against duplication of current or previous demonstration projects. It is important to note that submittals provided in response to either of the earlier announcements will not be evaluated or considered in any way with regard to this Announcement, unless they are resubmitted under this solicitation. Prospective submitters are advised, therefore, that they must submit a new Statement of Interest or Informational Proposal if they wish to offer clean coal technologies for consideration in the context of the present Announcement.

Objective

The objective of this Announcement is to request Statements of Interest in, and Informational Proposals for, projects employing emerging clean coal technologies that are capable of retrofitting, repowering, or modernizing existing facilities. These submittals are being requested for the sole purpose of allowing the Department of Energy to prepare and submit to Congress two reports, as follows:

1. A summary report on the number, nature, and contents of the responses received, based on the Public Abstract and Project Summary forms described in the "Special Instructions" portion of this Announcement. This first report will be submitted to the Congress no later than March 6, 1987.

2. A second report, which will be submitted to the Congress no later than 120 days after the deadline date for receipt of submittals in response to this Announcement, that:

- Analyzes the information contained in such Statements of Interest and Informational Proposals, and
- Assesses the potential usefulness and commercial viability of each emerging clean coal technology for which a Statement of Interest or Informational Proposal has been received.

Statements of Interest and Informational Proposals

Statements of Interest and Informational Proposals submitted in response to this Announcement shall propose a project employing at least one emerging clean coal technology that is capable of retrofitting, repowering, or modernizing existing facilities and that meets the cost-sharing criteria described in the section of this Announcement entitled, "Government Financial Participation." As previously noted, no monies currently are available to fund proposals for projects submitted in response to this Announcement. Statements of Interest and Informational Proposals shall be brief, shall not exceed a total of ten (10) 8½" x 11" pages, and should, if known, include descriptions of the:

(1) Specific technology, including (a) the application(s) proposed for both the demonstration project and the commercialized technology, (b) whether best suited for retrofit, for repowering, or for modernization of existing facilities, and (c) how it differs from other known demonstrations that may be similar;

(2) Site, if known.

(3) Type(s) of coal to be used, including typical sulfur content, both for the

demonstration project and as envisioned for the commercialized technology;

(4) Project size, e.g., generating capacity, coal consumption rate, etc.;

(5) Total estimated project cost and the cost-share that would be offered;

(6) Environmental performance of the technology(s) with respect to estimated wastes and releases of emissions and effluents for both the demonstration project and the commercialized version. Information should be included with respect to air emissions as follows:

- Emissions reduction measured as a percentage of sulfur dioxides and oxides of nitrogen removed;
- Cost of achieving these emission reductions expressed in dollars per ton;
- Applicability to existing sources utilizing high sulfur coal; and
- Market potential for retrofit application.

(7) Economic and technical performance of the technology in comparison with competing technologies.

Respondents are advised that DOE is not requesting extensive data on technical performance, project design, partnership arrangements, project economics, or environmental impacts as part of any proposed submission under this Announcement.

Special Instructions

Statements of Interest and Informational Proposals shall be prepared to comply with the special instructions provided below, and shall be structured in the following order:

(1) Statement/Proposal Cover Sheet (Appendix A; see Special Instruction No. 1, below),

(2) Public Abstract (Appendix B; see Special Instruction No. 2, below),

(3) Project Summary (Appendix C; see Special Instruction No. 3, below), and

(4) Statement of Interest/Informational Proposal Narrative Text.

1. Statement/Proposal Cover Sheet

Appendix A of this Announcement provides a form that shall be used for the preparation of the cover sheet of the Statement of Interest or Informational Proposal. Submitters are required to complete the form in accordance with the instructions that follow, and then to photocopy that form for use as Page 1 of each copy of the submittal. Instructions for the form are provided below:

(1) Copy number. Each submittal shall be provided in one (1) original and six (6) copies. In this space, indicate the copy number of the particular volume, using number 1 for the original and numbers 2 through 7 for the six copies.

(2) Technology. Identify the emerging clean coal technology(s) employed in your project.

(3) Title. Provide the full title of the Statement of Interest or Informational Proposal. The title should reflect the substance of the project.

(4) Submitter Name(s). Identify the name(s) of the submitting entity or entities, listing the primary party first.

(5) (6) (7) (8) Full Mailing Address. Provide for the primary party, i.e., for the entity that DOE should contact, if necessary.

(9) Project Location(s). If known, identify the geographic location(s) of the proposed project(s) to the extent possible.

(10) Primary Contact. Enter the name of the person that DOE should contact, if the need arises.

(11) Phone Number(s). For the primary contact, area code first.

(12) Proprietary Information Instructions. Self-explanatory.

2. Public Abstract

Submitters shall provide a Public Abstract for their submittal that provides an overview of the proposed project. Appendix B of this Announcement provides a form that shall be used for the preparation and submittal of the Public Abstract. One continuation sheet may be used if necessary, for a total length not to exceed two pages. The Public Abstract should describe the proposed project, the specific emerging clean coal technology proposed, the ability of the technology to be used for retrofitting, repowering, or modernizing existing facilities, the objective, methodology, sponsoring organization(s), time frame (project duration), total estimated project cost, and the cost-sharing that would be offered. Submitters are advised that this Public Abstract will be released to the public by DOE. Therefore, it shall not contain any proprietary data or confidential business information.

Submitters should include photocopies of the Public Abstract in each of the seven copies of their proposal or statement of interest.

Nothing should appear on the reverse side of any of the copies of the Public Abstract.

3. Project Summary

Submitters also shall complete and include in their proposals and statements of interest the Project Summary form provided as Appendix C of this Announcement. As for Appendices A and B, photocopies of Appendix C should be included in each of the seven submittal copies. Please note that it is to the benefit of all those concerned to provide as specific information as possible. Detailed instructions for Appendix C follow:

(1) Technology. Same as for the submittal cover sheet, Entry 2.

(2) Project Title. Same as for the submittal cover sheet, Entry 3.

(3) Submitter Name(s). Same as for the submittal cover sheet, Entry 4.

(4) Primary Submitter's Address. Same as for the submittal cover sheet, Entries 5, 6, 7, and 8.

(5) (6) Primary Contact and Telephone Number. Same as for the submittal cover sheet, Entries 10 and 11.

And, if known, please provide the following information:

(7) Project Location(s). Same as for the submittal cover sheet, Entry 9.

(8) County(ies). Corresponds to above Item 7.

(9) Application(s): Refers to the submitter's proposed emerging clean coal technology, e.g., retrofit to coal-fired industrial boiler, repowering of large electric utility generating unit, modernizing of coal-fired electric generating unit, etc.

(10) Types of Coal to be Used by the Proposed Demonstration Project and typical sulfur content, e.g., Pennsylvania bituminous (3%), Texas lignite (1%), etc.

(11) Coal Source(s). Refers to above Item 10: mine(s) and seam(s), if known.

(12) Coal Use Rate or Other Measure of Proposed Project Size, e.g., 10 tons of coal throughput/hour, 650 MWe power plant retrofit, etc.

(13) Environmental Performance Aspects. Summary of the portion of the submittal that addresses the environmental performance of the technology with respect to emissions.

(14) Proposed Project Duration by Phase, in months.

(15) Proposed Project Total Duration. Sum of the durations of the phases in above Item 14.

(16) Estimated Total Cost of the Project (Submitter and Government).

(17) Submitter's Estimated Cost-Share. State as a percentage of the total given for above Item 16.

(18) Estimated Project Costs by Phase. Self-explanatory, but must agree with above Items 16 and 17.

Numnber of Copies Required

Each submittal should consist of seven (7) copies, one original and six (6) photocopies. The original copy of the Informational Proposal or Statement of Interest shall contain all documents that bear original signatures.

Cover Sheets, Public Abstracts, and Project Summaries should each be on separate sheets of paper that contain no writing or information of any kind on the reverse sides. In each instance, for all three items, no other information shall appear with or be added to that required in Appendices A, B, and C.

Government Financial Participation

Funds are not available for the support of, or to reimburse submitters for the cost of preparing, Informational Proposals and Statements of Interest received in response to this Announcement. The Department does not intend to enter into contracts or financial assistance awards with respondents to this Announcement, and reiterates that the Statements of Interest and Informational Proposals received will be used solely for the purpose of analyzing and reporting to Congress. The need for further demonstrations will be considered by Congress after evaluating the information received under this solicitation.

Pub. L. No. 99–500 provides that projects submitted in response to this Announcement nevertheless must be able to satisfy the cost-sharing criteria that were established in Pub. L. No. 99–190. The pertinent portions of Pub. L. No. 99–190 are provided below for the convenience of prospective submitters:

Pub. L. No. 99–190 provided, in pertinent part, that:

> . . . the Secretary [of Energy] shall not finance more than 50 per centum of the total costs of a project as estimated by the Secretary as of the date of award of financial assistance: Provided further, That cost-sharing by project sponsors is required in each of the design, construction, and operating phases proposed to be included in a project: Provided further, That financial assistance for costs in excess of those estimated as of the date of award of original financial assistance may not be provided in excess of the proportion of costs borne by the Government in the original agreement and only up to 25 per centum of the original financial assistance: Provided further, That revenues or royalties from prospective operation of projects beyond the time considered in the award of financial assistance, or proceeds from prospective sale of the assets of the project, or revenues or royalties from replication of technology in future projects or plants are not cost-sharing for the purposes of this appropriation: Provided further, That other appropriated Federal funds are not cost-sharing for the purposes of this appropriation: Provided further, That existing facilities, equipment, and supplies, or previously expended research or development funds are not cost-sharing for the purposes of this appropriation, except as amortized, depreciated, or expensed in normal business practice.

Proprietary Information

Submitters should, to the extent possible, avoid including proprietary and confidential business information in their Statements of Interest and Informational Proposals. However, information provided by a submitter and identified as trade secret or confidential business information will be treated in confidence, to the extent permitted by law, provided that this information is clearly marked by the submitter with the term, "Confidential Proprietary Information," and provided that appropriate page numbers are inserted into the legend that is set forth below which must be placed on the submission cover sheet.

> **Notice Re Restriction on Disclosure and Use of Data**
>
> This submission includes data that constitute trade secrets or confidential business information and shall not be duplicated, used, or disclosed, in whole or in part, for any purpose other than to analyze information contained in this submission, except to the extent permitted or required by law. This restriction does not limit the Government's right to use information contained in these data if it is obtained from another source without restriction. The data that are subject to this restriction are contained in sheets __________ (insert page numbers or other identification of sheets).

Each sheet of data the submitter wishes to restrict must be marked with the following legend:

> Use or disclosure of data contained on this sheet is subject to the restriction on the cover sheet of this submission.

Submission Preparation Costs

The Department is not able to reimburse submitters for any costs associated with the preparation of Statements of Interest or Informational Proposals.

DATE: The deadline for receipt of submittals at the addresses identified below is 3:30 p.m., e.s.t., on the 60th (sixtieth) day after the date of publication of this Program Announcement in the **Federal Register**. In the event that the 60th day coincides with a Saturday, Sunday, or Federal holiday, the deadline date shall be the first business day that follows thereafter.

ADDRESSES: Mailed submittals should be addressed to: Director, Office of Coal Combustion Systems, Fossil Energy, FE–23, GTN, U.S. Department of Energy, Washington, DC 20545.

Hand-delivered submittals should be brought Monday through Friday, except on Federal holidays, between the hours of 8:30 a.m. to 3:30 p.m., to: North Lobby, U.S. Department of Energy, Maryland Route 118, Germantown, Maryland, ATTN: Fossil Energy, FE–23.

FOR FURTHER INFORMATION CONTACT: Dr. Howard Feibus, Director, Office of Coal Combustion Systems, Fossil Energy, FE–23, GTN, U.S. Department of Energy, Washington, DC 20545, (301) 353–4348.

Issued in Washington, DC, November 5, 1986.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

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Appendix A

DOE USE ONLY

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U.S. DEPARTMENT OF ENERGY

PROGRAM ANNOUNCEMENT
for

Information Regarding Emerging Clean Coal Technologies
Capable of Retrofitting, Repowering, or
Modernizing Existing Facilities

STATEMENT/PROPOSAL COVER SHEET

(1) Copy No.________

(2) Technology: ____

(3) Title: ____

____

____

(4) Submitter Name(s): ____________________________________

____

(5) Mailing Address: ______________________________________

____

(6) City:__________________(7) State: _______(8) Zip: _______

(9) Project Location(s): ___________________________________

(10) Primary Contact: _____________________________________

(11) Phone Number(s): ____________________________________

(12) Does this submittal contain proprietary or business-confidential information? Circle YES or NO

If your answer is YES, insert the "Notice re Restriction on Disclosure and Use of Data" (provided in the Program Announcement) in the space below:

NOTICE RE RESTRICTION ON DISCLOSURE AND USE OF DATA

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Appendix B

U.S. DEPARTMENT OF ENERGY

PROGRAM ANNOUNCEMENT
for
Information Regarding Emerging Clean Coal Technologies
Capable of Retrofitting, Repowering, or
Modernizing Existing Facilities

PUBLIC ABSTRACT

Technology: ____________________

Title: ____________________

____

____

Submitter Name(s): ____________________

____

Abstract:

Appendix C

U.S. DEPARTMENT OF ENERGY

PROGRAM ANNOUNCEMENT
for
Information Regarding Emerging Clean Coal Technologies
Capable of Retrofitting, Repowering, or
Modernizing Existing Facilities

PROJECT SUMMARY

(1) Technology: ________________________________

(2) Project Title: ________________________________
____
____

(3) Submitter Name(s): ____________________________
____

(4) Primary Submitter's Address: ____________________
____
____

(5) Primary Contact: ______________________________

(6) Telephone Number: _____________________________

(7) Project Location(s): ___________________________
____

(8) County(ies): __________________________________

(9) Application(s): ________________________________
____

(10) Types of Coal to be Used: ______________________
____

(11) Coal Source(s): ______________________________
____

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Appendix C

PROJECT SUMMARY CONTINUED

(12) Coal Use Rate/Project Size: ____________________

(13) Environmental Performance Aspects: ____________________

(14) Proposed Project Duration, for Phase 1, Design and Permitting ____________ (months).

Phase 2, Construction and Startup ("Shakedown"): ____________

Phase 3, Operation, Data Collection, Reporting, and Disposition ____________ (months).

(15) Proposed Project Total Duration: ____________ (months).

(16) Estimated Project Total Cost: $ ____________

(17) Submitter's Estimated Cost-Share: ____________ %

(18) Estimated Project Costs by Phase:

	Cost ($)	Submitter's Share (%)	Government Share (%)
Phase 1, Design and Permitting:			
Phase 2, Construction and Startup:			
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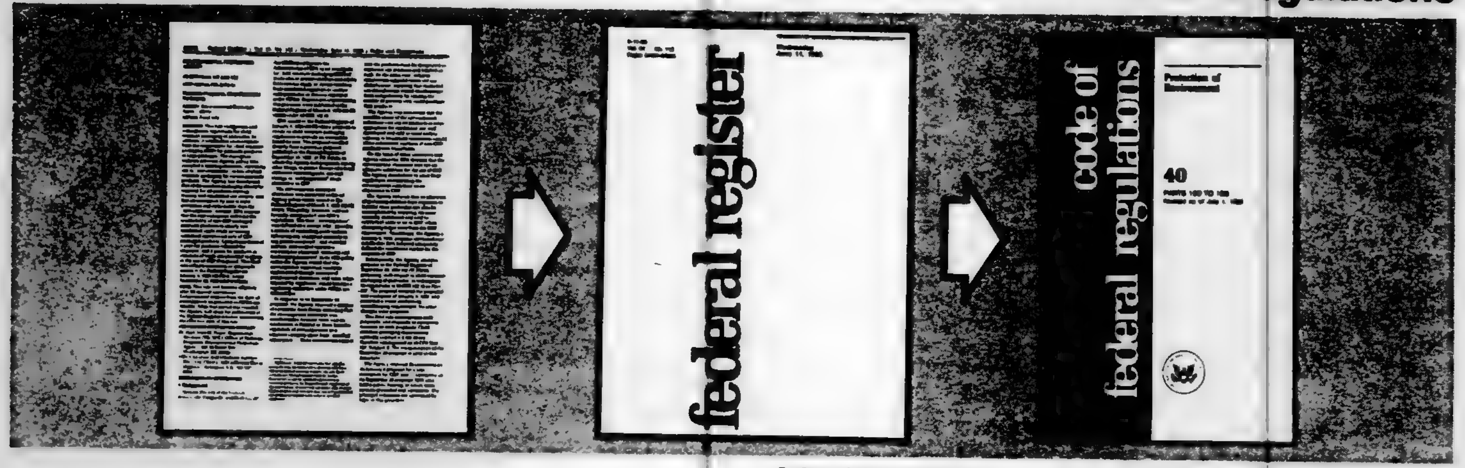

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Presidential Documents

Title 3—

The President

Notice of November 10, 1986

Continuation of Iran Emergency

On November 14, 1979, by Executive Order No. 12170, the President declared a national emergency to deal with the threat to the national security, foreign policy, and economy of the United States constituted by the situation in Iran. Notices of the continuation of this national emergency were transmitted by the President to the Congress and the **Federal Register** on November 12, 1980, November 12, 1981, November 8, 1982, November 4, 1983, November 7, 1984, and November 1, 1985. Because our relations with Iran have not yet returned to normal and the process of implementing the January 19, 1981, agreements with Iran is still underway, the national emergency declared on November 14, 1979, must continue in effect beyond November 14, 1986. Therefore, in accordance with Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Iran. This notice shall be published in the **Federal Register** and transmitted to the Congress.

Ronald Reagan

THE WHITE HOUSE,
November 10, 1986.

[FR Doc. 86-25807
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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 906 and 944

Oranges and Grapefruit Grown in Texas, and Imported Oranges; Revision of Grade, Size, Container, and Container Marking Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule temporarily: (1) Relaxes the current minimum grade requirements for Texas oranges, Texas grapefruit, and imported oranges; (2) lowers the minimum size requirement for Texas grapefruit; and (3) suspends certain container marking requirements. Such action will permit shipment of oranges and grapefruit which are slightly lower in quality, and grapefruit which are slightly smaller in size during the 1986–87 season, in recognition of the overall quality of the crop and anticipated market conditions. Also, it will authorize another container which is needed for shipment of Texas oranges and grapefruit.

EFFECTIVE DATE: November 7, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone 202–447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Pursuant to the requirements set forth in the RFA, the Administrator of AMS has considered the impact of this rule upon small entities. This action relaxes for the 1986–87 season the grade and size requirements for Texas grapefruit, and the grade requirements for Texas and imported oranges. Likewise, a container marking requirement pertaining to U.S. No. 2 grade Texas oranges and grapefruit would be relaxed. Also, another container would be authorized on a permanent basis for the shipment of Texas oranges and grapefruit. This action will impose no new or additional costs of affected handlers, producers, and importers.

It is estimated that 22 handlers of Texas oranges and grapefruit under the marketing order for fresh oranges and grapefruit grown in the Lower Rio Grande Valley in Texas and 10 importers of oranges will be subject to regulation during the course of the current season which began in early October 1986 and ends on July 31, 1987. The great majority of these handlers, producers, and importers may be classified as small entities. In addition, there are in excess of 3,000 producers in the production area.

This revision of the Texas orange and grapefruit requirements is issued under the marketing agreement, as amended, and Order No. 906, as amended (7 CFR Part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This revision of the Texas orange and grapefruit requirements is based upon the unanimous recommendation of an information submitted by the Texas Valley Citrus Committee, established under the order, and upon other available information.

This final rule: (1) Relaxes for Texas oranges and imported oranges, the current minimum grade requirement of U.S. No. 2, to U.S. No. 2 with additional allowances for fruit with thorn scratches, scale, green spots, oil spots, and discoloration; (2) relaxes for Texas grapefruit the current minimum grade requirement of U.S. No. 2, to U.S. No. 2 with additional allowances for thorn scratches, scale, green spots, and shape; and (3) permits the shipment of smaller size grapefruit by lowering, for all grades of Texas grapefruit, the minimum size requirement to pack size 112 with a minimum diameter of $3\frac{5}{16}$ inches. These changes are in effect through July 31, 1987. Currently, the minimum size requirement for U.S. No. 2 grade Texas grapefruit is pack size 96 with a minimum diameter of $3\frac{9}{16}$ inches, while for U.S. No. 1 grade grapefruit the minimum is already pack size 112 with a minimum diameter of $3\frac{5}{16}$ inches.

Section 8e of the Act (7 U.S.C. 608e–1) provides that whenever specified commodities, including oranges and grapefruit, are regulated under a Federal marketing order, imports of that commodity are prohibited unless they meet the same grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. Since this action would relax the minimum grade requirement for domestically produced oranges, this change would also be applicable to imported oranges during the period that the domestic handling requirements are in effect. This action does not change the import requirements for grapefruit because imported grapefruit is governed by Grapefruit Regulation 6 (7 CFR 944.106). Regulation 6 applies the requirements for Florida grapefruit (7 CFR Part 905) to imported grapefruit.

Because the current minimum grade requirements are relaxed in this final rule by permitting additional allowances for scratches and other imperfections, the container marking provision is suspended through July 31, 1987. The suspension is designed to prevent the need for a "qualified U.S. No. 2 grade" stamp and to prevent confusion on the part of packinghouse personnel who stamp the "grade" on the containers. In addition, the rule authorizes the use of a new container by permitting handlers to ship Texas oranges and grapefruit in a

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⅔ fiberboard crib, provided that the crib is used only once for the shipment of citrus fruit. The one-time use requirement is necessary to help control the spread of postharvest diseases commonly found in the marketplace. The dimension, shape, and strength of the container are specified in the regulation and are consistent with the other container requirements currently in effect. The committee has found the ⅔ fiberboard crib to be a suitable container based on its use on an experimental basis over several seasons.

The relaxed grade, size, and container marking requirements for the 1986–87 season are the same as those in effect during the 1985–86 season.

Relaxation of the current minimum grade and size requirements for Texas oranges and grapefruit recognizes the overall quality of the crop and anticipated market conditions and should result in increased fresh market sales and improved returns to growers. The committee reports that while the quality of the 1986–87 Texas orange and grapefruit crop is good, only a small volume of fruit will be available for fresh market shipment. The committee recommended the grade and size relaxations to allow shipment of as much fruit into the fresh market as the 1986–87 crop conditions will allow, while providing consumers with an acceptable product. This continues the industry's efforts to get back into the fresh market since the devastating freeze in 1983.

Similar to last year, the committee reports that for the 1986–87 season Texas oranges and grapefruit have abnormal amounts of skin blemishes due to bird pecks, wind and twig scarring, and inadequate spray coverage. The committee believes that a considerable amount of fruit on the trees will not meet current minimum grade and size requirements and that some of this fruit would likely be abandonded unless current requirements are relaxed because of inadequate market outlets for such fruit. This is partly due to the fact that the juice plants are expected to operate for a short period of time this season. Because the 1986–87 Texas orange and grapefruit harvest began in early October, prompt action is required.

The 1985–86 season marked the first commercial production of citrus from Texas since the freeze of December 1983. However, only about two percent of a normal (pre-freeze) grapefruit crop was produced and about six percent of a normal orange crop was produced. Texas orange production is estimated by the committee at 1.45 million cartons, 2.4 times greater than the 0.6 million cartons produced in 1985–86. This would represent about 13 percent of pre-freeze orange production levels of about 11–12 million cartons. Competing domestic orange production areas are also expected to have larger crops this season with an 11 percent increase in U.S. orange production predicted.

At four million cartons, the 1986–87 grapefruit crop is forecast by the committee to be ten times greater than last year's 0.4 million carton crop. However, if attained, this level of grapefruit production would only be 15 percent of a normal (pre-freeze) crop. Pre-freeze grapefruit production levels were about 25–30 million cartons. Although the Texas grapefruit crop is expected to be ten times larger than last year, it is still only 15 percent of normal (compared to two percent last year). U.S. grapefruit production is only expected to show a five percent increase.

The suspension of the container marking requirement and the authorization of another container for shipments will facilitate the packing and shipment of Texas oranges and grapefruit this season.

After consideration of the information and recommendation submitted by the committee, and other available information, it is found that amendment of §§ 906.340, 906.365, and 944.312 will tend to effectuate the declared policy of the Act and be in the public interest.

Pursuant to 5 U.S.C. 553, it is hereby found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and to engage in public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes restrictions on the handling of Texas oranges and grapefruit and imported oranges; (2) handlers of Texas oranges and grapefruit are aware of this action which was recommended by the committee at a public meeting, and they will require no additional time to comply with the rule; (3) this rule should become effective as soon as possible because shipment of the 1986–87 season Texas orange and grapefruit crops has already began; and (4) the orange import requirements are mandatory under section 8e of the Act.

List of Subjects

7 CFR Part 906

Marketing agreement and orders. Oranges, Grapefruit, Texas.

7 CFR Part 944

Food grades on standards, Imports, Oranges.

1. The authority citation for 7 CFR Parts 906 and 944 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 906.340 is amended by adding a paragraph (a)(1)(ix), by changing the period to a colon and adding a proviso following the last word in paragraph (a)(3) of such section.

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

§ 906.340 Container, Pack and Container Marking Regulation.

(a) * * *

(1) * * *

(ix) Octagonal or rectangular ⅔ fiberboard crib with dimensions of 46 inches long, 38 inches wide, by 24 inches high: *Provided,* That the crib has a Mullen or Cady test of at least 1,300 pounds: *Provided further,* That the crib be used only once for the shipment of citrus fruit.

* * * * *

(3) * * * : *Provided,* That such container grade marking requirement is suspended through July 31, 1987.

* * * * *

3. Section 906.365 is amended by adding paragraph (c) to read as follows:

§ 906.365 Texas Orange and Grapefruit Regulation 34.

* * * * *

(c) Notwithstanding the requirements specified for oranges and grapefruit in paragraphs (a) (1) through (4) of this section, any handler may ship through July 31, 1987:

(1) Oranges if such fruit grades at least U.S. No. 2, except very serious damage by thorn scratches, scale, green spots, oil spots, and discoloration shall be permitted, provided such defects are within the acceptance levels specified in § 51.689;

(2) Grapefruit if such fruit grades at least U.S. No. 2, except very serious damage by thorn scratches, scale, green spots, and shape shall be permitted, provided such defects are within the acceptance levels specified in § 51.628; and

(3) Such grapefruit are at least pack size 112, except that the minimum diameter limit for pack size 112 grapefruit in any lot shall be 3$\frac{5}{16}$ inches. Applicable grade and size requirements are defined in 7 CFR 51.620–51.653, and 51.680–51.714.

PART 944—FRUITS; IMPORT REGULATIONS

3. Section 944.312 is amended by adding a new paragraph (g) to such section to read as follows:

§ 944.312 Orange Import Regulation 13.

* * * * *

(g) Notwithstanding the requirements specified for oranges in this section, any person may import oranges through July 31, 1987, if they grade at least U.S. No. 2, except very serious damage by thorn scratches, scale, green spots, oil spots, and discoloration shall be permitted, provided such defects are within the acceptance levels specified in § 51.689. Such grade is defined in 7 CFR 51.680–51.714.

Dated: November 7, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86-25636 Filed 11-12-86; 8:45 am]

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7 CFR Part 966

Tomatoes Grown in Florida and Tomatoes Imported Into the United States; Amendment to Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule increases the minimum size requirement for domestic tomatoes covered under the marketing order for tomatoes grown in Florida, and for all tomatoes offered for importation into the United States from $2\frac{4}{32}$ inches in diameter to a $2\frac{9}{32}$ inches in diameter. This change is intended to consistently supply fresh market outlets with tomatoes of acceptable maturity and quality. Smaller size tomatoes generally take longer to ripen than the larger tomatoes. Because of this, they normally do not develop proper flavor. Also, the change would eliminate from fresh shipments smaller size tomatoes which are usually of negligible economic value to producers. The change in the minimum size applicable to domestic tomatoes was recommended by the Florida Tomato Committee, the body which works with the Department in administering the Federal marketing order for Florida tomatoes. The change in minimum size applicable to tomatoes offered for importation is necessary under section 8e of the Agricultural Marketing Agreement Act of 1937.

EFFECTIVE DATE: The change in the minimum size requirement for Florida and imported tomatoes is effective December 1, 1986, through June 15, 1987, for the 1986–87 season. For the 1987–88 season and each season thereafter these regulations are effective October 10 through June 15.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Departmental Regulation 1512-1 and Executive Order 12291 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of the businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (the Act, 7 U.S.C. 601–674), and rules promulgated thereunder, are unique in that they are brought about through the group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 103 handlers of Florida tomatoes subject to regulation under the Florida tomato marketing order handling regulation. There are approximately 180 growers of tomatoes in the production area. Finally, there are approximately 31 importers of fresh tomatoes subject to the tomato import regulation during the 1986–1987 season. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000 and agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers, producers, and importers of Florida tomatoes may be classified as small entities.

Pursuant to requirements set forth in the RFA, the Administrator of the Agricultural Marketing Service (AMS) has considered the impact of this rule on small entities. The regulatory action in this instance is a final rule increasing the minimum size requirement for tomatoes that will eliminate the 7x7 classification for fresh tomatoes having a minimum diameter of $2\frac{4}{32}$ inches and a maximum diameter of $2\frac{10}{32}$ inches. The handling regulation is applicable to fresh tomatoes grown in the production area and shipped outside the regulated area during the period October 10 through June 15 each marketing season. Pursuant to section 8e of the Act, when such a regulation is in effect for domestic shipments, imports are required to meet the same requirements. As indicated earlier the change in the minimum size requirement for the domestic and imported tomatoes will be effective December 1, 1986, through June 15, 1987, for the 1986–87 season. Each season thereafter these regulations will be effective October 10 through June 15. the final rule is the same as the proposed rule except that the effective date for the 1986–87 season has been changed to December 1, 1986.

The 1985–86 annual report of the Florida Tomato Committee provides data on shipments 7x7 classification tomatoes during the October 10, 1985, through June 15, 1986, shipping season for fresh tomatoes grown in the Florida production area and shipped outside the regulated area. The statistics divide tomatoes into two categories, mature green and vine-ripe. For mature green tomatoes in the 7x7 classification, there were 3,132,880 containers of 25-pound equivalents or 6.69 percent of the total mature green shipments of 46,834,876 containers for all sizes. With an average price of $4.07 a container, the 7x7 mature green tomatoes were valued at $12,739,586 or about 3.5 percent of the total sales dollars of $364,055,331 for all sizes of mature green tomatoes. Vine ripe tomatoes in the 7x7 classification totaled 131,716 containers in 20-pound equivalents or 1.89 percent of the total of 6,983,646 containers for all sizes. At an average price of $3.00, the 7x7 vine-ripe tomatoes were valued at more than $395,000 or about one percent of the total sales dollars of $44,046,160 for vine-ripe tomatoes of all sizes. Therefore, the total sales dollar volume of all 7x7 classification tomatoes shipped last season represented about 3.2 percent of the total dollar volume of all sizes of tomatoes shipped.

While this regulation will not permit shipment of 7x7 classification tomatoes outside of the regulated area, exemptions to the handling regulation will continue to be available. For example, several varieties or types of tomatoes are completely exempt and handlers may ship up to 60 pounds of tomatoes per day without regard to the requirements of the handling regulation. The handling regulation does not prevent the handling of tomatoes within the regulated area and the regulation

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permits shipments of tomatoes for canning, experimental purposes, relief, charity, or export. Importers could also ship up to 60 pounds of tomatoes per day exempt from the import regulation.

It is the Department's view that under this regulation the impact of the regulation upon the growers, handlers, and importers will not be adverse. Any additional costs to handlers, growers, and importers in implementing this rule will be significantly offset when compared to the potential benefits of the rule.

Marketing Order No. 966 regulates the handling of tomatoes grown in Florida. The program is effective under the Act. The Florida Tomato Committee, established under the order, is responsible for its local administration.

The Florida Tomato Committee met September 5, 1986, and recommended that the current minimum size requirement of $2\frac{8}{32}$ inches in diameter for tomatoes grown in the production area be increased to $2\frac{9}{32}$ inches in diameter. The effect of this change would be the elimination of the 7x7 size classification for tomatoes with a minimum diameter of $2\frac{8}{32}$ inches and a maximum diameter of $2\frac{19}{32}$ inches. The committee recommended that the change be effective at the start of the 1986–87 season. Other handling requirements under M.O. 966, including the minimum requirement that tomatoes be at least U.S. No. 3 grade remain unchanged.

According to the committee, the increase in the minimum size requirement is necessary to prevent tomatoes of lower quality and maturity and undesirable size from being distributed in fresh market channels. It also stated that such tomatoes are usually of negligible economic value to producers. The committee believes this action would provide consumers with tomatoes of good quality and size throughout the season consistent with the overall quality of the crop and improve economic returns to growers.

Section 8e of the Act (7 U.S.C. 608e–1) provides that whenever specified commodities, including tomatoes, are regulated under a Federal marketing order, imports of that commodity are prohibited unless they meet the same grade, size quality, or maturity requirements as those in effect for the domestically produced commodity. Since this rule will increase the minimum size requirement for domestically produced tomatoes, this change will also be applicable to imported tomatoes during the period that the domestic handling requirements are in effect. Conforming changes to § 966 323(d)(3) *For special packed tomatoes* and § 966.323(f) *Applicability to imports* will be made to reflect the increase in the minimum size requirement. No change is needed in the import regulation for tomatoes which appears in Part 980 (7 CFR 980.212; 42 FR 55192; October 4, 1977).

Notice of this change for Florida tomatoes and imported tomatoes was contained in a proposed rule published in the **Federal Register** on October 3, 1986 (51 FR 35358). A total of 57 comments were filed. The committee filed a comment supporting its recommendation. Other comments from Florida growers and handlers and consumers supported the committee's efforts to improve the quality of tomatoes entering fresh market channels. Comments from repackers primarily from the northeastern part of the United States objected to the change as did several retail stores, packaging and cellophane manufacturers, and some consumers.

Comments supporting the proposed increase in the minimum size requirements contend that it is necessary in order to prevent tomatoes of lower quality and maturity from being distributed in fresh market channels, and that this action would improve the overall quality of tomato shipments and improve economic returns to growers. These commentors further contend that tomatoes smaller than $2\frac{9}{32}$ inches in diameter generally are immature fruit that takes longer than normal to ripen and does not develop full flavor. A detailed discussion of these contentions is included later in this final rule.

Those opposing the increased minimum size to $2\frac{9}{32}$ inches indicated that eliminating the 7x7 size classification would cause unemployment, lost tax revenues, and wasted inventories of wrapping materials and containers dedicated to the 7x7 size tomato. Also, the commentors contend that removal of the smaller sized 7x7 tomatoes will decrease the supply of existing tomatoes and thus increase the price for all tomatoes. Several comments indicated that 7x7 size tomatoes were more affordable for lower income families than larger size tomatoes. One comment was received from a senior citizen living on a fixed income indicating that 7x7 tomtoes are satisfactory. Another comment was received representing the views of forty-two low-income families. The comment indicated that they purchased the smaller size tomatoes because the price fit their budget and that they found nothing wrong with the taste or quality of smaller tomatoes.

Several comments from food chain stores indicated that the 7x7 size tomato was one of their best sellers with lower and fixed income groups and that the quality and taste did not appear to be a problem.

Several comments were received from repackers of Florida and imported tomatoes disputing the tomato committee's claim that small 7x7 tomatoes are of lower quality and maturity and undesirable to consumers, and thus should be eliminted from the marketplace. These repackers contend that consumers prefer buying several smaller size tomatoes rather than one or two large tomatoes at the same price. Also, they indicated taste studies show that smaller tomatoes actually taste better than the larger, over-sized tomatoes. However, the name of the study and its author or authors were not indicated and, hence, the contentions are not verifiable.

A telephone comment and a written comment were received from two Florida handlers under the marketing order. They objected to the elimination of 7x7 tomatoes on the basis that the proposal did not represent the views of the regulated industry and its members. However, this assertion is belied by the fact that the recommendation is a unanimous recommendation of the Florida Tomato Committee. In its comment, the committee has indicated that there were more than 120 people present at the time of the September 5, 1986, committee meeting who represented more than 90 percent of the volume of tomatoes produced in the production area as defined in § 966.4.

In accordance with the declared policy of the Act, one of the Department's principal objectives is to establish a current level of prices to growers up to parity at a rate the Department deems to be in the public interest and feasible in view of the current demand in domestic and foreign markets. The 1986–87 season aveage f.o.b. shipping point price for Florida tomatoes is not expected to exceed the parity equivalent price. The Florida Tomato Committee expects that fresh tomato shipments from Florida during the 1986–87 season will be slightly less than the 1985–86 total with about 47 million 25-pound equivalent containers of tomatoes. In addition, preliminary reports from the U.S. Agricultural Attache in Mexico indicate that fresh tomato exports to the U.S. during the 1987 winter and spring will be at least slightly larger than in the 1986 season. Imports of fresh tomatoes from Caribbean countries also may increase compared with 1985–86.

In the 1985–86 season, Florida tomato prices averaged $29.20 per hundredweight. This compares with $18.40 per hundredweight in the previous season and a 1979–80 through 1983–84 average of $24.15 per hundredweight. The 1985–86 season average price is 69 percent of the Florida parity equivalent price compared with an average of 60 percent in the five previous seasons.

In support of the committee's contention concerning the negligible economic value of tomatoes smaller than $2\frac{9}{32}$ inches in diameter and the maturity and quality of such tomatoes, the committee submitted the following information on returns to growers and the maturity of these tomatoes in its comment.

The committee indicated that total shipments of 7x7 tomatoes during the 1985–86 season were 3,132,880, 25-pound equivalent packages of mature greens at an average price of $4.07, and 131,716, 20-pound equivalent packages of vine-ripes at an average price of $3.00. The committee also indicated that during 18 weeks of the 36-week 1985–86 season that the average price received for 7x7 tomatoes was less than the average harvesting and marketing costs of $3.14 per 25-pound unit. It further indicated that in only one week of the 1985–86 season was the average price for 7x7 tomatoes higher than the average total costs of $6.08 per 25-pound equivalent for producing and marketing such tomatoes. These total costs include production, harvesting, and marketing costs. In 1984–85, a total of 2,264,904 packages of 7x7 mature greens were shipped at an average price of $4.80, and 104,181 packages of vine-ripes were shipped at an average price of $3.77. The committee indicated that during 22 weeks of the 35-week 1984–85 season that the average price for mature green 7x7 tomatoes was less than the average harvesting and marketing costs of $3.14 per 25-pound unit. The committee further indicated that in only nine weeks of the 35-week 1984–85 season was the average price for 7x7 tomatoes higher than the average total costs of $6.08, for producing, harvesting, and marketing such 7x7 tomatoes. The committee indicated that the higher prices were a direct result of freezing temperatures that greatly reduced supplies that season. This information shows that grower returns for 7x7 tomatoes are limited except during times of extremely low supply. Obviously, this is an important concern to the Florida tomato industry.

Size is generally the most important consideration in pricing at shipping point and wholesale. For a given grade, the largest tomatoes sell at the highest price. Large U.S. No. 2 grade tomatoes normally are priced above small U.S. No. 1 tomatoes. The price spread between sizes is largest during periods of normal or light supplies but narrows appreciably when supplies are heavy.

The October 7, 1986, compilation of Florida weekly tomato acreage planted for harvest for the 1986–87 season published by the Florida Agricultural Statistics Service shows that 5,258 more acres were planted this season over the past season. The additional acreage is expected to result in an oversupply of tomatoes. Although total output will be highly dependent on the weather, the committee believes that the 1986–87 crop will total about 47 million 25-pound equivalents. Last year's crop totalled about 52 million 25-pound equivalents. The committee's initial estimate of that crop was 49 million 25-pound equivalents. As indicated earlier, the Department has information which projects that tomato imports from Mexico and Caribbean countries will be slightly greater for the 1986–87 season than last year. Increased imports to the United States would further increase the supply of tomatoes. With ample supplies of tomatoes from domestic and foreign sources, any price increases resulting from this action are expected to be minimal.

While the repackers and other interested parties contend that small size tomatoes are mature, taste better and are preferred by their customers, the committee has submitted information which contradicts these contentions. The information submitted shows that small 7x7 tomatoes generally take longer to ripen after harvest than larger tomatoes and because of that are less flavorful and undesirable to the consumer.

Growers attempt to pick these 7x7 tomatoes generally when they have reached mature green. Subsequently, they are gassed in handling facilities to hasten the coloring and ripening process. Then they are packed and shipped to fresh market channels. Mature green means that the surface of the tomato is completely green in color. The shade of green color may vary from light to dark. Currently tomato pickers, working on a per bucket basis, must try to size tomatoes that are $2\frac{9}{32}$ inches in diameter and larger as quickly as possible. This rapid procedure of picking tomatoes sometimes includes smaller, immature tomatoes.

However, a recent study conducted on ripening mature green tomatoes by Dr. Jeffrey K. Brecht, Assistant Professor, Vegetable Crops Department, IFAS, University of Florida, indicates that the 7x7 size class of tomatoes tends to be too immature on an average and thus of very low quality. Fully mature green tomatoes according to the study, will begin coloring within a few days of harvesting and ripen at 68 degrees Fahrenheit. Since there are no easily identified surface indicators of full maturity in green fruit, pickers are forced to rely on size rather than maturity when harvesting tomatoes. The result of this with regard to the small 7x7 size class is immature tomatoes which may require two weeks or more to begin ripening. Attainment of the full ripe stage requires on the average a week to 10 days additional time. Hence, the full ripening process could take as along as four weeks. According to the study, tomatoes held this long after harvest have extremely poor taste quality. The researcher indicates that elimination of the 7x7 class would be of benefit to the industry and the consumer.

The researcher also reported the results of an experiment designed to show the effect of ethylene treatment on the internal development of immature tomatoes. The fruit used were 7x7 tomatoes obtained from a commercial packinghouse. About 60 percent of the fruit from the lot used were completely immature. The rest were almost all just partially immature. At the end of 16 days, the controlled fruit was still substantially shy of the breaker stage. A breaker is a tomato in the first stage of changing color; it is primarily green with a little yellow or pink coloring at the blossom end. The researcher concluded that continuous ethylene treatment had a substantial effect on the rate of development on the small tomatoes. But in his opinion, the fruit was basically tasteless.

This study strongly supports the industry's quality observation on small size 7x7 tomatoes. That is, that small size 7x7 tomatoes are generally immature and do not reach a level of maturity that provides the consumer with a good product. The tendency for 7x7 tomatoes to be immature and of lower quality appears to be an important factor in the low market price for such tomatoes.

Quality assurance is very important to the Florida tomato industry in light of their decision to spend hundreds of thousands of dollars on promotion and education programs to increase per capita consumption and teach consumers how to properly ripen tomatoes. It is the committee's opinion that it would not be in the best interest of Florida tomato growers and handlers for the committee to spend great sums of

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money for promotion and education purposes and continue to sell a product which is not preferred by consumers, especially when more than ample supplies of tomatoes are available to meet market needs.

The committee contends that its recommendation to raise the minimum size requirement from $2\frac{4}{32}$ inches in diameter to $2\frac{9}{32}$ inches in diameter will provide fresh market outlets and consumers with a better quality product. A product that is more desirable and appealing to the consumer, and which will provide greater economic returns to tomato producers.

Another comment states that the proposal to eliminate the shipment of size 7x7 tomatoes is contrary to the Secretary's Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders, published by the U.S. Department of Agriculture on January 25, 1982. While quality control provisions may impact supplies, this impact is secondary to their primary purpose of providing the public with acceptable quality merchandise from season to season recognizing changing crop conditions and buyer preferences. This primary consideration has been adequately justified by the evidence submitted by the committee.

Several commentors indicated that they have substantial sums of money invested in packaging machinery and raw material for repacking 7x7 tomatoes. One firm indicated that the elimination of the 7x7 size category could cost his firm close to $750,000. Another firm indicated that it has over $25,000 in packaging supplies, including printed film and trays which cannot be used for tomatoes larger than the size to be eliminated. Another firm indicated that the dollar value of its tray inventory for 7x7 tomatoes was $44,000.

In recognition of the possible financial losses on packaging material inventories, the Department has given consideration to delaying the effective date of the size changes. The Department recognizes that the Florida tomato industry is anxious to improve the quality and maturity of tomatoes shipped into fresh channels. However, the Department believes that repackers and packaging manufacturers should have time to dispose of some of their packing material and lessen their financial losses, if any, on this material. To give these firms the opportunity to obtain 7x7 tomatoes from Florida, other tomato producing States, and foreign sources, the effective date of this action is being delayed until December 1, 1986.

Each comment was carefully considered in reaching the final decision on this action. On the basis of the comments received, and other available information, it has been determined that the minimum size requirement for Florida tomatoes and tomato imports will be $2\frac{9}{32}$ inches in diameter effective December 1, 1986.

The specified requirements for both Florida and imported tomatoes will continue in effect from marketing season to marketing season indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the committee or other information available to the Secretary. Although the seasonal regulations will be effective for an indefinite period, the committee will continue to meet prior to and during each season to consider recommendations for modification, suspension, or termination of the regulation. Prior to making any such recommendations the committee would submit to the Secretary a marketing policy for the season including an analysis of supply and demand factors having a bearing on the marketing of the Florida tomato crop. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate committee recommendations and information submitted by the committee, and other available information, and determine whether modification, suspension, or termination of the regulations on shipments of Florida and imported tomatoes would tend to effectuate the declared policy of the Act.

After consideration of all relevant information, including the proposal set forth in the notice and comments filed with respect thereto, it is hereby found that the following changes in the domestic and imported tomato requirements, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is hereby further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) for the following reasons: (1) Shipments of the 1986 tomato crop grown domestically have begun; (2) to maximize benefits to handlers, producers, and consumers, this regulation should apply to as many shipments as possible during the marketing season; (3) to assure the quality of imported tomatoes, the tomato import regulations should apply effective December 1, 1986.

List of Subjects in 7 CFR Part 966

Marketing agreements and orders, Tomatoes, Florida, Import regulations.

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 966 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 966.323 is amended by revising the introductory text and paragraphs (a)(2)(i), (d)(3), and (f) to read as follows:

§ 966.323 Handling regulation.

During the period December 1, 1986, through June 15, 1987, during the 1986–87 season, and during the period October 10 through June 15 each season thereafter, no person shall handle any lot of tomatoes for shipment outside the regulated area unless they meet the requirements of paragraph (a) or are exempted by paragraphs (b) or (d).

(a) * * *

(2) *Size.* (i) Tomatoes shall be at least $2\frac{9}{32}$ inches in diameter and be sized with proper equipment in one or more of the following ranges of diameters. Measurements of diameters shall be in accordance with the methods prescribed in paragraph 51.1859 of the U.S. Standards for Grades of Fresh Tomatoes.

Size classification	Inches	
	Minimum diameter	Maximum diameter
6x7	$2\frac{9}{32}$	$2\frac{19}{32}$
6x6	$2\frac{17}{32}$	$2\frac{25}{32}$
5x6 and larger	$2\frac{24}{32}$	

* * * * *

(d) * * *

(3) *For special packed tomatoes.* Tomatoes which met the inspection rquirements of paragraph (a)(4) which are resorted, regraded, and repacked by a handler who has been designated as a "Certified Tomato Repacker" by the committee are exempt from (i) the tomato grade classifications of paragraph (a)(1), (ii) the size classifications of paragraph (a)(2) except that the tomatoes shall be at least $2\frac{9}{32}$ inches in diameter, and (iii) the container weight requirements of paragraph (a)(3).

* * * * *

(f) *Applicability to imports.* Under section 8e of the Act and § 980.212 "Import regulations" (7 CFR 980.212) tomatoes inspected during the period December 1, 1986, through June 15, 1987, during the 1986–87 season and October 10 through June 15 each season thereafter shall be at least U.S. No. 3 grade and at least $2\frac{9}{32}$ inches in diameter. Not more than 10 percent, by count, in any lot may be smaller than the minimum specified diameter.

Dated: November 7, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86-25637 Filed 11-12-86; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 86-090]

Ports Designated for Exportation of Animals; Deletion of Indianapolis International Airport

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the regulations on "Inspection and Handling of Livestock for Exportation" by deleting Indianapolis International Airport from the list of ports of embarkation. We are taking this action because Indianapolis International Airport no longer has export inspection facilities.

DATES: Interim rule effective; November 13, 1986; comments must be received on or before January 12, 1987.

ADDRESSES: Submit comments to Steven R. Poore, Acting Assistant Director, Regulatory Coordination, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that they refer to Docket Number 86-090. Written responses may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Jr., Senior Staff Veterinarian, Import-Export and Emergency Planning Staff, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 806, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; (301) 436-8695.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR Part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations), prescribe conditions for exporting animals from the United States. Section 91.14 of the regulations lists ports of embarkation. Only ports satisfying specific requirements can be designated as ports of embarkation. A port must, among other things, have an inspection facility available for animals intended for export. Private parties or State departments of agriculture own and operate these export inspection facilities.

The Animal and Plant Health Inspection Service provides export inspection services at the request of the operator of an inspection facility. The decision to establish, operate, or close an animal export inspection facility rests with the operator alone, and may change at any time.

We are removing Indianapolis International Airport from the list of ports of embarkation in § 91.14(a) of the regulations because the export inspection facility has been closed by the operator.

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. It is necessary to make this interim rule effective immediately, to notify animal exporters that this port of embarkation is no longer available.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 533, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective upon publication. Comments are solicited for 60 days after publication of this document. A final document discussing comments received and any amendments required will be published in the **Federal Register.**

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, we have determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It is anticipated that the closing of the animal export inspection facility at Indianapolis International Airport will affect only one business concern. Approved embarkation ports are available in nearby Chicago, Illinois, and Cincinnati, Ohio, so that there should be no significant economic impact on this entity.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock and livestock products, Transportation.

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

Accordingly, 9 CFR Part 91 is amended as follows:

1. The authority citation for Part 91 continues to read as set forth below:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618, 46 U.S.C. 466a, 466b; 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 91.14, paragraph (a)(5) is removed and paragraphs (a)(6) through (a)(16) are redesignated as paragraphs (a)(5) through (a)(15).

Done in Washington, DC, this 7th day of November.

B.G. Johnson,

Deputy Administrator, Veterinary Services.

[FR Doc. 86-25635 Filed 11-12-86; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-CE-57-AD; Amendment 39-5464]

Airworthiness Directives; British Aerospace Model B.121 Series I, II, and III Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to all British Aerospace (BAe) Model B.121 Series I, II, and III airplanes which requires initial and repetitive visual inspections for cracks in the structure that attaches the vertical fin to the fuselage. BAe has received reports of cracks being found in these areas. Inspection in the area where the vertical fin attaches to the fuselage will detect these cracks before structural failures occur, and preclude subsequent loss of airplane control.

DATES: *Effective* December 18, 1986.

Compliance: As prescribed in the body of this AD.

ADDRESSES: British Aerospace Service Bulletin (S/B) No. B121/86, dated March 29, 1984, applicable to this AD may be obtained from British Aerospace, Engineering Department, Post Office Box 17414, Dulles International Airport, Washington, DC 20041; Telephone (703) 435-9100. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. T. Ebina, Brussels Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 513.38.30; or Mr. John P. Dow, Sr., FAA, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring initial and repetitive visual inspections for cracks in the structure that attaches the vertical fin to the fuselage, and repair as necessary on all BAe Model B.121 Series I, II, and III airplanes, was published in the **Federal Register** on August 14, 1986, 51 FR 29110. The proposal resulted from BAe receiving a report of cracks being found on a Model B.121 Series airplane (a) on the center angle attaching the upper Rear Fuselage sloping diaphragm to STN 207.85 Frame Assembly, (b) on the upper decking diaphragm attached between the same frame assembly and STN 218.5 Frame Assembly, and (c) in the heel of the side skin attachment flange on Frame 207.85 adjacent to the tailplane front spar attachment bolts. Consequently, British Aerospace issued BAe S/B No. B121/86, dated March 29, 1984, which: (1) Specified an initial visual inspection of the vertical fin/fuselage structure within 50 hours time-in-service (TIS) for airplanes having 2,450 hours or more TIS, (2) specified repetitive visual inspection at intervals of 50 hours TIS thereafter, and (3) requires a repair procedure if cracks beyond specific limits are found.

The Civil Aviation Authority-United Kingdom (CAA-UK), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in the United Kingdom, classified this service bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes.

On airplanes operated under United Kingdom registration, this action has the same effect as an AD on airplanes certificated for operation in the United States. The FAA relies upon the certification of the CAA-UK, combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA examined the available information related to the issuance of BAe S/B No. B121/86, dated March 29, 1984, and the mandatory classification of this service bulletin by the CAA-UK, and concluded that the condition addressed by BAe S/B No. B121/86, dated March 29, 1984, was an unsafe condition that may exist on other airplanes of this type certificated for operation in the United States. Accordingly, the FAA proposed an amendment to Part 39 of the FAR to include an AD on this subject.

Interested persons have been afforded an opportunity to comment on the proposal. No comments were received. Accordingly, the proposal is adopted without change.

The FAA has determined that this regulation involves two airplanes at an approximate annual cost of $105 for each airplane, or a total annual fleet cost of $210.

The FAA has determined that this document: (1) Involves a regulation that is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) certifies under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities.

Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 2, 1979); and (3) will not have a significant economic impact an a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 and Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

British Aerospace: Applies to Model B.121 Series I, II, and III (all serial numbers) airplanes certificated in any category.

Compliance: Required initially within 50 hours time-in-service (TIS) for airplanes having or upon accumulating 2,450 hours or more TIS, and thereafter at intervals of 50 hours TIS, unless already accomplished.

To assure the integrity to the vertical fin/fuselage attachment structure, accomplish the following:

(a) Visually inspect for cracks in the following areas:

(1) Center Angle, Part Number (P/N) BE-10-10085 in accordance with paragraph 3. "ACTION" subparagraph (c) of British Aerospace (BAe) Service Bulletin (S/B) No. B121/86, dated March 29, 1984.

(i) If cracks are found that equal or exceed the conditions shown in paragraph 3. "ACTION" subparagraph (c) of BAe S/B No. B121/86, prior to further flight, repair in accordance with repair instructions obtained from the manufacturer, British Aerospace, and approved by the Manager, Aircraft

Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium (hereinafter referred to as "Manager, AEU-100").

(ii) If no cracks are found or if cracks do not exceed the limits shown in paragraph 3. "ACTION" subparagraph (d) of BAe S/B No. B121/86, repeat the inspection at intervals not exceeding 50 hour TIS.

(2) The underside of Diaphragm Decking upper, P/N BE-10-10155/1, in accordance with paragraph 3. "ACTION" subparagraph (d) of BAe S/B No. B121/86, dated March 29, 1984.

(i) If cracks are found, prior to further flight, repair in accordance with the repair instructions obtained from the manufacturer, British Aerospace, and approved by the Manager, AEU-100.

(ii) If no cracks are found, repeat the inspection at intervals not exceeding 50 hours TIS.

(3) The heel of the side skin attachment flange (left and right) adjacent to the tailplane from spar attachment bolts in accordance with paragraph 3. "ACTION" subparagraph (e) of BAe S/B No. B121/86, dated March 29, 1984.

(i) If cracks are found, prior to further flight, repair in accordance with repair instructions obtained from the manufacturer, British Aerospace, and approved by the Manager, AEU-100.

(ii) If no cracks are found, repeat the inspection at intervals not exceeding 50 hours TIS.

(b) Extension or elimination of the repetitive inspections specified in this AD may be inculded as part of the FAA-approved repair obtained in accordance with paragraphs (a)(1)(i), (a)(2)(i), and (a)(3)(i) of this AD.

(c) Aircraft may be flown in accordance with Federal Aviation Regulation 21.197 to a location where this AD can be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

All persons affected by this directive may obtain a copy of the document referred to herein upon request to British Aerospace, Engineering Department, Post Office Box 17414, Dulles International Airport, Washington, DC 20041; Telephone (703) 435-9100, or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on December 18, 1986.

Issued in Kansas City, Missouri, on November 3, 1986.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 86-25533 Filed 11-12-86; 8:45 am]

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14 CFR Part 39

[Docket No. 78-CE-23-AD; Amdt. 39-5460]

Airworthiness Directives; Great Lakes Models 2T-1A-1 and 2T-1A-2 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 78-26-10, Amendment 39-3384 applicable to Great Lakes Models 2T-1A-1 and 2T-1A-2 airplanes. AD 78-26-10 requires repetitive visual inspections of the support plates at both ends of the heat exchanger for cracks. The manufacturr subsequently introduced a design change to the cockpit heater system which makes the requirements of AD 78-26-10 inapplicable to those airplanes which are equipped with a cockpit heater system other than Part Number (P/N) 50146. Accordingly, the amendment allows those airplanes which have installed such a cockpit heater system to be exempt from compliance with the AD.

EFFECTIVE DATE: December 17, 1986.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Information applicable to this AD is contained in the Rules Docket and may be obtained from the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 78-CE-23-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Fahr, ANE-153, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; Telephone (617) 273-7103.

SUPPLEMENTARY INFORMATION: This amendment revises Amendment 39-3384 (44 FR 1081), AD 78-26-10, which currently requires repetitive inspection of the cockpit heater system on all Great Lakes Models 2T-1A-1 and 2T-1A-2 airplanes to preclude contamination of the cockpit heater air with carbon monoxide. Subsequent to issuance of this AD, the manufacturer introduced a design change to the cockpit heater system which makes the requirements of AD 78-26-10 inapplicable for those airplanes which are equipped with a cockpit heater system other than P/N 50146. Consequently, a proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to revise AD 78-26-10 to allow those airplanes which have a cockpit heater system other than P/N 50146 to be exempt from further compliance with the AD was published in the **Federal Register** on July 15, 1986 (51 FR 25569).

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the final rule will be adopted without change.

This amendment imposes no additional burden on any person. The cost of compliance with the revised AD is unchanged from the current AD and will not have a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising AD 78-26-10, Amendment 39-3384, as follows:

Revise paragraphs A)1., A)2., A)3., and Figure 1 by replacing "cockpit heater system" with "P/N 50146 cockpit heater system".

Revise paragraph (C) to read as follows:

The actions and inspections specified in paragraphs A)2. and A)3. of this AD may be discontinued upon either removal of the P/N 50146 cockpit heater system per paragraph B) of this AD, or replacement of the P/N 50146 cockpit heater system with a different FAA approved cockpit heater system.

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Revise paragraph (D) to read as follows:

Any equivalent method of compliance with this AD must be approved by the Manager, Boston Aircraft Certification Office, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

This amendment revises AD 78-26-10, Amendment 39-3384.

This amendment becomes effective on December 17, 1986.

Issued in Kansas City, Missouri, on October 31, 1986.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 86-25530 Filed 11-12-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-CE-55-AD; Amdt. 39-5462]

Airworthiness Directives; Collins Model DME-42 Distance Measuring Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Collins Model DME-42 Distance Measuring Equipment (DME) transceivers which have incorporated Collins Service Bulletin, DME-42 SB-5, dated August 11, 1986. Transceivers modified by this Service Bulletin, identified as Part Number (P/N) 622-6263-002, may cause erroneous display of the station identifier with associated distance to go, time to go and audio identifier that is different from the station manually selected. This display of erroneous information during periods of high cockpit workload in IFR conditions such as an ILS approach, could result in incorrect interpretation of aircraft location and possible subsequent loss of the aircraft. The removal and modification of these transceivers as prescribed in the AD will assure safe and proper operation of the DME.

DATES: Effective November 17, 1986. Compliance: As prescribed in the body of the AD.

ADDRESSES: Collins Service Bulletin DME-42 SB-6, dated October 15, 1986, may be obtained from Collins Avionics Division/Rockwell International, 400 Collins Road NE., Cedar Rapids, Iowa 42498. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Trammell, FAA, Atlanta Aircraft Certification Office, ACE-130A, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763-7781.

SUPPLEMENTARY INFORMATION: Collins reported to the FAA that a condition of erroneous display was found during flight testing of a newly installed DME-42 transceiver. This erroneous display can result in an incorrect interpretation of aircraft location and if this occurs during a critical phase of flight, loss of the aircraft could result.

Collins confirmed by engineering laboratory tests that the erroneous display is attributed to incorporation of Collins Service Bulletin DME-42 SB-5, dated August 11, 1986, into the transceiver. This Service Bulletin modifies the transceiver, and re-identifies the unit as P/N 622-6263-002. As a result, Collins issued Service Bulletin DME-42 SB-6, dated October 15, 1986, which removes the modification of Service Bulletin SB-5 and restores the P/N 622-6263-001 identification. Transceivers that have not incorporated Service Bulletin DME-42 SB-5 or those P/N 622-6263-002 transceivers restored by Service Bulletin DME-42 SB-6 to P/N 622-6263-001 configuration do not demonstrate this malfunction.

Since the FAA has determined that the unsafe condition described herein is likely to exist in other transceivers which have incorporated Collins Service Bulletin DME-42 SB-5, an AD is being issued requiring the removal of these transceivers from service and modification back to the original configuration. Because a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedures hereon are impractical and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct this condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "**ADDRESSES**" at the location identified.

Lists of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

PART 39—[AMENDED]

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The Authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), and 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Collins Avionics Division/Rockwell International: Applies to Collins Model DME-42, P/N 622-6263-002, Distance Measuring Equipment.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent display of erroneous DME-42 information, accomplish the following:

(a) For aircraft with Collins Model DME-42 Distance Measuring Equipment installed, within the next 25 hours time-in-service after the effective date of this AD:

(1) Visually inspect all installed DME-42 equipment to determine if Part Number (P/N) 622-6263-002 transceivers are installed.

(2) If installed, prior to further flight remove the transceiver(s), and tag the unit(s) unserviceable until the modification specified in paragraph (b) of this AD is accomplished.

(b) For all affected DME-42 transceivers, P/N 622-6263-002, not installed in an aircraft, prior to further use modify and reidentify the transceiver in accordance with the instructions contained in Collins Service Bulletin DME-42 SB-6, dated October 15, 1986.

(c) Aircraft may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Atlanta Aircraft Certification Office, ACE-115A, FAA, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763-7428.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Collins Avionics Division/Rockwell International, 400 Collins Road NE., Cedar Rapids, Iowa 52498; or the FAA, Rules Docket, Office of Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on November 17, 1986.

Issued in Kansas City, Missouri on October 31, 1986.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 86–25539 Filed 11–12–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 86–CE–16–AD, Amdt. 39–5461]

Airworthiness Directives; Consolidated Aeronautics Incorporated Lake Model 250 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Consolidated Aeronautics Incorporated Lake Model 250 airplanes which requires the addition of hardware on the fuel shutoff handle. This hardware is needed to prevent the fuel shutoff handle from binding on the cabin upholstery which could result in preventing the flight crew from isolating the fuel system from the engine compartment, thereby creating an extreme hazard if the airplane experiences an inflight fire or similar emergency.

DATE: Effective: December 17, 1986. Compliance: As prescribed in the body of the AD.

ADDRESSES: Lake Service Bulletin No. B–66, dated May 31, 1985, applicable to this AD, may be obtained from: Lake Aircraft, Laconia Airport, Laconia, New Hampshire 03646. A copy of the service bulletin is contained in the Rules Docket, Docket Number 86–CE–16–AD, in the Office of the Regional Counsel, Federal Aviation Administration, Central Region, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Gaulzetti, ANE–153, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington , Massachusetts 01803; Telephone 617–273–7102.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring the addition of hardware on the fuel shutoff handle on certain Lake Model 250 airplanes was published in the **Federal Register** on July 8, 1986 (51 FR 24715).

The proposal was prompted by the discovery that in certain Lake Model 250 airplanes the upholstery can restrict movement of the fuel shutoff valve, preventing the flight crew from isolating the fuel system from the engine compartment if the airplane experiences an inflight fire or similar emergency.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change.

The FAA has determined that this regulation involves approximately 16 airplanes, at an approximate one-time cost of $75 for each airplane or a total one-time fleet cost of $1200. The cost is so small that compliance with the proposal will not have a significant financial impact on any small entities owning affected airplanes. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation Safety, Safety.

PART 39—[AMENDED]

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Consolidated Aeronautics Incorporated: Applies to Consolidated Aeronautics Incorporated, Lake Model 250 Airplanes, Serial Numbers 2 through 17, equipped with fuel shutoff valve mouting plate part number 3–6572–17, certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent the possible contact of the fuel shutoff valve handle hardware and the cabin rear upholstery panel, accomplish the following:

(a) Modify the fuel shutoff valve mounting plate in accordance with instructions in Lake Aircraft Division Consolidated Aeronautics Incorporated Service Bulletin No. B–66 dated May 31, 1985.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD can be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Federal Aviation Administration, Boston Aircraft Certification Office, ANE–150, 12 New England Executive Park, Burlington, Massachusetts 01803.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Lake Aircraft, Laconia Airport, Laconia, New Hampshire 03646; or Federal Aviation Administration, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on December 17, 1986.

Issued in Kansas City, Missouri, on October 31, 1986.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 86–25538 Filed 11–12–86; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB–65]

Staff Accounting Bulletin No. 65

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: The interpretations in this staff accounting bulletin indicate the staff's views on certain matters involved in the application of Accounting Series Release Nos. 130 and 135 regarding risk sharing in business combinations accounted for as pooling of interests.

DATE: November 5, 1986.

FOR FURTHER INFORMATION CONTACT: Lawrence Salva, Office of the Chief Accountant (202–272–2130), or Howard P. Hodges, Jr. Division of Corporation Finance (202–272–2553), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering

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the disclosure requirements of the Federal Securities laws.

Shirley E. Hollis,

Assistant Secretary.

November 5, 1986.

PART 211—[AMENDED]

Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 65 to the table found in Subpart B.

Staff Accounting Bulletin No. 65

The staff hereby adds Section E to Topic 2 of the staff accounting bulletin series. Section E discusses the staff's views on certain matters involved in the application of Accounting Series Release Nos. 130 and 135 regarding risk sharing in business combinations accounted for as pooling of interests.

Topic 2: Business Combinations

* * * * *

E. Risk Sharing in Pooling of Interests

Facts: The Commission established and published guidelines in Accounting Series Release Nos. 130 and 135[1] which are used in making determinations on whether the sharing of rights and risks among constituent stockholder groups will have occurred in order for a business combination to be accounted for as a pooling of interests. Those guidelines indicate that the requisite risk-sharing will have occurred if no affiliate of either company reduces his risk relative to any common shares received in the business combination until publication of financial results covering at least 30 days of post-merger combined operations.

Question 1: Are affiliates of each combining company restricted from dispositions of their shares or do the restrictions apply only to affiliates of the "target" company actually receiving shares in the business combination?

Interpretive Response: Affiliates of each combining company may not reduce their risk relative to their common shareholder positions during the indicated time period in order to achieve the risk sharing required for the applicability of pooling of interests accounting. Any one of the combining companies may issue shares in exchange for the shares of the other combining companies. Alternatively, a new corporation may be formed to issue its shares to effect a combination of the companies. As indicated in APB Opinion 16, "the choice of issuing corporation is essentially a matter of convenience." The staff therefore believes that allowing affiliates of the issuing company to immediately sell or otherwise dispose of their shares while restricting such actions by the affiliates of the "target" company would be inconsistent with the risk sharing element that is essential in poolings.

Question 2: Will a disposition of shares by an affiliate, before the exchange of shares to effect the combination occurs, cause the staff to question the application of pooling of interests accounting?

Interpretive Response: Yes, in some cases. Although continuity of ownership interests is not a condition to accounting for a business combination by the pooling of interests method under APB Opinion 16, the Opinion clearly articulates the need for a sharing of risk. To allow affiliates to sell their shares shortly before the consummation of the combination while restricting such sales immediately following the exchange would be inconsistent.

The Opinion contemplates that business combinations accounted for as pooling of interests must normally be consummated within one year after the plan of combination is initiated and the staff notes that such combinations have typically been consummated within a few months of initiation. While it can be argued that risk sharing should begin when a formal plan of combination is initiated, in some situations this may be an unreasonably long period to restrict affiliates from selling their shares or otherwise reducing their risk with respect to the combined company. This is particularly the case in combinations that require a lengthy period between initiation and consummation (such as between financial institutions that require regulatory approval) and where the affiliate transactions are relatively minor and routine. In view of these practical considerations, the staff will generally not raise a question about the applicability of pooling of interests accounting as a result of dispositions of shares by affiliates prior to 30 days before consummation of a business combination.[2]

[FR Doc. 86–25625 Filed 11–12–86; 8:45 am]

BILLING CODE 8010–01–M

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[1] These guidelines were codified in section 201.01 of the Codification of Financial Reporting Policies (FRP), a separate publication issued by the Commission.

[2] Registrants are reminded, however, of AICPA Interpretation Nos. 34 and 37 of APB Opinion 16, which indicate that combinations that require, or are contingent upon, the sale of shares by shareholders of either of the combining companies would be accounted for as purchases.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 154

[Docket No. RM84–6–033; Order No. 399–C]

Refunds Resulting From Btu Measurement Adjustments

Issued: November 5, 1986.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order postponing deadline for payment.

SUMMARY: The Federal Energy Regulatory Commission is postponing the deadline for payment of Btu refunds attributable to royalty interest owners for any first seller that has a petition pending for a waiver of or postponement of the deadline to pay such Btu refunds until 30 days after the Commission issues an order disposing of the petition.

EFFECTIVE DATE: November 5, 1986.

FOR FURTHER INFORMATION CONTACT: Darrell Blakeway, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8213.

SUPPLEMENTARY INFORMATION:

Order Postponing Deadline for Refund

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

In Order No. 399[1] the Commission established November 5, 1986, as the deadline for first sellers to pay their Btu refund obligations attributable to payments made to their royalty interest owners. The Commission also stated that it would consider, on a case-by-case basis, requests to waive the interest on, or postpone the deadline for paying, such refunds. In Order No. 399-A, the Commission concluded that it could waive the principal of a refund obligation attributable to royalty payments if the first seller demonstrated that the refund is uncollectible.[2]

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[1] In Order No. 399, Refunds Resulting from Btu Measurement Adjustments, 47 FR 37735 (Sept. 28, 1984), FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,597, the Commission established procedures and deadlines for the refund of charges for natural gas that exceeded NPA ceilings as a result of Btu measurements based on the water vapor content of the gas "as delivered", rather than on a water saturated basis. In so doing, the Commission was implementing the decision of the United States Court of Appeals for the District of Columbia Circuit in Interstate Natural Gas Association of America v. Federal Energy Regulatory Commission, 716 F.2d 1 (D.C. Cir. 1983), *cert. denied*, 465 U.S. 1106 (1984).

Numerous first sellers have filed petitions for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) seeking a waiver of the refund obligation attributable to royalty payments or a postponement of the deadline for paying such refunds to their pipeline/purchasers until the royalty owners remit the amounts owed to first sellers. Several petitioners seeking such relief have requested the Commission to postpone the November 5, 1986 deadline for their payment of such refunds until at least 30 days after the Commission rules on their petitions on the merits.

The Commission has determined to grant interim relief to any first seller that has a petition on file with the Commission seeking waiver of Btu refunds attributable to royalty payments or for a postponement of the deadline to pay such refunds. In order to provide an opportunity for the Commission to rule on the merits of the pending requests, the Commission postpones the November 5, 1986 deadline for any such first seller until 30 days after issuance of an order by the Commission or the Director of the Office of Pipeline and Producer Regulation (acting pursuant to a delegation of authority by the Commission) disposing of the pending petition.[3]

By the Commission. Commissioner Stalon dissented.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-25528 Filed 11-12-86; 8:45 am]

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[2] 49 FR 46353 at 46,361 (Nov. 26, 1984), FERC Stats. & Regs. [Regulations Preambles 1982-1985] ¶ 30,612 at 31,217. *See also* C.E.C. Oil and Gas Operations, 33 FERC ¶ 61,013 (1985); Wylee Petroleum Corporation, 33 FERC ¶ 61,014 (1985); Inland Ocean, Inc., 33 FERC ¶ 61,015 (1985); Conoco, Inc., 33 FERC ¶ 61,016 (1985); and Witt Oil Production, Inc. 33 FERC ¶ 61,018 (1985), where the Commission established standards for determining when a Btu refund obligation may properly be considered uncollectible.

[3] Interest on the refund obligation continues to accrue until paid, unless the principal is ultimately waived or the refund is attributable to royalties paid to a state or federal governmental authority that makes refunds to the first seller but does not pay interest thereon. See 18 CFR 273.302(e) (1986), 18 CFR 154.102 (c) and (d) (1986), and 49 FR at 37,739 (Order No. 399).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Morantel Tartrate Cartridge

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental NADA filed by Pfizer, Inc., providing for a 106-day withdrawal period for use of Paratect® (morantel tartrate) Sustained Release Cartridge used to remove and control the adult stage of certain gastrointestinal nematode infections in weaned calves and yearling cattle.

EFFECTIVE DATE: November 13, 1986.

FOR FURTHER INFORMATION CONTACT: Adriano R. Gabuten, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed supplemental NADA 134-779 which provides for oral use of Paratect® (morantel tartrate) Sustained Release Cartridge as an anthelmintic in yearling cattle and weaned calves weighing at least 200 pounds. The regulations in 21 CFR 520.1450b provide for use of the product. The supplemental NADA revises the withdrawal period from 160 to 106 days before slaughter for food use. The supplement is approved and the regulations are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither and environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360(i)); 21 CFR 5.10 and 5.83.

§ 520.1450b [Amended]

2. Section 520.1450b *Morantel tartrate cartridge* is amended in paragraph (d)(3) by removing the number "160" and inserting in its place "106".

Dated: November 5, 1986.

Marvin A. Norcross,

Associate Director for New Animal Drug Evaluation.

[FR Doc. 86-25541 Filed 11-12-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

Land Uses

AGENCY: Forest Service, USDA.

ACTION: Final rule; technical amendments.

SUMMARY: This final rule reorganizes 36 CFR Part 251—Land Uses into a Subpart A and B and centralizes the authority citations at the Subpart level in conformance with new **Federal Register** document requirements. This action will facilitate subsequent reference and amendment to the part.

EFFECTIVE DATE: This rule is effective November 13, 1986.

FOR FURTHER INFORMATION CONTACT: Marian P. Connolly, Regulatory Coordinator, Forest Service, USDA, P.O. Box 2417, Washington, DC 20013, (202) 235-1488.

SUPPLEMENTARY INFORMATION: As noted in the Semi-annual Regulatory Agenda of April 21, 1986 (51 FR 13835), the Forest Service is presently reviewing several existing regulations within Part 251 and intends to issue new rules to this part on access to National Forest

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System lands and on special uses. To accommodate these rulemakings, it is necessary to reorganize the Part and to relocate certain authority citations within the part in compliance with new **Federal Register** format requirements.

This final rule is a technical rule with no substantive impact on the general public or small entities. The rulemaking also has no information collection requirement impacts. Therefore, it is exempt from the regulatory review procedures of E.O. 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

List of Subjects in 36 CFR Part 251

Electric power, National forests, Public lands—rights of way, Reporting and recordkeeping requirements, Water resources.

Therefore, for the reasons set forth in the preamble, Part 251 of Title 36 of the Code of Federal Regulations is hereby amended as follows:

PART 251—[AMENDED]

1. Remove the authority citation for Part 251 that occurs at the end of the Table of Contents.

§§ 251.9–251.35 [Designated as Subpart A]

2. Designate existing §§ 251.9 through 251.35 as Subpart A—Miscellaneous Land Uses, retaining the undesignated centered headings for these sections within the Table of Contents.

§§ 251.9–251.35 [Amended]

3. Remove the authority citations that occur at the end of §§ 251.9 through 251.35 and add a centralized authority citation for Subpart A to read as follows:

Subpart A—Miscellaneous Land Uses

Authority: 7 U.S.C. 428a. 1011; 16 U.S.C. 518, 551, 678a, 1131–1136, 1241–1249, 1271, 1287; 54 Stat. 1197.

4. Designate §§ 251.50 through 251.64 as Subpart B—Special Uses, and removing the undesignated centered heading and editorial note.

5. Add a centralized authority citation for Subpart B to read as follows:

Subpart B—Special Uses

Authority: 16 U.S.C. 472, 551, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1771.

Dated: November 4, 1986.

Douglas W. MacCleery,

Deputy Assistant Secretary for Natural Resources and Environment.

[FR Doc. 86–25638 Filed 11–12–86; 8:45 am]

BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SHW–FRL–3106–4]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion and Final Organic Leachate Model (OLM)

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is granting final exclusions for the solid wastes generated at two particular generating facilities from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions received by the Agency under 40 CFR 260.20 and 260.22 to exclude wastes on a "generator-specific" basis from the hazardous waste lists. The effect of this action is to exclude certain wastes generated at these facilities from listing as hazardous wastes under 40 CFR Part 261. In addition, this notice addresses comments received by the Agency on its approach to evaluating organics data in delisting petitions.

EFFECTIVE DATE: November 13, 1986.

ADDRESSES: The public docket for this final rule is located in the Sub-basement, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20406, and is available for public viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475–9327 or Kate Blow at (202) 382–4675 for appointments. The reference number for this docket is "F–86–CCEF–FFFFF". The public may copy a maximum of 50 pages of materials from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, toll-free at (800) 424–9346, or (202) 382–3000. For technical information, contact Dave Topping, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–4690.

SUPPLEMENTARY INFORMATION: On November 27, 1985, EPA proposed to exclude specific wastes generated by thirteen facilities. Four of these exclusions have been finalized in earlier notices. One exclusion will be reproposed (Eli Lilly, located in Clinton, IA; see 51 FR 27061–27064, July 29, 1986). Six of the proposed exclusions will be finalized in other notices. The remaining two proposals are the subject of today's notice: (1) Continental Can Company, located in Milwaukee, Wisconsin (see 50 FR 48915); and (2) Star Expansion Company, located in Mountainville, New York (see 50 FR 48934).

These actions were taken in response to petitions submitted by these companies (pursuant to 40 CFR 260.20 and 260.22) to exclude their wastes from hazardous waste control. In their petitions, these companies have argued that certain of their wastes were non-hazardous based upon the criteria for which the waste was listed. The petitioners have also provided information which has enabled the Agency to determine whether any other toxicants are present in the wastes at levels of regulatory concern. The purpose of today's actions is to make final those proposals and to make our decisions effective immediately. More specifically, today's rule allows these two facilities to manage their petitioned wastes as non-hazardous. The exclusions remain in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process.)[1] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.

The Agency notes that the petitioners granted final exclusions in today's **Federal Register** have been reviewed for both the listed and non-listed criteria. As required by the Hazardous and Solid Waste Amendments of 1984, the Agency evaluated the wastes for the listed constituents of concern as well as for all other factors (including additional constituents) for which there was a reasonable basis to believe that they could cause the waste to be hazardous. These petitioners have demonstrated through submission of raw materials data, EP toxicity test data for all EP toxic metals, and test data on the four hazardous waste characteristics that their wastes do not exhibit any of the hazardous waste characteristics, and do not contain any other toxicants at levels of regulatory concern.

Limited Effect of Federal Exclusion

States are allowed to impose requirements that are more stringent than EPAs pursuant to section 3009 of RCRA. State programs thus need not include those Federal provisions which exempt persons from certain regulatory requirements. For example, States are not required to provide a delisting mechanism to obtain final authorization. If the State program does include a delisting mechanism, however, that mechanism must be no less stringent than that of the Federal program for the State to obtain and keep final authorization.

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[1] The current exclusions apply only to the processes covered by the original demonstrations. A facility may file a new petition if it alters its process. The facility must treat its waste as hazardous, however, until a new exclusion is granted.

As a result of enactment of the Hazardous and Solid Waste Amendments of 1984, any States which had delisting programs prior to the Amendments must become reauthorized under the new provisions.[2] To date only one State (Georgia) has received tentative approval for their delisting program. The final exclusions granted today, therefore, are issued under the Federal program. States, however, can still decide whether to exclude these wastes under their State (non-RCRA) program. Since a petitioners waste may be regulated by a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

The exclusions made final here involve the following petitions:

Continental Can Company, Milwaukee, Wisconsin
Star Expansion Company, Mountainville, New York

I. Continental Can Co.

A. Proposed Exclusion

Continental Can Company (Continental) has petitioned the Agency to exclude its incinerator ash from the incineration of several non-halogenated solvents from EPA Hazardous Waste Nos. F003 and F005 based upon the absence, low concentration, or immobilization of the listed constituents of this waste. Data submitted by Continental substantiate their claim that the listed constituents of concern are either not present in concentrations of regulatory concern or are present in essentially immobile forms. As required by the Hazardous and Solid Waste Amendments of 1984, Continental also provided data that indicate that no other hazardous constituents are present in this waste at levels of regulatory concern and that the waste does not exhibit any of the characteristics of hazardous waste.[3]

B. Agency Response to Public Comments

The Agency did not receive any public comments regarding its decision to grant an exclusion to Continental for the waste identified in its petition.

C. Final Agency Decision

For the reasons stated in the proposed exclusion, the Agency believes that this waste is non-hazardous and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Continental Can Company for its Milwaukee, Wisconsin facility. The incinerator ash is generated from the incineration of spent non-halogenated solvents, listed as EPA Hazardous Waste Nos. F003 and F005. These solvents are used in Continental's multi-stage can assembly process. [The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (e.g., the waste is altered as a result of changes in the manufacturing or treatment process).[4] In addition, generators are still obligated to monitor these wastes to determine if they exhibit any hazardous characteristics].

II. Star Expansion Co.

A. Proposed Exclusion

Star Expansion Company (Star Expansion) has petitioned the Agency to exclude its treated sludge from EPA Hazardous Waste No. F006, based upon the absence, low concentration, or immobilization of the listed constituents of this waste. Data submitted by Star Expansion substantiate their claim that the listed constituents of concern are either not present in concentrations of regulatory concern or are present in essentially immobile forms. As required by the Hazardous and Solid Waste Amendments of 1984, Star Expansion also provided data that indicate that no other hazardous constituents are present in this waste at levels of regulatory concern and that the waste does not exhibit any of the characteristics of hazardous waste.[5]

B. Agency Response to Public Comments

The Agency did not receive any public comments regarding its decision to grant an exclusion to Star Expansion for the waste identified in its petition.

C. Final Agency Decision

For the reasons stated in the proposed exclusion, the Agency believes that this waste is non-hazardous and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Star Expansion Company for its treated sludge generated at its Mountainville, New York facility. The treated sludge is generated from the treatment of electroplating wastewaters, listed as EPA Hazardous Waste No. F006, which are generated in the production of fasteners for the construction and transportation industries. [The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[6] In addition, generators are still obligated to monitor these wastes to determine if they exhibit any hazardous characteristics].

III. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six month period to come into compliance. This is the case here since this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioners by an effective date six months after promulgation and the fact that such a deadline is not necessary to achieve the purpose of section 3010, we believe that these rules should be effective immediately. These reasons also provide a basis for making this rule

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[2] RCRA Regulation Statutory Interpretation No. 4: Effect of Hazardous and Solid Waste Amendments of 1984 on State Delisting Decisions, May 16, 1985, Jack W. McGraw, Acting Assistant Administrator for the Office of Solid Waste and Emergency Response

[3] See 50 FR 48915–48917, November 27, 1985 for the original proposed exclusion and a more detailed description of why the Agency proposed to grant Continental's petition. See also 51 FR 27061–27064 for the results of the revised Organic Leachate Model for Continental's waste.

[4] The current exclusion only applies to the processes covered by the original demonstrations. A facility may file a new petition if it alters its process. Should such a change occur, the facility must treat its waste as hazardous until a new petition is granted.

[5] See 50 FR 48934–48936, November 27, 1985 for the original proposed exclusion and a more detailed description of why the Agency proposed to grant Star Expansions petition. Also see 51 FR 27061–27064, July 29, 1986, Table 1, for the results of the revised Organic Leachate Model for Star Expansion.

[6] The current exclusion only applies to the processes covered by the original demonstrations. A facility may file a new petition if it alters its process. Should such a change occur, the facility must treat this waste as hazardous until a new petition is granted.

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effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This proposal to grant exclusions is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at specific facilities from EPA's list of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment, a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effects will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this regulation will not have a significant impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921

Dated: November 5, 1986.

Marcia Williams,

Director, Office of Solid Waste.

Appendix: Response to Public Comment Regarding the Organic Leaching and Land Treatment Models

The Environmental Protection Agency (EPA) received a number of comments regarding the proposed rule set forth in 50 FR 48953, November 27, 1985, which discusses the Agency's approach to evaluating petitions for the delisting of organic wastes that are typically landfilled or landfarmed. The comments received and the Agency's responses are presented in this notice in terms of the following four issues: (1) The legislative authority of the proposed rule; (2) assumptions used in the organic leachate model (OLM); (3) assumptions used in the land treatment model; and (4) general comments on the delisting program.

Comments were also received on several of the parameters used in the Agency's vertical and horizontal spread (VHS) groundwater dispersion landfill model. This model was proposed on February 26, 1985 (see FR 7882, Appendix I), comments were solicited and incorporated, and the model was made final on November 27, 1985 (see 50 FR 48886, Appendix). Since the landfill model has already been made final, additional comments on these parameters will not be entertained. Due to the fact that the VHS is a steady-state model, however, the assumed ground-water velocity was not specifically discussed when that model was proposed. Since the ground-water velocity is a factor in evaluating the fate of organic toxicants (due to the implied transport time), comments on this parameter are addressed in today's notice (see section 4). Comments on the general applicability of the landfill and other models are addressed in section 4.

In response to some of the comments on the November 27, 1985 notice, the Agency published a Notice of Availability on July 29, 1986. Today's notice also presents the Agency's response to comments on that notice. (See Section 2.B.)

1. Legislative Authority

A number of comments were received concerning the legislative authority of the proposed use of the OLM. Specifically, the Agency received comments concerning the following issues:

- Petition-specific evaluation
- Right to comment
- Basis for determination of hazard
- Use of health-based standards
- Stringency of the proposed rule.

The comments received and the Agency's responses are presented in the following sections.

A. Petition-specific Evaluation

Comment: One commenter stated that the use of the proposed OLM and the VHS models is not consistent with the legislative intent of section 3001(f)(1) of RCRA which is interpreted by the commenter to stipulate that the delisting process should be applied on an individual basis. The commenter stated that the models exclude relevant evidence by only considering constituent concentration and waste volume, and by assuming that all wastes containing a particular Appendix VIII constituent will behave alike, encounter the same conditions, and be mismanaged alike. Furthermore, the commenter stated that once EPA promulgates its models, the assumptions in the models are no longer subject to challenge. Thus, this approach does not provide for an individual analysis of any specific petition. The commenter recommended that EPA abandon its worst-case assumptions in favor of using actual waste data and site-specific conditions to evaluate a particular generator's waste in relation to its most likely disposal site.

Response: The application of the OLM and VHS models to petition evaluation does not cause the process to be less individualized. The models are intended to be petition evaluation tools, but not to function as the sole basis for evaluation.

The Agency's petition-evaluation process has always emphasized factors that are specific to the subject waste. These factors include the concentration of toxicants in the waste and exhibited in the waste's leachate, and the reasonably expected management practices to which the waste will be subjected. Thus, in evaluating petitions, the Agency does not assume that all wastes containing a particular toxicant will behave alike, encounter the same conditions, or be managed alike. For example, the OLM predicts that two wastes containing different levels of the same toxicant will exhibit different leachate concentrations of that toxicant. Also, a waste that is typically subjected to a particular management (*e.g.,* landfilled) is evaluated differently than a waste which is subject to different management (*e.g.,* land treated). The petition-evaluation process does, therefore, provide for individual analysis of petitions.

In evaluating delisting petitions, the Agency assesses the hazard due to disposal of the waste in a non-Subtitle C setting. The Agency therefore uses a number of reasonable worst-case assumptions about the unit in which the waste will be managed. Since the Agency often has no assurance that a petitioner will continue to dispose of the waste at a particular disposal unit, it is not reasonable to consider site-specific factors for that unit. The Agency is, however, considering the use of site-specific values, on a petition-by-petition basis, in certain rare circumstances. One such situation, for example, would be when it is not reasonable to expect the waste to be moved from the current management unit and the hydrogeology is well known. Should the Agency conclude that such an approach is warranted, that approach will be proposed in the **Federal Register** and comments will be solicited.

Comment: One commenter stated that the model "fails to balance administrative convenience with accuracy of assessment." EPA interprets this statement to mean that the commenter believes that the model does not consider all relevant parameters to accurately assess the potential hazard of a given waste, and that the model is being used inappropriately to expedite the Agency's review process.

Response. The Agency believes that petitions should be evaluated in both a timely and a thorough manner. The Agency further believes that models are useful and effective tools to evaluate the potential hazard due to unregulated disposal of wastes and that their use in no way diminishes the thoroughness of the review nor precludes the consideration of relevant parameters. While models may appear to limit the number of parameters considered, this is primarily due to the fact that reasonable worst-case values have been assigned to many parameters and that these parameters do not, therefore, appear as variables. For example, while the VHS landfill model (see 50 FR 7882, Appendix I, February 26, 1985 and 50 FR 48896, Appendix, November 27, 1985) may appear to consider only a limited number of parameters, such factors as attenuation and saturated soil conditions were considered in the selection and application of that model. Likewise, the OLM incorporated experimental data from wastes representing a number of different matrices in the data base. (See Organic Leaching Model Background Document, Docket Report, July 18, 1986, which is contained in the docket for 51 FR 27061, July 29, 1986, for a description of the wastes used in the OLM data base.)

Comment: The commenter added that the Agency has considered site- and waste-specific factors for spills that remain in place. The commenter recommended that EPA expand this approach to include wastes managed in on-site land treatment facilities and surface impoundments. A commenter argued that site-specific evaluations are appropriate when the delisted waste is managed onsite and the site hydrogeology is well defined. The commenter recommended that, in such cases, the ground-water transport portion of the VHS model should be revised to consider site-specific hydrogeologic factors.

Response: The Agency will consider such factors in certain rare circumstances. (The Agency notes, however, that the only case where this approach was taken was at a spill site where the contaminant acrolein was treated under an emergency treatment permit (49 FR 8963, March 9, 1984). The acrolein was reduced to its non-toxic degradation products before the emergency permit expired. The concentrations of contaminants in the soil were reduced to non-hazardous levels. Also, the consideration of site- and waste-specific factors in the referenced exclusion did not involve modifications to the VHS or OLM models since these models were not in use at that time.) The Agency anticipates that site-specific factors will only be considered when the petitioner can fully characterize the hydrogeology of the site. Should the Agency choose to adopt such an approach for a specific petition, the analysis, including a description of the hydrogeological factors considered, will be part of the proposed decision on the petition, and will be explained or referred to in the **Federal Register**.

Comment: One commenter suggested that EPA take into consideration state and local standards which may provide controls on the disposal of delisted wastes. The commenter believes that such standards should affect the Agency's development of a reasonable worst-case management scenario on a petition-specific basis.

Response: The Agency agrees that, in certain cases, state or local standards will require that delisted wastes be disposed of in a controlled manner. The Agency has no guarantee, however, that the waste will be managed locally where such protective measures are enforced, thus it is not generally appropriate for the Agency to take state and local standards into consideration.

Comment: The commenter suggested that delisting procedures could include industry-specific considerations, which is consistent with RCRA section 3001(f).

Response: While section 3001(f) requires the consideration of waste-specific factors other than those for which the waste was originally listed, the legislative language does not specify anything concerning industry-specific factors. The Agency points out, however, that industry-specific management practices are already considered in the delisting procedure. When applying models to a petitioned waste, for example, the Agency determines the most common industry-specific management practice for that waste and uses the appropriate model (*e.g.,* petroleum wastes that are typically land treated are evaluated using the land treatment model while metal hydroxide sludges that are typically landfilled are evaluated using the landfill model). Industry-specific waste characteristics are also considered in the evaluation process to identify additional factors and constituents that may cause a waste to be hazardous.

Comment: Another respondent recommended that intended disposal sites be considered since several facilities may dispose their delisted wastes in the same location and collectively influence the contaminant levels at compliance points.

Response: The Agency concedes that codisposal of multiple delisted wastes in one location may influence contaminant levels at compliance points. As previously discussed, however, since the Agency can neither predict nor control where delisted wastes will be disposed, it is not possible to account for this occurrence in petition evaluation.

Comment: One commenter encouraged EPA to consider the characteristics of stabilized products in developing key leachate assumptions for input into EPA's VHS model. The commenter recommended that EPA allow for a waste- and site-specific demonstration of the model's inapplicability to specific wastes.

Response: The Agency agrees with the commenter that the OLM does not specifically address the matrix effect on organic constituents in stabilized wastes. Matrix-specific characteristics of stabilized wastes for inorganics are considered through using the Multiple Extraction Procedure (MEP) analytical test. This test predicts EP toxic metal leachate levels from the stabilized waste following the weathering or degradation of the waste matrix to a fine powder (100 mesh). Petitioners are encouraged to submit additional data concerning matrix characteristics (*e.g.,* buffering capacity, cation exchange capacity, paint filter test) to support an assertion that stabilization will sustain the integrity of the waste in weathering and pulverizing scenarios. The Agency notes, however, that these considerations apply to inorganic toxicants. None of the delisting petitions submitted to date include a stabilization process designed specifically for the immobilization of organics. The Agency believes that the TCLP, if and when adopted for the delisting program, will reflect the ability of specific waste matrices to decrease the leachability of organic toxicants.

B. Right to Comment

Comment: Several commenters stated that because the only information the OLM and VHS models require is waste volume and waste constituent concentrations, the public is not able to comment on any other factors that may cause a petitioned waste to be nonhazardous or on any erroneous assumptions or incomplete information used in EPA models. One commenter claimed that this is a violation of RCRA section 3001(f)(1), which requires that EPA "provide notice and opportunity for comment on these additional factors before granting or denying such petitions." Another commenter stated that the use of the OLM unfairly restricts the petitioner's submission of relevant data. The commenter recommended that the final rule should state that a proposed denial will be revised if the petitioner, based on the availability of evidence, can rebut the results of the model.

Response: The Agency has never intended to deny the right to comment on proposed petition denials or exclusions. All proposed denials or exclusions are subject to public comment and the Agency will continue to consider any relevant data submitted during the comment periods prior to final decisions. The Agency reiterates that the OLM and the VHS model, like any other regulatory tool used by the Agency (*e.g.,* the EP toxicity test, reactivity test), are used to rank the threat posed by a particular waste under a specific set of circumstances and are not the sole basis for petition evaluation. The Agency has maintained (see November 26, 1985, 50 FR 48910) that petitioners could submit data and arguments detailing the inapplicability of the models to their wastes. The Agency encourages the submission of such information during the petition-review period as well as during the public comment period for proposed decisions. While such submittals may not be used to modify the models, they may be grounds to reconsider the applicability of a model to a given petition.

C. Reasonable Basis for the Determination of Hazard

Comment: Comments were received concerning the Agency's basis for determining whether a waste is hazardous and the extent to which that basis is reasonable. Commenters stated that the models assume an implausible waste management scenario that is inconsistent with EPA's previous position, which one commenter characterized as "that for a waste to pose a 'substantial' hazard covered by RCRA section 1004(5), the improper management of the waste must be plausible (see 45 FR 33113, May 19, 1980)."

Response: EPA disagrees with the commenters in part. The Agency asserts that the models portray reasonable worst-case scenarios and that EPA has carefully considered the comments and suggestions provided by the public in order to ensure that the models are reasonable.

The commenters' interpretation of the cited statute and preamble, however, is correct. RCRA section 1004(5) defines the term "hazardous waste" as:

> . . . a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may—
>
> (a) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or
>
> (b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

The cited preamble states that:

> In the Agency's view, the hazards posed by a waste are not "substantial" (section 1004(5)(B)) if hazards could arise only as a result of implausible types of waste mismanagement. Thus, the Agency would not examine possible hazards arising from improper waste incineration if the waste in question is not likely to be incinerated.

These citations show that Congress and EPA intend that appropriate types of mismanagement scenarios be considered. For example, if a specific waste is typically landfilled, the hazards of landfill mismanagement should be evaluated. That is what the Agency does. Thus, the disposal conditions assumed in the models, and the ways in which the models are applied are plausible (*i.e.,* a waste that the Agency applies the land treatment model to should reasonably be land treated and land treatment could reasonably pose as much of a hazard as assumed in the land treatment model).

Comment: One commenter stated that EPA has not demonstrated that the worst-case assumptions used in the model are reasonable, since factors such as attenuation and biodegradation have not been considered. Therefore, the commenter characterizes the model as unreasonable in its approach to determining whether a waste is hazardous.

Response: These factors were considered by the Agency and it was determined that the assumption of no attenuation or biodegradation represented a reasonable worst case (see 50 FR 48903, 48954 and 48961, November 27, 1985). Further discussion of biodegradation is provided later in this notice.

D. Use of Health-Based Standards

Comment: Two commenters stated that the rulemaking cannot be reviewed completely or adequately without EPA providing the health-based standards that will be used in the decision-making process. EPA must demonstrate that these standards are appropriate and reasonable for such use. In addition, the commenters recommended that the health-based standards be proposed for at least a 60-day public comment period and that background materials be available at the beginning of the comment period. One of the commenters also stated that no explanation was provided concerning the use of these standards as regulatory standards or how the standards were developed. The commenter also stated that EPA's current approach is confusing and fails to constitute a reasonable regulatory approach of determining and presenting these standards for comment, thus violating 5 U.S.C. 553 of the Administrative Procedure Act.

Response: The Agency agrees that the health-based standards must be proposed for public comment and review. EPA regrets that all necessary background materials were not available at the beginning of the comment period for the November 27, 1985 notice. The comment period was therefore extended in a Notice of Availability for the health-based standards used in petition decisions published in the November 27, 1985 notice (see 51 FR 27061, July 29, 1986). Measures have been taken to ensure that current and future public dockets are complete. The Agency points out, however, that documents and references that are readily accessible to the public are not normally placed in the docket. The Agency intends to propose all health-based standards to be used in support of the petition evaluation process and will demonstrate their appropriateness. These standards will be developed on an as-needed basis. Some standards will be proposed in a group as a separate FR notice, while other standards may be proposed individually as part of a proposed exclusion or denial (see proposed nickel standard, 50 FR 20247, May 15, 1985).

Comment: One commenter stated that it is not clear whether these "health-based" standards are the only standards EPA intends to use when evaluating petitions and whether these standards will be applicable only to ground-water-related impacts or to air exposures as well.

Response: The relevant health-based standards for each hazardous constituent will be adopted as delisting standards. As petitions are evaluated that require a consideration of standards for new constituents, standards for these additional constituents will be developed. Interim standards will be used when necessary. Standards will be developed separately for groundwater and air exposures. Ground-water standards will consider Reference Doses (RfDs) and Maximum Concentration Levels (MCLs) for a 70 kg man who consumes 2 liters of contaminated water daily. Air exposure standards will be developed as needed, and proposed with the individual delisting proposals.

Comment: The commenter stated that many of the standards are at such low concentrations that when they are used to "back-calculate" a constituent concentration, the levels in the waste are below current analytical detection limits. The commenter stated that while EPA recognizes this problem and has agreed to act upon a petition if the waste is non-hazardous at best achievable detection limits (50 FR 48909), this intent was not included in the proposed rule. The commenter also stated that these detection methods are not statistically reliable at the detection limits.

Response: The Agency recognizes that, for several constituents in some waste matrices, current SW–846 analytical methods do not provide sufficient detection limits to enable petitioners to demonstrate that the constituents are not present at levels of regulatory concern. Through back calculation from the health-based standards (using the OLM and the appropriate dispersion model), petitioners can determine the level of detection that is required for each constituent in their waste prior to the submission of analytical data in support of their petitions. When a petitioner determines that SW–846 methods are insufficient to demonstrate that an expected constituent is not present at the levels of concern, or when matrix interferences or other analytical difficulties prohibit the achievement of statistically reliable SW–846 method detection limits, the Agency will provide guidance (on a petition-specific basis) as to additional sample clean-up or analytical methods and the acceptability of the achievable detection limit. Where hazardous constituents in a waste are determined to be non-detectable using appropriate analytical methods, the Agency will, as a matter of policy, not regulate the waste as hazardous. Appropriate minimum detection limits will be determined on a case-by-case basis and will depend on the waste matrix.

E. Stringency of Proposed Rule

Comment: One commenter stated that the proposed rule "impermissibly" creates a test for delisting organic wastes that is more stringent than the existing delisting procedure by: (1) Effectively presuming that any waste containing Appendix VIII organic toxicants is hazardous; (2) excluding relevant factors from the model; (3) assigning conservative values to the factors used in the model; and (4) disallowing public comment after promulgation of the model.

Response: The Agency asserts that the OLM is an appropriate, permissible, and useful tool for the evaluation of petitioned wastes. HSWA (section 3001(f)(1)) confers on EPA the authority to consider any factors, including the presence of Appendix VIII constituents, which may cause a petitioned waste to be hazardous. The OLM and VHS models provide the Agency with a means of evaluating whether a given concentration of an Appendix VIII constituent is a threat to human health or the environment. Thus, it is not the presence of a toxicant but, rather, the concentration of the toxicant and its potential mobility that is evaluated in determining whether a waste is hazardous. The Agency does not believe that relevant factors have been omitted from the model and has provided additional discussion elsewhere in this notice concerning assumptions that factors such as biodegradation and attenuation were considered in the development and application of the models. In addition, the Agency believes that the conservative values used in the model are necessary in order to model a reasonable worst-case scenario. Finally, the Agency has provided the requisite comment period for proposed rulemakings, has extended the comment periods on various occasions, and in response to public concern has provided further clarification concerning the assumptions incorporated in the final VHS landfill model after its promulgation.

Comment: One commenter stated that EPA justifies its conservative approach based on the assumption that once a waste is delisted, it is no longer under EPA's control. The commenter argued that this assumption is inapplicable, since generators must still test these delisted wastes to determine if they are hazardous, and if they are, they must be managed as hazardous wastes.

Response: Generally, once a waste is delisted, Subtitle C requirements will no longer apply. The delisting decision, however, is a limited one. It is only a determination that the waste generated at that particular facility is different from the waste listed as typically hazardous. The waste remains a solid waste, and thus if in the future the waste exhibits any of the characteristics, it is a hazardous waste. In addition, except in those cases where a conditional exclusion is granted, petitioners are only required to determine whether their wastes exhibit any of the characteristics of a hazardous waste contained in Subpart C of Part 261. Testing is not required. The Agency's use of reasonable worst-case assumptions in the delisting program is primarily related to the attributes of the disposal unit in which the waste will be managed once delisted. The determination for Subpart C characteristics does not provide for continued Agency control to the extent implied by the commenter. In view of this, the Agency believes that the use of conservative, reasonable worst-case assumptions in the evaluation of petitions is justified.

Comment: One commenter stated that the predicted organic constituent leachate levels from the OLM may not have any similarity to the results of the analytical leachate test currently being developed. The commenter requested clarification of the Agency's approach to evaluating a petition in which a petitioned waste fails the model, but the results of the new analytical test indicate that pollutant levels are lower than the regulatory standards.

Response: EPA reiterates that the OLM will be replaced by an analytical test method such as the TCLP when such a method is available and determined to be appropriate for delisting. The test results will take precedence over the OLM evaluation when a waste can be delisted by the analytical results, but fails the model.

2. Organic Leachate Model Assertions Challenged and Model Revisions

The Agency received a number of comments concerning the assumptions underlying the proposed OLM and the procedures used to develop that model. The Agency agreed with a number of these comments and, since the incorporation of those comments resulted in substantial changes to the model, responded to the comments, presented the revised OLM, and requested comments on the Agency's responses on July 29, 1986 (see 51 FR 27061). The comments that were addressed in the July 29 notice and the Agency's resultant responses are summarized below.

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A. Comments on the OLM Incorporated in the July 29, 1986 Notice

Data Set. The OLM is an empirical equation derived from a supporting data base of waste constituent concentrations and experimentally measured leachate concentrations. This data base will be referred to as the leaching data base (LDB) for the remainder of this notice. Several commenters expressed concern over the reliability and development of this data set.

Comment: Two commenters stated that the LDB excluded zero leachate concentration values and other data points, but no explanations were provided in the docket to support these exclusions.

Response: The Agency reconsidered the exclusion of data pairs with zero leachate concentration values. These data pairs were re-incorporated into the LDB and, as a reasonable worst-case analysis, the analytical detection limit value was used instead of zero.

Comment: One commenter questioned the reliability of the OLM due to data transcription errors in the LDB.

Response: The Agency corrected the data transcription errors and has incorporated the corrected values into the LDB.

Comment: One respondent stated that the OLM is based on a limited set of wastes and the data used reflect short-term rather than long-term leachings. The commenter also stated that the LDB is limited to too few leaching media and waste types.

Response: In the course of re-evaluating the LDB, the Agency concluded that the data base inadequately represented data for compounds with very low solubilities (*e.g.,* less than 0.01 ppm), and that it should include data developed during lysimeter tests and during the development of the Toxicity Characteristic Leachate Procedure (TCLP). The Agency therefore incorporated this additional data into the LDB. The revised LDB includes 7 leaching media and 10 waste types.[1] Since the solid to liquid ratio of the TCLP-type leaching test was designed to represent mid- to long-term leaching,[2] the incorporation of that data into the LDB reflects such leaching.

Comment: One commenter stated that because municipal/industrial landfill leachates are not particularly aggressive (*i.e.,* strong), greater weight should be given to leachate data developed using an aqueous, neutral pH medium rather than data derived using acidic leaching media.

Response: The Agency maintains that municipal landfills are known to produce high-strength leachates, which frequently contain significant levels of organic acids formed by the decomposition of carbohydrates. The Agency, therefore, does not agree with the commenter that landfill leachates are not particularly aggressive or that aqueous neutral pH leachate data are more appropriate than acidic leaching media. The EP toxicity test is conducted using acetic acid to maintain an acidic pH of 5 to simulate municipal landfill leachate pH.[3] Acetic acid is the dominant fatty acid found in typical landfill leachate.

The technical literature supports EPA's assumptions that leachates are acidic. The acid strength of leachate is a result of microbial decomposition, which converts waste into organic acids. An initial process of aerobic decomposition depletes the subsurface environment of oxygen. Once oxygen levels are depleted, anaerobic decomposition of carbohydrates into fatty acids occurs. Typical leachate generated by this phase of decomposition contains the following concentrations of organic acids:[4]

	mg/l
Acetic acid	3,800
Propionic acid	1,600
n-Butyric acid	3,500
iso-Butyric acid	145
n-Valeric acid	2,100
iso-Valeric acid	70
Caproic acid	3,700

Free volatile fatty acids have been reported to constitute up to 54 percent of the total organic carbon of fresh leachate.[5] The Agency therefore concluded that the use of data from tests using acidic leaching media is appropriate and retained the results from such tests in the OLM.

Reapplication of the Regression Procedures for the OLM. Through reapplication of the regression procedures, the Agency determined that the leachate behavior of organics can be described effectively by a concentration and solubility logarithmicbased equation. The Agency, using the expanded LDB, re-evaluated the OLM and presented the following mathematical relationship that best describes the baseline leaching behavior of organics from a waste:

$$C_l = 0.00221\, C_w^{0.678}\, S^{0.373}$$

where:

C_l = predicted contaminant concentration in the leachate (mg/l)

C_w = contaminant concentration in the waste (mg/l)

S = contaminant's water solubility at ambient temperature (usually between 18 and 25° C) (mg/l)

The Agency selected this model because it has the best overall fit to the LDB and the highest significance of any model evaluated (R-squared = 0.6453).[6] This equation specifically describes the baseline behavior of leachate concentrations of organics.

In addition to the baseline equation, the Agency proposed a 95 percent confidence interval version of the baseline equation. The Agency specifically solicited comments as to which version of the OLM is appropriate.

Comment: One commenter stated that EPA's original method for determining the 95 percent confidence interval was statistically incorrect and yielded an overly conservative model.

Response: The Agency agreed that the initial methodology was incorrect and revised the methodology for calculating the 95 percent confidence interval in the July 29 notice.

Comment: One commenter stated that EPA's assumption that candidate model equations must pass through the axis origin is unnecessary because in regression analysis, the fitted equation is only applicable approximately over tho range of values for the independent variable. Thus, eliminating non-zero intercept equations is not only unnecessary, but also unrealistic.

Response: The Agency agreed that forcing the model equation to pass through the axis origin was unnecessary, since the model is not based on data pairs near the axis origin. The modeling procedures were re-run without this forcing assumption. It is logical, however, to expect that as the concentration of a constituent in a waste approaches zero, the leachate concentration also would approach zero.

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[1] The original data base contained only 1 leaching media.

[2] See *Background Document, Toxicity Characteristic Leaching Procedure,* March 10, 1986. A copy of this document is available in the public docket to today's notice.

[3] U.S. EPA, Office of Solid Waste. May 2, 1980. "Background Document—§ 261.24—EP Toxicity Characteristic." p. 53.

[4] Dunlap, W.K. 1976. Organic Pollutants Contributed to Groundwater by a Landfill. EPA-600-9-76-004. pp. 96–100 in Holmes, J.R. *Practical Waste Management.* John Wiley & Sons, Ltd.

[5] Farquhar, G.J. and Sykes, J.F. 1982. "Control of Leachate Organics in Soil." Conservation and Recycling. Vol. 5. No. 1. pp. 55–66.

[6] Other models evaluated by the Agency were described in the docket to the July 29, 1986 notice.

B. Comments Submitted in Response to the Notice of Availability

A number of commenters expressed concern that their comments submitted in response to the November 27, 1985 proposal were not addressed in the Notice of Availability. The Agency did not attempt to address all of the November comments in the Notice of Availability, but rather addressed only those comments which resulted in modifications to the LDB, the regression analysis, the application of the 95 percent confidence interval, and the health-based standards. The remaining November comments have been addressed in today's notice in Section 2.C. Comments submitted during the comment period of the Notice of Availability which were duplicative of the November comments are also addressed in Section 2.C.

The remainder of this section addresses those comments concerning the Notice of Availability and its docket.

Accuracy of OLM for Low Solubilities and Low Concentrations

Comment: One commenter stated that the revised OLM does not work for compounds with solubilities lower than 1 mg/l, and pointed out that the coefficient for multiple correlation (R^2) is no higher than 0.32 for these compounds. The commenter also questioned the performance of the OLM for chemicals with total waste concentration less than 1 ppm since R^2 is 0.27 for this subset of the OLM's data base. The commenter believes that there is a clear relationship between R^2 and solubility which suggests that the analysis is being driven by the high solubility compounds. The commenter provided the following recommendations concerning the OLM and low solubility compounds:

- In order to minimize the extent to which highly soluble compounds drive the standard least-squares regression analysis (where large magnitude numbers are given proportionally more weight in determining the position of the regression line), a sample magnitude weighting procedure should be used. This approach has been used by EPA in other rulemakings.
- The application of the model should be limited on a chemical-specific basis. The model should not be applied when the total waste concentration of a compound is likely to result in a leachate concentration below the method detection limit. The commenter recommended that the OLM data base to be used to determine the appropriate lower total waste concentration cutoffs.

Response: The Agency does not believe that it is appropriate to examine small portions of the regression curve since the curve-fitting process incorporates all of the available data. The Agency is not aware of any data which implies that the leaching relationship (as represented by the empirical equation or as derived on a theoretical basis) changes at high or low solubilities or concentrations. The Agency believes that the observed low R^2 for the very insoluble compounds is probably due to the inherent inaccuracies and variabilities of analytical results at very low concentrations rather than an inaccuracy in the empirical equation. The suggestion of a chemical-specific application of the OLM is addressed separately below.

Use of Detection Limit for Non-Detected Leachate Concentrations

Comment: The commenter supported the Agency's inclusion of data pairs with non-detectable leachate concentrations. Two commenters disagreed, however, with the use of the detection limit as the leachate concentration, claiming that this assumption severely biases the results of the regression analysis, particularly when the 95 percent confidence interval is applied. One commenter recognized that one value must be assigned for these data pairs to allow their incorporation in the OLM data base, but stated that the use of the detection limit is unacceptable for these samples where no trace of the constituent was observed.

The commenter suggested that EPA could assign randomly selected concentrations to each sample with a non-detected leachate concentration This would allow the incorperation of all data pairs with non-detectable leachate concentrations without introducing bias.

Response: The Agency agrees that if data pairs with non-detected leachate concentrations are to be included in the LDB, they must be assigned nonzero concentrations. However, the Agency maintains that randomly selected concentrations do not yield a more accurate model for concentrations below the detection limit. The use of randomly selected leachate concentrations ignores the correlation between waste composition and leachate concentration and thus serves only to introduce additional error to the model. Additionally, randomly selected leachate concentrations violate the Agency's policy of conservatism under uncertainty in cases where the leachate is certain to contain the undetected organic compound. The Agency recognized that the use of detection limits in this case introduces some bias to the model but argues that no more adequate approach to imputing values for nondetected leachate concentrations has been recommended by the commenter.

Comment: The commenter agreed with EPA that extrapolation beyond the limits of analytical accuracy (*i.e.*, below the detection limits) lends uncertainty to application of empirical models. The commenter stated that the use of extrapolation is particularly inappropriate when the detection limit is used as the leachate concentration since the model would then be applied beyond the range of the available empirical data.

Response: The Agency maintains that extrapolation beyond the range of the LDB is reasonable for two reasons. First, there is no reason to believe (and no case has been presented to support) that leaching phenomenon as described by toxicant concentration and solubility is different at low solubilities and concentrations. Secondly, the accuracy and precision of the available analytical methods are reduced at low concentrations, thereby increasing the relative reliability of a model based on the more accurate range of data.

For these two reasons the Agency believes that, in this case, extrapolation is appropriate and possibly preferable to analytical methods to evaluate the leachability of toxicants at low solubility and concentration.

Use of the 95 Percent Confidence Level

Comment: The commenter agreed with the Agency's revised method for calculating the upper 95 percent confidence level of the OLM. The commenter, however, does not necessarily believe that the 95 percent confidence level should be used in making delisting decisions. The commenter believes that EPA used a series of overly conservative assumptions in the OLM and VHS and believes that the simultaneous occurrence of all of these assumptions is very unlikely. Given the conservation built into the other components of EPA's delisting methodology, this commenter and others recommended that the base-line version of the OLM be used in delisting petition evaluation.

Response: The Agency agrees with the commenter that the application of the 95 percent confidence interval is not necessary for evaluating organics data in delisting petitions. The Agency, however, does not believe that the underlying assumptions of the OLM and VHS models are overly conservative, but rather that they represent a reasonable worst-case scenario. The application of a 95 percent confidence interval to the OLM, however, will result in overly conservative results due to the model's large mean square error (MSE). The Agency believes that use of the 95 percent confidence interval will place an undue burden on the petitioners, and thus the Agency has decided to use the baseline version of the OLM.

Comment: The commenter agreed with EPA that there is significant variance in the OLM data base and that the method may not include all relevant variables. The commenter recommends that the delisting petitioners be given the opportunity to submit actual leaching test data for its waste instead of using the model with its inherent flaws.

Response: The Agency agrees that actual leaching data is preferable to the OLM. When a leachate test for organics is promulgated for delisting purposes, petitioners will be requested to submit organics leaching data for evaluation of the waste under the toxicity characteristic and as input to the VHS model. The Agency does not intend, however, to use this data now, in advance of a decision on the TCLP and the extent to which that procedure is appropriate for delisting.

Comment: The commenter believes that the 95 percent confidence level is not appropriate because in some cases (*e.g.*, benzo(a) pyrene, benzo(b)fluoranthene, and dibenzo(a,h)anthracene) the model, at the 95 percent confidence level, predicts a leachate concentration higher than the solubility of the compound.

Response: EPA disagrees that this phenomenon indicates that the use of the 95 percent confidence level is inappropriate. The leaching data base contained a number of data pairs where the leachate concentration exceeded the compound's water solubility. Since the leaching media in a municipal landfill has been shown to be more aggressive than an aqueous leaching media, it is quite possible that leachate concentrations may exceed solubility levels.

Use of OLM or Analytical Leaching Method

Comment: The commenter believes that, for the limited purpose of evaluating existing delisting petitions, the OLM may be a viable approach for certain chemicals and wastes. Since the Agency has proposed the TCLP, however, the OLM has become redundant. Since the OLM is based primarily on results of the EP and the TCLP, the commenter believes that the OLM has no advantage over requiring future petitioners to submit TCLP data. In addition, because the OLM obscures the matrix dependency of leaching, the use of the TCLP is more desirable. Two other commenters recommended that EPA accept TCLP results rather than applying the OLM.

Response: As stated before in the proposed notice (November 27, 1985) and in the Notice of Availability, the Agency intends to replace the OLM with a viable leaching test when such a test is adopted in the delisting program. Until then, the Agency believes that the empirical OLM is an acceptable method of petition evaluation. EPA reminds the commenter that lysimeter data were included in the regression analysis, as well as a number of different leaching media.

Comment: The commenter recommended that petitioners who have already filed with EPA be given the opportunity to submit leaching data using the proposed TCLP as an alternative to the OLM in predicting leachate concentrations. The commenter also believes that the only scenario in which EPA should use the OLM instead of the results of a leaching procedure, is when a petitioner has already submitted a petition and total constituent data and does not wish to provide leaching test data.

Response: The Agency will not consider the results of the TCLP in evaluating delisting petitions until we conclude that it would be appropriate for delisting. The Agency has received extensive comments on the proposed method and is considering a number of potential modifications to the method and its underlying assumptions. Thus, even if the use of the proposed TCLP were submitted, the use of the proposed method could potentially produce different results than the result of the method when promulgated. This would require the petitioner to resample and reanalyze the waste according to the final procedure.

Comment: The commenter, while endorsing the concept of an analytical leaching method, expressed numerous reservations about the proposed TCLP and made reference to comments submitted in response to the TCLP proposal.

Response: The Agency will address the commenter's concerns in a separate notice when we finalize the organic toxicity characteristics. The Agency will examine the underlying assumptions of the leachate test when finalized to determine the most appropriate manner to incorporate this test into the delisting petitions evaluation process.

Comment: The commenter questioned the logic of EPA's statements concerning the lack of an acceptable analytical leaching method while EPA used the results from these "unacceptable" test procedures to develop the OLM. The commenter argued that an empirical model cannot be any more valid than the test procedures from which it is derived.

Response: The Agency has not yet promulgated an organic leaching method because of the variability in the results of the available methods. One purpose of proposing a method for public comment is to allow the public to suggest modifications to increase the dependability of a method. The Agency believed that the results of the TCLP, while variable, were generally acceptable for inclusion into the data base for an empirical model, and that the averaging effects of a regression analysis could cause the resulting model to be representative of the results of a modified and reliable TCLP.

Opportunity for Comment on VHS Land Treatment Model and Health-Based Standards

Comment: The commenter questioned why the July 29, 1986 Notice of Availability did not address the comments submitted in response to the proposed rule concerning the VHS land treatment model and the health-based risk levels and concentration limits. The commenter believes that these components of the delisting methodology contain flaws as significant as those identified for the OLM, and thus the Agency should provide opportunity for comment on EPA's responses to these issues.

Response: The July 29, 1986 notice was intended to be a response to those public comments received on the November 27, 1985 proposal that resulted in significant modifications to the proposed OLM. The comments received on health-based risk levels were addressed through the extension of the comment period provided by the July notice. For the VHS land treatment model, comments did not result in significant changes to the model, thus the comment period was not reopened in July.

Chemical-Specific Approach vs. OLM

Comment: Two commenters believe that there is more theoretical and practical justification for developing either waste-specific or, more appropriately, organic compound-specific equations for predicting leachate concentrations as a function of waste concentrations and matrix type than using the overall generic OLM proposed by the Agency. The commenters questioned the appropriateness of a generic OLM which applies to a large number of organic chemicals with very different chemical properties. One commenter provided limited evaluations of the OLM leaching data. The commenter suggested that better predictions of leachate concentration as a function of waste concentration are possible using this approach.

Response: The additional data required to develop a series of chemical-specific equations would be tremendous. The Agency is not convinced that such an approach would be a significant improvement over the OLM. The Agency currently has only limited data for many chemicals and an equation based on a very few data points may not be as reliable as one based on a substantial number (such as the OLM). In the Agency's development of a theoretical basis for the OLM, solubility was the only chemical-specific property which affected leaching. The regression analysis showed that the solubility variable has a high degree of significance, which is an indication of the appropriateness of including solubility in the leaching equation.

Cosolvent Effects

Comment: The commenter disagreed with a statement in the Organic Leachate Model Background Document (p. 1–3) which said that the presence of organic compounds in leachate increases the leaching of other organics in the waste. The commenter pointed out that the Oak Ridge National Laboratories report (51 FR 21684, reference 6) conclusions state that the highest ranked extraction fluids for organics were distilled water and carbonic acid, neither of which contains organics.

Response: The Agency's response to this comment is found in Section 2.C, Constituent Mobility.

Theoretical Approach to Modeling

Comment: The commenter disagreed with the Agency's theoretical equation development which was used as the basis for the empirical OLM. Specifically, the commenter stated that the fractions of organic carbon and solids in the immobile phase cannot be assumed to be constants across the different waste matrices which constitute the LDB. The commenter recommended that the Agency abandon the theoretical equation development and recognize that the development of the OLM is primarily a curve-fitting exercise.

Response: The Agency never maintained that the development of the empirical OLM was anything but a curve-fitting exercise. The theoretical equation discussed in the OLM Background Document served as a model form. In the derivation of this form, the variables for the fraction of organic carbon and total solids were not assumed to be constant, but rather were indeterminant and were allowed to "float" in the regression analysis. The effect of this step is the high variance seen in the regression analysis, as stated in the November and July notices. These variables were not included in the OLM because: (1) They were not available for the wastes included in the LDB; and (2) the analytical method for determining the organic carbon fraction of a solid waste is difficult and would be an excessive burden on petitioners.

Data Editing Procedures

Comment: The commenter agreed with the Agency's averaging of multiple leachate values for a given waste matrix when different extraction fluids were used in order to avoid biasing the empirical equation with multiple extractions of one waste. The commenter questioned, however, why the Agency claimed certain samples to be redundant and eliminated them from the LDB. The commenter believes that these samples represent a duplicative analysis of the total waste concentration and leachate concentration from one extraction method, and as such should have been included in the overall average for that data pair. (If the waste concentration was much higher than that for the other sample of the same waste, then the sample should have been included as an independent data pair.)

Response: The samples were eliminated because they were replicate samples that exhibited high variance. These samples were all from one laboratory and the Agency believes that they are unreliable.

Comment: The Agency believes that overall the commenter agreed with the Agency's data editing procedures. The commenter, however, questioned the deletion of samples with high soluble constituents and low leachate concentrations (0.1 percent of waste concentration). The commenter stated that data pairs eliminated in this editing procedure may have been exhibiting a matrix effect rather than an analytical problem. The commenter questioned the need for this procedure since the model optimization process eliminates true outliers from the data set after the initial regression analysis is completed.

Response: The Agency continues to believe that these data pairs exhibiting high solubility and extremely low leaching should not be included in the LDB. The 50 data pairs which were deleted were associated with 22 different wastes. Due to the number of waste matrices involved, the Agency does not believe that the low leaching levels observed for the 50 data pairs were associated with waste matrix effects. The Agency also maintains that some true outliers will not be identified through the regression since the mean square error is large.

Comment: The commenter pointed out that while the Agency deleted samples from the data base when any one constituent's total concentration exceeded 100,000 ppm, the Agency retained waste S–5 for hexachlorobenzene which contained 469,000 ppm of the chemical.

Response: The commenter was mistaken. The data pair was not included in the LDB.

C. Comments on the OLM Not Addressed in the July 29, 1986 Notice

Reapplication of the Regression Procedures

Comment: One commenter asserted that EPA's statistical analysis of waste leachability is invalid because it does not reflect the variability in the LDB due to the use of average data. In addition, the respondent stated that in order for the public to judge the adequacy of the Agency's regression, EPA must provide a confidence interval for the regression curve.

Response: The Agency disagrees that the use of average concentration values for an individual waste in the LDB is inappropriate. Average values were used when the leachate concentration of a constituent within a waste was determined by several leaching techniques. Average values eliminate the variations in laboratory techniques, and thus, the Agency asserts that these values are most likely to be representative of actual leaching rates.

Further discussion on the use of average concentration values is provided in the public docket to today's notice in the OLM Background Document. The background document also contains confidence intervals for the dependent variables in the OLM.

Comment: One commenter stated that a model simulation (*e.g.*, Monte Carlo) is needed to determine the probability or likelihood of the model's outcome.

Response: The Agency has determined that the use of a probability simulation such as a Monte Carlo application to the revised model is inappropriate. The revised OLM is based upon actual concentration and solubility data. When actual data with its inherent variations are available, it is

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inappropriate to simulate that data with probability distributions.

Concentration Input to VHS Models

Comment: Two commenters recommended using analytical data rather than the OLM to predict a waste's leachate concentrations. One of the commenters recommended using a test similar to the draft Toxicity Characteristics Leachate Procedure for wastes containing volatile organic constituents and using actual EP test data for non-volatile organic constituents. Another commenter stated that EPA's use of the OLM increases the uncertainty of the delisting process, is unnecessary since actual testing is possible, and is representative of neither the wastes in question nor the constituents of concern.

Response: EPA intends to use the results of an analytical organics leachate test as input to the VHS; however, none of the tests suggested by the commenters or studied by the Agency have been completely evaluated, especially in terms of the comments received on the TCLP to be considered for use in the delisting program. Until a final analytical method becomes available, the Agency believes that the revised OLM is a reliable and useful tool for use in petition evaluation.

Comment: Another commenter stated that the use of maximum leachate concentration or the upper 95 percent confidence value as input to the OLM represents a "worst worst-case" rather than EPA's "reasonable worst-case." The commenter recommended that EPA consider using either the mean plus one standard deviation or the median value as an input concentration.

Response: The Agency disagrees with the commenter. As long as few samples are available, the maximum leachate concentration may represent the actual leachate concentration from the waste. The use of the maximum or 95 percent confidence interval limit is generally appropriate for the evaluation of the analytical data used to characterize the waste. The selection of the proper statistic depends upon petition-specific factors, including the number and location of samples that are analyzed, the distribution of the reported concentrations, and the expected variability of the waste. The Agency refers the commenter to 50 FR 48909, November 27, 1985. Here, the Agency has stated that the mean, maximum, or 95 percent confidence interval may be used, depending on a number of petition-specific factors. In addition, the Agency conducts outlier analyses to measure the extent to which the data is representative. The Agency intends to explain further which value will be used under what circumstances in the near future.

Comment: One commenter recommended that delisting decisions be based upon total concentrations of constituents in the waste rather than upon an extract of the waste, in order to allow the Agency to consider various constituent transport scenarios involving physical migration and the effects of solvent codisposal. The commenter noted that EPA has used this approach in the past and urged its continuance. Another commenter stated that since the waste matrix effects on leachate concentrations are unknown, the leachate constituent concentration should be assumed to be equal to the waste constituent concentration.

Response: The Agency believes that using the total waste concentration of inorganic or organic constituents is appropriate only if the waste could be expected to migrate (*e.g.*, if the waste is a liquid). For solid wastes, however, physical migration is not expected and thus, this approach is overly conservative. A discussion is provided elsewhere in this section concerning the effects of solvent codisposal and waste matrices.

Model Review

Comment: One commenter suggested that EPA submit the model and alternative approaches to the Science Advisory Board (SAB) or some other recognized scientific organization for review and comment.

Response: Since the OLM is an interim tool that will be replaced when an analytical organic leaching test is made final, such review was not believed to be necessary.

Constituent Mobility

Comment: One commenter stated that EPA has not addressed mobility mechanisms, such as physical migration and constituent solubilization, due to codisposal of solvents, and that EPA's conclusion to ignore codisposal with organics cannot be justified, since such disposal occurs on a regular basis in both hazardous and Subtitle D landfills. The commenter submitted further evidence that solvents are likely to be present in Subtitle D facilities. The commenter recommended that all delistings of organic wastes should be delayed until a suitable method for assessing migration associated with codisposal with solvents is developed.

Response: The Agency does consider physical migration of delisted wastes where, for example, the waste is liquid. For liquid wastes, as a reasonable worst-case assumption, the Agency uses the actual concentrations of organics in the waste, rather than the predicted leachate concentration from the OLM, as input values to the VHS models.

The Agency agrees that solvents are present in Subtitle D landfills and resultant leachates. The Agency believes that solubilization effects occur to some degree within wastes that contain soluble solvents and has included wastes with high levels of solvents in the data base used to develop the revised model. EPA believes that, to some extent, solubilization effects are currently reflected in the data used to develop the model. The Agency does not have sufficient data at the moment, however, to consider the cosolvent effects more completely. The Agency is developing a solvency characteristic, which will begin to address the effects of solvency in land disposal.

Comment: One commenter stated that the model will seriously underestimate pollutant mobility, particularly for polynuclear aromatic hydrocarbons (PNAs) in elements of oily wastes. This commenter recommended that the model consider cosolvent effects since there is extensive literature conclusively supporting the mobility of oil in the ground.

Response: While PNAs are likely to be attenuated by solid wastes (as they are in soils), as evidenced by their high sediment organic carbon water partition coefficients (K_{oc}), the models assume no attenuation. The leaching data base contained eight oily wastes which represented 15 percent of the data set. Many other wastes that were included in the data base, such as organic still bottoms, may have oily characteristics. Thus, the Agency believes that oily waste cosolvent effects are reflected in the data base. The Agency is currently considering different methods of evaluating the mobility of oily wastes.

Degradation

Comment: Commenters expressed a wide range of concerns on the degradation of leachate contaminants, as noted below:

- Biodegradation of organic compounds can be estimated using reasonable worst-case conditions. Consideration should be given to a reasonable worst-case biodegradation rate.
- Certain organics decrease in concentration in the environment due to biodegradation.
- Numerous organics, especially halogenated hydrocarbons, are transformed into intermediates of greater toxicity than the parent compounds.
- "It is argued that most organics are not transformed in ground water since recent

studies have shown that many organics are resistant to chemical and/or biological transformation under conditions typical for the subsurface [environment]."

- "Hydrolysis in ground water is poorly documented, and therefore, considering the technical uncertainty in this area, transformation to less toxic compounds cannot be assumed."
- As a reasonable worst-case assumption, the Agency should assume that organics are not transformed. However, when transformation does occur, the reasonable worst-case assumption is that they are transformed to more toxic compounds, since neither abiotic nor biotic transformation of organics necessarily render the parent compounds non-toxic.
- Factors such as chemical concentration and redox conditions may significantly impact transformation.
- Assumptions should be developed to replace the zero biodegradation retardation assumptions on which the model was based.

Response: The Agency recognizes that many of these assertions, under certain circumstances, are true. The concentrations of some organics in the environment are reduced due to biodegradation, but other, more toxic transformation products are sometimes produced instead. The net result of degradation processes in a landfill depends on a wide range of chemical and site-specific factors unique to each landfill. In order to include the effect of degradation in the OLM, the Agency would need substantial evidence from the technical literature that biodegradation either increases or decreases the overall hazard at a landfill. This type of literature, as yet, has not been identified. In the absence of sufficient data to develop such a generalization, the Agency believes it is reasonable to assume that biodegradation does not have a significant effect on leachate concentrations.

Degradation Occurrence in the Subsurface. The technical literature supports the hypothesis that biodegradation of organic compounds occurs in the subsurface environment and therefore influences the fate of organic solvents in landfilled wastes. For example, researchers from Rutgers University concluded that leachate-derived carbon can be used as the sole source of carbon for microbial energy and growth and that the reduction of dissolved organic carbon (DOC) in landfill leachate over time is due to biological oxidation and not to sorption, stripping, or evaporation. The researchers performed microorganism growth and substrate degradation studies on leachate in the absence of glucose and other nutrients and found that the acclimated populations used carbon, phosphorous, and nitrogen derived solely from the leachate.[7]

A similar conclusion was reached when microbial degradation of leachate organic matter was investigated at the University of Waterloo in Ontario, Canada. The destruction of organic matter was observed on a laboratory scale using two packed soil columns operated anaerobically under continuous saturated flow conditions. Decreasing levels of chemical oxygen demand (COD) and total organic carbon (TOC) revealed that significant microbial degradation of organics in soils occurred. The results were compared to field data and were found to simulate closely the situation at a closed sanitary landfill.[8]

Degradation—Mechanisms. Given a suitable environment, soil bacteria degrades a wide variety of hydrocarbons, as evidenced by the low to moderate persistence of some organic hazardous waste constituents in soil.[9] Below the surface of landfills, however, the conditions for bacterial growth are less than optimal. Oxygen is in short supply, and sufficient levels of nutrients are not present. The degradation processes operating on organic chemicals are believed to be anaerobic in nature, and aerobic microbial degradation can be eliminated from consideration as a major pathway for hydrocarbon removal. By contrast, anaerobic decomposition was noted as one of the major modes of degradation in a sanitary landfill, although the route, pathways, rate, and degree of degradation are not well-understood. In theory, anaerobic decomposition involves a two-stage process of liquefaction and gasification. During the liquefaction stage, extracellular enzymes degrade complex carbohydrates to simple sugars; proteins to peptides and amino acids; and fats to glycerols and fatty acids. Following this process, methane bacteria converts these compounds into gases, including methane, carbon dioxide, and ammonia, and into other chemical byproducts. Most of the theory on anaerobic decomposition has been developed from conventional anaerobic wastewater treatment systems (laboratory or pilot-scale).[10]

Degradation—In Ground Water. Researchers from Stanford University and the University of Waterloo restated the belief that biotransformation of trace organic contaminants can and does occur in the ground-water zone under certain conditions. These conditions depend on:

- Water temperature and pH
- The microorganism population (numbers and species)
- The concentration of the organic carbon source (substrate)
- The presence of microbial toxicants and nutrients
- The availability of electron acceptors.

The researchers cautioned, however, that "transformation of a toxic organic solute is no assurance that it has been converted to harmless or less hazardous products." They therefore concluded that it is prudent to assume that hazardous contaminants persist indefinitely.[11] The Agency agrees with the researchers.

Degradation of organic solvents (especially chlorinated solvents) may also occur via hydrolysis. When chlorinated solvents are degraded by hydrolysis, the transformation products are usually chlorinated alcohols and/or carboxylic acids. Laboratory-derived reaction half-lives due to hydrolysis were observed to range from 38 days for chloroethane to 7 years for carbon tetrachloride.[12]

Based on their relatively high persistence values and based on the fact that transformation products in some cases may be less toxic than the original chemical and in other cases more toxic, the Agency believes it is reasonable to assume that degradation does not affect contaminant concentrations in leachate.

Comment: One commenter argued that EPA must allow a petitioner to demonstrate that a waste constituent may biodegrade before reaching a receptor point.

Response: The Agency is always receptive to any supporting data a petitioner may provide and encourages petitioners to supply data to support any assertions made in their petitions. Any

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[7] Venkataramani, E.S. and Ahlert, R.C. "Acclimated Mixed Microbial Responses to Organic Species in Industrial Landfill Leachate." *Journal of Hazardous Materials.* Vol. 10. pp. 1–12.

[8] Dunlap, W.K. 1976. Organic Pollutants Contributed to Groundwater by a Landfill. EPA-600-9-76-004. pp. 96–100 in Holmes, J.R., *Practical Waste Management.* John Wiley & Sons, Ltd.

[9] Berkowitz, J.B., Harris, J.C. and Goodwin, B. 1981. "Identification of Hazardous Waste for Land Treatment Research," D.W. Schultz and D. Black, eds: Proceedings of the Seventh Annual Research Symposium, Philadelphia, P.A. U.S. Environmental Protection Agency. pp. 168–177, in Bennett 1985.

[10] Bennett, G. August 1985. *Fate of Solvents in a Landfill.* Open File Report prepared for the Environmental Institute for Waste Management Studies, University of Alabama.

[11] Mackay, D.M., Roberts, P.V., and Cherry, J.A., 1985. "Transport of Organic Contaminants in Groundwater." Environmental Science and Technology. Vol. 19. No. 5.

[12] Smith, et al. in "Mobility and Degradation of Common Solvents in Groundwater." May/June 1985. The Hazardous Waste Consultant.

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petitioner who has reason to believe that a waste constituent may biodegrade before reaching a receptor point should provide the Agency with data supporting this claim.

Sorption

Comment: One commenter noted that equations are available for the sorption of certain organics in soils with organic carbon content less than 0.1 percent. The commenter urged EPA to include reasonable worst-case assumptions for organic content and to determine the amount of leachate that would be sorbed onto the soil and aquifer sediments between the disposal-site boundary and the compliance point. Several commenters stated that the model should consider the sorptive/desorptive phenomenon. Evidence was submitted on the attenuative characteristics of a stabilized waste product.

Response: The model is based on experimental measurements of desorption (leaching) of organics from waste matrices; the sorptive/desorptive phenomenon is integral to the model. The Agency asserts that it is inappropriate to include additional sorptive effects in the OLM for several reasons: (1) Waste management site-specific conditions, such as soil types, are not considered in the application of the delisting models (see earlier discussion); and (2) generic soil profiles for a typical landfill and receptor well are difficult both to develop and to defend due to the lack of such data.

Waste Matrix Effects

Comment: Several commenters raised the concern that the model does not account for the importance of waste matrix effects, particularly for stabilized wastes.

Response: The Agency agrees that the model does not specifically account for waste matrix effects as an input parameter. The use of leaching data for a wide variety of waste types in designing the model, however, ensures that waste matrix effects have been integrated into the model. The Agency is not aware of any modeling methodologies that could be used in conjunction with the OLM that would take into consideration the attenuation effects of various molecular structures present in stabilized waste. EPA will consider data relevant to matrix and bulk property effects if it is demonstrated by the petitioner that such effects reduce the mobility of constituents from the petitioned waste.

Use of Informal Surveys

Comment: One commenter stated that the Subtitle D landfill survey[13] was not representative of the population, the response rate was poor, the results were questionable, and the basic principles of statistical surveys were not followed. Another commenter stated that informal surveys are not an adequate basis for rulemaking.

Response: The Agency agrees that the landfill survey was not a statistically precise representation of landfill practices. The survey's purpose was to indicate trends in landfill practices. Ongoing literature searches and other available EPA surveys currently are being investigated to provide more comprehensive descriptions of landfill practices. The Agency, however, believes that the Subtitle D landfill survey is adequate for the limited purposes for which it has been used.

3. Land Treatment Model Assertions Challenged

EPA received a number of comments concerning the assumptions underlying the use of the land treatment model. Specifically, the Agency received comments regarding the following issues:

- Land treatment practices
- Biodegradation/adsorption
- Volatilization
- Ground-water analysis
- Facility dimensions
- Petition-specific evaluations
- Use of informal survey
- Use of other models

The comments received and the Agency's responses are presented in the following sections.

A. Land Treatment Practices

Comment: One commenter criticized the accuracy of the Agency's characterization of land treatment operations and the logic of the assumptions applied to the land treatment model. The commenter asserted that the model is driven by site geometry and noted that it does not account for treatment mechanisms and relevant factors such as climate, site hydrogeology, and the waste matrix.

Response: The Agency believes that the proposed land treatment model represents a realistic and reasonable worst-case land treatment scenario. Land treatment, under a controlled and well-managed operation, can be an effective method of waste disposal. The information provided in the published technical literature, however, is insufficient in scope and detail to support the characterization of a typical non-Subtitle C land treatment facility. Land treatment practices vary considerably among sites. The effectiveness of land treatment waste degradation is contingent on a number of factors, including waste composition, loading rate, facility size, soil type, and climate. Although soil bacteria may degrade oil effectively under optimal conditions of aeration, moisture, and nutrient content, these conditions rarely exist naturally.[14] The Agency therefore cannot assume that delisted wastes will be managed in an environmentally protective manner after they are delisted, since important factors such as loading rate, frequency of application, and nutrient addition are not regulated adequately once a waste is delisted.

EPA conducted a study recently, during the fall and winter of 1985–1986, of state and territorial Subtitle D non-hazardous waste programs.[15] One objective of the study was to evaluate management practices and control technologies at Subtitle D facilities and the extent and causes of human health and environmental impacts at such facilities. The results of this study indicate that for 5,605 industrial land treatment units (this estimate does not include data from the states of Illinois, Louisiana, Missouri, and Montana), 84 percent have had compliance inspections once every 2 years or less frequently, and 24 percent have never been inspected. Of the 1,601 industrial land treatment units inspected in 1984 for compliance with state Subtitle D regulations, 15 percent were reported to be in violation of some requirement. A breakdown of these violations is as follows: 45 units, ground-water contamination; 41 units, ground-water monitoring deficiencies; 60 units, surface water contamination; 10 units, air contamination; and 88 units, operational deficiencies and minor violations. Only 11 percent of the 5,605 industrial land application units perform ground-water monitoring, 2 percent perform surface water monitoring, 4 percent perform soil monitoring, and less than 1 percent perform air monitoring. These findings support the Agency's assertion that wastes likely to be land treated may not be managed properly following delisting. Also, as discussed previously, the evaluation of site-specific factors in the VHS model is generally not appropriate for wastes being considered for delisting. The Agency therefore believes that its assumptions about land treatment operations are appropriate for wastes being considered for delisting.

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[13] See 50 FR 48956 for a description of the Subtitle D landfill survey.

[14] American Petroleum Institute, 1972. The Migration of Petroleum Products in Soil and Groundwater, Principles and Countermeasures, Washington DC, December.

[15] WESTAT, 1986. Mail Survey of State Subtitle D Programs, Preliminary Data. Performed under contract to U.S.EPA, OSW, Special Wastes Branch, May.

Comment: One commenter disagreed with the Agency's calculation of land treatment unit surface areas, which is based on the assumption that the volume of waste generated annually is applied once per year at a depth of 1 foot. The commenter asserted that these assumptions are unrealistic because: (1) Facilities have limited storage capacity; (2) facilities typically apply wastes five to six times per year; and (3) a 1-foot waste application would inhibit using heavy equipment.

Response: The Agency believes that the commenter has misinterpreted the Agency's approach to calculating land treatment unit surface areas. The Agency did not intend to imply that wastes would be land applied once a year with a 12-inch thick waste application. Rather, for modeling purposes, the total volume of waste applied per year is used to determine the facility's X and Y dimensions. The Agency believes that the 1-foot depth is an appropriate approximation to use to determine the site dimensions. According to the "Land Treatment Data Base" of Subtitle C facilities, frequency of application ranged from daily to once every 10 years.[16] Based on the reported size of the land treatment area and the amount of waste land treated annually, the average calculated "depth" of the site was 6 inches; the results ranged from <1 inch to 66 inches. The Agency believes that, in many cases, the calculated loading rate underestimated the actual application rate because the waste was probably not applied to the entire site (e.g., in instances where data were available, only a fraction of the reported site size was considered active). These results are in close agreement with the results of the SAIC survey used to support the proposed rule-making (50 FR 48963, November 27, 1985).

Total waste volume is assumed to be the summation of the waste volumes applied to the zone of incorporation during the course of a year. For example, a facility might use a loading rate that results in a quarterly, 3-inch sludge application. Thus, to determine the length of the land treatment unit (X), which is assumed to be square, the Agency would divide the volume of waste by 1 foot, and take the square root [*e.g.*, V=[X] [X] (1 ft)].

Comment: The commenter also stated that the waste fraction, in the 1-foot zone of incorporation, is more likely to be on the order of 10 percent rather than the assumed 100 percent. The model effectively describes a 1-foot deep landfill because of this assumption. The land treatment unit surface area for a given volume of waste is therefore much greater than assumed in the model because the incorporation volume is not 100 percent.

Response: The Agency believes that the commenter misinterpreted the Agency's approach to calculating the site dimensions (see above). The Agency used the 1-foot depth solely to calculate the X and Y dimensions of the site, based on yearly loading rates. No data are available on Subtitle D facilities to support the commenter's contention that the incorporation of waste is on the order of 10 percent. The Agency notes that its assumption of quarterly application of three inches of sludge, followed by incorporation into the twelve inches of soil, actually represents 20 percent incorporation rather than 100 percent incorporation.

However, since loading rates and other important land treatment criteria are not generally regulated at Subtitle D facilities, saturated conditions can develop, leading to the establishment of anaerobic conditions that may decrease constituent degradation rates and increase constituent longevity.

The Agency cannot be assured that wastes are being applied so as to avoid saturated conditions. This is true of a waste that is delisted and therefore no longer under Subtitle C regulatory control. The Agency will therefore continue to use the 1-foot assumption for purposes of modeling a land treatment unit.

Comment: One commenter stated that the land treatment model is an oversimplification of land disposal practices that consistently and incorrectly estimates that for a given waste volume, higher constituent concentrations could be found at the down-gradient receptor point of a worst-case land treatment unit than of a worst-case landfill. The commenter stated that for a given volume of waste, the calculated land treatment unit surface area is eight times greater than that for a corresponding landfill under the final VHS model. This assumption allows for greater dispersion in the vertical direction; however, due to the domination of surface area in the model calculation, there is, in effect, less dilution for a land treatment unit than a landfill at the downgradient compliance point.

Response: The Agency believes that the proposed land treatment model is an appropriate representation of land-treatment management to which delisted wastes may be subjected. The Agency recognizes that in most instances the land treatment model results in higher compliance-point concentrations than a similar volume of waste would exhibit when evaluated with the landfill VHS model. The Agency believes that this is reasonable since the land treatment model predicts that a large contaminant plume (as compared to the landfill model will be produced since the area of the land treatment unit is relatively large. Since no biodegradation, photodegradation, *etc.* is assumed, the concentration of toxicants in the plume is similar to that from a landfill. This is supported by the fact that, in most cases, the mass of a contaminant in the leachate (from the OLM) is sufficiently less than the total mass available in the waste to allow sustained leaching for a long period of time. Where this is not the case (*i.e.*, insufficient mass is available to sustain leaching), the Agency will evaluate the "continuous leaching" assumption on a case-by-case basis.

B. Biodegradation/Adsorption

Comment: Several commenters considered the model's assumption that no biodegradation, attenuation, sorption, or photodegradation occur in land treatment units to be an extremely unreasonable worst-case scenario for both the zone of incorporation and the ground water. One commenter stressed that the assumption that no biodegradation occurs is unrealistic, since it has been shown to occur under diverse conditions and essentially is the same process that occurs in wastewater treatment systems, but with a longer retention time. The commenter stated that even under unfavorable biodegradation conditions, the slow transport of hazardous constituents through the soil column allows adequate time for degradation. The commenter stressed the importance of photo-oxidation, which can promote biodegradation, and sorption, which immobilizes many organics within the treatment zone, and therefore allows more time for biodegradation. The commenter also pointed out that the Agency has assumed in the development of the Oily Waste EP test that biodegradation occurs in land treatment facilities.

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[16] U.S. EPA. 1986. Land Treatment Data Base, February 5. Office of Air Quality Planning and Standards. References in Memorandum of 2/12/86 from Susan Thorneloe, USEPA OAQPS, to Jim Durham, USEPA OAQPS.

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Response: The Agency continues to assert that the assumptions of no biodegradation, sorption, or photodegradation are reasonable worst-case assumptions for the land treatment model. The effectiveness of these processes, acknowledged by the Agency as being important in the degradation and treatment of organic wastes, cannot be ensured once a waste is delisted and no longer managed under the Subtitle C program.

While the literature shows that biodegradation generally occurs in well-managed land treatment units, the effectiveness of this process depends greatly on the maintenance of proper operating conditions, such as enhanced aeration, nutrient additions, pH control, etc.[17] [18] The literature reports that N-alkanes are the most rapidly degraded component of land treated oily wastes.[19] [20] [21] Several investigations have indicated, however, that higher molecular weight hydrocarbons are degraded more slowly than N-alkanes. The decomposition of many aromatics is slow, particularly those of higher molecular weight.[22] It has been found that the solubilities of the lighter paraffins and aromatic hydrocarbons tend to make them more toxic to bacteria, and therefore limit bacterial growth.[23] Similarly, water-soluble compounds found in both a petroleum refinery sludge and a petrochemical plant sludge were reported to be extremely mobile in high concentrations, potentially toxic, and exhibited low rates of degradation.[24] The accumulation in the treatment zone of asphaltic materials that exhibit low degradability has been reported.[25] Thus, while the Agency believes that biodegradation occurs, the effectiveness of the biodegradation process is, at best, variable.

Another factor contributing to the Agency's concerns with incorporating biodegradation into the OLM is the biodegradation products. The biodegradation products of land treatment would seem to be more polar in nature than the applied wastes, therefore exhibiting greater mobility. An Arthur D. Little (1983) study reported increased levels of polar organics in soils receiving refinery sludges, suggesting that oxidation degradation was occurring. The study also reported, however, that a significant accumulation of non-oxygenated aliphatic and aromatic hydrocarbons was observed.[26] Increased levels of ethyl ether extractable matter in leachate waters from soils receiving oil applications have also been reported, suggesting incomplete degradation of some individual oil components was occurring.[27] As discussed in Section 2.C, *Degradation In Groundwater,* the Agency points out that the biodegradation of land treated organic constituents may result in the formation of daughter compounds of greater toxicity than the parent constituent. If constituents are leached through the soil column, limited, if any, degradation can be expected at lower depths, since anaerobic biodegradation has been shown to be a slow process compared to aerobic degradation in the treatment zone. In addition, the loss of land treated oil due to photo-oxidation has been reported to be insignificant.[28] [29]

The Agency concludes that, while the processes of biodegradation, sorption, and photodegradation occur in land treatment facilities, these processes are contingent on a number of site-specific and waste management-specific factors that are not appropriate for consideration in the application of the delisting models. In order to evaluate a petitioned wastes leachability in a reasonable worst-case land treatment scenario, the Agency will not include these processes in its land treatment modeling effort.

Comment: One commenter stated that a saturated soil condition as suggested by EPA will not occur within the life of a disposal site for certain waste constituents.

Response: As discussed previously, the Agency continues to believe that saturated soil conditions are a possible consequence of waste mismanagement. The Agency therefore will continue to apply this assumption.

C. Volatilization

Comment: Several commenters stated that the land treatment model's assumption of a simultaneous release of 100 percent of all volatile organic constituents to both the air and the ground water is a physically impossible phenomenon.

Response: The Agency believes that the commenters have misunderstood the Agency's approach to modeling the release of volatile organic constituents (VOC's). The Agency did not intend to suggest that 100 percent of VOCs can be released simultaneously to both the air and the ground water. The Agency stated in the proposed rule (50 FR 48964) that it is modeling two different worst-case scenarios: air release and ground-water release. The Agency stated in the proposed notice that for a specific chemical, volatilization is enhanced by dry conditions and porous soils. More frequent waste applications and greater surface area also increase the potential for volatilization. Conversely, migration to ground water is favored by high rainfall and permeable soils. Decreased soil column depth and low soil pH also can result in increased leaching to ground water. Either situation (release to air or to ground water) can occur. Since the Agency cannot predict or control which will occur, release of 100 percent of the VOCs to air is a reasonable worst case for exposure by air and release of 100 percent of the VOCs to ground water is a reasonable worst case for exposure through drinking water.

Comment: One commenter suggested that the Agency consider various site-specific factors that can affect significantly the volatilization of organics. The commenter referenced an EPA study that reports significant differences in cumulative emissions among several land treatment sites.

Response: The Agency agrees that there are a number of factors that significantly affect the volatilization of organics. These factors (method of waste application, climate, etc.) vary significantly among sites, however, and therefore will not be considered in the land treatment model. As discussed previously, site-specific factors are not appropriate for consideration in the generic application of the delisting models.

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[17] See footnote 14.

[18] Dibble, J. and Bartha, R. 1979. Effect of Environmental Parameters and the Biodegradation of Oil Sludge. Applied Envir. Micro., 37(4):729–739.

[19] McGill, W.B. 1980. Factors Affecting Oil Degradation Rates in Soils. In D.M. Shilesky (ed.), Disposal of Industrial and Oily Sludges by Land Cultivation. Resource Systems and Management Association.

[20] Walker, J.D., et al. 1976. Biodegradation Rates of Components of Petroleum. Can. J. Microbiol., 22: 1209–1213.

[21] Cansfield, P.E., and Racz, G.S. 1978. Degradation of Hydrocarbon Sludges in the Soil. Can. J. Soil Sci., 58:339–345.

[22] See footnote 14.

[23] See footnote 19.

[24] Brown, K.W. et al. 1983. Land Treatability of Refinery and Petrochemical Sludges. EPA–600/2/83–074. August, 1983.

[25] See footnote 19.

[26] Berkowitz, et al. 1983. Land Treatment Field Studies: Volume 1—Petroleum Wastewater Pond Bottoms. EPA–600/2–83–057a, July.

[27] Raymond, R.L., et al. 1980. Assimilation of Oil by Soil Bacteria. In: D.M. Shilesky (ed.), Disposal of Industrial and Oily Sludges by Land Cultivation. Resource Systems and Management Association.

[28] McGill, W. B. 1977. Soil Restoration Following Oil Spills. A Review. J. Can. Petro Technology, 16(2):60–67.

[29] Volk, V.V. 1980. Oily Waste and Plant Growth. 1980. In: D.M. Shilesky (ed.), Disposal of Industrial and Oily Sludges by Land Cultivation. Resource Systems and Management Association.

D. Groundwater Analysis

Comment: One commenter stated that increased total organic carbon (TOC) levels downgradient of land treatment units cannot be used as a basis for concluding that hazardous constituents are being leached from a site. The commenter emphasized that TOC is a gross parameter that measures both contaminants and organics occurring naturally in soils. The commenter also stated that even though only a few land treatment facilities identified in the informal survey [30] conduct Appendix VIII groundwater analyses, the Agency should not infer that many land treatment facilities are leaching hazardous constituents to the ground water. On the contrary, the commenter asserted that this indicates that few facilities are leaching hazardous constituents.

Response: The Agency agrees that elevated TOC values are not proof of the existence of hazardous constituents in the ground water. TOC values are used frequently, however, as indicators of possible contamination of ground water by leachate. As previously discussed in the proposal (50 FR 48961, November 27, 1985), there are mobile, non-volatile classes of chemicals, such as phenols, which will tend to migrate readily to ground water. It is logical to expect land treated wastes containing such compounds to be contaminating the ground water when elevated TOC values are found.

The Agency reiterates its position (50 FR 48961) that the small percentage of facilities conducting Appendix VIII ground-water analyses is not indicative that ground water contamination is not occurring at unmonitored sites; thus, as a reasonable worst-case assumption, the Agency assumes that such contamination can occur.

E. Petition-specific Evaluations

Comment: Several commenters stated that on-site land treatment is the prevalent method for disposing petroleum industry waste. One commenter asserted that delisting decisions should therefore be based on site-specific information, including actual groundwater flow data, location of receptors, and volatilization and leaching data. Evaluating the potential hazard associated with waste- and facility-specific factors would allow the Agency to confirm that biodegradation does occur.

Response: The Agency acknowledges the importance of land treatment in a number of industries, including the petroleum and petrochemicals industries. While a majority of land treated wastes are disposed on site (off-site land treatment does occur), the Agency cannot assume that this practice will continue in the future or that on-site characteristics will remain constant after a waste is delisted. As discussed previously (see Section 1.A), therefore, the Agency does not generally consider site-specific factors in its application of the delisting models.

F. Use of Informal Survey

Comment: Several commenters stated that the survey conducted in support of the land treatment model (see 50 FR 48961, November 27, 1985) was inappropriate. One commenter asserted that it is inappropriate to base any land treatment delisting decisions on the land treatment survey because it has inherent methodological problems. The commenter stated that surveying Subtitle C land treatment facilities is inconsistent with reasonable mismanagement scenarios.

Another commenter asserted that the survey does not support EPA's worst-case assumptions and the omission of biodegradation from the model.

One commenter suggested that in order to determine distances to wells, the Agency needs to survey non-regulated facilities applying a margin of safety to account for future well location, or conduct a valid survey of Subtitle C facilities applying several margins of safety to the results.

Response: The Agency agrees that the land treatment survey was not a statistically precise representation of land treatment practices. The survey's purpose was to indicate trends in land treatment practices. Ongoing literature searches and other available EPA surveys currently are being investigated to provide more comprehensive results.

The Agency has reviewed the available Subtitle D land treatment information and has found no data relevant to the proximity of drinking water wells to land treatment units. The Agency will therefore use a distance of 1,000 feet, based on our current survey results.

The Agency has relied, to a large extent, on data from Subtitle C land treatment facilities. The Agency has little information on Subtitle D industrial land treatment facilities, as these facilities fall under the purview of the individual states. The Agency has begun recently to examine the environmental consequences of Subtitle D facilities and is considering a more comprehensive regulatory program. A number of studies currently underway will add considerably to the Agency's understanding of Subtitle D land treatment facilities. (For example, see Footnote 15). Generally, detailed characterizations of Subtitle D land treatment facilities are not available in the literature. The Agency has therefore relied on Subtitle C data due to a lack of a better data set.

G. Use of Other Models

Comment: One commenter stated that the Agency should consider the land treatment model developed by API or the model developed at EPA's Kerr Laboratory, both of which consider biodegradation and attenuation and do not assume 100 percent release of VOCs to both air and ground water.

Response: At this time, the Agency will continue to use the proposed land treatment model, since modeling efforts of both the EPA Kerr Laboratory and the API are inappropriate for delisting evaluations. The Kerr Laboratory land treatment model currently is not available and, when completed, will model well-managed Subtitle C facilities rather than reasonable worst-case Subtitle D scenarios. When this modeling effort and associated biodegradation studies are completed, however, the Agency will consider the results and make modifications to the delisting land treatment model, as appropriate. The API land treatment model referenced by the commenter evaluates the relative treatability of Appendix VIII constituents based on site- and waste-specific factors. Since this methodology considers site-specific factors, it is generally inappropriate for use as the delisting land treatment model for reasons cited previously in this notice. (See Section 1A. Petition-specific Evaluations, for a more detailed discussion of site-specific considerations.)

4. VHS Landfill Model Assertions Challenged

EPA received a number of comments related to the VHS landfill model. These included comments in individual parameters of that model and recommendations for alternative models. Since the VHS landfill model was made final on November 27, 1986 (see 50 FR 48886, Appendix), and all comments received in the proposal for the model were incorporated, these comments will not be entertained. Comments related to the application of the model to organic compound-containing wastes are addressed, however, as are comments related to general applicability of the model.

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[30] See 50 FR 48961, November 27, 1985 for a description of the informal survey.

A. Groundwater Velocity

Comment: The commenter considered the 2 meter per year ground-water velocity assumption as totally unsubstantiated. EPA should use hydraulic conductivities specific to the site as defined by hydrogeologic surveys or tracer studies over portions of the potential site. Consideration also should be given to the effect of pumping wells on transport rates and dispersion.

Another commenter considered the solute transport rate assumed by the VHS model, 2 meters per year, to overstate the rate of migration for many constituents, such as benzo(a)pyrene, to receptor wells. The commenter considered the exclusion from the model of a slow organic constituents migration rate to be arbitrary. The commenter also recommended that the VHS model be revised to simulate constituent behavior in groundwater.

Response: The Agency reiterates that petition evaluation is waste-specific and not waste management site-specific. It is inappropriate, therefore, to incorporate groundwater velocities or a consideration of the effect of pumping wells into the model (see Section 1.A). The Agency recognizes that organic toxicants may migrate more slowly than the groundwater. While this does affect the time required for toxicants to reach the receptor, it would not affect the toxicants' concentrations when they do reach the receptor if no degradation is assumed. Should a petitioner demonstrate that degradation does occur (see Section 2.C, *Degradation*), however, the increased transport time due to slower migration rates may become a major factor. This effect should, therefore, be addressed by the petitioner (and will be considered by the Agency) in any demonstrations relative to degradation.

B. Steady-state Release

Comment: The commenter stated that the VHS model relies on a steady-state assumption, a constant leaching rate for 100 years, which violates the law of conservation of mass. The steady-state model fails to consider the constituent's release rate as a result of repeated flushing. The commenter stated that the GLM predicts constituents will be leached completely before the VHS model predicts that steady-state will be reached. EPA also should review the continuous leaching assumption to determine if it is realistic for particular wastes.

The commenter recommended an alternative transport model that is time-varying rather than steady-state and incorporates degradation and retardation. The commenter asserts that this alternative model can accurately consider wastes that will leach out constituents prior to reaching steady-state and can be used when the strength of the source diminishes with time. The suggested equation is: $(C_y)_A = (C_y)_{VHS} \exp(-\lambda aT)$.

Another commenter recommended that a non-steady-state model be considered as an alternative to the steady-state VHS model, since the steady-state model overpredicts leachate generation and input to the aquifer and does not incorporate degradation or retardation data.

Another respondant expressed concern that the steady-state release assumption is unreasonable and unrealistic since it does not consider attenuation which is likely to occur in chemically stabilized products.

Response: The Agency is not convinced of the advantages of using a time-varying model. The steady-state model provides a reasonable worst-case value at the receptor well. A time-varying approach is most useful in a site-specific application to predict periods of maximum leachate concentration; but the Agency is not modeling a management site-specific scenario. Neither approach accounts for worst-case scenarios such as storms and other causes of slug leachate loading. The Agency notes that, in most cases, the concentration of a toxicant in the leachate (from either actual leaching tests or from the OLM) represents only a small fraction of the total mass of that toxicant in the waste. Thus, a sufficient mass of the toxicant is available to sustain the leaching level for long periods of time. When this is not the case (*e.g.*, where a toxicant leaches very readily but the total mass of the toxicant in the waste is low) the Agency agrees that the steady-state approach may not be valid. These cases will be addressed on a petition-specific basis.

C. Mounding Effects

Comment: The commenter stated that the Agency cannot delist surface impoundments based on the existing landfill model, since it does not assume sufficient hydraulic head. The commenter contended that the Agency did not consider the hydraulic head caused by mounded leachate in groundwater, which will tend to displace natural groundwater flow, draw leachate deeper into the aquifer, and divert natural groundwater flow around the facility. The commenter asserted that little vertical dilution would occur and drinking water wells directly downgradient would receive pure leachate rather than a leachate-groundwater mixture. If mounding eliminates the vertical component of dilution, the constituent dilution rate would be reduced less drastically than the model predicts. The commenter also recommended that the effects of mounding on leachate transport be considered the same for surface impoundments as for landfills.

Response: The Agency agrees that mounding effects from surface impoundments are significant. In order to evaluate the influence of mounding on an aquifer, the Agency is developing a model which estimates mound height given facility dimensions, infiltration rates, hydraulic conductivity, and specific yield. This model is still under development for application to surface impoundments and will be proposed for use in the delisting program when its development is complete.

The Agency disagrees, however, that the mounding effects from landfills are comparable to those from surface impoundments. While the surface impoundment model is, as previously stated, still under development, the Agency believes the model may be used to examine the importance of mounding in landfills. The modeling approach under consideration uses the Hantush mounding equation.[81] When this model is evaluated using infiltration rates of 0.25 m/yr as reported for municipal landfills,[82] mounds ranging from 0.5 to 2.5 feet are estimated depending on waste volume. The Agency believes mound heights of this magnitude will have little impact on the underlying aquifer and no effect at the compliance point. While the values chosen for each parameter influences the resultant mound height, the Agency believes that any set of worst reasonable case parameter estimates will yield similarly small mound heights. Based on this analysis, the Agency maintains mounding effects in active landfills will be minimal. In the case of inactive or capped landfills, the Agency believes no mounding will occur. Mounding is a result of increased infiltration under a waste management unit. In an active unit rain water may pool and flow into the unit. The Agency believes that infiltration rates from an inactive unit will not differ from infiltration rates for the surrounding terrain and therefore no mound will be generated. A report describing the mounding equation, parameter estimates, assumptions, and actual computer runs which support these conclusions can be found in the RCRA docket. When a mounding model for surface impoundments is fully developed it will be proposed and comments will be solicited.

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[81] Hantush, M.S. 1967. Growth and Decay of Groundwater Mounds in Response to Uniform Percolation. Water Resources Research 3(1):227–234.

[82] Sobotka & Co., Inc. Comparative Risk Analysis of Sources of Groundwater Contamination, Appendix A. Draft report submitted to U.S. EPA 1985.

The Agency recognizes that the application of the VHS landfill model may not be appropriate for wastes that are managed in surface impoundments. Such application is an interim measure and will be discontinued when an appropriate surface impoundment model is developed. The Agency believes that the evaluation of delisting petitions cannot be postponed until models are available to evaluate all hazards due to all types of waste management. For cases where models are not available to aid in the evaluation of wastes, the Agency relies on other criteria, including groundwater monitoring data for sites, concentration of toxicants in the waste, leachate tests, etc.

5. Comments on Delisting Program

EPA received a number of comments concerning the delisting program in general. As a result, the Agency is providing a response to these comments and further clarification of the delisting program elements.

A. Systematic Approach to Delisting

Comment: Several commenters supported the use of objective and quantitative criteria in the delisting program, but disagreed with a number of assumptions used in the VHS models and their use for delisting organics.

One commenter recommended that models be developed for disposal methods other than land treatment and land disposal. The same commenter stated that delisting program inflexibilities unnecessarily regulate non-hazardous wastes as hazardous.

Response: The Agency has refined the proposed OLM and contends that the new model is an appropriate tool for evaluating delisting petitions until an acceptable analytical leaching method is developed. The Agency is developing models for additional disposal methods including surface impoundments. EPA intends to use as many models as are appropriate in petition evaluation and will propose the use of these models as they are developed.

B. Public Docket

Comment: Several commenters stated that the public docket for the proposed rule was incomplete and that it was difficult to provide useful comments without access to the full docket. .

Response: The Agency agrees that the public docket was inadequately prepared for the November 27, 1985 FR notice. Measures have been taken to correct these inadequacies and to ensure that future notices have complete public dockets at the time of publication. In order to correct this deficiency, the Notice of Availability (see 50 FR 27061, July 29, 1986) reopened the comment period for various aspects of the November 27, 1985 proposed rule that were affected by the incomplete docket.

C. Standard Analytical Methods

Comment: One commenter encouraged EPA to develop an organic leachate test that can be applied with consistent results under laboratory conditions. Another commenter challenged the ability of the organics leachate test currently under development to represent accurately leachate from oily wastes, since the test has not been applied yet to oily sludges.

Response: The Agency is currently developing an organics test, which, when finalized, will generate reproducible results. Since no one test has proven effective to measure the mobility of all constituents from all waste matrices, the Agency is evaluating new procedures and/or modifications to existing procedures to allow more accurate assessments of all types of wastes.

Comment: The commenter challenged the use of the Oily Waste EP test for all wastes with more than 1 percent oil and grease. Assumptions inherent in the test require oils to be separated from the waste to simulate a land treatment degradation scenario. The commenter challenged that the test should not be used for wastes that will be landfilled, recommending that only sludges with a reasonable potential for land treatment be subjected to this test. The commenter also submitted studies to indicate that land treatment is not appropriate for metal hydroxide wastes from metal finishing operations.

Response: The Oily Waste EP test (OWEP) was developed in response to concerns that the EP test is not suitable for wastes which exhibit a substantial oil and grease content (oil fraction). Specifically, concern was expressed that (1) toxic metals may leach at higher levels than those predicted by the EP test if the oil fraction degrades, and (2) the oily fraction, while it may act as a solid in the EP test, could migrate as a liquid once the waste is disposed.

The first concern is based upon a scenario in which the oily fraction coats the solid phase of the waste and the leaching medium. If the oily fraction degrades, as could occur in a well-managed landfarm, the solid phase could be more completely exposed to the leaching medium and increased leaching could occur. (The practice of requesting the OWEP for wastes containing >1 percent oil and grease was based upon the estimate that 1 percent oil and grease would be a sufficient quantity to coat the waste.) The OWEP simulates this effect by removing the oily fraction with toluene and tetrahydrofuran prior to subjecting the waste to the EP test. The OWEP also requires the measurement of the mass of metals in the oily fraction, which is added to the mass of metals that leach in the EP step. This accounts for those metals that are initially in the oily fraction that would be available for leaching once that fraction degrades.

The second concern is based upon the potential for the oily fraction to migrate from the waste. This could result in the contamination of an aquifer by the oily fraction itself. This would be more likely to occur when the waste is managed in a landfill and the oily fraction is not rapidly degraded. The OWEP addresses this concern by assuming that the contaminants in the oily fraction are added to those that are mobilized through the liquid extraction step of the procedure. Since in the original EP test the oily fraction may not be tested as a liquid due to its inability to pass through the filter during the phase separation step, the ability of the toxicants in the oily fraction to behave as a liquid is not addressed in that test. The OWEP, however, by requiring a separate analysis of the oily fraction, allows for an assessment of the additive effects of groundwater contamination potential from both toxicants contained in the organic fraction and those that mobilize from the solid phase during the extraction step. Since the oil phase from oily metal hydroxide wastes in a landfill scenario can mobilize, the Agency will continue to use the OWEP as a tool to measure the concentrations of inorganic toxicants moving in this fraction.

The Agency intends, however, to initiate a testing program to determine: The percent oil content of various waste matrices that will result in a mobile oil phase; whether the TCLP is a more accurate measure of the mobility of the oil fraction; and the toxicological implications of the oil itself contaminating underlying aquifers.

D. Exclusion Effective Time

Comment: One commenter recommended that delisting exclusions take effect at the point of disposal to ensure proper manifesting.

Response: The Agency asserts that delisted wastes are nonhazardous and

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thus are not subject to regulations. Manifests are therefore not appropriate.

E. Ground-water Monitoring Requirements

Comment: One commenter stated that the Agency's practice of processing delistings for facilities with inadequate ground-water monitoring data violates the law, and is not in compliance with 40 CFR Part 265, Subpart F. The commenter asserted that this practice discourages petitioners from developing important monitoring data. The commenter also recommended that EPA refrain from granting exclusions for waste management units that have not been monitored or have been inadequately monitored for their effect on ground-water.

Response: EPA agrees that consideration of ground-water monitoring data is an essential part of petition evaluation. The Agency has made a policy decision however not to impose additional monitoring requirements upon petitioners for which the Agency has already published final or temporary exclusions, since a decision was already made based on the petitioner's characterization of their waste. Further, in many cases the facility owner/operators were not required to develop ground-water monitoring systems as a result of having been issued a temporary exclusion. However, even in these cases the Agency has reviewed any existing groundwater monitoring data. When ground-water contamination is demonstrated, it is used as a basis for petition denial.

Comment: Another commenter recommended that long-term monitoring of the nearest potentially affected well should be required of each petitioner granted an exclusion.

Response: The Agency maintains that if a waste is delistable for all reasons, including the results of the VHS model, monitoring of wells is unnecessary. Petitioners are responsible for reporting any changes in the delisted waste's generation or treatment that may cause the waste to be hazardous. Hence the potential for the waste to become hazardous over the long term is monitored.

F. Conditional Exclusions

Comment: One commenter suggested that EPA consider applying reasonable legal "conditions" to delisted wastes' management, since the Agency already has granted "conditional" temporary delistings. The commenter further suggested that the Agency could set expiration dates for petitions to ensure that generators are managing their wastes in the specified manner.

Commenters provided several examples of conditional exclusions currently used to support their argument. One commenter stated that delisting decisions are conditional on any process changes that may cause a material to exhibit hazardous waste characteristics. The commenter suggested that this concept could be expanded so that breach of any other delisting condition is a violation of Subtitle C regulations. Another commenter characterized the delisting of the mobile incinerator (50 FR 23721) as conditional, since the exclusion is contingent on testing specific containers.

Response: The Agency typically does not grant conditional exclusions on the premise that if a waste cannot be fully delisted, it should remain under Subtitle C control. Even when a conditional delisting is granted, however, the conditions refer to the contaminant concentration in the waste, not the way in which the waste is managed. The Agency does grant conditional exclusions occasionally when, for example, a waste is delisted, on a one-time basis. Specifically, if a petitioner wanted to stabilize a sludge and close the lagoon containing the stabilized product, the sludge may be delisted and the delisting would be contingent on testing conducted during the stabilization process.

G. Air Emission Model

Comment: One commenter described the air quality dispersion model as a simple model that was designed for easy use and stated that this simple, virtual source model is not an accurate representation of the effects of land disposal on air quality. The commenter suggested that petitioners should be allowed to present their analysis using a more realistic source model if they so desire.

Response: The Agency believes that the virtual point source model is both reasonable and appropriate as a screening tool to ensure that emissions from the land disposal of specific wastes do not present a hazard to human health and the environment. The Agency recognizes, however, that the assumptions related to emission rates (*i.e.*, the source) may represent a worst-case scenario. The Agency is currently developing models to more accurately predict these emission rates and is evaluating a number of air dispersion models to use in concert with those source models. These models will be proposed when they are fully developed. In the interim, the Agency agrees that petitioners should be allowed to present their own analyses and encourages the submission of such data when necessary to support delisting petitions.

Comment: One commenter recommended that the state authorization requirements be amended to require States to have delisting programs.

Response: This is not possible. RCRA section 3009 explicitly states that States may impose requirements more stringent than those imposed by EPA's regulations. The decision by a State not to have delisting is a more stringent condition, which, under section 3009, cannot be prohibited.

[FR Doc. 86-25502 Filed 11-12-86; 8:45 am]

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40 CFR Part 261

[SW-FRL-3108-8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is announcing its decision to deny the petitions submitted by five petitioners to exclude their solid wastes from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 256, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste lists. Our basis for denying these petitions is that the petitioners have not substantiated their claims that the wastes are non-hazardous. The effect of this action is that all of this waste must be handled as hazardous waste in accordance with 40 CFR Parts 262-266, and Parts 270, 271 and 124.

In addition to the final denials, the Agency is also making final its decision to use the nickel content of a waste as a criteria for evaluating petitioned wastes, and to deny a petition if the concentration of nickel at the compliance point (using the VHS model) exceeds the Agency's interim standard for nickel. (See Appendix I of this notice.)

EFFECTIVE DATE: For the three petitioners, GMC, Lacks Industries, and Radford Army Ammunition Plant, which have temporary exclusions, the effective date of this decision is May 13, 1987; for the other petitioners, the effective date of this decision is November 13, 1986.

ADDRESSES: The public docket for these final petition denials is located in the Sub-basement, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for public viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475-9327 or Kate Blow at (202) 382-4675 for appointments. The reference number for this docket is "F-86-NIDF-FFFFF". The public may copy a maximum of 50 pages of materials from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-5096.

SUPPLEMENTARY INFORMATION: On September 22, 1986, EPA proposed to deny specific wastes generated by several facilities, including: (1) General Motors Corporation, Chevrolet-Pontiac-Canada Group, located in Pontiac, Michigan (see 51 FR 33630); (2) Lacks Industries, located in Grand Rapids, Michigan (see 51 FR 33632); (3) Light Metals Coloring Co., Inc., located in Southington, Connecticut (see 51 FR 33633; (4) PEC Industries, located in Orlando, Florida (see 51 FR 33635); (5) Radford Army Ammunition Plant, located in Radford, Virginia (see 51 FR 33637). The Agency had previously evaluated three of the five petitions which are discussed in today's notice. Based on our review at that time, these three petitioners were granted a temporary exclusion. Due to changes in the delisting criteria required by the Hazardous and Solid Wastes Amendments of 1984, however, these petitions, as well as the other two have been evaluated both for the factors for which the wastes were originally listed, as well as other factors and toxicants which reasonably could cause the wastes to be hazardous. Based upon these evaluations, the Agency has determined that all five of the petitioning facilities have not substantiated their claims that the wastes are non-hazardous; therefore, the Agency is denying the petitions submitted by all five petitioning facilities and is revoking the temporary exclusions currently held by three of these facilities.

The denials made final here involve the following petitioners:

General Motors Corporation/Chevrolet-Pontiac-Canada Group, Pontiac, Michigan;
Lacks Industries, Grand Rapids, Michigan;
Light Metals Coloring Company, Inc., Southington, Connecticut;
PEC Industries, Orlando, Florida;
Radford Army Ammunition Plant, Radford, Virginia.

I. General Motors Corporation/Chevrolet-Pontiac-Canada Group

A. Proposed Denial

General Motors Corporation, Chevrolet-Pontiac-Canada Group (CPC), has petitioned the Agency to exclude its wastewater treatment sludge from EPA Hazardous Waste No. F006, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by CPC, however, fails to substantiate its claim that the listed constituents are essentially present in an immobile form.[1] (See 51 FR 33630-33632, September 22, 1986, for a more detailed explanation of why the Agency proposed to deny CPC's petition.)

B. Agency Response to Public Comments

The petitioner submitted comments clarifying the facility's intended management and disposal practices for the petitioned waste. The facility pointed out that, although the Agency stated that the waste would be subject to regulation again under 40 CFR Parts 262 through 266 and the permitting standards of 40 CFR Part 270, CPC no longer accumulates the waste of concern in a waste pile. The petitioner claims that the waste is placed directly into a roll-off box when generated and sent directly to a landfill within two production days. CPC believes that they will not need to submit a Part B permit application because the facility will not be operating a hazardous waste pile when the temporary exclusion expires. In addition, CPC believes that a revised Part A will not be required because the facility will not be storing the waste on-site for longer than 90 days. The Agency did not intend in the proposed rule to make a determination on the details of CPC's compliance requirements. The Agency was merely reminding the petitioner of the general regulations the waste falls under.

The petitioner also stated that CPC intends to segregate or eliminate the one chrome plating process which causes their sludge to be hazardous and believes the Agency's redefinition of F006 wastes has impacted their sludge. The Agency has recently reevaluated the scope of the F006 listing criteria and will publish a notice in the near future announcing the results of this reevaluation. The Agency has sent letters to the petitioners who generate F006 wastes explaining the redefinition efforts. CPC believes that due to the F006 redefinition and the segregation of the chrome plating line that they will no longer be generating a listed hazardous waste. The Agency has reviewed CPC's plating operations and agrees that CPC may be able to generate a non-listed hazardous waste if the chrome plating line is segregated or eliminated.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the vaccum filter sludge generated by CPC is hazardous and as such should not be excluded from hazardous waste control. The Agency, therefore, is denying a final exclusion to General Motors Corporation/CPC Group for its dewatered wastewater treatment sludge (vaccum filter sludge) resulting from electroplating operations, listed as EPA Hazardous Waste No. F006, which is generated at its facility located in Pontiac, Michigan. By this action, the Agency also withdraws the temporary exclusion granted for this waste on November 22, 1982 (see 47 FR 52674).

II. Lacks Industries

A. Proposed Denial

Lacks Industries (Lacks), located in Grand Rapids, Michigan, has petitioned the Agency to exclude its previously generated wastewater treatment sludge (metal hydroxide sludge) from EPA Hazardous Waste No. F006, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by Lacks, however, fails to substantiate its claim that the listed constituents are essentially present in an immobile form. (See 51 FR 33632-33633, September 22, 1986, for a more detailed explanation of why the Agency proposed to deny Lacks' petition.)

B. Agency Response to Public Comments

The Agency did not receive any comments regarding its decision to deny an exclusion to Lacks for the waste identified in the petition.

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[1] CPC was granted a temporary exclusion for this waste on November 22, 1982 (see 47 FR 52674).

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C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the wastewater treatment sludge generated by Lacks is hazardous and as such should not be excluded from hazardous waste control. The Agency, therefore, is denying a final exclusion to Lacks Industries for its metal hydroxide sludge previously generated from electroplating operations and contained in an on-site surface impoundment, listed as EPA Hazardous Waste No. F006, which was generated and is currently stored at its Grand Rapids, Michigan facility.

III. Light Metals Coloring Company, Inc.

A. Proposed Denial

Light Metals Coloring Company, Inc. (Light Metals) has petitioned the Agency to exclude its previously generated wastewater treatment sludge from EPA Hazardous Waste No. F019, based on the low concentration and immobilization of the listed constitutents in the waste. Data submitted by Light Metals, however, fails to substantiate its claim that the listed constitutents are essentially present in an immobile form.[2] (See 51 *FR* 33633–33635, September 22, 1986, for a more detailed explanation of why the Agency proposed to deny Light Metals' petition.) B. Agency Response to Public Comments.

The Agency did not receive any comments regarding its decision to deny an exclusion to Light Metals for the waste identified in the petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the wastewater treatment sludge generated by Light Metals, and contained in an on-site surface impoundment, is hazardous and as such should not be excluded from hazardous waste control. The Agency, therefore, is denying a final exclusion to Light Metals Coloring Company, Inc. for its wastewater treatment sludge (contained in an on-site surface impoundment) resulting from the chemical conversion coating of aluminum, listed as EPA Hazardous Waste No. F019, which was generated at its Southington, Connecticut facility. By this action, the Agency also withdraws the temporary exclusion granted for this waste on November 22, 1982 (see 47 FR 52675).[3]

IV. PEC Industries

A. Proposed Denial

PEC Industries (PEC) has petitioned the Agency to exclude its wastewater treatment sludge (filter cake) from EPA Hazardous Waste No. F006, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by PEC, however, fails to substantiate its claim that the listed constitutents are essentially present in an immobile form. (See 51 FR 33635–33637, September 22, 1986, for a more detailed explanation of why the Agency proposed to deny PEC's petition.)

B. Agency Response to Public Comments

The Agency did not receive any comments regarding its decision to deny an exclusion to PEC for the waste identified in the petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the filter cake generated by PEC is hazardous and as such should not be excluded from hazardous waste control. The Agency, therefore, is denying a final exclusion to PEC for for its dewatered wastewater treatment sludge (filter cake) resulting from electroplating operations, listed as EPA Hazardous Waste No. F006, generated at its Orlando, Florida facility.

V. Radford Army Ammunition Plant

A. Proposed Denial

Radford Army Ammunition Plant (RAAP) has petitioned the Agency to exclude its red water from EPA Hazardous Waste No. K047, based on the nonreactive nature of the waste. Data submitted by RAAP, however, fails to substantiate its claim that the waste is non-hazardous.[4] (See 51 FR 33637–33639), September 22, 1986, for a more detailed explanation of why the Agency proposed to deny RAAP's petition.)

B. Agency Response to Public Comments

RAAP submitted a response regarding the notification that the Agency intended to propose to deny their petition.[5] RAAP questioned the rationale for using drinking water standards to evaluate metal concentrations in their waste. They noted that EP toxic levels permit wastes with higher metal concentrations to be landfilled. The Agency, however, evaluates listed hazardous waste with regard to any constituents which may reasonably be expected to be present in the waste. Non-listed solid wastes are evaluated to determine if they exhibit any of the four hazardous waste characteristics: Ignitability; corrosivity; reactivity; and EP toxicity. It is true that concentrations of leachate metals necessary to define a non-listed waste as EP toxic are higher than the concentrations deemed of regulatory concern in the red water generated at Radford. The Agency believes that wastes which exhibit levels of leachable metals above the EP toxic levels are definitely hazardous wastes. Solid wastes which exhibit leachable metal concentrations below the EP toxic levels will be evaluated on an individual basis through the listing and delisting mechanisms. See 45 FR 33111–33112, May 19, 1980.

RAAP was also concerned that the VHS model is used in connection with the proposed land disposal restrictions. In fact, a similar but distinct model was developed in conjunction with the land disposal restrictions. The VHS model is used only to evaluate delisting petitions. The model was made final on November 27, 1985 (see 50 FR 48886).

RAAP questioned the validity of using a landfill disposal scenario in evaluating the red water it generates since they do not plan to dispose of these wastes in a Subtitle D landfill. RAAP also claims that due to the fact that the waste is a liquid, it could not be disposed in a Subtitle D landfill. The Agency first notes that the ban on disposal of non-hazardous liquids in landfills only applies to disposal in a Subtitle C landfill. If delisted, this waste would not be banned from disposal in a Subtitle D landfill. See RCRA section 3004(c)(3). In addition, the Agency notes that the waste could be impounded on site (e.g., if the company recovering the waste was no longer able to do so). The Agency notes that other wastes generated by this facility are in fact presently impounded on-site. Given this reasonable management scenario, the VHS analysis (or a more stringent model for surface impoundments) should apply, and accordingly, the waste may pose a hazard to human health or the environment. The Agency notes that the petitioner had previously identified an alternate facility capable of treating the waste which is no longer available. This reinforces the Agency's belief that the waste could be impounded at some point in time. The Agency notes that RAAP has indicated an on-site treatment and recovery facility is being constructed. RAAP estimates completion of this facility in two to three years. At that time, the facility may wish to reapply for an exclusion.

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[2] Light Metals was granted a temporary exclusion for this waste on November 22, 1982, (see 47 FR 52675).

[3] The Agency formally notified Light Metals on January 6, 1986, that it would recommend to the Assistant Administrator for Solid Waste and Emergency Response that Light Metals' petition be denied and that their temporary exclusion be withdrawn. Light Metals declined to withdraw its petition. See FR 33635, n. 20, September 22, 1986.

[4] Radford was granted a temporary exclusion for this waste on December 16, 1981 (46 FR 61275).

[5] The Agency formally notified RAAP on May 19, 1986 that it would recommend to the Assistant Administrator for Solid Waste and Emergency Response that RAAP's petition be denied and that their temporary exclusion be withdrawn. RAAP declined to withdraw its petition. See 51 FR 33639, n. 38, September 22, 1986.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the red water generated by RAAP is hazardous and as such should not be excluded from hazardous waste control. The Agency, therefore, is denying a final exclusion to Radford Army Ammunition Plant for its red water resulting from TNT operations, listed as EPA Hazardous Waste No. K047, which is generated at its plant in Radford, Virginia. By this action, the Agency also withdraws the temporary exclusion granted for this waste on December 16, 1981 (see 46 FR 61275).[6]

VI. Effective Date

The Hazardous and Solid Waste Amendments of 1984 amended 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance.This is the case for two of the petitions included in today's notice (Lacks Industries and PEC Industries) since this rule does not change the existing requirements for the handling of their wastes, because these facilities have been obligated to manage their wastes as hazardous during the Agency's review of their petition. This rule, therefore, is effective immediately for these petitioners.

For the three petitioners having their temporary exclusions revoked and their petitions denied, these facilities will be required to revert back to handling their wastes as they did before being granted these exclusions (*i.e.,* they must handle their waste as hazardous). These petitioners will need some time to come into compliance with the RCRA hazardous waste management system. Accordingly, the effective date of revocation and denial of final exclusions of these temporary exclusions is six months after publication in the **Federal Register.**

VII. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to a requirement of a Regulatory Impact Anaylsis. This final denial, which would revoke temporary exclusions and would deny the exclusion petitions submitted by three facilities, is not major. The affect of this proposal would increase the overall costs for the facilities which currently have a temporary exclusion. The actual costs to these companies, however, would not be significant. In particular, in calculating the amount of waste that is generated by these three facilities that currently have temporary exclusions and considering a disposal cost of $300/ton, the increase to these facilities is approximately $4.6 million, well under the $100 million level constituting a major regulation. This final denial is not a major regulation, therefore, no Regulatory Impact Analysis is required.

VIII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment, a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will have the effect of increasing overall waste disposal costs for the three facilities which currently have temporary exclusions. Some of the facilities may be considered small entities, however, this rule only affects three facilities across different industrial segments. The overall economic impact, therefore, on small entities is small. Accordingly, I hereby certify that this final regulation will not have a significant impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.)

Dated: November 6, 1986

J.W. McGraw,

Acting Assistant Administrator Office of Solid Waste and Emergency Response.

Appendix I—Criteria Used for the Evaluation of Wastes for its Nickel Content

On September 22, 1986, the Agency proposed to use 0.35 mg/l as the regulatory standard for nickel (both to grant and to deny petitions) for the VHS model portion of our petition evaluation. (See 51 FR 33639, September 22, 1986.) This interim standard was based on an expert panel review of the reproductive effects study conducted by Ambrose et al., 1976 (see 50 FR 20247, May 15, 1985) and preliminary results from ongoing toxicological feeding studies and multi-generational fertility and reproductive studies on rats being conducted by the Agency (see 51 FR 33639, September 22, 1986).

Response to Public Comments: One commenter claimed that no petitions should be denied (based on nickel levels) until nickel is formally adopted as a drinking water standard and is added to the list of EP toxic metals in 40 CFR 261.34. The commenter further claimed that the Agency had used a "back door" action to adopt a drinking water standard for nickel and to adopt nickel as a constituent of concern. The commenter also indicated that the regulatory process for setting a health-based standard is much more rigorous than simply issuing a proposed denial of a delisting petition.

The Agency disagrees with the commenter on several issues. First, the Agency does not wait for drinking water standards to be promulgated in order to make decisions on delisting petitions. Prior to HSWA, the Agency addressed all listed constituents for a petitioned waste for EPA Hazardous Waste No. F006, which included cyanide and nickel (which do not have drinking water standards). If the Agency had waited for a drinking water standard to be promulgated, no exclusions would have been granted since 1980. Early on, however, the Agency made a policy decision to process petitions using the best toxicity data available if drinking water or other Agency standards had not been developed. The Agency disagrees with the commenter that we are trying a "back door approach" to adopting nickel as a constituent of concern. Nickel has always been a listed hazardous constituent of concern for EPA Hazardous Waste No. F006. The Agency's policy with regard to the appropriate standard for evaluating this constituent was to use the supporting studies for the ambient water quality criterion and the Agency's own toxicity testing data if statistically defensible. (See 50 FR 20247, May 15, 1985.)

As a result of HSWA, the Agency has been required to consider Appendix VIII hazardous constituents (other than the listed constituents) in petitioned waste, where there is reasonable basis to expect these constituents to be present. Again, in lieu of deferral of decisions, the Agency has used available standards and toxicological data for these additional hazardous constituents. The Agency's policy regarding a procedure for public comment on the standards used for additional Appendix VIII constituents is that the toxicological data and our method used to calculate the standards used in delisting evaluations are filed in the public docket and are referenced in specific proposed delisting decisions.

The comment period provided on the new nickel policy (and the information supporting it) was an opportunity for the commenter (and anyone else) to express their thoughts on the level of concern for nickel in delisting decisions. If the Agency were to defer action rather than pursuing the denial decision as

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[6] See footnote 5.

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proposed for these five petitioners on September 22, 1986, the three temporary exclusions would lapse on November 8, 1986 and these petitioners would be forced to handle their wastes as hazardous as of that date. The Agency, therefore, believes it is more productive to rely on interim standards as developed under the delisting program, which would allow continued processing of petitions. Our procedures under this program do allow public comment on these standards, and the use of any other more formalized means of generating standards would involve a lengthy process which would essentially result in the Agency's inability to process petitions in any reasonable time-frame.

[FR Doc. 86-25588 Filed 11-12-86; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6629

[ID-943-07-4220-11; I-7322]

Withdrawal of Public Lands for Protection of the Lower Salmon River, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 12,402.60 acres of public lands from surface entry and mining, and 4,435.60 acres of reserved mineral interests in private lands from mining for 20 years to protect the recreational and scenic values of the Lower Salmon River. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: November 13, 1986.

FOR FURTHER INFORMATION CONTACT: Larry Lievsay, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1735.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following-described public lands are hereby withdrawn from settlement, sale, location, and entry under the general land laws, including the United States mining laws (30 U.S.C. ch.2), but not from leasing under mineral leasing laws to protect the Lower Salmon River.

Boise Meridian, Idaho

T. 28 N., R. 1 E.,
Sec. 3, lots 2, 3, 5, 6, 7, 8, 9, 10, NW¼SW¼, NW¼SE¼,
Sec. 10, lots 1, 2, 3, 4, 5, 7, 8, 10, NW¼SW¼;
Sec. 15, lots 1 thru 8, E½SW¼.
T. 29 N., R. 1 E.,
Sec. 3, lots 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, SW¼SW¼:
Sec. 4, lots 1, 2;
Sec. 5, lot 2;
Sec. 10, lots 1 thru 7;
Sec. 11, lots 1 thru 5, SW¼NW¼, NE¼SW¼;
Sec. 14, lots 1 thru 8;
Sec. 23, lots 1, 3, 4, 5, 8, 9, 10, 11, 12, SW¼NE¼, SW¼NW¼;
Sec. 26, lots 1 thru 8, SE¼NW¼;
Sec. 27, lots 1 thru 4;
Sec. 34, lots 1 thru 8; SE¼SE¼,
Sec. 35, W½NE¼.
T. 30 N., R. 1 E.,
Sec. 31, lots 4, 5, 6, 9, NE¼SW¼, N½SE¼;
Sec. 32, lots 1, 2, 5, 6, 7, 8, 9;
Sec. 33, lots 1 thru 7;
Sec. 34, SW¼SW¼.
T. 30 N., R. 1 W.,
Sec. 3, lots 5 thru 9, SW¼NW¼, NW¼SE¼:
Sec. 4, lots 3 thru 10, NW¼SE¼;
Sec. 5, lots 1 thru 6, S½NE¼;
Sec. 6, lots 1 thru 8, SW¼NE¼, SE¼NW¼;
Sec. 10, lots 1 thru 8, NE¼SW¼;
Sec. 15, lots 1 thru 8;
Sec. 22, lots 1 thru 6;
Sec. 23, lots 1, NW¼SW¼, SE¼SE¼;
Sec. 24, S½SW¼;
Sec. 25, lots 1 thru 8, 10, NE¼NW¼;
Sec. 26, lots 1, 2, 6, 7, 8, 12, 13.
T. 31 N., R. 1 W.
Sec. 31, lot 6;
Sec. 32, lots 1, 2, S½SE¼.
T. 30 N., R. 2 W.,
Sec. 1, lots 1, 4 thru 10, NE¼SE¼;
Sec. 2, lots 1 thru 7, S½NW¼.
T. 31 N., R. 2 W.,
Sec. 7, lots 3, 6, 7, 8, 9, 10;
Sec. 8, lot 2;
Sec. 17, lots 2 thru 8;
Sec. 19, lots 1, 4, 5, 6, 7, 10;
Sec. 20, lots 1 thru 10, SW¼NW¼;
Sec. 21, lots 1, 2, 3;
Sec. 27, lots 1, 2, 3;
Sec. 28, lots 1 thru 6;
Sec. 34, lots 2, 3, 4, 5, 7, 8, 10, 11, 12, 13;
Sec. 35, lot 2.
T. 31 N., R. 3 W.,
Sec. 12, lots 3 thru 6;
Sec. 13, lots 1 thru 5, 8, NE¼NW¼;
Sec. 24, lots 1, 4, 5, 8, NE¼NW¼;
Sec. 25, lots 1, 3, 6, 7, SE¼NW¼, SE¼SE¼;
Sec. 26, lots 1, 2, 3, 5, 6, SW¼NE¼;
Sec. 27, lots 4, 5, NW¼NW¼, SE¼SW¼;
Sec. 28, lots 6, 7;
Sec. 29, SE¼SE¼;
Sec. 32, lots 1, 2, 4, NE¼NE¼;
Sec. 33, lots 2, 3, 4, SE¼NW¼, SW¼SW¼.
T. 30 N., R. 3 W.,
Sec. 5, lots 2, 5, 8, SW¼SW¼;
Sec. 6, lots 6, 7, 10, 11;
Sec. 7, lots 1, 2, 5, 6, 8, 11, SE¼NW¼;
Sec. 18, lot 2;
Sec. 19, lots 2, 5, 8, 11, SE¼NW¼;
Sec. 20, SW¼SW¼;
Sec. 29, lots 2, 5, 6;
Sec. 30, lots 1, 2, SE¼NE¼;
Sec. 32, lots 2, 3, 5, 6, 7, 8.
T. 29 N., R. 3 W.,
Sec. 5, lots 3 thru 6, SE¼NW¼, SW¼SW¼;
Sec. 6, lots 6, 7, 8, 11, 12, SW¼SE¼;
Sec. 7, lots 1, 2, 4, 5, 6, 7, 8, NE¼NW¼.
T. 29 N., R. 4 W.,
Sec. 11, lot 4, SW¼SE¼;
Sec. 12, lots 1 thru 8, SW¼NE¼, NW¼SW¼, SE¼SE¼;
Sec. 13, lot 1, NE¼NW¼, NW¼NE¼, NE¼NE¼, SW¼NW¼.

The area described contains 12,402.60 acres in Idaho County.

2. Subject to valid existing rights, the reserved mineral interests in the following described private lands are hereby withdrawn from the United States mining laws but not from mineral leasing laws:

Boise Meridian, Idaho

T. 28 N., R. 1. E.,
Sec. 3, lot 1.
T. 29 N., R. 1 E.,
Sec. 3, lot 15, NW¼SE¼;
Sec. 10, SE¼SE¼;
Sec. 11, NW¼NW¼, SE¼NW¼, NW¼SE¼;
Sec. 14, lot 9, W½NW¼, NW¼SW¼;
Sec. 23, SW¼SE¼;
Sec. 26, NW¼NE¼;
Sec. 27, SW¼NE¼.
T. 30 N., R. 1 E.,
Sec. 32, N½NE¼, SE¼NE¼;
Sec. 33, N½S½;
Sec. 34, NW¼SW¼, SE¼SW¼.
T. 30 N., R. 1 W.,
Sec. 4, lots 1, 2, NE¼SW¼, SE¼SE¼;
Sec. 10, NW¼NW¼;
Sec. 23, W½NW¼, SE¼SW¼, SW¼SE¼.
T. 31 N., R. 1 W.,
Sec. 33 S½SW¼.
T. 30 N., R. 2 W.,
Sec. 1, NW¼SW¼.
T. 31 N., R. 2 W.,
Sec. 17, SW¼NE¼;
Sec. 18, lot 1, N½NE¼, SE¼NE¼, NE¼NW¼, E½SE¼;
Sec. 19, NW¼NE¼, SW¼SE;¼;
Sec. 21, N½SW¼, SW¼SE¼;
Sec. 27, NE¼SW¼;
Sec. 29, N½N½;
Sec. 30, lot 2;
Sec. 33, NE¼NE¼;
Sec. 34, lot 6, NW¼NE¼.
T. 29 N., R. 3 W.,
Sec. 5, lot 2, NE¼SW¼;
Sec. 7, lot 9, SE¼NE¼, NW¼SE¼;
Sec. 8, NW¼NW¼.
T. 30 N., R. 3 W.,
Sec. 5, lots 1, 6, 7, SE¼NE¼, NW¼SE¼;
Sec. 7, lots 7, 9, 10, 12;
Sec. 18, lots 1, 4, 5, 10;
Sec. 19, lots 1, 6, 7, 12;
Sec. 29, lots 1, 3, 4, 7, NE¼NW¼, SE¼SE¼;
Sec. 32, lots 1, 4, NE¼NE¼, E½SE¼.
T. 31 N., R. 3 W.,
Sec. 12, lot NW¼SE¼;
Sec. 24, lots 3, 6, 7;
Sec. 25, lots 2, 8;
Sec. 26, lots 4, 7, 8, SE¼SW¼;
Sec. 27, lots 6, 7, 8;
Sec. 28, lots 4, 5;
Sec. 32, lot 3;
Sec. 33, lot 1, N½NE¼;
Sec. 35, N½NE¼.
T. 29 N., R. 4 W.,
Sec. 11, NE¼SE¼;
Sec. 12, NE¼NE¼.

The area described contains 4,435.60 acres in Idaho County.

3. The withdrawal made by this order does not alter the applicability of those public land laws governing the disposal of their mineral or vegetative resources other than under the mining laws.

4. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

J. Steven Griles,

Assistant Secretary of the Interior.

October 20, 1986.

[FR Doc. 86-25653 Filed 11-12-86; 8:45 am]

BILLING CODE 4310-GG-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 86-228]

Delegations of Authority to the Chief Engineer

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends Part 0, §§ 0.241 and 0.243 of the Commission's Rules by deleting some subsections, simplifying others and changing the format of § 0.241.

This action is taken by the Commission as part of its regulatory review efforts to eliminate obsolete rules. It will improve service to the public and make Commission processes more efficient.

EFFECTIVE DATE: April 18, 1986.

FOR FURTHER INFORMATION CONTACT: Robert Ungar, Office of Engineering and Technology, (202) 653-8100.

SUPPLEMENTARY INFORMATION:

Note.—The delay in publishing this document is due to amendatory language problems which were not resolved until recently.

Order

In the matter of Amendment of Part 0 of the Commission Rules to Reformat and Simplify the Delegations of Authority to the Chief Engineer.

Adopted: April 18, 1986.

Released: May 9, 1986.

By the Commission.

1. The action taken herein is intended to conform the Chief Engineer's delegations of authority to those of the operating bureaus, to delete those delegations that have become obsolete and to simply various other delegations that are unclear or cumbersome.

Structure of Rules

2. The Chief Engineer's delegations of authority are found in §§ 0.241 and 0.243 of the Commission's Rules. Structurally, the delegation of authority is similar to that of other Commission offices—Office of Plans and Policy, Office of General Counsel, and Office of the Managing Director. The rules state affirmatively what actions may be taken. Anything not contained in the rules must be referred to the Commission.

3. In contrast, chiefs of operating bureaus are permitted to exercise all functions described in the relevant functional section of Part 0, subpart A, except for specified functions that can be performed only by the Commission. These proscribed actions, for the most part involve matters where there is a novel question of law, fact or policy. Where there is established precedent, however, bureau chiefs are free to act. By altering the structure of the Chief Engineer's delegations to conform to those used for operating Bureaus, efficencies are likely to be realized. Routine waivers may be processed faster and service to the pubic will be improved.

Simplification of Rules

4. Various of the Chief Engineer's delegations can be simplified. In particular, the delegations dealing with the equipment authorization process and the granting of licenses for Part 5 experimental stations are unnecessarily complex. The different forms of equipment authorization need not be individually addressed. From time to time new forms of authorization have been added or modifications have been made, and it should not be necessary to amend the delegation list in such an event. Similarly, little is gained by detailing all possible steps in the Part 5 licensing process. A more general delegation to administer these programs is sufficient.

Deletion of Unnecessary Rules

5. Some delegations have outlived their usefulness and can be eliminated entirely. Section 0.243(c) gives the Chief Engineer (with concurrence of the General Counsel) authority to waive the All Channel Receiver rules for TV sets used in hospitals. Obviously this delegation is a vestige of old technology and no longer serves a useful purpose.

6. In addition we have determined that several of the other delegations requiring concurrence of the General Counsel are no longer necessary. Because the concurrence function has become obsolete and given the above-mentioned simplification of the Part 5 delegation we may eliminate § 0.243(a)(1)(4) originally intended to deal with construction permits, assignments and transfers of control and the withdrawal of pleadings. Because we have restructured the rules, it is no longer necessary to retain the specific delegation of § 0.243(d) to dismiss repetitive reconsideration requests. We have also determined that the authority to dismiss rulemaking petitons which ". . . plainly do not warrant consideration. . . " (Section 0.243(e)) will be retained but without the necessity of concurrence by the General Counsel.

7. Since a Notice of Proposed Rulemakings is not required, the Regulatory Flexibility Act, Pub. L. 93-354, does not apply.

8. Prior notice and procedures are not required because the amendments herein pertain only to internal agency procedures and practices. *See* 5 U.S.C. 553(b)(3)(A), 47 CFR 1.412(b)(5).

9. In view of the foregoing and pursuant to sections 4(i), 5(c)(1), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(c)(1) and 303(4), IT IS ORDERED that part 0 of the Commission's Rules IS AMENDED as set forth below, effective April 18, 1986.

10. IT IS FURTHER ORDERED that because it deals only with internal Commission practice and procedure this Order is effective upon Adoption by the Commission. See 5 U.S.C. 553(d), 47 CFR 1.427(b).

List of Subjects in 47 CFR Part 0.

Organization and functions (Government Agencies).

Federal Communications Commission.

William J. Tricarico,

Secretary.

Rules Changes

Part 0 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation of Part 0 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Implement; 5 U.S.C. 552 unless otherwise noted.

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2. The undesignated center heading above § 0.241 is revised to read "Chief Engineer".

3. Section 0.241 is revised to read as follows:

§ 0.241 Authority delegated.

(a) The performance of functions and activities described in § 0.31 of this part is delegated to the Chief Engineer: Provided, that the following matters shall be referred to the Commission en banc for disposition:

(1) Notices of proposed rulemaking and of inquiry and final orders in rulemaking proceedings, inquiry proceedings and non-editorial orders making changes. See § 0.231(d).

(2) Petitions for review of actions taken to delegated authority. See § 1.115 of this chapter.

(3) Petitions and other requests for waivers of the Commission's rules, whether or not accompanied by an applications, when such petitions or requests contain new or novel arguments not previously considered by the Commission or present facts or arguments which appear to justify a change in Commission policy.

(4) Petitions and other requests for declaratory rulings, when such petitions or requests contain new or novel arguments not previously considered by the Commission or preset facts or arguments which appear to justify a change in Commission policy.

(5) Any other petition, pleading or request presenting new or novel questions of fact, law, or policy which cannot be resolved under outstanding precedents and guidelines.

(6) Proposed U.S. positions to be transmitted to the Department of State for international meetings of telecommunications entities.

(7) Any other complaint or enforcement matter presenting new or novel questions of fact, law, or policy which cannot be resolved under outstanding precedents and guidelines.

(8) Authority to issue a notice of opportunity for hearing pursuant to § 1.80(g) of this chapter; and authority to issue notices of apparent liability, final forfeiture orders, and orders canceling or reducing forfeitures imposed under § 1.80(f) of this chapter, if the amount set out in the notice of apparent liability is more than $2,000.00.

(9) Proposed actions following any case remanded by the courts.

(b) The Chief Engineer is delegated authority to administer the Equipment Authorization program as described in Part 2 of the Commission's Rules.

(c) The Chief Engineer is delegated authority to administer the Experimental Radio Service program pursuant to Part 5 of the Commission's Rules.

(d) The Chief engineer is delegated authority to examine all applications for certification (approval) of subscription television technical systems as acceptable for use under a subscription television authorization as provided for in this chapter, to notify the applicant that an examination of the certified technical information and data submitted in accordance with the provisions of this chapter indicates that the system does or does not appear to be acceptable for authorization as a subscription television system. This delegation shall be exercised in consultation with the Chief, Mass Media Bureau.

(e) The Chief Engineer is authorized to dismiss or deny petitions for rulemaking which are repetitive or moot or which, for other reasons plainly do not warrant consideration by the Commission.

4. Sec. 0.243 is amended by revising paragraph (a) to read as follows:

§ 0.243 Authority delegated upon securing concurrence of the General Counsel.

(a) The Chief Engineeer, upon securing concurrence of the General Counsel, is authorized to issue notices of apparent liability, final forfeiture orders, and orders canceling or reducing forfeitures imposed under § 1.80(f) of this chapter, in the amount of $2,000.00 or less; and is authorized to issue citations pursuant to § 1.80(d).

* * * * *

[FR Doc. 86-25441 Filed 11-12-86; 8:45 am]

BILLING CODE 6712-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 702

[AIDAR Notice 87-1]

Revision of Contracting Authority

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The AID Acquisition Regulation (AIDAR) is being amended to limit the Office of Management Operations authority to enter into service contracts; reflecting reassignment of contracting responsibilities within the Directorate for Program and Management Services.

EFFECTIVE DATE: November 13, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Kelly, M/SER/PPE, Room 1600I, SA-14, Agency for International Development, Washington, DC 20523. Telephone (703) 875-1534.

SUPPLEMENTARY INFORMATION: AIDAR 702.170-10(a) is being revised to limit the Office of Management Operations authority to enter into service contracts.

This Notice is not considered a significant rule subject to FAR 1.301 or 1.5. This Notice is exempted from the requirements of Executive Order 12291 by OMB Circular 85-7. This Notice will not have an impact on a substantial number of small entities, nor will it require any information collection as contemplated by the Regulatory Flexibility Act and Paperwork Reduction Act, respectively.

List of Subjects in 48 CFR Part 702

Government procurement.

For the reasons set out in the Preamble, Chapter 7 of Title 48 of the Code of Federal Regulations is amended as follows:

PART 702—DEFINITIONS OF WORDS AND TERMS

Subpart 702.170—Definitions

1. The authority citation in Part 702 is unchanged, and continues to read as follows:

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979 44 FR 56673, 3 CFR Part 1979 Comp., p. 435.

2. Section 702.170-10 is amended by revising paragraph (a) to read as follows:

§ 702.170-10 Head of the contracting activity.

* * * * *

(a) AID/Washington.

Position	Limitation
Director, Office of Procurement.	None.
Director, Office of Management Operations.	Use of small purchase procedures ($25,000) for supplies and services, except professional non personal services and personal services. Unlimited authority when ordering against GSA or other established U.S. Government ordering agreements.
Director, Office of Foreign Disaster.	Contracts for disaster relief purposes during the first 72 hours of a disaster in a total amount not to exceed $500,000 (AID Handbook 8, Chapter 5). Routing small purchase authority ($25,000).
Director, Office of International Training.	Use of small purchase procedures up to $10,000. Unlimited for procuring participant training based on published catalog prices, using M/SER/PPE approved forms.

Each of these Office Directors will issue warrants to qualified individuals to actually exercise the authority.

* * * * *

Dated: November 3, 1986.

John F. Owens,

Procurement Executive.

[FR Doc. 86-25516 Filed 11-12-86; 8:45 am]

BILLING CODE 6116-01-M

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Proposed Rules

Federal Register
Vol. 51, No. 219
Thursday, November 13, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 51

[Docket No. 86-103]

Animals Destroyed Because of Brucellosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations governing the payment of indemnity for animals destroyed because of brucellosis by adding a breed association to the list of registered breed associations. It appears that this action is necessary in order to include in the regulations all the registered breed associations that maintain records concerning the purebreeding of animals adequate to identify an animal as a registered animal of that breed association. This action would allow for proper payment of indemnities to owners of cattle destroyed because of brucellosis, thereby encouraging the elimination of these reactor cattle as a disease source.

DATE: Written comments must be received on or before December 15, 1986.

ADDRESS: Submit written comments to Steven R. Poore, Acting Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 86-103. Comments may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Robert E. Wagner, Regulatory Communications and Compliance Policy Staff, VS, APHIS, USDA, Room 827, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8565.

SUPPLEMENTARY INFORMATION:

Background

The "Animals Destroyed Because of Brucellosis" regulations (contained in 9 CFR Part 51 and referred to below as the regulations) provide for the payment of indemnities to owners of cattle, bison, and swine destroyed because of brucellosis. Under these regulations indemnity is paid to an owner of such animals destroyed because of brucellosis to encourage the owner to cooperate in the timely removal of infected animals from the herd or, in the case of herd depopulation, to remove a focus of infection in an otherwise clean area and thereby prevent transmission of brucellosis to nearby susceptible herds. Under § 51.3(a)(1) of the regulations, the indemnity shall not exceed $250 for any registered cattle or nonregistered dairy cattle or, with certain exceptions, $50 for any other nonregistered cattle or bison.

To receive indemnity for registered cattle destroyed because of brucellosis, a claimant must provide registration papers for each animal, issued in the name of or transferred by the registered breed association to the name of the claimant/owner.

Registered cattle are defined in § 51.1(o) of the regulations as:

> Cattle for which individual records of ancestry are recorded and maintained by a breed association whose purpose is the improvement of the bovine species, and for which individual registration certificates are issued and recorded by such breed association.

Section 51.1(cc) of the regulations lists known registered breed associations. It also defines a registered breed association as:

> An association formed and perpetuated for the maintenance of records of purebreeding of animal species for a specific breed whose characteristics are set forth in Constitutions, By-Laws, and other rules of the association. The records maintained by such an association shall include an Official Herd Book or other recordkeeping format and Certificates of Registration or Recordation which identify an animal as a registered animal of that registered breed association.

A claimant is eligible to receive indemnity for cattle as registered animals if they are registered with a breed association listed in § 51.1(cc) of the regulations.

In addition to the registered breed associations already listed, it has been deterined that the "American Blonde d'Aquitaine Association" is within the definition of a registered breed association in § 51.1(cc). Therefore, we propose to add this registered breed association to the list of registered breed associations in § 51.1(cc).

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this proposed rule would not have a significant effect on the economy; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The economic impact of this proposed rule is that it would allow approximately 1,500 small cattle producers owning Blonde d'Aquitaine whose cattle are registered with the American Blonde d'Aquitaine Association to receive a higher indemnity rate when such reactor cattle or exposed cattle must be destroyed because of brucellosis. There are many thousands of small cattle producers who do not own this registered breed of cattle who would not be affected by this proposed rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 51

Animal diseases, Bison, Brucellosis, Cattle, Hogs, Indemnity payments.

PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

Under the circumstances referred to above, 9 CFR Pat 51 would be amended as follows:

1. The authority citation for Part 51 would continue to read as follows:

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, 134b; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 51.1, paragraph (cc) would be amended by inserting the "American Blonde d'Aquitaine Association," immediately after "The American Black Maine-Anjou Association."

Done in Washington, DC, this 7th day of November 1986.

B.G. Johnson,

Deputy Administrator, Veterinary Services.

[FR Doc. 86–25633 Filed 11–12–86; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 92

[Docket No. 85–038]

Branding of Cattle From Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to amend our regulations on importation of cattle to require branding of steers imported into the United States from Mexico. Our proposed amendment appears necessary to improve surveillance for bovine tuberculosis in cattle by providing a permanent means of identifying steers of Mexican origin.

DATE: Written comments must be received on or before January 12, 1987.

ADDRESS: Written comments concerning this proposed rule should be submitted to Steven R. Poore, Acting Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should indicate that they are in response to Docket Number 85–038. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. M. A. Essey, Program Planning Staff, VS, APHIS, USDA, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–5961.

SUPPLEMENTARY INFORMATION: Title 9 Part 92 of the Code of Federal Regulations [9 CFR Part 92; and referred to below as the regulations] regulates the importation into the United States of specified animals and animal products to prevent the introduction into the United States of various diseases.

We propose to amend § 92.35(c) of the regulations, which contains provisions restricting the importation of certain Mexican cattle to prevent the introduction of bovine tuberculosis into the United States.

Branding

We propose to add a new paragraph (c)(2) to § 92.35 as follows:

> Each steer imported into the United States from Mexico shall be branded with the letter "M", prior to arrival at a port of entry, unless the steer is imported for slaughter in accordance with § 92.40 of this part. The "M" brand shall be not less than 2 inches, nor more than 3 inches high, and shall be applied to each steer's right jaw with a hot iron.

The jaw area is recognized and used by animal health officials around the world as a location for branding for international livestock disease eradication purposes.

Identification

Steers from Mexico are often moved into the United States for fattening prior to slaughter. Once in the United States, these steers normally spend 12 to 18 months on pasture, then are fed for 3 to 6 months in feedlots before being sent to slaughter.

Mexico also serves as a prime source of steers for use on the United States rodeo circuit. Some rodeo animals of Mexican origin may be purchased as "practice" animals by rodeo professionals and amateur enthusiasts. These animals are normally sold for slaughter when no longer able to meet rodeo competition standards.

Steers imported from Mexico are identified with metal eartags inserted prior to their entry into this country. However, eartags are frequently lost or removed after importation. This is particularly true along the rodeo circuit, where metal eartags may be a hindrance or hazard to participants in roping and bulldogging events. At present, it is often impossible to determine the country of origin of a steer that has lost its eartag.

The proposed "M" brand would provide a permanent, highly visible means of identifying steers of Mexican origin. The ability to make this determination with speed and accuracy is of vital importance to this country's National Cooperative State-Federal Bovine Tuberculosis Eradication Program.

Surveillance and Trace-Backs

In the United States, surveillance for bovine tuberculosis primarily revolves around the reporting of suspicious lesions found during postmortem inspection at slaughtering establishments. When a tuberculosis-lesioned carcass is discovered, the animal's movements are traced to locate the herd in which the disease originated. Once this is accomplished, all other movements from the infected herd are traced to find and eliminate any possible disease spread.

When a tuberculosis-infected steer is of Mexican origin, however, trace-back operations generally would be limited to (1) finding the feedlot or pasture that received the animal after its importation into this country, and (2) tracing movements (other than to slaughter) of exposed animals from the feedlot or pasture.

The proposed "M" brand would permit immediate identification of steers of Mexican origin. We believe, therefore, that this proposal will speed trace-backs in "lost eartag" instances, enabling the Department to focus manpower and funding along the most promising investigatory channels.

Miscellaneous

This document would also make certain nonsubstantive changes in the regulations for the purposes of clarity.

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this action would not have an effect on the economy of $100 million or more; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not have any adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule requiring that certain Mexican steers be branded prior to their arrival at a United States port of entry should not increase or decrease the number of Mexican steers imported into the United States. Branding would involve a small additional cost for

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Mexican ranchers and exporters, but this expenditure would not be significant—even for small entities—when measured against overall production and transportation costs. The Department also believes that the proposed branding requirement would not affect cattle or meat prices at either the wholesale or retail levels.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, it is proposed to amend regulations contained in 9 CFR Part 92 as follows:

1. The authority citation for Part 92 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

2. The definitions in § 92.1 would be placed in alphabetical order, and the paragraph designations would be deleted.

3. Section 92.1 would be amended by adding, in alphabetical order, the following new definition:

§ 92.1 Definitions.

* * * * *

United States. All of the States of the United States, the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other Territories and Possessions of the United States.

* * * * *

4. In § 92.35, current paragraphs (c)(2) and (c)(3) would be renumbered (c)(3) and (c)(4), respectively.

5. In § 92.35 a new paragraph (c)(2) would be added to read as follows:

§ 92.35 Cattle from Mexico

* * * * *

(c) * * *

(2) Each steer imported into the United States from Mexico shall be branded with the letter "M," prior to arrival at a port of entry, unless the steer is imported for slaughter in accordance with § 92.40 of this part. The "M" brand shall be not less than 2 inches, nor more than 3 inches high, and shall be applied to each steer's right jaw with a hot iron.

* * * * *

Done at Washington, DC, this 7th day of November 1986.

B.G. Johnson,

Deputy Administrator Veterinary Services.

[FR Doc. 86–25634 Filed 11–12–86; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 106, 9001, 9002, 9003, 9004, 9005, 9006, 9007, 9031, 9032, 9033, 9034, 9035, 9036, 9037, 9038, 9039

[Notice 1986–10]

Public Financing of Presidential Primary and General Election Candidates

AGENCY: Federal Election Commission.

ACTION: Announcement of hearing date.

SUMMARY: On August 5, 1986, the Federal Election Commission published a Notice of Proposed Rulemaking on regulations governing the public financing of Presidential primary and general election candidates (51 FR 28154). One commenter on the proposed rules has submitted a request to testify before the Commission regarding certain of these proposals. The Commission has therefore decided to hold a public hearing on the proposed rules governing public financing of Presidential primary and general election campaigns. The hearing will be held on December 3, 1986, at 10:00 a.m., in the Commission's 9th Floor hearing room, 999 E Street, NW., Washington, DC.

Although the August notice also raised issues regarding bank loans to candidates and political committees, the Commission intends to concentrate on the public financing issues in the hearing being announced today. The Commission will determine at a later point whether to hold hearings to specifically address the bank loan proposals.

Persons wishing to testify at the December 3 hearing must so notify the Commission in writing on or before November 21, 1986. Further, any person requesting to testify must submit written comments on the proposed rules on or before November 21, 1986.

DATES: A public hearing on the proposed rules governing public financing of Presidential campaigns will be held on December 3, 1986, at 10:00 a.m. Requests to appear and comments on the proposed rules must be submitted in writing on or before November 21, 1986.

ADDRESS: Requests to appear and comments on the proposed rules must be addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Susan E. Propper, Assistant General Counsel (202) 376–5690 or (800) 424–9530.

Dated: November 10, 1986.

Joan D. Aikens,

Chairman, Federal Election Commission.

[FR Doc. 86–25749 Filed 11–12–86; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86–CE–56–AD]

Airworthiness Directives; British Aerospace (BAe) Models HP 137 MK I, Jetstream 200 and Jetstream 3101 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to British Aerospace (BAe) Models HP 137 MK I Series, Jetstream 200 Series and certain Jetstream 3101 Series airplanes incorporating certain nose landing gears where would introduce a recurring torque loading check on the nose landing gear top cap securing bolts. Three incidents have occurred in service, which the bolts securing the top cap to the steering tube on the nose landing gear have been found fractured and loose. These defects may cause loss of control of the aircraft.

DATES: Comments must be received on or before February 16, 1987.

ADDRESSES: British Aerospace (BAe), CAA Mandatory Service Bulletin (MSB) No. 32–JA840827 dated January 16, 1986, revised February 4, 1986, February 7, 1986. BAe Airweapons Division Service Bulletin (S/B) No. 32–12 dated November 29, 1985, BAe S/B No. 32–JA860331 dated September 1, 1986, and BAe Airweapons Division S/B No. 32–20 dated March 4, 1986, applicable to this AD may be obtained from British Aerospace PLC., Manager, Product Support Civil Aircraft Division, Prestwick Airport, Ayrshire, KA9 2RW, Scotland; or British Aerospace, Inc., Librarian, Post Office Box 17414, Dulles International Airport, Washington, DC 20041; or the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86–CE–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Ebina, Aircraft Staff, AEU–100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, B–1000 Brussels, Belgium; Telephone (322) 513.38.30; or Mr. Harvey A. Chimerine, FAA, Project Support Staff Foreign, ACE–109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (316) 374–6932.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should indentify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86–CE–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

Three incidents have occurred in service on British Aerospace (BAe) Air Weapons Division (AWD) manufactured nose landing gear units, where the bolts securing the top cap to the steering tube on the nose landing gear have been found fractured and loose. As a result, British Aerospace has issued BAe CAA MSB No. 32–JA840827 dated January 16, 1986, revised February 4, 1986, February 7, 1986, BAe AWD S/B No. 32–12 dated November 29, 1985, which introduces a recurring torque loading check for the proper torque of 26–28 ft-lbs on the nose landing gear top cap securing bolts of aircraft in service. Subsequently, BAe issued S/B No. 32–JA860331 dated September 1, 1986, and BAe AWD S/B No. 32–20 dated March 4, 1986, which introduces a modification by replacing the existing top cap and bolts and installing a reinforced top cap, new bolts with larger clamping area, dowel retaining plate and spirol pins. The Civil Airworthiness Authority United Kingdom (CAA–UK) which has responsibility and authority to maintain the continuing airworthiness of these airplanes in the United Kingdom has classified this BAe, CAA MSB No. 32–JA840827 dated January 16, 1986, revised February 4, 1986, February 7, 1986, and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under United Kingdom registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the CAA–UK combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this type design certificated for operation in the United States. The FAA has examined the available information related to the issuance of British Aerospace (BAe), CAA MSB No. 32–JA840827 dated January 16, 1986, revised February 4, 1986, February 7, 1986, BAe AWD S/B No. 32–12 dated November 29, 1985, BAe S/B No. 32–JA860–331 dated September 1, 1986, and BAe AWD S/B No. 32–20 dated March 4, 1986, and the mandatory classification of this British Aerospace (BAe), CAA MSB No. 32–JA840827 dated January 16, 1986, revised February 4, 1986, and February 7, 1986, by the CAA–UK. Based on the foregoing, the FAA believes that the condition addressed by the British documentation is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD would require British Aerospace (BAe) Model HP 137 MK I Series, Jetstream 200 Series and certain Jetstream 3101 Series airplanes incorporating certain nose landing gears to introduce a repetitive torque loading check for the proper torque of 26–28 ft-lbs on the nose landing gear top cap securing bolts. The proposed AD permits the one-time modification of the nose landing gear by removing and discarding the existing top cap and bolts, installing a new reinforced top cap per BAe S/B No 32–JA860331 complete with additional spirol pins, new top cap bolts part numbers, and a dowel retaining plate.

The FAA has determined there are approximately 75 airplanes affected by the proposed AD. The cost of inspecting and retorquing is estimated to be $120 per airplane. The total cost is estimated to be $9,000 to the private sector.

The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator,

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the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

British Aerospace: Applies to British Aerospace Models HP 137 MK I and Jetstream 200 Series (all serial numbers) and Model Jetstream 3101 airplanes as follows:

1. Serial Numbers 601 to 606 inclusive, incorporating nose landing gear BAe type numbers 1863, 1873/2A or 1873/3A, and;

2. Serial numbers 607 and subsequent, incorporating nose landing gear BAe type B00A702852A with "strike off" numbers 1, 2, 3 or 4.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent the failure and loosening of the nose landing gear top cap securing bolts and possible loss of control of the aircraft, accomplish the following:

(a) Within the next 200 landings after the effective date of this AD, visually inspect the nose landing gear top cap securing bolts in accordance with Section 2. "ACCOMPLISHMENT INSTRUCTIONS" in British Aerospace Air Weapons Division Service Bulletin (S/B) No. 32–JA840827 dated January 16, 1986, revised February 4, 1986 and February 7, 1986.

(1) If a cracked or loose nut is found, before further flight, remove, replace, lubricate, and retorque the top cap securing bolts in accordance with BAe Air Weapons Division S/B No. 32–12 and repeat the inspection of paragraph (a) of this Airworthiness Directive (AD) before the next 1,000 landings, and every 1,000 landings thereafter, or modify the nose landing gear in accordance with paragraph (b) of this AD.

(2) If no defect is found, repeat the inspection of paragraph (a) of this Ad before the next 1,000 landings, and every 1,000 landings thereafter, or modify the nose landing gear in accordance with paragraph (b) of this AD. Note: If landings are not recorded, substitute one landing for each ½ hour of flight time.

(b) The repetitive inspection required by paragraph (a) of this AD may be discontinued when the nose landing gear is modified in accordance wtih BAe S/B No. 32–JA860331 dated September 1, 1986, and BAe Air Weapons Division S/B No. 32–20 dated March 4, 1986, by replacing the existing top cap and bolts and installing new reinforced top cap, new bolts with larger clamping area, dowel retaining plate and spiral pins.

(c) Aircraft may be flown in accordance with Federal Aviation Regulations 21.197 to a location where this AD can be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Staff, AEU–100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, B–1000 Brussels, Belgium.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to British Aerospace PLC., Manager, Product Support Civil Aircraft Division, Prestwick Airport, Ayrshire, KA9 2RW, Scotland; or British Aerospace, Inc., Librarian, Post Office Box 17414, Dulles International Airport, Washington, DC 20041; or FAA Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on November 3, 1986.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 86–25531 Filed 11–12–86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86–CE–02–AD]

Airworthiness Directives; Cessna 150, A150, F150, FA150, FRA150, 152, F152, FA152, A152, 170, 172, F172, FR172, P172, R172, 175, 177, 177RG, F177RG, 180, 182, F182, FR182, R182, TR182, 185, A185, 188, A188, T188, 190, 195, 205, 206, P206, U206, TU206, TP206, 207, T207, 210, P210, T210, 336, 337, F337, FP337, P337, T337, and T303 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of Notice of Proposed rulemaking (NPRM).

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM) Docket 86–CE–02–AD, published in the **Federal Register** on January 31, 1986 (51 FR 3985). The NPRM proposed to adopt an Airworthiness Directive (AD), that would require relocation of seat stops on certain models, installation of a warning placard concerning proper locking of the seats on all models, and inspection of seat rails and locking mechanisms on all models. Subsequent evaluations of public comments to the NPRM indicates strong opposition to the proposed AD. The opposition is based primarily on the following three concerns: (1) An unsafe condition may be created for some pilots if the seat stops were relocated, (2) the information on the proposed placard is already a preflight checklist item, and (3) the seat rail and locking mechanism inspections are already a part of normal required maintenance. Based upon the public comments and a complete technical reevaluation of the proposal, the FAA is withdrawing this NPRM and is preparing a new AD which will require a more thorough inspection of the seats, seat rails, and seat lock mechanisms.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas W. Haig, Airframe Branch, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946–4409.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD, requiring: (1) Relocation of seat stops on certain applicable models, (2) installation of a warning placard on all models addressing proper locking of the seats, and (3) inspection of the seat rails and locking mechanisms on all models, was published in the **Federal Register** on January 31, 1986 (51 FR 3985). Interested persons, including registered owners/operators of some 145,000 affected aircraft, were afforded an opportunity to comment on the proposed AD. Four hundred and twenty-two comments (including comments from representatives of several major owner and user groups) were received, of which 31 were in favor of adopting the amendment, 334 were opposed, 43 were in favor of adopting the amendment in part, and 14 offered neutral comments.

In addition to objecting, two commenters recommended that their Supplemental Type Certificates (STCs) be incorporated into the proposed AD and another recommended the installation of a secondary stop fabricated out of wood. Three commentors recommended the use of stronger materials and a redesign of the seat lock mechanism. Incorporation of any of these modifications will increase the total cost of the proposed AD as none of these alterations would eliminate the proposed inspection requirements.

Another commenter recommended that all the seats and related structure of all affected airplanes be redesigned to meet crash dynamic criteria. This recommendation is beyond certification requirements and would not be economically feasible.

Two commenters submitted studies concluding that the seat problems are related to usage and wear making this strictly a usage/maintenance issue. According to these studies, everytime the airplane is flown, the seat is expected to be moved four times. In the case of an airplane used in training, 400 hours a year flying time is typical. Such airplanes may experience 1600 seat movements a year. The FAA recognized that adequate integrity of a seat system subjected to high frequency usage can best be assured by dedication of the operators to an adequate maintenance program.

Seven commentors were in favor of relocation of the seat stops; whereas, 46 were opposed, based upon a decrease in safety. Those opposing the seat stop relocation contend that limiting forward travel of the seat creates an unsafe condition for short people, i.e., they cannot reach the rudder pedals and other controls. The FAA concurs that repositioning of the seat stops can create an unsafe condition for pilots with certain physiques and should not be a requirement of the AD.

Fifteen commentors were in favor of the warning placard; whereas, 195 were opposed. Those opposing this placard contend that it is unnecessary since the instructions are already a checklist item and that instrument panel placards should contain only information which is essential to flight. Most consider the panel already overly crowded with placards. The FAA agrees that the placard information is already available as a checklist item, and the placard should not be a requirement of the AD.

Six commentors were in favor of the seat rail and locking mechanism inspections; whereas, 216 were opposed to the inspections as proposed. Those opposing the inspection aspects of the proposed AD maintain these inspections are already specified at 100 hour intervals for FAR 135 operators and at annual inspections for FAR 91 operations. The FAA concurs that these inspections are called out but considers the current inspections inadequate. In addition, the crack criteria called out in Cessna Single Engine Service Information Letter SE83-6, dated March 11, 1983, does not directly relate to the seat slipping problem. Therefore, additional maintenance and inspection requirements are necessary to prevent possible seat slippage and will be addressed in a new proposed AD action.

One hundred and two commentors addressed cost as a factor in their decision; 100 felt the economic impact to be excessive. No comments were received which would change the cost estimates for the actions proposed in the NPRM.

From the public comments and a complete technical reevaluation of the proposal, the FAA is withdrawing this NPRM and is preparing a new AD action which will require a more thorough inspection of the seats, seat rails and seat lock mechanisms.

Withdrawal of Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration deletes a proposal to amend § 39.13 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.89.

2. NPRM Docket No. 86-CE-02-AD, published in the **Federal Register** on January 31, 1986 (51 FR 3965), is withdrawn.

Issued in Kansas City, Missouri, on November 3, 1986.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 86-25532 Filed 11-12-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-CE-52-AD]

Airworthiness Directives; Champion Aircraft Company, Inc., Models 7 and 8 Airplanes

AGENCY: Federal Aviation Adminstration (FAA), DOT.

ACTION: Notice of Proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new Airworthiness Directive (AD) that would require an inspection of the front and rear wing spars for compression failures on the Champion (Bellanca) Models 7 and 8 airplanes. Two accidents have occurred since 1985 where compression failures were found to have contributed to the accidents. The inspection is necessary to detect said condition in the spars and preclude inflight structural failure of the wing.

DATES: Comments must be received on or before December 10, 1986.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86-CE-52-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Efrain Esparza, Airplane Certification Branch, ASW-150, Aircraft Certification Division, Southwest Region, Federal Aviation Administration, Post Office Box 1689, Fort Worth, Texas 76101; Telephone (817) 624-5156.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of the proposed AD will be filed in the Rules Docket.

Availability of NPRMs.

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86-CE-52-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion: The FAA has determined that there have been two accidents as a result of in-flight structural failure of the wing on Champion (Bellanca) Model 8GCBC airplanes for which compression failure in the wing's main spar were contributing factors. In addition, the FAA has received a report of a Champion (Bellanca) Model 7KCAB airplane with compression failures in the rear spar at the strut fitting attach area. Compression failures are failures of wood fibers on a plane perpendicular to the wood fiber longitudinal axis. Failures can occur during flight when the structural limits of the airplane wings are exceeded during a flight maneuver. If this condition goes undetected, it can result in in-flight structural failure of the wing with loss of the airplane. Therefore, an inspection of the wings' spars to detect compression failures is necessary to preclude in-flight structural failure of the wing.

On October 17, 1985, the FAA issued a General Aviation Airworthiness Alert, AC 43-16, "Bellanca Aircraft Possible Wing Failure, Model 7 and 8 Series," to recommend an inspection of the wings' spars for compression failures for the Model 7 and 8 series airplanes. However, the level of response to this AC has been very low considering the nature of the problem and the number of airplanes involved.

Since this condition is likely to exist or develop on other airplanes of the same/similar type design, the proposed AD would make compliance with the instructions in AC 43–16 dated October 17, 1985, mandatory for all Champion (Bellanca) Model 7 and 8 airplanes. The FAA has determined that approximately 8,200 airplanes will be affected by this proposal. The estimated cost per airplane for the initial inspection will depend on the fuel system of the airplane. Airplanes with a 70 gallon fuel system will have nine rib bay areas per wing to inspect while those with a 36 or 26 gallon fuel system will have 13 rib bay areas. Therefore, the estimated cost per airplane for the initial inspection will range from $1,260 to $1,820 and between $10,332,000 and $14,924,000 for the fleet. In addition, the AD will require a re-inspection of the wings spars if the airplane is overturned or suffers structural wing damage after the initial inspection and/or if the airplane is in the acrobatic category. The cost of the re-inspection is expected to be the same as the initial inspection. Few, if any, small entities operate the affected airplane and any that may would operate only one airplane.

Therefore, I certify that this action (1) is not a major rule under the provision of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the FAA proposes to amend § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Champion Aircraft Company, Inc. Applies to Models 7 and 8 airplanes (all serial numbers) certificated in any category.

Compliance: Required as indicated in the body of the AD unless already accomplished.

To preclude in-flight structural failure of the wing, accomplish the following:

(a) Within the next 75 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished, inspect the wing spars for compression failures as follows:

(1) For the spar, make rectangular C-shaped cutouts just aft of the front spar with the longside parallel to the spar so that the fabric peels away from the spar. The cutout should be large enough to allow visual inspection of the spar. Do this for all rib bay areas outboard of the fuel tank outboard rib. If an inspection hole already exists in a particular rib bay area, use this in lieu of making the rectangular cutout if it allows for visual inspection of the spar. For the rear spar, the rectangular cutout should be made just forward of the rear spar so that it peels away from the spar.

(2) Look along the side surface of the spar (front/rear) with a light striking along the grain at an angle of about 20° with the surface. The point of view should be varied between 45° and the vertical (with respect to the spar side surface) on the same side as the light source. Other angles of light and vision should be tried.

(3) If any compression failure is found, prior to further flight, repair or replace the spar.

Note (1).—When viewed in the manner described in paragraph (a)(2), a failure appears as an irregular line extending across the grain. When a 10X hand lens or microscope is used, the same arrangement with respect to the light source is recommended except that it is best to keep the point of view at vertical angle, due to distortion of the field when any other position is used.

A good hand lens is of assistance when the failures are minute or when only a small area is to be examined. When examining the spar with a hand lens, care must be taken not to mistake minute breaks in the surface fibers, that are sometimes caused by chafing, for compression failures. These surface breaks can be removed with a sharp knife, whereas a compression failure is usually still visible after a thin shaving has been taken off. The knife must be sharp so that a very thin shaving can be removed without crushing the remaining fibers and thereby obscuring a compression failure if present.

Note (2).—An area requiring special attention is the wing strut fitting area. Other conditions such a loose/missing rib nails should be looked for, and unsatisfactory conditions should be repaired. After the wing spar inspection has been accomplished, wing fabric cutouts must be repaired or reinstalled.

(b) After wing spar inspection is completed repair wing fabric cutouts or reinstall covers.

(c) If at any time, subsequent to the effective date of this AD, the aircraft is involved in an accident that may have resulted in structural damage to the wings, before further flight reinspect the wing spars in accordance with this AD.

(d) Reinspect aircraft in the acrobatic category at every 100-flight hour interval after the inspection conducted per paragraph (a) above.

(e) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(f) The intervals between repetitive inspections required by this AD may be adjusted up to 10 percent of the specified interval to allow accomplishing these inspections concurrent with other scheduled maintenance of the airplane.

(g) An equivalent method of compliance with the AD may be used if approved by the Manager, Airplane Certification Branch, ASW–150, Federal Aviation Administration, Southwest Regional Office, Fort Worth, Texas 76101.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 24, 1986.

Barry D. Clements,

Acting Director, Central Region.

[FR Doc. 86–25534 Filed 11–12–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 73

[Airspace Docket No. 86–ASO–16]

Proposed Alteration of Restricted Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to change the times of designation for Restricted Areas R–3002A, B, C, D, E and F, Fort Benning, GA; R–4404A, B and C, Macon, MS, and R–5314A, B, C, D, E, F, G, H and J, Dare County, NC. The times of designation are being altered from a continuous basis to specific times so as to provide for better real time management of the nation's airspace, reflect more accurately the actual usage of the airspace, and return unused airspace for public use.

DATE: Comments must be received on or before December 29, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southern Region, Attention: Manager, Air Traffic Division, Docket No. 86–ASO–16, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Ronald C. Montague, Airspace and Aeronautical Information Requirements Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC. 20591; telephone: (202) 267-9247.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-ASO-16." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments.A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to change the times of designation for Restricted Areas R-3002A, B, C, D, E and F, Fort Benning, GA; R-4404A, B and C, Macon, MS, and R-5314A, B, C, D, E, F, G, H and J, Dare County, NC. The times of designation are being altered from a continuous basis to specific times so as to provide for better real time management of the nation's airspace, reflect more accurately the actual usage of the airspace, and return unused airspace for public use.

These actions were prompted by a review of the annual utilization reports that are submitted annually to the FAA by the using agencies. The review reveal that certain restricted areas designated as "continuous" were only in use during a portion of the day. Southern Region military representatives and FAA controlling agencies in the Southern Region were ask to provide time blocks that more accurately reflected real time usage information. The revised times of designation were developed from the information received. Sections 73.30, 73.44 and 73.53 of Part 73 of the Federal Aviation Regulations were republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

PART 73—[AMENDED]

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 73.30 is amended as follows:

R-3002A, B and D Fort Benning, GA [Amended]

By removing the present time of designation and substituting the following:

Time of designation. Intermittent, 0600-2000 local time, daily; other times by NOTAM 6 hours in advance.

R-3002C, E, and F Fort Benning, GA [Amended]

By removing the present time of designation and substituting the following:

Time of designation. Intermittent by NOTAM 6 hours in advance.

3. Section 73.44 is amended as follows:

R-4404A, B, and C Macon, MS [Amended]

By removing the present time of designation and substituting the following:

Time of designation. Intermittent, 0700-1800 local time, daily; other times by NOTAM 24 hours in advance.

4. Section 73.53 is amended as follows:

R-5314A, B, C, D, E, F, G, H and J Dare County, NC [Amended]

By removing the present time of designation and substituting the following:

Time of designation. Intermittent, 0600-2400 local time, Monday-Friday; 0800-1800 local time Saturday-Sunday; other times by NOTAM 6 hours in advance.

Issued in Washington, DC, on November 5, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-25536 Filed 11-12-86; 8:45 am]

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14 CFR Part 73

[Airspace Docket No. 86–ASO–3]

Proposed Alteration of Restricted Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to change the times of designation for Restricted Areas R–2102A, B and C, Fort McClellan, AL; R–2104A and C Huntsville, AL; R–2901A, B, C, D, E, F, G, H and I, Avon Park, FL; R–2906 Rodman, FL; R–2907A and B, Lake George, FL; R–2908 Pensacola, FL; R–2910 Pinecastle, FL, and R–7104 Vieques Island, PR. The times of designation are being altered from a continuous basis to specific times so as to provide for better real time management of the nation's airspace, reflect more accurately the actual usage of the airspace, and return unused airspace for public use.

DATES: Comments must be received on or before December 29, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southern Region, Attention: Manager, Air Traffic Division, Docket No. 86–ASO–3, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Ronald C. Montague, Airspace and Aeronautical Information Requirements Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operatives Service, Federal Aviation administration, 800 Independence Avenue, SW., Washington, DC 20591; (202) 267–9247.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, enviromental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86–ASO–3." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to change the times of designation for Restricted Areas R–2102A, B and C, Fort McClellan, AL; R–2104A and C, Huntsville, AL; R–2901A, B, C, D, E, F, G, H and I, Avon Park, FL; R–2906 Rodman, FL; R–2907A and B Lake George, FL; R–2908 Pensacola, FL; R–2910 Pinecastle, FL, and R–7104 Vieques Island, PR. The times of designation are being altered from a continuous basis to specific times so as to provide for better real time management of the nations's airspace, reflect more accurately the actual usage of the airspace, and return unused airspace for public use.

These actions were prompted by a review of the annual utilization reports that are submitted annually to the FAA by the using agencies. The review revealed that certain restricted areas designated as "continuous" were only in use during a portion of the day. Southern Region military representatives and FAA controlling agencies in the Southern Region were asked to provide time blocks that more accurately reflected real time usage information. The revised times of designation were developed from the information received. Sections 73.21, 73.29 and 73.71 of Part 73 of the Federal Aviation Regulations were republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

PART 73—[AMENDED]

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 73.21 is amended as follows:

R–2102A, B and C Fort McClellan, AL [Amended]

By removing the present time of designation and substituting the following:

Time of designation. Intermittent, 0600–

2200 local time, daily; other times by NOTAM 6 hours in advance.

R–2104A and C Huntsville, AL [Amended]

By removing the present time of designation and substituting the following:

Time of designation. Intermittent, 0800–2000 local time, Monday-Saturday; other times by NOTAM 6 hours in advance.

3. Section 73.29 is amended as follows:

R–2901A, B, C, D, E, F, G, H and I Avon Park, FL [Amended]

By removing the present time of designation and substituting the following:

Time of designation. Intermittent, 0800–2400 local time, Monday-Friday; 0800–1800 local time, Saturday-Sunday; other times by NOTAM 6 hours in advance.

R–2906 Rodman, FL [Amended]

By removing the present time of designation and substituting the following:

Time of designation. Intermittent, 0500–0100 local time, daily; other times by NOTAM 6 hours in advance.

R–2907A and B Lake George, FL [Amended]

By removing the present time of designation and substituting the following:

Time of designation. Intermittent, 0500–0100 local time, daily; other times by NOTAM 6 hours in advance.

R–2908 Pensacola, FL [Amended]

By removing the present time of designation and substituting the following:

Time of designation. Intermittent, sunrise-sunset, daily; other times by NOTAM 24 hours in advance.

R–2910 Pinecastle, FL [Amended]

By removing the present time of designation and substituting the following:

Time of designation. Intermittent, 0500–0100 local time, daily; other times by NOTAM 6 hours in advance.

4. Section 73.71 is amended as follows:

R–7104 Vieques Island, PR [Amended]

By removing the present time of designation and substituting the following:

Time of designation. Intermittent, 0600–2300 local time, daily; other times by NOTAM 24 hours in advance.

Issued in Washington, DC, on November 5, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 25637 Filed 11–12–86; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 33

Cross-Margining of Commodity Futures, Commodity Options, and Securities Options; Request for Comments on Petition of Rulemaking

AGENCY: Commodity Futures Trading Commission.

ACTION: Request for comment.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is seeking comments on a petition for rulemaking submitted by the Intermarket Clearing Corporation ("ICC"). The petition seeks to have the Commission issue a rule of general applicability that would permit the cross-margining of positions in commodity futures, commodity options, and securities options relating to the same underlying assets. The text of ICC's rule proposal is being published as part of this request for comment. Copies of the accompanying petition are available from the Secretary of the Commission at the address and telephone number set forth below.

DATE: Comments must be submitted by February 11, 1987.

ADDRESS: Written comments must be submitted to and copies of the petition for rulemaking may be obtained from: Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 (Attention: Jean A. Webb, Secretary). Telephone: (202) 254–6314.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Rosenzweig, Associate Director, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated January 31, 1986, the Intermarket Clearing Corporation submitted to the Commission a petition for rulemaking in which ICC requested that the Commission issue a rule which, notwithstanding the provisions of other of the Commission's regulations, would permit the "cross-margining" of positions in commodity futures, commodity options, and non-commodity options, including options on stock indices, government securities, and foreign currencies, where such options are traded on a national securities exchange ("securities options"). In support of its petition, ICC states that the economic similarities between futures, commodity options, and securities options have created opportunities for intermarket hedging and arbitrage.[1] For example, while the risk of some short call positions in stock index options traded on a national securities exchange can be substantially diminished by a long futures position on the same or a related index, each such position must be margined separately at the respective clearing organizations for those contracts. ICC states that as a result, persons with intermarket spread positions and their clearing firms must meet substantially higher margin requirements than are warranted by the "net risk" posed by those positions.

ICC therefore has proposed that the Commission adopt a rule which would authorize a clearing organization of a contract market that is also registered with the Securities and Exchange Commission as a clearing agency [2] to carry all legs of such a spread position. ICC represents that this would allow it (and, presumably, and similarly situated clearing organization) to recognize the reduced risk level associated with combined positions and to set its margin requirement accordingly. ICC contends that such a system of cross-margining would eliminate a deterrent to intermarket spreading and arbitrage, facilitate the unified net capital treatment of such intermarket positions, and eliminate potential settlement problems associated with the maintenance of large intermarket spread positions.

ICC further maintains in suppport of its proposal that cross-margining would facilitate financial surveillance by increasing participating clearing organizations' awareness of the positions that ordinarily would be held by their members with other clearing

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[1] Although characterized in the ICC petition as "intermarket hedge positions," positions consisting of commodity futures, commodity options, and securities options would not qualify as hedging under the Commission's regulations and are, therefore, hereinafter referred to as spread positions.

[2] *See* Section 17A of the Securities Exchange Act of 1934, 15 U.S.C. 78q–1. ICC, which is not presently registered as a securities clearing agency, is a subsidiary of the Options Clearing Corporation, which serves as the quarantor and clearinghouse of standardized securities options. ICC has indicated that it would register as such a clearing agency.

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organizations. Finally, ICC believes that concentrating all legs of an intermarket spread position with a single clearing organization through cross-margining will improve the safety of commodity and securities clearing systems. In this regard, ICC notes that the margin systems used by clearing organizations typically require their members to deposit cash or cash-equivalent assets to compensate for the risk of obligations whose liquidation cost may be highly volatile. In contrast, ICC states that where the risk of an obligation is reduced by a position on the other side of the market, any increase in the cost of liquidating one obligation should be offset by a corresponding increase in the value of the other.

The Commission has set forth below a synopsis of the mechanics of the cross-margining system proposed by ICC. The Commission notes, however, that certain facets of ICC's proposal do not appear to be essential or universal attributes of a cross-margining system. Similarly, the text of the rule proposed by ICC (and which is being published as Part III of this **Federal Register** notice) may in certain respects be reflective of ICC's unique situation.[3] The Commission therefore believes that it would be most appropriate for persons commenting on the ICC petition to concentrate their remarks on the issues raised generally by such a proposal. Thus, although the Commission is making ICC's petition available upon request and welcomes comments upon the particulars of that petition, the Commission asks that commentors endeavor specifically to address the questions identified by the Commission in this **Federal Register** notice.

II. Mechanics of the Proposed Cross-Margining System

ICC's cross-margining proposal would permit ICC clearing members to carry positions in commodity futures, commodity options, and securties options in integrated accounts with ICC. The ICC petition therefore contemplates that positions in related markets, such as a short futures contract in a foreign currency, a short call option on that futures contract, and a long put option on that currency traded on a national securities exchange, could be assigned an aggregate margin amount which would be reflective of the combined risk of those positions.

A clearing member's house account would be eligible for cross-margining, as would an account of a consenting customer specially designated by the clearing member.[4] ICC indicates that although cross-margining treatment would be available equally to all customers, it anticipates that FCMs ordinarily would offer this alternative only to those market professionals and large customers whose intermarket trading was of sufficient size and frequency as to offset the administrative costs associated with maintaining special cross-margining accounts on behalf of those customers.

Specifically, under ICC's proposal, FCMs generally would be required to open a special cross-margining account for each customer. These separate accounts would be required to be maintained at both the clearing member and clearinghouse levels. Although ICC would net margin these accounts at the clearinghouse level (*i.e.*, all cross-margining accounts would be aggregated for purposes of determining the amount of original margin required to be paid by the clearing member to ICC), clearing members would be required to collect customer margins on a gross basis (*i.e.*, each customer's margin obligations would be determined independently, without regard to the positions held by that customer in any other account and without regard to the positions held by any other customer).[5] ICC would have a lien on the positions and assets carried in each cross-margining account to secure the clearing member's obligations with respect to that account only, but not with respect to any other account of the clearing member.

ICC contemplates that is would enter into an agreement with OCC, which would remain the exclusive issuer of, and the exclusive clearing agency for, standardized securities options. Securities option positions qualifying for cross-margining treatment would, therefore, be carried in accounts at OCC. Securities option positions subject to cross-margining, however, would be assigned to ICC, where they would in turn be assigned to particular accounts and afforded cross-margining treatment. ICC clearing members for whom accounts are maintained at OCC would be permitted to exercise control over those accounts—*i.e.*, to clear opening and closing trades through the account, to exercise options carried in the account, and to effect premium and exercise settlements—as though the account has not been assigned to ICC. As is the case with margin payments, ICC—and not the individual clearing member—would be ultimately responsible to OCC for settlements in these assigned accounts.

ICC would rely upon its margin and clearing fund requirements to guarantee performance with respect to cross-margined accounts of OCC. ICC clearing members would make margin payments for these accounts solely to ICC and would contribute to the ICC clearing fund. Accordingly, ICC clearing members would not be required to deposit margin with OCC in respect of short securities options nor would positions carried in assigned accounts be counted towards the base used for calculation of OCC's clearing fund requirements. ICC explains that it would need the margin it would collect from its clearing members for its own protection, so that there would be no surplus to pay over to OCC. OCC would instead rely on ICC's system of safeguards (including ICC's margin requirements and clearing fund) to prevent a default by ICC. For similar reasons, securities option positions carried in cross-margining accounts of ICC would be included in OCC's determination of its clearing fund requirements, but would instead be applied to the calculation of ICC's own clearing fund requirements.

Where commodity futures or commodity options eligible for cross-margining were traded on contract markets already cleared by ICC, ICC clearing members would obtain cross-margining treatment by directing trades in eligible contracts to their cross-margining accounts at ICC. In other cases, where the commodity future or commodity option that would be subject to cross-margining treatment is traded on a contract market whose clearing organization is other than ICC, ICC proposes to act as an "auxiliary clearing organization." In such a case, trades matched by the exchange or its clearing organization would be directed to accounts with ICC as if ICC were itself the clearing member responsible for those trades. ICC would in turn post the trades to the clearing members' accounts. Each clearing organization, therefore, would maintain positions with the other and would be required to make daily variation payments and margin settlements with the other. ICC contemplates, however, that neither clearing organization would be required to deposit original margin with the other or to contribute to the other's clearing or guarantee fund.

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[3] As noted earlier, ICC is a subsidiary of the Options Clearing Corporation ("OCC"), which is the issuer of standardized securities options traded on national securities exchanges. In addition, ICC acts as the clearing organization for three contract markets, the Amex Commodities Corporation, the Philadelphia Board of Trade, and the New York Futures Exchange, Inc.

[4] A clearing member carrying accounts for commodity customers or commodity option customers would of course have to register as a futures commission merchant ("FCM"). ICC observes in its petition that a clearing member might also find it necessary or desirable to register as a broker-dealer under the Securities Exchange Act of 1934 and that such registration "might buttress a firm's claim to 'stockbroker' status under the Bankruptcy Code, which would afford protection against the Code's automatic stay and avoidance provisions in the event of a customer bankruptcy." The Commission notes that an FCM would have similar protections. *See* 11 U.S.C. 362(b)(6), 556.

By letter dated August 6, 1986, ICC separately filed with the Commission, pursuant to the provisions of Section 5a(12) of the Act and Commission Regulation 1.41(b), proposed rule changes which ICC represented would allow it to implement, with respect to proprietary accounts only, the system of cross-margining that is described in its January 31, 1986 petition. That latter filing was remitted to ICC, in accordance with the provisions of Commission Regulation 1.41a(a)(4), on October 20, 1986.

[5] Under the ICC proposal, "market professionals" could agree to have their positions combined in a single account. As would be the case with any other cross-margining account, a clearing member would be required to charge margin to the customers in a combined account without regard to the positions of any other customer. Positions in combined accounts similarly would be carried on a gross basis at ICC. Thus, if one "market professional" were long a particular future or option and another were short the same contract, the clearing member would be shown on ICC's books as carrying both positions.

III. ICC's Rule Proposal

The verbatim text of ICC's rule proposal, as submitted in conjunction with the January 31, 1986 petition for rulemaking, is set forth below:

Section 1.80 Cross-Margining of Intermarket Positions.

(a) *Definitions.* As used in this Section, the following terms shall have the meanings ascribed to them below.

(1) "Non-commodity options" shall mean standardized option contracts traded on a national securities exchange or under the rules of registered national securities association.

(2) "Cross-margining" shall mean fixing margin requirements for mixed positions in commodity futures contracts, commodity options, and non-commodity options on the basis of the net risk of such positions taken as a whole to the recipient of the margin.

(3) "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended from time to time.

(4) "SIPA" shall mean the Securities Investor Protection Act of 1970, as amended from time to time.

(5) "Qualified clearing organization" shall mean a clearing organization registered as a clearing agency under the Exchange Act that carries positions in non-commodity options as well as in commodity futures contracts and commodity options.

(6) "Eligible FCM" shall mean a futures commission merchant that is a member of a qualified clearing organization.

(7) "Consenting customer" shall mean a customer of an eligible FCM who has:

(A) Requested in writing that positions in commodity futures contracts, commodity options, and non-commodity options relating to specified underlying assets carried for his account by the eligible FCM be carried in a cross-margining account as provided below, and

(B) Agreed in writing that in the event of the bankruptcy or liquidation of the eligible FCM, all cash, securities (including non-commodity options), and other property carried for his account in such cross-margining account shall be administered under Part 190 of this chapter, and shall not be deemed to be "customer property" for the purposes of SIPA or give rise to any claim thereunder.

(8) "Market professional" shall mean a consenting customer who is registered as a futures commission merchant or a floor broker under the Act or as a broker-dealer under the Exchange Act.

(9) "Self-regulatory organization" shall mean a self-regulatory organization as defined either in Section 1.3 of this Part or in Section 3(a) of the Exchange Act.

(b) *Cross-Margining Accounts.* Subject to applicable rules of self-regulatory organizations, an eligible FCM may establish and maintain cross-margining accounts for consenting customers. For each such account, the eligible FCM shall maintain a corresponding account with a qualified clearing organization. Each cross-margining account shall be confined to the positions of a single customer, provided that combined accounts may be maintained for groups of market professionals who agree in writing that their combined positions may be margined on a net basis at the clearing organization.

(c) *Cross-Margining.* Anything else in this Part to the contrary notwithstanding, a qualified clearing organization, and, subject to applicable rules of self-regulatory organizations, an eligible FCM, may cross-margin positions in commodity futures, commodity options, and non-commodity options carried in cross-margining accounts, and, in so doing, may use the customer funds in such accounts to carry positions in non-commodity options, as well as in commodity futures and commodity options, therein. Customer funds held by a qualified clearing organization or an eligible FCM in a cross-margining account shall not be excluded from segregated funds solely because such funds are or may be used to margin or secure positions in non-commodity options.

(d) *Customer Protection.* Money, securities, and property received by an eligible FCM in connection with positions in non-commodity options carried in cross-margining accounts shall be separately accounted for and dealt with as belonging to the customers of such eligible FCM, provided that if the eligible FCM is registered as a broker-dealer under the Exchange Act, this requirement shall be deemed to be satisfied by compliance with applicable customer protection rules under that Act. Customer funds held by an eligible FCM for the account of a market professional participating in a combined account shall not be used to secure or guarantee the trades, contracts, commodity options, or non-commodity options, or to secure or extend the credit, of any person other than the one for whom such funds are held, provided that such funds may be deposited with the qualified clearing organization with which the combined account is carried to secure or guarantee the eligible FCM's obligations to such clearing organization in respect of that account in accordance with the rules of such clearing organization.

IV. Request for Comments

1. Should the Commission approve the concept of cross-margining of commodity futures and commodity options with securities options? What regulatory, economic, and policy issues must be resolved in making such a determination?

2. ICC has stated in its petition that cross-margining would result in numerous benefits, such as the reduction of risk to commodities and securities clearing systems and improved efficiency of the futures and option markets. The Commission requests comments as to the conditions necessary to yield the anticipated benefits suggested by ICC. Are there benefits for cross-margining in addition to those which are described in the ICC petition?

3. ICC contends that cross-margining would improve the safety of the commodity and securities clearing systems. The Commission requests comments as to whether cross-margining would increase the risk to those systems by, *inter alia*, increasing the complexity of the actual clearing process (under the proposal, trades would be compared either by ICC or by other clearing organizations), by concentrating in one place positions that would otherwise be held by different commodities or securities clearing

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organizations, and by reducing overall the level of funds that is required to sustain futures, commodity option and securities option positions.

4. ICC has indicated that it presently contemplates offering cross-margining for products based on stock indices, foreign currencies, and government securities. What restrictions, if any, should be established on the types of commodity futures, commodity options, and securities options that can be the subject of cross-margining?

5. The ICC petition contemplates that cross-margining would be made available only to large institutional customers and "market professionals" whose intermarket trades were of sufficient size and frequency to cover the associated administrative costs. The Commission asks that commentors identify and quantify these costs. What type of bookkeeping and data processing entries would be required to balance clearing members' accounts? Is it realistic to expect that clearing members will be willing to maintain separate accounts at the clearing organization on behalf of each of their cross-margining customers? Persons responding to this question are urged to provide detailed examples of any operational or other impediments to the ICC proposal.

6. The ICC petition defined "market professional" to include registered FCMs, floor brokers, and broker-dealers. The Commission requests comments as to whether cross-margining should be available equally to any "member of a contract market" (as that term is defined in Commission Regulation 1.3(q)), which would also include, *inter alia*, floor traders and persons not required to register as futures commission merchants in accordance with the provisions of Commission Regulation 3.10(c). What restrictions, if any, should be imposed on the availability of cross-margining to different classes of market participants? Under what circumstances should "public customers" be allowed to cross-margin?

7. As noted earlier, the ICC petition is predicated in certain significant respects upon the relationship existing between ICC and its parent, the Options Clearing Corporation. The Commission particularly invites comments from other contract markets and clearing organizations as to the extent they would be willing to consider an arrangement of the type described by the ICC petition wherein other clearing organizations would share the clearing of trades with ICC. What practical problems, if any, would be presented by such arrangements?

8. The ICC petition suggests that cross-margining would facilitate improvements in the net capital treatment afforded intermarket spread positions. The Commission requests comments on the extent to which that result can be expected. In the alternative, the Commission requests comment on the circumstances, if any, in which cross-margining might be expected to diminish the safeguards afforded by the current net capital treatment of such positions.

9. What disclosure requirements, if any, should be established in connection with cross-margining? Should customers be required specifically to acknowledge or consent to the cross-margining of their positions?

10. The Commission recognizes that certain amendments to its regulations may be necessary if cross-margining were to be permitted. (In the alternative, the Commission could adopt the approach suggested by ICC, which would have the Commission adopt a single regulation which supersedes other Commission rules to the extent those rules were inconsistent with the new regulation.) In either event, the Commission will have to evaluate the effect of cross-margining on existing regulatory safeguards and standards and therefore requests comments as to whether it would be appropriate to amend or supersede the following rules:

(a) Commission Regulations, 1.20, 1.21, 1.22 and 1.24, relating to the segregation of customer funds;

(b) Commission Regulation 1.36, relating to the recording by futures commission merchants and clearing organizations of securities and property received from customers;

(c) Commission Regulation 1.17, relating to minimum financial requirements for futures commission merchants (including the definition of "cover" contained in § 1.17(j));

(d) Part 190 of the Commission's regulations, relating to the bankruptcy of commodity brokers:

(e) Commission Regulation 1.58, relating to the gross collection by futures commission merchants of initial and maintenance margin;

(f) Commission Regulation 33.4(a)(2), relating to the full payment of commodity option premiums;

(g) Commission Regulation 1.19, relating to the assumption by the futures commission merchant of financial liability for the performance of a commodity option;

(h) Commission Regulation 1.46, relating to the offsetting of existing positions in the same account; and

(i) Commission Regulation 1.33, relating to monthly and confirmation statements.

The Commission additionally invites comments on whether it would be appropriate or necessary to amend other Commission regulations to accommodate cross-margining.

11. The ICC petition contemplates that ICC would have a line on the positions and assets carried in each individual customer's account or in each combined account. Such liens would be to secure the clearing member's obligations to ICC with respect to that account only. Thus, ICC could not use the assets in one customer's account to margin, guarantee, or secure the positions of other customer accounts in the event a clearing member fails to make required payments to ICC in respect of such an account. ICC also could not use the assets in another account of a customer to margin, guarantee, or secure the positions in a cross-margined account of that customer. The Commission notes, however, that clearing organizations typically reserve unto themselves the right to apply margin deposits of a defaulting clearing member to satisfy the obligations of that firm's customers.[6] The Commission therefore requests comments on whether the arrangement proposed by ICC would pose undue risks to a clearing organization. The Commission additionally requests comments as to whether this aspects of ICC's proposal could have the effect of disadvantaging customers not engaged in cross-margining transactions if the equity in their accounts could be applied to secure the positions of defaulting commodity futures or commodity option customers while the positions of cross-margining customers would not be subject to such treatment.

12. Section 4d of the Act generally requires money, securities, and proprety received by a FCM to margin, guarantee, or secure the trades or contracts of any customer, or accruing to the account of any customer, to be separately accounted for and not be used to margin or garantee the trades or contracts, or secure or extend the credit, of any customer or person other than the one for whom that money, securities, or property is held. The ICC proposal would require an FCM engaging in cross-margining to account separately for money, securities, and property received in connection with securities options but would allow that requirement to be met, in cases where

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[6] That right is not unlimited. *See, e.g.*, Office of General Counsel Interpretive Letter 85-3, Comm. Fut. L. Rep. (CCH) ¶ 22,793 (August 12, 1985).

the FCM also was registered as a broker-dealer, by compliance with Securities and Exchange Commission ("SEC") Rule 15c3–3 (17 CFR 240.15c3–3) which provides, *inter alia*, for the establishment ofa special reserve bank account for the exclusive benefit of customers. The Commission requests comments as to whether such an arrangement would create regulatory or operational problems, including in the event of a bankruptcy of a clearing FCM/broker-dealer. The Commission additionally notes that Rule 15c3–3 permits a brokerdealer, in computing the amount required to be maintained in such a account, to offset customer credits and debits to the extent permitted by Exhibit A to that Rule (17 CFR 240.15c3–3a). The Commission therefore requests comments as to how compliance with Rule 15c3–3 could be a satisfactory alternative to segregation under the Commodity Exchange Act and the Commission's regulations thereunder.

(13) The ICC petition would require a customer to agree, as a condition of obtaining cross-margining treatment, that in the event of the bankruptcy or liquidation of his FCM, all assets (including securities options) carried in his cross-margining account would be subject to administration under the Commission's bankruptcy rules (17 CFR Part 190) and would not be deemed to be "customer property" for the purpose of the Securities Investor Protection Act of 1970 ("SIPA") or give rise to any claim thereunder. ICC explains that this requirement is intended to obviate the possibility that some or all of the assets in a cross-margining account might be found to constitute "customer property" for purposes of the commodity broker liquidation provisions of the Bankruptcy Code as well as for SIPA and thus be subject to two conflicting schemes of distribution.[7]

ICC further observes that a customer's agreement to have his crossmargining account administered under the Part 190 rules would not, by itself, be binding on a bankruptcy trustee or on creditors of the bankrupt firm, such as securities customers. However, Section 20 of the Act gives the Commission the authority, "[n]otwithstanding title 11 of the United States Code, [to] provide, with respect to a commodity broker that is a debtor under chapter 7 of title 11 of the United States Code by rule or regulation—

> (1) that certain cash, securities, other property, or commodity contracts are to be included in or excluded from customer property or member property; [and] . . . (5) how the net equity of a customer is to be determined."

ICC therefore maintains that the Commission could use that authority to buttress customers' agreements by amending the Part 190 rules to define "customer property" to include assets held in cross-margining accounts (and "member property" to include assets held in proprietary cross-margining accounts). ICC acknowledges that such rules might overlap the definition of "customer property" in SIPA, inasmuch as SIPA is not part of the Bankruptcy Code. ICC concludes, however, that given the need for a rational scheme of distribution for property of cross-margining customers (which ICC believes the Part 190 rules could provide, but SIPA would not), the problems as to availability of the SIPA fund that would arise if cross-margining accounts were administered under SIPA, and the express consent of the customers most directly involved, provisions in the part 190 rules dealing specifically with cross-margining accounts should be controlling.

The Commission requests comments as to whether it is reasonable to assume that amending the definitions of "customer property" (as specified in Commission Regulations 190.01(n) and 190.08(a)) and "member property" (as specified in Commission Regulation 190.09), when coupled with the express consent of cross-margining customers, is sufficient to result in a waiver of SIPA coverage and to defeat the claims of a trustee in bankruptcy or other securities customers. The Commission further requests comments as to how ICC's analysis would be affected where the clearing member is also a broker-dealer who has elected, as provided under the ICC petition, to meet applicable segregation requirements by compliance with SEC Rule 15c3–3.

The foregoing list of questions is not intended to be exclusive and commentors are encouraged to address such other matters as they deem appropriate. The Commission asks, however, that persons responding to any of the questions set forth above identify by number the particular matters upon which they are providing comments.

Issued in Washington, DC on November 6, 1986, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86–25545 Filed 11–2–86; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 855

Use of United States Air Force Installations by Other Than United States Department of Defense Aircraft

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of the Air Force is revising Part 855 of Chapter VII, Title 32, of the Code of Federal Regulations, which establishes the responsibilities and describes the procedures for the use of United States Air Force installations by aircraft other than U.S. Department of Defense aircraft. This revision clarifies requirements and responsibilities and provides more latitude for decisionmaking at lower levels.

DATE: Comments must be received by December 15, 1986.

ADDRESS: HQ USAF/PRPJ, Washington, DC 20330–5000.

FOR FURTHER INFORMATION CONTACT: Ms. R.A. Young, HQ USAF/PRPJ, Washington, DC 20330–5000, telephone (202) 697–1796.

SUPPLEMENTARY INFORMATION: This revision establishes HQ U.S. Air Force as office of primary responsibility in requesting FAA certification of a U.S. Air Force airfield; adds and expands terms explained; provides new forms for permit application; includes exemption for aircraft owned by a municipality, county, or other political subdivision operated on official government business; adds exemption for foreign government-owned aircraft covered under reciprocal use agreements; adds exemption for aircraft being delivered to U.S. Air Force museums; reorganizes and expands section on unauthorized landings; adds procedures for civil aircraft fly-ins; expands and reorganizes types of civil use; expands MAJCOM/SOA and installation commander approval authority; expands HQ AAC approval authority; authorizes approval by HQ PACAF for aircraft transiting Wake Island; authorizes approval by

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[7] Section 742 of the Bankruptcy Code provides, in essence, that application for a protective decree by the Securities Investor Protection Corporation ("SIPC"), as provided under 15 U.S.C. 78eee(a)(1), stays all proceeding under Chapter 7 (the commodity broker and stockbroker provisions) of that Code. (The Securities and Exchange Commission may apply to a United States district court for an order compelling SIPC to discharge its obligations under SIPA if SIPC fails to apply for such an order. 15 U.S.C. 78ggg(b).) As a result, the Commission's ability to order the transfer of customer positions and of the equity supporting those positions, as provided under 11 U.S.C. 764(b) and Commission Regulation 190.06, may be impeded by application for a protective decree under SIPA.

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HQ AFSPACECOM for aircraft transiting Sondrestrom; permits approval of landing rights for up to 2 years; adds instructions for permit renewal; adds ferry flights to part A and increases minimum insurance requirements (table 1); links time the aircraft remains on an installation to type of use authorized and revises user fees; and expands joint-use section.

The Department of the Air Force has determined that this regulation is not a major rule as defined by Executive Order 12291 and is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354). DD Forms 2400, 2401 and 2402 contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub L. 96–511), and have been approved by the Office of Management and Budget (OMB) under control number 0701–0050.

List of Subjects in 32 CFR Part 855

Aircraft Federal buildings and facilities.

The revised Part 855 is proposed to read as follows:

PART 855—USE OF UNITED STATES AIR FORCE INSTALLATIONS BY OTHER THAN UNITED STATES DEPARTMENT OF DEFENSE AIRCRAFT

Sec.
855.0 Purpose.

Subpart A—General Provisions

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855.2 Definitions.
855.3 Aircraft exempt from the requirement for a civil aircraft landing permit or aircraft landing authorization number.

Subpart B—Unauthorized Landings

855.4 Unauthorized landings.
855.5 Emergency landings.
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Subpart C—Civil Fly-In Procedures

855.8 Civil fly-ins.
855.9 Civil fly-in procedures.

Subpart D—Civil Aircraft

855.10 Conditions for use of U.S. Air Force installations.
855.11 Types of civil use.
855.12 Approving authority.
855.13 Application procedures.
855.14 Processing procedures.
855.15 Insurance requirements.
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855.19 General information.
855.20 Application procedures.
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855.23 Aviation fuel and oil purchases.
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855.27 Waiver authority.

Subpart F—Joint-Use of a U.S. Air Force Installation

855.28 U.S. Air Force joint-use policy.
855.29 Procedures for sponsor.
855.30 Procedures for U.S. Air Force.

Authority: 10 U.S.C. 8012, 49 U.S.C. 1507.

§ 855.0 Purpose.

This part establishes the responsibilities and describes the procedures for the use of United States (U.S.) Air Force installations by aircraft other than U.S. Department of Defense (DOD) aircraft pursuant to section 1107 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1507). This part applies to all regular U.S. Air Force, Air National Guard, and U.S. Air Force Reserve installations with airfields. Major commands (MAJCOM) or separate operating agencies (SOA) may issue supplements to establish command-unique procedures permitted by and consistent with this part.

Subpart A—General Provisions

§ 855.1 U.S. Air Force policy.

U.S. Air Force policy is to permit civil aircraft use of U.S. Air Force airfields to the maximum extent feasible on an equitable basis. However, U.S. Air Force installations are established to facilitate the training required to maintain defense readiness and to provide the operational capacity necessary to defend the U.S.; therefore, careful consideration must be given to those external influences which could impair operational capabilities. U.S. Air Force requirements will take precedence over authorized civil aircraft use. This part carries the force of U.S. law, and exceptions are not authorized without prior approval of HQ USAF/PRPJ. Any proposed exception or waiver will be evaluated as to current and future impact on U.S. Air Force policy and operations.

(a) The U.S. Air Force:

(1) Determines whether civil aircraft use of U.S. Air Force installations is compatible with current or future military activities.

(2) Normally authorizes civil aircraft use of U.S. Air Force installations only for flights operating in conjunction with official government business or where a formal joint-use agreement exists (Subpart F). However, if exceptional circumstances warrant, other types of use may be authorized. Federal Aviation Administration (FAA) certification is required for airfields used by carriers certified under Federal Aviation Regulation (FAR), Part 121 (passenger aircraft which exceed 30 passenger seats or cargo aircraft with a maximum certified takeoff weight over 12,500 pounds). HQ USAF/PRPJ will request that FAA issue an airport operating certificate under FAR, Part 139, as necessary. Exceptions to the requirement for certification are U.S. Air Force airfields used for:

(i) Emergencies.

(ii) Weather alternates.

(iii) Air taxi operations under FAR, Part 135.

(iv) Air carrier operations in support of contract flights exclusively for the DOD.

(3) Subject to the laws and regulations of the U.S., or to applicable international agreements with the country in which the U.S. Air Force installation is located, acts as clearing authority for civil aircraft use of U.S. Air Force installations.

(4) Reserves the right to suspend any operation which is inconsistent with national defense interests or deemed not in the best interests of the U.S. Air Force.

(5) Will terminate authorization to use a U.S. Air Force installation if the:

(i) User's liability insurance is cancelled.

(ii) User is reported as operating for other than the approved purpose, or otherwise in violation of this regulation or clearances and directives hereunder.

(6) Will not authorize civil use of U.S. Air Force installations:

(i) In substantial competition with civil airports by providing services or facilities which are already available in the private sector.

(ii) Solely for the convenience of passengers or aircraft operator.

(iii) Solely for transient aircraft servicing.

(iv) For private enterprise which promotes, benefits, or favors a specific commercial venture.

(v) For unsolicited proposals in procuring government business or contracts.

(vi) Solely for customs handling purposes.

(7) Will not authorize civil aircraft to operate at a closed U.S. Air Force airfield.

(8) Will not authorize civil aircraft use of U.S. Air Force ramps located on civil airfields. This paragraph does not apply to use of U.S. Air Force aero club facilities located on civil airfields (§ 855.11(i) of this part) or civil aircraft chartered by DOD and authorized use of loading or unloading facilities on the Air

Force ramp (§ 855.11 (k) and (n) of this part).

(b) All civil aircraft operators must:

(1) Obtain prior authorization to land at U.S. Air Force installations, except in an emergency or at bases specifically exempted by joint-use or international agreements.

(2) Ensure that pavement load-bearing capacity at installations requested for use will support aircraft to be operated.

(3) Have aircraft equipped with operating two-way radio equipment to obtain landing clearance from the air traffic control tower.

(4) Not assume that landing clearance granted by an air traffic control tower facility constitutes prior authorization.

(5) Obtain required diplomatic or overflight clearance.

(6) Pay applicable costs.

(7) File a flight plan before departing the U.S. Air Force installation.

(c) The installation commander:

(1) Exercises administrative and security control over both the aircraft and passengers while on the installation.

(2) May require civil users to delay, reschedule, or reroute arrivals or departures to preclude interference with military activities.

(3) Cooperates with customs, immigration, health, and other public authorities in connection with aircraft arrival and departure.

§ 855.2 Definitions.

(a) Aircraft. Any contrivance now known or hereafter invented, used, or designated for navigation of or flight in navigable airspace as defined in the Federal Aviation Act.

(b) Airfield facilities. Runways, taxiways, parking and servicing areas, air traffic control facilities, base operations, navigation aids, aircraft fire suppression and rescue services, and airfield lighting and aircraft arresting systems.

(c) Authorized credit letter. A letter of agreement which qualified operators must file with the U.S. Air Force to purchase U.S. Air Force aviation fuel and oil on a credit basis under the provisions of AFR 144–9.

(d) Civil aircraft. Any U.S. or foreign-registered aircraft owned by private individuals or corporations, and foreign government-owned aircraft which are operated for commercial purposes.

(e) Civil aviation. All flying activity by civil aircraft of any national registry, including:

(1) Commercial aviation. Civil aviation involving transportation of passengers or cargo for hire.

(2) General aviation. Civil aviation not involving the transportation of passengers or cargo for hire.

(f) Civil fly-in. Civil aircraft participation in U.S. Air Force sponsored or funded events such as, but not limited to, an open house or a safety seminar.

(g) Closed airfield. An airfield which is restricted from use by all aircraft.

(h) DD Form 2400, Civil Aircraft Certificate of Insurance. A certificate which states the amount of thirdparty liability insurance carried by the user and assures the U.S. government of advance notice of changes in the terms of coverage or policy cancellation.

(i) DD Form 2401, Civil Aircraft Landing Permit. An application which, when validated by a U.S. Air Force approving authority, authorizes the civil operator to use the installation under the terms of this regulation.

(j) DD Form 2402, Civil Aircraft Hold Harmless Agreement. An agreement, executed by the user, which releases the U.S. government from all liabilities incurred in connection with civil aircraft use of U.S. Air Force installations.

(k) Government aircraft. Aircraft owned, operated, or controlled for exclusive, long-term use by any department or agency of either the U.S. or a foreign government; and aircraft owned by any U.S. state, county, municipality or other political subdivision; or any aircraft for which a government has the liability responsibility. In the context of this regulation, this also includes foreign registered aircraft, which are normally commercially operated, that have been wholly chartered for use by foreign government heads of state for official state visits.

(l) Government furnished or bailed aircraft. U.S. government-owned aircraft provided to a government contractor for use in conjunction with a specific contractual requirement.

(m) Installation commander. An officer who commands a host support unit, host wing, or higher level host unit and has been identified by administrative order or command directive as "installation commander." He or she discharges the duties directed by U.S. statutes or U.S. Air Force directives to be performed by the "installation commander."

(n) Joint-use installation. A U.S. Air Force installation where a specific written agreement exists between the U.S. Air Force and a local U.S. or foreign government agency for civil aviation use of U.S. Air Force controlled runways, taxiways, and other necessary facilities.

(o) Loaned aircraft. U.S. government-owned aircraft made available for use by another U.S. government agency or to a U.S. Air Force aero club. This does not include aircraft leased or loaned to nongovernmental entities which are treated as civil aircraft for purposes of this regulation.

(p) Military aircraft. Aircraft used exclusively in the military services of the U.S. or a foreign government and bearing appropriate military and national markings or carrying appropriate identification.

(q) Official government business. Activity in support of U.S. federal agencies located at or in the immediate vicinity of a U.S. Air Force installation, including nonappropriated fund activities. For elected or appointed federal, state, and local officeholders, official business is activity performed in fulfilling duties as a public official.

(r) Public agency. A state, or agency of a state, a municipality, or other political subdivision of a state, a tax supported organization, or Indian tribe or pueblo.

(s) Unauthorized landing. A landing at a U.S. Air Force installation by a civil aircraft operator, including both general and commercial aviation, who has not received prior authorization as required in § 855.10 of this part.

(t) U.S. Air Force installation. A defined area of real property for which the U.S. Air Force has operational jurisdiction and exclusive use of the airfield facility either by ownership, lease, or international agreement.

(u) User. The person, corporation, or other responsible entity operating civil aircraft at U.S. Air Force installations.

(v) Weather alternate airport. A U.S. Air Force installation used as a weather alternate airport as prescribed by Federal Aviation Regulations (FAR), international agreement, or other directives.

(The reporting and recordkeeping requirements in paragraphs (h), (i), and (j) approved by the Office of Management and Budget under control number 0701–0050)

§ 855.3 Aircraft exempt from the requirement for a civil aircraft landing permit or aircraft landing authorization number.

(a) Any aircraft owned and operated by:

(1) Any other U.S. government agency.

(2) U.S. Air Force aero clubs established as prescribed in AFR 215–12.

(3) Aero clubs of other U.S. military services.

(4) A U.S. state, county, municipality, or other political subdivision, when operated to support official business at any level of government.

(b) Any civil aircraft under:

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(1) Lease or contractual agreement for exclusive U.S. government use on a long-term basis and operated on official business by or for a U.S. government agency; for example, the FAA, Department of Interior, or Department of Energy. (The government normally holds liability responsibility for the aircraft.)

(2) Lease or contractual agreement to the U.S. Air Force for U.S. Air Force Civil Air Patrol (CAP) liaison purposes and operated by a U.S. Air Force CAP liaison officer on official U.S. Air Force business.

(3) CAP control for a specific mission directed by the U.S. Air Force.

(4) Contractual agreement to any U.S., state, or local government agency in support of operations involving safety of life or property as a result of a disaster.

(5) Government furnished property or bailment contract for use by a contractor, provided the federal, state, or local government has retained liability responsibilities.

(c) Civil aircraft transporting critically ill or injured individuals to or from a U.S. Air Force installation.

(d) Foreign government-owned aircraft falling within the purview of international reciprocal use agreements.

(e) Historic aircraft delivered to U.S. Air Force museums under the provisions of AFR 210-4.

Subpart B—Unauthorized landings

§ 855.4 Unauthorized landings.

The installation commander will identify an unauthorized landing as either an emergency landing, an inadvertent landing, or an intentional landing. An unauthorized landing may be designated as inadvertent or intentional whether or not the operator has knowledge of the provisions of this regulation and whether or not the operator filed a flight plan identifying the installation as a destination. On all unauthorized landings, the aircraft should be allowed minimum ground time and the installation commander:

(a) Briefs the operator on this part and the FAA requirement for reporting the incident.

(b) Has the operator prepare a circumstantial report, sign DD Form 2402, and pay applicable charges. (In some instances, it may be necessary to arrange to bill the user for the appropriate charges.) DD Form 2402 need not be completed for commercial carriers if it is known the form is already on file at HQ USAF/PRPJ.

(c) After compliance with preceding requirements, directs the operator to depart the installation.

(d) In the U.S. or its possessions, notifies the nearest FAA general aviation district office for incidents involving general aviation and the air carrier district office for incidents involving air carriers.

(e) Within a foreign country, notifies appropriate U.S. Defense Attache Office (USDAO) in the country of aircraft registration. Provides an information copy of the report to the civil aviation authority of the country concerned.

(f) Prepares a report on the landing and submits the report with supporting documentation through channels to HQ USAF/PRPJ, Washington, DC 20330-5248.

§ 855.5 Emergency landings.

Any aircraft operator who experiences an inflight emergency may land at any U.S. Air Force installation without prior authorization. An inflight emergency is defined as a situation which makes continued flight hazardous.

(a) The U.S. Air Force will use any method or means to clear an aircraft or wreckage from the runway to preclude interference with essential military operations. Removal efforts should minimize damage to the aircraft or wreckage; however, military or other operational factors may be overriding.

(b) A user making an emergency landing:

(1) Is not charged a landing fee.

(2) Pays all costs for labor, material, parts, use of equipment, tools, and so forth, to include, but not limited to:

(i) Spreading foam on the runway.

(ii) Damage to runway, lighting, and navigation aids.

(iii) Rescue, crash, and fire control services.

(iv) Movement and storage of aircraft.

(v) Performance of minor maintenance.

(vi) Fuel or oil (AFR 144-9).

(3) Files a circumstantial landing report with the installation commander and completes DD Form 2402.

(c) The installation commander:

(1) Documents total cost incurred by the U.S. government. (Use Part 812 of this chapter for cost determination.)

(2) Collects payment of all charges incurred. (In some instances, it may be necessary to arrange to bill the user for the appropriate charges.)

(3) Prepares an emergency landing report if there are no survivors.

(4) Complies with appropriate portions of § 855.4 of this part.

(5) Handles an emergency landing by a foreign military or foreign government-owned aircraft in the same manner as for a U.S. government-owned aircraft.

§ 855.6 Inadvertent unauthorized landings.

(a) The installation commander may determine a landing to be inadvertent if the aircraft operator:

(1) Landed due to flight disorientation.

(2) Mistook the U.S. Air Force installation for a civil airport.

(b) Reporting procedures in § 855.4 of this part and normal landing fees (§ 855.16 of this part) are applicable. An unauthorized landing fee (§ 855.16 of this part) may be assessed to compensate the government for the added time, effort, and risk involved in an unauthorized landing. This unauthorized landing fee may be waived by the installation commander or a designated representative if, after interviewing the pilot-in-command and appropriate government personnel, it is determined that flying safety was not significantly impaired. The pilot-in-command may appeal the imposition of an unauthorized landing fee for an inadvertent landing to the MAJCOM, whose decision will be final. A subsequent inadvertent landing will be processed as an intentional unauthorized landing.

§ 855.7 Intentional unauthorized landings.

(a) The installation commander may categorize an unauthorized landing as intentional when substantial evidence demonstrates that the pilot knew the landing was unauthorized or the civil aircraft operator:

(1) Landed without an approved DD Form 2401 on board the aircraft.

(2) Landed for a purpose not approved on the DD Form 2401.

(3) Operated an aircraft not of a model or registration number on the approved DD Form 2401.

(4) Did not request or obtain the required final clearance from the installation commander or a designated representative at least 24 hours before aircraft arrival.

(5) Did not obtain landing clearance from the air traffic control tower.

(6) Landed with an expired DD Form 2401.

(7) Obtained landing authorization through fraudulent methods.

(8) Requested permission to land from any U.S. Air Force authority, including the control tower, and was denied.

(b) Reporting procedures in § 855.4 of this part and normal landing fees (§ 855.16 of this part) are applicable. Since intentional unauthorized landings increase reporting, processing, and staffing costs, the unauthorized landing fee (§ 855.16 of this part) for (1) through (6) of this section will be increased by 100 percent. The fee will be increased 200 percent for items (7) and (8) of this section and when substantial evidence demonstrates the pilot knew the landing was unauthorized.

(c) Under the conditions described in paragraph (b) of this section, an installation commander in the U.S., its territories or its possessions may choose to detain the aircraft at the installation until:

(1) The unapproved landing has been reported to the appropriate civil aviation authority, HQ USAF/PRPJ, and the appropriate U.S. Attorney.

(2) The pilot or other competent authority of the owner has executed DD Form 2402 and prepared the circumstantial landing report.

(3) All applicable charges have been paid.

(d) The installation commander may, at his or her discretion, release the aircraft upon compliance with paragraphs (1) and (2) of this section and payment of the inadvertent unauthorized landing charge, if he or she wishes to investigate the matter further before determining whether the circumstances warrant higher fees. The aircraft must not be released without obtaining bond, promissory notes, or other security for payment of the highest charge that might be assessed.

(e) The pilot and passengers will not be detained longer than is necessary for identification, although they may be permitted to remain in a lounge or other waiting area on the base at their request for such period as the installation commander may determine (normally not to exceed close of business hours at the home office of the entity owning the aircraft, if the operator does not own the aircraft). No person will be detained involuntarily after identification is complete without coordination from the appropriate U.S. Attorney, the MAJCOM, and HQ USAF/PRPJ.

(f) The unauthorized landing may be prosecuted as a criminal trespass, especially if a debarment letter has been issued. Repeated intentional unauthorized landings prejudice the user's FAA operating authority and jeopardize future use of any U.S. Air Force installation.

Subpart C—Civil Fly-In Procedures

§ 855.8 Civil fly-ins.

Civil aircraft operators may be invited to participate in a U.S. Air Force fly-in for a base sponsored or funded activity being held at a specified U.S. Air Force installation. They will be authorized use only during the period of the event.

§ 855.9 Civil fly-in procedures.

(a) The installation commander:

(1) Requests approval from the MAJCOM or SOA.

(2) Provides HQ USAF/PRPJ/XOOR/XOOO and SAF/PAC with the date and purpose of the fly-in.

(3) Ensures that DD Form 2402 is completed by each user. DD Forms 2400 and 2401 are not required for fly-in participants.

(b) The MAJCOM or SOA ensures HQ USAF/PRPJ/XOOR/XOOO and SAF/PAC are advised of the approval or disapproval for the fly-in.

Note.—This section does not apply to civil aircraft aerobatic performance or demonstrations (Part 837 of this chapter), or transport-type (revenue or nonrevenue) flights.

Subpart D—Civil Aircraft

§ 855.10 Conditions for use of U.S. Air Force installations.

The U.S. Air Force authorizes use of its installations for a specific purpose by a named individual or company (not transferable to a second or third party) which does not extend to other types of civil aviation use. An approved landing permit does not obligate the U.S. Air Force to provide supplies, equipment, or facilities other than the landing, taxiing, and parking areas (§§ 855.17 and 18 of this part). Personnel on board are only authorized activities at the installation directly related to the type of use granted. All users are expected to submit their application (DD Forms 2400, 2401, and 2402) at least 30 days in advance of intended use and, except for weather alternate use, must contact the appropriate installation commander for final clearance at least 24 hours in advance of arrival. Failure to comply with either time limit may result in denied landing rights.

§ 855.11 Types of civil use.

Listed below are specific types of civil use the U.S. Air Force normally authorizes. Others may be considered if sufficient justification is provided. Application for each type of use must be made on a separate DD Form 2401. The letter following each type of use in paragraphs (a) through (p) of this section will be used when a landing permit number is assigned (§ 855.14(c) of this part).

(a) Contractor or subcontractor personnel (A). A U.S. or foreign contractor or subcontractor, operating corporate or personal aircraft, who uses a U.S. Air Force installation to fulfill the terms of a U.S. government contract.

Verification: The contractor or subcontractor must indicate on the DD Form 2401 the current government contract numbers; the U.S. Air Force installation required for each contract; a brief description of the work to be performed; and the name, telephone number, and address of the government contracting officer.

Note.—Potential contractors may not land at U.S. Air Force installations for the purpose of pursuing or presenting an unsolicited proposal for procurement of government business.

(b) Demonstration flights (B). Permits an aircraft or aircraft component manufacturer to display or demonstrate aircraft (nonaerobatic) or installed components to U.S. government representatives who have procurement interest or authority, or certification responsibilities.

Verification: Nonaerobatic demonstration or display must be a contractual provision or presented at the request of an authorized U.S. government representative. The name, address, and telephone number of the requesting government representative or contracting officer and contract number must be included on the DD Form 2401.

(c) Active duty U.S. military (C). Authorizes active duty U.S. military members, operating their own aircraft or aircraft leased at their own expense, to use any U.S. Air Force installation for official duty transportation (temporary duty (TDY), permanent change of station, etc.) or for private, nonrevenue flights. (Members of the U.S. Public Health Service are considered active duty U.S. military.)

Verification: Provide social security number in block 1 on DD Form 2401.

(d) Reserve Forces (D). Permits members of the U.S. Reserve Forces (including Reserve Officer Training Corps and National Guard) operating their own aircraft or aircraft leased at their own expense, to use a specific U.S. Air Force installation where their assigned unit is located to fulfill their official duty commitment or for TDY at other installations when on official travel orders.

Verification: Request routed through commander for an endorsement which validates military status and requirement for use of U.S. Air Force installations listed on permit application. When appropriate, travel orders must be on board the aircraft.

(e) Civilian employees of the U.S. government (E). Permits civilian employees of the U.S. government, operating their own aircraft or aircraft leased at their own expense, to use U.S. Air Force installations only for official government business travel.

Verification: A copy of current travel orders or other official travel certification must be on board the aircraft.

(f) Special conveyance (F). Permits government personnel to use a chartered aircraft for single flights between two or more points for official business only. The official directing the travel must authorize use of special conveyance and arrangements for hiring the aircraft must be made by a transportation office (AFR 75-8, volume I).

Verification: A copy of official orders citing the special conveyance authorization must be on board the aircraft.

(g) Retired U.S. military (G). (Includes Regular and Reserve personnel receiving retirement pay and an identification card authorizing use of the commissary, base exchange, and military medical facilities.) Permits retired U.S. military members, operating their own or leased aircraft, to use a U.S. Air Force installation in conjunction with activites related to retirement entitlements authorized by law or regulation.

Verification: A copy of retirement orders must be on file with the approving authority.

(h) Civil Air Patrol (CAP) (H). Permits aircraft owned and operated by the CAP or by a CAP member to use designated U.S. Air Force installations for official CAP activities.

Verification: Endorsement of the application by HO. CAP-USAF/DO, Maxwell AFB AL 36112-5572.

(i) Aero club member (I). Permits individuals to operate their own aircraft into and out of the U.S. Air Force airfield where they hold active aero club membership.

Verification: Written endorsement on the DD Form 2401 by the aero club manager which validates the individual's aero club membership. (Members using U.S. Air Force aero club facilities located on a civil airfield must provide the endorsement, and DD Forms 2400 and 2402 to the local commander. DD Form 2401 is not required.)

(j) Weather alternate airport (J). Permits scheduled air carriers to divert to a specified U.S. Air Force installation when weather conditions require a change from the original destination while in flight. Aircraft may not be dispatched from the point of departure to a U.S. Air Force airfield which has been designated as an approved weather alternate.

Verification: Actual use is predicated on weather conditions at scheduled destination. Scheduled route structure must encompass the U.S. Air Force airfield requested for use.

(k) Military Airlift Command (MAC) contract or charter (K). Permits an air carrier to use a U.S. Air Force installation under the terms of a MAC contract. Landing permits for this type of use are processed by HQ MAC/TRC.

Verification: International flights must have a MAC Form 8, Civil Aircraft Certificate, on board the aircraft. Domestic flights must have either a Certificate of LOGAIR Operations (U.S. Air Force—AFLC), a Certificate of QUICKTRANS (U.S. Navy), a Certificate of Courier Service Operations (MAC), or a Certificate of Intra-Alaska Operations (MAC) on board the aircraft.

(l) U.S. government contract or charter operator (L). Permits an air carrier to use a U.S. Air Force installation under the terms of a U.S. government contract or charter agreement by a U.S. government department or agency other than the DOD.

Verification: Carrier must identify the chartering agency and provide the name, address, and telephone number of the government official procuring the transportation. An official government document must be on board the aircraft to substantiate that the flight is operating for a U.S. government department or agency. (National Aeronautics and Space Administration charters are identified by SF 1169, U.S. Government Transportation Request. Army and Air Force Exchange Service (AAFES) charters are identified by AAFES Form 4150-1, AAFES Purchase and Delivery Order.)

(m) Contractor or subcontractor charter (M). An operator who uses a U.S. Air Force installation for the transportation of U.S. or foreign contractor or subcontractor personnel or cargo in support of a current U.S. government contract.

Verification: The contractor or subcontractor must provide written validation to the approving authority that the charter operator will be operating on their behalf in fulfilling the terms of a government contract, to include current government contract numbers and titles; the U.S. Air Force installations which are required; and the name, telephone number, and address of the government contracting officer.

(n) DOD charter (N). A civil aircraft operator who uses a U.S. Air Force installation for the official transportation of DOD personnel or cargo.

Verification: Tender of service approved by the Military Transportation Management Command (MTMC) and an SF 1169 or SF 1103, U.S. Government Bill of Lading, on the aircraft to validate the operation is for the DOD (AFM 75-2). (Passenger charters arranged by the MTMC are assigned a commercial air movement (CAM) or civil air freight movement (CAFM) number each time a trip is awarded. Installations will normally be notified by message at least 24 hours in advance of a pending CAM operation.)

(o) Media (O). Permits representatives of the media to gather information about a U.S. government operation or event. Use will be considered on a case-by-case basis; for example, if other forms of transportation would preclude meeting a production deadline or if use would be in the best interest of the U.S. government, authorization would be warranted. DD Forms 2400 and 2402 should be on file with HQ USAF/PRPJ to ensure prompt telephone approval for validated requests.

Verification: Concurrence of the installation commander, base operations officer, and public affairs officer.

(p) Other. Under certain circumstances, based on the justification provided, use of U.S. Air Force installations may be authorized for:

(1) Aircraft certification testing as required by FARs which does not involve use of Air Force testing hardware (P).

(2) Commercial development testing at Air Force flight test facilities (Part 835 of this chapter) (Q).

(3) Commercial charter operations (R).

(4) Commercial aircrew training flights (S).

(5) Private, nonrevenue producing flights (T).

(6) Temporary scheduled air service (U).

(7) Foreign government charter (V).

(8) Flights transporting foreign military sales (FMS) material (W). (Hazardous, oversized, or classified cargo only.)

Verification: Cargo information must be provided as specified in § 855.24 of this part. Application must also include the Department of Transportation exemption number when hazardous cargo is to be transported, if required.

(9) Certified flight record attempts (X).

(10) Political candidates (Y). (For security reasons only.) Aircraft either owned or chartered explicitly for a Presidential or Vice Presidential candidate, including not more than one accompanying overflow aircraft for the candidate's staff and press corps. Candidate must be a Presidential or Vice Presidential candidate who is being furnished protection by the U.S. Secret Service. Aircraft clearance is predicated on the Presidential or Vice Presidential candidate being aboard one of the aircraft (either on arrival or departure).

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After normal duty hours, flight schedule changes must be reported through the HQ U.S. Air Force Operations Center. Normal landing fees will be charged. Fuel may be sold on a cash or credit basis (AFR 144–9). To reduce conflict with U.S. statutes and U.S. Air Force operational requirements, and to provide expeditious handling of aircraft and passengers, the following guidance applies for the installation commander:

(i) Minimum official (base officials) welcoming party.

(ii) No special facilities are to be provided.

(iii) No onbase political rallies or speeches.

(iv) No official transportation should be provided for unauthorized personnel (press, local populace, etc.). Verification: The Secret Service must confirm that use has been requested in support of their security responsibilities.

(11) Aircraft either owned or personally chartered for transportation of the President, Vice President, or a past President of the U.S.; the head of any U.S. federal department or agency; or a member of the Congress (Z). Use by other than the President or Vice-President must be for official government business. Any request received by MAJCOM or installation commanders from or for members of the Congress must be reported to the Director of Legislative Liaison (SAF/LL) as prescribed in AFR 11–7.

§ 855.12 Approving authority.

The authority to approve or disapprove civil aircraft use of U.S. Air Force installations is vested in:

(a) Directorate of Programs and Evaluation, Deputy Directorate for Bases and Units (HQ USAF/PRPJ). HQ USAF/PRPJ may act on any request for any type of civil aviation use; however, it reserves exclusive approval authority for the following:

(1) Use of multiple U.S. Air Force installations which are within the jurisdiction of multiple MAJCOMs or SOAs, except as delegated in paragraph (b) of this section.

(2) Those listed in § 855.11 (o) and (p) of this part except as specifically delegated to another approving authority.

(3) Joint-use (§ 855.28 of this part).

(4) Any unusual or unique use not specifically authorized by this regulation.

(b) MAJCOM, SOA, or installation commander. With the exception of those uses reserved for HQ U.S. Air Force and HQ MAC approval (paragraphs (a) and (d) of this section), MAJCOMs, SOAs, or installation commanders may approve or disapprove applications (DD Forms 2400, 2401, and 2402) for types of use described in § 855.11 of this part at installations under their jurisdiction. Additionally, they may give approval for one-time, official business operations which are in the best interest of the U.S. government and do not violate other provisions of this regulation. As a minimum, for one-time flights authorized under this paragraph, insurance verification and a completed DD Form 2402 must be provided before the aircraft operates into the U.S. Air Force airfield. Authority to approve civil aircraft use of U.S. Air Force airfields on foreign soil may be limited. Commanders outside the continental U.S. (CONUS) must be familiar with international agreements which may render inapplicable, in part or in whole, provisions of this regulation.

(c) Commander, Alaskan Air Command (AAC). In addition to paragraph (b) of this section, the Commander, AAC, may approve and disapprove landing permits for use under § 855.11(p)(3) and (5) at Alaskan airstrips within the jurisdiction of HQ Tactical Air Command (TAC) and HQ AAC, with the exception of Shemya AFB. All use of Shemya AFB will be approved by HQ USAF/PRPJ. HQ AAC must provide HQ TAC/DOO with a copy of all permits approved for use of TAC airfields.

(d) Commander, MAC. In addition to paragraph (b) of this section, the Commander, MAC, may approve use of U.S. Air Force installations worldwide for flights in support of MAC contracts.

(e) Commander, Pacific Air Forces (PACAF). In addition to paragraph (b) of this section, the Commander, PACAF, may approve private, nonrevenue flights transiting Wake Island for refueling purposes.

(f) Commander, Air Force Space Command (AFSPACECOM). In addition to paragraph (b) of this section, the Commander, AFSPACECOM, may approve civil flights transiting Sondrestrom AFS, Greenland, for refueling purposes.

(g) USDAO. The USDAO, acting on behalf of HQ USAF/ PRPJ, may approve a request for a one-time landing at a U.S. Air Force installation provided:

(1) The request is for official government business of either the U.S. or the country to which the USDAO is accredited.

(2) The U.S. Air Force installation is located within the country to which the USDAO is accredited.

(3) Approval will not violate any agreement with the host country.

(4) The installation commander concurs.

§ 855.13 Application procedures.

The prospective user can obtain a copy of this part (AFR 55–20) and the required forms from a U.S. Air Force installation or an approving authority. The user is responsible for reviewing the regulation and accurately completing the forms before submitting them to the approving authority (§ 855.12 of this part). The types of use normally authorized are specified in § 855.11 of this part. The verification required for each type of use must be included with the application. To allow time for processing, all documents and a self-addressed, stamped envelope should be submitted at least 30 days before the date of the first intended landing. The name of the user must be the same on all forms. Original handscribed signatures, not facsimile elements, are required on all forms. Prospective civil users of a U.S. Air Force installation must apply for authorization as follows:

(a) Have the insurance company or its authorized agent complete and sign DD Form 2400. The user name in item 3 of the DD Form 2400 must correspond with the user name in item 1 of DD Form 2401. All coverages must be stated in U.S. dollars. See table 1 for required minimum coverage. The DD Form 2400 is valid until 1 day before insurance expiration date. A DD Form 2400 with the statement "until cancelled" in lieu of a specific expiration date is valid for 2 years from the effective date. Upon expiration, the DD Form 2400 must be resubmitted along with DD Form 2401 for continued use of Air Force installations. The DD Form 2400 may be sent to the approving authority by either the user or insurer.

(b) Prepare and sign a separate set of DD Forms 2401 for each type of use requested. Submit DD Form 2401 in an original and two copies when HQ USAF/PRPJ is the approving authority, and an original and three copies for other approving authorities.

(1) Provide, in alphabetical order, the name and location of each U.S. Air Force installation requested for use. (The statement "Any U.S. Air Force Installation Worldwide" is acceptable for users performing MAC charters. "Any U.S. Air Force Installation Within the CONUS" is acceptable, if warranted by official government business, for other users.)

(2) Provide a brief explanation of purpose for use with verification for each type of use as specified in § 855.11 of this part. When the purpose for use does not correspond with the categories listed in § 855.11 of this part, it may be considered if sufficient justification is provided.

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(3) Aircraft registration numbers are required unless the DD Form 2400 indicates coverage for "any aircraft of the listed model owned and or operated" in lieu of specific registration numbers (§ 855.15 of this part). All other aircraft information must be provided.

(4) The period of use is determined by the insurance expiration date shown on a completed DD Form 2400. Except where an earlier date of expiration is indicated on the permit, the landing permit will expire 1 day before the insurance coverage expiration date shown on DD Form 2400, or 2 years from the date the permit is issued when the insurance expiration date either exceeds 2 years or is indefinite (for example, "until cancelled").

(5) Once the DD Form 2401 has been approved and distributed, users may make no further entries or amendments without the consent of the approving authority.

(6) Upon expiration, resubmit DD Form 2401 along with DD Form 2400 for continued use of U.S. Air Force installations.

(c) Complete, sign, and send original DD Form 2402 to the approving authority. When the user is a corporation, the DD Form 2402 must be completed and signed by a second corporate officer (other than the officer executing DD Form 2402) to certify the signature of the first officer. As necessary, the U.S. Air Force also may require that the form be authenticated by an appropriately designated third official. Once the completed and signed DD Form 2402 has been accepted by an approving authority, and unless rescinded for cause, it is valid until obsolete, and need not be resubmitted to the same approving authority.

§ 855.14 Processing procedures.

Upon receipt of an application (DD Forms 2400, 2401, and 2402) for use of a U.S. Air Force installation, the approving authority:

(a) Determines the availability of the installation and its capability to accommodate the type of use requested.

(b) Determines the validity of the request and ensures all entries on DD Forms 2400, 2401, and 2402 are in conformance with this regulation.

(c) Approves DD Form 2401 (with conditions or limitations listed) by completing all items in the approving authority section. Installation commanders assign a permit number comprised of the last three letters of the installation's International Civil Aviation Organization (ICAO) code identifier, the last two digits of the calendar year, a four-digit number sequentially assigned, and a letter suffix (§ 855.11 of this part) indicating the type of use; such as ADW 86-0001C. MAJCOMs, SOAs, and USDAOs use a three-position organization abbreviation; such as MAC 86-0002K.

(d) Disapproves the request if:

(1) Use interferes with current operations, security, or safety.

(2) Adequate civil facilities are collocated or available in the proximity of the requested U.S. Air Force installation when use is not required for official government business (§ 855.1(a)(8)).

(3) Use could result in substantial competition with civil airports or air carriers.

(4) Civil user has not fully complied with this regulation.

(e) Distributes the approved DD Form 2401 before the first intended landing, when possible, and:

(1) Retains original.

(2) Returns two copies to the user.

(3) Provides a copy to HQ USAF/PRPJ, when the approving authority is other than HQ USAF/PRPJ. HQ USAF/PRPJ will provide a computer printout of current landing permits to the MAJCOMs. The MAJCOMs will make distribution to the appropriate installations.

§ 855.15 Insurance requirements.

Each user who applies for permission to land at a U.S. Air Force installation must present proof of third-party liability insurance on DD Form 2400, with the amounts stated in U.S. dollars. The policy number, effective date, and expiration date are required. The statement "until cancelled" may be used in lieu of a specific expiration date. The geographical area of coverage must include the area where the U.S. Air Force installation of proposed use is located. If several aircraft or aircraft types are included under the same policy, a statement such as "all aircraft owned," "all aircraft owned and or operated," or "all aircraft operated," may be used in lieu of aircraft registration numbers. To meet the insurance requirements, either Split Limit coverage for Bodily Injury, Property Damage, and Passengers or a Single Limit coverage is required. The coverage carried will be at the expense of the user with an insurance company acceptable to the U.S. Air Force and must be current during the period the U.S. Air Force installation will be used. The liability required is computed on the basis of aircraft maximum gross takeoff weight (MGTOW) and passenger or cargo configuration. Minimum coverage will not be less than the amount indicated in table 1.

TABLE 1.—AIRCRAFT LIABILITY COVERAGE REQUIREMENTS

[Stated in U.S. dollars]

	Bodily injury	Property damage	Passenger
(a) Civil aircraft without passenger seats			
12,500 pounds and under—			
Each person	$500,000		
Each accident	1,000,000	$500,000	
Over 12,500 pounds—			
Each person	500,000		
Each accident	5,000,000	3,000,000	
(b) Civil aircraft with passenger seats			
12,500 pounds and under—			
Each person	500,000		$500,000
Each accident	1,000,000	500,000	[1] 500,000
Over 12,500 pounds—			
Each person	500,000		500,000
Each accident	5,000,000	3,000,000	[2] 500,000

[1] Times number of passenger seats.

[2] Times 75 percent times number of passenger seats.

(a) Any insurance presented as a single limit of liability or a combination of primary and excess coverage will be an amount equal to or greater than the minimums required for bodily injury, property damage, and passengers for each accident as indicated in table 1.

(b) Each user's policy will specifically provide that:

(1) The insurer waives any right or subrogation they may have against the U.S. by reason of any payment made under the policy for injury, death, or property damage that might arise out of or in connection with the insured's use of any U.S. Air Force installation.

(2) The insurance afforded by the policy applies to the liability assumed by the insured under DD Form 2402.

(3) If the insurer or the insured cancels or reduces the amount of insurance afforded under the listed policy before the expiration date indicated on DD Form 2400, the insurer will send written notice of policy cancellation or coverage reduction to the approving authority at least 30 days before the effective date of the cancellation or reduction. (The policy must state that any cancellation or reduction will not be effective until at least 30 days after such notice is sent.)

§ 855.16 Landing, parking, and storage fees.

(a) *Fees.* All fees are normally due and collectable at time of use of any U.S. Air Force airfield and are deposited with the accounting and finance officer using DD Form 1131, Cash Collection Voucher. In some instances, it may be necessary to bill the user for charges incurred. Guidance and assistance may be obtained from the installation accounting and finance officer. The landing, parking, and storage fees (tables 2 and 3) are based on the aircraft

MGTOW. The installation commander may permit parking and storage on a nonexclusive, temporary, or intermittent basis, when compatible with military requirements. The time that an aircraft spends on an installation is at the discretion of the installation commander but should be linked to the type of use authorized. At those locations where there are U.S. Air Force aero clubs, parking and storage privileges may be permitted in the area designated for aero club use without regard for the type of use authorized, if consistent with aero club policies. Any such permission may be revoked upon notice, based on military needs and the installation commander's discretion.

(b) *Exceptions.* The landing, parking, and storage fees are not applicable for civil aircraft which are:

(1) Privately owned, leased, or operated by active duty military members, retired U.S. military members, CAP members, members of the Reserve Forces, or U.S. government civilian employees.

(2) Operated by aero club members (§ 855.11(i)).

(3) Operated in support of official government business, including those authorized use under § 855.11(b), or any use, the cost of which is subject to reimbursement by the U.S. government.

(4) Foreign government-owned aircraft as indicated in § 855.25.

(5) Foreign civil aircraft chartered for use by foreign heads of state on official state visits.

(6) Exempt from the requirement for a civil aircraft landing permit.

TABLE 2.—LANDING FEES

Aircraft max gross takeoff Wt (MGTOW)	Normal fee	Unauthorized fee	Intentional fee	Minimum fee	U.S. territories and possessions	Overseas
	$1.50/1,000 lb MGTOW or fraction thereof.			$20	X	
	$1.70/1,000 lb MGTOW or fraction thereof.			25		X
Up to and including 12,500 lb.		100			X	X
12,501 to 40,000 lb.		300			X	X
Over 40,000 lb.		600			X	X
			Increase unauthorized fee by 100% or 200%.		X	X

TABLE 3.—PARKING AND STORAGE FEES

Fee per aircraft for each 24-hour period or less	Minimum fee	Charge begins	Ramp	Hangar
$1.00/100,000 lb MGTOW or fraction thereof	$20	6 hours	X	
$2.00/100,000 lb MGTOW or fraction thereof	20	Immediately		X

§ 855.17 Aviation fuel and oil purchases.

When a user qualifies under the provisions of AFR 144–9, purchase of U.S. Air Force fuel and oil may be made on a cash basis, or on a credit basis after establishment of an Authorized Credit Letter (AFR 144–9, attachment 1). The Authorized Credit Letter must be submitted to HQ USAF/PRPJ and approved by SA-ALC/ACFMA, Kelly AFB TX 78241–5000, before products can be purchased on credit. Aviation fuel charges will be billed as prescribed in AFR 144–9 and AFM 67–1, volume I, part three, chapter 1.

§ 855.18 Supply and service charges.

Supplies and services furnished to a user will be charged for as prescribed in AFM 67–1, volume I, part one, chapter 10, section N, subsection 2, and AFR 177–102, paragraph 29.24. A personal check with appropriate identification, cashier's check, money order, or cash is an acceptable means of payment. Charges for handling FMS cargo are prescribed in AFR 170–3.

Subpart E—Foreign Government Aircraft

§ 855.19 General information

All foreign military or foreign government-owned, noncommercially operated aircraft (§ 855.2(k)) must have authorization before using U.S. Air Force installations. Where agreements do not exist between the U.S. and a foreign government or between the U.S. Air Force and a foreign air force for reciprocal use by military aircraft, the foreign government must specifically request permission for its aircraft to land at U.S. Air Force installations.

Note.—Permission to land at U.S. Air Force installations in the U.S. or foreign countries does not constitute nor take the place of diplomatic or other overflight clearance requirements.

§ 855.20 Application procedures.

Foreign government aircraft are not required to submit DD Forms 2400, 2401, and 2402 for permission to land at a U.S. Air Force installation. Instead, the foreign government must:

(a) Complete and send written request through its air attache to HQ USAF/CVAII, Washington, DC 20330–2006, a minimum of 72 hours, excluding Saturday, Sunday, and U.S. holidays, before first intended landing. (For use of U.S. Air Force installations in the Canal Zone, all Latin American countries are authorized to submit their requests direct to Commander, Southern Air Division (USAFSO), APO Miami 34001–5000. Requests must be submitted at least 24 hours in advance.)

(b) Submit a request for diplomatic clearance to the Department of State, if flight to U.S. territory is desired, unless flight in U.S. airspace is already authorized by an appropriate agreement

(c) Submit a request for diplomatic or other required clearance to each appropriate foreign country which is to be overflown or in which a landing is to be made, when use of a U.S. Air Force installation in a foreign country is desired.

§ 855.21 Processing procedures.

When an application is received, the approving authority:

(a) Determines the availability of the installation and its capability to accommodate the user request.

(b) Ensures that the prospective foreign government user has a valid requirement.

§ 855.22 Approving authority.

(a) *Assistant Vice Chief of Staff, International Affairs Division (HQ USAF/CVAII).* HQ USAF/CVAII acts on all requests for use of a U.S. Air Force installation by foreign government aircraft except those specifically delegated to another approving authority. An aircraft landing authorization number (ALAN) is assigned each request approved for foreign government aircraft. HQ USAF/CVAII will obtain telephonic clearance from the consolidated command post at Howard AFB, Panama, before issuing an ALAN to any country whose aircraft are transiting Howard while en route to or from the U.S. Appropriate U.S. Air Force installations, MAJCOMs, and Air Staff offices will be notified by message.

(b) *Commander, USAFSO.* Commander, USAFSO may act on requests from any Latin American country for the country's military

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aircraft, or other government-owned aircraft not engaged in commercial operations, to use U.S. Air Force installations under USAFSO control, ensuring all authorizations are consistent with current directives. USAFSO will provide appropriate billing instructions and flight information in a landing authorization message.

§ 855.23 Aviation fuel and oil purchases.

U.S. Air Force aviation fuel and oil may be purchased for foreign government aircraft as authorized by separate agreement or as stated in the notification message. Aviation fuel and oil charges will be billed as prescribed in AFM 67–1, volume I, chapter 1.

§ 855.24 Foreign military sales (FMS) cargo.

(a) *FMS charges.* So that the U.S. Air Force may properly apply charges for loading and other services performed in support of foreign government aircraft transporting FMS cargo, the following information is required on each request:

(1) Description of cargo (nomenclature) to include requisition numbers, if available, applicable FMS case(s) number(s), and delivery term codes.

(2) U.S. Air Force agency with which prior arrangements have been made for provision of military terminal loading and or other services.

(3) U.S. government FMS case management agency to which costs for services rendered are chargeable.

(4) Name, address, and telephone number of freight forwarder.

(5) Name, address, and telephone number of shipper.

(b) *Explosives and other hazardous material.* Aircraft transporting hazardous material must specify in paragraph 5 of the ALAN request the U.S. Department of Transportation proper shipping name and hazard class with respective number of pieces, weight, and cube. Additionally, in the case of explosives, provide net explosive weight of each explosive class and identify the U.S. facility where the hazardous material is to be loaded or unloaded.

(c) *Loading services.* When an aircraft picks up or delivers material at a U.S. Air Force base, it must be equipped with sufficient cargo pallets and or tiedown materials to facilitate loading. Compatible 463L pallets and nets will be exchanged on a one-for-one basis for serviceable units. Nonstandard pallets and nets cannot be exchanged; however, they will be used to build-up cargo loads after arrival of the aircraft. Aircraft arriving without sufficient cargo loading and tiedown devices must be floor loaded and the aircraft crew will be responsible for purchasing necessary ropes, chains, etc.

§ 855.25 Supply and service charges.

(a) Supplies and services furnished to a foreign government aircraft which are not covered by an FMS case will be charged for as prescribed in AFM 67–1, volume I, part one, chapter 10, section N, subsection 2; AFR 177–102, paragraph 29.24; and AFR 170–3; or other applicable laws and regulations.

(b) Invoicing procedures for terminal services (aircraft loading or unloading) prescribed in AFR 177–112, paragraph 4–25, will be used except when loading or unloading services are chargeable to an FMS case; that is, material assigned delivery term code 8 in the DD Form 1513, U.S. DOD Offer and Acceptance. FMS material assigned delivery term code 8 will be billed to the FMS case as prescribed in AFR 170–3.

(c) Communications services are normally provided only for official government business. If charges accrue to the U.S. government, reimbursement must be provided.

§ 855.26 Landing, parking, and storage fees.

Fees will not be charged for foreign military or foreign government aircraft unless specified in the HQ USAF/CVAII message granting authorization for landing.

§ 855.27 Waiver authority.

HQ USAF/CVAII reserves the right to waive the above procedures for any unusual or unique use not specifically authorized by this regulation for use of U.S. Air Force facilities by foreign government aircraft.

Subpart F—Joint Use of a U.S. Air Force Installation

§ 855.28 U.S. Air Force joint-use policy.

Joint-use of a U.S. Air Force installation will be considered only if there will be no compromise of military response, security, readiness, or safety and when requested by authorized local government representatives eligible to sponsor a public airport. Such requests are considered and evaluated on an individual basis by all reviewing levels. Generally, an airfield will be considered for joint-use if it does not have a nuclear alert force, pilot training, nuclear storage, or a major classified mission. Civil operations must begin within 5 years of formalizing an agreement.

§ 855.29 Procedures for sponsor.

To initiate consideration for joint-use of a U.S. Air Force installation, a formal proposal must be submitted by a local government agency eligible to sponsor a public airport to the installation commander, and include the following:

(a) Type of operation.

(b) Type and number of aircraft to be located on or operating at the installation.

(c) An estimate of the number of annual operations for the first 5 years.

§ 855.30 Procedures for U.S. Air Forces.

(a) The installation commander, on receipt of the request, without precommitment or comment, will send the documents to the Air Force representative at the FAA regional office within the geographical area where the installation is located, with an information copy to HQ USAF/PRPJ.

(b) The U.S. Air Force representative at the FAA regional office will provide comments on the request regarding airspace, air traffic control, and other related areas, return the request with appropriate comments to the installation commander, and advise local FAA personnel of the proposal for joint-use. Operational considerations will be based on the premise that military aircraft will receive priority handling (except in emergencies), if traffic must be adjusted or resequenced. Manpower increases in air traffic control or related support activities required solely for the civil operation, normally will not be considered but if accommodated, must be fully reimbursed by the joint-use sponsor. Additional equipment or relocation of equipment must be funded by the civil sponsor.

(c) The installation commander will comment on the request and send the comments and all related documents through channels to HQ USAF/PRPJ.

(d) The U.S. Air Force will act as lead agency for the preparation of the environmental analysis (Part 989 of this chapter). The community government representatives, working in coordination with local U.S. Air Force personnel and other concerned local or federal officials, must identify the proposal, develop conceptual alternatives, and provide planning, socioeconomic, and environmental information as specified by HQ USAF/LEEV. The information must be complete and accurate in order to serve as a basis for the preparation of U.S. Air Force environmental documents. The sponsor will normally fund the environmental studies required for the environmental impact analysis process. Environmental analysis requirements can be obtained from HQ USAF/LEEV, Washington, DC 20332–5000.

(e) In addition to the environmental analysis, HQ USAF/PRPJ will consider all of the following factors when evaluating a joint-use proposal:

(1) The current and programmed military activities at the installation.

(2) Runway and taxiway facilities. Joint-use will normally not be considered at locations with single runway capacity.

(3) Security. Joint-use increases the possibility for sabotage, terrorism, and vandalism. Joint-use will not be considered:

(i) If military and civil aircraft would be collocated.

(ii) When other than normal airfield facilities would be shared.

(iii) If access to the civil facilities would require routine transit through the base.

(4) Availability of supplies and maintenance services.

(5) Volume and type of military traffic.

(i) Compatibility of proposed civil operations with present and planned military operations.

(ii) Normally, aircraft must be certified for operation under instrument flight rules (IFR), equipped with a two-way radio, and operated by an IFR qualified crew.

(6) Fire, crash, and rescue services.

(7) The extent to which the proposed use might detract from the installation capability to meet national defense needs.

(8) Availability of public airports to accommodate the current and future civil aviation requirements of the community and the practicality of constructing or expanding a public airport.

(9) Availability of sufficient land for civil facilities. The majority of land for the civil facilities must be located on the perimeter of the U.S. Air Force installation or be segregatable in a manner which does not detract from security. Federal legislative jurisdiction should be retroceded to the State after joint-use is implemented. If the community does not already own the needed land, it must be acquired at no expense to the U.S. government. If land presently owned by the government is desired, the community must contact the General Services Administration regarding availability of excess U.S. government property and submit an application through FAA (50 U.S.C. 1622). Application for lease of U.S. Air Force property must be processed through channels to HQ USAF/LEER as prescribed in AFR 87-3. All real property outleased will be processed through the Corps of Engineers at fair market value.

(10) Whether the community would acquire, construct, and maintain all necessary facilities for civil aviation operations; for example, a terminal building, parking ramp, taxiways, and, if appropriate, a civil runway. The U.S. Air Force will not provide manpower to install, operate, maintain, alter, or relocate navigation equipment or aircraft arresting systems for the sole use of civil aviation. U.S. Air Force approval would be required on siting, design, and construction of the civil facilities.

(11) Terms for reimbursement. The civil sponsor must reimburse the U.S. Air Force a proportionate share for maintenance and operation of the government runway and other facilities used.

(f) The proposed joint-use agreement will be negotiated by HQ USAF/PRPJ and concluded on behalf of the Air Force by SAF/MI. The joint-use agreement will state the extent to which the provisions of this regulation will apply to all civil aviation use authorized.

(g) When processing major amendments to existing joint-use agreements, (a) through (f) of this section are applicable.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-25423 Filed 11-12-86; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

Natural Resource Damage Assessments

AGENCY: Office of the Secretary, Interior.

ACTION: Extension of comment period.

SUMMARY: On August 1, 1986, the Department of the Interior (Department) published a final rule (51 FR 27674) establishing procedures for assessing damages to natural resources for purposes of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and the Clean Water Act. In the **Federal Register** publication, the Department requested additional public comment on the concept of a "special resource" exception to the damage measurement rule contained in the final type B regulation (51 FR 27724). The Department is extending the period for public comment on the special resource concept from September 29, 1986, to November 28, 1986.

DATE: Comments on the concept of "special resources" should be submitted by November 28, 1986.

ADDRESS: Comment should be sent to: Keith Eastin, Deputy Under Secretary, CERCLA 301 Project Director, Room 4354, Department of the Interior, 1801 "C" Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Keith Eastin, (202) 343-5183; David Rosenberger, (202) 343-1301; Alison Ling, (415) 556-8807; or Willie Taylor, (202) 343-7531.

SUPPLEMENTARY INFORMATION: In the December 20, 1985, Notice of Proposed Rulemaking (50 FR 52126), the Department of the Interior proposed an exception to the general common law rule that natural resource damages are the lesser of restoration or replacement costs, or the diminution of use values. This exception, which covered a narrow class of resources called "special resource," was set forth in § 11.35(d) of the proposed rule. The intent of this concept was to create a very narrow exception to the general common law rule that would have allowed damages to be based on restoration or replacement costs for such "special resources."

After careful evaluation of the public comments on the proposed notice the Department deleted the special resource exception from the final type B rule, but indicated that it would further consider the need for, and the extent of, any exception. The Department requested, in 51 FR 27724, additional public comment on the issue. The Department indicated that it would implement any changes as a result of the review and consideration of public comment received by amending the final type B rule. Upon request, the Department has granted a 60-day extension of time to comment. The extension is retroactive to September 29, 1986.

The Department appreciates the interest in the special resource issue. The Department intends to respond to the comment submitted and will, if necessary, propose amendments to the final type B rule relating to the special resource concept on or about March 15, 1987.

Dated: November 7, 1986.

Keith E. Eastin,

Deputy Under Secretary.

[FR Doc. 86-25552 Filed 11-12-86; 8:45 am]

BILLING CODE 4310-10-M

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 205

Disaster Assistance; Withdrawal of Proposed Revisions

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Withdrawal of Proposed Regulations.

SUMMARY: The Federal Emergency Management Agency (FEMA) gives notice that proposed rules revising disaster assistance regulations (51 FR 13332, April 18, 1986) have been withdrawn.

FOR FURTHER INFORMATION CONTACT: John Lundberg, Office of Disaster Assistance Programs, FEMA, Room 714, 500 C Street SW., Washington DC 20472 (202) 646–3688.

SUPPLEMENTARY INFORMATION: On April 18, 1986, FEMA published in the **Federal Register** (51 FR 13332–13373) proposed rules which would have revised Federal disaster assistance regulations, 44 CFR Part 205, Subpart C, The Declaration Process and State Commitment; Subpart D, Temporary Housing Assistance; Subpart E, Public Assistance Eligibility Criteria; Subpart H, Project Administration; and Subpart M, Hazard Mitigation. FEMA has determined that these proposed regulations should be withdrawn.

Therefore, the proposed revisions to disaster assistance regulations are withdrawn and Chapter I, Title 44 of Code of Federal Regulations is not amended by revising Part 205.

Dated: November 6, 1986.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 86–25553 Filed 11–12–86; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

46 CFR Part 580

[Docket No. 86–29]

Maritime Carriers and Related Activities in Foreign Commerce; Filing of Service Contracts and Availability of Essential Terms

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend its rules governing service contract recordkeeping because of excessive delays the Commission has experienced in promptly obtaining adequate service contract records. The Proposed Rule would require ocean common carriers and conferences to maintain service contract records in the United States in an organized, readily accessible manner; to identify the location of records and recordkeeper(s); and to produce service contract records within 15 days from the date of a Commission request.

DATE: Comments due on or before January 12, 1987.

ADDRESS: Comments (original and 20 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT:

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573 (202) 523–5740.

Robert G. Drew, Director, Bureau of Tariffs, 1100 L Street, NW., Washington, DC 20573, (202) 523–5796.

SUPPLEMENTARY INFORMATION: Section 8(c) of the Shipping Act of 1984 (1984 Act or Act), 46 U.S.C. app. 1707(c), authorizes ocean common carriers or conferences to enter into service contracts with shippers or shippers' associations, subject to the requirements of the Act and the Commission's regulations. The Commission's rules governing the use of service contracts require, among other things, that ocean common carriers and conferences maintain service contract shipment records for a period of five years from the termination of each contract, 46 CFR 580.7(j). In addition, service contracts are required to state the ". . . shipment records which will be maintained to support the contract," 46 CFR 580.7(b)(3)(vi).

The Commission's Interim Rules implementing the 1984 Act, 49 FR 18852, May 3, 1984, required service contract shipment records to be maintained by a resident representative *in the United States* for a period of five years from the completion of the contract. However, when the Commission adopted final service contract rules, it decided against requiring records to be kept in the United States, because there appeared to be no compelling necessity to do so at the time. The Commission made it clear, however, that if any difficulties were encountered in obtaining service contract information in the future, it would consider reimposing a United States recordkeeping requirement. Docket No. 84–21, *Publishing and Filing Tariffs by Common Carriers in the Foreign Commerce of the United States—Service Contracts and Time/Volume Contracts* 49 FR 45370, November 15, 1984.

The Commission has now experienced considerable difficulties in obtaining service contract records. Approximately twenty-five percent of the service contract audits scheduled by the Commission's Bureau of Investigations have been delayed for varying periods of time. In some cases, the Commission has had to wait over eight months to receive the requested information from carriers or conferences. Moreover, the fact that some service contract records are located overseas has resulted in additional delays caused by foreign government involvement in the process of producing requested records. In addition, the kinds of records maintained by carriers have not always proven to be sufficient to enable the Commission to verify compliance with a contract. Accordingly, the Commission is not proposing a rule to effectively deal with the problem of timely production of service contract records, including a requirement that such records be maintained in the United States.

The Proposed Rule defines "service contract records," and requires each service contract to identify the specific location of the records within the United States, and the name, title, address, and telephone number of the individual who will make records available to the Commission. The Proposed Rule would also require that every ocean common carrier or conference tender services contract records within 15 days from the date of a written request by designed officials of the Commission. The Proposed Rule also retains the present requirement to maintain records for five years and adds a requirements that the records be maintained in an organized, readily accessible manner.

The auditing of service contracts is vital to the Commission's responsibility to ensure that ocean common carriers and conferences are abiding by the terms of service contracts and to ensure that acts prohibited by the 1984 Act are treated appropriately. Essential to the auditing process is timely production of records which are capable of verifying compliance with service contract terms. Maintaining the records in the United States and providing the Commission with the location of records and name of the ocean common carrier or conference representatives which maintain such records will expedite production of the records. The production of records or documents within 15 days from the date of the written request appears reasonable, particularly in light of the proposed requirement that ocean common carriers and conferences maintain such records in the United States. This Proposed Rule should permit prompt and adequate Commission access to service contract records.

The Federal Maritime Commission has determined that the Proposed Rule, if adopted, is not a "major rule" as defined in Executive Order 12291, 46 FR 12193, February 27, 1981, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) a significant adverse effect on competition, employment, investment productively, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chairman of the Federal Maritime Commission certifies that the Proposed Rule will not, if adopted, have a significant economical impact on a substantial number of small entities, including small businesses, small organizational units and small governmental jurisdictions.

The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3504(h). A copy of the request for OMB review and supporting documentation may be obtained from the Commission's Secretary. Comments on the information collection aspects of this rule should be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Maritime Commission.

List of Subjects in 46 CFR Part 580

Administrative practice and procedure, Antitrust, Automatic data processing, Cargo vessels, Confidential business information, Contracts, Exports, Freight, Imports, Maritime carriers, Penalties, Rates and fares, Reporting and recordkeeping requirements.

Therefore, Part 580 of Title 46, Code of Federal Regulations, is proposed to be amended as follows:

1. The authority citation to Part 580 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702–1705, 1707, 1709, 1712, 1714–1716 and 1718.

2. Section 580.7 is amended by redesignating paragraphs (a)(5) and (a)(6) as paragraphs (a)(6) and (a)(7), respectively, by adding a new paragraph (a)(5), by revising paragraph (b)(3)(vi), by adding paragraph (b)(3)(vii), and by revising paragraph (j) to read as follows:

§ 580.7 Filing of service contracts and availability of essential terms.

(a) * * *

(5) *Service contract records* means such information as will enable the Commission to verify compliance with the terms of a service contract and shall include freighted ocean bills of lading, or equivalent shipping documents, with riders, attachments, invoices, and corrections, and any other documents, which establish that the terms of the contract are being or have been met.

* * * * *

(b) * * *

(3) Service contracts shall clearly state:

* * * * *

(vi) The types of service contract records which will be maintained.

(vii) The specific location in the United States of service contract records; and the name, title, address and telephone number of the individual who will make records available to the Commission pursuant to § 580.7(j).

* * * * *

(j) *Recordkeeping and production of records.* (1) Every ocean common carrier or conference shall maintain in the United States service contract records in an organized, readily accessible manner for a period of five years from the termination of each contract.

(2) Every ocean common carrier or conference shall, upon written request of the Director, Bureau of Investigations or the Director of any District Office, submit requested service contract records within 15 days from the date of the request.

* * * * *

By the Commission.

Joseph C. Polking,
Secretary.

[FR Doc. 86–25612 Filed 11–12–86; 8:45 am]

BILLING CODE 6730-01-M

Notices

Federal Register
Vol. 51, No. 219
Thursday, November 13, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

November 7, 1986.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Food and Nutrition Service.

Claim for Reimbursement Summer Food Service Program
Recordkeeping; June, July and August
Non-profit institutions; 2,250 responses; 1,688 hours; not applicable under 3504(h)
Joseph Surdick (703) 756–3870

- Rural Electrification Administration.

Schedule of Advances on FFB Notes Guaranteed
REA–152
Annually
Small Businesses or organizations; 100 responses; 25 hours; not applicable under 3504(h)
Milton E. Wright (202) 382–1933

New

- Agricultural Stabilization and Conservation Service

7 CFR Part 702 Colorado River Basin Salinity Control Program Regulations
CRSC–1, –2, –3
On occasion
Farms; 644 responses; 194 hours; not applicable under 3504(h)
Cecil Lower (202) 475–5924

- Farmers Home Administration.

FmHA Offset of Income Tax Refunds and Reporting Delinquent Accounts to Credit Bureaus
On occasion
Individuals or households; Farms; 420 responses; 105 hours; not applicable under 3504(h)
Jack Holston (202) 382–9736

Revision

- Food and Nutrition Service.

Coupon Account and Destruction Report
FNS–471
Recordkeeping; Monthly
State or local governments; 78,888 responses; 22,971 hours; not applicable under 3504(h)
Paul Jones (703) 756–3385

Reinstatement

- Food and Nutrition Service.

Food Stamp Program Regulations, Part 275—Quality Control (Reporting and Recordkeeping)
Recordkeeping; On occasion
State or local governments; 53 responses; 266 hours; not applicable under 3504(h)
Joseph H. Pinto (703) 756–3471

- Food and Nutrition Service.

Negative Sample and Periodic Reports for Quality Control—Food Stamp Program
FNS–245, –247, –248
Recordkeeping; On occasion; Monthly; Annually
Individuals or households; State or local governments; 31,774 responses; 94,376 hours; not applicable under 3504(h)
Nancy Theodore (703) 756–3469

Revision

- Extension Service.

Application for Authorization to Use the 4–H Club Name or Emblem
On occasion
Individuals or households; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 30 responses; 15 hours; not applicable under 3504(h)
V. Milton Boyce (202) 447–6527

Donald E. Hulcher,
Departmental Clearance Officer.

[FR Doc. 86–25632 Filed 11–12–86; 8:45 am]

BILLING CODE 3410-01-M

Soil Conservation Service

Lumpkin County Road Backslopes Critical Area Treatment Measure, Georgia

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impacts.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council of Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Lumpkin County Road Backslopes Critical Area Treatment Measure, Lumpkin County, Georgia.

FOR FURTHER INFORMATION CONTACT: B.C. Graham, State Conservationist, Soil Conservation Service, Federal Building, Box 13, 355 East Hancock Avenue, Athens, Georgia 30601; Telephone: 404–546–2273.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, B.C. Graham, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The measure concerns a plan for the treatment of critically eroding roadbank areas. The planned works as described in the Finding of No Significant Impact consists of the establishment of erosion control vegetation on 21.3 acres.

The Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency, Federal, State, and local agencies, and interested parties. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. B.C. Graham. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken under 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: November 3, 1986.

B.C. Graham,

State Conservationist.

[FR Doc. 86–25569 Filed 11–12–86; 8:45 am]

BILLING CODE 3410-16-M

ARCTIC RESEARCH COMMISSION

Notice is hereby given that the Arctic Research Commission will meet in Anchorage, Alaska on 18 November 1986 starting at 3:00 p.m. On 18 November, the Commission plans to conduct a workshop on Arctic research logistics at the Sheraton Anchorage Hotel, Anchorage, Alaska. This workshop will be held in conjunction with the Consultative Workshop on the Draft Five-Year Federal Arctic Research Plan. Agenda items include: (1) Overview of workshops purpose and methods to be used in acquiring and using information (2) availability of research vessels and current and anticipated requirements (3) the role and needs for satellite systems in Arctic research (4) buoy programs and expected future requirements (5) logistical support needed for terrestrial research (6) the elements of coordination and the systems required to manage logistics for national Arctic research effort (7) other logistical options and their specific roles in Arctic research.

Following the speakers and also at the end of the session, there will be opportunities for comments and short statements.

Contact Person for More Information: W. Timothy Hushen, Executive Director, Arctic Research Commission (213) 743–0970.

W. Timothy Hushen,

Executive Director, Arctic Research Commission.

[FR Doc. 25652 Filed 11–12–86; 8:45 am]

BILLING CODE 7555-01-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration
Title: Delivery Verification Certificate
Form Number: Agency -ITA-647P; OMB–0625–0063
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 500 respondents; 133 reporting hours
Needs and Uses: On occasion foreign governments request U.S. importers of strategic commodities to supply them with proof that the commodities shipped to the U.S. were not diverted from their intended destination and were in fact actually imported into the U.S. As a part of its responsibilities in the foreign trade field, Export Administration has agreed to receive these representations from persons in the U.S. regarding their intended disposition of commodities. Export Administration acts as the certifying agent by issuing certificates which are provided to the requesting government.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sheri Fox 395–3785

Agency: International Trade Administration
Title: Shipments of Primary Nickel
Form Number: Agency–ITA–920; OMB–0625–0012
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 21 respondents; 14 reporting hours
Needs and Uses: The information is required in support of the President's industrial mobilization responsibilities under the Defense Production Act of 1950, as amended. The survey provides data on shipments of primary nickel and is used to determine stockpile goals and establish acquisition and disposal programs.
Affected Public: Businesses or other for-profit institutions
Frequency: Quarterly
Respondent's Obligation: Mandatory
OMB Desk Officer: Sheri Fox 395–3785.

Agency: International Trade Administration
Title: Copper Controlled Materials
Form Number: Agency–ITA–9008; OMB–0625–0011
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 100 respondents; 200 reporting hours
Needs and Uses: The informaton is required in support of the President's priorities and allocations authority under the Defense Production Act of 1950. The information requested provides data on defense rated shipments of copper and copper base alloy products. The data are used by the International Trade Administration to establish and monitor the obligation ("set-asides") of producers of copper and copper base alloy products to accept defense rated orders.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: Quarterly
Respondent's Obligation: Mandatory
OMB Desk Officer: Sheri Fox 395–3785

Agency: International Trade Administration
Title: Overseas Business Interest Questionnaire
Form Number: Agency–ITA–471P; OMB–0625–0039
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 1,000 respondents; 500 reporting hours
Needs and Uses: Firms participating in overseas trade events are asked to provide information on the audience they wish to target. The information is used by overseas posts of the United States and Foreign Commercial

Services to arrange appointments for mission/show particpants during scheduled trade promotion events.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Voluntary
OMB Desk Officer: Sheri Fox 395-3785

Agency: International Trade Administration
Title: Titanium Metal
Form Number: Agency—ITA-991; OMB-0625-0019
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 35 respondents; 140 reporting hours
Needs and Uses: This information is required in support of the President's industrial mobilization responsibilities under the Defense Production Act of 1950. Titanium is a strategic and critical material essential to defense production. The information collected provides data on the supply, production and shipments of titanium sponge, ingot, and mill shapes, the consumption of scrap, and the imports of titanium sponge. The data are used by several Federal agencies in support of their programs.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: Quarterly.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Sheri Fox, 395-3785.

Agency: International Trade Administration
Title: Steel Controlled Materials Report
Form Number: Agency—ITA-943; OMB-0625-0017
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 100 respondents; 133 reporting hours
Needs and Uses: This information is required in support of the President's priorities and allocations authority under the Defense Production Act of 1950, as amended, as implemented by the Defense Priorities and Allocations System Regulation. The information provides data on defense rated shipments of iron and steel. The data are used to establish and monitor the obligation ("set-asides") of producers of iron and steel to accept defense rated orders.
Affected Public: Businesses or other for-profit institutions
Frequency: Quarterly.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Sheri Fox, 395-3785.

Agency: International Trade Administration
Title: Shipment of Nickel Alloy Products
Form Number: Agency—ITA-942; OMB-0625-0021
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 21 respondents; 14 reporting hours
Needs and Uses: The information collected from nickel alloy products producers is required for the enforcement and administration of the delegated authority of the Defense Production Act of 1950, as amended, to manage the consumption and use of controlled materials. The survey provides data on defense rated shipments of nickel alloy products. The information is used to monitor the "set-asides" of producers of nickel alloys to accept defense rated orders.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: Quarterly.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Sheri Fox, 395-3785.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: November 6, 1986.

Edward Michals,

Departmental Clearance Officer, Information Management Division, Office of Information Resources Management.

[FR Doc. 86-25599 Filed 11-2-86; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Questionnaire Design for Decennial Census Forms
Form Number: Agency-DC-2-U(F); OMB-0607-0532
Type of Request: Extension of a currently approved collection
Burden: 600 respondents; 900 reporting hours
Needs and Uses: This program of questionnaire design research for the 1990 Decennial Census will be used to refine the question wording, layout, and instructions for the census questionnaire which will be administered to the entire population.
Affected Public: Individuals or households
Frequency: One time
Respondent's Obligation: Voluntary
OMB Desk Officer: Timothy Sprehe, 395-4814

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Tomothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: November 6, 1986.

Ed Michals,

Departmental Clearance Officer, Information Management Division, Office of Information Resources Management.

[FR Doc. 86-25600 Filed 11-12-86; 8:45 am]

BILLING CODE 3510-CW-M

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis
Title: Transactions of U.S. Affiliate, Except an Unincorporated Bank, with Foreign Parent
Form Number: Agency—BE-605; OMB—0608-0009
Type of Request: Revision of a currency approved collection
Burden: 3,100 respondents; 12,400 reporting hours
Needs and Uses: Data are needed on current and capital account transactions between foreign owners (other than banking branches and agencies) hodling a 10 percent or more ownership interest in U.S. business enteprises and their U.S. business enterprises. These data are used to prepare the balance of payments accounts of the United States.
Affected Public: Business or other for-profit institutions
Frequency: Quarterly
Respondent's Obligation: Mandatory.

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OMB Desk Officer: Timothy Sprehe 395-4814

Agency: Bureau of Economic Analysis
Title: Transactions of U.S. Banking Branch or Agency with Foreign Parent
Form Number: Agency—BE-606B; OMB—0608-0023
Type of Request: Revision of a currently approved collection
Burden: 325 respondents; 1,300 reporting hours
Needs and Uses: These data are needed on current and capital account transactions between foreign owners holding a 10 percent or more ownership interest in unincorporated U.S. banks and the U.S. banking branches or agencies that they hold. The data are used to prepare the balance of payments accounts of the United States.
Affected Public: Businesses or other for-profit institutions
Frequency: Quarterly
Respondent's Obligation: Mandatory.
OMB Desk Officer: Timothy Sprehe 395-4814

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: November 6, 1986.

Edward Michals,

Departmental Clearance Officer, Information Management Division Management.

[FR Doc. 86-25601 Filed 11-12-86; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has sumitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Economic Development Administration
Title: The Determinants of Plant Location
Form Number: Agency—NA; OMB—NA
Type of Request: New collection
Burden: 500 respondents; 250 reporting hours
Needs and Uses: EDA will conduct this survey to detemine why plants locate where they do. EDA will use the collected information in its effort to attract manufacturing to distressed areas.
Affected Public: Businesses or other for-profit institutions, small businesses or organizations
Frequency: One time
Respondent's Obligation: Voluntary
OMB Desk Officer: Timothy Sprehe 395-4818

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: November 6, 1986.

Ed Michals,

Departmental Clearance Officer, Information Management Division, Office of Information Resources, Management.

[FR Doc. 86-25599 Filed 11-12-86; 8:45 am]

BILLING CODE 3510-W-M

Bureau of the Census

Annual Surveys in Manufacturing Area; Determination

In conformity with Title 13,United States Code (Section 131, 182, 224, and 225), I have determined that annual data to be derived from the surveys listed below are needed to aid the efficient performance of essential governmental functions and have significant application to the needs of the public and industry. The data derived from these surveys, most of which have been conducted for many years, are not publicly available from nongovernmental of other governmental sources.

Most of the following commodity or product surveys provide data on shipments or productions; some provide data on stocks, unfilled orders, orders booked, consumption, and so forth. Reports will be required of all or a sample of establishments engaged in the production of the items covered by the following list of surveys. These surveys are listed under major group headings based on the *Standard Industrial Classification Manual* (1972 edition) promulgated by the Office of Management and Budget for use of Federal Government statistical agencies.

Annual Current Industrial Reports

Major Group 20—Food and Kindred Products

Confectionery

Major Group 22—Textile Mill Products

Broadwoven fabrics finished
Narrow fabrics
Yarn production
Knit fabric production
Carpets and rugs

Major Group 23—Apparel and Other Finished Products Made From Fabrics and Similar Materials

Mens's and boys' apparel
Women's apparel
Underwear and nightwear
Children's apparel
Gloves and mittens

Major Group 24—Lumber and Wood Products, Except Furniture

Hardwood plywood
Softwood plywood
Lumber production and mill stocks

Major Group 26—Paper and Allied Products

Pulp, paper, and board

Major Group 28–Chemicals and Allied Products

Industrial gases
Inorganic chemicals
Pharmaceutical preparations, except biologicals
Sulfuric acid
Paints, varnish, and lacquer

Major Group 30—Rubber and Miscellaneous Plastics Products

Rubber
Plastics bottles

Major Group 31—Leather and Leather Products

Footwear

Major Group 32—Stone, Clay, and Glass

Consumer, scientific, technical, and industrial glassware Fibrous glass
Major Group 33—Primary Metal Industries
Steel mill products
Insulated wire and cable
Nonferrous castings
Ferrours castings

Major Group 34—Fabricated Metal Products, Except Machinery and Transportation Equipment

Selected heating equipment

Major Group 35—Machinery, Except Electrical

Internal combustion engines

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Farm machinery and lawn and garden equipment
Mining machinery and mineral processing equipment
Air-conditioning and refrigeration equipment
Computers and office and accounting machines
Pumps and compressors
Selected industrial air pollution control equipment
Construction machinery
Anti-friction bearings
Fluid power products
Robots

Major Group 36—Electrical Machinery, Equipment, and Supplies

Radios, televisions, and phonographs
Motors and generators
Wiring devices and supplies
Switchgear, switchboard apparatus, relays, and industrial controls
Communications equipment
Semiconductors and printed circuit boards
Elecctromedical equipment
Electric housewares and fans
Electric lighting fixtures
Major household appliances
Transformers

Major Group 37—Transportation Equipment

Aerospace orders

Major Group 38—Professional, Scientific, and Controlling Instruments; Photographic and Optical Goods; Watches and Clocks

Selected instruments and related products

The following survey represents an annual supplement of a monthly survey and will cover the same establishments canvassed monthly. There will be no duplication of reporting, however, since the type of data collected on the annual supplement will be different from that collected monthly.

Major Groups 32—Stone, Clay, and Glass

Glass containers

The following list of surveys represents annual counterparts of monthly and quarterly surveys and will cover only those establishments that are not canvassed or do not report in the more frequent surveys. Accordingly, there will be no duplication in reporting. The content of these annual reports will be identical with that of the monthly and quarterly reports.

Major Group 20—Food and Kindred Products

Flour milling products

Major Group 22—Textile Mill Products

Broadwoven fabric (gray)
Consumption on the woolen system and worsted combing

Major Group 23—Apparel and Other Finished Products Made From Fabrics and Similar Materials

Sheets, pillowcases, and towels

Major Group 32—Stone, Clay, and Glass

Glass containers
Refractories
Clay construction products
Flat Glass

Major Group 33—Primary Metal Industries

Inventories of steel mill shapes

Major Group 34—Fabricated Metal Products, Except Machinery and Transportation Equipment

Plumbing fixtures
Steel shipping drums and pails
Closures for containers

Major Group 35—Machinery, Except Electrical

Construction machinery

Major Group 36—Electrical Machinery, Equipment, and Supplies

Fluorescent lamp ballasts
Electric lamps

Major Group 37—Transportation Equipment

New complete aircraft and aircraft engines, except military
Truck trailers

Annual Survey of Manufactures

The annual survey of manufactures collects industry statistics such as total value of shipments, employment, payroll, work hours, capital expenditures, cost of materials consumed, supplemental labor costs, and so forth. This survey, while conducted on a sample basis, covers all manufacturing industries, including data on plants under construction but not yet in operation.

Annual Survey of Research and Development

A survey of research and development (R&D) activities is conducted. The major data obtained in this survey include total R&D expenditures by source of funds, the number of scientists and engineers employed, the amounts spent for pollution abatement and energy R&D and, for comparative purposes, the total net sales and receipts and the total employment of the company.

Annual Survey of Shipments to Federal Government Agencies

A survey of shipments to the Federal Government is conducted to provide information on the effect of Federal procurement on selected industries by Federal Government agencies.

Annual Survey of Pollution Abatement Costs and Expenditures

The annual survey of pollution abatement costs and expenditures is designed to collect from manufacturers the total expenditures by industry and geographic area to abate pollutant emissions. The survey covers current operating costs and capital expenditures to abate air and water pollution and solid waste. This survey also will obtain the costs recovered from abatement activities and assets in place for the abatement of pollutants.

Annual Survey of Plant Capacity

The annual survey of plant capacity obtains information such as the amount of time a plant is in operation; operating rates as related to preferred levels and practical capacity; the value of production and other statistics for actual, preferred, and practical capacity operating levels; and the reasons for operating at less than capacity.

The report forms will be furnished to firms included in these surveys. Copies of survey forms are available on request to the Director, Bureau of the Census, Washington, DC 20233.

I have, therefore, directed that these annual surveys be conducted for the purpose of collecting the data as described.

Dated: November 6, 1986.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 86–25589 Filed 11–12–86; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

Brookhaven National Laboratory; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 86-240. Applicant: Brookhaven National Laboratory, Upton, NY 11973. Instrument:

Superconducting Magnet System. Manufacturer: Cryogenic Consultants Limited, United Kingdom. Intended Use: See notice at 51 FR 25924.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides a guaranteed magnetic field of 9.0 tesla, field homogeneity of 1.0% over 10.0 millimeters, and vacuum in the bore. The National Institutes of Health advises in its memorandum dated September 29, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-25640 Filed 11-12-86; 8:45 am]

BILLING CODE 3510-DS-M

University of Pennsylvania; Decision on Application For Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 86-226. Applicant: University of Pennsylvania, Philadelphia, PA 19104. Instrument: Preparative Quencher/Stopped-flow System, PQ/SF-53CD with UV-Visible Spectrophotometer Unit (SU-40A). Manufacturer: Hi-Tech Scientific Ltd., United Kingdom. Intended Use: See notice at 51 FR 22844.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides time resolution less than 1.0 millisecond, aging times between <1.0 millisecond and 10 seconds, and stopped-flow capability. The National Institutes of Health advises in its memorandum dated September 29, 1986 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-25641 Filed 11-12-86; 8:45 am]

BILLING CODE 3510-DS-M

Cornell University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No. 86-306. Applicant: Cornell University, Ithaca, NY 14853. Instrument: FTIR Spectrophotometer, Model DA3.3. Manufacturer: Bomem Incorporated, Canada. Intended use: See notice at 51 FR 33282.

Comments: None received. Decision: Approved No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides an unapodized resolution of 0.0026 cm^{-1} and a range from 5 cm^{-1} in the far infrared to 45 000 cm^{-1} in the ultra violet. These capabilities are pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 25643 Filed 11-12-86; 8:45 am]

BILLING CODE 3510-DS-M

Good Samaritan Hospital and Medical Center; Decision on Application For Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 86-225. Applicant: Good Samaritan Hospital and Medical Center, Portland, OR 97210. Instrument: Electronically Controlled Digital Camera System for Detecting and Analyzing Motion. Manufacturer: Northern Digital, Canada. Intended Use: See notice at 51 FR 22844.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides 3-dimensional digital recordings for motion analysis with angular displacement sensitivity less than 4.0 degrees. The National Institutes of Health advises in its memorandum dated September 29, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign intrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-25642 Filed 11-12-86; 8:45 am]

BILLING CODE 3510-DS-M

Iowa State University of Science and Technology; Decision on Application For Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1423, U.S. Department of Commerce, 14th and Consitituion Avenue, NW., Washington, DC.

Docket Number: 86-301. Applicant: Iowa State University of Science and Technology, Ames, IA 50011. Instrument: Interfermeter Spectrophotometer, Model DA3.16. Manufacturer: Bomen Inc., Canada. Intended Use: See notice at 51 FR 33283.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being

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manufactured in the United States. Reasons: The foreign article provides an unapodized resolution of $0.26\ \mathrm{cm}^{-1}$ and a vacuum of 0.1 Torr. These capabilities are pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-25646 Filed 11-12-86; 8:45 am]

BILLING CODE 3510-DS-M

Roswell Park Memorial Institute; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 86-245. Applicant: Roswell Park Memorial Institute, Buffalo, NY 14263. Instrument: Rotating Anode X-Ray Generator, Model RU-200H with Accessories. Manufacturer: Rigaku Corporation, Japan. Intended Use: See notice at FR 51 25924.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides high power density (12.0 kilowatts per square millimeter) and a small focal spot size (0.1 x 1.0 millimeter). The National Institutes of Health advises in its memorandum dated September 29, 1986 that (1) this capablity is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Imports Programs Staff.

[FR Doc. 86-25644 Filed 11-12-86; 8:45 am]

BILLING CODE 3510-DS-M

Regents of the University of California; Decision on Application For Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 86-305. Applicant: Regents of the University of California, Riverside, CA 92521. Instrument: Electromagnetic Ground Conductivity Meter. Manufacturer: Geonics Limited, Canada. Intended Use: See notice at 51 FR 33282.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign article permits uninterrupted investigation of solute phenomenon without affecting soil and chemical parameters using non-destructive sampling procedures. A range of five conductivity measurements allows *in situ* determinations of both dilute and concentrated chemical movement in soil. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-25645 Filed 11-12-86; 8:45 am]

BILLING CODE 3510-DS-M

University of Washington; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 86-244. Applicant: University of Washington, Seattle, WA 98195. Instrument: Mass Spectrometer, Model VG 70SEQ. Manufacturer, VG Analytical Ltd., United Kingdom. Intended Use: See notice at 51 FR 25924.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides resolution to 50,000, extended mass range to 15,000, MS/MS and FAB capability. The National Institutes of Health advises in its memorandum dated September 29, 1986 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-25648 Filed 11-12-86; 8:45 am]

BILLING CODE 3510-DS-M

University of Wisconsin-Madison; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 86-259. Applicant: University of Wisconson-Madison, Madison, WI 53706. Instrument: Scanning Electron Microscope, Model S-900. Manufacturer: Hitachi Ltd., Japan. Intended Use: See notice at 51 FR 26732.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides high resolution (1.0 nanometers at 20,000 volts) and operation with a 6.0 nanometer beam at 1000 votes. The National Institutes of Health advises in its memorandum dated September 29, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-25647 Filed 11-12-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-007]

Barium Chloride From the Peoples Republic of China; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on barium chloride from the People's Republic of China. The review covers one exporter of this merchandise to the United States and the period October 1, 1984 through September 30, 1985. The review indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 13, 1986.

FOR FURTHER INFORMATION CONTACT: Michael Rill or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-5255/3601.

SUPPLEMENTARY INFORMATION:

Background

On October 17, 1984, the Department of Commerce ("the Department") published in the Federal Register (49 FR 40635) an antidumping duty order on barium chloride from the People's Republic of China ("PRC"). The petitioner, Chemical Products Corporation, requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on November 12, 1985 (50 FR 46689).

Scope of the Review

Imports covered by the review are shipments of barium chloride, a chemical compound having the formula BaC12 of BaC12–2H20. Barium chloride is currently classifiable under item 417.7000 of the Tariff Schedules of the United States Annotated.

The review covers one exporter of Chinese barium chloride to the United States, China National Chemicals Import and Export Corporation ("SINOCHEM"), and the period October 1, 1984 through September 30, 1985.

For certain sales to the United States, we were preliminarily unable to determine that the U.S. purchaser was not related to the exporter. For those sales we used the best information available for assessment purposes. The best information available was the weighted-average margin on sales to unrelated purchasers.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the c.i.f. packed price to an unrelated purchaser in the United States. We made deductions for discounts, marine insurance, and ocean freight. No other adjustments were claimed or allowed.

Foreign Market Value

In accordance with section 773(c) of the Tariff Act, we used the weighted-average price of barium chloride imported into the United States from a basket of countries as the basis for foreign market value.

We have concluded that the economy of the PRC is state-controlled for purposes of this administrative review. As a result, section 773(c) of the Tariff Act requires us to use either the prices or the constructed value of such or similar merchandise sold by a country or countries whose economy is not state-controlled. Section 353.8 of our regulations establishes a preference for foreign market value based upon sales prices in a non-state-controlled-economy country at a stage of economic development comparable to that of the state-controlled-economy country.

After an analysis of countries which produce barium chloride, we determined that India and Peru were the countries most comparable to the PRC in their stages of economic development. However, the Indian Embassy declined to permit us to contact Indian firms, and the firm contacted in Peru did not respond.

Lacking information on sales of barium chloride from a country at a stage of economic development comparable to that of the PRC, and lacking information needed to calculate foreign market value based on valuation of the Chinese factors of production in a non-state-controlled-economy country at a stage of economic development comparable to that of the PRC, we have based foreign market value on the prices of imports of such merchandise into the United States during the period of review. We excluded imports from countries with known export subsidies and based foreign market value on imports from the remaining exporting countries: France, Italy, the Netherlands, and the United Kingdom.

We calculated foreign market value as the weighted-average f.a.s. value of these imports based on U.S. Census Bureau import statistics. Lacking further information, we made no adjustments to this average price.

Preliminary Results of the Review

As a result of our review, we preliminary determine that a dumping margin of 48.08 percent exists for the period October 1, 1984 through September 30, 1985.

Interested parties may submit written comments on these preliminary results on or before November 24, 1986 and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held on November 24, 1986. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of issues raised in any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margin shall be required for SINOCHEM. For any future entries of this merchandise from a new exporter, not covered in this review, whose first shipments occurred after September 30, 1985 and who is unrelated to the reviewed firm, a cash deposit of 48.08 percent shall be required. These deposit requirements are effective for all shipments of Chinese barium chloride entered, or withdrawn from warehouse, for consumption on or after the date of

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publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: November 7, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86–25746 Filed 11–12–86; 8:45 am]

BILLING CODE 3510-DS-M

[A-559-502]

Antidumping Duty Order; Light-Walled Rectangular Pipes and Tubes From Singapore

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In an investigation concerning light-walled rectangular pipes and tubes (LWR pipes and tubes) from Singapore, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that LWR pipes and tubes from Singapore are being sold at less than fair value and that imports of LWR pipes and tubes from Singapore threaten material injury to a United States industry. Therefore, based on these findings, in accordance with the "Special Rule" provision of section 736(b)(2) of the Tariff Act of 1930, as amended (the Act), 19 U.S.C. 1673e(b)(2), all unliquidated entries, or warehouse withdrawals, for consumption of LWR pipes and tubes from Singapore made on or after the date of publication of the ITC's affirmative determination of threat of material injury in the **Federal Register** will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register.**

EFFECTIVE DATE: November 13, 1986.

FOR FURTHER INFORMATION CONTACT: Frank R. Crowe or Mary S. Clapp, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Ave. NW., Washington, D.C. 20230; telephone: (202) 377–4087 or 377–1769, respectively.

SUPPLEMENTARY INFORMATION: The products covered by this investigation are welded carbon steel pipes and tubes of rectangular (including square) cross section having a wall thickness of less than 0.156 inch as currently provided for in item 610.4928 of the *Tariff Schedules of the United States Annotated.* These products are commonly referred to in the industry as mechanical pipes and tubes.

In accordance with section 733 of the Tariff Act of 1930, as amended (the act) (19 U.S.C. 1673b), on April 22, 1986, the Department preliminarily determined that there was reason to believe or suspect that LWR pipes and tubes from Singapore were being sold at less than fair value (51 FR 15941, April 29, 1986). On September 11, 1986, the Department made its final determination that these imports were being sold at less than fair value (51 FR 33101, September 18, 1986).

On November 3, 1986, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such importations threaten material injury to a United States industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise subject to the order exceeds the United States price for all entries of such merchandise from Singapore. These antidumping duties will be assessed on all unliquidated entries of such merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's affirmative determination of threat of material injury in the **Federal Register** in accordance with the "Special Rule" provision of section 736(b)(2) of the Act (19 U.S.C. 1673e(b)(2).

Because the ITC determined that imports of LWR pipes and tubes from Singapore only threaten material injury to, rather than materially injure, a U.S. industry, Customs field offices are being directed to terminate the suspension of liquidation, release any bond or other security and refund any cash deposit made to secure the payment of antidumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption, before the ITC final determination publication date in the **Federal Register.**

On and after the date of publication of this notice, United States Customs officers must require at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margin as noted below:

Manufacturers/producers/exporters	Weighted average (percent)
Steel Tubes of Singapore (PTE), Ltd	12.03
All others	12.03

The margin is a change from the original September 11, 1986, final determination figure of 12.6. This change was made to correct clerical errors discovered in the calculation of the margin for the final determination.

This determination constitutes an antidumping duty order with respect to LWR pipes and tubes from Singapore, pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations Annex I of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

November 10, 1986.

[FR Doc. 86–25750 Filed 11–12–86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Carribean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council's Administrative Subcommittee will convene a public meeting, November 20, 1986, from 9:30 a.m. to approximately 4 p.m., at the Carribean Council's office (address below), to address issues related to the Administrative Subcommittee's regular administrative operations; to examine the proposed concepts of utilizing the approach of permit sanctions together with monetary penalties in the enforcement of fishery management plans' regulations, and a draft revised penalty schedule for violations to those regulations incurred in the Carribbean.

For further information contact the Carribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, Puerto Rico 00918; telephone: (809) 753-4926.

Dated: November 7, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-25630 Filed 11-12-86; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting Import Limits for Certain Cotton, Wool and Man-Made Fiber Apparel Products Produced or Manufactured in the Philippines

November 7, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 7, 1986. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

A CITA directive dated December 20, 1985 (50 FR 52830), as amended, established limits for certain specified categories of cotton, wool and man-made fiber textile products, including Categories 338/339, 342-NT, 347, 443, 633, 634, 636-NT, 638/639, 641-T, 641-NT, 643, 646-T, 647, 648-T, 648-NT and 650, produced or manufactured in the Philippines and exported during the agreement year which began on January 1, 1986 and extends through December 31, 1986. At the request of the Government of the Republic of the Philippines, pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of November 24, 1982, as amended, between the Governments of the United States and the Republic of the Philippines, the 1986 limits for the foregoing categories are being adjusted by the application of carryover.

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the restraint limits previously established for the categories, as indicated.

A description of the cotton, wool and man-Made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44 782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 7, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on December 20, 1985 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and man-made fiber textile products, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

Effective on November 7, 1986, the directive of December 20, 1985 is hereby further amended to include the following adjusted restraint limits: [1]

Category	Adjusted 12-month limit [2]
338/339	1,007,443 dozen.
342-NT	75,070 dozen.
347	348,846 dozen.
443	2,651 dozen.
633	22,209 dozen.
634	242,193 dozen.
636-NT	55,426 dozen.
638/639	1,091,888 dozen.
641-T	100,117 dozen.
641-NT	231,415 dozen.
643	54,336 dozen.
646-T	321,970 dozen.
647	104,930 dozen.
648-T	244,107 dozen.
648-NT	70,864 dozen.
650	19,041 dozen.

[2] The limits have not been adjusted to account for any imports exported after December 31, 1985.

The Committee for the Implementation of Textile Agreements had determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-25639 Filed 11-12-86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 2-3 December 1986.

Times of Meeting: 0830-1700 hours.

Place: 5001 Eisenhower Avenue, Alexandria, VA.

Agenda: The Army Science Board Effectiveness Review of the U.S. Army Research Institute for the Behavioral and Social Sciences will hold its kickoff meeting. The meeting will consist of the following briefings: Institute Overview, Commander ARI; Laboratory Overviews on Manpower and Personnel, Systems Research, Trained Research, and Basic Research. The panel will address the following questions: What is the quality of staff, facility and technical program?; How productive is the lab in accomplishing its mission?; How relevant is the lab's work to import Army problems?; How can we improve the assessment methodology and procedures?; What are the lessons learned from conducting the review? This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). This classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86-25571 Filed 11-12-86; 8:45 am]

BILLING CODE 3710-08-M

Board of Visitors, U.S. Military Academy; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following meeting:

Name of Committee: Board of Visitors, United States, Military Academy.

Date of Meeting: 3-5 December 1986.

Place of Meeting: West Point, New York (Building 600).

Time of Meeting: 9:00 a.m.

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[1] The agreement provides, in part, that: (1) Specific limits may be exceeded during the agreement year by designated percentages; (2) specific limits may be adjusted for swing, carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

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Proposed Agenda: Discussion of the following items; Cadet Pay, Judge Advocate Activities, Superintendent's Honor Review Committee Report, Long Range Planning, and Conclusions and Recommendations for inclusion in the Annual Board of Vistors Report.

All proceedings are open. For further information contact Colonel D.P. Tillar, Jr., United States Military Academy, West Point, New York 10996-5000.

For the Board of Visitors.

D.P. Tillar, Jr.,

COL, FA Executive Secretary, USMA Board of Visitors.

[FR Doc. 86-25515 Filed 11-12-86; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER87-44-000 et al.]

Electric Rate and Corporate Regulation Filings; Wisconsin Public Service Corp. et al.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Public Service Corp.

[Docket No. ER87-44-000]

November 5, 1985.

The filing company submits the following:

Take notice that on October 23, 1986, Wisconsin Public Service Corporation (WPSC) of Green Bay, Wisconsin, submitted for filing revised rates which reduce the company's charges for full requirements and partial requirements wholesale for resale customers by 3%. The customers affected by the filing and their rate schedule designations are:

Customer and Rate Schedule or Tariff Designation

Alger Delta Electric Assoc.; Rate Schedule No. 38
Washington Island Electric; Rate Schedule No. 40
Village of Daggett; Tariff, Orig. Vol 2, Service Agreement No. 3
City of Stephenson; Tariff, Orig. Vol 2, Service Agreement No. 4
Village of Stratford; Tariff, Orig. Vol 2, Service Agreement No. 6
Wisconsin Public Power, Inc. System; Tariff, Orig. Vol 2, Service Agreement No. 1
City of Wisconsin Rapids; Tariff, Orig. Vol 2, Service Agreement No. 5
Consolidated Water Power Co.; Tariff, Orig. Vol 1, Service Agreement No. 1
City of Manitowoc; Tariff, 1st Rev. Vol 1, Service Agreement No. 2
City of Marshfield; Tariff, 1st Rev. Vol 1, Service Agreement No. 3

The Alger Delta Electric Association, the Village of Daggett and the City of Stephenson are located in Michigan. The other customers are located in Wisconsin.

The company asks that the proposed rates be made effective on January 1, 1987. Copies of the filing have been served on the affected customers, the Wisconsin Public Service Commission and the Michigan Public Service Commission.

Comment date: November 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Southwestern Electric Power Co.

[Docket No. ER878-40-000]

November 5, 1986.

Take notice that on October 22, 1986, Southwestern Electric Power Company ("SWEPCO") tendered for filing a Letter Agreement providing for the sale of replacement energy from SWEPCO to the Oklahoma Municipal Power Authority ("OMPA") and a Rate Schedule for Third-Party Purchase and Resale Transactions (Pursuant to FERC Order No. 84). The Commission accepted the rate for third-party purchase and resale transactions reflected in the Rate Schedule for filing in 1983 for use in three SWEPCO interconnection agreements which provided for such transactions. The Rate Schedule tendered for filing incorporates the established Order No. 84 rate in a traffic format intended for general applicability where SWEPCO purchases and resells energy from another utility. SWEPCO requests an effective date of August 4, 1986 for the Letter Agreement and accordingly seeks waiver of the notice requirements of the Federal Power Act. SWEPCO requests an effective date of September 2, 1980 for the Rate Schedule to coincide with the earlier established effective date for SWEPCO's Order 84 rate.

Copies of the filing have been sent to OMPA, the Oklahoma Corporation Commisson and the Louisiana Public Service Commission.

Comment date: November 18, 1986, in accordance with the Standard Paragraph E at the end of this notice.

3. Ohio Power Co.

[Docket No. ER87-42-000]

November 5, 1986.

Take notice that American Electric Power Service Corporation (AEP) on October 23, 1986, tendered for filing on behalf of its affiliate Ohio Power Company (OPCO), which is an AEP affiliated operation subsidiary, Modification No. 13 dated April 1, 1986 to the facilities and Operating Agreement dated May 1, 1967 between OPCO and the Dayton Power and Light Company (Dayton). The Commission has previously designated the 1967 Agreement as OPCO's Rate Schedule FERC No. 36 and Dayton Company's Rate Schedule FERC No. 31.

Modification No. 12 revises the Parties' Short Term Power Service Schedule by adding provisions for a rate of "up to" the Parties' respective demand and energy rates. Such reductions are, however, limited to 110% of the out-of-pocket cost associated with each specific reservation for Short Term Power and Energy. All of the rates proposed here, pertaining to OPCO, have previously been accepted for filing by the Federal Energy Regulatory Commission in various other OPCO filings.

AEP has requested that the Commission permit this Modification to become effective in two parts, allowing Dayton's Short Term Power "up to" provisions to become effective as of September 25, 1986 and the remainder of this Modification to become effective immediately. This request has been made so that Dayton could participate in Short Term Power opportunity sales that would not have otherwise been made.

Copies of this filing were served upon Dayton and the Public Utilities Commission of Ohio.

Comment date: November 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Arkansas Power & Light Co.

[Docket No. ER81-577-013]

November 5, 1986.

Take notice that on October 14, 1986, Arkansas Power & Light Company (AP&L) tendered for filing a compliance report reflecting the application on final rates referred to in the above referenced docket.

Comment date: November 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Kentucky Utilities Co.

[Docket No. ER78-417-068]

November 6, 1986.

Take notice that on October 27, 1986, Kentucky Utilities Company tendered for filing in this docket a document which it terms its "Compliance Filing," to which are attached a form Contract for Electric Service, Electric Rate Schedule WPS-83SR (M), and Rules, Regulations, Terms, and Conditions. Kentucky Utilities proposes to make the changes in service and/or rate, charge, classification, rule, regulation, practice or contract effective as soon as the Commission takes the required and appropriate steps and permits such effectiveness.

Comment date: November 19, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Niagara Mohawk, Power Corp.

[Docket No. ER87-75-000]

November 6, 1986.

Take notice that on November 3, 1986, Niagara Mohawk Power Corporation (NMPC) tendered for filing a proposed change to rate schedules to increase charges for transmission and delivery of power and energy to industrial customers receiving Replacement and/or Expansion Power, such power and energy being purchased by NMPC from the Power Authority of the State of New York (PASNY).

The proposed change would increase the charge provided under Rate Schedule FERC No. 19 for the transmission and delivery of power and energy and affect those industrial customers receiving Replacement and/or Expansion Power. An effective date of January 2, 1987 is requested. In addition, the same rate change would apply to transmission and delivery of power and energy by NMPC to certain industrial customers from PASNY's Fitzpatrick Nuclear Plant under NMPC's Rate Schedule FERC No. 95, and the Niagara Frontier Transportation Authority under Rate Schedule FERC No. 136, which incorporate by reference the charges provided under Rate Schedule FERC No. 19.

Comment date: November 19, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. Orange and Rockland Utilities, Inc.

[Docket No. ER87-72-000]

November 6, 1986.

Take notice that on October 31, 1986, Orange and Rockland Utilities, Inc. tendered for filing proposed changes in its Power Supply Agreement with Pike County Light and Power Company, Rate Schedule FERC No. 44. The proposed changes would: (1) Decrease the return on equity from 15.5 percent to 14 percent; (2) eliminate the 43 percent cap on the equity ratio (currently, equity in excess of the 43 percent cap is assigned the embedded cost of debt); and, (3) eliminate the 6-month averaging provision that provides for a limited filing to reevaluate the return on equity when specified interest rates persist above or below 9.5 percent. The return on equity is one component of the return on investment applied to utility plant serving a joint use function as between the two companies.

Copies of the filing were served upon the New York State Public Service Commission, the Pennsylvania Public Utility Commission, and the Office of the Consumer Advocate in Pennsylvania.

Comment date: November 19, 1986, in accordance with Standard Paragraph E at the end of this notice.

8. Tucson Electric Power Co.

[Docket No. ER86-676-000]

November 6, 1986.

Take notice that on October 14, 1986, Tucson Electric Power Company (Tucson) tendered for filing a supplement of explanation to the Interconnection Agreement between Tucson and Rocky Mountain Generation Cooperative, Inc. (Rocky Mountain) originally tendered for filing on August 19, 1986 in this docket. Tucson files this supplement to clarify the applicability of paragraph A.5.2 of Service Schedule A to the Agreement, entitled Economy Energy Interchange. It is not presently contemplated that services will be provided under that Paragraph. Should the Parties in the future agree to provide services under that Paragraph the Parties will file at that time a rate schedule for services under that Paragraph, with, if necessary, any applicable cost support data.

Tucson states that it has served a copy of the filing upon Rocky Mountain.

Comment date: November 20, 1986, in accordance with Standard Paragraph E at the end of this notice.

9. Orange and Rockland Utilities, Inc.

[Docket No. ER87-73-000]

November 6, 1986.

Take notice that on October 31, 1986, Orange and Rockland Utilities, Inc. tendered for filing proposed changes in its Power Supply Agreement with Rockland Electric Company, Rate Schedule FERC No. 43. The proposed changes would: (1) Decrease the return on equity from 15.5 percent to 14 percent; (2) elimminate the 43 percent cap on the equity ratio (currently, equity in excess of the 43 percent cap is assigned the embedded cost of debt); and, (3) eliminate the 6-month averaging provision that provides for a limited filing to reevaluate the return on equity when specified interest rates persist above or below 9.5 percent. The return on equity is one component of the return on investment applied to utility plant serving a joint use function as between the two companies.

Copies of the filing were served upon the New York State Public Service Commission, the New Jersey Board of Public Utilities, and the Office of the Public Advocate (Division of Rate Counsel) in New Jersey.

Comment date: November 19, 1986, in accordance with Standard Paragraph E at the end of this notice

10. Wisconsin Electric Power Co.

[Docket No. ER87-67-000]

November 6, 1986.

Take notice that on October 31, 1986, Wisconsin Electric Power Company (WEPCO) tendered for filing proposed changes in its wholesale tariff for service to its wholesale customers. The effect of these changes would be to decrease estimated charges to WEPCO's wholesale customers by approximately $910,000 on a forecast 1987 basis. The proposed rates included lower energy charges and higher demand charges, but all customers would pay less under the proposed rates than under the present rates. The voltage differential for service is being revised to flat percentages applied to the energy and demand charges. A provision to recover take-or-pay charges from a coal supplier is being re-filed in order to continue its effectiveness beyond December 31, 1986.

WEPCO has also submitted an executed Exhibit C to its service agreement with Alger Delta Electric Cooperative, reflecting a change in voltage level at one delivery point.

WEPCO requests an effective date of December 30, 1986, sixty days after filing, and suspension for two days, until January 1, 1987.

Copies of the filing have been served upon WEPCO's jurisdictional customers. Copies have also been mailed to the Michigan Public Service Commission and the Public Service Commission of Wisconsin.

Comment date: November 19, 1986, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraphs

E. Any person desiring to the heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

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Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-25529 Filed 11-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000 (Parts A-D) et al.]

Columbia Gas Transmission Corp. et al.; Order Dismissing Petitions for Clarification and Motion to Require Filing

(Issued: November 5, 1986)

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

In the matter of: Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company), (Texas Independent Producers and Royalty Owners Association), (Northwest Central Pipeline Corporation), (Yankee International Company), (Capital Energy Corporation), (Iowa Electric Light and Power Company), (ONG Western, Inc.), (Cascade Natural Gas Corporation), (Felmont Oil Corporation and Essex Offshore, Inc.), (Nycotex Gas Transport), (Illinois Commerce Commission); Docket No. RM85-1-000 (Parts A-D)

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (National Fuel Gas Distribution Corporation); Docket No. RM-85-1-174

National Fuel Gas Distribution Corporation; Docket No. CP81-319-001

This order dismisses eleven petitions for clarification of Order No. 436[1] and one motion to require an interstate pipeline company to file tariff provisions providing for open access transportation in accordance with that order and the Regulations promulgated thereunder. The petitions are dismissed summarily, without adjudication on the merits and without prejudice to their being filed in other form if the movants so decide.

The various petitions, and the relief requested, are as follows:

1. Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company (collectively Columbia) seek clarification that, having elected to become open access transporters under Order No. 436, they thereby are excused from certain filing requirements under Part 154 of the Regulations. In the alternative, Columbia requests waiver of the filing requirements.

2. The Texas Independent Producers and Royalty Owners Association (TIPRO) asks that we issue a policy statement providing for the rejection of any applications for "open carrier" status pursuant to Order No. 436 which are made conditional on terms which differ from the express requirements of that order.

3. Northwest Central Pipeline Company (Northwest Central) seeks a ruling that an oral notice which it gave to Arkla Energy Resources, one of its suppliers, stating that it desired a reduction in its firm sales entitlement was sufficient to satisfy the requirements of the Regulations. Alternatively, Northwest Central requests waiver of the Regulations to the extent necessary to effect such entitlement reduction.

4. Yankee International Company requests clarification concerning whether a transportation service previously provided it in 1986 by Panhandle Eastern Pipe Line Company (Panhandle) under a Natural Gas Act (NGA) section 7(c) certificate, but which has since been discontinued, can be reinstituted at different receipt points now that Panhandle has become an open access transporter.

5. Capital Energy Corporation requests clarification that there is no prohibition on the establishment of a class of Order No. 436 subcarriers who would aggregate the transportation services of several pipelines for the purposes of marketing the resulting agglomeration as a means of gas transportation, or otherwise acquire the rights to utilize certain pipeline capacity for the purpose of marketing gas.

6. Iowa Electric Light and Power Company (Iowa Electric) purchases gas from Natural Gas Pipeline Company of America (Natural), which is an open access transporter. Iowa Electric has elected to reduce its contract demand obligation with Natural. It requests clarification concerning whether Natural will still be required to make the election effective, after the requisite waiting period, even if Natural in the interim ceases to be an open access transporter.

7. ONG Western, Inc. transports gas pursuant to NGPA section 311 under agreements entered into both before and after October 9, 1985, the issuance date of Order No. 436. It notes that in several orders, we have held that changes made after October 9, 1985, in supply points provided in pre-October 9, 1985 transportation agreements will be treated as a new service, necessitating a new application. ONG Western requests clarification concerning whether this same ruling is applicable to it in light of its status as an open access transporter.

8. Cascade Natural Gas Corporation seeks clarification whether its transportation agreement with Northwest Pipeline Corporation would continue to qualify for transition treatment under section 284.105 of the Regulations if it disregards a clause in that agreement.

9. Felmont Oil Corporation and Essex Offshore, Inc. request clarification or waiver regarding the authority of Transcontinental Gas Pipe Line Corporation to transport natural gas on behalf of Brooklyn Union Gas Company, pursuant to section 311 of the NGPA.

10. Nycotex Gas Transport (Nycotex) entered into an agreement with Tennessee Gas Pipeline Company (Tennessee) in June 1985, whereby Tennessee agreed to transport Nycotex's gas under NGPA section 311. Nycotex incurred expenditures under the agreemenmt in August, September, and October 1985. Transportation had not commenced prior to the issuance of Order No. 436. Nycotex has requested a waiver or clarification of the transitional provisions of section 284.105 of the Regulations to allow the transaction to be completed.

11. The Illinois Commerce Commission (ICC) filed a motion on September 22, 1986, in which it seeks an order requiring Midwestern Gas Transmission Company (Midwestern) to file tariff amendments to provide for open access transportation on its southern system under Order No. 436. The motion is predicated on Midwestern's affiliation with Tennessee Gas Pipeline Company (Tennessee) as co-subsidiaries of Tenneco, Inc.; the fact that Tennessee filed tariff changes on June 3, 1986, to provide open access transportation; and that Midwestern's southern system is physically connected to and primarily supplied by Tennessee. The ICC contends that "by voluntarily acting to open Tennessee under Order 436, that this same decision, of necessity, must be applied to Midwestern." On October 7, 1986, Midwestern filed an answer in opposition to the ICC's motion.

12. Finally, National Fuel Gas Distribution Corporation, which except for one subsystem is exempt from the requirements of the Natural Gas Act under section 1(c) and has been issued a blanket certificate under § 284.224 of the Regulations, seeks clarification on a series of eleven questions relative to the transportation under its blanket certificate of locally produced gas to interstate pipelines.

Discussion

Order No. 436 was issued on October 9, 1985, more than one year ago. That order established the framework for a new, simplified, voluntary transportation program under section 7 of the NGA and section 311 of the Natural Gas Policy Act (NGPA), under which any pipeline electing to participate would be required to provide non-discriminatory access to its facilities for the transportation of gas by shippers, local distribution companies and end-users. Order No. 436 was followed and refined by Order No. 436-A,[2] Order No. 436-B,[3] Order No. 436-C,[4] Order No. 436-D [5] and Order No. 436-E.[6] Each of these orders either granted in part applications for rehearing of the underlying order, and thus amended Order No. 436, or denied petitions for rehearing and reconsideration. At the same time, the Commission responded to numerous petitions for clarification of the order, some of which were predicated on particular factual situations and others of which generally interpreted the Order's requirements. Eventually, the Commission intercepted issued in excess of 130 orders, responding to approximately 200 requests for clarification or waiver, involving many aspects of Order No. 436.

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[1] FERC Statutes and Regulations, Regulations Preambles 1982-1985, ¶ 30,665; 50 FR 42408 (October 18, 1985).

Even when they were based on individual facts, the orders granting or denying petitions for clarification were not case specific, nor did they affect only the particular applicant or transaction posed in the petition. Rather, they served to make clear the overall substance of the Rulemaking and its requirements and, as such, the decisions rendered therein are generally applicable as part and parcel of the basic Rule. For this reason the orders on petitions for clarification were published in the **Federal Register**. They may be relied upon by anyone, to the same extent as the underlying Order, in fixing the duties and responsibilities attendant upon a decision whether or not to proceed under the terms and conditions laid out in Order No. 436. In this respect, they are unlike, for example, private revenue rulings issued by the Internal Revenue Service, which are binding only on the individuals or businesses immediately involved and relate only to the precise transaction under consideration.

Order No. 436 and the Regulations promulgated therein have now been in effect for an extended period. A large number of transportation transactions have been entered into in reliance thereon. The order has been clarified extensively by the numerous orders mentioned above. Many of the newly filed requests either tend to seek clarification in the nature of changing the Rule or waiving its requirements, or involved a highly fact-specific situation of the type best handled in a declaratory order.

A full year has elapsed since the issuance of Order No. 436. There is no longer a need to issue emergency clarifications of a newly adopted rule. At this juncture, the wiser course is to consider such pleadings pursuant to the Commission's established processes, and to refrain from issuing further orders on petitions for clarification or waiver, or for major modifications as requested by TIPRO and the ICC, unless a strong showing is made in the application that a major element of the Rule has been completely over looked (which we consider unlikely in light of the large number of refinements and explanations that already have been issued) or that an immediate resolution of the problem posed is essential to the effective administration or operation of the open access transportation program.

On due consideration of the petitions under consideration, we find that none are of such a nature under the standard herein enunciated as to require their resolution by clarification. The petitions for clarification and requests for waiver, as well as the other motions addressed herein, will be dismissed without prejudice. The parties may file a request under § 385.207(a) of the Regulations for a declaratory order by the Commission, or a complaint pursuant to § 385.206, or request for an interpretation by the General Counsel under § 385.1901, accompanied by the filing fee required by the Regulations for such applications. Notice of complaints and petitions for declaratory orders will be published in the **Federal Register** in accordance with Commission policy, to afford an opportunity for public comment.

The Commission orders:

The petitions for clarification or waiver of Order No. 436, and the motion filed by the Illinois Commerce Commission, considered herein are dismissed without prejudice.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-25525 Filed 11-12-86; 8:45 am]

BILLING CODE 6717-01-M

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[2] *Id.*, ¶ 30,675, 50 F.R. 52217 (December 23, 1985).

[3] FERC Statutes and Regulations III, ¶ 30,688; 51 Fed. Reg. 6398 (February 24, 1986).

[4] 34 FERC ¶ 61,404 (March 28, 1986); 51 F.R. 11566 (April 4, 1986).

[5] 34 FERC ¶ 61,405 (March 28, 1986); 51 F.R. 11566 (April 4, 1986).

[6] 34 FERC ¶ 61,403 (March 28, 1986); 51 F.R. 11566 (April 4, 1986).

[Docket No. RM85-1-000]

Order Granting Request for Waiver From Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol for Panda Resources, Inc.

Issued: November 5, 1986.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeva.

On December 27, 1985, Panda Resources, Inc. filed a request for waiver of the transitional provisions of Order No. 436 [1] as they apply to a transportation transaction performed under section 311 of the Natural Gas Policy Act of 1978. We will grant Panda's request.

The Comanche Gathering System Joint Venture, which is composed of serveral companies including Panda, entered into agreements from late 1984 through early 1985 to purchase gas from producers in Comanche County, Kansas. A gathering system was constructed at a cost of $415,000. On October 4, 1985, Comanche entered into a written agreement to sell the gas to Northern Gas Marketing, Inc. who, in turn, agreed to sell the gas at the wellhead to Peoples Natural Gas Company, a Division of Utilicorp United Inc. On October 7, ANR Pipeline Company entered into a written agreement to transport the gas on behalf of Peoples from Comanche to Northern Natural Gas Company, Division of Enron, Corporation's (Northern Natural) system in Kiowa County, Kansas, under section 311 of the NGPA and Subpart B of section 284 of the Commission's Regulations. Northern Natural would transport the gas to Peoples for its system supply pursuant to section 311 of the NGPA and Subpart B of section 284 of the Commission's Regulations under a transportation contract executed on October 17, 1983. On May 16, 1985, in Docket No. ST84-104-000, Northern extended its transportation service until October 16, 1987. ANR's and Northern Natural's transportation under section 284 is pursuant to the provisions of that section as it was effective prior to November 1, 1985.

In *CLARCO Gas Company, Inc.*, 35 FERC ¶ 61,339 (1986), we held that waiver of the transitional provisions of Order No. 436 will be granted where evidence exists to show (1) an agreement prior to October 9, 1985, between two or more parties that commits the parties to an element of the transaction, (2) the construction of significant facilities or the expenditure

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[1] 33 FERC ¶ 61,007 (1985); FERC Statutes and Regulations ¶ 30,665 (1985).

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of substantial funds prior to October 9, 1985 in reliance on that agreement, and (3), if the agreement relied upon was oral, execution of the agreement in written prior to October 9, 1985. In addition, we stated that we will require a showing that the transaction for which waiver is sought is of a type that qualifies for transitional treatment.

We conclude that Panda meets the test established in *CLARCO*. A written contract to sell the gas existed prior to October 9, 1985, as did a written contract to transport the gas. In additon, the gas will be transported for the system supply of a local distribution company. Accordingly, Panda's request is granted.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR. Doc. 86-25526 Filed 11-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000]

Orders Denying Request for Waiver From Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol for Tennessee Gas Pipeline Co.

Issued November 5, 1986.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Tranbandt and C. M. Naeve.

On July 30, 1986, Tennesee Gas Pipeline Company (Tennessee) filed a request for waiver of § 284.105(a) of the Commission's Regulations.[1] Tennessee requests authorization to continue or recommence transportation service for 83 local distribution companies, interstate pipelines and intrastate pipelines that were originally authorized under subparts B and G of part 284 of the regulations. Tennessee seeks a waiver to extend service until the earlier of June 30, 1987, or 30 days after the Commission issues an order on the merits of the take-or-pay funding issue in Docket No. RM86-119-000.

Tennessee is currently transporting natural gas pursuant to § 284.105 of the Commission's Regulations. On June 3, 1986, in Docket No. CP86-534-000, Tennessee filed an application to obtain an Order No. 436 blanket certificate. Tennessee also filed in Docket No. RP86-119-000, tariff sheets addressing Tennessee's take-or-pay problems.

By an order issued on July 2, 1986,[2] the Commission rejected Tennessee's tariff sheets, finding that the take-or-pay proposals constituted an unlawful tracking proposal. The Commission set the matter for hearing. In response, on July 15, 1986, Tennessee withdrew its Order No. 436 blanket certificate application.

Tennessee, in its petition, cited to *Texas Eastern Transmission Corporation*,[3] wherein the Commission granted a waiver to allow Texas Eastern to continue section 311 transportation without becoming subject to the provisions of § 284.10 of the Regulations. Texas Eastern was granted a waiver of section 284.10 to avoid a break in service while the conditions under which Texas Eastern would implement Order No. 436 transportation were established. Tennessee claims it has shown similar good cause. We do not agree.

In *Texas Eastern*, the Commission granted a temporary waiver of the Regulations to a pipeline that had an Order No. 436 settlement on file and was providing section 311 transportation. The waiver allowed Texas Eastern to continue new NGPA section 311 arrangements after June 30, 1986 without invoking the rights of its firm sales customers to reduce their firms sales entitlements or convert those entitlements to firm transportation. Although Tennessee argues that granting its requested waiver would be similar to the action taken in *Texas Eastern*, the two cases have virtually nothing in common. In the instant docket, Tennessee does not have an Order No. 436 settlement on file and is not providing section 311 transportation. Furthermore, Tennessee is not requesting a waiver of the contract conversion reduction provisions, which would otherwise be triggered automatically by providing new transportation under NGPA section 311. Rather, Tennessee seeks to waive the grandfather provision of § 284.105 until Tennessee's take-or-pay funding issues are worked out. There is no similarity whatsoever between this case and *Texas Eastern*.

Section 284.105(a) was designed to prevent undue hardship by allowing transactions that were ongoing when the rule was issued to run their course. To allow the extension of 83 transactions pending resolution of take-or-pay issues would be grossly unfair to parties who might desire transportation but who had no previous transactions to "entend." It would also be tantamount to suspending the application of Order No. 436 in large measure. This we will not do.

We find that Tennessee has not established good cause for waiver. Tennesee's request is hereby denied.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-25527 Filed 11-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-20-000]

Small Power Production and Cogeneration Facilities; Qualifying Status; Eli Lilly Industries, Inc.

November 6, 1986.

On October 17, 1986, Eli Lilly Industries, Inc. (Applicant), of Call Box 1198, Pueblo Station, Carolina, Puerto Rico 00628-1198 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a completed filing.

The topping-cycle cogeneration facility will be located in Carolina, Puerto Rico and will consist of two diesel engine generators, two waste heat recovery steam generators, two jacket water heat recovery plates, and two frame heat exchangers. The net electric power production capacity of the facility will be 4919 kW. The primary source of energy will be fuel oil. Construction of the facility will begin in February 1987.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-25606 Filed 11-12-86; 8:45 am]

BILLING CODE 6717-01-M

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[1] 18 CFR 284.105(a) provides that any transportation service that was commenced on or before October 9, 1985, under the terms that applied prior to November 11, 1985, may be continued until the earlier of October 9, 1987, or the expiration of the original extended term.

[2] Docket No. CP86-534-000, 36 FERC ¶ 61,032.

[3] Order issued June 27, 1986, Docket No. RP86-110-001, 35 FERC ¶ 61,405.

[Docket No. QF87-21-000]

Small Power Production and Cogeneration Facilities; Qualifying Status; Willis and Paul Group

November 6, 1986.

On October 17, 1986, the Willis and Paul Group (Applicant), of 66 Ford Road, Denville, New Jersey 07834, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located adjacent to the BP Performance Polymers, Inc. plant on Thomas Road in Mansfield Township, New Jersey. The facility will consist of a water-wall circulation fluid bed combustion boiler and a steam turbine generator. Steam produced in the boiler will be sold to BP Performance Polymers, Inc. for process use and will also be used in a sludge drying process to be located adjacent to the project. The primary energy source will be coal in the form of anthracite silt. The maximum electric power production capacity of the facility will be 30 MW. Construction of the facility is expected to begin late in 1987.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-25609 Filed 11-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-1-32-003]

Colorado Interstate Gas Co.; Proposed Change in FERC Gas Tariff

November 6, 1986

Take notice that on October 30, 1986, pursuant to Ordering Paragraph (A)(1) of the Commission's Order issued September 30, 1986, in Docket No. TA87-1-32, as modified by an Order issued October 14, 1986, Colorado Interstate Gas Company (CIG) filed revised rates reflecting the elimination of $35 million in projected costs attributable to Order No. 451.

On October 30, 1986, CIG submitted for filing as part of its FERC Gas Tariff six copies each of Substitute Twenty-Sixth Revised Sheet No. 7 and First Substitute Twenty-Seventh Revised Sheet No. 8, reflecting the elimination of the $35 million in projected Order No. 451 costs.

At the same time, CIG resubmitted for filing Alternate Twenty-Sixth Revised Sheet No. 7 and Alternate First Substitute Twenty-Seventh Revised Sheet No. 8, which sheets were previously filed on August 15, 1986, and reflect CIG's estimate of the impact of Order No. 451 on its gas costs.

CIG stated that it strongly believed that the alternate tariff sheets more accurately reflect the cost of gas that it will actually incur because of the good faith negotiation rule of Order No. 451, and therefore urged that the alternate tariff sheets be accepted for filing and be made effective on October 1, 1986. CIG noted that it was providing to the Commission and all parties the details underlying and supporting its estimate of the Order No. 451 impact, and accordingly, submitted that it was entirely appropriate for the Commission to accept the tendered alternate tariff sheets for filing to be effective on October 1, 1986. However, should the Commission not agree, CIG requested that the revised sheets eliminating the Order No. 451 costs be accepted for filing to be effective on October 1, 1986.

Because of the shortness of time between the filing date and the date that October billings must be mailed out, CIG also advised the Commission that it intends to bill its customers on the basis of the alternate tariff sheets that include the $35 million Order No. 451 costs. Should the Commission ultimately determine that this was inappropriate, CIG agreed to refund any revenue overrecovery resulting from use of the alternate tariff sheets.

CIG noted that it had complied with the balance of the Commission's September 30, 1986, Order on October 15, 1986.

CIG respectfully requested the Commission to grant any waivers of the Commission's Regulations as it may deem necessary to accept this filing.

Copies of the filing have been served upon CIG's jurisdictional customers, other interested public bodies, and parties of record in this proceeding.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure.

All such petitions or protests should be filed on or before Nov. 13, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-25610 Filed 11-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-57-014]

Natural Gas Pipeline Company of America; Proposed Changes to FERC Gas Tariff

November 6, 1986.

Take notice that on October 27, 1986, Natural Gas Pipeline Company of America (Natural) tendered for filing tenth Revised Sheet No. 5E to be a part of its FERC Gas Tariff, Third Revised Volume No. 1.

Natural states that the purpose of this sheet is to set out the threshold percentages and discount rates applicable to Rate Schedule IOS for the month of November 1986. The filing is being made in accordance with the provisions of Rate Schedule IOS which was authorized by FERC order issued March 13, 1986 at Docket No. CP85-57-003.

Natural requests waiver of the Commission's regulations to the extent necessary to permit tenth Revised Sheet No. 5E to become effective November 1, 1986. Copies of this filing were mailed to Natural's jurisdicitonal customers and to interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before November 13, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will

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not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-25611 Filed 11-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-719-000]

Pacific Gas and Electric Co.; Filing

November 5, 1986.

Take notice that on October 27, 1986, Pacific Gas and Electric Company (PGandE) tendered for filing an amended tariff sheet which was previously designated as Supplement No. 1 to Original Tariff Sheet No. 173 PGandE's letter dated September 26 and the accompanying filing (filed September 29) to the Commission. PGandE requests that revised Supplement No. 1 Tariff Sheet be substituted for the Supplement No. 1 Tariff Sheet previously provided in PGandE's September 29 filing which has been designated as Docket No. ER86-719-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 18, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-25604 Filed 11-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-204-005]

Pennsylvania Electric Co.; Filing

November 7, 1986.

Take notice that on October 14, 1986, Pennsylvania Electric Company tendered for filing a compliance report whereby refunds of all revenue amounts collected in excess of the settlement rate levels, together with interest computed in accordance with 35.19(a) of the Commission's Regulations, were made on September 30, 1986.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 20, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-25605 Filed 11-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-361-002]

Upper Peninsula Power Co.; Filing

November 7, 1986.

Take notice that on October 10, 1986, Upper Peninsula Power Company (UPPCO) tendered for filing a compliance report whereby UPPCO states that because increased rates were suspended until October 17, 1986, no refunds had to be made. Rates found to be higher than settlement rates were not collected.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 20, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

FR Doc. 86-25606 Filed 11-12-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-85-000]

West Texas Utilities Co.; Filing

November 6, 1986.

Take notice that on October 31, 1986, West Texas Utilities Company (WTU) tendered for filing proposed changes in its FERC Electric Service Tariff, Original Volume No. 1, unexecuted letter amendments to its electric service agreement with Texas-New Mexico Power Company (formerly Community Public Service Company) and unexecuted letter amendments to contracts for electric service with the Cities of Brady and Coleman, Texas. WTU has proposed a phased rate increase and certain other rate schedule changes applicable to the affected customers. Level B Rates, proposed to be effective on January 1, 1987, would increase revenues from jurisdictional sales by $5,079,360 based on calendar year 1987. Level A Rates, proposed to be effective on December 31, 1986, would increase revenues from jurisdictional sales by $4,054,501, based on calendar year 1987. The principal difference between the two sets of rates is the return on common equity which the rates are designed to produce. WTU requests that the Level A Rates be suspended until January 1, 1987, in accordance with the terms of settlement in WTU's last rate case.

Copies of the filing have been served on the customers of WTU affected by the filing and upon the Public Utilities Commission of Texas.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 19, 1986. Protests will be considered by the Commission in determining the apropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-25607 Filed 11-12-86; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[A-9-FRL-3100-3] [EPA Project Number SJ 85-06]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Rio Bravo Refining Company

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on October 22, 1986 the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to construct a 36 MW (gross) coal-fired cogeneration facility to be located in the Poso Creek Oil Field, Kern County, California. The permit is subject to certain conditions, including an allowable emission rate (2-hour average) as follows: SO_2—14.0 lbs/hr or 20 ppm at 3% O_2, for NO_x—the more stringent of 38.9 lbs/hr or 78 ppm at 3% O_2, and for CO—105.1 lbs/hr.

FOR FURTHER INFORMATION CONTACT: Anita Tenley at (415) 974-8240

ADDRESS: Copies of the permit are available for public inspection upon request; address request to: Anita Tenley (A-3-1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-8240, FTS 454-8240.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements inlcude the use of limestone injection to control SO_2 emissions, with limestone at a minimum Ca/S molar ratio of 1.6:1 being injected directly into the combustion chambers. To control NO_x emissions, the use of selective non-catalytic reduction is required as BACT, utilizing ammonia injection within the boiler at a point where a temperature range of 1500-1700 °F is achieved during normal operations. Ammonia shall be injected at a minumum NH_3/NO_x ratio of 6.1:1 on a weight basis.

DATE: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by January 12, 1987.

Dated: October 31, 1986.

David P. Howekamp,

Director, Air Management Division, Region 9.

[FR Doc. 86-25583 Filed 11-12-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59231B; FRL-3100-5]

Approval of Test Marketing Exemptions for a Certain Chemical

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-86-61. The test marketing conditions are described below.

EFFECTIVE DATE: November 3, 1986.

FOR FURTHER INFORMATION CONTACT: Michelle Roddy, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611B, 401 M St. SW., Washington, DC 20460, (202-475-8993).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-86-61. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. The production volume must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-86-61. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced.
2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment.
3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T 86-61

Date of Receipt: September 23, 1986.

Notice of Receipt: October 3, 1986 (51 FR 35425).

Applicant: Confidential.

Chemical: (S) Amine bis (hydrogenated tallow alkyl) methyl, citrates.

Use: (S) Formulated laundry wash cycle product.

Production Volume: Confidential.

Number of Customers: Confidential.

Worker Exposure: Manufacturing: Minimal dermal and respiratory exposure to a total of 4 persons for one 8 hour period.

Test Marketing Period: One year.

Commencing on: November 3, 1986.

Risk Assessment: EPA identified no significant human health concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health. EPA has identified potential environmental concerns. However, EPA has determined that the estimated releases of the test market substance will not present any unreasonable risk of injury to the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: November 3, 1986.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 86-25582 Filed 11-12-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59231A; FRL 3100-4]

Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test

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marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-86-60. The test marketing conditions are described below.

EFFECTIVE DATE: November 3, 1986.

FOR FURTHER INFORMATION CONTACT: Robert Wright, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St. SW., Washington, DC 20460, (202-382-7800).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-86-60. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. The production volume must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-86-60. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced.

2. The applicant must maintain records of the dates of shipment to each customer and quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T 86-60

Date of Receipt: September 23, 1986.

Notice of Receipt: October 3, 1986 (51 FR 35425).

Applicant: Uniroyal Incorporated.

Chemical: (G) An isocyanate terminated polyurethane prepolymer.

Use: (G) Chemical intermediate for industrial applications.

Production Volume: 45,000 kg.

Number of Customers: Confidential.

Worker Exposure: Manufacturing: Minimal inhalation exposure to a total of 3 persons for one 4 hour period, up to 20 days.

Test Marketing Period: Six months.

Commencing on: (*November 3, 1986*).

Risk Assessment: EPA identified no significant human health concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health. EPA has identified potential environmental concerns. However, EPA has determined that the estimated releases of the test market substance will not present any unreasonable risk of injury to the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: Novebe r 3, 1986.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 86-25580 Filed 11-12-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Notice of Agreements(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-004177-003.

Title: Seattle Terminal Agreement.

Parties:

Port of Seattle (Port)
Stevedoring Services of America (SSA)

Synopsis: The proposed amendment would permit the Port to lease an additional 8.5 acres to SSA. The parties have requested a shortened review period.

Agreement No.: 202-010676-020.

Title: Mediterranean/U.S.A. Freight Conference.

Parties:

Achille Lauro
C.I.A. Venezolana de Navegacion
Compania Trasatlantica Espanola, S.A.
Costa Line
Farrell Lines, Inc.
"Italia" de Navigazione, S.p.A.
Jugolinija
Jugooceanija
Lykes Lines
Nedlloyd Lines
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would clarify certain applications of independent action, it would prohibit proxies at owner's meetings and permit self-policing as an alternative to employing an independent neutral body. It would also require each party to appoint a senior executive, and up to two alternates, to give notice of independent action and would change the vote required to permit alternate port service by land.

Agreement No.: 202-01848-002.

Title: North Europe-Virgin Islands Rate Agreement.

Parties:

Trans Freight Lines
Tropical Shipping and Construction Co., Ltd.

Synopsis: The proposed amendment would delete the parties' authority to agree upon the level of compensation paid to ocean freight forwarders under the agreement. The parties have requested a shortened review period.

Agreement No.: 224-011025.

Title: Seattle Terminal Agreement.

Parties:

Port of Seattle (Port)
Hanjin Container Lines, Ltd. (Hanjin)

Synopsis: The proposed agreement would permit the Port to lease approximately 13 acres of improved, paved land together with office space to Hanjin for use in its terminal operations at Terminal 46 in the Port of Seattle.

Additionally, the agreement provides for the preferential use by Hanjin of one ship's berth and container handling equipment. The parties have requested a shortened review period.

Agreement No.: 224-011026.

Title: Seattle Terminal Agreement.

Parties:

Port of Seattle (Port)

Stevedoring Services of America (SSA)

Synopsis: The proposed amendment would permit the Port to lease to SSA space in Transit Shed 2 and an adjacent chassis and auto parking area at Terminal 37 in the Port of Seattle for use in its terminal operations. The parties have requested a shortened review period.

Dated: November 7, 1986.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 86-25613 Filed 11-12-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Banc One Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 28, 1986.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Banc One Corporation,* Columbus, Ohio; to acquire 100 percent of the voting shares of Northwest National Bank, Rensselaer, Indiana.

2. *Park National Corporation,* Newark, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Park National Bank, Neward, Ohio, and thereby indirectly acquire The Richland Trust Company, Mansfield, Ohio.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Community Bancshares, Inc.,* Blountsville, Alabama; to acquire 100 percent of the voting shares of Madison County Bank, New Hope, Alabama, a *de novo* bank.

2. *Community Bancshares, Inc.,* Blountsville, Alabama; to acquire 100 percent of the voting shares of Morgan County Bank, Falkville, Alabama, a *de novo* bank.

Board of Governors of the Federal Reserve System, November 6, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 25574 Filed 11-12-86; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notice; Acquisition of Banks or Bank Holding Companies

The notificants listed in this notice have applied for the Board's approval under the Change in Bank Control Act (12 U.S.C. 1817(j) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in the paragraph 7 of the Act (12 U.S.C. 1817(j)(7).

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the applications have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors.

Comments regarding these applications must be received not later than November 28, 1986.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Frank Pupello,* Tampa, Florida; to acquire 12.4 percent of the voting shares of Key Bankshares, Inc., Tampa, Florida, and thereby indirectly acquire Key Bank of Florida, Tampa, Florida.

2. *Jorge Gadala Samour,* Miami, Florida, to acquire 37.18 percent of Executive Banking Corporation, Miami, Florida.

Board of Governors of the Federal Reserve System, November 6, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-25575 Filed 11-12-86; 8:45 am]

BILLING CODE 6210-01-M

NewCentury Bank Corp; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated

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or the office of the Board of Governors not later than December 1, 1986.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *NewCentury Bank Corporation*, Bay City, Michigan; to engage *de novo* in providing data processing services to First of America Bank-Mid Michigan, Gladwin, Michigan, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 6, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-25576 Filed 11-12-86; 8:45 am]

BILLING CODE 6210-01-M

Sovran Financial Corp., et al. Applications To Engage de Novo in Nonbanking Activities

The companies listed in this notice have filed applications under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the applications have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposals can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 2, 1986.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Sovran Financial Corporation*, Norfolk, Virginia; to engage *de novo* through its subsidiary, Sovran Investment Corporation, Richmond, Virginia, in offering cash management services, including customer account-related functions, for customers of Sovran Investment Corporation and its affiliate banks.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Barnett Banks of Florida, Inc.*, Jacksonville, Florida; to engage *de novo* through its subsidiary, Barnett Banks Insurance Inc., Jacksonville, Florida, in acting as a reinsurer of home mortgage redemption insurance that is directly related to an extension of credit by Barnett or any of its subsidiaries.

Board of Governors of the Federal Reserve System, November 6, 1986.

James McAfee.

Associate Secretary of the Board.

[FR Doc. 86-25577 Filed 11-12-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office for Civil Rights; Statement of Organization Functions and Delegations of Authority

Part A, Chapter AT (Office for Civil Rights) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services as last amended at 47 FR 20033 (April 10, 1982) is amended. The changes made to the Office for Civil Rights include: The realignment of the subordinate organizations of the Office of Management and Policy and changing the title of the Office of Management, Planning and Evaluation; the realignment of the subordinate organizations of the Office of Program Operations; the change in reporting relationship of the Regional Offices to report to the Director of the Office for Civil Rights; the transfer of the Policy and Special Projects organization to the Office of the Director and the realignment of the regional offices. The changes are as follows:

1. Amend Part A, Chapter AT Sections AT.00, AT.10, and subsections A, B, and C of Section AT.20 as revised to read as follows: Chapter AT, Office for Civil Rights.

Section AT.00 Mission

The primary mission of the Office for Civil Rights is to eliminate unlawful discrimination and to insure equal opportunities for the beneficiaries of Federal financial assistance provided by the Department of Health and Human Services. This shall be accomplished as quickly and effectively as possible, but with meaningful efforts at voluntary compliance.

Section AT.10 Organization

The Office for Civil Rights is under the supervision of the Director who reports to the Secretary. The Director also serves as the Secretary's Special Assistant for Civil Rights, responsible for overall coordination of the Department's civil rights activities. The Office is comprised of the following headquarters components.

Office of the Director, Policy and Special Projects Staff, Executive Secretariat, EEO/Affirmative Action Coordinator

Office of the Associate Deputy Director for Management Planning and Evaluation

Office of Management Planning and Evaluation, Quality Assurance and Evaluation Division, Budget and Administrative Services Division, Management Analysis and Information Division

Office of the Associate Deputy Director for Program Operations, Voluntary Compliance and Outreach Division, Investigations Division, Program Development and Training Division

Regional Office for Civil Rights, Investigations Division (Branch in small offices), Voluntary Compliance and Outreach Division, (Branch in small offices)

Section AT.20 Functions

A. *Office of the Director:* As the Department's chief officer for the enforcement of the nondiscrimination provisions of law and as adviser to the Secretary on civil rights, the Director is responsible for the overall operations of the Office for Civil Rights; establishes policy and serves as adviser to the Secretary on civil rights matters, including intradepartmental activities aimed at incorporating civil rights compliance into programs the Department administers; sets overall direction and priorities of the Office through budget requests and long-range operating plans; determines policies and standards for the civil rights investigative and voluntary compliance programs in coordination with the

Secretary and other Federal agencies; supervises OCR field components; determines cases for enforcement action. In consultation with the Office of the General Counsel (OGC), identifies cases for referral to the Department of Justice for legal action and cases for the institution of administrative enforcement proceedings; consults with the Associate General Counsel, Civil Rights Division; represents the Secretary before Congress and the Executive Office of the President on matters relating to civil rights; and solicits the participation of beneficiaries and recipients in the conduct of the Department's civil rights enforcement and voluntary compliance programs.

The Director of the office is served by a Deputy who acts as his/her alter ego. In addition, this office has primary responsibility for oversight of budget formulation and execution and personnel activities.

1. Policy and Special Projects Staff: Develops and disseminates civil rights policy. Undertakes special projects in program areas to provide guidance in implementation strategies for new or revised programs. Develops policy statements, speeches and other materials for the Director. Serves as the focal point of external communication including liaison with the Assistant Secretary for Public Affairs where necessary.

Conducts a research program to develop and maintain a body of information on civil rights issues in health and human services in cooperation with the Office of Program Operations; collects and maintains information on recurrent and special policy issues and needs; develops civil rights policy, regulations and guidelines; provides policy interpretations and policy research information to other OCR components; reviews Departmental regulations for civil rights adequacy; reviews policy implications of legislative proposals and budget documents submitted to the Director for approval; and maintains and disseminates a policy digest.

Maintains liaison with Congress and other Federal departments and agencies charged with civil rights enforcement responsibilities; prepares the Inter-Agency Report on Age Discrimination for which OCR plays a lead role; conducts activities in coordination and consultation with the Assistant Secretary for Legislation; reviews pending legislation for civil rights implications; notifies appropriate Congressional committees of significant civil rights developments and informs members of compliance developments affecting recipients of Federal funds in their Congressional districts. Administers the Freedom of Information and Privacy Act.

Recommends, analyzes and evaluates pilot or model compliance reviews to test new program approaches or to validate standards and procedures; translates pilot or model review findings into recommendations of specific program activities needed to support similar reviews; when appropriate provides these recommendations to the Voluntary Compliance and Outreach Division for implementation; conducts special studies involving new or revised programs and makes recommendations for implementation.

Prepares publications and coordinates as necessary with the Assistant Secretary for Public Affairs through the Policy and Special Projects staff. Prepares news releases, articles and other informational material.

2. Executive Secretariat: Reviews all documents forwarded to the Director for approval; establishes and monitors procedures for timely responses to the Secretary, Department components, Congress, government agencies, and the public; assigns responsibility for preparation of documents and clearance dates; determines internal clearance procedures; arranges for necessary coordination with other Department components; follows up on work assignments made by the Director; disseminates Director's decisions in headquarters; serves as liaison with Secretary's executive secretariat; and maintains Director's official files.

3. EEO/Affirmative Action Coordinator: Serves as principal adviser to the Director regarding EEO/affirmative action planning, implementation, and direction. Is responsible for assisting OCR Senior Staff and Regional Civil Rights Directors to identify and achieve affirmative action goals. Works with Department-level EEO/Affirmative Action Staff to insure that OCR's plans and procedures adhere to Departmental and Equal Employment Opportunity Commission (EEOC) guidelines. Serves as primary liaison to OS Personnel for the implementation of OCR's Federal Equal Opportunity Recruitment Program (FEORP) in headquarters, and advises Regional Civil Rights Directors on FEORP liaisons with Regional Personnel Offices. Serves as primary contact with all standing OCR affirmative action committees. Facilitates settlement of EEO complaints made against OCR and assists in implementing EEO settlements.

B. *Office of Management Planning and Evaluation.* Serves as the Director's principal adviser in management policy, budget formulation and execution, and automated data processing systems for the office. In addition, provides administrative, logistical, planning, evaluative, analytical and management information support services.

1. Management Information and Analysis Division

Collects, maintains and disseminates automated management information; coordinates information requests for all OCR components; provide ADP support services to all OCR components, including studies to determine areas where needs could be met by the use of data processing technology; functions as liaison with the Department management information offices; conducts studies to determine methods of reducing costs and improving quality and effectiveness of data collection and referral; acquires equipment, supplies and products necessary to support the ADP system; insures adherence to Department and Federal ADP standards; establishes controls, to assure the security of the ADP equipment and the data within the information systems; as directed, develops programs to be incorporated in the system.

Develops, tracks, analyzes and reports on Secretary and Director level management initiatives, timeframes and internal objectives for case processing. Develops and disseminates administrative policy and guidance (e.g., procurement, etc.); advises OCR components on effect of changes in Departmental administrative policy; provides management analysis services.

Provides operational analysis services including analyzing field workloads through the Case Management Information System and recommending adjustments in case processing goals; develops, implements and monitors field management systems, including a comprehensive work measurement system; serves as liaison with the Office of Program Operations in the development of performance standards in the field; provides guidance to insure uniform implementation of administrative and management policy in the field; conducts management studies and reviews of field offices to identify problems and needs; recommends operational resources adjustments. Conducts management studies to assess effectiveness and efficiency of OCR component operations and develops recommendations for improvement.

Conducts surveys (e.g., Hill-Burton Survey) and other studies as appropriate and evaluates survey data.

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2. Budget and Administrative Services Division

Formulates and executes OCR Budget; serves as liaison with departmental financial management units; reports to the Associate Deputy Director on fiscal matters; translates office wide goals into budgets with supporting documentation for legislative recommendations; and develops resource and operations planning and budget development guidelines within OMB's framework; prepares testimony for use by the Director before appropriation committees of Congress.

Functions as liaison with the Department personnel and logistical support offices; provides full range of property management services, including space, equipment and supplies management, insures adherence to Federal and Departmental policies and standards regarding security of records, files and equipment; manages files and records maintenance systems; develops and directs counseling and training activities concerning employees' career development opportunities and other programs for personnel development.

3. Quality Assurance and Internal Control Division

Develops and conducts ongoing quality assurance program for field and headquarters components, performs review and analysis of selected completed cases to assess consistency in the application of procedures; analyzes case processing and support systems to assess efficiency and effectiveness; prepares reports and recommendations for improving program activity; identifies areas in which new or modified compliance policies are necessary and makes recommendations; through quality assurance program identifies programmatic training needs in headquarters and the field and makes appropriate recommendations. Develops and implements office internal control system. Conducts audits to assess effectiveness and efficiency of internal control areas, develops recommendations for improvement in internal control areas and performs follow-up audits where indicated. Serves as liaison with Department internal control staff. Assists in the development of performance standards for headquarters; administers employee performance management, merit pay and SES systems for headquarters and field.

Establishes planning systems, and studies data. Directs research on recipient and beneficiary populations and analyzes the resulting data; provides statistical analysis and research support for the recipient and beneficiary information needs throughout the office. Participates in long-range and budget planning.

C. *Office of Program Operations.* Manages a national program of civil rights complaints investigations and voluntary compliance and outreach activities. Serves as principal adviser to the Director in enforcement and Voluntary compliance activities. Carries out the responsibility for the uniform and timely implementation of program policies in operating components.

Reviews cases recommended for enforcement and makes enforcement recommendations to the Director and the Office of General Counsel.

1. Voluntary Compliance and Outreach Division

Oversees a compliance review program for recipients; provides assistance to field offices for uniform implementation of voluntary compliance policies; provides field offices with necessary headquarters assistance concerning program matters in compliance reviews; develops and manages the provision of intradepartmental technical assistance and outreach programs aimed at civil rights policy implementation; develops and manages the provision of comprehensive outreach programs to constituent groups; develops and disseminates specialized materials for recipients and beneficiaries; provides leadership and guidance in implementing civil rights compliance activities in the operating divisions (OPDIVs) of the Department; plans and conducts a continuing program of evaluating civil rights compliance activities in the OPDIVs; conducts a program of training for OPDIV staff to carry out their civil rights responsibilities; facilitates communication of matters related to civil rights with other Departmental offices, Federal departments non-HHS agencies, and State and local governments, including organizations representing such units of government; advises recipients on requirements for filing of civil rights compliance assurance forms and maintains a file of completed forms.

2. Investigations Division

Oversees conduct of investigations that result form constituent complaints or other information requiring formal investigation; provides assistance to field offices for uniform and timely implementation of regulations and policies in investigations; monitors investigation activities to determine program problems; assesses investigative plans and letters of findings to insure proper case development and supportable findings; provides field offices with necessary headquarters assistance concerning technical program matters in investigations; provides liaisons between headquarters and field offices to facilitate resolution of issues and policy questions; serves as intake unit and determines jurisdiction in age discrimination complaints and forwards them to the Federal Mediation and Conciliation Service; reviews cases recommended for enforcement and makes final enforcement recommendations to the Associate Deputy Director; conduct negotiations in conjunction with field offices to secure compliance in cases recommended for enforcement; secures resource person for preparation of testimony in enforcement cases; provides supplemental staff and technical support in precedent setting or extensive investigations; maintains a library of letters of findings and operates an office system to warn the Director, and Secretary of imminent case decisions and their potential effects.

3. Program Development and Training Division

Serves as the Associate Deputy Director's principal adviser on program planning and staff program training. Develops and directs all OCR program training for headquarters and field office personnel. Provides leadership, guidance and direction in the develolpment and coordination of plans which identify civil rights objectives and establish priorities for attaining these goals. Develops an annual operating plan for the office. Provides input into long range planning process.

Develops and directs civil rights training programs for headquarters and field offices; assists Office components identifying training needs; locates appropriate sources to meet those needs, including outside training courses, consultant instruction, and development of internal programs; identifies needs for procedures/manual and develops and disseminates those manuals for the conduct of investigations and compliance activities.

2. Amend Chapter AT Subsection D of Section AT.20 by eliminating the entire subsection and substituting the following:

I. Office of the Regional Manager

Within goals set by the Director develops and delivers a comprehensive regional enforcement and voluntary compliance program to carry out the office mission; manages staff and other resources allocated to the region; directs a program to meet OCR objectives in such areas as quantity, quality and timeliness of work products in investigations and voluntary compliance activities; serves as a resource to the HHS Regional Directors on civil rights matters; disseminates and implements OCR policies and procedures; establishes priorities for work assigned to the civil rights attorney in the regional attorney's office; determines compliance of recipients of Federal financial assistance; negotiates voluntary compliance; approves, disapproves, and monitors implementation of voluntary compliance and corrective plans; approves, disapproves, and monitors State agency Methods of Administration; determines the most effective enforcement method, including conciliation of differences between complainants and recipients; recommends to the Director administrative and/or judicial enforcement actions when voluntary compliance cannot be obtained; participates in headquarters policy and program development; prepares regional budget proposal and supporting resource and work measurement justification; implements final budget allotment for region; implements the part of the Annual Operating Plan (AOP) pertaining to the conduct of complaint investigations, compliance reviews, voluntary compliance activities, staff training and other regional office activities; coordinates with the Freedom of Information Officer and OCR headquarters on information requests and news media inquiries. Establishes and maintains effective relations with offices of Governors, mayors, county officials, and other key State and local officials; furnishes advice and assistance to them in civil rights matters, and strives to develop mutually beneficial Federal-State-local partnerships; responds to Congressional inquiries; implements court decisions as they pertain to the program; provides input into and implements OCR's affirmative action plan.

Administrative Unit: Provides the Regional Program Manager with evaluative reports and advice concerning the Office's achievement of its overall goals and objectives, specifically with regard to: the quantity of compliance activities completed; the completion of compliance actions within established time frames; the achievement of change for beneficiaries. Monitors region AOP; oversees regional resource planning; conducts regional data collections, support services, computer input; assesses and assists in meeting regional training needs; provides administrative support services such as personnel, reproduction of materials, space and supply acquisition and utilization, maintenance, correspondence control, safety, and travel; coordinates and implements OCR's Case Information Management System; and provides internal program quality control.

1. Investigations Division (called Investigations Branch in small regions)

Under the authorities the Office enforces; serves as complaint intake unit; conducts complaint investigations of health and human services institutions to eliminate unlawful discrimination and to insure equal opportunity for the beneficiaries of Federal financial assistance provided by the Department of Health and Human Services; determines compliance of recipients; advises Regional Manager (through the Division Director in small regions) on critical enforcement action; provides assistance to recipients for corrective action; and monitors implementation of corrective plans; coordinates enforcement activities with regional civil rights attorney, OPDIV regional officials, State, and other Federal agencies, and, as appropriate, headquarters offices and divisions; solicits regional/area civil rights attorney's legal opinion on investigations, as the Regional Manager deems appropriate; and processes all complaints received, including determination of jurisdiction and completeness.

2. Voluntary Compliance and Outreach Division (called Branch in small regions)

Conducts project reviews in order to assist in identifying potential compliance problems; negotiates voluntary compliance with health and human services institutions; advises the Regional Program Manager on critical compliance matters; coordinates voluntary compliance activities with OPDIV and STAFFDIVs, regional officials, State, local and other Federal agencies and, as appropriate, headquarters offices and divisions; provides assistance and outreach services to recipients, beneficiaries and organizations as requested or referred; represents the regional office to promote understanding of the Office's responsibilities and voluntary compliance programs; establishes and maintains effective relationships with offices of Governors, State and local officials in order to provide advice and assistance to them on civil rights matters; establish and maintain liaison with ROFEC to assist in providing technical assistance on architectural barrier problems; maintain close liaison with the Regional Office of Public Affairs in carrying out speaking engagements, media appearances and interviews.

Dated: November 3, 1986.

Don M. Newman,

Acting Secretary.

[FR Doc. 86-25614 Filed 11-12-86; 8:45 am]

BILLING CODE 4150-04-M

Statement of Organization Functions and Delegations of Authority; Public Affairs Office

Part A of the Statement of Organizations, Functions and Delegations of Authority for the Department of Health and Human Services is amended. Part A. Office of the Secretary, Chapter AP, Office of Public Affairs as last published at 45 FR 18488 (March 21, 1980) is being amended. This change in the Office of Public Affairs consolidates functions within the Office to improve the management of the assigned functions and improve the utilization of resources. The changes are as follows:

1. Part A, Chapter AP (Office of Public Affairs) is deleted in its entirety and replaced with the following:

AP.00 Mission
AP.10 Organization
AP.20 Functions

Section AP.00 Mission

The mission of the Office of the Assistant Secretary for Public Affairs (OASPA) is to serve as the Secretary's principal public affairs policy advisor; to provide centralized professional leadership and continuous monitoring and evaluation of Departmentwide policies, procedures and operating practices regarding public affairs activities; and to administer the Freedom of Information Act, Privacy Act and other information access statutes.

Section AP.10 Organization

The Office of the Assistant Secretary for Public Affairs, headed by the Assistant Secretary for Public Affairs, who reports to the Secretary, consists of the following organizations:

The Office of the Assistant Secretary for Public Affairs
Office of the Principal Deputy Assistant Secretary for Public Affairs
  FOIA/Privacy Act Division
  Speech and Editorial Division
  Communications Services Division

Office of the Deputy Assistant Secretary for News
News Division

Section AP.20 Functions

A. The Office of the Assistant Secretary for Public Affairs

Provides executive leadership, policy direction, and management strategy for the Department's public affairs programs and activities. Counsels and acts for the Secretary and the Department in carrying out responsibilities under statutes, Presidential directives, and Secretarial orders for informing the general public, specialized audiences, HHS employees, and other Federal employees about the programs, policies, and services of the Department. Establishes and enforces policies and practices which produce an accurate, clear, efficient, and consistent flow of information to the general public and other audiences about departmental programs and activities.

Provides advice, counsel and information to the Secretary and other HHS policymakers to assure that public affairs impact is considered in the establishment of departmental policies or the conduct of its activities.

Serves as the principal point of contact with senior White House officials regarding communications and press issues.

Exercises professional leadership and provides functional management of public affairs activities throughout the Department to assure that Secretarial priorities are followed, high quality standards are met, and cost-effective, non-duplicative communications products are developed which accurately and effectively inform its audiences.

Serves as Secretarial surrogate throughout the public and private sector to both represent the views of the Administration and the Secretary, and to inform and educate various audiences.

Insures coordination among public affairs components. Manages public affairs issues and special activities that cut across Operating Division lines.

B. Office of the Principal Deputy Assistant Secretary for Public Affairs

Directs all public affairs activities in the absence of the Assistant Secretary.

Is responsible for policies and activities related to the Department's speech and editorial services, communications services, public affairs policy analysis, and oversight of Freedom of Information and Privacy Act Division.

Provides advice and assistance on all public affairs matters, in consultation with the Assistant Secretary for Public Affairs. Provides management or coordination to high priority media campaigns and information programs in the Department.

Acts as liaison to private sector organizations, to the Operating and Staff Divisions, to the public affairs units in the HHS Operating Divisions and Regions, and to other Federal agencies, including OMB and the Office of Public Liaison at the White House.

Provides management and oversight of regional public affairs activities.

Initiates, designs and effects outreach programs for all organizations, associations and individuals concerned with the broad range of policies, programs, and issues of the Department.

B.1. FOIA/Privacy Act Division

Administers Information access and privacy protection laws and HHS regulations implementing these laws to insure Department-wide consistency in information disclosure/confidentiality policies, practices and procedures. Such laws include the Freedom of Information Act and the Privacy Act, as well as the open meetings provisions of the Federal Advisory Committee Act, the Government in the Sunshine Act and the disclosure provisions of the Ethics in Government Act.

In concert with Office of General Counsel staff, assists in development of regulations implementing these statutes and develops policy interpretations and guidelines as well as procedural materials and training programs for all Department components.

Develops policy guidelines and training programs for all HHS components regarding the FOIA and related legislation, i.e., the Privacy Act, Federal Advisory Committee Act, and the Government in the Sunshine Act.

Provides responses to requests made under the Freedom of Information Act and determines the availability of records and information under the law and HHS Regulations.

Resolves questions which overlap the FOIA and the privacy Act regarding release of records.

Provides policy guidance on and maintains the index of materials required by FOIA.

B.2. Speech and Editorial Division

Serves as the principal resource within the Department for reviewing and editing written materials reflecting the views of the Secretary, Under Secretary and Chief of Staff.

Prepares speeches, statements, articles, and related material for the Secretary, Under Secretary, Chief of Staff and other top Department officials.

Researches and prepares Op Ed pieces, features, articles, and stories for the media.

Reviews all regulations and other policy memoranda, and advises the Deputy Assistant Secretary for Public Affairs of appropriate response.

B.3. Communications Services Division

Provides direction to all audiovisual activities in and for the Department.

Responsible for all aspects of print and audiovisual production and programming in support of the Secretary, the ASPA and senior HHS management. Operates the HHS studio and coordinates activities of other HHS studios as required. Under the direction of the ASPA, develops and implements media campaigns and special projects. Acts as liaison to broadcast organizations.

Establishes departmental policy and procedures for the procurement, design, production, distribution and quality control of media campaigns, audiovisual products exhibits and publications.

Reviews and clears all media campaigns, audiovisual products and exhibits produced with Departmental funds. Reviews audiovisual aspects of HHS public affairs' components plans to insure they are supportive of HHS policy.

Reviews and clears all periodicals and publications materials produced with departmental funds. Provides liaison with OMB on matters pertaining to publications and periodicals.

Reviews and approves contracts for public affairs services. Collects and analyzes information on projected departmental public affairs offices' budgets, staffing and communication initiatives.

Monitors clearinghouse and information center activities. Reviews and approves departmental information center requests for contracts, including both research contracts and information center operating contracts. Collects operating data from departmental information centers and reports on accomplishments in information dissemination and effectiveness of personnel use and government expenditures.

Responds to inquires from Congress and other arms of the government that involve the collection of data about HHS public affairs activities.

Responds to requests for speakers and coordinates the scheduling of speaking engagements of various policy-level officials of the Department.

Manages the Hispanic Communications function which provides Spanish language news services and Hispanic media liaison, Spanish language print and audiovisual clearances, advises HHS components on Hispanic communications strategies and serves as a contact for public liaison with Hispanic groups and individuals.

Coordinates all activities of private sector initiatives of the White House.

C. Office of the Deputy Assistant Secretary for News

Responsible for policies and activities related to providing the public with information about the Department's policies and programs through the news media.

Provides advice and assistance on all public affairs matters, in consultation with the Assistant Secretary for Public Affairs. Provides management or coordination to high priority media campaigns and information programs in the Department.

Is responsible for management oversight of the Press Office and related activities.

Conducts an active communications program with the public on behalf of the Department through the media and other avenues of communication, in order to further public understanding of its policies, programs and issues.

Coordinates press activities with the White House Press Office and other government departmental press operations.

Oversees the departmental message center, preparing Presidential and Secretarial messages for deserving individuals and organizations.

Serves as a writing resource for the Secretary, a source of news clippings from major newspapers, a filing source for Secretarial materials, and a resource for public affairs preparation and planning.

C.1. News Division

Plans, directs and coordinates the issuance of public information from HHS to the press and broadcast media.

Prepares news releases and other news material for the Secretary and other top Department officials. Reviews and clears all news releases and other news materials prepared by HHS components.

Identifies news opportunities for the Secretary.

Makes recommendations concerning press releases on upcoming publication of regulations or other actions.

Identifies likely media questions for news conferences and interviews, assists in preparing background briefings for encounters with the press.

Briefs the Secretary, Under Secretary, and Chief of Staff, in conjunction with other departmental experts, for all media events.

Responds to press queries, either directly or by steering reporters to appropriate public affairs personnel in Operating Division press offices.

Coordinates press conferences for the Secretary. Acts as a liaison for reporters requesting interviews and for newspaper editorial boards wishing to meet with the Secretary.

Directs the preparation of the Green Sheet, a daily compilation of news concerning HHS programs and activities.

Monitors AP and UPI wires and distributes articles of interest throughout the day to key staff.

Dated: November 6, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-25615 Filed 11-12-86; 8:45 am]

BILLING CODE 4150-04-M

Health Care Financing Administration

[BERC-362-PN]

Medicare Program; Criteria for Medicare Coverage of Heart Transplants

Correction

In FR Doc. 86-23666 beginning on page 37164 in the issue of Friday, October 17, 1986, make the following correction:

On page 37164, first column, in the "**ADDRESS**" Caption, sixth line, "21270" should read "21207".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Cow Creek Band of Umpqua Tribe Reservation, OR

Cow Creek Band of Umpqua Tribe of Indians Establishment of Reservation. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1. Notice is hereby given that, under the authority of section 7 of the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), the hereinafter-described parcels of land, located in Douglas County, Oregon, were proclaimed to be an Indian reservation, effective October 24, 1986 for exclusive use of Indians entitled by enrollment or by tribal membership to residence at such reservation.

Willamette Meridian, Douglas County, Oregon

Parcel 1

Beginning at the corner of Secs. 21, 22, 27 and 28, T. 30 S., R. 5 W.; thence South 21.93 chains to a rock corner, thence East 23.38 chains to a point in the County Road leading to Canyonville; thence North 11½° West 5.23 chains; thence North 29° West 9.39 chains; thence North 45° West 11.15 chains; thence North 83½° West 6.06 chains; thence North 87° West 3.60 chains to the point of beginning, save and except that portion of the above-described land used as a part of the Pacific Highway and the county roads.

Excepting that portion deeded to Daniel R. Baird and his wife by deed recorded September 16, 1948, File No. 82440, described as: Beginning at an iron pipe on the Easterly right-of-way line of the Pacific Highway at a point which is North 30°33′ West 280.1 feet from the Northwest corner of the Canyonville, Oregon, Masonic Cemetery, said beginning point being 1414.2 feet North and 450.0 feet East of the quarter section corner between Secs. 27 and 28, T. 30 S., R. 5 W.; thence running North 30°33′ West 198.2 feet along said highway line to an iron pipe; thence East 236.4 feet to an iron pipe; thence South 39°35′ East 216 feet to an iron pipe; thence South 89°09′ West 276.0 feet to the place of beginning.

Also excepting that portion deeded to Albert Guest and Ella May Guest, husband and wife, recorded September 16, 1948, File No. 82438, described as: Beginning at a point on the North line of the Canyonville Masonic Cemetery, said beginning point being 1175.8 feet North and 908.3 feet East of the quarter section corner between Secs. 27 and 28, T. 30 S., R. 5 W., thence running from said beginning point North 0°31′ West 248 feet, thence North 89°09′ East 200.0 feet; thence South 0°31′ East 247.0 feet to the North line of said cemetery property, thence South 89°29′ West 200.0 feet to the place of beginning.

Also excepting that portion deeded to Albert Guest and Ella May Guest, husband and wife, recorded September 16, 1948, File No. 82436, described as: Beginning at the Northwest corner of said cemetery to a point which is on the East right-of-way line of the Pacific Highway and 1173.0 feet North and 592.3 feet East of the quarter section corner between Secs. 27 and 28, T. 30 S., R 5 W.; thence running North 30°33′ West 280.1 feet along the Easterly right-of-way line of the Pacific Highway to a point; thence North 89°09′ East 451.2 feet; thence South 0°31′ East 247.0 feet to a

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point on the North line of said cemetery; thence South 89°29′ West 316.0 feet along the North line of said cemetery to the point of beginning.

Also excepting that portion deeded to Sidney Ward and Florence L. Ward, husband and wife, recorded December 19, 1947, in Volume 149, Page 588, Deed Records of Douglas County described as: Beginning at an iron pipe on the West line of the James Clark Donation Land Claim No. 51, in T. 30 S., R. 5 W.; said beginning point being 1275.0 feet South of an iron bar set at the Northwest corner of Section 27 said township and range; thence running South 88°56′ East 391.0 feet to an iron pipe at the Westerly line of the Pacific Highway; thence South 28°51′ East 231.0 feet along the said highway line to an iron pipe on the North line of the Russell property, thence North 88°56′ West 517 feet along a fence line to an iron pipe at the Southwest corner of the Swanson property, thence Northerly along a fence line 200 feet to the place of beginning, and situated in Sec. 27, T. 30 S., R. 5 W.

Also excepting that portion conveyed to the State or Oregon, by and through its State Highway Commission, as recorded in Volume 188, Page 254, Deed Records of Douglas County, Oregon, described as a parcel of land lying in the NW¼NW¼ of Sec. 27, T. 30 S., R. 5 W., and being a portion of the following described property; that tract of land which was conveyed by that certain deed to Nick J. Meyer, et al., recorded in Book 160, Page 496 of Deed Records of Douglas County. The said parcel being described as follows:

A triangular piece of ground being all that part of the above-described property lying West of the Easterly right-of-way line of the present Pacific Highway.

Also excepting that portion sold to O.D. and Anna Havely, as recorded in Volume 192, Page 340, Deed Records of Douglas County, Oregon, described as follows: Beginning at a point on the North line of the Canyonville Masonic Cemetery, said beginning point being 1175.8 feet North and 1108.3 feet East of the quarter section corner between Secs. 27 and 28, T. 30 S., R. 5 W., said point being the Southeast corner of the lands sold to Albert Guest and Ella May Guest, husband and wife, as recorded September 16, 1948, Recorder's No. 82438 of the Deed Records of Douglas County; thence North 0°31′ West 112 feet; thence North 89°09′ East 380 feet; thence South 11°30′ East 112 feet to a point on the North line of said cemetery property; thence South 89°29′ West along said Masonic Cemetery line 400 feet to the point of beginning, in Sec. 27, T. 30 S., R. 5 W.

Also Excepting that portion sold to Robert H. Young and wife, as recorded in Volume 258, Recorder's No. 222404, Deed Records of Douglas County, Oregon, described as follows: Beginning at a ¾″ pipe at the Northeast corner of property described in deed to Robert H. Young and Alice Joanne Young, husband and wife, as recorded the 10th day of November 1951, in Volume 200 at page 442, Recorder's No. 131152 of the Deed Records of Douglas County; thence South 89°09′ West along the North line of said Young property 110 feet to a point marked by a ¾″ pipe; thence North 0°31′ West 50 feet to a point marked by a ¾″ pipe; thence North 89°09′ East 101 feet to a point marked by a ¾″ pipe; thence South 11°25′ East to the place of beginning, the Northeast corner of property described in deed to the said Youngs wherein O.D. Havely and Anna Havely were the grantors all in Sec. 27, T. 30 S., R. 5 W.

The above-property being situated in Sec. 27, T. 30 S., R. 5 W.

Parcel 2

Beginning on the North line of Canyonville Masonic Cemetery, said beginning point being 1175.8 feet North 1108.3 feet East of the quarter section corner between Secs. 27 and 28, T. 30 S., R. 5 W., said point being the Southeast corner of the Guest property as recorded September 16, 1948, Recorder's No. 82438, of Deed Records of Douglas County, Oregon; thence North 0°31′ West 112 feet; thence North 89°09′ East 270 feet to a point marked by a ¾″ pipe; South 11°30′ East 112 feet to a point marked by a ¾″ pipe on the North line of said cemetery property South 89°29′ feet along said Masonic Cemetery North line 270 feet to the point of beginning, all in Sec. 27, T. 30 S, R. 5 W.

Parcel 3

Beginning at an iron pipe on the Easterly right-of-way line of the Pacific Highway at a point which is North 30°33′ feet from the Northwest corner of the Canyonville, Oregon Masonic Cemetery, said beginning point being 1414.2 feet North and 450.0 feet East of the quarter section corner between Secs. 27 and 28, T. 30 S., R. 5 W.; thence running North 30°33′ West 198.2 feet along said highway line to an iron pipe; thence East 236.8 feet to an iron pipe; thence South 89°09′ West 276.0 feet to the place of beginning, and situated in Sec. 27, T. 30 S., R. 5 W.

The above-described parcels contain a total of 28.71 acres, more or less, which are subject to all valid rights, reservations, rights-of-way, and easements of record.

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

[FR Doc. 86-25517 Filed 11-12-86; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Eugene District Advisory Council; Meeting

Notice is hereby given in accordance with section 309 of the Federal Land Policy and Management Act of 1976 that a meeting of the Eugene District Advisory Council will be held on December 9, 1986, at 9:30 a.m. Pacific Standard Time, in Room 221 of the Federal Building, 211 E. 7th, Eugene, Oregon.

The agenda for the meeting will include: (1) An update on potential timber defaults; (2) a review of issues proposed for BLM's western Oregon planning cycle; and (3) other miscellaneous business.

The meeting is open to the public. Interested persons may make oral statements to the Council at the end of the meeting or file written statements for the Council's consideration. Anyone desiring to make an oral statement must notify the District Manager, Bureau of Land Management, 1255 Pearl St., Eugene, Oregon, 97401 by December 5. A per-person time limit may be established by the District Manager, depending on the number of persons wanting to address the Council.

Summary minutes of the Council meeting will be maintained in the District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Dated: November 4, 1986.

Melvin D. Clausen,

District Manager.

[FR Doc. 86-25518 Filed 11-12-86; 8:45 am]

BILLING CODE 4310-33-M

[AZ-040-07-4212-12; A 22435, A 22436]

Realty Action; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Designation of public lands for transfer out of Federal ownership in exchange for lands owned by the State of Arizona, Notice of Termination of segregative effect for public lands and opening of public land to entry for disposal by state exchange.

SUMMARY: BLM proposes to exchange public land with the State of Arizona in order to achieve more efficient management of the public land through consolidation of ownership.

All of the public land in the following described sections and subdivisions is being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716).

Gila and Salt River Meridian, Arizona

T. 8 S., R. 16 E.,
  Sec. 23.
T. 15 S., R. 19 E.,
  Sec. 14.
T. 6 S., R. 22 E.,
  Sec. 26, public land south of Reservation Bdy.
T. 15 S., R. 22 E.,
  Sec. 22, NW¼.
T. 21 S., R. 22 E.,
  Sec. 34.
T. 22 S., R. 22 E.,
  Secs. 14 and 15;
  Sec. 24, E½, NE¼SW¼, S½SW¼'
  Secs. 25, 26 and 27.
T. 22 S., R. 23 E.,
  Sec. 17;
  Sec. 18, lot 4;
  Sec. 19, N½SE¼SE¼SW¼, S½S½SE¼SW¼, NE¼SW¼SE¼, S½NW¼SW¼SE¼, S½SW¼SE¼, SE¼SE¼;
  Secs. 20, 21, 28 and 30.
T. 6 S., R. 24 E.,
  Sec. 25, SW¼SW¼.
T. 13 S., R. 25 E.,
  Secs. 13 and 24.
T. 14 S., R. 25 E.,
  Sec. 4.
T. 13 S., R. 26 E.,
  Secs. 11, 14 and 15.
T. 14 S., R. 26 E.,
  Secs. 23, 25 and 26.
T. 12 S., R. 27 E.,
  Secs. 12, 13 and 22;
  Sec. 23, N½NW¼, SW¼NW¼, SE¼SW¼;
  Secs. 24, 26 and 27.
T. 13 S., R. 27 E.,
  Secs. 1, 3, 10–13, 19, 24 and 27.
T. 12 S., R. 28 E.,
  Secs. 4–7, 16, 19, 20, 29, 30 and 31.
T. 13 S., R. 28 E.,
  Sec. 6, lots 3 and 4 (South of railroad R/W), lot 5 and SE¼NW excepting Highway R/W, lots 6 and 7, E½SW¼;
  Sec. 8, S½SW¼;
  Sec. 11;
  Sec. 12, S½SW¼;
  Secs. 17–21, 25, 27 and 28;
  Sec. 27, NE¼, E½NW¼, NW¼NW¼;
  Secs. 34 and 35.
T. 13 S., R. 29 E.,
  Secs. 17, 18, 19, 25–28, 30, 31, 33, 34 and 35.
T. 4 S., R. 30 E.,
  Sec. 25.
T. 8 S., R. 30 E.,
  Sec. 19, lots 3 and 4, SE¼SW¼, S½SE¼;
  Sec. 30, NE¼.
T. 13 S., R. 30 E.,
  Sec. 30.
T. 14 S., R. 30 E.,
  Sec. 13.
T. 4 S., R. 31 E.,
  Sec. 30.
T. 8 S., R. 31 E.,
  Sec. 22, N½NE¼, NE¼NW¼, SE¼SW¼, S½SE¼.
T. 8 S., R. 32 E.,
  Sec. 3;
  Sec. 9, NW¼SE¼;
  Sec. 10, lots 1–4 incl., W½E½, NW¼, E½SW¼;
  Sec. 15.

The lands described above comprise 22,504.04 acres, more or less in Cochise County; 2,593.43 acres, more or less, in Greenless County; 614.02 acres, more or less, in Graham County; and 320 acres, more or less, in Pinal County.

The above described lands will be segregated from entry under the mining laws, except the mineral leasing laws, effective upon publication of this notice in the **Federal Register.** The segregative effect will terminate upon issuance of patent to the State of Arizona or upon expiration of two years from the effective date, or by publication of a Notice of Termination by the Authorized Officer, whichever comes first.

Final determination of disposal will await completion of environmental analyses.

Publication of this notice shall also terminate the segregative effect previously placed on the following described public lands:

Gila and Salt River Meridian, Arizona

T. 18 S., R. 21 E.,
  Sec. 32, lots 5 and 6.
T. 6 S., R. 24 E.,
  Sec. 25, NW¼NW¼.

The lands described above comprise 66.00 acres, more or less.

On the date of publication of this notice, the following described public land shall be open to entry for the purpose of exchange with the State of Arizona:

Gila and Salt River Meridian, Arizona

T. 12 S., R. 27 E.,
  Sec. 24, E½.

DATE: For a period of 45 days from date of publication in the **Federal Register,** interested parties may submit comments to the Safford District Manager, 425 E. 4th Street, Safford, Arizona 85546.

SUPPLEMENTARY INFORMATION: Detailed informaiton concerning the exchange is available at the Safford District Office.

Dated: November 4, 1986.

Vernon L. Saline,

Acting District Manager.

[FR Doc. 86–25519 Filed 11–12–86; 8:45 am]

BILLING CODE 4310-32-M

Minerals Management Service

Development Operations Coordination Document; Exxon Co., U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Exxon Company, U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 016 and 0367, Blocks 31 and 32 respectively, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Isle, Louisiana.

DATE: The subject DOCD was deemed submitted on November 4, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Wholesalers Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised section 250.34 of Title 30 of the CFR.

Dated: November 5, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86–25520 Filed 11–12–86; 8:45 am]

BILLING CODE 4310-MR-M

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Development Operations Coordination Document; Hall-Houston Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 7834, Block 30, Chandeleur Area, offshore Louisiana and Mississippi. Proposed plans for the above area provide for the development and produciton of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on October 31, 1986. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Wholesalers Pkwy., Room 114, New Orleans, Lousiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit, Phone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: November 4, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-25521 Filed 11-12-86; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Petroleum Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Huffco Petroleum Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 0988, Block 275, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Freshwater City, Louisiana.

DATE: The subject DOCD was deemed submitted on November 3, 1986.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1420 South Clearview Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that Minerals Managment Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Managment Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised 250.34 of Title 30 of the CFR.

Dated: November 4, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico, OCS Region.

[FR Doc. 86-25522 Filed 11-12-86; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Walter Oil & Gas Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Walter Oil & Gas Corporation has submitted a DOCD describing the activities it proposes to conduct on lease OCS-G 4719, Block 321, Galveston Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Freeport, Texas .

DATE: The subject DOCD was deemed submitted on November 3, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1420 South Clearview Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals

Management Service makes information contained in DOCDs available to affected States, executives of affected local governments and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 4, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico, OCS Region.

[FR Doc. 86-25523 Filed 11-12-86; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Martin Luther King, Jr., National Historic Site and Preservation District Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Martin Luther King, Jr., National Historic Site Advisory Commission will be held at 10:30 a.m. on Wednesday, December 3, 1986, at The Martin Luter King, Jr., Center for Non-Violent Social Change, Inc., Freedom Hall, Room 261, 449 Auburn Avenue, NE., Atlanta, Georgia 30312.

The purpose of the Martin Luther King, Jr., National Historic Site Advisory Commission is to consult with the Secretary of the Interior on matters of planning, development and administration of the Martin Luther King, Jr., National Historic Site. The purpose of this meeting will be to update the Commission on park activities and operations.

The members of the Advisory Commission are as follows:

Mr. William Allison, Chairman
Mr. John H. Calhoun, Jr.
Dr. Elizabeth A. Lyon
Mr. C. Randy Humphrey
Mrs. Christine King Farris
Mr. Handy Johnson, Jr.
Mr. James Patterson
Mrs. Valena Henderson
Mrs. Millicent Dobbs Jordan
Mr. John W. Cox
Reverend Joseph L. Roberts, Jr.
Mrs. Coretta Scott King, Ex-Officio Member,
Director, National Park Service, Ex-Officio Member

The meeting will be open to the public; however, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing further information concerning the meeting or who wish to submit written statements may contact Randolph Scott, Superintendent, Martin Luther King, Jr., National Historic Site. 522 Auburn Avenue, N.E., Atlanta, Georgia 30312; Telephone 404/331-5190. Minutes of the meeting will be available approximately 4 weeks after the meeting.

Dated: October 30, 1986.

Robert M. Baker,

Regional Director, Southeast Region.

[FR Doc. 86-25662 Filed 11-12-86; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-350 (Preliminary)]

Certain Forged Steel Crankshafts From Brazil; Petition and Termination of Investigation

AGENCY: International Trade Commission.

ACTION: Notice of withdrawal of petition and termination of investigation.

SUMMARY: On October 30, 1986, the Commission received a letter from petitioner in the subject investigation (Wyman-Gordon Company) withdrawning its petition. The Commission has been advised that the petition filed with the Department of Commerce was simultaneously withdrawn, and the administering authority will not initiate a formal antidumping investigation in accordance with 19 U.S.C. 1673a(a). Consequently, there will be no imports subject to investigation by the administering authority and there will be no basis upon which the Commission will be able to render a preliminary determination. Therefore, the Commission is terminating the antidumping investigation instituted effective October 9, 1986 (51 FR 36871, Oct. 16, 1986).

EFFECTIVE DATE: October 30, 1986.

FOR FURTHER INFORMATION CONTACT: Diane Mazur (202-523-7914), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Authority: This investigation is being terminated under authority of the Tariff Act of 1930, title VII.

Issued: November 5, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-25595 Filed 11-12-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-255]

Certain Garment Hangers; Commission Decision Not To Review an Initial Determination Amending Complaint and Notice of Investigation To Add One Respondent

AGENCY: International Trade Commission.

ACTION: Amendment of complaint and notice of investigation to add one respondent.

SUMMARY: Notice is hereby given that the Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) (Order No. 5) amending the complaint and notice of investigation to add Hangers Unlimited, Inc. of Englewood, New Jersey as a respondent in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Charles H. Nalls, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 523-1626.

SUPPLEMENTARY INFORMATION: On September 23, 1986, complainant Batts, Inc., filed a motion (Motion No. 255-1) to amend the complaint and notice of investigation to add Hangers Unlimited, Inc. of Englewood, New Jersey as a respondent. The presiding ALJ issued an ID granting the motion on October 1, 1986. No petitions for review of the ID were received nor were any comments received from Government agencies.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-1626. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Issued: November 5, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-25596 Filed 11-12-86; 8:45 am]

BILLING CODE 7020-02-M

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[Investigations Nos. 731-TA-293, 294, and 296 (Final)]

Certain Welded Carbon Steel Pipes and Tubes From the Philippines and Singapore

Determinations

On the basis of the record[1] developed in investigations Nos. 731–TA–293 and 294 (Final), the Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673(b)), that an industry in the United States is not materially injured or threatened with material injury, and that the establishment of an industry in the United States is not materially retarded, by reason of imports of standard pipes and tubes[2] from the Philippines and Singapore which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

The Commission further determines,[3] on the basis of the record developed in investigation No. 731–TA–296 (Final), pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is threatened with material injury by reason of imports of light-walled rectangular pipes and tubes[4] from Singapore which have been found by the Department of Commerce to be sold in the United States at LTFV. The Commission also determines, pursuant to section 735(b)(4)(B) of the Tariff Act of 1930 (19 U.S.C. 1673d(b) (4)(B)), that no material injury would have been found but for any suspension of liquidation of entries of the Merchandise.[5]

Background

The Commission instituted these investigations effective April 28, 1986, following preliminary determinations by the Department of Commerce that imports of certain welded carbon steel pipes and tubes from the Philippines and Singapore were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of May 14, 1986 (51 FR 17682). The hearing was held in Washington, DC, on September 17, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on November 3, 1986. The views of the Commission are contained in USITC Publication 1907 (November 1986), entitled "Certain Welded Carbon Steel Pipes and Tubes from the Philippines and Singapore: Determinations of the Commission in Investigations Nos. 731–TA–293, 294, and 296 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

Issued: November 4, 1986.

By order of the Commission:

Kenneth R. Mason,

Secretary.

[FR Doc. 86–25598 Filed 11–12–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337-TA-259]

Certain Battery-Powered Smoke Detectors; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 9, 1986, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of BRK/Colorado, Inc., 140 South Union, Lakewood, Colorado 80228, and Pittway Corporation, 333 Skokie Boulevard, Northbrook, Illinois 60065–3012. An amendment and supplement to the complaint were filed on October 23, 1986. The complaint, as amended, alleges unfair methods of competition and unfair acts in the importation into the United States of certain battery-powered smoke detectors, and in their sale, by reason of alleged infringement of at least claims 1, 2, 7, 9–10, and 14–16 of U.S. Letters Patent Re. 29,983. The complaint further alleges that the effect or tendency of unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainants request that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Cheri M. Taylor, Esq., or Deborah S. Strauss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–523–0440 and 202–523–1233, respectively.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on November 5, 1986, ordered that:

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation into the United States of certain battery-power smoke detectors, or in their sale, by reason of alleged infringement of claims 1, 2, 7, 9–10, and 14–16 of U.S. Letters Patent Re. 29,983, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

BRK/Colorado, Inc., 140 South Union,
Lakewood, Colorado 80228

and

Pittway Corporation, 333 Skokie
Boulevard, Northbrook, Illinois
60065–3012.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Management Investment &
Technology Company, Ltd., Wah
Ming Building—15th Floor, 34 Wong
Chuk Hang Road, Aberddeen, Hong
Kong

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(i)).

[2] For purposes of these investigations, the term "standard pipes and tubes" covers welded carbon steel pipes and tubes of circular cross section, 0.375 inch or more but not over 16 inches in outside diameter, provided for in items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the *Tariff Schedules of the United States (Annotated)* (TSUSA).

[3] Chairman Liebeler, Vice Chairman Brunsdale, and Commissioner Lodwick make negative determinations.

[4] For purposes of this investigation, the term "light-walled rectangular pipes and tubes" covers welded carbon steel pipes and tubes of rectangular (including square) cross section, having a wall thickness less than 0.156 inch, provided for in item 610.4928 of the TSUSA.

[5] Chairman Liebeler, Vice Chairman Brunsdale, and Commissioner Lodwick, having made negative determinations, do not address the question of whether material injury would have been found but for any suspension of liquidation of entries.

Wing Wah Chong Investment Company, Ltd., Flat-A1 A2, 2-S Fortune Factory Bldg., 40 Lee Chung Street, Chai-Wan, Hong Kong

Dicon Systems Limited, 719 Clayson Road, Toronto, Ontario M9M 2H4, Canada

Gateway Scientific, Inc., 3020 Red Hill Avenue, Costa Mesa, California 92626

Southwest Laboratories, Inc., 3505 Cadillac Avenue—Bldg. F-1, Costa Mesa, California 92626

Emhart Corporation, 426 Colt Highway, Farmington, Connecticut 06032

Firex Corp., 2464 Wisconsin Avenue, Downers Grove, Illinois 60515

Jameson Home Products, Inc., 2464 Wisconsin Avenue, Downers Grove, Illinois 60515

Fyrnetics, Inc., 1021 Davis Road, Elgin, Illinois 60120

Ten-Tek Electronics, Inc., 631 Executive Drive, Willowbrook, Illinois 60525

Universal Security Instruments, Inc., 10324 South Dolfield Road, Owings Mills, Maryland 21117

Pyrotector, Inc., 333 Lincoln Street, Hingham, Massachusetts 02043

Notifier Company, 3700 North 56th Street, Lincoln, Nebraska 68504

North American Philips Corporation, Norelco Consumer Products Division, 100 East 42nd Street, New York, New York 10017

(c) Cheri M. Taylor, Esq., and Deborah S. Strauss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 701 E Street NW., Room 125 and Room 126, respectively, Washington, DC 20436, shall be the Commission investigative attorneys, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Response must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202-523-0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Issued: November 6, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-25594 Filed 11-12-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-245]

Certain Low-Nitrosamine Trifluralin Herbicides, Commission Decision To Review Initial Determinations, Schedule for Filing of Written Submissions

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined to review the administrative law judge's (ALJ's) initial determinations (ID's) terminating all respondents in the above-captioned investigation on the basis of a consent order agreement and settlement and licensing agreements.

AUTHORITY: The authority for the Commission's action herein is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in §§ 210.53-210.56 of the Commission's Rules of Practice and Procedure (19 CFR 210.53-210.56).

FOR FURTHER INFORMATION CONTACT: Wayne W. Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0350.

SUMMARY: On October 6, 1986, the presiding ALJ (Judge Mathias) issued two IDs (Orders Nos. 25 and 26) terminating all the respondents in the above-referenced investigation on the basis of a consent order and settlement and licensing agreements. Order No. 25 terminates respondents Agan Chemical Manufacturers Ltd. and Makhteshim-Agan (America) Inc. (Agan) on the basis of a consent order. The consent order is based on a consent order agreement which is accompanied by settlement and license agreements between complainant Eli Lilly and Co. (Lilly) and Agan. Order No. 26 terminates respondents Industria Prodotti Chimici, S.p.A. (I.Pi.Ci.) and Aceto Agricultural Chemicals Corp. (Aceto) on the basis of settlement agreements between Lilly, I.Pi.Ci. and Aceto and a license agreement between Lilly and I.Pi.Ci No petitions for review or comments from Government agencies or the public have been received.

Having examined the record, the Commission has concluded that the following policy issue warrants review:

> Whether the consent order which is the subject of Order No. 25 should be issued, in view of the fact that the respondents concerned therein (Agan) have concluded settlement and license agreements with complainant Lilly. The Commission is particularly interested in the justification for further expenditures of public resources which might be involved in monitoring or enforcing the consent order. The Commission notes that Order No. 26 terminates the respondents concerned therein (I.Pi.Ci. and Aceto) on the basis of settlement and license agreements alone.

Written submissions: The parties to the investigation and interested Government agencies are encouraged to file written submissions on the issue under review.

Written submissions on the issue under review, must be filed not later than the close of business on November 20, 1986. Reply submissions on the issue under review, if any, must be filed not later than the close of business on December 3, 1986.

Commission Hearing: The Commission does not plan to hold a public hearing in connection with this review.

Additional Information: Persons submitting written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment by the administrative law judge. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents containing

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confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection in the Office of the Secretary.

Notice of this investigation was published in the **Federal Register** of April 9, 1986 (51 FR 12218).

Copies of the nonconfidential version of the administrative law judge's initial determinations and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Issued: November 6, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-25593 Filed 11-12-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-246]

Certain Xenon Lamp Dissolver Slide Projectors and Components Thereof; Commission Decision Not To Review an Initial Determination Granting a Motion To Amend the Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Nonreview of the presiding administrative law judge's initial determination granting respondents' motion to amend the notice of investigation.

SUMMARY: On September 22, 1986, respondents D.O. Industries, Inc. (D.O. Industries) and Hokushin Precision Instruments Inc. (Hokushin) filed a motion to amend the notice of investigation in the above-captioned investigation to eliminate claims of infringement of claims 2 and 9 of U.S. Letters Patent 4,158,491 (the '491 patent) from the scope of the investigation (Motion 246-7). The motion was unopposed. On October 6, 1986, the presiding administrative law judge (ALJ) issued an initial determination (ID) (Order No. 8) granting the motion. Petitions for review of the ID were due October 17, 1986; none were received. Comments from government agencies were due October 20, 1986; none were received. The Commission has determined not to review the ID.

FOR FURTHER INFORMATION CONTACT: Kristian E. Anderson, Esq., Office of the General Counsel, U.S. International Trade Commission, Washington, DC 20436, telephone 202-523-0074.

SUPPLEMENTARY INFORMATION:

Authority

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rules 210.53 and 210.55 (19 CFR 210.53, 210.55).

Background

On April 3, 1986, complainant Bergen Expo Systems, Inc (Bergen) filed a complaint with the Commission alleging that respondents D.O. Industries and Hokushin were violating section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Specifically, complainant Bergen originally alleged that respondents are infringing claims 1, 2, 6-9, and 13 of the '491 patent. The Commission instituted the present investigation on May 7, 1986. 51 FR 16909.

Public Inspection

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436, telephone 202-523-0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Issued: November 5, 1986.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-25597 Filed 11-12-86; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative Notice to the Commission of Intent to Perform Interstate Transportation for Certain Nonmembers

Dated: November 7, 1986.

The following Notices were filed in accordance with section 10526 (a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Agricultural Services Association, Inc.
(2) P.O. Box 360, Bells, TN 38006
(3) 118 Main Street, Bells, TN 38006
(4) Gail Chapman, P.O. Box 360, Bells, TN 38006
(1) Dawn Transport Inc.
(2) 117 W. San Ysidro Blvd. CFP No. 13, San Ysidro, CA 92073
(3) 1590 Reforma, Mexicali Baja, CA
(4) H. Jackson, 117 W. San Ysidro Blvd. CFP No. 13, San Ysidro, CA 92075
(1) Sunset Transport, Inc.
(2) C.F.P. Ste. 194, 2630 E. Beyer Blvd., San Ysidro, CA 92073
(3) Donato Guerra 900 Sur., Gulican, Sinaloa, Mexico
(4) Armondo Villalba, C.F.P. Ste. 194, 2630 E. Beyer Blvd., San Ysidro, CA 92073

Noreta R. McGee,

Secretary.

[FR Doc. 86-25557 Filed 11-12-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-62 (Sub-No. 2X)]

Marinette, Tomahawk and Western Railroad Co.; Exemption for Abandonment in Lincoln County, WI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10903, et seq., the abandonment by Marinette, Tomahawk & Western Railroad Company of 1.48 miles of rail line between milepost 11.73 near Kings, and

milepost 13.21 at High School Road, Tomahawk, WI, in Lincoln County, WI, subject to standard labor protection conditions.

DATES: This exemption will be effective on December 15, 1986. Petitions to stay must be filed by November 24, 1986, and petitions for reconsideration must be filed by December 3, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB-62 (Sub-No. 2X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representatives: Francis G. McKenna, Anderson & Pendleton C.A., Suite 707, 1000 Connecticut Avenue, NW., Washington, DC 20036

Lynton W. Brooks, Servtras Management, Inc., 114 River View Boulevard, International Falls, MN 56649

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: October 31, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 86-25556 Filed 11-12-86; 8:45 am]

BILLING CODE 7035-07-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Water Act; Pima County, AZ

In accordance with Department policy, 28 CFR 50.7, Notice is hereby given that on *October 31, 1986* a proposed Consent Decree in *United States* v. *Pima County, Arizona* and *State of Arizona,* Civil Action No. 83-804-TUC, was lodged with the United States District Court for the District of Arizona. The proposed Consent Decree concerns discharges in excess of effluent limitations requirements at Pima County's Ina Road wastewater treatment plant periodically between 1978 and 1982 and occasional instances in late 1981 and early 1982 in which automatic effluent samplers at that plant were turned off by a low level employee, without the knowledge or approval of Pima County officials, in violation of sections 301 and 402 of the Clean Water Act. The proposed Consent Decree relates only to defendant Pima County and requires Pima County to pay a civil penalty of $100,000 to prepare a final Operation and Maintenance ("O&M") Manual to be submitted to EPA detailing, inter alia, operation and maintenance of plant equipment and plant-specific key operating procedures for process control of each unit, publication in certain publications of public notice condeming improper effluent sampling activities and violations of effluent limitations requirements and warning that such actions will result in legal penalties, a provision enjoining Pima County from altering any monitoring device required under the Clean Water Act of filing or maintaining an inaccurate report or record required under that Act, and subjects Pima County to certain stipulated contempt penalties for violation of the provisions of the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Pima County, Arizona* and *State of Arizona,* D.J. Ref. 90-5-1-1-2050.

The proposed Consent Decree may be examined at the office of the United States Attorney, Arizona District, Tucson Office, 120 West Broadway, Suite 310, Acapulco Building, Tucson, Arizona 85701 and at the Region 9 Office of the Environmental Protection Agency, Office of General Counsel, 215 Fremont Street, San Francisco, California 94105. Copies of the Consent Decree also may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.20 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-25623 Filed 11-12-86; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

John R. Knight, M.D.; Revocation of Registration

On August 11, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued to John R. Knight, M.D. of 595 E. Broadway, South Boston, Massachusetts 02127, an Order to Show Cause proposing to revoke his DEA Certificate of Registration, AK8892766, and deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The proposed action was predicated upon Dr. Knight's lack of authorization to handle controlled substances in the Commonwealth of Massachusetts.

The Order to Show Cause was sent to Dr. Knight by registered mail. DEA received the return receipt which indicated that the Order to Show Cause was received on August 14, 1986. More than thirty days have passed since the Order to Show Cause was served and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Dr. Knight is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that since at least 1978, Dr. Knight has been obtaining controlled substances for his own addiction through the use of fraudulent prescriptions. Dr. Knight was previously authorized by DEA to handle controlled substances at an address in New York. On or about January 12, 1981, Dr. Knight entered into a stipulation with the New York Department of Health in which Dr. Knight admitted that "between July 29, 1978 and October 31, 1978, he did, not in good faith and not in the course of his professional practice, make and utter eight false New York State prescriptions, and thereby unlawfully obtained, possessed, had under his control and self-administered Demerol." On January 14, 1981, the Department of Health for the State of New York fined Dr. Knight $3,600.00 and ordered him to surrender his controlled substance privileges.

In June 1983, investigators of the Massachusetts State Police—Diversion Investigation Unit began monitoring the controlled substance prescribing practices of Dr. Knight in Massachusetts. On June 6, 1983, Dr. Knight told a Massachusetts State Police officer that 25 of his prescriptions for Demerol were for his father's medical

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condition and that 22 of his prescriptions for Demerol were for his aunt's medical condition. During a subsequent interview, Dr. Knight admitted that he actually used these prescriptions to obtain Demerol for his personal use. As a result of this information, on January 10, 1984, Dr. Knight voluntarily surrendered his Schedule II privileges with the Drug Enforcement Administration.

On April 14, 1986, the Board of Registration in Medicine for the Commonwealth of Massachusetts received information that Dr. Knight is still addicted to controlled substances and continues to attempt to obtain such substances through fraudulent prescriptions. In addition, on April 14, 1986, Dr. Knight's treating neurologist expressed the opinion that he no longer could control Dr. Knight's substance abuse problem and therefore it is not safe for Dr. Knight to continue to diagnose and treat patients.

As a result of this information, on April 16, 1986, the Board of Registration in Medicine for the Commonwealth of Massachusetts ordered the temporary suspension of Dr. Knight's license to practice medicine in the Commonwealth of Massachusetts. Dr. Knight is no longer authorized to prescribe, dispense, administer or otherwise handle controlled substances in the Commonwealth of Massachusetts. Therefore, there is a lawful basis for the revocation of Dr. Knight's DEA Certificate of Registration. 21 U.S.C. 824(a)(3). DEA has consistently held that when a registrant or applicant is without lawful authority to handle controlled substances under the laws of the state in which he practices or intends to practice, the Drug Enforcement Administration is without lawful authority to issue or maintain such registration. See, *Jerry L. Word, M.D.*, 51 FR 26613 (1986); *Meyer Liebowitz, M.D.*, 51 FR 11654 (1986); *George P. Gotsis, M.D.*, 49 FR 33750 (1984).

Since Dr. Knight cannot lawfully handle controlled substances in the State of Massachusetts, the Administrator has no choice but to revoke Dr. Knight's DEA Certificate of Registration and to deny any pending applications for registration. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AK8892766, previously issued to John R. Knight, M.D. be, and it hereby is revoked. The Administrator further orders that any pending applications of Dr. Knight, for registration under the Controlled Substance Act, be, and they hereby are denied. This order is effective December 15, 1986.

Dated: November 6, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86-25616 Filed 11-12-86; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-54]

Ramon Pla, M.D.; Revocation of Registration

On June 17, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, (DEA) directed an Order to Show Cause to Ramon Pla, M.D. (Respondent) of 21100 Southgate Park Boulevard, Maple Heights, Ohio 44137. The Order to Show Cause sought to revoke his DEA Certificate of Registration AP2956641 and to deny any of his pending applications for registration as a practitioner under 21 U.S.C. 823(f). The proposed action was predicated on Respondent's lack of authorization to handle controlled substances in the State of Ohio. 21 U.S.C. 824(a)(3).

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Francis L. Young. The Administrative Law Judge provided the Government an opportunity to file a motion for summary disposition, which the Government filed. The Administrative Law Judge then provided Respondent an opportunity to respond to the motion for summary disposition. Respondent did not file such a response. Judge Young considered the motion for summary disposition, and on September 26, 1986, issued his opinion and recommended ruling, findings of fact and conclusions of law in this matter. No hearing was held, since no factual issues were involved. Neither side filed exceptions to the recommended ruling of the Administrative Law Judge. On October 23, 1986, Judge Young transmitted the record in this matter to the Administrator. The Administrator hereby adopts the findings of fact and conclusions of law of the Administrative Law Judge and enters his final order in this matter.

The Administrative Law Judge found that on April 9, 1986, the State Medical Board of Ohio revoked Respondent's license to practice medicine and surgery in the State of Ohio, effective immediately. Therefore, Respondent is without authority to practice medicine or handle controlled substances in Ohio, the state in which he is registered. Judge Young found, as does the Administrator, that DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances. See, 21 U.S.C. 823(f). The Administrator and his predecessors have consistently so held. See, *George S. Health, M.D.*, Docket No. 86-24, 51 FR 26610 (1986); *Dale D. Shahan, D.D.S.*, Docket No. 85-57, 51 FR 23481 (1986); *Emerson Emory, M.D.* Docket No. 85-46, 51 FR 9543 (1986); *Agostino Carlucci, M.D.*, Docket No. 82-20, 49 FR 33184 (1984).

The Administrative Law Judge also found that the motion for summary disposition was properly entertained and must be granted. When no fact question is involved, or when the facts are agreed, there is no requirement that an agency convene a plenary, adversarial administrative proceeding, even though the pertinent statute prescribes a hearing. Congress does not intend administrative agencies to perform meaningless tasks. See, *United States v. Consolidated Mines and Smelting Co., Ltd.*, 445 F.2d 432, 453 (9th Cir. 1971); *NLRB v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO*, 549 F.2d 634 (9th Cir. 1977).

Having considered the record in this matter, the Administrator concludes that Respondent's DEA Certificate of Registration should be revoked due to his lack of authorization to handle controlled substances in the State of Ohio. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 21 CFR 0.100(b), orders that DEA Certificate of Registration AP2956641, previously issued to Ramon Pla, M.D., is hereby revoked. In addition, the Administrator orders that any pending applications of Ramon Pla, M.D., for registration under the Controlled Substances Act, are hereby denied. This order is effective December 15, 1986.

Dated: November 6, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86-25617 Filed 11-12-86; 8:45 am]

BILLING CODE 4410-09-M

John L. Vakas, M.D.; Revocation of Registration

On September 2, 1986, the Deputy Assistant Administrator, Office of

Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to John L. Vakas, M.D., 1508 W. 4th Street, Coffeyville, Kansas 67337, proposing to revoke DEA Certificate of Registration AV1287463 previously issued to him. The statutory predicate for the Order to Show Cause was an Emergency Order of Limitation issued by the Kansas State Board of Healing Arts on October 14, 1985, which prohibits Dr. Vakas administering, dispensing and/or prescribing controlled substances in the State of Kansas.

The Order to Show Cause was mailed to Dr. Vakas, registered mail, return receipt requested, and was received by the doctor at his registered address on September 8, 1986. More than thirty days have elapsed since the Order to Show Cause was received, and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and (d), Dr. Vakas is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based upon the investigative file. 21 CFR 1301.57.

The Administrator finds that on October 14, 1985 the Kansas State Board of Healing Arts, after a lengthy investigation, served on Dr. Vakas an Emergency Order of Limitation of License which immediately suspended him from selling, dispensing, administering or prescribing controlled substances. On December 6, 1985, the Kansas Board issued a Petition for the Revocation, Suspension or Limitation of License in the matter of John L. Vakas, M.D. In this Petition the Board declared that the Emergency Order of Limitation of License which prohibits the administering, dispensing, and/or prescribing of controlled substances by Dr. Vakas be continued in full force until the conclusion of formal revocation proceedings. There has been no conclusion of such proceedings to date.

Among the allegations listed in the December 6, 1985 Petition of the Kansas State Board of Healing Arts were repeated instances of dispensing or distribution of controlled substances for other than legitimate medical purposes. The controlled substances involved in these dispensations included amphetamines, methylphenidate, and phenmetrazine, all Schedule II stimulant controlled substances; and various narcotic controlled substances.

The Administrator notes that Dr. Vakas was indicated by a Montgomery County, Kansas Grand Jury on March 21, 1986 of 410 counts of unlawfully prescribing controlled substances. There has been no trial or other resolution of this matter.

The Administrator has consistently held that when an individual registered with DEA is not authorized to handle controlled substances in the state in which he practices, DEA is without lawful authority to maintain his registration. See: *Avner Kauffman, M.D.*, Docket No. 85–8, 50 FR 34208 (1985); *Kenneth K. Birchard*, M.D., 48 FR 33778 (1983); and *Thomas E. Woodson, D.O.*, Docket No. 81–4, 47 FR 1353 (1982). Therefore, since Dr. Vakas is not authorized to handle controlled substances in the State of Kansas, the Administrator cannot permit him to maintain a DEA Certificate of Registration in that State.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AV1287463 previously issued to John L. Vakas, M.D. is revoked effective December 15, 1986. Any outstanding applications for renewal of that registration are hereby denied.

Dated: November 6, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86–25618 Filed 11–12–86; 8:45 am]

BILLING CODE 4410-09-M

Bureau of Prisons

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Construction of a Federal Correctional Facility, In Wayne County, GA

AGENCY: Department of Justice; Federal Bureau of Prisons; Justice.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: 1. Proposed Action: The U.S. Department of Justice; Federal Bureau of Prisons; has determined that a new medium security Federal Correctional Institution including an adjacent minimum security facility is needed in the Southeastern United States. A site is currently being evaluated near Jesup, Georgia. The proposal calls for the initial construction of a minimum security camp housing as many as 200 inmates. The second phase of the development would consist of a 500–600 bed facility to house medium security inmates. Approximately 250 total acres would be required for read access and service/support space for the institution. In addition, exercise areas and an adequate natural buffer zone around the entire property would be included in the required acreage.

2. In the process of evaluating the specific site, the following subject will receive a detailed examination: Water and sewage, wetlands, threatened and endangered species, cultural resources, unique and prime farmlands, and varied socioeconomic issues.

3. Alternatives: In developing the DEIS, the options of no action and alternative sites for the proposed facilities will be fully and thoroughly examined.

4. Scoping Process: A number of meetings have already been held with local officials and interested citizens. Additional meetings including at least one public meeting will be held once a specific site is identified. A formal public hearing will be held after the publication of the DEIS.

5. DEIS Preparation: The DEIS should be available for public review and comment in the spring 1987.

6. Address: Question concerning the proposed action and the DEIS should be addressed to: Jim Jones, Site Acquisition Coordinator, Facilities Development and Operations, U.S. Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, Telephone: (202) 272–6871.

Loy S. Hayes,

Chief, Office of Facilities Development and Operations, Federal Bureau of Prisons Department of Justice.

[FR Doc. 86–25743 Filed 11–12–86; 8:45 am]

BILLING CODE 4410-05-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (86–81)]

NASA Advisory Council, Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee Ad Hoc Review Team on Use of Space Station as an Engineering Laboratory.

DATE AND TIME: December 4, 1986, 9 a.m. to 4 p.m.

ADDRESS: Room 625, Building FOB 10, National Aeronautics and Space Administration, Washington, DC 20546.

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FOR FURTHER INFORMATION CONTACT: Mr. James Romero, Code RS, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2738.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee has established an ad hoc team to identify in-space derived experimental data that are needed by the aerospace engineering community to enhance its capability to design and operate future space systems. The team's recommendations will be factored into the selection process for in-space research and technology experiments using the space station as a laboratory facility. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including the team members and other participants).

Type of Meeting: Open.

Agenda: December 4, 1986.

9 a.m.—Chairperson's Opening Remarks.

9:30 a.m.—Identification and Selection of Technical Areas.

11 a.m.—Assignment of Tasks.

11:30 a.m.—General Discussion of Individual Tasks.

3 p.m.—Plan Schedule of Future Meetings.

4 p.m.—Adjourn.

October 31, 1986.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 86–25560 Filed 11–12–86; 8:45 am]

BILLING CODE 7510–01–M

[Notice (86–82)]

NASA Advisory Council, Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee and the Aerospace Research and Technology Subcommittee.

DATE AND TIME: December 16, 1986, 8:30 a.m. to 4:30 p.m.; December 17, 1986, 8 a.m. to 5:30 p.m.; December 18, 1986, 8 a.m. to 12:30 p.m.

ADDRESS: Ames Research Center, Building 201, Main Auditorium, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT: Ms. Joanne Teague, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–1887.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee was established to provide overall guidance and direction to the aeronautics research and technology activities in the Office of Aeronautics and Space Technology (OAST).

The Aerospace Research and Technology Informal Subcommittee was formed to provide technical support for the AAC and to conduct ad hoc interdisciplinary studies and assessments. The Committee, chaired by Mr. Robert B. Ormsby, is comprised of 23 members. The Subcommittee is comprised of 47 members. The meeting will be open to the public up to the seating capacity of the room (Approximately 200 persons including the Subcommittee members and other participants).

Type of Meeting: Open.

Agenda: December 16, 1986.

8:30 a.m.—Opening Remarks.

9 a.m.—Discussion of Membership Changes.

9:15 a.m.—Aeronautics Overview.

9:45 a.m.—Parallel Discipline Program Reviews on Aerodynamics, Materials & Structures, Propulsion, and Controls & Guidance/Human Factors.

1 p.m.—Facility Tour.

2 p.m.—Continuation of Discipline Program Reviews.

4:30 p.m.—Adjourn.

December 17, 1986.

8 a.m.—Continuation of Discipline Program Reviews.

1 p.m.—Facility Tour.

2 p.m.—Parallel Vehicle Program Reviews of Rotorcraft, General Aviation/Transport/Supersonic, High Performance, and Hypersonics/National Aerospace Plane.

4 p.m.—Plenary Session.

5:30 p.m.—Adjourn.

December 18, 1986.

8 a.m.—Remarks by AAC Chairperson.

8:30 a.m.—Remarks by Associate Administrator for Aeronautics and Space Technology.

9 a.m.—Progress Reports by Ad Hoc Review Team Chairpersons.

10 a.m.—Discussion of Issues and Recommendations.

11 a.m.—Summary Session.

12:30 p.m.—Adjourn.

October 31, 1986.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 86–25561 Filed 11–12–86; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: 10 CFR Part 71—Packaging and Transportation of Radioactive Material.

3. The form number if applicable: Not applicable.

4. How ofter the collection is required: Applications for package certification may be made at any time. Required reports are collected and evaluated on a continuing basis as events occur.

5. Who will be required or asked to report: All NRC specific licensees who place byproduct, source, or special nuclear material into transportation, and all persons who wish to apply for NRC approval of package designs for use in such transportation.

6. An estimate of the number of responses: 725.

7. An estimate of the total number of hours needed to complete the requirement or request: 73,417.

8. An indication of whether section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. *Abstract:* NRC regulations in 10 CFR Part 71 establish requirements for packaging, preparation for shipment, and transportation of licensed material, and prescribe procedures, standards, and requirements for approval by NRC of packaging and shipping procedures for fissile material and for quantities of licensed material in excess of type A quantities.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Commets and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395–7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland, this 6th day of November 1986.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 86–25657 Filed 11–12–86; 8:45 am]

BILLING CODE 7590-01-M

Documents containing reporting or recordkeeping requirements; Office of Management and Budget review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: 10 CFR Part 75 Safeguards on Nuclear Material—Implementation of US/IAEA Agreement.

3. The form number if applicable: Not applicable.

4. How often the collection is required: Installation information is submitted upon written notification from the Commission. Changes are submitted as occurring. Nuclear Material accounting and control information is submitted in accordance with specified instructions.

5. Who will be required or asked to report: All persons licensed by the Commission or Agreement States to posses source or special nuclear material at an installation specified on the U.S. eligible list as determined by the Secretary of State or his designee and filed with the Commission, as well as holders of construction permits and persons who intend to receive source material.

6. An estimate of the number of responses: 63.

7. An estimate of the total number of hours needed to complete the requirement or request: 4,756.

8. An indication of whether section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. *Abstract:* 10 CFR Part 75 establishes a system of nuclear material accounting and control to implement the Agreement between the United States and the International Atomic Energy Agency.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395–7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland, this 6th day of November 1986.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 86–25656 Filed 11–12–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–455]

Commonwealth Edison Co., Byron Station, Unit No. 2; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission or NRC), has issued Facility Operating License No. NPF–66 to Commonwealth Edison Company (the licensee) which authorizes operation of the Byron Station, Unit No. 2 (the facility) at reactor core power levels not in excess of 3411 megawatts thermal in accordance with the provisions of the license, the Technical Specifications and the Environmental Protection Plan with a condition currently limiting operation to five percent of full power (170 megawatts thermal). Authorization to operate beyond five percent of full power will require specific Commission approval.

Byron Station, Unit No. 2 is a pressurized water reactor located in north central Illinois, 2½ miles east of the Rock River, 3 miles south-south-west of the town of Byron, and 17 miles southwest of Rockford, Illinois. The station is within Rockvale Township, Ogle County, Illinois. The license is effective as of the date of issuance.

The application for the License complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license for the Byron Station was published in the Federal Register on December 15, 1978 (43 FR 58659).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement and the Assessment of the Effect of License Duration on Matters Discussed in the Final Environmental Statement for the Byron Station, Units 1 and 2 (dated April 1982) since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see (1) Facility Operating License No. NPF–66, with Revisions to Technical Specifications (Appendix A); (2) Facility Operating License NPF–37, dated February 14, 1985 with Technical Specifications, Appendix A, NUREG–1113 and the Environmental Protection Plan, Appendix B; (3) the report of the Advisory Committee on Reactor Safeguards, dated March 9, 1982; (4) the Commission's Safety Evaluation Report, dated February 1982 (NUREG–0876), and Supplements 1 through 7; (5) the Final Safety Analysis Report and Amendments thereto; (6) the Environmental Report and supplements thereto; (7) and the Final Environmental Statement, dated April 1982 (NUREG–0848).

These items are available for inspection at the Commission's Public Document Room located at 1717 H Street, NW., Washington, DC 20555 and at the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois. A copy of Facility Operating License NPF–66 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of PWR Licensing–A. Copies of the Safety Evaluation Report and Supplements 1 through 7 (NUREG–0876) and the Final Environmental Statement (NUREG–0848) may be purchased at current rates from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20012–7982 or by calling (202) 275–2060 or (202) 275–2171.

Dated at Bethesda, Maryland, this 6th day of November, 1986.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Project Directorate #3 Division of PWR Licensing–A.

[FR Doc. 86–25659 Filed 11–12–86; 8:45 am]

BILLING CODE 7590-01-M

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[Docket No. 50-482]

Kansas Gas and Electric Co.; Kansas City Power and Light Co.; Kansas Electric Power Cooperative, Inc.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a schedular exemption from the requirements of Appendix E to 10 CFR Part 50 to the Kansas Gas and Electric Company, Kansas City Power & Light Company, and Kansas Electric Power Cooperative, Inc. (the licensee), for the Wolf Creek Generating Station located at the licensee's site in Coffey County, Kansas. The exemption was requested by the licensee by letter dated March 20, 1986.

Environmental Assessment

Identification of Proposed Action

The exemption will permit the licensee to defer the 1986 emergency plan exercise for as long as two months to a time period between January 1 and February 28, 1987.

Section IV.F.2 of 10 CFR Part 50, Appendix E, requires that the licensee exercise its emergency plan annually. The Wolf Creek emergency plan was previously exercised in November 1985 with state and local government participation.

The need for this exemption has arisen due to the rescheduling of the Wolf Creek refueling outage from Spring 1987 to October-November 1986 due to operation at a higher than anticipated capacity factor during the plant's first operating cycle.

Key utility personnel who are needed for the planning and conduct of the emergency plan exercise are also significantly involved in the planning and conduct of the refueling outage. Therefore, the licensee has requested a one-time exemption to permit the deferral of the 1986 exercise for up to two months.

The Need for the Proposed Action

The proposed exemption is needed to permit the licensee to complete the rescheduled refueling outage on schedule and return the unit to power operation.

Environmental Impact of the Proposed Action

The proposed exemption is schedular only. It does not involve any change to the emergency organization and plan that are in place at Wolf Creek. Therefore, the proposed exemption does not involve a significant environmental impact.

Alternative to the Proposed Action

Because the staff has concluded that there is no significant impact associated with the proposed exemption, any alternative to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to the Operation of Wolf Creek Generating Station Unit 1," dated June 1982.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request that supports the proposed exemption. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the request for exemption dated March 20, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the William Allen White Library, Emporia State University, Emporia, Kansas, and at the Washburn University School of Law Library, Topeka, Kansas.

Dated at Bethesda, Maryland, this 6th day of November 1986.

For the Nuclear Regulatory Commission.

B.J. Youngblood,

Director, PWR Project Directorate No. 4, Division of PWR Licensing-A, Office of Nuclear Reactor Regulation.

[FR Doc. 86-25658 Filed 11-12-86; 8:45 am]

BILLING CODE 7590-01-M

Evaluation of Agreement State Radiation Control Programs: Proposed General Statement of Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed revision to general statement of policy.

SUMMARY: The Nuclear Regulatory Commission proposes to revise its general statement of policy, "Guidelines for NRC Review of Agreement State Radiation Control Programs," December 4, 1981. The proposed revision to the Guidelines which was prepared by the NRC staff incorporate minor changes to the introduction, the indicators and the guidelines for acceptable practice by Agreement States. The statement of policy informs the public of the indicators and guidelines which the Commission uses in reviewing Agreement State radiation control programs. The Commission believes that the revisions are needed and is requesting comments on them. The Commission is also requesting comment on the feasibility of developing a set of objective performance indicators for various materials licensees.

DATE: Comments are due on or before January 12, 1987.

ADDRESSES: Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Monday through Friday. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Donald A. Nussbaumer, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7767.

SUPPLEMENTARY INFORMATION: Section 274 of the Atomic Energy Act of 1954, as amended, (Act) was enacted in 1959 to provide a statutory means by which the NRC (then the AEC) could transfer to the States part of its regulatory authority. The mechanism for the transfer of the Commission's regulatory authority is by an agreement between the Governor of a State and the Commission. Thus far, 28 States have entered into such agreements.[1]

Before entering into an agreement, the NRC is required to make a finding that the State's radiation control program is adequate to protect the public health and safety and is compatible with the Commission's program. Section 274j(1) of the Act requires the NRC to periodically review such agreements and actions taken by the States under the agreements to insure compliance with the provisions of section 274 of the Act. The purpose of the policy statement is to establish the methods and guidelines the Commission will use in conducting the periodic reviews. Section 274j(1) of the Act also provides that the NRC may terminate an agreement with a State if the Commission finds that such termination is necessary to protect the public health and safety or the State has not complied with one or more of the requirements of section 274. Under section 274j(2) the Commission has the authority to temporarily suspend an agreement under emergency conditions.

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[1] Alabama, Arizona, Arkansas, California, Colorado, Florida Georgia, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, and Washington.

Findings of adequacy and compatibility are currently made by the NRC staff following reviews of individual Agreement State programs in accordance with the December 4, 1981 policy statement. Such reviews are conducted on a frequency of 12 to 18 months. The results of each review are discussed with a senior management official, such as the State Health Officer (or designee), and confirmed by letter. Copies of these letters are placed in the NRC Public Document Room. The Commission is also informed of the results of individual Agreement State reviews.

The NRC staff comment letters contain as an enclosure a summary of the policy statement with emphasis on how comments concerning Category I and Category II [2] indicators affect staff findings of adequacy and compatibility. Staff findings of adequacy and compatibility are offered only when there are no significant problems in Category I Indicators. If there are minor Category I Indicator comments or Category II Indicator comments, the State is requested to respond to our comments in these areas.

When one or more significant problems in Category I Indicators are found, the State, in addition to being asked to respond to any comments, is also informed that no findings of adequacy and compatibility will be considered until a response to the comments has been received from the State and evaluated.

Since the December 4, 1981 policy statement was issued this method of implementation has been successful in helping Agreement States maintain their programs in an adequate and compatible manner. From 1981 through 1985, 108 routine reviews of State programs were performed. Full findings of adequacy and compatibility were offered by the staff in 63 cases (58%). In 15 other cases, findings of adequacy were offered by the staff but not a finding of compatibility (because of outdated regulations) (14%). Withholding of both findings occurred in 30 cases (28%). In most of these 30 cases, State responses to significant Category I comments were found by NRC staff to satisfactorily address NRC concerns and NRC staff findings of adequacy and compatibility were subsequently offered. Follow-up reviews were performed on 5 occasions. In two instances, State actions to address significant Category I comments were undertaken but subsequent NRC reviews disclosed additional steps were still needed to fully resolve Category I problems. In these cases, the States provided additional responses that NRC staff found to be satisfactory. In no case did any Agreement State's program performance cause NRC staff to recommend to the Commission that it institute proceedings to suspend or revoke all or part of an Agreement.

NRC staff meet semi-annually with representatives of the Occupational Safety and Health Administration (OSHA) to review the status of the Agreement State program. This is done because the Occupational Safety and Health Act of 1970 does not apply when Federal agencies and State agencies acting under section 274 of the Atomic Energy Act of 1954, as amended, exercise statutory authority to prescribe or enforce standards or regulations affecting occupational radiological safety or health.

While overall implementation of the December 4, 1981 policy statement has been satisfactory in assuring adequate and compatible Agreement State programs, the experience to date has identified some facets of the policy statement that could benefit from updating, clarifying or other minor modifications.

The guideline document contains six major sections, each of which deals with a separate program element. These sections are: Legislation and Regulations, Organization, Management and Administration, Personnel, Licensing, and Compliance. Each program element contains "Indicators" which address specific functions within the program element. One or more recommended "Guidelines" are listed under each "Indicator."

The proposed policy statement revision spells out in somewhat greater detail NRC staff practices in handling findings of reviews, including specifying when staff offerings of adequacy and compatibility may be made and options available to the States and to the NRC staff when review results preclude such offerings. The policy statement revision incorporates staff practices of informing the Commission of the results of reviews of individual Agreement State programs and of placing copies of NRC review letters to the States into the NRC Public Document Room. Consolidated annual reports of all Agreement State review findings in one document are no longer prepared, having been discontinued in 1982.

The policy statement no longer notes Commission interest in establishing a more quantitative basis for measuring the quality and consistency of NRC reviews. No public comments were received on this issue following issuance of the 1981 Policy Statement. In 1983, the National Governors' Association report on the Agreement State program found that "the present NRC guidelines for evaluating Agreement State programs are considered adequate and offer the proper degree of flexibility in reviewing State programs for adequacy and compatibility." NRC staff of the Offices of Nuclear Material Safety and Safeguards, the Office of Inspection and Enforcement and the Office of State Programs exchange considerable information on their respective activities. They have met to discuss the subject of objective measures of performance. The staff has concluded that the indicators and associated review guidelines used in reviewing Agreement State programs are sufficiently objective and are consistent with the objectives the NRC staff uses in appraising its regional material licensing and compliance functions.

As an alternative to establishing objective performance indicators to assess the Agreement State regulatory programs, the Commission has directed the staff, in conjunction with the Agreement States to examine the feasibility of an objective performance indicator system for the various categories of materials licensees regulated by the Agreement States and the NRC. The Commission believes such a system would provide a national data base on overexposures, medical misadministration etc. and would be an indicator of how well the various Agreement States and the NRC are doing their jobs. The Agreement States and the public are invited to express their views on the feasibility of developing a set of objective performance indicators for materials licensees and to provide suggestions of what would constitute suitable indicators.

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[2] Category I Indicators are those that directly affect public health and safety (e.g., quality of licensing). Category II indicators are those program elements that can lead to Category I problems if not maintained (e.g., staffing level, laboratory support). The distinction between significant and minor Category I problems provides the staff some flexibility when evaluating overall performance within an Indicator program area. For example, "Status of Inspection Program" is a Category I Indicator and contains a guideline for addressing inspection backlogs when they occur. If there is a backlog in high priority inspections and the State has not developed a plan to reduce and monitor the backlog, then the backlog is considered to be a significant problem. If the State has a plan in place to reduce the backlog (with suitable goals and benchmarks) whose progress program management is monitoring, the problem can be characterized as minor. If, in a subsequent review, there was lack of satisfactory progress in reducing the backlog, this would cause the staff to conclude the problem is significant.

The proposed policy statement revision permits NRC staff to extend the interval between reviews to approximately 24 months in cases when no significant Category I findings are identified. Since the issuance of the 1981 policy statement, the NRC Agreement State program has been decentralized. State Agreement Representatives are present in NRC Regions I, II, IV and V where 27 of the 28 Agreement States are located. These persons not only conduct the periodic reviews but are in frequent contact with the States in these regions and thus can closely monitor events affecting the Agreement program in the States. The selective extension of review intervals will permit more effective utilization of NRC resources for Agreement State program activities.

The format of the Indicators and Guidelines has been revised to make it easier to print.

Under the Element, Legislation and Regulations, for the Indicator, "Legal Authority," the guideline addressing cases when regulatory authorities are divided between State agencies has been moved to Organization Element under the Indicator, "Location of Radiation Control Program Within State Organization," which is more appropriate.

The Category II Indicator, "Updating of Regulations" has been deleted and the guidelines under it moved to a renamed Category I Indicator, "Status and Compatibility of Regulations," Lack of findings of compatibility have almost always been caused by out-of-date State regulations. Updating of regulations has become a chronic problem for Agreement States, because State resources needed to draft revisions were not always available, because State adoption procedures for regulations have become increasingly complex, and because the model Suggested State Regulations prepared by the Conference of Radiation Control Program Directors, Inc. have not been updated in a timely fashion to reflect revisions to NRC regulations. Confusion has also arisen over the distinctions between the two Indicators and the differences in their categories. The revision combines the two into a single Category I indicator, thus emphasizing the importance of keeping the regulations up to date. A minor change to the reference to 10 CFR Part 20 was made to include the waste manifest rule (10 CFR 20.311) as a compatibility item. A reference to 10 CFR Part 61 has been added to the guideline which highlights specific Parts of NRC regulations to which State regulations should be essentially identical.

Under Management and Administration, for the Indicator, "Administrative Procedures," the guideline has been modified and expanded to make clearer what is being sought with respect to these kinds of procedures. Confusion has arisen between "administraive" procecures and procedures called for in the guidelines in the technical areas of licensing, inspection and enforcement. Under "Management," a new guideline has been added that recommends periodic audits of State regional offices or other State agency offices when these are used in an Agreement State program. A number of Agreement State programs are regional offices or use other State or local government staffs (usually for inspection).

Under "Public Information," the guideline on availability of files to the public has been modified to also note the need for provisions to protect proprietary or clearly personal information from public disclosure. Previously the guidelines only called for handling such information in accordance with State administrative procedures. Some recently enacted State "open records" legislation have in some instances, caused changes to State administrative procedures that weaken or prevent protection of such information from public disclosure. As a result, State radiation control programs may have difficulty in withholding individual personnel radiation exposure records or proprietary information relating to radiation safety when necessary to carry out their statutory responsibilities.

Under the Indicator, "Qualifications of Technical Staff," the guideline has been modified to make clear that it is desirable that the directors of radiation protection programs possess appropriate technical qualifications.

Under the Indicator, "Staffing Level," the guideline containing the value 1.0 to 1.5 person-year per hundred licenses has been modified to make clear that this staff-level guideline excludes professional effort expended for uranium mill, mill tailings and radioactive waste disposal regulation.

Under the Indicator, "Status of Inspection Program," the inspection planning guideline has been modified to also address inspection backlogs. Inspection backlogs constitute the most prevalent problem in Agreement State programs. NRC staff experience has been that when States are asked to develop plans specifically for addressing backlogs, including setting of priorities and benchmarks, progress in controlling this problem is achieved.

Under the Indicator, "Inspection Frequency," modifications have been made to the guideline to make clear that the NRC inspection priority system for materials is the minimum that is acceptable.

Under the Indicator, "Inspection Reports," revisions were made to the guideline to more clearly essential elements the reports should contain.

The Indicator, "Independent Measurements" has been retitled "Confirmatory Measurements." Minor revisions have been made to the guidelines, including addition of "micro-R-meter" to the list of desirable instrumentation.

Guidelines for NRC Review of Agreement State Radiation Control Programs

1986

Prepared by Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Introduction

Section 274 of the Atomic Energy Act was enacted by the Congress in 1959 to recognize the interests of the States in atomic energy, to clarify the respective responsibilities of State and Federal Governments, and to provide a mechanism for States to enter into formal agreements with the Atomic Energy Commission (AEC), and later the Nuclear Regulatory Commission (NRC), under which the States assume regulatory authority over byproduct, source, and small quantities of special nuclear materials, collectively referred to as agreement materials. The mechanisms by which the NPC discontinues and the States assume regulatory authority over agreement materials is an agreement between the Governor of a State and the Commission. Before entering into an Agreement, the Governor is required to certify that the State has a regulatory program that is adequate to protect the public health and safety. In addition, the Commission must perform an independent evaluation and make a finding that the State's program is adequate from the health and safety standpoint and compatible with the Commission's regulatory program.

Current Guidelines

In 1981, the Commission published a major revision of the guide for review of Agreement State programs (two earlier revisions reflected primarily minor and editorial changes). These Guidelines constitute Commission policy in the form of a document entitled "Guidelines for NRC Review of Agreement State Radiation Control Programs." This document provides guidance for evaluation of operating Agreement State programs based on over 20 years of combined AEC–NRC experience in administering the Agreement State program. In 1985, Commission staff initiated minor updating, clarifying and editorial changes reflecting the experience gained with the 1981 policy statement. The revised document will be used by the NRC in its continuing program of evaluating Agreement State programs.

The "Guidelines" contain six sections, each dealing with one of the essential elements of a radiation control program (PCP) which are: Legislation and Regulations, Organization, Management and Administration, Personnel, Licensing, and Compliance. Each section contains (a) a summary of the general significance of the program elements, (b) indicators which address specific functions within the program element, (c) categories which denote the relative importance of each indicator, and (d) guidelines which delineate specific objectives or operational goals.

Categories of Indicators

The indicators listed in this document cover a wide range or program functions, both technical and administrative. It should be recognized that the indicators, and the guidelines under each indicator, are not of equal importance in terms of the fundamental goal of a radiation control program, i.e. protection of the public health and safety. Therefore, the indicators are categorized in terms of their importance to the fundamental goal of protecting the public health and safety. Two categories are used.

Category I—Direct Bearing on Health and Safety. Category I Indicators are:

- Legal Authority
- Status and Compatibility of Regulations.
- Quality of Emergency Planning.
- Technical Quality of Licensing Actions.
- Adequacy of Product Evaluations.
- Status of Inspection Program.
- Inspection Frequency.
- Inspectors' Performance and Capability.
- Response to Actual and Alleged Incidents.
- Enforcement Procedures.

These indicators address program functions which directly relate to the State's ability to protect the public health and safety. If significant problems exist in one or more Category I indicator areas, then the need for improvements may be critical. Legislation and regulations together form the foundation for the entire program establishing the framework for the licensing and compliance programs. The technical review of license applications is the initial step in the regulatory process. The evaluation of applicant qualifications, facilities, equipment, and procedures by the regulatory agency is essential to assure protection of the public from radiation hazards associated with the proposed activities. Assuring that licensees fulfill the commitments made in their applications and that they observe the requirements set forth in the regulations is the objective of the compliance program. The essential elements of an adequate compliance program are (1) the conduct of onsite inspections of licensee activites, (2) the performance of these inspections by competent staff, and (3) the taking of appropriate enforcement actions. Another very important factor is the ability to plan for, respond effectively to, and investigate radiation incidents.

Category II—Essential Technical and Administrative Support. Category II Indicators are:

- Location of Radiation Control Program within State Organization.
- Internal Organization of Radiation Control Program.
- Legal Assistance.
- Technical Advisory Committees.
- Budget.
- Laboratory Support.
- Administrative Procedures.
- Management.
- Office Equipment and Support Services.
- Public Information.
- Qualifications of Technical Staff.
- Staffing Level.
- Staff Supervision.
- Training.
- Staff Continuity.
- Licensing Procedures.
- Inspection Procedures.
- Inspection Reports.
- Confirmatory Measurements.

These indicators address program functions which provide essential technical and administrative support for the primary program functions. Good performance in meeting the guidelines for these indicators is essential in order to avoid the development of problems in one or more of the principal program areas, i.e. those that fall under Category I indicators. Category II indicators frequently can be used to indentify underlying problems that are causing, or contributing to, difficulties in Category I indicators.

It is the NRC's intention to use these categories in the following manner. In reporting findings to State management, the NRC will indicate the category of each comment made. If no significant Category I comments are provided, this will indicate that the program is adequate to protect the public health and safety and is compatible with the NRC's program. If one or more significant Category I comments are provided, the State will be notified that the program deficiencies may seriously affect the State's ability to protect the public health and safety and that the need of improvement in particular program areas in critical. The NRC would request an immediate response. If, following receipt and evaluation, the State's response appears satisfactory in addressing the significant Category I comments, the staff may offer findings of adequacy and compatibility as appropriate or defer such offering until the State's actions are examined and their effectiveness confirmed in a subsequent review. If additional information is needed to evaluate the State's actions, the staff may request the information through follow-up correspondence or perform a follow-up or special, limited review. NRC staff may hold a special meeting with appropriate State representatives. No significant items will be left unresolved over a prolonged period. The Commission will be informed of the results of the reviews of the individual Agreement State programs and copies of the review correspondence to the States will be placed in the NRC Public Document Room. If the State program does not improve or if additional significant Category I deficiencies have developed, a staff finding that the program is not adequate will be considered and the NRC may institute proceedings to suspend or revoke all or part of the Agreement in accordance with section 274j of the Act.

Category II comments concern functions and activities which support the State program and therefore would not be critical to the State's ability to protect the public. The State will be asked to respond to these comments and the State's actions will be evaluated during the next regular program review.

It should be recognized that the categorization pertains to the

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significance of the overall indicator and not to each of the guidelines within that indicator. For example, "Technical Quality of Licensing Actions" is a Category I indicator. The review of license applications for the purpose of evaluating the applicant's qualifications, facilities, equipment, and procedures is essential to assuring that the public health and safety is being protected. One of the guidelines under this indicator concerns prelicensing visits. The need for such visits depends on the nature of the specific case and is a matter of judgment on the part of the licensing staff. The success of a State program in meeting the overall objective of the indicator does not depend on literal adherence to each recommended guidline.

The "Guidelines for NRC Review of Agreement State Radiation Control Programs" will be used by the NRC staff during its onsite reviews of Agreement State programs. Such reviews are conducted at approximately 18 month intervals, or less if deemed necessary. If there are no significant Category I comments, the staff may extend the interval between reviews to approximately 24 months.

In making a finding of adequacy, the NRC considers areas of the State program which are critical to its primary function, i.e., protection of the public health and safety. For example, a State that is not carrying out its inspection program, or fails to respond to significant radiological incidents would not be considered to have a program adequate to protect the public health and safety. Basic radiation protection standards, such as exposure limits, also directly affect the State's ability to protect public health and safety. The NRC feels that it is important to strive for a high degree of uniformity in technical definitions and terminology, particularly as related to units of measurement and radiation dose. Maximum permissible doses and levels of radiation and concentrations of radioactivity in unrestricted areas as specified in 10 CFR Part 20 are considered to be important enough to require States to be essentially equivalent in this area in order to protect public health and safety. Certain procedures, such as those involving the licensing of products containing radioactive material intended for interstate commerce, also require a high degree of uniformity. If no serious performance problems are found in an Agreement State program and if its standards and program procedures are compatible with the NRC program, a finding of adequacy and compatibility is made.

Program Element: Legislation and Regulations

The effectiveness of any State radiation control program (RCP) is dependent upon the underlying authority granted the PCP in State legislation, and implemented in the State regulations. Regulations provide the foundation upon which licensing, inspection, and enforcement decisions are made. Regulations also provide the standards and rules within which the regulated must operate. Periodic revisions are necessary to reflect changing technology, improved knowledge, current recommendations by technical advisory groups, and consistency with NRC regulations. Procedures for providing input to the NRC on proposed changes to NRC regulations are necessary to assure consideration of the State's interests and requirements. The public and, in particular, affected classes of licensees should be granted the opportunity and time to comment on rule changes.

Indicators and Guidelines

Legal Authority (Category I)

- Clear statutory authority should exist, designating a State radiation control agency and providing for promulgation of regulations, licensing, inspection and enforcement.
- States regulating uranium or thorium recovery and associated wastes pursuant to the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) must have statutes enacted to establish clear authority for the State to carry out the requirements of UMTRCA.

Status and Compatibility of Regulations (Category I)

- The State must have regulations essentially identical to 10 CFR Part 19, Part 20 (radiation dose standards, effluent limits, waste manifest rule and certain other parts), Part 61 (technical definitions and requirements, performance objectives, financial assurances) and those required by UMTRCA, as implemented by Part 40.
- The State should adopt other regulations to maintain a high degree of uniformity with NRC regulations.
- For those regulations deemed a matter of compatibility by NRC, State regulations should be amended as soon as practicable but not later than 3 years.
- The RCP has established procedures for effecting appropriate amendments to State regulations in a timely manner, normally within 3 years of adoption by NRC.
- Opportunity should be provided for the public to comment on proposed regulation changes (Required by UMTRCA for uranium mill regulation.)
- Pursuant to the terms of the Agreement, opportunity should be provided for the NRC to comment on draft changes in State regulations.

Program Element: Organization

The effectiveness of any State RCP may be dependent upon its location within the overall State organizational structure. The RCP should be in a position to compete effectively with other health and safety programs for budget and staff. Program management must have access to individuals or groups which establish health and safety program priorities. The RCP should be organized to achieve a high degree of efficiency in supervision, work functions, and communications.

Indicators and Guidelines

Location of Radiation Control Program Within State Organization (Category II)

- The RCP should be located in a State organization parallel with comparable health and safety programs. The Program Director should have access to appropriate levels of State management.
- Where regulatory responsibilities are divided between State agencies, clear understandings should exist as to division of responsibilities and requirements for coordination.

Interal Organization of Radiation Control Program (Category II)

- The RCP should be organized with the view toward achieving an acceptable degree of staff efficiency, place appropriate emphasis on major program functions, and provide specific lines of supervision from program management for the execution of program policy.
- Where regional offices or other government agencies are utilized, the lines of communication and administrative control between these offices and the central office (Program Director) should be clearly drawn to provide uniformity in licensing and inspection policies, procedures and supervision.

Legal Assistance (Category II)

- Legal staff should be assigned to assist the RCP or procedures should exist to obtain legal assistance expeditiously. Legal staff should be knowledgeable regarding the RCP program, statutes, and regulations.

Technical Advisory Committees (Category II)

- Technical Committees, Federal Agencies, and other resource organizations should be used to extend staff capabilities for unique or technically complex problems.
- A State Medical Advisory Committee should be used to provide broad guidance on the uses of radioactive drugs in or on humans. The Committee should represent a wide spectrum of medical disciplines. The Committee should advise the RCP on policy matters and regulations related to use of radioisotopes in or on humans.
- Procedures should be developed to avoid conflict of interest, even though Committees are advisory. This does not mean that representatives of the regulated community should not serve on advisory committees or not be used as consultants.

Program Element: Management and Administration

State RCP management must be able to meet program goals through strong, direct leadership at all levels of supervision. Administrative procedures are necessary to assure uniform and appropriate treatment of all regulated parties. Procedures for receiving information on radiological incidents, emergency response, and providing information to the public are necessary. Procedures to provide feedback to supervision on status and activities of the RCP are necessary. Adequate facilities, equipment and support services are needed for optimum utilization of personnel resources. Laboratory support services should be administered by the RCP or be readily available through established administrative procedures.

In order to meet program goals, a State RCP must have adequate budgetary support. The total RCP budget must provide adequate funds for salaries, travel costs associated with the compliance program, laboratory and survey instrumentation and other equipment, and other administrative costs. The program budget must reflect annual changes in the number and complexity of applications and licenses, and the increase in cost due to normal inflation.

Indicators and Guidelines

Quality of Emergency Planning (Category I)

- The State RCP should have a written plan for response to such incidents as spills, overexposures, transportation accidents, fire or explosion, theft, etc.
- The Plan should define the responsibilities and actions to be taken by State agencies. The Plan should be specific as to persons responsible for initiating response actions, conducting operations and cleanup.
- Emergency communication procedures should be adequately established with appropriate local, county and State agencies. Plans should be distributed to appropriate persons and agencies. NRC should be provided the opportunity to coment on the Plan while in draft form.
- The plan should be reviewed annually by Program staff for adequacy and to determine that content is current. Periodic drills should be performed to test the plan.

Budget (Category II)

- Operating funds should be sufficient to support program needs such as staff travel necessary to the conduct of an effective compliance program, including routine inspections, followup or special inspections (including pre-licensing visits) and responses to incidents and other emergencies, instrumentation and other responses to incidents and other emergencies, instrumentation and other equipment to support the RCP, administrative costs in operating the program including rental charges, printing costs, laboratory services, computer and/or word processing support, preparation of correspondence office equipment, hearing costs, etc. as appropriate.
- Principal operating funds should be from sources which provide continuity and reliability, i.e., general tax, license fees, etc. Supplemental funds may be obtained through contracts, cash grants, etc.

Laboratory Support (Category II)

- The RCP should have laboratory support capability inhouse, or readily available through established procedures, to conduct bioassays, analyze environmental samples, analyze samples collected by inspectors, etc. on a priority established by the RCP.

Administrative Procedures (Category II)

- The RCP should establish written internal policy and administrative procedures to assure that program functions are carried out as required and to provide a high degree of uniformity and continuity in regulatory practices. These procedures should address internal processing of license applications, inspection policies, decommissioning and license termination, fee collection, contacts with communication media, conflict of interest policies for employees, exchange-of-information and other functions required of the program. Administrative procedures are in addition to the technical procedures utilized in licensing, and inspection and enforcement.

Management (Category II)

- Program management should receive periodic reports from the staff on the status of regulatory actions (backlogs, problem cases, inquiries, regulation revisions).
- RCP management should periodically assess workload trends, resources and changes in legislative and regulatory responsibilities to forecast needs for increased staff, equipment, services and fundings.
- Program management should perform periodic reviews of selected license cases handled by each reviewer and document the results. Complex licenses (major manufacturers, large scope-Type A Broad, potential for significant releases to environment) should receive second party review (supervisory, committee, consultant). Supervisory review of inspections, reports and enforcement actions should also be performed.
- When regional offices or other government agencies are utilized, program management should conduct periodic audits of these offices.

Office Equipment and Support Services (Category II)

- The RCP should have adequate secretarial and clerical support. Automatic typing and Automatic Data Processing and retrieval capability should be available to larger (greater than 300–400 licenses) programs. Similar services should be available to regional offices, if utilized.
- Professional staff should not be sued for fee collection and other clerical duties.

Public Information (Category II)

- Inspection and licensing files should be available to the public consistent with State administrative procedures. It is desirable, however, that there be provisions for protecting from public disclosure proprietary information and information of a clearly personal nature.
- Opportunity for public hearings should be provided in accordance with UMTRCA and applicable State administrative procedure laws.

Program Element: Personnel

The RCP must be staffed with a sufficient number of trained personnel. The evaluation of license applications and the conduct of inspections require

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staff with in-depth training and experience in radiation protection and related subjects. The staff must be adequate in number to assure licensing, inspection, and enforcement actions of appropriate quality to assure protection of the public health and safety. Periodic training of existng staff is necessary to maintain capabilities in a rapidly changing technological environment. Program management personnel must be qualified to exercise adequate supervision in all aspects of a State radiation control program.

Indicators and Guidelines

Qualifications of Technical Staff (Category II)

- Professional staff should have bachelor's degree or equivalent training in the physical and/or life sciences. Additional training and experience in radiation protection for senior personnel including the director of the radiation protection program should be commensurate with the type of licenses issued and inspected by the State.
- Written job descriptions should be prepared so that professional qualifications needed to fill vacancies can be readily identified.

Staffing Level (Category II)

- Professional staffing level should be approximately 1–1.5 person-year per 100 licenses in effects. RCP must not have less than two professionals available with training and experience to operate RCP in a way which provides continuous coverage and continuity.
- For States regulating uranium mills and mill tailings, current indications are that 2–2.75 professional person-years' of effort, including consultants, are needed to process a new mill license (including in situ mills) or major renewal, to meet requirements of Uranium Mill Tailings Radiation Control Act of 1978. This effort must include expertise in radiological matters, hydrology, geology, and structural engineering.[1]

Staff Supervision (Category II)

- Supervisory personnel should be adequate to provide guidance and review the work of senior and junior personnel.
- Senior personnel should review applications and inspect licenses independently, monitor work of junior personnel, and participate in the establishment of policy.
- Junior personnel should be initially limited to reviewing license applications and inspecting small programs under close supervision.

Training (Category II)

- Senior personnel should have attended NRC core courses in licensing orientation, inspection procedures, medical practices and industrial radiography practices. (For mill States, mill training should also be included.)
- The RCP should have a program to utilize specific short courses and workshops to maintain appropriate level of staff technical competence in areas of changing technology.

Staff Continuity (Category II)

- Staff turnover should be minimized by combinations of opportunities for training, promotions, and competitive salaries.
- Salary levels should be adequate to recruit and retain persons of appropriate professional qualifications. Salaries should be comparable to similar employment in the geographical area.
- The RCP organization structure should be such that staff turnover is minimized and program continuity maintained through opportunities for promotion. Promotion opportunities should exist from junior level to senior level or supervisory positions. There also should be opportunity for periodic increases compatible with experience and responsibility.

Program Element: Licensing

It is necessary in licensing byproduct, source, and special nuclear materials that the State regulatory agency obtain information about the proposed use of nuclear materials, facilities and equipment, training and experience of personnel, and operating procedures appropriate for determining that the applicant can operate safely and in compliance with the regulations and license conditions. An acceptable licensing program includes: preparation and use of internal licensing guides and policy memoranda to assure technical quality in the licensing program (when appropriate, such as in small programs, NRC Guides may be used); prelicensing inspection of complex facilities; and the implementation of administrative procedures to assure documentation and maintenance of adequate files and records.

Indicators and Guidelines

Technical Quality of Licensing Actions (Category I)

- The RCP should assure the essential elements of applications have been submitted to the agency, and that these elements meet current regulatory guidance for describing the isotopes and quantities to be used, qualifications of persons who will use material, facilities and equipment, and operating and emergency procedures sufficient to establish the basis for licensing actions.
- Prelicensing visits should be made for complex and major licensing actions.
- Licenses should be clear, complete, and accurate as to isotopes, forms, quantities, authorized uses, and permissive or restrictive conditions.
- The RCP should have procedures for reviewing licenses prior to renewal to assure that supporting information in the file reflects the current scope of the licensed program.

Adequacy of Product Evaluations (Category I)

- RCP evaluations of manufacturer's or distributor's data on sealed sources and devices outlined in NRC, State of appropriate ANSI Guides, should be sufficient to assure integrity and safety for users.
- The RCP should review manufacturer's information in labels and brochures relating to radiation health and safety, assay, and calibration procedures for adequacy.
- Approval documents for sealed source or device designs should be clear, complete and accurate as to isotopes, forms, quantities, uses, drawing identifications, and permissive or restrictive conditions.

Licensing Procedures (Category II)

- The RCP should have internal licensing guides, checklists, and policy memoranda consistent with current NRC practice.
- License applicants (including applicants for renewals) should be furnished copies of applicable guides and regulatory positions.
- The present compliance status of licensees should be considered in licensing actions.
- Under the NRC Exchange-of-Information program, evaluation sheets, service licenses, and licenses authorizing distribution to general licensees should be submitted to NRC on a timely basis.
- Standard license conditions comparable with current NRC standard license conditions should be used to expedite and provide uniformity in the licensing process.
- Files should be maintained in an orderly fashion to allow fast, accurate retrieval of information and documentation of discussions and visits.

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[1] Additional guidance is provided in the Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement (46 FR 7540, 36969 and 48 FR 33376).

Program Element: Compliance

Periodic inspections of licensed operations are essential to assure that activities are being conducted in compliance with regulatory requirements and consistent with good safety practices. The frequency of inspections depends on the amount and the kind of material, the type of operation licensed, and the results of previous inspections. The capability of maintaining and retrieving statistical data on the status of the compliance program is necessary. The regulatory agency must have the necessary legal authority for prompt enforcement of its regulations. This may include, as appropriate, administrative remedies, orders requiring corrective action, suspension or revocation of licenses, the impounding of materials, and the imposing of civil and criminal penalties.

Indicators and Guidelines

Status of Inspection Program (Category I)

- State RCP should maintain an inspection program adequate to assess licensee compliance with State regulations and license conditions.
- The RCP should maintain statistics which are adequate to permit Program Management to assess the status of the inspection program on a periodic basis information showing the number of inspections conducted, the number overdue, the length of time overdue and the priority categories should be readily available.
- At least semiannual inspection planning for number of inspections to be performed, assignments to senior vs. junior staff, assignments to regions, identification of special needs and periodic status reports. When backlogs occur, the program should develop and implement a plan to reduce the backlog. The plan should identify priorities for inspections and establish target dates and milestones for assessing progress.

Inspection Frequency (Category I)

- The RCP should establish an inspection priority system. The specific frequency of inspections should be based upon the potential hazards of licensed operations, e.g., major processors, and industrial radiographers should be inspected approximately annually-smaller or less hazardous operations may be inspected less frequently. The minimum inspection frequency including for initial inspections should be no less than the NRC system.

Inspectors' Performance and Capability (Category I)

- Inspectors should be competent to evaluate health and safety problems and to determine compliance with State regulations. Inspectors must demonstrate to supervision an understanding of regulations, inspection guides, and policies prior to independently conducting inspections.
- The compliance supervisor (may be RCP manager) should conduct annual field evaluations of each inspector to assess performance and assure application of appropriations and consistent policies and guides.

Response to Actual and Alleged Incidents (Category I)

- Inquiries should be promptly made to evaluate the need for onsite investigations.
- Onsite investigations should be promptly made of incidents requiring reporting to the Agency in less than 30 days. (10 CFR 20.403 types).
- For these incidents not requiring reporting to the Agency in less than 30 days, investigations should be made during the next scheduled inspection.
- Onsite investigations should be promptly made of non-reportable incidents which may be of significant public interest and concern, e.g., transportation accidents.
- Investigations should include indepth reviews of circumstances and should be completed on a high priority basis. When appropriate, investigations should include reenactments and time-study measurements (normally within a few days). Investigation (or inspection) results should be documented and enforcement action taken when appropriate.
- State licensees and the NRC should be notified of pertinent information about any incident which could be relevant to other licensed operations (e.g., equipment failure, improper operating procedures).
- Information on incidents involving failure of equipment should be provided to the agency responsible for evaluation of the device for an assessment of possible generic design deficiency.
- The RCP should have access to medical consultants when needed to diagnose or treat radiation injuries. The RCP should use other technical consultants for special problems when needed.

Enforcement Procedures (Category I)

- Enforcement Procedures should be sufficient to provide a substantial deterrent to licensee noncompliance with regulatory requirements. Provisions for the levying of monetary penalties are recommended
- Enforcement letters should be issued within 30 days following inspections and should employ appropriate regulatory language clearly specifying all items of noncompliance and health and safety matters identified during the inspection and referencing the appropriate regulation or license condition being violated.
- Enforcement letters should specify the time period for the licensee to respond indicating corrective actions and actions taken to prevent re-occurrence (normally 20–30 days). The inspector and compliance supervisor should review licensee reponses.
- Licensee responses to enforcement letters should be promptly acknowledged as to adequacy and resolution of previously unresolved items.
- Written procedures should exist for handling escalated enforcement cases of varying degrees.
- Impounding of material should be in accordance with State administrative procedures.
- Opportunity for hearings should be provided to assure impartial administration of the radiation control program.

Inspection Procedures (Category II)

- Inspection guides consistent with current NRC guidance, should be used by inspectors to assure uniform and complete inspection practices and provide technical guidance in the inspection of licensed programs. NRC Guides may be used if properly supplemented by policy memoranda, agency interpretations, etc.
- Written inspection policies should be issued to establish a policy for conducting unannounced inspections, obtaining corrective action, following up and closing out previous violations, interviewing workers and observing operations, assuring exit interviews with management, and issuing appropriate notification of violations of health and safety problems.
- Procedures should be established for maintaining licensees' compliance histories.
- Oral briefing of supervisors or the senior inspector should be performed upon return from nonroutine inspections.
- For States with separate licensing and inspection staffs procedures should be established for feedback of information to license reviewers.

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Inspection Reports (Category II)

- Findings of inspections should be documented in a report describing the scope of inspections, substantiating all items of noncompliance and health and safety matters, describing the scope of licensees' programs, and indicating the substance of discussions with licensee management and licensee's response.
- Reports should uniformly and adequately document the result of inspections including confirmatory measurements, status of previous noncompliance and identify areas of the licensee's program which should receive special attention at the next inspection. Reports should show the status of previous noncompliance and the results of confirmatory measurements by the inspector.

Confirmatory Measurements (Category II)

- Confirmatory measurements should be sufficient in number and type to ensure the licensee's control of materials and to validate the licensee's measurements.
- RCP instrumentation should be adequate for surveying license operations (e.g., survey meters, air samples, lab counting equipment for smears, identification of isotopes, etc).
- RCP instrumentation should include the following types: GM Survey Meter, 0–50 mr/hr; Ion Chamber Survey Meter, several r/hr; micro-R-Survey meter; Neutron Survey Meter, Fast and Thermal; Alpha Survey Meter, 0–1000,000 c/m; Air Samplers, Hi and Lo Volume; Lab Counters, Detect 0.001 uc/wipe; Velometers; Smoke Tubes; Lapel Air samplers.
- Instrument calibration services or facilities should be readily available and appropriate for instrumentation used. Licensee equipment and facilities should not be used unless under a service contract. Exceptions for other State Agencies, e.g., a State University, may be made.
- Agency instruments used for surveys and confirmatory measurements should be calibrated within the same time interval as required of the licensee being inspected.

Dated at Washington, DC this 6th day of November 1986.

For the Nuclear Regulatory Commission,

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 86–25655 Filed 11–12–86; 8:45 am]

BILLING CODE 7590-01-M

PEACE CORPS

Agency Information Collection Activities Under OMB Review

ACTION: Notification of revision and extension request of Peace Corps' form PC 1502, volunteer application form.

SUMMARY: The information collection form described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Peace Corps is requesting approval of proposed revisions relating to legal, security, and medical requirements, and a three-year extension for using the form.

SUPPLEMENTARY INFORMATION: The form is completed voluntarily by applicants for the Peace Corps program and it provides basic information concerning background, education, qualifications, language skills, preference, etc. This information is necessary for Peace Corps staff to perform the initial screening between qualified and unqualified candidates, for selection from among the qualified, and finally for proper placement of the potential volunteers in suitable programs and settings.

Title and Agency Number: Peace Corps Volunteer Application, Form Number PC–1502.

Office: Volunteer Recruitment and Selection.

Frequency of Collection: On occasion.

General Description of Respondents: Individuals applying for Peace Corps Service.

Estimated Number of Respondents: 14,000 annually.

Estimated Hours for Respondents To Furnish Information: One hour each.

Respondents Obligation To Reply: Voluntary.

Comments: Interested persons are invited to submit comments regarding this form by name. These comments should be sent to Francine Picoult, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20503. Comments or a notification of intent to comment should be received on or before November 28, 1986.

FOR FURTHER INFORMATION CONTACT: James Duke, Management Analyst, Office of Volunteer Recruitment and Selection, Peace Corps, 806 Connecticut Avenue, NW., Room M–900, Washington, DC 20526, telephone (202) 254–8387.

This is not a proposal to which 44 U.S.C. 3504(h) applies.

This notice is issued in Washington, DC on November 6, 1986.

Linda Rae Gregory,

Associate Director for Management.

[FR Doc. 86–25514 Filed 11–12–86; 8:45 am

BILLING CODE 6051-01-M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Information Collection Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, Chapter 35), this notice announces a proposed information collection from the public that was submitted to OMB for clearance. RI 34–1, Financial Resources Questionnaire, will be used by the Office of Personnel Management to ascertain the ability of individuals to reimburse the Government as a result of overpayments made from the Civil Service Retirement and Disability Fund. For copies of this proposal call James M. Farron, Agency Clearance Officer, on (202) 632–7714.

DATE: Comments on this proposal should be received within 10 working days from the date of this publication.

ADDRESSES: Send or deliver comments to:

James M. Farron, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6410, Washington, DC 20415

and

Katie Lewin, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, NW., Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: James L. Bryson, (202) 632–5472.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 86–25660 Filed 11–12–86; 8:45 am]

BILLING CODE 6325-01-M

Proposed Extention of RI Form 20–56

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice

announces a proposed extension of information collection from the public. RI Form 20-56, Addendum to OPM Form 1496A, Application for Deferred Annuity (for persons separated on or after October 1, 1956), was developed by the Office of Personnel Management for use by former Federal employees in applying for deferred annuities as established under 5 U.S.C. 8338. For copies of this proposal call James M. Farron, Agency Clearance Office, on (202) 632-7714.

DATE: Comments on this proposal should be received on or before November 24, 1986.

ADDRESSES: Send or deliver comments to:

James M. Farron, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6410, Washington, DC 20415

and

Katie Lewin, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, NW., Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: James L. Bryson, (202) 632-5472.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 86-25061 Filed 11-12-86; 8:45 am]

BILLING CODE 6325-01-M

POSTAL SERVICE

Privacy Act of 1974, System of Records

AGENCY: Postal Service.

ACTION: Advance Notice of Proposed Routine Use and Final Notice of Minor Change to Purpose section.

SUMMARY: The purposes of this document are to propose the addition of a routine use and to modify the statement of purpose to existing Postal Service system of records USPS 200.030.

EFFECTIVE DATE: Comments on Part 1 must be received on or before December 15, 1986. Part 2 is effective November 13, 1986.

ADDRESS: Comments on this proposed system change may be mailed to the Records Officer, U.S. Postal Service, 475 L' Enfant Plaza, SW., Washington, DC 20260-5010 or delivered to Room 8121 at the above address between 8:15 a.m. and 4:45 p.m. Comments received may also be inspected during the above hours in Room 8121.

FOR FURTHER INFORMATION CONTACT: Rubenia Carter (202-268-4872).

SUPPLEMENTARY INFORMATION: (1) The Postal Service proposes to add an additional routine use to system USPS 200.030, Non-Mail Monetary Claims—Tort Claims Records. The proposal does not reflect a change in the disclosure of information from this system, but rather more accurately describes the Postal Service's practice of releasing information to independent contractors from this system for the purpose of obtaining professional medical assistance and any other required assistance when needed in connection with matters involving a claim filed against the Postal Service. This proposal would apply to the extent that relevant records maintained in system USPS 200.030 would be released to independent contractors, retained by the Postal Service, for the purpose of either examining claimants to determine if claimed injuries relate to Postal Service accidents or for the purpose of obtaining the opinion of expert witnesses. This routine use would also allow for the disclosure of pertinent records to independent contractors for the purpose of analyzing bills, hospital transcripts, medical reports, accident reports, investigative reports, witness statements or any other information contained in a file in order to provide the Postal Service with opinions and advice as to whether injuries claimed relate to the accidents involved, whether the related bills are consistent with acceptable medical services and to provide the Postal Service with other opinions and conclusions for purposes of determining appropriate action. The proposed new routine use is necessary to assure that Postal Service application of the Privacy Act of 1974, Pub. L. 93-579, is accommodated with the obligations of the Postal Service to settle and defend against tort claims made against the Postal Service under the Federal Tort Claims Act.

A complete statement of the existence and character of system USPS 200.030 appeared in the Federal Register on March 15, 1983, 48 FR 10998. As required by 5 U.S.C. 552a(e)(11), interested persons are invited to submit comments on this proposal. Final notice regarding the proposed use will be given after the time for public comment has elapsed. The proposed routine use follows:

"11. May be disclosed to independent contractors retained by the Postal Service to provide advice in connection with the settlement or defense of claims filed against USPS."

(2) The Postal Service has decided to rewrite the Purpose section to system USPS 200.030. This rewrite does not reflect changes in the operations or functions of the system. The second sentence of the Purpose section as written makes reference to an external disclosure that has been properly reported in Routine Use 5 of this system. Therefore to more accurately describe the Purpose of maintaining records in this sytem, the second sentence has been deleted as noted below. The following constitutes final notice of this change:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Change to Read: Purpose—"Used by attorneys and other employees of the Postal Service to consider, settle and defend against tort claims made against the USPS under the Federal Tort Claims Act."

Fred Eggleton,

Assistant General Counsel Legislative Division.

[FR Doc. 86-25542 Filed 11-12-86; 8:45 am]

BILLING CODE 7710-12-M

Privacy Act of 1974; Systems of Records

AGENCY: Postal Service.

ACTION: Advance and final notices of records systems changes.

SUMMARY: The purpose of this document is to provide information for public comment concerning the Postal Service's proposal to add two new routine uses to system USPS 050.020, Finance Records—Payroll System, and to publish final notice of an editorial revision to two existing routine uses to that system.

DATE: Any interested party may submit written comments on Part 2 of this notice regarding the proposed new routine uses. Comments must be received on or before December 15, 1986. Part 1 is effective November 13, 1986.

ADDRESS: Comments may be mailed to Records Officer, U.S. Postal Service, 475 L' Enfant Plaza, SW., Washington, DC 20260-5010, or delivered to Room 8121 at that address between 8:15 a.m. and 4:45 p.m. where they will be available for inspection during those hours.

FOR FURTHER INFORMATION CONTACT: Betty E. Sheriff, Records Office (202) 268-5158.

SUPPLEMENTARY INFORMATION: The Postal Service hereby publishes final and advance notice of certain changes to its system USPS 050.020—Finance Records—Payroll System, as follows:

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Part 1 makes an editorial revision to existing routine use Nos. 26 and 28; and Part 2 proposes two new routine uses permitting the discretionary disclosure of data from this system to (a) agencies having child support enforcement responsibilities for the purpose of locating absent parents; and (b) the Department of Defense for the purpose of identifying employees who are subject to dual compensation restrictions.

PART 1—Final Notice—Editorial Revision to Routine Uses

The Postal Service published on September 24, 1984, (49 FR 37487) and on July 16, 1985, (50 FR 28862) final notice of routine use Nos. 26 and 28, respectively, in connection with its plans to disclose certain employee information from system USPS 050.020 for computer matching operations conducted either by the Postal Service or by requesting Federal agencies or non-Federal entities. The Postal Service has determined that it is necessary to make an editorial revision to these routine uses. The revision reflects no change in the operation or function of the described system, but merely makes clear that uses are intended to permit the Postal Service to act either as the matching agency or as the source agency in connection with authorized computer matching programs. The following constitutes final notice of the revision.

USPS 050.020

System name: Finance Records—Payroll System.

Routine uses of records maintained in this system, including categories of users and the purposes of such uses:

* * * * *

26. Disclosure of information about current or former postal employees may be made to requesting states under approved computer matching efforts in which either the Postal Service or the requesting State acts as the matching agency, but limited to only those data elements considered relevant to making a determination of employee participation in and eligibility under unemployment insurance programs administered by the States (and by those States to local governments); to improve program integrity; and to collect debts and overpayments owed to those governments and their components.

28. Disclosure of information about current or former postal employees may be made to requesting Federal agencies or non-Federal entities under approved computer matching efforts in which either the Postal Service or the requesting entity acts as the matching agency, but limited to only those data elements considered relevant to making a determination of employee participation in and eligibility under particular benefit programs administered by those agencies or entities or by the Postal Service; to improve program integrity; and to collect debts and overpayments owed under those programs.

* * * * *

PART 2—Proposed New Routine Uses

The Postal Service has received a number of requests for its participation in computer matching programs to be conducted for the purpose of locating absent parents who owe child support obligations. The requesting agencies are charged with the responsibility of establishing, enforcing, and administering child support obligations; seeking enforcement of child support orders; and collecting child support owed to public assistance programs as a result of benefits paid to dependents. To avoid needless burden and delays in the processing of these requests, the Postal Service has determined it appropriate to establish a general routine use to permit disclosure to these agencies whose program management purpose is the same. Accordingly, proposed routine use 32 permits the disclosure of limited information to these agencies for the purpose of locating absent parents against whom they are enforcing or seeking to enforce a child support obligation and to take the appropriate administrative or legal action to secure support from the delinquent absent parent.

Proposed routine use No. 33 will permit the Postal Service to furnish information about its current and former employees to the Department of Defense (DOD) for the purpose of identifying employees who are subject to dual compensation restrictions. The Dual Compensation Act, Pub. L. No. 88-448, section 201, 78 Stat. 484 (1964) (codified as amended at 5 U.S.C. 5532 (1982)), requires certain reductions in the retired pay of former members of the military who hold civilian positions in the Government. The match will identify retired military postal employees whose dual compensation exceeds that permitted by law. DOD will take administrative action to adjust pay, collect overpayment or take other appropriate action.

The above described matches will be conducted in accordance with the Office of Management and Budget's Revised Supplemental Guidelines for Conducting Matching Programs (47 FR 21656, May 19, 1982). The Postal Service will obtain a signed agreement from the requesting agency specifying that the information disclosed by the Postal Service will be used for purposes of the computer match and for no other purposes and specifying that the information will be safeguarded against unauthorized disclosure. Disclosure of information will be limited to only that necessary to make a thorough analysis for determining the employee's status for purposes of the matching program. The Postal Service retains the authority under each proposed routine use to withhold specific data elements if it is believed that those elements are not germane to the purpose of such analysis. The mere existence of an individual's match between the requesting agency's file and the Postal Service's Payroll System file will not of itself, or without the individual's prior opportunity to respond, be the cause of any benefit reduction or legal collection action.

Disclosure under the proposed routine uses is compatible with the Postal Service's personnel management responsibility for oversight of its employees' conduct, particularly with regard to the requirement that employees comport themselves in a proper manner and not obtain financial benefits in a fraudulent manner.

System USPS 050.020 last appeared on August 13, 1986, in 51 FR 29028. Accordingly, it is proposed to add new routine uses 32 and 33 as follows:

* * * * *

"32. Disclosure of information about current or former postal employees may be made to requesting Federal agencies or non-Federal entities under approved computer matching efforts in which either the Postal Service or the requesting entity acts as the matching agency, but limited to only those data elements considered relevant to identifying those employees who are absent parents owing child support obligations and to collecting debts owed as a result thereof.

"33. Disclosure of information about current or former postal employees may be made on a semi-annual basis to the Department of Defense (DOD) under approved computer matching efforts in which either the Postal Service or DOD acts as the matching agency, but limited to only those data elements considered relevant to identifying retired military employees who are subject to restrictions under the Dual Compensation Act as amended (5 U.S.C. 5532), and for taking subsequent actions to reduce military retired pay or collect debts and overpayments, as appropriate."

* * * * *

Fred Eggleston,

Assistant General Counsel Legislative Division.

[FR Doc. 86-25543 Filed 11-12-86; 8:45 am]

BILLING CODE 7710-12-M

THE PRESIDENT'S COMMISSION ON WHITE HOUSE FELLOWSHIPS

Extension of Deadline for Accepting Applications

November 7, 1986.

AGENCY: President's Commission on White House Fellowships.

ACTION: Notice.

SUMMARY: The President's Commission on White House Fellowships has extended the deadline for applications for White House Fellowships from November 15, 1986, to December 15, 1986.

DATE: The closing date for applications for White House Fellowships is December 15, 1986.

FOR FURTHER INFORMATION CONTACT: President's Commission on White House Fellowships, 712 Jackson Place, NW., Washington, DC 20503, (202) 395-4522.

Dated: November 7, 1986.

Linda L. Tarr,

Director, President's Commission on White House Fellowships.

[FR Doc. 86-25651 Filed 11-12-86; 8:45 am]

BILLING CODE 6325-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

White House Science Council (WHSC); Meeting

The White House Science Council, the purpose of which is to advise the Director, Office of Science and Technology Policy (OSTP), will meet on November 20 and 21, 1986 in Room 5104, New Executive Office Building, Washington, DC. The meeting will begin at 6:00 p.m. on November 20, recess and reconvene at 8:00 a.m. on November 21. Following is the proposed agenda for the meeting:

(1) Briefing of the Council, by the Assistant Directors of OSTP, on the current activities of OSTP.

(2) Briefing of the Council by OSTP personnel and personnel of other agencies on proposed, ongoing, and completed panel studies.

(3) Discussion of composition of panels to conduct studies.

The November 20 session and a portion of the November 21 session will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b(c) (1), (2), and 9(B).

A portion of the discussion of panel composition will necessitate the disclosure of informaton of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552b(c)(6).

Because of the security in the New Executive Office Building, persons wishing to attend the open portion of the meeting should contact Annie L. Boyd, Secretary, White House Science Council at (202) 456-7740, prior to 3:00 p.m. on November 19. Ms. Boyd is also available to provide specific information regarding time, place and agenda for the open session.

Jerry D. Jennings,

Executive Director, Office of Science and Technology Policy.

October 22, 1986.

[FR Doc. 86-25721 Filed 11-12-86; 8:45 am]

BILLING CODE 3170-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-23768; File Nos. SR-Amex-85-1; SR-NYSE-85-25]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes by the New York Stock Exchange, Inc. and American Stock Exchange, Inc. to Amend the Exchanges' Rules Relating to Approved Persons of Specialists

I. Introduction and Summary

The American ("Amex") and New York ("NYSE") Stock Exchanges have proposed to amend their rules to ease restrictions imposed on approved persons[1] or member organizations[2] affiliated with specialists or specialist units in order to facilitate entry into the specialist business by retail broker-dealers, among others.

No Amex or NYSE rules prohibit a retail broker-dealer from owning or controlling a specialist unit on an exchange; however, relatively few retail member firms on the Amex or the NYSE are affiliated with specialist units[3] because any activities that an approved person might have in specialty securities would be subject to the restrictions that these Exchanges place on specialists. Currently, the Amex and NYSE prohibit approved persons affiliated with specialists from, among other things: (1) Trading specialty securities, (2) trading options on specialty securities (other than for hedging purposes), (3) accepting orders in specialty securities from institutions, the issuer, and its insiders, (4) performing research and advisory

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[1] In general, the term "approved person" refers to a person who is not a member of the exchange but controls a member organization, or is engaged in the securities business and is either controlled by or under common control with a member organization.

[2] The NYSE proposal eases restrictions on approved persons, the Amex proposal eases restrictions on approved persons and member organizations. The NYSE, however, interprets its definition of approved person to encompass member organizations. Therefore, throughout this Release, the discussion is intended to implicitly recognize that member organizations are encompassed by the Amex and NYSE proposals.

[3] Drexel Burnham Lambert, Inc. ("Drexel") and Bear, Stearns & Co. ("Bear Stearns") are the two retail trading firms that are affiliated with specialist units on the Amex floor. Bear Stearns is also affiliated with a specialist unit on the NYSE floor. In addition, the following NYSE specialist firms do retail business either directly or through an affiliate: Asiel & Co.; Ernst & Co.; Purcell, Graham & Co., Inc.; A.C. Partners; Spear, Leeds & Kellogg; and Quick & Reilly Spec. Corp.

The regional exchanges do not place similar restrictions on approved persons affiliated with specialist units. The Philadelphia ("Phlx"), Pacific ("PSE"), Boston ("BSE") and Midwest ("MSE") Stock Exchanges currently have a number of major retail firms associated with specialist units on their floors. Drexel and Dean Witter are affiliated with speicalist units on the Phlx. Retail trading firms with affiliated specialist units on the PSE include Shearson/American Express, Inc.; Goldberg Securities; Wedbush, Noble, Cooke, Inc. ("Wedbush"); Moseley Securities Corp.; Jefferies & Co.; AGF Securities; Crowell Weedon & Co.; Easton & Co.; Bateman Eichler, Hill Richards, Inc.; Trading Co. of the West; Mitchum Jones & Templeton, Inc.; ABD Securities, Inc.; Merrill Lynch & Co., Inc. ("Merrill"); the Pershing Division of Donaldson Lufkin Jenrette Securities, Inc.; and Seidler Amdec Securities, Inc. Affiliated specialist units on the BSE are Dean Witter Reynolds, Inc. ("Dean Witter"); Drexel; Fidelity Brokerage Services; and Josephthal & Co., Inc. Specialist units on the MSE that are affiliated with retail firms include Mesirow, Wed-Marsh, Inc.; Wilson-Chicago Corp.; Goldberg Securities; Freehling & Co.; ABD Securities Corp.; Stifel, Nicolaus & Co., Inc.; Niehoff & Co.; K.J. Brown; Nomura Securities International, Inc.; Yamaichi International (America), Inc.; and First Options of Chicago, Inc.

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services with respect to specialty securities, (5) "popularising" specialty securities [4] and (6) engaging in business transactions with a company in whose stock the specialist is registered.

Under the proposals, if an approved person were to establish an organizational separation, a so-called "Chinese Wall," between itself and an associated specialist unit in conformity with guidelines published by the Exchanges, it would be exempt from these restrictions.[5] Because these proposals raise basic questions regarding the regulation of specialist trading activity and informational advantages as well as the workability of a Chinese Wall in this context, the Commission issued a release describing the proposals and soliciting comments on the issues raised.[6] In response, the Commission received 13 comment letters, including two from the NYSE. Six commentators objected to the proposals,[7] and six supported the proposals.[8]

The Commission believes that the NYSE and Amex proposals have the potential to increase the capitalization of exchange specialist units and therefore may improve the depth and liquidity of specialist market making activity. The Commission recognizes, however, that significant conflicts of interest can arise between an approved person of a specialist unit and the unit itself which, if not addressed by appropriate Chinese Wall procedures and the monitoring and surveillance of the continuing adequacy of such procedures, could result in potential manipulative market activity and informational advantages benefitting the approved person, the specialist unit, or the customers of either. Nevertheless, the Commission believes that the procedures the Amex and NYSE intend to implement with respect to approving and monitoring Chinese Wall procedures address these concerns. In addition, the Commission notes that proposed Exchange sanctions for approved persons' failure to maintain an adequate Chinese Wall will be severe,[9] and can serve to deter inappropriate conduct. The Commission, therefore, has determined to approve the Amex and NYSE proposals.

II. Descriptions of the Rule Proposals

Amex's proposed changes to its Rules 190 and 193 [10] and NYSE's proposed new Rule 98 [11] would exempt an approved person from a number of current Amex and NYSE restrictions if the person established, and the Exchange approved, an organizational separation between the person and the affiliated specialist unit on the floor.

An organizational separation would have to be established in conformity with guidelines published by the Exchange.[12] If an approved person affiliated with a specialist unit established such a separation, the approved person would be exempt from the prohibitions of the relevant Exchange rules, and would be permitted to: (1) Trade specialty securities (Amex Rule 170(e); NYSE Rule 104, 104.13), (2) trade options on specialty securities (Amex Rules 190(b) and 175; NYSE Rule 105), (3) accept orders in specialty securities from the issuer, its insiders and institutions (Amex Rules 190(b) and 950(k); NYSE Rules 104 and 113), (4) perform research and advisory services with respect to specialty securities (Amex Rule 190, Commentary; NYSE Rule 113.20), (5) "popularize" specialty securities (Amex Rule 190, Commentary; NYSE Rule 113.20), and (6) engage in business transactions with a company in whose stock the specialist is registered (Amex Rule 190(a); NYSE Rule 460).

Although the Amex's filing will permit approved persons to participate in an underwriting as manager of the offering, the NYSE's filing prohibits approved persons from acting as the managing underwriter of an offering of stock, or securities convertible into that stock, of an issuer in whose securities the specialist is registered.[13]

In addition, both the Amex and NYSE amended their filings to clarify the procedures that would apply if market sensitive information were passed between an approved person and the affiliated specialist. A specialist who becomes privy to market sensitive information must communicate that fact promptly to his firm's compliance officer. The specialist must seek a determination from the compliance officer as to what procedures the specialist should follow after receipt of such information.

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[4] The "popularizing" restriction generally prohibits specialists, their member organizations and their corporate parents from making recommendations and providing research coverage regarding their specialty securities.

[5] Amex Rule 193(d) and NYSE Rule 98(c) further provide that where the approved person controls, is controlled by, or is under common control with a person other than the affiliated specialist, an exemption will only be available if a Chinese Wall is established according to the Guidelines between the approved person, the affiliated specialist, and such other person.

[6] Securities Exchange Act Release No. 22396 (September 11, 1985), 50 FR 37925 ("Proposal Release").

[7] Letters from Frederick A. Klingenstein, Chairman, Wertheim & Co. Inc. ("Wertheim"), to John Wheeler, Secretary, SEC, dated October 2, 1985 ("Wertheim Letter"); Richard B. Fisher, President, Morgan Stanley & Co., Inc. ("Morgan Stanley"), to John Wheeler, dated October 16, 1985 ("Morgan Stanley Letter"); S.L. Prendergast, Corporate Vice President and Treasurer, AT&T, to John Wheeler, dated October 18, 1985 ("AT&T Letter"); Edward W. Wedbush, President, Wedbush, to John Wheeler, dated October 18, 1985 ("Wedbush Letter"); Brian Riddell, Executive Vice President, BSE, to John Wheeler, dated January 30, 1986 ("BSE Letter"); and Walter E. Auch, Chairman and Chief Executive Officer, Chicago Board Options Exchange ("CBOE"), to John Wheeler, dated February 14, 1986 ("CBOE Letter"). The CBOE, on October 29, 1986, filed a second letter that reemphasized its objectives to the proposal. Letter from Alger B. Chapman, Chairman and Chief Executive Officer, CBOE, to John S.R. Shad, Chairman, SEC.

[8] Letters from Leland B. Paton, Executive Vice President, Prudential-Bache Securities ("Prudential-Bache"), to John Wheeler, dated October 17, 1985 ("Prudential-Bache Letter"); Frederick H. Joseph, Vice Chairman of the Board, Chief Executive Officer, Drexel, to John Wheeler, dated October 31, 1985 ("Drexel Letter"); William A. Schreyer, Chairman and Chief Executive Officer, Merrill, to John Wheeler, dated November 1, 1985 ("Merrill Letter"); Sam Scott Miller, Vice President, General Counsel and Secretary, Paine Webber Group, Inc. ("Paine Webber"), to John Wheeler, dated November 4, 1985 ("Paine Webber Letter"); Robert M. Gardiner, Chairman and Chief Executive Officer, Dean Witter Reynolds, Inc. ("Dean Witter"), to John Wheeler, dated November 5, 1985 ("Dean Witter Letter"); and James E. Buck, Secretary, NYSE, to John Wheeler, dated November 11, 1985 ("NYSE November 11 Letter"); and James E. Buck, Secretary, NYSE, to John Wheeler, dated April 8, 1986 ("NYSE April 8 Letter").

[9] The Amex and NYSE Guidelines provide regulatory sanctions, including the potential withdrawal of the registration of one or more stocks of the affiliated specialist or the withdrawal of one or more of the exemptions provided by Amex Rules 190 and 193 and NYSE Rule 98.

[10] On January 30, 1985, Amex filed the proposed changes to Rules 190 and 193 with the Commission. On March 19, 1985, Amex filed Amendment No. 1 to the proposed rule change incorporating guidelines for establishing an Exchange-approved "Chinese Wall" between an approved person and the specialist unit on the floor. To provide notice of the proposal and to solicit public comment, the amended filing was published in the **Federal Register**. Securities Exchange Act Release No. 21916 (April 2, 1985), 50 FR 14058.

[11] The NYSE filed its proposal with the Commission on June 20, 1985. Notice of the proposal was provided in Securities Exchange Act Release No. 22183 (June 28, 1985), 50 FR 27875. In conjunction with its filing of the current proposed rule change, the NYSE withdrew a pending proposed rule change (File No. SR–NYSE–78–59) to relieve approved persons of members and member organizations from the provisions of certain NYSE rules, including Rules 98, 104.13, 113 and 113.20.

[12] The organizational separation guidelines of each Exchange outline the minimum requirements that an approved person would be expected to demonstrate to provide for a "functional separation" of its retail and specialist activity. A firm seeking exemptive relief would be required to obtain the prior written approval of the Exchange confirming that it had complied with these guidelines in establishing its Chinese Wall and that it had established proper compliance and audit procedures to ensure the Wall's maintenance.

[13] The NYSE's prohibition would not apply to non-convertible debt securities.

The Exchange require further that the compliance officer keep a written record of each such request received from a specialist. The record must include all pertinent facts, including a description of the information received by the specialist, the determination made by the compliance officer and the basis for such determination. If the "book" is given up to another member of the specialist unit or an independant specialist unit, the Exchange must be immediately informed and record must be kept of the time the specialist reacquired the book and the reasons for the compliance officer's determination that the reacquisition was appropriate. [14]

III. Summary of Comments

Because the current restriction imposed on specialists' relationships with approved persons reflect potential conflict of interest, market manipulation and competitive concerns, the Commission issued a release describing the proposed rule changes and requesting comment on the issues raised by the proposals. [15] Twelve commentators responded. [16]

A. Objections to the Proposals

Six commentators [17] raised objections to the proposals, stating that the Chinese Wall would prove ineffective in alleviating potential conflicts of interest.[18] In particular, commentators were concerned that the primary roles and activities of the retail broker-dealers and their respective specialist units would conflict.[19] They feared a Chinese Wall would be ineffective in ensuring independence of operations [20] and disrupt upstairs operations.[21] Several commentators also questioned the possible effectiveness of surveillance of a Chinese Wall.[22]

Two commentators were concerned that by permitting this affiliation the present order flow determinations would be altered, adversely affecting other retail broker-dealers, unaffiliated specialists, and regional exchanges.[23] These commentators contend that institutions would channel their orders to those broker-dealers affiliated with specialists in an effort to obtain a better execution.[24] They also assert that retail broker-dealers would direct order flow in specialist stocks to their affiliated specialist unit, thereby undermining the willingness of these broker-dealers to send their orders to the best market for the security and further concentrating order flow in the primary markets.[25]

B. Support for the Proposal

The six commentators [26] the proposals viewed the Chinese Wall as effective in preventing the exchange of material, non-public information among departments and avoiding conflicts of interest. Commentators supported this view by pointing to the success of similar Chinese Wall procedures utilized by affiliated firms on the regional exchanges and the success of their own Chinese Walls, created to separate sensitive activities such as investment banking and research, trading and sales areas. [27] Some stated that a retail

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[14] The NYSE and Amex Guidelines also caution members that any trading by any person while in possession of material, non-public information received as a result of a breach of the internal controls required by the Guidelines may violate Rules 10b-5 and 14e-3 under the Securities Exchange Act of 1934 (the "Act") [17 CFR 240.10b-5 and 240.14e-3 (1986)], NYSE Rule 104, Amex Rule 170, just and equitable principles of trade or one of more other provisions of the Act or of Exchange rules. The Guidelines state that the Exchanges intend to review carefully any trading which occurs after a breach in the Wall has occurred with a view toward identifying any such violation.

[15] *See* Proposal Release, *supra* note 6. In its Release, the Commission asked a series of questions concerning the potential benefits of the proposals, necessary internal controls, potential unfair competitive advantages, appropriate trading restrictions and equal regulation issues, among others. The Commission requested that the commentators address whether: (1) The proposed procedures for establishing the Wall would be adequate; (2) the procedures for maintaining the Wall would be adequate; (3) the procedures for auditing the maintenance of the Wall would be adequate; and (4) particular restrictions presently applicable to an approved person should continue to apply to the approved person notwithstanding the creation of the Wall.

[16] A summary of the comment letters, and the letters themselves, are available for inspection and copying in the Commission's Public Reference Section in Washington, DC. (*See* File Nos. SR–Amex-85–1 and SR–NYSE–85–25).

[17] *See* note 7, *supra*.

[18] Comments previously had been submitted to the NYSE in response to the NYSE's Special Membership Bulletin discussing the possibility of retail firms acting as specialists and outlining possible proposed Rule 98 to regulate such activity. The NYSE received 12 comment letters from 13 commentators. Eight of the 12 commentators supported the rule change [Ernst & Co.-Homans & Co.-Ware & Keelips-Victor, Inc.; Paine Webber; Mesirow & Company; A.B. Tompane & Co.; Prudential-Bache Securities; Dean Witter; Stephen Peck (RPN Partners) and Donald Stott (Wagner, Stott & Co.); and Merrill]; and three expressed opposition [J. Streicher & Co.; Wertheim; and Morgan Stanley]. In one letter [Securities Industry Association ("SIA")], a position was not stated. In general, the commentators who supported the rule believed that the rule would strengthen the specialist system by attracting new sources of capital which would improve the liquidity and quality of NYSE markets and would enhance competition among specialists on the Exchange. The proposal also was cited as a practical and effective approach for handling conflicts and other regulatory issues that might arise from such combinations without imposing inappropriate regulatory burdens. In Merrill's view, the existing framework of specialist regulation and the system of stock allocation (which, in part, is based on the specialist unit's evaluation by floor brokers as measured by a quarterly questionnaire) also would serve as protection against abusive practices.

Those in opposition to the rule, however, stressed the unworkability of the Chinese Wall concept, contending that it would not satisfactorily address conflict of interest concerns, and that it might result in an undue concentration of member organizations in the specialist business on the Exchange, as well as in institutional investors directing order flow in a particular stock only to a member organization associated with the specialist member organization registered in that stock. J. Streicher & Co., for instance, stated that the proposal would impose unfair competitive conditions upon established specialist units. In the view of Wertheim, the proposal would aggravate the current problem of declining public participation in the securities markets by adding to the reality as well as to the perception of conflicts of interest.

The SIA did not take a position but instead outlined concerns and comments expressed by members of its Board of Directors. These concerns included questions about the impact that this would have on the market structure of the NYSE's floor, and on the public's perception of the manner in which the Exchange operates, as well as the potential conflicts of interest between the Exchange and the specialist unit. On the other hand, the SIA cited the need for new entrants to attract new capital and the belief that conflicts of interest potentially could be controlled.

[19] Wertheim and Morgan Stanley Letters, *supra* note 7.

[20] BSE, Wedbush and Wertheim Letters, *supra* note 7.

[21] Wertheim Letter, *supra* note 7.

[22] BSE and Wertheim Letters, *supra* note 7.

[23] Wertheim and CBOE Letters, *supra* note 7.

[24] Wertheim Letter, *supra* note 7.

[25] CBOE Letter, *supra* note 7. In this regard, the CBOE also suggested that the Commission "(i) ascertain the percentage of order flow in particular [national market system ("NMS")] stocks each large retail firm commands . . . (ii) assess the extent to which each such firm's order flow would permit it . . . to maintain the dominance of the existing primary market specialist; and (iii) evaluate the likely effect of the Specialist Affiliation Proposals on inter-market competition in the context of the goals of a [NMS]." CBOE Letter, *supra* note 7 at 4. The NYSE, in its April 8 letter to the Commission, responded to the CBOE, stating that the CBOE's "concerns are highly speculative and unfounded." The NYSE stated that its proposals would assure that specialists would continue to be adequately capitalized, and that continuing deep and liquid NYSE markets would be achieved "without sacrificing market integrity or the protection of investors." The NYSE indicated that there is no evidence suggesting that firms affiliated with specialist units would ignore "best execution" responsibilities, and that, as long as member firms provide for the "best execution" for customers' orders, customers will not be adversely affected by the NYSE's proposal and firms would be justified in sending those orders to the NYSE.

[26] *See* note 8, *supra*.

[27] Paine Webber, Drexel and Merrill Letters, *supra* note 8.

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broker-dealer would not put its reputation in jeopardy, or risk losing its specialist franchise, by permitting the Chinese Wall to be loosely enforced.[28] Furthermore, several commentators pointed out that the presence of other regulatory factors, such as NYSE Rules 115 (prohibiting disclosure of orders on the specialists' books), 91 (taking or supplying securities named in order), 92 (limitation on members' trading because of customers' orders), and rules governing priority of order left on the specialist's "book," will act to restrict improper behavior by both the retail broker-dealer and its affiliate.[29]

Several commentators emphasized that it was in the public interest to allow the affiliation in order to provide additional and permanent capital to the Exchange market making function.[30] They concluded that the entry of diversified firms into the specialist business would stimulate competition in specialist activity. This, plus the increase in capital, could improve liquidity of exchange markets.[31] The result would be to strengthen further the already strong exchange market system.[32]

IV. Discussion

A. Benefits Resulting From The Proposals

The increasing institutionalization of the markets in recent years has imposed additional pressure on primary market specialists to ensure market liquidity. As more institutions have shifted to active trading of their portfolios, both the aggregate volume[33] and average size of trades[34] have increased substantially. Moreover, with the growth of derivative stock products and the use by many market professionals of various arbitrage and hedging strategies the frequency of large surges of selling or buying pressure has increased. While upstairs block positioning firms serve a critical function in offsetting institutional order imbalances, the Commission also believes that well-capitalized specialists are critical to orderly functioning of the markets. The Exchanges' proposals will increase the capital base upon which specialists may draw and should enhance their ability to maintain fair and orderly markets. The Commission also agrees with the NYSE that the proposals will increase specialist competition for allocations of new listings which should in turn enhance the quality of markets on the Exchanges. For these reasons, the Commission has concluded that substantial benefits may be obtained from the proposals.

B. Adequacy of the Wall

The Commission previously had recognized the use of Chinese Walls in a number of instances regarding the establishment of an organizational separation between different departments of a broker-dealer as one of several means of preventing the interdepartmental communication of material, non-public information.[35]

For example, the Commission has recognized that in view of the diverse functions performed by a multi-service firm and the material, non-public information that may be obtained by any one department of the firm, the firm often may be required to restrict access to information to the Department receiving it, in order to avoid potential liability under sections 10(b) and 14(e) of the Act[36] and Rules 10b–5 and 14e–3 thereunder.[37] Accordingly, the Commission has indicated that the creation of an effective Chinese Wall would enable broker-dealers to continue to maintain multiple services in a single operation, thereby economically benefitting the firm and enabling it to provide enhanced services to customers.[38] Similarly, the Commission believes that an organizational separation imposed between an approved person and affiliated specialist member organization can effectively be established in connection with the Amex and NYSE proposals.

Nevertheless, some commentators have suggested that the precautions built into the Exchanges' proposed Chinese Wall procedures will not adequately restrict the potential for conflicts of interest and market manipulation in view of the strong incentives of affiliated specialists and their approved persons to exploit their time, place and informational advantages. Specifically, commentators have stated that the desire of the specialist for information,[39] the monetary incentives of the approved person[40] and the numerous opportunities to communicate material, non-public information, particularly where non-disclosure of such information otherwise would significantly harm an affiliate,[41] would render the proposed procedures ineffective in preventing market abuses arising from the affiliation of the approved person and specialist unit.

The Commission believes that Chinese Walls, with effective controls, may be effective in restricting information flow between the various departments of broker-dealers. The current proposals do, however, present a new variable which has not been addressed in other contexts. Previously, Chinese Walls generally have been designed to isolate material, non-public information regarding a discrete transaction such as an underwriting or tender offer. In contrast, these proposals are designed to address an ongoing relationship between the specialist and the approved person. The Commission believes, however, that the Guidelines prepared by the Exchanges effectively address the potential for market abuses resulting from this ongoing relationship. For example, the proposed Guidelines of both the Amex and NYSE call for procedures to be established by participating approved persons to ensure, among other things: (1) The confidentiality of the specialist's book; (2) that the approved person can have no influence on specific specialist trading decisions; (3) material, non-public corporate or market information obtained by the approved person from the issuer is not made available to the specialist; (4) that clearing and margin financing information regarding the specialist is routed only to employees engaged in such work and managerial employees engaged in overseeing operations of the approved persons and specialist entities. The effectiveness of the procedures set forth in the Guidelines is reinforced by the Exchanges' existing surveillance of specialists and the marketplace as well as the specialist's highly visible position in the marketplace.[42] These factors, along with the specialist's existing statutory duty to maintain a fair and orderly market, should combine to enhance the effectiveness of the proposed Chinese Wall.[43]

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[28] Drexel and Merrill Letters, *supra* note 8.

[29] Merrill and NYSE November 11 Letters, *supra* note 8.

[30] Drexel, Paine Webber, and NYSE November 11 Letters, *supra* note 8. Prudential-Bache stated that it would enhance the specialist system to have well-capitalized firms affiliated with specialist firms, noting that the presence of institutional investors has increased demands on the specialists' limited capital. Prudential-Bache Letter, *supra* note 8.

[31] Drexel and Paine Webber Letters, *supra* note 8.

[32] NYSE November 11 Letter, *supra* note 8. The NYSE also argues that its proposal will enhance intra-market competition by encouraging high-quality specialist performance, which is the basis upon which the newly listed NYSE securities are allocated. The proposal enhances inter-market competition, according to the NYSE, by permitting affiliations that are currently permitted on regional exchanges, but not subject to restrictions under current NYSE rules. The NYSE views such a regulatory disparity as imposing an unjustified burden on competition.

[33] For example, the shares traded on the NYSE in 1985 (27.5 billion) more than doubled the number of shares traded in 1980 (11.3 billion). The value of these shares traded in 1985 ($970.4 billion) almost tripled the value of the shares traded in 1980 ($374.9 billion). *NYSE Fact Book* (1986) at 6.

[34] In 1985, the average size of reported trades on the NYSE was 1878 shares, whereas, in 1980, the average size of reported trades was 872 shares. Furthermore, trades of blocks of 1,000 shares and over increased from 19.9% of total shares traded in 1980 to 33.1% of total shares traded in 1985. *Id.* a 10.

[35] *See* SEC, Institutional Investor Study, H.R. Doc. No. 9264, 92d Cong., 1st Sess. 2539 (1971) ("Institutional Investor Study"). The Study urged financial institutions to "consider the necessity of segregating information flows arising from a business relationship with a company as distinct from information received in an investor or shareholder capacity." The Commission notes that the so-called Chinese Wall solution to the problem of multiservice firms, with conflicting duties, acquiring confidential information has been used in a variety of circumstances. *See, e.g.,* Fund of Funds, Ltd. v. Arthur Anderson & Co., 567 F.2d 225 (2d Cir. 1977) (accounting firms); Herzel & Colling, The Chinese Wall Revisited, 6 *Corp. L. Rev.* 116 (1983) (banks); and Comment, The Chinese Wall Defense to Law-Firm Disqualification, 128 *U. Penn. L. Rev.* 677 (1980) (law firms).

[36] 15 U.S.C. 78j(b) and 78n(e) (1982).

[37] *See* Securities Exchange Act Release No. 17120 (September 4, 1980) ("Rule 14e–3 Release"), 45 FR 60410. Rule 14e–3(a) establishes a duty to "disclose or abstain from trading" for any person who is in possession of material information that relates to a tender offer by another person, when he knows or has reason to know that the information is non-public and was acquired directly or indirectly from that person or the issuer of the securities subject to the tender offer. Rule 14e–3(b) exempts a multi-service institution from liability under Rule 14e–3(a) to the extent that it has implemented reasonable procedures to prevent the purchase or sale of any security, or the causing of a purchase or sale of any security, while in the possession of material, non-public information relating to a tender offer in violation of Rule 14e–3(a) and the individual(s) making the investment decision(s) did not know such information.

[38] *Supra* note 37, 45 FR at 60416.

[39] *See* Wedbush Letter, *supra* note 7.

[40] *See* Wertheim Letter, *supra* note 7.

[41] *See* Morgan Stanley Letter, *supra* note 7.

C. Surveillance of the Wall

The structural adequacy of the Wall is, of course, only one part of evaluating whether the procedures established by the Amex and NYSE adequately will detect and deter potential improper activity by either the approved person or the specialist.

Appropriate surveillance procedures are critical to ensure that the Wall is maintained.

The Exchanges have submitted to the Commission proposed procedures for monitoring the Wall consisting of: (1) Examination of the Chinese Wall procedures established by broker-dealers seeking exemptions under the proposals, and (2) surveillance of proprietary trades effected by each approved person and its affiliated specialist member organization.[44]

The Amex and NYSE will conduct periodic examinations of the approved person's Chinese Wall procedures to ensure that an organizational separation between the approved person and specialist organization has been created and thereafter maintained. Second, the Amex and NYSE will monitor the trading activities of approved persons and affiliated specialists—in order to check for possible trading while in possession of material, non-public information—by reviewing as a routine matter on a day-to-day basis, as well as periodically, trading and comparison reports generated by the Amex and NYSE surveillance departments regarding the activities of approved persons and affiliated specialists.[45]

D. Approved Person as Managing Underwriter

As indicated above, pursuant to proposed Rule 98, the NYSE would prohibit approved persons from acting as the managing underwriter of an offering of stock, or securities convertible into that stock, of an issuer in whose securities the specialist is registered, while the Amex would permit approved persons to participate in an underwriting as manager of the offering. The NYSE stated that its proscription against managing underwriter activities by the approved person of a specialist was based on the Exchange's concern that

> the possible public perception of a potential conflict of interest between an approved person, acting as underwriter, and its associated specialist member organization, acting as market-maker, . . . is likely to focus most particularly on instances where the approved person is acting as a managing underwriter, and thus has a greater financial stake in the successful outcome of the distribution than a syndicate or selling group member.[46]

The NYSE states that it is not seeking to provide exemptive relief "at this time" for an approved person to act as a managing underwriter in order to "minimize any possible concerns that might arise in this area." [47]

The Commission received six comments addressing this issue. The NYSE reiterated its belief that its proposed restriction is intended to address a possible public perception of a potential conflict of interest between an approved person and an associated specialist when the approved person acts as managing underwriter.[48] Morgan Stanley suggested that the NYSE's proposed restriction addresses some concerns raised by the proposals, but that, on the whole, excessive conflicts remain.[49] Merrill, Pine Webber, Drexel,

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[42] For example, the specialist's, as well as the approved person's, proprietary trades are recorded and monitored. Furthermore, a specialist's performance is evaluated by both the exchange and the floor members for purposes of the allocation and reallocation of issuers' stock.

[43] Both the Amex and NYSE proposals would allow an approved person to use an affiliated broker, as well as an unaffiliated broker, for its proprietary trades in the securities trade by an affiliated specialist. Such trades must be executed in compliance with the requirements of section 11(a) of the Act [15 U.S.C. 78k(a) (1982)] relating to trading by members of the exchange, brokers and dealers, and Rules 11a–1 and 11a1–1(T) thereunder [17 CFR 240.11a–1 and 240.11a1–1(T) (1986)]. Section 11(a)(1) of the Act prohibits exchange members from effecting transactions for the member's account on such exchange, provided that, under section 11(a)(1)(G)(i), the member is exempt from such prohibition if it is "primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities to customers, and acting as broker . . . and whose gross income normally is derived principally from such business and related activities," and under section 11(a)(1)(G)(ii), the member's proprietary transactions are effected in compliance with Commission rules, including rules ensuring that such transactions "yield priority, parity, and precedence in execution to orders for the account of persons who are not members or associated with members of the exchange." Pursuant to Rule 11a1-1(T) under the Act, a transaction for a member's account will be deemed to yield priority, parity and precedence to orders for the account of non-members if the transaction complies with specified execution requirements. In addition, the Commission notes that transactions by approved persons that are not otherwise exempt under section 11(a) may be subject to the provisions of Rule 11a2–2(T) of the Act [17 CFR 240.11a2–2(T) (1986)], the so-called "effect versus execute" rule, which requires execution of an order for a member's account by a member not associated with the initiating member.

[44] The Amex and the NYSE have requested that these procedures be accorded confidential treatment by the Commission.

[45] If a breach of the Wall did occur (e.g., an employee of the approved person communicated confidential information to an employee of the specialist), the employee receiving this information would be obligated to report the breach to the Compliance Department of the approved person. The Compliance Department would, in turn, be obligated to determine whether the information was material and, if so, what arrangements might be made to avoid violating the Amex and NYSE Rule against trading while in possession of material, non-public information. As a general matter, the Commission expects that if an individual specialist is in receipt of market sensitive information via its approved person, he will, at a minimum, pass the book in the specialty stock to another specialist within the same firm who is not in possession of such information. In addition, the compliance officer should be responsible for determining when the specialist may recover the book and recommence trading the specialty stock at issue.

[46] File No. SR–NYSE–85–25, NYSE proposal, at 11. The functions of the managing underwriter, who will have originated an offering through the underwriter's contact with the issuer, and the one or more broker-dealers that the managing underwriter may invite to serve as co-managers, include the following: (1) To assemble the syndicate that will participate in the underwriting commitment; (2) to maintain the records for the syndicate; and (3) to stabilize the aftermarket. *See* Institutional Investor Study, *supra* note 35, at 2510–26. The NYSE's prohibition also would apply to co-managers and to the managing underwriter's or co-manager's participation in a shelf offering.

[47] File No. SR–NYSE–85–25, NYSE proposal, at 11.

[48] *See* NYSE November 11 Letter, *supra* note 8.

[49] *See* Morgan Stanley Letter, *supra* note 7.

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and Prudential-Bache supported the Amex approach and objected to the NYSE's proposed prohibition.[50] These commentators argued that the Chinese Wall would serve adequately to limit potential conflicts of interest and that the proposed surveillance measures and penalties effectively would deter any violations.

The Commission agrees that the potential conflict of interest between the approved person and the specialist is the primary area of concern arising under these proposals. Potential problems related to conflicts of interest may be of greater concern when an approved person acts as managing underwriter for the issuer of a speciality security in view of the number of close contacts between a managing underwriter, the issuer, other syndicate participants, and the specialist. Such contacts may help to create greater risks of misuse of information.[51]

Section 6(b)(5) of the [52] Act requires that the rules of an exchange be "designed to prevent fraudulent and manipulative acts . . . and, in general, to protect investors and the public interest." On the other hand, section 6(b)(5) also requires that exchange rules not "permit unfair discrimination between . . . brokers, or dealers . . .," and section 6(b)(8) of the Act requires that exchange rules not impose any "burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]."[53] Accordingly, the Commission must balance the potential reduced risks of abuse [54] resulting from the managing underwriter prohibition against the argument by integrated broker-dealers that the prohibition imposes an unnecessary competitive burden on their ability to enter the specialist business.[55]

In weighing these arguments, the Commission believes that the managing underwriter prohibition cannot be viewed in isolation from the broader NYSE initiative. Proposed Rule 98 represents a substantial expansion of the opportunities for integrated retail broker-dealer firms—and others—to enter the specialist business. As noted above, that expansion itself requires the Commission and the NYSE to balance potentially greater risks of abuses with potential enhancement of market liquidity. In light of the novel issues raised by this major change, the Commission does not believe that the NYSE's decision to restrict the activities of approved persons in the context where the potential for abuse may be greatest is unfair or inapprpriate at this time.[56]

The Commission has not determined, however, that the NYSE's proposed restriction is a prerequisite to ensuring the efficacy of the NYSE's Chinese Wall procedures.[57] The Commission notes that the Amex would promote competition by permitting approved persons of specialist units to compete for managing underwriter positions. The Commission notes that the affiliated specialist unit must "hand off the book" during the approved person's participation in an underwriting for the appropriate period pursuant to Rule 10b–6 under the Act.[58] In light of this requirement and the Amex's compliance and surveillance procedures discussed above, the Commission believes that the Amex proposal is consistent with the Act.

Even though the Commission does not believe that the NYSE's proposed restriction on an approved person acting as a managing underwriter is strictly necessary (and, therefore, is prepared to approve the Amex proposal as submitted), the Commission believes that the Act allows an SRO sufficient flexibility to proceed cautiously in implementing potentially significant structural changes in its marketplace.[59]

The Commission does expect, however, that the NYSE will closely monitor trading under Rule 98 in order to determine whether the restriction on managing underwriter participation should be removed in the future. Furthermore, both the Amex and the NYSE have agreed to review the implementation of this program and report their findings to the Commission after the program has been operational for two years. The Commission expects that such a report will not only assess the adequacy and efficacy of the Chinese Wall procedures, but also will discuss the need for the managing underwriter restriction.

E. Industry Concentration

Some commentators expressed concern that, if adopted, the proposals could lead to substantial concentration of capital and market making activities in a smaller number of market participants. For example, one commentator stated that "[d]iversification of activities and sources of capital has been a unique strength of the industry" and questioned the impact greater concentration of capital would have on the auction market.[60] In addition, it was suggested that the consolidation of market resources under the proposal would "continue" the public perception that individual investors are at a significant disadvantage relative to highly capitalized financial institutions, institutional investors, and market professionals.

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[50] *See* Merrill, Paine Weber, Drexel, and Prudential-Bache Letters, *supra* note 8.

[51] *See* Morgan Stanley Letters, *supra* note 7. *Cf.* SIA Letter, *supra* note 18.

[52] 15 U.S.C. 78f(b) (1982).

[53] An exchange rule that imposes a competitive burden is inconsistent with section 6(b)(8) of the Act unless it furthers some other regulatory objective. *See* Clement v. SEC, 674 F.2d 641 (7th Cir. 1982).

[54] The Commission does not believe that the NYSE's expressed "public perception" concerns provide a basis under the Act for approval of the Rule.

[55] The Commission notes that, in assessing the competitive implications of self-regulatory organization ("SRO") and Commission action, the Commission is required to balance competitive consequences "against other regulatory criteria and considerations," and is not required "to justify that such actions be the least anticompetitive manner of achieving a regulatory objective." Senate Comm. on Banking, Housing & Urb. Affs., *Report to Accompany S. 249: Securities Acts Amendments of 1975*, S. Rep. No. 75, 94th Cong., 1st Sess., 13 (1975) ("Senate Report"). *See* Bradford National Clearing Corp. v. SEC, 590 F.2d 1085, 1105–06 (D.C. Cir. 1978).

[56] Integrated broker-dealer firms still would be able to participate in an underwriting as a non-manager. Only where the potential for concern is greatest would the NYSE prohibition apply to the approved person.

[57] *See* text accompanying note 60, *infra*.

[58] Rule 10b–6 [17 CFR 240.10b–6 (1986)], prohibits an underwriter and its affiliates, including an affiliated specialist unit, from bidding for or purchasing the security being distributed or any related security during a distribution. Rule 10b–6(a)(3)(xi) excepts from that prohibition bids or purchases by an underwriter of the security being distributed prior to the the applicable cooling-off period specified by the Rule. Thus, the underwriter and its affiliated specialist unit could not bid for or purchase the security being distributed or a related security as of the commencement of the cooling-off period until the completion of the distribution. In the case of stock with a minimum market price of $5 per share and a public float of 400,000 shares, the Rule 10b–6 cooling-off period is two business days. For all other securities, the cooling-off period is nine business days. *See* Rule 10b–6(a)(3)(xi) and (c)(7).

[59] The Commission notes that the possibility that the NYSE may seek to modify its proscription in light of its experience under Rule 98, and that the NYSE has stated in its comment letter that "[it was] not seeking *at this time* to provide exemptive relief as to managing underwriting arrangements" (emphasis added). Further, the NYSE has stated that it "has not concluded that there is such an inherent conflict of interest in the managing underwriter/specialist relationship so as to justify the managing underwriter restriction in any event, irrespective of possible public perception concerns." NYSE November 11 Letter, *supra* note 8, at 15.

The Commission notes that it has the flexibility to make distinctions among various SROs and marketplaces and it is not required to apply strictly uniform regulatory requirements to all SROs. *See* Senate Report, *supra* note 55, at 7.

[60] *See* Morgan Stanley Letter, *supra* note 7. The Commission notes the increasing consolidation of specialist units and the contraction in the number of specialist units on the exchange floors in recent years. In 1984, for example, 380 NYSE members were registered as specialists and organized into 110 specialist units. Currently, the NYSE has 400 specialists organized into 56 specialist units.

Concerns about increasing concentration within the securities industry have been prevalent at least since the introduction of negotiated commission rates in 1975. Nevertheless, concentration *per se* is not proscribed by the Act. Even so, in view of the competition standard in the Act,[61] the Commission, of course, would be concerned if a structural change in the market were likely to lead to increased concentration and it was reasonably foreseeable that such concentration was likely to lead to reduced competition within the securities industry.

The Commission has identified no evidence that the proposals will cause substantial industry concentration of retail business. Furthermore, if the proposals do result in industry specialist concentration, there still will be competition among these specialists for allocations of newly listed issues as well as competition with specialists in other markets. Thus, the Commission does not believe that the possibility of some additional specialists concentration, without reasonably likely adverse consequences,[62] is a sufficient reason to disapprove these proposals.

F. Effect on the National Market System

The CBOE has suggested that the proposals would have an adverse impact on the regional exchanges because an approved person affiliated with a specialists unit on a primary exchange would direct its order flow in specialty stocks to its affiliate, and, furthermore, would direct order flow in non-speciality stocks to that exchange because of the firm's interest in the success of its affiliated specialists marketplace. The result, according to the CBOE, could be a "deadening of intermarket competition . . . ."[63]

The Commission does not agree with the CBOE that the Amex and NYSE proposals imperil the goals of the NMS.[64] While a firm may choose to route some order flow to an affiliated specialist, the Commission expects that those firms will recognize their continuing obligation to provide their customers with best execution of their orders.[65] In addition, the Commission notes that while the addition of a specialist unit could be a new profit center for a major retail firm, it might contribute only a small percentage of that firm's gross revenues.[66] The Commission does not believe that a major firm will permit a relatively minor affiliate to dictate how it handles retail agency orders in securities in which the affiliate does not even specialize. Moreover, to the extent there is any competitive impact, all exchanges have the ability to attract retail firms to specialize in their marketplace. Accordingly, the Commission does not believe that the Amex and NYSE should be precluded from seeking to attract retail firm capital to their trading floors in the fear that by so doing retail firms will cease to determine where to send their order flow in a "neutral" fashion. Indeed, if such were the goal, the Commission would, in turn, have to prohibit retail firms from acting as specialists on the regional stock exchanges.

G. Equal Regulation of Primary and Regional Exchanges

In the Proposal Release,[67] the Commission noted that regional stock exchanges have not been required to adopt restrictions similar to those of the Amex and the NYSE on approved persons of specialist units primarily because of their limited trading volume and because they are not the primary exchange market for most securities traded on those exchanges.[68]

The NYSE believes that the current regulatory disparity between the primary and regional exchanges will continue to encourage diversified firms that desire to enter the specialist business, without disrupting their other lines of business, to become specialists on a regional exchange rather than on the NYSE.[69] The NYSE believes such a disparity imposes a two-fold burden on competition: (1) As between the NYSE and other market centers, and (2) as between existing NYSE specialist member organizations and diversifies firms that desire to enter the specialist business on the NYSE market. The NYSE believes the Commission should "reassess its traditional position in this area," and that the NYSE's proposal provides a "fairer competitive balance. . . ."[70] Indeed, the NYSE states that diversified firms that have regional exchange specialist operations are diverting order flow in their specialty stocks to the regional exchanges, and that regional specialists are becoming "active and significant competitors for the order flow generated by other broker-dealer organizations."[71]

As discussed above, the BSE believes that different regulations for the regionals as compared to the primary exchanges are appropriate because the regional exchanges account for limited trading volume and generally price their orders based on the primary market.[72]

The Commission agrees that the recent increase in acquisitions of regional specialist operations by diversified brokerdealer firms, particularly by large retail firms, [73] has increased concerns arising from the regulatory disparities between regional and primary exchanges in the regulation of affiliations between specialist operations and diversified broker-dealer firms. While, as the BSE notes, overall regional exchange volume is small compared to primary market volume, [74] and regional exchange pricing of orders is generally derived from primary market quotations, the diversion by a large retail broker-dealer of all or a significant portion of order flow in specialty stocks to an affiliated regional specialist could raise certain regulatory concerns similar to those raised by such affiliations on the primary exchanges. Moveover, even if regional exchange

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[61] *See e.g.*, Sections 6(b)(8), 11A, and 23(a) of the Act [15 U.S.C. 78f(b), 78k–1, and 78w(a) and (1982)].

[62] For example, over the last two decades retail broker-dealers became the dominant market makers in the OTC market, displacing the traditional wholesale market makers. Nevertheless, the Commission has detected no decrease in the level of competitive market making; rather, such competition appears to be more vigorous than ever.

[63] CBOE Letter, *supra* note 7, at 3. *See* notes 23–25, *supra*, and accompanying text.

[64] *See* Section 11A of the Act.

[65] *See* Securities Exchange Act Release No. 15671 (March 22, 1979), 44 FR 20360, 20363 n.30.

[66] During the last quarter of 1985, although the gross revenue of NYSE retail broker-dealers reached $11.7 billion, the gross revenue of NYSE specialists was $115 million, or less than 1% of the retail firms' revenues.

[67] Proposal Release, *supra* note 6.

[68] Because the large majority of stocks traded on the regional exchanges are listed on the Amex or NYSE, and are traded on the regionals pursuant to unlisted trading privileges granted by the Commission under section 12(f) of the Act [15 U.S.C. § 78e (1982)], traditionally the Commission has not required regional exchange specialists to operate under the same regulatory regime as primary market specialists. *See, e.g.*, Securities Exchange Act Release No. 7465 (November 23, 1964), at 3; SEC, *Report of Special Study of the Securities Markets*, 88th Cong., 1st Sess., H. Doc. No. 95, pt. 2, at 167.

[69] *See* File No. SR–NYSE–86–25, NYSE proposal, at 15.

[70] *See* NYSE November 11 Letter, *supra* note 8, at 18–19. The NYSE, however, stated that it was "not necessarily suggesting that there should be absolute 'equality' of regulation between the NYSE and the regional exchanges," and that "[e]ven under the NYSE's functional regulation proposal, NYSE specialist member organizations and diversified organizations associated with them would be subject to more stringent regulations than exist on regional exchanges." *Id.* at 19.

[71] *Id.* at 18.

[72] BSE Letter, *supra* note 7, at 3–4.

[73] *See* note 3, *supra*.

[74] In 1985, for example, the regional exchanges, including the MSE, Phlx, PSE, BSE, and the Cincinnati Stock Exchange, Inc., accounted for approximately 13% of share volume in NYSE listed stocks, and 24% of total transaction volume reported through the Consolidated Transaction Reporting System.

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specialists continue to set their prices based on primary market quotations, a regional specialist affiliated with an integrated retail firm could obtain significant access to material, non-public information.

The Commission understands that a number of firms with regional specialist operations have established Chinese Wall procedures between the specialist and its affiliated firm. Nevertheless, such procedures have not necessarily been adopted by all specialist affiliates, have not been adopted pursuant to any specific regional exchange requirements, and have not been subject to specific exchange surveillance and oversight. The Commission believes it is desirable for the regional exchanges to consider requiring specialists affiliated with integrated firms to establish an adequate Chinese Wall and generally to review the efficacy of their surveillance and compliance procedures regarding those specialists. Accordingly, the Commission has instructed the Commission staff to write to the regional exchanges requesting that they review the current procedures followed by retail firms acting as specialists on their floors with a view toward evaluating whether additional regulatory requirements and surveillance procedures are appropriate.[75]

H. Trading Restrictions

Rule 10a–1 under the Act,[76] the short sale rule, requires a broker-dealer firm and its affiliates to "net" their respective stock positions to determine whether the positions were, in the aggregate, net long or net short for purposes of determining their compliance with Rule 10a–1.[77] The Amex and NYSE have requested that the Commission issue a no-action position to the effect that, if a firm has established an appropriate Chinese Wall pursuant to Rules 193 or 98, it would not be required to aggregate the approved person's position with the position of the affiliated specialist.[78] Merrill also requested similar interpretive relief regarding Rule 10b–4 under the Act,[79] regarding analogous aggregation requirements with respect to that Rule's restrictions on short tendering of securities.[80] The primary reason stated by commentators for not requiring aggregation of the specialist's and approved person's positions is that continuous contact between the specialist and the approved person for the purpospe of determining their aggregate net position would require regular violations of the required Chinese Wall.[81] In addition, one commentator suggested that a requirement that positions be "netted" could impede the specialist's ability to meet its market making obligations because the specialist could then become subject to the restrictions of Rule 10a–1 because of independent, unrelated activities of the approved person.[82]

The Commission agrees that it would be inconsistent with the Chinese Wall procedures envisioned by the Amex and NYSE proposals to require a specialist and an approved person routinely or during the course of a tender offer to exchange information to determine whether the entities' proprietary positions were, in the aggregate, net long or short for purposes of Rules 10a–1 and 10b–4.[83] The Commission, therefore, believes it is appropriate, as a general matter, to except specialists and approved persons from the aggregation requirements of those Rules. Nevertheless, because interpretive relief is justified by the Chinese Wall established by the approved person, the Commission believes that such relief should be conditioned upon the satisfactory implementation of these programs. Therefore, the Commission's staff will issue a no-action letter to except those approved persons who have established Chinese Walls in accordance with either Amex Rule 193 or NYSE Rule 98, and their affiliated specialists, from the aggregation requirement of Rules 10a–1 and 10b–4 under the Act. With respect to those broker-dealers which currently operate affiliated specialists on regional stock exchanges, the Commission's staff will develop appropriate review procedures in conjunction with its review of the Chinese Wall procedures of those firms and the regional exchanges' surveillance programs concerning those procedures.

V. Conclusion

For the reasons stated above, the Commission finds that the Amex and NYSE proposed rule changes are consistent with the requirements of the Act applicable to a national securities exchange and, in particular, with the requirements of section 6 of the Act and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to section 19(b)(2) of the Act, that the proposed rule changes be, and hereby are, approved.

Dated: November 3, 1986.

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[75] The staff has requested the PSE, Phlx, MSE and BSE, among other things, to detail the procedures each exchange has implemented for surveillance of compliance with Chinese Wall procedures that have been established by firms affiliated with exchange specialists.

[76] 17 CFR 240.10a–1 (1986). Rule 10a–1 prohibits the short sale of any exchange-traded security (1) below the price at which the last regular way sale of the security was affected on the exchange (*i.e.*, on a minus tick), or (2) at such price unless the price is above the next preceding different price at which the last regular way sale was effected (*i.e.*, on a zero minus tick). The purpose of Rule 10a–1 is to "(1) allow relatively unrestricted short selling in an advancing market; (2) prevent short selling at successively lower prices, thus eliminating short selling as a tool for driving the market down; [and] (3) prevent short sellers from accelerating a declining market by exhausting all remaining bids at one price level, causing successively lower prices to be established by long sellers." Securities Exchange Act Release No. 22414 (September 10, 1985), 50 FR 38871, 38872 n. 11.

[77] Rule 3b–3 under the Act [17 CFR 240.3b–3 (1986)], defines the phrase "short sale" as "any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller." The Rule provides further that "a person shall be deemed to own securities only to the extent that he has a net long position in such securities."

[78] In addition, three firms have submitted such no-action requests to the Commission. See letters from Sheldon I. Goldfarb, Reavis & McGrath (councel for Spear, Leeds & Kellogg and Spear, Leeds & Kellogg Securities, Inc.), to Brandon Becker, Assistant Director, Division of Market Regulation, dated October 29, 1985; James B. Bragg, Vice President Legal Department, Paine Webber, to Brandon Becker, dated November 27, 1985; Valentina R. Stum, Senior Counsel, Merrill Lynch Capital Markets, to Brandon Becker, dated December 9, 1985 ("Merrill Lynch Capital Markets Letter").

[79] 17 CFR 240.10b–4 (1986).

[80] Merrill Letter, *supra* note 8, at 9. Merrill also has requested the Commission to "explore the possibility of providing interpretative relief under . . . Section 16(d) by expanding the exemption afforded thereunder to positions acquired by a specialist in the ordinary conduct of trading activities incident to the establishment and maintenance of a market in a listed security." *Id.* Merrill also requested "interpretive guidance . . . in clarifying that contemporaneous positions in a particular security held by a specialist unit and affiliated trading areas will not be viewed as purchases made by a 'group' under section 13(d) of the Act." *Id.*

[81] *Id.* The Guidelines under proposed Rule 98 and Rule 193 contemplate that the approved person could establish business goals for the specialist and maintain general oversight of the specialist. Both Rules, however, strictly preclude the exchange of information between the specialist and the approved person regarding day-to-day trading decisions.

[82] Merrill Lynch Capital Markets Letter, *supra* note 78, at 2.

[83] In contrast, it is less clear that compliance with an aggregation requirement for purposes of the insider trading restriction under Section 16 of the Act (*i.e.*, the profit recapture provisions which attach to a 10% owner of an issuer's securities and related aggregation requirements) and the definition of the term "group" under section 13(d) of the Act, is impracticable or inconsistent with the Chinese Wall procedures envisioned by the proposals. More importantly, even if relief from those provisions were appropriate, it may be necessary to consider legislative action to provide such relief. Therefore, the Commission takes no position, at this time, regarding the availability of such relief.

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-25567 Filed 11-12-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23774; File No. SR-PSE-86-22]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc., Order Granting Accelerated Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 29, 1986, the Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items, I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Currently, a diseminated best bid or offer may be the result of an order represented by a Floor Broker. The proposed Options Floor Procedure Advice ("OFPA") will make it the responsibility of the Floor Broker holding such an order to instruct the Order Book staff to remove the bid or offer if (1) the bid or offer is cancelled; or (2) the order representing such best bid or offer has been filed in its entirety.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to ensure that disseminated markets are always current and accurate. There are many occasions when a disseminated bid or offer represents an order being held by a Floor Broker in the trading crowd. It has only been custom that such Floor Broker sees to the cancellation of such dissemination when the order is cancelled or filled to its entirety. The proposed OFPA will allow the Exchange to enforce this custom.

The PSE believes that this requirement is specifically in keeping with section 6 of the Act because it will foster cooperation with persons engaged in regulating and processing information with respect to transactions. The proposal will help to remove impediments to and assist in perfecting the mechanism of a free and open market. It will also provide additional protection for investors and the public interest.

(B) Self-Regulatory Organizations' Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act because it involves implementation of a practice which has a material impact on the dissemination of accurate options quotation information and on the public interest in listed options.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication thereof because the rule will allow the Exchange to enforce a practice which has a material impact on the dissemination of accurate options quotation information.

IV. Solicitation of Comments

Interested persons are invited to submit written, data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 4, 1986.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 4, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-25627 Filed 11-12-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15397; File No. 811-3783]

Application and Opportunity for Hearing; CNA Money Market Fund, Inc.

November 5, 1986.

Notice is hereby given that CNA Money Market Fund, Inc., CNA Plaza, Chicago, Illinois 60685, registered as an open-end, diversified, management investment company under the Investment Company Act of 1940 (the "Act"), filed an application on Form N-8F on September 11, 1986, pursuant to section 8(f) of the Act, for an order declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states that on June 27, 1983, Applicant, a Maryland corporation filed its initial registration statement under the Securities Act of 1933 and under the Act for an indefinite amount of securities pursuant to Rule 24f-2. The applicant states a pre-effective amendment was filed on or about September 20, 1984. The applicant further states that the registration never became effective and, therefore, no public offerings were commenced. Applicant states that within the last eighteen months it has not transferred any of its assets to a separate trust, the beneficiaries of which were or are

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securityholders of applicant. According to Applicant, its highest month end net asset value was $29,442,846.31 on November 30, 1985, and that since that date, distributions were made to its shareholders. Applicant further states that its Board of Directors authorized the filing of Form N-8F on February 21, 1986, and February 22, 1986 was the date on which distributions were begun in connection with the winding up of CNA Money Market Fund, Inc.

Applicant states that it has retained no assets; it has no debts; it is not a party to any litigation or administrative proceeding. Applicant states that it has no securityholders and is not now engaged, not does it propose to engage in any business activities other than those necessary for the winding up of its affairs.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 1, 1986, at 5:30 p.m., do so by submitting a written request, and the specific issues, if any, of fact or law that are disputed. Such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request should be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-25628 Filed 11-12-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15400 (File No. 812-6494)]

The Chase Manhatten Bank, N.A., Application for Order Permitting Foreign Custody Arrangements

November 5, 1986.

Notice is hereby given that the Chase Manhattan Bank, N.A. ("Chase"), 1 Chase Manhattan Plaza, New York, NY 10081, filed an application on September 23, 1986, for an order, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act'), exempting any investment company registered under the Act, other than an investment company registered under section 7(d) of the Act ("Company"), Chase and Banco Chase Manhattan, S.A. ("Banco Chase") from the provisions of section 17(f) of the Act to permit Chase, as custodian of the securities and other assets of a company ("Securities"), or as subcustodian of the Securities as to which any other entity is acting as custodian, and such other entity for which Chase so acts, to deposit, or to cause or permit the deposit of, such Securities in Banco Chase in Brazil, subject to certain conditions. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the relevant provisions.

According to the application, on November 20, 1981, the Commission granted an order (Investment Company Act Release No. 12053) to permit Chase, as custodian of the Securities of a company or as subcustodian of such Securities as to which any other entity is acting as custodian, and such other entity for which Chase so acts, to deposit or to cause or permit the deposit of such Securities in foreign banks and foreign securities depositories under certain conditions. Chase states that such order was amended (Investment Company Act Release No. 14184, October 9, 1984) to conform to certain conditions in Rule 17f-5 under the Act adopted by the Commission on September 7, 1984 (Investment Company Act Release No. 14132) (the order, as amended, is referred to herein as the "Existing Order").

Chase now proposes to deposit Securities in Brazil with Banco Chase, a wholly-owned subsidiary of Chase that is regulated in Brazil as a banking institution by Commissao De Valores Mobiliarios. Chase states that, as of December 31, 1985, the shareholders' equity of Banco Chase was less than the equivalent of U.S. $100,000,000, the minimum required in order for a foreign bank subsidiary of a U.S. bank or bank holding company to be considered an eligible foreign custodian under the Existing Order.

Therefore, Chase requests an order permitting Chase to deposit Securities in Brazil with Banco Chase so long as such deposit is made in accordance with an agreement, which agreement would be required to remain in effect at all times during which Banco Chase did not meet the shareholders' equity requirement of the Existing Order, among (a) the Company or a custodian of the Securities of the Company for which Chase acts as subcustodian, (b) Chase and (c) Banco Chase, pursuant to the terms of which Chase would act as the custodian or subcustodian, as the case may be, of the Securities of the Company and Banco Chase would be delegated such duties and obligations of Chase thereunder as would be necessary to permit Banco Chase to hold in custody the Securities of the Company in Brazil, provided that such delegation would not relieve Chase of any responsibility to the Company for any loss due to such delegation, except such loss as may result from political risk (e.g. exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife or armed hostilities) and other risk of loss (excluding bankruptcy or insolvency of Banco Chase) for which neither Chase nor Banco Chase would be liable under the Existing Order (e.g., despite the exercise of reasonable care, loss due to Acts of God, nuclear incident and the like). Chase undertakes, as an express condition to the requested order, to comply with all terms of the Existing Order, except the shareholders' equity requirement.

According to the application, the Existing Order requires the custody agreement between Chase and any foreign custodian to provide that Chase will indemnify and hold a company whose securities are held pursuant to such agreement harmless from and against any loss occurring as the result of the failure of a foreign custodian holding such Securities to exercise reasonable care with respect to the safekeeping of such Securities to the same extent that Chase would be required to indemnify and hold such Company harmless if Chase itself were holding such Securities in New York. Chase states that such indemnity provides financial support to contractual responsibility in addition to that afforded by the shareholders' equity of a foreign bank and that the agreements of Chase with respect to Banco Chase will afford protection significantly beyond such indemnification. Chase also states that it maintains a Bankers Blanket Bond, which provides standard fidelity and non-negligent loss coverage with respect to securities which may be held in the offices of Chase's subsidiary banks and the offices of non-affiliated foreign banks which may be utilized as subcustodians by Chase. Chase represents that it will maintain such coverage so long as it is available at reasonable cost.

Pursuant to the Existing Order, Chase

states that it must warrant to each Company that the established procedures to be followed by each foreign bank holding such Company's Securities, in the opinion of Chase after due inquiry, afford protection for such Company's Securities that is at least equal to that afforded by Chase's established procedures with respect to similar securities held by Chase in New York. Chase also states that in selecting a subcustodian under the Existing Order, it takes into consideration the financial strength of the subcustodian, its general reputation and standing in the country in which it is located, its ability to provide efficiently the custodial services required and the relative costs for the services to be rendered.

Chase represents that it has taken the foregoing factors into consideration in its selection of Banco Chase to act as a subcustodian. Chase believes that Banco Chase has financial resources totally adequate to meet its contractual responsibilities as subcustodian of Chase and that it enjoys an excellent reputation in Brazil. Chase submits that, based upon the protections provided by the Existing Order and the qualifications of Banco Chase outlined above, the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person wishing to request a hearing on the application may, not later than December 1, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reason for such request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request shall be served personally or by mail upon Chase at the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued as of course unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-25629 Filed 11-12-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15[illegible]; (812-6379)]

PaineWebber Inc., et al.; Application for an Order Permitting Certain Affiliated Transactions

November 5, 1986.

Notice is hereby given that The Municipal Bond Fund, The Municipal Bond Trust and the PaineWebber Pathfinders Trust ("Trusts"), and PaineWebber Incorporated, sponsor of the Trusts ("Sponsor", collectively with Trusts, "Applicants"), 1285 Avenue of the Americas, New York, NY 10021, filed an application on May 12, 1986, and an amendment thereto on October 21, 1986, for an order, pursuant to sections 6(c) and 17(b) of the Investment Company Act of 1940 ("Act") exempting Applicants from section 17(a)(2) of the Act, to the extent necessary, to permit the Trusts to sell certain portfolio securities through independent clearing brokers to purchasers, which may include the Sponsor. Applicants also request that such relief extend to future unit investment trusts sponsored by the Sponsor, subject to the same terms and conditions set forth in the application. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the relevant provisions thereof.

According to the application, each Trust is a registered unit investment trust under the Act that issues series ("Series"), each of which is separately registered under the Securities Act of 1933 ("1933 Act") with respect to the sale of units ("Units") that represent a fractional undivided interest in such Series. Applicants state that each Series of the Trust invests in securities consisting of debt obligations of states, municipalities, public authorities and other public subdivisions ("Municipal Bonds"). Applicants also state that the Municipal Bonds are exempt from registration under the 1933 Act and that the interest on each such Bond, in the opinion of Bond counsel, is exempt from federal income taxation.

Applicants state that the trustee for the Trusts ("Trustee") is not permitted to vary investments or to purchase Municipal Bonds except to purchase replacement Municipal Bonds for failed contracts. The Trustee is authorized to sell securities prior to maturity when necessary to meet expenses, in order to meet redemption obligations to Unitholders, or, as directed by the Sponser, in the event of certain material adverse credit developments, such as defaults of amounts due or default on amounts due on other securities of the same issuer, a decline in prices, or the occurrence of other market developments which, in the Sponsor's opinion, would make retention of the Municipal Bonds detrimental to the interests of Unitholders.

According to the application, municipal bonds are traded after initial issuance in a dealer market in which there is no single obtainable price. Applicants state that when the sale of Municipal Bonds is necessary there are two principal methods whereby the Trustee may sell such Bonds. First, the Trustee may approach a number of dealers and sell to the dealer making the highest bid. Or, the Trustee may place an order to sell Municipal Bonds with one dealer ("Introducing Dealer"), who retains an unaffiliated broker ("Clearing Broker") to communicate the availability of the Bonds through one of two wire services to 300–400 dealers. Pursuant to a prior order (Investment Company Act Release No. 14371, February 21, 1985), the Sponsor is permitted to act as Introducing Dealer when Municipal Bonds are sold through a wire system by the Clearing Broker.

Applicants state that experience has shown that the use of a wire service generally produces a higher price because it results in much better exposure of the offerings of Municipal Bonds to potential purchasers in a market that is widely competitive and anonymous. The wire services announce offers over the wire, specifying the security, principal amount offered, and any price and timing limitation, but neither the ultimate seller nor the Introducing Dealer acting on its behalf are revealed. Applicants represent that the Clearing Broker coordinates the receipt of all bids and selects the highest bidder.

According to the application, instructions to sell Municipal Bonds come from an officer of the Sponsor's Unit Trust Department, which is part of the Sponsor's Consumer Markets Group. Applicants represent that although Municipal Bonds deposited in a Series may be acquired from the Sponsor's Capital Markets Group, which is among the largest underwriters of, and dealers in, municipal securities, the personnel and operations of the Unit Trust Department and the Capital Markets Group are entirely separate and the Capital Markets Group will not have any involvement in administering or monitoring the Trusts' portfolios and will not solicit any sales from the Trusts' portfolios. Applicants state that personnel of the Capital Markets Group may be consulted from time to time about the quality of a Municipal Bond held by a Series.

Applicants note that because section 17(a)(2) of the Act generally prohibits affiliated persons of a registered investment company from purchasing securities from such registered investment company, the Clearing Brokers have been instructed not to accept any bids received from the Sponsor or its affiliates. Applicants state that excluding the Trusts from receiving such bids, notwithstanding that the market reached by the wire services is both widely competitive and anonymous, may frequently cause the Trusts to be denied the best available price. Therefore, Applicants request an order, pursuant to sections 6(c) and 17(b) of the Act, to permit the Trusts to sell Municipal Bonds through a wire service to the highest bidder, including the Sponsor.

Applicants contend that the Sponsor's role as Introducing Dealer will not affect the anonymity or fairness of the contemplated affiliated transactions. In this regard, Applicants state that the transactions will be effected blindly through the Clearing Brokers, who in all cases will be an independent party. Applicants state that when selling a Trust's Municipal Bonds, the Sponsor's Consumer Markets Group would act as Introducing Dealer and the Sponsor's Capital Markets Group would act as purchasing dealer, and that both departments have separate personnel, location, facilities, credit analysts and purposes and will not consult with each other concerning the sale or purchase of any Municipal Bond. Applicants assert that the objective that the Sponsor as Introducing Dealer may have in selling a Municipal Bond (*e.g.,* to meet redemption obligations, to pay Trust expenses, as well as credit or market factors) would have no relation to the objective that the Sponsor as purchasing dealer would have in purchasing such Municipal Bond (*e.g.,* for a subsequent purchaser wanting to purchase such security). Finally, the Clearing Brokers will be instructed to obtain the best available price and therefore the Sponsor, as purchasing dealer, could not purchase a Muncipal Bond unless its bid were higher than the best price available from unaffiliated purchasing dealers.

Applicants agree that in order to minimize the possibilities of overreaching in Municipal Bonds transactions, the following conditions will apply to the requested order: (1) The Unit Trust Department of the Sponsor will not advise its Capital Markets Group or the municipal securities dealer department of any other broker-dealer when giving instructions to sell a Municipal Bond; (2) The Clearing Broker will be independent of the Sponsor in all cases; (3) Offers will be made through a major wire service in municipal bonds and will be kept open for three hours after initial appearance on the wire, which time period will not be reduced to less than two hours in the discretion of the Clearing Broker in a declining market; (4) The Sponsor's bid will be accepted only if a minimum of three bids are received from persons other than the Sponsor or its affiliates; (5) The Trustee will be instructed not to inquire as to the identify of a bidding purchasing dealer, and if it receives such information, will not transmit it to the Sponsor or any agent thereof; and (6) Clearing Brokers effecting the sales will be instructed to obtain the best available price and execution and will instruct the wire services not to report any bid from the Sponsor unless it is higher than the best price available from unaffiliated broker-dealers.

Applicants assert that sale of the Trusts' Municipal Bonds through the means of an independent wire services subject to the conditions described above will enable the Trusts to obtain the highest available price without eliminating the significant segment of possible buyers represented by the Sponsor's Capital Markets Group. Applicants further assert that the proposed terms and conditions of the contemplated affiliated transactions, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, are consistent with the policies of the Trusts as recited in their registration statements and reports filed under the Act. Applicants also assert that the requested exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 1, 1986, at 5:30 p.m., do so by submitting a written report setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-25626 Filed 11-12-86; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-16039]

Application and Opportunity for Hearing

Notice is Hereby Given that LTV Corporation ("Applicant") has filed an applicaton pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 ("Act") for a finding by the Securities and Exchange Commission ("Commission") that the successor trusteeship of Valley Fidelity Bank and Trust Company ("Fidelity") under four indentures of the Applicant heretofore qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Fidelity from acting as trustee under any of such indentures.

Section 310(b) of the Act provides, in pertinent part, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest, it shall, within 90 days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such section provides, in effect, that with certain exceptions, a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding. However, under clause (ii) of said Subsection (1), there shall be excluded from the operation of this provision another indenture under which other securities of the issuer are outstanding if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

The Applicant alleges that: 1. The Applicant has outstanding 9-¼%

Sinking Fund Debentures due February 1, 1997 ("9–¼% Debentures") issued under an indenture date as of February 1, 1977 ("1977 Indenture"), between the Applicant and MBank of Dallas, National Association ("MBank"), as Trustee, which 1977 Indenture was heretofore qualified under the Act. The 9–¼% debentures were registered under the Securities Act of 1933 ("1933 Act").

2. The Applicant has outstanding 13–⅞% Sinking Fund Debentures due December 1, 2002 ("13–⅞% Debentures") issued under an indenture date as of December 1, 1982 ("1982 Indenture"), between the Applicant and MBank, as Trustee, which 1982 Indenture was heretofore qualified under the Act. The 13–⅞% Debentures were registered under 1933 Act.

3. The Applicant has outstanding 14% Sinking Fund Debentures due August 15, 2004 ("14% Debentures") issued under an indenture date as of August 15, 1984 ("1984 Indenture"), between the Applicant and MBank, as Trustee, which 1984 Indenture was heretofore qualified under the Act. The 14% Debentures were registered under the 1933 Act.

4. The Applicant has outstanding 10⅝% Senior Reset Notes due March 15, 1999 ("10⅝ Notes") and 15% Senior Notes due January 15, 2000 ("15% Notes") issued under an indenture dated as of May 30, 1986 ("1986 Indenture"), between the Applicant and MBank, as Trustee, which 1986 Indenture was qualified under the Act. The 10⅝% Notes and the 15% Notes were exempt for registration under the 1933 Act.

5. On September 30, 1986, Fidelity was appointed as successor trustee to MBank under the 1977 Indenture, the 1982 Indenture, the 1984 Indenture and the 1986 Indenture (collectively, the "Indentures").

6. The Applicant is in default under the Indentures by virtue of having filed on July 17, 1986, a petition under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York, and its failure to make any interest payments due on the 9¼% Debentures, the 13⅞% Debentures, the 14% Debentures, the 10⅝ Notes and the 15% Notes (collectively, the "Securities") after such date.

7. The Applicant's obligations under the Indentures and the Securities issued thereunder are wholly unsecured and rank *pari passu inter se*.

8. In the opinion of the Applicant, the provisions of the Indentures are not so likely to involve a material conflict of interest so as to make it necessary in the public interest or for the protection of any holder of any of the Debentures issued under the Indentures to disqualify Fidelity from acting as successor trustee under any of the Indentures.

The Applicant has waived notice of hearing, any right to a hearing on the issues raised by its application, and all rights to specify procedures under the Rules of Practice of the Commission which the respect to its application.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said Application File No. 22–16039, which is a public document on file in the offices of the Commission at the Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

Notice is Further Given that any interested person may, not later than November 30, 1986, submit to the Commission his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth St., NW. Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reasons for the request, and the issues of fact and law raised by the application which he desires to controvert. Persons who request the hearing or advice as to whether the hearing is ordered will receive all notices and orders issued in this matter, including the date of hearing (if ordered) and any postponements thereof. At any time after such date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–25562 Filed 11–12–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–15394; (File No. 811–1607)]

Resources Growth Fund; Proposal to Terminate Registration Under the Act

November 4, 1986.

Notice is hereby given that the Commission proposes, pursuant to section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order upon its own motion that Resources Growth Fund, Inc. ("Fund"), registered under the Act as an open-end, diversified, management company, has ceased to be an investment company as defined in the Act.

Information contained in the files of the Commission indicates that the Fund was organized on November 30, 1967, and that it registered under the Act on February 23, 1968 by filing a Form N–8A. In mid-1983, the Fund's contract with its investment adviser, Resources Capital Corporation ("RCC"), expired. This contract was not renewed because, for reasons unrelated to the Fund, RCC had determined not to continue its operations. RCC withdrew its registration as an investment adviser effective July 17, 1984. Thereafter, all but one of the directors of the Fund resigned, leaving Mr. Bruce Glaspell, the president of the Fund, as its only remaining director.

By August 15, 1983, all investment activity of the Fund had been terminated, and the proceeds of portfolio liquidation in the amount of $75,902.60 had been placed with Wells Fargo Bank, San Francisco. This amount, together with a checking account balance of $6,510.83 was thereafter transferred to Manufacturers Hanover Trust Company, San Francisco. In August, 1983, Mr. Glaspell retained Kenneth M. Christison, Esq. to wind-up the Fund's affairs in an orderly manner, by means of a voluntary redemption of outstanding shares. Arrangements were made for payment of the Fund's liabilities. Thereafter, a March 12, 1984 letter ("letter") was sent to shareholders advising them of these circumstances and encouraging them to tender their shares for redemption because the Fund's size made it uneconomical to resume operations. This letter also stated that, with respect to shareholders who could not be located, or who for any reason did not respond to this letter, any monies remaining in the Fund's account with Manufacturers Hanover Trust Company would escheat to the State of California after a period of seven years from the termination of the redemption period, according to procedures prescribed by California law. However, any shareholder would be able to request redemption during the seven year period. Further, the letter represented that as required by the Act, the books and records of the Fund would be retained for a period of six years under the control of Mr. Christison's law firm and could be reviewed by any shareholder. Finally, the letter advised shareholders that upon completion of the redemption period, it was Mr. Glaspell's intention that the Fund, a a corporate entity, be legally dissolved.

As a result of the letter, twenty shareholders requested and received redemptions of $72,808.78 for 5,909.808

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shares. Twenty shareholders could not be located, leaving a total of $10,886.68 for 883.669 shares unredeemed. In 1984, this remaining balance was placed in a trust account at Crocker Bank, Tiburon-Belvedere #113, CA 94920, bearing the name "Resources Growth Fund, Inc., Kenneth M. Christison, Trustee." Crocker Bank has since been acquired by Wells Fargo Bank, which presently maintains the trust account at the aforementioned location, in the amount, approximately, of $12,000 for remaining shareholders of the Fund, and will continue to do so during the escheatment period. On the basis of the foregoing, it appears that the Fund is no longer an investment company.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion, finds that a registered investment company has ceased to be an investment company, it shall be so declare by order and upon the taking effect of that order, the registration of that investment company shall cease to be in effect.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than November 18, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–25565 Filed 11–12–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15396; File No. 812-6450]

Application and Opportunity for a Hearing; SAFECO Life Insurance Co., et al.

November 5, 1986.

Notice is hereby given that SAFECO Life Insurance Company (the "Company"), SAFECO Resource Variable Account B (the "Account"), and SAFECO Securities, Inc., SAFECO Plaza, Seattle, Washington 98185, (referred to collectively as "Applicants"), filed an application on August 8, 1986, and amendments thereto on September 8, and October 9, 1986, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") granting exemptions from sections 26(a)(2) and 27(c)(2) of the Act to permit the deduction of mortality and expense risk changes from the assets of the Account in connection with the issuance of certain variable annuity contracts ("Contracts"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and rules thereunder for the text of the relevant provisions.

Applicants state that the Company is a Washington stock life insurance company. Applicants state that SAFECO Securities, Inc. is the principal underwriter of the Account. Applicants also state that the Account was established by the Company on February 6, 1986, in accordance with the provisions of Washington insurance law, and that it is a separate investment account to which owners of the Contracts may allocate purchase payments to support benefits payable under the Contracts. Applicants further state that the Account is registered under the Act as a unit investment trust and will invest assets related to the Contracts solely in shares of SAFECO Resources Series Trust.

Applicants state that the Contracts are group contracts which provide for a surrender charge upon a partial or total surrender of a Contract or participant account prior to the annuity date. Applicants state that this charge applies only to purchase payments, made in the five certificate years preceding the year of surrender. The amount is equal to 9 percent of the amount withdrawn in the first two certificate years with respect to each purchase payment and declining by 1 percent in each of the next four certificate years thereafter such that, on a first-in-first-out basis, there is only a 5% charge applicable to amounts withdrawn in the sixth and subsequent certificate years; no charge is applied to amounts withdrawn representing purchase payments five certificate years prior to the surrender date. Applicants also state that the surrender charge may be insufficient to cover all costs relating to the distribution of the Contracts.

Applicants state that an administrative charge of $15.00 will be assessed against a participant's accumulation account value in each calendar year prior to the annuity date. This charge, according to the Applicants, is guaranteed not to increase about $25.00 for the life of the Contract and is assessed in equal amounts against each Division of the Account in which a participant has accumulations. Applicants state that this charge is designed to reimburse the Company for certain expenses incurred in establishing and maintaining the records relating to participant accounts and to a Contract participating in the Account.

Applicants state that a charge is assessed against Account assets at an annualized rate of 1.25 percent of the average daily net asset value of the Account attributable to the Contracts. According to the application, 0.75 prcent of this charge is intended to compensate the Company for assuming the risk that its actuarial estimate of mortality rates may prove erroneous (i.e., the risk that a participant may receive annuity benefits for a period longer than that reflected in the Contract's annuity rates or may die at a time when the death benefit guaranteed by the Contract is higher than the accumulation value of the participant's accumulation account); and 0.50 percent of this charge is intended to compensate the Company for assuming the risk that administrative charges, which are guaranteed not to increase, may prove insufficient to cover expenses actually incurred. Applicants represent that accumulation amounts used to purchase annuity benefits are applied at annuity rates guaranteed in the Contract. Applicants state that the annuity tables contained in the Contracts are based on the 1983 Group Annuity Mortality Table, projected, with an age setback of one year if the annuity payment begins in the year 2000–2009, two years if the annuity payment begins in the year 2010–2019 and an additional one year setback for each additional ten years following.

Applicants represent that charges for the Company's assumption of mortality and expense risks, which are guaranteed not to increase, are reasonable in relation to the risks assumed and guarantees provided in the Contracts. Applicants submit that this representation is based upon an analysis of the mortality risks, (taking into consideration such factors as the guaranteed annuity purchase rates) the expense risks (taking into consideration charges against separate account assets for other than mortality and expense risks) and the estimated costs, now and in the future, of certain contract features. Applicants state that the Company has incorporated its analysis into a memorandum which it will maintain and make available to the Commission or its staff upon request.

Applicants represent that under certain circumstances, profit derived from the mortality and expense risk charge may be viewed as providing for a portion of the costs relating to distribution of the Contracts. Applicants state that the Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Account, the owners of the Contracts and participants thereunder. Applicants state that the Company has taken into consideration, among other things, that the sales load is imposed only if a contractowner surrenders the Contract and that, in the interim, those funds are invested on behalf of contractowners and participants. Applicants represent that the bases for the Company's conclusion have been incorporated into a memorandum, which the Company will maintain and make available to the Commission or its staff upon request.

The Company represents that the assets of the Account will be invested only in a management investment company which undertakes, in the event it should adopt a plan for financing distribution expenses pursuant to Rule 12b-1 under the Act, to have such plan formulated and approved by a board of directors, the majority of whom are not "interested persons" of the management company within the meaning of section 2(a)(19) of the Act.

Applicants request exemption from sections 26(a)(2) and 27(c)(2) to the extent necessary to deduct from the Account a daily asset charge for mortality and expense risks which amounts to an aggregate of 1.25% per annum (consisting of approximately .75% for mortality risks and approximately .50% for expense risks).

Notice is further given that any person wishing to request a hearing on the application may, not later than December 1, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his or her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed. Such request should be addressed to: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-25563 Filed 11-12-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15393; File No. 812-6468]

Universal BIDCO Corp.; Filing of Application Pursuant to Section 6(c) of the Act for an Order Exempting Applicant From all Provisions of the Act

November 4, 1986.

Notice is hereby given that Universal BIDCO Corporation ("Applicant"), 1400 North Woodward Avenue, Suite 100, Birmingham, Michigan 48011, a Michigan corporation which is seeking to be licensed as a "business and industrial development corporation" under Act No. 89 of the Michigan Public Acts of 1986 ("BIDCO Act"), filed an application on August 29, 1986, and an amendment thereto on October 21, 1986, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), requesting an order exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable provisions thereof.

Applicant represents that the BIDCO Act and Applicant's licensure thereunder are part of an economic development incentive for the State of Michigan. Applicant states that its purposes are mandated by statute to render financial and management assistance to business firms primarily in the State of Michigan. To this end, Applicant will engage in debt financing, equity financing and leasing transactions designed to furnish innovative financing to deserving businesses which may otherwise be unable to obtain conventional bank financing. Applicant will have the power to make loans, invest in securities, and own real and personal property and lease the same to other businesses. It is anticipated that Applicant will provide financing and management assistance principally to entities doing business in Michigan. Applicant anticipates that the majority of its investments will be in medium terms loans, similar to commercial loans. Unlike typical investment companies regulated under the Act, Applicant argues that its investments in securities will be almost exclusively limited to direct acquisitions from the issuer in transactions not involving any public offering. Other than obligations of the United States and highly rated debt obligations of publicly-held domestic corporations, Applicant does not propose to acquire any significant investments in securities in public trading markets. Furthermore, Applicant expressly represents that it will not make any investment in the voting securities of any Small Business Investment Company licensed under the Small Business Investment Act ("SBIC"), unless such SBIC limits its investments to those in businesses located primarily in Michigan.

It is further stated that Applicant will operate as a for-profit corporation with a single class of voting common stock. Applicant's common stock will initially be distributed in an offering made only to accredited investors as defined in Rule 501(a), and pursuant to Rule 506, of Regulation D under section 4(2) of the Securities Act of 1933 ("1933 Act"). Applicant states that subscribers for its shares in this private placement will be required to represent that they are acquiring the shares for purposes of investment and not for resale. The common shares will be subject to substantial restrictions on transfer, will bear a restrictive legend to that effect, and no public active trading market is expected to develop for such common shares absent an underwritten distribution registered under the 1933 Act. Applicant will offer 800,000 common shares, $.10 par value, at a price of $5.00 per share, in such offering. Shareholders will have one vote for each share held, and will elect all of Applicant's directors.

Applicant anticipates that it may in the future make one or more subsequent offerings of its common shares to increase its capital base; it is stated that if such a subsequent offering is effectuated pursuant to an effective registration statement under the 1933 Act, a public trading market might develop for such common shares. Applicant represents that in any public offering registered under the 1933 Act, it will implement reasonable procedures designed to limit purchasers in such offering, as well as purchasers in any secondary trading market which might develop, to those who would be deemed to be sophisticated investors, who are capable of understanding and assuming the risks involved in an investment in Applicant's securities.

Applicant concedes that it may fall within the Act's definition of an investment company because it expects that its loans and investments will be represented by debt, equity and other securities issued by businesses to which it renders management and financial assistance, and that the value of such securities acquired by Applicant may exceed 40% of the value of Applicant's total assets. Applicant anticipates having more than 100 beneficial owners of its common shares. Applicant contends, however, that its requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes and policies of the Act.

In support of that assertion, Applicant states that it will, pursuant to the BIDCO Act, be subject to pervasive regulation by the State of Michigan designed to protect investors, in and lenders to, Applicant, including the Michigan Uniform Securities Act. Such regulation also includes supervisory control by the Michigan Financial Institutions Bureau of: (i) The character, fitness and financial standing of Applicant's directors, officers and controlling persons; (ii) minimum capital requirements; (iii) conflicts of interest; (iv) the acquisition of other businesses (v) dividend policy; (vi) the redemption of Applicant's shares; (vii) change in control of, or disposition of, Applicant's business; and (viii) financial soundness of the Applicant. Applicant will be required to make annual, and may be required to make other, periodic reports to the Michigan Financial Institutions Bureau, and is subject to required annual examinations of its business and assets by the Bureau.

Notice if further given that any interested person wishing to request a hearing on the application may, not later than November 24, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of Service, (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-25564 Filed 11-12-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #6463]

Declaration of Disaster Loan Area; Idaho

Caribou County, Idaho, constitutes a disaster area because of severe damage to crops due to frost and winter kill, which occurred on October 15, 1985. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on August 3, 1987, at the address listed below: Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, P.O. Box 13795, Sacramento, California 95853-4795

or other locally announced locations.

The interest rate for eligible small business concerns without credit elsewhere is 4 percent, and 10.5 percent for eligible small agricultural cooperatives without credit available elsewhere.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: November 3, 1986.

Charles L. Heatherly,

Acting Administrator.

[FR Doc. 86-25550 Filed 11-12-86; 8:45 am]

BILLING CODE 8025-01-M

Region X Advisory Council; Public Meeting

The U.S. Small Business Administration, Region X Advisory Council, located in the geographical area of Seattle, Washington, will hold a public meeting at 9:00 a.m., on Tuesday, December 2, 1986, in Room 166 of the Jackson Federal Building, 915 2nd Avenue, Seattle, Washington, to conduct a briefing on the following:

1. Results of the White House Conference
2. Results of State Small Business Conference
3. Review of SBA programs
4. Ways to improve Washington State's participation in small business

For further information, write or call John Talerico, District Director, U.S. Small Business Administration, 915 2nd Avenue, Room 1792, Seattle, Washington 98174 (206) 442-2786.

Jean M. Nowak,

Director, Office of Advisory Councils.

November 4, 1986.

[FR Doc. 86-25551 Filed 11-12-86; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-0299]

Brentwood Capital Corp.; Filing of an Application for an Exemption Under the Conflict of Interest Regulation

Notice is hereby given that Brentwood Capital Corporation (Brentwood), 11661 San Vicente Boulevard, Los Angeles, California 90049, a Federal License under the Small Business Investment Act of 1958, as amended (the Act), has filed an application with the Small Business Administration (SBA) pursuant to § 107.903(b) of the Regulations governing small business investment companies (13 CFR 107.903(b) (1986)) for an exemption from the provisions of the cited Regulation.

Subject to SBA approval, Brentwood Capital Corporation proposes to provide funds to Protype Corporation, 8655 Tamarack Avenue, Sun Valley, California 91352 for working capital use.

The proposed financing is brought within the purview of § 107.903(b) of the Regulations because Brentwood Associates IV, an associate of Brentwood, owns greater than 10 percent of Protype Corporation and therefore Protype Corporation is considered an Associate of Brentwood Capital Corporation as defined by § 107.3 of the Regulations.

Notice is hereby given that any interested person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the proposed transaction to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in the Sun Valley, California area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: November 6, 1986.

[FR Doc. 86-25549 Filed 11-12-86; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 02/02-5500]

Manhattan Central Capital Corp.; Application for a License to Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (the Act), 15 U.S.C. 661 et. seq.), has been filed by Manhattan Central Capital Corp., (Applicant) with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1986).

The officers, directors and shareholders of the Applicant are as follows:

Name and address	Title or relationship	Percentage of shares owned
David Choi, 22 Holly Drive, Shortsville, NJ 07078.	President, Director	25
Kun Sang Gusk, 441 Buchanan Avenue, Staten Island, NY 10314	Vice President, Director	25
Hi Cho Pyun, 46 North Henry Street, Brooklyn, NY 11222.	Vice President, director	25
Kow Se Lee, 7084 Boulevard East, Guttenberg, NJ 07093.	Secretary, Director	25
Vincent Sabella, 1867 51st Street, Brooklyn, NY 11204.	Manager	0

The Applicant, a New York corporation, with its principal place of business at 38 West 32nd Street, New York, New York 10001, will begin operations with $1,00,000 of paid-in Capital and paid-in surplus. The Applicant will initially conduct its activities in the State of New York.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Small Business Investment Act and the SFA Rules and Regulations.

Notice is nereby given that any person may, not later than 30 days from the date of publicatin of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of this Notice shall be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 3, 1986.

Robert G. Linsberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-25546 Filed 11-12-86; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-0229]

Mapleleaf Capital Corp.; Filing of Application for Transfer of Ownership and Control

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.601 of the Regulations governing small business investment companies (13 CFR 107.601 (1986)) for Transfer of Ownership and Control of Mapleleaf Capital Corporation (Licensee), 55 Waugh Drive, Suite 710, Houston, Texas 77007, a Federal Licensee under the Small Business Investment Act of 1958 (the act) as amended (15 U.S.C. 661 et seq.).

Pursuant to an agreement dated October 25, 1986, Vestcap Inc. (Vestcap) will acquire 100 percent of the issued and outstanding stock of the Licensee. Vestcap is a Texas corporation located at 55 Waugh Drive, Suite 710, Houston, Texas 77007. Vestcap is seventy-five percent owned by Sunwestern Investment Fund (Sunwestern) and twenty-five percent owned by Edward M. Fink. Sunwestern and its affiliates presently own and manage two other Licensees, Sunwestern Capital Corporation and Sunwestern Ventures Company (formerly Gill Capital Corporation).

The officers, directors and indirect shareholders of the Licensee will be as follows:

Name	Title or Relationship	Percentage of Shares Owned
Edward M. Fink, 55 Waugh Drive #710, Houston, Texas 77007	President, Chf. Exec. Off. & indirect Shareholder.	25% of Vestcap.
Bernadette Obermeier, 55 Waugh Drive #710, Houston, Texas 77007	Secretary & Treasurer.	
Thomas W. Wright, Three Forest Plaza, 12221 Merit Drive #1680, Dallas, Texas 75251	Director	
James F. Leary, Three Forest Plaza, 12221 Merit Drive, #1680, Dallas, Texas 75251		
Chris Camouche, Dickerson, Early, Hamel & Pennock, 2300 Citicorp, 1200 Smith, Houston, Texas 77002	Director	
Noel Mascarenhas, Rotan Mosle, Post Office Box 3226, Houston, Texas 77253	Director	
Sunwestern Investment Fund, Three Forest Plaza, 12221 Merit Drive, Suite 1680, Dallas, Texas 75251	Indirect Shareholder.	75% of Vestcap.

The Licensee will retain its corporate name and location. Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice shall be published in newspapers of general circulation in Houston, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 5, 1986.

Robert G. Linsberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-25547 Filed 11-12-86; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration, Region VI Advisory Council located in the geographical area of Houston, Texas, will hold a public meeting from 9:30 a.m. until 3:00 p.m., Friday, December 5, 1986, at the Marriott Hotel, at the Astrodome, in the Chaparral Ballroom South, located at 2100 South Braeswood at Greenbriar, Houston, Texas 77030, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call Donald D. Grose, District Director, U.S. Small Business Administration, 2525 Murworth, Suite 112, Houston, Texas 77054, (713) 660-4409.

Jean M. Nowak,

Director, Office of Advisory Councils.

November 4, 1986.

[FR Doc. 86-25548 Filed 11-12-86; 8:45 am]

BILLING CODE 8025-01-M

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Safety of Navigation; Meeting

The Working Group on Safety of Navigation of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on December 18, 1986, at 9:30 a.m. in Room 3442 of the Department of Transportation

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Headquarters, 400 Seventh Street, SW., Washington, DC 20590.

The purpose of the meeting is to discuss the advance papers received and the U.S. position for Session 33 scheduled for January 12–16, 1987. Items of principal interest on the agenda for this session are:

—Routing of Ships
—Problems related to deep-draft vessels
—Matters concerning search and rescue
—Amendment of regulations V/2(a) and V/3(b) of SOLAS
—Removal of disused offshore platforms
—Infringement of safety zones around offshore structures
—Method of supplying heading information at the emergency steering position
—World-wide navigation system
—Electronic chart display systems
—Navigational aids and related equipment

Members of the general public may attend up to the seating capacity of the room.

For further information or for documentation pertaining to the SOLAS meeting, contact Mr. Edward J. LaRue, Jr., U.S. Coast Guard Headquarters (G-NSS-2), 2100 Second St. SW., Washington, DC 20593-0001, Telephone: (202) 267-0416.

Dated: November 3, 1986.

William H. Dameron,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 86-25622 Filed 11-12-86; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 86-11-15; Dockets 36253 and 41638]

Aviation Proceedings; Proposed Revocation of the Section 401 Certificates of Cascade Airways, Inc.; Secretary, DOT.

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order revoking the certificates of Cascade Airways, Inc., issued under section 401 of the Federal Aviation Act.

DATE: Persons wishing to file objections should do so no later than December 1, 1986.

ADDRESSES: Responses should be filed in Dockets 36253 and 41638 and addressed to the Documentary Services Division, Department of Transportation, 400 7th Street, SW., Room 4107, Washington, DC 20590, and should be served on the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Janet A. Davis, Special Authorities Division, P-47, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 366-2340.

Dated: November 7, 1986.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 25650 Filed 11-12-86; 8:45 am]

BILLING CODE 4910-62-M

[Order 86-11-14]

Aviation Proceedings; Fitness Determination of Midcontinent Airlines, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination—order to show cause.

SUMMARY: The Department of Transportation is proposing to find that Midcontinent Airlines, Inc. is fit, willing and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act and is capable of providing reliable essential air service at Norfolk and Columbus, Nebraska, and Yankton, South Dakota.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination and reliability findings should file their responses with the Service Analysis Division I, P-63, Department of Transportation, 400 7th Street, SW., Room 5100, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than November 24, 1986.

FOR FURTHER INFORMATION CONTACT: John McCamant, Service Analysis Division I, P-63, Department of Transportation, 400 7th Street, SW., Washington, DC. 20590 (202) 366-1057.

Dated: November 7, 1986.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86-25649 Filed 11-12-86; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Cargo Compartment Fire Detection Instruments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comments.

SUMMARY: The proposed TSO-Clc prescribes the minimum performance standards that cargo compartment fire detection instruments must meet to be identified with the marking "TSO-Clc."

DATE: Comments must identify the TSO file number and be received on or before February 20, 1987.

ADDRESS: Send all comments on the proposed technical standard order to:

Technical Analysis Branch, AWS-120,
Aircraft Engineering Division, Office of Airworthiness—File No. TSO-Clc,
Federal Aviation Administration, 800 Independence Avenue SW.,
Washington, DC 20591

Or Deliver Comments To: Federal Aviation Administration, Room 335,
800 Independence Avenue SW.,
Washington, DC 20591.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AWS-120, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267-9546.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

How To Obtain Copies

A copy of the proposed TSO-Clc may be obtained by contacting the person under "FOR FURTHER INFORMATION

CONTACT." TSO–C1c references Society of Automotive Engineers, Inc. (SAE), Aerospace Standard (AS) Document No. AS 8036, dated April 1, 1985, for the minimum performance standard, Radio Technical Commission for Aeronautics (RTCA) Document No. DO–160B, dated July 1984, for the environmental standard, and DO–178, for the computer software requirements, dated March 1985. SAE AS Document No. AS 8036 may be purchased from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096. RTCA/DO–160B and DO–178A may be purchased from the Radio Technical Commission for Aeronautics Secretariat, One McPherson Square, Suite 500, 1425 K Street NW., Washington, DC 20005.

Issued in Washington, DC, on November 3, 1986.

Thomas E. McSweeny,

Manager, Aircraft Engineering Division, Office of Airworthiness.

[FR Doc. 86–25535 Filed 11–12–86; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. EX86–1; Notice 2; Docket No. EX86–2; Notice 2]

Panther Motor Car Co. Ltd., Carrozzeria Bertone; Petitions for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

On July 31, 1986, the National Highway Traffic Safety Administration published notices of receipt of petitions from Panther Motor Car Co. Ltd. of England, and Carrozzeria Bertone S.p.A. of Italy, for temporary exemptions from the passive restraint requirements of Federal Motor Vehicle Safety Standard No. 208 *Occupant Restraint Systems* (51 FR 27482).

The vehicle for which Panther requested exemption is the Kallista, an open roadster in the style of the 1930s. Bertone's product is the X1/9, an open vehicle of contemporary design. On April 12, 1985, the agency proposed alternative occupant crash protection requirements for convertible-type passenger cars (50 FR 14589) beginning with the 1990 model year which would not involve the use of automatic restraints. In reponse to that proposal, the agency has recently amended Standard No. 208 to exempt convertibles from the automatic restraint requirement during the phase-in period September 1, 1986–September 1, 1989 (51 FR 37028). In a subsequent ruling NHTSA will determine whether to apply the automatic restraint requirement to convertibles manufactured after September 1, 1989, or whether to apply a dynamic test requirement to the manual safety belts used in those vehicles.

The recent agency action in exempting convertibles has mooted the petitions by Panther and Bertone for temporary exemptions from the automatic restraint requirements for their Kallista and X1/9 convertible passenger cars. Accordingly, these dockets are being closed without further action by the agency.

(Sec. 3, Pub. L. 92–548, 86 Stat. 1159 (15 U.S.C. 1410); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: October 31, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 25540 Filed 11–12–86; 8:45 am]

BILLING CODE 4910–59–M

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy; Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held November 19, 1986, in Room 600, 301 4th Street, SW., Washington, DC from 11:15 a.m. to 12:00 noon.

The Commission will meet with Mr. Carl Gershman, President, National Endowment for Democracy and Mr. John Richardson, Chairman, National Endowment for Democracy to discuss Endowment policies and programs.

Please call Gloria Kalamets, (202) 485–2468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: November 5, 1986.

Bruce N. Gregory,

Staff Director.

[FR Doc. 86–25619 Filed 11–12–86; 8:45 am]

BILLING CODE 8230–01–M

VOL
51
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NO
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Sunshine Act Meetings

Federal Register
Vol. 51, No. 219
Thursday, November 13, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:30 p.m. on Thursday, November 6, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in The Home Bank, Savannah, Missouri, Savannah, Missouri, which was closed by the Commissioner of Finance for the State of Missouri on Thursday, November 6, 1986; (2) accept the bid for the transaction submitted by United Missouri Bank of St. Joseph, St. Joseph, Missouri, an insured State nonmember bank; (3) approve the application of United Missouri Bank of St. Joseph, St. Joseph, Missouri, for consent to purchase certain assets of and assume the liability to pay deposits made in the The Home Bank, Savannah, Missouri, Savannah, Missouri, for consent to establish the sole office of the Home Bank, Savannah, Missouri, as a branch of United Missouri Bank of St. Joseph, and for consent to exercise full trust powers; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction;

(B)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in First Stock Yards Bank, St. Joseph, Missouri, which was closed by the Commissioner of Finance for the State of Missouri on Thursday, November 6, 1986; (2) accept the bid for the transaction submitted by the Bank of St. Joseph, St. Joseph, Missouri, an insured State nonmember bank; (3) approve the application of the Bank of St. Joseph, St. Joseph, Missouri, for consent to purchase certain assets of and assume the liability to pay deposits made in First Stock Yards Bank, St. Joseph, Missouri, and for consent to establish the two offices of First Stock Yards Bank as branches of the bank of St. Joseph; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction;

(C)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in The Citizens State Bank, Donna, Texas, which was closed by the Banking Commissioner for the State of Texas on Thursday, November 6, 1986; (2) accept the bid for the transaction submitted by Raymondville State Bank, Raymondville, Texas, an insured State nonmember bank; (3) approve the application of Raymondville State Bank, Raymondville, Texas, for consent to purchase certain assets of and assume the liability to pay deposits made in The Citizens State Bank, Donna, Texas, and for consent to establish the sole office of The Citizens State Bank as a branch of Raymondville State Bank; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction;

(D) adopt a resolution making funds available for the payment of insured deposits made in the The First National Bank and Trust Company of Enid, Enid, Oklahoma, which was closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, November 6, 1986; and

(E) consider a request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Chairman L. William Seidman, concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: November 7, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-256911 Filed 11-10-86; 12:16 pm]

BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, November 18, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

* * * * *

DATE AND TIME: Thursday, November 20, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Draft Advisory Opinion 1986-35 (Reconsideration), Marshall Hurley on behalf of Coble for Congress, Again
Draft Advisory Opinion 1986-38—Donald R. Vaughan on behalf of W. David Stedman
Revised explanation and justification of regulations: 11 CFR 110.1 and 110.2
FY '87 management plan
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 86-25730 Filed 11-10-86; 3:09 am]

BILLING CODE 6715-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

November 6, 1986.

TIME AND DATE: 10:00 a.m., Thursday, November 13, 1986.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTER TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Mohave Concrete and Materials, Inc., Docket No. WEST 86-14-M. (Issue include consideration of Mohave's request that the Chief Administrative Law Judge's finding of default and order to pay the proposed civil penalties be set aside.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 86-25689 Filed 11-10-86; 11:46 am]

BILLING CODE 6735-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 10, 17, 24, and December 1, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of November 10

Monday, November 10

2:00 p.m.
Briefing on Thermal Hydraulic Research Program (Public Meeting)

Friday, November 14

10:00 a.m.
Briefing on Improving Effectiveness of Intial Startup Programs (Public Meeting)
11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of November 17—Tentative

Wednesday, November 19

10:00 a.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7) (Postponed from October 31)
2:00 p.m.
Briefing in Advanced of Publication of Draft NUREG-1150 (Source Term) (Public Meeting)

Thursday, November 20

10:00 a.m.
Briefing on Initiatives to Improve Maintenance Performance (Public Meeting) (Postponed from November 6)
2:00 p.m.
Periodic Meeting with NUMARC (Public Meeting)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, November 21

10:00 a.m.
Discussion/Possible Vote on Davis Besse Restart (Public Meeting)
1:30 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Week of November 24—Tentative

Wednesday, November 26

10:00 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of December 1—Tentative

Thursday, December 4

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

ADDITIONAL INFORMATION

Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6) was held on November 6.

Affirmation of "Braidwood—Draft Order for Resolution of Dispute Between Braidwood Board and OI Over Disclosure of Investigation Information" (Public Meeting) was postponed from November 6 to November 7.

Affirmation of "Licensing Decision for Perry-1" (Public Meeting) is scheduled for November 7.

TO VERIFY THE STATUS OF MEETING CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634-1410.

Robert B. McOsker,

Office of the Secretary.

November 6, 1986.

[FR Doc. 86-25654 Filed 11-7-86; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

Amended Notice of Meeting

TIME AND DATE: 10:00 a.m. on November 19, 1986.

PLACE: Room 300, 1333 H Street, NW., Washington, DC 20268-0001.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The Notice published in Volume 51, No. 215, **Federal Register**, p. 40370, November 6, 1986, is amended under "**MATTERS TO BE CONSIDERED**" to read: To consider motions to dismiss the Complaint of the Sacramento Bee, et al, which is Docket No. C86-2, and to consider motions to dismiss the Complaint of the United Parcel Service, which is Docket No. C86-3.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW; Washington, DC 20268-0001, Telephone (202) 789-6840.

Charles L. Clapp,

Secretary.

[FR Doc. 25762 Filed 11-10-86; 3:48 pm]

BILLING CODE 7715-01-M

RAILROAD RETIREMENT BOARD

Notice is hereby given that the Railroad Retirement Board will hold a meeting on November 19, 1986, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 Rush Street, Chicago, Illinois, 60611. The agenda for the meeting follows:

Portion Open to the Public

(1) Proposed Changes in the RULA Regulations
(2) Board Order 75-3
(3) Final Rule Regulations on Primary Insurance Amount Determinations
(4) Proposal to Recognize the Disability Programs Section
(5) Proposal Impacting Disability Programs
(6) Change in Agency Budget Request for Fiscal Year 1988
(7) Appeal of Claude J. Hahne Under the Railroad Unemployment Insurance Act
(8) Appeal of Alexander Zelinsky of the Service and Compensation Credited Under the Railroad Retirement and Railroad Unemployment Insurance Acts.

Portion Closed to the Public

(A) Appeal from Referee's Denial of Disability Annuity, Anthony Rich.

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312-751-4920, FTS No. 387-4920.

Dated: November 7, 1987.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 25682 Filed 11-10-86; 8:45 am]

BILLING CODE 7905-01-M

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federal register

Thursday
November 13, 1986

Part II

Department of Defense

Corps of Engineers, Department of the Army

33 CFR Parts 320 through 330

Regulatory Programs of the Corps of Engineers; Final Rule

VOL 51 ISS 219 NO 13 1986 UMI

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Parts 320, 321, 322, 323, 324, 325, 326, 327, 328, 329 and 330

Final Rule for Regulatory Programs of the Corps of Engineers

AGENCY: Corps of Engineers, Army Department, DOD.

ACTION: Final rule.

SUMMARY: We are hereby issuing final regulations for the regulatory program of the Corps of Engineers. These regulations consolidate earlier final, interim final, and certain proposed regulations along with numerous changes resulting from the consideration of the public comments received. The major changes include modifications that provide for more efficient and effective management of the decision-making processes, clarifications and modifications of the enforcement procedures, modifications to the nationwide permit program, revision of the permit form, and implementation of special procedures for artificial reefs as required by the National Fishing Enhancement Act of 1984.

EFFECTIVE DATE: January 12, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Collinson or Mr. Bernie Goode, HQDA (DAEN–CWO–N), Washington, DC 20314–1000, (202) 272–0199.

SUPPLEMENTARY INFORMATION:

Consolidation of Corps Permit Regulations

These final regulations consolidate and complete the six following rulemaking events affecting the Corps regulatory program:

1. *Interim Final Regulations.* These regulations contained Parts 320–330 and were published (47 FR 31794) on July 22, 1982, to incorporate policy and procedural changes resulting from legislative, judicial, and administrative actions that had occurred since the previous final regulations had been published in 1977. Because it had been almost two years since we had proposed changes to the 1977 regulations, we published the 1982 regulations as "interim final" and asked for public comments. We received nearly 200 comments.

2. *Proposed Regulatory Reform Regulations.* On May 12, 1983, we published (48 FR 21466) proposed revisions to the interim final regulations to implement the May 7, 1982, directives of the Presidential Task Force on Regulatory Relief. The Task Force directed the Army to reduce uncertainty and delay, give the states more authority and responsibility, reduce conflicting and overlapping policies, expand the use of general permits, and redefine and clarify the scope of the permit program. Since these regulations proposed changes to our existing nationwide permits and the addition of two new nationwide permits, a public hearing was held in Washington, DC, on October 12, 1983, to obtain comments on these proposed changes. As a result of the public comments received, nearly 500 in response to the proposed regulations and 22 at the public hearing, we have determined that some of the proposed revisions should be adopted and some should not. We have adopted some of the provisions that were designed to clarify policies for evaluating permit applications, to revise certain permit processing procedures, to add additional conditions to existing nationwide permits, and to modify certain nationwide permit procedures. We have not adopted some of the other proposed changes, including the two proposed new nationwide permits.

3. *Settlement Agreement Final Regulations.* On October 5, 1984, we published (49 FR 39478) final regulations to implement a settlement agreement reached in a suit filed by 16 environmental organizations in December of 1982 against the Department of the Army and the Environmental Protection Agency (*NWF* v. *Marsh*) concerning several provisions of the July 22, 1982, interim final regulations. The court approved the settlement agreement on February 10, 1984, and on March 29, 1984, we published (49 FR 12660) the implementing proposed regulations. We received over 150 comments on these proposed regulations covering a full range of views. Those comments which were applicable to the provisions of the March 29, 1984, proposals were considered and addressed in the final regulations published on October 5, 1984. The remaining comments have been considered in the development of the final regulations we are issuing today.

In the October 5, 1984, final rule there were several new provisions relating to the 404(b)(1) guidelines. In 33 CFR 320.4(a)(1) we clarified the fact that no 404 permit can be issued unless it complies with the 404(b)(1) guidelines.

If a proposed action complies with the guidelines, a permit will be issued unless the district engineer determines that it will be contrary to the public interest. In 33 CFR 323.6(a) we stated that district engineers will deny permits for discharges which fail to comply with the 404(b)(1) guidelines, unless the economic impact on navigation and anchorage necessitates permit issuance pursuant to section 404(b)(2) of the Clean Water Act. Although no 404 permit can be issued unless compliance with the 404(b)(1) guidelines is demonstrated (i.e., compliance is a prerequisite to issuance), the 404(b)(1) evaluation is conducted simultaneously with the public interest review set forth in 33 CFR 320.4(a).

4. *Proposed Permit Form Regulations.* On May 23, 1985, we published (50 FR 21311) proposed revisions to 33 CFR Part 325 (Appendix A), which contains the standard permit form used for the issuance of Corps permits and the related provisions concerning special conditions. This proposal provided for the complete revision of the permit form and its related provisions to make them easier for permittees to understand. General permit conditions were written in plain English and greatly reduced in number; unnecessary material was deleted; and material which is informational in nature was reformatted under a "FURTHER INFORMATION" heading. We received 18 comments on this proposal.

5. *Proposed Regulations to Implement the National Fishing Enhancement Act of 1984 (NFEA).* On July 26, 1985, we published (50 FR 30479) proposed regulations to implement a portion of the Corps regulatory responsibilities pursuant to the NFEA. Specialized procedures relative to the processing of Corps permits for artificial reefs were proposed for inclusion in Parts 322 and 325. Eight organizations commented on these proposed regulations. The NFEA also authorizes the Secretary of the Army to assess a civil penalty on any person who, after notice and an opportunity for a hearing, is found to have violated any provision of a permit issued for an artificial reef. Procedures for implementing such civil penalties will be proposed at a later date. In addition, we are hereby notifying potential applicants for artificial reef permits that the procedures contained in Part 323 relating to the discharge of dredged or fill materials and those in Part 324 relating to the transportation of dredged material for the purpose of dumping in ocean waters will be used in the processing of artificial reef permits when applicable.

6. *Proposed Regulations (Portion of Part 323 and All of Part 326.* On March 20, 1986, we published (51 FR 9691) a proposed change to 33 CFR 323.2(d), previously 323.2(j), to reflect the Army's policy regarding *de minimis* or incidental soil movements occurring

during normal dredging operations and a proposed, complete revision of the Corps of Engineers enforcement procedures (33 CFR Part 326). Seventeen comment letters were received on these proposed regulations. These comments and the resulting changes reflected in the final regulations for § 323.2(d) and Part 326 are discussed in detail below.

Environmental Documentation

We have determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment. Appropriate environmental documentation has been prepared for all permit decisions. Environmental assessments for each of the nationwide permits previously issued or being modified today are available from the Corps of Engineers. You may obtain these assessments by writing to the address listed in this preamble. Considering the potential impacts, we have determined that none required an environmental impact statement.

Discussion of Public Comments and Changes

Part 320—General Regulatory Policies

Section 320.1(a)(6): In order to provide clarity to the public, we have added a provision to codify existing practice that when a district engineer makes certain determinations under these regulations, the public can rely on that determination as a Corps final agency action.

Section 320.3(o): The National Fishing Enchancement Act of 1984 has been added to the list of related laws in § 320.3.

Section 320.4: In the May 12, 1983, proposed rule and the March 29, 1984, proposed rule we proposed changes to §§ 320.4(a)(1)—public interest review, 320.4(b)(5)—effect on wetlands, 320.4(c)—fish and wildlife, 320.4(g)—consideration of property ownership, and 320.4(j)—other Federal, state or local requirements. Changes to these paragraphs were adopted in the October 5, 1984, final rule. The various comments relating to these proposals have been fully discussed in the October 5, 1984 final rule (49 FR 39478).

Section 320.4(a)(3): Many commenters objected, some strongly, to the deletion in the October 5, 1984, final regulations of the term "great weight" from § 320.4(c), the paragraph concerning the consideration of opinions expressed by fish and wildlife agencies. Many stated that fish and wildlife agencies had the expertise and knowledge to know the impact of work in wetlands; therefore, their opinions should be given strong consideration. Some commenters supported removal of the "great weight" statement expecting less value would be given fish and wildlife agency views. It is not our intention to reduce or discount the value or expertise of fish and wildlife agency comments or those of any other experts in any field. Comments also varied from support of to objection to the deletion of the "great weight" statement from the other policy statements such as energy and navigation in § 320.4. Therefore, we added a new paragraph (a)(3) to clarify our position on how we consider comments from the public, including those from persons or agencies with special expertise on particular factors in the public interest review.

Section 320.4(b)(1): One commenter objected to the placement of the word "some" in this paragraph as a rewrite of E.O. 11990 which places no qualifier on "wetlands" indicating that all wetlands are vital. We have found through experience in administering the Section 404 permit program that wetlands vary in value. While some are vital areas, others have very little value; however, most are important. We recognize that "some wetlands are vital . . ." is being read by some people as "Some wetlands are important . . ." This was not our intent. To avoid this confusion we have revised this paragraph by deleting "some wetlands are vital areas . . ." and indicating that "most" wetlands are important.

Section 320.4(b)(2)(vi): We have included in the list of important wetlands those wetlands that are ground water discharge areas that maintain minimum baseflows important to aquatic resources. Scientific research now indicates that wetlands more often serve as discharge areas than recharge areas. Those discharge areas which are necessary to maintain a minimum baseflow necessary for the continued existence of aquatic plants and animals are recognized as important.

Section 320.4(b)(2)(viii): We have included in the list of important wetlands those which are unique in nature or scarce in quantity to the region or local area.

Section 320.4(d): We have revised this paragraph to clarify that impacts from both point source and non-point source pollution are considered in the Corps public interest review. However, section 208 of the Clean Water Act provides for control of non-point sources of pollution by the states.

Section 320.4(j)(1): Clarifying language has been added to this section to eliminate confusion regarding denial procedures when another Federal, state, and/or local authorization or certification has been denied.

Section 320.4(p): Some commenters felt that environmental considerations should take precedence over other factors. Other commenters believed that guidance should be given as to who determines whether there are environmental benefits to a project. Many commenters indicated that the regulation does not define the possible range of environmental benefits that will be considered. Environmental benefits are determined by the district engineer and the district staff based on responses received from the general public, special interest groups, other government agencies and staff evaluation of the proposed activity. Defining the possible range of environmental benefits would be almost impossible to cover in the rules in sufficient detail, since circumstances vary considerably for each permit application. After considering all the comments we have decided to make the change as proposed on May 12, 1983.

Section 320.4(q): Some commenters believed that this rule would distort review criteria by inserting inappropriate economic assumptions and minimizing environmental criteria. Some commenters suggested that the Corps revise this paragraph to include a provision to challenge an applicant's economic data and that of governmental agencies as well. Other commenters believe that economic factors do not belong in these regulations since the intent of the Clean Water Act is: "to restore and maintain the chemical, physical, and biological integrity of the nation's waters"; therefore, any regulation under the CWA should have, as its primary objective, provisions which give environmental factors the greatest weight. They were concerned that this part may be applied to allow economic benefits to offset negative environmental effects. Some commenters, however, believed that the Corps should assume that projects proposed by state and local governmental interests and private industry are economically viable and are needed in the marketplace. They also believed that the Corps and other governmental agencies should not engage in detailed economic evaluations. Economics has been included in the Corps list of public interest factors since 1970. However, there has never been a specific policy on economics in the regulations. The Corps generally accepts an applicant's determination that a proposed activity is needed and will be economically viable, but makes its own decision on whether

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a project should occur in waters of the U.S. The district engineer may determine that the impacts of a proposed project on the public interest may require more than a cursory evaluation of the need for the project. The depth of the evaluation would depend on the significance of the impacts and in unusual circumstances could include an independent economic analysis. The Corps will balance the economic need for a project along with other factors of the public interest. Accordingly, § 320.4(q) has been modified from the proposed rule to provide that the district engineer may make an independent review of the need for a project from the perspective of the public interest.

Section 320.4(r): Many comments were offered as to the intent, scope and implementation of the proposed mitigation policy. Comments were almost equally divided between those who felt that the policy should be expanded and those that felt it should be more limited. The issues that were raised include: mitigation should not be used to outweigh negative public interest factors; mitigation should not be integrated into the public interest review; mitigation should be on-site to the maximum extent practicable; off-site mitigation extends the range of concerns beyond those required by Section 404. A wide range of views were expressed on our proposed mitigation policy, but virtually all commenters expressed need for a policy. The Corps has been requiring mitigation as permit conditions for many years based on our regulations and the 404(b)(1) guidelines. Because of the apparent confusion on this matter, we have decided to clarify our existing policy at 320.4(r).

The concept of "mitigation" is many-faceted, as reflected in the definition provided in the Council on (Environmental Quality (CEQ) NEPA regulations at 40 CFR 1508.20. Viewing "mitigation" in its broadest sense, practically any permit condition or best management practice designed to avoid or reduce adverse effects could be considered "mitigation." Mitigation considerations occur throughout the permit application review process and are conducted in consultation with state and Federal agencies responsible for fish and wildlife resources. District engineers will normally discuss modifications to minimize project impacts with applicants at pre-application meetings (held for large and potentially controversial projects) and during the processing of applications. As a result of these discussions, district engineers may condition permits to require minor project modifications, even though that project may satisfy all legal requirements and the public interest review test without those modifications.

For applications involving Section 404 authority, mitigation considerations are required as part of the Section 404(b)(1) guidelines analysis; permit conditions requiring mitigation must be added when necessary to ensure that a project complies with the guidelines. To emphasize this, we have included a footnote to § 320.4(r) regarding mitigation requirements for Section 404, Clean Water Act, permit actions. Some types of mitigation measures are enumerated in Subpart H of the guidelines. Other laws such as the Endangered Species Act may also lead to mitigation requirements in order to ensure that the proposal complies with the law. In addition to the mitigation developed in preapplication consultations and through application of the 404(b)(1) guidelines and other laws, these regulations provide for further mitigation should the public interest review so indicate.

One form of mitigation is "compensatory mitigation," defined at 40 CFR 1508.20(e) to mean "compensating for the impact by replacing or providing substitute resources or environments." Federal and state natural resource agencies sometimes ask the Corps to require permit applicants to compensate for wetlands to be destroyed by permitted activities. Such compensatory mitigation might be provided by constructing or enhancing a wetland; by dedicating wetland acreage for public use; or by contributing to the construction, enhancement, acquisition or preservation of such "mitigation lands." Compensatory mitigation of this type is often referred to as "off-site" mitigation. However, it can be provided either on-site or off-site. Such mitigation can be required by permit conditions only in compliance with 33 CFR 325.4, and specifically with 33 CFR 325.4(a)(3). In addition to those restrictions, the Corps has for many years declined to use, and does now decline to use, the public interest review to require permit applicants to provide compensatory mitigation unless that mitigation is required to ensure that an applicant's proposed activity is not contrary to the public interest. If an applicant refuses to provide compensatory mitigation which the district engineer determines to be necessary to ensure that the proposed activity is not contrary to the public interest, the permit must be denied. If an applicant voluntarily offers to provide compensatory mitigation in excess of the amount needed to find that the project is not contrary to the public interest, the district engineer can incorporate a permit condition to implement that mitigation at the applicant's request.

Part 321—Permits for Dams and Dikes in Navigable Waters of the United States

The Secretary of the Army delegated his authority under Section 9 of the Rivers and Harbors Act of 1899, 33 U.S.C. 401 to the Assistant Secretary of the Army (Civil Works). The Assistant Secretary in turn delegated his authority under Section 9 for structures in intrastate navigable waters of the United States to the Chief of Engineers and his authorized representative. District engineers have been authorized in 33 CFR 325.8 to issue or deny permits for dams or dikes in intrastate navigable waters of the United States" under Section 9 of the Rivers and Harbors Act of 1899. This section of the regulation and §§ 325.5(d) and 325.8(a) have been revised to reflect this delegation.

Part 322—Permits for Structures or Work in or Affecting Navigable Waters of the United States

Section 322.2(a): We have revised the term "navigable waters of the United States" to reference 33 CFR Part 329 since it and all other terms relating to the geographic scope of the Section 10 program are defined at 33 CFR Part 329.

Section 322.2(b): Commenters on the definition of structures indicated that several terms needed further amplification. It was suggested that the term "boom" be defined to exclude a float boom, as would be used in front of a spillway. The term was not redefined because those dams constructed in Section 10 waters do require a permit for a float boom. However, most dams in the United States are constructed in non-Section 10 waters and do not require a permit for a boom (floating or otherwise) unless it involves the discharge of dredged or fill material. It was suggested that the term "obstacle or obstruction" be modified to reinstitute the language from the July 19, 1977, final regulations. We have adopted the suggestion which will clarify our intent that obstacles or obstructions, whether permanent or not, do require a permit; it will also assist in jurisdictional decisions on enforcement. It was suggested that "boat docks" and "boat ramps" be included in the list of structures, since these are frequently proposed structures. These have been included. It was suggested that the term "artificial gravel island" be added, as

Congress, by Section 4(e) of the Outer Continental Shelf Lands Act of 1953, extended the regulatory program to the Outer Continental Shelf, and specifically cited artificial islands as falling under Section 10 jurisdiction. This type of structure is also constructed on state lands within the territorial seas. Accordingly, artificial islands have been included.

Section 322.2(c): Two commenters discussed the definition of "work"; one stated that it was too broad and the other that it should be expanded. The present definition of the term "work" has remained unchanged for many years and has achieved general acceptance by the regulators and those requiring a permit. The present language has been retained.

Sections 322.2(f)(2) and 323.2(n)(2): Both of these sections are concerned with the definition of general permits. Several commenters expressed support for the additional criteria contained in the May 12, 1983 proposed rule. Other commenters expressed concern that the proposed criteria were illegal. Some commenters believed that the proposal would amount to a delegation of the Section 404 program to the states, and that this is not a prerogative of the Corps of Engineers. Many commenters expressed serious concern that state programs were not comprehensive enough to properly represent the public interest review. Still others objected to the proposal because there were no assurances that the state approved projects themselves were "similar in nature" or would have "minimal adverse environmental effects"; those objections extended to the proposal to assess the impacts of the differences in the State/Corps decisions. Some commenters suggested that an automatic "kick-out" provision, whereby concerned agencies could cause the Corps to require an individual application on a case-by-case basis, may provide sufficient safeguards for the proposal to go forward. Some commenters suggested that a preferred approach to reducing duplication would be for the Corps to express, in its regulations, direction for its districts to vigorously pursue joint processing, permit consolidation, pre-application consultation, joint applications, joint public notices and special area management planning. This change was proposed in 1983. At that time we believed that additional flexibility in the types of general permits which could be developed was necessary to effectively administer the regulatory program. Our experience since then has shown that the existing definitions of general permit at both of these sections is flexible enough to develop satisfactory general permits. Therefore we have decided not to adopt this proposed change. Because several definitions previously found in Part 323 have been moved to Part 328, § 323.2(n) has been redesignated § 323.2(h).

Section 322.2(g): This section adds the definition of the term "artificial reefs" from the National Fishing Enhancement Act and clarifies what activities or structures the term does not include. Two commenters suggested modifications, or clarifications, to this definition to ensure that old oil and gas production platforms can be considered for use as artificial reefs. We agree with their suggestion. The definition would include the use of some production platforms, either abandoned in place or relocated, as artificial reefs as long as they are evaluated and permitted as meeting the standards of Section 203 of the Act.

Section 322.2(h): This section was proposed to add the definition of the term "outer continental shelf" from the Outer Continental Shelf Lands Act (OCSLA). Two commenters suggested that the territorial sea off the Gulf Coast of Florida and Texas is greater than three nautical miles from the coast line. We have determined that this is not the case, and have decided not to include a definition of the term "outer continental shelf" in these regulations and to rely instead on the definition of this term that is already in the OCSLA.

Sections 322.3(a) and 322.4: Activities which do not require a permit have been moved from § 322.3 and included in § 322.4. The limitation of the applicability of Section 154 of the Water Resource Development Act of 1976 in certain waterbodies has been deleted because no such limitation exists in that Act.

Section 322.5(b): This section addresses the policies and procedures for processing artificial reef applications. One commenter suggested that the opportunity for a general permit should not be precluded by this section. A general permit for artificial reefs is not precluded by this regulation change. Furthermore, the opportunity for the issuance of general permits may be enhanced with the implementation of the National Artificial Reef Plan by the Department of Commerce.

Section 322.5(b)(1): This section cites the standards established under section 203 of the National Fishing Enhancement Act. These standards are to be met in the siting and construction, and subsequent monitoring and managing, of artificial reefs. Two commenters insisted that these should be called goals or objectives, and several commenters said that more specific guidelines or criteria are needed to evaluate proposed artificial reefs against the standards or goals. Section 204 of the Act states that the Department of Commerce will develop a National Artificial Reef Plan which will be consistent with the standards established under Section 203, and will include criteria relating to siting, constructing, monitoring, and managing artificial reefs. Specification of such criteria in these rules would be inappropriate in view of the intent of Congress to have the Department of Commerce perform this function. The National Marine Fisheries Service (NMFS), acting for the Department of Commerce, has consulted with us in developing the National Artificial Reef Plan, and we will continue to consult with them to ensure permits are issued consistent with the criteria established in that plan. The Department of Commerce announced the availability of the National Artificial Reef Plan in the **Federal Register** on November 14, 1985.

The U.S. Coast Guard was particularly concerned that these rules be more specific with regard to information and criteria that will be used to ensure navigation safety and the prevention of navigational obstructions. Section 204 of the National Fishing Enhancement Act requires that the Department of Commerce consult the U.S. Coast Guard in the development of the National Artificial Reef Plan regarding the criteria to be established in the plan. One of the standards with which the criteria must be consistent is the prevention of unreasonable obstructions to navigation. In addition, the district engineer shall consult with any governmental agency or interested party, as appropriate, in issuing permits for artificial reefs. This includes pre-application consultation with the U.S. Coast Guard, and placing conditions in permits recommended by the U.S. Coast Guard to ensure navigational safety.

Section 322.5(b) (2) and (3): These sections state that the district engineer will consider the National Artificial Reef Plan, and that he will consult with governmental agencies and interested parties, as necessary, in evaluating a permit application. Two commenters supported this coordination. The NMFS requested notification of decisions to issue permits which either deviate from or comply with the plan. Paragraph (b)(2) requires the district engineer to notify the Department of Commerce of any need to deviate from the plan. In addition, the NMFS receives a monthly list of permit applications on which the district engineer has taken final action. This should be sufficient notification for those permits which do not deviate from the plan.

Section 322.5(b)(4): Although some commenters strongly supported this section describing the liability of permittees authorized to build artificial reefs, several expressed concern that this provision was not clearly written or required specific criteria to assist the district engineer in determining financial liability. This paragraph has been rewritten to correspond closely with the wording in the National Fishing Enhancement Act, and examples of ways an applicant can demonstrate financial responsibility have been added.

Section 322.5(g): We have revised this paragraph on canals and other artificial waterways by eliminating procedural-only provisions which are redundant with requirements in 33 CFR Parts 325 and 326.

Section 322.5(l): A new section on fairways and anchorage areas has been added. This section was formerly found at 33 CFR 209.135. We are moving this provision to consolidate all of the permit regulations on structures to this part. We will delete 33 CFR 209.135 by separate notice in the **Federal Register**.

Part 323—Permits for Discharges of Dredged or Fill Material Into Waters of the United States

Section 323.2: Several commenters supported moving the definitions relating to waters of the United States to a separate paragraph. As proposed on May 12, 1983, we have moved the term "waters of the United States" and all other terms related to the geographic scope of jurisdiction of Section 404 of the CWA to 33 CFR Part 328 which is titled "Definition of the Waters of the United States." We believe that, by setting these definitions apart in a separate and distinct Part of the regulation and including in that Part all of the definitions of terms associated with the scope of the Section 404 permit program, we are better able to clarify the scope of our jurisdiction. We have not changed any existing definitions nor added any definitions proposed on May 12, 1983. Comments related to these definitions are addressed in Part 328 below.

We have not changed the definition of fill material at § 323.2(e). However, the Corps has entered into a Memorandum of Agreement with the Environmental Protection Agency to better identify the difference between section 402 and section 404 discharges under the Clean Water Act.

Section 323.2(d)—Previously 323.2(j): The proposed modification of this paragraph states that "*de minimis* or incidental soil movement occurring during normal dredging operations" is not a "discharge of dredged material," the term defined by this paragraph.

Eight commenters raised concerns relating to this provision. Most of these supported the regulation of "*de minimis* or incidental soil movement occurring during normal dredging operations" in varying degrees. Two specifically expressed a belief that the fallback from dredging operations constituted a discharge within the intent of section 404 of the Clean Water Act. One of these stated that the proposed provision was contrary to a binding decision by the U. S. District Court for the Northern District of Ohio in *Reid* v. *Marsh*, No. C–81–690 (N. D. Ohio, 1984). Another commenter objected to the provision on the basis that it would force states that perceived a need to regulate dredging operations to regulate such activities under their National Pollutant Discharge Elimination System authority. The recommendations of the above group of commenters included the regulation of dredging activities on an individual or general permit basis or on a selective basis that would take into account the scopes and anticipated effects of the projects involved. Two commenters expressed concern over the fact that discharge activities such as the sidecasting of dredged material might be considered "soil movement" that was "incidental" to a "normal dredging operation." The final concern raised related to the list of dredging equipment cited as examples. This list was seen, alternatively, as too limited or as not limited enough in reference to the types of equipment that may be used in a "normal dredging operation." Four commenters supported the proposed provision as a reasonable interpretation of the section 404 authority of the Corps.

Section 404 clearly directs the Corps to regulate the *discharge* of dredged material, not the dredging itself. Dredging operations cannot be performed without some fallback. However, if we were to define this fallback as a "discharge of dredged material," we would, in effect, be adding the regulation of dredging to section 404 which we do not believe was the intent of Congress. We have consistently provided guidance to our field offices since 1977 that incidental fallback is not an activity regulated under section 404. The purpose of dredging is to remove material from the water, not to discharge material into the water. Therefore, the fallback in a "normal dredging operation" is incidental to the dredging operation and *de minimis* when compared to the overall quantities removed. If there are tests involved, we believe they should relate to the dredging operator's intent and the result of his dredging operations. If the intent is to remove material from the water and the results support this intent, then the activity involved must be considered as a "normal dredging operation" that is not subject to section 404.

Based on the above discussion, we have not adopted any of the recommendations relating to the revision or deletion of this provision for the purpose of bringing about the regulation of "normal dredging operations" in varying degrees. We have replaced the "or" between the words "*de minimis*" and "incidental" with a comma to more clearly reflect the fact that the incidental fallback from a "normal dredging operation" is considered to be *de minimis* when compared to the overall quantities removed. In addition, we have deleted the examples of dredging equipment at the end of the proposed provision to make it clear that *de minimis* or incidental soil movement occurring during *any* "normal dredging operation" is not a "discharge of dredged material." However, we wish to also make it clear that this provision applies only to the incidental fallback occurring during "normal dredging operations" and not to the disposal of the dredged material involved. If this material is disposed of in a water of the United States, by sidecasting or by other means, this disposal will be considered to be a "discharge of dredged material" and will be subject to regulation under section 404.

Section 323.4: We have made some minor corrections to this section to be consistent with EPA's permit exemption regulations at 40 CFR Part 233.

Part 324—Ocean Disposal

Section 324.4(c): The language of this section on the EPA review process has been rewritten to clarify the procedures the district engineer will follow when the Regional Administrator advises that a proposed dumping activity does not comply with the criteria established pursuant to section 102(a) of the Marine Protection, Research and Sanctuaries Act (MPRSA), or the restrictions established pursuant to section 102(c) thereof, in accordance with the provisions of 40 CFR 225.2(b).

Part 325—Permit Processing

Several minor changes have been made in this part. These changes involve requesting additional information from

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an applicant, providing for a reasonable comment period, combining permit documentation, and documenting issues of national importance.

Section 325.1(b): This section has been rewritten to clarify the pre-application consultation process for major permit applications. No significant changes have been made in the content of this section.

Section 325.1(d)(1): One commenter on this content of applications paragraph asked that where, through experience, it has been found that specific items of additional information are routinely necessary for permit review, the district engineer should be allowed to develop supplemental information forms. Another observed that restricting production of local forms may inhibit joint permit application processes. If it becomes necessary to routinely request additional information, the Corps can change the application form, but that must be done at Corps headquarters with the approval of the Office of Management and Budget. This change does not place any additional restrictions on developing local forms. As is now the case, local forms may be developed for joint processing with a Federal or state agency.

Section 325.1(d)(8): This is a new section requiring an applicant to include provisions for siting, construction, monitoring and managing the artificial reef as part of his application for a permit. One commenter suggested that the criteria for accomplishing these activities must be completed in the National Artificial Reef Plan before establishment of such reefs can be encouraged. Another recommended that the regulation describe more specifically the information to be supplied by an applicant with regard to monitoring and maintaining an artificial reef. The plan includes general mechanisms and methodologies for monitoring the compliance of reefs with permit requirements, and managing the use of those reefs. It can be used as a guide for the information to be supplied by the permit applicant. Specific conditions for monitoring and managing, as well as for maintaining artificial reefs generally need to be site-specific and should be developed during permit processing.

The U.S. Coast Guard requested that they be provided copies of permit applications for artificial reefs, and that a permittee be required to notify the Coast Guard District Commander when reef construction begins and when it is completed so timely information can be included in notices to mariners. The district engineer may elect to consult with the Coast Guard, when appropriate, during the pre-application phase of the permit process. At any rate, the Coast Guard will receive public notices of permit applications, and may make recommendations to ensure navigational safety on a case-by-case basis. Appropriate conditions can be added to permits to provide for such safety.

Section 325.1(e): Several commenters expressed concern with language changes requiring only additional information "essential to complete an evaluation" rather than the former requirement for information to "assist in evaluation of the application." They felt this change would reduce the data base on which decisions would be made. They indicated further that without necessary additional information, district engineers would not be able to make a reasonable decision, the public's ability to provide meaningful comments would be limited, and resource agencies would have to spend more time contacting the applicant and gathering information. They felt this could increase delays rather than limiting them. Several commenters asked that the regulations be altered to specifically require submission of information necessary for a 404(b)(1) evaluation. Similar concerns were expressed with the change stating that detailed engineering plans and specifications would not be required for a permit application. Commenters advised that without adequate plans or the ability to routinely require supplemental information it may be impossible to insure compliance with applicable water quality criteria or make reasonable permit decisions. Other commenters wanted further restrictions placed on the district engineer's ability to request additional information. Suggestions included altering the regulations to specify the type, need for, and level of detail which could be requested, and requiring the district engineer to prepare an analysis of costs and benefits of such information. Some commenters objected to requirements for providing information on project alternatives and on the source and composition of dredged or fill material.

This paragraph has been changed as proposed. The intent of this change was to assure that information necessary to make a decision would be obtained, while requests for non-essential information and delays associated with such requests would be limited.

Section 325.2(a)(6): The new requirement to document district engineer decisions contrary to state and local decisions was adopted essentially as proposed. The reference to state or local decisions in the middle of this paragraph incorrectly did not reference § 320.4(j)(4) in addition to § 320.4(j)(2). The adopted paragraph references state and local decisions in both of these paragraphs.

Section 325.2(b)(1)(ii): The May 12, 1983, proposed regulations sought to speed up the process by reducing the standard 60 day comment/waiver period to 30 days for state water quality certifications. Commenters on this paragraph offered a complete spectrum of views from strong support for the proposed changes to strong opposition to the proposal. Comments within this spectrum included opinions that: states must have 60 days; certification time should be the same as allowed by EPA (i.e. 6 months); the proposal is illegal; it conflicts with some state water quality certification regulations and procedures; and it would reduce state and public input to the decision-making process. Most states objected to this reduction with many citing established water quality certification procedures required by statute and/or regulations which require notice to the public (normally 30 days) and which allow requests for public hearings which cannot be completed within the 30-day period. We have, therefore, retained the 60 day period in the July 22, 1982, regulations. Some Corps districts have developed formal or informal agreements with the states, which identify procedures and time limits for submittal of water quality certifications and waivers. Where these are in effect, problems associated with certifications are minimized.

Many commenters objected to the May 12, 1983, proposal to delete from the July 22, 1982, regulations the statement, "The request for certification must be made in accordance with the regulations of the certifying agency." Deleting this statement will not delete the requirement that valid requests for certification must be made in accordance with State laws. However, we have found that, on a case-by-case basis in some states, the state certifying agency and the district engineer have found it beneficial to have some flexibility to determine what constitutes a valid request. Furthermore, we believe that the state has the responsibility to determine if it has received a valid request. If this statement were retained in the Corps regulation, it would require the Corps to determine if a request has been submitted in accordance with state law. To avoid this problem, we have decided to eliminate this statement.

Section 325.2(d)(2): Numerous commenters expressed concern with comment periods of less than 30 days. They were concerned that, in order to expedite processing times, 15 day

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notices would become the norm. These commenters stated that 15 days was insufficient to prepare substantive comments and would not allow the public adequate participation in the permit process as mandated by Section 101 of the CWA. State agencies noted that, with internal and external mail requiring as much as a week each for the Corps and the state, 15 days would not provide any time for consideration of a project. Several commenters noted that such expedited review times might actually be counter-productive, as Federal and state agencies might routinely oppose projects and request permit denial so that they would then have sufficient time to review a project and to work with an applicant to resolve conflicts. We recognize that 15 days is a very short comment period considering internal agency processing and mail time. We expect that comment periods as short as 15 days would be used only for minor projects where experience has shown there would be little or no controversy. Some districts have been routinely using comment periods of less than 30 days (20 and 25 days) while others have used such procedures in only a limited number of special cases. In adopting this provision, we have modified the May 12, 1983, proposal to require the district engineer to consider the nature of the proposal, mail time, the need to obtain comments from remote areas, comments on similar proposals, and the need for site visits before designating public notice periods of less than 30 days. Additionally, after considering the length of the original comment period as well as those items noted above, the district engineer may extend the comment period an additional 30 days if warranted. We believe this provides the desired flexibility with the necessary restraints on when to use comment periods of less than 30 days.

Sections 325.2(e)(1) and 325.5(b)(2): Commenters supporting the use of letters of permission (LOP) for minor section 404 activities stated that applicants will realize significant time savings for minor requests while there will be no loss in environmental protection. Objectors believe that the Corps is seeking administrative expediency at the cost of environmental protection. Issues raised by commenters include: the legality of the 404 LOP procedure without providing for notice and opportunity for public hearing (Section 404(a) of the CWA); the legality of issuing a permit which would become effective upon the receipt or waiver of 401 certification and/or a consistency certification under the CZMA; the need to be more definitive as to the criteria for making a decision as to the categories of activities eligible for authorization under the LOP; and the lack of coordination with Federal and state resource agencies. A few commenters were concerned that the notice in the May 12, 1983, Proposed Rules was insufficient because it did not give the scope and location of the work to be covered. The commenting states also indicated that the notice was insufficient for water quality certification and coastal zone consistency determination purposes. Other commenters were concerned that, while LOP's would be coordinated with Federal and state fish and wildlife agencies, other resource agencies such as EPA should also review Section 404 LOP's. Based on the comments on the proposed 404 LOP procedures, we have decided not to adopt the 404 LOP procedures as proposed. We are not changing § 325.5(b)(2), LOP format, nor are we changing the section 10 LOP provisions. Rather, we have revised § 325.2(e)(1) to describe a separate section 404 LOP process. Unlike the section 10 LOP process, the section 404 process involves the identification of categories of discharges and a generic public notice. This LOP process is a type of abbreviated permit process which could and has been developed under the July 22, 1982, interim final regulations. These procedures will avoid unnecessary paperwork and delays for many minor section 404 projects in accordance with the intent of Section 101(f) of the Clean Water Act

Section 325.7(b): We have added a provision that, when considering a modification to a permit, the district engineer will consult with resource agencies when considering a change to terms, conditions, or features in which that agency has expressed a significant interest.

Section 325.9: One commenter generally supported this section on the district engineer's authority to determine jurisdiction but indicated that § 325.9(c) should not be adopted because it reflects the provisions of a Memorandum of Understanding (MOU) with EPA and would not be applicable if the MOU is revised or deleted. We have determined that this paragraph is not now needed and have decided not to adopt it.

Appendix A—Permit Form and Special Conditions

A. Permit Form

Project Description: A comment was received stating that intended use should be specified for all permitted work and not just for the fills involved. A comment was also received suggesting that we be more specific on what discharges are covered by permit authorizations. We agree with these points and have made appropriate changes to the instructional material relating to project descriptions.

General Conditions

General Condition 1: Several commenters stated that the specified three month lead time on the requesting of permit extensions was too long. We agree with these commenters and have, therefore, reduced this lead time from three to one month.

General Condition 2: One commenter recommended that the wording of this condition, relating to the maintenance of authorized work, be modified to indicate that restoration may be required if the permittee fails to comply with the condition. We agree and have modified the condition accordingly. Another commenter stated that it would not be reasonable to enforce this condition when a permitted underground facility is abandoned. We generally agree with this statement. However, we believe the procedures governing the enforcement of permit conditions are flexible enough to allow a reasonable approach in such situations.

General Condition 3: One commenter indicated that this condition should be modified to require the permittee to halt work that could damage discovered historic resources and to protect those resources from inadvertent damage. That commenter also indicated that under certain circumstances it would not be necessary to notify the Corps or to halt work. This notification requirement has been in effect since 1982, and the continuation of this requirement provides for the Corps to be notified in a timely manner. With this notification, the Corps can react quickly to determine the appropriate course of action. We believe this approach has proven to be satisfactory. Therefore, this condition is being adopted as proposed.

Proposed General Condition 4: In our proposal, we specifically requested comments on this condition, which would require recording the permit on the property deed. More than half the comments received were on this proposal. All but one of the commenters who addressed this condition were critical of it to a greater or lesser degree. Institutional interest observed that this condition would only add to their costs, since once lands were purchased they were seldom sold. Institutional and industrial interests observed that permits often relate to easements and not to fee simple ownership and that compliance with the proposed condition, in such situations, would not be possible or meaningful in some locations. One commenter stated that a recordation condition should not be necessary, provided permittees complied with proposed General Condition 5, which requires owners to notify the Corps when property is transferred. To strengthen the property transfer condition, we have modified the statement preceding the transferee's signature to specify that the requirement to comply with the terms and conditions of the permit moves with the property. One commenter stated that a general condition requiring recordation where possible would be unfair, since it would not be uniformly applicable to all permittees. Further coordination with our field offices indicates that compliance with and use of the proposed condition probably occurs only in a few locations. This coordination also indicates that for some jurisdictions, where recordation is possible, the cost of recordation may be so great that it exceeds the benefits. Given that recordation may not be practical or appropriate for all Corps permits, we have deleted this general condition from the permit form and renumbered the remaining general conditions accordingly. On the other hand, the recordation requirement is appropriate and useful for many types of structures needing Corps permits, to provide fundamental fairness toward future purchasers of real property and to facilitate enforcement of permit conditions against future purchasers. For example, if the Corps were to issue a permit for a pier, that permit would require the owner to maintain the pier in good condition and in conformance with the terms and conditions of the permit. If the builder of the pier were to allow the pier to deteriorate, he could easily transfer the pier and associated property with no notice to the purchaser of the legal obligation to repair and maintain the pier, unless the permit were recorded along with the title documents relating to the associated property. This failure to give notice to prospective purchasers would be unfair, and would increase the Federal Government's difficulty in enforcing permit conditions against future purchasers. Because of this important notice function, we have added a recordation condition under B. Special Conditions, for use wherever recordation is found to be reasonably practicable and appropriate.

General Condition 4 (Proposed General Condition 5): One commenter suggested that this condition, relating to the transference of the permit with the property, be modified to provide for notice and approval from the Corps before the permit is transferred. The reason given for this suggestion was that the Corps may have special knowledge of the particular transferee's history and capabilities and may wish to modify the terms and conditions of the permit accordingly. The suggested change would require the issuing office to conduct a review and prepare decision documentation every time property is transferred and there is a Corps permit involved. We believe that such a review in every case involving the transfer of a permit would constitute an inefficient use of available resources. Under the procedures contained in 33 CFR 325.7, a permit is subject to suspension, modification, or revocation at any time the Corps determines such action is warranted. We believe this is a better approach, and have, therefore, retained the proposed wording of this condition.

General Condition 5 (Proposed General Condition 6): One commenter recommended that this proposed condition, which relates to compliance with the provisions of the water quality certification, be changed to provide for the modification of the Corps permit if EPA promulgates a revised Section 307 standard or prohibition which applies to the permitted activity. We agree that permits must be modified when circumstances warrant. Procedures governing modifications are contained in 33 CFR 325.7, and we advise permittees of these procedures in item 5 (Reevaluation of Permit Decision) under the "Further Information" heading. Therefore, since we believe this potential requirement for permit modifications is adequately covered under the "Further Information" heading, we have retained the proposed wording of this condition.

General Condition 6 (Proposed General Condition 7): One commenter noted that compliance inspections should be conducted during normal working hours. As a general rule, this observation seems reasonable. However, since we believe that compliance inspections will be scheduled during normal working hours when possible, we have not made any changes to the proposed wording of this condition.

Further Information

Limits of Federal Liability: One commenter suggested that the Government could, under certain circumstances, be held liable for damages caused by activities authorized by the permit and suggested that Item 3, which limits the Government's liability, be deleted in its entirety. While it is true that some courts have found the United States liable for damages sustained by the owners of permitted structures or by individuals injured in some way by those structures, it has never been the intent of the Corps to assume either type of liability or to insure that no interference or damage to a permitted structure will occur after it has been built. In permitting structures within navigable waters, the Corps does not assume any duty to guarantee the safety of that structure from damages caused by the permittee's work or by other authorized activities in the water, such as channel maintenance dredging. This is viewed as an acceptable limitation on the privilege of constructing a private structure for private benefit in a public waterway, particularly since insurance is readily available to protect the permittee from any damage his structure may sustain. Accordingly, the language in Item 3 has been further clarified to preclude any inference that the Government assumes any liability for interference with or damage to a permitted structure as a result of work undertaken by or on behalf of the United States in the public interest.

Reevaluation of Permit Decision: One commenter recommended that reevaluations be limited to the three circumstances listed. Although we believe that the vast majority of the reevaluations required will qualify under one of the three listed circumstances, we cannot exclude the possibility of non-qualifying, unique situations where the public's good may require a reevaluation of a permit decision. Therefore, we have retained the wording which states that reevaluations will not necessarily be limited to the circumstances listed. Another commenter recommended that we add to this item that we have the authority to issue administrative orders to require compliance with the terms and conditions of permits and to initiate legal actions where appropriate. The procedures governing these actions are contained in 33 CFR 326.4 and 326.5 and reference was made to these procedures in the proposed wording. However, we agree that it would be helpful to modify the proposed wording to provide permittees with a better understanding of our enforcement options; we have modified the text accordingly.

B. Special Conditions

One commenter suggested that Special Condition 5, which requires permittees authorized to perform certain types of work to provide advance notifications to the National Ocean

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Service and the Corps before beginning work, be changed to allow verbal notifications followed by written confirmations. We have determined that this suggestion, if adopted, would greatly increase the chance of errors in notice documents published by the Government and would not be in the best interest of mariners. Two weeks advance notice is a reasonable period of time both for construction scheduling and for Government notification to mariners. Therefore, we have not adopted this suggestion.

One commenter suggested that a special condition be added, for use when appropriate, to require the permittee to carry out a historic preservation plan attached to the permit. The wording of special conditions are normally determined on a case-by-case basis. Only those that are used often and are subject to standardized wording are listed in Appendix A (B. Special Conditions). While we agree that special conditions of this nature may be required, we do not believe they lend themselves sufficiently to standardized wording to warrant adding a specific special condition to Appendix A.

Three comments were received which related to General Condition (n) on the previous permit form. This condition required the permittee to notify the issuing office of the date when the work authorized would start and of any prolonged suspensions before the work was complete. Two of the commenters recommended that this provision be retained as a general condition, and one commenter recommended that it be specified as a special condition. Our research indicates that this condition, as a general condition applicable to all permitted activities, has been virtually unenforceable in most areas and of limited use as a permit monitoring tool. We agree that special conditions requiring permittees to notify the Corps, in advance, of the dates permitted activities will start, are appropriate in certain situations. Two of these situations are covered by Special Condition 3 (maintenance dredging) and Special Condition 5 (charting of activities by National Ocean Service). Since we believe our field offices are in the best position to identify any other situations in which similar special conditions would be appropriate, we have not adopted these recommendations.

As discussed under Proposed General Condition 4 above, we have added a sixth special recordation condition for use where recordation is found to be reasonably practicable.

General: In addition to several editorial changes, we have added definitions for the word "you" and its derivatives and the term "this office" at the beginning of the permit form. We have substituted the term "this office" for references to the district engineer throughout the form.

Part 326—Enforcement

General: Three commenters objected to what they perceived as a lack of specific requirements and recommended that the word "should" be changed to "shall" throughout Part 326. Another commenter stated that the proposed regulations were too specific and recommended that a significant amount of the procedures in this Part be deleted and addressed in internal guidance. The word "should," where used, allows district engineers to base their enforcement actions on an assessment of what is the best approach on a case-by-case basis. The word "shall" would require district engineers to implement specified actions even though such actions may be obviously inappropriate in relation to a particular case. We believe this flexibility is appropriate and have, therefore, retained the word "should" in most of the places where it occurred in the proposed regulations. However, the word "will" is used at various places in this Part where flexibility is not appropriate. We believe that the proposed language achieves a proper balance between the providing of necessary guidance and flexibility.

Finally, one commenter suggested that Part 326 be rewritten to include only two requirements: orders for immediate restoration of filled wetlands and referrals for legal action if these orders are not complied with. When Congress established the Corps regulatory authorities, it allowed for the issuance of permits. To ignore the issuance of permits as one means of resolving violations would be inappropriate.

Section 326.1: As a result of further internal coordination, we have determined that it would be appropriate to make it clear that nothing in this Part establishes a non-discretionary duty on the part of a district engineer. Further, nothing in this Part should be considered as a basis for a private right of action against a district engineer. Therefore, we have modified this paragraph accordingly.

Section 326.2: One commenter recommended that this statement of general enforcement policy be expanded to provide priority guidance on enforcement actions. Two other commenters recommended strengthening of this paragraph, with one recommending that it cite the firm and fair enforcement of the law to prohibit and deter damage, to require restoration, and to punish violators as the purpose of the Corps enforcement program. In that we refer in this paragraph to unauthorized activities, we are reflecting the fact that these activities are unauthorized and subject to enforcement actions pursuant to the legal authorities cited at the beginning of this Part. Further, the other recommended changes would simply duplicate the discussions of enforcement methods and procedures already contained in §§ 326.3, 326.4, and 326.5. However, we have added a statement to this provision to reflect the fact that EPA has independent enforcement authorities under the Clean Water Act, and thus, district engineers should normally coordinate with EPA.

Section 326.3(b): One commenter recommended that this paragraph be amended to require the establishment of numbered file systems for violations. Most Corps districts already assign control numbers to enforcement actions, and since this is an administrative function, we have determined that it would be inappropriate to include this requirement in a Federal regulation designed to provide enforcement policy.

Section 326.3(c)(2): One commenter suggested rewording of this paragraph to make it clear that a violation involving a completed activity may or may not be resolved through the issuance of a Corps permit. The reference in the proposed wording to not initiating "any additional work before obtaining required Department of the Army authorizations" apparently led to the commenter misunderstanding this paragraph. The intent of this wording related to warning a violator not to initiate work on other projects before obtaining required Corps permits. Since the violator is in the process of being made aware of the legal requirements for obtaining Corps permits, we have determined that this warning is unnecessary and have, therefore, deleted it.

Section 326.3(c)(3): One commenter recommended that this paragraph be amended to indicate that the information requested will also be used for determining whether legal action is appropriate in addition to determining what initial corrective measures may be required. We agree that the information obtained from violators may provide a basis for enforcement decisions other than those relating to interim corrective measures. Therefore, we have revised this provision to provide for notifying violators of potential enforcement consequences and for the more generalized use of the information provided by violators in the identification of appropriate enforcement measures.

Section 326.3(c)(4): One commenter recommended that this provision be reworded to indicate that the limitations on unauthorized work of an emergency nature are to be established in conjunction with Federal and state resource agencies. We believe it is understandable that actions of this type will be completed on an expedited basis with the procedures in § 326.3(c–d) being followed concurrently. Since § 326.3(d) already provides for interagency consultations, in appropriate cases, we do not believe it is necessary to duplicate that guidance in this provision.

Section 326.3(d)(1): One commenter recommended that "initial corrective measures" be defined as measures "which substantially elminate all current and future detrimental impacts resulting from the unauthorized work." This commenter also recommended that the procedures in 33 CFR 320.4 and 40 CFR Part 230 be referenced for use in determining what "initial corrective measures" are required. Essentially, this commenter is recommending that all violators be denied a Corps authorization and required to undertake full corrective measures in the initial stage of an enforcement action. This would not be a reasonable or practical approach, since it would eliminate public participation and would result in the removal of work that may have been permitted under normal circumstances. Another commenter objected to the statement that further enforcement actions "should normally" be unnecessary if the initial corrective measures substantially eliminate all current and future detrimental impacts. This commenter sees this provision as barring legal action in appropriate cases such as those involving willful, flagrant, or repeated violations. This is not the case. To say that such corrective measures "should normally" resolve a violation does not mean that they will "always" resolve a violation. Another commenter stated that consultations with the Fish and Wildlife Service and the National Marine Fisheries Service should be made mandatory in this paragraph pursuant to the Fish and Wildlife Coordination Act. The reason given was that this provision would result in the issuance of permits which would require such consultations. This paragraph deals with initial corrective measures and not with the issuance of permits. These agencies will be given an opportunity to comment in response to a public notice before any decision is made on an after-the-fact permit application. In view of the above discussion, we have retained the proposed wording of this paragraph.

Section 326.3(d)(2): One commenter recommended that this paragraph be deleted on the basis that it provided the district engineer with too much discretion and questioned the cross-reference to § 326.3(3). This paragraph was intended to provide guidance to district engineers in situations involving prior initiations of litigation or denials of essential authorizations or certifications by other Federal, state or local agencies. We believe district engineers should have the discretionary authority to determine what is a reasonable and practical course of action for the Corps under these circumstances. However, we have revised this paragraph to clarify its intent and to correct the cross-reference.

Section 326.3(d)(3): As a result of further review within the Corps, we have determined that the provision proposed as § 326.3(e)(1)(i), which states that it is not necessary to issue a Corps permit for initial corrective measures, should be moved to § 326.3(d) to more appropriately reflect the sequence of enforcement procedures. Therefore, we have modified this provision and established it as new § 326.3(d)(3).

Section 326.3(e): One commenter objected to the after-the-fact permit process, and observed that the process was generally seen as a mechanism to avoid compliance with the law. Exceptions to the processing of after-the-fact permit applications are contained in § 326.3(e)(i–iv). However, in most cases, the public participation associated with the processing of an application is necessary before a violation can be appropriately resolved.

Section 326.3(e)(1): One commenter recommended that this paragraph be amended to specify the criteria for legal action and to require that public notices associated with after-the-fact permit applications clearly identify that a violation is involved. The criteria for legal actions are given in § 326.5(a), and permit decisions are based on whether an activity complies with the section 404(b)(1) Guidelines, where applicable, and on whether it is or is not found to be contrary to the public interest. Permit decisions are not based on whether a permit application is before or after-the-fact. We have, therefore, retained the proposed wording of this paragraph.

Proposed Section 326.3(e)(1)(i): We have deleted this provision here and have moved a modified version of it to new § 326.3(d)(3); see discussion under § 326.3(d)(3).

Section 326.3(e)(1)(i)—Proposed as 326.3(e)(1)(ii): This provision indicates that the processing of an after-the-fact permit application will not be necessary "when" detrimental impacts have been eliminated by restoration. One commenter recommended that district engineers be required to consult with EPA before determining that restoration has been completed that eliminates current and future detrimental impacts. We have addresse this comment by modifying § 326.2 and § 326.3(g) to provide for such coordination when the district engineer is aware of an enforcement action being considered by EPA under its independent enforcement authorities. Another commenter observed that the word "when" appeared to be in error and recommended substituting the word "unless." This would indicate that the Corps should process an after-the-fact permit application only after restoration had taken place and there is no work requiring a permit. This obviously would not be reasonable. In view of the above discussion, we have retained the proposed wording of this provision.

Section 326.3(e)(1)(iii)—Proposed as 326.3(e)(1)(iv): One commenter recommended that a provision be added to this paragraph to prohibit the acceptance of an application for a Corps permit where an activity is not in compliance with other Federal, state, or local authorizations or certifications. In essence, this amounts to requiring district engineers to take steps to enforce the terms and conditions of another agency's authorization or certification. We believe this is the issuing agency's responsibility and not the responsibility of the Corps. Of course, where that other agency has denied a requisite authorization, the Corps would not accept an application for processing.

Section 326.3(e)(1)(iv)—Proposed as 326.3(e)(1)(v): Two commenters recommended rewording of this paragraph to prohibit the acceptance or processing of any after-the-fact permit application when the Corps is aware of litigation or other enforcement actions that have been initiated by other Federal, state or local agencies. We believe the Corps should, in appropriate situations, be able to take positions on cases that are in conflict with the viewpoints of other agencies. Therefore, we have retained the wording of this paragraph essentially as proposed. However, since EPA has independent enforcement authorities, we have provided for coordination with EPA in §§ 326.2 and 326.3(g).

Section 326.3(g): One commenter indicated that this paragraph should delineate EPA's responsibility over

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recognizing and reporting unpermitted discharges. This paragraph deals only with cases where EPA is considering an enforcement action. The reporting of violations is covered under § 326.3(a). Another commenter recommended that this paragraph be reworded to ensure that Corps actions under Part 326 are not in conflict with EPA enforcement actions. Another commenter, a state agency, suggested that this provision be expanded to require similar consultations with state agencies that have initiated enforcement actions. The reason we have provided for consultations with EPA in this paragraph is due to the fact that both the Corps and EPA have overlapping authorities pursuant to the Clean Water Act. This is not the case with state agencies. Nevertheless, we believe district engineers will wish to consult with state agencies in appropriate circumstances. In any event, as we stated in our discussion relating to the wording of § 326.3(e)(iv), we believe the Corps should have the right to take a position that may conflict with another agency's viewpoint. However, we have revised this provision to emphasize that district engineers should coordinate with EPA when they are aware of enforcement actions being considered by EPA under its independent enforcement authorities.

Section 326.4(a–b): As a result of further internal coordination, we have determined that § 326.4(a) should make it clear that district engineers have the discretionary authority to determine when the inspection of permitted activities is appropriate. We have modified § 326.4(a) accordingly. In addition, we have added a new § 326.4(b) to further discuss inspection limitations.

Section 326.4(d)—Proposed as 326.4(c): One commenter, a state agency, objected to the provisions in this paragraph for attempting to obtain voluntary compliance before issuing a formal compliance order. The rationale given was that the absence of a formal order would make coordination between the Corps and the state difficult. Another state agency recommended consultations with state agencies and with EPA. The proposed, non-compliance procedures do not prohibit early coordination with other regulatory agencies, when appropriate, and presumably, if the permittee quickly brings his work into compliance, such coordination should not be necessary.

One commenter objected to allowing a district engineer to issue a compliance order and to not making the use of Corps suspension/revocation procedures or legal actions mandatory. Another commenter recommended that suspension/revocation procedures or legal actions be made mandatory if a violator fails to comply with a compliance order. The issuance of a compliance order is provided for in section 404(s) of the Clean Water Act, and in most cases, we believe that the methods available for obtaining voluntary compliance should be used before discretionary consideration is given to using the Corps suspension/revocation procedures or initiating legal action.

Another commenter objected to the term "significantly serious to require an enforcement action" on the basis that all violations are worthy of some enforcement action. Minor deviations from the terms and conditions of a Corps permit may not always warrant an enforcement action. For example, would a dock authorized to be constructed with a length of 50 feet but inadvertently constructed with a length of 51 feet constitute a violation warranting an enforcement action? We agree there may be extenuating circumstances, such as the additional length of the dock being just enough to impact the water access of a neighbor. However, this is a judgment that is best made by the district engineer involved.

One Commenter objected to the term "mutually agreeable solution" on the basis that such a solution could invalidate the prior results of coordination with resource agencies. Since this term refers to bringing the permitted activity into compliance or the resolution of the violation with a permit modification using the modification procedures in 33 CFR 325.7(b), such resolutions would not invalidate prior coordination. In view of the above discussion, we have retained the proposed wording of this paragraph.

Section 326.5(a): One commenter requested that the words "willful" and "repeated" be deleted from this paragraph, the rationale being, apparently, that most violators are not repeat or willful offenders and that the Corps should take the one opportunity it has to bring legal action against these one-time violators. We do not agree with this approach as being either reasonable or practical. Another commenter recommended adding violations that result in substantial impacts to the list of violations that should be considered appropriate for legal action. We agree with this recommendation and have modified the wording of this provision accordingly.

Section 326.5(c): One commenter recommended rewording of this paragraph to require that copies be provided to EPA of Corps referrals to local U.S. Attorneys. We believe it would be more appropriate to address matters relating to the detailed aspects of interagency coordination in interagency agreements. Therefore, we have retained the proposed wording of this paragraph.

Section 326.5(d)(2): As a result of further internal coordination, we have determined that litigation cases involving isolated water no longer need to be referred to the Washington level on a routine basis. Therefore, we have deleted this provision.

Section 326.5(e): One commenter recommended that the word "may" be replaced with the words "encouraged to" in the provision relating to sending litigation reports to the Office of the Chief of Engineers when the district engineer determines that an enforcement case warrants special attention and the local U.S. Attorney has declined to take legal action. We agree with this recommendation and have made the change.

Another commenter suggested that wording be aided to this paragraph to address circumstances in which permits are not required. The fact that a legal option may not be available does not mean that a permit is not required. If the district engineer chooses to close the case record, the activity in question will still be unauthorized and therefore illegal. Such unauthorized activities will be taken into account if the responsible parties become involved in future violations. One commenter suggested that Corps attorneys initiate legal actions as an alternative to actions by local U.S. Attorneys. However, the Corps does not have the authority under existing Federal laws to initiate legal actions on its own.

Another commenter recommended that this paragraph be modified to provide for joint Federal/state prosecution of violators. Since this involves discretionary decisions on the part of the Department of Justice, it would not be appropriate to include a provision of this nature in the Corps enforcement regulations.

Part 328—Definition of Waters of the United States

This part is being added in order to clarify the scope of the Section 404 permit program. This part was added in direct response to many concerns expressed by both the public and the Presidential Task Force on Regulatory Relief. We have not made changes to existing definitions; however, we have provided clarification by simply setting them apart in a separate and distinct Part 328 of the regulation.

The format for Part 328 has been changed slightly from the proposed regulation in order to improve clarity and reduce duplication. The content of the proposed § 328.2 "General Definitions" has been partially combined with § 328.3 "Definitions." The remainder has been reestablished as § 328.5, "Changes in Limits of Waters of the United States." Section 328.2 has been established as "General Scope." The proposed §§ 328.4 and 328.5 have been combined into § 328.4 and renamed "Limits of Jurisdiction."

A number of commenters appeared to have misinterpreted the intent of this part. Many thought we were trying to reduce the scope of jurisdiction while others believed we were trying to expand the scope of jurisdiction. Neither is the case. The purpose was to clarify the scope of the 404 program by defining the terms in accordance with the way the program is presently being conducted.

Section 328.3: Definitions. This section incorporates the definitions previously found in § 323.3 (a), (c), (d), (f) and (g). Paragraphs (c), (d), (f) and (g) were incorporated without change. EPA has clarified that waters of the United States at 40 CFR 328.3(a)(3) also include the following waters:

a. Which are or would be used as habitat by birds protected by Migratory Bird Treaties; or

b. Which are or would be used as habitat by other migratory birds which cross state lines; or

c. Which are or would be used as habitat for endangered species; or

d. Used to irrigate crops sold in interstate commerce.

For clarification it should be noted that we generally do not consider the following waters to be "Waters of the United States." However, the Corps reserves the right on a case-by-case basis to determine that a particular waterbody within these categories of waters is a water of the United States. EPA also has the right to determine on a case-by-case basis if any of these waters are "waters of the United States."

(a) Non-tidal drainage and irrigation ditches excavated on dry land.

(b) Artificially irrigated areas which would revert to upland if the irrigation ceased.

(c) Artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.

(d) Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.

(e) Waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States (see 33 CFR 328.3(a)).

The term "navigable waters of the United States" has not been added to this section since it is defined in Part 329.

A number of comments were received concerning the proposed change to the definition of the terms "adjacent" and the proposed definitions for the terms "inundation", "saturated", "prevalence", and "typically adapted." A number of commenters believed that these terms may better define the scope of jurisdiction of the section 404 program, but such definitions should more rightfully be within the province of the Environmental Protection Agency in order to remain consistent with the opinion of Benjamin Civiletti, Attorney General (September 5, 1979). These definitions would require the prior approval of the Environmental Protection Agency, which has not been forthcoming. Therefore, these new proposed definitions will not be adopted at this time.

To respond to requests for clarification, we have added a definition for "tidal waters." The definition is consistent with the way the Corps has traditionally interpreted the term.

Section 328.4: Limits of Jurisdiction. Section 328.4(c)(1) defines the lateral limit of jurisdiction in non-tidal waters as the ordinary high water mark provided the jurisdiction is not extended by the presence of wetlands. Therefore, it should be concluded that in the absence of wetlands the upstream limit of Corps jurisdiction also stops when the ordinary high water mark is no longer perceptible.

Section 328.5: Changes in Limits of Waters of the United States. This section was changed to reflect both natural and man-made changes to the limits of waters of the United States. This change was made for clarification and resulted from consultation with the Environmental Protection Agency.

Section 328.6: Supplemental Clarification. Most commenters favored the Corps plans to give special consideration to unique areas such as Arctic Tundra that do not easily fit the generic" wetlands definition. Several commenters indicated that the Corps should clarify its intended use of this section, and one questioned the need to "describe" unique areas in the **Federal Register.** A number of commenters indicated that criteria should be specified for determining wetland types to be included as unique areas. Some commenters stated that close coordination between the Corps and the Environmental Protection Agency will be necessary when selecting unique areas and developing procedures for making wetland determinations in such areas, since the Environmental Protection Agency has the final authority to determine the scope of "Waters of the United States."

While we believe that supplemental clarificaion of unique areas will be a positive step in clarifying the scope of jurisdiction under the section 404 permit program, we have determined that such supplemental clarification can be done under existing regulations of the Environmental Protection Agency and the Corps and therefore have deleted this section.

Part 329—Definition of Navigable Waters of the United States

We are currently planning to propose a complete revision of Part 329 in the near future, to simplify and clarify the procedures involved, while retaining the essential aspects of the relevant policy. In the interim, we are making the two minor changes discussed below.

Section 329.11: This section has been modified to clarify that the lateral extent of jurisdiction in rivers and lakes extends to the edge of all such waterbodies as it does in bays and estuaries (§ 329.12(b)).

Section 329.12(a): This section has been corrected to reflect that the territorial seas, for the purpose of Rivers and Harbors Act of 1899 jurisdiction, extend 3 geographic miles everywhere and are measured from the baseline.

Part 330—Nationwide Permits

We are reissuing the 26 nationwide permits at § 330.5(a) as modified and conditioned. The nationwide permits will be in effect for 5 years beginning with the effective date of this regulation, unless sooner revised or revoked.

Section 330.1: This section was restructured and updated in order to improve its readability and technical accuracy. The definition concerning the division engineer's discretionary authority was deleted from this section since similar language appears in § 330.2. "Definitions." The discussion concerning the applicability of nationwide permits as they relate to

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other Federal, state, and local authorizations was deleted from this section and relocated to § 330.5(d) "Further Information."

Section 330.2: The definition of the term "headwaters" was deleted from Part 323 and relocated to § 330.2(b), since the definition is used as part of the nationwide permit program. The definition of the term "natural lake" which was proposed at § 330.2(c) has been deleted. Changes to the "headwaters"/"isolated waters" nationwide permit which is found at § 330.5(a)(26) have obviated the need for this definition.

Section 330.5: In order to better inform the public of the statutory authority under which each nationwide permit has been issued, we have added the authority by parenthetical expression at the end of each nationwide permit.

We had proposed nationwide permits for activities funded or authorized by another Federal agency or department and for activities adjacent to Corps of Engineers civil works projects. Most commenters discussed the two proposed nationwide permits together. The most frequent comments questioned whether they would comply with section 404(e) of the CWA. They believed these nationwide permits could authorize a wide variety of Federal projects that would not be similar in nature and projects which could have significant adverse environmental inpacts on aquatic resources. Numerous commenters stated that the Corps would be delegating its 404(b)(1) compliance responsibilities to other agencies and that there is a natural tendency of such agencies to be self-serving. Many commenters, including some states, objected that the public and other agencies would not have an opportunity to review some large individual projects. Many commenters encouraged the adoption of these nationwide permits; in most cases they based their opinion upon reduction in duplication and the expediting of project authorization. Based on the comments received we have decided that clarification of activities that could be covered by nationwide permits would be necessary to insure proper understanding and field application. Because of the complexity of doing this and an evaluation of the comments received, we have decided not to adopt these two nationwide permits.

Section 330.5(a)(3): This nationwide permit for repair, rehabilitation, or replacement of existing structures or fill has been clarified to show that beach restoration is not authorized by this nationwide permit.

Section 330.5(a)(6): This nationwide permit for survey activities was clarified to show that it does not authorize the drilling of exploration-type bore holes for oil and gas exploration.

Section 330.5(a)(7): This nationwide permit for outfall structures was clarified by adding language concerning minor excavation, filling and other work which is routinely associated with the installation of intake and outfall structures.

Section 330.5(a)(18): This nationwide permit for discharges up to 10 cubic yards was clarified by indicating that it does not authorize discharges for the purpose of stream diversion. The footnote was deleted because it was redundant with the terms of the nationwide permit itself.

Section 330.5(a)(19): This nationwide permit for dredging up to 10 cubic yards was clarified by indicating that it does not authorize the connection of canals or other artificial waterways to navigable waters of the United States.

Section 330.5(a)(22): This nationwide permit for the removal of obstructions to navigation was clarified by indicating that it does not authorize maintenance dredging, shoal removal, or riverbank snagging.

Section 330.5(b)(3): This condition for the protection of endangered species was modified to set forth more clearly options available to the district engineer to satisfy section 7 of the Endangered Species Act when it has been determined that an activity may adversely affect any listed endangered species or its critical habitat.

Section 330.5(b)(7): This condition for the protection of wild and scenic rivers was modified to define more clearly components of the National Wild and Scenic River System by showing that it includes any Congressionally designated "study river."

Section 330.5(b)(9): This condition for the protection of historic properties was added in response to numerous comments which expressed concern for an apparent lack of consideration which was being given historic properties. This condition outlines the procedures to be followed by both the permittee and the district engineer to provide for modification, suspension, or revocation of a nationwide permit or contact with the Advisory Council on Historic Preservation if an activity authorized by a nationwide permit may adversely affect an historic property.

Section 330.5(b)(10): This condition was added as a result of comments which expressed concern that activities performed under the nationwide permits could impair reserved tribal rights.

Section 330.5(b) (11) and (12): These conditions were adopted as proposed. They provide notification to the public that, within certain states, authorization for the activity may have been denied without prejudice as a result of state 401 water quality certification denial or nonconcurrence with Coastal Zone Management consistency. These conditions trigger the provisions of §§ 330.9 and 330.10.

Section 330.5(b)(13): This condition was added to alert the public that regional conditions may have been added by the division engineer in accordance with § 330.8(a).

Section 330.5(c): The Grandfathering provision included in the October 5, 1984, final regulations expires on April 5, 1986, before the effective date of these regulations and is, therefore, no longer needed and has been deleted. A new paragraph has been added to provide the public further information on nationwide permits as they relate to such things as compliance with conditions, other required authorizations, property rights, Federal projects, and revised or modified water quality standards.

Section 330.5(d): This paragraph has been added to clarify that the Chief of Engineers has the authority to modify, suspend, or revoke any nationwide permit.

Some states indicated in their comments that there might be other ways to reduce burdens on the public within their state other than the nationwide permits. One state suggested that it might be appropriate to revoke all the nationwide permits in favor of regional permits subject to interagency review. The authority exists for the Chief of Engineers to revoke some or all of the nationwide permits within a state. There are also existing provisions in the regulations for district engineers and the states to develop a permit system designed around specific state authorities. These existing provisions include regional general permits, programmatic general permits, transfer of the 404 program (see 33 CFR 323.5), joint processing, permit consolidation, preapplication consultation and special area management planning. Before adopting a permit system designed around specific state authorities, a public notice providing an opportunity for a public hearing would be issued outlining the proposed permit system within the state and the proposal to revoke the nationwide permits. If such a system is developed, the Chief of Engineers will consider revoking all or most of the nationwide permits within a state.

Section 330.8(a): The concept of case-by-case regional conditioning authority received overwhelming support. This new paragraph allows the division engineer through discretionary authority to add activity specific conditions to nationwide permits on a case-by-case basis. The district engineer may do the same when there is mutual agreement with the permittee or when conditions are necessary based on conditions of a state 401 certification.

Section 330.8(c): This paragraph was modified to clarify that, although the division engineer has used discretionary authority to require individual permits, he may subsequently allow the activity to be authorized by nationwide permit if the impediment to using the nationwide permit, which triggered the discretionary authority, has been removed.

Section 330.8(c)(2): This paragraph has been modified to allow division engineers the discretionary authority to require individual permits for categories of activities or specific geographic areas. This authority was previously exercised by the Chief of Engineers. However, the Chief of Engineers is retaining this authority on a statewide or nationwide basis.

Section 330.9: Many commenters objected to the issuance of nationwide permits when a state denies 401 certification. Their objections were based on the Clean Water Act requirement that "No license or permit shall be granted until the certification . . . has been obtained or has been waived." Commenters expressed strong concerns about the validity of such permits, and stated that issuance would constitute a de facto transfer of the administration of this portion of the 404 permit program to the objecting states. An attendant concern was that, if states were unable to respond within the time specified by the Corps, a waiver would be presumed, and the nationwide permit would become effective, whether or not this would have been the intent of the state. Some commenters suggested that states would be forced to deny certifications because of inadequate time to ensure that proposed activities would not violate water quality standards. Most commenters opposed district engineers having discretionary authority over conditions to the 401 certification. One commenter believes this authority conflicts with states' rights. Another suggested that the proposed action could prod states into adopting their own wetland laws and regulatory programs. Several commenters supported the proposal, stating that it was a means of preserving the utility of the general permit program.

Section 330.9 has been modified to provide that, if a state denies a required 401 certification for a particular nationwide permit, then authorization for all discharges covered by the nationwide permit within the state is denied without prejudice until the state issues an individual or generic water quality certification or waives its right to do so. We did not adopt the 30 day waiver period but rather will rely on the language at § 325.2(b)(1) which defines a reasonable period of time. This section was also modified to notify the public that the district engineer will include conditions of the 401 water quality certification as special conditions of the nationwide permit.

Section 330.9(b): This subsection has been added to notify the public of the certification requirements of the various nationwide permits.

Section 330.10: A number of coastal states commented that consistency determination or waiver thereof must have been obtained prior to the promulgation of the nationwide permits. Some commenters asserted that such a requirement is not a statutory prerequisite to permit issuance. Others contend that assuming a waiver of certification preempts the individual state's authority and thwarts Congressional intent that the permit process involves oversight by the state as well as Federal agencies.

Section 330.10 has been modified to state that, in certain instances where a state has not concurred that a particular nationwide permit is consistent with its coastal zone management plan, authorization for all activities subject to such nationwide permit within or affecting the state coastal zone agency's area of authority is denied without prejudice until the applicant has furnished to the district engineer a coastal zone management consistency determination pursuant to section 307 of the Coastal Zone Management Act and the state has either concurred in that determination or waived its right to do so.

Section 330.11: This subsection was added to clarify existing procedures to establish a time limit in which a permittee may rely on confirmation from the district engineer that an activity is covered by a nationwide permit, and to specify procedures to modify, suspend, or revoke the permittee's right to proceed under the nationwide permit after the district engineer notified the permittee that the activity may proceed.

Section 330.12: This subsection was modified to provide a twelve month transition period for projects which may be affected by future changes in nationwide permits. After considering equity established in reliance on the nationwide permit and that the public will in all likelihood receive ample notice of proposed changes, we believe that this transition period is both reasonable and equitable. In addition, if necessary on a case-by-case basis we can, even though there is a grandfather provision, exercise discretionary authority pursuant to § 330.8 or modify, suspend or revoke individual authorization pursuant to 33 CFR 325.7.

State Certification of Nationwide Permits

Most states have issued or waived 401 certification and/or Coastal Zone Management consistency concurrence for one or more of the twenty six nationwide permits. Many states have issued a conditional certification and some have denied certification/consistency concurrence. Final action is still pending in some of the states but is imminent. The primary mechanism for keeping the public informed of the status and/or changes in state certifications or Coastal Zone Management consistency concurrence will be public notices issued by the district engineers within the affected states. The district engineers will be issuing public notices concurrent with the publication of these regulations. Subsequent notices will be issued as changes occur.

Listed below are those states which, as of the date of this printing, have either denied or conditionally issued 401 certification and/or coastal zone management consistency concurrence for one or more of the nationwide permits. For more current and detailed information you should consult with the appropriate district engineer.

Alaska, California, Connecticut, Florida, Hawaii, Illinois, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Washington, West Virginia and Wisconsin.

Determinations under Executive Order 12291 and the Regulatory Flexibility Act. The Department of the Army has determined that the revisions to these regulations do not contain a major proposal requiring the preparation of a regulatory analysis under E.O. 12291. The Department of the Army certifies, pursuant to section 605(b) of the Regulatory Flexibility Act of 1980, that these regulations will not have a significant economic impact on a substantial number of entities.

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Note 1.—The term "he" and its derivatives used in these regulations are generic and should be considered as applying to both male and female.

List of Subjects

33 CFR Part 320

Environmental protection, Intergovernmental relations, Navigation, Water pollution control, Waterways.

33 CFR Part 321

Dams, Intergovernmental relations, Navigation, Waterways.

33 CFR Part 322

Continental shelf, Electric power, Navigation, Water pollution control, Waterways.

33 CFR Part 323

Navigation, Water pollution control, Waterways.

33 CFR Part 324

Water pollution control.

33 CFR Part 325

Administrative practice and procedure, Intergovernmental relations, Environmental protection, Navigation, Water pollution control, Waterways.

33 CFR Part 326

Investigations, Intergovernmental relations, Law enforcement, Navigation, Water pollution control, Waterways.

33 CFR Part 327

Administrative practice and procedure, Navigation, Water pollution control, Waterways.

33 CFR Part 328

Navigation, Water pollution control, Waterways.

33 CFR Part 329

Waterways.

33 CFR Part 330

Navigation, Water pollution control, Waterways.

Dated: November 4, 1986.

Robert K. Dawson,

Assistant Secretary of the Army (Civil Works).

Accordingly, the Department of the Army is revising 33 CFR Parts 320, 321, 322, 323, 324, 325, 326, 327, 329, and 330 and adding Part 328 to read as follows:

PART 320—GENERAL REGULATORY POLICIES

Sec.
320.1 Purpose and scope.
320.2 Authorities to issue permits.
320.3 Related laws.
320.4 General policies for evaluating permit applications.

Authority: 33 U.S.C. 401 *et seq.*; 33 U.S.C. 1344; 33 U.S.C. 1413.

§ 320.1 Purpose and scope.

(a) *Regulatory approach of the Corps of Engineers.* (1) The U.S. Army Corps of Engineers has been involved in regulating certain activities in the nation's waters since 1890. Until 1968, the primary thrust of the Corps' regulatory program was the protection of navigation. As a result of several new laws and judicial decisions, the program has evolved to one involving the consideration of the full public interest by balancing the favorable impacts against the detrimental impacts. This is known as the "public interest review." The program is one which reflects the national concerns for both the protection and utilization of important resources.

(2) The Corps is a highly decentralized organization. Most of the authority for administering the regulatory program has been delegated to the thirty-six district engineers and eleven division engineers. If a district or division engineer makes a final decision on a permit application in accordance with the procedures and authorities contained in these regulations (33 CFR Parts 320–330), there is no administrative appeal of that decision.

(3) The Corps seeks to avoid unnecessary regulatory controls. The general permit program described in 33 CFR Parts 325 and 330 is the primary method of eliminating unnecessary federal control over activities which do not justify individual control or which are adequately regulated by another agency.

(4) The Corps is neither a proponent nor opponent of any permit proposal. However, the Corps believes that applicants are due a timely decision. Reducing unnecessary paperwork and delays is a continuing Corps goal.

(5) The Corps believes that state and federal regulatory programs should complement rather than duplicate one another. The Corps uses general permits, joint processing procedures, interagency review, coordination, and authority transfers (where authorized by law) to reduce duplication.

(6) The Corps has authorized its district engineers to issue formal determinations concerning the applicability of the Clean Water Act or the Rivers and Harbors Act of 1899 to activities or tracts of land and the applicability of general permits or statutory exemptions to proposed activities. A determination pursuant to this authorization shall constitute a Corps final agency action. Nothing contained in this section is intended to affect any authority EPA has under the Clean Water Act.

(b) *Types of activities regulated.* This Part and the Parts that follow (33 CFR Parts 321–330) prescribe the statutory authorities, and general and special policies and procedures applicable to the review of applications for Department of the Army (DA) permits for controlling certain activities in waters of the United States or the oceans. This part identifies the various federal statutes which require that DA permits be issued before these activities can be lawfully undertaken; and related Federal laws and the general policies applicable to the review of those activities. Parts 321–324 and 330 address special policies and procedures applicable to the following specific classes of activities:

(1) Dams or dikes in navigable waters of the United States (Part 321);

(2) Other structures or work including excavation, dredging, and/or disposal activities, in navigable waters of the United States (Part 322);

(3) Activities that alter or modify the course, condition, location, or capacity of a navigable water of the United States (Part 322);

(4) Construction of artificial islands, installations, and other devices on the outer continental shelf (Part 322);

(5) Discharges of dredged or fill material into waters of the United States (Part 323);

(6) Activities involving the transportation of dredged material for the purpose of disposal in ocean waters (Part 324); and

(7) Nationwide general permits for certain categories of activities (Part 330).

(c) *Forms of authorization.* DA permits for the above described activities are issued under various forms of authorization. These include individual permits that are issued following a review of individual applications and general permits that authorize a category or categories of activities in specific geographical regions or nationwide. The term "general permit" as used in these regulations (33 CFR Parts 320–330) refers to both those regional permits issued by district or division engineers on a regional basis and to nationwide permits which are issued by the Chief of Engineers through publication in the **Federal Register** and are applicable throughout the nation. The nationwide permits are found in 33 CFR Part 330. If an activity is covered by a general permit, an application for a DA permit does not have to be made. In such cases, a person must only comply with the conditions contained in the general permit to satisfy requirements of law for a DA permit. In certain cases pre-notification may be required before initiating construction. (See 33 CFR 330.7)

(d) *General instructions.* General policies for evaluating permit applications are found in this part. Special policies that relate to particular activities are found in Parts 321 through 324. The procedures for processing individual permits and general permits are contained in 33 CFR Part 325. The terms "navigable waters of the United States" and "waters of the United States" are used frequently throughout these regulations, and it is important from the outset that the reader understand the difference between the two. "Navigable waters of the United States" are defined in 33 CFR Part 329. These are waters that are navigable in the traditional sense where permits are required for certain work or structures pursuant to Sections 9 and 10 of the Rivers and Harbors Act of 1899. "Waters of the United States" are defined in 33 CFR Part 328. These waters include more than navigable waters of the United States and are the waters where permits are required for the discharge of dredged or fill material pursuant to Section 404 of the Clean Water Act.

§ 320.2 Authorities to issue permits.

(a) Section 9 of the Rivers and Harbors Act, approved March 3, 1899 (33 U.S.C. 401) (hereinafter referred to as section 9), prohibits the construction of any dam or dike across any navigable water of the United States in the absence of Congressional consent and approval of the plans by the Chief of Engineers and the Secretary of the Army. Where the navigable portions of the waterbody lie wholly within the limits of a single state, the structure may be built under authority of the legislature of that state if the location and plans or any modification thereof are approved by the Chief of Engineers and by the Secretary of the Army. The instrument of authorization is designated a permit (See 33 CFR Part 321.) Section 9 also pertains to bridges and causeways but the authority of the Secretary of the Army and Chief of Engineers with respect to bridges and causeways was transferred to the Secretary of Transportation under the Department of Transportation Act of October 15, 1966 (49 U.S.C. 1155g(6)(A)). A DA permit pursuant to section 404 of the Clean Water Act is required for the discharge of dredged or fill material into waters of the United States associated with bridges and causeways. (See 33 CFR Part 323.)

(b) Section 10 of the Rivers and Harbors Act approved March 3, 1899, (33 U.S.C. 403) (hereinafter referred to as section 10), prohibits the unauthorized obstruction or alteration of any navigable water of the United States. The construction of any structure in or over any navigable water of the United States, the excavating from or depositing of material in such waters, or the accomplishment of any other work affecting the course, location, condition, or capacity of such waters is unlawful unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army. The instrument of authorization is designated a permit. The authority of the Secretary of the Army to prevent obstructions to navigation in navigable waters of the United States was extended to artificial islands, installations, and other devices located on the seabed, to the seaward limit of the outer continental shelf, by section 4(f) of the Outer Continental Shelf Lands Act of 1953 as amended (43 U.S.C. 1333(e)). (See 33 CFR Part 322.)

(c) Section 11 of the Rivers and Harbors Act approved March 3, 1899, (33 U.S.C. 404), authorizes the Secretary of the Army to establish harbor lines channelward of which no piers, wharves, bulkheads, or other works may be extended or deposits made without approval of the Secretary of the Army. Effective May 27, 1970, permits for work shoreward of those lines must be obtained in accordance with section 10 and, if applicable, section 404 of the Clean Water Act (see § 320.4(o) of this Part).

(d) Section 13 of the Rivers and Harbors Act approved March 3, 1899, (33 U.S.C. 407), provides that the Secretary of the Army, whenever the Chief of Engineers determines that anchorage and navigation will not be injured thereby, may permit the discharge of refuse into navigable waters. In the absence of a permit, such discharge of refuse is prohibited. While the prohibition of this section, known as the Refuse Act, is still in effect, the permit authority of the Secretary of the Army has been superseded by the permit authority provided the Administrator, Environmental Protection Agency (EPA), and the states under sections 402 and 405 of the Clean Water Act, (33 U.S.C. 1342 and 1345). (See 40 CFR Parts 124 and 125.)

(e) Section 14 of the Rivers and Harbors Act approved March 3, 1899, (33 U.S.C. 408), provides that the Secretary of the Army, on the recommendation of the Chief of Engineers, may grant permission for the temporary occupation or use of any sea wall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the United States. This permission will be granted by an appropriate real estate instrument in accordance with existing real estate regulations.

(f) Section 404 of the Clean Water Act (33 U.S.C. 1344) (hereinafter referred to as section 404) authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits, after notice and opportunity for public hearing, for the discharge of dredged or fill material into the waters of the United States at specified disposal sites. (See 33 CFR Part 323.) The selection and use of disposal sites will be in accordance with guidelines developed by the Administrator of EPA in conjunction with the Secretary of the Army and published in 40 CFR Part 230. If these guidelines prohibit the selection or use of a disposal site, the Chief of Engineers shall consider the economic impact on navigation and anchorage of such a prohibition in reaching his decision. Furthermore, the Administrator can deny, prohibit, restrict or withdraw the use of any defined area as a disposal site whenever he determines, after notice and opportunity for public hearing and after consultation with the Secretary of the Army, that the discharge of such materials into such areas will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas. (See 40 CFR Part 230).

(g) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (33 U.S.C. 1413) (hereinafter referred to as section 103), authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits, after notice and opportunity for public hearing, for the transportation of dredged material for the purpose of disposal in the ocean where it is determined that the disposal will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. The selection of disposal sites will be in accordance with criteria developed by the Administrator of the EPA in consultation with the Secretary of the Army and published in 40 CFR Parts 220–229. However, similar to the EPA Administrator's limiting authority cited in paragraph (f) of this section, the Administrator can prevent the issuance of a permit under this authority if he

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finds that the disposal of the material will result in an unacceptable adverse impact on municipal water supplies, shellfish beds, wildlife, fisheries, or recreational areas. (See 33 CFR Part 324).

§ 320.3 Related laws.

(a) Section 401 of the Clean Water Act (33 U.S.C. 1341) requires any applicant for a federal license or permit to conduct any activity that may result in a discharge of a pollutant into waters of the United States to obtain a certification from the State in which the discharge originates or would originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the affected waters at the point where the discharge originates or would originate, that the discharge will comply with the applicable effluent limitations and water quality standards. A certification obtained for the construction of any facility must also pertain to the subsequent operation of the facility.

(b) Section 307(c) of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1456(c)), requires federal agencies conducting activities, including development projects, directly affecting a state's coastal zone, to comply to the maximum extent practicable with an approved state coastal zone management program. Indian tribes doing work on federal lands will be treated as a federal agency for the purpose of the Coastal Zone Management Act. The Act also requires any non-federal applicant for a federal license or permit to conduct an activity affecting land or water uses in the state's coastal zone to furnish a certification that the proposed activity will comply with the state's coastal zone management program. Generally, no permit will be issued until the state has concurred with the non-federal applicant's certification. This provision becomes effective upon approval by the Secretary of Commerce of the state's coastal zone management program. (See 15 CFR Part 930.)

(c) Section 302 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (16 U.S.C. 1432), authorizes the Secretary of Commerce, after consultation with other interested federal agencies and with the approval of the President, to designate as marine sanctuaries those areas of the ocean waters, of the Great Lakes and their connecting waters, or of other coastal waters which he determines necessary for the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or aesthetic values. After designating such an area, the Secretary of Commerce shall issue regulations to control any activities within the area. Activities in the sanctuary authorized under other authorities are valid only if the Secretary of Commerce certifies that the activities are consistent with the purposes of Title III of the Act and can be carried out within the regulations for the sanctuary.

(d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) declares the national policy to encourage a productive and enjoyable harmony between man and his environment. Section 102 of that Act directs that "to the fullest extent possible: (1) The policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall * * * insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision-making along with economic and technical considerations * * *". (See Appendix B of 33 CFR Part 325.)

(e) The Fish and Wildlife Act of 1956 (16 U.S.C. 742a, *et seq.*), the Migratory Marine Game-Fish Act (16 U.S.C. 760c–760g), the Fish and Wildlife Coordination Act (16 U.S.C. 661–666c) and other acts express the will of Congress to protect the quality of the aquatic environment as it affects the conservation, improvement and enjoyment of fish and wildlife resources. Reorganization Plan No. 4 of 1970 transferred certain functions, including certain fish and wildlife-water resources coordination responsibilities, from the Secretary of the Interior to the Secretary of Commerce. Under the Fish and Wildlife Coordination Act and Reorganization Plan No. 4, any federal agency that proposes to control or modify any body of water must first consult with the United States Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate, and with the head of the appropriate state agency exercising administration over the wildlife resources of the affected state.

(f) The Federal Power Act of 1920 (16 U.S.C. 791a *et seq.*), as amended, authorizes the Federal Energy Regulatory Agency (FERC) to issue licenses for the construction and the operation and maintenance of dams, water conduits, reservoirs, power houses, transmission lines, and other physical structures of a hydro-power project. However, where such structures will affect the navigable capacity of any navigable water of the United States (as defined in 16 U.S.C. 796), the plans for the dam or other physical structures affecting navigation must be approved by the Chief of Engineers and the Secretary of the Army. In such cases, the interests of navigation should normally be protected by a DA recommendation to FERC for the inclusion of appropriate provisions in the FERC license rather than the issuance of a separate DA permit under 33 U.S.C. 401 *et seq.* As to any other activities in navigable waters not constituting construction and the operation and maintenance of physical structures licensed by FERC under the Federal Power Act of 1920, as amended, the provisions of 33 U.S.C. 401 *et seq.* remain fully applicable. In all cases involving the discharge of dredged or fill material into waters of the United States or the transportation of dredged material for the purpose of disposal in ocean waters, section 404 or section 103 will be applicable.

(g) The National Historic Preservation Act of 1966 (16 U.S.C. 470) created the Advisory Council on Historic Preservation to advise the President and Congress on matters involving historic preservation. In performing its function the Council is authorized to review and comment upon activities licensed by the Federal Government which will have an effect upon properties listed in the National Register of Historic Places, or eligible for such listing. The concern of Congress for the preservation of significant historical sites is also expressed in the Preservation of Historical and Archeological Data Act of 1974 (16 U.S.C. 469 *et seq.*), which amends the Act of June 27, 1960. By this Act, whenever a federal construction project or federally licensed project, activity, or program alters any terrain such that significant historical or archeological data is threatened, the Secretary of the Interior may take action necessary to recover and preserve the data prior to the commencement of the project.

(h) The Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 *et seq.*) prohibits any developer or agent from selling or leasing any lot in a subdivision (as defined in 15 U.S.C. 1701(3)) unless the purchaser is furnished in advance a printed property report containing information which the Secretary of Housing and Urban Development may, by rules or regulations, require for the protection of purchasers. In the event the lot in question is part of a project that requires DA authorization, the property report is required by Housing and Urban Development regulation to state whether or not a permit for the development has been applied for, issued, or denied by the Corps of Engineers under section 10 or section 404. The property report is also required to state whether or not any enforcement action has been taken as a consequence of non-application for or denial of such permit.

(i) The Endangered Species Act (16 U.S.C. 1531 *et seq.*) declares the intention of the Congress to conserve threatened and endangered species and the ecosystems on which those species depend. The Act requires that federal agencies, in consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, use their authorities in furtherance of its purposes by carrying out programs for the conservation of endangered or threatened species, and by taking such action necessary to insure that any action authorized, funded, or carried out by the Agency is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary of the Interior or Commerce, as appropriate, to be critical. (See 50 CFR Part 17 and 50 CFR Part 402.)

(j) The Deepwater Port Act of 1974 (33 U.S.C. 1501 *et seq.*) prohibits the ownership, construction, or operation of a deepwater port beyond the territorial seas without a license issued by the Secretary of Transportation. The Secretary of Transportation may issue such a license to an applicant if he determines, among other things, that the construction and operation of the deepwater port is in the national interest and consistent with national security and other national policy goals and objectives. An application for a deepwater port license constitutes an application for all federal authorizations required for the ownership, construction, and operation of a deepwater port, including applications for section 10, section 404 and section 103 permits which may also be required pursuant to the authorities listed in section 320.2 and the policies specified in section 320.4 of this Part.

(k) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*) expresses the intent of Congress that marine mammals be protected and encouraged to develop in order to maintain the health and stability of the marine ecosystem. The Act imposes a perpetual moratorium on the harassment, hunting, capturing, or killing of marine mammals and on the importation of marine mammals and marine mammal products without a permit from either the Secretary of the Interior or the Secretary of Commerce, depending upon the species of marine mammal involved. Such permits may be issued only for purposes of scientific research and for public display if the purpose is consistent with the policies of the Act. The appropriate Secretary is also empowered in certain restricted circumstances to waive the requirements of the Act.

(l) Section 7(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1278 *et seq.*) provides that no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration.

(m) The Ocean Thermal Energy Conversion Act of 1980, (42 U.S.C. section 9101 *et seq.*) establishes a licensing regime administered by the Administrator of NOAA for the ownership, construction, location, and operation of ocean thermal energy conversion (OTEC) facilities and plantships. An application for an OTEC license filed with the Administrator constitutes an application for all federal authorizations required for ownership, construction, location, and operation of an OTEC facility or plantship, except for certain activities within the jurisdiction of the Coast Guard. This includes applications for section 10, section 404, section 103 and other DA authorizations which may be required.

(n) Section 402 of the Clean Water Act authorizes EPA to issue permits under procedures established to implement the National Pollutant Discharge Elimination System (NPDES) program. The administration of this program can be, and in most cases has been, delegated to individual states. Section 402(b)(6) states that no NPDES permit will be issued if the Chief of Engineers, acting for the Secretary of the Army and after consulting with the U.S. Coast Guard, determines that navigation and anchorage in any navigable water will be substantially impaired as a result of a proposed activity.

(o) The National Fishing Enhancement Act of 1984 (Pub. L. 98–623) provides for the development of a National Artificial Reef Plan to promote and facilitate responsible and effective efforts to establish artificial reefs. The Act establishes procedures to be followed by the Corps in issuing DA permits for artificial reefs. The Act also establishes the liability of the permittee and the United States. The Act further creates a civil penalty for violation of any provision of a permit issued for an artificial reef.

§ 320.4 General policies for evaluating permit applications.

The following policies shall be applicable to the review of all applications for DA permits. Additional policies specifically applicable to certain types of activities are identified in 33 CFR Parts 321–324.

(a) *Public Interest Review.* (1) The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. Evaluation of the probable impact which the proposed activity may have on the public interest requires a careful weighing of all those factors which become relevant in each particular case. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. The decision whether to authorize a proposal, and if so, the conditions under which it will be allowed to occur, are therefore determined by the outcome of this general balancing process. That decision should reflect the national concern for both protection and utilization of important resources. All factors which may be relevant to the proposal must be considered including the cumulative effects thereof: among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. For activities involving 404 discharges, a permit will be denied if the discharge that would be authorized by such permit would not comply with the Environmental Protection Agency's 404(b)(1) guidelines. Subject to the preceding sentence and any other applicable guidelines and criteria (see §§ 320.2 and 320.3), a permit will be granted unless the district engineer determines that it would be contrary to the public interest.

(2) The following general criteria will be considered in the evaluation of every application:

(i) The relative extent of the public and private need for the proposed structure or work:

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(ii) Where there are unresolved conflicts as to resource use, the practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed structure or work; and

(iii) The extent and permanence of the beneficial and/or detrimental effects which the proposed structure or work is likely to have on the public and private uses to which the area is suited.

(3) The specific weight of each factor is determined by its importance and relevance to the particular proposal. Accordingly, how important a factor is and how much consideration it deserves will vary with each proposal. A specific factor may be given great weight on one proposal, while it may not be present or as important on another. However, full consideration and appropriate weight will be given to all comments, including those of federal, state, and local agencies, and other experts on matters within their expertise.

(b) *Effect on wetlands.* (1) Most wetlands constitute a productive and valuable public resource, the unnecessary alteration or destruction of which should be discouraged as contrary to the public interest. For projects to be undertaken or partially or entirely funded by a federal, state, or local agency, additional requirements on wetlands considerations are stated in Executive Order 11990, dated 24 May 1977.

(2) Wetlands considered to perform functions important to the public interest include:

(i) Wetlands which serve significant natural biological functions, including food chain production, general habitat and nesting, spawning, rearing and resting sites for aquatic or land species;

(ii) Wetlands set aside for study of the aquatic environment or as sanctuaries or refuges;

(iii) Wetlands the destruction or alteration of which would affect detrimentally natural drainage characteristics, sedimentation patterns, salinity distribution, flushing characteristics, current patterns, or other environmental characteristics;

(iv) Wetlands which are significant in shielding other areas from wave action, erosion, or storm damage. Such wetlands are often associated with barrier beaches, islands, reefs and bars;

(v) Wetlands which serve as valuable storage areas for storm and flood waters;

(vi) Wetlands which are ground water discharge areas that maintain minimum baseflows important to aquatic resources and those which are prime natural recharge areas;

(vii) Wetlands which serve significant water purification functions; and

(viii) Wetlands which are unique in nature or scarce in quantity to the region or local area.

(3) Although a particular alteration of a wetland may constitute a minor change, the cumulative effect of numerous piecemeal changes can result in a major impairment of wetland resources. Thus, the particular wetland site for which an application is made will be evaluated with the recognition that it may be part of a complete and interrelated wetland area. In addition, the district engineer may undertake, where appropriate, reviews of particular wetland areas in consultation with the Regional Director of the U. S. Fish and Wildlife Service, the Regional Director of the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, the Regional Administrator of the Environmental Protection Agency, the local representative of the Soil Conservation Service of the Department of Agriculture, and the head of the appropriate state agency to assess the cumulative effect of activities in such areas.

(4) No permit will be granted which involves the alteration of wetlands identified as important by paragraph (b)(2) of this section or because of provisions of paragraph (b)(3), of this section unless the district engineer concludes, on the basis of the analysis required in paragraph (a) of this section, that the benefits of the proposed alteration outweigh the damage to the wetlands resource. In evaluating whether a particular discharge activity should be permitted, the district engineer shall apply the section 404(b)(1) guidelines (40 CFR Part 230. 10(a) (1), (2), (3)).

(5) In addition to the policies expressed in this subpart, the Congressional policy expressed in the Estuary Protection Act, Pub. L. 90–454, and state regulatory laws or programs for classification and protection of wetlands will be considered.

(c) *Fish and wildlife.* In accordance with the Fish and Wildlife Coordination Act (paragraph 320.3(e) of this section) district engineers will consult with the Regional Director, U.S. Fish and Wildlife Service, the Regional Director, National Marine Fisheries Service, and the head of the agency responsible for fish and wildlife for the state in which work is to be performed, with a view to the conservation of wildlife resources by prevention of their direct and indirect loss and damage due to the activity proposed in a permit application. The Army will give full consideration to the views of those agencies on fish and wildlife matters in deciding on the issuance, denial, or conditioning of individual or general permits.

(d) *Water quality.* Applications for permits for activities which may adversely affect the quality of waters of the United States will be evaluated for compliance with applicable effluent limitations and water quality standards, during the construction and subsequent operation of the proposed activity. The evaluation should include the consideration of both point and non-point sources of pollution. It should be noted, however, that the Clean Water Act assigns responsibility for control of non-point sources of pollution to the states. Certification of compliance with applicable effluent limitations and water quality standards required under provisions of section 401 of the Clean Water Act will be considered conclusive with respect to water quality considerations unless the Regional Administrator, Environmental Protection Agency (EPA), advises of other water quality aspects to be taken into consideration.

(e) *Historic, cultural, scenic, and recreational values.* Applications for DA permits may involve areas which possess recognized historic, cultural, scenic, conservation, recreational or similar values. Full evaluation of the general public interest requires that due consideration be given to the effect which the proposed structure or activity may have on values such as those associated with wild and scenic rivers, historic properties and National Landmarks, National Rivers, National Wilderness Areas, National Seashores, National Recreation Areas, National Lakeshores, National Parks, National Monuments, estuarine and marine sanctuaries, archeological resources, including Indian religious or cultural sites, and such other areas as may be established under federal or state law for similar and related purposes. Recognition of those values is often reflected by state, regional, or local land use classifications, or by similar federal controls or policies. Action on permit applications should, insofar as possible, be consistent with, and avoid significant adverse effects on the values or purposes for which those classifications, controls, or policies were established.

(f) *Effects on limits of the territorial sea.* Structures or work affecting coastal waters may modify the coast line or base line from which the territorial sea is measured for purposes of the Submerged Lands Act and international law. Generally, the coast line or base line is the line of ordinary low water on the mainland; however, there are exceptions where there are islands or lowtide elevations offshore (the Submerged Lands Act, 43 U.S.C. 1301(a) and *United States* v. *California*, 381 U.S.C. 139 (1965), 382 U.S. 448 (1966)). Applications for structures or work affecting coastal waters will therefore be reviewed specifically to determine whether the coast line or base line might be altered. If it is determined that such a change might occur, coordination with the Attorney General and the Solicitor of the Department of the Interior is required before final action is taken. The district engineer will submit a description of the proposed work and a copy of the plans to the Solicitor, Department of the Interior, Washington, DC 20240, and request his comments concerning the effects of the proposed work on the outer continental rights of the United States. These comments will be included in the administrative record of the application. After completion of standard processing procedures, the record will be forwarded to the Chief of Engineers. The decision on the application will be made by the Secretary of the Army after coordination with the Attorney General.

(g) *Consideration of property ownership.* Authorization of work or structures by DA does not convey a property right, nor authorize any injury to property or invasion of other rights.

(1) An inherent aspect of property ownership is a right to reasonable private use. However, this right is subject to the rights and interests of the public in the navigable and other waters of the United States, including the federal navigation servitude and federal regulation for environmental protection.

(2) Because a landowner has the general right to protect property from erosion, applications to erect protective structures will usually receive favorable consideration. However, if the protective structure may cause damage to the property of others, adversely affect public health and safety, adversely impact floodplain or wetland values, or otherwise appears contrary to the public interest, the district engineer will so advise the applicant and inform him of possible alternative methods of protecting his property. Such advice will be given in terms of general guidance only so as not to compete with private engineering firms nor require undue use of government resources.

(3) A riparian landowner's general right of access to navigable waters of the United States is subject to the similar rights of access held by nearby riparian landowners and to the general public's right of navigation on the water surface. In the case of proposals which create undue interference with access to, or use of, navigable waters, the authorization will generally be denied.

(4) Where it is found that the work for which a permit is desired is in navigable waters of the United States (see 33 CFR Part 329) and may interfere with an authorized federal project, the applicant should be apprised in writing of the fact and of the possibility that a federal project which may be constructed in the vicinity of the proposed work might necessitate its removal or reconstruction. The applicant should also be informed that the United States will in no case be liable for any damage or injury to the structures or work authorized by Sections 9 or 10 of the Rivers and Harbors Act of 1899 or by section 404 of the Clean Water Act which may be caused by, or result from, future operations undertaken by the Government for the conservation or improvement of navigation or for other purposes, and no claims or right to compensation will accrue from any such damage.

(5) Proposed activities in the area of a federal project which exists or is under construction will be evaluated to insure that they are compatible with the purposes of the project.

(6) A DA permit does not convey any property rights, either in real estate or material, or any exclusive privileges. Furthermore, a DA permit does not authorize any injury to property or invasion of rights or any infringement of Federal, state or local laws or regulations. The applicant's signature on an application is an affirmation that the applicant possesses or will possess the requisite property interest to undertake the activity proposed in the application. The district engineer will not enter into disputes but will remind the applicant of the above. The dispute over property ownership will not be a factor in the Corps public interest decision.

(h) *Activities affecting coastal zones.* Applications for DA permits for activities affecting the coastal zones of those states having a coastal zone management program approved by the Secretary of Commerce will be evaluated with respect to compliance with that program. No permit will be issued to a non-federal applicant until certification has been provided that the proposed activity complies with the coastal zone management program and the appropriate state agency has concurred with the certification or has waived its right to do so. However, a permit may be issued to a non-federal applicant if the Secretary of Commerce, on his own initiative or upon appeal by the applicant, finds that the proposed activity is consistent with the objectives of the Coastal Zone Management Act of 1972 or is otherwise necessary in the interest of national security. Federal agency and Indian tribe applicants for DA permits are responsible for complying with the Coastal Zone Management Act's directives for assuring that their activities directly affecting the coastal zone are consistent, to the maximum extent practicable, with approved state coastal zone management programs.

(i) *Activities in marine sanctuaries.* Applications for DA authorization for activities in a marine sanctuary established by the Secretary of Commerce under authority of section 302 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, will be evaluated for impact on the marine sanctuary. No permit will be issued until the applicant provides a certification from the Secretary of Commerce that the proposed activity is consistent with the purposes of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, and can be carried out within the regulations promulgated by the Secretary of Commerce to control activities within the marine sanctuary.

(j) *Other Federal, state, or local requirements.* (1) Processing of an application for a DA permit normally will proceed concurrently with the processing of other required Federal, state, and/or local authorizations or certifications. Final action on the DA permit will normally not be delayed pending action by another Federal, state or local agency (See 33 CFR 325.2 (d)(4)). However, where the required Federal, state and/or local authorization and/or certification has been denied for activities which also require a Department of the Army permit before final action has been taken on the Army permit application, the district engineer will, after considering the likelihood of subsequent approval of the other authorization and/or certification and the time and effort remaining to complete processing the Army permit application, either immediately deny the Army permit without prejudice or continue processing the application to a conclusion. If the district engineer continues processing the application, he will conclude by either denying the permit as contrary to the public interest, or denying it without prejudice indicating that except for the other Federal, state or local denial the Army permit could, under appropriate conditions, be issued. Denial without prejudice means that there is no prejudice to the right of the applicant to reinstate processing of the Army permit

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application if subsequent approval is received from the appropriate Federal, state and/or local agency on a previously denied authorization and/or certification. Even if official certification and/or authorization is not required by state or federal law, but a state, regional, or local agency having jurisdiction or interest over the particular activity comments on the application, due consideration shall be given to those official views as a reflection of local factors of the public interest.

(2) The primary responsibility for determining zoning and land use matters rests with state, local and tribal governments. The district engineer will normally accept decisions by such governments on those matters unless there are significant issues of overriding national importance. Such issues would include but are not necessarily limited to national security, navigation, national economic development, water quality, preservation of special aquatic areas, including wetlands, with significant interstate importance, and national energy needs. Whether a factor has overriding importance will depend on the degree of impact in an individual case.

(3) A proposed activity may result in conflicting comments from several agencies within the same state. Where a state has not designated a single responsible coordinating agency, district engineers will ask the Governor to express his views or to designate one state agency to represent the official state position in the particular case.

(4) In the absence of overriding national factors of the public interest that may be revealed during the evaluation of the permit application, a permit will generally be issued following receipt of a favorable state determination provided the concerns, policies, goals, and requirements as expressed in 33 CFR Parts 320–324, and the applicable statutes have been considered and followed: e.g., the National Environmental Policy Act; the Fish and Wildlife Coordination Act; the Historical and Archeological Preservation Act; the National Historic Preservation Act; the Endangered Species Act; the Coastal Zone Management Act; the Marine Protection, Research and Sanctuaries Act of 1972, as amended; the Clean Water Act, the Archeological Resources Act, and the American Indian Religious Freedom Act. Similarly, a permit will generally be issued for Federal and Federally-authorized activities; another federal agency's determination to proceed is entitled to substantial consideration in the Corps' public interest review.

(5) Where general permits to avoid duplication are not practical, district engineers shall develop joint procedures with those local, state, and other Federal agencies having ongoing permit programs for activities also regulated by the Department of the Army. In such cases, applications for DA permits may be processed jointly with the state or other federal applications to an independent conclusion and decision by the district engineer and the appropriate Federal or state agency. (See 33 CFR 325.2(e).)

(6) The district engineer shall develop operating procedures for establishing official communications with Indian Tribes within the district. The procedures shall provide for appointment of a tribal representative who will receive all pertinent public notices, and respond to such notices with the official tribal position on the proposed activity. This procedure shall apply only to those tribes which accept this option. Any adopted operating procedures shall be distributed by public notice to inform the tribes of this option.

(k) *Safety of impoundment structures.* To insure that all impoundment structures are designed for safety, non-Federal applicants may be required to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons and, in appropriate cases, that the design has been independently reviewed (and modified as the review would indicate) by similarly qualified persons.

(l) Floodplain management. (1) Floodplains possess significant natural values and carry out numerous functions important to the public interest. These include:

(i) Water resources values (natural moderation of floods, water quality maintenance, and groundwater recharge);

(ii) Living resource values (fish, wildlife, and plant resources);

(iii) Cultural resource values (open space, natural beauty, scientific study, outdoor education, and recreation); and

(iv) Cultivated resource values (agriculture, aquaculture, and forestry).

(2) Although a particular alteration to a floodplain may constitute a minor change, the cumulative impact of such changes may result in a significant degradation of floodplain values and functions and in increased potential for harm to upstream and downstream activities. In accordance with the requirements of Executive Order 11988, district engineers, as part of their public interest review, should avoid to the extent practicable, long and short term significant adverse impacts associated with the occupancy and modification of floodplains, as well as the direct and indirect support of floodplain development whenever there is a practicable alternative. For those activities which in the public interest must occur in or impact upon floodplains, the district engineer shall ensure, to the maximum extent practicable, that the impacts of potential flooding on human health, safety, and welfare are minimized, the risks of flood losses are minimized, and, whenever practicable the natural and beneficial values served by floodplains are restored and preserved.

(3) In accordance with Executive Order 11988, the district engineer should avoid authorizing floodplain developments whenever practicable alternatives exist outside the floodplain. If there are no such practicable alternatives, the district engineer shall consider, as a means of mitigation, alternatives within the floodplain which will lessen any significant adverse impact to the floodplain.

(m) *Water supply and conservation.* Water is an essential resource, basic to human survival, economic growth, and the natural environment. Water conservation requires the efficient use of water resources in all actions which involve the significant use of water or that significantly affect the availability of water for alternative uses including opportunities to reduce demand and improve efficiency in order to minimize new supply requirements. Actions affecting water quantities are subject to Congressional policy as stated in section 101(g) of the Clean Water Act which provides that the authority of states to allocate water quantities shall not be superseded, abrogated, or otherwise impaired.

(n) *Energy conservation and development.* Energy conservation and development are major national objectives. District engineers will give high priority to the processing of permit actions involving energy projects.

(o) *Navigation.* (1) Section 11 of the Rivers and Harbors Act of 1899 authorized establishment of harbor lines shoreward of which no individual permits were required. Because harbor lines were established on the basis of navigation impacts only, the Corps of Engineers published a regulation on 27 May 1970 (33 CFR 209.150) which declared that permits would thereafter be required for activities shoreward of the harbor lines. Review of applications would be based on a full public interest evaluation and harbor lines would serve as guidance for assessing navigation impacts. Accordingly, activities constructed shoreward of harbor lines prior to 27 May 1970 do not require specific authorization.

(2) The policy of considering harbor lines as guidance for assessing impacts on navigation continues.

(3) Protection of navigation in all navigable waters of the United States continues to be a primary concern of the federal government.

(4) District engineers should protect navigational and anchorage interests in connection with the NPDES program by recommending to EPA or to the state, if the program has been delegated, that a permit be denied unless appropriate conditions can be included to avoid any substantial impairment of navigation and anchorage.

(p) *Environmental benefits.* Some activities that require Department of the Army permits result in beneficial effects to the quality of the environment. The district engineer will weigh these benefits as well as environmental detriments along with other factors of the public interest.

(q) *Economics.* When private enterprise makes application for a permit, it will generally be assumed that appropriate economic evaluations have been completed, the proposal is economically viable, and is needed in the market place. However, the district engineer in appropriate cases, may make an independent review of the need for the project from the perspective of the overall public interest. The economic benefits of many projects are important to the local community and contribute to needed improvements in the local economic base, affecting such factors as employment, tax revenues, community cohesion, community services, and property values. Many projects also contribute to the National Economic Development (NED), (i.e., the increase in the net value of the national output of goods and services).

(r) *Mitigation.*[1] (1) Mitigation is an important aspect of the review and balancing process on many Department of the Army permit applications. Consideration of mitigation will occur throughout the permit application review process and includes avoiding, minimizing, rectifying, reducing, or compensating for resource losses. Losses will be avoided to the extent practicable. Compensation may occur on-site or at an off-site location. Mitigation requirements generally fall into three categories.

(i) Project modifications to minimize adverse project impacts should be discussed with the applicant at pre-application meetings and during application processing. As a result of these discussions and as the district engineer's evaluation proceeds, the district engineer may require minor project modifications. Minor project modifications are those that are considered feasible (cost, constructability, etc.) to the applicant and that, if adopted, will result in a project that generally meets the applicant's purpose and need. Such modifications can include reductions in scope and size; changes in construction methods, materials or timing; and operation and maintenance practices or other similar modifications that reflect a sensitivity to environmental quality within the context of the work proposed. For example, erosion control features could be required on a fill project to reduce sedimentation impacts or a pier could be reoriented to minimize navigational problems even though those projects may satisfy all legal requirements (paragraph (r)(1)(ii) of this section) and the public interest review test (paragraph (r)(1)(iii) of this section) without such modifications.

(ii) Further mitigation measures may be required to satisfy legal requirements. For Section 404 applications, mitigation shall be required to ensure that the project complies with the 404(b)(1) Guidelines. Some mitigation measures are enumerated at 40 CFR 230.70 through 40 CFR 230.77 (Subpart H of the 404(b)(1) Guidelines).

(iii) Mitigation measures in addition to those under paragraphs (r)(1) (i) and (ii) of this section may be required as a result of the public interest review process. (See 33 CFR 325.4(a).) Mitigation should be developed and incorporated within the public interest review process to the extent that the mitigation is found by the district engineer to be reasonable and justified. Only those measures required to ensure that the project is not contrary to the public interest may be required under this subparagraph.

(2) All compensatory mitigation will be for significant resource losses which are specifically identifiable, reasonably likely to occur, and of importance to the human or aquatic environment. Also, all mitigation will be directly related to the impacts of the proposal, appropriate to the scope and degree of those impacts, and reasonably enforceable. District engineers will require all forms of mitigation, including compensatory mitigation, only as provided in paragraphs (r)(1) (i) through (iii) of this section. Additional mitigation may be added at the applicants' request.

PART 321—PERMITS FOR DAMS AND DIKES IN NAVIGABLE WATERS OF THE UNITED STATES

Sec.	
321.1	General.
321.2	Definitions.
321.3	Special policies and procedures.

Authority: 33 U.S.C. 401.

§ 321.1 General.

This regulation prescribes, in addition to the general policies of 33 CFR Part 320 and procedures of 33 CFR Part 325, those special policies, practices, and procedures to be followed by the Corps of Engineers in connection with the review of applications for Department of the Army (DA) permits to authorize the construction of a dike or dam in a navigable water of the United States pursuant to section 9 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401). See 33 CFR 320.2(a). Dams and dikes in navigable waters of the United States also require DA permits under section 404 of the Clean Water Act, as amended (33 U.S.C. 1344). Applicants for DA permits under this Part should also refer to 33 CFR Part 323 to satisfy the requirements of section 404.

§ 321.2 Definitions.

For the purpose of this regulation, the following terms are defined:

(a) The term "navigable waters of the United States" means those waters of the United States that are subject to the ebb and flow of the tide shoreward to the mean high water mark and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce. See 33 CFR Part 329 for a more complete definition of this term.

(b) The term "dike or dam" means, for the purposes of section 9, any impoundment structure that completely spans a navigable water of the United States and that may obstruct interstate waterborne commerce. The term does not include a weir. Weirs are regulated pursuant to section 10 of the Rivers and Harbors Act of 1899. (See 33 CFR Part 322.)

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[1] This is a general statement of mitigation policy which applies to all Corps of Engineers regulatory authorities covered by these regulations (33 CFR Parts 320–330). It is not a substitute for the mitigation requirements necessary to ensure that a permit action under section 404 of the Clean Water Act complies with the section 404(b)(1) Guidelines. There is currently an interagency Working Group formed to develop guidance on implementing mitigation requirements of the Guidelines.

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§ 321.3 Special policies and procedures.

The following additional special policies and procedures shall be applicable to the evaluation of permit applications under this regulation:

(a) The Assistant Secretary of the Army (Civil Works) will decide whether DA authorization for a dam or dike in an interstate navigable water of the United States will be issued, since this authority has not been delegated to the Chief of Engineers. The conditions to be imposed in any instrument of authorization will be recommended by the district engineer when forwarding the report to the Assistant Secretary of the Army (Civil Works), through the Chief of Engineers.

(b) District engineers are authorized to decide whether DA authorization for a dam or dike in an intrastate navigable water of the United States will be issued (see 33 CFR 325.8).

(c) Processing a DA application under section 9 will not be completed until the approval of the United States Congress has been obtained if the navigable water of the United States is an interstate waterbody, or until the approval of the appropriate state legislature has been obtained if the navigable water of the United States is an intrastate waterbody (i.e., the navigable portion of the navigable water of the United States is solely within the boundaries of one state). The district engineer, upon receipt of such an application, will notify the applicant that the consent of Congress or the state legislature must be obtained before a permit can be issued.

PART 322—PERMITS FOR STRUCTURES OR WORK IN OR AFFECTING NAVIGABLE WATERS OF THE UNITED STATES

Sec.

322.1 General.
322.2 Definitions.
322.3 Activities requiring permits.
322.4 Activities not requiring permits.
322.5 Special policies.

Authority: 33 U.S.C. 403.

§ 322.1 General.

This regulation prescribes, in addition to the general policies of 33 CFR Part 320 and procedures of 33 CFR Part 325, those special policies, practices, and procedures to be followed by the Corps of Engineers in connection with the review of applications for Department of the Army (DA) permits to authorize certain structures or work in or affecting navigable waters of the United States pursuant to section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) (hereinafter referred to as section 10). See 33 CFR 320.2(b). Certain structures or work in or affecting navigable waters of the United States are also regulated under other authorities of the DA. These include discharges of dredged or fill material into waters of the United States, including the territorial seas, pursuant to section 404 of the Clean Water Act (33 U.S.C. 1344; see 33 CFR Part 323) and the transportation of dredged material by vessel for purposes of dumping in ocean waters, including the territorial seas, pursuant to section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (33 U.S.C. 1413; see 33 CFR Part 324). A DA permit will also be required under these additional authorities if they are applicable to structures or work in or affecting navigable waters of the United States. Applicants for DA permits under this part should refer to the other cited authorities and implementing regulations for these additional permit requirements to determine whether they also are applicable to their proposed activities.

§ 322.2 Definitions.

For the purpose of this regulation, the following terms are defined:

(a) The term "navigable waters of the United States" and all other terms relating to the geographic scope of jurisdiction are defined at 33 CFR Part 329. Generally, they are those waters of the United States that are subject to the ebb and flow of the tide shoreward to the mean high water mark, and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce.

(b) The term "structure" shall include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other obstacle or obstruction.

(c) The term "work" shall include, without limitation, any dredging or disposal of dredged material, excavation, filling, or other modification of a navigable water of the United States.

(d) The term "letter of permission" means a type of individual permit issued in accordance with the abbreviated procedures of 33 CFR 325.2(e).

(e) The term "individual permit" means a DA authorization that is issued following a case-by-case evaluation of a specific structure or work in accordance with the procedures of this regulation and 33 CFR Part 325, and a determination that the proposed structure or work is in the public interest pursuant to 33 CFR Part 320.

(f) The term "general permit" means a DA authorization that is issued on a nationwide or regional basis for a category or categories of activities when:

(1) Those activities are substantially similar in nature and cause only minimal individual and cumulative environmental impacts; or

(2) The general permit would result in avoiding unnecessary duplication of the regulatory control exercised by another Federal, state, or local agency provided it has been determined that the environmental consequences of the action are individually and cumulatively minimal. (See 33 CFR 325.2(e) and 33 CFR Part 330.)

(g) The term "artificial reef" means a structure which is constructed or placed in the navigable waters of the United States or in the waters overlying the outer continental shelf for the purpose of enhancing fishery resources and commercial and recreational fishing opportunities. The term does not include activities or structures such as wing deflectors, bank stabilization, grade stabilization structures, or low flow key ways, all of which may be useful to enhance fisheries resources.

§ 322.3 Activities requiring permits.

(a) *General.* DA permits are required under section 10 for structures and/or work in or affecting navigable waters of the United States except as otherwise provided in § 322.4 below. Certain activities specified in 33 CFR Part 330 are permitted by that regulation ("nationwide general permits"). Other activities may be authorized by district or division engineers on a regional basis ("regional general permits"). If an activity is not exempted by section 322.4 of this part or authorized by a general permit, an individual section 10 permit will be required for the proposed activity. Structures or work are in navigable waters of the United States if they are within limits defined in 33 CFR Part 329. Structures or work outside these limits are subject to the provisions of law cited in paragraph (a) of this section, if these structures or work affect the course, location, or condition of the waterbody in such a manner as to impact on its navigable capacity. For purposes of a section 10 permit, a tunnel or other structure or work under or over a navigable water of the United States is considered to have an impact on the navigable capacity of the waterbody.

(b) *Outer continental shelf.* DA permits are required for the construction of artificial islands, installations, and other devices on the seabed, to the seaward limit of the outer continental shelf, pursuant to section 4(f) of the Outer Continental Shelf Lands Act as amended. (See 33 CFR 320.2(b).)

(c) *Activities of Federal agencies.* (1) Except as specifically provided in this paragraph, activities of the type described in paragraphs (a) and (b) of this section, done by or on behalf of any Federal agency are subject to the authorization procedures of these regulations. Work or structures in or affecting navigable waters of the United States that are part of the civil works activities of the Corps of Engineers, unless covered by a nationwide or regional general permit issued pursuant to these regulations, are subject to the procedures of separate regulations. Agreement for construction or engineering services performed for other agencies by the Corps of Engineers does not constitute authorization under this regulation. Division and district engineers will therefore advise Federal agencies accordingly, and cooperate to the fullest extent in expediting the processing of their applications.

(2) Congress has delegated to the Secretary of the Army in section 10 the duty to authorize or prohibit certain work or structures in navigable waters of the United States, upon recommendation of the Chief of Engineers. The general legislation by which Federal agencies are enpowered to act generally is not considered to be sufficient authorization by Congress to satisfy the purposes of section 10. If an agency asserts that it has Congressional authorization meeting the test of section 10 or would otherwise be exempt from the provisions of section 10, the legislative history and/or provisions of the Act should clearly demonstrate that Congress was approving the exact location and plans from which Congress could have considered the effect on navigable waters of the United States or that Congress intended to exempt that agency from the requirements of section 10. Very often such legislation reserves final approval of plans or construction for the Chief of Engineers. In such cases evaluation and authorization under this regulation are limited by the intent of the statutory language involved.

(3) The policy provisions set out in 33 CFR 320.4(j) relating to state or local certifications and/or authorizations, do not apply to work or structures undertaken by Federal agencies, except where compliance with non-Federal authorization is required by Federal law or Executive policy, e.g., section 313 and section 401 of the Clean Water Act.

§ 322.4 Activities not requiring permits.

(a) Activities that were commenced or completed shoreward of established Federal harbor lines before May 27, 1970 (see 33 CFR 320.4(o)) do not require section 10 permits; however, if those activities involve the discharge of dredged or fill material into waters of the United States after October 18, 1972, a section 404 permit is required. (See 33 CFR Part 323.)

(b) Pursuant to section 154 of the Water Resource Development Act of 1976 (Pub. L. 94–587), Department of the Army permits are not required under section 10 to construct wharves and piers in any waterbody, located entirely within one state, that is a navigable water of the United States solely on the basis of its historical use to transport interstate commerce.

§ 322.5 Special policies.

The Secretary of the Army has delegated to the Chief of Engineers the authority to issue or deny section 10 permits. The following additional special policies and procedures shall also be applicable to the evaluation of permit applications under this regulation.

(a) *General.* DA permits are required for structures or work in or affecting navigable waters of the United States. However, certain structures or work specified in 33 CFR Part 330 are permitted by that regulation. If a structure or work is not permitted by that regulation, an individual or regional section 10 permit will be required.

(b) *Artificial Reefs.* (1) When considering an application for an artificial reef, as defined in 33 CFR 322.2(g), the district engineer will review the applicant's provisions for siting, constructing, monitoring, operating, maintaining, and managing the proposed artificial reef and shall determine if those provisions are consistent with the following standards:

(i) The enhancement of fishery resources to the maximum extent practicable;

(ii) The facilitation of access and utilization by United States recreational and commercial fishermen;

(iii) The minimization of conflicts among competing uses of the navigable waters or waters overlying the outer continental shelf and of the resources in such waters;

(iv) The minimization of environmental risks and risks to personal health and property;

(v) Generally accepted principles of international law; and

(vi) the prevention of any unreasonable obstructions to navigation. If the district engineer decides that the applicant's provisions are not consistent with these standards, he shall deny the permit. If the district engineer decides that the provisions are consistent with these standards, and if he decides to issue the permit after the public interest review, he shall make the provisions part of the permit.

(2) In addition, the district engineer will consider the National Artificial Reef Plan developed pursuant to section 204 of the National Fishing Enhancement Act of 1984, and if he decides to issue the permit, will notify the Secretary of Commerce of any need to deviate from that plan.

(3) The district engineer will comply with all coordination provisions required by a written agreement between the DOD and the Federal agencies relative to artificial reefs. In addition, if the district engineer decides that further consultation beyond the normal public commenting process is required to evaluate fully the proposed artificial reef, he may initiate such consultation with any Federal agency, state or local government, or other interested party.

(4) The district engineer will issue a permit for the proposed artificial reef only if the applicant demonstrates, to the district engineer's satisfaction, that the title to the artificial reef construction material is unambiguous, that responsibility for maintenance of the reef is clearly established, and that he has the financial ability to assume liability for all damages that may arise with respect to the proposed artificial reef. A demonstration of financial responsibility might include evidence of insurance, sponsorship, or available assets.

(i) A person to whom a permit is issued in accordance with these regulations and any insurer of that person shall not be liable for damages caused by activities required to be undertaken under any terms and conditions of the permit, if the permittee is in compliance with such terms and conditions.

(ii) A person to whom a permit is issued in accordance with these regulations and any insurer of that person shall be liable, to the extent determined under applicable law, for damages to which paragraph (i) does not apply.

(iii) Any person who has transferred title to artificial reef construction materials to a person to whom a permit is issued in accordance with these regulations shall not be liable for damages arising from the use of such materials in an artificial reef, if such materials meet applicable requirements

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of the plan published under section 204 of the National Artificial Reef Plan, and are not otherwise defective at the time title is transferred.

(c) *Non-Federal dredging for navigation.* (1) The benefits which an authorized Federal navigation project are intended to produce will often require similar and related operations by non-Federal agencies (e.g., dredging access channels to docks and berthing facilities or deepening such channels to correspond to the Federal project depth). These non-Federal activities will be considered by Corps of Engineers officials in planning the construction and maintenance of Federal navigation projects and, to the maximum practical extent, will be coordinated with interested Federal, state, regional and local agencies and the general public simultaneously with the associated Federal projects. Non-Federal activities which are not so coordinated will be individually evaluated in accordance with these regulations. In evaluating the public interest in connection with applications for permits for such coordinated operations, equal treatment will be accorded to the fullest extent possible to both Federal and non-Federal operations. Permits for non-Federal dredging operations will normally contain conditions requiring the permittee to comply with the same practices or requirements utilized in connection with related Federal dredging operations with respect to such matters as turbidity, water quality, containment of material, nature and location of approved spoil disposal areas (non-Federal use of Federal contained disposal areas will be in accordance with laws authorizing such areas and regulations governing their use), extent and period of dredging, and other factors relating to protection of environmental and ecological values.

(2) A permit for the dredging of a channel, slip, or other such project for navigation may also authorize the periodic maintenance dredging of the project. Authorization procedures and limitations for maintenance dredging shall be as prescribed in 33 CFR 325.6(e). The permit will require the permittee to give advance notice to the district engineer each time maintenance dredging is to be performed. Where the maintenance dredging involves the discharge of dredged material into waters of the United States or the transportation of dredged material for the purpose of dumping it in ocean waters, the procedures in 33 CFR Parts 323 and 324 respectively shall also be followed.

(d) *Structures for small boats.* (1) In the absence of overriding public interest, favorable consideration will generally be given to applications from riparian owners for permits for piers, boat docks, moorings, platforms and similar structures for small boats. Particular attention will be given to the location and general design of such structures to prevent possible obstructions to navigation with respect to both the public's use of the waterway and the neighboring proprietors' access to the waterway. Obstructions can result from both the existence of the structure, particularly in conjunction with other similar facilities in the immediate vicinity, and from its inability to withstand wave action or other forces which can be expected. District engineers will inform applicants of the hazards involved and encourage safety in location, design, and operation. District engineers will encourage cooperative or group use facilities in lieu of individual proprietary use facilities.

(2) Floating structures for small recreational boats or other recreational purposes in lakes controlled by the Corps of Engineers under a resource manager are normally subject to permit authorities cited in § 322.3, of this section, when those waters are regarded as navigable waters of the United States. However, such structures will not be authorized under this regulation but will be regulated under applicable regulations of the Chief of Engineers published in 36 CFR 327.19 if the land surrounding those lakes is under complete Federal ownership. District engineers will delineate those portions of the navigable waters of the United States where this provision is applicable and post notices of this designation in the vicinity of the lake resource manager's office.

(e) *Aids to navigation.* The placing of fixed and floating aids to navigation in a navigable water of the United States is within the purview of Section 10 of the Rivers and Harbors Act of 1899. Furthermore, these aids are of particular interest to the U.S. Coast Guard because of its control of marking, lighting and standardization of such navigation aids. A Section 10 nationwide permit has been issued for such aids provided they are approved by, and installed in accordance with the requirements of the U.S. Coast Guard (33 CFR 330.5(a)(1)). Electrical service cables to such aids are not included in the nationwide permit (an individual or regional Section 10 permit will be required).

(f) *Outer continental shelf.* Artificial islands, installations, and other devices located on the seabed, to the seaward limit of the outer continental shelf, are subject to the standard permit procedures of this regulation. Where the islands, installations and other devices are to be constructed on lands which are under mineral lease from the Mineral Management Service, Department of the Interior, that agency, in cooperation with other federal agencies, fully evaluates the potential effect of the leasing program on the total environment. Accordingly, the decision whether to issue a permit on lands which are under mineral lease from the Department of the Interior will be limited to an evaluation of the impact of the proposed work on navigation and national security. The public notice will so identify the criteria.

(g) *Canals and other artificial waterways connected to navigable waters of the United States.* A canal or similar artificial waterway is subject to the regulatory authorities discussed in § 322.3, of this Part, if it constitutes a navigable water of the United States, or if it is connected to navigable waters of the United States in a manner which affects their course, location, condition, or capacity, or if at some point in its construction or operation it results in an effect on the course, location, condition, or capacity of navigable waters of the United States. In all cases the connection to navigable waters of the United States requires a permit. Where the canal itself constitutes a navigable water of the United States, evaluation of the permit application and further exercise of regulatory authority will be in accordance with the standard procedures of these regulations. For all other canals, the exercise of regulatory authority is restricted to those activities which affect the course, location, condition, or capacity of the navigable waters of the United States. The district engineer will consider, for applications for canal work, a proposed plan of the entire development and the location and description of anticipated docks, piers and other similar structures which will be placed in the canal.

(h) *Facilities at the borders of the United States.* (1) The construction, operation, maintenance, or connection of facilities at the borders of the United States are subject to Executive control and must be authorized by the President, Secretary of State, or other delegated official.

(2) Applications for permits for the construction, operation, maintenance, or connection at the borders of the United States of facilities for the transmission of electric energy between the United States and a foreign country, or for the exportation or importation of natural

gas to or from a foreign country, must be made to the Secretary of Energy. (Executive Order 10485, September 3, 1953, 16 U.S.C. 824(a)(e), 15 U.S.C. 717(b), as amended by Executive Order 12038, February 3, 1978, and 18 CFR Parts 32 and 153).

(3) Applications for the landing or operation of submarine cables must be made to the Federal Communications Commission. (Executive Order 10530, May 10, 1954, 47 U.S.C. 34 to 39, and 47 CFR 1.766).

(4) The Secretary of State is to receive applications for permits for the construction, connection, operation, or maintenance, at the borders of the United States, of pipelines, conveyor belts, and similar facilities for the exportation or importation of petroleum products, coals, minerals, or other products to or from a foreign country; facilities for the exportation or importation of water or sewage to or from a foreign country; and monorails, aerial cable cars, aerial tramways, and similar facilities for the transportation of persons and/or things, to or from a foreign country. (Executive Order 11423, August 16, 1968).

(5) A DA permit under section 10 of the Rivers and Harbors Act of 1899 is also required for all of the above facilities which affect the navigable waters of the United States, but in each case in which a permit has been issued as provided above, the district engineer, in evaluating the general public interest, may consider the basic existence and operation of the facility to have been primarily examined and permitted as provided by the Executive Orders. Furthermore, in those cases where the construction, maintenance, or operation at the above facilities involves the discharge of dredged or fill material in waters of the United States or the transportation of dredged material for the purpose of dumping it into ocean waters, appropriate DA authorizations under section 404 of the Clean Water Act or under section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, are also required. (See 33 CFR Parts 323 and 324.)

(i) *Power transmission lines.* (1) Permits under section 10 of the Rivers and Harbors Act of 1899 are required for power transmission lines crossing navigable waters of the United States unless those lines are part of a water power project subject to the regulatory authorities of the Department of Energy under the Federal Power Act of 1920. If an application is received for a permit for lines which are part of such a water power project, the applicant will be instructed to submit the application to the Department of Energy. If the lines are not part of such a water power project, the application will be processed in accordance with the procedures of these regulations.

(2) The following minimum clearances are required for aerial electric power transmission lines crossing navigable waters of the United States. These clearances are related to the clearances over the navigable channel provided by existing fixed bridges, or the clearances which would be required by the U.S. Coast Guard for new fixed bridges, in the vicinity of the proposed power line crossing. The clearances are based on the low point of the line under conditions which produce the greatest sag, taking into consideration temperature, load, wind, length or span, and type of supports as outlined in the National Electrical Safety Code.

Nominal system voltage, kV	Minimum additional clearance (feet) above clearance required for bridges
115 and below	20
138	22
161	24
230	26
350	30
500	35
700	42
750–765	45

(3) Clearances for communication lines, stream gaging cables, ferry cables, and other aerial crossings are usually required to be a minimum of ten feet above clearances required for bridges. Greater clearances will be required if the public interest so indicates.

(4) Corps of Engineer regulation ER 1110–2–4401 prescribes minimum vertical clearances for power and communication lines over Corps lake projects. In instances where both this regulation and ER 1110–2–4401 apply, the greater minimum clearance is required.

(j) *Seaplane operations.* (1) Structures in navigable waters of the United States associated with seaplane operations require DA permits, but close coordination with the Federal Aviation Administration (FAA), Department of Transportation, is required on such applications.

(2) The FAA must be notified by an applicant whenever he proposes to establish or operate a seaplane base. The FAA will study the proposal and advise the applicant, district engineer, and other interested parties as to the effects of the proposal on the use of airspace. The district engineer will, therefore, refer any objections regarding the effect of the proposal on the use of airspace to the FAA, and give due consideration to its recommendations when evaluating the general public interest.

(3) If the seaplane base would serve air carriers licensed by the Department of Transportation, the applicant must receive an airport operating certificate from the FAA. That certificate reflects a determination and conditions relating to the installation, operation, and maintenance of adequate air navigation facilities and safety equipment. Accordingly, the district engineer may, in evaluating the general public interest, consider such matters to have been primarily evaluated by the FAA.

(4) For regulations pertaining to seaplane landings at Corps of Engineers projects, see 36 CFR 327.4.

(k) *Foreign trade zones.* The Foreign Trade Zones Act (48 Stat. 998–1003, 19 U.S.C. 81a to 81u, as anended) authorizes the establishnent of foreign-trade zones in or adjacent to United States ports of entry under terms of a grant and regulations prescribed by the Foreign-Trade Zones Board. Pertinent regulations are published at Title 15 of the Code of Federal Regulations, Part 400. The Secretary of the Army is a member of the Board, and construction of a zone is under the supervision of the district engineer. Laws governing the navigable waters of the United States remain applicable to foreign-trade zones, including the general requirements of these regulations. Evaluation by a district engineer of a permit application may give recognition to the consideration by the Board of the general econonic effects of the zone on local and foreign commerce, general location of wharves and facilities, and other factors pertinent to construction, operation, and maintenance of the zone.

(l) *Shipping safety fairways and anchorage areas.* DA permits are required for structures located within shipping safety fairways and anchorage areas established by the U.S. Coast Guard.

(1) The Department of the Army will grant no permits for the erection of structures in areas designated as fairways, except that district engineers may permit temporary anchors and attendant cables or chains for floating or semisubmersible drilling rigs to be placed within a fairway provided the following conditions are met:

(i) The installation of anchors to stabilize semisubmersible drilling rigs within fairways must be temporary and shall be allowed to remain only 120 days. This period may be extended by the district engineer provided reasonable cause for such extension can

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be shown and the extension is otherwise justified.

(ii) Drilling rigs must be at least 500 feet from any fairway boundary or whatever distance necessary to insure that minimnum clearance over an anchor line within a fairway will be 125 feet.

(iii) No anchor buoys or floats or related rigging will be allowed on the surface of the water or to a depth of 125 feet from the surface, within the fairway.

(iv) Drilling rigs may not be placed closer than 2 nautical miles of any other drilling rig situated along a fairway boundary, and not closer than 3 nautical miles to any drilling rig located on the opposite side of the fairway.

(v) The permittee must notify the district engineer, Bureau of Land Management, Mineral Management Service, U.S. Coast Guard, National Oceanic and Atmospheric Administration and the U.S. Navy Hydrographic Office of the approximate dates (commencent and completion) the anchors will be in place to insure maximum notification to mariners.

(vi) Navigation aids or danger markings must be installed as required by the U.S. Coast Guard.

(2) District engineers may grant permits for the erection of structures within an area designated as an anchorage area, but the number of structures will be limited by spacing, as follows: The center of a structure to be erected shall be not less than two (2) nautical miles from the center of any existing structure. In a drilling or production complex, associated structures shall be as close together as practicable having due consideration for the safety factors involved. A complex of associated structures, when connected by walkways, shall be considered one structure for the purpose of spacing. A vessel fixed in place by moorings and used in conjunction with the associated structures of a drilling or production complex, shall be considered an attendant vessel and its extent shall include its moorings. When a drilling or production complex includes an attendant vessel and the complex extends more than five hundred (500) yards from the center or the complex, a structure to be erected shall be not closer than two (2) nautical miles from the near outer limit of the complex. An underwater completion installation in and anchorage area shall be considered a structure and shall be marked with a lighted buoy as approved by the United States Coast Guard.

PART 323—PERMITS FOR DISCHARGES OF DREDGED OR FILL MATERIAL INTO WATERS OF THE UNITED STATES

Sec.

323.1 General.
323.2 Definitions.
323.3 Discharges requiring permits.
323.4 Discharges not requiring permits.
323.5 Program transfer to states.
323.6 Special policies and procedures.

Authority: 33 U.S.C. 1344.

§ 323.1 General.

This regulation prescribes, in addition to the general policies of 33 CFR Part 320 and procedures of 33 CFR Part 325, those special policies, practices, and procedures to be followed by the Corps of Engineers in connection with the review of applications for DA permits to authorize the discharge of dredged or fill material into waters of the United States pursuant to section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344) (hereinafter referred to as section 404). (See 33 CFR 320.2(g).) Certain discharges of dredged or fill material into waters of the United States are also regulated under other authorities of the Department of the Army. These include dams and dikes in navigable waters of the United States pursuant to section 9 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401; see 33 CFR Part 321) and certain structures or work in or affecting navigable waters of the United States pursuant to section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403; see 33 CFR Part 322). A DA permit will also be required under these additional authorities if they are applicable to activities involving discharges of dredged or fill material into waters of the United States. Applicants for DA permits under this part should refer to the other cited authorities and implementing regulations for these additional permit requirements to determine whether they also are applicable to their proposed activities.

§ 323.2 Definitions.

For the purpose of this part, the following terms are defined:

(a) The term "waters of the United States" and all other terms relating to the geographic scope of jurisdiction are defined at 33 CFR Part 328.

(b) The term "lake" means a standing body of open water that occurs in a natural depression fed by one or more streams from which a stream may flow, that occurs due to the widening or natural blockage or cutoff of a river or stream, or that occurs in an isolated natural depression that is not a part of a surface river or stream. The term also includes a standing body of open water created by artificially blocking or restricting the flow of a river, stream, or tidal area. As used in this regulation, the term does not include artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water for such purposes as stock watering, irrigation, settling basins, cooling, or rice growing.

(c) The term "dredged material" means material that is excavated or dredged from waters of the United States.

(d) The term "discharge of dredged material" means any addition of dredged material into the waters of the United States. The term includes, without limitation, the addition of dredged material to a specified discharge site located in waters of the United States and the runoff or overflow from a contained land or water disposal area. Discharges of pollutants into waters of the United States resulting from the onshore subsequent processing of dredged material that is extracted for any commercial use (other than fill) are not included within this term and are subject to section 402 of the Clean Water Act even though the extraction and deposit of such material may require a permit from the Corps of Engineers. The term does not include plowing, cultivating, seeding and harvesting for the production of food, fiber, and forest products (See § 323.4 for the definition of these terms). The term does not include *de minimis*, incidental soil movement occurring during normal dredging operations.

(e) The term "fill material" means any material used for the primary purpose of replacing an aquatic area with dry land or of changing the bottom elevation of an waterbody. The term does not include any pollutant discharged into the water primarily to dispose of waste, as that activity is regulated under section 402 of the Clean Water Act.

(f) The term "discharge of fill material" means the addition of fill material into waters of the United States. The term generally includes, without limitation, the following activities: Placement of fill that is necessary for the construction of any structure in a water of the United States; the building of any structure or impoundment requiring rock, sand, dirt, or other material for its construction; site-development fills for recreational, industrial, commercial, residential, and other uses; causeways or road fills; dams and dikes; artificial islands; property protection and/or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments; beach nourishment; levees; fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants and subaqueous utility lines; and artificial reefs. The term does not include plowing, cultivating, seeding and harvesting for the production of food, fiber, and forest products (See § 323.4 for the definition of these terms).

(g) The term "individual permit" means a Department of the Army authorization that is issued following a case-by-case evaluation of a specific project involving the proposed discharge(s) in accordance with the procedures of this part and 33 CFR Part 325 and a determination that the proposed discharge is in the public interest pursuant to 33 CFR Part 320.

(h) The term "general permit" means a Department of the Army authorization that is issued on a nationwide or regional basis for a category or categories of activities when:

(1) Those activities are substantially similar in nature and cause only minimal individual and cumulative environmental impacts; or

(2) The general permit would result in avoiding unnecessary duplication of regulatory control exercised by another Federal, state, or local agency provided it has been determined that the environmental consequences of the action are individually and cumulatively minimal. (See 33 CFR 325.2(e) and 33 CFR Part 330.)

§ 323.3 Discharges requiring permits.

(a) *General.* Except as provided in § 323.4 of this Part, DA permits will be required for the discharge of dredged or fill material into waters of the United States. Certain discharges specified in 33 CFR Part 330 are permitted by that regulation ("nationwide permits"). Other discharges may be authorized by district or division engineers on a regional basis ("regional permits"). If a discharge of dredged or fill material is not exempted by § 323.4 of this Part or permitted by 33 CFR Part 330, an individual or regional section 404 permit will be required for the discharge of dredged or fill material into waters of the United States.

(b) *Activities of Federal agencies.* Discharges of dredged or fill material into waters of the United States done by or on behalf of any Federal agency, other than the Corps of Engineers (see 33 CFR Part 209.145), are subject to the authorization procedures of these regulations. Agreement for construction or engineering services performed for other agencies by the Corps of Engineers does not constitute authorization under the regulations. Division and district engineers will therefore advise Federal agencies and instrumentalities accordingly and cooperate to the fullest extent in expediting the processing of their applications.

§ 323.4 Discharges not requiring permits.

(a) *General.* Except as specified in paragraphs (b) and (c) of this section, any discharge of dredged or fill material that may result from any of the following activities is not prohibited by or otherwise subject to regulation under section 404:

(1)(i) Normal farming, silviculture and ranching activities such as plowing, seeding, cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices, as defined in paragraph (a)(1)(iii) of this section.

(ii) To fall under this exemption, the activities specified in paragraph (a)(1)(i) of this section must be part of an established (i.e., on-going) farming, silviculture, or ranching operation and must be in accordance with definitions in § 323.4(a)(1)(iii). Activities on areas lying fallow as part of a conventional rotational cycle are part of an established operation. Activities which bring an area into farming, silviculture, or ranching use are not part of an established operation. An operation ceases to be established when the area on which it was conducted has been coverted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operations. If an activity takes place outside the waters of the United States, or if it does not involve a discharge, it does not need a section 404 permit, whether or not it is part of an established farming, silviculture, or ranching operation.

(iii) (A) Cultivating means physical methods of soil treatment employed within established farming, ranching and silviculture lands on farm, ranch, or forest crops to aid and improve their growth, quality or yield.

(B) Harvesting means physical measures employed directly upon farm, forest, or ranch crops within established agricultural and silvicultural lands to bring about their removal from farm, forest, or ranch land, but does not include the construction of farm, forest, or ranch roads.

(C)(*1*) Minor Drainage means:

(*i*) The discharge of dredged or fill material incidental to connecting upland drainage facilities to waters of the United States, adequate to effect the removal of excess soil moisture from upland croplands. (Construction and maintenance of upland (dryland) facilities, such as ditching and tiling, incidential to the planting, cultivating, protecting, or harvesting of crops, involve no discharge of dredged or fill material into waters of the United States, and as such never require a section 404 permit.);

(*ii*) The discharge of dredged or fill material for the purpose of installing ditching or other such water control facilities incidental to planting, cultivating, protecting, or harvesting of rice, cranberries or other wetland crop species, where these activities and the discharge occur in waters of the United States which are in established use for such agricultural and silvicultural wetland crop production;

(*iii*) The discharge of dredged or fill material for the purpose of manipulating the water levels of, or regulating the flow or distribution of water within, existing impoundments which have been constructed in accordance with applicable requirements of CWA, and which are in established use for the production of rice, cranberries, or other wetland crop species. (The provisions of paragraphs (a)(1)(iii)(C)(*1*) (*ii*) and (*iii*) of this section apply to areas that are in established use exclusively for wetland crop production as well as areas in established use for conventional wetland/non-wetland crop rotation (e.g., the rotations of rice and soybeans) where such rotation results in the cyclical or intermittent temporary dewatering of such areas.)

(*iv*) The discharges of dredged or fill material incidental to the emergency removal of sandbars, gravel bars, or other similar blockages which are formed during flood flows or other events, where such blockages close or constrict previously existing drainageways and, if not promptly removed, would result in damage to or loss of existing crops or would impair or prevent the plowing, seeding, harvesting or cultivating of crops on land in established use for crop production. Such removal does not include enlarging or extending the dimensions of, or changing the bottom elevations of, the affected drainageway as it existed prior to the formation of the blockage. Removal must be accomplished within one year of discovery of such blockages in order to be eligible for exemption.

(*2*) Minor drainage in waters of the U.S. is limited to drainage within areas that are part of an established farming or silviculture operation. It does not include drainage associated with the immediate or gradual conversion of a wetland to a non-wetland (e.g., wetland species to upland species not typically adapted to life in saturated soil conditions), or conversion from one wetland use to another (for example, silviculture to farming). In addition,

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minor drainage does not include the construction of any canal, ditch, dike or other waterway or structure which drains or otherwise significantly modifies a stream, lake, swamp, bog or any other wetland or aquatic area constituting waters of the United States. Any discharge of dredged or fill material into the waters of the United States incidental to the construction of any such structure or waterway requires a permit.

(D) Plowing means all forms of primary tillage, including moldboard, chisel, or wide-blade plowing, discing, harrowing and similar physical means utilized on farm, forest or ranch land for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. The term does not include the redistribution of soil, rock, sand, or other surficial materials in a manner which changes any area of the waters of the United States to dry land. For example, the redistribution of surface materials by blading, grading, or other means to fill in wetland areas is not plowing. Rock crushing activities which result in the loss of natural drainage characteristics, the reduction of water storage and recharge capabilities, or the overburden of natural water filtration capacities do not constitute plowing. Plowing as described above will never involve a discharge of dredged or fill material.

(E) Seeding means the sowing of seed and placement of seedlings to produce farm, ranch, or forest crops and includes the placement of soil beds for seeds or seedlings on established farm and forest lands.

(2) Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures. Maintenance does not include any modification that changes the character, scope, or size of the original fill design. Emergency reconstruction must occur within a reasonable period of time after damage occurs in order to qualify for this exemption.

(3) Construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance (but not construction) of drainage ditches. Discharges associated with siphons, pumps, headgates, wingwalls, weirs, diversion structures, and such other facilities as are appurtenant and functionally related to irrigation ditches are included in this exemption.

(4) Construction of temporary sedimentation basins on a construction site which does not include placement of fill material into waters of the U.S. The term "construction site" refers to any site involving the erection of buildings, roads, and other discrete structures and the installation of support facilities necessary for construction and utilization of such structures. The term also includes any other land areas which involve land-disturbing excavation activities, including quarrying or other mining activities, where an increase in the runoff of sediment is controlled through the use of temporary sedimentation basins.

(5) Any activity with respect to which a state has an approved program under section 208(b)(4) of the CWA which meets the requirements of sections 208(b)(4) (B) and (C).

(6) Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained in accordance with best management practices (BMPs) to assure that flow and circulation patterns and chemical and biological characteristics of waters of the United States are not impaired, that the reach of the waters of the United States is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized. These BMPs which must be applied to satisfy this provision shall include those detailed BMPs described in the state's approved program description pursuant to the requirements of 40 CFR Part 233.22(i), and shall also include the following baseline provisions:

(i) Permanent roads (for farming or forestry activities), temporary access roads (for mining, forestry, or farm purposes) and skid trails (for logging) in waters of the U.S. shall be held to the minimum feasible number, width, and total length consistent with the purpose of specific farming, silvicultural or mining operations, and local topographic and climatic conditions;

(ii) All roads, temporary or permanent, shall be located sufficiently far from streams or other water bodies (except for portions of such roads which must cross water bodies) to minimize discharges of dredged or fill material into waters of the U.S.;

(iii) The road fill shall be bridged, culverted, or otherwise designed to prevent the restriction of expected flood flows;

(iv) The fill shall be properly stabilized and maintained during and following construction to prevent erosion;

(v) Discharges of dredged or fill material into waters of the United States to construct a road fill shall be made in a manner that minimizes the encroachment of trucks, tractors, bulldozers, or other heavy equipment within waters of the United States (including adjacent wetlands) that lie outside the lateral boundaries of the fill itself;

(vi) In designing, constructing, and maintaining roads, vegetative disturbance in the waters of the U.S. shall be kept to a minimum;

(vii) The design, construction and maintenance of the road crossing shall not disrupt the migration or other movement of those species of aquatic life inhabiting the water body;

(viii) Borrow material shall be taken from upland sources whenever feasible;

(ix) The discharge shall not take, or jeopardize the continued existence of, a threatened or endangered species as defined under the Endangered Species Act, or adversely modify or destroy the critical habitat of such species;

(x) Discharges into breeding and nesting areas for migratory waterfowl, spawning areas, and wetlands shall be avoided if practical alternatives exist;

(xi) The discharge shall not be located in the proximity of a public water supply intake;

(xii) The discharge shall not occur in areas of concentrated shellfish production;

(xiii) The discharge shall not occur in a component of the National Wild and Scenic River System;

(xiv) The discharge of material shall consist of suitable material free from toxic pollutants in toxic amounts; and

(xv) All temporary fills shall be removed in their entirety and the area restored to its original elevation.

(b) If any discharge of dredged or fill material resulting from the activities listed in paragraphs (a) (1)–(6) of this section contains any toxic pollutant listed under section 307 of the CWA such discharge shall be subject to any applicable toxic effluent standard or prohibition, and shall require a Section 404 permit.

(c) Any discharge of dredged or fill material into waters of the United States incidental to any of the activities identified in paragraphs (a) (1)–(6) of this section must have a permit if it is part of an activity whose purpose is to convert an area of the waters of the United States into a use to which it was not previously subject, where the flow or circulation of waters of the United States may be impaired or the reach of such waters reduced. Where the proposed discharge will result in significant discernible alterations to flow or circulation, the presumption is that flow or circulation may be impaired by such alteration. For example, a permit will be required for the conversion of a cypress swamp to some other use or the conversion of a wetland from silvicultural to agricultural use when there is a discharge of dredged or fill material into waters of the United States in conjunction with construction of dikes, drainage ditches or other works or structures used to effect such conversion. A conversion of a Section 404 wetland to a non-wetland is a change in use of an area of waters of the United States. A discharge which elevates the bottom of waters of the United States without converting it to dry land does not thereby reduce the reach of, but may alter the flow or circulation of, waters of the United States.

(d) Federal projects which qualify under the criteria contained in section 404(r) of the CWA are exempt from section 404 permit requirements, but may be subject to other state or Federal requirements.

§ 323.5 Program transfer to states.

Section 404(h) of the CWA allows the Administrator of the Environmental Protection Agency (EPA) to transfer administration of the section 404 permit program for discharges into certain waters of the United States to qualified states. (The program cannot be transferred for those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to the high tide line, including wetlands adjacent thereto). See 40 CFR Parts 233 and 124 for procedural regulations for transferring Section 404 programs to states. Once a state's 404 program is approved and in effect, the Corps of Engineers will suspend processing of section 404 applications in the applicable waters and will transfer pending applications to the state agency responsible for administering the program. District engineers will assist EPA and the states in any way practicable to effect transfer and will develop appropriate procedures to ensure orderly and expeditious transfer.

§ 323.6 Special policies and procedures.

(a) The Secretary of the Army has delegated to the Chief of Engineers the authority to issue or deny section 404 permits. The district engineer will review applications for permits for the discharge of dredged or fill material into waters of the United States in accordance with guidelines promulgated by the Administrator, EPA, under authority of section 404(b)(1) of the CWA. (see 40 CFR Part 230.) Subject to consideration of any economic impact on navigation and anchorage pursuant to section 404(b)(2), a permit will be denied if the discharge that would be authorized by such a permit would not comply with the 404(b)(1) guidelines. If the district engineer determines that the proposed discharge would comply with the 404(b)(1) guidelines, he will grant the permit unless issuance would be contrary to the public interest.

(b) The Corps will not issue a permit where the regional administrator of EPA has notified the district engineer and applicant in writing pursuant to 40 CFR 231.3(a)(1) that he intends to issue a public notice of a proposed determination to prohibit or withdraw the specification, or to deny, restrict or withdraw the use for specification, of any defined area as a disposal site in accordance with section 404(c) of the Clean Water Act. However the Corps will continue to complete the administrative processing of the application while the section 404(c) procedures are underway including completion of final coordination with EPA under 33 CFR Part 325.

PART 324—PERMITS FOR OCEAN DUMPING OF DREDGED MATERIAL

Sec.
324.1 General.
324.2 Definitions.
324.3 Activities requiring permits.
324.4 Special procedures.

Authority: 33 U.S.C. 1413.

§ 324.1 General.

This regulation prescribes in addition to the general policies of 33 CFR Part 320 and procedures of 33 CFR Part 325, those special policies, practices and procedures to be followed by the Corps of Engineers in connection with the review of applications for Department of the Army (DA) permits to authorize the transportation of dredged material by vessel or other vehicle for the purpose of dumping it in ocean waters at dumping sites designated under 40 CFR Part 228 pursuant to section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (33 U.S.C. 1413) (hereinafter referred to as section 103). See 33 CFR 320.2(h). Activities involving the transportation of dredged material for the purpose of dumping in the ocean waters also require DA permits under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) for the dredging in navigable waters of the United States. Applicants for DA permits under this Part should also refer to 33 CFR Part 322 to satisfy the requirements of Section 10.

§ 324.2 Definitions.

For the purpose of this regulation, the following terms are defined:

(a) The term "ocean waters" means those waters of the open seas lying seaward of the base line from which the territorial sea is measured, as provided for in the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606: TIAS 5639).

(b) The term "dredged material" means any material excavated or dredged from navigable waters of the United States.

(c) The term "transport" or "transportation" refers to the conveyance and related handling of dredged material by a vessel or other vehicle.

§ 324.3 Activities requiring permits.

(a) *General.* DA permits are required for the transportation of dredged material for the purpose of dumping it in ocean waters.

(b) *Activities of Federal agencies.* (1) The transportation of dredged material for the purpose of disposal in ocean waters done by or on behalf of any Federal agency other than the activities of the Corps of Engineers is subject to the procedures of this regulation. Agreement for construction or engineering services performed for other agencies by the Corps of Engineers does not constitute authorization under these regulations. Division and district engineers will therefore advise Federal agencies accordingly and cooperate to the fullest extent in the expeditious processing of their applications. The activities of the Corps of Engineers that involve the transportation of dredged material for disposal in ocean waters are regulated by 33 CFR 209.145.

(2) The policy provisions set out in 33 CFR 320.4(j) relating to state or local authorizations do not apply to work or structures undertaken by Federal agencies, except where compliance with non-Federal authorization is required by Federal law or Executive policy. Federal agencies are responsible for conformance with such laws and policies. (See EO 12088, October 18, 1978.) Federal agencies are not required to obtain and provide certification of compliance with effluent limitations and water quality standards from state or interstate water pollution control agencies in connection with activities involving the transport of dredged material for dumping into ocean waters beyond the territorial sea.

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§ 324.4 Special procedures.

The Secretary of the Army has delegated to the Chief of Engineers the authority to issue or deny section 103 permits. The following additional procedures shall also be applicable under this regulation.

(a) *Public notice.* For all applications for section 103 permits, the district engineer will issue a public notice which shall contain the information specified in 33 CFR 325.3.

(b) *Evaluation.* Applications for permits for the transportation of dredged material for the purpose of dumping it in ocean waters will be evaluated to determine whether the proposed dumping will unreasonably degrade or endanger human health, welfare, amenities, or the marine environment, ecological systems or economic potentialities. District engineers will apply the criteria established by the Administrator of EPA pursuant to section 102 of the Marine Protection, Research and Sanctuaries Act of 1972 in making this evaluation. (See 40 CFR Parts 220–229) Where ocean dumping is determined to be necessary, the district engineer will, to the extent feasible, specify disposal sites using the recommendations of the Administrator pursuant to section 102(c) of the Act.

(c) *EPA review.* When the Regional Administrator, EPA, in accordance with 40 CFR 225.2(b), advises the district engineer, in writing, that the proposed dumping will comply with the criteria, the district engineer will complete his evaluation of the application under this part and 33 CFR Parts 320 and 325. If, however, the Regional Administrator advises the district engineer, in writing, that the proposed dumping does not comply with the criteria, the district engineer will proceed as follows:

(1) The district engineer will determine whether there is an economically feasible alternative method or site available other than the proposed ocean disposal site. If there are other feasible alternative methods or sites available, the district engineer will evaluate them in accordance with 33 CFR Parts 320, 322, 323, and 325 and this Part, as appropriate.

(2) If the district engineer determines that there is no economically feasible alternative method or site available, and the proposed project is otherwise found to be not contrary to the public interest, he will so advise the Regional Administrator setting forth his reasons for such determination. If the Regional Administrator has not removed his objection within 15 days, the district engineer will submit a report of his determination to the Chief of Engineers for further coordination with the Administrator, EPA, and decision. The report forwarding the case will contain the analysis of whether there are other economically feasible methods or sites available to dispose of the dredged material.

(d) *Chief of Engineers review.* The Chief of Engineers shall evaluate the permit application and make a decision to deny the permit or recommend its issuance. If the decision of the Chief of Engineers is that ocean dumping at the proposed disposal site is required because of the unavailability of economically feasible alternatives, he shall so certify and request that the Secretary of the Army seek a waiver from the Administrator, EPA, of the criteria or of the critical site designation in accordance with 40 CFR 225.4.

PART 325—PROCESSING OF DEPARTMENT OF THE ARMY PERMITS

Sec.
325.1 Applications for permits.
325.2 Processing of applications.
325.3 Public notice.
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Appendix A—Permit Form and Special Conditions
Appendix B—Reserved (For Future NEPA Regulation)
Appendix C—Reserved (For Historic Properties Regulation)

Authority: 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; 33 USC 1413.

§ 325.1 Applications for permits.

(a) *General.* The processing procedures of this Part apply to any Department of the Army (DA) permit. Special procedures and additional information are contained in 33 CFR Parts 320 through 324, 327 and Part 330. This Part is arranged in the basic timing sequence used by the Corps of Engineers in processing applications for DA permits.

(b) *Pre-application consultation for major applications.* The district staff element having responsibility for administering, processing, and enforcing federal laws and regulations relating to the Corps of Engineers regulatory program shall be available to advise potential applicants of studies or other information foreseeably required for later federal action. The district engineer will establish local procedures and policies including appropriate publicity programs which will allow potential applicants to contact the district engineer or the regulatory staff element to request pre-application consultation. Upon receipt of such request, the district engineer will assure the conduct of an orderly process which may involve other staff elements and affected agencies (Federal, state, or local) and the public. This early process should be brief but thorough so that the potential applicant may begin to assess the viability of some of the more obvious potential alternatives in the application. The district engineer will endeavor, at this stage, to provide the potential applicant with all helpful information necessary in pursuing the application, including factors which the Corps must consider in its permit decision making process. Whenever the district engineer becomes aware of planning for work which may require a DA permit and which may involve the preparation of an environmental document, he shall contact the principals involved to advise them of the requirement for the permit(s) and the attendant public interest review including the development of an environmental document. Whenever a potential applicant indicates the intent to submit an application for work which may require the preparation of an environmental document, a single point of contact shall be designated within the district's regulatory staff to effectively coordinate the regulatory process, including the National Environmental Policy Act (NEPA) procedures and all attendant reviews, meetings, hearings, and other actions, including the scoping process if appropriate, leading to a decision by the district engineer. Effort devoted to this process should be commensurate with the likelihood of a permit application actually being submitted to the Corps. The regulatory staff coordinator shall maintain an open relationship with each potential applicant or his consultants so as to assure that the potential applicant is fully aware of the substance (both quantitative and qualitative) of the data required by the district engineer for use in preparing an environmental assessment or an environmental impact statement (EIS) in accordance with 33 CFR Part 230, Appendix B.

(c) *Application form.* Applicants for all individual DA permits must use the standard application form (ENG Form 4345, OMB Approval No. OMB 49–R0420). Local variations of the application form for purposes of facilitating coordination with federal, state and local agencies may be used. The appropriate form may be obtained from the district office having jurisdiction over the waters in which the activity is proposed to be located. Certain activities have been authorized by general permits and do not require submission of an application form but may require a separate notification.

(d) *Content of application.* (1) The application must include a complete description of the proposed activity including necessary drawings, sketches, or plans sufficient for public notice (detailed engineering plans and specifications are not required); the location, purpose and need for the proposed activity; scheduling of the activity; the names and addresses of adjoining property owners; the location and dimensions of adjacent structures; and a list of authorizations required by other federal, interstate, state, or local agencies for the work, including all approvals received or denials already made. See § 325.3 for information required to be in public notices. District and division engineers are not authorized to develop additional information forms but may request specific information on a case-by-case basis. (See § 325.1(e)).

(2) All activities which the applicant plans to undertake which are reasonably related to the same project and for which a DA permit would be required should be included in the same permit application. District engineers should reject, as incomplete, any permit application which fails to comply with this requirement. For example, a permit application for a marina will include dredging required for access as well as any fill associated with construction of the marina.

(3) If the activity would involve dredging in navigable waters of the United States, the application must include a description of the type, composition and quantity of the material to be dredged, the method of dredging, and the site and plans for disposal of the dredged material.

(4) If the activity would include the discharge of dredged or fill material into the waters of the United States or the transportation of dredged material for the purpose of disposing of it in ocean waters the application must include the source of the material; the purpose of the discharge, a description of the type, composition and quantity of the material; the method of transportation and disposal of the material; and the location of the disposal site. Certification under section 401 of the Clean Water Act is required for such discharges into waters of the United States.

(5) If the activity would include the construction of a filled area or pile or float-supported platform the project description must include the use of, and specific structures to be erected on, the fill or platform.

(6) If the activity would involve the construction of an impoundment structure, the applicant may be required to demonstrate that the structure complies with established state dam safety criteria or that the structure has been designed by qualified persons and, in appropriate cases, independently reviewed (and modified as the review would indicate) by similiarly qualified persons. No specific design criteria are to be prescribed nor is an independent detailed engineering review to be made by the district engineer.

(7) *Signature on application.* The application must be signed by the person who desires to undertake the proposed activity (i.e. the applicant) or by a duly authorized agent. When the applicant is represented by an agent, that information will be included in the space provided on the application or by a separate written statement. The signature of the applicant or the agent will be an affirmation that the applicant possesses or will possess the requisite property interest to undertake the activity proposed in the application, except where the lands are under the control of the Corps of Engineers, in which cases the district engineer will coordinate the transfer of the real estate and the permit action. An application may include the activity of more than one owner provided the character of the activity of each owner is similar and in the same general area and each owner submits a statement designating the same agent.

(8) If the activity would involve the construction or placement of an artificial reef, as defined in 33 CFR 322.2(g), in the navigable waters of the United States or in the waters overlying the outer continental shelf, the application must include provisions for siting, constructing, monitoring, and managing the artificial reef.

(9) *Complete application.* An application will be determined to be complete when sufficient information is received to issue a public notice (See 33 CFR 325.1(d) and 325.3(a).) The issuance of a public notice will not be delayed to obtain information necessary to evaluate an application.

(e) *Additional information.* In addition to the information indicated in paragraph (d) of this section, the applicant will be required to furnish only such additional information as the district engineer deems essential to make a public interest determination including, where applicable, a determination of compliance with the section 404(b)(1) guidelines or ocean dumping criteria. Such additional information may include environmental data and information on alternate methods and sites as may be necessary for the preparation of the required environmental documentation.

(f) *Fees.* Fees are required for permits under section 404 of the Clean Water Act, section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, and sections 9 and 10 of the Rivers and Harbors Act of 1899. A fee of $100.00 will be charged when the planned or ultimate purpose of the project is commercial or industrial in nature and is in support of operations that charge for the production, distribution or sale of goods or services. A $10.00 fee will be charged for permit applications when the proposed work is non-commercial in nature and would provide personal benefits that have no connection with a commercial enterprise. The final decision as to the basis for a fee (commercial vs. non-commercial) shall be solely the responsibility of the district engineer. No fee will be charged if the applicant withdraws the application at any time prior to issuance of the permit or if the permit is denied. Collection of the fee will be deferred until the proposed activity has been determined to be not contrary to the public interest. Multiple fees are not to be charged if more than one law is applicable. Any modification significant enough to require publication of a public notice will also require a fee. No fee will be assessed when a permit is transferred from one property owner to another. No fees will be charged for time extensions, general permits or letters of permission. Agencies or instrumentalities of federal, state or local governments will not be required to pay any fee in connection with permits.

§ 325.2 Processing of applications.

(a) *Standard procedures.* (1) When an application for a permit is received the district engineer shall immediately assign it a number for identification, acknowledge receipt thereof, and advise the applicant of the number assigned to it. He shall review the application for completeness, and if the application is incomplete, request from the applicant within 15 days of receipt of the application any additional information necessary for further processing.

(2) Within 15 days of receipt of an application the district engineer will either determine that the application is complete (see 33 CFR 325.1(d)(9) and issue a public notice as described in § 325.3 of this Part, unless specifically exempted by other provisions of this

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regulation or that it is incomplete and notify the applicant of the information necessary for a complete application. The district engineer will issue a supplemental, revised, or corrected public notice if in his view there is a change in the application data that would affect the public's review of the proposal.

(3) The district engineer will consider all comments received in response to the public notice in his subsequent actions on the permit application. Receipt of the comments will be acknowledged, if appropriate, and they will be made a part of the administrative record of the application. Comments received as form letters or petitions may be acknowledged as a group to the person or organization responsible for the form letter or petition. If comments relate to matters within the special expertise of another federal agency, the district engineer may seek the advice of that agency. If the district engineer determines, based on comments received, that he must have the views of the applicant on a particular issue to make a public interest determination, the applicant will be given the opportunity to furnish his views on such issue to the district engineer (see § 325.2(d)(5)). At the earliest practicable time other substantive comments will be furnished to the applicant for his information and any views he may wish to offer. A summary of the comments, the actual letters or portions thereof, or representative comment letters may be furnished to the applicant. The applicant may voluntarily elect to contact objectors in an attempt to resolve objections but will not be required to do so. District engineers will ensure that all parties are informed that the Corps alone is responsible for reaching a decision on the merits of any application. The district engineer may also offer Corps regulatory staff to be present at meetings between applicants and objectors, where appropriate, to provide information on the process, to mediate differences, or to gather information to aid in the decision process. The district engineer should not delay processing of the application unless the applicant requests a reasonable delay, normally not to exceed 30 days, to provide additional information or comments.

(4) The district engineer will follow Appendix B of 33 CFR Part 230 for environmental procedures and documentation required by the National Environmental Policy Act of 1969. A decision on a permit application will require either an environmental assessment or an environmental impact statement unless it is included within a categorical exclusion.

(5) The district engineer will also evaluate the application to determine the need for a public hearing pursuant to 33 CFR Part 327.

(6) After all above actions have been completed, the district engineer will determine in accordance with the record and applicable regulations whether or not the permit should be issued. He shall prepare a statement of findings (SOF) or, where an EIS has been prepared, a record of decision (ROD), on all permit decisions. The SOF or ROD shall include the district engineer's views on the probable effect of the proposed work on the public interest including conformity with the guidelines published for the discharge of dredged or fill material into waters of the United States (40 CFR Part 230) or with the criteria for dumping of dredged material in ocean waters (40 CFR Parts 220 to 229), if applicable, and the conclusions of the district engineer. The SOF or ROD shall be dated, signed, and included in the record prior to final action on the application. Where the district engineer has delegated authority to sign permits for and in his behalf, he may similarly delegate the signing of the SOF or ROD. If a district engineer makes a decision on a permit application which is contrary to state or local decisions (33 CFR 320.4(j) (2) & (4)), the district engineer will include in the decision document the significant national issues and explain how they are overriding in importance. If a permit is warranted, the district engineer will determine the special conditions, if any, and duration which should be incorporated into the permit. In accordance with the authorities specified in Section 325.8 of this Part, the district engineer will take final action or forward the application with all pertinent comments, records, and studies, including the final EIS or environmental assessment, through channels to the official authorized to make the final decision. The report forwarding the application for decision will be in a format prescribed by the Chief of Engineers. District and division engineers will notify the applicant and interested federal and state agencies that the application has been forwarded to higher headquarters. The district or division engineer may, at his option, disclose his recommendation to the news media and other interested parties, with the caution that it is only a recommendation and not a final decision. Such disclosure is encouraged in permit cases which have become controversial and have been the subject of stories in the media or have generated strong public interest. In those cases where the application is forwarded for decision in the format prescribed by the Chief of Engineers, the report will serve as the SOF or ROD. District engineers will generally combine the SOF, environmental assessment, and findings of no significant impact (FONSI), 404(b)(1) guideline analysis, and/or the criteria for dumping of dredged material in ocean waters into a single document.

(7) If the final decision is to deny the permit, the applicant will be advised in writing of the reason(s) for denial. If the final decision is to issue the permit and a standard individual permit form will be used, the issuing official will forward the permit to the applicant for signature accepting the conditions of the permit. The permit is not valid until signed by the issuing official. Letters of permission require only the signature of the issuing official. Final action on the permit application is the signature on the letter notifying the applicant of the denial of the permit or signature of the issuing official on the authorizing document.

(8) The district engineer will publish monthly a list of permits issued or denied during the previous month. The list will identify each action by public notice number, name of applicant, and brief description of activity involved. It will also note that relevant environmental documents and the SOF's or ROD's are available upon written request and, where applicable, upon the payment of administrative fees. This list will be distributed to all persons who may have an interest in any of the public notices listed.

(9) Copies of permits will be furnished to other agencies in appropriate cases as follows:

(i) If the activity involves the construction of artificial islands, installations or other devices on the outer continental shelf, to the Director, Defense Mapping Agency, Hydrographic Center, Washington, DC 20390 Attention, Code NS12, and to the Charting and Geodetic Services, N/CG222, National Ocean Service NOAA, Rockville, Maryland 20852.

(ii) If the activity involves the construction of structures to enhance fish propagation (e.g., fishing reefs) along the coasts of the United States, to the Defense Mapping Agency, Hydrographic Center and National Ocean Service as in paragraph (a)(9)(i) of this section and to the Director, Office of Marine Recreational Fisheries, National Marine Fisheries Service, Washington, DC 20235.

(iii) If the activity involves the erection of an aerial transmission line, submerged cable, or submerged pipeline across a navigable water of the United States, to the Charting and Geodetic Services N/CG222, National Ocean Service NOAA, Rockville, Maryland 20852.

(iv) If the activity is listed in paragraphs (a)(9) (i), (ii), or (iii) of this section, or involves the transportation of dredged material for the purpose of dumping it in ocean waters, to the appropriate District Commander, U.S. Coast Guard.

(b) *Procedures for particular types of permit situations.*—(1) *Section 401 Water Quality Certification.* If the district engineer determines that water quality certification for the proposed activity is necessary under the provisions of section 401 of the Clean Water Act, he shall so notify the applicant and obtain from him or the certifying agency a copy of such certification.

(i) The public notice for such activity, which will contain a statement on certification requirements (see § 325.3(a)(8)), will serve as the notification to the Administrator of the Environmental Protection Agency (EPA) pursuant to section 401(a)(2) of the Clean Water Act. If EPA determines that the proposed discharge may affect the quality of the waters of any state other than the state in which the discharge will originate, it will so notify such other state, the district engineer, and the applicant. If such notice or a request for supplemental information is not received within 30 days of issuance of the public notice, the district engineer will assume EPA has made a negative determination with respect to section 401(a)(2). If EPA determines another state's waters may be affected, such state has 60 days from receipt of EPA's notice to determine if the proposed discharge will affect the quality of its waters so as to violate any water quality requirement in such state, to notify EPA and the district engineer in writing of its objection to permit issuance, and to request a public hearing. If such occurs, the district engineer will hold a public hearing in the objecting state. Except as stated below, the hearing will be conducted in accordance with 33 CFR Part 327. The issues to be considered at the public hearing will be limited to water quality impacts. EPA will submit its evaluation and recommendations at the hearing with respect to the state's objection to permit issuance. Based upon the recommendations of the objecting state, EPA, and any additional evidence presented at the hearing, the district engineer will condition the permit, if issued, in such a manner as may be necessary to insure compliance with applicable water quality requirements. If the imposition of conditions cannot, in the district engineer's opinion, insure such compliance, he will deny the permit.

(ii) No permit will be granted until required certification has been obtained or has been waived. A waiver may be explicit, or will be deemed to occur if the certifying agency fails or refuses to act on a request for certification within sixty days after receipt of such a request unless the district engineer determines a shorter or longer period is reasonable for the state to act. In determining whether or not a waiver period has commenced or waiver has occurred, the district engineer will verify that the certifying agency has received a valid request for certification. If, however, special circumstances identified by the district engineer require that action on an application be taken within a more limited period of time, the district engineer shall determine a reasonable lesser period of time, advise the certifying agency of the need for action by a particular date, and that, if certification is not received by that date, it will be considered that the requirement for certification has been waived. Similarly, if it appears that circumstances may reasonably require a period of time longer than sixty days, the district engineer, based on information provided by the certifying agency, will determine a longer reasonable period of time, not to exceed one year, at which time a waiver will be deemed to occur.

(2) *Coastal Zone Management Consistency.* If the proposed activity is to be undertaken in a state operating under a coastal zone management program approved by the Secretary of Commerce pursuant to the Coastal Zone Management (CZM) Act (see 33 CFR 320.3(b)), the district engineer shall proceed as follows:

(i) If the applicant is a federal agency, and the application involves a federal activity in or affecting the coastal zone, the district engineer shall forward a copy of the public notice to the agency of the state responsible for reviewing the consistency of federal activities. The federal agency applicant shall be responsible for complying with the CZM Act's directive for ensuring that federal agency activities are undertaken in a manner which is consistent, to the maximum extent practicable, with approved CZM Programs. (See 15 CFR Part 930.) If the state coastal zone agency objects to the proposed federal activity on the basis of its inconsistency with the state's approved CZM Program, the district engineer shall not make a final decision on the application until the disagreeing parties have had an opportunity to utilize the procedures specified by the CZM Act for resolving such disagreements.

(ii) If the applicant is not a federal agency and the application involves an activity affecting the coastal zone, the district engineer shall obtain from the applicant a certification that his proposed activity complies with and will be conducted in a manner that is consistent with the approved state CZM Program. Upon receipt of the certification, the district engineer will forward a copy of the public notice (which will include the applicant's certification statement) to the state coastal zone agency and request its concurrence or objection. If the state agency objects to the certification or issues a decision indicating that the proposed activity requires further review, the district engineer shall not issue the permit until the state concurs with the certification statement or the Secretary of Commerce determines that the proposed activity is consistent with the purposes of the CZM Act or is necessary in the interest of national security. If the state agency fails to concur or object to a certification statement within six months of the state agency's receipt of the certification statement, state agency concurrence with the certification statement shall be conclusively presumed. District engineers will seek agreements with state CZM agencies that the agency's failure to provide comments during the public notice comment period will be considered as a concurrence with the certification or waiver of the right to concur or non-concur.

(iii) If the applicant is requesting a permit for work on Indian reservation lands which are in the coastal zone, the district engineer shall treat the application in the same manner as prescribed for a Federal applicant in paragraph (b)(2)(i) of this section. However, if the applicant is requesting a permit on non-trust Indian lands, and the state CZM agency has decided to assert jurisdiction over such lands, the district engineer shall treat the application in the same manner as prescribed for a non-Federal applicant in paragraph (b)(2)(ii) of this section.

(3) *Historic Properties.* If the proposed activity would involve any property listed or eligible for listing in the National Register of Historic Places, the district engineer will proceed in accordance with Corps National Historic Preservation Act implementing regulations.

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(4) *Activities Associated with Federal Projects.* If the proposed activity would consist of the dredging of an access channel and/or berthing facility associated with an authorized federal navigation project, the activity will be included in the planning and coordination of the construction or maintenance of the federal project to the maximum extent feasible. Separate notice, hearing, and environmental documentation will not be required for activities so included and coordinated, and the public notice issued by the district engineer for these federal and associated non-federal activities will be the notice of intent to issue permits for those included non-federal dredging activities. The decision whether to issue or deny such a permit will be consistent with the decision on the federal project unless special considerations applicable to the proposed activity are identified. (See § 322.5(c).)

(5) *Endangered Species.* Applications will be reviewed for the potential impact on threatened or endangered species pursuant to section 7 of the Endangered Species Act as amended. The district engineer will include a statement in the public notice of his current knowledge of endangered species based on his initial review of the application (see 33 CFR 325.2(a)(2)). If the district engineer determines that the proposed activity would not affect listed species or their critical habitat, he will include a statement to this effect in the public notice. If he finds the proposed activity may affect an endangered or threatened species or their critical habitat, he will initiate formal consultation procedures with the U.S. Fish and Wildlife Service or National Marine Fisheries Service. Public notices forwarded to the U.S. Fish and Wildlife Service or National Marine Fisheries Service will serve as the request for information on whether any listed or proposed to be listed endangered or threatened species may be present in the area which would be affected by the proposed activity, pursuant to section 7(c) of the Act. References, definitions, and consultation procedures are found in 50 CFR Part 402.

(c) [Reserved]

(d) *Timing of processing of applications.* The district engineer will be guided by the following time limits for the indicated steps in the evaluation process:

(1) The public notice will be issued within 15 days of receipt of all information required to be submitted by the applicant in accordance with paragraph 325.1.(d) of this Part.

(2) The comment period on the public notice should be for a reasonable period of time within which interested parties may express their views concerning the permit. The comment period should not be more than 30 days nor less than 15 days from the date of the notice. Before designating comment periods less than 30 days, the district engineer will consider: (i) Whether the proposal is routine or noncontroversial, (ii) mail time and need for comments from remote areas, (iii) comments from similar proposals, and (iv) the need for a site visit. After considering the length of the original comment period, paragraphs (a)(2) (i) through (iv) of this section, and other pertinent factors, the district engineer may extend the comment period up to an additional 30 days if warranted.

(3) District engineers will decide on all applications not later than 60 days after receipt of a complete application, unless (i) precluded as a matter of law or procedures required by law (see below), (ii) the case must be referred to higher authority (see § 325.8 of this Part), (iii) the comment period is extended, (iv) a timely submittal of information or comments is not received from the applicant, (v) the processing is suspended at the request of the applicant, or (vi) information needed by the district engineer for a decision on the application cannot reasonably be obtained within the 60-day period. Once the cause for preventing the decision from being made within the normal 60-day period has been satisfied or eliminated, the 60-day clock will start running again from where it was suspended. For example, if the comment period is extended by 30 days, the district engineer will, absent other restraints, decide on the application within 90 days of receipt of a complete application. Certain laws (e.g., the Clean Water Act, the CZM Act, the National Environmental Policy Act, the National Historic Preservation Act, the Preservation of Historical and Archeological Data Act, the Endangered Species Act, the Wild and Scenic Rivers Act, and the Marine Protection, Research and Sanctuaries Act) require procedures such as state or other federal agency certifications, public hearings, environmental impact statements, consultation, special studies, and testing which may prevent district engineers from being able to decide certain applications within 60 days.

(4) Once the district engineer has sufficient information to make his public interest determination, he should decide the permit application even though other agencies which may have regulatory jurisdiction have not yet granted their authorizations, except where such authorizations are, by federal law, a prerequisite to making a decision on the DA permit application. Permits granted prior to other (non-prerequisite) authorizations by other agencies should, where appropriate, be conditioned in such manner as to give those other authorities an opportunity to undertake their review without the applicant biasing such review by making substantial resource commitments on the basis of the DA permit. In unusual cases the district engineer may decide that due to the nature or scope of a specific proposal, it would be prudent to defer taking final action until another agency has acted on its authorization. In such cases, he may advise the other agency of his position on the DA permit while deferring his final decision.

(5) The applicant will be given a reasonable time, not to exceed 30 days, to respond to requests of the district engineer. The district engineer may make such requests by certified letter and clearly inform the applicant that if he does not respond with the requested information or a justification why additional time is necessary, then his application will be considered withdrawn or a final decision will be made, whichever is appropriate. If additional time is requested, the district engineer will either grant the time, make a final decision, or consider the application as withdrawn.

(6) The time requirements in these regulations are in terms of calendar days rather than in terms of working days.

(e) *Alternative procedures.* Division and district engineers are authorized to use alternative procedures as follows:

(1) *Letters of permission.* Letters of permission are a type of permit issued through an abbreviated processing procedure which includes coordination with Federal and state fish and wildlife agencies, as required by the Fish and Wildlife Coordination Act, and a public interest evaluation, but without the publishing of an individual public notice. The letter of permission will not be used to authorize the transportation of dredged material for the purpose of dumping it in ocean waters. Letters of permission may be used:

(i) In those cases subject to section 10 of the Rivers and Harbors Act of 1899 when, in the opinion of the district engineer, the proposed work would be minor, would not have significant individual or cumulative impacts on environmental values, and should encounter no appreciable opposition.

(ii) In those cases subject to section 404 of the Clean Water Act after:

(A) The district engineer, through consultation with Federal and state fish and wildlife agencies, the Regional

Administrator, Environmental Protection Agency, the state water quality certifying agency, and, if appropriate, the state Coastal Zone Management Agency, develops a list of categories of activities proposed for authorization under LOP procedures;

(B) The district engineer issues a public notice advertising the proposed list and the LOP procedures, requesting comments and offering an opportunity for public hearing; and

(C) A 401 certification has been issued or waived and, if appropriate, CZM consistency concurrence obtained or presumed either on a generic or individual basis.

(2) *Regional permits.* Regional permits are a type of general permit as defined in 33 CFR 322.2(f) and 33 CFR 323.2(n). They may be issued by a division or district engineer after compliance with the other procedures of this regulation. After a regional permit has been issued, individual activities falling within those categories that are authorized by such regional permits do not have to be further authorized by the procedures of this regulation. The issuing authority will determine and add appropriate conditions to protect the public interest. When the issuing authority determines on a case-by-case basis that the concerns for the aquatic environment so indicate, he may exercise discretionary authority to override the regional permit and require an individual application and review. A regional permit may be revoked by the issuing authority if it is determined that it is contrary to the public interest provided the procedures of § 325.7 of this Part are followed. Following revocation, applications for future activities in areas covered by the regional permit shall be processed as applications for individual permits. No regional permit shall be issued for a period of more than five years.

(3) *Joint procedures.* Division and district engineers are authorized and encouraged to develop joint procedures with states and other Federal agencies with ongoing permit programs for activities also regulated by the Department of the Army. Such procedures may be substituted for the procedures in paragraphs (a)(1) through (a)(5) of this section provided that the substantive requirements of those sections are maintained. Division and district engineers are also encouraged to develop management techniques such as joint agency review meetings to expedite the decision-making process. However, in doing so, the applicant's rights to a full public interest review and independent decision by the district or division engineer must be strictly observed.

(4) *Emergency procedures.* Division engineers are authorized to approve special processing procedures in emergency situations. An "emergency" is a situation which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures. In emergency situations, the district engineer will explain the circumstances and recommend special procedures to the division engineer who will instruct the district engineer as to further processing of the application. Even in an emergency situation, reasonable efforts will be made to receive comments from interested Federal, state, and local agencies and the affected public. Also, notice of any special procedures authorized and their rationale is to be appropriately published as soon as practicable.

§ 325.3 Public notice.

(a) *General.* The public notice is the primary method of advising all interested parties of the proposed activity for which a permit is sought and of soliciting comments and information necessary to evaluate the probable impact on the public interest. The notice must, therefore, include sufficient information to give a clear understanding of the nature and magnitude of the activity to generate meaningful comment. The notice should include the following items of information:

(1) Applicable statutory authority or authorities;

(2) The name and address of the applicant;

(3) The name or title, address and telephone number of the Corps employee from whom additional information concerning the application may be obtained;

(4) The location of the proposed activity;

(5) A brief description of the proposed activity, its purpose and intended use, so as to provide sufficient information concerning the nature of the activity to generate meaningful comments, including a description of the type of structures, if any, to be erected on fills or pile or float-supported platforms, and a description of the type, composition, and quantity of materials to be discharged or disposed of in the ocean;

(6) A plan and elevation drawing showing the general and specific site location and character of all proposed activities, including the size relationship of the proposed structures to the size of the impacted waterway and depth of water in the area;

(7) If the proposed activity would occur in the territorial seas or ocean waters, a description of the activity's relationship to the baseline from which the territorial sea is measured;

(8) A list of other government authorizations obtained or requested by the applicant, including required certifications relative to water quality, coastal zone management, or marine sanctuaries;

(9) If appropriate, a statement that the activity is a categorical exclusion for purposes of NEPA (see paragraph 7 of Appendix B to 33 CFR Part 230);

(10) A statement of the district engineer's current knowledge on historic properties;

(11) A statement of the district engineer's current knowledge on endangered species (see § 325.2(b)(5));

(12) A statement(s) on evaluation factors (see § 325.3(c));

(13) Any other available information which may assist interested parties in evaluating the likely impact of the proposed activity, if any, on factors affecting the public interest;

(14) The comment period based on § 325.2(d)(2);

(15) A statement that any person may request, in writing, within the comment period specified in the notice, that a public hearing be held to consider the application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing;

(16) For non-federal applications in states with an approved CZM Plan, a statement on compliance with the approved Plan; and

(17) In addition, for section 103 (ocean dumping) activities:

(i) The specific location of the proposed disposal site and its physical boundaries;

(ii) A statement as to whether the proposed disposal site has been designated for use by the Administrator, EPA, pursuant to section 102(c) of the Act;

(iii) If the proposed disposal site has not been designated by the Administrator, EPA, a description of the characteristics of the proposed disposal site and an explanation as to why no previously designated disposal site is feasible;

(iv) A brief description of known dredged material discharges at the proposed disposal site;

(v) Existence and documented effects of other authorized disposals that have been made in the disposal area (e.g.,

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heavy metal background reading and organic carbon content);

(vi) An estimate of the length of time during which disposal would continue at the proposed site; and

(vii) Information on the characteristics and composition of the dredged material.

(b) *Public notice for general permits.* District engineers will publish a public notice for all proposed regional general permits and for significant modifications to, or reissuance of, existing regional permits within their area of jurisdiction. Public notices for statewide regional permits may be issued jointly by the affected Corps districts. The notice will include all applicable information necessary to provide a clear understanding of the proposal. In addition, the notice will state the availability of information at the district office which reveals the Corps' provisional determination that the proposed activities comply with the requirements for issuance of general permits. District engineers will publish a public notice for nationwide permits in accordance with 33 CFR 330.4.

(c) *Evaluation factors.* A paragraph describing the various evaluation factors on which decisions are based shall be included in every public notice.

(1) Except as provided in paragraph (c)(3) of this section, the following will be included:

> "The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people."

(2) If the activity would involve the discharge of dredged or fill material into the waters of the United States or the transportation of dredged material for the purpose of disposing of it in ocean waters, the public notice shall also indicate that the evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, EPA, (40 CFR Part 230) or of the criteria established under authority of section 102(a) of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (40 CFR Parts 220 to 229), as appropriate. (See 33 CFR Parts 323 and 324).

(3) In cases involving construction of artificial islands, installations and other devices on outer continental shelf lands which are under mineral lease from the Department of the Interior, the notice will contain the following statement: "The decision as to whether a permit will be issued will be based on an evaluation of the impact of the proposed work on navigation and national security."

(d) *Distribution of public notices.* (1) Public notices will be distributed for posting in post offices or other appropriate public places in the vicinity of the site of the proposed work and will be sent to the applicant, to appropriate city and county officials, to adjoining property owners, to appropriate state agencies, to appropriate Indian Tribes or tribal representatives, to concerned Federal agencies, to local, regional and national shipping and other concerned business and conservation organizations, to appropriate River Basin Commissions, to appropriate state and areawide clearing houses as prescribed by OMB Circular A-95, to local news media and to any other interested party. Copies of public notices will be sent to all parties who have specifically requested copies of public notices, to the U.S. Senators and Representatives for the area where the work is to be performed, the field representative of the Secretary of the Interior, the Regional Director of the Fish and Wildlife Service, the Regional Director of the National Park Service, the Regional Administrator of the Environmental Protection Agency (EPA), the Regional Director of the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration (NOAA), the head of the state agency responsible for fish and wildlife resources, the State Historic Preservation Officer, and the District Commander, U.S. Coast Guard.

(2) In addition to the general distribution of public notices cited above, notices will be sent to other addressees in appropriate cases as follows:

(i) If the activity would involve structures or dredging along the shores of the seas or Great Lakes, to the Coastal Engineering Research Center, Washington, DC 20016.

(ii) If the activity would involve construction of fixed structures or artificial islands on the outer continental shelf or in the territorial seas, to the Assistant Secretary of Defense (Manpower, Installations, and Logistics (ASD(MI&L)), Washington, DC 20310; the Director, Defense Mapping Agency (Hydrographic Center) Washington, DC 20390, Attention, Code NS12; and the Charting and Geodetic Services, N/CG222, National Ocean Service NOAA, Rockville, Maryland 20852, and to affected military installations and activities.

(iii) If the activity involves the construction of structures to enhance fish propagation (e.g., fishing reefs) along the coasts of the United States, to the Director, Office of Marine Recreational Fisheries, National Marine Fisheries Service, Washington, DC 20235.

(iv) If the activity involves the construction of structures which may affect aircraft operations or for purposes associated with seaplane operations, to the Regional Director of the Federal Aviation Administration.

(v) If the activity would be in connection with a foreign-trade zone, to the Executive Secretary, Foreign-Trade Zones Board, Department of Commerce, Washington, DC 20230 and to the appropriate District Director of Customs as Resident Representative, Foreign-Trade Zones Board.

(3) It is presumed that all interested parties and agencies will wish to respond to public notices; therefore, a lack of response will be interpreted as meaning that there is no objection to the proposed project. A copy of the public notice with the list of the addresses to whom the notice was sent will be included in the record. If a question develops with respect to an activity for which another agency has responsibility and that other agency has not responded to the public notice, the district engineer may request its comments. Whenever a response to a public notice has been received from a member of Congress, either in behalf of a constitutent or himself, the district engineer will inform the member of Congress of the final decision.

(4) District engineers will update public notice mailing lists at least once every two years.

§ 325.4. Conditioning of permits.

(a) District engineers will add special conditions to Department of the Army permits when such conditions are necessary to satisfy legal requirements or to otherwise satisfy the public interest requirement. Permit conditions will be directly related to the impacts of the proposal, appropriate to the scope and degree of those impacts, and reasonably enforceable.

(1) Legal requirements which may be satisfied by means of Corps permit conditions include compliance with the 404(b)(1) guidelines, the EPA ocean dumping criteria, the Endangered Species Act, and requirements imposed by conditions on state section 401 water quality certifications.

(2) Where appropriate, the district engineer may take into account the existence of controls imposed under other federal, state, or local programs which would achieve the objective of the desired condition, or the existence of an enforceable agreement between the applicant and another party concerned with the resource in question, in determining whether a proposal complies with the 404(b)(1) guidelines, ocean dumping criteria, and other applicable statutes, and is not contrary to the public interest. In such cases, the Department of the Army permit will be conditioned to state that material changes in, or a failure to implement and enforce such program or agreement, will be grounds for modifying, suspending, or revoking the permit.

(3) Such conditions may be accomplished on-site, or may be accomplished off-site for mitigation of significant losses which are specifically identifiable, reasonably likely to occur, and of importance to the human or aquatic environment.

(b) District engineers are authorized to add special conditions, exclusive of paragraph (a) of this section, at the applicant's request or to clarify the permit application.

(c) If the district engineer determines that special conditions are necessary to insure the proposal will not be contrary to the public interest, but those conditions would not be reasonably implementable or enforceable, he will deny the permit.

(d) *Bonds.* If the district engineer has reason to consider that the permittee might be prevented from completing work which is necessary to protect the public interest, he may require the permittee to post a bond of sufficient amount to indemnify the government against any loss as a result of corrective action it might take.

§ 325.5 Forms of permits.

(a) *General discussion.* (1) DA permits under this regulation will be in the form of individual permits or general permits. The basic format shall be ENG Form 1721, DA Permit (Appendix A).

(2) The general conditions included in ENG Form 1721 are normally applicable to all permits; however, some conditions may not apply to certain permits and may be deleted by the issuing officer. Special conditions applicable to the specific activity will be included in the permit as necessary to protect the public interest in accordance with Section 325.4 of this Part.

(b) *Individual permits*—(1) *Standard permits.* A standard permit is one which has been processed through the public interest review procedures, including public notice and receipt of comments, described throughout this Part. The standard individual permit shall be issued using ENG Form 1721.

(2) *Letters of permission.* A letter of permission will be issued where procedures of paragraph 325.2(e)(1) have been followed. It will be in letter form and will identify the permittee, the authorized work and location of the work, the statutory authority, any limitations on the work, a construction time limit and a requirement for a report of completed work. A copy of the relevant general conditions from ENG Form 1721 will be attached and will be incorporated by reference into the letter of permission.

(c) *General permits*—(1) *Regional permits.* Regional permits are a type of general permit. They may be issued by a division or district engineer after compliance with the other procedures of this regulation. If the public interest so requires, the issuing authority may condition the regional permit to require a case-by-case reporting and acknowledgment system. However, no separate applications or other authorization documents will be required.

(2) *Nationwide permits.* Nationwide permits are a type of general permit and represent DA authorizations that have been issued by the regulation (33 CFR Part 330) for certain specified activities nationwide. If certain conditions are met, the specified activities can take place without the need for an individual or regional permit.

(3) *Programmatic permits.* Programmatic permits are a type of general permit founded on an existing state, local or other Federal agency program and designed to avoid duplication with that program.

(d) *Section 9 permits.* Permits for structures in interstate navigable waters of the United States under section 9 of the Rivers and Harbors Act of 1899 will be drafted at DA level.

§ 325.6 Duration of permits.

(a) *General.* DA permits may authorize both the work and the resulting use. Permits continue in effect until they automatically expire or are modified, suspended, or revoked.

(b) *Structures.* Permits for the existence of a structure or other activity of a permanent nature are usually for an indefinite duration with no expiration date cited. However, where a temporary structure is authorized, or where restoration of a waterway is contemplated, the permit will be of limited duration with a definite expiration date.

(c) *Works.* Permits for construction work, discharge of dredged or fill material, or other activity and any construction period for a structure with a permit of indefinite duration under paragraph (b) of this section will specify time limits for completing the work or activity. The permit may also specify a date by which the work must be started, normally within one year from the date of issuance. The date will be established by the issuing official and will provide reasonable times based on the scope and nature of the work involved. Permits issued for the transport of dredged material for the purpose of disposing of it in ocean waters will specify a completion date for the disposal not to exceed three years from the date of permit issuance.

(d) *Extensions of time.* An authorization or construction period will automatically expire if the permittee fails to request and receive an extension of time. Extensions of time may be granted by the district engineer. The permittee must request the extension and explain the basis of the request, which will be granted unless the district engineer determines that an extension would be contrary to the public interest. Requests for extensions will be processed in accordance with the regular procedures of § 325.2 of this Part, including issuance of a public notice, except that such processing is not required where the district engineer determines that there have been no significant changes in the attendant circumstances since the authorization was issued.

(e) *Maintenance dredging.* If the authorized work includes periodic maintenance dredging, an expiration date for the authorization of that maintenance dredging will be included in the permit. The expiration date, which in no event is to exceed ten years from the date of issuance of the permit, will be established by the issuing official after evaluation of the proposed method of dredging and disposal of the dredged material in accordance with the requirements of 33 CFR Parts 320 to 325. In such cases, the district engineer shall require notification of the maintenance dredging prior to actual performance to insure continued compliance with the requirements of this regulation and 33 CFR Parts 320 to 324. If the permittee desires to continue maintenance

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dredging beyond the expiration date, he must request a new permit. The permittee should be advised to apply for the new permit six months prior to the time he wishes to do the maintenance work.

§ 325.7 Modification, suspension, or revocation of permits.

(a) *General.* The district engineer may reevaluate the circumstances and conditions of any permit, including regional permits, either on his own motion, at the request of the permittee, or a third party, or as the result of periodic progress inspections, and initiate action to modify, suspend, or revoke a permit as may be made necessary by considerations of the public interest. In the case of regional permits, this reevaluation may cover individual activities, categories of activities, or geographic areas. Among the factors to be considered are the extent of the permittee's compliance with the terms and conditions of the permit; whether or not circumstances relating to the authorized activity have changed since the permit was issued or extended, and the continuing adequacy of or need for the permit conditions; any significant objections to the authorized activity which were not earlier considered; revisions to applicable statutory and/or regulatory authorities; and the extent to which modification, suspension, or other action would adversely affect plans, investments and actions the permittee has reasonably made or taken in reliance on the permit. Significant increases in scope of a permitted activity will be processed as new applications for permits in accordance with § 325.2 of this Part, and not as modifications under this section.

(b) *Modification.* Upon request by the permittee or, as a result of reevaluation of the circumstances and conditions of a permit, the district engineer may determine that the public interest requires a modification of the terms or conditions of the permit. In such cases, the district engineer will hold informal consultations with the permittee to ascertain whether the terms and conditions can be modified by mutual agreement. If a mutual agreement is reached on modification of the terms and conditions of the permit, the district engineer will give the permittee written notice of the modification, which will then become effective on such date as the district engineer may establish. In the event a mutual agreement cannot be reached by the district engineer and the permittee, the district engineer will proceed in accordance with paragraph (c) of this section if immediate suspension is warranted. In cases where immediate suspension is not warranted but the district engineer determines that the permit should be modified, he will notify the permittee of the proposed modification and reasons therefor, and that he may request a meeting with the district engineer and/or a public hearing. The modification will become effective on the date set by the district engineer which shall be at least ten days after receipt of the notice by the permittee unless a hearing or meeting is requested within that period. If the permittee fails or refuses to comply with the modification, the district engineer will proceed in accordance with 33 CFR Part 326. The district engineer shall consult with resource agencies before modifying any permit terms or conditions, that would result in greater impacts, for a project about which that agency expressed a significant interest in the term, condition, or feature being modified prior to permit issuance.

(c) *Suspension.* The district engineer may suspend a permit after preparing a written determination and finding that immediate suspension would be in the public interest. The district engineer will notify the permittee in writing by the most expeditious means available that the permit has been suspended with the reasons therefor, and order the permittee to stop those activities previously authorized by the suspended permit. The permittee will also be advised that following this suspension a decision will be made to either reinstate, modify, or revoke the permit, and that he may within 10 days of receipt of notice of the suspension, request a meeting with the district engineer and/or a public hearing to present information in this matter. If a hearing is requested, the procedures prescribed in 33 CFR Part 327 will be followed. After the completion of the meeting or hearing (or within a reasonable period of time after issuance of the notice to the permittee that the permit has been suspended if no hearing or meeting is requested), the district engineer will take action to reinstate, modify, or revoke the permit.

(d) *Revocation.* Following completion of the suspension procedures in paragraph (c) of this section, if revocation of the permit is found to be in the public interest, the authority who made the decision on the original permit may revoke it. The permittee will be advised in writing of the final decision.

(e) *Regional permits.* The issuing official may, by following the procedures of this section, revoke regional permits for individual activities, categories of activities, or geographic areas. Where groups of permittees are involved, such as for categories of activities or geographic areas, the informal discussions provided in paragraph (b) of this section may be waived and any written notification nay be made through the general public notice procedures of this regulation. If a regional permit is revoked, any permittee may then apply for an individual permit which shall be processed in accordance with these regulations.

§ 325.8 Authority to issue or deny permits.

(a) *General.* Except as otherwise provided in this regulation, the Secretary of the Army, subject to such conditions as he or his authorized representative may from time to time impose, has authorized the Chief of Engineers and his authorized representatives to issue or deny permits for dams or dikes in intrastate waters of the United States pursuant to section 9 of the Rivers and Harbors Act of 1899; for construction or other work in or affecting navigable waters of the United States pursuant to section 10 of the Rivers and Harbors Act of 1899; for the discharge of dredged or fill material into waters of the United States pursuant to section 404 of the Clean Water Act; or for the transportation of dredged material for the purpose of disposing of it into ocean waters pursuant to section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended. The authority to issue or deny permits in interstate navigable waters of the United States pursuant to section 9 of the Rivers and Harbors Act of March 3, 1899 has not been delegated to the Chief of Engineers or his authorized representatives.

(b) *District engineer's authority.* District engineers are authorized to issue or deny permits in accordance with these regulations pursuant to sections 9 and 10 of the Rivers and Harbors Act of 1899; section 404 of the Clean Water Act; and section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, in all cases not required to be referred to higher authority (see below). It is essential to the legality of a permit that it contain the name of the district engineer as the issuing officer. However, the permit need not be signed by the district engineer in person but may be signed for and in behalf of him by whomever he designates. In cases where permits are denied for reasons other than navigation or failure to obtain required local, state, or other federal approvals or certifications, the Statement of Findings must conclusively justify a denial decision. District engineers are authorized to deny permits without issuing a public notice or taking other procedural steps where required local, state, or other federal permits for the proposed activity have been denied or where he determines that the activity will clearly interfere with navigation except in all cases required to be referred to higher authority (see below). District engineers are also authorized to add, modify, or delete special conditions in permits in accordance with § 325.4 of this Part, except for those conditions which may have been imposed by higher authority, and to modify, suspend and revoke permits according to the procedures of § 325.7 of this Part. District engineers will refer the following applications to the division engineer for resolution:

(1) When a referral is required by a written agreement between the head of a Federal agency and the Secretary of the Army;

(2) When the recommended decision is contrary to the written position of the Governor of the state in which the work would be performed;

(3) When there is substantial doubt as to authority, law, regulations, or policies applicable to the proposed activity;

(4) When higher authority requests the application be forwarded for decision; or

(5) When the district engineer is precluded by law or procedures required by law from taking final action on the application (e.g. section 9 of the Rivers and Harbors Act of 1899, or territorial sea baseline changes).

(c) *Division engineer's authority.* Division engineers will review and evaluate all permit applications referred by district engineers. Division engineers may authorize the issuance or denial of permits pursuant to section 10 of the Rivers and Harbors Act of 1899; section 404 of the Clean Water Act; and section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended; and the inclusion of conditions in accordance with § 325.4 of this Part in all cases not required to be referred to the Chief of Engineers. Division engineers will refer the following applications to the Chief of Engineers for resolution:

(1) When a referral is required by a written agreement between the head of a Federal agency and the Secretary of the Army;

(2) When there is substantial doubt as to authority, law, regulations, or policies applicable to the proposed activity;

(3) When higher authority requests the application be forwarded for decision; or

(4) When the division engineer is precluded by law or procedures required by law from taking final action on the application.

§ 325.9 Authority to determine jurisdiction.

District engineers are authorized to determine the area defined by the terms "navigable waters of the United States" and "waters of the United States" except:

(a) When a determination of navigability is made pursuant to 33 CFR 329.14 (division engineers have this authority); or

(b) When EPA makes a section 404 jurisdiction determination under its authority.

§ 325.10 Publicity.

The district engineer will establish and maintain a program to assure that potential applicants for permits are informed of the requirements of this regulation and of the steps required to obtain permits for activities in waters of the United States or ocean waters. Whenever the district engineer becomes aware of plans being developed by either private or public entities which might require permits for implementation, he should advise the potential applicant in writing of the statutory requirements and the provisions of this regulation. Whenever the district engineer is aware of changes in Corps of Engineers regulatory jurisdiction, he will issue appropriate public notices.

Appendix A—Permit Form and Special Conditions

A. Permit Form

Department of the Army Permit

Permittee ____________________
Permit No. ____________________
Issuing Office ____________________

Note.—The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: (Describe the permitted activity and its intended use with references to any attached plans or drawings that are considered to be a part of the project description. Include a description of the types and quantities of dredged or fill materials to be discharged in jurisdictional waters.)

Project Location: (Where appropriate, provide the names of and the locations on the waters where the permitted activity and any off-site disposals will take place. Also, using name, distance, and direction, locate the permitted activity in reference to a nearby landmark such as a town or city.)

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on __________. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.

2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions: (Add special conditions as required in this space with reference to a continuation sheet if necessary.)

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

( ) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

( ) Section 404 of the Clean Water Act (33 U.S.C. 1344).

( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

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d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

(Permittee)

(Date)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

(District Engineer)

(Date)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(Transferee)

(Date)

B. Special Conditions. No special conditions will be preprinted on the permit form. The following and other special conditions should be added, as appropriate, in the space provided after the general conditions or on a referenced continuation sheet:

1. Your use of the permitted activity must not interfere with the public's right to free navigation on all navigable waters of the United States.

2. You must have a copy of this permit available on the vessel used for the authorized transportation and disposal of dredged material.

3. You must advise this office in writing, at least two weeks before you start maintenance dredging activities under the authority of this permit.

4. You must install and maintain, at your expense, any safety lights and signals prescribed by the United States Coast Guard (USCG), through regulations or otherwise, on your authorized facilities. The USCG may be reached at the following address and telephone number:

5. The condition below will be used when a Corps permit authorizes an artificial reef, an aerial transmission line, a submerged cable or pipeline, or a structure on the outer continental shelf.

National Ocean Service (NOS) has been notified of this authorization. You must notify NOS and this office in writing, at least two weeks before you begin work and upon completion of the activity authorized by this permit. Your notification of completion must include a drawing which certifies the location and configuration of the completed activity (a certified permit drawing may be used). Notifications to NOS will be sent to the following address: The Director, National Ocean Service (N/CG 222), Rockville, Maryland 20852.

6. The following condition should be used for every permit where legal recordation of the permit would be reasonably practicable and recordation could put a subsequent purchaser or owner of property on notice of permit conditions.

You must take the actions required to record this permit with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property.

Appendix B—[Reserved] (For Future NEPA Regulation)

Appendix C—[Reserved] (For Historic Properties Regulation)

PART 326—ENFORCEMENT

Sec.
326.1 Purpose.
326.2 Policy.
326.3 Unauthorized activities.
326.4 Supervision of authorized activities.
326.5 Legal action.

Authority: 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; 33 U.S.C. 1413.

§ 326.1 Purpose.

This Part prescribes enforcement policies (§ 326.2) and procedures applicable to activities performed without required Department of the Army permits (§ 326.3) and to activities not in compliance with the terms and conditions of issued Department of the Army permits (§ 326.4). Procedures for initiating legal actions are prescribed in § 326.5. Nothing contained in this Part shall establish a non-discretionary duty on the part of district engineers nor shall deviation from these precedures give rise to a private right of action against a district engineer.

§ 326.2 Policy.

Enforcement, as part of the overall regulatory program of the Corps, is based on a policy of regulating the waters of the United States by discouraging activities that have not been properly authorized and by requiring corrective measures, where appropriate, to ensure those waters are not misused and to maintain the integrity of the program. There are several methods discussed in the remainder of this part which can be used either singly or in combination to implement this policy, while making the most effective use of the enforcement resources available. As EPA has independent enforcement authority under the Clean Water Act for unauthorized discharges, the district engineer should normally coordinate with EPA to determine the most effective and efficient manner by which resolution of a section 404 violation can be achieved.

§ 326.3 Unauthorized activities.

(a) *Surveillance.* To detect unauthorized activities requiring permits, district engineers should make the best use of all available resources.

Corps employees; members of the public; and representatives of state, local, and other Federal agencies should be encouraged to report suspected violations. Additionally, district engineers should consider developing joint surveillance procedures with Federal, state, or local agencies having similar regulatory responsibilities, special expertise, or interest.

(b) *Initial investigation.* District engineers should take steps to investigate suspected violations in a timely manner. The scheduling of investigations will reflect the nature and location of the suspected violations, the anticipated impacts, and the most effective use of inspection resources available to the district engineer. These investigations should confirm whether a violation exists, and if so, will identify the extent of the violation and the parties responsible.

(c) *Formal notifications to parties responsible for violations.* Once the district engineer has determined that a violation exists, he should take appropriate steps to notify the responsible parties.

(1) If the violation involves a project that is not complete, the district engineer's notification should be in the form of a cease and desist order prohibiting any further work pending resolution of the violation in accordance with the procedures contained in this part. See paragraph (c)(4) of this section for exception to this procedure.

(2) If the violation involves a completed project, a cease and desist order should not be necessary. However, the district engineer should still notify the responsible parties of the violation.

(3) All notifications, pursuant to paragraphs (c) (1) and (2) of this section, should identify the relevant statutory authorities, indicate potential enforcement consequences, and direct the responsible parties to submit any additional information that the district engineer may need at that time to determine what course of action he should pursue in resolving the violation; further information may be requested, as needed, in the future.

(4) In situations which would, if a violation were not involved, qualify for emergency procedures pursuant to 33 CFR Part 325.2(e)(4), the district engineer may decide it would not be appropriate to direct that the unauthorized work be stopped. Therefore, in such situations, the district engineer may, at his discretion, allow the work to continue, subject to appropriate limitations and conditions as he may prescribe, while the violation is being resolved in accordance with the procedures contained in this part.

(5) When an unauthorized activity requiring a permit has been undertaken by American Indians (including Alaskan natives, Eskimos, and Aleuts, but not including Native Hawaiians) on reservation lands or in pursuit of specific treaty rights, the district engineer should use appropriate means to coordinate proposed directives and orders with the Assistant Chief Counsel for Indian Affairs (DAEN-CCI).

(6) When an unauthorized activity requiring a permit has been undertaken by an official acting on behalf of a foreign government, the district engineer should use appropriate means to coordinate proposed directives and orders with the Office, Chief of Engineers, ATTN: DAEN-CCK.

(d) *Initial corrective measures.* (1) The district engineer should, in appropriate cases, depending upon the nature of the impacts associated with the unauthorized, completed work, solicit the views of the Environmental Protection Agency; the U.S. Fish and Wildlife Service; the National Marine Fisheries Service, and other Federal, state, and local agencies to facilitate his decision on what initial corrective measures are required. If the district engineer determines as a result of his investigation, coordination, and preliminary evaluation that initial corrective measures are required, he should issue an appropriate order to the parties responsible for the violation. In determining what initial corrective measures are required, the district engineer should consider whether serious jeopardy to life, property, or important public resources (see 33 CFR Part 320.4) may be reasonably anticipated to occur during the period required for the ultimate resolution of the violation. In his order, the district engineer will specify the initial corrective measures required and the time limits for completing this work. In unusual cases where initial corrective measures substantially eliminate all current and future detrimental impacts resulting from the unauthorized work, further enforcement actions should normally be unnecessary. For all other cases, the district engineer's order should normally specify that compliance with the order will not foreclose the Government's options to initiate appropriate legal action or to later require the submission of a permit application.

(2) An order requiring initial corrective measures that resolve the violation may also be issued by the district engineer in situations where the acceptance or processing of an after-the-fact permit application is prohibited or considered not appropriate pursuant to § 326.3(e)(1) (iii)-(iv) below. However, such orders will be issued only when the district engineer has reached an independent determination that such measures are necessary and appropriate.

(3) It will not be necessary to issue a Corps permit in connection with initial corrective measures undertaken at the direction of the district engineer.

(e) *After-the-fact permit applications.* (1) Following the completion of any required initial corrective measures, the district engineer will accept an after-the-fact permit application unless he determines that one of the exceptions listed in subparagraphs i-iv below is applicable. Applications for after-the-fact permits will be processed in accordance with the applicable procedures in 33 CFR Parts 320-325. Situations where no permit application will be processed or where the acceptance of a permit application must be deferred are as follows:

(i) No permit application will be processed when restoration of the waters of the United States has been completed that eliminates current and future detrimental impacts to the satisfaction of the district engineer.

(ii) No permit application will be accepted in connection with a violation where the district engineer determines that legal action is appropriate (§ 326.5(a)) until such legal action has been completed.

(iii) No permit application will be accepted where a Federal, state, or local authorization or certification, required by Federal law, has already been denied.

(iv) No permit application will be accepted nor will the processing of an application be continued when the district engineer is aware of enforcement litigation that has been initiated by other Federal, state, or local regulatory agencies, unless he determines that concurrent processing of an after-the-fact permit application is clearly appropriate.

(2) Upon completion of his review in accordance with 33 CFR Parts 320-325, the district engineer will determine if a permit should be issued, with special conditions if appropriate, or denied. In reaching a decision to issue, he must determine that the work involved is not contrary to the public interest, and if section 404 is applicable, that the work also complies with the Environmental Protection Agency's section 404(b)(1) guidelines. If he determines that a denial is warranted, his notification of denial should prescribe any final corrective

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actions required. His notification should also establish a reasonable period of time for the applicant to complete such actions unless he determines that further information is required before the corrective measures can be specified. If further information is required, the final corrective measures may be specified at a later date. If an applicant refuses to undertake prescribed corrective actions ordered subsequent to permit denial or refuses to accept a conditioned permit, the district engineer may initiate legal action in accordance with § 326.5.

(f) *Combining steps.* The procedural steps in this section are in the normal sequence. However, these regulations do not prohibit the streamlining of the enforcement process through the combining of steps.

(g) *Coordination with EPA.* In all cases where the district engineer is aware that EPA is considering enforcement action, he should coordinate with EPA to attempt to avoid conflict or duplication. Such coordination applies to interim protective measures and after-the-fact permitting, as well as to appropriate legal enforcement actions.

§ 326.4 Supervision of authorized activities.

(a) *Inspections.* District engineers will, at their discretion, take reasonable measures to inspect permitted activities, as required, to ensure that these activities comply with specified terms and conditions. To supplement inspections by their enforcement personnel, district engineers should encourage their other personnel; members of the public; and interested state, local, and other Federal agency representatives to report suspected violations of Corps permits. To facilitate inspections, district engineers will, in appropriate cases, require that copies of ENG Form 4336 be posted conspicuously at the sites of authorized activities and will make available to all interested persons information on the terms and conditions of issued permits. The U.S. Coast Guard will inspect permitted ocean dumping activities pursuant to section 107(c) of the Marine Protection, Research and Sanctuaries Act of 1972, as amended.

(b) *Inspection limitations.* Section 326.4 does not establish a non-discretionary duty to inspect permitted activities for safety, sound engineering practices, or interference with other permitted or unpermitted structures or uses in the area. Further, the regulations implementing the Corps regulatory program do not establish a non-discretionary duty to inspect permitted activities for any other purpose.

(c) *Inspection expenses.* The expenses incurred in connection with the inspection of permitted activities will normally be paid by the Federal Government unless daily supervision or other unusual expenses are involved. In such unusual cases, the district engineer may condition permits to require permittees to pay inspection expenses pursuant to the authority contained in Section 9701 of Pub L. 97–258 (33 U.S.C. 9701). The collection and disposition of inspection expense funds obtained from applicants will be administered in accordance with the relevant Corps regulations governing such funds.

(d) *Non-compliance.* If a district engineer determines that a permittee has violated the terms or conditions of the permit and that the violation is sufficiently serious to require an enforcement action, then he should, unless at his discretion he deems it inappropriate: (1) First contact the permittee; (2) request corrected plans reflecting actual work, if needed; and (3) attempt to resolve the violation. Resolution of the violation may take the form of the permitted project being voluntarily brought into compliance or of a permit modification (33 CFR 325.7(b)). If a mutually agreeable solution cannot be reached, a written order requiring compliance should normally be issued and delivered by personal service. Issuance of an order is not, however, a prerequisite to legal action. If an order is issued, it will specify a time period of not more than 30 days for bringing the permitted project into compliance, and a copy will be sent to the appropriate state official pursuant to section 404(s)(2) of the Clean Water Act. If the permittee fails to comply with the order within the specified period of time, the district engineer may consider using the suspension/revocation procedures in 33 CFR 325.7(c) and/or he may recommend legal action in accordance with § 326.5.

§ 326.5 Legal action.

(a) *General.* For cases the district engineer determines to be appropriate, he will recommend criminal or civil actions to obtain penalties for violations, compliance with the orders and directives he has issued pursuant to §§ 326.3 and 326.4, or other relief as appropriate. Appropriate cases for criminal or civil action include, but are not limited to, violations which, in the district engineer's opinion, are willful, repeated, flagrant, or of substantial impact.

(b) *Preparation of case.* If the district engineer determines that legal action is appropriate, he will prepare a litigation report or such other documentation that he and the local U.S. Attorney have mutually agreed to, which contains an analysis of the information obtained during his investigation of the violation or during the processing of a permit application and a recommendation of appropriate legal action. The litigation report or alternative documentation will also recommend what, if any, restoration or mitigative measures are required and will provide the rationale for any such recommendation.

(c) *Referral to the local U.S. Attorney.* Except as provided in paragraph (d) of this section, district engineers are authorized to refer cases directly to the U.S. Attorney. Because of the unique legal system in the Trust Territories, all cases over which the Department of Justice has no authority will be referred to the Attorney General for the trust Territories. Information copies of all letters of referral shall be forwarded to the appropriate division counsel, the Office, Chief of Engineers, ATTN: DAEN–CCK, the Office of the Assistant Secretary of the Army (Civil Works), and the Chief of the Environmental Defense Section, Lands and Natural Resources Division, U.S. Department of Justice.

(d) *Referral to the Office, Chief of Engineers.* District engineers will forward litigation reports with recommendations through division offices to the Office, Chief of Engineers, ATTN: DAEN–CCK, for all cases that qualify under the following criteria:

(1) Significant precedential or controversial questions of law or fact;

(2) Requests for elevation to the Washington level by the Department of Justice;

(3) Violations of section 9 of the Rivers and Harbors Act of 1899;

(4) Violations of section 103 the Marine Protection, Research and Sanctuaries Act of 1972;

(5) All cases involving violations by American Indians (original of litigation report to DAEN–CCI with copy to DAEN–CCK) on reservation lands or in pursuit of specific treaty rights;

(6) All cases involving violations by officials acting on behalf of foreign governments; and

(7) Cases requiring action pursuant to paragraph (e) of this section.

(e) *Legal option not available.* In cases where the local U.S. Attorney declines to take legal action, it would be appropriate for the district engineer to close the enforcement case record unless he believes that the case warrants special attention. In that situation, he is encouraged to forward a litigation report to the Office, Chief of Engineers, ATTN: DAEN–CCK, for direct coordination through the Office of the Assistant Secretary of the Army (Civil Works) with the Department of Justice. Further, the case record should not be closed if the district engineer anticipates that further administrative enforcement actions, taken in accordance with the procedures prescribed in this part, will identify remedial measures which, if not complied with by the parties responsible for the violation, will result in appropriate legal action at a later date.

PART 327—PUBLIC HEARINGS

Sec.

327.1 Purpose.
327.2 Applicability.
327.3 Definitions.
327.4 General policies.
327.5 Presiding officer.
327.6 Legal adviser.
327.7 Representation.
327.8 Conduct of hearings.
327.9 Filing of transcript of the public hearing.
327.10 Authority of the presiding officer.
327.11 Public notice.

Authority: 33 U.S.C. 1344; 33 U.S.C. 1413.

§ 327.1 Purpose.

This regulation prescribes the policy, practice and procedures to be followed by the U.S. Army Corps of Engineers in the conduct of public hearings conducted in the evaluation of a proposed DA permit action or Federal project as defined in § 327.3 of this Part including those held pursuant to section 404 of the Clean Water Act (33 U.S.C. 1344) and section 103 of the Marine Protection, Research and Sanctuaries Act (MPRSA), as amended (33 U.S.C. 1413).

§ 327.2 Applicability.

This regulation is applicable to all divisions and districts responsible for the conduct of public hearings.

§ 327.3 Definitions.

(a) Public hearing means a public proceeding conducted for the purpose of acquiring information or evidence which will be considered in evaluating a proposed DA permit action, or Federal project, and which affords the public an opportunity to present their views, opinions, and information on such permit actions or Federal projects.

(b) Permit action, as used herein means the evaluation of and decision on an application for a DA permit pursuant to sections 9 or 10 of the Rivers and Harbors Act of 1899, section 404 of the Clean Water Act, or section 103 of the MPRSA, as amended, or the modification, suspension or revocation of any DA permit (see 33 CFR 325.7).

(c) Federal project means a Corps of Engineers project (work or activity of any nature for any purpose which is to be performed by the Chief of Engineers pursuant to Congressional authorizations) involving the discharge of dredged or fill material into waters of the United States or the transportation of dredged material for the purpose of dumping it in ocean waters subject to section 404 of the Clean Water Act, or section 103 of the MPRSA.

§ 327.4 General policies.

(a) A public hearing will be held in connection with the consideration of a DA permit application or a Federal project whenever a public hearing is needed for making a decision on such permit application or Federal project. In addition, a public hearing may be held when it is proposed to modify or revoke a permit. (See 33 CFR 325.7).

(b) Unless the public notice specifies that a public hearing will be held, any person may request, in writing, within the comment period specified in the public notice on a DA permit application or on a Federal project, that a public hearing be held to consider the material matters at issue in the permit application or with respect to Federal project. Upon receipt of any such request, stating with particularity the reasons for holding a public hearing, the district engineer may expeditiously attempt to resolve the issues informally. Otherwise, he shall promptly set a time and place for the public hearing, and give due notice thereof, as prescribed in § 327.11 of this Part. Requests for a public hearing under this paragraph shall be granted, unless the district engineer determines that the issues raised are insubstantial or there is otherwise no valid interest to be served by a hearing. The district engineer will make such a determination in writing, and communicate his reasons therefor to all requesting parties. Comments received as form letters or petitions may be acknowledged as a group to the person or organization responsible for the form letter or petition.

(c) In case of doubt, a public hearing shall be held. HQDA has the discretionary power to require hearings in any case.

(d) In fixing the time and place for a hearing, the convenience and necessity of the interested public will be duly considered.

§ 327.5 Presiding officer.

(a) The district engineer, in whose district a matter arises, shall normally serve as the presiding officer. When the district engineer is unable to serve, he may designate the deputy district engineer or other qualified person as presiding officer. In cases of unusual interest, the Chief of Engineers or the division engineer may appoint such person as he deems appropriate to serve as the presiding officer.

(b) The presiding officer shall include in the administrative record of the permit action the request or requests for the hearing and any data or material submitted in justification thereof, materials submitted in opposition to or in support of the proposed action, the hearing transcript, and such other material as may be relevant or pertinent to the subject matter of the hearing. The administrative record shall be available for public inspection with the exception of material exempt from disclosure under the Freedom of Information Act.

§ 327.6 Legal adviser.

At each public hearing, the district counsel or his designee may serve as legal advisor to the presiding officer. In appropriate circumstances, the district engineer may waive the requirement for a legal advisor to be present.

§ 327.7 Representation.

At the public hearing, any person may appear on his own behalf, or may be represented by counsel, or by other representatives.

§ 327.8 Conduct of hearings.

(a) The presiding officer shall make an opening statement outlining the purpose of the hearing and prescribing the general procedures to be followed.

(b) Hearings shall be conducted by the presiding officer in an orderly but expeditious manner. Any person shall be permitted to submit oral or written statements concerning the subject matter of the hearing, to call witnesses who may present oral or written statements, and to present recommendations as to an appropriate decision. Any person may present written statements for the hearing record prior to the time the hearing record is closed to public submissions, and may present proposed findings and recommendations. The presiding officer shall afford participants a reasonable opportunity for rebuttal.

(c) The presiding officer shall have discretion to establish reasonable limits upon the time allowed for statements of witnesses, for arguments of parties or their counsel or representatives, and upon the number of rebuttals.

(d) Cross-examination of witnesses shall not be permitted.

(e) All public hearings shall be reported verbatim. Copies of the transcripts of proceedings may be

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purchased by any person from the Corps of Engineers or the reporter of such hearing. A copy will be available for public inspection at the office of the appropriate district engineer.

(f) All written statements, charts, tabulations, and similar data offered in evidence at the hearing shall, subject to exclusion by the presiding officer for reasons of redundancy, be received in evidence and shall constitute a part of the record.

(g) The presiding officer shall allow a period of not less than 10 days after the close of the public hearing for submission of written comments.

(h) In appropriate cases, the district engineer may participate in joint public hearings with other Federal or state agencies, provided the procedures of those hearings meet the requirements of this regulation. In those cases in which the other Federal or state agency allows a cross-examination in its public hearing, the district engineer may still participate in the joint public hearing but shall not require cross examination as a part of his participation.

§ 327.9 Filing of the transcript of the public hearing.

Where the presiding officer is the initial action authority, the transcript of the public hearing, together with all evidence introduced at the public hearing, shall be made a part of the administrative record of the permit action or Federal project. The initial action authority shall fully consider the matters discussed at the public hearing in arriving at his initial decision or recommendation and shall address, in his decision or recommendation, all substantial and valid issues presented at the hearing. Where a person other than the initial action authority serves as presiding officer, such person shall forward the transcript of the public hearing and all evidence received in connection therewith to the initial action authority together with a report summarizing the issues covered at the hearing. The report of the presiding officer and the transcript of the public hearing and evidence submitted thereat shall in such cases be fully considered by the initial action authority in making his decision or recommendation to higher authority as to such permit action or Federal project.

§ 327.10 Authority of the presiding officer.

Presiding officers shall have the following authority:

(a) To regulate the course of the hearing including the order of all sessions and the scheduling thereof, after any initial session, and the recessing, reconvening, and adjournment thereof; and

(b) To take any other action necessary or appropriate to the discharge of the duties vested in them, consistent with the statutory or other authority under which the Chief of Engineers functions, and with the policies and directives of the Chief of Engineers and the Secretary of the Army.

§ 327.11 Public notice.

(a) Public notice shall be given of any public hearing to be held pursuant to this regulation. Such notice should normally provide for a period of not less than 30 days following the date of public notice during which time interested parties may prepare themselves for the hearing. Notice shall also be given to all Federal agencies affected by the proposed action, and to state and local agencies and other parties having an interest in the subject matter of the hearing. Notice shall be sent to all persons requesting a hearing and shall be posted in appropriate government buildings and provided to newspapers of general circulation for publication. Comments received as form letters or petitions may be acknowledged as a group to the person or organization responsible for the form letter or petition.

(b) The notice shall contain time, place, and nature of hearing; the legal authority and jurisdiction under which the hearing is held; and location of and availability of the draft environmental impact statement or environmental assessment.

PART 328—DEFINITION OF WATERS OF THE UNITED STATES

Sec.

328.1 Purpose.
328.2 General scope.
328.3 Definitions.
328.4 Limits of jurisdiction.
328.5 Changes in limits of waters of the United States.

Authority: 33 U.S.C. 1344.

§ 328.1 Purpose.

This section defines the term "waters of the United States" as it applies to the jurisdictional limits of the authority of the Corps of Engineers under the Clean Water Act. It prescribes the policy, practice, and procedures to be used in determining the extent of jurisdiction of the Corps of Engineers concerning "waters of the United States." The terminology used by section 404 of the Clean Water Act includes "navigable waters" which is defined at section 502(7) of the Act as "waters of the United States including the territorial seas." To provide clarity and to avoid confusion with other Corps of Engineer regulatory programs, the term "waters of the United States" is used throughout 33 CFR Parts 320–330. This section does not apply to authorities under the Rivers and Harbors Act of 1899 except that some of the same waters may be regulated under both statutes (see 33 CFR Parts 322 and 329).

§ 328.2 General scope.

Waters of the United States include those waters listed in § 328.3(a). The lateral limits of jurisdiction in those waters may be divided into three categories. The categories include the territorial seas, tidal waters, and non-tidal waters (see 33 CFR 328.4 (a), (b), and (c), respectively).

§ 328.3 Definitions.

For the purpose of this regulation these terms are defined as follows:

(a) The term "waters of the United States" means

(1) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(2) All interstate waters including interstate wetlands;

(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:

(i) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or

(ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(iii) Which are used or could be used for industrial purpose by industries in interstate commerce;

(4) All impoundments of waters otherwise defined as waters of the United States under the definition;

(5) Tributaries of waters identified in paragraphs (a) (1)–(4) of this section;

(6) The territorial seas;

(7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) (1)–(6) of this section.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 123.11(m) which also meet the criteria of this definition) are not waters of the United States.

(b) The term "wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(c) The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are "adjacent wetlands."

(d) The term "high tide line" means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

(e) The term "ordinary high water mark" means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(f) The term "tidal waters" means those waters that rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by hydrologic, wind, or other effects.

§ 328.4 Limits of jurisdiction.

(a) *Territorial Seas.* The limit of jurisdiction in the territorial seas is measured from the baseline in a seaward direction a distance of three nautical miles. (See 33 CFR 329.12)

(b) *Tidal Waters of the United States.* The landward limits of jurisdiction in tidal waters:

(1) Extends to the high tide line, or

(2) When adjacent non-tidal waters of the United States are present, the jurisdiction extends to the limits identified in paragraph (c) of this section.

(c) *Non-Tidal Waters of the United States.* The limits of jurisdiction in non-tidal waters:

(1) In the absence of adjacent wetlands, the jurisdiction extends to the ordinary high water mark, or

(2) When adjacent wetlands are present, the jurisdiction extends beyond the ordinary high water mark to the limit of the adjacent wetlands.

(3) When the water of the United States consists only of wetlands the jurisdiction extends to the limit of the wetland.

§ 328.5 Changes in limits of waters of the United States.

Permanent changes of the shoreline configuration result in similar alterations of the boundaries of waters of the United States. Gradual changes which are due to natural causes and are perceptible only over some period of time constitute changes in the bed of a waterway which also change the boundaries of the waters of the United States. For example, changing sea levels or subsidence of land may cause some areas to become waters of the United States while siltation or a change in drainage may remove an area from waters of the United States. Man-made changes may affect the limits of waters of the United States; however, permanent changes should not be presumed until the particular circumstances have been examined and verified by the district engineer. Verification of changes to the lateral limits of jurisdiction may be obtained from the district engineer.

PART 329—DEFINITION OF NAVIGABLE WATERS OF THE UNITED STATES

Sec.

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329.16 Use and maintenance of lists of determinations.

Authority: 33 U.S.C. 401 *et seq.*

§ 329.1 Purpose.

This regulation defines the term "navigable waters of the United States" as it is used to define authorities of the Corps of Engineers. It also prescribes the policy, practice and procedure to be used in determining the extent of the jurisdiction of the Corps of Engineers and in answering inquiries concerning "navigable waters of the United States." This definition does not apply to authorities under the Clean Water Act which definitions are described under 33 CFR Parts 323 and 328.

§ 329.2 Applicability.

This regulation is applicable to all Corps of Engineers districts and divisions having civil works responsibilities.

§ 329.3 General policies.

Precise definitions of "navigable waters of the United States" or "navigability" are ultimately dependent on judicial interpretation and cannot be made conclusively by administrative agencies. However, the policies and criteria contained in this regulation are in close conformance with the tests used by Federal courts and determinations made under this regulation are considered binding in regard to the activities of the Corps of Engineers.

§ 329.4 General definition.

Navigable waters of the United States are those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. A determination of navigability, once made, applies laterally over the entire surface of the waterbody, and is not extinguished by later actions or events which impede or destroy navigable capacity.

§ 329.5 General scope of determination.

The several factors which must be examined when making a determination whether a waterbody is a navigable water of the United States are discussed in detail below. Generally, the following conditions must be satisfied:

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(a) Past, present, or potential presence of interstate or foreign commerce;

(b) Physical capabilities for use by commerce as in paragraph (a) of this section; and

(c) Defined geographic limits of the waterbody.

§ 329.6 Interstate or foreign commerce.

(a) *Nature of commerce: type, means, and extent of use.* The types of commercial use of a waterway are extremely varied and will depend on the character of the region, its products, and the difficulties or dangers of navigation. It is the waterbody's capability of use by the public for purposes of transportation of commerce which is the determinative factor, and not the time, extent or manner of that use. As discussed in § 329.9 of this Part, it is sufficient to establish the potential for commercial use at any past, present, or future time. Thus, sufficient commerce may be shown by historical use of canoes, bateaux, or other frontier craft, as long as that type of boat was common or well-suited to the place and period. Similarly, the particular items of commerce may vary widely, depending again on the region and period. The goods involved might be grain, furs, or other commerce of the time. Logs are a common example; transportation of logs has been a substantial and well-recognized commercial use of many navigable waters of the United States. Note, however, that the mere presence of floating logs will not of itself make the river "navigable"; the logs must have been related to a commercial venture. Similarly, the presence of recreational craft may indicate that a waterbody is capable of bearing some forms of commerce, either presently, in the future, or at a past point in time.

(b) *Nature of commerce: interstate and intrastate.* Interstate commerce may of course be existent on an intrastate voyage which occurs only between places within the same state. It is only necessary that goods may be brought from, or eventually be destined to go to, another state. (For purposes of this regulation, the term "interstate commerce" hereinafter includes "foreign commerce" as well.)

§ 329.7 Intrastate or interstate nature of waterway.

A waterbody may be entirely within a state, yet still be capable of carrying interstate commerce. This is especially clear when it physically connects with a generally acknowledged avenue of interstate commerce, such as the ocean or one of the Great Lakes, and is yet wholly within one state. Nor is it necessary that there be a physically navigable connection across a state boundary. Where a waterbody extends through one or more states, but substantial portions, which are capable of bearing interstate commerce, are located in only one of the states, the entirety of the waterway up to the head (upper limit) of navigation is subject to Federal jurisdiction.

§ 329.8 Improved or natural conditions of the waterbody.

Determinations are not limited to the natural or original condition of the waterbody. Navigability may also be found where artificial aids have been or may be used to make the waterbody suitable for use in navigation.

(a) *Existing improvements: artificial waterbodies.* (1) An artificial channel may often constitute a navigable water of the United States, even though it has been privately developed and maintained, or passes through private property. The test is generally as developed above, that is, whether the waterbody is capable of use to transport interstate commerce. Canals which connect two navigable waters of the United States and which are used for commerce clearly fall within the test, and themselves become navigable. A canal open to navigable waters of the United States on only one end is itself navigable where it in fact supports interstate commerce. A canal or other artificial waterbody that is subject to ebb and flow of the tide is also a navigable water of the United States.

(2) The artificial waterbody may be a major portion of a river or harbor area or merely a minor backwash, slip, or turning area (see paragraph 329.12(b) of this Part).

(3) Private ownership of the lands underlying the waterbody, or of the lands through which it runs, does not preclude a finding of navigability. Ownership does become a controlling factor if a privately constructed and operated canal is not used to transport interstate commerce nor used by the public; it is then not considered to be a navigable water of the United States. However, a private waterbody, even though not itself navigable, may so affect the navigable capacity of nearby waters as to nevertheless be subject to certain regulatory authorities.

(b) *Non-existing improvements, past or potential.* A waterbody may also be considered navigable depending on the feasibility of use to transport interstate commerce after the construction of whatever "reasonable" improvements may potentially be made. The improvement need not exist, be planned, nor even authorized; it is enough that potentially they could be made. What is a "reasonable" improvement is always a matter of degree; there must be a balance between cost and need at a time when the improvement would be (or would have been) useful. Thus, if an improvement were "reasonable" at a time of past use, the water was therefore navigable in law from that time forward. The changes in engineering practices or the coming of new industries with varying classes of freight may affect the type of the improvement; those which may be entirely reasonable in a thickly populated, highly developed industrial region may have been entirely too costly for the same region in the days of the pioneers. The determination of reasonable improvement is often similar to the cost analyses presently made in Corps of Engineers studies.

§ 329.9 Time at which commerce exists or determination is made.

(a) *Past use.* A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in paragraph 329.8(b) of this Part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions. Nor does absence of use because of changed economic conditions affect the legal character of the waterbody. Once having attained the character of "navigable in law," the Federal authority remains in existence, and cannot be abandoned by administrative officers or court action. Nor is mere inattention or ambiguous action by Congress an abandonment of Federal control. However, express statutory declarations by Congress that described portions of a waterbody are non-navigable, or have been abandoned, are binding upon the Department of the Army. Each statute must be carefully examined, since Congress often reserves the power to amend the Act, or assigns special duties of supervision and control to the Secretary of the Army or Chief of Engineers.

(b) *Future or potential use.* Navigability may also be found in a waterbody's susceptibility for use in its ordinary condition or by reasonable improvement to transport interstate commerce. This may be either in its natural or improved condition, and may thus be existent although there has been no actual use to date. Non-use in the past therefore does not prevent recognition of the potential for future use.

§ 329.10 Existence of obstructions.

A stream may be navigable despite the existence of falls, rapids, sand bars, bridges, portages, shifting currents, or similar obstructions. Thus, a waterway in its original condition might have had substantial obstructions which were overcome by frontier boats and/or portages, and nevertheless be a "channel" of commerce, even though boats had to be removed from the water in some stretches, or logs be brought around an obstruction by means of artificial chutes. However, the question is ultimately a matter of degree, and it must be recognized that there is some point beyond which navigability could not be established.

§ 329.11 Geographic and jurisdictional limits of rivers and lakes.

(a) *Jurisdiction over entire bed.* Federal regulatory jurisdiction, and powers of improvement for navigation, extend laterally to the entire water surface and bed of a navigable waterbody, which includes all the land and waters below the ordinary high water mark. Jurisdiction thus extends to the edge (as determined above) of all such waterbodies, even though portions of the waterbody may be extremely shallow, or obstructed by shoals, vegetation or other barriers. Marshlands and similar areas are thus considered navigable in law, but only so far as the area is subject to inundation by the ordinary high waters.

(1) The "ordinary high water mark" on non-tidal rivers is the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

(2) Ownership of a river or lake bed or of the lands between high and low water marks will vary according to state law; however, private ownership of the underlying lands has no bearing on the existence or extent of the dominant Federal jurisdiction over a navigable waterbody.

(b) *Upper limit of navigability.* The character of a river will, at some point along its length, change from navigable to non-navigable. Very often that point will be at a major fall or rapids, or other place where there is a marked decrease in the navigable capacity of the river. The upper limit will therefore often be the same point traditionally recognized as the head of navigation, but may, under some of the tests described above, be at some point yet farther upstream.

§ 329.12 Geographic and jurisdictional limits of oceanic and tidal waters.

(a) *Ocean and coastal waters.* The navigable waters of the United States over which Corps of Engineers regulatory jurisdiction extends include all ocean and coastal waters within a zone three geographic (nautical) miles seaward from the baseline (The Territorial Seas). Wider zones are recognized for special regulatory powers exercised over the outer continental shelf. (See 33 CFR 322.3(b)).

(1) *Baseline defined.* Generally, where the shore directly contacts the open sea, the line on the shore reached by the ordinary low tides comprises the baseline from which the distance of three geographic miles is measured. The baseline has significance for both domestic and international law and is subject to precise definitions. Special problems arise when offshore rocks, islands, or other bodies exist, and the baseline may have to be drawn seaward of such bodies.

(2) *Shoreward limit of jurisdiction.* Regulatory jurisdiction in coastal areas extends to the line on the shore reached by the plane of the mean (average) high water. Where precise determination of the actual location of the line becomes necessary, it must be established by survey with reference to the available tidal datum, preferably averaged over a period of 18.6 years. Less precise methods, such as observation of the "apparent shoreline" which is determined by reference to physical markings, lines of vegetation, or changes in type of vegetation, may be used only where an estimate is needed of the line reached by the mean high water.

(b) *Bays and estuaries.* Regulatory jurisdiction extends to the entire surface and bed of all waterbodies subject to tidal action. Jurisdiction thus extends to the edge (as determined by paragraph (a)(2) of this section) of all such waterbodies, even though portions of the waterbody may be extremely shallow, or obstructed by shoals, vegetation, or other barriers. Marshlands and similar areas are thus considered "navigable in law," but only so far as the area is subject to inundation by the mean high waters. The relevant test is therefore the presence of the mean high tidal waters, and not the general test described above, which generally applies to inland rivers and lakes.

§ 329.13 Geographic limits: shifting boundaries.

Permanent changes of the shoreline configuration result in similar alterations of the boundaries of the navigable waters of the United States. Thus, gradual changes which are due to natural causes and are perceptible only over some period of time constitute changes in the bed of a waterbody which also change the shoreline boundaries of the navigable waters of the United States. However, an area will remain "navigable in law," even though no longer covered with water, whenever the change has occurred suddenly, or was caused by artificial forces intended to produce that change. For example, shifting sand bars within a river or estuary remain part of the navigable water of the United States, regardless that they may be dry at a particular point in time.

§ 329.14 Determination of navigability.

(a) *Effect on determinations.* Although conclusive determinations of navigability can be made only by federal Courts, those made by federal agencies are nevertheless accorded substantial weight by the courts. It is therefore necessary that when jurisdictional questions arise, district personnel carefully investigate those waters which may be subject to Federal regulatory jurisdiction under guidelines set out above, as the resulting determination may have substantial impact upon a judicial body. Official determinations by an agency made in the past can be revised or reversed as necessary to reflect changed rules or interpretations of the law.

(b) *Procedures of determination.* A determination whether a waterbody is a navigable water of the United States will be made by the division engineer, and will be based on a report of findings prepared at the district level in accordance with the criteria set out in this regulation. Each report of findings will be prepared by the district engineer, accompanied by an opinion of the district counsel, and forwarded to the division engineer for final determination. Each report of findings will be based substantially on applicable portions of the format in paragraph (c) of this section.

(c) *Suggested format of report of findings:*

(1) Name of waterbody:

(2) Tributary to:

(3) Physical characteristics:

(i) Type: (river, bay, slough, estuary, etc.)

(ii) Length:

(iii) Approximate discharge volumes: Maximum, Minimum, Mean:

(iv) Fall per mile:

(v) Extent of tidal influence:

(vi) Range between ordinary high and ordinary low water:

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(vii) Description of improvements to navigation not listed in paragraph (c)(5) of this section:

(4) Nature and location of significant obstructions to navigation in portions of the waterbody used or potentially capable of use in interstate commerce:

(5) Authorized projects:

(i) Nature, condition and location of any improvements made under projects authorized by Congress:

(ii) Description of projects authorized but not constructed:

(iii) List of known survey documents or reports describing the waterbody:

(6) Past or present interstate commerce:

(i) General types, extent, and period in time:

(ii) Documentation if necessary:

(7) Potential use for interstate commerce, if applicable:

(i) If in natural condition:

(ii) If improved:

(8) Nature of jurisdiction known to have been exercised by Federal agencies if any:

(9) State or Federal court decisions relating to navigability of the waterbody, if any:

(10) Remarks:

(11) Finding of navigability (with date) and recommendation for determination:

§ 329.15 Inquiries regarding determinations.

(a) Findings and determinations should be made whenever a question arises regarding the navigability of a waterbody. Where no determination has been made, a report of findings will be prepared and forwarded to the division engineer, as described above. Inquiries may be answered by an interim reply which indicates that a final agency determination must be made by the division engineer. If a need develops for an energency determination, district engineers may act in reliance on a finding prepared as in Section 329.14 of this Part. The report of findings should then be forwarded to the division engineer on an expedited basis.

(b) Where determinations have been made by the division engineer, inquiries regarding the *navigability* of specific portions of waterbodies covered by these determinations may be answered as follows:

This Department, in the administration of the laws enacted by Congress for the protection and preservation of the navigable waters of the United States, has determined that ______ (River) (Bay) (Lake, etc.) is a navigable water of the United States from ______ to ______. Actions which modify or otherwise affect those waters are subject to the jurisdiction of this Department, whether such actions occur within or outside the navigable areas.

(c) Specific inquiries regarding the *jurisdiction* of the Corps of Engineers can be answered only after a determination whether (1) the waters are navigable waters of the United States or (2) if not navigable, whether the proposed type of activity may nevertheless so affect the navigable waters of the United States that the assertion of regulatory jurisdiction is deemed necessary.

§ 329.16 Use and maintenance of lists of determinations.

(a) Tabulated lists of final determinations of navigability are to be maintained in each district office, and be updated as necessitated by court decisions, jurisdictional inquiries, or other changed conditions.

(b) It should be noted that the lists represent only those waterbodies for which determinations have been made; absence from that list should not be taken as an indication that the waterbody is not navigable.

(c) Deletions from the list are not authorized. If a change in status of a waterbody from navigable to non-navigable is deemed necessary, an updated finding should be forwarded to the division engineer; changes are not considered final until a determination has been made by the division engineer.

PART 330—NATIONWIDE PERMITS

Sec.

330.1 General.
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Authority: 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; 33 U.S.C. 1413.

§ 330.1 General.

The purpose of this regulation is to describe the Department of the Army's (DA) nationwide permit program and to list all current nationwide permits which have been issued by publication herein. A nationwide permit is a form of general permit which may authorize activities throughout the nation. (Another type of general permit is a "regional permit" and is issued by division or district engineers on a regional basis in accordance with 33 CFR Part 325). Copies of regional conditions and modifications, if any, to the nationwide permits can be obtained from the appropriate district engineer. Nationwide permits are designed to allow certain activities to occur with little, if any, delay or paperwork. Nationwide permits are valid only if the conditions applicable to the nationwide permits are met. Failure to comply with a condition does not necessarily mean the activity cannot be authorized but rather that the activity can only be authorized by an individual or regional permit. Several of the nationwide permits require notification to the district engineer prior to commencement of the authorized activity. The procedures for this notification are located at § 330.7 of this Part. Nationwide permits can be issued to satisfy the requirements of section 10 of the Rivers and Harbors Act of 1899, section 404 of the Clean Water Act, and/or section 103 of the Marine Protection, Research and Sanctuaries Act. The applicable authority is indicated at the end of each nationwide permit.

§ 330.2 Definitions.

(a) The definitions of 33 CFR Parts 321–329 are applicable to the terms used in this Part.

(b) The term "headwaters" means the point on a non-tidal stream above which the average annual flow is less than five cubic feet per second. The district engineer may estimate this point from available data by using the mean annual area precipitation, area drainage basin maps, and the average runoff coefficient, or by similar means. For streams that are dry for long periods of the year, district engineers may establish the "headwaters" as that point on the stream where a flow of five cubic feet per second is equaled or exceeded 50 percent of the time.

(c) Discretionary authority means the authority delegated to division engineers in § 330.8 of this part to override provisions of nationwide permits, to add regional conditions, or to require individual permit application.

§ 330.3 Activities occurring before certain dates.

The following activities were permitted by nationwide permits issued on July 19, 1977, and unless modified do not require further permitting:

(a) Discharges of dredged or fill material into waters of the United States outside the limits of navigable waters of the United States that occurred before the phase-in dates which began July 25, 1975, and extended section 404 jurisdiction to all waters of the United

States. (These phase-in dates are: After July 25, 1975, discharges into navigable waters of the United States and adjacent wetlands; after September 1, 1976, discharges into navigable waters of the United States and their primary tributaries, including adjacent wetlands, and into natural lakes, greater than 5 acres in surface area; and after July 1, 1977, discharges into all waters of the United States.) (Section 404)

(b) Structures or work completed before December 18, 1968, or in waterbodies over which the district engineer had not asserted jurisdiction at the time the activity occurred provided, in both instances, there is no interference with navigation. (Section 10)

§ 330.4 Public notice.

(a) *Chief of Engineers.* Upon proposed issuance of new nationwide permits, modification to, or reissuance of, existing nationwide permits, the Chief of Engineers will publish a notice in the **Federal Register** seeking public comments and including the opportunity for a public hearing. This notice will state the availability of information at the Office of the Chief of Engineers and at all district offices which reveals the Corps' provisional determination that the proposed activities comply with the requirements for issuance under general permit authority. The Chief of Engineers will prepare this information which will be supplemented, if appropriate, by division engineers.

(b) *District engineers.* Concurrent with publication in the **Federal Register** of proposed, new, or reissued nationwide permits by the Chief of Engineers, district engineers will so notify the known interested public by an appropriate notice. The notice will include regional conditions, if any, developed by the division engineer.

§ 330.5 Nationwide permits.

(a) *Authorized activities.* The following activities are hereby permitted provided they meet the conditions listed in paragraph (b) of this section and, where required, comply with the notification procedures, of § 330.7.

(1) The placement of aids to navigation and regulatory markers which are approved by and installed in accordance with the requirements of the U.S. Coast Guard (33 CFR Part 66, Subchapter C). (Section 10)

(2) Structures constructed in artificial canals within principally residential developments where the connection of the canal to a navigable water of the United States has been previously authorized (see 33 CFR Part 322.5(g)). (Section 10)

(3) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure or fill, or of any currently serviceable structure or fill constructed prior to the requirement for authorization, provided such repair, rehabilitation, or replacement does not result in a deviation from the plans of the original structure or fill, and further provided that the structure or fill has not been put to uses differing from uses specified for it in any permit authorizing its original construction. Minor deviations due to changes in materials or construction techniques and which are necessary to make repair, rehabilitation, or replacement are permitted. Maintenance dredging and beach restoration are not authorized by this nationwide permit. (Section 10 and 404)

(4) Fish and wildlife harvesting devices and activities such as pound nets, crab traps, eel pots, lobster traps, duck blinds, and clam and oyster digging. (Section 10)

(5) Staff gages, tide gages, water recording devices, water quality testing and improvement devices, and similar scientific structures. (Section 10)

(6) Survey activities including core sampling, seismic exploratory operations, and plugging of seismic shot holes and other exploratory-type bore holes. Drilling of exploration-type bore holes for oil and gas exploration is not authorized by this nationwide permit; the plugging of such holes is authorized. (Sections 10 and 404).

(7) Outfall structures and associated intake structures where the effluent from that outfall has been permitted under the National Pollutant Discharge Elimination System program (Section 402 of the Clean Water Act) (see 40 CFR Part 122) provided that the district or division engineer makes a determination that the individual and cumulative adverse environmental effects of the structure itself are minimal in accordance with § 330.7 (c)(2) and (d). Intake structures per se are not included—only those directly associated with an outfall structure are covered by this nationwide permit. This permit includes minor excavation, filling and other work associated with installation of the intake and outfall structures. (Sections 10 and 404)

(8) Structures for the exploration, production, and transportation of oil, gas, and minerals on the outer continental shelf within areas leased for such purposes by the Department of Interior, Mineral Management Service, provided those structures are not placed within the limits of any designated shipping safety fairway or traffic separation scheme (where such limits have not been designated or where changes are anticipated, district engineers will consider recommending the discretionary authority provided by 330.8 of this Part, and further subject to the provisions of the fairway regulations in 33 CFR 322.5(1) (Section 10).

(9) Structures placed within anchorage or fleeting areas to facilitate moorage of vessels where such areas have been established for that purpose by the U.S. Coast Guard. (Section 10)

(10) Non-commercial, single-boat, mooring buoys. (Section 10)

(11) Temporary buoys and markers placed for recreational use such as water skiing and boat racing provided that the buoy or marker is removed within 30 days after its use has been discontinued. At Corps of Engineers reservoirs, the reservoir manager must approve each buoy or marker individually. (Section 10)

(12) Discharge of material for backfill or bedding for utility lines, including outfall and intake structures, provided there is no change in preconstruction bottom contours (excess material must be removed to an upland disposal area). A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquifiable, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone and telegraph messages, and radio and television communication. (The utility line and outfall and intake structures will require a Section 10 permit if in navigable waters of the United States. See 33 CFR Part 322. See also paragraph (a)(7) of this section). (Section 404)

(13) Bank stabilization activities provided:

(i) The bank stabilization activity is less than 500 feet in length;

(ii) The activity is necessary for erosion prevention;

(iii) The activity is limited to less than an average of one cubic yard per running foot placed along the bank within waters of the United States;

(iv) No material is placed in excess of the minimum needed for erosion protection;

(v) No material is placed in any wetland area;

(vi) No material is placed in any location or in any manner so as to impair surface water flow into or out of any wetland area;

(vii) Only clean material free of waste metal products, organic materials, unsightly debris, etc. is used; and

(viii) The activity is a single and complete project. (Sections 10 and 404)

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(14) Minor road crossing fills including all attendant features, both temporary and permanent, that are part of a single and complete project for crossing of a non-tidal waterbody, provided that the crossing is culverted, bridged or otherwise designed to prevent the restriction of, and to withstand, expected high flows and provided further that discharges into any wetlands adjacent to the waterbody do not extend beyond 100 feet on either side of the ordinary high water mark of that waterbody. A "minor road crossing fill" is defined as a crossing that involves the discharge of less than 200 cubic yards of fill material below the plane of ordinary high water. The crossing may require a permit from the US Coast Guard if located in navigable waters of the United States. Some road fills may be eligible for an exemption from the need for a Section 404 permit altogether (see 33 CFR 323.4). District engineers are authorized, where local circumstances indicate the need, to define the term "expected high flows" for the purpose of establishing applicability of this nationwide permit. (Sections 10 and 404)

(15) Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the United States, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills provided such discharge has been authorized by the US Coast Guard as part of the bridge permit. Causeways and approach fills are not included in this nationwide permit and will require an individual or regional Section 404 permit. (Section 404)

(16) Return water from an upland, contained dredged material disposal area (see 33 CFR 323.2(d)) provided the state has issued a site specific or generic certification under section 401 of the Clean Water Act (see also 33 CFR 325.2(b)(1)). The dredging itself requires a Section 10 permit if located in navigable waters of the United States. The return water or runoff from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d) even though the disposal itself occurs on the upland and thus does not require a section 404 permit. This nationwide permit satisfies the technical requirement for a section 404 permit for the return water where the quality of the return water is controlled by the state through the section 401 certification procedures. (Section 404)

(17) Fills associated with small hydropower projects at existing reservoirs where the project which includes the fill is licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920, as amended; has a total generating capacity of not more than 1500 kw (2,000 horsepower); qualifies for the short-form licensing procedures of the FERC (see 18 CFR 4.61); and the district or division engineer makes a determination that the individual and cumulative adverse effects on the environment are minimal in accordance with § 330.7 (c)(2) and (d). (Section 404)

(18) Discharges of dredged or fill material into all waters of the United States other than wetlands that do not exceed ten cubic yards as part of a single and complete project provided the material is not placed for the purpose of stream diversion. (Sections 10 and 404)

(19) Dredging of no more than ten cubic yards from navigable waters of the United States as part of a single and complete project. This permit does not authorize the connection of canals or other artificial waterways to navigable waters of the United States (see Section 33 CFR 322.5(g)). (Section 10)

(20) Structures, work, and discharges for the containment and cleanup of oil and hazardous substances which are subject to the National Oil and Hazardous Substances Pollution Contingency Plan, (40 CFR Part 300), provided the Regional Response Team which is activated under the Plan concurs with the proposed containment and cleanup action. (Sections 10 and 404)

(21) Structures, work, discharges associated with surface coal mining activities provided they were authorized by the Department of the Interior, Office of Surface Mining, or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977; the appropriate district engineer is given the opportunity to review the Title V permit application and all relevant Office of Surface Mining or state (as the case may be) documentation prior to any decision on that application; and the district or division engineer makes a determination that the individual and cumulative adverse effects on the environment from such structures, work, or discharges are minimal in accordance with §§ 330.7 (c) (2) and (3) and (d). (Sections 10 and 404)

(22) Minor work, fills, or temporary structures required for the removal of wrecked, abandoned, or disabled vessels, or the removal of man-made obstructions to navigation. This permit does not authorize maintenance dredging, shoal removal, or river bank snagging. (Sections 10 and 404)

(23) Activities, work, and discharges undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another federal agency or department where that agency or department has determined, pursuant to the CEQ Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR Part 1500 et seq.), that the activity, work, or discharge is categorically excluded from environmental documentation because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment, and the Office of the Chief of Engineers (ATTN: DAEN–CWO–N) has been furnished notice of the agency's or department's application for the categorical exclusion and concurs with that determination. Prior to approval for purposes of this nationwide permit of any agency's categorical exlcusions, the Chief of Engineers will solicit comments through publication in the **Federal Register**. (Sections 10 and 404)

(24) Any activity permitted by a state administering its own Section 404 permit program for the discharge of dredged or fill material authorized at 33 U.S.C. 1344(g)–(l) is permitted pursuant to section 10 of the Rivers and Harbors Act of 1899. Those activities which do not involve a section 404 state permit are not included in this nationwide permit but many will be exempted by section 154 of Pub. L. 94–587. (See 33 CFR 322.3(a)(2)). (Section 10)

(25) Discharge of concrete into tightly sealed forms or cells where the concrete is used as a structural member which would not otherwise be subject to Clean Water Act jurisdiction. (Section 404)

(26) Discharges of dredged or fill material into the waters listed in paragraphs (a)(26) (i) and (ii) of this section except those which cause the loss or substantial adverse modification of 10 acres or more of such waters of the United States, including wetlands. For discharges which cause the loss or substantial adverse modification of 1 to 10 acres of such waters, including wetlands, notification to the district engineer is required in accordance with section 330.7 of this section. (Section 404).

(i) Non-tidal rivers, streams, and their lakes and impoundments, including adjacent wetlands, that are located above the headwaters.

(ii) Other non-tidal waters of the United States, including adjacent wetlands, that are not part of a surface tributary system to interstate waters or navigable waters of the United States (i.e., isolated waters).

(b) *Conditions.* The following special conditions must be followed in order for the nationwide permits identified in paragraph (a) of this section to be valid:

(1) That any discharge of dredged or fill material will not occur in the proximity of a public water supply intake.

(2) That any discharge of dredged or fill material will not occur in areas of concentrated shellfish production unless the discharge is directly related to a shellfish harvesting activity authorized by paragraph (a)(4) of this section.

(3) That the activity will not jeopardize a threatened or endangered species as identified under the Endangered Species Act (ESA), or destroy or adversely modify the critical habitat of such species. In the case of federal agencies, it is the agencies' responsibility to comply with the requirements of the ESA. If the activity may adversely affect any listed species or critical habitat, the district engineer must initiate Section 7 consultation in accordance with the ESA. In such cases, the district engineer may:

(i) Initiate section 7 consultation and then, upon completion, authorize the activity under the nationwide permit by adding, if appropriate, activity specific conditions, or

(ii) Prior to or concurrent with section 7 consultation he may recommend discretionary authority (See section 330.8) or use modification, suspension, or revocation procedures (See 33 CFR 325.7).

(4) That the activity shall not significantly disrupt the movement of those species of aquatic life indigenous to the waterbody (unless the primary purpose of the fill is to impound water);

(5) That any discharge of dredged or fill material shall consist of suitable material free from toxic pollutants (see section 307 of the Clean Water Act) in toxic amounts;

(6) That any structure or fill authorized shall be properly maintained.

(7) That the activity will not occur in a component of the National Wild and Scenic River System; nor in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status;

(8) That the activity shall not cause an unacceptable interference with navigation;

(9) That, if the activity may adversely affect historic properties which the National Park Service has listed on, or determined eligible for listing on, the National Register of Historic Places, the permittee will notify the district engineer. If the district engineer determines that such historic properties may be adversely affected, he will provide the Advisory Council on Historic Preservation an opportunity to comment on the effects on such historic properties or he will consider modification, suspension, or revocation in accordance with 33 CFR 325.7. Furthermore, that, if the permittee before or during prosecution of the work authorized, encounters a historic property that has not been listed or determined eligible for listing on the National Register, but which may be eligible for listing in the National Register, he shall immediately notify the district engineer;

(10) That the construction or operation of the activity will not impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights;

(11) That in certain states, an individual state water quality certification must be obtained or waived (See § 330.9);

(12) That in certain states, an individual state coastal zone management consistency concurrence must be obtained or waived (See § 330.10);

(13) That the activity will comply with regional conditions which may have been added by the division engineer (See § 330.8(a)); and

(14) That the management practices listed in § 330.6 of this part shall be followed to the maximum extent practicable.

(c) *Further information.* (1) District engineers are authorized to determine if an activity complies with the terms and conditions of a nationwide permit unless that decision must be made by the division engineer in accordance with § 330.7.

(2) Nationwide permits do not obviate the need to obtain other Federal, state or local authorizations required by law.

(3) Nationwide permits do not grant any property rights or exclusive privileges.

(4) Nationwide permits do not authorize any injury to the property or rights of others.

(5) Nationwide permits do not authorize interference with any existing or proposed Federal project.

(d) *Modification, Suspension or Revocation of Nationwide Permits.* The Chief of Engineers may modify, suspend, or revoke nationwide permits in accordance with the relevant procedures of 33 CFR 325.7. Such authority includes, but is not limited to: adding individual, regional, or nationwide conditions; revoking authorization for a category of activities or a category of waters by requiring individual or regional permits; or revoking an authorization on a case-by-case basis. This authority is not limited to concerns for the aquatic environment as is the discretionary authority in § 330.8.

§ 330.6 Management practices.

(a) In addition to the conditions specified in § 330.5 of this Part, the following management practices shall be followed, to the maximum extent practicable, in order to minimize the adverse effects of these discharges on the aquatic environment. Failure to comply with these practices may be cause for the district engineer to recommend, or the division engineer to take, discretionary authority to regulate the activity on an individual or regional basis pursuant to § 330.8 of this Part.

(1) Discharges of dredged or fill material into waters of the United States shall be avoided or minimized through the use of other practical alternatives.

(2) Discharges in spawning areas during spawning seasons shall be avoided.

(3) Discharges shall not restrict or impede the movement of aquatic species indigenous to the waters or the passage of normal or expected high flows or cause the relocation of the water (unless the primary purpose of the fill is to impound waters).

(4) If the discharge creates an impoundment of water, adverse impacts on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized.

(5) Discharge in wetlands areas shall be avoided.

(6) Heavy equipment working in wetlands shall be placed on mats.

(7) Discharges into breeding areas for migratory waterfowl shall be avoided.

(8) All temporary fills shall be removed in their entirety.

§ 330.7 Notification procedures.

(a) The general permittee shall not begin discharges requiring pre-discharge notification pursuant to the nationwide permit at § 330.5(a)(26):

(1) Until notified by the district engineer that the work may proceed under the nationwide permit with any special conditions imposed by the district or division engineer; or

(2) If notified by the district or division engineer that an individual permit may be required; or

(3) Unless 20 days have passed from receipt of the notification by the district engineer and no notice has been

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received from the district or division engineer.

(b) Notification pursuant to the nationwide permit at § 330.5(a)(26) must be in writing and include the information listed below. Notification is not an admission that the proposed work would result in more than minimal impacts to waters of the United States; it simply allows the district or division engineer to evaluate specific activities for compliance with general permit criteria.

(1) Name, address, and phone number of the general permittee;

(2) Location of the planned work;

(3) Brief description of the proposed work, its purpose, and the approximate size of the waters, including wetlands, which would be lost or substantially adversely modified as a result of the work; and

(4) Any specific information required by the nationwide permit and any other information that the permittee believes is appropriate.

(c) *District engineer review of notification.* Upon receipt of notification, the district engineer will promptly review the general permittee's notification to determine which of the following procedures should be followed:

(1) If the nationwide permit at § 330.5(a)(26) is involved and the district engineer determines either, (i) the proposed activity falls within a class of discharges or will occur in a category of waters which has been previously identified by the Regional Administrator, Environmental Protection Agency; the Regional Director, Fish and Wildlife Service; the Regional Director, National Marine Fisheries Service; or the heads of the appropriate state natural resource agencies as being of particular interest to those agencies; or (ii) the particular discharge has not been previously identified but he believes it may be of importance to those agencies, he will promptly forward the notification to the division engineer and the head and appropriate staff officials of those agencies to afford those agencies an adequate opportunity before such discharge occurs to consider such notification and express their views, if any, to the district engineer concerning whether individual permits should be required.

(2) If the nationwide permits at § 330.5(a) (7), (17), or (21) are involved and the Environmental Protection Agency, the Fish and Wildlife Service, the National Marine Fisheries Service or the appropriate state natural resource or water quality agencies forward concerns to the district engineer, he will forward those concerns to the division engineer together with a statement of the factors pertinent to a determination of the environmental effects of the proposed discharges, including those set forth in the 404(b)(1) guidelines, and his views on the specific points raised by those agencies.

(3) If the nationwide permit at § 330.5(a)(21) is involved the district engineer will give notice to the Environmental Protection Agency and the appropriate state water quality agency. This notice will include as a minimum the information required by paragraph (b) of this section.

(d) *Division engineer review of notification.* The division engineer will review all notifications referred to him in accordance with paragraph (c)(1) or (c)(2) of this section. The division engineer will require an individual permit when he determines that an activity does not comply with the terms or conditions of a nationwide permit or does not meet the definition of a general permit (see 33 CFR 322.2(f) and 323.2(n)) including discharges under the nationwide permit at § 330.5(a)(26) which have more than minimal adverse environmental effects on the aquatic environment when viewed either cumulatively or separately. In reaching his decision, he will review factors pertinent to a determination of the environmental effects of the proposed discharge, including those set forth in the 404(b)(1) guidelines, and will give full consideration to the views, if any, of the federal and state natural resource agencies identified in paragraph (c) of this section. If the division engineer decides that an individual permit is not required, and a federal or appropriate state natural resource agency has indicated in writing that an activity may result in more than minimal adverse environmental impacts, he will prepare a written statement, available to the public on request, which sets forth his response to the specific points raised by the commenting agency. When the division engineer reaches his decision he will notify the district engineer, who will immediately notify the general permittee of the division engineer's decision.

§ 330.8 Discretionary authority.

Except as provided in paragraphs (c)(2) and (d) of this section, division engineers on their own initiative or upon recommendation of a district engineer are authorized to modify nationwide permits by adding regional conditions or to override nationwide permits by requiring individual permit applications on a case-by-case basis, for a category of activities, or in specific geographic areas. Discretionary authority will be based on concerns for the aquatic environment as expressed in the guidelines published by EPA pursuant to section 404(b)(1). (40 CFR Part 230)

(a) *Activity Specific conditions.* Division engineers are authorized to modify nationwide permits by adding individual conditions on a case-by-case basis applicable to certain activities within their division. Activity specific conditions may be added by the District Engineer in instances where there is mutual agreement between the district engineer and the permittee. Furthermore, district engineers will condition NWPs with conditions which have been imposed on a state section 401 water quality certification issued pursuant to § 330.9 of this Part.

(b) *Regional conditions.* Division engineers are authorized to modify nationwide permits by adding conditions on a generic basis applicable to certain activities or specific geographic areas within their divisions. In developing regional conditions, division and district engineers will follow standard permit processing procedures as prescribed in 33 CFR Part 325 applying the evaluation criteria of 33 CFR Part 320 and appropriate parts of 33 CFR Parts 321, 322, 323, and 324. Division and district engineers will take appropriate measures to inform the public of the additional conditions.

(c) *Individual permits*—(1) *Case-by-Case.* In nationwide permit cases where additional individual or regional conditioning may not be sufficient to address concerns for the aquatic environment or where there is not sufficient time to develop such conditions under paragraphs (a) or (b) of this section, the division engineer may suspend use of the nationwide permit and require an individual permit application on a case-by-case basis. The district engineer will evaluate the application and will either issue or deny a permit. However, if at any time the reason for taking discretionary authority is satisfied, then the division engineer may remove the suspension, reactivating authority under the nationwide permit. Where time is of the essence, the district engineer may telephonically recommend that the division engineer assert discretionary authority to require an individual permit application for a specific activity. If the division engineer concurs, he may orally authorize the district engineer to implement that authority. Oral authorization should be followed by written confirmation.

(2) *Category.* Additionally, after notice and opportunity for public hearing, division engineers may decide that individual permit applications

should be required for categories of activities, or in specific geographic areas. However, only the Chief of Engineers may modify, suspend, or revoke nationwide permits on a statewide or nationwide basis. The division engineer will announce the decision to persons affected by the action. The district engineer will then regulate the activity or activities by processing an application(s) for an individual permit(s) pursuant to 33 CFR Part 325.

(d) For the nationwide permit found at § 330.5(a)(26), after the applicable provisions of § 330.7(a) (1) and (3) have been satisfied, the permittee's right to proceed under the general permit may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 325.7.

(e) A copy of all modifications or revocations of activities covered by nationwide permits will be forwarded to the Office of the Chief of Engineers, ATTN: DAEN–CWO–N.

§ 330.9 State water quality certification.

(a) State water quality certification is required for nationwide permits which may result in any discharge into waters of the United States. If a state issues a water quality certification which includes special conditions, the district engineer will add these conditions as conditions of the nationwide permit in that state. However, if such conditions do not comply with the provisions of 33 CFR 325.4 or if a state denies a required 401 certification for a particular nationwide permit, authorization for all discharges covered by the nationwide permit within the state is denied without prejudice until the state issues an individual or generic water quality certification or waives its right to do so. A district engineer will not process an individual permit application for an activity for which authorization has been denied without prejudice under the nationwide permit program. However, if the division engineer determines that it would otherwise be appropriate to exercise his discretionary authority, pursuant to § 330.8, to override the nationwide permit or permits in question, he may do so, and the district engineer may proceed with the processing of individual permit applications. In instances where a state has denied the 401 water quality certification for discharges under a particular nationwide permit, applicants must furnish the district engineer with an individual or generic 401 certification or a copy of the application to the state for the certification. If a state fails to act within a reasonable period of time (see § 325.2(b)(1)(ii)), a waiver will be presumed. Upon receipt of an individual or generic certification or a waiver of certification, the proposed work is authorized under the nationwide permit. If a state issues a conditioned individual certification, the district engineer will include those conditions that comply with 33 CFR 325.4 as special conditions of the nationwide permit (see 33 CFR Part 330.8(a)) and notify the applicant that the work is authorized under the nationwide permit provided all conditions are met.

(b) Certification requirements for nationwide permits fall into the following general categories:

(1) *No certification required.* Nationwide permits numbered 1, 2, 4, 5, 8, 9, 10, 11, and 19 do not involve activities which may result in a discharge and therefore 401 certification is not applicable.

(2) *Certification sometimes required.* Nationwide permits numbered 3, 6, 7, 13, 20, 21, 22, and 23 each involve various activities, some of which may result in a discharge and require certification, and others of which do not. State denial of certification for any specific nationwide permit in this category affects only those activities involving discharges. Those not involving discharges remain in effect.

(3) *Certification required.* Nationwide permits numbered 12, 14, 15, 16, 17, 18, 24, 25, and 26 involve activities which would result in discharges and therefore 401 certification is required.

(c) District engineers will take appropriate measures to inform the public of which waterbodies or regions within the state, and for which nationwide permits, an individual 401 water quality certification is required.

§ 330.10 Coastal zone management consistency determination.

In instances where a state has not concurred that a particular nationwide permit is consistent with an approved coastal zone management plan, authorization for all activities subject to such nationwide permit within or affecting the state coastal zone agency's area of authority is denied without prejudice until the applicant has furnished to the district engineer a coastal zone management consistency determination pursuant to section 307 of the Coastal Zone Management Act and the state has concurred in it. If a state does not act on an applicant's consistency statement within six months after receipt by the state, consistency shall be presumed. District engineers will take appropriate measures to inform the public of which waterbodies or regions within the state, and for which nationwide permits, such individual consistency determination is required. District engineers will not process any permit application for an activity which has been denied without prejudice under the nationwide permit program. However, if the division engineer determines that it would otherwise be appropriate to exercise his discretionary authority, pursuant to § 330.8, to override the nationwide permit or permits in question, he may do so, and the district engineer may proceed with the processing of individual permit applications.

§ 330.11 Nationwide permit verification.

(a) General permittees may, and in some cases must, request from a district engineer confirmation that an activity complies with the terms and conditions of a nationwide permit. District engineers will respond promptly to such requests. The response will state that the verification is valid for a period of no more than two years or a lesser period of time if deemed appropriate. Section 330.12 takes precedence over this section, therefore, it is incumbent upon the permittee to remain informed of changes to nationwide permits.

(b) If the district engineer decides that an activity does not comply with the terms or conditions of a nationwide permit, he will so notify the person desiring to do the work and indicate that an individual permit is required (unless covered by a regional permit).

(c) If the district engineer decides that an activity does comply with the terms and conditions of a nationwide permit he will so notify the general permittee. In such cases, as with any activity which qualifies under a nationwide permit, the general permittee's right to proceed with the activities under the nationwide permit may be modified, suspended, or revoked only in accordance with the procedures of 33 CFR 325.7.

§ 330.12 Expiration of nationwide permits.

The Chief of Engineers will review nationwide permits on a continual basis, and will decide to either modify, reissue (extend) or revoke the permits at least every five years. If a nationwide permit is not modified or reissued within five years of publication in the **Federal Register**, it automatically expires and becomes null and void. Authorization of activities which have commenced or are under contract to commence in reliance upon a nationwide permit will remain in effect provided the activity is completed within twelve months of the date a nationwide permit has expired or was revoked unless discretionary permit authority has been exercised in

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accordance with § 330.8 of this Part or modification, suspension, or revocation procedures are initiated in accordance with the relevent provisions of 33 CFR 325.7. Activities completed under the authorization of a nationwide permit which was in effect at the time the activity was completed continue to be authorized by that nationwide permit.

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November 13, 1986

Part III

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Parts 2509, 2510, 2520, and 2550
Employee Benefit Plans: Definition of Plan Assets and Exemption and Alternative Method of Annual Reporting for Plans Investing in Certain Entities; Rule

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Parts 2509, 2510, and 2550

Final Regulation Relating to the Definition of Plan Assets

AGENCY: Department of Labor.

ACTION: Final regulation.

SUMMARY: This document contains a final regulation that describes what constitute assets of a plan for purposes of certain provisions of Title I of the Employee Retirement Income Security Act of 1974 (ERISA, or the Act) and the related prohibited transaction provisions of the Internal Revenue Code (the Code). This document also contains a redesignation of the rule relating to guaranteed governmental mortgage pool certificates that was originally codified at 29 CFR 2550.401b–1. There has been considerable uncertainty regarding what constitute "plan assets" for purposes of ERISA, and the regulation will provide guidance to plan fiduciaries, participants and beneficiaries of plans and other affected parties.

DATES: The final regulations will be effective March 13, 1987. In general, the final regulations will apply for purposes of identifying plan assets at any time after March 13, 1987. The final regulations also contain certain transitional provisions.

FOR FURTHER INFORMATION CONTACT: John S. Hunter, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, (202) 523–7901 or Shelby J. Hoover or Daniel J. Maguire, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210, (202) 523–8658 or (202) 523–9595, respectively. For matters concerning Executive Order 12291, the Regulatory Flexibility Act or the Paperwork Reduction Act, contact Gary Hendricks, Office of Policy, Planning and Research, Pension and Welfare Benefits Administration, (202) 523–7933. These are not toll free numbers.

Background

I. History of the Regulation

On January 8, 1985, the Department of Labor (the Department) published a notice in the **Federal Register** containing a proposed regulation that would characterize the assets of certain entities in which plans invest as including plan assets, with the result that the managers of those entities would be considered "fiduciaries" subject to the fiduciary responsibility provisions of ERISA.[1] The notice gave an opportunity for interested persons to comment on the proposal.

On February 15, 1985, the Department published a notice in the **Federal Register** containing an amendment modifying the effective date provision of the proposed regulation.[2]

A public hearing on the proposal was held in Washington, DC, on May 6, 7 and 8, 1985 at which time more than 45 commentators made oral presentations. At the conclusion of the hearing, the record in the proceeding was held open until June 30, 1985, in order to permit the filing of additional submissions.[3]

The Department has received more than 700 letters of comment regarding the proposal. The final regulation has been substantially revised in response to the comments received and the testimony at the public hearing.

The following discussion summarizes the proposed regulation and the major issues raised by the commentators and explains the Department's reasons for adopting the final regulation that is published with this notice.

II. Overview of the "Plan Assets" Issue

The proposed plan assets regulation described the circumstances under which the assets of an entity in which a plan invests will be considered to include "plan assets" so that the manager of the entity would be subject to the fiduciary responsibility rules of ERISA. Under ERISA, persons who exercise discretionary authority or control over the assets of a plan or who provide investment advice for a fee with respect to such assets are "fiduciaries" subject to the fiduciary responsibility provisions of the Act.[4] Thus, identifying a plan's assets is a critical step in identifying plan fiduciaries. Moreover, the fiduciary responsibility provisions of ERISA include prohibited transaction provisions which restrict the manner in which fiduciaries may deal with the assets of a plan.[5] In general, a fiduciary may not use the assets of a plan to engage in transactions with "parties in interest" to the plan or plans for which he is acting.

In ERISA, the term "fiduciary" is defined broadly and in functional terms. Fiduciary status is determined with reference to a person's activities with respect to a plan; it does not depend upon any formal undertaking or agreement.[6] In the Department's view, there are many situations where a plan, although nominally investing its assets in a separate entity, is as a practical matter retaining the persons who manage the entity to provide investment management services for the plan. For example, some institutional managers—such as banks and insurance companies—have traditionally pooled the assets of several plans for purposes of collective investment, and plans typically participate in such a fund by acquiring investment units evidencing an interest in the fund. More recently, limited partnerships have been used as devices for the collective investment of plan assets.

Although ERISA does not explicitly define what constitute "plan assets", it does deal specifically with certain kinds of collective investment arrangements. Section 401(b)(1) of ERISA provides that, in the case of a plan which invests in any security issued by an investment company registered under the Investment Company Act of 1940, the assets of the plan will be deemed to include such security, but will not, solely by reason of the plan's acquisition of the security, be deemed to include any assets of the investment company.[7] Similarly, section 401(b)(2) of ERISA provides that when a plan acquires a "guaranteed benefit policy" from an insurance company, the assets of the plan include the policy, but do not include any of the underlying assets of the insurance company issuing the policy.

ERISA also includes provisions which indicate that the underlying assets of certain kinds of collective funds do include "plan assets."[8] Thus, the Act contains special reporting and disclosure provisions where some or all of the assets of a plan are held in an insurance company separate account or a bank common or collective trust fund.[9] In addition, the legislative history accompanying ERISA clearly indicates that the assets of such traditional investment funds should be considered "plan assets" subject to the fiduciary responsibility rules of the Act.[10]

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[1] Proposed regulation 29 CFR 2510.3–101 (50 FR 961). That document also gave notice of withdrawal of a previously proposed regulation (45 FR 38084, June 6, 1980) and the withdrawal of most of the provisions of another previously proposed regulation (44 FR 50363, August 28, 1979) both of which dealt with the definition of plan assets. The Department also noted that the regulation, if adopted, would contain a revision and clarification of Interpretive Bulletin 75–2 (29 CFR 2509.75–2).

[2] 50 FR 6362.

[3] Transcript of Hearing for May 8, 1985, at 110.

[4] See section 3(21) of ERISA.

[5] See section 406 of ERISA. The prohibited transaction provisions of ERISA are complemented by section 4975 of the Code which imposes an excise tax on disqualified persons who engage in prohibited transactions.

[6] See H.R. Rep. No. 1280, 93d Cong., 2d Sess., 323 (1974) (the Conference Report).

[7] The Conference Report indicates that this statutory exclusion was included in ERISA in view of the existence of regulation under the Investment Company Act and because interests in registered investment companies must be widely held. Conference Report at 296. Section 3(21)(B) of ERISA also indicates that neither a registered investment company, its investment adviser nor its principal underwriter is deemed to be a fiduciary by reason of a plan's investment in the investment company, except insofar as such investment company or its investment adviser or principal underwriter acts in connection with an employee benefit plan covering employees of such company, adviser or underwriter.

In the Department's view, it would be unreasonable to suppose that Congress intended that the protections of the fiduciary responsibility provisions of the Act which are applicable where a plan directly retains a manager of its investments would not be applicable where the manager is retained indirectly through investment by the plan in a collective investment fund. It would also appear to be inconsistent with the broad functional definition of "fiduciary" in ERISA if persons who provide services that would cause them to be fiduciaries if the services were provided directly to plans are able to circumvent the fiduciary responsibility rules of the Act by the interposition of a separate legal entity between themselves and the plans (for example, by providing services to a limited partnership in which plans invest). However, neither ERISA itself nor the legislative history of the Act provides a clear indication of the extent to which the fiduciary responsibility provisions of the Act are intended to apply when a plan invests in another entity which may be a vehicle for collective investment of plan funds. In developing a regulation to address this issue the Department has taken into account the public comments on the proposed regulation and the testimony at the public hearing, the express statutory provisions of ERISA, the relevant legislative history and the existing federal regulatory structure applicable to entities in which plans invest.

III. Description of the Proposed Regulation

In order to determine when an investment is an arrangement for the indirect provision of investment management services, the proposed regulation established a "look-through" rule pursuant to which a plan would, in cases where the rule applies, be considered to have acquired an interest in the underlying assets of an entity in which it invests so that the assets of the entity would include "plan assets." To define the scope of the look-through rule, the proposed regulation also established a series of exceptions to the rule. The proposed regulation reflected a general policy determination that the fiduciary responsibility provisions of the Act should apply to an entity in which a plan invests only if: (1) The plan's investment is such that it has an opportunity to participate in the earnings of the entity; (2) the entity itself is an investment fund; and (3) there is some indication that interests in the entity are offered especially to plans. Although, as discussed below, the Department has made several modifications to the regulation in response to the comments received, this general policy approach is reflected in the final regulation.

The first exclusion in the proposed regulation was for plan investments that are not "equity interests". This exclusion reflected a determination that only those investments which provide a plan with an opportunity to share in the success or failure of the entity to which the investment relates are likely to be vehicles for the indirect provision of investment management services. Under the proposal, "equity interests" were defined generally as interests in an entity other than instruments which are treated as indebtedness under local law and which have no substantial equity features.

The second exclusion was for "publicly-offered" securities, that is securities that are registered under the federal securities acts and which are widely-held and freely transferable. The exclusion did not extend to securities that are offered primarily to tax exempt investors.

The third exclusion was for entities in which there was no "significant" plan investment. This exclusion was intended to deal with investments in entities in which there has been no special solicitation of plan investors. Under the proposal, plan investment was "significant" if ERISA plans and certain other kinds of benefit plans own more than 20 percent of any class of outstanding equity interests in an entity.

The fourth exclusion related to "operating companies"—companies that are primarily engaged in the production or sale of a product or service other than the investment of capital. The proposal also specifically described certain "real estate operating companies" and "venture capital operating companies" which were treated as operating companies.

The proposed regulation also provided that the assets of certain entities would always include "plan assets." These included bank collective trust funds, most insurance company separate accounts and entities that are wholly owned by plans. The proposal also provided that the assets of entities, other than insurance companies licensed to do business in a state, that are established for the purpose of providing benefits to participants of investing plans would include plan assets. This provision was intended to apply primarily to so-called "multiple employer trusts."

As proposed, the plan assets regulation would have been effective 90 days after it was published in final form. Under a transitional rule, however, the regulation would not apply to entities which accepted no new plan investments after June 30, 1986.

The Final Regulation

I. The Look-Through Rule for Plan Investments

A. Comments on the General Approach of the Regulation

Several persons who submitted comments on the proposed regulation suggested that the Department should not establish any look-through rule with respect to plan investments in other entities. These commentators indicated that, in their view, references in ERISA to the "assets" of a plan should in all cases be considered to refer to a plan's investment and not to the underlying assets of the entity in which it invests. Some of the commentators suggested that the Department does not have the authority to issue a regulation characterizing the assets of a separate legal entity in which a plan invests as "plan assets". Even assuming that the Department has this authority, the commentators stated, there is no sufficiently compelling policy reason for adopting a look-through rule. With respect to these points, the commentators pointed out that the Department recognized, in its Interpretive Bulletin 75-2, that the assets of an entity in which a plan invests

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[8] In such case, a plan's assets would include its interest in the fund and an undivided interest in each of the underlying assets of the fund.

[9] Section 103(b)(3)(C) of the Act.

[10] "[I]nsurance companies are to be responsible under the general fiduciary rules with respect to assets held under separate account contracts and the assets of these contracts are to be considered as plan assets . . ." Conference Report, at 296. "The conferees understand that it is common practice for banks, trust companies and insurance companies to maintain pooled investment funds for plans. . . . Banks, etc. that operate such pooled investment funds are, of course, plan fiduciaries." Conference Report, at 316.

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generally are not "plan assets".[11] According to the commentators, the Interpretive Bulletin is a correct and proper interpretation of ERISA, and the Department should not depart from that rule.

Other commentators suggested that even if the Department adopts a look-through rule, different standards should be applied in determining when that rule is applicable. Several of these commentators urged the Department to adopt a rule based solely upon the degree of plan investment in an entity. Under the rule suggested by the commentators, the assets of an entity in which a plan invests would include plan assets only if aggregate plan investment exceeds a specified percentage of total investment in the entity (such as 80 percent) or only if aggregate plan investment in the entity exceeds some lesser percentage (such as 50 percent) and one plan or group of related plans holds more than 10 percent of the aggregate outstanding investments in the entity. Finally, some commentators suggested that the look-through rule should apply only where a single plan or group of related plans owns more than a specified percentage of the outstanding equity interests in an entity.

B. The Final Regulation

As noted above, the final regulation adheres to the general approach of the proposed regulation although a number of specific changes have been made.

In the Department's view, the regulation is necessary for several reasons. First, in the absence of a regulation it would be relatively easy for an investment manager to avoid compliance with the fiduciary responsibility provisions of ERISA by indirectly providing investment management services to plans through a separate legal entity. This result would be inconsistent with the broad, functional definition of fiduciary in ERISA as well as Congress's intention that fiduciary status should be imposed on all persons conducting certain specified activities on behalf of plans rather than merely on those who expressly agree to be fiduciaries.

Second, since many collective investment arrangements—such as limited partnerships—allow realization of economies of scale, they are often especially suited for the purposes of smaller plans. Moreover, testimony at the public hearing on the proposed regulation indicated that the traditional forms of collective investment specifically addressed in ERISA—bank collective trust funds and insurance company separate accounts—are generally available only to larger plans. Thus, if other forms of collective investment that are suitable for small plans are not subject to the fiduciary responsibility rules of ERISA, the full protections of those rules would be available for larger plans, but would not be available for smaller plans.

Third, although the legislative history and the statute itself provide specific guidance regarding the application of the fiduciary responsibility rules to certain traditional forms of collective investment, they do not describe how those rules should apply to other forms of collective investment. Thus, if the Department does not adopt a regulation, uncertainty about the scope of the fiduciary responsibility rules will persist until such time as the issue is settled in litigation. This uncertainty would, in the Department's view, be detrimental to plans as well as to persons marketing investments to plans.

The Department also believes that the general approach of the proposed regulation, which takes into account the nature of the plan's investment, the nature of the entity to which the investment relates, and the nature of other investors, is the most appropriate way of distinguishing investments that are vehicles for the indirect provision of investment management services from those that are not. In this respect, the Department has concluded that, although the degree of plan investment in an entity is relevant to a determination whether the underlying assets of an entity include plan assets, that factor alone should not be dispositive.

Finally, the Department believes that it has authority under ERISA to promulgate the final regulation set forth here.[12]

II. Scope of the Regulation

A. The Proposed Regulation

The proposed regulation described what constitute "plan assets" with respect to a plan's investment in another entity for purposes of Subtitle A (definitional and coverage provisions) and Parts 1 and 4 (reporting and disclosure and fiduciary provisions) of Subtitle B of Title I of ERISA and for purposes of section 4975 of the Internal Revenue Code (excise tax provisions relating to prohibited transactions).[13] Since it applied to the prohibited transaction provisions of the Code as well as Title I of ERISA, the proposed regulations would have affected not only investments by plans that are subject to Title I (Title I plans), but also investments by plans that are not subject to Title I, but which are described in section 4975 of the Code.[14] These plans include primarily individual retirement accounts (IRAs) and certain plans which are qualified for favorable tax treatment under the Code that cover only self-employed individuals.

B. Comments Received

The Department received several comments which expressed concern about the effect that the proposed regulation might have on investment opportunities for IRAs. In addition, several commentators raised questions regarding the extent to which the regulation should apply to plans other than Title I plans. In this respect, some commentators and a witness at the public hearing on the proposal emphasized that investment decisions with respect to IRAs are generally made by the persons for whom the accounts are established and that these investments thus differ substantially from those typically made by employer-sponsored plans. Finally, one commentator urged the Department to clarify whether the reference to "plan" in paragraph (a)(2) of the proposal refers to "benefit plan investors" (which include certain plans that are not subject to either Title I of ERISA or section 4975 of the Code) or only to plans described either in Title I of ERISA or in section 4975(e)(1) of the Code.

C. The Final Regulation

The final regulation will apply to determinations of what constitute "plan assets" for all purposes under the definitional provisions of ERISA and parts 1 and 4 of Title I of ERISA and section 4975 of the Internal Revenue Code. Thus, it will apply to investments made by IRAs and other plans described in section 4975(e)(1) of the Code in addition to plans that are subject to the requirements of Title I of ERISA. The Department has determined that, even though there may be differences between IRAs and Title I plans that affect the kinds of investments made by such plans, there is a need for consistent application of the prohibited transaction rules of ERISA and the related excise tax provisions of the Code. In this respect, it appears clear that Congress intended that the prohibited transaction excise tax provisions would not only operate to discourage the direct or indirect use of the assets of an IRA for purposes unrelated to retirement needs, but that they also would apply to transactions involving persons who are fiduciaries by reason of providing investment management services to such accounts.[15] Although, as noted above, most of the Department of the Treasury's authority under section 4975 of the Code has been transferred to the Department, the Department has consulted with the Department of the Treasury regarding the scope of the final regulation.

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[11] 29 CFR 2509.75–2.

[12] The Department notes that not only does section 505 of ERISA contain a broad grant of rulemaking authority, but that in section 11018(d) of Pub. L. 99–272 Congress has expressly instructed the Department to issue a final regulation defining "plan assets" by December 31, 1986.

[13] Thus, as discussed in the preamble to the proposed regulation, the regulation is not relevant to "minimum standards" issues, such as matters relating to vesting and funding. With respect to the reporting and disclosure provisions of ERISA, the Department recognized that special difficulties are presented in reporting transactions involving collective investment funds whose assets include plan assets and therefore published a proposed alternative method of compliance for such entities (proposed regulation 29 CFR 2520.103–12 (50 FR 3362, January 24, 1985)). As discussed below, the Department is also publishing this regulation in final form in today's **Federal Register**.

[14] Section 102 of Reorganization Plan Number 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), transferred the authority of the Secretary of the Treasury to issue regulations under most provisions of section 4975 of the Code, including those provisions to which the definition of the term "plan assets" is relevant, to the Secretary of Labor.

III. Definition of Equity Interest

A. The Proposed Regulation

Under the proposed regulation, the assets of a plan would not have included an interest in the assets of an entity in which it invests unless the plan acquires an "equity interest" in the entity. Paragraph (b)(1) of the proposal stated that the term "equity interest" means any interest in an entity "other than an instrument that is treated as indebtedness under applicable local law and which has no substantial equity features." That paragraph also provided that a profits interest in a partnership, an undivided ownership interest in property and a beneficial interest in a trust would be treated as equity interests.

The preamble to the proposal indicated that, while the question whether a plan's interest is an "equity interest" is an inherently factual one, an instrument will not fail to be a debt instrument merely because it has certain equity features—such as additional variable interest and conversion rights—that are incidental to the primary fixed obligation. In addition, an example in the proposal indicated that a plan would not acquire an "equity interest" at the time that it purchases a convertible debenture if the conversion feature is incidental to the primary obligation to pay principal and interest. However, the example also indicated that the plan would acquire an "equity interest" at the time that it exercises its option to convert the debenture to stock of the issuing corporation.

B. Discussion of Comments and the Terms of the Final Regulation.

1. *Applicable Law.* Several commentators noted that the proposal did not specify which state's law would control with respect to a determination whether a plan has invested in a debt instrument. One commentator indicated that the law of the state in which the entity is formed should control. Some commentators suggested that the exclusion in the regulation should apply to any instrument that is treated as indebtedness under local law, regardless of the extent to which the instrument has equity features.

—The Final Regulation

The reference to local law in the definition of equity interest in the final regulation is the same as the reference in the proposal. In the Department's view, the reference to local law provides an initial frame of reference for determinations whether an interest is indebtedness. With respect to the question of which law applies for purposes of determining whether an instrument is treated as indebtedness under "applicable local law," the Department intends that such determinations should be made under the law governing questions regarding interpretation of the instrument.

2. *Substantial Equity Features.* Some commentators requested that the Department provide a more meaningful explanation of when certain equity features will be considered "incidental" to the primary fixed obligation for purposes of the definition of equity interest. Several commentators specifically requested additional guidance regarding how the "substantial equity features" element of the definition would apply to hybrid investments. One commentator suggested that the Department include a list of common equity features in the final regulation and provide in the regulation that the existence of any two of these features would constitute "substantial equity features". However, other commentators acknowledged that it is extremely difficult to characterize accurately an instrument that has both debt and equity features. Nonetheless, these commentators suggested that some certainty could be provided in this area if the Department established safe harbors under which certain hybrid instruments would not be considered "equity interests." Some commentators advocated a safe harbor based on the approach taken in the regulations proposed by the Department of the Treasury under section 385 of the Code, *i.e.*, that the instrument be characterized as debt or equity according to its predominant characteristic.[16] One commentator suggested an alternative safe harbor for hybrid instruments which are considered "indebtedness" under state law and which have an effective annual interest rate on the fixed obligation portion equal to at least 60 percent of the current "applicable federal rate" under section 1274(d) of the Code.[17] Another commentator proposed a safe harbor for hybrid instruments which contain certain characteristics typical of many securities offered by real estate firms. Finally, one commentator requested that the text of the regulation should state explicitly the principle established in the example discussed above, *i.e.*, that the mere presence of a conversion right which is incidental to the primary fixed obligation does not create an "equity interest" until such a right is exercised.

—The Final Regulation

The Department has decided not to modify the regulation to specify more precisely when equity features of a debt instrument become "substantial". As demonstrated by the comments on this issue, there are a vast number of different kinds of equity features, each of which provide investors with different opportunities to participate in the earnings of an entity. Thus, whether any particular investment has substantial equity features is an inherently factual question that must be

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[15] Congress expressly made prohibited transactions with respect to certain plans that are not covered by Title I of ERISA subject to the excise tax imposed by section 4975. Moreover, section 4975 expressly distinguishes between prohibited transactions that benefit beneficiaries of IRAs and those that do not: Section 408(e)(2)(A) and section 408(e)(4) of the Code provide that an individual retirement account will lose its tax exempt status if any of the assets of the account are used to engage in a prohibited transaction for the benefit of an individual who has established an account or who is a beneficiary of the account, and section 4975(c)(3) of the Code provides for the abatement of the excise tax that would otherwise be imposed with respect to such a prohibited transaction. No similar abatement is provided for other kinds of prohibited transactions involving IRAs, however.

[16] Formerly 26 CFR 1.385-1—1.385-10 (adopted December 29, 1980 and withdrawn August 5, 1983).

[17] Section 1274 of the Code establishes rules for imputing a rate of interest to certain debt instruments: the "applicable Federal rate" is one element in making such a determination.

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resolved on a case-by-case basis. In making such a determination, however, it would be appropriate, in the Department's view, to take into account whether the equity features of an instrument are such that a plan's investment in the instrument would be a practical vehicle for the indirect provision of investment management services. Nonetheless, as reflected in the definition of equity interest, the Department has concluded that the mere fact that a debt instrument has some equity features does not require characterization of the instrument as an equity interest.

3. *Timing.* A number of comments addressed the issue of when a determination should be made that a particular instrument is debt or equity. Several commentators expressed concern with the implication in the proposal that characterization of an instrument as debt or equity might change over time. One commentator advocated that a determination of the character of an instrument be made at the time of its initial issuance. Another commentator suggested that the characterization of an instrument at the time of issuance should control unless a significant change is made to the terms of the instrument itself. Other commentators suggested that a determination of whether an instrument creates a debt or equity interest should be made at the time of the plan's investment.

—The Final Regulation

The definition of equity interest in the final regulation in effect provides that characterization of an instrument as debt or equity is made continuously during a plan's holding of the instrument. Thus, for example, if a plan acquires an instrument which is debt at the time of acquisition, but due to changing market conditions the equity features become significant, the instrument would then be characterized as an "equity interest." This approach will provide for uniform treatment among plan investors, because the characterization given a particular class of securities will not be different for different plan investors depending solely on when the plans happened to make the investment, and will assure that plans' holdings of instruments that provide a significant opportunity to participate in the earnings of the issuer will be tested under the other rules in the regulation in order to determine whether the investments are vehicles for the indirect provision of investment management services.

IV. The "Publicly-Offered" Exception

A. The Proposed Regulation

As noted above, the look-through rule in the proposed regulation would not have applied in the case of a plan's investment in "publicly-offered" securities. Thus, the managers of an issuer of publicly-offered securities would not have been considered ERISA fiduciaries solely by reason of a plan's acquisition of such securities.

Paragraph (b)(2) of the proposed regulation defined "publicly-offered securities" as securities which are widely-held, freely transferable, and part of a class of securities registered pursuant to section 12(b) or 12(g) of the Securities Exchange Act of 1934, or sold to a plan from a public offering pursuant to an effective registration statement under the Securities Act of 1933 and the class of securities of which such security is a part is subsequently registered under the 1934 Securities Act. The proposal also indicated that a security would not be publicly-offered if it is part of an offering that is directed primarily to tax-exempt entities. The Department indicated in the preamble to the proposal that, although a determination whether a security is offered primarily to tax-exempt entities would be made on a case-by-case basis, a security would be considered to be offered primarily to such entities if it is subject to restrictions on transfer that result, or are likely to result, in the security being acquired primarily by tax-exempt entities, or if the disclosure materials relating to the offering indicate that the investment is intended primarily for such entities.

With respect to the "free transferability" requirement, the Department stated in the preamble to the proposal that the extent to which any particular restriction affects the free transferability of a security is a factual question to be resolved on a case-by-case basis.

B. Discussion of Comments and the Terms of the Final Regulation

1. *"Primarily to Tax Exempt Investors" Limitation.* The limitation to the publicly-offered exception that made the exception unavailable in the case of offerings primarily to tax-exempt investors was the single most controversial provision of the proposal, and a large number of commentators urged the Department to delete the limitation. These comments were made principally by sponsors of real estate limited partnerships designed especially for plan investors and by certain real estate investment trusts (REITs).

The commentators argued that public real estate partnerships are sufficiently different from traditional pooled investment funds in which plans participate that plan investments in such partnerships should not be considered the functional equivalent of retaining the general partner to provide investment management services. Moreover, the commentators described at some length the scope of regulation of public real estate partnerships under federal and state securities laws. These commentators contended that widely-held, freely transferable securities issued by public real estate partnerships are similar to equity securities issued by registered investment companies, the underlying assets of which are not treated as plan assets under ERISA.[18]

The commentators also argued that if the underlying assets of a publicly-offered real estate partnership are considered to include plan assets, and if managers of public real estate partnerships are treated as ERISA fiduciaries, it would be extremely difficult, if not impossible, for many partnerships with large numbers of plan investors to comply with the ERISA prohibited transaction rules. In this respect, the commentators noted that, due to the high minimum investment requirements for participation in bank and insurance company pooled real estate vehicles, REITS and public real estate partnerships are the primary means by which small and medium sized plans invest in real estate.

Most of the commentators urged the Department to delete the "primarily to tax-exempt investors" limitation entirely so that the publicly-offered exception would be available for securities offerings directed particularly to plans. Some commentators also suggested, however, that if a limitation to the publicly-offered exception were retained in the final regulation, it should apply only to offerings made primarily to Title I plans.

—The Final Regulation

The Department has deleted the primarily offered limitation from the publicly-offered exception in the final regulation. Thus, the assets of an entity whose securities are widely-held, freely transferable and registered under the federal securities acts would not include plan assets even where those securities are offered primarily, or even exclusively, to plans. Consequently, the managers of such entities would not be ERISA fiduciaries merely because there is plan investment in the entity.

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[18] See section 3(21)(B) and 401(b)(1) of ERISA, discussed above.

The primary basis for the proposed publicly-offered exception was to prevent the regulation from operating to create inadvertent ERISA fiduciaries. The manager of a publicly-offered entity typically is not able to control plan investment in the entity and often is not readily able to determine whether a particular investor is, or is not, a plan. In these circumstances, the Department concluded that it would be inappropriate to impose fiduciary responsibility on the entity's managers—even where the entity is an investment fund—merely because plans happen to invest in the entity.[19]

The limitation to the publicly-offered exclusion in the 1985 proposal was based on the Department's conclusion that, where a securities offering in an investment fund is made especially to plans, the primary rationale for the publicly-offered exception would not be applicable because the issuer of securities that are offered primarily to plans cannot be said to have "inadvertently" assumed fiduciary responsibilities that might result from plan investment. Based on the comments received concerning the limitation, however, the Department has reexamined the role of the publicly-offered exception.

In deciding to delete the limitation, the Department has considered the existing federal regulatory structure relating to companies that invest and reinvest capital. In enacting the Investment Company Act of 1940, Congress created a system of *substantive* federal regulation for companies that invest in securities, but did not extend such regulation to companies that invest in property other than securities. Thus, although publicly-offered securities of companies which invest in property other than securities (such as real estate) are subject to the disclosure-oriented Securities Act of 1933 and Securities Exchange Act of 1934, these companies generally are not subject to substantive federal regulation of their business activities. Congress specifically recognized that the Investment Company Act would result in such differing regulatory treatment. In this respect, the legislative history of the Investment Company Act indicates that Congress found that investment funds consisting of securities are particularly susceptible to abuse because securities are typically highly liquid investments.[20] Moreover, the staff of the Securities and Exchange Commission has recognized this distinction several times in expressing opinions regarding the scope of the Investment Company Act.[21]

As discussed above, the Department has concluded that the plan assets regulation is essential in order to protect fundamental principles under the fiduciary responsibility provisions of ERISA and to implement Congress's intent in enacting ERISA. In formulating the final regulation, however, the Department has also taken into account Congressional decisions implementing other federal policies. In the Department's view, it would be inappropriate, in the absence of compelling reasons for doing so, to take a regulatory position here which would disrupt the Congressional balancing of policy interests that is reflected in the federal securities laws. Thus, the Department has balanced the apparent need to apply the fiduciary responsibility provisions of ERISA to the issuers of publicly-offered securities against the intrusion on other federal regulatory policies that would result from such application. In this respect, it appears that, although public offerings have been developed which take into account the particular investment needs of plans, there is no clear indication that plan investments in such offerings have on the whole operated to the detriment of the investing plans or their beneficiaries.[22]

Accordingly, the Department has determined that the benefits of extending the ERISA fiduciary responsibility rules to the managers of issuers of such securities are outweighed by the disruption of other federal regulatory policies which would result from such a rule.

The Department also believes that the "widely-held" and "freely transferable" requirements under the publicly-offered exception will provide plan investors two significant protections: (1) The ability to liquidate an unattractive investment; and (2) diminution of concentration of ownership in any one investor due to the large number of investors in the entity so that it will be less likely that the entity's managers will engage in transactions for the benefit of persons related to any particular investor.

The Department also notes that investing plan fiduciaries have a duty to carefully evaluate plan investments in publiclyoffered securities that are issued by entities that are similar to investment funds. A plan fiduciary is obligated under ERISA to consider all relevant information in making investment decisions.[23] Thus, whether the underlying assets of an entity include "plan assets" is one factor that a plan fiduciary should consider in making a decision to invest in an entity.

2. The Widely-Held Requirement. Some commentators also suggested that the final regulation clarify the term "widely-held" as it is used in the publicly-offered exception. In general, these comments stated that the Department should include in the final regulation a statement made in the preamble to the 1979 plan assets proposal to the effect that interests in an entity ordinarily will be considered "widely-held" if they are held by 100 or more persons. Commentators on behalf of REITs particularly stressed this point, noting that under section 856 of the Internal Revenue Code a REIT must have 100 or more investors to qualify for favorable tax treatment. Other commentators suggested that the "widely-held" requirement be replaced by a limitation on the amount of the outstanding interests in an entity that could be held by any single investor (for example, 5 percent). According to the commentators, this test would assure that no plan investor would be able to exercise a controlling influence over the entity's management.

—The Final Regulation

In the final regulation, the Department has provided a more precise definition of the term "widely-held" as it is used in the publicly-offered exception. Under the final regulation, securities will be considered "widely-held" only if they are part of a class of securities purchased and held by 100 or more persons who are independent of the issuer and of one another.[24] This bright line test was chosen to provide as much clarity and certainty as possible. The requirement that the investors be independent of each other and the

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[19] See the discussion of the similar publicly-offered exception in the Department's 1979 plan assets proposal (44 FR 50364-5, August 28, 1979).

[20] See H.R. Rep. No. 2639, 76th Cong., 3d Sess. 7 (1940).

[21] See, e.g., Merrill, Lynch, Pierce, Fenner & Smith Inc., [1982] Fed. Sec. L. Rep. (CCH) ¶ 77,089 at 77,750 (October 5, 1981).

[22] In individual cases, a plan's investment in publicly-offered securities of companies which invest in property other than securities (which are thus not regulated by the Investment Company Act of 1940) might result in losses to the plan and in some cases such losses may be attributable to the misconduct of the manager of the entity to which the securities relate. The Department, however, has not identified the kind of pattern of abuse that would provide a sufficiently compelling reason for applying a look-through rule to plan investments in such securities. Of course, if such a pattern of abuse were to develop, the Department would need to reexamine its conclusions.

[23] See 29 CFR 2550.404a–1(b)(1).

[24] Securities will not, however, be considered to fail this test if subsequent to issuance, events beyond the issuer's control cause the securities to be held by fewer than 100 independent investors.

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management of the entity to which the investment relates will assure that this aspect of the publicly-offered exception will not be subject to manipulation, for example, by the issuance of securities to affiliates of the issuer or to small groups of related investors.

3. The Free Transferability Requirement. A number of commentators also urged that the Department either eliminate the free transferability element of the publicly-offered exception or that it specifically indicate that customary restrictions on the transfer of limited partnership and REIT interests will not cause those interests to fail to meet the requirement. In general, the commentators suggested that the Department indicate that four categories of restrictions would be permissible. These included restrictions necessary to comply with: (1) Applicable federal or state securities laws; (2) federal or state tax law; (3) state partnership laws; or (4) reasonable administrative processing needs.

Public real estate partnerships and REITs also specifically requested that the Department make it clear that the existence of a right of first refusal will not cause a security to fail to be freely transferable. In the case of partnerships, the commentators noted, a right of first refusal (*i.e.*, a requirement that an issuer be provided an opportunity to acquire securities that an investor wishes to sell before they may be sold to another party) is a useful way of preventing the premature termination or liquidation of the partnership for tax purposes; the commentators also indicated that in the case of REITs, a right of first refusal helps assure that the REIT will not lose its qualification for favorable tax treatment under section 856 of the Code.

Some commentators also suggested that the final regulation should provide that the free transferability requirement is met if investors have the ability to freely assign the economic benefits of ownership of securities even though the original investor retains legal title to the securities.

The commentators also noted that REITs and public real estate partnerships frequently require prior approval by a general partner or other co-investors as a condition to transfer of a limited partnership interest. The commentators indicated that this kind of restriction, as well as suitability standards for potential transferees, aid REITs and limited partnerships in meeting requirements under state and federal tax and securities laws, and they urged the Department to make it clear that such requirements would not affect the free transferability of securities.

Some commentators also requested that the final regulation make it clear that reasonable administrative fees could be imposed with respect to the transfer of securities without affecting the free transferability of the securities.

—The Final Regulation

In general, the Department has concluded that a determination whether a security is considered freely transferable is a factual one to be made on the basis of the circumstances of each case. Nonetheless, because the comments demonstrate that many federal and state requirements exist which might be considered to affect the "free transferability" of a security, the Department has also determined that some additional clarification is necessary. In the opinion of the Department, the minimum amount which can be purchased by an investor is a characteristic of a securities offering which will frequently affect the ability of an investor to liquidate his investment. For example, where the amount of the minimum investment is relatively low, the securities which are the subject of the offering are more likely to be widely distributed and it is more likely that the securities can be easily liquidated. Conversely, where the amount of the minimum investment is relatively high, there are likely to be more limited opportunities to dispose of the securities.

Based on the information submitted by commentators, the Department has concluded that where a minimum investment in a public offering is $10,000 or less, the securities in question are likely to be widely distributed. Thus, although a determination whether securities offered in a public offering in which the minimum investment is $10,000 or less are freely transferable is ultimately a factual question under the final regulation, paragraph (b)(4) contains a list of eight types of permissible restrictions which ordinarily will not, alone or in combination, affect a finding that such securities are freely transferable. These permissible restrictions are derived from the special transitional rule for publicly-offered real estate companies in Public Law 99–272.[25] The enumerated restrictions include restrictions necessary to permit partnerships to comply with applicable federal and state laws, to assure favorable treatment under federal or state tax law, and to meet reasonable administrative processing needs. Thus, the final regulation in effect establishes a presumption that securities will be considered freely transferable, notwithstanding the existence of the enumerated restrictions, where they are part of an offering in which the minimum investment is $10,000 or less.[26]

In those cases where the minimum investment exceeds $10,000, whether a security is freely transferable will be determined under the final regulation based on all the relevant facts and circumstances. In such cases, the minimum investment restriction as well as any other type of restriction applicable to a security should be considered in determining whether the security is freely transferable. The Department emphasizes, however, that the existence of the kinds of restrictions on transfer that fit within one or more of the specific categories discussed above would not necessarily result in a determination that securities are not freely transferable, even where the minimum permitted investment in the securities exceeds $10,000. However, the presumption that such restrictions do not affect the free transferability of the securities would not be available in these circumstances.

The Department believes these rules will allow publiclyoffered entities to meet certain federal and state requirements while still assuring that the publicly-offered exclusion in the final regulation will only apply to securities which in fact provide a plan investor a reasonable opportunity to liquidate its investment.

V. The Significant Participation Exception

A. The Proposed Regulation

Under the proposal, the underlying assets of an entity in which a plan invests would have included plan assets only if equity participation in the entity by benefit plan investors is "significant." The proposal indicated that equity participation in an entity would be "significant" on any date if, immediately after the most recent acquisition of any equity interest in the entity, 20 percent or more of the value of any class of equity interests is held by "benefit plan investors". The proposal defined the term "benefit plan investor" to include: (1) Any employee pension or welfare benefit plan whether or not the plan is subject to Title I of ERISA; (2) any plan described in section 4975(e)(1) of the Internal Revenue Code; and (3) any entity whose underlying assets include plan assets by reason of plan investment in the entity.

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[25] Section 11018(a) of Pub. L. 99–272, in effect establishes an effective date provision for the final plan assets regulation to the extent that it would characterize the assets of publicly-offered real estate entities as including plan assets. This provision is discussed in more detail below.

[26] On the basis of the record, it appears to the Department that the offering value of minimum investment units of widely distributed collective investment vehicles is $10,000 or less. Thus, with regard to those collective investment vehicles with minimum investment units valued within this range, the Department has determined that a plan's ability to dispose of its investment would not, in general, be greatly affected by the permissible restrictions listed in paragraph (b)(4).

The preamble to the proposed regulation indicated that the significant participation test was based on the Department's conclusion that where there is substantial plan investment in an investment fund there is an expectation on the part of the investing plans that the assets of the fund will be managed in furtherance of the objectives of the investing plans and that in such circumstances the manager of the fund is likely to take the objectives of the investing plans into account in making investment decisions for the fund.

Finally, equity interests in an entity held by any person who would be a fiduciary if the assets of the entity included plan assets (as well as any equity interests held by an affiliate of such a person) were disregarded for purposes of the significant participation test in the proposed regulation.

B. Discussion of Comments and the Terms of the Final Regulation

A number of commentators objected to various aspects of the significant participation test. In particular, they asserted: (1) That the definition of the term "benefit plan investor" was too broad; (2) that the 20 percent test for "significant" plan investment was too low; (3) that the degree of investment by plan investors changes constantly and cannot be controlled by an entity's management, and that, even in an initial offering, the manager of an entity may not know the degree of plan investment. The commentators also stated that the significant participation exception is especially important in cases involving private offerings which do not meet the "publicly-offered security" exception. These entities are primarily venture capital companies and certain real estate companies.

1. *The 20 Percent Limitation.* Several commentators suggested modification of the 20 percent figure used in the significant participation test. These commentators contended that 20 percent ownership of a class of equity securities by benefit plan investors is not sufficient to establish the existence of the two factors on which the test was predicated—i.e., special solicitation of plan investors and an expectation on the part of the plan investors that the assets of the entity will be managed in furtherance of their investment objectives.

The commentators stated that much of the nation's private capital is now concentrated in benefit plans and that, accordingly, it is quite possible that as much as 50 percent of an entity's equity capital may be provided by benefit plans without any special solicitation of such investors. Moreover, the commentators asserted that there is no reason to assume that a group of plan investors owning only 20 percent of an entity's outstanding securities will be able to influence the management of the entity. For these reasons, the commentators urged the Department to adopt a 50 percent test.

In addition, some commentators expressed the belief that even a 50 percent limitation would not necessarily be consistent with the underlying rationale for the exception. These commentators stated that where no single plan or group of related plans owns a large interest in an entity, benefit plan investment can be insignificant for purposes of influencing an entity's investment policies even where it is in excess of 50 percent of the aggregate investment in the entity. These commentators suggested that the final regulation should include two percentage tests related to plan investments: one relatively high percentage test which would be intended to identify cases where there has been special solicitation of plan investments by an entity's management and a smaller percentage limitation relating to individual plan investment to identify cases where a particular investor has the potential to influence the entity's business objectives.

Some commentators requested that the percentage test be applied on the basis of aggregate ownership of all classes of equity securities of a single entity rather than on a class by class basis.

Some commentators also objected to the exclusion of the value of equity interests owned by the entity manager (or its affiliates) in calculating whether there is significant plan investment in an entity. These commentators asserted that such an exclusion effectively lowers the percentage test, making it much more likely that there will be significant plan investment, without providing any additional evidence that the entity is managing its assets in furtherance of benefit plan investment goals.

—The Final Regulation

In the final regulation, the Department has increased the threshold percentage for the significant participation test to 25 percent. Although this revision makes the "safe harbor" provided by the significant participation test available to entities in which there is a slightly greater degree of plan investment, the Department has retained the general approach of the proposal.

With respect to the comments urging a more substantial increase in the threshold percentage, the Department notes that the significant participation test was intended to provide a mechanical test which would permit entity managers and investing plans to more easily analyze the consequences under the regulation of an investment where characterization of the investment under other provisions of the regulation (such as the operating company exception) is unclear. The Department believes that such a safe harbor rule must be formulated narrowly in order to prevent its use as a method of evading the application of the fiduciary responsibility rules of ERISA. Thus, in the Department's view, the exception should only apply where plan investment is not so substantial that any special solicitation of plan investments is likely to have occurred and where there is no reasonable expectation that the investment policies of the entity will be affected by the special objectives of the plan investors.

The Department has also concluded that it is necessary to apply the significant participation test to each class of securities and to disregard investments by the entity's managers and their affiliates for purposes of applying the test. In the Department's view, without these restrictions the test could be easily manipulated so as to avoid a determination that plan investment is significant, even where plans provide a substantial degree of the entity's capital and constitute most of the outside investors in the entity. None of the comments suggested ways of avoiding this potential for manipulation.

2. *Benefit Plan Investor Definition.* Several commentators suggested that the Department should narrow the definition of "benefit plan investor" to include only Title I plans (or only plans subject to ERISA or the prohibited transaction provisions of the Code). These commentators argued that since Congress did not believe the protections of the fiduciary responsibility rules are necessary for plans that are not subject to Title I, it would be inappropriate for the Department to take non-covered plans into account in determining whether an entity holds plan assets. The commentators also noted that, in some circumstances, an entity has no means of determining whether an investor is a "benefit plan investor". In addition,

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some commentators suggested that different categories of benefit plan investors may not necessarily have similar investment goals. For example, according to the commentators, foreign plans which are included in the "benefit plan investor" definition, but are not subject to ERISA, might have different objectives than domestic plans.

—The Final Regulation

The Department has adopted the definition of "benefit plan investor" as it was proposed. In reaching this decision, the Department has considered two factors. First, as noted above, the safe harbor rule embodied in the significant participation test is intended to exclude only those entities in which plan investment is so insignificant that it is unlikely that such investment has been especially sought or that the investment objectives of the entity will be influenced by the plan investors. In the Department's view, a broad definition of benefit plan investor is necessary in order to avoid manipulation of the significant participation test. Although the specific investment objectives of different kinds of plans may vary, the Department has concluded that unless all kinds of plans are taken into account for purposes of the test, entity managers would be able to avoid ERISA fiduciary status by rationing investments to plans that are covered by ERISA and offering the remaining investments to other plans that are not covered. Thus, it has concluded that all benefit plan investments should be taken into account in determining whether aggregate investment by plans is more than incidental.

With respect to the definition of benefit plan investor, the Department emphasizes that (as noted in the preamble to the proposed regulation) nothing in the regulation imposes responsibilities on fund managers with respect to plan investors that are not subject to ERISA or to the prohibited transaction provisions of the Code. Plan investors that are not subject to these statutes are merely taken into account for purposes of determining whether plan investment in the aggregate is "significant." This point is made clear in an example that was included in the proposed regulation and which is also included in the final regulation (see paragraph (j)(2) of the final regulation).

3. *Timing of Calculations of Significant Plan Participation.* Several commentators noted that since compliance with the significant participation test would be tested after each new investment, the test could operate in such a way that the consequences of a plan's investment in an entity for plan assets purposes might be affected by subsequent events. In this respect, the commentators contended that the proposal could create administrative burdens for the managers of investment vehicles because frequent changes in the degree of plan ownership could cause frequent changes in the entity's status under the plan assets regulation and because it would be difficult to determine whether an entity meets the requirements for the exception at any particular time.

The commentators suggested two possible changes to address the problems that might be created under the approach of the proposed regulation. First, some commentators suggested that determinations of significant plan investment should be made as of the most recent acquisition of any equity interest in an entity from an issuer or an underwriter. Second, some commentators suggested that determinations of significant plan investment should be made only once with respect to each plan investment in an entity, at the time of the plan's investment. Under this approach, an entity's managers would have fiduciary obligations only to plans that invest in the entity at times when aggregate plan investment exceeds the threshold percentage.

—The Final Regulation

The Department has decided that the regulation should not be revised to permit determinations of significant participation less frequently than the proposal required, *i.e.*, after each new investment. Such continual testing assures consistent treatment of all plan investors in an entity and provides for more accurate characterization of the degree of plan investment in an entity at a given time. The Department also notes that, because of the broad publicly-offered exception that has been included in the final regulation, interests in most of the entities for which the significant participation exception will be dispositive are privately-offered. It should be relatively easy for managers of a privately-offered entity to identify plan investors and to determine whether or not there is significant benefit plan investor participation in an entity. Thus, many of the practical problems of compliance that were identified by the commentators (most of which related to large, public offerings) would not exist under the final regulation.

The significant participation test is not intended to affect the consequences of a plan's investment in debt or publicly-offered securities. Thus, for example, if an investment fund issues a class of publicly-offered securities in which plans invest and issues a second class of equity securities in a private placement exclusively to plans, then the assets of the plans that acquired the privately-offered securities would include an interest in the underlying assets of the fund (because participation in the fund by benefit plan investors is significant since all of the private class of securities is held by plans). However, the assets of the plans that purchased the publicly-offered securities would consist only of those securities and would not include an interest in any of underlying assets of the issuer. Thus, the managers of the investment fund would be fiduciaries only with respect to the plans that purchased the privately-offered securities.

VI. Operating Companies

A. In General

1. *The Proposed Regulation.* The proposed regulation also contained an exception to the look-through rule of the proposal for plan investments in "operating companies." This exclusion was intended to distinguish between companies that carry on an active trade or business, and which thus are not likely vehicles for the indirect provision of investment management services, from investment funds which may well serve as conduits for the provision of such services. Under the proposed regulation, the term "operating company" included any company that is primarily engaged, either directly or through a majority owned subsidiary or subsidiaries, in the production or sale of a product or service other than the investment of capital.

The proposal also contained definitions describing two specific kinds of operating companies: "venture capital operating companies" and "real estate operating companies". Venture capital companies and many real estate companies have characteristics of both operating companies and investment funds, and the specific definitions were intended to provide guidance in determining whether the operating company exclusion would be available for such companies.

2. *Comments Relating to the General Operating Company Definition and Discussion of the General Definition in the Final Regulation.* Most of the comments received by the Department with respect to the operating company exception raised issues with respect to venture capital operating companies and real estate operating companies. These comments are discussed below.

However, several commentators urged the Department to clarify how companies engaged in various different kinds of businesses would be treated under the general operating company definition. These included comments filed on behalf of persons engaged in such activities as equipment leasing and oil and gas ventures.

—The Final Regulation

In general, whether a particular company is, or is not, an operating company under the final regulation is a factual question to be resolved taking into account the particular characteristics of the entity under consideration. As demonstrated by the comments, companies in which plans invest engage in a vast number of different activities. Although in most cases it is relatively easy to characterize an entity as either an operating company or an investment fund, some companies do carry on both kinds of activities. The Department has concluded, however, that, other than with respect to real estate companies and venture capital companies, it would be impractical to provide detailed guidance concerning the types of activities necessary for characterization as an operating company. Accordingly, the general operating company definition in the final regulation is the same as that in the proposal.

B. The Venture Capital Operating Company Exception

1. *The Proposed Regulation.* Under the proposed regulation, there were two elements to the definition of "venture capital operating company". First, at least 85 percent of the firm's assets (not including short-term investments) would have been required to be invested in "venture capital investments" or "derivative investments" (as defined in the proposed regulation). Second, a venture capital firm would have been required to actually exercise "management rights" in at least one of the portfolio companies in which it invests. The proposed regulation also indicated that whether an entity meets the 85 percent test is determined annually on a fixed date and that assets would be valued at their fair market value.

A "venture capital investment" was defined in the proposal as an investment in an enterprise with respect to which the investor has or obtains "management rights" and certain "derivative" investments which are related to investments which provide for management rights.

The term "management rights" was defined in the proposal as rights to substantially participate in, or substantially influence the conduct of, the management of an enterprise. The preamble to the proposed regulation stated that the fact that the holder of corporate securities has the right to appoint one or more directors of the corporation would indicate that the securities are venture capital investments, as would the fact that a representative of the holder of such securities serves as a corporate officer. The preamble also suggested that special rights to examine the books of a nonpublic entity and the fact that an investment constitutes a significant portion of the equity capitalization of a nonpublic issuer may be indicative of management rights.

An example in the proposed regulation indicated that a company must also actually exercise management rights in the ordinary course of its business, and not on a sporadic basis in order to be treated as a venture capital operating company. The proposed regulation also indicated that it is sufficient for a venture capital company to actually participate in the management of only one company in order to meet this requirement. The preamble to the proposal made it clear, however, that substantial resources must be devoted to management efforts.

2. *Discussion of Comments and the Terms of the Final Regulation.* Several venture capital firms commented on the venture capital operating company definition of the proposed regulation. There were three main aspects of the proposal which most concerned these commentators. First, the commentators expressed reservations about the requirement that 85 percent of a venture capital operating company's assets must be invested in companies with respect to which it obtains management rights. Second, the commentators were also concerned with certain aspects of the method of determining compliance with the 85 percent test and the method of valuing securities for purposes of that test. Third, the commentators requested the Department to clarify in the final regulation what kinds of investment covenants and other rights constitute "management rights." The commentators' concerns with each of these aspects of the proposal, and the Department's conclusions with respect to these points, are discussed below.

a. *The Percentage Test.* Most of the venture capital commentators suggested that the Department lower the 85 percent test. Their primary argument was that the 85 percent level does not allow enough flexibility for ordinary venture capital activities and would operate to deprive venture capital companies of the opportunity to diversify investments.

The problem most frequently voiced by the commentators was that the 85 percent test would effectively preclude participation in "later stage" financings because management rights have been ceded to early and middle stage investors and later stage investors ordinarily do not acquire those rights. The commentators expressed similar concerns with respect to investments in newly issued public securities of emerging growth companies because management rights typically are not given in public offerings. According to the commentators, a lower percentage test would also provide venture capital companies with more flexibility to respond to fluctuations in the business cycle.

The most frequently suggested alternative to the 85 percent test was a 50 percent test. However, several commentators suggested alternative levels between 60 percent and 85 percent.

—The Final Regulation

In the final regulation, the Department has replaced the 85 percent test in the definition of venture capital operating company with a 50 percent test. In the Department's view, this level provides venture capital companies with flexibility to respond to changing economic conditions and will enable venture capital companies to diversify investments and thus mitigate the risk associated with venture capital investments. Since companies must devote at least half of their assets on an ongoing basis to venture capital investments, however, the Department is also of the view that the exclusion for venture capital operating companies will continue to be confined to those companies that have demonstrated a substantial ongoing commitment to the venture capital business.

b. *Computation of the Percentage Test and Valuation of Assets.* Several commentators also suggested alternatives to the annual determination of compliance with the percentage test in the definition of venture capital operating company and with the requirement that such computation be based on the fair market value of the company's assets. Specifically, some commentators suggested that compliance with the percentage standard should be determined on an acquisition basis.[27] Finally, several

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[27] Under an acquisition test, a company, once it has initially complied with the applicable percentage test, would cease to be treated as a

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commentators suggested that a company's assets should be valued at book value (generally cost) rather than fair market value for purposes of determining compliance with the percentage test.

Some commentators also indicated that compliance with the annual valuation test in the proposed regulation would be particularly difficult for venture capital companies that have recently been formed as well as for venture capital companies that are winding up their affairs.

—The Final Regulation

The Department has made several revisions to the computational aspects of the definition of venture capital operating company.

First, in the final regulation, assets are to be valued at their cost for purposes of applying the 50 percent test. This modification should eliminate the difficulties that were identified by the commentators in valuing assets for which there is no recognized market. Moreover, the Department has determined that valuing assets at cost is a more appropriate way of applying the percentage test because that method focuses on the degree of a company's commitment of resources to venture capital activities and because, under that method, a company's compliance with the percentage test will not be affected by the relative success or failure of venture capital investments relative to other investments.

Second, the Department has modified the annual method of determining compliance with the percentage test. Under the revised test, a venture capital operating company must meet the 50 percent standard when it first makes long-term investments.[28] Thereafter, a company is treated as a venture capital operating company if on any day during an annual "valuation period" it complies with the 50 percent test. In the Department's view, the use of an annual valuation period will provide venture capital companies with some additional flexibility in complying with the annual 50 percent test while assuring that an entity's compliance with the requirements for treatment as a venture capital operating company is regularly tested.[29]

A "valuation period" is a fixed period which must occur annually, which may not exceed 90 days in duration, and which must begin no later than the anniversary of the date on which the company first becomes a venture capital operating company. The operation of the percentage test is illustrated by the following example: A venture capital company, A, makes a long-term investment on July 15, 1987 and immediately after such investment, A meets the 50 percent test described in paragraph (d)(1)(i). A's "initial valuation date" is July 15, 1987 (see paragraph (d)(1)). Since the initial annual valuation period must begin no later than the anniversary of the initial valuation date (see paragraph (d)(5)(ii)), A's first valuation period may begin no later than July 15, 1988. A establishes the period from July 15 until October 12 as its annual valuation period. Since the regulation provides that a company which complies with the 50 percent test on its initial valuation date is treated as a venture capital operating company until the end of its first valuation period (see paragraph (d)(1)), A does not need to demonstrate compliance with the 50 percent test until October 12, 1988. Thereafter, A must comply with the percentage test on at least one day within the period that begins with July 15 and ends with October 12 of each year.[30]

Third, the definition of venture capital operating company also includes a special rule for companies that are in the process of distributing assets to investors.[31] Under this rule, once a venture capital operating company elects to enter a "distribution period" (after it has distributed 50 percent of its assets, on a cost basis, to investors) it will continue to be treated as a venture capital operating company for the remainder of the distribution period. However, under this rule, a company that has elected to begin a distribution period will cease to be treated as a venture capital operating company if it makes any new portfolio investment (an investment in a company in which the venture capital operating company has not maintained a venture capital investment at all times since the beginning of the distribution period) or upon the expiration of 10 years after the beginning of the distribution period. For example, assume that a venture capital operating company makes three investments. Investment A is a venture capital investment and had a cost of $500,000. Investment B is also a venture capital investment and had a cost of $250,000. Investment C is not a venture capital investment and had a cost of $200,000. Assume further that the venture capital operating company sells Investment A for $1,000,000 and distributes the proceeds to investors in the venture capital company. After this sale, the venture capital operating company may elect to enter a distribution period because it has distributed the proceeds of at least 50 percent of its total investments valued at cost. If the company elects to enter a distribution period, it will continue to be treated as a venture capital operating company notwithstanding that it may thereafter fail to satisfy the annual 50 percent test (for example, by selling Investment B, the remaining venture capital investment, and distributing the proceeds to investors before selling Investment C, the non-venture capital investment). This treatment would continue until the earliest of (1) the date the venture capital operating company distributes all of its assets, (2) the date 10 years from the beginning of the distribution period, or (3) the date on which the company makes a "new portfolio investment."

c. *Venture Capital Investments.* A number of commentators suggested that the Department expand the definition of management rights. These commentators urged particularly that a venture capital company should be considered to have acquired management rights in cases where it participates in a syndication in which management rights are given only to a lead investor. The commentators indicated that syndications are common in the venture capital industry and that

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venture capital operating company only if it makes an investment that is not a venture capital investment the effect of which would be to cause the initial cost of the company's non-venture capital investments to exceed the applicable percentage of the initial cost of all the company's investments.

[28] In the case of an existing venture capital or real estate company, the initial valuation date is any date designated by the company within the 12 month period ending on the effective date of the regulation.

[29] As in the proposed regulation, short-term investments pending long-term commitment are disregarded for purposes of applying the 50 percent test. In the final regulation, the Department has also made it clear that short-term investments made pending distributions to investors also may be disregarded. The Department intends that the investments which are disregarded under this exclusion would be confined to investments—such as commercial paper and similar instruments—that are in fact short-term and which in fact are held by the venture capital company pending long-term investment or distribution to investors. Thus, a venture capital operating company could not hold a portfolio of short-term investments indefinitely and continue to disregard them for purposes of the 50 percent test.

[30] However, the company for "good cause"—such as a change in fiscal year for independent business reasons—may change the fixed annual valuation period.

[31] The Department notes that distributions of assets (or proceeds) in this context could also include in-kind distributions.

management rights acquired by the lead investor in a syndicate should in effect be attributed to the other investors in such syndicate.

Several commentators also suggested that the Department treat "later stage" investments in portfolio companies as venture capital investments even though management rights with respect to the company have been ceded to early stage investors. These commentators urged that the final regulation indicate that if a portfolio company grants management rights to any investor (or group of investors) these management rights will be deemed also to have been granted to later stage investors so long as management rights remain in effect at the time subsequent investors acquire securities from the company. In the alternative, some commentators suggested several characteristics of later stage investments which should be treated as indicative of the existence of management rights. These included: special rights to examine books and records of an issuer, appointment of an employee of a venture capital fund to serve as a corporate officer of a public or nonpublic issuer, investment in five percent or more of the voting securities of an issuer, and rights to redeem securities, preemptive rights, or rights of co-sale with respect to a public or nonpublic issuer.

Other commentators suggested that the final regulation make it clear that newly issued public securities of emerging growth companies would be considered venture capital investments.

Several commentators also suggested revisions to the definition of "derivative investments" in the proposed regulations. These commentators noted that venture capital investors sometimes lose management rights with respect to an investment for reasons other than an initial public offering—for example, as a result of a merger or reorganization. These commentators suggested that securities acquired in exchange for venture capital investments as a result of such changes in corporate structure should be treated as derivative investments.

Some commentators also expressed concern that the standards in the proposed regulation limiting the period during which an investment may be treated as a derivative investment might have the effect of forcing a venture capital company to dispose of a derivative investment at an inopportune time. These commentators suggested that a derivative investment should in all cases continue to be treated as such an investment until the expiration of some stated period after it first becomes a derivative investment.

Finally, some commentators suggested that a venture capital fund of funds (which invests in numerous venture capital companies and in turn sells shares to plans) should be excluded from plan asset treatment by expanding the definition of "venture capital investments" to include investments in an entity which is a "venture capital operating company".

—The Final Regulation

The general definition of venture capital investments in the proposed regulation has been retained in the final regulation. The comments on the proposed regulation and the testimony at the public hearing demonstrated that venture capital companies engage in a variety of different kinds of investment activities and that the kinds of rights to participate in management that such companies obtain vary widely. Thus, it is difficult to develop standards of general application regarding what constitute venture capital investments. In addition, it would be extremely difficult, if not impossible, to fashion a definition that would be responsive to the points made by the commentators, but which would not be so inclusive that virtually any investment would qualify as a venture capital investment. In this respect, the 50 percent test in the final regulation will provide substantially greater flexibility to venture capital companies than the 85 percent test included in the proposal, particularly since determinations of compliance with the percentage test will be made on the basis of the cost of investments. Thus, the Department has concluded that there is less need for additional guidance regarding the precise scope of the term "venture capital investments".

The Department has made some clarifying modifications to the definition of venture capital investment, however. First, the regulation has been revised to make it clear that management rights must be direct contractual rights running from an operating company to a venture capital operating company. Thus, under the final regulation, management rights that are acquired by the lead investor in a syndication would not be attributed to other companies that participate in the syndication and therefore the investments through the syndication would not be venture capital investments for companies other than the lead investor.

Similarly, where management rights may be exercised only by a group of investors acting together, those rights would not be attributed to the individual members of the group. In these circumstances, an individual member of the group has a right to participate in collective decisions with respect to the group's management rights, but it has not itself obtained rights to influence, or participate in, the management of a portfolio company. However, where members of such a group of investors appoint one lead investor to act on behalf of the group, the group has effectively delegated its contractual management rights to the lead investor and that investor would therefore be considered to have obtained management rights with respect to its investment even though it exercises those rights pursuant to an agreement with the group rather than pursuant to an agreement directly with the portfolio company. In addition, the Department notes that different venture capital investors in a single entity may obtain different kinds of management rights. For example, in a syndication arrangement, the lead venture capital investor may obtain a contractual right to appoint a member of the portfolio company's board while other venture capital investors in the syndication may contract for other kinds of management rights.

Second, the Department has modified the definition of "venture capital investment" in the proposal to make it clear that portfolio companies in which venture capital operating companies invest must themselves be operating companies. As noted above, venture capital operating companies have characteristics of passive investment funds as well as operating company characteristics. The exclusion for venture capital operating companies is based on the Department's determination that the "operating" activities of such companies predominate because they obtain and exercise management rights in portfolio companies that are actively engaged in the production or sale of a product or service other than the investment of capital. Thus, this revision is consistent with the purposes underlying the venture capital operating company exception as well as with the Department's understanding of the activities of venture capital companies. Where a company is primarily engaged in the business of investing in venture capital operating companies, however, its relationship to the management of companies that actually produce or sell a product or service is much more remote. Accordingly, as revised, the definition of venture capital investment does not extend to investments in venture capital operating companies. Thus, the venture capital operating company exception would not be available for a venture capital fund of

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funds even where such a fund obtains management rights with respect to the venture capital operating companies in which it invests.

Third, the Department has modified the examples in the final regulation relating to venture capital companies to avoid an implication that management rights may only be acquired with respect to nonpublic companies.

Fourth, the Department has modified the definition of derivative investments to include certain securities acquired in a merger or corporate reorganization (provided the merger or reorganization is undertaken for independent business reasons other than extinguishing an investor's management rights) and to provide that a derivative investment will retain its status until the later of 10 years after the acquisition of the original venture capital investment to which the derivative investment relates, or 30 months after the investment becomes a derivative investment.

d. *Small Business Investment Companies.* Some commentators suggested that the Department specifically include small business investment companies (SBICs) within the definition of a "venture capital operating company". SBICs are created under the Small Business Investment Company Act of 1958, the commentators noted, and are investment firms created for the exclusive purpose of providing growth capital and management support for new and growing small business concerns. These companies are licensed and regulated by the Small Business Administration. The commentators noted that SBICs are similar to venture capital operating companies and are subject to oversight by another federal agency. Thus, the commentators argued, the policy considerations supporting other exclusions from the proposed regulation (particularly the venture capital operating company exception and the exclusion for registered investment companies) also support exclusion of SBICs.

—The Final Regulation

The Department has decided not to include a specific reference to small business investment companies in the definition of an "operating company" because many of the practical problems of compliance identified by the commentators would not exist under the final regulation due to changes made to the "venture capital operating company" exception. The Department has also concluded that it would be inappropriate to treat a SBIC as an additional specific kind of "operating company" unless it satisfies the definition of "operating company" provided in the final regulation, which includes the modified definition of a "venture capital operating company". Thus, a small business investment company may qualify as a venture capital operating company under the final regulation if it invests at least 50 percent of its assets (valued at cost) in operating companies as to which it has or obtains management rights. Moreover, a small business investment company that initially meets the requirements for treatment as a venture capital operating company would, of course, be subject to the "distribution period" rule, discussed above, with respect to determinations regarding its continued qualification.

C. The Real Estate Operating Company Exception

1. *The Proposed Regulation.* As noted above, the proposed regulation also contained an exception from plan asset treatment for "real estate operating companies." This provision was similar to the venture capital operating company exception. Thus, the term "real estate operating company" was defined as a company at least 85 percent of the assets of which are devoted directly to the management or development of real estate. As with the venture capital operating company exception, the proposal provided for an annual determination of compliance with the percentage test and assets would have been valued at their fair market value.

The preamble to the proposed regulation indicated that, to qualify as a real estate operating company, a firm must actively participate in, or influence, management decisions with respect to the properties in which it has an interest. The preamble also stated that the enterprise must in fact devote substantial resources to its management and development activities.

The proposal also included several examples illustrating the operation of the real estate operating company exception. One example indicated that a company may qualify for the exception notwithstanding that some of its real estate management and development activities are performed by independent contractors. Another example indicated that an entity may acquire rights to manage or develop real estate through the acquisition of certain kinds of mortgages on real property as well as through the acquisition of equity ownership interests. Another example in the proposed regulation made it clear, however, that mere equity ownership of real property is not sufficient to qualify for the real estate operating company exception.

2. *Discussion of Comments and the Terms of the Final Regulation.* As in the case of the proposed definition of venture capital operating company, several commentators expressed concern that the 85 percent test incorporated in the definition of real estate operating company would be too restrictive and thus that the exception would not extend to actively managed real estate companies which should be treated as operating companies. Several commentators also expressed concern about various aspects of the requirement that a real estate operating company be involved "directly" in the management or development of real estate. The comments with respect to each of these issues are discussed in more detail below.

a. *The Percentage Test.* Several commentators asserted that the 85 percent requirement was not sufficiently flexible and might deprive real estate companies of the opportunity to make certain advantageous real estate investments. A number of these commentators suggested that the Department adopt a 50 percent test. Such a test, they suggested, would be sufficient to meet the Department's concern that the exception be available only to those real estate firms that have made a substantial ongoing commitment to active real estate management or development activities, but would also provide additional flexibility to real estate firms. Another commentator suggested a "two tier" alternative to the 85 percent test. Under this approach, a firm would initially qualify for treatment as a real estate operating company if a specified, relatively high, percentage of its assets are devoted to real estate management and development activities. After the company meets this initial qualification test, however, it would not lose its qualification unless the percentage of assets devoted to real estate management or development activities falls below another, lower percentage. Another group of commentators suggested that the Department adopt a percentage level between 50 and 80 percent (such as 60 or 70 percent) in lieu of the 85 percent test in the proposed rule.

Finally, several commentators suggested that the Department indicate more clearly whether real estate which is owned and actively managed or developed by an entity would be considered assets "devoted to" the management or development of real estate.

—The Final Regulation

The Department has decided that an entity should be treated as a real estate operating company if at least 50 percent of its assets are invested in real estate which is managed or developed and with respect to which the entity has the right to substantially participate directly in the management or development activities. Further, in the ordinary course of its business, the entity must actually engage in real estate management or development activities. This approach is consistent with the approach taken with respect to venture capital operating companies and implements similar policy objectives—to ensure that only those entities which demonstrate a substantial ongoing commitment to managing and developing real estate will qualify for treatment as real estate operating companies—while providing additional flexibility to companies that are engaged in the real estate business. In addition, for the reasons discussed above with respect to venture capital operating companies, the Department has concluded that determinations of a company's status as a real estate operating company should be made during an annual valuation period rather than on a fixed valuation date and that assets should be valued at their cost rather than fair market value for purposes of determining whether a company complies with the test.[32]

Moreover, the definition of real estate operating company has been revised to conform more closely to the venture capital operating company definition. Thus, the cost of an entity's entire investment in real estate which is actually managed or developed will be taken into account for purposes of applying the percentage test provided the entity has the right to participate in such management or development activities.

b. *Management or Development of Real Estate.* Several commentators expressed concern about the portion of the definition of real estate operating company that relates to the requirement that a specified percentage of the company's assets be devoted "directly" to the management or development of real estate. Most of these commentators urged the Department to make it clear that the reference to "direct" management or development of real estate does not require that a company's real estate management or development activities be performed by the company's own employees in order for the company to qualify for the exception. These commentators asserted that no legitimate policy purpose would be served if the regulation implicitly or expressly includes such a requirement because a company is not the less engaged in real estate management or development activities because it conducts its business through independent contractors than it would be if it conducts such activities solely through its own employees.

Several commentators also requested the Department to clarify what would constitute "management or development" of real estate in certain circumstances. Specifically, those commentators requested that the Department make it clear that certain activities that involve leasing, particularly shopping center management, should be considered real estate management activities for purposes of the definition of real estate operating company.

In addition, some commentators urged the Department to expand the principle (illustrated in one of the examples) that a real estate operating company could obtain management or development rights through investments in mortgages. Specifically, they urged that management activity should include the management of mortgage loan portfolios, including servicing mortgages and identifying appropriate mortgage investments.

—The Final Regulation

Under the final regulation, a company will not fail to qualify for treatment as a real estate operating company solely because it uses independent contractors (including affiliates of general partners) exclusively in conducting its real estate management or development activities. This is made clear in an example in the final regulation (see paragraph (j)(8)). Based on the comments received, it appears that independent contractors are widely used in the real estate industry and that often using an independent contractor may be the most efficient way of managing property. Thus, the regulation indicates that the fact that a particular entity does, or does not, have its own employees who engage in real estate development or management activities would be only one factor in determining whether an entity is actively managing or developing real estate.

With respect to comments raising issues as to whether particular kinds of conduct constitute management or development activities, the Department has concluded that a determination whether a company is actively involved in the management or development of a particular parcel of real estate is ultimately a factual question that must be resolved on a case by case basis. In the Department's view, however, an entity would not be engaged in the management or development of real estate for purposes of the definition of real estate operating company in the final regulation merely because it services mortgages on real property.[33] The Department has added an example to the regulation to illustrate the application of the management or development standard in certain circumstances. This example (paragraph (j)(8)) indicates that certain management activities associated with shopping center leasing may qualify as management activities.

VII. Entities That Always Hold Plan Assets.

A. Group Trusts, Bank Common and Collective Trust Funds and Insurance Company Separate Accounts.

1. *The Proposed Regulation.* Under the proposed regulation, the assets of insurance company separate accounts, group trusts and bank common or collective trust funds would generally include plan assets regardless of any other provisions of the proposal. Thus, for example, the proposed regulation provided that an insurance company managing a pooled separate account would be subject to the fiduciary responsibility rules of ERISA even though the account might otherwise qualify as a real estate operating company.

The proposal also stated, however, that the rule described above would not apply to a separate account registered as an investment company under the Investment Company Act of 1940 or to insurance company separate accounts that are maintained solely in connection with fixed contractual obligations of the insurance company under which the amounts payable to the plan and to any annuitant under the plan are not affected in any manner by the investment performance of the account.

2. *Discussion of the Comments and Terms of the Final Regulation.*

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[32] As in the case of the venture capital operating company exception, a company may disregard short-term investments pending long-term commitment or distribution to investors. As discussed in more detail above with respect to the definition of venture capital operating company, the Department intends this exclusion to apply only to a limited category of investments.

[33] Some commentators suggested that private mortgage pools are similar to guaranteed governmental mortgage pools under 29 CFR 2550.401b–1 redesignated under this regulation as 29 CFR 2510.3 101(i)) and should receive similar treatment. The Department believes there are differences between those mortgage investments which are guaranteed by agencies or instrumentalities of the federal government and other mortgage pools which do not provide for such guarantees. The Department also notes, however, that many private mortgage pools may qualify for the publicly-offered exception in the final regulation.

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Representatives of several insurance companies and banks urged the Department to revise the regulation so that it would apply to separate accounts and bank common and collective trust funds in the same manner as it applies to other entities in which plans invest, thereby permitting separate accounts and common and collective trust funds to take advantage of the exceptions to the look-through rule, for example, the publicly-offered security exception and the real estate operating company exception. These commentators argued that separate accounts and common and collective trust funds are no different from other arrangements involving the pooling of investments of two or more plans in terms of the types of portfolio investments, the potential return or the services performed by the managers of the funds.

In addition, one commentator noted that some group trusts are also registered as investment companies under the Investment Company Act of 1940 and urged the Department to extend the exclusion relating to separate accounts that are registered investment companies to include registered investment companies that are also group trusts.

—The Final Regulation

In general, the Department has adopted the provisions relating to group trusts, bank common and collective trust funds and insurance company pooled separate accounts as they were proposed. This approach conforms with the express requirements of ERISA and the relevant legislative history.[34] Moreover, these provisions are also consistent with interpretive positions taken by the Department regarding group trusts, bank collective trust funds, and insurance company separate accounts.[35] The Department has, however, modified the final regulation to make it clear that the assets of a group trust or bank common or collective trust fund do not include plan assets if the trust is registered as an investment company under the Investment Company Act of 1940.[36] This modification is consistent with the rule for insurance company separate accounts and with sections 3(21)(B) and 401(b)(1) of ERISA.

The Department emphasizes that even though the other exceptions in the regulation do not apply to a plan's investment in a group trust, bank common or collective trust fund or insurance company separate account, those exceptions might be applicable to a trust's or separate account's portfolio investments. Thus, for example, although the assets of an insurance company separate account always include plan assets under the final regulation, the underlying assets of the issuer of publicly-offered securities acquired by the separate account would not include plan assets.

B. Entities that are Wholly-Owned by a Plan

1. *The Proposed Regulation.* The proposed regulation also provided that when a plan owns all of the outstanding equity interests in an entity, the assets of the plan include those equity interests and all of the underlying assets of the entity. This provision reflected the Department's conclusion that when a plan is the sole owner of an entity there is no meaningful difference between the assets of the entity and the assets of the plan. Under the proposal, this rule applied without regard to the nature of the business activities of an entity owned by a plan. Thus, the assets of an operating company that is owned entirely by a plan would have been considered plan assets.

2. *Discussion of Comments Received and the Terms of the Final Regulation.* A number of commentators objected to the proposed rule relating to entities that are wholly-owned by plans. These commentators indicated that many wholly-owned entities are operating companies and that the operating company exception should be available for such entities. According to the commentators, it would be extremely difficult for the officers and employees of an operating company to manage the assets of the company in accordance with the fiduciary responsibility provisions of ERISA, particularly the prohibited transaction rules. Several commentators emphasized that the special rule for wholly-owned companies would be particularly disruptive to employee stock ownership plans (ESOPs).

—The Final Regulation

The final regulation generally retains the rule relating to entities that are wholly-owned by a plan and extends the rule to entities wholly-owned by a "related group" of plans.[37] The Department continues to believe that, as a general matter, where all of the outstanding equity interests in an entity are owned by a plan, there is no practical difference between the assets of the plan and the assets of the entity which is owned by the plan. The extension of the rule to entities wholly-owned by a related group of plans will assure that or more plans this rule will not be subject to manipulation, for example, by the purchase of the entire equity interest in an entity by two defined benefit plans, one of an employer and one of an affiliate of that employer. Finally, the Department has made a minor modification to the wholly-owned rule to make it clear that an entity will be considered wholly-owned by a plan even in those instances where shares are owned by others due to a state law requiring such ownership.

Under the final regulation, the rule relating to wholly-owned entities would not apply, however, in the case of one or more eligible individual account plan(s) (as defined in section 407(d)(3) of the Act) maintained by the same employer and which own(s) qualifying employer securities (described in section 407(d)(5) of the Act), provided that substantially all of the participants in the plan(s) are, or have been, employed by the issuer of such securities or by members of a group of affiliated corporations of which the issuer is a member.[38] In general, under section 407(d)(3) of the Act the term eligible individual account plan includes profit-sharing, stock bonus, thrift or savings plans and employee stock ownership plans. In such circumstances, the consequences under the final regulation of the plan's ownership of the employer securities would be determined under the other provisions of the regulation. For example, if an eligible individual account plan owns all of the outstanding stock of an operating company that is an employer of substantially all of the participants in the plan, then the operating company exception would be applicable, and accordingly the assets of the plan would include the employer securities, but would not include any interest in the underlying assets of the employer.

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[34] See "Overview of the Plan Assets Issue," above, for a discussion of the statutory provisions and legislative history relating to bank common and collective trust funds and insurance company separate accounts.

[35] See, *e.g.*, DOL Advisory Opinion 82–31A (group trusts), preamble to the proposed Prohibited Transaction Class Exemption 78–19, 42 FR 54687 (October 11, 1977) (separate accounts), and preamble to Prohibited Transaction Class Exemption 80–51, 45 FR 49709 (July 25, 1980) (bank common and collective trust funds).

[36] The final regulation also includes the exception set forth in the proposed regulation for insurance company separate accounts that are maintained solely in connection with certain guaranteed obligations of an insurance company. The Department notes that this provision deals solely with the issue of whether such a separate account holds "plan assets." By including such an exception, the Department is not, however, addressing any issues which may arise under sections 403(c)(1) or 404(a) of ERISA with respect to the use of such separate accounts.

[37] A related group of plans is defined as two or more plans each of which receives 10 percent or more of its aggregate contributions from the same employer (or members of the same controlled group of corporations) or each of which is maintained by, or pursuant to a collective bargaining agreement negotiated by the same employee organization or affiliated organizations. The concept of a related group of plans is also used in the regulation published elsewhere in the **Federal Register** today which provides a reporting and disclosure alternative method of compliance for plans which invest in certain entities whose underlying assets include plan assets.

[38] For purposes of this provision, whether a corporation is an affiliate of another corporation is determined by applying the definition of "affiliate" in section 407(d)(7) of the Act. In general, under that definition, a "corporation" is an affiliate of another corporation if it is a member of a "controlled group of corporations" of which such latter corporation is a member, applying the principles of section 1563(a) of the Internal Revenue Code, but using a 50 percent ownership test rather than the 80 percent ownership test set forth in section 1563(a).

The provision relating to qualifying employer securities is consistent with provisions of ERISA which permit certain individual account plans to hold up to 100 percent of their assets in qualifying employer securities in order to provide an incentive to employees by allowing them to participate in the earnings of the employer through plan investments.[39]

VIII. Effective Date/Transitional Rule Provision

A. The Proposed Regulation

The proposed general effective date for the regulation was 90 days after publication of the final rule. In addition, the proposed regulation indicated that once the regulation becomes effective it would apply to all plan assets determinations made after the effective date with respect to plan investments, regardless of when those investments are made. Thus, under the general effective date provision, the plan assets regulation would apply to both new and existing plan investments. The proposal also included a transitional rule, however, under which the regulation would not apply to plan investments in certain entities.

The proposed transitional rule had two requirements. First, the entity seeking coverage under the rule was required to be in existence on June 30, 1986. Second, the transitional rule would have applied only if no plan acquires an interest in the entity from an issuer or an underwriter at any time after June 30, 1986, except pursuant to a binding contract in effect on that date.[40] The preamble to the proposal indicated that plan assets determinations for entities that qualify for the transitional relief would be made taking into account the provisions of ERISA itself, the legislative history of ERISA, the Department's rules and regulations and relevant judicial decisions.

B. Comments Received

A large number of commentators on the proposed regulation urged the Department to modify the effective date provision. Several commentators objected to the general approach reflected in the effective date provision of the proposal and urged the Department to apply the regulation only to new plan investments. Most of the comments, however, urged the Department to modify the expiration date of the transitional rule. These suggestions fell into two categories. The first, and most frequent, suggestion was that the expiration date for the transitional rule should be set at a specified number of days after publication of the final rule (or, as suggested by some commentators, at the later of June 30, 1986 or a set number of days after issuance of the final rule). The comments varied with respect to the period that would be appropriate. Some commentators suggested that a 90 day period would be sufficient; others indicated that 180 days would be appropriate. The second approach, suggested by only a few commentators, was to move the expiration date of the transitional period to some other fixed date beyond June 30, 1986.

Some commentators sought clarification of whether certain contractual arrangements to acquire additional securities (*i.e.*, warrants) entered into before the expiration date of the transitional rule would be considered binding contracts under that rule. Those commentators suggested that a plan's exercise of warrants after the expiration date should not cause the entity to lose its qualification for transitional relief.

C. Public Law 99-272

Section 11018 of Pub. L. 99-272 establishes a statutory transitional rule for the application of the plan assets regulation to the extent it would apply to certain publicly-offered real estate entities that are described in the statute. This statutory provision has two primary effects. First, it prohibits the application of the plan assets regulation to plan investments in public real estate companies that have certain characteristics. In general, the statutory limitation applies only to publicly-offered real estate companies which first offer interests to plans on or before a date 120 days after the date of publication of the final regulation and in which no plan invests on or after a date 270 days from the date of publication of the regulation. Second, the statute provides that the assets of a public real estate company that meets the requirements described above would not include plan assets if they would not have been characterized as plan assets under Interpretive Bulletin 75-2 or under any of the Department's previous proposed plan assets regulations. Section 11018 of Pub. L. 99-272, however, does not prohibit the application of the regulation to such a publicly-offered real estate entity to the extent the regulation would provide a defense (*i.e.*, to the extent the assets of the entity would not include plan assets under the final regulation).

D. The Final Regulation

The Department has decided that the general approach reflected in the effective date/transitional rule provisions should be retained as proposed. To amend the effective date so that the regulation would apply only to new plan investments would delay the implementation of a final regulation because many plans have substantial outstanding long-term investments and thus it may be several years until all, or even most, of these assets are held in investments made after the effective date. Moreover, if the regulation were applied only to new plan investments, similarly situated plan investors would have different rights and remedies based solely on the date of their investment in an entity.

The Department has concluded, however, that both the effective date of the regulation and the expiration of the transitional period should be set at the later of January 1, 1987 or a date 120 days from the date of publication of the regulation. This provision will assure that affected persons will have time to assess the impact of the final regulation before the expiration of the transitional period.

The Department has also decided that warrants acquired by a plan before the expiration of the transitional period should not be considered binding contracts for purposes of the transitional rule. The binding contract provision of the transitional rule is intended to assure that the relief provided by that rule will remain available even where a

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[39] See section 404(a)(2), 407(d)(3), and 407(b) of ERISA; see also S. Rep. No. 383, 93d Cong., 1st Sess. 32–33, 100 (1973).

[40] As originally proposed, the transitional rule required that an entity be in existence on January 4, 1985 and that no plan acquire an interest in the entity after May 8, 1985. On February 15, 1986 the Department published an amendment to the proposal which extended the expiration date to June 30, 1986.

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plan makes new equity investments in an entity after the expiration of the transitional period if the plan had obligated itself to make the investment before the expiration date. If the provision were to apply where the plan merely has an option to make such additional equity investments (but is not obligated to make the investment), an issuer could effectively continue to offer interests to plans indefinitely by issuing a large amount of warrants before the expiration of the transitional period.

The assets of most of the publicly-offered real estate companies described in section 11018 of Pub. L. 99–272 would not include plan assets because plan investments in securities issued by such companies would ordinarily qualify under the publicly-offered exception in the final regulation. The statutory transitional rule also applies, however, to a few entities that, in the absence of the availability of transitional relief, might hold plan assets under the final regulation.[41]

In view of the provisions of section 11018 of Pub. L. 99–272, the effective date provision of the final regulation also provides that the regulation will not apply, except as a defense, to entities that qualify for the statutory transitional relief. Under this rule, plan investments in a publicly-offered real estate entity that is described in section 11018(a) of Pub. L. 99–272, but which do not qualify for the publicly-offered exception (because, for example, there are not 100 independent investors) would nonetheless not be subject to the regulation. Of course, this additional rule would only be applicable to investments in entities that meet all of the requirements of section 11018(a), including the requirement that interests in the entity are first offered to plans before the expiration of 120 days from the date of publication of the regulation and the requirement that the entity refrain from offerings to plans after 270 days from the date of publication of the regulation. However, since the additional rule does not apply to the extent the final regulation provides a defense, a real estate company that does qualify for the publicly-offered exception under the final regulation may rely on that exception as soon as the regulation becomes effective.

The Department has also decided that other entities that are described in the transitional rule (*i.e.*, entities in which no plan acquires an interest from an issuer or underwriter after the effective date), should also be permitted to rely on the final regulation after it becomes effective to the extent it provides a defense. Thus, for example, even though the transitional rule would be available for an operating company in which there are no new plan investments after the effective date of the final regulation (whether or not the entity is described in section 11018(a) of Pub. L. 99–272) the company's managers may nonetheless rely on the operating company exception of the regulation as a defense to allegations of misconduct by plan investors that are predicated on the managers' status as ERISA fiduciaries. In the Department's view, this rule will assure consistent treatment for similarly situated entities under the final regulation.

IX. Revision and Clarification of Interpretive Bulletin 75–2

As indicated in the preamble to the proposed regulation, the Department has revised Interpretive Bulletin 75–2 to coordinate it with the final regulation. As revised, the interpretive bulletin indicates that the rules established by the final "plan assets" regulation apply only for purposes of identifying plan assets on or after the effective date of the regulation and that the interpretive bulletin is effective for periods prior to that date and for investments that are subject to the transitional rule.

The remainder of the Interpretive Bulletin which discusses certain prohibited transactions under section 406 of ERISA (and section 4975 of the Code), is not affected by the final "plan assets" regulation. Also, the Department notes that the portion of Interpretive Bulletin 75–2 dealing with contracts or policies of insurance is not affected by the regulation being issued here.

The Department does not intend to effect any substantive change in the rules in the interpretive bulletin by making these revisions.[42]

X. Reporting and Disclosure

As noted above, the regulation will apply for purposes of the reporting and disclosure requirements of ERISA as well as to the definitional provisions of the Act and the fiduciary responsibility provisions. As indicated in the proposed regulation, the Department is aware that special difficulties are presented in reporting transactions involving collective investment funds whose assets include plan assets. In order to deal with these issues, the Department published a proposed alternative method of compliance with the reporting and disclosure requirements for entities whose assets include "plan assets."[43] The alternative method is similar to the procedure established under the statutory and regulatory provisions now governing reporting for plan assets held in bank collective trust funds, insurance company separate accounts and master trusts. The final alternative method of compliance is being published separately in today's **Federal Register**.

XI. Guaranteed Governmental Mortgage Pool Certificates

The proposed regulation indicated that the Department's existing regulation dealing with governmental mortgage pools would be redesignated and incorporated into the final plan assets regulation. Thus, paragraph (i) of the final regulation sets forth the rule relating to governmental mortgage pools that now appears at 29 CFR 2550.401b–1.

XII. Miscellaneous Issues

A. Definition of Fiduciary

Paragraph (a)(2)(ii) of the proposed regulation stated that any person who has authority or control respecting the management or disposition of the underlying assets of any entity whose assets include plan assets, and any person who provides investment advice with respect to such assets for a fee (direct or indirect), is a fiduciary of the investing plan.

Several commentators suggested that the Department indicate that the provision quoted above was not intended to expand the definition of fiduciary in section 3(21)(A) of ERISA and section 4975(e)(3) of the Code or to affect the principles set forth in Interpretive Bulletins 75–5 and 75–8.[44]

The final regulation is not intended to address issues relating to the kinds of activities with respect to plan assets that would cause a person to be a fiduciary. Thus, where the underlying assets of an entity include plan assets, determinations whether a person is a fiduciary with respect to such assets would be made under the standards set forth in section 3(21) of ERISA, and the Department's regulations, including Interpretive Bulletins 75–5 and 75–8. In this respect, the Department has, in accordance with the suggestion of one commentator, modified paragraph (a)(2) of the regulation to conform to the language of section 3(21) of ERISA.

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[41] These include entities the interests in which are not widely-held because they are held by less than 100 *independent* investors (see section 11018(a)(1)(C)(i) of Pub. L. 99–272) and certain partnerships organized prior to the enactment of Pub. L. 99–272 in which plans have acquired interests in a private placement which have a value of less than $20,000.

[42] In this regard, the Department notes that the final paragraph of Interpretive Bulletin 75–2 states that the Department would consider a fiduciary who makes or retains an investment in a corporation or partnership for the purpose of avoiding the application of the fiduciary responsibility provisions of the Act to be in contravention of the provisions of section 404(a) of the Act. However, it is the Department's view that the mere fact a fiduciary makes or retains an investment in a corporation or partnership which does not hold plan assets under the final regulation does not mean the fiduciary has engaged in a transaction for the purposes of avoiding the application of the fiduciary responsibility rules within the meaning of the final paragraph of Interpretive Bulletin 75–2.

[43] 50 FR 3362, January 24, 1985.

[44] See 29 CFR 2509.75–5 and 2509.75–8.

B. Burden of Proof

In the preamble to the proposed regulation, the Department indicated that the burden of showing that the operating company exception or the significant participation exception applies, should be assigned to the person making that assertion. Some commentators objected to this observation, asserting that the Department does not have the authority to change normal judicial standards regarding burden of proof.

The observations regarding burden of proof in the preamble to the proposed regulation were not intended to effect any change in normal judicial standards relating to burden of proof, but rather to provide a clear indication of the Department's intent. The Department has also endeavored to draft the final regulation in such a way that, in practice, the burden of proof with respect to matters regarding application of the regulation will be assigned in the manner described in the preamble to the proposal.

C. Jointly Owned Property

The proposed regulation provided that where a plan owns property jointly with others, or where the value of a plan's equity interest relates solely to identified property of an entity, such property would be considered for purposes of the regulation as the sole property of a separate entity.

Some commentators suggested that where an independent investor enters into a venture with a plan pursuant to which it holds property jointly with the plan, such an independent investor is acting on its own behalf and is not, directly or indirectly, providing any investment advisory or investment management services to the plan. According to the commentators, it would be inappropriate to impose fiduciary responsibilities on the independent investor in such cases. Other commentators urged the Department to make it clear that plan "investments" in the hypothetical entity contemplated by the jointly owned property rule would be subject to the exceptions in the regulation, for example, the operating company exception.

The Department has retained the jointly owned property rule in the final regulation because it has concluded that the rule is essential in order to prevent circumvention of the other provisions of the regulation. However, the extent of any investor's fiduciary responsibilities in cases where the rule applies would depend on the kind of activities that the investor conducts with respect to the property.[45]

The Department does intend that the exceptions in the regulation would be applicable to plan investments in the hypothetical entity contemplated by the jointly owned property rule. Thus, for example, if a plan jointly owns a parcel of real property with others, that property may be considered a real estate operating company if the conditions to that exception are met.

Regulatory Flexibility Act

The Department has determined that this regulatory action would not have any significant economic effect on small plans or small business entities. First, small employee benefit plans (those with fewer than 100 participants) virtually never invest in privately placed pools such as those offered by venture capital or real estate organizations. Small plans tend to invest in pools whose certificates are publicly-offered. The underlying assets of these pools are not plan assets under the final rule. Hence, small plans would not generally be affected by the regulation. In rare instances, a small plan could lose money under the final regulation as compared to the 1985 proposal since under the final regulation a fiduciary will not be managing the plan's assets and, thus, the plan will not have a potential ERISA claim if losses occur.

Second, some smaller entities like those dependent on venture capital or real estate pools as sources of financing also have a stake in this regulation. The final regulation, however, substantially reduces the impact on most entities affected by the regulation. Most venture capital pools either do or will meet the 50 percent management test, and all such entities that accept less than 25 percent plan monies are exempt. Moreover, even if less plan money is made available, other investors are expected to fill this gap. To the extent that plan investments decrease, rates of return on these investments will increase, thereby drawing more non-plan monies into these industries. On balance, it is expected that the regulation will not substantially affect the amounts of money available to finance new ventures and real estate developments.

Executive Order 12291

The Department has determined that the final regulatory action would not constitute a "major rule" as that term is used in the Executive Order 12291 because the action would not result in: an annual effect on the economy of $100 million; a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export matters.

The Department has prepared an evaluation of the cost impact of the final regulation which states that the maximum cost impact of the regulation would be $41 million; however, the Department anticipates that the actual cost impact will be much lower.

Paperwork Reduction Act

The final plan assets regulation does not contain any new information collection requirements and does not modify any existing requirements. Some plans which have invested in entities affected by the regulation may have additional reporting requirements by virtue of the underlying assets of the entities clearly being considered plan assets, others may have less than they do currently. Since these burdens have, on average, already been included in the burden for the annual reports (Form 5500 series), the regulation will not result in any additional burden in the aggregate.

Statutory Authority

The regulation is adopted pursuant to the authority contained in section 505 of ERISA (Pub. L. 93–406, 88 Stat. 894; 29 U.S.C. 1135) and under section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979); 3 CFR Part 1978 Comp., 332, under section 11018(d), Pub. L. 99–272 (100 Stat. 82); and Under Secretary of Labor's Order No. 1–86.

List of Subjects

29 CFR Part 2509

Employee Benefit Plans, Employee Retirement Income Security Act, Fiduciaries, Pensions, Pension and Welfare Benefits Administration, Plan assets, Trusts and trustees.

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[45] See the discussion regarding the definition of fiduciary at Part XII, A, above.

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29 CFR Part 2510

Employee Benefit Plans, Employee Retirement Income Security Act, Pensions, Pension and Welfare Benefits Administration, Plan assets.

29 CFR Part 2550

Employee Benefit Plans, Employee Retirement Income Security Act, Employee Stock Ownership Plans, Exemptions, Fiduciaries, Investments, Investments foreign, Party in interest, Pensions, Pension and Welfare Benefits Administration, Prohibited transactions, Real estate, Securities, Surety bonds, Trusts and trustees.

For the reasons set out in the preamble, Chapter XXV of Title 29 of the Code of Federal Regulations is amended as set forth below.

PART 2509—INTERPRETIVE BULLETINS RELATING TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

1. The authority citation for Part 2509 is revised to read as set forth below and the authority citations following all the sections in Part 2509 are removed.

Authority: 29 U.S.C. 1135.

Section 2509.75–1 also issued under 29 U.S.C. 1114.

Section 2509.75–10 and § 2509.75–2 also issued under 29 U.S.C. 1052, 1053, 1054. Secretary of Labor's Order No. 1–86.

2. In Part 2509, § 2509.75–2 is revised to read as follows:

§ 2509.75–2 Interpretive bulletin relating to prohibited transactions.

On February 6, 1975, the Department of Labor issued an interpretive bulletin, ERISA IB 75–2, with respect to whether a party in interest has engaged in a prohibited transaction with an employee benefit plan where the party in interest has engaged in a transaction with a corporation or partnership (within the meaning of section 7701 of the Internal Revenue Code of 1954) in which the plan has invested.

On November 13, 1986 the Department published a final regulation dealing with the definition of "plan assets". See § 2510.3–101 of this title. Under that regulation, the assets of certain entities in which plans invest would include "plan assets" for purposes of the fiduciary responsibility provisions of the Act. Section 2510.3–101 applies only for purposes of identifying plan assets on or after the effective date of that section, however, and § 2510.3–101 does not apply to plan investments in certain entities that qualify for the transitional relief provided for in paragraph (k) of that section. The principles discussed in paragraph (a) of this Interpretive Bulletin continue to be applicable for purposes of identifying assets of a plan for periods prior to the effective date of § 2510.3–101 and for investments that are subject to the transitional rule in § 2510.3–101(k). Paragraphs (b) and (c) of this Interpretive Bulletin, however, relate to matters outside the scope of § 2510.3–101, and nothing in that section affects the continuing application of the principles discussed in those parts.

a. *Principles applicable to plan investments to which § 2510.3–101 does not apply.* Generally, investment by a plan in securities (within the meaning of section 3(20) of the Employee Retirement Income Security Act of 1974) of a corporation or partnership will not, solely by reason of such investment, be considered to be an investment in the underlying assets of such corporation or partnership so as to make such assets of the entity "plan assets" and thereby make a subsequent transaction between the party in interest and the corporation or partnership a prohibited transaction under section 406 of the Act.

For example, where a plan acquires a security of a corporation or a limited partnership interest in a partnership, a subsequent lease or sale of property between such corporation or partnership and a party in interest will not be a prohibited transaction solely by reason of the plan's investment in the corporation or partnership.

This general proposition, as applied to corporations and partnerships, is consistent with section 401(b)(1) of the Act, relating to plan investments in investment companies registered under the Investment Company Act of 1940. Under section 401(b)(1), an investment by a plan in securities of such an investment company may be made without causing, solely by reason of such investment, any of the assets of the investment company to be considered to be assets of the plan.

(b) *Contracts or policies of insurance.* If an insurance company issues a contract or policy of insurance to a plan and places the consideration for such contract or policy in its general asset account, the assets in such account shall not be considered to be plan assets. Therefore, a subsequent transaction involving the general asset account between a party in interest and the insurance company will not, solely because the plan has been issued such a contract or policy of insurance, be a prohibited transaction.

(c) *Applications of the fiduciarv responsibility rules.* The preceding paragraphs do not mean that an investment of plan assets in a security of a corporation or partnership may not be a prohibited transaction. For example, section 406(a)(1)(D) prohibits the direct or indirect transfer to, or use by or for the benefit of, a party in interest of any assets of the plan and section 406(b)(1) prohibits a fiduciary from dealing with the assets of the plan in his own interest or for his own account.

Thus, for example, if there is an arrangement under which a plan invests in, or retains its investment in, an investment company and as part of the arrangement it is expected that the investment company will purchase securities from a party in interest, such arrangement is a prohibited transaction.

Similarly, the purchase by a plan of an insurance policy pursuant to an arrangement under which it is expected that the insurance company will make a loan to a party in interest is a prohibited transaction.

Moreover, notwithstanding the foregoing, if a transaction between a party in interest and a plan would be a prohibited transaction, then such a transaction between a party in interest and such corporation or partnership will ordinarily be a prohibited transaction if the plan may, by itself, require the corporation or partnership to engage in such transaction.

Similarly, if a transaction between a party in interest and a plan would be a prohibited transaction, then such a transaction between a party in interest and such corporation or partnership will ordinarily be a prohibited transaction if such party in interest, together with one or more persons who are parties in interest by reason of such persons' relationship (within the meaning of section 3(14)(E) through (I)) to such party in interest may, with the aid of the plan but without the aid of any other persons, require the corporation or partnership to engage in such a transaction. However, the preceding sentence does not apply if the parties in interest engaging in the transaction, together with one or more persons who are parties in interest by reason of such persons' relationship (within the meaning of section 3(14)(E) through (I)) to such party in interest, may, by themselves, require the corporation or partnership to engage in the transaction.

Further, the Department of Labor emphasizes that it would consider a fiduciary who makes or retains an investment in a corporation or partnership for the purpose of avoiding the application of the fiduciary responsibility provisions of the Act to be in contravention of the provisions of section 404(a) of the Act.

PART 2510—DEFINITIONS OF TERMS USED IN SUBCHAPTERS C, D, E, F, AND G OF THIS CHAPTER

3. The authority citation for Part 2510 is revised to read as set forth below and the authority citations following all the sections in Part 2510 are removed.

Authority: Sec. 3(2), 111(c), 505, Pub. L. 93–406, 88 Stat. 852, 894, (29 U.S.C. 1002(2), 1031, 1135); Secretary of Labor's Order No. 27–74, 1–86 and Labor-Management Services Administration Order No. 2–6, unless otherwise noted.

Section 3–101 is also issued under Sec. 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1978); 3 CFR 1978 Comp. 332, and section 11018(d) of Pub. L. 99–272, 100 Stat. 82.

4. Part 2510 is amended by adding a new § 2510.3–101 in the appropriate place to read as follows:

§ 2510.3–101 Definition of "plan assets"—plan investments.

(a) *In general.* (1) This section describes what constitute assets of a plan with respect to a plan's investment in another entity for purposes of Subtitle A, and Parts 1 and 4 of Subtitle B, of Title I of the Act and section 4975 of the Internal Revenue Code. Paragraph (a)(2) of this section contains a general rule relating to plan investments. Paragraphs

(b) through (f) of this section define certain terms that are used in the application of the general rule. Paragraph (g) of this section describes how the rules in this section are to be applied when a plan owns property jointly with others or where it acquires an equity interest whose value relates solely to identified assets of an issuer. Paragraph (h) of this section contains special rules relating to particular kinds of plan investments. Paragraph (i) describes the assets that a plan acquires when it purchases certain guaranteed mortgage certificates. Paragraph (j) of this section contains examples illustrating the operation of this section. The effective date of this section is set forth in paragraph (k) of this section.

(2) Generally, when a plan invests in another entity, the plan's assets include its investment, but do not, solely by reason of such investment, include any of the underlying assets of the entity. However, in the case of a plan's investment in an equity interest of an entity that is neither a publicly-offered security nor a security issued by an investment company registered under the Investment Company Act of 1940 its assets include both the equity interest and an undivided interest in each of the underlying assets of the entity, unless it is established that—

(i) The entity is an operating company, or

(ii) Equity participation in the entity by benefit plan investors is not significant.

Therefore, any person who exercises authority or control respecting the management or disposition of such underlying assets, and any person who provides investment advice with respect to such assets for a fee (direct or indirect), is a fiduciary of the investing plan.

(b) *"Equity interests" and "publicly-offered securities".* (1) The term "equity interest" means any interest in an entity other than an instrument that is treated as indebtedness under applicable local law and which has no substantial equity features. A profits interest in a partnership, an undivided ownership interest in property and a beneficial interest in a trust are equity interests.

(2) A "publicly-offered security" is a security that is freely transferable, part of a class of securities that is widely held and either—

(i) Part of a class of securities registered under section 12(b) or 12(g) of the Securities Exchange Act of 1934, or

(ii) Sold to the plan as part of an offering of securities to the public pursuant to an effective registration statement under the Securities Act of 1933 and the class of securities of which such security is a part is registered under the Securities Exchange Act of 1934 within 120 days (or such later time as may be allowed by the Securities and Exchange Commission) after the end of the fiscal year of the issuer during which the offering of such securities to the public occurred.

(3) For purposes of paragraph (b)(2) of this section, a class of securities is "widely-held" only if it is a class of securities that is owned by 100 or more investors independent of the issuer and of one another. A class of securities will not fail to be widely-held solely because subsequent to the initial offering the number of independent investors falls below 100 as a result of events beyond the control of the issuer.

(4) For purposes of paragraph (b)(2) of this section, whether a security is "freely transferable" is a factual question to be determined on the basis of all relevant facts and circumstances. If a security is part of an offering in which the minimum investment is $10,000 or less, however, the following factors ordinarily will not, alone or in combination, affect a finding that such securities are freely transferable:

(i) Any requirement that not less than a minimum number of shares or units of such security be transferred or assigned by any investor, provided that such requirement does not prevent transfer of all of the then remaining shares or units held by an investor;

(ii) Any prohibition against transfer or assignment of such security or rights in respect thereof to an ineligible or unsuitable investor;

(iii) Any restriction on, or prohibition against, any transfer or assignment which would either result in a termination or reclassification of the entity for federal or state tax purposes or which would violate any state or federal statute, regulation, court order, judicial decree, or rule of law;

(iv) Any requirement that reasonable transfer or administrative fees be paid in connection with a transfer or assignment;

(v) Any requirement that advance notice of a transfer or assignment be given to the entity and any requirement regarding execution of documentation evidencing such transfer or assignment (including documentation setting forth representations from either or both of the transferor or transferee as to compliance with any restriction or requirement described in this paragraph (b)(4) of this section or requiring compliance with the entity's governing instruments);

(vi) Any restriction on substitution of an assignee as a limited partner of a partnership, including a general partner consent requirement, provided that the economic benefits of ownership of the assignor may be transferred or assigned without regard to such restriction or consent (other than compliance with any other restriction described in this paragraph (b)(4)) of this section;

(vii) Any administrative procedure which establishes an effective date, or an event, such as the completion of the offering, prior to which a transfer or assignment will not be effective; and

(viii) Any limitation or restriction on transfer or assignment which is not created or imposed by the issuer or any person acting for or on behalf of such issuer.

(c) "*Operating company*". (1) An "operating company" is an entity that is primarily engaged, directly or through a majority owned subsidiary or subsidiaries, in the production or sale of a product or service other than the investment of capital. The term "operating company" includes an entity which is not described in the preceding sentence, but which is a "venture capital operating company" described in paragraph (d) or a "real estate operating company" described in paragraph (e).

(d) "*Venture capital operating company*". (1) An entity is a "venture capital operating company" for the period beginning on an initial valuation date described in paragraph (d)(5)(i) and ending on the last day of the first "annual valuation period" described in paragraph (d)(5)(ii) (in the case of an entity that is not a venture capital operating company immediately before the determination) or for the 12 month period following the expiration of an "annual valuation period" described in paragraph (d)(5)(ii) (in the case of an entity that is a venture capital operating company immediately before the determination) if—

(i) On such initial valuation date, or at any time within such annual valuation period, at least 50 percent of its assets (other than short-term investments pending long-term commitment or distribution to investors), valued at cost, are invested in venture capital investments described in paragraph (d)(3)(i) or derivative investments described in paragraph (d)(4); and

(ii) During such 12 month period (or during the period beginning on the initial valuation date and ending on the last day of the first annual valuation period), the entity, in the ordinary course of its business, actually exercises management rights of the kind described in paragraph (d)(3)(ii) with respect to one or more of the operating companies in which it invests.

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(2)(i) A venture capital operating company described in paragraph (d)(1) shall continue to be treated as a venture capital operating company during the "distribution period" described in paragraph (d)(2)(ii). An entity shall not be treated as a venture capital operating company at any time after the end of the distribution period.

(ii) The "distribution period" referred to in paragraph (d)(2)(i) begins on a date established by a venture capital operating company that occurs after the first date on which the venture capital operating company has distributed to investors the proceeds of at least 50 percent of the highest amount of its investments (other than short-term investments made pending long-term commitment or distribution to investors) outstanding at any time from the date it commenced business (determined on the basis of the cost of such investments) and ends on the earlier of—

(A) The date on which the company makes a "new portfolio investment", or

(B) The expiration of 10 years from the beginning of the distribution period.

(iii) For purposes of paragraph (d)(2)(ii)(A), a "new portfolio investment" is an investment other than—

(A) An investment in an entity in which the venture capital operating company had an outstanding venture capital investment at the beginning of the distribution period which has continued to be outstanding at all times during the distribution period, or

(B) A short-term investment pending long-term commitment or distribution to investors.

(3)(i) For purposes of this paragraph (d) a "venture capital investment" is an investment in an operating company (other than a venture capital operating company) as to which the investor has or obtains management rights.

(ii) The term "management rights" means contractual rights directly between the investor and an operating company to substantially participate in, or substantially influence the conduct of, the management of the operating company.

(4)(i) An investment is a "derivative investment" for purposes of this paragraph (d) if it is—

(A) A venture capital investment as to which the investor's management rights have ceased in connection with a public offering of securities of the operating company to which the investment relates, or

(B) An investment that is acquired by a venture capital operating company in the ordinary course of its business in exchange for an existing venture capital investment in connection with:

(*1*) A public offering of securities of the operating company to which the existing venture capital investment relates, or

(*2*) A merger or reorganization of the operating company to which the existing venture capital investment relates, provided that such merger or reorganization is made for independent business reasons unrelated to extinguishing management rights.

(ii) An investment ceases to be a derivative investment on the later of:

(A) 10 years from the date of the acquisition of the original venture capital investment to which the derivative investment relates, or

(B) 30 months from the date on which the investment becomes a derivative investment.

(5) For purposes of this paragraph (d) and paragraph (e)—

(i) An "initial valuation date" is the later of—

(A) Any date designated by the company within the 12 month period ending with the effective date of this section, or

(B) The first date on which an entity makes an investment that is not a short-term investment of funds pending long-term commitment.

(ii) An "annual valuation period" is a preestablished annual period, not exceeding 90 days in duration, which begins no later than the anniversary of an entity's initial valuation date. An annual valuation period, once established may not be changed except for good cause unrelated to a determination under this paragraph (d) or paragraph (e).

(e) *"Real estate operating company"*. An entity is a "real estate operating company" for the period beginning on an initial valuation date described in paragraph (d)(5)(i) and ending on the last day of the first "annual valuation period" described in paragraph (d)(5)(ii) (in the case of an entity that is not a real estate operating company immediately before the determination) or the expiration of an annual valuation period described in paragraph (d)(5)(ii) (in the case of an entity that is a real estate operating company immediately before the determination) if:

(1) On such initial valuation date, or on any date within such annual valuation period, at least 50 percent of its assets, valued at cost (other than short-term investments pending long-term commitment or distribution to investors), are invested in real estate which is managed or developed and with respect to which such entity has the right to substantially participate directly in the management or development activities; and

(2) During such 12 month period (or during the period beginning on the initial valuation date and ending on the last day of the first annual valuation period) such entity in the ordinary course of its business is engaged directly in real estate management or development activities.

(f) *Participation by benefit plan investors*. (1) Equity participation in an entity by benefit plan investors is "significant" on any date if, immediately after the most recent acquisition of any equity interest in the entity, 25 percent or more of the value of any class of equity interests in the entity is held by benefit plan investors (as defined in paragraph (f)(2)). For purposes of determinations pursuant to this paragraph (f), the value of any equity interests held by a person (other than a benefit plan investor) who has discretionary authority or control with respect to the assets of the entity or any person who provides investment advice for a fee (direct or indirect) with respect to such assets, or any affiliate of such a person, shall be disregarded.

(2) A "benefit plan investor" is any of the following—

(i) Any employee benefit plan (as defined in section 3(3) of the Act), whether or not it is subject to the provisions of Title I of the Act,

(ii) Any plan described in section 4975(e)(1) of the Internal Revenue Code,

(iii) Any entity whose underlying assets include plan assets by reason of a plan's investment in the entity.

(3) An "affiliate" of a person includes any person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person. For purposes of this paragraph (f)(3), "control", with respect to a person other than an individual, means the power to exercise a controlling influence over the management or policies of such person.

(g) *Joint ownership*. For purposes of this section, where a plan jointly owns property with others, or where the value of a plan's equity interest in an entity relates solely to identified property of the entity, such property shall be treated as the sole property of a separate entity.

(h) *Specific rules relating to plan investments*. Notwithstanding any other provision of this section—

(1) Except where the entity is an investment company registered under the Investment Company Act of 1940, when a plan acquires or holds an interest in any of the following entities its assets include its investment and an undivided interest in each of the underlying assets of the entity:

(i) A group trust which is exempt from taxation under section 501(a) of the Internal Revenue Code pursuant to the principles of Rev. Rul. 81-100, 1981-1 C.B. 326,

(ii) A common or collective trust fund of a bank,

(iii) A separate account of an insurance company, other than a separate account that is maintained solely in connection with fixed contractual obligations of the insurance company under which the amounts payable, or credited, to the plan and to any participant or beneficiary of the plan (including an annuitant) are not affected in any manner by the investment performance of the separate account.

(2) When a plan acquires or holds an interest in any entity (other than an insurance company licensed to do business in a State) which is established or maintained for the purpose of offering or providing any benefit described in section 3(1) or section 3(2) of the Act to participants or beneficiaries of the investing plan, its assets will include its investment and an undivided interest in the underlying assets of that entity.

(3) When a plan or a related group of plans owns all of the outstanding equity interests (other than director's qualifying shares) in an entity, its assets include those equity interests and all of the underlying assets of the entity. This paragraph (h)(3) does not apply, however, where all of the outstanding equity interests in an entity are qualifying employer securities described in section 407(d)(5) of the Act, owned by one or more eligible individual account plan(s) (as defined in section 407(d)(3) of the Act) maintained by the same employer, provided that substantially all of the participants in the plan(s) are, or have been, employed by the issuer of such securities or by members of a group of affiliated corporations (as determined under section 407(d)(7) of the Act) of which the issuer is a member.

(4) For purposes of paragraph (h)(3), a "related group" of employee benefit plans consists of every group of two or more employee benefit plans—

(i) Each of which receives 10 percent or more of its aggregate contributions from the same employer or from members of the same controlled group of corporations (as determined under section 1563(a) of the Internal Revenue Code, without regard to section 1563(a)(4) thereof); or

(ii) Each of which is either maintained by, or maintained pursuant to a collective bargaining agreement negotiated by, the same employee organization or affiliated employee organizations. For purposes of this paragraph, an "affiliate" of an employee organization means any person controlling, controlled by, or under common control with such organization, and includes any organization chartered by the same parent body, or governed by the same constitution and bylaws, or having the relation of parent and subordinate.

(i) *Governmental mortgage pools.* (1) Where a plan acquires a guaranteed governmental mortgage pool certificate, as defined in paragraph (i)(2), the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate.

(2) A "guaranteed governmental mortgage pool certificate" is a certificate backed by, or evidencing an interest in, specified mortgages or participation interests therein and with respect to which interest and principal payable pursuant to the certificate is guaranteed by the United States or an agency or instrumentality thereof. The term "guaranteed governmental mortgage pool certificate" includes a mortgage pool certificate with respect to which interest and principal payable pursuant to the certificate is guaranteed by:

(i) The Government National Mortgage Association;

(ii) The Federal Home Loan Mortgage Corporation; or

(iii) The Federal National Mortgage Association.

(j) *Examples.* The principles of this section are illustrated by the following examples:

(1) A plan, P, acquires debentures issued by a corporation, T, pursuant to a private offering. T is engaged primarily in investing and reinvesting in precious metals on behalf of its shareholders, all of which are benefit plan investors. By its terms, the debenture is convertible to common stock of T at P's option. At the time of P's acquisition of the debentures, the conversion feature is incidental to T's obligation to pay interest and principal. Although T is not an operating company, P's assets do not include an interest in the underlying assets of T because P has not acquired an *equity* interest in T. However, if P exercises its option to convert the debentures to common stock, it will have acquired an equity interest in T at that time and (assuming that the common stock is not a publicly-offered security and that there has been no change in the composition of the other equity investors in T) P's assets would then include an undivided interest in the underlying assets of T.

(2) A plan, P, acquires a limited partnership interest in a limited partnership, U, which is established and maintained by A, a general partner in U. U has only one class of limited partnership interests. U is engaged in the business of investing and reinvesting in securities. Limited partnership interests in U are offered privately pursuant to an exemption from the registration requirements of the Securities Act of 1933. P acquires 15 percent of the value of all the outstanding limited partnership interests in U, and, at the time of P's investment, a governmental plan owns 15 percent of the value of those interests. U is not an operating company because it is engaged primarily in the investment of capital. In addition, equity participation by benefit plan investors is significant because immediately after P's investment such investors hold more than 25 percent of the limited partnership interests in U. Accordingly, P's assets include an undivided interest in the underlying assets of U, and A is a fiduciary of P with respect to such assets by reason of its discretionary authority and control over U's assets. Although the governmental plan's investment is taken into account for purposes of determining whether equity participation by benefit plan investors is significant, nothing in this section imposes fiduciary obligations on A with respect to that plan.

(3) Assume the same facts as in paragraph (j)(2), except that P acquires only 5 percent of the value of all the outstanding limited partnership interests in U, and that benefit plan investors in the aggregate hold only 10 percent of the value of the limited partnership interests in U. Under these facts, there is no significant equity participation by benefit plan investors in U, and, accordingly, P's assets include its limited partnership interest in U, but do not include any of the underlying assets of U. Thus, A would not be a fiduciary of P by reason of P's investment.

(4) Assume the same facts as in paragraph (j)(3) and that the aggregate value of the outstanding limited partnership interests in U is $10,000 (and that the value of the interests held by benefit plan investors is thus $1000). Also assume that an affiliate of A owns limited partnership interests in U having a value of $6500. The value of the limited partnership interests held by A's affiliate are disregarded for purposes of determining whether there is significant equity participation in U by benefit plan investors. Thus, the percentage of the aggregate value of the limited partnership interests held by benefit plan investors in U for purposes of such a determination is approximately 28.6% ($1000/$3500). Therefore there is significant benefit plan investment in T.

(5) A plan, P, invests in a limited partnership, V, pursuant to a private offering. There is significant equity participation by benefit plan investors in V. V acquires equity positions in the companies in which it invests, and, in connection with these investments, V negotiates terms that give it the right to participate in or influence the management of those companies. Some of these investments are in publicly-offered securities and some are in securities acquired in private offerings. During its most recent valuation period, more than 50 percent of V's assets, valued at cost, consisted of investments with respect to which V obtained management rights of the kind described above. V's managers routinely

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consult informally with, and advise, the management of only one portfolio company with respect to which it has management rights, although it devotes substantial resources to its consultations with that company. With respect to the other portfolio companies, V relies on the managers of other entities to consult with and advise the companies' management. V is a venture capital operating company and therefore P has acquired its limited partnership investment, but has not acquired an interest in any of the underlying assets of V. Thus, none of the managers of V would be fiduciaries with respect to P solely by reason of its investment. In this situation, the mere fact that V does not participate in or influence the management of all its portfolio companies does not affect its characterization as a venture capital operating company.

(6) Assume the same facts as in paragraph (j)(5) and the following additional facts: V invests in debt securities as well as equity securities of its portfolio companies. In some cases V makes debt investments in companies in which it also has an equity investment; in other cases V only invests in debt instruments of the portfolio company. V's debt investments are acquired pursuant to private offerings and V negotiates covenants that give it the right to substantially participate in or to substantially influence the conduct of the management of the companies issuing the obligations. These covenants give V more significant rights with respect to the portfolio companies' management than the covenants ordinarily found in debt instruments of established, creditworthy companies that are purchased privately by institutional investors. V routinely consults with and advises the management of its portfolio companies. The mere fact that V's investments in portfolio companies are debt, rather than equity, will not cause V to fail to be a venture capital operating company, provided it actually obtains the right to substantially participate in or influence the conduct of the management of its portfolio companies and provided that in the ordinary course of its business it actually exercises those rights.

(7) A plan, P, invests (pursuant to a private offering) in a limited partnership, W, that is engaged primarily in investing and reinvesting assets in equity positions in real property. The properties acquired by W are subject to long-term leases under which substantially all management and maintenance activities with respect to the property are the responsibility of the lessee. W is not engaged in the management or development of real estate merely because it assumes the risks of ownership of income-producing real property, and W is not a real estate operating company. If there is significant equity participation in W by benefit plan investors, P will be considered to have acquired an undivided interest in each of the underlying assets of W.

(8) Assume the same facts as in paragraph (j)(7) except that W owns several shopping centers in which individual stores are leased for relatively short periods to various merchants (rather than owning properties subject to long-term leases under which substantially all management and maintenance activities are the responsibility of the lessee). W retains independent contractors to manage the shopping center properties. These independent contractors negotiate individual leases, maintain the common areas and conduct maintenance activities with respect to the properties. W has the responsibility to supervise and the authority to terminate the independent contractors. During its most recent valuation period more than 50 percent of W's assets, valued at cost, are invested in such properties. W is a real estate operating company. The fact that W does not have its own employees who engage in day-to-day management and development activities is only one factor in determining whether it is actively managing or developing real estate. Thus, P's assets include its interest in W, but do not include any of the underlying assets of W.

(9) A plan, P, acquires a limited partnership interest in X pursuant to a private offering. There is significant equity participation in X by benefit plan investors. X is engaged in the business of making "convertible loans" which are structured as follows: X lends a specified percentage of the cost of acquiring real property to a borrower who provides the remaining capital needed to make the acquisition. This loan is secured by a mortgage on the property. Under the terms of the loan, X is entitled to receive a fixed rate of interest payable out of the initial cash flow from the property and is also entitled to that portion of any additional cash flow which is equal to the percentage of the acquisition cost that is financed by its loan. Simultaneously with the making of the loan, the borrower also gives X an option to purchase an interest in the property for the original principal amount of the loan at the expiration of its initial term. X's percentage interest in the property, if it exercises this option, would be equal to the percentage of the acquisition cost of the property which is financed by its loan. The parties to the transaction contemplate that the option ordinarily will be exercised at the expiration of the loan term if the property has appreciated in value. X and the borrower also agree that, if the option is exercised, they will form a limited partnership to hold the property. X negotiates loan terms which give it rights to substantially influence, or to substantially participate in, the management of the property which is acquired with the proceeds of the loan. These loan terms give X significantly greater rights to participate in the management of the property than it would obtain under a conventional mortgage loan. In addition, under the terms of the loan, X and the borrower ratably share any capital expenditures relating to the property. During its most recent valuation period, more than 50 percent of the value of X's assets valued at cost consisted of real estate investments of the kind described above. X, in the ordinary course of its business, routinely exercises its management rights and frequently consults with and advises the borrower and the property manager. Under these facts, X is a real estate operating company. Thus, P's assets include its interest in X, but do not include any of the underlying assets of X.

(10) In a private transaction, a plan, P, acquires a 30 percent participation in a debt instrument that is held by a bank. Since the value of the participation certificate relates solely to the debt instrument, that debt instrument is, under paragraph (g), treated as the sole asset of a separate entity. Equity participation in that entity by benefit plan investors is significant since the value of the plan's participation exceeds 25 percent of the value of the instrument. In addition, the hypothetical entity is not an operating company because it is primarily engaged in the investment of capital (*i.e.*, holding the debt instrument). Thus, P's assets include the participation and an undivided interest in the debt instrument, and the bank is a fiduciary of P to the extent it has discretionary authority or control over the debt instrument.

(11) In a private transaction, a plan, P, acquires 30% of the value of a class of equity securities issued by an operating company, Y. These securities provide that dividends shall be paid solely out of earnings attributable to certain tracts of undeveloped land that are held by Y for investment. Under paragraph (g), the property is treated as the sole asset of a separate entity. Thus, even though Y is an operating company, the hypothetical entity whose sole assets are the undeveloped tracts of land is not an operating company. Accordingly, P is considered to have acquired an undivided interest in the tracts of land held by Y. Thus, Y would be a fiduciary of P to the extent it exercises discretionary authority or control over such property.

(12) A medical benefit plan, P, acquires a beneficial interest in a trust, Z, that is not an insurance company licensed to do business in a State. Under this arrangement, Z will provide the benefits to the participants and beneficiaries of P that are promised under the terms of the plan. Under paragraph (h)(2), P's assets include its beneficial interest in Z and an undivided interest in each of its underlying assets. Thus, persons with discretionary authority or control over the assets of Z would be fiduciaries of P.

(k) *Effective date and transitional rules.* (1) In general, this section is effective for purposes of identifying the assets of a plan on or after March 13, 1987. Except as a defense, this section shall not apply to investments in an entity in existence on March 13, 1987, if no plan subject to Title I of the Act or plan described in section 4975(e)(1) of the Code (other than a plan described in section 4975(g)(2) or 4975(g)(3)) acquires an interest in the entity from an issuer or underwriter at any time on or after March 13, 1987 except pursuant to a contract binding on the plan in effect on March 13, 1987 with an issuer of underwriter to acquire an interest in the entity.

(2) Notwithstanding paragraph (k)(1), this section shall not, except as a defense, apply to a real estate entity described in section 11018(a) of Pub. L. 99-272.

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

5. The authority citation for Part 2550 is revised to read as set forth below and the authority citations following all the sections in Part 2550 are removed.

Authority: 29 U.S.C. 1135.

Section 2550.407c–3 also issued under 29 U.S.C. 1107.

Section 2550.412–1 also issued under 29 U.S.C. 1112. Section 2550.414b–1 also issued under 29 U.S.C. 1114.

Secretary of Labor Order No. 1–86.

6. Part 2550 is amended by removing § 2550.401b–1.

Signed at Washington, DC, this 6th day of November, 1986.

Dennis M. Kass,

Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86–25512 Filed 11–12–86; 8:45 am]

BILLING CODE 4510-29-M

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29 CFR Part 2520

Exemption and Alternative Method of Annual Reporting for Plans Investing in Certain Entities

AGENCY: Department of Labor.

ACTION: Final regulation.

SUMMARY: This document contains a final regulation under the Employee Retirement Income Security Act of 1974 (ERISA or the Act) which would provide a limited exemption from the reporting and disclosure requirements of ERISA and an alternative method of annual reporting for plan investments in certain entities. Under a final regulation published elsewhere in today's **Federal Register**, the assets of certain entities in which plans invest would be deemed to include plan assets. This regulation will facilitate the reporting of financial information by plans with respect to investments in such entities.

DATE: The final regulation will be effective March 13, 1987, and will apply to plan years ending on or after that date.

FOR FURTHER INFORMATION CONTACT: George M. Holmes, Jr., Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210, (202) 523–8515 (not a toll free number) or Daniel J. Maguire, Esq., Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210, (202) 523–9595 (not a toll free number).

SUPPLEMENTARY INFORMATION:

A. Background

This document adopts a final regulation which provides an alternative method of compliance for plan investments in entities which would hold "plan assets" under the Department's final regulation defining that term which is published separately in today's **Federal Register**.[1]

Under the Department of Labor's final regulations relating to the term "plan assets", when a plan invests in certain entities its assets are considered to include an undivided interest in each of the underlying assets of the entity for purposes of the reporting and disclosure and fiduciary responsibility provisions of ERISA.[2] This "look-through" rule applies in cases where the plan, although nominally investing in another entity, is as a practical matter retaining the persons managing the entity to provide investment management services to the plan.

In cases where the "look-through" rule of the plan assets regulation applies, information regarding both the plan's investment and the underlying assets of the entity to which the investment relates would have to be included as part of the plan's annual report required by sections 103 and 104 of ERISA to be filed with the Department and made available to plan participants and beneficiaries. In these circumstances, the plan administrator would, in the absence of a reporting alternative, be responsible for obtaining detailed information about the underlying assets of the entity and about certain transactions to which the entity is a party. The alternative method of reporting is intended to reduce the burden of complying with these annual reporting requirements. As discussed in more detail below, the Department received only two comments on the proposed reporting alternative, and the Department has decided to adopt it in the form proposed.

B. Description of the Reporting Alternative

The reporting alternative will be codified at 29 CFR 2520.103–12. Under paragraph (a) of that section, the plan administrator need not include in the plan's annual report any information regarding the underlying assets and individual transactions of an entity the assets of which include plan assets; instead, the administrator is required to report only the value of the plan's investment or units of participation in the entity on the appropriate reporting form (Form 5500 Series), in the manner prescribed in the instructions to the form. As a condition to using this alternative, however, certain information regarding the entity must be filed directly with the Secretary on behalf of the plan administrator no later than the date on which the plan's annual report is due.[3] Such information, described in paragraph (b) of the regulation, relates primarily to the financial condition of the entity for its fiscal year ending with or within the plan year for which the plan's annual report is made. Although this information would not be included with the form filed by the plan administrator, it would, nevertheless, constitute part of the plan's annual report for purposes of the reporting and disclosure requirements of ERISA.

ERISA requires a plan administrator to engage an independent public accountant to examine and provide an opinion with respect to the financial statements and schedules included in the plan's annual report. The information with respect to an entity which is required to be reported to the Department under the reporting alternative also includes a report of an independent public accountant. In this respect, the Department is amending 29 CFR 2520.103–1 to make it clear that an independent public accountant, in conducting the required audit of a plan that uses the reporting alternative, would be permitted to omit certain procedures which the accountant might ordinarily use in the course of an audit made for the purpose of expressing the opinions required by ERISA. In particular, the regulation would allow the plan's accountant to limit the scope of his opinion by relying on the entity's financial report which has been certified by an independent accountant in a

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[1] The reporting alternative that is being adopted here was proposed on January 24, 1985 (50 FR 3362). The plan assets regulation to which it relates was published as a proposed regulation on January 8, 1985 (50 FR 961) and modified by a notice published on February 15, 1985 (50 FR 6361).

[2] The plan assets regulation is codified at 29 CFR 2510.3–101.

[3] This alternative permits the plan administrator and the manager of the entity to develop a suitable procedure whereby the plan administrator can establish to his satisfaction that the Department will receive, on behalf of the plan, all the information required in paragraph (b) of the alternative regarding the assets of the entity. The alternative does not contain any detailed rules relating to the exchange of information between the plan and the entity or the certification as to the accuracy of such information. The alternative does not, of course, affect a plan administrator's responsibility to monitor the conduct of the entity manager and to obtain whatever financial information concerning the entity that is necessary for the administrator to perform his duties under ERISA.

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manner which satisfies the standards in 29 CFR 2520.103–1.[4]

C. Discussion of Comments

The Department received two letters of comment in response to the proposal. One commentator urged the Department to adopt the proposed reporting alternative in final form as quickly as possible. The commentator noted that until such time as the proposal is adopted, a plan which invests in an entity the assets of which include plan assets must file information regarding both the plan's investment in the entity and such plan's interest in the underlying assets of the entity as part of such plan's annual report. The commentator indicated that a plan's reporting in this manner would be of questionable value.

In order to assure that the reporting alternative will be available to plans and other entities that are affected by the Department's final regulation defining the term "plan assets", the Department has made the reporting alternative effective for plan years ending on or after the later of January 1, 1987 or 120 days after publication in order to confor? to the effective date of the plan assets regulation.[5] Thus, the reporting alternative will be available to persons affected by the plan assets regulation at all times after the effective date of that regulation. In this respect, the Department is engaged in a comprehensive review of the annual reporting forms under the reporting and disclosure provisions of ERISA, and it anticipates that revised forms will be available for plan years beginning in 1987. The Department also anticipates that these revised forms will reflect the availability of the reporting alternative. For plan years beginning in 1986, plans may make use of the reporting alternative by disclosing the value of any investment to which the look-through rule of the plan assets regulation applies and by assuring that the manager of the entity to which the investment relates files the information contemplated by the reporting alternative directly with the Department.

Another commentator asserted that the proposal did not clearly indicate how to report information when a pooled trust in which plans invest makes an equity investment in another entity (a "subentity") which holds title to real estate. The commentator noted that this is particularly a problem when the subentity is a real estate partnership the assets of which are managed and controlled by a partner other than the pooled trust. The commentator stated that the pooled trust could report to its investing plans on the assets and liabilities of the partnership, but that the trust would not necessarily be in a position to report information, particularly regarding disbursement activities, with respect to the details of operation of the underlying real estate assets of the partnership even if the subentity is required to distribute audited financial statements to its investors. The commentator suggested that an entity which holds plan assets by reason of direct plan investment should only be required to report the information specified in proposed regulation § 2520.103–12 at the subentity level when the reporting entity either (i) has or had the power and responsibility to negotiate the terms and conditions establishing such subentity or (ii) has or had the power and authority to substantially influence the operation or management of that subentity.

In the Department's view, the extent to which an entity holding plan assets would submit information concerning the underlying assets of subentities depends on the characterization of the assets of the subentity under the final plan assets regulation. If the assets of the subentity do not include plan assets—for example, because the subentity is an operating company of the kind described in the regulation—then the entity in which the plan has invested would only report the value of its investment in the subentity. If, on the other hand, the assets of a subentity do include plan assets, information regarding the underlying assets of the subentity would have to be provided to the plan or reported pursuant to the alternative method of compliance.

In this respect, the Department notes that, under paragraph (c), the reporting alternative is available with respect to any plan investment in an entity whose assets include plan assets under the Department's plan assets regulation provided two or more unrelated plans have invested in the entity. The Department intends that this would include situations where the plan has invested indirectly in a subentity whose assets include plan assets.

Finally, the Department has made a minor change to the definition of "related group of plans" to conform that portion of the definition relating to "affiliated employee organizations" to that contained in the Department's final plan assets regulation.

D. Departmental Findings

The reporting alternative is issued under section 110 of ERISA which authorizes alternative methods of compliance with the reporting and disclosure requirements applicable to pension plans and under section 104(a)(3) of ERISA which authorizes the Department to exempt any welfare plan from all or part of the reporting and disclosure requirements of Title I of ERISA or to provide for simplified reporting and disclosure.

With respect to pension plans, section 110 of ERISA permits the Department to prescribe alternative methods of complying with any of the reporting and disclosure requirements of ERISA if it finds: (1) That the use of the alternative is consistent with the purposes of ERISA and that it provides adequate disclosure to plan participants and beneficiaries and to the Department; (2) that application of the statutory reporting and disclosure requirements would increase the costs to the plan or impose unreasonable administrative burdens with respect to the operation of the plan; and (3) that the application of the statutory reporting and disclosure requirements would be adverse to the interests of plan participants in the aggregate.

With respect to the first requirement, the reporting alternative is intended to establish a reporting method for investments to which the "look-through" rule of the plan assets regulation applies that is comparable to the method established by the Department for other kinds of collective investment arrangements.[6] Thus, the Department has concluded that the reporting alternative will provide more meaningful disclosure to participants and to the Department than would be the case if the statutory requirements were applied. The Department has also concluded that the reporting alternative is consistent with the purposes of ERISA because it results in consistent reporting of collective investment arrangements involving plans.

With respect to the second factor, the Department has determined that application of the statutory annual reporting requirements without modification would impose an unreasonable administrative burden on plans because it would be extremely difficult for plan administrators to identify and report the value of the plan's ratable interest in each of the underlying assets of an entity in which it invests in cases where the assets of the entity include plan assets.

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[4] In general, 29 CFR 2520.103–1(b)(5) requires that an accountant's report must state whether the audit has been conducted in accordance with generally accepted auditing standards and must contain the accountant's opinion with respect to the financial statements and schedules covered by the report.

[5] In general, the effective date of the plan assets regulation will be no earlier than January 1, 1987.

[6] See section 103(b)(3)(G) of ERISA and 29 CFR 2520.103–1(e) (assets held in master trusts); 29 CFR 2520.103–3 (assets held in common or collective trusts); 29 CFR 2520.103–4 (assets held in insurance company pooled separate accounts).

Finally, based on the above, the Department has determined that application of statutory requirements without the availability of an alternative reporting method would be adverse to the interests of the participants and beneficiaries of such plans.

The reporting alternative also applies to welfare plans, and, insofar as it is applicable to such plans, it is being issued under section 104(a)(3) of ERISA. That section states that the Secretary may exempt any welfare plan from all or part of the reporting and disclosure requirements if he finds such requirements to be inappropriate. The Department has determined that application of the statutory reporting requirements in cases where the "look-through" rule of the plan assets regulation applies would also be inappropriate in the context of welfare plans for the reasons discussed above in the context of pension plans.

Regulatory Flexibility Act

For the purpose of analyzing the effect of the final regulation, small entities were defined as employee benefit plans covering fewer than 100 persons. While some larger employers have small plans, in general, most small plans are maintained by small businesses. Therefore, assessing the regulation's impact on small plans is an appropriate substitute for evaluating its effects on small entities.

This regulation will provide administrators of employee benefit plans with a less burdensome and less costly means of complying with the annual reporting requirements under Title I of ERISA where a plan invests in certain entities the underlying assets of which include plan assets. Based on an informal review of plan investment practices, it was determined that typically only those plans with $7 million or more in assets invest in the types of entities which generally would be considered to be holding plan assets. Based on data derived from the Form 5500 annual return/reports, less than 0.02 percent of plans covering fewer than 100 persons have assets of $7 million or more.

In addition, available data indicates that very few of the entities in which plans invest would be considered small entities. Based on available data, it appears that approximately $1 billion of plan monies are invested in entities which may be considered to be holding plan assets. While the range of total dollars (plan and non-plan) invested per entity varies from $1 million to over $500 million, data suggests that few entities handling plan assets would fall within the lower dollar ranges (i.e., $1 million to $10 million).

For the above reasons, the undersigned hereby certifies under section 605(b) of the Regulatory Flexibility Act that this regulation will not have a significant economic impact on a substantial number of small plans or small entities in which such plans might invest. Therefore, compliance with sections 603 and 604 of the Regulatory Flexibility Act is waived.

Executive Order 12291

The Department has determined that this regulation is not a "major rule" as that term is used in Executive Order 12291 because the regulation will not result in: an annual effect on the economy of $100 million; a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This conclusion is based on the fact that this regulation, rather than increasing costs and burdens on employee benefit plans or entities in which they might invest, will provide administrators of plans which invest in certain entities (i.e., entities the underlying assets of which are considered to include plan assets) with a less burdensome and costly means of complying with the statutory requirement to file annual reports with the Secretary.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the reporting provisions that are included in this regulation have been submitted to the Office of Management and Budget for its review and approval.

Statutory Authority

The regulation is adopted pursuant to the authority contained in sections 104, 110, and 505 of ERISA (Pub. L. 93-406; 88 Stat. 894; 29 U.S.C. 1024, 1030 and 1135).

List of Subjects in 29 CFR Part 2520

Accountants, Actuaries, Disclosure requirements, Employee Benefit Plans, Employee Retirement Income Security Act, Health insurance, Life insurance, Pensions, Pension and Welfare Benefits Administration, Reporting requirements.

Final Regulation

For the reasons set out in the preamble, Chapter XXV of Title 29 of the Code of Federal Regulations is amended as set forth below.

PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

1. The authority citation for Part 2520 is revised to read as set forth below and the authority citations following all the sections in Part 2520 are removed.

Authority: Secs. 101, 102, 103, 104, 105, 109, 110, 111(b)(2), 111(c), 505, Pub. L. 93-406, 88 Stat. 840-52, 894 (29 U.S.C. 1021-25, 1029-31, 1135); Secretary of Labor's Order No. 27-74, No. 13-76, No. 1-86; Labor-Management Services Administration Order No. 2-6.

2. Part 2520 is amended by adding a new § 2520.103-12 to Subpart C in the appropriate place to read as follows:

§ 2520.103-12 Limited exemption and alternative method of compliance for annual reporting of investments in certain entities.

(a) This section prescribes an exemption from and alternative method of compliance with the annual reporting requirements of Part 1 of Title I of ERISA for employee benefit plans whose assets are invested in certain entities described in paragraph (c). A plan utilizing this method of reporting shall include as part of its annual report the current value of its investment or units of participation in the entity in the manner prescribed by the Return/Report Form and the instructions thereto. The plan is not required to include in its annual report any information regarding the underlying assets or individual transactions of the entity, provided the information described in paragraph (b) regarding the entity is reported directly to the Department on behalf of the plan administrator no later than the date on which the plan's annual report is due. The information described in paragraph (b), however, shall be considered as part of the annual report for purposes of the requirements of § 104(a)(1)(A) of the Act and §§ 2520.104a-5 and 2520.104a-6.

(b) The following information regarding the entity must be reported for the fiscal year of the entity ending with or within the plan year for which the plan's annual report is made:

(1) Name, Address and EIN of the entity;

(2) A list of all plans investing in the entity identified by plan name, plan number, and name and EIN of the plan

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sponsor as they appear on the annual return/report;

(3) Annual statement of assets and liabilities of the entity;

(4) Statement of income and expenses of the entity;

(5) Assets held for investment (including acquisitions and dispositions), leases and obligations in default, and compensation paid by the entity for services—in the manner required by the instructions to the Annual Return/Report Form 5500;

(6) Report of an independent qualified public accountant regarding the statements and schedules described in paragraphs (b)(2)–(5) of this section which meets the requirements of § 2520.103–1(b)(5).

(c) This method of reporting is available to any employee benefit plan which has invested in an entity the assets of which are deemed to include plan assets under § 2510.3–101, provided the entity holds the assets of two or more plans which are not members of a "related group" of employee benefit plans as that term is defined in paragraph (e) of this section. The method of reporting is not available for investments in an insurance company pooled separate account or a common or collective trust maintained by a bank, trust company, or similar institution.

(d) The examination and report of an independent qualified public accountant required by § 2520.103–1 for a plan utilizing the method of reporting described in this section need not extend to any information concerning an entity which is reported directly to the Department under paragraph (b) of this section.

(e) A "related group" of employee benefit plans consists of every group of two or more employee benefit plans—

(1) Each of which receives 10 percent or more of its aggregate contributions from the same employer or from members of the same controlled group of corporations (as determined under section 1563(a) of the Internal Revenue Code, without regard to section 1563(a)(4) thereof); or

(2) Each of which is either maintained by, or maintained pursuant to a collective bargaining agreement negotiated by, the same employee organization or affiliated employee organizations. For purposes of this paragraph, an "affiliate" of an employee organization means any person controlling, controlled by, or under common control with such organization, and includes any organization chartered by the same parent body, or governed by the same constitution and bylaws, or having the relation of parent and subordinate.

3. Section 2520.103–1(b)(5)(ii)(B) is revised to read as follows: Contents of the annual report.

* * * * *

(b) * * *

(5) * * *

(ii) * * *

(B) Shall designate any auditing procedures deemed necessary by the accountant under the circumstances of the particular case which have been omitted, and the reasons for their omission. Authority for the omission of certain procedures which independent accountants might ordinarily employ in the course of an audit made for the purpose of expressing the opinions required by paragraph (b)(5)(iii) of this section is contained in §§ 2520.103–8 and 2520.103–12.

* * * * *

Signed at Washington, DC, this 6th day of November, 1986.

Dennis M. Kass,

Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86–25513 Filed 11–12–86; 8:45 am]

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federal register

Thursday
November 13, 1986

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 159

Carriage of Weapons and Other Dangerous Objects at Washington National Airport and Washington Dulles International Airport; Notice of Proposed Rulemaking

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 159

[Docket No. 25123; Notice No. 86-18]

Carriage of Weapons and Other Dangerous Objects at Washington National Airport and Washington Dulles International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to clarify the rule governing the carriage of weapons and other dangerous objects on Washington National Airport and Washington Dulles International Airport so that it more closely conforms to Federal Aviation Regulations governing aviation security and to existing local gun control ordinances. These clarifications would make it easier for the traveling public to comply with the airports' rule without compromising airport security.

DATES: Comments must be received on or before January 12, 1987.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, Office of Chief Counsel, Attention, Rules Docket (AGC–204), Docket No. 25123, 800 Independence Avenue, SW. Washington, DC 20591.

Or delivered in duplicate to: Room 915G, 800 Independence Avenue, SW., Washington, DC 20591.

Comments must be marked: Docket No. 25123.

Comments received may be inspected at Room 915G between 8:30 a.m. and 5:00 p.m., Monday through Friday, except for Federal holidays.

FOR FURTHER INFORMATION CONTACT: Edward S. Faggen, or Jana E. McIntyre, Legal Counsel, AMA–7, Hangar 9, Washington National Airport, Washington, DC 20001, Telephone: (703) 557–8123.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking action by submitting written data, views or arguments. Communications should identify the regulatory docket and notice number and be submitted in duplicate to the Rules Docket at the address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action.

Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25123." The postcard will be date/time stamped and returned to the commenter. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public comment with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center (APA–430), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Washington National Airport and Washington Dulles International Airport (the "Airports") are owned and operated by the Federal Government. The Secretary of Transportation has control over and responsibility for the care, operation, maintenance, and protection of the airports, and the authority to promulgate rules and regulations necessary for this purpose. This authority has been delegated to the Administrator of the Federal Aviation Administration.

Existing FAA regulation 14 CFR 159.79(a) prohibits any person, except a Peace Officer, an authorized post office, Airport, or air carrier employee, or a member of an Armed Force on official duty, from carrying any weapon, explosive or inflammable material on or about his person, openly or concealed, on the airports without the written permission of the airport manager. This rule was adopted by the FAA on September 22, 1962 (27 FR 9444) and was designed to assist airport law enforcement and security efforts by maintaining tight control over the presence of weapons and other dangerous objects on the airports.

The existing rule has created confusion among persons who are carrying weapons on the airport for the lawful purpose of checking these weapons with their baggage or who are carrying them after retrieving them from lawfully checked baggage. The Federal Aviation Regulations (FAR) forbid the carriage of weapons on or about an individual's person or accessible property when that person enters the sterile area of an airport (§ 107.21), the area behind the security screening point. The rules, however, do allow air carriers to develop their own rules permitting passengers to ship unloaded weapons aboard the aircraft. Among other requirements, the weapons must be carried in a container deemed by the carrier to be appropriate for air transportation and the weapons must be placed in an area of the aircraft that is inaccessible to passengers (§ 108.11(d)). Many passengers, although aware of these security regulations, are unaware that they may be prosecuted if they fail to have the airport manager's permission to carry weapons in securely packed baggage onto any area of Washington National Airport or Washington Dulles International Airport, including the terminals, for the purpose of checking them in an inaccessible part of the aircraft. It should be noted that historically the rule has not been used to prosecute individuals who are carrying a weapon to be checked as baggage and who do not otherwise enter a secured area. The potential exists, however, for prosecuting for a federal misdemeanor persons who possess weapons on the airport as baggage incident to legitimate air travel either before checking their baggage aboard an air carrier or after retrieving it from a carrier, but who do not have the airport manager's permission to have the weapon on the airport.

Persons carrying weapons properly prepared for air transportation do not pose a threat to the security of the airport because their weapons are unloaded and carried in containers which are suitable for air transportation. Weapons prepared in this manner are not immediately accessible. Therefore, the FAA is considering clarifying the existing rule to make it explicitly inapplicable to these persons. The FAA's goal is to control weapons on the airport and preserve the airport's security in a practical manner, but at the same time not unduly burden travelers.

The Proposed Revisions

FAA proposes to permit persons to bring weapons on or about their persons onto Washington National or Washington Dulles International Airports only if the weapons are unloaded or deactivated, if possible, and are packed in a secure container for shipment. Permission of the manager would not be required. However, all loaded or activated weapons, and all openly carried weapons not securely packed for shipment would be prohibited on the airports unless otherwise permitted by the airport manager. The proposed rule is intended to control the presence of weapons on the airports, but not unduly interfere with the legitimate shipment of weapons. Once a person reaches a security screening point or enters a sterile area, however, there is no legitimate reason to carry a weapon. Therefore, the proposed rule would prohibit persons from carrying even unloaded, securely packaged weapons when inspection has begun before entering a sterile area or while in a sterile area. Persons who violate the rule would be subject to criminal prosecution for a misdemeanor or to a civil enforcement action under the FAA's administrative procedures.

The current rule refers to weapons "on or about his person." The proposed rule would add "or accessible property." While the FAA considers accessible property to be carried "about the person," placing this language in the rule is intended to foreclose any arguments to the contrary.

The proposed rule would define "unloaded" to mean that a firearm has no live round of ammunition, cartridge, detonator or powder in the chamber or in a clip, magazine or cylinder inserted in it. By requiring that the firearm be unloaded, it would not be possible for the firearm to discharge if the package in which it is being carried is accidentally dropped. Further, a firearm which is unloaded under this definition would be more difficult to use, because it would take time to load it.

The proposed rule is similar to many of the local ordinances governing carriage of weapons, such as the District of Columbia's ordinance (D.C. Code section 22-3204). For this reason, the proposed rule would be less likely to be a surprise to airport patrons. The D.C. and other local ordinances have been developed to control the carriage of weapons in a congested city environment. This environment is comparable to the busy and often congested environment at the airport's where the open display of weapons could alarm or endanger large numbers of persons.

It is anticipated that the proposed rule would achieve the FAA's goals of maintaining airport security in a practical manner. Passengers who are carrying weapons on the airports which are securely packaged with the intent to meet the conditions developed by the air carriers under § 108.11(d) for carriage of weapons aboard aircraft could not be viewed as being in violation of the airports' weapon rule unless they attempt to pass through a security checkpoint with the weapon. The proposed rule would permit law enforcement officials to continue to enforce the airport's rules against individuals who breach the security screening points with a weapon. Persons who attempt to breach the security screening points or sterile areas with weapons may also be charged with violation of § 107.21 or 49 U.S.C. 1472(l)(1).

It also should be noted that compliance with the airport's proposed rule would not automatically mean that the weapon would meet the air carriers' own security requirements regarding weapons. Individual air carrier security rules may be more restrictive concerning the weapons that may be carried on the aircraft and the containers in which they may be stored. The carrier should always be consulted prior to bringing a securely packaged weapon on the airport.

Carriage of Explosive and Incendiary Materials on the Airports

The proposed rule would retain the existing requirement that all persons must obtain the written permission of the airport manager prior to bringing any explosive or incendiary on the airport on or about their persons in either an open or a concealed fashion. Enforcement of this portion of the existing rule has posed few problems for the airports. Since these materials are carried less frequently by airport partrons than weapons, compliance with this portion of the rule has not been shown to be difficult for airport patrons. Control over these substances is necessary for airport security because of the inherently dangerous nature of these materials. Shippers of these materials who properly package them and transport them through authorized shipping practices would not be deemed to have these materials "on or about their person," however.

Exemption of Law Enforcement Officers

The existing rule exempts Peace Officers, authorized post office, airport or air carrier employees, and members of the Armed Forces on official duty from the provisions of the rule. The proposed rule would change the rule to exempt only "law enforcement officers" on official duty. This proposed rule would not be intended to interfere with those who have a legitimate need to carry weapons, explosive or incendiaries on the airport. However, the category of exempt individuals should be limited; others with a need to carry these items on the airport may seek permission from the airport to do so. Such permission granted by the airport manager will only serve to exempt individuals from paragraphs (a)(1) or (a)(2), however. Exemptions to paragraph (a)(3) are governed by the provisions of §§ 107.21, 108.11 and 129.27.

In addition, the rule would not apply to any person who is authorized to carry a weapon aboard an aircraft as described in §§ 107.21, 108.11 or 129.27. This would prevent such persons from violating the airport's rule if the FAA has authorized them to carry weapons on aircraft.

Weapon

The existing regulations, § 159.79(c), defines weapon to include "a gun, dirk, bowie knife, black jack, switch blade knife, slingshot, or metal knuckles." While this definition is intended to give guidance to the public, it is not intended to exclude from the definition other items which may be weapons. The FAA proposes to change this definition of weapons to add additional items to clarify the point that is all inclusive and to eliminate redundant references. Comments are requested from interested persons on how this definition could be further improved to better alert the public as to what is considered to be a weapon.

Regulatory Evaluation

The proposed rule would not be expected to have any significant economic impact because it would not impose any significant additional requirements on persons carrying dangerous objects on the airports and would not require any significant changes in the airports' security enforcement procedures. A minimal economic benefit would accrue to those persons who previously would have sought written permission to legitimately carry weapons on the airports.

The various regulations proposed in the NPRM would have no impact on

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trade opportunities for both U.S. firms doing business overseas and foreign firms doing business in the U.S.

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure, among other things, that small entities are not disproportionately affected by government regulations. The proposed rule would have only a minimal cost impact on affected persons. Therefore, the FAA has determined that, under the criteria of the RFA, the proposed regulations would not have a significant economic impact in a substantial number of small entities.

Conclusion

The proposed rule would not be expected to impose any significant economic impact because it would not impose significant additional requirements on persons complying with the rule and would not impose any major changes in the activities it addresses. Therefore, the FAA has determined that this proposed amendment involves a regulation which is not major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures. (44 FR 11034; February 26, 1979). For the same reasons, it is certified that this proposed amendment should not have a significant economic impact on a substantial number of small entities. Because the cost of this proposal is so minimal no regulatory evaluation has been prepared.

List of Subjects in 14 CFR Part 159

Weapons.

The Proposed Amendment

PART 159—NATIONAL CAPITAL AIRPORTS

In consideration of the foregoing, it is proposed to amend Part 159 of the Federal Aviation Regulations (14 CFR Part 159) as follows:

1. By revising the authority citation for Part 159 to read as follows:

Authority: 49 U.S.C. 2402, 2404, 2424, and 2428.

2. In §159.79, by revising paragraphs (a) and (c) and adding new paragraphs (d), (e) and (f) to read as follows:

§ 159.79 Weapons, explosives and incendiaries.

(a) Except as provided in paragraph (d), no person may—

(1) Carry any deadly or dangerous weapon, concealed or unconcealed, on or about his or her person or accessible property on the airport unless the weapon—

(i) If a firearm, is unloaded or, if not a firearm, is deactivated to the extent possible; and

(ii) Is packaged for shipment in a container that is locked or otherwise secure;

(2) Carry any explosive or incendiary, concealed or unconcealed, on or about his or her person or accessible property on the airport; or

(3) Carry any explosive, incendiary, or deadly or dangerous weapon on or about his or her person or accessible property—

(i) When performance has begun of the inspection of the individual's person or accessible property before entering the sterile area; or

(ii) When entering or in a sterile area.

* * * * *

(c) For the purposes of this section a weapon includes, but is not limited to, a firearm, a pellet pistol or rifle, a knife, blackjack, bow and arrow, slingshot or metal knuckles.

(d) Paragraph (a) of this section does not apply to Special Agents and Security Officers of the Department of Transportation, persons authorized to carry a weapon aboard an aircraft as described in §§ 107.21, 108.11 and 129.27 of this chapter or to a law enforcement officer on official duty. Paragraph (a)(1) of this section does not apply to any person who has received the permission of the airport manager to carry a weapon on the airport. Paragraph (a)(2) of this section does not apply to any person who has received the permission of the airport manager to carry an explosive or incendiary on the airport.

(e) For the purpose of this section, "unloaded" means the firearm has no live round of ammunition, cartridge, detonator or powder in the chamber or in a clip, magazine or cylinder inserted in it.

(f) For the purpose of this section, "sterile area" means "sterile area" as defined in § 107.1 of this chapter.

Issued in Washington, DC, on November 4, 1986.

James A. Wilding,

Director, Metropolitan Washington Airports.

[FR Doc. 86-25591 Filed 11-12-86; 8:45 am]

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H.R. 4154/Pub. L. 99-592

Age Discrimination in Employment Amendments of 1986. (Oct. 31, 1986; 4 pages) Price: $1.00

H.R. 4576/Pub. L. 99-593

To designate the United States Attorney's Building for the Southern District of New York as the "Silvio James Mollo Federal Building." (Oct. 31, 1986; 1 page) Price: $1.00

H.R. 5215/Pub. L. 99-594

To authorize the construction by the Secretary of Agriculture of a salinity laboratory at Riverside, California. (Oct. 31, 1986; 1 page) Price: $1.00

H.R. 5679/Pub. L. 99-595

To extend the exclusion from Federal unemployment tax of wages paid to certain alien farmworkers. (Oct. 31, 1986; 1 page) Price: $1.00

H.R. 5682/Pub. L. 99-596

To authorize the Secretary of the Navy to make a certain conveyance of real property. (Nov. 3, 1986; 1 page) Price: $1.00

S. 2948/Pub. L. 99-597

To authorize the President to promote posthumously the late Lieutenant Colonel Ellison S. Onizuka to the grade of Colonel. (Nov. 3, 1986; 1 page) Price: $1.00

H.R. 2484/Pub. L. 99-598

To amend title 28, United States Code, relating to quiet title actions against the United States, with respect to actions brought by States. (Nov. 4, 1986; 2 pages) Price: $1.00

H.R. 4118/Pub. L. 99-599

To designate the building commonly known as the Old Post Office in Worcester, Massachusetts, as the "Harold D. Donohue Federal Building." (Nov. 5, 1986; 1 page) Price: $1.00

H.R. 5167/Pub. L. 99-600

To declare that the United States holds certain public domain lands in trust for the Pueblo of Zia. (Nov. 5, 1986; 3 pages) Price: $1.00

H.R. 5564/Pub. L. 99-601

To amend the National Housing Act to provide for the eligibility of certain property for single family mortgage insurance. (Nov. 5, 1986; 1 page) Price: $1.00

H.J. Res. 645/Pub. L. 99-602

To designate 1988 as the "National Year of Friendship with Finland." (Nov. 5, 1986; 1 page) Price: $1.00

S. 1200/Pub. L. 99-603

Immigration Reform and Control Act of 1986. (Nov. 6, 1986; 87 pages) Price: $2.50

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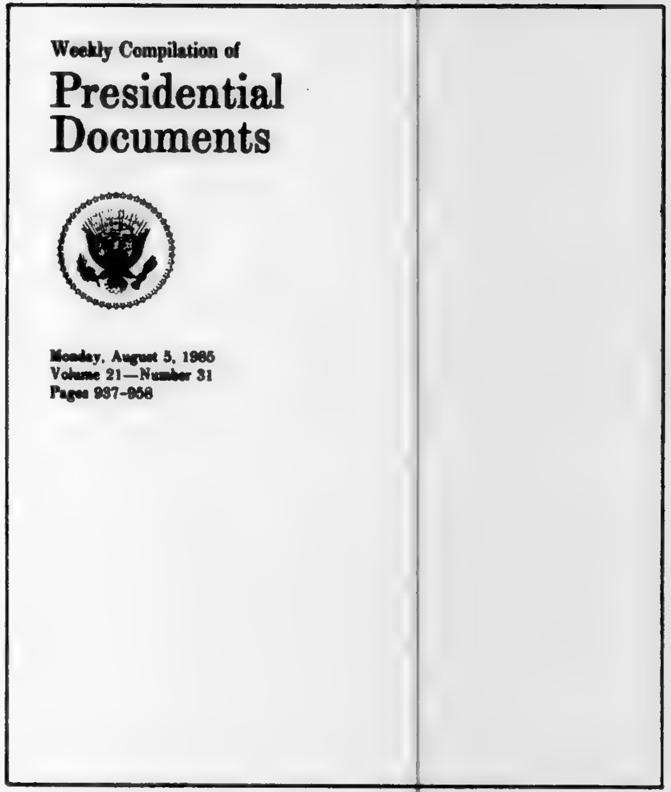
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Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 5569 of November 12, 1986

Salute to School Volunteers Day, 1986

By the President of the United States of America

A Proclamation

Americans have always relied on education to enrich our lives and to keep our Nation free and strong. We have relied as well on our spirit of voluntarism to improve our communities and to help our neighbors. These two traditions are among our Nation's greatest strengths, and we can all take a great deal of pride in our millions of school volunteers who exemplify both of them.

These volunteers generously contribute their time, talent, and resources to help professional educators enhance classroom instruction. In addition, citizens form business and education partnerships and adopt-a-school initiatives to develop a broader range of educational opportunities for students. All of this support from the community encourages school staffs and furthers the education of our children. The magnitude, quality, and selflessness of these efforts deserve the gratitude of every American who cares about our children and the future of our Nation.

The Congress, by Senate Joint Resolution 407, has designated November 12, 1986, as "Salute to School Volunteers Day" and authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Wednesday, November 12, 1986, as Salute to School Volunteers Day. I invite government officials, educators, parents, students, and all Americans to observe this day and participate in activities to recognize and show appreciation for school volunteers' contributions to education.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of November, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-25952
Filed 11-13-86; 11:45 am]
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Rules and Regulations

Federal Register
Vol. 51, No. 220
Friday, November 14, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 210

National School Lunch Program; Revision

Correction

In rule document 86-22046 beginning on page 34864 in the issue of Tuesday, September 30, 1986, make the following corrections:

§ 210.4 [Corrected]

1. On page 34877, in the first column, in § 210.4(b)(1), in the thirteenth line, insert "School" after "National".

§ 210.5 [Corrected]

2. In § 210.5(d)(1), on page 34878, in the first column, in the eleventh line, "Downroad" should read "Downward".

§ 210.16 [Corrected]

3. On page 34883, in the first column, in § 210.16(a)(3), in the second line, "on-sit" should read "on-site".

§ 210.19 [Corrected]

4. On page 34887, in the first column, in § 210.19(b), in the third line, "access" should read "assess".

§ 210.25 [Corrected]

5. On page 34889, in the second column, in § 210.25, paragraph (a) is corrected to read:

(a) If such funds, assets, or property are of a value of $100 or more, be fined no more than $10,000 or imprisoned not more than 5 years or both; or

6. On the same page, in the same column and section, in paragraph (b), in the first line, "finds" should read "funds", and in the second line, "are" was misspelled.

§ 210.27 [Corrected]

7. In § 210.27, on page 34890, in the first column, in paragraph (g), in the tenth line, "distribution" should read "distributing", and in the third line from the end of the paragraph, insert "these" after "meet".

Appendix A—[Corrected]

8. In Appendix A, on page 34891, in the first column, in the second line, "large" should read "larger".

9. Also in Appendix A, on page 34893, in the first column, in the fourth line, insert "protein" after "percent".

BILLING CODE 1505-01-M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 634]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 634 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period November 14 through 20, 1986. Such action is needed to balance the supply of fresh navel oranges with the demand for such period, due to the marketing situation confronting the orange industry.

DATE: Regulation 634 (§ 907.934) is effective for the period November 14 through 20, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202-447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This rule is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1986-1987 adopted by the Navel Orange Administrative Committee. The committee met publicly on November 11, 1986, at Visalia, California, to consider the current and prospective conditions of supply and demand and recommended, by a vote of 6 to 5, a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that demand is good for large-sized oranges and weak for small-sized oranges. Demand is expected to be good for the upcoming Thanksgiving holiday.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. To effectuate the declared purposes of the act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

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List of Subjects in 7 CFR Part 907

Agricultural Marketing Service, Marketing agreements and orders, California, Arizona, Oranges (navel).

PART 907—[AMENDED]

1. The authority citation for 7 CFR Part 907 continues to read:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.934 Navel Orange Regulation 634 is hereby added to read:

§ 907.934 Navel Orange Regulation 634.

The quantities of navel oranges grown in California and Arizona which may be handled during the period November 14 through November 20, 1986, are established as follows:

(a) District 1: 1,254,714 cartons;
(b) District 2: 36,105 cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons.

Joseph A. Gribbin,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–25910 Filed 11–13–86; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 910

[Lemon Regulation 535]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 535 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 275,000 cartons during the period November 16 through November 22, 1986. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 535 (§ 910.835) is effective for the period November 16 through November 22, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the FRA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1986–1987. The committee met publicly on November 11, 1986, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a vote of 13 to 0, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that demand is fairly steady due to the upcoming Thanksgiving holiday. However, cold weather in the east has caused some decrease in demand with large sizes expected to drop in price and small sizes expected to increase slightly.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, and Lemons.

PART 910—[AMENDED]

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.835 is added to read as follows:

§ 910.835 Lemon Regulation 535.

The quantity of lemons grown in California and Arizona which may be handled during the period November 16 through November 22, 1986, is established at 275,000 cartons.

Dated: November 12, 1986.

Joseph A. Gribbin,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–25909 Filed 11–13–86; 8:45 am]

BILLING CODE 3410–02–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR 240

[Release No. 34–23773; File No. S7–46–85]

Net Capital Rule

AGENCY: Securities and Exchange Commission.

ACTION: Rule amendment.

SUMMARY: The Securities and Exchange Commission ("Commission") is amending the net capital rule under the Securities Exchange Act of 1934 ("Act"). The amendments will lower the haircuts on certain positions involving certain nonconvertible debt securities and expand the types of instruments that may be used to create hedged positions as to those securities for purposes of the net capital rule. The amendments will also restructure the criteria for determining whether the remaining maturities of two offsetting debt positions are close enough to consider the combined position to be hedged and thereby subject to lower haircuts.

EFFECTIVE DATE: December 15, 1986.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, (202) 272–2904, Julio A. Mojica, (202) 272–2372, or Michael P. Jamroz, (202) 272–2398, Division of Market Regulation, 450 5th Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

A broker-dealer arrives at its net capital by deducting from its net worth, as computed under generally accepted accounting principles, the value of assets not readily convertible into cash, and certain percentages of the market value of securities carried in its accounts. These percentage deductions, or "haircuts," take into account elements of market and credit risk that the broker-dealer is exposed to when holding a particular position. When determining what the haircut for a given debt security should be, the Commission considers factors such as the nature of the issuer, the time to maturity of the security and for securities of nongovernmental issuers, the ratings of nationally recognized statistical rating services. Haircuts for debt securities are primarily based on the historical market fluctuations of each type of instrument.

In Securities Exhange Act Release No. 22532,[1] the Commission proposed for comment amendments to the net capital rule that would alter both the method in which a broker-dealer determines if investment grade nonconvertible debt securities positions are hedged and the haircuts for those hedged positions.

The three comment letters received by the Commission supported the adoption of the proposed amendments, but recommended one change to the proposal. The Commission has determined that the change recommended by the commentators is appropriate, and, as discussed more fully below, has included the change in the amendments it is adopting today.

II. Discussion of Amendments

Currently, subparagraph (c)(2)(vi)(F)(1) of Rule 15c3–1 (17 CFR 240.15c3–1(c)(2)(vi)(F)(1)) prescribes the haircuts that the broker-dealer incurs with respect to its positions in nonconvertible corporate debt securities positions having a fixed interest rate and fixed maturity date and which are: (i) Not traded flat or in default as to principal or interest; and (ii) rated in one of the four highest categories by at least two of the nationally recognized statistical rating organizations ("corporate debt securities"). Those haircuts range from two to nine percent of the market value of the greater of the long or short position in each maturity category specified in the subparagraph.

Subparagraph (c)(2)(vi)(F)(2) of Rule 15c3–1 (17 CFR 240.15c3–1(c)(2)(vi)(F)(2)) prescribes the haircuts for corporate debt securities positions that are offset by securities issued by the United States or an agency thereof ("Government securities") with similar remaining maturities. Currently, the haircuts for those hedged positions are one-half of the haircuts required for unhedged corporate debt securities positions. Prior to these amendments, corporate debt securities that were offset by futures on Government securities or other corporate debt securities were treated as unhedged and subject to the haircuts prescribed in subparagraph (c)(2)(vi)(F)(1).

As amended, subparagraph (c)(2)(vi)(F)(2) will provide for lower haircuts for corporate debt securities that are offset by Government securities. The revised haircuts range from 1.5 percent to 3 percent depending on the maturity of the securities. The Rule as amended will also recognize futures on U.S. government securities as a substitute for U.S. government securities in determining hedged corporate debt securities positions.

Positions in corporate debt securities that are offset by other corporate debt securities of similar maturities will also be considered as hedged, but subject to a different schedule of haircuts. Those haircuts range from 1.75 percent to 3.5 percent and approximate 120 percent of the haircuts on hedged positions that include a Government security or future.

The present Rule recognizes the hedging of a corporate debt security with a government security if both are within certain maturity bands. These standards were based on conservative views of which debt instruments moved more or less in tandem. For example, a corporate debt security of 2½ years maturity may be hedged by a government security of 3 years maturity.

The Commission proposed amendments expanding the time constraints based on the volatility data provided to it by the Securities Industry Association ("SIA"). Specifically, each category relating to hedged corporate securities positions would cover five years of maturities with the exception of the last category, which includes bonds with fifteen or more years to maturity.

The sole recommendation made by the commentators relates to the hedging of corporate debt securities with over fifteen years to maturity. Under the proposal, the maturities of two corporate debt securities with over fifteen years remaining to maturity would be required to have remaining maturities within five years of each other to be considered hedged. Based on the data provided by the SIA, the Commission has revised the amendments to allow hedging between two instruments with over fifteen years to maturity if within 10 years of each other.

Finally, the proposed amendments would change the haircuts for unhedged corporate debt securities as follows:

[In percent]

Maturity range	Current haircut	Revised haircut
4 years to less than 5 years	7	6
5 years to less than 10 years	9	7
10 years to less than 15 years	9	7½
15 years to less than 20 years	9	8
20 years to less than 25 years	9	8½
25 years or more to maturity	9	(1)

(1) Unchanged.

The changes, based on the data submitted to the Commission by the SIA, are designed to make the maturity categories for the unhedged corporate debt securities haircut schedules more consistent with the maturity categories in the new hedged haircut schedules and with those in the government securities haircut schedule (15c3–1(c)(2)(vi)(A)). The Commission believes that the changes more accurately reflect the relative volatility of the various maturity categories. The Commission continues to believe that the proposed amendments will more accurately reflect the risks of broker-dealers holding hedged corporate debt securities positions. For this reason, the Commission has determined to adopt the amendments as proposed with the one revision discussed above.

III. Statutory Authority

Pursuant to the Securities Exchange Act of 1934 and particularly Section 15(c)(3) thereof, 15 USC 78*o* (c)(3), the Commission is adopting amendments to 240.15c3–1 in Chapter II of Title 17 in the manner set forth below.

IV. Text of the Amendments

In accordance with the foregoing, 17 CFR Part 240 is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read as follows:

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C.

---

[1] 50 FR 42961 (October 23, 1985).

78w * * *. Section 240.15c3–1 also issued under Secs. 15(c)(3) and 17(a), 15 U.S.C. 78o(c)(3) and 78q(a).

2. Section 240.15c3–1 is amended by revising paragraph (c)(2)(vi)(F) as follows:

§ 240.15c3–1 Net capital requirements for brokers and dealers.

* * * * *

(c) * * *

(2) * * *

(vi) * * *

(F) (*1*) *Nonconvertible debt securities.* In the case of nonconvertible debt securities having a fixed interest rate and a fixed maturity date and which are not traded flat or in default as to principal or interest and which are rated in one of the four highest rating categories by at least two of the nationally recognized statistical rating organizations, the applicable percentages of the market value of the greater of the long or short position in each of the categories specified below are:

(*i*) Less than 1 year to maturity—2%

(*ii*) 1 year but less than 2 years to maturity—3%

(*iii*) 2 years but less than 3 years to maturity—5%

(*iv*) 3 years but less than 5 years to maturity—6%

(*v*) 5 years but less than 10 years to maturity—7%

(*vi*) 10 years but less than 15 years to maturity—7½%

(*vii*) 15 years but less than 20 years to maturity—8%

(*viii*) 20 years but less than 25 years to maturity—8½%

(*ix*) 25 years or more to maturity—9%

(*2*) A broker or dealer may elect to exclude from the above categories long or short positions that are hedged with short or long positions in securities issued by the United States or any agency thereof or nonconvertible debt securities having a fixed interest rate and a fixed maturity date and which are not traded flat or in default as to principal or interest and which are rated in one of the four highest rating categories by at least two of the nationally recognized statistical rating organizations if such securities have maturity dates:

(*i*) less than five years and within 6 months of each other;

(*ii*) Between 5 years and 10 years and within 9 months of each other;

(*iii*) Between 10 years and 15 years and within 2 years of each other; or

(*iv*) 15 years or more and within 10 years of each other.

The broker-dealer shall deduct the amounts specified in paragraphs (c)(2)(vi)(F) (*3*) and (*4*) of this section.

(*3*) With respect to those positions described in paragraph (c)(2)(vi)(F)(*2*) of this section that include a long or short position in securities issued by the United States or any agency thereof, the broker or dealer shall exclude the hedging short or long United States or agency securities position from the applicable haircut category under paragraph (c)(2)(vi)(A) of this section. The broker or dealer shall deduct the percentage of the market value of the hedged long or short position in nonconvertible debt securities as specified in each of the categories below:

(*i*) Less than 5 years to maturity—1½%

(*ii*) 5 years but less than 10 years to maturity—2½%

(*iii*) 10 years but less than 15 years to maturity— 2¾%

(*iv*) 15 years or more to maturity—3%

(*4*) With respect to those positions described in paragraph (c)(2)(vi)(F)(*2*) of this section that include offsetting long and short positions in nonconvertible debt securities, the broker or dealer shall deduct a percentage of the market value of the hedged long or short position in nonconvertible debt securities as specified in each of the categories below:

(*i*) Less than 5 years to maturity—1¾%

(*ii*) 5 years but less than 10 years to maturity—3%

(*iii*) 10 years but less than 15 years to maturity—3¼%

(*iv*) 15 years or more to maturity—3½%

(*5*) In computing deductions under paragraph (c)(2)(vi)(F)(*3*) of this section, a broker or dealer may include in the categories specified in paragraph (c)(2)(vi)(F)(*3*) of this section, long or short positions in securities issued by the United States or any agency thereof that are deliverable against long or short positions in futures contracts relating to Government securities, traded on a recognized contract market approved by the Commodity Futures Trading Commission, which are held in the proprietary or other accounts of the broker or dealer. The value of the long or short positions included in the categories shall be determined by the contract value of the futures contract held in the account.

(*6*) The provisions of Appendix B to Rule 15c3–1 (17 CFR 240. 15c3–1b) will in any event apply to the positions in futures contracts.

* * * * *

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

November 4, 1986.

[FR Doc. 86–25566 Filed 11–13–86; 8:45 am]

BILLING CODE 8010-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning December 1, 1986. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The PBGC adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after December 1, 1986 and will remain in effect until the PBGC issues new interest rates and factors.

EFFECTIVE DATE: December 1, 1986.

FOR FURTHER INFORMATION CONTACT: John Foster, Attorney, Corporate Policy and Regulations Department, Code 35100, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006, 202–778–8850 (202–778–8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The PBGC's regulation on the valuation of plan benefits in single-employer plans (29 CFR Part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Although the amendments to Title IV effected by the Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA") change significantly the rules for terminating single-employer plans, the valuation rules are much the same. (SEPPAA applies to all plan terminations initiated on or after January 1, 1986.) Under amended ERISA section 4041(c), all plans wishing to terminate in a distress termination (like all insufficient plans under prior law) must value guaranteed benefits and (new under SEPPAA) benefit commitments under the plan using the formulas set forth in Part 2619. Plans terminating in a standard termination may, for purposes of the notice given to the PBGC, use these formulas to value benefit commitments, although this is not required. (Such plans may value benefit commitments that are payable as annuities on the basis of a qualifying bid obtained from an insurer.)

Appendix B in Part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since November 1, 1986 (51 FR 36690 (October 15, 1986)). Changes in the financial and annuity markets now require a decrease in those rates. Accordingly, this amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after December 1, 1986, which set reflects a decrease of ¼ percent in the immediate interest rate to 7½ percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after December 1, 1986, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, Part 2619 of Chapter XXVI, Title 29, Code of Federal Regulations, is hereby amended as follows:

1. The authority citation for Part 2619 continues to read as follows:

Authority: Secs. 4002(b)(3), 4041 (b) and (c), 4044, 4062 (b) and (c), Pub. L. 93–406, 88 Stat. 1004, 1020, 1025, 1029, as amended by secs. 403(l), 403(d), 402(a)(7), Pub. L. 96–364, 94 Stat. 1302, 1301, 1299, and by secs. 11007–11009, 11011, Pub. L. 99–272, 100 Stat. 244, 248, 253 (29 U.S.C. 1302, 1341, 1344, 1362).

2. Rate Set 65 of Appendix B is revised and Rate Set 66 of Appendix B is added to read as follows: The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "G_y" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1, and n_2 are defined in § 2619.45.

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities				
	On or after	Before		k_1	k_2	k_3	n_1	n_2
*	*	*	*	*	*	*		
65	11–1–86	12–1–86	7.75	1.0700	1.0575	1.0400	7	8
66	12–1–86		7.50	1.0675	1.0550	1.0400	7	8

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 86–25690 Filed 11–13–86; 8:45 am]

BILLING CODE 7708-01-M

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29 CFR Part 2676

Valuation of Plan Assets and Plan Benefits Following Mass Withdrawal; Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Assets and Plan Benefits Following Mass Withdrawal, which was published on March 25, 1986 (at 51 FR 10322). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of December 1986.

EFFECTIVE DATE: December 1, 1986.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; 202–778–8850 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (*See* 5 U.S.C. 533 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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List of Subjects in 29 CFR Part 2676

Employee benefit plans, Pensions.

In consideration of the foregoing, Part 2676 of Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for Part 2676 continues to read as follows:

Authority: Secs. 4002(b)(3), 4219(c)(1)(D), and 4281(b), Pub. L. 93–406, as amended by sections 403(1) and 104(2) (respectively), Pub. L. 96–364, 94 Stat. 1302, 1237–1238, and 1261 (1980) (29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1)).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

* * * * *

(c) *Interest rates.*

For valuation dates occurring in the month—	The values i_k are—															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_n
*		*		*		*		*		*						
December 1986	0.08875	0.08625	0.08375	0.08	0.07625	0.07125	0.07125	0.07125	0.07125	0.07125	0.065	0.065	0.065	0.065	0.065	0.05875

Kathleen P. Utgoff,
Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 86–25339 Filed 11–13–86; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 291b

Availability to the Public of Defense Nuclear Agency (DNA) Instructions and Changes Thereto

AGENCY: DNA, OSD, DOD.

ACTION: Final rule.

SUMMARY: This rule implements DNA procedures for obtaining by the public and other federal agencies, DNA instructions, changes to instructions and DNA indexes to instructions (DNA Instruction 5025.80, AFRRI Instruction 5025.26N and Index to FC, DNA Administration Instruction 5025.8B).

EFFECTIVE DATE: This rule will be effective December 15, 1986.

FOR FURTHER INFORMATION CONTACT: For further information contact: Ms. Cheri Abdelnour, Defense Nuclear Agency, Public Affairs Office, Washington, DC 20305–1000, telephone (703) 325–7095.

List of Subjects in 32 CFR Part 291b

Availability to the public, Freedom of Information.

Accordingly, Title 32 of the CFR is amended by adding Part 291b to read as follows:

PART 291b—AVAILABILITY TO THE PUBLIC OF DEFENSE NUCLEAR AGENCY (DNA) INSTRUCTIONS AND CHANGES THERETO

Sec.
291b.1 Ordering DNA issuances.

Authority: 10 U.S.C. 133, 5 U.S.C. 552.

§ 291b.1 Ordering DNA issuances.

(a) The DNA issuances published in the DNA indexes are published under the following subject groups:

1000—Manpower, Personnel and Reserve
2000—International Programs
3000—Intelligence
4000—Logistics and Resources Management
5000—General Administration
6000—Health and Medical
7000—Comptrollership
DNA Instruction 5025.80, Index to Administrative Publications
AFRRI Instruction 5025.26N, Index to AFRRI Publications
FC, DNA Instruction 5025.8B, Index to FC, DNA Administrative Instruction

(b) Copies of DNA indexes and instructions may be ordered by telephone or letter. The commercial telephone number is (703) 325–7095. Include personal or company name, street address or post office box, city, state, country (if applicable) and zip code when submitting requests. Submit written requests to: Defense Nuclear Agency, Public Affairs Office, Washington, DC 20305–1000.

(c) This service is provided to the public and to federal agencies other than the Department of Defense. DNA does not charge for requests for an index and one instruction; however, fees for larger orders are determined on a case-by-case basis.

November 10, 1986.

Linda M. Lawson,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86–25694 Filed 11–13–86; 8:45 am]

BILLING CODE 3810-01-M

POSTAL SERVICE

39 CFR Part 111

Discontinuance of Post Offices, Emergency Suspension of Service, and Station and Branch Discontinuance

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This revision to existing rules is intended to conform post office closing procedures to the Postal Service's new management structure, which has given to the 74 newly created Field Divisional Offices many of the duties and responsibilities previously assigned to the 42 former District Offices, and sharply reduced the staffing of the five Regional Offices. At the same time, by retaining final authority over post office discontinuances in the Senior Assistant Postmaster General, Operations Support Group, the revised rules ensure that every proposal to close or consolidate a post office must be approved by senior management at Postal Service Headquarters. The revised rules carry forward the wording and intent of the former regulations concerning which types of actions are covered by the rules concerning discontinuance of post offices, and explain more clearly which types of circumstances may justify the suspension of operations at a post office. Finally, in response to public concern regarding the discontinuance of stations, branches, and contractor operated community post offices, the revised rules require that such actions must be reviewed and approved by senior level management at Postal Service Headquarters.

EFFECTIVE DATE: December 15, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Mario Principe, (202) 268–3538.

SUPPLEMENTARY INFORMATION: On June 19, 1986, the Postal Service published in the **Federal Register** (51 FR 22314) a proposed change in the rules concerning the discontinuance of post offices. In response to requests to extend the time for public comment on this proposal, the deadline for comments was extended to August 19, 1986 (51 FR 25371). The Postal Service received over 40 letters of comment, the majority of which stated the writers' opposition to the closing of a particular postal facility, or to the closing of small post offices in general. The remaining letters addressed more specific aspects of the proposed regulations, in several cases offering suggestions for the revision of particular sections. Careful consideration has been given to all views expressed in response to the invitation for comments, and in a number of instances the proposed regulations have been revised in response to the suggestions received.

The Postal Service notes that the vast majority of those comments which opposed the closing of a particular facility concerned facilities which the Postal Service has no intent to discontinue. If, in the future it becomes necessary to consider the discontinuance of any of these facilities, the Postal Service will comply with the applicable regulations. With regard to comments which opposed the closing of small post offices generally, the Postal Service points out that the pertinent regulations continue to require decisions regarding the closing or consolidation of post offices to be made on an individualized basis, case by case, a procedure which is designed to preclude any wholesale closing of post offices.

As originally proposed (51 FR 22314), the regulations would have required the final determination on each post office closing or consolidation to be made by the Assistant Postmaster General, Delivery Services Department, the officer most directly concerned with the retail and delivery operations of post offices. At least eight of the comments on the proposed regulations insisted that this decisionmaking authority should be retained at a higher level of Postal Service management, in order to ensure the consistent application of nationwide policies and bolster public confidence in the fairness of the administrative process. The Postal Service agrees that the discontinuance of a post office is frequently a matter of significant concern to the members of the affected community, and has accordingly revised the pertinent portions of the regulations to provide that the final authority over any proposal to discontinue a post office will reside in the Senior Assistant Postmaster General, Operations Support Group.

In the same vein, four comments expressed concern that the elimination of the intermediate review of proposals at the district and regional levels of postal management would create disparity in the application of national policies. With regard to these concerns, the Postal Service points out that the elimination of these intermediate levels of review is necessary to reflect the new management structure of the Postal Service which has abolished the former District Offices and placed responsibility and authority over matters formerly handled at the district level in the new Field Divisional Offices. As reorganized, moreover, the staffing of the Regional Offices has been sharply reduced, and those offices are no longer equipped to provide any significant input regarding a proposal to discontinue a post office. The Postal Service believes, moreover, that retaining final authority over the discontinuance of post offices in the Senior Assistant Postmaster General, Operations Support Group, will ensure the consistent application of Postal Service policies and regulations on a nationwide basis. In addition, the Postal Service considers that the creation of direct lines of communication regarding these matters between Headquarters and the Field Divisional Offices will prevent unwarranted delays in the consideration of post office discontinuance proposals, and will permit the Senior Assistant Postmaster General to make a timely determination whether a particular proposal should be approved, disapproved, or returned to the appropriate Field Divisional Office for additional review or the gathering of additional information.

Two comments took exception to the proposed wording of 113.234g, which reformulates the notice which must be contained in any initial written proposal to discontinue a post office which is posted for public comment. The commenters were concerned that the new wording would improperly restrict the appellate role of the Postal Rate Commission. To the contrary, as explained in the Postal Service's original proposal (51 FR 22314), the revision in the wording of the prescribed notice is intended solely to prevent premature appeals to the Postal Rate Commission at the initial stages of the administrative process, before the Postal Service has determined whether or not it wishes to discontinue a particular office. As provided by statute, 39 U.S.C. 404(b)(5), the right to appeal a post office discontinuance to the Postal Rate Commission becomes effective only after the Postal Service has made a written determination to close or consolidate the post office, and made that determination available to the persons served by the office. In accordance with a suggestion contained in a third comment concerning the revised notice, however, the proposed wording of 113.234g has been revised to give the customers of a post office under consideration for discontinuance advance notice of the statutory time limit on appeals which will apply if the Postal Service makes a final determination to close or consolidate the post office.

Approximately half of the comments received voiced opposition to the propoosed wording of 113.211, concerning the types of actions covered by the regulations concerning discontinuance of post offices. As originally proposed (51 FR 22315), this section would have stated explicitly that the regulations are not intended to apply to actions regarding stations, branches, or contractor operated facilities such as community post offices. The comments regarding 113.211 demonstrated the need for clarification on this point. Several of these comments requested that actions regarding stations, branches, and contractor operated facilities not be removed from coverage under the current appeals process, while other comments suggested that the scope of the current regulations should be expanded to apply to the closing of such facilities. Both groups of commenters expressed the concern that specifically omitting stations, branches, and contractor operated community post offices from coverage under the proposed regulations would encourage the arbitrary closing of such facilities by local postal officials.

The Postal Service has carefully considered all the comments regarding the scope of the proposed regulations, and has concluded that it is appropriate to carry forward the wording and intent of the current regulations. As the Postal Service explained when it first adopted the current procedures for discontinuance of post offices (42 FR 59082; November 15, 1977), these regulations were intended to apply solely to any decision to close or consolidate a post office, not to actions regarding stations, branches, or contractor operated facilities such as community post offices. Postal statutes and regulations have consistently distinguished between post offices and subordinate facilities such as stations, branches, and contract units. Decisions regarding subordinate facilities,

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moreover, have been made in a more flexible and decentralized fashion than decisions concerning post offices, with the result that stations, branches, and contract facilities tend to be established, discontinued, or changed more frequently than post offices. Whether in an urban or rural setting, the Postal Service believes it is essential to maintain this flexibility regarding the location of subordinate facilities, because it permits the Postal Service to provide its customers with ready access to essential postal services, consistent with reasonable economies of postal operations.

The Postal Service believes, moreover, that it would be especially inappropriate to apply the lengthy and detailed procedures for the discontinuance of post offices to contractor operated facilities, including community post offices. The contract for the operation of such a facility may be terminated by the contractor upon 30 days' notice, a circumstance which would allow insufficient time to satisfy even the preliminary notice requirements of 39 U.S.C. 404(b), let alone permit the solicitation and review of customer comments or the consideration of a formal appeal. It is not unlikely, in addition, that widening the scope of the regulations to include contract facilities would hamper the Postal Service's efforts to negotiate reasonable terms for the operation of a unit, or to require satisfactory contract performance, by permitting the contractor to use the appeals process as an additional forum for the litigation of contract disputes.

The Postal Service accordingly believes that it would be improper and unwise to expand the coverage of the regulations concerning the discontinuance of post offices to include actions regarding stations, branches, and contract facilities. It must be noted, however, that the Postal Service shares the concern, expressed in the comments on the proposed regulations, that subordinate facilities should not be closed for arbitrary or unsatisfactory reasons. Consistent with this view, the proposed regulations have been revised by the addition of 113.41 and 113.42 to require that a Field Division General Manger/Postmaster who determines that it is necessary to discontinue the operation of a classified station or branch operated by Postal Service employees, or a contractor operated community post office, must provide immediate written notice of the reasons for that proposed action to the Senior Assistant Postmaster General, Operations Support Group. *No final action on any such proposed closing may then be taken without the approval of the Senior Assistant Postmaster General.* The Postal Service believes that establishing this separate procedure for the review of station, branch, and community post office closings by senior level Headquarters management will provide adequate safeguards against the unjustified closing of subordinate facilities, while preserving essential management flexibility.

For the reasons given, the Postal Service adopts the following final regulations on this subject as amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR 111 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 404, 407, 408, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

PART 113—SERVICE IN POST OFFICES

2. Sections 113.2 and 113.3 are revised; sections 113.4 through 113.8 are redesignated 113.5 through 113.9; and new 113.4 is added reading as follows:

113.2 Discontinuance of Post Offices.

.21 Introduction

.211 Coverage. This part establishes the rules that govern the Postal Service's consideration of whether an existing post office should be discontinued. The rules cover any proposal to replace a post office with a community post office, station, or branch through consolidation with another post office, as well as any proposal to discontinue a post office without providing a replacement facility.

.212 Requirements of Law. Under 39 United States Code (U.S.C.) 404(b), any decision to close or consolidate a post office must be based on certain specific criteria. These include the effect on the community served; the effect on employees of the post office; compliance with Government policy established by law that the Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining; the economic savings to the Postal Service; and any other factors determined to be necessary by the Postal Service. In addition, certain mandatory procedures apply:

a. The public must be given 60 days notice of a proposed action in order to enable the persons served by a post office to evaluate the proposal and provide comments.

b. Any final determination to close or consolidate a post office, after public comments are received and taken into account, must be made in writing and must include findings covering all of the required considerations.

c. The written determination must be made available to the persons served by the office at least 60 days before the discontinuance takes effect.

d. Within the first 30 days after the written determination is made available, any person regularly served by the affected post office may appeal the decision to the Postal Rate Commission.

e. The Commission may affirm the determination of the Postal Service or return the matter for further consideration but may not modify the determination.

f. The Commission is required by 39 U.S.C. 404(b)(5) to make a determination on the appeal no later than 120 days after receiving the appeal.

g. A summary table of the notice and appeal periods under the statute or these regulations appears in Exhibit 113.212.

.213 Additional Requirements. Section 113.2 includes: (a) Rules to ensure that the community's identity as a postal address will be preserved and (b) rules for consideration of a proposed discontinuance and for its implementation if approved. These rules are designed to ensure that the reasons which lead a Field Division General Manager/Postmaster, to propose the discontinuance of a particular post office are fully articulated and disclosed at a stage that will enable customer participation to make a helpful contribution toward the final decision.

.22 Preservation of Community Address

.221 Policy. The Postal Service permits the use of a community's separate address to the extent practicable.

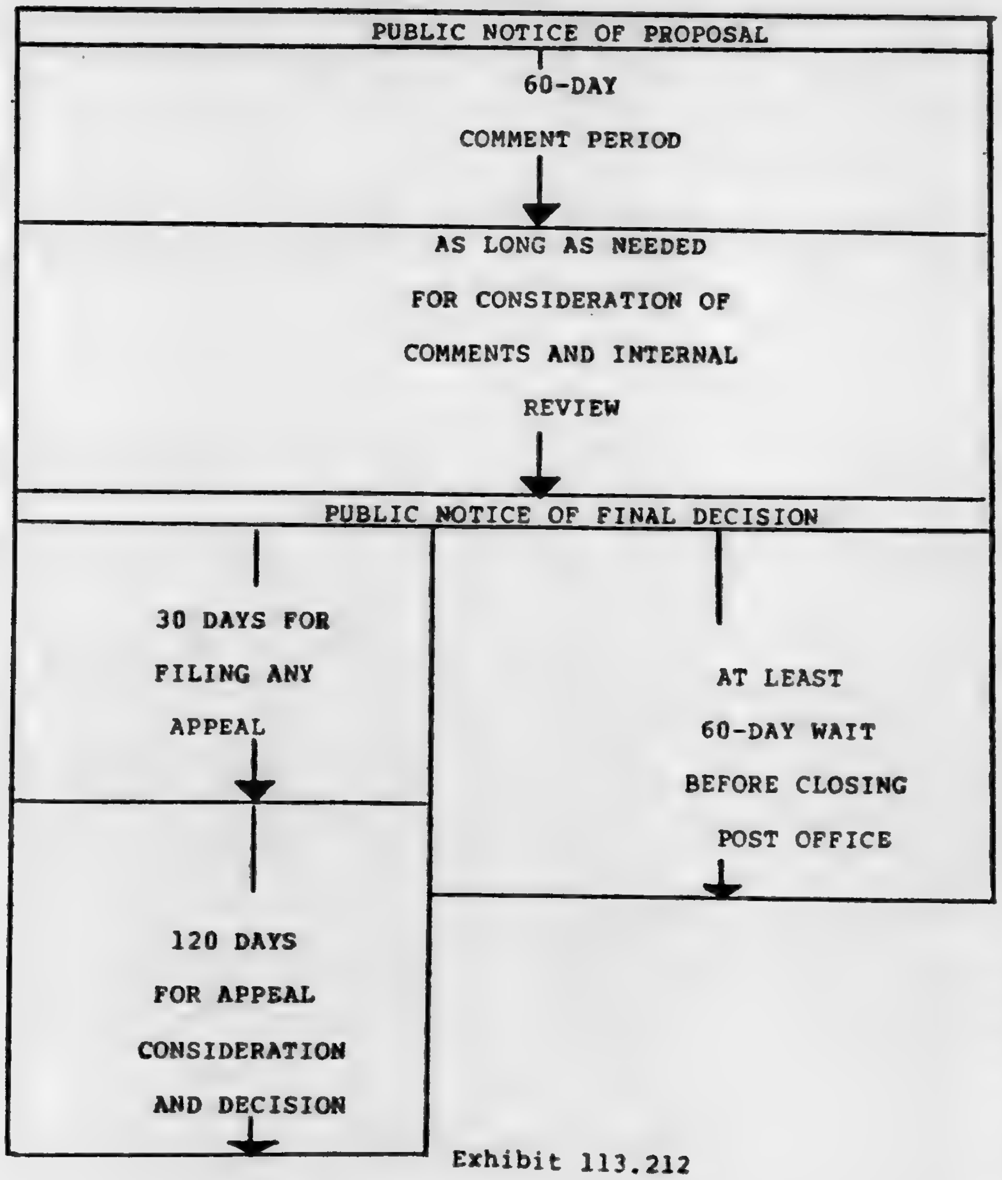
PUBLIC NOTICE OF PROPOSAL
60-DAY COMMENT PERIOD
AS LONG AS NEEDED FOR CONSIDERATION OF COMMENTS AND INTERNAL REVIEW
PUBLIC NOTICE OF FINAL DECISION
30 DAYS FOR FILING ANY APPEAL
AT LEAST 60-DAY WAIT BEFORE CLOSING POST OFFICE
120 DAYS FOR APPEAL CONSIDERATION AND DECISION

Exhibit 113.212

.222 Assignment of ZIP Code. The ZIP Code for each address formerly served from the discontinued post office ordinarily should be the ZIP Code of the facility providing replacement service to that address. In appropriate circumstances, the ZIP Code originally assigned to the discontinued post office may be retained if the responsible Field Division General Manager/Postmaster submits a request with justification to the Office of Address Information Systems, Headquarters, before the proposal to discontinue the post office is posted.

a. In the case of a consolidation, the ZIP Code provided for the replacement community post office, station, or branch will be (1) either the ZIP Code originally assigned to the discontinued post office or (2) the ZIP Code of the replacement facility's parent post office, whichever provides the most expeditious distribution and delivery of mail addressed to the customers of the replacement facility.

b. If the ZIP Code is changed and the parent post office is a multi-ZIP Coded office, the ZIP Code must be that of the delivery area within which the facility is located.

.223 Post Office Name in Address. If all of the delivery addresses using the name of the post office to be discontinued are assigned the same ZIP Code, each customer may continue to use the name of the discontinued post office in his address, instead of changing to or adding the name of the post office from which delivery is provided after the discontinuance.

.224 Name of Facility Established By Consolidation. If a post office to be discontinued is to be consolidated with one or more other post offices, by establishing in the place of the discontinued post office, a community post office, classified or contract station, or branch affiliated with another post office involved in the consolidation, the name of the replacement unit will be the same as the name of the discontinued post office.

.225 Listing of Discontinued Post Offices. The name of all post offices discontinued after March 14, 1977, are listed in an appropriate manner in Postal Service official directories, such as Publication 65, National Five-Digit ZIP Code and Post Office Directory, for mailing address purposes only. The ZIP Code listed for discontinued offices will be assigned in accordance with 113.2.

.23 Initial Proposal

.231 General. If Field Division General Manager/Postmaster believes that the discontinuance of a post office within his or her responsibility may be warranted, the Field Division General Manager/Postmaster:

a. Must apply the standards and procedures in 113.23 and 113.24.

b. Must investigate the situation.

c. May propose that the post office be discontinued.

.232 Consolidation. The proposed action may include a consolidation of post offices to substitute a community post office or a classified or contract station or branch for the discontinued post office:

a. If the communities served by two or more post offices are being merged into a single incorporated village, town, or city; or

b. If providing a replacement facility is necessary to maintain regular and effective service to the area served by the post office being considered for discontinuance.

.233 Views of Postmasters. Whether the discontinuance under consideration involves a consolidation or not, the Field Division General Manager/Postmaster must:

a. Discuss the matter with the postmaster (or the officer-in-charge, if there is a vacancy in the postmaster position) of the post office being considered for discontinuance, and with the postmaster of any other post office that would be affected by the change; and

b. Encourage these officials to submit their comments and suggestions in writing to be made part of the record for further consideration and review of the proposal.

.234 Preparation of Written Proposal. The Field Division General Manager/Postmaster must gather and

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preserve for the record all documentation used to assess the proposed change. If the Field Division General Manager/Postmaster believes the proposed action is warranted, he or she must prepare a document entitled, "Proposal to [Close] [Consolidate] the [Name] Post Office." This document must provide a description and analysis of the proposal that is sufficient to disclose both to higher management and to the persons served by the affected post office the nature and justification of the proposed changes in service. The written proposal must address each of the following matters in separate sections:

a. *Responsiveness to Community Postal Needs.* The proposal must take into account the policy of the Government, as established by law, that the Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. The proposal should contrast the services available before and after the proposed change; should describe how the changes respond to the postal needs of the persons served by the post office; and should highlight any particular aspects of service that might be less advantageous to the persons served as well as those that would be more advantageous.

b. *Effect on Community.* The proposal must include an analysis of the effect that the proposed discontinuance might have on the community served by the affected post office. The application of the requirements in 113.22 must be discussed and taken into account.

c. *Effect on Employees.* The written proposal must include a summary of the contemplated effect of the proposed change on the postmaster and any supervisors and other employees of the post office proposed for discontinuance. (The Field Division General Manager/Postmaster must suggest measures to comply with personnel regulations related to the discontinuance and consolidation of post offices.)

d. *Economic Savings.* The proposal must include an analysis of the economic savings to be gained by the Postal Service from the proposed action, including the cost or savings expected from each of the major factors contributing to the overall estimate.

e. *Other Factors.* The proposal should include an analysis of any other factors that the Field Division General Manager/Postmaster determines are necessary to a complete evaluation of the proposed change, to be weighed in favor, or to be weighed against the proposed action.

f. *Summary.* The proposal must include a summary that explains why the proposed action is considered necessary, including an assessment of how those factors supporting the need for the proposed change outweigh any negative factors. In taking competing considerations into account, the need to provide regular and effective service must be paramount.

g. *Notice.* The proposal must include the following notice:

THIS IS A PROPOSAL. IT IS NOT A FINAL DETERMINATION TO [CLOSE] [CONSOLIDATE] THIS POST OFFICE.

If a final determination is made to [close] [consolidate] this post office, after public comments on this proposal are received and taken into account, a notice of that final determination will be posted in this post office.

The final determination will contain instructions on how affected customers may appeal that decision to the Postal Rate Commission. Any such appeal must be received by the Commission within 30 days of the posting of the final determination.

.24 Notice, Public Comment, and Record.

.241 Posting Proposal and Comment Notice. A copy of the written proposal, together with a signed invitation for comments, must be prominently posted in each post office that would be affected. The invitation for comments must:

a. Include a request that interested persons provide written comments within 60 days, to a stated address, offering specific opinions and information, favorable or unfavorable, regarding the potential effect of the proposed change on postal services and on the community;

b. Indicate that copies of the proposal with attached optional comment forms are available upon request in the affected post offices; and

c. Provide a name and telephone number to call for further information and questions.

.242 Proposal and Comment Notice. The following is a sample format which may be used for the proposal and comment notice:

Proposal to [Close] [Consolidate] the [Name] Post Office and Optional Comment Form

Attached is a proposal that we are considering to attempt to provide your community's postal service more economically and efficiently, while also providing regular and effective service. Please read the proposal carefully and then let us have your comments and suggestions. If you choose, you may use the form provided below. Your comments will be carefully considered and will be made part of a public record. If you use the form provided below and need additional room, please attach additional sheets of paper. Return the completed form to

____

by ______________________________

In considering this proposal, if you have any questions you want to ask a postal official, you may call __________, whose telephone number is __________.

I. Effect on Your Postal Services

Please describe any favorable or unfavorable effects which you believe the proposal would have on the regularity or effectiveness of your postal service.

II. Effect on Your Community

Please describe any favorable or unfavorable effects which you believe the proposal would have on your community.

III. Other Comments

Please provide any other views or information which you believe the Postal Service should consider in deciding whether to adopt the proposal.

(Date) ————

(Signature of Postal Customer)

____

(Mailing Address)

____

(City) (State) (ZIP Code)

____

.243 Other Steps. In addition to providing notice and inviting comment, the Field Division General Manager/Postmaster will take any other steps considered necessary to ensure that the persons served by the post office affected understand the nature and implications of the proposed action (e.g., meeting with community groups and following up on comments received which seem to be based on incorrect assumptions or information). Note:

a. If oral contacts develop views of information not previously documented, whether favorable or unfavorable to the proposal, the Field Division General Manager/Postmaster should encourage persons offering the views or information to provide written comments, in order to preserve them for the record.

b. The Field Division General Manager/Postmaster may not rely, as a factor in making his or her decision, upon communications received from anyone unless submitted in writing for the record.

.244 Record. The Field Division General Manager/Postmaster must maintain as part of the record for his or her consideration and for review by the Senior Assistant Postmaster General, Operations Support Group, all of the documentation gathered concerning the proposed change. Note:

a. The record must include all information that the Field Division General Manager/Postmaster has considered, and the decision must stand on the record. No information or views submitted by customers may be excluded, whether or not it tends to support the proposal.

b. The docket number assigned to the proposal must be the ZIP Code of the office proposed for closing or consideration.

c. The record must include a chronological index in which each document contained is identified and numbered as filed.

d. As written communications are received in response to the public notice and invitation for comments, they will be included in the record.

e. A complete copy of the record must be available for public inspection during normal office hours at the post office proposed for discontinuance or at the post office providing alternative service, if the office to be discontinued was temporarily suspended in accordance with 113.3, *Emergency Suspension of Service*, beginning no later than the date upon which notice is posted and extending through the comment period.

f. Copies of documents in the record shall be provided upon request and (except for the proposal and comment form) payment of fees prescribed by 352.6 of the Administrative Support Manual.

.25 Consideration of Public Comments and Final Local Recommendation

.251 Analysis of Comments. After waiting not less than 60 days after notice has been posted in accordance with 113.241, the Field Division General Manager/Postmaster will prepare an analysis of the public comments received, to aid his or her consideration, and for inclusion in the record. If possible, comments subsequently received should also be included in the analysis. The analysis should list and briefly describe each of the points which appear favorable to the proposal and each of the points which appear unfavorable to the proposal, and should identify to the extent possible how many comments supported each point listed.

.252 Reevaluation of Proposal. Upon completion of the analysis, the Field Division General Manager/Postmaster will review the proposal and reevaluate all of the tentative conclusions previously made in light of the additional information and views received from the public and included in the record.

a. *Discontinuance not warranted.* If the Field Division General Manager/Postmaster decides not to proceed with the proposed discontinuance, the Field Division General Manager/Postmaster will post in the post office considered for discontinuance, a notice that the proposed closing or consolidation has been determined not to be warranted.

b. *Discontinuance warranted.* If the Field Division General Manager/Postmaster decides that the proposed discontinuance is justified, the appropriate sections of the proposal will be revised taking into account the comments received from the public. Upon completing the necessary revisions, the Field Division General Manager/Postmaster will:

(1) Forward the revised proposal together with the entire record to the Senior Assistant Postmaster General, Operations Support Group, for final review.

(2) Attach a certification that all documents included in the record are originals or true and correct copies.

.26 Postal Service Decision

.261 General. The Senior Assistant Postmaster General, Operations Support Group or an authorized designee shall review the Field Division General Manager/Postmaster's proposal. This review, and the decision on the proposal, must be based on and supported by the record developed by the Field Division General Manager/Postmaster. At the discretion of the Senior Assistant Postmaster General, the Field Division General Manager/Postmaster may be instructed to provide additional information to supplement the record. Each such instruction, and the response, shall be added to the record. The decision on the Field Division General Manager/Postmaster's proposal, which shall also be added to the record, may approve or disapprove the proposal, or return it for further action as set forth below.

.262 Approval. The Senior Assistant Postmaster General or an authorized designee may approve the Field Division General Manager/Postmaster's proposal, with or without making further revisions. If approved, the term "Final Determination" is substituted for "Proposal" in the title. A copy of the Final Determination shall be provided to the Field Division General Manager/Postmaster. The Final Determination shall constitute the determination of the Postal Service for the purposes of 39 U.S.C. 404(b). Each Final Determination must include the following notices:

(1) *Supporting Materials.* Copies of all materials upon which this Final Determination is based are available for public inspection at the (Name) Post Office during normal office hours.

(2) *Appeal Rights.* This Final Determination to (close) (consolidate) the (Name) Post Office may be appealed by any person serviced by that office to the Postal Rate Commission, 1333 H Street, NW., Suite 300, Washington, DC 20368-0001. Any appeal must be *received* by the Commission within 30 days of the date this Final Determination was posted. If an appeal is filed, copies of appeal documents prepared by the Postal Rate Commission, or the parties to the appeal, will be made available for public inspection at the (name) Post Office during normal office hours.

.263 Disapproval. The Senior Assistant Postmaster General or an authorized designee may disapprove the Field Division General Manager/Postmaster's proposal, and return it and the record to the Field Division General Manager/Postmaster with written reasons for disapproval. The Field Division General Manager/Postmaster will post a notice that the proposed closing or consolidation has been determined not warranted in each office where notices were posted under 113.2.

.264 Return for Further Action. The Senior Assistant Postmaster General or an authorized designee may return the Field Division General Manager/Postmaster's proposal with written instructions to give additional consideration to specific matters in the record, or to obtain additional information. All such instructions shall be included in the record.

.265 Public File. A copy of each Final Determination, and a copy of each disapproval of a Field Division General Manager/Postmaster's proposal shall be placed on file in the Postal Service Headquarters Library.

.27 Implementation of Final Determination

.271 Notice of Final Determination to Discontinue Post Office.

a. The Field Division General Manager/Postmaster will provide notice of the Final Determination by posting a copy prominently in the affected post office or offices. The date of posting shall be noted on the first page of the posted copy as follows: "Date of posting: ____________, 19____". The Field Division General Manager/Postmaster will notify the Senior Assistant Postmaster General, Operations Support Group in writing of the date of posting.

b. The Field Division General Manager/Postmaster will ensure that a copy of the completed record is made available for public inspection during normal office hours at the post office or offices where the Final Determination is

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posted, beginning on the posting date and extending for a period of 30 days.

c. Copies of documents in the record must be provided upon request and payment of fees prescribed by 352.6 of the ASM.

.272 Implementation of Determinations Not Appealed. If no appeal is filed pursuant to 39 U.S.C. 404(b)(5), the official closing date of the office will be published in the Postal Bulletin effective the first Saturday, 90 days after the Final Determination was posted. A Field Division General Manager/Postmaster may request approval of a different date for official discontinuance by including the request with the document submitted to the Senior Assistant Postmaster General. However, the post office may not be discontinued sooner than 60 days after the notice required by 113.271 is posted.

.273 Actions During Appeal

a. *Implementation of Discontinuance.* If an appeal is filed, the affected post office may be discontinued, prior to final disposition of the appeal, only by direction of the Senior Assistant Postmaster General, Operations Support Group. However, the post office may not be discontinued sooner than 60 days after the notice required by 113.271 is posted.

b. *Display of Appeal Documents.* The Rate Application Division, Law Department, Headquarters will provide the Field Division General Manager/Postmaster with copies of all pleadings, notices, orders, briefs, and opinions filed in the appeal proceeding.

(1) The Field Division General Manager/Postmaster will assure that a copy of each of these documents is prominently displayed and made available for inspection by the public in the post office to be discontinued, or if it has been or is discontinued, in the post office or post offices serving the customers affected.

(2) All documents except the Commission's final order and opinion must be displayed until the final order and opinion are issued. The final order and opinion must be displayed for a period of 30 days.

.274 Actions Following Appeal Decision

a. *Determination Affirmed.* If the Commission dismisses the appeal or affirms the Postal Service's determination, the official closing date of the office will be published in the Postal Bulletin effective the first Saturday, 90 days after the Commission renders its opinion if not previously implemented under .273a. However, the post office may not be discontinued sooner than 60 days after the notice required under 113.271 is posted.

b. *Determination Returned for Further Consideration.* If the Commission returns the matter for further consideration, the Senior Assistant Postmaster General, Operations Support Group, will direct either (1) that notice be provided in accordance with 113.263 that the proposed discontinuance has been determined not to be warranted, or (2) that the matter be returned to an appropriate stage under these regulations for further consideration according to such instructions as may be provided.

113.3 Emergency Suspension of Service.

.31 A Field Division General Manager/Postmaster may suspend the operations of any post office under his or her jurisdiction when an emergency or other condition requires such action. Circumstances which may justify a suspension include but are not limited to a natural disaster, the termination of a lease when other adequate quarters are not available, the lack of qualified personnel to operate the office, severe damage to or destruction of the office, and the lack of adequate measures to safeguard the office or its revenues. The Field Division General Manager/Postmaster shall provide notice of any suspension by telephone or TWX to the Senior Assistant Postmaster General, Operations Support Group.

.32 In any such case, if it is proposed to discontinue a suspended office rather than restore operations, the procedures of 113.2 must be followed. All notices and other documents required to be posted or maintained in the office to be discontinued shall be posted or maintained in the post office or offices temporarily serving the customers of the post office where operations have been suspended.

113.4 Station and Branch Discontinuance

.41 If a Field Division General Manager/Postmaster determines that it is necessary to discontinue the operation of a classified station, classified branch, or contractor-operated community post office administratively attached to a post office, he or she must provide immediate notice in writing, including the reasons for the proposed discontinuance to the Senior Assistant Postmaster General, Operations Support Group.

.42 The Senior Assistant Postmaster General or an authorized designee may approve the proposed discontinuance, or may disapprove it if the reasons given by the Field Division General Manager/Postmaster do not appear sufficient to justify the proposed action. No final action on a proposed discontinuance may be taken without the approval of the Senior Assistant Postmaster General.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 86-25782 Filed 11-13-86; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3111-5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is granting final exclusions for the solid wastes generated at two particular generating facilities from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions received by the Agency under 40 CFR 260.20 and 260.22 to exclude wastes on a "generator-specific" basis from the hazardous waste lists. The effect of this action is to exclude certain wastes generated at these facilities from listing as hazardous wastes under 40 CFR Part 261.

EFFECTIVE DATE: November 14, 1986.

ADDRESS: The public docket for this final rule is located in the Sub-basement, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for public viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475-9327 or Kate Blow at (202) 382-4675 for appointments. The reference number for this docket is "F-86-HAFE-FFFFF". The public may copy a maximum of 50 pages of materials from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, toll-free at (800) 424-9346 or (202) 382-3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-5096.

SUPPLEMENTARY INFORMATION: On October 3, 1986, EPA proposed to exclude specific wastes generated by two facilities, including: (1) Holston Army Ammunition Plant, located in Kingsport, Tennessee (see 51 FR 35374); and (2) William L. Bonnell Company, located in Newnan, Georgia (see 51 FR 35376). These actions were taken in response to petitions submitted by these companies (pursuant to 40 CFR 260.20 and 260.22) to exclude their wastes from hazardous waste control. In their petitions, these companies have argued that certain of their wastes were non-hazardous based upon the criteria for which the waste was listed. The petitioners have also provided information which has enabled the Agency to determine whether any other toxicants are present in the wastes at levels of regulatory concern. The purpose of today's actions is to make final these two proposals and to make our decisions effective immediately. More specifically, today's rule allows these facilities to manage their petitioned wastes as non-hazardous. The exclusions remain in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[1] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.

The Agency notes that the petitioners granted final exclusions in today's **Federal Register** have been reviewed for both the listed and non-listed criteria. As required by the Hazardous and Solid Waste Amendments of 1984, the Agency evaluated the wastes for the listed constituents of concern as well as for all other factors (including additional constituents) for which there was a reasonable basis to believe that they could cause the waste to be hazardous. These petitioners have demonstrated through submission of raw materials data, EP Toxicity test data for all EP Toxic metals, and test data on the four hazardous waste characteristics that their wastes do not exhibit any of the hazardous waste characteristics, and do not contain any other toxicants at levels of regulatory concern.

Limited Effect of Federal Exclusion

States are allowed to impose requirements that are more stringent than EPA's pursuant to section 3009 of RCRA. State programs thus need not include those Federal provisions which exempt persons from certain regulatory requirements. For example, States are not required to provide a delisting mechanism to obtain final authorization. If the State program does include a delisting mechanism, however, that mechanism must be no less stringent than that of the Federal program for the State to obtain and keep final authorization.

As an result of enactment of the Hazardous and Solid Waste Amendments of 1984, any States which had delisting programs prior to the Amendments must become reauthorized under the new provisions.[2] To date only one State (Georgia) has received approval for their delisting program. Therefore, the final exclusion granted today for the facility located in Georgia applies only to management of the waste outside of the State of Georgia or transportation of the waste by an interstate carrier, as this is the only portion of the RCRA delisting program remaining under Federal jurisdiction. The other final delisting exclusion granted today is issued under the Federal (RCRA) delisting program. In general, States can still decide whether to exclude these wastes under their State (non-RCRA) program. Since a petitioner's waste may be regulated by a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

The exclusions made final here involve the following petitioners:

Holston Army Ammunition Plant, Kingsport, Tennessee;
William L. Bonnell Company, Newnan, Georgia.

I. Holston Army Ammunition Plant

A. Proposed Exclusion

Holston Army Ammunition Plant (Holston) has petitioned the Agency to exclude its wastewater treatment sludges (filter press sludges) from EPA Hazardous Waste Nos. K044, F003, and F005, based on the low concentration and immobilization of the listed constituents in the wastes. Data submitted by Holston substantiate their claim that the listed constituents of concern, although present, are essentially present in an immobile form. Furthermore, additional data provided by Holston indicate that no other hazardous constituents are present in the wastes at levels of regulatory concern, and that these wastes do not exhibit any of the characteristics of hazardous waste. (See 51 FR 35374–35376, October 3, 1986, for a more detailed explanation of why EPA proposed to grant Holston's petition.)

B. Agency Response to Public Comments

The Agency did not receive any public comments regarding its decision to grant an exclusion to Holston Army Ammunition Plant for the wastes identified in its petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the filter press sludges are non-hazardous and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Holston Army Ammunition Plant for its wastewater treatment sludges (EPA Hazardous Waste Nos. K044, F003, and F005) generated at its Kingsport, Tennessee facility. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[3] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.)

II. William Bonnell Company

A. Proposed Exclusion

William L. Bonnell Company (Bonnell) has petitioned the Agency to exclude its wastewater treatment sludge (vacuum filter sludge) from EPA Hazardous Waste No. F019, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by Bonnell substantiate their claim that the listed constituents of concern, although present, are essentially present in an immobile form. Furthermore, additional data provided by Bonnell indicate that no other hazardous constituents are present in the waste at levels of regulatory concern, and that the waste does not exhibit any of the characteristics of hazardous waste. (See 51 FR 35376–35378, October 3, 1986, for a more

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[1] The current exclusions apply only to the processes covered by the original demonstrations. A facility may file a new petition if it alters its process. The facility must treat its waste as hazardous, however, until a new exclusion is granted.

[2] RCRA Reauthorization Statutory Interpretation #4: Effect of Hazardous and Solid Waste Amendments of 1984 on State Delisting Decisions, May 16, 1985, Jack W. McGraw, Acting Assistant Administrator for the Office of Solid Waste and Emergency Response.

[3] See footnote 1

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detailed explanation of why EPA proposed to grant Bonnell's petition.)

B. Agency Response to Public Comments

The Agency did not receive any public comments regarding its decision to grant an exclusion to Bonnell for the waste identified in its petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the vacuum filter sludge is non-hazardous and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to William L. Bonnell Company for its dewatered wastewater treatment sludge (vacuum filter sludge) resulting from the chemical conversion coating of aluminum, listed as EPA Hazardous Waste No. F019, generated at its Newnan, Georgia facility.[4] (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[5] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.)

III. Effective Date

This rule is effective immediately. Although Subtitle C regulations normally take effect six months after promulgation (RCRA section 3010(b)), the Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here since this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioners by an effective date six months after promulgation, and the fact that such a deadline is not necessary to achieve the purpose of section 3010, we believe that this rule should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This grant of exclusions is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at specific facilities from EPA's lists of hazardous wastes, thereby enabling these facilities to treat their wastes as non-hazardous.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effects will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this final regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous wastes, Recycling.

Dated: October 29, 1986.

Jeffery D. Denit,

Acting Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Appendix IX, add the following wastestreams in alphabetical order to Table 1 to read as follows:

Appendix IX—[Amended]

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste Description
* * *	* * *	* * *
Holston Army Ammunition Plant.	Kingsport, Tennessee.	Dewatered wastewater treatment sludges (EPA Hazardous Waste Nos. F003, F005, and K044) generated from the manufacturing and processing of explosives and containing spent non-halogenated solvents after November 14, 1986.
* * *	* * *	* * *
William L. Bonnell Co..	Newnan, Georgia.	Dewatered wastewater treatment sludges (EPA Hazardous Waste No. F019) generated from the chemical conversion coating of aluminum after November 14, 1986. This exclusion does not include sludges contained in Bonnell's on-site surface impoundments.

[FR Doc. 86–25711 Filed 11–13–86; 8:45 am]

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40 CFR Part 261

[SW-FRL-3111-4]

Hazardous Waste Management System, Identification and Listing of Hazardous Waste

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is granting a final exclusion for the solid wastes generated at one particular generating facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition received by the Agency under 40 CFR 260.20 and 260.22 to exclude wastes on a "generator-specific" basis from the hazardous waste lists. The effect of this action is to exclude certain wastes generated at one facility from listing as a hazardous waste under 40 CFR Part 261.

EFFECTIVE DATE: November 14, 1986.

ADDRESS: The public docket for this final rule is located in the Sub-basement, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for public viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475–9327 or Kate Blow at (202) 382–4675 for appointments. The reference number for this docket is "F–86–MTFE–FFFFF". The public may copy a maximum of 50 pages of materials from any one regulatory docket at no cost. Additional copies cost $.20/page.

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[4] Bonnell petitioned the Agency to exclude its wastewater treatment sludge and sludge contained in its on-site surface impoundments. This final exclusion applies only to the wastewater treatment sludges currently generated at the facility, and not to sludges in the on-site impoundments.

[5] See footnote 1

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, toll-free at (800) 424-9346, or (202) 382-3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-5096.

SUPPLEMENTARY INFORMATION: On October 9, 1986, EPA proposed to exclude specific wastes generated by the Michelin Tire Corporation, located in Sandy Springs, South Carolina (see 51 FR 36237). This action was taken in response to a petition submitted by this company (pursuant to 40 CFR 260.20 and 260.22) to exclude their waste from hazardous waste control. In their petition, this company has argued that certain of their wastes were non-hazardous based upon the criteria for which the waste was listed. The petitioner has also provided information which has enabled the Agency to determine whether any other toxicants are present in the wastes at levels of regulatory concern. The purpose of today's actions is to make final the proposal and to make our decision effective immediately. More specifically, today's rule allows this facility to manage its petitioned waste as non-hazardous. The exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[1] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.

The Agency notes that the petitioner granted a final exclusion in today's **Federal Register** has been reviewed for both the listed and non-listed criteria. As required by the Hazardous and Solid Waste Amendments of 1984, the Agency evaluated the waste for the listed constituents of concern as well as for all other factors (including additional constituents) for which there was a reasonable basis to believe that they could cause the waste to be hazardous. This petitioner has demonstrated through submission of raw materials data, EP toxicity tests data for all EP toxic metals, and test data on the four hazardous waste characteristics that its waste does not exhibit any of the hazardous waste characteristics, and dose not contain any other toxicants at levels of regulatory concern.

Limited Effect of Federal Exclusion

States are allowed to impose requirements that are more stringent than EPA's pursuant to Section 3009 of RCRA. State programs thus need not include those Federal provisions which exempt persons from certain regulatory requirements. For example, States are not required to provide a delisting mechanism to obtain final authorization. If the State program does include a delisting mechanism, however, that mechanism must be no less stringent than that of the Federal program for the State to obtain and keep final authorization.

As a result of enactment of the Hazardous and Solid Waste Amendments of 1984, any States which had delisting programs prior to the Amendments must become reauthorized under the new provisions.[2] To date only one State (Georgia) has received approval for their delisting program. The final exclusion granted today, therefore, is issued under the Federal program. States, however, can still decide whether to exclude this waste under their State (non-RCRA) program. Since a petitioner's waste may be regulated by a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

The exclusion made final here involves the following peitioners: Michelin Tire Corporation, Sandy Springs, South Carolina.

I. Michelin Tire Corporation

A. Proposed Exclusion

Michelin Tire Corporation (Michelin) has petitioned the Agency to exclude its wastewater treatment sludge (filter cake) from EPA Hazardous Waste No. F006, based on the low concentration and immobilization of the listed constitutents in the waste. Data submitted by Michelin substantiate their claim that the listed constitutents of concern, although present, are essentially present in an immobile form. Furthermore, additional data provided by Michelin indicate that no other hazardous constituents are present in the waste at levels of regulatory concern, and that the waste does not exhibit any of the characteristics of hazardous waste. (See 51 FR 36235-36241, October 9, 1986 for a more detailed explanation of why EPA proposed to grant Michelin's petition.)

B. Agency Response to Public Comments

The Agency did not receive any public comments regarding its decision to grant an exclusion to Michelin for the waste identified in its petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the filter cake is non-hazardous and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Michelin for its wastewater treatment sludge (EPA Hazardous Waste No. F006) generated at Michelin's Sandy Springs, South Carolina facility. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[3] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.)

II. Effective Date

This rule is effective immediately. Although Subtitle C regulations normally take effect six months after promulgation (RCRA section 3010(b)), the Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here since this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioner by an effective date six months after promulgation, and the fact that such a deadline is not necessary to achieve the purpose of section 3010, we believe that this rule should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(b).

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[1] The current exclusion applies to the processes covered by the original demonstration. A facility may file a new petition if it alters its process. The facility must treat its waste as hazardous, however, until a new exclusion is granted.

[2] RCRA Reauthorization Statutory Interpretation #4: Effect of Hazardous and Solid Waste Amendments of 1984 on State Delisting Decisions, May 16, 1985. Jack W. McGraw, Acting Assistant Administrator for the Office of Solid Waste and Emergency Response.

[3] See footnote 1.

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III. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This grant of this exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous.

IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. §§ 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effects will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this final regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous wastes, Recycling.

Dated: October 31, 1986.

Jeffery D. Denit,

Acting Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

2. In Appendix IX, add the following wastestreams in alphabetical order to table 1 to read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * *
Michelin Tire Corp..	Sandy Springs, South Carolina.	Dewatered wastewater treatment sludge (EPA Hazardous Wastes No. F006) generated from electroplating operations after November 14, 1986.
*	*	* * *

[FR Doc. 86–25710 Filed 11–13–86; 8:45 am]

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40 CFR Part 261

[SW-FRL-3111-2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste (Final Exclusion for GMC—Fisher Body Division)

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is granting a final exclusion for the solid waste generated at a particular generating facility from the list of hazardous wastes contained in 40 CFR 261.31. This action responds to a delisting petition received by the Agency under 40 CFR 260.20 and 260.22 to exclude wastes on a "generator-specific basis" from the hazardous waste lists. The effect of this action is to exclude certain wastes generated at this facility from listing as hazardous waste under 40 CFR Part 261.

EFFECTIVE DATE: November 14, 1986.

ADDRESS: The RCRA regulatory docket for this final exclusion is located at U.S. Environmental Protection Agency, 401 M Street SW. (Sub-basement), Washington, DC 20460, and is available for public inspection from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475–9327 or Kate Blow at (202) 382–4675 for appointments. The public may copy a maximum of 50 pages of material from any regulatory docket at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, toll-free at (800) 424–9346, or (202) 382–3000. For technical information, contact Mr. David Topping, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202) 382–4690.

SUPPLEMENTARY INFORMATION: On November 27, 1985, EPA proposed to exclude wastes generated by several petitioners, including the General Motors Corporation (GMC), Fisher Body Division, located in Elyria, Ohio (see 50 *FR* 48917). The proposal to exclude GMC's waste was in response to a petition submitted by that company, pursuant to 40 CFR 260.20 and 260.22, to exclude their waste from hazardous waste control. In their petition, GMC contended that their waste is non-hazardous based upon the factors for which the waste was originally listed. GMC also submitted additional information which enabled the Agency to determine whether any other toxicants are present in the waste at levels of regulatory concern, and whether any other factors are present which could cause the waste to be hazardous. The purpose of today's notice is to make final the proposed conditional, one-time exclusion for GMC's waste and to make that exclusion effective immediately. More specifically, today's rule allows this facility to manage the waste as non-hazardous. This exclusion will be effective unless the conditions stipulated in the granting of this exclusion are not satisfied.

The Agency notes that the petition for which a final conditional, one-time exclusion is granted in today's **Federal Register** has been reviewed for both the listed and expected non-listed constitutents. As required by the Hazardous and Solid Waste Amendments of 1984, the Agency evaluated the waste for all factors which could reasonably cause the waste to be hazardous. The petitioner has demonstrated, through the submission of a raw materials list, data on the four hazardous waste characteristics, *etc.*, that the waste does not exhibit any of the hazardous waste characteristics and does not contain any other toxicants at levels of regulatory concern. The Agency, in its proposal to exclude the waste covered by this rule, provided the information necessary to evaluate these factors.

Limited Effect of Federal Exclusion

States are allowed to impose requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. State programs thus need not include those Federal provisions which exempt persons from certain regulatory requirements. For example, States are not required to provide a delisting mechanism to obtain final authorization. If the State program does include a delisting mechanism, however, that mechanism must be no less stringent than that of the Federal program for the State to obtain and keep final authorization.

As a result of the enactment of the Hazardous and Solid Waste Amendments of 1984, any states which had delisting programs prior to the Amendments must become reauthorized under the new provisions.[1] To date only one State (Georgia) has received approval for their delisting program. The final exclusion granted today, therefore, is issued under the Federal program. States, however, can still decide whether to exclude this waste under their State (non-RCRA) program. Since a petitioner's waste may be regulated by a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their waste under State law.

The exclusion made final here involves the following petitioner: General Motors Corporation, Fisher Body Division, Elyria, Ohio

I. General Motors Corporation, Fisher Body Division

A. Proposed Exclusion

The General Motors Corporation (GMC), Fisher Body Division, located in Elyria, Ohio, has petitioned the Agency to exclude (on a one-time basis) approximately 6.8 million gallons of electroplating wastewater treatment sludge (contained in three surface impoundments) after chemical stabilization (using the Chemfix® treatment technology), from EPA Hazardous Waste No. F006. GMC claimed that the Chemfix® treatment technology would bind all inorganic constituents within the waste matrix. In addition, GMC claimed that any hazardous organic constituents, if present, are either at non-hazardous levels or are bound within the waste matrix. GMC submitted test data from representative samples, which included total constituent analyses for metals, EP toxicity and oily waste EP toxicity test data, Multiple Extraction Procedure (MEP) test data, and total constituent organic analyses for the organic priority pollutants.

Based upon these data, the Agency proposed to grant a conditional exclusion to GMC, which would require continous monitoring of mixing ratios; continous daily batch testing for lead, chromium, and nickel using the EP toxicity test; and deposition of the treated waste into bermed cells to ensure that the waste is identifiable and retrievable. See 50 FR 48917–48922, November 27, 1985, for a more detailed explanation of why EPA proposed to grant GMC's petition.

B. Agency Response to Public Comment

The Agency received comments from the petitioner requesting that the Agency consider material-specific characteristics of the stabilized waste during the vertical and horizontal spread (VHS) model evaluation. Specifically, the petitioner requested that Condition No. 2 of the proposed exclusion (requiring testing of the treated waste and setting limits above which the waste would be hazardous) be modified in light of the waste's attenuative properties to allow a two-fold increase in the allowable leachate concentrations of lead, chromium, and nickel. GMC's representative, Chemfix Technologies, Inc. (CTI), quoting the Agency, noted that EPA has the discretion to consider material-specific factors in developing assumptions for VHS model input parameters, and that applying this discretion to the evaluation of GMC's waste would result in lower predicted leachate concentrations.

The Agency agrees with the quotation cited, that "if a petitioner can demonstrate that his material will remain stable in the environment, the Agency will reconsider the grinding requirements" (which undo the binding accomplished by fixation). 50 FR 48906, November 27, 1985. The Agency, however, does not believe that the commenter has adequately demonstrated that GMC's waste would be stable in the environment. Thus, while EPA may consider material-specific data submitted by a petitioner in the general evaluation of a waste, the Agency does not intend at the present time to modify the VHS model evaluation to incorporate such data here. The mismanagement scenario portrayed by the VHS model assumes that stabilized wastes are broken up during routine waste management with a subsequent increase in permeability. The Agency intends to continue to use the VHS model as a tool in evaluating the waste's hazard in a reasonable worst-case management scenario. Additionally, the Agency finds CTI's suggested two-fold increase in the maximum allowable concentrations levels to be somewhat arbitrary. The Agency cannot agree to such suggestions without a solid technical basis detailing why the increase should be two-fold.

CTI submitted data in order to demonstrate that the reserve cation exchange capacity (CEC) of the stabilized waste exhibits long-term stability and decreases only slightly following exposure to severe environmental conditions simulated by the EP toxicity test and the corresponding grinding requirements. CTI calculated the total CEC required to recapture the maximum reported lead, chromium, and nickel leachate levels, as measured by the EP test. CTI compared this required CEC (0.088 meq/100g) to the waste's reserve CEC, which averaged 50 meq/100g, and concluded that the waste could "attenuate and/or recapture the concentrations of the constituents of concern indicated by the EP results."

The Agency is not convinced by this argument for several reasons. First, CTI does not address other potential leachate constituents that may be competing for cation exchange sites with the constituents of concern. Secondly, CTI did not address the rate with which the attenuation reaction reaches equilibrium. The Agency believes that this equilibrium rate may play an important role in the leachate levels of the constituents of concern. An inadequate cation exchange rate may be responsible for the observed leachate levels of lead, chromium, and nickel. The CEC analysis provided by CTI implies that if the attenuation reaction had gone to completion, leachate levels would be zero since the CEC is greater than the required CEC for lead, chromium, and nickel. Some factor, such as the time to reach equilibrium (or contact time, matrix degradation, diffusion rate, etc.), must therefore be responsible for the observed leachate levels. Since this phenomenon has not been explained, the Agency cannot assume that actual leachate levels would be lower than those levels predicted by the EP test. The Agency, therefore, believes that the allowable leachate levels should not be increased as requested by the petitioner.

The petitioner also commented that the Agency did not present the correct maximum EP nickel results for Pond 1, Quadrant 1, and Pond 2, Quadrant 2. The Agency disagrees. The values used were taken from the first extraction in the MEP analysis, which is equivalent to the EP test.

Another commenter stated that EPA should consider ground water mounding effects beneath landfills. The commenter further asserts that mounding effects beneath landfills are comparable in

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[1] RCRA Reauthorization Statutory Interpretation #4: Effect of Hazardous and Solid Waste Amendments of 1984 on State Delisting Decisions. May 16, 1985, Jack W. McGraw, Acting Assistant Administrator for the Office of Solid Waste and Emergency Response.

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magnitude to those beneath surface impoundments. While the Agency believes that mounding effects beneath surface impoundments are significant, mounding effects beneath landfills are believed to be insignificant. This conclusion is based upon a comparative analysis of mounds beneath impoundments and landfills using the Agency's surface impoundment model, which is currently under development. (See the notice finalizing the Organic Leachate Model for a more detailed response to this comment). In the case of GMC, the Agency believes that no mounding should be observed beneath the stabilized waste. Since the waste will be landfilled after stabilization and the site elevation will be returned to grade level, the infiltration rate will be no different from surrounding terrain, and thus, no mound will form.

C. Final Agency Decision

Based upon samples of the waste taken from the three surface impoundments indicating low extract values generated from corresponding EP toxicity tests, Oily Waste EP toxicity tests, and MEP test data, previous demonstrations made by Chemfix Technologies, and the continuous testing provision, GMC has demonstrated that the Chemfix® treated waste is capable of successfully binding the inorganic toxicants within the matrix of the residue, thereby limiting their mobility. The Agency concluded this, even though three or four composites that were tested for chromium, one of four that were tested for lead, using the EP Toxicity Test for Oily Waste; and one of four composites that were tested for nickel using the Multiple Extraction test, failed the VHS analysis by generating compliance-point concentrations above their respective regulatory standards. The Agency's basis for this conclusion includes: (1) GMC tested representative samples of this waste prior to the publication of the final VHS model and therefore did not use mixing ratios necessary to achieve the more stringent limitations of the final version of the VHS model; (2) all of the reported extract values were less than 15 times the respective standards, even though the more effective mixing ratios were not used; (3) the waste will be homogenized during treatment; and (4) the exclusion will require testing of each day's treatment residue, preventing the handling of any residue exhibiting extract levels above 6.3 times their respective standard, as a non-hazardous waste.

The Agency, therefore, believes that the extract levels can be reduced by alteration of the mixing ratios of treatment additives.[2] In addition, the Agency is satisfied with GMC's determination that no other hazardous constitutents are present in the waste.[3]

The Agency, therefore, considers GMC's treated waste generated from the Chemfix® treatment process to be non-hazardous for all reasons and believes it should be excluded from hazardous waste control under the conditions specified below. Due to the large volume of waste contained in GMC's impoundments, the high content of toxic metals in the waste, and the fact that the data in the petition were based on laboratory and pilot-scale data, the Agency is requiring testing of the treated waste to ensure that stabilization occurs and that each day's treated waste be identifiable and retrievable as follows:

(1) Mixing ratios shall be monitored continuously to ensure consistent treatment.

(2) One grab sample of the treated waste should be taken each hour as it is pumped into the holding area (cell) from each trailer unit. At the end of each production day, the grab samples from the individual trailer units will be composited and the EP toxicity test[4] will be run on each composite sample. If lead or chromium (total) concentrations exceed 0.315 ppm or if nickel levels exceed 2.17 ppm in the extract, the waste will be removed and retreated or disposed as a hazardous waste. (The Agency has included nickel in this testing program, since it is present at substantial concentrations in the waste and could be affected by adjusting mixing ratios to limit chromium and lead mobility.)

(3) The treated waste must be pumped into bermed cells that are constructed to ensure that the treated waste generated each day is identifiable and retrievable (*i.e.*, the material can be removed and either disposed as a hazardous waste or retreated if conditions 1 or 2 are not met.)

The Agency believes that GMC's treated waste generated by the Chemfix® process will be non-hazardous under the conditions specified above. The Agency therefore is granting a final, conditional, one-time exclusion to GMC for the product that will result from the chemical stabilization of the electroplating wastewater treatment sludge presently contained in three surface impoundments at the Elyria, Ohio site.

II. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six month period to come into compliance. That is the case here since rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioner by an effective date six months after promulgation, and the fact that such a deadline is not necessary to achieve the purpose of section 3010, we believe that this rule should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

III. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This grant of an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous.

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[2] The Agency has data submitted in other delisting petitions on the Chemfix® process and on other cementitious stabilization processes that indicate that the adjustment of mixing ratios can alter the leachability of each metal toxicant. CTI further claims that they can achieve leachate levels of six times the regulatory standards when treating GMC's waste.

[3] GMC tested its waste for the priority pollutants since rinse waters from painting operations enter the treatment system. All volatile constituents were reported as non-detectable at a level of 0.1 ppm using methods 5030 and 8240 from Test Methods for Evaluating Solid Waste, SW–846. Acid and Base/Neutral Extractables were reported as non-detectable at a level of 1 ppm using methods 3530 and 8270 from SW–846. The Agency notes that these detection limits would generate compliance-point concentrations above the regulatory standards for some constituents, (*i.e.*, a detection limit of 0.01 ppm would be necessary for chloroform, or 0.0004 ppm for 1,1-dichloroethylene to pass at the compliance-point). The Agency is also aware, however, that the recommended extraction and analytical procedures described in SW–846 cannot achieve low enough detection limits to pass the VHS analysis for some constituents. Where hazardous constitutents in a waste are determined to be non-detectable using appropriate analytical methods, the Agency will, as a matter of policy, not regulate the waste as hazardous. The agency is not indicating that these detection limits are appropriate minimum limits for all petitioners. These will be determined on a case-by-case basis and will depend on the waste matrix. The Agency further notes that as the recommended clean-up and analytical tests improve, the required detection limits will decrease for those petitioners submitting petitions at that point in time.

[4] Since the results obtained using the EP toxicity test were equal to or greater than those determined by the EP toxicity test for oily wastes, indicating that little or no metals were found in the oil fraction, the Agency has allowed the use of the EP toxicity test in the contingency testing program.

IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. §§ 601-612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this final regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous wastes, Recycling.

Dated: November 4, 1986.

Jeffery D. Denit,

Acting Director, Office of Solid Waste.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Appendix IX, add the following wastestream in alphabetical order to Table 1 to read as follows:

Appendix IX—[Amended]

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste Description
*	*	* * *
General Motors Corp., Fisher Body Division.	Elyria, OH ...	The residue generated from the use of the Chemfix® treatment process on sludge (EPA Hazardous Waste No. F006) generated from electroplating operations and contained in three on-site surface impoundments on November 14, 1986. To assure that stabilization occurs, the following conditions apply to this exclusion: (1) Mixing ratios shall be monitored continuously to assure consistent treatment. (2) One grab sample of the treated waste shall be taken each hour as it is pumped to the holding area (cell) from each trailer unit. At the end of each production day, the grab samples from the individual trailer units will be composited and the EP toxicity test will be run on each composite sample. If lead or total chromium concentrations exceed 0.315 ppm or if nickel exceeds 2.17 ppm, in the EP extract, the waste will be removed and retreated or disposed of as a hazardous waste. (3) The treated waste shall be pumped into bermed cells which are constructed to assure that the treated waste is identifiable and retrievable (*i.e.,* the material can be removed and either disposed of as a hazardous waste or retreated if conditions 1 or 2 are not met). Failure to satisfy any of these conditions would render the exclusion void. This is a one-time exclusion, applicable only to the residue generated from the use of the Chemfix® treatment process on the sludge currently contained in the three on-site surface impoundments.

[FR Doc. 86-25706 Filed 11-13-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 261

[SW-FRL-3111-1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Denials

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is announcing its decision to deny the petitions submitted by four petitioners to exclude their solid wastes from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste lists. Our basis for denying these petitions is that the petitioners have not substantiated their claims that the wastes are non-hazardous. The effect of this action is that all of this waste must be handled as hazardous waste in accordance with 40 CFR Parts 262-266, and Parts 270, 271 and 124.

EFFECTIVE DATE: May 14, 1987.

ADDRESSES: The public docket for these final petition denials is located in the Sub-basement, U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460, and is available for public viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475-9327 or Kate Blow at (202) 382-4675 for appointments. The reference number for this docket is "F-86-CHDF-FFFFF". The public may copy a maximum of 50 pages of materials from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-5096.

SUPPLEMENTARY INFORMATION: On October 22, 1986, EPA proposed to deny specific wastes generated by several facilities, including: (1) Ford Motor Co., located in Lima, Ohio (see 51 FR 37427); (2) General Motors Corp., Truck and Coach Div., located in Pontiac, Michigan (see 51 FR 37429); (3) Olin Corp., located in St. Marks, Florida (see 51 FR 37434); and (4) Welsh Co. of the South, located in Union Springs, Alabama (see 51 FR 37436).[1] The Agency had previously evaluated all four of the petitions which are discussed in today's notice. Based on our review at that time, these petitioners were granted a temporary exclusion. Due to changes in the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, however, these petitions, as well as the other three have been evaluated both for the factors for which the wastes were originally listed, as well as other factors and toxicants which reasonably could cause the wastes to be hazardous. Based upon these evaluations, the Agency has determined that all four of the petitioning facilities have not substantiated their claims that the wastes are non-hazardous; therefore, the Agency is denying the petitions submitted by all four petitioning facilities and is revoking the temporary

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[1] In the same **Federal Register** notice, the Agency also proposed to deny the exclusion of specific wastes generated by Chevron, U.S.A., Port Arthur, Texas (see 51 FR 37422), E.I. Du Pont de Nemours & Co., Beaumont, Texas (see 51 FR 37423), and McLouth Steel Corp., Trenton, Michigan (see 51 FR 37432). Chevron, Du Pont, and McLouth submitted comments which take issue with the proposed denials for their facilities. The Agency will address these comments in a later **Federal Register** notice.

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exclusions currently held by these facilities.

The denials made final here involve the following petitioners:

Ford Motor Co., Lima, Ohio;
General Motors Corp., Truck and Coach Div., Pontiac, Michigan;
Olin Corp., St. Marks, Florida;
Welsh Co. of the South, Union Springs, Alabama.

I. Ford Motor Company

A. Proposed Denial

Ford Motor Company (Ford) has petitioned the Agency to exclude its wastewater treatment sludge contained in two on-site lagoons from EPA Hazardous Waste No. F006, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by Ford, however, fails to substantiate its claim that the listed constituents are essentially present in an immobile form.[2] (See 51 FR 37427–37429, October 22, 1986, for a more detailed explanation of why the Agency proposed to deny Ford's petition.)

B. Agency Response to Public Comments

The Agency did not receive any comments regarding its decision to deny an exclusion to Ford for the waste identified in the petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the sludge contained in two on-site lagoons is hazardous and as such should not be excluded from hazardous waste control.[3] The Agency, therefore, is denying a final exclusion to Ford for its wastewater treatment sludge resulting from electroplating operations, listed as EPA Hazardous Waste No. F006, which is stored at its Lima, Ohio facility. By this action, the Agency also withdraws the temporary exclusion granted for this waste on February 12, 1982.

II. GMC Truck and Coach

A. Proposed Denial

GMC Truck and Coach (GMC Truck) has petitioned the Agency to exclude its wastewater treatment sludge from EPA Hazardous Waste Nos. F006 and F019, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by GMC, however, fails to substantiate its claim that the listed constituents are essentially present in an immobile form.[4] (See 51 FR 37429–37432, October 22, 1986, for a more detailed explanation of why the Agency proposed to deny GMC's petition.)

B. Agency Response to Public Comments

The Agency did not receive any comments regarding its decision to deny an exclusion to GMC for the waste identified in the petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the filter cake generated by GMC is hazardous and as such should not be excluded from hazardous waste control.[5] The Agency, therefore, is denying a final exclusion to GMC Truck and Coach for its dewatered wastewater treatment sludge (sludge) resulting from electroplating operations, and the chemical conversion of aluminum listed as EPA Hazardous Waste Nos. F006 and F019, which is generated at its Pontiac, Michigan facility. By this action, the Agency also withdraws the temporary exclusion granted for this waste in May, 1982.

III. Olin Corporation

A. Proposed Denial

Olin Corporation Smokeless Powder Plant (Olin) has petitioned the Agency to exclude its wastewater treatment sludge from EPA Hazardous Waste Nos. K044 and K046 based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by Olin, however fails to substantiate its claim that the listed constituents are essentially present in an immobile form.[6] (See 51 FR 37434–37436, October 22, 1986, for a more detailed explanation of why the Agency proposed to deny Olin's petition.)

B. Agency Response to Public Comments

The Agency did not receive any comments regarding its decision to deny an exclusion to Olin for the waste identified in the petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the sludge generated by Olin is hazardous and as such should not be excluded from hazardous waste control. The Agency, therefore, is denying a final exclusion to Olin Corporation for its dewatered sludge resulting from the manufacture, formulation and loading of lead-based initiating compounds, listed as EPA Hazardous Waste Nos. K044 and K046, which is generated at its St. Marks, Florida facility. By this action, the Agency also withdraws the temporary exclusion granted for this waste on November 22, 1982 (47 FR 52673).

IV. Welsh Company of the South

A. Proposed Denial

Welsh Company of the South (Welsh) has petitioned the Agency to exclude its wastewater treatment sludge from EPA Hazardous Waste No. F006, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by Welsh, however, fails to substantiate its claim that the listed constituents are essentially present in an immobile form.[7] (See 51 FR 37436–37438, October 22, 1986, for a more detailed explanation of why the Agency proposed to deny Welsh's petition.)

B. Agency Response to Public Comments

The Agency did not receive any comments regarding its decision to deny an exclusion to Welsh for the waste identified in the petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the sludge generated by Welsh is hazardous and as such should not be excluded from hazardous waste control. The Agency, therefore, is denying a final exclusion to Welsh Company of the South for its dewatered sludge) resulting from the electroplating of steel furniture parts, listed as EPA Hazardous Waste No. F006 which is generated at its Union Springs, Alabama facility. By this action, the Agency also withdraws the temporary exclusion granted for this waste in May, 1982.

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[2] Ford was granted a temporary exclusion for this waste on February 12, 1982.

[3] It should be noted that a recent re-interpretation of F006 indicates that wastes generated by phosphating and immersion plating processes are not regulated if segregated. Accordingly, the dewatered sludge presently generated by these processes is not regulated if segregated. Since Ford once disposed of copper plating rinsewaters (classified as EPA Hazardous No. F006) in its two on-site lagoons, however, the lagoon sludges, which are the subject of this petition, are classified as EPA Hazardous Waste No. F006 by the mixture rule.

[4] GMC Truck was granted a temporary exclusion for this waste in May 1982.

[5] The recent Agency re-interpretation of F006 indicates that wastes generated by phosphating processes are not regulated. Accordingly, the petitioner's waste from their phosphating processes, if segregated, (previously classified as EPA Hazardous Waste No. F006) is not regulated. This waste, however, is still regulated as F019.

[6] Olin was granted a temporary exclusion for this waste on November 22, 1982 (see 47 FR 52673).

[7] Welsh was granted a temporary exclusion for this waste in May, 1982.

V. Effective Date

The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This is not the case, however, for the four petitioners included in this notice having their temporary exclusions revoked and final exclusions denied. They will have to revert back to handling their wastes as they did before being granted these exclusions (*i.e.*, they must handle their wastes as hazardous). These petitioners will need some time to come into compliance with the RCRA hazardous waste management system. Accordingly, the effective date of the revocation of these temporary exclusions and denials is six months after publication of the final rule in the **Federal Register**.

VI. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation, which would revoke temporary exclusions and deny petitions from four facilities, is not major. The affect of this rule would increase the overall costs for the facilities which currently have temporary exclusions that are being revoked and denied. The actual costs to these companies, however, would not be significant. In particular, in calculating the amount of waste that is generated by these four facilities that currently have temporary exclusions and considering a disposal cost of $300/ton, the increased cost to these facilities is approximately $5.7 million, well under the $100 million level constituting a major regulation. In addition, some of these companies are large and, therefore, the impact of this rule will be relatively small. This rule is not a major regulation; therefore, no Regulatory Impact Analysis is required.

VII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. §§ 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will have the effect of increasing overall waste disposal costs. This rule only effects four facilities across different industrial segments. The overall economic impact, therefore, on small entities is small. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Dated: November 7, 1986.

J. W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 86–25707 Filed 11–13–86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 261

[SW–FRL–3111–3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is announcing its decision to deny the petitions submitted by two petitioners to exclude their solid wastes from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste lists. Our basis for denying these petitions is that the petitioners have not substantiated their claims that the wastes are non-hazardous. The effect of this action is that all of this waste must be handled as hazardous waste in accordance with 40 CFR Parts 262–266, and Parts 270, 271 and 124.

EFFECTIVE DATE: May 14, 1987.

ADDRESSES: The public docket for these final petition denials is located in the Sub-basement, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, and is available for public viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475–9327 or Kate Blow at (202) 382–4675 for appointments. The reference number for this docket is "F–86–ANDF–FFFFF". The public may copy a maximum of 50 pages of materials from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline,toll free at (800) 424–9346, or at (202) 382–3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 382–5096.

SUPPLEMENTARY INFORMATION: On October 8, 1986, EPA proposed to deny specific wastes generated by three facilities, including: (1) AT&T Technology Systems, located in Richmond, Virginia (see 51 FR 36058) and (2) John Deere Des Moines Works, located in Ankeny, Iowa (see 51 FR 36031).[1] The Agency had previously evaluated both of the petitions which are discussed in today's notice. Based on our review at that time, these petitioners were granted a temporary exclusion. Due to changes in the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, however, these petitions, have been evaluated both for the factors for which the wastes were originally listed, as well as other factors and toxicants which reasonably could cause the wastes to be hazardous. Based upon these evaluations, the Agency has determined that both of the petitioning facilities have not substantiated their claims that the wastes are non-hazardous; therefore, the Agency is denying the petitions submitted by both petitioning facilities and is revoking the temporary exclusions currently held by these facilities.

The denials made final here involve the following petitioners:

AT&T Technology Systems, Richmond, Virginia;

John Deere Des Moines Works, Ankeny, Iowa.

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[1] In the same **Federal Register** notice, the Agency also proposed to deny exclusion of specific wastes generated by the American Nickeloid Company, Lima, Illinois (see 51 FR 36026). During the comment period for the proposed rule, American Nickeloid sent a letter to the Agency requesting that their petition be withdrawn. By withdrawing their petition, American Nickeloid's temporary exclusion is no longer valid; therefore, the previously petitioned waste must now be handled as hazardous.

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I. AT&T Technology Systems

A. Proposed Denial

AT&T Technology Systems (AT&T) has petitioned the Agency to exclude its wastewater treatment sludge (vacuum filter sludge) from EPA Hazardous Waste No. F006, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by AT&T, however, fails to substantiate its claims that the listed constituents are essentially present in an immobile form.[2] (See 51 FR 36026–36031, October 8, 1986, for a more detailed explanation of why the Agency proposed to deny AT&T's petition.)

B. Agency Response to Public Comments

The Agency did not receive any comments regarding its decision to deny an exclusion to AT&T for the waste identified in the petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the vacuum filter sludge generated by AT&T is hazardous and as such should not be excluded from hazardous waste control. The Agency, therefore, is denying a final exclusion to AT&T Technology Systems for its dewatered wastewater treatment sludge (vacuum filter sludge) resulting from electroplating operations, listed as EPA Hazardous Waste No. F006, which is generated at its Richmond, Virginia, facility. By this action, the Agency also revokes the temporary exclusion granted for this waste on November 22, 1982 (see 47 FR 52673).

II. John Deere Des Moines Works

A. Proposed Denial

John Deere Des Moines Works (John Deere) has petitioned the Agency to exclude its wastewater treatment sludge from EPA Hazardous Waste No. F006, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by John Deere, however, fails to substantiate its claim that the listed constituents are essentially present in an immobile form.[3] (See 51 FR 36031–36034, October 8, 1986, for a more detailed explanation of why the Agency proposed to deny John Deere's petition.)

B. Agency Response to Public Comments

The Agency received comments from the petitioner during the public comment period. These comments were to notify the Agency that the John Deere Des Moines facility has made process changes and to request that the Agency consider delisting the new waste upon completion of future sampling and analyses of the waste. The Agency notes that John Deere's previously granted temporary exclusion applied only to the waste and processes described in the original delisting demonstration. The Agency is, therefore, basing today's final denial decision on the characteristics of the wastes which were originally petitioned for delisting. The Agency also notes that consideration of wastes generated by processes other than those described in John Deere's original petition would require that the facility submit a separate delisting petition for the wastes that are generated by the new processes. Until a separate petition is submitted and an exclusion granted, John Deere must handle the wastes generated by the new processes as hazardous.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the vacuum filter sludge generated by John Deere is hazardous and as such should not be excluded from hazardous waste control. The Agency, therefore, is denying a final exclusion to John Deere Des Moines Works for its dewatered wastewater treatment sludge (vacuum filter sludge) resulting from electroplating operations, listed as EPA Hazardous Waste No. F006, which is generated at its Ankeny, Iowa facility. By this action, the Agency also revokes the temporary exclusion granted for this waste on November 25, 1980 (see 45 78550).

III. Effective Date

The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This is not the case, however, for the two petitioners included in this notice having their temporary exclusions revoked and final exclusions denied. They will have to revert back to handling their wastes as they did before being granted these exclusions (*i.e.*, they must handle their wastes as hazardous). These petitioners will need some time to come into compliance with the RCRA hazardous waste management system. Accordingly, the effective date of the revocation of these temporary exclusions and denials is six months after publication of this final rule in the Federal Register.

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This final rule, which would revoke temporary exclusions and deny petitions from two facilities, is not major. The affect of this rule would increase the overall costs for these facilities which currently have temporary exclusions that are being revoked and denied. The actual costs to these companies, however, would not be significant. In particular, in calculating the amount of waste that is generated by these two facilities that currently have temporary exclusions and considering a disposal cost of $300/ton, the increased cost to these facilities is approximately $600,000 well under the $100 million level constituting a major regulation. This is not a major regulation; therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of a small entities.

This amendment will have the effect of increasing overall waste disposal costs. This rule only effects two facilities across different industrial segments. The overall economic impact, therefore, on small entities is small. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

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[2] AT&T was granted a temporary exclusion for this waste on November 22, 1982 (see 47 FR 52673).

[3] John Deere was granted a temporary exclusion for this waste on November 25, 1980 (See 45 FR 87550).

Dated: November 4, 1986.

J.W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 86-25709 Filed 11-13-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 261

[SW-FRL-3110-3]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is announcing its decision to deny the petition submitted by one petitioner to exclude its solid waste from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste lists. Our basis for denying this petition is that the petitioner has not substantiated its claim that the waste is non-hazardous. The effect of this action is that all of this waste must be handled as hazardous waste in accordance with 40 CFR Parts 262-266, and Parts 270, 271 and 124.

EFFECTIVE DATE: May 14, 1987.

ADDRESSES: The public docket for this final petition denial is located in the Sub-basement, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for public viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475-9327 or Kate Blow at (202) 382-4675 for appointments. The reference number for this docket is "F-86-LVDF-FFFFF". The public may copy a maximum of 50 pages of materials from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-5096.

SUPPLEMENTARY INFORMATION: On October 21, 1986, EPA proposed to deny specific wastes generated by several facilities, including LTV Steel Company, located in East Chicago, Indiana (see 51 FR 37307).[1] The Agency had previously evaluated the petition which is discussed in today's notice. Based on our review at that time, this petitioner was granted a temporary exclusion. Due to changes in the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, however, this petition has been evaluated both for the factors for which the waste was originally listed, as well as other factors and toxicants which reasonably could cause the waste to be hazardous. Based upon these evaluations, the Agency has determined that the petitioning facility has not substantiated its claims that the waste is non-hazardous; therefore, the Agency is denying the petition submitted by this petitioning facility and is revoking the temporary exclusion currently held by this facility.

The denial made final here involves the following petitioner: LTV Steel Company, East Chicago, Indiana.

I. LTV Steel Company

A. Proposed Denial

LTV Steel Company (LTV) has petitioned the Agency to exclude its wastewater treatment sludge from EPA Hazardous Waste No. F006, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by LTV, however, fails to substantiate its claim that the listed constituents are essentially present in an immobile form.[2] (See 51 FR 37307-37309, October 21, 1986, for a more detailed explanation of why the Agency proposed to deny LTV's petition.)

B. Agency Response to Public Comments

The Agency received comments from LTV regarding its decision to deny an exclusion to LTV for the waste identified in the petition. LTV indicated that from July through September, 1986, the sludge generation rate had decreased from 15,000 tons to 4,100 tons due to improved dewatering procedures. LTV did not indicate what specific changes were made to bring their generation rate to approximately one third of that originally reported. The Agency believes that a decrease in generation rate of this proportion could constitute a significant change in the dewatering process. The Agency believes that LTV would need to submit a new petition containing waste characterization data on the waste presently being generated (at the decreased generation rate), or at a minimum discuss what the changes to the process were and why they feel they were not significant enough to effect the concentration and mobility of hazardous constituents contained in the waste. The Agency believes it is inappropriate to evaluate the waste using the volume of waste currently generated and waste characterization data on the waste produced prior to LTV's process change.

LTV objects to the use of data from the oily waste EP procedure (OWEP) since the test relates to wastes that are normally landfarmed. In addition, LTV also objects to use of a testing procedure that has not been proposed or promulgated.

The OWEP was developed in response to concerns that the EP toxicity test underestimates the ability of metals to leach from oily wastes. The Agency has requested that the OWEP test be performed on oily wastes to assess the additive groundwater contamination potential of toxicants contained in the organic (oily) and solid phases of these wastes. Since the oil phase from oily wastes can mobilize in a landfill setting, the Agency will continue to use the OWEP as a tool to measure the concentrations of inorganic toxicants moving in this fraction.[3]

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[1] In the same Federal Register notice, the Agency also proposed to deny the exclusion of specific wastes generated by the following petitioners: Cerro Conduit Company, located in Syosset, New York (see 51 *FR* 37301); General Motors Corp., Delco Products Division, located in Kettering, Ohio (see *FR* 37303); John Deere Dubuque Works, located in Dubuque, Iowa 51 *FR* 37305); and United Chair, Inc., located in Irondale, Alabama (see 51 *FR* 37309). The Agency has addressed these proposed decisions in separate Federal Register notices.

[2] LTV was granted a temporary exclusion for this waste on November 22, 1982 (47 *FR* 52668).

[3] The Oily Waste EP test (OWEP) was developed in response to concerns that the EP test is not suitable for wastes which exhibit a substantial oil and grease content (oil fraction). Specifically, concern was expressed that (1) toxic metals may leach at higher levels than those predicted by the EP test if the oil fraction degrades, and (2) the oily fraction, while it may act as a solid in the EP test, could migrate as a liquid once the waste is disposed.

The first concern is based upon a scenario in which the oily fraction coats the solid phase of the waste and the leaching medium. If the oily fraction degrades, as could occur in a well-managed landfarm, the solid phase could be more completely exposed to the leaching medium and increased leaching could occur. (The practice of requesting the OWEP for wastes containing >1 percent oil and grease was based upon the estimate that 1 percent oil and grease would be a sufficient quantity to coat the waste.) The OWEP simulates this effect by removing the oily fraction with toluene and tetrahydrofuran prior to subjecting the waste to the EP test. The OWEP also requires the measurement

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The OWEP test was first published in *Proposed Sampling and Analytical Methodologies for Addition to Test Methods for Evaluating Solid Waste* (see 49 FR 38790, October 1, 1984). It was also used to evaluate wastes in a proposed rule on October 23, 1984 (see 49 FR 42587–42593). On February 26, 1985 (50 FR 7882–7900), the Agency published a proposed rule and request for comment, proposing use of the VHS model for evaluating delisting petitions. The model inputs are the waste generation rate, and the toxicant concentrations in the extract. The Agency indicated that the EP toxicity test, the OWEP test (for wastes with oil and grease greater than 1%), or some other leachate test would be used to determine inorganic extract concentrations for input into the VHS model. The Agency further stated in the February 26, 1985 notice that the EP for Oily Wastes would be used for all wastes exceeding an oil and grease content of 1 percent. Comments on the VHS model and modifications to SW–846, including those on the OWEP, were addressed when the final version of the VHS model was published on November 27, 1985, 50 FR 48886–48967). At that time, the Agency specified that petitioners wishing to use another test may request permission from the Agency to use an alternative procedure, pursuant to 40 FR 26021. The Agency also described the OWEP in *Petitions to Delist Hazardous Wastes: A Guidance Manual*, published in April, 1984. The Agency has no tool, other than the OWEP, at the present time, to evaluate metal mobility from oily wastes. The Agency's policy with respect to petition review is to use the best available tools (*i.e.*, leachate tests, models, regulatory standards, etc.) to assist in these evalutions. If these tools were not used, timely review of petitions would be impossible and all action on delisting petitions would cease.

LTV had several criticisms of individual parameters used in the VHS model itself (e.g., the dilution predicted by the model for large volume wastes and the lack of attenuation for metal species). Since the VHS landfill model was made final on November 27, 1985 (see 50 FR 48886, Appendix), and all comments received in the proposal for the model were incorporated, these comments will not be entertained. One point in this regard will be mentioned due to a question raised about state law. The commenter noted that the State of Indiana prohibits landfills from locating cells less than 1,000 feet from a drinking water well and, therefore, the assumption of a receptor 500 feet from the disposal site should be altered. The Agency notes that once delisted there would be no limitation on selecting out-of-state disposal sites.

LTV Steel claimed that hexavalent chromium instead of total chromium should be considered in delistings because it is more mobile in the environment and more toxic. The Agency has already cited its basis for considering total chromium in its analysis (see 51 FR 37308, October 21, 1986). In this proposal the Agency cited studies which have shown that trivalent chromium can convert to hexavalent chromium in the environment. As discussed in the proposal, the trivalent form has the potential to convert to hexavalent chromium under the conditions found in groundwater and soil environments. The Agency has set its chromium water standard and EP toxicity characteristic based on total chromium.

LTV expressed concern that they were not informed of the Agency's decision to deny the petition on the basis of vinyl chloride and benzene. The Agency acknowledges that it failed to inform LTV that the compliance point concentrations, as predicted by one or both versions of the proposed OLM, were of regulatory concern in the denial letter sent to LTV by EPA on July 28, 1986. Nevertheless, LTV was informed of this decision when the Agency published its proposed decision on the LTV petition and has had an opportunity to provide comments. Under HSWA, the Agency must evaluate all Appendix VIII constituents likely to be present in a petitioned waste. Since these organics were detected in the waste (as reported in the petition), the Agency must evaluate these constituents. The final model, using the baseline equation indicates that benzene, but not vinyl chloride, is present in the waste at a level of regulatory concern.

LTV also argued that the detection of vinyl chloride and benzene should be considered an anomaly or, alternatively, the waste generation rate and distance to a well should be adjusted when evaluating the waste for these constituents. However, the upper limit of a 95% confidence interval (based on detected levels in one of four samples, and on the detection limits in the remaining three samples) for benzene data also resulted in a compliance point value exceeding regulatory standards, as discussed in the proposed denial. As discussed above, the compliance point concentration of vinyl chloride does not fail the final version of the OLM. LTV should submit additional sampling and analysis data, which would increase the sample population size, in order to support its anomaly argument. The reasons why the Agency cannot adjust the waste generation rate and distance to a well are discussed in the November 27, 1985, final version of the VHS model.

LTV claims that benzene is not present in any raw materials, additives, or products at their facility. The Agency has reviewed LTV's raw materials data and notes that, other than Quintolubric 957–WV, no other materials are likely to contain benezene. LTV has not presented enough component data on this raw material to determine whether it is likely to contain benzene. Nevertheless, its presence at a concentration of 0.34 ppm in one of four samples indicates there may be a source of benzene at the facility. The Agency cannot ignore the fact that benzene was detected at this level in the waste, regardless of the source.

C. Final Agency Decision

For the reasons stated in the proposal and in the response to comments, the Agency believes that the centrifuge sludge generated by LTV is hazardous and as such should not be excluded from hazardous waste control. The Agency, therefore, is denying a final exclusion to the LTV Steel Company for its dewatered wastewater treatment sludge (centrifuge sludge) resulting from electroplating operations, listed as EPA

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of the mass of metals in the oily fraction, which is added to the mass of metals that leach in the EP step. This accounts for those metals that are initially in the oily fraction that would be available for leaching once that fraction degrades. (Degradation of the oily fraction occurs in landfills although the rate of this degradation is usually much slower than that of a landfarm.)

The second concern is based upon the potential for the oily fraction to migrate from the waste. This could result in the contamination of an aquifer by the oily fraction itself. This would be more likely to occur when the waste is managed in a landfill and the oily fraction is not rapidly degraded. The OWEP addresses this concern by assuming that the contaminants in the oily fraction are added to those that are mobilized through the liquid extraction step of the procedure. Since in the original EP test the oily fraction may not be tested as a liquid due to its inability to pass through the filter during the phase separation step, the ability of the toxicants in the oily fraction to behave as a liquid is not addressed in that test. The OWEP, however, by requiring a separate analysis of the oily fraction, allows for an assessment of the additive effects of groundwater contamination potential from both toxicants contained in the organic fraction and those that mobilize from the solid phase during the extraction step. Since the oil phase from oily metal hydroxide wastes in a landfill scenario can mobilize, the Agency will continue to use the OWEP as a tool to measure the concentrations of inorganic toxicants moving in this fraction.

The Agency, however, intends to initiate a testing program to determine: the percent oil content of various waste matrices that will result in a more accurate measure of the mobility of the oil fraction; and the toxicological implications of the oil itself contaminating underlying aquifers.

Hazardous Waste No. F006, which is generated at its East Chicago, Indiana facility. By this action, the Agency also withdraws the temporary exclusion granted for this waste on November 22, 1982 (see 47 FR 52668).

II. Effective Date

The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This is not the case, however, for the petitioner included in this notice having its temporary exclusion revoked and final exclusion denied. This facility will have to revert back to handling its wastes as it did before being granted the exclusion (*i.e.*, they must handle their waste as hazardous). The petitioner will need some time to come into compliance with the RCRA hazardous waste management system. Accordingly, the effective date of the revocation of this temporary exclusion and denial is six months after publication of this final rule in the **Federal Register.**

III. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This final rule, which would revoke a temporary exclusion and deny a petition from one facility is not major. The affect of this final rule would increase the overall costs for this facility which currently has a temporary exclusion that is being revoked and denied. The actual cost to this company, however, would not be significant. In particular, in calculating the amount of waste that is generated by this one facility that currently has a temporary exclusion and considering a disposal cost of $300/ton, the increased cost to this facility is approximately $4.5 million, well under the $100 million level constituting a major regulation. This is not a major regulation; therefore, no Regulatory Impact Analysis is required.

IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. §§ 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will have the effect of increasing overall waste disposal costs. This rule only effects one facility, therefore, the overall economic impact on small entities is small. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Dated: November 7, 1986.

J. W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 86–25712 Filed 11–13–86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 261

[SW-FRL-3110-4]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is announcing its decision to deny the petitions submitted by five petitioners to exclude their solid wastes from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste lists. Our basis for denying these petitions is that the petitioners have not substantiated their claims that the wastes are non-hazardous. The effect of this action is that all of this waste must be handled as hazardous waste in accordance with 40 CFR Parts 262–266, and Parts 270, 271 and 124.

EFFECTIVE DATE: May 14, 1987.

ADDRESS: The public docket for these final petition denials is located in the Sub-basement, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for public viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475–9327 or Kate Blow at (202) 382–4675 for appointments. The reference number for this docket is "F–86–MADF-FFFFF". The public may copy a maximum of 50 pages of materials from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–5096.

SUPPLEMENTARY INFORMATION: On November 3, 1986, EPA proposed to deny specific wastes generated by several facilities, including: (1) ITE Electrical Apparatus Division of Siemens Energy and Automation, Inc., located in Spartanburg, South Carolina (see 51 FR 39970); (2) Monroe Auto Equipment Company, located in Cozad, Nebraska (see 51 FR 39972); (3) Harrison Radiator, Division of General Motors Corp., located in Dayton, Ohio (see 51 FR 39982); (4) Harrison Radiator, Division of General Motors Corp., located in Moraine, Ohio (see 51 FR 39985); and (5) American Chrome and Chemicals, located in Corpus Christi, Texas (see 51 FR 39986). The Agency had previously evaluated each of the five petitions which are discussed in today's notice. Based on our review at that time, these five petitioners were granted a temporary exclusion. Due to changes in the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, however, these petitions have been evaluated both for the factors for which the wastes were originally listed, as well as other factors and toxicants which reasonably could cause the wastes to be hazardous. Based upon these evaluations, the Agency has determined that all five of the petitioning facilities have not substantiated their claims that the wastes are non-hazardous; therefore, the Agency is denying the petitions submitted by all five petitioning facilities and is revoking the temporary exclusions currently held by these facilities.

The denials made final here involve the following petitioners:

ITE Electrical Apparatus Division of Siemens Energy and Automation, Inc., Spartanburg, South Carolina

Monroe Auto Equipment Company, Cozad, Nebraska

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Harrison Radiator, Division of General Motors Corp, Dayton, Ohio
Harrison Radiator, Division of General Motors Corp, Moraine, Ohio
American Chrome and Chemicals, Corpus Christi, Texas.

I. ITE Electrical Apparatus Division of Siemens Energy and Automation, Inc.

A. Proposed Denial

ITE Electrical Apparatus Division of Siemens Energy and Automation, Inc. (ITE), has petitioned the Agency to exclude its wastewater treatment sludge from EPA Hazardous Waste No. F006, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by ITE, however, fails to substantiate its claim that the listed constituents are essentially present in an immobile form.[1] (See 51 FR 39970–39972, November 3, 1986, for a more detailed explanation of why the Agency proposed to deny ITE's petition.)

B. Agency Response to Public Comments

The Agency did not receive any comments regarding its decision to deny an exclusion to ITE for the waste identified in the petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the wastewater treatment sludge generated by ITE is hazardous and as such should not be excluded from hazardous waste control. The Agency, therefore, is denying a final exclusion to ITE Electrical Apparatus Division of Siemens Energy and Automation, Inc. for its wastewater treatment sludge as generated, and as held in its impoundments, resulting from electroplating operations, listed as EPA Hazardous Waste No. F006, which is generated at its facility located in Spartanburg, South Carolina. By this action, the Agency also withdraws the temporary exclusion granted for this waste on August 6, 1981 (see 46 FR 40158).

II. Monroe Auto Equipment Company

A. Proposed Denial

Monroe Auto Equipment Company (Monroe) has petitioned the Agency to exclude its wastewater treatment sludge from EPA Hazardous Waste No. F006, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by Monroe, however, fails to substantiate its claim that the listed constituents are essentially present in an immobile form.[2] (See 51 FR 39972–39982, November 3, 1986, for a more detailed explanation of why the Agency proposed to deny Monroe's petition.)

B. Agency Response to Public Comments

The Agency did not receive any comments regarding its decision to deny an exclusion to Monroe for the waste identified in the petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the wastewater treatment sludge generated by Monroe is hazardous and as such should not be excluded from hazardous waste control. The Agency, therefore, is denying a final exclusion to Monroe Auto Equipment Company for its wastewater treatment sludge as generated, and as held in its impoundments, resulting from electroplating operations, listed as EPA Hazardous Waste No. F006, which is generated at its facility located in Cozad, Nebraska. By this action, the Agency also withdraws the temporary exclusion granted for this waste in December 1982.

III. Harrison Radiator, Division of General Motors Corporation,

A. Proposed Denial

Harrison Radiator, Division of General Motors Corporation, has petitioned the Agency to exclude its wastewater treatment sludge from EPA Hazardous Waste No. F006, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by Harrison Radiator, however, fails to substantiate its claim that the listed constituents are essentially present in an immobile form.[3] (See 51 FR 39982–39985, November 3, 1986, for a more detailed explanation of why the Agency proposed to deny Harrison Radiator's petition.)

B. Agency Response to Public Comments

The Agency did not receive any comments regarding its decision to deny an exclusion to Harrison Radiator for the waste identified in the petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the wastewater treatment sludge generated by Harrison Radiator is hazardous and as such should not be excluded from hazardous waste control. The Agency, therefore, is denying a final exclusion to Harrison Radiator, Division of General Motors Corporation for its wastewater treatment sludge as generated, resulting from electroplating operations, listed as EPA Hazardous Waste No. F006, which is generated at its facility located in Dayton, Ohio. By this action, the Agency also withdraws the temporary exclusion granted for this waste in December 1981.

IV. Harrison Radiator, Division of General Motors Corporation

A. Proposed Denial

Harrison Radiator, Division of General Motors Corporation, has petitioned the Agency to exclude its wastewater treatment sludge from EPA Hazardous Waste No. F006, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by Harrison Radiator, however, fails to substantiate its claim that the listed constituents are essentially present in an immobile form.[4] (See 51 FR 39985–39986, November 3, 1986, for a more detailed explanation of why the Agency proposed to deny Harrison Radiator's petition.)

B. Agency Response to Public Comments

The Agency did not receive any comments regarding its decision to deny an exclusion to Harrison Radiator for the waste identified in the petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the wastewater treatment sludge generated by Harrison Radiator is hazardous and as such should not be excluded from hazardous waste control. The Agency, therefore, is denying a final exclusion to Harrison Radiator, Division of General Motors Corporation, for its wastewater treatment sludge as generated, resulting from electroplating operations, listed as EPA Hazardous Waste No. F006, which is generated at its facility located in Moraine, Ohio. By this action, the Agency also withdraws the temporary exclusion granted for this waste on December 27, 1982.

V. American Chrome and Chemicals

A. Proposed Denial

American Chrome and Chemicals (ACC) has petitioned the Agency to exclude its wastewater treatment sludge from EPA Hazardous Waste No. K006, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by ACC, however, fails to substantiate its claim that the listed constituents are essentially present in an immobile form.[5] (See 51 FR 39986–39988, November 3, 1986, for a more detailed explanation of why the Agency proposed to deny ACC's petition.)

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[1] ITE was granted a temporary exclusion for this waste on August 6, 1981 (see 46 FR 40158).

[2] Monroe was granted a temporary exclusion for this waste in December, 1982.

[3] Harrison Radiator was granted a temporary exclusion for this waste in December, 1981.

[4] Harrison Radiator was granted a temporary exclusion for this waste on December 27, 1982.

B. Agency Response to Public Comments

The Agency did not receive any comments regarding its decision to deny an exclusion to ACC for the waste identified in the petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the wastewater treatment sludge generated by ACC is hazardous and as such should not be excluded from hazardous waste control. The Agency, therefore, is denying a final exclusion to American Chrome and Chemicals for its wastewater treatment sludge contained in its impoundments, resulting from the treatment of wastewater from the production of chrome oxide green pigments (anhydrous and hydrous), listed as EPA Hazardous Waste No. K006, which is generated at its facility located in Corpus Christi, Texas. By this action, the Agency also withdraws the temporary exclusion granted for this waste on May 25, 1982.

V. Effective Date

The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This is not the case, however, for the five petitioners included in this notice having their temporary exclusions revoked and final exclusions denied. They will have to revert back to handling their wastes as they did before being granted these exclusions (*i.e.*, they must handle their wastes as hazardous). These petitioners will need some time to come into compliance with the RCRA hazardous waste management system. Accordingly, the effective date of the revocation of these temporary exclusions and denials is six months after publication of this rule in the **Federal Register.**

VI. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation, which would revoke temporary exclusions and deny petitions from five facilities is not major. The affect of this rule would increase the overall costs for the facilities which currently have temporary exclusions that are being revoked and denied. The actual costs to these companies, however, would not be significant. In particular, in calculating the amount of waste that is generated by these five facilities that currently have temporary exclusions and considering a disposal cost of $300/ton, the increased cost to these facilities is approximately $24 million, well under the $100 million level constituting a major regulation. In addition, some of these companies are large and, therefore, the impact of this rule will be relatively small. This rule is not a major regulation; therefore, no Regulatory Impact Analysis is required.

VII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will have the effect of increasing overall waste disposal costs. This rule only affects five facilities across different industrial segments. The overall economic impact, therefore, on small entities is small. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.)

Dated: November 7, 1986.

J.W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 86–25714 Filed 11–13–86; 8:45 am]

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40 CFR Part 261

[SW-FRL-3110-5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is announcing its decision to deny the petition submitted by one petitioner to exclude its solid waste from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 C.F.R. § 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste lists. Our basis for denying this petition is that the petitioner has not substantiated its claim that the waste is non-hazardous. The effect of this action is that all of this waste must be handled as hazardous waste in accordance with 40 CFR Parts 262–266, and Parts 270, 271 and 124.

EFFECTIVE DATE: May 14, 1987.

ADDRESSES: The public docket for this final petition denial is located in the Sub-basement, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for public viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475–9327 or Kate Blow at (202) 382–4675 for appointments. The reference number for this docket is "F–86–LTDF–FFFFF". The public may copy a maximum of 50 pages of materials from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–5096.

SUPPLEMENTARY INFORMATION: On October 17, 1986, EPA proposed to deny specific wastes generated by several facilities, including L–TEC Cutting Welding Systems (formerly Union Carbide Corp., Linde Welding Products Division), located in Ashtabula, Ohio

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[5] ACC was granted a temporary exclusion for this waste on May 25, 1982.

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(see 51 FR 37150).[1] The Agency had previously evaluated the petition which is discussed in today's notice. Based on our review at that time, this petitioner was granted a temporary exclusion. Due to changes in the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, however, this petition has been evaluated both for the factors for which the waste was originally listed, as well as other factors and toxicants which reasonably could cause the waste to be hazardous. Based upon these evaluations, the Agency has determined that the petitioning facility has not substantiated its claims that the waste is non-hazardous; therefore, the Agency is denying the petition submitted by this petitioning facility and is revoking the temporary exclusion currently held by this facility.

The denial made final here involves the following petitioner: L-TEC Welding and Cutting Systems, Ashtabula, Ohio.

I. L-TEC Welding and Cutting Systems

A. Petition for Exclusion

L-TEC Welding and Cutting Systems (L-TEC) has petitioned the Agency to exclude its wastewater treatment sludges, contained in four on-site impoundments, from EPA Hazardous Waste No. F006, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by L-TEC, however, does not substantiate its claim that the listed constituents of concern are essentially present in an immobile form. Furthermore, additional data collected by the Agency indicates that the wastes are hazardous, and should be managed as such. (See 51 FR 37150-37152, October 17, 1986, for a more detailed explanation of why the Agency proposed to deny L-TEC's petition.)

B. Agency Response to Public Comments

The Agency received comments from a single commenter regarding the Agency's proposed decision to deny an exclusion to L-TEC for the wastes identified in the petition. The commenter challenges the Agency's dismissal of L-TEC's analytical data. The commenter also indicates that averaged leachate values should be used in the evaluation of the impounded sludges, since the Agency has chosen to group the impoundment volumes together for purposes of analysis. If a mean value for leachable nickel from each impoundment were used to evaluate each impoundment separately, the commenter states that the VHS model would not predict that the compliance-point concentration would exceed the Agency's standard of 0.35 ppm for nickel in any of the impoundments. Even if the maximum value for leachable nickel for each impoundment was used to evaluate each impoundment separately, the VHS model would predict a compliance-point concentration less than the Agency's standard of 0.35 mg/l for nickel, so long as the volume for each impoundment was used as the input to the VHS model, rather than the volume for all impoundments together. If the mean leachate value for nickel were used to evaluate the total volume of impounded sludge on site, the VHS model would not predict a compliance-point value that would exceed the Agency's standard for nickel. The commenter claims that these methods of evaluation would more accurately represent the volume of waste present in L-TEC's impoundments.

The Agency affirms its belief that the composite samples collected during the Agency's site visit are more representative of the petitioned waste than are L-TEC's samples.[2] It is believed that the Agency's greater effectiveness in reaching and sampling sludges residing on the bottoms of these impoundments has resulted in waste samples which demonstrate higher EP values for nickel. The Agency's sampling visit has produced sludge samples which leach greater concentrations of nickel than did L-TEC's samples, and which exhibit greater variability (as evidenced by a larger range of leachate values and larger standard deviation). In fact, eleven of the Agency's 24 site-visit composite samples will produce compliance-point concentrations for nickel in excess of the Agency's standard for nickel when employed in the VHS model. Since the Agency is concerned that L-TEC's sampling efforts did not fully evaluate the bottom sludges, and the Agency is certain that the site-visit samples did adequately evaluate the bottom sludges, it is reasonable for the Agency to assume that the Agency's samples more accurately represent the waste present in the impoundments.

The Agency rejects the suggestion made by the commenter that we should evaluate these impounded wastes on the basis of individual impoundments. Because of the geographical proximity of the four impoundments to one another, the Agency believes it is reasonable to evaluate the sludges as a unit which will impact the underlying aquifer on a collection basis.[3]

The Agency also states that the use of statistical parameters other than maximum leachate concentrations in the VHS evaluation cannot be justified in this case, due to the small sample size. The Agency does not believe that 48 samples would be adequate to allow the evaluation, using alternative parameters such as the mean or median, of any surface impoundments with a combined surface area of approximately 70,000 ft^2, as L-TEC has.[4] Furthermore, statistical analysis of the distribution of data sets presented by L-TEC and collected by the Agency on its site-visit to L-TEC's facility indicates that these two data sets are significantly different and, therefore, cannot be grouped together into a single data set for purposes of analysis.[5] This statistical finding results in a substantially smaller data set for each impoundment, as well as for the combined impoundments. Because the Agency has a suitable date set of only 24 samples (collected on the site-visit), rather than the 48 samples possible if the sets were allowed to be combined, the Agency believes it is justified in using the maximum leachate values generated from L-TEC's waste in the VHS analysis. The smaller data set is not sufficient to allow use of any other statistical parameter in the evaluation.

The commenter also cited the lack of information in the RCRA public docket for 2-chlorophenol and 2,4-dinitrotoluene, two compounds which were evaluated in the Agency's proposal to deny L–TEC's petition. The Agency agrees with the commenter that documentation of the presence of these compounds in L–TEC's waste does not exist, and that the values set forth in Table 5 (51 FR 37152, October 17, 1986) do not reflect the actual concentrations of these compounds in L–TEC's waste. The Agency apologizes for what appears to be a misinterpretation of analytical data which were being generated on the site-visit samples at the time of the original evaluation. These compounds, then, will not serve as a basis for the final evaluation of L–TEC's waste.

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[1] In the same Federal Register notice, the Agency also proposed to deny the exclusion of specific wastes generated by the following petitioners: American Telephone and Telegraph, located in North Andover, Massachusetts (see 51 FR 37142); Diamond Shamrock Refining and Marketing Co., located in Sunray, Texas (see 51 FR 37143); Hill Petroleum Co., located in Houston, Texas (see 51 FR 37146); Murphy Oil USA, Inc., located in Superior, Wisconsin (see 51 FR 37152); New Departure Hyatt, located in Sandusky, Ohio (see 51 FR 37154); Virginia Chemicals Inc., located in Bucks, Alabama (see 52 FR 37156); Titan Oil Co., located in Indianapolis, Indiana (see 51 FR 37157); and Virginia Chemicals Inc., located in Leeds, Virginia (see 51 FR 37160). The Agency has addressed these proposed decisions in separate Federal Register notices.

[2] See the Agency's justification given in 51 FR 37151, n. 27 (October 17, 1986).

[3] See 51 FR 37151, n. 29 (October 17, 1986).

[4] See Morse, M., J. Warren, and W. Sproat, 1986. Sampling and analysis for delisting data verification/delisting spot checks. From Proceedings of the Second U.S. EPA Symposium on Solid Waste Testing and Quality Assurance, July 15-18, 1986. Washington, DC (copy provided in public docket for this notice). This paper provides some initial guidance on the factors which the Agency believes may be important in using non-parametric statistical techniques to determine the sample size that will allow the use of values other than the maximum in the VHS analyses. The Agency intends to publish more formal guidance on this issue in the future.

[5] The results of statistical testing used to identify the difference between data sets is in the public docket for this notice

C. Final Agency Decision

For the reasons stated in the proposal, and in the Agency's response to public comments, the Agency believes that the impounded electroplating wastewater treatment sludges at L–TEC's facility are hazardous and as such should be regulated under the Federal hazardous waste management program. The Agency believes that the impounded sludges exhibit the potential for nickel to leach from the waste and cause ground water contamination. The Agency, therefore, is denying a final exclusion to L–TEC Welding and Cutting Systems, located in Ashtabula, Ohio, for the wastes contained in four impoundments at its facility. By this action, the Agency also withdraws the temporary exclusion for these wastes. The impounded wastes are considered hazardous and subject to regulation under 40 CFR Parts 262 through 268.

II. Effective Date

The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This is not the case, however, for the petitioner included in this notice having its temporary exclusion revoked and final exclusion denied. This facility will have to revert back to handling its wastes as it did before being granted the exclusion (*i.e.*, they must handle their waste as hazardous). This petitioner will need some time to come into compliance with the RCRA hazardous waste management system. Accordingly, the effective date of the revocation of this temporary exclusion and denial is six months after publication of this final rule in the **Federal Register**.

III. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This final rule, which would revoke a temporary exclusion and deny a petition from one facility is not major. The affect of this final rule would increase the overall costs for this facility which currently has a temporary exclusion that is being revoked and denied. The actual cost to this company, however, would not be significant. In particular, in calculating the amount of waste that is generated by this one facility that currently has a temporary exclusion and considering a disposal cost of $300/ton, the increased cost to this facility is approximately $2.7 million, well under the $100 million level constituting a major regulation. This is not a major regulation; therefore, no Regulatory Impact Analysis is required.

IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. §§ 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will have the effect of increasing overall waste disposal costs. This rule only affects one facility, therefore, the overall economic impact on small entities is small. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Dated: November 7, 1986.

J.W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 86–25713 Filed 11–13–86; 8:45 am]

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40 CFR Part 261

[SW–FRL–3110–9]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is granting final exclusions for the solid wastes generated at four particular generating facilities from the lists of hazardous wastes contained in 40 CFR §§ 261.31 and 261.32. This action responds to delisting petitions received by the Agency under 40 CFR 260.20 and § 260.22 to exclude wastes on a "generator-specific" basis from the hazardous waste lists. The effect of this action is to exclude certain wastes generated at these facilities from listing as hazardous wastes under 40 CFR Part 261.

EFFECTIVE DATE: November 14, 1986.

ADDRESSES: The public docket for this final rule is located in the Sub-basement, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC., 20460, and is available for public viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475–9327 or Kate Blow at (202) 382–4675 for appointments. The reference number for this docket is "F–86–ENEF–FFFFF". The public may copy a maximum of 50 pages of materials from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, toll-free at (800) 424–9346, or (202) 382–3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. 20460, (202) 382–5096.

SUPPLEMENTAL INFORMATION: On October 15, 1986, EPA proposed to exclude specific wastes generated by four facilities, including: (1) Envirite Corporation, located in Canton, Ohio (see 51 FR 36709); (2) Envirite Corporation, located in Harvey, Illinois (see 51 FR 36714); (3) Envirite Corporation, located in Thomaston, Connecticut (see 51 FR 36718); and Envirite Corporation, located in York, Pennsylvania (see 51 FR 36724). These actions were taken in response to petitions submitted by these companies (pursuant to 40 CFR Parts 260.20 and 260.22) to exclude their wastes from hazardous waste control. In their petitions, these companies have argued that certain of their wastes were non-hazardous based upon the criteria for which the wastes were listed. The petitioners have also provided information which has enabled the Agency to determine whether any other toxicants are present in the wastes at levels of regulatory concern. The purpose of today's actions is to make final the four proposals and to make our decisions effective immediately. More specifically, today's rule allows all four of these facilities to manage their petitioned wastes as non-hazardous. The exclusions remain in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[1] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.

The Agency notes that the petitioners granted final exclusions in today's **Federal Register** have been reviewed for both the listed and non-listed criteria. As required by the Hazardous and Solid Waste Amendments of 1984, the Agency evaluated the wastes for the listed constituents of concern as well as for all other factors (including additional constituents) for which there was a reasonable basis to believe that they could cause the waste to be hazardous. These petitioners have demonstrated through submission of raw materials data, EP toxicity test data for all EP toxic metals, and test data on the four hazardous waste characteristics that their wastes do not exhibit any of the hazardous waste characteristics, and do not contain any other toxicants at levels of regulatory concern.

Limited Effect of Federal Exclusion

States are allowed to impose requirements that are more stringent than EPA's pursuant to section 3009 of RCRA. State programs thus need not include those Federal provisions which exempt persons from certain regulatory requirements. For example, States are not required to provide a delisting mechanism to obtain final authorization. If the State program does include a delisting mechanism, however, that mechanism must be no less stringent than that of the Federal program for the State to obtain and keep final authorization.

As a result of enactment of the Hazardous and Solid Waste Amendments of 1984, any States which has delisting programs prior to the Amendments must become reauthorized under the new provisions.[2] To date only one State (Georgia) has received approval for their delisting program. The final exclusions granted today, therefore, are issued under the Federal program. States, however, can still decide whether to exclude these wastes under their State (non-RCRA) program. Since a petitioner's waste may be regulated by a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

The exclusions made final here involve the following petitioners:

Envirite Corporation, Canton, Ohio;
Envirite Corporation, Harvey, Illinois;
Envirite Corporation, Thomaston, Connecticut; and
Envirite Corporation, York, Pennsylvania.

I. Envirite Corporation

A. Proposed Exclusion

Envirite Corporation (Envirite) (previously known as Liqwacon Corporation), located in Canton, Ohio, has petitioned the Agency to exclude its treatment residue from EPA Hazardous Waste Nos. F006, F007, F008, F009, F011, F012, F019, K002, K003, K004, K005, K006, K007, K008, K061, K062, K069, and K100, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by Envirite substantiate their claim that the listed constituents of concern, although present, are essentially present in an immobile form. Furthermore, additional data provided by Envirite indicate that no other hazardous constituents are present in the waste at levels of regulatory concern, and that the waste does not exhibit any of the characteristics of hazardous waste. (See 51 FR 36709–36714, October 15, 1986 for a more detailed explanation of why EPA proposed to grant Envirite's petition.)

B. Agency Response to Public Comments

One commenter indicated that section 3010 of RCRA (as amended by HSWA) allows the regulated community six months to come into compliance with the hazardous waste management system. The commenter claimed that since the Agency did not previously specify limitations on trace organics in the temporary exclusion, that affected petitioners should be allowed the opportunity to implement an effective organic prescreening program and develop on-site laboratory capability.

The Agency agrees with the commenter and will implement today only those conditions which involve parameters which were originally part of the limitations of the temporary exclusion (*i.e.*, arsenic, barium, cadmium, chromium, lead, mercury, selenium, silver, nickel, and cyanides). The petitioner will have six months from the date of publication of this final rule in the **Federal Register** to satisfy the conditions involving organic parameters in their final conditional exclusion.

The Agency notes that, since the draft of "EPA Support Document: Regulatory Standards and Solubilities of Constituents of Concern" (dated June 1986) has undergone recent updates, the proposed maximum acceptable levels for specific organics in Envirite's contingency plan (item #3) have been modified slightly. Envirite will be required to test for the total content of the organic toxicants listed below. If the total content of any of these constituents exceeds the maximum levels listed below, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270.

Compound	Maximum acceptable levels (ppm)
Anthracene	[1] 76.8
1,2-Diphenyl hydrazine	0.001
Methylene chloride	8.18
Methyl ethyl ketone	[2] 326
n-Nitrosodiphenylamine	11.9
Phenol	1,568
Tetrachloroethylene	0.188
Trichloroethylene	0.592

[1] The maximum acceptable level cited in the proposed exclusion was based on a solubility of 0.05 ppm. The Agency currently used a solubility value of to 0.045 ppm during petition evaluation.

[2] The maximum acceptable level for methyl ethyl ketone was reported incorrectly in the proposed exclusion.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the residue from the treatment of multiple metal-bearing waste streams from industrial clients is non-hazardous and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a conditional exclusion to Envirite for its treatment residue (EPA Hazardous Waste Nos. F006, F007, F008, F009, F011, F012, F019, K002, K003, K004, K005, K006, K007, K008, and K062) currently generated at Envirite's Canton, Ohio facility. The conditions which must be met were outlined in a contingency testing program in the proposed exclusion. The Agency notes that due to insufficient analytical data this exclusion does not apply to EPA

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[1] The current exclusions apply only to the processes covered by the original demonstrations. A facility may file a new petition if it alters its process. Should such a change occur, the facility must treat its waste as hazardous until a new exclusion is granted.

[2] RCRA Reauthorization Statutory Interpretation #4: Effect of Hazardous and Solid Waste Amendments of 1984 on State Delisting Decisions, May 16, 1985, Jack W. McGraw, Acting Assistant Administrator for the Office of Solid Waste and Emergency Response.

Hazardous Waste Nos. K061, K069, and K100. In addition, this exclusion does not apply to the proposed process additions described in the petition as recovery (including crystallization, electrolytic metals recovery, evaporative recovery, and ion exchange), additional sludge drying capacities, and wet air oxidation. If Envirite desires to delist these waste types or implement these process additions, they must submit a new petition providing the necessary analytical data demonstrating the effectiveness of the treatment process in rendering the wastes non-hazardous. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[3] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.)

II. Envirite Corporation

A. Proposed Exclusion

Envirite Corporation (Envirite), (previously known as Liqwacon Corporation), located in Harvey, Illinois, has petitioned the Agency to exclude its treatment residue from EPA Hazardous Waste Nos. F006, F007, F008, F009, F011, F012, F019, K002, K003, K004, K005, K006, K007, K008, K061, K062, K069, and K100, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by Envirite substantiate their claim that the listed constituents of concern, although present, are essentially present in an immobile form. Furthermore, additional data provided by Envirite indicate that no other hazardous constituents are present in the waste at levels of regulatory concern, and that the waste does not exhibit any of the characteristics of hazardous waste. (See 51 FR 36714–36718, October 15, 1986 for a more detailed explanation of why EPA proposed to grant Envirite's petition.)

B. Agency Response to Public Comments

See "Agency Response to Public Comments" for the Envirite, Canton, Ohio facility in today's notice.

The Agency notes that the regulatory standards for butyl benzyl phthalate, dibutyl phthalate, and ethyl benzene were reported incorrectly in Table 7 of the proposed exclusion (see 51 FR 36717). The regulatory standards for butyl benzyl phthalate, dibutyl phthalate, and ethyl benzene are 9, 3.5, and 3.5 ppm, respectively. In addition, the Agency notes that the predicted leachate concentration using the baseline equation of the Organic Leachate Model for bis(2-ethyl hexyl)phthalate and di-n-octyl phthalate should have been reported in the proposed exclusion as 0.0071 and 0.0044 ppm, respectively. The calculated compliance point concentrations for bis(2-ethyl hexyl)phthalate and bi-n-octyl phthalate should have been reported as 0.0011 and 0.0007 ppm, respectively. The Agency notes that these calculated compliance point concentrations are below the Agency's regulatory standards for these two constituents and, therefore, these constituents are not of regulatory concern.

The Agency notes that, since the draft of "EPA Support Document: Regulatory Standards and Solubilities of Constitutents of Concern" (dated June 1986) has undergone recent updates, the proposed maximum acceptable levels for specific organics in Envirite's contingency plan (item #3) have been modified slightly. Envirite will be required to test for the total content of the organic toxicants listed below. If the total content of any of these constituents exceeds the maximum levels listed below, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270.

Compound	Maximum acceptable levels (ppm)
Anthracene	[1] 76.8
1,2-Diphenyl hydrazine	0.001
Methylene chloride	8.18
Methyl ethyl ketone	[2] 326
n-Nitrosodiphenylamine	11.9
Phenol	1,566
Tetrachloroethylene	0.188
Trichloroethylene	0.592

[1] The maximum acceptable level cited in the proposed exclusion was based on a solubility of 0.05 ppm. The Agency currently used a solubility value of 0.045 ppm during petition evaluation.

[2] The maximum acceptable level for methyl ethyl ketone was reported incorrectly in the proposed exclusion.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes what the residue from the treatment of multiple metal-bearing waste streams from industrial clients is non-hazardous and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a conditional exclusion to Envirite for its treatment residue (EPA Hazardous Waste Nos. F006, F007, F008, F009, F011, F012, F019, K002, K003, K004, K005, K006, K007, K008, and K062) currently generated at Envirite's Harvey, Illinois facility. The conditions which must be met were outlined in a contingency testing program in the proposed exclusion. The Agency notes that due to insufficient analytical data this exclusion does not apply to EPA Hazardous Waste Nos. K061, K069, and K100. In addition, this exclusion does not apply to the proposed process additions described in the petition as recovery (including crystallization, electrolytic metals recovery, evaporative recovery, and ion exchange), additional sludge drying capacities, and wet air oxidation. If Envirite desires to delist these waste types or implement these process additions, they must submit a new petition providing the necessary analytical data demonstrating the effectiveness of the treatment process in rendering the wastes non-hazardous. (The Agency notes that the exclusion remains in effect unless the waste varies from the originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process.[4] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.

III. Envirite Corporation

A. Proposed Exclusion

Envirite Corporation (Envirite), (previously known as Liqwacon Corporation), located in Thomaston, Connecticut, has petitioned the Agency to exclude its treatment residue from EPA Hazards Waste Nos. F006, F007, F008, F009, F011, F012, F019, F002, K003, K004, K005, K006, K007, K008, K061, K062, K069, and K100, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by Envirite substantiate their claim that the listed constitutents of concern, although present, are essentially present in an immobile form. Furthermore, additional data provided by Envirite indicate that no other hazardous constituents are present in the waste at levels of regulatory concern, and that the waste does not exhibit any of the characteristics of hazardous waste. (See 51 FR 36718–36724, October 15, 1986 for a more detailed explanation of why EPA proposed to grant Envirite's petition.)

B. Agency Response to Public Comments

See "Agency Response to Public Comments" for Envirite, Canton, Ohio facility in today's notice.

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[3] See footnote 1.

[4] See footnote 1.

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The Agency notes that the regulatory standard for methylene chloride was reported incorrectly in Table 12 of the proposed exclusion (see FR 36722). The regulatory standard for methylene chloride is 0.056 ppm. The Agency further notes that the constituent methyl isobutyl ketone was omitted from Table 12. The predicted leachate concentration using the baseline equation of the Organic Leachate Model, the calculated compliance point concentration, and the regulatory standard for methyl isobutyl ketone, are, respectively, 0.079, 0.012, and 2 ppm. The Agency notes that the calculated compliance point concentration for methyl isobutyl ketone does not exceed the Agency's regulatory standard and, therefore, this constituent is not of regulatory concern.

The Agency notes that, since the draft of "EPA Support Document: Regulatory Standards and Solubilities of Constituents of Concern" (dated June 1986) has undergone recent updates, the proposed maximum acceptable levels for specific organics in Envirite's contingency plan (item #3) have been modified slightly. Envirite will be required to test for the total content of the organic toxicants listed below. If the total content of any of these constituents exceeds the maximum levels listed below, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270.

Compound	Maximum acceptable levels (ppm)
Anthracene	[1] 76.8
1,2-Diphenyl hydrazine	0.001
Methylene chloride	8.18
Methyl ethyl ketone	[2] 326
n-Nitrosodiphenylamine	11.9
Phenol	1,566
Tetrachloroethylene	0.188
Trichloroethylene	0.592

[1] The maximum acceptable level cited in the proposed exclusion was based on a solubility of 0.05 ppm. The Agency currently uses a solubility value of to 0.045 ppm during petition evaluation.

[2] The maximum acceptable level for methyl ethyl ketone was reported incorrectly in the proposed exclusion.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the residue from the treatment of multiple metal-bearing waste streams from industrial clients is non-hazardous and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a conditional exclusion to Envirite for its treatment residue (EPA Hazardous Waste Nos. F006, F007, F008, F009, F011, F012, F019, K002, K003, K004, K005, K006, K007, K008, and K062) from its original waste treatment system and the proposed solids treatment system currently generated at Envirite's Thomaston, Connecticut, facility. The conditions which must be met were outlined in a contingency testing program in the proposed exclusion. The Agency notes that due to insufficient analytical data this exclusion does not apply to EPA Hazardous Waste Nos. K061, K069, and K100. In addition, this exclusion does not apply to the proposed process additions described in the petition as recovery (including crystallization, electrolytic metals recovery, evaporative recovery, and ion exchange), additional sludge drying capacities, and wet air oxidation. If Envirite desires to delist these waste types or implement these process additions, they must submit a new petition providing the necessary analytical data demonstrating the effectiveness of the treatment process in rendering these wastes non-hazardous. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.,* the waste is altered as a result of changes in the manufacturing or treatment process).[5] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.

IV. Envirite Corporation

A. Proposed Exclusion

Envirite Corporation (Envirite), (previously known as Liqwacon Corporation), located in York, Pennsylvania, has petitioned the Agency to exclude its treatment residue from EPA Hazardous Waste Nos. F006, F007, F008, F009, F011, F012, F019, K002, K003, K004, K005, K006, K007, K008, K061, K062, K069, and K100, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by Envirite substantiate their claim that the listed constituents of concern, although present, are essentially present in an immobile form. Furthermore, additional data provided by Envirite indicate that no other hazardous constituents are present in the waste at levels of regulatory concern, and that the waste does not exhibit any of the characteristics of hazardous waste. (See 51 FR 36724–36728, October 15, 1986 for a more detailed explanation of why EPA proposed to grant Envirite's petition.)

B. Agency Response to Public Comments

See "Agency Response to Public Comments" for Envirite, Canton, Ohio facility in today's notice.

The Agency notes that the constituent methylene chloride was reported incorrectly in Table 3 of the proposed exclusion (see 51 FR 36726) as "methgyl chloride." The Agency also notes that the predicted leachate concentration using the baseline equation of the Organic Leachate Model and the calculated compliance point concentration for ethyl benzene should have been reported as 0.0041 and 0.0006 ppm, respectively. The calculated compliance point concentration for ethyl benzene does not exceed the Agency's regulatory standard and, therefore, this constituent is not of regulatory concern.

The Agency notes that, since the draft of "EPA Support Document: Regulatory Standards and Solubilities of Constituents of Concern" (dated June 1986) has undergone recent updates, the proposed maximum acceptable levels for specific organics in Envirite's contingency plan (item #3) have been modified slightly. Envirite will be required to test for the total content of the organic toxicants listed below. If the total content of any of these constituents exceeds the maximum levels listed below, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270.

Compound	Maximum acceptable levels (ppm)
Anthracene	[1] 76.8
1,2-Diphenyl hydrazine	0.001
Methylene chloride	8.18
Methyl ethyl ketone	[2] 326
n-Nitrosodiphenylamine	11.9
Phenol	1,566
Tetrachloroethylene	0.188
Trichloroethylene	0.592

[1] The maximum acceptable level cited in the proposed exclusion was based on a solubility of 0.05 ppm. The Agency currently uses a solubility value of 0.045 ppm during petition evaluation.

[2] The maximum acceptable level for methyl ethyl ketone was reported incorrectly in the proposed exclusion.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the residue from the treatment of multiple metal-bearing waste streams from industrial clients is non-hazardous and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a conditional exclusion to Envirite for its treatment residue (EPA Hazardous Waste Nos. F006, F007, F008, F009, F011, F012, F019, K002, K003, K004, K005, K006, K007, K008, and K062) from its original waste treatment system and the proposed solids treatment system currently generated at Envirite's York, Pennsylvania facility. The conditions which must be met were outlined in a contingency testing program in the proposed exclusion. The Agency notes that due to insufficient analytical data this exclusion does not apply to EPA Hazardous Waste Nos. K061, K069, and K100. In addition, this exclusion does not apply to the proposed process additions described in the petition as recovery (including crystallization, electrolytic metals recovery, evaporative recovery, and ion exchange), additional sludge drying capacities, and wet air oxidation. If Envirite desires to delist these waste types or implement these process additions, they must submit a new petition providing the necessary analytical data demonstrating the effectiveness of the treatment process in rendering these wastes non-hazardous. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[8] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.

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[5] See footnote 1.

V. Effective Date

This rule is effective immediately, inlcuding the testing requirements for heavy metals and cyanide. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case for heavy metals and cyanide testing since the petitioner has had ample time to prepare this condition. Accordingly, the rule and the testing conditions for heavy metals and cyanide are effective immediately. These reasons also provide a basis for making this portion of this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. § 553(d). This is not the case, however, for the four facilities included in this notice with respect to the conditional testing requirements for organics. These facilities will need some time to implement an effective organic prescreening program and develop on-site laboratory capability. Accordingly, the effective date of the organic testing conditions is six months after the publication of this rule in the **Federal Register**.

VI. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This grant of exclusions is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at specific facilities from EPA's lists of hazardous wastes, thereby enabling these facilities to treat their wastes as non-hazardous.

VII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effects will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this final regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

VIII. List of Subjects in 40 CFR Part 261

Hazardous wastes, Recycling.

Dated: November 6, 1986.

Jeffery D. Denit,

Acting Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Appendix IX, add the following wastestreams in alphabetical order to tables 1 and 2 to read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

Table 1.—Wastes Excluded From Non-specific Sources

Facility	Address	Waste description
		* * * * * * *
Envirite Corporation.	Canton, Ohio; Harvey, Illinois; Thomaston, Connecticut; and York, PA.	Dewatered wastewater sludges (EPA Hazardous Waste No. F006) generated from electroplating operations; spent cyanide plating solutions (EPA Hazardous Waste No. F007) generated from electroplating operations; plating bath residues from the bottom of plating baths (EPA Hazardous Waste No. F008) generated from electroplating operations where cyanides are used in the process; spent stripping and cleaning bath solutions (EPA Hazardous Waste No. F009) generated from electro-plating operations where cyanides are used in the process; spent cyanide solutions from salt bath pot cleaning (EPA Hazardous Waste No. F011) generated from Metal heat treating operations; quenching wastewater treatment sludges (EPA Hazardous Waste No. F012) generated from metal heat treating where cyanides are used in the process; wastewater treatment sludges (EPA Hazardous Waste No. F019) generated from the chemical conversion coating of aluminum after November 14, 1986. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern, the facility must implement a contingency testing program for the petitioned wastes. This testing program must meet the following conditions for the exclusions to be valid: (1) Each batch of treatment residue must be representatively sampled and tested using the EP Toxicity test for arsenic, barium, cadmium, chromium, lead, selenium, silver, mercury, and nickel. If the extract concentrations for chromium, lead, arsenic, and silver exceed 0.315 ppm; barium levels exceed 6.3 ppm; cadmium and selenium exceed 0.063 ppm; mercury exceeds 0.0126 ppm; or nickel levels exceed 2.205 ppm, the waste must be re-treated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. (2) Each batch of treatment residue must be tested for reactive and leachable cyanide. If the reactive cyanide levels exceed 250 ppm or leachable cyanide levels (using the EP Toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be re-treated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. (3) Each batch of waste must be tested for the total content of specific organic toxicants. If the total content of anthracene exceeds 76.8 ppm, 1,2-diphenyl hydrazine exceeds 0.001 ppm, methylene chloride exceeds 8.18 ppm, methyl ethyl ketone exceeds 326 ppm, n-nitrosodiphenylamine exceeds 11.9 ppm, phenol exceeds 1,566 ppm, tetrachloroethylene exceeds 0.188 ppm, or trichloroethylene exceeds 0.592 ppm, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 and 265 and the permitting standards of 40 CFR Part 270. (4) A grab sample must be collected from each batch to form one monthly composite sample which must be tested using GC/MS analysis for the compounds listed in #3 above as well as the remaining organics on the priority pollutant list. (See 47 FR 52309 November 19, 1982, for a list of the priority pollutants.)

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[8] See footnote 1.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(5) The data from conditions 1–4 must be kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the Administrator by certified mail semi-annually. The Agency will review this information and if needed will propose to modify or withdraw the exclusion. The organics testing described in conditions 3 and 4 above are not required until six months from the date of promulgation. The Agency's decision to conditionally exclude the treatment residue generated from the wastewater treatment systems at these facilities applies only to the wastewater and solids treatment systems as they presently exist as described in the delisting petition. The exclusion does not apply to the proposed process additions described in the petition as recovery including crystalization, electrolytic metals recovery, evaporative recovery, and ion exchange.
		• • • • • •

TABLE 2—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
•	•	• • • • •
Envirite Corporation	Canton, Ohio; Harvey, Illinois; Thomaston, Connecticut; and York PA.	Spent pickle liquor (EPA Hazardous Waste No. K062) generated from steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332); wastewater treatment sludge (EPA Hazardous Waste No. K002) generated from the production of chrome yellow and orange pigments; wastewater treatment sludge (EPA Hazardous Waste No. K003) generated from the production of molybdate orange pigments; wastewater treatment sludge (EPA Hazardous Waste No. K004) generated from the production of zinc yellow pigments; wastewater treatment sludge (EPA Hazardous Waste No. K005) generated from the production of chrome green pigments; wastewater treatment sludge (EPA Hazardous Waste No. K006) generated from the production of chrome oxide green pigments (anhydrous and hydrated); wastewater treatment sludge (EPA Hazardous Waste No. K007) generated from the production of iron blue pigments; oven residues (EPA Hazardous Waste No. K008) generated from the production of chrome oxide green pigments after November 14, 1986. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern, the facility must implement a contingency testing program for the petitioned wastes. This testing program must meet the following conditions for the exclusions to be valid: (1) Each batch of treatment residue must be representatively sampled and tested using the EP Toxicity test for arsenic, barium, cadmium, chromium, lead, selenium, silver, mercury, and nickel. If the extract concentrations for chromium, lead, arsenic, and silver exceed 0.315 ppm; barium levels exceed 6.3 ppm; cadmium and selenium exceed 0.063 ppm; mercury exceeds 0.0126 ppm; or nickel levels exceed 2.205 ppm, the waste must be re-treated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. (2) Each batch of treatment residue must be tested for reactive and leachable cyanide. If the reactive cyanide levels exceed 250 ppm; or leachable cyanide levels (using the EP Toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be re-treated or managed and disposed as hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR 270. (3) Each batch of waste must be tested for the total content of specific organic toxicants. If the total content of anthracene exceeds 76.8 ppm, 1,2-diphenyl hydrazine exceeds 0.001 ppm, methylene chloride exceeds 8.18 ppm, methyl ethyl ketone exceeds 326 ppm, n-nitrosodiphenylamine exceeds 11.9 ppm, phenol exceeds 1,566 ppm, tetrachloroethylene exceeds 0.188 ppm, or trichloroethylene exceeds 0.592 ppm, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. (4) A grab sample must be collected from each batch to form one monthly composite sample which must be tested using GC/MS analysis for the compounds listed in #3 above as well as the remaining organics on the priority pollutan list. (See 47 FR 52309, November 19, 1982, for a list of the priority pollutants.) (5) The data from conditions 1–4 must be kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the Administrator by certified mail semi-annually. The Agency will review this information and if needed will propose to modify or withdraw the exclusion. The organics testing described in conditions 3 and 4 above is not required until six months from the date of promulgation. The Agency's decision to conditionally exclude the treatment residue generated from the wastewater treatment systems at these facilities applies only to the wastewater and solids treatment systems as they presently exist as described in the delisting petition. The exclusion does not apply to the proposed process additions described in the petition as recovery, including crystalization, electrolytic metals recovery, evaporative recovery, and ion exchange.
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[FR Doc. 86–25706 Filed 11–13–86; 8:45am]

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40 CFR Parts 712 and 716

[OPTS–82031; FRL–3109–6]

Preliminary Assessment Information and Health and Safety Data Reporting; Addition of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Interagency Testing Committee (ITC) in its Nineteenth Report to EPA recommended that EPA give priority consideration to four chemical substances in determining whether to require testing under section 4 of the Toxic Substances Control Act (TSCA). To assist EPA in its determination of which, if any, tests are needed for these substances, EPA is adding the four chemical substances to two information gathering rules: The TSCA section 8(a) Preliminary Assessment Information rule (PAIR), and the TSCA section 8(d) Health and Safety Data Reporting Rule. The substances being given priority consideration are: 2-Butanone, oxime, CAS No. 96–29–7; 2-Propanol, CAS No. 67–63–0; Propane, 2-methoxy-2-methyl-, CAS No. 1634–04–4; Acetamide, N-[5-[bis[2-(acetyoxy)ethyl]-amino]-2-[(2-bromo-4,6-dinitrophenyl) azo]-4-ethoxyphenyl]-, CAS No. 3956-55-6.

DATE: This rule shall become effective on December 15, 1986.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St. SW., Washington, DC 20460 (202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Background

Section 4(e) of TSCA established the ITC and authorized it to recommend to EPA substances and mixtures to be given priority consideration in requiring testing under section 4(a). For some of these substances the ITC may designate that EPA must respond to its recommendations within 12 months. In this time, EPA must either initiate a rulemaking to test the substance or issue for publication in the **Federal Register** its reasons for not doing so. Elsewhere in today's **Federal Register**, EPA is announcing the receipt of the Nineteenth Report of the ITC, which was transmitted to EPA on October 31, 1986. The Nineteenth Report revises and updates the Committee's priority list of chemicals and adds four substances to the section 4(e) priority list. This rule adds these substances to the PAIR and the section 8(d) Health and Safety Data Reporting Rule which will require reporting of volume, and use, exposure, and unpublished health and safety data to EPA. In addition, one chemical substance which had been recommended with intent-to-designate

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by the ITC in its Eighteenth Report, phosphoric acid, tributyl ester, CAS No. 126-73-8, is now designated for response within 12 months. This revision does not trigger any new reporting requirements because following the recommendation with intent-to-designate, phosphoric acid, tributyl ester, was added to the PAIR and the section 8(d) Health and Safety Data Reporting Rule, as published in the **Federal Register** of May 19, 1986 (51 FR 18323).

To assist the Agency in responding to ITC recommendations, EPA has developed two model information gathering rules which provide for the "automatic" addition of ITC priority list substances. Whenever EPA announces the receipt of an ITC report, EPA may, at the same time without notice and comment, amend the two model information gathering rules by adding the recommended substances. The amendment adding these substances to the PAIR and the Health and Safety Data Reporting Rule becomes effective 30 days after publication.

EPA issued PAIR under section 8(a) of TSCA (15 U.S.C. 2607(a)), and it is codified at 40 CFR Part 712. This model section 8(a) rule established standard reporting requirements for manufacturers and importers of the chemicals listed in the rule. These manufacturers and importers are required to submit a one-time report on general volume, end use, and exposure information using the Preliminary Assessment Information Manufacturer's Report (EPA Form 7710-35). EPA uses this model section 8(a) rule to gather current information on substances of concern quickly.

EPA issued the model Health and Safety Data Reporting Rule under section 8(d) of TSCA (15 U.S.C. 2607(d)), and it is codified at 40 CFR Part 716. The section 8(d) model rule requires past, current, and prospective manufacturers, importers, and processors of listed chemical substances and mixtures to submit to EPA copies and lists of unpublished health and safety studies on the listed substances that they manufacture, import, or process. These studies provide EPA with useful information and have provided significant support for EPA's decisionmaking under TSCA sections 4, 5, 6, 8, and 9.

II. Chemicals To Be Added

The newly added ITC priority list substances for which reporting is required under 40 CFR Parts 712 and 716 are listed below by ascending Chemical Abstract Service (CAS) Registry Number:

CAS No.	Name
96-29-7	2-Butanone, oxime
67-63-0	2-Propanol
1634-04-4	Propene, 2-methoxy-2-methyl-
3956-55-6	Acetamide, N-[5-[bis[2-(acetyloxy)ethyl]-amino]-2-[(2-bromo-4,6-dinitrophenyl)azo]-4-ethoxyphenyl]-

III. Reporting Requirements

A. Preliminary Assesstment Information Rule

All persons who manufactured or imported the chemicals named in this rule during their latest complete corporate fiscal year must submit a Preliminary Assessment Information Manufacturer's Report (EPA Form No. 7710-35) for each manufacturing or importing site at which they manufactured or imported a named substance. A separate form must be completed for each chemical and submitted to the Agency no later than February 12, 1987. Persons who have previously and voluntarily submitted a Manufacturer's Report to the ITC or EPA should read § 712.30(a)(3). This section allows these persons to submit a copy of the original Report to EPA or to notify EPA by letter of their desire to have this submission accepted in lieu of a current data submission.

Complete details of the reporting requirements, including exemptions and a facsimile of the reporting form, are fully described in 40 CFR Part 712. Copies of the form are available from the TSCA Assistance Office at the address which precedes Unit I.

B. Health and Safety Data Reporting Rule

Listed below are the general reporting requirements of the section 8(d) model rule.

1. Persons who, in the 10 years preceding the date a substance is listed, either have proposed to manufacture, import, or process, or have manufactured, imported, or processed, the listed substance must submit to EPA:

A copy of each health and safety study which is in their possession at the time the substance is listed.

2. Persons who, at the time the substance is listed, propose to manufacture, import, or process; or are manufacturing, importing, or processing the listed substance must submit to EPA:

a. A copy of each health and safety study which is in their possession at the time the substance is listed.

b. A list of health and safety studies known to them but not in their possession at the time the substance is listed.

c. A list of health and safety studies that are ongoing at the time the substance is listed and are being conducted by or for them.

d. A list of each health and safety study that is initiated after the date the substance is listed and is conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete—regardless of completion date.

3. Persons who, after the time the substance is listed, propose to manufacture, import, or process the listed substance must submit to EPA:

a. A copy of each health and safety study which is in their possession at the time they propose to manufacture, import, or process the listed substance.

b. A list of health and safety studies known to them but not in their possession at the time they propose to manufacture, import, or process the listed substance.

c. A list of health and safety studies that are ongoing at the time they propose to manufacture, import, or process the listed substance, and are being conducted by or for them.

d. A list of each health and safety study that is initiated after the time they propose to manufacture, import, or process the listed substance, and is conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete—regardless of the completion date.

Detailed guidance for reporting unpublished health and safety data is provided in 40 CFR Part 716. Also found in Part 716 are the reporting exemptions.

C. Removal of Chemicals From the Rules

Any person who believes that section 8(a) or 8(d) reporting required by this rule is unwarranted, should promptly submit to the Agency in detail the reasons for that belief. EPA may then remove the substance from this rule. When withdrawing a substance from the rule, EPA will issue a rule amendment for publication in the **Federal Register**.

IV. Release of Aggregate Data

The Agency will follow procedures for the release of aggregate statistics as prescribed in a rule related notice published in the **Federal Register** of June 13, 1983 (48 FR 27041). Included in the notice are procedures for requesting exemptions from the release of aggregate data. Exemption requests concerning the release of aggregate data on any chemical substance must be

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received by EPA no later than February 12, 1986.

V. Economic Analysis

A. Preliminary Assessment Information Rule

EPA estimates the PAIR reporting cost of this rule is $58,220. To calculate this figure EPA used the TSCA Inventory to generate a list of manufacturers and importers of these substances. Twenty companies operating at approximately 59 sites were identified as potential manufacturers and 30 companies were identified as potential importers of these substances. Since 18 of these companies qualify as small businesses as defined in 40 CFR 712.25(c), EPA estimates that 32 firms may be required to report a total of 41 reports.

Reporting cost:	
(a) 41 reports expected at $774/report	$31,734
(b) 41 familiarization cases at $636/case	$26,486
Total	$58,220

(Average cost per site, $1,420; average cost per firm $1,819)

Reporting burden (hours):	
(a) Familiarization (18 hours per site times 41 sites/importers)	738
(b) Reporting (16 hours per report times 41 reports)	656
Total	1,394
EPA cost: Processing cost=($87/report times 41 reports)	$3,567

As previously noted, small manufacturers are exempt from reporting requirements. According to available data, 18 firms could be exempted from reporting requirements. Thus, the small manufacturer exemption reduces the reporting costs burden of this rule by approximately $25,560 [18 sites times ($774+$646)].

B. Health and Safety Data Reporting Rule

EPA estimates the total reporting costs for establishing section 8(d) reporting requirements for these substances is $25,954. This cost estimate is relatively high, because the Agency is uncertain about the likely number of respondents to the rule. Although EPA has used the best available data to make its economic projections, much of the data is not current. Therefore, EPA intends to overestimate rather than underestimate the reporting burden.

Nevertheless, the cost of this proposed rule is low in comparison with its potential benefits. Health and safety studies concerning these substances would improve EPA's ability to identify potential public health and environmental problems with regard to these chemicals. The Agency therefore would be better able to determine whether further regulatory action would be necessary.

The estimated reporting costs are broken down as follows:

Initial corporate review	$15,300
Site identification	1,836
File searches at affected sites	3,564
Title listing	228
Photocopying	742
Managerial review	3,672
Ongoing reporting	612
Total	25,954

VI. Rulemaking Record

The following documents constitute the public record for this rule (docket control number OPTS-82031). All of these documents are available to the public in the OTS Reading Room from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The OTS Reading Room is located at EPA Headquarters, Rm. NE-G004, 401 M St., SW., Washington, DC.

1. This final rule.
2. The economic analyses for this rule.
3. The Nineteenth Report of the Interagency Testing Committee.

VII. Regulatory Assessment Requirements

A. Exective Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not result in an effect on the economy of $100 million or more, an increase in costs or prices, or any of the adverse effects described in the Executive Order.

This amendment was not submitted to the Office of Management and Budget (OMB) review, because the automatic listing of designated substances is provided for in 40 CFR 712.30(c) and 716.18(b)—final rules which have been previously reviewed by OMB under the terms of the Executive Order.

B. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. and have been assigned OMB control numbers 2070-0054 and 2070-0004.

List of Subjects in 40 CFR Parts 712 and 716

Chemicals, Environmental protection, Hazardous substances, Health and safety data, Recordkeeping and reporting requirements.

Dated: November 5, 1986.

Joseph J. Merenda,

Existing Chemical Assessment Division, Office of Toxic Substances.

Therefore, 40 CFR Chapter I is amended as follows:

PART 712—[AMENDED]

1. In Part 712:

a. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2607(a).

b. Section 712.30 is amended by adding paragraph (t) to read as follows:

§ 712.30 Chemical lists and reporting periods.

* * * * *

(t) A Preliminary Assessment Information Manufacturer's Report must be submitted by February 12, 1986, for each substance listed below.

CAS No.	Name
96-29-7	2-Butanone, oxime
67-63-0	2-Propanol
1634-04-4	Propane, 2-methoxy-2-methyl-
3956-55-6	Acetamide, N-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[(2-bromo-4,6-dinitrophenyl)azo]-4-ethoxyphenyl]-

* * * * *

PART 716—[AMENDED]

2. In Part 716:

a. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2607(d).

b. By adding substances to paragraph (a)(1) numerically by CAS Number, and alphabetically to paragraph (a)(2) of § 716.120 to read as follows:

§ 716.120 Substances and listed mixtures to which this subpart applies.

* * * * *

(a) * * *

(1) * * *

CAS No.	Substance	Special exemptions	Effective date	Sunset date
*	*	*	*	*
67-63-0	2-Propanol		Dec. 15, 1986	Dec. 15, 1996

CAS No.	Substance	Special exemptions	Effective date	Sunset date
*	*	*	*	*
96-29-7	2-Butanone, oxime		Dec. 15, 1986	Dec. 15, 1996.
1634-04-4	Propane, 2-methoxy-2-methyl-		Dec. 15, 1986	Dec. 15, 1996.
3956-55-6	Acetamide, *N*-[5-[bis[2-(acetyloxy) ethyl]amino]-2-[(2-bromo-4,6-dinitrophenol)azo]-4-ethoxyphenyl]-.		Dec. 15, 1986	Dec. 15, 1996.
*	*	*	*	*

(2) * *

Substance	CAS No.	Special exemptions	Effective date	Sunset date
*	*	*	*	*
Acetamide, *N*-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[(2-bromo-4,6-dinitrophenol)azo]-4-ethoxyphenyl]- .	3956-55-6		Dec. 15, 1986	Dec. 15, 1996.
*	*	*	*	*
2-Butanone, oxime	96-29-7		Dec. 15, 1986	Dec. 15, 1996.
Propane, 2-methoxy-2-methyl-	1634-04-4		Dec. 15, 1986	Dec. 15, 1996.
2-Propanol	67-63-0		Dec. 15, 1986	Dec. 15, 1996.
*	*	*	*	*

(Approved by the Office of Management and Budget under control number 2070-0004)

[FR Doc. 25581 Filed 11-13-86; 8:45 am]

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40 CFR Parts 790 and 799

[OPTS-42052C; FRL 3113-3]

Testing Consent Agreement Development for Chemical Substances; Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of public meetings.

SUMMARY: EPA has issued an Interim Final Rule that amends EPA's regulations for the development and implementation of testing requirements under section 4 of the Toxic Substances Control Act (TSCA). These amendments provide for testing under consent agreements when EPA and affected manufacturers, processors, and other interested parties achieve timely consensus on appropriate testing programs. EPA will conduct one or more public meetings to discuss the implementation of the consent agreement process to date and ways to make it more effective.

DATES: The first meeting will be held November 20, 1986. Those interested in attending any of these meetings should contact the TSCA Assistance Office address before November 19, 1986.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office, Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, (202) 554-1404.

SUPPLEMENTARY INFORMATION: Under section 4 of TSCA, EPA is authorized to promulgate rules requiring manufacturers and processors to test chemicals they manufacture or process. From 1980 though 1983, EPA negotiated agreements with industry to have testing of certain chemicals conducted voluntarily as an alternative to the lengthier process of requiring testing by rule. In 1983, EPA was sued by the Natural Resources Defense Council (NRDC vs. Ruchelshaus, 83 Civ 8844, S.D.N.Y.) on the basis that these negotiated testing agreements were not equivalent to rules and therefore illegal. The court agreed with NRDC. In 1985, NRDC and the Chemical Manufacturer's Association (CMA) suggested to EPA that a procedure be developed that would permit negotiations while preserving the key features of section 4 test rules such as enforceability.

Subsequently, EPA, CMA, and NRDC developed such a procedure in a series of public meetings. This new approach would permit negotiation between EPA, industry, and other interested parties to culminate in a consent order in which test sponsors would be subject to civil penalties if they failed to perform the agreed-upon testing. Such consent agreements would be adopted by EPA only where all interested parties agreed upon an appropriate testing program in a timely manner. Otherwise, EPA would proceed with rulemaking if it remained convinced that testing should be required. This procedure was adopted by EPA in an interim final procedural rule, published in the **Federal Register** of June 30, 1986 (51 FR 23706). EPA stated it would gain experience in using the procedure and base the final rule on both public comment and its experience. The negotiation procedure now has been used with several chemicals including 2-ethylhexanol, 3,4-dichlorobenzotrifluoride, cyclohexane, anilines, and 2,6-di *tertiary* butylphenol.

CMA has recently voiced concerns to EPA about how the procedure is working. CMA feels the procedure, as currently being implemented by EPA, does not offer enough opportunity for free exchange of ideas and exploration of options. EPA believes that issues, especially those relating to exposure to the subject chemicals, may need to be raised earlier in the discussion process to provide such flexibility. In response to these concerns, EPA will hold one or more public meetings to obtain views of interested parties on the implementation of the consent order negotiation process and ways to make it more effective.

Anyone wishing to participate in or be informed of these meetings should contact the TSCA Assistance Office as soon as possible. The first meeting will be held on November 20, 1986.

Dated: November 12, 1986.

Joseph J. Merenda,

Director, Existing Chemical Assessment Division.

[FR Doc. 86-25871 Filed 11-13-86; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 406, 408, 409, 410, 421, 431, 433, 435, and 489

[BERC-360-FC]

Medicare and Medicaid Programs; Miscellaneous Conforming Amendments

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: These rules conform certain regulations to statutory changes enacted since those regulations were last published. Some of the statutory changes were self-executing, and some have been implemented through amendments to other regulations. These rules also clarify and correct the regulations that are being conformed.

These changes are necessary to achieve internal consistency and to ensure that users of the regulations are not misled or confused by language that does not accurately reflect current statutory provisions and current HCFA policies.

DATES: 1. These amendments are effective on December 15, 1986.

2. We will give consideration to comments received by January 13, 1987.

ADDRESSES: Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-360-FC, P.O. Box 26676, Baltimore, Maryland 21207.

If you comment on information collection requirements, please send a copy of those comments directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

If you prefer, you may deliver your comments to Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

In commenting, please refer to file code BERC-360-FC.

Comments will be available for public inspection as they are received, beginning approximately three weeks from today, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC 20201, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

FOR FURTHER INFORMATION CONTACT: Luisa V. Iglesias, (202) 245-0383.

SUPPLEMENTARY INFORMATION: These amendments conform HCFA regulations to statutory changes enacted since the particular sections were last published. Many of the statutory changes are self-executing, that is, are so clear and specific that their provisions can be put into effect without further elaboration through formal rules. Others have been implemented through changes in the basic regulations for each particular policy area. In both cases, it is desirable to conform related regulations so that users will not be misled or confused by content that fails to reflect changes that have already been made in statutes or other regulations. When the regulations that need to be conformed contain outdated material, confusing language, or incorrect cross-references, we have also revised them to clarify and correct.

Most of the statutory provisions reflected in the conforming amendments are contained in four laws:

1. The Omnibus Reconciliation Act of 1980 (Pub. L. 96-499) of December 5, 1980.
2. The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) of August 13, 1981.
3. The Tax Equity and Fiscal Responsibility Act (Pub. L. 97-248) of September 3, 1982.
4. The Deficit Reduction Act of 1984 (Pub. L. 98-369) of July 18, 1984.

Other laws are identified where appropriate.

The conforming changes were needed primarily for the Medicare supplementary medical insurance (SMI) program. Accordingly, it is the SMI regulations in Subpart B of 42 CFR Part 405 (most of which were last published between 1971 and 1978) that have undergone the most extensive revision.

In 1983 we published final regulations (48 FR 12526 of March 25, 1983) that established two new parts: Part 408—Medicare Eligibility and Entitlement, and Part 409—Medicare Benefits, Limitations, and Exclusions. We used the new parts to simplify and clarify hospital insurance rules and to incorporate changes required by 13 statutory provisions enacted after those rules were published.

To continue this reorganization of our Medicare rules, which aims to assign a separate part for each major aspect of the program, we have made the following changes:

- Part 408 is redesignated as Part 406—Hospital Insurance Eligibility and Entitlement.
- Part 407 is reserved for SMI Eligibility, Enrollment, and Entitlement.
- Part 408 is reserved for SMI premiums.
- (Part 409 remains unchanged but would be limited to its current content: hospital insurance benefits).
- The rules pertaining to SMI benefits are redesignated as a new Part 410.
- Part 411 is reserved for Exclusions from Medicare Payment.

The principal statutory and policy changes and the corresponding conforming changes in the regulations are discussed below in relation to specific program and policy areas.

I. Medicare Program

A. Home Health Services

1. Statutory Provisions (Pub. L. 96-499 of 1980)

Section 930 affects home health services, which are covered under both Medicare Part A hospital insurance and Medicare Part B supplementary medical insurance. Section 930—

- Removed the 100-visit limitation.
- Removed the requirement, previously applicable under Medicare Part A, that the beneficiary must have had previous hospital care for the condition for which home health services were needed.
- Exempted home health services from the Part B annual deductible.

2. Conforming Changes

- To reflect the repeal of the 100-visit limitation and of the requirement for previous hospitalization, we removed §§ 405.233, 405.239, and 409.45, and revised redesignated § 406.2 (formerly § 408.2), current § 409.43, and redesignated § 410.85 (formerly § 405.238). In revising § 409.43, we also made paragraph (a) consistent with the paragraph (b) examples, which remain unchanged.
- We also revised the redesignated § 410.160 (formerly § 405.245) to specify that the Part B deductible no longer applies to home health services.

B. Expanded Coverage

1. Statutory Provisions

a. Section 1 of Pub. L. 96-611 of September 28, 1980 provided coverage for pneumococcal pneumonia vaccine and its administration, to the extent that it is reasonable and necessary to prevent illness.

b. Sections 936 and 937 of Pub. L. 96-499 of December 5, 1980 broadened Part B (SMI) coverage (1) to include certain additional services furnished by dentists, and extend coverage of inpatient hospital care in connection with dental procedures to situations in which hospitalization is required because of the severity of the dental procedures; and (2) to include certain additional services furnished by optometrists.

c. Section 114(b) of Pub. L. 97–248 of September 3, 1982 added section 1861(s)(2)(H) to the Medicare statute to provide for coverage of services furnished to an enrollee of a participating health maintenance organization (HMO) or competitive medical plan (CMP), by a physician assistant or a nurse practitioner, or as incident to those services, if the services would be covered if furnished by a physician or as incident to a physician's services.

d. Sections 2322 through 2324 of Pub. L. 98–369 of July 18, 1984 provide for Medicare Part B coverage of—

(1) Services furnished to an enrollee of an HMO or CMP that participates in Medicare under a risk-sharing contract, by a clinical psychologist (as defined by the Secretary), and services incident to those services, if the services would be covered if furnished by a physician or as incident to a physician's services;

(2) Hepatitis B vaccine, administered to individuals who are at high or intermediate risk of contracting Hepatitis B; and

(3) Blood clotting factors furnished to hemophilia patients who are competent to use them to control bleeding without medical or other supervision, and items related to the administration of those factors.

e. Section 2325 of that same law requires the Secretary to provide that Medicare Part B payment will not be made for treatment of mycotic toenails that is performed more frequently than every 60 days, unless the medical necessity for more frequent treatment is documented by the billing physician.

The provisions for coverage of services of clinical psychologists to HMO and CMP enrollees, hepatitis B vaccine, and blood clotting factors are not entirely self-executing. We are required to define clinical psychologist, identify who are at "intermediate and high risk" of contracting Hepatitis B and define "competence to use blood clotting factors without supervision". The definition of clinical psychologist was included in final rules published on January 10, 1985 (50 FR 1314). The Hepatitis B vaccine and blood clotting factors provisions are dealt with in other regulations not yet published. The limitation on treatment of mycotic toenails had been imposed administratively in February 1984, before the statutory amendment to the same effect was enacted.

2. Conforming Changes

With one exception, the provisions that are self-executing or have been implemented as discussed above, are reflected in §§ 410.23, 410.24, 410.57, and 410.58, respectively. The limitation on treatment of mycotic toenails appears in § 405.310(1) under the exceptions to the exclusion of routine foot care.

C. Basis for Payment

1. Statutory Provisions

a. Section 233 of the Social Security Amendments of 1972 (Pub. L. 92–603) amended sections 1814(b) and 1833(a)(2) of the Act to provide that, subject to applicable deductible and coinsurance—

- Medicare payment to a "provider of services" shall generally be made on the basis of reasonable cost or customary charges, whichever is less; and
- As an exception, payment to a public provider that furnishes services free of charge or at a nominal charge to the public shall be on the basis of "fair compensation". (§ 405.455(e) of the Medicare rules defines "fair compensation" as reasonable cost.)

b. Section 2308(b) of Pub. L. 98–369, and technical amendments made by section 3(b) of Pub. L. 98–617, extended the fair compensation provision to nonpublic "providers of service" that furnish services free of charge or at a nominal charge to the public, if they demonstrate that a significant portion of their patients are low-income, and request that payment be made to them accordingly.

c. Section 942 of Pub. L. 96–499 revised the section 1833(a)(2) formula for Medicare Part B payment to a "provider of services" for most "medical and other health services".

The previous formula was 80 percent of the lesser of reasonable cost and customary charges, subject to the Part B deductible.

The new formula is the lesser of the following:

- 80 percent of the reasonable cost of the services.
- The reasonable cost of, or the customary charges for, the services, whichever is less, minus 20 percent of the customary (insofar as reasonable) charge for the services.

(Section 942 did not change the payment provisions for public providers.)

2. Conforming Changes

Although the earlier provisions were implemented by other regulations dealing with reimbursement, for the sake of clarity, some of that content is also reflected in these rules.

- A definition of "nominal charge provider" is added to §§ 409.3 and 410.2.
- Sections 409.61(d) and 489.30(a) are revised.
- In § 410.152, the content of §§ 405.240, 405.241, and 405.244 is revised to reflect statutory changes.

D. Payment for Particular Services

1. Statutory Provisions

a. *Outpatient physical therapy.* Section 935 of Pub. L. 96–499 increased, from $100 to $500 per calendar year, the amount of expenses incurred for outpatient physical therapy services furnished by a physical therapist in independent practice that may be recognized in determining amount of Medicare payment.

b. Pneumococcal vaccine. Section 1 of Pub. L. 96–611 and a later technical amendment made by section 112 of Pub. 97–248 provide for 100 percent reimbursement for pneumococcal vaccine and its administration when reasonable and necessary for the prevention of illness.

c. Radiology and pathology. Conversely, section 112 of Pub. L. 97–248 made the coinsurance provision (that is, reimbursement at 80 percent instead of 100 percent) applicable to physicians' services furnished to hospital inpatients by physicians in the field of radiology or pathology.

d. Durable medical equipment (DME)

- Section 245 of Pub. L. 92–603 (the Social Security Amendments of 1972) amended section 1833(f) of the Act of authorize the Secretary to waive the 20 percent coinsurance applicable to durable medical equipment furnished as a "medical or other health service" under Medicare Part B whenever the equipment is used equipment obtained at a price at least 25 percent less than the reasonable charge for comparable new equipment.
- Section 2321 of Pub. L 98–369 amended sections 1814, 1833, 1861, and 1866 of the Act and redesignated section 1833(f) as section 1889. The amendments substitute the term "durable medical equipment" for all references to "medical appliances" and modify the rules for payment of this benefit by requiring a 20 percent copayment by the beneficiary who receives durable medical equipment as a home health service under Part A or B. Before the effective date of section 2321 (July 18, 1984), the copayment requirement applied to DME furnished on an outpatient basis by any provider or supplier other than a home health agency. The exemption for used DME continues in effect in section 1889 (b) of

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the Act for used DME furnished as a Part B home health service.

2. Conforming Changes

a. Section 410.60 shows the increase from $100 to $500.

b. Redesignated § 410.152 (Amount of payment) and revised § 489.30 (Deductibles and coinsurance) reflect the other changes discussed above.

Note.—There have also been statutory changes that affect payment for services of independent laboratories and physician laboratories. Those changes are being implemented by other regulations (file code BERC–309–P) that would amend Subparts D and E of Part 405 of the Medicare rules. If necessary, Part 401 will be amended later, to reflect whatever final changes are made by BERC–309–F.

E. Changes Made by Other Regulations

1. Provisions of the Other Regulations

a. Ambulatory surgical center (ASC) services. Regulations published on August 5, 1982 (47 FR 34082) implemented section 934 of Pub. L. 96–499 which provides for SMI coverage and reimbursement of ambulatory surgical services.

b. Comprehensive outpatient rehabilitation facility (CORF) services. Regulations published on December 15, 1982 (47 FR 56282) implemented section 933 of Pub. L. 96–499, to provide for SMI coverage and reimbursement of CORF services. These regulations, in revising § 405.230, unintentionally omitted a rule on payment for renal dialysis services.

c. Renal dialysis services. Regulations published on May 11, 1983 (48 FR 21254) implemented section 2145 of Pub. L. 97–35, to establish, effective August 1, 1983, a method for prospective reimbursement of dialysis services to patients with end-stage renal disease (ESRD).

2. Conforming Changes

- Rules pertaining to payment for the three services discussed above are included in redesignated § 410.152—Amounts of payment.
- Redesignated § 410.150(b)(1) restores the omitted rule identified under item 1.b. above.
- In connection with payment for renal dialysis services, we removed §§ 405.690 and 405.691 because they became obsolete when prospective payment went into effect on August 1, 1983. (The removed sections provided that ESRD facilities could enter into agreements to receive special types of payment for home dialysis services.)

F. Medicare Part B (SMI) Deductibles

1. Statutory Provisions (Pub. L. 97–35)

- Section 2133 repealed the provision in the Social Security Act that permitted beneficiaries to count expenses incurred in the fourth quarter of a calendar year in meeting the Medicare Part B deductible for the following year. The provision was effective with the deductible for the calendar year 1982, with respect to expenses incurred on or after October 1, 1981.
- Section 2134 increased the Medicare Part B annual deductible from $60 to $75, effective beginning with calendar year 1982.
- Regulations published on March 25, 1983 (48 FR 12526) clarified policy regarding the blood deductible for Medicare Part A.

2. Conforming Changes

Section 410.160 reflects the statutory changes in the annual deductible. Section 410.161 incorporates by reference the content of § 409.87, the Part A blood deductible policy that applies equally to blood that is furnished by a hospital on an outpatient basis under Part B. Section 409.87, published on March 25, 1983, after notice and opportunity for public comment, reflects policy that has been in effect in practice since 1979 but had never been included in the regulations. Section 409.87 provides, in summary—

(a) That only whole blood or packed red cells are subject to the deductible;

(b) That the beneficiary is responsible for the first three units of whole blood or packed red cells; and

(c) That the hospital may not charge the beneficiary or third party for blood that is obtained at no charge other than a processing or service charge, or if the hospital or the hospital's blood supplier has received a replacement or replacement offer that meets the following two conditions:

(1) The replacement blood would not endanger the health of the recipient.

(2) The donor's health would not be endangered by making the blood donation.

Section 410.161 also specifies that, if the blood is supplied by a physician, clinic, or other supplier, the supplier who has accepted assignment of the beneficiary's claim may charge the beneficiary the reasonable charge for the first three units to the extent that those units are not replaced.

This clarifying language precludes any confusion that might arise from the previous § 405.246(b)(2):

> The amount of blood deductible is reduced to the extent that the individual replaces the blood on a pint for pint basis.

That language was misleading because the deductible—which is the amount that Medicare does *not* pay—is never "reduced". It is the individual's responsibility to pay cash or more specifically the supplier's right to charge—that is reduced when any of the first three pints of blood is replaced.

G. Payment After the Beneficiary Dies

1. Statutory provision (Pub. L. 96–499)

Section 954 amended section 1870(f) of the Social Security Act to provide that if an individual who received covered medical and other health care services dies without assigning the claim to the physician or other supplier, and the bill has not been paid—

a. Medicare pays the person or persons who furnished the services if they agree to accept the reasonable charge as the full charge for the services.

b. If those who furnished the services do not agree as indicated above, Medicare pays, on the basis of an itemized bill, any person who:

- Assumes legal obligation to pay for the services; and
- Files a request for payment with such evidence of the legal obligation as may be required in regulations.

2. Conforming Changes

The provisions of section 954 are set forth in paragraph (c)(2) of § 405.1684. Because § 405.1683 deals with a similar subject, its format was conformed to the format of the revised § 405.1684. We also corrected an error in the authority citation.

H. Other Minor Conforming Changes

1. In § 405.330, we changed "posthospital skilled nursing facility services" to "posthospital SNF care", which is the term now used in Part 409 and other basic Medicare rules.

2. We removed or corrected cross-references that became outdated as a result of the following:

- The redesignation of major portions of Subpart F of Part 405 as Part 489—Provider Agreements under Medicare, published April 4, 1980 at 45 FR 22937.
- The redesignation of major portions of Subpart A of Part 405 as Part 409, by final rules published March 25, 1983 at 48 FR 1254.
- The redesignation of Part 481 as Part 491 by regulations published on August 16, 1985 at 50 FR 33034.
- The changes made by this document, that is, the removal of 4 sections from Subpart F of Part 405, the redesignation of Part 408 as Part 406, and the redesignation of major portions of Subpart B of Part 405 as a new Part 410.

3. We transferred the content of §§ 405.658 and 405.659 to 405.152 to bring together provisions that deal with the same subject—payment for

emergency services furnished by nonparticipating hospitals, and removed §§ 405.690 and 405.691 as outdated.

4. In § 410.60(a)(3), we corrected the omission of a requirement of section 1861(p) of the Act—that outpatient physical therapy services be furnished by or "under the supervision of" the provider.

5. In § 421.200, we corrected one cross-reference and added another.

II. Medicaid Provision

Medicaid Funding for American Samoa.

A. Statutory Provision (Pub. L. 97-248)

Section 136 provides Federal funds for a Medicaid program in American Samoa, and permits more liberal waivers of the Medicaid requirements than are available to other jurisdictions.

B. Conforming Changes

The following sections of the Medicaid regulations are amended to include American Samoa: Sections 433.10, 435.2, 435.3 and the title of Part 435. The waiver provisions appear in a new § 431.56.

III. Regulatory Impact Statement

Executive Order 12291

Executive Order 12291 requires agencies to prepare and publish a regulatory impact analysis for any regulation that is likely to have an annual impact of $100 million or more on the economy, cause a major increase in costs or prices, or meet other thresholds specified in section 1(b) of the Order.

Since these amendments merely conform certain regulations to statutory provisions and administrative policies that are already in effect, we anticipate that they will have little, if any, economic impact. Accordingly, we have determined that a regulatory impact analysis is not required.

Regulatory Flexibility Act of 1980 (Pub. L. 96-354)

Consistent with this Act, we prepare and publish a regulatory flexibility analysis (RFA) for any regulation that will have a significant economic impact on a substantial number of small entities. A small entity is a small business, a nonprofit enterprise, or a government jurisdiction (such as a county or township) with a population of less than 50,000. The purpose of the analysis would be to anticipate the impact and to seek alternatives that would have a less negative effect.

We have not prepared an RFA for these regulations because we have determined, and the Secretary certifies, that they will not have a significant impact on a substantial number of small entities. Any impact resulting from changes in methods or amounts of reimbursement is caused by the law and not by the regulations that implement the law or conform the rules to its requirements.

IV. Paperwork Reduction Act of 1980

Sections 405.1683 (e), (f), and (g), 405.1684(c), 410.105(c), 410.165 (a) and (b) contain information collection requirements that are subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980. A notice will be published in the **Federal Register** when approval is obtained. If you comment on these provisions, please send a copy directly to the address indicated under the topic ADDRESSES of this preamble.

V. Waiver of Notice of Proposed Rulemaking

With one exception, this document conforms Medicare and Medicaid rules to—

- Self-implementing statutory changes that are already in effect, or
- Changes in law or policy that have already been implemented by other regulations that did provide notice and opportunity for public comment.

Our approach in the rules for payment after the beneficiary dies is somewhat different. The revision of § 405.1684 reflects the statutory amendment (long-since implemented through instructions) that provides for payment to a person who assumes legal responsibility for the bill, and requires evidence of that legal responsibility. In conforming § 405.1683, we incorporated policy generally applicable to claims (such as the requirement to submit an itemized bill and evidence of relationship to the deceased beneficiary), and clarified it by specifying that if none of the listed individuals survives, no payment will be made.

Given the nature of the changes, the fact that none of the content is new, and only about 5 percent is newly codified, we find that notice of proposed rulemaking is unnecessary. Nevertheless, as indicated under DATES, we will consider timely comments from any reader who believes that these rules go beyond what is required or permitted under the law, or that we have, in the process of redesignation and clarification, made substantive changes other than those discussed in this preamble.

VI. Response to Comments

Although we cannot respond to individual comments, if we revise these final rules, we will discuss the comments in the preamble to that revision.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 406

Health facilities, Kidney diseases, Medicare.

42 CFR Part 408

Health facilities, Kidney diseases, Medicare.

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 410

Medical and other health services, Medicare.

42 CFR Part 421

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 431

Grant programs-health, Health facilities, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 433

Administrative practice and procedure, Claims, Grant programs-health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs-health, Medicaid, Supplemental Security Income (SSI).

42 CFR Part 489

Health facilities, Medicare.

Redesignation Table—Part 405, Subpart B

Old sec.	New sec.
405.230	410.150
405.231(a)	410.10(a), 410.20
405.231(b)	410.10(b), 410.26
405.231(c)	410.10(c), 410.27
405.231(d)	410.10(f), 410.32
405.231(e)	410.10(g), 410.34
405.231(f)	410.10(h), 410.36(a)
405.231(g)	410.10(i), 410.38
405.231(h)	410.10(h), 410.36(b)
405.231(i)	410.10(h), 410.36(c)
405.231(j)	410.10(j), 410.40
405.231(k)	410.10(d), 410.29
405.231(l)	410.10(m), 410.60
405.231(m)	410.10(m), 410.62
405.231(n)	410.10(k), 410.45
405.231(o)	410.10(l), 410.50
405.231(p)	410.10(l), 410.52
405.231(q)	410.10(o), 410.55
405.232(b)	Removed as outdated.

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Old sec.	New sec.
405.232(b)	410.32
405.232(c)	410.29
405.232(d)	410.28
405.232(e)	410.60
405.232(f), (g), and (h)	410.32 and 410.34
405.232(i)	410.40
405.232(j)	410.62
405.232a(a)(1)	410.20
405.232a(a)(2)	410.20(b) and 410.24
405.232a(a)(3)	410.20(b) and 410.25
405.232a(a)(4)	410.20(b) and 410.23
405.232a(a)(5)	410.20(b) and 410.22
405.232a(b)	410.14
405.232b	410.22
405.232c	410.23
405.233	Removed as inconsistent with current law which no longer limits the home health visits.
405.234	Removed as duplicative of § 409.42(b) and (d)
405.235	Removed as duplicative of § 409.42(e)
405.236	Removed as duplicative of 409.40
405.237	Removed as duplicative of 409.41
405.238	Removed as duplicative of 409.43
405.239	Removed as inconsistent with current law which no longer limits the number of home health visits.
405.240	410.152
405.241	410.152(a)(2)(iii)
405.243	410.155
405.244a	410.152(a)(1)(i)
405.244(b)	410.152(a)(1)(ii)
405.244(c)	Removed as inconsistent with current law which no longer provides for 100 percent payment for radiology and pathology services.
405.244-1(a)	410.163
405.244-1(b)	410.152(i)(1)
405.244-1(c)	410.152(i)(2)
405.245	410.160
405.246	410.161
405.249	410.168
405.250	410.170
405.250-2	410.165
405.251	Removed as duplicative of Subpart P of Part 405.
405.252	410.175
405.260	410.100
405.261	410.102
405.262	410.105

42 CFR Chapter IV is amended as set forth below:

I. Part 405 is amended as follows:

PART 405—HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart A—[Amended]

A. Subpart A is amended as follows:

1. The authority citation for Subpart A continues to read as follows:

Authority: Secs. 1102, 1814, 1815, 1861, 1866(d), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395F, 1395g, 1395x, 1395cc(d), and 1395hh).

2. Section 405.152 is amended as set forth below:

a. The section heading is revised to read as follows:

§ 405.152 Payment for emergency services furnished by a nonparticipating hospital.

b. Paragraph (a)(5) is revised to read as follows:

* * * * *

(5) The hospital has in effect an election to claim payment for all emergency services furnished in a calendar year in accordance with paragraph (c) of this section.

* * * * *

c. New paragraphs (c)–(e) are added to read as follows:

* * * * *

(c) *Election to claim payment for emergency services.*

(1) *Terms of the election.* The hospital agrees to the following:

(i) To comply with the provisions of Subpart C of Part 489 of this chapter relating to charges for items and services the hospital may make to the beneficiary, or any other person on his or her behalf.

(ii) To comply with the provisions of Subpart D of Part 489 of this chapter relating to proper disposition of monies incorrectly collected from, or on behalf of, a beneficiary.

(iii) To request payment under the Medicare program based on amounts specified in § 413.74 of this chapter.

(2) *Filing of election statement.* An election statement must be filed on a form designated by HCFA, signed by an authorized official of the hospital, and either received by HCFA, or postmarked, before the close of the calendar year of election.

(3) *Acceptance and effective date of election.* If HCFA accepts the election statement, the election is effective as of the earliest day of the calendar year of election from which HCFA determines the hospital has been in continuous compliance with the requirements of section 1814(d) of the Act.

(d) *Appeal by hospital.* Any hospital dissatisfied with a determination that it does not qualify to claim reimbursement shall be entitled to appeal the determination as provided in Part 498 of this chapter.

(e) *Conditions for reinstatement after notice of failure to continue to quality.* If HCFA has notified a hospital that it no longer qualifies to receive reimbursement for a calendar year, HCFA will not accept another election statement from that hospital until HCFA finds that—

(1) The reason for its failure to qualify has been removed; and

(2) There is reasonable assurance that it will not recur.

Subpart B—[Amended]

B. Subpart B is amended as follows:

1. The authority citation for Subpart B is revised to read as follows:

Authority: Secs. 1102, 1836, 1837, 1838, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395o, 1395p, 1395q, and 1395hh).

2. Section 405.201 is revised to read as follows:

§ 405.201 Scope.

This subpart sets forth the conditions and procedures for enrollment in the Supplementary Medical Insurance (SMI) program.

§§ 405.233 and 405.239 [Removed]

3. Sections 405.233 and 405.239 are removed.

§§ 405.230 through 405.232c, 405.234 through 405.238, and 405.240 through 405.262 [Removed]

4. Sections 405.230–405.232c, 405.234–405.238, and 405.240–405.262 are removed. (They appear under a new Part 410, presented later in this document.)

C. Subpart C is amended as set forth below:

Subpart C—Exclusions, Recovery of Overpayment, Liability of a Certifying Officer and Suspension of Payment

1. The authority citation for Subpart C continues to read as follows:

Authority: Secs. 1102, 1154(a)(2)(B), 1815, 1833, 1842, 1861, 1862, 1866, 1870, 1871 and 1879 of the Social Security Act (42 U.S.C. 1302, 1320c–3(a)(2)(B), 1395g, 1395l, 1395u, 1395x, 1395y, 1395cc, 1395gg, 1395hh, 1395pp) and the Federal Claims Collection Act (31 U.S.C. 3711).

2. In §405.310, the introductory text of the section and the introductory text of paragraph (l)(1) are republished and paragraph (l)(2) is revised to include treatment of mycotic toenails within specified limits, to read as follows:

§ 405.310 Particular services excluded from coverage.

The following services are excluded from coverage:

* * * * *

(l) *Foot care.*

(1) *Basic rule.*

Except as provided in paragraph (l)(2) of this section, any services furnished in connection with the following:

* * * * *

(2) *Exceptions.*

(i) Treatment of warts is not excluded.

(ii) Treatment of mycotic toenails may be covered if it is furnished no more often than every 60 days or the billing physician documents the need for more frequent treatment.

(iii) The services listed in paragraph (l)(1) of this section are not excluded if they are furnished—

(A) As an incident to, at the same time as, or as a necessary integral part of a primary covered procedure performed on the foot; or

(B) As initial diagnostic services (regardless of the resulting diagnosis) in connection with a specific symptom or complaint that might arise from a condition whose treatment would be covered.

§ 405.330 [Amended]

3. In Section 405.330, paragraph (b) is amended by removing the comma between "posthospital" and "SNF care".

Subpart F—[Amended]

D. Subpart F is amended as set forth below:

1. The subpart heading is revised to read:

Subpart F—Notice and Agreement

2. The authority citation for Subpart F is revised to read as follows:

Authority: Secs. 1102, 1864, 1871 and 1881 of the Social Security Act (42 U.S.C. 1302, 1395aa, 1395hh, and 1395rr).

§§ 405.658, 405.659, 405.690, and 405.691 [Removed]

3. Sections 405.658 and 405.659 are removed (see § 405.152 for equivalent content) and §§ 405.690 and 405.691 are removed as outdated, and the table of contents of Subpart F is amended to reflect these changes.

E. Subpart P is amended as set forth below:

Subpart P—Certification and Recertification; Claims and Benefit Payment Requirements; Check Replacement Procedures

1. The table of contents for Subpart P is amended by revising the headings §§ 405.1683 and 405.1684, and correcting a U.S.C. citation in the authority citation, to read as follows:

Subpart P—Certification and Recertification; Claims and Benefit Payment Requirements; Check Replacement Procedures

Sec.

* * * * *

405.1683 Payment after beneficiary's death: Bill has been paid.
405.1684 Payment after beneficiary's death: Bill has not been paid.

* * * * *

Authority: Secs. 1102, 1814, 1835, 1871 and 1883 of the Social Security Act; 42 U.S.C. 1302, 1395f, 1395n, 1396hh, and 1395tt.

2. Sections 405.1683 and 405.1684 are revised to read as follows:

§ 405.1683 Payment after beneficiary's death: Bill has been paid.

(a) *Scope.* This section specifies the persons whom Medicare pays, and the conditions for payments, when the beneficiary has died and the bill has been paid.

(b) *Situation.*

(1) The beneficiary has received covered services for which he could receive direct payment, that is, services of the following types:

(i) Covered Part B services that are furnished by a physician or other supplier who did not accept assignment of the beneficiary's claim.

(ii) Covered emergency inpatient or outpatient hospital services that are furnished by a nonparticipating hospital that does not have in effect an election to claim payment for these services in accordance with § 405.152 and that are payable under § 405.1672(a).

(iii) Covered inpatient hospital services that are furnished by a foreign hospital that does not have in effect an election to claim payment for those services in accordance with § 405.152, and that are payable under § 405.1672(a).

(iv) Covered physician services and ambulance services that are furnished outside the United States and that are payable in accordance with § 405.1672(b).

(2) The beneficiary died without receiving Medicare payment.

(3) The bill has been paid.

(c) *Persons whom Medicare pays.* In the situation described in paragraph (b) of this section, Medicare pays the following persons in the specified circumstances:

(1) The person or persons who, without a legal obligation to do so, paid for the services with their own funds, before or after the beneficiary's death.

(2) The legal representative of the beneficiary's estate if the services were paid for by the beneficiary before he or she died, or with funds from the estate.

(3) If the deceased beneficiary or his or her estate paid for the services and no legal representative of the estate has been appointed, the survivors, in the following order of priority:

(i) The person found by SSA to be the surviving spouse, if he or she was either living in the same household with the deceased at the time of death, or was, for the month of death, entitled to monthly social security or railroad retirement benefits on the basis of the same earnings record as the deceased beneficiary;

(ii) The child or children, who were, for the month of death, entitled to monthly social security or railroad retirement benefits on the basis of the same earnings record as the deceased (and, if there is more than one child, in equal parts to each child);

(iii) The parent or parents, who were, for the month of death, entitled to monthly social security or railroad retirement benefits on the basis of the same earnings record as the deceased (and, if there is more than one parent, in equal parts to each parent);

(iv) The person found by SSA to be the surviving spouse who was not living in the same household with the deceased at the time of death and was not, for the month of death, entitled to monthly social security or railroad retirement benefits on the basis of the same earnings record as the deceased beneficiary;

(v) The child or children who were not entitled to monthly social security or railroad retirement benefits on the basis of the same earnings record as the deceased (and, if there is more than one child, in equal parts to each child);

(vi) The parent or parents who were not entitled to monthly social security or railroad retirement benefits on the basis of the same earnings record as the deceased (and, if there is more than one parent, in equal parts to each parent).

(4) If none of the listed relatives survive, no payment is made.

(5) If the services were paid for by a person other than the deceased beneficiary, and that person died before payment was completed, Medicare does not pay that person's estate. Medicare pays a surviving relative of the deceased beneficiary in accordance with the priorities in paragraph (c)(3) of this section. If none of those relatives survive, Medicare pays the legal representative of the deceased beneficiary's estate. If there is no legal representative of the estate, no payment is made.

(d) *Amount of payment.* The amount of payment is the amount due, including unnegotiated checks issued for the purpose of making direct payment to the beneficiary.

(e) *Conditions for payment.* For payment to be made under this section—

(1) The person who claims payment must meet the following requirements:

(i) Submit a claim on an HCFA-prescribed form and an itemized bill in accordance with the requirements of this subpart. (See paragraph (g) of this section for an exception.)

(ii) Provide evidence that the services were furnished if the intermediary or carrier requests it.

(iii) Provide evidence of payment of the bill and of the identity of the person who paid it.

(2) If a person claims payment as the legal representative of the deceased beneficiary's estate, he or she must also

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submit a copy of the papers showing appointment as legal representative.

(3) If a person claims payment as a survivor of the beneficiary, he or she must also submit evidence, if the intermediary or carrier requests it, that he or she is highest on the priority list of paragraph (c)(3) of this section.

(f) *Evidence of payment.* Evidence of payment may be—

(1) A receipted bill, or a properly completed "Report of Services" section of a claim form, showing who paid the bill;

(2) A cancelled check;

(3) A written statement from the provider or supplier or an authorized staff member; or

(4) Other probative evidence

(g) *Exception: Claim submitted before beneficiary died.* If a claim and itemized bill has been submitted by or on behalf of the beneficiary before he or she died, submission of another claim form and itemized bill is not required; any written request by the person seeking payment is sufficient.

§ 405.1684 Payment after beneficiary's death: Bill has not been paid.

(a) *Scope.* This section specifies whom Medicare pays, and the conditions for payment when the beneficiary has died and the bill has not been paid.

(b) *Situation.*

(1) The beneficiary has received covered Part B services furnished by a physician or other supplier.

(2) The beneficiary died without making an assignment to the physician or other supplier or receiving Medicare payment.

(3) The bill has not been paid.

(c) *To whom payment is made.* In the situation described in paragraph (b) of this section, Medicare pays as follows:

(1) *Payment to the supplier.* Medicare pays the physician or other supplier if he or she—

(i) Files a claim on a HCFA-prescribed form in accordance with the applicable requirements of this subpart;

(ii) Upon request from the carrier, provides evidence that the services for which it claims payment were, in fact, furnished; and

(iii) Agrees in writing to accept the reasonable charge as the full charge for the services.

(2) *Payment to a person who assumes legal obligation to pay for the services.* If the physician or other supplier does not agree to accept the reasonable charge as full charge for the service, Medicare pays any person who submits to the carrier all of the following:

(i) A statement indicating that he or she has assumed legal obligation to pay for the services.

(ii) A claim on a HCFA-prescribed form in accordance with the requirements of this subpart. (If a claim had been submitted by or on behalf of the beneficiary before he or she died, submission of another claim form is not required; a written request by the person seeking payment meets the requirement for a claim.)

(iii) An itemized bill that identifies the claimant as the person to whom the physician or other supplier holds responsible for payment. (If such an itemized bill had been submitted by or on behalf of the beneficiary before he or she died, submission of another itemized bill is not required.)

(iv) If the intermediary or carrier requests it, evidence that the services were actually furnished.

3. Section 405.1695 is revised to reflect changes in payment practices and to remove obsolete cross-references, to read as follows:

§ 405.1695 Replacement of U.S. Government checks that are lost, stolen, defaced, mutilated, destroyed, or paid on forged endorsements.

The Treasury Department is responsible for the investigation and settlement of claims in connection with Treasury checks issued on behalf of HCFA. HCFA forwards reports of lost, stolen, defaced, mutilated, destroyed, or forged Treasury checks to the Treasury Department disbursing center responsible for issuance of the check. Replacement or reclamation of those Treasury checks is undertaken in accordance with Treasury Department regulations at 31 CFR Parts 235, 240 and 245.

PART 408—[REDESIGNATED AS PART 406]

II. Part 408 is amended as follows:

1. Part 408 is redesignated as PART 406—The part heading is revised to read HOSPITAL INSURANCE ELIGIBILITY AND ENTITLEMENT. The part is without substantive change, and current references to PART 408 and its sections, throughout this Chapter IV, are changed to refer to PART 406 and its sections.

§ 406.2 [Amended]

2. Redesignated § 406.2 is amended by revising the last sentence to remove the term "posthospital" as applied to home health services to read as follows: "It includes inpatient hospital care, posthospital SNF care, home health services, and hospice care."

III. Part 409 is amended as follows:

PART 409—HOSPITAL INSURANCE BENEFITS

A. The part heading is revised to read as set forth above.

B. The authority citation for Part 409 is revised to read as follows:

Authority: Secs. 1102, 1812, 1813, 1861, 1871 and 1881 of the Social Security Act (42 U.S.C. 1302, 1395d, 1395e, 1395x, 1395hh, and 1395rr).

C. Subpart A is amended as follows:

Subpart A—Hospital Insurance Benefits: General Provisions

Section 409.3 is amended by adding, in alphabetical order, the following definition:

§ 409.3 [Amended]

* * * * *

"Nominal charge provider" means a provider that furnishes services free of charge or at a nominal charge and is either a public provider, or another provider that (1) demonstrates to HCFA's satisfaction that a significant portion of its patients are low-income, and (2) requests that payment for its services be determined accordingly.

* * * * *

D. Subpart D is amended as set forth below:

Subpart D—Requirements for Coverage of Posthospital SNF Care

In § 409.30(a), the introductory text is republished and paragraph (a)(2) is revised to read as follows:

§ 409.30 Basic requirements.

* * * * *

(a) *Pre-admission requirements.* The beneficiary must—

* * * * *

(2) Have been discharged from the hospital in or after the month he or she attained age 65, or in a month for which he or she was entitled to hospital insurance benefits on the basis of disability or end-stage renal disease, in accordance with Part 406 of this chapter.

* * * * *

E. Subpart E is amended as set forth below:

Subpart E—Home Health Services Under Hospital Insurance

§ 409.40 [Amended]

1. In § 409.40, paragraph (e) is amended by changing "medical appliances" to "durable medical equipment".

2. Section 409.42 is revised to remove and reserve paragraphs (c) and (f), revise paragraph (d), and provide footnotes regarding the outdated

provisions that are removed. As revised, § 409.42 reads as follows:

§ 409.42 Requirements and conditions for home health services.

(a) *Basic rule.* The services specified in § 409.40 are covered by Medicare Part A only if the requirements of paragraphs (b) through (g) of this section are met.

(b) *Conditions the beneficiary must meet.* The beneficiary must be—

(1) Confined to the home or in an institution that is neither a hospital nor primarily engaged in providing skilled nursing or rehabilitation services;

(2) Under the care of a physician who is a doctor of medicine or osteopathy; and

(3) In need of intermittent skilled nursing care or physical or speech therapy or, effective July 1 through November 30, 1981, occupational therapy. After November 30, 1981, continued need for occupational therapy is not a basis for initial qualification for home health services but does qualify a beneficiary for continued home health services even after he or she no longer needs intermittent skilled nursing care or physical or speech therapy.

(c) [Reserved] [1]

(d) *Plan of treatment requirements.*[2] The home health services must be furnished under a plan of treatment that is established and periodically reviewed by a doctor of medicine, osteopathy or, podiatric medicine. A doctor of podiatric medicine may establish a plan of treatment only if that is consistent with the home health agency's policy and with the functions he or she is authorized to perform under State law.

(e) *Where the services must be furnished.* (1) The home health services must be furnished—

(i) On a visiting basis in the individual's home; or

(ii) It it is necessary to use equipment that cannot readily be made available in the home, on an outpatient basis in a hospital, a SNF, or a rehabilitation center that meets State and local health and safety standards.

(2) If an individual is brought to a facility in accordance with paragraph (e)(1)(ii) of this section, other services that could be furnished in the home may be furnished in the facility at the same time.

(f) [Reserved] [3]

(g) *By whom the services must be furnished.* The home health services must be furnished by, or under arrangements made by a participating HHA.

3. Section 409.43 is revised to reflect the fact that there is no longer any limit on the number of home health visits and to make paragraph (a) consistent with the paragraph (b) examples, to read as follows:

§ 409.43 Home health service visit.

(a) *Basic rule.* The furnishing of any of the home health services specified in § 409.40 by a particular health worker on a particular day or a particular time of the day constitutes a home health visit.

(b) *Specific examples.* (1) If both a physical therapist and a visiting nurse furnish services in the home on the same day, that constitutes two visits.

(2) If a beneficiary has dressings changed twice in the same day, that constitutes two visits.

(3) If a beneficiary is brought to the hospital for hydrotherapy, and while there also receives speech therapy, that constitutes two visits.

(4) If a nurse furnishes several services during a visit (for example, skilled nursing care and home health aide services), that constitutes only one visit.

4. Section 409.44 is revised to read as follows:

§ 409.44 Home health services under Medicare Part B.

Home health services are also covered under Medicare Part B, under the rules set forth in this Subpart E.

§ 409.45 [Removed]

5. Section 409.45 is removed.

6. A new section 409.46 is added to read as follows:

§ 409.46 Coinsurance for durable medical equipment (DME) furnished as a home health service.

The coinsurance liability of the beneficiary or other person for DME furnished as a home health service is 20 percent of the customary (insofar as reasonable) charge for the services.

7. In § 409.61, paragraph (d) is revised to (1) reflect the fact that there is no longer any limitation on the number of home health visits; (2) specify the limitations on payment for durable medical equipment; and (3) to transfer outdated content to a footnote. As revised, paragraph (d) reads as follows:

§ 409.61 General limitations on amount of benefits.

* * * * *

(d) *Home health services.* Medicare Part A pays for all covered home health services[4] with no deductible, and subject to the following limitations on payment for durable medical equipment (DME):

(1) For DME furnished by an HHA that is a nominal charge provider, Medicare Part A pays 80 percent of fair compensation.

(2) For DME furnished by an HHA that is not a nominal charge provider, Medicare Part A pays the lesser of the following:

(i) 80 percent of the reasonable cost of the service.

(ii) The reasonable cost of, or the customary charge for, the service, whichever is less, minus 20 percent of the customary (insofar as reasonable) charge for the service.

IV. A new Part 410 is added, to read as follows:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

Subpart A—General Provisions

Sec.

410.1 Basis and scope.
410.2 Definitions.
410.3 Scope of benefits.
410.5 Other applicable rules.

Subpart B—Medical and Other Health Services

410.10 Medical and other health services: Included services.
410.12 Medical and other health services: Basic conditions and limitations.
410.14 Special requirements for services furnished outside the United States.
410.20 Physicians' services.
410.22 Limitations on services of a chiropractor.
410.23 Limitations on services of an optometrist.
410.24 Limitations on services of a doctor of dental surgery or dental medicine.
410.25 Limitations on services of a podiatrist.
410.26 Services and supplies incident to a physician's professional services: Conditions.
410.27 Outpatient hospital services and supplies incident to a physician's services: Conditions.

---

[1] Before July 1, 1981, Medicare Part A paid for home health services only if they were furnished to a beneficiary who—

- Had received inpatient care in a participating or qualified hospital or SNF; and
- Needed intermittent skilled nursing care, or physical or speech therapy for a codition for which he or she had received inpatient hospital or posthospital SNF care.

[2] Before January 1981, only a doctor of medicine or osteopathy could establish a plan for home health services. A plan of treatment established before July 1981 was acceptable for Medicare Part A payment only if it was established within 14 days after the individual's discharge from a hospital or SNF.

[3] Before July 1981, Medicare paid for not more than 100 home health visits, furnished—

- For Medicare Part A payment, during one year following the beneficiary's most recent discharge from a hospital or a SNF; and
- For Medicare Part B payment, within a calendar year.

[4] Before July 1, 1981, Medicare Part A paid for not more than 100 home health visits during one year following the beneficiary's most recent discharge from a hospital or a SNF.

410.28 Hospital diagnostic services furnished to outpatients: Conditions.
410.29 Limitations on drugs and biologicals.
410.32 Diagnostic X-ray tests, diagnostic laboratory tests, and other diagnostic tests: Conditions.
410.34 X-ray therapy and other radiation therapy services: Scope.
410.36 Medical supplies, appliances, and devices: Scope.
410.38 Durable medical equipment: Scope and conditions.
410.40 Ambulance services: Limitations.
410.45 Rural health clinic services: Scope and conditions.
410.50 Institutional dialysis services and supplies: Scope and conditions.
410.52 Home dialysis services, supplies, and equipment: Scope and conditions.
410.55 Services related to kidney donations: Conditions.
410.57 Pneumococcal vaccine and its administration: Conditions.
410.58 Additional services to HMO and CMP enrollees. Conditions.
410.60 Outpatient physical therapy services: Conditions.
410.62 Outpatient speech pathology services: Conditions and exclusions.

Subpart C—Home Health Services Under SMI

410.80 Applicable rules.

Subpart D—Comprehensive Outpatient Rehabilitation Facility (CORF) Services

410.100 Included services.
410.102 Excluded services.
410.105 Requirements for coverage of CORF services.

Subpart E—Payment of SMI Benefits

410.150 To whom payment is made.
410.152 Amounts of payment.
410.155 Psychiatric services limitations: Expenses incurred for physicians' services and CORF services.
410.160 Part B annual deductible.
410.161 Part B blood deductible.
410.163 Payment for services furnished to kidney donors.
410.165 Payment for rural health clinic services and ambulatory surgical center services: Conditions.
410.168 Payment for emergency outpatient services furnished by a nonparticipating hospital.
410.170 Payment for home health services, for medical and other health services furnished by a provider or an approved ESRD facility, and for comprehensive outpatient rehabilitation facility (CORF) services: Conditions.
410.175 Circumstances under which payment of benefits is prohibited.

Authority: Secs. 1102, 1832, 1833, 1835, 1861(r), (s) and (cc), 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395k, 1395l, 1395n, 1395x, (r), (s) and (cc), 1395hh, and 1395rr).

Subpart A—General Provisions

§ 410.1 Basis and scope.

(a) *Statutory basis.* Section 1832 of the Social Security Act establishes the scope of benefits provided under the Medicare Part B supplementary medical insurance (SMI) program. Sections 1833, 1835, and 1862 set forth the amounts of payment for SMI services, the conditions for payment, and the exclusions from coverage. Section 1861 defines the kinds of services that may be covered.

(b) *Scope of subpart.* This subpart sets forth the benefits available under Medicare Part B, the conditions for payment and the limitations on services, the percentage of incurred expenses that Medicare Part B pays, and the deductible and copayment amounts for which the beneficiary is responsible. (Exclusions applicable to these services are set forth in Subpart C of Part 405 of this chapter.)

§ 410.2 Definitions.

As used in this part—

"*Nominal charge provider*", means a provider that furnishes services free of charge or at a nominal charge, and is either a public provider, or another provider that (1) demonstrates to HCFA's satisfaction that a significant portion of its patients are low-income; and (2) requests that payment for its services be determined accordingly.

"*Partcipating*" refers to a hospital, SNF, HHA, CORF, or hospice that has in effect a provider agreement to participate in Medicare, and "*nonparticipating*" refers to a hospital, SNF, HHA, CORF, or hospice that does not have in effect a provider agreement to participate in Medicare.

§ 410.3 Scope of benefits.

(a) *Covered services.* The SMI program helps pay for the following:

(1) Medical and other health services such as physicians' services, outpatient hospital services, diagnostic tests, outpatient physical therapy and speech pathology services, rural health clinic services and outpatient renal dialysis services.

(2) Services furnished by ambulatory surgical centers (ASCs), home health agencies (HHAs), and comprehensive outpatient rehabilitation facilities (CORFs).

(3) Other medicial services, equipment, and supplies that are not covered under Medicare Part A hospital insurance.

(b) *Limitations on amount of payment.* (1) Medicare Part B does not pay the full reasonable costs or charges for all covered services. The beneficiary is responsible for an annual deductible and a blood deductible and, after the annual deductible has been satisfied, for coinsurance amounts specified for most of the services.

(2) Specific rules on payment are set forth in Subpart E of this part.

§ 410.5 Other applicable rules.

The following other rules of this chapter set forth additional policies and procedures applicable to three of the kinds of services covered under the SMI program:

(a) Part 405, Subpart U: End-Stage Renal Disease services.

(b) Part 405, Subpart X: Rural Health Clinic services.

(c) Part 416: Ambulatory Surgical Center services.

Subpart B—Medical and Other Health Services

§ 410.10 Medical and other health serviced: Includes services.

Subject to the conditions and limitations specified in § 410.12, "medical and other health services" includes the following services:

(a) Physicians' services.

(b) Services and supplies furnished incident to a physician's professional services, of kinds that are commonly furnished in physicians' offices and are commonly either furnished without charge or included in the physicians' bills.

(c) Services and supplies that are incident to physicians' services and are furnished to outpatients by or under arrangements made by a hospital.

(d) Diagnostic services furnished to outpatients by or under arrangements made by a hospital if the services are services that the hospital ordinarily furnishes to its outpatients for diagnostic study.

(e) Diagnostic laboratory and X-ray tests and other diagnostic tests.

(f) X-ray therapy and other radiation therapy services.

(g) Medical supplies, appliances, and devices.

(h) Durable medical equipment.

(i) Ambulance services.

(j) Rural health clinic services.

(k) Home dialysis supplies and equipment, self-care home dialysis support services, and institutional dialysis services and supplies.

(l) Pneumococcal vaccinations.

(m) Outpatient physical therapy and speech pathology services.

(n) Additional services furnished to enrollees of HMOs or CMPs, as described in § 410.58.

§ 410.12 Medical and other health services: Basic conditions and limitations.

(a) *Basic conditions.* The medical and other health services specified in § 410.10 are covered by Medicare Part B only if they are not excluded under

Subpart C of Part 405 of this chapter, and if they meet the following conditions:

(1) *When the services must be furnished.* The services must be furnished while the individual is in a period of entitlement. (The rules on entitlement are set forth in Part 406 of this chapter.)

(2) *By whom the services must be furnished.* The services must be furnished by a facility or other entity as specified in §§ 410.14 through 410.62.

(3) *Physician certification and recertification requirements.* If the services are subject to physician certification requirements, they must be certified as being medically necessary, and as meeting other applicable requirements, in accordance with Subpart P of Part 405 of this chapter.

(b) *Limitations on payment.* Payment for medical and other health services is subject to limitations on the amounts of payment as specified in §§ 410.152 and 410.155 and to the annual and blood deductibles as set forth in §§ 410.160 and 410.161.

§ 410.14 Special requirements for services furnished outside the United States.

Medicare Part B pays for physicians' services and ambulance services furnished outside the United States if the services meet the applicable conditions of § 410.12 and are furnished in connection with covered inpatient hospital services that meet the specific requirements and conditions set forth in § 405.153 of this chapter.

§ 410.20 Physicians' services.

(a) *Included services.* Medicare Part B pays for physicians' services, including diagnosis, therapy, surgery, consultations, and home, office, and institutional calls.

(b) *By whom services must be furnished.* Medicare Part B pays for the services specified in paragraph (a) of this section if they are furnished by one of the following professionals who is legally authorized to practice by the State in which he or she performs the functions or actions, and who is acting within the scope of his or her license.

(1) A doctor of medicine or osteopathy, including an osteopathic practitioner recognized in section 1101(a)(7) of the Act.

(2) A doctor of dental surgery or dental medicine.

(3) A doctor of podiatric medicine.

(4) A doctor of optometry.

(5) A chiropractor who meets the qualifications specified in § 410.22

(c) *Limitations on services.* The Services specified in paragraph (a) of this section may be covered under Medicare Part B if they are furnished within the limitations specified in §§ 410.22 through 410.25.

§ 410.22 Limitations on services of a chiropractor.

(a) *Qualifications for chiropractors.* (1) A chiropractor licensed or authorized to practice before July 1, 1974, and an individual who began studies in a chiropractic college before that date, must have—

(i) Had preliminary education equal to the requirements for graduation from an accredited high school or other secondary school;

(ii) Graduated from a college of chiropractic approved by the State's chiropractic examiners after completing a course of study covering a period of not less than 3 school years of 6 months each year in actual continuous attendance and covering adequate courses of study in the subjects of anatomy, physiology, symptomatology and diagnosis, hygiene and sanitation, chemistry, histology, pathology, and principles and practice of chiropractic, including clinical instruction in vertebral palpation, nerve tracing and adjusting; and

(iii) Passed an examination prescribed by the State's chiropractic examiners covering the subjects specified in paragraph (a)(1)(ii) of this section.

(2) A chiropractor first licensed or authorized to practice after June 30, 1974, and an individual who begins studies in a chiropractic college after that date, must have—

(i) Had preliminary education equal to the requirements for graduation from an accredited high school or other secondary school;

(ii) Satisfactorily completed 2 years of pre-chiropractic study at the college level;

(iii) Satisfactorily completed a 4-year course of 8 months each year offered by a college or school of chiropractic approved by the State's chiropractic examiners and including at least 4,000 hours in courses in anatomy, physiology, symptomatology and diagnosis, hygiene and sanitation, chemistry, histology, pathology, principles and practice of chiropractic, and clinical instruction in vertebral palpation, nerve tracing and adjusting, plus courses in the use and effect of X-ray and chiropractic analysis;

(iv) Passed an examination prescribed by the State's chiropractic examiners covering the subjects specified in paragraph (a)(2)(iii) of this section; and

(v) Attained 21 years of age.

(b) *Limitations on services.* (1) Medicare Part B pays only for a chiropractor's manual manipulation of the spine to correct a subluxation, if X-ray demonstrates that a subluxation exists and if the subluxation has resulted in a neuromusculoskeletal condition for which manipulation is appropriate treatment.

(2) Medicare Part B does not pay for X-rays or other diagnostic or therapeutic services furnished or ordered by a chiropractor.

§ 410.23 Limitations on services of an optometrist.

The services of optometrists are covered only if related to the condition of aphakia (absence of the natural crystalline lens of the eye, regardless of whether an intraocular lens has been implanted). The following are examples of examination services that may be covered when furnished by optometrists:

(a) Case history (the determination of changing visual performance as it relates to the condition of aphakia).

(b) External examination (the inspection with illumination and magnification of eyelids and surrounding areas of the eye).

(c) Ophthalmoscopy (the inspection with illumination and magnification of the internal structure of the eye).

(d) Biomicroscopy (the inspection of frontal tissues of the eye, using illumination and magnification).

(e) Tonometry (the measurement of the internal pressure of the eye).

(f) Evaluation of visual fields (central and peripheral fields of vision).

(g) Evaluation of ocular motility (the determination of the ability of the eye to move efficiently).

(h) Evaluation of binocular function (the ability of the eye to obtain single, clear, two-eyed vision).

(i) Examination required to prescribe prosthetic lenses in connection with aphakia.

§ 410.24 Limitations on services of a doctor of dental surgery or dental medicine.

Medicare Part B pays for services furnished by a doctor of dental surgery or dental medicine within the scope of his or her license, if the services would be covered as physicians' services when performed by a doctor of medicine or osteopathy.[6]

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[6] For services furnished before July 1, 1981 Medicare Part B paid only for the following services of a doctor of dental surgery or dental medicine:

- Surgery on the jaw or any adjoining structure, and
- Reduction of a fracture of the jaw or other facial bone.

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§ 410.25 Limitations on services of a podiatrist.

Medicare Part B pays for the services of a doctor of podiatric medicine, acting within the scope of his or her license, if the services would be covered as physicians' services when performed by a doctor of medicine or osteopathy.

§ 410.26 Services and supplies incident to a physician's professional services: Conditions.

(a) Medicare Part B pays for services and supplies incident to a physician's professional services, including drugs and biologicals that cannot be self-administered, if the services or supplies are of the type that are commonly furnished in a physician's office or clinic, and are commonly furnished either without charge, or included in the physician's bill.

(b) Drugs and biologicals are also subject to the limitations specified in § 410.29.

§ 410.27 Outpatient hospital services and supplies incident to physicians' services: Conditions.

(a) Medicare Part B pays for hospital services and supplies furnished incident to physicians' services to outpatients, including drugs and biologicals that cannot be self-administered, if they are furnished—

(1) By or under arrangements made by a participating hospital; and

(2) As an integral though incidental part of a physician's services.

(b) Drugs and biologicals are also subject to the limitations specified in § 410.29.

(c) Rules on emergency services furnished to outpatients by nonparticipating hospitals are specified in § 410.168.

§ 410.28 Hospital diagnostic services furnished to outpatients: Conditions.

(a) Medicare Part B pays for hospital diagnostic services furnished to outpatients, including drugs and biologicals required in the performance of the services (even if those drugs or biologicals are self-administered), if those services meet the following conditions:

(1) They are furnished by or under arrangements made by a participating hospital.

(2) They are ordinarily furnished by, or under arrangements made by, the hosptial to its outpatients for the purpose of diagnostic study.

(3) They would be covered as inpatient hospital services if furnished to an inpatient.

(4) If furnished under arrangements, they are furnished in the hospital or in other facilities operated by or under the supervision of the hospital or its organized medical staff.

(b) Drugs and biologicals are also subject to the limitations specified in § 410.29(b) and (c).

(c) Rules on emergency services furnished to outpatients by nonparticipating hospitals are set forth in § 410.168.

§ 410.29 Limitations on drugs and biologicals.

Medicare Part B does not pay for the following:

(a) Except as provided in § 410.28(a), any drug or biological that can be self-administered, whether furnished by a physician, a provider, or an entity other than a provider.

(b) Any drug product that meets all of the following conditions:

(1) The drug product was approved by the Food and Drug Administration (FDA) before October 10, 1962.

(2) The drug product is available only through prescription.

(3) The drug product is the subject of a notice of opportunity for hearing issued under section 505(e) of the Federal Food, Drug, and Cosmetic Act and published in the **Federal Register** on a proposed order of FDA to withdraw its approval for the drug product because it has determined that the product is less than effective for all its labeled indications.

(4) The drug product is presently not subject to a determination by FDA, made under its efficacy review program, that there is a compelling justification of the drug product's medical need. (21 CFR 310.6 contains an explanation of the efficacy review program.)

(c) Any drug product that is identical, related, or similar, as defined in 21 CFR 310.6, to a drug product that meets the conditions of paragraph (b) of this section.

§ 410.32 Diagnostic X-ray tests, diagnostic laboratory tests, and other diagnostic tests: Conditions.

(a) *Diagnostic X-ray services*—(1) *Basic rule.* Except as specified in paragraph (a)(2) of this section, Medicare Part B pays for diagnostic X-ray services only if they are furnished under the immediate supervision of a physician who is a doctor of medicine, osteopathy, dental surgery, dental medicine, or podiatric medicine, or by a radiology department that meets the requirements for hospital radiology departments set forth in § 482.27 of this chapter.

(2) *Exception.* Medicare Part B pays for portable X-ray services, including services furnished in a place of residence used as the patient's home, if the services are furnished, under the general supervision of a physician, by a supplier that meets the conditions for coverage of portable X-ray services specified in Subpart N of Part 405 of this chapter.

(b) *Diagnostic laboratory tests.* Medicare Part B pays for covered diagnostic laboratory tests that are furnished by any of the following:

(1) A participating hospital.

(2) A nonparticipating hospital that meets the requirements for emergency outpatient services specified in § 410.168 and the laboratory requirements specified in § 405.1028 of this chapter.

(3) The office of the patient's attending or consulting physician if that physician is a doctor of medicine, osteopathy, dental surgery, or dental medicine.

(4) A rural health chinic.

(5) An independent clinical laboratory, if it meets the conditions for coverage of services of independent laboratories specified in Subpart M of Part 405 of this chapter, including the laboratory of a nonparticipating hospital that does not meet the requirements for emergency outpatient services in § 410.168.

§ 410.34 X-ray therapy and other radiation therapy services: Scope.

Medicare Part B pays for X-ray therapy and other radiation therapy services, including radium therapy and radioactive isotope therapy, and materials and the services of technicians administering the treatment.

§ 410.36 Medical supplies, appliances, and devices: Scope.

Medicare Part B pays for the following medical supplies, appliances and devices:

(a) Surgical dressings, and splints, casts, and other devices used for reduction of fractures and dislocations.

(b) Prosthetic devices, other than dental, that replace all or part of an internal body organ, including colostomy bags and supplies directly related to colostomy care, including replacement of those devices.

(c) Leg, arm, back, and neck braces and artificial legs, arms, and eyes, including replacements if required because of a change in the individual's physical condition.

§ 410.38 Durable medical equipment: Scope and conditions.

(a) Medicare Part B pays for the rental or purchase of durable medical equipment, including iron lungs, oxygen tents, hospital beds, and wheelchairs, if the equipment is used in the patient's home or in an institution that is used as a home.

(b) An institution that is used as a home may not be a hospital or a SNF as defined in sections 1861(e)(1) and 1861(j)(1) of the Act, respectively.

(c) Wheelchairs may include a power-operated vehicle that may be appropriately used as a wheelchair, but only if the vehicle—

(1) Is determined to be necessary on the basis of the individual's medical and physical condition; and

(2) Meets any safety requirements specified by HCFA.

§ 410.40 Ambulance services: Limitations.

(a) *Definitions.* As used in this section—

"*Ambulance*" means a vehicle that—

(1) Is specially designed for transporting the sick or injured;

(2) Contains a stretcher, linens, first aid supplies, oxygen equipment, and other lifesaving equipment required by State or local laws; and

(3) Is staffed with personnel trained to provide first aid treatment.

"*Appropriate hospital or SNF*" refers to a hospital or SNF that is capable of providing the required level and type of care for the patient's illness or injury and, in the case of a hospital, has available the type of physician or physician specialist needed to treat the patient's condition.

"*Hospital inpatient*" means a beneficiary who has been formally admitted to a hospital and has not been formally discharged.

"*Locality*" means the service area, surrounding a hospital or SNF, from which individuals normally come or are expected to come for hospital or SNF services.

"*Outside supplier*" means a hospital or a nonhospital treatment facility, such as a clinic, therapy center, or physician's office, where a hospital or SNF inpatient may be taken to receive medically necessary diagnostic or therapeutic services not available at the hospital or SNF where he or she is an inpatient.

(b) *Limits on coverage of ambulance transportation.* Medicare Part B pays for ambulance transportation only if—

(1) Other means of transportation would endanger the beneficiary's health;

(2) Medicare Part A payment is not available for the service; and

(3) In the case of a hospital inpatient—

(i) The transportation is furnished by, or under arrangements made by, the hospital; or

(ii) The transportation is furnished by an ambulance service with which the hospital does not have an arrangement (as defined in §409.3 of this chapter), and the hospital has a waiver (in accordance with § 489.23 of this chapter) under which Medicare Part B payment may be made to the ambulance service.

(c) *Limits on origins and destinations.* Medicare Part B pays for ambulance transportation of a beneficiary—

(1) To a hospital or SNF, from any point of origin;

(2) To his or her home, from a hospital or SNF; or

(3) Round trip from a hospital or a participating SNF to an outside supplier to obtain medically necessary diagnostic or therapeutic services not available at the hospital or SNF where the beneficiary is an inpatient.

(d) *Specific limits on coverage of ambulance transportation outside the United States.* In the case of services furnished outside the United States, Medicare Part B pays only for ambulance transportation to a foreign hospital and only in conjunction with the beneficiary's admission for medically necessary inpatient services as specified in § 405.153 of this chapter.

(e) *Limitation on payments.* Medicare payments for ambulance services within the United States are limited to the amounts that would be paid for transportation—

(1) To an appropriate hospital or NSF in whose locality the beneficiary is located or, if the beneficiary is not in the locality of an appropriate hospital or SNF, to the nearest appropriate hospital or SNF;

(2) To the beneficiary's home from a hospital or SNF in whose locality the home is located, or from the nearest appropriate hospital or SNF; or

(3) Round trip to the nearest outside supplier capable of providing necessary diagnostic or therapeutic services not available at the hospital or SNF where the beneficiary is an inpatient.

§ 410.45 Rural health clinic services: Scope and conditions.

(a) Medicare Part B pays for the following rural health clinic services, if they are furnished in accordance with the requirements and conditions specified in Part 405, Subpart X, and Part 491 of this chapter:

(1) Physicians' services.

(2) Services and supplies furnished as an incident to physicians' professional services.

(3) Nurse practitioner and physician assistant services.

(4) Services and supplies furnished as an incident to nurse practitioners' or physician assistants' services.

(5) Visiting nurse services.

(b) Medicare pays for rural health clinic services when they are furnished at the clinic, at a hospital or other medical facility, or at the beneficiary's place of residence.

§ 410.50 Institutional dialysis services and supplies: Scope and conditions.

Medicare Part B pays for the following institutional dialysis services and supplies if they are furnished in approved ESRD facilities:

(a) All services, items, supplies, and equipment necessary to perform dialysis.

(b) Routine dialysis monitoring tests (i.e., hematocrit and clotting time) used by the facility to monitor the patients' fluids incident to each dialysis treatment, when performed by qualified staff of the facility under the direction of a physician, as provided in § 405.2163(b) of this chapter, even if the facility does not meet the conditions for coverage of services of independent laboratories in Subpart M of Part 405 of this chapter.

(c) Routine diagnostic tests.

§ 410.52 Home dialysis services, supplies, and equipment: Scope and conditions.

(a) Medicare Part B pays for the following services, supplies, and equipment furnished to an ESRD patient in his or her home:

(1) Purchase or rental, installation, and maintenance of all dialysis equipment necessary for home dialysis, and reconditioning of this equipment. Dialysis equipment includes, but is not limited to, artificial kidney and automated peritoneal dialysis machines, and support equipment such as blood pumps, bubble detectors, and other alarm systems.

(2) Items and supplies required for dialysis, including (but not limited to) dialyzers, syringes and needles, forceps, scissors, scales, sphygmomanometer with cuff and stethoscope, alcohol wipes, sterile drapes, and rubber gloves.

(3) Home dialysis support services furnished by an approved ESRD facility, including periodic monitoring of the patient's home adaptation, emergency visits by qualified provider or facility personnel, any of the tests specified in paragraphs (b) through (d) of § 410.50, personnel costs associated with the installation and maintenance of dialysis equipment, testing and appropriate treatment of water, and ordering of supplies on an ongoing basis.

(b) Home dialysis support services specified in paragraph (a)(3) of this section must be furnished in accordance with a written treatment plan that is prepared and reviewed by a team consisting of the individual's physician and other qualified professionals. (Section 405.2137 of this chapter contains specific details.)

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§ 410.55 Services related to kidney donations: Conditions.

Medicare Part B pays for medical and other health services covered under this subpart that are furnished in connection with a kidney donation—

(a) If the kidney is intended for an individual who has end-stage renal disease and is entitled to Medicare benefits; and

(b) Regardless of whether the donor is entitled to Medicare.

§ 410.57 Pneumococcal vaccine and its administration: Conditions.

Effective July 1, 1981, Medicare Part B pays for pneumococcal vaccine and its administration to a beneficiary, when reasonable and necessary for the prevention of disease, if the vaccine is ordered by a doctor of medicine or osteopathy.

§ 410.58 Additional services to HMO and CMP enrollees.

Services not usually covered under Medicare Part B may be covered as medical and other health services if they are furnished to an enrollee of an HMO or a CMP and the following conditions are met:

(a) The services are—

(1) Furnished by a physician assistant or nurse practitioner as defined in § 491.2 of this chapter, or are incident to services furnished by such a practitioner; or

(2) Furnished by a clinical psychologist as defined in § 417.416 of this chapter to an enrollee of an HMO or CMP that participates in Medicare under a risk-sharing contract, or are incident to those services.

(b) The services are services that would be covered under Medicare Part B if they were furnished by a physician or as incident to a physician's professional services.

§ 410.60 Outpatient physical therapy services: Conditions.

(a) *Basic rule.* Medicare Part B pays for outpatient physical therapy services if they meet the following conditions:

(1) They are furnished to a beneficiary while he or she is under the care of a physician who is a doctor of medicine, osteopathy, or podiatric medicine.

(2) They are furnished under a written plan of treatment that meets the requirements of § 405.1634(b)(2) of this chapter.

(3) They are furnished—

(i) By a provider, or by others under arrangements with, and under the supervision of, a provider; or

(ii) By or under the direct supervision of a physical therapist in independent practice who is licensed by the State in which he or she practices and who meets the qualifications specified in § 405.1702(d) of this chapter.

(b) *Outpatient physical therapy services to certain inpatients of a hospital or SNF.* Medicare Part B pays for outpatient physical therapy services furnished to an inpatient of a hospital or a SNF who requires them but who has exhausted or is otherwise ineligible for benefit days under Medicare Part A.

(c) *Special provisions for services furnished by physical therapists in independent practice.*

(1) *Who is a physical therapist in independent practice.* A physical therapist in independent practice is one who—

(i) Engages in the practice of physical therapy on a regular basis;

(ii) Furnishes services on his or her own responsibility without the administrative and professional control of an employer;

(iii) Maintains, at his or her own expense, office space and the necessary equipment to provide an adequate program of physical therapy;

(iv) Furnishes services only in office space maintained at his or her expense, or in the patient's home; and

(v) Treats individuals who are his or her own patients and collects fees or other compensation for the services furnished.

(2) *Limitation on incurred expenses.* Not more than $500 of reasonable charges incurred in a calendar year are recognized as incurred expenses.[7]

(d) *Excluded services.* No service is included as an outpatient physical therapy service if it would not be included as an inpatient hospital service if furnished to an inpatient of a hospital.

§ 410.62 Outpatient speech pathology services: Conditions and exclusions.

(a) *Basic rule.* Medicare Part B pays for outpatient speech pathology services if they meet the following conditions:

(1) They are furnished to a beneficiary while he or she is under the care of a physician who is a doctor of medicine or osteopathy.

(2) They are furnished under a written plan of treatment that—

(i) Is established by a physician or, effective January 1, 1982, by either a physician or the speech pathologist who will provide the services to the particular individual;

(ii) Is periodically reviewed by a physician; and

(iii) Meets the requirements of § 405.1634(b) of this chapter.

(3) They are furnished by a provider or by others under arrangements with, and under the supervision of, a provider.

(b) *Outpatient speech pathology services to certain inpatients of a hospital or SNF.* Medicare Part B pays for outpatient speech pathology services furnished to an inpatient of a hospital or SNF who requires them but has exhausted or is otherwise ineligible for benefit days under Medicare Part A.

(c) *Excluded services.* No service is included as an outpatient speech pathology service if it would not be included as an inpatient hospital service if furnished to an inpatient of a hospital.

Subpart C—Home Health Services Under SMI

§ 410.80 Applicable rules.

Home health services furnished under Medicare Part B are subject to the rules set forth in Subpart E of Part 409 of this chapter.

Subpart D—Comprehensive Outpatient Rehabilitation Facility (CORF) Services

§ 410.100 Included services.

Subject to the conditions and limitations set forth in §§ 410.102 and 410.105, CORF services means the following services furnished to an outpatient of the CORF by personnel that meet the qualifications set forth in § 485.70 of this chapter.

(a) *Physicians' services.* The following services of the facility physician constitute CORF services: consultation with and medical supervision of non-physician staff, establishment and review of the plan of treatment, and other medical and facility administration activities. Those services are reimbursed on a reasonable cost basis under Part 413 of this chapter. Diagnostic and therapeutic services furnished to an individual patient are not CORF physician's services. If covered, payment for these services would be made by the carrier on a reasonable charge basis subject to the provisions of Subpart E of Part 405 of this chapter.

(b) *Physical therapy services.* (1) These services include—

(i) Testing and measurement of the function or dysfunction of the neuromuscular, musculoskeletal, cardiovascular and respiratory systems; and.

(ii) Assessment and treatment related to dysfunction caused by illness or injury, and aimed at preventing or reducing disability or pain and restoring lost function.

(2) The establishment of a maintenance therapy program for an

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[7] Before 1982, not more than $100 was recognized as incurred expenses.

individual whose restoration potential has been reached is a physical therapy service; however, maintenance therapy itself is not covered as part of these services.

(c) *Occupational therapy services.* These services include—

(1) Teaching of compensatory techniques to permit an individual with a physical impairment or limitation to engage in daily activities.

(2) Evaluation of an individual's level of independent functioning.

(3) Selection and teaching of task-oriented therapeutic activities to restore sensory-integrative function; and

(4) Assessment of an individual's vocational potential, except when the assessment is related solely to vocational rehabilitation.

(d) *Speech-language pathology services.* These are services for the diagnosis and treatment of speech and language disorders that create difficulties in communication.

(e) *Respiratory therapy services.* (1) These are services for the assessment, diagnostic evaluation, treatment, management, and monitoring of patients with deficiencies or abnormalities of cardiopulmonary function.

(2) These services include—

(i) Application of techniques for support of oxygenation and ventilation of the patient and for pulmonary rehabilitation.

(ii) Therapeutic use and monitoring of gases, mists, and aerosols and related equipment;

(iii) Bronchial hygiene therapy;

(iv) Pulmonary rehabilitation techniques such as exercise conditioning, breathing retraining and patient education in the management of respiratory problems.

(v) Diagnostic tests to be evaluated by a physician, such as pulmonary function tests, spirometry and blood gas analysis; and

(vi) Periodic assessment of chronically ill patients and their need for respiratory therapy.

(f) *Prosthetic device services.* These services include—

(1) Prosthetic devices (excluding dental devices and renal dialysis machines), that replace all or part of an internal body organ or external body member (including contiguous tissue) or replace all or part of the function of a permanently inoperative or malfunctioning external body member or internal body organ; and

(2) Services necessary to design the device, select materials and components, measure, fit, and align the device, and instruct the patient in its use.

(g) *Orthotic device services.* These services include—

(1) Orthopedic devices that support or align movable parts of the body, prevent or correct deformities, or improve functioning; and

(2) Services necessary to design the device, select the materials and components, measure, fit, and align the device, and instruct the patient in its use.

(h) *Social services.* These services include—

(1) Assessment of the social and emotional factors related to the individual's illness, need for care, response to treatment, and adjustment to care furnished by the facility;

(2) Casework services to assist in resolving social or emotional problems that may have an adverse effect on the beneficiary's ability to respond to treatment; and

(3) Assessment of the relationship of the individual's medical and nursing requirements to his or her home situation, financial resources, and the community resources available upon discharge from facility care.

(i) *Psychological services.* These services include—

(1) Assessment, diagnosis and treatment of an individual's mental and emotional functioning as it relates to the individual's rehabilitation;

(2) Psychological evaluations of the individual's response to and rate of progress under the treatment plan; and

(3) Assessment of those aspects of an individual's family and home situation that affect the individual's rehabilitation treatment.

(j) *Nursing care services.* These services include nursing services specified in the plan of treatment and any other nursing services necessary for the attainment of the rehabilitation goals.

(k) *Drugs and biologicals.* These are drugs and biologicals that are—

(1) Prescribed by a physician and administered by or under the supervision of a physician or a registered professional nurse; and

(2) Not excluded from Medicare Part B payment for reasons specified in § 410.28.

(l) *Supplies, appliances, and equipment.* These include—

(1) Non-reusable supplies such as oxygen and bandages;

(2) Medical equipment and appliances; and

(3) Durable medical equipment of the type specified in § 410.38, (except renal dialysis systems) for use outside the CORF, whether purchased or rented.

(m) *Home environment evaluation.* This is a single home visit to evaluate the potential impact of the home situation on the rehabilitation goals.

§ 410.102 Excluded services.

None of the services specified in § 410.100 is covered as a CORF service if the service—

(a) Would not be covered as an inpatient hospital service if furnished to a hospital inpatient;

(b) Is not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member. An example would be services furnished as part of a maintenance program involving repetitive activities that do not require the skilled services of nurses or therapists.

§ 410.105 Requirements for coverage of CORF services.

Services specified in § 410.100 and not excluded under § 410.102 are covered as CORF services if the following requirements are met:

(a) *Referral and medical history.* The services must be furnished to an individual who is referred by a physician who certifies that the individual needs skilled rehabilitation services, and makes the following information available to the CORF before or at the time treatment is begun:

(1) The individual's significant medical history.

(2) Current medical findings.

(3) Diagnosis(es) and contraindications to any treatment modality.

(4) Rehabilitation goals, if determined.

(b) *When and where services are furnished.* (1) All services must be furnished while the individual is under the care of a physician; and

(2) Except for the home evaluation visit described in § 410.100(m), the services must be furnished onsite at a participating CORF. (The conditions for CORF participation in Medicare are set forth in Part 485, (Subpart B, of this chapter.)

(c) *Plan of treatment.* (1) The services must be furnished under a written plan of treatment that—

(i) Is established and signed by a physician before treatment is begun; and

(ii) Prescribes the type, amount, frequency, and duration of the services to be furnished, and indicates the diagnosis and anticipated rehabilitation goals.

(2) The plan must be reviewed at least every 60 days by a facility physician who, when appropriate, consults with the professional personnel providing the services.

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(3) The reviewing physician must certify or recertify that the plan is being followed, the patient is making progress in attaining the rehabilitation goals, and the treatment is having no harmful effects on the patient.

Subpart E—Payment of SMI Benefits

§ 410.150 To whom payment is made.

(a) *General rules.*

(1) Any SMI enrollee is, subject to the conditions, limitations, and exclusions set forth in this Part and in Parts 405 and 416 of this chapter, entitled to have payment made as specified in paragraph (b) of this section.

(2) The services specified in paragraphs (b)(5) through (b)(11) of this section must be furnished by a facility that has in effect a provider agreement or other appropriate agreement to participate in Medicare.

(b) *Specific rules.* Subject to the conditions set forth in paragraph (a) of this section, Medicare Part B pays as follows:

(1) To the individual, or to a physician or other supplier on the individual's behalf, for medical and other health services furnished by the physician or other supplier.

(2) To a nonparticipating hospital on the individual's behalf for emergency outpatient services furnished by the hospital, in accordance with § 410.168.

(3) To the individual, for emergency outpatient services furnished by a nonparticipating hospital, in accordance with § 405.1672(b) of this chapter.

(4) To the individual, for physicians' services and ambulance services furnished outside the United States in accordance with § 405.1672(b) of this chapter.

(5) to a provider on the individual's behalf for medical and other health services furnished by the provider (or by others under arrangements made with them by the provider).

(6) To a home health agency on the individual's behalf for home health services furnished by the home health agency.

(7) to a clinic, rehabilitation agency, or public health agency on the individual's behalf for outpatient physical therapy or speech pathology services furnished by the clinic or agency (or by others under arrangements made with them by the clinic or agency).

(8) To a rural health clinic on the individual's behalf for rural health clinic services furnished by the rural health clinic.

(9) To an ambulatory surgical center (ASC) on the individual's behalf for covered ambulatory surgical center facility services that are furnished in connection with surgical procedures performed in an ASC, as provided in Part 416 of this chapter.

(10) To a comprehensive outpatient rehabilitation facility (CORF) on the individual's behalf for comprehensive outpatient rehabilitation facility services furnished by the CORF.

(11) To a renal dialysis facility, on the individual's behalf, for institutional or home dialysis services, supplies, and equipment furnished by the facility.

§410.152 Amounts of payment.

(a) *General provisions.*—(1) *Exclusion from incurred expenses.* As used in this section, "incurred expenses" are expenses incurred by an individual, during his or her coverage period, for covered Part B services, excluding the following:

(i) Expenses incurred for services for which the beneficiary is entitled to have payment made under Medicare Part A or would be so entitled except for the application of the Part A deductible and coinsurance requirements.

(ii) Expenses incurred in meeting the Part B blood deductible (§ 410.161).

(iii) In the case of services reimbursable under a formula that takes into account reasonable charges, reasonable costs, customary charges, customary (insofar as reasonable) charges, fair compensation, a per-treatment prospective payment rate, or a standard overhead amount, or any combination of two or more of these factors, expenses in excess of any factor taken into account under that formula.

(iv) In the case of physician and CORF services, for the treatment of a mental, psychoneurotic, or personality disorder, furnished to an individual who is not an inpatient of a hospital, expenses for a calendar year in excess of the lesser of $312.50 or 62 percent of the reasonable charge.

(v) In the case of expenses incurred for outpatient physical therapy furnished by therapists in independent practice, expenses in excess of $500 in reasonable charges incurred in a calendar year.

(2) *Other applicable provisions.* Medicare Part B pays for incurred expenses the amounts specified in paragraphs (b) through (h) of this section, subject to the following:

(i) The principles and procedures for determining reasonable costs and reasonable charges and the conditions for Medicare payment, as set forth in Subparts D, E, P and X of part 405 of this chapter.

(ii) The Part B annual deductible (§ 410.160).

(iii) The special rules for payment to health maintenance organizations (HMOs), health care prepayment plans (HCPPs), and competitive medical plans (CMPs) that are set forth in Part 417 of this chapter. (A prepayment organization that does not qualify as an HMO CMP, or HCPP is paid in accordance with § 410.172)

(b) *Basic rules for payment.* Except as specified in paragraphs (c) through (h) of this section, Medicare Part B pays the following amounts:

(1) For services furnished by, or under arrangements made by, a provider other than a nominal charge provider, whichever of the following is less:

(i) 80 percent of the reasonable cost of the services.

(ii) The reasonable cost of, or the customary charges for, the services, whichever is less, minus 20 percent of the customary (insofar as reasonable) charges for the services.

(2) For services furnished by, or under arrangements made by, a nominal charge provider, 80 percent of fair compensation.

(3) For emergency outpatient hospital services furnished by a nonparticipating hospital that is eligible to receive payment for those services under § 410.168(c), the amount specified in paragraph (b)(1) of this section.

(4) For services furnished by a person or an entity other than those specified in paragraphs (b)(1), (b)(2) and (b)(3) of this section, 80 percent of the reasonable charges for the services.

(c) *Amount of payment: Home health services other than durable medical equipment (DME).* For home health services other than DME furnished by, or under arrangements made by, a participating HHA, Medicare Part B pays the following amounts:

(1) For services furnished by an HHA that is a nominal charge provider, 100 percent of fair compensation.

(2) For services furnished by an HHA that is not a nominal charge provider, the lesser of the reasonable cost of the services and the customary charges for the services.

(d) *Amount of payment: DME furnished as a home health service.*

(1) *Basic rule.* Except as specified in paragraph (d)(2) of this section—

(i) For DME furnished by an HHA that is a nominal charge provider, Medicare Part B pays 80 percent of fair compensation.

(ii) For DME furnished by an HHA that is not a nominal charge provider, Medicare Part B pays the lesser of the following:

(A) 80 percent of the reasonable cost of the service.

(B) The reasonable cost of, or the customary charge for, the service, whichever is less, minus 20 percent of the customary (insofar as reasonable) charge for the service.

(2) *Exception.* If the DME is used DME purchased by or on behalf of the beneficiary at a price at least 25 percent less than the reasonable charge for new equipment—

(i) For used DME furnished by an HHA that is a nominal charge provider, Medicare Part B pays 100 percent of fair compensation.

(ii) For used DME furnished by an HHA that is not a nominal charge provider, Medicare Part B pays 100 percent of the reasonable cost of, or the customary charge for, the services, whichever is less.

(e) *Amount of payment: Renal dialysis services, supplies, and equipment.* Effective for services furnished on or after August 1, 1983, Medicare Part B pays for the institutional dialysis services specified in § 409.250 and the home dialysis services, supplies, and equipment specified in § 409.252, as follows:

(1) Except as provided in paragraph (d)(2) of this section, 80 percent of the per treatment prospective reimbursement rate established under § 405.439 of this chapter, for outpatient maintenance dialysis furnished by ESRD facilities approved in accordance with Subpart U of Part 405 of this chapter.

(2) *Exception.* If a home dialysis patient elects to obtain home dialysis supplies or equipment (or both) from a party other than an approved ESRD facility, payment is in accordance with paragraph (b)(4) of this section.

(f) *Amount of payment: Rural health clinic services.* Medicare Part B pays, for services by a participating independent rural health clinic, 80 percent of the costs determined under Subpart X of Part 405 of this chapter, to the extent those costs are reasonable and related to the cost of furnishing rural health clinic services or reasonable on the basis of other tests specified by HCFA.

(g) *Amount of payment: Used durable medical equipment furnished by other than an HHA.* Medicare Part B pays the following amounts for used DME purchased by or on behalf of the beneficiary at a price at least 25 percent less than the reasonable charge for comparable new equipment:

(1) For used DME furnished by, or under arrangements made by, a nominal charge provider, 100 percent of fair compensation.

(2) For used DME furnished by or under arrangements made by a provider that is not a nominal charge provider, 100 percent of the reasonable cost of the service or the customary charge for the service, whichever is less.

(3) For used DME furnished by other than a provider, 100 percent of the reasonable charge.

(h) *Amount of payment: Pneumococcal vaccine.* Medicare Part B pays of pneumococcal vaccine and its administration as follows:

(1) For services furnished by a nominal charge provider, 100 percent of fair compensation.

(2) For services furnished by a provider that is not a nominal charge provider, the reasonable cost of the services or the customary charge for the service, whichever is less.

(3) For services furnished by other than a provider or a rural health clinic, 100 percent of the reasonable charge.

(4) For services furnished by a rural health clinic, reimbursement is in accordance with paragraph (f) of this section.

(i) *Amount of payment: Ambulatory surgical services.*

(1) *Physician services.* Effective for services furnished after September 6, 1982, Medicare Part B pays 100 percent of the reasonable charges (or 100 percent of the reasonable cost in the case of an HMO reimbursed in accordance with Part 416 of this chapter) for physician services (including all pre-operative and post-operative services) furnished in connection with surgical procedures specified in Part 416 of this chapter, if the following conditions are met:

(i) The procedures are performed in a participating ambulatory surgical center (ASC), on an outpatient basis in a participating hospital, or in a participating hospital-affiliated ASC.

(ii) The physician accepts assignment of the right to receive payment for the services (in accordance with § 405.1675 of this chapter) or qualifies to receive payment for the services (under § 405.1684 of this chapter) when the beneficiary dies without assigning the right to payment. Under § 405.1680 of this chapter, a physician may authorize an employer, facility, or organization to accept assignment or to claim payment on his or her behalf, in accordance with §§ 405.1675 and 405.1684 of this chapter.

If the conditions of this paragraph (i) are not met, Medicare Part B pays 80 percent of reasonable charges for the services.

(2) *Amount of payment: ASC facility services.* Effective for services furnished after September 6, 1982, Medicare Part B pays a standard overhead amount, as specified in § 416.120(c) of this chapter, for ASC facility services that are furnished in connection with surgical procedures specified in § 416.65 of this chapter.

§ 410.155 Psychiatric services limitations: Expenses incurred for physician services and CORF services.

(a) *Definitions.* As used in this section, unless the context indicates otherwise, "*Mental, psychoneurotic, or personality disorder*" means the specific psychiatric conditions described in the American Psychiatric Association's Diagnostic and Statistical Manual—Mental Disorders. "*Hospital*" means any hospital that is primarily engaged in providing, by or under the supervision of physicians, diagnostic and therapeutic services for the medical diagnosis, treatment, and care of injured, disabled or sick persons, or rehabilitation services for the rehabilitation of injured, disabled or sick persons; or psychiatric services for the diagnosis and treatment of mentally ill persons; and medical services for the diagnosis and treatment of tuberculosis.

(b) *Services subject to limitation.* The psychiatric services limitation applies to physician services and CORF services (furnished by physicians or nonphysicians) for the treatment of a mental, psychoneurotic, or personality disorder, when the services are furnished to an individual who is not an inpatient in a hospital.

(c) *Limitation.* Of the expenses incurred during any calendar year for services specified in paragraph (b) of this section, only $312.50 or 62½ percent of the expenses (whichever is less) will be considered reimbursable under Medicare Part B, subject to the amount of payment and deductible provisions set forth in §§ 410.152 and 410.160.

(d) *Example.*

As a private patient, Mr. X's only medical expenses during the calendar year 1982 amounted to $750 for physicians' services in connection with the treatment of a mental disorder which did not require inpatient hospitalization. The statutory limit for any calendar year on the amount of these expenses that is covered under this Subpart B is $312.50 ($312.50 being lesser in amount than 62½ percent of $750). Mr. X is required to meet the first $75 as a deductible, and 20 percent of the balance. The remaining 80 percent is payable under this Subpart B.

Total covered expenses	Mr. X's payment	Payment under subpart B
$312.50	[2] $437.50	
−75.00 [1]	[1] 75.00	
237.50	[3] 47.50	[4] 190.00

[1] Deductible, as described in § 409.360.

[2] In excess of $312.50.

[3] 20 percent of total covered expenses less deductible

[4] 80 percent of total covered expenses less deductible

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If Mr. X had incurred $350 of the above expenses while an inpatient of an institution (see paragraph (b) of this section), and the remaining $400 while not an inpatient of an institution, payment would be computed as follows:

Total covered expenses	Mr. X's payment	Payment under subpart B
$250 [1]	[3] $150	
+350 [2]		
600	[4] 75	
−75		
525	[5] 105	[6] 420

[1] 62½ percent of $400.
[2] In excess of 62½ percent of $400.
[3] 100 percent of expenses incurred while an inpatient.
[4] Deductible.
[5] 20 percent of total covered expenses less deductible.
[6] 80 percent of total covered expenses less deductible.

§ 410.160 Part B annual deductible.

(a) *Basic rule.* Except as provided in paragraph (b) of this section, incurred expenses (as defined in § 410.152) are subject to, and count toward meeting the annual deductible.

(b) *Exceptions.* The following incurred expenses are not subject to the Part B annual deductible and do not count toward meeting that deductible:

(1) Home health services. [8]

(2) Pneumococcal vaccines and their administration.

(3) Physician services furnished in connection with ambulatory surgery if those services meet the requirements of § 410.152(i)(1) for payment of 100 percent of reasonable charges.

(4) ASC facility services.

(c) *Application of the Part B annual deductible.*

(1) Before payment is made under § 410.152, an individual's incurred expenses for the calendar year are reduced by the Part B annual deductible.

(2) The Part B annual deductible is applied to incurred expenses in the order in which claims for those expenses are processed by the Medicare program.

(3) Only one Part B annual deductible may be imposed for any calendar year and it may be met by any combination of expenses incurred in that year.

(d) *Special rule for services reimbursable on a formula basis.*

(1) In applying the formula that takes into account reasonable costs, customary charges, and customary (insofar as reasonable) charges, and is used to determine payment for services furnished by a provider that is not a nominal charge provider, the Medicare intermediary takes the following steps:

(i) Reduces the customary charges for the services by an amount equal to any unmet portion of the deductible for the calendar year, in accordance with paragraph (b) of this section. (The amount of this reduction is considered to be the amount of the deductible that is met on the basis of the services to which it is applied.)

(ii) Determines 20 percent of any remaining portion of the customary (insofar as reasonable) charge.

(iii) Determines the lesser of the reasonable cost of the services and the customary charges for the services.

(iv) Reduces the amount determined under paragraph (c)(1)(iii) of this section by the sum of the reduction made under paragraph (c)(1)(i) of this section and the amount determined under parargaph (c)(1)(ii) of this section.

(v) Reduces the reasonable cost of the services by the amount of the reduction made under paragraph (c)(1)(i) of this section and multiplies the result by 80 percent.

(2) In accordance with § 410.152(b)(1), the amount payable is the amount determined under paragraph (c)(1)(iv) of this section, or the amount determined under paragraph (c)(1)(v) of this section, whichever is less.

(e) *Special rule for services of an independent rural health clinic.* Application of the Part B annual deductible to rural health clinic services is in accordance with § 405.2425(b)(2) of this chapter.

(f) *Amount of the Part B annual deductible.*

(1) Beginning with expenses for services furnished during calendar year 1982, the Part B annual deductible is $75.

(2) From 1973 through 1981, the deductible was $60.

(3) From 1966 through 1972, the deductible was $50.

(g) *Carryover of Part B annual deductible.* For calendar years before 1982, the Part B annual deductible was reduced by the amount of expenses incurred during the last quarter of the preceding year that was applied to meet the deductible for that preceding year. *Example:* If $20 of expenses incurred in November 1980 was used to meet the 1980 deductible, the 1981 deductible was reduced to $40 ($60–$20).

(h) *Examples of application of the annual deductible.*

(1) Mr. A submitted claims for the following expenses incurred during 1982: $20 for services furnished in March by physician X; $30 for services furnished in April by physician Y; $50 for services furnished in June by physician Z, for a total of $100. The carrier determined that the charges as submitted were the reasonable charges. The first $75 of expenses for which claims were processed is applied to meet the $75 deductible for that year. Medicare Part B pays 80 percent of the remaining $25, or $20.

(2) Mr. B submitted a claim that included a $25 charge by a doctor for an examination to prescribe a hearing aid and an $80 charge for office surgery. This was the first claim relating to Mr. B's medical expenses processed in the calendar year. The carrier disallowed the $25 charge because the type of examination is not covered by Medicare. The carrier reduced the $80 surgery charge to a reasonable charge of $40. Only the $40 reasonable charge for covered services will count toward meeting Mr. B's deductible. Since the remainder of the surgery charge constitutes and excess over the reasonable charge, it cannot be applied to satisfy Mr. B's deductible.

(3) Mr. C became entitled to Medicare Part B benefits on July 1, 1982. He incurred expenses of $200 in July, August, and September. The carrier determined that the changes as submitted were reasonable. Even though Mr. C was entitled to benefits for only half the year, he must meet the full $75 deductible. Thus, $75 of this expense constitutes Mr. C's deductible. Medicare would pay $100, which is 80 percent of the remaining $125.

§ 410.161 Part B blood deductible.

(a) *General rules.*

(1) As used in this section, "packed red cells" means the red blood cells that remain after plasma is separated from whole blood.

(2) A unit of packed red cells is treated as the equivalent of a pint of whole blood, which in this section is referred to as a unit of whole blood.

(3) Medicare does not pay for the first 3 units of whole blood or units of packed red cells that are furnished under Part B in a calendar year.

(4) The blood deductible does not apply to other blood components such as platelets, fibrinogen, plasma, gamma globulin and serum albumin, or to the costs of processing, storing, and administering blood.

(5) The blood deductible is in addition to the Part B annual deductible specified in § 410.160.

(6) There is also a separate Part A hospital insurance blood deductible. Blood furnished under Part A does not count toward meeting the Part B blood deductible, and blood furnished under Part B does not count toward meeting the Part A blood deductible.

(b) *Beneficiary's responsibility for the first 3 units of blood.*

(1) The beneficiary is responsible for the first three units of whole blood or

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[8] Before July 1981, home health services were subject to the Part B annual deductible.

packed red cells received during a calendar year.

(2) If the blood is furnished by a hospital, the rules set forth in § 409.87 (b), (c), and (d) of this chapter apply.

(3) If the blood is furnished by a physician, clinic, or other supplier that has accepted assignment of Medicare benefits, or claims payment under § 405.1684 of this chapter because the beneficiary died without assigning benefits, the supplier may charge the beneficiary the reasonable charge for the first 3 units, to the extent that those units are not replaced.

§ 410.163 Payment for services furnished to kidney donors.

Notwithstanding any other provisions of this chapter, there are no deductible or coinsurance requirements with respect to services furnished to an individual who donates a kidney for transplant surgery.

§ 410.165 Payment for rural health clinic services and ambulatory surgical center services: Conditions.

(a) Medicare Part B pays for covered rural health clinic services if—

(1) The services are furnished in accordance with the requirements of Subpart X of Part 405 of this chapter and Subpart A of Part 491 of this chapter; and

(2) The clinic files a written request for payment on the form and in the manner prescribed by HCFA.

(b) Medicare Part B pays for covered ambulatory surgical center (ASC) services if—

(1) The services are furnished in accordance with the requirements of Part 416 of this chapter; and

(2) The ASC files a written request for payment on the form and in the manner prescribed by HCFA.

§ 410.168 Payment for emergency outpatient services furnished by a nonparticipating hospital.

(a) *Definition.* As used in this section, "emergency outpatient services" means outpatient hospital diagnostic and therapeutic services that are necessary to prevent the death or serious impairment of the health of the individual, and which, because of the threat to the life or health of the individual, require the use of the most accessible hospital available and equipped to furnish those services.

(b) *General conditions for payment.* Medicare Part B pays for emergency outpatient services furnished by a nonparticipating hospital (that is, a hospital that does not have in effect a provider agreement in accordance with Part 489 of this chapter) if the conditions of this paragraph (b) and the following applicable conditions of paragraph (c) or (d) of this section are met.

(1) The hospital—

(i) Meets the requirements of section 1861(e) (5) and (7) of the Act with respect to 24-hour nursing service and State licensure;

(ii) Is primarily engaged in providing, under the supervision of a doctor of medicine or osteopathy, inpatient services for the medical diagnosis, treatment, and care or rehabilitation of persons who are sick, injured, or disabled; and

(iii) Is not primarily engaged in providing skilled nursing care and related services to inpatients who require medical or nursing care.

(2) The services are emergency outpatient services furnished to an individual who is enrolled under Medicare Part B.

(3) The services are furnished by the hospital or by others under an arrangement made by the hospital.

(4) Written request for payment is filed by or on behalf of the individual to whom the services were furnished.

(5) Payment for the services would have been made if an agreement under Part 489 of this chapter had been in effect with the hospital and the hospital had met all other conditions for payment.

(6) HCFA determines, in accordance with § 405.191 of this chapter, that an emergency existed at the time the services were furnished.

(7) HCFA determines, in accordance with § 405.192 of this chapter, that the hospital was the most accessible hospital available and equipped to furnish the services.

(c) *Additional conditions for payment to the hospital.* (1) The hospital has filed, and HCFA has accepted, the hospital's election to claim payment for all emergency services furnished to Medicare beneficiaries in a calendar year, in accordance with § 405.152 of this chapter.

(2) The hospital agrees to comply with the provisions of Subparts C and D of Part 489 of this chapter regarding the charges that may be imposed on the individual or any other person, and the return of any money incorrectly collected.

(3) The hospital's claim for payment is filed with HCFA and includes a physician's statement describing the nature of the emergency and stating that the emergency services were necessary to prevent the death of the individual or the serious impairment of his or her health. The statement must be sufficiently comprehensive to support a finding that an emergency existed.

(d) *Additional conditions for payment to the individual.* Medicare Part B pays the individual for emergency outpatient services received from a nonparticipating hospital if—

(1) The hospital that furnished the services does not have in effect an election to claim payment for all emergency services furnished to Medicare beneficiaries in the calendar year;

(2) The individual (or someone on his or her behalf) files a claim with HCFA, including the itemized hospital bill and a physician's statement that meets the requirements specified in paragraph (c)(3) of this section.

§ 410.170 Payment for home health services, for medical and other health services furnished by a provider or an approved ESRD facility, and for comprehensive outpatient rehabilitation facility (CORF) services: Conditions.

Payment under Medicare Part B, for home health services, for medical and other health services, or for CORF services, may be made to the provider or facility only if the following conditions are met:

(a) *Request for payment.* A written request for payment is filed by or on behalf of the individual to whom the services were furnished.

(b) *Physician certification.* (1) For home health services, a physician provides certification and recertification in accordance with § 405.1633 of this chapter.

(2) For medical and other health services, a physician provides certification and recertification in accordance with § 405.1634 of this chapter.

(3) For CORF services, a physician provides certification and recertification in accordance with § 405.1635 of this chapter.

(c) In the case of home dialysis support services described in § 410.52, the services are furnished in accordance with a written plan prepared and periodically reviewed by a team that includes the patient's physician and other professionals familiar with the patient's condition as required by § 405.2137(b)(3) of this chapter.

§ 410.175 Circumstances under which payment of benefits is prohibited.

Medicare does not pay Part B benefits under any of the following circumstances:

(a) *Failure to furnish information.* No payment is made unless the information necessary to determine the amount due has been furnished.

(b) *Failure to file timely claim.* No payment is made unless a claim is

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submitted in accordance with the requirements and time frames set forth in Subpart P of Part 405 of this chapter.

(c) *Alien outside the United States for 6 full calendar months.* (1) No payment is made for services furnished to an individual who is not a citizen or a national of the United States if those services are furnished in any month for which the individual is not paid monthly social security cash benefits (or would not be paid if he or she were entitled to those benefits) because he or she has been outside the United States continuously for 6 full calendar months.

(2) Payment of benefits resumes with services furnished during the first full calendar month the alien is back in the United States.

V. Part 421 is amended as set forth below:

PART 421—INTERMEDIARIES AND CARRIERS

A. The authority citation for Part 421 continues to read as follows:

Authority: Sec. 1102, 1815, 1816, 1833, 1842, 1861(u), 1871, 1874, and 1875 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395h, 1395l, 1395u, 1395x(u), 1395hh, 1395kk, and 1395ll), and 42 U.S.C. 1395b–1.

B. Section 421.200(c) is revised to correct and add cross-references, to read as follows:

§ 421.200 Carrier functions.

* * * * *

(c) *Payment on a charge basis.* If payment is on a charge basis, under Part 405, Subpart E of this chapter, the carrier must assure that—

(1) Charges are reasonable and not higher than the charge for a comparable service furnished under comparable circumstances to the carrier's policy holders and subscribers; and

(2) The payment is based on one of the following:

(i) An itemized bill.

(ii) An assignment under the terms of which the reasonable charge is the full charge for the service, as specified in § 405.1675 of this chapter.

(iii) If the beneficiary has died, the procedures set forth in §§ 405.1683 and 405.1684 of this chapter.

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VI. Part 421 is amended as set forth below:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

A. The authority citation for Part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

B. Subpart B is amended by adding a new § 431.56 to read as follows:

§ 431.56 Special waiver provisions applicable to American Samoa.

(a) *Basis and purpose.* This section implements section 1902(j) of the Act, which provides for waiver of requirements, in the case of American Samoa.

(b) *Waiver provisions.* American Samoa may request, and HCFA may approve, a waiver of any of the title XIX requirements except the following:

(1) The Federal medical assistance percentage specified in section 1903 of the Act and § 433.10(b) of this chapter.

(2) The limit imposed by section 1108(c) of the Act on the amount of Federal funds payable to American Samoa in any year of Medicaid expenditures.

(3) The requirement that payment be made only with respect to expenditure made by American Samoa for care and services that meet the section 1905(a) definition of medical assistance.

VII. Part 433 is amended as set forth below:

PART 433—STATE FISCAL ADMINISTRATION

A. The authority citation for Part 433 is revised to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 433.10 [Amended]

B. In Subpart A, § 433.10(b) is amended to correct a designation error and to add American Samoa, as follows:

1. In line 2 of paragraph (b), the "(1)" is removed.

2. In line 34 of paragraph (b), the word "and" is removed and a comma inserted.

3. In line 35 of paragraph (b), ", and American Samoa" is inserted immediately after "Islands".

VIII. Part 435 is amended as set forth below:

PART 435—ELIGIBILITY IN THE STATES, THE DISTRICT OF COLUMBIA AND THE NORTHERN MARIANA ISLANDS

The authority citation for Part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

A. The Part heading is revised to add American Samoa as follows:

PART 435—ELIGIBILITY IN THE STATES, THE DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

Subpart A—[Amended]

B. Subpart A is amended as follows:

1. Section 435.2 is amended by revising the undesignated introductory text to add American Samoa, to read as follows:

§ 435.2 Purpose and applicability.

This part sets forth, for the 50 States, the District of Columbia, the Northern Mariana Islands, and American Samoa—

* * * * *

§ 435.3 [Amended]

2. Section 435.3 is amended by inserting, immediately after the citation for 1902(f), the following:

1902(j) Medicaid program in American Samoa.

IX. Part 489 is amended as set forth below:

PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

1. The authority citation for Part 489 continues to read as follows:

Authority: Secs. 1102, 1861, 1864, 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395aa, 1395cc, and 1395hh).

2. Section 489.30 is amended as follows:

§ 489.30 Allowable charges: Deductibles and coinsurance.

a. The section heading is revised to read as set forth above.

b. Paragraph (a)(3) is updated by changing "extended care services" to the currently used term "SNF care".

c. A new paragraph (a)(4) is added to read as follows:

(a) *Part A deductible and coinsurance.*

* * * * *

(4) In the case of durable medical equipment (DME) furnished as a home health service, 20 percent of the customary charge for the service.

* * * * *

d. Paragraph (b) is amended by revising the heading and paragraphs (b) (1) and (2), and adding a new paragraph (b)(5) as follows:

* * * * *

(b) *Part B deductible and coinsurance.* (1) The basic allowable charges are the $75 deductible and 20 percent of the customary (insofar as reasonable) charges in excess of that deductible.

(2) For hospital outpatient services, the allowable deductible charges depend on whether the hospital can determine the beneficiary's deductible status.

(i) If the hospital is unable to determine the deductible status, it may charge the beneficiary its full customary charges up to $75.

(ii) If the beneficiary provides official information as to deductible status, the hospital may charge only the unmet portion of the deductible.

* * * * *

(5) In the case of DME furnished as a home health service under Medicare Part B, the coinsurance is 20 percent of the customary (insofar as reasonable) charge for the services, with the following exception: if the DME is used DME purchased by or on behalf of the beneficiary at a price at least 25 percent less than the reasonable charge for comparable new equipment, no coinsurance is required.

X. Correction of Cross-References and Outdated Duductible Amount:

§ 405.100 [Amended]

1. Reference to "Part 408" is changed to "Part 406".

§ 405.153 [Amended]

2. In paragraph (c)(1)(ii), reference to § 405.658 is removed.

§ 405.210 [Amended]

3. a. In paragraph (b)(1)(iii), reference to "§ 408.10" is changed to "§ 406.10".

b. In paragraph (b)(1)(iv), "(see § 408.12 of this chapter)" is changed to "under § 406.12 of this chapter", and "(see § 408.13 of this chapter)." is changed to "under § 406.13 of this chapter.".

§ 405.311a [Amended]

4. In paragraph (a), reference to "§ 405.249" is changed to "§ 410.168 of this chapter".

§ 405.341 [Amended]

5. a. In paragraph (a)(1), reference to "§ 408.10 of this chapter." is changed to "§ 406.10 of this chapter."

b. In paragraph (a)(2), reference to "§ 408.13;" is changed to "§ 406.13 of this chapter;".

§ 405.370 [Amended]

6. In paragraph (a), the phrase "and payments under § 405.251(a)" is removed.

§ 405.501 [Amended]

7. In paragraph (a), reference to "§§ 405.240 and 405.245)." is changed to "§§ 410.152 and 410.160 of this chapter).".

§ 405.514 [Amended]

8. In paragraph (k)(1), reference to "§ 405.240" is changed to "§ 410.152 of this chapter", and reference to "§ 405.245" is changed to "§ 410.160 of this chapter".

§ 405.515 [Amended]

9. In the introductory text, reference to "§§ 405.240 and 405.245);" is changed to "§§ 410.152 and 410.160 of this chapter);".

§ 405.522 [Amended]

10. In paragraph (c), reference to "§ 405.240(c)" is changed to "§ 410.152 of this chapter".

§ 405.803 [Amended]

11. In paragraph (b), reference to "(§ 405.251(b))" is changed to "under § 405.1675.".

§ 405.903 [Amended]

12. In paragraph (b), "(see § 405.245)" is changed to ", as specified in § 410.160 of this chapter,".

§ 405.1660 [Amended]

13. a. In paragraph (a), the last portion of the first sentence, beginning with "(see § 405.116. . ." is removed, and the following is inserted: ", for posthospital SNF care, and for home health services, in accordance with Part 409 of this chapter.".

b. In paragraph (b), the parenthetical references to "§ 405.233 et seq." and to "§§ 405.231 and 405.249" are removed, and the following is added at the end of that first sentence: ", in accordance with Part 410 of this chapter".

§ 405.1663 [Amended]

14. a. In paragraph (a), "(see §§ 405.116 and 405.152)" is removed.

b. In paragraph (b), "(see §§ 405.131 and 405.136)" is removed.

c. In paragraph (c), "(see § 405.125)" is removed.

§ 405.1672 [Amended]

15. In paragraph (b), reference to "§ 405.231" is changed to "§ 410.10 of this chapter", and reference to "§ 405.249" is changed to "§ 410.168 of this chapter".

§ 405.1675 [Amended]

16. In paragraph (a)(1)(i), reference to "§§ 405.245 and 405.246" is changed to "§§ 410.160 and 410.161 of this chapter".

§ 405.2401 [Amended]

17. a. In paragraph (a)(7)(i), "$60" is changed to "$ 75."

b. In paragraph (a)(7)(ii), reference to "§§ 405.245 and 405.246" is changed to "§§ 410.160 and 410.161 of this chapter".

§ 405.2403 [Amended]

18. In paragraph (a)(2), reference to "§ 405.250–2)," is changed to "§ 410.165 of this chapter),".

§ 405.2418 [Amended]

19. Reference to "Subpart C and §§ 405.232, 405.243, and 405.252 of this part" is changed to "Subpart C of this part and Part 410 of this chapter".

§ 405.2425 [Amended]

20. In paragraph (b)(3), reference to "§ 405.250–2" is changed to "§ 410.165 of this chapter".

§ 413.74 [Amended]

21. In paragraph (c), reference to "§ 405.658". is changed to "§ 405.152".

§ 416.3 [Amended]

22. In paragraph (a), reference to "§ 405.240(k)(2) of this chapter" is changed to "§ 405.1675 of this chapter".

§ 416.30 [Amended]

23. In paragraph (b), reference to "§ 405.250–2 of this chapter).". is changed to "§ 410.165 of this chapter).".

§ 416.110 [Amended]

24. In paragraph (c), reference to "§ 405.240(k)(2) of this chapter)." is changed to "§ 405.1675 of this chapter).".

§ 417.221 [Amended]

25. In paragraph (b), "(described in Subpart B of Part 405 of this chapter)." is changed to "(as specified in Part 410 of this chapter).".

§ 417.222 [Amended]

26. In paragraph (b), reference to "§§ 406.113 through 405.115, 405.123, and 405.124," is changed to "Subpart G of Part 409 of this chapter," and reference to "§§ 405.240, 405.243, 405.245, and 405.246." is changed to "Subpart E of Part 410 of this Chapter.".

§ 418.202 [Amended]

27. a. In paragraph (c), reference to "§ 405.232a" is changed to "§ 410.20 of this chapter".

b. In paragraph (f), reference to "§ 405.231(g)" is changed to "§ 410.38 of this chapter".

c. In paragraph (g), reference to "§ 405.127(d) of this chapter." is changed to "§ 409.33(d) of this chapter".

d. In paragraph (h), reference to "§ 405.127(c) of this chapter" is changed to "§ 409.33 (b) and (c) of this chapter".

§ 421.200 [Amended]

28. In paragraph (c)(2)(ii), reference to "§ 405.251(b) of this chapter;" is changed to "§ 405.1675 of this chapter;".

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§ 485.70 [Amended]

29. In the introductory test, reference to "§ 405.260 of this chapter." is changed to "§ 410.100 of this chapter.".

§ 489.23(d) [Amended]

30. In paragraph (d)(2), reference to "§ 405.245 of this chapter." is changed to "§ 410.160 of this chapter.".

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; No. 13.773, Medicare—Hospital Insurance; and No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: August 22, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: October 2, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-25326 Filed 11-13-86; 8:45 am]

BILLING CODE 4120-01-M

Office of the Secretary

45 CFR Part 5b

Privacy Act of 1974; Exempt System

AGENCY: Office of the Secretary, HHS

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services hereby exempts a new system of records, 09-37-0019, "National Medical Expenditure Survey (NMES) Records," to be maintained by National Center for Health Services Research and Health Care Technology Assessment (NCHSR), from the subject access and amendment requirements of the Privacy Act to maintain the statistical nature of these documents.

EFFECTIVE DATE: November 14, 1986.

FOR FURTHER INFORMATION CONTACT: Daniel C. Walden, Ph.D., Senior Research Manager, Division of Intramural Research, NCHSR, (301) 443-4836.

SUPPLEMENTARY INFORMATION: The National Medical Expenditure Survey (NMES) succeeds a series of national medical expenditure surveys, most notably the 1977 National Medical Care Expenditure Survey (NMCES) and the 1980 National Medical Care Utilization and Expenditures Survey (NMCUES). The new survey will collect information on health status, use of health care services, expenditures and sources of payment, insurance coverage, employment, and demographic information for a sample of civilian noninstitutionalized as well as institutionalized populations. The date from this survey will be used solely for statistical purposes and for health policy research and analysis. No use will be made of the data which will affect the subject individuals or any of their rights, benefits or privileges.

The survey is being conducted under section 304 of the Public Health Service (PHS) Act, 42 U.S.C. 242b, which authorizes the Secretary, acting through the National Center for Health Services Research and Health Care Technology Assessment (NCHSR), to conduct and support research demonstrations, evaluations, and statistical and epidemiological activities for the purpose of improving the effectiveness, efficiency, and quality of health services in the United States. The data collected by NCHSR are governed by 42 U.S.C. 242m(d), section 308(d) of the PHS Act. Under this confidentiality provision, information collected which can be identified with an individual may not be used for any purpose other than the purpose for which it is collected, i.e., statistical and health policy research. Further, no information may be released from health statistical data which might identify individuals or institutions unless the individuals or institution or authorized representative has given specific consent for such release.

Records on identifiable households, health care providers, employers, residents, and next of kin of such residents, of nursing and personal care homes, psychiatric hospitals, faclities for the mentally retarded, will be collected for NMES. Names, addresses and telephone numbers of individuals who respond on behalf of health care facilities and insurers will also be collected. Together, these records will constitute a "system of records" as that term is defined by the Privacy Act. Records will be retrieved by identifier as necessary to corroborate, complete or correct responses.

Initially, the records were to be included under the broad National Center for Health Statistics (NCHS) systems of records 09-37-0010 and 09-37-0013, both of which contain prior medical expenditure survey data from the National Medical Care Expenditure Survey (NMCES) and the National Medical Care Utilization and Expenditure Survey (NMCUES). All data in these two systems are exempt from subject access and amendment requirements. However, the PHS has established a separate system of records for new NMES records (09-37-0019) which are to be administered by NCHSR and has published a notice in the **Federal Register** to this effect, 51 FR 2762, January 21, 1986.

In a notice of proposed rulemaking published in the **Federal Register**, 51 FR 16074, April 30, 1986, it was proposed, in accordance with paragraph (k)(4) of the Privacy Act, that the new NMES material compiled by NCHSR and its contractor(s) being maintained solely for health statistical research purposes, like the original NMCES and NMCUES data, be exempted from paragraphs (c)(3), (d), (e)(4) (G) and (H), and(f) of the Privacy Act which essentially pertain to subject access and amendment rights.

No comments were received. Thus, as previously proposed, the NMES system (09-37-0019) is exempted from paragraphs (c)(3), (d), (e)(4) (G) and (H), and (f) by the following amendment.

The Department has determined that the authorized exemption of this system of records from the above-cited subject access and amendment requirements of the Privacy Act is not a major rule within the meaning of Executive Order 12291, nor will it have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. Finally, the exemption as previously proposed by the following amendment does not impose any new information collection requirements within the Paperwork Reduction Act.

List of Subjects in 45 CFR Part 5b

Privacy.

Accordingly, the Department of Health and Human Services amends 45 CFR Part 5b as set forth below.

Dated: September 22, 1986.

Robert E. Windom,

Assistant Secretary for Health.

Approved: October 17, 1986.

Otis R. Bowen,

Secretary, Department of Health and Human Services.

PART 5b—PRIVACY ACT REGULATION

1. The authority citation for Part 5b continues to read as follows:

Authority: 5 U.S.C. 301, 5 U.S.C. 552a.

2. Section 5b.11 is amended by adding paragraph (b)(2)(iii)(F) as follows:

§ 5b.11 Exempt systems.

* * * * *

(b) * * *
(2) * * *
(iii) * * *

(F) National Medical Expenditure Survey Records. HHS/OASH/NCHSR

* * * * *

[FR Doc. 86-25765 Filed 11-13-86; 8:45 am]

BILLING CODE 4150-04

Proposed Rules

Federal Register
Vol. 51, No. 220
Friday, November 14, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM-50-37]

Lillian McNally; Denial of Petition of Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission is denying a petition submitted by Lillian McNally. The petitioner requested the Commission to amend its regulations: (1) to limit the concentrations of deuterium (heavy hydrogen of mass 2); (2) further limit tritium (radioactive heavy hydrogen of mass 3) concentrations in waters circulated "in and around" nuclear power plants; and (3) not permit the recombination of hydrogen and oxygen. The petitioner states that these restrictions would increase public health protection. The Commission is denying the petition because tritium releases from nuclear power plants to the environment already are considered to be "as low as is reasonably achievable" under existing NRC regulations and the cessation of the use of hydrogen-oxygen recombiners would decrease plant safety and could increase health risks.

ADDRESSES: Copies of the petition, public comments received on the petition and tabular data summaries on tritium releases and doses from reactors are available for inspection and copying under Docket No. PRM-50-37 in the NRC Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harold T. Peterson, Jr., Safety Research Application Branch, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 443-7691.

SUPPLEMENTARY INFORMATION: A petition for rulemaking was filed by Lillian McNally on July 6, 1983, and, as amended, her petition was docketed on September 23, 1983 as PRM-50-37 and noticed in the **Federal Register** on October 31, 1983 (45 FR 50083).

The amended petition requested the Commission to set standards for tritium and deuterium such that:

> Water circulated in and around Nuclear Power Plants is not to exceed the natural environment concentration of deuterium and tritium for one year; that in one year the concentration shall be limited to less than one part by weight in 10,000 parts, and that the amount by which the contaminants [exceed this limit] shall be reviewed annually thereafter to determine the attainable purity of circulating water.

The petitioner also requested that:

> In no case should the reintroduction of contaminated water produced by the recombination of molecular hydrogen and oxygen in the plant be permitted.

Summary of Public Comments

Four public comments were received by the NRC in response to the notice of receipt for this petition. Three respondents recommended denial of the petition. One respondent favored granting the petition.

Comment Favoring the Petition

The commenter favoring granting the petition cites the following points:

1. *Comment:* NRC and its licensees are mandated by NEPA to avoid "degradation, risk to health and safety or other undesirable and unintended consequences."

NRC Response: The section of the National Environmental Policy Act (Public Law 91-190) referred to by this commenter (section 101(b)(3), 42 U.S.C. 4331(b)(3)) states:

> . . . (3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences. . . .

However, the preface which precedes this paragraph 101(b), 42 U.S.C. 4331] states in part:

> . . . (b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs and resources to the end that the Nation may. . . .

This preface indicates that the paragraphs which follow it, including paragraph (3), represent a series of national goals. The NRC believes that its existing regulations regarding radiation protection meet these goals.

2. *Comment:* Water is ubiquitous so that tritiated water is a concern regarding potential health effects.

NRC Response: Tritiated water can be of public health significance and, for that reason, its release to the environment is controlled by the NRC under its regulations in 10 CFR Part 20.

3. *Comment:* NPDES [the EPA National Pollutant Discharge Elimination System] fails to deal with tritium.

NRC Response: Materials regulated under the authority of the Atomic Energy Act are not subject to the Federal Water Pollution Control Act Amendments of 1972 [Public Law 92-500, 86 Stat. 816, 33 U.S.C. 1151], Section 402 of which created the National Pollutant Discharge Elimination System (NPDES). This explains why NPDES does not deal with tritium. Tritium releases to the environment, either to the atmosphere or in liquid effluents, are regulated under the Atomic Energy Act of 1954, as amended.

Public Comments Opposed to the Petition

The commenters who recommended denial of the petition cite the following specific reasons:

1. *Comment:* The petitioner fails to demonstrate that releases of radioactive water to the atmosphere are at levels which have produced any public health concerns. Such releases have been within NRC limits and the NRC limits in 10 CFR Part 20 and 10 CFR Part 20, Appendix B, are adequate to protect public health.

NRC Response: This issue is addressed in the NRC staff analysis supporting the recommendations to deny this petition.

2. *Comment:* It would be impossible to control the tritium and deuterium in reactor waters to levels not exceeding naturally-occurring levels as tritium and deuterium are both produced during reactor operation.

NRC Response: The petition intends that a deuterium/tritium removal process be employed to remove the deuterium prior to irradiation and tritium and deuterium as they are formed. The existence of a pending patent by Ms. McNally on a deuterium-

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tritium removal process is not a relevant factor in the Commission's decision on her petition.

3. *Comment:* Petitioner's desired limit for a concentration of 1 in 10,000 "doesn't make sense" for tritium as it corresponds to about 1,000 Ci/liter which is many orders of magnitude above normal tritium levels during operation.

NRC Response: This is addressed in the NRC staff analysis which follows:

4. *Comment:* The petitioner does not present any data on the process to remove tritium. There is no proof of cost efficiency and therefore this process cannot be used to establish standards.

NRC Response: The NRC does not require specific details of the petitioner's proposed tritium separation process. It is sufficient to note that there are existing methods for the separation of tritium and hydrogen isotopes which could be applied. The NRC regulations contain criteria for what constitutes "as low as reasonably achievable" which can be applied to the collective (population) doses from tritium releases in order to define justifiable control costs. No known method of isotopic separation could be used at a cost of less than $100 per nuclear power plant (See Analysis below).

5. *Comment:* Deuterium is outside of NRC's jurisdiction to regulate.

NRC Response: Deuterium (hydrogen-2) is neither a source, byproduct nor a special nuclear material regulated by the NRC under the Atomic Energy Act of 1954, as amended. However, to the extent that deuterium could affect public health and safety (such as through tritium production), it could be regulated by the NRC under its authority to regulate production and utilization facilities, incluing nuclear power reactors.

Other public comments are considered in connection with the analysis of the merits of the petition itself.

Analysis of the Petition

In light-water reactors (LWRs), deuterium in cooling water is a minor source of tritium production in the coolant; leakage of fission-product tritium produced in the fuel and by neutron reactions with boron and lithium are the principal sources of tritium (Ref. 1 through 6). In pressurized-water reactors, tritium is formed directly in the coolant by interactions with boron and lithium in addition to the deuterium (1, 2, 3, 4, and 6). Tritium is produced in the fuel rods and in boron control rods or plates of both BWRs and some PWRs, but it is generally contained in these materials and large quantities do not reach the coolant (4, 5 through 6). However, release of even one percent of the tritium contained in the fuel or boron control rods would exceed the deuterium reaction as a source of tritium in a BWR. Because of the presence of these other sources of tritium in a LWR, removal or reduction of the deuterium concentration in the coolant as proposed by the petitioner would not result in any major reduction in the overall tritium production nor would it result in decreased tritium releases to the environment.

Petitioner's suggested limit for deuterium of one part by weight in 10,000 is 3 to 4 times lower than the natural concentration of deuterium in water. Furthermore, additional tritium and deuterium will be produced by neutron capture by hydrogen during operation of the reactor. This condition would require reducing the deuterium and tritium concentrations at the plant water intakes to less than ambient levels in order to attempt to offset the levels produced from reactor operation.

The Commission has criteria determining the practicability of additional reductions in radioactive effluents from nuclear power reactors. These criteria define "as low as is reasonably achievable" or "ALARA" levels of radioactive materials in light-water-cooled nuclear power reactor effluents and are in Appendix I to 10 CFR Part 50. One of the criteria for ALARA is that additional equipment for effluent reduction and control must be added if the reduction in the collective (population) dose (person-rem) afforded by the control equipment multiplied by the worth of exposure reduction ($1,000 per person-rem reduced) would exceed the cost of adding this technology.

The estimated population doses associated with tritium releases from light-water reactor (LWR) effluents in 1981 ranged between 1.1×10^{-6} person-rem to 3.4 person-rem at individual LWR sites (6). The total for all reactor sites was 8.3 person-rem. This means that, using the Appendix I criterion of $1,000 per person-rem reduced, expenditures for tritium control up to $3,400 per year maximum per reactor might be justified. The maximum total cost for all plants that could be justified would be $8,300 (8.3 person-rem × $1,000 per person-rem). The average justifiable cost per plant would be around $100. The processing of in-plant liquid and effluent streams containing tritium may entail handling tens of thousands of gallons of liquids. There is no demonstrated separation technology that could concentrate and separate tritium and deuterium from this volume of liquid for a hundred dollars or less. Therefore, the NRC concludes that the petitioner's request to require a reduction in tritium levels in waters circulating in and around reactor plants is not "reasonably achievable" under the Commission's established criteria in Appendix I to 10 CFR Part 50.

The application of the one part in ten thousand (by weight; 1:10,000) ratio to tritium would, as one of the public commenters noted, result in reactor coolant tritium concentrations which greatly exceed those that could be tolerated without excessive dose to plant workers. A tritium-to-hydrogen ratio of 1:10,000 by weight corresponds to a tritium activity concentration of approximately one curie per gram (or per milliliter) which is equivalent to 1,000 curies per liter of water. Although it would be almost impossible to reach such concentrations in a light-water reactor, such a limit could not be tolerated for tritium because of worker protection considerations. Therefore, the portion of the petition requesting the NRC to adopt this limit for tritium is unacceptable.

The petitioner also requested that:

> In no case should the reintroduction of contaminated water produced by the recombination of molecular hydrogen and oxygen in the plant be permitted.

Hydrogen and oxygen gases are producted in normal reactor operation by the radiolytic (radiation-induced) decomposition in water. The purpose of the petitioner's request would be to keep tritium-contaminated hydrogen gas from mixing with the large volume of water within the plant. These gases are potentially explosive and can represent a significant portion of the total quantity of radioactive waste gases produced. Controlled recombination of these gases back into water reduces not only the potential explosive hazard, but also the volume of the gaseous wastes which have to be stored and treated. The volume reduction resulting from recombination of hydrogen and oxygen permits longer in-plant holdup of radioactive waste gases, longer periods of radioactive decay and, consequently, results in lower radiation doses from gaseous effluents. Because the elimination of recombiners could have an adverse impact on the potential safety of reactor systems, would have adverse impacts on waste gas holdup times and would increase offsite radiation doses, and cannot be justified solely on the potential reduction of the already-low doses from tritium, the NRC also denies this aspect of the petition.

Basis for Denial

The NRC denies the petitioner's request to establish limits on the deuterium and tritium concentrations in reactor coolants on the basis that: (1) reductions in the deuterium levels would not necessarily produce corresponding reductions in tritium production, (2) tritium in the coolant of operating light-water reactors already is at or beneath the numerical limits requested by the petitioner and (3) the associated tritium releases from nuclear power plants are already "as low as is reasonably achievable." The request not to permit hydrogen and oxygen recombination is also denied because this recombination is desirable both for safety reasons and for reducing the levels of gaseous radioactive releases. Therefore, the petition is denied.

References Cited

1. C.L. Weaver, E.D. Harward, and H.T. Peterson, Jr., "Tritium in the Environment from Nuclear Power Plants," *Public Health Reports, 84*(4):363–371 (April 1969).

2. H.T. Peterson, Jr., J.E. Martin, C.L. Weaver and E.D. Harward, "Environmental Tritium Contamination from Increasing Utilization of Nuclear Energy Sources" in *Environmental Contamination by Radioactive Materials* (Proc. FAO–IAEA—WHO Seminar. Vienna, Austria 24–28 March 1969) Vienna: IAEA pp. 35–58 (1969).

3. J. Locante and D.D. Malinowski, "Tritium in Pressurized Water Reactors" in *Tritium* (A.A. Moghissi and M.W. Carter, eds.) CONF–710809, Las Vegas, NV: Graphics (May 1973) pp. 45–57.

4. J.M. Iacovino, Jr., "Tritium Control Strategies in PWRs," paper presented at the American Nuclear Society winter meeting, Washington, D.C., November 18, 1976. Abstract in *Trans. Amer. Nucl. Soc., 24*:106–108 (Nov. 1976).

5. J.M. Smith and R.S. Gilbert, "Tritium Experience in Boiling Water Reactors" in *Tritium* (A.A. Moghissi and M.W. Carter, eds) Messenger Graphics, Las Vegas, NV (May 1973) pp. 57–68.

6. H.T. Peterson, Jr., and D.A. Baker, "Tritium Production, Releases and Population Doses at Nuclear Power Reactors," *Fusion Technology, 8* (2):2544–2550 (September 1985).

Dated at Bethesda, MD this 20th day of October 1986.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 86–25769 Filed 11–13–86; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5, and 7

[Notice No. 611; Ref: Notice Nos. 362 and 600]

Use of the Word "Light" (Lite) in the Labeling and Advertising of Wine, Distilled Spirits, and Malt Beverages; Reopening of Comment Period

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Reopening of comment period.

SUMMARY: This notice reopens the comment period for Notice No. 600 (51 FR 28836, August 12, 1986). Notice No. 600 proposed regulations addressing the use of the word "light" (lite) in the labeling and advertising of wine, distilled spirits, and malt beverages. The proposals made include: (1) prescribing new regulations; (2) amending current regulations; (3) incorporating and/or modifying prior ATF decisions on labeling and advertising matters issued as rulings, specifically ATF Rul. 80–3, A.T.F. Q.B. 1980–2, 13, into the regulations; (4) incorporating other ATF policies into the regulations; and (5) incorporating into the regulations ATF Rul. 84–1, A.T.F. Q.B. 1984–2, 35, dealing with low or reduced alcohol malt beverages.

If adopted, the proposals would provide a concise meaning to the word "light" (lite). This, in turn, would provide industry with guidelines on the use of these terms and would minimize consumer confusion in this complex area.

The comment period is being reopened based on requests from the Wine Institute and others.

DATE: Comments must be received on or before December 31, 1986.

ADDRESS: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385, Attn: Notice No. 600.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20226 (202–566–7626).

SUPPLEMENTARY INFORMATION:

Background

On August 12, 1986, ATF published Notice No. 600, proposing regulations addressing the use of the word "light" (lite) in the labeling and advertising of alcoholic beverages, as well as proposing regulations on use of the terms "low alcohol" and "reduced alcohol" in the labeling and adevertising of malt beverages. Use of the word "light" (lite) was previously addressed, to a limited extent, in Notice No. 362 (December 19, 1980, 45 FR 83530).

ATF has received a written request from the Wine Institute (on behalf of the 530 wineries and many grapegrowers who comprise the Wine Institute) for additional time to gather data and formulate their comments. ATF has also received verbal inquiries for additional time from other interested parties, representing both domestic and foreign interests, who are directly impacted by issues raised in Notice No. 600.

Therefore, the comment period is being reopened, until December 31, 1986.

Disclosure

Copies of this notice, Notice No. 600, and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Disclosure Branch, Room 4406, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington, DC.

Drafting Information

The principal author of this document is James P. Ficaretta, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

This notice is issued under the authority contained in section 5 of the Federal Alcohol Administration Act, 49 Stat. 981, as amended, 27 U.S.C. 205.

Signed: November 10, 1986.

Stephen E. Higgins,

Director.

[FR Doc. 86–25735 Filed 11–12–86; 9:41 am]

BILLING CODE 4810-31-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[A–2–FRL–3110–2; Region II Docket No. 57]

Designation of Areas for Air Quality Planning Purposes; Revision to Section 107 Attainment Status Designations for New York State

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This notice announces the Environmental Protection Agency's (EPA's) proposed approval of a request

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from New York State to revise the air quality designation of the Village of East Syracuse and certain other areas in the City of Syracuse with respect to attainment of the suspended particulate matter national ambient air quality standards. If this proposal is approved, portions of Syracuse and the Village of East Syracuse will be designated as "better than national standards" with respect to particulate matter. Such designations are required by section 107(d) of the Clean Air Act and may be revised at the request of a state.

DATE: Comments must be received on or before December 15, 1986.

ADDRESSES: All comments should be addressed to: Christopher J. Daggett, Regional Administrator, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York, 10278.

Copies of the proposals submitted by New York State are available for public inspection during normal business hours at the following addresses:

Environmental Protection Agency, Air Programs Branch, Room 1005, 26 Federal Plaza, New York, New York 10278

New York State Department of Environmental Conservation, Division of Air, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION: Section 107(d) of the Clean Air Act directed each state to submit to the Administrator of the Environmental Protection Agency (EPA) a list, covering all areas within the state, of attainment status designations with respect to the national ambient air quality standards. EPA received such designations from the states and promulgated them on March 3, 1978 (43 FR 8962). As authorized by the Clean Air Act, these designations have been revised from time to time at a state's request.

EPA's Review Criteria

EPA has summarized its policy on TSP redesignations in a memorandum of April 21, 1983 from Sheldon Meyers, former Director of EPA's Office of Air Quality Planning and Standards (OAQPS), and a memorandum of September 30, 1985 from Gerald Emison, current Director of OAQPS. The policy generally requires eight quarters (two years) of monitoring data showing no violations and, for areas having an EPA-approved, full Part D control strategy, evidence that the strategy has been implemented. The most recent four quarters of monitoring data may be used if dispersion modeling shows that the SIP strategy is sound and if actual enforceable emission reductions have occurred.

State Submittals and EPA's Review Findings

On March 7, 1985 the New York State Department of Environmental Conservation (NYSDEC) submitted a request to revise its air quality designations with respect to the secondary suspended particulate matter (TSP) standard for certain areas in Syracuse and the Village of East Syracuse to "better than national standard" (i.e., attainment). This request was supplemented with additional information on April 3 and June 20, 1985. The area is currently designated as "does not meet secondary standard". The specific areas mentioned in the State proposals are listed in Table 1, as follows:

TABLE 1.—STATE PROPOSAL

Area	Present designation	Proposed designation
Central AQCR:		
Portion of Syracuse (southwest of the Barge Canal, northwest of Bear Street, northeast of I-690 and southeast of Onondaga Lake).	Does not meet Secondary Standard.	No change
Remainder of Syracuse.	Does not meet Secondary Standard.	Better than National Standards
Village of East Syracuse.	Does not meet Secondary Standard.	Better than National Standards

The State requested that EPA redesignate certain portions of the City of Syracuse and the Village of East Syracuse from nonattainment to attainment. The four areas of the Syracuse Metropolitan area are: (1) The area north and slightly to the west of the Syracuse Central Business District, (2) the Central Business District of Syracuse, (3) the area between the Syracuse Central Business District and the southeast coast of Onondaga Lake, and (4) the Village of East Syracuse.

Each of the areas just described have met all EPA criteria for redesignation through air monitoring or modeling demonstrations and by having an EPA fully approved, implemented State Implementation Plan. In each area, there is also at least eight complete quarters of the most recent air quality data which show attainment of the secondary particulate matter ambient air standard. Further, all point source emissions comply with the stack height regulations promulgated by EPA on July 8, 1985 (50 FR 27892). Control strategies which have been applied in each of the areas proposed for redesignation are well-documented in the SIP. These include enforceable emission reductions at three major industrial facilities in metropolitan Syracuse, and implementation of the Federal Motor Vehicle Control Program.

In the Central Business District, an additional reduction in emissions was provided by the results of a revised fuel survey completed in January 1980. This revised inventory produced a reduction in fuel emissions of 108 tons/year, from previous emissions estimates for the year 1978. This reduction alone insured attainment of all the applicable air quality standards. This new survey is considered more accurate than previous estimates, because it is based on an actual building by building survey.

EPA's Proposed Action

Today, EPA is proposing to approve the State's request to redesignate the Village of East Syracuse and much of Syracuse to "better than national standards" with respect to particulate matter. EPA's proposed approval of the State's redesignation request is based on its meeting the requirements of section 107 and 301 of the Clean Air Act and applicable EPA guidelines.

Interested persons are invited to comment on the proposal and on whether it meets Clean Air Act requirements. Comments received by December 15, 1986, will be considered in EPA's final decision. All comments received will be available for inspection at the Region II office of EPA, at 26 Federal Plaza, Room 1005, New York, New York 10278.

Under 5 U.S.C. section 605(b), the Administrator has certified that this redesignation will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401-7642.

Dated: December 16, 1985.

Christopher J. Daggett,
Regional Administrator, Environmental Protection Agency.

Editorial note.—This document was received at the Office of the Federal Register on November 10, 1986.

[FR Doc. 86-25716 Filed 11-13-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-411, RM-5462]

Radio Broadcasting Services; Liberty, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Trinity River Valley Broadcasting Co., proposing the allotment of Channel 264C2 to Liberty, Texas, as that community's first FM service. A site restriction of 27.0 kilometers (16.7 miles) east of the city is required.

DATES: Comments must be filed on or before December 26, 1986, and reply comments on or before January 12, 1987.

ADDRESS: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Trinity River Valley Broadcasting Co., 517 Travis, Liberty, Texas 77575 (petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-411, adopted October 9, 1986, and released November 5, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-25725 Filed 11-13-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-409, RM-5387]

Radio Broadcasting Services; Panama City, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Bay Media, Inc. proposing to substitute Channel 290C2 for Channel 292A at Panama City, Florida, and to modify the license for Station WLVV(FM) accordingly, at the request of the licensee.

DATES: Comments must be filed on or before December 26, 1986, and reply comments on or before January 12, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Heidi P. Sanchez, Fly, Shuebruk, Gaguine, Boras and Braun, 1211 Connecticut Avenue, NW., Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-409, adopted October 9, 1986, and released November 5, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-25722 Filed 11-13-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-416, RM-5112]

Radio Broadcasting Services; Keokuk, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by W. Russell Withers, Jr. proposing the substitution of Class C2 FM Channel 290 for Channel 237A at Keokuk, Iowa, and modification of the Class A license for Station KOKX(FM). The proposed allotment could provide Keokuk with its first wide coverage Class C2 FM station.

DATES: Comments must be filed on or before December 29, 1986, and reply comments on or before January 13, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: William P. Bernton, Esq., 1875 Eye Street, NW., Suite 1050, Washington, DC 20006 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-416, adopted October 15, 1986, and released November 6, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M

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Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–25728 Filed 11–13–86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86–410, RM–5428 and 5469]

Radio Broadcasting Services; Columbia, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two separate petitions for rule making. Gail C. Mooney requests that Channel 223A be allocated to Columbia, Missouri, and George Thomas proposes the allotment of FM Channel 230A to Columbia. A site restriction 8.8 kilometers (5.5 miles) northwest of the community is required for the allotment of Channel 223A, and the allocation of Channel 230A is conditioned on the final approval for a construction permit to allow Station KSD–FM, St. Louis, Missouri, to operate as a full Class C facility. The allotments could provide a fourth and fifth commercial broadcast service to Columbia.

DATES: Comments must be filed on or before December 26, 1986, and reply comments on or before January 12, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: George Thomas, 1401 Paris Road, Columbia, MO 65201 (Petitioner for Channel 230A); Gail C. Mooney, 1501–212 Vandiver, Columbia, MO 65202 (Petitioner for Channel 223A).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, (202) 634–6530 Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–410, adopted October 9, 1986, and released November 5, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division Mass Media Bureau.

[FR Doc. 86–25724 Filed 11–13–86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86–415, RM–5373]

Radio Broadcasting Services; Conway, NH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Pemigewasset Broadcasters, Inc. proposing the allocation of Channel 283A to Conway, New Hampshire, as the community's second local FM service. A site restriction of 4.2 kilometers (2.6 miles) southeast is required to avoid a short-spacing to Station CFNI–FM, Channel 284A, Coaticook, Quebec, Canada.

DATES: Comments must be filed on or before December 29, 1986, and reply comments on or before January 13, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. (In addition to filing comments with the FCC, interested parties should serve the petitioner, or their counsel or consultant, as follows: Marvin Rosenberg, Esq., Thomas S. Walsh, Esq., Fletcher, Heald & Hildreth, 1225 Connecticut Avenue, NW., Suite 400, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–415, adopted October 7, 1986, and released November 6, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules, Division, Mass Media Bureau.

[FR Doc. 86–25726 Filed 11–13–86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-418, RM-5494]

Radio Broadcasting Services; Bedford, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to allocate Channel 298A to Bedford, Pennsylvania, as the community's second local FM service, at the request of Cessna Communications, Inc. The channel can be allocated without the imposition of a site restriction. Canadian concurrence is required.

DATES: Comments must be filed on or before December 29, 1986, and reply comments on or before January 13, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Robert A. Marmet, Esq., Harold K. McCombs, Jr. Esq. Marmet & McCombs Professional Corp., 1822 Jefferson Place, NW., Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-418, adopted October 15, 1986, and released November 6, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-25729 Filed 11-13-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-413, RM-5510]

Radio Broadcasting Services; State College and University Park, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to allocate Channel 233A to State College, Pennsylvania, as the community's second local FM service, at the request of Destiny Communications, Inc. The channel can be allocated without a site restriction. On its own motion, the Commission proposes to reallocate Channel 244A to University Park, Pennsylvania, to reflect its actual use there by Station WQWK. Canadian concurrence in both allotments is required.

DATES: Comments must be filed on or before December 26, 1986, and reply comments on or before January 12, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Richard J. Hayes, Jr. 1359 Black Meadow Road, Spotsylvania, Virginia 22553 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-413, adopted September 26, 1986, and released November 5, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-25723 Filed 11-13-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-414, RM-5468]

Radio Broadcasting Services; Williamsport, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to allocate Channel 238A to Williamsport, PA, as the community's third local FM service, at the request of Bald Eagle Broadcast Associates. Channel 300A, as originally proposed by Bald Eagle, would conflict with a pending request to allocate Channel 300B1 at Newberry, PA (RM-5374). Canadian concurrence is required since Williamsport is located within 320 kilometers of the U.S.-Canada border.

DATES: Comments must be filed on or before December 29, 1986, and reply comments on or before January 13, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Faith A. Smith, Vice President, Bald Eagle Broadcast Associates, P.O. Box 1111, Williamsport, PA. 17703-1111.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-414, adopted October 9, 1986, and released November 6, 1986. The full text of this Commission decision is available

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for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-25731 Filed 11-13-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-412, RM-5491]

Radio Broadcasting Services; Coalville, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Gene Guthrie proposing the allotment of Channel 223A to Coalville, Utah, as that community's first FM service.

DATES: Comments must be filed on or before December 29, 1986, and reply comments on or before January 13, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Robert L. Olender, Esquire, Baraff, Koerner, Olender & Hochberg, P.C., 2033 M Street, NW., Suite 203, Washington, DC 20036-3355.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-412, adopted October 6, 1986, and released November 6, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-25727 Filed 11-13-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-406; FCC 86-454]

Proposed Amendment or Elimination of the Main Studio Location and Origination Rules for Radio and Television Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend Part 73 of its Rules to modify or eliminate rules requiring the main studio of an AM and FM radio or television station to be located in the station's community of license and requiring more than 50 percent of that station's non-network programming to originate from its main studio or from another point in its community of license.

DATE: Comments are due on or before December 22, 1986, and reply comments are due on or before January 6, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Terry L. Haines, Policy and Rules Division, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making* in MM Docket No. 86-406, adopted October 16, 1986, and released October 30, 1986.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, 2100 M Street NW., Suite 140, Washington, DC, 20037. (202) 857-3800.

Summary of Notice of Proposed Rule Making

1. The Arizona Justice Committee ("the Committee"), and *ad hoc* group of radio licensees, filed a Petition for Rule Making on June 11, 1986, urging that the FCC propose modification of the main studio and program origination rules (§§ 73.1125 and 73.1130 of the Commissions Rules, respectively), as they pertain to radio stations. Currently, these rules require the location of a radio or television broadcast station's main studio in its community of license, and origination of over 50 percent of a station's non-network programming from that studio or from elsewhere within the community of license. The Committee claimed that these rules are outdated, unnecessary, and detrimental to providing the best service to the listening public, and suggested the replacement of these rules with the requirement that the main studio of a radio station be located within the station's service area, and the elimination of the studio origination rule for radio stations.

2. The Commission agrees that these rules should be reexamined. These rules were originally enacted over thirty-five years ago because the Commission felt that local self-expression would be furthered by requiring the main studio of a radio or television broadcast station to be located in its community of license and by requiring the origination of programming from that studio. However, the continued relevance of these rules is questionable in light of current regulatory policies and broadcast station operations. Specifically, technical advances in the production and transmission of programming have

eroded the role of a main studio and of studio origination, since remote facilities and satellite transmission capability effectively allow origination to occur from anywhere. Further, it is uncertain whether the presence of a main studio in the community of license actually increases communication between a station and its audience. There also may be substantial licensee compliance costs associated with these rules. Finally, the logic of these rules is contrary to the Commission's regulatory posture that broadcast station licensees will continue to serve their audiences without intrusive programming-related rules to tie them to their communities of license.

3. Therefore, in the interest of a consistent and comprehensive reevaluation of these rules, the Commission requests comments on proposals, for both radio and television broadcast stations: (1) To amend the main studio rule to allow a broadcast station to locate its main studio within its city grade contour (for AM radio, the 5 millivolt per meter contour), or within its Grade B contour (for AM radio, the 1 millivolt per meter contour); or (2) to eliminate the main studio rule; and (3) to eliminate the studio origination rule.

4. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR § 1.1231, for rules governing permissible *ex parte* contacts.

5. This proceeding suggests proposals which may significantly impact on small entities. Pursuant to the Regulatory Flexibility Act of 1980, 5 USC § 603 *et seq.*, public comment is requested on the initial regulatory flexibility analysis set out in the Commission's complete decision.

6. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to propose no new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

7. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before December 22, 1986, and reply comments on or before January 6, 1987. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

List of Subjects in 47 CFR Part 73

Radio broadcast services.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-25733 Filed 11-13-86; 8:45 am]

BILLING CODE 6712-01-M

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Notices

Federal Register
Vol. 51, No. 220
Friday, November 14, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

1987 National Marketing Quota and 1987 Price Support Level for Flue-Cured Tobacco

Correction

In FR Doc. 86–24701, beginning on page 39768, in the issue of Friday, October 31, 1986, make the following corrections:

On page 39771, second and third columns, in "Appendix Table 1" under the Item "Exports (Reported)" in the entry "463.0" remove footnote 4 and add footnote 4 to the entry "435.0"; on the same line remove footnote 5 from the entry "456.0" and add footnote 5 to the entry "470.0".

On the same page, same table, in the last line, "Exports", remove footnote 6 from the entry "75.5" and add footnote 6 to the entry for "137.1".

On the same page, the FR Doc. No. should read "86–24701".

BILLING CODE 1505-01-M

Soil Conservation Service

Wayne County Agricultural Society Flood Prevention and Drainage RC&D Measure, Wayne County, PA

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Wayne County Agricultural Society Flood Prevention and Drainage RC&D Measure in Wayne County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Olson, State Conservationist, Soil Conservation Service, Federal Building, 228 Walnut Street, Harrisburg, Pennsylvania 17108, telephone (717) 782–4453.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. James H. Olson, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood prevention and internal drainage. The planned works of improvement include 5,400 feet of surface drainage, 3,220 feet of subsurface drain, and five water control structures.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting James H. Olson.

No administrative action on implementation of the proposal will be taken until December 15, 1985.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development Program—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: November 6, 1986.

James H. Olson,

State Conservationist

[FR Doc. 86–25667 Filed 11–13–86; 8:45 am]

BILLING CODE 3410-16-M

ARMS CONTROL AND DISARMAMENT AGENCY

General Advisory Committee on Arms Control and Disarmament; Closed Meeting

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces the following meeting:

Name: General Advisory Committee on Arms Control and Disarmament
Date: November 19, 1986
Time: 9:15 am
Place: State Department Building, Washington, DC
Type of Meeting: Closed
Contact Person: William B. Staples, Executive Secretary, U.S. Arms Control and Disarmament Agency, Room 5933, Washington, DC 20451, (202) 647–8478
Purpose of Advisory Committee: To advise the Director of the U.S. Arms Control and Disarmament Agency on arms control and disarmament policy and activities, and from time to time to advise the President and the Secretary of State respecting matters affecting arms control, disarmament, and world peace.
Agenda: Will present the following discussions and presentations:

November 19

AM—Discuss the status of the Geneva negotiations and Strategic Defense Initiative.
PM—Discuss Verification and Non-Compliance, Multilateral and Non-Proliferation issues.

Reason for Closing: The GAC members will be reviewing and discussing matters specifically required by Executive Order to be kept secret in the interest of national defense and foreign policy.
Authority to Close Meeting: The closing of this meeting is in accordance with a determination by the Director of the U.S. Arms Control and Disarmament Agency dated November 12, 1986, made pursuant to the provisions of section 10(d) of the Federal Advisory Committee Act as amended.
Reason for Late Notice: Because of recent developments regarding arms control issues, it was determined that

a GAC meeting should be held on short notice.

William J. Montgomery,
Committee Management Officer.

[FR Doc. 86-25852 Filed 11-13-86; 8:45 am]

BILLING CODE 6820-32-M

DEPARTMENT OF COMMERCE

International Trade Administration

Bicycle Speedometers From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration; Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by the petitioner and three respondents, the Department of Commerce has conducted an administrative review of the antidumping finding on bicycle speedometers from Japan. The review covers eighteen manufacturers and/or exporters of this merchandise to the United States and the period November 1, 1984 through October 31, 1985. The review indicates the existence of dumping margins for certain firms during the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value. One firm failed to respond to our questionnaire. As a result, for that firm we used the best information available for assessment and antidumping duty cash deposit purposes.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 14, 1986.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Linnea Bucher, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On June 13, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 24426) the final results of its last administrative review of the antidumping finding on bicycle speedometers from Japan (37 FR 24826, November 22, 1972). We received requests for an administrative review from the petitioner and three respondents in accordance with § 353.53a(a) of the Commerce Regulations. We subsequently published a notice of initiation of the antidumping duty administrative review on December 13, 1985 (50 FR 50933).

Scope of the Review

Imports covered by the review are shipments of bicycle speedometers from Japan, currently classifiable under items 711.9300, 711.9820 and 732.4200 of the Tariff Schedules of the United States Annotated. The review covers eighteen manufacturers and/or exporters of Japanese bicycle speedometers to the United States and the period November 1, 1984 through October 31, 1985. Mitsui and Co. failed to respond to the Department's antidumping questionnaire. The Department used the best information available for assessment and estimated antidumping duty cash deposit purposes for that firm. The best information available is the highest rate for any responding firm with shipments in this review.

United States Price

In calculating United States price the Department used purchase price or exporter's sales price ("ESP"), both as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act"), as appropriate. Purchase price was based on the f.o.b. or c.i.f. packed, delivered price to either the first unrelated purchaser in the United States or unrelated Japanese trading company for export to the United States. ESP was based on the c.i.f. packed, delivered price to the first unrelated purchaser in the United States. We made adjustments, where applicable, for foreign and U.S. inland freight, ocean freight, marine insurance, U.S. Customs duties, brokerage and handling charges, and in ESP calculations, the U.S. subsidiary's selling expenses and the cost of parts and assembly added in the U.S. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis of comparison. Home market price was based on the packed, delivered price to unrelated purchasers. We made adjustments, where applicable, for inland freight, differences in packing costs, differences in the physical characteristics of the merchandise, and for indirect expenses to offset U.S. selling expenses for ESP calculations. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist for the period November 1, 1984 through October 3, 1985:

Manufacturer/exporter	Margin (percent)
All new firms	21.52
Asahi Keiki Mfg. Co	21.52
Asahi Keiki Mfg. Co./Noma Enterprises Co., Ltd	[1] 21.52
Asahi Keiki Mfg. Co./Nippon Seiki Co., Ltd	[1] 21.52
Asahi Keiki Mfg. Co./Royal Industries Ltd	[1] 21.52
Asahi Keiki Mfg. Co./Yagami Corporation	.03
Asahi Keiki Mfg. Co./NSI International	5.28
Asahi Keiki Mfg. Co./Diversified Product Corporation	5.68
Asahi Keiki Mfg. Co./Allegheny International	21.52
Asahi Keiki Mfg. Co./Roadmaster Corporation	0
Tsuyama Mfg. Co., Ltd	.07
Tsuyama Mfg. Co., Ltd./Kozaki Trading Co., Ltd	0
Tsuyama Mfg. Co., Ltd./Yagami Corporation	6.31
Tsuyama Mfg. Co., Ltd./Kuwahara Co., Ltd	2.34
Tsuyama Mfg. Co., Ltd./Asia Machinery Co., Ltd	0
Tsuyama Mfg. Co., Ltd./H. Tano & Co., Ltd	0
Tsuyama Mfg. Co., Ltd./Mitsui & Co., Inc	21.52
Tsuyama Mfg. Co., Ltd./Shinwa Trading Co., Ltd	0
Tsuyama Mfg. Co., Ltd./Fujimoto Trading Co	[1] 21.52

[1] No shipments during the period.

Interested parties may submit written comments on these preliminary results within 21 days of the date of publication of this notice and may request disclosure and/or a hearign within 10 days of the date of publication. Any hearing, if requested, will be held 21 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. Since the margins for Asahi/Yagami and Tsuyama are less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes, the Department waives the estimated cash deposit requirements for these firms. For any shipments from the remaining manufacturers and/or exporters not covered by this review, the cash deposit

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will continue to be at the rate published in the final results of the last administrative review for each of those firms (49 24426, June 13, 1984).

For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after October 31, 1985 and who is unrelated to any reviewed firm or any other previously reviewed firm, a cash deposit of 21.52 percent shall be required. These desposit requirements and waivers are effective for all shipments of Japanese bicyle speedometers entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: November 10, 1986.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-25756 Filed 11-13-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-005]

Carbon Steel Bars and Structural Shapes From Canada

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review and revocation in part.

SUMMARY: On July 1, 1986, the Department of Commerce published the preliminary results of its administrative review and a tentative determination to revoke in part the antidumping finding on carbon steel bars and structural shapes from Canada. The review covers the only manufacturer, Western Canada Steel Ltd., of this merchandise exported to the United States covered by this finding and the period September 1, 1983 through July 1, 1986.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results and tentative determination revoke in part. We received no comments. We also determined that there were no shipments of this merchandise to the United States by Western Canada Steel Ltd. during the period September 1, 1985 through the date of the tentative determination to revoke in part. We advised all interested parties that there were no shipments and we provided an additional opportunity to comment. Again, we received no comments. Based on our analysis, the final results of our review are the same as the preliminary results, and we revoke the finding for this merchandise manufactured and exported to the United States by Western Canada Steel Ltd.

EFFECTIVE DATE: November 14, 1986.

FOR FURTHER INFORMATION CONTACT: Sheila Forbes or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923/3601.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1986 the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 23803) the preliminary results of its administrative review and tentative determination to revoke in part the antidumping finding on carbon steel bars and structural shapes from Canada produced by Western Canada Steel Ltd. (29 FR 13319, September 25, 1964). We began this review under our old regulations. After the promulgation of our new regulations, the respondent, Western Canada Steel Ltd., requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of carbon steel bars, bars-shapes under 3 inches, and structural shapes 3 inches and over from Canada, manufactured by Western Canada Steel Ltd. Such merchandise is currently classifiable under items 606.8300 and 609.8000 of the Tariff Schedules of the United States Annotated.

The review covers the only manufacturer of Canadian carbon steel bars and structural shapes exported to the United States covered by this finding, Western Canada Steel Ltd., and the period September 1, 1983 through July 1, 1986.

Final Results of the Review and Revocation in Part

We gave interested parties an opportunity to submit oral or written comments on the preliminary results and tentative determination to revoke in part. We received no comments. We also determined that there were no shipments of this merchandise to the United States by Western Canada Steel Ltd. during the period September 1, 1985 through July 1, 1986, the date of the tentative determination to revoke in part. We advised interested parties that there were no shipments and we provided an additional opportunity to comment. Again, we received no comments. Based on our analysis, the final results of our review are the same as those presented in the preliminary results of review with respect to Wastern Canada Steel Ltd.

For the reasons set forth in the preliminary results, we are satisfied that there is no likelihood of resumption of sales at less than fair value by Western Canada Steel Ltd. Accordingly, we revoke in part the antidumping finding on carbon steel bars and structural shapes from Canada. This partial revocation applies to all unliquidated entries of this merchandise manufactured and exported by Western Canada Steel Ltd. entered, or withdrawn from warehouse, for consumption on or after July 1, 1986. The Department shall instruct the Customs Service not to assess antidumption duties on all appropriate entries.

Further, as provided for in § 353.48(b) of the Commerce Regulations, for any shipments from the six remaining known exporters of Canadian carbon steel bars and structural shapes manufactured by Western Canada Steel Ltd. not covered by this review, the cash deposit will continue to be at the rates published in the final results of the last administrative review for each of those firms (49 FR 45465, November 16, 1984). For any shipments from a new exporter of carbon steel bars and structural shapes manufactured by Western Canada Steel Ltd., not covered by this or prior administrative reviews, whose first shipments occurred after July 31, 1986 and who is unrelated to Western Canada Steel Ltd. or any other previously reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of Canadian carbon steel bars and structural shapes manufactured by Western Canada Steel Ltd. entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review, partial revocation, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)(c)), and §§ 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.53a, 353.54).

Dated: November 7, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-25747 Filed 11-13-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-008]

Color Televisions Receivers From Korea; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On July 28, 1986 the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on color television receivers from Korea. The review covers the three manufacturers and/or exporters of this merchandise to the United States currently covered by the order, and generally the period May 1, 1984 through March 31, 1985.

We gave interested parties an opportunity to comment on the preliminary results. Based on the comments we received we have changed the final results from those presented in our preliminary results of review.

EFFECTIVE DATE: November 14, 1986.

FOR FURTHER INFORMATION CONTACT: Laura Merchant or David Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601/2923.

SUPPLEMENTARY INFORMATION:

Background

On July 28, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 26919) the preliminary results of its administrative review of the antidumping duty order on color television receivers from Korea (49 FR 18336, April 30, 1984). We begin this review under our old regulations. After the promulgation of our new regulations, the petitioners and respondents requested in accordance with § 353.53(a) of the Commerce Regulations that we complete the administrative review. We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are sales of color television receivers, complete and incomplete, from Korea. The order covers all color television receivers regardless of tariff classification. The merchandise is currently classifiable under item numbers 684.9246, 684.9248, 684.9250, 684.9252, 684.9253, 684.9254, 684.9255, 684.9256, 684.9258, 684.9260, 684.9262, 684.9263, 684.9270, 684.9275, 684.9655, 684.9656, 684.9658, 684.9660, 684.9663, 684.9864, 684.9866, 687.3512, 687.3513, 687.3514, 687.3516, 687.3518, 687.3520 of the Tariff Schedules of the United States Annotated. The review covers the three known manufacturers and/or exporters of Korean color television receivers to the United States currently covered by the order, and generally the period May 1, 1984 through March 31, 1985.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results as provided by § 353.53(d) of the Commerce Regulations. We received comments from the petitioners (International Brotherhood of Electrical Workers, International Union of Electronic, Electrical, Technical, Salaried and Machine Workers, AFL-CIO-CLC, Independent Radionic Workers of America, Industrial Union Department, AFL-CIO), Zenith Electronics Corporation, and the respondents, Samsung Electronics Co., Gold Star Co., and Daewoo Electronics Co. (We received additional comments from the respondents concerning mathematical or clerical errors. We have corrected such errors but have not addressed them specifically in this notice.)

Comment 1: Zenith and the petitioners argue that the Department should have implemented the Court of International Trade's ("the CIT's") ruling in *Zenith v. United States* (April 24, 1986) and adjusted United States price for the rebate or forgiveness of internal taxes upon the exportation of the merchandise. This would require the Department to add to United States price an amount equal to the tax that would have been imposed by the Korean government upon the exported merchandise were it not exported.

Department's Position: As directed by the CIT in *Zenith*, we are now attempting to formulate a methodology for calculating the amount of indirect taxes passed through in the home market, which should then be added to United States price. Because the remand in the Japanese case and the current court case concerning the first administrative review of this order are still before the CIT, we have assumed full passthrough of indirect taxes in this review, for the reasons stated in our final determination of sales at less than fair value on Grand and Upright Pianos from Korea, (50 FR 37561 (1985)), and have subtracted the full amount of these taxes from foreign market value.

Comment 2: The petitioners argue that the Department erred when it treated Samsung's "indirect purchase price" sales as purchase price and not as exporter's sales price sales. These are sales where Samsung's U.S. subsidiary arranges sales of Korean televisions to an unrelated party prior to importation of the merchandise into the United States and then purchases the televisions from the Korean parent to cover those sales. The petitioners claim that the statute directs the Department to treat sales made through a related entity in the United States as exporter sales price transactions because the statute defines exporter's sales price as the price at which the merchandise is "sold in the United States, before or after importation, by or for the account of the exporter."

The petitioners claim an "indirect purchase price" approach is appropriate for cases in which the related entity has no role in the transaction except as an agent or representative of the manufacturer, when the price of the merchandise is clearly set before its importation into the United States, and when the price paid by the U.S. entity to the producer is the same as what is charged to the unrelated buyer.

Department's position: We disagree. The transfer price between Samsung and its U.S. subsidiary Samsung Electronics America ("SEA"), reported for Customs valuation, is not the sale price to the unrelated customer. We only consider the price of the first sale to an unrelated U.S. purchaser in our analysis. Further, we were satisified at verification that Samsung collected the price charged to the unrelated customer.

Comment 3: The petitioner claim that the Department inappropriately combined the commission offset and the exporter's sales price offset. The exporter's sales price offset is to reflect expenses incurred by the United States subsidiary which are presumably included in the United States price. It is intended to ensure that the price to the United States subsidiary does not reflect general, selling, and administrative expenses incurred in the home market. The commission offset, however, reflects the circumstance of using commissioned agents in one market and salaried salesmen in the other market.

Department's Position: When in an ESP situation a commission is paid only on U.S. sales, it is our practice to subtract the commission from the ESP and subtract indirect home market

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selling expenses up to the total amount of the U.S. commission and U.S. indirect selling expenses. By combining the two, we avoid using the same home market expenses to offset two different U.S. expenses. Failure to do so could lead to an offset in the home market which is greater than the total of the indirect selling expenses in the United States. See final determination of sales at less than fair value of 64K dynamic random access memory components from Japan (57 FR 15943, October 30, 1986).

Comment 4: The petitioners argue that if the Department accepts Daewoo's adjustment to its imputed credit calculation to reflect the payment of the value-added tax in the home market, then the Department should reduce Daewoo's value-added tax adjustment to United States price by the cumulated taxes paid upon prior stages of manufacture.

Petitioners reason that according to Daewoo's claim, the value-added tax paid on the value of prior stages of production are waived or refunded in payment of the tax on the finished article: Daewoo pays only the tax on the value added in the final stage of manufacture. Therefore, only the value added on the final stage has been waived by reason of exporting the merchandise to the United States. The Department should reduce Daewoo's tax adjustment to United States price by cumulative taxes paid prior to this stage.

Department's Position: We disagree. Daewoo's credit claim with respect to payment of the value-added tax merely accounts for the timing of the tax payment. Daewoo demonstrated at verification that it does pay the tax on the full value of the completed television. We believe the petitioners have misinterpreted Daewoo's claim to mean that Daewoo does not pay the tax on the value of the television but rather pays an amount based on the final stage of manufacture. We verified that this is not the case, and we have not made any compensating deductions to United States price.

Comment 5: The petitioners allege that despite the Department's statement in its preliminary results notice that the low percentage of sales below cost did not justify their exclusion from the Department's calculations, the Department did exclude some but not all of Gold Star's below cost sales. In accordance with section 773(b), the petitioners urge the Department to test Gold Star's home market sales on a model-by-model basis since a large percentage of sales below cost for any one model could skew the Department's dumping analysis.

Department's Position: Following the publication of our preliminary results notice for this review, we discovered an error in our computer program which created an inconsistent report of sales below cost for Gold Star. We found that for certain models, more than 10 percent of sales were made below-cost but were not detected in our analysis. We have corrected that error in our final analysis.

It is our general policy to exclude below-cost sales if more than 10 percent of sales of any one product-grouping are made below the cost of production for that product-grouping. In this case the product-groupings used were the models. If more than 90 percent of sales of a model are made below cost, we do not use that model for comparison purposes because the number of sales of that model remaining would form an inadequate basis for determining foreign market value.

Considering the high volume of sales in the home market for each respondent, our 10 percent rule is a reasonable guideline in this case. Further, because sales of one home market model are often compared against sales of more than one model in the United States, substantial below-cost sales of that home market model could have a significant influence on our analysis. We have therefore considered below-cost sales on a model-by-model basis as the petitioners have requested.

Comment 6: The petitioners urge the Department to use home market sales made in the same month as the U.S. sale, for purposes of comparison to U.S. sales. Petitioners note that Samsung did not report any home market sales which were made at the time of certain United States sales that took place prior to this review period. These United States sales are included in this review because of a change in coverage from the previous review. Because respondents did not report any of the home market sales made in the same month as those earlier United States sales, the Department should use the home market data Samsung submitted in connection with the previous review to compare with those United States sales.

Further, petitioners claim the Department erred when it used one weighted-average foreign market value for Samsung's sales during the review period and instead should use a monthly weighted-average foreign market value for comparison to U.S. sales.

Department's Position: We agree with petitioners that we should use a monthly weighted-average foreign market value. We had intended to use a monthly weighted-average in this case in the preliminary determination. However, as the result of a programming error, we did not do so for Daewoo and Samsung. We have now corrected that error. We believe that a monthly weighted-average is appropriate for this case because it accurately reflects the changes in price of each home market model during the review period.

We disagree that we are required to compare U.S. sales with home market sales made in the same month. Section 773(a)(1) of the Tariff Act provides that foreign market value is the price at the "time such merchandise is first sold within the United States." When there are no home market sales made in the same month as the U.S. sale, we try to find home market sales made as close in time to U.S. sales as possible. A contemporaneity rule has arisen from this endeavor in which we use a home market sale up to 90 days prior and 60 days after the date of the U.S. sale. There were some instances in which no home market sales of the comparison model were made in the same month as the U.S. sale. We then use this contemporaneity rule to choose a weighted-average foreign market value to compare with that U.S. sale. In no case did we compare U.S. sales to a weighted-average foreign market value more than three months prior to the month of the U.S. sale.

We believe this approach is reasonable given the fluctuations of home market prices. We do not believe the changes in prices during this review period warrant limiting our comparisons to a shorter time period. See our final determination of sales at less than fair value on electric motors from Japan (49 FR 32627, August 15, 1984).

Because Samsung's home market sales submitted in connection with our first administrative review were verified and accepted by the Department, we have used those sales for comparison purposes when needed.

Comment 7: The petitioners contend that the Department should adjust respondents' home market credit claims to reflect the average duration of accounts payable in their imputed credit expense calculations.

Department's Position: We disagree for the reasons stated in the response to comment 10 of the final results of the previous review. Section 773(a)(4)(B) of the Tariff Act permits only adjustments to account for differences in the circumstances surrounding the sale of the merchandise. The petitioners' argument would require us to adjust for factors relating to cost of production, which are unrelated to the *sales* at issue. We are satisfied that the imputed method based on the average balance of accounts receivable accurately reflects the credit costs respondents incurred on sales of the merchandise.

Comment 8: The petitioners argue that the Department should not have included Samsung's sales of returned merchandise in its analysis because the returns were not appropriately matched with the original sales to produce an accurate foreign market value. Further, Samsung is double-counting its return loss claim by including an adjustment for return loss in its warranty claim.

Department's Position: Samsung did not include an adjustment for return loss in its warranty claim. Its sales returns appear in its home market sales listing. However, because Samsung's returns were not matched to the initial sale in its computer printout, we cannot include the returns in our final analysis because we are unable to perform the required match.

Comment 9: Petitioners note an apparent discrepancy in Samsung's report of a specific home market sale in which the price documented in the home market verification report did not match the price reported in the response.

Department's Position: Most business in Korea is done by an open accounting system in which payment is made on a balance of accounts receivable, not on particular purchases. This system is an accepted accounting practice in Korea. Thus, for verification purposes, payments often cannot be traced to specific purchases as was the case with the sale at issue. Our verification of Samsung in Korea did not reveal any discrepancies in payments for purchases.

Comment 10: The petitioners are concerned that the Department did not check Samsung's home market sales for sales made at below the cost of production. Petitioners urge the Department to perform such a check on a model-by-model basis.

Department's Position: We did perform a check of Samsung's home market sales for sales below cost on a model-by-model basis. We did not find more than 10 percent of below-cost sales for any one model and therefore did not exclude any home market sales from our calculations.

Comment 11: The petitioners argue that the Department should deny Samsung's Korean inland freight claim because the claim is incorrectly applied to all home market sales and it includes expenses before the review period. The petitioners urge the Department to accept only expense information directly related to the sales used in the Department's pricing analysis.

Department's Position: Our verification of Samsung's Korean inland freight expense revealed that Samsung's allocation method is consistent with its accounting records. As noted in our report, the method by which Samsung records payment for shipment of merchandise does not include the exact content of the shipments. Therefore, Samsung's allocation procedure is reasonable given its knowledge of the contents of each shipment.

Samsung did not claim any pre-sale expenses. Its claim only includes the cost for shipments from the factory to the customers and for airfreight. However, since Samsung included expenses incurred before the review period, we have deducted a portion of the April, 1984 expense amount to better reflect costs incurred during the review period.

Comment 12: The petitioners argue that the Department should deny Samsung's home market forwarding charge claim because it consists of fixed, albeit temporary, labor costs. Zenith urges the Department to include these pre-sale expenses in the ESP offset only.

Department's Position: We agree. Our verification of Samsung's claim revealed that that these "temporary" workers receive wages and other benefits which are more like those received by salaried, rather than temporary employees. Because we do not consider salaries to be directly related to sales, we have allowed this forwarding expense as an indirect selling expense.

Comment 13: The petitioner's question portions of Samsung's sales promotion claim, particularly the expense amounts listed for interior decoration, a gift campaign, and leaflets. The gift campaign expenses do not appear to correlate with sales quantities, and Samsung has given no explanation of the leaflet expense. Further, petitioners fear Samsung has claimed the cost of printed materials in the home market without reporting similar expenses incurred in the United States.

Department's Response: We have found Samsungs' explanations of these expenses mentioned by the petitioners above, to be adequate, and its sales promotion claim is acceptable. We did verify Samsung's sales promotion expenses and found that the questionnaire response amounts matched with Samsung's books and records.

Comment 14: The petitioners claim that Samsung overstated its home market advertising expense claim by including expenses incurred outside the review period, and by not including advertising to its "special" (*i.e.*, military or hospital) customers in order to decrease the denominator used for allocation purposes. Advertising promotes Samsung's television sales regardless of customer class. Further, petitioners question a discrepancy in payment for three identical newspaper ads. The petitioners urge the Department to reduce Samsung's advertising claim if it is not satisfied with the explanation for this discrepancy.

Department's Position: We disagree with the petitioners that Samsung's advertising adjustment should be based on Samsung's sales to military PX's or hospitals. Samsung's home market advertising expense is an assumption of distributor's selling costs and is best quantified by the total sales to distributors. Therefore, we have not included Samsung's sales to military PXs or hospitals in Samung's advertising allocation.

Regarding the differing costs of the three identical newspaper ads, we are satisfied from verification that Samsung incurred the expenses it reported in its response.

We believe an allocation of advertising expenses, which includes expenses outside the review period over sales made during that same period, still presents an accurate estimation of the expense for the review period as a whole. Because an advertising claim is by nature not sales-specific, a reasonable estimate is acceptable.

Comment 15: The petitioners argue that Samsung has overstated its home market warranty claim by including expenses outside the review period, by using an improper allocation basis, and by including inappropriate expenses in the claim. Samsung included fees paid to outside repair agents in its claim. These fees were paid to "outside agents" which only perform repair work and other agents which also distribute Samsung products. Unless Samsung can isolate that portion of the agent's salary devoted to repair work, the Department should deny that part of Samsung's warranty claim. The Department should not consider payment for distribution of Samsung products to be a valid warranty expense. Finally, the Department erred in allocating Samsung's claimed warranty expense across all models.

Department's Position: Because Samsung allocated its home market warranty expenses over sales during the same time period, we believe that Samsung's claimed adjustment accurately reflects its expenses for the review period. We have not excluded the expense for fees to outside agents because the correction would change the claim by less than .1 percent. Therefore,

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we do not believe the adjustment is warranted. (See 19 CFR 353.23.)

Comment 16: The petitioners assert that the Department erred in allowing Samsung's quantity discount. This expense is merely a volume rebate and is characterized as a quantity discount for the purpose of masking dumping margins. According to Samsung's questionnaire response, Samsung grants a quantity discount to distributors based on the quantity purchased by that distributor during the previous month. This discount was granted on purchases of all merchandise, not only color television receivers. Further, because Samsung failed to establish a direct relationship between the discounts granted on color televisions and the quantity of televisions purchased, Samsung has failed to qualify for a quantity discount adjustment under § 353.14 of the Commerce Regulations, and the Department should disallow Samsung's claim.

Department's Position: We agree. The Commerce regulations direct us to account for differences in quantities sold to the extent that "the amount of any price differential is wholly or partially due to such differences in the quantities sold." (§ 353.14(a)) Samsung offers a so-called "quantity discount" which is an established rate based on the total value of sales per month. Because the home market sales prices are all individually negotiated—rather than fixed in a price list—the monthly sales value on which the discount is based does not reflect the actual quantity of television receivers purchased. In other words, the discount is not a quantity discount, but a volume rebate. Because Samsung could not show that the discount is a function of quantities sold, we did not allow the claimed adjustment under § 353.14(a). Rather, we treated it as an indirect selling expense because it is a volume rebate which cannot be tied to particular sales.

Comment 17: The petitioners note that the Department's April 11, 1986 verification report stated that Samsung excluded similar parts, interchangeable parts, similar parts identical in function, printed material, and parts not suitable for physical difference comparison, from its physical difference in merchandise claim. The Department not Samsung, should decide what is appropriate for inclusion in a claim.

Department's Position: We verified Samsung's physical differences in merchandise claim and found that its segregation between parts included in or excluded from the claim was acceptable.

Comment 18: The petitioners question Samsung's reported dates of sale, noting that in the first administrative review the Department determined that Samsung made certain U.S. color television sales pursuant to long-term contracts. The verification reports neither confirm nor deny the existence of such contracts. The reports simply state that some purchases were made according to a negotiated contract while others were orally agreed to. The petitioners suggest the Department obtain samples of negotiated contracts or not accept Samsung's reported sale dates.

Department's Position: We verified the dates of sale Samsung reported in its response. The petitioners did not voice their concern over the possible existence of such contracts until after verfication so we did not specifically examine the question. Because we were able to verify Samsung's reported dates of sale, we have accepted those dates.

Comment 19: At verification, Samsung informed the Department that it had improperly included certain color televisions and parts in its calculation of purchase price sales. Samsung submitted a revised computer tape in which it revised the gross unit price downward to reflect that portion represented by the improperly included televisions and parts. The petitioners argue that such a revision in price is not only tantamount to a discount, but it is not consistent with the way Samsung apparently determined the number of televisions or parts included in the sale. Samsung should not reduce the gross sales price based on the price negotiated with the customer if the number of televisions or parts were originally calculated from the quantity purchased and not the value of the purchase.

Department's Position: We disagree. In its revised computer tape, Samsung accounted for the televisions by correcting the reported quantities for the relevant sales, which changed the per-unit sales price. We do not believe that Samsung's reporting of these televisions disguises any unreported expenses. Likewise, we are satisfied that Samsung has adequately accounted for the parts in question. Therefore, we have accepted Samsung's method of accounting for the televisions and parts.

Comment 20: The petitioners note that the verification report for Samsung discusses the "individual" and "fixed" duty drawback rates, yet the report failed to disclose how the duty drawback system operates in Korea. For example, the report does not indicate what proof or records Samsung must submit to the government to obtain the individual rate. The petitioners fear that Samsung's duty drawback claim might overestimate the amount of duties rebated to Samsung, and urge the Department to investigate the extent to which the claim is based on individual rates.

Zenith urges the Department to limit respondents' duty drawback claim to drawback respondents received based on the actual content of the merchandise later exported. The Department should remove from the drawback adjustment the amount the respondents received on a fixed-rate basis or as part of the wastage allowance granted by the Korean government.

Department's Position: We have changed our position from the previous review concerning both the "fixed-rate" drawback and drawback granted as part of a wastage allowance.

The Korean government does not require documentation that duties and taxes were paid on certain parts. The government allows exporters to apply for fixed-rate drawback for these parts as a way of saving time and expense. The companies for which we verified the fixed rate portion of their claim were able to show that their duty drawback claim was based on the import permits which list the total duties and taxes paid on importation of the items. Respondents' total duty drawback claims including the portion based on the fixed rate did not exceed the upper limit set by the total duties paid during the review period. Respondents were also able to trace the parts for which the fixed-rate was granted, to the import permit listing the duties paid on the importation of that part. Further, the fixed-rate amount listed for these parts complied with the rates set by the Korean government. These rates are listed in the Korean Customs regulation book which states that applicants may apply for the fixed rate only for certain parts. Applicants either apply for this fixed rate, or for the actual amount of duties paid upon importation of that part if the actual amount exceeds or is less than the fixed rate by more than 20 percent. Therefore, the applicant can apply only for the fixed-rate drawback when the actual amount of import duties paid on that part varies within 20 percent of the fixed rate. We consider this fixed rate to be a reasonable estimation of the duties paid upon importation of the parts because the actual amount will be within 20 percent of the fixed rate, otherwise, the exporter will apply for the individual rate based on the actual duties paid from importation of the parts.

We believe that, based on the documentation provided to us at verification, respondents have calculated their duty drawback claims based on the duties and taxes they paid on the importation of the parts, and in accordance with the rules set by the Korean Government. Thus, we have included the duty drawback amount based on the fixed rate, in the duty drawback adjustment to United States price.

With regard to duty drawback on wastage, we have also reversed our position from the last review. Information from verification for duty drawback on parts consumed in the production process shows that the calculation of the loss rate by the government is a reasonable estimate of the company's experience since it is based on an industry average. Further, the documents show that the government granted drawback based on this published loss rate. Because the duties attributable to this wastage are actually incurred, and because the Korean government has reasonably calculated the amount of the rebate based on an industry average, we determine that the rebate reasonably reflects the amount of duties paid and is therefore allowable as an addition to United States price under section 772(d)(1)(B).

Comment 21: The petitioners question the accuracy of Samsung America's U.S. advertising expense claim. They first note a discrepancy between the reported total color television ESP sales amount listed in Samsung's October questionnaire response used to allocate model specific advertising expenses, and the total sales amount used for allocating general advertising expenses. The May verification report states that this difference is attributable to sales of certain other sets. Petitioners suggest the Department use the model specific sales figures for all allocation purposes.

The petitioners also question Samsung America's total advertising expense per television model. The May verification report states that Samsung had excluded an expense amount attributable to advertising expenses incurred on specific models but it gave no reason for the exclusion.

Further, the petitioners are puzzled by Samsung's deduction from invoice (DFI) advertising claim. Because Samsung based its allocation on the ratio of the DFI expenses to total ESP-type sales of all products, it is unclear whether the DFI expense was granted solely on sales of color televisions or on sales of other products.

Department's Position: Our verification of Samsung America revealed that Samsung had excluded sales of models produced in the U.S. from its general advertising expense allocation. We checked the quantities and sales of those models with Samsung America's financial statement at verification. The amounts Samsung reported in its questionnaire response were consistent with Samsung's records. Concerning Samsung's allocation methodology, we are satisfied with the total sales amounts Samsung used. Color television advertising in the United States does influence sales of Samsung color televisions regardless of the origin of those sets. Therefore, an allocation of advertising expense should include the total sales amount for all sets sold by Samsung America during the review period, whether or not produced in Korea.

Comment 22: The petitioners insist that the Department should treat Samsung's cash discount claim in the United States, a discount for a prompt payment, as a direct reduction in the United States price. The Department treated this claim as an indirect selling expense in its preliminary results determination.

Department's Position: We agree and have treated Samsung's cash discounts as an adjustment to gross price in our final results analysis because these discounts are specific to individual sales transactions.

Comment 23: The petitioners contend that the Department should treat commissions paid by Samsung in the United States as direct selling expenses. The Department incorrectly classified that expense as salesman's salaries, bonuses and the like incurred in the home market.

Department's Position: When a commission is granted in one market and not the other we may offset that commission with indirect selling expenses in the other. We believe that commissions granted to salesmen on specific sales help to cover the salesman's selling expenses, as well as add to his salary. Thus, commissions do cover indirect selling expenses.

Further, we do not consider the word "other" in the phrase "actual other selling expenses" in § 353.15(c) of the Commerce Regulations to impose a limitation on the type of indirect selling expenses we can use to offset commissions. We have therefore offset commissions with the full amount of indirect selling expenses incurred in the home market.

Comment 24: The petitioners argue that the Department erred in treating Samsung's rebates on U.S. sales as an indirect expense. In its October questionnaire response, Samsung was able to give an accurate report of its claim. It is inconsistent and illogical to allow the sales volume rebate in the United States as a direct expense but not to allow the quantity discount claimed in sales in the home market as a direct expense also. The petitioners therefore urge the Department to allow Samsung's rebate adjustment on the U.S. side as a direct expense in its final determination.

Department's Position: Because the claimed amounts are sales and customer specific, we have allowed this adjustment as a direct selling expense for our final determination.

Comment 25: In its October questionnaire response Samsung claimed a circumstance of sale adjustment in the home market for an incentive discount which was not in effect for the entire review period. The petitioners claim that the Department erred in granting this adjustment on all home market sales. It should have granted the adjustment only on the sales which took place during the time the discount program was in effect.

Department's Position: We agree. We have only applied the incentive discount on home market sales of models for which the discount was actually given.

Comment 26: The petitioners argue that Samsung has included certain inappropriate expenses in its home market indirect selling expense claim. The Department should not allow expenses for severance pay, keeping a garden, and athletic training. Nor should it accept the significant "miscellaneous" expenses included in Samsung's indirect selling expense claim. Further, the Department should not allow those indirect expenses for which a claim was made in the home market but not on the U.S. side as export selling expenses.

Department's Position: Because Samsung maintains that these expenses are specific to the regional sales offices and its salesmen, we have not adjusted the indirect selling expenses by deducting severance pay, keeping a garden, and athletic training. Similarly, we have allowed the "miscellaneous" expenses because Samsung has explained that the expense is for overtime meals for its salesmen. Thus, it is also a selling expense.

Comment 27: The petitioners contest Samsung's choices for, and the Department's acceptance of, certain home market model match comparisons. They propose that Samsung's choices of home market models are based more on a desire to minimize dumping margins than to find the most similar model in design.

Department's Position: We reviewed Samsung's home market model match suggestions at verification and are satisfied that the selected models are the most similar to the models exported to the United States.

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Comment 28: The petitioners point out that the May verification reports reveal that Samsung had warranty agreements with two U.S. customers, yet the Department's calculations show that Samsung only claimed warranty expenses on purchase price sales to one customer.

Samsung notes that the Department did in fact account for the warranty expenses incurred on those two customers but did not properly subtract those expenses from the ESP warranty expense total in Samsung's ESP warranty claim. By not making this second adjustment, the Department had double-counted those purchase price expenses.

Department's Position: We agree with Samsung and have made the appropriate adjustment to the ESP warranty expense claim in our final calculation. Further, we have corrected the errors concerning the warranty expenses incurred on purchase price sales.

Comment 29: The petitioners argue that Samsung's movement charges on U.S. sales, particularly "indirect purchase price" sales, are inaccurate and should be examined further by the Department. Additionally, the petitioners claim that Samsung has incorrectly reported duty payments on indirect purchase sales by reporting a lower entered value to Customs than it reported to the Department as its price to U.S. customers.

Department's Position: We have made the appropriate corrections to the ocean freight charges petitioners identify. We have not called into question Samsung's entire ocean freight claim however, because the inaccuracies were due to clerical errors.

Concerning the correct valuation of Samsung's televisions for U.S. Customs duty purposes, we did verify that Samsung America paid the amounts it reported in its questionnaire reponse.

Comment 30: The petitioners state that Samsung failed to associate an exporter's licensing fee with many of its U.S. sales transactions.

Department's Position: Samsung has satisfactorily accounted for those omissions and we have made no changes to Samsung's reported export license fee claim.

Comment 31: The petitioners fear that Samsung has engaged in multiple-invoicing of certain U.S. sales during the review.

Department's Position: Samsung has satisfactorily accounted for any multiple-invoicing and we have made no changes to Samsung's reported prices.

Comment 32: For ESP sales, the petitioners note that the Department failed to deduct any indirect selling expenses from the United States price.

Department's Position: We agree and have made the appropriate correction in our final results calculations.

Comment 33: The petitioners note that the Department did not include Gold Star's home market sales listed for customer categories 2 and 3 in its test for home market sales below the cost of production. If the Department decides to use home market sales in customer categories 1, 2 and 3, it should also make sure those sales are above the cost of production. The petitioners also question where Gold Star included an allowance for scrap, defective parts or other items related to yield loss. The home market verification report does not mention this category of manufacturing cost. Additionally, the verification report indicates certain discrepancies between the cost of production figures reported in Gold Star's questionnaire response and its factory ledgers in Korea. The report does not define what expense Gold Star has included under the category "outside processing." The petitioners fear Gold Star is not allocating all expenditures to CTV production but is allocating these expenses to activities which are subsumed under "overhead" for cost of production purposes.

Department's Position: We verified Gold Star's cost of production figures and were satisfied that Gold Star could trace its reported costs to its financial statements and to the specific televisions under review. Our exclusion of customer categories 2 and 3 was an oversight. We have included those sales in our cost test for these final results.

Comment 34: The petitioners note that even though the Department in its home market verification outline requested Gold Star to provide the methodologies of its calculation of ex-factory prices and net sales prices, there is nothing in the verification report indicating that the Department investigated Gold Star's method for determining either the tax base, or the timing of rebates and discounts and their effect on base-pricing for tax purposes.

Department's Position: Everything that we verified is mentioned in our verification reports. We were not aware of petitioners' concern regarding Gold Star's calculation of the tax base or the timing of rebates and discounts at the time of verification. We have evaluated therefore, the discounts and rebates issue based on the verification as conducted.

Comment 35: The petitioners note that a significant portion of Gold Star's U.S. sales were not included in the Department's preliminary results computations.

Department's Position: Gold Star was able to show at verification that the televisions listed as "samples" in its response were not purchased or agreed to be purchased within the meaning of section 772 of the Tariff Act. Televisions in this category were sent to the United States either for Federal approval, or for trade shows. Therefore, we have not included the "samples" in our analysis.

Comment 36: The petitioners and Gold Star note that the Department erroneously multiplied Gold Star's purchase price forwarding expense by the exchange rate. This expense was already denominated in dollars.

Department's Position: We agree and have corrected the error.

Comment 37: The petitioners note that the Department erroneously multiplied Gold Star's purchase price warranty expense by the exchange rate even though that expense was reported in U.S. dollars.

Gold Star explains that it reported its purchase price warranty expenses in Korean won because that is how that cost was originally incurred in the home market.

Department's Position: We agree with Gold Star and have made no changes.

Comment 38: The petitioners urge the Department to make sure that Gold Star's home market inland freight expense is allocated to comparison models only. Additionally, the Department should exclude any overhead on movement charges involving the shipment of televisions from factory to warehouse since these charges are not directly related to sales.

Department's Position: Gold Star's domestic inland freight adjustment was allocated on a per-unit basis for each comparison model. Further, we are satisfied from verification that Gold Star's claim does not include overhead expenses.

Comment 39: The petitioners argue that the Department's Gold Star home market verification report indicates that Gold Star could not substantiate its claims of in-transit warehousing as a direct selling expense. Given the problems the Department encountered in verifying this claim, petitioners request that the Department deny Gold Star's in-transit warehouse adjustment altogether.

Department's Position: We are confident that Gold Star's in-transit warehouse claim reflects expenses actually incurred and are related to sales of Gold Star's merchandise. Yet, because we are not convinced that this expense is an after-sale expense, we have accepted the in-transit warehouse expense only as an indirect selling expense in the home market.

Comment 40: The petitioners urge the Department to ensure that any rebate granted to Gold Star's home market customers is attributed to sales to those customers only, to sales of models under review or otherwise apportioned by sales value.

Department's Position: Whenever possible, we have applied actual rebate or discount amounts to sales to customers who received such rebates or discounts. In instances in which the actual amount could not be applied, we requested respondents to allocate the rebate or discount based on sales value.

Comment 41: The petitioners urge the Department to deny Gold Star's discount/premium claim because of inflated claims for discount and discrepancies uncovered at verification. The petitioners suggest the Department should disallow the discount claim and add the premium amounts to foreign market value.

Department's Position: We discovered at verification that Gold Star had granted discounts months after it was obligated to grant discounts in accordance with the terms of the program, and had posted "negative premiums" to several customer accounts. Gold Star did not adhere to the terms of its discount/premium program. Since, we did find that Gold Star incurred these expenses in connection with its discount program, we have therefore allowed this claim as an indirect selling expense in these final results.

Comment 42: The petitioners argue that Gold Star's discounts granted for advance payment on sales in the home market should offset its home market credit claim. To the extent purchasers made use of this program, interest gained on these transactions should offset credit expense claims.

Department's Position: We verified Gold Star's credit claim and found no inconsistencies between Gold Star's books and ledgers and its October questionnaire response. We believe that Gold Star's accounts receivable take interest on these sales into account. Therefore, we have made no changes to Gold Star's home market credit claim for these final results.

Comment 43: The petitioners are confused by the Department's verification report of Gold Star in Korea. They do not fully understand Gold Star's methodology for excluding duties and taxes from its physical difference claim. The petitioners urge the Department to deny Gold Star's claim unless Gold Star can supply the Department with an adequate explanation for the use of several allocation ratios.

Department's Position: Gold Star provided an explanation for the use of different allocation methodologies to establish a part's price under different purchasing circumstances. We believe Gold Star's of Gold Star's allocations are appropriate and our verification of Gold Star's physical differences in merchandise claim revealed no apparent discrepancies in its use of its allocations.

Comment 44: The petitionsers claim that Gold Star's royalty claim is fraught with inconsistencies and the expenses it claims on its purchase price sales are greatly understated for the review period.

Department's Position: We found Gold Star's royalty claim at verification to be consistent both with its payment records and with sales made during the review period. In our final results analysis we have corrected one error in the reporting of royalties for a six month period for ESP sales-specific information.

Comment 45: The petitioners argue that Gold Star's home market warranty claim is inadequate because Gold Star could not isolate its expenses for repairs of color televisions. Therefore, the Department should treat the majority of Gold Star's home market warranty claim as indirect expenses or else reduce those components.

Department's Position: In our final calculations we have considered Gold Star's claims for loss on cashback, service fees, and freight and delivery as expenses which are directly related to sales and therefore allowable circumstance of sale adjustments.

Comment 46: The petitioners note that a sample advertisement selected by the Department for verification of Gold Star's home market advertising should not be allowed as part of its claim because no mention was made in the ad of the comparison model.

Department's Position: We agree with petitioners that the claim should not include the expense claimed for this ad. The subject advertisement was the only expense in a certain category of ads and we have denied that particular expense for both the preliminary and final results.

Comment 47: The petitioners question the validity of Gold Star's inclusion of a claim for duty drawback received on a fixed rate basis. The verification report states that Gold Star determined its duty drawback claim using the import permits as the upper limit of its claim. The petitioners urge the Department to disallow the claim since the limit of the claim should be based on what was actually exported, and since without export no drawback can be claimed. Additionally, the petitioners argue that the Department should deny that part of Gold Star's drawback claim which is based on the loss rate. Drawback claims should be limited to those products, components, and parts which are actually exported.

Department's Position: For our treatment of fixed rate duty drawback and drawback based on a loss rate, see comment 20. We disagree with the petitioners that Gold Star's use of imports as the upper limits of its duty drawback claim is an unreasonable methodology. Since Gold Star can only receive drawback on the items it imported for use in exported merchandise, Gold Star's total duty drawback claim cannot exceed the amount of duties and taxes it paid on the importation of the items. The drawback will either equal the imported amount, when accounting also for drawback on parts lost during production, or be less than that amount.

Comment 48: The petitioners argue that the Department should require Gold Star to reallocate its export selling expenses based on sales to various export markets or some other methodology. Gold Star's allocation based on the number of personnel is potentially distortive of actual export selling expenses because most personnel are fungible and can be replaced by others who work on exports to markets other than the United States.

Department's Position: Gold Star developed a rather complicated method of allocating export selling expenses to sales in the United States. While petitioners may be correct in thinking that individuals in Gold Star's export staff can work in other departments, we cannot assume that this is the case. We believe that Gold Star's allocation based on the number of personnel is reasonable.

Comment 49: The petitioners note that the Department's verification report of Gold Star's U.S. subsidiary uncovered glaring discrepancies in the attempt to verify Gold Star Electronics International's ("GSEI") regular and net sales claims. The petitioners urge the Department to look closely at GSEI's monthly sales figures before accepting them in the final determination.

Department's Position: GSEI was able at verification and subsequent to verification, using documents given to the Department at verification, to explain to the Department's satisfaction the discrepancies in its reporting of regular sales. We have not made any changes to GSEI's claimed sales totals.

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Comment 50: The petitioners urge that GSEI's allocation of indirect selling expense in the U.S. based on the "nature" of the individual expenses is an inappropriate basis and serves only to reduce the total claim.

Department's Position: GSEI allocated the expenses which make up its pool of indirect selling expenses based on the ways in which it incurs each expense. For example, GSEI reported its warehousing expense based on cubic feet because that is how GSEI is billed. This allocation methodology was accepted by the Department in the previous review.

Comment 51: The petitioners argue that GSEI improperly allocated its U.S. inland freight expense on the basis of standard weight instead of square footage which is the standard method that trucking companies bill their clients.

Department's Position: We disagree. We verified that GSEI incurs its U.S. inland freight expense based on standard weights.

Comment 52: The verification report on GSEI revealed that many of GSEI's sales were phoned in. The petitioners contend that the use of phoned in orders indicates the existence of long term contracts between GSEI and its customers. If this is the case, the petitioners urge the Department to use the contract date as the date of sale and not the date of the phoned order.

Department's Position: During our verification of GSEI, we saw no indication of the existence of long-term contracts. We are satisfied that GSEI reported the most accurate date of sale for its merchandise.

Comment 53: The petitioners question the validity of GSEI's reconciliation of its reported Accounts Receivable balance in its U.S. credit expense to the company General Ledger and Balance Sheet statement. Further, the petitioners suspect that GSEI's reported long-term interest rate is inaccurate. They suggest that the parent is providing a guarantee for GSEI's loans, and such a guarantee has commercial value.

Department's Position: We are satisfied from our verification of GSEI that its reconciliation of its Accounts Receivable to its reported balance is reliable and accurate. Additionally, we verified that GSEI's reported short-term interest rate is the average of the rates it actually paid.

We consider a parent company and its U.S. subsidiary to be one entity. We are not concerned that the parent provides a guarantee for its subsidiaries' loans as long as the reported average short-term interest rate reflects the interest rate the subsidiary actually incurred.

Comment 54: The petitioners do not understand the method by which GSEI allocated its cooperative advertising expenses. They suggest the Department request GSEI to provide a more detailed explanation of its advertising expenses.

Department's Position: We agree with the petitioners that GSEI's explanation in its response of the basis for its allocation of dealer cooperative advertising is unclear. Our verification of GSEI's cooperative advertising expenses demonstrates that GSEI allocated its advertising expense for ads which include many products to color televisions based on the number of color televisions advertised, and the total cost of the advertisement to GSEI. We have accepted GSEI's method as a reasonable approximation of its cooperative advertising expense for color televisions.

Comment 55: The petitioners note that there is a large discrepancy between GSEI's reported commissions in the indirect selling expense section of its response and the amount listed on its income statement. The petitioners claim this discrepancy warrants the use of the higher figure in calculating United States prices.

Department's Position: The apparent discrepancy between the review period commission total and the actual expense listed in GSEI's income statement is accounted for by commissions returned due to merchandise returns.

Comment 56: The petitioners note that Gold Star allocated its U.S. warranty expenses over total sales of color televisions, which including sales outside the review period, while it did not use a similar allocation methodology in the home market. Additionally, the petitioners believe GSDEI has not accounted for all its warranty expenses on purchase price sales. They urge the Department to investigate these U.S. market expenses further.

Department's Position: Because the petitioners did not raise this question about GSEI's warranty expense methodology or reporting of expenses until after the verification, we must rely on data acquired at the verification for our final results.

Comment 57: The petitioners are concerned that Gold Star has not provided accurate information concerning its organizational structure, its annual and monthly income statements, and its cost of production for home market and U.S. color television models.

Department's Position: We verified Gold Star's quarterly and monthly income statements by tying the reported amounts to source documents. In addition, we verified Gold Star's organizational structure, income statements, and cost of production, and found no discrepancies. We are satisfied that Gold Star has submitted accurate data in its questionnaire response.

Comment 58: The petitioners object to the Department's inclusion of U.S. sales made in April, 1985. These sales are outside the review period.

Department's Position: We agree and have excluded those sales from our final calculations.

Comment 59: The petitioners claim the Department erred by including Daewoo's U.S. sales of "returned merchandise" because Daewoo has failed to demonstrate that its "returned merchandise" includes actual returns. Further, Daewoo's report of quantity returned is not consistent with the number of returned set sales Daewoo also reported.

Department's Position: Daewoo explains that the apparent inconsistency between the quantity returned and the sale of those sets is due to the lagtime between the return of the television and its resale. We believe Daewoo's explanation to be reasonable. Therefore, we have made no changes to our analysis regarding Daewoo's returned merchandise.

Comment 60: Daewoo and the petitioners argue that the Department erred in not including Daewoo's home market sales to affiliated dealers in its preliminary analysis.

Department's Position: We agree. We have included Daewoo's home market sales to both independent and affiliated dealers in our final results.

Comment 61: The petitioners note a computational error by the Department in its analysis of one of Daewoo's purchase price sales.

Department's Position: We agree and have corrected the error using information gathered during verification.

Comment 62: The petitioners claim that Daewoo has reported unreasonably low per-unit ocean freight, U.S. Customs duty, and brokerage and handling charges on its U.S. sales.

Department's Position: The low per-unit amounts for brokerage and handling charges, ocean freight and U.S. Customs duty charges is due to the fact that for certain sales the merchandise was imported in two or more entries. We have corrected our computer program to capture the full expense for each sale.

Comment 63: The petitioners question the validity of Daewoo's ocean freight rebate claim because the Department's verification team did not review any rebate agreement between Daewoo and the shipping company, and various other aspects of this rebate system. The petitioners note that these issues are especially pertinent in light of the discrepancies in Daewoo's ocean freight claim addressed above.

Department's Position: Our verification of Daewoo's ocean freight rebate claim revealed no discrepancies in Daewoo's reported expenses listed in its questionnaire response. Furthermore, because the petitioners did not raise their concerns about any agreements with shipping companies until after the verification, we must rely on the information we acquired at verification for our final results.

Comment 64: The petitioners claim that Daewoo double-counted its home market inland freight costs, and has included overhead in the claim. Additionally, the Department should require Daewoo to report dealer-specific inland freight information.

Department's Position: We treated Daewoo's Gumi factory-to-depot freight as an indirect selling expense because it is an expense incurred prior to sale of the merchandise. However, we do not believe that Daewoo has double-counted any expenses in this claim. We treated Daewoo's factory to dealer expense as an indirect selling expense because it included expenses for shipments from Gumi to the depots which Daewoo did not segregate from the claim.

Comment 65: The petitioners argue that the Department erred in using Daweoo's allocation of its U.S. cooperative advertising expenses over all Daewoo Electronic Company America's ("DECA") sales to dealers when Daewoo had also submitted more accurate, dealer-specific information.

Department's Position: Because Daewoo failed to identify its customers in its U.S. sales submission, we are unable to use the dealer-specific information Daewoo provided in its deficiency response. Further, because Daewoo's total cooperative advertising expense claim listed in its deficiency response varies from the total in its original response, we have applied the average allowance paid to the dealers who participated in all U.S. sales as best information available.

Comment 66: The petitioners argue that the Department should use the invoice-specific expense of Daewoo's early payment discounts on U.S. sales instead of applying the allocated expense amount Daewoo originally submitted in its response.

Department's Position: We agree that invoice-specific discount amounts would be more accurate but we do not believe that the possible distortions produced by using an allocated amount will be great enough to warrant the use of invoice-specific data.

Comment 67: The petitioners claim the Department erred in classifying commissions paid on Daewoo's U.S. sales as indirect selling expenses for the purposes of calculating the ESP offset adjustment.

In addition, the petitioners argue that the office employee expenses Daewoo included in its commission offset are inappropriate.

Department's Position: For our treatment of Daewoo's expense and the ESP offset, see the Department's Position to Comment 3 above. We disagree that the office employee expenses are inappropriate in the commission offset. Such expenses are indirect selling expenses which are properly used to offset commissions in the United States.

Comment 68: The petitioners claim Daewoo has overstated its home market sales volume rebate because (1) it included rebates on sales to dealers not listed in Daewoo's October questionnaire response, and (2) the April verification report notes that Daewoo granted rebates in excess of the allotted rebate agreement amount.

Department's Position: Our verification of Daewoo's sales volume rebate program did not reveal any inconsistencies which Daewoo did not point out in its deficiency response. We found at verification that Daewoo reported an accurate account of its rebate expenses. We see no reason to change our treatment of these rebates.

Comment 69: The petitioners claimed the Department erred in granting Daewoo's "fall promotional/gift rebate" program expenses because Daewoo could not tie the expense to sales during the review period, and the claim is fraught with inconsistencies.

Department's Position: We allowed Daewoo's "fall promotional/gift rebate" expenses as direct selling expenses because Daewoo could show that gifts were given only on purchases of color televisions. We adjusted the total quantity of gifts given to account for the gifts not provided on purchases of color televisions. We allowed the spring gift program as an indirect expense because gifts were based on the value of the purchase and thus not on sales of color television alone. We agree with petitioners that Daewoo cannot claim an expense which is greater than the cost of purchasing the gift and we have made the proper adjustments to our calculations.

Comment 70: The petitioners argue that Daewoo overstated its claimed short-term interest rate on home market borrowings. Further, the Department should not accept Daewoo's trust fund loans in its interest rate calculation because those loans involved special financing not generally available for financing working capital.

Department's Position: Our verification of Daewoo's short-term interest rate indicated to our satisfaction that its claimed average rate is consistent with the interest rate Daewoo paid on its loans.

Comment 71: The petitioners encourage the Department to use the model-specific home market warranty repair information Daewoo has provided.

Department's Position: We agree with petitioners and we have used the model-specific warranty expenses Daewoo submitted.

Comment 72: The petitioners claim that Daewoo has overstated its home market advertising expense. They note discrepancies between Daewoo's questionnaire response and the Department's April verification report.

Department's Position: At verification we spot-checked certain reported expenses in Daewoo's advertising claim. Given the time restriction of the verification process, we believe our method of spot-checking certain expense items to be adequate. Since petitioners did not state these concerns prior to verification, we had no reason to go beyond our normal practice.

Comment 73: The petitioners argue that the Department should use the model-specific indirect advertising data Daewoo submitted instead of an allocation over all models.

Department's Position: We disagree. The model-specific amounts that the petitioners refer to are based on ratios of sales of each model to total sales to dealers of all models. These ratios do not measure an advertising expense on a model-by-model basis. Daewoo's original allocation methodology is an accurate measure of its home market indirect advertising expense. We have applied this percentage to all dealer sales in the home market.

Comment 74: The petitioners claim the Department incorrectly allowed expenses incurred by Seoul Headquarters as part of Daewoo's home market indirect selling expense claim. The petitioners state the Daewoo is double-counting expenses for rent and vehicle maintenance for Seoul Headquarters which are also included as expenses incurred by the domestic sales division.

Department's Position: We disagree that Daewoo has double-counted certain home market indirect selling expenses.

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We have no reason to believe that the expenses for rent and vehicle maintenance in both the Seoul office and in the sale divsion are the same expenses. Further, we do not believe it is inappropriate for Daewoo to include a portion of its headquarter's selling expenses in its indirect selling expense adjustment.

Comment 75: The petitioners note that the Department failed to include the parts and labor cost of Daewoo's indirect warranty claim and its inventory carrying charges on U.S. sales in the preliminary results calculations.

Department's Position: We did include parts and labor cost in Daewoo's indirect warranty claim in our preliminary results calculations. We do agree that we had excluded the inventory carrying charge and we have now corrected that error.

Comment 76: The petitioners call the Department's attention to many discrepancies in reported materials costs, standard costs, lead time between materials purchases and production, and related supplier purchases found in Daewoo's cost of production data. Petitioners than urge the Department to conduct a cost of production investigation on Daewoo's home market sales before it accepts its home market sales for price comparison purposes.

Department's Position: The petitioners' allegation that Daewoo was selling in the home market at less than cost was received 63 days prior to the due date of the final determination. Based on the short time period between the submission of the pre-hearing briefs, and the completion of this review within our statutory time limit, we did not conduct the requried analysis to determine whether sales below cost do exist for Daewoo. Furthermore, we believe that the petitioner had sufficient information prior to the preliminary determination to allow the filing of a timely allegation of sales at less than the cost of production.

Comment 77: In the first administrative review it was discovered that certain Korean financial institutions require a portion of the amounts respondents borrow to be deposited with the institutions. Zenith urges the Department to ascertain whether respondents earned any interest on such compensating deposits and use that amount to offset interest paid on loans used to calculate respondents home market credit adjustment. Further, Zenith requests that the Department confirm that respondents' short-term interest rates used to calculate their home market credit adjustment do not contain interest paid on long-term loans.

Department's Position: We verified that the average interest rate respondents used in their credit calculation was an average of the actual interest rates incurred on their short-term loans. We use the interest rates on short-term loans because that rate reflects the cost incurred by the seller to cover the sales posted to its Accounts Receivable. The *use* of those borrowed funds, however, is not relevant to the calculation of the *cost* of those funds. If the seller re-deposits a portion of the amount it obtained from a short-term loan and earns interest on that deposit, the cost of the loan as reflected in the interest rate, is unchanged. If the respondent uses part of the borrowed funds as a compensating deposit required by the bank from which the loan was made, we do not believe any interest earned on that deposit should affect the cost of that loan for antidumping purposes.

Comment 78: Zenith notes that in the first administrative review, the Department found some evidence of a dual pricing structure in Korea in which the prices for materials destined to be incorporated in home market merchandise was higher than the price charges for identical materials used in export merchandise. This price discrepancy could not be explained solely by the amount of duties paid on components imported for use in home market merchandise. Zenith urges the Department to ascertain the extent to which claimed physical differences in merchandise adjustment amounts are due to the existence of this dual pricing structure.

Department's Position: We verified that respondents used the actual prices paid for different parts when calculating an average price for physical differences. We consider such a price difference appropriate for quantifying the cost of the physical differences. We believe that this is the only objective manner of adjusting for the physical differences.

Comment 79: Zenith argues that the Department should make sure that respondents included all antidumping legal fees in their U.S. selling expense claims. Zenith maintains that the Department should follow the previous review's methodology and include such expenses in respondents' claimed adjustments for U.S. selling expenses.

Department's Position: In the previous review, we deducted antidumping legal fees as export selling expenses stating that this deduction was the best information available for the legal fees at issue. After further consideration, we view that decision as incorrect. It is our practice as stated in our *Study of Antidumping Adjustments Methodology and Recommendations for Statutory Change* to not consider legal fees paid in connection with litigation resulting from an earlier antidumping investigation to be an expense related to sales made in the period of review. (See also the final results of sales at less than fair value of certain steel pipes and tubes from Japan, 48 FR 1206, April 29, 1983.) We view legal fees incurred at the administrative stage of an antidumping proceeding as meriting similar treatment since they are incurred in defending against an allegation of dumping. As such, they are not expenses incurred in selling merchandise in the United States.

Further, to deduct antidumping legal fees as selling expenses would effectively discriminate against those respondents who seek legal counsel in proceedings before the Import Administration.

Comment 80: Because this review covers sales made during the period May 1, 1984 through March 31, 1985 and the previous review covered entries, certain purchase price and ESP sales were not covered in the questionnaries for either review. Zenith argues that the Department should calculate the foreign market value to be compared to those U.S. sales on the basis of home market data applicable to the date of exportation of that merchandise to the United States. The Department should therefore use the foreign market values determined in the first administrative review, which apply to the date of exportation for these sales.

Department's Position: The first administrative review covered entries while this review covered sales. Therefore, many purchase price sales entered during this review but sold in the prior review period were not covered by either questionnaire. We extended this second administrative review period in order to cover those U.S. sales. It was our change in coverage from entries to sales which required respondents to submit home market comparison sales prior to the review period. For those purchase price sales, we have applied this review's methodology. We agree with Zenith that the ESP transactions for which the merchandise entered prior to but was sold during this review, were already covered by the first administrative review.

Comment 81: Zenith requests the Department to determine that Gold Star has removed some amount for duties and taxes paid for parts for which Gold Star could not find the actual amount paid as listed on the import permits.

Department's Position: Since we have determined that duty-inclusive parts prices should be used for calculating physical differences in merchandise; this issue is moot. For our treatment of duty in the physical differences claims, see Comment 116.

Comment 82: Zenith argues that the Department should treat Gold Star's media and dealer advertising claim as direct selling expenses in the United States.

Department's Position: We agree and have done so in our calculation of United States price for Gold Star.

Comment 83: Zenith argues that the Department should base its analysis of Gold Star's sales on sales of all imports into the United States during the review period, including samples, sales to employees, sales of damaged receivers, and other "non-commercial" sales.

Department's Position: We disagree with Zenith that Gold Star's U.S. samples should be included in our analysis. Gold Star was able to show at verification that these televisions were not sold within the meaning of section 772 of the Tariff Act. See Comment 35. However, we agree with Zenith that damaged set sales and sales to employees should be included in our final results because those sales were made at arms-length.

Comment 84: Zenith argues that the Department should remove from Samsung's indirect home market warranty claim the portion of salary subsidies paid to "independent contractors."

Department's Position: See Comment 15.

Comment 85: Zenith argues that the Department should not include Samsung's SYPM rebate anywhere in the foreign market value calculation unless it accounts for the fact that Samsung appears to keep the distributor's markup and that Samsung effectively earns interest on the majority of SYPM rebate sales.

Department's Position: We believe that Samsung has accounted for any income it may have earned on SYPM transactions.

Comment 86: Zenith argues that the Department should allow Samsung's U.S. cash discount and volume rebate as circumstance of sale adjustments. This is in accordance with a decision in which the Department received court approval for its treatment of home market discounts and rebates not linked to specific sales as directly related selling expenses.

Department's Position: For our treatment of Samsung's cash discount, see Comment 22. See Comment 24 for our treatment of the volume rebate.

Comment 87: Zenith notes that the Department deleted from its calculation of the Samsung margin those U.S. sales for which Samsung reported a zero price, but included the value of those sales in the denominator used to allocate U.S. expenses.

Department's Position: The "sales" for which Samsung reported a zero price are samples which were never sold within the meaning of section 772 of the statute. However, it is appropriate to include a value for those sets because Samsung still incurs costs in the production and transportation of those televisions.

Comment 88: Zenith suggests the possibility that the value of Samsung's indirect purchase price sales might be somehow commingled with ESP sales values.

Department's Position: Our verification of Samsung America's sales did not reveal that any indirect purchase price and ESP sales were double-counted.

Comment 89: Zenith contends that the Department has reasonable grounds to perform a test for sales made below the cost of production for Daewoo.

Department's Position: See Comment 74.

Comment 90: Zenith notes that the Department excluded certain of Daewoo's U.S. sales for which the price reported is zero. Zenith argues that the denominator used in the allocation formula for Daewoo's U.S. selling expenses should not include any sales value derived from those sales.

Department's Position: Daewoo explains that these color televisions are in fact samples and not "sales" within the meaning of section 772 of the statute. Further, Daewoo has provided sufficient documentation to support its claim that these televisions were sent to the United States as samples. We have accepted Daewoo's explanation, and for the reasons noted in Comment 87, we have left the total sales value of these televisions in the denominator used to allocate Daewoo's United States selling expenses.

Comment 91: Daewoo argues that the Department should accept its full home market warranty claim. The Department unjustly applied the provision for circumstance of sale to reclassify "direct" expenses as "indirect" selling expenses on the grounds that the expenses cannot be tied to sales. The antidumping law was not intended to require companies to rewrite their books.

Department's Position: We disagree. We discovered at verification that Daewoo had the necessary documentation to more closely tie its repair expenses to particular models. Because they had not done so, we treated certain of Daewoo's warranty expenses as indirect selling expenses for our preliminary results. We now have accepted Daewoo's December 30, 1985 revised claim which ties expenses to chassis sizes, and better reflects Daewoo's actual expenses.

We do not expect companies to "write" their books in order to qualify an expense as a direct selling expense. We do expect a company to make its claimed adjustments as accurate as possible based on its existing records.

Comment 92: Daewoo objects to the Department's denial of its claim for drawback on materials wasted or otherwise consumed in the production of televisions exported to the United States.

Department's Position: See Comment 20.

Comment 93: Daewoo argues that the Department was wrong to deny its claim for a deduction from home market price for freight costs incurred between the factory and depots.

Department's Position: We allowed Daewoo's freight claim for shipments from the factory to its depots as an indirect selling expense because we consider home market freight and warehouse expenses incurred prior to sale to be indirect expenses.

Comment 94: Daewoo notes that the Department failed to make adjustments for duty, U.S. dealer credit, advertising, warranty, and Korean inland freight, where appropriate, in its calculations of foreign market value for comparison to its purchase price sales. Further, the Department failed to adjust for U.S. and domestic royalty expenses.

Department's Position: We disagree with Daewoo that we omitted duty and U.S. dealer credit expenses in our calculation of one purchase price sale. Further, we also made an adjustment in our preliminary results calculation for the above-mentioned circumstances of sale claims and royalties. Those expenses were deducted from the home market price in our calculation of the net weight-averaged foreign market value.

Comment 95: Daewoo argues that the Department incorrectly treated its "spring sales rebate campaign" as an indirect selling expense.

Department's Position: We disagree. According to our verification report and Daewoo's questionnaire response, the spring campaign gifts were given out by dealers based on the total volume of the purchase. Thus, the cost of the gift cannot be solely attributed to the total number of televisions purchased while the program was in effect because

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purchases of other items, in addition to televisions, qualified the purchaser for a gift.

Comment 96: As a result of verification and the Department's treatment of Daewoo's home market warranty claim in its preliminary determination, Daewoo argues it has revised its direct warranty claim to best reflect the Department's policy and Daewoo's warranty records.

Department's Position: We have generally accepted Daewoo's warranty revision of December 30, 1985 as it best reflects the portion of variable warranty expenses Daewoo can attribute to color televisions. We have revised that claim slightly to exclude an amount for commissions to authorized agents because it is still not clear that this claim excludes certain fixed expenses.

Comment 97: Daewoo argues that the Department failed to make a correct adjustment for its generic advertising claim. Daewoo urges the Department to accept the allocation methodology outlined in its response because this is the methodology which the Department verified.

Department's Position: We have accepted Daewoo's original methodology and have made the adjustment to foreign market value.

Comment 98: Daewoo argues that the Department should apply its claimed home market credit adjustment to the gross dealer price because the credit expense claim is based on the time period after Daewoo pays its taxes.

Department's Position: We agree that and have applied the claimed credit adjustment to the gross dealer price because Daewoo carries the gross price on its books after it pays the taxes and until it receives payment from its customer.

Comment 99: Gold Star maintains that the Department should not disregard its below-cost home market sales pursuant to section 773(b) of the Tariff Act because such sales were not made in substantial quantities over an extended time period, nor were they made at prices that did not permit the recovery of all costs within a reasonable period.

Department's Position: We disagree. We disregarded below-cost sales which amounted to more than 10% of all home market sales of that model during the review period. We consider this percentage to be a reasonable guideline for disregarding below-cost sales in this case. (See Comment 5) Further, we also consider the eleven-month span of this review to be a reasonable time period in which to consider the extent of sales made below the cost of production.

Comment 100: Gold Star argues that the Department's rule to exclude sales of a particular model if the sales made below-cost exceed 10 percent of total sales of that model, and to exclude all sales of that model if below-cost sales account for over 90 percent of total sales, is arbitrary and without legal authority.

Department's Position: See Comment 5.

Comment 101: Gold Star argues that the Department incorrectly denied its home market warranty warehousing expense as a directly allowable circumstance of sale adjustment simply because the expense does not vary with sales.

Department's Position: We disagree. Gold Star's warehousing expense covers the leasing of two warehouses to store warranty parts used to repair all television models and possibly other products which Gold Star also repairs under warranty. Because it is unclear that this claimed expense is attributable to storage of color television parts, we have treated the expense as an indirect selling expense.

Comment 102: Gold Star argues that the Department was incorrect to deny its home market cash discount program as a direct circumstance of sale adjustment on the grounds that it could not tie its expense to sales in which a cash discount was granted. Even though Gold Star could not tie this expense to sales, it is a variable expense because no discounts are paid unless a sale is made.

Department's Position: For verification purpose we required Gold Star to trace the cash discounts to the sales on which that discount was given. Gold Star's accounting records were not consistent with the terms and conditions of the discount program. Therefore, we have allowed those discounts as an indirect circumstance of sale expense.

Comment 103: Gold Star insists that based on the information it has submitted to the Department, it qualifies for a level of trade adjustment.

In the home market, Gold Star sells only to small franchise stores, whereas in the United States it sells to both retailers and mass merchandisers/distributors. Gold Star claims that it incurs certain after-service warranty, advertising, and credit expenses in its sales to retailers which it does not incur on its sales to the mass merchandisers in the United States. Unlike retail stores, these mass merchandisers sell televisions under their own brand name, they perform their own warranty servicing and they do not benefit from Gold Star's image advertising because the customers are not aware they are purchasing a Gold Star television. Further, Gold Star identified certain expenses it incurs on sales to both retailers and mass merchandisers but which differ in amount because purchase quantities differ between the retail and mass merchandiser customers. Gold Star claims that these are the expenses it would incur in the home market if it sold television at the mass merchandiser/distributor level.

Department's Position: Gold Star was able to quantify certain expenss it incurs in selling color televisions at the retail store level in the home market. It then attempted to compare those expenses with expenses it might have incurred had it sold at the distributor/mass merchandiser level in the home market.

In our preliminary results, we denied Gold Star's level of trade claim because Gold Star could not adequately identify different trade levels in the home and U.S. markets. We have no evidence of the business practices of any mass merchandisers/distributors in Korea if in fact such customers do exist there. We cannot know what kinds of services Gold Star would be required to offer these mass merchandisers if such sales existed. We have no basis for assuming that Gold Star's claim identifies selling expenses which would have been incurred in Korea if sales at the distributor/mass merchandiser level existed. Lacking such supportable evidence, we have denied Gold Star's claim for these final results.

Comment 104: Gold Star claims the Department incorrectly reduced the portion of its home market imputed credit adjustment relating to advance tax payment by miscalculating the number of days between tax payment and receipt of payment from the customer. As Gold Star has acknowledged, the wording of its response narrative led the Department to miscalculate the tax lagtime. The Department should use the verified information in its final calculations.

Department's Position: For our preliminary results, we adjusted Gold Star's credit claim in accordance with its questionnaire response narrative. For the purpose of our final results we have calculated gold Star's credit claim based on information gathered at verification.

Comment 105: Gold Star comments that for its sales below-cost test the Department used review period average figures for home market models while it tested for below-cost sales on home market sales outside the review period. Because a cost test was already performed in the previous administrative review on those home market sales, Gold Star suggests the Department only test for below-cost sales on home market sales made during the review period.

Department's Position: We agree and have made the correction to our final calculations.

Comment 106: Gold Star argues that in the Department's test for sales-below-cost the Department failed to adjust the home market price to account for denials of certain selling expenses in the price-to-price portion of the program.

Department's Position: We agree. If we deny a portion of an adjustment for the purpose of calculating the foreign market value, we should only consider the allowed portion in our cost test.

Comment 107: Gold Star argues that the Department should allow its home market rebate program expense as a circumstance of sale adjustment. Gold Star recalculated the expense amount attributable solely to sales of color televisions and suggests the Department use this more accurate claim.

Department's Position: After further reference to the verification exhibits, we conclude that Gold Star was able at verification to segregate the rebate expense for televisions from rebates granted on other merchandise. We have, therefore, accepted the revised claim from verification because we were able to verify those sales rebate expenses.

Comment 108: Gold Star argues that the Department erroneously disregarded the below-cost sales of certain models that had more than 90 percent of their sales above cost.

Department's Position: We have corrected this clerical error for purposes of our final results.

Comment 109: Gold Star argues that the Department incorrectly denied as direct home market selling expenses, the claimed amounts for warranty service fees, communications, service fees, freight and delivery, loss on cash back, and warranty campaign advertising.

Department's Position: We consider only the cost of free parts, excluding profit, and expense incurred in servicing as directly allowable expenses. Such servicing expenses can include expenses of the serviceman going to and from the location of the repair, the cost of materials consumed during servicing and payments to unrelated firms for performing repairs. Indirect expenses include utilities, rent, servicemen's wages, or other general and administrative expenses incurred by the service department. These latter expenses are not directly related to the sales. However, we allowed Gold Star's claims for warranty service fees, loss on cash back and freight and delivery as direct warranty expenses because they are expenses attributable to each repair.

Comment 110: Gold Star argues that the Department should allow as a direct expense its claim for losses on returned sets in the home market.

Department's Position: We agree and have made the appropriate correction to our calculations.

Comment 111: Gold Star argues that the Department should allow its home market rebate program expense as a circumstance of sale adjustment. Gold Star recalculated the expense amount attributable solely to sales of color televisions and suggests the Department use this more accurate claim.

Department's Position: We cannot accept Gold Star's revised claim at this late date because we are unable to verify the expense amounts. Because Gold Star granted the same rebate to color televisions and other products, and it allocated the total rebate expense over sales of all products, we cannot assume the resulting claim reflects sales of color televisions alone. Therefore, we have treated this claim as an indirect adjustment.

Comment 112: Gold Star argues that, because it reported home market sales prior to this review period as contemporaneous sales, the Department should apply its first review cash discount claim to sales in those months. Further, Gold Star argues that if the Department applies the cash discount rate only to May sales, the Department should calculate the adjustment by dividing the discount amount by the May sales total.

Department's Position: We agree: We have applied the rate accepted in the first administrative review to those sales. We have applied a cash discount rate based on total May 1984 sales to sales in that month only.

Comment 113: Gold Star is mystified as to why the Department allowed its home market sales promotion claim only as an indirect expense.

Department's Response: This was a clerical error, and we have corrected it for our final calculations.

Comment 114: Samsung argues that the Department should allow its home market discounts and rebates as direct circumstances of sale adjustments.

Department's Position: For an explanation of our treatment of Samsung's quantity discount see Comment 16.

Because in our review we examine sales between the manufacturer and the unrelated dealer, we cannot tie the claimed rebates during the period to the manufacturer's sales during the period. Therefore, we have treated these rebates as indirect selling expenses. See the final results of our first administrative review in this case.

Comment 115: Samsung argues that the Department should allow its variable after-service warranty expenses as a circumstance of sale adjustment. At verification Samsung was able to break its home market after-service expense into variable and fixed amounts. Samsung requests the Department to make an adjustment for its warranty claim on these varied amounts.

Department's Position: We have treated Samsung's parts expense as an indirect selling expense because at verification we discovered that Samsung had the information to tie the expense to repairs but did not incorporate that information in its claimed adjustment. We have now accepted Samsung's break-out of variable and fixed after service expenses.

Comment 116: Samsung argues that the Department should use duty-paid parts cost in its calculation of Samsung's physical difference in merchandise adjustment because duties are an important component of Samsung's home market production costs and part of the material cost difference between its home market and U.S. models. If duties are excluded, margins may be created simply because a respondent has chosen to purchase its components abroad, even though it may pay the same price for them as for domestically sourced components. The Department should therefore follow its decision in the final results of sale at less than fair value on bicycle tubes and tires from Taiwan (48 FR 31691, July 11, 1983), where it held that for purposes of calculating adjustments for physical differences, duties should be left in the production costs of both markets.

Department's Position: We agree. After further consideration of the distortive effects of excluding duty from parts' prices in an adjustment to foreign market value for physical differences in merchandise, we conclude that duty-paid parts prices do reflect the actual purchase price paid by the manufacturer. We have, before, followed the methodology in *Bicycle Tubes and Tires From Taiwan,* and whenever possible, using the information respondents have provided in their responses or at verification, we have added duties back into the physical difference claims.

Comment 117: Samsung argues that the Department incorrectly treated selling expenses relating to ESP sales which were incurred in the home market, as indirect selling expenses. Samsung contends that the Department cannot adjust for such expenses under section 772(c) of the statute because

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selling expenses incurred by Samsung in Korea are not "incurred by or for the account of the exporter in the United States".

Department's Position: We disagree. We do not consider the Commerce Regulations to require that expenses be incurred in the United States, but that the expenses be incurred on behalf of the exporter who is in the United States. We have verified that Samsung incurs those expenses on U.S. sales, on behalf of the subsidiary who is in the United States. We have, therefore, treated those expenses as indirect selling expenses.

Comment 118: Samsung contends that the Department should not have included an imputed interest expense for the period between date of export and date of sale for its ESP transactions.

Department's Position: We disagree. We have determined that we should impute an interest expense for the period between date of shipment from Korea and date of sale in the United States because the opportunity cost of holding inventory is a "real" expense which Samsung cannot isolate from its pool of interest expenses.

Final Results of the Review

As a result of the comments received, we have revised our preliminary results for Samsung, Gold Star, and Daewoo, and we determined that the following weighted-average margins exist for the period May 1, 1984 through March 31, 1985:

Manufacturer/exporter	Margin (percent)
Samsung	2.06
Gold Star	1.37
Daewoo	3.49

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. Further, as provided for in section 751(a) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after March 31, 1985 and who is unrelated to any reviewed firm, a cash deposit of 3.49 percent shall be required. These deposit requirements are effective for all shipments of Korean color television receivers, complete or incomplete, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and §§ 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.53a).

Dated: November 7, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86–25746 Filed 11–13–86; 8:45 am]

BILLING CODE 3510-DS-M

Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held December 2, 1986, 9:30 a.m. Herbert C. Hoover Building, Room 1092, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment or technology.

Agenda

1. Opening remarks by the Chairperson.
2. Review and approval of the minutes of October 21, 1986, meeting.
3. Presentation of papers or comments by the public.
4. Presentations by Subcommittee Chairpersons of Annual Reports for FY 1986.
5. Chairperson's Annual Report for FY 1986.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377–4217. For further information or copies of the minutes, call Betty Ferrell at (202) 377–4959.

Dated: November 7, 1986.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 86–25752 Filed 11–13–86; 8:45 am]

BILLING CODE 3510-DT-M

Cornell University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 86–229. Applicant: Cornell University, Ithaca, NY 14853. Instrument: Portable Analog Pulse Logger. Manufacturer: Helpware Computer Consultancy, United Kingdom. Intended Use; See notice at 51 FR 23255.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument can digitize, record and play back waveforms in situ from weak electrical signals in water. The National Institutes of Health advises in its memorandum dated September 29, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-25753 Filed 11-13-86; 8:45 am]

BILLING CODE 3510-DS-M

Department of Health and Human Services/Public Health Service; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am, and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 86-041. Applicant: DHHS/PHS, Washington, DC 20204. Instrument: Light (Irradiation) Source, Model Supuvasun 3000. Manufacturer: Mutzhas Produktions GmbH, West Germany. Intended Use: See notice at 50 FR 48451.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides high intensity (3000 watts) light in the UV range (350 to 450 nanometers) with filtering capabilities. The National Institutes of Health advises in its memorandum dated May 1, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-25755 Filed 11-13-86; 8:45 am]

BILLING CODE 3510-DS-M

The Methodist Hospital et al; Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 86-105R. Applicant: The Methodist Hospital, 6565 Fannin Street, Houston, TX 77030. Instrument: Kidney Lithotripter. Manufacturer: Dornier Medizintechnik GmbH, West Germany. Original notice of this resubmitted application was published in the **Federal Register** of February 20, 1986.

Docket Number: 87-014. Applicant: University of Hawaii, Department of Agricultural Biochemistry, 1800 East West Road, Honolulu, HI 96822. Instrument: Rapid Kinetics Accessory for Spectrophotometers, Model SFA-11. Manufacturer: Hi-Tech Ltd., United Kingdom. Intended Use: The instrument is an accessory to existing spectrophotometric equipment which will allow measurement of rapid chemical and biochemical reactions. Experiments will be conducted to determine the mechanisms of action and the toxicity of thyroid drugs. Application received by Commissioner of Customs: October 22, 1986.

Docket Number: 87-015. Applicant: Northeastern University, Department of Civil Engineering, 360 Huntington Avenue, Boston, MA 02115. Instrument: Automated Triaxial and Consolidation Testing System. Manufacturer: GDS Instruments Ltd., United Kingdom. Intended Use: The instrument is intended to be used for studies of stress-strain, strength, permeability and compression characteristics of soils subjected to a variety of loading conditions. Applications Received by Commissioner of Customs: October 22, 1986.

Docket Number: 87-016. Applicant: University of California, Berkeley, Berkeley, CA 94720. Instrument: Electronic Visual Display Unit with Raster Rotation. Manufacturer: Joyce Electronics, United Kingdom. Intended Use: The instrument is intended to be used for the study of amblyopia, a general term which describes a unilateral loss of vision usually associated with some difficulty encountered in early childhood. Research-user group studies the root causes of developmental visual disorders, those types of disorder which are neither inherited nor arise due to trauma or secondary illness. The instrument will also be used for educational purposes in the courses P.O. 102, Dioptrics of the Eye and P.O. 299, Guided Research. Application Received by Commissioner of Customs: October 23, 1986.

Docket Number: 87-019. Applicant: University of Pennsylvania, Chemistry Department, 231 S. 34th Street, Philadelphia, PA 19104. Instrument: Mass Spectrometer, Model VG ZAB-E with Accessories. Manufacturer: VG Analytical Ltd., United Kingdom. Intended Use: The instrument will be used to study synthetic and semi-synthetic compounds, their intermediates and final products. The characterization of the compounds will be determined by high resolution mass spectrometry to achieve unambiguous identification at detection limits of parts per trillion. Polypeptides, oligonucleotides and other polar, thermally labile compounds will be studied by high performance liquid chromatography and fast atom bombardment mass spectrometry. Application Received by Commissioner of Customs: October 27, 1986.

Docket Number: 87-020. Applicant: Thomas Jefferson University, Jefferson Alumni Hall, 1020 Locust Street, Room 268, Philadelphia, PA 19107. Instrument: Electron Microscope (Side Entry Goniometer), Model H-7000. Manufacturer: Hitachi Scientific Instruments, Japan. Intended Use: The instrument is intended to be used for biomedical research which will include:

(1) Electron immunohistochemistry of the extracellular matrix,

(2) Rotary shadowing of biological molecules with heavy metals,

(3) The study of cell surface receptors in embryonic and neoplastic cells,

(4) The study of cell membranes by freeze-etching.

Application received by Commissioner of Customs: October 27, 1986.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-25754 Filed 11-13-86; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

[Docket No. 30812-6167]

Approval of Federal Information Processing Standard 70-1; Representation of Geographic Point Locations for Information Interchange

AGENCY: National Bureau of Standards, Commerce.

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ACTION: The purpose of this notice is to announce that the Secretary of Commerce (Secretary) has approved a new standard, which will be published as FIPS Publication 70-1 (a revision to FIPS 70).

SUMMARY: On September 15, 1983, notice was published in the **Federal Register** (48 FR 41478) that a Federal Information Processing Standard (FIPS) 70-1 entitled "Representation of Geographic Point Locations for Information Interchange" was being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to this standard were reviewed by NBS. On the basis of this review, NBS recommended that the Secretary approve the standard as a Federal Information Processing Standard (FIPS), and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

The approved standard contains two portions: (1) An announcement portion which provides information concerning the applicability, implementation, and maintenance of the standard, and (2) a specifications portion which deals with the technical requirements of the standard. Only the announcement portion of the standard is provided in this notice.

ADDRESS: Interested parties may purchase copies of this standard, including the technical specifications portion, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies Section of the announcement portion of the standard.

FOR FURTHER INFORMATION CONTACT: Mr. Roy G. Saltman, Center for Programming Science and Technology, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, (301) 921-3491.

Dated: November 5, 1986.

Ernest Ambler,

Director.

Federal Information Processing Standards Publication 70-1

1986 Month Day

Announcing the Standard for Representation of Geographic Point Locations for Information Interchange

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Bureau of Standards in accordance with section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89-306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations.

1. *Name of Standard:* Representation of Geographic Point Locations for Information Interchange.

2. *Category of Standard:* Federal General Data Standard, Representations and Codes: Earth Science Series.

3. *Explanation:* This standard establishes uniform formats for geographic point location data through the adoption of ANSI X3.61-1986, a standard approved by the American National Standards Institute. Geographic point location refers to the use of a coordinate system to define the position of a point that may be on, above, or below the Earth's surface. It provides a means for representing these data in digital form for the purpose of interchanging information among data systems and for improving clarity and accuracy of interpersonal, technical communications.

4. *Approving Authority:* Secretary of Commerce.

5. *Maintenance Agency:* U.S. Department of the Interior, Geological Survey (National Mapping Division).

Inquiries concerning the technical content of this standard should be addressed to: U.S. Geological Survey, National Mapping Division, National Center 510, Reston, VA 22092. The Geological Survey has assumed the leadership in developing and maintaining earth-science data element and representation standards under the terms of a Memorandum of Understanding signed in February 1980 by the National Bureau of Standards of the Department of Commerce and the Geological Survey, a bureau of the Department of the Interior.

The Maintenance Agency is responsible for the content of the standard and will provide the National Bureau of Standards with information on adopted changes. Change notices to this FIPS PUB will be issued by the National Bureau of Standards. Users who wish to receive such notices should complete the Change Request Form included in this FIPS PUB and return it to the address indicated.

6. *Cross Index:*

a. ANSI X3.61-1986, Representation of Geographic Point Locations for Information Interchange (revision of ANSI X3.61-1978).

b. FIPS PUB 70, Representation of Geographic Point Locations for Information Interchange, October 24, 1980 (the previous edition of this standard).

7. *Objectives:* The objectives of this standard are to improve the utilization of data resources of the Federal government and avoid unnecessary duplications and incompatibilities in the collection, processing and dissemination of data.

8. *Applicability:* This Federal general data element and representation standard is made available for data interchange among executive departments and independent agencies, and for Federal data interchange with the non-Federal sector including industry, State, local, and other governments, and the public at large. This standard applies only to uniquely identified locations, and not to a series of coordinates, at small intervals, such as linear map features, terrain profiles, or elevation models.

This standard does not apply to the inclusion, in text, of single values of latitude or longitude, or to applications covered by non-conforming international agreements established under the aegis of the World Meteorological Organization or the North Atlantic Treaty Organization. This standard excludes geographic coordinate systems and vertical control datums utilized by the U.S. Department of Defense in military applications.

9. *Implementation Schedule:* This standard becomes effective April 15, 1987. Use by Federal agencies is encouraged when such use contributes to operational benefits, efficiency, or economy.

10. *Specifications:* This standard adopts ANSI X3.61-1986, Representation of Geographic Point Locations for Information Interchange (revision of ANSI X3.61-1978), approved by the American National Standards Institute, Inc.

11. *Where to Obtain Copies:* Copies of this publication are available for sale by the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, please refer to Federal Information Processing Standards

Publication 70-1 (FIPSPUB70-1), and title. Copies of other FIPS PUBS are also available from NTIS. Payment may be made by check, money order, or deposit account.

[FR Doc. 86-25757 Filed 11-13-86; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

Determination of Commercial Fishery Failure Due to a Resource Disaster Under the Authority of the Commercial Fisheries Research and Development Act of 1964

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of determination.

SUMMARY: The Delaware Bay oyster population has been plagued by the recurring problem of MSX (*Haplosporidium nelsoni*) since the late 1950's when the protozoan organism was first detected. MSX caused oyster mortalities approaching 95 percent of the total resource in the lower reaches of the bay where the salinity levels normally reach 15 parts per thousand (ppt) and greater. MSX does not tolerate salinity levels lower than 15 ppt, which are generally common in the upper Bay and its tributaries during the winter spring period. The State of Delaware has been working over the last 25 years to improve the natural oyster environment through siltation removal and cultch planting, to provide for increased oyster production and recuperation of the industry. The resource and industry were showing signs of recovery as a result of the State's action. However, since 1984, drought conditions have been occurring reducing the freshwater run-off into the Bay and increasing the salinity to levels that permit MSX to thrive. The result was an 85 percent mortality rate to all newly planted oysters from the natural seed and leased beds. Harvest levels dropped from 214, 160 lbs in 1983 to 39,277 lbs. 1985. This year the State closed the seed beds to harvesting because 40-80 percent of samples examined were infested with MSX. Oysters in all the leased beds have also been eliminated. If salinity levels drop enough to allow for any spat setting in 1986 it will be at least three years before harvesting can resume.

Delaware intends to plant oyster seed cultch and cultivate natural oyster beds by removing silt to ameliorate the levels of MSX infestation and mortality. Past experiences and practices have shown that damaged oyster resources can be effectively restored using these methods.

Both the resource and the industry have suffered significantly over the past three years because of MSX. A combined technical review of the proposal by NMFS staff from the Northeast region and the Northeast Fisheries Center indicates that a resource disaster has occurred as defined under the terms of subsection 779b of the Commercial Fisheries Research and Development Act of 1964, as amended (Pub. L. 88-309, subsection 4(b). Therefore, as the authorized representative of the Secretary of Commerce, I hereby determine that funds appropriated by Pub. L. 99-500 may be used for the purposes of subsection 4(b) of Pub. L. 88-309 to restore and return to production the damaged oyster resources of the Delaware Bay.

Authority: 16 U.S.C. 779 et. seq.

Dated: November 7, 1986.

William E. Evans,

Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

[FR Doc. 86-25768 Filed 11-13-86; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Restraint Limits for Certain Cotton, and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia

November 7, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 14, 1986. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 1 and July 11, 1985 between the Governments of the United States and Malaysia provides, among other things, for percentage increases in certain categories, provided a corresponding reduction in equivalent square yards is made in one or more other specific limits during the same agreement year (swing); for the carryover of shortfalls in certain categories from the previous agreement year (carryover); and for the borrowing of yardage from the succeeding year's limit with the amount used being deducted from the limit in the succeeding agreement year (carryforward).

In accordance with the terms of the bilateral agreement and at the request of the Government of Malaysia, flexibility in the form of swing, carryover and carryforward is being applied, variously, to cotton and man-made fiber textile products in Categories 338/339, 340, 369-S, (shop towels in TSUSA number 366.2840) 640 and 641, produced or manufactured in Malaysia and exported during the agreement year which began on January 1, 1986 and extends through December 31, 1986. In the letter to the Commissioner of Customs which follows this notice, the Chairman of CITA directs the Commissioner of Customs to increase the limits previously established for cotton and man-made fiber textile products in Categories 338/339, 340, 640 and 641 to the designated amounts. The limit for Category 369-S is being reduced to 637,601 pounds to account for swing applied to other categories.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

November 10, 1986.

Committee for the Implementation of Textile Agreements

November 7, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 23, 1985 issued to you by the Chairman, Committee for the Implementation of textile Agreements concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Malaysia.

Effective on November 14, 1986, the directive of December 23, 1985 is hereby

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amended to include adjusted limits for the following categories: [1]

Category	Adjusted 12-mo restraint limit [1]
336/339	600,066 dozen.
340	409,648 dozen.
369–S [2]	637,601 pounds.
640	305,916 dozen.
641	553,118 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1985.
[2] In Category 369, only TSUSA number 366.2840.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–25751 Filed 11–13–86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Computer Applications to Training and Wargaming; Meeting

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Computer Applications to Training and Wargaming will meet in closed session on January 12–13, 1987 at the Institute for Defense Analyses, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will study how to integrate anticipated advances in computer technology with ongoing simulation efforts, supporting training and wargaming for joint warfighting.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

November 7, 1986.

[FR Doc. 86–25692 Filed 11–13–86; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Computer Applications to Training and Wargaming; Meeting

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Computer Applications to Training and Wargaming will meet in closed session on January 12–13, 1987 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will study how to integrate anticipated advances in computer technology with ongoing simulation efforts, supporting training and wargaming for joint warfighting.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

November 7, 1986.

[FR Doc. 86–25693 Filed 11–13–86; 8:45 am]

BILLING CODE 3810-01-M

Defense Advisory Committee on Women in the Services; Meeting

AGENCY: Defense Advisory Committee on Women in the Services (DACWITS), DOD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given of a forthcoming meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the meeting is to review the Recommendations, Requests for Information, and Continuing Concerns made by the Committee at the 1986 Fall Meeting; discuss current issues relevant to women in the Services; and finalize the program for the next semiannual meeting scheduled for May 3–7, 1987, in the Washington, DC area.

All meeting sessions will be open to the public.

DATES: December 4, 1986, 1:30–5:00 p.m. and December 5, 1986, 9:30–11:30 a.m.

ADDRESS: OSD Conference Room 1E801 #7, The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Major Ilona E. Prewitt, Director, DACOWITS and Military Women Matters, OASD (Force Management and Personnel), The Pentagon, Room 3D769, Washington, DC 20301–4000; telephone (202) 697–2122.

Patricia H. Means,

OSD Federal Register Liaison Office, Department of Defense.

November 10, 1986.

[FR Doc. 86–25786 Filed 11–13–86; 8:45am]

BILLING CODE 3810-01-M

Department of the Air Force

Privacy Act of 1974; Systems of Records

AGENCY: Department of the Air Force (DAF), DOD.

ACTION: Notice of deletion and amendment of Air Force Systems of Records Notices.

SUMMARY: The Air Force proposes to delete 1 systems of records notice, and amend 15. Changes are summarized below and the rewritten notices follow in their entirety.

EFFECTIVE DATE: The deletions are effective November 14, 1986, and the amendments shall be effective without further notice on or before December 15, 1986, unless public comments are received which result in a contrary determination.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Updike, HQ USAF/DAQD(S), The Pentagon, Washington, D.C., telephone: 202/694–3431.

SUPPLEMENTARY INFORMATION: The Air Force systems of records inventory subject to the Privacy Act of 1974, Title 5, United States Code, Section 552a (Pub. L. 93–579; 44 Stat. 1896 *et seq.*) has been published in the **Federal Register** as follows:

FR Doc. 85–10237 (50 FR 22332) May 29, 1985
FR Doc. 85–14122 (50 FR 24672) June 12, 1985
FR Doc. 85–15062 (50 FR 25737) June 21, 1985
FR Doc. 85–26775 (50 FR 46477) November 8, 1985

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[1] The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 1 and July 11, 1985 between the Governments of the United States and Malaysia provides, in part, that: (1) Specific limits or sublimits may be exceeded by not more than 5 percent, provided a corresponding reduction in equivalent square yards is made in one or more other specific limits during the same agreement year; (2) specific limits may be adjusted for carryover and carryforward up to 11 percent of the applicable category limits; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

FR Doc. 85–29261 (50 FR 50337) December 10, 1985
FR Doc. 86–2527 (51 FR 4531) February 5, 1986
FR Doc. 86–4546 (51 FR 7317) March 3, 1986
FR Doc. 86–10044 (51 FR 16735) May 6, 1986
FR Doc. 86–11696 (51 FR 18927) May 23, 1986

None of the proposed changes require a report as mandated by 5 U.S.C. 552a(o).

Patricia H. Means,
OSD Federal Register Liaison Officer, Department of Defense.
November 10, 1986.

Deletions

F120 AF MP A

System name:

Investigation-Complaint Files (50 FR 22488) May 29, 1985.

Reason:

These files are not retrieved by a personal identifier and are not subject to the Privacy Act of 1974.

Amendments

F030 AF MP A

System name:

Personnel Data System (PDS) (51 FR 18929) May 23, 1986.

Change:

System location:

Add, "activity or squadron orderly rooms," after "consolidated reserve personnel offices."

F035 MPC A

System name:

Application for Appointment and Extended Active Duty Files (50 FR 22409) May 29, 1985.

Changes:

System identification:

Change to, "F035 AF MP R."

System location:

Change to, "Headquarters United States Air Force, Washington, DC 20330–5120; Air Force Military Personnel Center, Randolph AFB, TX 78150–6001; Air Reserve Personnel Center, Denver, CO 80280–5003; Headquarters Air Force Reserve, Robins AFB, GA 31098–6001; United States Air Force Recruiting Service, Randolph AFB, TX 78150–5421; Air National Guard Support Center, Andrews AFB, Washington, DC 20331–6608."

Categories of individuals covered by the system:

Change to, "(1) All applicants for appointment/reappointment as Reserves of the Air Force (ResAF) to United States Air Force Reserve (USAFR) or Air National Guard of the United States (ANGUS) affiliation; (2) all applicants for appointment/reappointment as ResAF to serve on extended active duty (EAD) as medical service officers, chaplains, and judge advocates; (3) all USAFR and ANGUS members who apply for voluntary entry on EAD; (4) all commissioned officers of other uniformed services on EAD who apply for interservice transfer to serve on EAD with the USAF; (5) all commissioned officers and enlisted members of the USAF Reserve components, not on EAD, who apply for interservice transfer between Reserve components of the USAF."

Categories of records in the system:

Change to, "Individual's application and supporting documents as applicable."

Authority for maintenance of the system:

Change to, "10 USC Chapter 837, Appointment as Reserve Officers; Chapter 839, Temporary Appointments; implemented by AFR 36–15, Appointment in Commissioned Grades and Designation and Assignment in Professional Categories—Reserve of the Air Force and United States Air Force (Temporary). 10 USC 716, Commissioned officers, transfer among the armed forces, the Naitonal Oceanic and Atmospheric Adminstration, and the Public Health Service, implemented by AFR 35–39, Interservice and Intraservice Transfer of Uniformed Service Members. 10 USC 672(d), Reserve components generally; 689, Reserve officers; grade in which ordered to active duty; 50 USC App 454, Selective Service Act, Persons liable for training and service; App 456, Deferments and exemptions from training and service; implemented by AFR 45–26, Voluntary Entry on Extended Active Duty (EAD) of Commissioned Officers of the Air Reserve Forces."

Purpose(s):

Change to, "Used to select, appoint or designate persons for the USAFR or ANGUS, for interservice/intraservice transfer, Ready Reserve assignment, or for EAD."

Retention and Disposal:

Change to, "If selected for appointment/reappointment, extended active duty, USAFR or ANGUS affiliation, or interservice/intraservice transfer, records become the Master Personnel Record Group (MPerRGp) and are forwarded to the appropriate MPerRGp custodian. An abbreviated reference file of selected documents is maintained by the applicable utilization and assignment branch. If not selected, documents are retained for one year by the selection or appointment authority and destroyed."

System manager(s) and address:

Change to, "Assistant Deputy Chief of Staff/Personnel, Randolph AFB TX 78150–6001."

F051 AF B

System name:

Flying Training Records-Nonstudent (50 FR 25743) June 21, 1985.

Changes:

System location:

Add, "(3) Headquarters Air Force Systems Command (AFSC) and AFSC Divisions, Centers, Laboratories and Bases. Official mailing address are in the Department of Defense Directory in the appendix to the Air Force's systems notices."

Categories of individuals covered by the system:

Add, "(3) Students entered into AFSC flight training program."

Categories of records in the system:

Change "(1 and 2)" to "(1, 2 and 3)."

Authority for maintenance of the system:

Add, "(3) AFSCM 51–1."

Purpose(s):

Change "(2)" to "(2 and 3)."

Storage:

Add, "(3) Maintained in file folders, in microform, and on computer and computer output products."

Retention and disposal:

Add, "(3) Records are destroyed 1 year after completion of training or on discontinuance of activity, whichever is sooner."

System manager(s) and address:

Add, "(3) DET24, HQ AFSC/OSE, Eglin AFB FL 32542–5000."

Record source categories:

Add, "(3) Information is obtained from the individual, from instructors, instructor supervisors, and personnel involved in the evaluation and analysis of training effectiveness."

F178 AFSC B

System name:

Manhour Accounting System (MAS) (50 FR 22543) May 29, 1985.

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Changes:

System location:

Change to, Headquarters Air Force Systems Command, Divisions, Centers, and laboratories. Official mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notices.

Categories of individuals covered by the system:

Change to, "Civilian and military personnel assigned to AFSC."

Retrievability:

Change to, "Filed by Social Security Number (SSN) or name."

Safeguards:

Change to, "(1) Records are accessed by the records custodian or other persons responsible for servicing the records in performance of their official duties. (2) Records are controlled by personnel screening and by computer system software. (3) Records are maintained in locked cabinets, locked containers, or buildings with controlled entry."

System manager:

Change to, "Manhour accounting and JOCAS monitors at AFSC organizations."

The following changes to Air Force systems of records are required as a result of the creation of the United States Space Command, a joint command.

F011 AF A

System name:

Locator, Registration and Postal Directory Files (50 FR 22338) May 29, 1985.

Changes:

System location:

Add: "Headquarters United States Space Command (HQ USSPACECOM)."

Categories of individuals covered by the system:

Add, "Army, Navy, Air Force and Marine Corps active duty military personnel and civilian employees assigned to HQ USSPACECOM."

Contesting record procedure:

Delete "Air Force's" in first line.

F011 AF MP A

System name:

Congressional and Other High Level Inquiries (50 FR 22339) May 29, 1985.

Changes:

System location:

Add, "Headquarters United States Space Command (HQ USSPACECOM)."

Categories of individuals covered by the system:

Add, "Army, Navy, Air Force and Marine Corps active duty military personnel and civilian employees assigned to HQ USSPACECOM."

Contesting record procedure:

Delete "Air Force's" in first line.

F012 AF A

System name:

Information Requests—Freedom of Information Act (50 FR 22346) May 29, 1985.

Change:

System location:

Add, "Headquarters United States Space Command (HQ USSPACECOM)."

Contesting record procedure:

Delete "Air Force's" in first line.

F012 AF B

System name:

Privacy Act Request File (50 FR 22346) May 29, 1985.

Changes:

System location:

Add, "Headquarters United States Space Command (HQ USSPACECOM)."

Categories of individuals covered by the system:

After "Air Force," add, "HQ USSPACECOM."

Contesting record procedure:

Delete "Air Force's" in first line.

F030 AF A

System name:

Automated Personnel Management System (50 FR 25740) June 21, 1985.

Change:

System location:

Add, "Headquarters United States Space Command (HQ USSPACECOM)."

Contesting record procedures:

Delete "Air Force's" in first line and all after "System Manager."

F030 AF JA A

System name:

Confidential Statement of Affiliations and Financial Interests (50 FR 22348) May 29, 1985.

Changes:

System location:

Add, "Headquarters United States Space Command (HQ USSPACECOM)."

Categories of individuals covered by the system:

Add, "Army, Navy, Air Force, and Marine active duty and civilian personnel, in the same categories when assigned to HQ USSPACECOM."

Contesting record procedure:

Delete "Air Force's" in first line.

F035 AF MP O

System name:

Unit Assigned Personnel Information (50 FR 22382) May 29, 1985.

Changes:

System location:

Add, "Headquarters United States Space Command (HQ USSPACECOM)."

Categories of individuals covered by the system:

Add, "Army, Navy, Air Force and Marine Corps active duty military and civilian personnel assigned to HQ USSPACECOM."

Contesting record procedure:

Delete "Air Force's" in first line.

F190 AF PA A

System name:

Special Events Planning—Protocol (50 FR 22544) May 29, 1985.

Change:

System location:

Add, "Headquarters United States Space Command (HQ USSPACECOM)."

Contesting record procedures:

Delete "Air Force's" in the first line and all after "System Manager."

F190 SAFPA B

System name:

Official Biographies (50 FR 22546) May 29, 1985

Changes:

System location:

Add, "Headquarters United States Space Command (HQ USSPACECOM)."

Categories of individuals covered by the system:

Add, "Key personnel in USSPACECOM."

Contesting record procedure:

Delete "Air Force's in first line and all after "System Manager."

F205 AF A

System name:

Personnel Security Access Records (50 FR 22548) May 29, 1985.

Changes:

System location:

Add, "Headquarters United States Space Command (HQ USSPACECOM)."

Categories of individuals covered by the system:

Add, "Army, Navy, Air Force and Marine Corps active duty military and civilian personnel assigned to HQ USSPACECOM."

Contesting record procedure:

Delete "Air Force's" in first line and all after "System Manager.

F900 AF MP A

System name:

Military Decorations (50 FR 22559) May 29, 1985.

Changes:

System location:

Add, "Headquarters United States Space Command (HQ USSPACECOM)."

Categories of individuals covered by the system:

Add, "Army, Navy, Air Force and Marine Corps active duty military and civilian personnel assigned to HQ USSPACECOM."

Contesting record procedures:

Delete "Air Force's" in first line and all after "System Manager."

F011 AF A

SYSTEM NAME:

011 AF A

011 AF A—Locator, Registration and Postal Directory Files.

SYSTEM LOCATION:

Headquarters United States Air Force, and at Air Force Installations, to include bases, units, offices, and functions. Official mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notices. Headquarters United States Space Command (HQ USSPACECOM).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty military personnel; Air Force Reserve and National Guard Personnel; Air Force civilian employees; dependents may be included at the option of the installation, unit, or organization. Army, Navy, Air Force and Marine Corps active duty military and civilian personnel assigned to HQ USSPACECOM.

CATEGORIES OF RECORDS IN THE SYSTEM:

Cards or listings may contain the individuals name, grade, military service identification number, Social Security Number, duty location, office telephone number, residence address and residence telephone number, and similar type personnel data determined to be necessary by the local authority.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 8012, Secretary of the Air Force: Powers and duties; delegation by.

PURPOSE(S):

Used to locate or identify personnel assigned to, attached to, tenanted on, or on temporary duty at the specific installation, office, base, unit, function, and/or organization in response to specific inquiries from authorized users for the conduct of business. Portion of the system are used to directorize and forward individual personnel mail received by Air Force postal activities, and for assignment of individual mail boxes. Files may be used locally to support official and unofficial programs which require minimal locator information or membership or user listings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING; ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper records in card or form media in visible file binders/cabinets card files or on computer and computer products.

RETRIEVABILITY:

Filed by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Retained in office files until reassignment or separation, or when superseded or no longer needed for reference, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning or by overwriting magnetic media. Postal directory files are maintained for six months after reassignment, separation or departure from servicing activity.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Administration, Headquarters, US Air Force, Washington, DC. Local System Managers: Privacy officer of the installation, base, unit, organization, office or function to which the individual is assigned, attached, tenanted on or on temporary duty. Official mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notices.

NOTIFICATION PROCEDURES:

Requests from individuals should be addressed to the local System Manager or custodian of the records. Individual must furnish full name and the names of dependents to the Air Force installation, unit and organization, office, or function to which assigned, attached, tenanted on or on temporary duty at, including the calendar years of such service. The individual may visit the Locator Office or Privacy Officer at the place of assignment. No identification is required to determine if the system contains records pertaining to a specific individual.

RECORD ACCESS PROCEDURES:

Individual can obtain assistance in gaining access from the System Manager. Mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notices.

CONTESTING RECORDS PROCEDURES:

The rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the local System Manager.

RECORD SOURCE CATEGORIES:

Information obtained from automated system interfaces or from individuals or personnel records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

F011 AF MP A

SYSTEM NAME:

011 AF MP A—Congressional and Other High Level Inquiries.

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SYSTEM LOCATION:

Air Force Military Personnel Center, Major Commands, Separate Operating Agencies and Consolidated Base Personnel Offices (CBPOs) at Air Force installations. Official mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notices. Headquarters United States Space Command (HQ USSPACECOM).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force military personnel serving on active duty, in the Air Force Reserve, or retired or discharged from the Air Force. Civilian personnel currently or formerly employed by the Air Force. Personnel attending Air Force training institutions or undergoing training under Air Force sponsorship. Army, Navy, Air Force and Marine Corps active duty military and civilian personnel assigned to HQ USSPACECOM.

CATEGORIES OF RECORDS IN THE SYSTEM:

Background information and information reflecting Air Force personnel policies and procedures; copies of inquires received from the Office of the President, Members of Congress and other high level sources requesting information by or on behalf of a constituent; copies of replies to such inquiries including transmittal media used en route and to the Air Force Office of Legislative Liaison (SAF/LL).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 8012, Secretary of the Air Force: Powers and duties; delegation by; and 10 USC 8032, The Air Staff, general duties; implemented by Air Force Regulation 11-7, Air Force Relations with Congress.

PURPOSE(S):

Information pertinent to an inquiry forwarded to SAF/LL for preparation of the reply to the high level requester. In some instances, response may be direct to the requester without referral through SAF/LL; however, when required by directive, copies of such responses are furnished SAF/LL. The records may be used in responding to subsequent inquiries concerning the same individual. The record system is audited periodically to determine trends on the nature of complaints and questions and for statistical purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/cabinets.

RETRIEVABILITY:

Filed by name.

SAFEGUARDS:

Records are accessed by the custodian of the record system and by persons responsible for servicing the records in performance of their official duties who are properly cleared for need-to-know. Records are stored in security file containers/cabinets, locked cabinets or rooms.

RETENTION AND DISPOSAL:

Retained for up to 18 months depending on category, then destroyed by tearing into pieces, shredding, macerating, pulping or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff/Manpower and Personnel, Headquarters United States Air Force; commanders of major air commands, numbered air forces or comparable level activities.

NOTIFICATION PROCEDURE:

Requests from individuals must contain reasonable particulars about the subject in question and should be addressed to the respective System Manager.

RECORD ACCESS PROCEDURES:

Individual can obtain assistance in gaining access from the respective System Manager. Individual's request must contain reasonable identifying particulars about the subject in question.

CONTESTING RECORDS PROCEDURES:

The rules for accesss to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Information provided by major command or consolidated base personnel office personnel, manual or automated personnel records, Air Force policies and procedures, copies of inquiries, congressional/high level officials'/constituents' comments or requests and Air Force replies thereto.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

F012 AF A

SYSTEM NAME:

012 AF A—Information Requests-Freedom of Information Act.

SYSTEM LOCATION:

Air Force installations. Headquarters United States Space Command (HQ USSPACECOM).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who have requested documents under the provisions of the Freedom of Information Act (FOIA).

CATEGORIES OF RECORDS IN THE SYSTEM:

Administration of release of information to the public.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 552, The Freedom of Information Act as implemented by Air Force Regulation 12-30, Disclosure of Air Force Records to the Public.

PURPOSE(S):

To control administrative processing of requests for information used by freedom of information manager.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Filed by name.

SAFEGUARDS:

Records are accessed by custodian of the record system. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Retained in office files for two years after annual cut-off then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Administration, Headquarters United States Air Force, Washington, DC 20330.

NOTIFICATION PROCEDURE:

Contact the local FOIA manager at each Air Force installation.

RECORD ACCESS PROCEDURES:

Contact the local FOIA manager at each Air Force installation.

CONTESTING RECORDS PROCEDURES:

The rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Freedom of information manager as result of requests for information from members of public.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

F012 AF B

SYSTEM NAME:

012 AF B—Privacy Act Request File.

SYSTEM LOCATION:

At all levels of the Air Force having responsibility for systems of records under the Privacy Act. Includes Headquarters United States Air Force staff agencies, major commands, separate operating agencies, installations, and activities. Official mailing addresses are in the Department of Defense directory in the appendix to the Department of the Air Force system notices. Headquarters United States Space Command (HQ USSPACECOM).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who request access to, information from, or amendment of records about themselves from the Department of the Air Force and HQ USSPACECOM under the provisions of the Privacy Act of 1974 (5 USC 552a).

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters, memoranda, legal opinions, messages, and miscellaneous documents relating to an individual's request for access to or amendment of records concerning that person, including letters of denial, appeals, statements of disagreements, and related documents accumulated in processing requests received under the Privacy Act of 1974

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 552a, The Privacy Act of 1974 as implemented by Air Force Regulation 12–35, Air Force Privacy Act Program.

PURPOSE(S):

To record, process and coordinate individual requests for access to or amendment of personal records, and appeals on denials of requests for access or amendments to personal records; to prepare legal opinions and interpretations for System Managers and the Secretary of the Air Force.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force. Used by the Office of Management and Budget, the General Services Administration, the Office of Personnel Management, the Justice Department, or other Government agencies having a direct interest in monitoring or evaluating compliance with the provisions of the Privacy Act by the Department of the Air Force, including the preparation of special studies or reports on the status of actions taken to comply with the Act, the results of those efforts, any problems encountered and recommendations for any changes in legislation, policies, or procedures. Also used by members of Congress or their staffs for resolution of constituent inquiries.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and/or microfilm.

RETRIEVABILITY:

Filed by name of requester.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Requests for information are destroyed when no longer needed; requests from access or amendment and appeals of denial are destroyed four years after final action or three years after adjudication by the courts, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

The Director of Administration, Headquarters United States Air Force, Washington, DC 20330; or the Director of Administration of the major command or separate operating agency, or Chief, Central Base Administration at the Air Force installation where the requested or disputed records are located.

NOTIFICATION PROCEDURE:

Requests from individuals should be addressed to the System Manager. Written requests should include the person's full name, grade (if applicable), and some other personal information which could be verified from the person's file. For personal visits, the individual should present a valid identification card or driver's license and some verbal information which could be verified from the person's case file.

RECORD ACCESS PROCEDURES:

Written requests should be addressed to the office that processed the initial inquiry, access request, amendment request, or appeal; or individual can obtain assistance in gaining access from the System Manager. Mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notices.

CONTESTING RECORDS PROCEDURES:

The rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Records are obtained from the individual requester, Department of the Air Force organizations, other Department of Defense organizations, and agencies of Federal, state, and local governments, as applicable or appropriate for processing the case.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

F030 AF A

SYSTEM NAME:

030 AF A—Automated Personnel Management System.

SYSTEM LOCATION:

Units or offices at all levels within the Air Force, and Headquarters United States Space Command (HQ USSPACECOM), who implement the system under a specific authorizing local or higher directive.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel, including members of the Air Reserve Forces and civilian employees assigned to the office or unit as specified in the governing directive for the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data obtained from existing personnel or training records or from the individual. Record includes name, grade, SSN, unit of assignment, security clearance, supervisor, duty title, office

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and telephone number, home address and telephone number, dependents, education and training, speciality or job qualifications, performance/effectiveness reports, awards/decorations, promotions, duty assignment history and similar information listed in the governing directive for the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 8012, Secretary of the Air Force: Powers and duties; delegation by; as implemented by a specific governing directive. The system cannot be operated until a directive is published listing authorized locations, subjects, categories of records, safeguards, and management procedures. A copy of the directive will be provided to the command Privacy Act Officer.

PURPOSE(S):

Used to locate, manage and train assigned personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored on computer or word processor and output products as listed in the governing directive.

RETRIEVABILITY:

Filed by name or Social Security Number.

SAFEGUARDS:

Records are accessed by the custodian of the system and by persons servicing the records who are properly cleared for need-to-know. Records are protected in accordance with Air Force Regulation 300–13, Safeguarding Personal Information in Automatic Data Processing Systems.

RETENTION AND DISPOSAL:

Computer records are retained until no longer needed. Records will be destroyed no later than 2 years after last entry.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of the office or unit as specified in the governing directive.

NOTIFICATION PROCEDURE:

Requests from individuals should be sent to the System Manager.

RECORD ACCESS PROCEDURES:

Individuals can obtain assistance in gaining access from the System Manager.

CONTESTING RECORDS PROCEDURES:

The rules for access to records and contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager and are published in Air Force Regulation 12–35.

RECORD SOURCE CATEGORIES:

Information obtained from personnel records, training records or the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

F030 AF JA A

SYSTEM NAME:

030 AF JA A—Confidential Statement of Affiliations and Financial Interests.

SYSTEM LOCATION:

Office of the General Counsel, Office of the Secretary of the Air Force, Washington DC 20330; Office of the Judge Advocate General, Headquarters United States Air Force, Washington, DC 20330; Headquarters of major commands and at all levels down to and including Air Force installations. Headquarters United States Space Command (HQ USSPACECOM).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force civilian personnel paid at a level of GS–13 through GS–15; Air Force military personnel in the rank of Lieutenant Colonel or Colonel whose basic duties and responsibilities require the exercise of judgment on Government decision making or taking action on (1) the administering or monitoring of grants or subsidies, (2) contracting or procurement, (3) auditing, or (4) any other government activity in which the final decision or action has a significant economic impact on the interest of any non-federal enterprise; and Special Government employees who are "advisors" or "consultants." Army, Navy, Air Force, and Marine Corps active duty personnel and civilian employees in the same categories when assigned to HQ USSPACECOM.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains the title of the individual's position, date of appointment in present position, agency and major organization segment of the position, employment and financial interests, creditors, interest in real property, a list of persons from whom information can be obtained concerning the individual's financial situation, supervisor's evaluation, and Standards of Conduct Counsellor/Deputy Counsellor review.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11222, "Prescribing Standards of Ethical Conduct for Government Officers and Employees."

PURPOSE(S):

The review of the statements by the individual's supervisor and deputy counselor to determine the existence of or potential for a conflict of interst in the performance of official duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed alphabetically by year.

SAFEGUARDS:

Stored in locked metal file cabinets.

RETENTION AND DISPOSAL:

Retained up to two years after the individual has left employment or terminated responsibilities which require disclosure of information. Destroyed by tearing into pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

The Assistant General Counsel (Personnel). The Judge Advocate General, Headquarters United States Air Force.

NOTIFICATION PROCEDURE:

Requests from individuals should be addressed to the System Managers or to Deputy Standards of Conduct Counsellor at system location.

RECORD ACCESS PROCEDURES:

Individual can obtain assistance from the System Managers or Deputy Standards of Conduct Counsellor at system location.

CONTESTING RECORDS PROCEDURES:

The rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Managers.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual or from personnel designated by the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

F030 AF MP A

System name:

030 AF MP A—Personnel Data System (PDS).

SYSTEM LOCATION:

Headquarters United States Air Force, Washington DC 20330. Air Force Manpower and Personnel Center, Randolph Air Force Base, TX 78150. Air Reserve Personnel Center, Denver, CO 80280. Headquarters of major commands and separate operating agencies and consolidated base personnel offices, central civilian personnel offices (CCPOs), consolidated reserve personnel offices, and activity or squadron orderly rooms. Official mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty and retired military personnel. Air Force Reserve and Air National Guard personnel. Air Force Academy cadets. Air Force Civilian employees. Certain surviving dependents of deceased members of the US Air Force and predecessor organizations; potential Air Force enlistees; candidates for commission enrolled in college level Air Force Reserve Officer Training Corps Programs; Deceased members of the Air Force and predecessor organizations; Separated members of the US Air Force, the Air National Guard (ANG) and Air Force Reserve (USAFR); ANG and USAFR Technicians; Prospective, pending, current, and former Air Force civilian employees, except Air National Guard Technicians-current and former civilian employees from other Governmental agencies that are serviced at CCPOs may be included at the option of servicing CCPO; DOD contractors and foreign military personnel on liaison or support duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

The principal digital record maintained at each PDS operating level is the master personnel record, which contains the following categories of information: 1. Accession data pertaining to an individual's entry into the Air Force (place of enlistment source of commission, home of record, date of enlistment, place from which ordered to EAD). 2. Education and training data, describing the level and type of education and training, civilian or military (academic education level, major academic specialty, professional specialty courses completed, professional military education received). 3. Utilization data used in assigning and reassigning the individual, determining skill qualifications, awarding Air Force Specialty Codes, determining duty location and job assignment, screening/selecting individual for overseas assignment, performing strength accounting processes, etc. (Primary Air Force Specialty code, Duty and Control Air Force Specialty Code, personnel accounting symbol, duty location, up to 24 previous duty assignments, aeronautical rating, date departed last duty station, short tour return date, reserve section, current/last oversea tour). 4. Evaluation Data on members of the Air Force during their career (Officer Effectiveness Report dates and ratings, Airman Performance Report dates and ratings, results of various qualifications tests, an "Unfavorable Information" indicator, and Drug and Alcohol Abuse data). 5. Promotion Data including promotion history, current grade and/or selection for promotion (current grade, date of rank and effective date; up to 10 previous grades, dates of rank and effective dates; projected temporary grade, key "service dates"). 6. Compensation data although PDS does not deal directly with paying Air Force members, military pay is largely predicated on personnel data maintained in PDS and provided to the Air Force Accounting and Finance Center (AFAFC) as described in ROUTINE USES below (pay date, Aviation Service Code, sex, grade, proficiency pay status. 7. Sustentation data—information dealing with programs provided or actions taken to improve the life, personal growth and morale of Air Force members (awards and decorations, marital status, number of dependents, religious denomination of member and spouse, race relations education). 8. Separation and retirements data, which identifies an individual's eligibility for and reason for separation (date of separation, mandatory retirement date, projected or actual separation program designator and character of discharge). At the central processing site (AFMPC), other subsidiary files or processes are operated which are integral parts of PDS: 1. Procurement Management Information System (PROMIS) is an automated system designed to enable the USAF to exercise effective management and control of the personnel procurement personnel required to meet the total scheduled manpower requirements necessary to accomplish the Air Force mission. The system provides the recruiter with job requirement data such as necessary test scores, Air Forces Specialty Code, sex, date of enlistment; and the recruiter enters personal data on the applicant—SSN, name, date of birth, etc.—to reserve the job for him or her. 2. Career Airman Reenlistment Reservation System (CAREERS) is a selective reenlistment process that manages and controls the numbers by skill of first-term airmen that can enter the career force to meet established objectives for accomplishing the Air Force mission. A Centralized data bank contains the actual number, by quarter, for each Air Force Specialty Code (AFSC) that can be allowed to reenlist during that period. The individual requests reenlistment by stating his eligibility (AFSC, grade, active military service time, etc). If a vacancy exists, a reservation—by name, SSN, etc—will be made and issued to the CBPO processing the reenlistment. 3. Airman Accessions provides the process to capture a new enlistee's initial personal data (entire personnel record) to establish a personnel data record and gain it to the Master Personnel File of the Air Force. The initial record data is captured through the established interface with the Processing and Classification of Enlistees System (PACE) at Basic Military Training, Lackland Air Force Base, for non-prior service; for prior service enlistees the basic data (name, SSN, DOE, grade, etc.) is input directly by USAF Recruiting Service and updated and completed by the initial gaining CBPO. 4. Officer Accessions is the process whereby each of the various Air Force sources of commissioning (AF Academy, AFROTC, Officer Training School, etc.) project their graduates in advance allowing management to select by skill, academic specialty, etc.—which and how many will be called to active duty when, by entering into the record an initial assignment and projected entry onto Active Duty date. On that date the individual's record is accessed to the active Master Personnel File of the Air Force. 5. Technical Training Management Information System (TRAMIS) is a system dealing with the Technical Training activities controlled by Air Training Command. The purpose of the system is to integrate the training program, quota control and student

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accounting into the personnel data system. TRAMIS consists of numerous files which constitute "quota banks" of available training spaces, in specific courses, projected for future use based on estimated training requirements. Files include such data as: Course Identification Numbers. Class Start and Graduation Dates, Length of Training, Weapon System Identification, Training Priority Designators, Responsible Training Centers, Trainee Names, SSN (and other pertinent personnel data) on individuals scheduled to attend classes. 6. Training Pipeline Management Information System (TRAPMIS) is an automated quota allocating system which deals with specialized combat aircrew training and aircrew survival training. Its files constitute a "quota bank" against which training requirements are matched and satisfied and through which trainees are scheduled in "pipeline" fashion to accommodate the individual's scheduled geographical movement from school to school to end assignment. Files contain data concerning the courses monitored as well as names, SSNs and other pertinent personnel data on members being trained. 7. Air Force Institute of Technology (AFIT) Quota Bank File reflects program quotas by academic specialty for each fiscal year (current plus two future fiscal years, plus the past fiscal year programs for historical purposes). Also, this file reflects the total number of quotas for each academic specialty. Officer assignment transactions process against the AFIT Quota Bank file to reflect the fill of AFIT Quotas. Examples of data maintained are: Academic Specialty, Program Level, Fiscal Year, Name of Incumbent selected, projected, filling AFIT Quota. 8. Job File is derived from the Authorization Record and is accessible by Position Number. Resource managers can use the Jog File to validate authorizations by Position Number for assignment actions and also to make job offers to individual officers. Internal suspensing within the Job File occurs based upon Resource Managers update transactions. Data in the file includes: Position Number, Duty AFSC, Functional Account Code, Program Element, Location, and name of incumbent. 9. Casualty subsystem is composed of transactions which may be input at Headquarters Air Force and/or CBPOs to report death or serious illness of members from all components. A special file is maintained in the system to record information on individuals who have died. Basic identification data and unique data such as country of occurrence, date of incident, casualty group, aircraft involved in the incident and military status are recorded and maintained in this file. 10. Awards/Decorations are recorded and maintained on all component personnel in the headquarters Air Force master files. All approved decorations are input at CBPOs whereas disapproved decorations are input at MAJCOM/HAF. A decorations statistical file is built at AFMPC which reflects an aggregation of approvals/disapprovals by category of decoration. This file does not contain any individually identifiable data. All individually identifiable data on decorations is maintained in the Master Personnel File. Such information as the type of decoration, awarding authority, special order number and date of award are identified in an individual's record. Seven occurrences for all decorations are stored; however only specific data on the last decoration of a particular type is maintained. 11. Point Credit Accounting and Reporting System (PCARS). This system is an Air National Guard/Air Force Reserve Unique supported by PDS. Its basic purpose is to maintain and account for retirement/retention points accrued as a result of participating in Drills/Training. The system stores basic personal identification data which is associated with a calendar of points, earned by participation in the Reserve program. Each year an individuals record is closed and point totals are accumulated in history, and a point earning statement is provided the individual and various records custodians. 12. Human Reliability/Personnel Reliability File: This file is maintained at Headquarters Air Force in support of Air Force Regulation 35–99. It is not part of the Master Personnel Files but a free standing file which is updated by transactions from CBPOs. The file was established to specifically identify individuals who have become permanently disqualified under the provisions of the above regulations. A record is maintained on each disqualified individual which includes basic identification data, service component, Personnel/Human reliability status and date, and reason for disqualification. 13. Variable Incentive Pay (VIP) File for medical officers: Contains about 125 character record on all Air Force physicians and is specifically used to identify whether the individual is participating in the Continuation Pay or Variable Incentive Pay programs. Update to this file is provided by the Surgeon (AFMPC), the Air Force Accounting and Finance Center and directly from changes to the Master Personnel File. Besides basic identification data an individual's record includes source of appointment, graduate medical location status, amount of VIP or Continuation Pay and the dates of authorization and the dates and reason for separation. 15. Weighted Airman Promotion System: (a) The Test Scoring and Reporting Subsystem (TSRS) provides for: Identifying at the CBPO individuals eligible for testing; providing output to the Base Test Control Officer and the CBPO to control, monitor, and operate WAPS testing functions; editing and scoring WAPS test answer cards at AFMPC; providing output for maintaining historical and analytical files at AFMPC and the Human Resources Laboratory (HRL) and includes the central identification of AFMPC of individuals eligible for testing. (b) The Personnel Data Reporting Subsystem (PDRS) provides for: Identifying promotion eligibles at AFMPC; verifying these eligibles and selected promotion data; merging test and weighted promotion data at AFMPC to effect promotion scoring, assigning the promotion objective and aligning selectees in promotion priority sequence; maintaining projections on promotion selectees at AFMPC, MAJCOM, and the CBPO; updating these projections mothly; creating output products to monitor the flow of data in the system; maintaining promotion historical and analytical files and reports at AFMPC. (c) Basically, identification data along with time in grade, test scores, decoration information, time in service, and airman performance report history is used to support this program. 16. Retired Personnel Data System (RPDS) is made up of four files—Retired Officer Management File and Retired Airman Management File containing records on members in retired status and the Retired Officer and Airman Loss Files containing records on former retirees who have been lost from rolls, usually through death. The RPDS is used to produce address listings for the Retired Newsletter and Policy letter, statistical reports for budgeting, to manage the Advancement Program, the Temporary Disability Retired List, Age 59 rosters for ARPC, General Officer roster, and statistical digest data for management analysis functions. Data is extracted from the master files upon retirement from Actived Duty or Reserves. Data includes: Name, SSN, grade data, service data, education data, retirement data and address. 17. Separated Officer File contains historical information on officers who leave the Air Force via separation, retirement, or death. Copies are sent to Human Resources Lab and

Washington offices for research purposes. The data comprises the Master Personnel Record in its entirety and is captured 30 to 60 days after separation from the Air Force. 18. Airman Gain/loss File includes data extracted from the Airman Master file when accession and separation (gains and losses) occur. This file, like the Separated Officer File, is used for historical reports regarding strength changes. Data includes name, SSN, and other data that reflects strength, i.e., promotions, reassignment data, specialty codes, etc. 19. Officer and Airman Separation Subsystem is used to process, track, approve, disapprove and project separations from the Air Force and transfers between components of the Air Force. This subsystem uses the Active, Guard, and Reserve MPFs. Data includes that specifically related to separations, e.g., Date of Separation, Separation Program Designator, waivers, etc. 20. The Retirements Subsystem is used to process and track applications for an approval/disapproval and projections of retirements. This subsystem uses the Master Files for Active Duty and Reserve officers and airmen. Data specifically related to retirements includes application data, date of separation, waiver codes, disapproval reason codes, Separation Program Designator, Title 10 USC section, etc. 21. Retired Orders Log is a computer produced retirement orders routine. Orders are automatically produced when approval, verification of service dates, and physical clearance have been entered in system. The orders log contains data found in administrative orders for retirement, including name, SSN, grade, order number, effective dates, etc. The log is used to control assignment of order number, and as a cross-reference between orders, revocations, and amendments. 22. General Officer Subsystem of PDS contains data extracted from the Master Personnel File and language qualification data and assignment history data maintained by the Assistant for General Officer matters. A record is maintained on each general officer and general officer selectee. The general officer files are updated monthly and is used to produce products used in the selection/identification of general officers for applicable assignments. 23. Officer Structure Simulation Model (OSSM) provides officer force descriptions in various formats for existing, predictive or manipulated structures. It functions as a planning tool against which policy options can be applied so as to determine the impact of such policy decisions. The OSSM input records contain individual identifiable data from the Master Personnel Record, but all output is statistical. 24. Widow's File is maintained on magnetic tape and updated by the office of primary Responsibility. When required, address labels and listings are produced by employing selected PDS utility programs. The address labels are used to forward the Retired Newsletter to widows of active duty and retired personnel. The listings are used for management control of the program. Contained in the file are the name, address, and SSN of the widow. Additionally, the deceased sponsor's name, SSN, date of death, and status at time of death are maintained. 25. Historical Files are files with a retention period of 365 days or more. They consist of copies of active master files, and are used primarily for aggregation and analysis of statistical data, although individual records may be accessed to meet ad hoc requirements. 26. Miscellaneous files, records, and processes are a number of work files, inactive files with a less-than-365-day retention period, intermediate records, and processes relating to statistical compilations, computer operation, quality control and problem diagnosis. Although they may contain individual-identifying data, they do so only as a function of system operation, and are not used in making decisions about people. 27. Civilian employment information including authorization for position, personnel data, suspense information; position control information; projected information and historical information; civilian education and training data; performance appraisal, ratings, evaluations of potential; civilian historical files covering job experience, training and transactions; civilian awards information, merit promotion plan work files; career programs files for such functional areas as procurement, logistics, civilian personnel, etc., civilian separation and retirement data for reports and to determine eligibility; adverse and disciplinary data for statistical analysis and employee assistance; stand alone files, as for complaints, enrollee programs; extract files from which to produce statistical reports in hard copy, or for immediate access display on remote computer terminals; miscellaneous files, as described in item 26, above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 265, policies and regulations: Participation of reserve officers in preparation and administration; 269, Ready reserve: Placement in; transfer from; 275, Personnel records; 278, Dissemination of information; 279, Training Reports; Chapter 31, Enlistments; 564, Warrant officers: Effect of second failure of promotion; 593, Commissioned Officers: Appointment, how made; term; 651, Members: Required service; 671, Members not to be assigned outside US before completing training; 673, Ready reserve; Chapter 47, Uniform Code of Military Justice, Sections 835, Art. 35. Service of Charges; 837, Art. 37. Unlawfully influencing action of court; 885, Art. 85. Desertion; 886, Art. 86. Absence without leave; 887, Art. 87. Missing movement; 972, Enlisted members: Required to make up time lost; 1005, Commissioned officers: Retention until completion of required service; 1163, Reserve components: Members; limitations on separation; 1164, Warrant officers; separation for age; 1166, Regular warrant officers: elimination for unfitness or unsatisfactory performance; Chapter 61, Retirement—Physical disability; Chapter 63, Retirement for Age, Section 1263—Age 62: Warrant officers; Chapter 65, Retirement for Length of Service; 1293, Twenty years or more: Warrant officers; 1305, Thirty years or more: Regular warrant officers; Chapter 67, Retired pay; 1331, Computation of years of service in determining entitlement to retired pay; 1332, Age and service requirements; 1333, Computation of years of service in computing retired pay; Chapter 79, Correction of Military Records; Chapter 165, Accountability and responsibility, Section 2771, Final settlement of accounts: Deceased members; 8012, Secretary of the Air Force: Powers and duties; delegation by; Chapter 805, The Air Staff, Sections 8032, General duties; and Section 8033, Reserve components of Air Force; policies and regulations for government for government of: Functions of National Guard Bureau with respect to Air National Guard; Chapter 831, Strength, Section 8224, Air National Guard of the United States; Chapter 833, Enlistments; 835, Appointments in the Regular Air Force, 8284, Commissioned officers; Appointment, how made; 8285, Commissioned officers: Original appointment; qualifications; 8296, Promotion lists: Promotion-list officer defined; determination of place upon transfer or promotion; 8297, Selection boards; 8303, commissioned officers; Effect of failure of promotion to captain, major, or lieutenant colonel; Chapter 837, Appointments as Reserve Officers; 8360, Commissioned officers: Promotion service; 8362, Commissioned officers:

Selection boards; 8363, Commissioned officers; Selection boards; general procedures; 8366, Commissioned officers; Promotion to captain, major or lieutenant colonel; 8376, Commissioned officers: Promotion when serving in temporary grade higher than reserve grade; Chapter 839, Temporary Appointments, 8442, Commissioned officers; regular and reserve components: Appointment in higher grade; 8447, Appointments in commissioned grade: How made; how terminated; Chapter 841, Active Duty, 8496, Air National Guard of United States: Commissioned officers; duty in National Guard Bureau; Chapter 853, Rights and benefits, Section 8691, Flying officer rating: qualifications; Chapter 857, Decorations and Awards; Chapter 859, Separation, 8786, Officer considered for removal: Voluntary retirement or honorable discharge; severance benefits; 8796, Officers considered for removal: Retirement or discharge; Separation or Transfer to Retired Reserve, 8846, Deferred Officers; 8848, 28 years: Reserve first lieutenants, captains, majors, and lieutenant colonels; 8851, Thirty years or five years in grade: Reserve colonels and brigadier generals; 8852, Thirty-five years or five years in grade: Reserve major generals; 8853, Computation of years of service; Chapter 865, Retirement for Age, 8883, Age 60; regular commissioned officers below major general; 8884, Age 60: Regular major generals whose retirement has been deferred; 8885, Age 62: Regular major generals; 8886, regular major generals whose retirement has been deferred; Chapter 867, Retirement for Length of Service, 8911, Twenty years or more; regular or reserve commissioned officers; 8913, Twenty years or more: Deferred officers not recommended for promotion; 8914, twenty to thirty years: Regular enlisted members; 8915, Twenty-five years: Female majors except those designated under section 8067 (a)–(d) or (g)–(i) of this title; 8916, twenty-eight years: Promotion-list lieutenant colonels; 8917, Thirty years or more: Regular enlisted members; 8918, Thirty years or more: Regular commissioned officers; 8921, Thirty years or five years in grade: Promotion-list colonels; 8922, Thirty years or five years in grade: Regular brigadier generals; 8923, Thirty-five years or five years in grade: Regular major generals; 8924, Forty years or more: Air Force officers; Chapter 901, Training generally, 9301, Members of Air Force: Detail as students, observers and investigators at educational institutions, industrial plants, and hospitals; and 9302, Enlisted members of Air Force: Schools; Chapter 903, United States Air Force Academy, 9342, Cadet: Appointment; numbers, territorial distribution; 9344, Selection of persons from Canada and American Republics; 9345, Selection of Filipinos; Chapter 1, Organization, 102, General policy; and 104, units; Location; organization; command; Chapter 3, Personnel, 307, Federal recognition of officers; Examination, certification of eligibility; Chapter 7, Services, supplies, etc., 709, Caretakers and clerks; Chapter 3, Basic Pay, 308, Special pay: Reenlistment bonus; 313, Special pay: Medical officers who execute active duty agreements; Chapter 7, Allowances, 407, Travel and transportation allowances: Dislocation allowance; Chapter 10; Air Force Manual 30–3, Vol I–V, Mechanized Personnel Procedures, Air Force Manual 30–130, Base Level Military Personnel System, and Air Force Manual 300–4, Standard Data Elements and Codes.

PURPOSE(S):

The Air Force operates a centralized personnel management system in an environment that is widely dispersed geographically and encompasses a population that is diverse in terms of qualifications, experience, military status and needs. There are three major centers of Air Force personnel management: Washington, DC, where most major policy and long-range planning/programming decisions are made; the Air Force Manpower and Personnel center at Randolph Air Force Base, TX, which performs most personnel operations-type functions for the active duty components of the force; and the Air Reserve Personnel Center at Denver Co., which performs certain operational functions for the Reserve components of the force. Offices at Major Command Headquarters, State Adjutant General, and Air Force Bases perform operational tasks pertaining to the population for which they are responsible. The structure of the Air Force and its personnel management system, the composition of the force, and the Air Force's stated objective of treating its people as individuals, i.e., giving due consideration to their desires, needs and goals, demand a dynamic data system that is capable of supporting the varying needs of the personnel managers at each echelon and operating locations. It is to this purpose that the data in the Personnel Data System is collected, maintained, and used. A. ROUTINE USES WITHIN THE AIR FORCE—INTERNAL TO THE PERSONNEL COMMUNITY: HQ USAF, WASHINGTON, DC: Deputy Chief of Staff, Personnel and his immediate staff; Director of Personnel Plans; Director of Personnel Programs; Assistant for General Officer Matters; Assistant for Colonel Assignments; Reserve Personnel Division; Air National Guard Personnel Division; and The Surgeon General, the Chief of AF Chaplains and the Staff Judge Advocate, each of which perform certain Personnel functions within their area of responsibility. Data from the central data base at the AFMPC is furnished Washington area agencies by retrieval from the computer at Randolph via remote access devices and by provision of recurring products containing required management information, including computer tape files which are used as input to unique systems with which PDS interfaces. Although most of the data is used by policy makers to develop long-term plans and programs and track progress toward established goals, some individual data is provided/retrieved to support actions taken on certain categories of persons managed by offices in the headquarters e.g. General Officers, Colonels, Air National Guard personnel, etc. AIR FORCE MANPOWER AND PERSONNEL CENTER (AFMPC), RANDOLPH AIR FORCE BASE, TX. Personnel managers at AFMPC use the data in PDS to make decisions on individual actions to be taken in areas such as personnel procurement, education and training, classification, assignment, career development, evaluation, promotion, compensation, casualty and personal affairs, separation and retirement. AIR RESERVE PERSONNEL CENTER (ARPC), DENVER, COLORADO. Personnel managers at ARPC perform many of the same functions for the Reserve components of the Air Force as the managers at AFMPC perform for the active duty force. As with the Washington area, ARPC obtains data from the central data base at AFMPC by retrieval through remote terminals and recurring output products containing information necessary to their management processes. MAJOR COMMAND HEADQUARTERS. Major command headquarters personnel operation are supported by the standard content of PDS records provided them by AFMPC. In addition, there is provided in the PDS record an "add-on area" which the commands are authorized to use for the storage of data which will assist them in fulfilling unique personnel management requirements generated by their mission, structure, geographical location, etc. The standard functions performed fall generally under the same classifications as those in AFMPC, e.g., assignment, classification, separation, etc. Nonstandard usages include provisions of unique aircrew data, production of specially-tailored name listing, control of theatre oriented training, etc. Some commands use PDS data—both standard and add-on as input to unique command systems, which are separately described in the **Federal Register**. CONSOLIDATED BASE PERSONNEL OFFICES (CBPO). CBPOs, which represent the base-level aspect of PDS, are the prime point of system-to-people interface. Supplied with a standard data base and system, CBPOs provide personnel management support to commanders and supervisors on a daily basis. Acting on receipt of data from higher headquarters, primarily by means of transactions processed through PDS, they notify people of selection for reassignment, promotion, approval/disapproval of requests for separation and retirement, and similar personnel actions. When certain events occur on an individual at the local level, e.g., volunteer for overseas duty, reduction in grade, change in marital status, application for retirement, etc., the CBPO enters transactions into the vertical system to transmit the requisite information to other management levels and update the automated records resident at those levels. CBPOs too are allotted an "add-on" area in the computer record which they use to support local management unique requirements such as local training scheduling, unique locator listing, urinalysis testing scheduling, etc. B. ROUTINE USES WITHIN THE AIR FORCE—EXTERNAL TO THE PERSONNEL COMMUNITY 1. HEADQUARTERS USAF/AFMPC INTERFACES: Automated interfaces exist between the PDS central site files and the following systems of other functions: a. The Flight Records Data System (FRDS) maintained by the Air Force Inspection and Safety Center (AFISC) at Norton Air Force Base, CA. (1) Certain personnel identification data on rated officers is transferred monthly to the FRDS. This data flow creates the basic identifying data in the FRDS, insures compatibility with the PDS, and precludes duplicative data collection and input generation by the AFISC. (2) Update of the personnel data to the FRDS generates return flow of flying hour data which is used at AFMPC for rated resource distribution management. b. The Master Military Pay Account (MMPA), is the Joint Uniform Military Pay System (JUMPS) centralized pay file maintained by the Air Force Accounting and Finance Center (AFAFC) at Denver, CO. The PDS transfers certain pay related data as changes occur to update the MMPA, e.g., promotions, accessions, separations/retirements, name, SSN, grade. These data provide criteria for the AFAFC to determine specific pay entitlements. c. The AFAFC maintains a separate pay system for Air National Guard and Air Force Reserve personnel called the Air Reserve Pay and Allowances System (ARPAS). (1) PDS outputs certain pay related data to ARPAS as changes occur, e.g., retirements/separations, promotions, name, SSN, grade. These data form the criteria for the AFAFC to determine specific Reserve pay entitlements. (2) ARPAS outputs data which affect accumulated point credits for Air National Guard/Reserve participation to AFMPC for update of the Point Credit Accounting and Reporting System (PCARS), a component of PDS. PCARS also receives monthly input from Hq Air University which updates point credits as a result of completing an Extension Courses Institute correspondence program. d. AFAFC provides data on Variable Incentive Pay (VIP) for Medical Officers which is used to update a special control file within PDS and produce necessary reports for management of the VIP program. e. Air Training Command operates a system called PACE (Processing and Classification of Enlistees) at Lackland Air Force Base, TX. From that system data is fed to AFMPC to initially establish the PDS record on an Air Force enlistee. f. On a monthly basis, copies of the PDS master Personnel File are provided to the Human Resources Laboratory at Brooks Air Force Base, TX, where they are used as a statistical data base for research purposes. g. On a quarterly basis, AFMPC provides the USAF School of Aerospace Medicine with data concerning name, SSN and changes in base and command of assignment of flying personnel. The data reflects significant medical problems in the flying population. h. A complete printout of PDS data pertaining to an individual is included in his Master Personnel Record when it is forwarded to National Personnel Records Center. i. PDS data is provided to the Contingency Planning Support Capability (CPSC) at six major command headquarters: Tactical Air Command, Strategic Air Command, Military Airlift Command, Air Force Communications Command, United States Air Forces, Europe, and Pacific Air Forces. A record identifiable by individual's name and SSN provides contingency and/or manning assistance temporary duty (TDY) being performed by the individual. Record is destroyed upon completion of the TDY. Statistical records (gross statistics by skill and unit) are also generated for CPSC from PDS providing force availability estimates. CPSC is described separately in the **Federal Register**. 2. BASE LEVEL (CBPO) INTERFACES: Certain interfaces have been established at base level to pass data from one functional system to another. The particular mode of interface depends on the needs of the receiving function and the capabilities of the system to produce the necessary data: a. The Flight Management Data System (FMDS) receives an automated flow of selected personnel data on flying personnel as changes occur. This data consists primarily of assignment data and service dates which the base flight manager uses to determine appropriate category of aviation duty which is reflected by designation of an Aviation Service Code. The FMDS outputs aviation service data as changes occur to the BLMPS. These data subsequently flow to the PDS central site files at AFMPC so it is available for resource management decisions. b. The Medical Administration Management System (MAMS), currently being developed and tested, will receive flow of selected assignment data as changes occur for personnel assigned to medical activities. MAMS will use these data to align assigned personnel with various cost accounting work centers within the medical activity and thus be able to track manpower expenditure by sub-activities. c. The Automated Vehicle Operator Record (AVOR) is being developed to support motor vehicle operator management. Approximately 115 characters of vehicle operator data will be incorporated into the BLMPS data base during FY76 for both military and civilian personnel authorized to operate government motor vehicles and selected personnel data items (basic identification data) will be authorized for access by the vehicle operator managers. d. Monthly, a magnetic tape is extracted from BLMPS containing selected assignment data on all assigned personnel. This tape is transferred to the base Accounting and Finance Office for input into the Accounting Operations System. This system uses these data to derive aggregate base manpower cost data. e. A procedure is designed into BLMPS to output selected background data in pre-defined printed format for personnel being administered military justice. This output is initiated upon notification by the base legal office. The data is forwarded to the major command where it is input into the Automated Military Justice Analysis and Management System (AMJAMS). f. The BLMPS output (on an event-oriented

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basis) pay-affecting transactions such as certain promotions, accessions, and assignments/reassignments, to AFAFC, where the data is entered into the JUMPS. C. ROUTINE USES EXTERNAL TO THE AIR FORCE, TO THE OFFICE OF THE SECRETARY OF DEFENSE (OSD). 1. Individual information is provided to offices in OSD on a recurring basis to support top-level management requirements within the Department of Defense. Examples are the DOD Recruiter File to the Assistant Secretary for Manpower and Reserve Affairs (M&RA), a magnetic tape extract of military personnel records (RCS: DDM(SA) 1221) to M&RA, input to the Reserve Component Common Personnel Data System to M&RA, and the Post Career Data File to M&RA. 2. TO OTHER DEFENSE AGENCIES. PDS supports other components of DOD by provision of individual data in support of programs operated by those agencies. Examples are the Selected Officer List to Defense Intelligence Agency for use in monitoring a classified training program and the Defense System Management School (DSMS) Track Record System to DSMS for use in evaluating the performance of graduates of that institution. An extract file on Air National Guard Technicians is provided the National Guard Computer Center. 3. OTHER GOVERNMENT/QUASI-GOVERNMENT AGENCIES. Information used in analyzing officer/airman retention is provided RAND Corporation. Data on prior service personnel with military service obligations is forwarded to the National Security Agency. Lists of officers selected for promotion and/or appointment in the Regular Air Force are sent to the Office of the President and/or the Congress of the United States for review and confirmation. Certain other personnel information is provided these and other government agencies upon request when such data is required in the performance of official duties. Selected personnel data is provided foreign governments, US governmental agencies, and other Uniformed Services on USAF personnel assigned or attached to them for duty. Examples: the government of Canada, Federal Aviation Administration, US Army, Navy, etc.) 4. LITIGATION. 5. MISCELLANEOUS. Lists of individuals selected for promotion or appointment, who are being reassigned, who die, or who are retiring are provided to unofficial publications such as the Air Force Times, along with other information of interest to the general Air Force public. Information from PDS support a world-wide locator system which responds to queries as to the location of individuals in the Air Force. Locator information pertinent to personnel on active duty may be furnished to a recognized welfare agency such as the American Red Cross or the Air Force Aid Society. For civilian personnel—to provide automated system support to Air Force officials at all levels from that part of the Office of Personnel Management required personnel management and records keeping system that pertains to evaluation, authorization and position control, position management, staffing skills inventory, career management, training, retirement, employee services, rights and benefits, merit promotion, demotions, reductions in force, complaints resolution, labor management relations, and the suspensions and processing of personnel actions; to provide for transmission of such records between employing activities within the Department of Defense—to provide individual records and reports to OPM; to provide information required by OPM for the transfer between federal activities; to provide reports of military reserve status to other armed services for contingency planning—to obtain statistical data on the work force to fulfill internal and external report requirements and to provide Air Force offices with information needed to plan for and evaluate manpower, budget and civilian personnel programs—to provide minority group designator codes to the Office of Personnel Management's automated data file—to privide the Office of the Assistant Secretary of Defense Manpower and Reserve Affairs with data to access the effectiveness of the program for employment of women in executive level positions—to obtain listings of employees by function or area for locator and inventory purposes by Air Force offices—to assess the effect or probable impact of personnel program changes by simulations and modeling exercises—to obtain employee duty locations and other employee data for personnel program management purposes—to obtain employee duty locations and other information releasable under OPM rules and the Freedom of Information Act to respond to request from Air Force offices, other Federal agencies and the public—to provide individual records to other components of the Department of Defense in the conduct of their official personnel management program responsibilities—to provide records to OPM for file reconciliation and maintenance purposes—and to provide information to employee unions as required by negotiated contracts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/cabinets, card files, on computer magnetic tapes, disks or computer paper printouts or microfiche.

RETRIEVABILITY:

Filed by name, or Social Security Number (SSN). The primary individual record identifier in PDS is SSN. Some files are sequenced and retrieved from by other identifiers; for instance, the assignment action record is identified by an assignment action number. Additionally, at each echelon there exists computer programs to permit extraction of data from the system by constructing an inquiry containing parameters against which to match and select records. As an example, an inquiry can be written to select all Captains who are F–15 pilots, married, stationed at Randolph AFB, who possess a master's degree in Business Administration; then display name, SSN, number of dependents and duty location. There is the added capability of selecting an individual's record or certain pre-formatted information by SSN on an immediate basis using a teletype or cathode ray tube display device. High-speed line printers located in the Washington DC area, at Major Comm and Headquarters, and at ARPC permit the transfer of volume products to and for the use of Personnel managers at those locations.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in the performance of their official duties where authorized, and properly screened and cleared for need-to-know, and by commanders of medical centers and hospitals. Records are stored in security file containers/cabinets, safes, vaults and locked cabinets or rooms. Records are protected by guards. Records are controlled by personnel screening visitor registers and computer system software.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Preceding retention statement applies to Analog output products of the Personnel Data System. Data stored digitally within system is retained only for the period required to satisfy recurring processing requirements and/or historical requirements. Files with a retention period of 364 days or less are automatically released at the end of their specified retention period. "Permanent history" files are retained for 10 years. Files 365 or more days old are defined as "historical files" and are not automatically released. Retention periods for categories of PDS files are as follows: If cycle in which a program or series of programs creating output is daily, and the created magnetic tape file will be used for processing of next daily, then the retention will be not greater than 10 days. If cycle in which a program or series of programs creating output is daily, and the created magnetic tape file will be used for processing of next daily, which is also used for processing of weekly runs, then the retention will be not greater than 20 days. If cycle in which a program or series of programs creating output is daily, and the created magnetic tape file will be used for processing of next weekly, then the retention will be not greater than 20 days. If cycle in which a program or series of programs creating output is daily, and the created magnetic tape file will be used for processing of next weekly, which is also used for processing of monthly runs, then the retention will be not greater than 30 days. If cycle in which a program or series of programs creating output is weekly, and the created magnetic tape file will be used for processing of next weekly, then the retention will be not greater than 20 days. If cycle in which a program or series of programs creating output is weekly, and the created magnetic tape file will be used for processing of next weekly, which is also used for processing of monthly runs, then the retention will be not greater than 30 days. If cycle in which a program or series of programs creating output is monthly, and the created magnetic tape file will be used for processing of next monthly, then the retention will be not greater than 30 days. If cycle in which a program or series of programs creating output is monthly, and the created magnetic tape file will be used for processing of next monthly, which is also used for processing of quarterly runs, then the retention will be not greater than 90 days. If cycle in which a program or series of programs creating output is monthly, and the created magnetic tape file will be used for processing of next monthly, which is also used for processing of Semi-Annual run, then the retention will be not greater than 190 days. If cycle in which a program or series of programs creating output is monthly, which is also used for processing of annual runs, then the retention will be not greater than 365 days. If cycle in which a program or series of programs creating output is monthly, and the created magnetic tape file will be used for processing of next monthly, which is also used for processing of permanent history, then the retention will be not greater than 999 days. If cycle in which a program or series of programs creating output is quarterly, and the created magnetic tape file will be used for processing of next quarterly, then the retention will be not greater than 90 days. If cycle in which a program or series of programs creating output is quarterly, and the created magnetic tape file will be used for processing of next quarterly, which is also used for processing of semi-annual run, then the retention will be not greater than 190 days. If cycle in which a program or series of programs creating output is quarterly, and the created magnetic tape file will be used for processing of next quarterly, which is also used for processing of annual runs, then the retention will be not greater than 365 days. If cycle in which a program or series of programs creating output is quarterly, and the created magnetic tape file will be used for processing of next quarterly, which is also used for processing of permanent history, then the retention will be not greater than 999 days. If cycle in which a program or series of programs creating output is semi-annual, and the created magnetic tape file will be used for processing of next semi-annual, then the retention will be not greater than 190 days. If cycle in which a program or series of programs creating output is semi-annual, and the created magnetic tape file will be used for processing of next semi-annual, which is also used for processing of annual runs, then the retention will be not greater than 365 days. If created magnetic tape file will be used for processing of permanent history, then the retention will be not greater than 999 days. If cycle in which a program or series of programs creating output is annual, and the created magnetic tape file will be used for processing of next annual, then the retention will be not greater than 365 days. If cycle in which a program or series of programs creating output is annual, and the created magnetic tape file will be used for processing of next annual, which is also used for processing of permanent history, then the retention will be not greater than 999 days. If the program or series of programs creating output is a one time run, and the file will be used for processing as required, then the retention will be lowest possible retention commensurate to job completion. If the program or series of programs creating output is compile card image or SOLT tapes, and the created magnetic tape file will be used for processing as required run, then the retention will be not greater than 90 days maximum. If cycle in which a program or series of programs creating output is as required runs, and the created magnetic tape file will be used for processing as required, the retention will be lowest possible commensurate to job completion. If the program or series of programs creating output is test files, and the created magnetic tape file will be used for processing as required, then the retention will be not greater than 30 days. If the program or series of programs creating output is print/punch backup and the created magnetic tape file will be used for processing as required, then the retention will be not greater than 10 days. In addition, for civilian personnel at base level (CCPO), master personnel files for prospective employees are transferred to the active file upon appointment of the employee or in the event the employee is not appointed and will no longer be considered a candidate for appointment, are destroyed by degaussing-master personnel files for active employees are transferred to the separated employee history file where they are retained for three years subsequent to separation and then destroyed by degaussing. The notification of personnel action—Standard Form 450—is disposed of as directed by OPM—work files and records such as the employee career brief, position survey work sheet, retention register work sheet, alphabetic and Social Security Number locator files, and personnel and position control register are destroyed after use by tearing into pieces, shredding, pulping, macerating, or burning-work sheets pertaining to qualification and retention registers are disposed of as directed by OPM—transitory files such as pending files, and recovery files are destroyed after use by degaussing-files and records retrieved through general retrieval systems are destroyed after use

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by tearing into pieces, shredding, pulping, macerating, or burning. Those records at AF Manpower and Personnel Center for the end of each fiscal year quarter are retained for five years before destroying by deletion—the separated employee file retains employee information at time of separation for five years after which the employee's record is destroyed by degaussing.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff/Manpower and Personnel, Headquarters United States Air Force. Subordinate System Managers are: A. Director of Personnel Data Systems, Assistant Deputy Chief of Staff for Personnel for Military Personnel, Air Force Manpower and Personnel Center (AFMPC), Randolph Air Force Base, TX, 78150. He is responsible for overall PDS design, maintenance and operation, and is designated the Automated Data Processing System Manager for all Air Force personnel data system. B. The Director of Personnel Data Systems at each Major Command headquarters for systems operated at that level. C. The Chief, CBPO, at Air Force installations for systems operated at that level. D. The Civilian Personnel officer at Air Force installations for civilian systems operated at that level.

NOTIFICATION PROCEDURE:

Requests from individuals for notification as to whether the system contains a record on them should be addressed to the System Manager of the operating level with which they are concerned. Persons submitting such a request, either personally or in writing, must provide SSN, name, and military status (active, ANG/USAFR, retired, etc. ANG members not on extended active duty may submit such requests to the appropriate State Adjutant General or the Chief of the servicing ANG CBPO. USAFR personnel not on extended active duty may submit such requests to ARPC, Denver, CO, 80280 or, if unit assigned, to the Chief of the servicing CBPO or Consolidated Reserve Personnel Office. Personal visits to obtain notification may be made to the Military Records Review Room, Air Force Manpower and Personnel Center, Randolph Air Force Base, TX 78150, the Military Records Room, Air Reserve Personnel Center, Denver CO 80280; The Office of the Director, National Personnel Records Center (NPRC), 111 Winnebago St., St. Louis, MO, 63118; the office of the Director of Personnel Data Systems at the appropriate major command headquarters; or the office of the Chief of his servicing CBPO. Identification will be based on presentation of DD Form 2AF, Military Identification Card. Air Force civilian employees must provide SSN, full name, previous names if any, last date and location of Air Force civilian employment if not currently employed by the Air Force—current employees should submit such requests to their CCPO—former employees of the Air Force should submit such requests to the CCPO for the last Air Force installation at which they were employed. Authorizations for a person other than the data subject to have access to an individual's records must be based on a notarized statement signed by the data subject.

RECORD ACCESS PROCEDURES:

Assistance in gaining access to his records will be provided the individual by the appropriate subordinate System Manager at AFMPC, ARPC, NPRC, major command or CBPO/CRPO/CCPO.

CONTESTING RECORDS PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Information obtained from educational institutions, medical institutions, automated system interfaces, police and investigating officers, the bureau of motor vehicles, a state or local government and source documents such as reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

F035 AF MP O

SYSTEM NAME:

035 AF MP O—Unit Assigned Personnel Information.

SYSTEM LOCATION:

Headquarters United States Air Force and major command headquarters. Headquarters of major commands and at all levels down to and including Air Force installations and Air Force units. Headquarters United States Space Command (HQ USSPACECOM).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military personnel, and Air Force Reserve and Air National Guard personnel. Air Force civilian employees may be included when records are created which are identical to those on military members. Army, Navy, Air Force and Marine Corps Active duty military and civilian personnel assigned to HQ USSPACECOM.

CATEGORIES OF RECORDS IN THE SYSTEM:

File copies of separation actions, newcomers briefing letters, line of duty determinations, assignment actions, retirement actions, in and out processing checklists, promotion orders, credit union authorization, disciplinary actions, favorable/unfavorable communications, record of counselings, appointment notification letters, duty status changes, applications for off duty employment, applications and allocations for school training, professional military and civilian education data, private weapons storage records, locator information including names of dependents, home address, phone number, training and experience data, special recognition nominations, other personnel documents, and records of training.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 8012, Secretary of the Air Force: Powers and duties; delegation by; as implemented by Air Force Manual 30–3, Mechanized Personnel Procedures, and Air Force Manual 30–130, Base Level Military Personnel System.

PURPOSE(S):

Provides information to unit commanders/supervisors for required actions related to personnel administration and counseling, promotion, training, separation, retirement, reenlistment, medical examination, testing, assignment, sponsor program, duty rosters, and off duty activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, note books/binders, and card files.

RETRIEVABILITY:

Filed by name and Social Security Number (SSN).

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Retained in office files until reassignment or separation; most records are transient in nature and are maintained only as long as required to fulfill their management purpose or until superseded, then given to the individual or destroyed by shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff/Manpower and Personnel, Headquarters United States Air Force, Washington DC 20330.

NOTIFICATION PROCEDURE:

Inquiries from individuals should be addressed to the respective unit commander of supervisor who maintains the records in order to exercise their rights under the Act.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the respective unit commander or supervisor who maintains the records in order to exercise their rights under the Act. Mailing addresses are contained in the Department of Defense Directory in the appendix to the Air Force's Systems Notices.

CONTESTING RECORD PROCEDURES:

The rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Managers.

RECORD SOURCE CATEGORIES:

Information obtained from the individual concerned, financial institutions, educational institution employees, medical institutions, police and investigating officers, bureau of motor vehicles, witnesses, reports prepared on behalf of the agency, standard Air Force forms, personnel management actions, extracts from the Personnel Data System (PDS) and records of personal actions submitted to or originated within the organization.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

F035 AF MP R

SYSTEM NAME:

035 AF MP R—Application for Appointment and Extended Active Duty Files.

SYSTEM LOCATION:

Headquarters United States Air Force, Washington DC 20330–5120; Air Force Military Personnel Center, Randolph AFB TX 78150–6001; Air Reserve Personnel Center, Denver CO 80280–5000; Headquarters Air Force Reserve, Robins AFB GA 31098–6001; United States Air Force Recruiting Service, Randolph AFB TX 78150–5421; Air National Guard Support Center, Andrews AFB, Washington DC 20331–6605.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) All applicants for appointment/reappointment as Reserves of the Air Force (ResAF) to United States Air Force Reserve (USAFR) or Air National Guard of the United States (ANGUS) affiliation; (2) all applicants for appointment/reappointment as ResAF to serve on extended active duty (EAD)— as medical service officers, chaplains, and judge advocates; (3) all USAFR and ANGUS members who apply for voluntary entry on EAD; (4) all commissioned officers of other uniformed services on EAD who apply for interservice transfer to serve on EAD with the USAF; (5) all commissioned officers and enlisted members of the USAF Reserve components, not on EAD, who apply for interservice transfer between Reserve components of the USAF.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's application and supporting documents as applicable.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC Chapter 837, Appointment as Reserve Officers; Chapter 839, Temporary Appointments; implemented by Air Force Regulation 36–15, Appointment in Commissioned Grades and Designation and Assignment in Professional Categories—Reserve of the Air Force and United States Air Force (Temporary). 10 USC 716, Commissioned officers, transfer among the armed forces, the National Oceanic and Atmospheric Administration, and the Public Health Service, implemented by AFR 35–39, Interservice and Intraservice Transfer of Uniformed Service Members. 10 USC 672(d), Reserve components generally; 689, Reserve officers; grade in which ordered to active duty; 50 USC App 454, Selective Service Act, Persons liable for training and service; App 456, Deferments and exemptions from training and service; implemented by AFR 45–26, Voluntary Entry on Extended Active Duty of Commissioned Officers of the Air Reserve Forces.

PURPOSE(S):

Used to select, appoint or designate persons for the USAFR or ANGUS, for interservice/intraservice transfer, Ready Reserve assignment, or EAD.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/cabinets.

RETRIEVABILITY:

Filed by name.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

If selected for appointment/reappointment, extended active duty, USAFR or ANGUS affiliation, or interservice/intraservice transfer, records become the Master Personnel Record Group (MPerRGp) and are forwarded to the appropriate MPerRGp custodian. An abbreviated reference file of selected documents is maintained by the applicable utilization and assignment branch. If not selected, documents are retained for one year by the selection or appointment authority.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Deputy Chief of Staff/Personnel Randolph Air Force Base TX 78150–6001.

NOTIFICATION PROCEDURE:

Requests from individuals should be addressed to the System Manager.

RECORD ACCESS PROCEDURES:

Individual can obtain assistance in gaining access from the System Manager.

CONTESTING RECORD PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager.

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RECORD SOURCE CATEGORIES:

Member's application, letters of recommendation, results of National Agency Check and Military Personnel Records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

F051 AF B

SYSTEM NAME:

051 AF B—Flying Training Records—Nonstudent.

SYSTEM LOCATION:

(1) Columbus Air Force Base, MS 39701; Lackland Air Force Base, TX 78236; Laughlin Air Force Base, TX 78840; Mather Air Force Base, CA 95655; Randolph Air Force Base, TX 78150; Reese Air Force Base, TX 79489; Sheppard Air Force Base, TX 79720; and Williams Air Force Base, AZ 85244. (2) USAF Academy (USAFA), 50th Airmanship Training Squadron (50ATS), Colorado Springs, CO 80840–5566 amd Peterson AFB, CO 80914–5000. (3) Headquarters Air Force Systems Command (AFSC), and AFSC Divisions, Centers, Laboratories and Bases. Official mailing addresses are in the Department of Defense Directory in the appendix to the Air Force's systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Aircrew personeel of Air Training Command (ATC), academic instructors in flying training courses and Trainer Instructors. (2) Aircrew personnel, academic and staff instructors attached to the Deputy Commandant for Operations in support of Airmanship and 50ATS flying programs. (3) Students entered into AFSC flight training program.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1, 2 and 3) Record and document aircrew training, evaluations, performance, and accomplishments. (1) Taped radio transmissions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) 10 USC 8012, Secretary of the Air Force; Powers and duties; delegation by; and Air Training Command Regulation 51–27, Instructor Qualification and Training. (2) 10 USC Chapter 903, United States Air Force Academy. (3) Air Force Systems Command Manual (AFSCM) 51–1.

PURPOSE(S):

(1) Document the training, performance, and qualifications of aircrew and synthetic trainer personnel. Taped radio communications are used to investigate aircraft accidents. (2 and 3) Document aircrew training, evaluations, and performance.

ROUTINE USES OR RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ASSESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

(1 and 2) Maintained in file folders, and on computer and computer output products. (1) Maintained on magnetic tape. (3) Maintained in file folders, in microform, and on computer and computer output products.

RETRIEVABILITY:

Filed by name or Social Security Number.

SAFEGUARDS:

Access is by custodian of the record system and by persons responsible for servicing the record system in performance of their official duties who are properly screened.

RETENTION AND DISPOSAL:

(1 and 2) Aircrew evaluation documents, training and qualification records are maintained for the duration of the individual's assignment in ATC or at USAFA. Ouf-of-date material is returned to the individual. Initial training records are maintained for one year following completion of training. (1) Radio tapes are retained for one week unless circumstances dictate otherwise. (3) Records are destroyed 1 year after completion of training or on discontinuance of activity, whichever is sooner.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Deputy Chief of Staff Operations, Air Training Command, Randolph Air Force Base, TX 78150. (2) Deputy Commandant for Operations, USAF Academy, Colorado Springs, CO 80840–5434; 50 ATS/CC, USAF Academy, Colorado Springs, CO 80840–5566; and NCOIC Operations System Management, Peterson, AFB, 80914–5000. (3) Det24, HQ AFSC/OSE, Eglin AFB FL 32542–5000.

NOTIFICATION PROCEDURE:

Requests from individuals should be addressed to the System Manager. Record access procedures: Individual can obtain assistance in gaining access from the System Manager.

RECORD ACCESS PROCEDURES:

Individual can obtain assistance in gaining access from the System Manager.

CONTESTING RECORDS PROCEDURES:

The Air Force's rule for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager and are published in Air Force Regulation 12–35.

RECORD SOURCE CATEGORIES:

Information from source documents prepared by personnel administering training or evaluating performance; voice radio communications. Information is obtained from the individual, from instructor supervisors, and personnel involved in the evaluation and analysis of training effectiveness.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

F178 AFSC B

SYSTEM NAME:

178 AFSC B—Manhour Accounting System (MAS).

SYSTEM LOCATION:

Headquarters, Air Force Systems Command, Divisions, Centers, and laboratories. Official mailing addresses are in the Department of Defense directory in the appendix to the Air Force, systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian and military personnel assigned to AFSC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Manpower information-hourly expenditure, grade/rank, office symbol.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 8012, Secretary of the Air Force: Powers and duties; delegation by.

PURPOSE(S):

Used to provide manhour expenditure/resources for management.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on computer and computer output products.

RETRIEVABILITY:

Filed by Social Security Number (SSN) or name.

SAFEGUARDS:

(1) Records are accessed by the records custodian or other persons responsible for servicing by the records custodian or other persons responsible for servicing the records in performance of their official duties. (2) Records are controlled by personnel screening and by computer system software. (3) Records are maintained in locked cabinets, locked containers, or buildings with controlled entry.

RETENTION AND DISPOSAL:

Destroy after 2 years or when purpose has been served by means of tearing, shredding, pulping, maceration or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Manhour accounting and JOCAS monitors at AFSC organizations.

NOTIFICATION PROCEDURE:

Requests from individuals should be addressed to the System Manager.

RECORD ACCESS PROCEDURE:

Individual can obtain assistance in gaining access from the System Manager. Mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notices.

CONTESTING RECORD PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Information obtained from automated system interfaces.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

F190 AF PA A

SYSTEM NAME:

190 AF PA A—Special Events Planning—Protocol.

SYSTEM LOCATION:

Office of the Secretary of the Air Force (SAF/PAC). At Air Force installations and USAF Recruiting Service offices. At Headquarters United States Space Command (HQ USSPACECOM). Official mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Non-Air Force civilians, generally, but not limited to civilian leaders of the local community. Segments of the system may be specialized; e.g. active and retired military persons identified by special interests, teachers or other persons in governmental agencies qualified or considered to lecture in Air Force training courses, winners of AF-sponsored Science Fairs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical data usually including, but not limited to: Name; business and home address and telephone numbers; name of spouse and family; description of positions in business and community affiliations with Air Force-oriented civic organizations; photographs. For Science Fair winners; name/date of fairs; name of school; year in school; name of project; judging category; previous selection as Air Force winner with year and name of fair. May include summaries of circumstances of visits to the installation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 8012, Secretary of the Air Force: Powers and duties; delegation by.

PURPOSE(S):

Used by Public Affairs Officers, Executive Officers, Protocol Officers, or Commanders. As reference for planning official functions, reporting to higher headquarters, selecting lecturers for training courses, and submitting nominations for Air Force or Department of Defense conferences or other functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and in note books/binders.

RETRIEVABILITY:

Filed by name.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Secretary of the Air Force (SAF/PAC), Washington, DC 20330 or Commander of the Air Force installation concerned. Official mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notices.

NOTIFICATION PROCEDURE:

Requests from individuals should be addressed to the Office of Public Affairs, for public affairs planning, or the Executive Officer or Office for Protocol, for protocol system segments. Requests regarding systems for selection of lecturer should be addressed to the particular school or training unit, e.g. USAF Special Operations School (EDPT), Eglin AAF 9, FL 32544.

RECORD ACCESS PROCEDURES:

Individual can obtain assistance in gaining access from the System Manager. Mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notices.

CONTESTING RECORD PROCEDURES:

The rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Information obtained from the public media, a State or local government, source documents such as reports, Federal agencies staff recommendations, and Science Fair questionnaires.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

F190 SAFPA B

SYSTEM NAME:

190 SAFPA B—Official Biographies.

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SYSTEM LOCATION:

Biographies of active duty general officers and high-level civilian personnel of the Department of the Air Force: Air Force Service Information and News Center, Kelly Air Force Base, TX 78241 (AFSINC/IIB). Record system segments or duplicates pertaining to active duty general officers may be found at the Office of Public Affairs, Office of the Secretary of the Air Force, Washington, DC 20330; Headquarters of major commands and at all levels down to and including Air Force installations. Also at Air Force libraries, offices of air attaches to United States Embassies, Air Force sections of Military Assistance Advisory Groups and missions, unified activities and unified commands. Additional locations include the Air Force Chief Historian (AF/CHO), Washington, DC 20330; Assistant for General Officer Matters (AF/MPG) Washington, DC 20330; and the Aerospace Historical Foundation, University of KS. Biographies of retired Air Force general officers are located at the Media Relations Division, Secretary of the Air Force Office of Public Affairs (SAF/PAM), Room 5C879, The Pentagon, Washington, DC 20330, and at the Retired Activities Section, Assistant DCS/Personnel, Air Force Manpower and Personnel Center (AFMPC/AFPMSDMI), Randolph Air Force Base, TX 78150. Biographies of key civilian employees of the Office of the Secretary of the Air Force and of Headquarters, United States Air Force, are located at the Director of Civilian Personnel, Washington, DC 20330. Biographies of key civilian employees at subordinate organizational levels may be found at the office of the Director of Civilian Personnel. Biographies of Air Reserve general officers are at Headquarters USAF/REL, Washington, DC 20330. Record segments or duplicates may be found at the Office of Public Affairs, Headquarters, of the United States Air Force, major commands and major subordinate commands. Air Force Manpower and Personnel Center (AFMPC/DPMYR), Randolph Air Force Base, TX 78150; Headquarters, Air Force Reserve (Commander and Public Information Office), Robins Air Force Base, GA 31098; Air Reserve Personnel Center (Commander and Public Affairs Office), Denver, CO 80280; Headquarters, Military Airlift Command (CSB), Scott Air Force Base, IL 62225; Secretary of the Air Force, Manpower and Reserve Affairs (MRR), Washington, DC 20330; the Reserve Forces Policy Board, Washington, DC 20330; and the offices of all Air Reserve general officers. Biographies of Air National Guard general officers are located at the National Guard Bureau, Washington, DC 20310. Records system segments of duplicates may be found at Department of the Army major divisions and installations. Headquarters of the major commands and separate operating agencies. Army readiness regions; the offices of Army Guard and Air National Guard Liaison Officers; the Aerospace Audio-Visual Service, Norton Air Force Base, CA 92404; the Office of the Secretary of Defense; the Office of the Secretary of the Navy; the Library of Congress; the Air Force Association; the Army Association; the Reserve Officers Association; Air Force libraries; the Air War College, the offices of all National Guard and Air National Guard general officers, and the offices of state Adjutants General. Specific addresses may be obtained from the National Guard Bureau. Biographies prepared under the official biographies program for key military and civilian personnel of other Air Force organizations may be found at the Office of Public Affairs. Headquarters of major commands and at all levels down to and including Air Force installations. Headquarters United States Space Command (HQ USSPACECOM).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The Secretary of the Air Force, Under Secretary and assistant secretaries of the Air Force, Air Force general officers on active duty or retired, Air Reserve and Air National guard general officers, Air Force personnel assigned as pilots to the Manned Space Program, and key military and civilian personnel at all Air Force organizations. Key personnel is USSPACECOM.

CATEGORIES OF RECORDS IN THE SYSTEMS:

Includes, but not limited to, summary of military service (including dates and locations of assignments and dates of promotions), military honors and awards, educational background, date and place of birth, marital status, name of spouse and family, and any additional personal information provided by the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 8012, Secretary of the Air Force: Powers and duties, delegation by.

PURPOSE(S):

Biographies are prepared to support the Air Force policy to keep its members and the public informed about the Air Force and its leaders. Biographies may be used as resource documents in preparing news releases or other public information material and are included in the offical personnel records of all general officers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force. In their final form the biographies are considered published, public domain material and may be released to any requester on an as needed or as requested basis.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTESM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Filed by name.

SAFEGUARDS:

No specific safeguards required.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Air Force Service Information and News Center (AFSINC/CC), Kelly Air Force Base, TX 78241.

NOTIFICATION PROCEDURES:

Requests from individuals should be directed to Commander, Air Force Service Information and News Center (AFSINC/CC), Kelly Air Force Base, TX 78241, telephone (512) 925-6161 for all biographies of active duty general officers and key civilians assigned to the Office of the Secretary of the Air Force or to Headquarters Air Force. Biographies for Air Reserve general officers at Headquarters USAF/REL; Air National Guard general officers at the National Guard Bureau, and retired officers from the Media Relations Division (SAF/PAM), mailing addresses in the Department of Defense directory in the appendix to the Air Force's systems notices. All other biographies: Office of Public Affairs at the appropriate level.

RECORD ACCESS PROCEDURES:

Individual can obtain assistance from the Commander, Air Force Service Information and News Center, the National Guard Bureau, Headquarter, USAF/REL, Media Relations Division

(SAF/PAM) or the Office of Public Affairs at the appropriate level. Mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notices.

CONTESTING RECORDS PROCEDURES:

The rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Information obtained from the public media and Information obtained from source documents such as reports. Subject to final review by the individual concerned before publication.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

F205 AF A

SYSTEM NAME:

205 AF A—Personnel Security Access Records.

SYSTEM LOCATION:

Records are normally located at organizational units where individuals are currently assigned or employed. They may be located at offices of installation Chiefs of Security Police and for non-immigrant aliens at headquarters of major commands and major subordinate commands or at the National Personnel Records Center, Military Personnel Records, 9700 Page Blvd, St Louis, Mo., 63132, or Civilian Personnel Records, 111 Winnebago St., St Louis, Mo. 63118. Official mailing addresses are in the Department of Defense directory in the appendix to the Air Force's Systems Notices. Headquarters United States Space Command (HQ USSPACECOM).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty military and civilian personnel, Air Force Reserve and Air National Guard personnel, Air Force Academy cadets, American Red Cross Personnel, Exchange Officers, and Foreign National. Army, Navy, Air Force and Marine Corps active duty miltary and civilian personnel assigned to HQ USSPACECO.

CATEGORIES OF RECORDS IN THE SYSTEM:

System includes documentation requesting, granting and terminating access to classified information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 8012, Secretary of the Air Force: Powers and duties; delegation by.

PURPOSE(S):

Records are used to record level of security clearance and level of access to classified information that has been authorized. Information is used by commanders, supervisors, and security managers to insure that individuals who receive classified information have been properly investigated, cleared, have a definite need-to-know, and have been properly debriefed.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, note books/binders, visible file binders/cabinets or card files.

RETRIEVABILITY:

Filed by Name and/or Social Security Number (SSN).

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in security file containers/cabinets, safes or vaults, or in locked cabinets or rooms, protected by guards, and controlled by personnel screening.

RETENTION AND DISPOSAL:

Retained in office files until reassigned or separation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning. (Exception: Records on non-immigrant aliens are retained for two years after termination of access or employment, then destroyed, as above.) Security Termination Statements are retired one year after termination of service or employment to the National Personnel Records Center, Military Personnel Records, 9700 Page Blvd, St Louis, MO 63132, or Civilian Personnel Records, 111 Winnebago St, St Louis, Mo. 63118. Records indicating that access to classified information has been withdrawn for cause are forwarded to installation Chief of Security Police for disposition.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Security Police, Headquarters United States Air Force. Commanders of organization units and the Director National Personnel Records Center Military Personnel Records, 9700 Page Blvd, St Louis, MO 63132 or Civilian Personnel Records, 111 Winnebago St, St. Louis, MO 63118.

NOTIFICATION PROCEDURE:

Requests from individuals should be addressed to the System Manager. Write or visit the organizational unit where currently assigned or employed. Written requests must be notarized; personal visits require positive identification. Provide full name, SSN, and military rank or civilian rating.

RECORD ACCESS PROCEDURES:

Individual can obtain assistance in gaining access from the System Manager. Mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notices.

CONTESTING RECORDS PROCEDURES:

The rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Information obtained from medical institutions, from police and investigating officers, or from source documents such as reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

F900 AF MP A

SYSTEM NAME:

900 AF MP A—Military Decorations.

SYSTEM LOCATION:

Directorate of Personnel Program Actions, Headquarters Air Force Military Personnel Center, Randolph Air Force Base, TX 78150. Headquarters of major commands and at all levels down to and including Air Force installations. Headquarters United States Space Command (HQ USSPACECOM).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military personnel. Air Force Reserve personnel. Air National Guard personnel. Army, Navy, Air Force and Marine Corps active duty military and civilian Personnel assigned to HQ USSPACECOM.

CATEGORIES OF RECORDS IN THE SYSTEM:

Supervisory evaluation of duty performance with comments by commanders at intermediate levels.

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC Chapter 857, Decorations and Awards; as implemented by Air Force Regulation 900–48, Decorations, Service and Achievement Awards, Unit Awards, Special Badges, and Devices.

PURPOSE(S):

Award of military decorations—used by award approval authorities to determine qualification for recognition through award of a decoration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/cabinets.

RETRIEVABILITY:

Filed by name.

SAFEGUARDS:

Records are accessed by custodian of the record system and by persons responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Retained in office files for one year after annual cut-off, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Destroyed 1 year after completion by tearing into pieces shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Deputy Chief of Staff/Manpower and Personnel for Military Personnel, Randolph Air Force Base, TX 78150.

NOTIFICATION PROCEDURE:

Requests from individuals should be addressed to the System Manager, or individuals may contact agency officials at respective locations in order to exercise their rights under the act.

RECORD ACCESS PROCEDURES:

Same procedures as for notification.

CONTESTING RECORDS PROCEDURES:

The rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Supervisors' evaluations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 86–25787 Filed 11–13–86 8:45 am]

BILLING CODE 3810-01-M

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force (DAF), DoD.

ACTION: Notice of a new Air Force System of Records.

SUMMARY: The Air Force is adding a new system of records to its inventory of record systems subject to the Privacy Act of 1974.

EFFECTIVE DATES: The proposed action will be effective without further notice on or before December 15, 1986, unless public comments are received which would result in a contrary determination.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Updike, HQ USAF/DAQD (S), The Pentagon, Washington, D.C. 20330–5024, telephone: 202/694–3431.

SUPPLEMENTARY INFORMATION: The Air Force systems of records inventory subject to the Privacy Act of 1974, Title 5, United States Code, Section 552a (Pub. L. 93–579) has been published in the **Federal Register** as follows:

FR Doc. 85–10237 (50 FR 22332) May 29, 1985
FR Doc. 85–14122 (50 FR 24672) June 12, 1985
FR Doc. 85–15062 (50 FR 25737) June 21, 1985
FR Doc. 85–26775 (50 FR 46477) November 8, 1985
FR Doc. 85–29261 (50 FR 50337) December 10, 1985
FR Doc. 86–2527 (51 FR 4531) February 5, 1986
FR Doc. 86–4546 (51 FR 7317) March 3, 1986
FR Doc. 86–10044 (51 FR 16735) May 6, 1986
FR Doc. 86–11696 (51 FR 18927) May 23, 1986

A new system report as required by 5 U.S.C. 522a(o) of the Privacy Act was submitted on November 6, 1986, pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985.

Patricia H. Means,
OSD Federal Register Liaison Officer, Department of Defense.
November 10, 1986.

F067 AF B

SYSTEM NAME:

067 AF B—Base Service Store/Tool Issue Center Access.

SYSTEM LOCATION:

Retail Sales Section at Air Force installations; official mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty and reserve military and civilian personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Identification data on individuals authorized access to purchase Base Service Store/Tool Issue items.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 9832, Property Accountability: Regulations.

PURPOSES(S):

Control access to Base Supply's Base Service Store and Tool Issue Center Units at each Air Force installation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM STORAGE:

Maintained on computer and computer output products, and in paper form.

RETRIEVABILITY:

Access is by Social Security Number for military members and ID card number for civilian employees.

SAFEGUARDS:

Access to the records is controlled by computer system software and is limited to individuals responsible for serivcing the system.

RETENTION AND DISPOSAL:

Retained until superseded or cancelled by individual's commander.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff/Logistics and Engineering, Headquarters United States Air Force, Washington, DC 20330.

NOTIFICATION PROCEDURE:

Requests for individuals should be addressed to the system manager.

RECORD ACCESS PROCEDURES:

Individuals can obtain assistance in gaining access from the system manager.

CONTESTING RECORDS PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager and are published in Air Force Regulation 12-35.

RECORD SOURCE CATEGORIES:

Information obtained from the individual or from the individual's commander.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 86-25788 Filed 11-13-86; 8:45 am]

BILLING COCE 3810-01-M

Department of the Army

National Board for the Promotion of Rifle Practice; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name of committee: National Board for the Promotion of Rifle Practice
Date of meeting: 2 December 1986
Place: Ramada Renaissance Hotel, Washington Dulles International Airport, 13869-71 Park Center Road, Herndon, Virginia 22071
Time: 1330-1600.

Proposed agenda:

1. Open Prayer and Pledge Allegiance to the Flag.
2. **Federal Register** Notice of the Meeting.
3. Roll Call.
4. Introductory Comments by the Chairman.
5. Review Agenda of Executive Committee Meeting held 25 September 1986.
   a. Rewrite of AR 920-30.
   b. M16 rifles in Excellence in Competition (EIC) matches.
   c. Inclusion of the 9MM pistol in EIC competition.
   d. Restrictions on the number of EIC matches to be approved.
   e. Ammunition used in EIC matches.
   f. Conduct of the National Matches.
   g. Revision of the Small Arms Firing School Training.
6. Issue: Receipt and storage of small arms ammunition by Civilian Marksmanship Program organizations.
7. Business: Reports from Ad-hoc committees as listed above and issues of concern brought from the floor.
8. Closed Prayer.

This meeting is open to the public.

Persons desiring to attend the meeting should contact the Office of the Director of Civilian Marksmanship (202) 272-0810 prior to 17 November 1986 to arrange admission.

M.S. Gilchrist,

Colonel, Armor, Executive Officer, NBPRP.

[FR Doc. 86-25675 Filed 11-13-86; 8:45 am]

BILLING CODE 3710-08-M

National Board for the Promotion of Rifle Practice Budget Committee; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name of committee: National Board for the Promotion of Rifle Practice Budget Committee
Date of meeting: 2 December 1986
Place: Ramada Renaissance Hotel, Washington Dulles International Airport, 13869-71 Park Center Road, Herndon, Virginia 22071
Time: 0930-1130

Proposed agenda:

1. **Federal Register** Notice of the Meeting.
2. Roll Call.
3. Overview of Budget Process.
4. Review of Fiscal year 1986 Budget.
5. Explanation of funding changes in the Civilian Marksmanship Program and legal ramifications.
6. Fiscal year 1987 Budget and Obligation Plan.
7. Fiscal year 1988-89 and out-year budgets.

This meeting is open to the public.

Persons desiring to attend the meeting should contact the Office of the Director of Civilian Marksmanship (202) 272-0810 prior to 17 November 1986 to arrange admission.

M.S. Gilchrist,

Colonel, Armor, Executive Officer, NBPRP.

[FR Doc. 86-25674 Filed 11-13-86; 8:45 am]

BILLING CODE 3710-08-M

Military Traffic Management Command, Directorate of Personal Property, International Program; Rate Solicitation Changes

AGENCY: Military Traffic Management Command (MTMC).

ACTION: Notice of changes in Volume 54 ITGBL Rate Solicitation 100-D.

SUMMARY: A listing of the changes are as follows:

a. *Carrier Correspondence:* Carriers are prohibited from distributing rates and related information directly to PPSOs unless so directed by MTMC.

b. *New Definition of Net Weight:* The net weight of shipments transported in containers shall be the difference between the tare of the empty container, and the gross weight of the packed container.

c. *Payment of Debt:* MTMC states their policy for carriers refusing to settle claims with Government follows: "Should MTMC be advised that a carrier filing rates under the terms of this solicitation has failed to comply with the terms of an arrangement entered into between the carrier and an agency of the Federal Claims Collection Act of 1966 relating to transportation services, MTMC may place this carrier in nonuse or disqualification status until such time as the arrangement entered into by the carrier has been complied with."

d. *Code 5 Between CONUS and Germany:* Code 5 rates are solicited to/from Germany using ports of Rotterdam and Bremerhaven.

e. *Storage-in-Transit and Warehouse Handling Charges HHG:* Increase in rates for Japan and certain South American countries.

f. *Delivery of Split Code T and Code 5 Shipments:* Procedures have been added to cover pickup of split shipments at port/terminal.

g. *Code 5 Ports:* Shipments moving to and from Pacific rate areas will move through ports on east and gulf coasts as well as west coast ports.

These changes becomes effective April 1, 1987.

FOR FURTHER INFORMATION CONTACT: Mrs. Naomi King or Ms. Barbara Scott, HQ, Military Traffic Management Command, ATTN: MT-PPC (Room 408), 5611 Columbia Pike, Falls Church, Virginia 22041-5050

Joseph R. Marotta,

Colonel, GS, Director of Personal Property

[FR Doc. 86-25673 Filed 11-13-86; 8:45 am]

BILLING CODE 3710-08-M

Military Traffic Management Command, Military Mobile Homes Symposium; Open Meeting

Announcement is made of meeting of the Military Mobile Homes Symposium. This meeting will be held on 11 December 1986 at Headquarters, Military Traffic Management Command, 5611 Columbia Pike, Falls Church, Virginia, and will convene at 0930 hours and adjourn at approximately 1600 hours.

Proposed agenda

The purpose of the symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to Personal Property

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Traffic Management Regulation (DOD 4500.34R), and the handling of other matters of mutual interest concerning the movement and storage of mobile homes.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MT-PPM, at telephone number 756-1600, between 0800-1530 hours. Topics to be discussed should be received on or before 28 November 1986.

Dated: November 4, 1986.

Joseph R. Marotta,

Colonel, GS, Director of Personal Property.

[FR Doc. 86-25676 Filed 11-13-86; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Intergovernmental Advisory Council on Education; Meeting

AGENCY: Intergovernmental Advisory Council on Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Intergovernmental Advisory Council on Education Executive Committee. This notice also describes the functions of the Council. Notice of the meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend, and that a protion of the Executive Committee meeting will be closed to the public.

DATE: December 2, 1986.

ADDRESS: Room 1130, Barnard Room, Horace Mann Learning Center, FOB-6, 400 Maryland Avenue SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Dr. James G. Horn, Executive Director (A), Intergovernmental Advisory Council on Education, 513 Reporter's Building, 300 7th Street SW., Washington, DC 20202, 472-6464.

SUPPLEMENTARY INFORMATION: The Intergovernmental Advisory Council on Education was established under section 213 of the Department of Education Organization Act (20 U.S.C. 3423). The Council was established to provide assistance and make recommendations to the Secretary of the President concerning intergovernmental policies and relations pertaining to education.

On Tuesday, December 2, 1986, from the beginning of the meeting at approximately 9:00 a.m. and for a period of about three hours, the Executive Committee will be reviewing applications and interviewing candidates for the Executive Director position. The meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. Appendix 2) and under exemption (6) of section 3(a) of the Government in the Sunshine Act (Pub. L. 94-409; 5 U.S.C. 552b(c)(6). Discussion of the applications will include consideration of the qualifications and fitness of the candidates and will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

The proposed agenda includes:

—Review of applications and interviews of candidates for the position of Executive Director in a closed meeting

—Old Business and New Business including reports from Council Committees.

Records are kept of all Council proceedings, and are available for public inspection at the Intergovernmental Advisory Council on Education, 513 Reporter's Building, 300 7th Street SW., from 9:00 a.m. to 5:00 p.m.

Dated: November 10, 1986.

Peter R. Greer,

Deputy Under Secretary Intergovernmental and Interagency Affairs.

[FR Doc. 86-25743 Filed 11-13-86; 8:45 am]

BILLING CODE 4000-01-M

Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages

AGENCY: Department of Education.

ACTION: Notice of Extension of Closing Date for Transmittal of Applications for Fiscal Year 1987 under the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages.

SUMMARY: This notice extends the closing date for the transmittal of applications under the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages from November 17, 1986 to January 5, 1987. Detailed program information is contained in the application notice published in the **Federal Register** on September 17, 1986 (51 FR 33003).

Because of the increased appropriation for this program in fiscal year 1987, the Secretary has decided to extend the closing date. The increased level of funding will permit a greater number of awards to be made under this competition than was originally anticipated. The additional time will afford those who might not have considered applying an opportunity to do so. This extension will not alter the schedule for making awards in the spring.

FOR FURTHER INFORMATION CONTACT: Patricia L. Alexander, Secretary's Discretionary Fund, U.S. Department of Education, 400 Maryland Avenue, SW., Room 1011, Washington, DC 20202. Telephone: (202) 732-3599.

Program Authority: 20 U.S.C. 3972.

William J. Bennett,

Secretary of Education.

[FR Doc. 86-25876 Filed 11-13-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 86-09-NG]

Enron Gas Marketing Inc.; Order Approving Blanket Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Order Approving Blanket Authorization to Import Natural Gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting blanket authorization to Enron Gas Marketing Inc. (EGM), to import Canadian natural gas on a short-term basis. The order issued in Docket No. 86-09-NG authorizes EGM to import 250 Bcf of Canadian natural gas annually and a maximum of 500 Bcf of natural gas for a two-year term beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9478. The docket room is open between the hours of 8:00 a.m. and 4:30

p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 7, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-25697 Filed 11-13-86; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 85-40-NG]

Tennessee Gas Pipeline Co.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Order Granting Blanket Authorization to Import Natural Gas From Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting blanket authorization to import natural gas from Canada to Tennessee Gas Pipeline Company (Tennessee). The order issued in Docket 85-40-NG authorizes Tennessee to import up to 200 Bcf of natural gas over a two-year period for sale in the domestic spot market.

A copy of this order is available for inspection and copying in the Natural Gas Division Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 7, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-25698 Filed 11-13-86; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86-08-NG]

Western Gas Marketing U.S.A., Ltd.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Order Granting Blanket Authorization to Import Natural Gas From Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting blanket authorization to import natural gas from Canada to Western Gas Marketing U.S.A., Ltd. (Western). The order issued in ERA Docket 86-08-NG authorizes Western to import up to 300 Bcf of natural gas over a two-year period for sale in the domestic spot market.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Ave., SW. Washington, DC 20585, (202) 252-0478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 7, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-25699 Filed 11-13-86; 8:45 am]

BILLING CODE 6450-01-M

Notice of Issuance of Proposed Remedial Order to Armada International Corporation and Texas Armada Refining Company (Successor-in-Interest to Texas Asphalt and Refining Co., Inc.), and Notice of Opportunity for Objection

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice.

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration of the Department of Energy (DOE) hereby gives notice of a Proposed Remedial Order which was issued jointly to Armada International Corporation (Armada) and its wholly owned subsidiary, Texas Armada Refining Company (Texas Armada). Both have filed for dissolution in bankruptcy. Their trustee in bankruptcy is David Adler, 320 Orion, Metairie, Louisiana 70005. The Proposed Remedial Order (PRO) charges the predecessor-in-interest of Texas Armada, Texas Asphalt and Refining Co., Inc. (TARCO) with filing erroneous Refiners Monthly Reports (Form P-102-M-1) concerning crude oil refined under a purported processing agreement with another refiner. The reporting period was March through May 1977. ERA alleges that TARCO did not own 652,323 barrels of crude oil it reported as refined pursuant to that agreement and thus its receipt of $1,155,457 in small refiner bias entitlements on those barrels was unlawful. The impact of TARCO's unlawful receipt of small refiner entitlements, was spread nationwide among all refiner participants in the Entitlements Program.

A copy of the Proposed Remedial Order, with confidential information, if any, deleted, may be obtained from the DOE Freedom of Information Reading Room, U.S. Department of Energy, 1000 Independence Avenue SW., Room 1E-190, Washington, DC 20585.

Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Room 6F-055, 1000 Independence Avenue SW., Washington, DC 20585, in accordance with 10 CFR 205.193. A person who fails to file a Notice of Objection shall be deemed to have admitted the findings of fact and conclusions of law stated in the proposed order. If a Notice of Objection is not filed in accordance with § 205.193, the proposed order may be issued as a final Remedial Order by the Office of Hearings and Appeals.

Issued in Washington, DC on the 26 day of September 1986.

Marshall A. Staunton,

Administrator, Economic Regulatory Administration.

[FR Doc. 86-25700 Filed 11-13-86; 8:45 am]

BILLING CODE 6450-01-M

Mutual Petroleum Marketing Co., Inc., et al.; Remedial Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Proposed Remedial Order to: Mutual Petroleum Marketing Co., Inc., Mutual Petroleum Marketing Co. of California, Inc., Mutual Petroleum Marketing Co. of Texas, Inc., and Louisiana Bayou Oil Co., Inc.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Mutual Petroleum Marketing Co., Inc. (MPM): Tower 56, 126 E. 56th Street; New York, New York 10021; Mutual Petroleum Marketing Co. of California, Inc. (MPM-CA); c/o Mutual Petroleum Marketing Co., Inc.; Tower 56, 126 E. 56th Street; New York, New York 10021; Mutual Petroleum Marketing Co. of Texas, Inc. (MPM-Texas): c/o CT Corporation System; 1601 Elm Street; Dallas, Texas 75201; and Louisiana Bayou Oil Co., Inc. (Bayou): c/o Mutual Petroleum Marketing Co., Inc.; Tower 56, 126 E. 56th Street; New York, New York 10021. This Proposed Remedial Order alleges pricing violations by: MPM in the amount of $26,560,215 plus interest, MPM-CA in the amount of $1,446,910 plus interest, MPM-Texas in the amount of $28,275,534 plus interest, and Bayou in the amount of $50,400 plus interest, in connection with the purchase and resale

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of crude oil during the period July 1974 through December 1980. The impact of the alleged violation is nationwide.

A copy of the Proposed Remedial Order may be obtained from the Office of Freedom of Information Reading Room; U.S. Department of Energy; Forrestal Building; 1000 Independence Avenue SW.; Room 1E–190; Washington, DC 20585.

Within fifteen (15) days of publication of this Notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals; U.S. Department of Energy; Forrestal Building; 1000 Independence Avenue, SW., Room 6F–078, Washington, DC 20585, in accordance with 10 CFR 205.193. The Notice shall be filed in duplicate, shall briefly describe how the person would be aggrieved by issuance of the Proposed Remedial Order as a final Order and shall state the person's intention to file a Statement of Objections.

Pursuant to 10 CFR 205.193(c), a person who files a Notice of Objection shall on the same day serve a copy of the Notice upon:

Ben L. Lemos, Director, Office of Field Operations, Economic Regulatory Administration, U.S. Department of Energy, 1403 Slocum Street, Dallas, Texas 75207

and upon:

Marshall A. Staunton, Acting Solicitor, Economic Regulatory Administration, U.S. Department of Energy, Room 3H–017, RG–40, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

Issued in Dallas, Texas on the 3rd day of October, 1986.

Ben Lemos,

Director, Office of Field Operations, Economic Regulatory Administration.

[FR Doc. 86–25701 Filed 11–13–86; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Proposed Remedial Order to Texas American Oil Corporation and Notice of Opportunity for Objection

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice.

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration of the Department of Energy (DOE) hereby gives notice of a Proposed Remedial Order which was issued to Texas American Oil Corporation (Texas American), 300 W. Wall, Midland, Texas 79701. This Proposed Remedial Order (PRO) charges Texas American with filing erroneous Refiners Monthly Reports (Form P–102–M–1) concerning crude oil refined under processing agreements with another refiner during the period October 1976 through February 1977. ERA alleges that Texas American should have excluded 179,879 barrels of crude oil refined on its behalf by another refiner from its crude oil runs to stills. Alternatively, the PRO alleges that Texas American engaged in practices which resulted in the circumvention and contravention of the Entitlements Program. Texas American's misreporting and circumvention and contravention caused a loss to the Entitlements Program of $330,261, before interest. The impact was spread nationwide among all refiner participants in the Entitlements Program.

A copy of the PRO, with confidential information deleted, if any, may be obtained from the DOE Freedom of Information Reading Room, U.S. Department of Energy, 1000 Independence Avenue SW., Room 1E–190, Washington, DC 20585.

Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Room 6F–055, 1000 Independence Avenue SW., Washington, DC 20585, in accordance with 10 CFR 205.193. A person who fails to file a Notice of Objection shall be deemed to have admitted the findings of fact and conclusions of law stated in the PRO. If a Notice of Objection is not filed in accordance with § 205.193, the PRO may be issued as a final Remedial Order by the Office of Hearings and Appeals.

Issued in Washington, DC on this 30th day of October, 1986.

Marshall A. Staunton,

Administrator, Economic Regulatory Administration.

[FR Doc. 86–25702 Filed 11–13–86; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. SA86–27–000]

Coastline Exploration, Inc.; Petition for Adjustment

November 7, 1986.

On July 24, 1986, Coastline Exploration, Inc. (Coastline) filed with the Commission a petition for adjustment in accordance with section 502(c) of the Natural Gas Policy Act of 1978. 15 U.S.C. 3412(c) (1982). Coastline seeks relief from Commission Order Nos. 399, 399–A, 399–B that require all Btu refunds related to working interest owners and royalty interest owners be made by specified dates. Specifically, Coastal requests relief of its Btu refund obligation of approximately $2,041.88 to its purchaser, Trunkline Gas Company. Coastline states that it is on the verge of insolvency and in support of that statement, attaches its balance sheet. Moreover, Coastline states that one and possibly more of the working interest owners in the #1 Charles Muil well located in Jim Wells County, Texas, are either bankrupt or incapable of refunding any money previously paid to them. Consequently, Coastline requests from the Commission a waiver or staff adjustment for the $2,041.88 assessed against it for an outstanding Btu refund obligation.

The procedures applicable to this adjustment proceeding are found in Subpart K of the Commission's rules of practice and procedure (18 CFR 385.1101–385.1117 (1986)). Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86–25736 Filed 11–13–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP87–11–000]

Consolidated Edison Company of New York, Inc., et al.; Complaint

November 6, 1986.

In the Matter of Consolidated Edison Company of New York, Inc., Ft. Hill Natural Gas Authority, Long Island Lighting Company, Washington Gas Light Company, Delmarva Power & Light Company and Elizabethtown Gas Company Complainants v. Transcontinental Gas Pipe Line Corporation, Respondent.

Take notice that on October 7, 1986, Consolidated Edison Company of New York, Inc., Ft. Hill Natural Gas Authority, Long Island Lighting Company, Washington Gas Light Company, Delmarva Power & Light Company and Elizabethtown Gas Company (Complainants), 4 Irving Place, Room 1815–S, New York, New York 10003, filed a complaint pursuant to Rules 206 and 217 of the Commission's rules of practice and procedure against Transcontinental Gas Pipe Line Corporation. Specifically, complainants complain of Transco's violation of (1) section 4 (c) and (d) of the Natural Gas Act by its refusal to abide by, and action in contravention of, the provisions of its filed and effective FERC tariff (the WSS Rate Schedule); and (2) Commission Order No. 436, by endeavoring to use its status as an interim open access transporter for the improper purposes of abrogating contract and tariff obligations to Complainants with respect to the delivery of WSS gas, and reinforcing, rather than discontinuing, anticompetitive restraints in gas markets.

Complainants state that by letter dated July 28, 1986, Transco notified both the Commission and its customers that, as of that date, it considered itself an interim open-access transporter under Order No. 436 and had the right to initiate new interruptible transportation service. According to Complainants, Transco did not advise or even suggest to its customers in those letters, or in several later letters, that one of the claimed consequences of its new status was the abrogation of its existing contract and tariff obligations, and the discontinuance of prior procedures, for delivery of WSS gas.

Complainants further state that on or about September 19, 1986, Transco orally advised one or more of the Complainants for the first time that, because of its new status under Order No. 436, Transco was no longer required to deliver, and would not deliver, any WSS gas on a firm basis, and that this policy would remain in effect unless and until Transco's pending proposed settlement in Docket Nos. TA86-1-29, *et al.*, was approved by the Commission, the order of approval accepted by Transco, and a contract was executed by the WSS customer and Transco for certain new firm transportation service contemplated by the settlement. Meanwhile, according to Transco, Complainants would receive delivery of their WSS gas, if at all, only on an interruptible basis.

By an order Granting Waivers dated September 26, 1986 (in *Natural Gas Pipeline Company, et al.*, Docket Nos. RP86-97-003, *et al.*), the Commission confirmed Transco's interim open-access transporter status effective as of the date of the Order. According to Complainants, this letter-order does not clarify the WSS situation since the Commission was not given notice of this situation in any communication from Transco.

According to Complainants, Transco contends that its acquisition of interim open-access transporter status relieves it of the obligation to deliver any of Complainants' WSS gas on a firm basis. Complainants state that this waiver order is irrelevant to the issue of the delivery of WSS gas.

While the obligation to deliver WSS storage gas is found in the WSS service agreement, Complainants state that the determination of when the delivery must be made on a firm basis and when it may be made on an interruptible basis is governed by Transco's WSS rate schedule. They state that Transco's WSS tariff obligates Transco on any day to deliver under the WSS rate schedule a quantity of gas which, when combined with the gas scheduled for delivery under Transco's CD, G or OG rate schedules, does not exceed, but equals or is less than Transco's maximum obligations under the latter rate schedules. All other WSS deliveries that day are interruptible and subject to the availability of sufficient pipeline capacity.

Complainants state that Transco's new WSS policy deprives Complainants of any assurance of the ability to withdraw any quantity of WSS storage gas during the imminent 1986-87 winter heating season and also effectively precludes, or substantially increases the risk of further storage injections in the month of October. In addition, it substantially reduces the value of the gas that had been injected into storage prior to Transco's revelation on September 19 of its new WSS policy.

Complainants request a Commission order declaring that Order No. 436 does not require or permit a change in the character or a reduction in the quality of the WSS service, and summarily directing Transco to comply with the delivery provisions of its WSS contracts and rate schedule.

Any person who desires to be heard or to protest the complaint and petition for declaratory order should file, by November 25, 1986, with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of Rules 211 or 214 of the Commission's rules or practice and procedure, 18 CFR 385.211 and 385.214 (1986). Transco is also ordered to file its answer by that date. All protests filed will be considered but will not make the protestants parties to the proceeding. Answers to the complaint shall be made under Rules 206 and 213, 18 CFR 385.206 and 385.213 (1986), subject to the time limit stated above.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-25737 Filed 11-13-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA87-9-000]

CSX Oil & Gas Corp., Petition for Adjustment

November 7, 1986.

On October 21, 1986, CSX Oil & Gas Corporation (CSX) filed with the Federal Energy Regulatory Commission a petition for waiver pursuant to Commission Order No. 399-A[1] and section 502(c) of the Natural Gas Policy Act of 1978 (NGPA).[2] CSX seeks a waiver of the portion of its Btu refund obligation attributable to royalties paid to the Louisiana State Mineral Board under Order No. 399, which were due by November 5, 1986.[3] CSX asserts that the Louisiana State Mineral Board has adopted a resolution prohibiting the collection of Btu refunds by deductions from current royalty payments to Louisiana and stating that appropriate legal action will be taken if the unauthorized recovery of Btu refund amounts is attempted.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's rules of practice and procedure.[4] Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-25738 Filed 11-13-86; 8:45 am]

BILLING CODE 6717-01-M

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[1] Refunds resulting from Btu Measurement Adjustments, 49 FR 46,353 (Nov. 26, 1984), FERC Stats. & Regs. [Regulations Preambles 1982-1985] ¶30,612.

[2] 15 U.S.C. 3412(c) (1982).

[3] 49 FR 37,735 at 37,740 (Sept. 26, 1984), FERC Stats. & Regs. [Regulations Preambles 1983-1985] ¶ 30,597 at 31,150. In Order No. 399, the Commission established procedures and deadlines for the refund of charges for natural gas that exceeded NGPA ceilings as a result of Btu measurements based on a water vapor content of the gas "as delivered", rather than on a water saturated basis. In so doing, the Commission was implementing the decision in Interstate Natural Gas Association of America v. Federal Energy Regulatory Commission, 716 F.2d 1 (D.C. Cir. 1983), *cert. denied*, 465 U.S. 1108 (1984). See also Order Postponing Effectiveness of Good Faith Negotiation Procedures under Order No. 451, issued October 31, 1986.

[4] 18 CFR 385.1101-385.1117 (1986).

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[Docket No. GP86-42-000]

Mitchell Energy Corp.; Petition To Reopen and Vacate Final Well Category Determination and Withdraw Application for Determination

November 7, 1986.

On June 9, 1986 Mitchell Energy Corporation (Mitchell) filed with the Federal Energy Regulatory Commission (Commission) pursuant to § 275.205 of the Commissions regulations, a petition to reopen and vacate the final well category determination made on its F.E. Evans #1 well located in Victoria County, Texas. 18 CFR 275.205 (1986). Mitchell requests that the Commission grant its petition to reopen the well category determination proceeding as to its F.E. Evans #1 well, vacate its designation as a stripper well pursuant to section 108 of the Natural Gas Policy Act of 1978 (NGPA), and permit Mitchell to withdraw the underlying application. 15 U.S.C. 3318 (1982).

Mitchell in its petition and subsequent correspondence with the Commission states that its F.E. Evans #1 well may not have been producing at its maximum efficient flow rate during the 90-day qualifying period in accordance with section 108(b)(1)(B) of the NGPA. 15 U.S.C. 3318(b)(1)(B) (1982). Specifically, Mitchell claims that a flow-regulating device or choke was installed in the F.E. Evans #1 well in 1967. The existence of the choke was overlooked in the later stripper well analysis. Mitchell contends that due to numerous administrative and field personnel changes, the choke was not noticed until April 1986. A subsequent test of the F.E. Evans #1 well without the choke resulted in production rates in excess of stripper well rates. Based on that test, Mitchell concludes that its F.E. Evans #1 well would not have qualified as a stripper gas well.

Any person desiring to be heard or to make any protest to Mitchell's petition should file, within 30 days after this notice is published in the **Federal Register**, a motion to intervene or a protest under Rules 214 or 211 of the Commission's rules of practice and procedure respectively. 18 CFR 385.214 and 385.211 (1986). Filings should be made with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. All protests filed will be considered but will not make the protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-25740 Filed 11-13-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA86-32-000]

William Perlman, Ada Cauthorn No. 4-1 Well, Petition for Adjustment

November 7, 1986.

On September 4, 1986, William Perlman (Perlman) filed with the Commission a petition for adjustment pursuant to § 385.1104 of the Commission's rules of practice and procedure. Perlman requests that he be granted adjustment from the definition of recompletion tight formation gas as appearing at § 271.703(b)(3) of the Commission's regulations, so that he will be excused from refund liability in connection with sales of gas from the above-designated well to El Paso Natural Gas Company.

Perlman states that in December 1972, he completed the Ida Cauthorn No. 4-1 well through several producing intervals in the Canyon Sandstone formation, Sutton County, Texas. The only production from this well occurred in May and June of 1975 and amounted to 542 Mcf of gas. According to Perlman the Canyon Sandstone formation consists of two separate formations, the "Upper Canyon" and "Lower Canyon." The initial 1973 completion occurred in the Lower Canyon formation. In September 1979, Perlman re-entered the Ada Cauthorn No. 4-1 well in order to stimulate production from the Upper Canyon formation. Perlman sold the resulting production to El Paso at the prevailing tight sands incentive price. On April 23, 1986 the Commission ruled that pursuant to § 271.703(b)(3)(i) of the regulations, this production does not qualify as recompletion tight formation gas since the well initially completed prior to July 16, 1979. As a result Perlman faces refund exposure to El Paso. Perlman requests adjustment from the strict application of § 271.203(b)(3) so that post-July 1979 production from the Cauthorn well may be allowed to qualify as recompletion tight formation gas.

The procedures applicable to the conduct of this proceeding are found in Subpart K of the Commission's rules of practice and procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of Rules 214 of the Commission's rules of practice and procedure. Pursuant to Rule 1106, responses to the petition must be filed at the time the motion to intervene is filed. All motions to intervene must be filed within 30 days after publication of this notice in the **Federal Register**.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-25741 Filed 11-13-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA87-6-000]

Shell Offshore Inc. and Shell Oil Co.; Petition for Adjustment

Issued November 7, 1986.

On October 16, 1986, Shell Offshore Inc. and Shell Oil Company filed with the Federal Energy Regulatory Commission a petition for waiver pursuant to Commission Order No. 399-A,[1] section 502(c) of the Natural Gas Policy Act of 1978,[2] and Subpart K of the Commission's rules of practice and procedure.[3] Petitioners seek waiver of Btu refund obligations to its purchasers attributable to royalties paid by petitioners to the Minerals Management Service (MMS) of the U.S. Department of the Interior under federal oil and gas leases in the Outer Continental Shelf. Under Order No. 399, these refunds were due by November 5, 1986.[4]

Petitioners allege that they have diligently, but thus far unsuccessfully, pursued their legal remedies to recoup from MMS the Btu refunds attributable to royalty payments made prior to November 9, 1981. They state that MMS has taken the position that such refunds are barred by the statute of limtations under section 10 of the Outer Continental Shelf Lands Act.[5] Petitioners also state that they have not yet been able to recoup from MMS refunds for the period after November 9, 1981. Petitioners request that payment of their refund obligation be deferred until final resolution of the matter with the Department of Interior or until petitioners receive full payment from MMS. Furthermore, petitioners request an extensive of the November 5, 1986 deadline pending disposition of their petition on the merits.

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[1] 49 FR 46353 (November 26, 1984); FERC Stats. & Regs. [Regulations Preambles 1982-1985] ¶ 30,612.

[2] 15 U.S.C. 3412(c) (1982).

[3] 18 CFR 385.1101-385.1117 (1986).

[4] 49 FR 37735 at 37740 (September 28, 1984), FERC Stats. & Regs. [Regulations Preambles 1982-1985] ¶ 30,597 at 31,150. In Order No. 399, the Commission established refund procedures for charges for natural gas that exceeded NGPA ceilings as a result of Btu measurements based on the water vapor content of the gas "as delivered," rather than on a water saturated basis. In so doing, the Commission was implementing the decision in Interstate Natural Gas Association of America v. Federal Energy Regulatory Commission, 716 F.2d 1 (D.C. Cir. 1983), cert. *denied*, 465 U.S. 1108 (1984). See also Order Postponing Effectiveness, issued October 31, 1986.

[5] 43 U.S.C. 1339(1982).

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's rules of practice and procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-25742 Filed 11-13-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

[No. 87-1]

Continuation of Solicitation for Special Research Grants and Program Announcement for Basic Research Contracts

AGENCY: Office of Energy Research, DOE.

ACTION: Notice of Continuation of Availability of Research Grants and Contracts.

SUMMARY: The Office of Energy Research of the Department of Energy hereby announces its continuing interest in receiving applications/proposals for Special Research Grants or Basic Research Contracts supporting work in the following program areas: Basic Energy Sciences, Biological and Environmental Research, High Energy and Nuclear Physics, and Fusion Energy. The Catalog of Federal Domestic Assistance number is 81.049. Information about submission of applications/proposals, eligibility, limitations, evaluation and selection processes, and other policies and procedures are specified, for grants, in 10 CFR Part 605 which was published in the Federal Register on April 15, 1985 (50 FR 14856) and, for contracts, in the Program Announcement also published on April 15, 1985 at 50 FR 14865.

DATES: Applications and proposals may be submitted at any time. Generally, those applications and proposals received prior to April 1, 1987 will be considered for FY 1987 funding; those received on or after April 1, 1987, will generally be considered for future fiscal year funding.

ADDRESSES: Applicants/proposers may obtain forms and additional information from Robert A. Zich, Director, Acquisition and Assistance Management Division, Office of Energy Research, ER-64, U.S. Department of Energy, Washington, DC 20545, (301) 353-5544. Completed applications or proposals must be sent to this same address.

SUPPLEMENTARY INFORMATION: As mentioned above, the solicitations for Special Research Grants and the Program Announcement for basic research contracts were published in the **Federal Register** on April 15, 1985. Those solicitations specify the policies and procedures which govern the application, evaluation, and selection processes for research grants and contracts. It is anticipated that approximately $380 million will be available in FY 1987. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications/proposals. DOE reserves the right to fund, in whole or in part, any, all, or none of the applications/proposals submitted in response to this notice.

Issued in Washington, DC, on October 31, 1986.

Ira M. Adler,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 86-25703 Filed 11-13-86; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $75,000 (plus accrued interest) obtained from Stephen R. Kent, d.b.a. Kent Oil and Trading Company (Kent), Case No. HEF-0578. These funds represent a settlement of claims that Kent had violated DOE price regulations governing the resale of crude oil and refined petroleum products. The OHA has decided that the funds will be divided into two pools. The crude oil pool will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, while the refined products pool will be available to customers who purchased refined petroleum products from Kent.

DATE AND ADDRESS: Applications for refund must be filed in duplicate within 90 days of publication of this notice in the **Federal Register** and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All applications should display a reference to Case No. HEF-0578.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-2383.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy (DOE), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute moneys obtained from Stephen R. Kent, d.b.a. Kent Oil and Trading Company (Kent). Kent remitted moneys to the DOE to settle possible violations of various regulations governing the resale of crude oil and refined petroleum products. The firm's payment is being held in an interest-bearing escrow account pending distribution by the DOE.

The DOE has decided that the moneys received from Kent will be divided into two pools—a crude oil pool and a refined products pool. The refined products pool will be made available to customers who purchased refined petroleum products from Kent during the period August 19, 1973 through January 27, 1981. Distribution of the crude oil pool will be governed by the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986). Under that policy, crude oil overcharge moneys are divided among the states, the federal government, and eligible purchasers of crude oil and refined products. The portion of the Kent crude oil pool earmarked for the states will be distributed in proportion to each state's consumption of petroleum products. Refunds from the crude oil pool to eligible purchasers will be based on the number of gallons or refined petroleum products which they purchased from any supplier, and the extent to which they can demonstrate injury.

Applications for refund from both pools may now be filed. Applications will be accepted provided they are filed at the address set forth at the beginning of this notice, no later than 90 days after publication of this notice in the **Federal Register**. The specific information

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required in an application for refund is set forth in the Decision and Order.

Dated: November 6, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

November 6, 1986.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Stephen R. Kent, d/b/a Kent Oil & Trading Co.

Date of Filing: April 3, 1985

Case Number: HEF–0578

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on April 3, 1985. The petition requests that the OHA formulate and implement procedures for the distribution of funds received pursuant to a settlement agreement entered into by the DOE and Stephen R. Kent, individually and doing business as Kent Oil and Trading Company (hereinafter collectively referred to as Kent).

I. Background

Kent was a reseller of crude oil and motor gasoline with offices in Houston, Texas and Los Angeles, California. As part of its enforcement activities, the DOE reviewed Kent's records and subsequently alleged that Kent had violated various regulations governing the resale of crude oil and refined petroleum products. On December 12, 1983, Kent and the DOE entered into a Settlement Agreement, and on January 20, 1984, the DOE executed a Full and Final Release of claims against Kent. That Agreement and Release resolved all disputes between the parties for the period from August 19, 1973 to the date of the Release, with the exception of potential violations by Kent of the crude oil producer regulations, 10 CFR Part 212, Subpart D. It was specifically noted that execution of the Agreement did not constitute either an admission by Kent or a finding by the DOE of any violation by Kent of any federal petroleum price or allocation regulation. Kent paid $75,000 to completely settle all claims covered by the Agreement. On March 5, 1984, the Agreement was approved by the United States Bankruptcy Court for the Southern District of Texas (Houston Division), where Kent had filed a voluntary petition for bankruptcy under Chapter 11 of the U.S. Bankruptcy Code on August 26, 1980. These funds are being held in an interest-bearing escrow account pending distribution by the DOE. As of September 30, 1986, the escrow account contained approximately $90,700.

On June 18, 1986, we issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the Kent escrow fund. 51 F.R. 23141 (June 25, 1986). We stated in the PD&O that the basic purpose of a special refund proceeding is to make restitution for injuries that were suffered as a result of alleged or adjudicated violations of the DOE regulations. In order to effect restitution in this proceeding, we proposed to establish a claims procedure whereby applications for refund would be accepted from customers who can demonstrate that they were injured as a result of Kent's practices during the period covered by the settlement agreement.

A copy of the PD&O was published in the **Federal Register** on June 25, 1986, and comments were solicited regarding the proposed refund procedures. No comments regarding the first stage of the present refund proceeding were filed.[1] Since we have received no objections to the proposed refund procedures, we will adopt them in this Decision.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. It is the DOE policy to use the Subpart V process to distribute such funds where appropriate. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement,* 9 DOE ¶ 82,553 (1982); *Office of Enforcement,* 9 DOE ¶ 82,508 (1981); *Office of Enforcement,* 8 DOE ¶ 82,597 (1981). As we stated in the PD&O, we have reviewed the record in the present case and have determined that a Subpart V proceeding is an appropriate mechanism for distributing the Kent escrow fund. We will therefore grant the ERA's petition and assume jurisdiction over distribution of the fund.

III. Division of the Kent Funds

The terms of the settlement agreement are global in scope and cover alleged violations involving sales of both crude oil and refined products. We will therefore divide the fund into two pools, as we proposed in the PD&O. *See Office of Special Counsel,* 10 DOE ¶ 85,048 (1982). From our review of the only available records, it appears that approximately 18.5 percent of the firm's sales volume in gallons was crude oil and the remainder was motor gasoline and other refined products. To reflect these sales volumes, 18.5 percent of the funds contained in the Kent escrow account will be placed in a crude oil pool, and the remaining 81.5 percent will be placed in a refined products pool. Both pools will be distributed according to the procedures set forth in sections IV and V, *infra.*

IV. Refund Procedures for Crude Oil Claims

In the PD&O, we proposed to distribute the portion of the Kent moneys allocated to the crude oil pool in accordance with the DOE's Statement of Restitutionary Policy, 50 FR. 27400 (July 2, 1985) (the 1985 Policy). The 1985 Policy stated that all crude oil overcharge funds would be held in escrow to afford Congress the opportunity to select a means of making indirect restitution to injured parties. If Congress did not act, the 1985 Policy contemplated that the funds would be deposited in the U.S. Treasury.

On July 28, 1986, as a result of a court-approved Settlement Agreement in *The Department of Energy Stripper Well Litigation,* M.D.L. No. 378, in the United States District Court for the District of Kansas, the DOE modified its policy of restitution. *See* 51 FR 27899 (August 4, 1986) (the Modified Policy).[2] On August 8, 1986, the OHA announced its intention to follow the Modified Policy. 51 FR 29689 (August 20, 1986).

In accordance with the Modified Policy, we will reserve 20 percent of the Kent crude oil pool for refunds to injured parties. The funds in this reserve will be distributed in accordance with the Subpart V refund procedures to persons who prove they were injured by alleged crude oil violations. As in the procedures we adopt for the refined products pool, applicants for the crude oil pool will be required to document their purchase volumes [3] and to prove that they were injured by the alleged violations (*i.e.* that they did not pass on alleged overcharges to their own customers). The standards for showing injury will be the same as those required of applicants for refunds from the refined pool. *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986). Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the money in the Kent crude oil pool ($13,875) by the total consumption of petroleum products in the United States during the period of price controls.[4] Using this method, the refund amount in this case is $.0000000069 per gallon. Successful applicants will also receive their proportion of accrued interest.

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[1] Comments were filed on behalf of eight states, but these comments discuss the distribution of any residual funds which might remain after refunds have been made to first stage applicants. Any such funds remaining in the Kent crude oil pool will be distributed pursuant to the DOE's Modified Statement of Restitutionary Policy, discussed in Part IV, *infra,* while funds remaining in the Kent refined product pool will be distributed pursuant tot he recently enacted Petroleum Overcharge Distribution and Restitution Act of 1986, H.R. 5300, Title III, 99th Cong., 2d Sess., 132 Cong. Rec. H11319–21 (daily ed. October 17, 1986). Therefore, it is not necessary for us to discuss the states' comments at this time.

[2] For a detailed discussion of the events in the Stripper Well Litigation which brought about the DOE Policy, *see Stripper Well Exemption Litigation,* 14 DOE ¶ 85,382 (1986).

The remaining 80 percent of the Kent crude oil pool—$11,100—as well as any portion of the 20 percent reserve which is not distributed to applicants for direct restitution, will be divided between the states and federal government for indirect restitutionary purposes. We will direct the DOE's Office of Controller to distribute $2,775 plus appropriate interest to the states and $8,325 plus appropriate interest to the federal government.[5] The share or ratio of the funds in the state account which each state will receive is listed in Exhibit H to the Final Settlement Agreement in the *Stripper Well Litigation*, reprinted at 6 Fed. Energy Guidelines ¶ 90,509 at 90,687.

V. Refund Procedures for Refined Products Claims

A. *Determination of Injury.* With regard to the $81,125 in the Kent refined products pool, we will implement a refund process in which purchasers of Kent motor gasoline or other refined products will be afforded an opportunity to submit refund applications. Claimants who resold petroleum products purchased from Kent will be required to demonstrate that they did not pass on to their customers the price increases implemented by Kent. Accordingly, in order to qualify for a refund, a reseller claimant (including retailers and refiners who resold the product) must show that during the period covered by the settlement agreement market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. In addition, a reseller claimant must show that it had a "bank" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices. For periods in which the DOE regulations did not require the computation of cost banks, a reseller will only be required to show that market conditions prevented it from recovering increased costs. Such a showing might be made through a demonstration of lowered profit margins, decreased market shares, or depressed sales volume during the period of purchases from Kent. *See, e.g., Dorchester Gas Corp.*, 14 DOE ¶ 85,240 at 88,451 (1986).

We will adopt presumptions of injury which have been used in many prior refund cases. These presumptions will enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available, while permitting applicants to participate in the refund process without incurring inordinate expense. *See* 10 CFR 205.282(e).

1. *Applicants Claiming a Refund of $5,000 or Less.* We will presume that applicants who are claiming small refunds ($5,000 or less) were injured by the alleged overcharges. We recognize that making a detailed showing of injury may be too complicated and burdensome for resellers who purchased relatively small amounts of product from Kent. We also are concerned that the cost to the applicants and to the government of compiling and analyzing information sufficient to make a detailed showing of injury not exceed the amount of the refund to be gained. In the past, we have adopted a small claims presumption to assure that the costs of filing and processing a refund application do not exceed the benefits. *See, e.g., Marathon Petroleum Co.*, 14 DOE ¶ 85,269 at 88,515 (1986) and cases cited therein. Therefore, any applicant claiming a refund of $5,000 or less need not make a detailed showing of injury in order to be eligible to receive a refund.[6]

2. *Spot Purchasers.* We will adopt a rebuttable presumption that resellers who made spot purchases from Kent have suffered no injury. These firms will therefore be ineligible to receive a refund, even one below the $5,000 threshold level, unless they can make a showing that rebuts the presumption that they were not injured. As we have previously noted, spot purchasers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of Kent's product at increased prices unless they were able to pass through the full price of the purchases to their own customers. *Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396–97 (1981). Therefore, a firm which made only spot purchases from Kent will not receive a refund unless it presents evidence rebutting the spot purchaser presumption. Such evidence must establish that the spot purchaser was unable to recover the price it paid for Kent's product and that it was forced by market conditions to make the purchases upon which its refund claim is based. *See, e.g., Marathon*, 14 DOE at 88,515; *Dorchester*, 14 DOE at 88,452.

3. *End-Users.* We will also adopt a presumption that end-users or ultimate consumers whose businesses were unrelated to the petroleum industry were injured by Kent's alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). We have therefore concluded that end-users of Kent's refined products need only document their purchase volumes from the firm to make a sufficient showing that they were injured by the alleged overcharges. On the other hand, refund applicants whose

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[3] Applicants for refunds from the crude oil pool may claim refunds based on their purchases of refined petroleum products from any regulated company during the period of price controls. On the other hand, applicants for refunds from the refined product pool must document their purchases of Kent refined products during the period covered by the settlement agreement in this case.

[4] It is estimated that 2,020,997,335,000 gallons of petroleum products were consumed in the United States during the period August 1973 through January 1981. *Mountain Fuel*, 14 DOE at 88,868, n.4 (1986).

[5] This distribution reflects a ratio of 25 percent to the state governments and 75 percent to the federal government. Under the terms of the Stripper Well Settlement Agreement, the states received an advance of $200 million from the funds which would otherwise have been disbursed to the DOE. In order to reimburse the DOE for this advance, the Settlement Agreement provides that for amounts which the OHA transfers to the state and federal governments in excess of $100 million, the DOE shall receive 75 percent and the states shall receive 25 percent. This arrangement shall continue until the OHA has distributed the next $400 million under the 75/25 arrangement. Settlement Agreement, Paragraph II.B.3.c.ii.

[6] As in prior refund cases, applicants whose potential refund, calculated on the basis of the volumetric factor described below, exceeds the threshold amount may elect to apply for a refund of $5,000 without being required to make a detailed demonstration of injury.

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business operations were subject to the DOE regulatory program and who purchased Kent products for consumption as fuel or raw materials will not be considered end-users for the purpose of the showing of injury. *Seminole Refining Inc.*, 12 DOE ¶ 85,188 at 88,576 (1985).)[7]

B. *Calculation of Refund Amounts.* As set forth in the PD&O, we will use a volumetric method to divide the Kent refined products pool among applicants who demonstrate that they are eligible to receive refunds. This method generally presumes that the alleged overchargers were spread equally over all the gallons of product sold by Kent and covered by the Settlement Agreement. In the absence of better information, such a volumetric refund assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact on an individual purchaser might have been greater, and any purchaser may file a refund application based on a claim that it incurred a disproportionate share of alleged overcharges than the pro rata share calculated by the use of the volumetric presumption.

In the present case, we have calculated the volumetric refund amount by dividing the amount in the Kent refined product pool (81.5 percent of $75,000, or $61,125) by the estimated total volume of refined petroleum product sold by Kent during the period of the alleged violations resolved by the Settlement Agreement (684,041,606 gallons), resulting in a per gallon refund amount of $.000089358. The interest that has accrued on the money in the escrow account will be added to the refund of each successful applicant in proportion to the size of its refund.

As in previous cases, we will establish a minimum refund amount of $15 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

C. *General Refund Application Requirements.* In addition to the specific requirements outlined above, all applications for refund must be in writing and signed by the applicant. An application must make reference to the Stephen R. Kent/Kent Oil & Trading Co. Special Refund Proceeding (Case No. HEF-0578). Claimants seeking refunds from the crude oil pool do not need to trace their purchases of refined petroleum products back to Kent; instead, they may base their claims on the amount of refined products they purchased from any supplier. For claimants seeking refunds from the refined products pool, each must report the monthly volume of refined petroleum products it purchased from Kent during the period August 19, 1973 through January 27, 1981. If a claimant purchased Kent's products from another reseller, it must establish its basis for belief that the product originated with Kent and identify the reseller from whom the product was purchased.

Each applicant must state how it used the products it purchased, i.e. whether it was a reseller, retailer or ultimate consumer. An applicant should also submit the name, position or title, and telephone number of a person who may be contacted by us for additional information concerning the application. If the applicant is affiliated or associated with Kent in any manner, it must so indicate and provide information explaining the nature of its relationship with the firm. If the applicant has been involved in enforcement proceedings brought by the DOE, it must provide a summary of the present status of the proceeding, or if the matter is no longer pending, it must indicate how the proceeding was resolved. If the applicant is a firm which did not actually purchase refined product from Kent, but is a successor to a Kent customer, the applicant must provide evidence establishing that it, rather than Kent's former customer, is entitled to a refund. Claimants in the crude oil pool must state whether the applicant, its parent, or any affiliated firm waived their right to a refund. Finally, each applicant must include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001.

All applicants for refund must be filed in duplicate and must be received within 90 days after the publication of this Decision and Order in the **Federal Register**. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1000 Independence Avenue, SW., Washington, DC. Any applicant that believes that its application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the confidential information has been deleted, together with a statement specifying why any such information is privileged or confidential. Applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

It Is Therefore Ordered That:

(1) Applications for refunds from funds remitted to the Department of Energy by Stephen R. Kent, d.b.a. Kent Oil and Trading Company (Kent) pursuant to a Settlement Agreement executed on December 12, 1983, and a Full and Final Release executed on January 20, 1984, may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

(3) The funds remitted by Kent shall be divided into two pools as follows: (a) 81.5 percent, or $61,125 plus appropriate interest, shall be maintained in a refined products pool; and (b) 18.5 percent, or $13,875 plus appropriate interest, shall be maintained in a crude oil pool.

(4) Twenty percent of the funds in the crude oil pool, or $2,775 plus interest, shall be reserved for satisfying claims of parties who were injured by alleged crude oil violations. The remaining 80 percent of the crude oil pool, or $11,000 plus interest shall be distributed to the state and federal governments in the manner set out in paragraphs (5) and (6) below.

(5) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall transfer $2,775 plus interest into a subaccount denominated "Crude Tracking-State," Number 999DOE003W0.

(6) The Director of Special Accounts and Payroll shall transfer $8,325 plus interest into a subaccount denominated "Crude Tracking-Federal," Number 999DOE002W0.

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[7] End-user firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement should provide with their applications a full explanation of the manner in which any refunds which they receive would be passed through to their customers. They should also indicate how the appropriate regulatory body or membership group will be advised of the applicant's receipt of refund money. *See Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,288 (1982). We note that a cooperative's sales of Kent's products to non-members will be treated in the same manner as sales by other resellers.

Dated: November 6, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86-25704 Filed 11-13-86; 8:45 am]

BILLING CODE 6450-01-M

Southwestern Power Administration

Proposed Allocation of Additional Power

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of Proposed Allocation of Additional Power.

SUMMARY: The Southwestern Power Administration (SWPA), Department of Energy, markets Federal hydroelectric power and energy from projects constructed and operated by the Corps of Engineers and located in the States of Arkansas, Missouri, Oklahoma and Texas, under the provisions of Section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), as amended. In 1980, SWPA adopted final power allocations which allocated then-existing and then-anticipated Federal hydroelectric power (capacity) to preference customers in SWPA's marketing area which includes the above-mentioned states plus Kansas and Louisiana. The 1980 Final Power Allocations (1980–1988) (FPA) were published March 24, 1980 (45 FR 19032).

A Notice of Intent to Allocate Additional Power was published in the Federal Register January 28, 1986 (51 FR 3505). The Notice announced SWPA's intent to allocate an additional 7.5 MW of power (capacity) which has become available subsequent to the 1980 FPA. The allocation was to be made in accordance with the FPA; consequently, preference entities (customers) in Kansas and Louisiana would have received proportionate quantities of the additional power since no apparent changes in operating conditions had occurred in Texas subsequent to the FPA, that would allow additional allocations in Texas. Customers and interested parties were invited to comment on the Notice of Intent before February 27, 1986.

Comments were received from three parties in response to the first Notice; two customers and one group of prospective customers. One customer (Cajun Electric Power Cooperative, Inc., of Baton Rouge, Louisiana) expressed support for the allocation procedure and encouraged its implementation. The group of prospective customers, all U.S. Air Force Bases located in Kansas and Louisiana, requested the allocation of power to such bases. The other customer, Brazos Electric Power Cooperative, Inc., of Waco, Texas, (Brazos) proposed a method by which Brazos and the non-interconnected part of Texas, could receive the benefits of the additional power allocation in spite of the continuing operating conditions in Texas which effectively limit the direct transfer of power to or from the Electric Reliability Council of Texas (ERCOT) area. Brazos noted that approximately 5 percent of its load is located in the interconnected part of Texas (outside ERCOT) and arrangements can be developed such that the allocation can be delivered to the Brazos load outside ERCOT with 95% of the resulting benefits flowing to the non-interconnected area (ERCOT) by virtue of a "rolled-in" (postage stamp) rate which is the same for Brazos customers both inside and outside ERCOT.

As a result of this new information, SWPA published a request for Data and Comments Regarding the Allocation of Additional Power in the Federal Register 51 FR 17229 (May 9, 1986). SWPA also sent copies of both Federal Register Notices to all customers and known interested parties. These additional data and comments were requested to enable SWPA to evaluate the feasibility of Brazo's suggestion and its applicability to any other entities operating under similar circumstances.

Data and comments were received from seven parties in response to the second Notice; six customers and one customer agency. Two cooperative customers in Kansas (Kaw Valley Electric Cooperative Company, Inc., and Nemaha-Marshall Electric Cooperative Association, Inc.) requested allocations, preferring the initially proposed procedure which would have allocated the additional power in Kansas and Louisiana, and suggested consideration in the allocations be given under special circumstances such as a commitment to peak demand conservation, rather than following the 1980 Final Power Allocation procedure which sets allocations on a prorata share basis. A cooperative customer (Kansas Electric Power Cooperative, Inc., (KEPCo)) and the municipal customer agency (Kansas Municipal Energy Agency (KMEA)) in Kansas support SWPA's ultimate decision whether it is to allocate in Kansas and Louisiana, or to allocate in Texas as deemed appropriate by SWPA. The Department of the Army suggested that any additional allocation in the State of Texas should serve to replace power generation lost as a result of water supply diversion. The remaining parties commenting were three cooperative customers in Texas (Tex-La Electric Cooperative of Texas, Inc. (Tex-La of Texas), Rayburn Country Electric Cooperative, Inc. (Rayburn Country), and Brazos Electric Power Cooperative, Inc. (Brazos)), each of which requested an allocation and provided data to support their request and show their ability to receive power in the non-ERCOT area for the benefit of consumers in the ERCOT area.

Responses to Customer Comments

As regards a utility's commitment to peak demand conservation establishing a priority on the allocation of hydropower, such a commitment, or any attempt to conserve non-renewable resources, is in keeping with both SWPA's and the Nation's conservation effort. Further, the utility reaps the direct financial benefits of such conservation by foregoing construction or purchase of additional capacity resources, as well as reducing its operating costs of generation. While these efforts are commendable, the investment in such efforts and equipment produce specific financial benefits to the implementing utility which fully justify such investments. Since these benefits accrue primarily to the investing utility, we believe they should not be utilized to establish a priority in the allocation of Federal hydropower.

We also do not agree with the suggestion to utilize an allocation in Texas to replace generation lost as a result of water supply diversion. Such an approach would simply place the cost of providing water supply directly on the wholesale electric ratepayers of SWPA by redirecting funds from the sale of power for repayment of hydropower costs to repayment of a loss created by water supply diversion. We do not believe the hydropower ratepayers should pay for water supply diversion since they are only required to pay costs allocated to the hydropower purpose.

We have considered the data and comments received regarding the method previously proposed by Brazos to allocate the 7.5 MW of additional power to preference entities primarily located in the ERCOT area of Texas, which has previously been limited by operating conditions which restrict the direct transfer of power to or from the ERCOT area. We concur with the method by which a customer with loads located both inside and outside ERCOT, which can receive and utilize a power allocation to meet the non-ERCOT load and can pass the majority of the benefits of the power allocation through to ERCOT area consumers by means of a "rolled-in" (postage stamp) rate to all customers. We believe it will accomplish the objective of encouraging the most widespread use of power and energy marketed by SWPA, will implement the intent of the 1980 FPA to allocate power to areas receiving less than their fair share of SWPA power, and will provide a means of overcoming the restrictive operating conditions which have limited the delivery of power into the ERCOT area of Texas and, hence, limited the allocations and benefits of Federal power.

Additional Power Allocation Proposal

Therefore, we propose to allocate the entire 7.5 MW of additional power to the three Texas cooperatives (Brazos, Rayburn Country and Tex-La of Texas) which requested the allocation and provided information which indicates their abilities to receive and utilize such allocations in the non-ERCOT area and their use of "rolled-in" (postage stamp) rates, thus passing the majority of the financial benefits into the ERCOT area through such rates. The allocations will continue to be made in accordance with the 1980 FPA. The distribution among those three cooperatives (Brazos, Rayburn Country and Tex-La of Texas) requesting an allocation will be made on the basis of the ratio that each customer's "fair share", after adjusting for Federal Power under contract, bears to the state's (or area's) total fair share. This procedure is also called the deficiency allocation. Calculation of each customer's fair share is based on the most recent (1985) peak load data available. The following table entitled "Allocation of Additional Power (1986)—Texas (non-interconnected)" shows the detail of the deficiency allocation to the non-interconnected Texas system:

Allocation of Additional Power (1986), Texas (non-interconnected)

	MW
Amount to be Allocated	7.5
States' (Area's) Fair Share of SWPA Capacity	– [3] 485
Amount of Capacity Under Contract	–100
Deficiency	–385

	1985 [1] Peak load (kW)	Per-cent of total	Fair share (MW)	Amount under [2] con-tract (MW)	Deficiency		Alloca-tion (MW)
					(MW)	(per-cent)	
Cooperatives:							
Brazos	811,663	61.4	297.8	30.0	267.8	69.6	5.2
Rayburn Country	332,029	25.1	121.7	38.5	83.2	21.6	1.6
Tex-la of Texas	179,143	13.5	65.5	31.5	34.0	8.8	.7
Total	1,322,835	100.0	[3] 485.0	100.0	385.0	100.0	7.5

[1] From 1985 Peak Load Data provided by Customers.

[2] Breakdown of 70 MW combined sale to Rayburn Country and Tex-La of Texas from contract allocation percentages (55.5/44.5).

[3] Total State (Area) Fair Share from 1980 FPA, Tables 1 and 2, (45 FR 19037) March 2[illegible], 1980.

This proposed Allocation of Additional Power is subject to the following conditions:

1. The power allottee will accept and purchase the amount allocated, under contract terms and conditions applicable to the sale of Hydro Peaking Power by SWPA, not later than January 15, 1988, with the power sale commencing at the beginning of the month following the contract execution.

2. The power allottee will provide transmission facilities and/or contractual arrangements with others as may be necessary to receive and transmit this allocated power to its load centers, coincidental with condition 1 above.

3. If any power allottee cannot arrange to receive its allocation so as to satisfy condition 2 above, or refuses its allocation, such allocation will be redistributed with the deficiency allocation procedure used in this allocation to those allottees remaining.

4. The power allottee will not distinguish between its customers located inside or outside of the non-interconnected Texas System (ERCOT) with regard to rates or charges for the sale of wholesale power and energy. Failure to abide by this condition may be cause for revocation of the allocation.

SWPA expects to publish its final decision on the Additional Power Allocation before January 1, 1987, after reviewing comments received in response to this Notice. Customers and interested parties desiring to comment on this proposed allocation should submit comments on or before December 15, 1986.

ADDRESS: Written comments should be submitted to the Director, Power Marketing, Southwestern Power Administration, P.O. Box 1619, Tulsa, Oklahoma 74101.

FOR FURTHER INFORMATION CONTACT: Francis R. Gajan, Director, Power Marketing, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 581-7529.

Issued in Tulsa, Oklahoma, this 4th day of September, 1986.

Walter M. Bowers,

Acting Administrator, Southwestern Power Administration.

[FR Doc. 86-25705 Filed 11-13-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3109-9]

Environmental Impact Statements Filed November 3, 1986 Through November 7, 1986; Availability

Responsible agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed November 3, 1986 Through November 7, 1986 Pursuant to 40 CFR 1506.9.

EIS No. 860452, Draft, FHW, KY, Georgetown Bypass Construction, US 460 West/Frankfort Road to US 460/62 East/Paris-Cynthiana Roads Intersection, Scott County, Due: December 29, 1986, Contact: Robert Johnson (502) 227-7321.

EIS No. 860453, Final, FHW, TN, I-40/75 and Interchanges Improvements, East of Pellissippi Parkway to East of Papermill Road, Knoxville County, Due: December 15, 1986, Contact: Thomas Ptak (615) 736-5394.

EIS No. 860454, Draft, FHW, NJ, NJ-92 Construction, US 206 North of Princeton to NJ-33 East of Hightstown, Mercer, Somerset, and Middlesex Counties, Due: January 31, 1987, Contact: Paul Lariviere (609) 989-2274.

EIS No. 860455, DSuppl, BLM, SEV, Northwest Area Noxious Weed Control Program, Additional Information, Due: January 5, 1987, Contact: Lynne Hamilton (503) 231-6268.

EIS No. 860456, Final, AFS, MI, Hiawatha National Forest, Land and Resource Management Plan, Due: December 15, 1986, Contact: Kenneth Holtje (906) 786-4062.

EIS No. 860457, Draft, AFS, OR, Siuslaw National Forest, Land and Resource Management Plan, Due: February 15, 1987, Contact: Tony Vander Heide (503) 757-4496.

EIS No. 860458, FSuppl, COE, GU, Agana River Flood Control Improvements, New Environmental Information, Due: Decemberr 15, 1986, Contact: James Maragos (808) 438-2263.

EIS No. 860459, Final, MMS, CA, San Miguel Project and Northern Santa Maria Basin Area Study, Lease OCS-P 0409, Outer Continental Shelf (OCS) Development Plan, Approval and Permits, San Luis, Obispo, and Santa Barbara Counties, Due: December 15, 1986, Contact: Mary Elaine Warhurst (213) 894-4480.

EIS No. 860460, Final, AFS, AZ, Lincoln National Forest, Land and Resource Management Plan, Due: December 15, 1986, Contact: James Abbott (505) 437-6030.

EIS No. 860461, FSuppl, EPA, FL, ATL, Jacksonville Harbor Ocean Dredging Material Disposal Site, Fernandino Harbor Designation, Georgia Bight, Due: December 15, 1986, Contact: Sally Turner (404) 347-2126.

EIS No. 860462, Draft, BLM, AZ, NM, Arizona Interconnection Project and Plan Amendment, El Paso 345kV Transmission Line, Construction, Approval, Due: February 12, 1987, Contact: Bruce Blanchard (202) 343-3891.

EIS No. 860463, Legislative, UAF, SEV, Small Intercontinental Ballistic Missile Program, Development, Basing Mode(s) and Deployment Areas, Due: Earliest possible convenience, Contact: Peter Walsh (714) 382-4891.

EIS No. 860464, Draft, DOE, MT, Conrad-Shelby 230kV Transmission Line Project, Construction/Operation/Maintenance, Pondera and Toole Counties, Due: December 29, 1986, Contact: James Davies (406) 657-6525.

EIS No. 860465, FSuppl, COE, WA, Puget Sound Area, Carrier Battle Group Homeporting Everett Site, Construction and Operation, 10/404 Permit, Snohomish County, Due: December 15, 1986, Contact: Stephen Martin (206) 764-3625.

EIS No. 860466, DSuppl, FRC, WA, Hamma Hamma River Hydroelectric Project, Construction and Operation, Salient Cumulative Impact Issues, Evaluation and Conclusions, License, Macon County, Due: December 29, 1986, Contact: Lee Emery (202) 376-1955.

EIS No. 860467, Draft, EPA, TX, South Austin Regional Wastewater Treatment Facility Construction, Grant, Travis County, Due: January 9, 1987, Contact: Norm Thomas (214) 767-2716.

Amended Notices

EIS No. 860361, DRevised, AFS, Sierra National Forest, Land and Resource Management Plan, Due: January 12, 1987, Published FR 9-19-86—Review period extended.

EIS No. 860333, Draft, UAF, ND, SD, MN, Central Radar System, Over-the-Horizon Backscatter Radar System, Construction and Operation, Due: December 8, 1986, Published FR 10-3-86—Review period extended.

EIS No. 860432, Final, BLM, CA, California Desert Conservation Area Plan, Eastern San Diego County Management Framework Plan, 1985 Amendments, Due: December 31, 1986, Published FR 10-31-86—Review period extended.

EIS No. 860442, Draft, FWS, AK, Koyukuk and Northern Unit of Innoko National Wildlife Refuges, Comprehensive Conservation Plan, Wilderness Review and Wild River Plan, Due: January 27, 1987, Published FR 10-31-86—Review period extended.

Dated: November 10, 1986.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 86-25744 Filed 11-13-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3110-1]

Environmental Impact Statements and Regulations; Availability of Comments Prepared October 27, 1986 Through October 31, 1986

Availability of EPA comments prepared October 27, 1986 through October 31, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. D-BLM-J7009-UT, Rating E02, San Juan Resource Area, Resource Mgmt. Plan, UT. Summary: EPA's review concerned protection and improvement of water, watershed, and wetland-riparian related values. EPA recommended consistency with water quality standards; development of grazing management to protect watersheds and rangeland values; riparian area—wetland restoration and improvement; evaluation and guidance for soil and water-related Areas of Critical Environmental Concern; minerals management guidance for water resources; and specific comprehensive resource strategy. EPA noted strenghts of the RMP/EIS such as budgeting, environmental thresholds, and use of an implementation appendix.

ERP No. D-CDB-K89060-CA, Rating E03, Casa Loma Specific Plan and Enterprise Zone Application, Designation and CDBG, CA. Summary: EPA expressed objections to the proposal because the draft EIS did not: (1) Adequately discuss the project's impacts to air quality in Kern County to large-scale industrial developments, (2) provide for air quality mitigation measures, and (3) address the presence of hazardous substances at or near the Bakersfield Airpark. EPA requested that a revised draft EIS be prepared to address these issues, and offered to continue coordination so that these objections could be satisfactorily resolved.

ERP No. D-FHW-F40234-WI, Rating EC2, North Corridor Arterial and Chippewa River Crossing, Construction, US 12 to US 53, 404 Permit, WI. Summary: EPA expressed concerns about traffic noise, runoff from the new bridge over the Chippewa River, and loss of wetlands. EPA requested a commitment to noise mitigation, clarification of the bridge drainage scheme, and greater discussion of wetlands protection.

ERP No. D-UAF-J10007-00, Rating LO, Central Radar Systems. Over-the-Horizon Backscatter Radar System, Construction and Operation, North Central Region of US. Summary: EPA does not anticipate any significant adverse impacts, but requested field verification of radiofrequency radiation emissions and additional wetlands information and site review to confirm minimization of adverse impacts.

FINAL EISs

ERP No. F-AFS-J65130-CA, Stevens Gulch Road Extension, Hubbard, Dyke, and Elk Creeks Timber Sales, Offering and Forest Mgmt. Activities, Grand Mesa, Gunnison, and Uncompahgre Nat'l Forests, CA. Summary: The final EIS responds to EPA concerns noted in the draft EIS except that water quality sediment effects on salmonid habitat are applicable in both instantaneous and long-term time frames. The mitigation plan must ensure that existing aquatic uses are not degraded, even for a short period of time. EPA recommends the implementation of a monitoring program over and above adherence to Best Management Practices to document compliance with water quality requirements.

ERP No. F-BLM-G70002-NM, Carlsbad Resource Area, Resource Mgmt. Plan, MN. Summary: EPA has no objections to the proposed action as described. ERP No. F-BLM-K65106-AZ, Eastern Arizona Grazing Mgmt. Program, AZ. Summary: EPA noted that certain information it had requested as not included in the final EIS. This

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included information on existing water quality, riparian habitat status, water quality impacts and mitigation measures. EPA expressed a willingness to meet with BLM to discuss these important issues.

ERP No. F–BLM–L61145–ID, Challis Planning Unit, Corral-Horse Basin, Jerry Peak West and Jerry Peak Wilderness Study Areas, Wilderness Recommendations, ID. Summary: EPA expressed concern regarding water quality and potential fisheries losses in the three wilderness study areas (WSAs) that could be significant due to the cumulative impacts of development in the Salmon River Basin. EPA requested that the Record of Decision commit to a monitoring and mitigation program for the Corral-Horse Basin and Jerry Peak West WSAs, consistent with a goal of no net loss of anadromous fishery habitat valued for the Basin.

ERP No. F–BLM–L61155–ID, Eastern Idaho Planning Area, Hill's Half Acre, Hawley Mtn., Black Canyon, Cedar Butte and Petticoat Peak Wilderness Study Areas, Wilderness Recommendations, ID. Summary: EPA made no formal comments. EPA reviewed the final EIS and found the project to be satisfactory.

ERP No. F–BLM–L65078–ID, N. Idaho Planning Area, Selkirk Crest, Crystal Lake, Grandmother Mtn. Snowhole Rapids and Marshall Mtn. WSA's Wilderness Recommendations, ID. Summary: EPA made no formal comments. EPA reviewed the final EIS and found the project to be satisfactory.

ERP No. F–BLM–L65083–ID, Big Lost/Pahsimeroi Planning Units, Burnt Creek, Appendicitis Hill, and White Knob Mtns. Wilderness Study Areas, Wilderness Recommendations, ID. Summary: EPA made no formal comments. EPA reviewed the final EIS and found the project to be satisfactory.

ERP No. F–FHW–K40114–CA, CA–132 Improvement, D Street to Las Flores Ave., Sect. 10 and 404 Permits, CA. Summary: EPA had no comments to offer on the final EIS, however, it requested that the FHWA keep EPA informed of its progress in carrying out the mitigation measures adopted by the Record of Decision.

ERP No. F–OSM–E01007–TN, Rock Creek Watershed, Designation of Lands Unsuitable for Surface Coal Mining Operations, TN. Summary: EPA is concerned that mining activities in the area proposed for designation could contaminate groundwater, particularly aquifers utilized for local water supply wells. EPA requests follow-up documentation to address groundwater, surface water, noise, air quality, and other concerns.

ERP No. F1–SFW–L64030–AK, Togiak Nat'l Wildlife Refuge, Comprehensive Conservation Plan and Wilderness Review, AK. Summary: EPA made no formal comments. EPA reviewed the final EIS and found the project to be satisfactory.

Regulations

ERP No. R–NRC–A99166–00, CFR Parts 19, 20, 30, 31, 32, 34, 40, 50, 61, and 70; Standards for Protection Against Radiation (50 FR 51992, 51 FR 1092). Summary: EPA generally supported the proposed regulations. However, EPA expressed reservations about some parts of the proposal and clarification and improvement of other portions. EPA was specifically concerned about dose limits to the public, collective does evaluations, planned special exposure to workers, internal exposure of workers to ingested radioactivity, and worker exposure reporting procedures.

Dated: November 10, 1986.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 86–25745 Filed 11–13–86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS–140080; FRL–3110–6]

Access to Confidential Business Information by the Consumer Product Safety Commission

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has entered into a Memorandum of Understanding (MOU) with the Consumer Product Safety Commission (CPSC) governing access by EPA to Confidential Business Information (CBI) under the Consumer Product Safety Act (CPSA) and by CPSC to CBI submitted to EPA under all reporting provisions of the Toxic Substances Control Act (TSCA). This MOU describes procedures for and restrictions on access by each agency to CBI submitted to the other.

DATE: Access by CPSC to CBI submitted to EPA will occur no sooner than December 1, 1986.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, DC 20460, (202–554–1404).

SUPPLEMENTARY INFORMATION: In an MOU dated November 4, 1986 the CPSC and EPA's Office of Toxic Substances agreed to procedures governing access to certain information reported under current and prospective rules promulgated under all reporting provisions of TSCA and under the provisions of the CPSA.

The MOU incorporates procedures set forth in the TSCA Confidential Business Information Security Manual. It describes specific procedures for the transfer, use, and storage of CBI and for the clearance of individual EPA and CPSC employees for CBI access authorization.

In accordance with 40 CFR 2.306(j), EPA has determined that CPSC employees will require access to TSCA CBI, submitted under all sections of the Act, in connection with performing their responsibilities under the CPSA and TSCA. CPSC employees' access to TSCA CBI will take place when CPSC receives a referral from EPA under section 9 of TSCA, when CPSC participates in rulemaking or regulatory activities under TSCA, or when access to such information is necessary for regulatory activity under the CPSA. clearance for access by CPSC to TSCA CBI was previously announced in the **Federal Register** of January 5, 1983 (48 FR 504).

EPA is issuing this notice to inform submitters of information under all reporting provisions of TSCA that EPA may provide CPSC's employees access to these CBI materials on a need-to-know basis. Access ot TSCA CBI materials by CPSC employees will take place at EPA Headquarters as well as at CPSC's facilities. Upon completing review of the CBI materials, CPSC's employees will return all transferred materials to EPA.

Clearance for access to TSCA CBI by CPSC employees is scheduled to expire on September 30, 1989, subject to extension at that time.

CPSC has been authorized for access to TSCA CBI at its facilities under the EPA TSCA Confidential Business Information Security manual. EPA has performed the required inspection of their facilities and has found them to be in compliance with the requirements of the manual.

CPSC's employees will be briefed on appropriate security procedures and be required to submit a completed and signed TSCA CBI Access Request Form and pass a test on security procedures before access ot TSCA CBI is permitted.

Dated: November 4, 1986.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 86–25719 Filed 11–13–86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS–41023; FRL–3109–7]

Nineteenth Report of the Interagency Testing Committee to the Administrator; Receipt and Request for Comments Regarding Priority List of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Interagency Testing Committee (ITC), established under section 4(e) of the Toxic Substances Control Act (TSCA), transmitted its Nineteenth Report to the Administrator of EPA on October 31, 1986. This report, which revises and updates the Committee's priority list of chemicals, adds four chemicals to the list for priority consideration by EPA in the promulgation of test rules under section 4(a) of the Act. The new chemicals are isopropanol, C.I. Disperse Blue 79, methyl *tert*-butyl ether, and methyl ethyl ketoxime. These chemicals are not designated for response within 12 months. One substance previously recommended with intent to designate, tributyl phosphate (51 FR 18368), is now designated for response within 12 months. The Nineteenth Report is included in this notice. The Agency invites interested persons to submit written comments on the Report, and to attend a Focus Meeting to help narrow and focus the issues raised by the ITC's recommendations. Members of the public are also invited to inform EPA if they wish to be notified of subsequent public meetings on these chemicals. ITC also notes the removal of five chemicals from the priority list because EPA has responded to the ITC's previous recommendations for testing of the chemicals.

DATES: Written comments should be submitted by December 15, 1986. Focus Meetings will be held on December 16 and 17, 1986.

ADDRESSES: Send written submissions to: TSCA Public Information Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. NE G–004, 401 M St., SW., Washington, DC 20460.

Submissions should bear the document control number (OPTS–41023).

The public record supporting this action, including comments, is available for public inspection in Rm. NE G–004 at the address noted above from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays. Focus Meetings will be held at EPA Headquarters, Rm. 103 NE Mall, 401 M St., SW., Washington, DC. Persons planning to attend the Focus Meetings and/or seeking to be informed of subsequent public meetings on these chemicals, should notify the TSCA Assistance Office at the address listed below. To ensure seating accommodations at the Focus Meetings, persons interested in attending are asked to notify EPA at least one week ahead of the scheduled date.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC. 20460, (202–554–1404).

SUPPLEMENTARY INFORMATION: EPA has received the Report of the TSCA Interagency Testing Committee to the Administrator.

I. Background

TSCA (Pub. L. 94–469, 90 Stat. 2003 *et seq;* 15 U.S.C. 2601 *et seq.*) authorizes the Administrator of EPA to promulgate regulations under section 4(a) requiring testing of chemical substances and mixtures in order to develop data relevant to determining the risks that such chemical substances and mixtures may present to health and the environment.

Section 4(e) of TSCA established an Interagency Testing Committee to make recommendations to the Administrator of EPA of chemical substances and mixtures to be given priority consideration in proposing test rules under section 4(a). Section 4(e) directs the Committee to revise its list of recommendations at least every 6 months as necessary. The ITC may "designate" up to 50 substances and mixtures at any one time for priority consideration by the Agency. For such designations, the Agency must within 12 months either initiate rulemaking or issue in the **Federal Register** its reasons for not doing so. The ITC's Nineteenth Report was received by the Administrator on October 31, 1986, and follows this Notice. The Report adds four substances to the TSCA section 4(e) priority list.

II. Written and Oral Comments and Public Meetings

EPA invites interested persons to submit detailed comments on the ITC's new recommendations. The Agency is interested in receiving information concerning additional or ongoing health and safety studies on the subject chemicals as well as information relating to the human and environmental exposure to these chemicals. A notice is published elsewhere in today's **Federal Register** adding the substances recommended in the ITC's Nineteenth Report to the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716). The section 8(d) rule requires the reporting of unpublished health and safety studies on the listed chemicals. These chemicals will also be added to the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712) published elsewhere in this issue. The section 8(a) rule requires the reporting of production volume, use, exposure, and release information on the listed chemicals.

Focus Meetings will be held to discuss relevant issues pertaining to these chemicals and to narrow the range of issues/effects which will be the focus of the Agency's subsequent activities in responding to the ITC recommendations. The Focus Meetings will be held on December 16 and 17, 1986 at EPA Headquarters, Rm. 103 NE Mall, 401 M St., SW., Washington, DC. This meeting is intended to supplement and expand upon written comments submitted in response to this notice. The schedule for the Focus Meetings is as follows: December 16, 10 a.m.—isopropanol; 1 p.m.—C.I. Disperse Blue 79. December 17, 10 a.m.—methyl *tert*-butyl ether; 1 p.m.—methyl ethyl ketoxime.

Persons wishing to attend this meeting or subsequent meetings on these chemicals should call the TSCA Assistance Office at the toll free number listed above at least one week in advance.

All written submissions should bear the identifying docket number (OPTS–41023).

III. Status of List

In addition to adding the four recommendations to the priority list, the ITC's Nineteenth Report notes the removal of five chemicals from the list since the last ITC report because EPA has responded to the Committee's prior recommendations for testing of the chemicals. Subsequent to the ITC's preparation of its Eighteenth Report, EPA responded to the ITC's recommendations for six additional chemicals. The five chemicals removed and the dates of publication in the **Federal Register** of EPA's responses to the ITC for these chemicals are: methylcyclopentane, May 15, 1986 (51 FR 17854); tetrabromobisphenol A, May 15, 1986 (51 FR 17872); triethylene glycol monomethyl ether, May 15, 1986 (51 FR 17883); triethylene glycol monobutyl ether, May 15, 1986 (51 FR 17883); triethylene glycol monobutyl ether, May 15, 1986 (51 FR 17883). The report also notes that tributyl phosphate, which was originally recommended with intent to designate (51 FR 18368, May 19, 1986), has now

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been designated for response within 12 months by the ITC.

The current list contains three designated substances, two chemicals recommended with intent-to-designate, and four recommended substances.

Authority: 15 U.S.C. 2603.

Dated: November 6, 1986.

J. Merenda,

Director, Existing Chemical Assessment Division.

Nineteenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency

Summary

Section 4 of the Toxic Substances Control Act of 1976 (TSCA, Public Law 94-469) provides for the testing of chemicals in commerce that may present an unreasonable risk of injury to health or the environment. It also provides for the establishment of a Committee (ITC), composed of representatives from eight designated Federal agencies, to recommend chemical substances and mixtures (chemicals) to which the Administrator of the U.S. Environmental Protection Agency (EPA) should give priority consideration for the promulgation of testing rules.

Section 4(e)(1)(A) of TSCA directs the Committee to recommend to the EPA Administrator chemicals to which the Administrator should give priority consideration for the promulgation of testing rules pursuant to section 4(a). The Committee is required to designate those chemicals, from among its recommendations, to which the Administrator should respond within 12 months by either initiating a rulemaking proceeding under section 4(a) or publishing the Administrator's reason for not initiating such a proceeding. At least every 6 months, the Committee makes those revisions in the TSCA section 4(e) Priority List that it determines to be necessary and transmits them to the EPA Administrator.

As a result of its deliberations, the Committee is revising the TSCA section 4(e) Priority List by the addition of four chemicals, and is noting the removal of five as a result of responses by EPA. The Committee also is designating one chemical that had been recommended with intent-to-designate in the eighteenth report.

The Priority List is divided into three parts: Part A contains those recommended chemicals and groups designated for priority consideration and response by the EPA Administrator within 12 months. Part B contains chemicals and groups recommended with intent-to-designate. This category was established by the Committee in its seventeenth report (50 FR 47603; November 19, 1985) to take advantage of rules promulgating automatic reporting requirements for nondesignated ITC recommendations under the section 8(a) Preliminary Assessment rule and the TSCA section 8(d) Health and Safety Data Reporting rule. Information received following recommendation with intent-to-designate may influence the Committee to either designate or not designate the chemical or group of chemicals in a subsequent report to the Administrator. Part C contains chemicals and groups of chemicals that have been recommended for priority consideration by EPW without being designated for response within 12 months. The changes to the Priority List are presented, together with the types of testing recommended, in the following Table 1:

TABLE 1.—ADDITIONS TO THE SECTION 4(e) PRIORITY LIST, NOVEMBER 1986

Chemical/Group	Recommended Studies
A. Designated for Response Within 12 Months	
Tributyl phosphate [1] (CAS No. 126-73-8).	Health Effects: Chronic Toxicity including oncogenic, neurotoxic, renal, reproductive and developmental effects. Chemical Fate: Persistence in anaerobic soils and sediments. Ecological Effects: Chronic effects on aquatic and terrestrial plants; chronic effects on daphnids and/or other aquatic invertebrates; acute and chronic effects on benthic organisms and soil invertebrates, if found persistent under anaerobic conditions.
B. Recommended With Intent-to-Designate	
Isopropanol [2] (CAS No. 67-63-0).	Health Effects: Genotoxicity, including tests for mutagenicity in mammalian systems and clastogenicity; chronic toxicity including oncogenicity.
Methyl *tert*-butyl ether [3] (CAS No. 1634-04-4).	Health Effects: Chronic inhalation toxicity including neurotoxic, hematologic and ocogenic effects. Chemical Fate: Monitoring at representative gasoline terminals and service stations.
C. Recommended Without Being Designated for Response Within 12 Months	
C.I. Disperse Blue 79 [4] (CAS No. 3956-55-6).	Health Effects: Subchronic toxicity; adsorption and chemical disposition. Chemical Fate: Solubility in water; biodegradation under aerobic and anaerobic conditions and the identification of any relatively persistent biodegradation intermediates. Ecological Effects: Acute toxicity to fish, aquatic invertebrates, algae and benthic organisms (including filter feeders); bioconcentration in fish; chronic effects on aquatic and benthic biota, if the acute studies show toxicity at low mg/L concentration or if the dye does bioconcentrate.
Methyl ethyl ketoxime [5] (CAS No. 96-29-7).	Health Effects: Chronic toxicity with special emphasis on hematopoietic and oncogenic effects.

CA Index Names (9CI):

[1] Phosphonic acid, tributyl ester (tributyl phosphate was recommended with intent-to-designate by the Committee in the eighteenth report (51 FR 18368)).

[2] 2-Propanol,

[3] Propane, 2-methoxy-2-methyl-

[4] Acetamide, *N*-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[(2-bromo-4,6-dinitrophenyl)azo]-4-ethoxyphenyl]-

[5] 2-Butanone oxime.

TSCA Interagency Testing Committee

Statutory Member Agencies and Their Representatives

Council on Environmental Quality
  Harvey Doerksen, Member
Department of Commerce
  Patrick D. Cosslett, Member
Environmental Protection Agency
  John D. Walker, Member and Vice Chairperson
  Laurence S. Rosenstein, Alternate
National Cancer Institute
  Richard Adamson, Member
  Elizabeth K. Weisburger, Alternate
National Institute of Environmental Health Sciences
  James K. Selkirk, Member
National Institute for Occupational Safety and Health
  Rodger L. Tatken, Member and Chairperson
National Science Foundation
  Rodger W. Baier, Member
  Jarvis L. Moyers, Alternate
Occupational Safety and Health Administration
  Joseph Jarvis, Member [1]
  Stephen Mallinger, Alternate

Liaison Agencies and Their Representatives

Consumer Product Safety Commission
  Lakshmi C. Mishra
Department of Agriculture
  Richard M. Parry, Jr.
  Elise A. B. Brown
Department of Defense
  Edmund Cummings
Department of the Interior
  Ronald Eisler [2]
Food and Drug Administration
  Arnold Borsetti
National Library of Medicine
  Vera Hudson
National Toxicology Program
  Dorothy Canter

Committee Staff

Robert H. Brink, Executive Secretary
Norma Williams, ITC Coordinator

Support Staff

Alan Carpien—Office of the General Counsel, EPA

The Committee acknowledges and is grateful for the assistance and support given the ITC by the staff of Dynamac Corporation (technical support contractor) and personnel of the EPA Office of Toxic Substances.

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[1] Appointed on August 11, 1986.

[2] Appointed on July 11, 1986.

Chapter 1—Introduction

1.1 *Background.* The TSCA Interagency Testing Committee (Committee) was established under section 4(e) of the Toxic Substances Control Act of 1976 (TSCA, Public Law 94–469). The specific mandate of the Committee is to recommend to the Administrator of the U.S. Environmental Protection Agency (EPA) chemical substances and mixtures in commerce that should be given priority consideration for the promulgation of testing rules to determine their potential hazard to human health and/or environment. TSCA specifies that the Committee's recommendations shall be in the form of a Priority List, which is to be published in the **Federal Register.** The Committee is directed by section 4(e)(1)(A) of TSCA to designate those chemicals on the Priority List to which the EPA Administrator should respond within 12 months by either initiating a rulemaking proceeding under section 4(a) or publishing the Administrator's reason for not initiating such a proceeding. There is no statutory time limit for EPA response regarding chemicals that ITC has recommended but not designated for response within 12 months.

At least every 6 months, the Committee makes those revisions in the section 4(e) Priority List that it determines to be necessary and transmits them to the EPA Administrator.

The Committee is composed of representatives from eight statutory member agencies and seven liaison agencies. The specific representatives and their affiliations are named in the front of this report. The Committee's chemical review procedures and priority recommendations are described in previous reports (Refs. 1 through 3).

1.2 *Committee's previous reports.* Eighteen previous reports to the EPA Administrator have been issued by the Committee and published in the FEDERAL REGISTER (Refs. 1 through 3). Ninety-three entries (chemicals and groups of chemicals) were recommended for priority consideration by the EPA Administrator and designated for response within 12 months. In addition, five chemicals and one group of chemicals were recommended without being so designated.

1.3 *Committee's activities during this reporting period.* Between April 1, 1986, and September 30, 1986, the Committee continued to review chemicals from its fourth and fifth scoring exercises, and from nominations by Member Agencies, Liaision Agencies and State Agencies.

The Committee contacted chemical manufacturers and trade associations to request information that would be of value in its deliberations. Most of those contacted provided unpublished information on current production, exposure, uses, and effects of chemicals under study by the Committee.

During this reporting period, the Committee reviewed available information on 28 chemicals and 7 large classes of chemicals. Four chemicals were selected for addition to the section 4(e) Priority List, and five were deferred indefinitely. The remaining chemicals are still under study.

On August 7, 1986, the ITC published an Intent-to-Designate notice (51 FR 28431) that listed hexamethylenediamine and described additional information needed by the ITC to reach a more informed decision on whether or not to designate hexamethylenediamine in a subsequent report to the EPA Administrator. The Committee requested information on biodegradation in aerobic ponds and under both aerobic and anaerobic conditions in disposal wells, in the presence of other waste constituents typical of hexamethylenediamine production. A deadline of October 6, 1986 was provided for receipt of relevant information.

1.4 *The TSCA section 4(e) Priority List.* Section 4(e)(1)(B) of TSCA directs the Committee to: ". . . make such revisions in the [priority] list as it determines to be necessary and . . . transmit them to the Administrator together with the Committee's reasons for the revisions." Under this authority, the Committee is revising the Priority List by adding four chemicals: isopropanol, methyl *tert*-butyl ether, C.I. Disperse Blue 79, and methyl ethyl ketoxime. None of these chemicals is designated for response within 12 months but the Committee intends to designate isopropanol and methyl *tert*—butyl ether unless information received following recommendation influences the Committee to withhold designation. In addition, the Committee is designating for response within 12 months one chemical that was recommended with intent-to-designate in the eighteenth report. The designated chemical is tributyl phosphate. The testing recommended for these chemicals and the rationales for the recommendations are presented in Chapter 2 of this report.

Five chemicals are being removed from the Priority List because the EPA Administrator has responded to the Committee's prior recommendations for testing them. They are listed in the following Table 2 with citations to EPA responses:

TABLE 2—REMOVALS FROM THE TSCA SECTION 4(e) PRIORITY LIST APRIL 1, 1986 THROUGH SEPTEMBER 30, 1986

Chemical/Group	*EPA Responses*	
	Federal Register Citation	*Publication Date*
Methyl cyclopentane	51 FR 17854	May 15, 1986.
Tetrabromobisphenol A	51 FR 17872	May 15, 1986.
Triethylene glycol monomethyl ether.	51 FR 17883	May 15, 1986.
Triethylene glycol monoethyl ether.	51 FR 17883	May 15, 1986.
Triethylene glycol monobutyl ether.	51 FR 17883	May 15, 1986

Removal of 87 entries was noted in previous reports (Ref. 1 through 3). To date, 92 chemicals and groups of chemicals have been removed from the Priority List.

With the four recommendations and five removals noted in this report, nine entries now appear on the section 4(e) Priority List. The Priority List is divided in the following Table 3 into three parts; namely, A. Chemicals and Groups of Chemicals Designated for Response Within 12 Months, B. Chemicals and Groups of Chemicals Recommended with Intent-to-Designate, and C. Chemicals and Groups of Chemicals Recommended Without Being Designated for Response Within 12 Months. Table 3 follows:

TABLE 3.—THE TSCA SECTION 4(e) PRIORITY LIST, NOVEMBER 1986

A. Chemicals and Groups of Chemicals Recommended and Designated for Response Within 12 Months	
Entry and date of designation:	
1. Cyclohexane	May 1986.
2. 2,6-Di-*tert*-butylphenol	May 1986.
3. Tributyl phosphate	Nov. 1986
B. Chemicals and Groups of Chemicals Recommended with Intent-to-Designate	
Entry and date of recommendation:	
1. Isopropanol	Nov. 1986.
2. Methyl. *tert*-butyl ether	Nov. 1986
C. Chemicals and Groups of Chemicals Recommended Without Being Designated for Response Within 12 Months:	
1. 3,4-Dichlorobenzotrifluoride	May 1984
2. Diisodecyl phenyl phosphite	Nov 1985
3. C.I. Disperse Blue 79	Nov. 1986.
4. Methyl ethyl ketoxime	Nov 1986.

References

(1) Sixteenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, May 21, 1985, 50 FR 20930–20939.

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Includes references to Reports 1 through 15 and annotative list of removals.

(2) Seventeenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, November 19, 1985, 50 FR 47603–47612.

(3) Eighteenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, May 19, 1986, 51 FR 18368–18375.

Chapter 2—Recommendations of the Committee

2.1 *Chemicals recommended for priority consideration by the EPA Administrator.* As provided by section 4(e)(1)(B) of TSCA, the Committee is adding the following chemical substances to the section 4(e) Priority List: isopropanol, methyl *tert*-butyl ether, C.I. Disperse Blue 79, and methyl ethyl ketoxime. The recommendation of these chemicals is being made after considering the factors identified in section 4(e)(1)(A) and other relevant information, as well as the professional judgment of Committee members. In addition, the Committee is designating for response within 12 months one chemical substance that was recommended with intent-to-designate in the eighteenth report. The designated chemical is tributyl phosphate.

2.2 *Chemicals designated for response within 12 months—2.2.a Tributyl phosphate.* In the eighteenth report to the Administrator of EPA (51 FR 18368), tributyl phosphate was recommended with intent-to-designate. The rationale for that recommendation appears in the eighteenth report. Information reviewed by the Committee in response to the eighteenth report included any public comments on the Committee's recommendations; production volume, use, exposure and release information reported by manufacturers of tributyl phosphate under the TSCA section 8(a) Preliminary Assessment rule; health and safety studies submitted under the TSCA section 8(d) Health and Safety Data Report rule; and any unpublished and published data available to the Committee. Health effects information included acute toxicity studies and skin and eye irritation studies (Ref. 1, Dow Chemical Co., 1986; Ref. 2, Eastman Kodak Co., 1986; Ref. 3, FMC Corp., 1986; and Ref. 6, Stauffer Chemical Co., 1986), mutagenicity (Ames test) data (Ref. 3, FMC Corp., 1986) and delayed neurotoxicity studies (Ref. 5, Monsanto Co., 1986). Chemical fate information included chemical and physical properties, biological oxygen demand (BOD) data and monitoring reports (Ref. 2, Eastman Kodak Co., 1986; Ref. 3, FMC Corp., 1986; Ref. 4, Glyco, Inc., 1986; and Ref. 5 Monsanto Co., 1986). Ecological effects information included acute toxicity values with aquatic invertebrates and fish (Ref. 5, Monsanto Co., 1986).

After reviewing the information, the Committee concluded that data are still lacking on chronic toxicity, chemical fate and ecological effects. For these reasons and for the reasons previously presented (51 FR 18368) the Committee is now designating tributyl phosphate for response within 12 months and recommending that it be tested for the following:

1. *Health effects.* Chronic toxicity including oncogenic, neurotoxic, renal, reproductive and developmental effects.

2. *Chemical Fate.* Persistence in anaerobic soils and sediments.

3. *Ecological Effects.* Chronic effects on aquatic and terrestrial plants; chronic effects on daphnids and/or other aquatic invertebrates; acute and chronic effects on benthic organisms and soil invertebrates, if found persistent under anaerobic conditions.

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(2) Eastman Kodak Co., Rochester, N.Y. Letter from R. Hays Bell to U.S. EPA. August 11, 1986.

(3) FMC Corp., Philadelphia, PA. Letter from Ann S. Keller to U.S. EPA. August 8, 1986.

(4) Glyco, Inc., Norwalk, CT. Letter from Michael J. Reale to U.S. EPA. August 8, 1986.

(5) Monsanto Co., St. Louis, MO. Letter from J.R. Condray to Document Control Officer, Office of Pesticides and Toxic Substances, U.S. EPA. August 15, 1986.

(6) Stauffer Chemical Co., Westport, CT. Letter from Stauffer Chemical Co. to Document Control Office, Office of Toxic Substances, U.S. EPA. August 12, 1986.

(7) Union Carbide Corp., Danbury, CT. Letter from D.L. Heywood to U.S. EPA. August 11, 1986.

2.3 *Chemicals recommended with intent-to-designate—2.3.a Isopropanol—Summary of recommended studies.* It is recommended that isopropanol be tested for the following:

1. *Health Effects.* Genotoxicity studies, including tests for mutagenicity in mammalian systems and for clastogenicity Chronic toxicity, including oncogenicity.

Physical and Chemical Information

CAS Number: 67–63–0

Synonyms: 2–propanol (9 CI); dimethylcarbinol; isopropyl alcohol

Acronym: IPA

Structural Formula:

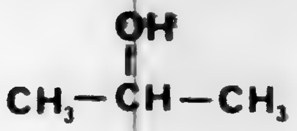

$$CH_3-\overset{\overset{\displaystyle OH}{|}}{C}H-CH_3$$

Empirical Formula: C_3H_8O

Molecular Weight: 60.11

Melting Point: −87.8°C (Ref. 29, Mellan, 1977)

Boiling Point: 82.3°C (Ref. 29, Mellan, 1977)

Vapor Pressure: 33.0 mmHg at 20°C (Ref. 29, Mellan, 1977), 44.0 mmHg at 25°C (Ref. 7, Browning, 1965), 105.6 mmHg at 40°C (Ref. 18, Hatch, 1961)

Solubility in Water: Miscible with water, insoluble in salt solutions (Ref. 56, Windholz, 1983)

Solubility in Organic Solvents: Miscible with ethanol, ether, and chloroform (Ref. 56, Windholz, 1983)

Specific Gravity: 0.79 at 20/20°C (Ref. 29, Mellan, 1977)

Log Octanol/Water Partition Coefficient: (log P): 0.2 (estimated; Ref. 27, Leo et al., 1971)

Description of Chemical: colorless liquid

Rationale for Recommendations

I. *Exposure information—A. Production/use/disposal/environmental release.* The annual production capacities of four domestic producers of isopropanol as of January 1, 1985, totaled 2.5 billion pounds (Ref. 46, SRI, 1985). The 1985 U.S. production of isopropanol was reported to be 1.12 billion pounds, giving it the ranking of 50 among the top 50 chemicals for that year (Ref. 9, C&EN, 1986). The 1984 U.S. production of isopropanol was reported to be 1.39 billion pounds (Ref. 54, USITC, 1985), up from the 1983 production of 1.21 billion pounds (Ref. 53, USITC, 1984) but down from the 1980 production of 1.21 billion pounds (Ref. 52, USITC, 1981).

Imports of isopropanol in 1985 totaled 136.2 million pounds (Ref. 49, USDOC, 1986a). Exports in 1985 accounted for 178.4 million pounds (Ref. 50, USDOC, 1986b).

Most isopropanol produced in the United States is manufactured by the indirect hydration process. In this two-step process, propylene reacts first with sulfuric acid; the products are then hydrolyzed to isopropanol and sulfuric acid (Ref. 45, SRI, 1980).

Isopropanol has a large number of uses. The percentage breakdown of isopropanol demand for 1984 was estimated to be the following: production of acetone (24 percent), coatings and related solvents (15 percent), other solvents (11 percent), pharmaceuticals (11 percent), household and personal products (11 percent), chemical process solvents (9 percent), chemical intermediates (7 percent), and gasoline additives (4 percent). Exports account for the other 8 percent (Ref. 12, CMR, 1984).

It has been estimated that 50 percent of commercial isopropanol is ultimately released to the environment. An additional 1.5 percent is estimated to be lost during production (Dorigan et al., 1976, cited in Ref. 51, USEPA, 1979).

B. *Evidence for human and environmental exposure.* The National Occupational Hazard Survey (NOHS), conducted by the National Institute for Occupational Safety and Health (NIOSH) from 1972 to 1974, estimated that 5,483,882 workers in 357,173 plants were potentially exposed to isopropanol in the workplace (Ref. 32, NIOSH, 1976a). These estimates were derived from observations of the manufacture and use of the compound, of trade name products known to contain the compound, and of generic products suspected to contain the compound (19, 40, and 42 percent of the total estimate, respectively).

NIOSH conducted a second workplace survey, the National Occupational Exposure Survey (NOES), from 1980 to 1983 (Ref. 34, NIOSH, 1984). Preliminary data from NOES indicated that 1,857,962 workers, including 1,186,141 women, in 43,616 plants were potentially exposed to the compound in the workplace in 1980. Unlike NOHS, the NOES estimates were based only on observations of the use and manufacture of the compound, per se.

The American Conference of Governmental Industrial Hygienists (ACGIH) has established a threshold limit value (TLV) of 400 parts per million (ppm) as an 8-hour time-weighted average with a 15-minute short-term exposure limit of 500 ppm (Ref. 2, ACGIH, 1986b). The TLV was set on the basis of eye, nose, and throat irritation (Ref. 1, ACGIH, 1986a). The permissible exposure limit (PEL) for the workplace adopted by the Occupational Safety and Health Administration is also 400 ppm (Ref. 40, OSHA, 1983).

General dilution/ventilation and the use of personal protective equipment have been recommended as effective controls to reduce occupational exposure to isopropanol in a number of operations (Ref. 35, NIOSH/OSHA, 1978).

Isopropanol is a constituent of some commercial food flavors (Ref. 47, Stanley, 1939; Ref. 41, Pendleton, 1970). For this use and its use as an adjuvant, the Food and Drug Administration permits the use of only the minimum quantity of isopropanol necessary to produce the desired effect. No residues of the chemical may remain in foods marked with isopropanol-derived color additives (Ref. 15, FDA, 1986).

Isopropanol has been detected in trace quantities in fish meal (Ref. 21, Iida et al., 1978), white bread (Wideblatt and Kohn, 1960, cited in Ref. 16, Fenaroli, 1975), enzyme-inactivated beef (Wick, 1965, cited in Ref. 16, Fenaroli, 1975), and pressure-cooked pork liver (Mussinan and Walradt, 1974, cited in Ref. 16, Fenaroli, 1975).

Isopropanol was identified in leachates from a Southington, CT, landfill site in 1982–83 at concentrations ranging from 3.9 to 8.8 mg/L (Ref. 43, Sawhney and Kozloski, 1984). Levels of isopropanol ranging fromn 2.3 to 21.3 ug/L have been measured at a municipal effluent in a river in Oklahoma, and levels ranging from 10 to 2,000 ug/L have been found in a well in South Carolina near an industrial impoundment area (Ref. 48, STORET, 1986).

II. *Chemical fate information.* Although very large amounts of isopropanol are released to air and water, most of the releases are widely dispersed and isopropanol in the environment will be rapidly biodegraded or oxidized. Therefore, chemical fate testing is not being recommended at this time.

III. *Biological effects of concern to human health—A. Metabolism and toxicokinetics.* Isopropanol administered intravenously and orally to normal, fasting dogs was rapidly absorbed from the gastrointestinal tract; distribution to the tissues occurred within a range of 30 minutes to 1 or 2 hours (Ref. 26, Lehman et al., 1945).

Isopropanol is metabolized to acetone in rats by alcohol dehydrogenase (ADH) (Ref. 37, Nordmann, 1980). Rats were intraperitoneally administered pyrazole, an inhibitor of ADH and catalase, or amino-1,2,4-triazole, an inhibitor of catalase alone. Isopropanol was then administered either intraperitoneally or by gavage. Blood levels of isopropanol and acetone were then monitored at regular intervals. Animals receiving amino-1,2,4-triazole showed no significant difference in blood isopropanol or acetone levels from those observed in rats receiving only isopropanol. In contrast, pretreatment with pyrazole decreased isopropanol clearance and delayed the rate of acetone production (Ref. 38, Nordmann et al., 1973).

When isopropanol was perfused through rabbit liver *in situ*, a progressive rise in the acetone concentration in blood was observed (Ref. 14, Ellis, 1952).

An average of 10.2 percent of the dose of isopropanol administered by gavage to rabbits was isolated as the glucuronide from the 24-hour urine sample. Acetone (about 0.5 percent of the dose) was also identified in expired air from treated rabbits (Ref. 22, Kamil et al., 1953).

Blood levels of isopropanol and acetone in rats following inhalation exposure to isopropanol for 4 hours, in the test range of 500 to 8,000 ppm, were directly related to atmospheric concentrations of the chemical. Increasing the exposure time to 8 hours magnified the amount of acetone that could be detected even 20 hours following exposure. These results indicate a slow conversion of the alcohol to acetone (Ref. 24, Laham et al., 1980).

In rats given single intraperitoneal doses of isopropanol, the half-life of the chemical in plasma declined with decreasing dose level (Ref. 42, Rietbrock and Abshagen, 1971).

B. *Acute (short-term) effects.* The acute toxicity of isopropanol is summarized in the following Table 4.

TABLE 4.—ACUTE TOXICITY OF ISOPROPANOL IN LABORATORY ANIMALS

Animal	Route	Effect	Reference
Mouse	Orl	LD$_{50}$: 4.8 g/kg; CNS depression	Levy and Zakhari (1976, Ref. 26)
Do	Ihl	LC$_{50}$: 10.39 mg/L, 2-hr exposure	Do.
Do	Ipr	LD$_{50}$: 1.26 g/kg	Do.
Do	Ivn	LD$_{50}$: 31.0 mmol/kg (about 1.9 g/kg)	Chvapil et al. (1962, Ref. 10).
Rat	Orl	LD$_{50}$: 5.84 g/kg	Smyth and Carpenter (1948, Ref. 44).
Do	Orl	LD$_{50}$: 6.73 cm^3/kg	Lehman and Chase (1944, Ref. 25).
Rat (14-day-old)	Orl	LD$_{50}$: 5.6 mL/kg	Kimura et al. (1971, Ref. 23).
Rat (young adult)	Orl	LD$_{50}$: 6.0 mL/kg	Do.
Rat (older adult)	Orl	LD$_{50}$: 6.8 mL/kg	Do.
Rat	Orl	LD$_{50}$: 4.7 g/kg	Levy and Zakhari (1976, Ref. 26).

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TABLE 4.—ACUTE TOXICITY OF ISOPROPANOL IN LABORATORY ANIMALS—Continued

Animal	Route	Effect	Reference
Do	Inhl	LD_{50}: 19,000 ppm (females); 8-hr exposure. Severe irritation to mucous membranes. Ataxia, prostration, narcosis. At levels between 20,000 and 22,000 ppm, paralysis of hind legs was observed in both sexes during first 5 days of exposure.	Laham et al. (1980, Ref. 24).
Rat	Inhl	Congestion of liver, lungs, and spleen was observed in rats exposed at 4,000 and 8,000 ppm.	
		500–16,000 ppm, 4-hr exposure; At 4,000 ppm slight hypothermia was observed. At 8,000 and 16,000 ppm, severe hypothermia recorded.	Laham et al. (1980, Ref. 24).
Do	Ipr	LD_{50}: 1.87 g/kg	Levy and Zakhari (1976, Ref. 28).
Do	Scu	LD_{50}: 5.70 g/kg	Do.
Rabbit	Orl	LD_{50}: 6.41 cm^3/kg	Lehman and Chase (1944, Ref. 25).
Do	Orl	LD_{50}: 6.15 cm^3/kg	Do.

When applied to rabbit eyes, a drop of isopropanol caused mild transitory injury (Ref. 44, Smyth and Carpenter, 1948). Isopropanol did not produce any adverse effects when applied dermally to guinea pigs, dogs, and white rats (Macht, 1922, cited in Ref. 32, NOISH, 1976a; Steele and Wilhelm, 1966, cited in Ref. 32, NIOSH, 1976a). Similarly, the chemical did not produce tissue destruction when applied to intact and abraded skin of rabbits and guinea pigs (Ref. 36, Nixon et al., 1975).

C. *Genotoxicity.* In the *Salmonella* microsomal assay using the spot test, isopropanol was nonmutagenic in strains TA98, TA100, TA1535, and TA1537 both with and without S–9 from Aroclor-induced rats (Ref. 17, Florin et al., 1980). The chemical was nonmutagenic in *Salmonella* strains TA97, TA98, TA100, TA1535, and TA1537 both with and without metabolic activation, when tested using a plate-incorporation modification of this microbial assay (Ref. 39, NTP CHEMTRACK, 1986).

Isopropanol yielded negative results in mutagenicity tests in *Neurospora crassa* (Ref. 6, Brockman et al., 1984). Isopropanol did not enhance simian adenovirus (SA7) transformation using Syrian hamster embryo cells when tested over a concentration range of 62 to 1,000 ug/mL (Ref. 19, Heidelberger et al., 1983).

D. *Oncogenicity.* In inhalation studies, C3H, ABC, and C57 mice were exposed to isopropanol for 3 to 7 hours per day, 5 days per week for 5 to 8 months. There was no significant increase in the number of tumors observed. Similarly, no increases in pulmonary tumors were observed in the same strains of mice received 20 to 40 weekly subcutaneous injections of 0.025 mL isopropanol (Ref. 55, Weil et al., 1952).

In skin painting studies, no tumors were observed when isopropanol was painted on the clipped backs on 30 Rockland all-purpose mice 3 times per week for 1 year (Weil, unpublished data, cited in Ref. 33, NIOSH, 1976b).

E. *Chronic (long-term) effects.* Isopropanol was administered as a 5 percent solution in tap water to male albino rats for 9 months. The average daily consumption of isopropanol was 1.9 mL/kg. There was no significant differences in the death rates of the treated animals compared to controls given tap water. Treated animals experienced a marked decrease in fluid consumption compared to controls, as well as a significant weight depression. Both of these conditions were reversed in the month following withdrawal of the alcohol. Noisy breathing and sluggishness were also noted in the treated animals. In another test, 187 daily applications of a 50 percent solution of isopropanol of the heads of male rats failed to cause injury to the skin, hair, or eyes that would differentiate the treated from the control animals (Ref. 5, Boughton, 1944).

White rats were administered 0.5, 1.0, 2.5, 5.0, and 10.0 percent solutions of isopropanol in water for 27 weeks. Rats given 10 percent isopropanol refused to drink the fluid and died early in the experiment. Some deaths occurred in two of the other exposure groups, but insufficient data were available to determine whether the deaths were treatment related. Food intake by the exposed rats was equal to or greater than that of the control rats. There was a tendency for decreasing fluid intake with increasing alcohol concentration. Gross and histopathologic examination of selected organs showed no evidence of gross or microscopic changes (Ref. 25, Lehman and Chase, 1944).

Three dogs were administered isopropanol in water daily for 7 months. The alcohol concentration was 4 percent from the end of the first month until the conclusion of the experiment. Tolerance to the alcohol developed, as manifested by an increased degree of neuromuscular coordination at similar blood levels in habituated versus control animals and by increased elimination of the alcohol. The only significant histopathologic changes were noted in the kidneys of the one dog that died (Ref. 26, Lehman et al., 1945).

F. *Reproductive and developmental effects.* In a three-generation reproductive study, male and female rats receiving 2.5 percent isopropanol daily in drinking water exhibited no deleterious effects on their reproductive function and embryonic development. Some retardation of growth was observed in the early life of first-generation rats (Ref. 26, Lehman et al., 1945).

Isopropanol was administered by inhalation to groups of 15 pregnant Sprague-Dawley rats for 7 hours per day on gestation days 1 to 19 at doses of 3,500, 7,000 and 10,000 ppm. The highest concentration produced maternal narcosis and reduced weight gain and feed intake. At 7,000 ppm isopropanol, the only observable maternal effect was decreased weight gain. No maternal effects were observed at 3,500 ppm. Following exposure to 10,000 ppm isopropanol, there was a statistically significant increase in resorptions and decrease in fetal weights. Fetal weights were also decreased at the two lower dose levels. There was a significant increase in malformations in the litters of dams exposed to 7,000 and 10,000 ppm isopropanol. No teratogenic effects were observed at the 3,5000 ppm dose level (Ref. 31, Nelson et al., 1985; Ref. 30, Nelson et al., 1986).

A single-generation reproduction study is being conducted in the Wistar rat at dose levels of 0.5, 1.0, and 2.0 percent isopropanol in drinking water. Males will be exposed 70 days prior to mating and females 21 days prior to mating. Also underway is a teratology study in female Wistar rats at does levels of 0.5, 1.5, and 2.5 percent isopropanol in drinking water. The high does was selected to produce maternal toxicity. Both studies are being conducted at the request of the government of the United Kingdom (Ref. 11, CMA, 1986).

G. *Observations in humans.* Occupational exposure to isopropanol was assessed in 12 workers employed in a printing works by testing environmental air, alveolar air, venous blood, and urine during their work shift. Isopropanol in environmental air ranged between 7 and 645 mg/m^3. It was detected in alveolar air at levels ranging between 4 and 437 mg/m^3. The chemical was not detected in blood or urine. Alveolar concentration of alcohol was significantly corrected with its environmental concentration (Ref. 8, Brugnone et al., 1983).

The blood half-lives of isopropanol in two patients suffering from acute overdoses of the alcohol were estimated at 155 and 187 minutes, respectively. In both patients, acetone levels were higher than the alcohol values at the beginning of the study and remained elevated throughout the study (Ref. 13, Daniel et al., 1981).

In five persons who died as a consequence of drinking isopropanol, deep and stubborn coma was observed as well as varying degrees of shock and hypothermia. Acetonuria without glycosuria was also observed (Ref. 3, Adelson, 1962).

In a historical prospective study of 262 men who had worked at an isopropanol plant in Great Britain, the observed deaths were slightly higher than expected. There was a statistically nonsignificant increase in deaths from neoplasms. One person died from nasal cancer; the authors stated that this finding was unlikely to be due to chance even though based on small numbers (Ref. 4, Alderson and Rattan, 1980).

An increased incidence of cancer of the paranasal sinuses was observed in workers at factories manufacturing isopropanol by the strong acid process. The risk of laryngeal cancer may also have been elevated in these workers (Ref. 20, IARC, 1977).

H. *Rationale for health effects recommendations.* Annual domestic production of isopropanol is greater than 1 billion pounds. Well over 1 million persons are estimated to be exposed to the chemical in the workplace. Widespread consumer exposure results from its use in pharmaceuticals and household products. It has been detected in trace quantities in several foods. It has also been identified in leachates from a landfill site. Although several limited carcinogenicity studies have been performed, insufficient data are available to assess its long-term effects. Therefore, the Committee recommends chronic toxicity studies, including tests to assess its oncogenic potential. Additional genotoxicity studies, including tests to assess its mutagenic potential in mammalian systems and its clastogenic effects, are also recommended. The Committee is concerned about possible reproductive and developmental effects of isopropanol given the teratogenic effects observed at high doses in inhalation studies in rats. However, the Committee recommends deferring the chemical from consideration for such testing pending the outcome of relevant studies presently being conducted at the request of the government of the United Kingdom.

IV. *Ecological effects of concern.* There is sufficient information available to show that isopropanol is unlikely to persist in the environment at concentrations that would cause adverse ecological effects. Therefore, ecological effects testing is not being recommended at this time.

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2.3.b *Methyl tert-butyl ether—Summary of recommended studies.* It is recommended that methyl *tert*-butyl ether (MTBE) be tested for the following:

1. *Chemical Fate.* Monitoring studies to determine typical concentrations of MTBE at representatives sites where MTBE-containing gasoline is transferred, including gasoline terminals and service stations.
2. *Health Effects.* Chronic inhalation toxicity including neurotoxic, hematologic, and oncogenic effects.

Physical and Chemical Information

CAS Number:
1634–04–4

Synonyms:
Propane, 2-methoxy-2-methyl—(9 CI); Methyl 1,1-dimethylethyl ether; (2-Methyl–2–propyl) methyl ether; *tert*-Butyl methyl either

Acronym:
MTBE

Structural Formula:

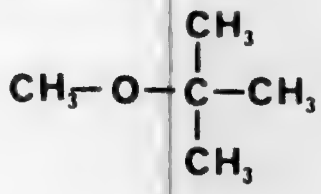

$$CH_3{-}O{-}C(CH_3)_2{-}CH_3$$

Empirical Formula:
$C_5H_{12}O$

Molecular Weight:
88.15

Melting Point:
−110°C (Ref. 16, Phillips Petroleum, 1984)

Boiling Point:
55°C (Ref. 16, Phillips Petroleum, 1984)

Vapor Pressure:
414 mmHg at 38°C (Ref. 16, Phillips Petroleum, 1984)

Solubility in Water:
40,000 mg/L (Ref. 11, Hawley, 1981)
43,000 mg/L (Ref. 4, ARCO, 1986)

Solubility in Organic Solvents:
Very soluble in alcohol and ether (Ref. 12, HSDB, 1986)

Specific Gravity:
0.74 at 20/4°C (Ref. 16, Phillips Petroleum, 1984)

Log Octanol/Water Partition Coefficient: (log P):
1.30 (Ref. 13, Leo, 1982; cited in ISHOW, 1984)

Henry's Law Constant:
4.5×10^{-4} atm-m^3/mol (Ref. 20, USEPA, 1986)

Description of Chemical:
Clear liquid, pleasant hydro-carbon odor (Ref. 16, Phillips Petroleum, 1984)

Rationale for Recommendations

I. *Exposure information*—A. *Production/use.* The commercial production of MTBE uses the reaction of isobutylene and methanol, in the presence of a catalyst, at 30 to 100°C and 7 to 14 atmospheres. Production has increased dramatically since 1979 when MTBE was approved by the EPA for use as a blending component of unleaded gasoline. Current production is in the neighborhood of 2 billion pounds per year in the United States. By 1989, production is predicted to reach 3 billion pounds per year (Ref. 5, CEH, 1985).

Nearly all of the MTBE produced in the Uhited States is used as octane-enhancing agent in some but not all unleaded gasolines. Although it has been approved as an additive at up to all percent, typical concentrations in gasoline range from 2 to 8 percent by weight (Ref. 4, ARCO, 1986).

B. *Evidence for human exposure.* The National Occupational Exposure Survey (NOES), conducted between 1980 and 1983, indicated that 2,571 workers, including 849 women, were potentially exposed to MTBE in the workplace (Ref. 14, NIOSH, 1984).

Occupational exposures at manufacturing sites are limited because manufacturing occurs in closed systems. However, two companies have reported measured 8-hour time weighted average (TWA) workplace exposures to MTBE of 1 to 3 ppm at manufacturing sites (Ref. 16, Phillips Petroleum, 1984; Ref. 4, ARCO, 1986).

Workers involved in transportation and loading operations of MTBE-containing gasoline have been found to be exposed to less than 2 ppm MTBE (Ref. 4, ARCO, 1986). Halder et al. (Ref. 10 1986) monitored exposures of truck drivers and terminal operators at five gasoline distribution terminals. A total of 183 samples were collected at the terminals over a 12-month period. Worker exposure to C_4 and higher hydrocarbons in gasoline vapors, on a 8-hour TWA basis, varied from 0.4 to 80 ppm, with an overall 8-hour TWA geometric mean of 1.4 ppm. Some of the vapor samples were analyzed for individuals hydrocarbon constituents. No analyses were made for MTBE, but C_4 and C_5 compounds constituted 61 to 74 percent by weight of the total gasoline vapor samples. Similar hydrocarbon exposures were reported in earlier studies at terminals (Ref. 15, Phillips and Jones, 1978; Ref. 8 Diakun, 1983).

In a survey of exposures to gasoline vapors at a service station plaza, Halder, et al. (1986, Ref. 10) reported a geometric mean 8-hour TWA exposure of 1.0 ppm. Diakun (1983, Ref. 8), reporting on analyses of 74 samples obtained during self-service consumer exposures, reported a cumulative mean concentration of 59.9 ppm hydrocarbon vapor during pumping, which, projected to an 8-hour TWA exposure, is 0.28 ppm.

Tests performed in 1983 indicated that MTBE accounts for approximately 3.3 percent of the organic vapors in the head space above gasoline containing 10 percent MTBE (Ref. 4, ARCO, 1986). It is not known how that study was conducted or whether the results are useful in estimating MTBE concentrations in the hydrocarbon vapors in the "breathing zone" locations at gasoline terminals and service station plazas. However, reports that C_4 and C_5 compounds make up 61 to 74 percent by weight of the total gasoline vapors at such sites (Ref. 10, Halder, 1986) demonstrate, as might be expected, that gasoline constituents with lower molecular weights volatilize more readily than the heavier fractions. The available data are not sufficient to permit a reliable estimate of the MTBE concentration in gasoline vapors at terminals and service stations or of worker and consumer exposures at those sites.

C. *Environmental release.* North Carolina authorities have found MTBE in ground water in test wells along the Cape Fear River (Ref. 18, Taylor, 1986) at concentrations of 0.18 to 3.0 parts per million. This ground water contamination is probably due to spills during transfer of gasoline from seagoing tankers to onshore storage facilities. The largest environmental release sources appear to be through fugitive emissions at gasoline terminals and service stations where distribution to and dilution in the atmosphere will be strongly dependent on local conditions. Controls that recover gasoline vapors emitted at filling stations are used at less than 10 percent of the service stations in the nation (Ref. 19, USEPA, 1984).

II. *Chemical fate information*—A. *Transport.* Despite its relatively high water solubility, MTBE is expected to partition largely to air. The Henry's law constant of 4.5×10^{-4} atm-m^3/mol indicates that any MTBE present in surface water will have a half-life of about 9 hours before volatilizing. Furthermore, most of the MTBE released to the environment will be released directly to air during transfer operations. The low octanol/water partition coefficient and relatively high water solubility of MTBE indicate little tendency for significant partitioning to soils, sediments, or biota.

B. *Persistence.* Nearly all of the MTBE released to the environment will partition to the atmosphere where it will be degraded by hydroxy radicals, with an atmospheric half-life of about 3.5 days. The products of this oxidation are likely to include *t*-butyl formate (major product), acetone, and methyl radical (Ref. 7, Cox and Goldstone, 1981). Persistence in ground water following spills is unknown, but it may persist for long periods if volatilization is prevented, since MTBE is not likely to be readily biodegraded or otherwise transformed in ground water.

C. *Rationale for chemical fate recommendations.* MTBE released to the environment will partition to the atmosphere (except at spill and leak sites) where it will be degraded by reaction with hydroxy radicals. Other fate pathways are expected to be less significant. The major concern for MTBE involves exposures in the "breathing zone" of workers and consumers handling MTBE-containing gasoline during transfer operations. In view of this and the lack of data on exposure concentrations, it is recommended that appropriate monitoring studies be conducted to evaluate the concentration of MTBE at representative sites where MTBE-containing gasoline is transferred from shipping units (e.g., tankers, barges) into storage facilities, from storage facilities into shipping units, and from service station plaza pumps into motor vehicles.

III. *Biological effects of concern to human health*—A. *Metabolism and toxicokinetics.* Over 90 percent of an intraperitoneal dose of MTBE (232 mg/kg) was excreted untransformed in rat breath (Ref. 3, API, 1985). A fraction of the dose was also excreted as CO_2 in the breath and as formic acid in the feces and urine.

B. *Acute and subchronic effects.* In rats, the oral LD_{50} (short-term) was reported as 3,865.9 mg/kg. Acute oral exposure resulted in central nervous system depression, ataxia, tremors, labored breathing, and loss of righting reflex. In rats exposed by inhalation, eye irritation, irregular respiration, incoordination and prostration were noted. The inhalation LD_{50} in rats was found to be approximately 120 mg/L (Ref. 3, Atlantic Richfield Co., cited in API, 1985).

In tests with rabbits, MTBE was not found to be a primary skin irritant. It was irritating to the rabbit eye (Ref. 3, Atlantic Richfield Co., cited in API, 1985).

A 9-day inhalation toxicity study was conducted on fasted and unfasted rats. Rats (20 per sex per group) were exposed for 6 hours per day, 5 days per week for 9 days at concentrations of 0, 100, 300, 1,000, or 3,000 ppm. No dose-related mortality was noted. Phosphorus levels were significantly increased in the fasted females in the 1,000 and 3,000 ppm groups. An increase in relative liver weight in both sexes of fasted rats at 3,000 ppm was noted. The same trend was seen in the unfasted high-does male rats. Microscopic pathology revealed chronic inflammation in the nasal mucosa and trachea in the 1,000 and 3,000 ppm groups. (Ref. 3, API 1985)

In a 90-day inhalation study in rats, MTBE was administered at 250, 500, and 1,000 ppm does levels for 6 hours per day, 5 days per week for 3 months. The principal pharmacotoxic sign was increased anesthesia with increased

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concentration. A slight decrease in body weight was seen at 1,000 ppm. An increase in hemoglobin levels in male rats was noted at 1,000 ppm at the end of the study, but this was not considered toxicologically significant (Ref. 3, API, 1985).

C. *Genotoxicity.* MTBE was tested in several *in vitro* systems (Atlantic Richfield Co., cited in API, 1985). Negative results were reported in the *Salmonella* and *Saccharomyces* tests with and without metabolic activation. In the mouse lymphoma forward mutation assay both with and without metabolic activation, a dose-related mutagenic effect was noted with S9 activation.

Sister chromatid exchange (SCE) and chromosomal aberration assays produced negative results. An increase in SCE was observed at 0.2 and 1.0 uL/mL in one activated sample. In an *in vitro* cytogenetic study in rats, negative results were noted.

D. *Oncogenicity.* No information was found.

E. *Reproductive and development effects.* Tests to determine the reproductive and developmental effects of MTBE were conducted in female rats. The animals were exposed to 0, 250, 1,000, and 2,500 ppm for 6 hours per day during gestation days 6 to 15. Dams were sacrificed at day 20. No treatment-related effects were noted. In another study, female mice were exposed to the same concentrations but were sacrificed at day 18 of gestation. No adverse effects were noted in the dams. Minor fetal skeletal malformations were noted, but in the absence of vertebral rib defects these malformations were not considered to be teratogenic (Ref. 6, Conaway et al., 1985).

An inhalation study was conducted on the effects of MTBE on the reproduction of rats through one generation. The animals were exposed to 0, 250, 1,000 or 2,500 ppm MTBE for 6 hours per day, 5 days per week for 12 weeks, including both premating and postmating periods. Males were exposed for 6 hours during the mating period. Female rats were exposed for 6 hours per day, 5 days per week for 3 weeks during premating and daily for 6 hours during mating. After mating, females were exposed 6 hours daily during gestation days 0 to 20 and lactation days 5 to 21. The study involved two litter intervals, and females were exposed for 5 days per week, 6 hours per day during a 2-week period between litter rest intervals. No dose-related adverse effects were noted (Ref. 3, API, 1985).

F. *Chronic (long-term) effects.* No information was found.

G. *Observations in humans. In vivo* dissolution of gallstones by MTBE in four patients was reported (Ref. 2, Allen et al., 1985b). Dissolution occurred within 4 to 7 hours after direct instillation. Hematology and blood chemistry profiles showed no abnormalities. Results of both urinalysis and 24-hour urine collection for measurement of total protein were normal.

The Food and Drug Administration has classified MTBE as an Investigational New Drug. It is currently being used by one team of investigators to dissolve gallstones (Ref. 22, Wyngaarden, 1986).

H. *Rationale for health effects recommendations.* Almost all MTBE produced in the United States is used as a gasoline enhancer in certain unleaded blends, and the annual production is on the rise, with a projected volume of 3 billion pounds in 1989. Consequently, human exposure to MTBE low-level fugitive emissions at gasoline pumps is expected to occur. The major routes of expose would be via the skin and inhalation. In view of this potential exposure and the lack of chronic health effects information, the Committee recommends chronic health effects testing. Special emphasis should be given to neurotoxic, hematologic, and oncogenic effects.

IV. *Ecological effects of concern*—A. *Acute and subchronic (short-term) effects.* Using a flow-through system, Veith et al. (1983, Ref. 21) reported a 96-hour LC_{50} with the fathead minnow of 760 mg/L MTBE. Using static systems, Tarkpea and Svanberg (1982, Ref. 17) found a 24-hour LC_{50} of 1,700 to 1,800 mg/L with the bleak *Alburnus alburnus*, and a 96-hour LC_{50} greater than 10,000 mg/L with the copepod *Nitocra spinipes*.

B. *Chronic (long-term) effects.* No information was found.

C. *Other ecological effects (biological, behavioral, or ecosystem processes).* No information was found.

D. *Bioconcentration and food-chain transport.* Using carp in a flow-through system, Fujiwara et al. (1984, Ref. 9) reported a bioconcentration factor of 1.5. MTBE was rapidly eliminated from the fish when they were transferred to fresh water. No other information was found.

E. *Rationale for ecological effects recommendations.* It does not appear that MTBE will be toxic to biota at concentrations likely to be found in the environment except at spill and leaking storage tank sites. Therefore, ecological effects testing is not being recommended at this time.

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2.4 *Chemicals and groups of chemicals recommended without being designated for response within 12 months*—2.4.a *C.I. Disperse Blue 79—Summary of recommended studies.* It is recommended that C.I. Disperse Blue 79 be tested for the following:

1. *Chemical Fate.* Solubility in water at 25° C. biodegradation under aerobic and anaerobic conditions and the identification of any relatively persistent biodegradation intermediates.
2. *Health Effects.* Absorption and chemical disposition via oral route of administration. Subchronic toxicity (90-day study).
3. *Ecological Effects.* Acute toxicity to fish, aquatic invertebrates, algae, and benthic organisms, including filter feeders. bioconcentration in fish. Chronic effects on aquatic and benthic biota if the acute studies show toxicity at low mg/L concentrations or if the dye bioconcentrates.

Physical and Chemical Information

CAS Number:
3956–55–6
Synonym:
Acetamide, *N*-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[(2-bromo-4,6-dinitrophenyl)azo]-4-ethoxyphenyl](9CI)
Structural Formula:

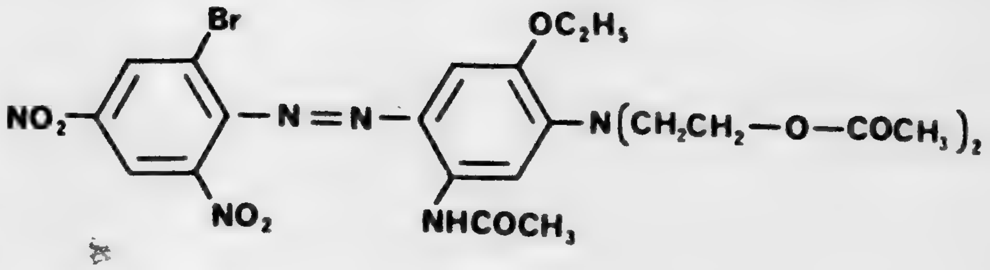

Description of Chemical:
Blue powder with characteristic odor (Ref. 12, Mobay Chemical, 1985)
Empirical Formula:
$C_{24}H_{27}BrN_6O_{10}$
Molecular Weight:
639.44
Melting Point:
143 °C (estimated; Ref. 19, USEPA, 1986a)
Boiling Point:
476 °C (estimated; Ref. 19, USEPA, 1986a)
Vapor Pressure:
3.4×10^{-9} mmHg at 25 °C (estimated; Ref. 19, USEPA, 1986a)
Solubility in Water:
5.4 mg/L (estimated; Ref. 19, USEPA, 1986a)
Solubility in Organic Solvents:
No information was found.
Specific Gravity:
No information was found
Log Octanol/Water Partition Coefficient: (log P):
4.1 (estimated; Ref. 19, USEPA, 1986a)
Henry's Law Constant:
5.9×10^{-10} atm-m^3/mol (estimated; Ref. 19, USEPA, 1986a)
Log Adsorption Coefficient (log K_{oc})
3.6 (estimated; Ref. 19, USEPA, 1986a)
Bioconcentration Factor (fish)
757 (estimated; Ref. 19, USEPA, 1986a)

According to the Ecological and Toxicological Association of the Dyestuffs Manufacturing Industry (Ref. 6, ETAD, 1986), the bromoethoxy compound described above, which has the Colour Index (C.I.) Constitution No. 11345, is the only derivative properly referred to as C.I. Disperse Blue 79. However, there appear to be three other closely related derivatives that have been and may still be called Disperse Blue 79. The concerns expressed in this report for the bromoethoxy derivative apply also to these other derivatives which are expected to have physical and chemical properties similar to the bromoethoxy derivative and which have the following structures:

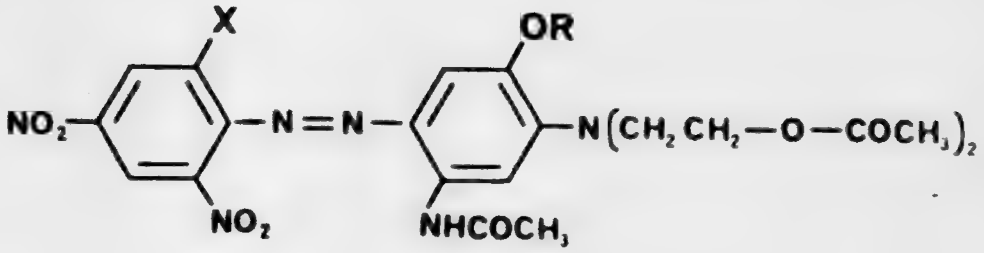

where, for derivative 1, X=Br and R=CH_3; for derivative 2, X=Cl and R=CH_3, and for derivative 3, X=Cl and R=C_2H_5.

Rationale for Recommendations

I. *Exposure information*—A. *Production/use/environmental release.* The U.S. International Trade Commission listed the annual production of C.I. Disperse Blue 79 at 5 to 10 million pounds per year in the United States from 1980 through 1984 (Refs. 23 through 27, USITC, 1981–1985). Heath (Ref. 21, USEPA, 1986c) has estimated the current annual production at 0.9 to 1.4 million kilograms (2 to 3 million pounds), as active colorant, which is a large production for a dye. Disperse Blue 79 appears to be the major blue dye for textile use and a major component of green, brown, and black dyes. About 40 percent of production is sold to users in a paste or liquid formulation and about 60 percent as a solid, mainly as low dusting granules (Ref. 6, ETAD, 1986).

Heath (Ref. 21 USEPA, 1986c) estimated that during the manufacture of Disperse Blue 79, there would be releases of 4,500 to 14,000 kilograms (10,000 to 30,000 pounds) per year at a total of nine sites, with an estimated 3 to 20 kilograms (7 to 45 pounds) per site per day. Heath estimated releases of 2 to 18 kg (4.4 to 40 pounds) per site per day at 400 to 600 textile dyeing operations.

B. *Evidence for human exposure.* According to the National Occupational Exposure Survey (NOES) 1,450 workers at 25 plants in the chemical and allied products industry were potentially exposed to C.I. Disperse Blue 79 in the workplace in 1980 (Ref. 13, NIOSH, 1984). Workplace exposure limtis have not been established for C.I. Disperse Blue 79 by American Conference of Governmental Industrial Hygienists (Ref. 1, ACGIH, 1986) or the Occupational Safety and Health Administration (Ref. 15, OSHA, 1983). Farris (Ref. 20, USEPA, 1986b) estimated significant worker exposure during manufacture and use. Occupational exposure to this dye is expected from inhalation of dye-containing dust particles, swallowing inhaled particles trapped in saliva and mucous, and from dermal exposure during open batch manufacture (Ref. 20, USEPA, 1986b; Ref. 21, USEPA, 1986c). Consumer exposures should be very low since this is a fast dye which is relatively insoluble in water and not likely to leach from the fabrics.

C. *Environmental exposure.* No published information was found. However, an assessment (based on mathematical modeling) has been made for the ITC by the Office of Toxic Substances (Ref. 22, USEPA, 1986d). The assessment used estimates of releases (Ref. 21, USEPA, 1986c) and took into consideration plant locations, receiving stream characteristics, and the locations of downstream drinking water treatment plants. The assessment also assumed 50 percent removal of the dye during passage through biological treatment plants by adsorption to sludge solids. Mean surface water concentrations downstream from manufacturing plants and fabric dyeing operations were estimated to range from 0.02 to 40 ug/L. A high receiving stream concentration of 306 ug/L was predicted for low flow conditions at one site. Drinking water exposures resulting from releases during manufacture and dyeing were calculated and were estimated to range from 0.06 to 43 ug/kg/year. Variations are due to site features, releases per day, and the number of days per year that releases occur. These estimates assumed no loss of the dye through biodegradation on other transformation processes.

II. *Chemical fate information*—A. *Transport.* The low estimated vapor pressure and Henry's law constant indicate that volatilization of Disperse Blue 79 will not be significant. The estimated log K_{oc} value of 3.6 indicates that about 50 to 60 percent of the dye will adsorb to the organic matter of waste treatment sludges and that about 40 to 50 percent will be released to receiving streams.

B. *Persistence.* Information supplied by ETAD (Ref. 6, 1986) indicates that in static tests, where the disappearance of total organic carbon (TOC) was followed, 29 to 68 percent of the TOC disappeared over a 2-week period in solutions containing Disperse Blue 79. No data were presented on the specific features of the tests or on whether the TOC disappearance might have been due to some factors other than biodegradation, such as adsorption onto suspended and settled particulates or the walls of test vessels. In standard 5-day biological oxygen demand (BOD) tests, the BOD_5 was 6.8 pounds O_2 per 100 pounds dye (Ref. 7, ETAD, 1986), which is about 4 percent of the theoretical oxygen uptake for complete oxidation. None of this biodegradation information is sufficient to evaluate the biodegradability of Disperse Blue 79. Studies currently underway or planned at the EPA Water Engineering Research Laboratory in Cincinnati, OH, and at the Georgia Institute of Technology (Ref. 6, ETAD, 1986) may provide useful information on both adsorption and biodegradation.

Azo dyes in general are relatively resistant to biodegradation and Disperse Blue 79 is likely to persist during biological treatment, with a portion adsorbing to the sludge solids and the rest being discharged in the effluent. Under anaerobic conditions, microbial processes may cleave the azo bond to form two aromatic amines. The 2-bromo-4,6-dinitroaniline produced by this reaction may be of concern by itself.

In its Fourth Report to the EPA Administrator (44 FR 31867), the ITC recommended and designated certain anilines, including 2-chloro-4,6-dinitroaniline (CAS No. 3531–19–9) and 2-bromo-4,6-dinitroaniline (CAS No. 1817–73–8). In an Advance Notice of Proposed Rulemaking (ANPR) on January 3, 1984 (49 FR 108), the EPA noted that there appeared to be no current production of 2-chloro-4,6-dinitroaniline, but that the 2-bromo compound was being produced and that it was being considered for a battery of chemical fate, health effects and environmental effects testing.

The potential for Disperse Blue 79 to be cleaved to release 2-bromo-4,6-dinitroaniline, both in the environment and *in vivo* following ingestion, needs to be investigated. If this product is formed via microbial processes in sediments, waste treatment facilities, and intestinal tracts, then added emphasis should be placed on testing of the sort described by the EPA in the ANPR of January 3, 1984.

Other transformation processes (e.g., hydrolysis and photolysis) are not expected to be major factors in the transformation of this dye.

C. *Rationale for chemical fate recommendations.* The lack of measured values on physical and chemical properties for C.I. Disperse Blue 79 increases the uncertainty with respect to chemical fate predictions. At a minimum, water solubility values at 25 °C should be obtained for any commercially important forms of Disperse Blue 79.

Disperse Blue 79 released to the environment is likely to partition to both water and sediments. In sediments, it may degrade anaerobically and release 2-bromo-4,6-dinitroaniline. No data have been found to substantiate or refute these predictions. Since the dye has widespread large use in the United States and is likely to be released to the environment during both manufacture and use, it is recommended that biodegradation studies be conducted to determine (1) the potential for aerobic and anaerobic biodegradation, and (2) the identify of relatively persistent intermediates, if any, resulting from biodegradation.

III. *Biological effects of concern to human health—A. Metabolism and toxicokinetics.* No information was found on the metabolism of C.I. Disperse Blue 79. The dye is likely to split at the azo bond into 2-bromo-4,6-dinitroaniline, and 2-diethanolamino-4-methoxy-5-amino-6-acetanilide by azoreductases present in the intestinal flora. Many azo dyes are split at the azo bond by the intestinal flora (Ref. 4, Chung et al., 1978; Ref. 7, Grasso and Golberg, 1968; Ref. 9, Honohan et al., 1976; Ref. 15, Pritchard et al., 1976; Ref. 16, Radomski, 1961; Ref 17, Roxon et al., 1967) and liver enzymes (Ref. 5, Daniel, 1967). Studies on the metabolism and disposition of 2-bromo-4,6-dinitroaniline, (BDNA) in male F344 rats were reported by Chopade and Matthews (1986, Ref 3). The gastrointestinal absorption of ^{14}C-BDNA was nearly complete, and approximately 80 percent of the radioactivity was cleared from most tissues within 6 hours.

B. *Acute and subchronic (short-term) effects.* The acute oral LD_{50} of Disperse Blue 79 in rats was greater than 5,000 mg per kg of body weight (Ref. 6, ETAD, 1986). It was found to be nonirritating in primary skin irritation and eye irritation tests (Ref. 6, ETAD, 1986).

C. *Genotoxicity.* Disperse Blue 79 was found to be strongly mutagenic in the standard *Salmonella* S–9 assay in four tester strains TA1535, TA1537, TA98, and TA100 (Ref. 11, Mishra et al., 1981). It was also found to be negative in the V79 mammalian cell and mouse micronucleus assays (Ref. 6, ETAD, 1986).

D. *Oncogenicity.* No data were found on oncogenicity testing of C.I. Disperse Blue 79. 2,6-Dichloro-4-nitro-aniline, a structural analog of 2-bromo-4,6-dinitroaniline (one of the fragments of azo bond cleavage of the dye), was found to be negative in cancer bioassays in mice (Ref. 16, Innes et al., 1969) and rats (Ref. 8, Hadidian et al., 1968).

2-Chloro-4,6-dinitroaniline and 2-bromo-4,6-dinitroaniline (CAS No. 3531–19–9 and 1817–73–16, respectively) were recommended by the ITC in its Fourth Report to the EPA Administrator for carcinogenicity, mutagenicity, teratogenicity, and other chronic effects studies (see Part IIB, above).

E. *Chronic (long-term) effects.* No information was found.

F. *Reproductive and developmental effects.* No information was found.

G. *Observations in humans.* No information was found.

H. *Rationale for health effects recommendations.* Because of the potential bioavailability of C.I. Disperse Blue 79 to workers from ingestion of inhaled dye-containing dust, it is recommended that the dye be tested for subchronic toxicity (90-day study) and for absorption and chemical dispositon following the oral route of administration. A chemical disposition study is recommended to determine the potential for liberation of 2-bromo-4,6-dinitroaniline in the intestines due to azo bond cleavage of the dye.

IV. *Ecological effects of concern*—A. *Acute and subchronic (short-term) effects.* Acute toxicity studies using rainbow trout and Disperse Blue 79 formulations were reported as follows (Ref. 6, ETAD, 1986):

Granule formulation, containing approximately 26% Disperse Blue 79, LC_{50}=320 mg/L.

Granule formulation, containing approximately 52% Disperse Blue 79, LC_{50}=400 mg/L.

Liquid formulation, containing approximately 13% Disperse Blue 79, LC_{50}=700 mg/L.

Without additional details, it is not possible to evaluate the validity of these test data. The Committee is concerned about the reported LC_{50} concentrations, since the values cited are about 100 times the estimated water solubility of Disperse Blue 79 and the test data are only for a 48-hour exposure time, whereas 96 hours is the minimal exposure period for acute toxicitiy tests in fish.

B. *Chronic (long-term) effects.* No information was found.

C. *Other ecological effects (biological, behavioral or ecosystem processes).* No effects on activated sludge respiration were observed when Disperse Blue 79 was present at concentrations up to 100 mg/L (Ref. 2, Brown et al., 1981).

D. *Bioconcentration and food-chain transport.* No data were found for Disperse Blue 79.

E. *Rationale for ecological effects recommendations.* Although the estimated concentration levels for C.I. Disperse Blue 79 in surface waters are relatively low, ranging from 0.02 to 306 µg/L, the lack of adequate data on ecological effects and the nature of this dye molecule raise concerns for potential effects. Acute toxicity tests should be run with fish, aquatic invertebrates, algae, and benthic organisms. If biodegradation studies demonstrate the formation of 2-bromo-4,6-dinitroaniline, then this transformation product should also be evaluated as noted in the EPA Advance Notice of Proposed Rulemaking of January 2, 1984 (49 FR 108). The estimated log P value of 4.1 for Disperse Blue 79, and an estimated bioconcentration factor in fish of 757, indicate a potential for some sorption and bioconcentration of the dye in biolipids. Bioconcentration studies with fish are recommended to confirm or refute the prediction of Disperse Blue 79 uptake. Chronic studies with aquatic and benthic organisms are recommended if the results of the studies show toxicity at low mg/L concentrations or if the dye bioconcentrates.

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2.4.b *Methyl Ethyl Ketoxime—Summary of recommended studies.* It is recommended that methyl ethyl ketoxime (MEKO) be tested for the following:

1. *Health Effects.* Chronic toxicity, with special emphasis on hematopoietic and oncogenic effects.

Physical and Chemical Information

CAS Number:
96–29–7
Synonyms:
2-Butanone oxime (9 CI); MEK-OXIME; MEKO
Structural Formula:

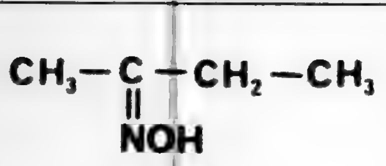

$$CH_3-\underset{\underset{NOH}{\|}}{C}-CH_2-CH_3$$

Empirical Formula:
C_4H_9NO
Molecular Weight:
87.12
Melting Point:
−29.5 °C (Ref. 25, Verschueren, 1983)
Boiling Point:
152 °C (Ref. 25, Verschueren, 1983)
Vapor Pressure:
1.06 mmHg at 20 °C 7.6 mmHg at 50 °C (Ref. 7, Kurita, 1967)
Solubility in Water:
100 g/L at unspecified temperature (Ref. 25, Verschueren, 1983)
Solubility in Organic Solvents:
Miscible with alcohol and ether (Ref. 26, Weast, 1984)
Secific Gravity
0.923 at 20/4 °C (Ref. 25, Verschueren, 1983)
Log Octanol/Water Partition Coefficient (log P):
0.8 (Ref. 6, Leo, 1982, cited in ISHOW, 1985)
Description of Chemical:
Clear, colorless to light-yellow liquid at ambient conditions (Ref. 7, Kurita, 1967; Ref. 2, Allied, 1984a)

Rationale for Recommendations

I. *Exposure information*—A. *Production/use/environmental release.* The public portion of the TSCA Inventory listed on aggregate production volume of 520,000 to 5,202,000 pounds of MEKO in 1977 Ref. 23, USEPA, 1986a). In 1982, approximately 1.9 to 2.7 million pounds of MEKO were produced in the United States and in 1983, 2.0 to 2.9 million pounds were produced (Refs. 27 and 28, Zacharias, 1985, 1986; Ref. 17, SRI, 1984). Imports of MEKO totaled 2.6 million pounds in 1984 (Ref. 21, USDOC, 1985) and 2.2 million pounds in 1985 (Ref. 22, USDOC, 1986).

MEKO is used almost exclusively as the major antiskinning agent in alkyd and coatings. (Ref. 4, CEH, 1981). Antiskinning agents are added at less than 1 percent concentration to typical solvent-thinned paint formulations (Ref. 15, Scofield et al., 1975), prevent oxidation of the paint while in the can and volatilize while the coating is drying (Ref. 10, NIOSH, 1984a). Alkyd paints containing MEKO are used in interior semigloss and gloss paints and exterior enamels, in auto refinishing, and in product finishes for metal furniture, machinery, and appliances (Ref. 16, SRI, 1982).

B. *Evidence for human and enviornmental exposure.* The National Occupational Hazard Survey (NOHS), conducted by the Natioal Institute for Occupational Safety and Health (NIOSH) from 1972 to 1974, estimated that 12,114 workers in 1,540 plants were potentially exposed to MEKO in the workplace in 1970 (Ref 10, NIOSH, 1976).

NIOSH conducted a second survey, the National Occupational Exposure Survey (NOES), from 1980 to 1983. Preliminary data from NOES indicated that 2,145 workers (including 209 women) in the chemical and allied products industry were potentially exposed to MEKO in 1980 (Ref. 11, NIOSH. 1984b).

It has been conservatively estimated that more than 900,000 individuals were potentially exposed to MEKO as professional painters in end-use applications in 1984 (Ref. 19, Stoecklein, 1986). This estimate is exclusive of consumers incidentally exposed during routine painting/decorating activities.

Workplace exposure limits have not been recommended for MEKO by the American Conference of Governmental Industrial Hygienists (Ref. 1, ACGIH, 1986) or established by the Occupational Safety and Health Administration (Ref. 13, OSHA, 1983).

In a montoring study (Ref. 5, Himmelsbach, 1984), a MEKO-containing paint was applied by nonpowered equipment in an interior hall in an office building by four painters. During a 4-hour sampling period, the airborne concentration of MEKO ranged from approximately 0.27 to 0.46 ppm.

There are 764 products listed in the U.S. Consumer Product Safety Commission's Chemicals in Products data base that contained MEKO at concentrations of 0.1 to 0.8 percent (Ref. 20, USCPSC, 1985). Of these, all but 16 are in the paints and coatings category, which includes house and trim finish products, floor paints, wood stains, enamel finishes, yacht bottom and marine paints, traffic paints, heavy-duty equipment enamels, varnishes, interior paints, and primers. Some of the products identified in the nonpaint category are bathroom bowl cleaners, aluminum cleaners, adhesives, and caulking compounds.

No information was found on general population exposure to MEKO. However, it appears that consumers as well as professional painters would potentially be exposed to MEKO via the dermal and inhalation routes, principally through contact with alkyd paints (e.g., interior semigloss and gloss paints, exterior enamels).

An exposure assessment (based on mathematical modeling) has been made for the ITC by the Office of Toxic Substances (Ref. 24, USEPA, 1986b). Based on this analysis, the level to which consumers might be exposed to MEKO was estimated. In this analysis, two coats of a solvent-based alkyd paint containing 1 percent MEKO were applied by roller to most of the interior of a house. The total exposure to MEKO resulting from such an activity was estimated to be 432 mg. While consumers could be exposed to this level on a casual basis, the exposure to professional painters would be more frequent. Hence, the levels to which this group could be exposed to MEKO would be considerably higher.

II. *Chemical fate information.* If released tothe environment, it is likely that MEKO will be photooxidized in the atmosphere and photolyzed or biodegraded in the aquatic environment. Therefore, chemical fate testing is not being recommended at this time.

III. *Biological effects of concern to human health—A. Metabolism and toxicokinetics.* It is expected that MEKO would metabolize to methyl ethyl ketone and hydroxylamine (Ref. 3, Allied, 1984b).

A summary of an unpublished study on tissue distribution (REF. 3, allied, 1984b), reported that pregnant female mice were administered a single oral (unspecified) dose of ^{14}C–MEKO on day 14 of gestation, and one male mouse was administered an unspecified dose of the compound by intratracheal instillation. The following data were reported:

> Whole body autoradiography revealed that MEKO was rapidly absorbed from the stomach and lungs. Widespread uptake and distribution of the label over the entire body of the animal were noted. The tissues with the highest concentration of MEKO included bone, bone marrow, liver, gallbladder, nasal and bronchial epithelium, pancreas, seromucous and salivary glands, spleen, intestinal wall, and thymus. Urine and bile contained significant activity throughout the study. Interstinal activity was minimal. This suggests that MEKO is primarily excreted via the kidneys . . . high concentrations of MEKO were detected in the liver of the fetuses at 24 hours. This concentration was greater than that seen in the livers of the mothers.

B. *Acute and subchronic effects.* The acute toxicity of MEKO is summarized in Table 5 which follows:

TABLE 5.—ACUTE TOXICITY OF METHYL ETHYL KETOXIME IN LABORATORY ANIMALS

Animal	Route	Effects	Reference
Mouse	Orl	LD_{50}: 1.0 g/kg[1]	Allied (1984b, Ref. 3).
Mouse	Ipr	Approx. LD_{50}: 1 g/kg	Pizak and Doull (1969, Ref. 14).
Rat	Orl	LD_{50}: 2.3 g/kg	Allied (1984b, Ref. 3).
Rat	Orl	LD_{50}: 3.7 g/kg	Allied (1984b, Ref. 3).
Rat	Ihl	Saturated vapors for 35 min. Agitation by 2 min and then drowsiness by 35 min when exposed to vapors for 35 min.	Kurita (1967, Ref. 7).
Rat	Ihl	0.19, 1.45, and 4.83 mg/L of MEKO vapors for 4 hr produced no mortality. The high dose group showed evidence of anesthesia after exposure. Methemoglobin formation was noted for the mid- and high-dose levels. Minor changes were noted in hematology or clinical chemistry for all groups.	Allied (1984b, Ref. 3).
Rat	Skn	Doses of 0.02, 0.2, or 2.0 mL/kg for 24 hr produced 100 percent mortality at 2.0 mL/kg; no mortality at lower doses. Methemoglobin was noted at 0.2 and 2.0 mL/kg and a small increase in reticulocytes at 0.2 mL/kg. Nervous system depression was the predominant sign for acute doses. There was no effect at 0.02 mL/kg.	Allied (1984b, Ref. 3).
Rat	Scn	LD_{50}: 2.7 g/kg, LD_{50}: 2.8 g/kg.	Kurita (1967, Ref. 7).

[1] "Oral" LD_{50} reported as cited in Allied (1984b).

In a study in which MEKO in vaseline was applied to rat skin (Ref. 7, Kurita, 1967), transient dermatitis was noted. Mild dermal irritation in the rabbit, usually disappearing within 72 hours of exposure, has also been reported (Ref. 3, Allied, 1984b). Data obtained using the guinea pig maximization test indicated that MEKO has a strong sensitization potential (Ref. 3, Allied, 1984b). Marked hyperemia of the eyelid and bulb conjunctiva was observed in rats following instillation of MEKO into one of the eyes of each of three rats. The observed effects disappeared after 6 to 9 hours (Ref. 7, Kurita, 1967).

The effects of MEKO on various hematologic parameters in rats have been studied (Ref. 7, Kurita, 1967). In one study, five male albino rats received subcutaneous doses of MEKO in olive oil (1.5 mL per kg every other day for 4 weeks). Five control rats were similarly treated with olive oil alone (1.5 mL per kg). At the end of the treatment period, the only statistically significant ($p < 0.05$) effect noted was inhibition of erythrocyte and plasma cholinesterease activity.

In another study (Ref. 7, Kurita, 1967), four groups of male albino rats each received MEKO in olive oil at dose levels of 0.1, 0.5, or 1.0 mL per kg body weight, respectively. The control group received olive oil only. The test material was injected subcutaneously once daily for 4 weeks. Clinical examinations, including body weight and hematologic measurements were performed throughout the experimental period. After 4 weeks, the rats were sacrificed, with blood samples taken and gross and microscopic pathological examinations performed. Dose-related effects were observed at the two highest doses but not at the lowest dose level (0.1 mL per kg per day). According to the author, the effects associated with exposure to MEKO included growth inhibition, increases in the absolute and/or relative weights of the spleen, liver, and kidneys, decreased erythrocyte count and hemoglobin content, secondary leukocytoses, lymphopenia, splenic hypertrophy, impairment of clotting function, atrophy of lymphatic tissue, pulmonary atelectasis, pulmonary emphysema, and bronchial pneumonia. A statistically significant ($p < 0.01$) decrease in serum protein concentration also was noted.

A summary of an unpublished study (Ref. 3, Allied, 1984b) reported that rats were administered MEKO by gavage at doses of 25, 75, and 225 mg per kg per day for 13 weeks. The following data were reported:

> No mortality, changes in appearance or behavior, or abnormalities in urine values were observed in the rats during the study. Slight to moderately lower mean body weights and food consumption were noted at the high dose level at eight and thirteen weeks in the males. All of the treated groups from both sexes showed dose related decreases in erythrocyte count, hematocrit and hemoglobin values and displayed a moderate to market reticulocytosis. Heinz bodies, occasional siderocytes, polychromasia, basophilic stippling and Howell-Jolly bodies were generally present in the mid and high dose groups. Blood chemistries revealed an elevation of total bilirubin and erythrocyte cholinesterase in mid dose males and high dose males and females. Alkaline phosphatase levels of high dose males also increased. A slight depression in blood urea nitrogen and plasma cholinesterase levels were noted in the high dose level female group.
>
> Dose related increases in the absolute and/or relative weight of the spleen, liver and kidney were observed in all treatment groups. The spleens and livers appeared large and/or darkened upon necropsy. Histopathological examination revealed extramedullary

hematopoiesis and increased amounts of greenish-brown pigment located in macrophages of the spleen and liver.

Kidney sections revealed an accumulation of greenish-brown pigment in the epithelial cells lining the proximal convoluted tubules. These data suggest that MEKO induces a hemolytic anemia in the rat with compensatory erythropoiesis. A NOEL (no observable effect level) was not established but was predicted to be less than 25 mg kg/day.

C. *Genotoxicity*. This chemical has been selected by the National Toxicology Program for testing in the Ames assay and is currently on test for *in vitro* cytogenetics (Ref. 12, NTP, 1986). In previously conducted assays, however, MEKO was nonmutagenic in both the Ames and sister chromatid exchange assays (Ref. 3, Allied, 1984b). In another study, MEKO was nonmutagenic in *Salmonella* strains TA98, TA100 TA1535, TA1537, and TA1538 (Ref. 8, NCI, 1985a). MEKO has also been tested in the mouse lymphoma assay (Ref. 9, NCI, 1985b). Under the conditions of the assay, MEKO produced a positive response without metabolic activation and a negative response with metabolic activation.

D. *Oncogenicity*. No information was found.

E. *Chronic (long-term) effects*. No information was found.

F. *Reproductive and developmental effects*. No information was found.

G. *Observations in humans*. No information was found.

H. *Rationale for health effects recommendations*. MEKO is the major antiskinning agent in alkyd coating resins for use in interior semigloss and gloss paints and exterior enamels, in auto refinishing and in product finishes for metal furniture, machinery, and appliances. It volatilizes while the coating is drying and may be inhaled in indoor settings by professional painters and consumers. Apart from the workers exposed to MEKO in the chemical and allied products industry, more than 900,000 professional painters are conservatively estimated to be exposed to this chemical at low levels on a continuous basis in end-use applications. The number of consumers exposed to MEKO through casual painting and decorating activities is assumed to be high, though data do not exist to provide a precise estimate.

Although several short-term toxicity studies have been performed, limited data exist to evaluate its long-term toxicologic effects, particularly on the hematopoietic system. In addition, no data are available that address the oncogenic potential of this compound. Therefore, the Committee recommends the performance of chronic toxicity studies with special emphasis on potential hematopoietic and oncogenic effects.

IV. *Ecological effects of concern*. MEKO is unlikely to persist in the environment at concentrations likely to cause adverse ecological effects. Therefore, ecological effects testing is not being recommended at this time.

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(20) USCPSC. U.S. Consumer Product Safety Commission. Memorandum from E.W. Leland, CPSC, to M. Wind, CPSC (October 11, 1985).

(21) USDOC. U.S. Department of Commerce, Bureau of the Census. "U.S. Imports for Consumption and General Imports," Report FT246/Annual 1983. Washington, DC: U.S. Government Printing Office. P. 1–355 (1985).

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(23) USEPA. Consumer printout (CICIS): 1977 production statistics for chemicals in the nonconfidential TSCA Chemical Substance Inventory. U.S. Environmental Protection Agency, Office of Pesticides and Toxic Substances, Washington, DC (1986a).

(24) USEPA. "Consumer Exposure to Methyl Ethyl Ketoxime." Memorandum from M.H. Thomas, Exposure Assessment Branch, EPA, to L. Rosenstein, Existing Chemical Assessment Division (August 5, 1986(b).

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(27) Zacharias, K. Personal communication from K. Zacharias, National Paints and Coatings Association, to A. Prevesz, Existing Chemical Assessment Division, EPA (September 3, 1985).

(28) Zacharias, K. Personal communication from K. Zacharias, National Paints and Coatings Association, to A. Revesz, Existing Chemical Assessment Division, EPA (September 24, 1986).

[FR Doc. 86–25584 Filed 11–13–86; 8:45 am]

BILLING CODE 6560-50-M

VOL 51 ISS 220 NO 14 1986 UMI

FEDERAL RESERVE SYSTEM

Frandsen Financial Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than November 28, 1986.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Frandsen Financial Corporation,* Rush City, Minnesota; to acquire 100 percent of the voting shares of Farmers and Merchants State Bank of Hinckley, Hinckley, Minnesota.

Board of Governors of the Federal Reserve System, November 7, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-25664 Filed 11-13-86; 8:45 am]

BILLING CODE 6210-01-M

Joseph Rinaudo, Jr., et al.; Acquisition of Banks or Bank Holding Companies; Change in Bank Control

The notificants listed in this notice have applied for the Board's approval under the Change in Bank Control Act (12 U.S.C. 1817(j) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the applications have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors.

Comments regarding these applications must be received not later than November 28, 1986.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Joseph Rinaudo, Jr.,* and Rinaudo Investments, both of St. Francisville, Louisiana; to acquire 15.35 percent of the voting shares of St. Francisville Bancshares, Inc., St. Francisville, Louisiana, and thereby indirectly acquire Bank of St. Francisville, St. Francisville, Louisiana.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Jacoby Dickens* and Paul Montes, Chicago, Illinois; to acquire 68.20 percent of the voting shares of Seaway Bankshares, Inc., Chicago, Illinois, and thereby indirectly acquire Seaway National Bank, Chicago, Illinois.

Board of Governors of the Federal Reserve System, November 7, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-25663 Filed 11-13-86; 8:45 am]

BILLING CODE 6210-01-M

Thompson Falls Holding Co.; Formation of, Acquisition by, or Merger of Bank Holding Companies and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 3, 1986.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Thompson Falls Holding Company,* Thompson Falls, Montana; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of Montana, Thompson Falls, Montana.

In connection with this application, Applicant has also applied to acquire Valley Insurance Agency, Thompson Falls, Montana, and thereby engage in general insurance agency activities in a community with a population not exceeding 5,000, pursuant to § 225.25(b)(8)(ii) of the Board's Regulation Y. These activities will be conducted in Thompson Falls, Montana.

Board of Governors of the Federal Reserve System, November 7, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-25665 Filed 11-13-86; 8:45 am]

BILLING CODE 6210-01-M

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CNB Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 11, 1986.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street), Chicago, Illinois 60690:

1. *CNB Bancorp, Inc.*, Danville, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The City National Bank of Hoopeston, Hoopeston, Illinois.

2. *Conover Bancorporation*, Creston, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank in Creston, Creston, Iowa.

3. *Warranty Bancorporation*, Ottumwa, Iowa; to become a bank holding company by acquiring 80 percent of the voting shares of South Ottumwa Savings Bank, Ottumwa, Iowa.

B. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Bancorp, Inc.*, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of The First Western Bank, Sturgis, South Dakota.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Citizens Bancshares of Marysville, Inc.*, Marysville, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens State Bank, Marysville, Kansas.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. **Security Pacific Corporation**, Los Angeles, California; to acquire 100 percent of the voting shares of California Pacific National Bank, Los Angeles, California.

Board of Governors of the Federal Reserve System, November 10, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-25790 Filed 11-13-86; 8:45 am]

BILLING CODE 6210-01-M

First Acadiana Bank Employee Stock Ownership Plan Trust and William N. Salin; Change in Bank Control Notice; Acquisition of Banks or Bank Holding Companies

The notificants listed in this notice have applied for the Board's approval under the Change in Bank Control Act (12 U.S.C. 1817(j) and § 225.41 of the Board's Regulation Y (12 U.S.C. 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7).

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the applications have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors.

Comments regarding these applications must be received not later than December 1, 1986.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Acadiana Bank Employee Stock Ownership Plan Trust*, Eunice, Louisiana; to acquire 24.9 percent of the voting shares of First Acadiana Corporation, Eunice, Louisiana, and thereby indirectly acquire First Acadiana Bank, Eunice, Louisiana.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *William N. Salin*, Ft. Wayne, Indiana; to acquire 17 percent of the voting shares of Logansport Bancorp, Inc., Ft. Wayne, Indiana, and thereby indirectly acquire shares of Farmers and Merchants Bank, Logansport, Indiana.

Board of Governors of the Federal Reserve System, November 10, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-25791 Filed 11-13-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[IOA-004-N]

Meeting of the Task Force on Technology-Dependent Children

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), this notice announces a meeting of the Task Force on Technology-Dependent Chidlren.

DATE: The meeting will be held on December 4, 1986 from 9:00 a.m. to 4:30 p.m., and on December 5, 1986 from 8:30 a.m. to 1:00 p.m., e.s.t. the meeting will be open to the public.

ADDRESS: The meeting will be held in the Stouffer Concourse Hotel, 2399 Jefferson Davis Highway, Crystal City, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Wilhelm Pickens, (202) 245-0070).

SUPPLEMENTARY INFORMATION:

Purpose

The Task Force on Technology-Dependent Children, established under section 9520 of the Consolidated Omnibus Reconciliation Act of 1985 (Pub. L. 99-272), will investigate alternatives to institutional care for technology dependent children. Technology-dependent children are those with chronic conditions requiring continuing use of medical technology.

The Task Force must report to the Secretary of Health and Human Services, the Administrator of the Health Care Financing Administration (HCFA), and to the Congress concerning alternatives to institutional care for technology-dependent children. The Task Force must develop recommendations designed to:

(1) Identify barriers that prevent the provision of appropriate care in a home or community setting to meet the special needs of technology-dependent children; and

(2) Recommend changes in the provision and financing of health care in private and public health care programs (including appropriate joint public-private initiatives) so as to provide home and community-based alternatives to the institutionalization of technology-dependent children.

To the extent that time and resources permit, the Task Force may develop recommendations that would address additional technology-dependent children concerns. The Task Force will address fully the two specified goals before it takes up any other questions. The Task Force recommendations are intended to be used only at the option of the Department of Health and Human Services and the Congress.

Agenda

Agenda items for the meeting will include orientation, introduction of Task Force members, presentations from experts in the field of technology-dependent children and those conducting studies in this subject area, and discussions of directions and issues to be addressed at the next meeting.

Agenda items are subject to change as priorities dictate.

(Sec. 9520 of Pub. L. 99–272 (42 U.S.C. 1396a note); Sec. 10(a)(2) of Pub. L. 92–463, as amended (5 U.S.C. App. 1))

Dated: November 5, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 86–25696 Filed 11–13–86; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health

Establishment and Reestablishment of Committees; Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee et al.

Pursuant to the Federal Advisory Committee Act of October 6, 1972 [Pub. L. 92–463, 86 Stat. 770–776[and the Health Research Extension Act of 1985, November 20, 1985 [Pub. L. 99–158, section 402(b)(6)], the Director, National Institutes of Health, announces the establishment of the Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee and the reestablishment, effective December 1, 1986, of the following committees:

Biomedical Library Review Committee
Board of Scientific Counselors, National Institute of Diabetes and Digestive and Kidney Diseases
Board of scientific Counselors, National Institute of Environmental Health Sciences
Board of Scientific Counselors, National Library of Medicine
Diabetes and Digestive and Kidney Diseases Special Grants review Committee
Environmental Health Sciences Review Committee.

The duration of these committees is continuing unless formally determined by the Director, NIH, that termination would be in the best public interest.

Dated: November 7, 1986.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 86–25783 Filed 11–13–86; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting of Ad Hoc Acrylonitrile Study Advisory Panel

Notice is hereby given of the meeting of the Acrylonitrile Study Advisory Panel on December 17, 1986, Building 31, C Wing, Conference Room 7, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The meeting will be open to the public from 9:00 a.m. to adjournment for discussion and review of the study protocol and study progress. Attendance by the public will be limited to space available.

Dr. David McB. Howell, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Etiology, National Cancer Institute, Building 31, Room 11A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–6927) will provide summaries of the meeting, rosters of panel members and substantive program information, upon request.

Dated: November 6, 1986.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 86–25784 Filed 11–13–86; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting of National Cancer Advisory Board

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board, National Cancer Institute, December 8–10, 1986, to be held at Memorial Sloan-Kettering Cancer Center, 1275 York Avene, New York, New York 10021. The entire meeting will be open to the public December 8 from 8:30 a.m. until recess: December 9 from 8:30 a.m. until recess; and December 10 from 8:00 a.m. until adjournment. The Director's Report on the National Cancer Institute, and the Program Review on the NCI Cancer Centers Program will be presented. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, NCI, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will furnish summaries of the meetings and rosters of members, upon request.

Mrs. Barbara S. Bynum, Executive Secretary, National Cancer Advisory Board, National Cancer Institute, Building 31, Room 10A03, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5147) will furnish substantive program information.

Dated: November 6, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86–25785 Filed 11–13–86; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14880–A]

Alaska Native Claims Selection; Kikiktugruk Inupiat Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Kikiktugruk Inupiat Corporation for approximately 0.28 acre. The lands involved are in the vicinity of Kotzebue, Alaska.

Kateel River Meridian, Alaska

Tract C, U.S. Survey No. 2863A.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Tundra Times. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal Government or regional corporation, shall have until December 15, 1986, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart

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E, shall be deemed to have waived their rights.

Joe J. Labay,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-25672 Filed 11-13-86; 8:45 am]

BILLING CODE 4310-JA-M

[UT-050-4432-17]

Utah; Richfield District Advisory Council; Meeting and Tour

AGENCY: Bureau of Land Management, Interior.

ACTION: Advisory council meeting and tour.

SUMMARY: Notice is hereby given that a Council Meeting will be held in the Richfield District Office in Richfield, Utah on December 11, 1986 at 10:00 a.m. The tour is scheduled for the following day.

Agenda items include: the noxious weed problem, the status of Annual Work Plan, the Henry Mountain Coordinated Resource Management Plan, the proposed Mt. Ellen chaining rehabilitation plan, an update on the Riley Creek and Mt. Ellen road appeals, and an overview of the rules and regulations of the mineral program.

The tour will be to review the fire rehabilitation program for areas involved with wild fires this past summer. The tour is open to the public however they must provide their own transportation.

The business meeting is also open to the public. Interested persons may make oral statements to the Council from 2:00 p.m. to 3:00 p.m. December 11, 1986.

For further information contact Bert Hart, Public Affairs Officer, BLM, 150 East 900 North, Richfield, Utah 84701, (801) 896-8221.

Larry R. Oldroyd,

Associate District Manager.

November 5, 1986.

[FR Doc. 86-25669 Filed 11-13-86; 8:45 am]

BILLING CODE 4310-DQ-M

[WY-040-06-4133-15]

Wyoming; Rock Springs District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Rock Springs, Interior.

ACTION: Notice of meeting of the Rock Springs District Advisory Council.

DATE: The meeting will be held December 18, 1986, at 10 A.M.

ADDRESS: Rock Springs District Office, Bureau of Land Management, U.S. Highway 191 North, Rock Springs, Wyoming.

FOR FURTHER INFORMATION CONTACT: Donald H. Sweep, District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902-1869, (307) 382-5350.

SUPPLEMENTARY INFORMATION: The meeting will begin at 10 A.M., Thursday, December 18 in the District Office Conference Room.

The agenda is:

Roles and Responsibilities for Wildlife Programs in Wyoming
Update on Hickey Mountain EIS
Update on Cedar Canyon EA
Public Comment Period

Donald H. Sweep,

District Manager.

[FR Doc. 86-25671 Filed 11-13-86; 8:45 am]

BILLING CODE 4310-22-M

Albuquerque District, NM; Proposed Land Disposal in Santa Fe and Rio Arriba Counties

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action on proposed land disposal.

SUMMARY: This notice is to advise the public that the Albuquerque District, of the Bureau of Land Management (BLM), is proposing to dispose of approximately 30.44 acres of public land near the Village of Chimayo within Santa Fe and Rio Arriba Counties, State of New Mexico.

SUPPLEMENTARY INFORMATION: The BLM has determined that the acres of public land described below are suitable for disposal under the Color-of-Title Acts of 1928 (45 Stat. 1069), 1932 (47 Stat. 53; 43 U.S.C. 178), and Sales Under section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1713 (1976).

New Mexico Principal Meridian

Chimayo I, New Mexico Public Land Disposal Block

Township 20 North, Range 9 East
  Sec. 1: Lots 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 56, 57, 59;
  Sec. 4: Lots 28, 30, 32, 33, 34, 35, 36, 37;
  Sec. 5: Lot 22;
  Sec. 8: Lots 22, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 38.
Township 21 North, Range 9 East
  Sec. 33: Lot 3.

Comprising approximately 30.44 acres.

Disposal of these lands is consistent with: (1) The approved Land Use Recommendations of the BLM's 1979 Rio Grande Management Framework Plan, (2) their location as well as the physical characteristics and the private ownership of adjoining lands, make them difficult and uneconomical to manage as public lands, so disposal would best serve the public interest, (3) this Notice of Realty Action will be published once a week for three weeks in a newspaper of general circulation and will be sent to the New Mexico Congressional Delegation and the relevant congressional committees by BLM. The specific parcels of public land will be disposed of using the following "Tract Disposal Criteria" in descending order of priority:

1. *Color-of-Title.* Color-of-Title disposals will be made to any applicant within the disposal area who qualifies under the Color-of-Title Acts.

2. *Non-Competitive (Direct) Sale.* Public lands within the disposal block will be sold without competition at Fair Market Value to those individuals who occupied the parcels before June 11, 1979 (the date land use plans were approved) but who do not qualify for title under one of the color-of-title acts.

The terms and conditions applicable to the disposal are:

1. The patents will contain a reservation to the United States for ditches and canals.

2. All disposals are for surface estate only. The patents will contain a reservation to the United States for all minerals.

3. Tracts which lie within the 100 year floodplain of the Santa Cruz River will be subject to EO 11988 which precludes the seeking of compensation from the United States or its agencies in the event existing or future facilities on those tracts are damaged by flood.

4. All disposals will be made subject to prior existing rights.

Additional information pertaining to this disposal including the environmental documents are available for review at the Taos Resource Area Office, Plaza Montevideo, Cruz Alta Road, Taos, New Mexico 87571, or telephone (505) 758-8851. For a period of 45 days from the date of this notice, interested parties may submit written comments to the Taos Resource Area Manager. Any adverse comments will be evaluated by the New Mexico State Director, Bureau of Land Management, who may vacate or modify this realty action and issue a final determination.

In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: November 6, 1986.

L. Paul Applegate,

District Manager.

[FR Doc. 86-25668 Filed 11-13-86; 8:45 am]

BILLING CODE 4310-FB-M

[AZ-050-07-4212-12; A-20349]

Realty Action; Exchange of Public Lands in Mohave County, AZ for State Lands in Mohave, La Paz, and Yuma Counties, AZ

The following described in lands and interests therein have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

Twp.	Rge.	Sec.	Subdivision
16N	20½W	14	NE¼; E½NW¼; N½N½SW¼; Lots 1, 2, 3, 4
		15	NE¼SE¼; E½NE¼; Lots 1, 2, 3, 5, 8
16N	21W	1	Lots 1, 2, 3, 4; S½N½; S½
		3	E½
		12	All.
		13	All.
		24	E½; S½NW¼; N½SW¼; SE¼SW¼
		25	All
		26	E½; NW¼

Containing 4,579.47 acres, more or less.

In exchange for these lands, the United States will acquire the following described lands from the State of Arizona:

Twp.	Rge.	Sec.	Subdivision
2S	19W	16	SE¼SE¼
2S	23W	32	All
3S	23W	2	Lot 4
		32	SE¼SW¼
4S	23W	2	Lots 1, 2, 3, 4, 5, 6; N½S½; N½
		16	All
2N	19W	2	Lots 1, 2, 3, 4; S½N½; S½
4N	20W	16	SE¼SE¼
5N	19W	2	Lots 1, 2, 3, 4; S½N½; S½
		16	SE¼; S½SW¼
		36	All
5N	20W	32	Lots 5, 6, 7, 8; E½E½
8N	15W	32	SW¼SW¼
8N	16W	2	Lots 1, 2, 3, 4; S½N½; SW¼SW¼SW¼
8N	17W	16	All
		36	All
8N	18W	2	Lots 1, 2, 3, 4; S½N½; S½
		16	All
		32	S½S½N½; S½
		36	NE¼; N½SW¼; SW¼SW¼
9N	15W	16	All
		32	All
9N	16W	2	Lots 1, 2, 3, 4; S½N½; S½
		16	All
		32	All
		36	All
9N	18W	16	NW¼
10N	16W	2	All
11N	16W	2	E½; NW¼
		4	Lots 1, 2, 3, 4; S½N½; S½
		8	All
		10	All
		14	All
		18	All
		22	All
		26	N½, N½S½
11N	17W	2	Lots 1, 2, 3, 4; S½N½; S½
		24	All
		36	SW¼
11N	18W	2	SW¼NE¼; SE¼NW¼
12N	17W	1	Lots 1, 2, 3, 4; S½
		2	NE¼SE¼
		3	Lots 1, 2, 3, 4; S½
		5	Lots 1, 2, 3, 4; S½
		7	Lots 1, 2, 3, 4; E½W½; E½
		9	All
12N	18W	1	Lots 1, 2, 3, 4; S½
		2	Lots 1, 2
		3	Lots 1, 2, 3, 4; S½
		11	All
		13	All
		15	All
		21	All
		36	E½; E½W½; W½NW¼; NW¼SW¼
13N	17W	16	All
		32	All
13N	18W	32	All
15N	18W	32	SW¼
16N	18W	36	E½

Containing 29,000 acres more or less.

The public land to be transferred will be subject to existing rights.

A final appraisal will be completed to determine the value of the disposal and acquired lands. On the basis of the appraisal, all or a portion of the lands will be exchanged to compensate an equal value exchange.

Publication of this Notice will segregate the subject lands form all appropriations under the public lands laws, including the mining laws, but not mineral leasing laws. This segregation will terminate upon issuance of a patent or two years from the date of publication of this Notice in the **Federal Register**, or upon publication of a Notice of Termination.

Detailed information concerning this exchange can be obtained from the Havasu Resource Area Office, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86403. For a period of forty-five (45) days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85364. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: November 7, 1986.

Robert B. Abbey,

Acting District Manager.

[FR Doc. 86-25767 Filed 11-13-86; 8:45 am]

BILLING CODE 4310-32-M

Alaska State Office; Proposed Reinstatement of a Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-49464-Z has been received covering the following lands:

Kateel River Meridian, Alaska

T. 2S., R. 4 W.,
  Sec. 23. SW¼SE¼.

(40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accuring from June 1, 1985, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-49464-Z as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effecative June 1, 1985, subject to the terms and conditions cited above.

Dated: November 6, 1986.

Kay K. Fletka,

Acting Chief, Branch of Mineral Adjudication.

[FR Doc. 86-25764 Filed 11-13-86; 8:45 am]

BILLING CODE 4310-84-M

[WY-010-07-4332-09]

Draft Resource Management Plan/Environmental Impact Statement, Draft Wilderness Environmental Impact Statement, and Public Hearing Schedule; for the Washakie Resource Area, Worland District, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Draft Washakie Resource Management Plan/Environmental Impact Statement, the Draft Washakie Wilderness Environmental Impact Statement, and Public Hearing Schedule.

SUMMARY: The Bureau of Land Management announces the availability for public review of the Draft Washakie Resources Management Plan/Environmental Impact Statement (RMP/EIS) and the Draft Washakie Wilderness Environmental Impact Statement (EIS), which is a supplement of the RMP/EIS. The Washakie Resource Area encompasses portions of Big Horn, Washakie, and Hot Springs Counties.

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The Draft Wilderness EIS addresses wilderness suitability recommendations for five wilderness study areas covering 67,610 acres of public land in the Washakie Resource Area. The Draft RMP/EIS analyzes future options for managing 1,234,000 acres of public land and 1,603,000 acres of Federal mineral estate in the Bureau's Washakie Resource Area in the Big Horn Basin of north-central Wyoming.

The Draft RMP/EIS also recommends the designation of about 11,200 acres of BLM administered public surface and mineral estate within the Trapper and Medicine Lodge Creek watersheds as the Spanish Point Karst Area of Critical Environmental Concern (ACEC). Within the boundaries of the ACEC, are lands in the national forest system and privately owned surface. The designation of an ACED would pertain to the surface and mineral estate managed by the BLM and to the BLM administered Federal mineral estate under private and forest system lands. The non-BLM administered surface would not be affected by the designation of the ACEC.

It is recommended, upon designation of the Spanish Point Karst ACEC, that management prescriptions for the area pursue a course of optimizing watershed opportunities over other resource concerns in the area due to recharge areas for the Madison aquifer and the existence of regional and nationally important caves. Management options for the area vary and are described in the watershed management sections of the draft RMP/EIS.

Notice is also given that a public hearing will be held to seek public comment on the wilderness suitability recommendations, including the impacts of the proposed action and alternatives, as explained in the Draft EIS document, and that a public meeting will be held to accept comments on the Draft Washakie RMP/EIS.

DATES: Written comments on the analysis and recommendations contained in both the Draft RMP/EIS and the Draft wilderness EIS will be accepted for 90 days following the date the Environmental Protection Agency publishes the notice of filing of these drafts in the **Federal Register**. A public hearing on the wilderness suitability recommendations will be held on Thursday, December 11, 1986, at 7:30 p.m., at the BLM's Worland District Office. Oral and written testimony will be accepted at that hearing. Immediately following the formal wilderness public hearing, a public meeting will be held to accept oral and written comments on the Washakie RMP.

ADDRESSES: Written comments on the documents should be addressed to: Area Manager, Washakie Resource Area, Bureau of Land Management, P.O. Box 119, Worland, Wyoming 82401. The public hearing will be held at the Worland District Office, 101 S. 23rd Street, Worland, Wyoming.

SUPPLEMENTARY INFORMATION: The Draft Washakie RMP/EIS analyzes five comprehensive alternatives for managing and allocating public land and resource uses within the Washakie Resource Area. Any of the alternatives could be chosen as the proposed management for the resource area and would provide for realistic management of the public lands.

The preferred alternative identified in the RMP/EIS is a combination of three of the four other alternatives analyzed. The RMP/EIS is primarily focused on resolving four key resource management issues that were identified with public involvement early in the planning process. These issues are: (1) Affects on vegetative resources, (2) special designations, (3) affects on water resources, and (4) adequacy of resource accessibility and manageability.

The Draft Wilderness EIS evaluates the environmental consequences expected to result from alternative management options for the wilderness study areas. The effects of continuing present management are examined in a "No Wilderness" alternative. Other alternatives analyzed ("All Wilderness", "Wilderness Enhancement", and "Partial Wilderness") recommend wilderness designation for different combinations of study area lands. The proposed action for the Honeycombs (WY-010-221), Cedar Mountain (WY-010-222), Medicine Lodge (WY-010-240), and Alkali Creek (WY-010-241) wilderness study areas is the "No Wilderness" alternative. The proposed action for the Trapper Creek WSA (WY-010-242) is the "All Wilderness" alternative.

Oral and written testimony on the wilderness suitability recommendations will be accepted at the public hearing. Persons wishing to testify should provide a written copy of their testimony to the Hearings Officer at the hearing. Oral and written comments will be accepted during the public meeting on the Washakie RMP/EIS, and a written copy of these comments should be made available to BLM personnel during the meeting.

Copies of the Washakie RMP/EIS and the Wilderness EIS supplement are available at the Worland District Office, at the addresses listed above.

FOR FURTHER INFORMATION CONTACT: Roger Inman, Washakie Resource Area Manager, David Stout, RMP/EIS Team Leader, or Mark Goldbach, Wilderness EIS Team Leader, at the addresses listed above, or at (307) 347-9871.

Hillary A. Oden,

State Director.

[FR Doc. 86-25624 Filed 11-13-86; 8:45 am]

BILLING CODE 4310-22-M

[UT-040-4410-10]

Utah; Cedar City District Management Plan Preparation

AGENCY: Bureau of Land Management, Interior.

ACTION: Notification of Resource Management Plan Preparation; Dixie Planning Unit, Dixie Resource Area, Cedar City District, Utah.

ADDRESS: Comments or requests for information should be directed to David Brine, Team Leader, Bureau of Land Management, P.O. Box 726, St. George, Utah 84770. Telephone (801) 673-4654.

SUMMARY: The Cedar City District, Bureau of Land Management announces it's intent to prepare a Resource Management Plan (RMP) for 638,518 acres of public land located in the Dixie Resource Area in Washington County, Utah. Washington County is located in the south-western corner of Utah and is bordered on the west by Lincoln County, Nevada and on the south by Mojave County, Arizona and on the north and east respectively by Iron and Kane Counties, Utah. Zion National Park and parts of the Dixie National Forest are also located adjacent to BLM administered Federal lands in the planning area.

The Bureau of Land Management has completed the replanning phase of the RMP process. The primary emphasis of this phase has been to identify preliminary planning issues, preliminary planning criteria, preliminary alternatives and to focus the analysis. Three preliminary issues were identified at topics of public controversy or dispute. Briefly, they are to determine: (1) The highest and best use for those public lands in Washington County where rapid urban encroachment is generating problems with the management of natural resources; (2) future management of outdoor recreation near the burgeoning communities; (3) how proposed water storage projects will influence natural resource management.

The planning area has one designated 3,040 acre research natural area, the

Woodbury Desert Study Area, which will be considered for ACEC designation. Other ACEC designations will be considered during this planning process. Nominations may be made by the public and other agencies. They must be accompanied by descriptive materials, maps, and evidence of the relevance and importance of the values or hazards involved.

Four preliminary alternatives have been developed. These are: (1) Continue with current Management Framework Plan (1979); (2) develop an RMP with emphasis on community development trends integrated with the principles of multiple use; (3) maximize opportunities to dispose of public lands identified by local and state planning interests as needed for community expansion; (4) maximize retention and protection of public lands where disposal could jeopardize natural resource values.

The Cedar City District has identified an interdisciplinary team to participate in each phase of the planning process. Discplines represented are: lands, recreation, minerals, wildlife, range, soil, water and air resources, forestry, archaeology, fire, and socio-economics.

The public will have opportunities to provide input into this RMP via public scoping meetings, mail distribution of information, news media releases, **Federal Register** Notices and public reviews of all documents at appropriate states of the planning process. A public participation plan schedule of actions has been developed as part of the preplanning analysis.

Documents relevant to the planning process are available from the above adress: Interested persons wishing to participate in issue identification, development of planning criteria, alternatives or other phases of the planning process should contact David Brine, Team Leader, at the above address or telephone.

Dated: November 4, 1986.

Morgan S. Jensen,

District Manager.

[FR Doc. 86-25670 Filed 11-13-86; 8:45 am]

BILLING CODE 4310-DQ-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Applicant: World Insectivorus Plants, Marietta, GA, PRT-710158.

The applicant requests a permit to sell in interstate commerce, artificially propagated green pitcher plants (*Sarracenia oreophila*) grown from seeds obtained from several locations prior to the date upon which this species was determined to be endangered. The applicant postulates that disposal of these specimens would prevent hybridization and therefore facilitate efforts at this nursery to propagate green pitcher plants from seeds supplied by the Georgia Department of Natural Resources. Plants propagated from those seeds are intended to be used to restock wild populations in Georgia.

Applicant: Dennis McEwan, California State University, Sacramento, CA, PRT-713124.

The applicant requests a permit to conduct the following activities with the Owens tui chub (*Gila bicolor snyderi*) in Hot Creek Headwater springs, Mono County California, for scientific research: (a) Capture thirty chubs and place them in an artificial stream chamber for approximately two days for a microhabitat selection study; (b) capture, mark and release an unlimited number of chubs for an estimation of the population size and structure; (c) capture fifteen chubs and transport them to California State University, Sacramento, where they will be placed in an aquarium for investigation of water quality tolerance limits; and (d) collect and sacrifice ten chubs every three months for a one year period to examine their stomach contents for a study on their food habits.

Applicant: Dallas Zoo, Dallas TX, PRT-713227.

The applicant requests a permit to export one male Malayan tapir (*Tapirus indicus*) to the Sao Paul Zoo, Brazil for breeding and exhibition. This animal was captured in the wild prior to December 1959.

Applicant: Pamela Bompart, Helena, MT, PRT-713273.

The applicant requests a permit to import four pairs of captive-born goldern parakeets (*Aratinga guarouba*) from Carterton Breeding Aviaries, Oxford, England for breeding purposes.

Applicant: San Diego Zoo, San Diego, CA, PRT-713277.

The applicant requests a permit to import one female captive-born lowland tapir (*Tapirus terrestris*) from the West Berlin Zoo, Federal Republic of Germany for breeding and exhibition. This female will be placed on exhibit with a single male currently held at San Diego Zoo.

Applicant: San Diego Zoo, San Diego, CA, PRT-713331.

The applicant requests a permit to import one male captive-born Bactrian deer (*Cervus elaphus bactrianus*) from the Koln Zoo, Federal Republic of Germany for breeding purposes. This male will be added to their herd of one male and two females to increase genetic variability.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: November 10, 1986.

Earl B. Baysinger,

Chief, Federal Wildlife Permit Office.

[FR Doc. 86-25781 Filed 11-13-86; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Document; Tenneco Oil Exploration and Production

AGENCY: Mineral Management Service, Department of the Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4565, Block 303, Galveston Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Pelican Island, Texas.

DATE: The subject DOCD was deemed submitted on November 4, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Wholesalers Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Serive, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section,

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Exploration/Development Plans Unit; Phone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979. (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 7, 1986.

J. Rogers Pearcy

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-25766 Filed 11-13-86; 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Exxon Company, U.S.A.

AGENCY: Minerals Management Service, Department of the Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document.

SUMMARY: This Notice announces that Exxon Company, U.S.A., Unit Operator of the West Delta Block 30, C-4, Reservoir Q Federal Unit Agreement No. 14-08-0001-11690, submitted on October 28, 1986, and October 30, 1986, a proposed Development Operations Coordination Document describing the activities it proposes to conduct on the West Delta Block 30, C-4, Reservoir Q Federal unit.

The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan that it is available for public review at the offices of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Wholesalers Parkway, New Orleans, Louisiana 70123.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 114, open weekdays 9:00 a.m. to 3:30 p.m., 1201 Wholesalers Parkway, New Orleans, Louisiana 70123, phone (504) 736-2519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in the proposed development operations coordination document available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: November 7, 1986.

J. Roger Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-25768 Filed 11-13-86; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than November 24, 1986. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Fred D. Allen, (703) 875-1573, IRM/PE, Room 1109, SA-14, Washington, DC 20523. Date Submitted: November 6, 1986.

Submitting Agency: Agency for International Development.

Form Number: AID Form 1550-2.

Type of Submission: Renewal.

Title: Computation of Percentage of Private Funding for PVO's International Activities.

Purpose: A.I.D. is required to collect information regarding the financial support of private and voluntary organizations (PVOs) registered with the Agency. The information is used to determine the eligibility of PVOs to receive A.I.D. funding.

Reviewer: Francine Picoult (202) 395-7231, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

Dated: November 5, 1986.

Fred D. Allen,

Planning and Evaluation Division.

[FR Doc. 86-25677 Filed 11-13-86; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[No. MC-C-30002]

Motor Carriers; Victoria Terminal Enterprises, Inc.; Transportation of Fertilizer Within Texas; Petition for Declaratory Order

AGENCY: Interstate Commerce Commission.

ACTION: Notice of filing of petition for declaratory order.

SUMMARY: Victoria Terminal Enterprises, Inc., a motor carrier, seeks institution of a declaratory order proceeding to determine whether the transportation of fertilizer from terminals in seven Texas counties to other Texas points is interstate or intrastate in nature. Arcadian Corporation, the involved shipper, ships bulk fertilizers from out-of-state manufacturing facilities to the terminals by barge and rail, temporarily stores them there, breaks them down into smaller volumes, and then reships them by motor carrier to customers at other Texas points.

DATES: Persons interested in participating in this proceeding should so advise the Commission in writing by December 1, 1986. A list of interested parties will then be complied and served. Victoria will have 10 days from service date of that list to serve each party on the list and the Commission with a copy of its petition and any additional comments. Other parties will then have 35 days from the service date of the service list to submit their comments to the Commission and to petitioner's representative. Petitioner will have 50 days from the service date of the service list to reply.

ADDRESS: Send an original and, if possible, 10 copies of comments referring to No. MC-C-30002 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

Send one copy of comments to petitioner's representative: William P. Jackson, Jr., P.O. Box 1240, Arlington, VA 22210.

FOR FURTHER INFORMATION CONTACT:
Paul Schach, (202) 275-7885
or
Louis E. Gitomer, (202) 275-7691.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T. S InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC, 20423, or call 289-4357

(DC Metropolitan area) or toll-free (800) 424-5403.

Decided: October 28, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Chairman Gradison and Commissioner Lamboley commented with separate expressions. Vice Chairman Simmons dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 86-25819 Filed 11-13-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30931]

Colleton County Railroad Co., Inc.; Trackage Rights; Hampton and Branchville Railroad Co., Inc.;

Hampton and Branchville Railroad Company, Inc., has agreed to grant overhead trackage rights to Colleton County Railroad Company, Inc., between Hampton and H & B Junction, SC, a distance of 17 miles. The trackage rights were effective on November 1, 1986.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry. Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: November 3, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86-25555 Filed 11-13-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

District of Columbia:	
DC86-1 (Jan. 3, 1986)	p. 80, pp. 86-89.
Florida:	
FL86-17 (Jan. 3, 1986)	p. 144.
Massachusetts:	
MA86-3 (Jan. 3, 1986)	pp. 375-382.
New York:	
NY86-13 (Jan. 3, 1986)	p. 752.
Pennsylvania:	
PA86-5 (Jan. 3, 1986)	p. 831

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Arkansas:	
AR86-1 (Jan. 3, 1986)	p. 4.
Illinois:	
IL86-1 (Jan. 3, 1986)	p. 71.
IL86-2 (Jan. 3, 1986)	pp. 93, 103.
IL86-3 (Jan. 3, 1986)	p. 106.
IL86-4 (Jan. 3, 1986)	pp. 112, 114.
IL86-5 (Jan. 3, 1986)	pp. 116-117.
IL86-6 (Jan. 3, 1986)	pp. 121-122.
IL86-7 (Jan. 3, 1986)	pp. 127, 129.
IL86-8 (Jan. 3, 1986)	pp. 133, 135.
IL86-9 (Jan. 3, 1986)	pp. 137-141.
IL86-11 (Jan. 3, 1986)	pp. 147, 150.
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IL86-13 (Jan. 3, 1986)	pp. 163-164.
IL86-14 (Jan. 3, 1986)	p. 174.
IL86-15 (Jan. 3, 1986)	p. 184.
IL86-16 (Jan. 3, 1986)	pp. 194, 200.
IL86-17 (Jan. 3, 1986)	pp. 208, 212a.
Michigan:	
MI86-1 (Jan. 3, 1986)	pp. 385-398b.
MI86-4 (Jan. 3, 1986)	p. 423.
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MI86-12 (Jan. 3, 1986)	pp. 470-471

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MI86–17 (Jan. 3, 1986)	pp. 486–487.
Minnesota:	
MN86–5 (Jan. 3, 1986)	pp. 497–499.
MN86–7 (Jan. 3, 1986)	pp. 511, 520.
MN86–8 (Jan. 3, 1986)	p. 530.
Missouri:	
MO86–3 (Jan. 3, 1986)	pp. 569–571.
Oklahoma:	
OK86–13 (Jan. 3, 1986)	pp. 821–822.
OK86–14 (Jan. 3, 1986)	p. 832.
Volume III	
California:	
CA86–2 (Jan. 3, 1986)	p. 51.
North Dakota:	
ND86–2 (Jan. 3, 1986)	pp. 209, 212.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 7th day of November 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86–25620 Filed 11–13–86; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

[Docket No. M–86–133–C]

International Anthracite Corp.; Petition for Modification of Application of Mandatory Safety Standard

International Anthracite Corporation, Box 546, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its B&M Tunnel Mine (I.D. No. 36–01781) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The Mine is in the Lykens Valley No. 5 Seam which ranges from 3.0 to 22.0 feet in thickness, dips to the south at 52–55 degrees and has a hardgrove of approximately 90.

3. The method of coal extraction is a sublevel caving method. A gangway (rock tunnel), sixteen feet wide by 10.5 feet in height, is driven approximately forty feet behind the seam and paralleling the strike. Shuttle entries are then driven on seventy foot centers and at a sixty degree angle off the gangway to intersect the coal. The coal is then loaded out using a Joy 14–BU loader, Long AirDox continuous haulage system and belt conveyors.

4. The Joy 14–BU loader is operated using the remote control unit with the operator standing on a platform behind the kitchen using the shortened canopy as an area to set controls.

5. When operating from the above stated platform position, the operator's visibility is increased. The placement of a cab or canopy would result in decreased visibility and blind areas, increasing the chances of an accident.

6. As an alternate method, petitioner states that the roof for twenty feet outby the intersection of the shuttle entry and the coal is bolted on four foot spacings, and wire mesh (chain link fencing) is installed and supported by these same bolts.

7. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 15, 1986. Copies of the petition are available for inspection at that address.

Dated: November 3, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86–25758 Filed 11–13–86; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–86–142–C]

New Lincoln Coal Company, Inc.; Petition for Modification of Application of Mandatory Safety Standard

New Lincoln Coal Company, Inc., 837 East Grand Avenue, Tower City, Pennsylvania 17980 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its No. 1 Vein Slope (I.D. No. 36–07629) located in Schuylkill County, Pennsylvania. The petition is filed under seciton 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slope with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed, they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 15, 1986. Copies of the petition are available for inspection at that address.

Dated: November 4, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-25759 Filed 11-13-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-141-C]

Snyder Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Snyder Coal Company, R.D. #2, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its N. & L. Slope (I.D. No. 36-02203) located in Northumberland County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed, they would be activated on knuckles and curves when when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting advice. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 15, 1986. Copies of the petition are available for inspection at that address.

Dated: November 3, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-25760 Filed 11-13-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-136-C]

Western Fuels-Utah, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Western Fuels-Utah, Inc., P.O. Box 1067, Rangely, Colorado 81648 has filed a petition to modify the application of 30 CFR 75.326 (air courses and belt haulage entries) to its Deserado Mine (I.D. No. 05-03505) located in Rio Blanco County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that entries used as intake and return air courses be separated from belt haulage entries.

2. Coal is produced from two coal seams and an interaction between these seams must be considered in the layout of the mine.

3. Petitioner states that application of the standard would result in a diminution of the safety due to the instability of roof and rib caused by increasing the number of entries.

4. Through past experience, petitioner has discovered that roof-falls are greater in panels which were developed using three-entry systems than in panels using two-entry systems. Over-development on advance contributes to the degradation of roof strength caused by the density of kettlebottoms and associated slickensides. Use of the entries would also result in benefits to ventilation, fire control, and escapeway.

5. As an alternate method, petitoner proposes to use the belt entry for return air in a two-entry type development section as follows:

(a) For fire protection: (1) Diesel scoops will meet the requirements of 30 CFR Part 36. Mantrips and utility vehicles which do not meet the requirements of 30 CFR Part 36 will be equipped with 2-10 lb. fire extinguishers. Only one such machine will operate at a time in the dual entry and a dispatcher will be present to enforce this rule;

(2) All overcasts and stoppings will be structurally equivalent or superior to 8 inch hollow core concrete blocks with mortared joints and provide a minimum fire resistance of 1 hour. Aluminum will not be used in ventilation controls;

(3) Combustible liquid storage will not exceed daily usage. No diesel will be stored in the two-entry;

(4) No battery charging stations or trolley will be permittted in the two-entry, and no underground storage of polyurethane will be allowed;

(5) The emulsion pump station will be located off panel in a minimum 1-hour fire resistant structure, and monitored for carbon monoxide (CO);

(6) All electrically powered equipment will use fire resistant hydraulic fluid or be protected by a fire suppression system;

(7) Plug and receptable type connector will be used for high voltage cable; and

(8) Continuous rock dusting units will operate during mining in belt entry/return on development and in tailgate on retreat.

(b) For fire detection: (1) The intake escapeway will be continuously monitored for CO on both retreat and development. Sensors will be located at the intake split and at not more than 2000 foot intervals inbye to the last open crosscut. All permanent electrical installations in two-entry will have CO sensors. The section or longwall power center will have a CO sensor;

(2) Belt line monitoring will consist of CO sensors at drive rollers, tailpiece, and less than 2000 foot spacing along the belt line. Belt line in return will also have methane (CH_4) sensors every 2000 feet;

(3) The tailgate return and the bleeder return will be continuously monitored for CO and CH_4 inbye the intersection with the main air course;

(4) The CO and CH_4 monitoring devices will be visually examined every 24 hours, and inspected by a qualified person every seven days. The monitor will be calibrated at least every 30 days, and an inspection record kept on the surface;

(5) On development, the belt entry return methane monitoring will provide an audio/visual alarm on the working section and at a staffed surface location when the level of methane reaches 0.8 volume per centum. The device will automatically deenergize the section power and conveyor belt when the level of methane reaches 1.0 volume per centum. The detection system will operate for a minimum of four hours on battery if the mine power is deenergized;

(6) A visual and audible alarm will be activated when the CO reaches a designated level. The alarms will be activated at an attended surface location where there is two-way

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communication. The monitor will be capable of identifying any activated sensor and to detect system malfunctions; and

(7) If the CO or CH_4 system is deenergized for any reason, a qualified person will patrol the affected area using hand-held CO or CH_4 detectors. CO or CH_4 detection devices will be available for use on each two-entry section, development or retreat.

(c) For fire control: (1) The water system at the mine is gravity fed. Power disruptions will not affect the firefighting capabilities of the system;

(2) Reflective signs or markers will be used to identify the location of fire outlets, hoses, and extinguishers;

(3) Fire suppression systems will be installed on all belt drives and permanent electrical installations in two-entry; and

(4) Water line will be installed the entire length of the belt conveyor, equipped with outlets every 300 feet and at tailpiece and drive.

(d) For evacuation-escapeways: (1) Four specific escapeways (2 primary and 2 secondary) will be provided;

(2) Longwall panels will not operate without passable primary escapeways;

(3) Systematic supplemental support will be installed throughout the tailgate entry of the first dual entry longwall panel prior to mining the panel. Systematic supplemental support for tailgate entries of subsequent panels will be installed in advance of the frontal abutment stresses of the adjacent panel being mined;

(4) Sufficient numbers of self-contained self-rescuers will be stored in the tailgate to service all personnel normally working on the face and tailgate; and

(5) A dual communication line will be maintained into the dual entry on both development and retreat. One line will be in the roadway, the other in the belt entry.

(e) For ventilation: (1) Velocity of air will be between at least 50 but not more than 500 feet per minute;

(2) An intake air velocity station will be mounted on intake split. This velocity will be continuously monitored at an attended surface station. An alarm will indicate a 25% reduction from normal velocity. A return air velocity station will be mounted on the return, inby its junction with the main return. This velocity will be continuously monitored at an attended surface station; and

(3) The bleeder system will be protected by barrier pillars, and will be designed to have two separate entries all the way to the main return.

6. Petitioner states that the proposed alternative method and associated safety precautions outlined above will provide the same degree of safety for the miners affected as that afforded by the standard.

Requests for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 15, 1986. Copies of the petition are available for inspection at that address.

Dated: November 5, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-25761 Filed 11-13-86; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

4,4'-Methylenedianiline Mediated Rulemaking Advisory Committee; Meetings; Correction

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of relocation of meetings, correction.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given of the relocation of the next Advisory Committee meeting. It is anticipated that the meeting will last from one to three days but this may vary as the work of the Committee proceeds. For the purpose of this notice only the beginning date is given.

DATES: The meeting is scheduled to begin on November 18, 1986 at 9:30 a.m. in the Walter J. Burke Education Center of the United Steelworkers of America International Union at Linden Hall in Dawson, Pennsylvania 15428.

Status: These meetings will be open to the public.

ADDRESS: Submissions presented in response to this notice should be sent in quadruplicate to the Docket Officer, Docket No. H-040, Room N3670, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC 20210; (202) 523-7894. Written comments received, as well as other information in Docket H-040, will be available for inspection and copying at this address, Monday through Friday, 8:15 a.m. to 4:45 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3637, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone (202) 523-8615.

SUPPLEMENTARY INFORMATION: On October 22, 1985, OSHA announced its intent to make use of negotiated rulemaking in developing a proposed standard for MDA (50 FR 42790-42793). The notice also set forth the basic concepts of negotiated rulemaking and outlined the participant selection criteria which OSHA expected to use in establishing an MDA Advisory Committee.

OSHA established the committee in accordance with the Federal Advisory Committee Act (FACA) and section 7(b) of the Occupational Safety and Health Act (OSH Act) to mediate issues associated with the development of a Notice of Proposed Rulemaking on MDA.

Appointees to the committee include representatives from labor, industry, health and safety groups, and government agencies.

A schedule of meeting dates and agenda items was published on August 4, 1986 (51 FR 27919), and corrected on October 6, 1986 (51 FR 35571). This notice changes the location for the meeting beginning November 18, 1986.

Members of the public wishing to submit written statements to the Committee that are germane to the agenda may do so. Such statements should be in reproducible form and should be submitted to the OSHA Division of Consumer Affairs at least 5 days before the meeting. In addition, the Mediator or Chairman of the Committee has the authority to decide to what extent oral presentations by members of the public may be permitted at the meeting.

Minutes of these meetings will be available for public inspection at the OSHA Docket Office, U.S. Department of Labor, Rm. N-3670, 200 Constitution Ave., NW., Washington, DC 20210; Telephone (202) 523-7894.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 86-25873 Filed 11-13-86; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 86-83]

NASA Advisory Council, History Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, History Advisory Committee.

DATE AND TIME: November 25, 1986, 8:30 a.m. to 3:30 p.m.

ADDRESS: NASA Johnson Space Center, Building One, Room 817, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Dr. Sylvia D. Fries, Code LBH, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–2999).

SUPPLEMENTARY INFORMATION: The History Advisory Committee was established to provide advice and guidance to the NASA history program, which maintains a non-record historical reference file and publishes works in the history of aeronautics and space science and technology. The Committee, chaired by Dr. Melvin Kranzberg, consists of 9 members. The meeting must be held at this time in order to assure full attendance of committee members prior to the end of the academic year.

This meeting will be closed to the public from 1:30 p.m. to 3:30 p.m. on November 25 for a discussion of (a) the qualifications of candidate historians to do a contract history project and (b) new committee members. Such a discussion would invade the privacy of the individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public. Visitors will be requested to sign a visitor's register.

Type of Meeting

Open, except for a closed session as noted in the agenda below.

Agenda

November 25, 1986

8:30 a.m.—Program Status and Briefings.
11 a.m.—Review of NASA Johnson Space Center History Office Functions.
12:30 p.m.—Review of NASA History Program Plans.
1:30 p.m.—Discussion of Candidate Committee Members (closed session).
2:30 p.m.—Discussion of Candidate Historians and Proposals for NASA Funded Histories (closed session).
3:30 p.m.—Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

November 7, 1986.

[FR Doc. 86–25695 Filed 11–13–86; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Inter-Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Interdisciplinary Arts Projects Section) to the National Council on the Arts will be held on December 1–2, 1986, from 9:00 a.m.–8:00 p.m.; on December 3, 1986, from 9:00 a.m.–6:00 p.m.; on December 4, 1986, from 9:00 a.m.–8:00 p.m.; and on December 5, 1986, from 9:00 a.m.–5:30 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on December 5, from 3:00 p.m.–5:30 p.m. to review guidelines and discuss policy issues.

The remaining sessions of this meeting on December 1–2, 1986 from 9:00 a.m.–8:00 p.m.; on December 3, from 9:00 a.m.–6:00 p.m.; December 4, from 9:00 a.m.–8:00 p.m.; and on December 5, from 9:00 a.m.–3:30 p.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

November 7, 1986.

[FR Doc. 86–25687 Filed 11–13–86; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–11834, License No. 12-06539–02, EA 86–102]

Cook County Highway Department; Order Imposing Civil Monetary Penalties

In the Matter of Cook County Highway Department, Bureau of Construction, 118 North Clark Street, Chicago, IL 60602.

I

Cook County Highway Department, Chicago, IL (the licensee) is the holder of License No. 12–06539–02 issued by the Nuclear Regulatory Commission (the Commission/NRC) which authorizes the licensee to use byproduct material in a source holder (gauge) for moisture/density measurements.

II

An NRC special inspection of the licensee's activities under the license was conducted May 8 and 14, 1986. During the inspection, the NRC staff determined that the licensee had not conducted its activities in full compliance with NRC requirements and the conditions of its license. A written Notice of Violation and Proposed Imposition of Civil Penalties was served upon the licensee by letter dated July 1, 1986. The Notice stated the nature of the violations, the provisions of the Nuclear Regulatory Commission's requirements that the licensee had violated, and the cumulative amount of the proposed civil penalties. A response dated July 28, 1986, to the Notice of Violation and Proposed Imposition of Civil Penalties was received from the licensee.

III

After consideration of the licensee's response and the statements of fact, explanation, and arguments for remission or mitigation of the proposed civil penalties contained therein, as set forth in the Appendix to this Order, the Director, Office of Inspection and Enforcement has determined that the violations occurred as stated and the penalties proposed in the Notice of

Violation and Proposed Imposition of Civil Penalties should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96-295), and 10 CFR 2.205, it is hereby ordered that: The licensee pay civil penalties in the cumulative amount of Five Hundred Dollars ($500) within thirty days of the date of this Order, by check, draft or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

V

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of the hearing request also shall be sent to the Assistant General Counsel for Enforcement, Office of the General Counsel at the same address. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. If the licensee fails to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such a hearing shall be:

(a) Whether the licensee violated NRC requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalties, and

(b) Whether, on the basis of such violations, this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland, this 6th day of November, 1986.

James M. Taylor,

Director, Office of Inspection and Enforcement.

Appendix—Evaluations and Conclusions

In a letter dated July 28, 1986, the licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalties dated July 1, 1986. In its response, the licensee admits the violations occurred as described in the Notice, requests mitigation of the civil penalties and provides reasons why it believes that mitigation of the penalties is appropriate. Provided below are: (I) A restatement of each violation, the licensee's response regarding each violation, and NRC's evaluation of each licensee response, (II) a summary of the licensee's arguments in support of mitigation of the proposed penalties, and (III) NRC's evaluation and conclusion.

I. Restatement of Violations, Licensee's Response, and NRC's Evaluation

A. Restatement of Violation A

Lisense Condition No. 12 requires that licensed material be used by or under the supervision and in the physical presence of specifically named individuals.

Contrary to the above, during the period April 16 through May 7, 1986, a moisture/density gauge containing licensed material was used by an individual who was not specifically named in License Condition No. 12 and was not under the supervision and in the physical presence of an individual specifically named in License Condition No. 12.

Licensee's Response

The licensee admits that License Condition No. 12 was violated, yet contends the training it provided the unauthorized user was more extensive than the authorized training course provided by the guage manufacturer. In addition, the licensee claims the unauthorized user was conversant with radiological safety procedures since he had studied the manufacturer's manual and also had worked with X-ray equipment in college.

NRC Evaluation

A licensee's training program must be recieved by NRC, approved, and incorporated into a license before it can be implemented. The training that the licensee provided to the individual had not been approved by the NRC and incorporated into the license.

The licensee claims that the individual was conversant with safety procedures since he had studied the manufacturer's manual; however, when questioned during the inspection, the individual was not familiar with the NRC rules and requirements governing gauge licenses. These rules and requirements are described, in detail, in the Troxler instruction manual. The licensee's claim that the individual had experience with X-ray equipment in college is not of significance since the individual apparently had no previous experience with the radioactive materials or devices that were used by the licensee.

Based upon the above information, no adequate reason has been provided for withdrawal of this violation.

B. Restatement of Violation B.1

License Condition No. 18 requires that licensed material be possessed and used in accordance with the statements, representations, and procedures contained in the application dated February 24, 1981 and the letter dated June 29, 1981.

Contrary to the above, licensed material was not possessed and used in accordance with statements, representations, and procedures contained in the referenced application and letter as evidenced by the following example:

The referenced letter, dated June 29, 1981, requires that when gauge use is not required, the guage shall be stored at the permanent storage location at the LaGrange Maintenance Facility.

However, from July 1981 when this requirement became effective until May 8, 1986, individuals routinely stored moisture/density gauges at their private residences when use was not required, rather than at the LaGrange Maintenance Facility.

Licensee's Response

The licensee admits that License Condition No. 18 was violated; however, the Illinois Department of Nuclear Safety allows storage of radium gauges at the operators' residences due to hardships encountered when returning gauges to the storage area at the main facility after hours. The licensee claims that since it is regulated by the NRC and the Illinois Department of Nuclear Safety and there are varying regulations, the NRC requirement for the storage of the gauges was overlooked. The licensee currently is storing all NRC licensed guages at the approved storage area at the main facility until temporary storage facilities are authorized by the NRC.

NRC Evaluation

The licensee stated in its June 29, 1981 letter that gauges would be stored at its permanent storage location at the LaGrange Maintenance Facility. Storage at any other location, including a private residence, requires a license amendment and the submission of detailed information to the NRC pertaining to the storage and control of such material to protect the public health and safety. The licensee did not submit such information to the NRC and did not request that its license be amended to authorize storage at private residences; therefore, the LaGrange Maintenance Facility is the only authorized place of storage. Overlooking the NRC requirement for the storage of the gauges is significant and is not justification for violating a NRC requirement.

Based upon the above, no adequate reason has been provided for withdrawal of this violation.

C. Restatement of Violation B.2

License Condition No. 18 requires that licensed material be possessed and used in accordance with the statements, representations, and procedures contained in the application dated February 24, 1981 and the letter dated June 29, 1981.

Contrary to the above, licensed material was not possessed and used in accordance with statements, representations, and procedures contained in the referenced application and letter as evidenced by the following example:

The referenced application, dated February 24, 1981, designates a specific individual as the Radiation Protection Officer.

However, in April 1984, the licensee appointed an individual to act as the Radiation Protection Officer who was not designated in the referenced application and who had not been approved by the NRC.

Licensee's Response

The licensee admits it failed to amend its NRC license to reflect the appointment of a new Radiation Protection Officer. The

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licensee stated the transitional period between Radiation Protection Officers was a turbulent time at the highway department due to hospitalization of the new Radiation Protection Officer. When the Radiation Protection Officer returned to work, the required amendment request was simply overlooked. The licensee also claimed that the new Radiation Protection Officer was familiar with NRC regulations and Troxler gauge and X-ray diffraction equipment at the time of his appointment.

NRC Evaluation

It is the licensee's responsibility to submit an amendment request prior to changing Radiation Protection Officers. The credentials of the individual must be reviewed by the NRC prior to issuing a license amendment to ensure that the individual is qualified to fill the position of Radiation Protection Officer.

In the case of the Cook County Highway Department, licensee management failed to request a license amendment as required and failed to ensure that the newly appointed Radiation Protection Officer was familiar with the NRC rules and requirements. This is evidenced by the fact that the NRC inspector had to provide the Radiation Protection Officer with copies of the NRC license and referenced material during the curse of the inspection.

Based upon the above information, no adequate reason has been provided for withdrawal of the violation.

D. Restatement of Violation B.3

License Condition No. 18 requires that licensed material be possessed and used in accordance with the statements, representations, and procedures contained in the application dated February 24, 1981 and the letter dated June 29, 1981.

Contrary to the above, licensed material was not possessed and used in accordance with statements, representations, and procedures contained in the referenced application and letter as evidenced by the following example:

The reference application, dated February 24, 1981, requires that each gauge be monitored on a weekly basis with a gamma survey meter. The application also requires that each gauge be monitored once per year by the safety and training division of the Cook County Highway Department and an insurance company agent.

However, from October 25, 1982 until May 8, 1986, no monitoring was performed of any gauges possessed by the licensee.

Licensee's Response

The licensee admits the required radiation surveys were not performed. The licensee stated that surveys were required by both the NRC and the Illinois Department of Nuclear Safety licenses and in 1982, when the licensee amended its State license to eliminate the requirement of surveys, it failed to amend its NRC license to reflect the change in procedures. Due to the confusion that resulted from operating under two licenses, the required NRC surveys were inadvertently discontinued. The licensee has initiated the surveys again and proposes to eliminate the requirement in its pending NRC license renewal application.

NRC Evaluation

It is the licensee's responsibility to ensure compliance with the NRC's rules and regulations. The licensee's failure to either amend its NRC license or perform the surveys is further evidence that the licensee was not familiar with the NRC's rules and regulations.

Based upon the above information, no adequate reason has been provided for withdrawal of the violation.

E. Restatement of Violation B.4.

License Condition No. 18 requires that licensed material be possessed and used in accordance with the statements, representations, and procedures contained in the application dated February 24, 1981 and the letter dated June 29, 1981.

Contrary to the above, licensed material was not possessed and used in accordance with statements, representations, and procedures contained in the referenced application and letter as evidenced by the following example:

The referenced application dated February 24, 1981 requires that the licensee's Victoreen Model 592B survey meter be calibrated on an annual basis.

However, the licensee's Victoreen Model 592B survey meter was not calibrated during the period January 13, 1982 through May 8, 1986.

Licensee's Response

The licensee admits that the survey meter had not been calibrated as required. The licensee stated that the meter had been placed in storage when surveys were discontinued. The survey meter has been calibrated and is now back in service.

NRC Evaluation

It is the licensee's responsibility to ensure compliance with NRC's rules and regulations. The licensee's failure to calibrate the Victoreen Model 592B survey meter further demonstrates the licensee's lack of knowledge regarding the requirements set forth in its NRC license.

Based upon the above information, no adequate reason has been provided for withdrawal of the violation.

II. Licensee's Request for Mitigation

The licensee offers the following reasons why it believes the proposed civil penalty should be mitigated.

1. The actions that resulted in violations are not prohibited by the Commission's own regulations, but are present in its license due to a poor job of preparation five years ago.
2. The violations resulted from confusion arising from operating under two separate licensing entities and two sets of regulations.
3. The licensee has operated safely for the past 23 years and has taken necessary steps to bring its operations into full compliance with the terms of its NRC license.

III. NRC Evaluation and Conclusion

A. NRC Evaluation

The following evalation will address each of the three reasons set forth by the licensee in support of its request for mitigation.

1. All license conditions are regulatory requirements and violation of these requirements is a basis for taking appropriate enforcement action. The licensee is attempting to excuse its failure to comply with regulatory requirements by claiming it did a poor job of preparing the license application and as a result committed to actions that were not required by NRC regulations. The NRC licensing staff concluded during its license application review that the licensee's commitments were appropriate and were correctly incorporated into the license as regulatory requirements. Therefore, this does not provide a basis for mitigation.
2. It is management's responsibility to ensure that it is actively involved in the licensed program and is aware of NRC regulatory requirements. Although the licensee is regulated by the NRC and the Illinois Department of Nuclear Safety, it is management's responsibility to assure that NRC regulatory requirements are understood and followed. Confusion on the part of the licensee management is not a basis for mitigation.
3. The licensee's actions to bring its program into compliance with NRC regulatory requirements were prompted by the special inspection conducted by the NRC and the enforcement conference conducted at the Region III office. Such actions are no more than is expected of licensees when violations of NRC regulations or license conditions are identified. Although no violations were identified during the initial inspection on January 21, 1981 it was shortly thereafter, in July 1981, that the licensee instituted the practice of permitting individuals to store gauges in their private residences. Therefore, the NRC does not consider that there is a basis for mitigation.

B. NRC Conclusion

The NRC staff has concluded that all of the violations occurred as stated in the July 1, 1986 Notice of Violation and Proposed Imposition of Civil Penalties. These violations collectively demonstrated that adequate control and oversight of the radiation safety program at the licensee's facility had not been exercised. A sufficient basis was not provided for mitigation of the Civil Penalty; therefore, the NRC staff has concluded that the $500 civil penalty should be imposed.

[FR Doc. 86-25774 Filed 11-13-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-327 and 50-328]

Tennessee Valley Authority; Denial of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied in part a request by the licensee for amendments to Facility Operating License Nos. DPR-77 and DPR-79, issued to the Tennessee Valley Authority (the licensee) for operation of the Sequoyah Nuclear Plant (the facility) located in Hamilton County, Tennessee.

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The amendments, as proposed by the licensee, would modify the Sequoyah Technical Specifications to remove the requirement for testing of the instantaneous elements of the molded case circuit breakers (MCCBs). The licensee's application for the amendments was dated August 8, 1986. Notice of consideration of issuance of these amendments was published in the **Federal Register** on September 24, 1986 (51 FR 33958). Other changes requested in that letter are still under staff review.

Although the Commission initially proposed a determination of "no significant hazards consideration" (NSHC) regarding the amendment request, upon additional considerations reached based upon a full safety review, the request to remove the requirements for testing of MCCBs was denied because no reasonable basis to eliminate such testing has been provided by the licensee.

The licensee was notified of the Commission's denial of this request by letter dated November 7, 1986.

By Dec. 15, 1986, the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by the proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Serivce Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of General Counsel—Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to Lewis E. Wallace, Acting General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E11B33, Knoxville, Tennessee 37902, attorney for the licensee.

For further details with respect to this action, see: (1) The application for amendment dated August 8, 1986, and (2) the Commission's letter to Tennessee Valley Authority dated Nov. 7, 1986, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37401. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of PWR Licensing–A.

Dated at Bethesda, Maryland, this 7th day of November 1986.

For the Nuclear Regulatory Commission.

B.J. Youngblood,

Director, PWR Project Directorate #4, Division of PWR Licensing–A.

[FR Doc. 86–25771 Filed 11–13–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–338 and 50–339]

Virginia Electric and Power Co., North Anna Power Station Units 1 and 2; Exemption

I

The Virginia Electric and Power Company (VEPCO, the Licensee) is the holder of Operating License No. NPF–4 which authorizes operation of North Anna Power Station Unit 1 and Operating License No. NPF–7 which authorizes operation of Unit 2. These operating licenses provide, among other things, that the North Anna Power Station is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The station comprises two pressurized water reactors at the Licensee's site located in Louisa County, Virginia.

II

On November 19, 1980, the Commission published a revised § 50.48 and a new Appendix R to 10 CFR 50 regarding fire protection features of nuclear power plants. The revised § 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specified requirements for a particular aspect of the fire protection features at a nuclear power plant. Two of these subsections, III.G and III.J, are the subject of the Licensee's exemption requests.

Subsection III.G.2 of Appendix R requires that one train of cables and equipment necessary to achieve and maintain safe shutdown be maintained free of fire damage by one of the following means:

a. Separation of cables and equipment and associated nonsafety circuits of redundant trains by a fire barrier having a 3-hour rating. Structural steel forming a part of or supporting such fire barriers shall be protected to provide fire resistance equivalent to that required of the barrier.

b. Separation of cables and equipment and associated nonsafety circuits of redundant trains by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area.

c. Enclosure of cable and equipment and associated nonsafety circuits of one redundant train in a fire barrier having a 1-hour rating. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area.

Subsection III.G.3 of Appendix R requires that for areas where alternative or dedicated shutdown is provided, fire detection and a fixed fire suppression system shall also be installed in the area, room, or zone under consideration.

Subsection III.J of Appendix R requires that emergency lighting units with at least an 8-hour battery-powered supply be provided in all areas needed for operation of safe shutdown equipment; and in access and egress routes thereto.

III

By letters dated May 1, 1984, the Licensee requested exemptions from sections III.G and III.J of Appendix R. By letters dated October 31, 1984, August 21, 1985, and March 21, 1986, the Licensee transmitted revisions to their Appendix R evaluation. These exemption requests are the subject of this report.

The following list of exemption requests, therefore, reflects the latest status:

1. Auxiliary, Fuel, and Decontamination Buildings (Fire Area 11). An exemption was requested from the specific requirement of Section III.G.3 to the extent that full area fire detection and fixed suppression systems are not installed throughout the area.

2. Containment Incore Instrument Tunnel (Fire Areas 1–1 and 1–2). An exemption was requested from the specific requirement of Section III.G.2.d to the extent that intervening combustibles exist between redundant cables and equipment.

3. Quench Spray Pump House (Fire Areas 15–1 and 15–2). An exemption was requested from the specific requirement of Section III.G.3 to the extent that automatic fire suppression systems are not installed throughout the fire areas.

4. Main Steam Valve House (Fire Areas 17–1 and 17–2). An exemption was requested from the specific requirement of Section III.G.3 to the extent that automatic fire suppression systems are not installed throughout each fire area.

5. Auxiliary Feedwater Pump House (Fire Areas 14B–1 and 14B–2). An exemption was requested from the specific requirement of Section III.G.3 to the extent that automatic fire

suppression systems are not installed throughout the fire areas.

6. Charging Pump Cubicles (Elevation 244 Feet, 6 Inches). An exemption was requested from the specific requirement of section III.G.2.a to the extent that nonrated removable concrete walls do not provide a 3-hour fire resistance rating.

7. Separation of Instrumentation Inside the Containment (Fire Areas 1–1 and 1–2). An exemption was requested from the specific requirement of section III.G.2.d to the extent that intervening combustibles exist between redundant cables and equipment separated by 20 feet or by radiant energy shields.

8. Emergency Lighting in the Seal Water Filter Area, Main Control Room, and Exterior Access Routes. An exemption was requested from the specific requirement of section III.J to the extent that it requires 8-hour emergency lighting in all areas needed for operation of safe shutdown equipment; and in access and egress routes thereto.

9. Chiller Rooms (Elevation 254 Feet, 0 Inch of the Service Building). An exemption was requested from the specific requirements of section III.G.2.a to the extent that ventilation penetrations through fire barriers are not provided with fire dampers.

10. Auxiliary Building Ventilation Equipment Area, Fire Area 11. An exemption was requested from the specific requirement of section III.G.2.b to the extent that full area detection and suppression are not provided.

In summary, the exemptions were requested from separating cables and associated nonsafety circuits of redundant trains by 3-hour rated fire barriers as required in section III.G.2.a of Appendix R, and from providing automatic fire suppression and detection systems as part of the protection requirements of sections III.G.2.b and III.G.3 of Appendix R. Additionally, exemptions from the intervening combustible requirements of section III.G.2.b and the emergency lighting requirements of section III.J were requested.

The Licensee has provided alternative and/or acceptable levels of fire protection for areas containing redundant safe shutdown systems not separated from each other. Fire protection in areas containing more than the negligible combustible load and containing safe shutdown equipment or cables consists of fire detectors and/or automatic fire suppression systems, portable extinguishers, and hose stations.

The staff finds that there is reasonable assurance that a fire in these areas would be of low magnitude, promptly detected, and extinguished by the fire brigade. The low combustible loading ensures that redundant safe shutdown equipment located in the adjoining areas will not be damaged before the fire brigade can extinguish the fire.

Base on the review of the licensee's analyses, the staff concludes that the level of fire protection provided is equivalent to the technical requirements of sections III.G and III.J of Appendix R. Additional details concerning the exemptions are provided in the safety evaluation dated November 6, 1986.

By letter dated September 30, 1986, the Licensee provided information relevant to the "Special circumstances" finding required by revised 10 CFR 50.12(a) (see 50 FR 50764). The Licensee stated that existing and proposed fire protection features at North Anna Power Station Units 1 & 2 accomplished the underlying purpose of the rule. Implementing additional modifications to provide additional suppression and detection systems and fire barriers would require the expenditure of engineering and construction resources as well as the associated capital costs which would represent an unwarranted burden on the licensee's resources. The Licensee stated that it would be necessary to design and install modifications to provide additional fire detection and fire suppression systems, fire barriers, fire doors and dampers, emergency lighting, and instrumentation. Additional dedicated personnel may be required. Engineering and construction support would be necessary to reroute substantial amounts of existing cable and conduit and install fire-rated wrap and conduit seals. Increased surveillance, test and maintenance effort would be necessary to support the new or augmented systems. Overall, these changes would require a significant expenditure of engineering, construction, and operations resources, as well as associated capital costs.

The Licensee stated that these costs are significantly in excess of those required to meet the underlying purpose of the rule. The staff concludes that "special circumstances" exist for the Licensee's requested exemptions in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of Appendix R to 10 CFR 50. See 10 CFR 50.12(a)(2)(ii).

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a): (1) These exemptions as described in section III are authorized by law and will not present an undue risk to the public health and safety and are consistent with common defense and security, and (2) special circumstances are present for the exemptions in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of Appendix R to 10 CFR 50. Therefore, the Commission hereby grants the following exemptions from the requirements of sections III.G and III.J of Appendix R to 10 CFR 50:

1. Auxiliary, Fuel, and Decontamination Buildings (Fire Area 11) to the extent that automatic fire suppression and detection systems are not installed throughout the fire area pursuant to section III.G.3.

2. Containment Incore Instrument Tunnel (Fire Areas 1–1 and 1–2) to the extent that safe shutdown cables and equipment are not separated by 20 feet of separation with no intervening combustibles pursuant to the requirements of section III.G.2.d.

3. Quench Spray Pump House (Fire Areas 15–1 and 15–2) to the extent that automatic fire suppression systems are not installed throughout the areas pursuant to section III.G.3.

4. Main Steam Valve House (Fire Area 17–1 and 17–2) to the extent that automatic fire suppression systems are not installed throughout the fire areas pursuant to section III.G.3.

5. Auxiliary Feedwater Pump House (Fire Areas 14B–1 and 14B–2) to the extent that automatic fire suppression systems are not installed throughout the fire areas pursuant to section III.G.3.

6. Charging Pump Cubicles (Elevation 244 Feet, 6 Inches) to the extent that redundant safe shutdown cables and equipment are not separated by a 3-hour rated fire barrier pursuant to section III.G.2.a.

7. Separation of Instrumentation Inside the Containment (Fire Areas 1–1 and 1–2) to the extent that safe shutdown cables and equipment separated by 20 feet, or radiant energy shields are not free of intervening combustibles pursuant to section III.G.2.d.

8. Emergency Lighting in the Seal Water Filter Area, Main Control Room, and Exterior Access Routes to the extent that 8-hour battery-powered emergency lighting is not provided pursuant to section III.J.

9. Chiller Rooms to the extent that redundant safe shutdown cables and equipment are not separated by a 3-hour rated fire barrier pursuant to section III.G.2.a.

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10. Auxiliary Building Ventilation Equipment Area (Fire Area 11) to the extent that full area detection and suppression are not provided.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of these exemptions will have no significant impact on the environment (51 FR 35708).

A copy of the Safety Evaluation dated November 6, 1986, related to this action is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the local public document rooms located at the Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901. A copy may be obtained upon written request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Director, Division of PWR Licensing-A.

These Exemptions are effective upon issuance.

Dated at Bethesda, Maryland this 6th day of November, 1986.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Acting Director, Division of PWR Licensing-A, Office of Nuclear Reactor Regulation.

[FR Doc. 86-25770 Filed 11-13-86; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-277 and 50-278]

Philadelphia Electric Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC/the Commission) is considering issuance of an exemption from the requirements of Appendix R of 10 CFR 50 to the Philadelphia Electric Company (PECO/the licensee), for the Peach Bottom Atomic Power Station, Units 2 and 3 located in York County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

The licensee would be exempted from the requirements of Sections III.F and III.M of Appendix R to 10 CFR 50 to the extent that automatic fire detection systems would not be required in the Emergency Cooling Tower Stairwell (III.F) and that certain penetration seals would be constructed of non-combustible materials (III.M).

The Need for the Proposed Action

The licensee has undertaken a penetration seal modification program in accordance with staff accepted ASTM tests. However, certain modified seals still contain combustible material not in accordance with III.M of Appendix R although they meet the ASTM test standards.

In addition, the licensee has requested that the Emergency Cooling Tower Stairwells be exempt from the requirements of III.F (Automated Fire Detection Systems) of Appendix R because there are no fixed combustibles. The area and access is strictly limited by plant security.

Environmental Impact of the Proposed Action

The proposed action would not impact the ability to effect safe shutdown of the plant in the event of a fire and would provide an acceptable level of safety, equivalent to that attained by compliance with Section III.F and III.M of Appendix R to 10 CFR 50. On this basis, the Commission concludes there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted areas as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the Peach Bottom Atomic Power Station, Units 2 and 3.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated May 27, 1984, as supplemented July 22, September 16, December 2, 1983, February 10, September 17, 1984, January 16 and September 24, 1985 (Section III.M) and request for exemption dated September 16, 1983 (Section III.F), which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Government Publication Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania, 17126.

Dated at Bethesda, Maryland this 10th day of November 1986.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Division of BWR Licensing.

[FR Doc. 86-25773 Filed 11-13-86; 8:45 am]

BILLING CODE 7590-01-M

Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a decision concerning certain pleadings submitted to Commissioner Asselstine by Marvin Lewis. The pleadings requested that the Commission shutdown all Boiling Water Reactors (BWRs) until all residual heat removal problems have been resolved.

The Director, Office of Nuclear Reactor Regulation, has determined to deny the request to shutdown all BWRs. The reasons for this decision are explained in the "Director's Decision Under 10 CFR 2.206", DD-86-16, which is available for public inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC.

A copy of the Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c). As provided in this regulation, the Decision will constitute the final action of the Commission twenty-five (25) days after issuance, unless the Commission, on its own motion, institutes review of the Decision within that time period.

Dated at Bethesda, Maryland, this 6th day of November 1986.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 86-25772 Filed 11-13-86; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-24234]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

November 6, 1986.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 1, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Consolidated Natural Gas Company (70-7290)

Consolidated Natural Gas Company ("Consolidated"), Four Gateway Center, Pittsburgh, Pennsylvania 15222, a registered holding company, has filed a declaration pursuant to section 12(b) of the Act and Rule 45 thereunder.

Consolidated requests authorization to enter into a General Agreement of Indemnity ("Agreement") for an indefinite period or such such period as this Commission may approve with Continental Casualty Company, National Fire Insurance Company of Hartford and American Casualty Company of Reading, Pennsylvania ("CNA"). Under the terms of the Agreement, CNA will issue bonds and similar undertakings on behalf of the subsidiary companies of Consolidated relating to such matters as self-insured workers' compensation, oil and gas well drilling, fuel tax, condemnation and road damage. Consolidated will guarantee the obligations of the subsidiary companies and will indemnify CNA against any liability which it may pay or incur.

Approximately 200 bonds totalling $9.8 million are currently outstanding. This amount may increase over time, according to the requirements of state or local law.

Gulf Power Company and Mississippi Power Company (70-7294)

Gulf Power Company ("Gulf"), 75 North Pace Boulevard, Pensacola, Florida 32520, and Mississippi Power Company ("Mississippi"), 2992 West Beach, Gulfport, Mississippi 39501, electric utility subsidiaries of The Southern Company, a registered holding company, have filed a declaration pursuant to section 6(a), 7 and 12(b) of the Act and Rules 45 and 50 thereunder.

Mississippi has reached agreements for the termination of two existing contracts for the supply of coal to Plant Daniel, an electric generating facility in Jackson County, Mississippi which is jointly owned by Mississippi and Gulf. Under a new agreement, Mississippi will make payments to the suppliers of $59.6 million and $61.0 million, respectively ("Termination and Closure Payments"). Mississippi will borrow up to $121.6 million from a special purpose corporation ("SPC") and will enter into a new contract with SPC for the supply of coal to the plant ("New Contract"). In turn, SPC will enter into an agreement for the supply of coal to it under terms substantially identical to those of the New Contract.

To provide funds to finance the Termination and Closure Payments, it is contemplated that SPC will issue and sell up to $121.6 million aggregate principal amount of its notes ("Notes"), payable semi-annually at a rate per annum to be determined by negotiations with the purchasers thereof and maturing no later than December 31, 1997. Mississippi would agree in the New Contract to make payments for coal which will include a sum ("Minimum Payments") to amortize the principal of and interest on the Notes. The Minimum Payments will be made as the coal is delivered to Mississippi, but Mississippi's obligation to pay sums equal to the Minimum Payments under the Notes will be irrespective of the delivery of coal. The Minimum Payments would be assigned by SPC to a trustee for the benefit of the holders of the Notes. In addition, Mississippi would guarantee the payment of the Notes pursuant to a Contingent Guaranty Agreement. In order to secure its obligations under the Contingent Guaranty Agreement and the New Contract, Mississippi may convey a subordinated security interest in certain of its properties.

As owner of a 50% undivided interest as tenant in common in Plant Daniel, Gulf will be responsible for one-half of all costs incurred by Mississippi pursuant to such arrangement. Mississippi acts as Gulf's agent in the operation of the plant.

If the financing arrangement described is not consummated on a timely basis, Gulf and Mississippi propose in the alternative that each of their short-term borrowing authorizations be increased by $65,000,000 to permit interim financing of the Termination and Closure Payments.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-25685 Filed 11-13-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15401; File No. 812-6465]

Application and Opportunity for Hearing; Security First Life Insurance Co. et al.

November 6, 1986.

Notice is hereby given that the Security First Life Insurance Company ("Security First Life"); Security First Life Separate Account A ("Separate Account") and Security First Financial, Inc., a registered broker-dealer and principal underwriter of the Separate Account (hereinafter collectively referred to as "Applicants"), at 11365 West Olympic Boulevard, Los Angeles, California 90064, filed an application on August 29, 1986, and an amendment thereto on October 9, 1986, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting the Applicants from the provisions of sections 26(a)(2)(C) and 27(c)(2) of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act for a statement of the relevant statutory provisions.

Applicants state that Security First Life is an insurance company organized under the laws of the State of Delaware in 1980, and the Separate Account was established by Security First Life on May 29, 1980, under the laws of the State of Delaware and registered as a unit

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investment trust under the Act. Applicants state that the Separate Account presently consists of three Series, each of which invests solely in the shares of one of the following open-end, diversified management investment companies: Security First Legal Reserve Fund, Inc., Security First Variable Life Fund, Inc., and Security First Money Market Fund, Inc. (hereinafter collectively referred to as the "Funds").

Applicants state that annuity payments will not be affected by the mortality experience of persons receiving such payments or of the general population, and that this mortality risk is assumed by virtue of annuity rates guaranteed in the Contract. The basis for these annuity rates is Security First Life's Modified Select Annuity Mortality Table projected to the year 2000 on Projection Scale C, with interest at 4.25%. The annuity rates cannot be changed after issuance of a Contract. For assuming this mortality risk and the risk inherent in the death benefit under the Contracts, Security First Life deducts a mortality risk charge from the Separate Account. The charge is computed and deducted from each Series at an annual rate of .80% of the Contract value. The rate imposed for the mortality risk charge may not be changed.

Applicants state that Security First will perform necessary administrative services for the Contracts and will absorb the expense of administration other than certain transaction charges. Applicants state that once a Contract has been issued, no charge for administrative services will be imposed under the Contract; Security First Life will provide such services based on the actuarial margins presently provided in the Contracts. Applicants state that the risk exists that the margins presently provided in the Contracts will prove insufficient to bear the administrative expenses. For assuming this expense risk, Security First Life deducts an expense risk charge deducted at an annual rate of .45% of the Contract value of the Separate Account. Applicants represent that the rate imposed for the expense risk charge may not be changed.

Applicants request that an exemption from sections 26(a) and 27(c)(2) be granted to allow Security First Life to deduct mortality and expense risk charges from the Separate Account. Applicants represent that the mortality risk is assumed by virtue of annuity rates contained in the Contract; the annuity rates cannot be changed after issuance of the Contract. Applicants also represent that no administrative charge will be imposed, regardless of actual expenses incurred. If either the mortality or expense risk charges are insufficient to cover the actual costs, Security First Life will bear the loss. Applicants state that to the extent that the charges are in excess of actual costs, Security First Life may use the excess at its discretion.

Applicants assert that the mortality and expense risk charge is reasonable in relation to the risks assumed by Security First Life under the Contracts, and falls within the range of industry practice with respect to comparable annuity products. Applicants state that this representation is based on their analysis of publicly available information about similar industry practices, taking into consideration such factors as current charge levels and the existence of expense charge guarantees and guaranteed annuity rates. Applicants further represent that Security First Life will maintain at its home office memoranda, available to the Commission, setting forth in detail the products analyzed in the course of, and the methodology and results of, Security First Life's comparative survey.

Applicants represent that Security First Life has concluded that there is a reasonable likelihood that the Separate Account's distribution financing arrangement will benefit the Separate Account and investors and that it will maintain and make available to the Commission upon request a memorandum setting forth the basis of such conclusion.

Applicants represent that the Separate Account will only invest in open-end management investment companies which have undertaken to have a board of directors, a majority of whom are not interested persons of the open-end management company, and will not formulate and approve any plan pursuant to Rule 12b–1 under the Act to finance distribution expenses.

A notice is further given that any interested persons wishing to request a hearing on the Application may, not later than December 1, 1986 at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of the fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the Application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–25683 Filed 11–13–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15398; File No. 812-6351]

Application and Opportunity for Hearing; Sun Life Insurance and Annuity Company of New York et al

November 5, 1986.

Notice is hereby given that Sun Life Insurance and Annuity Company of New York ("Sun Life"), Sun Life (N.Y.) Variable Account D ("Account D"), of 67 Broad Street, New York, New York 10004, and Clarendon Insurance Agency, Inc., of 200 Berkeley Street, Boston, Massachusetts 02116 (collectively, "Applicants") filed an application on April 18, 1986, and an amendment thereto on October 8, 1986, requesting an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") granting exemptions from the provisions of sections 2(a)(32), 2(a)(35), 9(a), 13(a), 15(a), 15(b), 22(c), 26(a)(1), 26(a)(2), 27(a)(1), 27(c)(2) and 27(d) of the Act and Rules 6e–2(b)(1), 6e–2(b)(12), 6e–2(b)(13)(i), 6e–2(b)(13)(iii), 6e–2(b)(13(iv), 6e–2(b)(13)(viii), 6e–2(b)(15), 6e–2(c)(1), 6e–2(c)(4) and 22c–1, thereunder, to the extent necessary to permit the offer of certain single premium variable life insurance contracts (the "Contracts"), as described in the application. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act and the rules thereunder for a statement of the relevant provisions.

Applicants state that Sun Life is a stock life insurance corporation incorporated under the laws of New York, and Account D is a separate account of Sun Life registered as a unit investment trust under the Act. Applicants state that Sun Life and Account D intend to offer and sell the Contracts, which will be funded through Account D, and that several subaccounts of Account D will each invest its assets exclusively in shares of a corresponding investment portfolio of MFS/Sun Life Series Trust (the "Series

Fund"). Applicants represent that they are relying on Rule 6e–2 under the Act, but that they require additional exemptions in connection with certain features of the Contracts, as described below. With respect to the exemptive relief requested, Applicants submit that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Custody Requirements: Applicants request exemptive relief from sections 26(a)(1), 26(a)(2) and 27(c)(2) of the Act, and from Rule 6e–2(b)(13)(iii) thereunder, to permit Account D to hold shares of the Series Fund, or such other registered management investment companies in which Account D may in the future invest, under an open account arrangement without the use of stock or other certificates and without Sun Life acting as a trustee or custodian pursuant to a trust indenture. Applicants represent that Sun Life will comply with all other applicable provisions of section 26 as if it were a trustee, depositor or custodian for Account D; Sun Life will file with the Superintendent of Insurance of the State of New York an annual statement of financial condition, which most recent statement indicates that it has a combined capital and surplus of not less than $1,000,000; and Sun Life is examined from time to time by the Superintendent of Insurance of the State of New York as to its financial condition and other affairs, and is subject to supervision and inspection with respect to Account D's operations. Applicants assert that the safekeeping of the assets of Account D does not depend on the issuance of certificates or interposition of a trustee and trust indenture, which measures would, in fact, result in additional unnecessary expense.

Mixed Funding: Applicants request exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the Act and from Rule 6e–2(b)(15) thereunder, to permit Account D to invest its assets in the Series Fund or additional registered management investment companies which may be established in the future, shares of which are presently, or are expected to be, sold to separate accounts established by Sun Life or its affiliates in order to fund variable annuity contracts ("mixed funding"). Applicants state that these separate accounts currently include Sun Life of Canada (U.S.) Variable Accounts A and E and Sun Life (N.Y.) Variable Accounts B and C. Applicants state that Rule 6e–2(b)(15) expressly requires that all assets of the separate account consist of shares of registered management investment companies which offer their shares *exclusively* to variable life insurance separate accounts of the life insurer or its affiliates. Applicants assert that there is no policy reason for excluding situations involving mixed funding from the exemptions in paragraph (b)(15), and that the monitoring costs that section 9(a) would entail would not result in any corresponding benefit to contractowners. Moreover, Applicants state that the use of a common underlying fund benefits both variable annuity and variable life insurance contractowners because it avoids additional startup and ongoing expenses for the operation and administration of funds. In addition, maintain the Applicants, the increased size of the resulting fund may benefit contractowners by economies of scale, reduced investment management fees and the possible inclusion of additional portfolios.

In order to meet concerns regarding conflicts of interest between holders of variable life insurance contracts and variable annuity contracts, Applicants represent that they will comply with the following conditions:

1. The Series Fund and any other underlying fund which is organized in the future will comply with all provisions of the Act requiring voting by shareholders, and, in particular, such fund will either provide for annual meetings or comply with section 16(c) of the Act as well as with section 16(a) and, if and when applicable, section 16(b).

Further, such fund will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto.

2. A majority of the Board of Trustees/Directors of each fund shall be persons who are not interested persons of the fund within the meaning of section 2(a)(19) of the Act.

3. The Board of each fund will monitor the fund for the existence of any irreconcilable material conflict between the interests of variable annuity contractowners and the interests of owners of variable life contracts that provide for investment in shares of the fund.

4. Sun Life and/or any affiliated insurance company, a separate account of which invests in such fund, will be responsible for reporting any potential or existing conflicts to the Board of Directors/Trustees, and providing all information required to enable the Board to consider the matter. If it is determined by either the Board of Trustees/Directors of a fund, a majority of its Disinterested Trustees/Directors or Sun Life or an affiliate whose separate account invests in the fund, that an irreconcilable material conflict exists, Sun Life or its affiliate shall, at their expense and to the extent reasonably practicable (as determined by a majority of the Disinterested Trustees/Directors), take whatever steps are necessary to remedy such conflict, including but not limited to establishing a new registered management investment company or unit investment trust, or a new series of a series fund, segregating the assets of any appropriate group (such as annuity contract owners or owners of variable contracts of a particular company), or submitting the question of such remedy to all affected contract owners. Notwithstanding the foregoing, neither Sun Life nor its affiliate nor any fund shall be required by this condition to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of the contract owners materially adversely affected by the irreconcilable material conflict.

Contingent Deferred Sales Charge: Applicants state that under the Contracts, no sales charge is deducted from premium payments. Instead, state Applicants, a contingent deferred sales charge ("CDSL") will be assessed if a Contract is surrendered before thirty days prior to the tenth contract anniversary. According to Applicants, the CDSL will be a percentage of the premium payment declining from eight percent during the first two contract years to two percent in the tenth year. Applicants request exemptions from sections 2(a)(32), 2(a)(35), 22(c), 26(a)(2)(C), 27(a)(1), 27(c)(1), 27(c)(2) and 27(d) of the Act, and from Rules 6e–2(b)(1), 6e–2(b)(12), 6e–2(b)(13)(i), 6e–2(b)(13)(iv), 6e–2(c)(4) and 22c–1 thereunder, to the extent deemed necessary to permit imposition of this CDSL.

Applicants state that the CDSL will not be imposed in connection with a transfer of amounts under the Contract between sub-accounts or payment of the death benefit. Applicants assert that the imposition of a CDSL rather than a front-end sales load operates to the advantage of contractowners in that the entire premium payment will be invested from the time of receipt of the payment and completed application and the sales load will remain fully invested until the Contract is surrendered. Applicants further represent that the CDSL will never exceed eight percent of the premium payment and will thus never be greater than the charge that could have been deducted as a front-end sales load under section 27(a)(1) of the Act and Rule 6e–2.

Applicants state that the CDSL will be imposed, if at all, at the time a contractowner surrenders or converts his or her Contract. They assert that the mere fact that the timing of Applicants' sales load may not fall within the literal pattern of section 2(a)(35) and Rule 6e–2(c)(4) does not change its essential nature. The CDSL will cover expenses associated with the offer and sale of the Contract, including commissions paid to sales personnel, promotional expenses and sales administration expenses, just as other forms of sales loads do.

On the basis of the foregoing, Applicants believe that a CDSL is consistent with the definition of "sales load" set out in Rule 6e–2(c)(4). However, in order to avoid any question concerning full compliance with the Act and rules thereunder, Applicants request exemption from section 2(a)(35) and Rule 6e–2, paragraphs (b)(1) and (c)(4), to the extent necessary, to be deemed to contemplate the CDSL under Applicants' Contract. For the same reasons, Applicants also request exemptions from sections 26(a)(2)(C) and 27(c)(2).

Applicants state that, although sections 2(a)(32) and 27(c)(1) do not specifically contemplate the imposition of a sales charge at the time of redemption, such a charge is not necessarily inconsistent with the definition of redeemable security. Applicants submit that deferring the imposition of the sales charge in no way restricts the contractholder from receiving his proportionate share of the value of Account D on redemption. On the basis of the foregoing, Applicants believe that a contract providing for a CDSL is consistent with the definition of redeemable security within the meaning of sections 2(a)(32) and 27(c)(1), as adapted for variable life insurance by Rule 6e–2, paragraphs (b)(12) and (13)(iv). However, in order to avoid any question concerning full compliance with the Act and rules thereunder, Applicants request exemption from such sections and rules, to the extent deemed necessary, to permit the CDSL under the Contract.

Applicants also request exemption from section 22(c) and from Rules 6e–2(b)(12) and 22c–1 to the extent deemed necessary to permit the CDSL. Applicants state that the redemption price will be based on the then current net asset avalue. Applicants argue that Rule 6e–2(b)(12) was intended to afford exemptive relief from 22c–1 with respect to redemption procedures in the context of variable life insurance, including surrender and exchange procedures but that Rule 6e–2(b)(12) could be read as not recognizing such a deferred sales load. Applicants maintain that their CDSL will not have the dilutive effect Rule 22c–1 was designed to prohibit.

Charge for Insurance Protection: Applicants state that under the Contracts, Sun Life will impose a monthly charge for insurance protection against the account value based on the net amount at risk under the Contract. Applicants state further that this charge, including charges for substandard risks, will be determined from time to time by Sun Life based on its expectations of future mortality experience, but it will never be higher than an amount based upon the 1980 Commissioners' Standard Ordinary Blended Mortality Table C ("1980 CSO Table"). Applicants request exemptions from sections 26(a)(2) and 27(c)(2) of the Act and Rules 6e–2(b)(13)(iii) and 6e–2(c)(4) to the extent necessary to permit use of the 1980 CSO Table as opposed to the 1958 CSO Table specified in Rule 6e–2, and to permit deduction of this charge monthly, based on the amount at risk under each Contract. Applicants assert that the 1980 CSO Table reflects improved mortality experience among all age groups over the 1958 Table. Applicants further assert that monthly deduction of the cost of insurance charge, as described, is more equitable and beneficial to contract owners because it increases the amount initially invested on their behalf and permits deductions on an ongoing basis directly from each Contract rather than from the premium payment based on estimates and assumptions regarding various factors considered in determining the net amount at risk over the life of the Contract. Applicants represent that any extra charge for cost of insurance for insureds in substandard risk catagories will not be included in the "premium" figures for the purpose of calculating CDSL.

Minimum Death Benefit Guarantee Charge: Applicants request an exemption from sections 26(a)(2) and 27(c)(2) of the Act and Rule 6e–2(b)(13)(iii) to permit Sun Life's deduction from Account D of a charge for the minimum death benefit guarantee equal, on an annual basis, to 0.25% for the first ten years of the Contract, to compensate Sun Life for the risk it assumes in providing such guarantee. No charge is deducted after the tenth Contract year. Applicants represent that they have reviewed the level of minimum death benefit guarantee charges under other single premium variable life insurance contracts and that the charge under the Contracts is reasonable in relation to the risks assumed under the Contracts and is within the range of industry practice, taking into account differences in product design and the timing and manner of deducting this risk charge in contrast with differing features of other products. Applicants further represent that Sun Life will maintain and make available to the Commission upon request a memorandum explaining the basis for this representation and the documents used to support this representation including the identity of the other products compared.

Applicants state that the CDSL may cover the expenses of distributing the Contracts but that surplus arising from the minimum death benefit guarantee charge and from other sources may be used for distribution.

Applicants represent that Sun Life has concluded and represents that there is a reasonable likelihood that the distribution financing arrangement being used to sell the Contracts will benefit Account D and contractowners. Applicants also represent that Sun Life has prepared and will maintain, and make available to the Commission upon request, a memorandum setting forth the basis of this representation.

Notice is further given that any interested person wishing to request a hearing on the Application may, not later than December 1, 1986 at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reason for such request and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request shall be served personally or by mail upon Applicants at the addresses stated above. Proof of service (by affidavit or in the case of an attorney-at-law, by certificate) shall be filed with the request. After the above date an order disposing of the Application will be issued as of course unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–25684 Filed 11–13–86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Application No. 02/02-5502]

Trans-Pac Capital Corp.; Application for a License to Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (the Act), 15 U.S.C. 661 et. seq., has been filed by Trans-Pac Capital Corporation (Applicant), with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1986).

The officers, directors and shareholders of the Applicant are as follows:

Name and address	Title or relationship	Percentage of shares owned
Sandy Shwu-Yea Su, 56-15 228th Street, Bayside, NY 11364.	President, Directory	10
Tsuey Tang Wang, 74 Oak Ridge Avenue, Summit, NJ 07901.	Vice President, Board Chairman.	15
Edward J. Chrvala, 1709 Rivena Court, Point Pleasant, NJ 08742.	Assistant to President	0
Margaret M. Wang, 74 Oak Ridge Avenue, Summit, NJ 07901	Secretary	0
Pangyen S. Hsu, 544 Spring Valley Drive, Bridgewater, NJ 08807	Treasurer	7
K. Peter Hsu, 544 Spring Valley Drive, Bridgewater, NJ 08807.	Director	0
Cheng Chung Hsung, 64-08 Wetherole Street, Rego Park, NJ 11374.	Investor	20
Li-Chu Huang, 173-25 Croydon Road, Jamaica, NY 11432.	Investor	20
Ter-Shan Chen, 6F-1 Sec. 4, 258, Sin-Yi Road, Taipei, Taiwan.	Investor	20
Cho Hwa Wang Chen, 62-24 Cronwell Crescent, Rego Park, NY 11374.	Investor	8

The Applicant, a New Jersey corporation, with its principal place of business at 605 King Georges Post Road, Suite 2B, Fords, New Jersey 08863, will begin operations with $1,000,000 of paid-in capital and paid-in surplus. The Applicant will initially conduct its activities in the States of New Jersey and New York.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the Applicant under their management, including profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of this Notice shall be published in a newspaper of general circulation in Fords, New Jersey.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 6, 1986

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 25678 Filed 11-13-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 86-11-20; Docket 44485 etc.]

Baltimore-London Service Case et al.; Order

Issued by the Department of Transportation on the 10th day of November, 1986.

In the matter of Baltimore-London Service Case, U.S.-London Gateways Case: Applications of Air Specialties Corp., d/b/a Air America, Trans World Airlines, Inc. under section 401 of the Federal Aviation Act for certificate of public convenience and necessity.

The selection of primary and backup carriers to serve the Baltimore-London market was placed at issue in the *U.S.-London Gateways Case*, by Order 86-10-38 (See summary published October 24, 1986, 51 FR 37812). That proceeding will also consider the selection of two additional U.S. gateway cities to London, as well as the carriers that will serve those routes. Given the broad scope of the *Gateways* case, we announced in our instituting order that we intended to sever the issue of carrier selection at Baltimore in the event that no carrier applied for both Baltimore-London and new gateway authority.

Prior to our instituting the *Gateways* case, Air America and Trans World Airways had filed applications seeking only Baltimore-London authority. Additional applications for the Baltimore-London route were due on November 3, 1986, and none were filed. Therefore, as no carrier has applied for both Baltimore-London and new gateway authority, we have decided to sever the selection of primary and backup carriers to serve the Baltimore-London market from Docket 44432, and we will open a new docket, the *Baltimore-London Service Case*, to consider these issues.[1] We have already determined, in Order 86-10-38, that the certification of service on this route is consistent with the public convenience and necessity,[2] and we expect parties to adhere to the evidence request that is attached as an appendix to that order.

Accordingly,

1. We sever the selection of primary and backup carriers for authorization to engage in foreign air transportation of persons, property, and mail between Baltimore, Maryland and London, United Kingdom from Docket 44432;

2. We open Docket 44485, the *Baltimore-London Service Case*, which will be set for an oral evidentiary hearing before an Administrative Law Judge of the Department at a time and place to be designated;

3. The proceeding instituted in ordering paragraph 2 shall include consideration of the following issues:

a. Which primary carrier and which backup carrier should be authorized to engage in foreign air transportation of persons, property, and mail between Baltimore, Maryland and London, United Kingdom;[3]

b. What terms, conditions and limitations, if any, should be placed on any authority awarded in this proceeding;

4. We make the Office of Essential Air Service together with the Office of Aviation Enforcement and Proceedings of the Office of the General Counsel, the Public Counsel party to this case; and

5. We shall publish this order in the **Federal Register**, and serve a copy of this order on all parties to Dockets 44349, 44416, and 44432.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86-25780 Filed 11-13-86; 8:45 am]

BILLING CODE 4910-62-M

Aviation Proceedings; Agreements Filed During the Week Ending—November 7, 1986

The following agreements were filed with the Department of Transportation

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[1] As we stated in Order 86-10-38, we will not consider the issue of awarding local traffic rights between London and Frankfurt in this proceeding.

[2] We incorporate by reference from Order 86-10-38, our intention to award 5 years, experimental certificates in this case, together with all other findings as they relate to this proceeding.

[3] This includes the issue of carrier fitness.

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under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 44480—R-1-R-4

Parties: Members of International Air Transport Association
Date Filed: November 6, 1986
Subject: Amends So Atlantic-Europe/Middle East Fares
Proposed Effective Date: November 15, 1986

Docket No. 44481—R-1 & R-2

Parties: Members of International Air Transport Association
Date Filed: November 6, 1986
Subject: Circle Pacific Fares
Proposed Effective Date: April 1, 1987

Docket No. 44442

Parties: Members of International Air Transport Association
Date Filed: November 6, 1986
Subject: RIO–CHI SCRs for Various Electronics
Proposed Effective Date: November 5, 1986

Docket No. 44483—R-1 & R-2

Parties: Members of International Air Transport Association
Date Filed: November 6, 1986
Subject: Amend Seasonality of Family Fares from Japan to Guam/Saipan
Proposed Effective Date: April 1, 1987

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 86-25779 Filed 11-13-86; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE-86-20]

Petition for Exemption; Summary of Petitions Received; Executive Air Charter, Inc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I). The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. The comment period for these petitions for exemption has been shortened in order to allow the agency to consider public comments and act on these petitions prior to the approaching compliance date established by the Federal Aviation Regulations. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before November 21, 1986.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-24), Petition Docket NO. ———, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11.)

Issued in Washington, DC, on November 12, 1986.

John H. Cassady,
Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
25124	Executive Air Charter, Inc	14 CFR 121 310	To allow petitioner a 4-day extension from the compliance date of November 26 for meeting emergency exit lighting requirements.

[FR Doc. 86-25823 Filed 11-12-86; 11:25 am]

BILLING CODE 4910-13-M

Research and Special Programs Administration

Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemption.

SUMMARY: In accordance with the procedures governing the application for and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comment period closes December 15. 1986.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590..

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Buildings, 400 7th Street, SW, Washington, DC.

NEW EXEMPTIONS

Application No	Applicant	Regulation(s) affected	Nature of exemption thereof
9684-N	General Electric Railcar Services Corporation, Chicago, IL.	49 CFR 179.105-4, 179.105-8(b)	To authorize a number of tank cars in the 112J and 114J series, equipped with a thermal protection system, which are not painted white, to be converted to the 112S and 114S series for the shipment of anhydrous ammonia. (Mode 2)

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9685–N	Certified Tank Manufacturing Inc., Wilmington, CA.	49 CFR 173.119, 173.154, 173.245, 173.245b.	To manufacture, mark and sell non-DOT specification portable tanks designed for top loading and end dump operations for shipment of certain flammable or corrosive liquids and solids for disposal. (Mode 1)
9686–N	Fluoroware, Inc., Chaska, MN	49 CFR 173.119, Part 173, Subpart F	To manufacture, mark and sell non-DOT specification 20 liter capacity rotationally molded teflon fiberglass wrapped containers for shipment of those flammable and corrosive liquids presently authorized in DOT Specification 34 and 6D/2S or 2SL containers as well as nitric acid not to exceed 71%. (Modes 1, 2)
9687–N	American Cyanamid Company, Wayne, NJ.	49 CFR 179.200–16–b	To authorize the installation on DOT Specification 111A100W2 tank cars in sulfuric acid service, safety vents on nozzles equipped with surge baffles having equivalent nozzle diameters of 1½ inches instead of 1¾ inches. (Mode 2)
9688–N	GTE Government Systems Corporation, Waltham, MA.	49 CFR 173.247	To authorize shipment of thionyl chloride, classed as a corrosive material in non-DOT specification teflon bottles of either 10 ounces or 16 ounces overpacked in DOT Specification 17H stainless steel drums not to exceed 54 bottles per drum. (Mode 1)
9689–N	Olin Corporation, Stamford, CT	49 CFR 176.76(a)(4)	To authorize drums of dense or heavy materials such as toluene diisocyanate and other hazardous materials not exceeding 12.09 pounds per gallon, to be secured against movement in a transport vehicle by the use of a fabric restraint dunnage system when shipped by the water mode. (Mode 3)
9690–N	Snyder Industries, Inc., Lincoln, NE	49 CFR Part 173, Subpart D, F	To manufacture, mark and sell non-DOT specification polyethylene portable tanks of 110 gallon capacity and 175 gallon capacity for shipment of certain corrosive or flammable liquid including 52% hydrogen peroxide. (Modes 1, 2)
9691–N	Gottlieb Duttenhoefer GmbH & Co. KG, Federal Republic of Germany.	49 CFR Part 173	To manufacture, mark and sell 15 gallon capacity steel overpack similar to DOT Specification 37M except for a slight reduction in wall thickness with polyethylene liner meeting DOT–2SL except for marking for shipment of those commodities authorized in DOT–37M/2SL. (Modes 1, 2, 3)
9692–N	Halliburton Services, Duncan, OK	49 CFR 173.119(m)	To authorize shipment of a flammable liquid which is also corrosive, classed as flammable liquid, corrosive, n.o.s. in DOT Specification 57 portable tanks. (Mode 1)
9693–N	Ashland Chemical Company, Dublin, OH	49 CFR 173.24, 173.300, 173.34	To authorize shipment of leaking cylinders containing certain hazardous materials to be overpacked in a specially designed container not to exceed one cylinder per overpack. (Mode 1)
9694–N	All Pure Chemical Company, Tracy, CA	49 CFR 173.315(i)(13), 173.33(f)(9), 173.33(h)(5)(i)	To authorize use of modified angle valves and pressure relief valves on MC–331 chlorine cargo tanks. (Mode 1)
9695–N	Southern California Gas Company, Los Angeles, CA.	49 CFR 173.34(e)(1)(iii)	To authorize a one-time shipment of 155 DOT Specification 4AA480 cylinders which have past their retest dates and were inadvertently charged with a ammonium hydroxide/sodium chromate solution. (Mode 1)

This notice of receipt of applications for new exemptions is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on November 5, 1986.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 86–25777 Filed 11–13–86; 8:45 am]

BILLING CODE 4910–60–M

Applications for Renewal or Modification of Exemptions or Applications To Become Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing a public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes November 28, 1986.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Buildings, 400 7th Street, SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
2709–X	Atlas Powder Co., Dallas, TX	2709
5022–X	Morton Thiokol, Inc., Elkton, MD	5022
5248–X	Rockwell International Corp., Anaheim, CA	5248
5557–X	U.S. Department of Energy, Washington, DC	5557
5600–X	Amoco Oil Co., Whiting, IN [1]	5600
6267–X	Alden Leeds, Inc., South Kearney, NJ	6267
6267–X	Coastal Industries, Inc., Carlstadt, NJ	6267
6543–X	Arco, The BOC Group, Inc., Riverton, NJ [2]	6543
6583–X	Phillips Petroleum Co., Bartlesville, OK	6583
6762–X	Texo Corp., Cincinnati, OH	6762
6922–X	General Electric Co., Waterford, NY	6922
7052–X	ENDECO, Inc., Marion, MA	7052
7546–X	Grumman Aerospace Corp., Bethpage, NY [3]	7546
7731–X	Minnesota Valley Engineering, Inc., New Prague, MN [4]	7731
7808–X	Whitmire Research Laboratories, Inc., Saint Louis, MO	7808
7808–X	Cline-Buckner, Inc., Artesia, CA	7808
8053–X	Eastman Kodak, Co., Rochester, NY	8053
8060–X	Parlefer S. A. R. L., Paris, France	8060
8084–X	IRECO Inc., Salt Lake City, UT	8084
8084–X	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE	8084
8115–X	Acurex Corp., Mountain View, CA	8115
8126–X	Arbel-Fauvet-Rail, Paris, France	8126
8126–X	SLEMI, Paris, France	8126
8348–X	Frell, Inc., Corpus Christi, TX [5]	8348
8451–X	Pyrotechnic Specialties, Inc., Byron, GA	8451
8519–X	Polish Ocean Lines, Gdynia, Poland	8519
8519–X	Atlantic Container Line, Limited, Elizabeth, NJ	8519
8520–X	Atlas Powder, Co., Dallas, TX	8520
8523–X	Arbel-Fauvet-Girel, Paris, France	8523
8526–X	3M Co., Saint Paul, MN	8526
8554–X	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE	8554
8554–X	THR Corp., Pennuco, FL	8554
8570–X	Snyder Industries, Inc., Woodland, Hills, CA [6]	8570
8802–X	EVA Eisenbahn-Verkehrsmittel, GmbH, Dusseldorf, West Germany	8802
8906–X	FMC Corp., Philadelphia, PA	8906

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Application No.	Applicant	Renewal of exemption
9130-X	Aquarius Pool & Spa Supply, Inc., Elk Grove Village, IL [1]	9130
9271-X	Missouri Pacific Railroad, Co., Omaha, NE	9271
9271-X	Union Pacific Railroad Co., Omaha, NE	9271
9319-X	W. R. Grace & Co., Dearborn, Division, Lake Zurich, IL	9319
9329-X	Dresser, Atlas, Houston, TX	9329
9332-X	Englehard, Corp., Edison, NJ	9332
9340-X	Pioneer Plastics & Services, Co., Ltd., Brampton, Ont., Canada [8]	9340
9678-X	Rossborough Manufacturing Co., Avon Lake, OH [9]	9678

[1] To renew and to authorize an additional manufacture of cylinder parts.

[2] To authorize a non-DOT specification 12 gauge, Type 316L stainless steel cylinder as an additional packaging for shipment of certain flammable or corrosive liquids.

[3] To renew and authorize slightly larger pipe assembly, containing certain flammable and nonflammable gases, overpacked in specifically designed wooden box and to add rail as additional mode.

[4] To authorize an additional model non-DOT specification vacuum insulated portable tank for shipment of helium or hydrogen.

[5] To authorize a rear door dump feature on non-DOT specification cargo tanks used for the shipment of certain waste materials.

[6] To authorize an additional polyethylene portable tank of 300 gallon capacity for shipment of certain flammable or corrosive liquids and an oxidizer.

[7] To authorize a polyethylene pail not to exceed 50 pounds of product overpacked in a fiberboard box for shipment of an oxidizer.

[8] To authorize certain blasting agents and an oxidizer as additional commodities.

[9] To renew an exemption originally issued on an emergency basis to authorize shipment of magnesium and calcium salt mixtures classed as flammable solid, in dry bulk tank semi-trailer.

Application No.	Applicant	Parties to exemption
4719-P	Halocarbon Products Corp., Hackensack, NJ	4719
6626-P	Messer Griesheim Industries, Valley Forge, PA	6626
6929-P	Morton Thiokol, Inc., Brigham City, UT [1]	6929
7544-P	Jones Chemicals, Inc., Caledonia, NY	7544
7951-P	Ready Food Products, Inc., Philadelphia, PA	7951
8091-P	U.S. West Material Resources Inc., Englewood, CO	8091
8445-P	Polaroid Corp., Cambridge, MA	8445
8445-P	American Cyanamid Co., Wayne, NJ	8445
8554-P	IRECO Inc., Salt Lake City, UT	8554
8554-P	Pepin Explosives, Inc., Negaunee, MI	8554
8554-P	Southwestern Explosives, Inc., Midland, TX	8554
8893-P	Atlas Powder Co., Dallas, TX	8893
9209-P	Jones-Hamilton Co., Newark, CA	9209
9617-P	D & J Maurer, Inc., Philipsburg, PA	9617
9617-P	Buckley Powder Co., Englewood, CO	9617
9623-P	Buckley Powder Co., Englewood, CO	9623

[1] Request party status and to authorize a specially designed wooden container for shipment of rocket motor, Class B explosive.

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on November 5, 1986.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 86-25778 Filed 11-13-86; 8:45 am]

BILLING CODE 4910-60-M

Saint Lawrence Seaway Development Corporation

Advisory Board Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation, to be held at 2:00 p.m., December 3, 1986, at the Corporation's Administration Headquarters, Room 5424, 400 Seventh St. SW., Washington, DC. The agenda for this meeting will be as follows: Opening Remarks, Consideration of Minutes of Past Meeting; Review of Programs; Business; Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than November 25, 1986, Joan C. Hall, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street SW., Washington, DC, 20590; 202/366-0118.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC on November 7, 1986.

Joan C. Hall,

Advisory Board Liaison.

[FR Doc. 86-25792 Filed 11-13-86; 8:45 am]

BILLING CODE 4910-61-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: November 7, 1986.

The Department of Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7313, 1201 Constitution Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: None
Type of Review: New
Title: Tele-Tax Publication 1163 Survey
Clearance Officer: Garrick Shear (202) 566-6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Comptroller of the Currency

OMB Number: 1557-0070
Form Number: FFIEC 004
Type of Review: Extension
Title: Extensions of Credit to National Bank Insiders (12 CFR 31)
Clearance Officer: Eric Thompson, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219
OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Douglas J. Colley,

Departmental Reports, Management Office.

[FR Doc. 86-25775 Filed 11-13-86; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: November 6, 1986.

The Department of Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7313, 1201 Constitution Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: None
Type of Review: New
Title: Public Questionnaire
Clearance Officer: Garrick Shear (202) 566-6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and

Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Douglas J. Colley,

Departmental Reports, Management Office.

[FR Doc. 86-25776 Filed 11-13-86; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

VA Medical Center, Dayton, OH, Bed Addition and Renovation; Revised Notice of Finding of No Significant Impact

The Veterans Administration published a FONSI for this project (49 FR 24099, June 11, 1984). Since then the project scope has been revised. The previous project included new construction for 360 beds and renovation of Brown Hospital for 300 beds. The revised project includes new construction of 511 beds, as well as selected diagnostic and support functions. It would be built east of the existing clinical building. Upon completion, Brown hospital would be phased out and eventually demolished.

Development of this project depends upon the availability of budgetary resources and administrative approval. The potential environmental impacts that may occur have been assessed for the revised project scope. The VA has determined that the potential environmental impacts associated with the project would be minimal.

Construction of this project would have permanent impacts on the historic/cultural environment. Views from within the site would be changed by demolition of Brown Hospital. Mitigation of these impacts would be accomplished through compatible design of the new addition. The VA would adhere to all applicable Federal, State, and local environmental regulations during construction and operation of this project.

The significance of the identified impacts has been evaluated relative to considerations of both context and intensity as defined by the Council on Environmental Quality (Title 40 CFR 1508.27).

An Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, §§ 1501.3 and 1508.9. A "Finding of No Significant Impact" has been reached based upon the information presented in the assessement.

The assessment is being placed for public examination at the Veterans Administration, Washington, DC. Persons wishing to examine a copy of the document may do so at the following office: Susan Livingstone, Director of Environmental Affairs (088A), Room 512, Veterans Administration, 811 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3717. Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: November 4, 1986.

Thomas K. Turnage,

Administrator.

[FR Doc. 86-25688 Filed 11-13-86; 8:45 am]

BILLING CODE 8320-01-M

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Sunshine Act Meetings

Federal Register
Vol. 51, No. 220
Friday, November 14, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Friday, November 21, 1986.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

FY '87 Operating Plan

The Commission will consider the 1987 Operating Plan.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301—492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301—492–6800.

Sheldon D. Butts,
Deputy Secretary.

November 12, 1986.

[FR Doc. 86–25855 Filed 11–12–86; 1:54 pm]

BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 2:00 p.m., Thursday, November 20, 1986.

LOCATION: Third Floor Hearing Room, 1111–18th Street, NW., Washington, DC.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Enforcement Matter OS #5168

The staff will brief the Commission on Enforcement Matter OS #5168.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301—492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301—492–6800.

Sheldon D. Butts,
Deputy Secretary.

November 12, 1986.

[FR Doc. 86–25856 Filed 11–12–86; 1:54 pm]

BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Wednesday, November 19, 1986.

LOCATION: Third Floor Hearing Room, 1111–18th Street, NW., Washington, DC.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

All-Terrain Vehicle (ATVs): Options

The ATV Task Force will brief the Commission on regulatory options for ATVs. The staff will review the major findings and recommendations of the ATV Task Force.

*If circumstances require, this meeting may be continued on Thursday, November 21, 1986 at the same location.

FOR A RECORDED MESSAGE CONTAINING THE LASTEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

Sheldon D. Butts,
Deputy Secretary.

November 12, 1986.

[FR Doc. 86–25857 Filed 11–12–86; 1:54 pm]

BILLING CODE 6355-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 9:30 a.m. (eastern time) Tuesday, November 25, 1986.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 E Street, NW., Washington, DC 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

Open

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. Request for Commission Approval to Receive Proposals to Mailout and Process the 1986 State and Local Government Information EEO–4 Survey

Closed

1. Commission Resolution To Effectuate Settlement in a Case
2. Litigation Authorization: General Counsel Recommendations
3. Proposed Commission Decisions

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634–6748.

Dated and issued November 12, 1986.

Cynthia C. Matthews,
Executive Officer, Executive Secretariat.

[FR Doc. 86–25904 Filed 11–12–86; 8:45 am]

BILLING CODE 6750-06-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:17 p.m. on Friday, November 7, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Metropolitan Bank & Trust Company, Baton Rouge, Louisiana, which was closed by the Commissioner of Financial Institutions for the State of Louisiana on Friday, November 7, 1986; (2) accept the bid for the transaction submitted by Whitney National Bank of New Orleans, New Orleans, Louisiana; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction;

(B)(1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Chokio State Bank, Chokio, Minnesota, which was closed by the Deputy Commissoner of Commerce for the State of Minnesota on Friday, November 7, 1986; (2) accept the bid for the transaction submitted by First Bank of Chokio, Chokio, Minnesota, a newly-chartered State nonmember bank; (3) approve the applications of First Bank of Chokio, Chokio, Minnesota, for Federal Deposit Insurance and for consent to purchase certain assets of and assume the liability to pay deposits made in Chokio State Bank, Chokio, Minnesota; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction; and

(C) Consider matters relating to The First National Bank and Trust Company of Enid, Enid, Oklahoma, which was closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, November 6, 1986.

In calling the meeting, the Board determined, on motion of Director Robert L. Clarke (Comptroller of the

Currency), seconded by Director C.C. Hope, Jr. (Appointive), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: November 10, 1986.

Federal Deposit Insurance Corporation

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-25829 Filed 11-12-86; 11:33 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, November 18, 1986, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for Federal deposit insurance and for consent to exercise limited trust powers:

Sumitomo Trust and Banking Co. (U.S.A.), a proposed new bank to be located at 527 Madison Avenue, New York City (Manhattan), New York.

Application for consent to purchase assets and assume liabilities:

The Citizens and Peoples National Bank of Pensacola, Pensacola, Florida, for consent to purchase certain assets of and assume the liability to pay deposits made in the Gulf Breeze, Florida, Branch; Milton, Florida, Branch; and Pace, Florida, Branch of Pioneer Savings Bank, Clearwater, Florida, a non-FDIC-insured institution.

Application for consent to purchase assets and assume liabilities and establish three branches:

Century North Shore Bank and Trust Company, Lynn, Massachusetts, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in St. Michael's Credit Union, Lynn, Massachusetts, a non-Federally-insured institution and to establish the three offices of St. Michael's Credit Union as branches of the resultant bank.

Application for consent to merge:

Phoenix National Bank, Phoenix, Arizona, for consent to merge, under its charter and with the title of "Northern Trust Bank of Arizona, National Association," with The Northern Trust Company of Arizona, Phoenix, Arizona, a non-FDIC-insured institution.

The First National Bank of Mayfield, Mayfield, Kentucky, for consent to merge, under its charter and title, with Bank of Farmington, Farmington, Kentucky, a noninsured institution.

The Peoples' National Bank of Wapakoneta, Wapakoneta, Ohio, for consent to merge, under its charter and title, with The Peoples Savings Bank, New Knoxville, Ohio, a noninsured institution.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,740 (Amendment)
Atlanta Regional Office, Atlanta, Georgia
Case No. 46,756-L
First National Bank of Prior Lake, Prior Lake, Minnesota

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation at (202) 898-3813.

Dated: November 10, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-25830 Filed 11-12-86; 11:34 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, November 18, 1986, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Recommendation regarding the Corporation's assistance agreement with an insured bank.

Discussion Agenda:

Application for Federal deposit insurance:

Liberty Savings Bank, an operating noninsured savings association located in Philadelphia, Pennsylvania.

Notice of acquisition of control:

Firstrust Savings Bank, Flourtown, Pennsylvania.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC

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Building located at 550–17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: November 10, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86–25831 Filed 11–12–86; 11:36 am]

BILLING CODE 6714-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

November 10, 1986.

TIME AND DATE: 10:00 a.m., Tuesday, December 16, 1986.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. Secretary of Labor, MSHA, and United Mine Workers of America v. NACCO Mining Company, Docket No. LAKE 85–87–R, LAKE 86–2. (Issues include whether an enforcement action under section 104(d) of the Mine Act, 30 U.S.C. 814(d), can be taken only when a violation is discovered during the course of an inspection and where the inspector actually observes the violation.)

TIME AND DATE: 2:00 p.m., Tuesday, December 16, 1986.

PLACE: Room 600, 1730 K St., NW., Washington, DC.

STATUS Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. Greenwich Collieres v. Secretary of Labor, MSHA and United Mine Workers of America, Docket No. PENN 85–188–R, etc. (Issues are same as above).

Any person intending to attend this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629.

Jean H. Ellen,

Agenda Clark.

[FR Doc. 86–25847 Filed 11–12–86; 1:39 pm]

BILLING CODE 6735-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

November 10, 1986.

TIME AND DATE: 10:00 a.m., Wednesday, December 17, 1986.

PLACE: Room 600, 1730 K St., NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. White County Coal Corporation v. Secretary of Labor, MSHA, Docket No. LAKE 86–58–R, LAKE 86–59–R. (Issues include whether an enforcement action under section 104(d) of the Mine Act, 30 U.S.C. 814(d), can be taken only when a violation is discovered during the course of an inspection and where the inspector actually observes the violation.)

TIME AND DATE: 2:00 p.m., Thursday, December 17, 1986.

PLACE: Room 600, 1730 K St., NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. Emerald Mines Corporation v. Secretary of Labor, MSHA, Docket No. PENN 85–298–R. (Issues are same as above).

Any person intending to attend this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 86–25848 Filed 11–12–86; 1:40 pm]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, November 19, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 10, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–25789 Filed 11–10–86; 5:05 pm]

BILLING CODE 6210-01-M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

The agenda for the upcoming meeting of the U.S. National Commission on Libraries and Information Science has been revised to include an Executive Session on November 19, 8:00–9:00 a.m. This session, as noted on this notice, is Closed.

The U.S. National Commission on Libraries and Information Science will meet November 19–20, 1986.

DATE AND TIME: November 19–20, 1986.

PLACE: Sheraton National Hotel, Concourse II Meeting Room, Columbia Pike and Washington Boulevard, Arlington, Virginia 22204.

STATUS:

November 19, 8:00 a.m. to 9:00 a.m. Executive Session—Closed
November 19, 9:00 a.m. to 4:30 p.m.—Open
November 20, 9:00 a.m. to 5:00 p.m.—Open

MATTERS TO BE DISCUSSED:

Introduction of New NCLIS Chairman and Executive Director
Chairman's Report
Approval of August 1986 Minutes
Executive Director's Report
  —FY 1986 Final Program Report
  —Administrative Matters
  —FY 1987 Program Plans
NCLIS Program Objectives: FY 1986–1988
Committee Reports
  —1989 National Conference
  —Bicentennial
  —Budget and Finance
  —Program Review
  —Public Affairs
Guest Speakers on Preservation:
  Warren Haas, Council on Library Resources (CLR)
  Peter Sparks, Library of Congress
Meeting Reports
  —Information in the Economy
  —Chief Officers of State Library Agencies (COSLA)
  —White House Conference on Library and Information Services Taskforce (WHCLIST)
Guest Speakers on the Information Age Bill:
  Jane Bortnick, Congressional Research Service (CRS)
  John Clement, American Federation of Information Processing Societies (AFIPS)
  Ralph Petta, Senator Nunn's Office
  Milton Wessell, Association of Data Processing Service Organizations (ADAPSO)
ALA President's Committee on Library Services to Minorities
  Old Business

New Business

CONTACT: Vivian J. Arterbery, Executive Director (202) 382-0840.

Jane D. McDuffie,

Staff Assistant.

October 30, 1986.

[FR Doc. 86-25835 Filed 11-12-86; 1:37 pm]

BILLING CODE 7527-01-M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 1:30 p.m., Thrusday, November 20, 1986.

PLACE: Red Lion Inn—Jantzen Beach, 909 North Hayden Island Drive, Portland, Oregon 97217, (503) 283-4466.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Operating Fee Scale.
3. Economic Commentary.
4. Review of Central Liquidity Facility Lending Rate.
5. Insurance Fund Report.
6. Proposed Amendments to Part 708, NCUA Rules and Regulations, involving mergers of federally-insured credit unions and voluntary termination or conversion of Federal share insurance.
7. Withdrawal of Proposed Rule, Part 744, NCUA Rules and Regulations, Payout Priorities for Involuntary Liquidation of Federally-Insured Credit Unions.
8. Appeal of Charter Application Denial by the Proposed American Postal Workers Emergency Fund Federal Credit Union.

TIME AND DATE: 5:00 p.m., Wednesday, November 19, 1986.

PLACE: Red Lion Inn—Jantzen Beach, 909 North Hayden Island Drive, Portland, Oregon 97217.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Appeal of Insurance Application Denial. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Administrative Actions under section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).
4. Delegations of Aauthority. Closed pursuant to exemption (2).
5. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, Telephone (202) 357-1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 86-25875 Filed 11-12-86; 3:28 pm]

BILLING CODE 7535-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Wednesday, November 26, 1986.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Briefing:* Mr. Archie Trammel, Inc., of Business and Commercial Aviation magazine, and Mr. Jim Cook, Independent Contract Research Pilot, will brief the Board on the use of airborne weather radar.

FOR MORE INFORMATION, CONTACT: Ray Smith (202) 382-6525.

Ray Smith,

Federal Register Liaison Officer.

November 10, 1986.

[FR Doc. 86-25808 Filed 11-12-86; 8:45 am]

BILLING CODE 7533-01-M

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federal register

Friday
November 14, 1986

Part II

Department of Agriculture

Cooperative State Research Service

7 CFR Part 3402

Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program Administrative Provisions; Proposed Rule

VOL 51 ISS 220 NO 14 1986 UMI

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

7 CFR Part 3402

Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program; Administrative Provisions

AGENCY: Cooperative State Research Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to establish Part 3402 of Title 7, Subtitle B, Chapter XXXIV of the Code of Federal Regulations, for the purpose of administering the Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program conducted under the authority of section 1417(a)(3)(B) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152(a)(3)(B)). The issuance of this rule will establish the procedures to be followed annually in the solicitation of competitive graduate fellowships grant proposals, the evaluation of such proposals, and the award of graduate fellowships grants under this program.

DATES: Written comments concerning the proposed rule are invited from interested individuals and organizations. To be considered, all relevant material must be received on or before December 15, 1986.

ADDRESSES: Please submit written comments to: Director, Higher Education Programs, Cooperative State Research Service, U.S. Department of Agriculture, Room 350A, Administration Building, 14th and Independence Avenue SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Dr. K. Jane Coulter (202) 447-7854.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this proposed rule is currently under review by the Office of Management and Budget.

Classification

This rule has been reviewed under Executive Order 12291, and it has been determined that it is not a major rule because it does not involve a substantial or major impact on the Nation's economy or on large numbers of individuals or businesses. There will be no major increase in cost or prices for consumers, individual industries, Federal, State, or local governmental agencies, or geographical regions. It will not have a significant economic impact on competitive employment, investment, productivity, innovation, or on the ability of U.S. enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, it will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. No. 96-534 (5 U.S.C. 601).

Regulatory Analysis

Not required for this rulemaking.

Environmental Impact Statement

This regulation does not significantly affect the environment.

Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.210, Food and Agricultural Sciences National Needs Graduate Fellowships Grants. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V, 48 FR 29115, June 24, 1983, when the authority to administer this program resided in the Agricultural Research Service, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background and Purpose

This document proposes to establish Part 3402 of Title 7, Subtitle B, Chapter XXXIV of the Code of Federal Regulations, for the purpose of administering the Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program conducted under the authority of section 1417(a)(3)(B) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152(a)(3)(B)). The issuance of this rule will establish the procedures to be followed annually in the solicitation of competitive graduate fellowships grant proposals, the evaluation of such proposals, and the award of graduate fellowships grants under this program. In the past, a Notice was published in the **Federal Register** announcing the availability of funds for the Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program and soliciting proposals. In addition, the Notice set forth the procedures and conditions relating to the award of grants and administration of the program. This rule will establish and codify such procedures, criteria, and conditions, and eliminate the need to republish them annually.

List of Subjects in 7 CFR Part 3402

Higher Education Programs (HEP) Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program.

It is therefore proposed to amend Title 7, Subtitle B, Chapter XXXIV of the Code of Federal Regulations, by adding Part 3402 to read as follows:

CHAPTER XXXIV—COOPERATIVE STATE RESEARCH SERVICE, DEPARTMENT OF AGRICULTURE

PART 3402—FOOD AND AGRICULTURAL SCIENCES NATIONAL NEEDS GRADUATE FELLOWSHIPS GRANTS PROGRAM

Subpart A—General Introduction

Sec.
3402.1 Applicability of regulations.
3402.2 Definitions.
3402.3 Institutional eligibility.

Subpart B—Program Description

3402.4 Food and agricultural sciences areas targeted for national needs graduate fellowships grant support.
3402.5 Overview of Graduate Fellowships Grants Program.
3402.6 Fellowship appointments.
3402.7 Fellowship activities.
3402.8 Financial provisions.

Subpart C—Preparation of a Proposal

3402.9 Program brochure and application kit.
3402.10 Proposal cover page.
3402.11 National need summary.
3402.12 National need narrative.
3402.13 Budget.
3402.14 Faculty vitae.
3402.15 Appendix.

Subpart D—Submission of a Proposal

3402.16 Where to submit proposals.
3402.17 Intent to submit a proposal.

Subpart E—Proposal Review and Evaluation

3402.18 Proposal review.
3402.19 Evaluation criteria.

Subpart F—Supplementary Information.

3402.20 Terms and conditions of grant awards.
3402.21 Notice of grant awards.
3402.22 Other federal statutes and regulations that apply.
3402.23 Confidential aspects of proposals and awards.
3402.24 Access to peer review information.
3402.25 Documentation of progress on funded projects.
3402.26 Evaluation of program.

Authority: Sec. 1470, National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3316).

Subpart A—General Introduction

§ 3402.1 Applicability of regulations.

(a) The regulations of this part apply to competitive grants awarded under the provisions of section 1417(a)(3)(B) of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152(a)(3)(B)).

This statute designates the Department of Agriculture as the lead Federal agency for agricultural research, extension, and teaching in the food and agricultural sciences. It authorizes the Secretary of Agriculture, who has delegated the authority to the Cooperative State Research Service (CSRS), to make competitive grants to U.S. colleges and universities to administer and conduct graduate fellowship programs to help meet the Nation's needs for development of scientific and professional expertise in the food and agricultural sciences. The fellowships are intended to encourage outstanding students to pursue and complete graduate degrees in the areas of food and agricultural sciences designated by CSRS through its Higher Education Programs (HEP) as national needs.

(b) The regulations of this part do not apply to grants awarded by the Department of Agriculture under any other authority.

§ 3402.2 Definitions.

As used in this part:

(a) "Graduate degree" means a master's or doctoral degree.

(b) "Citizen or national of the United States" means a citizen or native resident of any one of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Trust Territory of the Pacific Islands, or the Virgin Islands of the United States. It does not refer to a citizen of another country who has applied for United States citizenship.

(c) "College and university" means an educational institution in any State which—

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate,

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which a bachelor's degree or any other higher degree is awarded;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association.

(d) "Food and agricultural sciences" denotes research, extension, and teaching activities concerned with the production, processing, marketing, distribution, conservation, consumption, research and development of food and agriculturally related products and services, inclusive of programs in agriculture, natural resources, forestry, veterinary medicine, home economics, and closely allied fields.

(e) "Teaching activities" specific to the food and agricultural sciences denote academic programs of study designed to train scientists and professionals in production, processing, marketing, distribution, conservation, consumption, research and development of food and agriculturally related products and services.

§ 3402.3 Institutional eligibility.

Proposals may be submitted by all U.S. colleges and universities that confer a graduate degree in at least one area of the food and agricultural sciences targeted for national needs fellowships, that have a significant ongoing commitment to the food and agricultural sciences generally, and that have a significant ongoing commitment to the specific subject area for which grant application is made. It is the objective to award grants to colleges and universities which have notable teaching and research competencies in the food and agricultural sciences. The grants are specifically intended to support fellowship programs that encourage outstanding students to pursue and complete a graduate degree at such institutions in an area of the food and agricultural sciences for which there is a national need for the development of scientific expertise. Therefore, institutions which currently have excellent programs of graduate study and research in the food and agricultural sciences dealing with targeted national needs are particularly encouraged to apply.

Subpart B—Program Description

§ 3402.4 Food and agricultural sciences areas targeted for national needs graduate fellowships grants support.

Areas of the food and agricultural sciences appropriate for fellowship grant applications are those in which developing shortages of expertise have been determined and targeted by CSRS–HEP for national needs fellowship grant support. When funds are available, the specific areas will be identified in a **Federal Register** notice announcing the program and soliciting program applications.

§ 3402.5 Overview of graduate fellowships grants program.

Grants, providing funds for a limited number of fixed graduate student stipends and a fixed cost-of-education institution allowance, will be awarded competitively to selected U.S. institutions. Based on the amount of funds appropriated in any fiscal year, CSRS will determine the allowable stipend amount and cost-of-education allowance. In addition, it will establish minimum and maximum numbers of fellowships that an institution may apply for and support with grant funds and the minimum and maximum funds that may be awarded under a single grant. These determinations and the limits on the total number of proposals which can be submitted by an institution as well as the number of proposals submitted by an institution on behalf of the same college or equivalent administrative unit will be published as a part of the program announcement in the **Federal Register**.

§ 3402.6 Fellowship appointments.

Fellowships must be awarded within 15 months of the effective date of a grant. Institutions failing to meet this deadline will be required to refund monies associated with any unawarded fellowship(s). Fellowship appointments may be held only by persons who enroll and pursue full-time study in a graduate degree program in an area of the food and agricultural sciences targeted for national needs fellowships. In addition, fellows must be newly recruited and may not have been enrolled previously in the academic program at the same degree level; must be citizens or nationals of the United States as determined in accordance with Federal law; and must have a strong interest, as judged by the institution, in pursuing a degree in a targeted national need area and in preparing for a career as a food or agricultural scientist or professional. It will be the responsibility of the grantee institution to award fellowships to students of superior academic ability. A doctoral fellow who maintains satisfactory progress in his or her course of study is eligible for support for a maximum of 36 months within a 45-month period. Master's level fellows, maintaining satisfactory progress, are eligible for support for a maximum of 24

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months during a 33-month period. However, it is the intent of this program that fellows pursue full-time uninterrupted study. For fellows requiring additional time to complete a degree, it is expected that the institution will endeavor to continue supporting individuals originally appointed to fellowships through such other institutional means as teaching assistantships and research assistantships.

Within the framework of these regulations, all decisions with respect to the appointment of fellows will be made by the institution. Throughout a fellow's tenure, the institution should satisfy itself that the fellow is making satisfactory academic progress, and carrying out, or plans to carryout, national needs related research. If an intitution finds it necessary to terminate support of a fellow for insufficient academic progress or by decision on the part of the fellow, the fellow becomes ineligible for future assistance under the program. If a fellow finds it necessary to interrupt his or her program of study because of health, personal reasons, outside employment, or acceptance of an assistantship, the institution must reserve the funds for the purpose of allowing the fellow to resume funded study any time within a 9-month period. However, a fellow who finds it necessary to interrupt his or her program of study more than one time cannot exceed a total of 9 months cumulative leave status without forfeiting eligibility. For fellowships terminated because of insufficient academic progress, a decision on the part of the fellow, or reserved due to an interrupted program of study but not resumed within the required time period, unexpended monies must be refunded. Institutions may not use unexpended monies associated with a terminated fellowhip to recruit and support a "replacement" fellow.

§ 3402.7 Fellowship activities.

A fellow must be enrolled at all times during tenure in a full-time program leading to a graduate degree in one of the targeted national needs areas. However, the normal requirement of formal registration during part of this tenure may be waived if permitted by the policy of the fellowship institution, provided that the fellow remains engaged in appropriate full-time fellowship activities. Fellows in academic institutions are not entitled to vacations as such. They are entitled to the short normal student holidays observed by the institution. The time between academic semesters or quarters is to be utilized as an active part of the training period. During the period of support, a fellow may not accept employment by the institution or any other agency. However, a grant supporting research costs of the fellow is acceptable, exclusive of salary or wages and fringe benefits for the fellow.

§ 3402.8 Financial provisions.

The basic fellowship stipend and cost-of-education institution allowance that may be paid from grant funds will be contingent on and determined by annual appropriations. The amount of both the stipend and the cost-of-education allowance will be cited in the program announcement in the **Federal Register**. The cost-of-education allowance cannot exceed the authorized percent (cited in the annual program announcement) of the total fellowship stipends requested. An institution may elect to use these funds to apply to fellows' tuitions and fees; however, such is not required. The allowance may be used also by an institution to defray other program expenses (e.g., recruitment, travel, publications, or salaries of project personnel). Tuition and fees are the responsibility of a fellow unless an institution elects to use its cost-of-education allowance for this purpose or elects to pay such costs out of other non-USDA monies. No dependency allowances are provided for fellows. Monthly stipend payments will be made to fellows by the institution, according to standard institutional procedures.

Subpart C—Preparation of a Proposal

§ 3402.9 Program Brochure and Application Kit.

A Program Brochure and Application Kit will be made available to any potential grant applicant who requests a copy. This brochure and kit provide instructions, regulatory provisions applicable to the submission and administration of the grants, and forms.

§ 3402.10 Proposal cover page.

The Proposal Cover Page, Form CSRS-701, can be found in the program brochure and must be completed in its entirety including all authorizing signatures. One copy of each grant application must contain the pen-and-ink signature(s) of the Project Director(s), as well as the the Authorized Certifying Representative for the college, and institution.

§ 34021.11 National need summary.

Using the National Need Summary, Form CSRS-702, summarize the proposed graduate program of study and the academic and research strengths of the institution in the national need area for which funding is requested. If support for both master's and doctoral fellowships is requested, prepare a summary for each degree level. The summary should not include any reference to the specific number of fellowships requested. The information on this summary page(s) will be used in assigning the most appropriate panelists to review a proposal. If a proposal is supported, this page may be used in program publications. The *National Need Summary* form is provided in the program brochure.

§ 34021.12 National need narrative.

A narrative for the national need area should be written in four sections and limited to no more than 20 pages. The four sections to be included are as follows:

(a) *Section 1.* Present a detailed description of the proposed fellows' graduate plan of study. Identify courses and summarize content. Discuss any special features such as multidisciplinary aspects of the program of study, multiuniversity collaborative approaches, experiential learning opportunities such as a practicum or internship, or a unique disciplinary collateral specialization. Also discuss areas of research that fellows will be encouraged to engage in via a thesis or dissertation. In essence, this section must clearly establish that the proposed program of study will result in the development of outstanding scientific/professional expertise in the national need area for which funding is requested. Caution: If a proposal requests support for both master's and doctoral fellowships, all information in this section should be provided specific to each degree level.

(b) *Section 2.* Justify the institution's position that it presently provides a major, productive, recognized program of graduate study and research in the area of national need in which selected fellows would be engaged. Include evidence of the quality of existing attributes and resources of the institution such as teaching and research faculty, instructional and research instrumentation and facilities, library resources, computing resources, and so forth. Also, discuss the extent to which graduate students have access to such institution resources.

(c) *Section 3.* Thoroughly document the institution's plans and procedures for managing fellowship appointments. Explain in-depth the plan for recruiting academically outstanding fellows and procedures for selecting fellows of superior quality who appear to be highly motivated to prepare for and pursue a career as a food or agricultural scientist or professional. In addition, cite specific plans for advising and guiding fellows through a program of study, as well as any special programs or activities that will be offered to enrich the fellows' graduate training.

(d) *Section 4.* Include important supplementary summary data for your institution relevant to the national need area for which funding is requested. Examples of appropriate data are indices of student quality, enrollments and degrees awarded for recent years, placement of graduates, facilities, and faculty research support.

§ 3402.13 Budget.

Prepare the Proposal Budget, Form CSRS-703, identifying all costs associated with the proposal. Instructions for completing the *Proposal Budget* are provided on the form.

§ 3402.14 Faculty vitae.

This section should include summary vitae (emphasizing major accomplishments during the past 5 years) for faculty contributing significantly to institutional competence in the national need area addressed in the proposal. Arrange the vitae in alphabetical order, assign a number to each individual vita in the upper right hand corner, and refer to this number when appropriate within the context of the proposal.

§ 3402.15 Appendix.

Any additional supporting information deemed important for clarifying and/or strengthening the proposal should be included in an appendix.

Subpart D—Submission of a Proposal

§ 3402.16 Where to submit proposals.

Submit 6 copies of the complete proposal and one copy of the institution's latest graduate catalog as a single package to:

USDA-CSRS, Office of Grants and Programs Systems, Grants Administrative Management, Room 010 Justin Smith Morrill Building, 15th and Independence Ave. SW., Washington, DC 20251.

The deadline date for submission will be cited in the annual program announcement published in the **Federal Register.**

§ 3402.17 Intent to submit proposal.

To assist CSRS-HEP in preparing for review of fellowship proposals, institutions planning to submit proposals for fellowships are requested to complete and return the *Intent to Submit Card* provided on the inside back cover of the program brochure. One card should be completed and returned for *each* proposal an institution anticipates submitting. Sending this card does not commit an institution to any course of action.

Subpart E—Proposal Review and Evaluation

§ 3402.18 Proposal review.

The proposal evaluation process includes both internal staff review and merit evaluation by panels of scientists, educators, industralists, and Government officials who are highly qualified to render expert advice in the targeted areas. The goal of the process of selection and structuring of evaluation panels is to provide optimum expertise and objective judgment in the evaluation of proposals specific to a particular area of national need.

§ 3402.19 Evaluation criteria.

A proposal addressing a particular national need area will be evaluated in competition with other proposals addressing the same national need area at the same level of graduate study. Proposals addressing more than one level of graduate study will be rated for each degree level addressed. Therefore, funding may be awarded to a particular portion of a proposal addressing a degree level in lieu of funding a proposal in its entirety. Both internal staff and the panelists will evaluate proposals primarily on the basis of the following criteria:

Evaluation Criteria

Criteria and Weight

a. The degree to which the proposal clearly establishes that the proposed program of graduate training will result in the development of outstanding scientific/professional expertise related to the national need area and in a reasonable period of time—25 points.

b. The degree to which the proposed program of study reflects special features such as multidisciplinary and/or multiuniversity collaborative approaches, experiential learning opportunities, or a unique disciplinary collatoral specialization—15 points.

c. The degree to which the proposal establishes that the institution's faculty, facilities and equipment, instructional support resources, and other attributes are excellent for providing outstanding graduate study and research at the forefront of science and technology related to the chosen area of national need—20 points.

d. The degree to which the institution's plans and procedures for recruitment and selection of academically outstanding fellows and for monitoring and facilitating fellows' progress through a program of study reflect excellence as documented in the proposal—20 points.

e. Supporting summary data—10 points.

f. The quality of the proposal as reflected by its substantive content, organization, clarity, and accuracy—10 points.

Additional evaluation criteria may be cited in the annual program announcement published in the **Federal Register.**

Subpart G—Supplementary Information

§ 3402.20 Terms and conditions of grant awards.

Within the limit of funds available for such purpose, the awarding official shall make project grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program areas under the evaluation criteria and procedures set forth in this part. The beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved for support. All funds granted under this part shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015).

§ 3402.21 Notice of grant award.

(a) The grant award document shall include at a minimum the following:

(1) Legal name and address of performing organization.

(2) Title of project.

(3) Name(s) and address(es) of Project Director(s).

(4) Identifying grant number assigned by the Department.

(5) Project period, which specifies how long the Department intends to support the effort without requiring reapplication for funds.

(6) Total amount of Federal financial assistance approved during the project period.

(7) Legal authority(ies) under which the grant is awarded.

(8) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award.

(9) Other information or provisions deemed necessary by the Department to carry out its granting activities or to accomplish the purpose of this particular project grant.

(b) The notice of grant award, in the form of a letter, will provide pertinent instructions and information to the grantee which are not included in the grant award document described above.

§ 3402.22 Other Federal statutes and regulations that apply.

Several other Federal regulations or statutes apply to project grants awarded under this part. These include but are not limited to:

7 CFR Part 15, Subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, as amended, implementing OMB directives (i.e. Circular Nos. A-110 and A-21), as well as general policy requirements applicable to recipients of Departmental financial assistance

29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and CFR 7 Part 15b (USDA effectuation of statute), prohibiting discrimination based upon physical handicap in Federally assisted programs.

§ 3402.23 Confidential aspects of proposals and awards.

When a proposal results in a grant, it becomes a part of the record of the Agency's transactions, available to the public upon specific request. Information that the Agency and the grantee mutually agree to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked as such and sent in a separate statement, two copies of which should accompany the proposal. The original copy of a proposal that does not result in a grant will be retained by the Agency for a period of three years. Other copies will be destroyed. Such a proposal will be released only with the consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to the final action thereon.

§ 3402.24 Access to peer review information.

After final decisions have been announced, CSRS-HEP will, upon request, inform the project director of the reasons for its decision on a proposal. Verbatim copies of reviews, not including the identity of the reviewer, will be made available to respective project directors upon specific request.

§ 3401.25 Documentation of progress on funded projects.

A *Fellowship Appointment Documentation* form is included in the program brochure. Upon request by CSRS-HEP, project directors awarded grants under the program will be required to complete and submit this form. Follow-up progress reports will focus on assessing continuing progress of fellows through their graduate programs of study and on institution adherence to program guidelines.

§ 3401.26 Evaluation of program.

Grantees should be aware that CSRS may, as a part of its own program evaluation activities, carry out in-depth evaluations of assisted activities through independent third parties. Thus, grantees should be prepared to cooperate with evaluators retained by CSRS to analyze both the institutional context and the impact of any supported project.

Done at Washington, DC, this 7th day of November 1986.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 86-25686 Filed 11-13-86; 8:45 am]

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 897/Pub. L. 99-604

To recognize the Army and Navy Union of the United States of America. (Nov. 6, 1986; 3 pages) Price: $1.00

H.R. 1452/Pub. L. 99-605

Refugee Assistance Extension Act of 1986. (Nov. 6, 1986; 8 pages) Price: $1.00

H.R. 1790/Pub. L. 99-606

To withdraw certain public lands for military purposes, and for other purposes. (Nov. 6, 1986; 13 pages) Price: $1.00

H.R. 2434/Pub. L. 99-607

To authorize appropriations for the Patent and Trademark Office in the Department of Commerce, and for other purposes. (Nov. 6, 1986; 3 pages) Price: $1.00

H.R. 4244/Pub. L. 99-608

To authorize funds to preserve the official papers of Joseph W. Martin, Jr. (Nov. 6, 1986; 2 pages) Price: $1.00

S. 5554/Pub. L. 99-609

Community Development Credit Union Revolving Loan Fund Transfer Act. (Nov. 6, 1986; 2 pages) Price: $1.00

H.J. Res. 36/Pub. L. 99-610

To authorize the establishment of a memorial on Federal land in the District of Columbia and its environs to honor women who have served in the Armed Forces of the United States. (Nov. 6, 1986; 1 page) Price: $1.00

H.J. Res. 594/Pub. L. 99-611

To designate the week beginning May 3, 1987 as "National Correctional Officers Week." (Nov. 6, 1986; 1 page) Price: $1.00

H.J. Res. 684/Pub. L. 99-612

Calling for recognition of United Way's one hundredth anniversary. (Nov. 6, 1986; 1 page) Price: $1.00

H.J. Res. 755/Pub. L. 99-613

Providing for the convening of the first session of the One hundredth Congress. (Nov. 6, 1986; 1 page) Price: $1.00

S. 386/Pub. L. 99-614

To confirm a conveyance of certain real property by the Southern Pacific Transportation Company to Ernest Pritchett and his wife, Dianna Pritchett, and for other purposes. (Nov. 6, 1986; 3 pages) Price: $1.00

S. 511/Pub. L. 99-615

To change the name of the Loxahatchee National Wildlife Refuge, Florida, to the Arthur R. Marshall Loxahatchee National Wildlife Refuge. (Nov. 6, 1986; 1 page) Price: $1.00

S. 1230/Pub. L. 99-616

To amend the patent laws implementing the Patent Cooperation Treaty. (Nov. 6, 1986; 3 pages) Price: $1.00

S. 1311/Pub. L. 99-617

To authorize the Board of Regents of the Smithsonian Institution to construct the Charles McC. Mathias, Jr. Laboratory for Environmental Research in Edgewater, Maryland, and to designate the United States Courthouse and Customhouse in Louisville, Kentucky, as the "Gene Snyder United States Courthouse and Customhouse." (Nov. 6, 1986; 2 pages) Price: $1.00

S. 2852/Pub. L. 99-618

To authorize the Secretary of Transportation to release restrictions on the use of certain property conveyed to the Peninsula Airport Commission, Virginia, for airport purposes. (Nov. 6, 1986; 1 page) Price: $1.00

S. 2864/Pub. L. 99-619

Department of Labor Executive Level Conforming Amendments of 1986. (Nov. 6, 1986; 2 pages) Price: $1.00

S.J. Res. 43/Pub. L. 99-620

Authorizing establishment of a memorial to honor the American Armored Force. (Nov. 6, 1986; 1 page) Price: $1.00

S.J. Res. 258/Pub. L. 99-621

Providing for reappointment of Murray Gell-Mann as a citizen regent of the Board of Regents of the Smithsonian Institution. (Nov. 6, 1986; 1 page) Price: $1.00

S.J. Res. 336/Pub. L. 99-622

To express the sense of Congress on recognition of the contributions of the seven Challenger astronauts by supporting establishment of a Children's Challenge Center for Space Science. (Nov. 6, 1986; 1 page) Price: $1.00

S.J. Res. 427/Pub. L. 99-623

Reaffirming our friendship and sympathy with the people of El Salvador following the devastating earthquake of October 10, 1986. (Nov. 6, 1986; 1 page) Price: $1.00

H.R. 4302/Pub. L. 99-624

To establish a commission for the purpose of encouraging and providing for the commemoration of the centennial of the birth of President Dwight David Eisenhower. (Nov. 7, 1986; 3 pages) Price: $1.00

H.R. 4531/Pub. L. 99-625

To improve the operation of certain fish and wildlife programs. (Nov. 7, 1986; 4 pages) Price: $1.00

H.R. 4731/Pub. L. 99-626

Recreational Boating Safety Act of 1986. (Nov. 7, 1986; 4 pages) Price: $1.00

H.R. 5420/Pub. L. 99-627

To amend section 3726 of title 31, United States Code, relating to payment for transportation, to permit prepayment audits for selected transportation bills, to permanently authorize payment of transportation audit contractors from carrier overpayments collected, to authorize net overpayments collected to be transferred to the Treasury, and for other purposes. (Nov. 7, 1986; 2 pages) Price: $1.00

H.R. 5560/Pub. L. 99-628

Child Sexual Abuse and Pornography Act of 1986. (Nov. 7, 1986; 3 pages) Price: $1.00

H.J. Res. 10/Pub. L. 99-629

To designate the week beginning January 19, 1987, as "Shay's Rebellion Week" and Sunday, January 25, 1987, as "Shay's Rebellion Day." (Nov. 7, 1986; 1 page) Price: $1.00

H.J. Res. 67/Pub. L. 99-630

Calling for a wildlife sanctuary for humpback whales in the West Indies. (Nov. 7, 1986; 1 page) Price: $1.00

H.J. Res. 756/Pub. L. 99-631

To make corrections in the Comprehensive Anti-Apartheid Act of 1986. (Nov. 7, 1986; 5 pages) Price: $1.00

S. 565/Pub. L. 99-632

To provide for the transfer of certain lands in the State of Arizona, and for other purposes. (Nov. 7, 1986; 2 pages) Price: $1.00

S. 2245/Pub. L. 99-633

To authorize appropriations to carry out the Export Administration Act of 1979 and export promotion activities. (Nov. 7, 1986; 1 page) Price: $1.00

S. 2250/Pub. L. 99-634

Anti-Kickback Enforcement Act of 1986. (Nov. 7, 1986; 4 pages) Price: $1.00

S. 2351/Pub. L. 99-635

To revise the boundaries of Olympic National Park and Olympic National Forest in the State of Washington, and for other purposes. (Nov. 7, 1986; 3 pages) Price: $1.00

S. 2452/Pub. L. 99-636

To provide for the naming or renaming of certain buildings of the United States Postal Service. (Nov. 7, 1986; 2 pages) Price: $1.00

S. 2534/Pub. L. 99-637

To authorize the acquisition and development of a mainland tour boat facility for the Fort Sumter National Monument, South Carolina, and for other purposes. (Nov. 7, 1986; 3 pages) Price: $1.00

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Federal Register
Vol. 51, No. 221
Monday, November 17, 1986

Presidential Documents

Title 3—

The President

Proclamation 5570 of November 13, 1986

National Adoption Week, 1986

By the President of the United States of America

A Proclamation

The family is the most important unit in society, because belonging to a family is so important to the individual. We all need the love and the nurture of a family. Children belong in a family, where they can be cared for and taught the moral values and traditions that give order and stability to our lives and to society as a whole. Many adults, who cannot have children or who have room in their hearts for more of them, desire the special joy of sharing their homes with children who would otherwise have none. For these families, adoption represents a happy marriage of personal needs that serves society's larger interests as well.

Despite the many parents who want and wait for children and the perfect gift of life adoption can represent, it has tended to become the forgotten option in America. Many Americans, however, are taking courageous steps to reverse this trend and to promote public awareness of the positive advantages of adoption. For instance, they are making us aware that today in America approximately 36,000 children are legally eligible and waiting for adoption. These children have special needs that loving and generous people can meet. Some of these children are physically, mentally, or emotionally handicapped, while some are older, or belong to minority groups, or have brothers and sisters and need to be adopted together. Through the combined efforts of public and private child welfare agencies, church and civic groups, adoptive parent and advocacy groups, businesses, and the communications media, loving families are being found for these wonderful children.

More and more Americans are also encouraging adoption as the best solution for single women facing crisis pregnancies. Thousands upon thousands of Americans long for children even as more than 4,000 unborn babies perish in our country each day by abortion. As a people we must do more to give all the support we can, during and after pregnancy, to the courageous and compassionate mothers who choose adoption as a means of giving their little ones a lifetime of love with a permanent family.

"Nobody has ever measured, even poets, how much a heart can hold," wrote Zelda Fitzgerald. We do well during this Thanksgiving season to remember that the human heart can hold a great deal indeed. Let us call to mind the children, both here in the United States and in other countries, who need families, and let us honor our adoptive families and the brave people whose sacrifice and selflessness make such families possible.

The Congress, by Senate Joint Resolution 306, has designated the week beginning November 23, 1986, as "National Adoption Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning November 23, 1986, as National Adoption Week, and I call on all Americans, governmental and private agencies to observe the week with appropriate ceremonies and activities.

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IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of November, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-26007
Filed 11-13-86; 4:21 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 51, No. 221
Monday, November 17, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-61-AD; Amdt. 39-5467]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) that requires repetitive inspections for cracking, and repair as necessary, of body frame structure and skin in the nose (section 41) of the fuselage on certain Boeing Model 747 airplanes. This AD expands the area to be inspected. This action is prompted by a recent finding of numerous body frame structure cracks in other parts of section 41 which, if allowed to progress, could lead to sudden decompression of the fuselage.

DATE: *Effective:* December 15, 1986.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. It may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen Schrader, Airframe Branch, ANM-120S; telephone (206) 431-1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive to require inspection for cracking and subsequent repair, if necessary, was published in the **Federal Register** on July 1, 1986 (51 FR 23787). The comment period for the proposal closed on August 22, 1986.

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received.

Comments were received from the Air Transport Association (ATA) of America on behalf of its members. The ATA stated that operators have been denied an adequate comment period because Revision 3 to the Boeing Service Bulletin, which the accomplishment instructions for paragraphs C. through I. of the Notice of Proposed Rulemaking (NPRM) are provided, was released 29 days after the issuance of the NPRM. This effectively reduced the total comment period to less than 30 days. The FAA does not concur that this was an inadequate comment period. Revision 3 to the Boeing Service Bulletin did not expand the area to be inspected from the requirements of the Notice. It only added inspection procedures designed to assist the operator in performing the required inspections. Since the AD continues to allow FAA approved alternative procedures, no additional requirements are imposed by the reference to Revision 3 of the Boeing Service Bulletin. The comment period to the NPRM is therefore considered adequate.

The ATA and several ATA members requested that the effective date of the AD be delayed until repair kits for the area behind the flight engineers panel are available. The manufacturer has advised the FAA that the repair kits, and Service Bulletin instructions, will begin to become available by November 1, 1986. From a practical standpoint, due to notice and publication procedures, the final AD will not become effective prior to November 1, 1986. The comment will thereby be accommodated.

One ATA member requested that the compliance period of 500 landings, for airplanes with 16,000 landings or more, be increased to 750 landings to improve scheduling and flexibility. The FAA does not concur with the recommendation. In light of the severity of the hazard involved, and the time needed to perform the inspections, the FAA determined that the proposal for 500 landings was the shortest practicable compliance period. The FAA has determined that there have been no additional inspection reports that would support this increase.

The ATA commented that paragraph M. is not clear in what is meant by "new structure." The FAA does not concur. Paragraph M. clearly states "new structure" without any qualifications.

After issuing the NPRM, a repair and inspection procedure was developed by the maufacturer that will allow a 10,000 landings deferral of the repetitive inspections required by this AD. This deferral will apply to those operators who replace individual body frames, and not the adjacent structure. This deferral is conditioned upon accomplishment of a procedure, defined in new paragraph N., which requires inspection and repair, if necessary, of adjacent structure, and, in the area of stringer 6 from body stations 340 to 520, requires tear strap modification and stringer 6 replacement.

A new paragraph R. has been added to provide terminating action for the repetitive inspections required for the structure replaced and other adjacent structure.

One ATA member questioned the difference between Boeing Service Bulletin 747-53A2265, Revision 3, dated July 29, 1986, that allows inspection of the right side of the upper deck between body stations 340 to 400 to be deferred if the left side had no cracking, and the NPRM which requires inspection at every other inspection cycle even though the left side had no cracking. The member requested that the FAA review its justifying data in support of paragraph O. to determine if the AD can be revised to be consistent with the service bulletin.

This comment is incorrect in that the service bulletin would permit deferral only of the initial inspection, but would require inspections thereafter at each inspection cycle as specified in paragraph H. of the AD. A revision of the AD to conform to the specifications of the service bulletin would be beyond the scope of the notice and, therefore, has not been considered. The FAA will review this difference and, if appropriate, will consider future rulemaking to amend this AD.

The ATA commented that the $5,120,000 cost, estimated for the first

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inspection cycle, is an understatement. This discrepancy is due to an early inaccurate labor estimate by the manufacturer. The current cost impact of the initial inspection cycle is $12,160,000.

Another commenter requested that FAA give special consideration to certain high time airplanes, by providing for an optional 500 landing compliance threshold for paragraphs D. and E. to coincide with the the inspection requirements of paragraph F. The proposed AD permits an operator to comply with paragraphs D. and E. at the same time that it complies with paragraph F.

This same commenter requested that the AD provide for repeat inspections at every 3,500 landings, if the operator chooses to accomplish the paragraphs D. and E. inspections concurrently with the paragraph F. requirements. The FAA does not concur. The rate of crack growth found in this structure requires that the 3,000 landing repetitive inspection interval be maintained.

The commenter also requested that, for any location that the frames are replaced, the requirements for repetitive inspections following that replacement be removed. The FAA concurs and, as discussed above, paragraph N. has been added to clarify the inspection requirements when a frame section is replaced.

The manufacturer suggested adding a borescope inspection method as an optional procedure for complying with paragraph H. The FAA concurs and paragraph H. has been revised to include an optional procedure.

Another commenter suggested rewording paragraph M. to ensure that structure adjacent to cracked and repaired frames continue to be inspected at 3,000 flight intervals. The FAA does not concur. Paragraph M. only addresses the case where all structure in an area is new and new structure need not be inspected. As discussed above, adjacent structure is covered by paragraph N.

Upon further review of paragraphs A. and B. the FAA has determined that the inspection threshold for paragraphs A. and B., for airplanes with fewer than 12,000 landings, should be increased from 400 to 1,000 landings. This increase will allow for inspection phase-in with paragraph D. The FAA has determined that safety would not be compromised by this increase.

As discussed above, the text of the AD has also been revised to call out Boeing Service Bulletin 747–53A2265, Revision 3, dated July 29, 1986, in places where the NPRM referred to FAA-approved procedures. This does not place any additional burden on the operators of Boeing Model 747 airplanes since paragraph P. allows the substitution of alternate approved procedures.

A new paragraph S. has been added to provide operators with the option of accomplishment of the inspection of section 41 in accordance with Boeing Service Bulletin 747–53A2265, Revision 3, dated July 29, 1986, or later FAA-approved revisions, as an acceptable equivalent method of compliance with this AD.

A number of editorial changes have been made in the final rule strictly for clarification purposes.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes noted above.

In issuing the NPRM, Docket 86–NM–61–AD, the FAA intended to be consistent with the inspection, modification, and compliance time provisions of Boeing Service Bulletin 747–53A2265, Revision 3, which was still being developed by the manufacturer at that time. Following the issuance of the NPRM, the manufacturer issued Revision 3 to the service bulletin; however, it contained additional information which recommended more frequent inspections and repair procedures for certain areas, than was proposed in the NPRM. Although the intent of the FAA is to make the requirements of this final rule consistent with the recommendations of the service bulletin, it would be inappropriate to revise the final rule so as to increase the burden of compliance, since by doing so would expand the scope of the proposal without allowing appropriate time for public comment. The FAA, therefore, is considering future rulemaking to amend this AD to make its requirements consistent with the inspection, modification, and compliance provisions of Revision 3 of the service bulletin.

It is estimated that 160 airplanes of U.S. registry will be affected by this AD. It will take approximately 1,900 manhours per airplane to accomplish the required actions. (This number has been determined by averaging the number of manhours required to accomplish the 5 levels of imspection: Ranging from 3,600 manhours per airplane for the inspection required at 19,000 cycles, to 66 manhours per airplane for the inspection required at 8,000 cycles.) The average labor cost will be $40 per manhour. Based on these figures, the cost impact of this AD to U.S. operators is estimated to be $12,160,000 for the initial inspection cycle.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A final evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD T86–03–51, Amdt. 39–5297 (51 FR 16155; May 1, 1986); as follows:

Boeing: Applies to Model 747 series airplanes listed in Boeing Alert Service Bulletin 747–53A2265, Revision 2, dated May 8, 1986, certificated in any category. To detect cracking of forward fuselage (Section 41) internal and external structure, accomplish the following, unless already accomplished:

A. For airplanes, line numbers 1 through 87, perform a visual or X-ray inspection for cracking of the body frame structure and skins from body stations 360 through 380 from stringer 23 to the main deck floor, both left and right, in accordance with Boeing Service Bulletin 747–53A2265, Revision 2, dated May 8, 1986, or later FAA-approved revisions, in accordance with the schedule described in paragraph B., below.

B. For airplanes, line numbers 88 through 603, perform a visual or X-ray inspection for cracking of the body frame structure and skins in the following areas: on the main deck between body stations 240 and 400 from stringer 23 to the floor, both left and right; between body stations 200 and 240 from stringer 13A to 14E, both left and right; and at the body station 360 frame web at stringer 3L, in accordance with Boeing Service Bulletin 747–53A2265, Revision 2, dated May 8, 1986, or later FAA-approved revisions, in accordance with the following schedule:

1. On airplanes that have accumulated more than 14,000 landings as of the effective date of this AD, inspect within 100 landings after the effective date of this AD.

2. On airplanes that have accumulated 12,000 to 14,000 landings as of the effective date of this AD, inspect within 200 landings after the effective date of this AD.

3. On airplanes that have accumulated fewer than 12,000 landings as of the effective date of this AD, inspect within 1,000 landings after the effective date of this AD, or prior to the accumulation of 10,000 landings, whichever occurs later.

Note.—Paragraphs A. and B. are part of telegraphic AD T86–03–51, effective May 19, 1986. AD T86–03–51 is superseded by this AD.

C. For airplanes, line numbers 88 through 603, within the next 600 landings after the effective date of this AD, or prior to the accumulation of 8,000 landings, whichever occurs later, perform a visual or X-ray inspection, for cracking, in accordance with Boeing Service Bulletin 747–53A2265, Revision 3, dated July 29, 1986, or later FAA-approved revisions, of the body frame structure and adjacent skin in the following areas: the lower forward corner of the overhead escape hatch, body station 360 at stringer 3L; and both sides of the airplane below the window belt and above the main deck floor (stringer 22 to stringer 26) from body stations 300 through 320.

D. Except as provided in paragraph O., below, for airplanes, line numbers 1 through 603, within the next 1,000 landings after the effective date of this AD, or prior to the accumulation of 10,000 landings, whichever occurs later, perform the following visual or X-ray inspections for cracking, in accordance with Boeing Service Bulletin 747–53A2265, Revision 3, dated July 29, 1986, or later FAA-approved revisions:

1. Inspect body frames and adjacent skin in the following areas: on both sides of the airplane from body station 200 through 240 between stringers 13A and 14E, at body station 240 between stringers 6 and 13A, from body station 240 through 400 between stringers 22 and 26, and from body station 500 through 520 between stringers 30 and 34; and on the left side of the airplane at body station 360 at stringer 3L.

2. Inspect body frames and floor beams at frame to floor beam attach location, and the adjacent skin on both sides of the airplane in the area of body station 330 between stringers 11 and 14 on both sides of the airplane.

3. Inspect body frames, adjacent skin, and tear straps on both sides of the airplane in the area from body station 360 through 420 between stringers 4 and 10A.

4. Inspect: (a) Body frames and adjacent skin, (b) sills, intercostals, and stringers, (c) floor beams within 3 inches of frames, and (d) skin and skin splices (internal and external general visual inspection with detailed external visual inspection at door cutout corners and body station 417, 460 and 480) on both sides of the airplane from body station 400 through 520 between upper deck floor and stringer 30.

E. Except as provided in paragraph O., below, for airplanes, line numbers 1 through 603, within the next 1,000 landings after the effective date of this AD, or prior to the accumulation of 13,000 landings, whichever occurs later, perform the following visual or X-ray inspections for cracking, in accordance with Boeing Service Bulletin 747–53A2265, Revision 3, dated July 29, 1986, or later FAA-approved revisions.

1. Inspect body frame structure, adjacent skin, tear straps, and sills on both sides of the airplane in the area from body station 340 through 400 between stringer 0 and the upper deck floor.

2. Inspect body frames, adjacent skin, and tear straps on both sides of the airplane in the area from body station 400 through 520 between stringer 6 and the upper deck floor.

3. Perform the inspections defined in paragraph D., above.

F. Except as provided in paragraph O., below, for airplanes, line numbers 1 through 603, within the next 500 landings after the effective date of this AD, or prior to the accumulation of 16,000 landings, whichever occurs later, perform the following visual or X-ray inspections for cracking of the body frames and adjacent skin in the following areas on both sides of the airplane, in accordance with Boeing Service Bulletin 747–53A2265, Revision 3, dated July 29, 1986, or later FAA approved revisions:

—From body stations 200 through 220 between stringers 0 and 13A;
—From body stations 220 through 240 between stringers 0 and 6;
—From body stations 240 through 400 between stringers 14 and 19;
—From body stations 240 through 400 between stringers 26 and 34;
—From body stations 400 through 480 between stringers 30 and 34;
—From body stations 320 through 340 between stringer 0 and cabin window upper sill;
—From body stations 480 through 520 between stringer 0 and 6;
—At body stations 240 between stringers 34L and 34R in belly area; and
—At body station 320 between stringer 34 to nose wheel well.

G. Except as provided in paragraph O., below, for airplanes, line numbers 1 through 603, within the next 500 landings after the effective date of this AD, or prior to the accumulation of 19,000 landings, whichever occurs later, perform visual or X-ray inspection, in accordance with Boeing Service Bulletin 747–53A2265, Revision 3, dated July 29, 1986, or later FAA-approved revisions, for cracking of the body frames and adjacent skin from body station 140 through 520 that are not identified in paragraphs D., E., and F., above.

H. Repeat the inspections required by paragraphs D., E., F., and G., above, at the following intervals:

1. If the immediately prior inspection was accomplished using visual methods, including borescope inspection methods described in Boeing Service Bulletin 747–53A2265, Revision 3, dated July 29, 1986, or later FAA-approved revision, perform the next inspection within the next 3,000 landings.

2. If the immediately prior inspection was accomplished using X-ray methods, perform the next inspection within the next 1,500 landings.

I. If X-ray results give indications of cracking, visually inspect the structure to determine the full extent of frame cracking in accordance with the following schedule:

1. Prior to further flight for all findings that indicate possible skin cracking, cracks exceeding the limits of Boeing Service Bulletin 747–53A2265, Revision 2, dated May 8, 1986, in one or more frames, or cracking in two or more adjacent frames.

2. Within 150 landings for all findings that indicate partial severance of one frame not exceeding the limits of Boeing Service Bulletin 747–53A2265, Revision 2, dated May 8, 1986, provided no adjacent skin cracking or adjacent frame cracking is found.

J. If any cracking is found by visual inspection, repair in accordance with FAA-approved procedures prior to further flight, unless cracking does not exceed the limits of the provisions of Section III, Paragraph G., of Boeing Service Bulletin 747–53A2265, Revision 2, dated May 8, 1986, or later FAA-approved revision.

K. For the purpose of complying with this AD, the number of landings may be determined to equal the number of pressurization cycles where the cabin pressure was greater than 2.0 PSI.

L. For Model 747SR airplanes only, based on continued mixed operation of lower cabin differentials, the initial inspection thresholds and the repetitive inspection intervals specified in this AD may be multiplied by a 1.2 adjustment factor.

M. For structure which has been replaced with new structure during previous airplane modification/repair, the inspection requirements above date from the time of replacement of that structure.

N. The requirement for the repetitive inspections of existing structure (skin, stringers, clips, shear ties, etc.) adjacent to any new body frame may be deferred for 10,000 landings, provided the adjacent structure was inspected and all cracks were repaired when the new frame was installed. The inspection requirements above date from the time of replacement of the frame.

In the area of stringer 6, from body stations 340 to 520, this deferral is contingent upon also accomplishing the following:

1. Tear strap modification at body stations 360 to 500, both left and right sides, in accordance with FAA approved procedures.

(Tear strap modification is not required at body stations 380 to 440 on the right hand side for airplanes with right hand side crew service doors, and body stations 360 to 440 on the left hand side for airplanes with left hand side crew service doors.)

2. Replace stringer S–6 at body stations 340 to 400, both left and right sides. (Stringer replacement is not required at body stations 390 to 400 at crew service door locations.)

Note.—For example: The original threshold was 13,000 landings. The frame segment is replaced at 14,000 landings with a new frame segment. The next inspection threshold will be 10,000 landings after replacement. This will be followed by the resumption of the repetitive inspections at intervals of 1,500 or 3,000 landings.

O. Upper deck right side inspection from body stations 340 to 400 need be accomplished only if: (1) Any cracking is

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found, or if any cracking was previously repaired, on upper deck left side from body station 340 to 400, excluding any body station 360 frame web cracking at left stringer 3 adjacent to the crew escape hatch lower forward corner; (2) if left side structure was previously replaced or modified; or (3) if, at the last inspection of the left side, the inspection was deferred on the right side.

P. An alternate method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Q. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

R. Installation of new and improved body frame structure in accordance with FAA-approved procedures is terminating action for the repetitive inspections required by this AD for the structure replaced and other adjacent structure.

S. An acceptable equivalent method of compliance with this AD is the accomplishment of the inspections of section 41 in accordance with the instructions and compliance schedule of Boeing Service Bulletin 747–53A2265, Revision 3, dated July 29, 1986, or later FAA-approved revisions.

This supersedes AD T86–03–51, Amendment 39–5297 (51 FR 16155; May 1, 1986), issued February 16, 1986.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective December 15, 1986.

Issued in Seattle, Washington, on November 5, 1986.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 86–25803 Filed 11–14–86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 61094–6194]

OMB Control Number Assigned Pursuant to the Paperwork Reduction Act

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule, technical amendment.

SUMMARY: The Bureau of Economic Analysis is issuing this final rule to amend 15 CFR 806.18 to display a currently valid Office of Management and Budget (OMB) Control Number assigned pursuant to the Paperwork Reduction Act.

EFFECTIVE DATE: November 17, 1986.

FOR FURTHER INFORMATION CONTACT: Barbara Russell, (202) 377–5161.

SUPPLEMENTARY INFORMATION: On July 26, 1984 OMB approved the information collection request for the annual survey of U.S. Direct Investment Abroad (OMB Control No. 0608–0053) to be published at 15 CFR 806.14 (49 FR 30058).

This OMB Control Number is being added to § 806.18 to comply with the requirements of section 3507(f) of the Paperwork Reduction Act.

Because this amendment relates to agency organization and management, it is not a "rule" within the meaning of section 1(a) of E.O. 12291 and accordingly is not subject to the requirements of that order nor is it subject to the Administrative Procedure Act (APA) requirements of notice and opportunity for comment and delayed effective date. Because a notice of proposed rulemaking is not required by the APA or any other law, this final rule is not subject to the requirements of the Regulatory Flexibility Act.

List of Subjects in 15 CFR Part 806

Economic statistics, Foreign investment in the United States, Reporting and recordkeeping requirements, United States investments abroad.

Dated: October 24, 1986.

Allan H. Young,

Deputy Director, Bureau of Economic Analysis.

PART 806—[AMENDED]

15 CFR Part 806 is amended as follows:

1. The authority citation for Part 806 is revised to read as follows:

Authority: 5 U.S.C. Sec. 301, 22 U.S.C. sec. 3101–3108 and E.O 11961, as amended.

§ 806.18 [Amended]

2. In § 806.18(b) add the current OMB Control Number 0608–0053 to the present list.

[FR Doc. 86–25809 Filed 11–14–86; 8:45 am]

BILLING CODE 3510-06-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Pyrilamine Maleate Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Anthony Products Co., providing for use of pyrilamine maleate injection as an antihistamine in horses.

EFFECTIVE DATE: November 17, 1986.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: Anthony Products Co., 5600 Peck Rd., Arcadia, CA 91006, is sponsor of NADA 138–405 for pyrilamine maleate injection. The drug is an antihistamine for use in horses. The application is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Section 522.2063 is amended by revising paragraph (b), redesignating paragraph (c)(2) as (c)(2)(i), and adding new paragraph (c)(2)(ii) to read as follows:

§ 522.2063 Pyrilamine maleate injection.

* * * * *

(b) *Sponsors.* See Nos. 000845 and 011519 in § 510.600(c) of this chapter for uses in paragraph (c)(2)(i) of this section; see No. 000864 in § 510.600(c) of this chapter for uses in paragraph (c)(2)(ii) of this section.

(c) * * *

(2)(i) * * *

(ii) It is administered intravenously. Intravenous injections must be given slowly to avoid symptoms of overdosage. Dosage may be repeated every 6 to 12 hours if necessary. Horses, 40 to 60 milligrams per 100 pounds body weight; foals, 20 milligrams per 100 pounds body weight.[1]

* * * * *

Dated: November 5, 1986.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86-25814 Filed 11-14-86; 8:45 am]

BILLING CODE 4160-01-M

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[1] These conditions are NAS/NRC reviewed and deemed effective. Applications for these uses need not include effectiveness data as specified by § 514.111 of this chapter, but may require bioequivalency and safety information.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Occupational Safety and Health Standards; Air Contaminants; Cotton Dust

CFR Correction

§ 1910.1000 [Corrected]

In 29 CFR 1910.1000, Table Z-1, in the Code of Federal Regulations volume Parts 1900-1910, revised as of July 1, 1986, on page 656, the entry for cotton dust (raw) should read as follows:

Substance	p/m[a]	mg./M³ [b]
* * * * *		
Cotton dust (raw)		1[c]
* * * * *		

[a] Parts of vapor or gas per million parts of contaminated air by volume at 25 °C. and 760 mm. Hg. pressure.

[b] Approximate milligrams of particulate per cubic meter of air.

* * * * *

[c] This 8 hour time weighted average is for respirable dust as measured by a vertical elutriator cotton dust sampler or equivalent instrument. This time weighted average applies to the cotton waste processing operations of waste recycling (sorting, blending, cleaning, and willowing) and garnetting.

The entry appeared correctly when it was originally published in the **Federal Register** on December 13, 1985 at 50 FR 51173.

BILLING CODE 1505-02-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that Side Loadable Warping Tugs SLWT-2 and SLWT-3 are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with 72 COLREGS without interfering with their special functions as naval warping tugs. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: October 28, 1986.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, and Executive Order 11964, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that Side Loadable Warping Tugs SLWT-2 and SLWT-3 are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with 72 COLREGS, Rule 21(a), pertaining to the centerline location of the masthead lights, and Annex I, section 3(b), pertaining to the location of the sidelights, without interfering with their special function as Navy ships. The Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on these vessels in a manner differently from that prescribed herein will adversely affect the ships' ability to perform their military functions.

List of Subjects in 31 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

1. Table Two of § 706.2 is amended by adding the following vessels:

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Vessel No.	Masthead lights, distance to stbd of keel in meters; Rule 21(a)	Forward anchor light, distance below flight dk in meters; 2(k), Annex	Forward anchor light, number of; Rule 30(a)(i)	AFT anchor light, distance below flight dk in meters; Rule 21(e), Rule 30(a)(ii)	AFT anchor light, number of Rule 30(a)(ii)	Side lights, distance below flight dk in meters; 2(g), Annex I	Side lights, distance forward of forward masthead light in meters; 3(b) Annex I	Side lights, distance inboard of ship's sides in meters; 3(b) Annex I
SLWT 2	1.62							3.93
SLWT 3	1.62							3.93

[2] Port sidelight only.

Dated: October 28, 1986.

Approved:

John Lehman,

Secretary of the Navy.

[FR Doc. 86–25850 Filed 11–14–86; 8:45 am]

BILLING CODE 3810-AE-M

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32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS ANTIETAM (CG 54) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS without interfering with its special function as a naval cruiser. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: October 28, 1986.

FOR FURTHER INFORMATION CONTACT: Captain P. C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (202) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS ANTIETAM (CG 54) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and Annex I, section 3(a), pertaining to the horizontal distance between the forward and after masthead lights. Full compliance with the above-mentioned 72 COLREGS rule would interfere with the special function and purpose of the vessel. The Secretary of the Navy has also certified that the above-mentioned light is located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

1. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS ANTIETAM	CG 54						X	X	38

Dated: October 28, 1986.

Approved:

John Lehman,

Secretary of the Navy.

[FR Coc. 86–25851 Filed 11–14–86; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5–86–024]

Temporary Drawbridge Operation Regulations; Bridge Across Atlantic Intracoastal Waterway, Bogue Sound, at Atlantic Beach, NC

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule with request for comments.

SUMMARY: At the request of the North Carolina Department of Transportation the Coast Guard is issuing temporary regulations for the drawbridge across the Atlantic Intracoastal Waterway at mile 206.7, Bogue Sound, at Atlantic Beach, North Carolina, to provide hourly openings from 7 a.m. to 7 p.m. for

pleasure craft during construction of an adjacent fixed bridge. Public comments on the temporary rule are requested. The temporary rule may be amended based on those comments.

DATES: This temporary regulation becomes effective on October 27, 1986. It terminates on March 14, 1987. Comments must be received on or before November 21, 1986.

ADDRESSES: Comments may be mailed to: Commander (oan), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. Comments will also be available for inspection and copying at Room 609 of the above address. Normal office hours are between 8:00 a.m. and 4:30 p.m. Monday through Friday except holidays.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, telephone number: (804) 398-6222.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to reduce the highway traffic congestion in the vicinity of the bridge across the Atlantic Intracoastal Waterway, Bogue Sound, at Atlantic Beach, North Carolina, during construction of an adjacent fixed bridge. The North Carolina Department of Transportation did not request the issuance of these temporary regulations until October 10, 1986.

Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identifying the bridge, and give reasons for concurrence with or any recommended change in the temporary rule.

The Commander, Fifth Coast Guard District, will evaluate all communications received and determine whether the temporary rules should be changed in light of comments received.

Drafting Information

The drafters of this notice are Ann B. Deaton, project officer, and CDR Robert J. Reining, project attorney.

Discussion of Temporary Rule

At the request of North Carolina Department of Transportation the Coast Guard is issuing temporary regulations for the drawbridge across the Atlantic Intracoastal Waterway at mile 206.7, Bogue Sound, at Atlantic Beach, North Carolina, to provide hourly openings from 7 a.m. to 7 p.m. for pleasure craft during construction of an adjacent fixed bridge.

The project contractor for the North Carolina Department of Transportation, owner of the bridge, is reconstructing the existing approaches to the drawbridge to tie them into the new fixed bridge. This work has necessitated the closure of two traffic lanes of the four lane roadway. Massive highway traffic jams have resulted from the lane closures. Random, uncontrolled openings of the drawbridge have aggravated the situation.

This drawbridge currently is required to open on signal from October 16 through March 14. Implementation of the hourly opening schedule will alleviate some of the hardship on area motorists, while providing for the reasonable needs of navigation.

Economic Assessment and Certification

These temporary regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of the temporary regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. The temporary regulations will only impede the passage of recreational vessels. The bridge will continue to open on signal for commercial vessels, public vessels, and any vessel in an emergency.

Since the economic impact of these temporary regulations is expected to be minimal, the Coast Guard certifies that, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations is temporarily amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-01(g).

2. Paragraph (a) of § 117.821 is temporarily revised to read as follows:

§ 117.821 Atlantic Intracoastal Waterway, Bogue Sound to Wrightsville Beach.

(a) The draw of the S58 bridge, mile 206.7 at Atlantic Beach, Bogue Sound shall open on signal; except that from October 27, 1986 through March 14, 1987, the draw need be opened only on the hour from 7 a.m. to 7 p.m. for the passage of pleasure craft. If a pleasure craft is approaching the draw and cannot reach the draw exactly on the hour, the drawtender may delay the opening up to 10 minutes past the hour for the passage of the approaching vessel and any other vessels that are waiting. Public vessels of the United States, tugs with tows, commercial vessels, and any vessel in an emergency involving danger to life or property shall be passed at any time.

* * * * *

This temporary rule becomes effective on October 27, 1986. It terminates on March 14, 1987.

Dated: October 24, 1986.

B.F. Hollingsworth,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 86-25863 Filed 11-14-86; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP Miami, FL Regulation CCGD7-86-49]

Safety Zone Regulations; Safe Harbor, Stock Island, FL

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a Safety Zone around a mock-up submarine in position 24-33.25N, 081-44.06W Safe Harbor, Stock Island, FL. This Zone is needed to protect swimmers, pleasure boaters, commercial vessels from safety hazards associated with the submarine and film crew vessels. The submarine will be marked in accordance with Navigation Rule 30 as a vessel aground when filming is not in progress. A vessel provided by the owner will remain in the area at all times to direct traffic.

EFFECTIVE DATES: This regulation becomes effective on 26 November 1986

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at 00:01 am. It terminates at 12:59 pm on 17 December 1986, or upon the completion of the work, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: CWO3 P.J. MacDonald, c/o Commanding Officer, U.S. Coast Guard, Marine Safety Office, Miami, FL 33130, Tel (305) 536-5691.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after Federal Register publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent potential hazards to the vessels transiting the area of temporary underwater operation during filming.

Drafting Information

The drafters of this regulation are CWO3 P.J. MacDonald, project officer for the Captain of the Port, and LCDR S. Fuger, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation is the temporary underwater operations during filming of a submarine which is a possible hazard to navigation. This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart D of Part 165 of Title 33 Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation of Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-6 and 160.5.

2. A new § 165.T-07-86-33 is added to read as follows:

§ 165.T-07-86-33 Safety Zone: Submarine in position 24-33.05N, 081-44.06W, adjacent to Safe Harbor, Stock Island, FL.

(a) *Location*. The following area is a Safety Zone: The waters around position 24-33.05N, 081-44.06W extending for a clear radius of 100 feet in any direction.

(b) *Effective date*. This regulation becomes effective on November 26, 1986. It terminates on December 17, 1986.

(c) *Regulations*. (1) In accordance with the general regulation in Subpart 165.33 of this part, entry into this Zone is prohibited unless authorized by the Captain of the Port.

Dated: November 1, 1986.

C.C. Martin,

Captain, U.S. Coast Guard, Captain of the Port, Miami, Florida.

[FR Doc. 86-25864 Filed 11-14-86; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3112-6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule and notice of data availability with request for comments.

SUMMARY: The Environmental Protection Agency (EPA) today is granting a final exclusion for the solid wastes generated at one particular generating facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition received by the Agency under 40 CFR 260.20 and 260.22 to exclude wastes on a "generator-specific" basis from the hazardous waste lists. The effect of this action is to exclude certain wastes generated at this facility from listing as hazardous wastes under 40 CFR Part 261.

In addition to the final conditional exclusion, the Agency is also announcing the availability of data submitted in support of the petition granted by today's notice. These data were used in the evaluation of this delisting petition and are available in the public docket for comment.

EFFECTIVE DATE: The effective date of this final exclusion is November 17, 1986. EPA will accept public comments on the information and data available in the public docket as it relates to the final exclusion published in this notice until December 17, 1986.

ADDRESSES: The public docket for this final rule is located in the Sub-basement, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for public viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475-9327 or Kate Blow at (202) 382-4675 for appointments. The reference number for this docket is "F-86-TEEF-FFFFF". The public may copy a maximum of 50 pages of materials from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, toll-free at (800) 424-9346, or (202) 382-3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-5096.

SUPPLEMENTARY INFORMATION: On March 6, 1986, EPA proposed to exclude specific wastes generated by several facilities, including Tennessee Electroplating, located in Ripley, Tennessee (see 51 *FR* 7827).[1] This action was taken in response to a petition submitted by this company (pursuant to 40 CFR 260.20 and 260.22) to exclude its wastes from hazardous waste control. In their petition, this company has argued that certain of their wastes were non-hazardous based upon the criteria for which the waste was listed. The petitioner has also provided information which has enabled the Agency to determine whether any other toxicants are present in the waste at levels of regulatory concern. The purpose of today's actions is to make final the proposal and to make our decision effective immediately. More specifically, today's rule allows this facility to manage its petitioned waste as non-hazardous. The exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[2] In addition, the generator still is obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.

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[1] In the same Federal Register notice, the Agency also proposed to exclude specific wastes generated by the following petitioners: Chamberlain-Featherlite, Inc., located in Hot Springs, Arkansas (see 51 *FR* 7817); Falconer Glass Industries, Inc., located in Falconer, New York (see 51 *FR* 7819); Lake City Army Ammunition Plant, located in Independence, Missouri (see 51 *FR* 7820); Loxcreen Supply Co., located in Hayti, Missouri (see 51 *FR* 7822); Olin Corp., located in Augusta, Georgia (see 51 *FR* 7824); SR of Tennessee, located in Ripley, Tennessee (see 51 *FR* 7825); and Valley City Steel Co., located in Valley City, Ohio (see 51 *FR* 7829). The Agency has addressed or will address these proposed decisions in separate Federal Register notices.

[2] The current exclusion applies only to the process covered by the original demonstration. A facility may file a new petition if it alters its process. The facility must treat its waste as hazardous, however until a new exclusion is granted.

The Agency notes that the petitioner granted a final exclusion in today's Federal Register has been reviewed for both the listed and non-listed criteria. As required by the Hazardous and Solid Waste Amendments of 1984, the Agency evaluated the waste for the listed constituents of concern as well as for all other factors (including additional constituents) for which there was a reasonable basis to believe that they could cause the waste to be hazardous. The petitioner has demonstrated through submission of raw materials data, EP toxicity test data for all EP toxic metals, and test data on the four hazardous waste characteristics that their wastes do not exhibit any of the hazardous waste characteristics, and do not contain any other toxicants at levels of regulatory concern.

Limited Effect of Federal Exclusion

States are allowed to impose requirements that are more stringent than EPA's pursuant to section 3009 of RCRA. State programs thus need not include those Federal provisions which exempt persons from certain regulatory requirements. For example, States are not required to provide a delisting mechanism to obtain final authorization. If the State program does include a delisting mechanism, however, that mechanism must be no less stringent than that of the Federal program for the State to obtain and keep final authorization.

As a result of enactment of the Hazardous and Solid Waste Amendments of 1984, any States which had delisting programs prior to the Amendments must become reauthorized under the new provisions.[3] To date only one State (Georgia) has received approval for their delisting program. The final exclusion granted today, therefore, is issued under the Federal program. States, however, can still decide whether to exclude these wastes under their State (non-RCRA) program. Since a petitioner's waste may be regulated by a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), this petitioner is urged to contact its State regulatory authority to determine the current status of its wastes under State law.

The exclusion made final here involves the following petitioner:

Tennessee Electroplating, Ripley, Tennessee.

I. Tennessee Electroplating

A. Proposed Exclusion

Tennessee Electroplating has petitioned the Agency to exclude its wastewater treatment sludge (filter press and impoundment sludges) from EPA Hazardous Waste No. F006, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by Tennessee Electroplating substantiate their claim that the listed constituents of concern, although present, are essentially present in an immobile form. Furthermore, additional data provided by Tennessee Electroplating indicate that no other hazardous constituents are present in the waste at levels of regulatory concern, and that the waste does not exhibit any of the characteristics of hazardous waste. (See 51 FR 7827–7829, March 6, 1986, for a more detailed explanation of why EPA proposed to grant Tennessee Electroplating petition.)

B. Agency Response to Public Comments

The Agency received comments from a single commenter regarding its decision to grant an exclusion to Tennessee Electroplating for the waste identified in the petition. The commenter questioned the Agency's use of the extraction procedure to evaluate the potential mobility of constituents in the waste. Other factors which could increase metal mobility were cited, such as low pH or chelating agents in a sanitary landfill. The Agency's approach assumes a reasonable worst case scenario in an unlined municipal landfill for the VHS model. Such a modeling scenario is conservative in that mechanisms that may limit constituent concentrations in ground water, *e.g.*, attenuation, are assumed not to enter into the scenario. The Agency believes that our reasonable worst-case model is consistent, and in the case of Tennessee Electroplating the Agency believes that use of this reasonable worst-case model is sufficient to evaluate potential impacts on human health and the environment. No evidence has been presented to the Agency to indicate the presence of low pH or chelating agents at the Tennessee Electroplating site, or to otherwise show that the Agency's reasonable worst-case scenario would not be sufficiently rigorous to properly evaluate Tennessee Electroplating's waste.

In order to model specific chemical interactions (such as those discussed by the commenter), site-specific data for a particular landfill would be necessary. Evaluation of wastes under the delisting program, however, is not specific to a single disposal site. Once delisted, there is no guarantee that the waste would be disposed of according to a particular set of site-specific conditions. The Agency further notes that use of the EP toxicity test in the VHS model analysis was open for public comment (see 50 FR 7882–7900, February 26, 1985) and these comments were addressed (see 50 FR 48966–48967, November 27, 1985). The Agency believes these responses adequately address any specific concerns raised by this commenter.

The commenter also noted that the value of 0.82 ppm, instead of 0.99 ppm, was mistakenly used as the maximum value for chromium in the vacuum filter sludge. The Agency agrees with the commenter.

Use of the 0.99 value would result in a compliance point value of 0.053 ppm. An application of the Dixon Extreme Value test indicates that it is not an outlier. Results are available, however, for 73 additional filter press sludge samples which were collected since the original petition was submitted.[4] Since the data distribution of the 77 point data set was log normal, and 77 data points collected over a two year period are considered to be representative of the waste variability and is a large enough data set to consider a value other than the maximum, the concentration corresponding to the median of these log normal values can be used in the model. This results in a compliance point value of 0.01 ppm, which is below the regulatory standard.

The commenter questioned using the mean EP value in the VHS model for evaluating lagoon sludge (especially where, as here, no groundwater monitoring data was available). The Agency agrees with the commenter. The eight composite samples originally submitted for the lagooned waste do not

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[3] RCRA Reauthorization Statutory Interpretation #4: Effect of Hazardous and Solid Waste Amendments of 1984 on State Delisting Decisions, May 16, 1985, Jack W. McGraw, Acting Assistant Administrator for the Office of Solid Waste Emergency Response.

[4] Additional data were submitted on October 27, 1986, by Tennessee Electroplating for both the filter press sludge and impoundment sludge. These data were requested by the Agency as a result of the comments received on the proposed exclusion. Since these data were not available for inclusion in the public docket for the proposed rule, the Agency is allowing for a 30 day comment period to enable the public to review these data and submit comments on the applicability of these data as they relate to the Agency's final decision published in today's notice. If the Agency receives comments which substantiate a final decision other than the one published in today's notice, the Agency intends to publish a future notice addressing such comments and make a final decision considering the comments received.

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comprise a large enough data set to allow the use of any value other than the maximum extract value for chromium. Using the maximum EP value instead of the mean results in a value of 0.06 ppm chromium at the compliance point which fails the VHS analysis. Tennessee Electroplating has, however, submitted EP toxicity data on the 48 individual sub-samples used to create the original composites. The Agency believes that this data set is large enough to allow the use of a mean rather than a maximum EP extract value in the VHS model.

The Agency has established in past notices that statistical parameters other than the maximum may be used in waste evaluation if adequate numbers of waste samples have been provided. Without any prior assumption about the statistical distribution of any waste, a non-parametric evaluation of a waste would require approximately 45 samples to achieve a degree of certainty satisfactory to the Agency to allow consideration of alternative statistics, *e.g.*, mean.[5] The number of samples submitted by Tennessee Electroplating (*i.e.*, 74) are sufficient to satisfy any non-parametric requirements, and are also sufficient to establish that the leachate concentrations are distributed as a log-normal distribution. Due to the existence of the log-normal distribution, use of a median (instead of a maximum) value is appropriate in this instance. After mathematic conversion to calculate mean values for each constituent from log-normal median values, the resulting mean chromium value is 0.177 ppm.[6] This generates a compliance point value of 0.028 ppm which is less than the regulatory standard of 0.05 ppm.

The commenter also noted that the state never required ground water monitoring although the temporary exclusion did not cover the lagoon. The commenter suggested that EPA should not grant delistings to facilities that do not have adequate groundwater monitoring systems. The Agency agrees that the evaluation of groundwater monitoring data is a useful measure of a waste's degree of hazard. Data submitted for one downgradient well indicated nickel, chromium, and cadmium were not detected in the groundwater. In general, facilities petitioning for exclusion of a waste managed in an on-site land disposal unit or exclusion of a land disposal unit are expected to be in compliance with the requirements of 40 CFR Part 264 or 265 and must submit any ground water monitoring data collected as a result of those requirements. However, because many petitioners with final and temporary exclusions have not, under the regulations, been required to have monitoring systems in place, these petitioners, as well as facilities that have received a waiver from the groundwater monitoring requirements will, as a matter of policy, be considered for exclusion without this ground water monitoring data.

The final point discussed by the commenter addressed the fact that Tennessee Electroplating and SR of Tennessee may both use the same sanitary landfill for disposing of delisted wastes.

The commenter argued that the volumes of sludge from the two facilities should be added and the total volume used as the input to the VHS model. Under the delisting program, the Agency cannot insure how the waste will be managed after an exclusion has been granted. The delisting process, therefore, cannot predict which landfill will be used for disposal of a waste or account for other wastes with which the subject wastes may be disposed. The delisting, therefore, applies to the filter cake as generated, which is to be disposed in a landfill. The decision is not predicated, however, on which landfill is used. This interpretation of applicability is important to the petitioner in that since the decision is based on the waste, the waste can be landfilled at any location, enabling the petitioner to change the landfill used at any time (*e.g.*, due to variation in tipping fees). The VHS model is volume specific only in terms of the annual generation rate for each petitioner. The Agency has indicated previously (see 50 *FR* 7900, February 26, 1985) that the Agency and the VHS model cannot account for synergistic effects created by wastes disposed of by different generators at the same landfill.

The reasonable worst-case landfill scenario assumes that 5% of the waste at a landfill will consist of industrial waste. This assumption was used in the development of the EP leachate test. That the commenter has identified some other source of industrial waste does not suggest that the 5% assumption is incorrect.

The Agency will review its policy regarding this issue, but at the present has no means to incorporate co-use of the same landfill into its evaluation.[7] The Agency has formulated the VHS model to approximate a reasonable worst-case scenario in a Subtitle D facility, and the model makes several conservative assumptions about site geometry and aquifer movement. In order for the Agency to develop a new modeling scenario based on co-disposal of a similar waste (which would increase the waste volume and so decrease the dilution factor assigned to the evaluated waste), the Agency would need to cross-reference wastes being disposed at every disposal facility in the United States. Under the commenter's recommendation, the Agency would have to designate acceptable landfills to receive each delisted waste. This alternative is unacceptable to the Agency since it would impose an impossible administrative burden.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the filter press sludge generated by Tennessee Electroplating is non-hazardous and as such should be excluded from hazardous waste control. Additional data were received on October 27, 1986 which further support Tennessee Electroplating's contention that their waste is non-hazardous. This data was submitted as a result of the comments received on the proposed exclusion. The Agency, therefore, is granting a final conditional exclusion to Tennessee Electroplating for its wastewater treatment sludge (EPA Hazardous Waste No. F006) generated at Tennessee Electroplating's Hazardous Waste No. F006) generated at Tennessee Electroplating's Ripley, Tennessee facility.

The condition of the exclusion requires continuous batch testing of the filter press sludge for chromium for 45 days. This testing requirement is self-implemented, that is, the results of testing each batch need not be reviewed by State or Federal EPA representatives prior to disposal. The test data, however, must be recorded and kept on file at the facility for inspection purposes. Each batch of treatment residue must be representatively sampled and tested using the EP toxicity test for chromium.[8] If the extract levels exceed 0.922 ppm of chromium the waste must be managed and disposed of as a hazardous waste under 40 CFR Parts 262 to 266 and the permitting standards of 40 CFR Part 270. The Agency believes this testing requirement is necessary during the comment period for the data received on October 27, 1986. If the data indicates that leachable chromium is frequently present at levels above 0.922 ppm, the Agency will either propose to continue monitoring the waste under the conditions of the exclusion or propose to deny the exclusion.

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[5] See Morse, M., J. Warren, and W. Sproat, 1986. Sampling and analysis for delisting data verification/delisting spot checks. From Proceedings of the Second U.S. EPA Symposium on Solid Waste Testing and Quality Assurance, July 15–18, 1986. Washington, DC (copy provided in public docket for this notice). This paper provides some initial guidance on the factors which the Agency believes may be important in using non-parametric statistical techniques to determine the sample size that will allow the use of values other than the maximum in the VHS analyses. The Agency intends to publish more formal guidance on this issue in the future.

[6] These data were contained in the October 27, 1986 submission by Tennessee Electroplating. See footnote 4.

[7] The Agency notes that additional EP toxicity test data from Tennessee Electroplating has been submitted. This data involves in excess of 75 data points taken over a two year period. A statistical analysis of this data would allow the use of the median value rather than a maximum. Even if the combined volume for the two facilities is used, this petition would still pass the VHS evaluation.

(The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[9] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.)

The final conditional exclusion does not apply to the sludge contained in the impoundment.[10] The Agency is deferring its decision on delisting the impounded sludge until comments are received on the additional data submitted by Tennessee Electroplating. This deferral will not place any additional burden on the petitioner because the impounded wastes presently are hazardous and must continue to be handled as hazardous until a delisting is granted.

II. Effective Date

This rule is effective immediately. Although Subtitle C regulations normally take effect six months after promulgation (RCRA section 3010(b)), the Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here since this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioner by an effective date six months after promulgation, and the fact that such a deadline is not necessary to achieve the purpose of section 3010, we believe that this rule should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

III. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This grant of an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its wastes as non-hazardous.

IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effects will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this final regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous wastes, Recycling.

Dated: November 6, 1986.

Jeffery D. Denit,

Acting Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Appendix IX, add the following wastestreams in alphabetical order to Table 1 to read as follows:

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	* *	* *
Tennessee Electroplating.	Ripley, Tennessee.	Dewatered wastewater treatment sludges (EPA Hazardous Waste Nos. F006) generated from electroplating operations after November 17, 1986. To ensure chromium levels do not exceed the regulatory standards there must be continuous batch testing of the filter press sludge for chromium for 45 days after the exclusion is granted. Each batch of treatment residue must be representatively sampled and tested using the EP toxicity test for chromium. This data must be kept on file at the facility for inspection purposes. If the extract levels exceed 0.922 ppm of chromium the waste must be managed and disposed of as hazardous. If these conditions are not met, the exclusion does not apply. This exclusion does not apply to sludges in any on-site impoundments as of this date.

[FR Doc. 86–25837 Filed 11–14–86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 261

[SW–FRL–3112–4]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusions

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is granting final exclusions for the solid wastes generated at four particular generating facilities from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions received by the Agency under 40 CFR 260.20 and 260.22 to exclude wastes on a "generator-specific" basis from the hazardous waste lists. The effect of this action is to exclude certain wastes generated at these facilities from listing as hazardous wastes under 40 CFR Part 261.

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[8] The Agency is defining "batch" as the volume of waste generated for periodic disposal.

[9] See footnote 2.

[10] The impounded sludge was not covered under the temporary delisting granted to Tennessee Electroplating. Therefore, the waste contained in the impoundment is still considered hazardous until the comments are addressed from today's announced 30 day comment period, and should be managed in accordance with the RCRA hazardous waste regulations.

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EFFECTIVE DATE: November 17, 1986.

ADDRESSES: The public docket for this final rule is located in the Sub-basement, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460, and is available for public viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475–9327 or Kate Blow at (202) 382–4675 for appointments. The reference number for this docket is "F–86–CPEF–FFFFF". The public may copy a maximum of 50 pages of materials from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, toll-free at (800) 424–9346, or (202) 382–3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202) 382–5096.

SUPPLEMENTARY INFORMATION: On October 9, 1986, EPA proposed to exclude specific wastes generated by four facilities, including: (1) Capitol Products Corporation, located in Kentland, Indiana (see 51 FR 36234); (2) Lincoln Plating Company, located in Lincoln, Nebraska (see 51 FR 36245); (3) Maytag Corporation, located in Newton, Iowa (see 51 FR 36247); and (4) Windsor Plastics, Incorporated, located in Evansville, Indiana (see 51 FR 36249). These actions were taken in response to petitions submitted by these companies (pursuant to 40 CFR 260.20 and 260.22) to exclude their wastes from hazardous waste control. In their petitions, these companies have argued that certain of their wastes were non-hazardous based upon the criteria for which the waste was listed. The petitioners have also provided information which has enabled the Agency to determine whether any other toxicants are present in the wastes at levels of regulatory concern. The purpose of today's actions is to make final the four proposals and to make our decisions effective immediately. More specifically, today's rule allows these facilities to manage their petitioned wastes as non-hazardous. The exclusions remain in effect unless the waste varies from that originally described in the petition (*i.e.,* the waste is altered as a result of changes in the manufacturing or treatment process).[1] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.

The Agency notes that the petitioners granted final exclusions in today's **Federal Register** have been reviewed for both the listed and non-listed criteria. As required by the Hazardous and Solid Waste Amendments of 1984, the Agency evaluated the wastes for the listed constituents of concern as well as for all other factors (including additional constituents) for which there was a reasonable basis to believe that they could cause the waste to be hazardous. These petitioners have demonstrated through submission of raw materials data, EP toxicity test data for all EP toxic metals, and test data on the four hazardous waste characteristics that their wastes do not exhibit any of the hazardous waste characteristics, and do not contain any other toxicants at levels of regulatory concern.

Limited Effect of Federal Exclusion

States are allowed to impose requirements that are more stringent than EPA's pursuant to section 3009 of RCRA. State programs thus need not include those Federal provisions which exempt persons from certain regulatory requirements. For example, States are not required to provide a delisting mechanism to obtain final authorization. If the State program does include a delisting mechanism, however, that mechanism must be no less stringent than that of the Federal program for the State to obtain and keep final authorization.

As a result of enactment of the Hazardous and Solid Waste Amendments of 1984, any States which had delisting programs prior to the Amendments must become reauthorized under the new provisions.[2] To date only one State (Georgia) has received approval for their delisting program. The final exclusions granted today, therefore, are issued under the Federal program. States, however, can still decide whether to exclude these wastes under their State (non-RCRA) program. Since a petitioner's waste may be regulated by a dual system (*i.e.,* both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

The exclusions made final here involve the following petitioners:

Capitol Products Corporation, Kentland, Indiana;
Lincoln Plating Company, Lincoln, Nebraska;
Maytag Company, Newton, Iowa;
Windsor Plastics, Incorporated, Evansville, Indiana.

I. Capitol Products Corporation

A. Proposed Exclusion

Capitol Products Corporation (Capitol) has petitioned the Agency to exclude its wastewater treatment sludge (vacuum filter sludge) from EPA Hazardous Waste No. F019, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by Capitol substantiate their claim that the listed constituents of concern, although present, are essentially present in an immobile form. Furthermore, additional data provided by Capitol indicate that no other hazardous constituents are present in the waste at levels of regulatory concern, and that the waste does not exhibit any of the characteristics of hazardous waste. (See 51 FR 36243–36245, October 9, 1986, for a more detailed explanation of why EPA proposed to grant Capitol's petition.)

B. Agency Response to Public Comments

The Agency did not receive any public comments regarding its decision to grant an exclusion to Capitol for the waste identified in its petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the vacuum filter sludge is non-hazardous and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Capitol Products Corporation for its dewatered wastewater treatment sludge (vacuum filter sludge) resulting from the chemical conversion coating of aluminum, listed as EPA Hazardous Waste No. F019, generated at its Kentland, Indiana facility. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.,* the waste is altered as a result of changes in the manufacturing or treatment process).[3] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.)

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[1] The current exclusions apply only to the processes covered by the original demonstrations. A facility may file a new petition if it alters its process. The facility must treat its waste as hazardous, however, until a new exclusion is granted.

[2] RCRA Reauthorization Statutory Interpretation #4: Effect of Hazardous and Solid Waste Amendments of 1984 on State Delisting Decisions, May 16, 1985. Jack W. McGraw, Acting Assistant Administrator for the Office of Solid Waste and Emergency Response.

[3] See footnote 1.

II. Lincoln Plating Company

A. Proposed Exclusion

Lincoln Plating (Lincoln), has petitioned the Agency to exclude its wastewater treatment sludge (filter cake and portland cement mixture) from EPA Hazardous Waste No. F006, based on the low concentration and immobilization of the listed constituents in the waste. Date submitted by Lincoln substantiate their claim that the listed constituents of concern, although present, are essentially present in an immobile form. Furthermore, additional data provided by Lincoln indicate that no other hazardous constituents are present in the waste at levels of regulatory concern, and that the waste does not exhibit any of the characteristics of hazardous waste. (See 51 FR 36245–36247, October 9, 1986, for a more detailed explanation of why EPA proposed to grant Lincoln's petition.)

B. Agency Response to Public Comments

The Agency did not receive any public comments regarding its decision to grant an exclusion to Lincoln for the waste identified in its petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the filter cake and portland cement mixture is non-hazardous and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Lincoln for its wastewater treatment sludge (EPA Hazardous Waste No. F006) generated at Lincoln, Nebraska facility. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[4] In addition generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.)

III. Maytag Company

A. Proposed Exclusion

Maytag Company (Maytag) has petitioned the Agency to exclude its wastewater treatment sludge (vacuum filter sludge) from EPA Hazardous Waste No. F006, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by Maytag substantiate their claim that the listed constituents of concern, although present, are essentially present in an immobile form. Furthermore, additional data provided by Maytag indicate that no other hazardous constituents are present in the waste at levels of regulatory concern, and that the waste does not exhibit any of the characteristics of hazardous waste. (See 51 FR 36247–36249, October 9, 1986, for a more detailed explanation of why EPA proposed to grant Maytag's petition.)

B. Agency Response to Public Comments

The Agency did not receive any public comments regarding its decision to grant an exclusion to Maytag for the waste identified in its petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the dewatered sludge is non-hazardous and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Maytag for its wastewater treatment sludge (EPA Hazardous Waste No. F006) generated at Maytag's Newton, Iowa, facility.[5] (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[6] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.)

IV. Windsor Plastics, Inc.

A. Proposed Exclusion

Windsor Plastics (Windsor) has petitioned the Agency to exclude its treatment sludge (drummed sludge) from EPA Hazardous Waste No. F003, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by Windsor substantiate their claim that the listed constituents of concern, although present, are essentially present in an immobile form. Furthermore, additional data provided by Windsor indicate that no other hazardous constitutes are present in the waste at levels of regulatory concern, and that the waste does not exhibit any of the characteristics of hazardous waste. (See 51 FR 36249–36252, October 9, 1986, for a more detailed explanation of why EPA proposed to grant Windsor's petition.)

B. Agency Response to Public Comments

The Agency received additional information from Windsor in response to the Agency's earlier request for information on three organic constituents (methylene chloride, benzene, and trichloroethylene) in Windsor's still bottom waste. Data for twenty samples was submitted to support Windsor's claim that these constituents are of no regulatory concern.

Benzene was not detected in the waste samples at a detection limit of <0.75 mg/kg, and trichloroethylene was not detected at a limit of <1 mg/kg. Methylene chloride was detected in only six of twenty samples, at a maximum concentration of 39 mg/kg. If this value is used in the Agency's organic leaching model (OLM) and vertical and horizontal spread (VHS) model,[7] the resultant maximum compliance-point concentration is 0.031 mg/l, which is below the Agency's standard of 0.058 mg/l for methylene chloride. These three organic constituents have been shown to be present in consistently low concentrations in Windsor's waste, and the Agency, therefore, does not consider these constituents to be of regulatory concern.

C. Final Agency Decision

For the reasons stated in the proposal, and in the Agency's response to public comments, the Agency believes that the drummed sludge is non-hazardous and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Windsor for its wastewater treatment sludge (EPA Hazardous Waste No. F003) generated at its Evansville, Indiana facility. (The Agency notes that the exclusion remains in effect unless the waste varies from the originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process.[8] In

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[4] See footnote 1

[5] On November 6, 1986, Maytag expanded its petition to include EPA Hazardous Waste No. F019—Wastewater treatment sludges from the chemical conversion coating of aluminum. Maytag has previously considered conversion coating as an electroplating operation and had assumed that wastewater treatment sludges from this operation were described by EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations. In fact, all of the constituents of concern in Waste No. F019 are included in the constituents of concern in Waste No. F006. In addition, none of the wastewater treatment sludges from any of Maytag's production and wastewater treatment processes are segregated.

[6] See footnote 1.

[7] The OLM model was proposed on November 27, 1985 (see 50 FR 48886, appendix). As a result of public comment, two alternate versions were proposed in a Notice of Data Availability on July 29, 1986 (see 51 FR 27061). The "best-fit" version was used in Windsor's evaluation. The VHS model was published in final form on November 27, 1985 (see 50 FR 48886).

[8] See footnote 1.

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addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.)

V. Effective Date

This rule is effective immediately. Although Subtitle C regulations normally take effect six months after promulgation (RCRA section 3010(b)), the Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here since this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioners by an effective date six months after promulgation, and the fact that such a deadline is not necessary to achieve the purpose of section 3010, we believe that this rule should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

VI. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This grant of exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at specific facilities from EPA's lists of hazardous wastes, thereby enabling these facilities to treat their wastes as non-hazardous.

VII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effects will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this final regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous wastes, Recycling.

Dated: November 4, 1986.

Jeffery D. Denit,

Acting Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—INDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Appendix IX, add the following wastestreams in alphabetical order to table 1 to read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste Description
*	*	* * *
Capitol Products Corporation.	Kentland, IN	Dewatered wastewater treatment sludges (EPA Hazardous Waste No. F019) generated from the chemical conversion coating of aluminum after November 17, 1986.
*	*	* * *
Lincoln Plating Company.	Lincoln, NE	Wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from electroplating operations after November 17, 1986.
Maytag Company.	Newton, IA	Wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from electroplating operations and wastewater treatment sludges (EPA Hazardous Waste No. F019) generated from the chemical conversion coating of aluminum November 17, 1986.
*	*	* * *
Windsor Plastics, Inc.	Evansville, IN	Spent non-halogenated solvents and still bottoms (EPA Hazardous Waste No. F003) generated from the recovery of acetone after November 17, 1986.

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BILLING CODE 4910–14–M

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40 CFR Part 261

[SW-FRL-3112-5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusions

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is granting final exclusions for the solid wastes generated at two particular generating facilities from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions received by the Agency under 40 CFR 260.20 and 260.22 to exclude wastes on a "generator-specific" basis from the hazardous waste lists. The effect of this action is to exclude certain wastes generated at these facilities from listing as hazardous wastes under 40 CFR Part 261.

EFFECTIVE DATE: November 17, 1986.

ADDRESSES: The public docket for this final rule is located in the Sub-basement, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for public viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475–9327 or Kate Blow at (202) 382–4675 for appointments. The reference number for this docket is "F–86–SREF–FFFFF". The public may copy a maximum of 50 pages of materials from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, toll-free at (800) 424–9346, or (202) 382–3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–5096.

SUPPLEMENTARY INFORMATION: On March 6, 1986, EPA proposed to exclude specific wastes generated by several facilities, including S–R of Tennessee, located in Ripley, Tennessee (see 51 FR 7815);[1] and on May 6, 1986, EPA

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[1] In the same Federal Register notice, the Agency also proposed to exclude the wastes generated by the following petitioners: Chamberlain-Featherlite, Inc., located in Hot Springs, Arkansas (see 51 FR 7817); Falconer Glass Industries, Inc., Falconer, New York (see 51 FR 7819); Lake City Army Ammunition Plant, located in Independence, Missouri (see 51 FR 7820); Loxcreen Company, Inc., located in Hayti, Missouri (see 51 FR 7822); Olin Corp., located in Augusta, Georgia (see 51 FR 7824); Tennessee

Continued

proposed to exclude specific wastes generated from several other facilities, including Vulcan Materials company, located in Port Edwards, Wisconsin (see 51 FR 16860).[2] These actions were taken in response to petitions submitted by these companies (pursuant to 40 CFR 260.20 and 260.22) to exclude their wastes from hazardous waste control. In their petitions, these companies have argued that certain of their wastes were non-hazardous based upon the criteria for which the wastes were listed. The petitioners have also provided information which has enabled the Agency to determine whether any other toxicants are present in the wastes at levels of regulatory concern. The purpose of today's actions is to make final both of these proposals and to make our decisions effective immediately. More specifically, today's rule allows these facilities to manage their petitioned wastes as non-hazardous. The exclusions remain in effect unless the waste varies from that originally described in the petition (*i.e.,* the waste is altered as a result of changes in the manufacturing or treatment or process.[3] The generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.

The Agency notes that the petitioners granted final exclusions in today's **Federal Register** have been reviewed for both the listed and non-listed criteria. As required by the Hazardous and Solid Waste Amendments of 1984, the Agency evaluated the wastes for the listed constituents of concern as well as for all other factors (including additional constituents) for which there was a reasonable basis to believe that they could cause the waste to be hazardous. These petitioners have demonstrated through submission of raw materials data, EP toxicity test data for all EP toxic metals, and test data on the four hazardous waste characteristics that their wastes do not exhibit any of the hazardous waste characteristics, and do not contain any other toxicants at levels of regulatory concern.

Limited Effect of Federal Exclusion

States are allowed to impose requirements that are more stringent than EPA's pursuant to section 3009 of RCRA. State programs thus need not include those Federal provisions which exempt persons from certain regulatory requirements. For example, States are not required to provide a delisting mechanism to obtain final authorization. If the State program does include a delisting mechanism, however, that mechanism must be no less stringent than that of the Federal program for the State to obtain and keep final authorization.

As a result of enactment of the Hazardous and Solid Waste Amendments of 1984, any States which had delisting programs prior to the Amendments must become reauthorized under the new provisions.[4] To date only one State (Georgia) has received approval for their delisting program. The final exclusions granted today, therefore, are issued under the Federal program. States, however, can still decide whether to exclude these wastes under their State (non-RCRA) program. Since a petitioner's waste may be regulated by a dual system (*i.e.,* both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

The exclusions made final here involve the following petitioners:

S–R of Tennessee, Ripley, Tennessee;
Vulcan Materials Company, Port Edwards, Wisconsin.

I. SR of Tennessee

A. Proposed Exclusion

SR of Tennessee (SR) has petitioned the Agency to exclude its wastewater treatment sludge (filter press and impoundment sludges) from EPA Hazardous Waste No. F006, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by SR substantiate their claim that the listed constituents of concern, although present, are essentially present in an immobile form. Furthermore, additional data provided by SR indicate that no other hazardous constituents are present in the waste at levels of regulatory concern, and that the waste does not exhibit any of the characteristics of hazardous waste. (See 51 FR 7827–7829, March 6, 1986, for a more detailed explanation of why EPA proposed to grant SR's petition.)

B. Agency Response to Public Comments

The Agency received comments from a single commenter regarding its decision to grant an exclusion to SR for the waste identified in the petition. The commenter questioned the Agency's use of the extraction procedure to evaluate the potential mobility of constituents in the waste. Other factors which could increase metal mobility were cited, such as low pH or chelating agents in a sanitary landfill. The Agency's approach assumes a reasonable worst-case scenario in an unlined municipal landfill for the VHS model. Such a modeling scenario is conservative in that mechanisms which may limit constituent concentrations in ground water, *e.g.* attenuation, are assumed not to enter into the scenario. The Agency believes that our reasonable worst-case model is consistent, and in the case of SR of Tennessee the Agency believes that the use of this reasonable worst-case model is sufficient to evaluate potential impacts on human health and the environment. No evidence has been presented to the Agency to indicate the presence of low pH or chelating agents at the SR site, or to otherwise show that the Agency's reasonable worst-case scenario would not be sufficiently rigorous to properly evaluate SR's waste.

In order to model specific chemical interactions (such as those discussed by the commenter), site-specific data for a particular landfill would be necessary. Evaluation of wastes under the delisting program, however, is not disposal site-specific. Once delisted, there is no guarantee that the waste would be disposed of according to a particular set of site-specific conditions. The Agency further notes that use of the EP Toxicity test in the VHS model analysis was open for public comment (see 50 FR 7882–7900, February 26, 1985) and these comments were addressed (See 50 FR 48886–48967, November 27, 1985). The Agency believes these responses adequately address any specific concerns raised by this commenter.

The commenter questioned the mean EP value in the VHS model for

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Electroplating, located in Ripley, Tennessee (see 51 FR 7827); and Valley City Steel Co., located in Valley City, Ohio (see 51 FR 7829). The Agency has addressed or will address these proposed decisions in separate **Federal Register** Notices.

[2] In the same **Federal Register** notice, the Agency also proposed to exclude the wastes generated by the following petitioners: Arco Building Products, located in Sugar Creek, Ohio (see 51 FR 16862); Hanover Wire Cloth Division, located in Hanover, Pennsylvania (see 51 FR 16863); International Minerals and Chemical Corp., located in Terre Haute, Indiana (see 51 FR 16865); Monsanto Industrial Chemicals Co., located in Sauget, Illinois (see 51 FR 16866); Square D Co., located in Oxford, Ohio (see 51 FR 16869); and Whirlpool Corporation, located in Danville, Ohio (see 51 FR 16873). The Agency has addressed these proposed decisions in separate **Federal Register** Notices.

[3] The current exclusion apply only to the processes covered by the original demonstrations. A facility may file a new petition if it alters its process. The facility must treat its waste as hazardous, however, until a new exclusion is granted.

[4] RCRA Reauthorization Statutory Interpretation #4: Effect of Hazardous and Solid Waste Amendments of 1984 on State Delisting Decisions, May 16, 1985, Jack W. McGraw, Acting Assistant Administrator for the Office of Solid Waste and Emergency Response.

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evaluating lagoon sludge. The Agency agrees with the commenter. The eight composite samples originally submitted for the lagooned waste do not comprise a large enough data set to allow the use of any values other then the maximum extract value for chromium. The Agency has, therefore, re-run the VHS calculations using the maximum reported EP value in the lagoon sludge. The resulting compliance point value is 0.049 ppm, which is still less than the regulatory standard for chromium. Therefore, the Agency believes that this change, in combination with our responses to other points raised by the commenter and addressed elsewhere in this preamble, does not warrant changing our proposed decision on this petition.

The commenter noted that the state never required groundwater monitoring although the temporary exclusion did not cover the lagoon. Therefore, the commenter suggested that EPA should not grant delistings to facilities that do not have adequate groundwater monitoring systems. The Agency agrees that the evaluation of groundwater monitoring data is a useful measure of a waste's degree of hazard. Data submitted for one downgradient well indicated nickel, chromium, and cadmium were not detected in the groundwater. In general, facilities petitioning for exclusion of a waste managed in an on-site land disposal unit or exclusion of a land disposal unit are expected to be in compliance with the requirements of 40 CFR Part 264 or 265 and must submit any groundwater monitoring data collected as a result of those requirements. However, because many petitioners with final and temporary exclusions have not, under the regulations, been required to have monitoring systems in place, these peitioners, as well as facilities that have received a waiver from the groundwater monitoring requirements will, as a matter of policy, be considered for exclusion without this ground water monitoring data.

The final point discussed by the commenter addressed the fact that SR of Tennessee and Tennessee Electroplating may both use the same sanitary landfill for disposing of delisted wastes. The commenter argued that the volumes of sludge from the two facilities should be added and the total volume used as the input to the VHS model. Under the delisting program, the Agency cannot insure how the waste will be managed after an exclusion has been granted. The delisting process, therefore, cannot predict which landfill will be used for disposal of a waste or account for other wastes with which the subject wastes may be disposed. The delisting, therefore, applies to the filter cake as generated which is to be disposed in a landfill. The decision is not predicated, however, on which landfill is utilized. This interpretation of applicability is important to the petitioner in that since the decision is based on the waste , the waste can be landfilled at any location, enabling the petitioner to change the landfills used at any time (e.g., due to variation in tipping fees). The VHS model is volume specific only in terms of the annual generation rate for each petitioner. The Agency has indicated previously (see 50 FR 7900, February 26, 1985) that the Agency and the VHS model cannot account for synergistic effects created by wastes disposed of by different generators at the same landfill. The commenter notes that at the present time the same landfill is used by these two companies. The agency notes that it is very likely that several other generators also dispose of chromium bearing wastes at this site.

The reasonable worst-case landfill scenario assumes that 5% of the waste at a landfill will consist of industrial waste. This assumption was used in the development of the EP leachate test. That the commenter has identified some other source of industrial wastes does not suggest that the 5% assumption is incorrect.

The Agency will review its policy regarding this issue, but at the present has no means to incorporate co-use of the same landfill into its evaluation.[5] The Agency has formulated the VHS model to approximate a reasonable worst-case scenario in a Subtitle D facility, and the model makes several reasonable assumptions about site geometry and aquifer movement. In order for the Agency to develop a new modeling scenario based on co-disposal of a similar waste (which would increase the waste volume and so decrease the dilution factor assigned to the evaluated waste), the Agency would need to cross-reference hazardous wastes being disposed at every disposal facility in the United States. Under the commenter's recommendation, the Agency would have to designate acceptable landfills to receive each delisted waste. This alternative is unacceptable to the Agency since it would impose an impossible administrative burden.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the generated filter press sludge and that contained in the on-site impoundment are non-hazardous and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to SR of Tennessee for its waste-water treatment sludge (EPA Hazardous Waste No. F006) generated and that contained in the closed impoundment at SR's Ripley, Tennessee facility. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.,* the waste is altered as a result of changes in the manufacturing or treatment process).[6] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.)

II. Vulcan Materials Company

A. Proposed Exclusion

Vulcan Materials (Vulcan) has petitioned the Agency to exclude its brine purification muds and saturator insolubles for EPA Hazardous Waste No. K071, based on the low concentration and immobilization of the listed constituent in the waste. Data submitted by Vulcan substantiate their claim that mercury, the listed constituent of concern, is present, but essentially in an immobile form. Furthermore, additional data provided by Vulcan indicate that no other hazardous constituents are present in the waste at levels of regulatory concern, and that the waste does not exhibit any of the characteristics of hazardous waste. (See 51 FR 16871-16873, May 7, 1986, for a more detailed explanation of why EPA proposed to grant Vulcan's petition.)

B. Agency Response to Public Comments

The Agency received comments objecting to the use of EP leachate data in evaluating mercury-containing wastes that have been petitioned for exclusion. The commenter states that the total concentration of mercury in the waste should be used in the Agency's evaluation because, over time and after exposure to various landfill conditions (*e.g.*, aerobic and anaerobic biological activity, acidic alkaline, oxidizing, and reducing conditions, organic and inorganic solvent effects), relatively insoluble forms of mercury could be transformed to more transportable or soluble forms. However, the commenter did not identify these soluble mercury compounds or provide any information that landfills, in general, would leach mercury at concentrations greater than those predicted by the EP toxic levels and the VHS model. The commenter did give literature sources and contacts to support his claims.[7]

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[5] The Agency notes that although not used as a basis for response to this comment, additional EP toxicity test data from Tennessee Electroplating has been submitted. This data involves in excess of 75 data points taken over a two year period. A statistical analysis of this data would allow the use of the median value rather than a maximum. Even if the combined volume for the two facilities is used. Tennessee Electroplating would still pass the VHS evaluation. The Agency has not made this calculation for SR since additional filter cake data was not submitted to allow the use of a mean or median value for their filter cake.

[6] The current exclusion applies only to the processes covered by the original demonstrations. A facility must treat its waste as hazardous, however, until a new petition is granted.

The Agency acknowledges that the form and mobility of mercury in soils can vary depending on the types of conditions present, as cited by the commenter. Based on a review of the literature cited by the commenter, it appears he is concerned primarily with the potential production of methylated mercury compounds. The formation of monomethyl mercury (which is more soluble than dimethyl mercury), is favored under acidic conditions. In addition, the mobilization of monomethyl mercury could occur under these conditions. Mobility of inorganic mercury in soils can also occur under acidic conditions.[8] However, very acidic conditions in a landfill would be considered an absolute worst-case scenario. The EP toxicity test simulates levels of leaching activity and pH that could realistically occur in a Subtitle D landfill. The test is performed under conditions at or above a pH of 5 using 0.5 N acetic acid. The VHS model assumes a reasonable worst-case scenario, using the EP toxicity test.

The Agency can conclude, at this time, that the fraction of total mercury present at a landfill as monomethyl mercury compounds (and the mobility of these compounds) does not appear to be high enough to justify using the total mercury concentration as an evaluation criteria in the delisting process. In the absence of data showing that mercury would leach (under the conditions found in most Subtitle D landfills) at higher levels than that predicted by the EP toxicity test, the Agency believes that the use of the EP test in the VHS model is still the best approach available to predict reasonable worst-case mobility of mercury.

The Agency concludes that the EP test is still appropriate for evaluating the mobility of mercury in wastes. However, if new evidence becomes available the Agency may choose to further investigate the issue in the future.

C. Final Agency Decision

For the the reasons stated in the proposal, the Agency believes that the brine clarifier muds and saturator insolubles are non-hazardous and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a final conditional exclusion to Vulcan for its treated brine clarification muds and treated saturator insolubles (EPA Hazardous Waste No. K071) generated at its Port Edwards, Wisconsin facility.[9] The conditions of the exclusion require that Vulcan test each batch of treated brine clarifier muds and saturator insolubles prior to disposal. If EP analyses indicate that the leachate concentration of mercury exceeds 0.0129 ppm, the waste must be re-treated or disposed of as a hazardous waste and will be subject to the regulatory requirements of 40 CFR Parts 262 through 267. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process). In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste).

III. Effective Date

This rule is effective immediately. Although Subtitle C regulations normally take effect six months after promulgation (RCRA section 3010(b)), the Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here since this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioners by an effective date six months after promulgation, and the fact that such a deadline is not necessary to achieve the purpose of section 3010, we believe that this rule should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This grant of exclusions is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at specific facilities from EPA's lists of hazardous wastes, thereby enabling these facilities to treat their wastes as non-hazardous.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effects will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this final regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous wastes, Recycling.

Dated: November 7, 1986.

Jeffery D. Denit,

Acting Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and

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[7] The Agency has reviewed these and other literature sources. See public docket for a more detailed discussion of the Agency's review.

[8] The Agency further notes that based upon studies by Korte, et al. (1976) that there may be substantial leaching of inorganic mercury from soils at some acidic landfills that also have high chloride concentrations. For a large number of landfills, the production of mercuric chloride complexes would probably be inhibited by the formation of HgS and/or the reduction of mercury. In addition, high organic concentrations may also inhibit the production of mercuric chloride complexes.

[9] The current exclusion applies only to the processes covered by the original demonstrations. A facility may file a new petition if it alters its process. The facility must treat its waste as hazardous, however, until a new petition is granted.

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Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Appendix IX, add the following wastestreams in alphabetical order to Tables 1 and 2 to read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste Description
* * *	* * *	* * *
SR of Tennessee.	Ripley, TN	Dewatered wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from the copper, nickel, and chromium electroplating of plastic parts after November 17, 1986.
* * *	* * *	* * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
* * *	* * *	* * *
Vulcan Materials Company.	Port Edwards, WI.	Brine purification muds (EPA Hazardous Waste No. K071) generated from the mercury cell process in chlorine production, where separately prepurified brine is not used after November 17, 1986. To assure that mercury levels in this waste are maintained at acceptable levels, the following conditions apply to this exclusion: Each batch of treated brine clarifier muds and saturator insolubles must be tested (by the extraction procedure) prior to disposal and the leachate concentration of mercury must be less than or equal to 0.0129 ppm. If the waste does not meet this requirement, then it must be re-treated or disposed of as hazardous. This exclusion does not apply to wastes for which either of these conditions is not satisfied.

[FR Doc. 86–25843 Filed 11–14–86; 8:45 am]

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40 CFR Part 261

[SW-FRL-3111-6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Denials

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is announcing its decision to deny the petitions submitted by seven petitioners to exclude their solid wastes from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste lists. Our basis for denying these petitions is that the petitioners have not substantiated their claims that the wastes are non-hazardous. The effect of this action is that all of this waste must be handled as hazardous waste in accordance with 40 CFR Parts 262 through 266, and Parts 270, 271 and 124.

EFFECTIVE DATE: May 18, 1987.

ADDRESS: The public docket for these final petition denials is located in the Sub-basement, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for public viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475–9327 or Kate Blow at (202) 382–4675 for appointments. The reference number for this docket is "F-86-ATDF-FFFFF". The public may copy a maximum of 50 pages of materials from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–5096.

SUPPLEMENTARY INFORMATION: On October 17, 1986, EPA proposed to deny specific wastes generated by several facilities, including: (1) American Telephone & Telegraph (AT&T), located in North Andover, Massachusetts (see 51 FR 37141); (2) Diamond Shamrock Refining and Marketing Co., located in Sunray, Texas (see 51 FR 37143); (3) Hill Petroleum Company, located in Houston, Texas (see 51 FR 37146); (4) Murphy Oil USA, Inc., located in Superior, Wisconsin (see 51 FR 37152); (5) New Departure Hyatt, located in Sandusky, Ohio (see 51 FR 37154); (6) Virginia Chemicals, Inc., located in Bucks, Alabama (see 51 FR 37156); and (7) Virginia Chemicals, Inc., located in Leeds, South Carolina (see 51 FR 37160).[1] [2]

The Agency had previously evaluated all seven of the petitions which are discussed in today's notice. Based on our review at that time, all seven of these petitioners were granted a temporary exclusion. Due to changes in the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, however, these petitions have been evaluated both for the factors for which the wastes were originally listed, as well as other factors and toxicants which reasonably could cause the wastes to be hazardous. Based upon these evaluations, the Agency has determined that all of the petitioning facilities have not substantiated their claims that the wastes are non-hazardous; therefore, the Agency is denying the petitions submitted by all seven petitioning facilities and is revoking the temporary exclusions currently held by these facilities.

The denials made final here involve the following petitioners:

American Telephone & Telegraph, North Andover, Massachusetts;
Diamond Shamrock Refining and Marketing Co., Sunray, Texas;
Hill Petroleum Company, Houston, Texas;
Murphy Oil USA, Inc., Superior, Wisconsin;
New Departure Hyatt, Sandusky, Ohio;
Virginia Chemicals, Inc., Bucks, Alabama;
Virginia Chemicals, Inc., Leeds, South Carolina.

I. American Telephone & Telegraph

A. Proposed Denial

American Telephone & Telegraph (AT&T), formerly Western Electric Company, has petitioned the Agency to exclude its wastewater treatment sludge from EPA Hazardous Waste No. F006, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by AT&T, however, fails to substantiate its claim that the listed constituents are essentially present in an immobile form.[3] (See 51 FR 37142–37143, October 17, 1986, for a more detailed explanation of why the Agency proposed to deny AT&T's petition.)

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[1] In the same **Federal Register** notice, the Agency also proposed to deny exclusion of specific wastes generated by Titan Oil Company, Indianapolis, Indiana (see 51 FR 37157). During the public comment period for the proposed rule, Titan Oil sent a letter to notify the Agency that the petitioned waste is no longer treated or generated at their facility, and to withdraw their petition.

[2] In the same **Federal Register** notice the Agency also proposed to deny exclusion of specific wastes generated by L–TEC Welding and Cutting Systems, Ashtabula, Ohio. The Agency will address this proposed denial in a later **Federal Register** notice.

B. Agency Response to Public Comments

The Agency did not receive any comments regarding its decision to deny an exclusion to AT&T for the waste identified in the petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the vacuum filter sludge generated by AT&T is hazardous and as such should not be excluded from hazardous waste control. The Agency, therefore, is denying a final exclusion to American Telephone & Telegraph for its dewatered wastewater treatment sludge (vacuum filter sludge) resulting from electroplating operations, listed as EPA Hazardous Waste No. F006, which is generated at its North Andover, Massachusetts facility. By this action, the Agency also withdraws the temporary exclusion granted for this waste on March 4, 1982.

II. Diamond Shamrock

A. Proposed Denial

The Diamond Shamrock Refining and Marketing Company (Diamond Shamrock) has petitioned the Agency to exclude its wastewater treatment sludge from EPA Hazardous Waste Nos. K048, K049, and K051 based on the low concentrations and immobilization of the listed constituents in the waste. Data submitted by Diamond Shamrock, however, fails to substantiate its claim that the listed constituents are essentially present in an immobile form.[4] (See 51 FR 37143–37146, October 17, 1986, for a more detailed explanation of why the Agency proposed to deny Diamond Shamrock's petition.)

B. Agency Response to Public Comments

The Agency did not receive any comments regarding its decision to deny an exclusion to Diamond Shamrock for the waste identified in the petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the DAF float and API separator sludges generated by Diamond Shamrock are hazardous and as such should not be excluded from hazardous waste control. No additional information was submitted concerning the slop oil pits and slop oil emulsion solids. The Agency, therefore, is denying a final exclusion to Diamond Shamrock Refining and Marketing Company for its DAF float, API separator sludge, slop oil pits and slop oil emulsion solids resulting from petrochemical processing, listed as EPA Hazardous Waste Nos. K048, K049, and K051 which is generated at its McKee Plants Refinery near Sunray, Texas. By this action, the Agency also withdraws the temporary exclusion granted for these wastes on February 28, 1982.[5]

III. Hill Petroleum Company

A. Proposed Denial

Hill Petroleum Company, (Hill) formerly Charter International Oil Company, has petitioned the Agency to exclude its wastewater treatment sludges from EPA Hazardous Waste Nos. K048 and K051 based on the low concentrations and immobilization of the listed constituents in the waste. Data submitted by Hill, however, fails to substantiate its claim that the listed constituents are essentially present in an immobile form.[6] (See 51 FR 37146–37149, October 17, 1986, for a more detailed explanation of why the Agency proposed to deny Hill's petition.)

B. Agency Response to Public Comments

The Agency did not receive any comments regarding its decision to deny an exclusion to Hill for the waste identified in the petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the DAF float and API separator sludge generated by Hill are hazardous and as such should not be excluded from hazardous waste control. The Agency, therefore, is denying a final exclusion to Hill for its DAF float and API separator sludge resulting from petrochemical processing, listed as EPA Hazardous Waste Nos. K048 and K051 which is generated at its oil refinery in Houston, Texas.[7] By this action, the Agency also withdraws the temporary exclusion granted for this waste on February 12, 1982.

IV. Murphy Oil USA, Inc.

A. Proposed Denial

Murphy Oil USA, Inc. (Murphy), has petitioned the Agency to exclude its wastewater treatment sludge from EPA Hazardous Waste Nos. K049, K050, and K051 based on the low concentrations and immobilization of the listed constitutents in the waste. Data submitted by Murphy, however, fails to substantiate its claim that the listed constituents are essentially present in an immobile form.[8] (See 51 FR 37152–37154, October 17, 1986, for a more detailed explanation of why the Agency proposed to deny Murphy's petition.)

B. Agency Response to Public Comments

The Agency did not receive any comments regarding its decision to deny an exclusion to Murphy Oil for the waste identified in the petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the API separator sludges generated by Murphy are hazardous and as such should not be excluded from hazardous waste control. Since the API separator sludges are combined with two other listed hazardous wastestreams, the resulting API separator sludges are listed as K049, K050, and K051. The Agency therefore, is denying a final exclusion to Murphy Oil USA, Inc. for its API separator sludges resulting from petrochemical processing, listed as EPA Hazardous Waste No. K049, K050, and K051 which is generated at its Superior Refinery in Superior, Michigan. By this action, the Agency also withdraws the temporary exclusion granted for this waste on February 12, 1982.

V. New Departure Hyatt

A. Proposed Denial

New Departure Hyatt has petitioned the Agency to exclude its wastewater treatment sludge from EPA Hazardous Waste No. F006, based on the low concentration and immobilization of the listed constitutents in the waste. Data submitted by New Departure Hyatt, however, fails to substantiate its claim that the listed constituents are essentially present in an immobile form.[9] (See 51 FR 37154–37156, October 17, 1986, for a more detailed explanation of why the Agency proposed to deny New Departure Hyatt's petition.)

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[3] AT&T was granted an temporary exclusion for this waste on March 4, 1982. The exclusion applied only to the final treated and dewatered sludge. Furthermore, the temporary exclusion was conditional upon batch testing for total cyanide. If the total concentration exceeded 10 ppm, then the waste had to be covered as daily practice in order to avoid photoconversion of the cyanide.

[4] Diamond Shamrock was granted a temporary exclusion for this waste on February 28, 1982.

[5] Diamond Shamrock was notified, in a letter dated May 15, 1986, that the Characterization and Assessment Division (CAD) would recommend to the Assistant Administrator for Solid Waste and Emergency Response that Diamond Shamrock's petition be denied. Diamond Shamrock declined to exercise its option to withdraw the petition. See 51 FR 37146, n. 16, October 17, 1986.

[6] Hill Petroleum was granted a temporary exclusion for this waste on February 12, 1982.

[7] Hill originally petitioned the Agency to exclude five waste-streams; namely their DAF float (K048), slop oil emulsion solids (K049), heat exchanger bundle cleaning sludge (K050), API separator sludge (K051), and waste activated sludge. This notice discusses the Agency's decision regarding Hill's DAF float (K048) and API separator sludge (K051). Hill has withdrawn their petitions for the remaining three wastestreams.

[8] Murphy Oil was granted a temporary exclusion for this waste on February 12, 1982.

B. Agency Response to Public Comments

The Agency did not receive any comments regarding its decision to deny an exclusion to New Departure Hyatt for the waste identified in the petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the filter cake generated by New Departure Hyatt is hazardous and as such should not be excluded from hazardous waste control. The Agency, therefore, is denying a final exclusion to New Departure Hyatt for its dewatered wastewater treatment sludge (vacuum filter sludge) resulting from electroplating operations, listed as EPA Hazardous Waste No. F006, which is generated at its Sandusky, Ohio facility. By this action, the Agency also withdraws the temporary exclusion granted for this waste on December 15, 1981.

VI. Virginia Chemicals, Inc.

A. Proposed Denial

Virginia Chemicals, Inc. (Virginia Chemicals) has petitioned the Agency to exclude its still bottoms from EPA Hazardous Waste No. F003, based on the low percentage of methanol in the waste and the non-ignitability of the waste. Data submitted by Virginia Chemicals, however, fails to substantiate its claim that its methanol recovery process generates non-hazardous still bottoms.[10] (See 51 FR 37156–37157, October 17, 1986, for a more detailed explanation of why the Agency proposed to deny Virginia Chemicals' petition.)[11]

B. Agency Response to Public Comments

The Agency did not receive any comments regarding its decision to deny an exclusion to Virginia Chemicals for the waste identified in the petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the still bottoms generated by Virginia Chemicals are hazardous and as such should not be excluded from hazardous waste control. The Agency, therefore, is denying a final exclusion to Virginia Chemicals for its methanol recovery still bottoms resulting from the manufacture of sodium hydrosulfite, listed as EPA Hazardous Waste No. F003, which is generated at its Bucks, Alabama, facility. By this action, the Agency also withdraws the temporary exclusion granted for this waste on December 31, 1980 (see 45 FR 86444).

VII. Virginia Chemicals, Inc.

A. Proposed Denial

Virginia Chemicals, Inc. (Virginia Chemicals) has petitioned the Agency to exclude its still bottoms from EPA Hazardous Waste No. F003, based on the low percentage of methanol in the waste and the non-ignitability of the waste. Data submitted by Virginia Chemicals, however, fails to substantiate its claim that its methanol recovery process generates non-hazardous still bottoms.[12] (See 51 FR 37160–37161, October 17, 1986 for a more detailed explanation of why the Agency proposed to deny Virginia Chemicals' petition.)[13]

B. Agency Response to Public Comments

The Agency did not receive any comments regarding its decision to deny an exclusion to Virginia Chemicals for the waste identified in the petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the still bottoms generated by Virginia Chemicals are hazardous and as such should not be excluded from hazardous waste control. The Agency, therefore, is denying a final exclusion to Virginia Chemicals for its methanol recovery still bottoms resulting from the manufacture of sodium hydrosulfite, listed as EPA Hazardous Waste No. F003, which is generated at its Leeds, South Carolina facility. By this action, the Agency also withdraws the temporary exclusion granted for this waste on December 31, 1980 (see 45 FR 86544).

VIII. Effective Date

The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This is not the case, however, for the seven petitioners included in this notice having their temporary exclusions revoked and final exclusions denied. They will have to revert back to handling their wastes as they did before being granted these exclusions (*i.e.*, they must handle their wastes as hazardous). These petitioners will need some time to come into compliance with the RCRA hazardous waste management system. Accordingly, the effective date of the revocation of these temporary exclusions and denials is six months after publication of this rule in the **Federal Register.**

IX. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation, which would revoke temporary exclusions and deny petitions from seven facilities is not major. The affect of this rule would increase the overall costs for the facilities which currently have temporary exclusions that are being revoked and denied. The actual costs to these companies, however, would not be significant. In particular, in calculating the amount of waste that is generated by these seven facilities that currently have temporary exclusions and considering a disposal cost of $300/ton, the increased cost to these facilities is approximately $35.3 million, well under the $100 million level constituting a major regulation. In addition, some of these companies are large and, therefore, the impact of this rule will be relatively small. This rule is not a major regulation; therefore, no Regulatory Impact Analysis is required.

X. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. sections 601 through 612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

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[9] New Departure Hyatt was granted a temporary exclusion for this waste on December 15, 1981.

[10] Virginia Chemicals was granted a temporary exclusion for this waste on December 31, 1980 (See 45 FR 86544).

[11] Virginia Chemicals submitted additional data during the comment period. This data is still under review. If the data supports an exclusion, the Agency will propose to exclude these wastes.

[12] Virginia Chemicals was granted a temporary exclusion for this waste on December 31, 1980 (see 45 FR 86544).

[13] See footnote 11.

This amendment will have the effect of increasing overall waste disposal costs. This rule only effects seven facilities across different industrial segments. The overall economic impact, therefore, on small entities is small. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Dated: November 6, 1986.

J.W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 86–25840 Filed 11–14–86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 261

[SW–FRL–3111–7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Denials

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is announcing its decision to deny the petitions submitted by three petitioners to exclude their solid wastes from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste lists. Our basis for denying these petitions is that the petitioners have not substantiated their claims that the wastes are non-hazardous. The effect of this action is that all of this waste must be handled as hazardous waste in accordance with 40 CFR Parts 262 through 266, and Parts 270, 271, and 124.

EFFECTIVE DATE: May 18, 1987.

ADDRESSES: The public docket for these final petition denials is located in the Sub-basement, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for public viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475–9327 or Kate Blow at (202) 382–4675 for appointments. The reference number for this docket is "F–86–UCDF–FFFFF". The public may copy a maximum of 50 pages of materials from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–5096.

SUPPLEMENTARY INFORMATION: On October 21, 1986, EPA proposed to deny specific wastes generated by several facilities, including: (1) General Motors Corp., Delco Products Division, located in Kettering, Ohio (see 51 FR 37303); (2) John Deere Dubuque Works, located in Dubuque, Iowa (see 51 FR 37305); and (3) United Chair, Inc., located in Irondale, Alabama (see 51 FR 37309).[1, 2] The Agency had previously evaluated all three of the petitions which are discussed in today's notice. Based on our review at that time, these petitioners were granted a temporary exclusion. Due to changes in the delisting criteria required by the Hazardous and Solid Amendments of 1984, however, these petitions have been evaluated both for the factors for which the wastes were originally listed, as well as other factors and toxicants which reasonably could cause the wastes to be hazardous. Based upon these evaluations, the Agency has determined that these petitioning facilities have not substantiated their claims that the wastes are non-hazardous; therefore, the Agency is denying the petitions submitted by all three petitioning facilities and is revoking the temporary exclusions currently held by these facilities.

The denials made final here involve the following petitioners:

General Motors Corp., Delco Products Div., Kettering, Ohio;
John Deere Dubuque Works, Dubuque, Iowa;
United Chair, Inc., Irondale, Alabama.

I. General Motors Corporation, Delco Products Division

A. Proposed Denial

General Motors Corporation, Delco Products Division (Delco) has petitioned the Agency to exclude its wastewater treatment sludges from EPA Hazardous Waste Nos. F006 and F012, based on the absence or immobilization of the listed constituents in the wastes. Data submitted by Delco, however, fails to substantiate its claim that the listed constituents are absent or essentially present in an immobile form.[3] (See 51 FR 37303–37305, October 21, 1986, for a more detailed explanation of why the Agency proposed to deny Delco's petition.)

B. Agency Response to Public Comments

The Agency did not receive any comments regarding its decision to deny an exclusion to Delco for the waste identified in the petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the waste sludge cake generated by Delco is hazardous and as such should not be excluded from hazardous waste control. The Agency, therefore, is denying a final exclusion to the General Motors Corporation, Delco Products Division for its dewatered wastewater treatment sludge (waste sludge cake) resulting from electroplating and metal heat treating operations, listed as EPA Hazardous Waste Nos. F006 and F012 respectively, which are generated at its Kettering, Ohio facility. By this action, the Agency also withdraws the temporary exclusion granted for this waste on December 23, 1981 and modified on January 21, 1982.

II. John Deere Dubuque Works

A. Proposed Denial

John Deere Dubuque Works (John Deere) has petitioned the Agency to exclude its wastewater treatment sludge from EPA Hazardous Waste No. F006, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by John Deere, however, fails to substantiate its

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[1] In the same **Federal Register** notice, the Agency also proposed to deny exclusion for specific wastes generated by the LTV Steel Company, located in East Chicago, Indiana (see 51 FR 37037). The Agency will address this proposal in a future **Federal Register** notice.

[2] In the same **Federal Register** notice, the Agency also proposed to deny exclusion to specific wastes generated by the Cerro Conduit Co., located in Syosset, New York (see 51 FR 37301). During the comment period for the proposed rule, Cerro Conduit sent a letter to the Agency requesting that its petition be withdrawn. By withdrawing their petition, Cerro Conduit's temporary exclusion is no longer valid; therefore, the previously petitioned waste must now be handled as hazardous.

[3] Delco was granted a temporary exclusion for the F006 waste on December 23, 1981 The petition was amended on January 21, 1982 to include Delco's F012 waste.

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claim that the listed constituents are essentially present in an immobile form.[4] (See 51 FR 37305–37307, October 21, 1986, for a more detailed explanation of why the Agency proposed to deny John Deere's petition.)

B. Agency Response to Public Comments

The Agency did not receive any comments on its proposed decision to deny an exclusion John Deere for the waste identified in the petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the filter cake generated by John Deere is hazardous and as such should not be excluded from hazardous waste control. The Agency, therefore, is denying a final exclusion to John Deere Dubuque Works for its dewatered wastewater treatment sludge (filter cake) resulting from electroplating operations, listed as EPA Hazardous Waste No. F006, which is generated at its facility located in Dubuque, Iowa. By this action, the Agency also withdraws the temporary exclusion granted for this waste on December 16, 1981 (see 46 FR 61272).

III. United Chair, Inc.

A. Proposed Denial

United Chair, Inc. has petitioned the Agency to exclude its wastewater treatment sludge from EPA Hazardous Waste No. F006, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by United Chair, however, fails to substantiate its claim that the listed constitutents are essentially present in an immobile form.[5] (See 51 FR 37309–37310, October 21, 1986, for a more detailed explanation of why the Agency proposed to deny United Chair's petition.)

B. Agency Response to Public Comments

The Agency did not receive any comments regarding its decision to deny an exclusion to United Chair for the waste identified in the petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the filter press sludge generated by United Chair is hazardous and as such should not be excluded from hazardous waste control. The Agency, therefore, is denying a final exclusion to the United Chair, Inc. for its dewatered wastewater treatment sludge (filter press sludge) resulting from electroplating operations, listed as EPA Hazardous Waste No. F006, which is generated at its Irondale, Alabama facility. By this action, the Agency also withdraws the temporary exclusion granted for this waste on May 5, 1982.

IV. Effective Date

The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This is not the case, however, for the three petitioners included in this notice having their temporary exclusions revoked and final exclusions denied. They will have to revert back to handling their wastes as they did before being granted these exclusions (*i.e.*, they must handle their wastes as hazardous). These petitioners will need some time to come into compliance with the RCRA hazardous waste management system. Accordingly, the effective date of the revocation of these temporary exclusions and denials is six months after publication of this final rule in the **Federal Register**.

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation, which would revoke temporary exclusions and deny petitions from three facilities is not major. The affect of this rule would increase the overall costs for the facilities which currently have temporary exclusions that are being revoked and denied. The actual costs to these companies, however, would not be significant. In particular, in calculating the amount of waste that is generated by these three facilities that currently have temporary exclusions and considering a disposal cost of $300/ton, the increased cost to these facilities is approximately $2.9 million, well under the $100 million level constituting a major regulation. In addition, some of these companies are large and, therefore, the impact of this rule will be relatively small. This rule is not a major regulation; therefore, no Regulatory Impact Analysis is required.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. sections 601 through 612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will have the effect of increasing overall waste disposal costs. This rule only effects three facilities across different industrial segments. The overall economic impact, therefore, on small entities is small. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Dated: November 6, 1986.

J.W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 86–25839 Filed 11–14–86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 261

[SW-FRL-3112-8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusions

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is granting final exclusions for the solid wastes generated at three particular generating facilities from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions received by the Agency under 40 CFR 260.20 and 260.22 to exclude wastes on a "generator-specific" basis from the hazardous waste lists. The effect of this action is to exclude certain wastes generated at these facilities from listing as hazardous wastes under 40 CFR Part 261.

EFFECTIVE DATE: November 17, 1986.

ADDRESSES: The public docket for this final rule is located in the Sub-basement, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for public viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding

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[4] John Deere was granted a temporary exclusion for this waste on December 16, 1981 (46 FR 61272).

[5] United Chair was granted a temporary exclusion for this waste May 5, 1982.

Federal holidays. Call Mia Zmud at (202) 475-9327 or Kate Blow at (202) 382-4675 for appointments. The reference number for this docket is "F-86-TRFE-FFFFF". The public may copy a maximum of 50 pages of materials from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, toll-free at (800) 424-9346, or (202) 382-3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-5096.

SUPPLEMENTARY INFORMATION: On October 16, 1986, EPA proposed to exclude specific wastes generated by three facilities, including: (1) Tricil Environmental Systems, Inc., located in Hilliard, Ohio (see 51 FR 36976); (2) Tricil Environmental Systems, Inc., located in Nashville, Tennessee (see 51 FR 36979); and (3) Tricil Environmental Systems, Inc., located in Muskegon, Michigan (see 51 FR 36983). These actions were taken in response to petitions submitted by these companies (pursuant to 40 CFR 260.20 and 260.22) to exclude their wastes from hazardous waste control. In their petitions, these companies have argued that certain of their wastes were non-hazardous based upon the criteria for which the waste was listed. The petitioners have also provided information which has enabled the Agency to determine whether any other toxicants are present in the wastes at levels of regulatory concern. The purpose of today's actions is to make final the three proposals and to make our decisions effective immediately. More specifically, today's rule allows all three of these facilities to manage their petitioned wastes as non-hazardous. The exclusions remain in effect unless the wastes vary from those originally described in the petitions (*i.e.*, the wastes are altered as a result of changes in the manufacturing or treatment processes).[1] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.

The Agency notes that the petitioners granted final exclusions in today's **Federal Register** have been reviewed for both the listed and non-listed criteria. As required by the Hazardous and Solid Waste Amendments of 1984, the Agency evaluated the wastes for the listed constituents of concern as well as for all other factors (including additional constituents) for which there was a reasonable basis to believe that they could cause the waste to be hazardous. These petitioners have demonstrated through submission of raw materials data, EP toxicity test data for all EP toxic metals, and test data on the four hazardous waste characteristics that their wastes do not exhibit any of the hazardous waste characteristics, and do not contain any other toxicants at levels of regulatory concern.

Limited Effect of Federal Exclusion

States are allowed to impose requirements that are more stringent than EPA's pursuant to section 3009 of RCRA. State programs thus need not include those Federal provisions which exempt persons from certain regulatory requirements. For example, States are not required to provide a delisting mechanism to obtain final authorization. If the State program does include a delisting mechanism, however, that mechanism must be no less stringent than that of the Federal program for the State to obtain and keep final authorization.

As a result of enactment of the Hazardous and Solid Waste Amendments of 1984, any States which had delisting programs prior to the Amendments must become reauthorized under the new provisions.[2] To date only one State (Georgia) has received approval for their delisting program. The final exclusions granted today, therefore, are issued under the Federal program. States, however, can still decide whether to exclude these wastes under their State (non-RCRA) program. Since a petitioner's waste may be regulated by a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

The exclusions made final here involve the following petitioners:

Tricil Environmental Systems, Inc.,
Hilliard, Ohio;
Tricil Environmental Systems, Inc.,
Nashville, Tennessee; and
Tricil Environmental Systems, Inc.,
Muskegon, Michigan.

I. Tricil Environmental Services, Inc.

A. Proposed Exclusion

Tricil Environmental Services, Inc., (Tricil), located in Hilliard, Ohio, has petitioned the Agency to exclude the residue of specific segregated wastes (filter press sludge and sludge storage piles) produced by its treatment facility from EPA Hazardous Waste Nos. K062 and F006 based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by Tricil substantiate their claim that the listed constituents of concern, although present, are essentially present in an immobile form. Furthermore, additional data provided by Tricil indicate that no other hazardous constituents are present in the waste at levels of regulatory concern, and that the waste does not exhibit any of the characteristics of hazardous waste. (See 51 FR 36976-36979, October 16, 1986 for a more detailed explanation of why EPA proposed to grant Tricil's petition.)

B. Agency Response to Public Comments

The Agency received comments from Tricil regarding the Agency's decision to grant an exclusion for the waste identified in its petition. Tricil commented on the following aspects of the proposed exclusion: (1) The maximum acceptable limits for several constituents are below established quantification limits, and (2) the effective date of the final exclusion does not allow enough time for Tricil to come into compliance with the conditions of the exclusion. These comments are addressed below.

Tricil commented that the maximum acceptable levels (MALs) for 1,2-dichloroethane, chloroform, and 1,1-dichloroethane (0.0082, 0.012, and 0.01 ppm, respectively) are below the established analytical quantification limits (*i.e.*, 0.05 ppm as per the proposed toxicity characteristic (see 51 FR 21648-21693) for 1,2-dichloroethane and chloroform, and 0.05 ppm as per SW-846 Test Method 8240 for 1,1-dichloroethane.) Tricil suggested that the MALs for these three constituents be set at the quantification limit of 0.05 ppm. The Agency realizes that there are some constituents whose MALs are below standard EPA detection limits. The Agency has noted in previous notices that where hazardous constituents in a waste are determined to be nondetectable using appropriate analytical methods, the Agency will, as a matter of policy, not regulate the waste as hazardous. The Agency notes

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[1] The current exclusions apply only to the processes covered by the original demonstrations. A facility may file a new petition if it alters its process. Should such a change occur, the facility must treat its waste as hazardous until a new exclusion is granted.

[2] RCRA Reauthorization Statutory Interpretation #4: Effect of Hazardous and Solid Waste Amendments of 1984 on State Delisting Decisions, May 16, 1985, Jack W. McGraw, Acting Assistant Administrator for the Office of Solid Waste and Emergency Response.

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that Tricil has submitted analytical results with detection limits as low as 0.008 ppm for chloroform and 0.014 for 1,2-dichloroethane. (All reported results for 1,1-dichloroethane were greater than 0.05 ppm; however, the Agency believes these three compounds are similar enough that Tricil should be able to achieve detection limits less than 0.05 ppm for 1,1-dichloroethane.) The Agency, therefore, does not believe that it is necessary to raise the MALs to 0.05 ppm, but will review the petitioner's first six months of analytical data and, if a problem is demonstrated, will repropose the alternative detection limits as necessary.

Tricil requested that the Agency finalize the proposed exclusion prior to or on the HSWA deadline of November 8, 1986 but to postpone the cancellation of their temporary exclusion and the effective date of the final exclusion for six months. Tricil requested this extension of the temporary exclusion and postponement of the final exclusion in order to: (1) Allow Tricil to adjust its treatment system and/or eliminate clients in order to implement an effective organics pre-screening process to limit organic content in the waste, and (2) allow Tricil to develop the required laboratory capabilities and/or locate commercial laboratories to conduct the batch testing requirements of the conditional exclusion. Tricil believes that the Agency has the authority under HSWA to grant Tricil's request. Tricil's interpretation of HSWA is that "temporary exclusions issued prior to enactment cease to be in effect on November 8, 1986 *unless* EPA has promulgated a final decision to *grant* or deny a final exclusion by November 8, 1986." In addition, Tricil pointed out that the Agency has given facilities whose temporary exclusions are being denied a six month period to come into compliance. The Agency agrees with Tricil's arguments and, therefore, will allow Tricil a six month period to come into compliance with those conditions of the final exclusion pertaining to the level of organic toxicants in the delisted waste. The Agency, however, believes that it *is* appropriate for Tricil to implement immediately the testing requirements for the EP toxic metals, nickel, and cyanide since Tricil currently pre-screens incoming client wastes under the continuous testing provisions of their conditional temporary exclusion and has had ample time to prepare for this condition.

The Agency notes that since the draft of "EPA Support Document: Regulatory Standards and Solubilities of Constituents of Concern" (dated June 1986) has undergone recent updates, the proposed maximum acceptable levels for specific organics in Tricil's contingency plan (item #3) have been modified. Tricil will be required to test for the total content of the organic toxicants listed below. If the total content of any of these constituents exceeds the maximum levels listed below, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. A corrected and final list of MALs for the Tricil wastes is provided in Table 1.

TABLE 1.—MAXIMUM ACCEPTABLE LIMITS FOR TRICIL WASTES

Constituents	Maximum acceptable limits (ppm)
Acrolein	[1] 56.8
Anthracene	76.8
Benzene	0.108
p-Chloro-m-cresol	133
1,1-Dichloroethane	0.01
Fluorene	10.4
Methylene chloride	8.2
Methyl ethyl ketone	326
n-Nitrosodiphenylamine	11.9
Phenanthrene	14
Tetrachloroethylene	0.186
Trichloroethylene	0.59
Chloroform	0.013
1,2-Dichloroethane	0.0083
1,2-trans-Dichloroethylene	231
2,4-Dimethylphenol	[2] 12.5
Vinyl chloride	0.18
1,2-Diphenyl hydrazine	[2] 0.001

[1] The MAL cited in the proposed exclusion was based on a different solubility. The MAL cited here is based on a revised solubility.

[2] The MAL for 2,4-dimethyl phenol and 1,2-diphenyl hydrazine were reported incorrectly in the proposed exclusion.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the treatment residue is non-hazardous and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a conditional exclusion to Tricil for its treatment residue (EPA Hazardous Waste Nos. K062 and F006) generated at Tricil's Hilliard, Ohio facility. The conditions which must be met were outlined in a contingency testing program in the proposed exclusion. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[3] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.

II. Tricil Environmental Services, Inc.

A. Proposed Exclusion

Tricil Environmental Services, Inc., (Tricil), located in Nashville, Tennessee, has petitioned the Agency to exclude its wastewater treatment sludge (vacuum filter sludge) from EPA Hazardous Waste No. F019, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by Tricil substantiate their claim that the listed constituents of concern, although present, are essentially present in an immobile form. Furthermore, additional data provided by Tricil indicate that no other hazardous constituents are present in the waste at levels of regulatory concern, and that the waste does not exhibit any of the characteristics of hazardous waste. (See 51 FR 36979–36983, October 16, 1986 for a more detailed explanation of why EPA proposed to grant Tricil's petition.)

B. Agency Response to Public Comments

The Agency received comments from Tricil regarding the Agency's decision to grant an exclusion for the waste identified in its petition. Tricil commented on the following aspects of the proposed exclusion: (1) The maximum acceptable limits for several constituents are below established quantification limits, and (2) the effective date of the final exclusion does not allow enough time for Tricil to come into compliance with the conditions of the exclusion. These comments are addressed below.

Tricil requested that the Agency finalize the proposed exclusion prior to or on the HSWA deadline of November 8, 1986 but to postpone the cancellation of their temporary exclusion and the effective date of the final exclusion for six months. Tricil requested this extension of the temporary exclusion and postponement of the final exclusion in order to: (1) Allow Tricil to adjust its treatment system and/or eliminate clients in order to implement an effective organics pre-screening process to limit organic content in the waste, and (2) allow Tricil to develop the required laboratory capabilities and/or locate commercial laboratories to conduct the batch testing requirements of the conditional exclusion. Tricil believes that the Agency has the authority under HSWA to grant Tricil's request. Tricil's interpretation of HSWA is that "temporary exclusions issued prior to enactment cease to be in effect on November 8, 1986 *unless* EPA has promulgated a final decision to *grant* or

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[3] See footnote 1.

deny a final exclusion by November 8, 1986." In addition, Tricil pointed out that the Agency has given facilities whose temporary exclusions are being withdrawn/denied a six month period to come into compliance. The Agency agrees with Tricil's arguments and, therefore, will allow Tricil a six month period to come into compliance with those conditions of the final exclusion pertaining to the level of organic toxicants in the delisted waste. The Agency, however, believes that it *is* appropriate for Tricil to implement immediately the testing requirements for the EP toxic metals, nickel, and cyanide since Tricil currently pre-screens incoming client wastes under the continuous testing provisions of their conditional temporary exclusion and has had ample time to prepare for this condition.

The Agency notes that since the draft of "EPA Support Document: Regulatory Standards and Solubilities of Constituents of Concern" (dated June 1986) has undergone recent updates, the proposed maximum acceptable levels for specific organics in Tricil's contingency plan (item #3) have been modified. Tricil will be required to test for the total content of the organic toxicants listed below. If the total content of any of these constituents exceeds the maximum levels listed below, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. A corrected and final list of MALs for the Tricil wastes is provided in Table 1.

TABLE 1.—MAXIMUM ACCEPTABLE LIMITS FOR TRICIL WASTES

Constituents	Maximum acceptable limits (ppm)
Acrolein	[1] 363
Anthracene	402
Benzene	0.68
p-Chloro-m-cresol	848
1,1-Dichloroethane	0.068
Fluorene	66.7
Methylene chloride	52.4
n-Nitrosodiphenylamine	76.1
Phenanthrene	69
Tetrachloroethylene	1.2
Trichloroethylene	3.78
Chloroform	0.081
1,2-Dichloroethane	[2] 0.053
2,4-Dimethylphenol	79.7
Vinyl chloride	1.16
1,2-Diphenyl hydrazine	[2] 0.005

[1] The MAL cited in the proposed exclusion was based on a different solubility. The MAL cited here is based on a revised solubility.

[2] The MAL for 1,2-dichloroethane and 1,2-diphenyl hydrazine were reported incorrectly in the proposed exclusion.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the treatment residue is non-hazardous and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a conditional exclusion to Tricil for its treatment residue resulting from the chemical conversion coating of aluminum, listed as EPA Hazardous Waste No. F019, generated at its Nashville, Tennessee facility. The conditions which must be met were outlined in the contingency testing program in the proposed exclusion. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[4] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.)

III. Tricil Environmental Services, Inc.

A. Proposed Exclusion

Tricil Environmental Services, Inc., (Tricil), located in Muskegon, Michigan, has petitioned the Agency to exclude the treatment residue (filter press sludge) produced by its treatment facility from EPA Hazardous Waste Nos. K062 and F006 based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by Tricil substantiate their claim that the listed constituents of concern, although present, are essentially present in an immobile form. Furthermore, additional data provided by Tricil indicate that no other hazardous constituents are present in the waste at levels of regulatory concern, and that the waste does not exhibit any of the characteristics of hazardous waste. (See 51 FR 36983–36987, October 16, 1986 for a more detailed explanation of why EPA proposed to grant Tricil's petition.)

B. Agency Response to Public Comments

The Agency received comments from Tricil regarding the Agency's decision to grant an exclusion for the waste identified in its petition. Tricil commented on the following aspects of the proposed exclusion: (1) The maximum acceptable limits for several constituents are below established quantification limits, and (2) the effective date of the final exclusion does not allow enough time for Tricil to come into compliance with the conditions of the exclusion. These comments are addressed below.

Tricil commented that the maximum acceptable levels (MALs) for 1,2-dichloroethane, chloroform, and 1,1-dichloroethane (0.0082, 0.012, and 0.01 ppm, respectively) are below the established analytical quantification limits (*i.e.*, 0.05 ppm as per the proposed toxicity characteristic (see 51 FR 21648–21693) for 1,2-dichloroethane and chloroform, and 0.05 ppm as per SW-846 Test Method 8240 for 1,1-dichloroethane.) Tricil suggested that the MALs for these three constituents be set at the quantification limit of 0.05 ppm. The Agency realizes that there are some constituents whose MALs are below standard EPA detection limits. The Agency has noted in previous notices that where hazardous constituents in a waste are determined to be non-detectable using appropriate analytical methods, the Agency will, as a matter of policy, not regulate the waste as hazardous. The Agency notes that Tricil has submitted analytical results with detection limits as low as 0.008 ppm for chloroform and 0.014 for 1,2-dichloroethane. (AL1 reported results for 1,1-dichloroethane were greater than 0.05 ppm; however, the Agency believes that these three compounds are similar enough that Tricil should be able to achieve detection limits less than 0.05 ppm for 1,1-dichloroethane.) The Agency, therefore, does not believe that it is necessary to raise the MAL to 0.05 ppm, but will review the petitioner's first six months of analytical data and, if a problem is demonstrated, will repropose the alternative detection limits if necessary.

Tricil requested that the Agency finalize the proposed exclusion prior to or on the HSWA deadline of November 8, 1986 but to postpone the cancellation of their temporary exclusion and the effective date of the final exclusion for six months. Tricil requested this extension of the temporary exclusion and postponement of the final exclusion in order to: (1) Allow Tricil to adjust its treatment system and/or eliminate clients in order to implement an effective organics pre-screening process to limit organic content in the waste, and (2) allow Tricil to develop the required laboratory capabilities and/or locate commercial laboratories to conduct the batch testing requirements of the conditional exclusion. Tricil believes that the Agency has the authority under HSWA to grant Tricil's request. Tricil's interpretation of HSWA is that "temporary exclusions issued prior to enactment cease to be in effect on November 8, 1986 *unless* EPA has promulgated a final decision to *grant* or deny a final exclusion by November 8, 1986." In addition, Tricil pointed out that the Agency has given facilities whose temporary exclusions are being withdrawn/denied a six month period to come into compliance. The Agency agrees with Tricil's arguments and, therefore, will allow Tricil a six month period to come into compliance with those conditions of the final exclusion pertaining to the level of organic toxicants in the delisted waste. The Agency, however, believes that it *is* appropriate for Tricil to implement immediately the testing requirements for the EP toxic metals, nickel, and cyanide since Tricil currently pre-screens incoming client wastes under the continuous testing provisions of their conditional temporary exclusion and has had ample time to prepare for this condition.

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[4] See footnote 1.

The Agency notes that since the draft of "EPA Support Document: Regulatory Standards and Solubilities of Constituents of Concern" (dated June 1986) has undergone recent updates, the proposed maximum acceptable levels for specific organics in Tricil's contingency plan (item #3) have been modified. Tricil will be required to test for the total content of the organic toxicants listed below. If the total content of any of these constituents exceeds the maximum levels listed below, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. A corrected and final list of MALs for the Tricil wastes is provided in Table 1.

TABLE 1.—MAXIMUM ACCEPTABLE LIMITS FOR TRICIL WASTES

Constituents	Maximum acceptable limits (ppm)
Acrolein	[1] 56.8
Anthracene	76.8
Benzene	0.106
p-Chloro-m-cresol	133
1,1-Dichloroethane	0.01
Fluorene	10.4
Methylene chloride	8.2
Methyl ethyl ketone	326
n-Nitrosodiphenylamine	11.9
Phenanthrene	14
Tetrachloroethylene	0.188
Trichloroethylene	0.59
Chloroform	0.013
1,2-Dichloroethane	0.0083
1,2-trans-Dichloroethylene	231
2,4-Dimethylphenol	[2] 12.5
Vinyl chloride	0.18
1,2-Diphenyl hydrazine	[2] 0.001

[1] The MAL cited in the proposed exclusion was based on a different solubility. The MAL cited here is based on a revised solubility.

[2] The MAL for 2,4-dimethyl phenol and 1,2-diphenyl hydrazine were reported incorrectly in the proposed exclusion.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the treatment residue is non-hazardous and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a conditional exclusion to Tricil for its treatment residue (EPA Hazardous Waste Nos. K062 and F006) generated at Tricil's Muskegon, Michigan facility. The conditions which must be met were outlined in a contingency testing program in the proposed exclusion. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[5] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.

IV. Effective Date

This rule is effective immediately, including the testing requirements for heavy metals and cyanide. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case for the heavy metals and cyanide testing since the petitioner has had ample time to prepare for this condition. Accordingly, the rule and testing conditions for heavy metals and cyanide are effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d). This is not the case, however, for the three facilities included in this notice with respect to the conditional testing requirements for organics. These facilities will need some time to implement an effective organic pre-screening program and develop on-site laboratory capabilities. Accordingly, the effective date of the organic testing conditions is six months after the publication of this rule in the **Federal Register**.

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This grant of exclusions is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at specific facilities from EPA's lists of hazardous wastes, thereby enabling these facilities to treat their wastes as non-hazardous.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effects will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this final regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous wastes, Recycling.

Dated: November 7, 1986.

Jeffery D. Denit,

Acting Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Appendix IX, add the following wastestreams in alphabetical order to tables 1 and 2 to read as follows:

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[5] See footnote 1.

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Tricil Environmental Systems, Inc.	Hilliard, Ohio	Dewatered wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from electroplating operations after November 17, 1986. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern, the facility must implement a contingency testing program for the petitioned wastes. This testing program must meet the following conditions for the exclusion to be valid: (1) Each batch of treatment residue must be representatively sampled and tested using the total oil and grease test and the EP Toxicity test (or the Oily Waste EP test, if the oil and grease content of the waste exceeds one percent) for arsenic, barium, cadmium, chromium, lead, selenium, silver, mercury, and nickel. If the extract concentrations for chromium, lead, arsenic, and silver exceed 0.315 ppm; barium levels exceed 6.3 ppm; cadmium and selenium levels exceed 0.063 ppm; mercury levels exceed 0.013 ppm; or nickel levels exceed 2.2 ppm, the waste will be re-treated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. (2) Each batch of treatment residue must be tested for reactive and leachable cyanide. If the reactive cyanide levels exceed 250 ppm or leachable cyanide levels (using the EP Toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be re-treated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. (3) Each batch of the waste must be tested for the total content of the following organic toxicants. If the total content of any of the constituents exceeds the maximum levels shown, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. Compound and Maximum Acceptable Levels (ppm) Acrolein, 56.6 Anthracene, 76.8 Benzene, 0.106 p-Chloro-m-cresol, 133 1,1-Dichloroethane, 0.01 Fluorene, 10.4 Methylene chloride, 8.2 Methyl ethyl ketone, 326 n-Nitrosodiphenylamine, 11.9 Phenanthrene, 14 Tetrachloroethylene, 0.186 Trichloroethylene, 0.59 Chloroform, 0.013 1,2-Dichloroethane, 0.0083 1,2-trans-Dichloroethylene, 231 2,4-Dimethylphenol, 12.5 Vinyl chloride, 0.18 (4) A grab sample must be collected from each batch to form one monthly composite sample, which must be tested using GC/MS analysis for the compounds shown above as well as the remaining organics on the priority pollutant list. (See 47 FR 52309, November 19, 1982, for a list of the priority pollutants.) (5) The test data from conditions 1–4 must be kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the Administrator by certified mail on a semiannual basis. The Agency will review this information and if needed, will propose to modify or withdraw the exclusion. The organics testing described in conditions 3 and 4 above is not required until May 18, 1987. The Agency's decision to conditionally exclude the treatment residue generated from the wastewater treatment system at this facility applies only to the wastewater treatment residue as described in this petition.
Tricil Environmental Systems, Inc.	Nashville, Tennessee	Dewatered wastewater treatment sludges (EPA Hazardous Waste No. F019) generated from chemical conversion coating of aluminum after November 17, 1986. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern, the facility must implement a contingency testing program for the petitioned wastes. This testing program must meet the following conditions for the exclusion to be valid: (1) Each batch of treatment residue must be representatively sampled and tested using the total oil and grease test and the EP Toxicity test (or the Oily Waste EP test, if the oil and grease content of the waste exceeds one percent) for arsenic, barium, cadmium, chromium, lead, selenium, silver, mercury, and nickel. If the extract concentrations for chromium, lead, arsenic, and silver exceed 1.1 ppm; barium levels exceed 22.2 ppm; cadmium and selenium levels exceed 0.22 ppm; mercury levels exceed 0.044 ppm; or nickel levels exceed 7.8 ppm, the waste will be re-treated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. (2) Each batch of treatment residue must be tested for reactive and leachable cyanide. If the reactive cyanide levels exceed 250 ppm or leachable cyanide levels (using the EP Toxicity test without acetic acid adjustment) exceed 4.4 ppm, the waste must be re-treated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. (3) Each batch of the waste must be tested for the total content of the following organic toxicants. If the total content of any of the constituents exceeds the maximum levels shown, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. Compound and Maximum Acceptable Levels (ppm) Acrolein, 363 Anthracene, 492 Benzene, 0.68 p-Chloro-m-cresol, 848 1,1-Dichloroethane, 0.068 Fluorene, 66.7 Methylene chloride, 52.4 n-Nitrosodiphenylamine, 76.1 Phenanthrene, 89 Tetrachloroethylene, 1.2 Trichloroethylene, 3.78 Chloroform, 0.081 1,2-Dichloroethane, 0.053 2,4-Dimethylphenol, 79.7 Vinyl chloride, 1.16 1,2-Diphenyl hydrazine, 0.005 (4) A grab sample must be collected from each batch to form one monthly composite sample, which must be tested using GC/MS analysis for the compounds shown above as well as the remaining organics on the priority pollutant list. (See 47 FR 52309, November 19, 1982, for a list of the priority pollutants.) (5) The test data from conditions 1–4 must be kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the Administrator by certified mail on a semiannual basis. The Agency will review this information and if needed, will propose to modify or withdraw the exclusion. The organics testing described in conditions 3 and 4 above is not required until May 18, 1987. The Agency's decision to conditionally exclude the treatment residue generated from the wastewater treatment system at this facility applies only to the wastewater treatment residue as described in this petition.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
Tricil Environmental Systems, Inc.	Muskegon, Michigan	Dewatered wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from electroplating operations after November 17, 1986. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern, the facility must implement a contingency testing program for the petitioned wastes. This testing program must meet the following conditions for the exclusion to be valid: (1) Each batch of treatment residue must be representatively sampled and tested using the total oil and grease test and the EP Toxicity test (or the Oily Waste EP test, if the oil and grease content of the waste exceeds one percent) for arsenic, barium, cadmium, chromium, lead, selenium, silver, mercury, and nickel. If the extract concentrations for chromium, lead, arsenic, and silver exceed 0.315 ppm; barium levels exceed 6.3 ppm; cadmium and selenium levels exceed 0.063 ppm; mercury levels exceed 0.013 ppm; or nickel levels exceed 2.2 ppm, the waste will be re-treated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. (2) Each batch of treatment residue must be tested for reactive and leachable cyanide. If the reactive cyanide levels exceed 250 ppm or leachable cyanide levels (using the EP Toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be re-treated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. (3) Each batch of the waste must be tested for the total content of the following organic toxicants. If the total content of any of the constituents exceeds the maximum levels shown, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. Compound and Maximum Acceptable Levels (ppm) Acrolein, 56.8 Anthracene, 76.8 Benzene, 0.106 p-Chloro-m-cresol, 133 1,1-Dichloroethane, 0.01 Fluorene, 10.4 Methylene chloride, 8.2 Methyl ethyl ketone, 326 n-Nitrosodiphenylamine, 11.9 Phenanthrene, 14 Tetrachloroethylene, 0.188 Trichloroethylene, 0.59 Chloroform, 0.013 1,2-Dichloroethane, 0.0063 1,2-trans-Dichloroethylene, 231 2,4-Dimethylphenol, 12.5 Vinyl chloride, 0.18 (4) A grab sample must be collected from each batch to form one monthly composite sample, which must be tested using GC/MS analysis for the compounds shown above as well as the remaining organics on the priority pollutant list. (See 47 FR 52309, November 19, 1982, for a list of the priority pollutants.) (5) The test data from conditions 1–4 must be kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the Administrator by certified mail on a semiannual basis. The Agency will review this information and if needed, will propose to modify or withdraw the exclusion. The organics testing described in conditions 3 and 4 above is not required until May 18, 1987. The Agency's decision to conditionally exclude the treatment residue generated from the wastewater treatment system at this facility applies only to the wastewater treatment residue as described in this petition.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
Tricil Environmental Systems, Inc.	Hilliard, Ohio	Spent pickle liquor (EPA Hazardous Waste No. K062) generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332) after November 17, 1986. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern, the facility must implement a contingency testing program for the petitioned wastes. This testing program must meet the following conditions for the exclusions to be valid: (1) Each batch of treatment residue must be representatively sampled and tested using the total oil and grease test and the EP Toxicity test (or the Oily Waste EP test, if the oil and grease content of the waste exceeds one percent) for arsenic, barium, cadmium, chromium, lead, mercury, selenium, silver and nickel. If the extract concentrations for chromium, lead, arsenic, barium, and silver exceed 6.3 ppm; cadmium and selenium exceed 0.063 ppm; mercury levels exceed 0.013 ppm; or nickel levels exceed 2.2 ppm, the waste will be retreated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR 270. (2) Each batch of treatment residue must be tested for reactive and leachable cyanide. If the reactive cyanide levels exceed 250 ppm; or leachable cyanide levels (using ther EP Toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be retreated or managed and disposed as hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. (3) Each batch of waste must be tested for the total content of the following organic toxicants. If the total content of any of the constituents exceeds the maximum levels shown, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 and 265 and the permitting standards of 40 CFR Part 270. Compound and Maximum Acceptable Levels (ppm) Acrolein, 56.8 Anthracene, 76.8 Benzene, 0.106 p-Chloro-m-cresol, 133 1,1–Dichloroethane, 0.01 Fluorene, 10.4 Methylenechloride, 8.2 Methyl ethyl ketone, 326 n–Nitrosodiphenylamine, 11.9 Phenanthrene, 14 Tetrachloroethylene, 0.188 Trichloroethylene, 0.59 Chloroform, 0.013 1,2-Dichloroethane, 0.0063 1,2-trans-Dichloroethylene, 231 2,4-Dimethylphenol, 12.5 Vinyl chloride, 0.18 1,2-Diphenyl hydrazine, 0.001

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(4) A grab sample must be collected from each batch to form one monthly composite sample, which must be tested using GC/MS analyses for the organic compounds shown above, as well as the remaining organics on the priority pollutant list (see 47 FR 52309, November 19, 1982, Appendix A–126 Priority Pollutants). (5) The test data from conditions 1–4 must be kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the Administrator by certified mail on a semiannual basis. The Agency will review this information and if needed, will propose to modify or withdraw the exclusion. The organics testing described in conditions 3 and 4 above is not required until May 18, 1987. The Agency's decision to conditionally exclude the treatment residue generated from the wastewater treatment system at this facility applies only to the wastewater treatment residue described in this petition.
Tricil Environmental System, Inc	Muskegon, Michigan	Spent pickle liquor (EPA Hazardous Waste No. K062) generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332); after November 17, 1986. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern, the facility must implement a contingency testing program for the petitioned wastes. This testing program must meet the following conditions for the exclusion to be valid: (1) Each batch of treatment residue must be representatively sampled and tested using the total oil and grease test and the EP Toxicity test (or the Oily Waste EP test, if the oil and grease content of the waste exceeds one percent) for arsenic, barium, cadmium, chromium, lead, mercury, selenium, silver and nickel. If the extract concentrations for chromium, lead, arsenic, barium, and silver exceed 6.3 ppm, cadmium and selenium exceed 0.063 ppm; mercury levels exceed 0.013 ppm; or nickel levels exceed 2.2 ppm, the waste will be retreated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR 270. (2) Each batch of treatment residue must be tested for reactive and leachable cyanide. If the reactive cyanide levels exceed 250 ppm; or leachable cyanide levels (using the EP Toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be retreated or managed and disposed as hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. (3) Each batch of waste must be tested for the total content of the following organic toxicants. If the total content of any of the constituents exceeds the maximum levels shown, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 and 265 and the permitting standards of 40 CFR Part 270: Compound and Maximum Acceptable Levels (ppm) Acrolein, 56.8 Anthracene, 76.8 Benzene, 0.106 p-Chloro-m-cresol, 133 1,1–Dichloroethane, 0.01 Fluorene, 10.4 Methylenechloride, 8.2 Methyl ethyl ketone, 328 n–Nitrosodiphenylamine, 11.9 Phenanthrene, 14 Tetrachloroethylene, 0.188 Trichloroethylene, 0.59 Chloroform, 0.013 1,2-Dichloroethane, 0.0083 1,2-trans-Dichloroethylene, 231 2,4-Dimethylphenol, 12.5 Vinyl chloride, 0.18 1,2-Diphenyl hydrazine, 0.001 (4) A grab sample must be collected from each batch to form one monthly composite sample, which must be tested using GC/MS analysis for the organic compounds shown above, as well as the remaining organics on the priority pollutant list (see 47 FR 52309, November 19, 1982, Appendix A–126 Priority Pollutants). (5) The test data from conditions 1–4 must be kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the Administrator by certified mail on a semiannual basis. The Agency will review this information and if needed, will propose to modify or withdraw the exclusion. The organics testing described in conditions 3 and 4 above is not required until May 18, 1987. The Agency's decision to conditionally exclude the treatment residue generated from the wastewater treatment system at this facility applies only to the wastewater treatment residue described in this petition.

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BILLING CODE 6560-50-M

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40 CFR Part 261

[SW–FRL–3112–7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Denials

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is announcing its decision to deny the petitions submitted by two petitioners to exclude their solid wastes from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste lists. Our basis for denying these petitions is that the petitioners have not substantiated their claims that the wastes are non-hazardous. The effect of this action is that all of this waste must be handled as hazardous waste in accordance with 40 CFR Parts 262 through 266, and Parts 270, 271 and 124.

EFFECTIVE DATE: May 18, 1987.

ADDRESSES: The public docket for these final petition denials is located in the Sub-basement, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for public viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475–9327 or Kate Blow at (202) 382–4675 for appointments. The reference number for this docket is "F–86–CHDF–FFFFF." The public may copy a maximum of 50 pages of materials from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9347, or at (202) 382–3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–5096.

SUPPLEMENTARY INFORMATION: On October 22, 1986, EPA proposed to deny

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specific wastes generated by several facilities, including: (1) Chevron, U.S.A., located in Port Arthur, Texas (see 51 FR 37422); and (2) E.I. Du Pont de Nemours & Company, located in Beaumont, Texas (see 51 FR 37423). The Agency had previously evaluated both of these petitions which are discussed in today's notice. Based on our review at that time, these petitioners were granted temporary exclusions. Due to changes in the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, however, these petitions have been evaluated both for the factors for which the wastes were originally listed, as well as other factors and toxicants which reasonably could cause the wastes to be hazardous. Based upon these evaluations, the Agency has determined that both of the petitioning facilities have not substantiated their claims that the wastes are non-hazardous; therefore, the Agency is denying the petitions submitted by these petitioning facilities and is revoking the temporary exclusions currently held by these facilities.

The denials made final here involve the following petitioners:

Chevron, U.S.A., Port Arthur, Texas; and
E.I. Du Pont de Nemours & Company, Beaumont, Texas.

I. Chevron, U.S.A.

A. Proposed Denial

Chevron, U.S.A. (Chevron), has petitioned the Agency to exclude its wastewater treatment sludge from EPA Hazardous Waste Nos. K048 and K051 based on the low concentrations and immobilization of the listed constituents in the waste. Data submitted by Chevron, however, fails to substantiate its claim that the listed constituents are essentially present in an immobile form.[1] (See 51 FR 37422–37423, October 22, 1986 for a more detailed explanation of why the Agency proposed to deny Chevron's petition.)

B. Agency Response to Public Comments

The Agency received comments from Chevron regarding the proposed denial of its petitioned waste streams. Chevron specifically requested that the Agency discuss the evaluation of the slop oil emulsion solids, listed as EPA Hazardous Waste No. K049. Chevron revised their original petition to include this waste on November 6, 1981 and subsequently received a temporary exclusion for this waste, the DAF float, and the API separator sludge. Chevron provided only EP toxicity analyses of the slop oil emulsion solids for lead and chromium. Chevron did not provide total constituent analyses, oil and grease analyses, or ignitability, corrosivity, and reactivity test results for this waste. Furthermore, Chevron did not discuss sampling procedures followed during the collection of the four samples on which the EP toxicity analyses for lead and chromium were conducted, nor did they provide annual or maximum waste generation rates. The Agency, therefore, was not able to evaluate the EP toxicity data submitted because we could not determine whether the samples were representative of the slop oil emulsion solids and an estimated waste generation rate was not available for use in the VHS model evaluation. Finally, the Agency notes that Chevron did not respond to the Agency's requests for additional information regarding the slop oil emusion solids required by the Hazardous and Solid Waste Amendments of 1984 (*e.g.*, January 6, 1984; March 6, 1984; November 26, 1984; and September 18, 1985) and, therefore, the Agency could not evaluate this waste to determine whether or not any other toxicants were present in the waste at levels of regulatory concern.[2]

Chevron also commented that the date of their temporary exclusion was cited incorrectly in the proposed denial. The Agency agrees with Chevron that the date of the temporary exclusion should have been reported as February 12, 1982. Chevron also submitted comments that clarify information presented on the emulsion solids which should have been presented in the Agency's proposal denial. Specifically, Chevron states that their present crude refining capacity is 418,000 barrels per day; that heavy solids that settle to the bottom of the API separators are no longer routed to an accumulator settling tank, but removed periodically and disposed off site; and that DAF float is no longer recycled to the API separators but routed to an oil recovery unit for recovery of the recyclable oil. Chevron also claims that they have not disposed EPA Hazardous Waste Nos. K048, K049, and K051 on site since November 1980. Chevron also explained that because the Agency was not considering site-specific factors in the VHS model evaluation, Chevron decided not to conduct further sampling and analyses of their petitioned wastes.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the API separator sludge and dissolved air flotation (DAF) float generated by Chevron are hazardous and as such should not be excluded from hazardous waste control. In addition, the Agency believes that Chevron has been given an adequate period of time to provide information necessary to determine whether or not the slop oil emulsion solids are hazardous and, therefore, also is denying the petition as incomplete. The Agency, therefore, is denying a final exclusion to Chevron, U.S.A. for its wastewater treatment sludges, listed as EPA Hazardous Waste No. K048, K049, and K051 which are generated at its integrated refinery in Port Arthur, Texas. By this action, the Agency also withdraws the temporary exclusion granted for these wastes on February 12, 1982. The Agency is denying Chevon's petition, in part, due to the levels of mobile chromium, accordingly, we made the denial effective in 6 months even though a portion of the petition has been denied due to lack of information.

II. E.I. Du Pont de Nemours & Company

A. Proposed Denial

E.I. Du Pont de Nemours & Company, Beaumont Works, (Du Pont) has petitioned the Agency to exclude its wastewaters from EPA Hazardous Waste Nos. K103 and K104 based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by Du Pont, however, fails to substantiate its claim that the listed constituents are essentially present in an immobile form.[3] (See 51 FR 37423–37427, October 22, 1986, for a more detailed explanation of why the Agency proposed to deny Du Pont's petition.)

B. Agency Response to Comments

The Agency received comments from Du Pont regarding the proposed denial of their petition. Du Pont specifically commented on the following items: (1) The constituents evaluated by the Agency, (2) the VHS model, (3) the use of average vs. maximum values, (4) the Agency's toxicity data base, and (5) errors in the VHS model calculations.

Du Pont commented that the Agency should only consider the constituents associated with the K103 and K104 wastes during the delisting evaluation, and thus should not consider constituents such as tetrachloroethylene, chloroform, and carbon tetrachloride in the OLM/VHS model analyses of the lagoon sludge and water since these constituents are from other wastes. Du Pont believes that it is beyond the Agency's statutory authority to consider the constituents of other unrelated streams in making a delisting decision. The Agency disagrees with the petitioner's interpretation of the Agency's statutory authority. The mixture of a hazardous waste and a solid waste is a hazardous waste (40 CFR 261.3(a)(2)(iv)). Thus, the combined wastewaters are a hazardous waste. The Hazardous and Solid Waste Amendments of 1984 (HSWA) require that, when evaluating delisting petitions, the Agency consider any factors that could reasonably cause a waste to be hazardous, including additional constituents. This is what the Agency has done. Du Pont also questioned the appropriateness of the Agency's evaluation of the lagoon sludge. The Agency believes that the lagoon sludge is a hazardous waste, as defined under 40 CFR 261.3(c)(2)(i), which states that "any solid waste generated from the treatment, storage or disposal of a hazardous waste . . . is a hazardous waste," because the sludge may have been generated from the settling of solids from the K103 and K104 wastes, in addition to other wastes which pass through the lagoon. Thus, the Agency considered the lagoon sludge as part of the delisting evaluation. If the petitioner had shown that the sludge was not in any way derived from the K103 and K104 wastes, this evaluation would not have been necessary. However, since such evidence was not provided, the Agency assumed that the sludge was, at least in part, derived from the petitioned wastes.

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[1] Chevron, U.S.A. was granted a temporary exclusion for these wastes on February 12, 1982.

[2] The Agency notes that a discussion of Chevron's slop oil emulsion solids was not presented in the Agency's proposal to deny Chevron's API separator sludge and the DAF float. The Agency believes, however, that since Chevron's petition was proposed to be denied, among other reasons, on the grounds that it was incomplete and since the Agency has not received sufficient information to evaluate the slop oil emulsion solids, that the Agency is justified in presenting a final decision regarding the slop oil emulsion solids at this time.

[3] Du Pont was granted a temporary exclusion for this waste on November 22, 1982 (see 47 FR 52680).

Du Pont also commented that the application of the VHS model was inappropriate because they believe that the VHS model is flawed. The VHS model includes the parameters C_o, which is the leachate concentration of contaminants at the waste boundary in the uppermost portion of the aquifer, and Z, the depth to which the toxicants penetrate into the aquifer at the facility boundary. Du Pont described the distance Z as the mixing zone formed when the leachate from the landfill combines with and diffuses into the flowing ground water beneath the landfill. Du Pont believes that the Agency has assumed that C_o within Z is the same as the leachate within the landfill. This is not a correct interpretation of the Agency's definition of C_o. The Agency assumes that C_o remains constant until the leachate reaches the upper aquifer boundary, where dilution and dispersion begin to occur. Du Pont also claims that the Agency ignores the fact that the rate of leaking and ground water velocity affect the concentration in Z. The Agency agrees with the commenter that variations in the rate of contaminant leaking and ground water velocity will affect the concentrations in the contaminant plume. The Agency, however, in the development of a generic reasonable worst-case scenario, is not able to consider such variations which occur on a seasonal and site-specific basis. The petitioner has not provided any suggestions on how such factors could actually be incorporated into the VHS model analysis if a site-specific evaluation were made. Du Pont went on to add that the VHS model is flawed because it does not allow for such site-specific evaluations, including the use of waste geometrics and site hydrogeologic conditions. In response, the Agency reiterates that the purpose of the VHS model was not to provide for a site-specific evaluation, but to evaluate a reasonable worst-case scenario that may occur. The Agency may, in the future, consider conditional delistings predicated on disposal at a particular site, however, at this time, the Agency is unable to identify all necessary factors in such a demonstration.

The commenter also recommended that the Agency use its proposed toxicity characteristic, which includes a ground water transport model, (see 51 FR 21648–21693, June 13, 1986) with modifications suggested by the Chemical Manufacturer's Association (CMA) rather than the results of the VHS model. The Agency notes that it has not completed its evaluation of the comments on the proposed toxicity characteristic. When this proposal is finalized, the Agency will consider using the procedure in the evaluation of delisting petitions. Until that time, however, the Agency intends to continue using the Organic Leachate Model (OLM) and the VHS model to evaluate the potential of wastes to contaminate the ground water. Du Pont also commented that the application of the VHS model is inappropriate because they claim the ground water beneath the site is not potable. Assuming for the purpose of argument that Du Pont's assertion is true, the Agency does not believe that such a site-specific factor should be considered in this delisting because Du Pont has not provided a compelling rationale for why this waste could not be transported to another location for disposal where a useable aquifer might be affected.

Du Pont commented that the Agency should use average values rather than the maximum concentrations of the samples analyzed in input to the OLM and VHS models. Du Pont believes that average concentrations are more representative of what might potentially reach the environment, even under a worst-case scenario of mishandled waste. The Agency has considered the use of various parameters such as the mean, median, maximum and upper confidence limits as inputs to the models. Each of these parameters may be used under certain circumstances which are defined by the statistical characteristics of the analytical results. For example, the mean is used when the sample population is large enough and the data exhibit a normal distribution; the median is used again when the sample population is large enough and when the data exhibit a log normal distribution. The Agency believes that Du Pont's analytical results are insufficient to defend statistically the use of the mean or median, and thus the use of the maximum values was appropriate.[4] (The Agency notes that if the use of the mean had been appropriate, Du Pont's wastes still would not have passed the VHS model evaluation for a number of constituents.)

Du Pont also commented that they were unsure how EPAs developed the regulatory standards that are used in the VHS model analysis. Du Pont requested that the Agency provide the toxicological data used to develop the regulatory standards. The Agency has made this data available to Du Pont and placed additional copies in the public docket to this notice and other notices recently published (See 51 FR 37140, October 17, 1986; 51 FR 37299, October 21, 1986; and 51 FR 39968, November 3, 1986).

The Agency also indicated in this data supplied to the Docket, the approach used to derive these standards. For those waste constituents not known to display carcinogenic properties, reference doses (RfDs) were used. The RfD is an estimate (with uncertainty spanning perhaps an order of magnitude

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[4] The paper entitled "Sample and Analysis for Delisting Data Verification/Delisting Spot Checks" (from Proceedings of the 2nd U.S. EPA Symposium on Solid Waste Testing and Quality Assurance, July 15–18, 1986, Washington, DC), in the public docket provides some initial guidance on the factors which the Agency believes may be important in using non-parametric statistical techniques to determine the sample size that will allow the use of values other than the maximum in the VHS analysis.

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or greater) of a daily exposure for the human population (including sensitive subpopulations) that is likely to be without an appreciable risk of deleterious effects even if exposure occurs daily during a lifetime. An RfD is derived by dividing the experimentally determined no-observed-adverse-effect-level or low-observed-adverse-effect-level by the appropriate uncertainty factor.

For those waste constituents known to display carcinogenic properties, Risk-Specific Doses (RSDs) were used. The RSDs is simply an average daily dose corresponding to a specific level of excess lifetime cancer risk. The RSD for a chemical is derived from the estimated human unit cancer risk or q_1^* using the following formula:

$$\text{Dose} = \frac{\text{specified level of lifetime risk}}{\text{unit cancer risk or } q_1^*}$$

For the purposes of the delisting effort, it was necessary for each of the RfDs and RSDs to be defined as the maximum allowable concentration of the constituent in water. As stated previously, however, both RfDs and RSDs are daily doses, generally measured in mg/kg body weight/day. To convert a daily dose into the corresponding concentration in water, the following formula is used:

$$\text{Water concentration (mg/L)} = \frac{\text{RfD or RSD (mg/kg bw/day)} \times \text{body weight (kg)}}{\text{liters of water consumed per day}}$$

Our conversions were based upon the well-established and widely-accepted assumptions that the adult male's average body weight is 70 kg and that the average volume of water consumed by an adult male is 2 liters per day.

Du Pont restated their support for the regulatory standards proposed by CMA in its comments on the proposed toxicity characteristic. Du Pont believes that, using the modified (proposed) toxicity characteristic and regulatory standards suggested by CMA, the constituents of concern in the petitioned wastes will be below levels of regulatory concern. While the Agency is currently evaluating the comments submitted on the proposed toxicity characteristic and may incorporate a number of the suggested changes into the revised version, it is inappropriate for the Agency to use the proposed toxicity characteristic in evaluating delisting petitions at this time. DuPont was also concerned with what appeared to be apparent differences between the standards for several organics used to evaluate their petition and those used in the proposed toxicity characteristic. The Agency notes that these differences are purely a result of a policy decision to use different risk factors associated with carcinogens identified by the Agency's Carcinogen Assessment Group. Class A, B, and C carcinogens were assigned risk factors of 10^{-5}, 10^{-5} and 10^{-4} respectively, for the toxicity characteristics. The delisting program however, uses risk factors of 10^{-6}, 10^{-6}, and 10^{-5} for Class A, B, and C carcinogens respectively. The Agency proposed the higher risk factors in the toxicity characteristics since characteristics are broad measures designed to capture wastes which are clearly hazardous. (See 45 FR 33111–33112, May 19, 1980.) Delisting decisions use more stringent standards since they represent a more refined consideration of specific factors which might cause the waste to be hazardous. (See 40 CFR 261.11, 260.22.)

Du Pont commented that the calculated compliance point concentrations for chromium and lead in the lagoon sludge appeared to be incorrect. The Agency agrees that the published values for chromium and lead were incorrect. See Table 1 for the corrected values.

TABLE 1.—VHS MODEL: CALCULATED EP TOXIC METALS COMPLIANCE POINT CONCENTRATIONS (ppm)

Constituents	Compliance point concentrations			
	Carbon adsorber affluent	Lagoon sludge	Lagoon water	Regulatory standards
Chromium	0.0006	0.008	0.041	0.05
Lead	<.0041	.078	.0006	.05

The Agency notes that lead levels in the lagoon sludge (at the compliance point) exceed the Agency's regulatory standards and, therefore, are of regulatory concern. The Agency further notes that chromium levels in the lagoon sludge (at the compliance point) do not exceed the Agency's regulatory standard for chromium and, therefore, chromium is *not* of regulatory concern.

C. Final Agency Decision

For the reasons stated in the proposal, and the Agency's response to comments, the Agency believes that the wastewater generated by Du Pont's manufacturing process, the lagoon water, and the lagoon sludge are hazardous and as such should not be excluded from hazardous waste control. The Agency, therefore, is denying Du Pont's petition for its wastes listed as EPA Hazardous Waste Nos. K103 and K104, which are generated and stored at its facility located in Beaumont, Texas. By this action, the Agency also withdraws the temporary exclusion granted for this waste on November 22, 1982 (see 47 FR 52680).

III. Effective Date

The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This is not the case, however, for the two petitioners included in this notice having their temporary exclusions revoked and final exclusions denied. They will have to revert back to handling their wastes as they did before being granted their temporary exclusions (*i.e.*, they must handle their wastes as hazardous). These petitioners will need some time to come into compliance with the RCRA hazardous waste management system. Accordingly, the effective date of the revocation of these temporary exclusions and denials is six months after publication of the final rule in the **Federal Register.**

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation, which would revoke temporary exclusions and deny petitions from two facilities, is not major. The affect of this rule would increase the overall costs for the facilities which currently have temporary exclusions that are being revoked and denied. The actual costs to these companies, however, would not be significant. In particular, in calculating the amount of waste that is generated by these two facilities that currently have temporary exclusions and considering a disposal cost of $300/ton, the increased cost to these facilities is approximately $8.6 million, well under the $100 million level constituting a major regulation. In addition, some of these companies are large and, therefore, the impact of this rule will be relatively small. This rule is not a major regulation; therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. sections 601 through 612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will have the effect of increasing overall waste disposal costs. This rule only effects two facilities across different industrial segments. The overall economic impact, therefore, on small entities is small. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Dated: November 7, 1986.

J.W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 86–25838 Filed 11–14–86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6736]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column..

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et. seq.). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.** In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision

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not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 44—[AMENDED]

The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified	Date certain Federal assistance no longer available in special flood hazard areas
			Region I		
Massachusetts	Braintree, town of, Norfolk County	250233C	Nov. 10, 1972, Emerg., June 1, 1978, Reg., Nov. 19, 1986, Susp.	Aug. 2, 1974, June 1, 1976 and Nov. 19, 1986.	Nov. 19, 1986.
Maine	Litchfield, town of, Kennebec County.	230238B	Feb. 18, 1976, Emerg., Nov. 19, 1986, Reg., Nov. 19, 1986, Susp.	Feb. 7, 1975, Oct. 8, 1976 and Nov. 19, 1986.	Do.
			Region III		
Pennsylvania	Hickory, township of, Forest County.	421646B	Dec. 17, 1975, Emerg., Nov. 19, 1986, Reg., Nov. 19, 1986, Susp.	Dec. 20, 1974, Jan. 30, 1981 and Nov. 19, 1986.	Do.
Do	Hunker, borough of, Westmoreland County.	420880A	Aug. 5, 1980, Emerg., Nov. 19, 1986, Reg., Nov. 19, 1986, Susp.	Nov. 19, 1986	Nov. 19, 1987.
Do	Paint, borough of, Somerset County.	420800B	Aug. 27, 1975, Emerg., Nov. 19, 1986, Reg., Nov. 19, 1986, Susp.	July 26, 1974, Dec. 26, 1975 and Nov. 19, 1986.	Nov. 19, 1986.
Do	Southwest Greensburg, borough of, Westmoreland County.	420901C	June 30, 1976, Emerg., Nov. 19, 1986, Reg., Nov. 19, 1986, Susp.	Feb. 1, 1974, Sept. 26, 1975, June 30, 1976 and Nov. 19, 1986.	Do.
			Region IV		
Kentucky	Lewisport, city of, Hancock County	210093B	May 9, 1975, Emerg., Nov. 19, 1986, Reg., Nov. 19, 1986, Susp..	Feb. 1, 1974, Oct. 17, 1975 and Nov. 19, 1986.	Do.
			Region V		
Wisconsin	Boyceville, village of, Dunn County	550119B	June 23, 1975, Emerg., Nov. 19, 1986, Reg., Nov. 19, 1986, Susp.	June 14, 1974, Aug. 6, 1976 and Nov. 19, 1986.	Do.
Do	Mellen, city of, Ashland County	[illegible]	June 20, 1975, Emerg., Nov. 19, 1986, Reg., Nov. 19, 1986, Susp.	Dec. 17, 1973, May 14, 1976 and Nov. 19, 1986.	Do.
			Region VII		
Kansas	Park City, city of, Sedgwick County.	200983A	May 26, 1982, Emerg., Nov. 19, 1986, Reg., Nov. 19, 1986, Susp.	Nov. 19, 1986	Nov. 19, 1987.
Do	Peabody, city of, Marion County	200208	Sept. 18, 1974, Emerg., Nov. 19, 1986, Reg., Nov. 19, 1986, Susp.	June 28, 1974, Nov. 21, 1975 and Nov. 19, 1986.	Nov. 19, 1986.
Missouri	Flinthill, village of, St. Charles County.	290863B	July 9, 1980, Emerg., Nov. 19, 1986, Reg., Nov. 19, 1986, Susp.	Dec. 9, 1980 and Nov. 19, 1986	Do.
Do	Annada, village of, Pike County	290267A	Aug. 17, 1979, Emerg., Nov. 19, 1986, Reg., Nov. 19, 1986, Susp.	Feb. 7, 1975 and Nov. 19, 1986	Do.
			Region X		
California	Marin County, unincorporated areas.	060173	March 1, 1982, Emerg., Nov. 19, 1986, Reg., Nov. 19, 1986, Susp.	Feb. 25, 1977 and March 1, 1982	Do.
			Minimal Conversion		
Wisconsin	Bruce, village of, Rusk County	550370	Nov. 26, 1974, Emerg., Sept. 1, 1986, Reg., Nov. 19, 1986, Susp.	May 24, 1974, May 28, 1976 and Sept. 1, 1986.	Do.

Code for reading 4th column: Emerg.—Emergency, Reg.—Regular, Susp.—Suspension.

Issued: November 7, 1986.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 86-25874 Filed 11-14-86; 8:45 am]

BILLING CODE 6718-03-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 505, 513, 519 and 552

[Acquisition Circular AC-86-7]

Increase in Thresholds for Certain Requirements Relating to Small Purchases

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary regulation.

SUMMARY: This Acquisition Circular temporarily amends Parts 505, 513, 519 and 552 of the General Services Administration Acquisition Regulation (GSAR), Chapter 5, to implement section 101(c) of the Continuing Resolution for Appropriations FY 1986, Title IX, section 922, (Pub. L. 99-500), enacted October 18, 1986, which increases thresholds for certain requirements relating to small purchases. The intended effect is to implement the statutory change within the General Services Administration pending a revision to the Federal Acquisition Regulation.

DATES: *Effective Date:* November 3, 1986.

Expiration Date: May 3, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Ida Ustad, Office of GSA Acquisition Policy and Regulations (VP), 202–566–1224.

SUPPLEMENTARY INFORMATION: Pursuant to section 22(d) of the Office of Federal Procurement Policy Act, as amended, a determination has been made to waive the requirement for publication of procurement procedures for public comment before the regulation takes effect. The need to comply with statutory provisions is an urgent and compelling circumstance that makes advance publication impracticable. The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. It appears that these changes may have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). An initial Regulatory Flexibility Analysis has been prepared and sent to the Chief Counsel for Advocacy for the Small Business Administration. The rule does not contain information collection requirements which require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.).

List of Subjects in 48 CFR Parts 505, 513, 519, and 552

Government procurement.

PARTS 505, 513, 519 AND 552—[AMENDED]

1. The authority citation for 48 CFR Parts 505, 513, 519 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. 48 CFR Parts 505, 513, 519 and 552 are amended by the following Acquisition Circular:

General Services Administration Acquisition Regulation

Acquisition Circular (AC–86–7)

To: All GSA contracting activities.

Subject: Increase in thresholds for certain requirements relating to small purchases.

1. *Purpose.* This Acquisition Circular temporarily amends the General Services Administration Acquisition Regulation (GSAR), Chapter 5 (APD 2800.12) to implement section 101(c) of the Continuing Resolution for Appropriations FY 1987, Title IX, section 922, (Pub. L. 99–500), enacted October 18, which increases thresholds for certain requirements relating to small purchases.

2. *Background.* Section 101(c) of the Continuing Resolution for Appropriations FY 1987, Title IX, section 922, amended the Small Business Act to increase the threshold for use of small business-small purchase set-asides from $10,000 to $25,000 and amended the Small Business Act and the Office of Federal Procurement Policy Act to increase the threshold for publicizing proposed procurements in the Commerce Business Daily (CBD) from $10,000 to $25,000 with certain limitations for posting and publicizing certain procurements between $10,000 and $25,000. Specifically, proposed procurements that are expected to exceed $10,000 must be publicized in the CBD if there is not a reasonable expectation that at least two offers will be received from responsive and responsible offerors. For all proposed procurements expected to exceed $10,000 but not to exceed $25,000, either a notice containing information comparable to that required for CBD publication or a copy of the solicitation must be posted, for a period of not less than 10 calendar days, in a public place at the contracting office issuing the solicitation.

3. *Effective date.* November 3, 1986.

4. *Expiration date.* This Circular expires May 3, 1987, unless canceled earlier.

5. *Reference to regulation.* Sections 5.101, 5.201, 13.105, 19.501(f)(1), 19.505(a) and 52.219–4 of the Federal Acquisition Regulation (FAR) and Sections 505.101(c), 505.201, 513.105, 519.501, 519.502–1 (b), (d), and (g), 519.505(a), 519.506 and 552.219–4 of the General Services Administration Acquisition Regulation (GSAR).

6. *Explanation of changes.*

a. Section 505.101 is amended to add paragraph (c) to read as follows:

505.101 Methods of disseminating information.

* * * * *

(c) For all proposed procurements expected to exceed $10,000 but not to exceed $25,000, the contracting officer shall post on a bulletin board or similar display case either a notice containing information comparable to that required for Commerce Business Daily (CBD) publication or a copy of the solicitation, in a public place at the contracting office issuing the solicitation, for a period not less than 10 calendar days. Contracting offices may post the notice or solicitation at the Business Service Center (BSC) when located in the same geographic area as the BSC. Unless there is an unusual and compelling need for the supplies or services being procured, the closing date established for receipt of quotes must be after the 10 day period for posting the information or solicitation.

b. Section 505.201 is revised to read as follows:

505.201 General.

As required by the Small Business Act and the Federal Procurement Policy Act, contracting officers shall furnish, directly or through the local BSC, for publication in the Commerce Business Daily (CBD) notices of proposed contract actions expected to exceed $10,000, but not exceed $25,000 if there is not a reasonable expectation that at least two offers will be received from responsive and responsible offerors and notices of proposed contract actions expected to exceed $25,000 as specified in FAR 5.201(b). The references in FAR 5.201(b)(1) to the threshold in FAR 5.201(a) should be interpreted to mean $25,000. Contracting officers that transmit notices directly to the CBD must provide a copy of the notice to the local BSC.

c. Section 513.105 is added to read as follows:

513.105 Small business-small purchase set-asides.

The reference to $10,000 in FAR 13.105(a) should be interpreted to mean $25,000. Except as provided in FAR 13.105 (b), (c), and (d), each acquisition of supplies or services that has an anticipated value of $25,000 or less and is subject to small purchase procedures, shall be reserved exclusively for small business concerns. This shall be accomplished by using the category of set-asides established specifically for small purchases and identified as small business-small purchase set-asides.

d. Section 519.501 is amended to add a sentence at the beginning of the section text to read as follows:

519.501 General.

The reference to $10,000 in FAR 19.501(f)(1) should be interpreted to mean $25,000.

* * * * *

e. Section 519.502–1 is amended to revise paragraphs (b), (d) and the title of paragraph (g) to read as follows:

519.502–1 Requirements for setting aside an acquisition.

* * * * *

(b) *Small purchases.* Procurements that have an anticipated dollar value of $25,000 or less and are subject to small purchase procedures shall be reserved exclusively for small business concerns. Offers shall be solicited from small business concerns only unless the contracting officer makes a determination that there is no reasonable expectation that two or more small business concerns will submit acceptable offers at a reasonable price. If the procurement is not set-aside the contract file must be documented accordingly.

* * * * *

(d) *Construction contracts from $25,000 to $500,000.* In an understanding with the SBA, every proposed procurement for construction, including alterations, maintenance, and repairs estimated to be in excess of $25,000 and under $500,000 shall be considered individually as though the SBA had initiated a set-aside request and shall be

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set-aside, except as otherwise provided in GSAR 519.502-1 (e) and (f).

* * * * *

(g) *Building service contracts in excess of $25,000.*

* * * * *

f. Section 519.505 is amended by revising paragraph (a) to read as follows:

519.505 Rejecting set-aside recommendations.

(a) When the contracting officer determines that a procurement cannot be restricted for small business, the reasons for this determiniation shall be recorded on GSA Form 2689, Procurement Not Set-Aside and submitted for review. When small purchases are not set-aside for small business, the contracting officer need only doucment the file.

g. Section 519.508 is added to read as follows:

519.508 Solicitation provisions and contract clauses.

The reference to $10,000 in FAR 19.508(a)(2) should be interpreted to mean $25,000.

h. Section 552.219-4 is added to read as follows:

552.219-4 Notice of Small Business-Small Purchase Set-Aside.

The reference to $10,000 in the prescription for use of FAR 52.219-4 should be interpreted to mean $25,000.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

November 3, 1986.

[FR Doc. 86-25811 Filed 11-14-86; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Late Seasons, and Bag and Possession Limits for Certain Migratory Game Birds in the United States; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; correction.

SUMMARY: The Fish and Wildlife Service is correcting errors in the rule prescribing the late open seasons, hunting hours, hunting areas, and daily bag and possession limits for general waterfowl seasons in Illinois and Colorado and the sandhill crane season in New Mexico that appeared in the **Federal Register** on September 30, 1986 (51 FR 34623).

DATE: Effective on November 17, 1986.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building—Room 536, Washington, DC 20240. Phone (202) 254-3207.

SUPPLEMENTARY INFORMATION: In the September 30, 1986, **Federal Register** (51 FR 34623) the Fish and Wildlife Service published a final rule prescribing the late open seasons, hunting hours, hunting areas, and daily bag and possession limits for general waterfowl seasons and certain other migratory game bird seasons in the conterminous United States. The rule contained errors in the waterfowl season entries for Illinois and Colorado and the sandhill crane season entry for New Mexico which are discussed briefly below and are corrected by this notice.

Public comment was received on proposed rules for the seasons and limits contemplated herein. These comments were addressed in the **Federal Register** dated June 6, 1986 (51 FR 20677), August 15, 1986 (51 FR 29274), and September 12, 1986 (51 FR 32460). The corrections are typographical in nature, and because the seasons involved have already begun, immediate action is essential. By the nature of the corrections and the time available, the changes must become effective immediately.

PART 20—[AMENDED]

The following corrections are made in Migratory Bird Hunting; Late Seasons, and Bag and Possession Limits for Certain Migratory Game Birds in the United States published in the September 30, 1986, **Federal Register** (51 FR 34623).

1. On page 34632 in the issue of September 30, 1986, under the heading *Illinois*, the possession limit of "2" Canada geese in the counties of McHenry, Lake, Kane, DuPage, Cook, Kendall, Grundy, Will and Kankakee during the October 15 through November 23, season is corrected to read "4".

2. On page 34637 in the issue of September 30, 1986, under the heading *Colorado*, the duck season dates of "October 4 through October 11" are corrected to read "October 4 through October 17".

3. On page 34638 in the issue of September 30, 1986, under the heading *Seasons, limits and shooting hours for sandhill cranes*, subheading *Central Flyway*, paragraph (b), which reads "In the New Mexico Counties of Chaves, Curry, DeBaca, Eddy, Lea, Quay and Roosevelt the inclusive season dates are October 25, 1986, through January 25, 1987." is revised to read as follows:

"In the New Mexico Counties of Chaves, Curry, DeBaca, Eddy, Lea, Quay and Roosevelt the inclusive dates are October 25, 1986, through January 25, 1987. In the Middle Rio Grande Valley Area (see State regulations for boundary description) the inclusive season dates are October 16, 1986, through October 23, 1986, and October 24, 1986, through October 31, 1986. Hunting in the Middle Rio Grande Valley Area will be by special permit issued by the State; each permittee may take 3 sandhill cranes per season."

Dated: November 5, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-25853 Filed 11-14-86; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 36

Closure of Amchitka Island, a Unit of the Alaska Maritime National Wildlife Refuge, to Public Access, Occupancy and Use

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: In the interests of national security and according to the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd) and Executive Order 1733, the U.S. Fish and Wildlife Service (Service) closes Amchitka Island to all forms of public access, occupancy and use.

The U.S. Navy will be constructing facilities of a sensitive nature on Amchitka Island. In order to secure and protect the Island and its installations, the Island will be closed to all forms of public use such as: hunting, sport fishing, camping, photography, hiking and other related activities. Use of the pier and associated areas in Constantine Harbor for storage of commercial crab pots or any other use by commercial fishermen; and unauthorized trespass/entry of any type, either by foot, all terrain vehicle, snowmobile, airplane or any type of mechanized means by the general public, is prohibited.

Personnel stationed at Amchitka for official business are authorized to engage in sport fishing activity on the Island.

EFFECTIVE DATE: December 17, 1986.

FOR FURTHER INFORMATION CONTACT: William Knauer, Refuges and Wildlife, Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503, Telephone (907) 786-3399 or the Refuge Manager, 202 Pioneer Ave, Homer, Alaska 99603, Telephone (907) 235-6546.

SUPPLEMENTARY INFORMATION: Executive Order 1733, dated March 3, 1913, reserved the Aleutian Islands as a wildlife and fisheries refuge, but only insofar as it *shall not interfere with the use of the Islands for military or naval purposes.* Amchitka Island is part of the Alaska National Wildlife Refuges, as established by the Alaska National Interest Lands Conservation Act (ANILCA) dated December 2, 1980. Section 1310 of ANILCA (16 U.S.C. 3199) allows the placement of new facilities for national defense purposes, but only after consultation by the requesting agency and in accordance with terms mutually agreed upon to minimize adverse impacts. A Memorandum of Agreement (MOA) for Amchitka Island, with the U.S. Navy was signed on May 12, 1986, and authorizes the Navy to establish a facility for national defense. Part of the agreement states that the Service will provide closure regulations to protect U.S. interests. The Navy wishes to coordinate its use of Amchitka Island with the Service to preserve the integrity of the Service's programs of minimizing damage to designated wilderness and to recover and reestablish the endangered Aleutian Canada goose.

This rule executes those closure provisions of the MOA to provide for the national security of the U.S. and to assure public notice of the intent of this closure.

Since this action is necessary for national security purposes involving a military affairs function, the rulemaking provision of 5 U.S.C. 553 does not apply. Similarly, the provisions of Executive Order 12291 and 5 U.S.C. 601 are not applicable.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3501 et seq. and 5 CFR Part 1320.

Environmental Consideration

According to 516 DM 6 Appendix 1(c)(7) "Actions where FWS has concurrence or coapproval with another bureau and the action is a categorical exclusion for that bureau" is considered a categorical exclusion for the Service. The Navy has that exclusion, therefore, there is no requirement to do an Environmental Assessment (EA) at this time. However, an EA will be done by the Navy prior to development of facilities on the Island.

Nancy A. Marx, Division of Refuges, Fish and Wildlife Service, Washington, DC, is primary author of this rulemaking.

List of Subjects in 50 CFR Part 36

Alaska, National Wildlife Refuge System, Public land—mineral resources, Public lands—rights-of-way, Recreation, Traffic regulations, Wildlife refuges.

PART 36—[AMENDED]

1. The authority citation for Part 36 continues to read as follows:

Authority: 16 U.S.C. 460k et seq., 668dd et seq., 742(a) et seq., and 3101 et seq.; 44 U.S.C. 3501 et seq.

2. Section 36.39 is amended by adding a new paragraph (b) as follows:

§ 36.39 Public use.

* * * * *

(b) Alaska Maritime National Wildlife Refuge.

(1) Amchitka Island—closed to all public access, occupancy and use, unless specifically authorized by a special use permit issued jointly by the Refuge Manager and the U.S. Navy (Commanding Officer, Fleet Surveillance Support Command, Chesapeake, Virginia).

* * * * *

Dated: November 4, 1986.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-25794 Filed 11-14-86; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 371

[Docket No. 60616-6116]

Fraser River Sockeye and Pink Salmon Fisheries; Inseason Orders

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason orders.

SUMMARY: The Secretary of Commerce (Secretary) hereby publishes all the inseason orders which were issued during the 1986 sockeye salmon fisheries in United States waters within the Fraser River Panel Area. These orders, approved by the Fraser River Panel (Panel) of the Pacific Salmon Commission (Commission) and by the Secretary during the season, established fishing times and areas for U.S. treaty Indian and all-citizen fisheries during the period the Commission exercised jurisdiction over these fisheries.

Due to the frequency with which inseason orders are issued, publication of individual orders is impracticable. All the 1986 orders are therefore being published in this notice to avoid fragmentation.

EFFECTIVE DATES: Each of the following inseason orders of the Secretary was effective upon announcement on telephone hotlines as specified at 50 CFR 371.21(b)(1) (June 27, 1986, 51 FR 23425).

ADDRESS: Comments on these inseason orders may be sent to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206-526-6150; or Richard B. Thompson, 206-526-6144.

SUPPLEMENTARY INFORMATION: The Treaty between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon (Treaty) was signed at Ottawa on January 28, 1985, and subsequently was given effect in the United States by the Pacific Salmon Treaty Act (Act) at 16 U.S.C. 3631-3644.

Under authority of the Act, an emergency interim rule was promulgated at 50 CFR Part 371 (51 FR 23420, June 27, 1986) to provide a framework for implementation of certain regulations of the Commission and inseason orders of the Commission's Panel for sockeye and pink salmon fisheries in U.S. waters within the Panel area. The emergency interim rule was effective June 22, 1986, when the Commission assumed control of these fisheries, and remains in effect until modified, superseded, or rescinded.

The emergency interim rule closed the U.S. portion of the Panel area specified in Annex II of the Treaty to sockeye and pink salmon fishing unless opened by Panel regulations or by inseason orders of the Secretary that give effect to Panel orders, if such orders are determined to be consistent with domestic legal obligations. The Secretary may issue orders during the fishing season specifying the fishing times and areas for the U.S. treaty Indian and all-citizen fisheries for sockeye and pink salmon. The Secretary acts through his Panel representative, the Northwest Regional Director of NMFS, who signifies, by his affirmative vote, the Secretary's approval and adoption of inseason Panel orders. Official notice of these inseason actions of the Secretary is provided by two telephone hotlines described at § 371.21(b)(1). Inseason

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orders of the Secretary are also to be published in the **Federal Register** as soon as practicable after they are issued (§ 371.21(b)(4)). Due to the frequency with which inseason orders are issued, publication of individual orders is impracticable. All the 1986 orders are therefore being published in this notice to avoid fragmentation.

The following inseason orders were adopted by the Panel and issued for U.S. fisheries by the Secretary during the 1986 fishing season. The times listed are local times, and the areas designated are Puget Sound Management and Catch Reporting Areas as defined in the Washington State Administrative Code at Chapter 220–22 as of June 22, 1986.

Order No. 1986–1: Issued 12:15 p.m., July 22, 1986

Treaty Indian fishery: Areas 4B, 5, and 6C—Open until further notice to drift gill nets at 12:00 noon Friday, July 25. Areas 6, 7, and 7A—Remain closed to net fishing.

Order No. 1986–2: Issued 3:00 p.m., August 1, 1986

Treaty Indian fishery: Areas 4B, 5, and 6C—Remain open to drift gill net fishing. Areas 6, 7, and 7A—Open to net fishing 5:00 a.m. Tuesday, August 5 to 9:30 a.m. Wednesday, August 6.

All-citizen fishery: Areas 4B, 5, 6, 6C, 7, and 7A—Remain closed to commercial salmon fishing.

Order No. 1986–3: Issued 3:30 p.m., August 5, 1986

Treaty Indian fishery: Areas 6, 7, and 7A—Open to net fishing 9:30 a.m. Wednesday, August 6 to 9:30 a.m. Thursday August 7.

All-citizen fishery: Open to reef nets 6:00 a.m. to 9:00 p.m. Friday, August 8.

Order No. 1986–4: Issued 4:30 p.m., August 8, 1986

Treaty Indian fishery: Areas 4B, 5, and 6C—Remain open to drift gill nets. Areas 6, 7, and 7A—Open to net fishing 6:00 p.m. Sunday, August 10 to 9:30 p.m. Tuesday, August 12.

All-citizen fishery: Areas, 4B, 5, 6, 6C, 7, and 7A—Open to gill nets 7:00 p.m. Monday, August 11 to 9:30 a.m. Tuesday, August 12; open to purse seines 5:00 a.m. to 9:30 p.m. Tuesday, August 12.

Order No. 1986–5: Issued 4:00 p.m., August 11, 1986

Treaty Indian fishery: Areas 6, 7, and 7A—Extend opening for net fishing 9:30 p.m. Tuesday, August 12 to 9:30 p.m. Wednesday, August 13.

All-citizen fishery: Areas 4B, 5, 6, 6C, 7, and 7A—Open to reef nets 6:00 a.m. to 9:00 p.m. Tuesday, August 12; open to gill nets 7:00 p.m. Tuesday, August 12 to 9:30 a.m. Wednesday, August 13; open to purse seines 5:00 a.m. to 9:30 p.m. Wednesday, August 13.

Order No. 1986–6: Issued 2:55 p.m., August 15, 1986

Treaty Indian fishery: Areas 4B, 5, and 6C—Closed to drift gill nets 12:00 noon Monday, August 18 until 12:00 noon Tuesday, August 19; reopens to drift gill nets 12:00 noon Tuesday, August 19 until further notice. Areas 6, 7, and 7A—Open to net fishing 6:00 a.m. Sunday, August 17 to 9:30 a.m. Tuesday, August 19.

All-citizen fishery: Areas 4B, 5, 6, 6C, 7, and 7A—Open to reef nets 6:00 a.m. to 9:00 p.m. Saturday, August 16; open to purse seines 5:00 a.m. to 9:00 p.m. Sunday, August 17; open to gill nets 6:00 p.m. Sunday, August 17 to 9:00 a.m. Monday, August 18.

Order No. 1986–7: Issued 2:25 p.m., August 18, 1986

Treaty Indian fishery: Areas 6, 7, and 7A—Open to net fishing 9:30 a.m. Tuesday, August 19 to 9:30 a.m. Wednesday, August 20.

Order No. 1986–8: Issued 2:00 p.m., August 22, 1986

Treaty Indian fishery: Areas 4B, 5, and 6C—Remain open to drift gill nets. Areas 6, 7, and 7A—Open to net fishing 6:00 p.m. Sunday, August 24 to 9:30 p.m. Tuesday, August 26.

All-citizen fishery: Areas 4B, 5, 6, and 6C—Closed to net fishing. Areas 7 and 7A—Open to reef nets 6:00 a.m. to 9:00 p.m. Sunday, August 24; open to gill nets 6:00 p.m. Sunday, August 24 to 9:00 a.m. Monday, August 25; open to purse seines 5:00 a.m. to 9:00 p.m. Monday, August 25.

Order No. 1986–10: Issued 2:00 p.m., August 29, 1986

Treaty Indian fishery: Areas 4B, 5, and 6C—Closed to drift gill nets effective 12:00 noon Saturday, August 30. Areas 6, 7, and 7A—Closed to net fishing.

All-citizen fishery: Areas 4B, 5, 6, and 6C—Closed to net fishing. Areas 7 and 7A—Open to reef nets 6:00 a.m. to 9:00 p.m. Monday, September 1; open to purse seines 5:00 a.m. to 9:00 p.m. Tuesday, September 2; open to gill nets 6:00 p.m. Tuesday, September 2 to 9:00 a.m. Wednesday, September 3.

Closed to net fishing westerly of a straight line drawn from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island in the Province of British Columbia effective 12:01 a.m. Sunday, August 31.

Order No. 1986–12: Issued 11:15 a.m., September 12, 1986

Treaty Indian and all-citizen fisheries: Areas 4B, 5, 6, 6A, and 6C—Regulatory control relinquished effective 12:01 a.m. Sunday, September 14.

Order No. 1986–14: Issued 1:10 p.m., September 25, 1986

Area 7A—Regulatory control extended for those waters lying westerly of a straight line drawn from the low water range marker at Boundary Bay on the International Boundary through the east tip of Point Roberts to the East Point Light on Saturna Island.

Order No. 1986–15: Issued 12:40 p.m., September 27, 1986

Resume regulatory control of that portion of Area 7A lying north of a line from Birch Point to East Point on Saturna Island.

Treaty Indian and all-citizen fisheries: Area 7A northerly of a line from Birch Point to East Point on Saturna Island—Open to gill nets 7:00 p.m. Saturday, September 27 to 7:00 a.m. Sunday, September 28; open to purse seines 7:00 a.m. to 7:00 p.m. Sunday, September 28.

Order No. 1986–16: Issued 2:55 p.m., September 28, 1986

Treaty Indian and all-citizen fisheries: Area 7A northerly of a line from Birch Point to East Point on Saturna Island—Open to gill nets 7:00 p.m. Sunday, September 28 to 7:00 a.m. Monday, September 29 and 7:00 p.m. Monday, September 29 to 7:00 a.m. Tuesday, September 30; open to purse seines 7:00 a.m. to 7:00 p.m. Monday, September 29 and 7:00 a.m. to 7:00 p.m. Tuesday, September 30.

Order No. 1986–18: Issued 2:29 p.m., September 30, 1986

Area 7A northerly of a line from Birch Point to East Point on Saturna Island—Relinquish regulatory control effective 7:01 p.m. Tuesday, September 30.

Other Matters

This action is taken under authority of 50 CFR 371.21, and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 371

Fisheries, Fishing, Treaty Indians.

Authority: 16 U.S.C. 3636(b).

Dated: November 10, 1986.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 86–25824 Filed 11–14–86; 8:45 am]

BILLING CODE 3510-22-M

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Notices

Federal Register
Vol. 51, No. 221
Monday, November 17, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Programmatic Memorandum of Agreement Regarding the Treatment of World War II (1939–1946) Temporary Buildings

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: The Advisory Council on Historic Preservation has executed a Programmatic Memorandum of Agreement pursuant to § 800.13 of the Council's regulations, "Protection of Historic Properties" (36 CFR Part 800), with the Department of Defense and the National Conference of State Historic Preservation Officers, providing for the identification, evaluation, and documentation of World War II temporary buildings. Execution of this Agreement satisfies DoD's responsibilities under section 106 of the National Historic Preservation Act (16 U.S.C. 470f) for activities involving the demolition of these buildings.

The Agreement stipulates that all World War II temporary buildings that are identified by organizations and individuals within 60 days of the publication of this notice will be considered by DoD in its selection of examples to be documented or treated in accordance with historic preservation plans. Organizations and individuals should contact the offices listed below to provide information to DoD for its identification of significant World War II temporary buildings.

For Army and Army National Guard Installations: Chief, Facility Engineering Division, U.S. Army Corps of Engineers, Attn: DAEN-ZCF, Washington, DC 20314–1000, (202) 272–0867.

For Navy Installations: Commander, Naval Facilities Engineering Command, Code 20Y, 200 Stovall Street, Alexandria, VA 22332–2300, (202) 325–7353.

For Marine Corps Installations: Land Resources Management and Environmental Branch, HQ, Marine Corps, LFL, Washington, DC 20380, (202) 697–1890.

For Air Force Installations: Chief, Environmental Division, HQ, United States Air Force, Bolling AFB, Washington, DC 20332–5000, (202) 767–3639.

Single copies of the Programmatic Memorandum of Agreement can be obtained by writing to the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 803, Washington, DC 20004.

Dated: November 10, 1986.

John M. Fowler,
Acting Executive Director.

[FR Doc. 86–25897 Filed 11–14–86; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

National Advisory Council on Rural Development; Intent To Re-establish

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the Secretary of Agriculture proposes to re-establish the National Advisory Council on Rural Development. The purpose of the Council is to provide advice to the Secretary on the rural development needs, goals, objectives, plans, and recommendations of multi-state, State, substate, and local organizations and jurisdictions. The Council will provide the Secretary with assistance in identifying rural problems and supporting efforts and initiatives in rural development.

The Secretary has determined that the work of the Council is in the public interest and is in connection with the duties of the Department of Agriculture. No other advisory committee or agency of the department is performing the tasks assigned to the National Advisory Council on Rural Development.

Views and comments of interested persons may be submitted to the Under Secretary for Small Community and Rural Development, U.S. Department of Agriculture, Room 219–A, Washington, DC 20250, until 15 days after publication in the **Federal Register**. Such comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

Done at Washington, DC, this 12th day of November 1986.

John J. Franke, Jr.,
Assistant Secretary for Administration.

[FR Doc. 86–25912 Filed 11–14–86; 8:45 am]

BILLING CODE 3410-01-M

Food Safety and Inspection Service

[Docket No. 86–040N]

SLD Policy Memoranda; Semi-Annual Listing

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document lists and makes available to the public memoranda issued by the Standards and Labeling Division (SLD), Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service (FSIS), which contain significant new applications or interpretations of the Federal Meat Inspection Act, the Poultry Products Inspection Act, the regulations promulgated thereunder, or departmental policy concerning labeling.

FOR FURTHER INFORMATION CONTACT: Margaret O'K. Glavin, Director, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–6042.

SUPPLEMENTARY INFORMATION: FSIS conducts a prior approval program for labels or other labeling (specified in 9 CFR 317.4, 317.5, 381.132, and 381.134) to be used on federally inspected meat and poultry products. Pursuant to the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), and the regulations promulgated thereunder, meat and poultry products which do not bear approved labels may not be distributed in commerce.

FSIS' prior label approval program is conducted by label review experts within SLD. A variety of factors, such as continuing technological innovations in food processing and expanded public concern regarding the presence of various substances in foods, has generated a series of increasingly complex issues which SLD must resolve as part of the prior label approval process. In interpreting the Acts or regulations to resolve these issues, SLD may modify its policies on labeling or develop new ones.

Significant or novel interpretations or determinations made by SLD are issued in writing in memorandum form. This document lists those SLD policy memoranda issued from April 1, 1986, through September 30, 1986.

Persons interested in obtaining copies of any of the following SLD policy memoranda, or in being included on a list for automatic distribution of future SLD policy memoranda, may write to: Printing and Distribution Section, Paperwork Management Branch, Administrative Services Division, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

Memo No.	Title and date	Issue	Reference
096	Approval of Labels for Experimental/Sample Products, May 7, 1986.	Are there conditions under which an Inspector-In-Charge (IIC) of an official establishment may approve labels for experimental/sample (E/S) products?.	N/A
097	Label Approval Guidelines for Wild Boar Products, June 4, 1986.	What are the criteria and requirements for product labels bearing the term "Wild Boar"?.	9 CFR 317.2(d)(1), (2), and (3).
098	Labeling and Use of Beef Cheek Meat and Beef Head Meat, June 10, 1986.	What guidelines should be followed for the labeling and use of beef cheek meat and/or beef head meat?.	(Replaces Policy Memo 064); 9 CFR 319.15, 319.81, 319.100, 319.300, 319.301, 319.303.
031A	Salami Labeling, July 23, 1986	What is the appropriate labeling for the product "Salami"?	Policy Memo 031.
066B	Red Meat Products Containing Added Solutions, August 6, 1986.	The labeling of red meat products containing added solutions	(Replaces Policy Memo 066A); 9 CFR 319.101 and 102; Policy Memo 064; 9 CFR 318.7(c)(4); Policy Memo 061A Policy Memo 007.
044A	Raw Boneless Poultry Containing Solutions, September 2, 1986.	Labeling of raw boneless poultry and poultry parts to which solutions are added.	(Replaces Policy Memo 044.); 9 CFR 381.169; Policy Memo 007.
099	Labeling of Products Which Include Packets of Other Components, September 2, 1986.	What sort of product name and net weight declaration is required when meat and/or poultry products are packed with small packets of gravy, sauces, seasoning mixtures or the like?	Policy Memo 067A.
100	Poultry Tenders and Poultry Tenderloins, September 3, 1986.	When "(Kind) Tenders" or "(Kind) Tenderloins" are used as a product name, what products are being described?	N/A.

The SLD policies specified in these memoranda will be uniformly applied to all relevant labeling applications unless modified by future memoranda or more formal Agency action. Applicants retain all rights of appeal regarding decisions based upon these memoranda.

Done at Washington, DC, on November 12, 1986.

Margaret O'K. Glavin,

Director, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service.

[FR Doc. 86-25832 Filed 11-14-86; 8:45 am]

BILLING CODE 3410-DM-M

ARCTIC RESEARCH COMMISSION

Meetings

Notice is hereby given that the Arctic Research Commission will meet in Anchorage, Alaska on 4–5 December 1986. On 4 December (Thursday) and half day on December 5 (Friday) the Commission will be meeting at the Arctic Research Commission Offices, 707 A Street, Anchorage, Alaska. Agenda items on 4 December will include: (1) Opening Remarks by Chairman (2) Approval of Report of Meeting, 23 July 1986 (3) Comments from Interagency Arctic Research Policy Committee (4) 5-Year Arctic Research Plan—Outcome of Consultative Workshop (5) Activities of Federal/State Task Forces (6) Logistic Requirements to Support Arctic Research—Outcome of Workshop (7) Mechanisms for International Cooperation in Arctic Research (8) Future Activities of Commission (9) Commission Annual Report (10) Other Business.

The Commission will meet in Executive Session to discuss budgetary matters on 5 December.

Contact Person for More Information: W. Timothy Hushen, Executive Director, Arctic Research Commission (213) 743-0970.

W. Timothy Hushen,

Executive Director, Arctic Research Commission.

[FR Doc. 86-25887 Filed 11-14-86; 8:45 am]

BILLING CODE 7555-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Cornell University Medical College; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 86-242. Applicant: Cornell University Medical College, New York, NY 10021. Instrument: Mass Spectrometer, Model SIRA 12. Manufacturer: VG Isogas Ltd., United Kingdom, Intended use: See notice at 51 FR 25924.

Comments: None received.

Decision: Approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was intended to be used, and have it available to the applicant without unreasonable delay in accordance with § 301.5(d)(2) of the regulations, at the time the foreign instrument was ordered (February 13, 1986).

Reasons: The foreign instrument provides an internal precision of 0.92‰ for 20 microliter samples of CO_2 an automated 20 sample port heatable manifold. The capabilities are necessary for the intended purposes. We know of no domestic manufacturer both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, § 301.5(d)(2) of the regulations provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, "the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case." This subsection also provides that, if "a

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domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument."

The regulations require that domestic manufacturers be both "able and willing" to produce an instrument for the purposes of comparison with the foreign instrument. Where an applicant, as in this case, received no response to a formal request for quotation sent to the only known domestic manufacturer of isotope ratio mass spectrometers it is apparent that the domestic manufacturer was either not able or not willing to produce an instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time the foreign instrument was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-25885 Filed 11-14-86; 8:45 am]

BILLING CODE 3510-DS-M

The Johns Hopkins University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 86-237. Applicant: The Johns Hopkins University, Baltimore, MD 21218. Instrument: Reflex Light Microscope with Accessories. Manufacturer: Reflex Measurement Ltd., United Kingdom. Intended use: See notice at 51 FR 25083.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides three-dimensional measurements of very small objects with a horizontal repeatability of pointing to a well-defined point of 0.002 millimeters and 0.015 in the vertical. The National Institutes of Health advises in its memorandum dated July 29, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc 86-25886 Filed 11-14-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-401-603]

Initiation of Antidumping Duty Investigations; Certain Stainless Steel Hollow Products From Sweden

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating antidumping duty investigations to determine whether imports of certain stainless steel hollow products from Sweden are being, or are likely to be sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of these actions so that it may determine whether imports of these products materially injure, or threaten material injury to, a U.S. industry. If these investigations proceed normally, the ITC will make its preliminary determinations on or before December 4, 1986, and we will make ours on or before March 30, 1987.

EFFECTIVE DATE: November 17, 1986.

FOR FURTHER INFORMATION CONTACT: Mary Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1769.

SUPPLEMENTARY INFORMATION:

The Petition

On October 20, 1986, we received a petition filed in proper form by the Specialty Tubing Group, and by each of the member companies who produces certain stainless steel hollow products. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of certain stainless steel hollow products from Sweden are being, or are likely to be sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigations

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioners supporting the allegations.

We examined the petition on certain stainless steel hollow products from Sweden and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating antidumping duty investigations to determine whether certain stainless steel hollow products from Sweden are being, or are likely to be, sold in the United States at less than fair value. If our investigations proceed normally, we will make our preliminary determinations by March 30, 1987.

Scope of Investigations

The products covered by these investigations are certain stainless steel hollow products including pipes, tubes, hollow bars and blanks therefor, of circular cross-section, containing over 11.5 percent chromium by weight, as provided for in items 610.3701, 610.3727, 610.3731, 610.3741, 610.3742, 610.5130, 610.5202, 610.5229, 610.5230, and 610.5231 of the *Tariff Schedules of the United States Annotated (TSUSA).*

United States Price and Foreign Market Value

Petitioners based United States price on Swedish producers' price quotes in the United States on a C.I.F. basis.

Petitioners based foreign market value for welded tubes on an estimated 40 percent discount off list price. For seamless hollow bars and seamless pipe, home market prices were based on actual selling prices. Based on a comparison of United States prices and foreign market values, petitioners allege dumping margins of 32.6 to 101.2 percent for A-312 welded stainless steel pipe, 5.1 to 72.2 percent for A-269 welded tube, 19.0 to 20.3 percent for A-511 hollow bars, and 51.1 to 64.1 percent for A-312 seamless pipe.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of these actions and to provide it with the information we used to arrive at these determinations. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determinations by ITC

The ITC will determine by December 4, 1986, whether there is a reasonable indication that imports of certain stainless steel hollow products from Sweden materially injure, or threaten material injury to, a U.S. industry. If its determinations are negative the investigations will terminate; otherwise they will proceed according to the statutory and regulatory procedures.

November 10, 1986.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary, for Import Administration.

[FR Doc. 86-25881 Filed 11-14-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-041]

Synthetic Methionine From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by two respondents, the Department of Commerce has conducted an administrative review of the antidumping finding on synthetic methionine from Japan. The review covers one manufacturer and one exporter of this merchandise to the United States and the period July 1, 1982 through June 30, 1983. The review indicates no dumping margins for these firms during the period.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 17, 1986.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923/3601.

SUPPLEMENTARY INFORMATION:

Background

On December 9, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 55153) the final results of its last administrative review of the antidumping finding on synthetic methionine from Japan (38 FR 18392, July 10, 1973). We began the current review of the finding under our old regulations. After the promulgation of our new regulations, a manufacturer and an exporter requested in accordance with § 353.53a(a) of the Commerce regulations that we complete the administrative review. We published a notice of initiation of the antidumping duty administrative review on January 21, 1986 (51 FR 2748).

Scope of the Review

Imports covered by the review are shipments of synthetic methionine other than synthetic L methionine. Synthetic methionine is an amino acid produced in two grades, DL methionine national formula grade (used for research and pharmaceutical purposes) and DL methionine feed grade (used as a feed additive). Both grades of synthetic methionine are currently classifiable under item 425.0430 of the Tariff Schedules of the United States Annotated.

The review covers one manufactuer and one exporter of Japanese synthetic methionine to the United States, Nippon Soda Co., Ltd. and Mitsui & Co., Ltd., and the period July 1, 1982 through June 30, 1983.

United States Price

In calculating United States price the Department used exporter's sales price, as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act"). Exporter's sales price was based on the packed delivered price to the first unrelated purchaser in the United States. We made adjustments for commissions to unrelated parties, Customs duties, ocean freight, marine insurance, U.S. inland freight, food and drug inspection fees, brokerage fees, destination charges, warehouse expenses, early payment discounts, credit expenses, and the U.S. subsidiary's selling expenses. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed delivered price to an unrelated purchaser in the home market. We made adjustments, where applicable, for inland freight, discounts, commissions to unrelated parties, credit expenses, and differences in packing costs. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that no margin exists for Nippon Soda/Mitsui for the period July 1, 1982 through June 30, 1983.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

Further, as provided for by § 353.48(b) of the Commerce Regulations, since there was no margin the Department shall not require a cash deposit of estimated antidumping duties for Nippon Soda/Mitsui.

For any shipments from the 29 remaining known firms not covered in this review, the cash deposit will continue to be at the rates published in the final results of the last administrative review for each of those firms (48 FR 55153, December 9, 1983).

For any future shipments from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after June 30, 1983 and who is unrelated to any reviewed firm or any other previously reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of Japanese synthetic DL methionine entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675 (a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: November 10, 1986.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-25882 Filed 11-14-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-461-008]

Titanium Sponge From the USSR; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administrative/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by an importer, the Department of Commerce has conducted an administrative review of the antidumping finding on titanium sponge from the USSR. The review covers Techsnabexport, an exporter of this merchandise to the United States, and the period August 1, 1983 through July 31, 1985. The review indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value. Techsnabexport failed to respond to our questionnaire. As a result, we used the best information available for assessment and estimated antidumping duty cash deposit purposes.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 17, 1986.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-1130/3601.

SUPPLEMENTARY INFORMATION:

Background

On April 25, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 16330) the final results of its last administrative review of the antidumping finding on titanium sponge from the USSR (33 FR 12138, August 28, 1968). We began the current review of the finding under our old regulations. After the promulgation of our new regulations, an importer, ICD Group, Inc., requested that we complete the administrative review in according with § 353.53a(a) of the Commerce Regulations. We published the initiation of the administrative review on May 30, 1986 (51 FR 19580). As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of titanium sponge from the USSR. Titanium sponge is currently classifiable under item 629.1420 of the Tariff Schedules of the United States Annotated. The review covers Techsnabexport, an exporter of this merchandise to the United States, and the period August 1, 1983 through July 31, 1985.

Techsnabexport failed to respond to the Department's antidumping questionnaire. The Department consequently used the best information available for assessment and estimated antidumping duties cash deposit purposes. The best information available was the rate from the last review.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that for the period August 1, 1983 through July 31, 1985, a margin of 83.96 percent exists.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties of 83.96 percent shall be required.

This deposit requirement is effective for all shipments of titanium sponge manufactured by Techsnabexport entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a; 50 FR 32556, August 13, 1985).

Dated: November 11, 1986.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-25883 Filed 11-14-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-211-802]

Final Affirmative Countervailing Duty Determination; Operators for Jalousie and Awning Windows From El Salvador

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute subsidies are being provided to manufacturers, producers, or exporters in El Salvador of operators for jalousie and awning windows. The estimated net subsidy is 4.76 percent *ad valorem*. Industrias Metalicas, S.A. (IMSA), one of the respondents under investigation, did not apply for and did not receive any benefits under the program determined to be countervailable. We are, therefore, not including IMSA from our final determination. We also determine that critical circumstances do not exist with respect to the merchandise under investigation within the meaning of section 705(a)(2) of the Tariff Act of 1930 (the Act), as amended.

We have notified the United States International Trade Commission (ITC) of our determination. If the ITC's final injury determination is affirmative, we will direct the United States Customs Service to suspend liquidation of all entries of operators for jalousie and awning windows from El Salvador, except for those operators exported by IMSA, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the countervailing duty order.

EFFECTIVE DATE: November 17, 1986.

FOR FURTHER INFORMATION CONTACT: Steven Morrison or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-1248 or 377-2438.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Act, are being provided to manufacturers, producers, or exporters in El Salvador of operators for jalousie and awning windows. For purposes of this investigation, the "Income Tax Exemption for Export Earnings" is the only program that conferred a countervailable subsidy. We determine the estimated net subsidy to be 4.76 percent *ad valorem*.

Case History

On March 19, 1986, we received a petition in proper form from the Anderson Corporation and the Caribbean Die Casting Corporation, manufacturers of operators for jalousie and awning windows located in Puerto Rico. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in El Salvador of operators for jalousie and awning windows receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a United States industry. In addition, the petition alleged that "critical circumstances" exist within the meaning of section 703(e)(1) of the Act.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on April 8, 1986, we initiated an investigation (51 FR 12633). We stated that we expected to issue a preliminary determination on or before June 12, 1986.

Since El Salvador is a "country under the Agreement" within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from El Salvador materially injure, or threaten material injury to a United States industry. Therefore, we notified the ITC of our initiation. On May 5, 1986, the ITC determined that there is a reasonable indication that imports from El Salvador of operators for jalousie and awning windows threaten material injury to a United States industry (51 FR 17683).

We presented questionnaires concerning the petitioners' allegations to the Government of El Salvador in Washington, DC on April 18, 1986. We received responses to the questionnaires on May 20, 1986, and amendments to the responses on May 21, 22, 27, 29, June 2 and 3. The responses stated, and we verified, that IMSA is the only manufacturer of operators for jalousie and awning windows. Both IMSA and Die Casting Products, S.A. de C.V. (DIE CAST), which are owned by a common holding company, sold the subject merchandise to the United States during the review period (calendar year 1985). On June 12, 1986, we issued a preliminary affirmative determination in the countervailing duty investigation on operators for jalousie and awning windows from El Salvador (51 FR 22099). Our notice of preliminary determination gave interested parties an opportunity to submit oral and written views. A public hearing was not held because no interested party requested one in this investigation.

On June 24, 1986, petitioners filed a request for extension of the deadline date for the final determination in the countervailing duty investigation to correspond with the date of the final determination in the antidumping investigation on the same products from El Salvador. In accordance with section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984, we granted an extension for the final determination to November 10, 1986, to coincide with the deadline for the final determination in the antidumping duty investigation of the same product (51 FR 27232, July 30, 1986).

Verification was conducted in El Salvador from July 8 through July 16, 1986. The company respondents amended their response concerning sales volume and value on July 21, 1986 to reconcile minor differences found on verification.

Scope of Investigation

The products covered by this investigation are operators for jalousie and awning windows as provided for in item number 647.0365 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1986 issue of the **Federal Register** (49 FR 18006).

For purposes of this final determination, the period for which we are measuring subsidies ("the review period") is calendar year 1985, which corresponds to respondents' fiscal year. Based upon our analysis of the petition, the responses to our questionnaire, the verification, and comments filed by both petitioners and respondents, we determine the following:

I. Program Determined To Confer a Subsidy

We determine that a subsidy is being provided to manufacturers, producers, or exporters in El Salvador of operators for jalousie and awning windows under the following program:

Income Tax Exemption for Export Earnings

Under Chapters 2, 3, and 4 of the Export Promotion Law of 1974, approved exporting companies do not pay income tax on income earned from exports to destinations outside the Central American Common Market. DIE CAST is the only company involved in the export of operators for jalousie and awning windows which was eligible for and which claimed this tax exemption during and after the review period. IMSA did not apply for an income tax exemption for export earning benefits under the 1974 Export Promotion Law. Therefore, it was not eligible to receive and did not receive income tax benefits on its exports.

Because this income tax exemption is limited to income derived from exports, we determine that it confers an export subsidy. Accordingly, we calculated the benefit by dividing the amount of the income tax benefit received by DIE CAST, based on the income tax return filed during the review period, by the value of DIE CAST's exports of operators for jalousie and awning windows for 1985 that were exported to destination outside the Central American Common Market.

The estimated net subsidy is 4.76 percent *ad valorem*.

II. Program Determined Not To Confer A Subsidy

We determine that the following program does not confer a subsidy on manufacturers, producers or exporters in El Salvador of operators for jalousie and awning windows:

A. Exemptions to Exporters for Fiscal Stamp Tax

In El Salvador, a five percent stamp tax is levied on the value of sales and other commercial and legal activities. Export sales are specifically exempt from the stamp tax.

Under section 771(5)(A) of the Act, the non-excessive remission or exemption of indirect taxes levied at the final stage of production is not considered a subsidy. See Annex to the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (Annex to the Subsidies Code), Note to Article XVI. Since the amount of

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the stamp tax is not greater than the amount of stamp tax otherwise due, we determine that this program does not confer a subsidy on exports of operators for jalousie and awning windows.

III. Programs Determined Not To Be Used

We determine that manufacturers, producers, or exporters in El Salvador of operators for jalousie and awning windows do not use the following programs:

A. Exemptions from Taxes on Imported Capital Equipment Used for Export Production

Under Chapters 2, 3, and 4 of the 1974 Export Promotion Law, approved exporters are entitled to import duty exemptions for imported capital equipment, including machinery, equipment, spare parts and accessories. We verified that the companies did not import capital equipment during the review period and, consequently, received no tax advantage from the program.

B. Duty Exemption on Imported Inputs Not Physically Incorporated into Exported Products

Under Chapters 2, 3, and 4 of the 1974 Export Promotion Law, materials used by approved exporters in the production of goods for export including raw materials, intermediate and semi-finished products, containers, packaging, samples, and patterns, are exempt from import duty. We did not initiate an investigation on duty exemptions for items, such as raw materials, which are physically incorporated into exported products. Duty exemptions on physically incorporated imported inputs are not countervailable under the Annex to the Subsidies Code and Annex I of the Commerce Regulations (19 CFR Part 355, Annex I). We did initiate an investigation on such items as imported samples, patterns and lubricants not physically incorporated into exported products. We verified that the companies did not import any items which are not physically incorporated into the finished operators for jalousie and awning windows.

C. Operation in a Bonded Area

Under Chapters 2, 3, and 4 of the 1974 Export Promotion Law, exporting companies located in bonded areas are entitled to special duty-free privileges. We verified that no manufacturers, producers or exporters of operators for jalousie or awning windows are operating in bonded areas.

D. Central American Convention for Fiscal Incentives (Convenio Centro Americano de Incentives fiscales al Desarrollo Industrial)

After we initiated our investigation and presented our questionnaire, petitioners alleged that subsidies may be provided to manufacturers, producers, or exporters of the subject merchandise under this treaty. On April 30, we requested that the Government of El Salvador address the benefits of this treaty in its responses. In its response, the Government of El Salvador stated that, of the companies subject to the investigation, only IMSA was eligible for benefits during the review period under this treaty. We verified that under the convention, IMSA obtained only import duty exemptions for parts and materials physically incorporated into window operators. As stated previously, the exemption of import duties on items physically incorporated into the exported product is not considered a subsidy within the meaning of the countervailing duty law. We also verified that IMSA did not use any other provisions of this treaty. The duty exemption terminated on January 1, 1986 with the implementation of a new Central American tariff schedule (NAUCA II).

IV. Programs Determined Not To Exist

A. Pre-Export and Export Loans

Petitioners allege that pre-export loans were provided under Chapter 13 of the 1974 Export Promotion Law. In its response to our questionnaire the Government of El Salvador stated that no pre-export or export loans were extended because there were never any implementing regulations for Chapter 13.

B. Tax Credit Certificate (Del Certificado de Descuento Tributario)

Chapter 14 of the 1974 Export Promotion Law and Chapter 9 of the recently enacted 1986 Export Promotion Law, authorize qualified exporters to receive tax credit certificates, calculated as a percentage of the value of exports which can be used to pay taxes owed. We verified that implementing regulations were not put into effect under the old law, and have not, thus far, been enacted under the new law. Therefore, we determine that no program currently exists under which tax certificates are or were issued.

C. Pre-Export and Export Credit Guarantees

Chapter 13 of the 1974 Export Promotion Law authorizes the provision for pre-export and export guarantees. The Government of El Salvador stated, and we verified, that no such benefits have been conferred because this part of the law was never implemented through applicable regulations.

D. Export Credit Insurance

Chapter 15 of the 1974 Export Promotion Law authorizes the provision of export credit insurance for commercial and political risks. The Government of El Salvador stated and we verified, that an export credit insurance program has not been established and that this provision of the law had not been implemented.

E. Asset Tax Exemption under the 1974 Export Promotion Law

Petitioners allege that under Chapters 2 and 3 of the 1974 Export Promotion Law, certain persons and companies who qualify because of export activities, are not required to pay taxes on their assets and net capital worth. We verified that IMSA and DIE CAST did not take advantage of this provision as authorized under the Export Promotion Law during the review period. However, neither company paid asset taxes because all companies owned by Salvadorans and domiciled in El Salvador are not required to pay this tax, regardless of whether they exported. Since all domestically owned and operated companies are exempt from this asset tax, this exemption is not countervailable.

We also verified that the asset tax exemption authorized under the Export Promotion Law was not passed through to the individual owners of DIE CAST, the only investigated company that qualified for asset tax exemption under the Export Promotion Law during the review period. We verified that individual stockholders of DIE CAST paid their proportionate share of taxes on DIE CAST's assets on their personal tax returns. Accordingly, we determine that this program was not used by the only eligible company and that benefits from it were not passed through to its stockholders.

F. Exemption of Exporters from the Municipal Tax on Assets

Municipalities charge a monthly tax on the value of total real and personal property. There are no provisions under which exporting companies are exempted. Furthermore, we verified that the subject companies paid this tax.

VI. Program Determined To Be Terminated

Preferential Exchange Rate Treatment for Exporters

Petitioners allege that under El Salvador's two-tier exchange rate system, exporters purchase imports with dollars obtained at the official exchange rate, which is lower than the parallel market rate, while the returns from their exports are converted at the parallel exchange rate. A two-tier exchange rate system was in effect in El Salvador during the review period. Imports of materials and parts were purchased at a blend of dollars partly purchased at the official exchange rate and partly purchased at the higher parallel rate. Export earnings were also exchanged at a blended rate except that the percentage returned at the parallel rate was higher than that applicable to import purchases. The percentage of dollars that had to be returned at the official rate varied depending on the industry which manufactured the exported product.

As of June 17, 1985, the single exchange rate applicable to all purchases of imported materials and all export earnings was the parallel rate. Of the companies subject to this investigation, only IMSA purchased imports and made exports under the two-tier system. However, as of June 17, 1985, the only exchange rate applicable to all of IMSA's import and export transactions was the parallel rate.

Although IMSA utilized this two-tier exchange rate system during the first half of 1985, we verified that this program ceased to apply to the subject merchandise on June 17, 1985. In accordance with our policy regarding program-wide changes occurring prior to initiation of an investigation, we have determined that this program was terminated prior to initiation, and that IMSA could no longer receive or accrue any benefits under it. Therefore, it is unnecessary for us to determine whether it is countervailable.

Petitioners' Comments

Comment 1: Petitioners argue that the Department's attribution of DIE CAST's benefits to IMSA in the preliminary determination was correct insofar as both companies were commonly owned and the owners could easily shift exports from one company to the other. They further argue that a countervailing duty applied against both companies is the only meaningful penalty that can affect the economic interests of the individuals who own the assets of both companies.

DOC Position: We disagree. In our preliminary determination, we expressed concern that DIE CAST could, under the provisions of Article 81 of the 1974 Export Promotion Law, transfer its benefits to IMSA. The common ownership of the two companies made it even more likely that such a transfer of benefits might occur.

At verification, we learned that a transfer of benefits under Article 81 of the law was not possible between these two companies because IMSA, a domestic seller as well as an exporter, did not occupy the same status under the Export Promotion Law as that occupied by DIE CAST, which only exported the subject merchandise. We verified that IMSA had never qualified under the 1974 Export Promotion Law through transfer or original application. Furthermore, since DIE CAST's benefits were revoked by the Government of El Salvador subsequent to our preliminary determination, there was no possibility of any future transfer of benefits to IMSA.

With regard to petitioners' contention that a countervailing duty applied to both companies is the only meaningful penalty that can affect the economic interests of the individuals who own the assets of both companies, it is not the purpose of the law for us to determine the effects that the imposition of countervailing duties will have on the owners of these two companies. Our primary concerns in a related party situation are, whether the companies, in fact, operate as distinct entities, and whether any benefits are being passed through from one company to another. In this case, IMSA did not benefit from DIE CAST's subsidy.

Respondents' Comments

Comment 1: Respondents argue that since the Government of El Salvador revoked the eligibility of DIE CAST to receive benefits under the Export Promotion Law of 1974 in July 1986, the Department should issue a final negative determination with respect to DIE CAST, in accordance with our policy of taking into account program-wide changes that occur during an investigation. If the Department incorrectly determines that a negative determination is not appropriate, the Department should adjust the final estimated duty deposit rate to take into account this program-wide change. In the case of DIE CAST, this should result in a zero duty deposit rate.

DOC Position: We disagree. The Department's policy is to take program-wide changes into account when they occur prior to the preliminary determination. (See "Final Affirmative Countervailing Duty Determinations and Orders, Certain Textile Mill Products and Apparel from Peru" (50 FR 9871, March 12, 1985)). However, in this case, it was not a program-wide change, but a company specific change. Furthermore, this change did not occur until one month *after* the preliminary determination and DIE CAST will benefit from this program in calendar year 1986. It is not our policy to take into account a company-specific change that takes place after the preliminary determination. This is particularly true, where as here they are still receiving benefits from that program.

Comment 2: Respondents argue that the dual currency exchange system did not provide a countervailable subsidy to manufacturers, producers or exporters of window operators. The potential currency retention gain on exports is not a countervailable subsidy because it is neither an export subsidy nor a domestic subsidy. A currency gain is not a bonus on exports, which is what an export subsidy is defined as under the Subsidies Code. All Salvadoran manufacturers were eligible to purchase dollars at the official rate to pay for imports. Manufacturers who did not export could repatriate dollars received from other sources at the parallel rate. Because this system provided a better return on imports purchased with official rate dollars to non-exporters than to exporters, it is not an export subsidy. Further, it was not limited to a specific enterprise or industry, or group thereof, and therefore, could not be a domestic subsidy.

DOC Position: Since the dual exchange rate system was terminated prior to our initiation of this countervailing duty investigation and since we verified that no benefits were received or accrued under the program after its termination in June 1985, it is not necessary to determine whether El Salvador's dual exchange rate system constituted a subsidy.

Comment 3: Respondents content that if the Department (erroneously) attributes DIE CAST's income tax benefit to IMSA, it should recognize that IMSA had to sell the operators to DIE CAST in order to receive the subsidy and pay stamp taxes to the Government of El Salvador on those sales. IMSA would not have had to pay stamp taxes if they had exported the merchandise directly to the United States. Thus, any gross subsidy imputed to IMSA, should be reduced by stamp taxes paid.

DOC Position: Since we did not attribute the income tax exemption for export earnings to IMSA, this issue is moot.

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Final Negative Determination of Critical Circumstances

The petitioners alleged that "critical circumstances" exist within the meaning of section 705(a)(2) of the Act, with respect to imports of operators for jalousie and awning windows from El Salvador. In order to find that critical circumstances exist, we must determine that:

(a) The alleged subsidy is inconsistent with the Agreement, and

(b) There have been massive imports of the subject merchandise over a relatively short period.

Pursuant to section 705(a)(2)(B), we generally consider the following data in order to determine whether massive imports have taken place: (1) The volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports.

To determine whether imports have been massive over a relatively short period, we analyzed recent trade statistics on import levels for this merchandise for equal periods immediately preceding and following the filing of the petition, the first and second quarters of 1986. While there was an increase in imports in/during the second quarter over those for the first quarter of 1986, the average monthly imports in the second quarter of 1986, the average monthly imports in the second quarter of 1986 were less than half the monthly average of imports in 1985, and second quarter 1986 imports are part of an overall decline in imports since the beginning of 1986.

Since we have not found massive imports over a relatively short period of time, we need not determine whether the alleged subsidies are inconsistent with the Agreement. Therefore, we determine that critical circumstances do not exist.

Verification

In accordance with section 776 (a) of the Act, we verified the data used in making our final determination. We conducted the verification in El Salvador from July 8 through July 16, 1986.

During verification, we followed normal verification procedures, including meeting with government officials, inspecting government documents and inspecting the accounting and financial records of the companies producing and exporting the merchandise under investigation to the United States.

Suspension of Liquidation

In accordance with our preliminary countervailing duty determination (51 FR 22099, June 18, 1986) we directed the U.S. Customs Service to suspend liquidation of the products under investigation and to require that a cash deposit or bond be posted equal to the estimated final net subsidy. However the due date for the countervailing duty determination was extended to coincide with the final antidumping duty determination (51 FR 27233, July 30, 1986). Under Article 5, paragraph 3 of the Subsidies Code, provisional measures cannot be imposed for more than four months. Thus, we could not impose a suspension of liquidation on the subject merchandise for more than four months without final determinations of subsidization and injury. Therefore, we instructed the U.S. Customs Service to discontinue the suspension of liquidation on the subject merchandise entered after October 18, 1986.

Currently, liquidation is not being suspended pending the outcome of the ITC's injury determination on window operators from El Salvador. If we issue a final countervailing duty order, we will instruct the U.S. Customs Service to collect a cash deposit of 4.76 percent *ad valorem,* on all exports of operators for jalousie and awning windows from El Salvador, except for those exported by IMSA.

ITC Notification

In accordance with section 705(c) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without consent of the Deputy Assistant Secretary for Import Administrative.

The ITC will determine whether these imports materially injure, or threaten material injury to, a United States industry within 45 days after the date of publication of this notice. If the ITC determines that injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that injury exists, we will issue a countervailing duty order, directing Customs officers to resume the suspension of liquidation and collect cash deposits on entries of operators for jalousie and awning windows from El Salvador that are entered, or withdrawn from warehouse, for consumption as described in the "Suspension of Liquidation" section of this notice.

This notice is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Lee W. Mercer,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 86-25884 Filed 11-14-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-211-601]

Operators for Jalousie and Awning Windows From El Salvador: Final Determination of Sales at Less Than Fair Value

ACTION: Notice.

SUMMARY: We have determined that operators for jalousie and awning windows from El Salvador are being, or are likely to be, sold in the United States at less than fair value. The United States International Trade Commission (ITC) will determine, within 45 days of publication of this notice, whether these imports are materially injuring, or threatening material injury to, a United States industry. We have also directed the United States Customs Service to continue to suspend liquidation of all entries of operators for jalousie and awning windows from El Salvador that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Constitution of Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: November 17, 1986.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-1769.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that operators for jalousie and awning windows from El Salvador are being, or are likely to be, sold in the United States at less than fair value as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). The margin applicable to all exporters is 40.20 percent.

Case History

On March 19, 1986, we received a petition in proper form filed by the Anderson Corporation and the Caribbean Die Casting Corporation. In compliance with the filing requirements of §353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from El Salvador are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or threaten material injury, to a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated the investigation on April 8, 1986 (51 FR 13039, April 17, 1986) and notified the ITC of our action.

On May 5, 1986, the ITC found that there is a reasonable indication that imports of operators for jalousie and awning windows from El Salvador are threatening material injury to a United States industry (U.S. ITC Pub. No. 1843, May, 1986).

We presented a questionnaire to Industries Metalicas, S.A. (IMSA) on April 18, 1986, since we had information indicating that it accounted for virtually all of the exports to the United States during the period of investigation, October 1, 1985 to March 31, 1986. A response was received from IMSA on May 21, 1986. We verified the response at the company's offices in El Salvador from July 16 to July 18, 1986.

We issued a preliminary determination of sales at less than fair value on August 26, 1986 (51 FR 31350, September 3, 1986). Our notice of the preliminary determination provided interested parties with an opportunity to submit views orally or in writing. Accordingly, we held a public hearing on September 24, 1986.

Scope of Investigation

The products covered by this investigation are operators for jalousie and awning windows, which are currently provided for under item 647.0365 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided for in section 772(b) of the Act, for sales by IMSA, we based United States price on purchase price because the operators for jalousie and awning windows are sold to unrelated purchasers in the United States prior to importation.

We made a deduction from ex-factory, insured prices for marine insurance.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we based foreign market value of IMSA on sales in the home market. We made deductions from delivered prices for a stamp tax, inland freight, and inland insurance. We made an adjustment for differences in credit terms between the respective markets, in accordance with §353.15 of our regulations. For purposes of this determination, we adjusted the calculation we made for the preliminary determination to reflect more accurately the actural credit costs incurred by the respondent. Respondent has claimed a circumstance of sale adjustment for commissions paid to collection agents. However, at verification respondent failed to tie these commissions to the subject merchandise or to the sales under consideration. Therefore, we denied this adjustment because it was not supported and did not consider its merits. We deducted home market packing and added U.S. packing.

Currency Conversion

We made currency conversions from El Salvadoran colones to U.S. dollars in accordance with §353.56(a) of our regulations. Normally, we use certified exchange rates furnished by the Federal Reserve Bank of New York, but no certified rates were available for El Salvador. Therefore, we used monthly exchange rates published by Bank of America, London, as best information available.

Negative Determination of Critical Circumstances

The petitoners allege that "critical circumstances" exist within the meaning of section 735(a)(3) of the Act, with respect to imports of operators for jalousie and awning windows from El Salvador. In determining whether critical circumstances exist, we must examine whether:

(A) (i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value; and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 735(a)(3)(B), we generally consider the following data in order to determine whether massive imports have taken place: (1) The volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports.

To determine whether imports have been massive over a relatively short period, we analyzed respondent's recent trade statistics on exports of this merchandise for equal periods immediately preceeding and following the filing of the petition, the first and second quarters of 1986. While there was an increase in imports during the second quarter over those for the first quarter of 1986, the average monthly imports in the second quarter of 1986 were both less than half the monthly average of imports in 1985, and part of an overall decline in imports since the beginning of 1985. With respect to recent history, the first quarter 1986 imports represent an unusually low shipment rate. Based on this analysis, we find that imports of the subject merchandise have not been massive over a short period.

Since we do not find that there have been massive imports, we do not need to consider whether there is a history of dumping or whether importers of this product knew or should have known that it was being sold at less than fair value.

Therefore, we determine that critical circumstances do not exist with respect to imports of operators for jalousie and awning windows from El Salvador.

Verification

As provided in section 776(a) of the Act, we verified data used in making this determination by following procedures which included on-site inspection of the manufacturer's facilities, and examination of company records and selected original source documentation containing relevant information.

Petitioners' Comments

Comment 1: Petitioners argue that an additional deduction must be made from the U.S. purchase price for a commission or other consideration allegedly paid to the distributor for all sales to Puerto Rico.

This allegation is based on a resale invoice from the distributor to a Puerto Rico purchaser indicating prices below those shown in the questionnaire response.

DOC Response: At verification we found no evidence of any commission or other consideration paid to the Puerto

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Rico distributors. The invoice presented as evidence supporting the allegation indicates that the purchase order was dated in 1984, almost a year prior to our period of investigation. Therefore, the price on the invoice cannot be compared to sales prices during the period of investigation.

Comment 2: Petitioners argue that the respondent's claim for a circumstance of sale adjustment concerning a volume discount for jalousie operators sold to Puerto Rico should not be allowed.

DOC Position: We agree. See our response to respondent's comment #1.

Comment 3: Petitioners contend that the respondent's claim for the deduction from home market prices of the government stamp tax is inappropriate because the customers actually pay the tax.

DOC Position: We disagree. We verified that the respondent pays the stamp tax to the government, based on monthly sales value. Petitioners' contention is based on a statement in the verification report that the tax was collected from customers and remitted to the government. That statement should have indicated that the tax was included in the sales price.

Comment 4: Petitioners contend that respondent's financial statements must be presented to the Department in order to allow the Department to analyze the data.

DOC Position: We have determined that there is sufficient documentation on the record to support our analysis of IMSA's prices and claims for adjustments.

Comment 5: Petitioners argue that there have been massive imports of the merchandise under investigation, and that the Department should take into account that the respondent knew that an antidumping petition was going to be filed, and acted accordingly.

DOC Position: We disagree. See our discussion above in the "Negative Determination of Critical Circumstances" section of this notice. Since we find that imports were not massive over a relatively short period, respondent's possible knowledge of the filing of the petition is irrelevant, and we have not found any evidence of such knowledge.

Respondent's Comments

Comment 1: Respondent requests an adjustment for differences in quantities based on its estimate of cost savings for the higher volume of jalousie operators sold to the United States.

DOC Position: We disagree. The claimed adjustment was based on estimated costs savings, not on actual production experience. This estimate was based on an allocation of fixed costs between jalousie operators and other product lines. The resulting pool of costs was then allocated over theoretical increased volumes of production. The method of allocation does not reflect the effects of differing production levels of other products or differences in variable costs. In addition, respondent did not demonstrate that the production capacity for jalousie operators would permit the production levels used in its analysis either by trying it to actual experience or actual physical capacity. For the various reasons cited above, we determine that the estimate provided by respondent cannot be tied to actual costs differences for claimed differences in production levels and, therefore, this adjustment was not allowed.

Comment 2: Respondent claims that we improperly compared awning operators sold to the United States to those sold in the home market. The Department should have compared sales of awning operators in the United States, with sales of jalousie operators, with an adjustment for differences in physical characteristics. The claim is based on the small number of awning operators sold in the home market.

DOC Position: We determined that there were sufficient sales of jalousie and awning window operators which constitute such or similar merchandise in the home market to form an adequate basis for determining foreign market value. After determining that there is a viable home market, we then determine which product among such or similar products is the most similar. There were sales of awning operators, which constitute identical merchandise, in the home market. Since the statutory preference is for comparisons of identical ("such") merchandise, we compared sales of awning operators in both markets. Similarly, we compared sales of jalousie operators in both markets. Since we did not compare awning operators to jalousie operators, no adjustment for differences in physical characteristics was necessary.

Comment 3: Respondent claims that the Department should make a circumstance of sale adjustment for the "competitive discount" offered to U.S. customers. IMSA reportedly offers this discount because of: (1) Fears of non or late delivery due to politically-related disruptions in El Salvador, which do not pertain to other countries supplying operators in the U.S. market, and for which buyers in the home market have made accommodations since IMSA is the only supplier of operators in El Salvador; and (2) prior problems with quality, which resulted in the need to provide a discount as an incentive to U.S. purchasers.

If the Department does not grant an adjustment for differences in circumstances of sale, it should allow these discounts as differences in the physical characteristics of the merchandise, *as perceived* by Salvadoran and U.S. customers. The amount of the adjustment under either theory should be the difference between the home market price and U.S. market price.

DOC Position: We have denied these adjustments for the following reasons.

First, the antidumping law and regulations permit the granting of these types of adjustments only to the extent that the Department is satisfied that any price differential is wholly or partly due to such differences in circumstances of sale or physical characteristics. With respect to adjustments for differences in physical characterists, 19 CFR 353.16 also requires that those differences have a measurable effect on the cost of production or market value of the merchandise in the respective markets. Respondent has neither quantified these differences, nor supported any method of quantification. Respondent's suggestion that we quantify these differences by comparing United States price with foreign market value is unreasonable, for that is exactly what we do to obtain the margin of dumping. Respondent is in effect claiming that any dumping margin would be attributable to differences in circumstances of sale and physical characteristics.

Second, the political situation in El Salvador creates the risk of no or late delivery of this merchandise in both the United States and the home market. There is no "bona fide" difference in the circumstances of sale in the different markets. The claim that this risk has less effect upon purchasers in El Salvador is entirely without support. The fact that IMSA is the only supplier for the domestic market is irrelevant. The fact that there is only one supplier in the home market increases the likelihood that the theory that a monopolistic home market supplier can maximize home market profits in order to support low priced export sales may apply.

Third, circumstance of sale adjustments may only be based upon differences between the sales that form the basis for United States price and foreign market value of the merchandise under investigation. In determining whether sales are at less than fair value, we are not concerned with the comparability of IMSA's product with the products of other sellers in the U.S. market.

Fourth, respondent has not provided evidence which demonstrates that there are actual physical differences between the merchandise sold in the United

States and El Salvador, and the Department cannot make adjustments for unquantified "perceived" differences. Only tangible differences in the value of the merchandise can form the basis for adjustment.

Continuation of Suspension of Liquidation

We are directing the United States Customs Service to continue to suspend liquidation of all entries of operators for jalousie and awning windows from El Salvador that are entered, or withdrawn from warehouse, for consumption, on or after September 3, 1986, the date of publication of the preliminary determination in the **Federal Register.** The United States Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. With respect to entries or withdrawals made on or after the publication of this notice, the bond or cash deposit amounts required are shown below.

Article VI.5 of the General Agreement on Tariffs and Trade provides that "[n]o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act, which prohibits assessing dumping duties on the portion of the margin attributable to export subsidies. In the final countervailing duty determination on operators for jalousie and awning windows from El Salvador, which is being published simultaneously with this notice, we found export subsidies. Since dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Thus, the amount of the export subsidies will be subtracted for deposit or bonding purposes from the dumping margins.

Manufacturer/Producer/Exporter	Weighted-Average Margin Percentage
Industrias Metalicas, S.A.	40.20
All others	40.20

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will make its determination whether these imports are materially injuring, or threatening material injury to, a United States industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on operators for jalousie and awning windows from El Salvador entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

November 10, 1986.

Lee W. Mercer,

Acting Deputy Assistant Secretary for Trade Administration.

[FR Doc. 86-25880 Filed 11-14-86; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 4652-03]

Actions Affecting Export Privileges; Hendrick G. Wasmoeth

Facts

On February 3, 1984, the Hearing Commissioner issued a temporary denial order (TDO) against Hendrick G. Wasmoeth (Wasmoeth), Edward F. King (King) and Louis R. Klement (Klement). The Hearing Commissioner recited as the basis for issuance of the TDO a 10-count Federal Grand Jury indictment charging the respondents with conspiracy, as well as aiding and abetting exports and/or diversions of U.S.-origin equipment from the United States to Bulgaria through Holland without the required export license. The indictment continues to be outstanding as to Wasmoeth, a foreign national. King and Klement pled guilty to the conspiracy count and King pled guilty to attempting to export U.S.-origin equipment without the required licenses as well.

On April 9, 1986, Wasmoeth moved to have the TDO against him vacated. The Administrative Law Judge (ALJ) ordered the United States Department of Commerce (the Department) to provide him with a schedule for formally charging Wasmoeth. The Department stated that a charging letter would be issued against Wasmoeth by the end of June 1986. The Department issued a charging letter against Wasmoeth on June 30, 1986. The respondent acknowledged receipt of the charging letter, but the ALJ apparently did not receive notice of the charging letter prior to his decision.

On July 14, 1986, the ALJ, unaware of the charging letter and pursuant to the provisions of the Export Administration Act Amendments of 1985 (Amendments Act), vacated the TDO against Wasmoeth. He concluded that the TDO was invalid in fact and in law. In his Order of Dismissal, the ALJ concluded that the provisions of the Export Administration Act Amendments of 1985 apply to all TDO's, including those issued on or before July 11, 1985. Apparently basing his decision on the fact that no charging letter had been issued, and that there has been no application for renewal of the TDO pursuant to the provisions of the Amendments Act and the Regulations relating thereto, the ALJ vacated the TDO. It remains unclear whether the ALJ dismissed the TDO because the charging letter had not been issued by the end of June, because the Amendments Act standards were not applied, or because a 60-day renewal was not sought. Pursuant to § 388.22 of the 1984 Regulations, the Department has appealed that decision.

Issues

1. Whether pending TDO's issued prior to July 12, 1985 are governed by the Export Administration Act of 1979 and the Regulations promulgated thereunder, or are governed by changes in the law and regulations made pursuant to the Amendments Act.

2. Whether the ALJ's Order vacating the TDO was proper under the circumstances.

Discussion and Findings

A general rule of statutory construction is that statutes affecting antecedent rights are prospective while changes in the law relating only to procedures or remedies are usually held to be immediately applicable to pending cases.[1] Statutory amendments affecting substantive rights and liabilities are presumed to have only prospective effect.[2] Moreover, changes in substantive requirements should not be presumed to operate retroactively.[3]

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[1] *Turner* v. *United States,* 410 F.2d 837 (5th Cir. 1977).

[2] *Bennett* v. *New Jersey,* _____U.S. _____ 105 S.CT 1555, 84 L.Ed.2d 572 (1985).

[3] *Id., See also, United States* v. *Security Industrial Bank,* 459 U.S. 70, 79 (1982); *Greene* v. *United States,* 376 U.S. 149, 160 (1964); *Friel* v. *Cessna Aircraft Co.* 751 F.2d 1037, 1039 (9th Cir. 1985).

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Before the Amendments Act was passed by Congress, the Department derived its power to promulgate TDO regulations from the authority granted to it by the Export Administration Act of 1979 [4] (the Act) to prohibit or curtail exports when necessary to protect the public interest. Under the 1984 Regulations, issuance of a TDO depended on a showing that the TDO was necessary in the public interest to permit or facilitate enforcement of the Act, to avoid circumvention of any administrative or judicial proceedings, or to permit completion of an investigation. [5] The Amendments Act changes both the substance and procedure of TD issuance; however, the statute is silent on the issue of retroactivity.

The new guidelines, set forth in section 13(d) of the Amendments Act, require proof of an "imminent violation of the (Amendments) Act" to justify issuance of a TDO. [6] This is a substantive amendment because it changes the standard of proof required for issuance. The Amendments Act changes procedure in that it requires TDO's to be issued by the Deputy Assistant Secretary for Export Enforcement for no longer than 60 days, with renewals for subsequent 60 day periods upon a showing of danger of continued imminent violation. [7]

Since the Amendments Act changes both substance and procedure, the new standards must be applied prospectively. The presumption is that the Amendment Act applies to TDO's issued in or after July 12, 1985 since the changes effect the substantive showing that is required of the Department. If Congress had intended otherwise, it could have made the new standards and procedures of section 13(d) retroactive by explicit declaration of the new standards and procedures of the Amendments Act, the presumption is that the new law is prospective. Thus, the 1986 Regulations provide as follows:

> (f)or temporary denial orders issued on or before July 11, 1985, the proceedings will be governed by the applicable regulations in effect at the time the temporary denial orders were issued. [8]

Since the 1986 Regulations carry out the intent and the purpose of the Amendments Act, the Regulations are both valid and enforceable.

Having addressed the issue of retroactivity as above, the remaining issue is whether the TDO was justified when issued and whether its continuance is justified under both its terms and the Regulations under which it was issued. The 1984 Regulations provide:

> The presiding official may issue (a TDO) upon a showing that the order is required in the public interest to facilitate enforcement of the Act, any applicable Executive Order, or the Regulations; to avoid circumvention of such administrative or judicial proceedings; or to permit the completion of such investigation. The order shall be issued initially only for such period of time, ordinarily not exceeding 30 calendar days, as may be required to complete the administrative or judicial proceedings, or to complete the investigation. [9]

On February 3, 1984, the then Hearing Commissioner issued a TDO based on the showing made by the Department. The Department's evidence was that, in November 1983, a federal grand jury, in a 10-count indictment, charged: (1) King, Klement, Wasmoeth and others with conspiring to export and cause the export of U.S.-origin equipment from the United States to Bulgaria without obtaining the required validated export license; (2) King and Klement, aided and abetted by Wasmoeth, with exporting and causing to be exported U.S.-origin equipment without obtaining the required validated exported license, and (3) King and Klement, aided and abetted by Wasmoeth, with exporting and diverting, and causing to be exported and diverted U.S.-origin equipment from the United States through Holland to Bulgaria by falsely stating and representing on Shipper's Export Declarations the destination of the subject of U.S.-origin equipment to be Holland when in fact it was Bulgaria. King and Klement pled guilty to the conspiracy count and King pled guilty to attempting to export U.S.-origin equipment without the required licenses. Wasmouth, a foreign national who was charged as a co-conspirator of King and Klement, has never responded to the grand jury's indictment, which remains outstanding. All three respondents have been charged by the Office of Export Enforcement and have acknowledged receipt of the charging letters dated June 30, 1986.

At the time of issuance, the then Hearing Commissioner found a sufficient basis to impose the TDO. He found that the TDO "was required in the public interest to facilitate enforcement of (the Act)" and that it would remain in effect until the administrative proceedings were completed. [10] By issuing the charging letter, the Department has commenced an administrative proceeding within the meaning of § 388.19 of the 1984 Regulations. [11] Given the serious nature of the charges in the charging letter and the unanswered indictment, it is in the pubic interest to maintain the TDO in this case.

Order

Therefore, it is ordered that the initial decision of the ALJ dismissing the TDO against Hendrick G. Wasmoeth is hereby vacated. The TDO issued on February 3, 1984 is to remain in effect and his name is to be returned to the Table of Denied Parties.

1. All TDO's issued on or before July 11, 1985 are governed by the Export Administration Act of 1979 and the Regulations promulgated thereunder and in effect at the time of issuance of the TDO.

2. The decision of the ALJ vacating the TDO against Hendrick G. Wasmoeth is hereby vacated and Wasmoeth's name is to be relisted on the Table of Denied Parties.

3. The TDO against Wasmoeth shall remain in full force and effect until resolution of the administrative action now pending against him.

Dated: November 7, 1986.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

[FR Doc. 86–25868 Filed 11–14–86; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

Endangered Species; Application for Permit; Southeast Fisheries Center, National Marine Fisheries Service (P77 #25)

Notice is hereby given that an Applicant has applied in due form for a Permit to take endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), and the National Marine Fisheries Services regulations governing endangered fish and wildlife permits (50 CFR Parts 217 through 222).

1. Applicant:

a. Name Southeast Fisheries Center, National Marine Fisheries Service.

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[4] Export Administration Act of 1979, 50 U.S.C. app. 2401–2420 (1982).

[5] 15 CFR 388.19(a)(2) (1984).

[6] Export Administration Act of 1979, 50 U.S.C. app. 2401–2420 (1982), as amended by the Export Administration Act Amendments of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985), *See also*, 15 CFR Part 388.19 (b)(1) (1986).

[7] 15 CFR 388.19(b) through (d) (1986).

[8] 15 CFR 388.19 (1986).

[9] 15 CFR 388.19(a)(2) (1984).

[10] 49 FR 4959 (February 9, 1984).

[11] 15 CFR 388.19(a)(2)((1984).

b. Address: 75 Virginia Beach Drive, Miami, Florida 33149.

2. Type of Permit: Scientific Purposes.

3. Species Requested:

Atlantic ridley (*Lepidochelys kempi*)
Hawksbill (*Eretmochelys imbricata*)
Loggerhead (*Caretta caretta*)
Leatherback (*Dermochelys coriaces*)
Green (*Chelonia mydas*)
Olive ridley (*Lepidochelys olivacea*)

4. Type of Take: An unspecified number of marine turtles will be taken by the following means: importation; incidental capture and release; removal for rehabilitation; attachment of transmitters and tracking; tagging; aerial surveys; collection of dead animals; and collection of biological samples from dead and live animals.

5. Location of Activity: U.S. waters and waters throughout the West Central Atlantic area.

6. Period of Activity: 5 Years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Services, 1825 Connecticut Avenue NW., Room 805, Washington, DC; and

Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: November 10, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–25825 Filed 11–14–86; 8:45 am]

BILLING CODE 3510-22-M

Coastal Zone Management; Federal Consistency Appeal by Exxon From an Objection by the California Coastal Commission

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Public hearing schedule.

A public hearing will be held November 24, 1986, in the appeal filed under the Coastal Zone Management Act by Exxon U.S.A. from an objection by the California Coastal Commission. The Commission objected to Exxon's proposed production and development plan for the Santa Ynez Unit, 19 contiguous oil and gas lease tracts located on the Outer Continental Shelf in the Western Santa Barbara Channel.

The hearing, held in the Santa Barbara High School auditorium, will follow this schedule:

3:30 p.m.—registration for speakers (first come, first serve basis)
4 p.m.—presentations by Exxon, the California Coastal Commission and the County of Santa Barbara (20 minutes each)
5 p.m.—government representatives (7 minutes each)
6:30 p.m.—break
7:15 p.m.—resume hearing; representatives from organizations (5 minutes each); individuals (5 minutes each)

Because of the great number of individuals who have expressed an interest in speaking, these time limitations will be strictly enforced. Speakers are also reminded to limit their comments to those issues remaining to be decided on appeal. See 51 FR 37469 (Oct. 22, 1986).

As much as possible, speakers in support of Exxon's position will be scheduled alternately with those in support of the Commission's position. Speakers may also submit written comments to the record in lieu of or in addition to oral testimony.

FOR ADDITIONAL INFORMATION CONTACT: L. Pittman at (202) 673–5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration)

Dated: November 12, 1986.

Daniel W. McGovern,

General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 86–25869 Filed 11–14–86; 8:45 am]

BILLING CODE 3510-08-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increasing the Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

November 12, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 18, 1986. For further information contact Pamela Smith, Trade Reference Assistant, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

A CITA directive dated June 25, 1986 (51 FR 23807) established limits for certain specified categories of cotton, wool and man-made fiber textile products within the aggregate limit, including categories subject to specific limits (Group I) and those categories not subject to specific limits (Group II), produced or manufactured in Indonesia and exported during the agreement year which began on July 1, 1986 and extends through June 30, 1987.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 25 and October 3, 1985, as amended, between the Government of the United States and the Republic of Indonesia and at the request of the Government of the Republic of Indonesia, swing is being applied to the restraint limits established for Group I and the individual specific limit for cotton shop towels in Category 369–S (only TSUSA number 366.2840), increasing them to 249,549,134 square yards equivalent and 1,020,780 pounds, respectively. To account for swing applied to the foregoing group and category limits the limit for Group II is being reduced to 54,506,912 square yards equivalent.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and In Statistical Headnote 5, Schedule 3 of the Tariff Schedule of the United States Annotated (1986).

BEST COPY AVAILABLE

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Schedule of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 12, 1986.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of June 25, 1986 from the Chairman, Committee for the Implementation of Textile Agreements, which established restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Indonesia and exported during the agreement year which began on July 1, 1986 and extends through June 30, 1987.

Effective on November 18, 1986, the directive of June 25, 1986 is hereby amended to adjust the previously established restraint limits for Groups I and II and Category 369–S[1] under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 25 and October 3, 1985, as amended, between the Governments of the United States and the Republic of Indonesia:[2]

Category	Adjusted 12-mo limit[1]
Group I	249,549,134 square yards equivalent.
Group II	54,506,912 square yards equivalent.
369–S	1,020,780 pounds.

[1] The limits have not been adjusted to reflect any imports exported after June 30, 1986.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–25879 Filed 11–14–86; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1987; Establishment; Notice Correction

In FR Doc. 86–24745 appearing at page 39945 in the issue for Monday, November 3, 1986, make the following corrections:

1. On page 39945, in the agency's title, the word "Severly" should read "Severely".

2. On page 39946, second column, under CLASS 1005, Sling, Padded, Adjustable, the two-digit number reading "–03" should read "–00".

3. On page 39947, second column, under CLASS 5140, Belt, Tool, Repairman's, second line, the four-digit number reading "–1694" should read "–2694".

4. On page 39948, at the bottom of the third column, the line reading "Trousers, Women's Pajama" should read "Trousers, Operating Surgical" and the line reading "Trousers, Operating Surgical" should read "Trousers, Women's Pajama".

5. On page 39949, first column, under CLASS 6645, Clock Wall, third and fourth lines, the two-digit number reading "–00" should read "–01".

6. On page 39949, second column, under CLASS 7210, Bedspread, thirteen lines down insert "Bedspring (IB)" as the next line.

7. On page 39950, at the bottom of the first column, under Sheet, Bed, Disposable, move the lines reading "Memphis, TN and Tracy, CA Depots only" to appear after the line reading "7210–00–498–0512".

8. On page 39950, second column, under CLASS 7220, Mat, Floor, delete the eleventh line.

9. On page 39950, third column, seventh line from the top, the two-digit number reading "–00" should read "–01".

10. On page 39951, first column, mid-way down, first and second lines, under Pocket Planning Set, the two-digit number reading "–00" should read "–01".

11. On page 39951, top of the third column, under Stand, Calendar Pad, third line, the four-digit number reading "–4177" should read "–4277". Same column mid-way down, under Card, Guide, File, first line, the three-digit number reading "–988" should read "–989".

12. On page 39952, top of the second column, under Paper, Teletypewriter, Roll, sixth line, the two-digit number reading "–00" should read "–01"; seventh line, the four-digit number reading "–6991" should read "–9691"; and eighteenth line, the four-digit number reading "–7950" should read "–7850". Same column, mid-way down, under Refill, Appointment Book, second line, the two-digit number reading "–00" should read "–01".

13. On page 39953, second column, under CLASS 7930, Detergent, General Purpose, fourth and eleventh lines, the two-digit number reading "–00" should read "–01". Same column, under CLASS 7930, Dishwashing Compound, Hand, second line, the two-digit number reading "–00" should read "–01".

14. On page 39953, third column, under CLASS 8010, Enamel, fifth and sixth lines, the two-digit numbers reading "–00" should read "–01". Same column, under CLASS 8105, Bag, Cotton, seventh line, the four-digit number reading "–0826" should read "–0836".

15. On page 39954, second column, under CLASS 8340, Shelter Half, Tent, Complete, the four-digit number reading "–8345" should read "–8340".

16. On page 39955, second column, under CLASS 8415, Apron, Food Handler's, fourth line, the two-digit number reading "–00" should read "–01".

17. On page 39955, third column, under CLASS 8440, Belt, Trousers, eleventh, thirteenth and fifteenth lines, the two-digit number reading "–00" should read "–01".

18. On page 39956, first column, under CLASS 8455, Holder, Identification, the three-digit number reading "–988" should read "–898".

19. On page 39957, first column, under Military Resale Commodities, after the forty-sixth line insert the following as the next lines:

581 Flatware, Assorted, PG of 24 (IB)
583 Flatware, Forks, PG of 24 (IB)
584 Flatware, Spoons, PG of 24 (IB)

20. On page 39959, third column, mid-way down, under Department of Treasury, the third line should read "Washington, DC (SH)".

21. On page 39960, second column, the thirty-third line should read "Centennial Mall North, Lincoln".

22. On page 39961, first column, the twenty-first line should read "Federal Building, U.S. Post Office, W. 904".

23. On page 39961, first column, the thirty-first line should read "Federal Building, 500 Quarrier Street, Charleston, West".

24. On page 39961, second column, mid-way down under, Department of Interior, after the second line, insert the following as the next line:

BLM, Oregon State Office, Portland, Oregon

C.W. Fletcher,

Executive Director.

[FR Doc. 86–25870 Filed 11–14–86; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Grant Exclusive Patent License; Universal Energy Systems

Pursuant to the provisions of Part 101–4 of Title 41, Code of Federal

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[1] In Category 369 only TSUSA numbers 366.2840.

[2] The agreement provides, in part, that: (1) Within the aggregate limit specific restraint limits may be exceeded by designated percentages; (2) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

Regulations (47 FR 34148, August 6, 1982), the Department of the Air Force announces its intention to grant to Universal Energy Systems of Dayton, Ohio, an exclusive license under United States Patent No. 4,026,041 entitled "Two-Dimensional Drawing Board Manikin" issued May 31, 1977 to Kenneth W. Kennedy.

Any objection thereto, together with a request for an opportunity to be heard, if desired, should be directed in writing to the addressee set forth below within 60 days from the publication of this notice. Also copies of the Patent may be obtained for two dollars ($2.00) from the Commissioner of Patents and Trademarks, Washington, DC 20231.

All communications concerning this notice should be sent to: Mr. Donald J. Singer, Chief, Patents Division, Office of The Judge Advocate General, HQ USAF/JACP, 1900 Half Street, SW., Washington, DC 20324-1000, Telephone No. (202) 475-1386.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-25888 Filed 11-14-86; 8:45 am]

BILLING CODE 3910-01-M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Tuesday, November 25, 1986 beginning at 1:30 p.m. in the Jefferson Room of the Holiday Inn at 4th and Arch Streets, Philadelphia, Pennsylvania. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:00 a.m. at the same location.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or § 3.8 of the Compact:

1. *Philadelphia Electric Company (PECO) D-69-210 CP (Final): Revision No. 7.* An application by PECO to temporarily, during 1986, revise portions of the Limerick Generating Station project as included in the Comprehensive Plan and to approve the temporary change under § 3.8 of the Compact. The proposed revision is for the withdrawal of water from the Schuylkill River for consumptive use at Limerick Generating Station Unit No. 1, when existing flow constraints would otherwise prevent such withdrawal. PECO proposes that the current flow limit, which precludes the consumptive use of Schuylkill River water whenever the flow at the Pottstown gage in Montgomery County, Pennsylvania is less than 530 cfs and one unit operating, be reduced to 415 cfs temporarily through December 31, 1986. All other existing limitations currently in effect would remain. Recent operational problems with the Borough of Tamaqua system have resulted in curtailment in the water released for use at the Limerick Generating Station.

2. *Village of Wurtsboro D-81-28 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 17.3 million gallons (mg)/30 days of water to the applicant's distribution system from Linton Lane Well. Commission approval on July 22, 1981 was limited to five years and has expired. The applicant requests that the total withdrawal from the well remain limited to 17.3 mg/30 days. The project is located in the Village of Wurtsboro, Sullivan County, New York.

3. *Downingtown Area Regional Authority D-84-43 CP (Revised).* An application regarding the Downingtown Regional Water Pollution Control Center in East Caln Township, Chester County, Pennsylvania. The sewage treatment plant is currently being upgraded and expanded from 4 to 7 million gallons per day (mgd), as approved by Docket No. D-84-43, CP. The project is designed to serve the Borough of Downingtown, and portions of Caln, East Caln, and Uwchlan Township through the year 2000. Treatment plant effluent will continue to be discharged to East Branch Brandywine Creek. The application involves the revision of the discharge limits, the project owner, the deletion of a proposed final setting tank and various minor details.

4. *Town of Fallsburg—Loch Sheldrake Sewage Treatment Plant (STP) D-85-74 CP.* The Town of Fallsburg—Loch Sheldrake STP is being expanded from 0.274 mgd to a 0.700 mgd facility. The treatment scheme will employ the use of rotating biological discs. The SPDES permit requires disinfection from May 15 through October 15 only. The treatment plant will serve the Town of Fallsburg's expanded Loch Sheldrake Sewer District only and will discharge into Evens Lake in the Neversink River watershed at River Mile 253.64-27.3-9.4 in the Town of Fallsburg, Sullivan County, New York.

5. *Town of Fallsburg—South Fallsburg STP D-85-76 CP.* The existing Town of Fallsburg—South Fallsburg STP is being expanded from 1.5 mgd to a 2.77 mgd facility. The treatment scheme will employ the use of trickling filters and rotating biological discs. The SPDES permit requires disinfection from May 15 through October 15 only. The South Fallsburg Sewer District is being expanded to include flow from the Woodbourne Correctional Institute. The new treatment plant will discharge to the Neversink River at River Mile 253.64-32.5 in the Town of Fallsburg, Sullivan County, New York.

6. *BF Oil, Inc. D-86-41.* An application to modify and expand the applicant's Marcus Hook Refinery Wastewater Treatment Plant in the Borough of Trainer, Delaware County, Pennsylvania. The existing industrial waste treatment plant provides secondary level treatment for a design average flow of 2.88 mgd. The proposed plant will be designed to handle 4.3 mgd. The sanitary wastes from the estimated 600 employees is conveyed to the Delcora sewerage system. The treated process wastewater will continue to be discharged to Marcus Hook Creek through outfall 201 at River Mile 79.86-0.5 in Water Quality Zone 4. The proposed plant is designed to serve the applicant through the year 2006.

7. *Dover Air Force Base D-86-67 CP.* An application for approval of a ground water withdrawal project to supply up to 10.8 mg/30 days of water to the applicant's distribution system from new Well E, and to limit the withdrawal from all wells to 65 mg/30 days. The project is located near Lebanon, Kent County, Delaware.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact David B. Everett concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

November 10, 1986.

Susan M. Weisman,

Secretary.

[FR Doc. 86-25810 Filed 11-14-86; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection

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requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before December 17, 1986.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426–7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) agency form number (if any); (4) frequency of collection; (5) the affected public; (6) reporting burden; and/or (7) recordkeeping burden; and (8) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: November 12, 1986.

Carlos U. Rice,

Acting Director, Information Technology Services.

Office of Postsecondary Education

Type of Review: Revision
Title: Application for the Comprehensive Program Final Year Dissemination Competition Under the Fund for the Improvement of Postsecondary Education
Agency Form Number: ED 0003
Frequency: Annually
Affected Public: State or local governments; Non-profit institutions; Small businesses or organizations
Reporting Burden:
  Responses: 27
  Burden Hours: 216
Recordkeeping Burden:
  Recordkeepers: 27
  Burden Hours: 216.

Abstract: This is a grant competition for competitive awards with a limited eligibility requirement. Only current grantees under the Comprehensive Program in their final year of funding or a recipient of a single year grant may apply for assistance within one year following the termination of the project. The purpose of the awards is to disseminate project results.

Office of Educational Research and Improvement

Type of Review: New
Title: Schools and Staffing Surveys
Agency Form Number: G50–25P
Frequency: On occassion
Affected Public: Individuals or households; State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations
Reporting Burden:
  Responses: 3975
  Burden Hours: 2838
Recordkeeping Burden:
  Recordkeepers: 0
  Burden Hours: 0.

Abstract: The purpose of this survey is to provide national and state estimates of teacher demand and shortage, school conditions and staffing, teacher quailfications, and administrator background. These data will be useful to policy makers at national, state, and local levels.

[FR Doc. 86–25896 Filed 11–14–86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 86–26–NG]

Northwest Marketing Co.; Order Approving Blanket Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order approving blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting blanket authorization to Northwest Marketing Company (Northwest Marketing) to import Canadian natural gas on a short-term basis. The order issued in ERA Docket No. 86–26–NG authorizes Northwest Marketing to import up to 150 MMcf of Canadian natural gas per day for a two-year term beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 7, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–25914 Filed 11–14–86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA–C&E–87–01; OFP Case No. 64012–9295–26–24]

Acceptance of Petition for Exemption and Availability of Certification by Klondike Equity Enterprises, Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance.

SUMMARY: On October 3, 1986, Klondike Equity Eterprises, Inc. (KEE), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for a proposed electric powerplant to be located at its Klondike IV facility in Palm Springs, California, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary enegy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 292209, July 6, 1982), and are found at 10 CFR 503.37.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the Federal Register.

DATES: Written comments are due on or before January 2, 1987. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA-C&E-87-01 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Steven Mintz, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, S.W., Room GA-076, Washington, DC 20585, Telephone (202) 252-9506

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252-6947

SUPPLEMENTARY INFORMATION: KEE proposes to construct and operate a cogeneration facility in Palm Springs California, which will (1) generate electrical power for sale to Southern California Edison Company and (2) produce steam to meet the requirements of the adjoining recreational complex. The system will consist of a gas turbine, a heat recovery steam generator, a steam turbine generator, an absorption refrigeration package, and ancillary equipment

The cogeneration facility is classified as an electric powerplant under FUA because more than 50 percent of its net annual electric generation will be sold.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions to Title II of FUA. In accordance with the requirements of §503.37(a)(1), KEE has certified to ERA that:

1. The gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(b);

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

On February 23, 1982, DOE published in the Federal Register (47 FR 7676) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of a cogeneration FUA permanent exemption is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly effect the quality of the human environment. KEE has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

DOE's Office of Environment, in consultation with the Office of General Counsel, will review the completed environmental checklist submitted by KEE pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on KEE's petition that the grant or denial of the exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

The acceptance of the petition by ERA does not constitute a determination that KEE is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on November 6, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-25913 Filed 11-14-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER87-53-000 et al.]

Alabama Power Co. et al.; Electric Rate and Corporate Regulation Filings

November 7, 1986.

Take notice that the following filings have been made with the Commission.

1. Alabama Power Co.

[Docket No. ER87-53-000]

Take notice that on October 29, 1986, Alabama Power Company filed Twenty-Third Revised Sheet No. 37 to its FERC Electric Tariff, Original Volume No. 1. The purpose of this filing is to give notice that effective November 18, 1986, electric service to Black Warrior Electric Membership Corporation's new Melvin 44 kV delivery point will be established.

Copies of the filing were served upon Black Warrior Electric Membership Corporation.

Comment date: November 20, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Central Maine Power Co.

[Docket No. ER87-56-000]

Take notice that Central Maine Power Company (CMP), on October 29, 1986, tendered for filing proposed changes in its F.E.R.C. Electric Tariff, 8th Revised Volume No. 1, Wholesale Electric Rate for Other Utilities. Under the rate increase effective January 1, 1987, CMP would be permitted to increase its wholesale base rate by $325,000 for the twelve-month period ended June 30, 1985; effective October 1, 1987, CMP would be permitted to further revise its wholesale base rate by an additional $324,000 for the twelve-month period ended June 30, 1985.

The proposed tariff implements a Stipulation and Contracts between CMP and its wholesale customers, Kennebunk Light and Power District, Inhabitants of the Town of Madison (Madison Electric Works), and Fox Islands Electric Cooperative, Inc. Copies of the filing have been served on CMP's

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above-named wholesale customers, and on the Maine Public Utilities Commission.

Comment date: November 20, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Consumers Power Co.

[Docket No. ER87-54-000]

Take notice that Consumers Power Company ("Consumers") on October 29, 1986, tendered for filing Consumers' August 20, 1986 Letter Agreement Modifying Grand Traverse Interconnection Facilities Agreement Between Consumers Power Company, Wolverine Power Supply Cooperative, Inc. and the City of Traverse City.

This letter agreement waives a requirement in the Facilities Agreement between Consumers Power Company, Wolverine Power Supply Cooperative, Inc. and the City of Traverse City dated September 1, 1981. That requirement was that a 138 kV circuit breaker replace a motor-operated disconnect switch when 138 kV additions were made to the Grand Traverse Substation. An additional 138/69 kV transformer will soon be installed, but that addition will not require the installation of a 138 kV circuit breaker at the Grand Traverse Substation. The agreement being filed has no impact on rates being charged under the Facilities Agreement.

Consumers states that copies of the filing were served on Wolverine Power Supply Cooperative, Inc., on the City of Traverse City, Michigan and on the Michigan Public Service Commission.

Comment date: November 20, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Duke Power Co.

[Docket No. ER87-38-000]

Take notice that Duke Power Company (Duke Power) tendered for filing on October 27, 1986, a supplement to the Company's Electric Power Contract with the Commissioners of Public Works of the City of Greenwood. Duke Power states that this contract is on file with the Commission and has been designated Duke Power Company Rate Schedule FERC No. 250.

Duke Power further states that the Company's contract supplement, made at the request of the customer and with agreement obtained from the customer, provides for the following additional delivery: Delivery Point No. 5 with a contracted demand of 7,000 kW.

Duke Power indicates that this supplement also includes an estimate of sales and revenue for twelve months immediately succeeding the effective date. Duke Power proposes an effective date of July 21, 1986.

According to Duke Power, copies of this filing were mailed to the Commissioners of Public Works of the City of Greenwood and The South Carolina Public Service Commission.

Comment date: November 20, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Montaup Electric Co.

[Docket No. ER87-58-000]

Take notice that on October 30, 1986, Montaup Electric Company tendered for filing its Purchased Capacity Adjustment Clause (PCAC) rate for the adjustment period, calendar-year 1987. The PCAC was established in FERC Docket No. ER85-106-002. Montaup Electric Company states that it has mailed copies of the rate filing to its wholesale customers, the Attorney General of Massachusetts, the Massachusetts Department of Public Utilities, the Attorney General of Rhode Island and the Rhode Island Division of Public Utilities and Carriers.

Comment date: November 20, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. San Diego Gas & Electric Co.

[Docket No. ER87-59-000]

Take notice that on October 30, 1986, San Diego Gas & Electric Company (SDG&E) tendered for filing the Interchange Agreement between SDG&E and Deseret Generation & Transmission Co-operative (Deseret).

The agreement provides for the terms and conditions of interchange between the two parties.

SDG&E requests Waiver of the Commission's prior notice requirements and an effective date of November 1, 1986, for this agreement.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Deseret.

Comment date: November 20, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. Southern Company Services, Inc.

[Docket No. ER87-61-000]

Take notice that on October 31, 1986, Southern Company Service, Inc. on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company ("Southern Companies"), tendered for filing a rate schedule change to Service Schedule E to an interchange contract between Southern Companies and the City of Tallahassee, Florida. The rate schedule change provides for a decrease (from 16% to 15%) in the return on common equity component of the formulary rate incorporated in the interchange contract.

Comment date: November 20, 1986, in accordance with Standard Paragraph E at the end of this notice.

8. The Washington Water Power Co.

[Docket No. ER87-57-000]

Take notice that The Washington Water Power Company ("Washington") on October 30, 1986, tendered for filing, as an initial rate schedule, the Settlement Exchange Agreement between the United States of America, Department of Energy, acting by and through the Bonneville Power Administration ("Bonneville") and The Washington Water Power Company, executed September 17, 1985.

The Agreement provides for the exchange of power and energy which is expected to commence on January 1, 1987.

Washington requests an effective date of January 1, 1987, the date service is expected to commence under the Agreement.

A copy of the filing was mailed to Bonneville.

Comment date: November 20, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-25872 Filed 11-14-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Crude Oil Overcharges; Proposed Supplemental Order

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Proposed supplemental order.

SUMMARY: This determination tentatively establishes procedures to permit claimants who allege injury as a result of certain crude oil overcharges to file refund applications. The funds referred to in this determination were remitted to the DOE, in order to settle alleged crude oil pricing violations, by Brownlie, Wallace, Armstrong and Bander, Inc., Cordele Operating Company, H.H. Gungoll & Associates, and Juniper Petroleum Corporation.

DATES: Comments must be filed in duplicate within 30 days of publication of this notice in the **Federal Register**.

ADDRESS: Comments should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All comments should display a reference to Case Nos. KFX-0127 through KFX-0130.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-2383.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the issuance of the Proposed Supplemental Order set out below. The Proposed Supplemental Order sets forth the procedures that the DOE has tentatively formulated to distribute monies obtained from Brownlie, Wallace, Armstrong and Bander, Inc., Cordele Operating Company, H.H Gungoll & Associates, and Juniper Petroleum Corporation. These firms remittted monies to the DOE to settle possible pricing violations with respect to their sales of crude oil. The firms' payments are being held in an interest-bearing escrow account pending distribution by the DOE.

These funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986). Under the Modified Policy, crude oil overcharge monies are divided among the states, the federal government, and eligible purchasers of crude oil and refined products.

Eighty percent of the funds remitted to the DOE in these four cases has already been disbursed to the states and federal government pursuant to an August 4, 1986 Order of the OHA. At this time we propose procedures to permit claimants who allege injury as a result of crude oil overcharges to file refund applications for the remaining 20 percent portion of the funds. Under the plan we are proposing, purchasers of petroleum products must file an application for refund to be considered for the crude oil monies involved in these cases. Refunds to eligible purchasers would be based on the number of gallons of refined products which they purchased and the extent to which they can demonstrate injury.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1:00 p.m. and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: November 7, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Supplemental Order

November 17, 1986.

Names of Cases: Brownlie, Wallace, Armstrong and Bander, Inc., Cordele Operating Company, H.H. Gungoll & Associates, Juniper Petroleum Corporation.

Dates of Filing: October 29, 1986.

Case Numbers: KFX-0127, KFX-0128, KFX-0129, and KFX-0130.

On January 21, 1986, the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) issued two Decisions and Orders concerning distribution of alleged crude oil overcharge funds remited to the DOE by Brownlie, Wallace, Armstrong and Bander, Inc. (Brownlie), Cordele Operating Company (Cordele), H.H. Gungoll & Associates (Gungoll), and Juniper Petroleum Corporation (Juniper). *Brownlie, Wallace, Armstrong and Bander, Inc.*, 13 DOE ¶ 85,382 (1986); *Juniper Petroleum Corp.*, 13 DOE ¶ 85,383 (1986). The OHA concluded that the funds in those cases, totalling approximately $2,480,000, should be distributed in accordance with the then-current Department policy concerning crude oil overcharges. Since the policy in effect at that time did not authorize the submission of refund claims, the *Brownlie* and *Juniper* Decisions did not establish claims procedures for the funds involved. However, the Department's restitutionary policy for crude oil overcharges was modified six months after we issued those Decisions. Therefore, we are issuing this Proposed Supplemental Order to establish tentative claims procedures that comply with the modified policy for the Brownlie, Cordele, Gungoll and Juniper crude oil monies.

On July 28, 1986, as a result of a Settlement Agreement approved by the United States District Court for the District of Kansas in *The Department of Energy Stripper Well Litigation*, the DOE modified its policy of restitution concerning crude oil overcharges. 51 FR 27899 (August 4, 1986) (the Modified Policy). Under the Modified Policy, crude oil overcharge monies are divided among the states, the federal government, and eligible purchasers of crude oil and refined products. On August 8, 1986, the OHA announced its intention to follow the Modified Policy. *Notice of Order Implementing Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges*, 51 FR 29689 (August 20, 1986).[1]

On August 4, 1986, pursuant to Paragraph IV.B.7 of the Settlement Agreement, the OHA ordered disbursed to the state and Federal governments over $104 million of alleged crude oil overcharges remitted to the DOE and maintained in the DOE Deposit Fund Escrow Account. *Stripper Well Exemption Litigation*, 14 DOE ¶ 85,382 (1986). Eighty percent of the net equity from 63 subaccounts, including those accounts established with the funds remitted by Brownlie, Cordele, Gungoll and Juniper, was disbursed in this manner. Fifty-one million dollars was disbursed to State governments, and $53 million was deposited in the account of the federal government.

Refund Procedures

Under the Modified Policy, claimants who allege injury as a result of crude oil overcharges may file claims. The OHA may reserve up to 20 percent of crude oil overcharge funds to satisfy successful claims. *Mountain Fuel Supply Company*, 14 DOE ¶ 85,475 (1986) (Mountain Fuel). In these cases, we have concluded that the full 20 percent should be reserved initially in order to ensure that sufficient funds will be available for refunds to injured persons. The amount of the reserve may be adjusted later if circumstances warrant such action. The 80 percent portion of the crude oil funds which is not initially reserved for direct restitution, as well as any portion of the

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[1] The OHA is evaluating comments to that notice.

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reserve which is not distributed, will be divided between the States and the Federal government for indirect restitutionary purposes. Since 80 percent of the funds involved in these four cases has already been distributed to the state and federal governments in the August 4, 1986 *Stripper Well Exemption Litigation* decision, we need only establish procedures to permit injured claimants to file refund applications for portions of the funds reserved.

In order to receive a refund from the crude oil funds involved in this Decision, we propose that a claimant will be required to file an application for refund. The application should contain: (1) The name or names of the applicant's business and a short description of the applicant's use of petroleum products; (2) a statement identifying the petroleum products which the applicant purshased during the period of crude oil price controls (August 19, 1973 through January 27, 1981), the number of gallons of each product purchased, and the total number of gallons on which the applicant bases its claim; (3) a description of the method by which the applicant determined its purchase volumes, and a description of its method of estimation if the applicant used estimates to determine its purchase volumes; (4) a showing that the applicant was injured by the alleged overcharges; and (5) a statement that neither the applicant, its parents, subsidiaries, affiliates, successors nor assigns has waived any right it may have to receive a refund in this case.[2]

The OHA will evaluate applications for refund from purchasers of refined petroleum products using methods similar to those which the OHA has used to evaluate claims based on refined product overcharges pursuant to 10 CFR Part 205, Subpart V. *Mountain Fuel,* 14 DOE at 88,869. As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured by the alleged overcharges (i.e., that they did not pass the overcharges on to their own customers). *Id.* However, end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to be injured. *Greater Richmond Transit Company,* 15 DOE ¶ ________, No. RF272–1 (October 10, 1986). The standards for showing injury which the OHA has developed in analyzing and deciding non-crude oil claims will also apply to claims based on crude oil overcharges. *See, e.g., Dorchester Gas Corp.,* 14 DOE ¶ 85,240 (1986).

Refunds will be calculated on the basis of a per gallon refund amount derived by dividing the crude oil overcharge monies received in these four cases ($2,480,856.90) by the total U.S. consumption of petroleum products during the period of price control.[3] *Id.* at 88,867–68. The volumetric refund amount in each of these four proceedings is set out in the footnote.[4] The total refund amount is $.0000012275 per gallon. Successful applicants will also receive their proportion of accrued interest.

Before taking the action we have proposed in this Decision, we intend to publicize our proposal and solicit comments on it. Comments regarding the tentative distribution process set forth in this Proposed Decision should be filed with the OHA within 30 days of publication in the **Federal Register**.

It Is Therefore Ordered That: The crude oil refund amount remitted to the Department of Energy by the following companies will be distributed in accordance with the foregoing Decision: Brownlie, Wallace, Armstrong and Bander, Inc., pursuant to a consent order finalized on August 28, 1984; Cordele Operating Company, pursuant to a consent order finalized on May 31, 1984; H.H. Gungoll & Associates, pursuant to a Remedial Order issued on April 5, 1984; and Juniper Petroleum Corporation, pursuant to a July 17, 1984 Order of the United States District Court for the District of Delaware.

[FR Doc. 86–25817 Filed 11–14–86; 8:45 am]

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[2] Pursuant to the Settlement Agreement, escrow funds were established for refiners, resellers, retailers, agricultural cooperatives, airlines, privately owned utilities, surface transporters, and rail and water transporters. Firms which claim refunds for crude oil overcharges from those escrow funds waive their rights to receive funds from Subpart V cases based on alleged crude oil overcharges.

[3] It is estimated that 2,020,997,335,000 gallons of petroleum products were consumed in the United States during the period August 1973 through January 1981. *Mountain Fuel,* 14 DOE at 88,868 n.4 (1986).

[4] Name of firm	Principal amount remitted to DOE	Volumetric refund
Brownlie, Wallace, Armstrong & Bander, Inc.	$468,750.00	.0000002319
Cordele Operating Company	1,300,000.00	.0000006432
H.H. Gungoll & Associates	143,980.00	.0000000712
Juniper Petroleum Corp.	568,126.09	.0000002811

Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $180,000 (plus accrued interest) obtained from MAPCO, Inc., Case No. HEF–0577. The OHA has determined that the funds will be distributed in accordance with the DOE's Statement of Modified Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Applications for refund must be filed by October 1, 1987 and should be addressed to: Subpart V Crude Oil Refunds, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All applications should be printed or typed.

FOR FURTHER INFORMATION CONTACT: Thomas Wieker, Deputy Director or Irene Bleiweiss, Attorney, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–2390 (Wieker) or (202) 252–2400 (Bleiweiss).

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy (DOE), notice is hereby given to the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute monies obtained from MAPCO, Inc. (MAPCO). MAPCO remitted monies to the DOE to settle possible pricing violations with respect to its sales of crude oil. The firm's payment is being held in an interest-bearing escrow account pending distribution by the DOE.

The DOE has decided that distribution of the monies received from MAPCO will be governed by the DOE's Statement of Modified Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986). That policy states that crude oil overcharge monies will be divided among the states, the federal government, and eligible purchasers of refined products.

Refunds to the states will be distributed in proportion to each state's consumption of petroleum products. Refunds to eligible purchasers will be based on the number of gallons of crude oil or refined products which they purchased and the extent to which they can demonstrate injury.

Applications for refund must be filed by October 1, 1987 and should be sent to the address set forth at the beginning of this notice. The information which claimants should include in their application is explained in Section III of the Decision and Order.

Dated: November 7, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

November 7, 1986.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Case MAPCO, Inc.
Date of Filing: April 3, 1985
Case Number: HEF-0577.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. *See* CFR Part 205, Subpart V. Such procedures enable the DOE to refund monies to those injured by alleged violations of the DOE pricing regulations. On April 3, 1985, the ERA requested that the OHA formulate such procedures to distribute $180,000 which the DOE received pursuant to a settlement with MAPCO, Inc. (MAPCO).

This Decision establishes the procedures by which the OHA will distribute the MAPCO settlement fund. The requirements which an applicant must meet in order to be eligible for a refund appear in Section IIII of this Decision.

I. Background

During the period crude oil price controls, MAPCO was the operator of two crude oil producing properties located in Oklahoma.[1] Therefore, MAPCO was a "producer" of domestic crude oil and was subject to the provisions of the DOE's Mandatory Petroleum Price Regulations. The ERA conducted an audit of MAPCO's activities and determined that MAPCO violated the regulations and overcharged its customers by improperly classifying crude oil as "stripper well" crude oil. Therefore, on June 24, 1981, the ERA issued a Proposed Remedial Order to MAPCO requiring the firm to refund its alleged overcharges. MAPCO maintained that it did not violate the regulations, and contested the ERA's determination.

The DOE and MAPCO settled their dispute on August 1, 1984 when they entered into a Consent Order. Under the terms of the settlement, MAPCO paid $180,000 to the DOE to resolve all claims by DOE for the period September 1973 through January 27, 1981 with respect to MAPCO's pricing practices at the Sarasota 1-B #6 and Yarhola properties. MAPCO's payment is being held in an interest-bearing escrow account pending distribution.

On September 19, 1986 the OHA issued a Proposed Decision and Order (PD&O) proposing to distribute the MAPCO monies in accordance with the DOE's Statement of Modified Restitutionary Policy in Crude Oil Cases. *See* 51 FR 27899 (August 4, 1986) hereinafter "the DOE Policy"). Under the DOE Policy, crude oil overcharge monies are to be divided among the States, the federal government, and eligible purchasers of crude oil and refined petroleum products. The OHA proposed to reserve 20 percent of the MAPCO monies for direct restitution to injured purchasers of refined petroleum products. Eligible claimants would receive a refund based on a per gallon refund amount. To calculate the per gallon refund amount, we proposed to take the crude oil overcharge monies received and divide by the total U.S. Consumption of Petroleum Products during the period of crude oil price control. The OHA published the PD&O in the **Federal Register** and solicited comments to the proposed distribution procedures. 51 FR 35283 (October 2, 1986).

II. Comments to the Proposed Decision

Philip Kalodner, Esq. filed in the MAPCO proceeding as counsel for potential claimants. Basically, Mr. Kalodner supports the procedures which we proposed in the MAPCO PD&O. For example, Mr. Kalodner states that the formula the OHA proposed to use to determine a per gallon refund amount is acceptable to him. Mr. Kalodner agrees with the OHA's proposal to hold a 20 percent reserve to make direct restitution. He also supports the OHA's proposal to model MAPCO refund procedures on procedures established in refined products cases.

Mr. Kalodner's comments also make suggestions about our review of applications for refund. First, Mr. Kalodner suggests that end-users of petroleum products who apply for MAPCO crude oil monies should be presumed injured. We agree. In recent decisions we stated that end-users of petroleum products whose businesses are not related to the petroleum industry need not prove injury to receive a refund based on crude oil overcharges. *E.g. Greater Richmond Transit Co.*, 15 DOE ¶ 85,028 at 88,050 (1986) (*Greater Richmond*). Our reasoning for establishing this presumption of injury appears in those decisions.

Mr. Kalodner also comments on the possibility that the OHA may set a minimum claim amount in crude oil refund cases. If the OHA were to do so, he suggersts that the OHA recognize a claimant's possible recovery in all crude oil cases. The OHA understands that the recovery of any one firm would be quite small from a fund the size of the MAPCO settlement. However, the firm's recovery from the MAPCO fund and additional crude oil overcharge funds may be significant. The OHA has addressed this situation in its consideration of recent refund applications. *E.g. Fort Wayne Public Transportation Corp.*, 15 DOE ¶ 85,039 (1986). In such cases the OHA considered applicants for refunds smaller than the $15 minimum the OHA often sets in products cases. The OHA approved the claimants' purchase volumes but will not issue a refund check to the claimants until they are approved for additional refunds based on crude oil overcharges.

Finally, Mr. Kalodner suggests that once a claimant's purchase volumes are approved, its application should be deemed a continuing claim against all crude oil funds, without a requirement that the claimant file additonal information. At this early stage of our consideration of crude oil refund applications pursuant to Subpart V, we cannot accept Mr. Kalodner's suggestion. We do not yet know whether additional information may be necessary in order to consider a claimant for a particular fund. However, until we know whether additional information is necessary, we will notify claimants whose volumes are approved of any additional information needed in order to be considered for additional refunds.

III. Refund Procedures

After considering the comments received, we conclude that the monies received from MAPCO should be distributed in accordance with the DOE Policy.

A. Refunds to Eligible Purchasers. The DOE Policy provides that claimants who allege injury as a result of crude oil overcharges may file claims. The OHA will reserve 20 percent of the MAPCO settlement fund for direct restitution to such claimants who prove injury or who are presumed injured. The funds in this reserve will be distributed in accordance with the existing DOE refund regulations codified at 10 CFR Part 205, Subpart V. Claimants who purchased refined petroleum products will receive a refund on the basis of a per gallon refund amount. This figure will be derived by taking the crude oil overcharge monies received and dividing by the total U.S. Consumption

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[1] These properties were known as the Sarasota 1-B #6 property and the Yarhola property.

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of Petroleum Products during the period of price control. *Id.* Using this method, the refund amount in this case is $.000000089 per gallon.[2]

In order to receive a refund from the MAPCO settlement fund, a petroleum purchaser must file an application for refund. The application, which may be in the form of a letter, should contain:

(1) A heading at the top stating "Application for Refund";

(2) A short description of the applicant's business and use of petroleum products. If the applicant's business operated under more than one name the applicant should list these names;

(3) A statement identifying the petroleum products which the applicant purchased during the period of crude oil price controls (August 19, 1973 through January 27, 1981), the number of gallons of each product purchased, and the total number of gallons on which the applicant bases its claim;

(4) A description of the method by which the applicant determined its purchase volumes. If the applicant used estimates it should describe its method of estimation;

(5) A statement that neither the applicant, its parents, subsidiaries, affiliates, successors nor assigns has waived any right it may have to receive a refund in this case; [3]

(6) If the applicant is not an end-user whose business is unrelated to the petroleum industry, a showing that the applicant was injured by the alleged overcharges (i.e., that they did not pass the overcharges on to their own customers). The standards for showing injury which the OHA has developed in analyzing and deciding non-crude oil claims will also apply to claims based on crude oil overcharges. *See, e.g., Dorcester Gas Corp.*, 14 DOE ¶85,240 (1986). End-users of petroleum products whose businesses and unrelated to the petroleum industry will be presumed to be injured. *Greater Richmond*, 15 DOE at 88,050.

B. Refunds to the State and Federal Governments. In accordance with the DOE Policy, the 80 percent of the MAPCO settlement fund not reserved for direct restitution, as well as any portion of the 20 percent reserve which is not distributed, will be divided between the states and the federal government for indirect restitutionary purposes. Half of these funds will go to the states, in proportion to each state's consumption of petroleum products, and the other half will go to the federal government.[4] *See* "Calculation of Ratios For Distribution to States and Territories," *Final Settlement Agreement,* Exhibit H. *In Re Department of Energy Stripper Well Exemption Litigation,* M.D.L. 378, (D. Kan. 1986) (*reprinted at* 6 Fed. Energy Guidelines, ¶ 90,509 at 90,687).

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by MAPCO, Inc. pursuant to a Consent Order signed on August 1, 1986 may now be filed. Twenty percent of the funds, plus interest, shall be reserved for satisfying such claims. The dollar amount of this reserve shall be $39,653.90 plus interest from November 1, 1986 through the date of disbursement.[5]

(2) All applications must be filed no later than October 1, 1987.

(3) The remaining 80 percent of funds ($158,615.60) plus interest from November 1, 1986 through the date of disbursement shall be distributed to state and the federal governments in the manner set out in paragraphs (4) and (5) below.

(4) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall transfer $39,653.90 plus interest from November 1, 1986 through the date of disbursement into a subaccount denominated the "Crude Tracking-State" subaccount, No. 999DOE003WO.

(5) The Director of Special Accounts and Payroll shall transfer $118,961.70 plus interest from November 1, 1986 through the date of disbursement into a subaccount denominated the "Crude Tracking-Federal" subaccount, No. 999DOE002WO.

(6) This is a final order of the Department of Energy.

Dated: November 7, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86-25818 Filed 11-14-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL-3113-2]

Advisory Committee Negotiating the Hazardous Waste Injection Restrictions Rulemaking; Open Meeting

As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of an open, two-day meeting of the Advisory Committee negotiating hazardous waste injection restrictions.

The meeting will be held on Tuesday and Wednesday, December 2 and 3, 1986, at The Conservation Foundation, 1255 23rd Street, NW., First Floor Library, Washington, DC. On Tuesday, the meeting will start at 9:30 a.m. and will run until 5:00 p.m. On Wednesday, the meeting will start at 9:30 a.m. and will run until 4:00 p.m. The purpose of the meeting is to continue examining regulatory options and working on the substantive issues which the Committee has identified for resolution.

If interested in receiving more information, please contact Kathy Tyson at (202) 382-5352.

Dated: November 7, 1986.

John M. Campbell, Jr.,

Acting Assistant Administrator for Policy, Planning and Evaluation.

[FR Doc. 86-25836 Filed 11-14-86; 8:45 am]

BILLING CODE 6560-50-M

[SAB FRL-3112-9]

Science Advisory Board; Integrated Environmental Management Subcommittee; Open Meeting

Under Pub. L. 92-463, notice is hereby given of a two day meeting of the Integrated Environmental Management Subcommittee of the Science Advisory Board. The meeting will be held on December 4-5, 1986 at the U.S.

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[2] We derived this figure by dividing the monies received from MAPCO ($180,000) by an estimate of the number of gallons of petroleum products consumed in the United States during the period August 1973 through January 1981 (2,020,997,335,000). *Cf.* "Petroleum Consumption for OECD Contries," *Monthly Energy Review,* Energy Information Administration, April 1986, page 109. Successful applicants will also receive their proportion of interest accrued.

[3] Pursuant to the Settlement Agreement in *In Re Department of Energy Stripper Well Litigation,* M.D.L. 378 (D. Kan.) escrow funds were established for refiners, resellers, retailers, agricultural cooperatives, airlines, surface transporters, and rail and water transporters. Firms which claim refunds for crude oil overcharges from those escrow funds waive their rights to receive refunds from Subpart V cases based on alleged crude oil overcharges.

[4] In this case the actual distribution will reflect a ratio of 25 percent to the state governments and 75 percent to the federal government. Under the terms of the Stripper Well Settlement Agreement, the states received an advance of $200 million from funds which would otherwise have been disbursed to the DOE. In order to reimburse the DOF for this advance, the Settlement Agreement provides that for amounts which the OHA transfers to the state and federal governments in excess of $100 million, the DOE shall receive 75 percent and the states shall receive 25 percent. *Settlement Agreement,* Paragraph II.B.3.c.ii. This arrangement shall continue until the OHA has distributed $400 million under the 75/25 arrangement.

[5] On October 31, 1986 the monies in the MAPCO settlement fund, including interest accrued through that date, totaled $198,269.50.

Environmental Protection Agency, North Conference Center, Room #3, 401 M Street SW., Washington, DC 20460. The meeting will begin at 9:00 a.m. each day and will adjourn at approximately 3:00 p.m. on December 5.

The major purpose of the meeting is to provide the Subcommittee with the opportunity to further discuss the Baltimore and Santa Clara Valley integrated environmental management studies and to enable the Subcommittee to draft sections of its final report.

The meeting is open to the public. Any member of the public wishing to attend or obtain information about the meeting should notify Dr. Terry F. Yosie, Director, Science Advisory Board or Mrs. Joanna Foellmer located 401 M Street SW., Washington, DC or call (202) 382-4126 by close of business November 28, 1986.

Dated: November 7, 1986.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 86-25846 Filed 11-14-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-779-DR]

Missouri; Amendment to Notice of a Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri (FEMA-779-DR), dated October 14, 1986, and related determinations.

DATED: November 6, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC. 20472, (202) 646-3616.

Notice:

The notice of a major disaster for the State of Missouri, dated October 14, 1986, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 14, 1986:

The Counties of Bates, Benton, Cass, Clark, Henry, Johnson, Lewis, Miller, Morgan, Pettis, Ralls, St. Clair, Scotland, Shelby, Vernon, and Warren for Public Assistance.

The City of Cedar City and the Town of Mokane for Public Assistance.

The City of Hermann and Roark Township in Gasconade County for Public Assistance.

Loutre Township in Montgomery County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 86-25919 Filed 11-14-86; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217-010051-011.

Title: Mediterranean Force Majeure Agreement.

Parties:

Compania Trasatlantica Espanola
Costa Container Line
Farrell Lines, Inc.
Italia Di Navigazione, S.p.A.
Jugolinija
Lykes Bros. Steamship Co., Inc.
Sea-Land Service, Inc.
Zim Israel Navigation Co., Inc.

Synopsis: The proposed amendment would delete Med-America Express Service as a party to the agreement.

By Order of the Federal Maritime Commission.

Dated: November 12, 1986.

Joseph C. Polking,

Secretary.

[FR Doc. 86-25834 Filed 11-14-86; 8:45 am]

BILLING CODE 6730-01-M

[Foreign Trade Circular Letter No. 86-1]

Conferences and Rate Agreements Among Common Carriers by Water in the Outbound U.S. Foreign Commerce; Regarding Compensation of Ocean Freight Forwarders

November 6, 1986.

On October 22, 1986, the Tax Reform Act of 1986 was signed into law by the President. Section 1888(8) of this Act makes several significant changes to the method by which conferences or groups of two or more ocean common carriers may compensate ocean freight forwarders. Conferences must now provide their members with a right of independent action on compensation paid an ocean freight forwarder who is also a customs broker, and may not limit compensation paid to an ocean freight forwarder who is also a customs broker to less than 1.25 percent of the "the aggregate of all rates and charges applicable under the tariff assessed against the cargo."

It is our interpretation that this particular provision of the Tax Reform Act became effective upon signing. Conference agreements and tariffs should, therefore, be brought into compliance with these requirements forthwith. In the meantime, it is our opinion that the statute takes precedence over any agreement provisions which may be to the contrary.

Any necessary tariff amendment filed with the Commission should be sent to the attention of Ms. Mamie Black.

John E. Cograve,

Managing Director.

[FR Doc. 86-25833 Filed 11-14-86; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Statement of Organization, Functions, and Delegations of Authority; Family Support Administration

Pursuant to my authority under Reorganization Plan No. 1 of 1953, I hereby delegate to the Administrator of the Family Support Administration as published at 51 FR 11641, April 4, 1986, all authorities that were previously delegated to: The Commissioner of Social Security pertaining to the Office of Family Assistance and the Office of Refugee Resettlement; the Assistant Secretary for Human Development Services pertaining to the Work Incentive Program; and to the Director, Office of Community Services.

The Office of Child Support Enforcement is a separate organizational unit and the Administrator of the Family Support Administration serves as its Director, therefore all delegations from the Secretary of the Department of Health and Human Services to the Director, Office of Child Support Enforcement shall remain in effect.

As a result of statutory amendments for the Aid to Families with Dependent Children, Adult Assistance, and U.S. Repatriation Programs, the authorities contained in Sections I–XI, XIII, XIV, XXII, and XXIII published in the *Federal Register* on August 1, 1978, 43 33823–27, are replaced by the following revised authorities:

A. Aid to Families with Dependent Children (AFDC) Adult Assistance (AA) and U.S. Repatriation Programs

These revised authorities for the programs of AFDC, AA, and assistance to certain U.S. citizens returned from foreign countries (U.S. Repatriation Program) replace the authorities contained in Sections I–XI, XIII, XIV, XXII, and XXIII published in the *Federal Register* on August 1, 1978, (Vol. 43, No. 148 Doc. 78–21231).

1. Authority to apporve/disapprove State plans and State plan amendments for the AFDC program (title IV–A of the Social Security Act, as amended (the Act)), and the AA programs (Titles I, X, XIV, and XVI of the Act), under sections 2, 402, 1002, 1402, and, 1602 of the Act.

2. Authority to approve/disapprove expenditures for repair to homes of AFDC/AA recipients, under section 1119 of the Act.

3. Authority to approve/disapprove AFDC/AA grant awards to States, estimate quarterly AFDC/AA amounts payable to States, determine proper reimbursement to States for AFDC/AA administrative expenses, and allow/disallow Federal financial participation in State AFDC/AA expenditures, under sections 3,4, 403, 404, 1003, 1004, 1403, 1404, 1603, and 1604 of the Act.

4. Authority to waive compliance with State plan requirements, for the period necessary, to enable States to carry out AFDC/AA experimental, pilot, and demonstration projects under section 1115 of the Act.

5. Authority, under section 1102 of the Act, to make determinations on State appeals concerning audit questions or recommendations by the Department of Health and Human Services (HHS) Audit Agency which involve States AFDC/AA practices reviewed under titles I, IV–A, X, XIV, and XVI of the Act.

6. Authority to develop plans, make arrangements, approve/disapprove payments, determine and request repayment, as appropriate, and perform all other administrative functions, except promulgation of regulations, necessary to effectuate the program of temporary assistance to certain U.S. citizens and their dependents repatriated from foreign countries, under section 1113 of the Act.

7. Authority to approve/disapprove AFDC/AA cooperative research and demonstration projects under section 1110 of the Act, and AFDC/AA experimental, pilot, and demonstration projects under section 1115 of the Act.

8. Authority to approve/disapprove applications from States for Federal financial participation in the design of, and acquisition of equipment for, AFDC/AA automated data processing information systems, under sections 402(e), 403(a) (3) (b), and 1102 of the Act.

9. Authority to develop plans, make arrangements, approve/disapprove payments, determine and request repayment, as appropriate, and perform all other administrative functions, except promulgation of regulations, necessary to effectuate the program of hospitalization and other care, treatment, and assistance for certain U.S. nationals repatriated from foreign countries because of mental illness or insanity, under Pub. L. 86–571.

10. Authority to approve/disapprove alternate AFDC/AA quality control case review workload completion plans from States, under 45 Code of Federal Regulations (CFR) 205.40, and authority to request other data and reports from States on AFDC/AA quality control systems, under 45 CFR 205.40.

11. Authority to waive State plan requirements that certain categories of AFDC recipients must report to States on a monthly basis, under 45 CFR 233.36.

12. Authority, under 45 CFR 233.38, to waive monthly reporting and budgeting requirements so that State AFDC reporting is compatible with the monthly and budget reporting is compatible with the monthly and budget reporting requirements of section 402 of the Act and the Food Stamp Act of 1977.

13. Authority to establish a State's AFDC/AA error rate on the best available data, where the State has failed to cooperate in providing appropriate information upon which an error rate can be based, and authority to assess the States for costs incurred in establishing such error rate, under section 3(a), 403 (a)(1)(3), 1003(a), and 1603(a) of the Act.

14. Authority, under section 1116 (a) and (b) of the Act, to hold hearings and make decisions on State requests for reconsideration of disapproved State AFDC/AA plans or plan amendments, under Titles I, IV–A, X, XIV, and XVI of the act.

Conditions

(a) Authorities 1–13 may be redelegated by the Administrator of the Family Support Administration as he may deem appropriate, but authority 14 may not be further redelegated.

(b) Where all or any part of an experimental, pilot, research or demonstration project is wholly financed with Federal funds made available under section 1110 or 1115 of the Act, without any State, local, or other non-Federal financial participation, that project must be approved by the Secretary of Health and Human Services.

(c) The Administrator of the Family Support Administration retains final authority to allow/disallow Federal financial participation in State expenditures questioned by the General Accounting Office, the HHS Audit Agency, or Family Support Administration officials.

B. Low Income Home Energy Assistance Program

Authorities under the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) concerning the Low-Income Home Energy Assistance Program authorized by sections 2601–2610 of the Act. These authorities include: reviewing and approving plans submitted by States, territories and Indian tribal organizations; approving and issuing grants under approved plans, monitoring and gathering data on program operations; and performing other related administrative and operational functions in support of the above program.

Conditions

(a) This delegation excludes the authority to take final action to withhold funds from States and to act under the non-discrimination provisions of the Act.

(b) The Administrator of the Family Support Administration may redelegate these authorities to an official who reports directly to him and that official may redelegate no further than to an official who reports directly to him.

C. Work Incentive Demonstration Program

Authorities under section 445, title IV, Part C, of the Social Security Act, as amended, for the Work Incentive Demonstration Programs:

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1. Authority to approve or disapprove applications and plans submitted by States for participation in Work Incentive Demonstration Programs under section 445.

2. Authority to review expenditures and make grant awards to the States for Work Incentive Demonstration Programs.

3. Authority to perform administrative functions relating to the implementation of Work Incentive Demonstration Programs, including authority to compile and publish statistical data and to monitor, evaluate and report on program performance.

Conditions

(a) The Administrator of the Family Support Administration may redelegate these authorities as he may deem appropriate.

D. Authority to make determinations on request for waivers of disallowances based on the AFDC quality control systems pursuant to the 1979 Michel Amendments, section 201 of the Labor-HEW Appropriation Bill for Fiscal Year 1980 (H.R. 4389) as referenced in the Continuing Resolution for Fiscal Year 1980 (section 101(g) of Pub. L. 96–123).

Authorities contained in section 156 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248) amending the Social Security Act, limiting Federal financial participation in erroneous expenditures.

Conditions

(a) The Administrator of the Family Support Administration may not redelegate these authorities.

E. Authority to administer the provisions of section 402(a)(19)(G) of the Social Security Act (42 U.S.C. (a)(19)(G)), pertaining to grants to States and related services in support of the Work Incentive Program.

F. Authorities under the Omnibus Budget Reconciliation Act of 1981 to administer the provisions of sections 672–683 of the Act pertaining to the block grant, transition grant and discretionary grant programs and the authorities vested in the Director of the Office of Management and Budget (OMB) by section 682(e) of the Act and delegated to the Secretary of HHS by the Director, OMB by letter of September 5, 1981. These latter authorities relate to taking administrative actions necessary to close out programmatic activities of the Community Services Administration.

G. Authorities for the Cuban and Haitian Entrants Program under Executive Order Number 12341, January 21, 1982, sections 501 (a) and (b) of the Refugee Education Assistance Act

H. Authority under section 8 U.S.C. 1522(e)(7)(A) to develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.

These delegations do not include the authority to issue regulations or make reports to the Congress. This delegation is effective upon date of signature. In addition, I hereby affirm and ratify any actions taken by the Administrator of the Family Support Administration or other FSA officials with the Administrator's approval which, in effect, involved the exercise of these authorities prior to the effective date of this delegation.

Dated: October 29, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86–25877 Filed 11–14–86; 8:45 am]

BILLING CODE 4190-11-M

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings

The following advisory committee meetings are announced:

Anesthetic and Life Support Drugs Advisory Committee

Date, time, and place. December 1 and 2, 8:30 a.m., Wilson Hall, Bldg. 1, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, December 1, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 4 p.m.; open committee discussion, December 2, 8:30 a.m. to 1:30 p.m.; Isaac F. Roubein, Center for Drugs and Biologics (HFN–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the field of anesthesiology and surgery.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the contact person.

Open committee discussion. On December 1, the Committee will discuss: (1) Versed (Midazolam) adverse experience; (2) spinal narcotics of longer duration; (3) identification of pharmacological needs to improve the practice of anesthesia; potential interaction of anesthetics with cardiovascular drugs; (4) guidelines for clinical investigation of local anethetics; and (5) unlabeled use of drugs in pediatric anethesia. On December 2, the committee will discuss: (1) Acquired Immune Deficiency Syndrome (AIDS) and its impact on anesthesia; (2) efficacy of epidural steroids in treatment of low back pain; (3) approaches to alter gastric fluid pH and/or volume before induction of anesthesia; and (4) use of 93 percent oxygen.

Arthritis Advisory Committee

Date, time, and place. December 1 and 2, 8:30 a.m., Conference Rooms D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, December 1, 8:30 a.m. to 9:40 a.m., unless public participation does not last that long; open committee discussion, 9:40 a.m. to 5 p.m.; open committee discussion, December 2, 8:30 a.m. to 4:30 p.m.; David F. Hersey, Center for Drugs and Biologics (HFN–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in arthritis and related diseases.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the contact person.

Open committee discussion. The committee will discuss: (1) Agranulocytosis and aplastic anemia associated with nonsteroidal anti-

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flammatory drug (NSAID) therapy, (2) flank pain from NSAID's, and (3) gastrointestinal adverse drug reactions associated with NSAID therapy.

Gastrointestinal Advisory Committee

Date, time, and place. December 8 and 9, Lister Hill Auditorium, National Library of Medicine, Bldg. 38A, National Institutes of Health, 8600 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, December 8, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, December 8, 10 a.m. to 5 p.m.; open committee discussion, December 9, 9 a.m. to 12 m.; Joan C. Standaert, Center for Drugs and Biologics (HFN–110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4730.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the treatment of gastrointestinal disorders and diseases.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the contact person.

Open committee discussion. The committee will discuss: (1) New drug application (NDA) 19–487, Loperamide for over-the-counter use for diarrhea and associated cramps, McNeil Consumer Products Co., (2) NDA 19–357, Ethanolamine oleate (Ethamolin) intravenous injection for treatment of bleeding esophageal varices; and (3) NDA 19–618, 5-Amino-Salicylic Acid, Mesalamine (Rowasa), a rectal suspension for ulcerative colitis.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in the **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Room 4–62), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under sections 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: November 7, 1986.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–25816 Filed 11–14–86; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 86P–0404]

Canned Pacific Salmon Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Kelley-Clarke, Inc., to market test canned skinless and boneless chunk salmon packed in water. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

DATE: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than February 17, 1987.

FOR FURTHER INFORMATION CONTACT: Nannie H. Rainey, Center for Food Safety and Applied Nutrition (HFF–210), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202–485–0101.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Kelley-Clarke, Inc., Seattle, WA 98124.

The permit covers limited interstate marketing tests of canned skinless and boneless chunk salmon packed in water. The test product deviates from the standard of identity for canned Pacific salmon (21 CFR 161.170) in three ways: (1) The form of pack is chunk, i.e., not less than 50 percent of the fill weight of the salmon is retained on a ½-inch mesh screen; (2) the skin and backbone, i.e., vertebrae and associated bones (neural spines and ventral ribs), are removed; and (3) water, in an amount not to exceed 10 percent of the water capacity of the can, will be used as packing medium and to aid in dispersion of salt. The test product meets all requirements of 21 CFR 161.170 with the exception of these deviations. The permit provides for the temporary marketing of 15,000 cases of test product containing twenty-four 6½ ounce cans each. The test product will be distributed throughout the continental United States.

The test product is to be manufactured at the Petersburg Fisheries plant located in Petersburg, AK 99833.

Each of the ingredients used in the food is stated on the label as required by the applicable sections of 21 CFR Part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than February 17, 1987.

Dated: November 6, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-25815 Filed 11-14-86; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

National Committee on Vital and Health Statistics Subcommittee on Minority Health Statistics; Meeting

Pursuant to the Federal Advisory Act (Pub. L. 92-463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Minority Health Statistics established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, will convene on Monday and Tuesday, December 8-9, 1986 from 9:00 a.m. to 5:00 p.m. in Room 403-A of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

The Subcommittee will hear presentations from experts describing data on access to and financing of health care for minority groups from major Department of Health and Human Services data bases (e.g., National Medical Expenditure Survey, National Health Interview Survey, Medicaid, and Medicare).

Further information regarding this meeting of the Subcommittee may be obtained by contacting Nancy D. Pearce, National Center for Health Statistics, Room 2-28, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 426-7050.

Dated: November 5, 1986.

Manning Feinleib,

Director, National Center for Health Statistics.

[FR Doc. 86-25878 Filed 11-14-86; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. D-86-825; FR 2306]

Organization, Functions, and Authority Delegations; Office of the Manager, San Antonio Office, Designation; Order of Succession

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of order of succession.

SUMMARY: The Acting Manager is designating officials who may serve as Acting Manager during the absence, disability, or vacancy in the position of the Manager.

EFFECTIVE DATE: This designation is effective October 8, 1986.

FOR FURTHER INFORMATION CONTACT: Ann Hallan, Director, Management and Budget Division, Office of Administration, Fort Worth Regional Office, Department of Housing and Urban Development, 1600 Throckmorton, P.O. Box 2905, Fort Worth, Texas 76113-2905, Telephone (817) 885-5451 (this is not a toll-free number).

Designation

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence, disability, or vacancy in the position of the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided that no official is authorized to serve as Acting Manager unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability, or vacancy in the position:

1. Deputy Manager;
2. Director, Housing Development Division;
3. Chief Counsel; and
4. Director, Housing Management Division.

This designation supersedes the designation published at D-84-751, FR 1862 on May 15, 1984.

Authority: Delegation of Authority by the Secretary effective October 1, 1970: 36 FR 3389, February 23, 1971.

Sam R. Moseley,

Regional Administrator—Regional Housing Commissioner, Region VI.

[FR Doc. 86-25860 Filed 11-14-86; 8:45 am]

BILLING CODE 4210-01-M

Office of Administration

[Docket No. N-86-1649]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Action

Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Comprehensive Improvement Assistance Program (CIAP): Application Requirements
Office: Public and Indian Housing
Form Number: HUD-52821, 52823, 52824, and 52825
Frequency of Submission: On Occasion and Annually
Affected Public: State or Local Governments and Non-Profit Institutions
Estimated Burden Hours: 16,288
Status: Extension
Contact: Pris P. Buckler, HUD, (202) 755-6640; Robert Fishman, OMB, (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 5, 1986.

Proposal: Local Appeals to Single Family Mortgage Limits
Office: Housing
Form Number: None
Frequency of Submission: On Occasion
Affected Public: Businesses or Other For-Profit
Estimated Burden Hours: 480
Status: Extension
Contact: Morris Carter, HUD, (202) 426-7212; Robert Fishman, OMB, (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 5, 1986.

Proposal: Deed-in-Lieu of Foreclosure (Corporate Morgagors or Mortgagors Owning More Than One Property)
Office: Housing
Form Number: None
Frequency of Submission: On Occasion
Affected Public: Individuals or Households and Businesses or Other For-Profit
Estimated Burden Hours: 300
Status: Extension
Contact: Fred W. Pfaender, HUD, (202) 755-6672; Robert Fishman, OMB, (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 5, 1986.

Proposal: Cost Containment Policy Statement—Indian Housing Program and Comprehensive Improvement Assistance Program (CIAP)
Office: Public and Indian Housing
Form Number: None
Frequency of Submission: On Occasion
Affected Public: State or Local Governments and Non-Profit Institutions
Estimated Burden Hours: 66
Status: New
Contact: Patricia Arnaudo, HUD, (202) 755-1015; Robert Fishman, OMB, (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 5, 1986.

Proposal: Indian Preference Final Rule
Office: Public and Indian Housing
Form Number: None
Frequency of Submission: On Occasion
Affected Public: State or Local Governments, Businesses or Other For-Profit, and Small Businesses or Organizations
Estimated Burden Hours: 2,800
Status: Extension
Contact: John V. Meyers, HUD, (202) 755-1015; Robert Fishman, OMB, (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 5, 1986.

Proposal: Statement of Profit and Loss
Office: Housing
Form Number: HUD-92410
Frequency of Submission: Annually
Affected Public: Businesses or Other For-Profit
Estimated Burden Hours: 16,000
Status: Extension
Contact: Matt Andrea, HUD, (202) 755-6870; Robert Fishman, OMB, (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 5, 1986.

Proposal: Request for Release of Documents and Debit Authorization, 24 CFR Part 390
Office: Government Naitonal Mortgage Association
Form Number: HUD-11708 and 11709-A
Frequency of Submission: On Occasion
Affected Public: Business or Other For-Profit
Estimated Burden Hours: 650
Status: Extension
Contact: Patricia Gifford, HUD (202) 755-5550; Robert Fishman, OMB, (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 5, 1986.

Proposal: Weekly Opinion Poll of Mortgage Market Conditions
Office: Housing
Form Number: None
Frequency of Submission: Weekly
Affected Public: Businesses or Other For-Profit
Estimated Burden Hours: 156
Status: Extension
Contact: John Dickie, HUD (202) 755-7270; Robert Fishman, OMB, (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 5, 1986.

Donald C. Demitros,
Director, Office of Information Policies and Systems.

[FR Doc. 86-25858 Filed 11-14-86; 8:45 am]
BILLING CODE 4210-01-M

[Docket No. N-86-1651]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ACTION: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency offical familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Letter of transmittal, 24 CFR Part 390
Office: Government National Mortgage Association
Form Number: HUD-11700, 11702, 11707, and 11749
Frequency of submission: On occasion
Affected public: Business or other for-profit
Estimated burden hours: 15,230
Status: Extension
Contact:
Patricia Gifford, HUD, (202) 755-5550;
Robert Fishman, OMB, (202) 395-6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 5, 1986.

Donald C. Demitros,

Director, Office of Information Policies and Systems.

[FR Doc. 86-25859 Filed 11-14-86; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-940-87-4220-10; C-44666]

Proposed Withdrawal; Opportunity for Public Hearing; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has filed application for withdrawal of approximately 4,523 acres of National Forest System lands from location and entry under the United States mining laws only for protection of high value, irreplaceable, geologic features near Glenwood Springs, Colorado. The area proposed for withdrawal is within the boundaries of the White River National Forest. This notice segregates the land for a period of two years during which time the Forest Service will do the necessary studies to determine whether this site should be recommended to be withdrawn for 100 years. The land will continue to be open to all uses other than mining laws.

DATE: Comments or requests for hearing should be received on or before February 17, 1987.

ADDRESS: Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303-236-1768.

The Department of Agriculture proposes that the National Forest System lands identified below be withdrawn from location and entry under the United States mining laws only, subject to valid existing rights, pursuant to the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714:

Arapahoe National Forest

Sixth Principal Meridian

T. 4 S., R. 87 W.,
  Sec. 16, lots 1 thru 4;
  Sec. 17, lots 1 thru 8, S½N½, and S½;
  Sec. 18, lots 5 thru 12, E½W½, and E½;
  Sec. 19, lots 5 thru 12, E½W½, and E½;
  Sec. 20, all;
  Sec. 30, lots 5 thru 8, NE¼, and E½NW¼.
T. 4 S., R. 88 W.,
  Sec. 13, E½;
  Sec. 24, E½;
  Sec. 25, E½.

The area described aggregates approximately 4,523.29 acres in Rio Blanco County, Colorado.

Effective on date of publication, this land is segregated from operation of the United States mining laws. The land remains open to mineral leasing and to Forest Service management.

The segregative effect of this pending application will terminate 2 years from the date of this application unless final withdrawal action is taken or the application is terminated prior to that date. Notice of any action will be published in the **Federal Register**.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed withdrawal application may present their views in writing to the Colorado State Office.

Pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976, notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal. All interested persons who desire to be heard on this proposed action must submit a written request for a hearing to the Colorado State Director within 90 days from the date of this application. If it is determined that a public hearing should be held, the hearing will be scheduled and conducted in accordance with Bureau of Land Management Manual, section 2351.16B.

The Department of the Interior's regulations provide that the authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demands for the land and its resources. The authorized officer will undertake negotiations with the applicant agency to assure that the area sought is the minimum essential to meet the applicant's needs, to provide for the maximum concurrent utilization of the land for purposes other than the applicant's, and to reach an agreement on the concurrent mangement of the land and its resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the land will be withdrawn and reserved as requested by the applicant agency. The determination of the Secretary on this application will be published in the **Federal Register.**

Robert D. Dinsmore,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-25891 Filed 11-11-86; 8:45 am]

BILLING CODE 4310-JB-M

[CO-942-06-4520-12]

Colorado; Filing of Plats of Survey

November 6, 1986.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., November 6, 1986.

The plat, in two sheets, representing the dependent resurvey of a portion of the Twelfth Standard Parallel North (south boundary, T. 49 N., Rs. 7 and 8 W.), the First Guide Meridian West (west boundary), the south boundary, a portion of the east boundary, and subdivisional lines, and the survey of

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the subdivision of certain sections, T. 48 N., R. 8 W., New Mexico Principal Meridian, Colorado, Group No. 748, was accepted October 30, 1986.

The plat, in two sheets, representing the dependent resurvey of a portion of the U.S. Military Reservation (abandoned), a portion of the south and west boundaries, and a portion of the subdivisional lines, and the survey of the subdivision of certain sections, T. 48 N., R. 9 W., New Mexico Principal Meridian, Colorado, Group No. 720, was accepted October 30, 1986.

The supplemental plat showing the subdivision of original lots 2 and 3, section 4, T. 5 S., R. 95 W., Sixth Principal Meridian, Colorado, was accepted November 5, 1986.

The supplemental plat showing amended lottings created by the segregation of Mineral Survey No. 20819, Colorado, approved December 16, 1958, in sections 10, 11, and 12, T. 6 S., R. 95 W., Sixth principal Meridian, Colorado, was accepted November 5, 1986.

The supplemental plat showing a subdivision of original lot 8, section 6, T. 5 S., R. 99 W., Sixth Principal Meridian, Colorado, was accepted November 5, 1986.

The supplemental plat creating new lots and areas in the SW¼SW¼ of section 33, T. 1 S., R. 100 W., Sixth Principal Meridian, Colorado, was accepted November 5, 1986.

The supplemental plat creating new lots and areas in sections 1, 2, 3, and 4, T. 2 S., R. 100 W., Sixth Principal Meridian, Colorado, was accepted November 5, 1986.

The supplemental plats were prepared and the surveys were executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

Duane E. Olsen,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 86-25890 Filed 11-14-86; 8:45 am]

BILLING CODE 4310-JB-M

[NV-930-07-4212-11; N-18687]

Classification Termination; U.S. Highway 93, West Wendover, NV

November 4, 1986.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Classification Termination, Nevada.

SUMMARY: This notice terminates a portion of Recreation and Public Purposes classification N-18687, to allow for the relocation of a portion of U.S. Highway 93 at West Wendover, Nevada.

EFFECTIVE DATE: December 17, 1986.

FOR FURTHER INFORMATION CONTACT: Rod Harris, District Manager, Elko District Office, P.O. Box 831, Elko, Nevada 89801 (702) 738-4071.

SUPPLEMENTARY INFORMATION: Pursuant to 43 CFR 2450.6(b), the Bureau of Land Management hereby terminates in part Recreation and Public Purposes classification N-18687 as it pertains to the following described public lands:

Mount Diablo Meridian, Nevada

T. 33 N., R. 70 E.,
Sec. 15, lot 13.

The area described contains 4.13 acres in Elko County, Nevada.

In June 1978, 119.57 acres were classified for recreation and public purposes and a lease was subsequently issued to Elko County for municipal facilities and recreation use. The Nevada Department of Transportation (NDOT) proposes to reconstruct a bridge that carries U.S. Highway 93 across the railroad tracks at West Wendover, Nevada. As part of this project, the intersection of U.S. Highway 40 would be moved west to design a more perpendicular approach. As a consequence of moving the intersection, the road would cross public land under R&PP lease to Elko County. In order to accommodate the proposed NDOT project, Elko County relinquished the portion of their lease in lot 13 and said relinquishment has been accepted.

At 10:00 a.m., on December 17, 1986, the land will be open to the operation of the public land laws, subject to valid existing rights. All valid applications received prior to or at 10:00 a.m., on December 17, 1986, will be considered as simultaneously filed. All other applications received will be considered in the order of filing.

At 10:00 a.m., on December 17, 1986, the land will also be open to the operation of the mining laws.

Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. section 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

The land remains open to the mineral leasing and material sale laws.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 86-25889 Filed 11-14-86; 8:45 am]

BILLING CODE 4310-HC-M

Availability of Environmental Impact Statements for Natural Gas Pipeline Right-of-Way and Dredging Permits Between Prudhoe and Anderson Bays Near Valdez, AK

AGENCY: Bureau of Land Management, Department of the Interior and U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS) for a Grant of Right-of-Way across certain Federal lands in Alaska and for Department of Army permits under section 404 of the Clean Water Act and section 10 of the River and Harbor Act of 1899 for the discharge of dredged or fill material into waters of the United States (including adjacent wetlands) and for work (including structures placed) in navigable waters of the United States.

Notice of Amended Application

Notice of Public Scoping Meetings

SUMMARY: On May 1, 1984, the Yukon Pacific Corporation (YPC) applied for a right-of-way for the Trans-Alaska Gas System (TAGS) across Federal lands to allow construction of a 36 to 48-inch pipeline and related facilities along a route between Prudhoe Bay to Nikiski on the shores of Cook Inlet. Notice of the 1984 right-of-way application to the Bureau of Land Management (BLM) (AA-53559 and F-083941) was published in the Federal Register Vol. 49, No. 97, p. 20945-46 on May 17, 1984.

The Alaska District, U.S. Army Corps of Engineers (Corps), originally assigned the project file number 2-840222 and the waterway number Cook Inlet 319. The waterway number has recently been changed to Valdez Harbor 105 due to the revised project proposal.

The 1984 applications were deemed incomplete by the BLM and the Corps and further action suspended. Subsequently YPC revaluated its 1984 application and determined the perfected right-of-way application to BLM and the application for Department of the Army permits would be for a 36-inch natural gas pipeline and related facilities between Prudhoe Bay and Anderson Bay near Valdez. This modified routing parallels the Trans-Alaska Pipeline System (TAPS) and

authorized Alaska Natural Gas Transporation System (ANGTS) right-of-way (REVISION 4) to the vicinity of Delta Junction; thence southerly paralleling TAPS to Valdez, and; thence along the south shore of Valdez Arm approximately five miles to Anderson Bay.

The perfected application for the TAGS project to Anderson Bay will be filed with the BLM and Corps on December 5, 1986. It will not involve lands in any Conservation System Unit established under the Alaska National Interest Lands Conservation Act of 1980. Lands within the Chugach National Forest are in private, State or local governmental ownerships. The 1984 application involves lands within the Denali National Park and Preserve and should the Cook Inlet alternative be selected as the preferred route upon completion of the EIS, issuance of Federal permits would be deferred until completion of the requirments of 43 CFR Part 36.

Yukon Pacific Corporation also must file an application with Economic Regulatory Administration for authorization to export the liquified natural gas. The President is required to make findings under section 12 of the Alaska Natural Gas Transportation Act as part of any export decision for Alaska North Slope Natural gas.

In addition to Federal permits, the Yukon Pacific Corporation intends to file a right-of-way application with the State of Alaska to cross certain State ownerships.

Purpose

In accordance with section 102(2)(c) of the National Environmental Policy Act, the BLM and Corps have identified the need to prepare an Environmental Impact Statement.

In accordance with 40 CFR 1501.5 BLM and the Corps will assume co-lead with BLM acting as the Federal focal point.

In accordance with 40 CFR 1506.2 the State of Alaska, the BLM and the Corps are preparing a coordinated public involvement and decision process to reduce to the fullest extent possible duplication of effort.

In accordance with 40 CFR 1501.7 public scoping meetings have been scheduled at the following locations:

Barrow, Alaska—Assembly Room, North Slope Borough Administration Building, December 8, 1986. Public workshop 2:30–5 PM AST; Public Scoping meeting 7–11 PM AST.

Fairbanks, Alaska—Assembly Chambers, North Star Borough Administration Building, December 9, 1986. Public workshop 2:30–5 PM AST; Public Scoping meeting 7–11 PM AST.

Glenallen, Alaska—Glenallen High School Gym December 10, 1986. Public workshop 2:30–5 PM AST; Public Scoping meeting 7–11 PM AST.

Valdez, Alaska—City Council Chambers, Valdez City Hall December 11, 1986. Public workshop 2:30–5 PM AST; Public Scoping meeting 7–11 PM AST.

Soldotna, Alaska—Assembly Room—Peninsula Borough Administration Offices, December 12, 1986. Public workshop 2:30–5 PM AST; Public Scoping meeting 7–11 PM AST.

Anchorage, Alaska—BLM Anchorage District Office, December 13, 1986, Public workshop 2:30–5 PM AST; Public Scoping Meeting 7–11 PM AST.

All interested parties are invited to participate in the scoping process which will:

1. Ascertain the scope and significant issues to be analyzed in depth in the EIS.

2. Eliminate insignificant issues, concerns and opportunities or those that have been covered by prior environmental review.

3. Identify significant issues, concerns and opportunities to be addressed in depth prior to the Department of the Interior grant of right-of-way or Department of the Army Permits or at specified future Federal authorization points preceding construction and operation of the TAGS project.

Specific issues may involve the following questions:

What actions are necessary to avoid adverse impacts to local communities?

What lands and actions are necessary to protect the TAPS?

What lands and actions are necessary to protect the approved ANGTS right-of-way (Revision 4)?

To what extent are environmental solutions approved for ANGTS applicable to the proposed TAGS project?

To the extent ANGTS and TAGS are similar projects crossing similar areas of Alaska; What aspects of the environmental stipulations contained in the Grant of Right-of-Way F–24538 dated December 1, 1980 from the Department of the Interior for ANGTS, are applicable to the proposed TAGS project?

What actions are necessary to protect subsistence resources?

What actions are necessary to protect fish and wildlife?

What actions are necessary to minimize impacts to wetlands, water bodies, streams, and the marine environment?

What actions are necessary to complete authorizations to construct and operate the TAGS project and the timing of such actions?

What National scale social and economic impacts need to be considered?

In accordance with 40 CFR 1501.6 the following agencies have been requested to participate in the EIS process by BLM and the Corps:

State of Alaska

Department of the Interior

National Park Service
Fish and Wildlife Service
Bureau of Indian Affairs
Bureau of Mines
Minerals Management Service
Geological Survey

Office of the Federal Inspector

Environmental Protection Agency

Department of Agriculture

Forest Service

Department of Transportation

Coast Guard
Federal Highway Administration
Office of Pipeline Safety

Department of Commerce

National Marine Fisheries Service

Department of Energy

Economic Regulatory Administration

The EIS will be prepared under third party contract by Harding Lawson Associates. A draft EIS is expected to be available for public review and comment in the spring of 1987 with the Final EIS completed in the late summer of 1987.

Responsible official is Jules V. Tileston, BLM Program Officer—TAGS located in the BLM Alaska State Office, Anchorage, Alaska.

Written comments and suggestions should be sent to Jules V. Tileston, BLM Program Officer—TAGS, Bureau of Land Management, Alaska State Office, 701 C Street, Box 30, Anchorage, Alaska 99513, phone (907) 271–4440. Written scoping comments must be received not later than December 23, 1986.

Questions about the proposed actions and EIS related to Department of Army permits also may be addressed to: Mr. William M. Fowler, Project Manager, Alaska District, U.S. Army Corps of Engineers, P.O. Box 898, Anchorage, Alaska 99506–0898, Telephone number: (907) 753–2712.

In accordance with 6 AAC 50, the State of Alaska will be requesting preliminary communication on compliance of portions of the proposed

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TAGS project with the Alaska Coastal Zone Management Act. Also information developed during the BLM EIS process will be used by the State when YPC applies for the right-of-way lease over State land. Questions about State actions may be addressed to: Mr. Rod Swope, State of Alaska, Office of the Governor, Office of Management and Budget, P.O. Box AW, Juneau, Alaska 99811-0165, Telephone number: (907) 465-3562.

The TAGS applications are available for public inspection after December 5, 1986 at the following locations:

Bureau of Land Management, Alaska State Office, Public Room, Federal Office Building, Anchorage, Alaska
Bureau of Land Management, Anchorage, Branch of Field and Office Services, 6881 Abbott Loop, Anchorage, Alaska
Bureau of Land Management, Fairbanks Support Center, 1541 Gaffney Road, Fairbanks, Alaska
U.S. Army Corps of Engineer, Alaska District, Regulatory Branch, P.O. Box 898, Anchorage, Alaska

Dated: November 6, 1986.

Fred Wolf,

Acting State Director.

[FR Doc. 86-25793 Filed 11-14-86; 8:45 am]

BILLING CODE 4310-GA-M

Minerals Management Service

Development Operations Coordination; Huffco Petroleum Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Huffco Petroleum Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4750, Block 95, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide the development and production of hydrocarbons with support activities to be conducted from an offshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on November 6, 1986. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1420 South Clearview Pkwy., Room 114, New Orleans, Louisiana (Office Hours; 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans. Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit, Phone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 10, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-25849 Filed 11-14-86; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Intent To Negotiate Concession Contract; Olympic National Park, WA

Pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice the Department of the Interior, through the Director of the National Park Service proposes to negotiate a concession contract for the continued operation of a general store for the public at Olympic National Park in the state of Washington. The contract will be for a period of five (5) years from January 1, 1987, through December 31, 1991, and is conditioned upon completion of an improvement program.

This contract action has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The existing concessioner, Elizabeth Ketchum, has performed her obligations to the satisfaction of the Secretary under a current permit. Therefore, pursuant to the Act of October 9, 1965, as cited above, the existing concessioner is entitled to be given a preference in the negotiation of a new contract as defined in 36 CFR 51.5.

For a copy of the Statement of Requirements describing the opportunity offered and including the application requirements, interested parties should write to the Superintendent, Olympic National Park, 600 East Park Avenue, Port Angeles, Washington 98362 or call Mr. A. Durand Jones, Assistant Superintendent, 206-452-4501.

The Secretary will consider and evaluate all proposals timely received. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: November 3, 1986.

William J. Briggle,

Acting Regional Director, Pacific Northwest Region.

[FR Doc. 86-25796 Filed 11-14-86; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Reclamation

Intent To Prepare A Draft Environmental Impact Statement; American River Division of the Central Valley Project

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a draft environmental impact statement (EIS) for marketing water in the American River Division of the Central Valley Project.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the

Department of the Interior proposes to prepare an Environmental Impact Statement (EIS) for marketing water in the American River division of the Central Valley Project. The Environmental Impact Statement will identify the site specific and cumulative impacts of marketing additional water for agricultural and municipal and industrial purposes (M&I) in the service area. Sacramento County, San Juan Suburban Water District, and the City of Folsom have identified needs of approximately 290,000 to 360,000 acre-feet per year to the year 2020. Placer County Water Agency has requested consideration for a change in point of diversion to Folsom for a portion of their 237,000 acre-feet under their contract. A major objective of the EIS will be to identify the actual amount of water needed to meet agricultural and M&L demands, and fish and wildlife and recreation needs on the Lower American River.

Two workshops have been scheduled to solicit information from interested public entities and persons in determining the scope of the EIS and the significant issues related to the alternatives identified.

DATES: The workshops will be held on December 10, 1986, at 7:00 p.m. in Sacramento, California, and December 11, 1986, at 7:00 p.m. in Folsom, California.

ADDRESSES: The workshops will be held at:

Beverly Garland Hotel, Point West Ballroom, 1780 Tribute Road, Sacramento, California
Folsom High School, 715 Riley Street, Folsom, California

FOR FURTHER INFORMATION CONTACT: Mr. William Payne, Environmental Specialist, Mid-Pacific Region (MP-750), 2800 Cottage Way, Sacramento, California 95825, telephone (916) 978-5488.

SUPPLEMENTARY INFORMATION: The water marketing EIS will include the grographic area currently served or proposed to be served by the American River and Folsom South Canal. The area under consideration lies between Folsom Lake and the confluence of the American and Sacramento Rivers. Portions of Placer and Sacramento Counties, California, would be included in the study.

Primary impacts which will be evaluated in the EIS include potential effects on water quality, fish and wildlife, floodplains and wetlands, endangered species, recreation, and socio-economic.

A full range of alternatives will be analyzed in the EIS, including:

1. Servicing municipal, industrial, and agricultural needs as well as protecting fishery, wildlife, and recreational resources. Representative combinations of these principal needs would be analyzed based on alternatives which are identified during the scoping process.

2. Taking no action to increase the quantity of water under Federal contract.

The Bureau's proposed action for marketing water in the American River service area will be identified based on the results of the impact assessment and mitigation planning. The objective of this action will be to define the amount of water that could be marketed while protecting environmental resource values.

Dated: October 7, 1986.

C. Dale Duvall,

Commissioner.

[FR Doc. 86-25795 Filed 11-14-86; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30928]

CSX Transportation, Inc.; Trackage Rights—Baltimore & Ohio Chicago Terminal Railroad Co.; Exemption

The Baltimore and Ohio Chicago Terminal Railroad Company (B&OCT) has agreed to grant local trackage rights to CSX Transportation, Inc. (CSX) between Blue Island Junction and 71st Street in Bedford Park, IL, a distance of approximately 10.6 miles. The trackage rights will be effective on November 2, 1986.

This notice is filed under 49 CFR 1180.2(d)(3) and (7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354, I.C.C. 605 (1979), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: November 5, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86-25821 Filed 11-14-86; 8:45 am]

BILLING CODE 7035-01-M

Release of Waybill Data For Use in Agricultural Transportation Research Projects

The Commission has received a request from the Upper Great Plains Transportation Institute (Institute), North Dakota State University, for permission to use certain data from the Commission's 1985 Waybill Sample for various agricultural transportation research projects. One project would examine the differences in commodity flow patterns and rates to Pacific ports from wheat producing regions of North Dakota, Kansas, and Nebraska. A second project would involve a regional commodity flow analysis of the Upper Great Plains. The third project would entail both an intraregional and interregional analyses of grain traffic flows. To conduct these analyses, the Institute requests the following waybill data:

All commodities at the 5-digit STCC (Standard Transportation Commodity Code) level.
Number of carloads per shipment.
Tons per shipment.
Short line mileage.
Revenue.
Variable Rail Form A cost.
Standard Point Location Code (SPLC).
AAR car type.
TOFC/COFC flag.
TOFC/COFC initial.
TOFC/COFC plan number.
Number of TOFC/COFC.
Hazardous materials code.
Origin railroad.
Termination railroad.
Bridge railroads.
Bridge points.
Waybill date.
Car initial.

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From this waybill information, the Commission has developed a Public Use Waybill File that has satisfied the majority of all our waybill data requests while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill date until after: (1) Public notice is provided so affected parties have an opportunity

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to object and (2) certain requirements designed to protect the data's confidentiality are agreed to by the requesting party (48 FR 40328, September 6, 1983).

Accordingly, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Transportation Analysis (OTA) within 14 calendar days of the date of this notice. They should also include all grounds for objection to the full or partial disclosure of the requested data. The Director of OTA will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

Contact: Elaine Kaiser, (202) 275–7003.

Noreta R. McGee,

Secretary.

[FR Doc. 86–25820 Filed 11–14–86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–55; Sub-189X]

CSX Transportation, Inc.; Exemption; Abandonment of Portions of Tampa Terminal in Hillsborough County, FL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by CSX Transportation, Inc., of (1) its 0.51-mile line of railroad between Milepost A–890. 95 and A–891.46 at Port Tampa, and (2) its 0.51-mile line of railroad between Milepost S–843.95 and S–844.46 adjacent to Adamo Drive, both in Tampa Terminal in Hillsborough County, FL, subject to standard employee protective conditions.

DATES: This exemption is effective on December 17, 1986. Petitions to stay must be filed by November 28, 1986, and petitions for reconsideration must be filed by December 8, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB. 55 (Sub-No. 189X):

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative:

Patricia Vail, Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202

Peter J. Schudtz, Lawrence H. Richmond, 100 N. Charles Street, Baltimore, MD 21201

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: November 7, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 86–25866 Filed 11–14–86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–57; Sub-20X]

Soo Line Railroad Co.; Exemption; Abandonment in Douglass County, WI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the Soo Line Railroad Company from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, to abandon a portion of its line between Milepost 98.75 at Danbury, WI, to Milepost 98.79 at the Wisconsin-Minnesota border and extending through Minnesota to Milepost 129.19 at th Minnesota-Wisconsin border and continuing to Milepost 144.64 at Junction 278 near Superior, WI, a distance of approximately 45.89 miles.

DATES: This exemption will be effective on December 17, 1986. Petitions for stay must be filed by November 27, 1986, and petitions for reconsideration must be filed by December 8, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB. 57 (Sub-No. 20X) to:

(1) Office of the Secretary, Case Control Branch Interstate Commerce Commission, Washington, DC 20423; and

(2) Petitioner's representative: Larry D. Starns, Soo Line Railroad Company, 804 Soo Line Building, P.O. Box 530, 105 South Fifth Street, Minneapolis, MN 55440.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: November 6, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 86–25867 Filed 11–14–86; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387; Sub-959]

Contract Rate Competitive Impact Report—Grain Shippers

AGENCY: Interstate Commerce Commission.

ACTION: Report to Congress.

SUMMARY: Congress has instructed the Commision's contract rate advisory service to assess the impact on competition among grain shippers of variations between contract rates and single car tariff rates and to submit a report to Congress by February 18, 1987. Grain shippers are invited to describe the specific effects that railroad contract rates versus single car tariff rates have had on their competitive position in the grain trade. We also invite remarks from other parties who have specific knowledge of the impact of railroad contract rates on competition among grain shippers.

DATE: Responses must be submitted by December 19, 1986 and should refer to Ex Parte No. 387 (Sub-No. 959).

ADDRESS: An original and two copies should be sent to: Contract Rate Advisory Service, Office of Transportation Analysis, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Michael E. Sullivan, (202) 275–7692

or

Michael J. Dalton III, (202) 275–0193.

SUPPLEMENTARY INFORMATION: Section 4051 of the Conrail Privatization Act which was embraced in the Omnibus Budget Reconciliation Act, Pub. L. 99–509, enacted October 21, 1986, amends 49 U.S.C. 10713 (section 208 of the Staggers Rail Act of 1980) to provide for the expansion of the information to be publicly disclosed in railroad contract summaries for contracts on agricultural commodities. In addition, the legislation requires the Commission's contract rate advisory service to submit a report on the competitive impact of contract rates on agricultural shippers to Congress not later than February 18, 1987. Specifically section 4051 (D) provides:

> The railroad contract rate advisory service established pursuant to subsection (m) of this section shall assess the impact on competition among agricultural shippers of

variations between contract rates for various shipments and the published single car rates, and shall submit a report to the Congress not later than 120 days after the date of the enactment of the Conrail Privatization Act.

Under 49 CFR 1039.10, all farm products except grain, soybeans, and sunflower seeds are exempt from Commission jurisdiction. As a result, for purposes of this study, agricultural shippers means grain shippers and receivers. Grain will embrace all raw grains (STCC 0113), soybeans (STCC 01144), and sunflower seeds (STCC 0114940).

Grain shippers/receivers constitute a wide range of competing interests within the grain trade. These interests range from farmers and small country elevators competing for the farmers' grain at the local level to the large multifacility exporters competing in the world market. In order to assess the overall impact of railroad contract rates, we encourage all segments of the grain trade (from small shippers to large shippers) to comment on their competitive experience with railroad contract rates over the past six years.

Because of the public nature of the study, responses will not be treated as confidential. Therefore, parties filing responses should not reveal confidential provisions of their specific railroad rate contracts unless they are willing to make such information public. In order to effectively assess the responses, we request that grain shippers/receivers furnish and discuss, at a minimum, the following information:

1. Name/Address of Company.
2. Nature of Operations (country elevator, processor, merchandiser, exporter, integrated operations, etc.).
3. Elevator Location, Track Capacity (number of cars), Serving Railroad(s) (companies with more than one facility should submit a complete list of facilities identifying country elevators, sub-terminal elevators, terminal elevators, etc.).
4. Elevator Expansion in Past Six Years/Future Plans.
5. Primary Grains Handled.
6. Annual Rail Shipments (number of carloads).
7. Primary Rail Shipping Units (single car, multi-car, unit trains).
8. Primary Method of Rail Freight Bill Settlements (origin shipper billed by railroad; destination receiver billed by railroad).
9. Have you Entered Into Any Railroad Contracts? Yes ______ No ______

(Please include reasons why you have or have not obtained contract rates, such as traffic volume, transportation competition, market competition, etc.)

10. What Effects Have Railroad Rate Contracts Had on Your Competitive Postition?

Positive ______ Negative ______

No Change ______ Don't Know ______

(Please discuss in detail new markets, loss of markets, curtailed operations, expanded operations, modal shifts, gain or loss of customers, changes in grain price offers, etc.)

11. Other Comments.

Parties, other than grain shippers/receivers, should focus their comments on the specific competitive impacts of contract ratemaking on the grain trade.

This action will not significantly affect either the quality of the human environment or energy conservation. Also, this action (Report to Congress) will not have a significant economic impact on a substantial number of small entities, nor will it increase the compliance burden on regulated carriers or members of the public who have an interest in this action.

Authority: 49 U.S.C. 10321 and 10713; and 5 U.S.C. 553.

Dated: November 7, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 86-25865 Filed 11-14-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Safe Drinking Water Act; Paxton Water Corp. and Lee Hiatt

In accordance with Department Policy, 29 CFR 50.7, notice is hereby given that on November 3, 1986, a proposed consent decree in *United States* v. *Paxton Water Corporation and Lee Hiatt,* Civil Action No. TH 86-101-C, was lodged with the United States District Court for the Southern District of Indiana. The proposed consent decree concerns violations of the national interim primary drinking water regulations by the Paxton Water Corporation, which owns and operates a water distribution system located in Carlisle, Indiana. The proposed consent decree requires Paxton Water Corporation to hire a certified operator to perform sampling, check for cross-connections which might contaminate the water supply and to make all required reports to the Environmental Protection Agency. Paxton Water Corporation is also required to pay a civil penalty of $3,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States v. Paxton Water Corporation and Lee Hiatt,* D.J. Ref. 90-5-1-1-2600.

The Proposed consent decree may be examined at the office of the United States Attorney, 274 United States Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204 and at the Region V office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.80 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources.

[FR Doc. 86-25812 Filed 11-14-86; 8:45 am]

BILLING CODE 4410-01-M

Immigration and Naturalization Service

Implementation of Immigration User Fee Provisions

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of statutory provision.

SUMMARY: This Notice summarizes the provisions of the Department of Justice Appropriation Act, 1987, concerning the collection and remittance of the Immigration User Fee.

FOR FURTHER INFORMATION CONTACT: For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, 425 I Street, NW., Washington, DC 20536. Telephone (202) 633-3048.

For Specific Information: Charles S. Thomason, Jr., Systems Accountant, Finance Branch, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536. Telephone (202) 633-4705.

SUPPLEMENTARY INFORMATION: Pursuant to the Department of Justice

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Appropriation Act, 1987 (Act), approved October 21, 1986, this document provides notice of provisions of this Act that require the collection and payment of a specific fee for the immigration inspection or preinspection of passengers (with certain exceptions) arriving in the United States (U.S.). This document also provides procedures to be used for payment of fees and maintenance of records under section 205 of the Act. Prior to the enactment of this legislation the Immigration and Naturalization Service (INS) had no general legal authority to collect a fee for the inspection or preinspection of passengers arriving in or departing from the U.S. This document is being issued for informational purposes due to the limited period of time available before December 1, 1986, the date the law becomes effective. The INS will publish a Proposed Rule to implement the law at a later date and consideration will be given to all written comments submitted before incorporating changes into the regulations.

Summary of General Provisions and Collection Procedures Under Section 205 of the Act

(1) Section 205 of the Act provides that effective December 1, 1986, INS shall begin charging and collecting a $5.00 user fee (fee) per individual for the immigration inspection of each passenger (with certain exceptions) arriving at a port of entry in the U.S., or for the preinspection of a passenger in a place outside of the U.S. prior to such arrival, aboard a commercial aircraft or commercial vessel. The Attorney General is expressly given the authority to prescribe such rules and regulations as may be necessary to carry out the provisions of the Act.

(2) The fee set forth in paragraph (1) shall not be assessed for the following categories of arriving passengers:

(i) Persons whose journey originates in Canada, Mexico, a territory or possession of the U.S., or any adjacent island. The U.S. territories and possessions include American Samoa, Guam, the Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands. The adjacent islands include all of the islands in the Caribbean Sea, the Bahamas, Bermuda, St. Pierre, Miquelon, and the Turks and Caicos Islands;

(ii) Crew members and persons directly connected with the operation, navigation, ownership, or business of the vessel or aircraft (but not employees traveling on free and/or reduced rate tickets);

(iii) Diplomats, except for U.S. diplomats, who can show that their names appear on the accreditation listing maintained by the U.S. Department of State. In lieu of such listing an individual diplomat may present appropriate proof of diplomatic status to include possession of a diplomatic passport or visa, or diplomatic identification card issued by a foreign government;

(iv) Persons departing and returning to the U.S. without having touched a foreign port or place;

(v) Persons arriving as passengers on any aircraft used exclusively in the governmental service of the U.S. or a foreign government, including any agency or political subdivision thereof, so long as the aircraft is not carrying persons or merchandise for commercial purposes. Passengers on commercial aircraft under contract to the U.S. Department of Defense are exempted if they have been precleared abroad under a joint DOD/INS military inspection program;

(vi) Persons arriving on an aircraft due to an emergency or forced landing when the original destination of the aircraft was a foreign airport; and

(vii) Persons transiting the U.S. and not processed by INS.

(3) The fee specified in paragraph (1) shall be collected under the following circumstances:

(i) When through tickets or travel documents are issued indicating travel to the U.S. which originates in a location other than as specified in paragraph (2)(i);

(ii) When through tickets or travel documents are issued in an exempt location indicating an arrival in the U.S. following a stopover (layover) in a location other than as specified in paragraph (2)(i); and

(iii) When passengers arrive in the U.S. in transit from a non-exempt location and are processed by INS.

(4) Those who issue tickets or travel documents on or after December 1, 1986, are responsible for the collection of the fee from all passengers transported into the U.S. for whom the fee applies. The ticket or travel document shall be marked to indicate that the required fee has been collected from the passenger. If the ticket is not so marked and was issued in a foreign country, the fee shall be collected and remitted by the departing carrier upon departure of the passenger from the U.S. If collected at time of departure from the U.S., the person making the collection shall issue a receipt to the passenger. U.S.-based tour wholesalers who contract for passenger space and issue non-carrier tickets will collect and remit the fee in the same manner as the carrier.

(5) The immigration services required to be provided to passengers upon arrival in the U.S. on commercial aircraft or commercial vessels shall be provided at no cost (other than the fee to commercial aircraft or commercial vessels and passengers) at:

(i) Immigration serviced ports of entry; and

(ii) Places located outside of the U.S. at which an immigration officer is stationed for the purpose of providing such immigration services.

Procedures for Payment of Fees and Maintaining Records Under Section 205 of the Act

(6) Payment should be made to the Immigration User Fee Account, Department of the Treasury, via Treasury Financial Communications System (TFCS), using Agency Location Code (ALC) 15 12 0003.

(i) Payment must be made no later than 31 days after the close of the calendar quarter in which the fees are collected. If the issuing carrier has not collected the required fee from passengers, the person who first collects the fee shall remit it as provided above.

(ii) The first such payment covering collections for December 1, through December 31, 1986, is due by January 31, 1987. Concurrent with TFCS transmission, each person making such payments shall send a hard copy statement to INS, Office of the Comptroller, Room 6307, 425 I Street, NW., Washington, DC 20536 showing:

(A) Name and address of the party remitting payment;

(B) Taxpayer identification number of the party remitting payment;

(C) Calendar quarter covered by the payment;

(D) Number of tickets or travel documents issued with collection of the fee;

(E) Amounts collected and remitted; and

(F) Passenger volume of arrivals by persons other than those specified in paragraph (2)(i).

(iii) If unable to use TFCS, payments may be made by check or money order payable in U.S. dollars to the INS at the address in (6)(ii).

(iv) Yearly, persons remitting such fees shall submit a certified assurance statement from their independent public accountant to the Comptroller, INS, attesting to the degree of compliance with the law and to the accuracy of remittances of fees collected. This statement would present any material exceptions found during the examination. Certification statements are due within ninety (90) days after the close of each remitter's fiscal year.

(7) Carriers contracting with a U.S.-based tour wholesaler are responsible for notifying INS at the address shown in paragraph (6)(ii) of all flights or voyages contracted, the number of spaces contracted for, and the name, address and taxpayer identification number of the tour wholesaler all within 31 days after the close of the calendar quarter in which such a flight or voyage occurred.

(8) All persons affected by this Notice shall maintain all such documentation necessary for INS or its representative(s) to verify the accuracy of fee computations and to otherwise determine compliance under the law. Such documentation shall be maintained for a period of 2 years from the date of fee collection. Affected companies shall advise the Comptroller, INS, of the name, address, and telephone number of a responsible officer who shall be able to verify any records required to be maintained under this paragraph. The Comptroller, INS, shall be promptly notified of any changes in the identifying information submitted. Required information shall be submitted as set forth in paragraph (6)(ii).

Summary of provisions of Section 206 of the Act

(9) In accordance with section 286(h)(2)(A)(v) of the Immigration and Nationality Act, effective December 1, 1986, INS will provide detention services for excludable aliens arriving on commercial aircraft and commercial vessels.

(10) Commercial carriers shall continue to be responsible for detention expenses of excludable aliens until December 1, 1986.

Dated: November 12, 1986.

H.F. Sylvester,

Associate Commissioner, Management, Immigration and Naturalization Service.

[FR Doc. 86–25905 Filed 11–14–86; 8:45 am]

BILLING CODE 4410–10–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Computer and Computation Research; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463 as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer and Computation Research.

Date and Time: December 4, 1986, 9:00 a.m. to 5:30 p.m.; December 5, 1986, 9:00 a.m. to 3:00 p.m.

Place: Room 540, National Science Foundation, 1800 G Street NW, Washington, DC 20550.

Type of Meeting: All Open—December 4, Open—9:00 a.m. to 5:30 p.m.; December 5, Open—9:00 a.m. to 3:00 p.m.

Contact Person: Kent K. Curtis, Division Director, Division of Computer Research, Room 304, National Science Foundation, 1800 G Street NW., Washington, DC 20550, Telephone: (202) 357–9747. Anyone planning to attend this meeting should notify Mr. Curtis no later than December 1, 1986.

Purpose of Committee: To provide advice and recommendations concerning support of Computer Research.

Summary Minutes: May be obtained from the contact person at the above address.

Advisory Committee For Computer and Computation Research—Agenda

Thursday, December 4, 1986, Room 540—9:00 a.m. to 5:30 p.m.—Open

9:00 a.m.—Announcements and Review of Agenda, Kent Curtis
9:15 a.m.—Directorate status and plans—Gordon Bell
10:00 a.m.—Director's quarterly review—Ken Kennedy
10:30 a.m.—Hopcroft Report—John Hopcroft
12:00 Noon—Working Lunch
1:00 p.m.—CER Review—Nico Habermann and other
(a) Update and recent events—Kent Curtis
(b) Habermann Report—Nico Habermann
(c) Discussion
3:30 p.m.—Kosaraju Report—Rao Kosaraju
4:30 p.m.—Opportunities Report—Ken Kennedy
5:30 p.m.—Recess

Friday, December 5, 1986, Room 540—9:00 a.m. to 3:00 p.m.—Open

9:00 a.m.—Discussion: Large project initiatives to support software engineering and parallelism goals?—Ken Kennedy
10:30 a.m.—Discussion: Undergraduate Education in Computer and Information Science and Engineering—Robert Sedgewick
12:00 Noon—Working Lunch
1:00 p.m.—CISE Instrumentation Program—Al Thaler
1:30 p.m.—Committee Business
3:00 p.m.—Adjourn

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 86–25799 Filed 11–14–86; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Ethics and Values Studies; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Ethics and Values Studies (formerly the Advisory Committee for Ethics and Values in Science and Technology).

Date and Time: December 8th, 1986, 8:30 a.m. to 6:00 p.m.; December 9th, 1986, 8:30 a.m. to 2:00 p.m.

Place: Room 1243, National Science Foundation, 1800 G Street NW., Washington, DC.

Type of Meeting: Part Open—Closed December 8th, 1986, 8:30 a.m. to 6:00 p.m.; Open December 9th, 1986, 8:30 a.m. to 2:00 p.m.

Contact Person: Dr. Rachelle Hollander, Coordinator, Ethics and Values Studies, National Science Foundation, Washington, DC 20550, Telephone 202/357–9894.

Summary Minutes: May be obtained from the contact person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research and related activities in this field.

Agenda: Open—General discussion of the current status and future for Ethics and Values Studies. Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemption (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 86–25800 Filed 11–14–86; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Geography and Regional Science; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Geography and Regional Science.

Date and Time: December 4–5, 1986, 8:30 a.m. to 5:00 p.m., Closed.

Place: Room 543, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Ronald F. Abler, Program Director, Geography and Regional Science, National Science Foundation, Washington, DC 20550, Telephone (202) 357–7326.

Purpose of Advisory: To provide advice and recommendations concerning research in Geography and Regional Science.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority To Close Meeting: This determination was made by the Committee

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Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 86-25801 Filed 11-14-86; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Law and Social Science; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Law and Social Science.

Date/Time: December 5, 6, 1986: 9:00 a.m. to 6:00 p.m. each day.

Place: Room 523, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Felice J. Levine, Program Director, Law and Social Science, Room 316, National Science Foundation, Washington, DC 20550, Telephone (202) 357-9567.

Purpose of Panel: To provide advice and recommendations concerning support for research in Law and Social Science.

Agenda: Review and evaluate research and proposals and projects as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 86-25802 Filed 11-14-86; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Microelectronic Information Processing Systems; Determination of Establishment

The Assistant Director for Computer and Information Science and Engineering has determined that the establishment of the Advisory Committee for Microelectronic Information Processing Systems is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Advisory Committee for Microelectronic Information Processing Systems.

Purpose: To provide advice, recommendations, and oversight concerning support for research and research-related activities in the area of Microelectronic Information Processing Systems. Additionally, in some cases, the Committee may be called upon to advise on the merit of proposals for research and research-related activities.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 86-25798 Filed 11-14-86; 8:45 am]

BILLING CODE 7555-01-M

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On October 1, 1986, the National Science Foundation published a notice in the **Federal Register** of permit applications received. On November 7, 1986 permits were issued to: John L. Bengston; Stephen Green; Gerald L. Kooyman; Ronald Kuntz; David Lore; John McWethy; and Robert Martin.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 86-25892 Filed 11-14-86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-348 and 50-364]

Environmental Assessment and Finding of No Significant Impact; Alabama Power Co.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix R to 10 CFR Part 50 to Alabama Power Company, (the licensee), for the Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2, located near the City of Dothan, Alabama.

Environmental Assessment

Identification of Proposed Action: The exemption would permit alternatives to the technical requirements of Appendix R concerning certain specifically identified fire areas in Farley Unit Nos. 1 and 2.

The exemption is responsive to the licensee's application for exemption dated October 18, 1985, supplemented January 27, and July 16, 1986.

The Need for the Proposed Action: The proposed exemption is needed because the features described in the licensee's request regarding the existing fire protection at the plant for these items are the most practical means for meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protection capability.

Environmental Impacts of the Proposed Action: The proposed exemption and modifications to be made will provide a degree of fire protection that is equivalent to that required by Appendix R for the affected areas of the plant such that there is no increase in the risk of fires at this facility. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action: Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemption would be to require rigid compliance with section III.G of Appendix R requirements. Such action would not enhance the protection of the environment and would result in unjustified costs for the licensee.

Alternative Use of Resources: This action involves no use of resources not previously considered in the Final

Environmental Statement (construction permit and operating license) for the Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated October 18, 1985, supplemented January 27, and July 16, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Local Public Document Room, located at the George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama.

Dated at Bethesda, Maryland, this 6th of November, 1986.

For the Nuclear Regulatory Commission.

Lester S. Rubenstein,

Director, PWR Project Directorate No. 2, Division of PWR Licensing–A.

[FR Doc. 86-25906 Filed 11-14-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Regional and I&E Programs; Meeting

The ACRS Subcommitte on Regional and I&E Programs will hold a meeting on December 2, 1986, Region III Office, 799 Roosevelt Road, Glen Ellyn, IL.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Tuesday, December 2, 1986—8:30 a.m. until the conclusion of business

The Subcommittee will review the activities of the Office of Inspection and Enforcement which are under the control of the NRC Regional Offices. This meeting will focus on the activities under the purview of the Region III Office.

Oral statements may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: November 12, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-25894 Filed 11-14-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Waste Management; Meeting

The ACRS Subcommittee on Waste Management will hold a meeting on December 4 and 5, 1986, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, December 4, 1986—8:30 a.m. until the conclusion of business

Friday, December 5, 1986—8:30 a.m. until conclusion of business

The Subcommittee will review the following radioactive waste management topics: (1) The waste management aspects of the FY 1988 NRC safety research program; (2) the NRC Staff's review of DOE's Final Environmental Assessment for the five nominated geologic repository sites; (3) assessing compliance with the EPA Standard for HLW repositories; (4) rulemaking to conform Part 60 to the EPA Standard; (5) States' implementation of the Low-Level Radioactive Waste Policy Amendments Act of 1985; (6) alternatives to shallow land burial; and (7) the safety assessment of alternatives to shallow land burial.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those poritons of the meeting when a transcript is being kept, and questions may by asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Owen S. Merrill (telephone 202/634-1413) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: November 12, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-25893 Filed 11-14-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-338]

Virginia Electric and Power Co., et al.; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Virginia Electric and Power Company, et al. (the licensee) to withdraw their January 17, 1986 application of the North Anna Plant, Unit No. 1 (NA–1), located in Louisa County, Virginia.

The proposed amendment would have permitted the operation of NA–1 at 2775 Mwt with up to 7 percent of the steam generator tubes plugged. The Commission issued a Notice of Consideration of Issuance of Amendment in the **Federal Register** on March 7, 1986 (51 FR 8057). By letter dated September 30, 1986, the licensee requested, pursuant to 10 CFR 2.107, permission to withdraw their application for the proposed amendment. The basis for withdrawal of the amendment request was that the issuance of Amendment No. 84 on August 25, 1986 rendered the licensee's application of January 17, 1986, null and void. The Commission has considered the licensee's September 30, 1986 request and has determined the permission to withdraw the January 17, 1986 application for amendment should be granted.

For further details with respect to this action, see (1) the application for amendment dated January 17, 1986, (2) the licensee's letter dated September 30, 1986, withdrawing the application for amendment, and (3) our letter dated November 5, 1986. All of the above documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., and at the Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Dated at Bethesda, Maryland, this 5th day of November, 1986.

For the Nuclear Regulatory Commission.

Lester S. Rubenstein,

Director, PWR Project Directorate No. 2, Division of PWR Licensing-A, Office of Nuclear Reactor Regulation.

[FR Doc. 86–25908 Filed 11–14–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 72–2; 50–280 and –281]

Virginia Electric and Power Co.; Issuance of Amendment to Materials License SNM–2501

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 1 to Materials License No. SNM–2501 held by the Virginia Electric and Power Company for the receipt and storage of spent fuel at the Surry Independent Spent Fuel Storage Installation, located on the Surry Power Station site, Surry County, Virginia. The amendment is effective as of the date of issuance.

The amendment revises the Technical Specifications to correct the description of the operating characteristics of the storage cask interlid pressure switch. The purposes of this specification is to provide the pressure level at which the pressure switch alarm system will initiate. No change to the pressure switch limit set in the Technical Specifications is made, and no change in safety margins occurs.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the license amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that, pursuant to 10 CFR 51.22(c)(11), an environmental assessment need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see (1) the application for amendment dated October 10, 1986, and (2) Amendment No. 1 to Materials License No. SNM–2501, and (3) the Commission's letter to the licensee dated November 10, 1986. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Local Public Document Room at the Swem Library, College of William and Mary, Williamsburg, Virginia, 23185.

Dated at Silver Spring, Maryland, this 10th day of November 1986.

For the U.S. Nuclear Regulatory Commission.

Leland C. Rouse,

Chief, Advanced Fuel and Spent Fuel Licensing Branch, Division of Fuel Cycle and Material Safety.

[FR Doc. 86–25907 Filed 11–14–86; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2412.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, DC 20549.

Revision

Regulation 14A (No. 270–56) and 14C (No. 270–57) Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval proposed revisions to Securities Exchange Act proxy rules and related amendments.

Submit comments to OMB Desk Officer: Ms Sheri Fox, (202) 395–3785, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

November 10, 1986.

[FR Doc. 86–25827 Filed 11–14–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–15405; File No. 812–6461]

Freedom Investment Trust; Exemptive Application Relating to Contingent Deferred Sales Loads

November 7, 1986.

Notice is hereby given that Freedom Investment Trust ("Applicant"), Three Center Plaza, Boston, MA 02108, filed an application on August 19, 1986, and amendments thereto on October 15 and November 4, 1986, for a Commission order pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") amending an existing order (Rel. No. IC–15118, May 28, 1986 ("Order")) to the extent necessary to exempt Applicant from the provisions of (i) sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rule 22c–1 thereunder to permit assessment of a contingent deferred sales load ("CDSL") on certain redemptions of shares of Freedom Gold & Government Trust ("Gold Series"), Freedom Regional Bank Fund ("Bank Series") and Freedom Government/Index Option Fund ("Option Series") (collectively, "Non-Exempt Series"); and (ii) section 22(d) of the Act to permit certain waivers, deferrals, or reductions of any CDSL applicable to the Non-Exempt Series, Freedom Equity Value Fund ("Equity"), Freedom Government Plus Fund ("Government") and any subsequent similar series of Applicant. (Equity, Government and any subsequent similar series of Applicant are hereinafter collectively referred to as "Exempt Series.") All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the applicable provisions.

Applicant represents that it is registered under the Act as a diversified, open-end, management investment company. Applicant's shares are offered to the public through broker-dealers pursuant to distribution agreements with its principal underwriter, Tucker, Anthony & R.L. Day, Inc. ("Distributor"). Applicant's investment adviser, Tucker Anthony Management Corporation ("Adviser"), and Distributor are subsidiaries of John Hancock Mutual Life Insurance Company.

Applicant proposes to offer shares in the Non-Exempt Series without the imposition of a front-end sales load and proposes intstead to impose a CDSL upon redemption, with certain exceptions described in the application. Applicant represents that no CDSL will be imposed upon redemption on amounts derived from: (1) Increases in the value of an account, including reinvestment of dividend income and capital gains distributions, above the total cost of shares being redeemed due to increases in the net asset value per share of the Series; or (2) purchases made more than three years prior to the redemption. Further, if the current net asset value of the shares redeemed has declined due to performance of the concerned Series, the CDSL will be applied to the current value rather than the purchase price. Applicant states that the amount of the CDSL, if any, will depend upon the year during which the shares being redeemed were purchased; i.e., the CDSL will be 3.0% if redemption occurs within the first twelve-months of purchase, 2.0% if redemption occurs during the next twelve-month period, 1.0% redemption occurs during the third twelve-month period, and 0% if redemption occurs thereafter. The CDSL imposed upon redemption would not, in the aggregate, exceed 3% of the aggregate purchase payments made by the investor. Applicant also states that in determining the amount of the CDSL, shares held the longest will be assumed to be the first redeemed. According to Applicant, this will result in any CDSL being imposed at the lowest possible rate.

Applicant represents that the Non-Exempt Series propose to finance distribution of their shares pursuant to plans ("Plans") adopted under Rule 12b-1 under the Act. The Plans currently propose that the Gold Series, the Bank Series and the Option Series will accrue daily and pay monthly to Distributor a distribution fee calculated at the rate of .75%, .75% and 50%, respectively, of average daily net assets. Distributor also will receive the proceeds of any unwaived CDSL. Applicant represents that its Board of Trustees, in their periodic review of the Plans, will consider the use by Distributor of revenues raised by the CDSL.

Pursuant to the Order, the Exempt Series may waive, defer or reduce a CDSL in connection with (i) the death or disability of an investor, (ii) distributions from qualified retirement plans, (iii) redemptions by certain affiliates of Applicant, Distributor and Adviser, and by clients of Adviser, (iv) redemptions pursuant to liquidation of an investor's account, (v) redemptions pursuant to systematic withdrawal plans, and (iv) certain exchanges among the Exempt Series. Applicant now requests relief so that any CDSL applicable to the Non-Exempt Series may also be waived, deferred or reduced in similar circumstances, and that any CDSL applicable to the Non-Exempt Series and Exempt Series may be waived or deferred in connection with (a) additional redemptions by certain affiliates of Applicant, (b) redemptions by certain advisory clients of Tucker Anthony Advisers (a division of Distributor), and (c) certain exchanges among the Non-Exempt Series and between the Non-Exempt Series and Exempt Series. (Any applicable CDSL will be payable when a shareholder redeems shares acquired as a result of an exchange rather than at the time of exchange. The amount of the CDSL will be calculated from the date of the initial purchase of the exchanged shares.)

Applicant also proposes to reduce any CDSL otherwise applicable to the Non-Exempt Series and Exempt Series by one-half or three-fourths on redemptions of shares when, at the time of purchase of such shares, the shareholder owned shares in any one or more of Applicant's CDSL Series having an aggregate net asset value of at least $2,000,000 or $4,000,000 respectively. Applicant states that the following groups of shareholders may aggregate their purchases in order to qualify for a reduced CDSL: (i) An individual, his or her spouse, and his or her children under the age of 21, purchasing securities for his, her or their account; (ii) any organized group of persons which has been in existence for more than six months and has some purpose other than the purchase of redeemable securities of registered investment companies at a discount; (iii) a corporation, partnership or trust, other corporations, partnerships or trusts controlling, controlled by or under common control therewith, and any employee benefit plan or plans covering employees of one or more of such affiliated entities; and (iv) one or more trusts established by the same grantor. In the event Applicant contemplates any change in the scheduled percentage or reduction of the CDSL or the specified dollar value of shares required to qualify for a reduction, or in the categories of qualifying shareholders, Applicant will notify the Commission of any such change, and unless the Commission objects to it within 30 days, such change will become part of the order issued in this matter.

Applicant represents that it will comply with the provisions of Rule 22d-1 under the Act in connection with the proposed waivers, deferrals, and reductions of the CDSL.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 2, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-25828 Filed 11-14-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23779; File Nos. 4-218 and S7-433]

Joint Industry Plan; Filing of Amendments to the Consolidated Quotation Plan and the Consolidated Tape Association Plan Relating to Other Services and Fee Consolidation

The Participants in the Consolidated Quotation Plan ("CQ Plan") and the Consolidated Tape Association Plan ("CTA Plan") on October 10, 1986,

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submitted copies of an amendment[1] to the Plan governing the operation of the consolidated quotation reporting system ("CQS") and the Plan governing the operation of the consolidated transaction system ("CTS").[2]

I. Description of the Amendment

The purpose of the amendment is to restructure the Network A[3] fees for professional subscribers, create contractual and fee provisions for "Other Services" (services that differ from conventional services), and to establish a single, lower fee for receipt of Network A data by nonprofessional subscribers. The amendment also makes several conforming and technical changes.

A. Professional Fee Consolidation

Since the inception of consolidated reporting of prices and quotes, the CTA Plan and the CQ Plan have charged separately for last sale data and quote data. In addition, the CTA Plan has charged separately for last sale interrogation and ticker display. For each of the three types of information (last sale interrogation, last sale ticker and quote interrogation), the plans have calculated charges based on the number of terminals or "devices" at each location. The plans have charged a higher fee for the first device at each location, and a much lower fee for each extra device. The Participants believe that "the consequence has been a complicated rate structure that technological change has made increasingly cumbersome to administer for both the [p]articipants and data recipients alike."[4]

The amendment is designed to provide a more simplified structure, with a single fee for consolidated data. As a result, subscribers who today receive only last sale or quote data will pay the same fee as those who receive both types of data. Similarly, subscribers who today receive last sale data through only interrogation devices or only ticker display devices will pay the same fee as those who receive last sale data through a device having both functions. A subscriber under the new structure would pay an incrementally decreasing charge per unit based upon the total number of its devices receiving the consolidated information.

The amendment is designed to be revenue-neutral for the Participants. The Participants, however, expect that the simplification of recordkeeping and reporting requirements will benefit the vendors and subscribers distributing and using market data.

B. Other Services

The amendment would enable the Participants to alter the CTA Plan's vendor agreements as they apply to broker dealers and vendors offering "Other Services",[5] and to reduce or even eliminate contract requirements for their customers. The amendment also substantially reduces the charges applicable to Other Services.

The Participants believe this new fee and contract category will permit wider dissemination of market data by making it more readily, and less expensively, available to investors by accommodating innovative market data services that do not fit equitably within the existing charges and contract structures.

C. Nonprofessional Fee Consolidation and Reduction

The amendment would consolidate the present monthly fees payable by vendors in respect of nonprofessional Network A subscribers of $7.50 under the CTA Plan and $6.00 under the CQ Plan to a single fee of $4.00. The Participants expect this change to make sophisticated market data services more widely available to investors.

D. Miscellaneous Changes

The amendments make several other modifications that the charges described above necessitate or that address technical or administrative issues.

Because the proposed unitary professional fee structure eliminates two distinct sources of revenue for the CTA and CQS, the amendments accommodate this by combining the two plans' financial calculations and reporting. The amendment also reconciles the two plans' disparate treatment of bond data revenue. In addition, the amendment would extend the newly-combined and reduced CTA/CQ fee for nonprofessional subscribers to cover last sale ticker receipts. This avoids a nonprofessional having to pay the full professional fee of $120.00 for ticker receipt. If, however, the nonprofessional subscriber takes a ticker feed directly from CTA, a monthly fee of $30.00 would apply (in addition to the facilities fee and $4.00 non-professional fee).

Two changes fall into the category of technical and administrative changes. First, the amendment redefines "direct" high-speed line access to simply mean receipt directly from the plan processor. The redefinition is intended to eliminate the line-drawing problems under the current definition, which requires the NYSE staff to analyze whether data is significantly reprocessed. Second, the amendment recognizes that, under Rule 11Aa3–2, some plan amendments may become effective upon filing.

E. CQ Plan Changes

The changes made by the CTA Plan amendment also apply to the CQ Plan amendment except to the extent they pertain to matters that are unique to last sale information, such as the use of a low speed line. The CQ Plan amendment makes two changes that are not made by the CTA Plan amendment, but that conform the CQ Plan to the CTA Plan. First, the CQ Plan makes clear that nonprofessional fees can be increased by a two-thirds vote. Second, the amendment states that the CQ Plan participants must pay high speed line access charges.

F. Implementation Phases

The amendment would be implemented in two phases. First, the professional fee restructuring requires substantial changes to the NYSE's billing system. The Participants expect to implement the new professional fees during the first half of 1987 after the NYSE makes necessary software changes. Second, certain larger subscribers who face a substantial change in fees under the new structure will have the new fees phased in under "transition rules", that were filed with the amendment. These rules hold users of 100 or more devices to a 10 percent change, up or down, from what their payments would be under the current schedules during the first year after implementation. The rules ease these users into the balance of the increase/decrease over the second and third year by a monthly increment of 1/24th of the excess above 10 percent.

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[1] These amendments were submitted pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 ("Act"). The CTA amendments also were submitted pursuant to Rule 11Aa3–1 under the Act.

[2] The CQ Plan and subsequent amendments are contained in File No. 4–281. The Commission approved the CQ Plan in Securities Exchange Act Release No. 16518 (January 22, 1980), 45 FR 6528. The CTA Plan and subsequent amendments are contained in File No. S7–433. The Commission approved the 1980 Restated and Amended CTA Plan in Securities Exchange Act Release No. 16983 (July 16, 1985), 45 FR 49414.

[3] "Network A" refers to the facilities used to disseminate last sale and quote information for securities listed on the New York Stock Exchange ("NYSE").

[4] Letter from John F. Cipriano, Director, Market Data Service, NYSE, to Jonathan G. Katz, Secretary, SEC (October 9, 1986) ("CTA letter").

[5] An example of "Other Services" is a broker-dealer's system that uses a computer-generated voice to answer customer telephone requests for market data and current news about securities.

II. Request for Comment

Interested persons are invited to submit written comments on the amendment. Persons submitting comments should file six copies with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission and related items, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. All communications should refer to File Nos. 4–281 and S7–433 and should be submitted by December 17, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3(a) (27) and (29).

Dated: November 6, 1986.

Jonathan Katz,

Secretary.

[FR Doc. 86–25900 Filed 11–14–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–23782; File No. MSTC–86–05]

Self-Regulatory Organizations; Midwest Securities Trust Co.; Order Approving Proposed Rule Change

The Midwest Securities Trust Company ("MSTC") on August 11, 1986, filed a proposed rule change (File No. SR–MSTC–86–5) under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). The Commission published notice of the proposal in the **Federal Register** on August 27, 1986, to solicit public comment.[1] No public comment was received. This Order approves the proposal.

The proposed rule change would amend Article III, section 2, and Article V, sections 2, 5, and 6 of MSTC's By-Laws regarding MSTC's Board of Directors. First, the proposal would amend MSTC By-Law Article III, section 2 to make MSTC's President an *ex-officio* member of MSTC's Board of Directors. Second, the proposal would divide MSTC's 17 remaining directors into three classes, with one class of five directors and two classes of six directors. The By-Law currently divides all 18 directors into three equal classes.

The proposal would amend Article V of MSTC's By-Laws to provide that: (1) MSTC may choose its President from outside MSTC's Board of Directors; and (2) the Chairman and Vice Chairman of the Board would continue as Board members and would lose their status as *ex-officio* Board members. The By-Law currently requires that the President, Chairman, and Vice Chairman be chosen from Board members and provides that the Chairman and Vice Chairman are *ex-officio* Board members with a right to vote.

MSTC states that the proposed rule change would correct discrepancies in its By-Laws. MSTC characterizes the change as technical and states that it would not affect the existing structure of its Board. MSTC further states that the proposed rule change is consistent with section 17A of the Act, noting that the proposal would help to insure a fair representation of MSTC participants in the selection of MSTC directors.

The Commission agrees that the proposed rule change is consistent with the Act and that it should be approved. First, the Commission believes that the proposal clarifies terms governing the service of MSTC's Board members. The proposal removes a source of potential confusion by eliminating duplicative text. For example, the current By-Laws state that MSTC's Chairman and Vice Chairman must be selected from among the MSTC Board members, *i.e.*, that they first must be Board Members (with the implicit right to vote), and yet, after their selection, they remain on the board as *ex-officio* members with the right to vote. Second, the proposal is consistent with MSTC's fair representation duties under the Act. Indeed, in our view, the proposal in no way reduces the fair representation responsibilities of the MSTC Board or changes the manner in which MSTC directors are nominated and elected. *See* MSTC By-Laws, Article 3, sections 2 and 4. A Nominating Committee of MSTC participants still will be elected at MSTC's annual meeting and empowered to select directors with a view toward providing fair representation of the interests of all MSTC participants. Finally, the proposal would enable MSTC's Board to select MSTC's President from all sources. Currently, the Board's search authority extends only to those 18 persons already on MSTC's Board. This expanded search authority should help to ensure that, whenever MSTC's President must be chosen, MSTC's Board will have a pool of highly qualified candidates for the position.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–MSTC–86–5) be, and hereby is, approved.

For Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: November 6, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–25901 Filed 11–14–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23780; File No. SR–NASD–86–32]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to an Amendment to Schedule G of the NASD By-Laws.

Pursuant to section 19(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 29, 1986, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed amendment to section 2(a) of Schedule G of the NASD By-Laws will require transactions in listed securities executed off an exchange in the United States between 4:00 and 4:30 p.m. Eastern Time to be reported to the Consolidated Tape Association ("CTA") through the NASDAQ System.

II. Self-Regulatory Organization's Statements Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV, below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C), below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed amendment to section 2(a) of Schedule G of the NASD By-Laws is to standardize procedures for reporting transaction in listed securities executed off an exchange in the United States between the hours of 4:00 and 4:30 p.m. Eastern Time to CTA through the

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[1] Securities Exchange Act Release No. 23546 (August 21, 1986), 51 FR 30603 (August 27, 1986).

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NASDAQ System. Although NASDAQ transaction reporting facilities are currently available, upon request, for reporting transactions in listed securities to CTA between the hours of 4:00 and 4:30 p.m. Eastern Time, the majority of NASD members utilize Form T to report such trades. Information from Form T, which is submitted on a weekly basis, is not included in daily market activity summaries. Therefore, requiring transactions in listed securities executed between 4:00 and 4:30 p.m to be reported to CTA through NASDAQ would not result in the dissemination of more complete data on daily trading activity to the wire services and print media.

Because transactions in exchange-listed securities executed outside exchange trading hours are considered to be over-the-counter transactions, the proposed amendment will be applicable to member firms that are also members of a national securities exchange as well as sole NASD member firms. The proposed amendment would not, however, require the reporting of transactions in listed securities executed abroad after the close.

The proposed amendment is consistent with section 15A(b)(6) of the Securities Exchange Act of 1934, which provides that the rules of a registered securities association shall be designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed amendment to Schedule G will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 8, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 6, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-25902 Filed 11-14-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23781; File No. SR-OCC-86-20]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Options Clearing Corporation

On October 3, 1986, the Options Clearing Corporation ("OCC") filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1). The Commission is publishing this Notice to solicit comment on the proposal.

The proposed rule change amends OCC By-Laws and Rules and adds new Interpretations and Policies to those Rules to align settlement day for expiring foreign currency option exercises and assignments with delivery day for the International Monetary Market's ("IMM") foreign currency futures contracts.[1] Specifically, OCC By-Law Article XV, section 1(m) is amended to provide that, with respect to expiring foreign currency options, the term "business day" may include the Sunday following expiration date for the purposes of OCC Rules 1602, 1604 and 1605,[2] and may exclude the last day of trading preceding such expiration date for purposes of OCC Rule 1605. This change enables OCC to process expiration Saturday's exercise notices on Sunday and to defer until Sunday the processing of exercise notices tendered on the Thursday preceding expiration.[3]

Additionally, the proposed rule change revises OCC Rule 602A. That Rule concerns Clearing Member margin requirements for nonequity options. The proposal amends paragraph (f)(2) of that Rule to clarify that foreign currency Clearing Members' net exercise settlement obligations from expiring options will be included in OCC's margin calculations beginning with the business day following the date on which an Exercise Settlement Report is issued. This insures that exercised long positions and assigned short positions in foreign currency options are margined beginning on Monday. Previously, the language of Rule 602A required margin beginning on the second business day following the date of exercise, which may or may not have been Monday.

The rule change also amends several OCC Rules in Chapter XVI and adds new Interpretations and Policies to those Rules. First, a new Interpretation and Policy is added to Rule 1602.

That Interpretation and Policy provides that the Sunday following expiration date for foreign currency options shall be deemed to be a business day for purposes of issuing Exercise and Assignment Activity Reports reflecting the exercise and assignment of options that were exercised on expiration date.

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[1] OCC currently has pending before the Commission a proposed rule change that would enable an OCC Clearing Member that is also a Clearing Member of OCC's commodities futures clearing subsidiary, the Intermarket Clearing Corporation ("ICC"), to cross-net its OCC exercise and assignment settlement obligations in foreign currency options with its ICC settlement obligations in futures contracts on the same foreign currency settling on the same date. *See* File No. SR-OCC-86-14 published for comment in Securities Exchange Act Release No. 23452 (July 22, 1986), 51 FR 26965 (July 28, 1986).

[2] OCC By-Law Article XV, section 1(i), defines expiration date for foreign currency options as the Saturday immediately preceding the third Wednesday of the expiration month of such option contract.

[3] Foreign currency option assignments, however, still will occur on Friday morning pursuant to OCC Rules 803 and 1602.

Second, the proposal revises OCC Rule 1604 regarding the exercise settlement date for foreign currency options. Amended Rule 1604(a) clarifies that exercise settlement date will be the third business day following the business day after the day on which an exercise notice regarding such option was tendered to OCC.[4] The new Interpretation and Policy to Rule 1604 clarifies that the Sunday following the expiration date of a foreign currency option is a business day for purposes of determining the exercise settlement date for options exercised on expiration date. Moreover, Rule 1604(b) is amended to provide that the OCC Board of Directors may advance the exercise settlement date for foreign currency options to meet unusual conditions or whenever such action is in the public interest.[5] Previously, OCC Directors could only extend or postpone exercise settlement date. The Rule, as amended, enables OCC to maintain a Wednesday settlement date even if there is a bank holiday in the country of origin on the intervening Monday or Tuesday.[6]

Finally, the proposal adds a new Interpretation and Policy to Rule 1605, which concerns the allocation of exercise settlement obligations. New Interpretation and Policy 2 clarifies that, for expiring foreign currency options, the Sunday following expiration date will be deemed a business day and the last day of trading will be deemed not to be a business day. In addition, the Exercise Settlement Report issued on Sunday following expiration date will include settlement obligations in respect of long and short positions in expiring foreign currency options resulting from exercises effected on the business date preceding the last trading day, as well as exercises effected on expiration date.

OCC states that the proposed rule change is consistent with the requirements of section 17A of the Act in that it will promote the public interest by clarifying OCC's Rules to reflect actual practice and will continue to facilitate the investing public's use of the foreign currency options and futures markets. OCC believes that unifying expiring foreign currency option exercise and assignment settlement dates and delivery dates for foreign currency futures will result in fewer actual settlements and lower costs to Clearing Members.

The foregoing has become effective pursuant to section 19(b)(3)(a) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of the investors or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views are arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to file number SR–OCC–86–20 and should be submitted by December 8, 1986.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: November 6, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–25903 Filed 11–14–86; 8:45 am]

BILLING CODE 8010-01-M

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[4] This change merely reflects existing practice; settlement generally occurs on Wednesday for options exercised on expiration date or the Thursday preceding expiration date.

[5] OCC would communicate any advance settlement date to Clearing Members in the notice OCC now distributes at expiration reflecting settlement dates and other important information. OCC Directors also may postpone exercise settlement date under this Rule.

[6] IMM futures contracts generally settle on Wednesday even if there is a bank holiday in the country of origin on the intervening Monday or Tuesday.

SMALL BUSINESS ADMINISTRATION

Region III Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Clarksburg, West Virginia, will hold a public meeting beginning Thursday, December 4, 1986, at 1:00 p.m. and ending Friday, December 5, 1986 at 12:00 Noon at Oglebay Park, Wheeling, West Virginia to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Marvin P. Shelton, District Director, U.S. Small Business Administration, P.O. Box 1608, Clarksburg, West Virginia 2632–1608 or phone (304) 622–6601.

Jean M. Nowak,

Director, Office of Advisory Councils.

November 7, 1986.

[FR Doc. 86–25917 Filed 11–14–86; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of San Francisco, California, will hold a public meeting at 10:00 a.m. on Tuesday, December 2, 1986 in the San Francisco District Office of the Small Business Administration, 211 Main Street, 5th Floor—Room 543, San Francisco, California.

The purpose of the meeting is to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration or others present.

For further information, write or call the Office of District Director, San Francisco District Office, 211 Main Street—4th Floor, San Francisco, California 94105, (415) 974–0642.

Jean M. Nowak,

Director, Office of Advisory Councils.

November 7, 1986.

[FR Doc. 86–25916 Filed 11–14–86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. S–794]

Lykes Bros. Steamship Co., Inc.; Application To Operate a C7–S–95a RO/RO Vessel on Its Trade Route 13 From the South Atlantic

Lykes Bros. Steamship Co., Inc. (Lykes) by application dated October 31, 1986, has requested an amendment to Appendix B of Operating-Differential Subsidy Agreement (ODSA), Contract MA/MSB–451 to permit the operation of

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a C7–S–95a RO/RO vessel on its Trade Route (TR) 13 from the U.S. South Atlantic.

Appendix B of Lykes Contract MA/MSB–451 states that "[t]he Operator may not operate C7–S–95a vessels from or to U.S. South Atlantic ports on Trade Route 13 (U.S. South Atlantic and Gulf/Mediterranean) without prior notice under section 605(c) of the Merchant Marine Act, 1936, as amended." Lykes currently provides approximately biweekly service on its TR 13 service with three C5–37e Pacer type vessels. Under ODSA Contract MA/MSB–451, Lykes is authorized to make a minimum/maximum of 42/48 sailings per year on TR 13.

Lykes' application stresses that there is no other U.S.-flag RO/RO service from the South Atlantic portion of TR 13. Further, according to Lykes, since Prudential Lines, Inc. has recently ceased all service from the South Atlantic to the Mediterranean, and is unlikely to commence service in the foreseeable future, there is no basis for section 605(c) scrutiny under the transfer and interchange policy, because the capacity of the C7–S–95a RO/RO vessel is reasonably comparable to the vessels authorized to operate on the South Atlantic portion of TR 13, and the proposed employment is in fact, merely a substitution or interchange.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington DC 20590. Comments must be received no later than 5:00 p.m. on December 2, 1986. The Maritime Subsidy Board will consider any comments submitted and take such actions with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential subsidies)

By Order of the Maritime Subsidy Board.

Dated: November 10, 1986.

James E. Saari,
Secretary.

[FR Doc. 86–25826 Filed 11–14–86; 8:45 am]

BILLING CODE 4910–81–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supp. to Dept. Circ.—Public Debt Series—No. 36–86]

Treasury Bonds of 2016

Washington, November 7, 1986.

The Secretary announced on November 6, 1986, that the interest rate on the bonds designated Bonds of 2016, described in Department Circular—Public Debt Series—No. 36–86 dated October 30, 1986, will be 7½ percent. Interest on the bonds will be payable at the rate of 7½ percent per annum.

Gerald Murphy,
Fiscal Assistant Secretary.

[FR Doc. 86–25804 Filed 11–14–86; 8:45 am]

BILLING CODE 4810–40–M

[Supp. to Dept. Cir.—Public Debt Series—No. 34–86]

Treasury Notes, Series T–1989

Washington, November 5, 1986.

The Secretary announced on November 4, 1986, that the interest rate on the notes designated Series T–1989, described in Department Circular—Public Debt Series—No. 34–86 dated October 30, 1986, will be 6⅝ percent. Interest on the notes will be payable at the rate of 6⅝ percent per annum.

Gerald Murphy,
Fiscal Assistant Secretary.

[FR Doc. 86–25806 Filed 11–14–86; 8:45 am]

BILLING CODE 4810–40–M

[Supp. to Dept. Cir.—Public Debt Series—No. 35–86]

Treasury Notes, Series D–1996

Washington, November 6, 1986.

The Secretary announced on November 5, 1986, that the interest rate on the notes designated Series D–1996, described in Department Circular—Public Debt Series—No. 35–86 dated October 30, 1986, will be 7¼ percent. Interest on the notes will be payable at the rate of 7¼ percent per annum.

Gerald Murphy,
Fiscal Assistant Secretary.

[FR Doc. 86–25805 Filed 11–14–86; 8:45 am]

BILLING CODE 4810–40–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation of Authority of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Mounted Oriental Porcelain" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements between the International Exhibitions Foundation and various foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Frick Collection, New York, New York, beginning on or about December 2, 1986, to on or about March 1, 1987; the Nelson-Atkins Museum of Art, Kansas City, Missouri, beginning on or about March 28, 1987, to on or about May 24, 1987; and at the Center for the Fine Arts, Miami, Florida, beginning on or about June 13, 1987, to on or about August 23, 1987; is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**

Dated: November 13, 1986.

Joseph A. Morris,
General Counsel.

[FR Doc. 86–25955 Filed 11–14–86; 8:45 am]

BILLING CODE 8230–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 307–1]

Termination of Investigation; Export Performance Requirements in the Automotive Sector on Taiwan

AGENCY: Office of the United States Trade Representative, Executive Office of the President.

ACTION: Notice.

SUMMARY: The United States Trade Representative has decided to terminate the investigation initiated April 8 under the authority of section 307 of the Trade and Tariff Act of 1984 (19 U.S.C. 2114d), concerning the use of export performance requirements on foreign direct investment in the automotive sector on Taiwan.

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[1] A copy of this list may be obtained by contacting Mr. John Lindburg of the Office of the General Counsel of USIA. The telephone number is 202–485–7976, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

EFFECTIVE DATE: October 9, 1986.

FOR FURTHER INFORMATION CONTACT: Donald W. Eiss, Deputy Assistant U.S. Trade Representative for Trade Policy and Analysis, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506, (202) 395-5656.

SUPPLEMENTARY INFORMATION: On March 31, 1986, the President of the United States directed the United States Trade Representative (USTR) to investigate the imposition of export performance requirements on foreign direct investment in the automotive sector on Taiwan. On April 8, the USTR initiated an investigation concerning such export performance requirements on Taiwan (51 FR 12008).

Two rounds of consultations were held between the American Institute on Taiwan (AIT) and the Coordinating Council for North American Affairs (CCNAA) concerning this issue. As a result of these consultations, agreement was reached between AIT and CCNAA regarding actions that the authorities on Taiwan will be taking concerning the use of such requirements.

CCNAA informed AIT that export performance requirements will not be imposed in any future or pending investment applications for initial or expanded direct foreign investment in this sector. Also, a general review of the Automotive Industrial Development Plan will be conducted before the end of June 1987, and the export performance provisions in the Plan will be eliminated at that time, including the lifting of existing export performance requirements from firms that are currently subject to such requirements.

Based on these commitments, AIT has recommended to USTR that we terminate the section 307 investigation on export performance requirements in the automotive sector on Taiwan. On consideration of this request, and based on our understanding that the commitments contained in the agreement between AIT and CCNAA will be implemented as scheduled, we have determined that termination of this investigation is appropriate at this time.

Judith Hippler Bello,

Chairman, Section 301 Committee.

[FR Doc. 86-25861 Filed 11-14-86; 8:45 am]

BILLING CODE 3190-01-M

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Sunshine Act Meetings

Federal Register
Vol. 51, No. 221
Monday, November 17, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: November 12, 1986, 51 FR 41043.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: November 12, 1986, 9:00 a.m.

CHANGE IN THE MEETING: The following items have been added:

Item No., Docket No., and Company

3—RM87-5-000, Notice of Inquiry into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines

4—CI86-168-000, Tenngasco Corporation, *et al.*

Lois D. Cashell,
Acting Secretary.

[FR Doc. 86-25940 Filed 11-13-86; 10:51 am]

BILLING CODE 6717-02-M

FEDERAL RESERVE SYSTEM

Committee on Employee Benefits of the Federal Reserve System

TIME AND DATE: 2:30 p.m., Thursday, November 20, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. The Committee's agenda will consist of matters relating to: (a) The general administrative policies and procedures of the Retirement Plan, Thrift Plan, Long-Term Disability Income Plan, and Insurance Plan for Employees of the Federal Reserve System; (b) general supervision of the operations of the Plans: (c) the maintenance of proper accounts and accounting procedures in respect to the Plans; (d) the preparation and submission of an annual report on the operations of each of such Plans; (3) the maintenance and staffing of the Office of the Federal Reserve Employee Benefits System; and (f) the arrangement for such legal, actuarial, accounting, administrative, and other services as the Committee deems necessary to carry out the provisions of the Plans.

Specific items include: (1) Office of Employee Benefits' expense budget for 1987; and (2) proposals regarding the Retirement and Thrift Plans.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: November 13, 1986.

William W. Wiles,
Secretary of the Board.

[FR Doc 86-25941 Filed 11-13-86; 10:47 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS:

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 4522-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 13, 1986.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 86-25968 Filed 11-13-86; 2:41 pm]

BILLING CODE 6210-01-M

federal register

Monday
November 17, 1986

Part II

Department of Education

Office of Elementary and Secondary Education

34 CFR Part 222

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education; Final Rule

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DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 222

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Impact Aid Program to include eligibility criteria for payments under section 3 of Pub. L. 81-874. Section 3 payments provide maintenance and operations assistance to local educational agencies (LEAs) in federally affected areas. These regulations affect payments to LEAs beginning with fiscal year (FY) 1987.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: W. Stanley Kruger, Acting Director, Division of Impact Aid, U.S. Department of Education, Room 2117, 400 Maryland Avenue SW., Washington, DC 20202-6272. Telephone (202) 732-3637.

SUPPLEMENTARY INFORMATION: Public Law 81-874, as amended (the Act), 20 U.S.C. 236-244, known as the Impact Aid program, authorizes assistance to LEAs that are financially burdened by a reduced tax base resulting from the Federal acquisition of real property, or by an increased student population due to Federal activities, or both. Section 3 of the Act addresses both types of burdens by authorizing payments to LEAs that are to provide free public education to federally connected students. These payments supplement local revenues and assist the LEAs in meeting their maintenance and operations costs.

These regulations establish criteria for determining the eligibility of LEAs to claim children for purposes of section 3 Impact Aid payments. Pursuant to the Act, these regulations provide that an LEA cannot claim students for payment purposes if it is not both responsible for providing, and in fact providing, the students a free public education. They further the purpose of the Impact Aid program by directing the limited Federal funds to those LEAs that are burdened by having to educate federally connected children.

Although the Secretary anticipated that the regulations would govern FY 1986 payments, Pub. L. 99-349 (July 2, 1986) prohibits the Department from promulgating under the Act any new regulations effective for FY 1986. Therefore, these regulations will not affect any FY 1986 payments. All section 3 payments made for FY 1987 and beyond, however, will be governed by these regulations.

The Department received a number of comments in response to the Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on May 14, 1986 at 51 FR 17722. Those comments, along with the Department's responses, are summarized in Appendix B to these regulations. In light of the congressional mandate to delay the proposed FY 1986 effective date of these regulations, comments that requested postponement of the anticipated FY 1986 effective date are not summarized.

For the most part, these final regulations do not differ from the NPRM. As a result of a recommendation made by several commenters, however, Examples 1 and 2 have been clarified with respect to an LEA's responsibility to educate federally connected children whose education is substantially funded by the Bureau of Indian Affairs (BIA). The examples now explain that, although an LEA in that situation may retain legal responsibility for educating those children, the BIA has relieved the LEA of its practical and financial responsibility for their education.

Except for the part that describes Examples 1 and 2, the substantive discussion in the preamble to the NPRM is applicable to these final regulations.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

List of Subjects in 34 CFR Part 222

Elementary and secondary education, Federally affected areas.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of those final regulations.

(Catalog of Federal Domestic Assistance No. 84.041, School Assistance in Federally Affected Areas—Maintenance and Operations)

Dated: October 10, 1986.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 222 of Title 34 of the Code of Federal Regulations as follows:

PART 222—ASSISTANCE FOR LOCAL EDUCATION AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES AND ARRANGEMENTS FOR EDUCATION OF CHILDREN WHERE LOCAL EDUCATIONAL AGENCIES CANNOT PROVIDE SUITABLE FREE PUBLIC EDUCATION

1. Part 222 is amended by revising the citation of authority to read as follows:

Authority: 20 U.S.C. 236-244, unless otherwise noted.

2. Subpart I consisting of §§ 222.80 and 222.81 is revised to read as follows:

Subpart I—Standards for Determining Eligibility Under Section 3 of the Act

Sec.
222.80 Payments to local educational agencies.
222.81 Free public education.

Subpart I—Standards for Determining Eligibility Under Section 3 of the Act

§ 222.80 Payments to local educational agencies.

The Secretary makes payments to an applicant local educational agency (LEA) for children claimed under section 3 of the Act, only if—

(a) The LEA is responsible under applicable State or Federal law for providing a free public education (as provided in § 222.81) to those children;

(b) The LEA is providing a free public education to those children; and

(c) The State provides funds for the education of those children on the same basis as all other public school children in the State, unless permitted otherwise under section 5(d)(2) of the Act.

(Authority: 20 U.S.C. 238 (a) and (b))

§ 222.81 Free public education.

(a) As used in § 222.80, a free public education means education that is provided—

(1) At public expense;

(2) As the complete elementary or secondary educational program;

(3) In a school of the LEA or under a tuition arrangement with another LEA or other educational entity; and

(4) Except with respect to handicapped children, under public supervision and direction.

(b) For the purpose of paragraph (a)(1) of this section, education is provided at public expense if—

(1) There is no tuition charge to the child or the child's parents; and

(2) Federal funds, other than Impact Aid funds, do not provide a substantial portion of the educational program.

(c) For the purpose of paragraph (a)(2) of this section, the complete elementary or secondary educational program is the program recognized by the State as meeting all requirements for elementary or secondary education for the children claimed and does not include a program that provides only—

(1) Supplementary services or instruction; or

(2) A portion of the required educational program.

(d) For the purpose of paragraph (a)(3) of this section, a tuition arrangement must—

(1) Satisfy all applicable legal requirements in the State; and

(2) Genuinely reflect the applicant LEA's responsibility to provide a free public education to the children claimed under section 3.

(e) For the purpose of paragraph (a)(4) of this section, education provided under public supervision and direction means education that is provided—

(1) In a school of the applicant LEA or another LEA; or

(2) By another educational entity, over which the applicant LEA, or other public agency, exercises authority with respect to the significant aspects of the educational program for the children claimed. The Secretary considers significant aspects of the educational program to include administrative decisions relating to teachers, instruction, and curriculum.

(Authority: 20 U.S.C. 244(4))

Appendix A—Examples Illustrating Application of Regulations in Certain Situations

Note:—This appendix will not be shown in the Code of Federal Regulations.

Example No. 1. Each LEA in a State is held responsible under State law for providing a free public education to all students who reside within its boundaries. This LEA meets its legal responsibility of providing free public education to its resident students by operating schools for grades kindergarten through 12. While all the students residing within this LEA are entitled to attend its schools to receive free public education, they are not required to do so.

Also located in or near this LEA are several schools operated by tribal groups under contract with the Bureau of Indian Affairs (BIA) of the Department of the Interior. The BIA provides funding to these schools from the Indian School Equalization Program (ISEP) under a formula designed to provide the full cost of educating the eligible students attending the schools.

A large number of Indian students residing on Indian lands in the LEA are eligible and choose to attend the BIA-funded schools where they receive the full program of instruction at the elementary or secondary level required by the State. The LEA does not provide educational services to the students in the BIA-funded schools.

The LEA claims to have a tuition arrangement with the BIA-funded schools. Under that arrangement, the LEA agrees to send to each BIA-funded school the full amount of the Impact Aid payments that it anticipates receiving on behalf of students attending that school, less ten percent.

In this case, although the LEA may retain legal responsibility for educating the children attending the BIA-funded schools, the BIA has relieved the LEA of its practical and financial responsibility to educate those children. The LEA is no longer burdened, within the meaning of the Act, by having to educate federally connected children, because their education is being provided by the BIA.

Because the BIA has assumed the practical and financial responsibility for educating students attending its schools—and would be required by Federal statute to do so even if the LEA received no Impact Aid—the fact that the LEA claims to have a tuition agreement with each of the BIA-funded schools makes no difference, the "tuition" payments the LEA makes to the BIA-funded schools are gratuitous.

Under these regulations, the LEA is not eligible to claim the children because it is not in fact providing those children a free public education. One of the four tests of a free public education in § 222.81 is whether the education is provided at public expense. Because Federal BIA funds provide a substantial portion, if not the full cost, of the educational program for those children, the education is not provided at public expense as required by § 222.81(b).

Example No. 2. In one community there are two educational entities that serve the school-aged children in the area. One of the entities is an LEA and the other is a school operated by an Indian tribe with ISEP funds provided through a contract with the BIA. While the LEA and the Indian tribe operate separate elementary schools, they have decided that it is in their mutual interest to operate, through a joint board, a single high school program for all the children in the community. The members on the joint board who represent the LEA exercise authority with respect to all matters of significance concerning the operation of the high school.

The high school consists of two buildings, one of which is owned by the LEA and the other by the BIA school. The two buildings are used as one facility with all students moving freely from one to the other for their classes. The high school program is provided free of charge to all of the students who attend and is fully accredited and recognized by the State. The LEA and the BIA school pool the resources available for the students each is responsible for educating. The LEA contributes funds it raises from local property taxes, and the BIA school contributes the funds it receives under the ISEP formula. The State provides State aid payments on an equal basis for all the students in this high school.

In this case, the BIA has relieved the LEA of its practical and financial responsibility for educating the high school students funded by the BIA under the ISEP formula. The LEA is no longer burdened, within the meaning of the Act, by having to educate federally connected children, because their education is being provided by the BIA. Under these regulations, the LEA is not eligible to claim those children, because the LEA is not in fact providing them a free public education in accordance with §§ 222.80(b) and 222.81(b).

The LEA is eligible, on the other hand, to claim the federally connected high school students whose education is not funded by the BIA. Even though the joint operation of the high school is somewhat unusual, the LEA is reponsible under State law for providing, and is in fact providing, their free public education. The program for those students is funded by the LEA's local tax revenues and State aid contributions, and therefore the education is provided at public expense in accordance with § 222.81(b). The education consists of the complete secondary educational program recognized by the State, in accordance with § 222.81(c). Finally, because the LEA's representatives on the joint school board exercise authority in all significant decisions regarding the operation of the high school, the education is provided under public supervision and direction in accordance with § 222.81(e).

Example No. 3. A State requires each of its LEAs to provide free public education to all students residing within its boundaries. In this State, These LEAs are referred to as "school districts of residence." A district of residence provides its students the complete

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educational program required by the State.

A county in the State, containing four districts of residence, is considered an LEA by the State and also meets the Federal requirements for being an LEA because it provides the full required educational program for some children. This county also offers a supplementary program of advanced vocational training that is open to the secondary students of the four districts of residence located within the county. Typically, the secondary students from the districts of residence who attend the county's advanced vocational education program do so for one or two class periods a day. While the advanced vocational classes may be counted as part of a student's secondary program, a student could not meet the State's requirements for high school graduation by attending these classes alone.

Some of the students in one of the districts of residence are federally connected students who also participate in the county's supplementary vocational program. The district of residence is eligible for purposes of section 3 to claim those students because it is both responsible for providing, and in fact is providing, the complete educational program required by the State. The county, on the other hand, would not be eligible to claim those students. This is because the county, which provides only a supplementary portion of the students' education, does not provide the complete secondary educational program for those students in accordance with § 222.81(c). Therefore, the county is not providing their free public education as required by § 222.80(b).

Example No. 4. An LEA located in a sparsely populated, rural area operates a full program of elementary education, as recognized by its State, for the students residing within its boundaries. For various reasons, the LEA does not have any facilities in which to offer a program for its students at the secondary level.

The LEA provides the recognized secondary education program to its students by entering into a tuition arrangement with a local private school that meets applicable State requirements. The tuition covers the full cost of educating all its students. The program is governed by a joint school board made up of equal numbers of representatives of the LEA and the private school. A representative of the LEA serves as the director of the board. The joint board operates the secondary program by selecting and employing all school personnel, designing the curriculum, and supervising classroom instruction. In the event of a stalemate with regard to any significant decision affecting the educational program, the board director is authorized in resolve the issue.

Under these regulations, the LEA is eligible to claim for purposes of section 3 the students who are attending the private school for their secondary program. The LEA is both responsible for providing, and in fact is providing, their free public education under § 222.80. The education is provided at public expense (§ 222.81(b)) and is the complete secondary program recognized by the State (§ 222.81(c)). The education is being provided under a tuition arrangement that meets applicable State requirements and that genuinely reflects the LEA's responsibility to provide a free public education to the children claimed under section 3, in accordance with § 222.81(d). Finally, because the LEA exercises authority with respect to the significant aspects of the educational program, the education is provided under public supervision and direction as required by § 222.81(e).

Appendix B—Summary of Comments and Responses to the Notice of Proposed Rulemaking

Note.—This appendix will not be codified in the Code of Federal Regulations.

General

Comment. Many commenters suggested that the regulations should contain a hold-harmless provision for ineligible districts in place of an absolute bar on receipt of Impact Aid funds. Specifically, they requested a gradual phase-out of funds to ineligible districts by decreasing payments by 25 percent per year over four fiscal years. They argued that, without such a hold-harmless provision, the regulations would have a devastating financial impact on the affected LEAs. One commenter stated that, before the regulations are finalized, the Secretary should consider individual cases in which the regulations may have a drastic economic impact on an LEA's budget.

Response. A hold-harmless provision, under which the Department would continue to make payments over a period of time to ineligible districts, or an "exceptions" process based on individual cases, would be contrary to the purposes and objectives of the Impact Aid program. Payments under that program are intended to compensate LEAs that are responsible for providing and are providing a free public education to federally connected children. Payments made to districts on behalf of children enrolled in BIA-funded or private schools would divert limited Federal funds from eligible LEAs that are burdened by having to educate federally connected children.

In any event, since the regulations will not affect payments until fiscal year (FY) 1987, affected LEAs will have more time in which to plan for reductions in funds. The Department informed most affected LEAs in a January 1986 letter of the likelihood of reduced payments, and published a Notice of Intent to regulate in the **Federal Register** on February 19, 1986 (51 FR 6011). School districts have thus had adequate advance notice of regulatory changes that could affect their funding.

Comment. One commenter suggested that the regulations would in effect abolish the 22 existing cooperative agreements between LEAs and BIA-funded schools, and that those agreements should be encouraged rather than discouraged.

Response. These regulations govern eligibility for section 3 payments; they do not govern cooperative agreements, which are voluntarily entered into by LEAs and BIA-funded schools. The Secretary encourages the use of cooperative agreements when they constitute valid tuition arrangements and do not involve unauthorized duplicate Federal funding. By expressly permitting valid tuition arrangements (§ 222.81(a)(3)), these regulations may, in fact, help to foster genuine cooperation between LEAs and BIA-funded schools. Under these regulations, however, it would no longer be possible to use cooperative agreements for the purpose of obtaining Impact Aid on behalf of children who are claimed for funding by the BIA.

Comment. A few commenters said that the regulations violate the trust relationship between the Indians and the United States.

Response. The Secretary acknowledges the special trust relationship that exists between the Indians and the United States. Consistent with that trust relationship, the BIA provides funds for eligible children enrolled in its schools which are designed to meet the full cost of those children's education. In addition, the Impact Aid program provides for increased entitlements for federally connected Indian children and for withholding of all funds if LEAs do not establish adequate policies and procedures ensuring equal participation of Indian students. The existence of that trust relationship, however, does not authorize duplicate Federal funding and the diversion of Impact Aid funds from their intended purposes.

Comment. Several commenters requested that a district whose federally connected children do not qualify for Impact Aid funding under the regulations be allowed, nevertheless, to claim those children for purposes of determining the degree of the district's Federal impact. (For example, if a district has 20 percent or more "A" students in total membership, it is known as a "Super A" district and receives a payment more than two times that of a regular "A" district.) The commenters expressed concern that, without the ability to claim those children, some districts would lose "Super A or B" status and their payments would be substantially reduced.

Response. To allow a district to claim, for purposes of determining the degree of Federal impact, children for whom it does not provide a free public education would be contrary to the intended purposes and objectives of the Impact Aid program. If children are not eligible to be claimed for payment, they are also not eligible to be counted in determining the degree of Federal impact.

It should be noted that a reduction in the number of eligible federally connected children may not necessarily affect a district's "Super" status. This is because such a reduction affects not only the count of federally connected children but also the district's total membership count. Thus, the percentage of Federal impact (total number of federally connected children divided by total membership) may not significantly change.

Comment. One commenter suggested that the regulations be changed to specify that, regardless of any change in circumstances, schools originally built by LEAs would remain State-supported schools funded by Impact Aid and schools originally built by the BIA would remain funded through the Indian School Equalization Program (ISEP) formula.

Response. These regulations do not address the status of schools as LEA- or BIA-funded schools; rather, they address only the question of an LEA's eligibility to claim federally connected children for Impact Aid purposes.

Comment. A few commenters suggested that the BIA should be involved in the rulemaking process for these regulations. One commenter specifically stated that the Department has not obtained, or sought to obtain, the cooperation of the BIA regarding the effects of the regulations.

Response. The BIA has been involved in the rulemaking process for these regulations. In fact, for the past several years the Department and the BIA have cooperated in an attempt to resolve the issue of duplicate payments. Prior to the publication of the NPRM, the Department consulted the BIA for comments and suggestions on the proposed regulations. BIA officials submitted formal comments on the proposed regulations, as did a number of representatives from Indian tribes and BIA-funded schools.

Section 222.81 Free public education.

Comment. A few commenters stated that the Impact Aid statute does not authorize the Department to promulgate regulations that disqualify payments on behalf of federally connected children because their education is substantially funded by another Federal agency. One commenter stated that there is no authority for defining "education provided at public expense" (§ 222.81(b)) to exclude programs substantially supported by Federal funds. That commenter contended that the word "public" pertains to the Nation as well as the State, and, therefore, education provided by the BIA is "education provided at public expense."

Response. Under sec. 401(b) of Pub. L. 81–874, 20 U.S.C. 242(b), the Department has broad authority to promulgate regulations to interpret and implement the Imapct Aid law. As explained in the preamble to the NPRM, the provisions of these regulations that preclude duplicate payments of Federal funds are fully consistent with, and contribute significantly to, the purposes and objectives of the Impact Aid program.

"Public education" generally means education provided by a local or State community, not by the Federal Government. This meaning is incorporated in the Education Department General Administrative Regulations, 34 CFR 77.1(c). The Impact Aid law was enacted to help compensate districts for the burden imposed on *local* resources by having to educate federally connected children. *See* H. Rept. 2287, 81st Cong., 2d sess. 11, 1950. To consider education provided by the BIA as education provided at "public expense" would be to authorize duplicate Federal funding to districts that are not burdened within the meaning and purpose of the Act.

Comment. One commenter recommended that, in view of the fact that the appendix containing the examples will not be codified, the regulations should specify explicitly that students counted for funding under the ISEP formula are not eligible for Impact Aid funds.

Response. As explained in the preamble to the NPRM, the regulations are designed to cover a number of situations in which applicant LEAs claim children who reside within their boundaries but attend schools not operated by the LEAs. The Secretary believes that incorporating particular language from the examples into the regulations is not necessary and would entail an undue and uncharacteristic degree of specificity.

Comment. A few commenters stated that BIA funds should be treated as State funds rather than Federal funds. They explained that the BIA is treated as the "51st State" for local funding purposes, and therefore the receipt of BIA funds on behalf of a district's Indian children should not disqualify the district from claiming those same children for Impact Aid payments.

Response. Regardless of how BIA funds are treated for purposes of State funding in a given community, there is no question that those funds are provided by a Federal agency and therefore must be considered as a matter of law, for the purposes of these regulations, as Federal funds.

Comment. A few commenters stated that, in one State, tribally-operated schools funded by the BIA are considered "LEAs" in that State and that those schools should therefore qualify under the regulations to receive Impact Aid funds.

Response. Tribally-operated, BIA-funded schools that are considered LEAs by the State do not qualify under § 222.81(b)(2) (public expense requirement) to receive Impact Aid payments on behalf of children educated in those schools who are funded through the ISEP formula. Those schools are not providing a free public education for those children so long as BIA funds continue to support a substantial portion of their educational program.

Comment. One commenter suggested that the regulatory provision that disqualifies an LEA from claiming children whose education is funded by the BIA is unfair, because it ignores the fact that the BIA can claim a child for funding purposes under the ISEP formula even if that child is enrolled in the LEA. Another commenter suggested that the regulations should contain a provision to serve as a "watchdog" over the Department of the Interior and the BIA to ensure that the BIA-funded schools do not engage in "questionable activity" at the expense of the LEAs.

Response. Section 1128 of Pub. L. 95–561, as amended by Pub. L. 99–228, governs the eligibility of children for purposes of funding under the ISEP

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formula. The BIA is the agency charged with administering that law and establishing procedures for the funding of eligible children. It is not the intention of these regulations, nor is it within the authority of the Department of Education, to supervise or interfere with the BIA's administration of its own program.

Comment. One commenter suggested that, to be consistent with § 222.81(c), paragraph (a)(2) of § 222.81 should be changed to read "As the complete elementary *or* [as opposed to *and*] secondary educational program."

Response. The Secretary agrees with the suggestion and has made the requested change.

Comment. One commenter requested further clarification regarding what would constitute a tuition arrangement under § 222.81(d), and which district—the "sending" district or the "receiving" district—would be eligible to claim the tuitioned children.

Response. Under the regulations, if an LEA does not educate federally connected children in its own schools, it may make a tuition payment to another LEA or educational entity on behalf of those children under an arrangement that meets the requirements of § 222.81(d). In particular, the tuition payments must be more than token amounts and must genuinely reflect the LEA's responsibility to provide a free public education to the tuitioned children. If the "sending" LEA (*i.e.*, the one that makes a tuition payment) meets all the other requirements of the regulations, it will be deemed to be providing free public education to the tuitioned children, and can claim them for purposes of Impact Aid funding. The "receiving" entity (*i.e.*, the one that receives the tuition payments from the sending district), even if it is an LEA, cannot also claim those children for payments. (*See* 20 U.S.C. 244(10).)

If, on the other hand, the "sending" district does not make tuition payments to the "receiving" district, the "receiving" district may be eligible to claim the children for payments. To be able to claim those children, the "receiving" district would have to be responsible under State law for providing, and in fact be providing, the children a free public education in accordance with the requirements of the regulations.

Comment. One commenter stated that it is important that BIA-funded schools be allowed under the regulations to enter into tuition arrangements with the LEA in order to ensure that students, who are the responsibility of the LEA but for one reason or another do not attend the LEA's schools, are provided quality educational services.

Response. The regulations permit tuition arrangements between LEA's and BIA-funded schools that meet the requirements of § 222.81(d). LEA's providing free public education in accordance with the requirements of § 222.81 will qualify to claim their tuitioned children for purposes of Impact Aid.

Comment. One commenter suggested that the regulations should make clear that the public supervision and direction requirement in § 222.81(e) applies only with regard to students claimed for Impact Aid purposes. Another commenter stated that, in the situation in which an LEA pays tuition to a BIA-funded school on behalf of students enrolled in the LEA, the regulations would require the LEA to exercise excessive control over the administration of the BIA-funded school. The public supervision and direction requirement, said the commenter, is too restrictive and would have the effect of undermining the local decisionmaking authority of BIA-funded schools.

Response. The requirement that a free public education be provided under public supervision and direction is statutory. *See* 20 U.S.C. 244(4). The regulations implement that requirement by establishing a flexible standard under which various situations can be evaluated on a case-by-case basis. The language of § 222.81(e)(2) and the preamble to the NPRM both make clear that the public supervision and direction requirement applies only to children claimed for Impact Aid. Thus, the regulations should not be read to require an LEA to exercise authority with respect to the overall educational program of a BIA-funded or private school, but only to significant aspects of the program as they relate to the claimed children. Nor do the regulations require an LEA to exercise unwarranted control over the administration of a BIA-funded or private school.

What constitutes appropriated public supervision and direction would depend on the situation, but at the very least an LEA paying tuition for students attending a BIA-funded or private school must retain authority to approve the choice of curriculum and instruction as it relates to the educational program for the claimed students. Certainly, the LEA must exercise sufficient authority to ensure that the education provided for those students by the BIA-funded or private school meets the State requirements for graduation.

These regulations will encourage valid tuition arrangements and working relationships between LEAs and BIA-funded schools, while discouraging arrangements that are established solely for the purpose of obtaining Impact Aid funds on behalf of children who are claimed for funding by the BIA.

Comment. One commenter described a situation regarding an LEA's exercise of public supervision and direction over the educational program of a private school. The commenter explained that, pursuant to a contract between the LEA and the private school, periodic joint meetings are held between the two respective school boards during which decisions are made as a result of a consensus rather than a formal vote. The commenter requested that § 222.81(e) be broadened to reflect more closely the situation in that LEA.

Response. The situation described by the commenter would have to be examined more closely to determine whether the LEA would be in compliance with the public supervision and direction requirement. Example 4 in the appendix to the NPRM, which resembles the commenter's example, described a situation in which an LEA sends *all* of its high school students to a private school for their *entire* educational program. That LEA must maintain authority over significant decisions reached by a joint LEA/private school board with respect to the children claimed. Whether that authority is exercised by the taking of a formal vote or by the reaching of a consensus is not crucial. The Secretary believes that most LEAs that are otherwise eligible to claim children under the regulations will have little difficulty in complying with § 222.81(e).

Examples

Comment. Several commenters stated that they disagreed with the assertion in Examples 1 and 2 that, when a child who resides within the boundaries of an LEA chooses to attend a BIA-funded school, the BIA-funded school in effect releases the LEA from its legal responsibility to educate that child. They contended that the LEA at all times remains legally responsible for the child's education, regardless of whether he or she attends a school of the LEA or the BIA.

Response. The language in the first two examples has been amended to clarify which entity has responsibility for educating federally connected children who reside within the boundaries of an LEA but who choose to attend a BIA-funded school. The BIA does not, strictly speaking, release the LEAs in those examples from their legal responsibility to educate the claimed children. Nevertheless, the BIA has relieved the LEAs of their practical and financial responsibility for educating those children. By no longer having to pay for the education of those children, the LEAs are no longer burdened, within the meaning of the Impact Aid law, by the presence of those children within their boundaries. In the same way, an LEA is not financially burdened by children residing within its boundaries who choose to attend a private school.

In any event, the LEAs in the two examples are not providing the children a free public education that meets the requirements of § 222.81. The LEAs are therefore not eligible to claim those children for Impact Aid payments.

Comment. Several commenters took exception to the assertion made in the first example that BIA funds are designed to pay for the entire cost of the educational program for children attending its schools, and that BIA funds do, in fact, provide a substantial portion of those children's education. A few commenters said that, although the formula provided under ISEP is designed to pay for the full cost of educating those children, the BIA program is not adequately funded to provide a quality education, including an education meeting State standards.

Response. Comments submitted from authoritative sources, both within and outside the BIA, confirmed the Secretary's understanding that funds provided under the ISEP formula are designed to pay for the full cost of educating eligible children attending a BIA-funded school. Whether or not the BIA program is adequately funded to meet the necessary costs or State standards is not a matter within the jurisdiction or control of the Department of Education. Even if ISEP funds in some instances do not in fact pay for the full cost of educating eligible Indian children, those funds undoubtedly provide at least a substantial portion of those children's education. Their education, therefore, is not provided "at public expense" within the meaning of these regulations.

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Part III

Environmental Protection Agency

40 CFR Part 300

Emergency Planning and Community Right to Know Programs; Interim Final Rule and Proposed Rule Cross-Reference

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[SW H-FRL-3113-6]

Emergency Planning and Community Right to Know Programs

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: Section 302 of the Superfund Amendments and Reauthorization Act of 1986 (SARA), signed into law on October 17, 1986, requires the Administrator of EPA to publish a list of extremely hazardous substances within 30 days. The Administrator is also required to simultaneously publish an interim final regulation establishing a threshold planning quantity for each substance on the list and initiate a rulemaking to finalize these regulations. The list and planning quantities trigger emergency planning in States and local communities under SARA. The purpose of this rule is to publish the statutorily prescribed list of extremely hazardous substances and the corresponding threshold planning quantities for those substances. This rule also codifies the reporting and notification requirements under SARA for facilities at which extremely hazardous substances are present. Finally, a companion proposed rule, published elsewhere in today's **Federal Register**, initiates a rulemaking to revise the list of substances, the threshold planning quantities and reporting regulations.

EFFECTIVE DATES: This rule becomes effective on: November 17, 1986. Other dates relevant to this rule include the following:

1. The emergency release notification requirements become effective on November 17, 1986.
2. State emergency response commissions should be established by April 17, 1987.
3. Facility notifications for emergency planning are required by May 17, 1987.
4. State commissions should establish emergency planning districts by July 17, 1987.
5. State Commissions should establish local emergency planning committees by August 17, 1987.
6. Facility notifications to local committees concerning facility representatives are due by September 17, 1987.

COMMENTS: Written comments should be submitted on or before January 2, 1987.

ADDRESSES: Comments: Written comments should be submitted in triplicate to Preparedness Staff, Superfund Docket Clerk, Attention: Docket Number 300PQ, Superfund Docket Room Lower Garage, U.S. Environmental Protection Agency, Mail Stop WH 548D, 401 M Street SW., Washington, DC 20460.

Docket: Copies of materials relevant to this rulemaking are contained in the Superfund Docket located in Room Lower Garage at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The docket is available for inspection by appointment only between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding federal holidays. The docket phone number is (202) 382-3046. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Richard A. Horner, Chemical Engineer, Preparedness Staff, Office of Solid Waste and Emergency Response, WH-548, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or the Chemical Emergency Preparedness Hotline at 1-800/535-0202, in Washington, DC at 1-202/479-2449

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

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I. Introduction

A. Statutory Authority

These regulations are issued under Title III of the Superfund Amendments and Reauthorization Act of 1986, (Pub. L. 99-499), ("SARA" of "the Act"). Title III of SARA is known as the Emergency Planning and Community Right-to-know Act of 1986.

B. Background

1. Superfund Amendments and Reauthorization Act of 1986 (SARA)

On October 17, 1986, the President signed into law the Superfund Amendments and Reauthorization Act of 1986 ("SARA") which revises and extends the authorities established under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"). Commonly known as "Superfund," CERCLA provides authority for federal cleanup of abandoned toxic waste sites and response to releases of hazardous substances. Title III of SARA establishes new authorities for emergency planning and preparedness, community right to know reporting, and toxic chemical release reporting.

2. Title III

Title III of SARA, also known as the "Emergency Planning and Community Right-to-Know Act of 1986", is intended to encourage and support emergency planning efforts at the State and local level and provide residents and local governments with information concerning potential chemical hazards present in their communities.

The emergency planning requirements of this Act recognize the need to establish and maintain contingency plans for responding to chemical accidents which can inflict health and environmental damage as well as cause significant disruption within a community.

Title III is organized into three subtitles. Subtitle A, which establishes the framework for local emergency planning, will be described in more detail in the following section. Subtitle B provides the mechanism for community awareness with respect to hazardous chemicals present in the locality. This information is critical for effective local contingency planning. Subtitle B includes requirements for the submission of material safety data sheets and emergency and hazardous chemical inventory forms to State and local governments, and the submission of toxic chemical release forms to the States and the Agency. Subtitle C contains general provisions concerning trade secret protection, enforcement, citizen suits, and public availability of information.

3. Subtitle A

Subtitle A of Title III is concerned primarily with emergency planning programs at the State and local levels. Section 301 requires each State to establish an emergency response commission by April 17, 1987. The State emergency response commission will have several tasks critical to the implementation of local contingency planning and response efforts. It will be responsible for establishing emergency planning districts and appointing local emergency planning committees. The Commission will also be responsible for the supervision and coordination of the activities of the local emergency planning committees.

Section 302 requires the Administrator of EPA to publish a list of extremely hazardous substances and threshold planning quantities for such substances. Any facility where an extremely hazardous substance is present in an amount in excess of the threshold planning quantity is required to notify the State commission by May 17, 1986. Other facilities may also be designated by the Commission or the Governor.

Section 303 governs the development of comprehensive emergency response plans by the local emergency planning committees and provision of facility information to the committee. Section 304 establishes requirements for immediate reporting of certain releases of hazardous substances to the local planning committees and the State emergency response commission, similar to the release reporting provisions under section 103 of CERCLA. Section 304 also requires follow up reports on the release, its effects, and response actions taken.

Finally, section 305 addresses emergency preparedness and training, with special emphasis on hazardous chemicals. The Administrator is also required under section 305 to conduct a review of emergency systems.

4. Section 302

Section 302 defines the specific list of extremely hazardous substances and requires EPA to publish the list within 30 days after the enactment of SARA. The list of extremely hazardous substances is defined in section 302 as "the list of substances published in November, 1985 by the Administrator in Appendix A of the Chemical Emergency Preparedness Program Interim Guidance". This list was established by EPA to identify chemical substances which could cause serious irreversible health effects from accidental releases.

Section 302 further requires EPA to establish threshold planning quantities for each of the 402 extremely hazardous substances through an interim final regulation. At the same time, EPA must initiate a rulemaking effort to finalize these threshold planning quantities. This threshold planning quantity is the total amount of any listed extremely hazardous substance present at any one time at a facility, regardless of location, number of containers, or storage method, which will trigger the planning notification. Section 302 gives the Administrator broad flexibility in establishing these quantities. If EPA does not publish interim final rules establishing the threshold planning quantities by thirty days after enactment of SARA, then the threshold planning quantity becomes two pounds for each extremely hazardous substance.

Under section 302(a)(4) the Administrator may make revisions to the list and threshold planning quantities. Any revisions must take into account the toxicity, reactivity, volatility, dispersibility, combustibility, or flammability of a substance.

Toxicity must include any short- or long-term effect resulting from a short-term exposure to the substance in question. Thus, extremely hazardous substances are characterized as those which can cause serious health effects with only a single exposure.

A facility is subject to the emergency planning requirements of section 302 if any extremely hazardous substance is present at the facility in a quantity greater than the threshold planning quantity established for that substance. The Governor or the State emergency response commission may designate additional facilities to be covered if such designation is made after public notice and opporunity for comment.

Within seven months after enactment of SARA, May 17, 1987, the owner/operator of each facility subject to the provisions of section 302 must notify the State emergency response commission of the state in which it is located that it is subject to that Section. After May 17, 1987 an owner/operator must notify the State emergency response commission within sixty days after the facility begins handling an extremely hazardous substance. Failure to comply with these reporting provisions may, under section 325, result in injunctive relief or the imposition of a civil penalty in an amount of up to $25,000 for each day in which the violation continues.

Lastly, the State emergency response commission must provide the Administrator of EPA with information concerning the notifications received from any facility under section 302.

Today's rule publishes the list of extremely hazardous substances and corresponding threshold planning quantities, as required by section 302. This rule also codifies related statutory reporting requirements applicable to facilities at which extremely hazardous substances are present. Finally, today's rule represents an initiation of an Agency rulemaking to revise this rule as appropriate in response to public comment. A companion proposed rule, published elsewhere in today's **Federal Register**, specifically sets out for public comment all aspects of this final rule and proposes revisions to the list published today.

II. Analysis of the Interim Final Rule

A. Emergency Planning Program

The emergency planning program is a first step toward chemical emergency planning for extremely hazardous substances. After the enactment of Superfund, it became apparent that emergency response to accidental releases of hazardous substances, although vital to the protection of public health and the environment, was not enough protection against the possibility of the release of extremely hazardous substances. For many chemicals the magnitude of the endangerment to surrounding populations upon release is such that it is not sufficient merely to plan for cleanup of spills once they have occurred. Rather, it is important to facilitate emergency planning which can help prevent the accident and to prepare facilities and the surrounding or adjacent community for the contingency of a release and the resulting emergency response.

Particularly after the Bhopal, India disaster of December, 1984, it became clear that substances which are highly acutely toxic and have a high potential for becoming airborne posed a special problem for emergency response. In many cases, by the time any emergency response personnel can arrive on the scene of a release, the cloud has already done its damage to public health or the environment and dissipated. For such extremely hazardous substances, early comprehensive emergency planning for the possibility of a release is vital to effective public and environmental protection.

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1. Purpose of the List and Threshold Planning Quantities

The extremely hazardous substances list of 402 substances was developed as part of the Chemical Emergency Preparedness Program (CEPP) and is the result of over a year of EPA effort. EPA initiated the CEPP as part of its ongoing preparedness responsibilities for hazardous substance releases under CERCLA and for addressing toxic substances under the Toxic Substances Control Act (TSCA). The program was announced in June, 1985, as part of the Agency's Air Toxics Strategy for addressing both continuing and accidental releases of toxic substances into the air. CEPP is designed to increase public awareness of chemical hazards in communities and to assist States and communities in developing preparedness programs and response capabilities for releases of hazardous chemicals into the environment.

The Agency first developed the extremely hazardous substances list as part of the CEPP along with guidance materials to aid localities in focusing on these chemicals to address the development of community emergency response plans. The list and guidance materials (issued November, 1985) were designed to enable a community to obtain information on the location of potential chemical hazards in the community. This information could be used to help the community take preventive actions and plan responses to accidental releases of these extremely hazardous substances. A notice of availability of the CEPP Interim Guidance was published in the **Federal Register** on December 17, 1985.

Title III of SARA mandates the type of program advocated by the Agency's CEPP. It requires State and local governments to establish the infrastructure needed to facilitate emergency planning and provides technical support to these programs. It also requires certain facilities to supply the information on chemicals present at the facility which is necessary for contingency planning.

The extremely hazardous substances list and its threshold planning quantities are intended to help the local community focus on the chemicals and facilities of the most immediate concern from a community emergency planning and response perspective. EPA strongly emphasizes, however, that while the list published today includes many of the chemicals which may pose an immediate hazard to a community upon release, it is not to be considered a list of all chemicals which are hazardous enough to require community emergency response planning. There are tens of thousands of compounds and mixtures in commerce in the United States, and in specific circumstances, many of them could be considered toxic or otherwise dangerous. The list published today represents only a first step towards development of an effective emergency response planning effort at the community level. Without a preliminary list of this kind, it would be very difficult for most communities to know where to begin identification of potential chemical hazards among the many chemicals present in any locality.

Similarly, the threshold planning quantities are *not* absolute levels above which the extremely hazardous substances are dangerous and below which they pose no threat at all. Rather, the threshold planning quantities are intended to provide a "first cut" for community emergency response planners where these extremely hazardous substances are present. After identification of facilities at which extremely hazardous substances are present in quantities greater than the threshold planning quantities, the local community will have the basis for further analysis of the potential danger posed by these facilities. Also, they will be able to identify other facilities posing potential chemical risks to the locality, and develop contingency plans to protect its citizens from releases of hazardous chemicals. Sections 311 and 312 of Title III provide a mechanism through which a community will receive Material Safety Data Sheets and other information on extremely hazardous substances, as well as many other chemicals, from facilities which handle them. A community can then assess and initiate planning activities, if desirable, for quantities below the threshold planning quantity.

In addition to the assistance provided by the extremely hazardous substance list and the threshold planning quantities, community emergency response planners will be further aided by the National Response Team's proposed *Hazardous Materials Emergency Planning Guide* which is required under section 303(f) of Title III. This document will be available for public review and comment in December. A separate notice of availability will be published in the **Federal Register** at that time. The guidance document will be supplemented in 1987 with a technical publication developed by EPA to assist local emergency planning committees in the technical evaluation of potential chemical hazards and the prioritization of sites.

2. Responsibilities of Facilities Under Subtitle A

Subtitle A established several notification responsibilities for facilities at which hazardous substances are present or from which hazardous substances are released. First, under section 302, each facility where any extremely hazardous substance is present at any one time in a quantity equal to or above the threshold planning quantity established for that substance, must notify the State emergency response commission for the State in which it is located.

This notification must be provided within seven months after the enactment of SARA (May 17, 1987) or within 60 days from the time that the facility first becomes subject to the notification requirements in section 302, whichever is later.

Second, under section 303(d), these facilities must also designate a facility representative who will participate in the local emergency planning effort as a facility emergency response coordinator. This designation must be made by September 17, 1987 or 30 days after establishment of the local emergency response committee, whichever is earlier. Section 303(d) also requires facilities to provide the committee with information relevant to development or implementation of the local emergency response plan.

Section 304 requires notification by a facility at which a hazardous chemical is produced, used, or stored to the local planning committee and the State emergency response commission upon release of a reportable quantity (RQ) of any extremely hazardous substance or other hazardous substance identified under CERCLA section 101(14). This notification is required even if a threshold planning quantity of a substance is not present at the facility. Those extremely hazardous substances for which an RQ has not been established under CERCLA are given an RQ of one pound under section 304 of SARA. These RQ's will be adjusted in later regulation by EPA. Section 304 requires both an immediate release notification to the local committee and State commission and a follow-up report providing additional information on the release, its impacts, and any actions taken in response.

Under section 325, failure to comply with these responsibilities may result in the imposition of civil or criminal penalties. States, local governments, and citizens may also bring suit to enforce many sections of the Act.

3. Applicability

The emergency planning requirements under section 302 are applicable to all facilities which store, manufacture, process, use, or otherwise handle at any time an extremely hazardous substance in an amount above the threshold planning quantity established for that substance in today's rule. Additionally, after public notice and the opportunity for comment, the Governor may designate other facilities that will be subject to these regulations. "Facility", for the purposes of Title III, is defined as "all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person)."

For purposes of emergency release notification, under section 304 "facility" is defined in section 329 to also include transportation vessels or facilities. However, section 304 notification requirements apply only to facilities at which hazardous chemicals are produced, used, or stored and at which there is a release of an extremely hazardous substance or a CERCLA hazardous substance.

4. Responsibilities of the States and Local Communities Under Title III.

Title III also prescribes several requirements with respect to emergency planning for States and localities. First, under section 301(a) the Governor of each State is to appoint, within six months of the enactment of SARA, April 17, 1987, a State emergency response commission or designate a state agency to have this responsibility. Until the Governor appoints such a commission or state agency, responsibilities of the Commission under Title III remain with the Governor.

Section 301(b) further provides that the State emergency response commission will be responsible for the establishment of emergency planning districts in which local emergency planning committees will be formed. One month after the emergency planning districts are established, the State commission is responsible for appointing the local emergency planning committees.

Under section 301(c) local emergency planning committees will have the initial responsibility for establishing the community emergency response plans specified in section 303, and the ongoing responsibility for updating, revising, and exercising these plans.

B. List of Extremely Hazardous Substances and Threshold Planning Quantities

1. List of Extremely Hazardous Substances

a. *Statutory Requirement:* As stated above, the list of extremely hazardous substances is defined in section 302 to be the "same as the list of substances published in November 1985 by the Administrator in Appendix A of the Chemical Emergency Preparedness Program (CEPP) Interim Guidance." Section 302 requires the EPA to publish the list within 30 days of the enactment of SARA.

One of the goals of the CEPP was to increase community awareness of chemical hazards, specifically acutely toxic chemicals. To satisfy this goal, the Agency developed the toxicity criteria to assist communities in identifying acutely toxic chemicals present in their midst. Through identification of these chemicals, communities could establish priorities for developing comprehensive emergency response plans. To further assist the communities, the Agency applied toxicity criteria to develop a representative, but not exhaustive, list of acutely toxic chemicals. It is this representative list of 402 chemicals that is presently designated in section 302 as the list of extremely hazardous substances.

The following sections discuss the criteria for identifying extremely hazardous substances.

b. *Criteria for the List*—i. Basis for the Criteria. Considering the large number of chemicals in commerce and the variable nature of their individual inherent acute toxicities, the Agency assumed for the purposes of the CEPP, that it would be impractical for communities to evaluate all of them. The CEPP list was also based on the assumption that communities would want to focus emergency planning efforts on the most acutely toxic chemicals rather than on nontoxic chemicals or those exhibiting lesser acute toxicity. In an attempt to direct community planning efforts to these chemicals which, because of their inherent acute toxicity, are most likely to induce serious acute reactions following short term exposure, the Agency has specified selection criteria that can be applied to toxicity data to identify acutely toxic chemicals (referred to as "extremely hazardous substances" under Title III).

In defining the criteria, the Agency had to identify the health effects of concern and the data to be used. Because there are very few human acute toxicity data, the Agency elected to use acute toxicity data derived from experiments with animals to infer potential for acute toxic effects in humans. The Agency assumed that humans and animals (mammals), on the average, are similar in intrinsic susceptibility to toxic chemicals and that animal data can be used as a surrogate for human data. This assumption forms one basic premise of modern toxicology and is a key component in the regulation of toxic chemicals.

The Agency chose to utilize data on lethality because it represents the most immediate concern in an emergency situation. Additionally, such data can be used as a comparison among many substances whose mechanisms and sites of action may be markedly different. Moreover, acute lethality data for many chemicals are the most commonly reported toxicity information and are available in accessible databases. Lethality data from animal toxicity tests are generally expressed as the median lethal concentration (LC_{50}) when the substance has been administered by inhalation or the median lethal dose (LD_{50}) when the substance has been administered orally or dermally. These data represent dose levels or concentrations of a chemical that resulted in the death of 50 percent of the test animals exposed at the indicated dose level.

ii. Criteria. The Agency adopted the specific criteria shown in Table 1 to identify extremely hazardous substances that may present severe health hazards to humans following short term exposure to chemicals during a chemical accident or other emergency. The selection criteria are only screening tools to identify highly acutely toxic chemicals. Under these criteria, a chemical is to be considered a potential acute human toxicant if animal test data in any mammalian species are identified with a value less than or equal to that stated for the LC_{50} or LD_{50} criteria for any one of three exposure routes. Extremely hazardous substances are those defined with inhalation LC_{50} values of less than or equal to 0.5 milligrams per liter of air, dermal LD_{50} values of less than or equal to 50 milligrams per kilogram of body weight, or oral LD_{50} values of less than or equal to 25 milligrams per kilogram of body weight. The specific values chosen are recognized by the scientific community as indicating a high potential for actute toxicity, and chemicals meeting the toxicity criteria are considered potential hazards.

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TABLE 1—CRITERIA TO IDENTIFY ACUTELY TOXIC CHEMICALS THAT MAY PRESENT SEVERE HEALTH HAZARDS TO HUMANS EXPOSED DURING A CHEMICAL ACCIDENT OR OTHER EMERGENCY

Route of Exposure [1]	Acute Toxicity Measure [2]	Value
Inhalation	Median Lethal Concentration in Air (LC_{50})	Less than or equal to 0.5 milligrams per liter of air.
Dermal	Median Lethal Dose (LD_{50})	Less than or equal to 50 milligrams per kilogram of body weight.
Oral	Median Lethal Dose (LD_{50})	Less than or equal to 25 milligrams per kilogram of body weight.

[1] The route by which the test animals absorbed the chemical, i.e., by breathing it in air (inhalation), by absorbing it through the skin (dermal), or by ingestion (oral).

[2] LC_{50}: The concentration of the chemical in air at which 50 percent of the test animals died. LD_{50}: The dose which killed 50 percent of the test animals. In the absence of LC_{50} or LD_{50} data, LC_{LO} or LD_{LO} data should be used. LC_{LO}: Lethal Concentration Low, the lowest concentration in air at which any test animals died. LD_{LO}: Lethal Dose Low, the lowest dose at which any test animals died.

The primary route of exposure with which the Agency is concerned is inhalation. In using data on oral and dermal acute lethality to infer concern about inhalation toxicity, the Agency was not as much concerned with these specific routes of exposure in humans as with identifying compounds with inherent high potential for acute toxicity.

Even with the amount of animal data that are available, there exist chemicals for which there are no standard acute toxicity test data. In those cases where toxicity testing has not determined an LD_{50} or LC_{50}, the Agency selected an alternative measure of acute toxicity: The lowest dose or concentration at which some animals died following exposure (LD_{LO} or LC_{LO}). These values may be more variable than those provided from median lethality tests, but for the purposes of screening large numbers of chemicals, it was deemed necessary to provide a second level screening tool in preference to missing potentially toxic chemicals because they were not adequately tested.

The Agency chose to use data from the most sensitive mammalian species instead of data from only one specific species because at present it is not possible to predict which species is the appropriate surrogate for humans for a given chemical.

Acute inhalation toxicity testing depends upon the concentration of the chemical in air and the duration of the exposure periods. Because of this, LC_{50} and LC_{LO} values for a chemical may vary depending upon how long the animals were exposed to the substance. The Agency chose also to make maximum use of available acute toxicity data to screen for acutely toxic chemicals and, therefore, chose to use LC_{50} and LC_{LO} values with exposure periods up to 8 hours or with no reported exposure period. The Agency recognizes that this may be a conservative approach.

The screening criteria selected by the Agency are basically consistent with internationally accepted criteria used by both the European Economic Community and the World Bank. However, the Agency has adopted a more conservative approach by modifying the selection criteria in three ways:

1. Lethality data are not limited to data on rats, but include data on the most sensitive mammalian species tested;

2. LC_{50} data with inhalation exposure periods up to 8 hours are included as compared to using only data from 4 hour exposure tests; and

3. LD_{LO} and LC_{LO} data are used when LD_{50} or LC_{50} data are unavailable.

iii. Application of the Criteria. The screening criteria can be applied to any experimental data or data base on chemical substances that includes acute animal toxicity data. The Agency applied the criteria to a specific toxicity data base, the *Registry of Toxic Effects of Chemical Substances* (RTECS), maintained by the National Institute of Occupational Safety and Health (NIOSH). The RTECS data base was used as the principal source of toxicity data for identifying acutely toxic chemicals because it represents the most comprehensive repository of acute toxicity information available with basic toxicity information and other data on more than 79,000 chemicals. It is widely accepted and used as a toxicity data source by industry and regulatory agencies alike. Although RTECS is not formally peer-reviewed, the data presented are from scientific literature which has been edited by the scientific community before publication. The Agency recognizes the limitation associated with the lack of peer-review, but for the purposes of screening acute toxicity data, RTECS represents the single best source of information.

In addition, the Agency selected only those chemicals considered to be in current production by reviewing the non-confidential 1977 Toxic Substances Control Act (TSCA) Inventory and the current EPA list of active pesticide ingredients. The TSCA Inventory is a listing of chemicals in production at the time the Inventory was compiled. Chemicals entering commerce since 1977 through the Premanufacturing Notice (PMN) review process under Section 5 of TSCA also were screened for acute toxicity data and compared to the criteria for possible inclusion on the list.

Radioactive materials and chemical substances in research and development stages, as well as those manufactured, processed, or distributed in commerce for use as food additives, drugs, or cosmetics are not listed in the TSCA inventory and hence, were not considered. If research chemicals that meet the criteria are produced for commercial use under TSCA or for pesticide use under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA will identify such chemicals through its PMN review program or pesticide registration program and list them under section 302 in future rulemakings. The Agency solicits comments concerning the addition of chemicals in food, drugs, cosmetics and radioactive materials to the list of extremely hazardous substances.

iv. Other Toxic Chemicals. Chemicals with acute lethality values not meeting the criteria values discussed in the previous section are not necessarily safe. In fact, many may be toxic to humans and may represent hazards to the community in accidental release situations. The Agency identified some of these potentially toxic chemicals using criteria based on factors such as high production volume, acute lethality, and known risk, as indicated by the fact that these chemicals have caused death and injury in accidents.

c. *List of 402 Chemicals:* Application of the criteria discussed above to the RTECS data base and subsequent review of the TSCA Inventory and the FIFRA active pesticide ingredient list led to the identification of 378 chemicals. In addition, one chemical meeting the toxicity criteria was identified from the Premanufacture Notices. Twenty-three additional chemicals were identified as potentially hazardous, using the criteria described above for "other toxic chemicals". These chemicals were added to the list on the basis of toxicity, high production volume, and known risk. The list of 402 extremely hazardous substances is set forth in Appendices D and E.

The Agency recognizes that the criteria used to establish the extremely hazardous substance list address only lethality, and do not account for all effects that may be associated with acute exposure to chemicals. Criteria are being considered for other health effects after acute exposures to toxic chemicals. In addition, section 302 requires the Agency to also consider long-term health effects resulting from short-term exposures to these chemicals. The Agency does not presently have sufficient data on such effects and requests data from commenters on chronic effects from short-term exposures and comments on how these effects should be incorporated into criteria for revisions to the list. The Agency also requests any other comments on the appropriate criteria for additions to or deletions from the list.

A companion proposed rule, published elsewhere in today's **Federal Register**, specifically proposes the addition and deletion of certain substances from Appendices D and E.

2. Threshold Planning Quantities

A. *Statutory Requirement:* Under section 302 the Agency is required to develop threshold planning quantities for each of the 402 chemicals on the list of extremely hazardous substances and publish interim final quantities simultaneously with publication of the list. The threshold planning quantity is used to trigger reporting by facilities to the State emergency response commission. Any facility that has one or more of the chemicals on the list of extremely hazardous substances in quantities equal to or greater than the threshold planning quantity must provide notification to State emergency response commissions by April 17, 1987.

Section 302 specifies that the planning quantities may be based upon classes or categories of chemicals. If the Agency fails to develop threshold planning quantities for the chemicals on the extremely hazardous substances list, a quantity of two pounds is automatically established for each chemical.

b. *Development of Threshold Planning Quantities:* For many substances the potential for a serious accidental release resulting from an on-site quantity of two pounds is extremely remote. Therefore, threshold planning quantities of two pounds for all of the extremely hazardous chemicals could result in many unnecessary notifications, diverting the attention of emergency planners from facilities which may be of higher concern.

Because the Agency believes that the two pound threshold planning quantity for all 402 substances would overwhelm local emergency planning efforts and would not relate to the endangerment posed by individual substances, it is today establishing threshold planning quantities in lieu of the statutory level. The threshold planning quantities are designed to help State and local officials identify those sites where there is a greater potential for harm to the surrounding community if a release were to occur, thereby focusing resources on the priority emergency planning problems.

c. *Methodology:* The Agency considered four alternative approaches for development of the threshold planning quantities:

Approach 1. *Specific Quantity Prediction.* Under this approach the Agency would determine the specific quantity of each chemical that, if accidentally released, would result in significant acute health effects at a fixed distance from the release site.

Approach 2. *Dispersion/Toxicity Ranking Method.* Under this approach the Agency would assign chemicals to threshold planning quantity categories based on an index that accounts for the toxicity, the potential to become airborne, and the downwind dispersion of each chemical in an accidental release.

Approach 3. *Toxicity Ranking Method.* Under this alternative the Agency would assign categories of threshold planning quantities based solely on a toxicity index.

Approach 4. *Two Pound Quantity for All Chemicals.* Under this option, the default quantity of two (2) pounds would be used.

After considerable analysis, the Agency has chosen to develop threshold planning quantities using Approach 2. The methodology used in each approach is presented below along with a discussion of the approaches and the reasons why the Agency believes Approach 2 is the most appropriate for establishing threshold planning quantities. For details on the methodologies employed, refer to the Threshold Planning Quantities Technical Support Document, which is available in the public docket for this rule. Comments are solicited on the various approaches and the methodologies. Information on alternative approaches also is being sought by the Agency for consideration in the development of a revised final rule.

Methodology for Approach 1—Specific Quantity Prediction

The methodology for this approach is derived from the site specific guidance developed for the CEPP Interim Guidance. The methodology consists of initially determining a maximum short-term exposure concentration level in air ("level of concern") for each chemical that would not lead to serious health effects. The quantity of each chemical that would have to be released to the air to reach the "level of concern" is estimated using techniques for atmospheric dispersion and assessing physical/chemical properties.

This approach is a complex process designed to provide a specific threshold planning quantity for each of the 402 extremely hazardous substances. This section discusses the derivation of levels of concern, assumptions, concerning distance and release circumstances, and the dispersion modeling techniques used in the development of the threshold planning quantities under this approach.

To perform this analysis, a level of concern must be selected for each chemical, a representative distance from the release site to the exposed population must be determined, and the conditions and modeling techniques for release and dispersion must be selected for each chemical.

A level of concern was considered to be the maximum concentration of an extremely hazardous substance in air that will not cause serious irreversible health effects in the general population when exposed to the substance for relatively short duration. At present, no such exposure levels have been established specifically for the general public. The National Academy of Sciences and others have been developing guidelines for estimating such levels for toxic chemicals. However, at this time, values for only a few chemicals have been established.

In lieu of a value developed for the general public, the Agency has identified a surrogate measure of such an exposure level. This approximation is the Immediately Dangerous to Life and Health (IDLH) level which is available for 92 of the chemicals on the list of extremely hazardous substances. This level established by the National Institute for Occupational Safety and Health (NIOSH) represents the maximum concentration of a substance in air to which a healthy worker can be exposed for 30 minutes and escape without suffering irreversible health effects or impairing symptoms.

The Agency recognizes that the IDLH may have some limitations as a measure for protecting the general population. First, the IDLH is based upon the response of a healthy, male worker population and does not take into account exposure of more sensitive individuals such as the elderly, children, or people with various health problems. Second, the IDLH is based upon a maximum 30 minute exposure period which may not be realistic for accidental airborne releases. Third, the IDLH may not indicate the

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concentration that could result in serious but reversible injury. Based on these considerations, the development of more appropriate chemical emergency exposure levels for the general public has been identified as a high priority for the Agency.

However, the IDLH value, or an estimation of this value for substances that do not have a published IDLH, appears at present to be the best approximation of a level of concern available for planning purposes. IDLH values for those substances with published values were used in the calculations for establishing threshold planning quantities.

Levels of concern were estimated from acute animal toxicity test data for the substances that did not have published IDLH values.

In these instances, the concentration used to establish threshold planning quantities is determined from LC_{50}, LC_{LO}, LD_{50}, or LD_{LO} data. The following equations show how these data are converted to air concentrations to approximate the IDLH level: (1) Estimated level of concern = $LC_{50} \times 0.1$; (2) estimated level of concern = LC_{LO}; (3) estimated level of concern = $LD_{50} \times 0.01$; and (4) estimated level of concern = $LD_{LO} \times 0.1$. As new information and methodologies become available in the future, the level of concern and the value derived for chemicals on the list should be re-evaluated.

A second critical input to the analysis is the distance from the source of the release to the exposed population. For the purposes of establishing planning quantities, the Agency chose a distance of 100 meters (330 feet) to represent the distance from a source inside a chemical facility to the point where the community might be exposed. The Agency believes that this distance is representative of the point at which the community might first be impacted for most situations. The Agency recognizes that it may be shorter than that found at large manufacturing facilities, (particularly those that also have a "buffer zone") or farther than that found at facilities located within urban centers. For example, an informal survey of chemical facilities in the Kanawha Valley (West Virginia) by the National Institute for Chemical Studies in Charleston, West Virginia, showed that the distances between storage vessels and residential housing may be as close as 25 feet (Meyer, 1986). However, there are limitations associated with atmospheric dispersion modeling techniques at distances less than 100 meters. Additionally, the Netherlands Safety Report Legislation indicates that releases that travel more than 100 meters are judged to be major accidents (Van Deputte, 1982).

Once the level of concern for each chemical was determined and a fixed distance was established, dispersion modeling techniques were used to calculate the quantity of airborne chemical required to generate the level of concern at 100 meters. Although techniques have long been available and used to address air pollution and nuclear fallout, the uses of dispersion modeling techniques to simulate the behavior of chemicals released under accidental conditions for very short time spans are largely still under development. The Agency's comparison of the several available dispersion modeling techniques is described in the Threshold Planning Quantities Technical Support Document available in the public docket for this rule.

A third critical aspect in the development of the methodology is the assumption made concerning the release of the chemical. An accidental release could be caused by a number of events such as a process upset (e.g. runaway reactions, temperature or pressure excursions leading to release), equipment failures (such as pipe rupture, equipment seal failure, valve leaks), handling accidents (such as overfilling containers and puncturing drums with a forklift), or fires and explosions that affect nearby containers or storage vessels of toxic substances. The release scenario generally determines the nature of the emission source and source strength which are critical to the dispersion consequences. Therefore analysis of potential release scenarios in complex and critical to the outcome.

The chemicals on the list were segregated by ambient physical state and grouped as gas, liquid or solid. Gases and liquids represent about half of the 402 chemicals on the list; the remainder are solids. In analyzing the chemicals released, scenarios were developed as follows: Gases were assumed to be stored under pressure such that if a leak, rupture or process upset occurred, a relief valve would open or a rupture would occur, causing a gas jet to be released. Liquids were assumed to be spilled on the ground at ambient conditions and allowed to volatilize. Liquified gases were also evaluated. Because neither of the two release scenarios above are appropriate for solids unless the solids are handled in molten or vaporized state, solids were assumed to be dispersed in powered form as an aerosol by some mechanical means (e.g. filtration unit failure, dust explosion, or other explosion) because this represents a more realistic emergency release scenario. The sublimation of a solid as a result of a spill was considered and rejected because volatilization of solids is so slow that it does not present an emergency release hazard.

Advantages and Limitations of Approach 1

Approach 1 was designed to determine a specific individual quantity for each chemical for purposes of emergency planning. The quantities calculated using this approach ranged from below one pound (for certain extremely toxic gases) to millions of pounds (for relatively involatile substances). The apparent rigor of the methodology, however, is somewhat misleading due to the uncertainty in the level of concern (IDLH), the release scenarios selected, the source strength inputs, and the ability to model both the release and dispersion. Also, most dispersion techniques are compatible with only a limited number of the many potential release events that could occur; the Agency has no data to show whether these events represent typical or worst case situations.

Assumptions used with the modeling techniques also cause wide variations in the results. In the case of gases, variations of several orders of magnitude are possible depending on the pressure at which the gas is stored, size of the release opening, density and velocity of the escaping gas. An accidental release is an extremely dynamic event. The dynamics associated with accidental releases are not considered in this analysis since little information is available for the potential release conditions likely for the chemicals on the list.

Finally, even if the Agency was fully confident of the release scenario, emission source modeling and dispersion techniques, a number of key parameters in the analysis are site-specific. These parameters include the distance from the source to the community or fenceline, the way in which the chemical is actually handled at the facility (e.g., at high temperatures and pressures, refrigerated, etc.), the topography of the area around the site, and prevailing meteorological conditions which can cause wide variation in the dispersion of airborne chemicals. In the absence of a valid empirical data base, the Agency must make assumptions concerning "reasonable" or "credible" characteristics of these site-specific factors. These assumptions are influenced by modeling capabilities as well as general knowledge of chemical manufacturing and processing operations and greatly affect the accuracy of results.

For these reasons, the Agency has not used this approach to establish the threshold planning quantities in today's rule. However, because the selected methodology (Approach 2) relies on Approach 1 technical analyses, the Agency seeks comments and suggestions on the methodology used here for revision prior to issuance of a revised final rule.

Approach 2—Dispersion/Toxicity Ranking Method

The methodology for this approach makes use of the same technical analyses used in Approach 1 but uses them only to produce a ranking of the chemicals according to their potential to become airborne, dispersion potential and toxicological properties. This approach provides a basis for relative measures of concern rather than absolute values. Under Approach 2, the levels of concern are used as an index of toxicity, and physical state and volatility are used to assess their dispersion potential. The two indices are combined to produce an overall risk score or "ranking factor". Once the chemicals have been ranked, categories of quantity are assigned based on their relative ranking. The lowest rank (highest risk) are assigned low quantities and the highest rank (lowest risk) are assigned higher quantities.

To achieve this, the list of chemicals is again segregated by ambient physical state such as gas, liquid or solid. An index value is obtained by assuming that the level of concern is divided by the factor V, which represents the extent to which the material can become airborne and dispersed:

Index=Level of Concern/V

where V is the extent to which the chemical can become airborne. V is assumed to be 1 for chemicals that are gaseous at ambient conditions and for solids in powder form (e.g., flour, talc), that is, in an accidental release all of the chemical could become airborne. For liquids, V represents the extent of volatilization of a spilled quantity of liquid and is estimated by knowing the chemical's molecular weight and vapor pressure. See Attachment I at the end of this preamble for a derivation of the equations used to estimate V.

Once all the chemicals have been ranked, quantities are assigned to groups of chemicals on the list. In the Agency's evaluation of all of the chemicals, only nickel carbonyl is assigned a quantity of "any amount" and must be reported in any quantity because of its extremely high acute toxicity. Other chemicals with a low index factor, based on the Agency's technical review, are assigned a quantity of two pounds, the default quantity given by the Congress. With the exception of nickel carbonyl, it is believed that the two-pound quantity represents a reasonable lower limit for the most extremely hazardous substances on the list. Chemicals with the highest index factors (or rank) were assigned a threshold planning quantity of 10,000 pounds. This ensures that any facility with as much as a tank wagon or truck load of any extremely hazardous substances would be required to notify the State commission. Between the limits of two pounds and 10,000 pounds, chemicals were assigned to intermediate categories of 100, 500 or 1,000 pounds based on order of magnitude ranges in the index values. The selection of the intermediate categories was based on standard container sizes between two and 10,000 pounds. In summary, the allocations were as follows:

Index value:	*Threshold quantity (lb)*
$<1\times10^{-2}$	2
$>10^{-2}$ to $<10^{-1}$	100
$>10^{-1}$ to <1	500
>1 to <10	1,000
>10	10,000

Advantages and Limitations of Approach 2

The methods utilized in constructing the exposure and toxicity indices for Approach 2 are based upon, and therefore share the limitations of the methodologies utilized in Approach 1. In particular, NIOSH's IDLH or the Agency's estimated level of concern is an imperfect measure or an approximation of acute toxicity for emergency release situations involving the general public. In addition, the dispersion index is based upon specific release event assumptions. Changes in such assumptions could lead to changes in the rankings to a certain degree. Nevertheless, the Agency believes that this approach provides a consistent relative ranking of the extremely hazardous substances.

The selection of the particular cutoff values for the quantities is based wholly on the relative ranking among all of the substances on the list. Since this is a relative ranking scheme, there is no precision associated with the numbers and they should not be construed as "safe" levels. Because the Agency cannot evaluate every release scenario, it is possible that a serious event could occur with any quantity lower than the threshold planning quantity given by this approach. Conversely, some chemicals may be unlikely to cause serious events even at quantities significantly above their thresholds. However, the Agency believes that this approach yields threshold planning quantities which will focus initial community planning on those situations which present the greatest risk.

Methodology for Approach 3—Toxicity Ranking Method

This approach is similar to Approach 2 except that the chemicals on the list of extremely hazardous substances are ranked using only their level of concern as an index. As in Approach 2, the chemicals are assigned quantities ranging from any quantity for nickel carbonyl to 10,000 pounds with intermediate categories of 100, 500, and 1,000 pounds based upon a ranking of level of concern values.

Advantages and Limitations of Approach 3

By ignoring the potential for the chemical to become airborne, this approach simplifies the analysis but it may also distort local planning priorities. Although the Agency cannot assess all of the ways in which releases can occur, it is clear that physical state and vapor pressure greatly influence how much of the chemical actually gets into the air. Therefore, the Agency believes that consideration of the potential should be included in the development of a threshold planning quantity.

Approach 4—Default to 2 Pounds

Under this approach, EPA could take no action and allow the statutory thresholds to become effective.

Advantages and Limitations of Approach 4

A two pound quantity for each chemical is simple and straight-forward and ensures notification by facilities handling those chemicals that are deemed extremely hazardous in nature. However, it again ignores the potential for the chemical to actually become airborne, distorts local planning priorities and may cause local planning authorities to be overburdened by unnecessary notifications.

Conclusions

The Agency believes that Approach 2 is most appropriate for development of the threshold planning quantities because the quantities developed depend primarily on the toxicity of the chemical (level of concern) and degree

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to which the chemical will become airborne; factors which are very important in deciding which chemicals are the most important from an emergency planning standpoint. The potential for the chemicals to become airborne is not considered in Approach 3. Although Approach I also addresses these factors, the apparent rigor of this methodology is not supported by the uncertainty of the assumptions and the models which must be applied. Therefore, the planning quantities derived from Approach 1 suggest a level of accuracy or precision that cannot reasonably be relied upon.

Technical support documents, which contain additional information on the approaches presented here and the outcome of applying the approaches, are available in the public docket. A list of these documents is set forth in Attachment II. Approach I provides a much broader range (from less than one pound to over one million pounds, depending upon the assumptions and models used) than the other approaches. The Threshold Planning Quantity Technical Support Document includes the results of applying Approach 1, using varying release scenarios and assumptions, for a representative group of chemicals. Approaches 2 and 3 result in a narrower range, with five planning quantity categories, and "any quantity" planning quantity for nicket carbonyl. Of these two latter approaches, only Approach 2 considers the degree to which the chemical will become airborne.

The Agency believes that limited State and local resources should be focused on those substances that potentially will cause the greatest harm should an accidental release occur. The quantities developed in Approach 2 meet the objective such that those that are most likely to cause serious problems (extremely toxic gases, solids likely to be readily dispersed, or highly volatile liquids) have lower quantities that those that might be toxic but are not likely to be released to the air.

The Agency applied the ranking methodology described in Approach 2 to the 402 extremely hazardous substances. Recognizing that a strictly mechanical application of this approach could lead to errors based on specific characteristics of individual chemicals, the Agency then subjected each chemical to a limited additional review to evaluate the technical reasonableness of the assignments. The threshold planning quantity allocations determined by the ranking methodology were examined and where appropriate changes to higher or lower threshold classifications were made based upon other toxicity data, rapid absorption chemical reactivity, specific handling, formulation, and use considerations and related factors. For example, sarin and tabun, which were assigned to the 100 pound category by the methodology applied, were assigned to the two pound category because information on their toxicity suggested that they may be even more toxic under conditions of an accidental release than is indicated by the estimated level of concern. Thirty chemicals were reassigned based on this review. The rationale for each such decision is being included in the public docket for this rulemaking. Finally one chemical, nickel carbonyl, had a ranking value so low the Agency decided that any quantity could be a potential problem. The threshold for this chemical was therefore set at "any quantity".

Further, in the case of Approach 2, it was decided that if a chemical in solid form is not handled or stored as a powder at a site and it is not reactive with air or water to become airborne or to form airborne toxic products or by-products (e.g., sodium cyanide), then it would be assigned a quantity of 10,000 lb. Although the Agency cannot identify which chemicals are stored or handled in powder form, it has identified 15 substances that are reactive with water or air which cannot be assigned a threshold planning quantity of 10,000 pounds regardless of their physical form. These substances are identified in the list of extremely hazardous substances and are discussed in the Technical Support Document on Reactive Solids, which is available in the public docket for this rule. The Agency solicits comments on whether nonreactive solids not handled as a powder should be deleted from the list of extremely hazardous substances, instead of assigning a default value of 10,000 pounds.

Many of the extremely hazardous chemicals are transported, used and stored in formulated products, which contain mixtures of chemicals. The potential hazard associated with extremely hazardous chemicals in mixtures depends on the concentration of the material as well as many factors specific to the composition of the formulations. The Agency has noted in the threshold planning quantities list, one case where it believes that common commercial formulations should not be considered for the purpose of notification under this regulation. In the case of hydrogen peroxide, the Agency does not believe that there is cause for concern with aqueous concentrations of equal to or less than 52 percent and designates this exception on the list of extremely hazardous substances. The Agency solicits comments on this concept, which is discussed in more detail in the technical document which addresses response to public comments on the CEPP interim guidance.

In all other cases, and in the absence of more specific information, the Agency believes that mixtures of formulations containing one (1) percent or more of an extremely hazardous substance should be evaluated for notification purposes. This means a mixture containing less than 1% of an extremely hazardous substance need not be factored into the calculation of the threshold planning quantity. The rationale for the 1% rule is the low probability of the release of such a mixture delivering the threshold planning quantity of the extremely hazardous substance to the environment. OSHA has selected this cutoff value of its Hazard Communication Rule (29 CFR 1900.1200) for all hazards except carcinogens.

In evaluating whether to notify for mixtures, facility owners or operators should compare the appropriate threshold quantity with the weight of the extremely hazardous substance in the mixture. For example, if the threshold for a given chemical on the list is 100 pounds and that chemical is 20 percent by weight of a mixture, notification would be necessary if 500 pounds or more of that mixture is present at a facility. Note, however, that no such deminimis exemption exists for emergency release reporting under section 304.

The Agency seeks comments on the methodology chosen to determine threshold planning quantities. Specifically, the Agency seeks comments on:

—Whether the ranking methodology selected (Approach 2) is appropriate for the categorization of the extremely hazardous substances by threshold quantity, and if not, which other approach might be preferable and why.

—Whether the specific toxicity and exposure indices, the IDLH (or calculated level of concern), and V, respectively, chosen are appropriate for constructing the index.

—Whether the Agency has set the threshold planning quantities for the extremely hazardous chemicals (ranging from any to 10,000 pounds) too high or too low in order to provide state and local planning authorities the information with which to effectively begin their emergency planning activities.

—Whether it is appropriate to establish a percentage below which extremely hazardous components of mixtures do not have to be considered and, if so, whether one percent or some other percentage is an appropriate cutoff level.

—Whether the chemical specific quantity adjustments to the determinations made under Approach 2 properly considered the individual characteristics of the adjusted chemicals, and whether other chemicals on the list also require quantity adjustments.

—Whether assigning threshold planning quantities of 10,000 pounds to non-powder, non-reactive solids adequately addresses concerns for these materials.

—Whether it is appropriate not to consider certain common commercial formulations for purposes of notification under this regulation and whether the designated reporting limit of greater than 52 percent aqueous hydrogen peroxide is appropriate.

C. Statutory Requirement of Interim Final Rulemaking and Solicitation of Public Comment

Section 302 of Title III of SARA requires the Administrator to publish a list of extremely hazardous substances within 30 days of enactment. The initial list is required to be the same as the list of substances published in November, 1985 by the Administrator in Appendix A of the Chemical Preparedness Program Interim Guidance. In addition, section 302 specifically requires the Administrator to publish interim final regulations establishing a threshold planning quantity for each substance on the list, and to initiate a rulemaking to revise these threshold planning quantities. Failure to establish the threshold planning quantities results in statutorily established threshold planning quantities of two pounds.

Although this rule is statutorily required to be effective immediately, the Agency is also, soliciting comment on all aspects of today's rule. In a companion proposed rule published elsewhere in today's **Federal Register**, the Agency is specifically initiating a rulemaking to revise today's rule as appropriate in response to public comment.

In addition, certain portions of today's rule have previously received the benefit of public scrutiny and comment. At the time the list of 402 extremely hazardous substances was first published by the Agency, it was part of a voluntary program to encourage localities to begin the process of planning for chemical contingencies occurring in their communities. Appendix A of the Chemical Emergency Preparedness Program Interim Guidance document was made public in November, 1985. That guidance identified those substances for which it was not enough to merely focus attention on cleanup of releases. Rather, because these substances, upon release, posed immediate and serious threats to the surrounding community, emergency planning and release prevention was necessary for effective protection of human health and the environment.

At the time of publication, comments were requested on the methodology for establishing the CEPP list. EPA received comments on the toxicity data used for specific chemicals, and revisions based on those comments are discussed in section II.B.2.c. above. A summary of these comments and the Agency's response has been incorporated into the public docket for this rule.

Today we are requesting comments on all aspects of this rule and are specifically soliciting comments on the criteria for establishing the extremely hazardous substance list, the threshold planning quantities and the methodologies for establishment of the quantities.

Comments must be submitted within 45 days of the publication of this regulation in the **Federal Register**. Upon completion of the 45 day comment period, the threshold planning quantities and supporting regulations will be finalized in a subsequent final rule as required by section 302, using the comments received as guidance in revision of this interim final rule. The comment period is shorter than that provided for many Agency rules, but is essential in order to allow a final rule to be published before May 17, 1987, when facility notifications are due.

III. Relationship to CERCLA

A. Relationship of Title III to CERCLA

Title III is a free-standing Title within SARA and thus is separate from, though closely related to, CERCLA. Because the Agency's CEPP effort was developed originally under CERCLA and because Title III emergency response and planning are closely linked to the hazardous substance release response program under CERCLA, the authorities and requirements created by Title III will be largely incorporated into the existing National Contingency Plan, established under CERCLA section 105.

B. Relationship of This Rulemaking to the National Contingency Plan

This rulemaking is a new Subpart I within the existing National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR 300). The NCP provides for an efficient, coordinated and effective response to discharges of oil and releases of hazardous substances, pollutants and contaminants in accordance with the authorities of CERCLA and section 311 of the Clean Water Act. The NCP establishes the national organization, policy and procedures for preparedness and response to environmental incidents. The Agency is now in the process of developing a rulemaking to comprehensively revise the NCP to incorporate other changes under SARA and will evaluate placement of Title III rules.

C. Relationship of this Rule to CERCLA Section 103 Reporting Requirements

Under section 103 of CERCLA, any person in charge of a facility at which there is a release of a hazardous substance as defined in CERCLA section 101(14) equal to or in excess of its reportable quantity must report immediately to the National Response Center. The National Response Center will then alert the appropriate federal emergency response personnel of the release. This notification includes transportation incidents as well as fixed facility emergencies.

The notification to the State emergency response commission under section 302 is not triggered by a release incident but rather by the presence of certain quantities an extremely hazardous substance at a facility. No release or event of any kind is required for a section 302 report. This notification is an initial action in a process that culminates in the development of community emergency response plans. Section 304 in contrast, establishes reporting requirements similar to CERCLA Section 103 release reporting. However, instead of requiring notification only to the National Response Center when certain quantities of certain chemicals are released, facilities must under section 304 also notify State and local emergency response officials of these releases.

A comparison of the reportable quantities established by the Agency under CERCLA for the purposes of emergency response with the threshold planning quantities in today's rule indicates that the quantities established under these lists are not entirely comparable. In fact, 26 adjusted reportable quantities were higher than the threshold planning quantities for the same extremely hazardous substance. As a result, emergency planning would be required for an amount on the plant site which, if entirely released, would not require a reporting to the National Response Center or to the State commission. This has occurred as a result of the use of two different approaches for establishing reportable quantities and threshold planning quantities. Unlike CERCLA reportable quantities, the threshold planning quantities are based upon exposure potential. CERCLA reportable quantities are based solely on the intrinsic chemical and physical properties, or toxicity, of a hazardous substance.

During rulemakings to revise the final rule and to adjust reportable quantities under CERCLA and Title III, the Agency intends to evaluate and address, as appropriate, inconsistencies between the two methodologies, the underlying data base of each, and the resulting quantities.

IV. Regulatory Analyses

A. Regulatory Impact Analysis

Rulemaking protocol under Executive Order 12291 requires that regulations be classified as "major" or "non-major" for purposes of review by the Office of Management and Budget. According to E. O. 12291, major rules are regulations that are likely to result in (1) An annual adverse (cost) effect on the economy of $100 million, (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government, or geographical regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises in domestic or export markets.

Because this rule was required by statute to be published in 30 days no further economic or regulatory impact analysis could be conducted by the Agency prior to the publication of this interim final rule. However, analyses of economic and regulatory impact will be completed for the revised final rule.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 requires that an analysis be performed for all rules that are likely to have a "significant impact on a substantial number of small entities." Based on the limited time available, the Agency did not conduct a formal flexibility analysis. However, the Agency has considered the impact on small entities and does not believe that this rule will have significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

The reporting and notification requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2050–0046.

V. Supporting Information

A. List of Subjects

Chemicals, hazardous substances, extremely hazardous substances, intergovernmental relations, community right-to-know, natural resources, Superfund, Superfund. Amendments and Reauthorization Act, air pollution control, chemical accident prevention, chemical emergency preparedness, threshold planning quantity, community emergency response plan, contingency planning, reporting and recordkeeping requirements.

Dated: November 12, 1986.

Lee M. Thomas,

Administrator.

Attachment I

Technical Details for Approach 2 Determination of the Threshold Planning Quantity

In Approach 2, the index for ranking the chemicals on the list is:

Index = Level of Concern/V

where V represents the extent to which the chemical can become airborne and dispensed. For gases and solids V equals one, meaning all of the chemical once released can be potentially airborne. For liquids, V is calculated by estimating the rate of volatilization (mass vaporized per time) per mass of liquid spilled. The V may be generated as follows using equations from Clements (1981) (see also TRC, 1986)

The evaporation rate of a liquid into stagnant air may be estimated by:

$$G=(1.74\times10^{-4}\,MKAP)/(RT)$$

where G is the generation rate in pounds/minute; M, the molecular weight; K, mass transfer coefficient (cm/sec); A, surface area of the spill (cm²); P is the vapor pressure of the chemical (mm Hg); R is the Universal Gas Constant (82.05 atm cm³/g-mole °K) and T is the temperature of the liquid in °K. The mass transfer coefficient may be approximated by referencing the unknown chemical to water:

$$K=0.83\,(18/M)^{0.33}$$

Combining equations gives:

$$G=(3.78\times10^{-4}\,M^{2/3}\,A\,P)/(R\,T)$$

The surface area of a spill (or pool) is primarily a function of spilled quantity provided the spill occurs on a flat, non-absorbing surface. The depth of the pool is assumed to be 1 cm; although if the area around a storage vessel is diked or not flat where puddling could take place, deeper levels could occur for the same surface area of spilled material. In the absence of specific information about the size of diked area for each liquid, we assume that the spill is 1 cm deep and has density about that of water (1 gm/cm³):

$$\text{Area (cm}^2) = 454\text{ (gm/lb) Q (lb) / 1 (gm/cm}^3)\ 1\text{ (cm)} = 454\text{ Q}$$

Substituting and assuming the liquid is at its boiling temperatures (P=760, T>boiling point):

$$G/Q=V=1.6\,M/^{0.67}\,/\,(T+273)$$

where G/Q represents the rate of volatilization per mass of liquid spilled. Note that V was estimated for liquids at their boiling point rather than at ambient temperatures. Conditions during accidental releases are likely to vary and to involve heat (e.g. fires, exothermic runaway reactions or reactions with air or water) causing more rapid volatilization of the liquid. The Agency recognizes that spills at ambient temperatures are also likely and that the rate of volatilization may be impacted by heat from the surroundings, subcooling due to evaporation and flashing from superheated conditions. However, for purposes of developing a relative ranking between substances volatilization at boiling points was utilized and consideration of other conditions for all chemicals is not expected to greatly reorder the ranking of chemicals.

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TRC, 1986. "Evaluation and Assessment of Models for Emergency Response Planning" prepared for CMA, TRC Environmental Consultants, Inc. April 1986.

Clements, 1981. "Mathematical Models for Estimating Workplace Concentration Levels: A Literature Review" USEPA, Clement Associates, October 1981.

Attachment II

List of Technical Support Documents

1. Responses to Public Comments on the Chemical Emergency Preparedness Program Interim Guidance and Chemical Profiles
2. Proposed Changes to the List of Extremely Hazardous substances
3. Chemicals that were Assigned Different Threshold Planning

Quantities from the Calculated Index Value

4. Reactive Solids Whose Threshold Planning Quantities Should Not Become 10,000 Pounds
5 Alphabetical Listing of Synonyms for the List of Extremely Hazardous Substances
6. Threshold Planning Quantities Technical Support Document
7. Technical Support Document for Determination of Levels of Concern
8. The Criteria Used to Identify Extremely Hazardous Substances
9. Chemical Emergency Preparedness Program Interim Guidance—November, 1986
10. Chemical Profiles on the List of 402 Extremely Hazardous Substances

For the reasons set out in the Preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

1. The authority citation for Part 300 is revised to read as follows:

Authority: Sec. 105 Pub. L. 96–510, 94 Stat. 2764, 42 U.S.C. 9505 and sec. 311(c)(2), Pub. L. 92–500 as amended, 86 Stat. 865, 33 U.S.C. 1321(c)(2) and secs. 302, 303, 305, 325 and 328, Pub. L. 99–499; E.O. 12316, 46 FR 42237 (August 20, 1981); E.O. 11735, 38 FR 21243 (August 1973).

2. The table of contents of Part 300 is amended by adding a new Subpart I as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

Subpart I—Emergency Planning and Community Right to Know

Sec.
300.91 Purpose.
300.92 Definitions.
300.93 Emergency planning.
300.94 Emergency release notification.
300.95 Penalties.

3. Following Subpart H in Part 300, a new Subpart I is added as follows:

Subpart I—Emergency Planning and Community Right to Know

§ 300.91 Purpose.

This regulation establishes the list of extremely hazardous substances, threshold planning quantities, and facility notification responsibilities necessary for the development and implementation of State and local emergency response plans.

§ 300.92 Definitions.

Terms not specifically defined in this section have the same meaning as in Subpart A of this part.

Act means the Superfund Amendments and Reauthorization Act of 1986.

CERCLA Hazardous Substance means a substance listed in Table 302.4 of 40 CFR Part 302.

Commission means the State of emergency response commission (or, for the purpose of emergency planning, the Governor if there is no commission) for the State in which the facility is located.

Environment includes water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.

Extremely hazardous substance means a substance listed in Appendix D of this part.

Facility means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). For purposes of emergency release notification, the term includes motor vehicles, rolling stock, and aircraft.

Hazardous Chemical means any hazardous chemical as defined under § 1910.1200(c) of Title 29 of the Code of Federal Regulations, except that such term does not include the following substances:

(1) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.

(2) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.

(3) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.

(4) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual.

(5) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

Person means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or interstate body.

Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any hazardous chemical, extremely hazardous substance, or CERCLA hazardous substance.

Reportable quantity means, for any CERCLA hazardous substance, the reportable quantity established in Table 302.4 of 40 CFR Part 302, for such substance; for any other substance, the reportable quantity is one pound.

Threshold planning quantity means for a substance listed in Appendix D, the quantity listed in the column "threshold planning quantity" for that substance.

§ 300.93 Emergency planning.

(a) *Applicability.* The requirements of this section apply to any facility at which there is present an amount of any extremely hazardous substance in excess of its threshold planning quantity, or designated, after public notice and opportunity for comment, by the Commission or the Governor for the State in which the facility is located.

(b) *Emergency Planning Notification.* The owner or operator of a facility subject to this section shall provide notification to the commission that it is a facility subject to the emergency planning requirements of this subpart. Such notification shall be provided: (1) On or before May 17, 1987 or (2) within sixty days after a facility first becomes subject to the requirements of this section, whichever is later.

(c) *Facility Emergency Coordinator.* The owner or operator of a facility subject to this Section shall designate a facility representative who will participate in the local emergency planning process as a facility emergency response coordinator. The owner or operator shall notify the local emergency planning committee (or the Governor if there is no committee) of the facility representative on or before September 17, 1987 or 30 days after establishment of a local emergency planning committee, whichever is earlier.

(d) *Provision of Information.* (1) The owner or operator of a facility subject to this section shall inform the local emergency planning committee of any changes occurring at the facility which may be relevant to emergency planning.

(2) Upon request of the local emergency planning committee, the owner or operator of a facility subject to this section shall promptly provide to

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the committee any information necessary for development or implementation of the local emergency plan.

(Approved by the Office of Management and Budget under the control Number 2050-0046)

§ 300.94 Emergency release notification.

(a) *Applicability.* The requirements of this Section apply to any facility: (1) At which a hazardous chemical is produced, used, or stored and (2) at which there is release of a reportable quantity of any extremely hazardous substance or CERCLA hazardous substance which results in exposure to persons outside of the boundaries of the facility. This Section does not apply to any such release which is a federally permitted release.

(b) *Notice Requirements.* (1) The owner or operator of a facility subject to this Section shall immediately notify the local emergency coordinator for the local emergency planning committee of any area likely to be affected by the release and the State emergency planning commission of any State likely to be affected by the release. If there is no local emergency planning committee or State emergency planning commission, notification shall be provided under this section to relevant local or state emergency response personnel.

(2) The notice required under this Section shall include the following to the extent known at the time of notice and so long as no delay in notice or emergency response results:

(i) The chemical name or identity of any substance involved in the release.

(ii) An indication of whether the substance is on the list referred to in section 302(a).

(iii) An estimate of the quantity of any such substance that was released into the environment.

(iv) The time and duration of the release.

(v) The medium or media into which the release occurred.

(vi) Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.

(vii) Proper precautions to take as a result of the release, including evacuation (unless such information is readily available to the community emergency coordinator pursuant to the emergency plan).

(viii) The name and telephone number of the person or persons to be contacted for further information.

(3) As soon as practicable after a release which requires notice under (b)(1) of this section, such owner or operator shall provide a written follow-up emergency notice (or notices, as more information becomes available) setting forth and updating the information required under paragraph (b)(2) of this section, and including additional information with respect to—

(i) Actions taken to respond to and contain the release,

(ii) Any known or anticipated acute or chronic health risks associated with the release, and,

(iii) Where appropriate, advice regarding medical attention necessary for exposed individuals.

(4) Exceptions. (i) In lieu of the notices specified in paragraphs (b) (2) and (3) of this section, any owner or operator of a facility subject to this section from which there is a release of a CERCLA hazardous substance which is not an extremely hazardous substance and has a statutory reportable quantity may provide the same notice required under CERCLA section 103(a) to the local emergency planning committee.

(ii) In lieu of the notices specified in paragraphs (b) (2) and (3) of this section, any owner or operator of a facility subject to this section from which there is a release during transportation or storage incident to transportation, may provide notice by dialing 911 or, in the absence of a 911 emergency telephone number, calling the operator.

(Approved by the Office of Management and Budget under the control number 2050-0046)

§ 300.95 Penalties.

(a) *Civil Penalties.* Any person who fails to comply with the requirements of § 300.94 shall be subject to civil penalties of up to $25,000 for each violation in accordance with section 325(b)(1) of the Act.

(b) *Civil Penalties for Continuing Violations.* Any person who fails to comply with the requirements of § 300.94 shall be subject to civil penalties of up to $25,000 for each day during which the violation continues, in accordance with section 325(b)(2) of the Act. In the case of a second or subsequent violation, any such person may be subject to civil penalties of up to $75,000 for each day the violation continues, in accordance with section 325(b)(2) of the Act.

(c) *Criminal Penalties.* Any person knowingly and willfully fails to provide notice in accordance with § 300.94 shall, upon conviction, be fined not more than $25,000 or imprisoned for not more than two (2) years, or both (or, in the case of a second or subsequent conviction, shall be fined not more than $50,000 or imprisoned for not more than five (5) years, or both, in accordance with 325(b)(4) of the Act.

3. Following Appendix C of Part 300 new Appendix D and Appendix E are added as follows:

APPENDIX D.—LIST OF EXTREMELY HAZARDOUS SUBSTANCES, THRESHOLD PLANNING QUANTITIES, AND REPORTABLE QUANTITIES

[Alphabetical Order]

Chemical name	CAS No.	Ambient physical state	Threshold planning quantity (pounds)	Reportable quantity (pounds)
Acetone cyanohydrin	75-86-5	Liquid	1,000	10
Acetone thiosemicarbazide	1752-30-3	Solid	1,000	[1] 1
Acrolein	107-02-8	Liquid	500	1
Acrylamide	79-06-1	Solid	1,000	5,000
Acrylonitrile	107-13-1	Liquid	10,000	[b] 100
Acrylyl chloride	814-68-6	Liquid	500	[1] 1
Adiponitrile	111-69-3	Liquid	1,000	[1] 1
Aldicarb	116-06-3	Solid	[a] 100	1
Aldrin	309-00-2	Solid	500	[b] 1
Allyl alcohol	107-18-6	Liquid	1,000	100
Allylamine	107-11-9	Liquid	500	[1] 1
Aluminum phosphide	20859-73-8	Solid	[a] 500	100
Aminopterin	54-62-6	Solid	500	[1] 1
Amiton	78-53-5	Liquid	500	[1] 1
Amiton oxalate	3734-97-2	Solid	100	[1] 1
Ammonia	7664-41-7	Gas	500	100
Ammonium chloroplatinate	[b] 16919-58-7	Solid	10,000	[1] 1
Amphetamine	300-62-9	Liquid	1,000	[1] 1
Aniline	62-53-3	Liquid	1,000	5,000

APPENDIX D.—LIST OF EXTREMELY HAZARDOUS SUBSTANCES, THRESHOLD PLANNING QUANTITIES, AND REPORTABLE QUANTITIES—Continued

[Alphabetical Order]

Chemical name	CAS No.	Ambient physical state	Threshold planning quantity (pounds)	Reportable quantity (pounds)
Aniline, 2,4,6-trimethyl-	88-05-1	Liquid	500	[1] 1
Antimony pentaflouride	7783-70-2	Liquid	500	[1] 1
Antimycin A	1397-94-0	Solid	[2] 1,000	[1] 1
Antu	86-88-4	Solid	500	100
Arsenic pentoxide	1303-28-2	Solid	100	[2] 5,000
Arsenous oxide	1327-53-3	Solid	500	[2] 5,000
Arsenous trichloride	7784-34-1	Liquid	500	[2] 5,000
Arsine	7784-42-1	Gas	100	[1] 1
Azinphos-ethyl	2642-71-9	Solid	100	[1] 1
Azinphos-methyl	86-50-0	Solid	2	1
Bacitracin	[5] 1405-87-4(a)	Solid	10,000	[1] 1
Benzal chloride	98-87-3	Liquid	500	5,000
Benzenamine, 3-(trifluoromethyl)-	98-16-8	Liquid	500	[1] 1
Benzene, 1-(chloromethyl)-4-Nitro-	100-14-1	Solid	500	[1] 1
Benzenearsonic acid	98-05-5	Solid	2	[1] 1
Benzenesulfonyl chloride	[5] 98-09-9	Liquid	10,000	100
Benzotrichloride	98-07-7	Liquid	100	[2] 1
Benzyl chloride	100-44-7	Liquid	500	[2] 100
Benzyl cyanide	140-29-4	Liquid	1,000	[1] 1
Bicyclo[2.2.1]heptane-2-carbonitrile, 5-chloro-6-((((methylamino)Carbonyl)oxy)im	15271-41-7	Solid	500	[1] 1
Bix(chloromethyl) ketone	534-07-6	Solid	2	[1] 1
Bitoscanate	4044-65-9	Solid	500	[1] 1
Boron trichloride	10294-34-5	Liquid	500	[1] 1
Boron trifluoride	7637-07-2	Gas	500	[1] 1
Boron trifluoride compound with methyl ether (1:1)	353-42-4	Liquid	1,000	[1] 1
Bromadiolone	28772-56-7	Solid	100	[1] 1
Bromine	7726-95-6	Liquid	500	[1] 1
Butadiene	[5] 106-99-0	Gas	10,000	[1] 1
Butyl isovalerate	[5] 109-19-3	Liquid	10,000	[1] 1
Butyl vinyl ether	[5] 111-34-2	Liquid	10,000	[1] 1
C.I. basic green 1	[5] 633-03-4	Solid	10,000	[1] 1
Cadmium oxide	1306-19-0	Solid	100	[1] 1
Cadmium stearate	2223-93-0	Solid	[2] 1,000	[1] 1
Calcium arsenate	7778-44-1	Solid	500	[2] 1,000
Camphechlor	8001-35-2	Solid	500	[2] 1
Cantharidin	56-25-7	Solid	100	[1] 1
Carbachol chloride	51-83-2	Solid	500	[1] 1
Carbamic acid, methyl-, 0-(((2,4-Dimethyl-1, 3-Dithiolan-2-yl)Methylene)Amino)-	26419-73-8	Solid	100	[1] 1
Carbofuran	1563-66-2	Solid	2	10
Carbon disulfide	75-15-0	Liquid	10,000	100
Carbophenothion	786-19-6	Liquid	500	[1] 1
Carvone	[5] 2244-16-8	Liquid	10,000	[1] 1
Chlordane	57-74-9	Liquid	1,000	[2] 1
Chlorfenvinfos	470-90-6	Liquid	500	[1] 1
Chlorine	7782-50-5	Gas	100	10
Chlormephos	24934-91-6	Liquid	500	[1] 1
Chlormequat chloride	999-81-5	Solid	1,000	[1] 1
Chloroacetaldehyde	[5] 107-20-0	Liquid	10,000	1,000
Chloroacetic acid	79-11-8	Solid	100	[1] 1
Chloroethanol	107-07-3	Liquid	500	[1] 1
Chloroethyl chloroformate	627-11-2	Liquid	1,000	[1] 1
Chloroform	67-66-3	Liquid	10,000	[2] 5,000
Chloromethyl ether	542-88-1	Liquid	1,000	[2] 1
Chloromethyl methyl ether	107-30-2	Liquid	[3] 100	[2] 1
Chlorophacinone	3691-35-8	Solid	100	[1] 1
Chloroxuron	1982-47-4	Solid	500	[1] 1
Chlorthiophos	21923-23-9	Liquid	1,000	[1] 1
Chromic chloride	10025-73-7	Solid	2	[1] 1
Cobalt	[5] 7440-48-4	Solid	10,000	[1] 1
Cobalt carbonyl	10210-68-1	Solid	100	[1] 1
Cobalt, ((2,2'-(1,2-ethanediylbis (nitrilomethylidyne))bis(6-fluorophenolato))(2)	62207-76-5	Solid	100	[1] 1
Colchicine	64-86-8	Solid	100	[1] 1
Coumafuryl	[5] 117-52-2	Solid	10,000	[1] 1
Coumaphos	56-72-4	Solid	100	10
Coumatetralyl	5836-29-3	Solid	500	[1] 1
Cresol, o-	95-48-7	Solid	1,000	[2] 1,000
Crimidine	535-89-7	Solid	100	[1] 1
Crotonaldehyde	4170-30-3	Liquid	1,000	100
Crotonaldehyde, (E)-	123-73-9	Liquid	1,000	100
Cyanogen bromide	506-68-3	Solid	500	1,000
Cyanogen iodide	506-78-5	Solid	1,000	[1] 1
Cyanophos	2636-26-2	Liquid	1,000	[1] 1
Cyanuric fluoride	675-14-9	Liquid	100	[1] 1
Cycloheximide	66-81-9	Solid	100	[1] 1
Cyclohexylamine	108-91-8	Liquid	10,000	[1] 1
Cyclopentane	[5] 287-92-3	Liquid	10,000	[1] 1
Decaborane (14)	17702-41-9	Solid	500	[1] 1
Demeton	8065-48-3	Liquid	500	[1] 1
Demeton-s-methyl	919-86-8	Liquid	500	[1] 1
Dialifos	10311-84-9	Solid	100	[1] 1
Diborane	19287-45-7	Gas	100	[1] 1
Dibutyl phthalate	[5] 84-74-2	Liquid	10,000	10
Dichlorobenzalkonium chloride	[5] 8023-53-8	Solid	10,000	[1] 1
Dichloroethyl ether	111-44-4	Liquid	10,000	[2] 1
Dichloromethylphenylsilane	149-74-6	Liquid	1,000	[1] 1
Dichlorvos	62-73-7	Liquid	1,000	10
Dicrotophos	141-66-2	Liquid	100	[1] 1
Diepoxybutane	1464-53-5	Liquid	500	[2] 1
Diethyl chlorophosphate	814-49-3	Liquid	1,000	[1] 1

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APPENDIX D.—LIST OF EXTREMELY HAZARDOUS SUBSTANCES, THRESHOLD PLANNING QUANTITIES, AND REPORTABLE QUANTITIES—Continued

[Alphabetical Order]

Chemical name	CAS No.	Ambient physical state	Threshold planning quantity (pounds)	Reportable quantity (pounds)
Diethyl-p-phenylenediamine	[5] 93-05-0	Liquid	10,000	[1] 1
Diethylcarbamazine citrate	1642-54-2	Solid	100	[1] 1
Digitoxin	71-63-6	Solid	[3] 100	[1] 1
Diglycidyl ether	2238-07-5	Liquid	1,000	[1] 1
Digoxin	20830-75-5	Solid	100	[1] 1
Dimefox	115-26-4	Liquid	500	[1] 1
Dimethoate	60-51-5	Solid	500	10
Dimethyl phosphorochloridothioate	2524-03-0	Liquid	500	[1] 1
Dimethyl phthalate	[5] 131-11-3	Liquid	10,000	5,000
Dimethyl sulfate	77-78-1	Liquid	500	[2] 1
Dimethyl sulfide	75-18-3	Liquid	100	1
Dimethyl-p-phenylenediamine	99-98-9	Solid	2	[1] 1
Dimethyldichlorosilane	75-78-5	Liquid	10,000	[1] 1
Dimethylhydrazine	57-14-7	Liquid	1,000	[2] 1
Dimetilan	644-64-4	Solid	500	[1] 1
Dinitrocresol	534-52-1	Solid	2	10
Dinoseb	88-85-7	Solid	100	1,000
Dinoterb	1420-07-1	Solid	500	[1] 1
Dioctyl phthalate	[5] 117-84-0	Liquid	10,000	5,000
Dioxathion	78-34-2	Liquid	500	[1] 1
Dioxolane	[5] 646-06-0	Liquid	10,000	[1] 1
Diphacinone	82-66-6	Solid	2	[1] 1
Diphosphoramide, octamethyl-	152-16-9	Liquid	100	100
Disulfoton	298-04-4	Liquid	500	1
Dithiazanine iodide	514-73-8	Solid	500	[1] 1
Dithiobiuret	541-53-7	Solid	100	100
Emetine, dihydrochloride	316-42-7	Solid	1,000	[1] 1
Endosulfan	115-29-7	Solid	2	1
Endothion	2778-04-3	Solid	500	[1] 1
Endrin	72-20-8	Solid	500	1
Epichlorohydrin	106-89-8	Liquid	1,000	[2] 1,000
EPN	2104-64-5	Solid	100	[1] 1
Ergocalciferol	50-14-6	Solid	[3] 1,000	[1] 1
Ergotamine tartrate	379-79-3	Solid	500	[1] 1
Ethanesulfonyl chloride, 2-chloro-	1622-32-8	Liquid	500	[1] 1
Ethanol, 1,2-dichloro-, acetate	10140-87-1	Liquid	1,000	[1] 1
Ethion	563-12-2	Liquid	1,000	10
Ethoprophos	13194-48-4	Liquid	1,000	[1] 1
Ethyl thiocyanate	542-90-5	Liquid	10,000	[1] 1
Ethylbis(2-chloroethyl)amine	538-07-8	Liquid	10,000	[1] 1
Ethylene fluorohydrin	371-62-0	Liquid	[3] 2	[1] 1
Ethylene oxide	75-21-8	Gas	1,000	[2] 1
Ethylenediamine	107-15-3	Liquid	10,000	5,000
Ethyleneimine	151-56-4	Liquid	500	[2] 1
Ethylmercuric phosphate	[5] 2235-25-8	Solid	10,000	[1] 1
Fenamiphos	22224-92-6	Solid	2	[1] 1
Fenitrothion	122-14-5	Liquid	500	[1] 1
Fensulfothion	115-90-2	Liquid	1,000	[1] 1
Fluenetil	4301-50-2	Solid	100	[1] 1
Fluorine	7782-41-4	Gas	100	-10
Fluoroacetamide	640-19-7	Solid	[3] 2	100
Fluoroacetic acid	144-49-0	Solid	2	[1] 1
Fluoroacetyl chloride	359-06-8	Liquid	[3] 2	[1] 1
Fluorouracil	51-21-8	Solid	500	[1] 1
Fonofos	944-22-9	Liquid	500	[1] 1
Formaldehyde	50-00-0	Gas	500	[2] 1,000
Formaldehyde cyanohydrin	107-16-4	Liquid	10,000	[1] 1
Formetanate	23422-53-9	Solid	100	[1] 1
Formothion	2540-82-1	Liquid	100	[1] 1
Formparanate	17702-57-7	Solid	100	[1] 1
Fosthietan	21548-32-3	Liquid	500	[1] 1
Fubendazole	3878-19-1	Solid	100	[1] 1
Furan	110-00-9	Liquid	500	100
Gallium trichloride	13450-90-3	Solid	500	[1] 1
Hexachlorocyclopentadiene	77-47-4	Liquid	500	[2] 1
Hexachloronaphthalene	[5] 1335-87-1	Solid	10,000	[1] 1
Hexamethylenediamine, N,N'-dibutyl-	4835-11-4	Liquid	500	[1] 1
Hydrazine	302-01-2	Liquid	1,000	[2] 1
Hydrocyanic acid	74-90-8	Gas	100	10
Hydrogen chloride	7647-01-0	Gas	500	5,000
Hydrogen fluoride	7664-39-3	Gas	100	100
Hydrogen peroxide (concentration greater than 52%)	7722-84-1	Liquid	1,000	[1] 1
Hydrogen selenide	7783-07-5	Gas	2	[1] 1
Hydrogen sulfide	7783-06-4	Gas	500	100
Hydroquinone	123-31-9	Solid	500	[1] 1
Indomethacin	[5] 53-86-1	Solid	10,000	[1] 1
Iridium tetrachloride	[5] 10025-97-5	Solid	10,000	[1] 1
Iron, Pentacarbonyl-	[5] 13463-40-6	Liquid	100	[1] 1
Isobenzan	297-78-9	Solid	100	[1] 1
Isobutyronitrile	78-82-0	Liquid	10,000	[1] 1
Isocyanic acid, 3,4-dichlorophenyl ester	102-36-3	Solid	500	[1] 1
Isodrin	465-73-6	Solid	100	1
Isofluorphate	55-91-4	Liquid	[3] 100	100
Isophorone diisocyanate	4098-71-9	Solid	[4] 100	[1] 1
Isopropyl chloroformate	108-23-6	Liquid	1,000	[1] 1
Isopropyl formate	625-55-8	Liquid	500	[1] 1
Isopropylmethylpyrazolyl dimethylcarbamate	119-38-0	Liquid	500	[1] 1
Lactonitrile	78-97-7	Liquid	1,000	[1] 1
Leptophos	21609-90-5	Solid	500	[1] 1

APPENDIX D.—LIST OF EXTREMELY HAZARDOUS SUBSTANCES, THRESHOLD PLANNING QUANTITIES, AND REPORTABLE QUANTITIES—Continued

[Alphabetical Order]

Chemical name	CAS No.	Ambient physical state	Threshold planning quantity (pounds)	Reportable quantity (pounds)
Lewisite	541-25-3	Liquid	[3] 2	[1] 1
Lindane	58-89-9	Solid	1,000	[2] 1
Lithium hydride	7580-67-8	Solid	[4] 100(b)	[1] 1
Malononitrile	109-77-3	Solid	500	1,000
Manganese, tricarbonyl methylcyclopentadienyl	12108-13-3	Liquid	10,000	[1] 1
Mechlorethamine	51-75-2	Liquid	[3] 2	[1] 1
Mephosfolan	950-10-7	Liquid	500	[1] 1
Mercuric acetate	1600-27-7	Solid	500	[1] 1
Mercuric chloride	7487-94-7	Solid	500	[1] 1
Mercuric oxide	21908-53-2	Solid	500	[1] 1
Mesitylene	[5] 108-67-8	Liquid	10,000	[1] 1
Methacrolein diacetate	10476-95-6	Liquid	1,000	[1] 1
Methacrylic anhydride	760-93-0	Liquid	500	[1] 1
Methacrylonitrile	126-98-7	Liquid	10,000	1,000
Methacryloyl chloride	920-46-7	Liquid	100	[1] 1
Methacryloyloxyethyl isocyanate	30674-80-7	Liquid	500	[1] 1
Methamidophos	10265-92-6	Solid	100	[1] 1
Methanesulfonyl fluoride	558-25-8	Liquid	1,000	[1] 1
Methidathion	950-37-8	Solid	500	[1] 1
Methiocarb	2032-65-7	Solid	500	10
Methomyl	16752-77-5	Solid	1,000	100
Methoxyethylmercuric acetate	151-38-2	Solid	500	[1] 1
Methyl 2-chloroacrylate	80-63-7	Liquid	500	[1] 1
Methyl bromide	74-83-9	Gas	1,000	1,000
Methyl chloroformate	79-22-1	Liquid	10,000	1,000
Methyl disulfide	624-92-0	Liquid	100	[1] 1
Methyl isocyanate	624-83-9	Liquid	500	[2] 1
Methyl isothiocyanate	556-61-6	Solid	[4] 500	[1] 1
Methyl mercaptan	74-93-1	Gas	500	100
Methyl phenkapton	3735-23-7	Liquid	500	[1] 1
Methyl phosphonic dichloride	676-97-1	Solid	[4] 100	[1] 1
Methyl thiocyanate	556-64-9	Liquid	10,000	[1] 1
Methyl vinyl ketone	78-94-4	Liquid	2	[1] 1
Methylhydrazine	60-34-4	Liquid	500	10
Methylmercuric dicyanamide	502-39-6	Solid	500	[1] 1
Methyltrichlorosilane	75-79-6	Liquid	10,000	[1] 1
Metolcarb	1129-41-5	Solid	100	[1] 1
Mevinphos	7786-34-7	Liquid	500	10
Mexacarbate	315-18-4	Solid	500	1,000
Mitomycin C	50-07-7	Solid	500	[2] 1
Monocrotophos	6923-22-4	Solid	2	[1] 1
Muscimol	2763-96-4	Solid	500	1,000
Mustard gas	505-60-2	Liquid	1,000	[1] 1
Nickel	[5] 7440-02-0	Solid	10,000	[2] 1
Nickel carbonyl	13463-39-3	Liquid	[3] Any	[2] 1
Nicotine	54-11-5	Liquid	[3] 100	100
Nicotine sulfate	65-30-5	Solid	100	[1] 1
Nitric acid	7697-37-2	Liquid	1,000	1,000
Nitric oxide	10102-43-9	Gas	[3] 100	10
Nitrobenzene	98-95-3	Liquid	10,000	1,000
Nitrocyclohexane	1122-60-7	Liquid	500	[1] 1
Nitrogen dioxide	10102-44-0	Gas	100	10
Nitrosodimethylamine	62-75-9	Liquid	500	[2] 1
Norbormide	991-42-4	Solid	100	[1] 1
Organorhodium complex (PMN-82-147)	0	Solid	2	[1] 1
Orotic acid	[5] 65-86-1	Solid	10,009	[1] 1
Osmium tetroxide	[5] 20816-12-0	Solid	10,000	1,000
Ouabain	630-60-4	Solid	[3] 100	[1] 1
Oxamyl	23135-22-0	Solid	100	[1] 1
Oxetane, 3,3-bis(chloromethyl)-	78-71-7	Liquid	500	[1] 1
Oxydisulfoton	2497-07-6	Liquid	1,000	[1] 1
Ozone	10028-15-6	Gas	100	[1] 1
Paraquat	1910-42-5	Solid	2	[1] 1
Paraquat methosulfate	2074-50-2	Solid	2	[1] 1
Parathion	56-38-2	Liquid	[3] 100	[2] 1
Parathion-methyl	298-00-0	Solid	[3] 100	100
Paris green	12002-03-8	Solid	500	[2] 100
Pentaborane	19624-22-7	Liquid	500	[1] 1
Pentachloroethane	[5] 76-01-7	Liquid	10,000	[2] 1
Pentachlorophenol	[5] 87-86-5	Solid	10,000	[2] 10
Pentadecylamine	2570-26-5	Solid	100	[1] 1
Peracetic acid	79-21-0	Liquid	500	[1] 1
Perchloromethylmercaptan	594-42-3	Liquid	500	100
Phenol	108-95-2	Solid	500	1,000
Phenol, 2,2'-thiobis(4,6-dichloro-	97-18-7	Solid	100	[1] 1
Phenol, 2,2'-thiobis[4-chloro-6-methyl-	4418-66-0	Solid	100	[1] 1
Phenol, 3-(1-methylethyl)-, methylcarbamate	64-00-6	Solid	500	[1] 1
Phenoxarsine, 10,10'-oxydi-	58-36-6	Solid	500	[1] 1
Phenyl dichloroarsine	696-28-6	Liquid	1,000	[2] 1
Phenylhydrazine hydrochloride	59-88-1	Solid	1,000	[1] 1
Phenylmercury acetate	62-38-4	Solid	500	100
Phenylsilatrane	2097-19-0	Solid	500	[1] 1
Phenylthiourea	103-85-5	Solid	100	100
Phorate	298-02-2	Liquid	2	10
Phosacetim	4104-14-7	Solid	100	[1] 1
Phosfolan	947-02-4	Solid	100	[1] 1
Phosgene	75-44-5	Gas	2	10
Phosmet	732-11-6	Solid	2	[1] 1
Phosphamidon	13171-21-6	Liquid	100	[1] 1

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APPENDIX D.—LIST OF EXTREMELY HAZARDOUS SUBSTANCES, THRESHOLD PLANNING QUANTITIES, AND REPORTABLE QUANTITIES—Continued

[Alphabetical Order]

Chemical name	CAS No.	Ambient physical state	Threshold planning quantity (pounds)	Reportable quantity (pounds)
Phosphine	7803-51-2	Gas	500	100
Phosphonothioic acid, methyl-, O-ethyl O-(4-(methylthio)phenyl) ester	2703-13-1	Liquid	500	[1] 1
Phosphonothioic acid, methyl-, S-(2-(bis(1-methylethyl)amino)ethyl) O-ethyl ester	50782-69-9	Liquid	100	[1] 1
Phosphonothioic acid, methyl-,O-(4-nitrophenyl) O-phenyl ester	2665-30-7	Liquid	500	[1] 1
Phosphoric acid, dimethyl 4-(methylthio) phenyl ester	3254-63-5	Liquid	500	[1] 1
Phosphorous trichloride	7719-12-2	Liquid	1,000	1,000
Phosphorus	7723-14-0	Solid	[4] 500	1
Phosphorus oxychloride	10025-87-3	Liquid	500	1,000
Phosphorus pentachloride	10026-13-8	Solid	[4] 500	[1] 1
Phosphorus pentoxide	1314-56-3	Solid	[4] 2	[1] 1
Phylloquinone	[5] 84-80-0	Liquid	10,000	[1] 1
Physostigmine	57-47-6	Solid	100	[1] 1
Physostigmine, salicylate (1:1)	57-64-7	Solid	100	[1] 1
Picrotoxin	124-87-8	Solid	500	[1] 1
Piperidine	110-89-4	Liquid	1,000	[1] 1
Piprotal	5281-13-0	Solid	100	[1] 1
Pirimifos-ethyl	23505-41-1	Liquid	1,000	[1] 1
Platinous chloride	[5] 10025-65-7	Solid	10,000	[1] 1
Platinum tetrachloride	[5] 13454-96-1	Solid	10,000	[1] 1
Potassium arsenite	10124-50-2	Solid	500	[2] 1,000
Potassium cyanide	151-50-8	Solid	[4] 100	10
Potassium silver cyanide	506-61-6	Solid	[4] 500	1
Promecarb	2631-37-0	Solid	1,000	[1] 1
Propargyl bromide	106-96-7	Liquid	2	[1] 1
Propiolactone, beta-	57-57-8	Liquid	500	[1] 1
Propionitrile	107-12-0	Liquid	500	10
Propionitrile, 3-chloro-	542-76-7	Liquid	1,000	1,000
Propyl chloroformate	109-61-5	Liquid	500	[1] 1
Propylene glycol, allyl ether	[5] 1331-17-5	Liquid	10,000	[1] 1
Propylene oxide	75-56-9	Liquid	10,000	100
Propyleneimine	75-55-8	Liquid	10,000	[2] 1
Prothoate	2275-18-5	Solid	100	[1] 1
Pseudocumene	[5] 95-63-6	Liquid	10,000	[1] 1
Pyrene	129-00-0	Solid	[4] 1,000	5,000
Pyridine, 2-methyl-5-vinyl-	140-76-1	Liquid	500	[1] 1
Pyridine, 4-amino-	504-24-5	Solid	100	1,000
Pyridine, 4-nitro-, 1-oxide	1124-33-0	Solid	500	[1] 1
Pyriminil	53558-25-1	Solid	1,000	[1] 1
Rhodium trichloride	[5] 10049-07-7	Solid	10,000	[1] 1
Salcomine	14167-18-1	Solid	500	[1] 1
Sarin	107-44-8	Liquid	[3] 2	[1] 1
Selenium oxychloride	7791-23-3	Liquid	500	[1] 1
Selenous acid	7783-00-8	Solid	1,000	10
Semicarbazide hydrochloride	563-41-7	Solid	1,000	[1] 1
Silane, (4-aminobutyl)diethoxymethyl-	3037-72-7	Liquid	1,000	[1] 1
Sodium anthraquinone-1-sulfonate	[5] 128-56-3	Solid	10,000	[1] 1
Sodium arsenate	7631-89-2	Solid	1,000	[2] 1,000
Sodium arsenite	7784-46-5	Solid	500	[2] 1,000
Sodium azide (Na(N3))	26628-22-8	Solid	[4, 3] 100	1,000
Sodium cacodylate	124-65-2	Solid	100	[1] 1
Sodium cyanide (Na(CN))	143-33-9	Solid	[4] 100	10
Sodium fluoroacetate	62-74-8	Solid	2	10
Sodium pentacyhlorophenate	131-52-2	Solid	100	[1] 1
Sodium selenate	13410-01-0	Solid	100	[1] 1
Sodium selenite	10102-18-8	Solid	500	100
Sodium tellurite	10102-20-2	Solid	500	[1] 1
Strychnine	57-24-9	Solid	[3] 100	10
Strychnine, sulfate	60-41-3	Solid	100	[1] 1
Sulfotep	3689-24-5	Liquid	500	100
Sulfoxide, 3-chloropropyl octyl	3569-57-1	Liquid	500	[1] 1
Sulfur dioxide	7446-09-5	Gas	500	[1] 1
Sulfur tetrafluoride	7783-60-0	Gas	100	[1] 1
Sulfur trioxide	7446-11-9	Solid	[4] 100	[1] 1
Sulfuric acid	7664-93-9	Liquid	1,000	1,000
Tabun	77-81-6	Liquid	[3] 2	[1] 1
Tellurium	13494-80-9	Solid	500	[1] 1
Tellurium hexafluoride	7783-80-4	Gas	2	[1] 1
Tepp	107-49-3	Liquid	100	10
Terbufos	13071-79-9	Liquid	500	[1] 1
Tetraethyllead	78-00-2	Liquid	[3] 100	[2] 10
Tetraethyltin	597-64-8	Liquid	[3] 100	[1] 1
Tetramethyl lead	75-74-1	Liquid	[3] 100	[1] 1
Tetranitromethane	509-14-8	Liquid	500	10
Thallic oxide	[5] 1314-32-5	Solid	10,000	100
Thallium sulfate	10031-59-1	Solid	100	100
Thallous carbonate	6533-73-9	Solid	[3] 100	100
Thallous chloride	7791-12-0	Solid	[3] 100	100
Thallous malonate	2757-18-8	Solid	[3] 100	[1] 1
Thallous sulfate	7446-18-6	Solid	100	100
Thiocarbazide	2231-57-4	Solid	1,000	[1] 1
Thiocyanic acid, 2-(benzothiazolylthio)methyl ester	[5] 21564-17-0	Liquid	10,000	[1] 1
Thiofanox	39196-18-4	Solid	100	100
Thiometon	[5] 640-15-3	Liquid	10,000	[1] 1
Thionazin	297-97-2	Liquid	500	100
Thiophenol	108-98-5	Liquid	500	100
Thiosemicarbazide	79-19-6	Solid	100	100
Thiourea, (2-chlorophenyl)-	5344-82-1	Solid	100	100
Thiourea, (2-methylphenyl)-	614-78-8	Solid	500	[1] 1
Titanium tetrachloride	7550-45-0	Liquid	100	[1] 1

APPENDIX D.—LIST OF EXTREMELY HAZARDOUS SUBSTANCES, THRESHOLD PLANNING QUANTITIES, AND REPORTABLE QUANTITIES—Continued

[Alphabetical Order]

Chemical name	CAS No.	Ambient physical state	Threshold planning quantity (pounds)	Reportable quantity (pounds)
Toluene 2,4-diisocyanate	584-84-9	Liquid	500	100
Toluene 2,6-diisocyanate	91-08-7	Liquid	100	100
Trans-1,4-dichlorobutene	110-57-6	Liquid	500	[1] 1
Triamiphos	1031-47-6	Solid	500	[1] 1
Triazofos	24017-47-8	Liquid	500	[1] 1
Trichloro(chloromethyl)silane	1558-25-4	Liquid	100	[1] 1
Trichloro(dichlorophenyl)silane	27137-85-5	Liquid	500	[1] 1
Trichloroacetyl chloride	76-02-8	Liquid	500	[1] 1
Trichloroethylsilane	115-21-9	Liquid	10,000	[1] 1
Trichloronate	327-98-0	Liquid	1,000	[1] 1
Trichlorophenylsilane	98-13-5	Liquid	2	[1] 1
Trichlorophon	[5] 52-68-6	Solid	10,000	100
Triethoxysilane	998-30-1	Liquid	500	[1] 1
Trimethylchlorosilane	75-77-4	Liquid	1,000	[1] 1
Trimethylolpropane phosphite	824-11-3	Solid	500	[1] 1
Trimethyltin chloride	1066-45-1	Solid	500	[1] 1
Triphenyltin chloride	639-58-7	Solid	500	[1] 1
Tris(2-chloroethyl)amine	555-77-1	Liquid	1,000	[1] 1
Valinomycin	2001-95-8	Solid	[3] 1,000	[1] 1
Vanadium pentoxide	1314-62-1	Solid	[4] 100	1,000
Vinyl acetate monomer	108-05-4	Liquid	1,000	5,000
Vinylnorbornene	[5] 3048-64-4	Liquid	10,000	[1] 1
Warfarin	81-81-2	Solid	500	100
Warfarin sodium	129-06-6	Solid	1,000	[1] 1
Xylylene dichloride	28347-13-9	Solid	100	[1] 1
Zinc phosphide	1314-84-7	Solid	[4] 500	100
Zinc, dichloro(4,4-dimethyl-5((((methylamino)carbonyl)oxy)imino)pentanenitrile)	58270-08-9	Solid	100	[1] 1

[1] Statutory reportable quantity for purposes of emergency notification under SARA section 304(a)(2).

[2] Indicates that the reportable quantity is subject to change when the assessment of potential carcinogenicity and/or chronic toxicity is completed.

[3] The calculated threshold quantity changed after technical review as described in the text.

[4] This material is a reactive solid. The threshold planning quantity will not become 10,000 pounds for the non-powder form.

[5] This chemical is proposed for deletion from list. Threshold planning quantity is in the interim assigned to the category of lowest concern, 10,000 pounds.

[6] The statutory one-pound reportable quantity for methyl isocyanate under CERCLA section 102(b) may be adjusted in a future rulemaking action.

APPENDIX E.—LIST OF EXTREMELY HAZARDOUS SUBSTANCES, THRESHOLD PLANNING QUANTITIES, AND REPORTABLE QUANTITIES

[CAS Order]

CAS No.	Chemical name	Ambient physical state	Threshold planning quantity (pounds)	Reportable quantity (pounds)
0	Organorhodium complex (PMN-82-147)	Solid	2	[1] 1
50-00-0	Formaldehyde	Gas	500	[2] 1,000
50-07-7	Mitomycin C	Solid	500	[2] 1
50-14-6	Ergocalciferol	Solid	[3] 1,000	[1] 1
51-21-8	Fluorouracil	Solid	500	[1] 1
51-75-2	Mechlorethamine	Liquid	[3] 2	[1] 1
51-83-2	Carbachol chloride	Solid	500	[1] 1
52-68-6 [4]	Trichlorophon	Solid	10,000	100
53-86-1 [4]	Indomethacin	Solid	10,000	[1] 1
54-11-5	Nicotine	Liquid	[3] 100	100
54-62-6	Aminopterin	Solid	500	[1] 1
55-91-4	Isofluorphate	Liquid	[3] 100	100
56-25-7	Cantharidin	Solid	100	[1] 1
56-38-2	Parathion	Liquid	[3] 100	[2] 1
56-72-4	Coumaphos	Solid	100	10
57-14-7	Dimethylhydrazine	Liquid	1,000	[2] 1
57-24-9	Strychnine	Solid	[3] 100	10
57-47-6	Physostigmine	Solid	100	[1] 1
57-57-8	Propiolactone, beta-	Liquid	500	[1] 1
57-64-7	Physostigmine, salicylate (1:1)	Solid	100	[1] 1
57-74-9	Chlordane	Liquid	1,000	[2] 1
58-36-6	Phenoxarsine, 10, 10'-oxydi-	Solid	500	[1] 1
58-89-9	Lindane	Solid	1,000	[2] 1
59-88-1	Phenylhydrazine hydrochloride	Solid	1,000	[1] 1
60-34-4	Methylhydrazine	Liquid	500	10
60-41-3	Strychnine, sulfate	Solid	100	[1] 1
60-51-5	Dimethoate	Solid	500	10
62-38-4	Phenylmercury acetate	Solid	500	100
62-53-3	Aniline	Liquid	1,000	5,000
62-73-7	Dichlorvos	Liquid	1,000	10
62-74-8	Sodium fluoroacetate	Solid	2	10
62-75-9	Nitrosodimethylamine	Liquid	500	[2] 1
64-00-6	Phenol, 3-(1-methylethyl)-, methylcarbamate	Solid	500	[1] 1
64-86-8	Colchicine	Solid	100	[1] 1
65-30-5	Nicotine sulfate	Solid	100	[1] 1
65-86-1 [4]	Orotic acid	Solid	10,000	[1] 1
66-81-9	Cycloheximide	Solid	100	[1] 1
67-66-3	Chloroform	Liquid	10,000	[2] 5,000
71-63-6	Digitoxin	Solid	[3] 100	[1] 1
72-20-8	Endrin	Solid	500	1
74-83-9	Methyl bromide	Gas	1,000	1,000
74-90-8	Hydrocyanic acid	Gas	100	10
74-93-1	Methyl mercaptan	Gas	500	100
75-15-0	Carbon disulfide	Liquid	10,000	100
75-18-3	Dimethyl sulfide	Liquid	100	[1] 1

APPENDIX E.—LIST OF EXTREMELY HAZARDOUS SUBSTANCES, THRESHOLD PLANNING QUANTITIES, AND REPORTABLE QUANTITIES—Continued

[CAS Order]

CAS No.	Chemical name	Ambient physical state	Threshold planning quantity (pounds)	Reportable quantity (pounds)
75-21-8	Ethylene oxide	Gas	1,000	[2] 1
75-44-5	Phosgene	Gas	2	10
75-55-8	Propyleneimine	Liquid	10,000	[2] 1
75-56-9	Propylene oxide	Liquid	10,000	100
75-74-1	Tetramethyl lead	Liquid	[3] 100	[1] 1
75-77-4	Trimethylchlorosilane	Liquid	1,000	[1] 1
75-78-5	Dimethyldichlorosilane	Liquid	10,000	[1] 1
75-79-6	Methyltrichlorosilane	Liquid	10,000	[1] 1
75-86-5	Acetone cyanohydrin	Liquid	1,000	10
76-01-7 [4]	Pentachloroethane	Liquid	10,000	[2] 1
76-02-8	Trichloroacetyl chloride	Liquid	500	[1] 1
77-47-4	Hexachlorocyclopentadiene	Liquid	500	[2] 1
77-78-1	Dimethyl sulfate	Liquid	500	[2] 1
77-81-6	Tabun	Liquid	[3] 2	[1] 1
78-00-2	Tetraethyllead	Liquid	[3] 100	[2] 10
78-34-2	Dioxathion	Liquid	500	[1] 1
78-53-5	Amiton	Liquid	500	[1] 1
78-71-7	Oxetane, 3,3-bis(chloromethyl)-	Liquid	500	[1] 1
78-82-0	Isobutyronitrile	Liquid	10,000	[1] 1
78-94-4	Methyl vinyl ketone	Liquid	2	[1] 1
78-97-7	Lactonitrile	Liquid	1,000	[1] 1
79-06-1	Acrylamide	Solid	1,000	5,000
79-11-8	Chloroacetic acid	Solid	100	[1] 1
79-19-6	Thiosemicarbazide	Solid	100	100
79-21-0	Peracetic acid	Liquid	500	[1] 1
79-22-1	Methyl Chloroformate	Liquid	10,000	1,000
80-63-7	Methyl 2-chloroacrylate	Liquid	500	[1] 1
81-81-2	Warfarin	Solid	500	100
82-66-6	Diphacinone	Solid	2	[1] 1
84-74-2 [4]	Dibutyl phthalate	Liquid	10,000	10
84-80-0 [4]	Phylloquinone	Liquid	10,000	[1] 1
86-50-0	Azinphos-methyl	Solid	2	1
86-88-4	Antu	Solid	500	100
87-86-5 [4]	Pentachlorophenol	Solid	10,000	[2] 10
88-05-1	Aniline, 2,4,6-trimethyl-	Liquid	500	[1] 1
88-85-7	Dinoseb	Solid	100	1,000
91-08-7	Toluene 2,6-diisocyanate	Liquid	100	100
93-05-0 [4]	Diethyl-p-phenylenediamine	Liquid	10,000	[1] 1
95-48-7	Cresol, o-	Solid	1,000	[2] 1,000
95-63-6 [4]	Pseudocumene	Liquid	10,000	[1] 1
97-18-7	Phenol, 2,2'-thiobis(4,6-dichloro-	Solid	100	[1] 1
98-05-5	Benzenearsonic acid	Solid	2	[1] 1
98-07-7	Benzotrichloride	Liquid	100	[2] 1
98-09-9 [4]	Benzenesulfonyl chloride	Liquid	10,000	100
98-13-5	Trichlorophenylsilane	Liquid	2	[1] 1
98-16-8	Benzenamine, 3-(trifluoromethyl)-	Liquid	500	[1] 1
98-87-3	Benzal chloride	Liquid	500	5,000
98-95-3	Nitrobenzene	Liquid	10,000	1,000
99-98-9	Dimethyl-p-phenylenediamine	Solid	2	[1] 1
100-14-1	Benzene, 1-(chloromethyl)-4-nitro-	Solid	500	[1] 1
100-44-7	Benzyl Chloride	Liquid	500	[2] 100
102-36-3	Isocyanic acid, 3,4-dichlorophenyl ester	Solid	500	[1] 1
103-85-5	Phenylthiourea	Solid	100	100
106-89-8	Epichlorohydrin	Liquid	1,000	[2] 1,000
106-96-7	Propargyl bromide	Liquid	2	[1] 1
106-99-0 [4]	Butadiene	Gas	10,000	[1] 1
107-02-8	Acrolein	Liquid	500	1
107-07-3	Chloroethanol	Liquid	500	[1] 1
107-11-9	Allylamine	Liquid	500	[1] 1
107-12-0	Propionitrile	Liquid	500	10
107-13-1	Acrylonitrile	Liquid	10,000	[2] 100
107-15-3	Ethylenediamine	Liquid	10,000	5,000
107-16-4	Formaldehyde cyanohydrin	Liquid	10,000	[1] 1
107-18-6	Allyl alcohol	Liquid	1,000	100
107-20-0 [4]	Chloroacetaldehyde	Liquid	10,000	1,000
107-30-2	Chloromethyl methyl ether	Liquid	[3] 100	[2] 1
107-44-8	Sarin	Liquid	[3] 2	[1] 1
107-49-3	Tepp	Liquid	[3] 100	10
108-05-4	Vinyl acetate monomer	Liquid	1,000	5,000
108-23-6	Isopropyl chloroformate	Liquid	1,000	[1] 1
108-67-8 [4]	Mesitylene	Liquid	10,000	[1] 1
108-91-8	Cyclohexylamine	Liquid	10,000	[1] 1
108-95-2	Phenol	Solid	500	1,000
108-98-5	Thiophenol	Liquid	500	100
109-19-3 [4]	Butyl isovalerate	Liquid	10,000	[1] 1
109-61-5	Propyl chloroformate	Liquid	500	[1] 1
109-77-3	Malononitrile	Solid	500	1,000
110-00-9	Furan	Liquid	500	100
110-57-6	Trans-1,4-dichlorobutene	Liquid	500	[1] 1
110-89-4	Piperidine	Liquid	1,000	[1] 1
111-34-2 [4]	Butyl vinyl ether	Liquid	10,000	[1] 1
111-44-4	Dichloroethyl ether	Liquid	10,000	[2] 1
111-69-3	Adiponitrile	Liquid	1,000	[1] 1
115-21-9	Trichloroethylsilane	Liquid	10,000	[1] 1
115-26-4	Dimefox	Liquid	500	[1] 1
115-29-7	Endosulfan	Solid	2	1
115-90-2	Fensulfothion	Liquid	1,000	[1] 1
116-06-3	Aldicarb	Solid	[3] 100	1

APPENDIX E.—LIST OF EXTREMELY HAZARDOUS SUBSTANCES, THRESHOLD PLANNING QUANTITIES, AND REPORTABLE QUANTITIES—Continued

[CAS Order]

CAS No.	Chemical name	Ambient physical state	Threshold planning quantity (pounds)	Reportable quantity (pounds)
117-52-2 [4]	Coumafuryl	Solid	10,000	[1] 1
117-84-0 [4]	Dioctyl phthalate	Liquid	10,000	5,000
119-38-0	Isopropylmethylpyrazolyl dimethylcarbamate	Liquid	500	[1] 1
122-14-5	Fenitrothion	Liquid	500	[1] 1
123-31-9	Hydroquinone	Solid	500	[1] 1
123-73-9	Crotonaldehyde, (E)-	Liquid	1,000	100
124-65-2	Sodium cacodylate	Solid	100	[1] 1
124-87-8	Picrotoxin	Solid	500	[1] 1
126-98-7	Methacrylonitrile	Liquid	10,000	1,000
128-56-3 [4]	Sodium anthraquinone-1-sulfonate	Solid	10,000	[1] 1
129-00-0	Pyrene	Solid	[3] 1,000	5,000
129-06-6	Warfarin sodium	Solid	1,000	[1] 1
131-11-3 [4]	Dimethyl phthalate	Liquid	10,000	5,000
131-52-2	Sodium pentachlorophenate	Solid	100	[1] 1
140-29-4	Benzyl cyanide	Liquid	1,000	[1] 1
140-76-1	Pyridine, 2-methyl-5-vinyl-	Liquid	500	[1] 1
141-66-2	Dicrotophos	Liquid	100	[1] 1
143-33-9	Sodium cyanide (Na(CN))	Solid	[5] 100	10
144-49-0	Fluoroacetic acid	Solid	2	[1] 1
149-74-6	Dichloromethylphenylsilane	Liquid	1,000	[1] 1
151-38-2	Methoxyethylmercuric acetate	Solid	500	[1] 1
151-50-8	Potassium cyanide	Solid	[5] 100	10
151-56-4	Ethyleneimine	Liquid	500	[2] 1
152-16-9	Diphosphoramide, octamethyl-	Liquid	100	100
287-92-3 [4]	Cyclopentane	Liquid	10,000	[1] 1
297-78-9	Isobenzan	Solid	100	[1] 1
297-97-2	Thionazin	Liquid	500	100
298-00-0	Parathion-methyl	Solid	[3] 100	100
298-02-2	Phorate	Liquid	2	10
298-04-4	Disulfoton	Liquid	500	1
300-62-9	Amphetamine	Liquid	1,000	[1] 1
302-01-2	Hydrazine	Liquid	1,000	[2] 1
309-00-2	Aldrin	Solid	500	[2] 1
315-18-4	Mexacarbate	Solid	500	1,000
316-42-7	Emetine, dihydrochloride	Solid	1,000	[1] 1
327-98-0	Trichloronate	Liquid	1,000	[1] 1
353-42-4	Boron trifluoride compound with methyl ether (1:1)	Liquid	1,000	[1] 1
359-06-8	Fluoroacetyl chloride	Liquid	[3] 2	[1] 1
371-62-0	Ethylene fluorohydrin	Liquid	[3] 2	[1] 1
379-79-3	Ergotamine tartrate	Solid	500	[1] 1
465-73-6	Isodrin	Solid	100	1
470-90-6	Chlorfenvinfos	Liquid	500	[1] 1
502-39-6	Methylmercuric dicyanamide	Solid	500	[1] 1
504-24-5	Pyridine, 4-amino-	Solid	100	1,000
505-60-2	Mustard gas	Liquid	1,000	[1] 1
506-61-6	Potassium silver cyanide	Solid	[5] 500	1
506-68-3	Cyanogen bromide	Solid	500	1,000
506-78-5	Cyanogen iodide	Solid	1,000	[1] 1
509-14-8	Tetranitromethane	Liquid	500	10
514-73-8	Dithiazanine iodide	Solid	500	[1] 1
534-07-6	Bis (chloromethyl) ketone	Solid	2	[1] 1
534-52-1	Dinitrocresol	Solid	2	10
535-89-7	Crimidine	Solid	100	[1] 1
538-07-8	Ethylbis (2-chloroethyl) amine	Liquid	10,000	[1] 1
541-25-3	Lewisite	Liquid	[3] 2	[1] 1
541-53-7	Dithiobiuret	Solid	100	100
542-76-7	Propionitrile, 3-chloro-	Liquid	1,000	1,000
542-88-1	Chloromethyl ether	Liquid	1,000	[2] 1
542-90-5	Ethyl thiocyanate	Liquid	10,000	[1] 1
555-77-1	Tris (2-chloroethyl) amine	Liquid	1,000	[1] 1
556-61-6	Methyl isothiocyanate	Solid	[5] 500	[1] 1
556-64-9	Methyl thiocyanate	Liquid	10,000	[1] 1
558-25-8	Methanesulfonyl fluoride	Liquid	1,000	[1] 1
563-12-2	Ethion	Liquid	1,000	10
563-41-7	Semicarbazide hydrochloride	Solid	1,000	[1] 1
584-84-9	Toluene 2, 4-diisocyanate	Liquid	500	100
594-42-3	Perchloromethylmercaptan	Liquid	500	100
597-64-8	Tetraethyltin	Liquid	[3] 100	[1] 1
614-78-8	Thiourea, (2-methylphenyl)-	Solid	500	[1] 1
624-83-9	Methyl isocyanate	Liquid	500	[6] 1
624-92-0	Methyl disulfide	Liquid	100	[1] 1
625-55-8	Isopropyl formate	Liquid	500	[1] 1
627-11-2	Chloroethyl chloroformate	Liquid	1,000	[1] 1
630-60-4	Ouabain	Solid	[3] 100	[1] 1
633-03-4 [4]	C.I. basic green 1	Solid	10,000	[1] 1
639-58-7	Triphenyltin chloride	Solid	500	[1] 1
640-15-3 [4]	Thiometon	Liquid	10,000	[1] 1
640-19-7	Fluoroacetamide	Solid	[3] 2	100
644-64-4	Dimetilan	Solid	500	[1] 1
646-06-0 [4]	Diulane	Liquid	10,000	[1] 1
675-14-9	Cyanuric fluoride	Liquid	100	[1] 1
676-97-1	Methyl phosphonic dichloride	Solid	[5] 100	[1] 1
696-28-6	Phenyl dichloroarsine	Liquid	1,000	[2] 1
732-11-6	Phosmet	Solid	2	[1] 1
760-93-0	Methacrylic anhydride	Liquid	500	[1] 1
786-19-6	Carbophenothion	Liquid	500	[1] 1
814-49-3	Diethyl chlorophosphate	Liquid	1,000	[1] 1
814-68-6	Acrylyl chloride	Liquid	500	[1] 1

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APPENDIX E.—LIST OF EXTREMELY HAZARDOUS SUBSTANCES, THRESHOLD PLANNING QUANTITIES, AND REPORTABLE QUANTITIES—Continued

[CAS Order]

CAS No.	Chemical name	Ambient physical state	Threshold planning quantity (pounds)	Reportable quantity (pounds)
824-11-3	Trimethylolpropane phosphite	Solid	500	[1] 1
919-86-8	Demeton-S-methyl	Liquid	500	[1] 1
920-46-7	Methacryloyl chloride	Liquid	500	[1] 1
944-22-9	Fonofos	Liquid	100	[1] 1
947-02-4	Phosfolan	Liquid	500	[1] 1
950-10-7	Mephosfolan	Solid	100	[1] 1
950-37-8	Methidathion	Liquid	500	[1] 1
991-42-4	Norbormide	Solid	500	[1] 1
998-30-1	Triethoxysilane	Solid	100	[1] 1
999-81-5	Chlormequat chloride	Liquid	500	[1] 1
1031-47-6	Triamiphos	Solid	1,000	[1] 1
1066-45-1	Trimethyltin chloride	Solid	500	[1] 1
1122-60-7	Nitrocyclohexane	Solid	500	[1] 1
1124-33-0	Pyridine, 4-nitro-, 1-oxide	Liquid	500	[1] 1
1129-41-5	Metolcarb	Solid	500	[1] 1
1303-28-2	Arsenic pentoxide	Solid	100	[1] 1
1306-19-0	Cadmium oxide	Solid	100	[2] 5,000
1314-32-5 [4]	Thallic oxide	Solid	100	[1] 1
1314-56-3	Phosphorus pentoxide	Solid	10,000	100
1314-62-1	Vanadium pentoxide	Solid	[5] 2	[1] 1
1314-84-7	Zinc phosphide	Solid	[5] 100	1,000
1327-53-3	Arsenous oxide	Solid	[5] 500	100
1331-17-5 [4]	Propylene glycol, allyl ether	Solid	500	[2] 5000
1335-87-1 [4]	Hexachloronaphthalene	Liquid	10,000	[1] 1
1397-94-0	Antimycin A	Solid	10,000	[1] 1
1405-87-4 [4]	Bacitracin	Solid	[5] 1,000	[1] 1
1420-07-1	Dinoterb	Solid	1,000	[1] 1
1464-53-5	Diepoxybutane	Solid	500	[1] 1
1558-25-4	Trichloro(chloromethyl)silane	Liquid	500	[1] 1
1563-66-2	Carbofuran	Liquid	100	[1] 1
1600-27-7	Mercuric acetate	Solid	2	10
1622-32-8	Ethanesulfonyl chloride, 2-chloro-	Solid	500	[1] 1
1642-54-2	Diethylcarbamazine citrate	Liquid	500	[1] 1
1752-30-3	Acetone thiosemicarbazide	Solid	100	[1] 1
1910-42-5	Paraquat	Solid	1,000	[1] 1
1982-47-4	Chloroxuron	Solid	2	[1] 1
2001-95-8	Valinomycin	Solid	500	[1] 1
2032-65-7	Methiocarb	Solid	[5] 1,000	[1] 1
2074-50-2	Paraquat methosulfate	Solid	500	10
2097-19-0	Phenylsilatrane	Solid	2	[1] 1
2104-64-5	EPN	Solid	500	[1] 1
2223-93-0	Cadmium stearate	Solid	100	[1] 1
2231-57-4	Thiocarbazide	Solid	1,000	[1] 1
2235-25-8 [4]	Ethylmercuric phosphate	Solid	1,000	[1] 1
2238-07-5	Diglycidyl ether	Solid	10,000	[1] 1
2244-16-8 [4]	Carvone	Liquid	1,000	[1] 1
2275-18-5	Prothoate	Liquid	10,000	[1] 1
2497-07-6	Oxydisulfoton	Solid	100	[1] 1
2524-03-0	Dimethyl phosphorochloridothioate	Liquid	1,000	[1] 1
2540-82-1	Formothion	Liquid	500	[1] 1
2570-26-5	Pentadecylamine	Liquid	100	[1] 1
2631-37-0	Promecarb	Solid	100	[1] 1
2636-26-2	Cyanophos	Solid	1,000	[1] 1
2642-71-9	Azinphos-ethyl	Liquid	1,000	[1] 1
2665-30-7	Phosphonothioic acid, methyl-,0-(4-nitrophenyl) 0-phenyl ester	Solid	100	[1] 1
2703-13-1	Phosphonothioic acid, methyl-,0-ethyl 0-(4-(methylthio)phenyl) ester	Liquid	500	[1] 1
2757-18-8	Thallous malonate	Liquid	500	[1] 1
2763-96-4	Muscimol	Solid	[5] 100	[1] 1
2778-04-3	Endothion	Solid	500	1 000
3037-72-7	Silane, (4-aminobutyl)diethoxymethyl-	Solid	500	[1] 1
3048-64-4 [4]	Vinylnorbornene	Liquid	1,000	[1] 1
3254-63-5	Phosphoric acid, dimethyl 4-(methylthio)phenyl ester	Liquid	10,000	[1] 1
3569-57-1	Sulfoxide, 3-chloropropyl octyl	Liquid	500	[1] 1
3689-24-5	Sulfotep	Liquid	500	[1] 1
3691-35-8	Chlorophacinone	Liquid	500	100
3734-97-2	Amiton oxalate	Solid	100	[1] 1
3735-23-7	Methyl phenkapton	Solid	100	[1] 1
3878-19-1	Fuberidazole	Liquid	500	[1] 1
4044-65-9	Bitoscanate	Solid	100	[1] 1
4098-71-9	Isophorone diisocyanate	Solid	500	[1] 1
4104-14-7	Phosacetim	Solid	[5] 100	[1] 1
4170-30-3	Crotonaldehyde	Solid	100	[1] 1
4301-50-2	Fluenetil	Liquid	1,000	100
4418-66-0	Phenol, 2,2'-thiobis[4-chloro-6-methyl-	Solid	100	[1] 1
4835-11-4	Hexamethylenediamine, N,N'-dibutyl-	Solid	100	[1] 1
5281-13-0	Piprotal	Liquid	500	[1] 1
5344-82-1	Thiourea, (2-chlorophenyl)-	Solid	100	[1] 1
5836-29-3	Coumatetralyl	Solid	100	100
6533-73-9	Thallous carbonate	Solid	500	[1] 1
6923-22-4	Monocrotophos	Solid	[5] 100	100
7440-02-0 [4]	Nickel	Solid	2	[1] 1
7440-48-4 [4]	Colbalt	Solid	10,000	[1] 1
7446-09-5	Sulfur dioxide	Solid	10,000	[1] 1
7446-11-9	Sulfur trioxide	Gas	500	[1] 1
7446-18-6	Thallous sulfate	Solid	[5] 100	[1] 1
7487-94-7	Mercuric chloride	Solid	100	100
7550-45-0	Titanium tetrachloride	Solid	500	[1] 1
7580-67-8	Lithium hydride	Liquid	100	[1] 1
		Solid	[5] 100	[1] 1

APPENDIX E.—LIST OF EXTREMELY HAZARDOUS SUBSTANCES, THRESHOLD PLANNING QUANTITIES, AND REPORTABLE QUANTITIES—Continued

[CAS Order]

CAS No.	Chemical name	Ambient physical state	Threshold planning quantity (pounds)	Reportable quantity (pounds)
7631-89-2	Sodium arsenate	Solid	1,000	1,000 (d)
7637-07-2	Boron trifluoride	Gas	500	[1] 1
7647-01-0	Hydrogen chloride	Gas	500	5,000
7664-39-3	Hydrogen fluoride	Gas	100	100
7664-41-7	Ammonia	Gas	500	100
7664-93-9	Sulfuric acid	Liquid	1,000	1,000
7697-37-2	Nitric acid	Liquid	1,000	1,000
7719-12-2	Phosphorous trichloride	Liquid	1,000	1,000
7722-84-1	Hydrogen peroxide (concentration greater than 25%)	Liquid	1,000	[1] 1
7723-14-0	Phoshorus	Solid	[3] 500	[1] 1
7726-95-6	Bromine	Liquid	500	[1] 1
7778-44-1	Calcium arsenate	Solid	500	[2] 1,000
7782-41-4	Fluorine	Gas	100	10
7782-50-5	Chlorine	Gas	100	10
7783-00-8	Selenous acid	Solid	1,000	10
7783-06-4	Hydrogen sulfide	Gas	500	100
7783-07-5	Hydrogen selenide	Gas	2	[1] 1
7783-60-0	Sulfur tetrafluoride	Gas	100	[1] 1
7783-70-2	Antimony pentafluoride	Liquid	500	[1] 1
7783-80-4	Tellurium hexafluoride	Gas	2	[1] 1
7784-34-1	Arsenous trichloride	Liquid	500	[2] 5,000
7784-42-1	Arsine	Gas	100	[1] 1
7784-46-5	Sodium arsenite	Solid	500	[2] 1,000
7786-34-7	Mevinphos	Liquid	500	10
7791-12-0	Thallous chloride	Solid	[3] 100	100
7791-23-3	Selenium Oxychloride	Liquid	500	[1] 1
7803-51-2	Phosphine	Gas	500	100
8001-35-2	Camphechlor	Solid	500	[2] 1
8023-53-8 [4]	Dichlorobenzalkonium chloride	Solid	10,000	[1] 1
8065-48-3	Demeton	Liquid	500	[1] 1
10025-65-7 [4]	Platinous chloride	Solid	10,000	[1] 1
10025-73-7	Chromic chloride	Solid	2	[1] 1
10025-87-3	Phosphorus oxychloride	Liquid	500	1,000
10025-97-5 [4]	Iridium tetrachloride	Solid	10,000	[1] 1
10026-13-8	Phosphorus pentachloride	Solid	[3] 500	[1] 1
10028-15-6	Ozone	Gas	100	[1] 1
10031-59-1	Thallium sulfate	Solid	100	100
10049-07-7 [4]	Rhodium trichloride	Solid	10,000	[1] 1
10102-18-8	Sodium selenite	Solid	500	100
10102-20-2	Sodium tellurite	Solid	500	[1] 1
10102-43-9	Nitric oxide	Gas	[3] 100	10
10102-44-0	Nitrogen dioxide	Gas	100	10
10124-50-2	Potassium arsenite	Solid	500	[2] 1,000
10140-87-1	Ethanol, 1,2-dichloro-, acetate	Liquid	1,000	[1] 1
10210-68-1	Cobalt carbonyl	Solid	100	[1] 1
10265-92-6	Methamidophos	Solid	100	[1] 1
10294-34-5	Boron trichloride	Liquid	500	[1] 1
10311-84-9	Dialifos	Solid	100	[1] 1
10476-95-6	Methacrolein diacetate	Liquid	1,000	[1] 1
12002-03-8	Paris green	Solid	500	[2] 100
12108-13-3	Manganese, tricarbonyl methylcyclopentadienyl	Liquid	10,000	[1] 1
13071-79-9	Terbufos	Liquid	500	[1] 1
13171-21-6	Phosphamidon	Liquid	100	[1] 1
13194-48-4	Ethoprophos	Liquid	1,000	[1] 1
13410-01-0	Sodium selenate	Solid	100	[1] 1
13450-90-3	Gallium trichloride	Solid	500	[1] 1
13454-96-1 [4]	Platinum tetrachloride	Solid	10,000	[1] 1
13463-39-3	Nickel carbonyl	Liquid	[3] Any	[2] 1
13463-40-6	Iron, pentacarbonyl-	Liquid	100	[1] 1
13494-80-9	Tellurium	Solid	500	[1] 1
14167-18-1	Salcomine	Solid	500	[1] 1
15271-41-7	Bicyclo[2.2.1]heptane-2-carbonitrile, 5-chloro-6-((((methylamino)carbonyl)oxy)m	Solid	500	[1] 1
16752-77-5	Methomyl	Solid	1,000	100
16919-58-7 [4]	Ammonium chloroplatinate	Solid	10,000	[1] 1
17702-41-9	Decaborane(14)	Solid	500	[1] 1
17702-57-7	Formparanate	Solid	100	[1] 1
19287-45-7	Diborane	Gas	100	[1] 1
19624-22-7	Pentaborane	Liquid	500	[1] 1
20816-12-0 [4]	Osmium tetroxide	Solid	10,000	1,000
20830-75-5	Digoxin	Solid	100	[1] 1
20859-73-8	Aluminum phosphide	Solid	[5] 500	100
21548-32-3	Fosthietan	Liquid	500	[1] 1
21564-17-0 [4]	Thiocyanic acid, 2-(benzothiazolylthio)methyl ester	Liquid	10,000	[1] 1
21609-90-5	Leptophos	Solid	500	[1] 1
21908-53-2	Mercuric oxide	Solid	500	[1] 1
21923-23-9	Chlorthiophos	Liquid	1,000	[1] 1
22224-92-6	Fenamiphos	Solid	2	[1] 1
23135-22-0	Oxamyl	Solid	100	[1] 1
23422-53-9	Formetanate	Solid	100	[1] 1
23505-41-1	Pirimifos-ethyl	Liquid	1,000	[1] 1
24017-47-8	Triazofos	Liquid	500	[1] 1
24934-91-6	Chlormephos	Liquid	500	[1] 1
26419-73-8	Carbamic acid, methyl-, O-(((2,4-dimethyl-1,3-dithiolan-2-yl)methylene)amino)-	Solid	100	[1] 1
26628-22-8	Sodium azide ($Na(N_3)$)	Solid	[3] [5] 100	1,000
27137-85-5	Trichloro(dichlorophenyl)silane	Liquid	500	[1] 1
28347-13-9	Xylylene dichloride	Solid	100	[1] 1
28772-56-7	Bromadiolone	Solid	100	[1] 1
30674-80-7	Methacryloyloxyethyl isocyanate	Liquid	500	[1] 1

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APPENDIX E.—LIST OF EXTREMELY HAZARDOUS SUBSTANCES, THRESHOLD PLANNING QUANTITIES, AND REPORTABLE QUANTITIES—Continued

[CAS Order]

CAS No.	Chemical name	Ambient physical state	Threshold planning quantity (pounds)	Reportable quantity (pounds)
39196-18-4	Thiofanox	Solid	100	100
50782-69-9	Phosphonothioic acid, methyl-, S-(2-(bis(1-methylethyl)amino)ethyl) *O*-ethyl ester	Liquid	100	[1] 1
53558-25-1	Pyriminil	Solid	1,000	[1] 1
58270-08-9	Zinc, dichloro(4,4-dimethyl-5((((methylamino) carbonyl)oxy)imino)pentanenitrile)	Solid	100	[1] 1
62207-76-5	Cobalt, ((2,2'-(1,2-ethanediylbis (nitrilomethylidyne))bis(6-fluorophenolato))(2)	Solid	100	[1] 1

[1] Statutory reportable quantity for purposes of emergency notification under SARA section 304(a)(2).

[2] Indicates that the reportable quantity is subject to change when the assessment of potential carcinogenicity and/or chronic toxicity is completed.

[3] The calculated threshold quantity changed after technical review as described in the text.

[4] This chemical is proposed for deletion from list. Threshold planning quantity is in the interim assigned to the category of lowest concern, 10,000 pounds.

[5] This material is a reactive solid. The threshold planning quantity will not become 10,000 pounds for the non-powder form.

[6] The statutory one-pound reportable quantity for methyl isocyanate under CERCIA section 102(b) may be adjusted in a future rulemaking action.

[FR Doc. 86-25959 Filed 11-14-86; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[SW H -FRL-3113-7]

Emergency Planning and Community Right To Know Programs

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed Rule: Cross-Reference.

SUMMARY: This proposal is a companion to EPA's Interim Final Rule published elsewhere in today's **Federal Register** establishing the list of extremely hazardous substances, threshold planning quantities and notification requirements. Section 302 of the Superfund Amendments and Reauthorization Act of 1986 (SARA), signed into law on October 17, 1986, requires the Administator of EPA to publish a list of extremely hazardous substances within 30 days. The Administrator is also required to simultaneously publish an interim final regulation establishing a threshold planning quantity for each substance on the list and initiate a rulemaking to revise these regulations. The list and planning quantities trigger emergency planning by States and local communities under SARA. The purpose of this proposal is to initiate a rulemaking to revise the Interim Final Rule. The full text of that rule, including the list of substances, the threshold planning quantities and reporting regulations, is published elsewhere in today's **Federal Register**.

DATE: Written comments should be submitted on or before January 2, 1987.

ADDRESS: *Comments:* Written comments should be submitted to: Preparedness Staff, Superfund Docket Clerk, Attention: Docket Number 300PQ, Room Lower Garage, U.S. Environmental Protection Agency, Mail Stop WH 548D, 401 M Street SW., Washington, DC 20460.

Copies of materials relevant to this rulemaking are contained in Room Lower Garage, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket is available for inspection, by appointment only, between the hours of 9:00 a.m. through 4 p.m. Monday through Friday, excluding federal holidays. The docket telephone number is (202) 382-3064. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Richard A. Horner, Chemical Engineer, Preparedness Staff, Office of Solid Waste and Emergency Response, WH-548, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, or the Chemical Emergency Preparedness Hotline at 1-800/535-0202, in Washington DC at 1-202/479-2449.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 302 of SARA requires the Administrator of EPA to publish a list of extremely hazardous substances and threshold planning quantities for such substances. Any facility where an extremely hazardous substance is present in an amount in excess of the threshold planning quantity is required to notify the State commission by May 17, 1987.

The list of extremely hazardous substances is defined in section 302 as "the list of substances published in November, 1985 by the Administrator in Appendix A of the Chemical Emergency Preparedness Program Interim Guidance." This list was established by EPA to identify chemical substances which could cause serious irreversible health effects from accidental releases.

Section 302 further requires EPA to establish threshold planning quantities for each of the 402 extremely hazardous substances through an interim final regulation. At the same time, EPA must initiate a rulemaking effort to finalize these threshold planning quantities. If EPA does not publish an interim final rule establishing the threshold planning quantities by thirty days after enactment of SARA, then the threshold planning quantity becomes two pounds for each extremely hazardous substance.

Under section 302(a)(4) the Administrator may make revisions to the list and threshold planning quantities. Any revisions of the list must take into account specified factors.

II. Cross-Reference of Interim Final Rule

The Interim Final Rule establishing the list of extremely hazardous substances and corresponding threshold planning quantities is published elsewhere in today's **Federal Register**. Because section 302 also requires EPA to initiate an Agency rulemaking to revise this rule EPA is also soliciting comment on all aspects of that final rule. Thus, the Interim Final Rule is immediately effective but the text also serves as the text for this proposal. Readers should refer to the Interim Final Rule published elsewhere in today's **Federal Register**.

III. Additional Proposals

The Interim Final Rule which is the companion rule to this proposal, included only those requirements which are immediately effective under Title III of SARA. As indicated above, EPA in this proposal solicits comments on all aspects of that rule for revision in a revised final rule. This proposed rule, however, also includes a specific proposal for revisions to the list of extremely hazardous substances which does not appear in the Interim Final Rule. Readers should refer to the text of the Interim Final Rule published elsewhere in today's **Federal Register** for a discussion of the basis for identifying the initial list of extremely hazardous substances.

Section 302 authorizes EPA to revise the list of extremely hazardous substances, both to add and delete substances. Revisions to the list must take into account the toxicity, reactivity, volatility, dispersability, combustibility, or flammability of a substance. The Agency believes that changes to the list should be based on three conditions: corrections to the toxicity data base, addition of new data, or modifications to the criteria. The RTECS database is periodically reviewed and updated as new and/or corrected data become available.

Since the list was originally made public as part of the CEPP Interim Guidance (November 1985), the Agency discovered that several chemicals no longer meet the original listing criteria which corresponds to the statutory criterion of toxicity. Table 1 lists the chemicals that are today proposed for deletion. Additionally, several other chemicals were newly identified as tentatively meeting the criteria and are proposed for addition to the list. Table 2 lists the chemicals that are proposed today for addition to the list of extremely hazardous substances, along with corresponding proposed threshold planning quantities. Further discussion of the criteria for addition or deletion and the reasons for the decisions made with respect to individual substances can be found in the Interim Final Rule, published elsewhere in today's **Federal Register** and in the technical support documents listed in Attachment I of that rule.

The Agency recognizes that the criteria used to establish the extremely hazardous substance list address only lethality, and do not account for all effects that may be associated with acute exposure to chemicals. Criteria are being considered for other health effects after acute exposures to toxic chemicals. In addition, section 302 requires the Agency to consider long-term health effects resulting from short-term exposures to these chemicals. The Agency does not presently have

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sufficient data on such effects and request data from commenters on chronic effects from short-term exposures and comments on how these effects should be incorporated into criteria for revisions to the list. Finally, the Agency has developed the list and proposed revisions to it, largely based upon the toxicity of the chemicals. The Agency requests comment on the extent and the manner in which the criteria for adoption or deletion should be revised to include the other statutory criteria that may be considered for revisions to the list. The Agency also solicits any other comments on the criteria for additions to or deletions from the list.

IV. Regulatory Analyses

A. Regulatory Impact Analysis

Rulemaking protocol under Executive Order 12291 requires that regulations be classified as "major" or "non-major" for purposes of review by the Office of Management and Budget. According to E.O. 12291, major rules are regulations that are likely to result in: (1) An annual adverse (cost) effect on the economy of $100 million, (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government, or geographical regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises in domestic or export markets.

Because SARA requires the Administrator to publish this proposed rule within 30 days, the Agency cannot conduct an economic or regulatory impact analysis prior to the publication of this interim final rule. However, for informational purposes, the Agency will develop economic analyses in connection with the revised final rule.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 requires that an analysis be performed for all rules that are likely to have a "significant impact on a substantial number of small entities." Based on the limited time available, the Agency did not conduct a formal flexibility analysis. However, the Agency has considered the impact on small entities and it does not believe it will have a significant impact on a substantial number.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Submit comments on these requirements to the Office of Information and Regulatory Affairs; OMB; 726 Jackson Place, NW.; Washington, DC 20503 marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

V. Supporting Information

A. List of Subjects

Chemicals, hazardous substances, extremely hazardous substances, intergovernmental relations, community right-to-know, natural resources, Superfund, Superfund Amendments and Reauthorization Act, air pollution control, chemical accident prevention, chemical emergency preparedness, threshold planning quantity, community emergency response plan, contingency planning, reporting and recordkeeping requirements.

Dated: November 12, 1986.

Lee M. Thomas,

Administrator.

PART 300—[AMENDED]

For the reasons set out in the Preamble, Appendix D and Appendix E of Part 300 in Title 40 of the Code of Federal Regulations, which are set forth in an Interim Final Rule published elsewhere in today's **Federal Register,** are proposed to be amended as follows:

TABLE 1.—SUBSTANCES PROPOSED FOR DELETION FROM THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES

CAS No.	Chemical name
52–68–6	Trichlorphon.
53–86–1	Indomethacin.
65–86–1	Orotic Acid.
76–01–7	Pentachloroethane.
84–74–2	Dibutyl phthalate.
84–80–0	Phylloquinone.
87–86–5	Pentachlorophenol.
93–05–0	Diethyl-p-phenylenediamine.
95–63–6	Pseudocumene.
98–09–9	Benzenesulfonyl chloride.
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TABLE 2.—SUBSTANCES PROPOSED FOR ADDITION TO THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES

CAS No.	Chemical name	State	Proposed threshold planning quantity (lb)
70–69–9	Propiophenone, 4'-amino-.	Solid	100
330–55–2	Urea, 3-(3,4-dichlorophenyl)-1-methoxy-1-methyl- .	Solid	2
900–95–8	Stannane, acetoxytriphenyl- .	Solid	500
2587–90–8	Phosphorothioic acid, O,O-dimethyl- .	Liquid	500
3615–21–2	Benzimidazole, 4,5-dichloro-2-(trifluoromethyl)- .	Solid	500

[FR Doc. 86–25960 Filed 11–14–86; 8:45 am]

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H.R. 2663/Pub. L. 99-638

To amend title 5, United States Code, to credit time spent in the Cadet Nurse Corps during World War II as creditable service for civil service retirement; and to provide civil service retirement credit for certain employees and former employees of nonappropriated fund instrumentalities under the jurisdiction of the Armed Forces. (Nov. 10, 1986; 2 pages) Price: $1.00

H.R. 3737/Pub. L. 99-639

Immigration Marriage Fraud Amendments of 1986. (Nov. 10, 1986; 8 pages) Price: $1.00

H.R. 4208/Pub. L. 99-640

Coast Guard Authorization Act of 1986. (Nov. 10, 1986; 11 pages) Price: $1.00

H.R. 4613/Pub. L. 99-641

Futures Trading Act of 1986. (Nov. 10, 1986; 17 pages) Price: $1.00

H.R. 5180/Pub. L. 99-642

To designate the Federal Building at 111 W. Huron Street, Buffalo, New York, as the "Thaddeus J. Dulski Federal Building." (Nov. 10, 1986; 1 page) Price: $1.00

H.R. 5595/Pub. L. 99-643

Employment Opportunities for Disabled Americans Act. (Nov. 10, 1986; 7 pages) Price: $1.00

S. 485/Pub. L. 99-644

To amend the Alaska National Interest Lands Conservation Act of 1980 to clarify the treatment of submerged lands and ownership by the Alaskan Native Corporation. (Nov. 10, 1986; 1 page) Price: $1.00

S. 740/Pub. L. 99-645

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S. 1236/Pub. L. 99-646

Criminal Law and Procedure Technical Amendments Act of 1986. (Nov. 10, 1986; 33 pages) Price: $1.25

S. 1374/Pub. L. 99-647

To establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island. (Nov. 10, 1986; 7 pages) Price: $1.00

S. 2000/Pub. L. 99-648

To clarify the exemptive authority of the Securities and Exchange Commission. (Nov. 10, 1986; 1 page) Price: $1.00

S. 2648/Pub. L. 99-649

Injury Prevention Act of 1986. (Nov. 10, 1986; 2 pages) Price: $1.00

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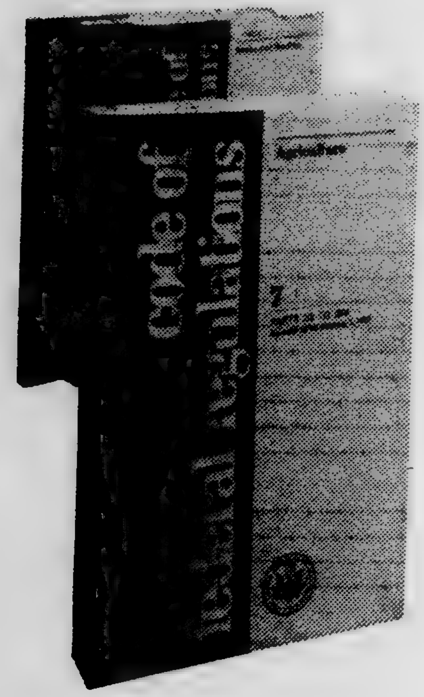

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Presidential Documents

Title 3—

The President

Proclamation 5571 of November 14, 1986

National Philanthropy Day, 1986

By the President of the United States of America

A Proclamation

The literal meaning of "philanthropy" is "affection for mankind." Throughout our history, we Americans have displayed this trait through our generous charitable giving and our spirit of neighbor helping neighbor. We help each other, and we reach out to help people all over the world. Our tradition of voluntarism embodies a great deal of caring, initiative, and ingenuity in solving problems and improving our communities. It is one of our great strengths as a people.

The record of our private sector giving is clear. Our country has more than 800,000 nonprofit philanthropic organizations. They employ more than 10 million people, of whom 4.5 million are volunteers. In 1985 alone, individual Americans, corporations, and foundations contributed almost $80 billion for the charitable work of these organizations, an increase of nearly 9 percent over the previous year's generous total. These efforts are augmented by the volunteer work of nearly half of all teenage and adult Americans; in 1985, 89 million of us each volunteered an average of 3.5 hours every week to help worthy causes.

We can be very grateful to the philanthropic individuals and organizations who have contributed so much to our social welfare, our cultural life, and the improvement of our communities. We can be grateful as well for our American spirit of giving from the heart. And one of the best ways to express our gratitude, of course, is to follow the good and great example of those who see needs and meet them with "affection for mankind."

The Congress, by Senate Joint Resolution 207, has designated November 15, 1986, as "National Philanthropy Day" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim November 15, 1986, as National Philanthropy Day. I call on the American people and organizations of every kind to observe this day with appropriate ceremonies and activities to recognize the enormous achievements of all who have given of themselves for others, and to rededicate ourselves to the great tasks ahead.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of November, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1924 and 1944

Section 502 and 515 Rural Housing Loan Policies, Procedures and Authorizations for Purchase of Manufactured Homes and Sites

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding Section 502 Rural Housing and 515 Rural Rental Housing Loan Policies, Procedures and Authorizations. This final rule implements the authority to make loans for the purchase of manufactured homes and sites under Section 502 and Section 515 Rural Housing Programs. This action is taken to incorporate changes required by the Housing and Urban Rural Recovery Act of 1983, Pub. L. 98–181. The intended effect of this action is to provide safe, sanitary and decent housing for eligible families in rural areas.

EFFECTIVE DATE: December 18, 1986.

FOR FURTHER INFORMATION CONTACT: Raymond R. McCracken, Senior Loan Officer, Single Family Housing Processing Division, Farmers Home Administration, USDA, Room 5346, South Agriculture Building, Washington, DC 20250, telephone 202–382–1486, or Karen King, Senior Loan Officer, Multi-family Housing Processing Division, Farmers Home Administration, Room 5331, telephone 202–382–1620.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined "nonmajor." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action requires no increase in costs to the Government. There is no impact on proposed budget levels and funding allocations will not be affected because of this action. There will be a modest increase in the reporting requirements required of the public in order to determine eligibility of those receiving the benefits. We have determined that the increase in reporting requirements is not a significant impact and that this regulation maximizes net benefit to society at the lowest net cost.

Background

The proposed rules published at 51 FR 2507 and 2516 on January 17, 1986, invited persons to submit written comments for the Agency to consider with regard to development of the final rule. The following comments were received for consideration in development of the final rule that amends Subpart A of Part 1924 and Subparts A and E of Part 1944 of Chapter XVIII, Title 7, Code of Federal Regulations.

Discussion of Comments Received Pertaining to Proposed Exhibit J to Subpart A of Part 1924

Issue: Definition of terms used.

Comment: Several commenters expressed concern that definitions and phrases used in Exhibit J to Subject A of Part 1924 were ambiguous.

Agency position: The Agency has considered these comments and clarified the following definitions: Accessory Building or Structure; Manufactured Home Community; Manufactured Home Rental Project, and; Permanent Perimeter Enclosure.

Issue: 100-year return frequency flood elevation.

Comment: One commenter suggested that the Agency delete the language "The National Flood Insurance Program damage projections indicate that mobile/manufactured housing is more susceptible to flood damage than site-built housing because of the materials used." Another commenter questioned the validity of the data used in the study. The final commenter suggested that it is unnecessary for the finish grade to be above 100-year flood elevation in order to protect the home.

Agency position: The Agency has considered this comment and believes that a comprehensive current study of comparative damageability of manufactured homes would reveal essentially the same findings as the earlier FEMA study. The Agency is in no position to conduct such a study. We would be glad to examine and consider amending our Final Rule if industry information or research findings conclusively demonstrate that comparative damageability of manufactured homes and site-built homes are similar.

Issue: Require house-type roofing and siding.

Comment: One commenter recommended that the Agency require a house-type exterior (roof and siding) on all structures financed.

Agency position: The Agency has considered this recommendation, but has rejected it. The Agency doe not have the authority to require or approve the use of any materials or construction for the manufactured housing unit. The Agency believes this should be addressed by local jurisdictions who may adopt specialty requirements as part of their local building or zoning codes.

Issue: Compliance with local regulations.

Comment: One commenter suggested that the wording in section IV, of Part A, Introduction, be modified by adding "except in the case of home construction in which the Federal preemption of CFR 3280 applies."

Agency position: The Agency finds merit in this comment. As a result, Part A, Section IV, Compliance with Local Regulations, has been clarified and modified to reflect only site development, installation and set-up.

Issue: Essential services.

Comment: One commenter suggested that in his State the requirement that essential services be situated nearby manufactured housing parks would likely add substantially to the land cost of the developers and threaten the economic viability of any park that attempted to maintain rents within reach of lower income families.

Agency position: The Agency has considered this comment and rejected it.

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The Agency considers manufactured housing as another form of housing that is subject to the same requirements as other 515 rural rental housing developments. We have not developed special regulations for manufactured housing. We are treating manufactured housing like any other form of housing subject to the same 515 and 502 housing program requirements as conventionally built housing except those requirements mandated by law.

Issue: General site requirements.

Comment: One commenter felt that several of the siting requirements were inconsistent with typical mobile home sites, especially in the West. A few commenters suggested that the Agency change the wording of the proposed rule to permit the referencing of ANSI, A225.1 for installation requirements for manufactured homes.

Agency position: The Agency has concluded that the site requirements as presented are consistent with provisions of the Housing and Urban Rural Recovery Act of 1983, Pub. L. 98–181, which requires the manufactured home or the manufactured home and lot, meet the installation, structural and site requirements which would apply under Title II of the National Housing Act.

Issue: Access to and ventilation of basementless crawl space.

Comment: One commenter suggested that reference be made to those sections of the MPS which address access to and ventilation of basementless crawl space.

Agency position: The Agency has considered this comment, but has rejected it as unnecessary. The Agency is relying on the definition of the permanent perimeter enclosure to provide the proper ventilation and access to the crawl space beneath the manufactured home. The Agency has modified the definition to reflect this.

Issue: Insufficient bracing requirements.

Comment: One commenter suggested that the present way of bracing mobile homes will not provide protection against racking and potential damage during transportation.

Agency position: Based on a study contracted by HUD which concluded that the highway shock and vibration adversely affects long-term structural durability and shortens the useful economic life of manufactured housing, the Agency has determined that the requirement to properly cross-brace and stiffen the manufactured home during transportation is necessary to FmHA financing. The transportation period is considered to begin when the manufactured home leaves the manufacturer and to continue until the manufactured home is placed upon its permanent foundation.

Issue: Co-mingling of manufactured homes with single family detached homes.

Comment: One commenter suggested that if mobile homes were co-mingled with conventional single family homes they would depreciate the value of the conventional built homes.

Agency position: The Agency has determined that manufactured housing is one solution to housing affordability. In addition the Agency has not found data that shows manufactured housing will reduce the value of adjacent conventionally built housing. Any potential negative effects can be avoided by proper site planning and buffering between housing of widely different values.

Two studies (Foremost Insurance Company 1981 and Boeing Aerospace Company, Variables Affecting the Economic and Useful Life of Mobile Homes, 1980) found that manufactured homes (built since the mid 1970's) appreciated at a minimum of 5% annually across the country. The data did not include the value of land or attachments which would further add to increases. The factors affecting value and appreciation are the same as those for conventional housing: (1) Location, (2) upkeep, (3) original home quality, and (4) housing supply and demand forces.

Issue: 50-foot right-of-way for local streets as stated in FmHA Instruction 424.5, Exhibit B, 204.5.

Comment: Two commenters stated that the street requirements are both exclusionary and contrary to law. It was recommended that the width limit be lowered to 35 feet for the right-of-way. The 50-foot right-of-way is appropriate for a typical single-family subdivision, but *not* a reasonable mobile home siting requirement given existing local standards.

Agency position: The Agency has determined that the right-of-way requirements contained in FmHA Instruction 424.5, Exhibit B, 204.5 are sufficient for manufactured housing site development to accommodate planned street, and where appropriate, walks, planting strips, utilities and drainage on individual sites and in 515 rental developments and subdivisions. The Agency has also determined that these requirements allow for streets to be dedicated to and accepted by the public body.

When the Agency develops regulations for manufactured housing rental *parks,* consideration will be given to the adoption of ANSI A225.1, *Standards for Manufactured Home Installations (Manufactured Home-Site, Communities and Set-ups).*

Issue: Permanent foundation.

Comment: One commenter contended that the use of permanent foundations with manufactured homes presented two serious problems. The first is cost and the other drawback is the danger presented by earthquakes.

Agency position: The Agency has concluded that the permanent foundation requirements are consistent with provisions of the Housing and Urban Rural Recovery Act of 1983, Pub. L. 98–181, which requires the manufactured home or the manufactured home and lot to meet the installation, structural and site requirements which would apply under Title II of the National Housing Act. The Agency is relying on the Minimum Property Standards and the acceptable model codes for health and safety requirements, including earthquake design requirements. Therefore, the Agency finds no compelling reason for departing from the present requirements.

Issue: Distance separation between units.

Comment: In order to provide for fire safety between adjacent residential units, some commenters suggested minimum references to distance separations be included since rural town regulations for manufactured home subdivisions may be limited or nonexistent.

Agency position: The Agency finds this comment persuasive. As a result, Part B, Section V has been modified to provide for distance separation and fire safety between units.

Issue: Roof drainage on entry platforms.

Comment: Another commenter recommended that FmHA consider the safety issue associated with lack of preventing water from draining onto uncovered entrance platforms. Presently Exhibit J, the FMHCSS, and other related regulations ignore the issue and would not prevent more hazardous conditions from occurring.

Agency position: The Agency has considered this comment and changed Part B, Section IV. A. 2. to require the design of accessory structures and related facilities to eliminate and prevent health and safety hazards associated with the installation of manufactured homes.

Issue: Number of reviews required of the drawings and specifications for the installation, anchorage and construction of the permanent foundation and perimeter enclosure.

Comment: Some commenters contended that the three reviews of all site drawings and specifications for foundation systems seem excessive and time consuming, and could result in unnecessary delays, or even inhibit use of the program.

Agency position: The Agency finds these comments persuasive. As a result Part C, Section I, C has been changed to address the commenters concern.

Issue: Drawings and specification requirements.

Comment: One commenter suggested that the requirements for drawings and specifications should be no less stringent than required in FmHA Instruction 1924–A, Exhibit B.

Agency position: By law HUD is responsible for reviewing the drawings and specifications for manufactured housing units. The Agency requires design calculations and detail drawings for the site-built permanent foundation system, permanent perimeter enclosure and the connections to the unit.

The Agency has proposed changing the title of Exhibit B to 1924–A from "Guidelines for Manufactured Structures and Products" to "Requirements for Modular/Panelized Housing Units" to be consistent with the Congressional Act that renamed mobile homes to manufactured homes.

Issue: Inspection by borrower's representative.

Comment: One commenter suggested that Exhibit J, Part D, Section II should allow a borrower's representative to make inspections in lieu of the borrower only.

Agency position: The Agency has determined that § 1924.13 of this subpart provides for the borrower's representative to make inspections for more complex construction. Therefore Part D, Section II has been modified accordingly.

Issue: Inspection of development work should include the unit itself.

Comment: Several commenters stated that inspection of development work should include the unit itself and be no less stringent than FmHA Instruction 1924–A and Exhibit B.

Agency position: The Agency cannot require inspection of the unit with the site development work. The National Manufactured Housing Construction and Safety Standards (MHCSS) Act of 1974 requires the Secretary of the Department of Housing and Urban Development to conduct inspections and investigations necessary to enforce the standard; to determine that a manufactured home fails to comply with the construction standard or contains a defect or an imminent safety hazard and to direct the manufacturer to furnish notification thereof; and in some cases, to remedy the defect or imminent safety hazard. All manufactured homes will carry a certification plate indicating that the unit has been properly inspected and meets the MHCSS.

Discussion of Comments Received Pertaining to Proposed Exhibit F to Subpart A of Part 1944

Issue: Thermal Standards.

Comment: A wide majority of commenters declared the HUD thermal standards inadequate and recommended that FmHA require compliance with its current thermal standards in order to reduce the energy cost for low- and very low-income families. A few commenters were in favor of either the HUD Title VI or Title II thermal standards.

Agency position: We agree with the commenters who recommended that FmHA require compliance with its current thermal standards so we have revised paragraph VI and other related paragraphs to require manufactured homes financed by FmHA to conform with the thermal standards in Exhibit D to Subpart A or Part 1924. This revision is also based on the following:

1. Public Law 98–181 (the 1983 Housing Act) directs FmHA to adopt thermal standards for manufactured homes which are at least equal to FmHA's existing thermal standards.

2. Manufactured housing built to the FmHA thermal standards is more affordable than such housing built to a lesser standard such as HUD Title II or VI. FmHA has completed engineering analyses which show that the reduction in a family's monthly heating bill, resulting from FmHA's higher thermal standard, would be greater than the increase in the family's monthly mortgage payments to finance the higher insulation levels. This is a critical factor with regard to very low-income borrowers. Ownership of manufactured housing by very low-income families could be jeopardized if such housing is built to a thermal standard lower than FmHA's.

3. Recent studies show that currently available technology is being used in the manufactured housing industry to construct homes to meet the FmHA thermal standards. Hence, FmHA's thermal standards will not adversely impact the manufactured housing industry's construction practices.

4. The Housing Act of 1983 requires the Secretary of Energy to deliver a report to Congress on the impacts of several national energy conservation standards that apply to manufactured housing and conventional site built housing. The interim findings of this study are:

- The FmHA standards result in the lowest energy consumption of the three standards analyzed,
- Compared to typical minimum building practice, the FmHA standard reduces annual energy consumption by 36 percent to 48 percent, depending on the location.
- The FmHa standard reduces life-cycle cost in all cities analyzed, and
- When applied to manufactured housing, the existing site built FmHA thermal standard does not appear discriminatory. In fact, it produces life-cycle cost reductions more consistently in manufactured homes than in site-built homes in the cities analyzed.

Issue: Paragraph I(b) under the proposed rule required the manufactured home and site to be classified and taxed as real estate.

Comment: Two commenters expressed concern with this requirement. The commenters pointed out that some states or localities have no formal procedure for titling or taxing manufactured homes as real estate and that this requirement may make the program unusable in some areas. One commenter suggested using a similar approach as the Federal Home Loan Mortgage Corporation in determining if the property is considered real estate.

Agency position: We agree with the comments and have revised paragraph I(b) to incorporate a similar approach as the Federal Home Loan Mortgage Corporation method of determining real estate classification.

Issue: The requirement in paragraph I(b) that the loan must include both unit and site.

Comment: Some commenters considered the requirement that the loan must include both unit and site too rigid. They recommend that at a minimum loans be permitted for units placed on rented sites when the land and/or manufactured home park is cooperatively owned by the residents. Additionally, they recommended the same lease requirements which now apply in the Section 502 program be applicable to manufactured home financing.

Agency position: We chose to have the same ownership requirements for manufactured homes as stick-built homes presently financed under the Section 502 program. This was done in order to limit the administrative problems associated with the financing of a different type of housing under our housing program. Once experience is gained in the financing of manufactured homes, the Agency will consider developing a program to finance manufactured homes on rented sites.

The lease requirements are the same for stick-built and manufactured homes financed under the Section 502 program.

Issue: Mobile/manufactured home as defined in paragraph II(a) of the proposed rule.

Comment: Several comments were received regarding the definition of a mobile/manufactured home. The comments were as follows:

1. Delete the word mobile.
2. The definition of a manufactured home should be as in 24 CFR 3280 which is consistent with appropriate Federal Codes. Thermal requirements should not be included in the definition, but addressed elsewhere.

Agency position: We agree with the comment to delete the word "mobile" from the phrase "mobile/manufactured home". All "mobile/manufactured home" phrases have been changed to read "manufactured home."

We believe it is appropriate to include thermal requirements in our definition since the definition in 24 CFR implies a different thermal standard than what is required for our program.

Issue: Paragraph V(e) prohibits alteration or remodeling of the unit when the initial loan is made.

Comment: One commenter suggested an exception be made in paragraph V(e) to permit alterations for the handicapped.

Agency position: We consider the time to make alterations to the manufactured home to be before it is built. When the order is submitted to accommodate the handicapped appropriate features should be included, if needed. This method of alteration is less costly to the consumer and would not affect the warranty on the home. Also, modification to manufactured homes could result in the unit no longer meeting FMHCSS. Therefore, we did not change paragraph V(e).

Issue: Paragraph VI provides that the floor area must be 400 square feet or more, and the width 12 feet or more for a single wide and 20 feet or more for a double wide unit.

Comment: One commenter recommended that single wide units of less than 700 square feet not be financed.

Agency position: Four hundred square feet is the minimum area authorized under the HUD Title II program for insuring loans for manufactured homes on permanent foundations. We adopted the same minimum requirement for the manufactured homes financed under the Section 502 program. We believe there are families whose housing needs can be adequately met with housing that is less than 700 sq. ft. Therefore, we have not changed the 400 minimum sq. ft. requirement.

Issue: Appraisal of manufactured homes as required in Paragraph VII.

Comment: Commenters expressed two concerns with the proposed appraisal technique. The first concern was the difficulty in locating comparable manufactured home sales to use in the market approach. Another concern was that there are other cost approach appraisal systems equivalent to Marshall and Swift and these should be considered for use when appraising manufactured homes.

Agency position: We realize the difficulty in obtaining comparable sales of manufactured homes on permanent foundations. However, we have addressed this situation by authorizing the use of other than manufactured home comparables, with proper adjustments, in the absence of manufactured home comparables.

We agree there are other cost appraisal systems for manufactured homes that are similar to Marshall-Swift. Therefore, we have changed paragraph VII(b) to permit use of appraisal systems, other than Marshall-Swift, after the National Office has approved the alternate cost method.

Issue: Warranty requirements in Paragraph XIII.

Comment: Two commenters consider the requirement that a dealer-contractor warrant that a manufactured home "substantially complies with the plans and specifications and the unit sustained no hidden damage" to be unreasonable. Another commenter expressed concern that the warranty was not commensurate with inferred quality, price, length of loan, etc.

Agency position: FmHA adopted the warranty that has been required since May 12, 1983, under the HUD Title II Program for manufactured homes. We consider this warranty appropriate as our borrower will hold the dealer-contractor responsible for repair of any construction defects.

Issue: Loan limitation amount determination as required in Paragraph VIII(b).

Comment: One comment was that the dealer-contractor should not be limited to 131% of unit wholesale invoice price, but should be allowed normal competitive overhead and profit. Another comment was that the dealer-contractor should not be allowed to set the price at 131% of wholesale unit price, but should let the purchaser negotiate under a competitive market for lowest price, the same as for a stick-built home.

Agency position: We have deleted the 131% of unit wholesale invoice price determination from paragraph VIII(b). The loan limitation will be determined by the appraisal or cost, whichever is less, the same as for stick-built or modular/panelized homes. This method of determining loan amount is similar to the valuation process for manufactured homes on permanent foundations financed through the HUD Title II and Veterans Administration housing programs.

Issue: Paragraph IX requires the Dealer-Contractor to provide the erection of the manufactured home and site development.

Comment: One commenter expressed concern that few Dealer-Contractors are able to provide full erection and site development services as well as the home itself. The commenter suggested a third party be permitted to develop the sites and erect the home.

Agency position: We intend for the Dealer-Contractor to be responsible for the manufactured home unit, its erection on the foundation and all site development work to support the unit. Paragraph XI of Exhibit F authorizes a third party to do the erection and site development work, but the Dealer-Contractor would be responsible for the work. This requirement is the same for the general contractor building under our stick-built housing program. We consider the requirement that the Dealer-Contractor be responsible for all work necessary in order to simplify the development of the home site for our applicant and to facilitate the resolution of any construction complaints.

Issue: Approval of Dealer-Contractor by County Supervisor as required in Paragraph X of the proposed rule.

Comment: One commenter mentioned several potential problems with requiring the County Supervisor to approve Dealer-Contractors, such as a Dealer-Contractor that wants to be approved to develop manufactured home sites in more than one county may be approved by one County Supervisor and rejected by another. The commenter also expressed concern that there is no follow-up check on the Dealer-Contractor after approval.

Agency position: We have revised Paragraph X to require the State Director to approve a Dealer-Contractor for participation in our manufactured home program. This action will facilitate the approval process for those Dealer-Contractors that will be in operation in more than one county office area and eliminate the duplication of approvals by different County Supervisors. We have not provided a follow-up check on the Dealer-Contractor, but paragraph X(a)(8) does require a complaint file to be maintained on each Dealer-

Contractor. This will provide a system of monitoring the Dealer-Contractors performance.

Issue: Approval procedure for thermal design and construction as required in paragraph XIV.

Comment: One commenter questioned what effect the approval procedure for the thermal design and construction of a manufactured home would have on implementing the financing of manufactured homes in a timely manner.

Agency position: We have revised paragraph XIV(c) to streamline the thermal design and construction approval procedure. If the design of a manufactured home conforms with FmHA's prescriptive thermal requirements of paragraph IV A of Exhibit D to Subpart A of Part 1924, FmHA approval of the thermal design is not necessary. However, the manufacturer would be required to certify that the design conforms to FmHA's thermal standards. If the manufacturer proposes to use one of FmHA's optional thermal calculation methods in paragraph IV C of Exhibit D to Subpart A of Part 1924, then the thermal design must be reviewed by the FmHA State Office. The manufacturer would still be required to certify that the construction of the unit conforms to the design and FmHA's thermal standards.

Issue: The requirement in paragraph XV of the proposed rule that the term of the loan be 20 years.

Comment: The majority of the commenters recommended a term of 30 years in order to provide housing that is affordable for low- and very low-income families, and to standardize the loan term for similar housing between Federal Agencies. However, some commenters advocated a term of 20 years or less as they consider the manufactured home construction standards inadequate to produce a unit that would have a useful life of 20 years or more.

Agency position: In order to provide affordable manufactured housing, as intended by Pub. L. 98–161, we have adopted a loan term of 30 years.

Issue: Paragraph XVIII in the proposed rule required the applicant to provide the manufacturer's invoice.

Comment: Some commenters expressed concern that the applicant would not normally have a copy of the manufacturer's invoice to provide the lender. The commenters suggested the manufactured home retailer, rather than the loan applicant, provide the wholesale invoice to the Agency.

Aency position: We have revised our method of determining the maximum loan amount. The revised method does not require use of the manufacturer's invoice. Therefore, we have deleted the requirement that it be furnished by the applicant.

Issue: Environmental impact statement.

Comment: One commenter disagreed with the determination that the proposed regulation will not significantly affect the quality of the human environment and the conclusion that an environmental impact statement is not required. The commenter believes the availability of FmHA manufactured home loans will accelerate the conversion of land from agricultural use in many rural areas.

Agency position: In the development of the proposed rule, FmHA prepared an environmental impact assessment and determined there would be no significant impact to the quality of the human environment from the Rule's implementation. An important reason for this determination is that all of the Agency's environmental policies and requirements that apply to stick-built homes will apply to manufactured homes. These requirements include avoiding sites in sensitive environmental areas such as floodplains, wetlands, and important farmlands. It also requires that homes be located within developed areas or contiguous to developed areas.

Issue: Purpose of loan funds.

Comment: We received a comment that free-standing appliances should not be financed and several comments that credit should be given for wheels and axles.

Agency position: The financing of appliances will have the same requirements as under our Section 502 Program for stick-built homes. Therefore, the proposed rule was not changed. We do agree that consideration should be given to the value of wheels and axles, since they are required to be removed. We have revised Paragraph XVIII(b) to include a credit for wheels and axles on the cost estimate for the purchase of the manufactured home.

Issue: Changes needed in FmHA procedures to implement the financing of manufactured homes.

Comment: Commenters recommended the following procedural changes:

A. Subpart A of Part 1944 of this chapter:

1. Revise 1944.16(a), which provides limits of 1200 square feet and 1½ baths, to include manufactured homes.

2. Revise § 1944.16(b) to preclude financing of existing manufactured homes.

3. Revise § 1944.16(c) to disallow repair loans on manufactured homes.

4. Rewrite the introductory paragraph in § 1944.40 as present form is not clear.

5. Revise Section 1944.34(f)(2) to permit a subsequent loan of less than 25-year term.

B. Parts 1955 and 1965 need to be revised to include manufactured homes.

Agency position: We revised §§ 1944.16 (b), (c) and § 1944.40 of subpart A of Part 1944 as suggested by the commenters. Section 1944.16(a) was not revised. Exhibit F of Subpart A of Part 1944 requires the conditions in paragraph VI of § 1944.16(a) to be met when financing manufactured homes. A revision of § 1944.34(f)(2) is not necessary as the term will be 30 years. Parts 1955 and 1965 were not revised as servicing for manufactured home loans will be the same as for stick-built or modular/panelized.

Issue: Format of Exhibit A.

Comment: One commenter considered the format of using questions as paragraph headings to be improper form and not consistent with other Agency Instructions.

Agency position: Agency personnel have responded favorably to the question-and-answer format used in the Exhibit. Therefore, this format has been retained.

Issue: Opposition to the financing of manufactured homes by FmHA.

Comment: Several commenters expressed opposition to the financing of manufactured homes by FmHA.

Agency position: We are complying with the Housing and Urban Rural Recovery Act of 1983, Pub. L. 98–181 by financing manufactured homes.

Issue: Vendors insurance.

Comment: One commenter recommended borrowers be required to obtain vendor's insurance that would insure the Agency against a borrower's unauthorized moving of FmHA security.

Agency position: The probability of a manufactured home being moved once set on a permanent foundation is remote. Therefore, we are not requiring vendor's insurance.

Issue: Reducing the risk of manufactured home loans.

Comment: One commenter suggested requiring applicants for manufactured home loans to have a minimum equity in order to minimize the risk taken by the Government.

Agency position: The risk in manufactured home loans will be minimized in the same manner as for stick-built or modular/panelized home loans; that is, by making sound loans and proper valuation of the security for the loan.

Discussion of Comments Received Pertaining to Proposed Revisions to Subpart E of Part 1944.

Issue: Section 1944.205(cc) Manufactured home (unit).

Comment: One commenter is concerned that our definition of manufactured home deviates from HUD's definition. In particular, he is concerned that we included the thermal requirements in our definition.

Agency position: We believe it is appropriate to include thermal requirements in our definition since the definition in 24 CFR 3280 implies a different thermal standard than what is authorized for our program.

Issue: Section 1944.223(b) Loan limitations.

Comment: One commenter feels that limiting the loan amount to a fixed percent of manufacturer's invoice is probably not practical.

Agency position: We have deleted the fixed percent of manufacturer's invoice as the loan limit. The maximum loan amount will be based on the development cost or the security value of each project, whichever is less. This is consistent with the Section 515 program.

Issue: Section 1944.223 Supplemental requirements for manufactured home rental project development.

Comment: One commenter asked if we could also develop manufactured home parks, leaving space for privately owned homes.

Agency position: At this time the Agency is financing only the projects (including the homes) for rental purposes. Financing parks with space for privately owned homes would require more extensive modification to existing rural rental housing regulations and to single family housing regulations which would delay implementation. After this regulation for financing projects is in place, we will be examining the idea of developing a regulation to finance manufactured home parks in conjunction with single family housing and developing a regulation to finance manufactured home classified as chattel property.

Issue: Opposition to program.

Comment: Two commenters generally opposed the program.

Agency position: We are implementing Pub. L. 98–181 by financing manufactured home rental projects.

Issue: Section 1944.223(a) Eligible projects.

Comment: One commenter is concerned that only two units on one tract of land could be considered a project. He feels that this type of housing scattered throughout a community could become an eyesore.

Agency position: The 515 rural rental program allows two-unit stick-built projects. We see no reason to deviate from this standard when incorporating manufactured home projects into our procedures. In addition, manufactured home projects must meet local zoning requirements and the Agency's position is that the local community must regulate where they want manufactured home projects.

Issue: Section 1944.232(f) Submission of docket to National Office.

Comment: One commenter suggested that submission to the National Office should be eliminated after each state has been approved.

Agency position: All requests for manufactured home rental projects will be submitted to the National Office at this time. This is a new program and we feel that it is necessary to monitor closely. We want to be involved so we can analyze the program and make adjustments, where needed, to ensure a successful program. After the program is established and running smoothly we will revert back to our normal processing for the 515 program.

Issue: Section 1944.223(a) Eligible projects.

Comment: One commenter questioned our inconsistency in using the terms "site" and "parcel of land."

Agency position: We have changed the language in § 1944.223(a)(2) to be consistent with other references to "site."

Issue: Section 1944.223(e) Property requirements.

Comment: One commenter believes that 400- to 600-square-foot manufactured units would be difficult to rent and, therefore, a larger standard should be applied.

Agency position: The 400-square-foot minimum is consistent with HUD Title II standards and we adopted the same minimum requirement. Before financing a manufactured housing project, we require the developer to provide market information and if the market does show a need for units that size, we will provide financing.

Issue: 1924–A, Exhibit J, Part B, section I.E.

Comment: One commenter is concerned that FmHA is prohibiting manufactured home sites or rental projects from being developed in deteriorated residential areas. They feel that many communities restrict such development to areas that could be interpreted as deteriorated and therefore FmHA would be denying assistance to these communities.

Agency position: The Agency is going to keep its location requirements consistent throughout the programs. We see no reason to develop manufactured home sites or rental projects in areas where we would not develop stick-built housing.

Issue: Terms used.

Comment: One commenter suggested that we adopt the term manufactured home rather than mobile/manufactured home in our regulation. The commenter pointed out that the 1980 Housing Act changed the name of mobile homes to manufactured homes in all federal laws and literature and that the administrative agencies have been conforming.

Agency position: We agree to adopt the term manufactured homes.

Issue: Section 1944.223(d) Security.

Comment: One commenter was concerned that the manufactured home be titled and taxed as real estate. He felt this requirement might make the program unusable in some states or localities which have no formal system for titling and taxing manufactured homes as real estate.

Agency position: We understand this concern and have changed our language for Final Rule.

Issue: Program funding.

Comment: One commenter is concerned that funds for manufactured housing projects come from the general Section 515 funds. They feel the program should be separate and funded accordingly.

Agency position: Through the Section 515 rural rental housing program we fund several types of housing—senior citizen, family, rural cooperative, and now manufactured housing. All proposals must compete for the same funds. Due to the size of our allocation, we do not think it would be practical to try to separate funds for all the types of housing we finance. The amounts we would end up working with in each type of housing would be too small to be practical.

Issue: Section 1944.223(b) Loan limitations.

Comment: One commenter feels that due to the uncertain economic life span of manufactured homes our loans should be limited to 90 percent of development cost or 95 percent of appraised value.

Agency position: The agency is going to keep the amount of loan consistent throughout the 515 program. If we were going to adjust for the economic life span of manufactured housing, we would consider adjusting the term of the loan, not the amount of the loan.

Issue: 1924–A, Exhibit J, Part A, II.

Comment: One commenter asks if the units in a manufactured home rental project are to be attached or detached. They are concerned that detached units will contradict policy for the stick-built rural rental projects.

Agency position: We do not believe there is a contradiction with the policy for the stick-built rural rental projects. If an applicant wants to submit a proposal for attached manufactured homes, we will consider it. The units that we are financing must be built to the Federal Manufactured Home Construction and Safety Standards which is a code for single-family units. Any proposal for attaching these units will be scrutinized closely to see that they meet fire and safety requirements.

For the reasons set forth in the Final Rule related to Notice 7 CFR 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities," the Section 502 rural housing loan program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

However, under regulations pertaining to the financing of manufactured homes under Subpart E of Part 1944, "Rural Rental Housing Loan Policies, Procedures and Authorizations," the program and activities will be subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

The collection of information requirements in this regulation have been submitted to the Office of Management and Budget for approval.

(Catalog of Federal Domestic Assistance Title and Number: 10.410 Low Income Housing Loans. 10.415 Rural Rental Housing Loans.)

List of Subjects

7 CFR Part 1924

Agriculture, Construction management, Construction and repair, Energy conservation, Housing, Loan programs—agriculture, Loan programs—housing and community development, Low and moderate income housing.

7 CFR Part 1944

Administrative practice and procedure, Aged, Handicapped, Home improvement, Loan programs—housing and community development, Low and moderate income housing—rental, Mobile homes, Mortgages, Nonprofit organizations, Rent subsidies, Rural housing subsidies.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1924—CONSTRUCTION AND REPAIR

1. The authority citation for Part 1924 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Planning and Performing Construction and Other Development

2. Section 1924.5 is amended by adding paragraph (e)(4) to read as follows:

§ 1924.5 Planning development work.

* * * * *

(e) * * *

(4) The site planning design, development installation and set-up of manufactured home sites, rental projects and subdivisions shall be guided by Exhibit J of this subpart.

§ 1924.8 [Amended]

3. In § 1924.8, paragraph (a) is amended by removing the period after the phrase "manufactured off-site" and adding the following: "except those defined in Exhibit J of this Subpart."

Exhibit B—[Amended]

4. The introductory paragraph of Exhibit B of Subpart A is amended by inserting after the first sentence the following: "This Exhibit does not apply to manufactured homes defined in Exhibit J of this subpart."

5. Exhibit J is added to Subpart A of Part 1924 to read as follows:

Exhibit J—Manufactured Home Sites, Rental Projects and Subdivisions: Development, Installation and Set-Up

Part A—Introduction
Part B—Construction and Land Development
Part C—Drawings, Specifications, Contract Documents and Other Documentation
Part D—Inspection of Development Work

Part A—Introduction

I. *Purpose and Scope.* This Exhibit describes and identifies acceptable site development, installation and set-up practices and concepts for manufactured homes. It is intended for FmHA field personnel, builders, developers, sponsors, and others participating in FmHA housing programs.

This Exhibit applies to all manufactured homes (except those referenced in Exhibit B of this subpart) on scattered sites or in rental projects and subdivisions and covers the requirements for design and construction of manufactured home communities. FmHA may approve alternatives or substitutes if it finds the proposed design satisfactory for the proposed use, and if the materials, installation, device, arrangement, or method of work is at least equivalent to that prescribed in this Exhibit considering quality, strength, effectiveness, durability, safety and protection of life and health.

FmHA will require satisfactory evidence to be submitted to substantiate claims made regarding the use of any proposed alternative.

II. *Background.* FmHA has authority to make (1) Section 502 Rural Housing (RH) loans with respect to manufactured homes and lots, and (2) section 515 Rural Rental Housing (RRH) loans with respect to manufactured home rental projects.

The manufactured home must be constructed in conformance with the Federal Manufactured Home Construction and Safety Standard (FMHCSS) and be permanently attached to a site-built permanent foundation which meets or exceeds the Minimum Property Standards (MPS) for One- and Two-Family Dwellings or Model Building Codes acceptable to FmHA. The manufactured home must be permanently attached to that foundation by anchoring devices adequate to resist all loads identified in the MPS. This includes resistance to ground movements, seismic shaking, potential shearing, overturning and uplift loads caused by wind. Note that anchoring straps or cables affixed to ground anchors other than footings will *not* meet these requirements.

Subpart G of Part 1940 of this chapter applies on scattered sites, in subdivisions and rental projects to the development, installation and set-up of *manufactured homes*. To determine the level of environmental analysis required for a particular application, each manufactured home or lot involved shall be considered as equivalent to one housing unit or lot as these terms are used in §§ 1940.310–1940.312 as well as in any other sections of Subpart G of Part 1940 of this chapter. The implementation of FmHA environmental policies and the consideration of important land use impacts are of particular relevance in the review of proposed manufactured home sites and in achieving the two purposes highlighted below. Because the development, installation and set-up of manufactured home communities, including scattered sites, rental projects, and subdivisions, differ in some requirements from conventional site and subdivision development, two of the purposes of this Exhibit are to:

A. Encourage economical and orderly development of such communities and nearby areas, and

B. Promote the safety and health of residents of such communities.

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Therefore, this Exhibit identifies those required standards and regulations and suggested guidelines for eliminating and preventing health and safety hazards and promoting the economical and orderly development and utilization of land for planning and development of manufactured home communities. The Exhibit also provides the requirements for meeting the following:

A. *Resistance to Wind.* Foundations and anchorages shall be designed to resist wind forces specified in American National Standards Institute (ANSI) A-58.1-1982 for the geographic area in which the manufactured home will be sited;

B. *Proper Installation.* The manufacturer's installation instructions provided with each manufactured home shall contain instructions for at least one site-built foundation with interior and/or perimeter supports. FmHA field office personnel shall review to determine its adequacy as security for an FmHA loan only, the foundation design concept for compliance with this Exhibit, the FmHA/MPS and any Model Building Code acceptable to FmHA in that particular geographic area; and

C. *Proper Foundation Design.* Manufactured homes shall be installed on a foundation system which is designed and constructed to sustain, within allowable stress and settlement limitations, all applicable loads. Any foundation and anchorage system or method of construction to be used should be analyzed in accordance with well-established principles of mechanics and structural engineering.

III. *Definitions.* For the purpose of this Exhibit the following definitions apply:

Accessory Building or Structure.

A subordinate building or structure which is an addition to or supplements the facilities provided by a manufactured home.

Anchoring Systems. An approved system for securing the manufactured home to the ground or foundation system that will, when properly designed and installed, resist overturning and lateral movement of the home from wind forces.

Contiguous. Sharing a boundary, adjoining or adjacent. A lot or subdivision is considered to be contiguous to other lots or subdivisions if it is adjoining, touching or adjacent.

Federal manufactured Home Construction and Safety Standards (FMHCSS). A 1976 federal standard, commonly known as the HUD Standard, for the construction, design and performance of a manufactured home which meets the needs of the public including the need for quality, durability and safety. Units conforming to the FMHCSS are certified by an affixed label that reads as follows:

AS EVIDENCED BY THIS LABEL NO. __________ THE MANUFACTURER CERTIFIES TO THE BEST OF THE MANUFACTURER'S KNOWLEDGE AND BELIEF THAT THIS MANUFACTURED HOME HAS BEEN INSPECTED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND IS CONSTRUCTED IN CONFORMANCE WITH THE FEDERAL MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS IN EFFECT ON THE DATE OF MANUFACTURE. SEE DATA PLATE.

Manufactured Home. A structure which is built to the Federal Manufactured Home Construction and Safety Standards and FmHA's thermal requirements. It is transportable in one or more sections, which in the traveling mode is ten body feet or more in width, and when erected on site is four hundred or more square feet, and which is built on a permanent foundation when connected to the required utilities. It is designed and constructed for permanent occupancy by a single family and contains permanent eating, cooking, sleeping and sanitary facilities. The plumbing, heating, and electrical systems are contained in the structure.

Manufactured Home Community. A parcel or contiguous parcels of land which contains two or more manufactured home sites available to the general public for occupancy. Sites and units may be for rent, or sites may be sold for residential occupancy (as in a subdivision).

Manufactured Home Rental Project. A parcel or multiple parcels of land which have been so designated and improved to contain manufactured homes with sites available for rent.

Manufactured Home Site. A designated parcel of land in a manufactured home rental project, subdivision or scattered site designed for the accommodation of a unit and its accessory structures for the exclusive use of the occupants.

Manufactured Home Subdivisions. A contiguous group of 10 or more (developed or undeveloped) lots or building sites designed or intended to be conveyed by deed to individual owners for residential occupancy primarily by manufactured homes. Typically all roads, rights-of-ways, water, sewer and other utility line easements would be dedicated to a public body which would be responsible for maintenance.

Permanent Perimeter Enclosure. A permanent perimeter structural system completely enclosing the space between the floor joist of the manufactured home and the ground. If separate from the foundation system, the permanent perimeter enclosure shall be secured to the perimeter of the manufactured home, properly ventilated and accessible and constructed of materials that conform to the FmHA adopted MPS requirements for foundations.

Pier Support System. Consists of footings, piers, caps, leveling spacers, or approved prefabricated load bearing devices.

Related Facilities. Any nonresidential structure or building used for rental housing related purposes as defined in § 1944.205(i) of Subpart E of Part 1944 of this chapter.

Site-Built Permanent Foundation System. A foundation system (consisting of a combination of footings, piers, caps and shims and anchoring devices or required structural connections) which is designed and constructed to support the unit and sustain, within allowable stress and settlement limitations, all applicable loads specified in ANSI A58.1-1982. All loads shall be transferred from the manufactured home to the earth at a depth below the established frost line without exceeding the safe bearing capacity of the supporting soil.

Set-Up. The work performed and operations involved in the placement of a manufactured home on a foundation system, to include installation of accessories or appurtenances and anchoring devices, and when local regulations permit, connection of utilities, but excluding preparation of the site.

IV. *Compliance with Local Regulations.* These requirements do not replace site development standards established by local law, ordinances, or regulations. Whenever such local standards contain more stringent provisions than any of the site development, installation and set-up minimums of FmHA, the more stringent standards shall govern.

V. *Applicable Standards, Regulations and Manuals.*— A. Manufactured housing to be financed by FmHA must comply with the following standards:

1. Federal Manufactured Home Construction and Safety Standards, 24 CFR Part 3280, mandated by Congress under Title VI of the Federal Housing and Community Development Act of 1974, except for § 3280.506, "Heat Loss," of Subpart F, "Thermal Protection," to Part 3280.
2. Foundation requirements of the Minimum Property Standards as adopted by FmHA or a Model Building Code acceptable to FmHA.
3. [Reserved]
4. Uniform Federal Accessibility Standard (UFAS).
5. ANSI A58.1-1982, Minimum Design Loads for Buildings and Other Structures.

B. Manufactured housing to be financed by FmHA shall comply with all applicable FmHA regulations, including but not limited to the following:

1. Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5), "Planning and Performing Site Development Work."
2. Subpart A of Part 1924, Exhibit D, "Thermal Performance Construction Standards."
3. Subpart G of Part 1940, "Environmental Program."
4. Subpart A of Part 1944, "Section 502 Rural Housing Loan Policies, Procedures, and Authorizations."
5. Subpart E of Part 1944, "Rural Rental Housing Loan Policies, Procedures, and Authorizations."

The requirements of the above references have not been repeated in this Exhibit. Those requirements contained above are either mandatory or minimums and every effort should be made by the applicant, builder-developer or dealer-contractor to utilize higher standards, when appropriate.

Part B—Construction and Land Development

I. *General Acceptability Criteria.* The following criteria apply to development on scattered sites, in subdivisions and in rental project communities.

A. A manufactured home development including a site, rental project or subdivision shall be located on property designated for that use, where designations exist, by the local jurisdiction.

B. Conditions of soil, ground water level, drainage, flooding and topography shall not create hazards to the property and health or safety of the residents.

C. The finished grade elevation beneath the manufactured home or the first flood elevation of the habitable space, whichever is lower, shall be above the 100-year return frequency flood elevation. This requirement applies wherever manufactured homes may be installed, not just in locations designated by the National Flood Insurance Program as areas of special flood hazards. The use of fill to accomplish this is a last resort. However, as stated in § 1940.304 of Subpart G of Part 1940 of this chapter, it is FmHA's policy not to approve or fund any proposal in a 100-year floodplain area unless there is no practicable alternative to such a floodplain location.

D. Essential service such as employment centers, shopping, schools, recreation areas, police and fire protection, and garbage and trash removal shall be convenient to the development and any site, community, or subdivision must meet the environmental and location requirements contained in Subpart G of Part 1940 of this chapter.

E. Manufactured home sites, rental projects and subdivisions shall not be subject to any adverse influences of adjacent land uses. An adverse influence is considered as one that is out of the acceptable level or range of a recognizable standard or where no standard exists is considered a nuisance irrespective of a site being zoned for manufactured home use. Health, safety and aesthetic consequences of location shall be carefully assessed by inspection of the site prior to selection of development. Undesirable land uses sush as deteriorated residential or commercial areas and noxious industrial properties shall be avoided to ensure compatibility. Other undesirable elements such as heavily traveled highways, airport runways, railroad, or fire hazards and other areas subject to recognizably intolerable noise levels shall be avoided.

F. The requirements for streets shall be those found in § 1804.67 of Subpart D to Part 1804 of this chapter (paragraph VII of FmHA Instruction 424.5).

G. The site design and development shall be in accordance with sound engineering and architectural practices and shall provide for all utilities in a manner which allows adequate, economic, safe, energy efficient and dependable systems with sufficient easements for their required installation and maintenance.

H. Utilities for each manufactured home site, rental housing project or subdivision shall be designed and installed in accordance with §§ 1804.66 and 1804.70 of Subpart D of Part 1804 (paragraph VI and X of FmHA Instruction 424.5); and the State health authority having jurisdiction, and all local laws and regulations requiring approval prior to construction.

I. Exhibit C, Section V of this Subpart shall be complied with by the applicant, dealer-contractor or builder-developer for manufactured home projects with individual water supply and sewage disposal systems. This Exhibit shall be used by the FmHA County Supervisors, District Directors, and State Directors in reviewing submissions.

J. During the planning, design, and construction of the foundation system and/or perimeter enclosure, provisions shall be made for the installation and connection of on-site water, gas, electrical and sewer systems, which are necessary for the normal operation of the manufactured home. Water and sewer system hookups shall be adequately protected from freezing.

II. *Development on Scattered Sites and in Subdivisions.—A. General.* Scattered sites and subdivision developments will be planned and constructed in accordance with specific requirements of this subpart, Subpart D of Part 1804 (FmHA Instruction 424.5), and Subpart G of Part 1940 of this chapter, and the applicable FmHA/MPS or Model Building Codes acceptable to FmHA. Manufactured homes for development in a manufactured home community shall:

1. Be erected with or without a basement on a site-built permanent foundation that meets or exceeds applicable requirements of the FmHA/MPS for One- and Two-Family Dwellings or Model Building Codes acceptable to FmHA;

2. Be permanently attached to that foundation by anchoring devices adequate to resist all loads identified in the FmHA adopted MPS (this includes resistence to ground movements, seismic shaking, potential shearing, overturning and uplift loads caused by wind, etc.);

3. Have had the towing hitch or running gear, which includes tongues, axles, brakes, wheels, lights and other parts of the chassis that operate only during transportation removed;

4. Have any crawl space beneath the manufactured home properly ventilated and enclosed by a continuous permanent perimeter enclosure. If it is not the supporting foundation, designed to resist all forces to which it may be subject without transmitting to the building superstructure movements or any effects caused by frost heave, soil settlement (consolidation), or shrinking or swelling of expansive soils; and be constructed of materials that conform to FmHA adopted MPS requirements for foundations;

5. Have the manufactured home insulated to meet the energy conserving requirements contained in Exhibit D of this subpart;

6. Have a manufactured home site, site improvements, and all other features of the mortgaged property not addressed by the Federal Manufactured Home Construction and Safety Standards, meet or exceed applicable requirements of this Subpart and Part 1804, Subpart D of this chapter (FmHA Instruction 424.5), the FmHA adopted MPS except paragraph 311–2.2 or a Model Building Code acceptable to FmHA;

7. Have had the manufactured unit itself braced and stiffened where necessary before it leaves the factory to eliminate racking and potential damage during transportation; and

8. Be eligible for financing in accordance with the requirements of either Section 502, or Section 515 of FmHA's Housing Program, for which purpose the beginning of construction will be the commencement of on-site work even though the manufactured home itself may have been produced and temporarily stored prior to the date of application for financing.

B. *Site Planning and Development.* The site planning and development of manufactured home scattered sites and subdivisions shall also comply with the following:

1. *Arrangement of Structures and Facilities.* The site, including the manufactured home, accessory structures, and all site improvements shall be harmoniously and efficiently organized in relation to topography, the shape of the plot, and the shape, size and position of the unit. Particular attention shall be paid to use, appearance and livability.

2. *Adaptation to Site Assets.* The manufactured home shall be fitted to the terrain with a minimum disturbance of the land. Existing trees, rock formations, and other natural site features shall be preserved to the extent practical. Favorable views or outlooks shall be emphasized by the plan.

3. *Site Plan.* The site plan shall provide for a desirable residential environment which is an asset to the community in which it is located.

4. *Lot Size.* The size of manufactured home lots (scattered sites and subdivisions) shall be determined by § 1944.11(c) of Subpart A of Part 1944 and § 1804.69 of Subpart D of Part 1804 of this chapter (paragraph IX of FmHA Instruction 424.5).

C. *Foundation Systems, Anchoring and Set-up.*

1. The foundation system shall be constructed in accordance with this subpart and one of the following: (a) the foundation system included in the manufacturer's installation instructions meeting FmHA/MPS requirements, (b) the FmHA/MPS 4900.1, which specifies performance requirements for foundations in Section 600 "General" and paragraph 601–16 "Foundations," or (c) an FmHA recognized model building code.

2. The manufactured home permanent foundation system shall constitute a permanent load bearing support system for the manufactured home. The manufacturer or applicant shall be permitted to design or specify the installation of a foundation system which meets FmHA/MPS design requirements for foundations and the general requirements above.

3. The applicant's responsibility for proper design and installation of the permanent foundation system, anchoring and set-up shall be in accordance with § 1924.5(f)(1), of this subpart.

4. The builder/developer of the manufactured home property, for proposed construction, shall submit with the application for financing by the applicant or for a conditional commitment design calculations, details and drawings for the installation, anchorage and construction of permanent foundation and perimeter enclosure to be used.

III. *Rental Housing Project Development.—A. General.* Manufactured housing rental developments shall be planned and constructed in accordance with requirements of Subpart D of Part 1804 (FmHA Instruction 424.5); this subpart; Subpart G of Part 1940;

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the FmHA/MPS; and the requirements of Subpart E of Part 1944 of this chapter.

B. *Site Planning and Development.* Site planning and development shall adapt to individual site conditions and the type of market to be served, reflect advances in site planning and development techniques, and be adaptable to the trends in design of the manufactured home. Site planning and development shall utilize existing terrain, trees, shrubs and rocks formations to the extent practicable. A regimental style site plan design should be avoided.

C. *Foundation Systems, Anchoring and Set-up.* Foundation systems, anchoring and set/ups for manufactured home rental projects (site and home) developed under FmHA Section 515 Rural Rental Housing program shall comply with the requirements of paragraphs II A and II C above.

IV. *Accessory Structures and Related Facilities.*—A. *General.* Accessory structures and related facilities are dependent upon the manufactured home and its environment.

1. Accessory structures and related facilities shall be planned, designed and constructed in accordance with the applicable provisions of this subpart; the FmHA/MPS; and local criteria of the authority having jurisdiction.

2. Accessory structures and related facilities shall be designed in a manner that will eliminate and prevent health and safety hazards and enhance the appearance of the manufactured home and its environment.

3. Accessory structures and related facilities shall not obstruct required openings for light and ventilation of the manufactured home and shall not hamper installation and utility connections of the unit.

B. *Accessory Structures.* 1. Accessory structures shall not include spaces for pantries, bath, toilet, laundries, closets or utility rooms.

2. Accessory structures shall be carefully designed and constructed for the convenience and comfort of the manufactured home occupant. These features significantly affect the visual appearance of the community and influence livability.

C. *Related Facilities (Rental Housing Projects).* 1. This includes those facilities as defined in §§ 1944.205(i) and 1944.212(f) of Subpart E of Part 1944 of this chapter.

2. Related facilities built on-site must meet the FmHA/MPS and Subpart A of Part 1924 of this chapter or other building codes approved by FmHA.

3. Workmanship shall be of a quality equal to good standard practice. Material shall be of such kind and quality as to assure reasonable durability and economy of maintenance, all commensurate with the class of building under consideration.

4. All members and parts of the construction shall be properly designed to carry all loads imposed without detrimental effect on finish or covering materials.

5. The structure shall be adequately braced against lateral stresses and each member shall be correctly fitted and connected.

6. Adequate precautions shall be taken to protect against fire and accidents.

7. All related facilities which require accessibility to the handicapped must comply with the Uniform Federal Accessibility Standard (UFAS).

V. *Fire Protection and Safety.* A. The design of the site plan for each manufactured community and scattered site shall meet the fire protection and safety requirements of the local authority responsible for providing the necessary fire protection services.

B. All fire detection and alarm systems, and water supply requirements for fire protection for manufactured communities shall be in accordance with the local authority responsible for providing the necessary fire protection services.

C. Any portion of a manufactured home shall not be closer than the local separation requirements of the development standard for side to side, end to end, and end to side siting. If the exposed composite wall and roof of two or more manufactured homes are proposed to be joined they shall be without openings and constructed of materials which will provide a minmum one-hour fire rating each, or the manufactured homes are separated by a one-hour fire rated barrier designed and approved for such installation and permitted by the authority having jurisdiction.

D. Manufactured homes shall not be positioned vertically (stacked) with one over the other in whole or in part without the specific approval of the authority having jurisdiction.

Part C—Drawings, Specifications, Contract Documents and Other Documentation

1. *General.* Adequate site development and foundation installation drawings and specfications shall be provided by the applicant or dealer-contractor to FmHA to fully describe the construction and other development work. These documents shall be provided according to the requirements of § 1924.5(f)(1) of this subpart. Contract documents will be prepared in accordance with § 1924.6 and, in the case of multiple family housing construction and development, § 1924.13 of this subpart.

A. The documents recommended shall be used as a guide for drawings and specifications to be submitted in support of all types of loan and/or grant applications involving manufactured homes. Adequate and accurate drawings and specifications are necessary to:

1. Determine the acceptability of the physical environment and improvements,
2. Determine compliance with the applicable standards and codes,
3. Review cost estimates, and
4. Provide a basis for financing, inspections, and the warranty.

B. Detailed floor plans, drawings and specifications are not required for any manufactured home to be installed on a scattered site, in a subdivision or rental housing project. However, a schematic floor plan should be submitted by the applicant when applying for FmHA financing. The unit must have an affixed label as specified in paragraph XIV (c)(3) of Exhibit F of Subpart A of Part 1944 indicating that the unit is constructed to the FmHA thermal requirements for the appropriate winter degree days. This will indicate that the manufacturer certifies that the unit has been properly inspected and it meets the FmHA Thermal Performance Construction Standard.

C. For proposed construction, the builder or dealer-contractor shall submit with the loan or grant application design calculations, details and drawings for the installation, anchorage and construction of the permanent foundations and perimeter enclosure to be used. Drawings and specifications for foundation systems will be reviewed and examined by either the FmHA County Supervisor, District Director, or State Architect/Engineer for foundation support locations, loads and connection requirements specified by the manufacturer as a basis for evaluating foundation compliance with the FmHA/MPS or Model Building Code, and for determining design suitability for soil conditions. Drawings and specifications will also be examined by FmHA to determine compliance with all other on-site features not covered by the FMHCSS.

D. Foundation design sections and details of all critical construction points systems, anchorage methods, and structural items shall be scaled as necessary to provide all appropriate information 1:30 (3/8"=1'-0") minimum.

II. *Scattered Sites.* Drawings for single family manufactured housing shall be submitted by the applicant in addition to the requirements of paragraph I above and the requirements of paragraphs II A and D–7 of Exhibit C of this subpart.

III. *Subdivisions.* A. § 1804.74 of Subpart D of 1804 (Exhibit A of FmHA Instruction 424.5) will be used as a guide by the applicant or builder-developer in preparing a proposal, and in providing supporting documents for a site development with 10 or more sites.

B. § 1804.74 of Subpart D of Part 1804 (Exhibit A of FmHA Instruction 424.5) will be used by FmHA County Supervisors, District Directors, and State Directors in reviewing subdivision submissions.

IV. *Rental Housing Projects.* A. Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5) will be used as a guide by the applicant or dealer-contractor in preparing a proposal and supporting documents for manufactured housing rental projects.

B. Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5) shall be used by FmHA County Supervisors, District Directors, and State Directors in reviewing manufactured housing rental project submissions.

V. *Specifications.* A. Form FmHA 424–2, "Description of Materials," or other acceptable and comparable descriptions of all materials used for site development, foundation installation and the permanent perimeter enclosure shall be submitted with the drawings by the applicant.

B. The material identification information shall be in sufficient detail to fully describe the material, size and grade. Where necessary, additional sheets shall be attached as well as manufacturer's specification sheets for equipment and/or special materials.

Part D—Inspection of Development Work

I. *General.* The following policies will govern the inspection of all manufactured housing development work. This includes scattered sites, subdivisions, rental housing projects and all accessory structures and related facilities unless otherwise indicated.

II. *Inspections.* A. The responsibility for frequency and propose of inspections shall be in accordance with § 1924.9(b) (1), (2) and (3) of this subpart. The inspection requirements of § 1924.13 apply to the planning and conduct of construction work on all 515 housing developments that are more extensive in scope and more complex in nature than those involving an individual manufactured housing unit. The Stage 2 inspection customary for site-built housing when the building is enclosed is not required for manufactured homes.

The Stage 2 inspection for manufactured homes will be made within two working days after erection or placement on the foundation to determine compliance with accepted installation drawings and specifications for installation and set-up and to verify that the correct unit is on the site.

Stages 2 and 3 inspections for manufactured homes may be combined when authorized by the State Director.

B. The borrower will join the County Supervisor or the District Director in making periodic inspections as often as possible and always for the final inspection.

C. The borrower should be encouraged to make enough periodic visits to the site to be familiar with the progress and performance of the work in order to protect the borrower's interest. If the borrower observes or otherwise becomes aware of any fault or defect in the work or nonconformance with the contract documents, the borrower should give prompt written notice thereof to the dealer-contractor and a copy of the notice to the appropriate County Supervisor or District Director.

D. During inspection, it will generally be infeasible to determine whether a manufactured unit erected on a site was properly braced and stiffened during transportation. Inspectors should examine these units to determine that there is no obvious damage or loosening of fastenings that may have occurred during transportation. The dealer-contractor must warrant these units against such damage, which should protect FmHA's interest.

III. *Warranty Plan Coverage.* The warranty requirements for all development work shall be in accordance with § 1924.9(d) of this subpart and Exhibit F of Subpart A of Part 1944 of this chapter.

PART 1944—HOUSING

6. The authority citation for Part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 2.70.

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

§ 1944.3 [Amended]

7. In § 1944.3 paragraph (a)(3) is amended by replacing the period at the end of the sentence with a comma and adding the following: "except for manufactured homes."

8. In § 1944.3 paragraph (b)(9) is amended by replacing the period at the end of the sentence with a comma and adding the following: "and incidental expenses authorized in Exhibit F of this subpart."

§ 1944.16 [Amended]

9. In § 1944.16 paragraph (b) is amended by adding at the end of the paragraph the following: "Loans will not be made on an existing manufactured home unless it is already financed with a Section 502 Rural Housing Loan or is being sold from FmHA inventory."

10. In § 1944.16 paragraph (c) is amended by adding the following after the first sentence: "Manufactured homes will not be repaired unless authorized in § 1944.40 or Exhibit F, paragraph (IV)(d) of this subpart.

11. Section 1944.16 is amended by adding paragraph (e) to read as follows:

§ 1944.16 Building requirements.

* * * * *

(e) *Manufactured homes.* Exhibit F of this subpart contains supplemental information concerning building requirements for manufactured homes.

§ 1944.17 [Amended]

12. In § 1944.17 paragraph (a)(1) is amended by replacing the period at the end of the sentence with a comma and adding the following: "except as provided in Exhibit F of this subpart."

13. Section 1944.17 is amended by adding paragraph (a)(2)(vi) to read as follows:

§ 1944.17 Maximum loan amounts.

(a) * * *

(2) * * *

(vi) The manufactured home and site meet the requirements in Exhibit F of this subpart and Exhibit J of Subpart A of Part 1924 of this chapter.

* * * * *

14. Section 1944.22 is amended by revising paragraph (a) to read as follows:

§ 1944.22 Refinancing debts.

(a) Refinancing of FmHA debts and debts on a building site without a dwelling or debts on a manufactured home is not authorized.

* * * * *

15. Section 1944.24 is amended by revising paragraph (b) to read as follows:

§ 1944.24 Technical services.

* * * * *

(b) *Planning and performing site development work.* Any site development will be planned and completed in accordance with Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5), except as provided for manufactured homes in Exhibit J of Subpart A of Part 1924 of this chapter. Subdivisions will be accepted by FmHA without further processing when the developer provides written evidence of current subdivision acceptance by HUD or VA. The developer must also provide proof of compliance with exception conditions established by HUD or VA. Such evidence will be reviewed and approved by the State Director.

* * * * *

§ 1944.25 [Amended]

16. In § 1944.25 paragraph (c) is amended in the first sentence by adding between the phrases "33 years" and "from the date" the following: "(30 years for a manufactured home loan)".

17. Section 1944.30 is amended by adding paragraph (b)(8) to read as follows:

§ 1944.30 Preparation of loan docket.

* * * * *

(b) * * *

(8) When the loan is for a manufactured home, the supplemental information needed is listed in Exhibit F, paragraph XVIII of this subpart.

18. In Section 1944.34, paragraph (f)(1)(iii) is amended in the first sentence by adding between the phrases "33 years" and "unless authorized" the following: "(30 years for a manufactured home loan)".

19. Section 1944.40 is amended by revising the introductory text to read as follows:

§ 1944.40 Rural housing disaster (RHD) loans.

RHD loans may be made to repair (except no RHD loan may be made on a manufactured home unless the unit is already financed with a Section 502 rural housing loan) or replace dwellings which were damaged or destroyed by a natural disaster such as earthquake, flood, forest fire, severe windstorm or lightning.

* * * * *

20. Section 1944.45 is amended by revising paragraph (a), introductory text of paragraph (b), and (c)(2) to read as follows:

§ 1944.45 Conditional commitments.

(a) *General.* A conditional commitment is assurance from FmHA to a qualified builder, dealer-contractor or seller that a dwelling to be built, rehabilitated, or developed as a manufactured home package and offered for sale will be acceptable for purchase by qualified RH loan

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applicants if built in accordance with FmHA approved plans and specifications and priced at not more than a specified maximum amount. The conditional commitment does not reserve funds for a loan nor does it assure that the area the dwelling is in will remain rural or that an eligible loan applicant will be available to buy the dwelling.

(b) *Eligibility.* To be eligible for conditional commitments, the builder, dealer-contractor, or seller must:

* * * * *

(c) * * *

(2) Conditional commitments will be issued by FmHA only for new homes to be constructed, new manufactured homes, or existing homes (other than manufactured) to be rehabilitated.

* * * * *

§ 1944.45 [Amended]

21. In Section 1944.45, paragraph (d) is amended in the first sentence by adding between the phrases "to a builder" and "who packages" the following: "or dealer-contractor."

22. In Section 1944.45 paragraph (h) is amended in the first sentence by removing "Exhibit D" and adding in its place the following: "Exhibits D and J (for manufactured homes)".

23. In Section 1944.45 paragraph (k) is amended in the first sentence by adding between the phrases "builder" and "or seller" the following: "dealer-contractor"; and between the phrase "Builder's Warranty" and "or provide" the following: "(manufactured home warranty will be in accordance with Exhibit F, paragraph XIII of this subpart)".

24. Paragraph IIB of Exhibit A of Subpart A is amended by adding at the end of the paragraph the following: "Additional information required for manufactured homes is listed in Exhibit F, paragraph XVIII of this subpart."

25. Subpart A is amended by adding Exhibit F which reads as follows:

Exhibit F—Supplemental Requirements for Making Section 502 RH Loans for Manufactured Homes

Paragraph

I. What are the general conditions for financing a manufactured home?
II. What are the definitions of terms used in this Exhibit?
III. What are the applicant eligibility requirements?
IV. For what purposes may Section 502 RH loan funds be used?
V. For what purposes may Section 502 RH funds not be used?
VI. What are the building and siting requirements?
VII. How will a manufactured home be appraised?
VIII. What are the loan limitations?
IX. How does a dealer-contractor qualify to participate in the program?
X. What are the County Supervisor's, District Director's and State Director's responsibilities in evaluating a dealer-contractor?
XI. What are the contract requirements?
XII. What are the lien release requirements?
XIII. What are the warranty requirements?
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I. What are the general conditions for financing a manufactured home?

a. This Exhibit provides for the financing of a manufactured home (herein called unit) with a Section 502 Rural Housing loan. Manufactured structures (as described in Exhibit B to Subpart A of Part 1924), generally referred to as modular homes that are constructed to the FmHA adopted MPS or FmHA recognized building codes, are not affected by this Exhibit. All parts of Part 1944, Subpart A of this chapter apply unless modified by this Exhibit.

b. FmHA may finance a manufactured home if both the unit and its site are covered by the mortgage or Deed of Trust. The encumbered property must be covered under a standard real estate title insurance policy or attorney's title opinion that identifies the site and unit as real property and insures or indemnifies against any loss if the manufactured home is determined not to be part of the real property. The unit and site must be taxed as real estate by the jurisdiction where located, if such taxation is permitted under applicable law, when the loan is closed. FmHA may not finance a lot for a unit already owned by the applicant. It is a violation of this regulation to finance furniture or to refinance any existing debts owed by the applicant/borrower.

II. What are the definitions of terms used in this Exhibit?

As used in this Exhibit the term—

a. "Manufactured Home" (Unit) means a structure which is built to the Federal Manufactured Home Construction and Safety Standards and FmHA Thermal requirements. It is transportable in one or more sections, which in the traveling mode is ten body feet or more in width, and when erected on site is four hundred or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities. It is designed and constructed for permanent occupancy by a single family and contains permanent eating, cooking, sleeping and sanitary facilities. The plumbing, heating, and electrical systems are contained in the structure. For the purpose of the FmHA Section 502 manufactured home program permanent foundations are required.

b. "Furniture" means movable articles of personal property such as drapes, beds, bedding, chairs, sofas, divans, lamps, tables, televisions, radios, or stereo sets, and other similar items of personal property, but furniture does not include wall-to-wall carpeting, refrigerators, ovens, ranges, washing machines, clothes dryers, heating or cooling equipment or other similar items.

c. "Single Wide" means a dwelling unit that is 12 or more feet in width and contains 400 or more square feet. It is a totally self-contained dwelling unit as transported from the factory on a single permanent chassis.

d. "Double Wide" means two or more sections transported from the factory on a permanent chassis intended to be joined together horizontally when located on the site, but capable of independent movement. The sections when joined together must be 20 or more feet in width.

e. "Eligible Options" mean items that could be financed under the Section 502 Program but are not included in the base price for the manufactured home unit. Examples are appliances, wiring for dryer, plumbing for washer, standard bathroom and kitchen fixtures, etc.

f. "Federal Manufactured Home Construction and Safety Standards" (FMHCSS) mean a 1976 Federal Standard commonly known as the HUD standards for the construction, design and performance of a manufactured home which meets the needs of the public including the need for quality, durability and safety. Units conforming to the FMHCSS are certified by an affixed label that reads as follows:

AS EVIDENCED BY THIS LABEL NO. __________THE MANUFACTURER CERTIFIES TO THE BEST OF THE MANUFACTURER'S KNOWLEDGE AND BELIEF THAT THIS MANUFACTURED HOME HAS BEEN INSPECTED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND IS CONSTRUCTED IN CONFORMANCE WITH THE FEDERAL MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS IN EFFECT ON THE DATE OF MANUFACTURE. SEE DATA PLATE.

g. "Dealer-Contractor" is a person, firm, partnership or corporation in the business of selling and servicing manufactured homes and developing sites for manufactured homes. A person, firm, partnership or corporation not capable of providing the complete service is not eligible to be a "dealer-contractor."

h. "New Unit" means a unit not previously occupied as a residence and less than 1 year old.

i. "Existing Unit" is a unit previously occupied as a residence or more than 1 year old.

j. "Design Approval Primary Inspection Agency" (DAPIA) is a state or private organization which has been approved by the Secretary of HUD to evaluate (i.e. approve or disapprove) manufactured home designs and quality control programs.

III. What are the applicant eligibility requirements?

An applicant meeting the eligibility requirements of §§ 1944.8 and 1944.9 of this subpart is eligible for a loan on a manufactured home.

IV. For what purposes may Section 502 RH loan funds be used?

FmHA may finance the following when a real estate mortgage covers both the unit and the lot:

a. A new unit for a site owned by the applicant which meets the requirements and limitations of § 1944.11 of this subpart or a leasehold meeting the provisions of § 1944.15(a)(5) of this subpart.

b. A new unit and a site which meets the requirements of § 1944.11 of this subpart.

c. Site development work. The types of site development required and permitted are in paragraph VI of this Exhibit and Part 1924, Subpart A of this chapter.

d. Subsequent loans for equity or repair with a transfer, credit sale, or a subsequent loan for repair of a unit if the unit is currently financed with a Section 502 Rural Housing loan.

e. Transportation and set-up costs if a new unit is financed.

V. For what purposes may Section 502 RH funds not be used?

FmHA may *not* use loan funds to finance:

a. An existing unit and site unless it is already financed with a Section 502 Rural Housing loan or is being sold from FmHA inventory.

b. The purchase of a site without also financing the unit.

c. Existing debts owed by the applicant/borrower.

d. A unit without an affixed certified label indicating the construction of the unit is in accordance with the FMHCSS.

e. Alteration or remodeling of the unit when the initial loan is made.

f. Furniture as defined in this Exhibit.

g. Any unit not constructed to the FmHA thermal standards as identified by an affixed label for the winter degree day zone where the unit will be located.

h. A unit that at the time of loan approval would result in more than one person per room. The number of rooms include bedrooms, living room, dining room, kitchen, den or family room.

i. Repairs unless authorized in paragraph (IV)(d) of this Exhibit.

VI. What are the building and siting requirements?

The unit must be modest in design, size and cost as defined in § 1944.16(a) of this subpart. The floor area must be 400 square feet or more, and the width 12 feet or more for a single wide unit and 20 feet or more for a double wide unit. Construction of the unit must conform with the FMHCSS as evidenced by an affixed certification label. The unit must be constructed to the FmHA thermal requirements of Exhibit D of Subpart A of Part 1924 of this chapter and identified by an affixed label as required in paragraph XIV c 3 of this Exhibit. Site development and set-up must conform to Exhibit J of Subpart A of Part 1924 of this chapter.

VII. How will a manufactured home be appraised?

a. The appraiser will use normal single family residential appraisal techniques when appraising a manufactured home and the site. Since other manufactured homes and sites provide the most similar comparables, every effort must be made to obtain such comparables even if their distance from the subject is greater than normally desirable. If other units are not available within a reasonable distance, the appraiser may use other than manufactured homes after adjusting for location, construction material, size, quality, etc.

b. The appraiser will use Marshall and Swift cost data for manufactured housing to determine the cost approach. An alternate cost method may be substituted for Marshall and Swift with prior authorization from the National Office.

VIII. What are the loan limitations?

A loan for a new unit, new unit and site or an existing site and unit may not exceed the final reconciliation/estimated value of the developed security as determined by a real estate appraisal.

IX. How does a dealer-contractor qualify to participate in the program?

A dealer-contractor may apply to participate by submitting Form FmHA 1944–5, "Dealer-Contractor Application," and a current financial statement prepared by a public accountant and certified by the dealer to the FmHA County Supervisor. A person, firm, partnership or corporation unable to provide a full service of sales, service, erection and site development is not eligible to participate as a dealer-contractor. To qualify to participate a dealer-contractor must be:

a. Financially responsible,

b. Qualified to perform satisfactorily the set-up of the homes and site development work,

c. Equipped to extend proper services to the customer, and

d. Willing to provide a warranty as required in paragraph XIII of this Exhibit.

X. What are the County Supervisor's, District Director's and State Director's responsibilities in evaluating a dealer-contractor?

a. The County Supervisor will:

1. Maintain an operational file for each dealer-contractor who submits Form FmHA 1944–5, "Dealer-Contractor Application," and a certified financial statement.

2. Obtain a commercial credit report on the firm and consumer credit reports on each of the principals.

3. Make direct checks on trade and bank references and check with the local Better Business Bureau.

4. Inspect the dealer's place of business to determine the permanency of same and the adequacy of available equipment.

5. Obtain copies of brochures, descriptive literature, guarantees, sales contracts, and price lists.

6. Determine that the dealer-contractor has the necessary equipment and experience to perform or subcontract all site development work. If the firm uses subcontractors, obtain the names of the subcontractors and their qualifications. A field inspection of recently developed sites and set-ups would be desirable in determining whether the dealer-contractor has the necessary experience.

7. Carefully analyze the above information to determine if the dealer-contractor is able to provide the full service of sales, service, erection and warranty of manufactured homes and developing sites for them. Submit, through the District Director, to the State Director a recommendation with supporting documentation as to whether or not the dealer-contractor is acceptable.

8. Maintain a complaint file on each dealer-contractor to establish a basis for limiting future business with that dealer-contractor, if necessary. Any *unresolved* complaints are reasons for possible debarment action under Subpart E of Part 1924 of this chapter.

b. The District Director will review the County Supervisor's recommendations and forward them, with any additional comments, to the State Director for review.

c. The State Director will make the decision on dealer-contractor's acceptability and, if acceptable, issue a letter of acceptance. The State Director will also issue a list of acceptable dealer-contractors in the state as a supplement to this Exhibit. If the State Director determines the dealer-contractor not acceptable, appeal rights will be granted as if the decision were covered by Subpart B of Part 1900 of this chapter. Any dealer-contractor held not to be acceptable may reapply for acceptance at any time the dealer-contractor has reason to believe the conditions leading to the determination have been removed.

XI. What are the contract requirements?

The dealer-contractor must sign Form FmHA 424–6, "Construction Contract," which will cover both the unit and site development work. The "borrower method" of development or use of multi-contracts is *prohibited.* A dealer-contractor may use subcontractors if the dealer-contractor is *solely* responsible for all work under the contract. Payment for all work will be in accordance with Form FmHA 424–6 and Subpart A of Part 1924 of this chapter, except no payment will be made for materials or property stored on site (e.g. payment for a unit will be made only after it is permanently attached to the foundation).

XII. What are the lien release requirements?

All persons furnishing materials or labor in connection with the contract must sign Form FmHA 424–10, "Release by Claimants," except the manufacturer of the unit. The manufacturer of the unit must furnish an executed manufacturer's certificate of origin that the unit is free and clear of all legal encumbrances. The use of Form FmHA 424–10 is optional in a State if the State Director has issued a State supplement not requiring its use. However, in all states the certificate of origin is required.

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XIII. What are the warranty requirements?

A dealer-contractor must provide a warranty in accordance with the provisions of § 1924.9(d) of Subpart A of Part 1924. The warranty must identify the unit(s) by serial number(s). The dealer-contractor must certify that the manufactured home property substantially complies with the plans and specifications and the manufactured home sustained no hidden damage during transportation and, if manufactured in separate sections, that the sections were properly joined and sealed according to the manufacturer's specifications. The dealer-contractor will also furnish the applicant with a copy of all manufacturer's warranties.

XIV. What are the requirements for inspections and design reviews?

a. The County Supervisor will inspect and review for purposes of determining that the government's security is adequate and that the general goals of the program are being complied with but not for the protection of the specific borrower:

1. That the unit has a properly affixed certification label indicating the construction of the unit is in accordance with the FMHCSS.

2. That the unit is modest in size, design and cost in accordance with § 1944.16 of this subpart and other housing financed for similar applicants in the area.

3. That the thermal design certification has been provided as required in paragraphs XIV(c)(2)(i) or XIV(c)(2)(ii).

4. That the unit contains the manufacturer's thermal certification as required in paragraph XIV(c)(3) of this Exhibit, and that the certified winter degree days are correct for the location of the unit.

5. To determine compliance with Exhibit J of Subpart A of Part 1924 of this chapter for all onsite development and features not covered by the FMHCSS.

6. To determine foundation support locations, loads and connection requirements specified by the manufacturer as a basis for evaluating foundation compliance with Exhibit J of Subpart A of Part 1924 of this chapter and for determining design suitability for the soil conditions.

7. To determine compliance with site development requirements including required siting approval by State and local authorities, when those entities regulate manufactured home siting.

8. To determine that the site is in compliance with Subpart G of Part 1940 of this chapter.

b. Designs must be reviewed and construction must be inspected in accordance with the procedures established by the Secretary of HUD in 24 CFR Part 3282.

c. Units must be designed and constructed in accordance with Exhibit D to Subpart A of Part 1924, "Thermal Performance Construction Standards."

1. The manufacturer must assign a unique designation to the design for each unit proposed for FmHA financing. This designation may not be repeated for any design package with a lower thermal resistance.

2. The unit must be designed to conform with either the prescriptive standards in paragraph IV A of Exhibit D to Subpart A of Part 1924, or the optional standards in paragraph IV C of Exhibit D to Subpart A of Part 1924.

(i) If a manufacturer proposes that a design conform with paragraph IV A of Exhibit D to Subpart A of Part 1924, then a DAPIA, qualified registered engineer or qualified registered architect must evaluate the thermal design of the unit and determine the maximum number of winter degree days in which the unit may be located based on paragraph IV A of Exhibit D to Subpart A of Part 1924. This determination must be certified in writing by the DAPIA, qualified registered engineer or qualified registered architect before FmHA will accept the unit for financing. This certification shall include the date, the name of the manufacturer, the model number, the design package number, and the maximum number of winter degree days in which the unit may be located. The manufacturer must submit a copy of this certification, prior to loan approval, to the FmHA loan approval official. This certification shall be filed in the loan docket.

(ii) If a manufacturer proposes that a design conform with paragraph IV C of Exhibit D to Subpart A of Part 1924, then the manufacturer shall submit to the FmHA State Office all drawings, sketches, material descriptions, thermal calculations, and any other information needed to substantiate design conformance. This shall be submitted to the State Office for the State in which the manufacturing plant is located. The State Office architect or engineer will review this submittal. Approval authority of designs shall be in accordance with paragraph IV C of Exhibit D to Subpart A of Part 1924. The State Office shall notify County and District Offices of models with approved thermal designs and other State Offices will be notified, if requested by the manufacturer. A State Office notification shall be accepted by other State Offices. Notifications shall include the manufacturer's name, model number, design package number, and the maximum number of winter degree days in which the unit may be located. A copy of this notification shall be filed in the loan docket.

3. The manufacturer must provide the following certification on a sticker approximately 4 inches by 6 inches affixed in a permanent manner near the HUD data plate: "This unit is constructed in accordance with design package __________ which conforms with the Farmers Home Administration thermal standards for __________ winter degree days. The thermal design of this unit was reviewed by __________. This unit was constructed by __________." The manufacturer will insert into the first blank space the designation for the design package, into the second blank space the maximum number of winter degree days identified in paragraph XIV(c)(2), into the third blank space the name of the DAPIA, registered engineer or registered architect which reviewed the thermal design in paragraph XIV(c)(2)(i) (or insert "FmHA" if reviewed in accordance with paragraph XIV(c)(2)(ii)), and into the fourth blank space the name of the manufacturer.

XV. What are the rates and terms of the loan?

The interest rates are the same as for other real estate loans made with Section 502 rural housing loan funds. The term of the loan may be up to 30 years for both single-wide and double-wide units.

XVI. Can a borrower be granted interest credit with a Section 502 RH loan on a manufactured home?

A borrower may receive interest credit under the conditions of § 1944.34 of this subpart.

XVII. May a dealer-contractor obtain conditional commitments for manufactured homes?

A dealer-contractor may obtain conditional commitments under § 1944.45 of this subpart.

XVIII. What information must an RH applicant submit with a request for financing a manufactured home?

In addition to the information required in Subpart A of Part 1944 of this chapter, an applicant must submit the following:

a. A plot plan and site development plan under Subpart A of Part 1924 of this chapter.

b. An itemized cost breakdown of the total package including the base unit, eligible options, site development, installation, set-up, lot costs and any credit for wheels and axles.

c. A statement signed by the dealer-contractor that any cash payment or rebate as a result of the purchase of the manufactured home will be deducted from the price of the unit and not paid to the applicant.

d. A statement signed by the dealer-contractor that this is the full price of the unit and all development, and if furniture is being purchased by the applicant, that a lien will not be filed against the FmHA security property.

XIX. What are the other considerations?

a. Development under the mutual self-help and borrower construction methods is not permitted for manufactured homes.

b. Debarment procedures apply to dealer-contractors who are removed from the list of approved dealer-contractors.

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

26. Section 1944.205 is amended by adding paragraphs (dd) through (gg) to read as follows:

§ 1944.205 Definitions.

* * * * *

(dd) *Manufactured home (unit).* A dwelling unit which is built to conform with the Federal Manufactured Home Construction and Safety Standards and FmHA thermal requirements. It is transportable in one or more sections, which in the traveling mode is ten body feet or more in width, and when erected on site is four hundred or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities. It is designed and constructed for permanent occupancy by a single family and contains permanent eating, cooking, sleeping and sanitary facilities. The plumbing, heating, and electrical systems are contained in the structure. For the purpose of this Subpart, it is a dwelling attached to a permanent foundation after all development is completed.

(1) "Single Wide" means a dwelling unit that is 12 or more feet in width and contains 400 or more square feet. It is a totally self-contained dwelling unit as transported from the factory on a single permanent chassis.

(2) "Double Wide" means two or more sections transported from the factory on a permanent chassis intended to be joined together when located on the site, but capable of independent movement. The sections when joined together must be 20 or more feet in width.

(ee) *Manufactured home rental project.* A parcel or parcels of land located in the same community which contain two or more manufactured home units on each parcel for rental occupancy and is operated under one management plan with one loan agreement/resolution.

(ff) *Federal Manufactured Home Construction and Safety Standards (FMHCSS).* A 1976 federal standard, commonly known as the HUD Standard, for the construction, design and performance of a manufactured home which meets the needs of the public including the need for quality, durability and safety. Units conforming to the FMHCSS are certified by an affixed label that reads as follows:

AS EVIDENCED BY THIS LABEL NO.__________ THE MANUFACTURER CERTIFIES TO THE BEST OF THE MANUFACTURER'S KNOWLEDGE AND BELIEF THAT THIS MANUFACTURED HOME HAS BEEN INSPECTED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND IS CONSTRUCTED IN CONFORMANCE WITH THE FEDERAL MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS IN EFFECT ON THE DATE OF MANUFACTURE. SEE DATA PLATE.

(gg) *Dealer-Contractor* is a person, firm, partnership or corporation in the business of selling and servicing manufactured homes and developing sites for manufactured homes for persons who purchase such homes for purposes other than resale. Dealer-contractor will be qualified as shown in FmHA Instruction 1944–A, Exhibit F, sections IX and X, except all processing will be handled by the District Director rather than the County Supervisor.

27. Section 1944.223 is added to read as follows:

§ 1944.223 Supplemental requirements for manufactured home rental project development.

This section includes additional provisions that apply to the making of loans for manufactured home rental project development. This section will apply in addition to all other applicable requirements contained elsewhere in this subpart. All references in this subpart to projects and housing for rent to eligible occupants shall also mean the rental of sites with manufactured homes within a rental project development.

(a) *Eligible projects.* At the time a loan is closed on a manufactured home rental project, the owner/borrower shall have constructed and completed, pursuant to a commitment given in accordance with § 1944.235(c)(1) of this subpart, or shall be obligated to construct and complete, pursuant to § 1944.235(c)(2) of this subpart, such project designed principally for rental use for manufactured homes, and conforming to the development, installation and set-up requirements of Exhibit J to Subpart A of Part 1924 of this chapter.

(1) The project owner/borrower must be the first owner purchasing the manufactured homes for purposes other than resale.

(2) The project must include two or more contiguous sites with dwelling units. Each manufactured home unit must not have been previously occupied as a residence or for any other purpose and be less than 1 year old from date of manufacture.

(3) A project is not eligible if the purpose of the loan is to refinance the project, except as provided for in § 1944.212(p) of this subpart.

(4) A loan may be made to rehabilitate manufactured home units of an existing project only if the units to be rehabilitated are currently financed by FmHA under this subpart.

(5) An eligible project may include the purchase of the real property of an existing project which will be redeveloped with the placement of new, previously unoccupied, manufactured homes and conforming to the development, installation and set-up requirements of Exhibit J to Subpart A of Part 1924 of this chapter.

(b) *Loan limitations.* The maximum loan amount shall be determined in accordance with § 1944.213(a) (1) or (2) of this subpart as applicable.

(c) *Rates and terms.* The amortization period of each loan shall not exceed the economic life of the security, taking into account probable depreciation. However, under no circumstance shall the amortization period for the loan made under this section exceed 30 years from the date of the promissory note.

(d) *Security.* A mortgage or deed of trust will be taken on the entire property purchased or improved with the loan. The encumbered property must be covered under a standard real estate title insurance policy or attorney's title opinion that identifies the project (including the manufactured homes) as real property and ensures or indemnifies against any loss if the manufactured home is determined not to be part of the real property. The property must be taxed as real estate by the jurisdiction where the project is located if such taxation is permitted under applicable law when the loan is closed.

(e) *Property requirements.*

(1) Construction and development of the project, including related facilities constructed or erected on the security property, shall be in accordance with § 1944.222(d) of this subpart and Exhibit J to Subpart A of Part 1924 of this chapter.

(2) Manufactured home rental projects shall be designed to provide for a desirable residential environment. Innovative and imaginative design is encouraged. Stylized patterns and monotony shall be avoided. All property improvements shall relate to the individual characteristics of the land. The project, including structures, streets, and all site improvements, should be harmoniously, efficiently and conveniently arranged in relation to the topography and the shape of the property.

(3) The owner/borrower shall not use or permit the use of any portion of the security property for demonstrating mobile home models for sale promotion purposes.

(4) The use and character of adjacent properties shall not adversely affect the project. However, the project shall be reasonably accessible to shopping centers or neighborhood stores, sources of employment, neighborhood parks, schools, if families with children are anticipated, and to other community services and facilities as appropriate for the size, scope and character of the project.

(5) Any portion of a project which is devoted to common use will be primarily for the use of, or service to, the project occupants. Any nonresidential

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use of the property must be subordinate to the residential use and character of the property. However, adequate passive and/or active recreation area shall be provided to meet the needs of the tenants. For example, tots lots equipped for small children's play shall be provided if it is anticipated that there will be children residing in the project.

(6) The domestic water supply and sewage disposal systems must meet state and local as well as FmHA standards in accordance with § 1804.66 of Subpart D to Part 1804 of this chapter (paragraph VI of FmHA Instruction 424.5).

(7) Parking spaces may be provided at each individual unit or in courts or bays. The number of spaces should be adequate to meet the needs of residents and their guests without interference with normal traffic.

(8) Each manufactured home should be fitted to the terrain with the least possible distrubance to the land. Existing trees, shrubs and ground cover shall be preserved to the extent possible and used to enhance the project. Additional plantings shall be provided to screen undesirable views, for shade and for visual appeal. All existing vegetation and proposed plantings shall be shown on the site plan or on a separate planting plan.

(9) The manufactured home, when placed on site, shall have floor space area of not less than 400 square feet, and a width of 12 feet or more for single wide and 20 feet or more for a double wide unit. The unit must:

(i) Be placed on a site-built permanent foundation that meets or exceeds applicable requirements of the FmHA adopted standards which are identified in Exhibit J to Subpart A of Part 1924 of this chapter or other building codes approved by FmHA.

(ii) Be permanently attached to the foundation by anchoring devices adequate to resist all loads identified in Exhibit J to Subpart A of Part 1924 of this chapter or other building codes approved by FmHA.

(iii) Be constructed in compliance with FmHA Thermal Performance Construction Standards as specified in Exhibit D to Subpart A of Part 1924 of this chapter. The unit must have an affixed label as specified in paragraph XIV(c)(3) of Exhibit F to Subpart A of Part 1944 of this chapter indicating that the unit is constructed to FmHA thermal requirements for the appropriate winter degree days.

(iv) Be constructed in compliance with applicable standards and manuals adopted by FmHA as evidenced in Part A, paragraph V of Exhibit J to Subpart A of Part 1924 of this chapter. All units must conform to the HUD "Federal Manufactured Home Construction and Safety Standards," and must be identified by an afixed certification label as defined in § 1944.205(ee) of this subpart.

(f) *Special warranty requirements.* The project general contractor or dealer-contractor, as may be applicable, must provide a warranty in accordance with the provisions of § 1924.9(d) of Subpart A of Part 1924 of this chapter.

(1) The warranty shall provide that the manufactured homes, foundations, positioning and anchoring of the units to their permanent foundations, and all contracted improvements are constructed in substantial conformity with applicable approved plans and specifications.

(2) The warranty shall also include provisions that the manufactured homes sustained no hidden damage during transportation, and for double-wide units, that the sections were properly joined and sealed.

(3) The project general contractor or dealer-contractor must warrant that the manufacturer's warranty is in addition to and not in derogation of all other warranties, rights and remedies that the owner/borrower may have.

(4) The seller of the manufactured homes will deliver to the owner/borrower the manufacturer's warranty. The warranty shall identify the units by serial number.

28. Section 1944.232 is amended by revising paragraph (f) to read as follows:

§ 1944.232 Preparation of completed loan docket.

* * * * *

(f) *Submission of docket to National Office.* If the State Director considers it necessary after completing the review of the docket, the State Director may submit recommendations, a copy of a proposed memorandum of approval, and the complete loan docket to the National Office for review and recommendations. If the docket was required to be reviewed (or was reviewed) by OGC, the comments of that office will be included. Prior review and concurrence by the National Office before loan approval will in all cases be required for all projects involving congregate housing, group type living arrangements or manufactured housing.

* * * * *

29. In Exhibit B of Subpart E, the definition for "Basic Rental" in paragraph II D and the introductory text of paragraph III is revised to read as follows:

Exhibit B—Interest Credits on Insured RRH and RCH Loans

* * * * *

II * * *

D *"Basic Rental"* means a unit rental charge determined on the basis of operating the project with payments of principal and interest on a loan to be repaid over a 30-year or longer period at 1 percent per annum.

* * * * *

III *Eligibility:* Borrowers may receive interest credits provided the loan (1) was made on or after August 1, 1968, to a nonprofit corporation, consumer cooperative, State or local public agency, or to any individual or organization operating on a limited profit basis; (2) is repaid over a period of 30 years or more; and (3) meets the other requirements of this Exhibit subject to the following limitations:

* * * * *

Dated: August 8, 1986.

Kathleen W. Lawrence,

Acting Under Secretary, Small Community and Rural Development.

[FR Doc. 86-25969 Filed 11-17-86; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-ANM-11]

Establishment of Rifle, CO, Transition Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes the Rifle, Colorado, 700 foot and 1,200 foot transition areas. The transition areas are necessary to provide controlled airspace for aircraft conducting Instrument Flight Rules (IFR) operations at the Garfield County Airport.

EFFECTIVE DATE: 0901 UTC, December 18, 1986.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM-533, Federal Aviation Administration, Docket No. 86-ANM-11, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2533.

SUPPLEMENTARY INFORMATION:

History

On October 14, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish the Rifle, Colorado, Transition Areas (51 FR 36562).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was published in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will provide controlled airspace for aircraft conducting IFR operations with a new instrument approach procedure at the Garfield County Airport, Rifle, Colorado.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.171 is amended as follows:

§ 71.171 [Amended]

Rifle, Colorado (New)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of the Garfield County Airport (lat. 39°31′34″ N., long. 107°43′23″ W.); and within 5 miles each side of the 093° bearing (080 mag) from the Garfield County Airport extending from the 8-mile radius to 21 miles east of the airport; and that airspace extending upward from 1,200 feet above the surface beginning at lat. 39°44′00″ N., long. 107°54′00″ W.; to lat. 39°44′00″ N., long. 106°57′00″ W.; to lat. 39°24′00″ N., long. 106°57′00″ W.; to lat. 39°24′00″ N., long. 107°54′00″ W.; to the point of beginning excluding that airspace overlying the Aspen, Eagle, and Meeker, Colorado, transition areas.

Issued in Seattle, Washington, on November 4, 1986.

William E. O'Neill,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 86–25920 Filed 11–17–86; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. C–3202]

GCS Electronics, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Costa Mesa, Calif. electronics company from making unsubstantiated claims about the capabilities of its portable "Mark II Executive Phone."

DATE: Complaint and Order issued Oct. 30, 1986[1].

FOR FURTHER INFORMATION CONTACT: FTC/B–407, C. Lee Peeler, Washington, DC 20580. (202) 376–8617.

SUPPLEMENTARY INFORMATION: On Friday, Aug. 8, 1986, there was published in the **Federal Register**, 51 FR 28594, a proposed consent agreement with analysis In the Matter of GCS Electronics, Inc., a corporation, and Gene Comfort, individually and as an officer of said corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: Sections 13.10 Advertising falsely or misleadingly; 13.170 Qualities or properties of product or service; 13.190 Results; 13.205 Scientific or other relevant facts. Subpart—Corrective Actions and/or Requirements: Sections 13.533 Corrective actions and/or requirements; 13.533–45 Maintain records; 13.533–45(a) Advertising substantiation. Subpart—Misrepresenting Oneself and Goods—Goods: Sections 13.1710 Qualities or properties; 13.1730 Results; 13.1740 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Mobile telephones, Trade practices.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

Emily H. Rock,

Secretary.

[FR Doc. 86–25924 Filed 11–17–86; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[Docket C–2037]

The J.B. Williams Co., Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying Order.

SUMMARY: The Federal Trade Commission has modified a 1971 order with respondents (36 FR 20588) by terminating a perpetual obligation that the company submit advertising and labeling to the FTC at six month intervals to demonstrate compliance with the order. The FTC concluded that it was in the public interest to relieve respondents of the costs of compliance with this provision.

DATES: Consent Order issued September 9, 1971. Modifying Order issued August 20, 1986.

FOR FURTHER INFORMATION CONTACT: FTC/B–425, Jerry McDonald, Washington, DC 20580. (202) 376–3484.

SUPPLEMENTARY INFORMATION: In the Matter of The J.B. Williams Company, Inc., et al. The prohibited trade practices and/or corrective actions, as set forth at 36 FR 20588, October 27, 1971, remain unchanged.

List of Subjects in 16 CFR Part 13

Weight reducing products, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

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[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th St. and Pa. Ave., NW., Washington, DC 20580.

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Order Reopening and Modifying Cease and Desist Order Issued on September 9, 1971

Commissioners: Daniel Oliver, Chairman; Patricia P. Bailey, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr.

On February 19, 1986, Beecham, Inc., on behalf of itself and its wholly owned subsidiary, J.B. Williams Company, Inc., petitioned the Commission to reopen. the proceeding in Docket No. C–2037 and modify the order against J.B. Williams issued by the Commission on September 9, 1971. Pursuant to Section 2.51 of the Commission's Rules of Practice, Beecham's petition was placed on the public record for comment. No comments were received.

Summary of Order

The order prohibits certain product effectiveness representations in advertising the product, "Proslim", or "any other purported weight reducing or weight control product".

In addition, the order prohibits the dissemination of any advertising which, in any manner, makes reference to scientific or medical tests or studies as substantiating any representation or claim as to the effectiveness or performance of any consumer product, unless such scientific tests or studies do, in fact, substantiate such representation or claim. The order further imposes the continuing obligation on the respondent to submit to the Commission samples of all advertising and labeling every six months to show continued compliance.

Request That Provision Requiring Substantiation for Product Claims be Set Aside

Beecham first requests that Part II of the order, which requires substantiation for product claims, be deleted from the order on the basis of changed conditions of fact and public interest considerations.

Beecham bases its request that Part II be deleted from the order primarily on changed conditions of fact. First, it states that the weight control products that were the subject of the order are no longer being manufactured, advertised or sold. Secondly, it states that J.B. Williams, the "bad actor" involved in the conduct leading to the order, no longer effectively exists. Therefore, Beecham argues that, since the products that were the subject of the order and the transgressor whose conduct led to the order no longer effectively exist, it is in the public interest to eliminate such a fencing-in provision.

In support of its argument that these changed conditions of fact require that Part II be deleted from the order, Beecham cites cases involving appellate review of orders with fencing-in provisions and competition cases where the Commission removed fencing-in provisions from orders because changing market conditions rendered the fencing-in provisions unnecessary. Beecham, however, fails to cite authority for the relief that it is requesting.

The Commission rejects Beecham's argument that the discontinuance of the products that were the subject of the complaint or that corporate personnel changes are changed conditions of fact requiring that the order be modified by deleting Part II from the order. The sale and advertising of weight control products may be resumed. More importantly, Part II is applicable to "any consumer product", not just to weight control preparations. In its April 11, 1984, letter to Beecham denying its prior petition to vacate this order in its entirety, along with others, the Commission rejected Beecham's argument that corporate personnel changes is a sufficient changed condition of fact to justify the relief requested in that petition. No new arguments have been advanced that would establish that this changed condition of fact warrants the modification requested herein. Furthermore, Beecham has cited no authority for its argument that the two asserted factual changes taken together, rather than considered separately, warrant the deletion of a fencing-in provision of an order.

Part II of the order is a limited and reasonable substantiation provision that should not impose unnecessary burdens on Beecham, and Beecham has not shown that it does impose such burdens. Simply stated, Part II merely requires that medical tests or studies do, in fact, substantiate effectiveness or performance claims if Beecham makes reference in advertising to such medical tests or studies. If Beecham does not have medical tests or studies to substantiate such claims, it may not make reference to such medical tests or studies. *See Pfizer, Inc.*, 81 F.T.C. 23 (1972).

Request That, If Part II Is Not Deleted From Order, It Be Qualified by the Addition of a Second Paragraph

If the Commission declines to delete Part II from the order, Beecham asks that the following paragraph be inserted in the order as the second paragraph in Part II of the order:

> Provided, however, that such scientific or medical tests or studies shall be deemed to substantiate any such representation or claim where competent scientific or medical persons retained or employed by respondent have a reasonably good faith belief that such substantiation in fact exists regardless of whether some other scientific or medical person or persons may or do have a belief to the contrary.

The request that the order be modified to place the above paragraph in the order is based on changed conditions of law and public interest considerations. Beecham says that Commission law was changed with *Pfizer, Inc., supra*, in 1972. It argues that Part II of the order may be interpreted by staff acting unreasonable as an "absolute basis" standard, rather than a "reasonable basis" standard. An "absolute basis" standard, according to Beecham, may require that its substantiation be "free from all uncertainties or good faith differences among competent scientists, medical personnel and other experts."

Beecham further argues that the substantiation standard in Part II is ambiguous and that it is "fundamentally unfair" not to provide Beecham with clear guidance on the applicable standard which must be met under Part II.

Arguing that the public interest requires that the order be reopened and modified by the addition of its proposed paragraph, Beecham cites *General Motors Corporation*, 104 F.T.C. 511 (1984), as an order which was modified "to avoid any unintended restriction on the dissemination to the public of information material to purchasing decisions." The *General Motors* approach is equally appropriate here, Beecham argues, "[to] eliminate the ambiguities in the advertising substantiation standards applicable under the Proslim order and to permit Beecham to make representations for which it has a reasonable basis and which consumers may wish to hear."

The Commission does not view Part II of the order as imposing on Beecham an "absolute basis" standard requiring unanimity of all scientists and medical personnel. If Beecham refers to medical tests or studies in its advertising, such tests or studies must substantiate such claim. The ultimate determination of whether Beecham's substantiation does, in fact, substantiate its claim is not made by staff, but it is made by the district court in an enforcement action. On the other hand, the paragraph that Beecham wishes to be placed in the order would, in the Commission's opinion, create an absolute standard. It would establish that the "reasonable good faith belief that such substantiation exists" possessed by "competent scientific or medical persons retained or employed" by Beecham is absolute "regardless of whether some other scientific or medical person or persons may or do have a belief to the contrary." There is no justification for the substantiation standard proposed by Beecham.

As to the public interest argument, the Commission has found that Beecham has failed to demonstrate that the public interest requires modification. The current situation is not comparable to the factual situation in *General Motors*. In *General Motors*, the modification was considered to be in the public interest because it permitted the flow of information to consumers concerning normal and ordinary handling characteristics of General Motors' vehicles which would have been impossible under the order.

Request That Product Coverage Be Limited

If the Commission declines to delete Part II from the order, Beecham requests that product coverage in Part II be limited to:

> Products intended for consumer use which are (a) sold under a trademark in use by J.B. Williams at the time that J.B. Williams was acquired by Beecham, (b) sold for the same uses as J.B. Williams sold such preparations at such time and (c) composed of substantially the same constituents as were in such products at such time.

The petition notes that the Commission's letter to Beecham of April 11, 1984, denying its request that this order and three other orders be set aside, also advised Beecham that it is bound by this order and the other J.B. Williams orders with respect to its advertising of the J.B. Williams consumer products. Changes in the products make it imperative, according to Beecham, that the Commission provide a more specific definition of which products are J.B. Williams consumer products and which are Beecham consumer products.

The reformulation of Beecham products is said to be a changed condition of fact requiring the product coverage modifications. With reformulations, Beecham asserts that it becomes increasingly difficult to determine whether any such product is still a "preparation of substantially similar composition" or possesses "substantially similar properties" to the old product.

Next, the integration of the J.B. Williams manufacturing facilities with those of Beecham is stated to be a changed condition of fact. Since a J.B. Williams product may be manufactured at a Beecham facility, and a Beecham product may be manufactured at a J.B. Williams facility, Beecham says that the products may be confused.

A final changed condition of fact, according to Beecham, is the dismissal of almost all J.B. Williams management personnel after Beecham's acquisition of that company. None of those responsible for the illegal conduct prohibited by the Proslim order are currently employed by Beecham.

Beecham also argues that adoption of the product coverage modifications is in the public interest "as giving Beecham guidance on precisely which products are and are not" J.B. Williams consumer products "covered by the Order."

The changed conditions of fact and public interest considerations recited in the petition do not justify the relief requested. Product reformulations, the integration of J.B. Williams manufacturing facilities with those of Beecham, management turnover, and the development of new products do not, in the opinion of the Commission, render J.B. Williams consumer products less identifiable. The Commission has previously determined that the order in Docket No. C-2037 only governs the advertising of J.B. Williams' consumer products. J.B. Williams' products and Beecham products are clearly distinguishable. J.B. Williams products would include any products manufactured by J.B. Williams at the time of the acquisition, and modifications thereto, sold and promoted under the same or substantially similar brand names, and any derivative products, *e.g.*, Sominex II, Geritol Complete., etc. However, to the extent that identification of J.B. Williams products is an issue, a determination may be made on a case-by-case basis.

Request That Perpetual Reporting Requirement Be Eliminated

The last modification requested by Beecham would delete from Part IV of the order a requirement that samples of all advertising, labels and labeling for weight control products and all advertisements for any consumer product that refer to scientific or medical tests or studies must be submitted every six months to demonstrate compliance with the order.

Upon consideration of Beecham's petition and other relevant information, the Commission now finds that the public interest warrants reopening the proceeding and modifying Part IV of the order. The record demonstrates that termination of the perpetual periodic obligation to submit advertising and labeling to the Commission to relieve respondent of compliance costs is in the public interest.

It is therefore ordered that this matter be, and hereby is reopened and that the last paragraph of Part IV of the Commission's order be, and hereby is modified to read as follows:

> It is further ordered, That respondents submit to the Commission within sixty (60) days after the order becomes final all advertising, labels and labeling, for "Proslim" or "Proslim 7 Day Reducing" wafers, diet drink mix, or any other purported weight reducing or weight control product, and all advertisements for any consumer product which in any manner make reference to scientific or medical tests or studies as allegedly substantiating any representation or claim as to the effectiveness or performance of any such product, to show the manner of compliance with this order.

By the Commission.

Issued: August 20, 1986.

Emily H. Rock,

Secretary.

[FR Doc. 86-25925 Filed 11-17-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 123

[Docket No. 83N-0368]

Frozen Raw Breaded Shrimp; Revocation of Current Good Manufacturing Practice Regulations

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revoking the current good manufacturing practice (CGMP) regulations for frozen raw breaded shrimp because the regulations are no longer necessary.

EFFECTIVE DATE: November 18, 1986.

FOR FURTHER INFORMATION CONTACT: Prince G. Harrill, Center for Food Safety and Applied Nutrition (HFF-210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0097.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 26, 1969 (34 FR 6977), the agency published a final rule governing CGMP in the food industry (see 21 CFR Part 110). Subsequently, the agency also published several regulations designed to address specific problems unique to the manufacture of certain food products. Among these were the regulations for frozen raw breaded shrimp (21 CFR Part 123) which were published in the **Federal Register** of January 13, 1970 (35 FR 420).

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Since 1970, the agency has received numerous comments from industry expressing the views that most problems addressed in the specific CGMP regulations are common to all parts of the food industry. In light of this information, the agency concluded that specific regulations would be unnecessary if Part 110 were revised to apply to most foods. Accordingly, in the **Federal Register** of June 19, 1986 (51 FR 22458), FDA issued a final rule that revised Part 110.

In keeping with the final rule, the agency, in the **Federal Register** of June 19, 1986 (51 FR 22482), published a proposal to revoke the CGMP regulations for frozen raw breaded shrimp. One comment from a trade association was received on the proposed rule. The comment supported the agency's proposal to revoke the CGMP regulation for frozen raw breaded shrimp. Accordingly, FDA announces in this document that it is revoking Part 123—Frozen Raw Breaded Shrimp.

List of Subjects in 21 CFR Part 123

Food packaging, Frozen foods, Seafood.

PART 123—FROZEN RAW BREADED SHRIMP [REMOVED]

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 402(a)(4), 701(a), 52 Stat. 1046 as amended, 1055 (21 U.S.C. 342(a)(4), 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Chapter I of Title 21 of the Code of Federal Regulations is amended by removing Part 123—Frozen Raw Breaded Shrimp.

Dated: November 12, 1986.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-25934 Filed 11-17-86; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3112-1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Denial

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is announcing its decision to deny the petition submitted by one petitioner to exclude its solid waste from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271, of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste lists. Our basis for denying this petition is that the petitioner has not substantiated its claim that the waste is non-hazardous. The effect of this action is that all of this waste must be handled as hazardous waste in accordance with 40 CFR Parts 262–266, and Parts 270, 271 and 124.

EFFECTIVE DATE: May 18, 1987.

ADDRESSES: The public docket for this final petition denial is located in the Sub-basement, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for public viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475–9327 or Kate Blow at (202) 382–4675 for appointments. The reference number for this docket is "F-86-RSDF-FFFFF". The public may copy a maximum of 50 pages of materials from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–5096.

SUPPLEMENTARY INFORMATION: On July 23, 1986, EPA proposed to deny specific wastes generated by several facilities, including Reynolds Aluminum, located in Sheffield, Alabama (see 51 FR 26426).[1] The Agency had previously evaluated the petition which is discussed in today's notice. Based on our review at that time, this petitioner was granted a temporary exclusion. Due to changes in the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, however, this petition has been evaluated both for the factors for which the waste was originally listed, as well as other factors and toxicants which reasonably could cause the waste to be hazardous. Based upon these evaluations, the Agency has determined that the petitioning facility has not substantiated its claims that the waste is non-hazardous; therefore, the Agency is denying the petition submitted by this petitioning facility and is revoking the temporary exclusion currently held by this facility.

The denial made final here involves the following petitioner: Reynolds Aluminum, Sheffield, Alabama.

I. Reynolds Aluminum

A. Proposed Denial

Reynolds Aluminum (Reynolds) has petitioned the Agency to exclude its wastewater treatment sludges (filter cake) from EPA Hazardous Waste No. F019, based on the reduction and immobilization of the listed constituents of these wastes.[2] Data submitted by Reynolds, however, fails to substantiate its claim that the listed constituents of concern are present in an immobile form. (See 51 FR 26426–26427, July 23, 1986, for a more detailed explanation of why the Agency proposed to deny Reynolds' petition.)

B. Agency Response to Public Comments

The Agency received comments from the petitioner on September 4, 1986 regarding the Agency's proposed decision to deny the exclusion of their wastewater treatment sludge. Reynolds provided new sampling data for the period from August 8, 1986 to August 17, 1986 to demonstrate that chromium concentrations in their wastewater treatment sludges are well below EPA's allowable concentrations. Reynolds maintains that the reduced chromium concentrations are the result of improvements in their chrome treatment plant operations as of 1983. These improvements include: (1) Personnel changes; (2) closer supervision of their coil coating line and their chrome treatment plant (CTP); and (3) improved maintenance and supervision.

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[1] In the same **Federal Register** notice, the Agency also proposed to deny the exclusion of specific wastes generated by the following petitioners: Bethlehem Steel Corp., located in Chesterton, Indiana (see 51 FR 26419); Fisher Guide Div. of General Motors Corp., located in Columbus, Ohio (see 51 FR 26421); General Battery Corp., located in Reading, Pennsylvania (see 51 FR 26423); and Kaiser Aluminum Chemical Corp., located in Spokane, Washington (see 51 FR 26424). The Agency will address these proposed decisions in a separate **Federal Register** notice.

[2] Reynolds was originally granted a temporary exclusion for this waste on November 22, 1982 (see 47 FR 52680).

Reynolds states that they significantly improved the CTP performance and reliability through the supervision and maintenance improvements implemented. Reynolds also claims that, at their facility, maintenance practices significantly impact the operation of the CTP and the quality of the effluent, and that during their initial January 5–9, 1981 delisting sampling and analytical program, the high leachable chromium levels were a direct result of maintenance practices. They assert that the 1981 analytical values are not representative of current operations and should be deleted from the data base on which the petition was evaluated. Reynolds added that during January 5–9, 1981, plant maintenance was installing new tank capacity on the coil coating line which adversely affected performance of the CTP due to atypical CTP influent variability. According to Reynolds, leachable chrome levels determined during this period are not representative of typical CTP operation.

The Agency agrees with the commenter that maintenance practices may significantly impact the operation of a treatment plant and the quality of effluent; however; the influence of maintenance practices on treatment plant reliability at the Reynolds facility is precisely what concerns us. If the quality of effluent is wholly dependent on the level of supervision and maintenance, then future changes in the level of supervision and maintenance could render the the waste hazardous. Since the Agency does not have information indicating that specific process changes which altered the composition of the waste were implemented during the period between the 1981 and 1984 sampling periods, the Agency cannot disregard the 1981 data.

Although Reynolds claims that the installation of new tank capacity in January 1981 renders the January 5–9, 1981 chromium levels non-representative of the current waste, no explanation has been offered as to why the chromium levels from the August and September, 1981 sampling period were two orders of magnitude higher than the levels specified in the 1984 and 1986 data. The Agency, therefore, disagrees with Reynolds' claim that the chrome cake is non-hazardous. The Agency notes that if Reynolds has indeed implemented specific process changes, and can substantiate this claim, then the Agency will re-evaluate Reynolds' petition. If Reynolds submits sufficient additional data in the future to indicate that the housekeeping changes will lead to the consistent generation of a non-hazardous waste, the Agency will propose to exclude Reynolds' waste at that time.

C. Final Agency Decision

For the reasons stated in the proposal, and in the Agency's response to public comments, the Agency believes that the filter cake generated by Reynolds Aluminum is hazardous and as such should not be excluded from hazardous waste control. The Agency, therefore, is denying a final exclusion to Reynolds Aluminum for its dewatered wastewater treatment sludge (filter cake) resulting from the chemical conversion coating of aluminum, listed as EPA Hazardous Waste No. F019, which is generated at its Alloy Plant located in Sheffield, Alabama. By this action the Agency also withdraws the temporary exclusion granted for these wastes on November 22, 1982 (see 47 FR 52680).[8]

II. Effective Date

The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This is not the case, however, for the petitioner included in this notice having its temporary exclusion revoked and final exclusion denied. This facility will have to revert back to handling its wastes as it did before being granted the exclusion (*i.e.*, they must handle their waste as hazardous). This petitioner will need some time to come into compliance with the RCRA hazardous waste management system. Accordingly, the effective date of the revocation of this temporary exclusion and denial is six months after publication of this final rule in the **Federal Register**.

III. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This final rule, which would revoke a temporary exclusion and deny a petition from one facility is not major. The affect of this final rule would increase the overall costs for this facility which currently has a temporary exclusion that is being revoked and denied. The actual cost to this company, however, would not be significant. In particular, in calculating the amount of waste that is generated by this one facility that currently has a temporary exclusion and considering a disposal cost of $300/ton, the increased cost to this facility is approximately $45,000, well under the $100 million level constituting a major regulation. This is not a major regulation; therefore, no Regulatory Impact Analysis is required.

IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will have the effect of increasing overall waste disposal costs. This rule only effects one facility, therefore, the overall economic impact on small entities is small. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

(Sec. 3001 RCRA, 42 U.S.C. 6921)

Dated: November 6, 1986.

J.W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 86–25961 Filed 11–17–86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 261

[SW–FRL–3112–2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is announcing its decision to deny the petition submitted by one petitioner to exclude their solid waste from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting

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[8] The Agency formally notified Reynolds Aluminum in a letter dated January 14, 1986, that the Characterization and Assessment Division would recommend to the Assistant Administrator for Solid Waste and Emergency Response that Reynolds' petition be denied and that the temporary exclusion for these wastes be withdrawn. Reynolds did not exercise its option to withdraw the petition. See 51 FR 26427, n. 36, July 23, 1986.

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petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste lists. Our basis for denying this petition is that the petitioner has not substantiated their claim that the waste is non-hazardous. The effect of this action is that all of this waste must be handled as hazardous waste in accordance with 40 CFR Parts 262–266, and Parts 270, 271 and 124.

EFFECTIVE DATE: May 18, 1986.

ADDRESSES: The public docket for this final petition denial is located in Room S–212, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for public viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding holidays. Call Mia Zmud at (202) 475–9327 or Kate Blow (202) 382–4675 for appointments. The reference number of this docket is "F–86–FGDF–FFFFF". The public may copy a maximum of 50 pages of materials from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–5096.

SUPPLEMENTARY INFORMATION: On July 23, 1986, EPA proposed to deny specific wastes generated by several facilities, including Fisher Guide Division of General Motors Corporation, located in Columbus, Ohio (see 51 FR 26421). The Agency had previously evaluated this petition which is discussed in today's notice. Based on our review at that time, the petitioner was granted a temporary exclusion. Due to changes in the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, however, this petition has been evaluated both for the factors for which the waste was originally listed, as well as other factors and toxicants which reasonably could cause the waste to be hazardous. Based upon these evaluations, the Agency has determined that the petitioning facility has not substantiated their claims that the waste is non-hazardous. The Agency is, therefore, denying the petition submitted by the petitioning facility and is revoking their temporary exclusion.

The denial made final here is for the following petitioner: Fisher Guide Division of General Motors Corporation, Columbus, Ohio.

I. Fisher Guide Division of General Motors Corporation

A. Proposed Denial

Fisher Guide Division of General Motors Corporation (Fisher Guide) has petitioned the Agency to exclude its wastewater treatment sludge, generated at its Columbus, Ohio facility, from EPA Hazardous Waste No. F006.[1] Data submitted by Fisher Guide, however, fails to substantiate its claim that the listed constituents of concern are present in an immobile form. (See 51 FR 26421–26423, July 23, 1986, for a more detailed explanation of why the Agency proposed to deny Fisher Guide's petition.)

B. Agency Response to Public Comments

The Agency received comments from Fisher Guide regarding the proposed denial of their petition. After discussing these comments with EPA, Fisher Guide, for purposes of final action on the proposed denial of their delisting petition, withdrew these comments. In doing so, Fisher Guide expressed their intention to gather additional information and submit a new delisting petition, and therefore asked the Agency to complete its review of their latest information submittal. The Agency intends to do this. The following discussion is the Agency's preliminary response.

Fisher Guide specifically commented on the Agency's use of the VHS model to evaluate petitioned waste streams. Fisher Guide stated in their comments, that the Agency had "shown a willingness to consider dilution processes other than spreading if [these dilution factors could be] incorporated within the general framework of the VHS model." Fisher Guide presented a modified version of the VHS model, one that considered dilution by aquifer recharge, used several site-specific parameters (*e.g.*, annual precipitation rate, distribution coefficients, hydraulic conductivity) as inputs to this modified version, and determined that constituent concentrations (at the compliance point) did not exceed regulatory standards. The Agency has reviewed the derivation of the modified VHS model and its application to Fisher Guide's petitioned waste. (A copy of Fisher Guide's comments is available in the public docket for inspection.)

For all delisting petitions to date, the Agency has evaluated the immediate and potential hazards of a petitioned waste based on waste characterization information and the assumption that the waste would be managed at a non-regulated facility. The VHS model used in Agency delisting decisions is a generic model based on this assumption. The Agency, however, realizes that specific waste management site conditions may differ from those used in the VHS model and include additional factors that provide sufficient protection of the underlying aquifer. The Agency will consider exploring the concept of allowing the use of site-specific factors in delistings. However, at this time the Agency has not developed a strategy for using such site-specific factors. If the Agency pursues a site-specific approach, it will need to determine which combination of site-specific factors are needed to adequately demonstrate the effects of the petitioned waste on ground water. The Agency also will need to determine the need for institutional controls on a site-specific delisting. In particular, the Agency needs to address concerns such as on-site and off-site management (and whether a site-specific demonstration will be allowable in either case), waste transportation controls to ensure that the waste is delivered to the approved site, and controls to ensure the waste is not removed from the approved management area. Ultimately, the Agency will consider developing guidelines to provide petitioners with specific information requirements necessary to present a demonstration using site-specific information. Thus, although site-specific delistings are under consideration there is currently no guidance criteria to evaluate demonstrations based on site-specific information. The Agency has discussed this matter with Fisher Guide. Fisher Guide realizes that if the Agency develops criteria for a site-specific delisting, and it allows for an off-site demonstration, that they may re-petition the Agency and pursue a delisting of their electroplating waste on a site-specific basis.

The Agency has reviewed Fisher Guide's demonstration and has identified several areas of concern. This review, however, is not intended to indicate (1) as a matter of policy whether this particular off-site demonstration will be accepted for delisting purposes if modified in the future, or (2) a complete synopsis of the Agency's concerns, since a particular site-specific evaluation approach has not yet been developed. The Agency is concerned about the input parameters selected for this site-specific application and their modification of the VHS model. Fisher Guide claims that in a precipitation rich region, there is not a finite volume of water in an aquifer and that studies in Illinois show that aquifer recharge varies from 10 to 27 percent of total precipitation. The Agency feels that the recharge will be introduced to the aquifer at a slow rate by percolation through the soil, and therefore the total volume of recharge is not immediately available for mixing. The time dependent nature of the mixing and subsequent dilution resulting from recharge needs to be addressed in the modified version of the VHS model. Specifically there is a concern about the delay from the time of recharge until the time of complete dilution and how this delay compares with the magnitude of time attributed to groundwater movement.

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[1] Fisher Guide was granted a temporary exclusion for its F006 waste on December 16, 1981 (see 46 FR 61284).

In modifying the VHS model, the commenter calculated the contaminant velocity, which is a site-specific parameter. The groundwater velocity is based on the hydraulic conductivity, hydraulic gradient, effective porosity, and the distribution coefficient. The Agency's review of Fisher Guide's methodology for estimating ground water velocity raises several concerns. First, due to the variability in local geology, the hydraulic conductivity, K, is likely to change between the point of disposal and the compliance point. Secondly, the aquifer test method used to generate time-drawdown data and the analytical method(s) used to calculate K can introduce variability into the results. The magnitude and significance of this variability needs to be addressed.

In addition, the possible presence of "short circuit" features in the local geology (*e.g.,* sand lenses, or fractured clays) need to be addressed. Also, the Agency believes that the methodology in measuring the distribution coefficient, a parameter that reflects the retardation of contaminant transport through chemical reaction, raises numerous technical concerns primarily because the site-specific nature of the measurement is lost during the procedure.

The laboratory procedures considered three components: the soil, the representative ground water, and the leachate. The procedure includes the addition of an equilibrating solution (simulates a metal-containing leachate) to a soil sample, agitation and centrifugation of the mixture, and subsequent analysis of the collected supernatant after filtration. Fisher Guide did not identify the origin of the soil samples used in the procedure, and did not explain why the soil samples were thought to be representative of the saturated zone. The Agency, therefore, was unable to determine whether the three soils used in the procedure represented the saturated zone under evaluation. Furthermore, the extreme mixing of the soils during the determination of the distribution coefficient may destroy the true (attenuative) characteristics of the soil. Also, non-filtered, as well as filtered sample analyses, are appropriate. (*i.e.,* EPA recommends that the Total Recoverable Materials Method, a method performed on an unfiltered sample, be the standard technique in determining ground water concentrations of metals.)

The Agency does not believe that the laboratory formulations of "representative" ground water are comparable to actual ground water collected from on-site monitoring wells. The Agency also does not believe that the equilibrating solutions are an adequate simulation of leaching conditions. The Agency notes that leachate will often include impurities such as oil and organic constituents and will often be slightly acidic in a mixed municipal/industrial waste landfill. Thus, the equilibrating solution, which consists of the salt of a specific metal in distilled water, tends to simulate an ideal condition, not a realistic one.

In some aquifers metals will tend to attenuate, and, if the "capacity" of a certain area or zone is exceeded (*i.e.,* the zone is saturated and additional immobilization can not occur) the metal constituents will pass through this zone and travel toward the compliance point. The Agency notes that Fisher Guide did not address these affects of saturation on the immobilization of metal constituents.

Even though the Agency has not established site-specific delisting criteria, as a result of the preliminary review, the Agency believes that Fisher Guide has neither presented data that are representative of the aquifer conditions, nor demonstrated that site-specific conditions would immobilize the particular constituents of concern in the waste (i.e., lead, nickel, chromium, cadmium, and mercury).

The Agency, nevertheless, has evaluated Fisher Guide's petitioned waste using the modified VHS model and assuming that the distribution coefficient is equal to zero (i.e., metal contaminants are not immobilized as a result of aquifer conditions). The Agency's evaluation, using a suggested dilution rate equal to two percent per year and ground water velocity equal to 10 feet per year, resulted in the compliance point concentrations shown in Table 1. (Use of site-specific data increased the VHS model dilution factor from 6.3 to 12.6.). The results still exceed the regulatory standard for chromium, lead, and nickel.

TABLE 1.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)

Constituents	Compliance point concentrations		Regulatory standards
	EP	OWEF	
Cd	0.01	0.004	0.01
Cr	[1]0.086	[1]0.26	0.05
Pb	[1]0.129	0.046	0.05
Hg	0.001	0.00002	0.002
Ni	[1]1.9	[1]1.03	0.35

[1] Exceeds regulatory standard.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the wastes generated by the manufacturing processes at Fisher Guide's Columbus facility (for which the petition was submitted) are not rendered non-hazardous by the waste treatment system currently in use. The analysis of the waste, using the VHS model, indicates the potential of the sludge to leach several toxic heavy metals (cadmium, chromium, lead, mercury, and nickel) and contaminate ground water. The Agency, therefore, is denying this petition for exclusion of the wastewater treatment sludges (EPA Hazardous Waste No. F006) produced by Fisher Guide at its facility in Columbus, Ohio. By this action, the Agency also withdraws the temporary exclusion granted for this waste on December 16, 1981 (46 FR 61284).[8]

II. Effective Date

The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This is not the case, however, for the petitioner included in this notice having their temporary

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[8] The Director of the Characterization and Assessment Division (CAD) formally notified Fisher Guide in a letter dated November 15, 1985, that the CAD would recommend to the Assistant Administrator for Solid Waste and Emergency Response that Fisher Guide's petition be denied and that Fisher Guide's temporary exclusion be withdrawn. Fisher Guide did not exercise its option to withdraw the petition. See 51 FR 26423, n. 18, July 23, 1986.

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exclusion revoked and final exclusion denied. They will have to revert back to handling their waste as they did before being granted their temporary exclusion (*i.e.*, they must handle their wastes as hazardous). This petitioner will need some time to come into compliance with the RCRA hazardous waste management system. Accordingly, the effective date of the revocation of this temporary exclusion and denial would be six months after publication of the final rule in the **Federal Register**.

III. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation, which would revoke a temporary exclusion and deny a petition from one facility, is not major. The affect of this rule would increase the overall costs for the facility which currently has a temporary exclusion that is being revoked and denied. The actual cost to this company, however, would not be significant. In particular, in calculating the amount of waste that is generated by this facility that currently has a temporary exclusion and considering a disposal cost of $300/ton, the increased cost to this facilities is approximately $1.9 million, well under the $100 million level constituting a major regulation.

This rule is not a major regulation; therefore, no Regulatory Impact Analysis is required.

IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will have the effect of increasing overall waste disposal costs. This rule only affects one facility. The overall economic impact, therefore, on small entities is small. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

(Sec. 3001 RCRA, 42 U.S.C. 6921)

Dated: November 7, 1986.

J.W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 86–25962 Filed 11–17–86; 8:45 am]

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40 CFR Part 261

[SW–FRL–3112–3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Denials

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is announcing its decision to deny the petition submitted by three petitioners to exclude their solid waste from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste lists. Our basis for denying these petitions is that the petitioners have not substantiated their claims that the wastes are non-hazardous. The effect of this action is that all of these wastes must be handled as hazardous waste in accordance with 40 CFR Parts 262–266, and Parts 270, 271, and 124.

EFFECTIVE DATE: May 18, 1987.

ADDRESSES: The public docket for these final petition denials is located in Room S–212, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for public viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding holidays. Call Mia Zmud at (202) 475–9327 or Kate Blow at (202) 382–4675 for appointments. The reference number of this docket is "F–86–BSDF–FFFFF". The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–5096.

SUPPLEMENTARY INFORMATION: On July 23, 1986, EPA proposed to deny specific wastes generated by several facilities, including: (1) Bethlehem Steel Corporation, located in Chesterton, Indiana (see 51 FR 26419); (2) General Battery Corporation, located in Reading, Pennsylvania (see 51 FR 26423); and (3) Kaiser Aluminum, located in Spokane, Washington (see 51 FR 26424).[1] The Agency had previously evaluated the petitions which are discussed in today's notice. Based on our review at that time, the petitioners were granted temporary exclusions. Due to changes in the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, however, these petitions have been evaluated both for the factors for which the wastes were originally listed, as well as other factors and toxicants which reasonably could cause the wastes to be hazardous. Based upon these evaluations, the Agency has determined that the petitioning facilities have not substantiated their claims that their wastes are non-hazardous. The Agency is, therefore, denying the petitions submitted by these petitioning facilities and is revoking their temporary exclusions.

The denials made final here involve the following petitioners:

Bethlehem Steel Corporation, Chesterton, Indiana;
General Battery Corporation, Reading, Pennsylvania;
Kaiser Aluminum, Spokane, Washington.

I. Bethlehem Steel

A. Proposed Denial

Bethlehem Steel Corporation (Bethlehem) has petitioned the Agency to exclude its wastewater treatment sludges and polishing lagoon sludges from EPA Hazardous Waste No. F006, based on the reduction and immobilization of the listed constituents of these wastes.[2] Data submitted by

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[1] In the same **Federal Register** notice, the Agency also proposed to deny the exclusion of specific wastes generated by Reynolds Aluminum, located in Sheffield, Alabama (see 51 FR 26426) and Fisher Guide Division of General Motors Corporation, located in Columbus, Ohio (see 51 FR 26421). The Agency will address these proposed decisions in separate **Federal Register** notices.

[2] Bethlehem Steel was originally granted a temporary exclusion for sludges listed as both F006 and K062 wastes. See 47 FR 52670, November 22, 1982. The waste sludge is no longer listed as a K062 waste due to the redesignation of lime stabilized pickle liquor sludges in the iron and steel industry as non-hazardous (49 FR 23284, June 5, 1984).

Bethlehem, however, fails to substantiate its claim that the listed constituents of concern are present in an immobile form. (See 51 FR 26419–26421, July 23, 1986, for a more detailed explanation of why the Agency proposed to deny Bethlehem's petition.)

B. Agency Response to Public Comments

The Agency received comments from a single commenter regarding its decision to deny an exclusion to Bethlehem for the waste identified in the petition. The commenter questioned the Agency's use of EP extract data in the vertical and horizontal spread (VHS) groundwater model, and cited comments from other parties made in response to the Agency's proposal of the VHS model (see 50 FR 7882–7900, February 26, 1985, and 50 FR 48886–48967, November 27, 1985). These comments centered on three points, namely that: (1) The VHS model overestimates actual constituent concentrations at the compliance point since the VHS model does not include site-specific factors which could decrease or limit constituent concentrations; (2) lysimeter leachate data from the facility should be used instead of EP toxicity data since the lysimeter more accurately characterizes the actual waste leachate than does the EP toxicity test; and (3) ground water data for the facility does not describe any adverse impacts from the on-site management of these sludges.

The Agency believes that these general comments were addressed (for the most part) in the Agency's response to public comments in the VHS Model Final Rule (see 50 FR 48896–48910, Appendix, November 27, 1985). The Agency has not intended that the VHS model evaluation would generally allow for the inclusion of site-specific factors. The hazards posed by a waste are evaluated in the VHS model in terms of a non-RCRA disposal scenario, since it cannot generally be guaranteed that the waste will continue to be managed at a particular site or in accordance with a particular set of site-specific conditions. The Agency may, in the future, consider issuing delistings conditioned upon the disposal of the waste at a specific site. Such delistings could consider site specific factors. However, the Agency has not yet defined what data would be required for such a site-specific delisting.

For example, lysimeter data might, in the future, be used in the evaluation of wastes if the Agency pursues such an approach. At this point, the limited data (three monthly samples of leachate) provided by the commenter does not adequately address a number of the Agency's concerns which have been identified to date, such as the increased potential for constituent release from the wastes due to weathering, the effects of seasonal variations in precipitation pH, the appropriate depth of lysimeters to account for the expected increase in toxicant concentrations at greater pile depths, the representativeness of waste pile composition as measured by lysimeter locations, whether the lysimeter samples were diluted by infiltration of ground-water, or the leaching potential of organic constituents from the waste.

The lysimeter data presented by the commenter is inadequate to allow the Agency to make a reasonable evaluation of the wastewater treatment sludges. Only three samples, representing three months of leachate collection, have been obtained from each lysimeter. Also, only three of the EP toxic metals (cadmium, chromium, and lead) were analyzed in the lysimeter samples, with no data available for the remaining metals. The lysimeter leachate was also analyzed for 91 priority pollutant constituents, of which five (methylene chloride, phenol, 2,4-dimethylphenol, bis(2-ethylhexyl)phthalate, and di-n-octyl phthalate) were detected. Of these five, only bis(2-ethyl hexyl)phthalate was detected in the analysis of the sludges themselves. The Agency does not believe that the lysimeter data provided by the commenter is sufficient to indicate that the waste will not cause environmental problems in the future. Thus, due to the fact that the Agency has not yet determined whether it will consider site specific delisting as well as the data gaps in the submitted lysimeter evaluation, this data cannot be used in lieu of the Agency's present review process, which includes the use of leachate data in the VHS model.

Groundwater data is useful in determining whether the past management of a waste has produced environmental contamination. This type of data, however, refers to past management practices only, and cannot be used in a predictive fashion to establish that contamination will not occur in the future. Consequently, groundwater data for a particular site will not give assurances that a contamination problem will not occur if the waste is managed on-site or at any other site.

The commenter also provided a detailed analytical evaluation of the sludges that were the subject of the petition. The voluminous data presented by the commenter, and summarized in Tables 1 to 5, further substantiates the hazardous nature of these wastes. The maximum total constituent concentrations and the EP leachate and Oily Waste EP (OWEP) leachate concentrations for the terminal polishing lagoon sludges are given in Table 1, while the maximum total constituent and EP and OWEP leachate concentrations for the wastewater treatment plant sludges are given in Table 2.

TABLE 1.—MAXIMUM CONSTITUENT CONCENTRATIONS/TERMINAL POLISHING LAGOON SLUDGE

	Total constituent (mg/kg)	Regular EP leachate (mg/l)	Oily waste EP leachate (mg/l)
As	13	0.016	0.01
Ba	72	3.1	2.5
Cd	9.4	.26	.55
Cr	320	2.52	.53
Pb	1000	1.1	.75
Hg	0.38	.004	.004
Ni	36	1.3	.82
Se	1.5	.024	.056
Ag	2.2	.06	.1
$S^{=}$	2600		

TABLE 2.—MAXIMUM CONSTITUENT CONCENTRATIONS/ WASTEWATER TREATMENT PLANT SLUDGES

	Total constituent (mg/kg)	Regular EP leachate (mg/l)	Oily waste EP leachate (mg/l)
As	27	<0.01	<0.01
Ba	42	1.2	1.2
Cd	13	.2	.15
Cr	500	.25	1.0
Pb	2100	1.4	.89
Hg	1.3	.005	<.002
Ni	120	1.1	.59
Se	.97	.1	.026
Ag	7.8	.14	.08
$S^{=}$	340		

Additional testing of the wastes indicated the presence of a number of organic constituents in Bethlehem's wastes. The results of these tests are given in Table 3.

TABLE 3.—MAXIMUM DETECTED ORGANIC CONSTITUENT CONCENTRATIONS (MG/KG)

	Terminal polishing lagoon sludges	Wastewater treatment sludges
Benzo(a)anthracene	5.3	18
Benzo(a)pyrene	5.4	[1] ND
PCBs	7	1.2
Fluoranthene	3.4	9.0
Phenanthrene	ND	7.3
Pyrene	4.8	11
4-chloro-3-methyl phenol	.9	ND
Bis(2-ethylhexyl)phthalate	15	ND
Naphthalene	ND	4.5

[1] ND=Not detected in the waste.

The leachate concentrations in Bethlehem's wastes were used in the Agency's vertical and horizontal spread

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(VHS) model.[3] The results of the Agency's evaluation of the inorganic constituents in Bethlehem's wastes are given in Table 4. The organic constituents of Bethlehem's wastes were also evaluated, using the Agency's organic leaching model (OLM)[4] in order to predict leachate concentrations expected from the waste, and these values were then used in the VHS model to predict the compliance-point concentrations of these constituents. The results of the Agency's evaluation of these organic compounds are given in Table 5.

TABLE 4.—CALCULATED MAXIMUM COMPLIANCE-POINT CONCENTRATIONS/TERMINAL POLISHING LAGOON SLUDGES AND WASTEWATER TREATMENT PLANT SLUDGES (MG/L)

	TPL sludges		WTP sludges		Regulatory standard
	EP	OWEP	EP	OWEP	
As	0.0029	0.0016	<0.0016	<0.0016	0.05
Ba	.49	.40	.19	.19	1.0
Cd	.41	.087	.032	.024	.01
Cr	.40	.084	.040	.16	.05
Pb	.17	.12	.22	.14	.05
Hg	.00063	.00063	.00079	<.00032	.002
Ni	.27	.13	.17	.093	.35
Se	.0036	.0092	.016	.0041	.01
Ag	.017	.016	.022	.013	.05

TABLE 5.—CALCULATED COMPLIANCE-POINT CONCENTRATIONS OF DETECTED ORGANIC CONSTITUENTS (MG/L)

	TPL sludges	WTP sludges	Regulatory standard
Benzo(a)-anthracene	[1] NA	NA	1×10^{-5}
Benzo(a)pyrene	8.1×10^{-5}	([2])	3×10^{-6}
PCBs	9.2×10^{-6}	6.5×10^{-6}	8.1×10^{-6}
Fluoranthene	5.5×10^{-4}	8.9×10^{-4}	2×10^{-1}
Phenanthrene		1.3×10^{-3}	2×10^{-3}
Pyrene	4.6×10^{-5}	7.4×10^{-4}	4
4-Chloro-3-methyl phenol	1.6×10^{-2}		[3] 0.2
Bis(2-ethyl-hexyl) phthalate	1.5×10^{-3}		7×10^{-1}
Napthalene		3.6×10^{-3}	9

[1] NA = Solubility data not available for that compound.

[2] A blank space after a compound name indicates that the compound was not detected in the waste.

[3] Standard for 4-chloro-3-methyl phenol (or 4-chloro-m-cresol) derived from known standard for p-chloro-m-cresol.

The EP toxicity tests, as well as the Oily EP tests, confirmed the potential for these wastes to leach a number of toxic heavy metals and organic constituents and so contaminate ground water. In particular, the maximum leachate concentrations for lead, when used as inputs into the VHS model, produced compliance-point concentrations in excess of the Agency's standard (in both the Oily EP and regular EP tests) for both of the petitioned wastes. The maximum OWEP leachate values for chromium were found to exceed the Agency's standard for the terminal polishing lagoon sludges. The compliance-point concentrations calculated from the maximum EP and OWEP leachate values for cadmium were also found to exceed the Agency's standard in both wastes. It is significant to note that even if the averaged leachate values for lead and chromium were used in the VHS analysis, the resulting compliance-point concentrations would also exceed the Agency's standards. These constituents, therefore, are of concern to the Agency.

Also, the evaluation of the organic compounds present in Bethlehem's wastes indicates that benzo(a)pyrene and polychlorinated biphenyls (PCBs) are present in the terminal polishing lagoon sludges at concentrations that would exceed the Agency's standards. PCBs are also of concern in the wastewater treatment plant sludges. Because of the potential exhibited by these wastes to leach cadmium, chromium, lead, benzo(a)pyrene, and polychlorinated biphenyls, the Agency believes that these sludges should be considered hazardous and should be managed in accordance with the federal hazardous waste regulations. The Agency believes that the additional analytical data presented by the commenter is not sufficient to alter the Agency's former evaluation of the hazardous nature of the sludges.

C. Final Agency Decision

For the reasons stated in the proposal, and in the Agency's response to public comments, the Agency believes that the wastes generated by the manufacturing processes at Bethlehem's Burns Harbor facility (for which the petition was submitted) are not rendered non-hazardous by the wastewater treatment system currently in use. The original analysis of the sludges, using the VHS model, indicated the potential of the sludges to leach several toxic heavy metals (cadmium, lead, barium, and chromium) and contaminate ground water. Additional information provided to the Agency verifies the potential of these wastes to leach metals, *i.e.*, chromium, cadmium, and lead. The Agency, therefore, is denying this petition for exclusion of the wastewater treatment sludges (EPA Hazardous Waste No. F006) produced by Bethlehem Steel at its Burns Harbor facility in Chesterton, Indiana. By this action, the Agency also withdraws the temporary exclusion granted for these wastes on November 22, 1982 (see 47 FR 52670).[5]

II. General Battery Corporation

A. Proposed Denial

The General Battery Corporation (GBC) has petitioned the Agency to exclude the emission control sludges produced at its Reading, Pennsylvania facility from EPA Hazardous Waste No. K069.[6] Data submitted by GBC, however, fails to substantiate its claim that the listed constituents of concern are present in an immobile form. (See 51 FR 26423–26424, July 23, 1986, for a more detailed explanation of why the Agency proposed to deny GBC's petition.)

B. Agency Response to Public Comments

The Agency received comments from a single commenter regarding its decision to deny an exclusion to General Battery for the waste identified in the petition. The commenter cited the use of lime in the facility operations, and indicated that sludges generated by the treatment process (using commercially available lime) cannot be expected to meet VHS model limits, due to the high amounts of lead in the lime. The Agency wishes to repeat that the evaluation of a listed hazardous waste for the purpose of delisting will include all hazardous constituents found in the waste, regardless of whether they may have originated from a listed or non-listed source. Thus, the lead (which is an EP toxic metal and a listed constituent of the petitioned waste) in the waste is evaluated for its potential impacts upon the environment. The Agency also wishes to note that the VHS evaluation also indicated the potential of the waste to leach excessive amounts of cadmium, arsenic, and selenium. This evaluation is not altered by the commenter's indication that the actual waste generation rate is about 10,500 tons per year (rather than 14,500 tons as shown in the petition).

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[3] See 50 FR 7882, Appendix I, February 26, 1985 for a detailed explanation of the development of the VHS model for use in the delisting program. See also the final version of the VHS model, 50 FR 48896, Appendix, November 27, 1985.

[4] The best-fit OLM model proposed in the Notice of Availability on July 29, 1986 (see 51 FR 27061) was used to evaluate the organic constituents in Bethlehem's waste.

[5] The Agency formally notified Bethlehem Steel in a letter dated January 14, 1986, that the Characterization and Assessment Division would recommend to the Assistant Administrator for Solid Waste and Emergency Response that Bethlehem's petition be denied and that Bethlehem's temporary exclusion for these wastes be withdrawn. Bethlehem did not exercise its option to withdraw the petition. See 51 FR 26421, n.9, July 23, 1986.

[6] GBC was originally granted a conditional temporary exclusion on August 6, 1981, with the condition that the emission control sludge be kept separate from other wastes generated at the facility (see 46 FR 40159).

The commenter has also mistakenly assumed that the compliance-point concentration calculated for the waste is a ceiling limit for acceptable EP leachate concentrations of metals. This is not correct; the compliance point is part of the VHS model scenario. The actual ceiling for EP leachate concentrations in the waste would be set by multiplying the regulatory standard for a constituent by the dilution factor assigned by the VHS model for that volume of waste: For example, the upper limit for lead would be 0.315 mg/l in the EP leachate (0.05 mg/l×6.30908).

The commenter has also provided the Agency with information indicating that the Pennsylvania Department of Environmental Resources granted a final exclusion under its authorized State RCRA program. (See Determination of Nonapplicability Order from the State of Pennsylvania, dated October 4, 1984.) The Agency recognizes that General Battery was granted a final exclusion from an authorized State RCRA program. The final State decision does not cover any activity that would bring the waste under Federal jurisdiction (i.e., interstate transport or use of interstate carriers).

C. Final Decision

The Agency recognizes the final exclusion issued by the State of Pennsylvania. Due to the Agency's evaluation of the waste, the petition would be denied if the waste was under Federal jurisdiction. Therefore, the waste must be handled as hazardous if transported in interstate commerce.[7]

III. Kaiser Aluminum

A. Proposed Denial

The Kaiser Aluminum Chemical Corporation (Kaiser) has petitioned the Agency to exclude its wastewater treatment sludge from EPA Hazardous Waste No. F019, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by Kaiser, however, fails to substantiate its claim that the listed constituents are essentially present in an immobile form.[8] (See 51 FR 26424–26426, July 23, 1986, for a more detailed explanation of why the Agency proposed to deny Kaiser's petition.)

B. Agency Response to Public Comments

The Agency did not receive any comments regarding its decision to deny an exclusion to Kaiser for the waste identified in the petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the vacuum filter sludge generated by Kaiser is hazardous and as such should not be excluded from hazardous waste control. The Agency, therefore, is denying a final exclusion to Kaiser Aluminum Chemical Corporation for its dewatered wastewater treatment sludge (vacuum filter sludge) resulting from conversion coating operations, listed as EPA Hazardous Waste No. F019, which is generated at its Trentwood Works in Spokane, Washington. By this action, the Agency also withdraws the temporary exclusion granted for this waste on December 16, 1981 (see 46 FR 61280).[9]

IV. Effective Date

The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This is not the case, however, for the three petitioners included in this notice having their temporary exclusion revoked and final exclusion denied. They would have to revert back to handling their wastes as they did before being granted these exclusions (*i.e.*, they must handle their waste as hazardous). These petitioners would need some time to come into compliance with the RCRA hazardous waste management system. Accordingly, the effective date of the revocation of these temporary exclusions and denials would be six months after publication of the final rule in the **Federal Register**.

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal, which would revoke the temporary exclusions and deny the petitions from three facilities is not major. The affect of this proposal would increase the overall costs for these facilities which currently have temporary exclusions that are being revoked and denied. The actual costs to these companies, however, would not be significant. In particular, in calculating the amount of waste that is generated by these three facilities that currently have temporary exclusion and considering a disposal cost of $300/ton, the increased cost to these facilities is approximately $8 million, well under the $100 million level constituting a major regulation. This proposal is not a major regulation; therefore, no Regulatory Impact Analysis is required.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will have the effect of increasing overall waste disposal costs. This rule only effects three facilities. The overall economic impact, therefore, on small entities is small. Accordingly, I hereby certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

(Sec. 3001 RCRA, 42 U.S.C. 6921)

Dated: November 7, 1986.

J.W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 86–25963 Filed 11–17–86; 8:45 am]

BILLING CODE 6560-50-M

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[7] GBC was formally notified in a letter dated November 15, 1985, that the Characterization and Assessment Division would recommend to the Assistant Administrator for Solid Waste and Emergency Response that GBC's petition be denied, and GBC's temporary exclusion be withdrawn. GBC did not exercise its option to withdraw the petition. See 51 FR 26424, n.22, July 23, 1986.

[8] Kaiser was granted a temporary exclusion for this waste on December 16, 1981 (46 FR 61280).

[9] The Agency formally notified Kaiser on January 10, 1986, that it would recommend to the Assistant Administrator for Solid Waste and Emergency Response that Kaiser's petition be denied and that Kaiser's temporary exclusion be withdrawn. Kaiser declined to withdraw its petition. See 51 FR. 26426, n. 30, July 23, 1986.

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40 CFR Part 261

[SW-FRL-3113-8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Denial

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is announcing its decision to deny the petition submitted by one petitioner to exclude their solid waste from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste lists. Our basis for denying this petition is that the petitioner has not substantiated their claim that the waste is non-hazardous. The effect of this action is that all of this waste must be handled as hazardous waste in accordance with 40 CFR Parts 262–266, and Parts 270, 271 and 124.

EFFECTIVE DATE: May 18, 1987.

ADDRESS: The public docket for this final petition denial is located in Room S-212, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for public viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information, contact Lori DeRose Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-5096.

SUPPLEMENTARY INFORMATION: On October 22, 1986, EPA proposed to deny specific wastes generated by several facilities, including McLouth Steel Products Corporation, located in Trenton, Michigan (see 51 FR 37432). The Agency had previously evaluated this petition which is discussed in today's notice. Based on our review at that time, the petitioner was granted a temporary exclusion. Due to changes in the delisting criteria required by the Hazardous and Solid Waste Amendments (HSWA) of 1984, however, this petition has been evaluated both for the factors for which the waste was originally listed, as well as other factors and toxicants which reasonably could cause the waste to be hazardous. Based upon these evaluations, the Agency has determined that the petitioning facility has not substantiated their claims that the waste is non-hazardous. The Agency is, therefore, denying the petition submitted by the petitioning facility and is revoking their temporary exclusion.

The denial made final here is for the following petitioner: McLouth Steel Products Corporation, Trenton, Michigan.

I. McLouth Steel Products Corporation

A. Proposed Denial

McLouth Steel Products Corporation (McLouth) has petitioned the Agency to exclude its dust/sludge from EPA Hazardous Waste No. K061, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by McLouth, however, fails to substantiate its claim that the listed constituents are essentially present in an immobile form.[1] (See 51 FR 37432–37434, October 22, 1986, for a more detailed explanation of why the Agency proposed to deny McLouth's petition.)

B. Agency Response to Public Comments

The Agency received numerous comments from McLouth regarding the proposed denial of their petition. McLouth specifically commented on the following items: (1) Promulgation of the VHS model, (2) classification of the petitioned waste as a hazardous waste, (3) lack of nickel and cyanide standards for the characteristic of EP toxicity, (4) the use of maximum leachable contaminant values/VHS model evaluation, (5) the consideration of parameters including dilution effects of recharge, vertical seepage of leachate, ground water flow rate, and attenuation, and (6) use of EP toxicity data in the VHS model.

McLouth comments that the Agency has "never promulgated the VHS model as a rule" and inappropriately did not consider comments received. Although the Agency did not promulgate the VHS model as a rule the Agency did propose and accept comment on the VHS model and its application to evaluating petitioned wastes on February 26, 1985 (see 50 FR 7882, Appendix I). The Agency published their response to the comments received and finalized the VHS model on November 27, 1985 (see 50 FR 48896–48910). The Agency believes that all comments were adequately addressed with regard to the Agency's intention to use the VHS model to predict potential contamination of the ground water under a reasonable worst-case scenario. This model was not promulgated as a rule since it is one of several approaches to petition review, and the Agency did not want to limit its own (or authorized State's) ability to employ novel review mechanisms.

McLouth commented that the petitioned waste, which is listed under 40 CFR Part 261.32 as a hazardous waste from a specific source, does not meet the criteria for listing set forth under 40 CFR 261.11 and, therefore, should be excluded from regulation as a hazardous waste. The Agency disagrees with McLouth's rationale. Under 40 CFR 261.3, a solid waste that has been listed in 40 CFR 261 Subpart D is a hazardous waste unless it has been excluded under 40 CFR Parts 260.20 and 260.22. McLouth, therefore, must not only demonstrate that the waste does not meet the criteria set forth under 40 CFR 260.20 261.11 but also must address the criteria set forth under 40 CFR 260.20 and 260.22. The Agency further notes that the VHS model evaluation is used specifically to predict reasonable worst-case contaminant levels in nearby hypothetical receptor wells, and even if the listed wastes do not exhibit the characteristics of hazardous waste, the wastes must also pass the VHS model evaluation (*i.e.,* compliance point concentrations generated using EP leachate data as input to the VHS model must be below appropriate regulatory standards) in order to be delisted. McLouth claims it is unreasonable for the Agency to go beyond consideration of the EP toxicity characterization contaminant levels in evaluation of their petition. The Agency has explicitly stated and reiterated that wastes leaching concentrations of the same toxicants at less than 100 times Drinking Water Standard levels (the EP Characteristic) are not necessarily non-hazardous. Rather, such wastes may be listed as hazardous, if pursuant to the criteria for listings contained in 40 CFR 261.11 of the regulations, these lesser concentrations in combination with other factors are deemed to pose substantial present or potential threat to human health and the environment. The EP toxicity characteristic is designed solely to bring non-listed wastes into the hazardous waste management system. It is not used to list or delist wastes. (See 45 FR 33111–33112, May 19, 1980.)

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[1] McLouth was granted a temporary exclusion for this waste on May 5, 1982.

McLouth commented that the Agency has not identified maximum nickel and cyanide concentration levels for determining EP toxicity characteristic levels. The Agency realizes that the EP toxicity characteristic levels for nickel and cyanide are not established. The Agency, however, notes that these values need not be established to allow the evaluation of listed constituents or constituents reasonably expected to be present in the waste.

The Agency does not wait for EP toxicity characteristic standards to be established in order to make decisions on delisting petitions. Prior to HSWA, the Agency considered as part of the delisting evaluation all of the listed constituents for a petitioned waste. The listed constituents include cyanide and nickel (which do not have EP toxicity characteristic standards) for wastes such as F006. If the Agency had waited for an EP toxicity characteristic standard to be established, no exclusions would have been granted since 1980 for wastes listed for these constituents. Early on, however, the Agency made a policy decision to process petitions using the best toxicity data available if EP toxicity standards had not been developed. As a result of HSWA, the Agency has been required to consider Appendix VIII hazardous constituents (other than the listed constituents) in petitioned wastes, where there is reasonable basis to expect these constituents to be present. Again in lieu of deferral of decisions, the Agency has used available standards and toxicological data for these additional hazardous constituents. The Agency, therefore, has evaluated nickel and cyanide levels in this waste using the VHS model. McLouth commented that the regulatory standard for cyanide presented in Table 3 of the proposed denial (see 51 FR 37434) was incorrect. The Agency agrees that the regulatory standard for cyanide should have been 0.2 mg/l. The Agency notes, in concurrence with McLouth, that the concentration for cyanide (at the compliance point) does not exceed the Agency's regulatory standard and, therefore, cyanide is not considered to be of regulatory concern.

McLouth has requested the Agency to use a lower waste generation rate than that reported in the petition. McLouth stated that the annual waste volume used in the Agency's evaluation (13,260 cubic yards) does not reflect the actual annual volume. McLouth explained that prior to the submittal of their delisting petition, the annual waste volume was estimated to be 6,000 tons. This volume, however, overestimated the actual annual volume of the petitioned waste because it included quantities of wastes other than the petitioned waste. McLouth also stated that, since the submittal of the petition, the petitioned waste has been segregated from other wastes. McLouth stated that a volume of 2,920 cubic yards more accurately reflects their maximum annual waste volume. The Agency has re-evaluated the information submitted by McLouth and agrees that 2,920 cubic yards should be considered. The Agency, therefore, has re-evaluated the waste using this volume.[2]

McLouth commented that the Agency's use of the maximum leachable contaminant levels in the VHS model does not represent a reasonable worst-case. The Agency recognizes that various parameters such as the mean, median, maximum, and upper confidence limits may, in some cases, be appropriate inputs to the VHS model. Each of these parameters may be used under certain circumstances that are defined by the statistical characteristics of the analytical results. For example, the mean is used when the sample population is large enough and the data exhibit a normal distribution; the median is used when the sample population is large enough and when the data exhibit a log normal distribution. Without any prior assumptions about the statistical distribution of the sample, a non-parametric evaluation of a waste would require approximately 45 samples to achieve a degree of certainty satisfactory to the Agency to allow consideration of alternative statistical values than the maximum.[3] McLouth's analytical results did not meet this sample size criterion for the use of the mean or median, and thus the use of the maximum values was appropriate. McLouth also commented that: (1) Selenium was considered in the VHS model evaluation, however, selenium has never been detected in the extract; and (2) the maximum barium leachate concentration is an outlier.

In response to these comments, the Agency has re-evaluated McLouth's petitioned waste using a maximum annual waste volume equal to 2,920 cubic yards (as previously discussed) and the resulting compliance point concentrations are presented in Table 1. The Agency used the maximum detection limit for selenium in the VHS model evaluation. The Agency realizes, however, that nine other samples displayed non-detect levels of <0.005 ppm. The Agency, therefore, agrees with the commenter that selenium is not present in the waste at levels of regulatory concern.

The leachable barium and cadmium concentrations for 1 of 10 samples were 82.0 and 0.673 ppm, respectively. The barium and cadmium concentrations for the other samples were less than 1 and 0.22 ppm, respectively. The Agency, therefore, agrees with McLouth that the maximum value for barium and also for cadmium are outliers and do not reflect the typical mobility of barium and cadmium in McLouth's waste. The Agency's conclusion is supported by the Dixon Extreme Value Test. The Agency believes that barium and cadmium concentrations of 0.927 and 0.22 ppm, respectively, more accurately reflect the concentration of these constituents in the waste and, therefore, these values were used in the VHS model evaluation.

TABLE 1.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)

Constituents	Compliance point concentrations	Regulatory standards
As	<0.014	0.05
Ba	.13	1.0
Cd	[1].03	.01
Cr	.014	.05
Pb	[2].33	.05
Hg	.0004	.002
Se	<.014	.01
Ag	.007	.05
Ni	.01	.350
CN	.076	.2

[1] The Agency notes that three of nine samples failed the VHS model evaluation for cadmium.

[2] The Agency notes that four of ten samples failed the VHS model evaluation for lead.

McLouth asserts that disposal facilities common in southeastern Michigan are regulated and approved facilities where one would not expect to find reasonable worst-case situations.

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[2] The Agency typically uses maximum annual generation rates or maximum capacities in the VHS model. The Agency has accepted McLouth's explanation that some portion of their wastes has been segregated, however, it is unclear whether the variation from 13,260 to 6000 tons is purely a reflection of the economic climate. The Agency has accepted this explanation in part, because it does not change the Agency's proposed decision to deny. The Agency further notes that the use of a maximum generation rate rather than a maximum capacity in this case is not of precidential significance.

[3] See Morse, M., J. Warren, and W. Sproat, 1986. Sampling and analysis for delisting data verification/delisting spot checks. From Proceedings of the Second U.S. EPA Symposium on Solid Waste Testing and Quality Assurance, July 15–18, 1986. Washington, D.C. (copy provided in public docket for this notice). This paper provides some initial guidance on the factors which the Agency believes may be important in using non-parametric statistical techniques to determine the sample size that will allow the use of values other than the maximum in the VHS model analysis. The Agency intends to publish more formal guidance on this issue in the future.

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McLouth further adds that disposal facilities in Michigan are constructed and operated "only where adequate protection of drinking water supplies can be ensured." The petitioner also claims that they would accept an exclusion conditioned on disposal of their waste at a licensed facility. The Agency, to date, has evaluated the immediate and potential hazards of a petitioned waste based on waste characterization information and the assumption that the waste would be managed at a non-regulated facility. The Agency, however, realizes that specific waste management site conditions may provide sufficient protection of the underlying aquifer. The Agency may in the future consider site-specific factors in delistings. At this time, however, the Agency has not developed a strategy for using or evaluating such site-specific factors. If the Agency pursues site-specific delistings, the Agency will need to determine which combination of site-specific factors are needed for various scenarios. The Agency also would need to consider the use of institutional controls (*e.g.*, conditional exclusions) in site-specific delisting evaluations. In particular, the Agency would need to address concerns such as the control or monitoring of on-site and off-site management (and whether a site-specific demonstration will be allowable in either case), controls on waste transportation to ensure that the waste is delivered to the site specified in the petition, and controls to ensure the waste is not removed from the designated management area. The Agency also may consider developing guidelines to provide petitioners with specific information requirements necessary to present a demonstration using site-specific information. The Agency notes that although site-specific delistings are under consideration there is no mechanism at the present time to evaluate demonstrations based on site-specific information.

McLouth claims that past conditional exclusions have been granted based on management conditions placed on the disposal of the waste. Accordingly, McLouth requests the Agency to grant them an exclusion conditioned to dispose their waste at a disposal facility licensed by the Michigan Department of Natural Resources. The Agency currently does not have a mechanism in place to do this. The Agency, however, may consider petitions of this type in the future.

The Agency has addressed several comments and criticisms McLouth has made on the VHS model. The Agency notes that the VHS model was made final on November 27, 1985 (See 50 FR 48886, Appendix), and all comments received on the proposal for the model were incorporated. Generally these comments are no longer entertained by the Agency. They are addressed here, however, due to McLouth's reference in some instances to site-specific factors.

McLouth claims that the Agency has developed and is using a model that "fails to approximate real-world conditions on a reasonable worst-case basis" which subsequently results in an overestimation of contaminant levels (at the compliance point). McLouth comments that dilution effects due to aquifer recharge should be incorporated into the model and further references an approach that addresses the dilution effects of recharge applicable to the VHS model. The Agency notes that dilution effects of recharge and the resulting implications of these effects on the VHS model results are being considered. However, the Agency, at this time, has concerns regarding the time dependent nature of the mixing and subsequent dilution resulting from recharge. Furthermore, recharge should probably be considered to be a site-specific parameter.

McLouth also presented a methodology that considers the effects of vertical seepage of leachate (V_z), an effect which the VHS model assumes is small compared to the ground water flow rate. McLouth concluded in their analysis that the Agency has assumed a uniform depth of contamination beneath the site. The Agency disagrees. The VHS model estimates the depth of penetration (Z) by the equation, $Z=(\alpha_z Y')^{0.5}$ where $\alpha_z=$ vertical dispersivity and $Y'=$facility width, which results in a parobolic ground water plume. The Agency continues to believe that the effect of V_z is minimal. Intuitively, one would not expect the effect of V_z to be large once the leachate is introduced into the ground water unless the leachate was more dense than the ground water and the plume was a "sinker".

McLouth provided an additional analysis disputing the Agency's assumption that $C_{lw}=C_c$, where $C_{lw}=$the leachate concentration and $C_c=$the concentration at the facility boundary. McLouth's derivation uses a site-specific value for V_z which assumes, among other things, a landfill cover permeability of 1×10^{-8} cm/sec. This assumption is not a reasonable worst case assumption that the Agency is prepared to consider. If the Agency establishes a protocol for the evaluation of site-specific factors, this type of assumption, in some cases, may be valid.

McLouth also claims that the Agency's use of a maximum ground water flow rate of 2 meters per year is not representative of the actual aquifers in which ground water wells are situated. The Agency has assumed that this ground water flow rate is a reasonable worst-case flow rate and realizes that this flow rate may not be representative of actual conditions at a particular site if site-specific conditions are to be considered. McLouth also states that the VHS model does not approximate realistic soil conditions because it neglects attenuation which occurs to some extent in all soils. Again, the Agency believes that the use of site-specific information such as ground water flow rate and soil attenuation factors will be more applicable in a site-specific delisting demonstration.

McLouth also challenged the Agency's use of the EP toxicity test. Specifically, McLouth claims that EP toxicity test data cannot provide a scientifically valid estimate of the attenuation of contaminants in a soil-ground water system because when soils are exposed to the extractant of the EP toxicity test procedure (*i.e.*, a buffered acetic acid solution) the soil chemistry will be altered. The Agency disagrees with this claim. The EP toxicity test procedure was developed to simulate the leaching that occurs at a municipal landfill. Therefore, the EP toxicity test is designed to measure, in part, the effect of a slightly acidic leachate (pH=5.0) that may reasonably be percolating through soils beneath a disposal area. The Agency believes that with respect to the pH conditions of the extractant, the EP toxicity test is, in fact, valid in simulating realistic conditions.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the sludge generated by McLouth is hazardous and as such should not be excluded from hazardous waste control. The Agency, therefore, is denying a final exclusion to the McLouth Steel Products Corporation for its sludge) resulting from the primary production of steel in electric furnaces, listed as EPA Hazardous Waste No. K061, which is generated at its Trenton, Michigan facility. By this action, the Agency also withdraws the temporary exclusion granted for this waste on May 5, 1982.

II. Effective Date

The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This is not the case, however, for the petitioner included in this notice having their temporary exclusion revoked and final exclusion denied. They will have to revert back to handling their waste as they did before being granted their temporary exclusion (*i.e.,* they must handle their wastes as hazardous). This petitioner will need some time to come into compliance with the RCRA hazardous waste management system. Accordingly, the effective date of the revocation of this temporary exclusion and denial is six months after publication of the final rule in the Federal Register.

III. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation, which would revoke a temporary exclusion and deny a petition from one facility, is not major. The affect of this rule would increase the overall costs for the facility which currently has a temporary exclusion that is being revoked and denied. The actual cost to this company, however, would not be significant. In particular, in calculating the amount of waste that is generated by this facility that currently has a temporary exclusion and considering a disposal cost of $300/ton, the increased cost to this facilities is approximately $0.9 million, well under the $100 million level constituting a major regulation.

This rule is not a major regulation; therefore, no Regulatory Impact Analysis is required.

IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will have the effect of increasing overall waste disposal costs. This rule only effects one facility. The overall economic impact, therefore, on small entities is small. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

(Sec. 3001 RCRA, 42 U.S.C. 6921)

Dated: November 7, 1986.

J.W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 86-25965 Filed 11-17-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6630

[AA-320-07-4220-10; ES 17056]

Minnesota; Withdrawal of Public Lands for Voyageurs National Park

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 49.26 acres of public land comprised of 61 islands and one waterfront lot from surface entry for 20 years in order to facilitate transfer of administrative jurisdiction from the Bureau of Land Management to the National Park Service. These islands will be managed as part of the Voyageurs National Park. The lands are not subject to the United States mining laws, and have been and will remain open to mineral leasing.

EFFECTIVE DATE: November 18, 1986.

FOR FURTHER INFORMATION CONTACT: Joyce Troy, Bureau of Land Management, Eastern States Office, 350 South Pickett St., Alexandria, Virginia 22304, 703-274-0122.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location and entry under the general land laws but not from leasing under mineral leasing laws and are hereby transferred from the Bureau of Land Management to the National Park Service, and henceforth shall be administered as part of the National Park System.

Fourth Principal Meridian, Minnesota

T. 69 N., R. 19 W.,
  Sec. 14, unsurveyed island in SE¼NE¼;
  Sec. 18, Government lot 4;
  Sec. 19, unsurveyed island in SW¼SE¼;
  Sec. 20, unsurveyed island in NW¼SE¼;
  Sec. 23, unsurveyed island in SE¼NW¼;
  Sec. 27, unsurveyed island in NW¼SE¼;
  Sec. 28, unsurveyed island in NE¼NW¼, unsurveyed island in SE¼NW¼;
  Sec. 30, unsurveyed island in NW¼SE¼, unsurveyed island in SE¼NE¼;
  Sec. 31, unsurveyed island in NW¼NW¼.
T. 70 N., R. 19 W.,
  Sec. 28, unsurveyed island in NE¼NE¼, unsurveyed island in NE¼NE¼;
  Sec. 30, unsurveyed island in NW¼SE¼;
  Sec. 33, unsurveyed island in NE¼NE¼;
  Sec. 34, unsurveyed island in SW¼NW¼.
T. 69 N., R. 20 W.,
  Sec. 12, unsurveyed island in SW¼SE¼;
  Sec. 13, unsurveyed island in SW¼NE¼, unsurveyed island in SE¼NE¼;
  Sec. 14, unsurveyed island in SE¼NE¼, unsurveyed island in NE¼SW¼, unsurveyed island in NW¼SW¼;
  Sec. 15, unsurveyed island in SW¼SW¼;
  Sec. 20, unsurveyed island in NE¼NE¼, unsurveyed island in SW¼NW¼, unsurveyed island in NW¼SW¼;
  Sec. 22, unsurveyed island in SE¼NW¼, unsurveyed island in NW¼SW¼;
  Sec. 23, unsurveyed island in SW¼SW¼, unsurveyed island in SW¼SW¼;
  Sec. 25, unsurveyed island in NE¼NE¼;
  Sec. 26, unsurveyed island in SW¼NE¼, unsurveyed island in SE¼NW¼.
T. 70 N., R. 20 W.,
  Sec. 34, unsurveyed island in NE¼SW¼;
  Sec. 35, unsurveyed island in NW¼SE¼.
T. 69 N., R. 21 W.,
  Sec. 3, unsurveyed island in NE¼NE¼, unsurveyed island in NE¼NE¼, unsurveyed island in SW¼NW¼, unsurveyed island in SW¼NW¼;
  Sec. 4, unsurveyed island in NW¼SW¼;
  Sec. 9, unsurveyed island in SW¼SW¼, unsurveyed island in NE¼SE¼;
  Sec. 10, unsurveyed island in NE¼NW¼, unsurveyed island in NE¼NW¼, unsurveyed island in SE¼NW¼, unsurveyed island in NE¼SW¼;
  Sec. 12, unsurveyed island in NW¼SE¼;
  Sec. 13, unsurveyed island in NE¼NE¼, unsurveyed island in NW¼SW¼;
  Sec. 14, unsurveyed island in NW¼NE¼ unsurveyed island in NW¼NE¼
  Sec. 21, unsurveyed island in NW¼NW¼;
  Sec. 23, unsurveyed island in NW¼SE¼, unsurveyed island in SW¼SE¼;
  Sec. 25, unsurveyed island in SW¼NE¼.
T. 70 N., R. 21 W.,
  Sec. 28, unsurveyed island in SE¼SW¼;
  Sec. 30, unsurveyed island in SW¼NE¼, unsurveyed island in SW¼SE¼;
  Sec. 32, unsurveyed island in NW¼SW¼;
  Sec. 33, unsurveyed island in SE¼NW¼, unsurveyed island in SW¼SE¼;
  Sec. 34, unsurveyed island in SW¼NW¼.

The area described aggregates approximately 49.26 acres in St. Louis County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit,

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or governing the disposal of their mineral or vegetative resources.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

4. The above described lands shall be administered by the Secretary of the Interior, through the National Park Service, in accordance with the provisions of the Act of August 25, 1916, 39 Stat. 535, as amended.

November 6, 1986.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 86-25927 Filed 11-17-86; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 73

[MM Docket 86-264; FCC 86-484]

Broadcast Services; Modifications of Broadcast Transmitters

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This decision deregulates certain rules regarding broadcaster transmitter equipment and mechanical modifications. In particular, the proceeding considers the requirement that certain electrical and mechanical broadcast transmitter modifications require submission of an FCC Form 301 and Commission approval before the modification can be performed. The action is needed to reduce burdens on the public and to allow licensees maximum flexibility without increasing harmful interference.

EFFECTIVE DATE: December 12, 1986.

FOR FURTHER INFORMATION CONTACT: Michael Lewis, Policy and Rules Division, Mass Media Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order (Report)* in MM Docket 86-264, adopted, October 24, 1986, and released November 4, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230, 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. The *Report and Order* in this proceeding eliminates the requirement that broadcast licensees need FCC approval before performing electrical and mechanical modifications to their transmitting equipment. The *Notice of Proposed Rule Making* in this proceeding proposed to permit licensees to modify their equipment without approval providing that equipment tests are performed immediately upon completion. The proposed test were those necessary for communications equipment to receive the FCC grants of type acceptance or notification. It was also proposed that the results of these tests would be retained for as long as the modified equipment is used.

2. In response to commenters concerns that the proposed tests would be expensive and time-consuming, the Commission instead adopted a requirement that traditional equipment performance measurements pertaining to measurement of spurious emissions be made subsequent to the modification. The results must be retained for two years. Also, a simple and brief description of the modification must be retained at the transmitter site. The Commission also reversed its position regarding AM stereo conversions. The Commission agreed with commenters that this modification should be permitted under the scope of these new rules. Therefore, any electrical or mechanical modification to transmitting equipment will be governed by these new relaxed procedures.

Regulatory Flexibility Information

3. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. section 603, a Final Regulatory Flexibility Analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

4. The Secretary shall cause a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of Small Business Administration, in accordance with section 603(a) of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*), (1981).

Paperwork Reduction Act Statement

5. The *Report and Order* contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to decrease the information collection burden which the Commission imposes on the public. This reduction in information collection burden is subject to approval by the Office of Management and Budget as prescribed by the Act.

Ordering Clauses

6. Accordingly, It Is Ordered, That pursuant to the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934 as amended, that Parts 2 and 73 of the Commission's Rules Are Amended effective December 12, 1986.

7. It Is Further Ordered That this proceeding Is Terminated.

List of Subjects

47 CFR Part 2

Communications equipment radio.

47 CFR Part 73

Radio broadcasting, Television broadcasting.

Amendatory Text

Title 47 CFR Parts 2 and 73 are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Parts 2 and 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. 47 CFR 2.977 is amended by adding new paragraph (d) to read as follows:

§ 2.977 Changes in notified equipment.

* * * * *

(d) Notwithstanding the provisions of this section, broadcast licensees or permittees are permitted to modify notified transmitters pursuant to § 73.1690 of the FCC's Rules.

3. 47 CFR 2.1001 is amended by adding new paragraph (l) to read as follows:

§ 2.1001 Changes in type accepted equipment.

* * * * *

(l) Notwithstanding the provisions of this section, broadcast licensees or permittees are permitted to modify type accepted equipment pursuant to § 73.1690 of the FCC's Rules.

PART 73—RADIO BROADCAST SERVICES

4. 47 CFR 73.127 is amended by revising paragraph (f) to read as follows:

§ 73.127 Use of multiplex transmission.

* * * * *

(f) Installation of the multiplex transmitting equipment must conform with the requirements of §73.1690(e).

5. 47 CFR 73.1225 is amended by revising paragraphs (c) and (d) in their entirety to read as follows:

§ 73.1225 Station inspections by FCC.

* * * * *

(c) The following records shall be made available by all broadcast stations upon request by representatives of the FCC.

(1) Equipment performance measurements required by §§ 73.1590 and 73.1690.

(2) The written designations for chief operators and, when applicable, the contracts for chief operators engaged on a contract basis.

(3) Application for modification of the transmission system made pursuant to § 73.1690(c).

(4) Informal statements or drawings depicting any transmitter modification made pursuant to § 73.1690(e).

(5) Station logs and special technical records.

(d) Commercial and noncommercial AM stations must make the following information also available upon request by representatives of the FCC.

(1) Copy of the most recent antenna or common-point impedance measurements.

(2) Copy of the most recent field strength measurements made to establish performance of directional antennas required by § 73.151.

(3) Copy of the partial directional antenna proofs of performance made in accordance with § 73.154 and made pursuant to the following requirements:

(i) Section 73.68, Sampling systems for antenna monitors.

(ii) Section 73.69, Antenna monitors.

(iii) Section 73.61, AM directional antenna field strength and proof of performance measurements.

6. 47 CFR 73.1660 is amended by revising paragraphs (b) and (d) to read as follows:

§ 73.1660 Acceptability of broadcast transmitters.

* * * * *

(b) A permittee or licensee planning to install and use as a main transmitter one not included on the FCC's "Radio Equipment List" must obtain authority to use such a transmitter by filing for a construction permit on FCC Form 301 (FCC Form 340 for noncommercial educational stations). The application must include a complete description and circuit diagram of the transmitter, description of the carrier frequency determining circuits, complete operating parameters, and measurement data as would be required for a grant of type acceptance. A permittee or licensee planning to modify a transmitter which is included on the FCC's "Radio Equipment List" or for which an FCC Form 301 has been submitted and approved, must follow the requirements contained in § 73.1690.

* * * * *

(d) AM stereophonic exciter-generators for interfacing with type accepted or notified AM transmitters may be type accepted upon request from any manufacturer by the procedures described in Part 2 of the FCC Rules. Broadcast licensees may modify their type accepted AM stereophonic exciter-generators in accordance with § 73.1690.

* * * * *

17. 47 CFR 73.1690 is amended by revising paragraph (e), by removing paragraphs (b)(1), (b)(2), and by redesignating paragraphs (b)(3), (b)(4), and (b)(5) as (b)(1), (b)(2), and (b)(3) respectively to read as follows:

§ 73.1690 Modification of transmission systems.

* * * * *

(e) Any electrical and mechanical modification to authorized transmitting equipment that is not otherwise restricted by thc preceeding provisions of this section, may be made without FCC notification or authorization. Equipment performance measurements must be made within ten days after completing the modifications (See § 73.1590). An informal statement, diagram, etc. describing the modification must be retained at the transmitter site for as long as the equipment is in use.

William J. Tricarico,

Secretary.

[FR Doc. 86–25732 Filed 11–17–86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 94

[PR Docket No. 86–126; RM–5202; FCC 86–485]

Amendment of Rules Governing Private Operational-Fixed Microwave Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Report and Order amending the rules in Part 94 which govern the Private Operational-Fixed Microwave Service (OFS). The rule section requiring the submission of frequency engineering analyses (47 CFR 94.15) is amended to require OFS applicants to furnish information regarding the system's transmitter and antennas to the entity performing its frequency engineering analysis. Further, the rule is amended to require frequency engineering analyses to include consideration of the technical characteristics of the transmitting equipment that an applicant proposes to use, as indicated by the FCC ID number of the transmitter and the make and model numbers for all antennas. This action is taken to improve the efficiency of microwave frequency engineering analyses.

EFFECTIVE DATE: December 15, 1986.

FOR FURTHER INFORMATION CONTACT: Harold Salters, Land Mobile and Microwave Division, Private Radio Bureau, (202) 632–7597.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR Docket No. 86–126, adopted October 24, 1986, and released November 6, 1986.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. On April 14, 1986, the FCC released a Notice of Proposed Rule Making (Notice) in PR Docket No. 86–126 (summary published at 51 FR 15355, April 23, 1986) proposing amendments to Part 94 of its rules governing the Private Operational-Fixed Microwave Service (OFS). The Notice was issued in response to a petition for rule making, RM–5202, filed by the Harris Corporation—Farinon Division (Harris).

2. Harris' petition requested that OFS applicants be required to provide the FCC ID number assigned to transmitting equipment and the make and model numbers of the proposed system's antennas as part of the frequency engineering analysis required by § 94.15(b) of the Commission's rules. Applicants for new or modified OFS facilities are required to submit a frequency engineering analysis of the potential interference that their proposed facilities may cause to previously-authorized and applied-for stations.

3. The June 1982 version of the FCC Form 402, Application for a License in the Private Operational-Fixed Microwave Radio Service, required applicants to provide the microwave

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transmitter's FCC ID number and the make and model numbers of the antennas. However, in August 1985, to reduce the public's paperwork burden and make more efficient use of the Commission's limited staff resources, the Commission revised Form 402 to remove data elements that were not critical to the staff's processing of applications. Among the data elements removed were the transmitter's FCC ID number and the make and model numbers of the antennas.

4. In consideration of the Harris petition, the Notice proposed to require applicants to furnish this transmitter and antenna information to the frequency engineering firm or other entity performing the required frequency engineering analysis. Additionally, recognizing the value of this information to the microwave frequency engineering process, we proposed adding language to the rule section requiring frequency engineering analyses (47 CFR 94.15(b)) to include consideration of the technical characteristics of the transmitting equipment that an applicant proposes to use, including the FCC ID number of the transmitter and the make and model numbers for all antennas the applicant proposes to use.

5. Commenters concurred in the Notice's objectives, although some urged us to go further and maintain this information in our microwave license data base. However, we believe that our amended rule, in conjunction with the existing requirements contained in § 94.15, will assure that all interested parties have access to necessary information. Section 94.15(b) requires that OFS applicants and licensees cooperate fully in the exchange of technical information necessary to performing frequency engineering analysis.

6. The Commission noted that it does not require the subject transmitter and antenna information for OFS application processing since the revised Form 402 requires the specific transmitter and antenna information necessary for us to determine the overall interference potential of an applicant's system. Further, any change in a transmitter or antenna that may impact the system's overall interference potential is brought to the attention of the Commission and the public by the requirement that modification applications be submitted and placed on public notice in specified situations.

Regulatory Flexibility Analysis

7. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. section 605, the Commission certified that the amended rule will not have a significant economic impact on a substantial number of small entities. Therefore, there is no requirement for a final regulatory flexibility analysis.

Paperwork Reduction

8. The rule amendment contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and has been found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Ordering Clause

9. Accordingly, it is ordered, that effective December 15, 1986, Part 94 of the Commission's Rules, 47 CFR Part 94, is amended as shown at the end of this document. Authority for this action is found in sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303. It is further ordered, that this proceeding is terminated.

List of Subjects in 47 CFR Part 94

Private operational-fixed microwave service, Radio.

Part 94 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 94—PRIVATE OPERATIONAL-FIXED MICROWAVE SERVICE

The authority citation for Part 94 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

In § 94.15, paragraph (b) is revised to read as follows:

§ 94.15 Policy governing the assigment of frequencies.

* * * * *

(b) All applications for new or modified stations must contain an engineering analysis of the potential interference between the proposed facilities and previously authorized facilities and pending applications. The application must contain as supplemental information:

(1) A certification that based upon frequency engineering analysis, the potential interference will not exceed that prescribed by the interference criteria in § 94.63; or

(2) If the potential interference will exceed that prescribed by § 94.63, a statement to the effect that all parties affected have agreed to accept the higher level of interference.

(3) In either case, the application must contain the names of the licensees and the call signs of the stations that were considered in conducting the engineering analysis. Further, applicants and licensees will be expected to cooperate promptly and fully in the exchange of technical information necessary to performing frequency engineering analysis and, in the event of technical differences, cooperate in resolving these differences. Engineering analyses prepared pursuant to this section shall include consideration of the technical characteristics of the transmitting equipment that an applicant proposes to use, including the FCC ID number of the transmitter and the make and model numbers for all antennas the applicant proposes to use. Applicants shall provide this information to the entities responsible for performing the frequency engineering analysis.

* * * * *

William J. Tricarico,

Secretary.

[FR Doc. 86-25998 Filed 11-17-86; 8:45 am]

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47 CFR Part 97

[PR Docket No. 85-196; DA 86-152]

Amateur Radio Service; Volunteer-Examiner Coordinators (VEC's); Maintenance of Pools of Questions for Amateur Operator Examinations

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The effective date of the Final Rule adopted in this proceeding, 51 FR 30645, August 28, 1986, was contingent upon approval of certain collection and record keeping requirements by the Office of Management and Budget. Such approval has now been received. Therefore, members of the public are notified that the rule amendments will become effective on the date shown below.

EFFECTIVE DATE: December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Private Radio Bureau, (202) 632-4964.

SUPPLEMENTARY INFORMATION:

November 10, 1986.

Public Notice

(Reissued)

Maintenance of Question Pools for Amateur Operator Examinations Transferred to VEC's—Rules To Become Effective

On August 4, 1986, the FCC adopted a Report and Order (FCC 86-343) in PR Docket No. 85-196 which transferred the maintenance of question pools for amateur operator examinations to the Volunteer Examiner Coordinators (VEC's). A written summary of this action was published in the **Federal Register** on August 28, 1986, 51 FR 30645.

Implementation of the information collection and record keeping requirements incident to the transfer of the question pools was contingent upon approval by the Office of Management and Budget (OMB). Approval has been received and the rules adopted in the proceeding may now become effective. Therefore, effective December 31, 1986, Part 97 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as set forth in the Appendix attached to the Report and Order in PR Docket No. 85-196.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-25997 Filed 11-17-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 71

[OST Docket No. 27; Amdt. 71-21]

Standard Time Zone Boundaries

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This rule incorporates a recent Public Law that changed the beginning of Daylight Saving Time to the first Sunday in April. Previously, Daylight Saving Time began the last Sunday in April. In addition, the rule makes a minor editorial correction to reflect the current names of time zones.

DATE: This rule is effective November 18, 1986.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the General Counsel (C-50), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590; (202) 366-9306.

SUPPLEMENTARY INFORMATION: Under the Uniform Time Act of 1966, as amended, the beginning and ending dates of Daylight Saving Time are set by Federal statute. Since 1966, Daylight Saving Time has begun at 2:00 a.m. the last Sunday in April, and ended at 2:00 a.m. the last Sunday in October. On July 8, 1986, President Reagan signed Pub. L. 99-359. Among other things, that Act moved the beginning of Daylight Saving Time up three weeks to the first Sunday in April. No change was made to the ending date. For example, Daylight Saving Time will begin in 1987 on April 5 and end on October 25. This change will only affect those States that choose to observe Daylight Saving Time. Section 71.2 is amended to make this change and is partially rewritten for clarity. The authority citation is also amended to reflect the new Public Law.

This rule also makes an editorial correction to § 71.1. In a 1983 final rule [48 FR 43281, September 22, 1983] the Department changed the names of the Yukon, Alaska-Hawaii, and Bering time zones to the Alaska, Hawaii-Aleutian and Samoa time zones. These new time zone names were inadvertently left out of § 71.1 in the 1983 rule but are corrected by this final rule.

Since this amendment merely incorporates a statutory change and makes a minor editorial correction, notice and comment on it are unnecessary and it may be made effective in less than thirty days after publication in the **Federal Register.**

Regulatory Requirements

I find that, under the criteria of the Regulatory Flexibility Act, this rule will not have a significant effect on a substantial number of small entities. Further, it is not a major rule under Executive Order 12291, nor a significant rule under DOT Regulatory Policies and Procedures. Because this amendment is merely editorial in nature, it does not warrant preparation of a regulatory evaluation. Finally, DOT has determined that this rule is not a major Federal Action significantly affecting the quality of the human environment under the National Environmental Policy Act and therefore that an environmental impact statement is not required.

List of Subjects in 49 CFR Part 71

Time.

PART 71—[AMENDED]

Accordingly, 49 CFR Part 71, *Standard Time Zone Boundaries*, is amended to read as follows:

1. The authority of Part 71 is revised to read:

Authority: Secs. 1-4, 40 Stat. 450, as amended; sec. 1, 41 Stat. 1446, as amended; secs. 2-7, 80 Stat. 107, as amended; 100 Stat. 764; Act of March 19, 1918, as amended by the Uniform Time Act of 1966 and Pub. L. 97-449, 15 U.S.C. 260-267; Pub. L. 99-359; 49 CFR 1.59(a).

2. Paragraph (c) of § 71.1 is revised to correct the names of the last three time zones so that it reads:

§ 71.1 Limits defined; exceptions authorized for certain rail operating purposes only.

* * * * *

(c) The time zones established by the Standard Time Act, as amended by the Uniform Time Act of 1966, are Atlantic, eastern, central, mountain, Pacific, Alaska, Hawaii-Aleutian, and Samoa.

3. Paragraph (a) of § 71.2 is revised to read:

§ 71.2 Annual advancement of standard time.

(a) The Uniform Time Act of 1966 (15 U.S.C. 260a(a)), as amended, requires that the standard time of each State observing Daylight Saving Time shall be advanced 1 hour beginning at 2:00 a.m. on the first Sunday in April of each year and ending at 2:00 a.m. on the last Sunday in October. This advanced time shall be the standard time of such zone during such period. The Act authorizes any State to exempt itself from this requirement. States in two or more time zones may exempt the easternmost time zone portion from this requirement.

(b) * * *

Issued in Washington, DC, under authority delegated to me under 49 CFR 1.57(1) on November 10, 1986.

Jim J. Marquez,

General Counsel.

[FR Doc. 86-25854 Filed 11-17-86; 8:45 am]

BILLING CODE 4910-62-M

Research and Special Programs Administration

49 CFR Parts 172 and 173

[Docket No. HM-166V; Amdt. Nos. 172-107 and 173-198]

Hazardous Materials; Uranium Hexafluoride

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Hazardous Materials Regulations to clearly specify certain safety control measures that must be employed before uranium hexafluoride (UF_6) is offered for transportation. RSPA believes this action is necessary to further increase safety in the transportation of UF_6

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because of its potential chemical hazard in addition to its radiological hazard.

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Michael E. Wangler, Technical Division, Office of Hazardous Materials Transportation, 400 Seventh St. SW., Washington, DC 20590. (202) 366–4545.

SUPPLEMENTARY INFORMATION: On April 11, 1986, the RSPA published a Notice of Proposed Rulemaking (NPRM) (Docket HM–166V, Notice No. 86–2) in the **Federal Register** [51 FR 12529] which requested public comment on the need to amend the Hazardous Materials Regulations (HMR) by adding a new § 173.420 to specify certain safety control measures addressing packaging requirements for fissile and low specific activity (LSA) UF_6.

Eight commenters responded in writing to the Notice. Five of the comments received objected to the wording contained in proposed § 172.420(a)(1) which addresses the cleaning of packagings used for transportation of UF_6. As proposed, § 173.420(a)(1) would require all packagings for UF_6 to be cleaned "before filling" in accordance with Appendix A of American National Standards Institute (ANSI) Standard N14.1–1982. The commenters interpreted this to mean the packagings must be cleaned prior to each shipment. Appendix A of ANSI N14.1–1982, however, applies to the cleaning of new packagings only. Three of the commenters stated the requirement, as proposed would prevent the filling of in-service cylinders containing "heels," a practice "routinely . . . being carried out safely for a number of years." The RSPA agrees, and § 173.420(a)(1) has been reworded to eliminate this ambiguity.

RSPA received a comment from the Department of Energy suggesting that packagings of UF_6 be cleaned in accordance with Appendix A of the ANSI Standard prior to initial filling and at each "hydrostatic recertification." Although this terminology (hydrostatic recertification) is not used in the ANSI Standard, RSPA agrees that thorough cleaning during periodic inspection and retesting will enhance safety and has amended the proposed rule to reflect this position. In response to a comment received concerning the acceptability of methods of cleaning other than that described in Appendix A, revision of the wording contained in the NPRM clarifies RSPA's position that only the procedures prescribed in Appendix A of the ANSI Standard are acceptable for cleaning new packagings and packagings during periodic inspection and test.

Two of the commenters inquired about the acceptability of using the present weight fill limits listed in Table 1 of ANSI N14.1–1982 for determining the maximum quantity of UF_6 allowed in one packaging during transportation. Additionally, one commenter suggested that RSPA specify a density value for UF_6 at 70 °F. to be used when calculating the mass of UF_6 which would occupy 61 percent of the volumetric capacity of the packaging used for its transportation.

The density of UF_6 at a 61 percent volume limit at 70 °F is 317.8 lb/ft ^{3} as given in Department of Energy Report ORO–651. However, since the percent volumetric fill limit and temperature were specified, designation of a density value was considered to be unnecessary. Additionally, the fill limits for each type of cylinder as specified in ANSI N14.1–1982 are equivalent to 61 percent of the volumetric capacity at 70 °F. Since the rulemaking could not address specific fill limits for each type of cylinder, the specification of a percent of volumetric capacity at a specific temperature was deemed to be the most desirable solution.

Two commenters inquired about the acceptability of using cylinders which were not fabricated in accordance with ANSI N14.1–1982. These cylinders may have been constructed in accordance with an older version of the ANSI Standard or according to other specifications and may or may not conform to DOT Type A packaging standards. Although RSPA believes many of these cylinders will be acceptable for transporting UF_6, a general provision allowing use of all cylinders which fall into one of the above categories can not be justified from a safety standpoint. Therefore, any cylinder not fabricated in accordance with ANSI N14.1–1982 will require an exemption granted under the provisions of Part 107 of the HMR before transportation of UF_6 is authorized.

One respondent questioned the safe transportation of cylinders filled with UF_6 that have been stored for many years. Under the ANSI standard, filled cylinders are excepted from the 5-year hydrostatic test requirement prescribed for packages of UF_6 in ANSI N14.1982. Based upon information concerning the physical, chemical, and radiological properties of UF_6, RSPA believes that this compound, when properly packaged, is not materially affected by lengthy delays between shipments. Therefore, there should be no effective change to the contents of the packaging, provided that the requirements of 49 CFR 173.420(a) continue to be met.

Shippers of UF_6 are reminded that in addition to the specific shipping requirements stated herein, all shipments of UF_6 are subject to the standard requirements for all packages (§ 173.24) and the quality control requirements for shipments of radioactive materials (§ 173.475).

Several comments expressed concern over the use in the NPRM of the term "packaging" rather than "cylinder" for containment devices for UF_6. However, because these packagings are not fabricated in accordance with a DOT cylinder specification, use of the term "cylinder" is not appropriate. In addition because the containers described in the ANSI Standard may be transported without additional packing or overpack, the requirements in 49 CFR 173.403 for a "packaging" are satisfied.

RSPA received one comment which stated the volumetric and pressure limitations proposed in the NPRM should be changed to "63.4% at 70 °F" and "less than 10 psia at 70 °F," respectively. RSPA disagrees. The limitations proposed in the NPRM (i.e., 61% and 14.7 psia) were taken from the ANSI Standard and U.S. Department of Energy Report ORO–651. The commenter failed to provide a technical basis for the proposed changes, and, without supporting data, deviation from acceptable industry standards as adopted in this amendment is not justified.

One commenter suggested the marking requirements prescribed under the ANSI Standard be incorporated into the final rule. RSPA agrees and has included a provision for compliance with the marking requirements established under ANSI N14.1–1982 to provide accurate information concerning the packaging's specification, manufacturer's identification, etc.

One commenter suggested that the "complete package system", the 21PF overpack, be discussed in the final rule. Requirements regarding the 21PF overpack are being addressed in a separate rulemaking under Docket No. HM–190, and are outside the scope of this rulemaking.

Additionally, a reference to § 173.421–2 was inadvertently omitted as one of the applicable requirements identified in the proposed § 173.420(a). This reference has been added. Similarly, the reference to the appropriate applicable section in the column (5)(a) for the entry "uranium hexafluoride, low specific activity" has been changed to refer to § 173.421–2.

In consideration of the comments received, RSPA is adopting the amendments proposed in Notice 86–2, with the following changes:

1. Packagings for UF_6 must be cleaned in accordance with ANSI N14.1–1982 both prior to initial filling and during periodic inspection and test; and

2. Packagings for UF_6 must be marked in accordance with ANSI N14.1–1982 (in addition to the markings already prescribed in the HMR).

Administrative Notices

The RSPA has determined that this rulemaking (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises, or small governmental jurisdictions; and (4) does not require and environmental impact statement under the National Environmental Policy Act (40 U.S.C. 4321 et seq.). A regulatory evaluation is available for review in the docket. Based on limited information concerning the size and nature of entities likely affected, I certify that this regulation will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects

49 CFR Part 172

Hazardous material transportation, Hazardous materials table.

49 CFR Part 173

Hazardous materials transportation, Packaging, Radioactive Materials.

In consideration of the foregoing, 49 CFR Parts 172 and 173 is amended as follows:

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

1. The authority citation for Part 172 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR Part 1, unless otherwise noted.

§ 172.101 [Amended]

2. In the § 172.101 Hazardous Materials Table:

a. For the entry "Uranium hexafluoride, fissile (containing more than 1% U–235)," the column (5)(b) section reference is revised to read "173.417, 173.420."

b. For the entry "Uranium hexafluoride, low specific activity" the column (5)(a) section reference is revised to read "173.421–2".

c. for the entry "Uranium hexafluoride, low specific activity," the column (5)(b) section reference is revised to read "173.420, 173.425."

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

3. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1806, 1807, 1808; 49 CFR Part 1, unless otherwise noted.

4. A new § 173.420 is added to read as follows:

§ 173.420 Uranium hexafluoride (fissile and low specific activity).

(a) In addition to any other applicable requirements of this subchapter, uranium hexafluoride, fissile or low specific activity, shall be packaged in conformance with the following requirements:

(1) Before initial filling and during periodic inspection and test, packagings shall be cleaned in accordance with the specific procedures of Appendix A of American National Standard N14.1–1982;

(2) Packagings must be designed, fabricated, inspected, tested and marked in accordance with American National Standard N14.1–1982;

(3) Uranium hexafluoride must be in solid form when offered for transportation;

(4) The volume of the solid uranium hexafluoride at 70° F must not exceed 61% of the volumetric capacity of the packaging; and,

(5) The pressure in the package at 70° F must be less than 14.8 psia.

(b) Packagings of uranium hexafluoride must be periodically inspected, tested and marked in accordance with American National Standard N14.1–1982.

(c) Each repair to a packaging for uranium hexaflouride shall be performed in conformance with American National Standard N14.1–1982.

Issued in Washington, DC on Nov. 10, 1986 under authority delegated in 49 CFR Part 1.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 86–25948 Filed 11–17–86; 8:45 am]

BILLING CODE 4910-60-M

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49 CFR Part 192

[Docket PS–91; Amdt. 192–55]

Pipeline Safety; Interval for Review and Calculation of Relief Device Capacity

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This amendment permits the review and calculation of the capacity of certain relief devices to be made at intervals not exceeding 15 months, but at least once each calendar year. Under the present rule, the review and calculation must be made at intervals not exceeding one-year, a frequency which causes inconvenience in scheduling.

EFFECTIVE DATE: December 18, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Paul J. Cory, (202) 366–4561, regarding the content of this amendment, or the Dockets Branch (202) 366–5046 regarding copies of the amendment or other information in this docket.

SUPPLEMENTARY INFORMATION:

Background

By letter of November 16, 1985, the Gas Piping Technology Committee of the American Society of Mechanical Engineers petitioned RSPA to amend § 192.743(b) to permit the review and calculation of relieving device capacity to be made at the same interval permitted for the testing of relieving devices under § 192.743(a) (Petition No. P–31).

The petition points out that the reviewing and calculation permitted by § 192.743(b), "at intervals not exceeding one-year," is an alternative to the testing of pressure relief devices (except rupture discs) required by § 192.743(a) in situations where the test is not feasible. Under § 192.743(a) testing is required "at intervals not exceeding 15 months, but at least once each calendar year." Thus, the petition explains that operators are required to keep separate maintenance schedules for relief devices depending on whether they are feasible to test. Separate schedules have no apparent safety benefit but add inconvenience to scheduling.

RSPA's review of the petition found the proposal justified. Therefore, a Notice of Proposed Rulemaking (NPRM) (51 FR 21939, June 17, 1986) was published proposing to amend the interval for review and calculation of the required capacity of each relieving device at each station under § 192.743(b) by replacing the words "at intervals not exceeding one year" with "at intervals not exceeding 15 months but at least one each calendar year." As a separate matter, RSPA noted in the preamble of the NPRM that recalculation of relief capacity is not necessary when the review documents that prior calculation parameters have not changed to make current capacity inadequate.

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Comments Favoring the NPRM

Twenty-five commenters responded to the NPRM: 2 trade associations, 20 pipeline operators, and 3 State regulatory agencies. All but one commenter agreed with amending § 192.743(b) as proposed.

Four of the commenters who favored the amendment also wanted the wording of the final regulation modified to state the conditions under which capacity need not be recalculated, as RSPA discussed in the preamble of the NPRM. This suggestion would clarify the intent of the existing requirement and is adopted in the final rule.

One of the commenters who favored the proposal made further recommendations for modification of § 192.743 that were outside the scope of the NPRM but which RSPA will consider in future regulatory review activities.

Comment Opposing the NPRM

One commenter objected to the proposed change as a "frivolous and unnecessary relaxation in safety code requirements." This commenter argued that the 15-month interval in the testing rule was provided primarily to allow for scheduling problems in running field tests and that similar problems do not arise in performing the alternative review and calculation in an office. This commenter further stated that the shorter interval for review and calculation is not an undue burden since if testing is not done, the alternative review and calculation should be done as soon as possible to provide for any needed increase in relieving capacity.

RSPA does not believe this commenter raised a substantial safety issue, since the proposal would merely place the interval for review and calculation on par with the interval now allowed for testing. As testing is the primary safety requirement (review and calculation may be done only when testing is not feasible), equating the two intervals should have no adverse effect on safety. Also, while RSPA agrees that safety should be achieved as soon as possible, the timing of an action must be considered in light of all the circumstances. In this case, requiring faster action for one safety alternative than the other creates compliance difficulties that do not appear to be offset by any demonstrable safety benefit.

Advisory Committee Review

Section 4(b) of the Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. 1673(b)), requires that each proposed amendment to a safety standard established under this statute be submitted to a 15-member advisory committee for its consideration. The Technical Pipeline Safety Standards Committee, composed of persons knowledgeable about transportation of gas by pipeline, considered the proposed amendment to § 192.743(b) in a meeting on June 10, 1986, at Washington, DC. The Committee found the proposed amendment to be technically feasible, reasonable, and practicable.

Classification

This final rule is considered to be nonmajor under Executive Order 12291 and is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. The rule merely provides flexibility in the frequency for review and calculation of capacity of relief devices as an alternative to actual testing.

Since the impact of this final rule is expected to be minimal, the agency certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 192

Relief device, Testing, Pipeline safety.

PART 192—[AMENDED]

In view of the foregoing, RSPA amends 49 CFR Part 192 as follows:

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 U.S.C. 1672; 49 U.S.C. 1804; 49 CFR 1.53 and Appendix A of Part 1.

2. Section 192.743(b) is revised to read as follows:

192.743 Pressure limiting and regulating stations: Testing of relief devices.

* * * * *

(b) If a test is not feasible, review and calculation of the required capacity of the relieving device at each station must be made at intervals not exceeding 15 months, but at least once each calendar year, and these required capacities compared with the rated or experimentally determined relieving capacity of the device for the operating conditions under which it works. After the initial calculations, subsequent calculations are not required if the review documents that parameters have not changed in a manner which would cause the capacity to be less than required.

* * * * *

Issued in Washington, DC, November 13, 1986.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 86-25946 Filed 11-17-86; 8:45 am]

BILLING CODE 4910-60-M

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49 CFR Part 192

[Docket No. PS-92; Amdt. 192-54]

Transportation of Natural and Other Gas by Pipeline; Exceptions from Nondestructive Testing of Welds in Transmission Line Repair

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies an existing rule concerning nondestructive testing of non-strength tested girth welds made in the replacement of damaged transmission lines segments. The amendment clarifies that these girth welds qualify for the same exceptions from testing as now apply to girth welds that are strength tested or are made in the replacement of pipe in transmission lines for reasons other than repair. The effect of the amendment should be to reduce repair costs and speed completion of repairs in transmission lines.

EFFECTIVE DATE: This final rule takes effect December 18, 1986.

FOR FURTHER INFORMATION CONTACT: L.M. Furrow, (202) 366-2392.

SUPPLEMENTARY INFORMATION: Part 192 contains two rules that govern the nondestructive testing of girth welds made when a segment of transmission line is repaired by replacing damaged pipe. One, § 192.719(a)(2), which is directed specifically to transmission line repair, requires that "all field girth butt welds that are not strength tested must be tested after installation by nondestructive tests meeting the requirements of § 192.243." Section 192.243 sets forth procedures for nondestructive testing and percentages of welds that must be tested. The other, more general rule, § 192.214(b), requires, with certain exceptions, that all newly made girth welds in steel pipelines which are to operate at a hoop stress of 20 percent or more of specified minimum yield strength (which includes transmission lines) be nondestructively tested in accordance with § 192.243. The excepted girth welds are those that are visually inspected and approved by a qualified inspector, and (1) located in a pipeline that is less than 6 inches in nominal diameter, or (2) if the welds are so limited in number that nondestructive testing is impractical, located in a pipeline that will be operated at less than 40 percent of SMYS. This general nondestructive testing rule, with its exceptions, applies to girth welds regardless of whether they are strength tested. The rule is also incorporated by reference in § 192.719(b), which governs the nondestructive testing of welds in several transmission line repair methods, including repair by the installation of replacement pipe.

Some operators have interpreted § 192.719(a)(2) to be more restrictive with respect to girth weld testing than § 192.241(b), because on its face it does not provide the exceptions found in § 192.241(b) and it pertains specifically to transmission line repair. By letter of February 7, 1986, the Gas Piping Technology Committee of the American Society of Mechanical Engineers (ASME) petitioned RSPA to exclude from § 192.719(a)(2) the two categories of girth welds that § 192.241(b) excepts from nondestructive testing. The rationale ASME gave for its proposal was that the two exceptions in § 192.241(b) apply to new construction, and there should be "no lessening in safety if they are also applicable to girth welds made during repair." ASME also argued that adding the exceptions would reduce costs where a nondestructive testing crew is not otherwise needed. In addition, ASME pointed out that the latest edition (1982) of the American National Standards Institute B31.8 Code, *Gas Transmission and Distribution Piping Systems*, allows pipeline operators to apply the subject exceptions to nondestructive testing of girth welds made during repair of transmission lines by pipe replacement.

RSPA had previously addressed the matter of the ASME proposal in Interpretation 81–4, dated October 2, 1981. This interpretation, which was set forth in Notice 1 (51 FR 24174, July 2, 1986) of this proceeding, held that the exceptions provided by § 192.241(b) also apply to nondestructive testing required by § 192.719(a)(2).

In view of Interpretation 81–4, the ASME proposal, and the exceptions in the B31.8 Code, RSPA proposed in Notice 1 to amend § 192.719(a)(2) by deleting the existing reference to "§ 192.243" and adding in its place "§ 192.241(b)", and by making associated editorial changes.

Sixteen persons submitted comments on the notice of proposed rulemaking (2 trade associations and 14 gas companies), and each one supported the concept of the proposal.

Two commenters, however, pointed out that if § 192.719 were amended as set out in the notice, a dual reference to the nondestructive testing standards of § 192.241 would be created (through the proposed § 192.719(a)(2) and the existing § 192.719(b)) that could be confusing. The proposed § 192.719(a)(2) reference would apply to girth welds that are *not* strength tested, while the § 192.719(b) reference applies to these welds as well as those that *are* strength tested. RSPA agrees with the two commenters that adding the reference to § 192.241(b) in § 192.719(a)(2) would create an unintended implication that non-strength tested grith welds are to be treated differently than those that are strength tested. Further, it appears that the proposed amendment to § 192.719(a)(2) would duplicate requirements of §§ 192.241(b) and 192.719(b) that now apply to non-strength tested girth welds made in the repair of transmission lines, and thus be unnecessary.

In the final rule, therefore, RSPA has revised § 192.719(a) by deleting that portion of paragraph (a)(2) that concerns nondestructive testing and combining the remainder of paragraph (a)(2) with paragraph (a)(1) to form an undivided paragraph (a) dealing with the pressure testing of replacement pipe. The purpose of this rulemaking, which is to clarify that the exceptions from nondestructive testing provided by § 192.241(b) pertain to testing of non-strength tested girth welds used to join replacement pipe in repaired transmission lines, is still achieved, since § 192.241(b) applies to these welds and the reference to § 192.241 in § 192.719(b) includes the § 192.241(b) exceptions.

Advisory Committee Review

The Technical Pipeline Safety Standards Committee, a 15-member advisory committee established under section 4(b) of the National Gas Pipeline Safety Act of 1968, considered the proposed rule at a meeting in Washington, DC on June 10, 1986. The Committee declared the proposed rule to be technically feasible, reasonable, and practicable. A transcript of the Committee's deliberation and a report of its findings are available in the docket for this proceeding.

Classification

Since this final rule will have a positive effect on the economy of less than $100 million a year, will result in cost savings to consumers, industry, and government agencies, and no adverse impacts are anticipated, the rule is not "major" under Executive Order 12291. Also, it is not "significant" under Department of Transportation procedures (44 FR 11034). RSPA believes that the rule will reduce the costs of repairing damaged transmission lines by reducing the number of occasions nondestructive testing is done to comply with the current rule. However, this savings is not expected to be large enough to warrant preparation of a Regulatory Evaluation.

Based on the facts available concerning the impact of this rulemaking action, I certify pursuant to section 605 of the Regulatory Flexibility Act that the action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 192

Pipeline safety, Welds, Nondestructive testing, Replacement.

PART 192—[AMENDED]

In consideration of the above, RSPA amends Part 192 of Title 49 of the Code of Federal Regulations as follows:

1. The authority citation for Part 192 continues to read as set forth below:

Authority: 49 U.S.C. 1672 and 1804; 49 CFR 1.53 and Appendix A of Part 1.

2. Section 192.719(a) is revised to read as follows:

§ 192.719 Transmission lines: Testing of repairs.

(a) *Testing of replacement pipe.* If a segment of transmission line is repaired by cutting out the damaged portion of the pipe as a cylinder, the replacement pipe must be tested to the pressure required for a new line installed in the same location. This test may be made on the pipe before it is installed.

* * * * *

Issued in Washington, DC on November 13, 1986

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc 86–25947 Filed 11–17–86; 8:45 am]

BILLING CODE 4910-60-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1058

[Ex Parte No. MC–41]

Identification of Motor Vehicles; Luxury-Type Limousine Passenger Service

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

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SUMMARY: Subsequent to notice (51 FR 28249, August 6, 1986) and comment the Commission is exempting from vehicle identification regulations at 49 CFR Part 1058, vehicles with a capacity of six or fewer passengers when engaged in luxury-type limousine passenger service. Carriers offering and passengers using this type of specialized service have found that the identification of vehicles, formerly required by Part 1058 detracted materially from the exclusive luxury nature of the service. The Commission also is eliminating the unnecessary regulation prohibiting the use of its vehicle identification plates issued prior to 1945. The amendments redesignating § 1058.5 as § 1058.5(a), the addition of a new paragraph (b), and the elimination of § 1058.6 are contained in Appendix A of the decision.

EFFECTIVE DATE: The revised rules are effective on December 18, 1986.

FOR FURTHER INFORMATION CONTACT: Roy M. Wilkins, 202-275-7639.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. Infosystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423 or call 289-4357 (DC Metropolitan area) or toll-free (800) 424-5403.

This action will not significantly affect, either the quality of the human environment or energy conservation. This rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1058

Motor carriers.

Decided: November 7, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,
Secretary.

Appendix A

Title 49, Code of Federal Regulations Part 1058, is amended as follows:

PART 1058—IDENTIFICATION OF VEHICLES

1. The authority citation for 49 CFR Part 1058 is revised to read as follows:

Authority: 49 U.S.C. 10922 and 10530; 5 U.S.C. 553.

2. Section 1058.5 is amended by designating the existing text as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 1058.5 Passenger vehicles.

* * * * *

(b) Sections 1058.1 through 1058.4 shall not apply to limousine-type vehicles with a capacity not to exceed six passengers when engaged in a non-scheduled, charter, luxury-type transportation service for passengers and their baggage.

§ 1058.6 [Removed]

3. Section 1058.6 is removed.

[FR Doc. 86-25971 Filed 11-17-86; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 51, No. 222
Tuesday, November 18, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 435

[Docket No. CAS-RM-79-112-B]

Mandatory Energy Conservation Standards for New Federal Residential Buildings

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice of extension of public comment period.

SUMMARY: The Department of Energy (DOE) extends to January 16, 1987, the time for public comment on DOE Notice of Proposed Interim Rule to establish a new Part 435 in Title 10 of the Code of Federal Regulations, Subpart C, entitled "Mandatory Energy Conservation Standards for New Federal Residential Buildings." DOE is developing energy conservation performance standards for new buildings pursuant to Title III of the Energy Conservation and Production Act. DOE, recognizing the complexity of the proposed rule, has determined that it is reasonable to provide the public with additional time for analysis and comment.

DATES: Written comments must be received no later than January 16, 1987, to receive consideration by the Department.

ADDRESSES: All written comments (7 copies) are to be submitted to: Office of Conservation and Renewable Energy, Hearings and Dockets Branch, U.S. Department of Energy, Docket Number CAS-RM-79-112-B, 1000 Independence Avenue, SW., Room 6B-025, Washington, DC 20585, (202) 252-9319.

Copies of the transcripts of the public hearings, the supporting documentation, and the written public comments received may be obtained from the DOE Freedom of Information Reading Room, Room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6020, 9:00 a.m.-4:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Jean J. Boulin, Architectural and Engineering Systems, CE-131, U.S. Department of Energy, Room GF-231, 1000 Independence Avenue, SW., Washington, DC 20858, (202) 252-9446.

Paul Cahill, Office of General Counsel, U.S. Department of Energy, Room 6B-144, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-1326.

SUPPLEMENTARY INFORMATION: The Department of Energy announced, on August 20, 1986 (51 FR 29754), the availability of Interim Mandatory Standards for Federal Residential Buildings entitled, "Mandatory Energy Conservation Standards for New Federal Residential Buildings." The Notice of Proposed Rulemaking was intended to solicit public comment on the interim standards. The proposal requires a Federal agency to establish an energy consumption goal for the design of a new Federal Residential Building using the computerized calculation procedure provided in a designated Federal micro-computer program (COSTSAFR-Conservation Optimization Standard for Savings in Federal Residences) and to adopt such procedures as may be necessary to assure that the design of a new Federal residential building is not less energy conserving than the energy consumption goal established for the design.

At the time of publication of the Notice several documents were made available for public review. In addition, on September 23, 1986, an ERRATA Addenda was sent to all those who received the initial supporting documents. The Addenda informed the user of the need for an additional calculation not described in the supporting documents. Several initial comments have expressed considerable delay in analysis due to the difficulty of obtaining an 8087 math co-processor (which is necessary to run the COSTSAFR program), and to an unfamiliarity with analyzing micro-computer programs such as COSTSAFR. Further, other comments have requested the need for a completed sample with calculations of the "COSTSAFR program compliance printout," showing what steps are necessary to use the printout. The Department anticipates this document will be issued as an addenda to the COSTSAFR-User's Manual on about November 25, 1986.

Because of the public interest on the Proposed Interim Mandatory Energy Conservation Standards for New Federal Residential Buildings, the Department has decided to extend the public comment period by 59 days to enable interested persons to provide more in-depth comment on the Standards.

Written Comment Procedures

Interested persons are invited to participate in this proceeding by submitting written data, views or arguments with respect to the subjects set forth in this notice. Instructions for submitting written comments are set forth below.

Comments should be labeled both on the envelope and on the comments, "Residential Building Standards [Docket No. CAS-RM-79-112-B]" and must be received by the date indicated in the beginning of this notice, in order to insure full consideration. Seven (7) copies are requested to be submitted. All comments and other relevant information received by the date specified at the beginning of this notice will be considered by DOE before final action is taken on the proposed regulation.

All written comments received on the proposed rule will be available for public inspection at the Freedom of Information Reading Room as provided at the beginning of this notice.

List of Subjects in 10 CFR Part 435

Architects, Building code officials, Buildings, Energy conservation, Energy conservation building performance standards, Engineers, Federal buildings and facilities, Housing, Insulation, Voluntary performance standards.

For the reasons set forth, time for public comment on the above referenced proposed interim rule is extended to January 16, 1987.

Issued in Washington, DC on November 14, 1986.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 86-26109 Filed 11-17-86; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86–CE–58–AD]

Airworthiness Directives; Mechanical Products 4001, 4200, 4310, and 8500 Series Circuit Breakers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain Mechanical Products, Inc. circuit breakers installed in any aircraft. The proposed AD requires the removal from service of the applicable circuit breakers. This action is prompted by reports of electrical short circuiting within the circuit breakers which may cause loss of essential equipment, an electrical fire, or an electrical shock hazard on aircraft.

DATES: Comments must be received on or before January 8, 1987.

ADDRESSES: Mechanical Products Service Instruction (identified on the back page with the date 10/86), applicable to this AD may be obtained from Mechanical Products, Inc., 1824 River Street, Post Office Box 729, Jackson, Michigan 49204; Telephone (517) 782–0391; or the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86–CE–58–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Donald P. Michal, FAA, Chicago Aircraft Certification Office, ACE–130C, 2300 East Devon Avenue, Des Plaines, Illinois 60018; Telephone (312) 694–7127.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86–CE–58–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

In 1984, a design change was made to certain Mechanical Products 4100, 4200, 4310, and 8500 Series circuit breakers which inadvertently allowed an internal part to be assembled incorrectly, resulting in the possible rotation of the part which can cause a short circuit. Two recent field failures have been reported. One occurred during a pre-installation panel assembly test on a unit which had not been in service, and another failed in an airplane after approximately 250 flight hours and an estimated 200 manual actuations. The later failure caused an electrical arc between the circuit breaker and the airplane mounting panel of sufficient duration to melt the surrounding panel material. To date 33,577 units have been tested by the manufacturer and 79 units (or 0.235%) were found to be incorrectly assembled.

Since the condition described is an unsafe condition which is likely to exist or develop in other Mechanical Products 4001, 4200, 4310, and 8500 Series circuit breakers of the same design, the proposed AD would require inspection for and removal of these circuit breakers from all aircraft. This proposal also would require the return of all applicable circuit breakers to the manufacturer for rework to ensure replacement parts availability.

The FAA has determined that approximately 163,000 circuit breakers of the type described in this AD could be used in commercial aircraft. Of the total 163,000 units, approximately 74,000 units were for civil aircraft customers, and 89,000 units went to distributors and have unknown destinations. Mechanical Products, Inc. has initiated a recall which has resulted in the return of approximately 34,000 units to date. Thus 129,500 units remain unaccounted for. The estimated time to inspect and replace each unit is 0.5 hours, for an estimated cost, assuming $40 per hour, of $20 per unit or a total cost of $2,580,000. The total cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities using these circuit breakers.

Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Mechanical Products, Inc.: Applies to the following 4001, 4200, 4310, and 8500 Series circuit breakers:

Mechanical products designation	Military designation	Ampere rating	Date code
4001 Series.	MS22073	1 thru 5	8501 thru 8636.
4200 Series.	MS26574	½ thru 5	8430 thru 8636.
4310–001,–019 Series.	MS3320	1 thru 5	8603 thru 8636.
8500 Series.	(None)	1 thru 5	8514 thru 8636.

This AD does not apply to circuit breakers produced or installed prior to July 23, 1984, (the thirtieth week of 1984), or to circuit breakers which have been inspected by the manufacturer, found free of defect, marked with a white inverted Z or a T painted on the terminal end, and have an additional date code with an "R" prefix.

Note 1: As an aid in identification, the bodies of these circuit breakers are blue or black in color.

Note 2: The date codes listed above are used to identify the year and week of manufacture, i.e., 8430 indicates the thirtieth week of 1984, and 8636 indicates the thirty-sixth week of 1986. These date codes may be found on the top, side, or bottom of the circuit breakers.

Note 3: As an example the unit may have the additional date code of R8642, where "R" designates a retest by Mechanical Products, 86 indicates the year 1986, and 42 indicates the 42nd week of 1986.

Compliance: Required within six months after the effective date of this AD, unless already accomplished.

To prevent possible loss of essential equipment, electrical fire, or electrical shock hazard on aircraft, accomplish the following:

(a) Visually inspect for installation in aircraft of any of the applicable circuit breakers in accordance with the instructions contained in Mechanical Products Service Instruction (identification on the back page with the date 10/86) and prior to further flight remove all units from service. Applicable aircraft records may be a source of information in complying with the requirements of this AD.

(b) Return all affected circuit breakers to Mechanical Products, Inc., 1824 River Street, Post Office Box 729, Jackson, Michigan 49204.

(c) Aircraft may be flown in accordance with FAR 21.197 to a location where the AD may be accomplished.

(d) An adjustment to the compliance time or an equivalent means of compliance with this AD may be used if approved by the Manager, Chicago Aircraft Certification Office, ACE-115C, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Mechanical Products, Inc., 1824 River Street, Post Office Box 729, Jackson, Michigan 49204; or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on November 7, 1986.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 86-25921 Filed 11-17-86; 8:45 am]

BILLING CODE 4910-3-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 612]

Old Mission Peninsula Viticultural Area; Michigan

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF), is considering the establishment of a viticultural area in Grand Traverse County, Michigan, to be known as "Old Mission Peninsula." The proposed viticultural area is located in the northwestern portion of the state's lower peninsula. The petition was submitted by a winery located in the proposed area. ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers identify the wines they may purchase. The establishment of viticultural areas allows wineries to further specify the origin of wines they offer for sale to the public.

DATES: Written comments must be received by January 2, 1987.

ADDRESS: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC, 20044-0385.

(Notice No. 612).

Copies of the petition, the proposed regulations, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Reading Room, Room 4406, Ariel Rios Federal Building, 12th and Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Edward A. Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revised regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of Part 9.

Section 4.25a(e)(2), outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. maps with the boundaries prominently marked.

Petition

AFT has received a petition proposing a viticultural area encompassing the narrow peninsula above Traverse City, Michigan. The proposed viticultural area is to be known as "Old Mission Peninsula." The petition was submitted by Edward O'Keefe, President of the Chateau Grand Traverse Winery, the only winery located in the proposed viticultural area. The proposed area consists of all the land in Peninsula Township (excluding Marion and Bassett Islands). It also includes a small portion of Traverse City Township. This peninsula is a sliver of land that juts out into Grand Traverse Bay, forming on its east side, the East Arm of Grand Traverse Bay and on its west side the West Arm of Grand Traverse Bay. The proposed viticultural area is approximately 19 miles long and no more than 3 miles wide at any point. The total area encompassed by the proposed boundaries consists of 181 square miles (101,440 acres) of land.

There are 50 acres of vinifera vineyards for wine production located in the proposed viticultural area with 31 more acres planned by 1989. The proposed area if approved as an American viticultural area will be one of Michigan's four recognized grape-growing regions. Leelanau Peninsula located nearby to the west (across Grand Traverse Bay) is one of them.

Evidence of Name

The petitioner claimed that the petitioned area is known as Old Mission Peninsula. He submitted historical documentation to support this statement. According to the book titled *Michigan History* by Virgil J. Vogel, the French voyagers who paddled southward on Lake Michigan from the Straits of Mackinac saw two indentations on the eastern shore. In crossing the bays from one headland to another, they called the smaller one La Petite Traverse (Old Mission Peninsula) and the larger La Grande Traverse (Leelanau Peninsula). Grand Traverse Bay is divided by Old Mission Peninsula, at the foot of which, is Traverse City.

According to documentation submitted by the petitioner, the settlement of the proposed viticultural area was begun by Reverend Peter Dougherty, who founded the first Indian school on the northeast shores of Old Mission Peninsula, at Mission Harbor. After the school was abandoned in 1952 a new school called "New Mission" was established in an area to the west, now known as Leelanau Peninsula (Leelanau County). From that time on, the old school became known as "Old Mission." At the same time the entire peninsula where the old school was situated became known as "Old Mission Peninsula." Today, this narrow strip of land is still referred to as "Old Mission Peninsula."

According to Leon D. Adams in *The Wines of America*, the Chateau Grand Traverse Winery was the first winery in recent history to plant vines and construct a winery on the Old Mission Peninsula.

Historical or Current Evidence That the Proposed Boundaries of the Viticultural Area Are Correct

The proposed Old Mission Peninsula viticultural area is bounded on three sides by the waters of Grand Traverse Bay, and connected on the south by the mainland of Michigan's lower peninsula, at Traverse City. The south boundary chosen by the petitioner, the unmarked light-duty road (known locally as Eastern Avenue) bordering on Northwestern Michigan College, although a man-made boundary, coincidentally is the demarcation point between the Old Mission Peninsula and the inland areas of northwestern Michigan's lower peninsula.

Evidence Relating to the Geographic Features Such As Climate, Soil, Elevation, Physical Features, etc., Which Set the Proposed Viticultural Area Apart From the Surrounding Areas

The petitioner furnished information which identified the proposed area as a fruit-growing region (cherries, peaches, plums, apples, berries and grapes) for over 100 years. According to this information, the region is world famous for the production of cherries and other agricultural products. The petitioner claims that Grand Traverse County leads the nation (and world) in cherry production. He claims the majority of those cherries come from Old Mission Peninsula.

In a report titled, *The Grand Traverse County Region* (on the Geological and Industrial Resources of the Counties of Antrim, Grand Traverse, Benzie and Leelanau) published in 1866, it stated that grapes thrive throughout the region. The report said that at New Mission (Old Mission Peninsula), Isabella and Catawba grapes were growing. In recent years there has been a revival in interest in grape-growing for commercial purposes in the proposed viticultural area. The one bonded winery in the proposed viticultural area was established in 1975. The petitioner claims the peninsula is isolated and distinguishable from the surrounding area by virtue of natural boundaries and unique geographical features.

Climate

According to the petitioner a climatic heritage of favorable summer and winter climate caused by the moderating influence of Lake Michigan is most pronounced in the Grand Traverse Region (as previously described this area includes Old Mission Peninsula, Leelanau Peninsula and a few surrounding counties). The southwest winds must sweep the whole length of Lake Michigan before crossing the shores of the Grand Traverse Region.

The petitioner enclosed a letter from the Grand Traverse County Cooperative Extension Service detailing the unique features of the proposed Old Mission Peninsula. According to Steven B. Fouch, Extension Agricultural Agent of the Cooperative Extension Service (Michigan State University/U.S. Department of Agriculture), the proximity to Grand Traverse Bay and the southwesterly breezes off Lake Michigan tend to moderate air temperature on the Old Mission Peninsula. This results in mild winters, delayed springs, and relatively cool summers.

Just as Lake Michigan tempers the Grand Traverse Region in general, the surrounding deep waters of the Grand Traverse Bay, coupled with southwesterly winds carrying warmth from the mainland, create a microclimate on the Old Mission Peninsula. The Peninsula, then, is doubly tempered; once from the Lake Michigan effects, and again by the Grand Traverse Bay. This additional insulating effect of the bay is reflected in differences in total degree growing days between Old Mission Peninsula, Traverse City, and Leelanau Peninsula.

Data gathered from a National Weather Service summary for the 15-year period (1962–1976) and for the 2-year period (1980–1981) in western Michigan, was provided by the petitioner. Total growing degree days for Old Mission Peninsula at base 50 (the base temperature used for grapes as well as cherries) averages 2,075 degree days (15 year period), whereas, Traverse City and Leelanau Peninsula average 2,134 degree days over a 2-year period and 2,109 degree days over a 15-year period, respectively. However, even though total growing degree days afforded fruit crops on the Old Mission Peninsula are less in number, they are virtually frost-free, as has been experienced by local fruit growers. In contrast, area frosts have been known to wipe out identical crops in the surrounding Grand Traverse Region, with little or no damage reported on the isolated Old Mission Peninsula. Therefore, temperature variations in both the spring and fall seasons are markedly more moderate on the Old Mission Peninsula than in the immediate surrounding areas.

Soils & Topography

Although not the major distinguishing feature of the proposed Old Mission Peninsula, the soils in the proposed viticultural area vary widely, as is always the case when land is formed by glacial action and deposits. The soil levels consist of granite and limestone bedrock, clay subsoils. The Old Mission Peninsula soil type is of the Leelanau-Kalkaska series, a sandy loam that provides good drainage for fruit crops. According to Mr. Fouch (the Extension Agricultural Agent), the Leelanu-Kalkaska sand loams dominate the soil profile on the peninsula. This well-drained soil has an acidic topsoil and alkaline subsoil.

To contrast, the soils of the Leelanau Peninsula viticultural area located to the west are characterized by large deep inland lakes which add an additional moderating effect to the climate, high rolling and heavily-timbered hills in the north, and undulating plateaus in the south which rise 250 to 400 feet above Lake Michigan.

According to Mr. Fouch, the proposed viticultural area's rolling hills overlook the east and west arms of Grand Traverse Bay and are among the prime fruit sites to be found anywhere. He said that cold spring frosts settle toward the ground and flow off the rolling topography to low areas. He also said fruit is generally much safer from spring frosts on higher elevations in the area.

Based on the petitioner's evidence provided in this notice, it is his opinion, that the proposed Old Missions Peninsula viticultural area defines a region with unique climate and growing conditions different from the surrounding areas.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this notice of proposed rulemaking because the proposal is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact nor compliance burdens on a substantial number of small entities.

Compliance With Executive Order 12291

It has been determined that this proposed rulemaking is not classified as a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; and it will not have significant adverse affects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 34, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirements to collect information is proposed.

Public Participation—Written Comments

ATF requests comments from all interested persons concerning this proposed viticultural area. The document proposes possible boundaries for the area named "Old Mission Peninsula" viticultural area. However, comments concerning other possible boundaries or names for this viticultural area will be given full consideration.

Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her requests, in writing, to the Director within the 45-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Viticultural areas, Consumer protection, Wine.

Drafting Information

The principal author of this document is Edward A. Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

PART 9—[AMENDED]

27 CFR Part 9—American Viticultural areas is amended as follows:

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of contents in 27 CFR Part 9, Subpart C, is amended to add the title of 9.114 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * * * *

9.114 Old Mission Peninsula.

Par. 3. Subpart C is amended by adding § 9.114 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.114 Old Mission Peninsula.

(a) *Name.* The name of the viticultural area described in this section is "Old Mission Peninsula."

(b) *Approved Maps.* The appropriate maps for determining the boundaries of the "Old Mission Peninsula" viticultural area are 2 U.S.G.S. Quadrangle (15 Minute Series) maps, scaled at 1:62,500. They are entitled:

(1) Elk Rapids, Mich. (1957); and

(2) Traverse City, Mich. (1957).

(c) *Boundaries.* The boundaries of the proposed Old Mission Peninsula viticultural area are as follows: The boundaries in Grand Traverse County, Michigan, consist of all of Peninsula Township, excluding Marion and Bassett Islands. In addition, the proposed area takes in a small portion of Traverse City Township.

(1) The beginning point is on the Traverse City, Mich., U.S.G.S. map at the shoreline of the West Arm of Grand Traverse Bay at Section 1, (T27N, R11W), approximately 500 feet due west of the intersection of two unmarked light-duty roads (approx. 750 feet north of Bryant Park);

(2) The boundary proceeds north 19 miles along the western shoreline of the Old Mission Peninsula until it reaches the lighthouse near Old Mission Point at the north side of the Peninsula on the Elk Rapids, Mich., U.S.G.S. map, Sec. 23, T30N, R10W;

(3) It then proceeds south for approximately 19 miles along the eastern shoreline of the peninsula to the southeast portion of an unmarked light-duty road (known locally as Eastern Avenue) at Sec. 6, T27N, R10W on the Traverse City, Mich., U.S.G.S. map. The unmarked light-duty road is located immediately north of Northwestern Michigan College on the shoreline of the East Arm of the Grand Traverse Bay;

(4) The boundary travels west along the unmarked light-duty road (known locally as Eastern Avenue) for approx. 1 mile until it meets an unmarked north/south light-duty road at Sec. 1, T27N, R11W; and

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(5) Finally, the boundary travels due east 500 feet to the beginning point on the shoreline of the West Arm of the Grand Traverse Bay at Sec. 1, T27N, R11W.

Approved: November 10, 1986.

Stephen E. Higgins,

Director.

[FR Doc. 86-25982 Filed 11-17-86; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD13 85-07]

Anchorage Grounds; Columbia River, OR and WA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal by the Port of Portland, Oregon, and other Lower Columbia River ports to expand the existing Lower Columbia River Anchorage Grounds. The proposal seeks enlargement of and a change of names for the Upper and Lower Tongue Point Anchorages near Astoria, Oregon, and establishment of seven new anchorages between Longview, Washington, and Vancouver, Washington. The seven new anchorages are located as follows:

1. Between the Port of Longview docks and the main ship channel;
2. Along Sandy Island across the main ship channel from Kalama, Washington;
3. North of Sand Island across the main ship channel from Columbia City, Oregon;
4. Along Sauvie Island across the main ship channel from Bachelor Point;
5. Across the main ship channel from Sauvie Island near Hewlett Point;
6. Between Kelley Point and the main ship channel; and
7. Along Hayden Island across the main ship channel from the Port of Vancouver.

The ports have asked for this expansion to enhance their ability to efficiently and economically handle existing shipping and to provide sufficient anchorage space to accommodate increases in shipping anticipated over the next 20 years.

In response to the ports' proposal, the Coast Guard Captain of the Port in Portland, Oregon, sponsored a number of meetings of port, terminal, and steamship representatives, local pilot organizations, and other river users including the Northwest Gillnetters Association. Comments received at those meetings led to the development of specific regulations governing utilization and administration of the anchorages which have been incorporated into this Notice of Proposed Rulemaking.

If adopted as final rules, the Coast Guard intends to evaluate utilization of the new anchorages and make changes as necessary to meet the needs of river users.

DATE: Comments must be received on or before January 2, 1987.

ADDRESSES: Comments should be mailed to Commanding Officer, U.S. Coast Guard Marine Safety Office, 6767 North Basin Avenue, Portland, Oregon 97217. The comments and other material referenced in this notice will be available for inspection and copying at 6767 North Basin Avenue, Portland, Oregon, Room 1114, Mt. St. Helens Building. Normal office hours are between 8:00 a.m. and 3:45 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LCDR N.S. PORTER, U.S. Coast Guard Marine Safety Office, 6767 North Basin Avenue, Portland, Oregon 97217, (503) 240-9317.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their name and address, identify this notice (CGD13-85-07) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LT M.P. RAND, USCG, and LCDR N. S. PORTER, USCG, Project Officers, Marine Safety Office Portland, Oregon, and LCDR L.I. KIERN, USCG, Project Attorney, Thirteenth Coast Guard District Legal Office, Seattle, Washington.

Discussion of Proposed Regulations

The existing Lower Columbia River Anchorage Grounds consist of two areas located near the mouth of the river at Astoria, Oregon. Historically, these areas have provided adequate anchorage space for vessels awaiting berth at the Port of Astoria and for vessels awaiting favorable conditions for transit of the Columbia River Bar. They have not, however, provided adequate space for vessels awaiting berth at any of the Columbia's upriver ports nor have they provided an economically practical anchorage area for vessel and facility operators who realize significant cost reductions from having ships anchored near their servicing terminals.

Over the years, the inadequacies of the existing anchorage grounds led vessel operators to anchor their ships in available upriver areas closer to their servicing terminals. Statistics provided by the Port of Portland show that approximately 1,000 such anchorings occurred during the period 1981 to 1983. Current growth projections indicate that this number could double by the year 2000. Although anchoring in this manner has not caused significant navigational problems, it has resulted in occasional conflicts with commercial drift fishing operations.

Prompted by the inadequacies of the existing anchorages and the projections for future growth, the ports of Portland, Astoria, Longview, Kalama, and Vancouver began an analysis of the Lower Columbia River anchorage situation in November, 1983. Their study, which included significant input from the U.S. Army Corps of Engineers, led to submission of a proposal in June, 1984, seeking enlargement of the existing areas and formal designation of eight additional upriver areas. Most of the proposed new anchorages coincided with areas which were already being utilized on an informal, but routine, basis.

In response to the ports' proposal, the Coast Guard Captain of the Port in Portland, Oregon, began a series of meetings with port, terminal, and vessel representatives, river and bar pilots, commercial fishermen, and state fishing authorities. Information presented at those meetings and developed from related studies led to elimination of one of the proposed anchorages and minor alteration of another. Additionally, the meetings led to identification of several public and governmental concerns which required attention if the ports' proposal was to be adopted. Chief among those concerns were the potential conflicts between ships using the anchorages and commercial fishing operations and the need for regulations which would ensure efficient management and proper utilization of the new and existing areas.

Based on the results of the anchorage meetings, the Captain of the Port developed a comprehensive list of anchorage use requirements which are included in § 110.228(b) of the proposed rules. These requirements eliminate the potential conflict between anchoring and fishing by prohibiting use of specific anchorages during officially designated drift fishing seasons, provide specific anchorage use guidelines, and provide the Coast Guard with realistic and enforceable anchorage management tools.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Although expansion of the Lower Columbia River Anchorage Grounds might adversely affect the commercial fishing industry, this proposal has been drafted so as to eliminate those effects. All other major users of the waterway are expected to either benefit from or be unaffected by adoption of these rules. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Lists of Subjects in 33 CFR Part 110

Anchorage Grounds.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471; 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 110.228 is revised to read as follows:

§ 110.228 Columbia River, Oregon and Washington.

(a) *The anchorage grounds*—(1) *Astoria North Anchorage.* An area enclosed by a line beginning north of Astoria, Oregon, at latitude 46°11'47" N., longitude 123°49'39" W.; thence continuing northerly to latitude 46°12'05" N., longitude 123°49'35" W.; thence northeasterly to latitude 46°13'16" N., longitude 123°46'23" W.; thence southerly to latitude 46°13'01" N., longitude 123°46'12" W.; thence southwesterly to latitude 46°11'52" N., longitude 123°49'13" W.; thence westerly to the point of beginning.

(2) *Astoria South Anchorage.* An area enclosed by a line beginning north of Astoria, Oregon, at latitude 46°11'38" N., longitude 123°48'59" W.; thence continuing northerly to latitude 46°11'47" N., longitude 123°49'08" W.; thence northeasterly to latitude 46°13'08" N., longitude 123°45'50" W.; thence northeasterly to latitude 46°13'07" N.,longitude 123°45'37" W.; thence southerly to latitude 46°12'56" N., longitude 123°45'30" W.; thence southwesterly to latitude 46°12'24" N., longitude 123°46'33" W.; thence southwesterly to latitude 46°12'07" N., longitude 123°47'24" W.; thence southwesterly to the point of beginning.

(3) Longview Anchorage. An area enclosed by a line beginning southeast of Longview, Washington, at latitude 46°07'15" N., longitude 122°59'06" W.; thence continuing northeasterly to latitude 46°07'23" N., longitude 122°58'56" W.; thence southeasterly to latitude 46°06'58" N., longitude 122°58'20" W.; thence southeasterly to latitude 46°06'42" N., longitude 122°57'56" W.; thence southerly to latitude 46°06'33" N., longitude 122°58'04" W.; thence westerly to latitude 46°06'35" N., longitude 122°58'16" W.; thence northwesterly to latitude 46°06'42" N., longitude 122°58'28" W.; thence northwesterly to the point of beginning.

(4) *Kalama Anchorage.* An area enclosed by a line beginning northeast of Sandy Island at latitude 46°00'59" N., longitude 122°51'31" W.; thence continuing southeasterly to latitude 46°00'55" N., longitude 122°51'27" W.; thence southeasterly to latitude 46°00'36" N., longitude 122°51'11" W.; thence southerly to latitude 45°59'42" N., longitude 122°50'48" W.; thence westerly to latitude 45°59'39" N., longitude 122°50'59" W.; thence northerly to latitude 46°00'35" N., longitude 122°51'26" W; thence northwesterly to latitude 46°00'52" N., longitude 122°51'41" W.; thence northeasterly to the point of beginning.

(5) *Woodland Anchorage.* An area enclosed by a line beginning east of Columbia City, Oregon, at latitude 45°53'56" N., longitude 122°48'13" W.; thence continuing easterly to latitude 45°53'58" N., longitude 122°47'58" W.; thence southerly to latitude 45°53'29" N., longitude 122°47'41" W.; thence westerly to latitude 45°53'21" N., longitude 122°47'59" W.; thence northerly to latitude 45°53'42" N., longitude 122°48'09" W.; thence northerly to the point of beginning.

(6) *Henrici Bar Anchorage.* An area enclosed by a line beginning near the mouth of Bachelor Slough at latitude 45°47'25" N., longitude 122°46'45" W.; thence continuing southeasterly to latitude 45°46'46" N., longitude 122°46'10" W.; thence southeasterly to latitude 45°46'26" N., longitude 122°45'56" W.; thence southerly to latitude 45°46'04" N., longitude 122°45'46" W.; thence southerly to latitude 45°45'42" N., longitude 122°45'41" W.; thence southerly to latitude 45°45'38" N., longitude 122°45'41" W.; thence westerly to latitude 45°45'38" N., longitude 122°45'48" W.; thence northerly to latitude 45°46'17" N., longitude 122°46'08" W.; thence northwesterly to latitude 45°47'21" N., longitude 122°46'55" W.; thence northeasterly to the point of beginning.

(7) *Willow Bar Anchorage.* An area enclosed by a line beginning northeast of Reeder Point at latitude 45°43'41" N., longitude 122°45'36" W.; thence continuing easterly to latitude 45°43'40" N., longitude 122°45'26" W.; thence southerly to latitude 45°41'28" N., longitude 122°46'12" W.; thence westerly to latitude 45°41'30" N., longitude 122°46'22" W.; thence northerly to the point of beginning.

(8) *Kelley Point Anchorage.* An area enclosed by a line beginning east of Kelley Point at latitude 45°39'07" N., longitude 122°45'36" W.; thence continuing northeasterly to latitude 45°39'11" N., longitude 122°45'32" W.; thence southerly to latitude 45°39'03" N. longitude 122°45'17" W.; thence westerly to latitude 45°38'58" N., longitude 122°45'22" W.; thence northerly to the point of beginning.

(9) *Hayden Island Anchorage.* An area enclosed by a line beginning south of Mathews Point at latitude 45°38'44" N., longitude 122°44'35" W.; thence continuing easterly to latitude 45°38'27" N., longitude 122°43'21" W.; thence southeasterly to latitude 45°38'12" N., longitude 122°43'03" W.; thence westerly to latitude 45°38'19" N., longitude 122°43'40" W.; thence northwesterly to latitude 45°38'42" N., longitude 122°44'36" W.; thence northeasterly to the point of beginning.

(b) *The regulations.* (1) All designated anchorages are intended for the primary use of deep-draft vessels over 200 feet in length.

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(2) If a vessel under 200 feet in length is anchored in a designated anchorage, the master or person in charge of the vessel shall:

(i) Ensure that the vessel is anchored so as to minimize conflict with large, deep-draft vessels utilizing or seeking to utilize the anchorage; and

(ii) Move the vessel out of the area if requested by the master of a large, deep-draft vessel seeking to enter or depart the area or if directed by the Captain of the Port.

(3) No vessel may occupy a designated anchorage for more than 30 consecutive days without a permit from the Captain of the Port.

(4) No vessel being layed-up or dismantled or undergoing major alterations or repairs may occupy a designated anchorage without a permit from the Captain of the Port.

(5) No vessel carrying a Cargo of Particular Hazard listed in § 126.10 of this Chapter may occupy a designated anchorage without permission from the Captain of the Port.

(6) No vessel in a condition such that it is likely to sink or otherwise become a hazard to the operation of other vessels shall occupy a designated anchorage except in an emergency and then only for such periods as may be authorized by the Captain of the Port.

(7) Except as allowed for emergencies, no vessel may occupy either the Henrici Bar or Willow Bar Anchorages during the commercial drift fishing seasons established by the Oregon Department of Fish and Wildlife (ODFW). Vessels occupying either of these anchorages at the time a drift fishing season is announced must depart prior to commencement of the season. In no case, however, shall a vessel have less than 48 hours to effect the move.

(c) ODFW will normally notify the Captain of the Port four days in advance of any commercial drift fishing season. Once notified, the Captain of the Port will inform the Portland Steamship Operators Association (PSOA) via the Merchant's Exchange and will notify the Columbia River and Bar Pilots.

Dated: November 3, 1986.

Theodore J. Wojnar,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 86-25862 Filed 11-17-86; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 3

Definition of Fraud

AGENCY: Veterans Administration.

ACTION: Proposed rule.

SUMMARY: The Veterans Administration (VA) is proposing to amend its adjudication regulations concerning the definition of fraud. The amendment is necessary as the current definition of fraud refers exclusively to acts of commission and fails to include acts of omission. The effect of this amendment will be to clarify the definition of fraud. Additionally, the VA proposes to change the criteria for entitlement to an apportionment or death benefits by dependents and survivors of certain veterans who forfeited all rights to benefits because of fraud or treason and to clarify that the $10 fee limitation applies to representation in forfeiture cases. These changes are based on opinions of the VA General Counsel.

DATES: Comments must be received on or before December 17, 1986. It is proposed to make these amendments effective 30 days following the date of publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these regulations to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in room 132 at the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until December 29, 1986.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Compensation and Pension Service (211B), Department of Veterans Benefits, (202) 233-3005.

SUPPLEMENTARY INFORMATION: Section 3.901 of Title 38, Code of Federal Regulations, essentially defines fraud as a knowingly wrongful act committed by a person with regard to the submission of any false or fraudulent information or documentation concerning any claim for Veterans Administration benefits. This proposed change will effectively augment the definition of fraud to include failure by a person to take necessary action knowing that such action is required and that such failure will secure or retain benefit payments. The proposed creation of §3.1(aa) is designed to define fraud as acts of commission as well as acts of omission. The definition of fraud in § 3.901(a) is removed by reason of this change and will be restated in the proposed §3.901(aa). Additionally, the proposed §3.1(aa) will cover situations where the person receiving or securing benefit payments is obligated to act with respect to a claim, but knowingly and intentionally fails to perform the required act. The proposed definition of fraud, which includes fraudulent acts of commission and omission, shall apply to use of the term "fraud" wherever it appears in 38 CFR Part 3, with the exception of the forfeiture provisions in 38 CFR 3.901 which are mandated by law and apply only to acts of commission.

This proposed change is based on an opinion of the VA General Counsel. In that opinion, the General Counsel, citing the rules of general case law, held that the failure of a claimant to disclose could amount to fraud and that such is an adjudicative determination. In making the adjudicative determination that failure to disclose is an act of fraud, the burden of proof rests with the VA, and all elements cited in proposed §3.1(aa)(2) must be established.

Section 3.901(c) (which is proposed to be changed to §§ 3.901(b)) and 3.902(c) provide regulatory authority to apportion benefits to eligible dependents of a veteran who forfeited all entitlement to benefits because of a fraudulent or treasonable act which occurred prior to September 2, 1959. The above regulations are silent as to whether the apportionment decisions had to have been made prior to September 2, 1959. Based on an opinion of the VA General Counsel, 38 U.S.C. 3503(e) and 3504(c) specifically bar payment of an apportionment when the fraudulent or treasonable act took place prior to September 2, 1959, and the decision to apportion was not made prior to September 2, 1959. Essentially, the proposed amendment to 38 CFR 3.901 and 3.902 would require that both the fraudulent or treasonable act and the decision to apportion occur prior to September 2, 1959. The same rationale also applies to bar death benefits for survivors of veterans who forfeited their rights by reason of treasonable acts committed prior to September 2, 1959, if those benefits were not authorized prior to that date. An amendment to § 3.904(b) is being proposed to clarify that issue.

In another recent opinion the VA General Counsel held that the $10 limitation for representing VA claimants (30 U.S.C. 3404(c)) applies in the case of any administrative proceeding to determine rights of beneficiaries or claimants for veterans' benefits. We are proposing to amend § 3.905(b)(5) to require that the fee limitation be included in the notice to persons against whom forfeiture proceedings have been instituted.

The Administrator hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the VA has determined that these regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans, Veterans Administration.

(Catalog of Federal Domestic Assistance program numbers are 64.100 through 64.110.)

Approved: October 27, 1986.

By direction of the Administrator.

Thomas E. Harvey,
Deputy Administrator.

PART 3—[AMENDED]

38 CFR, Part 3, Adjudication, is proposed to be amended as follows:

§ 3.1 [Amended]

1. In § 3.1(g)(4) remove the citation at the end which reads "(Pub. L. 89–670)".

2. In § 3.1, new paragraph (aa) is added and the cross-references are revised to read as follows:

§ 3.1 Definitions.

* * * * *

(aa) "Fraud" means:

(1) *Act of commission.* An act committed when a person knowingly makes or causes to be made or conspires, combines, aids, or assists in, agrees to, arranges for, or in any way procures the making or presentation of a false or fraudulent affidavit, declaration, certificate, statement, voucher, or paper, concerning any claim for benefits under any of the laws administered by the VA (except laws relating to insurance benefits), or

(2) *Act of omission.* Failure to act by a person in receipt of or entitled to receive benefits when such person:

(i) Has knowledge of facts upon which benefit or prospective benefit payments are based, and

(ii) Has knowledge of a change of circumstances and that such change could affect all or part of the benefit entitlement or eligibility, and

(iii) Fails to notify the VA of the change of circumstances with the actual intention of receiving or obtaining continued benefit payments or of obtaining increased benefit payments, and

(iv) Actually receives or retains payments or increased payments as a result of the failure to disclose the change of circumstances.

(3) *Forfeiture of VA benefits.* The forfeiture provisions of § 3.901 of this title apply only to acts of fraud as described in paragraph (aa)(1) of this section.

(Authority: 38 U.S.C. 210(c))

Cross-References: Pension. See § 3.3. Compensation. See § 3.4. Dependency and indemnity compensation. See § 3.5. Fraud. See § 3.901. Preservation of disability ratings. See § 3.951. Service-connection. See § 3.957.

§ 3.900 [Amended]

In § 3.900(d) remove the word "his" and add, in its place, the words "his or her".

3. In § 3.901, paragraph (a) is removed and paragraphs (b), (c), (d), and (e) are redesignated paragraphs (a), (b), (c), and (d); redesignated paragraphs (a), (b) and the last sentence of paragraph (c) are revised to read as follows:

§ 3.901 Fraud.

(a) *Effect on Claim.* For the purposes of paragraph (c) of this section, any person who commits fraud as defined in § 3.1(aa)(1) forfeits all rights to benefits under all laws administered by the VA other than laws relating to insurance benefits.

(b) *Forfeiture before September 2, 1959.* Where forfeiture for fraud was declared before September 2, 1959, in the case of a veteran entitled to disability compensation, the compensation payable except for the forfeiture may be paid to the veteran's spouse, children and parents provided the decision to apportion was authorized prior to September 2, 1959. The total amount payable will be the lesser of these amounts: (38 U.S.C. 3503(e))

* * * * *

(c) * * *
Where the veteran's rights have been forfeited, no part of his or her benefit may be paid to his or her dependents. (38 U.S.C. 3503(a), (d), (e))

4. In newly designated § 3.901(d), remove the citation at the end which reads "Pub. L. 92–328, 85 Stat. 393; effective June 30, 1972."

§ 3.902 [Amended]

5. In § 3.902(b) remove the word "he" and add, in its place, the words "he or she".

6. In § 3.902 the introductory texts of paragraphs (c), (c)(1) and (c)(2), and paragraph (e) are revised to read as follows:

§ 3.902 Treasonable acts.

* * * * *

(c) *Forfeiture before September 2, 1959.* Where forfeiture for treasonable acts was declared before September 2, 1959, the Administrator may pay any part of benefits so forfeited to the dependents of the person provided the decision to apportion was authorized prior to September 2, 1959, except that the amount may not be in excess of that which the dependent would be entitled to as a death benefit. (38 U.S.C. 3504(c))

(1) *Compensation.* Whenever a veteran entitled to disability compensation has forfeited his or her right, any part of the compensation payable except for the forfeiture may be paid to the veteran's spouse, children and parents. The total amount payable will be the lesser of these amounts:

* * * * *

(2) *Pension.* Whenever a veteran entitled to pension has forfeited his or her right, any part of the pension payable except for the forfeiture provision may be paid to the veteran's spouse and children. The total amount payable will be the lesser of these amounts:

* * * * *

(e) *Children.* A treasonable act committed by a child or children, regardless of age, who are in the surviving spouse's custody and included in an award to such person will not affect the award to the surviving spouse.

§ 3.903 [Amended]

7. In § 3.903(a)(4) remove the citation at the end which reads "Pub. L. 92–128; 85 Stat. 347".

§ 3.904 [Amended]

8. In § 3.904(a) remove the word "his" wherever it appears and add, in its place, the words "his or her".

9. In § 3.904 the first sentence and the cite at the end of paragraph (b) are revised to read as follows:

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§ 3.904 Effect of forfeiture after veteran's death.

* * * * *

(b) *Treasonable acts.* Death benefits may be paid as provided in paragraph (a) of this section where forfeiture by reason of a treasonable act was declared before September 2, 1959 and such benefits were authorized prior to that date. * * * (38 U.S.C. 3503(e); 38 U.S.C. 3504(c))

* * * * *

§ 3.905 [Amended]

10. In § 3.905 paragraphs (a) and (b) remove the words "Chief Attorney" wherever they appear and add, in their place, the words "District Counsel".

11. In § 3.905 paragraph (b)(5) is revised to read as follows:

§ 3.905 Declaration of forfeiture or remission of forfeiture.

* * * * *

(b) * * *

(5) The right to a hearing within 60 days, with representation by counsel of the person's own choosing, that fees for the representation are limited in accordance with 38 U.S.C. 3404(c), and that no expenses incurred by a claimant, counsel or witness will be paid by the VA.

* * * * *

[FR Doc. 86-25813 Filed 11-17-86; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 265

[SWH-FRL-3113-1]

Solid Waste Disposal; Subtitle D Study Phase I Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of Subtitle D Study Phase I Report, and request for comments.

SUMMARY: The Environmental Protection Agency is today announcing the availability of the Subtitle D Study Phase I Report, which summarizes data gathered in Phase I of EPA's Subtitle D study being completed in response to the 1984 Hazardous and Solid Waste Amendments. The report includes information on characteristics and management practices of nonhazardous (Subtitle D) wastes, characteristics of Subtitle D land disposal facilities, and State Subtitle D regulatory programs. Recommendations for Phase II study are also presented. Phase II will culminate in the submission of a report to Congress by November 1987. Comments are invited.

DATE: EPA will accept public comments until January 2, 1987. Comments postmarked after the close of the comment period will be stamped "late".

ADDRESSES: The report is available for viewing at all EPA libraries and in the EPA RCRA docket room, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, from 9:30 a.m. to 3:30 p.m., Monday thru Friday, except legal holidays; telephone: (202) 475-9327. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost 20 cents per page. The document can be purchased from the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, Virginia 22161, at (703) 487-4600: "Subtitle D Study Phase I Report (EPA/530-SW-86-054, NTIS No.: PB-87-116-810). Three copies of written comments should be submitted to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, Washington, 401 M Street, SW., Washington, DC 20460 and identified "F-86-SRCN-FFFFF."

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Hotline at (800) 424-9346 or (202) 382-3000. For technical information on the report, contact Gerry Dorian, Office of Solid Waste (WH565E), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4686.

SUPPLEMENTARY INFORMATION: In 1979, under authority of sections 1008(a)(3) and 4004(a) of Subtitle D of the Resource Conservation and Recovery Act (RCRA), EPA promulgated "Criteria for Classification of Solid Waste Disposal Facilities and Practices" (40 CFR Part 257.) The Criteria include environmental performance standards for determining which solid waste disposal facilities and practices pose a reasonable probability of adverse effects on human health or the environment. Facilities that violate the Criteria are "open dumps." The Criteria are enforced by States or through citizen suits. In 1984, Congress passed the Hazardous and Solid Waste Amendments (HSWA), including major provisions regarding the solid waste regulatory program. The Amendments require EPA to conduct a study and, by November 8, 1987, submit a report to Congress addressing whether the current Criteria (40 CFR Part 257) are adequate to protect human health and the environment, and whether additional authorities are needed to enforce the Criteria. Further, EPA is required to revise the Criteria by March 31, 1988, for facilities that may receive hazardous household waste or small quantity generator (SQG) hazardous waste. HSWA also requires States to have a permit program for the existing Criteria by November 1987 and to have a revised permit program 18 months after the revised Criteria are promulgated. In response to these statutory mandates, EPA is now gathering data for both the report to Congress and the Criteria revisions.

EPA's study for the report to Congress (the "Subtitle D Study") is being conducted in two phases. In Phase I EPA compiled existing data on Subtitle D wastes, facilities, and State regulatory programs from the literature, EPA and State agency files, and facility owners and operators. In Phase II of the study, EPA will gather additional data on these topics and complete an assessment of the adequacy of the current Federal Criteria.

Some of the major projects undertaken during Phase I included a survey of State programs, a review of State regulations, a comprehensive literature review on industrial non-hazardous wastes, an examination of municipal solid waste and household hazardous waste characteristics, and a review of Subtitle D facilities on the National Priorities List (NPL). Information from these and other efforts is summarized in the Subtitle D Study Phase I Report.

The Phase I report is organized into six major sections that are preceeded by an Executive Summary. Section 1 contains the introduction to the report and discusses the statutory background for the Subtitle D Study. Section 2 summarizes the projects that comprised Phase I of the Subtitle D Study. Section 3 characterizes those wastes types defined as Subtitle D wastes under RCRA. Section 4 characterizes the various types of Subtitle D land disposal facilities, including landfills, surface impoundments, land application units, and waste piles. Section 5 characterizes State Subtitle D regulatory programs. Section 6 identifies those data needs remaining and outlines the general direction of Phase II of the Subtitle D Study.

There are four appendices to the report. Appendix A reproduces the current Subtitle D Criteria (40 CFR Part 257). Appendix B contains data tables on industrial nonhazardous waste. Appendix C contains information collected from the States on municipal waste landfill capacity problems. Appendix D contains more detailed information on State Subtitle D Program regulations.

Dated: November 6, 1986.

J. W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 86–25845 Filed 11–17–86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86–417, RM–5445]

Radio Broadcasting Services; Window Rock, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Western Indian Ministries, Inc. seeking the allotment of Class C Channel 241 to Window Rock, Arizona, as that community's second local FM service.

DATES: Comments must be filed on or before December 29, 1986, and reply comments on or before January 13, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Mark E. Fields, Esq., Miller and Fields, P.C., P.O. Box 33003, Washington, DC 20033.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6539.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–417, adopted October 15, 1986, and released November 6, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–25999 Filed 11–17–86; 8:45 am]

BILLING CODE 6712-01-M

BEST COPY AVAILABLE

Notices

Federal Register
Vol. 51, No. 222
Tuesday, November 18, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Agency Information Collection Activities Under OMB Review

AGENCY: Action.

ACTION: Information collection request under review.

SUMMARY: This notice sets forth certain information about an information collection proposal by ACTION, the National Volunteer Agency.

Background

Under the Paperwork Reduction Act (44 U.S.C., Chapter 35), the Office of Management and Budget (OMB) reviews and acts upon proposals to collect information from the public or to impose recordkeeping requirements. ACTION has submitted the information collection proposal described below to OMB. OMB and ACTION will consider comments on proposed collection of information and recordkeeping requirements. Copies of the proposed forms and supporting documents [request for clearance (SF 83), supporting statement, instructions, transmittal letter, and other documents] may be obtained from the agency clearance officer.

Information About This Proposed Collection

Agency Clearance Officer—Melvin E. Beetle, 202–634–9321
Agency Address: ACTION, 806 Connecticut Ave., NW., Washington, DC 20525
Office of ACTION Issuing Proposal: Domestic Operations
Title of Form: Request for VISTA Information Postcard
Type of Request: On occasion
Frequency of Collection: One Response Per Individual
General Description of Respondents: Citizens interested in receiving information on becoming a VISTA Volunteer
Estimated Number of Annual Responses: Approximately 2,250
Estimated Annual Reporting or Disclosure Burden: 68 hours
Respondent's Obligation to Reply: Voluntary
Person responsible for OMB Review: Judy MacIntosh, (202) 395–6880

Dated: November 12, 1986.

Melvin E. Beetle,

ACTION Clearance Officer

November 12, 1986.

[FR Doc. 86–25970 Filed 11–17–86; 8:45 am]

BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE

Types and Quantities of Agricultural Commodities To Be Made Available for Donation Overseas

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice sets forth the determination of the Secretary of Agriculture of the types and quantities of agricultural commodities to be made available for donation overseas under section 416(b) of the Agricultural Act of 1949, as amended, during fiscal year 1987.

FOR FURTHER INFORMATION CONTACT: Mary Chambliss, Director, Program Analysis Division, Office of the General Sales Manager, FAS, USDA (202) 447–3573.

SUPPLEMENTARY INFORMATION: Section 416(b) of the Agricultural Act of 1949, as amended 7 U.S.C. 1431(b) ("section 416(b)"), requires the Secretary of Agriculture to make available for donation overseas for each of the fiscal year 1986–1990, not less than certain minimum quantities of Commodity Credit Corporation ("CCC") uncommitted stocks of grains and oilseeds, and dairy products. The minimum quantity of grains and oilseeds required to be made available shall be the lesser of 500,000 metric tons of CCC's uncommitted stocks or 10 percent of the estimated year-end levels of CCC's uncommitted stocks of grains and oilseeds; the minimum quantity of dairy products shall be 10 percent of CCC's uncommitted stocks of dairy products, but not less than 150,000 metric tons to the extent that uncommitted stocks are available. The minimum quantity requirements may be waived by the Secretary if the Secretary determines and reports to Congress that there are insufficient valid requests for eligible commodities under section 416(b) for any fiscal year, or if the Secretary determines the restrictions in furnishing of commodities under section 416(b)(3) prevent the making available of commodities in such quantities.

Section 416(b) also requires the Secretary to estimate the expected year-end levels of CCC's uncommitted stocks of grains and oilseeds, and dairy products for each of the fiscal years 1986–1990.

The Secretary is further required to publish in the Federal Register his determination of the quantities of commodities that shall be made available for each fiscal year along with a breakdown by kind of commodity and the quantity of each commodity.

Determination

In accordance with section 416(b), I have determined that the 500,000 metric tons of grains and oilseeds, and 150,000 metric tons of dairy products shall be made available for donation overseas pursuant to section 416(b) during fiscal year 1987. The kinds and quantities of commodities that shall be made available for donation are as follows:

Commodity	Quantity (metric tons)
Grains and oilseeds;	
Wheat	250,000
Barley	50,000
Corn	50,000
Sorghum	50,000
Rice	50,000
Soybeans	50,000
Total	500,000
Dairy products:	
Nonfat dry milk	125,000
Cheese	10,000
Butter/butteroil	15,000
Total	150,000

Done at Washington, DC, this 27th day of September, 1986.

Richard E. Lyng,

Secretary.

[FR Doc. 86–25996 Filed 11–17–86; 8:45 am]

BILLING CODE 3410-10-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Telecommunications and Information Administration
Title: Public Telecommunications Facilities Program Application Form
Form Number: Agency—N/A; OMB—0660-003
Type of Request: Revision of a currently approved collection (expedited review requested)
Burden: 450 respondents; 45,000 reporting hours
Needs and Uses: The National Telecommunications and Information Administration (NTIA) administers the Public Telecommunications Facilities Grant Program by annually conducting a grant application and review cycle. The information collected is used by NTIA in order to assess proposals for use of grant funds and determine which proposals should be granted.
Affected Public: State or local governments, non-profit institutions
Frequency: Annually
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Timothy Sprehe, 395-4814

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC. 20503.

Dated: November 10, 1986.

Ed Michals,

Department Clearance Officer, Information Management Division, Office of Information Resources Management

[FR Doc. 86-25981 Filed 11-17-86; 8:45 am]

BILLING CODE 3510-CW-M

Bureau of the Census

Annual Wholesale Trade; Determination

In accordance with Title 13, United States Code, sections 182, 224, and 225, I have determined the Census Bureau needs to collect data covering year-end inventories, annual sales, and purchases to provide a sound statistical basis for the formation of policy by various governmental agencies. These data also apply to a variety of public and business needs. This annual survey is a continuation of similar wholesale trade surveys conducted each year since 1978. It provides on a comparable classification basis annual sales, inventories, and purchases for 1985 and 1986. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

The Census Bureau will require selected firms operating merchant wholesale establishments in the United States (with sales size determining the probability of selection) to report in the 1986 Annual Wholesale Trade Survey. We will furnish report forms to the firms covered by this survey and will require their submission within 20 days after receipt. The sample will provide, with measurable reliability, statistics on the subjects specified above.

We will provide copies of the forms upon written request to the Director, Bureau of the Census, Washington, DC 20233.

I have directed, therefore, that an annual survey be conducted for the purpos of collecting these data.

Dated: November 12, 1986.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 86-25956 Filed 11-17-86; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: November 18, 1986.

FOR FURTHER INFORMATION CONTACT: William L. Matthews or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5253/2786.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32556) a notice outlining the procedures for requesting administrative reviews. The Department has received timely requests, in accordance with §§ 353.53a (a)(1), (a)(2), (a)(3), and 355.10(a)(1) of the Commerce Regulations, for administrative reviews of various antidumping and countervailing duty orders and findings.

Initiation of Reviews

In accordance with §§ 353.53a(c) and 355.10(c) of the Commerce Regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews no later than November 30, 1987.

Antidumping duty proceedings and firms	Periods to be reviewed
Pressure Sensitive Plastic Tape from Italy:	
Autoadesivitalia	10/85-09/86
Manuli	10/85-09/86
NAR	10/85-09/86
Barium Chloride from the People's Republic of China:	
Sinochem	04/06/84-09/30/84 10/01/85-09/30/86

Countervailing duty proceedings	Periods to be reviewed
Agricultural tillage tools from Brazil	06/10/85-12/31/85
Certain carbon steel products from Sweden	03/20/85-12/31/85

These initations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and §§ 353.53a(c) and 355.10(c) of the Commerce Regulations (19 CFR 353.53a(c), 35.10(c)).

Dated: November 10, 1986.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-25984 Filed 11-17-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-357-403]

Oil Country Tubular Goods From Argentina; Preliminary Results of Countervailing Duty; Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

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ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on oil country tubular goods from Argentina. The review covers the period January 1, 1985 through December 31, 1985 and four programs.

As a result of the review, the Department has preliminarily determined the total bounty or grant for the period of review to be 0.56 percent *ad valorem.* Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 18, 1986.

FOR FURTHER INFORMATION CONTACT: Richard C. Henderson or Lorenza Olivas, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: .

Background

On November 27, 1984, the Department of Commerce (" the Department") published in the **Federal Register** a countervailing duty order on oil country tubular goods from Argentina (49 FR 46564). On November 13, 1985, the petitioners, Lone Star Steel Company and CF&I Steel Corporation, requested in accordance with § 355.10 of the Commerce Regulations an administrative review of the order. We published the initiation on July 17, 1986 (51 FR 25923). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Argentine oil country tubular goods. Such merchandise is currently classifiable under items 610.3216, 610.3219, 610.3233, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244 of the Tariff Schedules of the United States Annotated. These products include finished or unfinished oil country tubular goods, which are hollow steel products of circular cross-section intended for use in the drilling of oil or gas, as well as oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) specifications or proprietary specifications.

The review covers the period January 1, 1985 through December 31, 1985 and four programs: (1) The reembolso, a cash rebate of taxes; (2) post-export financing; (3) BANADE long-term loan guarantees; and (4) discounts of foreign currency accounts receivable under Circular RF-21. During the period of review, Siderca S.A.I.C. ("SIDERCA"), was the only known exporter of Argentine OCTG to the United States.

Analysis of Programs

(1) Reembolso

The reembolso is a cash rebate of taxes paid upon exportation and is calculated as a percentage of the f.o.b. invoice price. The Tariff Act and the Commerce Regulations allow the rebate of the following: (1) Indirect taxes borne by inputs that are physically incorporated in the exported product (*see* Annex I.1 of Part 355 of the Commerce Regulations); and (2) indirect taxes levied at the final stage (*see* Annex I.2 of Part 355 of the Commerce Regulations). If the tax rebate upon export exceeds the total amount of allowable indirect taxes described above, we consider the difference to be an overrebate and, therefore, a bounty or grant.

We allowed the rebate of indirect taxes on raw materials and final stage indirect taxes. Based on our analysis of the total tax incidence on oil country tubular goods ("OCTG"), we found that the total amount of allowable indirect taxes was 9.72 percent *ad valorem.* In 1985, the reembolso rate for OCTG ranged from zero to 4 percent. Therefore, we preliminarily find no overrebate of indirect taxes for the period of review.

(2) Post-export Financing

The Central Bank makes post-export financing available to exporters through Circular OPRAC 1-9. The Central Bank limits these loans to 30 percent of the peso/austral equivalent of the foreign currency used in the export transaction. The maximum term of the loan is 180 days, and interest must be paid quarterly. The interest rate charged is the *tasa regulada* ("the regulated rate"), which the Central Bank sets monthly. SIDERCA received benefits from OPRAC 1-9 loans in 1985.

To calculate the benefit, we compared the rate of interest charged on those loans with a national average commercial rate. We used as our benchmark the weighted-average interest rate of comparable short-term loans available from Argentine banks during the period of review. These are the regulated, unregulated, and acceptance rates. (*See* the final affirmative countervailing duty determination and countervailing duty order on this case (49 FR 46564, November 27, 1984).) We made both the benchmark and the preferential rates effective by adjusting for the number of interest payments made during the year. Comparing the two rates on loans with interest payments during the review period, we preliminarily determine the benefit from this program to be 0.56 percent *ad valorem.*

(3) Other Programs

We also examined the following programs and preliminarily find that SIDERCA did not use them during the review period: (a) BANADE long-term loan guarantees, and (b) discounts of foreign currency accounts receivable under Circular FR-21.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be 0.56 percent *ad valorem* for the period of review.

The Department therefore intends to instruct the Customs Service to assess countervailing duties of 0.56 percent of the f.o.b. invoice price on shipments of this merchandise exported on or after January 1, 1985 and on or before December 31, 1985.

Further, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751 (a)(1) of the Tariff Act, on all shipments of OCTG from Argentina entered, or withdrawn from warehouse, for consumption on or after the date of pulication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results by December 9, 1986, and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held on December 9, 1986. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10).

Dated: November 12, 1986.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-25985 Filed 11-17-86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit: Mr. S. Jonathan Stern (P281B)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217-222).

1. Applicant:

a. Name: Mr. S. Jonathan Stern, Department of Biological Sciences.

b. Address: San Francisco State University, 1600 Halloway, San Francisco, California 94132.

2. Type of Permit: Scientific Research/ Scientific Purposes.

3. Name and Number of Marine Mammals: An unspecified number of gray whales (Eschrichtius robustus) may be harassed while determining under what conditions whales react to the presence of whale-watching vessels.

4. Location of Activity: Nearshore waters around Pt. Reyes, National Seashore, Marin County, California.

5. Period of Activity: 1 year.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm. 805, Washington, DC; and Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Dated: November 12, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-25626 Filed 11-17-86; 8:45 am]

BILLING CODE 3510-22-M

Permits; Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of issuance of an experimental fishing permit.

SUMMARY: This notice announces the issuance of two experimental fishing permits to U.S. fishermen to harvest soupfin sharks and other groundfish species using set nets in the fishery conservation zone north of 38° N. latitude. The permits authorize the use of experimental fishing gear which is otherwise prohibited by Federal regulations. This action is authorized by the Pacific Coast Groundfish Fishery Management Plan and implementing regulations.

EFFECTIVE DATES: October 1, 1986, through March 31, 1987.

ADDRESS: Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206-526-6150.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) and implementing regulations at 50 CFR Part 663 specify that experimental fishing permits (EFPs) may be issued to authorize fishing which is otherwise prohibited by the FMP and regulations. The procedures for issuing EFPs are contained in the regulations at § 663.10.

An EFP application submitted by two U.S. fishermen to harvest groundfish using gill nets in the fishery conservation zone (FCZ) off the coasts of Washington, Oregon, and northern California was received on August 28, 1986. Current groundfish regulations at § 663.26 do not authorize the use of drift gill nets nor set nets (anchored gill nets) north of 38° N. latitude to harvest groundfish. A notice acknowledging receipt of the application, describing the proposal, and requesting public comment was published in the Federal Register on September 19, 1986 (51 FR 33290). One public comment was received recommending denial of the permit because of the potential for marine mammal and seabird entanglement in gill nets. The application was considered by the Pacific Fishery Management Council, including the directors of the fishery management agencies of Washington, Oregon, California, and Idaho, at its September 1986, public meeting in Portland, Oregon. The Council recommended that NMFS issue an EFP with appropriate restrictions and limitations so that information on the experimental fishery could be obtained. The NMFS Regional Director, after having considered all factors including concerns for potential marine mammal entanglement in this experimental gear, issued two EFPs under the provisions of § 663.10. However, the EFPs do not authorize the use of drift gill nets as proposed by the applicants and include restrictions on the conduct of the experimental fishery to alleviate concerns over the potential for the experimental gear adversely affecting marine mammals or seabirds.

The EFPs authorize the experimental use of set nets to fish for soupfin sharks with an incidental catch of other groundfish species in the FCZ north of 38° N. latitude. The permits are valid on two vessels, both of which are based in Oregon, from October 1, 1986, to March 31, 1987. Under the terms and conditions of the EFPs, sets may not be made in waters shallower than thirty fathoms nor closer than five nautical miles to shore to minimize incidental interactions with marine mammals. The Regional Director may suspend the permit or require an adjustment of the experimental operation if marine mammals are incidentally taken or if more than five percent of the fish landed from a fishing trip are groundfish species other than sharks. The nets must have a minimum nine-inch mesh webbing and no more than 1800 fathoms of net can be fished simultaneously. Permittees are required to maintain detailed logs on the fishing operation and allow an observer to accompany the vessel if so requested.

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Further details or a copy of the permits may be obtained from the NMFS Regional Director at the above address.

(16 U.S.C. 1801 *et seq.*)

Dated: November 12, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries.

[FR Doc. 86–25938 Filed 11–17–86; 8:45 am]

BILLING CODE 3510-22-M

National Telecommunications and Information Administration

Open Meeting of Frequency Management Advisory Council

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of open meeting, Frequency Management Advisory Council.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given that the Frequency Management Advisory Council (FMAC) will meet from 9:30 a.m. to 4:00 p.m. on December 8, 1986, in Room 1605 at the United States Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC (Public entrance to the building is on 14th Street between Pennsylvania and Constitution Avenue.)

The Council was established on July 19, 1965. The objective of the Council is to advise the Secretary of Commerce on radio frequency spectrum allocation matters and means by which the effectiveness of Federal Government frequency management may be enhanced. The Council consists of 15 members whose knowledge of telecommunications is balanced in the functional areas of manufacturing, analysis and planning, operations, research, academia and international negotiations.

The principal agenda items for the meeting will be:

(1) Proposed NTIA policy on allocation of multifunction spread spectrum systems.

(2) Proposed NTIA policy on Federal Government trunked land mobile radio.

(3) ITU conference preparation for High Frequency and Medium Frequency WARC's.

(4) Preliminary considerations for space station frequency availability.

(5) Recent developments relative to radio frequency radiation exposure guidelines.

(6) NTIA survey on standards for AM stereo radio.

The meeting will be open to the public observations; and a period will be set aside for oral comments or questions by the public which do not exceed 10 minutes each per member of the public. More extensive questions or comments should be submitted in writing before December 5, 1986. Other public statements regarding Council affairs may be submitted at any time before or after the meeting. Approximately 20 seats will be available for the public on a first-come first-served basis.

Copies of the minutes will be available on request 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Inquires may be addressed to the Executive Secretary, FMAC, Mr. Charles L. Hutchison or Mr. Michael W. Allen, National Telecommunications and Information Administration, Room 4706, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230, telephone 202–377–0805.

Dated: November 12, 1986.

Michael W. Allen,

Acting Executive Secretary, FMAC National Telecommunications and Information Administration.

[FR Doc. 86–25940 Filed 11–17–86; 8:45 am]

BILLING CODE 3510-60-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board Panel on Information Management Concepts; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: Monday, 3 December 1986

Times of Meeting: 0800–1700 hours

Place: Pentagon, Washington, DC

Agenda: The Army Science Board Ad Hoc Panel on Army Information Management Concepts and Architecture will meet to organize its work and hear briefings on evolution of the Army's Information Mission Area and Current Information Management architectural initiatives. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86–25979 Filed 11–17–86; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board Closed Meeting; Steering Committee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: Monday, 8 December 1986

Times of Meeting: 0900–1500 hours

Place: Pentagon, Washington, DC

Agenda: The Army Science Board Steering Committee will meet for discussions of Tasking the ASB/Role of ERB; past and future Summer Studies; Imminent Ad Hoc Subgroups; ASB Orientation/Lessons Learned; and FSG future plans. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86–25980 Filed 11–17–86; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Program Research and Development Announcement; State Geothermal Research and Development

AGENCY: Department of Energy.

ACTION: Program Research and Development Announcement (PRDA) No. DE–PR07–861D12662 for State Geothermal Research and Development.

SUMMARY: The U.S. Department of Energy, Idaho Operations Office, desires to receive and consider for support, proposals from state agencies who desire to cost-share on state-oriented research on those aspects of geothermal energy that are not being studied by

private industry, but whidh have the potential for results that will be applicable by industry in development of geothermal resources. The Geothermal Energy Research, Development, and Demonstration Act of 1974 provides for DOE to enter into agreements with States to perform geothermal resource analyses and technology transfer. The Congress has mandated that certain funds would be used to assist the States with significant hydrothermal resources. The total amount of DOE funding allotted for this program is $510,000. The DOE cost-share will not exceed $75,000 per award and the state must cost-share a minimum of 10% of the gross amount requested. It is anticipated that at least six awards will be made, depending on the amount of each award. The expected contractual relationship will be grants.

Minimum Requirements: Responses shall demonstrate that: (1) The agency is designated by the state as being responsible for geothermal resources within the state; (2) the areas of research are geological, geochemical, geophysical, or hydrological aspects of hydrothermal systems; (3) the proposed research must be on hydrothermal resources, and the states from which the proposals are received must have a significant hydrothermal resource base as defined by DOE research programs or by the U.S. Geological Survey Circulars 790 and 892; and (4) the proposed work must be in-state or have written approval from the appropriate executive in the other state(s) where the proposed work is to be done.

DATES: The PRDA will be issued during November 1986 with proposals due approximately 90 days thereafter.

Contacts: Potential proposers desiring to receive a copy of the PRDA should provide a written request to the following address: Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83402, ATTN: Ronald A. King, Contracts Management Division.

Issued at Idaho Falls, Idaho, on October 30, 1986.

H. Brent Clark,

Director, Contracts Management Division.

[FR Doc. 86-26023 Filed 11-17-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ES87-7-000 et al.]

Electric Rate and Corporate Regulation Filings: Consumers Power Company et al.

November 13, 1986.

Take notice that the following filings have been made with the Commission:

1. Consumers Power Co.

[Docket No. ES87-7-000]

Take notice that on November 7, 1986, Consumers Power Company filed an application pursuant to section 204 of the Federal Power Act, seeking authority to issue and sell, or guarantee, up to $500,000,000 in secured and/or unsecured short-term debt including but not limited to, notes, drafts, debentures and commercial paper. The issuance of the notes, drafts, debentures and commercial paper would be issued from time to time, until December 31, 1987, with maturities of 364 days or less.

Comment date: December 5, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Idaho Power Co.

[Docket No. ES87-9-000]

Take notice that on November 4, 1986, Idaho Power Company filed an application with the Federal Energy Regulatory Commission seeking authority, pursuant to section 204 of the Federal Power Act, to issue not more than $135,000,000 of short-term debt or other evidence of indebtedness on or before December 31, 1987, with a final maturity no later than December 31, 1988.

Comment date: December 3, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. MDU Resources Group, Inc.

[Docket No. ES87-10-000]

Take notice that on November 7, 1986, MDU Resources Group, Inc. filed an application with the Federal Energy Regulatory Commission seeking authority, pursuant to section 204 of the Federal Power Act, seeking an Order (a) exempting the Applicant from the competitive bidding requirements of the Commission and (b) authorizing the issuance of up to 350,000 shares of Common Stock, par value $5, pursuant to Applicant's Tax Deferred Compensation Savings Plan For Collective Bargaining Unit Employees.

Comment date: December 5, 1986, in accordance with Standard Paragraph E. at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26003 Filed 11-17-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6829-001, 6727-001, 8236-001, 2905-007

Cross Flow Hydroelectric, Inc., Northwest Power Co.; Malacha Power Project Vermont Public Power Supply Authority; Availability of Environmental Assessment and Finding of No Significant Impact

November 13, 1986.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses (or exemptions) listed below and has assessed the environmental impacts of the proposed developments.

Project No.	Project name	State	Water body	Nearest town or county	Applicant
			Exemptions		
9620-001	Cabazon	CA	Cabazon County Water District Supply system, which uses water from Millard Canyon Creek.	Cabazon	Cross Flow Hydro-electric, Inc.
			Licenses		
6727-001	Miner's Tunnel	CA	South Yuba River	Nevada County	Northwest Power Company.
8296-001	Muck Valley	CA	Pit River	Fall River Mills	Malacha Power Project.
			Amendments		
2905-007	Enosburg Falls Hydroelectric	VT	Missisquoi River	Enosburg Falls	Vermont Public Power Supply Authority.

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements for these projects will not be prepared. Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26005 Filed 11-17-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 943-000]

Public Utility District No. 1 of Chelan County, WA; Intent To Prepare Environmental Impact Statement and To Hold Scoping Session and Public Hearing

November 12, 1986.

The Public Utility District No. 1 of Chelan County, Washington, filed an application for a new license for continued operation and maintenance of the Rock Island Hydroelectric Project, FERC No. 943. The project is located on the Columbia River, in Chelan and Douglas Counties, Washington.

The Commission staff has determined that issuance of a new license for the existing hydroelectric project would constitute a major federal action significantly affecting the quality of the human environment. The staff therefore intends to prepare an environmental impact statement (EIS) in accordance with the National Environmental Policy Act. A scoping document will follow this public notice and be sent to all recipients of this notice prior to the public and scoping meetings scheduled for December 1986.

Scoping Session

Interested persons and agencies are invited to participate in a scoping session to discuss the environmental impact issues associated with the relicensing of the Rock Island Hydroelectric Project. The scoping session will be held on Wednesday, December 17, 1986, commencing at 1:00 p.m. at the House Office Building, Hearing Room C, Olympia, Washington.

Scoping sessions are utilized by the Commission staff to do the following: (1) Present environmental issues that have been identified for coverage in the EIS to the public and to experts familiar with the project; (2) receive input from the public and experts on the issues presented; (3) clarify the significance of issues; (4) identify additional issues for EIS treatment; and (5) identify issues that do not merit EIS treatment. Agencies and individuals with environmental expertise and concerns are encouraged to attend the meeting and to assist the Commission's staff with the determination of issues to be addressed in the EIS. For additional information, contact Alan Mitchnick at 202-376-9061.

Public Hearing

Interested officials and members of the public are invited to express their views about the project in a public hearing. A public hearing will be held on Tuesday, December 16, 1986, commencing at 7:30 p.m., at the Wenatchee Center, 121 N. Wenatchee Avenue, Golden Delicious Room, Wenatchee, Washington. The public hearing will be conducted by the Commission's staff.

At the public hearing persons may give their statements orally or in writing. The hearing will be recorded by a stenographer, and all statements (oral and written) will become part of the public hearing record. In addition, the public hearing record will remain open until January 21, 1987, and anyone may submit written comments on the project until that time. Comments should be addressed to Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, and should clearly show the project name and number (Rock Island Project, FERC No. 943-000) on the first page.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26009 Filed 11-17-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9027-001 et al.]

Hydroelectric Applications (SNC Hydro, Inc., et al.); Notice of Application Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Major License (5MW or less).

b. Project No: 9027-001.

c. Date Filed: June 7, 1985.

d. Applicant: SNC Hydro Inc.

e. Name of Project: Monongahela Lock and Dam No. 7.

f. Location: On the Monongahela River near Greensboro, Fayette County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 17 U.S.C. 791(a)-825(r).

h. Contact Person: Keith F. Corneau, SNC Hydro Inc., 125 Wolf Road, Albany, NY 12205, (518) 482-7773.

i. Comment Date: December 29, 1986.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Monongahela Lock and Dam No. 7 and would consist of: (1) a proposed 96-foot-long by 67-foot-wide reinforced concrete powerhouse containing two 2,500-kW bulb or pit turbine-generator units, located at the right abutment of the dam; (2) proposed intake and tailrace channels; (3) a proposed 12-kV underground transmission line approximately 210 feet long; (4) a new access road about 1,200 feet long; and (5) appurtenant facilities.

The applicant estimates that the average annual energy generation would be 24.6 GWh. The project energy would be sold to West Penn Power Company.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C., D1.

2 a. Type of Application: Preliminary Permit.

b. Project No: 10106–000.

c. Date Filed: September 30, 1986.

d. Applicant: Frank A. Hartman.

e. Name of Project: South Creek.

f. Location: On South Creek in the Challis National Forest in T7N, R29E near Howe, in Butte County, Idaho.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Carl L. Myers, Myers Engineering Company, P.A., 750 Warm Springs Avenue, Boise, ID 83712, (208) 336–1425.

i. Comment Date: December 29, 1986.

j. Description of Project: The proposed run-of-the-mill project would consist of: (1) a 2-foot-high diversion weir at elevation 6,660-feet; (2) a 9,380-foot-high-long, 12-inch-diameter penstock; (3) a powerhouse containing one generating unit with a rated capacity of 250 kW; and (4) a 1-mile-long transmission line. Applicant estimates the average annual energy production to be 1,738,240 kWh. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $27,000.

k. Purpose of Project: The power produced is to be sold to the local power company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C., and D2.

3 a. Type of Application: Preliminary Permit.

b. Project No.: 10107–000

c. Date Filed: September 30, 1986.

d. Applicant: Frank A. Hartman.

e. Name of Project: Badger Creek.

f. Location: On Badger Creek within lands owned by the Bureau of Land Management in T9N, R27E, and R28E, near Howe in Butte County, Idaho.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Carl L. Myers, Myers Engineering Company, P.A., 750 Warm Springs Avenue, Boise, ID 83712, (202) 336–1425.

i. Comment Date: December 29, 1986.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) a 2-foot-high diversion weir at elevation 6,800–feet; (2) a 12,800-foot-long, 12-inch-diameter penstock; (3) a powerhouse containing one generating unit with a rated capacity of 450 kW; and (4) a 0.25-mile-long transmission line. Applicant estimates the average annual energy production to be 3,532,000 kWh. The applicant estimates that the cost of the works to be performed under the preliminary permit would be $30,000.

k. Purpose of Project: The power produced is to be sold to the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

4 a. Type of Application: Preliminary Permit.

b. Project No.: 10117–000.

c. Date Filed: October 6, 1986.

d. Applicant: Rock River Power & Light Corporation.

e. Name of Project: Lower Watertown Dam.

f. Location: Rock River, Jefferson and Dodge Counties, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Thomas J. Reiss, Jr., President, Rock River Power & Light Corporation, P.O. Box 553, 319 Hart Street, Watertown, WI 53094, (414) 261–7975.

i. Comment Date: December 29, 1986.

j. Description of Project: The proposed project would consist of: (1) an existing concrete dam 225 feet long and 9.5 feet high; (2) an existing reservoir with a surface area of 130 acres and a storage capacity of 250 acre-feet at a normal maximum surface elevation of 808 feet mean sea level; (3) a proposed concrete flume 25 feet long and 16 feet wide; (4) a proposed concrete and block powerhouse 40 feet long and 20 feet high, housing three proposed turbine-generators of 460 kW combined capacity; (5) a proposed 480 volt transmission line 100 feet long, and (6) appurtenant facilities. The estimated annual energy production is 2.9 GWh at a net hydraulic head of 11 feet. The existing facilities are owned by the City of Watertown, Wisconsin. Project power would be sold to Wisconsin Electric Company. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $30,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, D2.

5 a. Type of Application: Preliminary Permit.

b. Project No.: 10053–000.

c. Date Filed: July 31, 1986.

d. Applicant: Mr. Bill Harris.

e. Name of Project: Marble Creek.

f. Location: Marble Creek, near Benton, in Mono County, California.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Bill Harris, HCR30 Box 29, Chiloquin, OR 97624.

i. Comment Date: December 31, 1986.

j. Description of Project: The proposed project would consist of: (1) a diversion structure across Marble Creek at elevation 6,320 feet msl; (2) an off-stream retention basin having a capacity of three acre-feet; (3) a 12-inch-diameter, 17,420-foot-long penstock; (4) a powerhouse containing a single turbine-generator unit with a rated capacity of 250 kW under a head of 1,320 feet and a design flow of 3 cfs, and producing an estimated annual generation of 1.1 GWh; and (5) a ¼-mile-long transmission line interconnecting the project to an existing Southern California Edison Company line. The majority of the lands included in the project area are under the jurisdiction of the Bureau of Land Management. The proposed project would be located in Sections 14, 15, 21, 22, and 28, Township 2 South, Range 32 East MDBM, Monor Country, California.

k. This notice also consists of the following standards: A5, A7, A9, A10, B, C, and D2.

l. The Applicant estimates that the cost of the work to be performed under this preliminary permit would be $40,000 to $50,000.

6 a. Type of Application: Exemption (5MW or less).

b. Project No.: 10078–000.

c. Date Filed: September 5, 1986.

d. Applicant: Carl and Elaine Hitchcock.

e. Name of Project: Eau Galle Hydro Project.

f. Location: On the Eau Galle River near Eau Galle, Dunn County, Wisconsin.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 as amended.

h. Contact Person: Carl E. Hitchcock, 423 Green Tree Road, Kohler, WI 53044, (414) 452–2624.

i. Comment Date: December 12, 1986.

j. Description of Project: The proposed project would consist of: (1) an existing concrete dam approximately 171 feet long and 32 feet high; (2) an existing 350-acre reservoir having a storage capacity of 2,070 acre-feet at an elevation of 757 msl; (3) a proposed powerhouse integral with the dam, located on the east side of the river, housing two 150-kW generators for a total installed capacity of 300 kW; (4) a new tailrace; (5) a proposed short 12.7-kV transmission line; and (6) appurtenant facilities. The Applicant estimates that the average annual generation would be 1.03 GWh. The Applicant holds all real estate interests necessary to develop and operate the proposed project.

k. Purpose of Project: All project energy produced would be sold to Northern States Power Company.

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l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3a.

7 a. Type of Application: Transfer of License.

b. Project No.: 6552–002.

c. Date Filed: September 23, 1986.

d. Applicant: Frederick D. Ehlers, licensee and HDI Associates V and Frederick D. Ehlers, transferees.

e. Name of Project: North Fork Sprague River.

f. Location: North Fork Sprague River in Klamath County, Oregon, near the town of Bly, Oregon.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Paul V. Nolan, Esquire, Van Ness, Feldman, Sutcliffe and Curtis, 1050 Thomas Jefferson Street NW., Seventh Floor, Washington, DC 20007, (202) 331–9400

Frederick D. Ehlers and HDI Associates V, c/o Hydroelectric Development Inc., 10394 West Chatfield Drive, Suite 108, Littleton, CO 80127, (303) 973–0951.

i. Comment Date: December 15, 1986.

j. Description of Transfer: On December 20, 1985, a minor license was issued to Mr. Frederick D. Ehlers for the construction, operation, and maintenance of the North Fork Sprague River Project No. 6552. It is proposed to transfer the license to HDI Associates V and Frederick D. Ehlers. The licensee and transferees have jointly and severally applied for the transfer of the license to the transferees.

The transferees are a limited partnership organized under the laws of the State of Oregon and a citizen of the United States.

The licensee certifies that it has fully complied with the terms and conditions of its license and obligates itself to pay all annual charges accrued under the license to the date of transfer. The transferees accept all the terms and conditions of the license and agree to be bound thereby to the same extent as though they were the original licensee.

k. This notice also consists of the following standard paragraphs: B and C.

8 a. Type of Application: Exemption (5MW or Less).

b. Project No.: 9759–000.

c. Date Filed: December 30, 1985.

d. Applicant: Centreville Hydro, Inc.

e. Name of Project: Centreville Dam.

f. Location: On the Prairie River near Centreville, St. Joseph County, Michigan.

g. Filed Pursuant to: Energy Security Act of 1980 Section 408 (16 U.S.C. 2705 and 2708).

h. Contact Person: Gregory P. Sirna, Centreville Hydro, Inc., 1776 Valleywood Ct. #4, Portage, MI 49002–5248, (616) 327–9059.

i. Comment Date: December 15, 1986.

j. Description of Project: The proposed project would consist of: (1) an existing earth embankment and concrete apron over a rock and timber crib dam approximately 210 feet long and 13 feet high; (2) an existing 40 acre reservoir with a storage capacity of 200 acre-feet at a normal maximum water surface elevation of 820.9 feet msl; (3) an existing headrace 4,325 feet long; (4) an existing powerhouse containing proposed 80-kW and 45-kW hydropower units; (5) an existing tailrace 2,000 feet long; (6) a proposed transmission line 500 feet long; and (7) appurtenant facilities. The Applicant estimates that the average annual energy generation would be 500 MWh. The project energy would be sold to Consumers Power.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, D3a.

9 a. Type of Application: Conduit Exemption.

b. Project No.: 9922–001.

c. Date Filed: August 25, 1986.

d. Applicant: City of Boulder, Colorado.

e. Name of Project: Lakewood.

f. Location: Lakewood Pipeline, City of Boulder, Boulder County, Colorado.

g. Filed Pursuant to: Section 30 of the Federal Power Act, 16 U.S.C. 823(a).

h. Contact Person:

Ms. Eva J. Heinrich, City of Boulder, P.O. Box 791, Boulder, CO 80306, (303) 441–3205

Mr. Bob Looper, HDR Infrastructure, Inc., 1100 Capitol Life Center, Denver, CO 80203, (303) 861–1300.

i. Comment Date: December 15, 1986.

j. Description of Project: The proposed project would consist of: (1) a new flow control valve vault and surge tank at Sugarloaf Saddle; and, (2) a concrete powerhouse located adjacent to the Betasso Water Treatment Plant, housing a single horizontal Pelton turbine-generator unit with an installed capacity of 1,500 kW, operating under a head of 1,120 feet and a hydraulic capacity of 18 cfs, and producing an estimated average annual generation of 9.8 GWh. A 200-foot-long, 4.16-kV buried transmission cable would connect the project with the existing switchyard for the Betasso Water Power Project FERC No. 6282–001. The applicant intends to sell the project power to the Public Service Company of Colorado.

The proposed project would be constructed in conjunction with the applicant's municipal water distribution system maintenance program which consists of replacement of approximately 20,400 feet of the lower Lakewood Pipeline, from Sugarloaf Saddle to the Betasso Water Treatment Plant, with 24-inch diameter pipe.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

10 a. Type of Application: Small Conduit Exemption.

b. Project No.: 9983–000.

c. Date Filed: April 23, 1986.

d. Applicant: City of Pittsfield.

e. Name of Project: Ashley Reservoir Hydroelectric Power Plant.

f. Location: On Ashley Treatment Plant Site, Town of Washington, Berkshire County, Massachusetts.

g. Filed Pursuant to: Section 30 of the Federal Power Act, 16 U.S.C. 823(a).

h. Contact Person: Mr. William L. Forestell, Commissioner, Department of Public Utilities, City of Pittsfield, 70 Allen Street, Pittsfield, MA 01201, (413) 499–9330.

i. Comment Date: December 15, 1986.

j. Description of Project: The proposed project would be located on the 24-inch-diameter water supply conduit from Farnham Reservoir to Ashley Reservoir and would consist of: (1) an existing 24-inch-diameter gate valve serving as an inlet to the water supply line; (2) a new 24-inch by 16-inch reducer; (3) a 16-inch-diameter, 10-foot-long pipelines; (4) a concrete powerhouse containing one vertical turbine-generator unit with rated capacity of 225 kW at a head of 285 feet; (5) a 20-foot-long transmission line connecting to an existing line. The estimated average annual energy production would be 715,000 kWh.

k. Purpose of Project: The project power would be utilized by the Applicant:

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

11 a. Type of Application: Preliminary Permit.

b. Project No.: 10045–000.

c. Date Filed: July 21, 1986.

d. Applicant: City of Orofino.

e. Name of Project: Orofino No. 1 Hydroelectric Project.

f. Location: On the North Fork Clearwater River adjacent to the town of Ahsahka, Clearwater County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Honorable Henry L. Clay, Mayor, City of Orofino, P.O. Box 312, Orofino, ID 83544, (208) 476–4725.

i. Comment Date: January 5, 1987.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers Dworshak Dam and Reservoir and would consist of: (1) bifurcating the fish hatchery water supply lines to divert water through two new penstocks each 30 feet long and two feet in diameter leading to; (2) two new powerhouses each containing a single turbine/generator unit with an installed capacity of 800 kW operating between 280 and 500 feet of hydraulic head; and (3) a new 115-kV transmission line approximately one-quarter-mile-long. Total installed capacity will be 1,600 kW. The applicant estimates that the average annual energy generation would be 3,100 MWh and that the cost of the work to be performed under the preliminary permit would be $50,000.

k. Purpose of Project: The applicant intends to sell the power generated at the proposed facilities to Clearwater Power Company, Washington Power Company, or Bonneville Power Administration.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, & D2.

12 a. Type of Application: Preliminary Permit.

b. Project No.: 10109–000.

c. Date Filed: October 1, 1986.

d. Applicant: Lock and Dam No. 24 Associates.

e. Name Project: Clarksville Hydro.

f. Location: On the Mississippi River in Pike County, Missouri and Calhoun County, Illinois.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Jorden R. Walker, 484 East 300 North, Manti, UT 84642, Phone Number (801) 835–6262.

i. Comment Date: January 5, 1987.

j. Description of Project: The applicant proposes to utilize an existing dam under the jurisdiction of the U.S. Army Corps of Engineers. The proposed project would consist of: (1) a proposed inlet channel; (2) a proposed powerhouse containing two generating units rated at 18 MW each; (3) a proposed outlet channel; (4) a proposed transmission line; and (5) appurtenant facilities. The estimated average annual energy output is 175,000,000 kWh. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $85,000.

k. Purpose of Project: Energy produced at the project would be sold to the local power company or the local municipalities.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C & D2.

13 a. Type of Application: Preliminary Permit.

b. Project No.: 10110–000.

c. Date Filed: October 1, 1986.

d. Applicant: Lock and Dam No. 25 Associates.

e. Name Project: Winfield Hydro.

f. Location: On the Mississippi River in Calhoun County, Illinois and Lincoln County, Missouri.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Jordan R. Walker, 484 East 300 North, Manti, UT 84642.

i. Comment Date: January 5, 1987.

j. Description of Project: The applicant proposes to utilize an existing dam under the jurisdiction of the U.S. Army Corps of Engineers. The proposed project would consist of: (1) a proposed inlet channel; (2) a proposed powerhouse containing two generating units rated at 18 MW each; (3) a proposed outlet channel; (4) a proposed transmission line; and (5) appurtenant facilities. The estimated average annual energy output is 175,000,000 kWh. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $65,000.

k. Purpose of Project: Energy produced at the project would be sold to the local power company or the local municipalities.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C & D2.

14 a. Type of Application: New License.

b. Project No.: 1333–001.

c. Date Filed: February 28, 1986.

d. Applicant: Pacific Gas and Electric Company.

e. Name of Project: Tule River Water Power Project.

f. Location: On Tule River, Hossack Creek, and Doyal Springs in Tulare County, California: Sections 7 & 8, T20S, R31E; Sections 13, 14, 23, 24, 26, 27, 28, 29, & 32, T20S, R30E; section 6, T21S, R30E: MDB & M.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Stephen P. Reynolds, Vice President, Rates, Pacific Gas and Electric Company, 77 Beale Street, Room 1065, San Francisco, CA 94106.

i. Comment Date: January 19, 1987.

j. Description of Project: The existing project involves lands in the Sequoia National Forest and consists of: (1) Tule River Diversion Dam, 6 feet high and 98 feet long, diverting water into the Tule River Conduit; (2) Hossack Creek Diversion Dam, 7.5 feet high and 17 feet long, diverting water through a 12-inch-diameter, 98-foot-long pipe and a 12-inch by 13-inch, eight-foot-long flume into the Tule River Conduit; (3) Doyal Springs Diversion Dam, 4 feet high and 79 feet long, with the Wishon plant pumping water through an 18-inch-diameter, 1,250-foot-long pipe into the Tule River Conduit; (4) Tule River Conduit, 3.2 miles long, consisting of an open channel, tunnel, and pipe connecting to a surge tank; (5) Tule River Penstock, with diameter varying between 30 inches to 48 inches and length of 3,600 feet; (6) Tule River Powerhouse with an installed capacity of 6.4 MW to be upgraded to 7.9 MW, under a gross head of 1,544 feet; (7) a tailrace returning flow to the Tule River; (8) a 70-kV transmission line, 15.27 miles long; and (9) appurtenant facilities. The Applicant estimates that the present average annual energy output of 28.4 GWh will be increased to 31.8 GWh.

k. Purpose of Project: Project energy will continue to be utilized by the Applicant.

l. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

15 a. Type of Application: Preliminary Permit.

b. Project No.: 10116–000.

c. Date Filed: October 6, 1986.

d. Applicant: Triple Star Hydro Limited.

e. Name of Projects: North County Hydroelectric Project.

f. Location: On Eagle Creek, near town of Trinity Center, within the Shasta-Trinity National Forest, in Trinity County, California (In sections 7, 8, 9, 16 and 17 of T38N, R7W, MDB&M).

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. Contact Person: Dr. Roy McDonald, P.O. Box 11154, Beverly Hills, CA 90213–4154.

i. Comment Date: January 15, 1987.

j. Description of Project: The proposed project would consist of: (1) a 5-foot-high, 100-foot-long diversion dam at elevation 3,600 feet msl; (2) a 4-foot-diameter, 12,000-foot-long diversion pipeline; (3) a 3-foot-diameter, 3,000-foot-long steel penstock; (4) a powerhouse with a total installed capacity of 5,200 kW operating under a head of 1,085 feet; and (5) a 0.1-mile-long, 12.5-kV transmission line from the powerhouse to an existing Pacific Gas and Electric Company (PG&E) transmission line. The applicant estimates the average annual energy generation at 15.2 GWh to be sold to PG&E.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

Standard Paragraphs:

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing

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development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicants representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of the exemption. If an agency does not file comments within 30 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: November 13, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-25986 Filed 11-17-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-38-000 etc.]

Natural Gas Certificate Filings; Northwest Pipeline Corporation et al.

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP87-38-000]

November 6, 1986

Take notice that on October 27, 1986, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP87-38-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that under the blanket authorization issued to Northwest in Docket No. CP82-433-000, Northwest be authorized to construct and operate certain natural gas facilities and to reassign gas volumes to facilitate sales and deliveries of natural gas to The Washington Natural Gas Company (WNG), an existing customer of Northwest's; all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that pursuant to requests by WNG, Northwest and WNG entered into letter agreements dated July 11, 1986 and September 15, 1986, which requested that Northwest provide additional service through the existing Lake Stevens Meter Station and the Little Rock sales tap. The Lake Stevens Meter Station is located adjacent to Northwest's 26-inch Ignacio-Sumas mainline in Snohomish County, Washington. The Little Rock tap is located adjacent to Northwest's 10¾" Olympia-Shelton Lateral in Thurston County, Washington.

It is stated that the additional natural gas service proposed to be provided through these two points will be utilized in serving the increased residential and commercial demand which has developed since the original construction of the sales points in the mid 1960's.

Northwest asserts that WNG has agreed to pay for all direct construction costs associated with the modification of the two meter stations excluding any Northwest labor charges. Northwest estimates that the total direct cost of the proposed construction will be approximately $104,900.

Northwest avers that the Lake Stevens Meter Station was constructed pursuant to the authorizations granted in Docket No. CP83-627. Northwest states that it is currently authorized to sell and deliver 1,500 dt equivalent of natural gas per day to WNG at Lake Stevens and environs delivery point pursuant to a Service Agreement dated March 15, 1986, providing for service under Northwest's Rate Schedule ODL-1. Northwest avers that the Little Rock sales tap was constructed pursuant to the authorizations granted in Docket No. CP67-54. Northwest states that its current deliveries at Little Rock are made pursuant to Northwest's authorization to sell and deliver natural gas volumes to WNG at the Seattle-Tacoma and environs delivery points pursuant to the aforementioned ODL-1 Service Agreement.

Northwest asserts that it intends to provide additional firm service to the two meter stations by utilizing existing quantities of natural gas heretofore authorized for sale and delivery under Rate Schedule ODL-1 to WNG at the North Seattle and Everett Meter Station located in Kipsap County, Washington. The reassigned natural gas service which Northwest proposes to provide at the three affected meter stations is set forth in the notice on file with the Commission.

Northwest asserts that no increase in the total daily contract quantity of natural gas which it is authorized to sell and deliver to WNG is proposed, nor will any such increase result from the grant of authorization sought herein.

Northwest avers that the proposed sales will be made by utilizing its currently existing system capacity and that Northwest has sufficient capacity to provide for the proposed deliveries without any detriment or disadvantage to any of Northwest's existing customers.

Comment date: December 22, 1986, in accordance with Standard Paragraph G at the end of this notice.

2. Freeport Interstate Pipeline Company

[Docket No. CP85-874-001]

November 7, 1986.

Take notice that on October 28, 1986, Freeport Interstate Pipeline Company (Freeport Interstate), P.O. Box 61520, New Orleans, Louisiana 70161, filed in Docket No. CP85-874-001 a petition to amend the order issued January 17, 1986 (34 FERC ¶ 61,030), in Docket No. CP85-874-000, pursuant to Section 7(c) of the Natural Gas Act so as to authorize it to intermittently and temporarily cease operation of its pipeline for natural gas service and, during those periods, to instead operate the line for water transportation, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Freeport Interstate states that pursuant to a certificate of public convenience and necessity issued June 17, 1986 (34 FERC ¶ 61,030), it owns and operates the Caminada Pipeline, which is a single length of interstate natural gas pipeline, approximately 9 miles in length, which originates at the Grand Isle Base Facility of Freeport-McMoRan Resources Partners, Limited Partnership (FMRP, LP), which is located on Grand Isle in the Gulf of Mexico, offshore Jefferson Parish, Louisiana, and terminates at the inlet of the Caminada Sulphur Mine of FMRP, LP, which is located in the Gulf of Mexico, in the federal domain.

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Freeport Interstate indicates that FMRP, LP has requested that, during intermittent periods, it temporarily make available the subject line, which is lined with cement and resistant to water corrosion, for the transportation of fresh water from the Grand Isle Base Facility to the Caminada Sulphur Mine. FMRP, LP explained that a change in the method and pace of the mining operations at the Caminada Sulphur Mine now intermittently requires the temporary use of increased volumes of fresh water in order to efficiently operate the mine, including the continued efficient utilization of natural gas. FMRP, LP further explained that only commercially practical means of transporting the needed volumes of water to the mine is by pipeline and by intermittent and temporary use of the subject cement-lined line for that purpose. Accordingly, Freeport Interstate states that FMRP, LP petitioned it, upon request from time to time, to intermittently and temporarily cease operation of the subject line for natural gas service and, during those requested periods, to instead operate the line for water-supply transportation service to the Caminada Sulphur Mine.

Freeport Interstate States that the certificate amendment proposed in this application is required to comply with the customer's request to provide natural gas service on a basis compatible with the efficient utilization of natural gas at the mine. Freeport Interstate further states that, since the presently certificated service performed by Freeport Interstate by means of the subject line is interruptible, Freeport Interstate's implementation of the subject proposal would be entirely consistent with Freeport Interstate's certificated service obligation and, therefore, would not entail any diminishment of its service obligation. For that reason and for the reason that the customer's requested cessation by Freeport Interstate of natural gas service through the subject line is not on a permanent basis, but is only for intermittent and temporary periods, Freeport Interstate further states that there would be no abandonment of the subject line pursuant to section 7(b) of the Natural Gas Act.

Comment date: November 26, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Granite State Gas Transmission, Inc.

[Docket No. CP87-39-000]

November 7, 1986.

Take notice that on October 27, 1986, Granite State Gas Transmission, Inc. (Applicant), 120 Royall Street, Canton, Massachusetts 02021 filed in Docket No. CP87-39-000 an application pursuant to section 7(b) section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity for authorization to acquire, construct and operate natural gas pipeline facilities as extensions of its existing system to be utilized to import natural gas from Canada for system supply to increase its jurisdictional sales of natural gas and for pregranted abandonment of certain proposed operations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it has executed a Gas Sale Contract with Shell Canada Limited (Shell) for the purchase of up to 25 billion Btu of firm natural gas daily, and an additional 15 billion Btu daily on an interruptible basis, which would be delivered by Shell to Applicant at the United States-Canadian Border at a point near Highwater, Quebec, and North Troy, Vermont. Applicant requests the necessary authorizations to extend its existing system and operations to take delivery of the Shell gas at the border.

Applicant's existing pipeline extends to a terminus at Eliot, Maine, where it connects with an 8-inch line owned by Northern Utilities, Inc. (Northern Utilities). Northern Utilities' 8-inch line extends approximately 48 miles along the Maine coastal area to the vicinity of Portland, Maine. Applicant requests certificate authority to acquire by purchase, and operate the 48 miles of 8-inch Northern Utilities line from Eliot to the vicinity of Portland.

Applicant further states that Portland Pipe Line Corporation (Portland Pipe Line) owns an existing 18-inch common carrier crude oil pipeline that extends approximately 166 miles from a receiving terminal on the coast at South Portland, Maine, through Maine, New Hampshire and Vermont to a point on the United States-Canadian border near North Troy, Vermont, and Highwater, Quebec. North of the border, the 19-inch line continues, under ownership of Montreal Pipe Line Limited (Montreal Pipe Line), another 70 miles of refineries in Montreal, Quebec, according to Applicant. Applicant states that the 18-inch pipeline is not currently required for oil transportation service, and it is in a present condition suitable for conversion to natural gas transportation. Applicant proposes to lease the 18-inch line on the United States side from Portland Pipe Line and requests certificate authority to convert it and operate it in natural gas transportation service and, further, to construct and operate a connection between the leased line and the 8-inch line acquired from Northern Utilities where the lines cross near Portland, Maine.

It is further stated that the Canadian section of the 18-inch oil pipeline would be leased from Montreal Pipe Line by Shell Canada Products limited and also converted to natural gas service. The Canadian section of the converted line would be interconnected with the gas pipeline facilities of Gaz Metropolitian, Inc., in the Province of Quebec, which are already connected to the TransCanada PipeLines Ltd. system.

Applicant states that it expects to complete conversion of the 18-inch line, the acquisition of the 8-inch line from Northern Utilities and related construction of interconnections by November 1, 1987, and that deliveries by Shell through the delivery system in Canada to the border can then commence on an interruptible basis. Firm deliveries at the level of 25 billion Btu a day are projected to commence on November 1, 1988, according to Applicant.

Applicant further states that the lease of the converted line has a primary term extending from the earlier of first deliveries by Shell, or November 1, 1988, to March 31, 1999, and Portland Pipe Line has reversed the option to terminate the lease on March 31, 1996, March 31, 1997, and March 31, 1998, on two years and five months' notice before each of such dates, in the event that reconversion of the 18-inch line to oil transportation service is required. In recognition of the options to terminate, Applicant requests pregranted abandonment of its operation of the 18-inch line in natural gas service on March 31, 1996. Applicant states that, in the event of early termination of the lease, it would have alternate methods of supplying the gas transported through the converted pipeline.

Applicant states that during the period while interruptible deliveries are being made, Portland Pipe Line would receive, as rental, 24 cents per million Btu, on all gas received at the border and transported through the 18-inch line. When firm service commences, Applicant would pay Portland Pipe Line a monthly rental of $136,666.67 (U.S.), plus 6 cents per Mcf on all gas transported through the converted line, it is stated.

According to Applicant, the estimated cost of acquiring the approximately 48 miles of 8-inch line from Northern Utilities, the cost of converting the 18-inch oil pipeline to natural gas service and the cost of constructing interconnections, metering and appurtenant facilities is $5,844,500. Temporary financing would be provided by a short-term bank loan which would be replaced by permanent financing in the form of a long-term loan of $3,500,000 and an equity contribution from Applicant's parent, Northern Utilities, of $2,600,000, Applicant states.

Applicant states that it has filed an application with the Economic Regulatory Administration at Docket No. 86-43-NG for authority pursuant to section 3 of the Natural Gas Act to import natural gas from Canada purchased under the Gas Sales Contract with Shell. Shell, it is stated, would be responsible for the arrangements in Canada for transporting the gas from the producing area to the delivery point to Applicant at the border.

The Gas Sale Contract provides for a two-part demand and commodity pricing structure when firm deliveries commence and a single commodity rate during the period of interruptible service preceding firm deliveries, according to Applicant. Applicant states that the demand component after firm deliveries commence would consist of the sum of the fixed costs incurred by Shell for the transportation of the gas from Alberta to the border delivery point and that the commodity charge is a function of an adjusted border price, minus the demand charge. Applicant states that the border price is subject to adjustment monthly according to a formula that is designed to make the price of the Shell gas continuously responsive over the life of the contract to the competitive prices of alternative fuels and domestic gas supplies available in Applicant's market in Maine, New Hampshire and Massachusetts. According to Applicant, a base border price of $3.31 per million Btu has been established in the contract which would be adjusted monthly through a formula based on a market basket of competitive alternatives: No. 2 fuel oil, No. 6 fuel oil, both high and low sulphur, and the weighted average cost of Applicant's other available firm natural gas supplies.

Applicant proposes to passthrough the purchase cost of the Shell gas in its rates on an "as-billed" basis and Applicant requests that it be relieved of the reduced purchased gas costs requirements of the incremental pricing provisions of Part 282 of the Commission's Regulations insofar as such provisions might be applicable to its purchases from Shell.

Applicant states that the Shell supply is being acquired for system supply to meet the growing requirements of its customers' markets and can be absorbed by the markets without displacing Applicant's existing long-term supplies.

Comment date: November 28, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP87-41-000]

November 7, 1986.

Take notice that on October 28, 1986, Northern Natural Gas Company, a Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP87-41-000, a request pursuant to §§ 157.205 and 157.212 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authority to construct a delivery point and appurtenant facilities to accommodate natural gas deliveries to Minnegasco, Inc. (Minnegasco), a local distributor in the State of Minnesota, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Northern states that it seeks authority ot construct a small-volume delivery point to accommodate natural gas deliveries to the community of Credit River Township, Scott County, Minnesota, a resale customer of Minnegasco. Northern states that the approximate total quantity to be deivered to Minnegasco at the subject delivery point would be 13 Mcf on a peak day and 1,950 Mcf on an annual basis. The total cost to construct the proposed facilities is estimated to be $4,919. Northern advises that Minnegasco would be required to contribute $4,032 in aid of construction.

Comment date: December 22, 1986, in accordance with Standard Paragraph G at the end of this notice.

5. Granite State Gas Transmission, Inc.

[Docket No. CP87-40-000]

November 7, 1986.

Take notice that on October 27, 1986, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 filed in Docket No. CP87-40-000 an application pursuant to § 153.10 of the Commission's Regulations for a Presidential Permit for the construction, operation, maintenance, and connection of facilities at the United States-Canadian international border near North Troy, Vermont, and Highwater, Quebec, for the importation of natural gas all as more fully set forth in the application on file with the Commission and open to public inspection.

Concurrently therewith, Granite State filed an application in Docket No. CP87-39-000 for a certificate of public convenience and necessity pursuant to Section 7 of the Natural Gas Act seeking authority to lease, acquire, construct and operate the necessary natural gas pipeline facilitues to enable Granite State to import natural gas from Canada and to resell the imported gas in its market areas in Maine, New Hampshire, and Massachusetts.

Comment date: November 26, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. Northern Border Pipeline Company

[Docket No. CP86-395-001]

November 7, 1986.

Take notice that on October 15, 1986, Northern Border Pipeline Company (Applicant), 2600 Dodge Street, Omaha, Nebraska 68131, filed in Docket No. CP86-395-001 a petition, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) and section 7(c) of the Natural Gas Act, seeking a limited-term waiver of §§ 284.7 and 284.8 of the Commission's Regulation promulgated under Order No. 436, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Applicant seeks waiver of those provisions of the Commission's Regulations which require that rates for transportation service rendered under Subpart G of Part 157 of the Regulations be volume-tric and designed on the basis of projected units of service. Applicant asserts that since the Commission's September 16, 1986 order in Docket No. CP86-395-000, which scheduled a technical conference to consider Applicant's application for a blanket certificate (*Northern Border Pipeline Company*), 36 FERC¶ 61,283 (1986)), it has received several written, as well as oral, requests from potential shippers for the transportation of gas through Applicant's pipeline system. Applicant claims that a waiver is necessary in order to permit it to transport gas, pending further action by the Commission after the conclusion of the technical conference, above.

Applicant avers that it meets the Commission's standards for waiver of §§ 284.7 and 284.8 of the Regulations, as these standards were articulated in a June 27, 1986 order issued to Texas Eastern Transmission Corporation in Docket No. RP86-110-000 (*Texas Eastern Transmission Corporation*, 35 FERC ¶ 61,405 (1986)). Applicant requests that a waiver issue, to continue through the earlier of March 1, 1987 or 30 days after the effective date of any final

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Commission order in Docket No. CP86–385–000.

Comment date: November 26, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

7. Panhandle Eastern Pipe Line Company and Trunkline Gas Company

[Docket No. CP87–15–000]

November 10, 1986.

Take notice that on October 9, 1986, Panhandle Eastern Pipe Line Company (Panhandle) and Trunkline Gas Company (Trunkline), hereinafter jointly referred to as Applicants, P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP87–15–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to partially abandon a transportation service to Mississippi River Transmission Corporation (MRT), all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicants explain that the partial abandonment would render a reduction of the firm transportation quantity of natural gas from 13,500 Mcf per day to 6,750 Mcf per day.

Panhandle and Trunkline provide service to MRT pursuant to Rate Schedules T–38 and T–60, respectively, it is explained.

Comment date: December 1, 1986, in accordance with Standard Paragraph F at the end of this notice.

8. Pacific Gas Transmission Company

[Docket No. CP87–21–000]

November 10, 1986.

Take notice that on October 14, 1986, as supplemented November 3, 1986, Pacific Gas Transmission Company (Applicant), 160 Spear Street, San Francisco, California 94105–1570, filed an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing (1) the interruptible transportation of natural gas in interstate commerce; and (2) pregranted abandonment authorization upon termination of the transportation agreement, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that the transportation would be accomplished by means of a delivery to Applicant at Kingsgate, British Columbia, of up to 338,900 Mcf of natural gas per day for the account of Salmon Resources Ltd. (Salmon), and the redelivery of such natural gas to Salmon at a points of interconnection between the pipeline systems of Applicant and the Washington Water Power Company at Starr Road near Spokane, Washington, and Pacific Gas and Electric Company at Malin, Oregon. Applicant states that the proposed maximum daily quantities at the proposed delivery points at Starr Road and Marlin, Oregon, are to be 31,130 Mcf and 307,600 Mcf of natural gas per day, respectively. Applicant further states that the interruptible transportation service would be accomplished through the utilization of existing capacity available on applicant's system. It is alleged that the term of the agreement would be for a primary term of 90 days, not to exceed one year.

It is further stated that Applicant also seeks pregranted abandonment authorization to terminate service upon termination of the transportation agreement.

Comment date: December 1, 1986, in accordance with Standard Paragraph F at the end of this notice.

9. Natural Gas Pipeline Company of America

[Docket No. CP87–35–000]

November 10, 1986.

Take notice that on October 24, 1986, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, P.O. Box 1208, Lombard, Illinois 60148, filed in Docket No. CP87–35–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Natural (1) to transport on an interruptible basis natural gas under a gas transportation agreement with MidVen Pipeline Company (MidVen), (2) to retain and operate existing facilities, and (3) to add and delete receipt points for the transportation service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that on June 25, 1986, Natural entered into a gas transportation agreement with MidVen to provide on an interruptable basis transportation of up to 60 billion Btu equivalent of natural gas per day for MidVen for a period of ten years from date of first delivery and month-to-month thereafter until cancelled. Natural requests authorization to transport up to 60 billion Btu equivalent of natural gas per day on an interruptible basis to the agreement.

Natural lists existing receipt points in Nacogdoches, Cass and Nueces Counties, Texas. Natural would redeliver volumes of gas for MidVen's account at existing points of interconnection between Natural and MidVen in Cass and Kleberg Counties, Texas. Natural states that the above existing points were originally constructed to provide transportation under section 311 of the Natural Gas Policy Act of 1978 only, and so were non-jurisdictional. Natural requests certificate authorization to retain and operate the facilities for the purpose of the transportation proposed herein.

Natural proposes to charge MidVen a transportation rate consistent with its maximum rate levels under Rate Schedule TRT–1, effective July 1, 1986, ranging from 1.0 cent to 17.3 cents per million Btu equivalent depending on the receipt and delivery points used. Natural also proposes to charge MidVen the currently effective GR1 surcharge, if required.

Natural further requests authorization to add and delete receipt points as required to support the transportation service. The construction of such receipt points added to implement the arrangement would be done under Natural's blanket authorization in Docket No. CP82–402–000.

Comment date: December 1, 1986, in accordance with Standard Paragraph F at the end of this notice.

10. Colorado Interstate Gas Company

[Docket No. CP87–36–000]

November 10, 1986.

Take notice that on October 24, 1986, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP87–36–000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and nesessity authorizing the reduction, at CIG's option, of the general daily entitlement of natural gas sold by CIG to Natural Gas Pipeline Company of America (NGPL) during the period from December 1 through the last day of February (swing period) for each year during the term of the service agreement with NGPL, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG states that on June 26, 1986, it executed a service agreement with NGPL incorporating a general daily entitlement of 130,000 Mcf of natural gas per day, as authorized by the Commission's order issued September 30, 1985, in Docket No. CP85–381–000. CIG further states that the service agreement reestablishes the provision for a swing period reduction from 130,000 Mcf of natural gas per day to 90,000 Mcf of natural gas per day commencing with the 1986–1987 heating season. CIG asserts that the option to reduce deliveries to NGPL during the winter heating season allows CIG to obtain additonal peak day and general heating season gas volumes if needed. No change in the Total Annual Entitlement to volume for NGPL is proposed in the instant application.

CIG requests that the authority sought in the instant application be issued on or before December 1, 1986, in order that the swing period reduction may, if necessary, be utilized during the 1986–87 heating season.

Comment date: December 1, 1986, in accordance with Standard Paragraph F at the end of this notice.

11. Algonguin Gas Transmission Company

[Docket No. CP86-189-003]

November 10, 1986.

Take notice that on October 31, 1986, Algonquin Gas Transmission Company (Petitioner), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP86–189–003 a petition to amend the Commission's order issued on December 24, 1985, pursuant to section 7(c) of the Natural Gas Act so as to authorize Petitioner to extend a limited-term transportation service with pre-granted abandonment for Commonwealth Gas Company (Commonwealth) until February 13, 1987, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that Commonwealth has requested it to provide firm transportation service for natural gas supplies that Commonwealth has acquired from Boston Gas Company (Boston Gas) to meet expected peak service requirements in place of synthesized natural gas supplies during the period December 23, 1986, through February 13, 1987. Petitioner avers that the requested service is similiar to the transportation service which was authorized by the Commission by the order of December 24, 1985, and which expired on February 16, 1986, for Commonwealth. Therefore, Petitioner requests authority to transport by displacement, through existing facilities and receipt/delivery points with Boston Gas and Commonwealth, a maximum transportation quantity of up to 5 billion Btu equivalent of natural gas per day, with a total maximum quantity for the full period of 260,576 billion Btu equivalent of natural gas. Petitioner states that it intends to render such transportation services to Commonwealth pursuant to revised Rate Schedule X–29 in Petitioner's FERC Gas Tariff Original Volume No. 2, for a limited-term starting the later of December 23, 1986, or upon the date Petitioner accepts the certificate authorizing the extension of the service, with pre-granted authority to abandon the transportation service as of February 13, 1987. Petitioner proposes to charge a transportation rate of .01474 cents per billion Btu equivalent of natural gas transported, which charge is the established rate charged by Petitioner for Rate Schedule X–29 transportation service.

Comment date: December 1, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commisson will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–25942 Filed 11–17–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA83-2-31-008]

Arkla Energy Resources, a division of Arkla, Inc.; Petition for Waiver

November 13, 1986.

Take notice that on November 6, 1986, Arkla Energy Resources ("AER"), a division of Arkla, Inc., P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. TA83–2–31, a petition for waiver of requirements imposed in that docket and implemented in AER's tariff, in order to permit AER more equitably and efficiently to refund the purchased gas cost portion of a 1983 minimum bill deficiency payment paid to AER by Northwest Central Pipe Line Corporation ("NWC"), all as more fully set forth in the petition that is on file with the Commission and open to public inspection.

AER requests that the Commission grant a waiver of AER's tariff to permit AER (a) to calculate the refund due its jurisdictional customers with respect to the purchase gas cost portion of NWC's 1983 minimum bill deficiency payment on the basis of AER's jurisdictional sales during the twelve-months ended December 31, 1983, and (b) to make a lump sum refund of the resulting amounts directly to those customers. AER states that the relief it requests is consistent with the expectations of all participants in a settlement reached in this docket and approved by the Commission on August 13, 1984. AER further asserts that the proposed period for calculating the refund is appropriate because it corresponds to the period during which NWC's minimum bill deficiency was incurred and before NWC's purchase patterns were altered in light of Commission Order No. 380–C. AER further states that its proposal will be administratively efficient and permit repayment of the refund promptly

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following the termination of the period during which NWC is permitted to make up the minimum bill deficiency for which payment was made. AER states that it has discussed this proposal with its jurisdictional customers, who agree that the proposal provides for a more equitable method of accounting for the 1983 minimum bill deficiency payment.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before November 20, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26004 Filed 11-17-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9521-001]

Lloyd Ladd; Surrender of Preliminary Permit

November 13, 1986.

Take notice that Lloyd Ladd, permittee for the Ladd Dam Project No. 9521 located on the China Lake Outlet Stream in Kennebec County, Maine, has requested that its preliminary permit be terminated. The preliminary permit was issued on April 25, 1986, and would have expired on March 31, 1989. The permittee states that analysis of the Ladd Dam Project did not indicate feasibility for development.

The permittee filed the request on October 24, 1986, and the preliminary permit for Project No. 9521 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26006 Filed 11-17-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-128-003]

Ohio River Pipeline Corp.; Proposed Changes in FERC Gas Tariff

November 13, 1986.

Take notice that on November 4, 1986, Ohio River Pipeline Corporation (Ohio River) tendered for filings the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Substitute Original Sheet No. 4
Substitute Original Sheet No. 5
Substitute Original Sheet No. 10
Second Substitute Original Sheet No. 11
Substitute Original Sheet No. 41
Substitute Original Sheet No. 42
Substitute Original Sheet No. 49

Ohio River states that these revised tariff sheets are being filed as a result of a technical conference held pursuant to the Commission's order dated June 30, 1986 in Docket No. RP86-128-000 and subsequent discussions between Ohio River and the Commission's Staff.

Ohio River requests waiver of all Commission rules and regulations, as necessary, to permit the tendered tariff sheets to become effective on July 1, 1986. A copy of this filing was provided to Indiana Gas Company, Inc., Ohio River's parent and sole sales customer.

Simultaneously with this filing, Ohio River has filed a Motion For A Determination That A Filing Fee Is Not Required Pursuant to 49 CFR 381.110 Or, In The Alternative, For Waiver Of Filing Fee Pursuant to 49 CFR 381.106.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before November 20, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26008 Filed 11-18-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-44-002]

Valero Interstate Transmission Co.; Tariff Filing

November 13, 1986

Take notice that on October 30, 1986, Valero Interstate Transmission Company (Vitco) tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume Nos. 1 and 2:

Original Volume No. 1

3rd Revised Sheet No. 7
1st Revised Sheet Nos. 7.1 through 7.8
6th Revised Sheet No. 8
1st Revised Sheet Nos. 8.1 through 8.8
1st Revised Sheet No. 9.1
12th Revised Sheet No. 14
2nd Revised Sheet No. 14.2
1st Revised Sheet Nos. 22 through 29
Original Sheet Nos. 29.1 through 29.8
1st Revised Sheet Nos. 49 through 51
Original Sheet No. 51.1
2nd Revised Sheet Nos. 52 through 54
Original Sheet No. 54.1

Original Volume No. 2

1st Revised Sheet Nos. 1 and 2
7th Revised Sheet No. 6

Vitco states that these tariff sheets implement the July 16, 1986, "Stipulation and Agreement in Settlement of Rate Proceeding" which was approved October 3, 1986 by Commission letter order. Vitco further states that these tariff sheets are identical to those attached to the Stipulation and Agreement as modified for typographical errors by sheets filed with Vitco's August 11, 1986 Reply Comments. The tariff sheets contain as paragraph 5(k) of the General Terms and Conditions the "use-it-or-lose-it" provision for interruptible transportation service approved by the Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before November 20, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26010 Filed 11-17-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Magnetic Fusion Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Magnetic Fusion Advisory Committee.

Date and Time: Wednesday, December 3, 1986, 8:30 a.m.–5:00 p.m., Thursday, December 4, 1986, 8:30 a.m.–3:00 p.m.

Location: GA Technologies, Inc., Room No. T–120, 10955 John Jay Hopkins Drive, San Diego, California.

Contact: Thomas G. Finn, Office of Fusion Energy, Office of Energy Research, ER–50.2 U.S. Department of Energy, Mail Stop G–236, Washington, DC 20545, Phone: (301)–353–4941.

Purpose of the Committee

To provide advice to the Secretary of Energy on the Department's Magnetic Fusion Energy Program, including periodic reviews of elements of the program and recommendations of changes based on scientific and technological advances or other factors; advice on long-range plans, priorities, and strategies to demonstrate the scientific and engineering feasibility of fusion; advice on recommended appropriate levels of funding to develop those strategies and to help maintain appropriate balance between competing elements of the program.

Agenda Outline

Wednesday, December 3, 1986—8:30 AM

1. Welcome—D. Overskei.
2. New Developments in International Cooperation—J. Clarke.
3. MFAC Report on the Technical Planning Activity Panel (TPA)—C. Baker and H. Weitzner.
4. MFAC Discussion on TPA Panel.

Lunch

5. MFAC Discussion on TPA Panel/Public Comments.
6. Presentation on Fusion Materials Program—R. Conn and E. Bloom.
7. MFAC Report on Materials Charge—(Review of IEA Panel of Experts)—L. Berry.
8. MFAC Discussion.
9. Public Comments (10-minute rule).

Adjourn 5:00 PM

Thursday, December 4, 1986—8:30 AM

1. Report on ERAB Panel—R. Davidson.
2. MFAC Recommendations on TPA/MFAC Comments/Public Comments.
3. MFAC Recommendations on IEA Materials Panel/MFAC Discussion/Public Comments.
4. GA Presentation.

Lunch

5. GA Presentation.
6. Other Business.
7. Public Comments (10-minute rule).

Adjourn 3:00 PM

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Thomas G. Finn at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes

Available for public review and copying approximately 30 days following the meeting at the Public Reading Room, Room 1E190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC., between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on November 13, 1986.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 86–26024 Filed 11–17–86; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1628]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

November 10, 1986.

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202–857–3800). Oppositions to these petitions must be filed within 15 days after publication of this Public Notice in the **Federal Register**. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: MTS and WATS Market Structure: Average Schedule Companies. (CC Docket No. 78–72, Phase I).

Number of petitions received: 4.

Subjects: Authorized Rate of Return for the Internstate Servcies of AT&T Communications and exchange Telephone Companies. (CC Docket No. 84–800, Phase III).

Number of petitions received: 1.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–26002 Filed 11–17–86; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 86–400]

Zip-Call, Inc., et al.

AGENCY: Federal Communications Commission (FCC).

ACTION: Order designating applications for hearing.

SUMMARY: This order designates five applications in the Public Land Mobile Radio Service for comparative hearing pursuant to § 22.33(c)(i) of the Federal Communication's Rules, 47 CFR 22.33(c)(i). Zip-Call, Inc., File No. 24404–CD–P/L–3–85, proposes to construct additional transmitting facilities for Station KCI297 to operate on frequency 454.175 MHz at Agamenticus Village, Portland and Saco, Maine. Marshall Communications Corporation, File Nos. 23126–CD–P/L–1–85, 228899–CD–P/L–1–85, proposed to establish facilities for Station KNKI563 on frequency 454.175 MHz at Auburn, Maine and for KNKI514 on frequency 454.175 MHz at Saco, Maine. Summit Mobile Radio Company, File Nos. 24440–CD–P/L–1–85, 24444–CD–P/L–1–85, proposes to establish facilities on frequency 454.175 MHz for Station KNKI893 at Androscoggin, Maine and for Station KNKI901 at Falmouth Township, Maine. The Commission finds that it is in the public interest to allow Zip-Call, Inc. the opportunity to prove that an additional location on its existing system will benefit the public more than will service proposed by the other applicants.

DATES: Within 20 days of the release date of this order, applicants must file a written notice of their intention to appear on the day of the hearing and to present evidence on the specified issues.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

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FOR FURTHER INFORMATION CONTACT: Gerald Goldstein (202) 632-8450.

SUPPLEMENTARY INFORMATION: This is a summary of the Common Carrier Bureau's designation order, pursuant to delegated authority; adopted October 14, 1986, and released October 29, 1986.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230) 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Washington, DC 20037.

Kevin J. Kelley,

Deputy Chief, Domestic Facilities Division

[FR Doc. 86-26001 Filed 11-7-86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Revision of Information Collection 3067-0169

Title: Write Your Own (WYO) Program

Abstract: Under the Write Your Own Program, the Federal Insurance Administrator may enter into arrangements with private sector insurance companies to offer flood insurance coverage to eligible property owners. The Federal Government is a guarantor of flood insurance coverage for policies written under the Write Your Own Program. To insure that Federal funds are accounted for and appropriately expended, companies under the Write Your Own Program are required to submit monthly financial reports.

Type of respondents: Business and other for-profit

Number of respondents: 76

Burden hours: 456

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Dated: November 5, 1986.

Wesley C. Moore,

Acting Director, Office of Administrative Support.

[FR Doc. 86-25944 Filed 11-17-86; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

President's Advisory Committee on Mediation and Conciliation; Meeting

Pursuant to section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the President's Advisory Committee on Mediation and Conciliation will be held on Tuesday, December 9, 1986 from 9:00 a.m. to 5:00 p.m. and Wednesday, December 10, 1986 from 9:00 a.m. to 5:00 p.m. in hearing room number 1 of the National Labor Relations Board, 11000 Wilshire Boulevard, 12th floor, Los Angeles, California 90024.

The purpose of the meeting is to obtain the views of representatives of labor and management, and other qualified individuals, with regard to labor-managment goals and objectives expected to be achieved within a period of five years. A hearing procedure will be followed in which the views of witnesses will be transcribed for the record.

The meeting will be open to the public. Interested persons may file written statements with the Committee, and subject to reasonable Committee procedures may also make oral statements on matters germane to subjects under consideration at the meeting.

Further information regarding this meeting may be obtained from Mr. Dennis R. Minshall, Executive Director, President's Advisory Committee on Mediation and Conciliation, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427, or call (202) 653-5290.

Dated: November 12, 1986.

Duane M. Buckmaster

Deputy Director, Federal Mediation and Conciliation Service.

[FR Doc. 86-25923 Filed 11-17-86; 8:45 am]

BILLING CODE 6732-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 85V-0496]

Approved Variance for Laserscope OMNIplus™ Surgical Laser System; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration, (FDA) is announcing that a variance for the performance standard for laser products has been approved by FDA's Center for Devices and Radiological Health (CDRH) for the Laserscope OMNIplus™ surgical laser system manufactured by Laserscope, Santa Clara, CA.

DATES: The variance became effective August 8, 1986, and terminates August 8, 1991.

ADDRESS: The application and all correspondence on the application have been placed in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Donovan, Center and Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), CDRH has granted Laserscope, 3350 Scott Blvd., Bldg. 29, Santa Clara, CA 95054, a variance from § 1040.10(f)(5)(iii) (21 CFR 1040.10(f)(5)(iii)) of the performance standard for laser products for the Laserscope OMNIplus™ surgical laser system. The system is a pulsed solid state twin crystal laser used in a variety of surgical procedures (e.g., treatment of port wine stain and tattoos).

The specific requirements of the standard form which a variance has been granted pertains to the provision of § 1040.10(f)(5)(iii), which requires that after August 20, 1986, laser systems must include an emission indicator on each separately housed laser and on each operation control of a laser system if such laser or operation can be operated at a distance of greater than 2 meters from any separately housed portion of the laser product incorporating an emission indicator. All other provisions of the performance standard remain applicable to the product.

CDRH has determined that (1) the requirement of § 1040.10(f)(5)(iii) is not appropriate for laser systems equipped with a line-of-sight cordless infrared remote control unit, and (2) suitable means of radiation safety and protection will be provided by the supplemental features and information provided to users. Therefore, on August 8, 1986, CDRH approved the requested variance by a letter to the manufacturer from the Deputy Director of CDRH.

To assure that the product shows evidence of the variance approved for the manufacturer, the product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number, and the effective date of the variance.

In accordance with § 1010.4, the application and all correspondence on the application have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: November 7, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86-25936 Filed 11-17-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86P-0393]

Petition Requesting 10 Years' Exclusivity for Hydrocortisone Butyrate

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: In keeping with agency policy, the Food and Drug Administration (FDA) is announcing the filing of a petition requesting a period of 10 years' marketing exclusivity under section 505(j)(4)(D)(i) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 255(j)(4)(D)(i)) for hydrocortisone butyrate, a topical steroid drug. The agency previously has accorded hydrocortisone butyrate a period of 2 years' exclusivity under section 505(j)(4)(D)(v) of the act. FDA is giving notice of the filing of this petition to all interested persons because, should FDA decide to grant the petition, this decision may affect the date when approval for marketing of generic versions of hydrocortisone butyrate may be made effective.

DATE: Comments by December 18, 1986.

ADDRESS: Requests for a copy of the petition and written comments regarding the petition to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Adele S. Seifried, Center for Drugs and Biologics (HFN-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

SUPPLEMENTARY INFORMATION: On September 24, 1984, the President signed into law the Drug Price Competition and Patent Term Restoration Act of 1984. This act amends the Federal Food, Drug, and Cosmetic Act authorizing, among other things, the agency to accept abbreviated new drug applications (ANDA's) for most previously approved new drug products. This legislation also provides for extending the term of a patent which claims a product, use, or method of manufacture that was subject to a regulatory review period in accordance with the act. Further, this new legislation also provides for periods of exclusive marketing of certain new drug products submitted in an application (or a supplement to an application) under section 505(b) of the act. An ANDA or new drug application described in section 505(b)(2) of the act for such a drug may not be submitted (under some provisions) or made effective (under other provisions) until the period of "exclusive" marketing ends.

The new drug products that have been granted "exclusivity" under one of the several exclusivity provisions of this new legislation are set forth in the volume entitled "Approved Prescription Drug Products with Therapeutic Equivalence Evaluations" (the list) and its monthly supplements. In addition, the period of exclusivity is shown.

The agency believes that all exclusivity information appearing in the list is correct, and expects that such information appearing in any future supplements to the list will also be correct. However, interested persons may disagree with the agency's findings and believe that FDA has excluded exclusivity information that should have been included, or included exclusivity information that should have been excluded. Accordingly, FDA has established a policy that, whenever an interested person submits a citizen petition requesting such inclusion or exclusion, the agency will publish a notice in the **Federal Register** of the availability of the petition. This publication is constructive notice to all interested persons that they may be affected by the petition and gives them an opportunity to submit their comments on the petition to the agency. Persons potentially affected include holders of approved ANDA's or approved new drug applications decribed in section 505(b)(2) the effective dates of which might be changed by a decision to grant the petition, persons who have pending ANDA's or new drug applications described in section 505(b)(2) or who contemplate submitting such applications that, when approved, would have effective dates that will be determined by the decision on the petition or, in some cases, persons whose right to submit such application may be affected.

Although the agency has made an initial determination that hydrocortisone butyrate is entitled only to 2 years' exclusivity, in accordance with the policy above, FDA is announcing a filing of a petition (86P-0393) submitted on behalf of Gist-Brocades that hydrocortisone butyrate be accorded 10 years' exclusivity. Gist-Brocades requests that FDA reconsider its determination on exclusivity for hydrocortisone butyrate. Gist-Brocades states that the drug should be accorded 10 years' exclusivity under section 505(j)(4)(D)(i) of the act.

FDA is reviewing the merits of this petition and, by this notice, is giving anyone who may be affected by this petition an opportunity to submit comments within 30 days.

Interested persons may, on or before December 18, 1986, submit to the Dockets Management Branch (address above) written comments on the petition. These comments will be considered in preparing an agency response to the petition. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The petition and received comments may be seen in the Docket Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Requests for a single copy of the petition should be sent to the Docket Management Branch.

BEST COPY AVAILABLE

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Dated: November 12, 1986.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–25935 Filed 11–17–86; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 86M–0430]

W.L. Gore & Associates, Inc.; Premarket Approval of GORE-TEX™ Cruciate Ligament Prosthesis

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by W.L. Gore & Associates, Inc., Flagstaff, AZ, for premarket approval, under the Medical Device Amendments of 1976, of the GORE-TEX™ Cruciate Ligament Prosthesis. After reviewing the recommendation of the Orthopedic and Rehabilitation Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petition for administrative review by December 18, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nirmal K. Mishra, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7156.

SUPPLEMENTARY INFORMATION: On October 4, 1985, W.L. Gore & Associates, Inc., Flagstaff, AZ 86001, submitted to CDRH an application for premarket approval of the GORE-TEX™ Cruciate Ligament Prosthesis. The device is a prosthetic ligament fabricated from expanded polytetrafluoroethylene. It is implanted through single femoral and tibial tunnels, and fixed in place with stainless steel bone screws placed through the eyelets and the adjacent and opposite cortices. The device is indicated for use as a permanent replacement for the anterior cruciate ligament of the knee in those patients who have had at least one failed autogenous, intraarticular reconstruction of their anterior cruciate ligament.

On June 19, 1986, the Orthopedic Rehabilitation Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On October 10, 1986 CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Docket Management Branch (address above) and is available from that office upon written request. Request should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Nirmal K. Mishra (HFZ–410), address above.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 18, 1986, file with the Docket Management Branch (address above) two copies of each petition and supporting data and information, identifed with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: November 7, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86–25937 Filed 11–7–86; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Ophthalmic Devices Panel

Date, time, and place. December 4, 2 p.m., Conference Rm. E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. This meeting will be held by a telephone conference call. A speaker telephone will be provided in the conference room to allow public participation in the meeting. Open public hearing, 2 p.m. to 2:15 p.m.; open committee discussion, 2:15 p.m. to 5 p.m. Dr. Richard E. Lippman, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave. Silver Spring, MD 20910, 301, 301–427–7320.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation. The committee also reviews data on new devices and makes recommendations regarding their safety and effectiveness and their suitability for marketing.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before December 1, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss "Me Too" criteria for panel review of premarket approval applications (PMA's) and the issue of overnight swelling response in extended wear contact lens patients. The committee may also discuss general issues relating to other ophthalmic devices.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA-305), RM. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: November 14, 1986.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-26080 Filed 11-14-86; 2:36 am]

BILLING CODE 4160-01-M

Public Health Service

National Committee on Vital and Health Statistics, Subcommittee on Disease Classification and Automated Coding of Medical Diagnoses; Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the Subcommittee on Disease Classification and Automated Coding of Medical Diagnoses of the National Committee on Vital and Health Statistics (NCVHS) established persuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, will convene on Monday, December 2, 1986 at 9:00 a.m. in Room 403A of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

The Subcommittee will receive presentations from the National Center for Health Statistics on the current status of the Tenth Revision to the International Classification of Diseases (ICD-10). The meeting will also provide a forum for interested parties to express their views.

Further information regarding this meeting of the subcommittee may be obtained by contacting Gail F. Fisher, Ph.D., Executive Secretary, National Committee on Vital and Health Statistics, Room 2-28, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436-7050.

Dated: November 14, 1986.

Manning Feinleib,

Director, National Center for Health Statistics.

[FR Doc. 86-26091 Filed 11-17-86; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Wisconsin Winnebago Tribe; Establishment of Reservation

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

Notice is hereby given that, under the authority of section 7 of the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 467), the herinafter described land, located in Jackson, Juneau, Sauk, Wood, Monroe, Shawano and Dane Counties, Wisconsin, was proclaimed an addition to the Wisconsin Winnebago Indian Reservation, effective November 4, 1986, for the exclusive use of Indians entitled by enrollment or by tribal membership to residence at such reservation.

4th Principal Meridian

Jackson County

Parcel 1

A parcel of land located in part of the Northeast Quarter of the Northeast Quarter, the Southeast Quarter of the Northeast Quarter, the Southwest Quarter of the Northeast Quarter, and the Northwest Quarter of the Southeast Quarter, all located in Section 5, Township 21 North, Range 3 West, Town of Brockway, Jackson County, Wisconsin, more particularly described as follows: The Northeast Quarter of the Northeast Quarter, excepting the West 10 acres (Volume 180 of Records, page 47); and all that part of the Southeast Quarter of the Northeast Quarter, and the Southwest Quarter of the Northeast Quarter, and the Northwest Quarter of the Southeast Quarter lying North of the Northwesterly right-of-way line of Highway "54" as presently located, excepting a strip of land 100 feet in width lying North and parallel and adjacent to said Northwesterly right-of-way line of Highway "54". Said parcel contains 94.71 acres of land, more or less, together with the following roadway easement: A parcel of land located in the Southeast Quarter of the Northeast Quarter and the Southwest Quarter of the Northeast Quarter, Section 5, Township 21 North, Range 3 West, Town of Brockway, Jackson County, Wisconsin, described as follows: Commencing at the Southwest corner of the Southeast Quarter of the Northeast Quarter of Section 5, Township 21 North, Range 3 West; thence North 04°53'30" West along the forty line, 159.01 feet to the Northerwestly right-of-way (R/W) line of S.T.H. "54"; thence North 50°56'37" East along said R/W line, 11.35 feet to the point of beginning and the Southwesterly corner of the 66 foot roadway through 100 foot strip; thence continuing North 50°56'37" East along said Northwesterly R/W line of S.T.H. "54", 66.00 feet; thence North 38° 29' West perpendicular to the centerline of S.T.H. "54", 100.00 feet; thence South 50°56'37" West parallel to said S.T.H. "54" R/W line, 66.00 feet; thence 38° 29' East perpendicular to said centerline of S.T.H. "54", 100.00 feet to the point of beginning.

Jackson County

Parcel 2

The SW¼SW¼ Sec. 28, T. 22 N., R. 3W., except that part described as follows:

Beginning at the SW corner of the aforesaid quarter-quarter, thence N. on the W. line thereof 600 feet, thence E. parallel with the South line of said quarter-quarter 340 ft., thence South parallel with the West line 260 ft., thence West parallel with the South line of said quarter-quarter 290 ft., thence South parallel with the West line 340 ft. to the South line, thence West on said line 50 ft. to the point of beginning, and containing approximately 2.42 acres of land.

Parcel 3

SW¼NE¼ Sec. 24, T. 21 N, R. 2 W.

Parcel 4

NE¼SW¼ Sec. 28 T. 22 N., R. 3 W., minerals reserved.

Parcel 5

S½S½SW¼NE¼ Sec. 28, T. 22 N., R. 3 W.

Parcel 6

S½NW¼ and NW¼NW¼ Sec. 33, T. 22 N., R. 3 W., excepting therefrom approximately 17 acres described as follows: Beginning at the SE corner of T. 22 N., R. 3 W., Sec. 33, NW¼NW¼, thence West a distance of 950 feet, thence North a distance of 782 feet, thence East a distance of 950 feet, thence South a distance of 782 feet to the place of beginning.

Parcel 7

A parcel of land located in the Town of Komensky, more particularly described as follows:

Commencing at the SW corner of the NE¼NW¼, thence running north on the Eighth line 13 rods, thence running East 13 rods, thence running South 13 rods to the Eighth line, thence running West on the Eighth line 13 rods, to the place of beginning of Sec. 33, T. 22 N., R. 3 W.

Parcel 8

The NE¼NW¼ Sec. 33, T. 22 N., R. 3 W., excepting therefrom 1-acre described as follows:

Commencing at the SW corner of NE¼NW¼ Sec. 33, T. 22 N., R. 3 W., thence North on the Eighth line a distance of 13 rods, thence E. 13 rods, thence S. 13 rods, thence W. on the Eighth line 13 rods to the place of beginning.

Parcel 9

SE¼SW¼SW¼ Sec. 34, T. 22 N., R. 3 W.

Juneau County

A parcel of land located in SW¼NE¼ and SE¼ of Sec. 19, NE¼NE¼ of Sec. 30, N½NW¼ of Sec. 29, all in T. 14 N., R. 6 E., 4th P.M., which is bound by a line described as follows:

Beginning at the SE corner of said Sec. 19, (unless otherwise noted, the bearings on the following descriptions are referenced to the E. line of Sec. 19 being a N. and S. line); thence N. 89° 37' E., 186 ft. along the North line of the NW¼NW¼ of Sec. 29; thence S. 18° 42' E., 199.65 ft.; thence S. 23° 59' E., 129.70 ft.; thence S. 29° 09' E., 666.65 ft.; thence N. 82° 47' W., 154 ft.; thence S. 12° 25' W., 314.00 ft. to a point which is 60 ft., measured at right angles from the easterly right-of-way of I-90 & 94; thence S. 47° 31' E., (highway bearing), parallel with said right-of-way, 166.75 ft.; thence S. 86° 40' E., 762.0[illegible], parallel with the South line of the N½, NW¼ Sec. 29, to the centerline of CTH "N"; thence along said center-line S. 52° 18' E., 74.00 ft.; thence S. 74° 40' E., 65.70 ft.; thence S. 86° 30' E., 104.60 ft., to the South line of the N½NW¼ of said Sec. 29; thence N. 87° 40' W., 1009.00 ft., along said south line, to the easterly right-of-way of said I-29 & 94; thence Northerly along said Easterly right-of-way, (using bearings as designated on I-90 & 94 Highway Plans) as follows: Thence N. 47° 31' W., 770.72 ft.; thence N. 42° 19' W., 667.20 ft., to the point of curve to the right, radius 22,768.31 ft.; thence along the arc of said curve whose chord bears N. 45° 34' W., 1549.49 ft., to the point of tangency; thence N. 43° 37' W., 1502.46 ft., to the N–S one-quarter line of said Sec. 19; thence N. 1° 08' E., (the following bearings are referenced to the East line of Sec. 19 as being N–S) 916.60 ft., to the Southerly right-of-way of CTH "N"; thence Southeasterly along said right-of-way, along the arc of a curve, whose chord bears S. 55° 27' E., 193.3 ft.; thence S. 1° 08' W., 258.3 ft.; thence S. 55° 30' E., 446.9 ft., to the SW corner of a parcel described in Vol. 144, p. 616 of Deeds; thence S. 59° 18' E., 660.00 ft., parallel with the centerline of CTH "N"; thence N. 17° 07' E., 298.10 ft., to the centerline of CTH "N"; thence S. 59° 39' E., 535.55 ft., along said centerline; thence S. 55° 38' E., 75.00 ft., along said centerline; thence S. 51° 08' E., 77.85 ft., along said centerline; thence S. 43° 41' W., 390 ft., along the West line of the parcel described in Vol. 158, p. 163 of Deeds; thence S. 46° 19' E., 950 ft., along the South line of parcels described in Vol. 158, p. 163 of Deeds, and Vol. 156 p. 593 of Deeds; thence N. 43° 41' E., 390 ft., along the Easterly line of the parcel described in Vol. 156, p. 593 of Deeds; thence S. 46° 19' E., 201.00 ft., to a point where the centerline of CTH "N" intersects the East line of said Sec. 19; thence S. 889.68 ft., along East line to the point of beginning, containing 83 acres, more or less. Subject to an easement 30 ft. in width for the purpose of gaining access to the NE¼SW¼ of Sec. 19, T. 14 N., R. 6 E., more particularly described as follows:

Commencing at the SW corner of SW¼NE¼ of Sec. 19, thence South 30 ft. along the N and S centerline of said Sec. 19, thence East 30 feet, thence North parallel to said N and S centerline southerly line of County Trunk N, thence northwesterly along said southerly right-of-way to the N and S centerline of Sec. 19, thence South along said centerline to the point of beginning.

Monroe County

Parcel 1

The NE¼SW¼ Sec. 18, T. 18 N., R. 1 E., less the following described tracts:

(1) Commencing at the NW corner of said NE¼SW¼ Sec. 18, T. 18 N., R. 1 E., thence S. 75 ft., to point of beginning, thence E. 292 ft., thence South 325 ft., thence West 292 ft., thence North 325 ft. to the point of beginning;

(2) Commencing at the SW corner of above-described forty, thence N. 66 ft., to point of beginning, thence North 300 ft., thence E 365 ft., thence South 300 ft., thence West 365 ft., to the point of beginning;

(3) Commencing at the SW corner of above-described forty, thence North 366 ft., to point of beginning, thence North 150 ft., thence West 292 ft., thence South 150 ft., thence West 292 ft., to the point of beginning; and

(4) The South 66 feet of the above-described forty.

Parcel 2

E½NE¼NE¼, Sec. 24, T. 18 N., R. 1 W., containing 20 acres, more or less.

Sauk County

Parcel 1

Lot 1 (NE¼NE¼) Sec. 15, T. 13 N., R. 5 E.

Parcel 2

A parcel of land located in the NE¼NE¼ and SE¼NE¼ of Sec. 15, T. 13 N., R. 5 E., Town of Dellona, Sauk County, Wisconsin, to-wit; Beginning at the E-quarter corner of said Section 15; thence N. 88° 10' 44" W., 567.79 ft.; thence N. 1471.93 ft.; thence N. 21° 50" 51" W., 555.90 ft.; thence N. 68° 09' 09" E., 834.29 ft.; thence S. 2316.41 ft. to the point of beginning and containing 30 acres, more or less.

Parcel 3

Lot 3 (SE¼SE¼) Sec. 3, T. 12 N., R. 6 E.

Shawano County

The South 300 feet of the NE fractional ¼ NE¼ Sec. 4, T. 27 N., R. 11 E.

Wood County

Parcel 1

SE¼SE¼ Sec. 24, T. 21 N., R. 4 E.

Parcel 2

The E½NE¼NE¼, EXCEPTING the South 209 feet of the E. 209 ft., and excepting the

West 209 feet of the South 1,040 feet of Sec. 28, T. 22 N., R. 4 E. P.M.

Subject to all valid existing easements, reservations; and rights-of-way of record.

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

[FR Doc. 86-25957 Filed 11-17-86; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[WY-920-07-4111-15-7001; W-74031-G]

Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W-74031-G for lands in Weston County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-74031-G effective October 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 86-25928 Filed 11-17-86; 8:45 am]

BILLING CODE 4310-22-M

[AZ-020-06-4212-12; A 22448]

Exchange of Lands, Arizona

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Exchange of public lands, Maricopa, Yavapai and Mohave Counties, Arizona.

SUMMARY: The Phoenix District will be exchanging 12,155.16 acres of public land for approximately 40,939.91 acres of land owned by the State of Arizona as authorized by section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716. The exchange will be on an equal value basis as determined by appraisal.

Some of the lands involve base floodplains. Excluding lands within the base floodplain from the exchange is not a practicable alternative.

The public lands exchanged will be the following:

Gila and Salt River Meridian

T. 7 N., R. 2 E.,
  Sec. 26.
T. 6 N., R. 3 E.,
  Secs. 35, 36.
T. 11 N., R. 3 E.,
  Sec. 19.
T. 5 N., R. 4 E.,
  Secs. 6, 7.
T. 6 N., R. 4 E.,
  Secs. 4,7,.
T. 27 N., R. 9 E.,
  Sec. 24.
T. 26 N., R. 10 E.,
  Sec. 34.
T. 27 N., R. 10 E.,
  Secs. 6, 18, 20, 30.
T. 20 N., R. 11 E.,
  Sec. 22.
T. 23 N., R. 11 E.,
  Sec. 32.
T. 24 N., R. 11 E.,
  Sec. 6.
T. 25 N., R. 11 E.,
  Sec. 30.
T. 25 N., R. 1 W.,
  Sec. 30.
T. 18 N., R. 11 W.,
  Sec. 17.
T. 17 N., R. 12 W.,
  Sec. 1.
T. 18 N., R. 12 W.,
  Secs. 16, 29, 32.
T. 19 N., R. 12 W.,
  Sec. 21.
T. 21 N., R. 12 W.,
  Sec. 4.
T. 18 N., R. 12 W.,
  Secs. 2, 35, 36.
T. 19 N., R. 13 W.,
  Secs. 2, 7, 32, 36.
T. 20 N., R. 13 W.,
  Sec. 36.
T. 22 N., R. 14 W.,
  Sec. 9.
T. 23 N., R. 14 W.,
  Sec. 36.
T. 22 N., R. 15 W.,
  Secs. 13, 23, 34.

The state lands to be acquired will be within the following sections in Maricopa, Pinal, and Mohave Counties.

T. 5 N., R. 2 E.,
  Sec. 5.
T. 1 S., R. 10 E.,
  Secs. 25, 26.
T. 15 N., R. 10 W.,
  Secs. 2, 16.
T. 16 N., R. 10 W.,
  Sec. 36.
T. 11 N., R. 11 W.,
  Secs. 13, 14.
T. 14 N., R. 12 W.,
  Secs. 2, 16.
T. 16½ N., R. 12 W.,
  Sec. 32.
T. 17 N., R. 12 W.,
  Secs. 4, 6, 8, 16, 18, 20, 22, 28, 30, 34.
T. 13 N., R. 13 W.,
  Secs. 16, 32, 36.
T. 15 N., R. 13 W.,
  Secs. 12, 16, 32.
T. 16 N., R. 13 W.,
  Secs. 2, 32.
T. 17 N., R. 13 W.,
  Sec. 2.
T. 18 N., R. 13 W.,
  Secs. 26, 34.
T. 12 N., R. 14 W.,
  Secs. 16, 32.
T. 13 N., R. 14 W.,
  Secs. 16, 32, 36.
T. 17 N., R. 14 W.,
  Sec. 36.
T. 11 N., R. 15 W.,
  Secs. 8, 16.
T. 12 N., R. 15 W.,
  Sec. 2.
T. 13 N., R. 15 W.,
  Secs. 16, 32.
T. 25 N., R. 15 W.,
  Sec. 2.
T. 28 N., R. 15 W.,
  Sec. 32.
T. 29 N., R. 15 W.,
  Secs. 16, 32.
T. 30 N., R. 15 W.,
  Sec. 32.
T. 12 N., R. 16 W.,
  Sec. 16.
T. 13 N., R. 16 W.,
  Sec. 36.
T. 24 N., R. 16 W.,
  Sec. 2.
T. 25 N., R. 16 W.,
  Sec. 32.
T. 28 N., R. 16 W.,
  Sec. 36.
T. 30 N., R. 16 W.,
  Sec. 36.
T. 21 N., R. 17 W.,
  Sec. 32.
T. 23 N., R. 17 W.,
  Secs. 3, 4, 10, 15, 22, 23, 26.
T. 24 N., R. 17 W.,
  Sec. 2.
T. 27 N., R. 17 W.,
  Sec. 2.
T. 28 N., R. 17 W.,
  Secs. 32, 36.
T. 29 N., R. 17 W.,
  Sec. 36.
T. 24 N., R. 18 W.,
  Sec. 2.
T. 25 N., R. 18 W.,
  Sec. 2.
T. 26 N., R. 18 W.,
  Secs. 24, 26, 34.
T. 28 N., R. 18 W.,
  Secs. 2, 36.
T. 19 N., R. 19 W.,
  Sec. 16.
T. 22 N., R. 19 W.,
  Sec. 2.
T. 25 N., R. 19 W.,
  Sec. 36.
T. 27 N., R. 19 W.,
  Secs. 14, 30.
T. 19 N., R. 20 W.,
  Sec. 2.
T. 20 N., R. 20 W.,
  Sec. 2.
T. 21 N., R. 20 W.,

Secs. 2, 36.
T. 22 N., R. 20 W.,
Secs. 2, 32, 36.
T. 23 N., R. 20 W.,
Sec. 36.
T. 28 N., R. 20 W.,
Secs. 16, 32, 36.
T. 22 N., R. 21 W.,
Sec. 2.
T. 24 N., R. 21 W.,
Sec. 2.
T. 25 N., R. 21 W.,
Sec. 12.
T. 26 N., R. 21 W.,
Sec. 2.
T. 27 N., R. 21 W.,
Sec. 32.

The public land to be transferred will be subject to the following terms and conditions:

1. Reservations to the United States: (a) Right-of-way for ditches and canals under the Act of August 30, 1890; and (b) a right-of-way for gas pipeline purposes for Maricopa County.

2. Subject to Maricopa County sanitary landfill lease AR-035138, and rights-of-way A-13944, A-16383 for roads, and A-17724 for bridge abutments.

3. Subject to Lloyd William's mill site, AMC 69188.

4. Yavapai County floodplain regulations.

Detailed information concerning this exchange can be obtained from Phoenix District Office. For a period of forty-five (45) days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: November 6, 1986.

Henri R. Bisson,

Acting District Manager.

[FR Doc. 86-25939 Filed 11-17-86; 8:45 am]

BILLING CODE 4310-32-M

[ID-943-07-4220-11; I-15072]

Idaho; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that a portion of the withdrawal for the Cascade Reservoir and the potential Garden Valley Reservoir Site be continued for an additional 60 years. This is the estimated remaining life of the improvements with which the Cascade Reservoir is associated. Under the proposal, the 3,754 acres involved would remain closed to surface entry and the mining laws, but the entire acreage has been and would remain open to the mineral leasing laws.

DATE: Comments should be received by February 17, 1987.

ADDRESS: Comments should be sent to: Idaho State Director, Bureau of Land Management, 3380 Americana Terrace, Boise, ID 83706.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, Idaho State Office, 208-334-1597.

The Bureau of Reclamation proposes that a portion of the land withdrawal made by the Secretarial Order of April 26, 1938, be continued for a period of 60 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The lands are located within the following-described townships:

Boise Meridian, Idaho

T. 9 S., Rs. 3 and 4 E.
T. 10 N., R. 4 E.
T. 14 N., R. 3 E.
T. 15 N., R. 3 E.
T. 16 N., R. 3 E.

The total area involved contains 3,754 acres, more or less, in Boise and Valley Counties.

The land is located along and under Cascade Reservoir within 15 miles of the community of Cascade, Idaho and along the South and Middle Forks of the Payette River. No change is proposed in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued, and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: November 7, 1986.

William E. Ireland,

Chief Realty Operations Section.

[FR Doc. 86-25929 Filed 11-17-86; 8:45 am]

BILLING CODE 4310-GG-M

Minerals Management Service

Development Operations Coordination; Mobil Oil Exploration and Producing Southeast Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Mobil Oil Exploration & Producing Southeast Inc. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS 053 and 054, Blocks 128 and 129 respectively, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on November 4, 1986.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Wholesalers Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules govening practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 7, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86–25930 Filed 11–17–86; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination; TXP Operating Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that TXP Operating Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 4918, Block 273, Main Pass Area, offshore Louisiana and Mississippi. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on November 5, 1986.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Wholesalers Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 7, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86–25958 Filed 11–17–86; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 8, 1986. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by December 2, 1986.

Carol D. Shull,

Chief of Registration, National Register.

COLORADO

Moffat County

Dinosaur, *Chew, Rial, Ranch Complex (Dinosaur National Monument MRA),* US 40

Dinosaur, *Douglass, Earl, Workshop-Laboratory (Dinosaur National Monument MRA),* US 40

Dinosaur, *Julien, Denis, Inscription (Dinosaur National Monument MRA),* US 40

Dinosaur, *Morris, Josie Bassett, Ranch Complex (Dinosaur National Monument MRA),* US 40

Dinosaur, *Quarry Visitor Center (Dinosaur National Monument MRA),* US 40

Dinosaur, *Upper Wade and Curtis Cabin (Dinosaur National Monument MRA),* US 40

GEORGIA

Talbot County

Prattsburg, *Mathews, John Frank, Plantation,* US 80 at George Smith Rd.

MASSACHUSETTS

Middlesex County

Wakefield, *US Post Office—Wakefield Main,* 321 Main St.

Woburn, *US Post Office—Woburn Center Station,* 2 Abbott St.

Worcester County

Whitinsville, *US Post Office—Whitinsville Main, 58 Church St.*

MICHIGAN

Mecosta County

Big Rapids, *Nisbett Building,* 101 S. Michigan Ave.

Shiawassee County

Durand vicinity, *Williams—Cole House,* 6610 Newburg Rd.

NEBRASKA

Dawson County

Gothenburg, *Carnegie Public Library,* 1104 Lake Ave.

Douglas County

Omaha, *Jobbers' Canyon Historic District,* Roughly bounded by Farnum, Eighth, Jackson, and Tenth Sts.

Omaha, *Richardson Building,* 902 Jackson

Omaha, *Strehlow Terrace,* 2024 & 2107 N. Sixteenth St.

NEW HAMPSHIRE

Carroll County

Albany, *Russell—Colbath House,* Kancamagus Hwy.

NORTH CAROLINA

Alamance County

Burlington vicinity, *McCray School,* NW side of NC 62, S of jct. with SR 1757 Graham vicinity, Cedarock Park Historic District, SR 2409

Mebane vicinity, *Cooper School,* S side of SR 2143, E of jct. with SR 2142

Forsyth County

Winston-Salem, *West End Historic District,* Roughly bounded by W. End Blvd., Sixth, Broad, & Fourth Sts., I–40, Sunset Dr., and Peters Creek

Rowan County

Salisbury, *Salisbury Railroad Corridor Historic District,* Roughly East Council, Liberty, Kerr, Cemetery, Franklin, Lee, and Depot Sts.

Wake County

Fuquay-Varina, *Fuquay Mineral Spring,* NE Corner of Main and West Spring Sts.

OHIO

Franklin County

Columbus, *Broad Street Christian Church (East Broad Street MRA),* 1051 E. Broad St.

Columbus, *Broadmoor Apartments (East Broad Street MRA),* 880—886 E. Broad St.

Columbus, *Broadway Apartments (East Broad Street MRA),* 775 E. Broad St.

Columbus, *Cambridge Arms (East Broad Street MRA),* 926 E. Broad St.

Columbus, *Central Assurance Company (East Broad Street MRA),* 741 E. Broad St.

Columbus, *East Broad Street Presbyterian Church (East Broad Street MRA),* 760 E. Broad St.

Columbus, *East Broad Street Historic District (East Broad Street MRA),* Roughly between Ohio and Moneypenny Aves, on the north and Sherman and Auburn Aves, on the south

Columbus, *Heyne—Zimmerman House (East Broad Street MRA),* 973 E. Broad St.

Columbus, *Hickok, Frank, House (East Broad Street MRA),* 955 and 957 E. Broad St.

Columbus, *House at 753 E. Broad Street (East Broad Street MRA),* 753 E. Broad St.

Columbus, *Jacobs, Felix A., House,* 1421 Hamlet St.
Columbus, *Johnston—Campbell House (East Broad Street MRA),* 1203 E. Broad St.
Columbus, *Jong Mea Restaurant—McArthur Savings & Loan Company (East Broad Street MRA),* 747, 749, and 751 E. Broad St.
Columbus, *Joseph—Cherrington House (East Broad Street MRA),* 785 E. Broad St.
Columbus, *Kauffman, Linus B., House (East Broad Street MRA),* 906 E. Broad St.
Columbus, *Kaufman, Frank J., House (East Broad Street MRA),* 1231 E. Broad St.
Columbus, *Levy, Soloman, House (East Broad Street MRA),* 929 E. Broad St.
Columbus, *Lovejoy, Carrie, House (East Broad Street MRA),* 807 E. Broad St.
Columbus, *Morris, C.E., House (East Broad Street MRA),* 875 E. Broad St.
Columbus, *Prentiss, Fredrick, House (East Broad Street MRA),* 706 E. Broad St.
Columbus, *Prentiss—Tulford House (East Broad Street MRA),* 1074 E. Broad St.
Columbus, *Saint Paul's Episcopal Church (East Broad Street MRA),* 787 E. Broad St.
Columbus, *Schueller, Erwin W., House (East Broad Street MRA),* 904 E. Broad St.
Columbus, *Scofield—Sanor House (East Broad Street MRA),* 1031 E. Broad St.
Columbus, *Sharp—Page House (East Broad Street MRA),* 935 E. Broad St.
Columbus, *Shedd—Dunn House (East Broad Street MRA),* 965 E. Broad St.

Hancock County

Findlay vicinity, *Powell, Andrew, Homestead,* 9621 CR 313

VERMONT

Orleans County

Holland, *Holland Congregational Church,* West Holland Rd.

VIRGINIA

Norfolk (Independent City)

St. John's African Methodist Episcopal Church, 539—545 E. Bute St.

WISCONSIN

Waukesha County

Hartland, *Bailie, Ralph C., House (Hartland MRA),* 530 North Ave.
Hartland, *Bank of Hartland (Hartland MRA),* 112 E. Capitol Dr.
Hartland, *Burr Oak Tavern (Hartland MRA),* 315—317 E. Capitol Dr.
Hartland, *Dansk Evangilical Lutheran Kirke (Hartland MRA),* 400 E. Capitol Dr.
Hartland, *First Congregational Church (Hartland MRA),* 214 E. Capitol Dr.
Hartland, *Hartland Railroad Depot (Hartland MRA),* 301 Pawling Ave.
Hartland, *Hornburg, Harold, House (Hartland MRA),* 213 Warren Ave.
Hartland, *Jackson House (Hartland MRA),* 235 North Ave.
Hartland, *Sign of the Willows (Hartland MRA),* 122 E. Capitol Dr.
Hartland, *Tropp Filling Station (Hartland MRA),* 252—256 W. Capitol Dr.
Hartland, *Van Buren—Sara Belle, (Hartland MRA),* 128 Hill St.
Hartland, *Warren, Stephen, House (Hartland MRA),* 235 E. Capitol Dr.
Hartland, *Zion Evangelicol Lutheran Church (Hartland MRA),* 403 W. Capitol Dr.

WYOMING

Big Horn County

Black Mountain Archaeological District (48BH900/902/1065/1067/1126/1127/1128/1129)

Crook County

Arch Creek Petroglyphs (48CK41)

[FR Doc. 86–25797 Filed 11–17–86; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget (OMB) for review.

Purpose of Information Collection

The proposed information collection is for use the Commission in connection with investigation No. 332–232, U.S. Global Competitiveness: The U.S. Automotive Parts Industry, instituted under the authority of section 332 of the Tariff Act of 1930 (19 U.S.C 1332).

Summary of Proposal

(1) Number of form: three;
(2) Title of form: The U.S. Automotive Parts Industry, Questionnaires for Producers, Importers, and Purchases;
(3) Type of request: new;
(4) Frequency of use: nonrecurring;
(5) Description of respondents: Firms that produce, import, and purchase automotive parts;
(6) Estimated total number of respondents: 365;
(7) Estimated total number of hours to complete the forms: 5,621; and
(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment

Copies of the proposed form and supporting documents may be obtained from Dennis Rapkins, (USITC tel. 202–523–0299). Comments about the proposal should be directed to the Officer of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: Francine Picoult, Desk Office for U.S. International Trade Commission. Any comments should be specific indicating which part of the questionnaire or study plan is objectionable, describing the problem in detail, and including specific suggested revisions or language changes.

Submission of Comments

Comments should be submitted to OMB within two weeks of the date this notice appears in the **Federal Register.** If you are unable to submit them promptly you should advise OMB within the two week period of your intent to comment on the proposal. Ms. Picoult's telephone number is 202–395–7231. Copies of any comments should be provided to Charles Ervin (United States International Trade Commission, 701 E Street, NW., Washinton, DC 20346).

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724–0002.

By order of the Commission.

Issued: November 13, 1986.

Kenneth R. Mason,
Secretary.

[FR Doc. 86–25975 Filed 11–17–86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701–TA–285 and 286 (Preliminary) and 731–TA–365 and 366 (Preliminary)]

Industrial Phosphoric Acid From Belgium and Israel

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigations Nos. 701–TA–285 and 286 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Belgium and Israel of industrial phosphoric acid, provided for in item 416.30 of the Tariff Schedules of the United States (TSUS), which are alleged to be subsidized by the Governments of Belgium and Israel.

The Commission also gives notice of the institution of preliminary antidumping investigations Nos. 731–TA–365 and 366 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine

whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Belgium and Israel of industrial phosphoric acid, provided for in TSUS item 416.30, which are alleged to be sold in the United States at less than fair value. As provided in sections 703(a) and 733(a) of the act, the Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in these cases by December 22, 1986.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's rules of practice and procedure, Part 207, subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: November 5, 1986.

FOR FURTHER INFORMATION CONTACT: Ilene Hersher (202-523-4616), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202-724-0002. Information may also be obtained via electronic mail by accessing the Office of Investigations' remote bulletin board system for personal computers at 202-523-0103.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to petitions filed on November 5, 1986, by counsel on behalf of FMC Corp., Chicago, IL, and Monsanto Co., St. Louis, MO.

Participation in the Investigations

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary of the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certficate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on November 26, 1986 at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Ilene Hersher (202-523-4616) not later than November 24, 1986 to arrange for their appearance. Parties in support of the imposition of countervailing and/or antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submission

Any person may submit to the Commission on or before December 2, 1986 a written statement of information pertaining to the subject of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority

These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: November 13, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-26025 Filed 11-17-86; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30863]

Burlington Northern Railroad Co. and Soo Line Railroad Co.; Trackage Rights, Construction, and Operation Exemptions

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission: (1) under 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 10901, the construction of a 1,220-foot connecting track at Lucca, ND, by Burlington Northern Railroad Company (BN) and Soo Line Railroad Company (Soo); and (2) under 49 CFR 1180.2(d)(7) and 49 CFR 1150.31, respectively, gives notices of exemption (a) for an agreement under which BN is acquiring overhead trackage rights over Soo's 12.49-mile line of railroad between Sheldon (mp 252.62) and Lucca (mp 262.11), ND, subject the employee protective conditions set forth in *Norfolk & W.R. Co.–Trackage Rights–BN,* 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.–Lease and Operate,* 360 I.C.C. 653 (1980); and (b) for BN's operation over the connecting track to be constructed at Lucca.

DATES: The decision exempting the construction of connecting track is effective on December 18, 1986. Petitions to stay must be filed by November 28, 1986 and petition for reconsideration must be filed by December 8, 1986.

The exemptions for the trackage rights and for the operations over the new connecting track are effective on November 18, 1986. Petitions to revoke these class exemptions may be filed at any time under 49 U.S.C. 10505(d). The filing of a petition to revoke will not stay the transactions. If the documents supporting the class exemptions contain false or misleading information, the exemptions will be void *ab initio.*

ADDRESSES: Send pleadings referring to Finance Docket No. 30863 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Railroad's representatives: Edmund W. Burke, Douglas J. Babb, Peter M. Lee, Burlington Northern

Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

FOR FURTHER INFORMATION CONTACT: Joseph. H. Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: November 10, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 86-25972 Filed 11-17-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30821 (Sub-1)]

Missouri Pacific Railroad Co. and Houston Belt and Terminal Railway Co.; Construction and Operation Exemption, Houston, TX

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission, under 49 U.S.C. 10505, exempts from the requirements of 49 U.S.C. 10901, the construction and operation of a 500-foot connecting track at Pierce Junction, in Houston, TX, by the Missouri Pacific Railway Company and Houston Belt & Terminal Railway Company.

DATES: The decision is effective on November 28, 1986. Petitions to reopen must be filed by December 8, 1986.

ADDRESS: Send pleadings referring to Finance Docket No. 30821 (Sub-No. 1) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Railroad's representative: Colleen A. Lamont, 1416 Dodge Street, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: November 10, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 86-25973 Filed 11-17-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30919]

Colleton County Railroad Co., Inc., Acquisition and Operation Exemption; Certain Lines of Seaboard System Railroad; Correction

November 13, 1986.

The notice of exemption, that was served and published in the **Federal Register** on October 27, 1986 (51 FR 37987), contains an inadvertant error. In the first sentence of the first paragraph the milepost number for Walterboro, SC should be changed from 444.18 to 443.18.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86-75974 Filed 11-17-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Fairbanks T. Chua, M.D.; Revocation of Registration

On September 25, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Fairbanks T. Chua, M.D., Memphis Medical Clinic, 35040 Helze Lane, Memphis, Michigan. The Order to Show Cause sought to revoke Dr. Chua's current DEA Certificate of Registration, AC8814736, and deny any pending applications for renewal of his registration as a practitioner under 21 U.S.C. 823(f), for reason that: (1) On November 12, 1985, Dr. Chua was convicted on six counts of unlawfully delivering a substance containing Valium, other than as authorized by law, felony convictions relating to controlled substances, and (2) Dr. Chua's continued registration is inconsistent with the public interest, as evidenced by the following: (a) In addition to the above-mentioned offenses, Dr. Chua was indicted on two counts of unlawfully delivering a substance containing a controlled substance, to wit: terpin hydrate elixir with codeine, other than authorized by law, felony offenses relating to controlled substances, and (b) On several occasions, Dr. Chua wrote prescriptions for various controlled substances, including Tussionex, Citra Forte syrup and Darvocet, for no legitimate medical purpose.

On October 6, 1986, Dr. Chua, through counsel, filed a written statement explaining his opposition to the proposed revocation. Since Dr. Chua did not request a hearing on the issues raised in the Order to Show Cause, the Administrator concludes that he waived his opportunity for a hearing, and enters this final order after taking into consideration the information contained in the investigative file, Dr. Chua's written statement, and the record of the proceedings at this time. See 21 CFR 1301.54(c).

In his written statement, Dr. Chua argues that since he was not found guilty of all eight counts of the criminal indictment, and that since his criminal convictions are on appeal, he should be entitled to continue practicing medicine unless and until the Appellate Court of the State of Illinois affirms his convictions.

After carefully reviewing Dr. Chua's written statement, the Administrator concludes that the issues addressed therein can be afforded little weight when considering the revocation of Dr. Chua's DEA Certificate of Registration. First, although Dr. Chua was not found guilty of two counts contained in the original criminal indictment, he was convicted, by a jury of his peers, of six felony offenses relating to controlled substances. Second, all of the information relating to the two counts of the indictment which were dismissed can be considered in this administrative proceeding. Such information can be considered in determining whether Dr. Chua's registration should be revoked, despite the lack of criminal conviction on those two counts. Finally, the fact that Dr. Chua's criminal case presently is on appeal in the Appellate Court of the State of Illinois is irrelevant to this matter. At this point, Dr. Chua's six felony convictions for violating Illinois' controlled substance statutes have not been reversed. The Administrator has consistently held that felony convictions relating to controlled substances are statutory grounds for the revocation of a registrant's DEA Certificate of Registration, and for the denial of any pending renewal applications, regardless of whether the underlying criminal case is on appeal. See *Donald Wardell Andrews, M.D.*, 47 FR 56745 (1982): and *Lamar T. Zimmerman, M.D.*, 45 FR 3405 (1980). Therefore, the convictions can serve as statutory grounds for the revocation of Dr. Chua's current DEA Certificate of Registration, and for the denial of any pending applications for renewal.

The Administrator finds that on November 12, 1985, in the Circuit Court of Cook County, Illinois, Dr. Chua was convicted of six counts of unlawfully delivering a substance containing a controlled substance, to wit: Valium, the trade name for diazepam, a Schedule IV controlled substance, other than as authorized by law in violation of Chapter 56½, section 1401(f) of the Illinois Revised Statutes, felony convictions relating to controlled substances. The felony convictions resulted from Dr. Chua's writing of prescriptions for Valium without conducting physical examinations of the persons to whom the prescriptions were issued. Dr. Chua's felony convictions provide a sufficient statutory basis for the revocation of his DEA Certificate of Registration and for the denial of any pending applications for renewal. See 21 U.S.C. 824(a)(2) and 21 U.S.C. 823(f)(3).

In addition, the investigative file reveals substantial evidence that Dr. Chua also wrote prescriptions for Tussionex and Citra Forte syrup, trade names for hydrocodone, both Schedule III controlled substances, Darvocet, the trade name for propoxyphene, a Schedule IV controlled substance, and terpin hydrate elixir with codeine, a Schedule V controlled substance, without conducting proper medical examinations on the persons receiving the prescriptions and for no legitimate medical purpose. The activities cited in the investigative file involved local undercover police officers visiting Dr. Chua in an attempt to obtain various controlled substances. In each situation, Dr. Chua either did not perform any medical examination of the officer, or only performed a cursory, inadequate examination, before prescribing the controlled substances requested by the officer. Dr. Chua was indicted on two counts of unlawfully delivering a substance containing a controlled substance, to wit: terpin hydrate elixir, a Schedule V controlled substance, other than as authorized by law, in violation of Chapter 56½, section 1401(f) of the Illinois Revised Statutes, as a result of these undercover operations. Prior to trial, the indictment on these two counts was dismissed. Even so, the Administrator finds substantial evidence in the investigative file to conclude that Dr. Chua was involved in such unlawful activities, regardless of the failure of the state of convict him on the charges. Such activities are obviously inconsistent with the public interest. Thus, Dr. Chua's improper prescribing habits clearly constitute grounds for the revocation of his DEA Certificate of Registration and the denial of any pending applications for renewal. See 21 U.S.C. 824(a)(4) and 21 U.S.C. 823(f)(2).

The Administrator also finds that, based upon Dr. Chua's felony convictions relating to controlled substances, on February 11, 1986, the Illinois Department of Registration and Education suspended his license to handle controlled substances in that state for a period of five years, and suspended his physician's and surgeon's license for a period of one year and nine months. Therefore, Dr. Chua is no longer authorized to practice medicine or handle controlled substances in the State of Illinois. As a result, Dr. Chua now practices medicine in the State of Michigan. As of this date, Dr. Chua retains the authority to handle controlled substances in the State of Michigan. Although Dr. Chua has modified his DEA Certificate of Registration to allow him to handle controlled substances in Michigan rather than Illinois, the action by the Illinois Department of Registration and Education serves as a determination of a state licensing board that Dr. Chua is incapable of properly handling controlled substances, and that his continued registration is inconsistent with the public interest. Such a determination constitutes yet another ground for the revocation of Dr. Chua's current DEA Certificate of Registration and for the denial of any pending applications for renewal. See 21 U.S.C. 824(a)(4) and 21 U.S.C. 823(f)(1).

Based upon Dr. Chua's recent felony convictions relating to controlled substances, his other improper prescribing activities, and the suspension of his medical and controlled substance licenses in the State of Illinois, the Administrator finds that there is ample statutory basis for the revocation of Dr. Chua's DEA Certificate of Registration. Further, the Administrator concludes that, based upon the facts and circumstances presented in this case, Dr. Chua's registration indeed should be revoked, and that any pending applications for renewal should be denied. Therefore, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AC8814736, previously issued to Fairbanks T. Chua, M.D., be, and it hereby is, revoked. The Administrator further orders that any pending applications for renewal, executed by Fairbanks T. Chua, M.D., be, and they hereby are, denied.

This order is effective December 18, 1986.

Dated: November 13, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86-25867 Filed 11-17-86; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-3]

Irving M. Greenfarb, D.O., Morris Plains, NJ; Hearing

Notice is hereby given that on December 5, 1985, the Drug Enforcement Administration, Department of Justice, issued to Irving M. Greenfarb, D.O., an Order To Show Cause as to Why the Drug Enforcement Administration should not revoke his DEA Certificate of Registration, AG4091714, and deny his application for renewal of that registration, executed on September 3, 1985, as a practitioner under 21 U.S.C. 823(f).

Notice is hereby given that the hearing in this matter is being rescheduled for Tuesday, November 25, 1986, commencing at 10:00 a.m. in Courtroom No. 10, U.S. Claims Court, 717 Madison Place, NW., Washington, DC.

Dated: November 12, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86-25922 Filed 11-17-86; 8:45 am]

BILLING CODE 4410-09-M

National Institute of Justice

Grant Funds to Supplement the National Crime Survey

AGENCY: National Institute of Justice and Bureau of Justice Statistics.

ACTION: Notice of availability of grant funds.

SUMMARY: Notice is hereby given that the National Institute of Justice and the Bureau of Justice Statistics are jointly-sponsoring a research program to address the addition of supplemental questions to the National Crime Survey. Information regarding the proposal requirements, application procedures, and deadline can be found in the published solicitation entitled *Supplementing the National Crime Survey.*

DATE: Copies of the solicitation are available immediately. The deadline for applications is March 27, 1987.

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ADDRESS: Copies of the solicitation are available upon request at the following location: National Institute of Justice, 633 Indiana Ave, NW., Room 870, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Ms. Lauresa A. Stillwell of the National Institute of Justice at the address given above; telephone 202/724-2962.

James K. Stewart,

Director.

[FR Doc. 86-26014 Filed 11-17-86; 8:45 am]

BILLING CODE 4410-18-M

Federal Bureau of Investigation

Advisory Policy Board, National Crime Information Center; Meeting

The Advisory Policy Board of the National Crime Information Center (NCIC) will meet on December 10-11, 1986, from 9 a.m. until 5 p.m. at the Hotel Westcourt, 10220 North Metro Parkway East, Phoenix, Arizona 85051.

The major topic to be discussed will be the interstate exchange of criminal history records for licensing, employment, and security purposes at it relates to the NCIC Interstate Identification Index.

The meeting will be open to the public with approximately 20 seats available for seating on a first-come, first-served basis. Any member of the public may file a written statement with the Advisory Policy Board before or after the meeting. Anyone wishing to address a session of the meeting should notify the Advisory Committee Management Officer, Mr. William A. Bayse, FBI, at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, or hand-delivered note. In should contain the name, corporate designation, consumer affiliation, or Government designation, along with a capsulized version of the statement and an outline of the material to be offered. A person will be allowed not more than 15 minutes to present a topic, excpet with the special approval of the Chairman of the Board.

Inquiries may be addressed to Mr. David F. Nemecek, Committee Management Liaison Officer, NCIC, Federal Bureau of Investigation, Washington, DC 20535, telephone number 202-234-2606.

Dated: November 10, 1986.

William H. Webster,

Director.

[FR Doc. 86-25977 Filed 11-17-86; 8:45 am]

BILLING CODE 4410-02-M

DEPARTMENT OF LABOR

The Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: December 9, 1986, 9:30 a.m., Rm. S4215 A&B Frances Perkins, Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavallee, Executive Secretary, Labor Advisory Committee, Phone: (202) 523-6565.

Signed at Washington, DC, this 12th day of November 1986.

Robert W. Searby,

Deputy Under Secretary, International Affairs.

[FR Doc. 86-25993 Filed 11-17-86; 8:45 am]

BILLING CODE 4510-28-M

Employment and Training Administration

[TA-W-18,240]

E.I. du Pont de Nemours and Co., Inc., Ingleside, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 30, 1986 in response to a worker petition received on September 22, 1986 which was filed on behalf of workers at the Corpus Christi plant in Ingleside, Texas of E.I. du Pont de Nemours & Company, Incorporated.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA-W-18,187). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 31st day of October 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-25991 Filed 11-17-86; 8:45 am]

BILLING CODE 4510-01-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Esselte-Pendaflex et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 28, 1986.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adustment Assistance, at the address shown below, not later than November 28, 1986.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 3rd day of November 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm	Location	Date received	Date of petition	Petition No.	Articles produced
Esselte-Pendeflex (GAIU)	Elizabeth, NJ	10/16/86	9/30/86	TA-W-18,482	Stationary suppliers.
Regal Trucking Co. (Workers)	Laredo, TX	10/14/86	10/9/86	TA-W-18,483	Trucking services.
BJ Titan Services (Workers)	Hays, KS	10/9/86	10/8/86	TA-W-18,484	Cementing services.
Southern Union Exploration Co. (Workers)	Dallas, TX	10/9/86	9/29/86	TA-W-18,485	Crude oil and gas.
Franklin Supply Co. (Workers)	Denver and Brighton, CO	10/14/86	10/10/86	TA-W-18,486	Distribute tubing for oil companies.
Philips ECO (USWA)	Seneca Falls, NY	10/20/86	10/8/86	TA-W-18,487	TV tubes art data display tubes.
Fansteel Pasco Gear (Workers)	Phoenix, AZ	10/20/86	10/11/86	TA-W-18,488	Metal gears.
Uniroyal-Goodrich (Workers)	Eau Claire, WI	10/20/86	10/8/86	TA-W-18,489	Passenger car tires, farm tires and light truck tir.
General Chemical Corp. (ICWU)	Front Royal, VA	10/10/86	10/14/86	TA-W-18,490	Sulfuric acid.
Baker Packers (Workers)	San Antonio, TX	10/20/86	10/8/86	TA-W-18,491	Produced downhole tools.
OWS, Incorporated (Workers)	Plainsville, KS	9/18/86	9/14/86	TA-W-18,492	Oilfield service.
Saw Drilling (Workers)	Victoria, TX	19/16/86	9/11/86	TA-W-18,493	Contract oil drilling
Luckys Well Service (Workers)	St. Elmo, IL	10/7/86	10/1/86	TA-W-18,494	Services underground pumps.
Rams Drilling Company (Workers)	Houston, TX	10/7/86	9/29/86	TA-W-18,495	Contract oil drilling.
PRC Drilling Company (Workers)	Corpus Christi, TX	9/18//86	9/15/86	TA-W-18,496	Contract oil drilling.
Schlumberger Well Service (Workers)	Gillette, WY	10/20/86	10/11/86	TA-W-18,497	Logging service on oil wells.
Patterson Rental Tools and Patterson Inspection Services Inc. (Workers).	Victoria, TX	10/20/86	10/13/86	TA-W-18,498	Buys and rents tools to oil companies.
Fryco (Workers)	Mt. Carmel, IL	10/22/86	10/14/86	TA-W-18,499	Well maintenance.
Sherman Drilling Co. (Workers)	Mineral City, OH	10/24/86	10/19/86	TA-W-18,500	Oil field service.
Smith Drilling Systems Div. of Smith Int'l (Company)	Houston, TX	10/21/86	10/15/86	TA-W-18,501	Oil drilling equipment.
MND Drilling Corp. Southern Division (Workers)	Magonolia, TX	10/24/86	10/20/86	TA-W-18,502	Drilling services.
Tenneco Oil Company Exploration and Production (Workers).	Houston, TX	10/23/86	10/13/86	TA-W-18,503	Oil and natural gas.
Johnie Hunter Oil Field Service, Inc. (Workers)	Laredo, TX	10/23/86	10/20/86	TA-W-18,504	Hook-up and maintenance of wells.
Dowell Schlumberger (Workers)	Mission	10/27/86	10/17/86	TA-W-18,505	Oil field services.
Amerada Hess Corp. (Workers)	Denver, CO	10/27/86	9/15/86	TA-W-18,506	Geological services.
Demson Oil Corporation (Workers)	Denver, CO	10/22/86	10/12/86	TA-W-18,507	Geological services.
Four Flags Drilling Company (Workers)	Corpus Christi, TX	9/16/86	9/12/86	TA-W-18,508	Oil well drilling.
Mid Coast Drilling (Workers)	Victoria, TX	9/16/86	9/15/86	TA-W-18,509	Oil well drilling.
Columbiana Pump Co. (USWA)	Columbiana, OH	10/2/86	9/20/86	TA-W-18,510	Gray and ductile iron castings.
Lugo Welding Service (Workers)	Laredo, TX	9/17/86	9/12/86	TA-W-18,511	Welding services for oil and gas companies.
North American Phillips Lighting Division (Company)	Bloomfield, NJ	10/20/86	10/10/86	TA-W-18,512	Light bulb parts.
Alco Power (USWA)	Auburn, NY	10/24/86	10/21/86	TA-W-18,513	Diesel engines, turbo charges and parts.
Connie Blouse Co. (ILGWU)	Roseto, PA	1/27/86	10/22/86	TA-W-18,514	Ladies' blouses.
J.H. Williams Hand (Workers)	Buffalo, NY	10/27/86	10/23/86	TA-W-18,515	Hand tools.
Lehigh Portland Cement Company (Boilermakers)	Waco, TX	10/23/86	10/2/86	TA-W-18,516	Cement.
Utex Industries, Inc. (Workers)	Weimas, TX	10/21/86	10/13/86	TA-W-18,517	Packing and gaskets for oil industry.
Dowell Schlumberger Oilfield Service (Workers)	Bryan, TX	10/20/86	10/13/86	TA-W-18,518	Provide a service of cementing oil wells.
Calnap Tanning Co. (Company)	Napa, CA	10/23/86	10/20/86	TA-W-18,519	Tanning of lether.
Saipan Drilling Co. (Workers)	Midland, TX	10/16/86	10/10/86	TA-W-18,520	Service drill for oil wells.
McAlister Trucking (Workers)	Wichita Falls, TX	10/17/86	10/13/86	TA-W-18,521	Service-trucking firm.
Gold Medal, Inc. (Workers)	Racine, WI	10/21/86	10/17/86	TA-W-18,522	Folding director chairs.
McAdoo Mfg. Co., Inc. (ACTWU)	McAdoo, PA	10/17/86	10/14/86	TA-W-18,523	Children's knitwear.
Rio Grande Drilling (Workers)	San Antonio, TX	10/21/86	10/15/86	TA-W-18,524	Drilling company.
Fox/Brady (Workers)	Appleton, WI	10/21/86	10/10/86	TA-W-18,525	Farm machinery.
S and M Fishing & Rental Incorporated (Workers)	Odessa, TX	10/20/86	10/13/86	TA-W-18,526	Perform reverse unit service to get oil from well.
Murvin Oil Co. (Workers)	Olmey, IL	10/21/86	10/17/86	TA-W-17,527	Oil company.
Utex Oil Company (Company)	Salt Lake City, UT	10/21/86	10/16/86	TA-W-17,528	Oil.
Sprague Elec. Co. (Workers)	Lansing, NC	10/21/86	10/16/86	TA-W-17,529	Electronics.
Cowden Mfg. (Workers)	Lancaster, KY	10/27/86	10/23/86	TA-W-17,530	Blue jeans.
Fayscott (Workers)	Dexter, ME	10/21/86	10/15/86	TA-W-17,531	Grinders and gear handing equipment.
Ohio Brass Rectifiers (Workers)	Oak Hill, WV	10/21/86	19/15/86	TA-W-18,532	Power pectifiers.
Ensign-Brickford (Workers)	Louviers, CO	10/21/86	10/14/86	TA-W-18,533	Detonating cord and fuses.
Exploration Surveys Inc. (Workers)	Plano, TX	10/21/86	10/10/86	TA-W-18,534	Geophysical maps.
Gard Drilling, Inc. (Workers)	Gallipolis, OH	10/27/86	10/20/86	TA-W-18,535	Contract Drilling for oil and gas.
Quaker State Oil Refining Corp. (Workers)	Titusville, PA	10/27/86	10/20/86	TA-W-18,536	Crude oil.
Beverly Blouse Co, Inc.	Nazareth, PA	10/27/86	10/23/86	TA-W-18,537	Blouses and sportswear.
Essex Shoe Trimming Co. (Workers)	Haverhill, MA	10/27/86	10/23/86	TA-W-18,538	Contract tanning and leather finishing.
United States Steel Mining Co.	Gary, WV	10/27/86	10/22/86	TA-W-18,539	Metallurgical coal.
D&I Fashions, Inc.	Newark, NJ	10/27/86	10/22/86	TA-W-18,540	Skirts.
Final Oil and Chemical Co. (Workers)	Dallas, TX	10/27/86	10/15/86	TA-W-18,541	Crude Oil, petrochemicals and refined products
Sheffield Footwear Mfg. (Workers)	Miami, FL	10/27/86	10/20/86	TA-W-18,542	Cloth slippers and fabric shoes.
Energy Dynamics, Inc. (Workers)	Alice, TX	10/27/86	10/21/86	TA-W-18,543	Gas engine and gas compressor repair parts.
Chevron U.S.A., Inc. (Workers)	Cleves, OH	10/27/86	10/15/86	TA-W-18,544	Refined crude oil (i.e.-gasoline, diesel, heating oil).
Western Oceanic, Inc. (Workers)	Houston, TX,	10/22/86	10/04/86	TA-W-18,546	Contract drilling.
Central Foundry Div. General Motors (UAWA)	Massena, NY	10/11/86	9/24/86	TA-W-18-,546	Manufactures cylinder heads piston, transmission cases and brake drums for automobiles.

[FR Doc. 86-25995 Filed 11-17-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-17, 759]

Lepanto Garments Co./Minatola Industries, Lepanto, AR; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 28, 1986 in response to a worker petition received on July 14, 1986 which was filed on behalf of workers at Lepanto Garments Company/Minatola Industries, Lepanto, Arkansas.

An active certification covering the petitioning group of workers remains in effect (TA-W-17,193). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 28th day of October 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-25992 Filed 11-17-86; 8:45 am]

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Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Southwestern Portland Cement Co. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period October 27, 1986 through October 31, 1986.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to work separations at the firm.

TA-W-17,881; Southwestern Portland Cement Co., Odessa, TX

TA-W-17,514; Champion International Corp., Creedmoor, NC

TA-W-17,316; Basf Corp—Fibers Division, Williamsburg, VA

TA-W-17,688; Weatherly Foundry & Manufacturing Co., Weatherly, PA

TA-W-17,724; Ford Motor Co., Direct Market Operation, Newark, NJ

TA-W-17,826; Fiberglass Systems, Inc., Big Spring, TX

TA-W-17,346; Stewart-Warner Corp., Div 1 (Alemite & Instrument Division) Chicago, IL

TA-W-17,504; GS Electric Motors, Inc., Racine, WI

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-17,908; American Pipe Inspection, Inc., Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-17,878; Gambles, Inc., Minneapolis, MN

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,267; Flexcel Company, Inc., Marshall, TX

Aggregate U.S. imports of oil field equipment are negligible.

TA-W-18,276; Lovett, Inc., Corpus Christi, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,292; NL Bariod, Port Lavaca, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,270; Baker Packers, Corpus Christi, TX

Aggregate U.S. imports of oilfield equipment are negligible.

TA-W-18,277; Gemoco, Corpus Christi, TX

Aggregate U.S. imports of oilfield equipment are negligible.

TA-W-18,069; Turner Tubular Services, Inc., Corpus Christi, TX

Aggregate U.S. imports of carbon and alloy steel pipe and tubing did not increase as required for certification.

TA-W-17,511; Totco, Mills, WY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-17,512; Totco, Williston, ND

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-17,677; Pool Well Servicing Co., Williston, ND

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-17,543; Mack Truck, Inc., Allentown Assembly Operations & Machine Fabrication Div., Allentown, PA

An analysis of the market supplied by the subject firm indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-18,261; Clovis Riley, Inc., Pearsall, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,264; Murfin Drilling Co., Colby, KS

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,265; Welex, Inc., Abilene, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,268; Dixilyn Field Drilling Company, Alice, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,269; Cherokee Drilling and Development, Midland, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,271; Pool Company, Abilene, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,272; Red Tiger Drilling, Wichita, KS

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,274; Banner Drilling Co., Scottsbluff, NE

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,285; The Western Company, Snyder, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,286; Trend Exploration LTD, Denver, CO

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,290; Halliburton Services, Artesia, NM

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,291; Halliburton Services, Rankin, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,293; Dresser Atlas, Laredo, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974

TA-W-18,294; Johnn Drilling Company, Odessa, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,295; Les Wilson, Inc., Carmi, IL

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-17,869; Bryson Tank Co., Odessa, TX

Aggregate U.S. imports of storage tanks are negligible.

TA-W-17,982; Ansewn Shoe Co., Bangor, ME

The temporary worker separations at the firm were attributable to seasonality and normal business fluctuations.

TA-W-17,924; LTV Steel Tubular Products, Co., Younstown, OH

Aggregate U.S. imports of steel pipe and tubing did not increase as required for certification.

TA-W-17,493; Dan River, Inc., Wetumpka, AL

The investigation revealed that criterion (2) and (3) have not been met. Production increased in the 1984-85 and January-May 1985 1986 comparative periods. Separation of workers at the subject firm was due to a reorganization of the workforce resulting in a more efficient use of the workers.

TA-W-17,979; Hilti Inc., Hilti Steel Industrial Div., Cleveland, OH

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,002; and 18,003; Bunker Limited Partnership, Crescent Silver Mine, Inc., Kellogg, ID and Big Creek, ID

All the subject firm's output is exported.

TA-W-17,777; Hoover Allison, Xenia, OH

Imports of processed jute fiber have not increased.

TA-W-18,205; Kodak Processing Lab, Dallas, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-17,977; Kodak Processing Lab, Rochester, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,379; Dresser Atlas, Victoria, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,380; M and M Service Company, Pearsall, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,388; Moore Petroleum Services, Missouri City, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,395; Drill Collar Inspection Co., Corpus Christi, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,398; Sheehan Exploration, Casper, WY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,399; Norton Drilling Co., Lubbock, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,402; G and G Tank Rentals, Freer, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,405; Grant Norpac, Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,408; Mesa Drilling Company, Abilene, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,413; Four Flags Drilling Company, Corpus Christi, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,415; Mo-Vac Service Company, Laredo, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,416; Brown Drilling Company, Pleasantville, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,419; Midland Mud, Inc., Hays, KS

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,422; Loffland Brothers Company, Grant Junction, CO

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,428; AGAT-Geochem Consultants, Inc., Denver, CO

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,429; Geophysical Services, Inc., Stafford, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

Affirmative Determinations

TA-W-17,404; Cabot Corp., Wrought Products Div., Kohomo, IN

A certification was issued covering all workers of the firm separated on or after September 1, 1985.

TA-W-17,495; Moore Mill and Lumber Co., Bandon, OR

A certification was issued covering all workers of the firm separated on or after September 1, 1985.

TA-W-17,494; Erco Industries, Inc., Monroe, LA

A certification was issued covering all workers of the firm separated on or after May 2, 1985 and before November 30, 1985.

TA-W-17,417; Dan River, Inc., Benton, AL

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A certification was issued covering all workers of the firm separated on or after May 1, 1986 and before October 1, 1986.

TA-W-17,647; Wyman-Gordon Co., Harvey, IL

A certification was issued covering all workers of the firm separated on or after June 16, 1985.

TA-W-17,368; Sanford Manufacturing, Wilkes Barre, PA

A certification was issued covering all workers of the firm separated on or after April 3, 1985 and before December 6, 1985.

TA-W-17,433; Ohio Ferro-Alloys Corp., Mt Meigs, AL

A certification was issued covering all workers of the firm separated on or after July 1, 1985.

TA-W-17,597; Beloit Corp., Beloit, WI

A certification was issued covering all workers of the firm separated on or after October 1, 1985.

TA-W-17,868; Thermo-Serv, Inc., Anoka, MN

A certification was issued covering all workers of the firm separated on or after December 1, 1985.

TA-W-17,718; Ciba-Geigy Corp., Toms River, NJ

A certification was issued covering all workers of the firm separated on or after June 16, 1985.

TA-W-17,530; Kaychester, Inc., Port Chester, NY

A certification was issued covering all workers of the firm separated on or after May 28, 1985 and before June 21, 1986.

TA-W-17,635; Jeanette Sheet Glass Corp., Jeanette, PA

A certification was issued covering all workers of the firm separated on or after June 24, 1985 and before July 31, 1986.

TA-W-17,574; CMT Industries, El Paso, TX

A certification was issued covering all workers of the firm separated on or after May 29, 1985.

TA-W-17,532; Rob Roy, Inc., York, AL

A certification was issued covering all workers of the firm separated on or after May 8, 1985 and before February 16, 1986.

TA-W-17,492; (The) Budd Co., Frankfort, OH

A certification was issued covering all workers of the firm separated on or after May 6, 1985.

TA-W-18,198; Clyde-AMCA International, Duluth, MN

A certification was issued covering all workers of the firm separated on or after September 10, 1985.

TA-W-17,413; Aluminum Co. of America, Massena, NY

A certification was issued covering all workers of the firm producing primary aluminum and aluminum ingots separated on or after April 28, 1985 and before June 30, 1986.

TA-W-17,928; Lianga Pacific, Inc., Tocoma, WA

A certification was issued covering all workers of the firm separated on or after January 1, 1986.

TA-W-17,409; McQuay-Norris Manufacturing Div., SKF Industries, Bradford, TN

A certification was issued covering all workers of the Bradford, TN facility of the firm separated on or after April 23, 1985 and before October 1, 1986.

TA-W-18,608; McQuary-Norris Manufacturing Div., SKF Industries, St. Louis, MO

A certification was issued covering all workers of the St. Louis, MO facility of the firm separated on or after June 10, 1985 and before December 1, 1986.

TA-W-17,502; Axem Resources, Inc., Denver, CO, Belfield, ND, Casper, WY

A certification was issued covering all workers of the firm separated on or after January 1, 1986.

TA-W-17,391; Mitchell Energy Corp., Midland, TX

A certification was issued covering all workers of the firm separated on or after January 1, 1986.

TA-W-17,483; Pam Jo Manufacturing Co., East Newark, NJ

A certification was issued covering all workers of the firm separated on or after May 5, 1985 and before January 31, 1986.

TA-W-17,804; Buffalo Jewelry Case Co., Inc., Buffalo, NY

A certification was issued covering all workers of the firm separated on or after June 12, 1985 and before September 30, 1986.

TA-W-17,321; National Glove, Inc., Chestnut Street Plant, Mount Sterling, OH

A certification was issued covering all workers of the firm separated on or after October 15, 1985 and before May 31, 1986.

TA-W-17,321A; National Glove, Inc., Clark Street Plant, Mount Sterling, OH

A certification was issued covering all workers of the firm separated on or after October 15, 1985 and before May 31, 1986.

TA-W-17,555; Coseka Resources (U.S.A.) Limited, Denver, CO, Grand Junction, Co, Worland, WY, Costex Resources, Inc., Midland, TX

A certification was issued covering all workers of the firm separated on or after May 27, 1985.

TA-W-17,577; Hein Werner Corp., Waukeska, WI

A certification was issued covering all workers of the firm separated on or after April 6, 1986.

TA-W-17,426; Ashland Crafts, Inc., Ashland, KY

A certification was issued covering all workers of the firm separated on or after April 30, 1985 and before April 30, 1986.

TA-W-17,469; Well Made Dress Corp., Warren, RI

A certification was issued covering all workers of the firm separated on or after May 19, 1985. and

TA-W-17,500; Toby Fashions, Inc., Union City, NJ

A certification was issued covering all workers of the firm separated on or after May 13, 1985 and before May 14, 1986.

TA-W-17,462; Kaiser Steel Corp., Fabricated Products Group, Napa, CA

A certification was issued covering all workers of the firm producing large diameter steel pipe separated on or after January 1, 1986.

I hereby certify that the aforementioned determinations were issued during the period October 27, 1986 through October 31, 1986. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 4, 1986.

Marvin M. Fooks,

Director, Office of Trade adjustment Assistance.

[FR Doc. 86-25994 Filed 11-17-86; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-86-79-C]

Hegins Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Hegins Mining Company, Zerbe, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its No. 3 Slope (I.D. No. 36-01856) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps be housed in fireproof structures.

2. Petitioner states that application of the standard would result in a diminution of safety for the miners affected due to the space and clear area available.

3. The charging station is located at the botton of the slope in the west gangway. This area is limited in space. The only way to enclose this station with either steel or masonry and still maintain enough clear area to provide the required clearances that are necessary and provided presently would be to remove the solid rock support which would result in diminishing the roof support and exposing miners to hazardous conditions.

4. The mine is operated on one shift, the charging station is never activated during this time and the mining cycle is always completed a minimum of 5 hours prior to anyone re-entering the mine.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 18, 1986. Copies of the petition are available for inspection at the address.

Dated: November 6, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-25987 Filed 11-17-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-135-C]

Kerr-McGee Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Kerr-McGee Coal Corporation, P.O. Box 727, Harrisburg, Illinois 62946 has filed a petition to modify the application of 30 CFR 75.901 (protection of low- and medium-voltage three-phase circuits used underground) to its Galatia Mine 56-1 (I.D. No. 11-02752) located in Saline County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that low- and medium-voltage three-phase alternating-current circuits used underground shall contain a direct or derived neutral grounded through a suitable resistor at the power center, and a grounding circuit that will serve as a grounding conductor for the frames of all the electrical equipment supplied power from that circuit.

2. As an alternate method petitioner proposes to use a grounded wye system in lieu of a single phase system.

3. In support of this request, petitioner states that the power distribution system used in the underground shop for lighting, receptacles and small electrical equipment consists of a 112.5 KVA dry transformer, connected delta-wye and a 208/120V 3-phase panel with circuit breakers. All of the circuits from the panel to the lights, receptacles and motors are installed in conduit. The neutral of the 112.5 KVA transformer is connected to ground so that 120V is available from phase to neutral from the transformer.

4. Petitioner also states that safety switches have been added to the oil skimmer, sump pump and air compressor.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 18, 1986. Copies of the petition are available for inspection at that address.

Dated: November 6, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variance.

[FR Doc. 86-25988 Filed 11-17-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-115-C]

Orchard Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Orchard Coal Company, R.D. #4, Box 306, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescuers) to its Orchard Mine (I.D. No. 36-06132) located in Schuylkill County, Pennsylvania. The peitition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-contained self-rescue device approved by the Secretary which is adequate to protect such person for one hour or longer.

2. The mine is always damp to wet. The only electrical equipment, which is a pump, is located at the foot of the slope.

3. Petitioner states that the distance from the mine portal to the actual working face is less than 2,000 feet. The mine can be evacuated in less than 15 minutes.

4. Petitioner states that the devices are too heavy, bulky, and cumbersome to be worn while working or in the narrow confines of the slope gun boat which serves as mantrip at the mine.

5. Sections of the mine are subjected to freezing temperatures making constant availability of the devices questionable. In addition, the wet mine conditions make it difficult to locate a suitable dry storage location for the self-rescuers.

6. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 18, 1986. Copies of the petition are available for inspection at that address.

Dated: November 6, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-25989 Filed 11-17-86; 8:45 am]

BILLING CODE 4510-43-M

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[Docket No. M-86-79-C]

Utah Power & Light Co.; Petition for Modification of Application of Mandatory Safety Standard

Utah Power & Light Company, P.O. Box 310, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Wilberg Mine (I.D. No. 42-00080) located in Emery County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the belt haulage entries not be used to ventilate active working places.

2. Petitioner states that application of the standard would result in a diminution of safety because the stability of roof and ribs under deep cover and multiple seam mining has a direct relation to the number of entries opened; the fewer entries opened, the more stable the rood and ribs and the less likely are pillar and crib crushes, squeezes, floor heaves, overrides and rib rolls. Use of two entries would also result in benefits to ventilation, fire control, and escapeway conditions.

3. As an alternate method, petitioner proposes to develop a two-entry system of mining for longwall panel development in which the belt haulage entry would act as a return air course, and for longwall panel retreat mining in which the belt haulage entry would act as an intake air course for longwall face ventilation.

4. In support of this request, petitioner proposes to install an early warning fire detection system. A low-level carbon monoxide (CO) detection system will be installed in all belt entries used as intake or return air courses and at each belt drive and tailpiece located in intake air courses. The monitoring devices will be capable of giving warning of a fire for four hours should the power fail; a visual alert signal will be activated with the CO level is 10 parts per million (ppm) above ambient air and an audible signal will sound at 15 ppm above ambient air. All persons will be withdrawn to a safe area at 10 ppm and evacuated at 15 ppm. The fire alarm signal will be activated at an attended surface location where there is two-way communication. The CO system will be capable of identifying any activated sensor and for monitoring electrical continuity to detect any malfunctions.

5. The CO system will be visually examined at least once each coal-producing shift and tested for functional operation weekly to insure the monitoring system is functioning properly. The monitoring system will be calibrated with known concentrations of CO and air mixtures at least monthly.

6. If the CO monitoring system is deenergized for routine maintenance or for failure of a sensor unit, the belt conveyor will continue to operate and qualified persons will patrol and monitor the belt conveyor using hand-held CO detecting devices.

7. Until the CO detection system is installed and fully operational, CO will be monitored by a continuous CO station or by a qualified person with a hand-held CO detector.

8. Stoppings in all longwall development and retreat entries will be constructed of solid block with mortared joints.

9. For all longwall panels, a safe passageway under supported roof through tailgate entries or bleeders to a mine exit will be provided off the face on the tailgate side for emergencies. This passageway will be examined weekly by a qualified person. One hour self-contained self-rescuers will be carried by each person on a longwall panel or stored near the stageloader and stored on or near the face of the tailgate side of all longwall panels.

10. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 18, 1986. Copies of the petition are available for inspection at that address.

Dated: November 6, 1986.

Patricia W. Silvey,

Director Office of Standards, Regulations and Variances.

[FR Doc. 86-25990 Filed 11-17-86; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 86-129; Exemption Application No. D-6101 et al.]

Grant of Individual Exemptions; Fresh Retirement Plan et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Fresh Retirement Plan (the Plan) Located in Salinas, CA

[Prohibited Transaction Exemption 86-129; Exemption Application No. D-6101]

Exemption

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the leasing, effective July 1, 1986, of a portion of a ranch, known as the Estel Ranch from July 1, 1986 until June 30, 1991, by the Plan to Bruce Church, Inc., a party in interest with respect to the Plan, provided the terms and conditions of the transactions are at least as favorable to the Plan as the Plan could obtain in dealing with an unrelated third party.

Effective Dates: The effective dates of this exemption are July 1, 1986 to June 30, 1991.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 9, 1986 at 51 FR 32139.

For Further Information Contact: David Lurie of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Meister-Neiberg Co. Pension Plan and Trust (the Plan) Located in Chicago, IL

[Prohibited Transaction Exemption 86-130; Exemption Application No. D-6502]

Exemption

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective May 14, 1986, to the loans (the Loans) by the Plan, for a period of 6 years, of up to 25% of its assets to Meister-Neiberg Co., the Plan sponsor, provided that the term of the Loans are at least as favorable to the Plan as those between unrelated parties would be.

For a more complete statement of the facts and representation supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 9, 1986 at 51 FR 32143.

For Further Information Contact: David Lurie of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Customwood Manufacturing Company, Inc. Employee Defined Benefit Plan (the Plan) Located in Albuquerque, New Mexico

[Prohibited Transaction Exemption 86-131; Exemption Application No. D-6622]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale by the Plan of certain unimproved real property to Robert T. and Barbara J. Bogan, parties in interest with respect to the Plan; provided that such sale is on terms not less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant exemption refer to the notice of proposed exemption published on September 19, 1986 at 50 FR 33315.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

First National Bank of Mapleton Employees' Profit Sharing Retirement Trust (the Mapleton Plan) Located in Mapleton Depot, PA

[Prohibited Transaction Exemption 86-132; Exemption Application No. D-6669]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale by the Mapleton Plan, for the total cash consideration of $610,879, of certain mortgage and vehicular loan receivables (the Receivables) to First National Bank of Mapleton, provided the amount paid for the Receivables is not less than fair market value at the time the transaction is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 9, 1986 at 51 FR 32144.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8196. (This is not a toll-free number.)

Employees' Money Purchase Pension and Investment Plan of Ann Arbor Terminals, Inc. (the Plan) Located in Ann Arbor, MI

[Prohibited Transaction Exemption 86-133; Exemption Application No. D-6670]

Exemption

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the loan (the Loan) of $750,000 by the Plan to AA Development Corporation, a wholly-owned subsidiary of Ann Arbor Terminals, Inc., the Plan sponsor, provided that the terms and conditions of the Loan are at least as favorable to the Plan as those between unrelated parties would be.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 19, 1986 at 51 FR 33315.

For Further Information Contact: David Lurie of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Profit Sharing Plan for Employees of Regal Capital Company (the Plan) Located in Dallas, Texas

[Prohibited Transaction Exemption 86-134; Exemption Application No. D-6769]

Exemption

The restrictions of section 406 (a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale of a parcel of unimproved real property (the Property) by the Plan to Howard E. Rachofsky (Mr. Rachofsky), a party in interest with respect to the Plan; provided that the sales price is equal to the greater of the fair market value of the Property on the date of sale or the total expenditures incurred by the Plan in connection with the acquisition and holding of the Property by the Plan, as calculated on the day of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 12, 1986 at 51 FR 32554.

For Further Information Contact: Angelena Le Blanc of the Department, telephone (202) 523-8196. (This is not a toll-free number).

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Profit Sharing Plan and Trust of L.R. Mannausa, M.D., P.C. and Amended and Restated Pension Retirement Plan and Trust of L.R. Mannausa, M.D., P.C. (the Plans) Located in East Lansing, Michigan

[Prohibited Transaction Exemption 86-135; Exemption Application Nos. D-6677 & 6678]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Plans of certain unimproved real property to Lawrence R. Mannausa, M.D., a disqualified person with respect to the Plans; provided that such sale is on terms no less favorable to the Plans than the Plans could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 9, 1986 at 51 FR 32145.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number).

National Sales, Inc. Employee Profit Sharing Plan (the Plan) Located in Jackson, Mississippi

[Prohibited Transaction Exemption 86-136 Exemption Application Nos. D-6715]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of a certain parcel of improved real property located in Bossier City, Louisiana and a leasehold interest in another parcel of improved real property in Memphis, Tennessee (together, the Properties) to Business Advisors and Investors, Inc., a party in interest with respect to the Plan, provided that the sales price for each of the Properties is not less than the higher of either the total costs of such Property to the Plan or the fair market value of such Property on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 12, 1986 at 51 FR 32553.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523-8881. (This is not a toll-free number).

Profit Sharing Plan and Trust of Arasmith Manufacturing Company, Inc. (the Plan) Located in Rome, Georgia

[Prohibited Transaction Exemption 86-137; Exemption Application No. D-6751]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale (Sale) by the Plan of a certain parcel of real property (the Property) to Stanley D. Arasmith and Cherie M. Arasmith, parties in interest with respect to the Plan, provided that the consideration paid for the Property is not less the greater of either $10,000 or the fair market value of the Property on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 19, 1986 at 51 FR 33316.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or Code, including any prohibited transaction provisions ot which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fidiciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan s and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/ or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 10th day of November, 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Adminsitration, U.S. Department of Labor.

[FR Doc. 86-25854 Filed 11-17-86; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 86-128]

Class Exemption for Securities Transactions Involving Employee Benefit Plans and Broker-Dealers

AGENCY: Department of Labor.

ACTION: Grant of class exemption.

SUMMARY: This document contains an exemption which allows persons who serve as fiduciaries for employee benefit plans to effect or execute securities transactions under certain circumstances. The exemption also allows sponsors of pooled separate accounts and other pooled investment funds to use their affiliates to effect or execute securities transactions for such accounts when certain conditions are met. The exemption will replace Prohibited Transaction Exemption 79-1 and Prohibited Transaction Exemption 84-46. It affects participants and beneficiaries of, and fiduciaries with respect to, employee benefit plans which invest in securities, and other persons who engage in the described transactions.

EFFECTIVE DATE: The later of December 18, 1986, or the date on which the Office of Management and Budget approves the information collection requests contained in this exemption under the Paperwork Reduction Act of 1980.

FOR FURTHER INFORMATION CONTACT: Daniel J. Maguire, Esq., Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210, (202) 523-9595 (not a toll free number) or Mark Greenstein, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, (202) 523-8671 (not a toll free number).

SUPPLEMENTARY INFORMATION: On January 24, 1985, notice was published in the **Federal Register** (50 FR 3427) of the pendency before the Department of Labor (the Department) of a proposed class exemption to replace PTE 79-1 [1] and PTE 84-46,[2] which exempted certain transactions from the restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code (the Code) by reason of Code section 4975(c)(1) (A) through (F).[3] Notice was also given of the pendency before the Department of the proposed revocation of PTE 79-1 and PTE 84-46. The proposed class exemption was requested in part in an application filed by the Securities Industry Association (SIA) on behalf of its members, by letters to the Department dated November 29, 1982, April 22, 1983, May 24, 1983 and July 23, 1984. The proposal also contained provisions put forward by the Department on its own motion pursuant to its authority under section 408(a) of the Act and section 4975(c)(2) of the Code. Fifteen comments were received pursuant to those provisions, and in accordance with the procedures set forth in ERISA Procedure 75-1.[4] No requests for a hearing on the proposal were received.

Upon consideration of the entire record in the matter including the comments received, the Department is granting the exemption as proposed but with certain modifications.

Description of the Exemption

This exemption provides relief similar to that provided by Prohibited Transaction Exemption 79-1 (PTE 79-1) and Prohibited Transaction Exemption 84-46 (PTE 84-46), from the restrictions of section 406(b) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code. The exemption conditions the effecting or executing of securities transactions on behalf of a plan by a plan fiduciary upon the fiduciary's complying with a number of specific requirements designed to protect the interests of plan participants and beneficiaries. The exemption is generally available to fiduciaries with respect to employee benefit plans, except when a person is a fiduciary with respect to a plan by reason of being a plan trustee, plan administrator or sponsoring employer. The exemption is also available to managers of pooled investment funds in which plans invest, with certain restrictions applicable to those funds in which plans covering employees of the manager invest.

The exemption requires that a person engaging in a covered transaction must receive written authorization, executed in advance, from a fiduciary independent of such person. Thereafter, the authorized person must notify the plan at least annually that the authorization is terminable at will and without penalty by the plan. Such notice must include both a statement to the effect that failure to terminate the authorization will result in its continuation and a form on which to effect such a termination.

As in PTE 84-46, the exemption contains special authorization provisions and withdrawal rights for plans participating in pooled arrangements in order to accommodate the needs of funds or accounts in which the assets of many plans are collectively invested.

Persons effecting or executing securities transactions on behalf of plans pursuant to this exemption must disclose periodically certain information to the authorizing plan fiduciary. The exemption provides that a person engaging in covered transactions must furnish the authorizing fiduciary with either (1) confirmation slips containing the information described in Rule 10b-10 (17 CFR 240.10b-10) under the Securities Exchange Act of 1934 ("1934 Act"), 15 U.S.C. 78a *et seq.*, or (2) quarterly reports. The quarterly reports are compilations of the information that would have been provided by the confirmation slips and, specifically, must disclose the total of all charges incurred by the plan in connection with covered transactions during the reporting period, and the portion thereof that the authorized person has paid to others in connection with covered transactions. Annual reports are required of all persons engaging in covered transactions. The annual reports summarize the information required by the confirmation slips and, in addition, provide information regarding portfolio turnover and the use of brokerage commissions to pay for investment research services.

The exemption continues the recapture provisions of PTE 79-1. Under those provisions, any fiduciary may execute or effect securities transactions for a plan if he or she credits all profits earned in connection with the transaction to the plan. Persons generally excluded from coverage under the remainder of the exemption—that is, plan trustees, plan administrators and sponsoring employers—may engage in covered transactions on behalf of plans in such "recapture" situations.

In addition to special authorization provisions to accommodate the needs of pooled investment funds, the exemption provides, as to such funds in which plans covering employees of the pool manager or its affiliates participate, that the manager may engage in covered transactions on a "recapture" basis or may receive commissions based on the provision of brokerage services to the pool if the participation in the pool of plans covering employees of the pool sponsor is limited to twenty percent of the pool and the commissions received from all pools in which plans covering employees of the pool sponsor participate is limited to five percent of the aggregate amount of brokerage commissions received by the manager from all sources during the calendar year.

The exemption gives the authorizing fiduciary the right to request and receive any reasonably available information necessary for such fiduciary to determine whether the authorization should be made. In addition, the exemption places a corresponding duty on the authorized person to furnish the authorizing fiduciary with any additional information reasonably necessary and available to make this determination.

Finally, certain types of agency cross transactions are permitted under the exemption, under specified conditions.

Discussion of the Comments

A. Replacement of Annual Authorization Requirements

PTE 79-1 requires that persons engaging in a covered transaction on behalf of a plan obtain, at least annually, written authorization to engage in such transactions from an independent fiduciary with respect to that plan. In the interest of eliminating unnecessary costs to the authorized persons and the plans, it was proposed that this requirement be replaced with a provision whereby the independent fiduciary would be sent a form at least annually allowing it to terminate the authorization with respect to the plan; accompanying instructions would notify the plan that failure to return the form would result in continued authorization of the person to engage in covered transactions on behalf of the plan. Comments received on this aspect of the proposed exemption were generally favorable. Most commentators agreed with representations made by the SIA in

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[1] 44 FR 5963 (January 30, 1979).

[2] 49 FR 22157 (May 25, 1984).

[3] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type granted herein to the Secretary of Labor. For the sake of clarity, the remainder of the preamble refers only to Title I of ERISA, although these references also apply to the corresponding provisions of section 4975 of the Code.

[4] 40 FR 18471 (April 28, 1975).

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its exemption application that such a modification would reduce paperwork as well as other compliance expenses.

One commentator requested that, instead of sending a form, the authorized person be allowed to supply a simple notice containing the name and address of the person to contact if the plan desired to terminate the authorization. The commentator argued that this would reduce costs even further; it was acknowledged, however, that furnishing a form was not a significant burden. Accordingly, the Department believes that requiring the person seeking continued authorization to supply a termination form to the authorizing fiduciary, rather than requiring the authorizing fiduciary to prepare such a termination letter, is a proper allocation of the minimal burden involved.

In the final exemption, section III(g) of the proposed exemption, relating to the termination form, has been incorporated into section III(c) so that all conditions relating to authorization are grouped together.

B. Amendments to the Reporting Requirements

(1) Confirmation Slips and Quarterly Reports

Under PTE 79–1, authorized persons are required to supply the authorizing fiduciary with quarterly reports which disclose certain information related to the total of all transaction-related charges incurred by the plan in connection with covered transactions, the allocation of such charges among various persons, as well as a conspicuous statement about the negotiability of brokerage commissions and an estimate of future commission rates.

Pursuant to representations made by the SIA, the proposed exemption eliminated the requirements of PTE 79–1 as to the statement concerning the negotiability of brokerage commissions and the estimate of future commission rates. Various commentators agreed that the inclusion of these items in the quarterly reports provided little useful information to plan fiduciaries in evaluating the performance or services of the authorized persons.

The proposed exemption also provided that the authorized person was to supply the independent fiduciary with a "confirmation slip" for each securities transaction instead of quarterly reports. It was represented by the SIA that the contents of the confirmation slip would include information sufficient for the authorizing fiduciary to evaluate the execution services provided, and that the combination of confirmation slips and annual summaries would provide the plan fiduciaries with information more useful in monitoring the execution of securities trades than the quarterly reports had provided.

While many commentators agreed that confirmation slips would be as informative to the plans and less costly to the authorized person, several persons requested that the Department retain the quarterly reporting provision, or at least some other alternative, as a means of compliance. One commentator noted, for example, that where an investment adviser is required to maintain a segregated escrow fund (SEF) pursuant to Rule 206(4)–2 (17 CFR 275.206(4)–2), under the Investment Advisers Act of 1940, 15 U.S.C. 80b–1 *et seq.*, confirmation slips for securities transactions are issued only to the adviser and not to the fiduciary of a particular plan client of the adviser. It was argued that issuing confirmation slips to the authorizing fiduciary of each plan participating in the SEF would be much more burdensome than the quarterly reporting requirement of PTE 79–1. In consideration of these comments, the Department has decided to expand the availability of the option, proposed for pooled investment funds, to allow the provision to the authorizing fiduciary of either confirmation slips or quarterly reports.[5]

Those commentators who endorsed the "confirmation slip" aspect of the proposed exemption generally objected to the condition contained in proposed section III(e)(2), that the time of the transaction be included on the confirmation slip. Several commentators noted that Rule 10b–10 under the 1934 Act does not require that the exact time of the trade be included on the slip; rather, under that rule, the slips are to state that the time of the trade will be supplied upon the request of the customer. It was argued that supplying the independent fiduciary with the time of the trade provided no useful information and would entail costly adjustments to computerized reporting systems. Finally, one commentator argued that Rule 10b–10 has been revised and updated in recent years and most likely will continue to be modified in the future.

In consideration of these comments, the Department has modified this aspect of the exemption to state that confirmation slips provided to the authorizing fiduciary must contain the information described in Rule 10b–10 under the 1934 Act. This provision contemplates that, as the Securities and Exchange Commission (SEC) may amend and revise Rule 10b–10, the confirmation slips supplied to the authorizing fiduciaries pursuant to this class exemption will be correspondingly amended and revised, to the extent required by the changes in Rule 10b–10.

(2) Annual Reporting Requirements

(a) *Allocation of transaction related charges.* PTE 79–1 requires that the reports furnished to the authorizing fiduciary disclose both the total charges relating to covered transactions incurred by the plan during the period to which the report relates, as well as the amount of the transaction-related charges retained by the authorized person and the amount of such charges paid to other persons for execution or other services. The proposed exemption retained the requirement that this information be disclosed, either annually (for those issuing confirmation slips) or in quarterly reports otherwise. Some commentators stated that they had no objection to this requirement. A few commentators, however, objected to its inclusion. It was argued that the requirement provides the independent plan fiduciary with no useful information, as his or her concern should be with the aggregate charges and not with any additional breakdown. Another commentator analogized to the statutory reporting requirement under ERISA; it was noted that whereas section 103(e)(2) of ERISA requires a breakdown of how an insurance company disposes of premiums received from a plan, Congress imposed no such reporting requirements on broker-dealers.[6]

The Department is not persuaded by these arguments. While it agrees that this is information not required under ERISA's annual reporting requirements, the Department believes that it is entirely appropriate, in the context of this class exemption, to require disclosure of certain information by the exempted person so as to reduce the need for the independent fiduciary to make independent inquiry into the actions of that person. In this case, the breakdown of remuneration charges enables the authorizing fiduciary to ascertain whether, and if so, to what extent the authorized person is the one actually performing the services for which the plan has contracted.[7] It appears to the Department that such information would be helpful to independent fiduciaries generally in their evaluation of the management and brokerage services provided. Accordingly, the Department has decided to retain this requirement.[8]

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[5] Persons who elect the quarterly reporting option may incorporate any such report into a contemporaneous summary provided pursuant to section III(f) of the exemption.

[6] Another commentator objecting to this provision argued that the breakdown of remuneration charges was information not currently required to be provided to "customers". The requirement to provide the breakdown to independent plan fiduciaries is, however, currently required under section II(e)(ii) of PTE 79–1.

(b) *Disclosure of charges for research and other services.* The proposed exemption contained a provision requiring annual disclosure of whether any transaction-related charges were attributable to consideration for research, other nonbrokerage services or goods and, if so, a detailed description of such services or goods. Many commentators objected to this section of the proposal. Some commentators argued that the Department lacks the legal authority to require such disclosure and that only the SEC has jurisdiction over such matters. Others interpreted this section as inhibiting the payment of monies for research services in contravention of section 28(e) of the 1934 Act. Several commentators represented that compliance with the proposed requirement was impracticable because research and other services may not be directly attributable to specific trades for specific accounts.

In adopting amendments to several forms and a proxy rule under the Investment Company Act, the SEC addressed similar concerns [9] while still reflecting its longstanding position that "such brokerage placement practices, although permissible, should be disclosed to investors." [10] Amendments were adopted which required disclosure of whether persons acting on behalf of an investment company are authorized to pay a broker a brokerage commission in excess of that which another broker might have charged for effecting the same transaction, in recognition of the value of brokerage or research services provided by the broker.[11]

In addition, amendments to the "brochure rule" under the Investment Advisers Act of 1940 required certain investment advisers to provide a narrative description about their brokerage placement practices.[12]

Several commentators responding to the proposed exemption recommended that the Department rely on the disclosures required by the SEC in the rules discussed above.

In consideration of the comments, the Department has decided to modify the reporting provisions relating to charges that are attributable in part to consideration for goods or nonbrokerage services.

Rather than impose an annual reporting requirement, the final exemption requires that, as part of the initial authorization, the person requesting authorization provide the authorizing fiduciary with a description of the person's brokerage placement practices. Compliance with the brokerage placement practice disclosures required by Form ADV of the Advisers Act will satisfy this requirement of section III(d) of this exemption.[13] Subsequent to this initial disclosure, additional information regarding the person's brokerage placement practices need only be supplied in the summary provided pursuant to section III(f)(3) of the exemption when there is a material change in those practices.

As to pooled accounts, the final exemption has been amended to include a parallel reporting provision in section IV(d)(1)(B). Under this provision, the person requesting authorization must provide the authorizing fiduciary with a description of the person's brokerage placement practices along with other information necessary to determine whether the authorization should be made. Material changes in such brokerage placement practices must be disclosed to authorizing fiduciaries in the summaries provided pursuant to section III(f) of the exemption.

The Department notes that sections III(d) and IV(d)(1)(B) of the exemption continue the requirements of PTE 79-1 and PTE 84-46 that the authorized person is required to furnish the authorizing fiduciary with any reasonably available information necessary to determine whether the authorization should be made or continued. The Department further notes that, under ERISA section 404(a)(1)(B), the authorizing fiduciary has an obligation to be prudent in the selection, and in monitoring the performance of, the investment manager authorized to provide services under the exemption.[14] In this regard, the authorizing fiduciary may wish to request more information from the person concerning brokerage placement practices than is supplied with the initial authorization materials in order to satisfy his or her duties as the authorizing fiduciary.

With respect to the comments questioning the Department's authority to impose these disclosure requirements, the Department notes that the transactions covered by the exemption would, but for the exemption, be proscribed by ERISA's prohibited transaction provisions, for reasons that are unrelated to section 28(e). In the Department's view, the authority to grant exemptions from those provisions carries with it the authority to grant exemptions subject to conditions that the Department determines to be appropriate.

(c) *Disclosure of portfolio turnover.* Section III(f)(4) of the proposed exemption provided that the annual summary furnished to the authorizing fiduciary contain a calculation of the annualized portfolio turnover ratio as a percentage of the plan assets consisting of securities or cash for which the authorized person had investment discretion. That section provided a formula by which to make this calculation.

Several persons commented on this aspect of the proposed exemption. Some argued that the formula was so simple that the information it provided would be at best meaningless, and at worst misleading, to the authorizing fiduciary. Others stated that the calculation was so complex as to be burdensome for the authorized person. One commentator suggested that the final exemption contain a definition of "portfolio turnover" consistent with that contained in Form N-SAR pursuant to the Investment Company Act of 1940. [15]

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[7] The Department notes that, as the definition of "person" includes affiliates of the person, the exempted person need not disclose a breakdown of amounts paid to its affiliates. The Department also notes that, in other cases where precise figures are not available, a reasonable approximation of the allocation of fees will satisfy this condition (*See,* Preamble to PTE 79-1, 44 FR at 5966 (footnote 15)).

[8] One commentator stated that while it is feasible to provide this information, it is "not possible" to do so on the confirmation slips. Disclosure of this information on the confirmation slips themselves is not required; the remuneration breakdown is to be provided annually (for those supplying confirmation slips) or in quarterly reports for others.

[9] In 1976, the SEC had proposed a rule (proposed Rule 28e(2)-1 under the 1934 Act) which would have required investment advisers and others to disclose certain information concerning research services obtained in return for brokerage commissions, including a description of such services and an estimate of their fair market value. In addition, the SEC specifically invited comments on the feasibility and desirability of requiring disclosure of specific dollar amounts paid through brokerage commissions. *See* SEC Release Nos. 33-5772, 34-13024, IC-9547, IA-554 (41 FR 53356, December 6, 1976).

In response to this proposed rule, the Commission received numerous comments similar to those received by the Department: that it was impossible to attribute specific research to specific trades, that it was not practical to place a value on those services, and that it was not feasible to separate commissions into research and brokerage charges. SEC Release Nos. 33-6019, IC-10569, IA-665 (44 FR 7864, February 7, 1979). *See also,* SEC Release Nos. 34-15541, IA-664 (44 FR 7870, February 7, 1979).

[10] 44 FR at 7864.

[11] *See, e.g.,* 17 CFR 270.20(a)(7)(vi).

[12] *See* 17 CFR 275.204-3. *See also,* Securities and Exchange Commission Release No. IA-991 (50 FR 42903, October 23, 1985).

[13] However, under this exemption, such a description must be supplied regardless of whether the authorized person is subject to the "brochure rule."

[14] *See generally,* discussion of ongoing responsibilities of a fiduciary at 29 CFR 2509.75-8, FR-17, and, more particularly, ERISA Technical Release 86-1, issued May 22, 1986.

In consideration of these comments, the Department has decided to eliminate the requirement that the specific formula as set forth in this exemption must be used in computing the portfolio turnover ratio. Instead, the Department has determined that the authorizing fiduciary and the manager should be permitted to agree on a different method of computation that is reasonably designed to provide the authorizing fiduciary with the information needed to assist in discharging its duty of prudence. However, the formula as proposed, with certain technical modifications described below in response to the comments received, remains as a "safe harbor" method of satisfying the requirement of section III(f)(4).

The Department has modified the formula to eliminate from the computation the effects of short-term cash management—that is, management of debt securities with maturity at acquisition of one year or less. This was done to eliminate a "masking" effect that might otherwise result from high portfolio turnover ratios that can be the result of short-term cash management. In addition, explicit instructions for computing the "monthly average of the market value of the portfolio" have been provided. Both of these modifications were made to conform the method of computation to the method set forth in Form N-SAR, cited above. The formula does depart from that set forth in Form N-SAR, however, in that it adds an annualizing factor to account for the possibility that managers may serve for periods of varying durations.

As adopted, the "safe harbor" formula provides that a non-annualized portfolio turnover ratio is first calculated, by dividing the lesser of the aggregate dollar amounts of purchases or sales of portfolio securities during the relevant periods by the monthly average of the market value of the portfolio securities during such periods. The monthly average is obtained by totaling the market values of the portfolio securities as of the beginning and end of each period and as of the end of each month that ends within such periods, and dividing the sum by the number of valuation dates so used. As is noted above, all debt securities whose maturities at the time of acquisition were one year or less are excluded from both the numerator and the denominator. The annualized portfolio turnover ratio is then obtained by multiplying the portfolio turnover ratio described above by an annualizing factor. The annualizing factor is obtained by dividing the number twelve by the aggregate duration of the relevant management periods expressed in months (and fractions thereof).

The Department has added a section to the final exemption, (section V), containing examples which illustrate the use of this formula. The Department believes that, with the adoption of the formula as a "safe harbor", affected parties are provided with both the certainty and the flexibility necessary to comply with this condition of the class exemption.

In response to another comment, the Department has eliminated the requirement to supply the computation in cases where the authorized person has not, during the period covered by the report, exercised any discretionary authority over trading in the account. In those cases, the Department has concluded that the potential for self-dealing by means of causing the plan involved to engage in excessive trading, thereby generating unwarranted brokerage commissions, is substantially reduced if not eliminated. In other cases, however, the Department has decided to retain the requirement. The commentators who generally objected to the requirement argued that many factors, such as the types of securities contained in the portfolio and a given plan's investment objectives, would substantially affect the degree of portfolio turnover. The Department believes that a plan's authorizing fiduciary should be aware of these factors and, therefore, will be able to evaluate the portfolio turnover computation in light of them. Authorized persons may provide whatever supplemental explanatory material they believe to be necessary to make the calculation more meaningful and not misleading to the authorizing fiduciary in the annual report.

C. Clarification of the Scope of the Exemption

PTE 79-1 provides an exemption from both sections 406(a) and 406(b) of ERISA. The proposed exemption provided relief only from the restrictions of section 406(b). The reason for this modification is that the Department believes that any relief from section 406(a) that may be necessary in connection with transactions covered by this exemption is provided by the statutory exemption for the provision of services to a plan by a party in interest contained in section 408(b)(2) of ERISA.

Several commentators objected to this aspect of the proposed exemption. Some of these commentators included an argument that section 408(b)(2) provides an exemption from all of section 406, not just 406(a). The Department does not share this view of the scope of section 408(b)(2).[16]

Neither this class exemption, nor PTE 79-1 or PTE 84-46, provides relief for direct or indirect sales, or other underlying transactions, described in section 406, in which a plan and a party in interest participate. Rather, this exemption provides relief from the restrictions of section 406(b) only for those service transactions that are covered by section II of the exemption and the receipt of compensation therefor by a plan fiduciary. For example, if a plan fiduciary purchases securities from a person he knows to be a party in interest for the plan in an agency cross transaction and receives a commission from the party-in-interest for effecting that transaction, this exemption provides relief from section 406(b)(3) for the receipt of the commission by such fiduciary (provided that the conditions of the exemption are met) but does not provide relief from section 406(a)(1)(A), which generally prohibits a fiduciary with respect to a plan from causing the

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[15] *See* SEC Release No. 34-21633, IC-14299, dated January 4, 1985 (50 FR 1442, 1479, January 11, 1985).

[16] If that argument were correct, the necessity for this exemption would be called into question. Regulations promulgated pursuant to section 408(b)(2) provide, however, that that section does not provide an exemption for acts described in section 406(b). These regulations have been at issue in litigation and have been upheld. In *Marshall* v. *Kelly*, 465 F. Supp. 341 (W.D. Okla., 1978), the court held:

> Section 408(b)(2) of ERISA, 29 U.S.C. 1108(b)(2), provides no exemption from the provisions of section 406(b). Although the language of section 408(b)(2) appears to provide an exemption from all of the prohibitions of section 406, a closer look at the statutory language and purpose has led the Department of Labor to the position expressed in an interpretative regulation, 29 CFR 2550.408b-2 (a) and (e), that section 408(b)(2) provides no exemption from the provisions of section 406(b). Since this construction by the agency charged with the enforcement of ERISA resolves inconsistencies in the statutory language and preserves a fundamental purpose of ERISA, i.e. to prevent a fiduciary from acting in matters in which he has an interest which might affect his judgment, this Court should give it great weight, *Udall* v. *Tallman*, 380 U.S. 1 (1965). In addition, the Court has itself reviewed the statutory language and legislative history and has independently concluded that section 408(b)(2) should not be construed to provide an exemption from the prohibitions of section 406(b).

See also, *Gilliam* v. *Edwards*, 492 F. Supp. 1255 (D.N.J. 1980).

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plan to engage in a transaction that constitutes a direct or indirect sale or exchange of any property between a plan and a party in interest. In the absence of other exemptive relief, this latter transaction would be prohibited.

This exemption specifically excludes relief for acts of "churning." In this regard, section II(a) of the proposed exemption stated that relief was provided for the described transactions, "but only to the extent that such transactions are not excessive, under the circumstances, in either amount or frequency."

Several commentators objected to this language. Some commentators noted that whether an account is in fact "churned" depends on all the facts and circumstances, not merely the amount or frequency of securities trades. Others stated they feared that the Department would be developing or imposing a set of standards regarding what constitutes "churning" that differs from standards that would apply under the federal securities laws.

Upon consideration of the comments, the Department has decided to adopt the provision as proposed. The conduct of a plan fiduciary in managing a securities account must be measured according to ERISA's fiduciary responsibility standards; excessive trading in the account is one respect in which the fiduciary might breach the general fiduciary responsibilities, including that of prudence, imposed on him or her by section 404(a)(1) of ERISA. While the Department does not consider it appropriate to condition the availability of the exemption on adherence by the fiduciary to all facets of these fiduciary duties (including those related to the merits of the underlying transaction), the generation of excessive fees through inappropriately high portfolio turnover rates is an abuse with which the Department is concerned in implementing this class exemption. Thus, the Department could conclude that a fiduciary had violated ERISA's prudence requirement where an account had been "churned", despite the fact that the resulting composition of the plan's portfolio, viewed by itself without regard to the impact of excessive transaction costs, was beyond challenge. The Department does not wish to suggest that the exemption in any way relieves fiduciaries of the obligation not to cause the plan to pay excessive transaction costs.[17]

D. Agency Cross Transactions

The proposed exemption contained specific provisions relating to the conditions under which an authorized person could effect or execute agency cross transactions on behalf of its plan clients. Generally, an agency cross transaction is a transaction in which both the buyer and the seller of a security use the same broker. It was represented by the applicant that such transactions would save plans money and that SEC regulations are sufficient to protect plans from any potential abuse. The proposed conditions were derived from two SEC rules: (1) Rule 206(3)–2 under the Investment Advisers Act of 1940 (17 CFR 275.206(3)–2), and (2) Rule 17a–7 under the Investment Company Act of 1940 (17 CFR 270.17a–7).

As a general matter, the Department received no comments objecting to the inclusion in the exemption of the section on agency cross transactions. Rather, comments were addressed to particular aspects of that section of the proposed exemption; these comments are discussed below.

(1) *Price.* Section III(h)(5) of the proposed exemption required that agency cross transactions be effected at a price "no less favorable to any plan involved in the transaction than the 'current market price' of the security, as . . . defined in Rule 17a–7(b)." That subsection of Rule 17a–7 contains four possible means of determining "current market price" depending on such factors as whether the security is a reported security and whether its principal market is an exchange.

Four commentators objected to this subsection of the proposed exemption. It was argued that the condition in the proposed exemption would operate so as to require a broker-dealer to execute such transactions at the last sale price for certain reported securities, unless there were no reported transactions on that day, which could result in a transaction taking place at a price either higher or lower than the current market price for those securities. The commentators suggested that this condition be revised to require that agency cross transactions be effected or executed at any price at or between the current bid and current ask quotations. The commentators represented that their proposed condition, in conjunction with section III(h)(4) of the proposed exemption (which limits agency cross transactions to situations where market quotations for a security are readily available), would be sufficiently protective of the interests of the plan.

The Department agrees with the commentators' concerns. The Department has, therefore, adopted the suggested revision to the price condition, with the additional condition that the bid and ask quotations be independent.

(2) Transactions Where Discretion Exists on Both Sides

The preamble to the proposed exemption stated that relief was neither requested nor proposed by the Department to extend to agency cross transactions where a broker-dealer has discretionary authority or renders investment advice with respect to both sides of the transaction, in view of the additional potential for abuse that exists in such situations.

In response to this aspect of the proposed exemption, the Department received two comments. Specifically, it was requested that the proposed exemption be revised to permit agency cross transactions between two employee benefit plans, or between a plan and a mutual fund, when the transaction is recommended or effected by a person who serves as an adviser or fiduciary to both parties to the transaction. It was argued that normal portfolio adjustments necessary for liquidity needs as well as individual and overall investment strategies may result in the not unusual situation where an adviser/fiduciary has one client account for which he wishes to sell a particular security at the same time that he has another client account for which he wishes to buy that same security. It was represented that extending relief under the proposed exemption to allow the

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[17] One commenter argued that, in the case where a participant directs trading in his account, the fiduciary following those instructions should not be liable for any excise taxes that might be imposed if this condition of the exemption is not satisfied. The commentator correctly pointed out that while section 404(c) of ERISA (relating to relief from fiduciary liability in the case of participant-directed pension plan accounts) might provide relief from the prohibited transaction provisions of Title I of ERISA in such cases, there is no counterpart in the Code to section 404(c). If the fiduciary does not use its authority to cause the plan to pay additional fees for brokerage services, this exemption from the provisions of section 406(b)(1) of the Act and its counterpart in the Code is not necessary. See note 22, *infra*. The situation described by the commentator, however, also raises questions under section 406(a) of the Act and its counterpart in the Code. The extent to which the statutory exemptions in the Act and Code for the provisions of services apply to the situations described by the commentator is an interpretive matter that depends, in part, on the facts and circumstances surrounding the series of transactions directed by the participant. It should also be noted that, pursuant to section 102(a)(iii) of Reorganization Plan No. 4 of 1978 (43 FR 47713, Oct. 17, 1978), the authority to grant exemptions from the excise taxes imposed by section 4975 ". . . with respect to transactions that are exempted by subsection 404(c) from the provisions of Part 4 of . . . Title I of ERISA . . ." was not transferred from the Internal Revenue Service to the Department. See also, however, PTE 75–1 (40 FR 50845, Oct. 31, 1975), Section I(b). PTE 75–1 was issued by both the Department and the Internal Revenue Service.

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authorized person to effect the transaction for both sides would be beneficial to plans, both because, under the commentators' proposals, only limited fees would be charged and because the buyer and seller may obtain a better, less distorted price than that otherwise available on the open market.

Both commentators suggested that exemptive relief modeled after Rule 17a–7 of the Investment Company Act of 1940 would safeguard plans involved in such transactions against potential abuse. As to mutual funds, that rule provides an exemption for certain purchase or sale transactions between a mutual fund and certain "affiliated persons" thereof under specified conditions. Those conditions include quarterly determinations by the mutual fund's board of directors (including a majority of the directors who are not "interested persons" of the fund) that all purchases or sales made during the quarter pursuant to the Rule were in compliance with procedures reasonably designed to provide that the requirements of the Rule are met. Further, subsection (d) of the Rule provides that "no brokerage commission, fee (except for customary transfer fees), or other remuneration [may be] paid in connection with the transaction." One commentator noted, however, that "customary transfer fees" may be indicated as "commissions" on the brokerage confirmation. This commentator further advised that "broker-dealers may charge what is termed 'commissions' for an agency cross transaction since broker-dealers' costs and risks associated with such transactions may fluctuate with the amount of securities involved."

The other commentator stated that it was unable to define the term "customary transfer fee". It did state that such fees were understood to include such things as custodial transaction fees, out-of-pocket expenses, transfer agent transaction fees, and charges incurred pursuant to governmental reporting requirements. This commentator advised, however, that the Department should not attempt to define or limit the type of fees that may be charged in such transactions in order not to restrict unnecessarily the flexibility of investment advisers. The commentator also argued against restriction of the expanded relief it requested to transactions involving reported securities or securities principally marketed on an exchange.

After consideration of these comments, the Department has decided not to extend relief in the final exemption to agency cross transactions where the authorized person has discretionary authority with respect to both sides of the transaction.

In addition to uncertainty regarding both the fees that would be charged for such transactions and the bases for those fees, the comments received indicate that strict application of Rule 17a–7's pricing provisions may not be appropriate in all cases. The requested augmentation of the exemption, even if modified to allow the pricing flexibility that appears to be necessary or at least desirable, as is discussed above, would provide no assurance that plans that are parties to the transaction—possibly on both sides—would be obtaining a price commensurate with what arms'-length bargaining would have produced. Accordingly, the Department has not been persuaded that, on balance, the potential benefits that may inure to plans outweigh the possibility of abuse that exists when a plan fiduciary acts on behalf of both the plan and a party whose interests are adverse to those of the plan.

E. Recapture Provision

Section IV(c) of the proposed exemption continued the provision from PTE 79–1 which allows a fiduciary to effect securities transactions for a plan with respect to which the fiduciary is a plan trustee, plan administrator or employer of employees covered by the plan, provided that all profits resulting from the brokerage function are recaptured on behalf of the plan. The Department received two comments requesting modification of sections III(a) and IV(c) of the proposal so as to allow plan trustees to engage in covered transactions on a non-recapture basis.

The Department received one comment requesting that all trustees, including those with discretion with respect to plan investments, be allowed to engage in covered transactions. It was argued that PTE 79–1 and the exemption as proposed placed banks at a competitive disadvantage, "for no apparent reason", in relation to both insurance companies and investment advisory affiliates of broker-dealers, where a plan sponsor has "elected the stability, experience, and security offered . . . by a bank trustee."

The Department has previously expressed concern that, as a general matter, the position of a plan trustee may carry with it so great an influence over the general operation of the plan that an independent fiduciary may not be effective in examining critically and objectively multiple service arrangements.[18]

Although that comment did not address the Department's previously expressed concern, another commentator requested that the Department clarify the definition of trustee by explicitly excluding custodial or "non-discretionary" trustees who possess no investment discretion with respect to any assets of the plan. Custodial functions were described as including the provision of plan documents and necessary amendments to comply with applicable law, the safekeeping of securities, the disbursement of benefits, and the reporting of information required by the Internal Revenue Service. This commentator noted that the Department's Advisory Opinion #82–12A discussed the situation where, by operation of Code sections 401(f) or 408(h), a custodial account may be treated as a qualified trust, and as a result, the custodian is treated as the trustee of such account. On the basis of the representations made in that opinion request, the Department concluded that the custodian of the participant-directed plans would not be treated as a trustee for purposes of PTE 79–1.

This commentator also noted that the Comptroller of the Currency allows banks without fiduciary powers to "combine the functions of custodian and the purchasing of securities upon the direction of the principal."[19] In addition, the Federal Deposit Insurance Corporation recently amended its rules to permit certain banks that do not exercise trust powers to act as trustee or custodian of Individual Retirement Accounts and Simplified Employer Pensions under certain conditions; these conditions include: (1) The bank's duties as trustee or custodian must be essentially custodial in nature, (2) the bank must invest the funds from such plans only in its own time or savings deposits or in any other assets at the direction of the customer, (3) the bank may not exercise any investment discretion or provide any investment advice with respect to such accounts, and (4) the bank's acceptances of such accounts without trust powers must not be contrary to state law.[20]

In addition, this commentator argued that the Department's rationale for excluding trustees from those persons eligible to engage in transactions under this exemption—that is, that such persons may have so great an influence over the operation of the plan that adequate independent examinations of any multiple service arrangement involving the trustee may not exist—was not applicable in situations where a trustee has very little or no discretion respecting the investment of the assets of the plan. On the basis of these comments, the Department has concluded that persons who are trustees, but whose duties are limited in a manner similar to those of the non-trustee custodians discussed above, should be excepted from the condition that the person engaging in the covered transaction must not be a plan trustee.[21] Section III(a) of the exemption, as adopted, excludes "nondiscretionary trustees" from that condition, and new section I(i) defines the term "nondiscretionary trustee" in the same manner as that term is defined in PTE 77–9 as amended.[22] In other respects, the Department has decided to retain the condition of PTE 79–1 that trustees may provide brokerage services under this exemption only in recapture situations.[23]

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[18] *See*, preamble to PTE 79–1, 44 FR at 5964 (footnote 11).

[19] Opinion of the Comptroller, November 21, 1983.

[20] 12 CFR 333.101(b), 50 FR 10753 (March 18, 1985).

F. Special Rule for Pooled Funds

PTE 84–46 allows an affiliate of an insurance company maintaining a pooled separate account to provide brokerage services for that account. The authorization provisions of that exemption are designed to accommodate the needs of funds or accounts in which the assets of many plans are collectively invested. The proposed exemption made these alternative methods of authorization available to any account or fund for the collective investment of the assets of more than one plan without requiring the recapture of brokerage profits on behalf of that account or fund. The Department received no criticism of this provision and thus has retained it in the final.

Under PTE 79–1 and the exemption as proposed, persons who are plan trustees, plan administrators, or employers of employees covered by a plan, are generally prohibited from engaging in covered transactions on behalf of such plans other than in recapture situations. In response to that proposal, the Department received one comment requesting that the sponsors of pooled accounts or their affiliates be allowed, under certain conditions, to engage in covered transactions on a non-recapture basis where plans covering employees of the pool sponsors or their affiliates (in-house plans) participate in the pool. The suggested conditions included that the participation of in-house plans in a pool be limited to a certain percentage of the fair market value of the total assets of the pool. Furthermore, the commentator noted that limits could be placed on the total commissions received from all such pooled funds in which in-house plans participate. It was asserted that the interests of the in-house plans would be adequately protected because independent investors representing a substantial portion of the assets of a pooled fund would be scrutinizing the provision of brokerage services by the affiliated broker-dealer. In addition, the commentator noted that a limitation on commissions receivable with respect to pools in which in-house plans participate, similar to that contained in, for example, ERISA section 408(b)(5), would provide additional protection to such plans.

It was argued that the Department has granted similar exemptive relief in the past. In PTE 77–3, the Department exempted from the prohibited transaction provisions of the Act and the Code the acquisition and sale of shares of a mutual fund by the fund's in-house plan.[24] This relief, in turn, was modeled on the statutory exemptions for banks and insurance companies contained in ERISA sections 408(b) (4) and (5). As the Conference Report explains in relation to those statutory exemptions, it would be contrary to normal business practice for a bank to invest the assets of its in-house plan in another bank, or for a plan covering employees of an insurance company to purchase its insurance from another company.[25]

Based on these comments, the Department has decided to modify the exemption in the manner requested so as to allow in house plans to participate in such pools subject to certain protective conditions. Upon consideration, the Department has determined that a five percent limitation on the total commissions received with respect to those pooled funds in which in-house plans participate is an appropriate limitation.[26] In addition, the Department believes that further protection would be provided to such in-house plans where the value of their investment is limited to twenty percent of the fair market value of the pool, as determined on the first day of each fiscal year of the pool. The twenty percent figure is consistent with a similar condition in PTE 84–14, Class Exemption for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers (49 FR 9494, March 13, 1984), and adequately addresses the concerns expressed by the commentator. A determination of whether a pooled fund meets the twenty percent limit during the course of the pool's fiscal year must be made in a manner similar to that by which the percentage of a plan's holding of employer securities is made under the Department's regulations at 29 CFR 2550.407a–2 and 2550.407a–3; that is, (1) an in-house plan may not acquire any additional interests in a pool if, immediately after such acquisition, the fair market value of all in-house plans' interests would exceed 20% of the fair market value of the total assets of the pool; and (2) such pool fund will be in initial compliance with the 20% requirement for a fiscal year if it satisfies the requirement on the first day of that fiscal year notwithstanding any subsequent increase in such percentage limitation which occurs merely as a result of the withdrawal of other participants in the pool.

G. Transitional Rule and Effective Date

The proposed exemption provided that the replacement exemption would become effective thirty days after its publication in the the Federal Register. Further, the proposal indicated that the

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[21] The Department will consider, for purposes of this exemption, the power to amend plan documents solely to comply with changes in applicable law as a non-discretionary trustee or custodial function. The Department expresses no opinion, however, on whether the power to amend plan documents in a more substantive manner would indicate the opposite result.

[22] 49 FR 13208 (April 3, 1984). The distinction between "nondiscretionary" trustees and trustees generally was made in that exemption for reasons similar to those for which it is made here.

[23] It should be noted, however, that the Department has issued two advisory opinions which held that the subject banks would not violate ERISA section 406(b)(1) by the use of their in-house brokerage services in circumstances where (1) the banks would effect securities transactions only upon the express direction of a participant or an independent investment manager, and (2) the banks did not exercise any of the authority, control or responsibility that made them fiduciaries to cause the plans to pay any additional fees for the provision of such services. *See* DOL Advisory Opinions Nos. 85–15A, 85–16A (April 4, 1985). In other cases, section 404(c) of ERISA might provide adequate relief from the prohibited transaction provisions of Title I. However, it should be noted that the authority to grant administrative exemptions from the corresponding provisions of section 4975 of the Code remains with the Internal Revenue Service under Reorganization Plan No. 4 of 1978, there being no Code counterpart to section 404(c).

[24] Class Exemption Involving Mutual Fund In-House Plans, 42 FR 18734 (April 8, 1977).

[25] ERISA Conference Report, H.R. Rep. No. 93–1280, 93d Cong., 2d Sess. 313, 314 (1974).

[26] *See also*, PTE 79–60, 44 FR 59018 (October 12, 1979).

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Department intended to revoke PTE 79–1 and PTE 84–46 at the same time. The Department received several comments requesting clarification of the effective date provisions, as well as comments requesting an additional period of time before the revocation of the existing class exemptions.

Two commentators requested that the annual fiduciary authorizations obtained pursuant to PTE 79–1 be allowed to satisfy the initial authorization requirement of the new exemption without any further action by the authorized person. It was suggested that at the expiration of this annual authorization, the authorized person would then be required to include as part of the next annual report to the independent plan fiduciary all the information that would be required under the new exemption.

Another commentator requested that PTE 79–1 not be revoked for at least six months so as to allow time for agreements and contracts executed pursuant to that exemption to be modified in order to comply with the new exemption.

In consideration of these comments, the Department has made the following determinations: An authorized person may continue to rely on authorizations obtained pursuant to PTE 79–1 or PTE 84–46 to engage in covered transactions under the new exemption, provided that: (1) The authorization complies with the applicable authorization requirements of the new exemption, and (2) before the authorized person begins operating under the new exemption, the authorizing fiduciary is provided with the information required by section III(d) or IV(d)(1)(B), whichever is applicable (including a copy of this exemption) and the form for terminating the authorization. In addition, PTE 79–1 and PTE 84–46 will not be revoked until April 1, 1987, so as to allow authorized persons and authorizing fiduciaries ample time in which to adjust their authorization and reporting procedures. It should be noted, however, that this provision does not operate so as to relieve persons who continue to act pursuant to the "old" exemptions from any of the conditions imposed thereunder, including the reporting provisions. Authorized persons are reminded that they are required, under PTE 79–1 and PTE 84–46, to supply reports with respect to any three-month period in which they engaged in any covered transactions; upon availing themselves of the new exemption, therefore, such persons must still send the authorizing fiduciary any reports required under the old exemptions.

In addition, the effective date of the exemption has been changed to the later of thirty days after publication in the **Federal Register** or the date on which the Office of Management and Budget approves the information collection requests contained in the exemption under the Paperwork Reduction Act of 1980. When the exemption is effective, the Department will publish a notice in the **Federal Register** notifying interested persons of that fact.

H. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the disclosure provisions that are included in this exemption have been submitted to the Office of Management and Budget.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act. That section requires, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act. This exemption also does not affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of participants and beneficiaries.

(2) This exemption is supplemental to, and not in derogation of, any other provision of the Act and the Code, including statutory exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The class exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and based upon the entire record including the written comments submitted in response to the notice of January 24, 1985, the Department makes the following determinations:

(a) The class exemption set forth herein is administratively feasible;

(b) It is in the interests of plans and of their participants and beneficiaries; and

(c) It is protective of the rights of participants and beneficiaries of plans.

Accordingly, the following exemption is hereby granted under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1.

Section I: Definitions and Special Rules

The following definitions and special rules apply to this exemption:

(a) The term "person" includes the person and affiliates of the person.

(b) An "affiliate" of a person includes the following:

(1) Any person directly or indirectly controlling, controlled by, or under common control with, the person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of ERISA), brother, sister, or spouse of a brother or sister, of the person;

(3) Any corporation or partnership of which the person is an officer, director or partner.

A person is not an affiliate of another person solely because one of them has investment discretion over the other's assets. The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) An "agency cross transaction" is a securities transaction in which the same person acts as agent for both any seller and any buyer for the purchase or sale of a security.

(d) The term "covered transaction" means an action described in section II (a), (b) or (c) of this exemption.

(e) The term "effecting or executing a securities transaction" means the execution of a securities transaction as agent for another person and/or the performance of clearance, settlement, custodial or other functions ancillary thereto.

(f) A plan fiduciary is independent of a person only if the fiduciary has no relationship to or interest in such person that might affect the exercise of such fiduciary's best judgment as a fiduciary.

(g) The term "profit" includes all charges relating to effecting or executing securities transactions, less reasonable and necessary expenses including reasonable indirect expenses (such as overhead costs) properly allocated to the performance of these transactions under generally accepted accounting principles.

(h) The term "securities transaction" means the purchase or sale of securities.

(i) The term "nondiscretionary trustee" of a plan means a trustee or custodian whose powers and duties with respect to any assets of the plan are limited to (1) the provision of nondiscretionary trust services to the plan, and (2) duties imposed on the trustee by any provision or provisions of the Act or the Code. The term "nondiscretionary trust services" means custodial services and services ancillary to custodial services, none of which services are discretionary. For purposes of this exemption, a person does not fail to be a nondiscretionary trustee solely by reason of having been delegated, by the sponsor of a master or prototype plan, the power to amend such plan.

Section II: Covered Transactions

Effective the later of December 18, 1986, or the date on which the Office of Management and Budget approves the information collection requests contained in this exemption under the Paperwork Reduction Act of 1980, if each condition of section III of this exemption is either satisfied or notapplicable under section IV, the restrictions of section 406(b) of ERISA and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (E) or (F) or the Code shall not apply to—

(a) A plan fiduciary's using its authority to cause a plan to pay a fee for effecting or executing securities transactions to that person as agent for the plan, but only to the extent that such transactions are not excessive, under the circumstances, in either amount or frequency;

(b) A plan fiduciary's acting as the agent in an agency cross transaction for both the plan and one or more other parties to the transaction; or

(c) The receipt by a plan fiduciary of reasonable compensation for effecting or executing an agency cross transaction to which a plan is a party from one or more other parties to the transaction.

Section III: Conditions

Except to the extent otherwise provided in section IV of this exemption, section II of this exemption applies only if the following conditions are satisfied:

(a) The person engaging in the covered transaction is not a trustee (other than a nondiscretionary trustee) or an administrator of the plan, or an employer any of whose employees are covered by the plan.

(b) The covered transaction is performed under a written authorization executed in advance by a fiduciary of each plan whose assets are involved in the transaction, which plan fiduciary is independent of the person engaging in the covered transaction.

(c) The authorization referred to in paragraph (b) of this section is terminable at will by the plan, without penalty to the plan, upon receipt by the authorized person of written notice of termination. A form expressly providing an election to terminate the authorization described in paragraph (b) of this section with instructions on the use of the form must be supplied to the authorizing fiduciary no less than annually. The instructions for such form must include the following information:

(1) The authorization is terminable at will by the plan, without penalty to the plan, upon receipt by the authorized person of written notice from the authorizing fiduciary or other plan official having authority to terminate the authorization; and

(2) Failure to return the form will result in the continued authorization of the authorized person to engage in the covered transactions on behalf of the plan.

(d) Within three months before an authorization is made, the authorizing fiduciary is furnished with any reasonably available information that the person seeking authorization reasonably believes to be necessary for the authorizing fiduciary to determine whether the authorization should be made, including (but not limited to) a copy of this exemption, the form for termination of authorization described in section III(c), a description of the person's brokerage placement practices, and any other reasonably available information regarding the matter that the authorizing fiduciary requests.

(e) The person engaging in a covered transaction furnishes the authorizing fiduciary with either:

(1) a confirmation slip for each securities transaction underlying a covered transaction within ten business days of the securities transaction containing the information described in Rule 10b–10(a)(1–7) under the Securities Exchange Act of 1934, 17 CFR 240.10b–10; or

(2) at least once every three months and not later than 45 days following the period to which it relates, a report disclosing:

(A) A compilation of the information that would be provided to the plan pursuant to subparagraph (e)(1) of this section during the three-month period covered by the report;

(B) the total of all securities transaction related charges incurred by the plan during such period in connection with such covered transactions; and

(C) the amount of the securities transaction-related charges retained by such person and the amount of such charges paid to other persons for execution or other services.

For purposes of this paragraph (e), the words "incurred by the plan" shall be construed to mean "incurred by the pooled fund" when such person engages in covered transactions on behalf of a pooled fund in which the plan participates.

(f) The authorizing fiduciary is furnished with a summary of the information required under paragraph (e)(1) of this section at least once per year. The summary must be furnished within 45 days after the end of the period to which it relates, and must contain the following:

(1) The total of all securities transaction-related charges incurred by the plan during the period in connection with covered securities transactions.

(2) The amount of the securities transaction-related charges retained by the authorized person and the amount of these charges paid to other persons for execution or other services.

(3) A description of the person's brokerage placement practices, if such practices have materially changed during the period covered by the summary.

(4)(i) A portfolio turnover ratio, calculated in a manner which is reasonably designed to provide the authorizing fiduciary with the information needed to assist in discharging its duty of prudence. The requirements of this paragraph (f)(4)(i) will be met if the "annualized portfolio turnover ratio", calculated in the manner described in paragraph (f)(4)(ii), is contained in the summary.

(ii) The "annualized portfolio turnover ratio" shall be calculated as a percentage of the plan assets consisting of securities or cash over which the authorized person had discretionary investment authority, or with respect to which such person rendered, or had any responsibility to render, investment advice (the "portfolio") at any time or times ("management period(s)") during the period covered by the report. First, the "portfolio turnover ratio" (not annualized) is obtained by dividing (A) the lesser of the aggregate dollar amounts of purchases or sales of portfolio securities during the management period(s) by (B) the monthly average of the market value of the portfolio securities during all management period(s). Such monthly average is calculated by totaling the market values of the portfolio securities as of the beginning and end of each management period and as of the end of each month that ends within such period(s), and dividing the sum by the number of valuation dates so used. For purposes of this calculation, all debt securities whose maturities at the time of acquisition were one year or less are excluded from both the numerator and the denominator.

The "annualized portfolio turnover ratio" is then derived by multiplying the "portfolio turnover ratio" by an annualizing factor. The annualizing factor is obtained by dividing (C) the number twelve by (D) the aggregate duration of the management period(s) expressed in months (and fractions thereof).

Examples of the use of this formula are provided in section V of this exemption.

(iii) The information described in this paragraph (f)(4) is not required to be furnished in any case where the authorized person has not exercised discretionary authority over trading in the plan's account during the period covered by the report.

For purposes of this paragraph (f), the words "incurred by the plan" shall be construed to mean "incurred by the pooled fund" when such person engages in covered transactions on behalf of a pooled fund in which the plan participates.

(g) If an agency cross transaction to which section IV(b) does not apply is involved, the following conditions must also be satisfied:

(1) The information required under section III(d) or IV(d)(1)(B) of this exemption includes a statement to the effect that with respect to agency cross transactions the person effecting or executing the transactions will have a potentially conflicting division of loyalties and responsibilities regarding the parties to the transactions;

(2) The summary required under section III(f) of this exemption includes a statement identifying the total number of agency cross transactions during the period covered by the summary and the total amount of all commissions or other remuneration received or to be received from all sources by the person engaging in the transactions in connection with those transactions during the period;

(3) The person effecting or executing the agency cross transaction has the discretionary authority to act on behalf of, and/or provide investment advice to, either (A) one or more sellers or (B) one or more buyers with respect to the transaction, but not both.

(4) The agency cross transaction is a purchase or sale, for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available; and

(5) The agency cross transaction is executed or effected at a price that is at or between the independent bid and independent ask prices for the security prevailing at the time of the transaction.

Section IV: Exceptions From Conditions

(a) *Certain plans not covering employees.* Section III of this exemption does not apply to covered transactions to the extent they are engaged in on behalf of individual retirement accounts meeting the conditions of 29 CFR 2510.3-2(d), or plans, other than training programs, that cover no employees within the meaning of 29 CFR 2510.3-3.

(b) *Certain agency cross transactions.* Section III of this exemption does not apply in the case of an agency cross transaction, provided that the person effecting or executing the transaction:

(1) Does not render investment advice to any plan for a fee within the meaning of section 3(21)(A)(ii) of ERISA with respect to the transaction;

(2) is not otherwise a fiduciary who has investment discretion with respect to any plan assets involved in the transaction, see 29 CFR 2510.3-21(d); and

(3) does not have the authority to engage, retain or discharge any person who is or is proposed to be a fiduciary regarding any such plan assets.

(c) *Recapture of profits.* Section III(a) of this exemption does not apply in any case where the person engaging in a covered transaction returns or credits to the plan all profits earned by that person in connection with the securities transactions associated with the covered transaction.

(d) *Special rules for pooled funds.* In the case of a person engaging in a covered transaction on behalf of an account or fund for the collective investment of the assets of more than one plan (pooled fund):

(1) Sections III (b), (c) and (d) of this exemption do not apply if—

(A) The arrangement under which the covered transaction is performed is subject to the prior and continuing authorization, in the manner described in this paragraph (d)(1), of a plan fiduciary with respect to each plan whose assets are invested in the pooled fund who is independent of the person. The requirement that the authorizing fiduciary be independent of the person shall not apply in the case of a plan covering only employees of the person, if the requirements of section IV(d)(2)(A) and (B) are met.

(B) The authorizing fiduciary is furnished with any reasonably available information that the person engaging or proposing to engage in the covered transactions reasonably believes to be necessary to determine whether the authorization should be given or continued, not less than 30 days prior to implementation of the arrangement or material change thereto, including (but not limited to) a description of the person's brokerage placement practices, and, where requested, any reasonably available information regarding the matter upon the reasonable request of the authorizing fiduciary at any time.

(C) In the event an authorizing fiduciary submits a notice in writing to the person engaging in or proposing to engage in the covered transaction objecting to the implementation of, material change in, or continuation of, the arrangement, the plan on whose behalf the objection was tendered is given the opportunity to terminate its investment in the pooled fund, without penalty to the plan, within such time as may be necessary to effect the withdrawal in an orderly manner that is equitable to all withdrawing plans and to the nonwithdrawing plans. In the case of a plan that elects to withdraw under this subparagraph (d)(1)(C), the withdrawal shall be effected prior to the implementation of, or material change in, the arrangement; but an existing arrangement need not be discontinued by reason of a plan electing to withdraw.

(D) In the case of a plan whose assets are proposed to be invested in the pooled fund subsequent to the implementation of the arrangement and that has not authorized the arrangement in the manner described in subparagraphs (d)(1) (B) and (C) of this section, the plan's investment in the pooled fund is subject to the prior written authorization of an authorizing fiduciary who satisfies the requirements of subparagraph (d)(1)(A).

(2) Section III(a) of this exemption, to the extent that it prohibits the person from being the employer of employees covered by a plan investing in a pool managed by the person does not apply if—

(A) The person is an "investment manager" as defined in section 3(38) of ERISA, and

(B) Either (i) the person returns or credits to the pooled fund all profits earned by the person in connection with all covered transactions engaged in by the person on behalf of the fund, or (ii) the pooled fund satisfies the requirements of paragraph IV(d)(3).

(3) A pooled fund satisfies the requirements of this paragraph for a fiscal year of the fund if—

(A) On the first day of such fiscal year, and immediately following each acquisition of an interest in the pooled fund during the fiscal year by any plan covering employees of the person, the aggregate fair market value of the interests in such fund of all plans covering employees of the person does not exceed twenty percent of the fair market value of the total assets of the fund; and

(B) The aggregate brokerage commissions received by the person, in connection with covered transactions engaged in by the person on behalf of all pooled funds in which a plan covering employees of the person participates, do not exceed five percent of the total brokerage commissions received by the person from all sources in such fiscal year.

Section V: Examples Illustrating the Use of the Annualized Portfolio Turnover Ratio Described in Section III (f)(4)(ii)

(a) A, an investment manager affiliated with a brokerdealer that A uses to effect securities transactions for the accounts that it manages, exercises investment discretion over the account of plan P for the period January 1, 1987, through June 30, 1987, after which the relationship between A and P ceases. The market values of P's account with A at the relevant times (excluding debt securities having a maturity of one year or less at the time of acquisition) are:

Date	Market value ($ millions)
January 1, 1987	10.4
January 31, 1987	10.2
February 28, 1987	9.9
March 31, 1987	10.0
April 30, 1987	10.6
May 31, 1987	11.5
June 30, 1987	12.0
Sum of market values	74.6

Aggregate purchases during the 6-month period were $850,000; aggregate sales were $1,000,000, excluding in each case debt securities having a maturity of one year or less at the time of acquisition.

For purposes of section III (f)(4) of this exemption, A computes the annualized portfolio turnover as follows:

A=$850,000 (lesser of purchases or sales)

B=$10,657,143 ($74.6 million divided by 7, *i.e.*, the number of valuation dates)

$$\text{Annualizing factor} = \frac{C}{D} = 12/6 = 2$$

Annualized portfolio turnover ratio=2×(850,000/10,657,143)=0.160=16.0 percent

(b) Same facts as (a), except that A manages the portfolio through July 15, 1987 and, in addition, resumes management of the portfolio on November 10, 1987 through the end of the year. The additional relevant valuation dates and portfolio values are:

Dates	Market value ($ millions)
July 15, 1987	12.2
November 10, 1987	9.4
November 30, 1987	9.6
December 31, 1987	9.8
Sum of Market Values	41.0

During the periods July 1, 1987 through July 15, 1987, and November 10, 1987 through December 31, 1987, there were an additional $650,000 of purchases and $400,000 of sales. Thus, total purchases were $1,500.000 (*i.e.*, $850,000+$650,000) and total sales were $1,400,000 (*i.e.*, $1.000.000+$400,000) for the management periods.

A now computes the annualized portfolio turnover as follows:

A=$1,400,000 (lesser of aggregate purchases or sales)

B=$10,509,091 ($115.6 million divided by 11)

$$\text{Annualizing factor} = \frac{C}{D} = 12/(6.5+1.67) = 1.47$$

annualized portfolio turnover ratio=1.47×(1,400,000/10,509,091)=0.196=19.6 percent.

Section VI. Effective Dates and Transitional Rule

(a) This exemption will be effective on the later of December 18, 1986, or the date on which the Office of Management and Budget approves the information collection requests contained in this exemption under the Paperwork Reduction Act of 1980.

(b) PTE 79-1 and PTE 84-46 are revoked effective April 1, 1987.

Signed at Washington, DC, this 5th day of November, 1986.

Dennis M. Kass,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 86-25951 Filed 11-17-86; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-6160 et al.]

Proposed Exemptions: A.G. Edwards, Inc., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to

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comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuent to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERIS Procedure 71–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

A.G. Edwards, Inc. Retirement and Profit Sharing Plan (the Plan) Located in St. Louis, Missouri

[Application No. D-6160]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the proposed purchase or sale of zero-coupon obligations based on Treasury securities (STRIPs)[1] between individually directed accounts in the Plan and A.G. Edwards & Sons, Inc. (Edwards), the Plan Administrator, provided the following conditions are met: (A) The purchase or sale of the STRIPs will be on terms at least as favorable as those offered in the ordinary course of business to unrelated customers of Edwards; (B) Purchases or sales will be made only upon the written direction of a Plan participant; and (C) Purchases or sales directed by a participant will be only for the participant's individual account.

Summary of Facts and Representations

1. The Plan is a profit sharing plan covering the employees of A.G. Edwards, Inc. (AGE), its 12 subsidiaries and 3 affiliated companies. As of May, 1985, there were approximately 3,700 participants in the Plan. Edwards, the Plan Administrator, is the principal subsidiary of AGE, the Plan sponsor. Capital Guardian Trust Company (Capital) is the trustee of the Plan. For purposes of investments in STRIPs, one or more persons, who may be officers of Edwards, or an unrelated trust company, will be the trustees of the Plan (the Special Trustees).

2. The Plan currently allows each participant to direct the investment and reinvestment of assets credited to his/her individual account in one or a combination of six different mutual funds in the American Funds Group, which is not an affiliate of AGE. A participant may redirect investment of funds currently in the account no more than twice in any Plan year by giving written notice to Edwards on or before the fifteenth day of the month preceding the date upon which such change is to be made effective. Assets for which there is no effective participant direction are invested in the American Fund Group's money market fund. Once given, an investment direction is deemed to be continuing until explicitly changed in writing by the participant.

3. Edwards proposes to amend the Plan to allow fully vested participants the additional option of investing in STRIPs. STRIPs represent direct ownership of future principal and interest payments on United States Treasury Bonds or Notes. STRIPs pay no semi-annual interest, sell at a substantial discount and pay the full face value upon maturitiy. The total return is fixed at the time of purchase and equals the difference between the price an investor pays and the face value at maturity. The applicant represents that investment in STRIPs is particularly atractive to participants who wish to lock in a fixed rate of interest for a given period of time.

4. The applicant represents that STRIPs are marketed in the following manner. A primary government bond dealer purchases Treasury Securities directly from the United States Government. The primary dealers then break the Treasury Securities into principal and interest component obligations of the underlying securities, which are traded separately.[2] Broker-dealers, such as Edwards, purchase components by a transfer in book-entry form to the bank of the purchaser. At all times regardless of who owns the STRIP, it is maintained as a book-entry account at a bank which participates in the book-entry system operated by Federal Reserve Banks. The particular Government security or securities that represent the obligation to pay the owner of the STRIP will be identified by the unique CUSIP number attached to the obligation. The payment is fully backed by and is a direct obligation of the United States Government. Whether the payment is an interest payment or a principal payment may be determined from the CUSIP number which is attached to that payment.

5. In marketing STRIPs, Edwards acts as a principal rather than an agent. STRIPs are offered to the public in face amounts of $1,000 and integral multiples thereof at discounts from their face amount. Edwards sells STRIPs to its regular customers in the ordinary course of its business at a selling price which is $1.00 to $10.00 per $1,000 of face value above the price established and posted by Edwards for each particular STRIP on the trade date. This mark-up will not be charged to Plan participants for the subject transactions.

6. Edwards represents that it establishes the selling price for STRIPs by examining the bid and asked prices for maturity dates of STRIPs established by three different types of dealers: (1) A primary reporting government bond dealer, such as Salomon Brothers or Merrill Lynch; (2) A non-reporting government bond dealer, such as Tucker-Anthony; and (3) A broker which buys and sells securities only to other broker dealers, such as Mabon-Nugent or Cantor-Fitzgerald. During the course of a business day, Edwards receives quotations from five or more different dealers in the categories described above regarding their bid and asked prices for given maturity dates. These prices are based on the round lot market (sales for a given maturity date of STRIPs in the face amount of $1,000,000 and multiples thereof). Edwards in turn prices the STRIPs to its customers based on the round lot market rather than the odd lot market, resulting in a higher yield-to-maturity for the customers. In some cases the maturity dates of STRIPs held by Edwards may not correspond to the maturity dates for which Edwards

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[1] The STRIPs program was announced by the Department of the Treasury on February 15, 1985, to facilitate separate trading of registered interest and principal securities.

[2] For example, if an investor wishes to purchase a STRIP which will pay $25,000 on June 15, 1996, the underlying Treasury obligations may be twenty-five $1,000 interest payments due on that date, or five $5,000 interest payments due on that date, or a $25,000 principal payment due on that date, or another combination of interest and principal payments due on that date totaling $25,000.

received price quotations. In such cases Edwards prices the STRIPs to produce comparable yields within the matrix of price quotes received by Edwards. The applicant represents that Edwards is not the only broker-dealer selling STRIPs and therefore, the prices it establishes must be competitive with the marketplace. Edwards establishes its price at least twice daily, at 8:30 a.m. and at 3:30 p.m. On a day when the market is particularly volatile, Edwards changes its price more frequently. The posted price applies to all sales to all customers.

7. The applicant seeks an exemption to allow any fully vested Plan participant to direct the Special Trustees to invest all or a portion of the balance in the noncontributory portion of his or her individually directed account in STRIPs currently available to Edwards' regular customers in the normal course of business. The only commitment of Plan funds will be by an individual participant for his individual account. Neither AGE, Edwards, Capital nor the Special Trustees will recommend the purchase of STRIPs, nor will any employee of Edwards do anything which will serve as a primary basis for investment decisions with respect to any Plan assets by an individual participant. The applicant represents that Capital, the Plan trustee, is unable to handle investments by individual participants in STRIPs, requiring the appointment of the Special Trustees, who may be officers of Edwards, or an unrelated trust company, to act solely in connection with the purchase of STRIPs. If a participant selects a particular STRIP that is not in Edwards' inventory, Edwards will obtain such STRIP, if available, for resale to the participant.

8. Edwards will sell STRIPs to participants at the lesser of the morning posted price established by Edwards on the date the STRIP is purchased or the price established on that day by a primary government bond dealer who reports to the Federal Reserve Bank, as designated by the Special Trustees. Edwards will not charge Plan participants any of the normal mark-up or commission that it would charge to regular customers in the ordinary course of its business. The applicant represents that it is highly improbable on a given day that any one primary government bond dealer will set the best market price for all matruity dates and therefore, there is no one primary government bond dealer which Edwards may identify in advance of the trade date as the primary government bond dealer with whom Edwards will peg its selling prices. The applicant further represents that the use of a reference dealer is designed to insure that on any given day, the price established by Edwards in the normal course of its business is in line with the general market forces in effect on that day.

9. A participant may direct the purchase of STRIPs during the minimum of two fixed periods each calendar year, one commencing in mid-April and another commencing in mid-October. In addition, the Special Trustees in their sole discretion may designate up to two additional investment periods each calendar year, one commencing in mid-January and another commencing in mid-July. The investment periods were selected to coincide with each participant's receipt of the regular quarterly benefit statement reporting the status of his-her account under the Plan. As soon as practicable after distribution of the quarterly benefit report, Edwards will notify the participants of the STRIP investment period. The notice (the Notice) shall specify the latest date for delivering investment directions, the date on which investment directions are to be executed and the settlement date.

10. A participant's investment direction must be in writing in a form acceptable to Edwards and must specify the particular STRIP(s), including maturity date(s), to be acquired, the quantity of each STRIP to be acquired and the security or securities to be sold from the participant's other investments to fund the purchase of the STRIP(s). A participant may place a conditional order directing the purchase of a STRIP only if it could be obtained at below a maximum price or above a minimum yield. A participant will be able to rescind any order prior to the trade date specified in the Notice by notifying Edwards. A participant may modify an order should there be insufficient funds to pay for the STRIPs as of the trade date specified in the Notice. The minumum investment in STRIPs shall be $1,000.

11. Edwards will execute the orders on a first come, first serve basis, in the same manner as Edwards processes its orders for its regular customers in the normal course of business. The actual purchase will be made on the date specified in the Notice or as soon as practicable thereafter.

12. The applicant represents that the proposed exemption is in the Plan's best interest because: (a) The proposal merely makes available an additional investment option; (b) the participant may purchase only for his/her individual account; (c) the purchase price will be set by external market conditions and by an independent third party, neither of which are within the control of Edwards of AGE, and (d) the purchase price paid by the participant for a particlar STRIP will be below the normal market price available to a regular customer of Edwards, because no mark-up or commission will be paid.

13. The applicant also requests an exemption to permit Plan participants to have the opportunity once a year to sell any or all of the STIPSs in their account. If the STRIP is sold through Edwards in a principal transaction, the sale price for the STRIP will be the sale price that would be available for the same STRIP sold by Edwards in the ordinary course of business to its regular customers on the date of sale. Plan participants will not be charged any mark-up from the base sale price. The trade will otherwise be executed in the same manner as a sale in the ordinary course of business by a regular customer of Edwards. Any decision to sell a STRIP prior to distribution from the Plan will be voluntarily made by a participant. In making the sale option available, neither Edwards, AGE, the Special Trustees nor Capital will recommend that any participant sell any STRIP.

14. In summary, the applicant represents that the proposed transactions meet the criteria of section 408(a) of the Act because: (a) The purchase and sale of the STRIPs will be on terms at least as favorable as those offered in the ordinary course of business to unrelated customers of Edwards; (b) no commissions or mark-ups will be charged to Plan participants on either the purchase or the sale of the STRIPs; (c) purchases and sales will be made only on the written direction of a Plan participant; and (d) purchases and sales of the STRIPs directed by a participant will only be for that participant's individual account.

For further Information Contact: Mr. Gary H. Lewfkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

The general Motors Retirement Plan and Trust for Salaried Employees (the Salaried Plan); the General Motors Hourly-Rate Employeers Pension Plan and Trust (the Hourly Plan); and the General Motors Frigidaire Special Pension Plan and Trust (the Frigidaire Plan; Collectively, the GM Trusts) Located in New York, New York

[Application Nos. D-6540, D-6541, and D-6542]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to: (1) A loan (the Loan) on September 18, 1985 of $625 million by the GM Trusts to the Taubman Realty Group Limited Partnership (TRG), a party in interest with respect to the GM Trusts; (2) the purchase on September 18, 1985 of an option (the Option) to acquire a 50 percent limited partnership interest in TRG by the GM Trusts for $50 million; (30 the possible exercise of the Option by the GM Trusts and the payment of the exercise price of the Option in exchange for a limited partnership interest in TRG; (4) the transfer, sale or exchange of the GM Trusts' interests in the Loan or the rights in the Option to an institutional investor which is a party in interest with respect to assets of the GM Trusts unrelated to the subject transaction; (5) the term loans to the partners in TRG (the Term Loans) from the GM Trusts if, at any time after the exercise of the Option, TRG is terminated or there is a redemption of the GM Trusts' interests in TRG; (6) the exercise of the buy/sell option pursuant to the terms of the Prutaub Joint Venture (Prutaub) agreement (the Joint Venture Agreement) and the transfer of interests between TRG, or the GM Trusts as successor to TRG, and the Prudential Insurance Company of America (Prudential), a party in interest with respect to the Salaried Plan, pursuant to the Joint Venture Agreement; and (7) the exchange and transfer of interests between the GM Trusts and TRG if, at any time after the exercise of the Option, TRG is terminated or there is a redemption of the GM Trusts' interests in TRG; provided that the terms of all transactions are no less favorable to the GM Trusts than the terms available in similar transactions with unrelated parties.

Effective Date: If the proposed exemption is granted, the exemption will be effective September 18, 1985.

Summary of Facts and Representations

1. The Salaried Plan, the Hourly Plan, and the Frigidaire Plan are qualified defined benefit pension plans established by the General Motors Corporation (GM) to provide retirement benefits for employees of GM and its affiliates. The total number of participatns for the Salaried Plan, the Hourly Plan and the Frigidaire Plan were 215,973, 658,757, and 2,166, respectively, as of September 30, 1984. The total assets of the GM Trusts equalled approximately $23.3 billion as of September 30, 1985. The assets of the plans are held in two trusts. One trust holds the assets of the Salaried Plan, while a second master trust holds the assets of the Hourly Plan and the Frigidaire Plan. Bankers Trust Company of New York City (Bankers Trust) is the trustee of each of the GM Trusts. Bankers Trust has no discretionary authority over the investment management of the assets held in the GM Trusts relating to the subject transactions.

2. On September 18, 1985, the GM Trusts entered into the loan to TRG of $625 million and the purchase of the Option to acquire, after December 31, 1997 and on or before January 15, 2006, a 50 percent limited partnership interest in TRG. The interests in the Loan and the Option were allocated equally between each GM Trust. Immediately after the closing of the Loan and Option transaction, each GM Trust sold an equal portion of the Loan and the Option to the At&T Master Pension Trust (the AT&T Trust), allowing the AT&T Trust to acquire a 8.2 percent particiaption interest in the Loan and the Option. The participation of the GM Trusts and the AT&T Trust (the Trusts) in the investment is governed by a participation agreement (the Participation Agreement), entered into on August 1, 1985 [3] Pursuant to the terms of the Participation Agreement, the GM Trusts may sell or transfer any of their interests in the Loan or rights in the Option, provided that the acquiring entity is a "qualifying institutional investor" (as discussed below). The AT&T Trust may sell or transfer any of its interests in the investments under the same conditions as the GM Trusts, except that the AT&T Trust must either obtain prior approval from the GM Trusts of the identity of the acquiring entity or consult with the GM Trusts prior to the transaction and obtain the agreement of the acquiring entity to be bound by the provisions of the Participation Agreement. The GM Trusts have the right to cause the sale of the entire Loan and Option to a third party, subject to a right of first refusal held by the AT&T Trust. The AT&T Trust may elect to purchase the GM Trusts' interests in the Loan or the Option at a price equal to the offered price.

3. The Finance Committee of the GM Board of Directors, as the named fiduciary of the three plans participating in the GM Trusts, has delegated certain responsibilities to the GM Pension Investment Committee (the Committee). The Committee is responsible for the hiring, review and removal of investment managers of assets of the GM Trusts. Prior to the subject transactions, the Committee retained Aldrich, Eastman, and Waltch, Inc. (AEWI) as an investment manager for approximately $250 million of the GM Trusts' assets. AEWI is a real estate investment management company located in Boston, Massachusetts, and is a registered investment advisor under the Investment Advisers Act of 1940. At the present time, AEWI manages approximately $818 million of the assets of the GM Trusts. AEWI is generally able to satisfy the requirements for being considered a qualified professional asset manager (QPAM) under Prohibited Transaction Exemption (PTE) 84–14, however, PTE 84–14 is not available to AEWI in this case because the assets of the GM Trusts managed by AEWI exceed 20 percent of the total client assets under management by AEWI for all clients.[4]

4. In 1984, Salomon Brothers, Inc. (Salomon Brothers) developed an investment proposal relating to certain property investments held by A. Alfred Taubman, members of his family, certain past and present employees of the Taubman Company, Inc., and certain entities controlled by one or more such individuals (the Taubman Group). Salomon Brothers presented the proposal to a number of prospective investors and investment managers, including AEWI. After reviewing the material furnished by Salomon Brothers, AEWI developed an alternative propsoal involving these property investments which culminated in the Loan and the Option.

AEWI presented the Loan and the Option investment proposal to the Committee and to other clients of AEWI, including the AT&T Trust. Based upon AEWI's presentations to the Trusts, the Trusts' representatives expressed an interest in participating in the investments. The GM Trusts' representatives expressed an interest in taking up the entire amount of the proposed investments, while representatives of the AT&T Trust expressed an interest in a smaller portion of the proposed investments. After considering the proposals, the Committee and the Senior Vice President-Finance of AT&T, Virgini A. Dwyer (Ms. Dwyer), authorized AEWI to negotiate the terms and conditions of the Loan and the Option with TRG. Both the Committee, on behalf of the GM Trusts, and Ms. Dwyer, on behalf of the AT&T Trust, retained residual authority to approve or disapprove the investment.[5]

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[3] The applicant represents that to the extent the AT&T Trust's participation in the Loan and the Option, or other related transactions, gives rise to prohibited transactions, such transactions are exempt under Prohibited Transaction Exemption (PTE) 84–142, (49 FR 38381), September 28, 1984).

[4] See PTE 84–14, section I(e), (49 FR 9494, March 13, 1984).

With respect to the GM Trusts, AEWI was given full authority as investment manager to analyze the Loan and the Option, to evaluate the suitability of the investments under the broad objectives for real estate investments established by the Committee. None of the individuals comprising the Committee, all of whom are officers of GM, is affiliated in any way with AEWI, TRG, or persons or entities associated with TRG, nor with the parties in interest to the GM Trusts whose other activities give rise to the party in interest relationships of TRG and certain of its partners. In addition, AEWI and its officers, directors and principals have no other relationships with the GM Trusts or GM and its affiliates.

5. The applicant represent that TRG was established in March, 1985 as a general partnership under Michigan law, and was converted, effective August 1, 1985, into a limited partnership under the laws of the Commonwealth of Massachusetts. Immediately prior to the making of the Loan and issuance of the Option, members of the Taubman Group contributed all of there respective interests in certain property investments to TRG in return for partnership interests in TRG. In particular, the applicant states that A. Alfred Taubman holds, directly and indirectly, approximately a 69 percent interest in TRG, Richard P. Kughn holds approximately a 14.5 percent partnership interest in TRG, and William S. Taubman holds approximately a 2.2 percent partnership interest in TRG. A. Alfred Taubman is the managing general partner of TRG.

The property investments held by TRG are partnership interests in operating partnerships which own, or hold long-term leasehold interests in, seventeen regional shopping centers (the Operating Partnerships). Three of the Operating Partnerships are owned entirely by TRG. One of the Operating Partnerships, Prutaub, is 50% owned by TRG with the remaining 50 percent interest owned by Prudential in its general account. Prudential is an investment manager for assets of the Salaried Plan held in various separate accounts maintained by Prudential. Prudential is also an investment manager for assets of the AT&T Trust held in various separate accounts maintained by Prudential. In addition, Prudential's wholly-owned subsidiary, Prudential Bache Securities, Inc., is a brokerage service provider for the GM Trusts. Since Prudential holds a 50 percent interest in Prutaub, Prutaub is a party in interest with respect to the Salaried Plan. Thus, TRG is a party in interest with respect to the Salaried Plan as a more than 10 percent owner of Prutaub. A. Alfred Taubman holds approximately a 69 percent interest in TRG and, therefore, is a party in interest with respect to the Salaried Plan as a more than 10 percent indirect owner of Prutaub.

The applicant states that neither Prudential nor any of its affiliates has any discretionary authority over the assets of the GM Trusts involving the Loan and the Option, and that Prudential and its affiliates did not in any way participate in the evaluation, approval, negotiation or closing of the Loan and the Option transaction.

Two other Operating Partnerships, Lakeside/Novi Associates and Woodfield Associates, are 50 percent owned by TRG with the remaining 50 percent owned by Homart Development Company (Homart), a wholly-owned subsidiary of Sears, Roebuck and Company (Sears). Sears is also the parent of Dean Witter Reynolds, Inc. (Dean Witter), which is a brokerage service provider for the GM Trusts. Thus, each Operating Partnership in which Sears, through Homart, holds a 50 percent interest is a party in interest with respect to the GM Trusts. In addition, TRG is a party in interest with respect to the GM Trusts as a more than 10 percent owner of Lakeside/Novi Associates and Woodfield Associates. Since A. Alfred Taubman holds a more than 10 percent indirect interest in Lakeside/Novi Associates and Woodfield Associates through his interest in TRG, he is a party in interest with respect to the GM Trusts.

The applicant states that neither Sears nor Dean Witter has any discretionary authority with respect to the assets of GM Trusts involving the Loan and the Option, and that neither of them participated in any way in the evaluation, approval, negotiation or closing of the Loan and Option transaction.

William S. Taubman, the son of A. Alfred Taubman, holds a partnership interest in TRG. During the time the Loan and Option transaction was closed, William Taubman was employed by Oppenheimer & Company (Oppenheimer), which provides brokerage services to the GM Trusts. Thus, Oppenheimer is a party in interest with respect to the GM Trusts and William Taubman, as an employee of Oppenheimer, was a party in interest with respect to the GM Trusts. The applicant states that William Taubman, in the course of his employment with Oppenheimer, was not directly engaged in providing services to the GM Trusts. The applicant states further that Oppenheimer has no discretionary authority with respect to the assets of the GM Trusts comprising the Loan and the Option, and has not participated in any way in the evaluation, approval, negotiation or closing of the transaction.

The applicant represents that no members of the Taubman Group, who are otherwise parties in interest to the GM Trusts by virtue of a relationship to Prudential, Sears and other service providers with respect to the GM Trusts, exercised any discretionary authority on behalf of the GM Trusts with respect to the making of the Loan and the purchase of the Option or other transactions described herein.

6. AEWI represents that the Loan and the Option are designed to provide the GM Trusts with the opportunity to invest in one of the largest shopping center portfolios in the United States. AEWI expects that the GM Trusts will benefit from the fixed and secured investment return under the Loan for at least twelve years and, through the exercise or sale of the Option, from participation in the equity appreciation in the shopping center portfolio.

The applicant states that the Loan is evidenced by a $625 million note given by TRG to the GM Trusts. TRG received only $560 million with the remaining $65 million principal amount deducated as original issue discount. TRG's proceeds from the Loan and the sale of the Option, together comprising $610 million, were used to fund $600 million in term loans to the partners in TRG (the Term Loans), with the remaining $10 million being held in a special reserve fund for additional security.

Pursuant to the terms of the Loan Agreement, the Loan will nature on January 16, 2006, although full repayment may be made in seven installments ending on January 15, 2010. TRG may prepay the Loan at any time

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[5] The applicant states that AEWI would also not be considered a QPAM with respect to the GM Trusts under PTE 84-14 since a QPAM maut be the decision-maker with respect to the assets of a plan involved in a particular transaction. See PTE 84-14, Section I(c).

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between December 31, 1997 and December 31, 2004. The Trusts have the option to call the Loan after December 31, 1998, if certain notice requirements to TRG are met. If the Option is exercised while the Loan is outstanding, TRG may accelerate the maturity of the Loan or the Trusts may require the prepayment of the Loan.

The applicant states further that the Loan bears interest at a fixed rate of 12.5 percent per annum on the adjusted principal amount of the Loan. Interest is payable monthly. However, a portion of the monthly interest payment will be deferred and added to the principal. The interest rate may increase to as high as 13.1 percent under certain conditions if TRG extends the time before which the Trusts' right to call the Loan may be exercised. The Loan is secured by security agreements and other documents establishing the Trusts' lien and priority in all the material assets of TRG, including TRG's ownership interests in the Operating Partnerships. TRG's ownership interests in the Operating Partnerships had a fair market value determined by independent appraisal of more than $740 million. The Loan is also secured by the $10 million pledge of the Loan proceeds held in the special reserve fund with the State Street Bank and Trust Company (State Street), as escrow agent, a pledge of the Term Loan notes and security given for those notes, including $120 million from the Term Loans held in escrow with State Street, and the partnership interests of the partners in TRG. The total value of the security for the Loan is approximately 870 million.

Under the Loan agreement and Term Loan agreement between TRG and the individuals who hold interests in TRG, additional security is provided by the assignment to the Trusts of TRG's rights of personal recourse to A. Alfred Taubman and Richard P. Kughn for repayment of the Term Loans. The Trusts may require prepayment of the Loan if the ratio for either Mr. Taubman's or Mr. Kughn's respective assets less liabilities to their respective aggregate obligations on the Term Loans is ever less than 148 percent as of the close of any fiscal year before the release of the personal recourse obligations under the Term Loans. The applicant states that the value of the security for the Loan, including the personal recourse rights, was 2.15 times the principal amount of the Loan as of September 18, 1985, and is not expected to fall below a 1.99 level for the entire term of the Loan.

The applicant represents that there are several covenants and conditions in the Loan Agreement which are intended to protect the GM Trusts' security interests and ensure that TRG will be able to repay the Loan when due. The Loan Agreement limits the amount and type of partnership distributions that may be made by TRG prior to the exercise of the Option, prohibits additional borrowing by TRG and restricts the sale or transfer of properties by TRG or the acquisition of additional properties by TRG, without the prior consent of the Trusts under the Participation Agreement.

7. The Term Loans, the $600 million TRG loaned to the partners of TRG in proportion to their respective interests in TRG, bear interest at a rate of 13.75 percent per annum. In addition to the $10 million in the reserve fund, the applicant states that $120 million of the principal amount of the Term Loans has been placed in an escrow fund with State Street to be held as additional security for the Term Loans until certain cash flow requirements for TRG are met. The Loans are also secured by assignment of the borrowers' partnership interests in TRG. The Term Loans to A. Alfred Taubman and Richard P. Kughn, and certain related persons and entities, which constitute more than 90 percent of the principal amount of the Term Loans, will remain full recourse personal obligations of these borrowers until TRG realizes the cash flow requirements. When the specified cash flow levels are reached, the personal recourse obligations will be removed and the remaining balance of the $120 million escrow fund held by State Street will be released to the Term Loan borrowers.

The principal amount of the Term Loans will be repayable in a single payment, due on January 16, 2006. The applicant states that if a capital distribution by TRG from the proceeds of the sale or other disposition of its interest in an Operating Partnership would cause the ratio of the value of TRG's remaining interests in the Operating Partnerships to the aggregate outstanding principal of the Term Loans to fall below 1.33, such capital distribution must be applied to prepay the Term Loans to the extent necessary to maintain the ratio at 1.33. If TRG is terminated or the Trusts' partnership interests in TRG are redeemed, participation interests in the Term Loans will be distributed to the partners in TRG in proportion to their respective ownership interests. Thereafter, the Term Loans will become due and payable in four equal semi-annual installments. If the Trusts initiate the termination or redemption, the payments will commence on the later of (a) six months after the termination or redemption or (b) December 31, 1998, or as extended by the Loan agreement. Payments will be allocated first to the portion of the Term Loan distribution to the Trusts until that portion is paid in full.

8. The applicant represents that the Option was purchased at a price, $50 million, which was determined based on arm's-length negotiations between the Taubman Group and AEWI. The Option price was approved by the Committee on behalf of the GM Trusts and by Ms. Dwyer on behalf of the AT&T Trust. The Option may be exercised on any payment date of the Loan after December 31, 1997 through January 16, 2006, or earlier in the event of default on the Loan. The Option must be exercised as a whole and not in parts. The determination to exercise the Option would be made by the Trusts under the Participation Agreement.

9. The Trusts have the right to transfer their interests in the Loan or rights in the Option to "qualifying institutional investors." The applicant states that "qualifying institutional investors" include various types of retirement plans, endowment funds and private foundations having more than $50 million of assets, pooled funds having more than $100 million of assets in which plans or other tax-exempt entities invest, insurance companies and banks having more than $2 billion of assets, and any entity or fund substantially all of the beneficial interests in which are owned by one or more of the above. Certain of these institutional investors, such as insurance companies and banks or their affiliates, may be parties in interest with respect to the GM Trusts by reason of providing investment management or other financial services to the GM Trusts.

The applicant states that the decision to sell or transfer an interest in the Loan or the Option will be made by the Committee on behalf of the GM Trusts and Ms. Dwyer on behalf of the AT&T Trust. Thus, the purchaser of the interest in the Loan or the Option which may be a party in interest with respect to the GM Trusts would not have or exercise any discretionary authority, responsibility or control on behalf of either of the Trusts in the transaction. In addition, the terms of any such transfer would be negotiated by AEWI, or another independent advisor, on behalf of the Trusts. The applicant states that AEWI will not represent or exercise any discretionary authority, responsibility or control on behalf of any party other than the Trusts with respect to the sale of an interest in the Loan or the Option.

The applicant also represents that the Participation Agreement provides for the sale from the GM Trusts to the AT&T Trust of additional portions of the Loan and the Option. Under the Participation Agreement, AEWI was appointed to act as agent on behalf of the Trusts. However, AEWI did not represent any of the Trusts in connection with the negotiations which resulted in the establishment of the rights and obligations of the Trusts to one another under the Participation Agreement. Pursuant to the terms of the Participation Agreement, all important actions relating to the Trusts' rights or security under, or the disposition of, the Loan or the Option is subject to majority in interest approval of the participants in the Participation Agreement (i.e. the GM Trusts and the AT&T Trust). In addition, the decision of either of the Trusts to sell its respective interest in the Loan or the Option, or to sell participation interests therein, will be made by the appropriate plan fiduciaries of the Trusts and not by AEWI. In connection with the making of such decisions, AEWI would, at a minimum, continue to provide each of the Trusts with financial information and other relevant data that the plan fiduciaries need to make an informed judgment about the proposed action. Thus, AEWI will not be acting on behalf of or representing the interests of either of the Trusts in its dealings with the other Trust in such a sale. However, the application states that once decisions have been made in accordance with the terms of the Participation Agreement, AEWI may represent the Trusts in dealings with third parties in order to carry out such decisions.

10. The exercise price for the Option will equal $623.5 million, with adjustments for the net amount of deferred interest under the Loan and the aggregate amount of capital distributions made by TRG. AEWI states that the Option represents a valuable right to acquire a 50 percent interest in TRG at a price substantially below the predicted fair market value of the interests in TRG during the Option exercise period.

Upon the exercise of the Option, the Trusts will effectively hold a 50 percent limited partnership interest in TRG under the terms of the Participation Agreement of their interests in TRG. The applicant states that the termination or redemption may not take place before January 15, 1998. Upon termination of TRG or redemption of the Trusts' interests in TRG, the property interests held by TRG will be allocated to one of two lists prepared by TRG, each of which will hold assets with equal aggregate appraised net value as of the end of the most recent fiscal year. The Trusts will select one list of properties and all of the properties on the list will be distributed to the Trusts as tenants in common. However, the applicant states further that if the proposed distribution would impair the value of any property because of the rights of third parties, and such rights are not waived or are exercised, an adjustment will be made by agreement of the parties to have the impairment in value borne as equitably as possible among all of the partners in TRG.

The applicant represents that the Trusts or the Taubman Group partners may elect not to distribute the properties upon dissolution or redemption, but may instead elect to have TRG liquidate all its properties. Under this option, both the Trusts and the Taubman Group partners will be authorized to sell for cash the list of properties which were to have been distributed to them. If the liquidation of either list of properties is not completed within three years, the Trusts will be authorized to sell any remaining properties which were to have been sold by the Taubman Group partners and vice versa. The applicant states that the exchange of responsibilities wil be repeated at three year intervals until all the properties have been sold. The proceeds of all sales will be divided among all the partners in accordance with their respective interests in TRG. In addition, upon termination or redemption, the applicable portion of each Term Loan will be distributed to the partners in TRG, with a 50 percent interest distributed to the Trusts. The Term Loans will become due and payable in four equal semi-annual installments.

11. Prutaub, as discussed above, is an Operating Partnership in which TRG holds 50 percent interest. Prutaub holds a long-term lease on a shopping mall in Short Hills, New Jersey. Prudential holds the remaining 50 percent interest in Prutaub and is the lessor under the lease. The applicant represents that Prudential and the Trusts may become co-joint venturers in Prutaub through the Trusts' foreclosure on the pledge of TRG's interest in Prutaub in the event of a default on the Loan. Further, Prudential and the Trusts may become co-joint venturers if, following the exercise of the Option by the Trusts, TRG is terminated or the Trusts' limited partnership interests are redeemed, and TRG's interest in Prutaub is distributed to the Trusts.

If the Trusts receive TRG's interest in Prutaub, Prudential or the Trusts may exercise a buy/sell option under the Joint Venture Agreement. Under the buy/sell option, after September 1, 1990, a joint venturer may elect to terminate Prutaub and offer to purchase the entire equity interest of the other joint venturer in Prutaub. In addition, each joint venturer has a right of first refusal if the co-venturer wishes to sell its interests to a third party. In the event that the Trusts succeed to TRG's interest in Prutaub, the applicant states that the exercise of the buy/sell option or the first refusal rights between Prudential and the Trusts may constitute prohibited transactions. However, the applicant states further that neither TRG, and certain persons associated with TRG, nor Prudential has exercised or possessed any discretionary authority with respect to the assets of the GM Trusts involved in the transactions described herein.

12. The applicant represents that the Loan and the Option permit the GM Trusts to make real estate investments that further the investment objectives of the GM Trusts. In connection with the making of the Loan and the Term Loans, the purchase of the Option, the exercise of the Option and the transfer of interests upon the termination of, or redemption of interests in, TRG, the applicant states that neither TRG nor any persons associated with TRG have exercised or possess any discretionary authority with respect to the assets of the GM Trusts. Further, in connection with the exercise of the buy/sell option under the Joint Venture Agreement, Prudential would not be in a position to exercise any discretionary authority on behalf of the GM Trusts. The applicant states further that any institutional investor involved in the transfer of any interests in the Loan or the Option would not have any discretionary authority on behalf of the GM Trusts in the subject transactions.

The applicant represents that the terms of both the Loan and the Option, as well as the Joint Venture Agreement, were negotiated on a totally arm's-length basis. AEWI, after a thorough analysis, determined that the Loan and the Option were attractive investment opportunities for the GM Trusts and recommended that the Committee approve the investments on behalf of the GM Trusts. The Committee, which is totally independent of TRG and the Taubman Group, Prudential and its subsidiaries, Sears and its subsidiaries, and Oppenheimer, approved the making of the Loan and the purchase of the Option. The Committee will also be required to approve the exercise of the

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Option at the price determined under the Option agreement and the initiation of the termination of TRG or the redemption of the GM Trusts' interests in TRG. In addition, AEWI received the Joint Venture Agreement as part of its analysis of the Loan and the Option and, particularly, the amendments to such Agreement creating the buy/sell option shortly before the closing of the transaction on September 18, 1985. These amendments were negotiated on an arm's-length basis between members of the Taubman Group and Prudential in order to permit Prudential to terminate Prutaub before it became a partner of the GM Trusts. The applicant states that any other transactions involving the Loan and the Option, including the transfer of interests in the Loan or rights in the Option, would be entered into only on an arm's-length basis, with AEWI representing the GM Trusts, and any proposed transaction would require Committee approval. Thus, the applicant concludes that no party in interest with respect to the GM Trusts would be in a position to improperly influence the terms of any transaction for which relief is requested because AEWI and the Committee are unaffiliated with these other parties in interest who may be involved in the transaction.[6]

13. In summary, the applicant represents that the transactions satisfy the statutory criteria of section 408(a) of the Act because: (a) The subject transactions concern a clearly defined set of related transactions involving the Loan and the Option; (b) the GM Trusts' participation in the Loan and the Option have been determined by AEWI, an independent investment advisor, and by the Committee to be of a quality and potential profitability that meets the investment objectives of the GM Trusts, and, therefore, AEWI and the Committee believe that the subject transactions are in the best interests of the GM Trusts; and (c) the subject transactions were and will be negotiated either by AEWI or another independent advisor pursuant to arm's-length negotiations with the terms of such transactions being subject to the approval of the Committee.

For Further Information Contract: Mr. E.F. Williams of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Barkus & Kronstadt D.O., P.A. Defined Benefit Pension Plan (the Plan) Located in Miami, Florida

[Application No. D-6593]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed sale by the Plan of certain real property (the Property) to Miriam R. Barkus, a party in interest with respect to the Plan, provided that the sales price is no less than the greater of the fair market value of the Property as of the date of sale or the total expenses to the Plan in connection with the acquisition and holding of the Property.

Summary of Facts and Representations

1. The Plan is a defined benefit plan with approximately six participants and total assets of $710,413, as of May 31, 1985. Barkus & Kronstadt D.O., P.A., (the Employer), a professional association doing business in Miami, Florida, is the Plan Sponsor. The trustees of the Plan are Daniel R. Barkus, D.O., Miriam R. Barkus, his wife, and Richard A. Kronstadt, D.O. Daniel R. Barkus and Richard A. Kronstadt are co-owners of the Plan sponsor.

2. On August 30, 1984, the Plan purschased the Property, a parcel of land with a residence located at 34 NW. 169th Street in North Miami Beach, Florida, for a purchase price of $53,000 from an unrelated third party.[7] The purchase price included a cash payment and the assumption of a mortgage (then approximately $32,525.) As of August 21, 1986, the mortgate had an outstanding balance of $31,245.80.

3. The Plan purchased the Property with the intention of reselling it at a profit, together with other property in the area, after the Property had been rezoned. However, application for rezoning was denied, and the Property remains zoned as residential.

4. The applicant represents that, although at the present time the Property is being rented to an unrelated third party for $300 per month, the total cost of maintaining the Property, including the mortgage payment of $398 per month, is $500 per month.

5. According to Bernard Rein, of Rein Realty and Mortgage Company, approximately $12,000 worth of repairs would be required to bring the Property up to the level where the rent could be increased to between $450 and $500 per month.

6. Y. Stephen Liedman, the Plan Administrator, of Independent Pension Services Administrative Company, a pension consulting firm doing business in Coral Gables, Florida, stated on October 4, 1985 that continued ownership of the Property by the Plan was not in the Plan's best interest because the Property is being rented at a loss, substantial capital improvements to the Property are needed, and the investment in the Property is illiquid.

7. On April 19, 1985, Robert W. Codling, A.I.R.E.A., of Alamo Properties, Inc., a real estate firm doing business in Ft. Lauderdale, Florida, stated that the fair market value of the Property as of that date was $48,000.

8. Accordingly, Miriam R. Barkus, wife of a co-owner of the Plan sponsor, trustee of the participants in the Plan, desires to purchase the Property for cash and assume the current mortgage from the Plan, paying to the Plan the greater of the fair market value of the Property as of the date of sale or the total expenses to the Plan to the date of sale in connection with the acquisition and retention of the Property by the Plan, including, but not limited to, the price originally paid for the Property, mortgage payments of interest and principal, property taxes, and maintenance expenses. The Plan will not be required to pay any real estate commissions, fees, or taxes in connection with the sale.

9. In summary, the applicant represents that the proposed transaction will satisfy the terms and conditions of section 408(a) of the Act because: (a) The Property will be sold for the greater of its fair market value at the time of the sale as determined by an independent appraiser or for the total expenses to the Plan in connection with the acquisition and holding of the Property; (b) the sale represents a one-time transaction for cash which can be easily verified; (c) the sale will not require the payments of any commissions, fees, or taxes by the Plan; (d) the Plan will not suffer any loss with respect to its outlay in connection with its purchase and holding of the

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[6] The applicant also states that because a large number of persons and entitles are service providers and investment managers to the GM Trusts, additional party in interest relationships between the GM Trusts and TRG or members of the Taubman Group may arise during the period of the Loan and the Option. However, the applicant represents that such relationships will not involve parties in interest who act or have the power to act as a fiduciary with respect to assets of the GM Trusts represented by the Loan or the Option.

[7] In this proposed exemption, the Department expresses no opinion as to whether the acquisition by the Plan of the Property violated any provisions of Part 4 of Title I of the Act.

Property; and (e) the Trustees of the Plan have determined that the proposed transaction would be in the interest and protective of the Plan and of its participants and beneficiaries.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Metalex Manufacturing, Inc. Employee Profit Plan and Trust (the Plan), Located in Cincinnati, Ohio

[Application No. D–6722]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedures 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale for cash by the Plan of certain real property (the Real Property) to Werner K. Kummerle (Mr. Kummerle), a party in interest with respect to the Plan, provided that the amount received is the greater of the fair market value of the Real Property as of the date of sale or the Plan's total outlay for the Real Property to the date of sale, including, but not limited to, the price originally paid by the Plan for the Real Property, property taxes, interest and maintenance expenses.

Summary of Facts and Representations

1. The Plan is a profit sharing plan sponsored by Metalex Manufacturing, Inc., (the Plan Sponsor), a manufacturer of machinery in Cincinnati, Ohio. As of May 12, 1986, the Plan had approximately 87 participants. The Plan had assets of $191,569 as of June 30, 1980; of $355,659 as of June 30, 1983; and of $739,418 as of June 30, 1985. Trustees of the Plan are Werner K. Kummerle, 100% owner of the Plan Sponsor, and Sue L. Kummerle, his wife (the Kummerles).

2. On August 13, 1979, the Plan purchased 25.587 acres of land in Liberty Township, Butler County, Ohio from an unrelated third party for $189,313.20 in cash (the 1979 Purchase).[8] On the same date, the Kummerles bought a contiguous 77.549 acre parcel of land (the Kummerle Parcel) from the same unrelated third party by paying $10,000 in cash, assuming a first mortgage with a balance of $130,881.68, and taking a second mortgage in the amount of $138,294.72.

3. On August 13, 1982, the Plan purchased 14.305 acres of the Kummerle Parcel from the Kummerles for $123,576.70 in cash (the 1982 Purchase). The 1979 Purchase and the 1982 Purchase together make up the Real Property. The applicant represents that the 1982 Purchase was for fair market value, though no independent appraisal of the 14.305 acres was made at the time. The applicant acknowledges that the 1982 Purchase was a prohibited transaction under section 406 of the Act and accordingly represents that he has prepared Form 5330 (Return of Initial Excise Tax) with respect to the 1982 Purchase, and will file this return and pay all applicable excise taxes within 60 days from the date of the grant of this exemption.

4. The applicant represents that the Plan purchased the Real Property in the anticipation that it would increase in value. Because the Real Property has declined in value since its purchase by the Plan and has produced only $2,250 in rental income since its purchase, the Kummerles now wish to purchase it from the Plan to prevent the Plan from suffering any loss in connection with its acquisition and holding of the Real Property, and to enable the Plan to invest its funds in more liquid and more profitable investments.

5. On December 30, 1985, A. Seth Johnston, ARA, AFM, an independent appraiser with Agricultural Land Consultants, Inc., rural land appraisers and real estate specialists located in West Chester, Ohio, placed the fair market value of the Real Property at $147,200.

6. The applicant seeks an administrative exemption for the Plan to sell the Real Property to Mr. Kummerle for a cash amount equal to the greater of the fair market value of the Real Property as of the date of sale by the Plan or the Plan's total outlay for the Real Property to the date of sale, including, but not limited to, the price originally paid to purchase the Real Property, property taxes, interest and maintenance expenses. The applicant represents that the proposed transaction will not cause the Plan to exceed the limitations on contributions to the Plan contained in section 415 of the Code.

7. In summary, the applicant represents that the proposed transaction will meet the statutory criteria of section 408(a) of the Act because: (a) The Real Property will be sold for the greater of the fair market value at the time of sale as determined by an independent appraiser or the Plan's total outlay for the Purchase to the date of sale, including, but not limited to, the price originally paid by the Plan for the Real Property, property taxes, interest and maintenance expenses; (b) the proposed sale represents a one-time transaction for cash; (c) the proposed sale will not require the payment of any commissions by the Plan; (d) the proposed sale will enable the Plan to dispose of an asset which produces little income; and (e) the Trustees have determined that the proposed transaction would be in the best interests and protective of the Plan and its participants and beneficiaries.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan's either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Reagent Chemical & Research, Inc. Employee's Profit Sharing Plan and Trust (the Plan) Located in Middlesex, NJ

[Application No. D–6758]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406 (a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale by the Plan for $233,836 in cash of a parcel of improved real property located in Raritan Township, Hunterdon County, New Jersey to Brian Sheuse, a party in interest with respect to the Plan; provided that the cash received on the date of sale is no less than the fair market value.

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[8] In this proposed exemption the Department expresses no opinion as to whether the acquisition or holding of the real property acquired in the 1979 Purchase violated any provision of Part 4 of Title I of the Act.

Summary of Facts and Representations

1. The Plan is a defined contribution profit-sharing plan which provides for individual accounts for its approximately 200 participants. As of December 31, 1985, the assets of the Plan totalled $11,044,068. The trustees (the Trustees) for the Plan are Thomas J. Skeuse (Thomas Skeuse) and Robert H. Dallas (Bob Dallas) who are also participants in the Plan.

2. The Plan sponsor is Reagent Chemical & Research, Inc. (the Employer), a subchapter S corporation, located at 124 River Road in Middlesex, N.J. Thomas Skeuse and Bob Dallas own 66⅔ percent and 33⅓ percent interest in the Employer, respectively. Brian Skeuse is an employee of the Employer, a participant in the Plan, and the son of Thomas Skeuse.

3. On November 3, 1980, the Plan acquired at a cost of $225,000 from Joe and Wenona Russo, unrelated third parties with respect to the Plan, a parcel of real property consisting of approximately 34.58 acres of land (the Land) improved by three buildings, a two-story stone and frame single family residence, a barn, and an animal shed (the Buildings; collectively the Land and Buildings will hereinafter be referred to as the Property). The Plan has paid for taxes, insurance, and maintenance on the Property since it was acquired. The Property is 2,500 feet from a tract of land (the Hilltop Property) owned by Hilltop Associates, the partners of which are Thomas Skeuse and Bob Dallas. Also, adjacent to the Property is a 50 acre tract (the Skeuse-Dallas Tract) owned by Skeuse-Dallas Associates, the partners of which are Thomas Skeuse, Brain Skeuse, Bob Dallas, and his sons. The Hilltop Property is currently under a contract for sale to a developer who plans a residential project. It is represented that the Skeuse-Dallas Tract will be held for development at some undetermined time in the future. The Plan acquired the Property with the knowledge that it was not immediately marketable but would become so as soon as sewer and water systems were installed on the Hilltop Property. It is represented that the Plan's development costs would be reduced by connecting into such systems once developed on the adjacent properties.

4. Beginning November 25, 1985, Brian Skeuse has occupied the Property as a personal residence without a formal lease and rent free.[9] During this time, he expended a total of $36,000 to improve and maintain the Buildings and the surrounding Land.

5. Brian Skeuse requests exemption relief for the proposed sale of the Buildings and ten (10) acres of the Land for cash in the amount of $233,836; provided such price in not less than the fair market value on the date of sale. The Trustees represent that the Buildings plus 3½ acres of the Land have been actively marketed for four (4) years through ads in local newspapers and through brochures mailed to real estate brokers at a sales price of $215,000. Though several potential buyers were offered greater acreage as an inducement to agree to purchase the Buildings, Brian Skeuse's offer is the only *bona fide* offer to purchase the Buildings received by the Trustees, since the Plan acquired the Property.

6. The Buildings plus ten (10) acres of the Land were appraised for $220,600 as of August 1, 1986, by Dale C. Blazure, I.C.A. (Mr. Blazure) of Blazure Agency located in Annandale, N.J. In Mr. Blazure's opinion, a premium value of 6 percent of the current fair market value of the Buildings and ten (10) acres of the Land should be added to the price paid by Brian Skeuse, because he also owns an interest in adjacent property. Mr. Blazure certifies that he has no past, present, or future contemplated interest in the Land and Buildings, other than preparing the appraisal report. Mr. Blazure has been licenced as a real estate sales agent in New Jersey for seventeen (17) years and as a broker for eleven (11) years. It is represented that Mr. Blazure has completed all the necessary appraisal courses to qualify as a certified tax assessor and also as an independent senior fee appraiser. Mr. Blazure states he has experience with appraisals on estates, condemnations, and commercial and residential properties in the state of New Jersey.

7. The applicants maintain that the Plan will retain the approximately 24.58 acres of Land remaining after the sale of ten (10) acres to Brian Skeuse. It is represented that this is the more valuable Land as it is relatively flat and cleared and can be developed at a modest cost. The Plan will retain a right of way access to the remaining Land which will protest its value.

8. In summary, the applicants represent that the proposed transaction meets the statutory criteria for exemption under section 408(a) of the Act because: (a) The sale is a one-time transaction for cash; (b) the Plan will incur no fees, commissions, or expenses in connection with the sale; (c) the proceeds of the sale could be used to acquire higher yielding more liquid investments for the Plan or to finance development of the remaining Land; and (d) the sales price will be the fair market value as determined by a qualified independent appraiser.

Fur Futher Information Contact: Angelena Le Blanc of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

J.R. Olson Company, Inc. Defined Benefit Pension Plan (the Plan), Located in San Diego, California

[Application No. D–6838]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the cash sale (the Sale) on August 5, 1986, of a certain parcel of real property (the Property) by the Plan to James R. Olson and Marci L. Olson, (the Olsons), husband and wife, and disqualified persons with respect to the Plan, provided that the terms of the Sale were not less favorable to the Plan than terms obtainable in an arm's-length transaction with an unrelated party.

Effective Date: If granted this exemption will be effective August 5, 1986, the date the parcel of real property was sold by the Plan to the Olsons, as described in this proposed exemption.

Summary of Facts and Representations

1. The Plan is a defined benefit plan with one participant, James R. Olson (Mr. Olson), who is also the fiduciary of the Plan. As of February 28, 1986, the assets of the Plan totalled $345,480.72. Mr. Olson is the sole owner of the sponsoring employer of the Plan, J.R. Olson Company, Inc. (the Employer).[10]

The Employer was incorporated during April of 1978 in order to acquire a franchise permitting the building of a fast food restaurant chain in Orange

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[9] The applicants represent that they will file the Form 5330 with the Internal Revenue Service and will pay the applicable excise tax due on the "amount involved" and any back rental plus interest which may be due for Brian Skeuse's use of the Property from the date of his initial occupancy as determined under section 4941 of the Code within 60 days after the publication of the grant of an exemption in the Federal Register.

[10] Since Mr. Olson is the only participant of the Plan and is the sole owner of the Employer, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

County, California. One year later the Employer sold its franchise and obtained a real estate broker's license from the State of California. The Employer then became affiliated with Business Properties Brokerage Company (BPB) in the capacity of leasing and selling office developments. During 1982 the Employer terminated its contract with BPB and became affiliated with Iliff, Thorn & Company and continues to perform in a similar capacity as it performed with BPB.

2. During October of 1984 Mr. Olson, as fiduciary of the Plan, caused the Plan to purchase the Property for the sum of $58,000. The Property, initially consisted of an unimproved one-quarter acre lot (Lot 9, Block 7, Fairway Point Village 1) in a planned subdivision of Sunriver, Oregon. Subsequently, during January of 1986, the Plan had constructed on the lot for the sum of $188,017, a single family residence of approximately 2,446 square feet. This undertaking by the Plan with respect to the Property was prompted by Mr. Olson who had observed the sales of speculative housing in the Sunriver planned division while vacationing in Oregon. He concluded that the Plan could make the same investment in speculative housing and experience a profitable return within a short period of time. The profitable and quick sale anticipated by Mr. Olson did not occur. Upon completion of the construction, the Property was listed for sale with the principal real estate firm in Sunriver. During the six months of its listing, the Property failed to generate any written offers. Only one oral inquiry was received and this involved a sales price that would have caused the Plan to suffer a loss. The Property was not used by or leased to anyone while it was owned by the Plan.

3. In order to avoid further expenses and taxes to the Plan and the continuing decline in the market value of the Property, the Olsons purchased the Property on August 5, 1986, for the cash sum of $246,000. Mr. Olson had concluded that it was to the advantage of the Plan to have the Olsons purchase the Property for a consideration of no less than the appraised fair market value of the Property. On June 30, 1986, the Property had been appraised to have a fair market value of $242,500 by a qualified independent appraiser, Mr. Gary Ruch of Gary Ruch, Inc., Bend, Oregon. Mr. Olson was motivated to undertake the Sale when he had been informed that profitable sale to an unrelated party in the near future was unlikely because of the existing economy in Oregon and the abundance of similar properties in the vicinity of the Property. In addition, the Sale was prompted by the availability to the Olsons of the necessary financing at a relative low interest rate.

4. In summary, the applicant represents that the proposed transaction satisfies the criteria for an exemption under section 4975 of the Code because: (a) The Sale was a one-time transaction for cash with no expenses incurred by the Plan; (b) the Plan sold the Property at a price higher than its fair market value as determined by an independent qualified appraiser; (c) the Plan is able to avoid any future expenses or losses that would be incurred from owning the Property; (d) the Plan will be able to invest the proceeds from the Sale in income producing assets; and (e) Mr. Olson is the only participant affected by the transaction and he caused the transaction to be consummated.

Notice to Interested Persons: Because Mr. Olson is the sole participant of the Plan and is the only shareholder of the Employer, it has been determined by the Department that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received within 30 days of the date of publication of this notice of proposed exemption.

For further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Ohio Operating Engineers Apprenticeship Fund (the Plan) Located in Cincinnati, Ohio

[Application No. D-6860]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act shall not apply to: (1) The sale of a parcel of real property (the Property) by the Plan to Mr. and Mrs. Neal Hartfield (the Hartfields), for $230,000 in cash, provided such amount is not less than the fair market value of the Property on the date of the sale; and (2) the leaseback by the Plan from the Hartfields of a portion of the Property, under the terms described in this notice of proposed exemption, provided such terms are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is an employee welfare benefit plan established and maintained as a result of collective bargaining between the Labor Relations Division, Ohio Contractors Association and the Associated General Contractors, Inc. and International Union of Operating Engineers, Local No. 18 (and its constituent entities) A.F.L.–C.I.O. to provide apprenticeship training to apprentice operating engineers. The Plan has approximately 315 participants.

2. Mr. Hartfield is a shareholder, director, officer and employee of Mid Ohio Mechanical, Inc. (MOM), an Ohio corporation with its principal office in Granville, Ohio. MOM is a contributing employer to the Plan and both MOM and the Hartfields are parties in interest with respect to the Plan.

3. The Plan acquired the Property in 1969 for $41,000. The Property consists of a parcel of land containing approximately 7.16 acres, a structure containing five offices and a shop for repairs of mechanical equipment, and a storage building. The Plan had various improvements made to the Property in 1970 and 1971, and the initial cost plus additions and improvements is approximately $161,000. The Property is located at 1844 Lancaster Road, Granville, Ohio. The Property was used by the Plan for many years to operate the apprenticeship program.

4. In 1984, the trustees of the Plan determined that the Property was no longer needed for use in connection with apprenticeship training in the operation of heavy mechanical equipment. Therefore, the trustees determined to place the Property on the open market for sale. The applicants represent that the Property has proven to be difficult to sell. The Hartfields have now agreed to purchase the Property from The Plan for $230,000 in cash. The Plan will pay no commission with respect to the sale. The sale agreement was entered into after a lengthy period of negotiations between the Hartfields and the trustees of the Plan. The Plan's trustees determined that the terms of the sale agreement are appropriate for the Plan and in the Plan's best interests. The applicants represent that neither Mr. nor Mrs. Hartfield is a fiduciary with respect to the Plan. The Hartfields are not on the Board of Trustees of the Plan, nor do they have any control over the named fiduciaries of the Plan. Thus, the decision to enter into the transactions was made on behalf of the Plan solely by its trustees, and the Hartfields had no influence over such decision.

5. Mr. Jack Olpp (Mr. Olpp), an independent real estate appraiser located in Newark, Ohio, has appraised the Property as having a fair market value of $227,000 as of September 12, 1986.

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6. In addition to the sale, there are two leaseback arrangements as part of the agreement. The Plan as seller is granted the right to store heavy machinery on the .83 acre site at the rear of the building for a period of six months following the closing without charge or expense. If the Plan desires to continue to utilize this area for storage after the expiration of the six month period, and the Hartfields agree, the Plan shall pay as rent therefor the sum of $200 per month. Moreover, the Plan will lease back the front two offices, reception area and rest room, comprising approximately 600 square feet of the building, for two years at a rental of $500 per month, including all utilities, taxes, building insurance and exterior maintenance. Mr. Olpp has represented that the leaseback terms are fair and equitable to the Plan in light of rents currently being paid in the geographical area.

7. In summary, the applicants represent that the proposed transactions satisfy the criteria of section 408(a) of the Act because: (1) The sale is a one-time transaction for cash; (2) the sale price is more favorable to the Plan than that determined by an independent appraiser, who has also represented that the leaseback terms are fair and equitable to the Plan; and (3) the Plan's trustees have determined that the proposed transactions are appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Racine Construction Industry Pension Fund (the Plan) Located in Racine, Wisconsin

[Application No. D–6890]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the provision of long term mortgage financing by the Plan to property owners where such financing is to be used to retire construction loans extended by banks which are non-fiduciary parties in interest with respect to the Plan, provided that:

A. Such mortgage loan is expressly approved by a fiduciary independent of the construction lender who has authority to manage or control those Plan assets being invested;

B. The terms of each such transaction is not less favorable to the Plan than the terms generally available in an arm's-length transaction between unrelated parties; and

(C) No investment management, advisory, underwriting or sales commission or similar compensation is paid to the construction lender with regard to such transaction.

Summary of Facts and Representations

1. The Plan is a multiemployer pension plan which had approximately 956 participants and net assets of approximately $13,322,115 as of December 31, 1985. The board of trustees of the Plan is comprised of three employer-appointed trustees and three union-appointed trustees (collectively, the Trustees), with the employer and union trustees entitled to cast an equal number of aggregate votes. Investment decisions for the Plan are made by the Trustees.

2. The Plan proposes to engage in long-term mortgage financing for certain commercial construction projects. The Plan does not propose to engage in so-called interim or construction financing. Construction of such commercial properties may be performed by persons who are parties in interest or disqualified persons with respect to the Plan.[11] Specifically, however, the transaction for which exemptive relief is sought is the payoff by the Plan of the short term construction lender with proceeds from the long-term mortgage loan, where the short-term construction lender is a party in interest with respect to the Plan by reason of servicing the Plan's mortgages. In no case, however, will the short term lender be a fiduciary with respect to the Plan.

3. Long-term mortgage financing transactions involving the Plan typically begin when a prospective borrower approaches a mortgage banker [12] to discuss financing. The mortgage banker makes an initial determination as to the feasibility of the proposed project. If that determination is favorable, the prospective borrower enters into an agreement authorizing the mortgage banker to act as his agent in attempting to obtain long-term financing. Typically, this agreement provides that the mortgage banker will receive a one point "origination fee" (an amount equal to 1% of the local loan) [13] from the borrower for obtaining a long-term financing commitment. Up to this point, the Plan has had no involvement in the transaction. Also to this point, the prospective borrower typically would not have obtained short-term construction financing.

In the next phase, the mortgage banker prepares a loan offering for submission to potential lenders. If the mortgage banker believes the project meets the Plan's long-term lending criteria, he presents a copy of the loan offering for consideration by the Trustee. All loan offerings must be prepared in accordance with the Trustee's criteria and must offer a return equal to the current rate for similar financing. Satisfaction of the published criteria does not, however, result in automatic approval. Financing applications are individually considered and acted upon by the Trustee after it is determined that they satisfy the published criteria. Upon review of the loan offering, the Trustee may accept the proposal or offer a counter-proposal on terms different from those originally proposed. If the proposal is accepted, or if the borrower accepts a counter-proposal, the Plan would issue a commitment to provide long-term financing.

4. The Plan's mortgage application form states, among other things, that all construction, except that which is not within the jurisdiction of a union participating in the Plan, must be performed by contractors and subcontractors contributing to and who are in good standing with the Plan and who employ 100 percent AFL-CIO union construction labor. Construction, including all landscaping, must be 100 percent completed by such labor. The borrower must furnish a list to the Plan showing the names of the general contractor and subcontractors and any addition or substitution to that list must be submitted for review by the Plan before such addition or substitution could be made.[14]

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[11] The Department notes that where the construction on the property which secures a mortgage loan made by the Plan was by a contributing employer, and a principal of such employer exercises fiduciary authority in approving the Plan's investment in the mortgage, a prohibited transaction may occur, which transaction would not be covered by this exemption.

[12] The Plan makes financing commitments only in Racine County.

[13] The origination fee charged on any given situation depends on the then existing "market" conditions.

[14] With respect to the geographic and union labor criteria, it should be noted that section 404(a)(1) of Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries and for the

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5. The applicant represents that the total unpaid balance of the Plan's mortgage portfolio shall not, at any time, exceed 25 percent of the Plan's total assets. In addition, the total unpaid balance of any one mortgage which has been committed to and closed by the Plan shall not exceed 10 percent of the Plan's total assets. Mortgage financing applications will only be accepted from individuals who are not parties in interest with respect to the Plan. In some instances, financing applications may be received and considered prior to the selection of general contractors or subcontractors for the project involved. The Trustee considers financing applications without regard to the identity of the general contractor and/or the subcontractors who may potentially be selected (or who may already have been selected if such selection was made prior to submission of the financing application). The Trustee's decisions on the issuance of mortgage commitments are final.

6. The borrower normally obtains construction financing through the mortgage banker. Wen the borrower obtains the short-term construction loan a tri-party agreement may be entered between the Plan, borrower and mortgage banker. The tri-party agreement confirms the parties' understanding that upon completion of the project in accordance with Plan requirements, the Plan will provide the approved loan amount in order to substitute its financing for the short-term funds. The agreement provides for simultaneous assignment of the short-term lender's first mortgage lien to the Plan. This agreement is not required by all mortgage bankers, and, in the absence of an agreement, substitution of the Plan's long-term loan for short-term financing follows the same assignment procedure. The mortgage banker then secures note and mortgage instruments (which documents are prepared with a view to their furture assignment) from the borrower and the borrower begins construction.

Throughout construction, the mortgage banker monitors the project and its progress, making the necessary construction inspections and paying out short-term funds as the work progresses. Upon completion of the project, the mortgage banker makes the necessary inspections and final payouts and a loan closing is scheduled between the borrower and the Plan.

7. Upon completion of the project, the Plan's commitment remains contingent until satisfaction of certain conditions. The conditions include: (i) Issuance of an appraisal by a member of the American Institute of Appraisers showing that the Plan loan will not exceed 75 percent of the project's appraised value,[15] (ii) issuance of a title policy insuring the first lien status of the Plan's mortgage interest in an amount at least equal to the amount of the loan, (iii) receipt of an architect's certificate that construction conforms to the plans and specifications and meets applicable zoning and ordinance restrictions, (iv) issuance of a certification from the appropriate municipal building inspector that the project is complete and ready for occupancy, and (v) presentation of a hazard insurance policy in an amount at least equal to the Plan's loan and naming the Plan payee. If all those conditions are met, the Plan transfers its committed loan funds in exchange for an assignment of the note and mortgages. Typically, the borrower would sign a direction to pay, authorizing the Plan to make the loan to the borrower by paying the loan amount to the mortgage banker. Other documentation (such as title insurance policies, certifications and appraisals) are also reviewed and tranferred at this time.

8. As part of the loan offering, the mortgage banker may agree to service the long-term loan on behalf of the Plan. This servicing includes receipt and handling of scheduled payments, preparation and maintenance of accounts (showing allocation of payments between principal and interest), periodic inspections of the property, and demands for proof of continuing hazard insurance coverage. As compensation for such service, the mortgage banker typically receives from the Plan an amount equal to one-eighth of one percent per annum, of the unpaid amount of the loan.[16]

9. In summary, the applicant represent that the statutory criteria contained in section 408(a) of the Act have been satisfied because:

(a) The Plan has vigorous standards for the approval of any mortgage loan;

(b) The Trustee will review and approve all application for financing;

(c) No more than 25% of the Plan's assets will be invested in mortgage loans; and

(d) No mortgage loans will be made to parties in interest.

For Further Information Contact: Mr. Alan H. Levitas of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules.

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exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. In order to act prudently in making investment decisions, the trustees must consider, among other factors, the availability, risks, and potential return of alternative investments for the plan. Investing plan assets in loans meeting these criteria would not satisfy section 404(a)(1) if such loans would provide the plan with less return, in comparison to risk, than comparable investments available to the plan or if such loans would involve a greater risk to the security of plan assets than other investments offering a similar return.

Thus, in deciding whether and to what extent to invest in mortgage loans, the trustees must consider only factors relating to the interests of plan participants and beneficiaries in their retirement incomes. A decision to make a loan may not be influenced by a desire to stimulate business in a particular geographic area or to encourage the use of union labor unless the investment, when judged solely on the basis of its economic value, would be equal to or superior to alternative investments available to the plan.

[15] In this connection, it should be noted that while the Plan may agree to lend up to 75 percent of appraised value, the loan will not, in any event, exceed actual borrower disbursements. Thus, the Plan loan will reimburse for costs but will not provide any additional funds that the borrower might otherwise use for his own account prior to repayment.

[16] The compensation paid for mortgage servicing with respect to a given mortgage depends on the then existing "market" conditions.

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Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 10th day of November, 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86-25953 Filed 11-17-86; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes a notice at least monthly of all agency requests for records disposition authority (records schedules) which include records being proposed for disposal or which reduce the records retention period for records already authorized for disposal. The first notice was published on April 1, 1985. Records schedules identify records of continuing value for eventual preservation in the National Archives of the United States and authorize agencies to dispose of records of temporary value. NARA invites public comment on proposed records disposals as required by 44 U.S.C. 3303a(a).

DATE: Comments must be received in writing on or before January 20, 1987.

ADDRESS: Address comments and requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requestors must cite the control number assigned to each schedule when requesting a copy. The control number appears in parenthesis immediately after the title of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. government agencies create billions of records in the form of paper, film, magnetic tape, and other media. In order to control the accumulation of records. Federal agencies prepre records schedules which specify when the agency no longer needs them for current business and what happens to the records after the expiration of this period. Destruction of the records requires the approval of the Archivist of the United States, which is based on a thorough study of their potential value for future use. A few schedules are comprehensive; they list all the records of an agency or one of its major subdivisions. Most schedules cover only one office, or one program, or a few series of records, and many are updates of previously approved schedules.

This public notice identifies the Federal agencies and their appropriate subdivision requesting disposition authority, includes a control number assigned to each schedule, and briefly identifies the records scheduled for disposal. The complete records schedule contains additional information about the records and their disposition. Additional information about the disposition process will be furnished with each copy of a records schedule requested.

Schedules Pending Approval

1. Department of the Air Force, Directorate of Administration, Records Management Branch (N1-AFU-87-3). Reports and other records pertaining to assessment of liability for loss of government property.

2. Department of the Air Force, Directorate of Administration (N1-AFU-87-4). Lisitngs used in payrolling.

3. Department of the Army, Office of the Adjutant General (NC1-AU-85-83). Competition Advocacy Files.

4. Department of Agriculture, Agricultural Research Service, Market Quality Research Division (N1-136-86-2). Line project records created between 1953-64 relating to the testing, shipping and storage of fruit, and include project description forms and electrostatic copies of forms used to submit manuscripts for publication.

5. Department of Agriculture, Agricultural Research Service (N1-310-86-2). Grant case files, 1924-53, from the Bureau of Animal Industry (defunct) documenting submission of applications for grants or cooperative projects.

6. Department of Agriculture, Agricultural Research Service (N1-310-86-3). Bureau of Animal Industry (defunct) monthly, quarterly, and annual reports relating to staffing, status of experiments, cooperative efforts; experiment working papers; and miscellaneous correspondence, drawings, and sketches relating to animal husbandry activities of the Bureau.

7. Central Intelligence Agency (NC1-263-84-11). The CIA shedule is classified in the interest of national security pursuant to Executive Order 12356 and is further exempt from public disclosure pursuant to the National Security Act of 1947, 50 U.S.C. 403(d)(3), and the CIA Act of 1949, 50 U.S.C. 403g.

8. Federal Maritime Commission (N1-358-86-1). Update to the Commission's comprehensive schedule including disposition standards for agreement files.

9. General Services Administration, Office of Administration, Audit Resolution Program (N1-269-87-3). Records include contract and internal audit resolution case files and GAO audit reports case files.

10. Department of Housing and Urban Development, Office of Public Housing (N1-207-86-2). Land docket files, printed legislative files and defense housinig land record.

11. Department of Housing and Urban Development, New Communities Development Corporation (NCDC) (N1-207-86-4). Drawings of service systems, including fire protection, sewage, and drainage sytems, that do not have sufficient value for documenting unique aspects of NCDC planned communities.

12. United States Information Agency, Voice of America (N1-306-86-5). Records of the Tape Library consisting of paper copies of a numerical index now maintained electronically, a selective name index, and extra copies of a master set name index scheduled for archival retention.

13. National Archives and Records Administration, Office of Records Adminstration (N1-GRS-87-1). Revision of General Records Schedule 12 (Communications Records), item 4 (Telephone Summaries) to include disposition standards for "call detail" records.

14. Office of Personnel Management, Office of Information Management (N1-146-87-1). Central Office master addressee-index of central office correspondence.

15. Department of State, U.S. National Commission for UNESCO (N1-59-86-4). Motion picture film from the Library of the Commission that were produced by UNESCO.

16. Tennessee Valley Authority, Office of Energy Use, Division of Energy Use and Distributor Relations (NC1-142-85-6). Electric sales statistical data, exclusive of annual reports that have

been designated for future transfer to the National Archives.

17. Tennessee Valley Authority, Division of Engineering Design, Architectural Support Branch (N1-142-86-3). Site planting and planning drawing, 1951-1975.

18. Department of Transportation, Office of the Secretary, Departmental Office of Civil Rights (N1-398-86-3). Minority certification appeals file.

Dated: November 12, 1986.

Frank G. Burke,

Acting Archivist for the United States.

[FR Doc. 86-25932 Filed 11-17-86; 8:45 am]

BILLING CODE 7515-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-400]

Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant); Receipt of Petition for Director's Decision

Notice is hereby given that by petition dated October 17, 1986, Mr. Wells Eddleman and the Coalition for Alternatives to Shearon Harris (CASH) requested that the Director of Nuclear Reactor Regulation issue an order to Carolina Power & Light Company (CP&L) to require it to show cause why the construction permit for its Shearon Harris facility should not be modified or revoked and issuance of its operating license be denied or delayed pending resolution of a number of issues. The bases for the requested action are alleged deficiencies in CP&L's quality assurance program for electrical safety-related components, alleged lack of requisite character and technical capability to operate the Shearon Harris facility as evidenced by two recent employee discrimination cases before the Department of Labor, and allegations of improper documentation and performance of certain construction procedures.

The petition is being considered pursuant to 10 CFR 2.206 of the Commission's regulations. A copy of the petition is available for inspection in the Commission's Public Document Room, 1717 H. Street, NW., Washington, DC 20555, and at the local Public Document Room for the Shearon Harris facility located at the Richard B. Harrison Library, 1313 New Bern Avenue, Raleigh, North Carolina 27610.

Dated at Bethesda, Maryland, this 12th day of November, 1986.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 86-26017 Filed 11-17-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-440]

Cleveland Electric Illuminating Co., et al.; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission or NRC), has issued Facility Operating License No. NPF-58 to the Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and the Toledo Edison Company (licensees) which authorizes operation of the Perry Nuclear Power Plant, Unit No. 1 (the facility), at reactor core power levels not in excess of 3579 megawatts thermal (100 percent rated power) in accordance with the provisions of the License, the Technical Specifications and the Environmental Protection Plan. The issuance of this License was approved by the Nuclear Regulatory Commission at a meeting on November 7, 1986, and supersedes the license for fuel loading and low power testing, License NPF-45 issued on March 18, 1986.

The Perry Nuclear Power Plant, Unit No. 1, is a boiling water reactor located near Lake Erie in Lake County, Ohio, approximately 35 miles northeast of Cleveland, Ohio.

The License is effective as of the date of issuance. The application for the License complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulatons in 10 CFR Chapter I, which are set forth in the License. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on February 13, 1981 (46 FR 12372).

The Commission has determined that the issuance of this License will not result in any Environmental impacts other than those evaluated in the Final environmental Statement since the activity authorized by the License is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see (1) Facility Operating License No. NPF-58, with Technical Specifications (NUREG-1204) and the Environmental Protection Plan; (2) the reports of the Advisory Committee on Reactor Safeguards, dated July 13, 1982 and March 17, 1986; (3) the Commission's Safety Evaluation Report, dated May 1982 (NUREG-0887), and Supplements 1 through 10; (4) the Final Safety Analysis Report and Amendments thereto; (5) the Environmental Report and supplements thereto; and (6) the Final Environmental Statement, dated August 1982 (NUREG-0884).

These items are available for inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081. A copy of Facility Operating License No. NPF-58 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of BWR Licensing. Copies of the Safety Evaluation Report and its Supplements 1 through 10 (NUREG-0887) and the Final Environmental Statement (NUREG-0884) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, or may be ordered by calling (202) 275-2060 or (202) 275-2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082. All orders should clearly identify the NRC publication number and the requesters GPO deposit account, or VISA or Mastercard number and expiration date.

Dated at Bethesda, Maryland, this 13th day of November 1986.

For The Nuclear Regulatory Commission.

Walter R. Butler,

Director, BWR Project Directorate No. 4, Divison of BWR Licening.

[FR Doc. 86-26018 Filed 11-17-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-255]

Consumers Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-20, issued to Consumers Power Company (the licensee), for operation of the Palisades Plant located in Van Buren County, Michigan.

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The proposed license amendment would provide Technical Specifications applicable to an expanded storage capability for spent fuel at Palisades Plant. This expansion is to be accomplished by installing new storage racks in approximately one-half of the spent fuel pool. The proposed modifications will increase the spent fuel storage capacity of Palisades from 798 to 892 fuel assemblies, thus allowing a full core discharge capability for two fuel cycles (Cycle 8 and Cycle 9) longer than with exising racks. The spent fuel storage pool will be divided into two reigons. Region 1 contains the existing storage racks which have a nominal center-to-center spacing of 10.25 inches and its designed to accommodate non-irradiated, fully enriched fuel. Region 2 will contain the new racks which have a nominal center-to-center spacing of 9.17 inches. Placement of fuel in Region 2 is restricted by burnup and enrichment limits.

The specific changes proposed to Technical Specifications are:

Specification 4.2.1—Reference 7 for Table 4.2.1 has been expanded to include the new Specification 5.4.2f.

Specification 5.4.2b—This section is deleted because no spent fuel storage racks with an 11.25-inch center-to-center distance exist in the Palisades spent fuel pool. A single rack with 11.25 inch by 10.69 inch center-to-center spacing will be located in the spare (north) tilt pit. The other racks which will exist in the spent fuel pool and spare (north) tilt pit have either 10.25 inch (Region I) or 9.17 inch (Region II) center-to-center distances. [These three types of racks are covered by Specifications 5.4.2c and 5.4.2d.]

Specification 5.4.2c—This section has been expanded to describe the two region spent fuel pool and the existing racks which make up Region I of the spent fuel pool.

Specification 5.4.2d—Describes the Region II racks and the method used to determine which spent fuel can be stored in Region II.

Specification 5.4.2e—Limits the maximum amount of U–235 which can be stored in the spent fuel pool and, therefore, ensures the applicability of the calculations used in the Safety Analysis.

Specification 5.4.2f—Clarifies the requirement that spent fuel pool water boron concentration will be at least 1720 ppm.

Specification 5.4.2 g and h—Changes the alpha character designation.

Specification 5.4.2i—Restricts the storage of spent fuel in Region II racks to that fuel which has the required minimum burnup and assures the fuel enrichment limits assumed in the Safety Analysis will not be exceeded.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By December 18, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designate by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petititoner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the basis for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, is authorized to use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rule implementing section 134 of the NWPA are found in 10 CFR Part 2, Subpart K, "Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662 (October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument. The presiding officer may grant an untimely request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR Part 2, Subpart G, continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions.) The presiding officer shall grant a timely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart G, apply.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW, Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Ashok C. Thadani: (petitioners' name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 20, 1986 as supplemented by submittals dated April 16 and 24, July 24 and October 16, 1986, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Van Zoeren Library, Hope College, Holland, Michigan 49423.

Dated at Bethesda, Maryland, this 12th day of November 1986.

For the Nuclear Regulatory Commission

Ashok C. Thadani,

Director, PWR Project Directorate No. 8, Division of PWR Licensing-B.

[FR Doc. 86-26019 Filed 11-17-86; 8:45 am]

BILLING CODE 7590-01-M

[DOCKET NO. 50-395]

South Carolina Electric & Gas Co. and South Carolina Public Service Authority; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 54 to Facility Operating License No. NPF-12, issued to South Carolina Electric and Gas Company, and South Carolina Public Service Authority (the licensees), which revised the Technical Specifications for operation of the Virgil C. Summer Nuclear Station, Unit 1 (the facility) located in Fairfield County, South Carolina. The amendment is effective as of the date of issuance and until the end of the fifth refueling outage.

The amendment changes the Technical Specifications to modify steam generator tube plugging requirements for tube defects located in the tubesheet region.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action in the **Federal Register** on March 21, 1986 (51 FR 9907). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact (51 FR 26484, July 23, 1986) related to the action and has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributable to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facility dated May 1981.

For further details with respect to the action see (1) the application for amendment dated January 16, 1986, revised August 15, and September 15, 1986, and as supplemented May 8, and October 20, 1986, (2) Amendment No. 54 to License No. NPF-12, and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., and at the Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29810. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of PWR Licensing-A.

Dated at Bethesda, Maryland, this 5th day of November, 1986.

For the Nuclear Regulatory Commission.

Lester S. Rubenstein,

Director, PWR Project Directorate No. 2, Division of PWR Licensing-A, Office of Nuclear Reactor Regulation.

[FR Doc. 86-26020 Filed 11-17-86; 8:45 am]

BILLING CODE 7590-01-M

PENSION BENEFIT GUARANTY CORPORATION

Pendency of Request for Exemption From the Bond/Escrow Requirement Relating to the Sale of Assets by an Employer Who Contributes to a Multiemployer Plan; MDS Acquisition Corp.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of pendency of request.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation has received a joint request from MDS Acquisition Corporation and Culbro Corporation for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended. Section 4204(a)(1) provides that the sale of assets by an employer that contributes to a multiemployer pension plan will not constitute a complete or partial withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser post a bond or deposit money in escrow for the five-plan-year period beginning after the sale. The PBGC is authorized to grant individual and class exemptions from this requirement. Before granting an exemption the PBGC is required to give interested persons an opportunity to comment on the exemption request. The purpose of this notice is to advise interested persons of the exemption request and solicit their views on it.

DATE: Comments must be submitted on or before December 18, 1986.

ADDRESSES: All written comments (at least three copies) should be addressed to: Director, Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006. The non-confidential portions of the request for an exemption and the comments received will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: John Carter Foster, Attorney, Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone 202-956-5050 (202-956-5059 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

Section 4204 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980, ("ERISA" or "the Act"), provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1)(A)-(C), are that—

(A) the purchaser has an obligation to contribute to the plan with respect to the operations for substantially the same number of contribution base units for which the seller was obligated to contribute;

(B) the purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred (the amount of the bond or escrow is doubled if the plan is in reorganization in the year in which the sale occurred); and

(C) the contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale.

Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchasers's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. The granting of an exemption or variance from the bond/escrow requirement does not constitute a finding by the PBGC that a particular transaction satisfied the other requirements of section 4204(a)(1).

Under the PBGC's regulation on variances for sales of assets (29 CFR Part 2643), a request for a variance or waiver of the bond/escrow requirement under any of the tests established in the regulation (§§ 2643.12-2643.14) is to be made to the plan in question. The PBGC will consider waiver requests only when the request is not based on satisfaction of one of the four regulatory tests or when the parties assert that the financial information necessary to show satisfaction of one of the regulatory tests is privileged or confidential financial information with the meaning of section 552(b)(4) of the Freedom of Information Act.

Under § 2643.3 of the regulation, the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

The Request

The PBGC has received a joint request from MDS Acquisition Corporation ("the Buyer") and the Culbro Corportion ("the Seller") for an exemption from the bond-escrow requirement of section 4204(a)(1)(B) as it applies to the purchase of the assets of the Metropolitan Distribution Services, Inc. ("the Purchased Facility") from the Culbro Corporation. In the information that supports the request, the Parties represent, among other things, that:

1. On September 15, 1986, MDS Acquisition Corporation purchased from the Culbro Corporation the assets of Metropolitan Distribution Services, Inc.

2. Employees at the Purchased Facility are covered by the following multiemployer pension plans and, but for the application of section 4204, the Seller would have the following estimated withdrawal liability:

Plan name	Estimated liability
Trucking Employees of North Jersey (Local 560)	$25,000
Local 153 Pension Fund	0
IUE AFL-CIO Pension Fund (Local 332)	0
Teamsters Pension Fund of Philadelphia and Vicinity (Local 331)	0
Local 805 Pension Fund	260,000

3. The Buyer has assumed the obligation to contribute to the multiemployer pension plans on behalf of the employees at the Purchased Facility.

4. The Seller has agreed to be secondarily liable for any withdrawal liability should the Buyer withdraw from the Fund within five years of the sale.

5. The amount of the bond/escrow that would be required of the Buyer under section 4204(a)(1)(B) is approximately $500,000 based on the 1985 contributions or the 3-year average of the contributions to each plan.

6. The Buyer's net tangible assets immediately after the purchase exceed the withdrawal liability the Seller would have had if not for section 4204. In support of this assertion, a pro-forma financial statement and balance sheet were submitted that indicate that, immediately following the purchase, the buyer's net tangible assets were $1,000,000, exceeding the estimated withdrawal liability of the Seller by more than $700,000. Further, the Buyer submitted projections of net income over the next five years that indicate after tax income growing from $491,000 to $1,465,000.

8. Copies of the request were sent to each concerned Fund.

Comments

All interested persons are invited to submit written comments on the pending exemption request to the above address. All comments will be made a part of the record. Comments received, as well as the relevant non-confidential information submitted in support of the request, will be available for public inspection at the address set forth above.

Issued at Washington, DC, on this 12th day of November, 1986.

Kathleen P. Utgoff,

Executive Director.

[FR Doc. 86-25943 Filed 11-17-86; 8:45 am]

BILLING CODE 7706-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-23803; File Nos. 4-308 and SR-NYSE-86-17]

Self-Regulatory Organizations; Proposed Rule Change; New York Stock Exchange, Inc.

AGENCY: Securities and Exchange Commission.

ACTION: Request for additional comments and announcement of date of hearings.

SUMMARY: The New York Stock Exchange, Inc. ("NYSE") currently prohibits the listing of issuers that have outstanding common stock with unequal voting rights. The Commission has published notice of a proposed NYSE rule change that would permit listing of issuers with shares that have unequal voting rights, provided that certain conditions are satisfied. In view of the importance and complexity of the issues raised by the proposed rule change, the Commission has determined to hold public hearings on December 16 and 17, 1986. This release sets forth particular issues of interest to the Commission that commentators may wish to address either in written submission or during the public hearings.

DATES: Written comments should be submitted no later than December 5, 1986. Persons interested in appearing at the hearings should submit their requests, in writing, no later than November 26, 1986. The schedule of appearances will be announced by the Commission shortly before the hearings commence. Persons scheduled to appear should submit the original and ten copies of their written testimony by December 12, 1986.

ADDRESSES: Interested persons who will not be appearing at the hearings should submit three copies of their views and comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should refer to File Nos. 4-308 and SR-NYSE-86-17. Persons interested in appearing at the hearings should submit their requests to Mr. Katz at the same address. Public hearings will be held in the Commission's public meeting room, Room 1C30, at the above address. All written submissions and hearing transcripts will be made available for public inspection and copying in the Commission's Public Reference Section.

FOR FURTHER INFORMATION CONTACT: Ellen K. Dry, Division of Market Regulation, Stop 5-1, 450 Fifth Street, NW., Washington, DC 20549 (202/272-2843).

SUPPLEMENTARY INFORMATION:

I. Introduction

Since the 1920s, the NYSE generally has refused to list any company having classes of common stock with disparate voting rights. This rule is often referred to as the "one share, one vote" rule. [1] On September 16, 1986, the NYSE, pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[2] submitted to the Commission a proposed rule change that would allow companies listed on the NYSE to create a class or classes of common stock with unequal voting rights, provided that certain conditions relating to the creation of unequal voting rights are satisfied. Notice of the proposed rule change (File No. SR-NYSE-86-17) was given in Securities Exchange Act Release No. 23724 (October 17, 1986), 51 FR 37529.

Due to the importance and complexity of the issues raised by the proposed rule change, the Commission has decided to hold public hearings rule change, the Commission has decided to hold public hearings to explore more fully the matters discussed in this release, as well as other issues raised by the proposed rule change.[3] This release highlights some of the issues raised by the proposed rule change that commentators may wish to address.

II. Background

The NYSE's Listed Company Manual provides standards that must be met by an issuer in order to list the company's securities on the NYSE. These standards cover a variety of corporate governance matters, including voting rights. Currently, the NYSE prohibits the listing of a class of stock having unusual voting provisions that tend to nullify or restrict the voting rights of a class, or that has voting power not in proportion to the equity interest of the class ("disparate voting rights stock").[4] Accordingly, companies listed on the NYSE must provide one vote for each share of common stock issued. The American Stock Exchange, Inc. ("Amex") has less stringent voting rights requirements, and the National Association of Securities Dealers, Inc. ("NASD") has no such requirements.[5]

In June 1984, after several listed companies proposed recapitalizations involving the creation of a second class of common stock having disparate voting rights,[6] the NYSE formed the Subcommittee on Shareholder Participation and Qualitative Listing Standards ("Subcommittee") to consider the continued appropriateness of the Exchange's one share, one vote rule. Pending action by the NYSE Board of Governors' on the Subcommittee's recommendations, the NYSE imposed a moratorium on enforcement of the one share, one vote rule.

In January 1985, the Subcommittee published a report that recommended permitting the listing of issuers with classes of common stock having disparate voting rights, provided that certain conditions were met.[7] Following the publication of the recommendations of the Subcommittee, hearings were held in the United States House of Representatives on the issue of one share, one vote.[8] At the same time, interested members of Congress and the Commission encouraged the NYSE, the Amex and the NASD to explore the possibility of uniform shareholder voting standards.[9] In addition, in June 1985,

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[1] Since June 1984, however, approximately 22 companies listed on the NYSE suspended its enforcement of the one share, one vote rule pending an analysis of the policy and a decision on whether it should be modified.

[2] 15 U.S.C. 78s(b).

[3] The Commission authorized public hearings on the NYSE's proposal at an open meeting on October 16, 1986.

[4] NYSE Listed Company Manual, § 313.00.

[5] *See* note 9, *infra.*

[6] For example, General Motors Corporation, Dow Jones & Company, Inc., Hershey Foods Corporation, and The Coastal Corporation have issued stock having disparate voting rights since early 1984.

[7] NYSE Subcommittee on Shareholder Participation and Qualitative Listing Standards, *Initial Report—Dual Class Capitalization* (January 3, 1985) ("Subcommittee Report"). The conditions were: (1) Approval by two-thirds of all shares; (2) if the issuer has a majority of independent directors, approval by a majority of such directors; if no majority of independent directors, approval by all independnet directors; (3) a ratio of voting differential no greater than one to ten; and (4) substantially the same rights of the holders of the two classes of common stock except for voting power per share. Subcommittee Report at 4-5.

[8] Impact of Corporate Takeovers: Hearings Before the Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs, 99th Cong., 1st Sess. 1110-234 (1985).

[9] The Amex's voting rights standards are less stringent than those of the NYSE. *See* Amex Company Guide, § 122. The NASD has no voting rights standards for stocks quoted on NASDAQ.

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legislation was introduced that would have imposed a one share, one vote rule on publicly traded securities regardless of the market in which the securities are traded.[10]

The joint efforts by the NYSE, Amex, and NASD to develop acceptable uniform listing standards concerning voting rights were not successful.[11] On September 16, 1986, the NYSE submitted to the Commission a proposed rule change to modify its one share, one vote standard. In the NYSE's view, its proposal reflects the recognition "that the Exchange can neither dictate corporate governance standards of other self-regulatory organizations ["SROs"], nor unilaterally maintain such standards not required by other market centers in today's competitive environment." [12]

III. Description of the NYSE Proposal

Under the NYSE's proposal, the one share, one vote rule would be modified to permit the listing of a class or classes of common stock having disparate voting rights, if a majority of the issuer's independent directors, and a majority of its public shareholders[13] eligible to vote, have approved such class or classes.[14] Companies that apply for a listing on the NYSE and have outstanding any class of stock with disparate voting rights, must obtain the required approvals prior to listing. No approval is necessary if such stock: (1) Was outstanding at the time the company first became a public company, or (2) was distributed pro rata among the distributor's common shareholders in a spin-off transaction where the distributor is not the issuer.[15]

In its letter accompanying the proposed rule change, the NYSE states that the proposal to permit companies to adopt classes of stock having disparate voting rights "maintain[s] investor safeguards and fosters continued shareholder participation in corporate policy." [16] The NYSE also points out that these approval requirements exceed "requirements of state law as well as those of any other self-regulatory organization." [17] Furthermore, the Board of Directors' decision to adopt the rule proposal takes into account increases that have occurred since adoption of the NYSE's one share, one vote standard in corporate governance initiatives that provide public investors with added protections.[18]

IV. Request for Comments

The modification of the NYSE's longstanding one share, one vote policy raises a number of significant legal and policy issues. The rule dates back to the 1920s, a period during which there was a public outcry when several large NYSE listed companies, such as Dodge Brothers, Inc. and Industrial Rayon Corporation, distributed common stock having no voting rights.[19] Scholars have debated the advantages and disadvantages of dual classes of stock [20] and argued for and against federal action in this area.[21] Although the intense debate within the scholarly community does not provide clear answers, it does serve to show that the NYSE's proposal to modify its one share, one vote rule raises significant issues regarding corporate accountability, tender offer defensive tactics, and competition among SROs, among other matters. Accordingly, this release highlights certain issues raised by the proposal that commentators may wish to address. Interested persons may, of course, address any other issues they believe are relevant to the NYSE's proposal.

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[10] H.R. 2783, the Shareholder Democracy Protection Act, was introduced by Congressman John D. Dingell. Identical legislation, S. 1314, was introduced by Senators D'Amato, Metzenbaum, and Cranston. Neither proposal was reported out of committee.

[11] In reaching its conclusion not to impose listing standards relating to voting rights, the NASD relied in part on a study it commissioned from Professor Daniel R. Fischel of the University of Chicago. Fischel, *Organized Exchanges and the Regulation of Dual Class Common Stock* (March 1986) ("Fischel Study"). The major conclusions of the Fischel Study are that: (1) Exchanges have strong incentives to adopt voting rules that benefit investors; (2) no reason exists to believe that competition among exchanges on the subject of voting rules is undesirable; (3) legitimate business reasons exist for dual class common stock; (4) empirical evidence suggests that dual class common stock is desirable for certain types of firms; (5) many arguments regarding corporate democrary are based on a misconception of the corporate form of firm organization; and (6) there may be significant costs associated with prohibiting dual class common stock. *See* Fischel Study at 5–6.

[12] Letter from John J. Phelan, Jr., Chairman and Chief Executive Officer, NYSE, to John Shad, Chairman, SEC, dated September 16, 1986, at 3 ("September 16 letter").

[13] "Public shareholders" comprises the beneficial owners of the issuer's voting equity securities who are not directors, officers, or members of their immediate families of their affiliates, or affiliates of the issuer. *See* note 25, *infra.*

[14] Listed companies that have created disparate voting rights stock during the moratorium period without the required approval would have two years from the date the proposal enters into effect to comply with the rule.

[15] The approval requirements set forth in the NYSE's proposal are significantly different from the conditions recommended in the Subcommittee Report. *See* note 7, *supra.*

[16] September 16 letter, *supra* note 12, at 3.

[17] *Id.*

[18] *Id.* These initiatives include disclosure requirements under the federal securities laws, the requirement of at least two independent directors on the boards of NYSE-listed companies, and the requirement that each NYSE-listed company have an audit committee composed of independent directors. SR–NYSE–86–17, Form 19b-4 at 4–5.

[19] Seligman, *The One Share, One Vote Controversy, Report for the Investor Responsibility Research Center, Inc.* (January 1986).

[20] *See, e.g.,* Buxbaum, The Internal Division of Powers in Corporate Governance, 73 *Calif. L. Rev.* 1671 (1985) (although dual classes of stock serve some reasonable purposes, shareholder participation is important to the corporate process); Coffee, Regulating the Market for Corporate Control: A Critical Assessment of the Tender Offer's Role in Corporate Governance, 84 *Colum. L. Rev.* 1145, 1263 (1984) (dual classification of stock is a takeover defensive tactic that should be controlled); De Angelo and De Angelo, Managerial Ownership of Voting Rights, 14 *J. Fin. Econ.* 33 (1985) (the value of non-voting stock is less than that of voting stock); Dent, Dual Class Common Stock: A Reply to Professor Seligman, 54 *Geo. Wash. L. Rev.* —— (1986) (forthcoming) (in many instances the creation of dual classes of stock does not hurt shareholders); Fischel Study, *supra* note 11 (dual classes of stock serve useful purposes); Jarrell, The Stock Price Effects of NYSE Delisting for Violating Corporate Governance Rules (1984); Jog & Riding, Price Effects of Dual-Class Shares, 42 *Fin. Analysts J.* 58 (Jan.-Feb. 1986) (relationship between voting rights and share market value); Lease, McConnell & Mikkelson, The Evidence on Limited Voting Stock: Motives and Consequences, —— *Midland Corp. F.J.* —— (Summer 1986) (creation of class of stock with limited voting rights can be viable for closely-held and other corporations); Lease, McConnell & Mikkelson, The Market Value of Control in Publicly-Traded Corporations, 11 *J. Fin. Econ.* 439 (1983) (shares with superior voting rights are more highly valued by investors); Partch, The Creation of a Class of Limited Voting Common Stock and Shareholder Wealth, —— *J. of Fin. Econ.* —— (forthcoming) (no evidence that shareholders are harmed by creation of common stock with limited voting rights); Seligman, Equal Protection in Shareholder Voting Rights: The One Share, One Vote Controversy, 54 *Geo. Wash. L. Rev.* —— (1986) (forthcoming) (non-voting stock results in inefficient corporate management and is unfair to public shareholders); Address by John C. Whitehead before the 19th Annual Conference on Wall Street and the Economy at The New School for Social Research, "The Changing Face of Wall Street," February 2, 1985, at 10–15; and J. Whitehead, Don't Bend the Big Board's Rules, *Fortune,* March 18, 1985, at 185 (one share, one vote should be retained). *Cf.* Ratner, The Government of Business Corporations: Critical Reflections on the Rule of "One Share, One Vote," 56 *Cornell L. Rev.* 1 (1970) (proponent of one person, one vote standard, under which each shareholder casts one vote regardles of the size of his or her holdings).

[21] Coffee, *supra* note 20 (Commission has authority to act); Dent, *supra* note 20 (Congress should take action); Karmel, The SEC's Power to Regulate Stockholder Voting Rights, *N.Y.L.J.,* August 21, 1986, at 1 (hereinafter "Karmel August 1986 Article") (Commission has authority to act); Karmel, Is One Share, One Vote Archaic? *N.Y.L.J.,* February 28, 1985 (hereinafter "Karmel February 1985 Article") (Commission has authority to act); Ratner, *supra* note 20 (Congress should take action); Seligman, *supra* note 20 (Commission should take action); and Whitehead, *supra* note 20 (Commission should act).

A. Should the NYSE's Proposal Be Approved as Proposed, Approved Subject to Modifications, or Disapproved?

The NYSE and the Pacific Stock Exchange, Incorporated ("PSE")[22] are the only exchanges that impose a listing standard requiring that every share of common stock have equal voting rights. The NASD has no such requirement for NASDAQ quoted stocks, and the Amex's restrictions on dual classes of stock are less severe than the NYSE's.[23] In the September 16 letter the NYSE stated that the current competitive environment among SROs (*i.e.*, competition from the NASD and the Amex for listings) influenced its decision to propose a modification to its one share, one vote policy.[24]

The Commission solicits comments on the following questions:

1. Requiring the NYSE To Retain Its One Share, One Vote Policy

a. Should the NYSE be required to retain its one share, one vote policy? In this context, commentators should address whether there are any differences between NYSE-listed companies and companies listed or traded on other markets that justify requiring the NYSE to maintain its one share, one vote policy.

b. If the NYSE were required to retain its one share, one vote rule, what would the costs and benefits be to the NYSE, issuers, and investors? Commentators should address whether the NYSE will be competitively disadvantaged, as it claims, by losing listings to other markets if it is required unilaterally to maintain its one share, one vote policy. Will the lack of a one share, one vote rule at other SROs cause NYSE-listed companies to delist, or influence issuers not to list on the NYSE in the first place? In addition, commentators should address whether the NYSE derives certain benefits from being the only primary market requiring one share, one vote for all companies listed on the Exchange.

2. Adequacy of the NYSE's Proposed Standards for Allowing Dual Classes of Stock and Whether They Should Be Modified

If the NYSE proposal to permit listing of dual class stock is approved, the Commission must decide if the corporate procedures to create dual classes of stock set forth in the proposal are sufficient or should be modified. Under the proposal, listed companies may create a class or classes of stock having disparate voting rights if such securities have been approved by: (1) A majority of the independent directors of the issuer; and (2) a majority of the votes eligible to be cast by the public shareholders.

A company issuing stock with disparate voting rights at its inception or before becoming a public company would not have to obtain shareholder approval. If a company has classes of stock with disparate voting rights outstanding at the time it applies for NYSE listing, the company would have to meet the NYSE's approval requirements before being permitted to list on the NYSE.

Some of the questions arising from the NYSE's proposed standards for permitting the issuance of classes of stock having disparate voting rights are as follows:

a. Do the NYSE's approval requirements adequately protect the interests of shareholders? In this context, commentators should focus on what, if any, changes should be made to the NYSE's proposal to adequately protect investors.

b. Which shareholders should be eligible to vote and why? The NYSE proposal currently requires a vote by the majority of public shareholders. Public shareholders are defined as beneficial owners who are not directors, officers or members of their immediate families or their affiliates, or affiliates of the issuer.[25] Commentators should address the adequacy of this definition generally and, in particular, whether a stockholder holding 10 percent or more of the stock should be deemed to be a public shareholder for purposes of this requirement.[26]

c. Should more than a simple majority be required for shareholder approval and, if so, why? In this regard, we note that the NYSE's Subcommittee Report originally recommended a two-thirds majority vote.[27] Given that the proposed requirement is for a majority of all those *eligible* to vote, would a higher requirement impose disproportionate costs in seeking additional votes?

d. Should periodic reaffirmation by shareholders or independent directors of the dual class voting stock be required? If reaffirmation were required, how often should it occur? In this connection, we note that the NYSE has indicated that it considered a reaffirmation requirement and rejected it as infeasible.[28]

e. Should there be a requirement that some minimum level of voting participation for any class of common stock be retained (*e.g.*, a maximum one to ten ratio or full voting rights for certain issues)? If so, what would be a reasonable standard and why? The Commission notes that the NYSE's Subcommittee Report originally suggested a ratio of voting differential per share of no more than one to ten.[29]

f. The NYSE's proposal will permit certain companies to retain dual classes of stock with no shareholder approval required while requiring others to obtain shareholder approval within two years. Are these grandfather clauses reasonable or should they be expanded or restricted? If so, how and why?

g. What should the disclosure obligations be for companies proposing to issue classes of stock having disparate voting rights? [30] In this connection, the Commission notes a study by its Office of the Chief Economist determined that the stock of NYSE companies fell by an average of 3 percent upon announcement of a multiple class recapitalization.[31] Should this potential price effect be disclosed?

B. Should a One Share, One Vote Policy or Any Other Alternative Be Applicable to Other Securities Markets

Commentators' views on whether the NYSE's proposal should be approved or disapproved may depend, to a certain extent, on whether the Commission intends to impose uniform standards across all securities markets.[32] In this regard, we note that certain commentators have addressed the question of whether the Commission should not only disapprove the NYSE's proposal but also require all exchanges and the NASD to adopt a one share, one vote policy.[33] Others believe that it is more appropriate for Congress to address this issue and enact legislation.[34] Accordingly, commentators may wish to address the following issues:

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[22] The PSE has filed with the Commission a proposed rule change to eliminate this requirement. File No. SR-PSE-84-23.

[23] The Amex currently allows a listed company to issue a class of stock that has the right to elect only a minority of the board of directors. For example, Wang Laboratories, Inc. was listed on the Amex after it created a class of stock that entitled its holders to elect 25% of the Board of Directors. The Amex's Board of Governors has approved a proposal to amend Amex's rules to end any restrictions on dual class issuances by Amex listed companies. *See* letter from Arthur Levitt, Jr., Chairman, NYSE, to John S.R. Shad, Chairman, SEC, dated November 10, 1986.

[24] September 16 letter, *supra* note 12, at 3.

[25] For purposes of the rule, the term affiliate is defined pursuant to Securities Exchange Act Rule 12b-2 [17 CFR 240.12b-2 (1986)], which says an affiliate is a person that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

[26] The NYSE has specifically raised this issue in a letter to Chairman Shad. See September 16 letter, *supra* note 12, at 2.

[27] *See note 7, supra.*

[28] September 16 letter, *supra* note 12, at 2.

[29] *See* note 7, *supra.*

[30] For example, Professor Dent suggests that the Commission could require issuers seeking approval of superior voting stock to disclose prominently whether the new stock may be sold to insiders at less than its market value; whether other shareholders may be excluded from purchasing it; or that insiders may use superior voting stock to thwart a takeover or to divert much of the control premium to themselves. Dent, *supra* note 20.

[31] Jarrell, *supra* note 20.

1. Should a uniform one share, one vote policy be applied across all securities markets? Specifically, should all NYSE- and Amex-listed common stocks, and NASDAQ-quoted common stocks be subject to the same voting rights policy?

2. Even if a uniform policy is developed, should certain types of companies or situations uniformly be exempted from such a policy? For example, should there be an exemption to a one share, one vote rule for: (a) As the NYSE proposal permits, companies that had disparate voting rights at the time the company first became publicly owned; (b) companies that in connection with providing venture capital to small or medium size businesses, acquire control of those businesses; (c) growth or unseasoned companies; and (d) stock issued in connection with a merger the pay out of which is related to the underlying company (*e.g.*, GM classes E and H)?

3. Should a distinction be made between disenfranchisement situations and cases where a purchaser never expects to have equal voting rights. For example, should recapitalizations be permitted where management, or a small group of shareholders ("control group"), have exercised voting control over a corporation since it has become a public corporation? If such a distinction is appropriate, should it be extended to other analogous cases where the control group has held voting control for a substantial period of time?

4. If a uniform policy should be developed, should the Commission or Congress mandate such a policy?

C. Further Issues With Respect to the NYSE's Proposal

1. Certain institutional investor interest groups have implied that investment decisions of institutional investors will be affected by the nature of the voting rights associated with common stock. The Commission would be interested in receiving further information on this claim and data on its potential effect on the marketplace.

2. The Commission is interested in any state law implications arising from either approving the NYSE's proposal or requiring all exchanges and the NASD to adopt a one share, one vote policy.

* * * * *

The Commission also welcomes comments on any issues raised by the proposal that are not set forth above. The public hearings are scheduled to begin Tuesday, December 16, 1986, in Room 1C30 of the Commission's headquarters, 450 Fifth Street, NW., Washington, DC. The hearings will run from 9:30 a.m. to 12:30 p.m. and from 2:00 p.m. to 5:00 p.m. on both December 16 and 17. Although every attempt will be made to allow all interested persons to appear, time may not allow it. Therefore, panels made up of representative groups, such as public companies, institutional investors, shareholders, SROs, academicians, and state regulatory bodies, may be formed. The schedule of appearances will be announced before the hearings begin. People selected to appear at the hearings should submit an original and ten copies of the text of prepared statements not later than December 12, 1986. All participants are invited at the time of their appearance to make copies of their statements available to persons attending the hearings.

Dated: November 13, 1986.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-26049 Filed 11-17-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted within 21 days of this publication in the **Federal Register.** If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies

Copies of forms, request for clearance (S.F. 83), suporting statement, instructions, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Elizabeth M. Zaic, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653-6623

OMB Reviewer: Patricia Aronsson, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7231

Title: Nomination for the Small Business Contractor and Subcontractor of the Year Award

Form Nos.: SBA 883, SBA 1365

Frequency: Annually

Description of Respondents: Federal agencies and prime contractors nominate their prime contractors and subcontractors, by use of these forms, whose performance records serve as outstanding examples of the competence and expertise of small business. The Small Business Prime Contractor and Subcontractor of the Year are chosen from these nominations.

Annual Responses: 327

Annual Burden Hours: 1,308

Type of Request: Extension

Elizabeth M. Zaic,

Deputy Director, Office of Administrative Services, Small Business Administration.

[FR Doc. 86-25976 Filed 11-17-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

[Docket 44485]

Baltimore-London Service Case; Assignment of Proceeding

This proceeding has been asigned to Administrative Law Judge Ronnie A. Yoder. Future communications with respect to this proceeding should be addressed to him at U.S. Department of

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[32] Section 19(c) [15 U.S.C. 78s(c)] of the Exchange Act empowers the Commission to amend or rescind the rules of an SRO.

[33] *See* Coffee, *supra* note 20; Fischel, *supra* note 11; Karmel February 1985 and August 1986 Articles, supra note 21; Seligman, *supra* note 20; and Whitehead, *supra* note 20.

[34] Dent, *supra* note 20. *See* Ratner, *supra* note 20.

Transportation, Office of Hearings, M-50, Room 9400A, Nassif Bldg., 400 7th Street, SW., Washington., DC 20590, telephone (202) 366-2142.

Dated at Washington, DC, November 12, 1986.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 86-26011 Filed 11-17-86; 8:45 am]

BILLING CODE 4910-62-M

Federal Railroad Administration

[BS-Ap.-No. 2601]

Burlington Northern Railroad Co., Norfolk and Western Railway Co., and Chillicothe Southern Railroad Co.; Postponement of Public Hearing

The public hearing scheduled for November 20, 1986, in Chillicothe, Missouri, concerning the captioned block signal application, has been postponed indefinitely.

The postponement is being made at the request of one of the applicants for the signal discontinuance, the Burlington Northern Railroad Company.

In the application that will be the subject of this hearing, the Burlington Northern Railroad Company, the Norfolk and Western Railway Company, and Chillicothe Southern Railroad Company, have petitioned the Federal Railroad Administration (FRA) for approval of the proposed discontinuance of the traffic control signal system from Brookfield, Missouri, to Maxwell, Missouri, on the Burlington Northern Railroad, including the modification of Sumner Interlocking, where the Chillicothe Southern Railroad crosses at grade the Burlington Northern Railroad, and modification of the Norfolk and Western Railway Company junction at Maxwell. This proceeding is identified as FRA Block Signal Application No. 2601. (See the original hearing notice published October 6, 1986, at 51 FR 35577.)

FRA regrets any inconvenience caused by the postponement of this hearing.

Issued in Washington, DC, on November 14, 1986.

Joseph W. Walsh,

Associate Administrator for Safety.

[FR Doc. 86-26113 Filed 11-14-86; 4:50 pm]

BILLING CODE 4910-06-M

Maritime Administration

[Docket S-795]

United States Lines, Inc.; Application for Waiver Pursuant to Section 804 of the Merchant Marine Act, 1936, as Amended

By order served December 3, 1984 (approved November 30, 1984—Docket S-760), the Maritime Administrator waived the provisions of section 804(a) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1222) (Act) to allow United States Lines, Inc. (USL) to enter into certain foreign flag vessel charters and space charters. The foreign-flag vessels serve as feeders in support of USL's non-subsidized Jumbo Econship container vessels which operate in Round-the-World service eastbound. The waiver specified the ports to be served, the number of vessels to be operated in each port range, and the maximum FEU capacity per vessel.

The waiver was granted for a period of two years through December 31, 1986, subject to the provision that USL would be required to file by October 1, 1986, a detailed feasibility study regarding the factors necessitating any extension of the waiver beyond December 31, 1986, including the feasibility of operating the feeder service with unemployed U.S.-flag vessels, including any USL might have available; purchase of foreign-flag vessels for reflagging under the U.S.-flag; and joint arrangements with U.S.-flag operators in the trade.

By application dated September 30, 1986, USL requests that the Maritime Administrator renew its present waiver permitting the chartering of foreign flag feeder vessels or the chartering of space aboard such vessels, in order to support the continued operation of USL's 12 U.S.-flag Jumbo Econships in Round-the-World service. USL specifically seeks renewed waiver of the provisions of section 804(a) of the Act, as well as the comparable provisions appearing in USL's operating-differential subsidy contract, for a period of five years, beginning January 1, 1987.

USL advises that since approval of USL's present section 804 waiver in November 1984, USL has carefully examined all alternative means for feeding cargo to and from its Round-the-World service. USL also advises that it has retained the services of chartering consultants and the economic consulting firm of Temple, Barker & Sloane, Inc. to assist it in analyzing the various options. The detailed investigation was conducted pursuant to the terms of the Maritime Administrator's order granting USL's present waiver. USL indicates that no viable U.S.-flag feeder alternatives were found, as stated in the affidavits and reports that accompany its application, but the present request reflects a significant reduction in the geographic scope of the necessary waiver and the number of foreign-flag feeder vessels to be chartered by USL.

USL's specific renewal request encompasses the following vessel and space charter arrangements:

Line haul port	Feeder ports	Number of vessels	Maximum FEU capacity per vessel
Khor Fakkan	A UAE Port, AD Demman, Kuwait, Bahrain, Muscat [1].	2	275
Khor Fakkan or Singapore.	Muscat,[1] Cochin, Bombay, Karachi.	2	225
Singapore	Colombo, Madras, Calcutta, Chalna, Chittagong, Port Kelang [2].	3	225
Kaohsiung	Philippine Islands	1	[3] 90

[1] Muscat will be served by the Arabian Gulf feeders or, alternatively, the west coast of India feeders, but not at the same time.

[2] Port Kelang capacity will not exceed an average of 55 FEUs per week; this capacity may be provided either by chartered feeders or by space charter arrangements.

[3] Alternatively, this capacity may be provided by space charter arrangements.

USL's application and supporting materials may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm or corporation having any interest in such application within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Comments must be received no later than 5:00 p.m. on December 2, 1986. This notice is published as a matter of discretion. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies))

By Order of the Maritime Administrator.

Dated: November 13, 1986.

James E. Saari,

Secretary.

[FR Doc. 86-25983 Filed 11-17-86; 8:45 am]

BILLING CODE 4910-81-M

VOL 51
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Research and Special Programs Administration

Technical Pipeline Safety Standards Committee/Technical Hazardous Liquid Pipeline Safety Standards Committee; Joint Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. 1), notice is hereby given of a joint meeting of the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee on December 4, 1986, at 9:00 a.m. in Room 3442 Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

The purpose of the meeting is to present information and data to enable the Advisory Committee to assist and advise the Administrator of the Research and Special Programs Administration (RSPA) in the evaluation of issues raised and recommendations made by Congressional Committees relating to RSPA's pipeline safety program.

Attendance is open to the public, but limited to the space available. With approval of the Executive Director of the Committees, members of the public may present oral statements on the subject. Due to the limited time available, each person who wants to make an oral statement is requested to notify Linda Craver, Room 8409, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590, telephone 202-366-1640, of the topics to be addressed and the time requested to address each topic. The presiding officer may deny any request to present an oral statement and may limit the time of any oral presentation. Members of the public may present written statements to the Committee before or after any session of the meeting.

Dated: November 13, 1986.

Richard L. Beam,

Associate Director for Regulation, Office of Pipeline Safety.

[FR Doc. 86-25954 Filed 11-17-86; 8:45 am]

BILLING CODE 4910-60-M

Urban Mass Transportation Administration

New Jersey Transit; Sections 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (MTA), DOT.

ACTION: Notice.

SUMMARY: Pub. L. 99-500 signed into law by President Reagan on October 18, 1986, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the Federal Register each time to a grant is obligated pursuant to Sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Edward R. Fleischman, Chief, Resource Management Divison, (202) 366-2053, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The Section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to Pub. L. 99-500, UMTA reports the following grant information:

Transit property	Grant No.	Grant amount	Date obligated
UMTA Section 3 grants:			
New Jersey Transit	NJ-03-0063	$20,000,001	Oct. 28, 1986.
UMTA section 9 grants:			
None			

Issued on Novembeer 13, 1986.

Ralph L. Stanley,

Administrator.

[FR Doc. 86-26012 Filed 11-17-86; 8:45 am]

BILLING CODE 4910-57-M

UNITED STATES INFORMATION AGENCY

Fulbright Teacher Exchange Program

The United States Information Agency seeks to secure the services of two institutions of higher education to coordinate and implement orientation/workshop programs in the United States for the Fulbright Teacher Exchange Program. The Fulbright Teacher Exchange Program provides opportunities for U.S. teachers to exchange teaching positions with foreign counterpart teachers for an academic year.

Universities or colleges in metropolitan Washington, DC., with schools or colleges of education or graduate programs in international studies, and located within reasonable proximity of Washington, DC's international gateway airports, are invited to submit project proposals for grants. For application information, please contact Mr. David N. Levin no later than December 10, 1986, at the following address: Teacher Exchange Branch (E/ASX), Office of Academic Programs, United States Information Agency, 301 Fourth Street, SW., Washington, DC, 20547. Phone: (202) 485-2555.

Dated: November 13, 1986.

Charles N. Canestro

Federal Register Liaison.

[FR Doc. 86-25978 Filed 11-17-86; 8:45 am]

BILLING CODE 8230-01-M

[Delegation Order No. 86-6]

Director, Office of Contracts; Designation as Senior Procurement Executive

Pursuant to the authority vested in me as Director of the United States Information Agency by Reorganization Plan No. 2 of 1977; by the Federal Property and Administrative Services Act of 1949, as amended, (41 U.S.C. 251, *et seq.*); the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 401, *et seq.*); and other Federal statutes; and by Executive Orders 12048 of March 27, 1978, and 12352 of March 17, 1982, the Director of the Office of Contracts of the Bureau of Management, is hereby designated the Senior Procurement Executive in accordance with the provisions of 41 U.S.C. 414(3) and, further, is hereby delegated the authority:

1. To acquire personal property, services (including construction) and real property by contract and, in addition, to make grants (which shall hereafter be deemed to include grants-in-aid) and cooperative agreements;
2. To ensure that Agency operations for contracts, grants and cooperative agreements are conducted in an efficient manner, consistent with applicable provisions of law, Executive Order and regulation;
3. To redelegate any authority granted hereunder to the extent permitted by law, Executive Order, regulation or this Order;
4. To issue regulations, procedures and directives in the Manual of Operations and Administration regulating contracts, grants and cooperative agreements;
5. To develop, in cooperation with the

Department of State and with the International Development Cooperation Agency or the Agency for International Development, uniform or joint regulations governing contracts, grants and cooperative agreements made in foreign countries;

6. To determine sources, to solicit and to evaluate bids and offers, and to conduct all negotiations for the acquisition of personal property, services (including construction) and real property on behalf of the Agency, and to designate other Agency representatives to participate in specific negotiations of Agency contracts;

7. To ensure in all negotiations the full and proper participation of representatives of the General Counsel, affected offices and elements, which participation shall be considered necessary in all negotiations of consequences, unless it is obvious to all concerned that such participation is not needed;

8. To determine recipients of grants and cooperative agreements, to conduct discussions with proposed recipients of grants and cooperative agreements, and to designate the Agency participants in such discussions, except that the Senior Procurement Executive may not limit the existing power of the Board of Foreign Scholarships to select recipients of grants;

9. To designate and to define the authority of such Agency personnel as may be necessary to administer a contract, cooperative agreement, or grant, and to require any officer so designated to maintain appropriate records and to submit reports required by the Senior Procurement Executive;

10. To prescribe records and reports which must be maintained as documentation of contract, cooperative agreement, or grant activities;

11. To develop effective Agency-wide procurement systems which will enhance competition, eliminate unnecessary regulations and paperwork, establish procedures to ensure that contractors receive timely payment and establish clear lines of procurement authority and accountability;

12. To establish career development programs resulting in a highly qualified, professional procurement work force;

13. To certify to the Director that the procurement systems meet approved criteria;

14. To obtain the advice and clearance of the General Counsel with respect to the form and legal sufficiency of documents pertaining to contracts, cooperative agreements or grants in accordance with applicable laws and regulations, including regulations set forth in the Manual of Operations and Administration;

15. Without power of redelegation:

(a) To authorize a cost or cost-plus-a-fixed-fee contract or an incentive-type contract, either within or outside the United States, its territories and possessions, based upon the determination made pursuant to 41 U.S.C. 254 (b);

(b) To authorize advance payments, based upon determinations made pursuant to 41 U.S.C. 255 (c);

(c) To make determinations that only specified makes and models of technical equipment and parts will satisfy the Agency's needs to standardize for additional units or replacement parts pursuant to Subpart 6.302–1(b)(4) of the federal Acquisition Regulation;

(d) to serve as the Agency source selection authority pursuant to Subpart 15.6 of the Federal Acquisition Regulation;

(e) to make determinations with respect to mistakes in bids alleged or disclosed before or after award of contract pursuant to Parts 14.406 and 15.607 of the Federal Acquisition Regulation;

(f) to make the determination to enter into full and open competition after exclusion of sources pursuant to the authority of 41 U.S.C. 253 (b);

(g) to approve justifications for use of less than full and open competition as authorized at 41 U.S.C. 253 (c)(1) through (c)(6) when the contract amount exceeds $10,000,000;

(g) except with respect to the acquisition of property or services of any kind and description from or through international organizations; foreign governments; agencies, subdivisions of agencies, or other entities of foreign governments, to approve deviations from clauses, provisions, forms, policies, procedures, or limitations prescribed in the Federal Acquisition Regulation when, in the judgment of the Senior Procurement Executive, such deviations are necessary for the effective performance of Agency operations, provided that:

(1) each proposed deviation is cleared by the General Counsel;

(2) a record is maintained of each deviation, disclosing the nature of the deviation and the reason therefor; and

(3) a copy of all deviations shall be furnished to the FAR Secretariat in accordance with Part 1.4 of the Federal Acquisition Regulation;

16. In the absence of a specific delegation of authority from the Director or redelegation of authority from the Senior Procurement Executive, no officer or employee of the Agency shall be authorized, on behalf of the Agency, to solicit bids or offers; to negotiate contracts, grants or cooperative agreements; to enter into contracts, grants or cooperative agreements; to make findings and determinations; to amend or to administer any contract, grant or cooperative agreement or to make commitments with respect thereto. The authorities hereby delegated shall be exercised in accordance with all applicable provisions of law and subject to all applicable regulations, directives or instructions which are now in effect or may hereafter be issued by the United States Information Agency, or by any other Government agency of competent jurisdiction, governing the acquisition of personal property, services (including construction) and real property, cooperative agreements or grants. For purposes of this Order, the term contract shall include any acquisition by purchase, lease or barter. This authority is plenary and carries the full delegable authority of the Director insofar as permitted by law;

17. Copies of any redelegation made by the Senior Procurement Executive will be sent to the Office of Comptroller;

18. In the event of a vacancy in the position of the Director of the Office of Contracts, or in the event of his or her absence or illness, the authorities and functions delegated herein may be exercised by the Acting Director of the Office of Contracts;

19. Notwithstanding any other provision of this Order, the Director of the Agency may at any time exercise any function or authority delegated herein.

This Order is effective as of the date of its execution and supersedes all prior Delegation Orders, in particular Delegation Orders Nos. 78–5, 79–1, 85–7 (insofar as it affects the Director of the Office of Contracts) and 86–1.

Dated: October 29, 1986.

Charles Z. Wick,

Director, United States Information Agency.

[FR Doc. 86–25933 Filed 11–17–86; 8:45 am]

BILLING CODE 8230-01-M

VOL
51
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Sunshine Act Meetings

Federal Register
Vol. 51, No. 222
Tuesday, November 18, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY CREDIT CORPORATION

TIME AND DATE: 2:00 p.m., November 19, 1986.

PLACE: Room 104A-Administration Building, U.S. Department of Agriculture, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Minutes of Special Meeting on September 6, 1985.
2. Docket re Conservation Reserve Program, BCA–322.
3. Memorandum re Target Export Assistance—Foreign Market Development Projects for Fiscal Year 1987.
4. Memorandum re Emergency FCIC Funding Request.
5. Docket re Milk Price Support Program, XCP–98a, Advisory Memo No. 1.
6. Docket re Milk Price Support Program, XCP–98a, Advisory Memo No. 2.
7. Docket re Operating Provisions for the Special Producer Storage Loan Program, ACY–321.
8. Resolution re 1981 Uniform Grain Storage Agreement (UGSA), WCP–154a, Amend. 1.
9. Resolution re 1981 Uniform Grain Storage Agreement (UGSA), WCP–154a, Amend. 2.
10. Memorandum re Retendering of $90 Million African Assistance Sales Program.
11. Memorandum re Fiscal Year 1987 Section 416 Commodity Determination and Recent Program Summary.
12. Sale of Raw Sugar to the Peoples' Republic of China.
13. Resolution re Ratification of Targeted Export Assistance—Foreign Market Development Projects for Fiscal Year 1986.
14. Resolution re Ratification of Foreign Donation of Dairy Products & Wheat Pursuant to Section 416(b) of the Agricultural Act of 1949, as Amended, During Fiscal Year 1985.
15. Resolution re Ratification of Foreign Donation of Dairy Products & Wheat Pursuant to Section 416(b) of the Agricultural Act of 1949, as Amended, During Fiscal Year 1986.
16. Resolution re Ratification of Commodities Available for Pub. L. 480 During Fiscal Year 1986, CZ–266, Resolution No. 23.
17. Resolution re Ratification of Commodities Available for Pub. L. 480 During Fiscal Year 1986, CZ–266, Resolution No. 23, Amendment 1.
18. Resolution re Ratification of Commodities Available for Pub. L. 480 During Fiscal Year 1986, CZ–266, Resolution No. 23, Amendment 2.
19. Resolution re Ratification of Commodities Available for Pub. L. 480 During Fiscal Year 1986, CZ–266, Resolution No. 24.
20. Resolution re Ratification of Repurchase of CCC Guarantee Obligations on Credit Extended To Chile, Jamaica, Morocco, and Panama.

CONTACT PERSON FOR MORE INFORMATION: Jerry M. Barron, Acting Secretary, Commodity Credit Corporation, Room 3077 South Building, U.S. Department of Agriculture, Post Office Box 2415, Washington, DC 20013; telephone (202) 447–4208.

Jerry M. Barron,
Acting Secretary, Commodity Credit Corporation.

[FR Doc. 86–26069 Filed 11–14–86; 12:57 pm]

BILLING CODE 3410-05-M

FEDERAL ENERGY REGULATORY COMMISSION

November 12, 1986.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

TIME AND DATE: November 19, 1986, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR: Kenneth F. Plumb, Secretary, Telephone (202) 357–8400.

This is a List of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the division of Public Information.

Consent Power Agenda, 845th Meeting—November 19, 1986, Regular Meeting (10:00 a.m.)

- CAP–1.
  - Project No. 8823–002, city of New York
- CAP–2.
  - Project No. 2548–010, Georgia-Pacific Corporation
- CAP–3.
  - Project No. 10065–001, Gem Irrigation District
- CAP–4.
  - Project No. 9872–001, Joe A. Brady
- CAP–5.
  - Project No. 7037–003, Okanogan Public Utility District
- CAP–6.
  - Project No. 2890–017, Kings River Conservation District
- CAP–7.
  - Project No. 8745–001, Twin Lakes Canal Company
- CAP–8.
  - Project No. 2427–004, Woods Falls B. Hydro, Inc.
  - Project No. 8763–002, Power Mining, Inc.
- CAP–9.
  - Omitted
- CAP–10.
  - Omitted
- CAP–11.
  - Docket Nos. EF81–2011–005, EF81–2011–006, EF82–2011–005 and EF82–2011–006, United States Department of Energy—Bonneville Power Administration
- CAP–12.
  - Docket No. ER86–643–001, Arkansas Power and Light Company
- CAP–13.
  - Docket No. ER86–559–002, Unitil Power Corporation
- CAP–14.
  - Docket Nos. ER86–638–003 and ER86–638–004, El Paso Electric Company
- CAP–15.
  - Docket No. ER86–405–003, Boston Edison Company
- CAP–16.
  - Docket No. ER86–560–001, Southern Company Services, Inc.
- CAP–17.
  - Docket No. ER86–721–000, Central Power & Light Company
- CAP–18.
  - Docket No. ER87–3–000, Boston Edison Company
- CAP–19.
  - Docket No. ER86–720–000, Maine Public Service Company
- CAP–20.
  - Docket No. ER85–521–004, Kansas Gas and Electric Company
- CAP–21.
  - Docket No. EC86–22–000, Northern States Power Company (Wisconsin) and Lake Superior District Power Company
- CAP–22.
  - Docket No. EL84–23–000, Frank A. McDermott, Jr.
- CAP–10.
  - Docket No. QF86–1003–000, Bangor-Paific Hydro Associates

Consent Miscellaneous Agenda

- CAM–1.
  - Docket No. RM83–57–001, payments for benefits from headwater improvements
- CAM–2.
  - Docket No. IS83–26–000, IS83–26–007 and IS84–14–000, Gulf Central Pipeline Company
- CAM–3.
  - Docket No. RM79–76–233 (West Virginia—5), high-cost gas produced from tight formations

CAM–4.
Docket No. RM79–76–250, high-cost gas produced from tight formations
CAM–5.
Docket No. GP80–41–035, United Gas Pipeline Company
CAM–6.
Docket No. GP82–6–000, Pennsylvania Department of Environmental Resources, J&J Enterprises, Inc., Section 103 NGPA Determination, Student Cooperative Association, Inc. #3 well, FERC No. JD80–16246
CAM–7.
Docket No. GP86–17–000, Texaco Inc.
CAM–8.
Docket No. GP86–22–000, Williston Basin Interstate Pipeline Company v. Arco Oil and Gas Company
Docket No. SA86–15–000, Williston Basin Interstate Pipeline Company
CAM–9.
Docket No. SA85–32–001, Inland Ocean, Inc.
CAM–10.
Docket No. RA85–6–001, Utex Oil Company
CAM–11.
Docket No. RA83–6–000, Champlin Petroleum Company
CAM–12.
Docket No. RA83–8–000, Asamera Oil (U.S.) Inc.
CAM–13.
Docket No. RO86–20–000, C&H Refinery, Inc.
CAM–14.
Docket No. GP86–48–000, Beartooth Oil & Gas Company, Federal No. 5–15 well, FERC JD No. 85–29076
CAM–15.
Docket No. RO85–14–000, Holly Corporation and Holly Energy, Inc.
CAM–16.
Docket No. RO86–5–000, Apex Oil Company and Clark Oil & Refining Corporation

Consent Gas Agenda

CAG–1.
Omitted
CAG–2.
Omitted
CAG–3.
Docket Nos. RP86–161–000, 001 and CP86–596–000, MIGC, Inc.
CAG–4.
Omitted
CAG–5.
Omitted
CAG–6.
Omitted
CAG–7.
Docket Nos. TA87–1–23–000 and 001 (PGA87–1 and IPR87–1), Eastern Shore Natural Gas Company
CAG–8.
Docket Nos. TA87–1–45–000, 001 and 002, Inter-City Minnesota Pipelines Ltd., Inc.
CAG–9.
Docket No. RP86–96–002, Trailblazer Pipeline Company
Docket No. RP86–95–001, Canyon Creek Compression Company
Docket No. RP86–82–001, Wyoming Interstate Company Ltd.
CAG–10.
Docket No. RP86–97–004, Natural Gas Pipeline Company of America
CAG–11.
Docket No. RP86–117–001 Gas Research Institute
CAG–12.
Docket Nos. RP86–150–001 and 002, El Paso Natural Gas Company
CAG–13.
Docket No. RP86–155–003, Northwest Central Pipeline Corporation
CAG–14.
Docket Nos. RP86–158–002 and CP86–526–001, United Gas Pipe Line Company
CAG–15.
Docket Nos. TA87–1–35–000 and 003, West Texas Gas, Inc.
CAG–16.
Docket No. RP86–93–001, United Gas Pipe Line Company
CAG–17.
Docket No. RP86–127–001, Colorado Interstate Gas Company
CAG–18.
Docket No. TA86–1–40–002, Raton Gas Transmission Company
CAG–19.
Docket Nos. RP86–84–000 and 001, Florida Gas Transmission Company
CAG–20.
Docket No. TA86–4–11–000, United Gas Pipe Line Company
CAG–21.
Docket No. ST86–1562–001, Cranberry Pipeline Corporation
CAG–22.
Docket No. ST81–105–003, Producer's Gas Company
CAG–23.
Docket Nos. CI86–278–001 and CI86–298–001, Transcontinental Gas Pipe Line Corporation and Transco Gas Supply Company
CAG–24.
Docket Nos. RI74–188–088 and RI75–21–083, Independent Oil & Gas Association of West Virginia
CAG–25.
Docket No. CI86–403–000, Sonat Exploration Company
CAG–26.
Docket Nos. CP85–826–001, CP86–95–002 and CP86–96–002, National Fuel Gas Supply Corporation
Docket Nos. CP86–414–004, CP86–437–002, CP86–556–001 and CP86–557–003, National Gas Pipeline Company of America
Docket No. CP86–294–004, Northern Natural Gas Company, Division of Enron Corporation
CAG–27.
Docket No. CP86–375–001, Natural Gas Pipe Line Company of America
Docket No. CP86–679–002, Interstate Power Company
CAG–28.
Docket No. CP86–465–001, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
CAG–29.
Docket No. CP86–517,000 Northern Natural Gas Company, Divison of Enron Corporation
CAG–30.
Docket No. CP86–636–001, Pacific Gas Transmission Company
CAG–31.
Docket No. CP86–301–001, Panhandle Eastern Pipe Line Company
CAG–32.
Docket Nos. CP86–389–001 and 002, Transcontinental Gas Pipe Line Corporation
CAG–33.
Docket No. CP85–186–004, Valero Interstate Transmission Company
Docket Nos. CI85–206–002, CI85–207–002 and CI85–213–002, Shell Western E&P, Inc.
CAG–34.
Omitted
CAG–35.
Docket No. CP85–912–002, Colorado Interstate Gas Company
CAG–36.
Docket No. CP86–210–001, Southern Natural Gas Company
CAG–37.
Docket No. CP86–505–000, East Tennessee Natural Gas Company
CAG–38.
Docket No. CP86–540–000 Natural Gas Pipeline Company of America
CAG–39.
Docket No. CP86–654–000, Southern Natural Gas Company
CAG–40.
Docket No. CP85–920–000, Northwest Pipeline Corporation
CAG–41.
Docket No. CP86–140–000, Texas Gas Transmission Corporation
CAG–42.
Docket No. CP86–143–000, Texas Gas Transmission Corporation
CAG–43.
Docket No. CP86–496–000, Phillips Gas Pipeline Company

I. Licensed Project Matters

P–1.
Project No. 9552–000, Deferiet Corporation
P–2.
Project No. 9554–000, Colton Hydro Corporation
P–3.
Project No. 9555–000, Higley Corporation
P–4.
Project No. 9563–000, Herrings Hydro Corporation
P–5.
Project No. 9567–000, Hannawa Corporation
P–6.
Project No. 9556–000, Kamargo Corporation
Project No. 9557–000, Black River Hydro Corporation
Project No. 9564–000, Norwood Hydro Corporation
Project No. 9565–000, Raymondville Hydro Corporation
Project No. 9566–000, East Norfold Hydro Corporation
Project No. 9553–000, School Street Hydro Corporation
Project Nos. 2569–000, 2330–000 and 2539–000, Niagara Mohawk Power Corporation
P–7.
Project No. 9558–000, Carry Falls Corporation
P–8.

Project No. 9231-001, Scott Paper Company

P-9.

Project No. EL84-11-000, Aquenergy Systems, Inc.

II. Electric Rate Matters

ER-1.

Docket No. ER86-558-003, 004 and 005, Gulf States Utilities Company

ER-2.

Docket No. ER82-410-000, New York State Electric and Gas Corporation

ER-3.

Docket No. EL82-20-000, Town of Highlands, N.C. v. Nantahala Power & Light Company

ER-4.

Docket No. EL86-53-000, Southern Company Services, Inc.

Docket No. EL86-57-000, Gulf States Utilities Company v. Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Southern Company Services, Inc.

ER-5.

Docket Nos. QF86-686-000 and EL87-2-000, Martin Marietta Aluminum Properties, Inc.

ER-6.

Docket No. QF86-965-000, Caribbean Energy Company, Inc.

Miscellaneous Agenda

M-1.

Docket No. RM86-17-000, statements and reports (schedules), Form EIA-767, Steam-Electric Plant Operation and Design Report and FERC Form No. 549-ST, form of self-implementing transportation reports

M-2.

Reserved

M-3.

Reserved

M-4.

Docket No. RM86-15-000, computerized rate filing option by natural gas pipeline companies

M-5.

Docket Nos. GP86-58-000 and 001, State of Louisiana, Department of Natural Resources, section 102 determination, Forman Petroleum Coproration, LL&E No. 2 well, FERC JD No. 86-28332, section 103 determination, Forman Petroleum Corporation, LL&E No. 2 well, FERC JD No. 86-11240

I. Pipeline Rate Matters

RP-1.

Docket Nos. RP82-80-000 and CP82-542-000, ANR Pipeline Company

II. Producer Matters

CI-1.

Reserved

II. Pipeline Certificate Matters

CP-1.

Omitted

CP-2.

Omitted

CP-3.

Omitted

CP-4.

Omitted

CP-5.

Omitted

CP-6.

Docket Nos. TC80-31-000, TC81-16-000 and TC86-7-000, KN Energy, Inc.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26015 Filed 11-13-86; 4:29 pm]

BILLING CODE 6717-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

November 13, 1986.

TIME AND DATE: 10:00 a.m., Thursday, November 20, 1986.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Comments received regarding the revision of Procedural Rule 44, 29 CFR 2700.44.

It was determined by a unanimous vote of Commissioners that this meeting be closed.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 86-26027 Filed 11-14-86; 10:06 am]

BILLING CODE 6735-01-M

FEDERAL TRADE COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, November 19, 1986.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: Open.

MATTERS TO BE CONSIDERED: Consideration of staff recommendation concerning proposed rulemaking on mobile home sales and service.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 326-2179, Recorded Message: (202) 326-2711.

Emily H. Rock,

Secretary.

[FR Doc. 86-26028 Filed 11-14-86; 10:08 am]

BILLING CODE 6750-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:00 a.m., Tuesday, November 25, 1986.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Safety Study:* Crashworthiness of Large Poststandard Schoolbuses.

FOR MORE INFORMATION, CONTACT: Ray Smith (202) 382-6525.

Ray Smith,

Federal Register Liaison Officer.

November 14, 1986.

[FR Doc. 86-26096 Filed 11-14-3:44 pm]

BILLING CODE 7533-01-M

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular Board Meeting

TIME & DATE: 2:30 p.m., Monday, November 24, 1986.

PLACE: Federal Reserve Bank of Richmond, 701 East Byrd Street, Richmond, Virginia 2361.

STATUS: Open.

CONTRACT PERSON FOR MORE INFORMATION: Timothy McCarthy, Director of Communications, 376-2623.

AGENDA:

I. Call to Order and Remarks of Acting Chairman
II. Approval of Minutes, August 26, 1986
III. Executive Director's Activity Report
IV. Personnel Committee Report
—Recommendation of Officers' Performance Awards
V. Budget Committee Report
—Recommendation of FY 1987 Budget Adjustments
VI. Treasurer's Report
VII. Resolution: Ninth Annual Meeting
VIII. Resolution: Regular Meetings of the Board

Carol J. McCabe,

Secretary.

[FR Doc. 86-26035 Filed 11-14-86; 10:09 am]

BILLING CODE 7570-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of November 17, 1986:

A closed meeting will be held on Tuesday, November 18, 1986, at 10:00 a.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17

CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, November 18, 1986, at 10:00 a.m., will be:

Settlement of administrative proceedings of an enforcement nature.

Settlement of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Institution of injunctive action.

Opinion.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Douglas Michael at (202) 272-2467.

Jonathan G. Katz,

Secretary.

November 13, 1986.

[FR Doc. 86-26100 Filed 11-14-86; 4:02 pm]

BILLING CODE 8010-01-M

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federal register

Tuesday
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Part II

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

BEST COPY AVAILABLE

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

November 1, 1986.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of November 1, 1986, of 21 deferrals contained in the first special message of FY 1987. This message was transmitted to the Congress on September 26, 1986.

Rescissions (Table A and Attachment A)

As of November 1, 1986, there were no rescission proposals pending before the Congress.

Deferrals (Table B and Attachment B)

As of November 1, 1986, $1,764.5 million in 1987 budget authority was being deferred from obligation and $5.7 million in 1987 outlays was being deferred from expenditure. Attachment B shows the history and status of each deferral reported during FY 1987.

Information From Special Messages

The special message containing information on the deferrals covered by this cumulative report is printed in the **Federal Register** listed below:

Vol. 51, FR p. 35976, Tuesday, October 7, 1986

James C. Miller III,

Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1987 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President	0
Accepted by the Congress	0
Rejected by the Congress	0
Pending before the Congress	0

****

TABLE B

STATUS OF 1987 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President	1,835.6
Routine Executive releases through November 1, 1986 (OMB/Agency releases of $65.4 million and cumulative adjustments of $ 0 million)	-65.4
Overturned by the Congress	0
Currently before the Congress	1,770.2 a/

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a/ This amount includes $5.7 million in outlays for a Department of the Treasury deferral (D87-21).

Attachments

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Attachment A - Status of Rescissions - Fiscal Year 1987

As of November 1, 1986 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
NONE								

Attachment B - Status of Deferrals - Fiscal Year 1987

As of November 1, 1986 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 11-1-86
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D87-1	95,000		9-26-86					95,000
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal	D87-2	111,202		9-26-86					111,202
Timber salvage sales	D87-3	29,731		9-26-86					29,731
Cooperative work	D87-4	526,938		9-26-86					526,938
Gifts, donations, and bequests for forest and rangeland research	D87-5	200		9-26-86					200
DEPARTMENT OF DEFENSE - MILITARY									
Military Construction									
Military construction, Defense	D87-6	2,350		9-26-86					2,350
Family Housing									
Family housing, Defense	D87-7	76,943		9-26-86	65,143				11,800
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation	D87-8	1,065		9-26-86					1,065
DEPARTMENT OF ENERGY									
Power Marketing Administration									
Alaska Power Administration, Operation and maintenance	D87-9	165		9-26-86					165
Southwestern Power Administration, Operation and maintenance	D87-10	7,554		9-26-86					7,554

Attachment B - Status of Deferrals - Fiscal Year 1987

As of November 1, 1986 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 11-1-86
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Office of Assistant Secretary for Health									
Scientific activities overseas (special foreign currency program).......	D87-11	2,900		9-26-86					2,900
Social Security Administration									
Limitation on administrative expenses (construction)...........................	D87-12	7,073		9-26-86					7,073
DEPARTMENT OF JUSTICE									
Office of Justice Programs									
Crime victims fund.........................	D87-13	70,000		9-26-86					70,000
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive......	D87-14	6,100		9-26-86					6,100
Other									
Assistance for implementation of a Contadora agreement......................	D87-15	2,000		9-26-86					2,000
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund)......................	D87-16	803,877		9-26-86					803,877
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing									
Local government fiscal assistance trust fund..................................	D87-17	74,149		9-26-86					74,149
Local government fiscal assistance trust fund..................................	D87-21	5,981		9-26-86	257				5,724
OTHER INDEPENDENT AGENCIES									
Commission on the Ukraine Famine									
Salaries and expenses.....................	D87-18	100		9-26-86					100
Office of the Federal Inspector for the Alaska Natural Gas Transportation System,									
Salaries and expenses....................	D87-19	411		9-26-86					411
Pennsylvania Avenue Development Corporation									
Land acquisition and development fund......	D87-20	11,873		9-26-86					11,873
TOTAL, DEFERRALS............................		1,835,613	0		65,400	0		0	1,770,213

Note: All of the above amounts represent budget authority except the Local Government Fiscal Assistance Trust Fund (D87-21) of outlays only.

[FR Doc. 86-25931 Filed 11-17-86; 8:45 am]

BILLING CODE 3110-01-C

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Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 816, and 817

Surface Coal Mining and Reclamation Operations—Permanent Regulatory Program; Removal of Adverse Physical Impact Definition and Certain Remining Operations Performance Standards; Final Rule

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 816, and 817

Surface Coal Mining and Reclamation Operations—Permanent Regulatory Program; Removal of Adverse Physical Impact Definition and Certain Remining Operations Performance Standards

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is removing from its rules the definition of adverse physical impact, and certain performance standards pertaining to remining operations. The effect of these changes is to require all persons conducting remining operations on previously mined areas to use all reasonably available spoil in the immediate vicinity of the operation to backfill the highwall to the maximum extent technically practical.

EFFECTIVE DATE: December 18, 1986.

FOR FURTHER INFORMATION CONTACT: Raymond Aufmuth, Division of State Program Assistance, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202-343-5843.

SUPPLEMENTARY INFORMATION:

I. Background
II. General Discussion
III. Responses to Comments
IV. Procedural Matters

I. Background

On January 7, 1982 (47 FR 928), and June 25, 1982 (47 FR 27734), the Office of Surface Mining Reclamation and Enforcement (OSMRE) proposed permit and performance standards for remining previously mined areas. The January 7, 1982, proposal included a requirement to reclaim highwalls affected by remining, while the June 25, 1982, proposal provided additional standards applicable to remining and reprocessing operations. On November 12, 1982 (47 FR 51316), OSMRE issued an interim final rule applicable to remining of steep slope areas. That interim final rule, as well as other aspects of the June 25, 1982, proposal, were considered in OSMRE's "Final Environmental Impact Statement, OSM-EIS-1: Supplement" on the permanent program regulations.

In a final rule promulgated on September 16, 1983 (48 FR 41720), OSMRE revised portions of its regulations at 30 CFR 816.106 and 817.106 on performance standards applicable to remining operations. Under the revised rule at 30 CFR 816.106(b) and 817.106(b), remining operations with no adverse physical impact on a pre-existing highwall were excepted from the requirement to use all reasonably available spoil in the immediate vicinity of the operation to backfill the highwall to the maximum extent technically practical.

These revised regulations were challenged in Round III of *In Re: Permanent Surface Mining Litigation II,* Civil Action No. 79-1144 (D.D.C. 1984). However, before that portion of the case was decided, the Secretary of the Interior, in a joint motion with the environmental plaintiffs (the National Wildlife Federation et al.), agreed to suspend the definition of *adverse physical impact* as well as the related regulations at 30 CFR 816.106(b) and 817.106(b). On December 3, 1984, the court entered an order approving the agreement.

As a result of the court order, on January 3, 1985 (50 FR 257), OSMRE suspended 30 CFR 816.106(b) and 817.106(b), and the definition of *adverse physical impact* at 30 CFR 701.5.

On June 13, 1985 (50 FR 24881), OSMRE proposed to amend its remining regulations to permanently remove the suspended provisions. A seventy-day public comment period was announced in the proposed rule, to close on August 22, 1985.

OSMRE received comments on the proposed rule from a total of six individuals and organizations, representing industry, citizens, environnental groups, and other government agencies. OSMRE has reviewed these comments carefully and has taken them into consideration in writing this final rule. No request was received for a public hearing or meeting, and none was held.

II. General Discussion

This rule removes from 30 CFR 701.5 the definition of *adverse physical impact.*

Also, it removes from 30 CFR 816.106 paragraph (b), which excepted from the backfilling and grading requirements of paragraph (a) those remining operations that would not cause an adverse physical impact. The introductory text of § 816.106 is redesignated as paragraph (a), and paragraph (a) is redesignated as paragraph (b).

Finally, this rule amends 30 CFR 817.106, which applies to underground mining, in the same way as it amends § 816.106.

As a result of this rule the exceptions in removed §§ 816.106(b) and 817.106(b) for operations that would not cause an adverse physical impact no longer apply. All remining operations covered by redesignated §§ 816.106 (a) and (b) and 817.106 (a) and (b) must comply with the specified backfilling and grading requirements.

OSMRE will interpret and enforce redesignated paragraphs (a) and (b) as described in the preamble to the rule under which they originally were promulgated. 48 FR 41720 (September 16, 1983). An operator who conducts remining operations will be responsible for those areas which he reaffects and/or redisturbs. Where a remining operation reaffects or enlarges a preexisting highwall, and all reasonably available spoil is insufficient to completely eliminate the highwall, the operator will be required to backfill the highwall to the maximum extent technically practical using all spoil generated by the remining operation and any other reasonably available spoil located in the permit area. Under this rule, additional highwall cuts and face up areas for underground mines on previously mined areas are assumed to reaffect or enlarge a preexisting highwall. Auger mining operations are covered under 30 CFR 819 and are not affected by this rule.

III. Responses to Comments

Section 705.1 Definitions

Adverse Physical Impact

A number of comments on the proposed rule concerned the removal from 30 CFR 701.5 of the definition of the term *adverse physical impact.* Since these comments typically pertained to removed §§ 816.106(b) and 817.106(b) as well, for convenience they are discussed below with the related comments on these latter sections.

Sections 816.106 and 817.106 Backfilling and grading: Previously mined areas

A number of comments on the proposed rule concerned the substance of, or proposed the amendment of, redesignated §§ 816.106 (a) and (b), and 817.106 (a) and (b). Since this rule does not affect the substance of these sections, these comments do not pertain to this rule, and further response by OSMRE is not appropriate. For guidance on how OSMRE will interpret and enforce amended §§ 816.106 and 817.106, see the preamble to the rule under which they originally were promulgated. 48 FR 41720 (September 16, 1983).

Removed §§ 816.106(b) and 817.106(b)

Agreement With Proposed Rule

Two commenters agreed with the intent of the proposed rule. Generally, they concluded that it was an important means to mitigate environmental degradation and physical hazards resulting from mining activity conducted prior to enactment of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* OSMRE agrees.

Consistency With the Act

Several commenters stated that the proposed rule was inconsistent with the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 *et seq.*

OSMRE disagrees. This rule is consistent with section 515(b)(3) of the Act, 30 U.S.C. 1265(b)(3), as interpreted in a related context in *In Re: Permanent Surface Mining Litigation II,* No. 79–1144, slip op. at 25–29 (D.D.C. July 6, 1984). There, the District Court upheld 30 CFR 819.19(b), which pertains to auger mining of previously mined areas, and is essentially the same as redesignated §§ 816.106(b) and 817.106(b). Thus, by removing the exception for operations that do not cause an adverse physical impact, this rule brings §§ 816.106 and 817.106 into conformance with a rule that has been challenged and upheld as lawful.

Interpretation of Redesignated Provisions

A number of commenters on the proposed rule asked for guidance on how to interpret the requirements of §§ 816.106 and 817.106 in the absence of the exception for operations that would not cause an adverse physical impact. As stated previously, OSMRE will interpret and enforce redesignated paragraphs (a) and (b) of §§ 816.106 and 817.106 as described in the preamble to the rule under which they originally were promulgated. 48 FR 41720 (September 16, 1983).

Due to diversity of circumstances under which a remining operation may reaffect or enlarge a pre-existing highwall, it is not possible to provide in advance specific guidance applicable to all situations. To the extent additional guidance may be needed by an operator, it will be provided by the regulatory authority during the permitting process on the basis of the information on remining that is submitted in a complete permit application.

Adverse Effect Not Relevant

One commenter concluded that under the proposed rule remining always would be viewed by OSMRE as causing an adverse effect on a highwall.

OSMRE disagrees. In removing from § 701.5 the definition of *adverse physical impact,* and removing from §§ 816.106 and 817.106 the exception in paragraphs (b) for operations that do not cause an adverse physical impact, OSMRE has eliminated from these backfilling and grading regulations any consideration of adverse effect. OSMRE will not and need not view remining under the rule as always causing an adverse effect because the requirements of amended §§ 816.106 and 817.106 do not depend on adverse affect. Under the relevant terms of redesignated paragraphs (b), the requirement to eliminate a pre-existing highwall to the maximum extent practical depends only on whether the highwall is "reaffected or enlarged."

IBSMA Decisions

One commenter asked OSMRE to explain how removal of the definition of *adverse physical impact* from § 701.5, and of the corresponding performance standards from §§ 816.106(b) and 817.106(b), was related to the decisions of the Interior Board of Surface Mining and Reclamation Appeals (the board) in *Cedar Coal Co. v. OSM,* 1 IBSMA 145 (April 20, 1979), and *Miami Springs Properties v. OSM,* 1 IBSMA 399 (Dec. 23, 1980). This commenter concluded that for these two decisions to have meaning a definition of the term *adverse physical impact* was necessary.

OSMRE disagrees. Notwithstanding any previous interpretation to the contrary, OSMRE has concluded that neither board decision applies to §§ 816.106 or § 817.106. *Cedar Coal Co.* and *Miami Springs Properties* interpret the OSMRE interim program regulations which required complete highwall elimination, while §§ 816.106 and 817.106 come under the permanent program, which differs in its specific requirements. Moreover, to the extent these decisions might be construed as applying to the permanent program, it is within the discretion of OSMRE to revise its regulations to negate their effect.

In *Cedar Coal Co.* the permittee, operating under an interim program permit, had removed overburden from the base of an orphaned highwall, resulting in new highwall exposures. The board, interpreting the OSMRE interim program regulations, found "no showing that Cedar's removal of overburden [had] resulted in any adverse physical impact on the orphaned highwall," and thus concluded that "this activity [had] not triggered any obligation on the part of Cedar to eliminate the highwall." 1 IBSMA at 155.

In *Miami Springs Properties* the board read *Cedar Coal Co.* as clearly implying "that a[n interim program] permittee who did disturb an orphaned highwall in such a way as to cause an adverse physical impact on the highwall might be responsible for its complete elimination." 2 IBSMA at 403.

The board decisions in *Cedar Coal Co.* and *Miami Springs Properties* interpret the interim program regulation on backfilling and grading at 30 CFR 715.14, which in paragraph (b)(1)(ii) requires the *complete* elimination of a reaffected pre-existing highwall. Both decisions interpret the highwall elimination requirement of § 715.14 as conditioned upon whether disturbance of the highwall causes an *adverse physical impact.*

Unlike § 715.14, the corresponding permanent program regulations at 30 CFR 816.102 and 817.102 authorize *less than complete* elimination of a pre-existing highwall in accordance with §§ 816.106 and 817.106, respectively. In appropriate circumstances, redesignated paragraphs (b) of these sections require an operator to eliminate a pre-existing highwall only to the maximum extent technically practical. Thus, the requirements of the permanent program for reclamation of a pre-existing highwall are significantly more flexible than those of the interim program.

Based on a previous interpretation of the board decisions in *Cedar Coal Co.* and *Miami Springs Properties,* OSMRE incorporated in previous §§ 816.106(b) and 817.106(b) (herein removed), an exception to the highwall elimination requirements for permanent program operations that do not cause an adverse physical impact. It is this exception that this rule removes, along with the related definition in § 701.5 of *adverse physical impact.*

In view of the greater flexibility afforded by the permanent program regulations, OSMRE has concluded that the Board's interpretation of the interim program regulation on backfilling and grading does not apply to the permanent program, and that it is not reasonable to include in §§ 816.106 and 817.106 an exception for operations that do not cause an adverse physical impact. OSMRE believes that in removing this exception this rule strikes a reasonable balance between protection of the environment and agricultural productivity and this country's need for coal.

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Effect on Costs of Remining

Several commenters indicated that removing the exception for remining operations that do not cause an adverse physical impact would increase the cost and volume of spoil movement without any corresponding economic benefit from additional coal production.

OSMRE agrees that where the removed exception otherwise would have applied, remining operations may incur minor additional spoil-handling costs in complying with amended §§ 816.106 and 817.107. However, this rule does not impose any additional obligation on an operator to move spoil from outside the immediate vicinity of the remining operations, and any additional costs can readily be considered in assessing the economic feasibility of a particular remining operation.

The same commenter asked who would bear the cost of a worst case environmental impact, such as a landslide, that occurred during remining. The commenter stated that such costs are unpredictable and would hinder the remining of some areas.

In removing the exception for operations that do not cause an adverse physical impact, this rule does not affect a permittee's responsibility for unforeseen reclamation costs. Until the performance bond is released, a permittee will continue to be responsible for environmental problems that may occur on the permit area. Sound engineering design and operating practices should eliminate most costs of this type.

Finally, this commenter suggested that unplanned for, additional reclamation operations should be approved upon initial permit application to prevent after-the-fact costs to permittees.

OSMRE considered this suggestion, but did not adopt it since it would require the regulatory authority to give blanket approval to reclamation of an unknown nature which might never occur. Under such an approach the regulatory authority would have insufficient information to determine how the additional reclamation would be done, and thus insure that it would be environmentally sound.

Further Disincentives to Remining

One commenter stated that the proposed rule would create further disincentives to remining, and thus lessen the amount of reclamation and societal benefits which accrue from such activities. This commenter stated that the combined effect of the proposed rule and the court-mandated revision in the definition of *previously mined area* (See 51 FR 27508 (July 31, 1986)) would be to lessen the acreage of lands where the variances of §§ 816.106 and 817.106 were applicable. This commenter believed that the remining permittee should be responsible only for the additional impacts of remining, but not those from previous operations. This commenter concluded that under the rule reclamation that would have been accomplished at no cost to the taxpayer through remining would not be done, and that the resulting unreclaimed lands would continue to pollute and degrade the environment.

While this rule may result in some remining operations incurring minor additional spoil-handling costs in complying with amended §§ 816.106 and 817.106, OSMRE does not believe that there will be a significant impact on remining operations.

Thin Seam Mining

One commenter expressed concern that removing the exception for operations that do not cause an adverse physical impact might preclude the use of the technology known as *thin seam mining*. This commenter stated that removing spoil from the outslope of an old surface mine bench is technically practicable, but economically infeasible in a thin seam mining operation.

This rule is not likely to affect thin seam mining operations, which may be considered to be a form of auger mining. As such this type of mining operation will be covered by the performance standards found at 30 CFR 819. For a discussion of auger mining, see 48 FR 19314, 19321 (April 28, 1983).

Coordination With Other Rules

One commenter urged OSMRE to coordinate this rule closely with other related rules presently under consideration. This commenter cited the substantial, combined, potential impacts of these rules on the remining industry. OSMRE agrees, and is closely coordinating all of its rulemaking activities to insure a consistent, workable, regulatory scheme.

Immediate Vicinity

One comment on the proposed rule concerned the meaning of the term immediate vicinity, which is used in redesignated §§ 816.106(b) and 817.106(b), but is not defined. Since this rule does not affect either the meaning of this term or the substance of these sections, the comment does not pertain directly to this rule, and further response by OSMRE is not needed. For information on the meaning of this term, see the discussion of final § 816.106(a)(1) at 48 FR 41728 (September 16, 1983).

Previously Mined Area

One comment on the proposed rule concerned the definition in 30 CFR 701.5 of the term *previously mined area*. Although this term is used in redesignated §§ 816.106(a) and 817.106(a), this rule does not affect either its definition or the substance of these latter sections. Therefore, the comment does not pertain to this rule, and further response by OSMRE is not appropriate. For a recent OSMRE proposal to amend the definition of *previously mined area*, see 51 FR 27508 (July 31, 1986)

Reasonably Available Spoil

Several comments on the proposed rule concerned the definition in 30 CFR 701.5 of the term *reasonably available spoil*. Although this term is used in redesignated §§ 816.106(b) and 817.106(b), this rule does not affect either the definition of this term or the substance of these latter sections. Therefore, these comments do not pertain to this rule, and further response by OSMRE is not appropriate. For a discussion of the definition of this term, see 48 FR 41720 (September 16, 1983), and 47 FR 51316 (November 12, 1982).

IV. Procedural Matters

Federal Paperwork Reduction Act

This rule contains no new information collection requirements. The information collection requirements in the affected sections of the previous rules were submitted to the Office of Management and Budget under 44 U.S.C. and 3507 and assigned clearance numbers 1029-0047 (Part 816), and 1029-0048 (Part 817).

Executive Order 12291

The Department of the Interior (DOI) has examined this rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not a major rule and does not require a regulatory impact analysis. Any negative economic impact on coal operators will be offset by a corresponding positive impact on the environment and public health and safety.

Regulatory Flexibility Act

The DOI also has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., that this final rule will not have a significant economic impact on a substantial number of small entities. This rule may impact a relatively small number of coal operators, the majority of which will not be small entities.

National Environmental Policy Act

OSMRE has prepared an environmental assessment (EA) for this rule, and has made a finding that it would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). The EA and finding of no significant impact are on file in the administrative record for this rule in the OSMRE Administrative Record Room at 1100 L Street, NW., Washington, DC.

Author

The principal author of this rule is Raymond E. Aufmuth, Division of State Program Assistance, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue N.W., Washington, D.C., 20240; Telephone: 202-343-5843 (Commercial or FTS).

List of Subjects

30 CFR Part 701

Law enforcement, Surface mining, Underground mining.

30 CFR Part 816

Environmental protection, Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 817

Environmental protection, Reporting and recordkeeping requirements, Surface mining.

Accordingly, 30 CFR Parts 701, 816 and 817 are amended as set forth below:

Dated: October 24, 1986.

J. Steven Griles,

Assistant Secretary for Lands and Mineral Management.

PART 701—PERMANENT REGULATORY PROGRAM

1. The authority citation for Part 701 continues to read as follows:

Authority: Pub. L. 95-87, 91 Stat 445 (30 U.S.C. 1201 *et seq.*), unless otherwise noted.

§ 701.5 [Amended]

2. Section 701.5 is amended by removing the definition of "Adverse physical impact".

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

3. The authority citation for Part 816 continues to read as follows:

Authority: Pub. L. 95-87, 91 Stat 445 (30 U.S.C. 1201 *et seq.*), unless otherwise noted.

§ 816.106 [Amended]

4. Section 816.106 is amended by removing paragraph (b), redesignating the introductory text as paragraph (a), and redesignating paragraph (a) as paragraph (b).

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

5. The authority citation for Part 817 continues to read as follows:

Authority: Pub. L 95-87, 91 Stat 445 (30 U.S.C. 1201 *et seq.*), unless otherwise noted.

§ 817.106 [Amended]

6. Section 817.106 is amended by removing paragraph (b), redesignating the introductory text as paragraph (a), and redesignating paragraph (a) as paragraph (b).

[FR Doc. 86-25966 Filed 11-17-86; 8:45 am]

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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Establishment of Airport Radar Service Area; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-AWA-34]

Establishment of Airport Radar Service Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action designates an Airport Radar Service Area (ARSA) at Bates Field, Mobile, AL. The location designated is a public airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of the ARSA will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at this location will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

EFFECTIVE DATE: 0901 UTC, December 18, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Burns, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations, Service Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and the procedural aspects of the air traffic control (ATC) system. The FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas (TRSA) with Model B Airspace and Service (Airport Radar Service Areas)," in Notice 83-9 (48 FR 34286, July 28, 1983) proposing the establishment of ARSA's at Columbus, OH, and Austin, TX. Those locations were designated ARSA's by SFAR No. 45 (48 FR 50038, October 28, 1983) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis. The original expiration dates for SFAR 45, December 22, 1984, for Austin and January 19, 1985, for Columbus were extended to June 20, 1985 (49 FR 47176, November 30, 1984).

On March 6, 1985 the FAA adopted the NAR recommendation and amended Parts 71, 91, 103 and 105 of the Federal Aviation Regulations (14 CFR Parts 71, 91, 103 and 105) to establish the general definition and operating rules for an ARSA (50 FR 9252), and designated Austin and Columbus airports as ARSA's as well as the Baltimore/Washington International Airport, Baltimore, MD (50 FR 9250). Thus far the FAA has designated 66 ARSA's as published in the **Federal Register** in the implementation of this NAR recommendation.

On July 18, 1986, the FAA proposed to designate an ARSA at Bates Field, Mobile, AL, (51 FR 26116). This rule designates an ARSA at this airport. Interested parties were invited to participate in this rulemaking proceeding by submitting comments on the proposal to the FAA. Additionally, the FAA has held an informal airspace meeting for this proposed airport. In response to public comments received the FAA has modified this proposal.

Discussion of Comments

The FAA has received comments on the basic ARSA program as well as comments directed toward the proposed individual designation. Additionally, several of the comments on individual designation are common or speak to the basic program itself. Discussion of the comments is divided into two sections. The first addresses common and ARSA program comments, the second addresses comments on the proposal at Mobile.

ARSA Program Comments

Aircraft Owners and Pilots Association (AOPA) and others comments that, notwithstanding the statement by the FAA in the Regulatory Evaluation contained in the notice, increased air traffic controller personnel and equipment would be needed to handle the increased traffic expected due to the mandatory provisions of the ARSA. FAA's experience with the current ARSA's has been that while there is an increase in the amount of traffic being handled by controllers, this increase is significantly offset by the reduction in the amount of control instructions that must be issued under ARSA procedures as compared to TRAS procedures. However, the FAA recognizes that the potential exists for a need to establish additional controller positions at some facilities due to increased workload should be expected efficiency improvements in handling traffic not fully offset the increased number of aircraft handled. Further, FAA does not expect to incur additional equipment costs in implementing the ARSA program. In some instances, previously adopted plans to replace or modify older existing equipment may be rescheduled to accommodate the ARSA program. However, no new equipment is expected to be required as a result of the ARSA program.

Several commenters, including AOPA, disagreed with the FAA's conclusion that the additional air traffic could be accommodated with existing manpower at locations where TRAS participation was low. The FAA's conclusion for the total program was in part based upon the fact that participation in the existing TRSA's was quite high and, therefore, an increase from the present levels to 100% would not be a significant change. The commenters, while not agreeing with this conclusion, claimed that the FAA's rationale did not apply where participation was low and thus additional manpower would be needed at these locations if ARSA was designated. The FAA recognizes that participation in the TRSA program is relatively low at some of the candidate locations. However, this is in large part due to the controller's walkout of 1981 and the subsequent reduction in fully qualified controllers which led to the discontinuance of TRSA services. A sufficient number of controllers is assigned at the facilities to which the commenters refer and those facilities are ready to provide the service to the increased number of pilots. This factor was considered by the FAA in its initial evaluation of the ARSA program.

The Soaring Society of America (SSA) objected to the ARSA program because it does not provide the same level of safety and service to all clauses of aviation. As with other regulations, this rule affects different operators in different ways depending on their respective need to operate in controlled airspace or near the airports involved. The FAA does not agree that this variation in impact is reason not to adopt a rule which benefits the majority of users.

The SSA claims the FAA is changing the criteria that an operating control tower is the only requirement for an airport to be eligible for an ARSA. The FAA has not departed from the NAR criteria which would replace TRSA with ARSA at airports with an operating control tower served by a level III, IV, or V Radar Approach Control Facility.

The SSA claimed that the ARSA rule should state that the ultimate responsibility for separation from other aircraft operating in visual flight rule (VFR) conditions rests with the pilot. While the FAA agrees that such is the case, the agency does not agree that the ARSA rule must so state. Unless a new or amending provision to the Federal Aviation Regulations (FAR) specifically deletes, amends, or supersedes existing sections, the existing regulations still apply. The ARSA rule (50 FR 9252, 9257, March 6, 1985) did not alter the sections of the FAR that establish that level of responsibility.

AOPA faulted that FAA's implementation of the ARSA program. The FAA stated in the proposal that the benefits of standardization and simplicity were nonquantifiable, and that the safety benefits anticipated by the FAA were not attributable to any given candidate but were based upon implementation of the program on a national basis. According to AOPA this evidenced the need to further evaluate the program at the current locations so that benefits could be individually assessed and each candidate evaluated accordingly. The FAA does not agree. The benefits of standardization and simplicity would always be nonquantifiable regardless of the amount of evaluation, yet they received considerable emphasis by the NAR Task Group. Overall national midair collision accident rates are relatively low, and accident rates within individual categories of airspace are lower still. Additionally, accidents at specific locations are random occurrences. Therefore, estimates of potential reductions in absolute accident rates resulting from the ARSA program cannot realistically be disaggregated below the national level. Additionally, the FAA does not believe that these considerations should be cause for delaying a program that was recommended by a majority of the members of the National Airspace Review, and which has already produced positive results at most of the designate locations.

Numerous commenters also objected to the proposals based upon their belief that the volume of air traffic in several of the proposed locations was too great for the ARSA program. The FAA believes that such a point argues strongly for the establishment of an ARSA rather than the converse.

Some commenters, including AOPA, predicted that user costs incurred due to delay will be greater than was estimated by the FAA, and that these costs will be experienced more at some sites than at others. In the NPRM, FAA acknowledged that initial delays problems would vary from site to site, that estimates of delays where quite preliminary, that at some facilities the transition process is expected to go very smoothly, and that at other sites delay problems will dominate the initial adjustment period. These cost estimates are expected to be transitory in nature in that actual delays will be reduced as pilots and controllers become experienced with ARSA procedures. This has been the case at the three locations were ARSA has been in effect for an appreciable period, and is the trend at those locations more recently designated.

AOPA discounted the FAA delay estimates claiming that they were based upon a standard ARSA. The FAA does not agree. FAA's preliminary delay estimates were based upon the ARSA proposed for the individual locations, whether standard or modified.

Several comments claimed that some aircraft would have to purchase two-way radios in order to enter the ARSA and land at or depart from airports within the ARSA. The FAA does not agree. Each primary airport receiving ARSA designation has an airport traffic area requiring two-way radio communications at present. Therefore, no additional cost will be incurred for purchase of radios for aircraft landing at or departing from primary airports receiving ARSA designation.

Further, some commenters, including AOPA, expressed concern that older 360 channel transceivers would not be adequate to operate within an ARSA. Frequencies compatible with 360 channel transceivers are available at all ARSA locations. Therefore, operators of 360 channel equipment will not need to install new radios to operate within an ARSA.

AOPA and other commenters stated that the proposed ARSA's would derogate rather than improve safety, as a result of increased frequency congestion, pilots concentrating on their instruments and placing too much reliance upon ATC rather than "see and avoid," and the compression of air traffic into narrow corridors as pilots elect to circumnavigate an ARSA rather than receive ARSA services. In addition to increasing the risk of aircraft collision, the commenters claimed that compression would increase the impact of aircraft noise on underlying communities and cause aircraft to be flown closer to obstructions.

As indicated above, while an increased number of aircraft will be using radio frequencies, the amount of "frequency time" needed for each aircraft is reduced in an ARSA compared to the current TRSA. This has been the experience of the FAA at the current ARSA facilities.

AOPA claims that since the communications and readback procedures in ARSA's do not differ from those utilized in TRSA's there would be no reduction in "frequency time" needed for each pilot to acknowledge instructions or information, and thus, the partial offset indicated by the FAA was not justified. The offset is based upon fewer as well as shorter transmissions for each pilot, thus the FAA does not agree with this claim.

The FAA evaluated the flow of air traffic around the Austin, TX, and Columbus, OH, ARSA's during the confirmation period to determine if compression was occurring. This evaluation was performed by observing the radar at Austin, TX, and by both radar observations and the use of extracted computer data at Columbus, OH. Following the designation of an ARSA at Baltimore/Washington International Airport (BWI), the FAA evaluated the flow of air traffic there for a period of 90 days by observing the radar and extracting computer data to determine if compression was occurring. Additionally, the FAA has continually monitored for the possibility of compression at all recently designated locations. Compression has not been detected at any of these locations. However, compression of air traffic is a site-specific effect that could occur at a particular location regardless of its absence elsewhere. Thus, although the FAA does not believe compression of traffic will occur at any of the proposed airports, the agency will continue to monitor each designated ARSA and make adjustments if necessary.

AOPA, SSA, and other commenters claimed that the FAA provided no demonstrable evidence that the ARSA program would improve aviation safety. The FAA continues to believe the implementation of the ARSA program will enhance aviation safety. The program requires two-way radio communication between ATC and all pilots within the designated areas. Air traffic controllers will thus be in a much improved position to issue complete traffic information to the pilots involved, and thus, safety will be improved.

AOPA, and several other commenters, requested that VFR corridors be established at several of the subject locations along routes that are currently contained within an airport traffic area (ATA). The NAR Task Group noted in their evaluation of the TRSA program that under FAR § 91.87 pilots operating under VFR to or from a satellite airport within an ATA are excluded from the two-way radio communications requirement. The Task Group noted that

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this was acceptable until the volume of air traffic at the primary airport dictated the installation of a radar approach control. The Task Group recommended, and the FAA adopted, the ARSA program as a safety improvement addressing this problem. Thus, the FAA does not believe provisions for VFR corridors that penetrate an ATA in most cases are warranted or in keeping with that recommendation.

SSA claimed that the grouping of ARSA's such as that adopted in the Sacramento Valley area would create "squeezing" of traffic in the corridors between the blocks of ARSA airspace. One area in question, between Sacramento and Beale Air Force Base (AFB), is approximately 20 miles wide. The FAA does not agree that "squeezing" will occur in this area. Additionally, other user organizations have requested VFR corridors between adjacent or grouped ARSA's and these ARSA's have been modified to accommodate this request.

AOPA and others commented that several of the proposals will require pilots to violate FAR 91.79 (14 CFR 91.79) regarding minimum safe altitudes. The section states in part, "Except when necessary for takeoff or landing, no person may operate an aircraft below . . . an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft [when over any congested area of a city, town, or settlement, or over any open air assembly of persons]." The commenters claim that the 1,200-foot base altitude of the 5- to 10-mile portion of the ARSA will force pilots to violate FAR 91.79 where obstacles extend more than 200 feet above the ground. There are two alternatives available to pilots in such a situation which permit compliance with the regulation. Namely, pilots may participate in ARSA services and thus not be limited to the 1,200-foot base, and secondly, a pilot may deviate 2,000 feet horizontally from the obstacle.

Furthermore, AOPA claims that the above response does not adequately respond to the issue. They claim that deviations of 2,000 feet horizontally would increase workload and reduce the efficiency of see-and-avoid, and thus, potentially reduce safety. The FAA does not encourage deviation but encourages participation which will not require deviation and will result in controllers providing radar assistance for see-and-avoid.

Several commenters noted that the proposal did not contain an environmental assessment. Under existing environmental regulations the proposed establishment of a Terminal Control Area (TCA) or a TRSA does not require an environmental assessment. The agency environmental regulations have not yet been amended to reflect ARSA procedures. However, because the potential environmental impact and regulatory effects of ARSA designation fall between those of the TCA and TRSA designations, the FAA finds that no environmental assessment is required for an ARSA designation.

AOPA, the Experimental Aircraft Association (EAA), and other commenters indicated that the FAA had failed to demonstrate a need for the ARSA program itself, as well as a need for several of the individual proposed locations. Additionally, comments were received that faulted some of the features of the ARSA. Most of these comments went beyond the scope of the subject proposal and were addressed when the FAA adopted the recommendation of National Airspace Review (NAR) Task Group 1–2.2 (50 FR 9252, March 6, 1985). However, the FAA believes the need for the ARSA program was adequately demonstrated by the task group that reviewed the TRSA program and recommended the ARSA as the former's replacement. The task group faulted the TRSA program in several of its aspects and through consensus agreement determined the preferred features of the ARSA prior to making their recommendation to the FAA. Justification for the ARSA program has been the subject of previous FAA rulemaking, and the program was adopted after consideration of public comment. Response to comments on ARSA's at particular locations is made below.

AOPA, EAA, SSA, and others commented that several of the proposed ARSA's failed to meet the criteria for designation. The criteria for this airport was recommended by the NAR Task Group and adopted by the FAA. Namely, ". . . excluding TCA locations, all airports with an operational airport traffic control tower and currently contained within a TRSA serviced by a Level III, IV, or V radar approach control facility shall have [an ARSA] designated; unless a study indicates that such designation is inappropriate for a particular location." (49 FR 47184, November 30, 1984).

AOPA, EAA, and others commented that the existence of a TRSA in the above mentioned category should not be considered as justification for an ARSA. After a review of all comments received to the above referenced proposal, the FAA adopted that NAR recommendation (50 FR 9252, March 6, 1985). Therefore, absent a finding that designation would be inappropriate, the existence of a TRSA within that criteria is deemed sufficient for designation.

AOPA, EAA, and others indicated that several of the proposed locations do not meet the criteria that the FAA is considering for future ARSA candidates. The FAA has adopted criteria for future application. However, whatever the nature of any follow-on criteria adopted, this group of locations which qualify as ARSA candidates under the adopted NAR criteria would not be affected.

Several commenters suggested the top of the ARSA be lowered from 4,000 feet above field elevation. Absent strong justification for lowering this altitude, the FAA has not adopted these recommendations. The agency's rationale for nonadoption is set forth immediately above.

Several commenters, including AOPA and EAA, indicated that at several of the proposed ARSA's the TRSA was working quite well and that there was no need to change something that was working. The FAA acknowledges that TRSA's are functional and beneficial, to a point. However, the NAR Task Group did not fault individual TRSA locations but the TRSA program itself and recommended its replacement. The FAA concurred with that assessment and has determined that the ARSA program is an improvement over the TRSA program from the standpoints of both safety and service. Thus, the quality of service being provided at TRSA locations should not constitute a roadblock to improvement.

Several commenters claimed the reduced separation standards of the ARSA program would derogate rather than enhance safety. The elimination of the Stage III separation requirements was recommended by users, all of whom are vitally interested in aviation safety, and adopted by the FAA. This aspect of the ARSA program received considerable FAA attention during the confirmation period at Austin, TX, and Columbus, OH. The FAA agrees with the task group that the Stage III separation standards are not needed for safety in a mandatory participation area.

Several commenters requested that the ARSA be described in statute rather than nautical miles. Numerous user organizations and the NAR itself have recommended that the FAA adopt nautical-mile descriptions rather than statute. It is the intention of the FAA to establish all new descriptions according to that recommendation.

Several commenters objected to proposals where the ARSA was in proximity to other airports. According to these commenters pilots would not know whether they should be in contact with the ARSA approach control facility or in contact with the control tower at the secondary airport, or on unicom. The FAA does not view this situation as different from that existing at many of these locations today. Through pilot education programs and experience with ARSA procedures this situation will improve. Also, as at present, when a pilot contacts the wrong FAA facility the controllers will give appropriate instructions.

AOPA, SSA, and other commenters objected to several of the proposed ARSA's based upon the claim that the FAA had failed to evaluate the cumulative effect of the proposed ARSA's and other regulatory airspace. The evaluation for each ARSA included all factors known to the FAA, including the proximity of other regulatory airspace.

Underlying a great many of the comments received was the idea that some provision should be made so that pilots could continue their current practices without contacting the responsible ASTC facility. While the FAA has made modifications from the standard ARSA in cases where circumstances warrant, the basic thrust of the ARSA program is to require two-way communication with the responsible approach control facility, and not to make modifications in the program to provide for nonparticipation.

AOPA commented that FAA underestimated the one-time cost of distributing Letters to Airmen and the Advisory Circular, and neglected costs related to the informal public meetings. Both of these issues were discussed in the detailed regulatory evaluation of the NPRM, which has been available in the regulatory docket since publication of the NPRM. The availability of this detailed evaluation was indicated in the introductory paragraph of the regulatory evaluation summary included in the **Federal Register** NPRM (51 FR 26116, July 18, 1986). AOPA's comments assumed that every active pilot would be notified at least once. However, FAA intends to mail individual Letters to Airmen only to those pilots living in the vicinity of ARSA sites, and consequently its cost estimate is less than that of AOPA. The total one-time cost of distributing Letters to Airmen and the Advisory Circular was also prorated to reflect only those sites included in the notice, and both total and prorated cost estimates were provided in the notice. Further, as FAA indicated in the detailed regulatory evaluation, the expenses associated with public meetings will be incurred regardless of whether or not an ARSA is ultimately established at a proposed site, and consequently these expenses are more appropriately considered sunken costs attributable to the rulemaking process rather than implementation costs of the ARSA program. Similarly, information on ARSA's following the establishment of a new site will also be disseminated at aviation safety seminars conducted throughout the country by various district offices. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues, and, therefore, will not involve additional costs strictly as a result of the ARSA program.

Additionally, no significant costs are expected to be incurred as a result of the follow-on user meetings. These meetings are being held at public or other facilities which are being provided free of charge or at nominal cost. Further, because these meetings are being conducted by local FAA facility personnel, no travel, per diem, or overtime costs will be incurred by regional or headquarters personnel.

SSA faulted the FAA for using the aviation safety seminars for pilot education on ARSA's. They claim these seminars do not reach many pilots and the seminars are reserved during this year for the FAA "Back to Basics" program. The FAA does not agree. The aviation safety seminars are for all pilots and for education on all aspects of aviation which would include the ARSA program.

SSA commented that the FAA should take into consideration the unique operating characteristics of gliders in defining the ARSA airspace at some locations. The FAA has modified the configurations of the ARSA at locations where glider operations would be adversely affected by a standard configuration.

Numerous commenters objected to the ARSA designations claiming they would simply provide the FAA with the basis for additional regulatory restrictions. The FAA does not believe this to be a valid objection. While the agency has no current plans for further regulatory action which imposes additional restrictions, such action if it should ever become a reality would be the subject of additional rulemaking and would of necessity be judged on its own merits, as should these proposals.

The Air Line Pilots Association (ALPA) concurred with the proposal as an improvement in operational efficiency and a significant contribution to a reduction of midair collision potential.

The Air Transport Association (ATA) endorsed the proposed designations as an improvement in safety with specific comments indicated below.

The General Aviation Manufacturers Association endorsed the ARSA's as an improvement in safety and concurred with the FAA's philosophy regarding some deviation from the standard model.

Comments were received which were supportive of each of the ARSA's addressed here as an improvement in aviation safety, and stating that participation by all pilots was only equitable and that normal safety concerns dictated mandatory two-way communications. The FAA agrees.

Comments on Bates Field, Mobile, AL

One commenter claimed that to avoid misunderstanding of rules near the Brookley Airport, the Airport Traffic Area (ATA) for Brookley should be shown on the charts or the airspace cutout of the ARSA. The FAA does not agree. The FAA does not depict ATA's on charts since all dimensions are standard throughout the United States. Cutouts are not normally made for controlled airports underlying a shelf of the ARSA. The ARSA airspace is regulatory and takes precedence over the ATA. Use of this airspace will be mutually agreed to by the facilities involved.

Several commenters requested a cutout for St. Elmo Airport which is located approximately 12 miles south of Bates Field. The FAA does not agree in that St. Elmo is beyond the lateral limits of the ARSA.

The Gulf Coast Chapter 479 of EAA commented that the tops of the ARSA and the ATA should be the same. FAA rulemaking action is being considered which would designate a common top for ATA's and ARSA airspace. However, this action is not being taken as part of the adoption of the ARSA at Mobile, AL.

The Gulf Coast Chapter 479 of EAA also stated that they support efforts to improve air safety around busy terminal areas. They state that the simplification and uniformity of radar airspace is a step in the right direction.

The SSA stated that they are not aware of any glider operations in proximity to the Mobile area. However, they request that, if any glider operations wish to locate in an area near the Bates Field ARSA, that local FAA personnel work closely with them to lessen any impact on local or cross country operations. The FAA agrees and will continue to cooperate with local

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glider operations to ensure safety with the minimum impact on both operations.

The ATA responded in support of the Bates Field ARSA as a definite improvement in safety for all pilots.

One commenter stated that of all the proposed ARSA's of which he is aware, Mobile is probably the simplest and best located.

Other comments were received which were general in nature and were discussed under general comments.

Other comments

A number of other comments were received addressing matters beyond the scope of these proposals such as charting, the number of frequencies depicted on a chart, the general design features of an ARSA, etc. The FAA will give consideration to all of the points raised in these comments but will not address them as a part of this rulemaking.

Regulatory Evaluation

Those comments which addressed information presented in the Regulatory Evaluation of the notice for this docket included in this final rule have been discussed above. A copy of the final Regulatory Evaluation has been placed in the docket.

Briefly, the FAA finds that a direct comparison of the costs and benefits of this rule is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, especially those associated with simplification and standardization of terminal airspace procedures. Further, the benefits of standardization result collectively from the overall ARSA program, and as discussed previously, estimates of potential reductions in absolute accident rates resulting from the ARSA program cannot realistically be disaggregated below the national level. Therefore, it is difficult to specifically attribute these benefits to individual ARSA sites. Finally, until more experience has been gained with ARSA operations, estimates of *both* the efficiency improvements resulting in time savings to aircraft operators, and the potential delays resulting from mandatory participation, will be quite preliminary.

ATC personnel at some facilities anticipate that the process will go very smoothly, that delays will be minimal, and that efficiency gains will be realized from the start. Other sites anticipate that delay problems will dominate the initial adjustment period.

FAA believes these adjustment problems will only be temporary, and that once established, the ARSA program will result in an overall improvement in efficiency in terminal area operations at those airports where ARSA's are established. These overall gains which FAA expects for the ARSA site established by this rule typify the benefits which FAA expects to achieve nationally from the ARSA program. These benefits are expected to be achieved without any additional controller staffing or radar equipment costs to the FAA.

In addition to these operational efficiency improvements, establishment of this ARSA site will contribute to a reduction in midair collisions. The quantifiable benefits of this safety improvement could range from less than $100 thousand, to as much as $300 million, for each accident prevented.

For these reasons, FAA expects that the ARSA site established in this rule will produce long term, ongoing benefits which will exceed their costs, which are essentially transitional in nature.

Regulatory Flexibility Determination

Under the terms of the Regulatory Flexibility Act, the FAA has reviewed this rulemaking action to determine what impact it may have on small entities. FAA's Regulatory Flexibility Determination was published in the NPRM. Some of the small entities which could be potentially affected by implementation of the ARSA program include the fixed-base operators, flight schools, agricultural operations and other small aviation businesses located at satellite airports located within 5 miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in the TRSA and radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. Because FAA is excluding almost every satellite airport located within the 5-mile ring to avoid adversely impacting their operations, and in some cases will achieve the same purpose through Letters of Agreement between ATC and the affected airports establishing special procedures for operating to and from these airports, FAA expects to virtually eliminate any adverse impact on the operations of small satellite airports which potentially could result from the ARSA program. Similarly, FAA expects to eliminate potential adverse impacts on existing flight training practice areas, as well as, soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures which will accommodate these activities through local agreement between ATC facilities and the affected organizations. For these reasons, the FAA has determined that this rulemaking action is not expected to affect a substantial number of small entities. Therefore, the FAA certifies that this regulatory action will not result in a significant economic impact on a substantial number of small entities.

The Rule

This action designates an Airport Radar Service Area (ARSA) at Bates Field, Mobile, AL. The location designated is a public airport at which a nonregulatory Terminal Radar Service Area is currently in effect. Establishment of this ARSA will require that pilots maintain two-way radio communication with ATC while in the ARSA. Implementation of ARSA procedures at the affected location will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

For the reasons discussed above, the FAA has determined that this regualtion (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a) and 1354(a); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. Section 71.501 is amended as follows:

Bates Field, Mobile, AL—[New]

That airspace extending upward from the

surface to and including 4,200 feet MSL within a 5-mile radius of Bates Field (lat. 30°41′23″ N., long. 88°14′31″ W.); and that airspace extending upward from 1,500 feet MSL to and including 4,200 feet MSL within a 10-mile radius of Bates Field. This airport radar service area is effective during the specific days and hours of operation of Mobile Tower and Approach Control as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Issued in Washington, DC., on November 13, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-26021 Filed 11-17-86; 8:45 am]

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Part V

Department of Transportation

Federal Aviation Administration

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14 CFR Part 71

Proposed Establishment of Airport Radar Service Areas; Notice of Proposed Rulemaking

BEST COPY AVAILABLE

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-AWA-41]

Proposed Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Airport Radar Service Areas (ARSA) at the Allentown-Bethlehem-Easton Airport, Allentown, PA, and the Kahului Airport, Kahului, HI. Each location is a public airport at which a nonregulatory Terminal Radar Service Area (ARSA) is currently in effect. Establishment of each ARSA would require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at each of the affected locations would promote the efficient control of air traffic and reduce the risk of midair collision in terminal areas.

DATES: Comments must be received on or before March 4, 1987. Informal airspace meeting dates are as follows:

Allentown-Bethlehem-Easton Airport, PA—January 28, 1987

Kahului Airport, HI—January 20 and 21, 1987

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-204], Airspace Docket No. 86-AWA-41, 800 Independence Avenue, SW., Washington, DC 20591.

Informal airspace meeting places are as follows:

Allentown-Bethlehem-Easton Airport, PA, ARSA

Time: 7:00 p.m.

Location: UGI Corporation, Hospitality Hall, 2121 City Line Road, Bethlehem, PA

Kahului, HI, ARSA

January 20, 1987

Time: 7:00 p.m.

Location: Pagoda Hotel, 1525 Rycroft Street, Honolulu, HI

January 21, 1987

Time: 7:00 p.m.

Location: Kahului Public Library, Conference Room, 90 School Street, Kahului, HI

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Robert G. Burns, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:

Comments Invited

This notice involves two locations. Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AWA-41." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

Meeting Procedures

In addition to seeking written comments on this proposal, the FAA will hold informal airspace meetings for all proposed ARSA locations in order to receive additional input with respect to the proposal. The schedule of times and places of the hearings is listed above. No individual meetings will be held at the same time on separate locations in the same region, so that commenters will be able to attend all meetings in which they may have an interest. Persons who plan to attend any of the meetings should be aware of the following procedures to be followed:

(a) The meetings will be informal in nature and will be conducted by the designated representative of the Administrator. Each participant will be given an opportunity to make a presentation.

(b) The dates, times, and places for each meeting are listed above. There will be no admission fee or other charge to attend and participate. The meetings will be open to all persons on a space-available basis. The FAA representative may accelerate the agenda to enable early adjournment if the progress of any meeting is more expeditious than planned.

(c) The meetings will not be recorded. A summary of the comments made at each meeting will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the meetings may be submitted to the FAA representative. Participants submitting handout materials should present an original and two copies to the presiding officer before distribution. There should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by FAA participants at the meetings should not be taken as expressing a final FAA position.

Agenda

Presentation of Meeting Procedures
FAA Presentation of Proposal
Public Presentations and Discussion.

Background

On April 22, 1982, the National Airspace Review (NAR) plan was published in the Federal Register (47 FR

17448). The plan encompassed a review of airspace use and procedural aspects of the ATC system. Among the main objectives of the NAR were the improvement of the ATC system by increasing efficiency and reducing complexity. In its review of terminal airspace, NAR Task Group 1-2 concluded that TRSA's should be replaced. Four types of airspace configurations were considered as replacement candidates, of which Model B, since redesignated ARSA, was the consensus recommendation.

In response, the FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas with Model B Airspace and Service" in Notice 83-9 (July 28, 1983; 48 FR 34286) proposing the establishment of ARSA's at the Robert Mueller Municipal Airport, Austin, TX, and the Port of Columbus International Airport, Columbus, OH. ARSA's were designated at these airports on a temporary basis by SFAR No. 45 (October 28, 1983; 48 FR 50038) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis.

Following a confirmation period of more than a year, the FAA adopted the NAR recommendation and, on February 27, 1985, issued a final rule (50 FR 9252; March 6, 1985) defining an ARSA and establishing air traffic rules for operation within such an area. Concurrently, by separate rulemaking action, ARSA's were permanently established at the Austin, TX, and Columbus, OH, airports and also at the Baltimore/Washington International Airport, Baltimore, MD, (50 FR 9250; March 6, 1985). The FAA has stated that future notices would propose ARSA's for other airports at which TRSA procedures were in effect.

Additionally, the NAR Task Group recommended that the FAA develop quantitative criteria for proposing to establish ARSA's at locations other than those which are included in the TRSA replacement program. The task group recommended this criteria consider—among other things—traffic mix, flow and density, airport configuration, geographical features, collision risk assessment, and ATC capabilities to provide service to users. This criteria has been developed and circularized through the FAA directives system.

The FAA has established ARSA's at numerous locations under a paced implementation plan to replace TRSA's with ARSA's. This is one of a series of notices to implement ARSA's at locations with TRSA's.

Related Rulemaking

This notice proposes ARSA designation at two of the locations identified as candidates for an ARSA in the preamble to Amendment No. 71-10 (50 FR 9252). Other candidate locations will be proposed in future notices published in the Federal Register.

The Current Situation at the Proposed ARSA Locations

A TRSA is currently in effect at each of the locations at which ARSA's are proposed in this notice. A TRSA consists of the airspace surrounding a designated airport where ATC provides radar vectoring, sequencing, and separation for all aircraft operating under instrument flight rules (IFR) and for participating aircraft operating under visual flight rules (VFR). TRSA airspace and operating rules are not established by regulation, and participation by pilots operating under VFR is voluntary, although pilots are urged to participate. This level of service is known as Stage III and is provided at all locations identified as TRSA's. The NAR task group recommended the replacement of most TRSA's with ARSA's.

A number of problems with the TRSA program were identified by the task group. The task group stated that because there are different levels of service offered within the TRSA, users are not always sure of what restrictions or privileges exist, or how to cope with them. According to the task group, there is a feeling shared among users that TRSA's are often poorly defined, are generally dissimilar in dimensions, and encompass more area than is necessary or desirable. There are other users who believe that the voluntary nature of the TRSA does not adequately address the problems associated with nonparticipating aircraft operating in relative proximity to the airport and associated approach and departure courses. There is strong advocacy among user organizations that terminal radar facilities should provide all pilots the same service, in the same way, and, to the extent feasible, within standard size airspace designations.

Certain provisions of FAR 91.87 add to the problem identified by the task group. For example, aircraft operating under VFR to or from a satellite airport and within the airport traffic area (ATA) of the primary airport are excluded from the two-way radio communications requirement of 91.87. This condition is acceptable until the volume and density of traffic at the primary airport dictates further action.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish ARSA's at the Allentown-Bethlehem-Easton Airport, Allentown, PA, and the Kahului, Airport, Kahului, HI.

Each of the above locations is a public airport at which a nonregulatory TRSA is currently in effect. The proposed locations are depicted on charts in Appendix 1 to this notice.

The FAA has published a final rule (50 FR 9252; March 6, 1985) which defines ARSA and prescribes operating rules for aircraft, ultralight vehicles, and parachute jump operations in airspace designated as an ARSA.

The final rule provides in part that any aircraft arriving at any airport in an ARSA or flying through an ARSA, prior to entering the ARSA must: (1) Establish two-way radio communications with the ATC facility having jurisdiction over the area, and (2) while in the ARSA, maintain two-way radio communications with that ATC facility. For aircraft departing from the primary airport within the ARSA, two-way radio communications must be maintained with the ATC facility having jurisdiction over the area. For aircraft departing a satellite airport within the ARSA, two-way radio communications must be established as soon as practicable after takeoff with the ATC facility having jurisdiction over the area, and thereafter maintained while operating within the ARSA.

All aircraft operating within an ARSA are required to comply with all ATC clearances and instructions and any FAA arrival or departure traffic pattern for the airport of intended operation. However, the rule permits ATC to authorize appropriate deviations to any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in an ARSA may only be conducted under the terms of an ATC authorization.

The FAA adopted the NAR task group recommendation that each ARSA be of the same airspace configuration insofar as practicable. The standard ARSA consists of airspace within 5 nautical miles of the primary airport extending from the surface to an altitude of 4,000 feet above that airport's elevation, and that airspace between 5 and 10 nautical miles from the primary airport from 1,200 feet above the surface to an altitutde of 4,000 feet above that

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airport's elevation. Proposed deviation from the standard has been necessary at some airports due to adjacent regulatory airspace, international boundaries, topography, or unusual operational requirements.

Definitions, operating requirements, and specific airspace designations applicable to ARSA may be found in 14 CFR Part 71, §§ 71.14 and 71.501, and Part 91, §§ 91.1 and 91.88.

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposed regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Regulatory Evaluation

The FAA has conducted a detailed Regulatory Evaluation of the proposed establishment of additional ARSA sites. The major findings of that evaluation are summarized below, and the full evaluation is available in the regulatory docket.

a. Costs

Costs which potentially could result from the ARSA program fall into the following categories:

(1) Air traffic controller staffing, controller training, and facility equipment costs incurred by the FAA.

(2) Costs associated with the revision of charts, notification of the public, and pilot education.

(3) Additional operating costs for circumnavigating or flying over the ARSA.

(4) Potential delay costs resulting from operations within an ARSA rather than a TRSA.

(5) The need for some operators to purchase radio transceivers.

(6) Miscellaneous costs.

It has been the FAA's experience, however, that these potential costs do not materialize to any appreciable degree, and when they do occur, they are transitional, relatively low in magnitude, or attributable to specific implementation problems that have been experienced at a very small minority of ARSA sites. The reasons for these conclusions are presented below.

FAA expects that the ARSA program can be implemented without requiring additional controller personnel above current authorized staffing levels because participation at most TRSA locations is already quite high, and the reduced separation standards permitted in ARSA's will allow controllers to absorb the slight increase in participating traffic by handling all traffic much more efficiently. Further, because controller training will be conducted during normal working hours, and existing TRSA facilities already operate the necessary radar equipment, FAA does not expect to incur any appreciable implementation costs. Essentially, the FAA is modifying its terminal radar procedures in the ARSA program in a manner that will make more efficient use of existing resources.

No additional costs are expected to be incurred because of the need to revise sectional charts to remove TRSA airspace depictions and incorporate the new ARSA airspace boundaries. Changes of this nature are routinely made during charting cycles, and the planned effective dates for newly established ARSA's are scheduled to coincide with the regular 6-month chart publication intervals.

Much of the need to notify the public and educate pilots about ARSA operations will be met as a part of this rulemaking proceeding. The informal public meeting being held at each location where an ARSA is being proposed provides pilots with the best opportunity to learn both how an ARSA works and how it will affect their local operations. Because the expenses associated with these public meetings will be incurred regardless of whether or not an ARSA is ultimately established at a proposed site, they are more appropriately considered sunken costs attributable to the rulemaking process rather than costs of the ARSA program. Once the decision has been made to establish an ARSA through a final rule issued in this proceeding, however, any public information costs which follow are strictly attributable to the ARSA program. The FAA expects to distribute a Letter to Airmen to all pilots residing within 50 miles of ARSA sites explaining the operation and configuration of the ARSA finally adopted. The FAA will also issue an Advisory Circular on ARSA's. The combined Letter to Airmen and prorated Advisory Circular cost for the two airports at which ARSA's are being proposed by this notice is estimated to be approximately $900. This cost will be incurred only once upon the initial establishment of the ARSA's.

Information on ARSA's following implementation of the program will also be disseminated at aviation safety seminars conducted throughout the country by various district offices. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues, and therefore will not involve additional costs strictly as a result of the ARSA program. Additionally, no significant costs are expected to be incurred as a result of the follow-on user meetings that will be held at each site following implementation of the ARSA to allow users to provide feedback to the FAA on local ARSA operations. These meetings are being held at public or other facilities which are being provided free of charge or at nominal cost. Further, because these meetings are being conducted by local FAA facility personnel, no travel, per diem, or overtime costs will be incurred by regional or headquarters personnel.

FAA anticipates that some pilots who currently transit a TRSA without establishing radio communications or participating in radar services may choose to circumnavigate the mandatory participating airspace of an ARSA rather than participate. Some minor delay costs will be incurred by these pilots because of the additional aircraft variable operating cost and lost crew and passenger time resulting from the deviation. Other pilots may elect to overfly the ARSA, or transit below the 1,200 feet above ground level (AGL) floor between the 5- and 10-nautical-mile rings. Although this will not result in any appreciable delay, a small additional fuel burn will result from the climb portion of the altitude adjustment (which will be offset somewhat by the descent).

FAA recognizes that the potential exists for delay to develop at some locations following establishment of an ARSA. The additional traffic that the radar facilities will be handling as a result of the mandatory participation requirement may, in some instances, result in minor delays to aircraft operations. FAA does not expect such delay to be appreciable. FAA expects that the greater flexibility afforded controllers in handling traffic as a result of the reduced separation standards will keep delay problems to a minimum. Those that do occur will be transitional in nature, diminishing as facilities gain operating experience with ARSA's and learn how to tailor procedures and allocate resources to take fullest advantage of the efficiencies that an ARSA ywill permit. This has been the experience at the three locations where ARSA's have been in effect for the longest period of time, and is the trend at most of the locations that have been more recently designated.

The FAA does not expect that any operators will find it necessary to install radio transceivers as a result of establishing the ARSA's proposed in this notice. Aircraft operating to and from primary airports already are required to have two-way radio communications capability because of existing airport traffic areas and therefore will not incur any additional costs as a result of the proposed ARSA's. Further, the FAA has made an effort to minimize these potential costs throughout the ARSA program by providing airspace exclusions, or cutouts, for satellite airports located within 5 nautical miles of the ARSA center where the ARSA would otherwise have extended down to the surface. Procedural agreements between the local ATC facility and the affected airports have also been used to avoid radio installation costs.

At some proposed ARSA locations, special situations might exist where establishment of an ARSA could impose certain costs on users of that airspace. However, exclusions, cutouts, and special procedures have been used extensively throughout the ARSA program to alleviate adverse impacts on local fixed base and airport operators. Similarly, the FAA has eliminated potential adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight and banner towing activities, by developing special procedures to accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, the FAA does not expect that any such adverse impacts will occur at the candidate ARSA sites proposed in this notice.

b. Benefits

Much of the benefit that will result from ARSA's is nonquantifiable, and is attributable to simplification and standardization of ARSA configurations and procedures, which will eliminate much of the confusion pilots currently experience when operating in nonstandard TRSA's. Further, once experience is gained in ARSA operations, the greater flexibility allowed air traffic controllers in handling traffic within an ARSA will enable them to move traffic more efficiently than they currently are able to under TRSA's. These expected savings may or may not offset the delay that some sites may experience after the initial establishment of an ARSA, but are expected to eventually provide overall time savings to all traffic, IFR as well as VFR, that exceed delay as both pilots and controllers become more familiar with ARSA operating procedures.

Some of the benefits of the ARSA cannot be specifically attributed to individual candidate airports, but rather will result from the overall improvements in terminal area ATC procedures realized as ARSA's are implemented throughout the country. ARSA's have the potential of reducing both near and actual midair collisions at the airports where they are established. Based upon the experience at the Austin and Columbus ARSA confirmation sites, FAA estimates that near midair collisions may be reduced by approximately 35 to 40 percent. Further, FAA estimates that implementation of the ARSA program nationally may prevent approximately one midair collision every 1 to 2 years throughout the United States. The quantifiable benefits of preventing a midair collision can range from less than $100,000, resulting from the prevention of a minor nonfatal accident between general aviation aircraft, to $300 million or more, resulting from the prevention of a midair collision involving a large air carrier aircraft and numerous fatalities. Establishment of ARSA's at the sites proposed in this notice will contribute to these improvements in safety.

c. Comparison of Costs and Benefits

A direct comparison of the costs and benefits of this proposal is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, and it is difficult to specifically attribute the standardization benefits, as well as the safety benefits, to individual candidate ARSA sites.

FAA expects that any adjustment problems that may be experienced at new ARSA locations will only be temporary, and that once established, the ARSA program will result in an overall improvement in efficiency in terminal area operations at those airports where ARSA's are established. This has been the experience at the vast majority of ARSA sites that have already been implemented. In addition to these operational efficiency improvements, establishment of the proposed ARSA sites will contribute to a reduction in near and actual midair collisions. For these reasons, FAA expects that establishment of the ARSA sites proposed in this notice will produce long term, ongoing benefits that will far exceed their costs, which are essentially transitional in nature.

International Trade Impact Analysis

This proposed regulation will only affect terminal airspace operating procedures at selected airports within the United States. As such, it will have no affect on the sale of foreign aviation products or services in the United States, nor will it affect the sale of United States aviation products or services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities."

The small entities that could be potentially affected by implementation of the ARSA program are the fixed-base operators, flight schools, agricultural operators and other small aviation businesses located at satellite airports within 5 nautical miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in the TRSA and radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. FAA has proposed to exclude almost every satellite airport located within 5 nautical miles of the primary airport at candidate ARSA sites to avoid adversely impacting their operations, and to simplify coordinating ATC responsibilities between the primary and satellite airports. In some cases, the same purposes will be achieved through Letters of Agreement between ATC and the affected airports that establish special procedures for operating to and from these airports. In this manner, FAA expects to virtually eliminate any adverse impact on the operations of small satellite airports that potentially could result from the ARSA program. Similarly, FAA expects to eliminate potential adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures that will accommodate these activities through local agreements between ATC facilities and the affected organizations. FAA has utilized such arrangements extensively in implementing the ARSA's that have been established to date.

Further, because the FAA expects that any delay problems that may initially develop following implementation of an ARSA will be transitory, and because the airports that will be affected by the ARSA program represent only a small proportion of all the public use airports in operation within the United States, small entities of any type that use

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aircraft in the course of their business will not be adversely impacted.

For these reasons, the FAA certifies that the proposed regulation will not result in a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required under the terms of the RFA.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. Section 71.501 is amended as follows:

Allentown-Bethlehem-Easton Airport, PA—[New]

That airspace extending upward from the surface to and including 4,400 feet MSL within a 5-mile radius of the Allentown-Bethlehem-Easton Airport (lat. 40°39′11″ N., long. 75°26′25″ W.), excluding that airspace within a 1-mile radius of the Queen City Municipal Airport, Allentown, PA, (lat. 40°34′13″ N., long 75°29′19″ W.) and that airspace extending upward from 2,200 feet MSL to 4,400 feet MSL within a 10-mile radius of the Allentown-Bethlehem-Easton Airport from the 020° T (030° M) bearing from the airport clockwise to the 215° T (225° M) bearing from the airport and that airspace extending upward from 1,900 feet MSL to 4,400 feet MSL within a 10-mile radius of the airport from the 215° T (225° M) bearing from the airport clockwise to the 285° T (295° M) bearing from the airport and that airspace extending upward from 2,800 feet MSL to 4,400 feet MSL within a 10-mile radius of the airport from the 285° T (295° M) bearing from the airport clockwise to the 020° T (030° M) bearing from the airport.

Kahului Airport, HI—[New]

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of the Kahului Airport (lat. 20°54′ 07″ N., long. 156° 25′ 59″ W.), and that airspace extending upward from 2,000 feet MSL to 4,100 feet MSL within a 10-mile radius of Kahului Airport from the 289° T (300° M) bearing from the airport clockwise to the 069° T (080° M) bearing from the airport and that airspace extending upward from 2,000 feet MSL to 4,100 feet MSL within a 10-mile radius of the airport from the 149° T (160° M) bearing from the airport clockwise to the 199° T (210° M) bearing of the airport. This airport radar service area is effective during the specific days and hours of operation of Kahului Tower and Approach Control as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Issued in Washington, DC, on November 12, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

BILLING CODE 4910-13-M

AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

ALLENTOWN, PENNSYLVANIA
ALLENTOWN-BETHLEHEM-EASTON AIRPORT
FIELD ELEV. 394' MSL

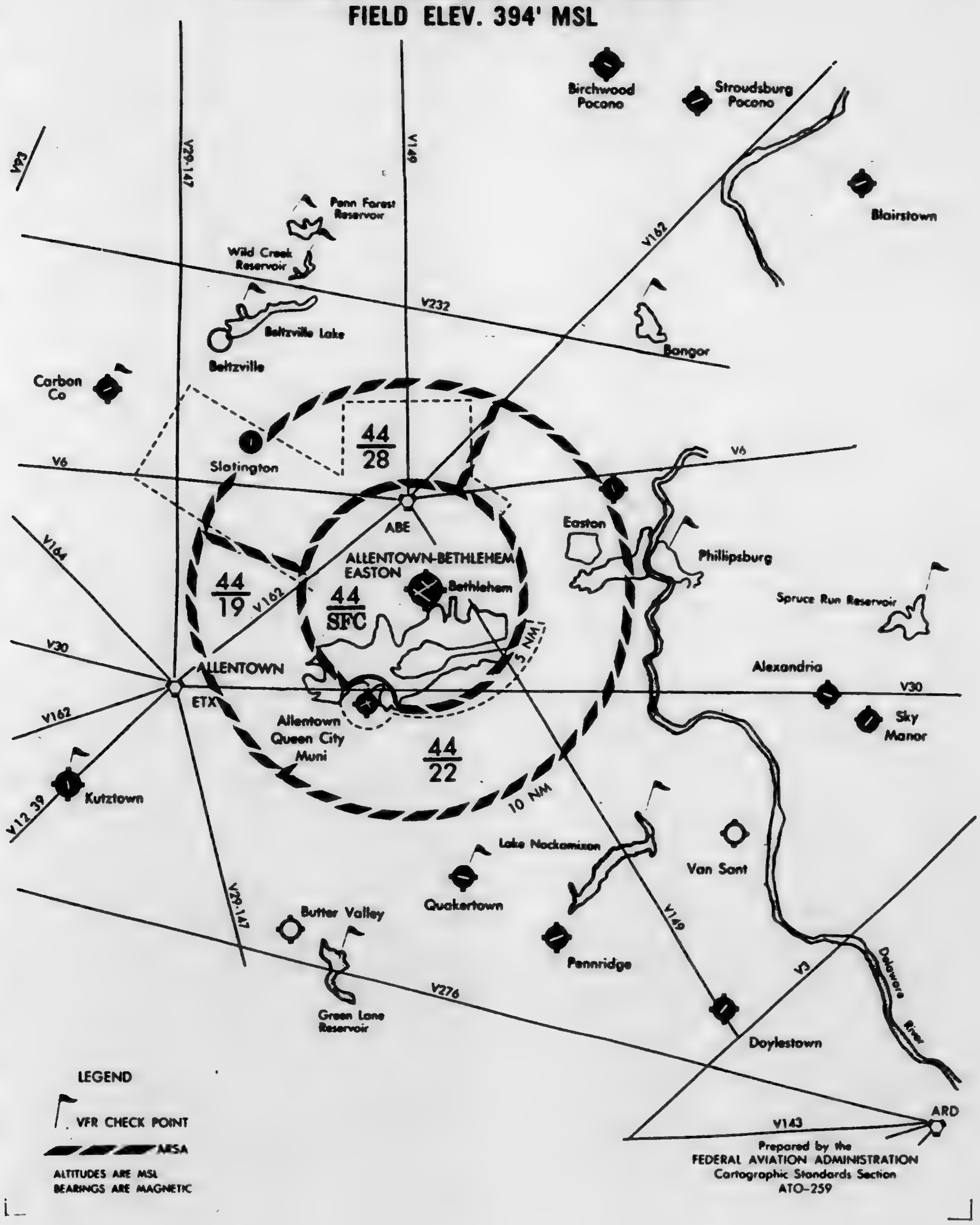
Birchwood Pocono
Stroudsburg Pocono
V93
V29-147
V149
Penn Forest Reservoir
Wild Creek Reservoir
Blairstown
V162
V232
Beltzville Lake
Beltzville
Bangor
Carbon Co
44
28
V6
Slatington
V6
ABE
Easton
Phillipsburg
V164
ALLENTOWN-BETHLEHEM EASTON
Bethlehem
44
19
V162
44
SFC
Spruce Run Reservoir
5 NM
V30
ALLENTOWN
Alexandria
V30
ETX
V162
Allentown Queen City Muni
Sky Manor
44
22
Kutztown
V12,39
10 NM
Lake Nockamixon
Van Sant
Quakertown
V29-147
Butter Valley
V149
Pennridge
V3
Delaware River
V276
Green Lane Reservoir
Doylestown
ARD
V143
LEGEND
VFR CHECK POINT
MSA
ALTITUDES ARE MSL
BEARINGS ARE MAGNETIC

Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Section
ATO-259

AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

KAHULUI, HAWAIIAN ISLANDS
KAHULUI AIRPORT
FIELD ELEV. 53' MSL

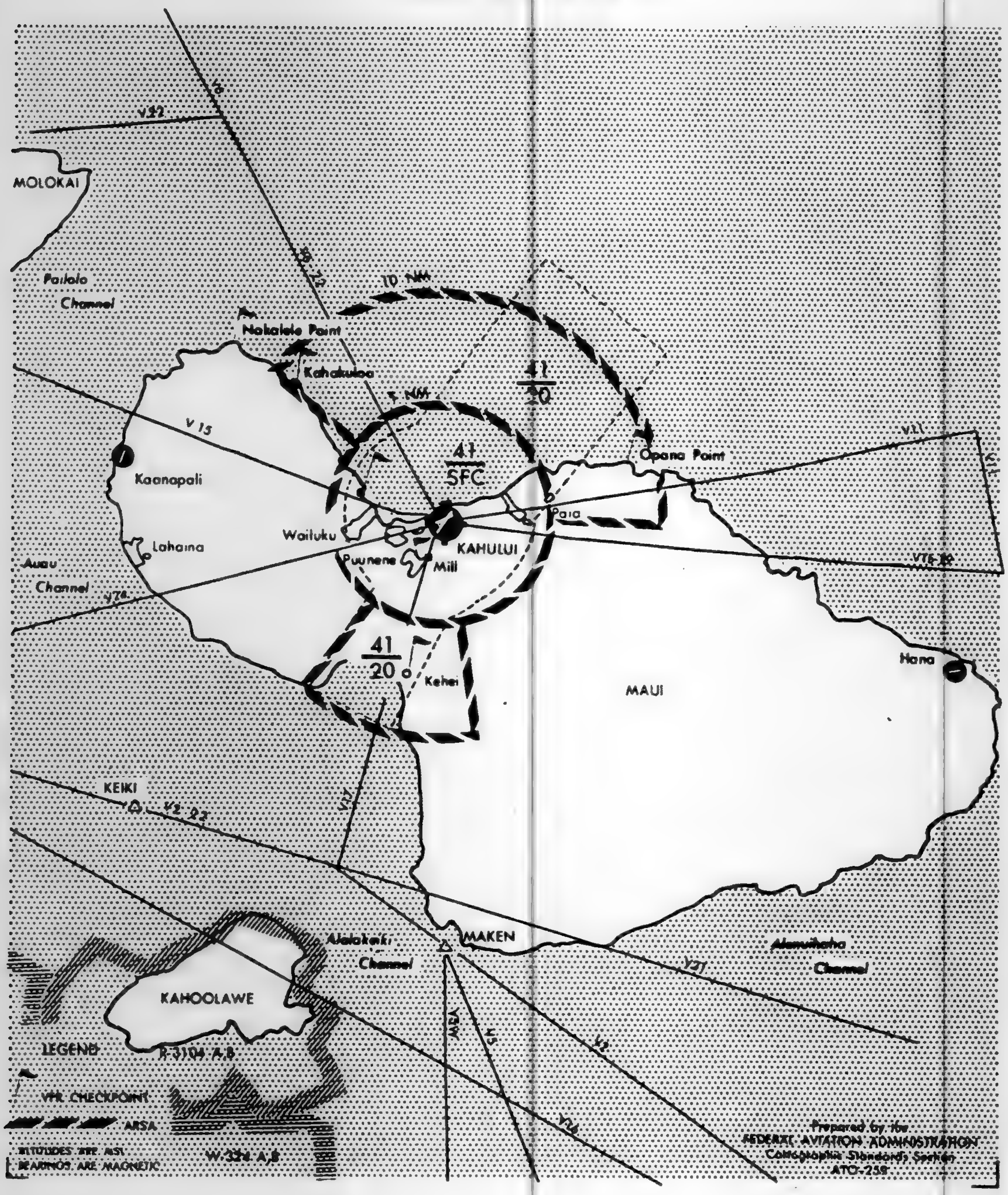
V32
V8
MOLOKAI
Pailolo
Channel
10 NM
Nakalele Point
Kahakuloa
5 NM
41
20
41
SFC
V15
Kaanapali
Opana Point
V21
Paia
Wailuku
KAHULUI
Lahaina
Puunene
Mill
V76-99
Auau
Channel
V76
41
20
Kehei
Hana
MAUI
KEIKI
V2-93
V21
MAKEN
Alalakeiki
Channel
Alenuihaha
Channel
KAHOOLAWE
LEGEND
R-3104 A,B
VFR CHECKPOINT
ARSA
ALTITUDES ARE MSL
BEARINGS ARE MAGNETIC
W-324 A,B
V2
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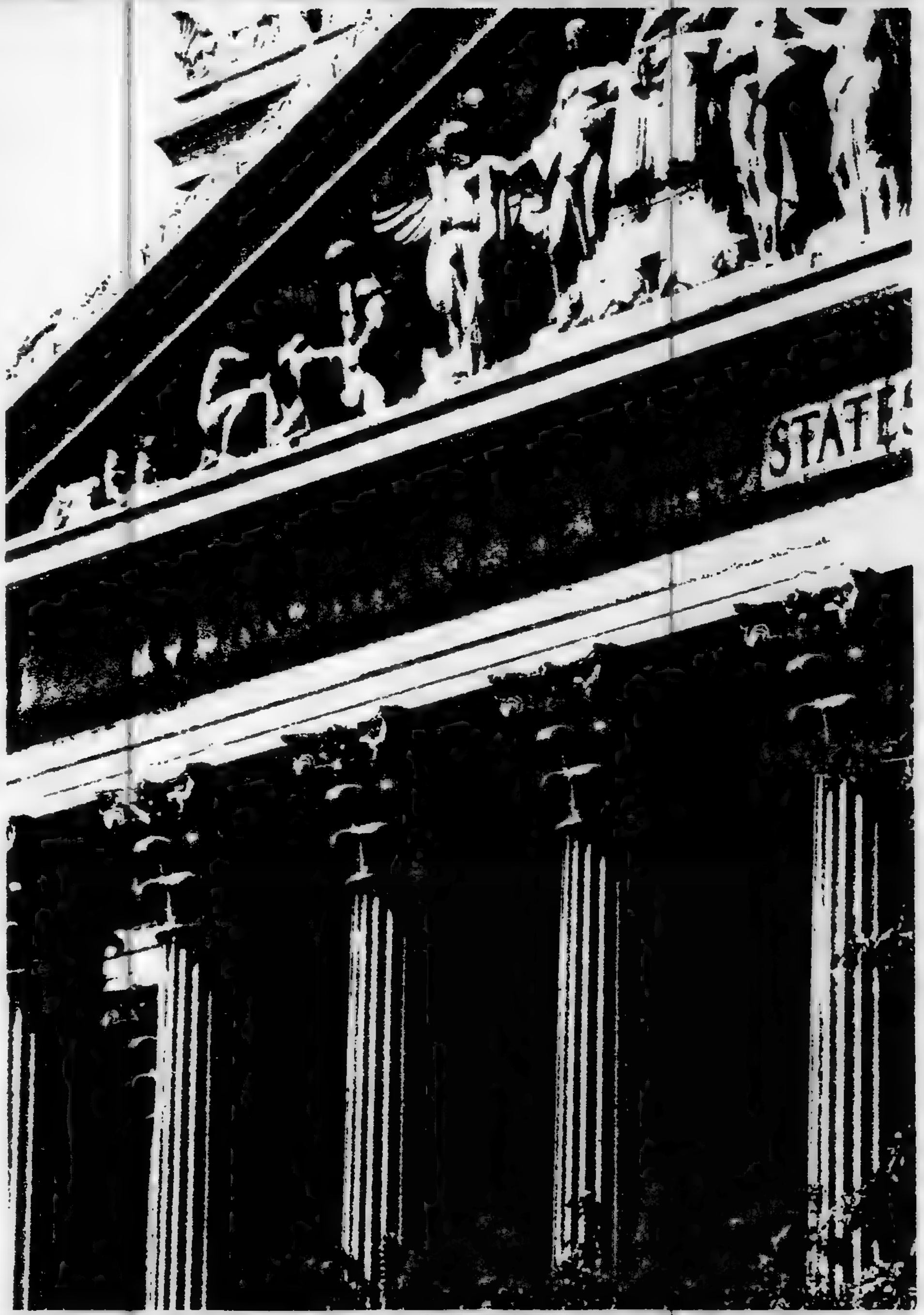

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Presidential Documents

Title 3—

The President

Proclamation 5572 of November 17, 1986

National Diabetes Month, 1986

By the President of the United States of America

A Proclamation

Diabetes afflicts perhaps one in twenty Americans and is one of the leading causes of death in our Nation. Every year, diabetes takes more than 35,000 lives and contributes to the loss of another 95,000. Diabetes can cause complications such as blindness, heart or kidney disease, strokes, birth defects, and lower life expectancy. This disease also imposes a personal burden on those affected with it and on their families. Day-to-day treatment is a lifelong responsibility for those who have diabetes.

Despite diabetes' serious consequences, almost half of those with the disease are not aware they have it. Through greater public awareness of the frequency and the dangers of diabetes, we may reduce the incidence of complications from it—and even prevent most cases of noninsulin-dependent diabetes.

Thanks to advances in research in recent years, we understand more than ever before about diabetes and its mechanisms. This knowledge is providing the basis for trials of new diagnostic techniques and new treatments.

Through the shared dedication of the Federal government and of private organizations and individuals, we can continue to make progress in research and education efforts aimed at controlling and one day curing this disease. The goal of eliminating diabetes as a public health threat is an essential task and a realizable one.

To increase public awareness about the dangers of diabetes and the need for continued research and education efforts, the Congress, by Public Law 99-460, has designated the month of November 1986 as "National Diabetes Month" and authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of November 1986 as National Diabetes Month. I call upon all government agencies and the people of the United States to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of November, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-26243
Filed 11-18-86; 10:57 am]
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Rules and Regulations

Federal Register
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Wednesday, November 19, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 441

Table Grape Crop Insurance Regulations; Correction

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule, Correction.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) published a final rule in the Federal Register on Monday, October 27, 1986, at 51 FR 37892, revising and reissuing the Table Grape Crop Insurance Regulations (7 CFR Part 441). In that publication the provision for determining the yield guarantee contained words inconsistent with the intent of the specified crop years and some language was inadvertently omitted in the method used for determining the yield guarantee. This notice is published to correct that error.

ADDRESS: Written comments on this correction may be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: FR Doc. No. 86-24242, appearing at page 37892, is corrected as follows:

In the Table Grape Crop Insurance Policy in § 441.7(d)—

1. On page 37895, first column, first paragraph, fifth line, the sentence "The production report or assigned yield will be used to compute your production history for the purpose of determining your guarantee for the subsequent crop year." should read "The production report or assigned yield will be used to compute your production history for the purpose of determining your guarantee for the insured crop year."

2. On the same page, same column and paragraph, eighth line, the sentence "The yield assigned by us will be 75% of the yield assigned for the purpose of determining your guarantee for the present crop year." should read: "The yield assigned by us will be 75% of the yield assigned for the purpose of determining your guarantee for the prior crop year as adjusted for crop and vineyard conditions.

Done in Washington, DC on November 3, 1986.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-26086 Filed 11-18-86; 8:45 am]

BILLING CODE 3410-08-M

Commodity Credit Corporation

7 CFR Part 1477

Disaster Payment Program for 1986 Crops

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: Public Law 99-500 provides for the implementation of a disaster payment program for eligible producers for losses of 1986 crop production due to drought, excessive heat, flood, hail or excessive moisture in 1986. Generally, to be eligible to receive a payment for a crop of wheat, feed grains, upland cotton, rice, soybeans, sugar beets, sugar cane, or peanuts ("program crops"), a producer must: be eligible to receive price support for such a crop; be in a county in which Farmers Home Administration ("FmHA") disaster emergency loans are available; and have suffered a loss of production of at least 50 percent for such crop. With respect to certain nonprogram crops, producers may qualify for such payments if they: Are in such FmHA designated counties; have suffered an economic emergency; and have a loss of production of at least 50 percent with respect to a nonprogram crop. This interim rule establishes the criteria to be used in making such disaster payments to eligible producers.

DATES: This interim rule shall become effective November 17, 1986.

Comments must be received on or before December 4, 1986, in order to be assured of consideration.

ADDRESSES: Send comments on this interim rule to Director, Emergency Operations and Livestock Programs Division, ASCS, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013. All written submissions made pursuant to this rule will be available for further inspection in Room 4095 South Building, USDA, between the hours of 8:15 am and 4:45 pm, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jerry W. Newcomb, Director, Emergency Operations and Livestock Programs Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC Telephone: (202) 447-5621.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed in accordance with procedures implementing Executive Order 12291 and Secretary's Memorandum 1512-1 and has been classified as "major" since the program will have an annual effect on the economy exceeding $100 million.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since CCC is not required by 5 U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject matter of this rule. Public Law 99-500 provides that the regulations implementing this program must be issued within 30 days of enactment of such act. Accordingly, this rule is effective upon filing with the Director, Office of the Federal Register.

An Environmental Evaluation with respect to the Disaster Payment Program has been completed. It has been determined that this action is not expected to have a significant impact on the quality of the human environment. In addition, it has been determined that this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

A Final Regulatory Impact Analysis of this regulation is being prepared. Copies

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of the analysis will be available to the public by contacting Jerry W. Newcomb.

The title and number of the federal assistance program to which this notice applies are: Title—Commodity Loans and Purchases; Number 10.051, as found in the Catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Background

Public Law 99–500 provides that disaster payments for prevented planting and low yield losses are to be made to producers of the 1986 crops of wheat, feed grains, upland cotton, rice, soybeans, sugar beets, sugar cane, and peanuts ("program crops") if the producer has suffered a loss of production for such a crop which is greater than the amount determined by multiplying 50 percent of the farm program payment yield by the disaster payment acreage. Such a producer must also be eligible to receive price support loans or purchases or other program benefits for the crop under sections 107D, 105C, 103A, 101A, 201(i), or 108B of the Agricultural Act of 1949 (7 U.S.C. 1445b–3, 1444b, 1444–1, 1446(i), or 1445c–2). Disaster payments are authorized only in a county in which producers are eligible to receive disaster emergency loans under section 321 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961) as a result of drought, excessive heat, flood, hail or excessive moisture.

Public Law 99–500 also provides that disaster payments are to be made to producers of certain nonprogram crops who have suffered losses of production due to drought, excessive heat, flood, hail or excessive moisture and such losses have created an economic emergency for the producers. In addition, such producers must be in a county designated on or after July 1, 1986, to be eligible to receive FmHA disaster emergency loans. Nonprogram crops include crops insured by the Federal Crop Insurance Corporation ("FCIC") and commercial crops whether or not FCIC insurance is available for the crop.

Section 1477.3 sets forth the following definitions which are applicable to these disaster payments: "Actual production" means for the 1986 crop year the quantity of the crop actually harvested or which would have been harvested as determined by the county Agricultural Stabilization and Conservation ("ASC") committee in accordance with instructions issued by the Deputy Administrator, State and County Operations ("Deputy Administrator"), Agricultural Stabilization and Conservation Service ("ASCS").

A "program crop" is defined as a crop of wheat, feed grains, upland cotton, rice, soybeans, sugar beets, sugar cane, or peanuts.

A "nonprogram crop" is defined as a crop, other than a program crop, produced on a farm for sale or exchange on a commercial basis in a large enough quantity to have a substantial impact on the producer's income as determined by the county ASC committee in accordance with instructions issued by the Deputy Administrator.

The "disaster payment yield" used in determining the amount of a payment is defined as: (1) For wheat, feed grains, upland cotton, and rice, the 1986 farm program yield determined in accordance with Part 713 of this title; (2) for peanuts, the 1986 farm yield determined in accordance with Part 729 of this title; (3) for flue-cured tobacco, the 1986 farm yield determined in accordance with Part 725 of this title; (4) for fire-cured, dark air-cured, Virginia sun-cured, and cigar filler and binder tobacco, the 1986 farm normal yield determined in accordance with Part 724 of this title; (5) for burley tobacco, the 1986 farm yield determined in accordance with Part 726 of this title; and (6) for sugar beets, sugar cane, soybeans, kinds of tobacco not subject to marketing quotas, and nonprogram crops, the yield determined in accordance with instructions issued by the Deputy Administrator which shall be based on the highest actual crop yield per harvested acre for the 1983, 1984, or 1985, or, if the data to compute the actual yield does not exist or is not available to the producer, the average of the county average crop yield for the years 1981, 1982, 1983, 1984, and 1985 as determined by the National Agricultural Statistics Service ("NASS").

The acreage eligible for a disaster payment is defined as "disaster payment acreage". The disaster payment acreage: (1) For wheat, feed grains, upland cotton, and rice is the sum of the 1986 acreage planted for harvest, as determined by the county ASC committee in accordance with instructions issued by the Deputy Administrator, and the 1986 acreage which the county ASC committee determines the producer was prevented from planting to the crop or any other nonconserving crop but not to exceed the 1986 permitted acreage established for the crop; and (2) for other crops, the sum of the 1986 acreage planted for harvest as determined by the county ASC committee in accordance with instructions issued by the Deputy Administrator and the 1986 acreage which the county ASC committee determines the producer was prevented from planting to the crop or any nonconserving crop but not to exceed the sum of the acreage planted to the crop for harvest in 1985, or the corresponding year if there is an approved rotation for the crop on the farm, plus the prevented planted acreage in 1985.

In determining whether a producer of a nonprogram crop qualifies for such a payment, the producer must have suffered an "economic emergency" as the result of the aforementioned natural disasters. Although Pub. L. 99–500 does not define the term "economic emergency", CCC previously has defined this term for the purpose of establishing eligibility for disaster payments for certain program crops in 1983–1985, to mean a 60 percent loss of production of all crops produced on a farm. Since producers of nonprogram crops do not receive price support or related benefits (such as deficiency payments) with respect to nonprogram crops, it has been determined that a lesser level of a loss of production should be established as an eligibility requirement for receiving disaster payments under the provisions of Part 1477. Accordingly, for purposes of this program, an "economic emergency" is defined as a loss of 50 percent or more of the value of all crops produced on all farms in which they have an interest within the country.

A "producer" is defined as a person who, as owner, landlord, tenant, or sharecropper is entitled to share in the nonprogram crops available for marketing from the farm, or in the proceeds thereof.

Sections 1477.4 and 1477.6 provide that disaster payments will be made to eligible producers of program crops and nonprogram crops who are in eligible countries. With respect to producers of program crops, eligible counties are those countries in which producers may receive FmHA disaster emergency loans in accordance with section 321 of the Consolidated Farm and Rural Develoment Act (7 U.S.C. 1961) as the result of losses to 1986 crops due to drought, excessive heat, flood, hail, or excessive moisture. For nonprogram crops, eligible counties are those counties in which producers became eligible to receive such FmHA disasater emergency loans after July 1, 1986.

Section 1477.5 sets forth the criteria for establishing eligibility for receiving disaster payments with respect to program crops. Section 1477.5 provides that disaster payments shall be made to producers of 1986 program crops for losses of production due to drought, excessive heat, flood, hail or excessive moisture. The loss of production is the difference between: (1) The quantity determined by multiplying the farm program payment yield established for the crop by 50 percent by the disaster payment acreage, and (2) the 1986 actual production of the crop. The amount of the disaster payment is determined by multiplying such loss of production by the disaster payment rate. The disaster payment rate is the basic county price support loan rate established for the crop, except that such rates are $18 per ton for sugar beets, $17 per ton for sugar cane, $607.47 per ton for quota peanuts, and $149.75 per ton for additional peanuts. Such producers must be eligible to receive price support for such crops in accordance with the Agricultural Act of 1949, as amended, and must submit a report of production and disposition for each program crop for which a payment is requested. The county ASC committee will determine whether the operator and other producers on a farm were prevented from planting an eligible commodity or any nonconserving crop or that the production of an eligible commodity on the disaster payment acreage resulted in a low yield of such commodity.

Section 1477.7 sets forth the criteria to be used in making disaster payments for nonprogram crops. In making disaster payments for nonprogram crops due to prevented planting and/or low yields, the producer must be a producer of nonprogram crops and must be eligible for a payment only as the result of an economic emergency. This rule takes into account the entire farming operations within the county of the producer who is applying for a disaster payment based on losses to nonprogram crops. Therefore, nonprogram crop producers shall report the production and disposition of all crops produced in 1986 on all farms in which they have an interest within the county.

If a producer has suffered an economic emergency, the producer may receive a disaster payment for the loss of production of each nonprogram crop produced on the farm. Section 1477.7 further provides that a loss of production eligible for payment shall be only that quantity of nonprogram crops the county ASC committee has determined that the eligible producer did not harvest due to a reduced yield or the producer was prevented from planting to the nonprogram crop or any nonconserving crops. Disaster payments for each nonprogram crop shall be made on the loss of production in 1986. The loss of production is the difference between: (1) Quantity determined by multiplying 50 percent by the disaster payment yield by the disaster payment acreage, and (2) the 1986 actual production of the crop. The disaster payment computation for each such crop shall be the result of multiplying such loss of production times the seasonal average market prices for the commodity as determined by the Deputy Administrator.

Section 1477.10 provides that the producer must provide the approving official a report of acreage, production, and disposition of all program and nonprogram crops produced in a county in order to determine that the producer is eligible for a disaster payment.

Section 1477.11 sets forth the limitations on the maximum amount of disaster payments which may be received by a person under the provisions of this interim rule. For purposes of determining a "person", the regulations set forth in Part 795 of this title shall be applicable.

Payments made available to each eligible producer in accordance with this program shall not exceed $100,000 for nonprogram crops and $100,000 for program crops. Disaster payments made in accordance with the program authorized by this rule are contingent upon the availability of funds to the CCC to make such payments. If funds made available by Pub. L. 99–500 are insufficient to make the maximum allowable payment to all eligible producers, § 1477.9 provides that payments made to eligible producers may be reduced proportionately according to a calculable factor.

Public Law 99–500 also provides that payments determined with respect to any producer with crop insurance shall be reduced to the extent the amount determined by adding the total amount of the disaster payment received for a program crop and the total amount of crop insurance indemnity payments (gross payment less premium paid) received for such crop exceeds the amount determined by multiplying the farm program payment yield by the eligible acreage by the payment rate for the commodity. In order to provide equitable treatment to nonprogram and program crop producers, § 1477.11 provides that this same limitation will apply to all crops.

List of Subjects in 7 CFR Part 1477

Crop insurance, Indemnity payments.

Interim Rule

Accordingly, a new Part 1477 is added to Chapter XIV of Title 7 of the Code of Federal Regulations as follows:

PART 1477—DISASTER PAYMENT PROGRAM FOR 1986 CROPS

Sec.
1477.1 General statement.
1477.2 Administration.
1477.3 Definitions.
1477.4 Availability of disaster payments for program crops.
1477.5 Disaster payments for program crops.
1477.6 Availability of disaster payments for nonprogram crops in a county.
1477.7 Disaster payments for nonprogram crops.
1477.8 Filing application for payment.
1477.9 Availability of funds.
1477.10 Report of acreage, production, disposition, and indemnity payments.
1477.11 Payment limitations.
1477.12 Payments.
1477.13 Misrepresentation, scheme and device, and fraud.
1477.14 Refunds to CCC.
1477.15 Cumulative liability.
1477.16 Appeals.
1477.17 Liens.
1477.18 Other regulations.
1477.19 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

Authority: Pub. L. 99–500.

§ 1477.1 General statement.

This part implements a Disaster Payment Program for the 1986 crop year. The purpose of the program is to make disaster payments to producers who have suffered a loss of production of 1986 crops due to drought, excessive heat, flood, hail or excessive moisture.

§ 1477.2 Administration.

(a) The program will be administered under the general supervision of the Executive Vice President, Commodity Credit Corporation ("CCC"), and shall be carried out in the field by State and county Agricultural Stabilization and Conservation committees ("State and county committees").

(b) State and county committees, and representatives and employees thereof, do not have authority to modify or waive any of the provisions of this part, as amended or supplemented.

(c) The State committee shall take any action required by this part which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with this part, or

(2) Require a county committee to withhold taking any action which is not in accordance with this part.

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(d) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

§ 1477.3 Definitions.

In determining the meanings of the provisions of this part, unless the context indicates otherwise, words imparting the singular include and apply to several persons or things, words, imparting the plural include the singular, words imparting masculine gender include the feminine as well, and words used in the present tense include the past and future as well as the present. The following terms shall have the following meanings and all other words and phrases shall have the meanings assigned to them in the regulations governing reconstitution of farms in Part 719 of this title or in the regulations applicable to the production adjustment programs for feed grain, rice, upland and extra long staple cotton, wheat and related programs set forth in Part 713 of this title:

(a) "Actual production" means the quantity of the crop actually harvested or which could have been harvested as determined by the county committee in accordance with instructions issued by the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service ("Deputy Administrator").

(b) "Program crop" means a crop of wheat, feed grains, upland cotton, rice, soybeans, sugar beets, sugar cane or peanuts.

(c) "Nonprogram crop" means a crop, other than a program crop produced on a farm for sale or exchange on a commercial basis in a large enough quantity to have a substantial impact on the producer's income, as determined by the county committee in accordance with instructions issued by the Deputy Administrator.

(d) "Disaster payment yield" means: (1) For wheat, feed grain, upland cotton, extra long staple cotton, and rice, the 1986 farm program payment yield determined in accordance with Part 713 of this title.

(2) For peanuts, the 1986 farm yield determined in accordance with Part 729 of this title.

(3) For flue-cured tobacco, the 1986 farm yield determined in accordance with Part 725 of this title.

(4) For fire-cured, dark air-cured, Virginia sun-cured, and cigar filler and binder tobacco, the 1986 farm normal yield determined in accordance with Part 724 of this title.

(5) For burley tobacco, the 1986 farm yield determined in accordance with Part 726 of this title.

(6) For sugar beets, sugar cane, soybeans, and kinds of tobacco not subject to marketing quotas, the yield determined in accordance with instructions issued by the Deputy Administrator which shall be the highest actual crop yield per harvested acre for the years 1983, 1984, or 1985 or, if the data to compute the actual yield does not exist or is not available to the producer, the average of the county average corp yields for the years 1981, 1982, 1983, 1984, and 1985 as determined by the National Agricultural Statistics Service ("NASS").

(7) For other crops, the yield determined in accordance with instructions issued by the Deputy Administrator which shall be the highest actual crop yield per harvested acre for the years 1983, 1984, or 1985, or, if the data to compute the actual yield does not exist or is not available to the producer, the average of the county average crop yields for the years 1981, 1982, 1983, 1984, and 1985 as determined by the NASS.

(e) "Disaster payment acreage" means: (1) For wheat, feed grains, upland cotton, extra long staple cotton, and rice, the sum of the 1986 acreage planted for harvest, as determined by the county committee in accordance with instructions issued by the Deputy Administrator, and the 1986 acreage which the county committee determines the producer was prevented from planting to the crop or any other nonconserving crop. Such sum shall not exceed the 1986 permitted acreage for the crop.

(2) For other crops, the sum of the 1986 acreage planted for harvest, as determined by the county committee in accordance with instructions issued by the Deputy Administrator, and the 1986 acreage which the county committee determines the producer was prevented from planting to the crop or any other nonconserving crop. Such sum shall not exceed the sum of the acreage planted to the crop for harvest in 1985 (or the corresponding year if there is an approved rotation for the crop on the farm) plus the prevented planted acreage in 1985.

(f) "Economic emergency" means a loss of 50 percent or more of the value of all crops produced by a producer on all farms in which the producer has an interest within a county.

(g) "Producer" means, with respect to those crops for which an application for a disaster payment has been made, under this part, a person who, as owner, landlord, tenant, or sharecropper is entitled to share in such crops available for marketing from the farm or in the proceeds thereof.

§ 1477.4 Availability of disaster payments for program crops.

Disaster payments will only be made to eligible producers in a county in which producers are eligible to receive disaster emergency loans in accordance with section 321 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961) as the result of drought, excessive heat, flood, hail or excessive moisture which occurred in 1986.

§ 1477.5 Disaster payments for program crops.

(a) *Eligibility for disaster payments.* Disaster payments for prevented planting and low yield losses are authorized to be made to producers of 1986 program crops if:

(1) The producer is eligible to receive price support loans or purchases or other program benefits under sections 107D, 105C, 103A, 101A, 201(i) or 108B of the Agricultural Act of 1949 (7 U.S.C. 1445b–3, 1444b, 1444–1, 1444–1, 1446(i) or 1445c–2);

(2) The operator submits an Application for Disaster Credit ("Form ASCA–574"), in accordance with instructions issued by the Deputy Administrator;

(3) The operator submits a report of production and disposition in accordance with § 1477.10; and

(4) The county committee determines that because of drought, excessive heat, flood, hail, or excessive moisture, the producers on the farm were:

(i) Prevented from planting an eligible commodity or other nonconserving crop, or

(ii) That the production of an eligible commodity on an acreage resulted in a low yield of such commodity, as determined in accordance with instructions issued by the Deputy Administrator.

(b) *Loss of production.*

(1) The loss of production eligible for payment shall be only that quantity of a program crop on a farm that eligible producers on a farm did not harvest due to a reduced yield or were prevented from planting to such crop or other nonconserving crops as result of disaster conditions. Such loss of production for a crop shall be the difference between:

(i) The result determined by multiplying 50 percent of the disaster payment yield times the disaster payment acreage, and

(ii) the actual production of the crop on the farm if such quantity is less than the quantity determined in accordance with paragraph (b)(1)(i) of this section.

(c) *Payment computation.* The disaster payment for each crop shall be the result of multiplying the loss of production as determined in accordance with paragraph (b), times the 1986 basic county price support loan rate for the applicable commodity, except for sugar beets, sugar cane, and peanuts. The payment rate for sugar beets shall be $18 per ton, and the payment rate for sugar cane shall be $17 per ton. The payment rate for quota peanuts shall be $607.47 per ton and the payment rate for additional peanuts shall be $149.75 per ton.

(d) *Division of payments.* Each producer's share of a disaster payment shall be based on the producer's share of the crop or proceeds thereof or, if no crop was produced, the share which the producer would have otherwise received had the crop been produced.

§ 1477.6 Availability of disaster payments (for nonprogram crops) in a county.

Disaster payments will be made to eligible producers of nonprogram crops in a county in which producers became eligible to receive disaster emergency loans after July 1, 1986, in accordance with section 321 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961) as the result of drought, excessive heat, flood, hail, or excessive moisture.

§ 1477.7 Disaster payments for nonprogram crops.

(a) *Eligibility for Disaster Payments.* Disaster payments for prevented planting and low yield losses are authorized to be made to producers of 1986 nonprogram crops only if, in accordance with instructions issued by the Deputy Administrator:

(1) The producer suffers an economic emergency due to a loss of production of all crops grown on all farms in which the producer has an interest within the county because of drought, excessive heat, flood, hail, or excessive moisture;

(2) The producer submits a Form ASCS–574;

(3) The producer submits a report of production and disposition in accordance with § 1477.10 for all nonprogram crops grown on all farms in which the producer has an interest within the county; and

(4) The county committee determines that the producer was prevented from planting nonprogram crops or other nonconserving crops on all farms in the county in which the producer has an interest within the county or that the production of nonprogram crops result in a low yield of such commodity because of drought, excessive heat, flood, hail, or excessive moisture which occurred in 1986.

(b) *Loss of production.* The loss of production eligible for payment shall be only that quantity of nonprogram crops the county committee has determined that eligible producers did not harvest due to reduced yield or were prevented from planting to such commodity or other nonconserving crops on all farms in which the producer has an interest within the county. Such loss of production shall be the difference between:

(1) The result determined by multiplying 50 percent times the established disaster payment yield times the disaster payment acreage, and

(2) The actual 1986 production of such crop, if such quantity is less than the quantity determined in accordance with paragraph (b) (1) of this section.

(c) *Payment computation.* The disaster payment for each crop shall be the result of multiplying the loss of production as determined in accordance with paragraph (a) of this section, times the average market price received by producers of such crops. Such market price shall be the price that has been established for such crop by the Farmers Home Administration for use in making determinations with respect to disaster emergency loan eligibility or, if such price is not available, a price determined in accordance with instructions issued by the Deputy Administrator.

(d) *Division of Payments.* Each producer's share of a disaster payment shall be based on the producer's share of the crop or proceeds thereof or, if no crop was produced, the share which the producer would have otherwise received had the crop been produced.

§ 1477.8 Filing application for payment.

(a) *Place of filing.* Applications for payment shall be filed by the applicant with the county ASCS office serving the county where the headquarters of the producer's farm is located. If the producer has more than one farm, with headquarters in more than one county, separate applications for payments shall be filed with the county ASCS office serving each such headquarters with respect to only the crops produced on each such farm, except that if the producer sells the entire crop in a single sale or if the entire crop is sold for the producer's account by one marketing agency, the producer may file the application(s) for payment in any one such county ASCS office. In the event all business transactions are conducted from the producer's residence or office and the farm has no other headquarters, the office or residence may be considered to be the farm headquarters.

(b) *Time of filing.* An application for payment shall be filed after the later of January 11, 1987, or the date that the producer's eligibility has been established in accordance with §§ 1477.5(a) and 1477.7(a), but before the close of business on January 30, 1987. If an application is filed by mail, it must be received by the county ASCS office by January 30, 1987.

§ 1477.9 Availability of funds.

Disaster payments will be contingent upon the availability of funds to CCC to make such payments. To the extent that funds authorized are insufficient to make the maximum allowable payment to all eligible producers, payments may be made to eligible producers proportionately according to a factor.

§ 1477.10 Report of acreage, production, disposition, and indemnity payments.

(a)(1) Producers shall report, in accordance with instructions issued by the Deputy Administrator, the production and disposition of all program and nonprogram crops produced in 1986 on all farms in which the producer has an interest within a county if an application for a disaster payment is filed with respect to any such farm. If the producer files such an application for nonprogram crops, such report shall include the production and disposition of all crops produced in 1986 on such farms.

(2) If there has been a disposition of crop production through commercial channels, the producer must furnish documentary evidence of such disposition in order to verify the information provided on the report. Acceptable evidence shall include but is not limited to such items as the original or a copy of commercial receipts, gin records, CCC loan documents, settlement sheets, warehouse ledger sheets, elevator receipts or load summaries.

(3) If there has been disposition of crop production other than through commercial channels, the producer must furnish such documentary evidence as the county committee determines to be necessary in order to verify the information provided by the producer. If the producer utilized any of the crops produced on the farm as feed, the producer must provide the number and type of livestock fed, the duration of the feeding period, the type of feed, and other documentation requested by the

county committee to substantiate the production on the farm in 1986.

(b) Producers of soybeans, peanuts, sugar beets, sugar cane, and nonprogram crops must submit evidence satisfactory to the county committee of the acreage planted for harvest in 1985 together with any acreage which was prevented from being planted to the crop or to other nonconserving crops in 1985. Such evidence may include, but is not limited to, such items as commercial contracts which specify acreages planted to the crop and insurance claim forms.

(c) Producers who have purchased crop insurance with respect to a crop for which a disaster payment is made must present evidence of the total amount of indemnity payments received (gross indemnity less premium paid) for each such crop in accordance with instructions issued by the Deputy Administrator.

§ 1477.11 Payment limitations.

(a) Disaster payments made to eligible producers shall be reduced as provided in this section from purposes of making such payments, the term "producer" shall be considered to mean the term "person", as defined in Part 795 of this title. Such payments shall be reduced:

(1) For each crop of eligible commodities produced on a farm, by the amount by which the sum of the computed disaster payment and the total amount of crop insurance indemnity payments (gross indemnity less premium paid) received by the producer for the loss of production for each crop of eligible commodities on the farm exceeds:

(i) 100 percent of: (A) The applicable basic county price support loan rate established for program crops or; (B) the payment rate as established in this part for nonprogram crops, times

(ii) The disaster payment yield times the disaster payment acreage.

(2) For each program crop produced on a farm, by the amount by which the sum of the computed disaster payment and the total amount of price support loans and purchases which are made with respect to such crop exceeds the amount determined by multiplying:

(i) 100 percent of the applicable basic county price support loan rate established for such crop, times

(ii) The disaster payment yield, times

(iii) The disaster payments acreage.

(3) By the amount of any prevented planted deficiency payments made for a crop of a commodity.

(b) For each producer, the sum of all payments made with respect to all program crops shall not exceed $100,000.

(c) For each producer, the sum of all disaster payments made with respect to all nonprogram crops shall not exceed $100,000.

(d) If there is an undermarketing of quota peanuts from a farm for the 1986 crop and a disaster payment has been made with respect to such undermarketings, any subsequent quota established for such farm shall be reduced by such quantity of undermarketings.

(e) For purposes of determining the payment limitations imposed by this section, disaster payments shall be attributed to each producer on the farm according to the producer's share in the crop as determined in accordance with §§ 1477.5(d) and 1477.6(c). The reduction of any producer's disaster payment shall not increase the disaster payment made to any other producer on the farm.

§ 1477.12 Payments.

Any disaster payments made in accordance with this part shall be made within 45 days after an application for payment is made to the county ASCS office and shall be made in the form of commodity certificates issued in accordance with Part 770 of this title.

§ 1477.13 Misrepresentation, scheme and device, and fraud.

(a) If CCC determines that any producer has erroneously represented any fact or has adopted, participated in, or benefited from, any scheme or device which has the effect of, or is designed to, defeat the purpose of this part, such producer shall not be eligible for disaster payments under this part and all such payments previously made to any such producer shall be refunded to CCC. The amount paid to CCC shall include any interest and other amounts determined in accordance with this part.

(b) If any misrepresentation, scheme or device or practice has been employed for the purpose of causing CCC to make a payment which CCC under this part otherwise would not make, all amounts paid by CCC to any such producer shall be refunded to CCC together with interest and other amounts determined in accordance with this part, and no further disaster payments shall be made to such producer by CCC.

(c) If the county committee determines that any producer has adopted or participated in any practice which tends to defeat the purpose of the program established in accordance with this part, the county committee shall withhold or require to be refunded all or part of the payments which otherwise would be due the producer under this part.

§ 1477.14 Refunds to CCC.

(a) In the event that there is a failure to comply with any term, requirement, or condition for payment made in accordance with this part, all such payments made to the producer shall be refunded to CCC, together with interest.

(b) Interest shall be charged with respect to any refund which is determined to be due CCC at the rate of interest which CCC is required to pay for its borrowings from the United States Treasury as of the date of the disbursement by CCC of the monies to be refunded. Interest shall accrue from the date of such disbursement by CCC. Upon the sending of the notification of the debt by CCC to the producer, the account shall bear late payment charges to be assessed in accordance with the provisions of, and subject to the rates prescribed in, Part 1403 of this title. If, for any reason, no late payment charges may be assessed with respect to such account under the provisions of Part 1403 of this title, additional charges on the account will accrue at the rate equal to the current rate for CCC borrowings from the United States Treasury plus three percent per annum.

(c) Producers must refund to CCC any excess payments made by CCC.

(d) In the event that the loss of production was established as a result of erroneous information provided by any person to the county ASCS office or was erroneously computed by such office, the loss of production shall be recomputed and the payment due shall be corrected as necessary. Any refund of payments which are determined to be required as a result of such recomputation shall be remitted to CCC.

§ 1477.15 Cumulative liability.

The liability of any producer for any payment or refund which is determined in accordance with this part to be due to CCC shall be in addition to any other liability of such producer under any civil or criminal fraud statute or any other statute or provision of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 1001; 15 U.S.C. 714m; and 31 U.S.C. 3729.

§ 1477.16 Appeals.

Reconsideration and review of all determinations made in accordance with this part shall be made in accordance with Part 780 of this title.

§ 1477.17 Liens.

Any payment which is due any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, and the proceeds, thereof, which may be asserted by any creditor, except agencies of the United States Government.

§ 1477.18 Other regulations.

The following regulations and amendments thereto shall also be applicable to this part:

(a) *7 CFR Part 13*—Setoffs and Withholdings;

(b) *7 CFR Part 707*—Payments Due Persons Who Have Died, Disappeared or Have Been Declared Incompetent;

(c) *7 CFR Part 713*—Feed grain, Rice, Upland and Extra Long Staple Cotton, and Wheat;

(d) *7 CFR Part 719*—Reconstitution of Farms, Allotments, Normal Crop Acreage and Preceding Year Planted Acreage;

(e) *7 CFR Part 770*—Commodity Certificates, In-Kind Payments, and Other Forms of Payments;

(f) *7 CFR Part 780*—Appeal Regulations;

(g) *7 CFR Part 790*—Incomplete Performance Based Upon Action or Advice of an Authorized Representative of the Secretary;

(h) *7 CFR Part 795*—Payment Limitation;

(i) *7 CFR Part 796*—Denial of Program Eligibility for Control Substance Violation;

(j) *7 CFR Part 1403*—Interest on Delinquent Debts;

(k) *7 CFR Part 12*—Highly Erodible Land and Wetland Conservation.

§ 1477.19 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements of this part shall be submitted to the Office of Management and Budget (OMB) for purposes of the Paperwork Reduction Act and it is anticipated that an OMB Number will be assigned.

Signed at Washington, DC on November 13, 1986.

Peter C. Myers,

Acting Secretary.

[FR Doc. 86-26134 Filed 11-17-86; 10:37 am]

BILLING CODE 3410-05-M

FEDERAL RESERVE SYSTEM

12 CFR Part 227

[Reg. AA; Docket No. R-0570]

Unfair or Deceptive Acts or Practices; Order Granting Partial Exemption to the State of Wisconsin From the Credit Practice Rule

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Order.

SUMMARY: The Board has determined that the exemption from the Credit Practices Rule, Subpart B of Regulation AA, requested by the state of Wisconsin should be granted in part.

EFFECTIVE DATE: November 20, 1986.

FOR FURTHER INFORMATION CONTACT: Adrienne D. Hurt, Susan Kraeger, or Heather Hansche, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551 at (202) 452-3867 or (202) 452-2412; or Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD) at (202) 452-3544.

SUPPLEMENTARY INFORMATION:

(1) *Background*

In April 1985 the Board adopted its Credit Practices Rule, 12 CFR Part 227 (50 FR 16695), thereby amending its Regulation AA (unfair or deceptive Acts or Practices). The Board's rule, which became effective on January 1, 1986, followed the adoption by the Federal Trade Commission (FTC) of its Credit Practices Rule in March 1984 (49 FR 7740), effective March 1, 1985.[1] The Board's rule applies to all banks and their subsidiaries

The Credit Practices Rule prohibits banks from entering into any consumer credit obligation that contains a confession of judgment clause, a waiver of exemption, certain types of wage assignments, or a nonpossessory, nonchase money security interest in household goods. The rule prohibits the enforcement of these provisions in a consumer credit obligation chased by a bank.

The rule also prohibited a practice commonly referred to as "pyramiding" of late charges. Under the late charges provision, it is an unfair practice for a bank to assess multiple late charges based on a single delinquent payment that is subsequently paid. In addition, the rule prohibits a bank from misrepresenting a consigner's liability and requires the bank to give a cosigner, prior to becoming obligated in connection with a consumer credit transaction, a disclosure notice that explains the nature of the cosigner's contractual obligations and liability.

Compliance with the provisions of the Board's Credit Practices Rule is provided through administrative enforcement (including compliance examinations and investigations). Administrative enforcement of the rule for banks may involve actions under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), including the issuance of cease and desist orders and the imposition of penalties of up to $1,000 per day for violation of an order. Staff guidelines—in question and answer format—designed to aid banks in complying with the Credit Practices Rule were issued in November 1985 (50 FR 47036).

Section 227.16 of the Credit Practices Rule provides that if a State applies for an exemption from a provision of the rule, an exemption may be granted if the Board determines that (i) there is a State requirement or prohibition in effect that applies to any transaction to which a provision of the Credit Practices Rule applies; and (ii) the State requirement or prohibition affords a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by the rule's provision. If the Board makes such a determination, the prohibition or requirement in the Board's rule will not be in effect in that state to the extent specified by the Board in its determination, for as long as the state effectively administers and enforces the State requirement or prohibition. The effect of an exemption is that banks and their subsidiaries (other than federally chartered institutions) that are subject to the Board's rule will be subject solely to State law and enforcement.

Applicable State law provisions need not be the same as the comparable federal requirement in order to meet the rule's substantially equivalent standard. Variations, however, should not deprive consumers of protections provided by Federal law. An analysis of the state's ment activities focuses on the ways in which a State demonstrates a commitment to ment and administration of the State's law; factors such as staffing, training activities, examination and administrative procedures, and other indicators of ment efforts may be considered, as well as the existence under the State law of any private right of action by aggrieved consumers.

The State of Wisconsin, through its Banking Commissioner, applied to the Board for an exemption from the Board's

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[1] Under section 18(a)(1)(B) and section 5(a)(1) of the Federal Trade Commission Act (FTC Act), the FTC is authorized to promulgate rules that define and prevent "unfair or deceptive acts or practices" in or affecting commerce with respect to extensions of credit to consumers. Section 18(f) of the FTC Act provides that whenever the FTC promulgates a rule prohibiting practices which it has deemed to be unfair or deceptive, the Board, with certain limited exceptions, must adopt a substantially similar rule prohibiting such practices by banks. The Federal Home Loan Bank Board (FHLBB) is also required under section 18(f) to adopt a rule substantially similar to that of the FTC for institutions that are members of the Federal Home Loan Bank System; the FHLBB did so in May 1985 (59 FR 19325), with its rule also taking effect on January 1, 1986.

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Credit Practices Rule.[3] Notice of the exemption request, with an opportunity for public comment, was published on March 20, 1986 (51 FR 9684). Wisconsin requested an exemption from all of the provisions of the Board's rule. The comparable state provisions that form the basis for Wisconsin's exemption request are contained in the Wisconsin Consumer Act and administrative rules.

In its March notice, the Board detailed, and requested comment on, the differences between the Board's rule and the relevant provisions of the Wisconsin statute. Very few comments were received on the exemption request. The commenters generally indicated that most of the relevant provisions of Wisconsin law provide a level of consumer protection that is either substantially equivalent to, or greater than, that provided by the Board's rule. Some concern was expressed, however, about whether the Wisconsin household goods and cosigner provisions provide protections that are substantially equivalent to those provided by the Federal rule. In the Board's view, the differences between the Board's rule and Wisconsin law—with one exception as noted below—are not substantial and, therefore do not adversely affect Wisconsin's exemption request. Moreover, the Board finds that Wisconsin has demonstrated that it administers and enforces its laws effectively.

The Wisconsin Consumer Act does not cover consumer credit transactions over $25,000. The Board's rule—like the FTC's Credit Practices Rule—protects all consumers against the use of certain creditor remedies that have been deemed unfair or deceptive, regardless of the amount of the transaction. Consequently, the Board is granting the state of Wisconsin an exemption from the rule for transactions up to $25,000; transactions over $25,000 would remain subject to the rule. In order to accomplish the intended purpose of the rule—to provide protections in all consumer credit transactions— and at the same time relieve Wisconsin banks of the burden of complying with two different laws (state law for transactions up to $25,000 and federal law for transactions over $25,000), the Board deems compliance with the relevant provisions of Wisconsin law for transactions over $25,000 to be in compliance with the Federal rule's requirements.

In accordance with the procedures established by the Board for making exemption determinations (contained in Appendix B to Regulation Z, 12 CFR Part 226), the Board reserves the right to revoke an exemption if at any time it determines that the standards required for an exemption are not being met. A state that is granted an exemption must inform the Board within 30 days of any change in its relevant law or regulations. In addition, the State must file with the Board such periodic reports as the Board may require. The Board will inform the appropriate State official of any revisions in the federal statute, regulation, interpretations, or enforcement policies that must be adopted by the State in the future, and will allow sufficient time to the State to revise its laws and regulations, in order for the State to maintain its exemption. Where the Board makes an initial determination that an exemption should not be granted, the Board will afford the State a reasonable opportunity to demonstrate further that an exemption is proper.

(2) Order of Exemption

The following sets forth the terms of the Wisconsin exemption:

Order

The State of Wisconsin has applied for an exemption from the Credit Practices Rules which became effective January 1, 1986. Pursuant to § 227.16 of Regulation AA, the Board has determined that the relevant laws of this State are substantially equivalent to the Federal law and that the State administers and enforces its laws effectively. The Board hereby grants the exemption as follows:

> Effective November 20, 1986, consumer credit transactions under $25,000 that are subject to the Wisconsin Consumer Act and its implementing regulations are exempt from the Board's Credit Practices Rule. Consumer credit transactions over $25,000 are subject to the Board's Credit Practice Rule; however, compliance with the relevant provisions of the Wisconsin Consumer Act would be considered in compliance with the Board's rule.

This exemption does not apply to transactions in which a federally chartered institution is a creditor.

By order of the Board of Governors of the Federal Reserve System, November 13, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-26040 Filed 11-18-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Certification of True Copies and Use of Department Seal

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority relating to certification of true copies and use of the Department seal to update the list of delegates according to changes in organization titles.

EFFECTIVE DATE: November 19, 1986.

FOR FURTHER INFORMATION CONTACT: Margie J. Shandruk, Office of Management and Operations (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: The newly established position of Deputy Director, Office of Regulatory Resource Management, Office of Regulatory Affairs, is being added to the list of delegates. In addition, reorganizations in FDA require that the list of delegates in § 5.22 (21 CFR 5.22) be updated. The reorganization of September 24, 1986 (51 FR 33931), abolished the Office of Consumer and Professional Affairs in the Center for Drugs and Biologics (CDB) and transferred freedom of information functions to the Office of Management, CDB. A reorganization of October 3, 1986 (51 FR 35433), transferred the Division of Food Technology, Office of Nutrition and Food Sciences, Center for Nutrition and Food Safety, to the Office of Physical Sciences, and retitled it as the Division of Food Chemistry and Technology. Also, the Division of Drug Quality Compliance, Office of Compliance, CDB, was retitled on February 12, 1986, as the Division of Manufacturing and Product Quality. This document revises § 5.22 *Certification of true copies and use of Department seal.*

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

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[3] The State of Wisconsin has submitted similar applications to the FTC and to the FHLBB, in order to obtain exemptions from the credit practices rules of those agencies. The Wisconsin exemption requests to those agencies were published for comment in the **Federal Register** at 50 FR 46062 and 51 FR 12865, respectively. A final determination by the FTC granting Wisconsin an exemption from the FTC's rule for transactions under $25,000 was published on July 3, 1986 (51 FR 24304).

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, Part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR Part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552; 7 U.S.C. 2217; 15 U.S.C. 638, 1451 et seq., 21 U.S.C. 41 et seq., 61–63, 141 et seq., 301–392, 467f(b), 679(b), 801 et seq., 823(f), 1031 et seq.; 35 U.S.C. 156; 42 U.S.C. 219, 241, 242(a), 242a, 242l, 242o, 243, 262, 263, 263b through 263n, 264, 265, 300u et seq., 1395y and 1395y note, 3246(b)(3), 4831(a), 10007, and 10008; Federal Caustic Poison Act (44 Stat. 1406); Comprehensive Drug Abuse Prevention and Control Act of 1970 (84 Stat. 1241); Federal Advisory Committee Act (Pub. L. 92–463); E.O. 11490, 11921.

2. By revising § 5.22(a) (4) (iii), (7) (iii), (iv), and (vi), and (8)(v), to read as follows:

§ 5.22 Certification of true copies and use of Department seal.

(a) * * *

(4) * * *

(iii) The Director and Deputy Director, Office of Regulatory Resource Management ORA.

* * * * *

(7) * * *

(iii) The Chief, Freedom of Information Staff and Freedom of Information Offices, Office of Management, CDB.

(iv) The Chief, Biologics Information Staff, Office of Biologics Research, CDB.

* * * * *

(vi) The Directors of the Divisions of Drug Quality Evaluation, Drug Labeling Compliance, and Manufacturing and Product Quality, Office of Compliance, CDB.

* * * * *

(8) * * *

(v) The Director, Division of Food Chemistry and Technology, Office of Physical Sciences, CFSAN.

* * * * *

Dated: November 10, 1986.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–26051 Filed 11–18–86; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 74, 81, 82, and 201

[Docket No. 86C-0182]

Permanent Listing of FD&C Yellow No. 6

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is permanently listing FD&C Yellow No. 6 for use generally in food, drugs, and cosmetics. These actions respond to a petition filed by the Cosmetic, Toiletry and Fragrance Association; the Pharmaceutical Manufacturers Association; and the Certified Color Manufacturers Association. This rule will remove FD&C Yellow No. 6 from the provisional list of color additives. Also, it will establish requirements for the label declaration of FD&C Yellow No. 6 because of evidence of possible allergic-type reactions to the color additive.

DATES: Effective December 22, 1986, except as to any provisions that may be stayed by the filing of proper objections; objections by December 19, 1986. The labeling requirements (§ 201.20(a)) are effective November 19, 1987.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–426–5487.

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I. Introduction

In 1960, Congress passed the Color Additive Amendments (the amendments). In *Certified Color Mfg. Ass'n* v. *Matthews*, 543 F.2d 284, 286–287 (D.C. Cir. 1976), the United States Court of Appeals for the District of Columbia Circuit explained the purpose of this legislation:

> The Color Additive Amendments of 1960 reflect a Congressional and administrative response to the need in contemporary society for a scientifically and administratively sound basis for determining the safety of artificial color additives, widely used for coloring food, drugs, and cosmetics. The Amendments reflect a general unwillingness to allow widespread use of such products in the absence of scientific information on the effect of these products on the human body. The previously used system had some glaring deficiencies, and the 1960 Amendments were designed to overcome them. * * *

[Footnotes omitted.]

As amended, section 706(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 376(a)) provides that a color additive will be deemed unsafe for use in food, drugs, cosmetics, and some medical devices unless FDA has issued a regulation permanently listing that color additive for its intended use. FDA will issue such a regulation only if it has been presented with data that establish with reasonable certainty that no harm will result from the use of the color additive. The burden of presenting such data is on the person who is seeking approval of the use of the additive.

In passing the amendments, Congress provided for the provisional listing of the color additives in use at that time, pending completion of the scientific investigations needed for a determination about the safety of these additives (section 203(b) of the transitional provisions of the amendments, Title II, Pub. L. 86–618, 74 Stat. 404–407 (21 U.S.C. 376, note)). Section 81.1 (21 CFR 81.1) of the agency's color additive regulations

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enumerates those additives that are still provisionally listed. Among them is FD&C Yellow No. 6 for use generally in food, drugs, and cosmetics.

II. Regulatory History

In the **Federal Register** of November 20, 1968 (33 FR 17205), FDA announced that a petition, now identified as CAP 8C0066, was filed by the Cosmetic, Toiletry and Fragrance Association (CTFA) (previously the Toilet Goods Association, Inc.); the Pharmaceutical Manufacturers Association (PMA); and the Certified Color Manufacturers Association (CCMA) (previously the Certified Color Industry Committee), c/o Hazleton Laboratories, Inc., 9200 Leesburg Turnpike, Vienna, VA 22180. The petition was proposing the issuance of a color additive regulation to provide for the safe use of FD&C Yellow No. 6 as a color additive for use in food, drugs, and cosmetics. The petition was filed under section 706 of the act (21 U.S.C. 376).

Currently, FD&C Yellow No. 6 is provisionally listed in 21 CFR 81.1(a) for use in food, drugs, and cosmetics generally subject to conditions under § 81.27 (21 CFR 81.27). It is identified in § 82.706 (21 CFR 82.706) by the name disodium salt of 1-*p*-sulfophenylazo-2-naphthol-6-sulfonic acid. Section 82.706 prescribes specifications to be used by FDA in the certification of the color additive and identifies the color additive that may be used in the formation of lakes under the provisions of Part 82 (21 CFR Part 82).

A. Chemistry Data Concerning FD&C Yellow No. 6

In the **Federal Register** of September 23, 1976 (41 FR 41860) (Docket No. 76N–0366), FDA stated that there were 15 provisionally listed color additives that could not be permanently listed at that time because complete chemistry data were lacking to establish specifications for the color additive. FD&C Yellow No. 6 was among the 15. FDA requested the submission of these chemistry data and specifically stated that:

> The chemistry data lacking on these 15 colors consist of sufficiently precise analytical methods and other information to enable FDA to identify and define the color additives more accurately than currently available data permit. Detailed specifications and precise analytical methods are required to certify batches of each color additive as equivalent to the batches of each color additive used in conducting animal studies to establish the safety of the color.

The agency proposed to continue the provisional listing of FD&C Yellow No. 6 to September 30, 1977, to provide for the submission of the necessary chemistry information. In the **Federal Register** of February 4, 1977 (42 FR 6992), FDA announced that the petitioner had submitted chemistry data which adequately addressed the deficiencies for FD&C Yellow No. 6. The agency continued the provisional listing of FD&C Yellow No. 6, however, because of the need for additional toxicity data as discussed below. FDA made the determination that continued provisional listing of the color additive under its intended conditions of use would not present a hazard to the public health.

B. Toxicology Testing of FD&C Yellow No. 6

In the **Federal Register** of September 23, 1976 (41 FR 41860) (Docket No. 76N–0366), FDA stated that the available toxicological studies were inadequate to support the permanent listing of several color additives, including FD&C Yellow No. 6. The agency explained that the studies were deficient in the following respects:

1. Many of the studies were conducted using groups of animals, i.e., control and those fed the color additive, that are too small to permit conclusions to be drawn today on the chronic toxicity or carcinogenic potential of the color. The small number of animals used does not, in and of itself, cause this result, but when considered together with the other deficiencies in this listing, does do so. By and large, the studies used 25 animals in each group; today FDA recommends using at least 50 animals per group.
2. In a number of the studies, the number of animals surviving to a meaningful age was inadequate to permit conclusions to be drawn today on the chronic toxicity or carcinogenic potential of the color additives tested.
3. In a number of the studies, an insufficient number of animals was reviewed histologically.
4. In a number of the studies, an insufficient number of tissues was examined in those animals selected for pathology.
5. In a number of the studies, lesions or tumors detected under gross examination were not examined microscopically.

The agency proposed that the continued provisional listing of several color additives, including FD&C Yellow No. 6, be conditioned upon at least one petitioner undertaking new chronic feeding studies for each of these color additives. On February 4, 1977, the agency published a final order that responded to comments on the proposal, and extended the provisional listing of FD&C Yellow No. 6 to January 31, 1981 (42 FR 6992).

Thereafter, FDA extended the closing date several times to permit completion of the chronic toxicity studies and the submission of the resulting data. Once the petitioners had met their obligations, the closing date was then extended to give the agency time to complete its evaluation of all the data submitted, and to incorporate findings from peer review conducted by the National Toxicology Program Board of Scientific Counselors Technical Review Subcommittee. The most recent extension was announced in the **Federal Register** of October 6, 1986 (51 FR 35511), establishing the current closing date of December 5, 1986.

C. Citizen Petition Filed by Public Citizen Health Research Group

On December 17, 1984, the Public Citizen Health Research Group (Public Citizen) petitioned FDA to ban the use of the color additives that remained provisionally listed, including FD&C Yellow No. 6 (Ref. 1). On January 22, 1985, Public Citizen filed a complaint in the District Court for the District of Columbia seeking the same relief. Public Citizen alleged that, by continuing to provisionally list the color additives, including FD&C Yellow No. 6, FDA had violated the Color Additive Amendments to the act, as well as those provisions of the Administrative Procedure Act (5 U.S.C. 706(1)) that pertain to unreasonable delay of agency action. Public Citizen sought to enjoin FDA from using the provisional list or any other means to allow the marketing of the provisionally listed color additives.

On June 21, 1985, the Commissioner of Food and Drugs sent to Public Citizen a response to the petition. The response includes a detailed discussion of FDA's evaluation of the safety of FD&C Yellow No. 6 and is incorporated herein by reference (Ref. 2). In the letter, the Commissioner concluded that the public health would not be endangered by the continued marketing of the color additives, including FD&C Yellow No. 6, while scientific, legal, and policy issues were addressed and, therefore, the Commissioner denied the petition.

On February 13, 1986, Judge Stanley S. Harris granted FDA's motion for summary judgment and dismissed Public Citizen's complaint. *Public Citizen et al.* v. *DHHS, et al.*, No. 85–1572 (D.D.C. February 13, 1986). Public Citizen has appealed Judge Harris' decision.

D. Lakes of FD&C Yellow No. 6

To establish permanent regulations for lakes, FDA proposed the listing of, and specifications for, lakes of permanently listed color additives in the **Federal Register** of May 11, 1965 (30 FR 6490). However, because no certified color additives were permanently listed in 1965, the agency did not issue a final rule on the proposal, and the provisional regulations for lakes under Parts 81 and 82 have remained in effect.

In the **Federal Register** of June 22, 1979 (44 FR 36411), FDA published a notice of intent to propose rules concerning lakes of color additives. This notice discussed the general areas of concern in the development of a new proposal for the regulation of lakes. Although several color additives have been permanently listed under Part 74, the agency did not consider the permanent listing of their lakes to be appropriate because questions about the safety and use of the lakes had arisen. Because of the amount of time that had passed since the 1965 proposal, the agency concluded that a new proposal on lakes should be developed and published. Therefore, FDA withdrew its original proposal (30 FR 6490) and requested information for use in the development of a new proposal for the regulation of lakes.

The agency is deferring the issue of lakes for the reasons discussed in the notice of intent to propose rules published in the **Federal Register** of June 22, 1979 (44 FR 36411). Lakes of certified color additives, including FD&C Yellow No. 6, will be addressed fully in a future **Federal Register** publication. However, the agency is requiring that the provisionally listed lakes of FD&C Yellow No. 6 be manufactured from certified batches of the color additive. A discussion concerning this requirement appears in the conclusion section of this document.

III. Overview of the Final Rule

FDA has evaluated all the available evidence regarding the safety of FD&C Yellow No. 6. Based upon this evaluation, FDA finds that there is sufficient evidence for the agency to establish with reasonable certainty that no harm will result from permanently listing the use of FD&C Yellow No. 6 in food, drugs, and cosmetics. The agency concludes that these uses of FD&C Yellow No. 6 are safe.

The remaining sections of this document describe the information and data relied upon by the agency in reaching its conclusion concerning the safety of FD&C Yellow No. 6. First, the agency evaluates the available data resulting from the toxicology testing of FD&C Yellow No. 6 and explains its conclusion that the compound has not been shown to induce cancer in laboratory animals. Next, in order to provide an adequate margin of safety for the permanently listed food, drug, and cosmetic uses of the color additive, the agency establishes an acceptable daily intake level for the color additive. Then, the agency discusses the issues arising from carcinogenic impurities that may be present in FD&C Yellow No. 6. Last, the agency discusses the available information concerning allergic reactions to FD&C Yellow No. 6 and, in light of this latter information, the agency establishes labeling requirements for the safe use of the additive.

IV. Statutory Requirements

Section 706(b)(4) of the act, the so-called "general safety provision" for color additives, enjoins the Secretary from listing a color additive for a particular use unless the data presented by the petitioner establish that the color is safe for that use. Although what is meant by "safe" is not explained in the general safety provision, the legislative history makes clear that this word is to have the same meaning for color additives as for food additives. (See H. Rept. 1761, "Color Additive Amendments of 1960," Committee on Interstate and Foreign Commerce, 86th Cong., 2d Sess. 11 (1960).)

The concept of safety embodied in this requirement was explained in the Senate Report on the Food Additives Amendment for 1958:

> The concept of safety used in this legislation involves the question of whether a substance is hazardous to the health of man or animal. Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstances.
>
> This was emphasized particularly by the scientific panel which testified before the subcommittee. The scientists pointed out that it is impossible in the present state of scientific knowledge to establish with complete certainty the absolute harmlessness of any chemical substance.

S. Rept. 2422, "Food Additive Amendment of 1958," Committee on Labor and Public Welfare, 85th Cong., 2d Sess. 6 (1958).

FDA has incorporated this concept of safety into its color additive regulations. Under 21 CFR 70.3(i), a color additive is "safe" if "there is convincing evidence that establishes with reasonable certainty that no harm will result from the intended use of the color additive." Therefore, the general safety provision prohibits approval of a color additive if doubts about the safety of the additive for a particular use are not resolved to an acceptable level in the minds of competent scientists. In addition, the Delaney Clause (section 706(b)(5)(B) of the act) provides that a color additive shall be deemed to be unsafe "if the additive is found by the Secretary to induce cancer when ingested by man or animal" (21 U.S.C. 376(b)(5)(B)(i)).

V. The Safety of FD&C Yellow No. 6

In reviewing food and color additive petitions, FDA routinely reviews all data submitted by the petitioner as well as any other available pertinent data. The agency has completed its review and evaluation of the color additive petition for FD&C Yellow No. 6, including the new chronic toxicity (carcinogenesis) studies in rats and mice. On the basis of its review and evaluation, the agency concludes that FD&C Yellow No. 6 is not a carcinogen and that available data support the finding that the color additive is safe for use in food, drugs, and cosmetics.

A. Old Studies

The agency previously reviewed reports of several toxicity studies of this color additive involving rats, mice, dogs, rabbits, and minipigs (Ref. 3). These studies included acute toxicity studies of the color additive administered orally and by intraperitoneal injection, subchronic studies using dietary exposure, teratology and reproductive studies, mutagenicity and other short-term studies, metabolism studies, and chronic toxicity studies. For the chronic studies, the animals were exposed to FD&C Yellow No. 6 in the diet and in the drinking water, by skin painting, and subcutaneous injections. The chronic studies included a 7-year study in dogs and carcinogenesis bioassays in rats and mice. With the exception of the 1981 National Cancer Institute/National Toxicology Program (NCI/NTP) bioassays that were done, the agency considered past studies as inadequate for a final determination of the safety of FD&C Yellow No. 6.

There was reported a "suggestive" increase in the number of mammary tumors in a lifetime (chronic) study in Osborne-Mendel rats that was not observed in any other study (Ref. 3). The International Agency of Research on Cancer reviewed this study and a followup study and concluded that there was not a statistically significant increase in the number of mammary tumors and there was no effect on tumor formation in the followup study (Ref. 4). Other than the "suggestive" result mentioned above, there were no reports of any carcinogenic effect attributable to FD&C Yellow No. 6 as a result of these studies.

B. New Long-Term Feeding Studies

The new studies of the provisionally listed color additives, including FD&C Yellow No. 6 represent current state-of-the-art toxicological testing. The protocols for these studies have benefited from knowledge of

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deficiencies in previously conducted carcinogenesis bioassays and other chronic toxicity studies. The use of large numbers of animals of both sexes, pilot studies to determine maximum tolerated dosages, two control groups (thereby effectively doubling the number of controls), and in utero exposure in one of the two species tested (the rat) significantly increase the power of these tests for detecting dose-related effects. The studies were designed and conducted in full compliance with FDA's good laboratory practice regulations and were subject to FDA inspection while they were being conducted.

1. *Mice.* Charles River CD-1, COBS(ICR-derived) mice were fed FD&C Yellow No. 6 ad libitum at dietary levels of 0.5, 1.5, and 5 percent. Two groups were fed the plain diet. Each group consisted of 60 males and 60 females that were randomly assigned. The study was terminated at 20 months for the male mice and at 23 months for the female mice by sacrificing the surviving animals.

The mortality rate was higher in male mice fed diets containing 5 percent FD&C Yellow No. 6 than in the male control groups ($p<0.01$, life table analysis). Mean body weights of male mice of this dosage group were less than those of the pooled controls throughout the study despite elevated food consumption. In female mice, elevated food consumption occurred for the group fed 5 percent FD&C Yellow No. 6. Elevated food consumption occurred also for the male mice fed 0.5 and 1.5 percent FD&C Yellow No. 6.

Complete histopathology was done on the controls and the high dosage groups. Histopathological examinations of all tissue masses and other gross changes of an uncertain nature were done for mice in the two lower dosage groups. Gross postmortem examinations of treated mice revealed yellow to orange discoloration of the gastrointestinal tract by the color additive.

The gross and microscopic examinations of tissues and organs of mice from this study revealed no adverse morphological changes that could be attributed to treatment with FD&C Yellow No. 6. Detailed statistical analyses by the petitioner indicated that this color additive had no effect on the incidence of mice with any tumor type or on the time to tumor.

2. *Rats*—(a) *Protocols.* Two long-term feeding studies with in utero exposure to FD&C Yellow No. 6 were carried out with the Charles River Albino (CD)® rats. Parent animals (60 males and 60 females per group) were randomly assigned and mated. FD&C Yellow No. 6 was mixed with the diet and fed ad libitum to the parents prior to mating and subsequently fed to their offspring. The dosage levels used in the first study were 0.75, 1.5, and 3 percent FD&C Yellow No. 6. The dosage level used in the second study was 5 percent after FDA scientists concluded that the 3 percent dose was too low. Two groups of controls were fed the plain diet in the first study and one group of controls was included in the second study. For the chronic phase, 70 male and 70 female offspring were selected randomly from each of the treated and control groups.

Interim sacrifice and necropsy of 10 rats per sex per group were performed 1 year after the initiation of the long-term feeding study in the offspring. The first study was terminated at 30 months for male rats and at 28.5 months for female rats. The second study was terminated at 25.6 and 27.8 months, for male and female rats, respectively.

Tissues from all rats in the three control groups and the two high-dose groups (3 percent and 5 percent FD&C Yellow No. 6) were subjected to histopathological examinations. Histopathological evaluations were performed on all tissues masses and gross lesions from animals in the two lower dosage groups.

b. *General findings.* Survival of offspring was reduced in the groups fed 3 percent and 5 percent FD&C Yellow No. 6 in the diet. Reduced pup weights occurred at these same dosages and at 1.5 percent also. In the chronic phase, survival of male rats fed 5 percent FD&C Yellow No. 6 was decreased ($p=0.01$, NCI analysis for survivorship). Body weights of rats fed the 5 percent diets were decreased throughout the study. The body weights of treated and control rats of the first study were generally comparable despite decreased pup weights in groups treated with 1.5 and 3 percent FD&C Yellow No. 6. Food consumption of all treated groups in both studies was generally increased.

There were no differences in hematology measurements, clinical chemistry measurements, and urinalysis in either study that can be attributed to treatment. Urine samples from rats fed FD&C Yellow No. 6 were a different color (amber to orange) than those from control rats.

A slight increase in kidney weights of female rats treated with 5 percent FD&C Yellow No. 6 was noted in rats killed at 1 year interim sacrifice. There was no morphological evidence of any adverse treatment-related effect in these kidneys or in any other organs or tissues of treated rats after 1 year of treatment with FD&C Yellow No. 6. At the terminal sacrifice, female rats treated with 3 percent and 5 percent of FD&C Yellow No. 6 had increased mean relative kidney weights ($p=0.05$).

C. Toxicological Issues and Evaluation

After examining the initial data pertaining to the possible carcinogenicity of FD&C Yellow No. 6, the Cancer Assessment Committee (the committee) of FDA's Center for Food Safety and Applied Nutrition (CFSAN) concluded that the studies revealed no carcinogenic effect in male or female mice and in male rats that could be attributed to treatment with FD&C Yellow No. 6. The committee could not make a similar conclusion regarding the female rats. Accordingly, the committee concluded that further evaluation of tumors in adrenal glands and kidneys was needed.

1. *Adrenal findings.* The contract laboratory (Bio/dynamics) reported a higher incidence of treated female rats with adrenal medullary tumors in the two high-dose groups (3 and 5 percent dietary FD&C Yellow No. 6) than was found in control female rats. To evaluate this observation, FDA obtained from the sponsor (CCMA) all available microslides of adrenal glands from female rats. In addition, FDA obtained from the sponsor new microslides from resectioned adrenal glands from those animals for whom the amount of adrenal medulla in the originally submitted slides had been inadequate for diagnosis. Adrenal glands from female rats of the two lower dosage groups not previously examined were also later sectioned and submitted to FDA for review.

FDA pathologists reported incidences of adrenal medullary lesions that were generally higher than those reported by the contract laboratory pathologists. These differences were similar, across all groups, treated as well as control groups. Accordingly, the conclusion regarding the adrenal lesions was the same from both sets of diagnoses.

According to FDA pathologists, the incidences of female rats with adrenal medullary tumors (pheochromocytoma) were 12/68 (17.6 percent) in control IA, 6/66 (9.1 percent) in control IB, 7/66 (10.6 percent) in the 0.75 percent dietary level of FD&C Yellow No. 6, 9/64 (14.1 percent) in the 1.5 percent dietary level, and 15/66 (22.7 percent) in the 3.0 percent dietary level. Prevalence statistical tests for high dose to combined control comparison and dose-related trend yield p-values of 0.054 and 0.022, respectively, for these incidences. (The prevalence analysis is a time-adjusted statistical test for comparing incidences of lesions considered to be nonlethal.) In the second Charles River Albino (CD)® study, the 5.0 percent dietary and its control female groups had incidences of rats with this tumor of 15/68 (22.1 percent) and 5/70 (7.1 percent), respectively. Utilizing the low control incidence in this study, the prevalence p-value for this comparison was 0.01.

FDA carefully considered the potential implication of the occurrence in the high-dose groups of more female rats with pheochromocytoma than in the other groups. As recommended by the Office of Science and Technology Policy (OSTP) (Ref. 5), FDA utilized information derived from toxicology, pathology, and scientific disciplines instead of focusing on only the tumor incidence data.

For a number of reasons, FDA scientists have concluded that the higher incidence of rats with pheochromocytoma in the high-dose female rat group is not related to treatment with FD&C Yellow No. 6. The reasons are:

(a) *Small Magnitude of Difference and Lack of Dose Response.* The number of female rats (15) with pheochromocytoma in the group fed 5 percent FD&C Yellow No. 6 was exactly the same as the number seen in the group fed the 3 percent diet in the first study. If the response were compound-related, one would expect a higher number of rats with pheochromocytoma in the 5 percent group than in the 3 percent group. Considering that 12 rats with pheochromocytoma were found in one of the control groups of the first study, the occurrence of 15 rats with pheochromocytoma in a group is not remarkable. The p-value (0.01) for the treated versus control comparison of incidences of rats with pheochromocytoma in the second study is likely to be more a reflection of the low number of animals in the concurrent control group rather than the result of any real increase in the number of treated female rats with this tumor. Moreover, when the two experiments are considered together, there is no indication of dose-related increase in incidence.

(b) *Likelihood of False Positives.* In the CCMA-sponsored studies in mice and rats, a large number of animals were tested at several dose levels. A very large number of tissue sites were examined for tumors. Considering the study design and the large number of comparisons among control and treated groups, the p-values for comparisons between incidences of treated rats with pheochromocytoma and controls are not remarkable. In fact, even more extreme p-value would be expected to occur by chance given the numerous explicit or implicit comparisons made of the tumor incidences at so many organ/tissue sites (48 FR 5257) (Ref. 6).

(c) *Lack of Precancerous Lesions.* Adrenal medullary hyperplasia has been identified as a stage in the development of pheochromocytoma in rats (Gillman, Gilbert, and Spence, 1953) (Ref. 7). It follows that, if the pheochromocytoma in the female rats had been induced by treatment, the incidence of animals with medullary hyperplasia would have increased correspondingly in the treated groups. However, the incidence of female rats with adrenal medullary hyperplasia was similar in the treated and control groups. This lack of any dose response information indicates that no treatment-related carcinogenic process occurred in the adrenal glands of the rat.

(d) *Morphological Similarity of Adrenal Medullary Lesions in Treated and Control Rats.* The induction of neoplasia by carcinogens is often multicentric (Shabad, 1973) (Ref. 8). If pheochromocytoma and medullary hyperplasia had been induced by treatment, both adrenals would be more likely to be affected in a treated animal and the distribution of the lesions (medullary hyperplasia/pheochromocytoma) would more likely be multifocal. In the FD&C Yellow No. 6 studies, the pheochromocytoma and medullary hyperplasia were distributed (focal/multifocal/diffuse) similarly within the adrenal glands across all groups and showed no predilection for unilateral and bilateral occurrence that could be related to treatment. Also, the number of rats with both a pheochromocytoma and medullary hyperplasia was similar across control and treated groups. These observations indicate that no carcinogenic process associated with exposure to FD&C Yellow No. 6 occurred in the adrenal glands.

(e) *Unaffected Latency Period.* A positive result in a carcinogenesis bioassay can be based on a decreased latency period as well as on an increase in incidence of tumors (Ref. 5). In the current Charles River Albino (CD)® rat studies, based on the mortality records of these animals, generally there were no early occurrences of medullary proliferative lesions in treated rats as compared with their controls. In fact, most of these lesions were found in older rats. If pheochromocytoma were induced by treatment, a substantially decreased latency period should have been observed.

(f) *Spontaneous Tumors.* Pheochromocytoma is a common old age spontaneous tumor in rats (Hollander and Snell, 1976) (Ref. 9). The reported historical incidence of rats with pheochromocytoma tends to underestimate the occurrence of the lesion because most compilations do not include rats as old as those in the studies and because some studies have failed to ensure the presence of adequate medullary tissue for diagnosis in every animal (Ref. 10). The number of female rats with pheochromocytoma in the two high-dose groups of the present study is unremarkable given the variable occurrence of this tumor and the limitations of the historical data (Ref. 7).

(g) *Lack of Effect in Male Rats.* Generally, male rats display higher incidences of pheochromocytoma than do female rats (Refs. 9 and 11). Thus, if a treatment-related carcinogenic effect had occurred, it would be logical to expect that treated male rats would manifest more medullary lesions than female rats, based on the higher spontaneous background rate of male rats and their presumed increased sensitivity. The lack of a treatment-related effect in the male rats in the present studies is additional evidence that a treatment-related effect did not occur in the female rats.

(h) *Comparison with Other Studies.* There was no association between exposure to FD&C Yellow No. 6 and occurrence of pheochromocytoma (or adrenal medullary hyperplasia) in any of the other chronic studies on the color additive. These include studies in mice and dogs as well as in rats other than the Sprague-Dawley strain. The studies in rats include a recent NCI/NTP study in Fischer 344 rats (Ref. 12). Fischer rats, like the Charles River Albino (CD)® rats, have a high spontaneous background rate of pheochromocytoma late in life. Because a carcinogenic effect would be expected in a strain with potentially high susceptibility to a specific type of tumor, the lack of observed response of Fischer rats is consistent with the conclusion that there was a lack of treatment-related effects on the adrenal gland in Charles River Albino (CD)® rats.

(i) *Summary.* The following factors all indicate that there was no causal relationship between the occurrence of pheochromocytoma in Charles River (CD)® rats and exposure to FD&C Yellow No. 6:

The small increase in the number of treated animals with a type of tumor that occurs spontaneously with a high and variable incidence, p-values which were not particularly unusual for studies of this magnitude and complexity, the lack of any morphological or other biological support for a treatment-

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induced carcinogenic process including the lack of any effect on the latency period for adrenal lesions, the absence of a dose-response relationship between the incidence and severity of either pheochromocytoma or medullary hyperplasia, the lack of a treatment-related effect in male rats for the medullary lesions, and the lack of similar effects in male or female rats of any of the other rat studies with FD&C Yellow No. 6.

2. *Kidney Lesions.* In the first rat study on D&C Yellow No. 6, no renal cortical tumors were reported in the high-dose group (3 percent) or either of the two control groups of female rats. In the 5 percent group, tested in the second study, four female rats were reported to have renal tubular adenoma and one female rat was reported to have kidney tumor that was initially diagnosed as a renal tubular cell carcinoma (this carcinoma was later diagnosed as a transitional cell tumor rather than a tubular cell tumor). No renal cortical tumors were reported in the control groups of the first study, although one control female rat from this study had a transitional cell tumor. In the second study, the female rats in both the group fed 5 percent of the color additive and the control group manifested a very high incidence of chronic progressive nephrosis (also called old-rat nephopathy). This disease is a common finding in kidneys of aging rats (Ref. 13).

FDA pathologist obtained kidney slides from both experiments for review. Following examination of the kidney slides, FDA decided that it was necessary to examine additional kidney tissue from female rats in the second experiment in order to determine if the small number of renal cortical tumors found was affected by any possible sampling differences associated with the widespread occurrence of chronic progressive nephrosis.

On March 14, 1985, FDA met with the petitioner and agreed on a protocol for obtaining for microscopic study the additional sampling of kidneys from female rats in the second Charles River Albino (CD)® rat study. On June 13, 1985, the sponsor submitted to FDA (1) microslides of additional sections from each kidney (for a total of 10 per kidney) of the female rats in the 5 percent dietary group and its control group and (2) the results of the sponsor's examination of these microslides.

The examination of additional sections of kidney from these female rats by the performing laboratory's pathologists showed that the tumor that had been diagnosed as a renal tubular cell carcinoma was of transitional cell origin and thus could not be counted with the renal tubular cell tumors. (Considering that two rats with transitional cell carcinoma were observed in the female control group, this finding is unremarkable with respect to treatment.) The pathologists also reported that there were considerably more kidneys with renal tubular adenomas in both the treated and control rats than when only one section of kidney was examined.

FDA pathologists also examined the additional kidney sections and agreed with the pathologists from the performing laboratory that the transitional cell carcinoma had been originally incorrectly classified as a tubular cell carcinoma. There was general agreement between FDA pathologists and the performing laboratory pathologists over the diagnoses of the original few tubular adenomas. However, the two groups of pathologists differed over the terminology to be applied in characterizing the very small proliferative lesions observed in the additional sections.

FDA scientists had recommended additional examination of the kidneys primarily for two reasons: (1) the presence of a malignant renal tubular tumor in the 5 percent dietary female group, and (2) the perceived rarity of renal tubular proliferative lesions. The additional examination eliminated the initial concern. The diagnosis of tubular carcinoma was found to be in error and, as explained above, the occurrence of this tumor would not be relevant to the occurrence of renal tubular tumors. The remainder of this section discusses the significance of the renal proliferative tubular lesions.

Based upon the diagnoses made by FDA pathologists, the incidence of female rats with renal tubular cell adenoma were control, 0/70; 5 percent dietary group, 5/70. The incidences of renal tubular nodular hyperplasia were control, 9/70; 5 percent dietary group, 16/70. Four rats in the latter group also had tubular cell adenoma. Prevalence analysis was performed for these incidences. For adenomas alone this test gave a p-value of 0.028 for comparison of the incidence in the 5 percent dietary group to the incidence in the control group. For combined incidences of adenoma and nodular hyperplasia, the same prevalence analysis gave a p-value of 0.05. These values are not remarkable and do not provide a persuasive quantitative argument for a treatment-related effect. However, given the differences in opinion of diagnoses of these lesions between FDA pathologists and pathologists of the performing laboratory, the agency relied on additional information in evaluating the significance of the observed lesions.

First, FDA reviewed available information on the historical spontaneous incidences of these renal lesions. The agency attempted to ascertain the range of spontaneous incidences among comparable untreated groups and to see if the observed incidence values for the treated group fell within or outside the range. However, the thorough sectioning of kidneys (10 sections per kidney) that occurred in the current study represents a unique situation for which no historical data are available. In a recent article, Hardisty demonstrated that in the pancreas not only does the incidence of small proliferative lesions in control groups increase dramatically with serial as opposed to single, random sectioning, but also that the range in incidences among four different control groups was substantial after serial sectioning (Ref. 18). There is no reason to believe that these increases will not also occur in the kidney.

FDA's Cancer Assessment Committee tentatively concluded that the higher incidence of rats with renal proliferative lesions in the treated group could not be directly attributable to FD&C Yellow No. 6. The Committee based its conclusion on the following factors: (1) The underlying kidney disease that could be exacerbated by the consumption (and excretion) of large amounts of FD&C Yellow No. 6 over a long period of time, (2) the presence of kidney tubular cell proliferative lesions generally associated with the occurrence of chronic progressive nephrosis, (3) the lack of treatment-related changes in kidneys of male rats (male rats are known to be more susceptible than female rats to the effects of renal carcinogens), and (4) the variability of the spontaneous occurrence of renal tubular cell tumors as shown by the higher number and greater severity of these tumors in male controls than in corresponding groups of treated male rats even after limited sampling of one section per kidney.

D. Peer Review of Kidney Lesions

In an attempt to definitively resolve how best to characterize the lesion, the agency requested the Board of Scientific Counselors of the National Toxicology Program (NTP) to consider the occurrence of more treated female rats with proliferative renal lesions than in controls in the second Charles River Albino (CD)® rat study and to determine whether this occurrence was indicative of the chemical induction of cancer.

FDA also requested the NTP panel to examine two related questions:

1. What is the role of chronic progressive nephrosis in the pathogenesis of renal proliferative lesions in rats fed diets containing high concentrations of FD&C Yellow No. 6?

2. Does the occurrence of a greater number of male rats with proliferative renal lesions (even without additional sectioning) in untreated controls influence the interpretation of a possible relationship to exposure to this color additive?

In the **Federal Register** of December 17, 1985 (50 FR 51455), it was announced that a meeting would be held on January 8, 1986, to provide peer review of the data from the chronic carcinogenesis bioassay of FD&C Yellow No. 6. National Toxicology Program's Board of Scientific Counselors Technical Reports Review Subcommittee and an Ad Hoc Panel of Experts constituted the Peer Review Panel (Panel). The Panel included the following:

Subcommittee Member

Dr. James Swenberg (Chairman), Head, Department of Biochemical Toxicology and Pathobiology, Chemical Industry Institute of Toxicology, Research Triangle Park, NC.

Panel Members

Dr. Richard J. Kociba, Dow Chemical USA, Midland, MI.

Dr. Robert A. Scala, Senior Scientific Advisor, Medicine and Environmental Health Department, Research and Environmental Health Division, Exxon Corp., East Millstone, NJ.

Dr. Bruce W. Turnbull, Professor and Associate Director, College of Engineering, Cornell University, Ithaca, NY.

Expert Pathology Consultants

Dr. Richard H. Bruner, Toxicology Detachment, Naval Medical Research Institute, Wright-Patterson AFB, Dayton, OH.

Dr. Harold W. Casey, Department of Veterinary Pathology, School of Veterinary Medicine, Louisiana State University, Baton Rouge, LA.

Prior to the Panel's meeting, a review package of relevant toxicological and pathological information was prepared by FDA for examination by the Panel. Microscopic slides of kidney lesions were made available to the Panel for examination prior to the meeting. Presentations to the Panel were made by representatives of FDA during the meeting.

After reviewing the study, including the microslides of kidney lesions from the female rats fed 5 percent FD&C Yellow No. 6 and their controls, the Panel concluded that "the resultant study data were considered insufficient to be categorized as a demonstrated carcinogenic response to the chemical treatment" (Ref. 14). The Panel based this interpretation on the following eight considerations:

(1) The acknowledged debatable nature of the small renal proliferative lesions variously categorized by different pathologists as representing nodular hyperplasia, adenomatous hyperplasia, or benign renal tubular adenomas;

(2) The lack of concurrence as to whether lesions were hyperplastic or benign neoplastic, noted upon inspection of the incidence rates reported for these lesions by different examining pathologists, i.e., those from Bio/dynamics, Division of Pathology (CFSAN), Experimental Pathology Laboratories, and the Peer Review Panel;

(3) With one exception, the unanimous agreement among the different examining pathologists of the absence of any definitive malignant renal cortical tubular neoplasms in the treated rats;

(4) The relatively unique condition wherein up to 20 sections (10 per kidney) were examined from each of the control and treated female rats from the high-dose (5 percent) study;

(5) The absence of any type of renal tubular proliferative response in the male rats (generally regarded as more sensitive than female rats to experimental renal tubular neoplasias) used in this study;

(6) The negative genetic toxicology data base;

(7) The previously reported chronic studies which were all negative for carcinogenicity; and

(8) The judgment that the dose chosen was a good approximation of the maximum tolerated dose (MTD) (Ref. 14).

The Panel concluded that the available data did not allow a definitive judgment to be made regarding what role the chronic progressive nephrosis may have placed in the formation of tubular proliferative lesions in treated and control groups. The Panel also noted that the question of the carcinogenicity of FD&C Yellow No. 6 could not be definitively resolved based upon the observations in the kidneys of the high-dose female group. Rather, the entire body of evidence needed to be evaluated to reach a conclusion.

In addition to the points discussed above, the Panel considered the occurrence of renal cell carcinomas in two untreated male control groups and none in treated groups in the CCMA-sponsored study to be a supportive factor in its evaluation of the evidence. The Panel also considered the fact that the histopathological slides of the kidneys in the NTP-sponsored study on FD&C Yellow No. 6 were reexamined prior to the peer review and NTP's original negative findings in the kidneys were confirmed.

The Panel concluded that "the weight of evidence of all the studies does not suggest that FD&C Yellow No. 6 is a renal carcinogen."

E. FDA's Final Evaluation of the Kidney Lesions

1. *Overview.* Following the peer review, the agency assessed the findings and conclusions of the Peer Review Panel and reevaluated all the information bearing on the question of whether FD&C Yellow No. 6 is a renal carcinogen. The agency concludes that FD&C Yellow No. 6 is not a renal carcinogen.

In reaching this conclusion, the agency noted the differences of opinion of the various pathologists over the diagnoses and nomenclature of small proliferative lesions seen in the kidneys. The following tables (Tables I and II) show the collective diagnoses of the four expert pathologists on the Peer Review Panel (Ref. 14). These tables reflect the range of opinion expressed by all the pathology reviewers and illustrate the dilemma presented by the unprecedented degree of sectioning of these small lesions, which could ordinarily be missed by most routine microslide reviews.

TABLE I.—RESULTS OF THE PATHOLOGY REVIEW OF KIDNEY SLIDES FROM CONTROL FEMALE RATS—STUDY NO. 78-2211—BY THE NTP PEER REVIEW PANEL PATHOLOGISTS ON JANUARY 7-8, 1986[1] [2]

Case No.	Number of proliferative lesions	Simple tubular hyperplasia	Nodular hyperplasia	Adenomatous hyperplasia	Renal tubular adenomas	Renal tubular carcinomas	Other diagnoses
1501	[illegible]		[illegible]				
1511		[illegible]	[illegible]				
1517		[illegible]		[illegible]			
1520		[illegible]	1/4				
1532		1/4	[illegible]	[illegible]			
1549	1/4	[illegible]	1/4				
1552	[illegible]	1/4	1/4				
1555			1/4	1/4	[illegible]		

TABLE I.—RESULTS OF THE PATHOLOGY REVIEW OF KIDNEY SLIDES FROM CONTROL FEMALE RATS—STUDY NO. 78-2211—BY THE NTP PEER REVIEW PANEL PATHOLOGISTS ON JANUARY 7–8, 1986[1] [2]—Continued

Case No.	Number of proliferative lesions	Simple tubular hyperplasia	Nodular hyperplasia	Adenomatous hyperplasia	Renal tubular adenomas	Renal tubular carcinomas	Other diagnoses
1556				3/4	2/4		[3] 2/4
1569							[4] 1/4
	3/10/70	8/10/70	7/10/70	4/10/70	2/10/70	0/10/70	

[1] n/4=Number of Panel pathologists making a diagnosis/total number of Panel pathologists.
[2] n/10/70=Number of animals diagnosed/number of animals examined/total number of animals in group.
[3] Diagnosed lesion as transitional cell carcinoma.
[4] Diagnosed lesion as transitional cell hyperplasia.

Table II.—Results of the Pathology Review of Kidney Slides From Treated Female Rats (FD&C Yellow No. 6—5 Percent in Diet)—Study No. 78-2211—by the NTP Peer Review Pathologists on January 7–8, 1986 [1] [2]

Case No.	Number of proliferative lesions	Simple tubular hyperplasia	Nodular hyperplasia	Adenomatous hyperplasia	Renal tubular adenomas	Renal tubular carcinomas	Other diagnoses
2503			1/4	3/4	1/4		
2507					2/4		
2512				3/4	2/4		
2515	2/4		2/4				
2522	3/4	2/4	1/4				
2524			3/4	3/4			
2525					2/4		
2530			1/4	2/4			
2541		3/4	2/4	2/4			
2550				1/4	2/4		
2551					1/4		
2553				3/4	3/4		
2554							[3] 2/4
2555				3/4	2/4		
2560		2/4	2/4				
2564			2/4	2/4			
2566		2/4	1/4	1/4			
2568					3/4		
2549							[4] 2/4
	2/19/70	4/19/70	9/19/70	10/19/70	9/19/70	0/19/70	

[1] n/4=Number of Panel pathologists making a diagnosis/total number of Panel pathologists.
[2] n/10/70 = Number of animals diagnosed/number of animals examined/total number of animals in group.
[3] Diagnosed lesion as malignant undifferentiated neoplasm, not otherwise specified.
[4] Diagnosed lesion as transitional cell hyperplasia.

2. *Statistical Analysis.* FDA statisticians analyzed the incidence of female rats with proliferative renal cortical lesions in the group treated with 5 percent FD&C Yellow No. 6 and in the control group (see Tables I and II). The lack of agreement among peer review pathologists regarding specific diagnosis provided difficulties as to which incidence figures to use for statistical analysis. The method that FDA used counted only those diagnoses on which two or more of the four pathologists agreed. The FDA analyses compared the two groups with respect to the incidence of female rats with tubular cell "adenoma" only and for combined tubular cell "nodular hyperplasia," "adenomatous hyperplasia," and "adenoma." The incidences for these diagnoses were 7/57 and 2/59 for adenoma only in the treated and control groups, respectively, and 16/57 and 5/59 for the combined lesions in the treated and control groups, respectively. In the latter case, for combined lesions, an animal was counted if two or more pathologists diagnosed any one of the three categories of lesions. The denominators reflect the elimination of the interim sacrificed animals and those dying before the interim sacrifice. The p-values for Fisher's Exact tests performed on these incidences gave 0.073 and 0.0057 for the adenoma only and combined lesions, respectively.

3. *Evaluation.* The extensive sampling provided by the 10 tissue sections per kidney is unprecedented; there is little historical experience from which to draw inferences about what to expect from the results of such a protocol. The small size of the lesions detected from the careful scrutiny of these kidneys apparently contributes to the difference of opinion among pathologists as to the diagnoses of the lesions. The expert pathologists on the Peer Review Panel considered that the disagreements represent valid differences of opinion under circumstances where there has been little previous experience to draw upon.

In addition to the foregoing complexities, many of the observations were made in animals found dead or sacrificed moribund with underlying extensive chronic progressive nephrosis. The nephrosis was extensive and severe in all groups, treated as well as controls, and occurred in a greater number of female rats in the high-dose group than in any other group. Chronic progressive nephrosis occurs spontaneously in older rats and confounds the interpretation of small proliferative lesions because it may affect the formation of these lesions. There are reports in the literature on the effect of age and diet on pathology findings in kidney. The authors of these papers comment extensively on the nephrosis occurring spontaneously in older rats and the effect that diet can play in the severity. For example, Durand, Fisher, and Adams (Ref. 15) refer to "striking" degrees of tubular hyperplasia in rats with spontaneous kidney disease. According to Gray (Ref. 13), most investigators have noted limited degrees of hyperplasia associated with chronic progressive nephrosis but have considered these focal increases of epithelial cells to be secondary in occurrence and compensatory in nature. According to Squire (Ref. 16), renal tubular adenomas occur sporadically in aging control rats and this occurrence appears to correlate with the development of chronic nephropathy. Thus, there is a reasonable basis for attributing proliferative changes in the kidneys of rats exposed to FD&C Yellow No. 6 to chronic progressive nephrosis.

Under these circumstances, the agency considers the findings in the kidneys of female rats from the second Charles River Albino (CD)® rat study as scientifically ambiguous. The observations in these rats represent new findings of scientific research over which scientific agreement about the meaning is lacking and is currently speculative. Yet, taking into consideration what is known about chemical carcinogenesis in animals, especially chemical carcinogenesis in the rat kidney, the results in the kidneys of female rats exposed to high doses of FD&C Yellow No. 6 do not fit the chemical carcinogenesis paradigm. Therefore, FDA concludes, as did the Peer Review Panel, that these data are insufficient evidence of a carcinogenic response that could be attributed to treatment with FD&C Yellow No. 6.

However, under these circumstances of uncertainty, it is necessary to consider the weight of the entire body of evidence on FD&C Yellow No. 6 in order to determine whether the observations in the female rats have any utility in making conclusions about the carcinogenic potential and the safety of the color additive. Having evaluated all of the evidence from these studies, FDA has concluded that there is no basis for concluding that FD&C Yellow No. 6 is capable of inducing cancer of the kidneys. The main reasons that lead the agency to this conclusion are:

(a) *Proliferative lesions in male rats.* In the first and second Charles River Albino (CD)® rat studies, proliferative lesions of renal tubules were observed in several male rats in each of the three control groups. Some of these lesions were diagnosed as tubular cell carcinoma. These lesions were observed even though only one section per kidney was examined. Some kidney lesions were observed in treated male rats, but the number was generally lower than in the control groups. Apparently, in these studies of such a long duration (28 months), proliferative lesions of the renal tubules are not rare.

(b) *Greater reactivity of male rats to renal carcinogens.* A recent survey of more than 230 chemicals tested in 2-year chronic toxicity studies by NCI/NTP showed that chemically induced neoplasia of the kidney occurred more commonly in males than in females (Ref. 17). In fact, they found that of 10 chemicals identified as renal carcinogens, none produced renal neoplasta in females only. From additional searching of the literature on carcinogenicity, FDA scientists have been unable to find one example of a substance inducing renal tubular proliferative lesions in female rats only. On the other hand, male rats have responded to effects of renal carcinogens when female rats have been refractory (Ref. 17). There is no reason to believe that FD&C Yellow No. 6 would be an exception to the general observation that male rats are more sensitive to the effects of renal cortical carcinogens than female rats.

(c) *Lack of malignant tumors.* The Peer Review Pathologists did not diagnose as malignant any of the renal tubular lesions in the female rats administered FD&C Yellow No. 6. As can be seen in tables I and II, the lesions were described either as categories of hyperplasia or as early microscopic adenoma. The length of the study was 28 months following in utero exposure compared to the more usual 24 months without prior in utero exposure and the dietary level of the administered color additive was at 5 percent throughout the duration of the study. The design of the study afforded maximal opportunity for any substance to express the full range of proliferative tubular lesions, including carcinoma. That the full range of proliferative lesions was not seen, is, in the agency's view, a significant factor against the color additive inducing carcinogenic effects in the rat kidney. Considering that this study lasted some 16 months following detection of the first proliferative lesion, the fact that there was no progression to malignancy is not consistent with chemical induction of a carcinogenic process. The lack of progression is especially evident in the results of the terminal sacrifices where only 2 of 10 treated female rats displayed changes and the changes were only microscopic proliferative lesions. Thus, if FD&C Yellow No. 6 were a carcinogen for rat kidneys, at least some of the proliferative lesions observed in the study should have progressed to the malignant state. (Members of the Peer Review Panel judged this to be an important consideration.)

(d) *No decreased latency period.* Generally, the renal tubular lesions were seen in older animals. There was no evidence of a shortening of the latency period to the occurrence of proliferative renal lesions in the high-dose group which one would expect if renal carcinogenesis were taking place. Indeed, the earliest female rat with a proliferative lesion was 1 of the 10 controls that was sacrificed at 1 year. This is near the time when chronic renal nephrosis becomes notable. Renal proliferative lesions were an incidental finding in kidneys of rats that were found dead as early as 16 to 17 months into the chronic phase. (An incidental finding is one that is discovered at the necropsy of an animal which died of something else. See Peto, R., *British Journal of Cancer,* 29:100 (1974) (Ref. 19.).

(e) *Coincidence of renal proliferative lesions and chronic renal disease.* There was a considerable incidence of chronic progressive nephrosis in all groups and an increase in the incidence and severity of chronic progressive nephrosis in female rats fed high levels of FD&C Yellow No. 6. Chronic progressive nephrosis is a phenomenon in CD rats that increases dramatically with age (Ref. 13). Spontaneously occurring proliferative lesions/neoplasms of the renal tubules also tend to increase with age (Ref. 13).

(f) *Lack of corroborative evidence from other studies.* None of the other chronic studies in rats, mice, and dogs displayed a suggestion of treatment-related carcinogenic effects of FD&C Yellow No. 6 of the kidney. These studies include the recent studies with rats and mice sponsored by NTP. This lack of confirmation from other studies of the suggestive kidney finding in the second Charles River Albino (CD)® rat study further reduces the possibility that feeding FD&C Yellow No. 6 resulted in a carcinogenic process in the kidneys.

(g) *Genotoxicity of FD&C Yellow No. 6.* With the exception of one test for which increases in the chromosomal aberrations in vitro were reported to be associated with treatment (Ref. 20), all genotoxicity testing gave negative results (Ref. 21). There are reasons to question the validity of the positive results of the test for chromosomal damage because the substance used was not from a certified batch of FD&C Yellow No. 6 and because problems with purity were reported by the investigators (Ref. 22). Moreover, negative results were reported by the same investigators in an in vivo test that was used to investigate a similar end point. The results of short-term tests, when properly used and validated, can provide a strong indication of potential carcinogenicity (Ref. 5). The predominantly negative results with FD&C Yellow No. 6 support the conclusion that the color additive is not a carcinogen.

(h) *Conclusion.* The foregoing considerations have led the agency to conclude that the results of the second Charles River Albino (CD)® rat study do not support a finding that FD&C Yellow No. 6 when fed in the diet of laboratory animals, induced carcinogenic activity in animal kidneys or any other site. Moreover, no other data or scientific information exists to implicate FD&C Yellow No. 6 as a carcinogen. In fact, all of the other chronic studies and genetic toxicity testing provide no basis for a conclusion that FD&C Yellow No. 6 is carcinogenic. Under these circumstances, FDA concludes that FD&C Yellow No. 6 has not been shown to be a carcinogen and that, therefore, the proscriptions of the Delaney Clause do not apply to a determination whether the color additive may be permanently listed.

VI. Acceptable Daily Intake for FD&C Yellow No. 6

Based on the occurrence of the adverse effect of FD&C Yellow No. 6 on body weight gain seen at the 1.5 percent dietary level of the color additive in the most recent chronic feeding study in rats sponsored by CCMA, the agency concludes that the no adverse effect dosage is 0.75 percent (equivalent to 375 milligrams per kilogram body weight per day). Applying a hundredfold safety factor, the agency has calculated the acceptable daily intake for FD&C Yellow No. 6 to be 3.75 milligrams per kilogram body weight per day, or 225 milligrams per day for a 60 kilogram human. As discussed further below, the agency concludes that the likely foreseeable exposure to FD&C Yellow No. 6 from all uses should not exceed 45 milligrams per day. Thus, the available data support an adequate margin of safety for the human use of FD&C Yellow No. 6.

VII. FDA'S Evaluation of the Possible Risks Presented by Carcinogenic Constituents of FD&C Yellow No. 6

A. Background

During the safety review, the agency developed new methodology for determining trace levels of unsulfonated impurities in water-soluble color additives (Refs. 23 and 24). As reported in the **Federal Register** of September 4, 1985 (50 FR 35774), the application of this methodology to the analysis of FD&C Yellow No. 5 detected six carcinogenic impurities present in that color additive. FD&C Yellow No. 6 was also examined using the same methodology because it shares a common intermediate with FD&C Yellow No. 5 and is manufactured in a similar manner. Analysis of commercial, certified batches of FD&C Yellow No. 6 revealed five of the same six carcinogenic impurities detected in FD&C Yellow No. 5. The carcinogenic impurities that the agency found in some batches of FD&C Yellow No. 6 were aniline, azobenzene, 4-aminobiphenyl, 1,3-diphenyltriazene, and 4-aminoazobenzene.

The results of the analysis of representative samples from certified batches of FD&C Yellow No. 6 are summarized in Table III below. The concentrations of the impurities are expressed in parts per billion. The lower detection limit mentioned in the table is the approximate concentration of the impurity that causes a response on the chromatogram that is visible above the background. This limit is less than the concentration that will produce a response that can be reliably quantitated as determined by statistical analysis. The agency is continuing to develop methodology with the goal of improving quantitation of some of these impurities at lower concentrations. New § 74.706 as set forth below establishes specifications that would limit the concentrations in future batches for the five impurities detected in FD&C Yellow No. 6.

In contrast to FD&C Yellow No. 5, analysis of batches of FD&C Yellow No. 6 did not reveal benzidine in detectable amounts. However, benzidine is likely to be present below the level of analytical sensitivity in some of those batches analyzed because of the similarity in the manufacturing process and the intermediates with FD&C Yellow No. 5. Future batches of FD&C Yellow No. 6 could possibly contain levels of benzidine similar to those found in some batches of FD&C Yellow No. 5. Therefore, because of this possibility, the agency is placing a limitation on the level of benzidine permitted in the color additive to restrict its presence in future batches.

During the development and evaluation of the analytical methodology for two of the impurities, namely, azobenzene and 1,3-diphenyltriazene, FDA observed an additional constituent of FD&C Yellow No. 6. FDA later identified this component as the unsulfonated subsidiary color formed by the coupling of aniline and 2-naphthol to form 1-(phenylazo)2-naphthalenol, Color Index 12055, CAS Reg. No. 842-07-9. This constituent is also known as Sudan I, Sudan Yellow, and C. I. Solvent Yellow 14. (The component will be referred to as Sudan I for purposes of discussion in this order.)

TABLE III.

Constituent	Number of batches containing detectable levels of impurity	Range of impurity concentrations, parts per billion	Average impurity level, parts per billion
4-Aminoazobenzene	23 [1]	Less than 0.6–1,099 [2]	40.
4-Aminobiphenyl	23 [1]	Less than 0.1–17 [2]	4.
Aniline	34 [1]	5–422 [2]	98.
Azobenzene	29 [3]	Less than 1–230 [2] (max.) [2].	53.
Benzidine	0 (Not found) [1].	Less than 1 [2]	Less than 1.
1,3-Diphenyltriazene	2 [3]	Less than 12–15 [4]	13.
Sudan I	17 [5]	Less than 100–4,700	1,260.

[1] 34 batches tested.

[2] Lower detection limit.

[3] 37 batches tested.

[4] Visual detection limit estimated at 10 parts per billion.

[5] 23 batches tested.

B. Prior Actions by FDA

Even though appropriate testing of FD&C Yellow No. 6 does not show the color additive to be a carcinogen, the agency must still consider whether the color additive, in light of the fact that it may contain carcinogenic impurities, may be safely used in food, drugs, and cosmetics.

In the past, FDA has terminated the provisional listing of several color additives that contained or were suspected to contain a carcinogenic impurity. However, the agency no longer believes that it must refuse to list a color additive simply because it contains or is expected to contain a carcinogenic impurity. (These past agency actions are described in the preambles to the D&C Green No. 5 final rule published in the **Federal Register** of June 4, 1982 (47 FR 24278, 24280) and the FD&C Yellow No. 5 final rule in the **Federal Register** of September 4, 1985 (50 FR 35774).)

As explained in the D&C Green No. 6 final rule (47 FR 14135, 14141–14142; April 2, 1982), the agency has concluded that even if a color additive contains a carcinogenic impurity, the provisions of section 706(b)(5)(B) of the act do not apply unless the color additive as a whole is found to cause cancer. The agency is confident that it possesses the capacity (through the use of extrapolation procedures) to assess adequately the upper limit of risk presented by the use of a color additive that has not been shown to be a carcinogen but that does contain a carcinogenic impurity. The estimate of the risk is exaggerated because the extrapolation models used are designed to estimate the maximum risk. For this reason, the estimate can be used with confidence to conclude that a substance is safe under specific conditions of use. (FDA has also explained the basis for the approach in the advance notice of proposed rulemaking on its policy for regulating carcinogenic chemicals in food and color additives published in the **Federal Register** of April 2, 1982 (47 FR 14464).)

The agency is using the same approach for assessing the safety of the use of FD&C Yellow No. 6 that it used in its review of other color additives. The agency examined the risk associated with the drug and cosmetic uses of D&C Green No. 6, D&C Green No. 5, D&C Red No. 6, and D&C Red No. 7 (47 FR 57681; December 28, 1982), which contain minor amounts of *p*-toluidine. None of these color additives had been shown to be carcinogenic by appropriate bioassays. FDA concluded that the use of each of these color additives in drugs and cosmetics is safe.

The agency's position is supported by *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which, as explained above, contains a carcinogenic chemical but has not itself been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list D&C Green No. 5, the United States Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulations.

Because FD&C Yellow No. 6 has not been shown to cause cancer, the anticancer clause does not apply to it. FDA has evaluated the safety of this additive under the general safety clause, using risk assessment procedures to estimate the upper bound limit of risk presented by the carcinogenic chemicals that may be present as impurities in the additive, and has concluded that the additive is safe under the proposed conditions of use.

The risk assessment procedure used has two aspects: (1) Assessment of the probable exposure to the impurity from the proposed use of the additive, and (2) extrapolation of the risk observed in the animal bioassays of the impurities to the conditions of probable human exposure.

C. Exposure to Carcinogenic Impurities in FD&C Yellow No. 6

The agency has estimated the maximum risk from exposure to the carcinogenic impurities that may result from general use of FD&C Yellow No. 6 in food, drugs, and cosmetics.

FDA certified an average of 1.2 million pounds of FD&C Yellow No. 6, over 341,000 pounds of FD&C Yellow No. 6 lakes, and just under 2,000 pounds of D&C Yellow No. 6 lakes per year over the 5-year period from 1978 through 1982. Poundage certified in 1983 was just over 1 million pounds of FD&C Yellow No. 6, over 379,000 pounds of FD&C Yellow No. 6 lakes, and over 200 pounds of D&C Yellow No. 6 lakes (Ref. 28). For the years 1984 and 1985, the average poundage certified was over 1 million pounds for FD&C Yellow No. 6, over 433,000 pounds for FD&C Yellow No. 6 lakes, and over 2,000 pounds for D&C Yellow No. 6 lakes. FD&C Yellow No. 6 lakes are made from certified batches of FD&C Yellow No. 6. In the past, D&C Yellow No. 6 lakes could have been made from batches of the color additive that had not been certified. (As discussed below, this practice will no longer be allowed.) Currently, the lakes are also subject to certification.

Based on certified poundage data for the last 14 years, the agency projects certification of approximately 1.4 million pounds per year of FD&C Yellow No. 6 and its lakes by 1990 (Ref. 28). Per capita exposure to 1.4 million pounds per year of the color additive is an average of 2.8 grams per year or 7.6 milligrams per day if all is used equally by the entire U.S. population. Based upon this projection, the agency does not expect a significant change in consumer exposure to FD&C Yellow No. 6.

The agency has considered the types of products that contain FD&C Yellow No. 6 and the likely exposure to the color additive for a high user of such products. The agency concluded that, averaged over a lifetime, a high user of such products could ingest as much as 39 milligrams per day, and could be exposed to 6 milligrams per day from dermal applications. (Ref. 28 explains in detail the basis for these estimates.)

In adopting specifications for FD&C Yellow No. 6, FDA considered the concentrations of the carcinogenic impurities that were present in the certified batches of the color additive that the agency recently surveyed.

The agency developed "tentative working specifications" by identifying a concentration (in round numbers) for each impurity consistent with current good manufacturing practice, as evidenced by the surveyed batches. These levels approximate the levels of the carcinogenic impurities that were in the sample tested in the chronic toxicity studies.

FDA then estimated the maximum carcinogenic risk attributable to each impurity to evaluate whether the "tentative working specifications" were adequate. For those impurities with the greatest carcinogenic potencies, the agency revised the specification downward to the lowest level, given current knowledge, that can be practicably produced and enforced. The agency is adopting in § 74.706(b) these specifications, which are listed in the first column of Table IV.

TABLE IV.—ESTIMATED IMPURITY EXPOSURE AT THE SPECIFICATION LIMITS

Constituent	Specification (part per billion)	Per capita exposure (ng/day)[1]	High user exposure (ng/day)[1]	
			Oral	Dermal
4-Aminobi-phenyl	15	0.1	0.6	
4-Aminoazo-benzene	50	0.4	2	0.3
Aniline	250	1.9	10	
Azobenzene	200	1.5	8	
1,3-Diphenyl-triazene	40	0.3	1.5	0.2
Benzidine[2]	[3] 1	0.008	0.04	
Sudan I	10,000	80	400	

[1] ng=Nanograms (1 billionth of a gram)

[2] Not found in survey of 37 batches.

[3] The quantitation limit for benzidine is 5 parts per billion, but its presence can be visualized at 1 part per billion (Ref. 27).

A comparison of these specifications and the average impurity levels obtained by analysis of the surveyed certified batches, as shown in Table III, reveals that in most cases the average (arithmetic mean) impurity level has been far below the specifications that FDA is adopting.

Table IV also gives the estimated exposure of individuals to the impurities if each batch of the color additive contained each impurity at the maximum level allowed by the specifications. The "per capita exposure" (second column of Table IV) is calculated by multiplying the per capita exposure to FD&C Yellow No. 6 described previously (7.6 milligrams per day) by the specification for each impurity. The high user exposure (column 3) is similarly calculated by multiplying the high user exposure (39 milligrams per day by ingestion) by each specification. Systemic exposure to these impurities from dermal application will be negligible compared to ingestion because the great majority of exposure to this color additive results from its ingested uses and because only a small fraction of a dermally applied product is likely to be absorbed.

Two of the impurities, 4-aminoazobenzene and 1,3-diphenyltriazene, have been shown to be carcinogenic not only when ingested but also when applied externally to the skin. Accordingly, the agency has estimated not only the risks from systemic exposure but also those from dermal exposure. FDA has based its estimates of risk from dermal exposure on the skin painting studies and on the high user external exposure to FD&C

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Yellow No. 6 (6 milligrams per day) (Ref. 26).

D. Risk Extrapolations Regarding the Potential Contaminants

The second part of the evaluation of the risk presented by the presence of the impurities is an extrapolation from the actual compound-related incidence of tumors found in animal bioassays under conditions of exaggerated exposure to the conditions of probable exposure for humans.

The agency has used estimates of carcinogenic potency and estimates of exposures to the carcinogenic impurities for high users of FD&C Yellow No. 6 (with all carcinogenic impurities at the maximum concentrations allowed by the specifications) to estimate risks for exposure to each impurity. The agency has then summed these risks to derive the maximum upper bound risk associated with lifetime exposure to FD&C Yellow No. 6.

The agency searched the scientific literature for evidence on the carcinogenicity of the impurities found in FD&C Yellow No. 6. If more than one study found one of these impurities to be carcinogenic, the agency identified the study that was most suitable to estimate risk. Although, in general, these studies were not designed to estimate risk and were often deficient under current standards, they are the only studies available and cannot be ignored. Also, the reports did not always provide all the information necessary for a risk estimate. The agency has thus attempted to make assumptions and corrections that would provide estimates that are reasonable while not underestimating the risk. These assumptions and corrections are presented more fully in the discussions of each constituent.

4-Aminoazobenzene

The agency has evaluated reports showing that 4-aminoazobenzene is carcinogenic in the diet of rats (Refs. 28 and 29), and that it is carcinogenic when applied dermally to rats (Ref. 30). The agency has developed a risk estimate from each of these studies.

A study implicating 4-aminoazobenzene as a carcinogen by dietary administration to Wistar rats was reported by Kirby et al. (Ref. 29). The study reported that 7 of the 16 animals in the treated group were found to have liver cell neoplasms after a total of 120 weeks. Six rats in this group displayed papillomas of the stomach. No information is available to determine whether any of the individual rats had neoplasms in both the liver and the stomach. Although the dose was allowed to vary throughout the experiment, the Center for Food Safety and Applied Nutrition's Quantitative Risk Assessment Committee calculated the average dose over 120 weeks to be 0.25 percent in the diet (Ref. 31).

4-Aminoazobenzene was also implicated as a carcinogen in a skin painting study in which 1.0 milliliter of a 0.2 percent acetone solution containing 4-aminoazobenzene (corresponding to a dose of 2.0 milligrams of 4-aminoazobenzene per application) was applied to the skin twice weekly on six male albino rats as a part of a larger study utilizing a number of azo compounds (Ref. 30). All six male rats in the treatment group displayed skin neoplasms after 123 weeks compared to none in the control group.

The agency has estimated that the lifetime risk of cancer from all systemic exposure to 4-aminoazobenzene (ingested and absorbed through the skin) is less than 3 in 10 billion from products containing FD&C Yellow No. 6 (Refs. 31 and 32). The data indicate, however, that 4-aminoazobenzene may be a more potent carcinogen at the site of application to the skin than when absorbed systemically. The agency has estimated that the lifetime risk of skin cancer from dermal application of products containing 4-aminoazobenzene is less than 6 in 1 billion (Refs. 31 and 32). Because the risk estimate for dermally applied products is larger than for ingested products, FDA is using this higher estimate to evaluate total risk.

4-Aminobiphenyl

A number of studies in different species have been performed on 4-aminobiphenyl. The agency has chosen a dog study reported both by Block et al. and by Rippe et al. for quantitative risk assessment because the data on this study yield a higher risk estimate than data from other studies (Refs. 33, 34, and 35).

In this study, 24 pure-bred female beagle dogs were administered 4-aminobiphenyl orally, by capsule, at a dosage level of 5 milligrams per kilogram body weight for 5 days a week. Cystoscopic examinations were made routinely starting at 16 months and continuing up to 41 months after commencement of treatment. Diagnoses at 24 months showed that 22 of 24 treated dogs had bladder papillomas. Because this incidence is so high, data at later times show essentially the same incidence. Data at earlier times show a lower incidence, proportional to the lesser exposure time. The agency concludes that data obtained at 24 months are the most reliable for risk assessment because, among other reasons, more complete histopathology was performed at this time (Ref. 35).

Under circumstances in which lifetime risk must be estimated from studies that are performed for less than a lifetime, the data must be corrected to account for the fact that the animals were at risk for less than a lifetime. Typically, tumor incidence has been thought to be proportional to some power of time (Ref. 36). The agency believes that in the absence of specific data, it is reasonable in these circumstances to make adjustments based on a model that uses the third power of the time exposed (Refs. 35 and 36).

Because 24 months represent approximately one-fifth of the lifetime of a beagle dog, the Quantitative Risk Assessment Committee has corrected for the rapid induction of these neoplasms in the calculation of lifetime risk. Extrapolating directly from the data and making a correction for less than lifetime exposure, the agency estimates that the lifetime risk of cancer from systemic exposure to 4-aminobiphenyl in products containing FD&C Yellow No. 6 is less than 3 in 10 million (Refs. 32 and 35).

Aniline

Data reported by NCI demonstrated that aniline was carcinogenic to the spleen of Fischer 344 rats (Ref. 37). This finding has subsequently been verified by a dietary study performed by the Chemical Industry Institute of Toxicology (CIIT) using the same strain of rat (Ref. 38). FDA used data from the CIIT study to estimate that the lifetime risk of cancer from systemic exposure to aniline in products containing FD&C Yellow No. 6 is less than 1 in 10 billion (Refs. 32 and 39).

Azobenzene

In an NCI-sponsored bioassay reported in 1979, azobenzene induced a dose-related increase in the incidence of sarcomas of the abdominal cavity, particularly the spleen, in both sexes of Fischer 344 rats (Ref. 40). Three groups of animals (0, 200, and 400 parts per million in the diet) per sex were used in the study. From this study, the agency estimates that systemic exposure to azobenzene in products containing FD&C Yellow No. 6 presents a lifetime risk of less than 8 in 10 billion (Refs. 32 and 41).

1,3-Diphenyltriazene

The agency has evaluated reports showing that 1,3-diphenyltriazene is carcinogenic in the diet, and that it is carcinogenic when applied dermally. A study performed by Otsuka (Ref. 42), while deficient in certain aspects, showed that 1,3-diphenyltriazene produced forestomach tumors in mice upon dietary exposure. The compound was administered in the diet at a concentration of 0.04 percent for 483 days. Although this dietary study is quite old and was terminated after 16 months, the agency believes that it is usable if corrected for less than lifetime exposure. Assuming the average lifetime of a mouse is 24 months, the agency has corrected for less than lifetime exposure by assuming the risk of cancer increases as the third power of the time exposed (Refs. 36 and 44). Therefore, the agency has used a correction factor of 3.4., i.e., (24 months/16 months)^3, which increases the estimated risk.

Using this correction, the agency estimates that systemic exposure to 1,3-diphenyltriazene from products containing FD&C Yellow No. 6 presents a lifetime risk of less than 2 in 1 billion (Refs. 32 and 44).

A lifetime skin painting study using 1,3-diphenyltriazene on mouse skin was performed by Kirby (Ref. 43). This skin study involved a twice weekly application of a 5 percent solution of the test compound in acetone. In 16 mice surviving more than 300 days, 3 developed squamous cell papilloma, and 3 developed squamous cell carcinoma. One mouse that developed a carcinoma could not be identified as part of this experiment or a parallel experiment. The agency has assumed that this mouse was part of this experiment so as not to underestimate risk. As was often the case in the 1940's, when this study was conducted, the amount of solution applied to the skin of the animals was not accurately measured and thus not reported for this experiment. The failure to measure and to report this information creates problems in conducting a quantitative risk assessment. However, in later years, the standard protocol for this kind of study in mice became the application of 0.20 milliliter of solution to the skin. Because the agency does not know whether as much as 0.20 milliliter was applied, it has made a more conservative assumption that 0.10 milliliter was used to estimate the risk. Using this procedure, the agency estimates that dermal exposure to 1,3-diphenyltriazene from products containing FD&C Yellow No. 6 presents a lifetime risk of less than 2 in 100 billion (Refs. 32 and 44).

Benzidine

FDA used a human epidemiology study by Zavon (Ref. 45) and a study performed by Rhinde and Troll in the rhesus monkey (Ref. 46) as the basis for a quantitative risk assessment on benzidine.

Zavon attempted to obtain good data on exposure to benzidine by analyzing the urine of workers in a plant that manufactures this substance. The workers were monitored until a number of them were diagnosed as having bladder neoplasms. Urine levels of benzidine in workers were measured before each work shift, after each work shift, and on every Monday morning. Average levels were: before work, 0.01 milligram per liter; after work, 0.04 milligram per liter; and on Monday morning before work, somewhat below 0.005 milligram per liter.

No controlled study with the administration of benzidine and the concomitant measurement of benzidine in the urine in humans has been performed. Thus, the conversion from urine concentration to total exposure cannot be made from human data alone. However, the Rhinde and Troll study related ingestion of benzidine to amounts of benzidine and monoacetylbenzidine in the urine of rhesus monkeys. The agency believes it is reasonable to use this study to relate urine concentration to exposure for humans (Ref. 46). This procedure yields a higher risk estimate than if the risk was estimated solely from an animal feeding study and thus it is less likely to underestimate risk.

In the Rhinde and Troll study, benzidine was administered orally to Rhesus monkeys, and the 72-hour urine collection was analyzed for benzidine and monoacetylbenzidine. In two trials, the amount of benzidine and monoacetylbenzidine excreted in the urine was 1.4 percent and 1.5 percent of the initial input. The agency used these data and applied a safety factor of two to compensate for uncertainties, to estimate that the amount of benzidine and monoacetylbenzidine excreted in the urine of humans is approximately 3 percent of that consumed. The agency then calculated that the average human worker in the Zavon study was exposed to approximately 0.8 milligram benzidine per work day.

The agency estimated systemic exposure to benzidine based on the two studies discussed above. The potential lifetime upperbound risk, if benzidine is present in products containing FD&C Yellow No. 6, is estimated to be 3 in 10 million (Refs. 32 and 47).

Sudan I

In an NTP-sponsored bioassay reported in 1982, Sudan I produced neoplastic nodules of the liver in rats (Ref. 25). Three groups of animals (0, 250, and 500 parts per million in the diet) per sex were used in the study. Although Sudan I was not designated as a carcinogen by the agency's Cancer Assessment Committee, a worst case estimate was made. Based on the data reported in the NCI/NTP study, FDA estimated that if Sudan I were a carcinogen, the lifetime risk of cancer from systemic exposure to Sudan I (at the specification limit shown in Table IV) in products containing FD&C Yellow No. 6 would be less than 4 in 100 million (Ref. 48).

E. Cumulative Risk Estimates Regarding the Potential Contaminants

The agency, in evaluating FD&C Yellow No. 5, established a precedent by setting specifications for a color additive with multiple carcinogenic constituents (50 FR 35774). The agency used the same procedure to evaluate the safety of FD&C Yellow No. 6 because it has to consider the most appropriate way to evaluate the risk from consuming small amounts of several carcinogenic agents stimultaneously.

The Office of Science and Technology Policy discussed the issue of exposure to multiple carcinogenic agents in a document entitled "Chemical Carcinogens; A Review of the Science and Its Associated Principles" (50 FR 10371, 10394; March 14, 1985) as follows:

> Since people are exposed to many different agents at the different times in different sequences, the effect of multiple agents on carcinogenesis is of major concern. However, there is little information of general import in the field. Models for interaction are generally limited by lack of information on dose-response curves for carcinogens in the area of interest. The great number of permutations of possible agents and doses makes understanding interaction of multiple agents very difficult.
>
> In general, the action of two or more agents can be additive (if the agents are given in a dose range where the biological response is a linear function of dose) or multiplicative (if the response is a simple exponential response to dose), synergistic (greater than expected) or antagonistic (less than expected.

The agency knows of no method whereby potential multiplicative, synergistic, or antagonistic interactions can be incorporated in to a generalized risk assessment process. Furthermore, at the dose levels under consideration (far below those having measurable pharmacologic or physiologic activity), the agency sees no reason to consider synergistic or antagonistic interactions. When one extrapolates carcinogenicity data downward to very low doses, one is, in effect, assuming that the carcinogens are acting independently, and that no interactions occur. Thus, if the probability of developing cancer

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from one substance is independent of the probability of developing cancer from another substance, then the probability of developing cancer from either substance may be obtained from summing the individual probabilities. Therefore in the absence of specific information on the interactions among the carcinogenic impurities, the agency believes that, operationally, the risks incurred from the presence of multiple carcinogenic impurities in a color additive or food additive can be considered independent, and that the estimated risks should be summed.

Table V shows the total upper bound risk estimated by summing the risk estimates from the six detected carcinogenic impurities when present at their highest level, consistent with specifications in the new § 74.706, to be less than 3 in 10 million.

Table V—Upper Bound Risk Estimates Based on Specifications for Carcinogenic Impurities in FD&C Yellow No. 6

Constituent	Lifetime cancer risk
4-Aminoazobenzene	0.000000006 (6×10^{-9})
4-Aminobiphenyl	0.0000003 (3×10^{-7})
Aniline	0.0000000001 (1×10^{-10})
Azobenzene	0.0000000008 (8×10^{-10})
1,3-Diphenyltriazine	0.000000002 (2×10^{-9})
Sudan I	0.00000004 (4×10^{-8})
Sum[1]	0.0000003 (3×10^{-7})

[1] In summing risk estimates, numbers have been rounded off to the nearest significant figure.

The agency emphasizes that these upper bound risk estimates are worst case estimates that are used to assure that there is a reasonable certainty that use of an additive will not cause harm. They are not intended to predict an actual risk. Consequently, several assumptions used for the estimate tend to overestimate rather than underestimate risk. For example, the linear-at-low-dose model used for these calculations to extrapolate risk to low-dose exposure is a conservative model.

Furthermore, the agency's risk estimates are based on the assumption that all carcinogenic impurities are present at the maximum concentrations allowed by the regulation. In reality, any batch with any impurity concentration above a specification would be rejected while batches with lower concentrations would be allowed. Therefore, unless all batches of certified color additive have impurity concentrations exactly at the specification limits, the average concentration of each impurity will be lower than the maximum allowed.

This fact is exemplified in Table 111, which shows that the average concentration of all of the impurities was well below the concentration specified in the regulation, even though particular batches did exceed these specifications.

Finally, the agency points out that, in the recent carcinogenicity studies in rats and mice at very high dietary levels (5 percent), much higher than human dietary exposure, FD&C Yellow No. 6 did not induce cancer. Moreover, the agency concludes that the levels of the impurities found in FD&C Yellow No. 6 are so low that under no circumstances could a bioassay detect a carcinogenic effect from these impurities.

The agency has considered the potential presence of these impurities in all other color additives as part of its evaluation of FD&C Yellow No. 6. At present, the agency can only estimate risks for products containing both FD&C Yellow No. 6 and FD&C Yellow No. 5. The cumulative risk from these two color additives would be less than 7 in 10 million.

D&C Red No. 33, which is currently provisionally listed and under review, is expected to contain some or all of the impurities found in FD&C Yellow No. 6. However, exposure to these impurities from D&C Red No. 33 will depend on whether it is permanently listed and, if so, what specifications the agency sets for the additive. Thus, the agency cannot make reasonable estimates of exposure to the impurities in this additive until all remaining issues affecting decisions on this additive are resolved.

The agency believes that the maximum risk to consumers from the use of FD&C Yellow No. 6 alone or in combination with FD&C Yellow No. 5 is sufficiently low that it can conclude that the use of batches of FD&C Yellow No. 6 that meet the specifications adopted by this rule is safe. The agency will review any risk resulting from exposure to these impurities in other color additives, including D&C Red No. 33, and will take whatever regulatory action is needed to protect the public health, when sufficient information is available for an appropriate decision.

VIII. Possible Allergic Reactions to FD&C Yellow No. 6

A. Discussion of Problems

Several published articles report allergic-type reactions to FD&C Yellow No. 6 (Refs. 49 through 56). One of these, a case study reported by Jenkin, P. et al. (Ref. 56), was cited as evidence of the allergenic nature of FD&C Yellow No. 6 in the December 14, 1984, Public Citizen petition concerning the remaining 10 provisionally listed colors. The agency in denying that petition had noted that "[T]he cited article is an isolated medical case report of an immunosuppressed, severely ill patient who was observed to experience gastrointestinal symptoms from sunset yellow powder (presumably uncertified FD&C Yellow No. 6) taken by mouth." The agency stated that it "did not consider this single case report to provide a basis for concluding that FD&C Yellow No. 6 is an allergen." This information, however, together with the structural similarity of FD&C Yellow No. 6 to FD&C Yellow No. 5, which has also been reported to cause allergic-type reactions, prompted the agency to review all available information on allergic-type reactions related to the consumption of the color additive.

Sensitivity to FD&C Yellow No. 6 has been reported to occur slightly less frequently than does sensitivity to FD&C Yellow No. 5. In a case report by Chaffee and Settipane (Ref. 50) and in a clinical study by Weber et al. (Ref. 51), evidence of asthmatic reactions to the color additive was reported. Studies by Michelsson and Juhlin (Ref. 52) and Thune and Granholt (Ref. 53) suggested that patients could develop urticaria from azo dyes such as FD&C Yellow No. 6. In another report, Michelsson et al. (Ref. 54) studied several patients with allergic vascular purpura hypersensitivity reactions to determine their sensitivity to azo dyes. Trautlein and Mann (Ref. 55) reported a case of anaphylactic shock due to exposure to FD&C Yellow No. 5 and FD&C Yellow No. 6 in soap used for a cleansing enema. The patient was reported to be sensitive to both color additives upon subsequent testing. Jenken et al. (Ref. 56) reported a case of gastrointestinal symptoms (pain and vomiting) possibly associated with ingestion of a medication containing FD&C Yellow No. 6.

Many substances to which people are exposed, including those occurring naturally, may elicit allergic-type reactions in susceptible individuals. A great variety of materials has been implicated in allergic-type reactions, e.g., dusts of various kinds, pollens, feathers, mold spores, insect fragments, bee stings, seeds, dander, and a number of foods (Ref. 49). Hypersensitive persons may react by exhibiting a number of responses, including angioedema, urticaria, asthma, pruritis, rhinitis, and anaphylaxis.

B. Views and Recommendations of FDA's Advisory Committee on Hypersensitivity to Food Constituents

FDA announced in the **Federal Register** of April 16, 1984 (49 FR 15021), the establishment of the Ad Hoc Advisory Committee on Hypersensitivity to Food Constituents (the Committee) by the Secretary of

Health and Human Services. At the first meeting held September 12 and 13, 1985, the Committee was charged to (1) review data on the incidence and severity of hypersensitivity of food constituents; (2) determine criteria to assess the magnitude of hypersensitivity reactions to food constituents; (3) identify classes of food constituents or specific food constituents for further review, (4) indicate, if possible, the mechanism of action for the identified constituents or classes of constituents; (5) assess the impact of hypersensitivity problems on public health; and (6) evaluate the effectiveness of labeling or alternative strategies for the identified health concerns.

During its meeting on May 8 and 9, 1986, the Committee considered information on the sensitivity of humans to four specific food and color additives. Tartrazine (FD&C Yellow No. 5), an azo dye, was one of the substances considered. The Committee also reviewed data on the incidence and severity of hypersensitivity to aspirin and to the color additive FD&C Yellow No. 5, and considered the issue of whether there was an association between the two in regard to hypersensitivity. FD&C Yellow No. 6 is also an azo dye and is structurally similar to FD&C Yellow No. 5. Therefore, the agency believes that the observations and recommendations the Committee made concerning FD&C Yellow No. 5 are relevant for FD&C Yellow No. 6.

The literature reports of cross sensitivity to aspirin and FD&C Yellow No. 5 have served as the bases for requiring a label warning on drug package inserts. However, the Committee pointed out flaws in the studies reported in the literature that have been used by FDA over the years as evidence for the view that people who are sensitive to aspirin may also be sensitive to FD&C Yellow No. 5.

Based upon the Committee's recent review of the literature on FD&C Yellow No. 5, the Committee concluded that: (1) there is no evidence in the information reviewed to show that FD&C Yellow No. 5 as a food coloring ingredient constitutes a hazard to the general public when used at its current levels, (2) there is some evidence to indicate that FD&C Yellow No. 5 may be the etiologic agent in cases of urticaria in a small subset of the population and the reactions are mild; (3) there is no conclusive data to indicate that FD&C Yellow No. 5 can provoke attacks of bronchial asthma, or that other azo dyes are likely to cause reactions in the asthmatic population, (4) the current labeling declaration practice should be continued to allow individuals with suspected FD&C Yellow No. 5 sensitivity to make prudent decisions, and (5) the current precaution stating that FD&C Yellow No. 5 sensitivity is "frequently seen in patients who also have aspirin sensitivity" be removed from the label. The Committee made the fifth recommendation because the subset of the population sensitive to aspirin is small and the subset of the aspirin-sensitive population who are also sensitive to Yellow No. 5 is also small.

C. Agency Conclusions Concerning Allergenicity of FD&C Yellow No. 6

In evaluating the reports described above and the recommendations of the Committee, the agency concludes that while an allergic-type sensitivity to FD&C Yellow No. 6 may occasionally occur, there is no evidence in the available information on FD&C Yellow No. 6 that demonstrates a significant hazard to the general population when the color additive is used at current levels and in the manner now practiced. However, because there is a possible relationship between FD&C Yellow No. 6 and allergic-type responses in some individuals, the agency concludes that action should be taken to inform the public of the presence of the color additive in food or drugs. These actions are discussed in greater detail below. The agency believes that these actions are consistent with the recommendations of the Committee.

There are no reports of reactions to FD&C Yellow No. 6 from external application. However, as of May 31, 1976, all newly ordered labels for cosmetics have been required to declare the specific color additives present. Under these circumstances, persons who may be hypersensitive to FD&C Yellow No. 6 will, by careful review of the product labeling, be able to avoid cosmetic products containing the color. The agency concludes, therefore, that no further action is required as to cosmetics in general or for externally applied drugs.

Declaration of Food Labeling

Persons who believe that they are intolerant of FD&C Yellow No. 6 are likely to be selective in the types of foods that they use and, with appropriate label declaration, would be able to avoid the potential hazard of allergic-type reactions to the color additive in food by reading the label. Accordingly, a label declaration of the presence of FD&C Yellow No. 6 in food for humans, whether added as the straight color additive, a mixture, or a lake, would enable persons who may be allergic to FD&C Yellow No. 6 to minimize exposure to the color additive.

The basis for this action is the provision of section 706(b)(3) of the act, which provides that regulations for the listing of a color additive shall "prescribe the conditions under which such additive may be safely employed for such use or uses (including but not limited to, * * * and directions or other labeling or packaging requirements for such additive)." FD&C Yellow No. 6 has been reported to be associated with the production of allergic-type responses in humans and thus the agency finds that the requirement for label declaration of the color additive on food, including butter, cheese, and ice cream is justified.

Because there are no reports that any color additive, including FD&C Yellow No. 6, elicits allergic-type reactions in animals, label declaration of FD&C Yellow No. 6 in animal feeds and pet food is not being required. For the above reasons, the agency concludes that labeling for food products should be revised as soon as possible (i.e., rather than the uniform effective date of January 1, 1989, established by a rule that FDA published in the **Federal Register** of September 25, 1986 (51 FR 34085)) to include the declaration of FD&C Yellow No. 6 among the list of ingredients. The effective date for this final regulation concerning labeling will be November 19, 1987. This regulation covers the ingredient labeling of all affected products initially introduced or initially delivered for introduction into interstate commerce after the effective date. The agency believes this delayed effective date will provide sufficient time to permit use of current stocks of labeling and revision of labeling to include a declaration of the presence of FD&C Yellow No. 6. Manufacturers could, of course, revise their labeling before the effective date of the regulation, and the agency encourages them to do so.

Declaration of Drug Labeling

The use of color additives in ingested drugs for human use is an old, accepted practice in the pharmaceutical industry. The use of color additives in drugs serves a necessary public health function because it permits drugs of identical size and shape to be distinguished. The distinction provided by the use of color additives provides an important quality control tool in the dispensing of drugs to prevent mixups between otherwise similarly appearing drugs. The ability to distinguish among different products is also very important to persons taking more than one drug, especially to the patient who may think

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in terms of taking a drug of a particular color rather than by the name of the drug. Color additives in drugs also assist in the identification of a drug in cases of accidental overdose. Because yellow is a primary color, yellow color additives are widely used to color drugs. A substantial number of drugs would have to be reformulated if FD&C Yellow No. 6 were prohibited in drugs for human use. The considerable time and effort necessary to reformulate drug products and the loss of product identification would be unimportant if considered necessary for the protection of public health and if there were no suitable alternative course of action. However, on the basis of the current information available concerning the nature and extent of possible intolerance to FD&C Yellow No. 6, the agency believes that prohibiting all drug uses of FD&C Yellow No. 6 is not necessary and that requiring labeling similar to that for foods will ensure the protection of patients who suspect they may be intolerant of FD&C Yellow No. 6. This rulemaking is set forth below under 21 CFR Parts 74 and 201.

Under 21 CFR 201.20 (a) and (b), drug labeling is required for both prescription and over-the-counter (OTC) drug products which are administered orally, nasally, rectally, or vaginally. Topical or other externally applied drug products are not subject to these regulations. However, the drug products that are subject to this rule are required to have labeling that identifies the color additive by both of the names by which it is known, i.e., FD&C Yellow No. 6 (Sunset Yellow).

The primary basis for this action is also section 706(b)(3) of the act, as discussed above under "Declaration of Food Labeling."

IX. References

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49. FD&C Yellow No. 5, "Labeling in Food and Drugs for Human Use and Restriction on Use in Certain Human Drugs," Docket No. 77N–0009, February 4, 1977 (42 FR 6835).

50. Chaffee, F.H., and G.A. Settipane, "Asthma Caused By FD&C Approved Dyes," *Journal of Allergy*, 40:2:65–71, 1967.

51. Weber, R.W., et al., "Incidence of Bronchoconstriction Due to Aspirin, Azo Dyes, Non-Azo Dyes, and Preservatives in a Population of Perennial Asthmatics," *Journal of Allergy and Clinical Immunology*, 64:32–37, 1979.

52. Michelsson, G., and L. Juhlin, "Urticaria Induced By Preservatives and Dye Additives in Food and Drugs," *British Journal of Dermatology*, 88:525–532, 1973.

53. Thune, P., and A. Granholt, "Provocation Test With Antiphlogistica and Food Additives in Recurrent Urticaria," *Dermatologica* (Basel), 151:(6):360–367, 1975.

54. Michelsson, G., L. Pattersson, and L. Juhlin, "Purpura Caused By Food and Drug Additives," *Archives of Dermatology*, 109:49–52, 1974.

55. Traulein, J., and W.J. Mann, "Anaphylactic Shock Caused By Yellow Dye (FD&C Yellow No. 6) in an Enema" (Case Report), *Annals of Allergy*, 41:28–29, 1978.

56. Jenken P., R. Michelsson, and P.A. Emerson, "Adverse Drug Reaction to Sunset Yellow in Rifampicin/Isoniazid Tablet," *Lancet*, 2:285, 1982.

X. Conclusions

The agency concludes that FD&C Yellow No. 6 is safe for general use in food, drugs, and cosmetics and that certification is necessary for the protection of the public health. Therefore, the agency is adding 21 CFR 74.706, 74.1706, and 74.2706 to permit these uses.

The final chronic toxicity study reports, interim reports, and the agency's toxicology evaluations of these studies supporting the safety of the color additive for all uses are on file at the Dockets Management Branch (address above). They may be reviewed between 9 a.m. and 4 p.m., Monday through Friday.

The agency is describing the color additive in this regulation according to the current Chemical Abstracts nomenclature, which differs somewhat from the nomenclature FDA previously used.

The agency is establishing new chemical specifications for these listings that identify the color additive more precisely than those specifications currently in § 82.706.

The agency concludes that it is necessary to include in the listing regulations for FD&C Yellow No. 6 a brief description of its manufacturing process to ensure the safety of the color additive. FDA has included that description to define as closely as possible the color additive that has been tested and shown to be safe. The agency is doing so because use of a different manufacturing process is likely to produce different impurities that have not been considered in establishing specifications for this color additive. The agency is not able at this time to set specifications that would control the presence of all such impurities. FDA is willing to consider petitions for alternative manufacturing processes, but those petitions should contain evidence that demonstrates that those processes will not produce impurities that will make use of the color additive unsafe.

The agency has contracted with the National Academy of Sciences/National Research Council (NAS/NRC) to develop appropriate specifications for color additives for use in food as part of the Food Chemicals Codex. Similarly, appropriate specifications for color additives for use in drugs and cosmetics will be developed following the general guidelines used by NAS/NRC in its evaluation of color additives used in food. The agency concludes that specifying, through a general description, the manufacturing process in the regulations for this color additive will provide an adequate assurance of safety until suitable specifications can be developed.

The agency finds that because of the presence or possible presence of carcinogenic impurities in the color additive, specifications for impurities are necessary to protect the public health. Therefore, specifications as listed in Table IV, column 2 of this preamble are included in the regulation.

In the past, D&C lakes have been permitted to be prepared from uncertified straight color additives. The resulting lakes would subsequently be certified. However, to assure that all lakes (FD&C and D&C) meet the specification limits for the carcinogenic constituents and that the use of lakes remains consistent with the risk assessment, the agency is establishing the requirement that all lakes of FD&C Yellow No. 6 be prepared from certified batches of the straight color additive. Accordingly, § 82.706 is amended to reflect this requirement.

Because the agency found reports that FD&C Yellow No. 6 may cause allergic-type responses in a small percentage of the population, a label declaration of the additive is being required for its use in human foods and ingested drugs.

The agency has determined under 21 CFR 25.24(b)(3) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XI. Objections

Any person who will be adversely affected by this regulation may at any time on or before December 19, 1986, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in

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response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register.**

List of Subjects

21 CFR Part 74

Color additives, Food, Cosmetics, Drugs, Medical devices.

21 CFR Part 81

Color additives, Food, Cosmetics, Drugs.

21 CFR Part 82

Color additives, Food, Cosmetics, Drugs.

21 CFR Part 201

Drugs, Labeling.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 74, 81, 82, and 201 are amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 74 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

2. By adding § 74.706 to read as follows:

§ 74.706 FD&C Yellow No. 6.

(a) *Identity.* (1) The color additive FD&C Yellow No. 6 is principally the disodium salt of 6-hydroxy-5-[(4-sulfophenyl)azo]-2-naphthalenesulfonic acid (CAS Reg. No. 2783–94–0). The trisodium salt of 3-hydroxy-4-[(4-sulfophenyl)azo]-2,7-naphthalenedisulfonic acid (CAS Reg. No. 50880–65–4) may be added in small amounts. The color additive is manufactured by diazotizing 4-aminobenzenesulfonic acid using hydrochloric acid and sodium nitrite. The diazo compound is coupled with 6-hydroxy-2-naphthalene-sulfonic acid. The dye is isolated as the sodium salt and dried. The trisodium salt of 3-hydroxy-4-[(4-sulfophenyl) azo]-2,7-naphthalenedisulfonic acid which may be blended with the principal color is prepared in the same manner except the diazo benzenesulfonic acid is coupled with 3-hydroxy-2,7-naphthalenedisulfonic acid.

(2) Color additive mixtures for food use made with FD&C Yellow No. 6 may contain only those diluents that are suitable and that are listed in Part 73 of this chapter as safe for use in color additive mixtures for coloring foods.

(b) *Specifications.* The color additive FD&C Yellow No. 6 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by current good manufacturing practice:

Sum of volatile matter (at 135 °C) and chlorides and sulfates (calculated as sodium salts), not more than 13 percent.

Water insoluble matter, not more than 0.2 percent.

Sodium salt of 4-aminobenzenesulfonic acid, not more than 0.2 percent.

Sodium salt of 6-hydroxy-2-naphthalenesulfonic acid, not more than 0.3 percent.

Disodium salt of 6,6′-oxybis[2-naphthalenesulfonic acid], not more than 1 percent.

Disodium salt of 4,4′-(1-triazene-1,3-diyl)bis[benzenesulfonic acid], not more than 0.1 percent.

Sum of the sodium salt of 6-hydroxy-5-(phenylazo)-2-naphthalenesulfonic acid and the sodium salt of 4-[(2-hydroxy-1-naphthalenyl)azo]benzenesulfonic acid, not more than 1 percent.

Sum of the trisodium salt of 3-hydroxy-4-[(4-sulfophenyl)azo]-2,7-naphthalenedisulfonic acid and other higher sulfonated subsidiaries, not more than 5 percent.

4-Aminoazobenzene, not more than 50 parts per billion.

4-Aminobiphenyl, not more than 15 parts per billion.

Aniline, not more than 250 parts per billion.

Azobenzene, not more than 200 parts per billion.

Benzidine, not more than 1 part per billion.

1,3-Diphenyltriazene, not more than 40 parts per billion.

1-(Phenylazo)-2-naphthalenol, not more than 10 parts per million.

Lead (as Pb), not more than 10 parts per million.

Arsenic (as As), not more than 3 parts per million.

Mercury (as Hg), not more than 1 part per million.

Total color, not less than 87 percent.

(c) *Uses and restrictions.* The color additive FD&C Yellow No. 6 may be safely used for coloring foods (including dietary supplements) generally in amounts consistent with current good manufacturing practice, except that it may not be used to color foods for which standards of identity have been promulgated under section 401 of the act unless added color is authorized by such standards.

(d) *Labeling requirements.* (1) The label of the color additive and any mixtures intended solely or in part for coloring purposes prepared therefrom shall conform to the requirements of § 70.25 of this chapter.

(2) Foods for human use that contain FD&C Yellow No. 6, including butter, cheese, and ice cream, shall specifically declare the presence of FD&C Yellow No. 6 by listing the color additive as FD&C Yellow No. 6 among the list of ingredients.

(e) *Certification.* All batches of FD&C Yellow No. 6 shall be certified in accordance with regulations in Part 80 of this chapter.

3. By adding § 74.1706 to read as follows:

§ 74.1706 FD&C Yellow No. 6.

(a) *Identity and specifications.* (1) The color additive FD&C Yellow No. 6 shall conform in identity and specifications to the requirements of § 74.706(a)(1) and (b).

(2) Color additive mixtures for drug use made with FD&C Yellow No. 6 may contain only those diluents that are suitable and that are listed in Part 73 of this chapter as safe for use in color additive mixtures for coloring drugs.

(b) *Uses and restrictions.* FD&C Yellow No. 6 may be safely used for coloring drugs generally in amounts consistent with current good manufacturing practice.

(c) *Labeling requirements.* (1) The label of the color additive and any mixtures intended solely or in part for coloring purposes prepared therefrom shall conform to the requirements of § 70.25 of this chapter.

(2) The label of over-the-counter and prescription drug products intended for human use administered orally, nasally, rectally, or vaginally containing FD&C Yellow No. 6 shall specifically declare the presence of FD&C Yellow No. 6 by listing the color additive using the names FD&C Yellow No. 6 and Sunset Yellow. The label shall bear a statement such as "Contains FD&C Yellow No. 6 (Sunset Yellow) as a color additive" or "Contains color additives including FD&C Yellow No. 6 (Sunset Yellow)." The labels for certain drug products subject to this labeling requirement that are also cosmetics, such as antibacterial mouthwashes and fluoride toothpastes, need not comply with this requirement provided they comply with the requirements of § 701.3 of this chapter.

(d) *Certification.* All batches of FD&C Yellow No. 6 shall be certified in accordance with regulations in Part 80 of this chapter.

4. By adding § 74.2706 to read as follows:

§ 74.2706 FD&C Yellow No. 6.

(a) *Identity and specifications.* The color additive FD&C Yellow No. 6 shall conform in identity and specifications to the requirements of § 74.706 (a)(1) and (b).

(b) *Uses and restrictions.* FD&C Yellow No. 6 may be safely used for coloring cosmetics generally in amounts consistent with current good manufacturing practice.

(c) *Labeling.* The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(d) *Certification.* All batches of FD&C Yellow No. 6 shall be certified in accordance with regulations in Part 80 of this chapter.

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOOD, DRUGS, AND COSMETICS

5. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.1 [Amended]

6. In § 81.1 *Provisional lists of color additives* by removing the entry for "FD&C Yellow No. 6" from the table in paragraph (a).

§ 81.27 [Amended]

7. In § 81.27 *Conditions of provisional listing* by removing the entry for "FD&C Yellow No. 6" from the table in paragraph (d).

PART 82—LISTING OF CERTIFIED PROVISIONALLY LISTED COLORS AND SPECIFICATIONS

8. The authority citation for 21 CFR Part 82 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

9. By revising § 82.706 to read as follows:

§ 82.706 FD&C Yellow No. 6.

(a) The color additive FD&C Yellow No. 6 shall conform in identity and specifications to the requirements of § 74.706 (a)(1) and (b) of this chapter.

(b) All lakes including current D&C external D&C lakes of FD&C Yellow No. 6 shall be manufactured from previously certified batches of the straight color additive.

PART 201—LABELING

10. The authority citation for 21 CFR Part 201 is revised to read as follows:

Authority: Secs. 201, 502, 505, 701, 52 Stat. 1040–1042 as amended, 1050–1056 as amended (21 U.S.C. 321, 352, 355, 371); 21 CFR 5.10 and 5.11; section 201.20 also issued under sec. 706, 74 Stat. 399–407 as amended (21 U.S.C. 376).

11. In § 201.20 by revising paragraph (a) to read as follows:

§ 201.20 Declaration of presence of FD&C Yellow No. 5 and/or FD&C Yellow No. 6 in certain drugs for human use.

(a) The label for over-the-counter and prescription drug products intended for human use administered orally, nasally, rectally, or vaginally containing FD&C Yellow No. 5 and/or FD&C Yellow No. 6 shall specifically declare the presence of FD&C Yellow No. 5 or FD&C Yellow No. 6 or both as a color additive using the names FD&C Yellow No. 5 and tartrazine or FD&C Yellow No. 6 and Sunset Yellow or both sets. The labeling shall bear a statement such as "Contains FD&C Yellow No. 5 (tartrazine) as a color additive," "Contains FD&C Yellow No. 6 (Sunset Yellow) as a color additive," or "Contains color additives including FD&C Yellow No. 5 (tartrazine) and FD&C Yellow No. 6 (Sunset Yellow)." The labels of certain drug products subject to this labeling requirement that are also cosmetics, such as antibacterial mouthwashes and fluoride toothpastes, need not comply with this requirement provided they comply with the requirements of § 701.3 of this chapter.

* * * * *

Dated: November 10, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 86–26052 Filed 11–18–86; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Fenbendazole Blocks

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Hoechst-Roussel Agri-Vet Co., providing for safe and effective use in beef cattle of Safe-Guard.™ (fenbendazole) Enproal® molasses feedblocks as an anthelmintic.

EFFECTIVE DATE: November 19, 1986.

FOR FURTHER INFORMATION CONTACT: Adriano R. Gabuten, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., Route 202–206 North, Somerville, NJ 08876, filed NADA 139–189 providing for use in beef cattle of Safe-Guard.™ Enproal® molasses feedblocks as an anthelmintic. Each feedblock weighs 25 pounds and contains 750 milligrams of fenbendazole per pound. The blocks are indicated for removal and control of the lungworm *Dictyocaulus viviparus* and certain stomach and intestinal worms. The application is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(vi) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Part 520 is amended by adding new § 520.905e to read as follows:

§ 520.905e Fenbendazole blocks.

(a) *Specifications.* Each pound of molasses block contains 750 milligrams of fenbendazole.

(b) *Sponsor.* See 012799 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.275 of this chapter.

(d) *Conditions of use*—(1) *Amount.* 0.1 pound of block per 100 pounds of body

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weight per day for 3 days. Total dose for the 3-day period is 2.27 milligrams of fenbendazole per pound of body weight for mature cattle.

(2) *Indications for use.* For removal and control of infections of lungworms *(Dictyocaulus viviparus)* and gastrointestinal roundworms *(Haemonchus contortus, Ostertagia ostertagi, Trichostrongylus axei, Bunostomum phlebotomum, Nematodirus helvetianus, Cooperia oncophora* and *c. punctata, Trichostrongylus colubriformis,* and *Oesophagostomum radiatum)* in beef cattle.

(3) *Limitations.* Administer free choice to beef cattle on pasture that have become accustomed to nonmedicated block feeding during an adaptation period of 12 to 19 days. Cattle must not be slaughtered within 11 days following last treatment. Animals maintained under conditions of constant worm exposure may require retreatment within 6 to 8 weeks. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism.

Dated: November 12, 1986.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 86-26050 Filed 11-18-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 198

[DoD Directive 6035.2]

DoD Medical Program Review Committee (MPRC)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part is the charter for the DoD Medical Program Review Committee (MPRC). The MPRC is being established as directed by the Secretary of Defense memorandum, dated June 20, 1986. It outlines the purpose, organization, and responsibilities of the MPRC.

EFFECTIVE DATE: October 15, 1986.

ADDRESS: Office of the Assistant Secretary of Defense (Health Affairs), Room 3E321, the Pentagon, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Reynolds, telephone (202) 694-3242.

List of Subjects in 32 CFR Part 198

Organization and functions, Health care.

Accordingly, Title 32 is amended by adding Part 198 to read as follows:

PART 198—DOD MEDICAL PROGRAM REVIEW COMMITTEE (MPRC)

Sec.
198.1 Purpose.
198.2 Applicability.
198.3 Policy.
198.4 Organization, management, and responsibilities.

Authority: 5 U.S.C. Section 301; 10 U.S.C. § 113.

§ 198.1 Purpose.

In accordance with Secretary of Defense Memorandum, June 20, 1986, this part authorizes and establishes the charter for the DoD Medical Program Review Committee (MPRC).

§ 198.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, Defense Agencies, and DoD field activities—e.g., Office of Civilian Health and Medical Program of the Uniform Services (CHAMPUS) and the Defense Medical Support Activity. The term "Military Services" refers to the Army, Navy, Air Force, and Marine Corps.

§ 198.3 Policy.

The MPRC complements the Defense Resources Board by providing a balanced and integrated review of the medical portions of the Service, Defense Agency, and DoD field activity Program Objective Memorandums (POMs). This MPRC review shall be based on the Defense Guidance and policy guidance from the Assistant Secretary of Defense (Health Affairs) (ASD(HA)). The Committee shall serve as a forum for resolving program issues confronting the Military Health Services System.

§ 198.4 Organization, management, and responsibilities.

(a) MPRC membership is composed of the ASD(HA), who serves as the Chair; the Principal Deputy Director, Program Analysis and Evaluation (PA&E); the four Service Programmers; and the Director, Strategic Plans and Resources Analysis Agency. In addition, the Committee may call for expert advice from other OSD organizations, OJCS, and/or the Services. The Deputy Assistant Secretary of Defense (Health Affairs) (Medical Resources Administration) shall serve as MPRC Executive Secretary.

(b) The Committee meets throughout the year at the call of the Chair in conjunction with the Planning, Programming, and Budgeting System (PPBS) cycle to address medical program issues. The Committee shall meet:

(1) To assist the ASD(HA) in drafting medical guidance for incorporation in the Defense Guidance (DG), and to review and provide recommendations on the draft DG to the Defense Guidance Steering Group.

(2) To review inputs to the POM Preparation and Format Instructions (PPI) and make recommendations to the Executive Secretary of the Defense Resources Board before publishing the PPI.

(3) To formulate and provide additional guidance to the Services, Defense Agencies, and DoD field activities for submitting the medical portion of their POMs six weeks before the overall Service POHs.

(4) To review the medical programs of the Services, Defense Agencies, and DoD field activities. This review shall address all wartime and peacetime medical program issues across the Military Departments, Defense Agencies, and DoD field activities. Issues that may not be resolved by consensus within the Committee in time to be reflected in the final version of the Service and/or Agency POM, or on an "out-of-court" basis, may be submitted for consideration under the normal procedures of the Defense Resources Board.

(5) To provide advice and comment to the Executive Secretary of the Defense Resources Board regarding proposed Program Decision Memorandum (PDM) language.

(6) To review and assess Program Budget Decisions (PBDs) for medical programmatic impacts.

(c) After one complete PPBS cycle, the Committee shall review this charter and recommend changes as necessary.

(d) The Services, Defense Agencies, and DoD field activities shall submit their medical programs to the MPRC six weeks before the overall Service POHs are due.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-26061 Filed 11-18-86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 211

Appeal of Decisions Concerning the National Forest System

AGENCY: Forest Service, USDA.

ACTION: Interim rule; request for comments.

SUMMARY: This rule revises Forest Service administrative appeal procedures to clarify procedures for acquiring information helpful to Reviewing Officers in making stay decisions; to give Reviewing Officers flexibility in making stay decisions; to provide criteria in ruling on stay decisions; and to lengthen the time allowed to make stay decisions. Public comments are invited and will be considered in promulgating a final rule, if received within 30 days of publication of this notice..

DATES: *Effective Date:* November 19, 1986. *Comment Date:* December 19, 1986.

ADDRESS: Send comments on this interim rule to Chief (1570), Forest Service, USDA, P.O. Box 2417, Washington, DC 20013.

The public may inspect comments received in Room 4211, South Building, U.S. Department of Agriculture, 14th and Independence Avenue SW., Washington, DC during business hours.

FOR FURTHER INFORMATION CONTACT: Kathie Hauser, Program Analyst, National Forest System (202) 382-9346.

SUPPLEMENTARY INFORMATION:

Background

Forest Service rules at 36 CFR 211.18 establish the process and procedures by which the public may appeal a National Forest System management decision. Pursuant to 36 CFR 211.18(h), a request for a stay at the first level of appeal will be considered if the requester submits information explaining what action is to be stopped and why. The Reviewing Officer has 10 days to decide on a stay and must notify the appellant of the stay decision in writing. The rule requires that a stay remain in effect until 10 days after an appeal decision is rendered. The rule does not currently provide the Reviewing Officer any flexibility to modify or vacate a stay once granted.

At the second level of appeal, a stay request must be made at the time of filing the notice of appeal (36 CFR 211.18.(c)(2)). This provision effectively limits requests for stay to appellants, since intervenors usually do not know of an appeal until after it is filed.

This interim rule would remove the requirement that a request for stay at the second level of appeal must accompany notice of appeal. Under the interim rule, a request for stay would be acceptable at any time pending a decision on the merits of an appeal. The interim rule would also result in consistent treatment of stay requests at all levels of appeals.

The interim rule amends the present procedures governing filing and handling of stay requests, as follows:

1. The requester must file the stay request and supporting information with the Reviewing Officer and provide the Deciding Officer (the officer who made the original decision or appeal decision) with a copy of the stay request and supporting information.
2. The Deciding Officer must, within 7 days, provide the Reviewing Officer and all parties to an appeal, an analysis of the stay request.
3. The rule establishes basic criteria to be applied to stay requests by the Reviewing Officer.
4. The maximum time for a Reviewing Officer to rule on a stay request is lengthened from 10 to 21 days to allow further reasonable time for consideration of the stay request and factors relevant to the stay decision.
5. The rule provides the Reviewing Officer authority to modify or vacate a stay that has been granted pending a decision on the merits of the appeal.

These changes result from experience in implementing the existing rule with regard to stay requests. Reviewing Officers have felt the need for analysis of the impacts of stays but have found it difficult to obtain and consider such analyses within the 10 day period for ruling on stay requests. The longer period will allow the Reviewing Officer a more reasonable opportunity to consider factors relevant to a requested stay. The requirement for Deciding Officers to prepare an analysis of the effects of a stay ensures that officer the opportunity to respond to the assertions made by the appellant or intervenor, provides additional information to the Reviewing Officer, and makes that analysis a part of the record.

The Forest Service officers who issue a stay should have the inherent right to modify or vacate a stay. However, the absence of affirmative language in the rule on this point has led to inconsistent treatment by Reviewing Officers and gives the appearance that the initial granting or denying of a stay is frozen in place until the appeal decision is rendered.

Because of the heavy appeals workload and anticipated numbers of requests for stays and their complexity, it is necessary to improve consistency and allow greater flexibility in the handling of stay requests. Therefore, this rule is being implemented immediately upon publication. And, it will apply to all appeals currently being processed. This means that stay decisions already rendered in existing appeals, are subject to the modification provisions of the regulation. However, public comment is invited and will be considered fully in promulgation of a final rule.

Regulatory Impact

Because of the need to implement these revised procedures immediately to improve consistency to processing stay requests, time has not permitted advance review by the Office of Management and Budget. However, as required by E.O. 12291, notice of this rule is being given to the Director of the Office of Management and Budget upon publication in the **Federal Register.**

The rule will have no effect on the Nation's economy, or on the quality of the human environment. The final rule does not contain an information collection or recordkeeping requirement as defined in the Paperwork Reduction Act of 1980 and thus is exempt from the review procedures of 5 U.S.C. 1320.

List of Subjects in 36 CFR Part 211

Administrative practice and procedure, National forests.

Therefore, for the reasons set forth above, Subpart B—Appeal of Decisions Concerning the National Forest System of Part 211—Administration of Title 36 of the Code of Federal Regulations is amended as follows:

PART 211—ADMINISTRATION

Subpart B—Appeal of Decisions Concerning the National Forest System

1. The authority citation for Part 211 continues to read as follows:

Authority: 30 Stat. 35, as amended, sec. 1, 33 Stat. 628 (16 U.S.C. 551, 472).

2. Revise paragraphs (c)(2) and (h) of § 211.18 to read as follows:

§ 211.18 Appeal of decisions of forest officers.

* * * * *

(c) * * *

(2) A notice of appeal at the second level must be filed within 30 days of written decision. A statement of reasons to support the appeal and any request for an oral presentation must accompany any notice of appeal at the second level.

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(h) *Stay of decision pending appeal.* (1) An appellant or intervenor may request a stay of decision at any time while an appeal is pending.

(2) In making a request for a stay of decision, an appellant or intervenor must:

(i) Enclose a copy of the Notice of Appeal or request for intervention and a copy of the decision being appealed.

(ii) As part of the request, provide a written description of the specific activities to be stopped and the reasons why the stay should be issued. The description should include the effect of the activity upon the requester and the nature of any imminent harm which might occur if the activity(ies) were to continue while the appeal on the merits of the decision is pending.

(iii) File the request for stay and accompanying documents with the Reviewing Officer and simultaneously provide a copy to the Deciding Officer and other parties to the appeal.

(3) Within 7 days of receipt of a copy of the stay request, the Deciding Officer shall, by the most expeditious method, transmit to the Reviewing Officer an analysis on the stay request. The Reviewing Officer may waive this requirement where appropriate. When an analysis is prepared:

(i) The analysis should address the requester's reasons for stay, effects on involved entities, including the Forest Service, and any other pertinent information.

(ii) The Deciding Officer shall send a copy of the stay analysis to all parties to the appeal at the same time as it is sent to the Reviewing Officer.

(4) The factors that a Reviewing Officer should consider in ruling on a stay request include but are not limited to:

(i) The effect of a stay on the parties and on the public interest, including the possibility of irreparable harm to parties to the appeal.

(ii) The potential for irreversible impact on the resource during the pendency of the appeal.

(iii) The effect of a stay or denial of a stay on preservation of a meaningful appeal on the merits.

(iv) Other factors deemed relevant by the Reviewing Officer.

(5) The Reviewing Officer may rule on a stay request at any time, but in no case shall a decision on a stay request exceed 21 days from receipt of the stay request.

(i) If a stay is granted, it shall remain in effect until 10 days after a decision on the merits, unless a different period is specified in the decision document, or modification occurs pursuant to paragraph (h)(6) of this section.

(ii) If a stay is granted, the stay shall specify the following: specific activities to be stopped; duration of the stay; and reasons for granting the stay.

(iii) If a stay is denied, the decision shall specify the reasons for the denial and any subsequent appeals rights.

(6) A Reviewing Officer may modify or vacate a stay decision according to any terms established by the Reviewing Officer in the decision itself, or at any time during an appeal that new information and/or changed circumstances support a modification of the stay.

(i) A Reviewing Officer may initiate a modification of a stay, or may consider a modification upon petition by any party to the appeal (including the Deciding Officer).

(ii) Prior to modification of a stay, the Reviewing Officer shall give all parties notice and an opportunity to comment on the proposed stay revision.

(7) When intervention is sought and is accompanied by a stay request, the Reviewing Officer's period for issuance of a decision on the stay request starts on the date intervention is granted.

(8) Levels of appeal for any decision on a stay request or modification thereof are those specified in paragraphs (f), (l), and (o) of this section.

(9) The provisions in this paragraph apply to all appeals pending on the effective date of the revision of paragraph (h) of this regulation.

* * * * *

Dated: November 10, 1986.

Douglas W. MacCleery,

Acting Assistant Secretary, Natural Resources and Environment.

[FR Doc. 86–26066 Filed 11–18–86; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL 3114-2; NC-013, -014]

Approval and Promulgation of Implementation Plans, North Carolina; Miscellaneous Regulatory Changes

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: In this action, EPA is approving revisions to the North Carolina State Implementation Plan for Air Quality which were submitted by the North Carolina Division of Environmental Management on March 18, 1985, and April 15, 1985. These revisions include: the addition of control standards for three volatile organic compound (VOC) source categories; the addition of test methods for VOC sources; the deletion of mandatory source registration; a clarification of how to determine allowable particulate emissions from existing fuel and wood burning indirect heat exchangers when new boilers are added to a site; an explanation of how to correct to twelve percent oxygen when determining emission from incinerators; and additional permit application provisions. Most of the regulation changes are minor in nature and serve merely to update the North Carolina Administrative Code.

EFFECTIVE DATE: This rule will become effective December 19, 1986.

ADDRESSES: Copies of the State's submittals are available for review during normal business hours at the following locations:

Air Quality Section, Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina 27611

Air Programs Branch, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365

The Office of the Federal Register, 1100 L Street, NW., Room 8301, Washington, DC.

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Pamela Gilbert of the Region IV EPA Air Programs Branch, at the above address and following phone (404) 347–3286 or FTS 257–3286.

SUPPLEMENTARY INFORMATION: On March 18, 1985, and April 15, 1985, the North Carolina Division of Environmental Management submitted numerous regulation changes and nonregulatory revisions to the North Carolina State Implementation Plan (SIP). EPA proposed to approve these revisions on March 7, 1986, at 51 FR 7959. EPA is now taking final approval action on these revisions, as submitted on the above dates. A discussion of these revisions and the basis for EPA action now follow:

Submittal of March 18, 1985

- Regulation 15 NCAC 2D.0606 (Other Coal or Residual Oil Burners) was amended to correct a cross reference. The regulation previously referenced 15 NCAC 2D.0603 (Sources Covered by

New Source Performance Standards), which has been repealed. Regulation 15 NCAC 2D.0524 (New Source Performance Standards) was substituted for the repealed 15 NCAC 2D.0603.

- Regulation 15 NCAC 2D.0939 (Determination of Volatile Organic Compound Emissions) was amended by adding three test methods for quantifying VOC emissions.
- Regulation 15 NCAC 2D.0943 (Synthetic Organic Chemical and Polymer Manufacturing); 2D.0944 (Manufacturing of Polyethylene, Polypropylene and Polystyrene); and 2D.0945 (Petroleum Dry Cleaning) are new regulations which were adopted to control additional sources of volatile organic compounds. The rules are consistent with the Group III Control Technology Guideline Documents for those source categories. The regulations in Section 2D.0900 presently are only mandatory for sources in Mecklenburg County (the State's only nonattainment area for ozone) which have the potential to emit 100 tons per year or more of VOCs. There are presently no sources in Mecklenburg County to which these three rules apply.
- Also included in the March 18, 1985, submittal were revisions to regulation 2D.0524 (New Source Performance Standards) and 2D.0525 (National Emission Standard for Hazardous Air Pollutants). North Carolina revised their rules by adding six New Source Performance Standards (NSPS) and two National Emission Standards for Hazardous Air Pollutants (NESHAP). They also requested delegation of authority for implementing and enforcing the NSPS and NESHAP for these source categories. A letter delegating this authority to the state was signed by Charles R. Jeter, Regional Administrator, on April 1, 1985. The delegation was announced in the **Federal Register** on August 1, 1985 (50 FR 31182).

Submittal of April 15, 1985

- Regulation 15 NCAC 2D.0202 (Registration of Air Pollution Sources) was amended to require sources to register only when requested to do so by the State. In the past, registration was mandatory for all sources of air pollution, but this procedure is no longer necessary because the State requires virtually all sources to have permits. Permit applications contain essentially the same information contained in the registration form. To eliminate this unnecessary duplication, North Carolina has eliminated the requirement for all sources to register.
- Regulation 15 NCAC 2D.0501 (Compliance with Emission Control Standards) was amended to remove the requirement for mandatory source registration and to correct a cross reference. Test methods for mercury and for VOC's were also added and updated. Revisions to subparagraph (f)(1)(A) of regulation 2D.0501 were also submitted on April 15, 1985. EPA will take action on the changes to 2D.0501(f)(1)(A) in a separate **Federal Register** notice.
- Regulation 15 NCAC 2D.0503 (Control of Particulates from Fuel Burning Indirect Heat Exchangers) and 2D.0504 (Particulates from Wood Burning Indirect Heat Exchangers) were amended to clarify how allowable particulate emissions from existing boilers are determined when a new boiler is added to the site.
- Regulation 15 NCAC 2D.0505 (Control of Particulates from Incinerators) was amended to explain how to correct to twelve percent carbon dioxide when determining the amount of particulate emissions from incinerators.
- Regulation 15 NCAC 2H.0603 (Applications) was amended to allow the State to request information from a source (in addition to what is required on the permit application) when it is necessary to properly evaluate that source's application for a permit.

New source impact analyses and permit applications, for sources proposed to be located in nonattainment areas, are now available for public inspection. The public also has the opportunity to request a public hearing on such permit applications and impact analyses.

Further details pertaining to these regulation changes are contained in the technical support document, which is available for public inspection at EPA's Regional Office in Atlanta, Georgia.

Final Action

EPA is approving the above regulation changes which were submitted to EPA on March 18, 1985, and April 15, 1985, with the exception of 2D.0501(f)(1)(A) which will be acted upon in a separate notice.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 20, 1987. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2).).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Particulate matter, Hydrocarbons, Intergovernmental relations, Incorporation by reference.

Note.—Incorporation by reference of the State Implementation Plan for the State of North Carolina was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 7, 1986.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart II—North Carolina

2. Section 52.1770 is amended by adding paragraphs (c)(43) and (c)(44) to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(43) Revisions to the North Carolina Administrative Code were submitted to EPA on March 18, 1985.

(i) Incorporation by reference.

(A) Changes in the following regulations were adopted by the Environmental Management Commission on March 14, 1985:

15 NCAC 2D.0606, Other Coal or Residual Oil Burners

15 NCAC 2D.0939, Determination of Volatile Organic Compound Emissions

(B) The following new regulations were adopted by the Environmental Management Commission on March 14, 1985:

15 NCAC 2D.0943, Synthetic Organic Chemical and Polymer Manufacturing

15 NCAC 2D.0944, Manufacturing of Polyethylene, Polypropylene, and Polystyrene

15 NCAC 2D.0945, Petroleum Dry Cleaning

(ii) Other material—none.

(44) Revisions to the North Carolina Administrative Code were submitted to EPA on April 15, 1985.

(i) Incorporation by reference.

(A) Changes in the following regulations were adopted by the Environmental Management Commission on April 11, 1985:

15 NCAC 2D.0202, Registration of Air Pollution Sources

15 NCAC 2D.0501, Compliance with Emission Control Standards (except the changes to paragraph (f)(1)(A))

15 NCAC 2D.0503, Control of Particulates from Fuel Burning Indirect Heat Exchangers

15 NCAC 2D.0504, Particulates from Wood Burning Indirect Heat Exchangers

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15 NCAC 2D.0505, Control of Particulates from Incinerators
15 NCAC 2H.0603, (Permit) Applications

(ii) Other material—none.

[FR Doc. 86-26072 Filed 11-18-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 62

[A-4-FRL-3113-9; NC-024]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants, North Carolina; Minor Revisions to 111(d) Regulations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: In this action, EPA is approving revisions to three North Carolina regulations which are part of the North Carolina 111(d) plans for sulfuric acid mist, total reduced sulfur, and fluorides from primary aluminum reduction plants. These revisions are minor and do not change the meaning of the current regulations.

DATES: This action will be effective January 20, 1987 unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection at the following locations and notice of adverse or critical comments may be submitted to Janet Hayward at the EPA Regional Office listed below:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365
Air Quality Section, Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina, 27611.

FOR FURTHER INFORMATION CONTACT: Janet Hayward of the EPA Region IV, Air Programs Branch, at the above address and telephone (404) 347-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION: On December 17, 1984, the North Carolina Division of Environmental Management submitted numerous changes to the North Carolina Administrative Code to EPA for approval as part of the State Implementation Plan (SIP). These changes included several rule revisions which could not be processed as revisions to the SIP under section 110 of the Clean Air Act (the Act), because they dealt with "designated pollutants" which are regulated under section 111(d) of the Act. These rules were: 2D.0517 (Emissions from Plants Producing Sulfuric Acid), 2D.0528 (Total Reduced Sulfur from Kraft Pulp Mills) and 2D.0529 (Fluoride Emissions from Primary Aluminum Reduction Plants).

North Carolina resubmitted the above regulations on July 18, 1986, for approval as minor changes to the State's 111(d) plans for those designated pollutants. There are no substantive differences in the effect of the North Carolina air pollution control regulations as a result of the changes. Terms have been changed to make them consistent with current usage and changes have been made in order to standardize nomenclature and to clarify the intent and applicability of the regulations.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective January 20, 1987.

Final Action

After reviewing North Carolina's 111(d) plan revisions, EPA is approving these changes because they are routine wording changes and have no effect on the meaning of the regulations. Under 5 U.S.C. section 605(b), I certify that these revisions will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 20, 1987. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2).).

List of Subjects in 40 CFR Part 62

Air pollution control, Fluoride, Aluminum, Pulp and paper products industry, Sulfur oxides, Sulfuric acid plants.

Dated: November 7, 1986.

Lee M. Thomas,
Administrator.

PART 62—[AMENDED]

Part 62 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

Subpart II—North Carolina

2. Section 62.8350 is amended by adding paragraph (b)(4) to read as follows:

§ 62.8350 Identification of Plan.

* * * * *

(b) * * *

(4) The following revisions to Title 15 of the North Carolina Administrative Code (15 NCAC) were submitted to EPA on July 18, 1986, following adoption by the North Carolina Environmental Management Commission on November 8, 1984: revised regulations 2D.0517—Emissions From Plants Producing Sulfuric Acid, 2D.0528—Total Reduced Sulfur From Kraft Pulp Mills, and 2D.0529—Fluoride Emissions From Primary Aluminum Reduction Plants.

* * * * *

[FR Doc. 86-26071 Filed 11-18-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[A-9- FRL-3114-5]

Designation of Areas For Air Quality Planning Purposes; Las Vegas Valley, NV, Redesignation for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice takes final action to approve the State of Nevada request for the redesignation of the Las Vegas Valley nonattainment area to attainment for ozone. EPA finds that the National Ambient Air Quality Standards (NAAQS) for ozone have not been violated, based on data available from 1983 to date measured in the area being redesignated. This action updates the attainment status for the area. Also, no additional Part D requirements need to be satisfied in the attainment area.

DATES: This action will be effective January 20, 1987, unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: The EPA Technical Support Document (June 1986) is available for public inspection during normal business hours at the EPA Region 9 address listed below and at the following locations:

Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, 201 S. Fall Street, Carson City, NV 89710
Clark County Health District, Air Pollution Control Division, 625 Shadow Lane, Las Vegas, NV 19106

FOR FURTHER INFORMATION CONTACT: Morris Goldberg (A-2-1), Technical Evaluation Section, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco CA 94105, Telephone: (415) 974-7651, (FTS) 454-7651.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978 (43 FR 8962), under paragraph 107(d)(2) of the Clean Air Act, as amended, EPA promulgated attainment status designations for all states. Ambient air quality data measured in Las Vegas Valley in 1977 was provided to EPA by the State along with a recommendation that the area be designated nonattainment for oxidant, in accord with paragraph 107(d)(1)(A) of the Act. EPA designated the Las Vegas Valley area nonattainment for oxidant.

On February 8, 1979 (44 FR 8220), the NAAQS were revised from 0.08 ppm oxidant, 1-hour average concentration, not to be exceeded more than once per year, to 0.12 ppm ozone, daily maximum 1-hour average concentration, not expected to be exceeded more than an 1.0 times per year, averaged over the most recent three years for which data are available. The attainment status designation table headings at 40 CFR Part 81 were revised accordingly.

On April 1, 1986, the State of Nevada requested that EPA redesignate the Las Vegas Valley area to attainment for ozone. The request indicated that the implementation of EPA-approved control measures had resulted in only one exceedance of the NAAQS at each of two monitoring stations and less than 1.0 expected exceedances at each of three sites in the last three years.

Evaluation

EPA reviewed the ozone ambient air quality data from the three monitoring sites in the Las Vegas Valley and found it consistent with the data in the redesignation request. EPA found one exceedance of the NAAQS at each of two of the three sites during the past three years. The exceedances were recorded on September 14, 1983, at the Casino Center site and on February 15, 1985, at the Henderson monitoring site. Based on the completeness of the data, EPA found 0.4 and 0.3 expected exceedances of the NAAQS, averaged over the most recent three years at the Las Vegas-Casino Center and Henderson-Powerline monitoring sites, respectively. Also no exceedances have been measured to-date in 1986 at any Las Vegas Valley monitoring station.

The ozone implementation plan for the Las Vegas Valley was submitted by the State of Nevada on January 11, 1985 and fully approved on August 21, 1986 (51 FR 29923). The approved plan contains chlorine stationary source emission limitations and new source review rules. These regulations, adopted on May 18, 1984, assure EPA that the 90% reduction in chlorine emissions obtained between 1979 and 1983 would continue. EPA also approved the plan's demonstration (of attainment) of the effect of the chlorine emission control strategy on the ozone ambient air quality concentrations in the area. EPA's approval of the control strategy containing these measures indicates that the plan satisfactorily demonstrates that these measures, when implemented, have the potential to provide the emission reduction necessary for the attainment and maintenance of the designated national ambient air quality standard. The plan also contains approved control measures for volatile organic compounds, as required by EPA, to ensure that ozone caused by the more traditional precursors is controlled.

Thus, EPA concludes, as did the State, that the implementation of federally enforceable control measures has resulted in air quality better than that needed for redesignation of the area. Thus, EPA concurs with the redesignation of the area from nonattainment to attainment for ozone.

EPA Action

This notice takes final action to redesignate the Las Vegas Valley, Nevada, from nonattainment to attainment for ozone, as requested by the State.

Direct Final

EPA's approval of the above redesignation in Nevada is being done without prior proposal because the redesigation is not considered to be controversial. The public should be advised that this approval action will be effective 60 days from the date this approval is published in the **Federal Register**. However, if notice is received by EPA within 30 days indicating that someone wishes to submit adverse or cirtical comments, this approval action will be withdrawn and a subsequent notice will be published before the effective date. The subsequent notice will indefinitely postpone the effective date, modify the final action to a proposed action, and establish a comment period.

Regulatory Process

The Office of Management and Budget has exempted this action from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 20, 1987. This action may not be challenged later in processing to enforce its requirements (See 307(b)(2)).

Under 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small business entities. (46 FR 8709).

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: October 17, 1986.

Lee M. Thomas,

Administrator.

PART 81—[AMENDED]

40 CFR Part 81 is amended as follows:

Subpart C—Section 107 Attainment Status Designations

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. In § 81.329 the Nevada attainment status designation table for ozone (O_3) is revised to read as follows:

§ 81.329 Nevada.

* * * * *

NEVADA—O_3

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Entire State		X

[FR Doc. 86-26073 Filed 11-18-86; 8:45 am]

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DEPARTMENT OF AGRICULTURE

48 CFR Part 433

[Agriculture Acquisition Circular No. 1]

Acquisition Regulation; Competition in Contracting and Miscellaneous Changes; Correction

AGENCY: Office of Operations, USDA.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule, which was published in the **Federal Register** on Monday, September 29, 1986 (51 FR 34564) to amend Agriculture's Acquisition Regulation (AGAR) for the purpose of implementing the Competition in Contracting Act of 1984 and inserting other additions, deletions, and revisions.

EFFECTIVE DATE: September 29, 1986.

FOR FURTHER INFORMATION CONTACT: Larry Schreier, Office of Operations, United States Department of Agriculture, Washington, DC, (202) 447-8924.

SUPPLEMENTARY INFORMATION: In FR Doc. 86-21954 published Monday, September 29, 1986, make the following correction in order to remedy an inadvertent deletion of existing sections of text, which should have been redesignated as sections under Subpart 432.2:

1. On page 34566, the instruction for item 17 is corrected to read as follows:

"17. Part 433 is amended to read as follows by:

(a) revising the Table of Contents; (b) adding Subpart 433.1 consisting of sections 433.102 through 433.105; (c) redesignating sections 433.003, 433.003-70, 433.009, 433.011, and 433.012 as sections 433.203, 433.203-70, 433.209, 433.211, and 433.212, respectively and designating the redesignated sections as subpart 433.2; (d) revising the FAR cross-referenced section numbers 33.003, 33.009, and 33.011(a)(4) as shown in the text of redesignated sections 433.203(a), 433.209, and 433.211 to read as 33.203, 33.209, and 33.211(a)(4), respectively; and (e) revising the AGAR cross-referenced section number 433.003-70 shown in the text of redesignated section 433.211 to read as 433.203-70."

List of Subjects in 48 CFR Part 433

Government procurement; Protests, Disputes, & Appeals.

Dated: November 12, 1986.

Charles A. Bucy,

Acting Director.

[FR Doc. 86-25915 Filed 11-18-86; 8:45 am]

BILLING CODE 3410-96-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Experimental Population Status for an Introduced Population of Red Wolves in North Carolina

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines that it will introduce mated pairs of red wolves (*Canis rufus*) into the Alligator River National Wildlife Refuge (Refuge) in Dare County, North Carolina. The red wolf population in Dare County and the adjacent Tyrrell, Hyde, and Washington Counties is determined to be a nonessential experimental population according to section 10(j) of the Endangered Species Act of 1973 (ESA), as amended. The red wolf is now extirpated from its entire historic range in the southeastern United States; this action is being taken in an effort to reestablish a wild population. The experimental population status is designated because section 10(j) authorizes more discretion in devising an active management program for an experimental population than for a regularly listed species, a critical factor in insuring that other agencies and the public will accept the proposed reintroduction. An experimental population is treated as a threatened species for purposes of sections 4(d) and 9 of the Act, which prohibit certain activities involving listed species. Accordingly, a special rule for specifying circumstances under which taking of introduced red wolves will be allowed is being promulgated in conjunction with the nonessential, experimental population rule. Management actions that would involve take include recapture of wolves to replace transmitter or capture collars, provide routine veterinary care, return animals to the refuge which have strayed outside its boundaries, or to return to captivity animals that are a threat to human safety or property, or which are severely injured or diseased. The nonessential designation is determined because the species is fully protected in captivity in six different locations, and all animals released into the wild can be quickly replaced through captive breeding. When not on National Wildlife Refuge or National Park lands, a nonessential experimental population is treated as a proposed species, rather than a listed species, for purposes of the review of other Federal agency actions under section 7 of the ESA (except for section 7(a)(1), which applies to all experimental populations). No conflicts are envisioned between the red wolf reintroduction and any existing or anticipated Federal agency actions or traditional public uses of the refuge or surrounding lands.

DATES: The effective date of this rule is December 19, 1986. Although red wolves will be transported to North Carolina prior to the effective date, no wolves will be released until next spring, well after this final rule becomes effective.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Endangered Species Field Office, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Mr. Warren T. Parker, Asheville Endangered Species Field Supervisor (see **ADDRESSES** section above), or Mr. Marshall P. Jones, Chief, Endangered Species Division, U.S. Fish and Wildlife Service, 75 Spring Street, SW., Atlanta, Georgia 30303 (404/331-3580 or FTS 242-3580).

SUPPLEMENTARY INFORMATION:

Background

Among the signficant changes made by the Endangered Species Act Amendments of 1982, Pub. L. No. 97-304, was the creation of a new section 10(j) which provides for the designation of specific introduced populations of listed species as "experimental populations." Under previous authorities in the Act, the Service was permitted to reintroduce populations into unoccupied portions of a listed species historic range when it would foster the conservation and recovery of the species. Local opposition to reintroduction efforts, however, stemming from concerns about the restrictions and prohibitions on private and Federal activities contained in sections 7 and 9 of the Act, severely handicapped the effectiveness of this as a management tool. Under section 10(j), past and future reintroduced populations established outside the current range, but within the species' historic range, may now be designated, at the discretion of the Service, as "experimental." Such designations will increase the Service's flexibility to manage these reintroduced populations because such experimental populations may be treated as threatened species. The Service has much more discretion in devising management programs for threatened species that for endangered species, especially on matters regarding incidental or regulated takings. Morever, experimental populations found to be "nonessential" to the continued existence of the species in question are to be treated as if they were only proposed for listing for purposes of section 7 of the ESA, except as noted below. A "nonessential" experimental population is not subject to the formal consultation requirement of section 7(a)(2) of the Act, but if the experimental population is found on a National Wildlife Refuge or National Park, the full protection of section 7 applies to such animals. (The provision in section 7(a)(1) applies to all experimental populations.) The individual organisms comprising the designated experimental population can be removed from an existing source or donor population only after it has been determined that their removal itself is not likely to jeopardize the continued existence of the species, and must be done under a permit issued in accordance with the requirements in 50 CFR 17.22.

The species included in this final rule is the red wolf (*Canis rufus*), an endangered species which is currently extirpated from the wild. The red wolf was originally native to the southeastern United States from the Atlantic Coast westward to central Texas and Oklahoma and from the Gulf of Mexico to central Missouri and southern Illinois. The historic relationship of the red wolf to other wild canids is poorly understood, but it is thought that the red wolf coexisted with the coyote (*Canis latrans*) along its western range generally along the line where deciduous cover gave way to open prairie in Texas and Oklahoma. The gray wolf (*Canis lupus*) is believed to have frequented the range north of the red wolf, but probably did range along higher elevations of the Appalachian Mountains as far south as Georgia and Alabama. Historical evidence seems to characterize the red wolf as common in the vast pristine bottomland riverine habitats of the southeast, and especially numerous in and adjacent to the extensive "canebrakes" that occurred in these habitats. The canebrakes harbored large populations of swamp and marsh rabbits, considered likely to be the primary prey species of the red wolf under natural conditions. The demise of the red wolf was directly related to man's activities, especially land changes, such as the drainage of vast wetland areas for agricultural purposes; the construction of dam projects that inundated prime habitat; and predator control efforts at the private, State, and Federal levels. At that time the natural history of the red wolf was poorly understood, and like most other large predators, it was considered a nuisance species. Today, the red wolf's role as a potentially important part of a natural ecosystem, if it can be successfully reintroduced, is better appreciated. Furthermore, it is now clear that traditional controls would not be needed in any case; the red wolf would pose no threat to livestock in situations where its natural prey, especially such small mammal species as rabbits and opossums, are abundant. Service studies have documented that there is an abundant prey base at the Alligator River National Wildlife Refuge. This was one of the criteria used to select it as a reintroduction site.

Man-caused pressures eventually forced the red wolf into the lower Mississippi River drainage and lastly into southeast Texas and southwest Louisiana. This was where the only surviving population remained in the mid-1970s when the Service decided to trap the animals and place them in a captive breeding program. This decision was based on the obviously low number of animals left in the wild, poor physical condition of these animals due to internal and external parasites and disease, and the treat posed by an expanding coyote population and consequent inbreeding problems. A Red Wolf Captive Breeding Program was established by contract with the Paint Defiance Zoological Garden of the Metropolitan Park Board of Tacoma, Washington. Soon, thereafter, 40 wild-caught adult red wolves were provided to the breeding program, and the first litter of pups was born in May 1977. Since then, the wolves have continued to prosper at this and six other captive facilities throughout the United States. Without this extreme action it is obvious that the species would now be completely extinct. Throughout this time, however, the goal of the Service's red wolf recovery program has continued to be the eventual release of at least some of the captive animals into the wild to establish new, self-sustaining populations.

To demonstrate the feasibility of such reintroductions of red wolves, the Service conducted carefully planned experiments in 1976 and 1978. These experiments involved the release of mated pairs of red wolves onto Bulls Island, a 4,000-acre component of the Cape Romain National Wildlife Refuge near Charleston, South Carolina. The results of these planned releases indicated that it is feasible to reestablish adult wild-caught red wolves in selected habitats in the wild. The experiments were eventually terminated, and the wolves recaptured and returned to captivity all in good health. Bulls Island was not large enough to support a self-sustaining population of wolves, and it was never intended to be a permanent reintroduction site. Observations and conclusions derived from these experiments, plus knowledge gained with wild-caught but captive-reared pups in Texas, also indicate the potential success of establishing captive reared populations in the wild.

Based on limited historical knowledge of this species, it is believed that the red wolf would thrive in dense cover typified by large acreages of bottomland vegetation now typically found in remnant sites throughout the Piedmont and Coastal Plain regions of the southeastern States. Such sites would provide the small mammal prey base and the denning and escape cover required by the species. Ideally such areas would also be isolated, have a low human encroachment potential, and be secured in either State or Federal ownership.

A great deal of investigative effort by the Fish and Wildlife Service since 1980 has been directed at locating suitable release sites throughout the historic range of the red wolf. Apparently ideal habitat for this species exists within the Alligator River National Wildlife Refuge in Dare and Tyrrell Counties, North Carolina. This refuge comprises nearly 120,000 acres of the finest wetland ecosystems found in the Mid-Atlantic region. Principal natural communities in the Refuge include broad expanses of palustrine (non-riverine) swamp forests, pocosins, and freshwater and salt marshes. Adjacent to the refuge is a 47,000-acre U.S. Air Force bombing range with similar habitats. The very limited live ordnance expended by the Air Force and Navy on this range is restricted to two extremely small, well defined, and cleared target areas (approximately 10 acres each). The establishment of an experimental population of red wolves in this refuge will greatly enhance the recovery of this species by demonstrating the feasibility of a large predator reintroduction. The approved Red Wolf Recovery Plan calls for the establishment of three self-sustaining populations before the species can be considered for possible downlisting from its endangered status. By demonstrating that reintroductions of red wolves into suitable habitats is feasible, the Service hopes to encourage other Federal land management agencies in the Southeast to become interested in further reintroduction efforts.

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Presently, the Fish and Wildlife Service's Red Wolf Captive Breeding Program in Washington State has 49 animals. One small captive breeding program near St. Louis, Missouri, has 12 wolves, and 19 other animals are in five public and private zoos in the United States. The Fish and Wildlife Service has full responsibility for all of the red wolves in captivity, and from this captive group will come those animals selected for a reintroduction. A reintroduction project at the refuge requires the removal of 8 to 12 animals from the captive program over a period of 12 months. Animals selected for reintroduction to the wild will be flown to Norfolk, Virginia, in the fall and transported by truck to the refuge. Each pair will be placed in a 2,500-square foot acclimation pen for a period of six months. Acclimation pens will be isolated and provided maximum protection. During their acclimation each animal will be fitted with a radio collar and a capture collar to allow the animals time to adjust to the collars and also to insure the quick retrieval of any animals if this proves necessary.

During the early spring months of 1987, three pairs of mated, acclimated red wolves will be released on a 2-week staggered schedule. They will be closely monitored via telemetry tracking for the first 4 to 6 weeks, then the frequency of monitoring will be gradually reduced after each pair has established a home range on the refuge. If these initial releases are judged successful, two more mated pairs will be released on the refuge the following spring (1988) after going through the acclimation process. It is anticipated that the refuge and adjacent U.S. Air Force lands could eventually sustain a red wolf population of about 25 to 35 animals.

Status of Reintroduced Populations

This reintroduced population of red wolves is designated as a nonessential experimental population according to the provisions of section 10(j) of the Act. The experimental population status means the reintroduced population will be treated as a threatened species, rather than an endangered species, for the purposes of sections 4(d) and 9 of the Act, which regulate taking, and other actions. This enables the Service to adopt a special rule which is less restrictive than the mandatory prohibitions covering endangered species, if there is a management need for more flexibility and the resulting protections are necessary and advisable for the conservation of the red wolf. The Service recognizes that circumstances could arise whereby a person engaged in an otherwise lawful activity such as hunting or trapping, might accidently take a red wolf despite the exercise of reasonable due care. Where such a taking was unavoidable, unintentional, and did not result from negligent conduct lacking reasonable due care, the Service believes that no legitimate conservation purpose would be served by bringing an enforcement action under the ESA. Therefore, upon investigation of a taking, the Service would not prosecute anyone under such circumstances. In addition, red wolves can be taken in defense of human life (though such circumstances are considered extremely unlikely to occur), provided the taking is immediately reported to the Refuge Manager. Service and State employees and agents would be additionally authorized to take animals which are responsible for depredations to livestock or property by means which might involve injury or death only if it has not been possible to eliminate such threat by live capturing and releasing the red wolf unharmed on the refuge. These flexible rules are considered a key to public acceptance of the reintroduced population. The State of North Carolina has regulatory authority to protect and conserve the species, and we are satisfied that the State's regulatory system for recreational activities is sufficient to provide for conservation of the red wolf. No additional Federal regulations are needed.

The nonessential status is appropriate for the following reasons: Although extirpated from the wild, the red wolf, nevertheless, is secured in seven widely separate captive breeding programs and zoos in the United States. The existing captive population totals 80 animals, with over half this number in the U.S. Fish and Wildlife Service's captive breeding program in the State of Washington, and the other animals scattered in six facilities in Louisiana, Texas, Missouri, Florida, and New York. Given the health checks and careful monitoring that these animals receive, it is highly unlikely that disease or other natural phenomena would threaten the survival of the species. Furthermore, the species breeds readily in captivity; only five members of the existing captive population were wild caught, with all the others born since 1977 to captive pairs. Therefore, the taking of 8 to 12 animals from this captive assemblage would pose no threat to the survival of the species even if all of these animals, once placed in the wild, were to succumb to natural or man-caused factors.

The management advantage from the nonessential status comes from the fact that it would change the application of section 7 of the Act (interagency consultation) to the reintroduced population. Off of the refuge (*i.e.*, on the Dare County Bombing Range or on private lands), the nonessential experimental population would be treated as if it were a species proposed for listing, rather than a listed species. This means that only two provisions of section 7 would apply on these non-Service lands: Section 7(a)(1), which authorizes all Federal agencies to establish conservation programs; and section 7(a)(4), which requires Federal agencies to confer informally with the Service on actions that are likely to jeopardize the continued existence of the species. The results of a conference are only advisory in nature; agencies are not required to refrain from commitment of resources to projects as a result of a conference. There are in reality no conflicts envisioned with any current or anticipated management actions of the Air Force or other Federal agencies in the area. The presence of the bombing range is in fact a benefit, since it forms a secure buffer zone between the refuge and private lands; the target areas that are actually fired into, as previously discussed, would be easily avoided by the wolves. Thus there would be no threats to the success of the reintroduction project or the overall continued existence of the red wolf from these less restrictive section 7 requirements.

On the Alligator River National Wildlife Refuge, on the other hand, the experimental population would continue to receive the full range of protections of section 7. This would prohibit the Service or any other Federal agency from authorizing, funding, or carrying out an action on the refuge which is likely to jeopardize the continued existence of the red wolf. Service regulations at 50 CFR 17.83(b) specify that section 7 provisions shall apply collectively to all experimental and nonexperimental populations of a listed species, rather than solely to the experimental population itself. The Service has reviewed all ongoing and proposed uses of the refuge, including traditional trapping and hunting with or without dogs, and found that none of these would jeopardize the continued existence of the red wolf, nor would they adversely affect the success of the reintroduction effort.

Location of Reintroduced Population

Since the red wolf is recognized as extinct in the wild, this reintroduction site fulfills the requirement of section 10(j) that an experimental population be geographically isolated and/or easily discernible from existing populations. As previously described, the release sites are in the Alligator River National Wildlife Refuge in Dare County, North Carolina, in the extreme northeast corner of the State, just inland from the Outer Banks. The experimental population designation is also being extended to Tyrrell County (which includes a small portion of the Refuge lying west of the Alligator River) as well as the adjacent Washington and Hyde Counties.

Management

This reintroduction project will be undertaken by the Service. Present plans call for the acclimation of wolves for 6 months in captive pens on the refuge, followed by release of six animals in the spring of 1987, and if that is successful, by the release of two additional pairs the next spring. Animals released will be adult, previously mated pairs. Releases will be staggered at 2-week intervals. Reintroduced animals will be closely monitored via telemetry during the first 3 to 5 weeks following release. After this initial monitoring phase, periodic checks will be made to determine if established home ranges are being maintained. It is anticipated that, because of the size and habitat characteristics of the reintroduction area, animals will remain within the boundaries of the refuge and adjacent military lands. The public will be instructed to immediately report any observation of a red wolf off Federal lands to the refuge manager. The Service will then take appropriate actions to recapture and return the animal to the refuge.

Take of animals by the public will be discouraged by an extensive information and education program and by the assurance that all introduced animals will be radio-collared and, thus easy to locate if they leave the refuge. The public will be encouraged to cooperate with the Service in attempts to maintain the animals on the release site. In addition, there will be no penalty for taking a red wolf where the take, incidental to an otherwise lawful activity was unavoidable, unintentional, and did not result from negligent conduct lacking reasonable due care, provided the taking is immediately reported to the refuge manager. Service and State employees and agents would be additionally authorized to take animals which need special care or which are responsible for depredation to livestock or property only if it has not been possible to eliminate such threat by live capturing and releasing the specimen unharmed on the refuge. Take procedures in such instances would involve live capture and removal to a remote area, or if the animal is clearly unfit to remain in the wild, return to the captive breeding facility. Killing of animals would be a last resort; lethal takes are authorized only if live capture attempts failed or there was some clear danger to human life. These flexible rules are considered a key to public acceptance of the reintroduced population.

Utilizing information gained from this initial 5-year period, an overall assessment of the success of the reintroduction will be made at the end of the fifth year. This assessment will include public meetings in the Dare County area to ascertain public attitudes that have developed toward the red wolf. In consultation with the North Carolina Wildlife Resources Commission, a determination will then be made regarding the future management of wolves that leave the refuge/bomb range area. This assessment will provide the Service the information needed to initiate the next management phase for the Alligator River population and to consider additional red wolf introductions in accordance with the recovery goals identified for this species.

This reintroduction is not expected to conflict with existing or proposed human activities or hinder the utilization of the Alligator River National Wildlife Refuge by the public. Additionally, the presence of these animals is not expected to impact the ongoing activities designated for this national wildlife refuge. Utilization of the refuge for the establishment of a red wolf population is consistent with the legal responsibility of the Service to enhance the wildlife resources of the United States.

As described above, no extant populations are available to provide animals for this reintroduction. Therefore, the Service believes that this reintroduction will result in the establishment of the only viable wild population. With a successful reintroduction, the Service can begin to consider additional sites and proceed with the expectation that recovery of this species is attainable. In addition, there are no existing or anticipated Federal and/or State actions identified for this release site which are expected to affect this experimental population. For all of these reasons, the Service finds that the release of an experimental population of red wolves will further the conservation of this species. *See* ESA, section 10(j)(2)(A); 50 CFR 17.81(b).

On July 24, 1986, the Service published, in the **Federal Register** (51 FR 26564), a proposal to introduce mated pairs of red wolves into the Alligator River Refuge and to determine this population to be a nonessential, experimental population according to section 10(j) of the Endangered Species Act of 1973 (ESA), as amended. That proposal provided information on the species' biology, status, and recovery potential, as well as possible implications of reintroducing the red wolf to the refuge.

Summary of Comments and Recommendations

In the July 24, 1986, proposed rule (51 FR 26564) all interested parties were requested to submit comments that might contribute to the development of a final decision on the proposed rule. Appropriate State and Federal agencies, scientific and environmental organizations, and other interested parties were contacted and requested to comment. A 45-day comment period was provided. A total of 12 letters were received. Specific issues addressed by the commenters and the Service response to each are presented below.

1. General Comments of Support

The Edison Electric Institute commented that they support the reintroduction effort and expressed the opinion that the red wolf project should be a model for reintroduction of other endangered species.

The Tennessee Valley Authority expressed their support for the reintroduction, stressing the importance of the 1982 Amendment to the Endangered Species Act which allows for the experimental designation of animals selected for reintroduction.

The Secretary of the North Carolina Department of Natural Resources and Community Development expressed his agency's support for the project and underscored his view that the effort will provide not only a positive impact on the preservation of the red wolf, but also a greater goal, which is education. His letter went on to underscore the vital role that captive environments such as zoos can play in the preservation of species. The importance of captive programs in many endangered species endeavors was also voiced by the American Association of Zoological Parks and Aquariums and by the Point Defiance Zoo and Aquarium in Tacoma, Washington.

Response: The Service strongly concurs with the key role of zoos and other captive breeding programs in endangered species management, and

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the importance of the experimental population provisions added to the Act in 1982 in fostering endangered species conservation.

2. Comments Concerning Taking of Red Wolves

The Defenders of Wildlife, the National Audubon Society, The Humane Society of the United States and the National Wildlife Federation each expressed strong support for the proposal, but objected to the proposed incidental take provision as being both unnecessary and subject to misinterpretation. These organizations shared the view that this language could be construed to mean that the Service would invite or condone the indiscriminate killing of red wolves.

Response: After reconsideration of this issue, the Service agrees that the language in the proposed special rule is difficult to interpret, although the coverage of the incidental take exception in proposed § 17.84(c)(4)(i) was clearly intended by the Service to be limited to unintentional taking that results from otherwise lawful recreational activities. The Service did not intend to allow indiscriminate killing of red wolves through the language of its proposed rule. Nevertheless, to avoid any possible confusion, the special rule has been revised to delete this language. Instead, the enforcement policy of the Service with regard to the accidental taking of a red wolf has been clarified in the preamble to this final rule (see "Background" section). In essence, there will be no penalty where the take of a red wolf, incidental to an otherwise lawful activity, was unavoidable, unintentional, and did not result from negligent conduct lacking reasonable due care, provided the taking is immediately reported to the refuge manager.

The Wildlife Information Center requested that only live traps be used should it be necessary for the Service to remove wolves from the project area.

Response: The Service will make every effort to keep red wolves on the refuge, but if an animal leaves the refuge/bombing range area, the Service intends to recapture it and return it to captivity, utilizing the capture collar that each animal will wear upon release. Upon receiving a coded radio signal, this collar is activated, the wolf is sedated, and then the animal is located by radio transmitter signal. Should the capture collar fail, individual animals would be tracked by transmitter and darted utilizing a standard gas powered capture gun. The use of live traps in this particular habitat type, coupled with a high black bear population, would be cost prohibitive and inefficient. A basic premise adopted by the Service for this project is that when a red wolf must be recaptured, it should be done as quickly and humanely as possible.

The North Carolina Farm Bureau stated that livestock owners should be allowed to take red wolves that are engaged in livestock depredation, rather than having to wait for a Fish and Wildlife Agent or State Wildlife Conservation Officer to prove that depredations were actually occurring.

Response: Since an ample prey base exists on the refuge/bomb range area, the Service sees very little likelihood of conflicts with the small amount of livestock which exists in Dare County. In the unlikely event one or more red wolves should stray far enough from the refuge to encounter livestock, the Service would ask that local farmers immediately contact the refuge manager. However, if one or more red wolves are actually preying on livestock, Service or State employees would be empowered to take the offending animals. Furthermore, nothing in the proposed rule was intended to interfere with a livestock owner actually protecting his property from other predators such as wild dogs, which are a much more probable threat than red wolves.

3. Comments Concerning Hunting and Trapping on the Refuge

The Executive Director of the North Carolina Wildlife Resources Commission expressed the support of his agency for the project so long as traditional hunting and trapping on the refuge is permitted.

The Humane Society of the United States expressed opposition to hunting and trapping on the refuge after red wolves are released. Similarly, the Wildlife Information Center stated that since the Service could not guarantee that red wolves will not be shot or accidentally trapped, all hunting and trapping should be prohibited.

The Defenders of Wildlife cautioned that the Service may have been premature to judge that no traditional uses of the refuge would jeopardize the wolves or interfere with the success of the project.

Response: The Service's underlying philosophy regarding the compatibility of the red wolf reintroduction and traditional recreational uses of the refuge is based on both immediate and long-term conservation needs. First of all, the whole intent of the experimental population provision of the Act is to eliminate the requirement for absolute protection of reintroduced animals, in order to foster the chances of reintroduction. The insistence of a guarantee that no animals will ever succumb to man-caused factors could preclude the use of this innovative provision of the Act. Without management flexibility, the current reintroduction effort would be much less likely to succeed. The Service's second premise deals with the long-term prospects this species has for recovery in the wild. The recovery plan calls for establishment of three self-sustaining populations before the species can be considered for possible downlisting. If traditional uses of the refuge have to be significantly modified or altered to accommodate red wolves, it is going to be very difficult, if not impossible, to approach other public land management agencies to permit wolf reintroductions on their lands. The best information indicates that known uses such as hunting and trapping are compatible with red wolf introduction. As information is gathered during the monitoring of released wolves, we will continue to evaluate the compatibility of these uses with the needs of the red wolf and make appropriate determinations.

4. Comments Regarding Removal of Wolves From the Captive Population

The Wildlife Information Center expressed concern over the number of red wolves (8–12) proposed for removal from the total captive population of 63 animals; they suggested that no more than six captive red wolves be selected for the project.

The National Wildlife Federation expressed a related concern that the Service may be overoptimistic in concluding that all animals can be quickly replaced through captive breeding, since it has taken 10 years to build up the current captive population; they urged the Service to minimize losses of released wolves rather than to rely on supplementing the reintroduced population with additional captive red wolves.

Response: The Service is confident that any wolves lost in the reintroduction attempt at Alligator River Refuge can be replaced in the next breeding season. The Service currently plans to limit releases to no more than 12 animals. This number is based on a proportion of the predicted eventual population the area will sustain (25 to 35 animals of all age classes), which in turn reflects the magnitude of the available prey base, the acreage available to the project, and the approximate home range of the animals, as determined in Texas and Louisiana during the late 1970s by radio telemetry investigations. The reproductive vigor of the red wolf has been amply demonstrated at the

Services' captive breeding project in Washington State and at other captive facilities; in fact, since publication of the proposed rule, the captive breeding program has produced 17 additional offspring, bringing the present captive population to 80 red wolves in the program nationwide. Furthermore, the overall captive population size could be even greater, except that it has been necessary to suppress reproduction in order to keep numbers within the capability of current facilities. Thus the Service has carefully evaluated the numerical status of this species and has determined that the taking of 8 to 12 animals from this captive assemblage would pose no threat to the survival of the species, even if all of these animals succumb to natural or man-caused factors.

5. Comments on Ecological Suitability of the Refuge to Support Red Wolves

The President of the North Carolina Farm Bureau Federation stated his view that ". . . the introduction of another predator into the refuge would be a mistake, and that the impact that this would have on other wildlife populations in the area (such as black bears) has not been fully considered." The American Farm Bureau similarly noted that there has been no determination of the effects of the red wolf reintroduction ". . . on all wildlife and plants within the 'food chain.' "

Response: Although little factual data is available regarding the interactions of red wolves and black bears, there is abundant evidence that black bears and gray wolves coexist in harmony in Minnesota and throughout Canada and Alaska. More generally, based on previous trial releases of red wolves in South Carolina in 1976 and 1978 and on the limited historical knowledge of the species in Louisiana and Texas, the Service does not expect the red wolf to disrupt any of the dynamic natural process on the refuge. During the 6-month acclimation period, surveys of pre-release biomass will be conducted in various habitat types on a per acre basis. After the wolves are released, these surveys will be duplicated and trends, if any, determined.

The American Farm Bureau expressed concerns that the Service had no data, but had only made a guess, about whether there is an adequate prey base to support a population of red wolves on the refuge. It also questioned whether the refuge is within the historic range of the red wolf and whether the habitat is suitable for the species, requesting the Service to specify how much of the total acreage is actually usable.

Response: The Service has conducted extensive small mammal surveys on portions of the refuge, especially in habitats that appeared to sustain a low density of probable prey species, such as the large acreage of pond pine pocosin north of U.S. 64. This habitat type was found to sustain at least moderate populations of white-footed and golden mice, southeastern shrews, marsh rabbits, and gray squirrels. This area is also inhabited by a fair population of bobcats. Other portions of the refuge tend to have more edge effect and thus carry higher populations of marsh rabbits and a variety of other small mammals which would serve as a substantial prey base for the red wolf.

Regarding historic range of the species, current investigations have determined that the red wolf occurred within recent historic time as far north along the Atlantic seaboard as Delaware and southeastern Pennsylvania. In terms of habitat suitability, the limited available historical information indicates the red wolf preferred areas with thick understory. In earlier times these were overflow river swamps with extensive canebrakes and associated vegetation. Habitats found within the Alligator River Refuge typify this habitat type to a large degree. About 70 percent of the refuge is made up of impenetrable pocosins of various types, and 20 percent or so is fresh water swamp habitat along the Alligator River. The remaining habitat of the refuge is made up of a pine ridge, roads, streams, and small clearings. The Service expects the red wolf to utilize all of these habitats but primarily to utilize the thick pocosins, which total more than 100,000 acres in the refuge/bombing range complex.

6. Comments on Documentation and Public Notification of the Proposal

The American Farm Bureau objected to the fact that the Service has not prepared a "legally sufficient biological assessment" for the project.

Response: The Service believes that the Farm Bureau has misunderstood the nature of such a document. Under 50 CFR 402.12(b)(1) [see 51 FR 19926, 19960 (June 3, 1986)] a biological assessment must be prepared for any Federal action that is a major *construction* activity prior to entering into consultation under section 7(a)(2). Such a document has no relationship to the process of designating an experimental population or reintroducing red wolves under section 10(j) of the Act, because the establishment of *this* experimental population does not involve construction activities that fall within the definition of "major construction activity," nor does this rule constitute a "major Federal action" for purposes of the National Environmental Policy Act. See 50 CFR 401.02 [51 FR 19926, 19958 (June 3, 1986)]. If the Farm Bureau's intent was to refer to general biological studies of the suitability of the area, the Service reviewed all available information on refuge habitats and red wolf habits, conducted studies of the prey base on the refuge, and consulted wolf experts prior to preparation of the proposal, to insure that there is a scientific consensus that the refuge is indeed suitable for a red wolf reintroduction. These are documented in the Service's technical proposal.

The American Farm Bureau went on to express the opinion that the Service had not adequately considered State and local laws and the impact on local agricultural interests. It also stated that the draft environmental assessment should have received wider distribution to possible affected agencies and agricultural interests within the State.

Response: The project has been carefully reviewed at various levels within the State government of North Carolina. The Wildlife Resources Commission has been aware of the proposal from its inception, and the project has been presented twice in detail to the wildlife commissioners at scheduled meetings with agendas publicized in advance. The Service consulted in detail with the North Carolina Commissioner of Agriculture and with other staff of the State Department of Agriculture. Staff of the Animal and Plant Health Inspection Service of the Federal Department of Agriculture (which is responsible for animal damage control activities) were likewise consulted. At the local level, the Dare County Commissioners have reviewed the project and publicly voted to support the proposal. No State or local entity has advised the Service of any laws that this proposal would violate. Regarding the environmental assessment, the announcement of its availability was included in the proposed rule, copies of which were provided to numerous interested parties throughout the State. Two requests for copies of the environmental assessment were received, and copies were provided. As noted elsewhere in this rule, the Service has determined that this action is not a major Federal action necessitating the preparation of an Environmental Impact Statement.

7. Other Red Wolf Protection Issues

The National Wildlife Federation also urged the Service to closely monitor the

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wolves and their offspring for diseases, such as distemper and canine parvo virus, that can be transmitted to the wolves from domestic dogs on the refuge; expressed concerns about releases of deer dogs near red wolf acclimation-release sites during the hunting season; and suggested that speed limit warning signs and "rumble strips" be installed on portions of State Highways 64 and 264 within the refuge to alert motorists of the possible presence of red wolves in the area.

Response: The Service agrees with the intent of each of these comments. Close monitoring of wolves and their offspring for diseases, injuries, behavioral abnormalities, and other problems will be a routine part of the reintroduction. Access to the acclimation/release site areas will be limited within a one-half mile radius of each site. Regarding measures to limit speeds on highways, the Service agrees conceptually with these suggestions, and will discuss the issues with the North Carolina Department of Transportation.

The National Wildlife Federation also expressed concern over the use of language in the proposal that perpetuates the fallacy that wolves are a threat to human life, and recommended that the Service delete all references in the final regulation to "life threatening" conflicts.

Response: The Service certainly agrees that red wolves released into the refuge for the reintroduction attempt will in reality never prove a threat to any humans in the area. In fact, as the results of the 1976 experiment in South Carolina showed, it is very likely that humans will rarely, if ever, even *see* red wolves in the vast and impenetrable habitat of the refuge. However, as noted previously, under some circumstances it might be difficult or impossible to distinguish a red wolf from a more realistic threat, a feral dog. The Service will expect that a person in such circumstances will use all reasonable means to avoid a response not proportionate to the perceived threat, but in a potentially life-threatening situation the Service does not expect a person to hesitate in self-defense or defending others while attempting to make an identification of the animal. A related consideration for the Service in developing the special rule has been the need to foster public acceptance of the red wolf population. The knowledge people have about the degree of threat posed by a red wolf still varies widely. At the end of the 5-year experimental phase of the project, the Service will be most interested in assessing changes in public attitude regarding wolves. During the interim, the Service is of the opinion that the language as expressed in the proposed rule should be retained.

National Environmental Policy Act

An environmental assessment under NEPA has been prepared and is available to the public at the Service's Asheville Field Office (see **ADDRESSES** section), Atlanta Regional Office (see **FOR FURTHER INFORMATION CONTACT** section), or the Office of Endangered Species, 1000 N. Glebe Road, Arlington, Virginia 22201 (202/235-2760). It has been determined that this action is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (implemented at 40 CFR Parts 1500 through 1508).

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The U.S. Fish and Wildlife Service has determined that this is not a major rule as defined by Executive Order 12291; that the rule would not have a significant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act (Pub. L. 96-354). The introduction site occurs within 15 miles of Atlantic Ocean resorts in a region along the Outer Banks that can be considered a high use area for vacations and wildlife enthusiasts. However, the mainland portion of Dare County is not in the vicinity of a high concentration of year-round inhabitants. The refuge has been set aside by the Federal government for wildlife use. The introduction of a nonessential experimental population into this refuge and the use by these animals of adjacent Federal lands is compatible with current utilization of the refuge and adjacent Federal lands and is expected to have no adverse impact on public use days. It is reasonable to expect some increase in visitor use of the refuge after the release of the red wolves. No private entities will be affected by this action. The rule as presented does not contain any information collection or record keeping requirements as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

Authors

The principal authors of this rule are Warren T. Parker, Endangered Species Field Office, Asheville, North Carolina (704/259-0321), Marshall P. Jones, Atlanta Regional Office, Atlanta, Georgia (404/331-3583), and Peter G. Poulos, Office of Endangered Species, Washington, DC (202/235-2760).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations, is hereby amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; and Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Section 17.11(h) is amended by revising the entry for this "red wolf" species to read as shown below:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
MAMMALS							
*	*	*	*	*	*		
Red wolf	*Canis rufus*	U.S.A. (SE U.S.A., west to central TX).	Entire except Dare, Tyrrell, Hyde, and Washington Counties, NC.	E	1	NA	NA
Do	do	do	U.S.A. NC-Dare, Tyrrell, Hyde, Washington Cos.	XN		NA	17.84(c)
*	*	*	*	*	*		

3. Section 17.84 is amended by adding new paragraph (c) as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(c) Red wolf (*Canis rufus*). (1) The red wolf population identified in paragraph (c)(9) of this section is a nonessential experimental population.

(2) No person may take this species, except as provided in paragraphs (c)(3) through (5) and (10) of this section.

(3) Any person with a valid permit issued by the Service under § 17.32 may take red wolves for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act and in accordance with applicable State fish and wildlife conservation laws and regulations;

(4) Any person may take red wolves in defense of that person's own life or the lives of others, *Provided* that such taking shall be immediately reported to the refuge manager, as noted in paragraph (c)(6) of this section.

(5) Any employee or agent of the Service or State conservation agency who is designated for such purposes, when acting in the course of official duties, may take a red wolf if such action is necessary to:

(i) Aid a sick, injured, or orphaned specimen;

(ii) Dispose of a dead specimen, or salvage a dead specimen which may be useful for scientific study;

(iii) Take an animal which constitutes a demonstrable but nonimmediate threat to human safety, or which is responsible for depredations to lawfully present domestic animals or other personal property, if it has not been possible to otherwise eliminate such depredation or loss of personal property, *Provided* that such taking must be done in a humane manner, and may involve killing or injuring the animal only if it has not been possible to eliminate such threat by live capturing and releasing the specimen unharmed on the refuge.

(6) Any taking pursuant to paragraphs (c)(3) through (5) must be immediately reported to the Refuge Manager, Alligator River National Wildlife Refuge, Manteo, North Carolina, telephone 919/473–1131, who will determine disposition of any live or dead specimens.

(7) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife laws or regulations or the Endangered Species Act.

(8) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (c) (2) through (7) of this section.

(9) The site for reintroduction of red wolves is within the historic range of the species in the State of North Carolina, on the Alligator River National Wildlife Refuge, Dare County; the adjacent Tyrrell, Hyde, and Washington Counties are also included in the experimental population designation. The red wolf is otherwise extirpated from the wild, so there are no other extant populations with which this experimental population could come into contact.

(10) The reintroduced population will be continually monitored closely during the life of the project, including the use of radio telemetry as appropriate. All animals will be vaccinated against diseases prevalent in canids prior to release. Any animal which is sick, injured, or otherwise in need of special care, or which moves off Federal lands, will be immediately recaptured by the Service and given appropriate care. Such an animal will be released back to the wild on the refuge as soon as possible, unless physical or behavioral problems make it necessary to return the animal to a captive breeding facility.

(11) The status of the population will be reevaluated within 5 years of the effective date of this regulation to determine future management status and needs. This review will take into account the reproductive success of the mated pairs, movement patterns of individual animals, food habits, and the overall health of the population.

Dated: October 24, 1986.

Susan Recce,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–28048 Filed 11–18–86; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 672, and 675

[Docket No. 51190–5190]

Foreign Fishing; Groundfish of the Bering Sea and Aleutian Islands Area, and the Gulf of Alaska; Inseason Adjustments

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustments.

SUMMARY: NOAA announces the apportionment of amounts of the Alaska groundfish reserves to supplement domestic annual harvest (DAH) and total allowable level of foreign fishing (TALFF) of certain groundfish species under provisions of the fishery management plans (FMPs) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Groundfish Fishery of the Gulf of Alaska. The intent of this action is to assure optimum use of all Alaskan groundfish species.

DATES: Effective November 14, 1986. Comments will be accepted December 1, 1986.

ADDRESSES: Comments should be mailed to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service (Regional Director), P.O. Box 1668, Juneau, Alaska 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Janet Smoker (Resource Management Specialist, Alaska Region, NMFS), 907–586–7229.

SUPPLEMENTARY INFORMATION:

Background

Bering Sea and Aleutian Islands Area (BSA)

The total allowable catches (TACs) for various groundfish species are established under the FMP which was developed by the North Pacific Fishery Management Council under the Magnuson Fishery Conservation and Management Act and is implemented by regulations appearing at 50 CFR 611.93 and Part 675. The TACs are apportioned

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initially among DAH, reserve, and TALFF. DAH, in turn, is composed of domestic annual processing (DAP) and joint venture processing (JVP) fisheries.

Under § 675.20(b), crossreferenced at § 611.93(b)(2), the reserve amount is to be apportioned to DAH and/or to TALFF during the fishing year. As soon as practicable after April 1, June 1, and August 1 or on other dates as are deemed necessary the Secretary of Commerce (Secretary) reapportions to DAH all or part of the reserve that he finds will be harvested by U.S. vessels during the remainder of the year, and reapportions to TALFF the remaining portion of the reserve that will not be reapportioned to DAH, except that part or all of the reserve may be withheld if an apportionment would adversely affect the conservation of groundfish resources or prohibited species. When the initial DAH and TALFF for 1986 were established (51 FR 956, January 9, 1986), DAH and TALFF were supplemented with 29,857 metric tons (mt) from the initial 300,000 mt reserve, reducing the reserve to 270,143 mt. On April 25, 1986, the JVP portion of DAH for pollock (Aleutian Islands subarea), yellowfin sole, and other flatfish and TALFF for pollock (Bering Sea subarea) were supplemented by 135,072 mt from the reserve (April 30, 1986, 51 FR 16058). On May 14, 1986 the Bering Sea area sablefish DAP portion of DAH was supplemented with 500 mt from the reserve (May 19, 1986, 51 FR 18333). On July 10, the Bering Sea area sablefish and Pacific ocean perch DAP portions of DAH were supplemented by 400 mt and 250 mt, respectively, from the reserve (July 15, 1986, 51 FR 25529).

On July 31 DAH and TALFF were supplemented by 112,280 mt from the reserve, reducing it to 21,641 mt (July 31, 1986, 51 FR 27412) as follows: Apportionments from reserve were made to the following Aleutian Island subarea categories; 15,380 mt was transferred to JVPs for pollock (15,000 mt), rockfish (250 mt), sablefish (80 mt), and squid (50 mt). In the Bering Sea subarea, 20,000 mt of reserve for pollock was transferred to pollock JVP and the DAP category "other species" was supplemented by 500 mt from reserves. (This action also transferred 40,000 mt of the pollock DAP to JVP).

Apportionments to TALFF were made from the nonspecific reserves of Bering Sea subarea pollock (51,228 mt), yellowfin sole (14,425 mt), "other flounders" (4,330 mt), and Pacific cod (6,417 mt).

On September 22, the Bering Sea sablefish DAP and TALFF were supplemented by 200 mt and 10 mt, respectively, from the reserve, reducing it to 21,431 mt (51 FR 33613).

Gulf of Alaska (GOA)

The FMP for the Groundfish of the Gulf of Alaska, also developed by the Council under the Magnuson Act, is implemented by regulations appearing at 50 CFR 611.92 and Part 672. It establishes optimum yields (OYs) for various groundfish species which are apportioned initially among DAH, reserve, and TALFF. Under 50 CFR 611.92(c)(1)(ii) and 672.20(c), the Secretary may reapportion reserve and DAH amounts to DAH and/or TALFF on the same schedule as the BSA. The interim apportionments of OY for each category of groundfish were published on January 9, 1986 (51 FR 956). On March 4, the JVP of pollock in the Western/Central Regulatory Area was increased by 18,000 mt by transferring 15,960 mt from reserve to DAH and allocated to JVP and 2,040 mt from DAP to JVP (51 FR 7446). The revised initial apportionments were published by emergency interim rule on May 28 (51 FR 19203) and were extended through November 18 (August 25, 1986, 51 FR 30218).

Reapportionments (Table 1)

The following actions are taken by this notice to reapportion specifications in the BSA and GOA fisheries.

To the BSA JVP

Due to unanticipated high catches by joint ventures in the Bering Sea subarea, the JVPs of the following species must be increased: pollock, 30,000 mt; yellowfin sole, 9,000 mt; arrowtooth flounder, 800 mt; Pacific cod, 15,000 mt; Atka mackerel, 1,200 mt; sablefish, 100 mt; and "other species", 1,000 mt. For pollock, arrowtooth flounder, and Pacific cod, the specified amounts are transferred from DAP, because the Regional Director has determined that these amounts will not be needed by DAP fisheries in 1986. For yellowfin sole, Atka mackerel, sablefish, and "other species," the amounts are apportioned from the nonspecific reserve. The new yellowfin sole TAC is 218,500 mt, 1 percent above the current TAC. The new Atka mackerel TAC is 32,050 mt, 1 percent above the current TAC. The new sablefish TAC is 3,387 mt, 1 percent above the current TAC. The Regional Director has found that the taking of these revised TAC amounts will not result in overfishing.

In the Bering Sea subarea, a fall DAP fishery for rock sole, a species currently included in the "other flatfish" category, has been proposed. Therefore, the DAP of "other flatfish" is increased by 5,000 mt, transferred from JVP.

To TALFF/BSA (Table 1)

The Regional Director has determined that in the Bering Sea subarea, 20,000 mt of the "other flatfish" JVP will not be used by DAH fisheries and is therefore available for transfer to TALFF. To provide sufficient bycatch for the increased flatfish TALFF fisheries, 2,300 mt of Pacific cod is transferred from DAP to TALFF. Similarly, 10 mt of sablefish is transferred to the Bering Sea subarea sablefish TALFF from the nonspecific reserve.

To JVP/GOA (Table 2)

Proposed joint venture operations on pollock in the Western and Central Gulf this fall could take an additional 10,000 mt of pollock. The DAP catch of pollock to date is less than 5,200 mt of the 40,000 mt DAP apportionment. The Regional Director therefore finds that the 1,860 mt reserve amount and 8,000 mt of the DAP apportionment of pollock in the Western/Central regulatory areas will not be taken by DAP fisheries and are therefore transferred to JVP.

Comments and Responses

The Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Immediate effectiveness of this notice is necessary to benefit groundfish fishermen who otherwise would have to forego substantial amounts of other groundfish species if fisheries were closed as a result of achieving previously specified JVPs or TACs. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

Classification

This action is taken under the authority of 50 CFR Parts 611, 672, and 675 and complies with Executive Order 12291.

List of Subjects in 50 CFR Parts 611, 672, and 675

Fisheries.

(16 U.S.C. 1801 *et seq.*)

Dated: November 13, 1986.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

TABLE I.—BERING SEA/ALEUTIAN ISLANDS REAPPORTIONMENTS OF TAC

[In metric tons]

Bering Sea subarea	Current	This action	Revised
Pollock (TAC (1,200,000) EY [1] (1,100,000)):			
DAP	101,755	−30,000	71,755
JVP	750,000	+30,000	780,000
TALFF	348,245		348,245
Yellowfin sole (TAC (218,500); EY (310,000)):			
DAP	1,030		1,030
JVP	144,300	+9,000	153,300
TALFF	64,170		64,170
Arrowtooth flounder (TAC (20,000); EY (20,000)):			
DAP	1,805	−800	1,005
JVP	1,667	+800	2,467
TALFF	13,528		13,528
Other flatfish (TAC (124,200); EY (150,000)):			
DAP	4,192	+5,000	9,192
JVP	98,850	−25,000	73,850
TALFF	16,158	+20,000	36,158
Pacific cod (TAC (223,047); EY (165,000)):			
DAP	133,394	−17,300	116,094
JVP	50,830	+15,000	65,830
TALFF	38,823	+2,300	41,123
Atka mackerel (TAC (32,050; EY (30,800)):			
DAP	10		10
JVP	30,790	+1,200	31,990
TALFF	50		50
Sablefish (TAC (3,367); EY (3,000)):			
DAP	2,926		2,926
JVP	246	+100	346
TALFF	105	+10	115
Other Species TAC (24,130); EY (51,200):			
DAP	610		610
JVP	7,000	+1,000	8,000
TALFF	16,520		16,520
Total (TAC=2,000,000):			
DAP	286,949	−43,100	243,849
JVP	1,123,783	+32,100	1,155,883
RES	21,431	−11,310	10,121
TALFF	557,857	+22,310	580,167

[1] EY means equilibrium yield.

TABLE 2.—GULF OF ALASKA REAPPORTIONMENTS OF OY

[In metric tons]

Western/Central area	Current	This action	Revised
Pollock (OY=100,000):			
DAP	40,000	−8,000	32,000
JVP	58,000	+9,860	67,860
TALFF	140		140
RES	1,860	−1,860	0

[FR Doc. 86-28038 Filed 11-14-86; 10:49 am]

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Proposed Rules

Federal Register
Vol. 51, No. 223
Wednesday, November 19, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Amdt. No. 2; Docket No. 3694S]

General Administrative Regulations—Appeal Procedure

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend Subpart J to Part 400 in Chapter IV of title 7 of the Code of Federal Regulations (CFR), known as 7 CFR Part 400—General Administrative Regulations—Subpart J, Appeal Procedure. The intended effect of this rule is to prescribe procedures under which a person who has been determined by FCIC as being ineligible for crop insurance, or whose contract is determined by FCIC to be ineligible for reinsurance, may request review of the determination of ineligibility made by FCIC. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES: Written comments, data, and opinions on this proposed rule must be received not later than January 20, 1987, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulations 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1990.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

The Appeal Regulations provide administrative procedures under which any person or organization may request and obtain review and appeal of determinations made by FCIC. The regulations, found at 7 CFR Part 400, Subpart J, and published in the **Federal Register** on Wednesday, February 12, 1986 at 51 FR 5147, set forth the levels of appeal and prescribe the manner and format of such procedure.

It is the intention of the Corporation to compile a list of those persons who have been found ineligible for participation in the crop insurance program because of non-payment of premium, fraud or other violation of program regulations. No person would be included on this list until they have been given the opportunity to appeal this determination in accordance with the appeal regulations of the Corporation. Presently, all insureds are given the opportunity to appeal determinations by the Corporation which may result in inclusion on this list or to defend their actions in litigation.

The Corporation now also intends to include persons who have been found to have committed similar actions when insured under crop insurance policies issued by Multi-Peril Crop Insurance (MPCI) companies and reinsured by the Corporation. It is the intention of the Corporation to distribute this ineligible list to the MPCI companies and refuse to reinsure any crop insurance policies sold to any person who is identified on this list.

Further, it is the intention of the Corporation to require that the MPCI companies require any applicant for multi-peril crop insurance to state whether a multi-peril crop insurance policy has been terminated by the Corporation or any MPCI company and the basis for that termination. Any false answer to that question would be a basis for termination of a policy after acceptance of the application if the person is later identified as being on the ineligible list.

In order to assure that only those persons are placed on the ineligible list who have violated material provisions of their crop insurance contracts, the Corporation proposes to open the appeal procedure to those persons who are terminated by MPCI companies because of those reasons which would cause placement on the ineligible list if those individuals had been terminated by the Corporation. The appeal would not be from the termination by the MPCI company. The appeal would be solely for the purpose of determining whether the individual should be placed on the ineligible list by the Corporation.

The MPCI companies would be required to advise the Corporation of all contract terminations and the reasons for those terminations. Those persons who have been terminated for reasons which would give rise to placement on the ineligible list will be notified of the Corporation's proposal to place their names on the ineligible list and the reason for that proposal. They would be given the opportunity to appeal that determination in accordance with this subpart. The Corporation is in the process of establishing a system of records under the terms of the Privacy Act for the maintenance of the ineligible list.

The information collection control numbers assigned by Office of Management and Budget (OMB) are found at Subpart H to 7 CFR Part 400.

FCIC is soliciting public comment on this proposed rule for 60 days after publication in the **Federal Register**. All written comments received on this rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 400

Crop insurance; Administrative regulations—review and appeal procedure.

Proposed Rule

PART 400—[AMENDED]

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend 7 CFR Part 400, Subpart J—General Administrative Regulations; Appeal Procedure, in the following instances:

1. The authority citation for 7 CFR Part 400, Subpart J, continues to read as follows:

Authority: Pub.L. 75–430, 52 Stat. 72 et seq., as amended, (7 U.S.C. 1501 et seq.).

2. 7 CFR 400.92 is amended by adding paragraph (g) to read as follows:

§ 400.92 Right of appeal.

* * * * *

(g) Any person who has been notified by the Corporation that, because of actions of the person concerning the present or previous Corporation or reinsured crop insurance contract, such person is ineligible to purchase crop insurance from the Corporation and that the Corporation will not reinsure any crop insurance contract issued to such person by a private insurance company.

Done in Washington, DC on October 17, 1986.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86–26089 Filed 11–18–86; 8:45 am]

BILLING CODE 3410–08–M

FEDERAL RESERVE SYSTEM

12 CFR Parts 211 and 262

[Docket No. R–0584]

Rules of Procedure; Assessment of Fees for Supervision of Edge Corporations and for Processing Applications

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System, as part of an ongoing program of budgetary restraint, has decided to seek public comment on a limited proposal to assess fees for certain of its supervisory services. The Board is advancing this proposal as a possible revenue enhancing measure to supplement prior Board actions to streamline operations and eliminate unnecessary functions. This proposal is designed to recover part of the identifiable costs for certain supervisory functions. The Board is seeking comment on whether such a system of fees should be imposed and, if so, whether the proposed fee schedules are equitable and appropriate.

The Board has proposed that fees be assessed for supervision of Edge corporations and for a variety of final applications that are filed by bank holding companies, state member banks, and companies or individuals seeking to acquire control of such banking organizations. The Board has proposed to assess fees for general supervision and inspection *only* in the case of Edge corporations in an effort to avoid duplicating assessments by other bank regulatory agencies. In addition, the Board has proposed fixed fee schedules that are limited to recovering costs for the supervisory activities and the processing of applications on an average basis rather than a variable fee schedule based upon costs in an individual case.

DATE: Comments must be received by January 5, 1987.

ADDRESS: All comments, which should refer to Docket No. R–0584, should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, or should be delivered to the Office of the Secretary, Room 2223, Eccles Building, 20th Street and Constitution Avenue, NW, between the hours of 8:45 a.m. and 5:15 p.m. weekdays. Comments may be inspected in Room 1122, Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Frederick M. Struble, Associate Director, (202) 452–3794, Don E. Kline, Associate Director, (202) 452–3421, Kevin M. Raymond, Supervisory Financial Analyst (202) 452–2573, or James V. Houpt, Supervisory Financial Analyst, (202) 452–3358; Division of Banking Supervision and Regulation; or for users of Telecommunications Devices for the Deaf, Earnestine Hill or Dorothea Thompson, (202) 452–3244, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

Federal and state supervision and regulation of banking organizations is designed to achieve a variety of public policy objectives, including: (1) Promoting the stability of the banking system and, more generally, the stability of financial markets and the economy at large, (2) protecting depositors and the viability of the federal deposit insurance fund, (3) preserving competition in local and regional banking markets, and (4) limiting dislocations in local communities resulting from bank failures. Individual banking organizations benefit from the system of government supervision and regulation designed to further these public policy objectives. Indirectly, they benefit from the stability of the system as a whole, from the public confidence that such stability engenders, and from efforts to limit or contain problems encountered by individual banking organizations. More directly, they benefit from regulations, off-site review, and on-site inspections and examinations designed to prevent problems from developing and to assist in identifying and correcting problems that may develop.

Individual organizations submitting applications to the Board of Governors of the Federal Reserve System ("Board") also benefit directly. The process of review sometimes detects existing problems of applicant organizations or organizations to be acquired. Such review may also identify potential problems that might arise as a result of the transaction that is the subject of the application. In addition to such screening, it is through the application process that individual organizations are able to expand and increase profit opportunities in a manner consistent with established public policy objectives.

Individual banking organizations, as direct beneficiaries, have been asked to bear a significant portion of the costs of bank supervision and regulation. State-chartered banking organizations, in

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general, pay assessments and fees that cover the operating costs of the bank supervisory agencies of their state. In one-half of the states, the assessments and fees paid by state chartered banks go into the general funds of the state, and the agency operates on an annual appropriation by the legislature; in another 22 states the revenues are deposited in a special fund to be used only to cover the expenses of the banking agency, and the agency's budget is subject to approval by the legislature. In the three other states, all revenues are deposited with and controlled by the banking department, subject to the review of either the legislature or a state finance department. The extent to which operating budgets coincide with revenues collected varies from state to state. In cases where a misalignment exists, it appears that revenues generally exceed costs.

At the federal level, the supervisory costs incurred by individual bank supervisory agencies are paid in a variety of ways, including general assessments, hourly charges for examinations, fees assessed for processing applications and deposit insurance premiums. In part, such costs are also met from returns on investments or by means other than a direct charge to individual banking organizations.

The Board currently does not levy charges for any of its supervisory or regulatory activities. Prior to 1930, the Federal Reserve System was required by law to charge for its examination of member banks, but in that year Congress, at the recommendation of the Board, and because of concerns about double assessment by the Board and state supervisors, amended section 9 of the Federal Reserve Act to eliminate mandatory assessment of Federal Reserve member banks for examination expenses. The Board was given explicit authority to decide whether to assess state member banks for the cost of their examinations or to absorb these costs. (*See* 12 U.S.C. 326, as amended June 26, 1930 (46 Stat 814).) The Board has not charged state member banks for supervision since 1935. It has never charged for supervision of bank holding companies or of foreign branches of U.S. banks. Prior to 1958 the Board at times levied charges to cover part of its costs incurred in conducting examinations of Edge corporations. The Board has not levied such charges since 1958.

Purpose of the Proposed Rulemaking

The Board is seeking comment on this proposal to depart from past practice and begin to charge fees to banking organizations for supervisory and regulatory oversight. The Board will evaluate whether the budgetary benefits of such a proposal in the form of additional revenue would be outweighed by possible adverse effects.

This proposal is advanced as a budgetary matter, to explore possible sources of additional revenue to complement actions already taken to streamline operations and eliminate unnecessary functions. The Board believes that in light of its expanded supervisory responsibilities since the passage of the Bank Holding Company Act in 1956, and in light of the fact that certain of these supervisory responsibilities would not result in the sort of double assessments that provided the basis for its efforts to eliminate fees and assessments in the past, it may be appropriate to request the individual organizations that benefit most directly from Board supervisory activities to assume a portion of the costs of that supervision.

The proposal, therefore, is designed to recover the costs of certain supervisory activities—to shift a portion of the costs of such supervision to those entities which receive the greatest direct benefit of such supervision—but to do so in a manner that, in the Board's view, will not be so burdensome as to alter business decisions. It should be stressed that the Board is making this proposal in the context of ongoing budgetary review, and it seeks comments upon the scope of services for which fees might be charged, the appropriate levels of such fees, and any adverse effects upon either the activities of banking institutions or the supervisory process that may result from the imposition of such fees.

There are two basic areas of Board responsibility for which the Board may impose fees: (1) General supervision, including inspection, examination, review of various types of reports of condition, and such oversight of corrective measures as may be necessary, and (2) applications, including those for acquisition of a bank, for geographic expansion or expansion into a new type of business activity, for change in business structure, and for acquisition of or change in control of a banking organization. The Board has considered assessment of fees in the first of these two areas and has proposed a very limited fee schedule in the supervisory area relating only to Edge corporations (as defined in section 25(a) of the Federal Reserve Act, 12 U.S.C. 611 *et seq*). In the applications area, however, the Board has proposed a broader range of fee schedules covering virtually all types of applications that come before the Board except those for Federal Reserve System membership.

Fees for Supervision of Edge Corporations

As noted above, the Board based its recommendation that Congress free it from the requirement to charge for its supervision of state member banks on the argument that banking organizations should not be required to pay a double assessment for government supervision. The Board also cited this consideration in deciding not to charge for the supervision of Edge corporations, noting that many of them are subsidiaries of commercial banks, which are assessed on the basis of their consolidated assets (including those of the Edge corporations) to cover costs of supervising and regulating the entire organization.

In recent years, however, significant numbers of Edge corporations have been established by foreign banks and by nonbanking firms, which are not subject to assessment by other U.S. banking agencies. Double assessment is not an issue in these cases. Moreover, while most Edge corporations continue to be owned by institutions that do pay assessments or fees to other banking agencies for their general supervision, only the Board specifically examines and supervises these Edge corporations. Section 25(a) of the Federal Reserve Act permits the Board to assess fees for supervision of Edge corporations (12 U.S.C. 611).

The Board considered two approaches to recover the costs of supervising Edge corporations—charging on the basis of examiner time devoted to examinations or charging annual assessments on the basis of an organization's size. While each approach has certain advantages, the Board has proposed to adopt a schedule of annual assessments based on the total assets of the Edge corporations. A significant proportion of the costs of supervising Edge corporations are incurred for various off-premises activities—collection and review of reports and other data, formulation of regulations, and monitoring of activities for compliance. Because on-site examinations are only part of a comprehensive supervisory system, the Board believes an annual general assessment based on an institution's size is a more suitable approach.

A general assessment would also be easier to administer and of greater benefit to the Board's budgeting process since the amounts assessed annually would be more predictable. This approach would avoid potential disputes with Edge corporations about the accuracy of examiners' time records and the efficiency of their work. It also would avoid an additional recordkeeping burden for examiners. Moreover, a general assessment would assist the examined institutions to budget for this cost and would allow corporations experiencing serious difficulties to correct their problems without additional administrative fees for more frequent and longer examinations.

Table 1 contains a proposed schedule of annual assessments for Edge corporations. The proposed schedule is on a sliding scale based on the size and type of institution to be supervised. In Table 1, the Board distinguished between banking Edge corporations, which conduct banking activities in the United States relating to foreign or international transactions, and investment Edge corporations, which are essentially holding companies for foreign investments. The measure of size used for banking Edge corporations is their total assets, plus the volume of their outstanding standby letters of credit. Account has not been taken of other off-balance sheet items—either because of a lack of data or because the available data measure the volume of trading rather than the risk to an Edge corporation, as in the case of foreign exchange activities. The same measure would be used for investment Edge corporations, in their case consolidating the assets and standby letters of credit of their subsidiaries. It should be emphasized that the proposed schedule is tentative and subject to change based upon review of public comments.

Table 2 contains the general structure and size of Edge corporations and indicates revenues that would have been collected from these corporations in 1985. The size of banking Edges amounts to less than half that of investment Edges, while the estimated revenue in 1985 from these two types of Edge corporations would have been about equal. The estimated revenue to be derived from each type of Edge corporation is generally consistent with the relative amount of time the Board devotes to supervising that type of corporation. Less time is spent in supervising investment Edge corporations per dollars of assets, in part because their overseas subsidiaries (which account for virtually all of their assets) are examined only every two or three years. During the other years their assets and activities are reviewed using information available at the parent Edge corporation. In addition, since certain U.S. laws and regulations are directed only toward a corporation's domestic business, the examinations of foreign activities can be narrower in scope than those of banking Edge corporations.

The Board has not proposed to charge for supervision of organizations other than Edge corporations. However, the Board requests comment on the concept of expanding such supervisory fees or assessments to cover bank holding company inspection and supervision.

Fees for Processing Bank Holding Company, International Banking, and Other Applications

The analysis performed by the Board on the various types of applications that it processes is, as a general rule, not duplicated by other banking agencies. Board fees for processing such applications generally would not duplicate assessments by other bank supervisors. Similarly, authority sought in applications before the Board is not granted by any other federal banking agency, although in some cases organizations applying for authority to form a bank holding company or to acquire a national or state bank may be required to submit concurrent applications to other federal or state agencies. The Board has traditionally attributed both direct and support costs to the processing of applications. The total of such direct and support costs incurred by the Board in processing applications were estimated to be $18.0 million in 1985.

As in the case of Edge corporation supervision fees, the Board compared the advantages of basing a proposed fee schedule on staff time involved in processing an application with the alternative of establishing a standard schedule of fees that would be paid in filing specific types of applications. Although the hourly rate approach would provide a more exact method for charging applicants for the costs involved in processing specific applications, the Board believes that this approach would have significant administrative problems. There are a variety of Reserve Bank and Board functions involved in the applications process, and these functions involve personnel with a wide range of salary levels. Since applications staff members work on several applications at the same time, accounting for the hours spent on any given application and, therefore, the resulting billing would be quite complicated. Even more important, however, is the fact that issues raised by specific applications often have policy implications that go well beyond the acceptance or rejection of that application. Thus the costs incurred in addressing those issues should properly be spread over subsequent applications which raise the same issues.

Under a standard fee approach, on the other hand, a fee schedule could be established for each type of application or for a group of applications, with the fees set to reflect the relative amount of staff time generally spent on the various types of applications (or groups of applications). Under this approach, applicants would know in advance of the costs of processing an application. Those applicants raising significant issues of first impression, resolution of which would expedite processing of future applications, would not bear a disproportionate part of the costs of resolving such questions. There appear to be fewer administrative problems associated with this type of approach, since staff would not have to compile complex records of time spent on individual applications.

The proposed Table 3 would group the types of applications processed by four general categories and would establish a fee schedule necessary to permit recovery of 1985 processing costs. The Board recognizes that the volume of applications submitted varies from year to year, and that revenues would vary with the volume of applications.

The proposed fee schedule contained in Table 3, does not vary according to the size of the applicant or organization to be acquired. As a general rule—to which there are many exceptions—the applications of larger organizations within a given category are more complex than those of smaller organizations and require more processing time. Accordingly, the Board has also proposed, and seeks comment upon Table 4, a flexible rate schedule for different types of applications based upon the size of the applicant. Table 4 contains the same four groupings or categories of applications as Table 3. There is a maximum level of fees proposed on the theory that processing costs do not continue to increase in direct proportion to the size of a banking organization applicant. Moreover, there is no sliding scale for applications to install automated teller machines since the costs of processing these applications do not vary with size. The size of the applicant in Table 4 is to be computed on a pro forma consolidated assets basis, that is after including the assets of any acquisition that may be the subject of the application for which the fee is assessed. Table 4 presents an alternative to Table 3 that would recover the same level of 1985 costs.

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Both Table 3 and Table 4 are based on a system of fees for all applications filed with the Board except for those involving membership in the Federal Reserve System. The Board believes that a fee for membership would in all cases constitute a double charge against state banks that must pay certain fees or assessments to state supervisory agencies. Moreover, such banks already bear additional costs in the form of the requirement to purchase stock in a Federal Reserve Bank.

This proposal also contemplates a fee only for final applications and notices filed with and accepted by the Federal Reserve System, including notices for change in control of a bank holding company or state member bank, applications by U.S. banking organizations to engage in activities in other countries, and applications for merger, acquisitions, branches and automated teller facilities. There will be no assessment for review of draft applications.

Specific Issues for Comment

The Board requests comment on the following issues raised by the proposed rulemaking.

1. The board seeks comment initially, and most importantly, on the advisability of charging fees for any of its supervisory or regulatory services. The Board requests comment on whether the assessment of fees would adversely affect the examination or inspection process or diminish cooperation and communication between the Board and supervised institutions to a significant degree. The board also seeks suggestions on how this proposal may be modified to minimize any such potential problems.

2. The Board seeks comment as a general matter on the scope of supervisory and application activities for which fees should be assessed. More particularly, the Board seeks comment on whether it should assess fees for the general supervision and inspection of bank holding companies. Such fees would not appear to duplicate charges by other regulatory agencies and some of the arguments in favor of fees for the supervision of Edge corporations would apply equally to bank holding companies.

3. In view of the tentative nature of the proposed fee schedules, the Board seeks comment on the following issues with respect to fees for supervision of Edge corporations:

(a) the distinction between banking & investment Edges,

(b) the use of an annual assessment as the basis for the fee schedules,

(c) the use of a sliding scale based on size,

(d) how the size of Edge corporations should be determined, including the use of some off balanced sheet items in determining size, and

(e) whether the proposed fee levels are equitable and appropriate.

4. The Board seeks comment on the following issues with respect to the fee schedules for applications:

(a) the grouping of applications in categories and appropriate placement of each type of application,

(b) whether to choose the fee schedule model or Table 3 or Table 4, and

(c) whether the proposed fees are appropriate and equitable.

5. The Board requests comment upon a variety of issues involved in administering the proposed fee schedules for applications should they be adopted, including:

(a) When fees should be paid,

(b) Whether fees should be charged for draft applications,

(c) Whether fees should be refunded upon withdrawal of the application,

(d) Whether fees should be assessed for emergency applications,

(e) Whether fees should be adjusted for dual applications for the same transaction,

(f) Whether fees should attach to notices as well as applications, and

(g) Whether fees should be charged for applications for membership in the Federal Reserve System.

(h) Whether the Board should separately recover the cost of publishing notice of applications in the Federal Register

TABLE 1.—PROPOSED ASSESSMENT SCHEDULE FOR EDGE CORPORATIONS

Total assets plus standby letters of credit (dollars in millions)	Assess this amount	Plus	Of excess over (dollars in millions)
Banking Edges: [1]			
$0 to 10 million	$2,000	0.000200	$0
10 to 25	4,000	0.000130	10
25 to 100	6,000	0.000120	25
100 to 500	15,000	0.000100	100
Over 500	55,000	0.000078	500
Investment Edges: [1]			
$0 to 10 million	1,000	0.000100	0
10 to 100	2,000	0.000060	10
100 to 1,000	7,500	0.000055	100
1,000 to 5,000	57,000	0.000040	1,000
Over 5,000	237,000	0.000032	5,000

[1] Banking Edge corporations conduct banking activities in the United States related to foreign or international transactions, while investment Edges are essentially holding companies for foreign investments. The size categories for banking Edges refer to their estimated assets, based on data they submit on FR 2886b reports. The size categories for investment Edges refer to the estimated consolidated assets of these corporations and their majority-owned (or otherwise controlled subsidiaries.

TABLE 2.—ESTIMATED REVENUE COLLECTABLE FROM EDGE CORPORATIONS BASED ON ASSESSMENT SCHEDULES SHOWN IN TABLE 1

Size category [1]	Number of corporations	Aggregate assets + standby L/C ($000,000)	Estimated revenue ($000)
Banking Edges:			
Less than $10 million	19	$94	$73
10 to 25	12	194	69
25 to 100	27	1,509	254
100 to 1,000	20	4,800	709
Over 500	11	14,095	1,204
Subtotal	89	20,692	2,309
Investment Edges:			
Less than $10 million	16	50	10
10 to 100	15	622	58
100 to 1,000	5	2,584	152
1,000 to 5,000	9	25,280	1,163
Over 5,000	2	21,421	839
Subtotal	47	49,957	2,222
Total	135	$70,649	$4,531

[1] The size categories for banking corporations refer to their estimated assets, based on data these corporations submit on FR 2886b reports. The size categories for investment Edges refer to the estimated consolidated assets of these corporations and their majority-owned (or otherwise controlled) subsidiaries, since these corporations are principally holding companies for foreign investments.

TABLE 3.—PROPOSED FEE SCHEDULE FOR PROCESSING APPLICATIONS SUBMITTED TO THE FEDERAL RESERVE SYSTEM

Type of application	Proposed fee	1985	
		Applications volume	Total revenue dollars in Thousands)
Category A: Bank holding company formations, acquisition of banks and acquisition of nonbanks (going concerns); bank holding company stock redemptions and changes in control; international investment applications	$8,000	1,958	$15,664
Category B: Initial foreign branches, Edge Act and other international applications, domestic bank mergers, and changes in control for state member banks	5,000	130	650
Category C: Bank holding company nonbank acquisitions (de novo) and export trading company notifications; state member bank branches, bank service corporations, investments in bank premises and issuance of capital notes by state member banks; additional foreign branch and investment notifications	2,500	628	1,570
Category D: ATM branches	1,000	64	64
Total		2,780	$17,948

TABLE 4.—PROPOSED FEE SCHEDULE FOR PROCESSING APPLICATIONS SUBMITTED TO THE FEDERAL RESERVE SYSTEM

Assets [1]		Proposed fee		
Over	But not over	This amount	Plus	Of excess
Category A [2]				
$0	$150M	$5,000	0	—
150M	1B	5,000	.0000058	$150M
1B	5B	10,000	.0000012	1B
5B	10B	15,000	.0000009	5B
10B	—	20,000		
Category B [2]				
$0	$150M	$2,500	0	—
150M	1B	2,500	.0000029	$150M
1B	5B	5,000	.0000006	1B
5B	10B	7,500	.0000005	5B
10B	—	10,000	—	—
Category C [2]				
$0	$150M	$1,250	0	—
150M	1B	1,250	.0000014	$150M
1B	5B	2,500	.0000003	1B
5B	10B	3,750	.0000002	5B
10B	—	5,000		—
Category D [2] $1,000				

[1] Total assets are to be measured on a pro forma basis—that is, the applicant's total assets if its application is approved.

[2] For types of applications and notifications included in each category, see Table. 3

Regulatory Flexibility Act

The Board is sensitive to the impact of the proposed rule on small entities. Consequently, the Board is considering the imposition of fees for supervision of Edge corporations and for applications on a sliding scale based upon the size of the regulated organization. It has proposed comparatively limited fee assessments for smaller organizations. Moreover, the proposed schedules are designed only to recover partially those costs associated with a particular supervisory activity. The Board believes the fees payable will be sufficiently small as to have no significant impact on the financial stability of a reasonably profitable institution.

The proposed regulation imposes no additional information collection requirements.

List of Subjects

12 CFR Part 211

Banks, banking, Federal Reserve System, Foreign banking, Reporting and recordkeeping requirements, Export trading companies, Allocated transfer risk reserve, Reporting and disclosure of international assets, Accounting for fees on international loans.

12 CFR Part 262

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies.

For the reasons set forth above, the Board proposes to amend 12 CFR Parts 211 and 262 as follows:

PART 211—INTERNATIONAL BANKING OPERATIONS

It is proposed to amend 12 CFR Part 211 as follows:

1. The authority citation for Part 211 continues to read as follows:

Authority: Federal Reserve Act (12 U.S.C. 211 *et seq.*); Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*); the International Banking Act of 1978 (Pub. L. 95–369; 92 Stat. 607; 12 U.S.C. 3101 *et seq.*); the Bank Export Services Act (Title II, Pub. 97–290, 96 Stat. 1235); and the International Lending Supervision Act (Title IX, Pub. L. 98–181, 97 Stat. 1153).

2. Section 211. 4 is amended by adding paragraph (a)(7) to read as follows:

§ 211.4 Edge and Agreement Corporations.

(a) * * *

(7) *Fees.* Edge corporations shall be assessed an annual fee by the Board for supervision and inspection. The schedule of such fees is provided in § 262.3(d) of the Board's Rules of Procedure, 12 CFR 262.3(d).

* * * * *

PART 262—RULES OF PROCEDURE

It is proposed to amend 12 CFR Part 262 as follows:

3. The authority citation for Part 262 is revised to read as follows:

Authority: Administrative Procedure Act (5 U.S.C. 552); Bank Holding Company Act (12 U.S.C. 1841 *et seq.*); Federal Reserve Act (12 U.S.C. 211 *et seq.*); International Banking Act of 1978 (12 U.S.C. 3101 *et seq.*) and the International Lending Supervision Act (12 U.S.C. 3901 *et seq.*).

§ 262.3 [Amended]

4. Paragraphs 262.3 (d) through (l) are redesignated as paragraphs 262.3 (e) through (m).

5. A new paragraph (d) is added to § 262.3 to read as follows:

§ 262.3 Applications.

* * * * *

(d) (1) The Board shall assess fees for the filing of all applications (except applications for membership in the Federal Reserve System) according to the following schedule.

FEE SCHEDULE FOR PROCESSING APPLICATIONS SUBMITTED TO THE FEDERAL RESERVE SYSTEM

Assets [1]		Processing fee		
Over	But not over	This amount	Plus	Of excess
Category A [2]				
$0	$150M	$5,000	0	
150M	1B	5,000	.0000058	$150M
1B	5B	10,000	.0000012	1B
5B	10B	15,000	.0000009	5B
10B		20,000		
Category B [3]				
$0	$150M	$2,500	0	
150M	1B	2,500	.0000029	$150M
1B	5B	5,000	.0000006	1B
5B	10B	7,500	.0000005	5B
10B		10,000		
Category C [4]				
$0	$150M	$1,250	0	
150M	1B	1,250	.0000014	$150M
1B	5B	2,500	.0000003	1B
5B	10B	3,750	.0000002	5B
10B		5,000		
Category D [5] $1,000				

[1] Total assets are to be measured on a pro forma basis—that is, the applicant's total assets if its application is approved.

[2] Category A applications include: bank holding company formations, acquisition of banks and acquisition of nonbanks, (going concerns); bank holding company stock redemptions, and changes in control; international investment applications.

[3] Category B applications include: initial foreign branches, Edge Act and other international applications, domestic bank mergers, and changes in control for state member banks.

[4] Category C applications include: Bank holding company nonbank acquistions (de novo) and export trading company notifications; state member bank branches, bank service corporations, investments in bank premises and issuance of capital notes by state member banks; additional foreign branch and investment notifications.

[5] Category D includes ATM branches. All ATM branches pay the same processing fee

(2) The Board shall assess annual fees for the supervision and inspection of Edge corporations (as defined in section 25(a) of the Federal Reserve Act, 12 U.S.C. 611 *et seq.*) according to the following schedule.

ASSESSMENT SCHEDULE FOR EDGE CORPORATIONS

Total assets plus standby letters of credit (dollars in millions)	Assess this amount	Plus	Of excess over (dollars in millions)
Banking Edges: [1]			
$0 to 10 million	$2,000	0.000200	$0
10 to 25	4,000	0.000130	10
25 to 100	6,000	0.000120	25
100 to 500	15,000	0.000100	100
Over 500	55,000	0.000078	500
Investment Edges: [1]			
$0 to 10 million	1,000	0.000160	0
10 to 100	2,000	0.000060	10
100 to 1,000	7,500	0.000055	100
1,000 to 5,000	57,000	0.000040	1,000
Over 5,000	237,000	0.000032	5,000

[1] Banking Edge corporations conduct banking activities in the United States related to foreign or international transactions, while investment Edges are essentially holding companies for foreign investments. The size categories for banking Edges refer to their estimated assets, based on data they submit on FR 2886b reports. The size categories for investment Edges refer to the estimated consolidated assets of these corporations and their majority-owned (or otherwise controlled) subsidiaries.

Board of Governors of the Federal Reserve System, November 12, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86–25926 Filed 11–18–86; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM79-76-251; (Texas—16 Addition II)]

18 CFR Part 271

High-Cost Gas Produced From Tight Formations; Proposed Rulemaking

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982), to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1983)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the Railroad Commission of Texas that an additional area of the Olmos Formation be designated as a tight formation under § 271.703(d).

DATES: Comments on the proposed rule are due on December 29, 1986.

No public hearing is scheduled in this docket as yet. Written requests for a public hearing due on November 28, 1986.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Edward G. Gingold (202) 357–9114, or Walter W. Lawson, (202) 357–8556.

SUPPLEMENTARY INFORMATION:

Issued: November 13, 1986.

I. Background

On September 15, 1986, the Railroad Commission of Texas (Texas) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (18 CFR 271.703 (1983)), that an additional area of the Olmos Formation located in the southern portion of the state of Texas be designated as a tight formation. The Commission previously adopted a recommendation that the Olmos Formation in certain areas of Webb and Dimmit Counties be designated a tight formation (Order No. 263 issued September 30, 1982, in Docket No. RM79–76–080 (Texas—16)) and the A.W.P. (Olmos) Field (Order No. 452 issued June 12, 1986, in Docket No. RM79–76–247 (Texas—16 Addition)). Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Texas' recommendation that the additional area of the Olmos Formation be designated a tight formation should be adopted. Texas' recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

The area for which the tight sand recommendation is sought consists of approximately 7,506 acres and is located to the east and southeast of Tilden, in McMullen County, Texas. This area contains four leases in the A.W.P. (Olmos) Field; the 3,480.6 acre Bracken Lease, the 320 acre Dan Foster Lease, the 2,431.46 acre R. P. Horton Lease, and the 1,274 acre R. P. Horton "C" Lease.

According to the recommendation, there are fifty-one producing wells within the designated area. Forty-four of the wells are oil wells and seven are gas wells. The average field density of development is equivalent to 147 acres per well. Field rules allow for one well per 80 acres, with an optional 40 acre unit, and a tolerance of 40 acres for the last well on a lease.

The Olmos Sandstone is the youngest (uppermost) of three formations comprising the Taylor Group of Cretaceous Age. In south Texas, rocks of the Taylor Group, including the Olmos, conformably overlie the Austin Chalk and are uncomformably overlain by rock of the Navarro Group, principally the Escondido formation. The Olmos can be correlated as a continuous unit over the entire area of application and is present at depths below mean sea level ranging from 9,100' to 9,600'. It is recognized in two sections, known as the Massive Olmos and the Second Olmos Stringer.

In the area of application, the Olmos reservoir is controlled by both structural and stratigraphic mechanisms. Three major faults have been recognized on well logs. Several other smaller faults have been detected but do not appear to be a controlling factor in reservoir fluid migration. Primarily, the reservoir is controlled by a stratigraphic unconformity where the Olmos is erosionally truncated and then overlain by an impermeable shale.

Geological analysis of Olmos core samples have determined that the average Olmos Sand in the area of application is a very fine grained, clayey, glauconitic, feldspathic quartz sand with accessory mica, rock fragments, heavy minerals and planktonic foraminifera. Detrital clay matrix makes up from 33 to 53 percent of the total rock volume and the clay has been admixed with the sand by borrowing organisms.

III. Discussion of Recommendation

Texas claims in its submission that evidence gathered through information and testimony presented at a public hearing convened by Texas on the matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce, without stimulation, more than five (5) barrels of oil per day.

Texas further asserts that existing state law and established casing procedures assure protection of all fresh water zones.

Accordingly, under the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, [Reg. Preambles 1977–1981] FERC Stats. and Regs. ¶ 30,180 (1980), the Director gives notice of the proposal submitted by Texas that the additional area of the Olmos Formation, as described and delineated in Texas' recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the

Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before December 29, 1986. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79-76-251 (Texas—16 Addition II) and should give reasons including supporting data for any recommendation. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC, during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. The person shall specify the amount of time requested at the hearing, and should file the request with the Secretary of the Commission no later than November 28, 1986.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formation.

Accordingly, the regulations in Part 271, Subchapter H, Chapter I, Title 18, *Code of Federal Regulations*, will be amended as set forth below, in the event the Commission adopts Texas' recommendation.

Raymond A. Beirne,

Acting Director, Office of Pipeline and Producer Regulations.

PART 271—[AMENDED]

Section 271.703 is amended as follows:

1. The authority citation for Part 271 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended by adding paragraph (d)(111)(iii) to read as follows:

§ 271.703 Tight formation.

* * * * *

(d) *Designated tight formations.*

* * * * *

(111) *The Olmos Formation in Texas.* RM79-76 (Texas—16).

* * * * *

(iii) *A.W.P. (Olmos) Field, McMullen County.*

(A) *Delineation of formation.* The designated portion of the Olmos Formation is located to the east and southeast of Tilden, in McMullen County, Texas, and consists of approximately 7,506 acres containing four leases; the 3,480.6 acre Bracken Ranch lease, the 320 acre Dan Foster lease, the 2,431.46 acre R.P. Horton lease and the 1,274 acre R.P. Horton "C" lease.

(B) *Depth.* The top of the Olmos Formation occurs at depths of from 9,100 feet to 9,600 feet below mean sea level.

[FR Doc. 86-28013 Filed 11-18-86; 8:45 am]

BILLING CODE 6717-01-M

VETERANS ADMINISTRATION

38 CFR Part 17

Medical Benefits; Transportation of Claimants and Beneficiaries

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: For several years the Veterans Administration (VA) has sought administratively to control expenditures for the transportation and travel expenses of veteran beneficiaries traveling to and from VA health care facilities. Underlying these efforts was a strong sense that funds available to provide health care to veterans are more appropriately used for direct patient care programs rather than for transportation costs. Nevertheless, beneficiary travel costs have continued to exsalate rapidly. To avoid haveing to continually divert substantial amounts of appropriated funds from direct patient care programs to the beneficiary travel program, VA is proposing to amend its medical regulations to authorize beneficiary travel payments to eligible veterans only when specialized modes of transportation, such as ambulance or wheelchair van, are medically indicated.

DATES: Written comments must be received on or before December 22, 1986. These amendments will apply to claims for transportation occurring on or after the effective date of final regulations.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding these proposed regulations to: Administrator of Veterans Affairs (271A), 810 Vermont Avenue NW, available for public inspection only in the Veterans Services Unit, Room 132, of the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until January 7, 1987.

FOR FURTHER INFORMATION CONTACT: Karen Walters, Chief, Policies and Procedures Division, Medical Administration Service (202) 233-2337.

SUPPLEMENTARY INFORMATION: The annual HUD-Independent Agencies Appropriations Act (the Act appropriating funds for the VA) includes an appropriation for all medical care for veterans. From this appropriation, VA funds a beneficiary travel program authorized by section 111 of Title 38, United States Code. Pursuant to that authority, VA pays, or reimburses eligible veterans costs of their transportation and travel to and from a VA health care facility. The costs of the beneficiary travel program have been increasing steadily in recent years despite administrative actions to reduce costs and improve management of the program.

An amendment is being made to 38 CFR 17.000 to provide that VA beneficiary travel payments may be authorized only for the cost of medically indicated specialized modes of transportation. Medically indicated special modes of transportation include: Ambulance, ambulette, air ambulance, wheelchair van, and other modes of transportation which are specially designed to transport certain types of disabled individuals. The term special modes does not include: Public transportation such as a bus, subway, train, airplane, or privately-owned conveyance. It would include a hired car, or a taxi, but only in the case of an interfacility transfer when such mode of transportation is less expensive than other authorized specialized modes of transportation. The regulation is also being amended to prohibit authorization of any travel expenses when VA care is sought for certain purposes for which travel was previously authorized, e.g. admission for domiciliary care, or travel for family members of veterans receiving mental health services from the VA. Finally, the regulation is being amended to clarify the scope of permissible "interfacility transfers," as authorized under existing regulations. As amended, that provision would authorize VA to provide transportation costs when necessary to transfer any veteran from one health care institution (either a VA or contract care facility) to another in order to continue ongoing VA-sponsored care.

This proposed amendment to VA regulations is considered nonmajor under the criteria of Executive Order

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12291, Federal Regulation. It will not have an annual effect on the economy of $100 million or more; result in major increases in costs for consumers, individual industries, Federal, State or local government agencies, or geographic regions; have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator certifies that this proposed amendment, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The change concerns the eligibility of individual veterans and VA beneficiaries to VA payment for, or reimbursement of, their expenses for travel to or from VA medical facilities in certain circumstances. This change imposes no regulatory, administrative, or paperwork burdens on any type of small entity.

(The Catalog of Federal Domestic Assistance numbers are 64.009, 64.011, and 64.013)

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants programs—health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Approved: November 4, 1986.

Thomas K. Turnage,
Administrator.

PART 17—[AMENDED]

38 CFR Part 17, Medical, is proposed to be amended as follows:

1. § 17.100 [Amended]

1. In § 17.100(d) remove the words "or member" wherever they appear.
2. In § 17.100(j) remove the words "pullman accommodations," wherever they appear.
3. In § 17.100 paragraphs (a)(3) and (g)(3) are removed and the introductory text and paragraphs (e), (f)(1), and (k) are revised to read as follows:

§ 17.100 Transportation of claimants and beneficiaries.

Transportation at Government expense may be authorized for an individual who is eligible under this section only when a VA physician has determined that a specialized mode of transportation is medically required. Special modes of transportation which may be determined to be medically required include: ambulance, ambulette, air ambulance, wheelchair van, and other modes of transportation which are specially designed to transport certain types of medically disabled individuals. The term special mode does not include: public transportation such as bus, subway, train, airplane, or any automobile or similar conveyance. A hired car or taxi may be authorized as a special mode only for interfacility transfers, as authorized in paragraph (e) of this section, if use of such mode of transportation is less expensive than other authorized specialized modes of transportation. Transportation will not be authorized for the cost of travel in excess of the actual expense incurred by any person as certified by the person in writing. Transportation will not be authorized unless the person claiming reimbursement is a service-connected veteran; a nonservice-connected veteran in receipt of VA pension benefits; or a person whose annual income, as determined under the provisions of 38 U.S.C. 503, is less than or equal to the maximum annual base pension rates provided in 38 U.S.C. 521. Travel expenses of all other claimants will not be authorized unless the claimant can present clear and convincing evidence, in a form prescribed by the Administrator, to show that he or she is unable to defray the cost of transportation; or except when medically-indicated ambulance transportation is claimed and an administrative determination is made regarding the claimant's ability to bear the cost of such transportation. Travel will be authorized for the following purposes: (38 U.S.C. 111, as amended by Pub. L. 94–581, sec. 101, and Pub. L. 96–151, sec. 201)

* * * * *

(e) *Interfacility transfers.* Subject to the limitations of this section, VA may transport a patient who is eligible for benefits under this section, or may reimburse such patient for the expenses of authorized transportation, when such travel is necessary to transfer the patient from one health care institution to another, provided both institutions furnish the individual with treatment at VA expense, and the transfer is necessary for continuation of such treatment. (38 U.S.C. 111)

(f) *Discharge.* (1) Subject to the limitations of this section, upon regular discharge from hospitalization for treatment, observation and examination, or nursing home care, return transportation to the point from which the beneficiary had proceeded; or to another point if no additional expense be thereby caused the Government.

* * * * *

(k) *Furnishing transportation and other expenses incident thereto.* In furnishing transportation and other expenses incident thereto, as defined, the VA may (1) issue requests for transportation, meals, and lodging; or (2) reimburse the claimant, beneficiary or representative, for payment made for such purpose, upon due certification of vouchers submitted therefor. The provisions of §§ 17.100, 17.101 or 17.102 will be complied with in all instances when transportation costs are claimed. (38 U.S.C. 111)

* * * * *

[FR Doc. 86-26086 Filed 11-18-86; 8:45 am]

BILLING CODE 8320-01-M

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38 CFR Part 36

Loan Guaranty; Increase in Value of Security Which Can Be Released Without Prior Approval

AGENCY: Veterans Administration.

ACTION: Proposed regulatory amendment.

SUMMARY: The Veterans Administration (VA) is proposing to amend its regulations by increasing from $500 to $2,500 the maximum value of property securing a VA-guaranteed home loan that can be released by the holder without prior approval of the Administrator. A new maximum value of $2,500 will eliminate unnecessary paperwork for both the lender and the VA by reducing the number of partial security release cases referred by lenders to the VA for prior approval. The new maximum value will allow for greater reduction to the loan balance, and consequently to the Administrator's liability, because the regulations still provide for the entire consideration received for the released security to be applied to the loan balance.

DATES: Comments must be received on or before December 22, 1986. The VA proposes to make this regulatory amendment effective 30 days after publication of the final regulations.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection at the above address only between the hours of 8:00 a.m. and

4:30 p.m., Monday through Friday (except holidays) until *January 7, 1987.*

FOR FURTHER INFORMATION CONTACT: Mr. Raymond L. Brodie, Assistant Director for Loan Management (261), Loan Guaranty Service, (202) 233–3668.

SUPPLEMENTARY INFORMATION: 38 CFR 36.4324(a) was last amended may 20, 1970, to increase from $300 to $500 the value of property securing a VA-guaranteed loan that can be released by the holder without prior VA approval. Due to an increase in property values since 1970, a $500 value is no longer realistic. An example of an instance in which a partial release of property is required is a highway widening project. Currently, if the value of property to be released for such a project is more than $500, the holder must value VA approval before releasing the property to the highway department. Requiring VA approval before releasing property with such a low value when compared to the total worth of the security places an unnecessary paperwork burden on both the lender and the VA. The purpose of the proposed amendment is to raise this amount to $2,500. For release of property value at more than $2,500, VA prior approval is needed to verify the adequacy of the consideration received and to ensure that the value of the remaining property is sufficient to secure the outstanding loan balance.

The Administrator hereby certifies that this proposed regulatory amendment will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. By reducing the number of cases requiring referral by the holder to the VA, the proposed amendment establishes a procedure which is less burdensome on the holder than that described in the current regulations. Pursuant to 5 U.S.C. 605(b), this proposed regulatory amendment is, therefore, exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Administator has also determined that the proposed amendment is not a "major rule" within the meaning of Executive Order 12291, Federal Regulation. It will not have an annual effect on the economy of $100 million or more; it will not cause a major increase in costs or prices for consumers or individual industries; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Catalog of Federal Domestic Assistance Program Numbers are 64.114 and 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan programs—housing and community development, Manufactured homes, Veterans.

This regulatory amendment is proposed under the authority granted the Administrator by sections 210(c) and 1820 of Title 38, United States Code.

Approved: October 29, 1986.

Thomas K. Turnage,

Administrator.

PART 36—[AMENDED]

38 CFR Part 36, Loan Guaranty, is proposed to be amended as follows:

§ 36.4324 [Amended]

In § 36.4324 paragraph (a) is amended by removing the words "$500' wherever they appear and adding, in their place, the words "$2,500".

[FR Doc. 86–26087 Filed 11–18–86; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-3113-4]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: On May 7, 1984, and January 23, 1986, the State of Indiana submitted to USEPA a revision to the Indiana lead (Pb) State Implementation Plan (SIP) in order to satisfy the requirements of 40 CFR 51.18 (a) through (i) and 51.18(k) for a general New Source Review (NSR) program, as well as the Federal requirements for a Pb NSR program. USEPA has reviewed these submittals and is proposing to approve them for the pollutant Pb as meeting the requirements of 40 CFR Part 51.18 (a) through (i) and 51.18(k). The purpose of this notice is to present a discussion of the material submitted by the State to support the revision and to provide an opportunity for public comment on the revision and on USEPA's proposed action.

DATE: Comments on this revision and on the proposed USEPA action must be received by January 20, 1987.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Anne E. Tenner, at (312) 886–6036, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604

Air Management Division, Indiana Department of Environmental Management, P.O. Box 6015, Indianapolis, Indiana 46206–6015

Please submit an original and three copies, if possible. Comments on this proposed rule should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, (312) 886–6036.

SUPPLEMENTARY INFORMATION: On May 7, 1984, the State of Indiana submitted to USEPA a revision to the Indiana Pb SIP in order to satisfy the requirements of 40 CFR 51.18 (a) through (i) and 51.18(k) for a general NRS program, as well as the Federal requirements for a Pb NSR program. On January 23, 1986, the State submitted to USEPA an amended version of the Pb NSR rules which addressed certain deficiencies in the previous Pb NSR rules.

In today's rulemaking action, USEPA is proposing to approve this revision to the Indiana SIP as requested by the State of Indiana. The Pb NSR rules are discussed in detail below. However, USEPA wishes to clarify that this proposed rulemaking action only pertains to the approvability of this SIP revision with respect to the Pb NSR requirements. USEPA will rulemake on NSR rules at they apply to other pollutants at a latter date.

The amended rule is consistent with USEPA policy (memorandum dated April 8, 1980, from Richard G. Rhoads, Director, Control Programs Development Division to Directors, Air and Hazardous Materials Divisions) which states that the NSR requirements of the Pb SIP may be satisfied by requiring review of all Pb sources which have the potential to emit Pb in excess of 5 tons per year.

This amended rule is also consistent with USEPA's interim policy on Pb plans which requires review of any modification to a source with actual emissions in excess of 5 tons per year of Pb, if the modification would result in a

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net increase of 0.6 or more tons of Pb per year of potential emissions. (See pp. 4–23 in "Updated Information on Approval and Promulgation of Pb Implementation Plan", dated July 1983). As a result, USEPA is proposing for approval Indiana Rule IAC 2–1.1 as meeting the new source review requirements in 40 CFR 51.18 (a) through (i) of new sources of Pb.

Additionally, USEPA is proposing for approval Indiana Rule IAC 2–1.1 as meeting the requirements of 40 CFR 51.18(k) for Pb. Paragraph (k) requires a provision in a permit or equivalent program which satisfies the requirements of the Clean Air Act (Act) Section 110(a)(2)(D)(i) for major new sources and major modifications of existing sources in attainment or unclassified areas. Section 110(a)(2)(D)(i) of the Act requires SIPS to have a program that can enforce emission limits and regulations with respect to the construction, modification and operation of "major emitting facilities" to achieve and maintain national standards.

A "major emitting facility" according to Section 302(j) of the Act, is any source with a potential of emitting 100 tons per year. The State rule in section (1)(a)(1) and Section (1)(b)(1)(A) requires all sources with potential emissions of 25 tons per year or more to apply for and receive a construction or operating permit. The 25 tons per year is more stringent than the 100 tons per year Federal cut-off.

The construction permit program in Indiana Rule 325 IAC 2–1.1 Section 3(b)(1) requires a demonstration that the National Ambient Air Quality Standards (NAAQS) and the Prevention of Significant Deterioration (PSD) increments will be maintained before a permit can be issued. The operating permit program implements this by requiring adherence to the construction permit conditions and adherence to the State's emission rules. Furthermore, Section 5(a) of the State rule allows the State of Indiana to place emission limits on construction and operating permits for the protection of the NAAQS and the Prevention of Significant Deterioration (PSD) increments. These provisions in section 3(b)(1) and Section 5(a) provide the State with enforcement provisions that are needed to protect the NAAQS and the PSD increments as required by the Act section 110(a)(2)(D)(i).

In summary, USEPA is proposing for approval Indiana Rule 325 IAC 2–1.1 as meeting all the requirements of 40 CFR 51.18(a)–(i) and 51.18(k) for Pb. In addition, USEPA has determined that the submitted NSR rules will meet the Pb NSR requirements and, therefore, will fulfill one element in the overall Indiana Pb Plan.

Under 5 U.S.C section 604(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Authority: 42 U.S.C. 7401–7642.

Dated: June 26, 1986.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 86–26075 Filed 11–18–86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-1-FRL-3114-3]

Approval and Promulgation of Implementation Plans Connecticut; Group III CTG Regulations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve proposed State Implementation Plan (SIP) revisions submitted by the State of Connecticut. These revisions will require reasonably available control technology (RACT) to reduce volatile organic compound (VOC) emissions from synthetic organic chemical and polymer manufacturing equipment and from polystyrene manufacturing equipment. The revisions also include amendments clarifying VOC compliance methods for surface coating operations. The intended effect of this action is to reduce statewide ozone levels as required under Section 110 and Part D of the Clean Air Act.

DATES: Comments must be received on or before December 19, 1986. Public comments on this document are requested and will be considered before taking final action on these SIP revisions.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2311, JFK Federal Building, Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2311, JFK Federal Building, Boston, MA 02203; and the Air Compliance Unit, Department of Environmental Protection, State Office Building, 165 Capitol Ave., Hartford, CT 06106.

FOR FURTHER INFORMATION CONTACT: David B. Conroy (617) 565–3252; FTS 835–3252 or Lynne A. Naroian (617) 565–3246; FTS 835–3246.

SUPPLEMENTARY INFORMATION: On March 26, 1986, the Department of Environmental Protection (DEP) submitted proposed revisions to the Connecticut State Implementation Plan. These proposed revisions include the following:

1. Section 22a–174–20, Subsection (x), "Control of VOC Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment"—Except as discussed below, EPA's review of this regulation found it consistent with the Control Techniques Guideline (CTG) document *Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment* (EPA–450/383–006). The proposed regulation does not define the term "In VOC Service." This term should be defined prior to final adoption of the regulation by the State of Connecticut.

Proposed Action

EPA is proposing to approve Section 22a–174–20, Subsection (x). EPA is proposing approval with the understanding that Connecticut will amend this regulation, as discussed above, prior to its adoption and submittal for incorporation into the SIP.

2. Section 22a–174–20, Subsection (y), "Manufacture of Polystyrene Resins"—This regulation requires all continuous polystyrene resin manufacturing facilities to comply with an emission limit of 0.12 kg of VOC/1000 kg of product in total from the styrene condenser vent and the styrene recovery unit condenser vent. EPA has reviewed this regulation and found that it is consistent with the CTG document *Control of Volatile Organic Compound Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins* (EPA–450/383–008). This regulation does not address polypropylene and high-density polyethylene manufacturers. This is acceptable if there are no sources in these categories located in the State of Connecticut.

Proposed Action

EPA is proposing to approve Section 22a–174–20, Subsection (y). The formal submittal of this SIP revision must include a letter certifying that there are no polypropylene or high-density polyethylene manufacturing sources in the State of Connecticut.

3. Amendments to Section 22a–174–20, Subsection (bb), "VOC Compliance

Methods"—This SIP regulation is being amended, at Subsection (bb), to clarify the requirement that VOC surface-coating sources use a capture system with a 90% collection efficiency when utilizing add-on control equipment to achieve compliance. EPA's review of the amendments to subsection (bb) has indicated that it is approvable as submitted. In Connecticut's submittal, Subsection (bb) was inadvertently listed as applicable to the following subsections: Subsection (t), "Manufacture of Synthesized Pharmaceutical Products," Subsection (u), "Manufacture of Pneumatic Rubber Tires," and Subsection (v), "Graphic Arts Rotogravers and Flexography." These regulations already contain capture and control efficiency requirements within them. The State may wish to clarify the applicability of Subsection (bb) by excluding Subsections (t), (u), and (v).

Proposed Action

EPA is proposing to approve Section 22a-174-20, Subsection (bb). EPA is proposing approval with the understanding that Connecticut will clarify the applicability portion of this subsection, as discussed above, prior to its adoption and formal submittal as a SIP revision.

A more detailed description of EPA's evaluation on each of the above regulatory changes is presented in the Technical Support Document that has been prepared for these revisions. That document is available for public inspection at the locations provided in the ADDRESSES section of this notice.

EPA is soliciting public comments on this notice and on issues relevant to today's proposed action. Comments will be considered before taking final action. Interested parties may participate in the federal Rulemaking process by submitting written comments to the address provided above.

Approval of these revisions is being proposed under a procedure called "parallel processing." 47 FR 27073. Parallel processing is a procedure by which the Federal rulemaking process and the state's procedures for amending its SIP are done concurrently. If the proposed revisions are substantially changed, in areas other than those identified in this notice, EPA will evaluate those changes and may publish a revised notice of proposed rulemaking. If no substantial changes are made other than those areas cited in this notice, EPA will publish a final rulemaking notice on the revisions. The final rulemaking action by EPA will occur only after the SIP revisions have been adopted by the State of Connecticut and submitted to EPA for incorporation into the SIP. It is estimated that "parallel processing" reduces the customary time required for final approval of SIP revisions by 3 to 4 months.

Under 5 U.S.C. section 605(b), I certify that these SIP revisions will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

The Administrator's decision to approve or disapprove the plan revisions will be based on whether they meet the requirements of Sections 110(a)(2)(A)-(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: May 22, 1986.

Michael R. Deland,

Regional Administrator, Region I.

[FR Doc. 86–26074 Filed 11–18–86; 8:45 am]

BILLING CODE 6560-01-M

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40 CFR Part 180

[PP 6E3384/P405; FRL-3110-6]

Pesticide Tolerance for Fluazifop-Butyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for residues of the herbicide fluazifop-butyl in or on the raw agricultural commodity tabasco peppers. The proposed regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number [PP 6E3384/P405], must be received on or before December 19, 1986.

ADDRESS: By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT BY MAIL:

Donald R. Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1806).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, submitted pesticide petition 6E3384 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the Agricultural Experiment Station of Louisiana.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the herbicide fluazifop-butyl (+)-2-[4-[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy propanoic acid (fluazifop), both free and conjuqated and of (±)-butyl-2[4-[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy propanoate (fluazifop-butyl), all expressed as fluazifop, in or on the raw agricultural commodity tabasco peppers at 1.0 part per million (ppm). The petitioner proposed that use on tabasco peppers be limited to Louisiana based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's

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Registration Division at the address provided above.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 2-year chronic feeding/oncogenicity study in rats which was negative for oncogenic potential at 3.0 milligrams (mg) per kilogram (kg) of body weight (bw) per day (equivalent to 60 ppm, highest dose tested) and a no-observed-effect level (NOEL) of 1 mg/kg/day.
2. A 90-day rat feeding study with a NOEL of 0.5 mg/kg/day (equivalent to 10 ppm).
3. A 90-day dog feeding study with a NOEL of 25 mg/kg/day (equivalent to 1,000 ppm).
4. A rat oral lethal dose LD50 of 3,300 mg/kg.
5. A rat teratology study with a teratogenic and maternal toxicity NOEL of 10 mg/kg/day (equivalent to 100 ppm) and a NOEL for fetotoxicity of 1 mg/kg/day (the teratogenic and maternal toxic effects level is 200 mg/kg/day, highest dose tested).
6. A rabbit teratology study with no teratogenic effect at 90 mg/kg/day (highest dose tested) and a NOEL for fetotoxicity of 10 mg/kg/day (equivalent to 330 ppm).
7. A 2-generation rat reproduction study with a NOEL of 1 mg/kg/day.
8. An 18-month mouse chronic feeding/oncogenicity study with no observed oncogenic potential at 3.0 mg/kg/day (highest dose tested) and a NOEL for systemic toxicity of 1.0 mg/kg/day (equivalent to 7 ppm).
9. An Ames test (negative), a rat cytogenetic study (negative), and an in-vitro transformation assay (negative).
10. An acute delayed neurotoxicity study in hens (negative).

The acceptable daily intake (ADI), based on the 2-year rat feeding study (NOEL of 1.0 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.01 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 0.6 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.0457 mg/day; the current action will increase the TMRC by 0.00045 mg/day (0.98 percent). Published tolerances utilize 7.6 percent of the ADI; the current action will utilize an additional 0.07 percent.

The nature of the residues is adequately understood and an adequate analytical method, high pressure liquid chromatography using an ultra-violet detector, is available in Pesticide Analytical Manual, Volume II (PAM-II), for enforcement purposes.

No secondary residues in meat, milk, poultry, or eggs are expected since tabasco peppers are not considered a livestock feed commodity. Based on the data and information considered, the Agency concludes that the proposed tolerance will protect the public health. Therefore, the tolerance is proposed as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 6E3384/P405]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 5, 1986.

E.F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.411 is amended by designating the current paragraph and list of tolerances as paragraph (a) and adding paragraph (b) to read as follows:

§ 180.411 Fluazifop-butyl; tolerances for residues.

(a) * * *

(b) Tolerances with regional registration are established for residues of (±)-2-[4-[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy propanoic acid (fluazifop), both free and conjugated and of (±)-butyl-2-[4-[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy propanoate (fluazifop-butyl), all expressed as fluazifop, in or on the raw agricultural commodity:

Commodities	Parts per million
Peppers, tabasco	1.0

[FR Doc. 86-25717 Filed 11-18-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 6E3396/P404; FRL-3110-7]

Pesticide Tolerance for Oxyfluorfen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY This document proposes that a tolerance be established for the combined residues of the herbicide oxyfluorfen and its metabolite in or on the raw agricultural commodity guava. The proposed regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number [PP 6E3396/P404], should be received on or before December 19, 1986.

ADDRESS: By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm 236, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Donald R. Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716B, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1806).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, submitted pesticide petition 6E3396 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the Agricultural Experiment Station of Hawaii.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the herbicide oxyfluorfen [2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene] and its metabolite containing the diphenyl ether linkage in or on the raw agricultural commodity guava at 0.05 part per million (ppm). The petitioner proposed that use on guava be limited to Hawaii based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 20-month mouse feeding study (chronic feeding/oncogenicity) with a no-observed-effect level (NOEL) of 2 ppm (0.3 milligram (mg) per kilogram (kg) of body weight (bw)) and a lowest effect level (LEL) of 20 ppm (increased absolute liver weight and non-neoplastic histological lesions). The Cancer Assessment Group (CAG) was asked to evaluate the oncogenic potential of oxyfluorfen. CAG requested a 90-day mouse study be performed as an estimate to determine the maximum tolerated dose (MTD). Subsequently, it was determined that toxicological concerns were not considered sufficient to regulate oxyfluorfen as an oncogen and oxyfluorfen received unconditional registration by the Agency.

2. A 2-year dog feeding study with a NOEL of 100 ppm (equivalent to 2.5 mg/kg/day).

3. A rat oral lethal dose LD_{50} greater than 5.0 grams (g)/kg.

4. A rat cytogenetic test (purified oxyfluorfen), negative; two Ames assays (technical), positive; an Ames assay (purified oxyfluorfen), negative; an Ames assay (polar fraction), positive; and Unscheduled DNA Synthesis (UDS) Assays (technical and polar fraction) both negative.

5. A rabbit teratology study with no observed teratogenic effect at 30 mg/kg.

6. A rat teratology study with no observed terata at 1,000 mg/kg of bw (highest dose tested) and a fetotoxic NOEL of 100 mg/kg.

7. A 3-generation rat reproduction study with a NOEL of 10 ppm (0.5 mg/kg of bw).

8. 2-year rat chronic feeding/oncogenicity study with a NOEL of 40 ppm (2.0 mg/kg of bw) and no oncogenic potential observed at the levels tested (2, 40 and 800 ppm, raised to 1,600 ppm at week 57 of the test).

The acceptable daily intake (ADI), based on the chronic mouse feeding study NOEL of 0.3 mg/kg/day and using a 100-fold safety factor, is calculated to be 0.003 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 0.18 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.0394 mg/day; the current action will increase the TMRC by 0.0000252 mg/day (0.06 percent). Published tolerances utilize 21.88 percent of the ADI; the current action will utilize an additional 0.01 percent.

There are no regulatory actions pending against the pesticide. Oxyfluorfen was the subject of a Rebuttable Presumption Against Registration (RPAR) process and a Notice of Determination that was published in the **Federal Register** of June 23, 1982 (47 FR 27118).

One of the solvents used in the production of technical oxyfluorfen, perchloroethylene (PCE), has been shown to produce liver tumors in mice. The Agency has concluded that potential benefits from use of oxyfluorfen outweigh risks from PCE, provided oxyfluorfen products are produced with no more than 200 ppm PCE contaminant. The producer of oxyfluorfen has verified that oxyfluorfen formulations contain a maximum of 200 ppm PCE.

The nature of the residues is adequately understood and an adequate analytical method, gas chromatography, is available in Pesticide Analytical Manual, Volume II (PAM-II), for enforcement purposes. There are presently no actions pending against the continued registration of oxyfluorfen.

No secondary residues in meat, milk, poultry, or eggs are expected since guavas are not considered a livestock feed commodity. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments should bear a notation indicating the document control number, [PP 6E3396/P404]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant

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economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 5, 1986.

E.F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.381 is amended by designating the current paragraph and list of tolerances as paragraph (a) and adding paragraph (b) to read as follows:

§ 180.381 Oxyfluorfen; tolerances for residues.

* * * * *

(b) Tolerances with regional registration are established for residues of the herbicide oxyfluorfen [2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene] and its metabolites containing the diphenyl ether linkage in or on the raw agricultural commodities:

Commodities	Parts per million
Guava	0.05

[FR Doc. 86-25718 Filed 11-18-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. MMPAH-1986-1]

Regulations Governing the Taking and Importing of Marine Mammals; Supplementary Information

AGENCY: Office of the Administrative Law Judge, U.S. Department of Commerce, for the National Marine Fisheries Service (NMFS), NOAA.

ACTION: Supplement relating to issues in formal rulemaking proceeding.

SUMMARY: On August 15, and October 28, 1986, notices announced the convening of a formal rulemaking in the matter of proposed regulations to govern the taking of marine mammals (Dall's porpoise) incidental to commercial salmon fishing operations, 51 FR 29674, (Aug. 20, 1986). This Notice confirms the issues for consideration, lists the witnesses whose testimony has been submitted and established the order of presentation.

DATES: The dates remain as published in the Order of September 17, 1986, 51 FR 33907 (Sept. 24, 1986).

ADDRESS: Office of the Administrative Law Judge, Suite 6716, U.S. Department of Commerce, 14th and Constitution Ave. NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Rosalie Smith, Office of the Administative Law Judge, Suite 6716, U.S. Department of Commerce, 14th & Constitution Ave. NW., Washington, DC 20230, Telephone: 202-377-3135.

SUPPLEMENTARY INFORMATION:

In the Matter of: Proposed Regulations to Govern the Taking of Marine Mammals (Dall's Porpoise) Incidental to Commercial Salmon Fishing Operations; Docket No. MMPAH-1986-1.

ORDER

The pre-hearing conference was held as scheduled on November 3, 1986, at the Department of Commerce, Washington, DC.

The following are the witnesses whose testimony or statements have been filed in accordance with the notices and which may be admitted at the hearing scheduled to commence at 10 a.m. on December 1, 1986, in Courtroom E912 of the King County Courthouse, 3rd and James Streets, Seattle, Washington.

Franklin G. Alverson
Gordon C. Broadhead
Shintaro Enomoto
Frank J. Hester
Mamoru Kato
Masayuki Komatsu
Hiroshi Ogiwara
Seiji Oshumi
Kazuo Shima
Satoshi Shimizu
Kenji Takagi
Linda Jones
G. Christopher Bouchet
Jeff Breiwick
Paul Sponz
Hans Jartmann

Agenda

At the hearing, following consideration of any preliminary matters and motions, the representative of the parties will have the opportunity to make opening statements. Introduction and cross-examination of the proponents' witnesses by the parties opposing the application, in turn. The proponents will then be afforded an opportunity for recross-examination. The participants are reminded that anyone presenting a witness is responsible to provide a translator to assure that the record is made in English. Following the proponent's presentations, the parties in opposition will be offered opportunity to make their presentations.

Testimony will be received on marine mammal populations, including mortality of Dall's porpoise in the driftnet squid fishery, as well as in other fisheries and natural activities. Testimony respecting as asserted incidental or other take for fur seals and/or sea lions will also be received. However, testimony may be limited if a particular stock is shown not to be the subject of taking and/or a permit within the ambit of this proceeding. As indicated at the pre-hearing conference, these are considered as within the paramter of the issues as previously stated.

I will defer to the requests of the parties to allow testimony on the incidental take of marine birds in the drift gillnet fishery. This is not a National Environmental Policy Act, Environmental Impact Statement process or proceeding. However, I recognize that the latter is being accomplished concurrently and, is parallel. I still have reservations respecting the sea-birds question, but will allow the testimony as requested. I will reserve for later determination the extent of consideration to be given to the issues raised in the Environmental Impact Statement process and invite counsel to comment, particularly in their post-hearing submissions, further on the appropriateness and/or necessity of such consideration, particularly to matters not related directly to marine mammals.

The schedule of the proceeding will be maintained.

Dated: November 13, 1986.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 86-26070 Filed 11-18-86; 8:45 am]

BILLING CODE 3510-08-M

Notices

Federal Register
Vol. 51, No. 223
Wednesday, November 19, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

November 14, 1986

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Attn: Desk Officer for USDA

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible

Extension

Agricultural Marketing Service

7 CFR Part 55, Regulations for Voluntary Inspection of Egg Products and Grading
On occasion; Weekly, Monthly, Daily
Businesses or other for-profit; Small businesses or organizations;
5,472 responses; 1,286 hours; not applicable under 3504(h)
Merlin L. Nichols, Jr. (202) 447–3506

Forest Service

Youth Conservation Corps (YCC) Application and Medical History
FS–1800–3; FS–1800–18
On occasion
Individuals or households; 27,500 responses; 2,500 hours; not applicable under 3504(h)
L. Wayne Bell (202) 535–0927

Rural Electrification Administration

Financial Requirement & Expenditure Statement—Electric Program REA–595
On occasion
Small businesses or organizations; 2,700 responses; 29,700 hours; not applicable under 3504(h)
Bert Huntington (202) 382–1966

Revision

Agricultural Marketing Service

Dried Prunes Produced in California—Marketing Order 993
Recordkeeping; On occasion; Monthly; Annually
Businesses of other for-profit; 39,301 responses; 34,837 hours; not applicable under 3504(h)
Ronald L. Cioffi (202) 447–5697

Farmers Home Administration

7 CFR 1924–A, Planning and Performing Construction and Other Development
FmHA 1924–1, –2, –3, –5, –6, –7, –9, –10, –11, –12, –13, –18, 424–19, and CC–257
Recordkeeping; On occasion
Individuals or households; Farms; Businesses or other for-profit;
Non-profit institutions; Small businesses or organizations; 759,078 responses; 262–629 hours; not applicable under 3504(h)
Jack Holston (202) 382–9736
7 CFR 1944–A, Section 502 Rural Housing Loan Policies, Procedures and Authorizations
FmHA 431–3, 440–34, 1944–4, 1944–6, 1944–A6, 1944–12, 1944–36, and 1944–5
On occasion
Individuals or households; Businesses or other for-profit; Small businesses or organizations; 718,600 responses; 357,640 hours; not applicable under 3504(h)
Jack Holston (202) 382–9736

Food and Nutrition Service

Report of the Child Care Food Program
FNS–44
Monthly; Quarterly
State or local governments; 1,584 responses; 4,752 hours; not applicable under 3504(h)
Alan Rich (703) 756–3100

Donald E. Hulcher,
Acting Departmental Clearance Officer.

[FR Doc. 86–26096 Filed 11–18–86; 8:45 am]

BILLING CODE 3410-01-M

Rural Electrification Administration

Associated Electric Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of No Significant Impact. Relates to the construction of a 345 kV transmission line between Benton County, Arkansas, and Polk County, Missouri.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Enviornmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508), and REA Environmental Policy and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact (FONSI) with respect to construction of a 345 kV transmission line on steel lattice towers in northwestern Arkansas and wood H-frame support structures in southwestern Missouri. Associated Electric Cooperative, Inc. (AECI), of Springfield, Missouri, has requested approval from the REA for a $15.6 million loan guarantee which would permit AECI to own a 78 km (49 mi) share in the proposed project. The other participants in the proposed project are Springfield City Utilities (CU), of Springfield, Missouri, with a 72 km (45 mi) segment; Southwestern Electric Power Company, of Shreveport, Louisiana, with a 29 km (18 mi) segment; and Empire District Electric Company

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(EDE), of Republic, Missouri, with a 38 km (23 mi) segment. KAMO Electric Cooperative, Inc. (KAMO), of Vinita, Oklahoma, will also use this line in the operation of its system and has been designated by AECI as the construction agent for AECI's share of the project. The Grand River Dam Authority (GRDA), of Vinita, Oklahoma, also plans to use this line in the operation of its system.

FOR FURTHER INFORMATION CONTACT: Frank W. Bennett, Director, Southeast Area-Electric, Room 0256, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382–8434.

SUPPLEMENTARY INFORMATION: REA, in conjunction with a request for approval from AECI for a $15.6 million loan guarantee to enable AECI to construct its share of the project, required that the project participants develop environmental support information reflecting the potential impacts of the project. Included as part of its environmental review process, REA held an interagency and two public scoping meetings in Missouri. The environmental support information supplied by the project participants, input from the meetings held, and input from the public and certain Federal and State agencies have been used by REA to develop its Environmental Assessment (EA). REA has concluded that the EA represents an accurate assessment of the environmental impacts of the proposed project and that the impacts are acceptable. The joint project will allow each of the participants to continue to meet their responsibilities to serve their load in a reliable and economical manner.

The length of the proposed project is approximately 216 km (135 miles). It originates at the Flint Creek Generating Station in Arkansas and traverses to the Morgan Substation in Missouri. The proposed transmission line is to be located in Benton County, Arkansas, and in McDonald, Newton, Barry, Lawrence, Greene, and Polk Counties, Missouri. The proposed project includes the construction by CU of the 345/161 kV Brookline Substation in Greene County, and an addition of a 345/161 kV transformer at both EDE's Monett Substation in Lawrence County and AECI's Morgan Substation in Polk County.

The single circuit 345 kV line will require a 46 m (150 ft) right-of-way (ROW). The two substations to be expanded, Monett and Morgan, will require 2.4 ha (6 ac) and 3.2 ha (8 ac), respectively. The new Brookline Substation will require 4 ha (10 ac).

REA has concluded that the proposed project will have no significant impact on wetlands, prime forestland or rangeland, threatened or endangered species or critical habitat, property listed or eligible for listing in the National Register of Historic Places, water quality and health of humans or animals. Floodplains of numerous streams and areas defined as prime farmland and Missouri important farmland are located in the preferred corridor. The only land removed from production will be immediately adjacent to the line support structures. The approximate amount of prime farmland and Missouri important farmland subject to impacts from the project is 0.11 ha (0.27 ac). About 12 structures are to be located within the 100-year floodplain of the streams located within the preferred corridor. There is no practicable alternative action that would avoid or reduce the small amount of prime and important farmland that would be impacted or that avoids the placement of 12 structures in the 100-year floodplain. Certain impacts resulting from the proposed project are unavoidable such as the cutting of trees and vegetation for the right-of-way clearing and the esthetic impact on the visual quality of the area.

Alternatives examined for the proposed joint project included no action, alternative energy sources and upgrading existing facilities. Alternative line routes, structure types and substation sites were also evaluated. REA determined that there is a demonstrated need for the project and constructing it within the preferred corridor is an environmentally acceptable project to meet the needs of the four project participants. The actual line route would be established within a corridor varying from approximately 1.6 km (1 mi) to 3.2 km (2 mi) to minimize the impacts on landowners, where practicable.

Based upon the environmental support information provided, and information from the REA conducted scoping meetings and public input, REA prepared an Environmental Assessment (EA) concerning the proposed project and its impacts. As a result of our independent evaluation, REA concluded that approval of financing assistance enabling AECI to own a 78 km (49 mi) share of the proposed project would not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, REA has reached a FONSI with respect to the proposed project.

Copies of REA's EA and FONSI can be obtained from the offices of REA in the South Agriculture Building, Room 0256, 14th and Independence Avenue SW., Washington, DC 20250; AECI, 2814 South Golden, Springfield, Missouri 65807 or KAMO, 900 South Wilson, Vinita, Oklahoma 74301. Copies of these documents can be reviewed at the offices of Springfield City Utilities, 301 East Central, Springfield, Missouri 65801; Empire District Electric Company, 202 South Main, Republic, Missouri 65738; and Southwestern Electric Power Company, 300 North College, Fayetteville, Arkansas 72701, during regular business hours. Copies of the documents are being sent to various Federal and State agencies. REA will take no final action with respect to AECI's request for financing assistance for at least forty five (45) days after publication of this notice in the **Federal Register** and in newspapers of general circulation in the counties where the project would be located.

Any comments should be sent to REA at the address given previously. All comments received during this period will be considered. This program is listed in the Catalog of Federal Domestic Assistance under No. 10.8509—Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015, Subpart V, this program is excluded from the scope of Executive Order 312372 which requires intergovernmental consultation with state and local officials.

Dated: November 12, 1986.

Jack Van Mark,

Acting Administrator.

[FR Doc. 86–26065 Filed 11–18–86; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (14 U.S.C. Chapter 35).

Agency: International Trade Administration

Title: Emergency Application for Rating or Directive Assistance

Form Number: Agency—ITA–993; OMB—0625–0032

Type of Request: Extension of the expiration date of a currently approved collection

Burden: 0 respondents at this time; 1 reporting hours

Needs and Uses: Standby emergency assistance has been a part of the Government's emergency preparedness planning since the mid-1950's. In the event of a national emergency, this information would be used to assure that production materials for essential items may be obtained by contractors, and the distribution of these items may be accomplished. Contractors would use this form to request special priority rating authority or directive assistance during a national emergency.

Affected Public: Businesses or other for-profit institutions; Federal agencies or employees; small businesses or organizations
Frequency: On occasion
Respondent's obligation: Mandatory
OMB Desk Officer: Sheri Fox, 395-3785

Agency: International Trade Administration
Title: Diamond Dies, Natural and Synthetic Production, Imports and Exports
Form Number: Agency—ITA-9013; OMB—0625-0033
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 22 respondents; 11 reporting hours

Needs and Uses: This information is required in support of the President's industrial mobilization responsibilities under Title III of the Defense Production Act of 1950, as amended. The survey provides data on production, imports and exports of diamond dies, natural and synthetic. The information collected is used by the Federal Emergency Management Agency and the Department of Commerce in support of their functions.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: Annually
Respondent's obligation: Mandatory
OMB Desk Officer: Sheri Fox, 395-3785

Agency: International Trade Administration
Title: Jewel Bearings and Related Components
Form Number: Agency—ITA-941; OMB—0628-0025
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 240 respondents; 720 reporting hours

Needs and Uses: The information collected from consumers of jewel bearings and related components is required in support of mobilization preparedness responsibilities assigned to the Department of Commerce. The information provides data on production, imports and consumption of jewel bearings and related components and is used by several Federal agencies in support of their programs.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: Annually
Respondent's obligation: Mandatory
OMB Desk Officer: Sheri Fox, 395-3785

Agency: International Trade Administration
Title: Defense Priorities and Allocations System (DPAS)
Form Number: Agency—N/A; OMB—0625-0107
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 25,000 recordkeeping hours

Needs and Uses: Under the Defense Production Act (DPA) of 1950, as amended, the President is given authority to allocate materials and facilities and to establish priorities in the performance of contracts and orders in support of the national defense. Any person who receives a rated order under the implementing DPAS regulation must retain a record of the transaction. The records are used in audits/investigations to determine if requirements of the DPA and implementing regulation have been properly followed.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion
Respondent's obligation: Mandatory
OMB Desk Officer: Sheri Fox, 395-3785

Agency: International Trade Administration
Title: Controlled Materials Requirements (Production, Construction, or Research and Development)
Form Number: Agency—ITA-9048; OMB—0625-0013
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 2,900 respondents; 1,250 hours

Needs and Uses: The information is required in support of the President's priorities and allocations authority under the Defense Production Act of 1950, as implemented by the Defense Priorities and Allocations System Regulation. the survey provides data on the quarterly requirements of controlled materials (copper, steel, aluminum, and nickel alloys) needed in support of authorized defense or energy programs. The information is used by several agencies to make program determinations.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion
Respondent's obligation: Mandatory
OMB Desk Officer: Sheri Fox, 395-3785

Agency: International Trade Administration
Title: Aluminum Producers and Importers (Receipts, Shipments, and Stocks)
Form Number: Agency—ITA-978; OMB—0625-0016
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 300 respondents; 1,800 reporting hours

Needs and Uses: This information collected from aluminum ingot and mill product producers is required in support of the President's priorities and allocations authority under the Defense Production Act of 1950. This survey provides data on defense rated shipments of aluminum ingot and mill products. The data are used by the International Trade Administration to establish and monitor the obligation ("set-a-sides") of producers of aluminum ingot and mill products to accept defense rated orders.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: Monthly
Respondent's obligation: Mandatory
OMB Desk Officer: Sheri Fox, 395-3785

Agency: International Trade Administration
Title: Request for Special Priorities Assistance
Form Number: Agency—ITA-999; OMB—0625-0015
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 1,800 respondents; 900 reporting hours

Needs and Uses: This information is required in support of the President's priorities and allocations authority under the Defense Production Act of 1950, as amended. Defense contractors may request special priorities assistance when placing defense rated orders with suppliers, or to obtain timely delivery of products or materials from suppliers, in support of authorized national defense and energy programs. This form is used by contractors to apply for such assistance.

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Affected Public: Businesses or other for-profit institutions; Federal agencies or employees; small businesses or organizations
Frequency: On occasion
Respondent's obligation: Mandatory
OMB Desk Officer: Sheri Fox, 395–3785
Agency: International Trade Administration
Title: Radial Ball Bearings (30 mm and Under)
Form Number: Agency—ITA–985; OMB—0625–0044
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 15 respondents; 8 reporting hours

Needs and Uses: The information collected from radial ball bearings producers (30 mm and under) is required in support of mobilization preparedness responsibilities assigned to the Commerce Department under the Defense Production Act of 1950. This survey provides data on the shipments, including defense orders and exports and unfilled orders of radial ball bearings. Minature and instrument radial ball bearings are used in many defense critical products. The industry needs to be monitored in view of the deterioration of the domestic radial ball bearing industry.

Affected Public: Businesses or other for-profit institutions
Frequency: Annually
Respondent's obligation: Mandatory
OMB Desk Officer: Sheri Fox, 395–3785

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: November 13, 1986.

Edward Michals,

Departmental Clearance Officer, Information Management Division, Office of Information Resources Management.

[FR Doc. 86–26081 Filed 11–18–86; 8:45 am]

BILLING CODE 3510-07-M

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Quarterly Financial Reports
Form Number: Agency—QFR–101A(MG–2), QFR–102A (TR–2), QFR–103A (NB), QFR–106A (CS), QFR–101A(MG–2), QFR–102A(TR–2); OMB—0607–0432, 0607–0433, 0607–0434, 0607–0436
Type of Request: Revision of currently approved collections
Burden: 231,300 respondents; 24,670 reporting hours

Needs and Uses: The QFR is the best available source of timely financial data for gauging quarterly performance of the nonregulated, domestic corporate sector. Collected data are used for the quarterly GNP estimates (BEA), in briefings on conditions and financial markets in various sectors of the economy (FRB); to trace financial performance of small business (SBA); to extrapolate tax-based income (Treasury); as a standard to assess reasonableness of rate increase petitions by the trucking industry (ICC); to respond to Congress inquiries regarding sales, profits, financial position, and rates of return by industry (Joint Committee on Internal Revenue and Taxation); to analyze and explain behavior of retail food prices (Agriculture); as an index to move IRS benchmark data on municipal holding (HUD); and as the only profitability indicator for the establishment of fair selling price, at auction, of government timber (BLM).

Affected Public: Individuals or households
Frequency: Quarterly, annually, biennially
Respondent's Obligation: Mandatory
OMB Desk Officer: Timothy Sprehe, 395–4814

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503

Dated: November 13, 1986.

Ed Michals,

Departmental Clearance Officer, Information Management Division, Office of Information Resources Management.

[FR Doc. 86–26082 Filed 11–8–86; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

Jim Nissmo Elektronik A.B.; Export Privileges; Order

In the matter of Jim A. Nissmo, individually and doing business as Jim Nissmo Elektronik A.B., Repslagarevagen 31 24 500 Staffanstorp, Sweden, Respondents.

The Office of Export Enforcement, International Trade Administration, U.S. Department of Commerce (Department), having determined to initiate an administative proceeding against Jim A. Nissmo, individually and doing business as Jim Nissmo Elektronik A.B. (Nissmo), pursuant to section 13(c) of the Export Adminstration Act of 1979 (50 U.S.C. app. 2401–2420 (1982), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985)) (the Act), and Part 388 of the Export Administration Regulations (currently codified at 15 CFR Parts 368 through 399 (1986)) (the Regulations), based on allegations that Nissmo violated §§ 387.4 and 387.5 of the Regulations in that: (a) Nissmo failed to notify the Department that he was no longer the ultimate consignee of U.S.-origin equipment, a material fact deemed to be continuing in effect and requiring notification to the Department if any change occurs; (b) Nissmo knew or had reason to know that he was violating the Regulations in stating that he would be the ultimate consignee when he knew that he would not be; and (c) Nissmo made false representations to the Office of Export Enforcement during the course of its investigation.

The Department and Nissmo having entered into a Consent Agreement whereby the parties have agreed to settle this matter: (1) by Nissmo's paying a civil penalty of $15,000 to the Department, and (2) by denying all of Nissmo's U.S. export privileges for a period ending ten years from the date of this Order.

The terms of the Consent Agreement having been approved by me;

It is therefore ordered,

First. A civil penalty in the amount of $15,000 is assessed against Nissmo.

Second. Payment of $7,500 of the civil penalty will be made in three equal installments of $2,500 each in the manner specified in the attached instructions. Nissmo shall pay to the Department the first installment of $2,500 within 20 days of service of this Order on Nissmo through his counsel. The second installment shall be due on or before January 30, 1987. The third installment shall be due on or before July 31, 1987. Payment of the remaining $7,500 is suspended, as authorized by section 388.16 of the Regulations, for a period of ten years from the date of this Order. Payment of the suspended portion will be waived at the end of the 10-year period provided that during that time Nissmo has committed no further violations of the Act, or any regulation, order or license issued under the Act.

Third. Nissmo, individually and doing business as Jim Nissmo Elektronik A.B., for a period ending ten years from the date of this Order, is denied all privileges of participating, directly or indirectly, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad.

A. Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations; and (v) in the financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

B. Such denial of export privileges shall extend not only to Nissmo but also to his agents, employees and successors. After notice and opportunity for comment, such denial shall also be made applicable to any person, firm, corportion, or business organization with which Nissmo is now or hereafter may be related by affiliation, ownership, control, position of responsibility or other connection in the conduct of export trade or related services.

C. The 10-year denial period set forth above is suspended, as authorized by § 388.16 of the Regulations, and will be waived at the end of the 10-year period provided that during that time Nissmo has committed no further violations of the Act, or any regulation, order or license issued under the Act.

Fourth. The proposed Charging Letter, the Consent Agreement and this Order shall be made available to the public and this Order shall be published in the **Federal Register.**

Fifth. By Order of June 29, 1982 (47 FR 29304) (the Denial Order), Nissmo was denied all privileges of participating in any manner or capacity in the export of U.S.-origin commodities or technical data because of his failure to provide responsive answers to the interrogatories issued pursuant to the Department's investigation of this matter and served on Nissmo on September 28, 1981. Under the terms of the Denial Order, Nissmo was denied export privileges until June 28, 1988 or until he answered responsively the interrogatories or showed good cause for his failure to do so. This Order concludes the matter under investigation which prompted the issuance of the interrogatories.

Therefore, the Denial Order is hereby vacated with respect to Nissmo and all parties related to him.

This Order is effective immediately.

Entered this 7th day of November, 1986.

Theodore W. Wu,

Deputy Assistant Secretary for Export Enforcement.

[FR Doc. 86-26083 Filed 11-18-86; 8:45 am]

BILLING CODE 3510-25-M

Minority Business Development Agency

[Transmittal and Project I.D. No. DRO—Tulsa MBDC]

Minority Business Development Center (MBDC); Project I.D. Number: DRO—Tulsa MBDC; Applications

Summary

The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a *three (3) year period,* subject to available funds. The cost of performance for the first twelve (12) *months* is estimated at *$194,118* for the project's performance period of *04/1/87 to 03/31/88.* The MBDC will operate in the *Tulsa, Oklahoma Standard Metropolitan Statistical Area (SMSA).* The first year cost for the MBDC will consist of *$165,000* in Federal funds and a minimum of *$29,118* in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian Tribes and educational institutions.

The MBDC will provide management and technical assistance (M&TA) to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance (M&TA); and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance (M&TA); the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA, based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is 12/22/86. Applications must be postmarked On or Before December 22, 1986.

ADDRESS: MBDA—Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas, Texas 75242-0790.

FOR FURTHER INFORMATION CONTACT: Marie Hearne, Business Development Clerk, Dallas Regional Office, 214/767-8001.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Melda Cabrera,

Acting Regional Director, Minority Business Development Agency, Dallas Regional Office.

November 13, 1986.

Section B. Project Specifications

Program Number and Title: 11.800 Minority Business Development.

Project Name: (Geographic Area or (SMSA) Tulsa, Oklahoma MBDC.

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Project Identification Number: DRO—TULSA MBDC.

Project Start and End Dates: April 1, 1987 thru March 31, 1988.

Project Duration: 12 mos.

Maximum Federal Funding Level (85%)	$165,000
Minimum Non-Federal Cost Sharing (15%)	29,118
Total project cost	194,118

Closing Date for Submission of this Application: December 22, 1986.

Geographic Specification: The Minority Business Development Center shall offer assistance in the geographic area of: *Tulsa, Oklahoma Standard Metropolitan Statistical Area (SMSA).*

Eligibility Criteria: There are no eligibility restrictions for this project. Eligible applications may include individuals, non-profit organizations, for profit firms, local and state governments, American Indian Tribes, and educational institutions.

Project Period: The project period will be for three years with funding and evaluation on an annual basis. MBDC's will be evaluated on their performance usually during each project period of 12 months or so. The MBDC will be funded each year at the discretion of MBDA based upon the availability of funds, the MBDC's performance, and Agency priorities.

MBDA's *Minimum* levels of effort:

Financial Packages: $2,266,000
M&TA: $103,000
Procurements: $4,807,000
Number of Clients: 65.

Note.—Applicant's *proposed* levels, whether the same, higher or lower are to be justified.

[FR Doc. 86-26090 Filed 11-18-86; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

[P278C]

Marine Mammals; Application for Permit; Mr. Brent S. Stewart, Hubbs Marine Research Center

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Mr. Brent S. Stewart, Hubbs Marine Research Center.

b. Address: 1700 South Shores Road, San Diego, CA 92109.

2. Type of Permit: Scientific Research.

3. Name of Marine Mammals:

Northern elephant seal *(Mirounga angustirostris)*
California sea lion *(Zalophous californianus)*
Harbor seal *(Phoca vitulina)*
Northern sea lion *(Eumetopias jubatus)*
Northern fur seal *(Callorhinus ursinus)*
Guadalupe fur seal *(Arctocephalus townsendi)*

4. Type of Take and Annual Numbers: The applicant requests authorization to take by tagging 2,900 northern elephant seals; to mark up to 100 pups with hair dye; to bleach mark up to 200 adult and subadult males; to mark with hair dye up to 200 adult females; to collect blood samples from 50 of the marked pups and attach microprocessor time-depth recorders to 20 tagged females and 20 tagged males. To take by tagging and weighing 1,000 California sea lions; to attach microprocessor time-depth recorders and/or radio transmitters to 20 parturient or barren females, tagged animal will be marked with hair dye. To take by tagging, 60 harbor seals, with microprocessor time-depth recorders and/or radio-transmitters and cattle ear tags, each tagged animal will have blood samples taken. An unspecified number of northern elephant seals may be inadvertently harassed during the ground surveys and an unspecified number of all 5 species may be inadvertently harassed during aerial surveys.

5. Location of Activity: San Miguel, Santa Rosa, Santa Cruz, Anacapa, Santa Barbara, San Nicolas, San Catalina, and San Clemente Islands, California.

6. Period of Activity: 5 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following office(s):

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dated: November 13, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-26039 Filed 11-18-86; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

November 4, 1986.

The USAF Scientific Advisory Board Electronic Systems Division Advisory Group will meet at the MITRE Corp., Burlington Road, Bedford, MA on January 8, 1987 from 8:30 a.m. to 5:00 p.m. and at the Command Management Center, Hanscom AFB, MA on January 9, 1987 from 8:30 a.m. to 12:00 noon.

The purpose of the meeting is to review, discuss and evaluate communications technology and mission critical software initiates.

The meeting concerns matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8845.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-26029 Filed 11-18-86; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee panel on Over the Horizon Targeting Capabilities will meet on December 3–4, 1986, at the Office of

Naval Research, 800 North Quincy Street, Arlington, Virginia. The meeting will commence at 8:00 A.M. and terminate at 5:00 P.M. on December 3; and commence at 8:30 A.M. and terminate at 5:00 P.M. on December 4, 1986. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to conduct a comprehensive review of existing and planned over the horizon targeting programs; determine current and projected over the horizon targeting and related command and control capabilities and limitations; and identify any problems and recommend solutions. The agenda will consist of technical briefings and discussions addressing over the horizon targeting capabilities, program tactics and operations. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217-5000, Telephone Number (202) 696-4870.

Dated: November 14, 1986

Harold R. Stoller, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 86-26057 Filed 11-18-86; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

National Council on Educational Research; Meeting

AGENCY: National Council on Educational Research, Education.

ACTION: Full Council meeting of the National Council on Educational Research.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the National Council on Educational Research. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(A)(2) of the Federal Advisory Committee Act.

DATES: December 4 and 5, 1986.

ADDRESS: The Council will meet on December 4 from 10 a.m. to 3 p.m. in Conference Room 326 at 555 New Jersey Avenue NW., Washington, DC 20208. From 3:30 p.m. to 5 p.m. Council Members will be conducting a site visit to the ERIC Clearinghouse on Teacher Education, Suite 610, One Dupont Circle, Washington, DC 20036, and to the ERIC Clearinghouse on Higher Education, Suite 630, One Dupont Circle, Washington, DC 20036.

The Council will meet on December 5 from 9 a.m. to 1 p.m. at the Omni Shoreham Hotel, 2500 Calvert St. NW., Washington, DC 20008 (conference room to be announced).

FOR FURTHER INFORMATION CONTACT: Mary Grace Lucier, Executive Director, National Council on Educational Research, 2000 L. St. NW., Suite 617 B, Washington, DC 20036, (202) 254-7490.

SUPPLEMENTARY INFORMATION: The National Council on Educational Research is established under section 405 of the General Education Provisions Act (20 U.S.C. 1221 e); Department of Education organization plan implemented pursuant to section 413 of Pub. L. 96-88 and notice to Congress dated July 2, 1985. The Council is established to advise the Secretary of Education on policies and priorities for the Office of Educational Research and Improvement (OERI), and to review the conduct of OERI and to advise the Secretary of Education and the Assistant Secretary for OERI on development of programs to be carried out by OERI.

Meetings of the Council are open to the public. The agenda for December 4 includes briefings on the National Diffusion Network by Dr. Shirley Curry, Director, Recognition Division of the Office of Educational Research and Improvement, and on Library Programs by Dr. Anne Mathews, Director, Library Programs, OERI. The agenda for December 5 will cover lab/center site visit reports by Members and a discussion of privatization issues by Dr. Myron Lieberman of the Graduate School of Education, the University of Pennsylvania.

Records are kept of all Council Proceedings and are available for public inspection at the office of the National Council on Educational Research, 2000 L. St. NW., Suite 617 B, Washington, DC 20036, from the hours of 9 a.m. to 5 p.m. Monday through Friday.

Dated: November 14, 1986.

Mary Grace Lucier,

Executive Director.

[FR Doc. 86-26037 Filed 11-18-86; 8:45 am]

BILLING CODE 4000-01-M

Vocational Education National Council; Meetings

AGENCY: National Council on Vocational Education, ED.

ACTION: Notice of Public Meeting of the Council.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Council on Vocational Education. It also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act, and is intended to notify the general public of its opportunity to attend.

DATE: December 6, 1986.

ADDRESS: Loews Anatole Hotel, 2201 Stemmons Freeway, Dallas, Texas 75207, (214) 748-1200.

FOR FURTHER INFORMATION CONTACT: Dr. Joyce L. Winterton, Executive Director, National Council on Vocational Education, 2000 L Street, NW., Suite 580, Washington, DC 20036, (202) 634-6110.

SUPPLEMENTARY INFORMATION: The National Council on Vocational Education is established under section 104 of the Vocational Education Amendments of 1968, Pub. L. 90-576. The Council advises the President, Congress, and the Secretary of Education on:

A. Effectiveness of the act in providing students with skills that meet needs of employers;

B. Strategies for increasing cooperation between business and vocational education for training for new technologies;

C. Practical approaches for retraining adult workers;

D. Effective ways of providing access to information regarding market demand for skills;

E. Vocational education needs of the handicapped and their level of participation in vocational programs;

F. Implementation of the Jobs Training Partnership Act, and policies needed to build a coordinated capacity to train America's work force.

The meeting of the Council is open to the public. The proposed agenda will include:

Follow-up Discussion on Project Catalyst

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Discussion of FY 1987 plan of work
Discussion on FY 86 Annual Report

Records are kept of the Council's proceedings, and are available for public inspection at the office of the National Council on Vocational Education from 9:00 AM to 4:30 PM at 2000 L Street NW., Suite 580, Washington, DC, 20036.

Signed at Washington, DC on November 14, 1986.

Joyce L. Winterton,

Executive Director.

[FR Doc. 86–26034 Filed 11–18–86; 8:45 am]

BILLING CODE 4000-01-M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before December 19, 1986.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 4074, Switzer Building, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426–7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) agency form number (if any); (4) frequency of collection; (5) the affected public; (6) Reporting burden; and/or (7) recordkeeping burden; and (8) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: November 14, 1986.

Carlos U. Rice,

Acting Director Information Technology Services.

Office of Postsecondary Education

Type of Review: Extension
Title: Application for Certification for Participation in Programs under Title IV of the Higher Education Act of 1965, as amended.
Agency Form Number: ED 633
Frequency: Annually
Affected Public: Business or other for profit
Reporting Burden:
  Responses: 1500
  Burden Hours: 3000
Recordkeeping Burden:
  Recordkeepers: 0
  Burden Hours: 0

Abstract: This form is used by colleges, universities and vocational schools to apply to the Department of Education to become certified to participate in student financial assistance programs under Title IV, of the Higher Education Act of 1965, as amended.

Type of Review: Reinstatement
Title: Request for Institutional Eligibility for Programs under the Higher Education Act of 1965, as amended.
Agency Form Number: EDD 1059
Frequency: Annually
Affected Public: State or local governments; Businesses or other for-profit; Non-profit institutions
Reporting Burden:
  Responses: 1200
  Burden Hours: 1200
Recordkeeping Burden:
  Recordkeepers: 0
  Burden Hours: 0

Abstract: Under the Higher Education Act of 1965, as amended, the Secretary of Education must determine which postsecondary institutions are eligible to receive Federal funds for themselves or their students. The Secretary uses the information collected on this form to determine the eligibility of these institutions.

Type of Review: New
Title: National Rehabilitative Personnel and Training Needs Assessment
Agency Form Number: B20–20P
Frequency: On occasion
Affected Public: State or local governments; Non-profit institutions
Reporting Burden:
  Responses: 587
  Burden Hours: 2000
Recordkeeping Burden:
  Recordkeepers: 0
  Burden Hours: 0

Abstract: This assessment will collect information from State Vocational Rehabilitation agencies and local service providers on manpower and training needs for the qualified personnel necessary to provide services to handicapped individuals. This information will be used to fulfill the reporting requirements of section 304(c) of the Rehabilitation Act of 1984, as amended.

[FR Doc. 86–26112 Filed 11–18–86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Issuance of Proposed Remedial Order to Morrison Petroleum Co., Inc. and Opportunity for Objection

AGENCY: Economic Regulatory Administration, U.S. Department of Energy.

ACTION: Notice of issuance of proposed remedial order to Morrison Petroleum Company, Inc. and notice of opportunity for objection.

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration of the Department of Energy (DOE) hereby gives notice of a Proposed Remedial Order which was issued to Morrison Petroleum Company, Inc. (Morrison), 2600 South 1600 W., Woods Cross, Utah 84087. This Proposed Remedial Order charges Morrison with filing erroneous Refiners Monthly Reports (Form P–102–M–1) concerning crude oil refined under processing agreements with other refiners. The processing period was July 1976 through May 1977. ERA alleges that Morrison did not own 2,577,774 barrels of crude oil refined pursuant to the agreements and thus its receipt of $4,843,227 in small refiner bias entitlements on those barrels was unlawful. The impact of Morrison's unlawful receipt of these small refiner bias entitlements was spread nationwide among all refiner participants in the Entitlements Program.

A copy of the Proposed Remedial Order, with confidential information deleted, if any, may be obtained from the DOE Freedom of Information Reading Room, U.S. Department of Energy, 1000 Independence Avenue SW., Room 1E-190, Washington, DC 20585.

Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Room 6F-055, 1000 Independence Avenue SW., Washington, DC 20585, in accordance with 10 CFR 205.193. A person who fails to file a Notice of Objection shall be deemed to have admitted the findings of fact and conclusions of law stated in the proposed order. If a Notice of Objection is not filed in accordance with § 205.193, the proposed order may be issued as a final Remedial Order by the Office of Hearings and Appeals.

Issued in Washington, DC on the 12th day of November, 1986.

Marshall A. Staunton,

Administrator, Economic Regulatory Administration.

[FR Doc. 86-26062 Filed 11-18-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP87-46-000 et al.]

Natural Gas Certificate Filings: Alabama-Tennessee Natural Gas Co. et al.

Take notice that the following filings have been made with the Commission:

1. Alabama-Tennessee Gas Co.

[Docket No. CP87-46-000]

November 12, 1986.

Take notice that on October 30, 1986, as supplemented November 10, 1986, Alabama-Tennessee Natural Gas Company (A-T), P.O. Box 918, Florence, Alabama 35631, filed in Docket No. CP87-46-000 an application pursuant to section 7(c) of the Natural Gas Act to transport up to 10,000 Mcf of natural gas per day on an interruptible basis for the Tennessee Valley Authority (TVA), along with a request for pre-granted abandonment, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

A-T indicates that it proposes to provide the service in accordance with the terms and conditions of a transportation agreement between A-T and TVA dated October 15, 1986, which A-T indicates provides for a term expiring two years from the date of initial deliveries.

A-T states that TVA would cause gas to be delivered to various points of interconnection of the facilities of Tennessee Gas Pipeline Company (Tennessee Gas) or Columbia Gulf Transmission Company (Columbia Gulf) or Tennessee River Intrastate Gas Company, Inc. (TRIGAS), for redelivery to A-T. It is indicated that A-T would receive such gas at the existing points of interconnection between A-T and: (1) Tennessee Gas located in Alcorn County, Mississippi, or Colbert County, Alabama, and/or (2) Columbia Gulf located in Alcorn County, Mississippi, and/or (3) the interconnection being constructed between A-T and TRIBAS, located in Colbert County, Alabama. A-T has further requested authority under section 7(c) of the Natural Gas Act to receive natural gas from TRIGAS for redelivery to TVA. It is also indicated that TRIGAS, in turn, would receive the natural gas which it delivers to A-T from Texas Eastern Transmission Corporation. A-T states that it would redeliver to TVA an equivalent quantity of gas to the existing point of interconnection between the facilities of A-T and TVA.

A-T states that TVA has agreed to pay each month for the transportation services rendered the applicable transportation charge(s) as approved by the Federal Energy Regulatory Commission. A-T indicates that initially it would charge maximum and minimum rates of 15.96 cents per Mcf of gas and 6.63 cents per Mcf of gas, respectively, and that it would credit to Account No. 191 as described in the Commission's Uniform System of Accounts the revenues derived from this service until transportation quantities of gas are allocated in a rate case.

A-T alleges that if the application is approved, TVA would be permitted to enter the natural gas spot market in search of cheaper natural gas for operation of its fertilizer products, thereby reducing the need for federal funds for such purposes.

Comment date: December 3, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket No. CP87-48-000]

November 13, 1986.

Take notice that on October 31, 1986, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP87-48-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing transportation of up to 4 billion Btu equivalent of natural gas per day on an interruptible basis for Kerr Glass Manufacturing Corporation (Kerr Glass), a high-priority industrial end-user, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant proposes to provide the transportation service pursuant to a gas transportation agreement dated July 14, 1986, for a period of two years from the date of first delivery and month to month thereafter. Applicant states that the gas would be used by Kerr Glass at its Plainfield plant in furnaces used for the manufacture of glass. Applicant would receive gas for the account of Kerr Glass at the following receipt points: (1) The existing interconnection between Applicant and ONG Transmission company (ONG) in Woodward County, Oklahoma; (2) the existing interconnection between Applicant and ONG in Custer County, Oklahoma; (3) the existing interconnection between Applicant and Houston Pipe Line Company (HPL) in Nueces County, Texas; (4) the existing interconnection between Applicant and HPL in Jim Hog County, Texas; and (5) the existing interconnection between Applicant and Transwestern Pipeline Company in Hansford County, Texas. Applicant further requests authorization to add or delete additional receipt points in the future that may be necessary to support this service. Applicant states that redeliveries of gas for the account of Kerr Glass would be made to Northern Illinois Gas Company (NIGAS) at existing interconnections between the Applicant and NIGAS in DuPage County, Illinois and in Livingston County, Illinois, for redelivery by NIGAS to Kerr Glass at its Plainfield plant located in Will County, Illinois.

Applicant proposes to charge Kerr Glass the following transportation rates:

Point of Receipt	Point of delivery	Transportation rate per MMBtu (in cents)
Woodward County, OK	Du Page County, IL.	26.8
	Livingston County, IL.	26.8
Custer County, OK	Du Page County, IL.	30.7
	Livingston County, IL.	30.7
Nueces County, TX	Du Page County, IL.	43.3
	Livingston County, IL.	43.3
Jim Hogg County	Du Page County, IL.	46.1
	Livingston County, IL.	46.1

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Point of Receipt	Point of delivery	Transportation rate per MMBtu (in cents)
Hansford County, TX	Du Page County, IL.	29.6
	Livingston County, IL.	29.6

Applicant states that quantities of gas redelivered would be less fuel use and unaccounted-for losses. Applicant also proposes to charge Kerr-Glass the currently effective GRI surcharge as set forth on Tariff Sheet No. 5A of Applicant's Volume No. 1 Tariff.

Comment date: December 4, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Northern States Power Company—Minnesota

[Docket No. CP81–522–005]

November 13, 1986.

Take notice that on October 24, 1986, Northern States Power Company-Minnesota (Applicant), 414 Nicollet Mall, Minneapolis, Minnesota 55401 filed in Docket No. CP81–522–005 an amendment to the order issued December 28, 1982, in Docket No. CP81–522–000, as amended, pursuant to sections 4 and 7(c) of the Natural Gas Act so as to authorize Applicant to amend its liquefied natural gas (LNG) service agreement with Northern States Power Company-Wisconsin (NSP-Wisc), and to revise the formula to calculate the rate charged for such LNG services pursuant to Rate Schedule LNGA–3 of Applicant's FERC Gas Tariff, Original Volume No. 1, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant states that on February 19, 1985, it signed a revised agreement to provide LNG services to its wholly-owned subsidiary NSP-Wisc. It is stated that under the original agreement Applicant provided liquefaction services to NSP-Wisc for up to 100,000 Mcf of natural gas per year. It is further stated that Applicant accepted delivery and liquefied the NSP-Wisc gas at Applicant's Westcott LNG facility and redelivered the LNG to NSP-Wisc for transportation by cryogenic vehicle. Applicant states that the revised agreement reduces the contract quantity from 110,000 Mcf per year to 50,000 Mcf per year and that the revised agreement allows Applicant to provide additional liquefaction and redelivery services by mutual consent of the parties. The revised agreement also establishes a new formula calculating the rates to be charged for such LNG services, it is stated.

Applicant states that NSP-Wisc requested the reduced level of service because of modifications to NSP-Wisc's liquefaction operating equipment and the availability of group billing from Northern Natural Gas Company, Division of Enron Corp., NSP-Wisc's pipeline gas supplier.

Comment date: December 4, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Northern Natural Gas Company

[Docket No. CP87–42–000]

November 13, 1986

Take notice that on October 28, 1986, Northern Natural Gas Company (Northern) 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP87–42–000 a request pursuant to §§ 157.205 and 157.211 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate measurement stations for 5 residential, agricultural and commercial customers, under the certificate issued in Docket No. CP82–401–000, pursuant to the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that all 5 customers, as listed below, would be served by Peoples Natural Gas Company (Peoples), the local distribution company.

End-user	Peak day volumes (Mcf)	Location	End-use
Leon Beckman	2.0	Minnehaha County, SD.	Residential heat.
Mervin Miller	45.0	Dickinson County, IA.	Grain drying.
Scott Randall	1.0	Story County, IA.	Residential heat.
U.S. Steel	468.0	St. Louis County, MN.	Heating for mobil equipment shop.
Terry Williams	1.0	Mills County, IA.	Residential heat.

Northern states that deliveries to these measurement stations will be made within the existing firm entitlements of Peoples. It is stated that the total estimated cost of the proposal would be $52,080, of which Peoples would contribute $2,895.

Comment date: December 29, 1986, in accordance with Standard Paragraph G at the end of this notice.

5. Panhandle Eastern Pipe Line Company and Trunkline Gas Company

[Docket No. CP82–211–003]

November 13, 1986.

Take notice that on October 31, 1986, Panhandle Eastern Pipe Line Company and Trunkline Gas Company (Applicants), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP82–211–003 a petition to amend the order issued August 16, 1982 (20 FERC ¶ 62,275), in Docket No. CP82–211, pursuant to section 7(c) of the Natural Gas Act so as to authorize an additional 1,250 Mcf per day of interruptible transportation service to Southern Natural Gas Company (Southern), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Applicants state that by order issued August 16, 1982, in Docket No. CP82–211, Applicants were authorized to receive, transport and redeliver a firm transportation quantity of natural gas up to 750 Mcf per day on behalf of Southern pursuant to a transportation agreement among Applicants and Southern dated December 23, 1981 (Agreement). It is further stated that Panhandle receives natural gas from a point of interconnection with Southern in Custer County, Oklahoma, and transports and redelivers to Trunkline at Tuscola, Illinois, for ultimate redelivery to Southern in St. Mary Parish, Louisiana. Applicants indicate that Panhandle provides its portion of the transportation service pursuant to Rate Schedule T–50 of its FERC Gas Tariff, Original Volume No. 2 and that Trunkline provides its portion of the transportation service pursuant to Rate Schedule T–74 of its FERC Gas Tariff, Original Volume No. 2.

Applicants indicate that on April 29, 1986, they entered into an amendment to the Agreement, which provides for an additional 1,250 Mcf per day of interruptible transportation service to Southern. Applicants further indicate that the additional interruptible transportation quantity would be received by Panhandle from the above-referenced Custer County, Oklahoma, point of receipt and redelivered to Southern in St. Mary Parish, Louisiana, by Trunkline.

Applicants state that no new or additional facilities would be required as a result of the requested amended authority. Applicants further state that they would charge Southern an interruptible transportation rate of 29.12 cents per Mcf.

Comment date: December 4, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. Philadelphia Electric Co., Complaint v. Transcontinental Gas Pipe Line Corp., Respondent

[Docket No. CP87-37-000]

November 12, 1986.

Take notice that on October 24, 1986, Philadelphia Electric (PECo), 2301 Market Street, Philadelphia, Pennsylvania 19101, filed in Docket No. CP87-37-000 pursuant to §§ 385.206, 385.207, 385.212, and 385.217 of the Commission's Rules of Practice and Procedure a petition for declaratory order, complaint and request for order directing compliance by Transcontinental Gas Pipe Line Corporation (Transco) with § 284.10 of the Commission's Regulations, which requires, in accordance with the Commission's Order No. 436, that interstate pipelines which provide open access transportation service after June 30, 1986, must offer the sales customers to the opportunity to convert existing firm sales entitlements to firm transportation, all as more fully set forth in the complaint and request which is on file with the Commission and open to public inspection.

PECo, a local distribution company (LDC), states that it has been a traditional sales, storage, and transportation customer of Transco. PECo further states that Order No. 436 provides that when a pipeline commences or continues transportation under section 311 of the NGPA after June 30, 1986, its firm sales customers have the right either to reduce their firm sales entitlements or to convert those entitlements into firm transportation. On July 2, 1986, PECo asserts that Transco requested that the Commission issue a waiver of § 284.10(a)(1) of the Regulations to permit it to engage in new section 311 transportation after June 30, 1986 without granting its firm sales customers either the reduction or the conversion option. It is indicated that subsequently, by letters dated July 28, 1986, Transco announced to its customers and to the Commission that it was commencing new section 311 transportation, without waiting for Commission waiver of § 284.10(a)(1). Relying on Order No. 436 and Transco's stated policy, by letter dated August 11, 1986, and consistent with § 284.10, PECo states that it notified Transco of (1) the conversion of 15% of its contract sales demand to firm transportation, (2) the desired receipt and delivery points, and (3) an effective date of November 1, 1986. PECo explains that Transco responded by refusing to comply.

PECo explains that the Commission ultimately issued a waiver to Transco of § 284.10 of the Regulations September 26, 1986. However, PECo notes that the order granting the waiver provided that such waiver would be prospective only. Therefore, PECo alleges that between the time Transco commenced section 311 transportation services and when Transco was granted a waiver, it was in violation of the requirements of § 284.10. In view of this, PECo requests that the Commission:

1. By declaratory order, find that the conversion option exercised by PECo in its August 11, 1986 letter was in conformity with § 284.10 and becomes effective on November 1, 1986.

2. Order Transco to provide the firm transportation that PECo has requested, and order Transco to acknowledge and effect a 15% conversion in PECo's contract demand entitlements, effective November 1, 1986.

Comment date: December 1, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

7. Tennessee Gas Pipeline Co. a Division of Tenneco Inc.

[Docket Nos. CP84-441-020 and CP80-65-060]

November 13, 1986.

Take notice that on October 29, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Petitioner), P.O. Box 2511, Houston, Texas 77001, filed in Docket Nos. CP84-441-020 and CP80-65-060 a petition to further amend the Commission's orders issued in Docket Nos. CP84-441-000, *et al.*, as amended, and CP80-65-000, *et al.*, as amended, pursuant to section 7(c) of the Natural Gas Act so as to authorize Petitioner to provide firm storage-related transportation services under its existing Rate Schedules SST-NE and FSST-NE, within existing transportation quantity authorizations, to or from any storage contractor in any increment of the total authorized transportation quantity for any customer having storage arrangements with more than one storage contractor, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that certain of its Rate Schedules SST-NE and FSST-NE customers have storage arrangements with more than one storage contractor and that the Commission has authorized Petitioner to transport discrete quantities of storage gas to and from each storage contractor for each affected customer under each rate schedule. The storage contractors are Penn-York Energy Corporation, Honeoye Storage Corporation, and Consolidated Gas Transmission Corporation. In order to provide increased flexibility to the affected Rate Schedule FSST-NE and SST-NE customers' utilization of currently contracted storage and transportation capacity to best serve the gas supply requirements on their systems, Petitioner requests authorization (1) to provide firm storage service transportation for the following customers up to the total quantity shown for each rate schedule and (2) to eliminate the restrictions regarding specific quantities of gas delivered to or received from each storage contractor:

Rate schedule	Customer	Quantity (dekatherms per day)
SST-NE	Berkshire Gas Co.	3,731
	EnergyNorth, Inc.	4,244
	Essex County Gas Co.	4,072
	Valley Gas Co.	4,197
FSST-NE	Boston Gas Co.	13,040
	Connecticut Natural Gas Corp.	5,658
	EnergyNorth, Inc.	4,804

Petitioner states that the proposed service would be rendered in accordance with the terms and conditions of the FSST-NE and SST-NE Rate Schedules, and that the existing points of receipt, delivery and interconnection for each customer would not be changed. Petitioner further states that no additional facilities would be required to render the proposed service and that no capacity on Petitioner's system in excess of that currently used to provide storage transportation service for the affected customers would be utilized. *Comment date:* December 4, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to

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intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26047 Filed 11-18-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER87-25-000 et al.]

Electric Rate and Corporate Regulation Filings; Florida Power Corp. et al.

November 12, 1986.

Take notice that the following filings have been made with the Commission:

1. Florida Power Corp.

[Docket No. ER87-25-000]

Take notice that on October 27, 1986, Florida Power Corporation (Florida Power) tendered for filing information intended to supplement its October 13, 1986, filing of a Scheduling Service Agreement with Seminole Electric Cooperative, Inc. This supplemental filing consists of additional explanation of the cost components of the proposed rates.

Florida Power again requests that the Scheduling Service Agreement be made effective as a rate scheduled on October 20, 1986, and therefore requests waiver of the sixty (60) day notice requirement. Copies of this filing have been served on Seminole Electric Cooperative, Inc., Southern Company Services, Inc., Oglethorpe Power Corporation, and the Florida Public Service Commission.

Comment date: November 25, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Middle South Services, Inc.

[Docket No. ER87-55-000]

Take notice that Middle South Services, Inc. (MSS), as agent for Arkansas Power & Light Company (AP&L), Louisiana Power & Light Company (LP&L), Mississippi Power & Light Company (MP&L) and New Orleans Public Service, Inc. (NOPSI), on October 29, 1986, tendered for filing a letter agreement for sale of peaking capacity to Oklahoma Gas & Electric Company from AP&L, LP&L, MP&L and NOPSI.

Comment date: November 25, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Ogden Haverhill Associates

[Docket No. ER87-76-000]

Take notice that on November 3, 1986, Ogden Haverhill Associates tendered for filing an executed agreement providing for the sale of capacity and energy to New England Power Company. The filing company also submitted a petition for waiver of rules not appropriate for application to PURPA qualifying facilities. The filing company requests waiver of the prior notice requirements of the Commission's regulations to permit the proposed rate schedule to be filed more than 120 days prior to the effective date. The filing company also requests acceptance of the formula set forth in the executed agreement as the rate so that changes in the charges due to the operation of the formula need not be filed pursuant to the Commission's regulations, 18 CFR Part 35.

Comment date: November 25, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Southern California Edison Co.

[Docket No. ER87-69-000]

Take notice that on October 31, 1986, Southern California Edison Company ("Edison") tendered for filing a change of rate for scheduling and dispatching services under the provisions of Edison's agreements with the parties listed below as embodied in their FERC Rate Schedules. Edison requests that the new rates for these services be made effective January 1, 1987.

Entity	Rate schedule FERC No.
1. City of Riverside ("Riverside")	129, 165, 192, and 194.
2. City of Anaheim ("Anaheim")	130, 164, and 193.
3. City of Vernon ("Vernon")	149, 154.7, and 172.
4. City of Banning ("Banning")	159, and 190.
5. City of Azusa ("Azusa")	160, and 189.
6. City of Colton ("Colton")	162, and 191.

Edison states that the filing is in accordance with the terms of each of these agreements, which state that the rates for these services will be redetermined prior to January 1 of each year based on Edison's annual budget for load dispatching and production section function expenses for that year.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: November 25, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Southern California Edison Co.

[Docket No. ER87-70-000]

Take notice that on October 31, 1986, Southern California Edison Company ("Edison") tendered for filing a change of rate for scheduling and dispatching services under the provisions of Edison's agreements with the parties listed below as embodied in their FERC Rate Schedules. Edison requests that the new rates for these services be made effective January 1, 1987.

Entity	Rate schedule FERC No.
1. City of Pasadena ("Pasadena")	158, and 177.
2. Arizona Power Pooling Association ("APPA").	92, and 93.
3. City of Los Angeles ("Los Angeles")	102, 118, 140, 141, 163, and 186.
4. State of California, Department of Water Resources ("CDWR").	112, 113, and 181.
5. City of Burbank ("Burbank")	166, and 175.
6. Pacific Gas and Electric Company ("PGandE").	117 and 147.
7. Western Area Power Administration ("Western").	120.
8. Arizona Electric Power Cooperative Inc. ("AEPCO").	132, and 161.
9. City of Glendale ("Glendale")	143, and 178.
10. San Diego Gas and Electric Company ("SDG&E").	151.
11. M-S-R Public Power Agency ("M-S-R").	153.
12. Salt River Project Agricultural Improvement and Power District ("Salt River").	184.

Entity	Rate schedule FERC No.
13. Arizona Public Service Company ("APS").	185.

Edison states that the filing is in accordance with the terms of each of these agreements, which state that the rates for these services will be redetermined prior to January 1 of each year based on Edison's annual budget for load dispatching and production section expenses for that year.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: November 25, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Bangor Hydro-Electric Co.

[Docket No. ER 86-663-000]

Take notice that on October 24, 1986, Bangor Hydro-Electric Company (the Company) tendered for filing the First Amendment to Power Sale Agreement With Respect to Wyman No. 4.

Comment date: November 26, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. Central Vermont Public Service Corp.

[Docket No. ER86-658-000]

Take notice that on October 29, 1986, Central Vermont Public Service Corporation (CVPS) tendered for filing a revised filing in Docket No. ER86-658-000. The docket pertains to a proposed rate schedule filed with the Commission on August 14, 1986, between CVPS and Citizens Utilities Company (CU).

CVPS states that this revision has taken place to reflect the costs associated with the Merrimak No. 2 Generating Station.

CVPS states that this amended filing is being mailed to CU, the Vermont Public Service Board and the Vermont Department of Public Service.

Comment date: November 26, 1986, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26046 Filed 11-18-86; 8:45 am]

BILLING CODE 6717-01-M

Hydroelectric Applications; Re-Notice of Application Filed with the Commission[1]

November 14, 1986.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. Type of Application: Preliminary permit.

b. Project No.: 10033-000.

c. Date Filed: July 7, 1986.

d. Applicant: The Town of Wilmington, New York.

e. Name of Project: Wilmington.

f. Location: West Branch of the Ausable River, Essex County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Donal S. DeMacy, Supervisor, Town Hall, Wilmington, NY 12997, (518) 946-7174.

i. Comment Date: December 17, 1986.

j. Competing Application: Project No. 9234-000 Date Filed: May 28, 1985.

k. Description of Project: The proposed project would consist of: (1) An existing concrete gravity dam 230 feet long and 16 feet high; (2) an existing impoundment of 3.2 acres surface area and 32 acre-feet mean sea level; (3) a proposed masonry intake-powerhouse 10 feet wide, 15 feet long, and housing two proposed turbine-generators of 360-kW combined capacity at a net hydraulic head of 18 feet; (4) a proposed 17.4-kV transmission line 200 feet long; and (5) appurtenant facilities.

The estimated annual energy production is 1.6 GWh. Project power would be sold to New York State Electric and Gas Corporation. The existing facilities are owned by the applicant. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $15,000.

l. This notice also consists of the following standard paragraphs: A8, A10, B, C, D2.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A10. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or *"MOTION TO INTERVENE"*, as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street

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[1] Previous Notice not published in the Federal Register.

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NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203-RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-26097 Filed 11-18-86; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PF-471; FRL-3109-8]

Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of pesticide petitions by FMC Corp. proposing tolerances for residues of the insecticide (2-methyl[1,1'-biphenyl]-3-yl)methyl -3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecaroxylate (referred to hereafter as bifenthrin) in or on certain agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF-471] at the following address:

Information Services Section (TS-757C), (Attn: Product Manager (PM) 15), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person, bring comments to: Information Services Section (TS-757C), Rm. 204, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. Written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: George LaRocca, Product Manager (PM) 15, Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 204, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2400).

SUPPLEMENTARY INFORMATION: FMC Corp., 2000 Market St., Philadelphia, PA 10103, has submitted the following pesticide petitions (PP) proposing to amend 40 CFR Part 180 by establishing tolerances for residues of the insecticide bifenthrin in or on certain raw agricultural commodities:

1. *PP 6F3454:* Peaches at 2.0 parts per million (ppm), pears and strawberries at 1.0 ppm, and pecans at 0.05 ppm.

2. *PP 6F3453:* Cattle—fat, meat, and meat byproducts (mbyp) at 0.1 ppm; cottonseed at 0.5 ppm; goats—fat, meat, and mbyp at 0.1 ppm; hogs—fat, meat, and mbyp at 0.1 ppm; horses—fat, meat and mbyp at 0.1 ppm; milk at 0.02 ppm; and sheep—fat, meat, and mbyp at 0.1 ppm.

The proposed analytical method for determining residues is gas chromatography.

Authority: 21 U.S.C. 346a.

Dated: October 31, 1986.

James W Akerman,
Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-25579 Filed 11-18-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59793; FRL-3114-6]

Certain Chemical Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of eleven such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 87-19 and 87-20—November 20, 1986.

Y 87-21 and 87-22—November 23, 1986.

Y 87-23 and 87-24—November 24, 1986.

Y 87-25 and 87-26—November 25, 1986.

Y 87-27 and 87-28 and 87-29—November 26, 1986.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 87-19

Manufacturer. Confidential.

Chemical. (G) Acrylic polymer.

Use/Production. (G) Emulsifier. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 87-20

Manufacturer. Confidential.

Chemical. (G) Acrylic polymer.

Use/Production. (G) Emulsifier. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 87-21

Importer. Dynamit Nobel Chemicals.

Chemical. (G) Polyester resin of aryl dicarboxylic acids, alkane diol and dimeric fatty acids.

Use/Import. (G) Hot melt adhesive. Import. range: 20,000 to 100,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 87-22

Importer. Dynamit Nobel Chemicals.

Chemical. (G) Polyster resin of aryl dicarboxylic acids and alkane diols.

Use/Import. (G) Resin for coil coatings paint. Import range: 30,000 to 100,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 87-23

Manufacturer. Confidential.

Chemical. (G) Saturated polyester resin.

Use/Production. (S) Industrial polyester coating resin component. Prod. range: 110,000 to 218,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 87-24

Importer. Confidential.

Chemical. (G) Polyacrylate.

Use/Import. (S) Binder for sealers and filler sealers. Import range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 87-25.

Manufacturer. Confidential.

Chemical. (G) Vinyl toluene alkyd copolymer.

Use/Production. (S) Industrial coating resin vehicle. Prod. range: 340,900 to 363,600 kg/yr.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 87-26.

Manufacturer. Confidential.

Chemical. (G) Unsaturated polyester.

Use/Production. (S) Industrial glass fiber binder. Prod. range: 46,000 to 200,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 87-27

Importer. Dynamit Nobel Chemicals.

Chemical. (G) Polyester resin of aryl dicarboxylic acids, alkane diols and dimeric fatty acids.

Use/Import. (G) Resin for paint. Import. range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 87-28

Importer. Dynamit Nobel Chemicals.

Chemical. (G) Polyester resin of aryl dicarboxylic acids, alkane diols and ester.

Use/Import. (S) Industrial base for coil-coating paint for outdoor exposure. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 87-29

Importer. Confidential.

Chemical. (G) Alkyd resin.

Use/Import. (G) Protective and decorative coating. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Dated: November 12, 1986.

V. Paul Fuschini,

Acting Division Director, Information Management Division.

[FR Doc. 86-26078 Filed 11-18-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51649; FRL-3114-8]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) permanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of forty-six such PMNs and provides a summary of each.

DATES: Close of Review Period:.

P 87-148, 87-149, 87-150, 87-151, 87-152, 87-153, 87-154, 87-155, 87-156, 87-157, 87-158, 87-159, 87-160, 87-161, and 87-162—January 28, 1987.

P 87-163, 87-164, 87-165, 87-166, 87-167, 87-168, 87-169, 87-170, 87-171, 87-172, 87-173, 87-174, 87-175, 87-176, 87-177, 87-178, 87-179, 87-180, 87-181, and 87-182—Janaury 31, 1987

P 87-183, 87-184, 87-185, and 1986—February 1, 1987.

P 87-187, 87-188, 87-189—February 2, 1987.

P 87-190, 87-191, 87-192 and 87-193—February 3, 1987.

Written comments by:

P 87-148, 87-149, 87-150, 87-151, 87-152, 87-153, 87-154, 87-155, 87-156, 87-157, 87-158, 87-159, 87-160, 87-161 and 87-162—December 29, 1986.

P 87-163, 87-164, 87-165, 87-166, 87-167, 87-168, 87-169, 87-170, 87-171, 87-172, 87-173, 87-174, 87-175, 87-176, 87-177, 87-178, 87-179, 87-180, 87-181 and 87-182—January 1, 1987.

P 87-183, 87-184, 87-185, and 87-186—January 2, 1987.

P 87-187, 87-188 and 87-189—January 4, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS-51649]" and the specific PMN number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87-148

Manufacturer. Confidential.

Chemical. (G) Acrylate capped polyurethane diol.

Use/Production. (G) Non-yellowing coating for optical and electronic

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components. Prod. range: 25,000 to 50,000 kg/yr.

Toxicity Data. Acute oral: >5g/kg; Acute Dermal: 72 g/kg; Irritation: Skin—Primary irritant, Eye—Non-irritant.

Exposure. Confidential.

Environmental Release/Disposal. Release to land. Disposal by approved landfill.

P 87–149

Manufacturer. Confidential.

Chemical. (G) Substituted alkylene amine.

Use/Production. (G) Destructive use. Prod. Range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 30 workers, up to 4 hrs/day, up to 34 days/yr.

Environmental Release/Disposal. No release. Disposal by approved landfill and Resource Conservation and Recovery Act (RCRA).

P 87–150

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Acrylic copolymer.

Use/Production. (G) Destructive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal.

Environmental Release/Disposal. Confidential. Disposal by incineration.

P 87–151

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Acrylic copolymer.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 4 workers.

Environmental Release/Disposal. Confidential. Disposal by incineration.

P 87–152

Manufacturer. Confidential.

Chemical. (G) Salt of heterocyclicalkenyl, substituted (phenyl pyrazole).

Use/Production. (G) Contained use in an article. Prod. range: 5,500. kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and Processing: Dermal and inhalation, a total of 35 workers, up to 4 hrs/day, up to 13 days/yr.

Environmental Release/Disposal. No release. Disposal by biological treatment system and incineration.

P 87–153

Manufacturer. Confidential.

Chemical. (G) Salt of substituted (phenylpyrazole).

Use/Production. (G) Chemical intermediate. Prod. range: 8,500 kg/yr.

Toxicity Data. No data submitted.

Exposure. Use: Inhalation, a total of 3 workers, up to .2 hr/days, up to 18 days/yr.

Environmental Release/Disposal. No release. Disposal by incineration.

P 87–154

Manufacturer. Confidential.

Chemical. (G) Substituted alkenyl substituted benzoxazole salt.

Use/Production. (G) Contained use in an article. Prod. range: 2,500 kg/yr.

Toxicity Data. Acute oral: > 5,000 mg/kg; Acute dermal: 2,000 mg/kg; Irritation: Skin–Slight, Eye–Slight; Sensitization: low.

Exposure. Manufacture and processing: inhalation, a total of 37 workers, up to 2 hrs/day, up to 15 days/yr.

Environmental Release/Disposal. 0 to 3 kg/batch released to water. Disposal by biological treatment system and incineration.

P 87–155

Manufacturer. Confidential.

Chemical. (G) Butyl methacrylate copolymer.

Use/Production. (G) Industrially used coating, having an open use. Prod. range: 11,000 to 110,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 55 wokers, up to 8 hrs/day, up to 20 days/yr.

Environmental Release/Disposal. 6 to 130 kg/batch released to land. Disposal by incineration and approved landfill.

P 87–156

Manufacturer. Celanese Specialty Operations.

Chemical. (G) Poly (p-vinylphenol).

Use/Production. (G) Polymeric blends, engineering resins and electronics. Prod. range: Confidential.

Toxicity Data. No data on PMN substance submitted.

Exposure. Manufacture: Dermal, a total of 8 workers, up to 6 hrs/day, up to 75 days/yr.

Environmental Release/Disposal. 2 to 10 kg/yr released. Disposal by Publicly Owned Treatment Work (POTW).

P 87–157

Manufacturer. Celanese Specialty Operations.

Chemical. (S) 1-[4-(Acetyloxy)phenyl]ethanone.

Use/Production. (S) Site limited and industrial intermediate for synthesis of other chemicals. Prod. range: Confidential.

Toxicity Data. Acute oral: 5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Mild to moderate; Ames test: Mutagenic.

Exposure. Processing: Dermal, a total of 11 workers, up to 4 hrs/day, up to 14 days/yr.

Environmental Release/Disposal. No release.

P 87–158

Manufacturer. Celanese Specialty Operations.

Chemical. (S) 4-Ethenylphenol acetate.

Use/Production. (S) Site limited and industrial for p-acetoxystyrene homopolymer and copolymer preparation and synthesis of other chemicals. Prod. range: Confidential.

Toxicity Data. Acute oral: 5,000 mg/kg; Irritation: Skin—Moderate to severe, Eye—Severe.

Exposure. Processing: Dermal, a total of 11 workers, up to 4 hrs/day, up to 14 days/yr.

Environmental Release/Disposal. 2 to 5 kg/yr released.

P 87–159

Manufacturer. Celanese Specialty Operations.

Chemical. (S) 1–[4–(Acetyloxy) phenyl]ethanol.

Use/Production. (S) Site limited and industrial intermediate for synthesis of other chemicals. Prod. range: Confidential.

Toxicity Data. Acute oral: 5,000 mg/kg. Irritation: Skin-Moderate to severe, Eye—Severe; Ames test: Negative.

Exposure. Processing: Dermal, a total of 12 workers, up to 6 hrs/day, up to 14 days/yr.

Environmental Release/Disposal. Minimal release. Disposal at approved disposal facilities.

P 87–160

Manufacturer. Celanese Specialty Operations.

Chemical. (S) Homopolymer of 4–ethenylphenol acetate.

Use/Production. (S) Site limited and industrial production of polyvinyl phenol homopolymer and blends with other polymers. Prod. range: Confidential.

Toxicity Data. Acute oral: 5,000 mg/kg; Acute dermal: 5,000 mg/kg; Irritation: Skin-Non-irritant, Eye-Non-irritant.

Exposure. Manufacture: Dermal, a total of 10 workers, up to to 6 hrs/day, up to 75 days/yr.

Environmental Release/Disposal. Less than 5 to 10 kg/yr released to water. Disposal by POTW.

P 87-161

Manufacturer. Confidential.

Chemical. (G) Disubstituted quinoline hydrochloride.

Use/Production. (S) Site limited agricultural chemical intermediate. Prod. range: Confidential.

Toxicity Data. Ames test: Non-mutagenic.

Exposure. Manufacture and use: Dermal and inhalation, a total of 73 workers, up to 15 hrs/day, up to 170 days/yr.

Environmental Release/Disposal. Release to air. Disposal by incineration.

P 87-162

Importer. Heubach, Incorporated.

Chemical. (G) Mixed metal oxide.

Use/Import. (G) Anti-corrosive pigment. Import. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 87-163

Manufacturer. Confidential.

Chemical. (G) Amine phosphate salt.

Use/Production. (S) Site-limited and industrial corrosion inhibitor. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total 6 workers, up to 5 hrs/day, up to 43 days/yr.

Environmental Release/Disposal. Less than 1 kg released to water. Disposal by POTW.

P 87-164

Manufacturer. Confidential.

Chemical. (G) Fatty acid esters.

Use/Production. (S) Site-limited and industrial lubricant base. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 6 workers, up to 5 hrs/day, up to 9 days/yr.

Environmental Release/Disposal. 5 kg released to water. Disposal by POTW.

P 87-165

Manufacturer. Confidential.

Chemical. (G) Fatty acid ester.

Use/Production. (S) Site-limited and industrial lubricant base. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacuture and processing: Dermal, a total 6 workers, up to 5 hrs/day, up to 45 days/yr.

Environmental Release/Disposal. 5 kg released to water. Disposal by POTW.

P 87-166

Manufacturer. Confidential.

Chemical. (G) Fatty acid esters.

Use/Production. (S) Site-limited and industrial lubricant base. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 6 workers, up to 5 hrs/day, up to 23 days/yr.

Environmental Release/Disposal. 5 kg released to water. Disposal by POTW.

P 87-167

Manufacturer. Confidential.

Chemical. (G) Fatty acid ester.

Use/Production. (S) Site-limited and industrial lubricant base. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 6 workers, up to 5 hrs/day, up to 30 days/yr.

Environmental Release/Disposal. 5 kg released to water. Disposal to POTW.

P 87-168

Manufacturer. Ethyl Corporation.

Chemical. (S) Alkenes, C_{20-24}, ethylene polymerization by-product.

Use/Production. (G) Intermediate for preparation of alkylated aromatic hydrocarbons from aromatic hydrocarbons, intermediate for reaction with maleic anhydride to produce alkenyl succinic anhydride and intermediate for general synthetic usage. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 87-169

Manufacturer. Confidential.

Chemical. (G) Carboxylic acid of a tertiary amine.

Use/Production. (G) Component of consumer products. Prod. range: Confidential.

Toxicity Data. Acute oral: 5 g/kg; Acute dermal: > 2.0 ml/kg; Irritation: Skin—Non-irritant; Skin Sensitization: Non-sensitizer.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 87-170

Manufacturer. Confidential.

Chemical. (G) Carboxylic acid of a tertiary amine.

Use/Production. (G) Component of consumer products. Prod. range: Confidential.

Toxicity Data. Acute oral: 5 g/kg; Acute dermal: >2.0 ml/kg; Irritation: Skin—Non-irritant; Skin Sensitization: Non-sensitizer.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 87-171

Manufacturer. Confidential.

Chemical. (G) Carboxylic acid of a tertiary amine.

Use/Production. (G) Component of consumer products. Prod. range: Confidential.

Toxicity Data. Acute oral: 5 g/kg; Acute dermal: >2.0 ml/kg; Irritation: Skin—Non-irritant; Skin Sensitization: Non-sensitizer.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 87-172

Manufacturer. Confidential.

Chemical. (S) Carboxylic acid of a tertiary amine.

Use/Production. (G) Component of consumer products. Prod. range: Confidential.

Toxicity Data. Acute oral: 5 g/kg; Acute dermal: > 2.0 ml/kg; Irritation: Skin—Non-irritant; Skin Sensitization: Non-sensitizer.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 87-173

Manufacturer. Confidential.

Chemical. (S) Carboxylic acid of a tertiary amine.

Use/Production. (G) Component of consumer products. Prod. range: Confidential.

Toxicity Data. Acute oral: 5 g/kg; Acute dermal: > 2.0 ml/kg; Irritation: Skin—Non-irritant; Skin Sensitization: Non-sensitizer.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 87-174

Importer. Confidential.

Chemical. (S) Phenyl methyl silicone resin.

Use/Import. (S) Industrial commercial and consumer release coating for metal surfaces. Import. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: Dermal, a total of 4 workers, up to 2 hrs/day.

Environmental Release/Disposal. 1.0 kg samples. Disposal by RCRA.

P 87-175

Importer. Antiphon, Incorporated.

Chemical. (G) Thermoplastic.

Use/Import. (G) Thermoplastic blend in solution. Import. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. No data submitted.

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P 87-176

Importer. Confidential.

Chemical. (G) Carboxy derivative of xanthen.

Use/Import. (S) Industrial colorant. Import. range: Confidential.

Toxicity Data. Acute oral: > 5,000 mg; Irritation: Skin—Slight, Eye—Moderate.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 87-177

Manufacturer. Confidential.

Chemical. (S) Hexanedioic acid, compound with 1-octadecanamine (1:2).

Use/Production. (G) Buffering agent. Prod. range: 10,000 to 30,000 kg/yr.

Toxicity Data. Acute oral: > 5 g/kg; Irritation: Skin—Non-irritant, Eye—Severe.

Exposure. Manufacturer and use: Dermal.

Environmental Release/Disposal. .1 kg/batch released to water. Disposal by navigable waterway.

P 87-178

Manufacturer. Confidential.

Chemical. (G) Alkenylamide polymer with methylheteromonoacrylic alkene.

Use/Production. (S) Industrial paper polymer. Prod. range: Confidential.

Toxicity Data. Acute oral: > 5,000 mg/kg; Irritation: Skin—Non-irritant, Amest test: Non-mutagenic.

Exposure. Manufacturer: Dermal, a total 45 workers, up to 8 hrs/day, up to 100 days/yr.

Environmental Release/Disposal. Less than 0.2 kg released to air with 5.5 kg to water. Disposal by POTW.

P 87-179

Manufacturer. Confidential.

Chemical. (G) Addition product of a primary amine and aliphatic isocyanate.

Use/Production. (G) Finishing agent. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 87-180

Manufacturer. Confidential.

Chemical. (G) Substituted urea carbomate.

Use/Production. (G) Coating with a dispersive use. Prod. range: 15,000 to 21,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 15 workers, up to 4 hrs/day, up to 14 days/yr.

Environmental Release/Disposal. 3 to 22 kg/batch released to land. Disposal by incineration and landfill.

P 87-181

Manufacturer. Confidential.

Chemical. (G) Polyamide resin.

Use/Production. (S) Printing ink component, laminating adhesive. Prod. range: Confidential.

Toxicity Data. Acute oral: 5.0 g/kg; Acute dermal: 2 g/kg; Irritation: Skin—Irritant, Eye—Non-irritant.

Exposure. Manufacture: dermal, a total of 2 workers, up to 2 hrs/day.

Environmental Release/Disposal. Release to sanitary landfill. Disposal by sanitary landfill.

P 87-1182

Manufacturer. Confidential.

Chemical. (G) Polyamide resin.

Use/Production. (S) Water-based ink over-print varnish (coating), printing ink component, laminating adhesive. Prod. range: Confidential.

Toxicity Data. Acute oral: 5.0 g/kg; Acute dermal: 2 g/kg; Irritation: Skin—Irritant, Eye—Non-irritant.

Exposure. Manufacture: Dermal, a total of 2 workers, up to 2 hrs/day.

Environmental Release/Disposal. Release to sanitary landfill. Disposal by sanitary landfill.

P 87-183

Importer. Confidential.

Chemical. (G) Methylheteromonocyclicalkene.

Use/Import. (S) Industrial chemical intermediate. Import. range: Confidential.

Toxicity Data. Acute oral: 825 mg/kg; Irritation: Skin—Irritant, Eye—Irritant; Ames test: Non-mutagenic.

Exposure. Manufacture: Dermal, a total of 20 workers, up to 8 hrs/day, up to 100 days/yr.

Environmental Release/Disposal. Less than 1 kg/batch released to air and water. Disposal by POTW.

P 87-184

Manufacturer. Confidential.

Chemical. (G) Modified dimer acids triethylenetetramine polyamide resin.

Use/Production. (S) Industrial curing agent for epoxy resins used in adhesives. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: inhalation, a total of 6 workers.

Environmental Release/Disposal. Less than 2 kg/batch released to land with less than .1 kg/batch to water. Disposal by sanitary landfill.

P 87-185

Manufacturer. Confidential.

Chemical. (G) Substituted indolyl carbonyl heteroarylcarboxylic acid.

Use/Production. (G) Site-limited intermediate consumed in the production of a commercial product. Prod. range: Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Ames test: Non-mutagenic.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by POTW.

P 87-186

Manufacturer. Confidential.

Chemical. (G) Substituted phenyl indolyl heteroarylone.

Use/Production. (G) Minor color-forming component in paper coatings. Prod. range: Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Acute dermal: >2.0 g/kg; Acute dermal: >2.0 g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Non-mutagenic.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by POTW.

P 87-187

Importer. NL Industries, Incorporated.

Chemical. (G) Polymide resin.

Use/Import. (G) A polymide resin to be used in an open, non-dispersive manner. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 87-188

Importer. Confidential.

Chemical. (G) Hydroxy functional styrenated acrylate methacrylate.

Use/Import. (G) Industrially used coating having a dispersive use. Import range: 1,500 to 3,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 87-189

Manufacturer. Confidential.

Chemical. (G) Acrylic methacrylic polymer with styrene.

Use/Production. (G) Industrial coating. Prod. range: 2,500 to 11,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 12 workers, up to 8 hrs/day, up to 28 days/yr.

Environmental Release/Disposal. 4 to 25 kg/batch released to land. Disposal by incineration and landfill.

P 87-190

Manufacturer. Confidential.

Chemical. (G) Alkyd resin.

Use/Production. (G) Resin converted to varnish. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 87–191

Importer. Hitachi Chemical Company America, Ltd.

Chemical. (G) Polyesterimide polymer A.

Use/Production. (S) Insulation of magnet wire. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: Dermal, a total of 10 workers, up to 8 hrs/day.

Environmental Release/Disposal. No release. Disposal by incineration.

P 87–192

Importer. Hitachi Chemical America, Ltd.

Chemical. (G) Polyester polymer.

Use/Import. (S) Insulation of magnet wire. Import. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: Dermal, a total of 10 workers, up to 8 hrs/day.

Environmental Release/Disposal. No release. Disposal by incineration.

P 87–193

Manufacturer. The Dow Chemical Company.

Chemical. (G) MDI polyether prepolymer.

Use/Production. (S) Industrial and commercial polyurethane coatings and elastomers. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal.

Environmental Release/Disposal. Release to land. Disposal by approved landfill and navigation waterway.

Dated: November 12, 1986.

V. Paul Fuschini,

Acting Division Director, Information Management Division.

[FR Doc. 86–26079 Filed 11–18–86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180707; FRL-3114-7]

Annual Report on Crisis Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice summarizes the number of crisis exemptions declared and the number of crisis exemptions revoked during the fiscal year 1986. State and Federal agencies issued 33 crisis exemptions authorizing unregistered pesticide uses in accordance with the regulations at 40 CFR 166.40 pursuant to section 18 of FIFRA. During this same time period, EPA revoked the crisis provision for use of one pesticide. This annual report is required under 40 CFR 166.49.

FOR FURTHER INFORMATION CONTACT:

Donald R. Stubbs, Registration Division (TS-767C), Office of Pesticide Environmental Protection Agency, 410 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, Cyrstal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

SUPPLEMENTARY INFORMATION: The regulations pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act require the EPA to issue annually a notice for publication in the **Federal Register** which summarizes the number of crisis exemptions declared and the number of crisis exemptions revoked.

Subpart C of 40 CFR Part 166 sets forth the regulations dealing with crisis exemptions. This Subpart allows the head of a Federal or State agency to issue a crisis exemption in situations involving an unpredictable emergency situation when: (1) An emergency condition exists and (2) the time element with respect to the application of the pesticide is critical, and there is not sufficient time either to request a specific, quarantine, or public health exemption or, if such a request has been submitted, for EPA to complete review of the request. This Subpart also provides for EPA review of crisis exemptions and revocation of individual crisis exemptions or the authority of a State and Federal agency to utilize the crisis provisions.

During the fiscal year 1986 (October 1, 1985 through September 30, 1986), a total of 33 crisis exemptions were declared by State and Federal agencies. A breakdown of the crisis declarations by State/Federal agencies follows.

State/Federal agency	No. of crisis exemptions	Pesticide	Site
Alabama	1	Fluazifop-butyl	Peanuts.
Arkansas	1	Sodium chlorate.	Wheat.
California	5	Mevinphos	Pumpkins.
		Aluminum phosphide.	Wild rice.
		Metalaxyl	Asparagus.
		Parathion	Wild rice.
		Malathion	Persimmons.
Florida	2	Fluazifop-butyl	Peanuts.
		Metalaxyl	Head lettuce.
Georgia	2	Sodium chlorate.	Southern peas.
		Fluazifop-butyl	Peanuts.
Louisiana	4	Sethoxydim	Sweet potatoes.
		Bromoxynil	Rice.
		Propargite	Vetch.
		Fenvalerate	Cotton.
Mississippi	1	Sodium Chlorate.	Wheat.
Montana	1	Cypermethrin	Seed alfalfa.
North Carolina	3	Fluazifop-butyl	Peanuts.
		Sethoxydim	Peanuts.
		Metalaxyl	Peppers.
Nebraska	1	Sethoxydim	Potatoes.
Oklahoma	3	Methidathion	Corn.
		Monocroto-phos.	Corn.
		Sodium chlorate.	Wheat.
Texas	5	Permethrin	Greens.
		Fenvalerate	Grain sorghum.
		Fluazifop-butyl	Peanuts.
		Cypermethrin	Onions.
		Sodium chlorate.	Wheat.
Virginia	2	Metalaxyl	Broccoli.
		Sethoxydim	Peanuts.
Wisconsin	1	Aliette	Ginseng.
USDA	1	Naled	Non-food.

During the 1986 fiscal year EPA revoked the crisis provision for use of methidathion on corn due to endangered species concerns. This crisis exemption had been authorized by Oklahoma.

Authority: 7 U.S.C. 136.

Dated: November 7, 1986.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 86–26077 Filed 11–18–86; 8:45 am]

BILLING CODE 6560-50-M

SAB-FRL-3115-6

Science Advisory Board: Clean Air Scientific Advisory Committee; Open Meeting

Under Pub. L. 92–463, notice is hereby given of a meeting of the Materials Damage Review Subcommittee of the Clean Air Scientific Advisory Committee (CASAC) of the Science Advisory Board. The meeting will be held on December 4, 1986, starting at 9:30 am and ending at approximately 4:30 pm. The meeting will be held in the U.S. EPA, Conference Room 4, South Conference Center, 401 M Street, SW., Washington, DC 20460.

The purpose of this meeting is to review and discuss a March 1986 final report prepared by Mathtech, entitled, "A Damage Function Assessment of Building Materials: The Impact of Acid Deposition". The Mathtech report together with several supporting documents will be reviewed to determine whether the methods suggested are credible and whether the data are appropriate for estimating materials damage benefits from acid deposition in a 17 state area of the U.S. These documents may be used by the Agency's Office of Air Quality Planning and Standards (OAQPS) in preparing a Regulatory Impact Analysis (RIA) on the National Ambient Air Quality Standards

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for Sulfur Oxides. Availability of the draft RIA, and the opportunity for public comment, will be announced at a later date.

For further information and copies of the documents to be reviewed, please contact Mr. William O'Neil, Economic Analysis Branch, Office of Policy, Planning and Evaluation (PM-221), U.S. EPA, 401 M Street, SW., Washington, DC 20460, telephone: 202-382-5610, or FTS 382-5610.

The meeting is open to the public. Any member of the public wishing to obtain information concerning the meeting should contact Mr. Robert Flaak, Executive Secretary, Clean Air Scientific Advisory Committee, Science Advisory Board (A-101F), U.S. EPA, 401 M Street, SW., Washington, DC 20460, telephone: 202-382-2552, or FTS 382-2552. There will be an opportunity for brief oral statements (5-10 minutes) by members of the public who wish to comment on the scientific basis for the documents being reviewed. Written comments in any form will be accepted and can be sent to Mr. Flaak at the above address. Persons interested in making statements before the Committee must contact Mr. Flaak at the above address no later than December 1, 1986 in order to be assured of space on the agenda.

Dated: November 14, 1986.

Kathleen Conway,

Acting Director, Science Advisory Board.

[FR Doc. 86-26174 Filed 11-18-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-780-DR]

Amendment to Notice of a Major-Disaster Declaration; Kansas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas (FEMA-780-DR), dated October 22, 1986, and related determination.

DATED: November 13, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Program, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice

The notice of a major disaster for the State of Kansas, dated October 22, 1986, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in this declaration of October 22, 1986:

Elk County for Public Assistance.

(Catalog for Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dennis H. Kwiatkowski,

Acting Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 86-26063 Filed 11-18-86; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-779-DR]

Amendment to Notice of a Major-Disaster Declaration; Missouri

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri (FEMA-779-DR), dated October 14, 1986, and related determinations.

DATE: November 12, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice

The notice of a major disaster for the State of Missouri, dated October 14, 1986, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in this declaration of October 14, 1986:

St. Louis County as an adjacent area for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83-516, Disaster Assistance.)

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 86-26064 Filed 11-18-86; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-004140-003.
Title: Oakland Terminal Agreement.
Parties:

City of Oakland (Port)
Marine Terminals Corporation (MTC)

Synopsis: The proposed amendment would permit MTC to handle combination steel and container vessels at the Port's Seventh Street Public Container Terminal because of physical limitations at MTC's assigned premises at the Port's Ninth Avenue Terminal facility. It would also extend the compensation factors previously agreed to through June 30, 1987.

Agreement No.: 224-011027.
Title: Puerto Rico Maritime Shipping Authority Terminal Equipment Lease Agreement.
Parties:

Puerto Rico Maritime Shipping Authority (PRMSA)
Sea-Land Service, Inc. (Sea-Land)

Synopsis: The proposed agreement between PRMSA and Sea-Land provides for lease of terminal equipment at San Juan, Puerto Rico. The agreement would enable the parties to lease to each other certain identified items of terminal equipment, for the lessee's exclusive use at San Juan, Puerto Rico to provide terminal services for cargo moving in both the domestic and foreign commerce fo the United States. The term of the agreement is for three years, terminable thereafter upon six months written notice by either party.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: November 13, 1986.

[FR Doc. 86-26035 Filed 11-18-86; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 20 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 124-011028.

Title: Ponce, Puerto Rico Terminal Agreement.

Junta Administrative de los Muelles Municipales de Ponce (Port)

Ponce Maritime Services, Inc. (PMS)

Synopsis: The proposed agreement would permit the Port to lease approximately 6.5 acres of improved land to PMS for use as a parking area for trailer vans.

Filing Party: Antonio Zapater Cajigas, 50 Isabel Street, Post Office Box 1350, Ponce, Puerto Rico 00733.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

Dated: November 14, 1986.

[FR Doc. 86-26094 Filed 11-18-86; 8:45am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 221-010646-001.

Title: Oakland Terminal Agreement.

Parties:

City of Oakland (Port)

Hyundai Merchant Marine Co., Ltd. (Hyundai)

Synopsis: The proposed amendment would permit an original signator of the agreement (Korea Marine Transport Co., Ltd.) to assign its rights and responsibilities under the agreement to Hyundai and would permit the Port to transfer Hyundai's operations to another of the Port's public container terminals. It would also make other changes to conform the agreement to Agreement No. 224-010727 between the Port and Hyundai concerning Hyundai's use of the Port's Seventh Street Public Container Terminal.

Agreement No.: 224-010727-001.

Title: Oakland Terminal Agreement.

Parties:

City of Oakland (Port)

Hyundai Merchant Marine Co., Ltd. (Hyundai)

Synopsis: The proposed amendment would permit Hyundai to use an additional Port terminal for its vessel and cargo activities and would delete provisions regarding Hyundai's right to terminate the agreement on January 31, 1988.

Agreement No.: 224-010954-001.

Title: Savannah Terminal Agreement.

Parties:

Georgia Ports Authority

Japan Line, Ltd.

Mitsui O.S.K. Lines, Ltd.

Nippon Yusen Kaisha

Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment reflects the deletion of Kawasaki Kisen Kaisha Ltd. As a party to the agreement and would add clauses providing for preferential berthing and crane usage.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

Dated: November 14, 1986.

[FR Doc. 86-26095 Filed 11-18-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Banc One Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resouces, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing of this questions must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically and questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 5, 1986.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Banc One Corporation,* Columbus, Ohio; to engage *de novo* through its subsidiary, Banc One Investment Management Corporation, Columbus, Ohio, in providing investment advisory services pursuant to § 225.25(b)(4) of the Board's Regulation Y.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Mercantile Bancorporation, Inc.,* St. Louis, Missouri; to engage *de novo* through its subsidiary , Gateway West Investment Management, Inc., St. Louis, Missouri, in acting as an investment advisor providing investment or financial advice pursuant to § 225.25(b)(4) of the Board's Regulation Y.

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C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *BellCorp, Inc.*, Manhattan, Kansas; to engage *den novo* in direct lending pursuant to § 225.25 (b)(1) of the Board's Regulation Y.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *AmeriTex Bancshares Corporation*, Bedford, Texas; to engage *de novo* through its subsidiary, AmeriTex Financial Services, Inc., Bedford, Texas, in providing management consulting services to depository institutions pursuant to § 225.25 (b)(11) of the Board's Regulation Y.

E. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *National Bancorp of Alaska, Inc.*, Anchorage, Alaska; to engage *de novo* through its subsidiary, NBA Mortgage Company, Anchorage, Alaska, in making, acquiring, servicing, and selling mortgage loans, and acting as an underwriter for credit life insurance and credit accident and health insurance through NBA Mortgage Corporation, pursuant to § 225.25 (b) (1) and (8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 13, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-26041 Filed 11-18-86; 8:45 am]

BILLING CODE 6210-01-M

Banponce Corp. et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 5, 1986.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Banponce Corporation*, Hato Rey, Puerto Rico; to acquire Thrift Investment Corporation, Fords, New Jersey, and thereby engage in sales financing to consumers for the retail purchase of use automobiles; direct auto loans to consumers pursuant to § 225.25(b)(1); automobile leasing financing pursuant to § 225.25(b)(5); credit life, accident and health insurance; and automobile property damage insurance in relation to the extentions of credit pursuant to § 225.25 (b)(8)(i) and (b)(8)(ii) of the Board's Regulation Y. These activities will be conducted in the State of New Jersey.

2. *U.S. Trust Corporation*, New York, New York; to acquire Summit Management Company, Inc., Los Angeles, California, and thereby engage in providing portfolio investment advice and management to individual, corporate and institutional investors pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 13, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-26042 Filed 11-18-86; 8:45 am]

BILLING CODE 6210-01-M

Commonwealth Bancshares Corp.; Proposed Acquisition of Commonwealth Employer Services, Inc.

Commonwealth Bancshares Corporation, Williamsport, Pennsylvania, has applied, pursuant to section 4(c)(8) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to acquire Commonwealth Employer Services, Inc., Williamsport, Pennsylvania, and thereby engage in: (a) Designing employee group health benefit packages, including assisting clients in the analyses of existing employee benefits, developing investment and funding strategies, and providing clients with statistical reports of their plans' performance; (b) providing assistance in implementing plans, including assistance in the preparation of plan documents, development of a program for investing clients' funds, and implementation of plan administration systems; (c) providing administrative services with respect to plans, including record-keeping services and preparing reports on the plan for the clients and for various regulatory agencies; (d) offering clients assistance in developing a communication program to inform employees of the benefits of the plan. These services would be provided from an office in Williamsport, Pennsylvania, to customers in Pennsylvania.

Section 4(c)(8) of the Bank Holding Company Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." The Board has determined that these activities are closely related to banking. *Norstar Bancorp, Inc.*, 72 Federal Reserve Bulletin 729 (August 19, 1986).

Interested persons may express their views on whether the proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto," and whether consummation of the acquisition as a whole can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased on unfair competition, conflicts of interests or unsound banking practices." Any request for a hearing on these questions must be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Philadelphia.

Comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than December 18, 1986.

Board of Governors of the Federal Reserve System, November 13, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-26043 Filed 11-18-86; 8:45 am]

BILLING CODE 6210-01-M

Floyd C. Edward; Acquisition of Banks or Bank Holding Companies

The notificant listed in this notice has applied for the Board's approval under the Change in Bank Control Act (12 U.S.C. 1817(j) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the application are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors.

Comments regarding these applications must be received not later than December 4, 1986.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *C. Edward Floyd, M.D.*, Florence, South Carolina; to acquire 10.1 percent of Lake City Bancshares, Inc., Lake City, South Carolina, and thereby indirectly acquire Lake City State Bank, Lake City, South Carolina.

Board of Governors of the Federal Reserve System, November 13, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-26044 Filed 11-18-86; 8:45 am]

BILLING CODE 6210-01-M

UNB Corp. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 5, 1986.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *UNB Corp.*, Mount Carmel, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The Union National Bank of Mount Carmel, Mount Carmel, Pennsylvania.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Oak Brook Bancshares, Inc.*, Oak Brook, Illinois; to acquire 100 percent of the voting shares of FNB Bancorp, Inc., Chicago Heights, Illinois, and thereby indirectly acquire First National Bank of Chicago Heights, Chicago Heights, Illinois.

2. *Hasten Bancorp*, Indianapolis, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of H & H Financial Corporation, Kokomo, Indiana, and thereby indirectly acquire 91.32 percent of First National Bank, Kokomo, Indiana; 100 percent of the voting shares of First National Financial Corporation of Martinsville, Martinsville, Indiana, and thereby indirectly acquire 88.67 percent of First National Bank of Martinsville, Martinsville, Indiana; 100 percent of First Bank and Trust Company of Clay County, Brazil, Indiana; 99.67 percent of the voting shares of Sullivan State Bank, Sullivan, Indiana; and 97.9 percent of the voting shares of Peoples State Bank, Farmersburg, Indiana; 100 percent of the voting shares of Farmers Banc, Inc., Tipton, Indiana, and thereby indirectly acquire 100 percent of the voting shares of Farmers Loan and Trust Company, Tipton, Indiana. Farmers Loan and Trust Company also engages in general insurance activities.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Parkin Bancorp, Inc.*, Parkin, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank, Parkin, Arkansas.

2. *State First Financial Corporation*, Texarkana, Arkansas; to acquire 100 percent of the voting shares of American National Bank, Texarkana, Texas.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Cornerstone Bancshares, Inc.*, Dallas, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Cornerstone Bank, N.A., Dallas, Texas. Comments on this application must be received by December 8, 1986.

E. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Hawaii National Bancshares, Inc.*, Honolulu, Hawaii; to become a bank holding company by acquiring 100 percent of the voting shares of Hawaii National Bank, Honolulu, Hawaii. Comments on this application must be received by December 8, 1986.

Board of Governors of the Federal Reserve System, November 13, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-26045 Filed 11-18-86; 8:45 am]

BILLING CODE 6210-01-M

VOL 51
ISS 223
NO 19
1986
UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Consolidation of Regional Staff of the National Institute for Occupational Safety and Health

This notice advises the public of action taken by the National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control, to consolidate NIOSH staff in the PHS regional offices. The NIOSH regional positions are being consolidated into the three Regional Offices in Atlanta, Boston, and Denver. This action considered the availability of NIOSH staff in Morgantown, West Virginia, and Cincinnati, Ohio, to perform health hazard evaluations and the capabilities of States to meet some of the occupational safety and health needs. This action will result in more efficient use of staff in the accomplishment of the NIOSH mission.

Dated: November 10, 1985.

Wilford J. Forbush,

Director, Office of Management, PHS.

[FR Doc. 86–26093 Filed 11–18–86; 8:45 am]

BILLING CODE 4160-19-M

Orphan Products Board; Public Meeting

AGENCY: Office of the Assistant Secretary for Health.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health are announcing that a public meeting of the Orphan Products Board will be held on December 2, 1986, in Washington, DC, to receive information and views from interested persons on the issue of orphan products development. The meeting will be chaired by Dr. Robert E. Windom, Assistant Secretary for Health and Chairman of the Orphan Products Board (Board). The meeting will begin at 9 a.m., in Rm. 800, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC 20201.

ADDRESS: Written requests to participate should be sent to Neil Abel, Executive Secretary, Orphan Products Board (HF–35), Department of Health and Human Services, Rm. 12A–40, 5600 Fishers Lane, Rockville, MD 20857, and should be received by November 21, 1986.

FOR FURTHER INFORMATION CONTACT: Neil Abel, Executive Secretary, Orphan Products Board (HF–35), Department of Health and Human Services, 5600 Fishers Lane, Rockville, MD 20857 301–443–4718.

SUPPLEMENTARY INFORMATION: An orphan drug is a drug for the treatment of a rare disease or condition which either (1) has a prevalence in the United States of under 200,000 affected persons or (2) has a higher prevalence and for which there is no reasonable expectation that the cost of developing and making available in the United States a drug for such disease or condition will be recovered from sales in the United States of such drug. The Orphan Drug Act (the act) Pub. L. 97–414 enacted on January 4, 1983, and amended by Pub. L. 99–91, established a number of incentives to encourage the development and production of orphan drugs.

The act also established an Orphan Products Board to promote the development of drugs and devices for rare diseases or conditions and to assure appropriate coordination among all interested Federal agencies, manufacturers, and organizations representing patients with rare diseases.

The Orphan Products Board is chaired by the Assistant Secretary for Health. The Board is composed of representatives from the Department of Health and Human Services (DHHS), the Veterans Administration (VA), the National Institute of Handicapped Research (NIHR), and the Department of Defense (DOD). Within DHHS, representatives from the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), the Centers for Disease Control (CDC), the Food and Drug Administration (FDA), the Health Care Financing Administration (HCFA), the National Institutes of Health (NIH), and the Office of the Assistant Secretary for Health (OASH) serve on the Board.

This public meeting will have three purposes:

1. An update will be provided on the activities of the Orphan Products Board, and members of the Board from ADAMHA, CDC, FDA, and NIH will discuss their agency's recent orphan product development activities.
2. A ceremony will be held to honor the recipients of the Public Health Service Award for Exceptional Achievement in Orphan Products Development. This award recognizes the efforts of individuals who have contributed to the development of drugs for rare diseases or conditions. The awards will be presented by the Assistant Secretary for Health.
3. An opportunity will be given by the Board for the public to make presentations on issues involving the development and availability of orphan products; this opportunity is in keeping with the mandate of the DHHS to facilitate the research, development, and approval of orphan products, and to coordinate Government activities with the private sector.

Those persons wishing to make a presentation at the meeting on the third topic should submit a written request for a time slot to the Executive Secretary of the Orphan Products Board. The request for participation should be submitted before November 21, 1986, and should include:

1. Name, address, and telephone number of the person wanting to make a presentation;
2. Affiliation, if any;
3. A summary of the presentation; and
4. The approximate amount of time required for the presentation (no more than 10 minutes, unless more time can be justified).

Individuals and organizations with common interests or proposals are urged to coordinate or consolidate their presentations. Joint presentations may be required of persons or organizations with a common interest. The time available will be allocated among the individuals who request an opportunity for a presentation. Formal written statements or extensions of remarks (preferably five copies) may be presented to the chairman on the day of the meeting for inclusion in the record of the meeting. At the discretion of the chairman, and as time permits, any person in attendance may be heard. This time will, most likely, be at the end of the scheduled session.

For those unable to attend the meeting, comments may be sent to the Executive Secretary of the Orphan Products Board at the address listed above.

Dated: November 12, 1986.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 86–26092 Filed 11–18–86; 8:45 am]

BILLING CODE 4160-19-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On September 25, 1986 a notice was published in the **Federal Register** (51 (vol. 186) FR 34157) that an application had been filed with the Fish and Wildlife Service by our Alaskan Office of Fish and Wildlife Research (PRT–690038) for a permit to continue a program of polar bear research with certain minor amendments.

Notice is hereby given that on November 10, 1986, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Endangered Species Act of 1973 (16 U.S.C. 1539), the Fish and Wildlife Service issued a permit subject to certain conditions set forth therein.

The permit is available for public inspection during normal business hours at the Fish and Wildlife Service's Office in Room 605, 1000 North Glebe Road, Arlington, Virginia 22201.

Dated: November 13, 1986.

Earl B. Baysinger,

Chief, Federal Wildlife Permit Office.

[FR Doc. 86–26099 Filed 11–18–86; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395–7313, with copies to Norman J. Hess; Acting Chief, Rules, Orders, and Standards Branch; Offshore Rules and Operations Division; Mail Stop 646, Room 6A110; Minerals Management Service; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: Prospecting for Minerals Other than Oil, Gas, and Sulphur in the Outer Continental Shelf, 30 CFR Part 257

Abstract: Respondents provide certain information to the Minerals Management Service (MMS) when applying for and conducting work under a prelease prospecting permit. The MMS uses this information to evaluate permit applications and prospecting plans and to monitor activities conducted pursuant to the permits.

Bureau Form Number: None
Frequency: On occasion
Description of Respondents: Federal OCS permittees
Annual Responses: 75
Annual Burden Hours: 829
Bureau Clearance Officer: Dorothy Christopher (703) 435–6213

Dated: November 3, 1986.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 86–26030 Filed 11–18–86; 8:45 am]

BILLING CODE 4310-MR-M

Central and Field Organization

AGENCY: Minerals Management Service, Interior.

ACTION: Notice.

Pursuant to 5 U.S.C.(a)(1)(A), notice is hereby given that the following changes have been made to the Minerals Management Service section of the Department of the Interior, Central and Field Organization, published in the Federal Register on December 17, 1985 (50 FR 51455), at page 51462, columns 2 and 3.

The headquarters location of the Royalty Management Program has been changed to Lakewood, Colorado, and the address and telephone number is as follows:

Royalty Management Program, Building 85, Denver Federal Center, P.O. Box 25165, Lakewood, CO 80225, Phone, 303–231–3386.

In addition, the following address and telephone number changes have occurred:

Gulf of Mexico Region, 1420 South Clearview Parkway, New Orleans, LA 70123–2394, Phone, 504–736–0557.

Southern Administrative Service Center, 1420 South Clearview Parkway, New Orleans, LA 70123–2394, Phone, 504–735–2616.

FOR FURTHER INFORMATION CONTACT: Faye Quesenberry at 703–435–6179.

Dated: November 10, 1986.

Thomas Gernhofer,

Assistant Director for Administration.

[FR Doc. 86–26031 Filed 11–18–86; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Research Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the A.I.D. Research Advisory Committee meeting on December 15 and 16, 1986 at the Pan American Health Organization Building, 525—23rd Street NW., Washington, DC, Conference Room 'C'. The Committee will discuss research aspects of the Health and Population Programs in the Science and Technology Bureau, and research policy issues in the Food-For-Peace Program.

The meeting will begin at 9:00 a.m. and adjourn at 5:30 p.m. The meeting is open to the public. Any interested persons may attend, may file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee and to the extent the time available for the meeting permits. Dr. Handy Williamson, Jr., Acting Director, Office of Research and University Relations, Bureau for Science and Technology, is designated as the A.I.D. representative at the meeting. It is suggested that those desiring more specific information contact Dr. Williamson, 1601 N. Kent Street, Arlington, Virginia 22209 or call area code (703) 235–8929.

Dated: November 7, 1986.

Handy Williamson, Jr.,

A.I.D. Representative, Research Advisory Committee.

[FR Doc. 86–26059 Filed 11–18–86; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

Agency Forms Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget for review.

Purpose of Information Collection

The proposed information collection is for use by the Commission in connection with investigation No. 332–97, Report to the President on the domestic consumption of brooms of broomcorn, as required by Executive Order 11377.

Summary of Proposals

(1) Number of forms submitted: One.

(2) Title of forms: Brooms and Whiskbrooms Wholly or in Part of Broom Corn and Certain Other Brooms—Producers' Questionnaire.

(3) Type of Request: Extension.

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(4) Frequency of use: Annual.

(5) Description of respondents: U.S. broom producers.

(6) Estimated number of respondents: 200.

(7) Estimated total number of hours to complete the forms: 400.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment

Copies of the proposed forms and supporting documents may be obtained from Rhett Leverett (USITC tel. no. 202–724–1725). Comments about the proposal should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: Francine Picoult, Desk Officer for U.S. International Trade Commission. Any comments should be specific, indicating which part of the questionnaire or study plan is objectionable, describing the problem in detail, and including specific suggested revisions or language changes.

Submission of Comments

Comments should be submitted to OMB within two weeks of the date this notice appears in the **Federal Register.** If you are unable to submit them promptly you should advise OMB within the two week period of your intent to comment on the proposal. Ms. Picoult's telephone number is 202–395–7231. Copies of any comments should be provided to Charles Ervin (United States International Trade Commission, 701 E Street, NW., Washington, DC 20436).

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724–0002.

By order of the Commission.

Issued: November 14, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–26119 Filed 11–18–86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–251]

Certain Electronic Chromatogram Analyzers and Components; Change of the Commission Investigative Attorney

Before Sidney Harris, Administrative Law Judge.

Notice is hereby given that, as of this date, Jeffrey L. Gertler, Esq., and Dr. Cheri Taylor, Esq., of the Office of Unfair Import Investigations will be the Commission investigative attorneys in the above-cited investigation instead of Jeffrey L. Gertler, Esq., and Ethel L. Morgan, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: November 7, 1986.

Respectfully Submitted,

Arthur Wineburg,

Director, Office of Unfair Import Investigations, U.S. International Trade Commission.

[FR Doc. 86–26120 Filed 11–18–86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 303–TA–18, 701–TA–275, 277, and 278, and 731–TA–327 Through 334 (Final)]

Certain Fresh Cut Flowers From Canada, Chile, Colombia, Costa Rica, Ecuador, Israel, Kenya, Mexico, the Netherlands, and Peru

AGENCY: United States International Trade Commission.

ACTION: Institution of final countervailing duty and antidumping investigations and scheduling of a hearing to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigations No. 303–TA–18 (Final) under section 303 of the Tariff Act of 1930 (19 U.S.C. 1303) and Nos. 701–TA–275, 277, and 278 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of certain fresh cut flowers which have been found by the Department of Commerce, in preliminary determinations, to be subsidized by the Governments of the following countries:

Canada [1] [Investigation No. 701–TA–275 (Final)], Israel [2] [Investigation No. 701–TA–277 (Final)], The Netherlands [3] [Investigation No. 701–TA–278 (Final)], and Peru [4] [Investigation No. 303–TA–18 (Final)].

Unless the investigations are extended, Commerce will make its final subsidy determinations in these investigations on or before January 5, 1987, and the Commission will make its final injury determinations by February 23, 1987 (see sections 705(a) and 705(b) of the act (19 U.S.C. 1671d(a) and 1671d(b))).

The Commission also gives notice of the institution of final antidumping investigations Nos. 731–TA–327 through 334 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the following countries of certain fresh cut flowers which have been found by the Department of Commerce, in preliminary determinations, to be sold in the United States at less than fair value (LTFV):

Canada [1] [Investigation No. 731–TA–327 (Final)]

Chile [5] [Investigation No. 731–TA–328 (Final)]

Colombia [6] [Investigation No. 731–TA–329 (Final)]

Coasta Rica [7] [Investigation No. 731–TA–330 (Final)]

Ecuador [8] [Investigation No. 731–TA–331 (Final)]

Kenya [9] [Investigation No. 731–TA–332 (Final)]

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[1] Fresh cut flowers from Canada subject to investigation include miniature (spray) carnations and standard carnations, provided for in items 192.17 and 192.21, respectively, of the Tariff Schedules of the United States (TSUS).

[2] Fresh cut flowers from Israel subject to investigation include miniature (spray) carnations and gerbera, provided for in items 192.17 and 192.21, respectively, of the TSUS.

[3] Fresh cut flowers from the Netherlands subject to investigation include miniature (spray) carnations (TSUS item 192.17), and standard chrysanthemums, alstroemeria, and gerbera, provided for in item 192.21 of the TSUS.

[4] Fresh cut flowers from Peru subject to investigation include miniature (spray) carnations (TSUS item 192.17), and pompom chrysanthemums and gypsophila, provided for in item 192.21 of the TSUS.

[5] Fresh cut flowers from Chile subject to investigation include standard carnations, provided for in item 192.21 of the TSUS.

[6] Fresh cut flowers from Colombia subject to investigation include miniature (spray) carnations (TSUS item 192.17), and standard carnations, standard cyrysanthemums, pompom chrysanthemums, alstroemeria, gerbera, and gypsophila, provided for in item 192.21 of the TSUS.

[7] Fresh cut flowers from Costa Rica subject to investigation include miniature (spray) carnations (TSUS item 192.17), and standard carnations and pompom chrysanthemums, provided for in item 192.21 of the TSUS.

[8] Fresh cut flowers from Ecuador subject to investigation include miniature (spray) carnations (TSUS item 192.17), and standard carnations, standard chrysanthemums and pompom chrysanthemums, provided for in item 192.21 of the TSUS.

[9] Fresh cut flowers from Kenya subject to investigation include miniature (spray) carnations and standard carnations, provided for in items 192.17 and 192.21, respectively, 192.21 of the TSUS.

Mexico [10] [Investigation No. 731-TA-333 (Final)], and

Peru [4] [Investigation No. 731-TA-334 (Final)].

Unless the investigations are extended, Commerce will make its final LTFV determinations on or before January 12, 1987, and the Commission will make its final injury determinations by February 23, 1987 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673(b))).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: October 27, 1986.

FOR FURTHER INFORMATION CONTACT: Daniel Dwyer (202-523-4618), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 701 of the act (19 U.S.C. 1671) are being provided to manufacturers, producers, or exporters of certain fresh cut flowers in Canada, Israel, the Netherlands, and Peru, and as a result of affirmative preliminary determinations by Commerce that imports of certain fresh cut flowers from Canada, Chile, Colombia, Costa Rica, Ecuador, Kenya, Mexico, and Peru are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). These investigations were requested in petitions filed on May 21, 1986, by the Floral Trade Council, Davis, California. In response to those petitions the Commission conducted preliminary countervailing duty and antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (51 FR 25751, July 16, 1986).

Participation in the Investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provieed in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff Report

A public version of the prehearing staff report in these investigations will be placed in the public record on January 5, 1987, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on January 20, 1987, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on January 12, 1987. All persons desiring to appear at the hearing and makes oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on January 14, 1987, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is January 15, 1987.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on January 27, 1987. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before January 27, 1987.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority

These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: November 14, 1986.

Kenneth R. Mason,
Secretary.

[FR Doc. 86-26121 Filed 11-18-86; 8:45 am]

BILLING CODE 7020-02-M

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[10] Fresh cut flowers from Mexico subject to investigation include standard carnations, standard chrysanthemums and pompom chrysanthemums, provided for in item 192.21 of the TSUS.

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[Investigation No. 337-TA-231]

Certain Soft Sculpture Dolls, Popularly Known as "Cabbage Patch Kids," Related Literature and Packaging Therefor; Issuance of General Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Determination of violation of section 337 of the Tariff Act of 1930 and issuance of a general exclusion order.

Authority: 19 U.S.C. 1337.

SUMMARY: The Commission has determined that a general exclusion order pursuant to section 337(d) of the Tariff Act of 1930 (19 U.S.C. 1337(d)) is the appropriate remedy for the violations of section 337 found to exist in the above-captioned investigation; that the public interest considerations enumerated in section 337(d) do not preclude the issuance of such an order; and that the amount of the bond during the Presidential review period shall be 165 percent of the entered value of the imported articles.

FOR FURTHER INFORMATION CONTACT: Stephen A. McLaughlin, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0421.

SUPPLEMENTARY INFORMATION: On July 11, 1986, the presiding administrative law judge (ALJ) issued an initial determination (ID) finding that there is a violation of section 337 in the unauthorized importation into and sale in the United States of certain soft sculpture dolls, popularly known as "Cabbage Patch Kids." On August 28, 1986, the Commission determined to review those portions of the ID relating to the country of origin marking requirements, the scope of the domestic industry, and the effect or tendency to substantially injure a domestic industry. No other issues were reviewed and the reminder of the ALJ's ID was thereby adopted by the Commission. 51 FR 31731 (Sept. 4, 1986). The Commission requested written comments on the issues under review and on the issues of remedy, the public interest, and bonding. Submissions were received from complainants Original Appalachian Artworks, Inc. and Coleco Industries, Inc. and the Commission investigative attorney, but not from any respondent.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § § 210.54 through 210.56 of the Commission's Rules of Practice and Procedure (19 CFR 210.54–210.56).

Notice of this investigation was published in the **Federal Register** on November 7, 1985 (50 FR 46,368).

Copies of the Commission's Action and Order, the nonconfidential version of the ALJ's ID, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0471. Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202-724-0002.

By order of the Commission.

Issued: November 7, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-26122 Filed 11-18-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-250]

Certain Ventilated Motorcycle Helmets; Change of the Commission Investigative Attorney

Notice is hereby given that, as of this date, Arthur Wineburg, Esq. and T. Spence Chubb, Esq. of the Office of Unfair Import Investigations will be the Commission investigative attorneys in the above-cited investigation instead of Arthur Wineburg, Esq. and Steven H. Schwartz, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: October 1, 1986.

Respectfully submitted,

Arthur Wineburg,

Director, Office of Unfair Import Investigations, U.S. International Trade Commission.

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-276X]

Nashville and Ashland City Railroad Co. and Tenmet, Inc., Exemption; Discontinuance of Service, in Davidson and Cheatham Counties, TN

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903, *et seq.*, the discontinuance of service by the Nashville and Ashland City Railroad Co., and Tenmet, Inc., over 20.76 miles of rail line of the Illinois Central Gulf Railroad Company, between Nashville and Ashland City, TN, together with the rail property known as the North Nashville lead running from 26th Avenue to 1st Avenue in Nashville, TN, subject to standard labor protection.

DATES: This exemption will be effective on December 19, 1986. Petitions to stay must be filed by December 4, 1986. Petitions for reconsideration must be filed by December 15, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB-276X to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Eric D. Gerst, Gerst and Heffner, 21 South Fifth Street, Philadelphia, PA 19106.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229 , Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: November 6, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Commissioner Lamboley dissented in part with a separate expression. Vice Chairman Simmons did not participate.

Noreta R. McGee,

Secretary.

[FR Doc. 86-26085 Filed 11-18-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Judgment Pursuant to Clean Air Act; United States v. National Gypsum Company and Decorative Coverings, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on November 6, 1986, a proposed consent judgment in *United States* v. *National Gypsum Company and Decorative Coverings, Inc.,* Civil Action No. 86-3203-T, was lodged with the United States District Court for the District of Massachusetts. The proposed consent judgment requires National Gypsum Company to pay a civil penalty of $232,000 for past violations of the paper, fabric, and vinyl volatile organic carbon emission limitations of the Massachusetts State Implementation Plan ("SIP"). The consent judgment also requires Decorative Coverings, Inc., which purchased National Gypsum Company's facility in Hatfield, Massachusetts, to install air pollution control equipment and reformulate coatings to achieve compliance and maintain compliance with the Massachusetts SIP by and after May 1, 1987.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *National Gypsum Company, et al.*, D.J. Ref. 90-5-2-1-989.

The proposed consent judgment may be examined at the office of the United States Attorney, District of Massachusetts, 1107 John W. McCormack, Post Office and Courthouse, Boston, Massachusetts 02109, at the Region I office of the Environmental Protection Agency, John F. Kennedy Federal Building, Rm. 2203, Boston, Massachusetts 02203, and at the Department of Justice, Environmental Enforcement Section, Land and Natural Resources Division, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent judgment may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to *United States* v. *National Gypsum Company, et al.*, D.J. Ref. 90-5-2-1-989 and include a check in the amount of $2.70 ($.10 per page reproduction charge) payable to the United States Treasury.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-26060 Filed 11-18-86; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Literature Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Literary Publishing Section) to the National Council on the Arts will be held on December 4-5, 1986, from 9:00 a.m.-5:30 p.m.; on December 6, 1986, from 9:00 a.m.-3:00 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on December 6, from 12:00 p.m.-1:00 p.m. to review guidelines and discuss policy issues.

The remaining sessions of this meeting on December 4-5, 1986 from 9:00 a.m.-5:30 p.m.; on December 6, from 9:00 a.m.-12:00 p.m. and from 2:00-3:00 p.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

November 13, 1986.

[FR Doc. 86-26032 Filed 11-18-86; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Bi-Weekly Notice; Applications and Amendments To Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Pub. L. (Pub. L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. Pub. L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last bi-weekly notice which was published on November 5, 1986 (51 FR 40274), through November 7, 1986.

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

By December 19, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing

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Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Branch Chief)*: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket No. STN 50-528, Palo Verde Nuclear Generating Station (PVNGS), Unit No. 1, Maricopa County, Arizona

Date of Amendment Request: October 2, 1986.

Description of Amendment Request: The proposed amendment would modify the Technical Specifications (Appendix A to Facility Operating License No. NPF-41 for PVNGS Unit 1) as follows:

> The containment spray system performance is based on a single train flow rate of 3,740 gpm. As part of the effort to increase the containment sprav. pump performance margin for Technical Specification Surveillance Testing, an evaluation of peak containment pressures and temperatures was performed by the licensee, assuming a reduced containment spray pump flowrate of 3,525 gpm. Since the results of that evaluation (provided in PVNGS FSAR Section 6.2.1, Amendment 15) indicate that containment peak accident pressure can be increased from 49.2 to 49.5 psig, which is still well within the containment design pressure of 60.0 psig, the licensee has requested the following Technical Specification changes:
>
> (1) Limiting Conditions for Operation 3.6.1.2.a, 3.6.1.3.b and Surveillance Requirements 4.6.1.1.c, 4.6.1.2.a, 4.6.1.2.d, 4.6.1.3.b and associated Bases sections: change the containment peak accident pressure (Pa) from 49.2 psig to 49.5 psig based upon the results of the current containment analyses.
>
> (2) Action Statement a.1 of Limiting Condition for Operation 3.6.1.3: add a clarification note to the action statement to allow for the opening of the outer containment air lock door to facilitate the repair of an inoperable inner air lock door. The proposed added clarification would also limit the allowable time spent with the outer air lock door open to one hour per year.
>
> (3) Surveillance Reqirement 4.6.2.1.b: change the containment spray pump differential pressure requirement from 273 psid to 257 psid. This proposed change would be in accordance with the assumptions used in the containment analyses where the containment spray pump flow rate was

reduced in order to increase operating margins.

The proposed changes are being requested to make the Palo Verde Unit 1 Technical Specifications consistent with the Palo Verde Unit 2 Technical Specifications which were previously reviewed and accepted by the staff.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

A discussion of these standards as they relate to the amendment request follows:

Standard 1—Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.—The results of the containment analyses for a containment spray pump flow rate of 3,525 gpm for the most limiting containment pressurization transient indicate a containment peak accident pressure of 49.5 psig which would be within the design pressure of 60.0 psig for the containment building. Therefore, the integrity of the containment would continue to be assured and the offsite dose consequences of accidents which may result in the pressurization of the containment would not be increased by this change.

The proposed amendment does not, therefore, significantly increase the probability or consequences of an accident.

Standard 2—Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated.—The proposed amendment does not vary or affect any plant operating condition or parameter. It would only change the containment integrity surveillance requirements to be consistent with current analyses and limit the time the outer containment air lock door could be opened to repair an inoperable inner air lock door. For these reasons, the NRC staff has determined that the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3—Involve a Significant Reduction in a Margin of Safety.—The requested amendment does not change any of the design bases for the plant. For this reason, the NRC staff has determined that the changes do not involve a significant reduction in any margins of safety.

Based on the above considerations, the Commission proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room Location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for Licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: George W. Knighton.

Baltimore Gas & Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendment request: July 31, 1986 as supplemented by letter dated November 5, 1986.

Description of amendment request: The following proposed change to the technical specifications (TS) is in partial response to the Baltimore Gas and Electric Company (BG&E) application dated July 31, 1986. This proposal was further modified by BG&E's letter dated November 5, 1986. The remaining issues will be addressed in separate correspondence. The proposed TS change would modify the Units 1 & 2 TS 3/4.7.8, "Snubbers," by deleting Table 3.7-4, "Safety Related Hydraulic Snubbers," and by changing the requirement "All snubbers listed in Table 3.7-4 shall be operable," provided in TS Limiting Condition for Operation (LCO) 3.7.8.1, to the proposed requirement "All safety related snubbers shall be operable."

By letter dated November 5, 1986, the licensee requested a note be added to LCO 3.7.8.1 which would state that safety related snubbers include those snubbers installed on safety related systems and snubbers on non-safety related systems if their failure or the failure of the system on which they are installed would have an adverse effect on any safety related system.

Basis for proposed no significant hazards consideration determination: The proposal to delete Table 3.7-4, "Safety Related Hydraulic Snubbers," from the Units 1 and 2 TS 3/4.7.8, "Snubbers," is an administrative change that is in accordance with the Commission guidelines presented in Generic Letter (GL) 84-13, "Technical Specification for Snubbers."

GL 84-13 states that the Commission has reassessed the inclusion of snubber listings within the TS and has concluded that such listings are unnecessary provided the snubber TS is modified to specify which snubbers are required to be operable. The snubbers that were recommended for required operability by GL 84-13 included all snubbers with the exception of those snubbers installed on non-safety related systems whose failure or failure of the system on which they are installed would have no adverse effect on any safety related systems. The licensee's proposal that only safety related snubbers shall be operable complies with the guidance of GL 84-13 as the licensee's definition of safety related snubbers in the LCO includes all snubbers specified by GL 84-13.

The licensee evaluated the proposed change against the standards of 10 CFR 50.92 and has determined that the amendments would not:

(i) Involve a significant increase in the probability or consequences of an accident previously evaluated . . .

This change is administrative in nature. Though the snubber table is being deleted, all of the snubbers that are currently required to be operable will still be required to be demonstrated operable in the proposed requirement. As such, the proposed change does not involve any increase in the probability or consequences of an accident previously evaluated.

(ii) Create the possibility of a new or different type of accident from any accident previously evaluated . . .

As this proposal does not alter any snubber operability requirements, no possibility of creating a new or different type of accident would result due to the proposed change.

(iii) Involve a significant reduction in margin of safety.

All current snubber operability requirements are unaffected by this proposed administrative change. Therefore, this proposal will not involve any reduction in a margin of safety.

Based upon the above, the NRC staff agrees with the licensee's evaluation and proposes to determine that the proposed change to TS 3.4.7.8 involves no significant hazard consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Attorney for Licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

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NRC Project Director: Ashok C. Thadani.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: October 2, 1986.

Description of amendment request: The proposed amendment would add Figure 3.11-7 to the Technical Specifications to provide the maximum average planar linear heat generation rate (MAPLHGR) versus planar average exposure curves for fuel type BP8DRB300. The licensee proposes to use fuel type BP8DRB300 during Reload 7 in addition to the fuel types currently reflected in curves in Figures 3.11-1 through 3.11-6.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment it must provide to the Commission its analysis, using the standards in 10 CFR 50.92, about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the following analysis has been provided by the licensee:

> (1) Will operation of the facility in accordance with the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?
>
> Operating Pilgrim Station in accordance with the proposed amendment will not result in a significant increase in the probability or consequences of an accident because the characteristics of type BP8DRB300 fuel is not significantly different from fuel types previously reviewed and approved for use in Pilgrim's core. Analysis demonstrating this has been performed by General Electric.
>
> The method is contained in NEDE-24011-P-A-7-US of August 1985, which was submitted to the NRC September 24, 1985 for review in accordance with the criteria of Section 4 of the Standard Review Plan (NUREG 0800).
>
> The Emergency Core Cooling System models used to determine the effects of a loss of coolant accident (LOCA) in accordance with 10 CFR 50.46 and Appendix K indicate no increased probability or consequences resulting from installing BP8DRB300 fuel into the PNPS core. The results of that analysis did generate a new MAPLHGR curve, represented in Figure 3.11-7, which may be incorporated as an amendment to technical specifications.
>
> Operating Pilgrim in conformance to Figure 3.11-7 results in no significant increase in the probability or consequences of an accident previously evaluated.
>
> (2) Will operation of the facility in accordance with the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated:
>
> Operating Pilgrim Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated because the various analyses performed in accordance with the NRC approved methodologies and computer models identified above indicate that conformance to proposed Figure 3.11-7 is enveloped by previously evaluated accidents.
>
> (3) Will operation of the facility in accordance with the proposed amendment involve a significant reduction in margin of safety?
>
> Operating Pilgrim Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety because analyses conducted in accordance with NRC approved methodologies demonstrate that the margin of safety remains substantially unchanged by the incorporation of BP8DRB300 into the Pilgrim core. Such incorporation does require the addition of Figure 3.11-7. Operation in accordance with Figure 3.11-7 will ensure that no significant reduction of a safety margin occurs.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, based on the above, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W.S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: John A. Zwolinski.

Carolina Power and Light Company, Docket No. 50-261, H.B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: October 13, 1986.

Description of amendment request: The proposed amendment would revise Technical Specifications (TS) for the H.B. Robinson Steam Electric Plant Unit No. 2. The proposed revision changes the TS to:

(1) Increase the fuel enrichment from 3.5% to 3.9% for high density poisoned spent fuel racks, Section 5.3.1.3 and Section 5.4.2.2;

(2) Rewrite and reformat Section 5.4 to add:

a. 21-inch center-to-center spacing of the fuel storage racks;

b. the 0.98K_{eff} criteria for an optimum moderation event; and

c. proposed 1500 ppm boron concentration that is required in the spent fuel pit during new fuel movement or storage;

(3) Correct a typographical error in Table 4.1-2 item 1, and add: "sampling prior to New Fuel Movement in the Pit," to item 7.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for a no significant hazards determination by providing certain examples (51 FR 7155). Several of these are:

(i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature; and

(ii) A change. that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement.

In addition, the Commission has provided guidance concerning the determination of significant hazards considerations by providing certain standards (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

The above item 2 a&b, contained in the Description, are additions for clarification purposes and do not add or delete requirements, and Item 3 corrects errors. These changes are, therefore, similar to example (i) above.

Item 2c adds boron concentration requirements and Item 3 adds a new requirement ". . . or New Fuel Movement in the Spent Fuel Pit." These added requirements are similar to example (ii) above (see also item 1 below).

Item 1 increases the fuel enrichment from 3.5% to 3.9%. The impact of core enrichment on operational safety margins is an integral part of each core reload analysis.

The staff has reviewed the proposed increase in fuel enrichment in accordance with the criteria set forth in 10 CFR 50.92(c) and determined that the proposed amendment does not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed because the only accident scenarios for which the probability of occurrence are affected by new fuel enrichment involve criticality events during fuel handling and storage. The criticality safety analysis submitted to the staff demonstrated that, with the imposed boron concentration and storage geometry controls, the fuel enrichment could be raised to 4.2% during fuel handling and storage and still remain adequate to ensure subcriticality for all defined accident conditions. The proposed limit of 3.9% is well below the analyzed limit of 4.2%. The analysis shows a K_{eff} of less than 0.95 assuming new fuel storage racks flooded with unborated water and assures that K_{eff} is less than 0.98 in an optimum moderator event.

Therefore, since subcriticality is maintained in accordance with staff requirements, no releases could result from a fuel handling criticality accident and, therefore, the consequences of an accident are not increased.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because the only potential impact of increased enrichment upon new fuel storage and handling involves the potential for criticality. The potential for criticality has been analyzed as discussed in (1) above and with the K_{eff} of 0.95, assuming new fuel storage racks flooded with unborated water, and the K_{eff} less than 0.98 in an optimum moderator event assures subcriticality. Therefore, there is no possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety because the criticality analysis submitted to the staff demonstrates that the imposed geometry and boron concentration provides adequate margin to ensure subcriticality of the new fuel during storage and handling operations. This has been demonstrated by showing that the K_{eff} is less than 0.95 assuming new fuel racks flooded with unborated water and a K_{eff} of 0.98 in an optimum moderator event. On the basis of the above discussions, the staff proposes to determine that the amendment application does not involve a significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Attorney for licensee: Shaw, Pittman, Potts, and Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: Lester S. Rubenstein.

Commonwealth Edison Company, Docket No. STN-50-454, Byron Station, Unit 1, Ogle County, Illinois

Date of amendment request: September 15, 1986.

Description of amendment request: The amendment would revise Technical Specification Table 4.3-1 on page 3/4 3-9 and 3/4 3-12. The change replaces the requirement to measure the source range neutron flux instrumentation high voltage plateau curve with a requirement to measure source range neutron flux instrumentation discriminator bias curves.

This change is requested because the new Westinghouse (the vendor) low-noise pre-amplifier source range alignment procedure does not require that high voltage plateau curves be obtained. Instead, a discriminator bias curve is required to be obtained and is used to demonstrate degradation of the source range detectors, if any occurs. Currently, Byron Station obtains plateau curves to satisfy the existing Technical Specifications and also obtains discriminator bias curve to satisfy the new vendor recommendation. The proposed revision will be consistent with the vendor's new recommendation.

It is the staff's intention to apply this amendment to Byron Station, Unit 2, when it receives its operating license if the amendment is found acceptable for Byron Station, Unit 1.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. In accordance with the criteria of 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the functions of the source range neutron flux instrumentation are not being changed or degraded as a result of this Technical Specification revision. The change allows incorporating the vendor recommendations of obtaining data which can be used to determine potential source range detector degradation. Therefore, the probability or consequences of previously evaluated accidents are unaltered.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the revision to the Technical Specification does not change any of the operational characteristics of the source range neutron flux instrumentation, or the manner that the system is operated. Hence, the possibility of a new or different kind of accident being created than previously evaluated is unchanged.

(3) Involve a significant reduction in the margin of safety because there are no changes being made to hardware, or in the manner that the system is being operated. The automatic actions, response times, setpoints and alarms of the source range neutron flux instrumentation are not affected by this technical specification revision. Therefore, the margin of safety is not being compromised as a result of this proposed license amendment.

Based on the preceding assessment, the staff proposes to determine that this proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61103.

Attorney for licensee: Michael Miller, Isham, Lincoln & Beal, One First National Plaza, 42nd Floor, Chicago, Illinois 60603.

NRC Project Director: Steven A. Varga.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, La Salle County Station, Units 1 and 2, La Salle County, Illinois

Date of amendment request: October 23, 1986.

Description of amendment request: The proposed amendment to Operating License No. NPF-11 and Operating License No. NPF-18 would revise the La Salle Unit 1 and 2 Technical Specifications regarding the water level setpoint for closure of the Main Steam Isolation Valves (MSIVs). This setpoint would be changed from reactor low-low water level (Level 2, i.e., equal to 111.5 inches from top of the active fuel) to reactor low-low-low water level (Level 1, i.e. 32.5 inches from top of the active fuel). The purpose of lowering the MSIV isolation setpoint is to reduce the probability of reactor isolation during operation and thus reduce the potential challenges to the safety/relief valves (SRVs).

The objective of Item II.K.3.16 in the "TMI Action Plan Reouirements" (NUREG-0737) is to reduce the potential challenges and failures of SRVs. In response to this requirement the BWR Owners Group submitted the results of a feasibility study and evaluation of various actions and modifications which might reduce the challenges and failures of SRVs. The staff evaluated the BWR

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Owners Group feasibility study and concluded that in addition to a preventive maintenance program, the staff endorsed three modifications that would achieve the objectives of NUREG–0737, Item II.K.3.16. One of the three recommended actions or modifications was to lower the reactor water level isolation setpoint for main steam level isolation valve closure from Level 2 to Level 1. The purpose of these amendments is to implement one of the staff's recommended actions.

The proposed change would allow more energy to be released to the main condenser. The net effect is added manual response time for the reactor operator and a lesser challenge to the integrity of the suppression pool structures. By removing this energy, the reactor system safety is improved from the standpoint of reducing safety relief valve (SRVl challenges and the potential for stuck open SRVs. This, in turn, would increase plant availability and simplify plant operation.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined, and the NRC staff agrees, that the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because it could reduce the probability of an accident previously evaluated (stuck open safety/relief valve) and could reduce the potential consequences of certain events by allowing the main condenser to remain available for a longer time. This allows more energy to be removed from the primary system and containment without adversely affecting offsite dose rates. This will also effect the repressurization rate after MSIV closure if the reactor vessel level does reach level 1.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the MSIVs still close on reactor low level, therefore, a change in this setpoint will not create the possibility of a new or different kind of accident from any previously evaluated since the change does not entail a hardware modification or any change in plant operating procedure, nor would the change in setpoint create a new accident sequence.

(3) Involve a significant reduction in the margin of safety because by permitting more energy to be removed from the containment and dissipated in the condenser following a reactor scram, and reducing the challenges to SRVs, an increase in the margin of safety will be provided.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards considerations.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney for licensee: Isham, Lincoln and Burke, Suite 840, 1120 Connecticut Avenue NW., Washington, DC 20036.

NRC Project Director: Elinor G. Adensam.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: February 17, 1983 as supplemented August 23, 1984 and superseded January 20, 1986.

Description of amendment request: The new proposed amendments supersede in its entirety, (1) the February 17, 1983 request for amendments, which was noticed in the **Federal Register** on September 21, 1983 (49 FR 43132) and (2) the August 23, 1984 supplemental request for amendments, which was noticed in the **Federal Register** on February 27, 1985 (50 FR 7981). The changes proposed by. the licensee amend the Quad Cities Units 1 and 2 Technical Specifications (TS) to incorporate changes in the Commonwealth Edison corporate and station organizations. The administrative changes reflect both organizational changes and changes necessitated by revisions to 10 CFR 50.54, 50.72 and 50.73. More specifically, the changes include page numbers, new figures reflecting the revised corporate and station organizations, title changes, revised Shift Manning Charts to conform with 10 CFR 50.54(m)(2)(i), and miscellaneous administrative changes.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c).

10 CFR 50.91 requires at the time a licensee requests an amendment, it must provide to the Commission its analysis, using the standards in Section 50.92, about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has provided the following analysis.

> Commonwealth Edison has evaluated the proposed Technical Specification amendment and determined that it does not represent a significant hazards consideration. Based on the criteria for defining a significant hazards consideration established in 10 CFR 50.92(c), operation of Quad Cities 1 and 2 in accordance with the proposed amendments will not:
>
> (1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:
>
> the proposed changes involve administrative changes in the management organizational structural and do not affect any plant equipment or operational procedures which could impact the probability or consequences of an accident.
>
> (2) Create the possibility of a new or different kind of accident from any accident previously evaluated for the same reason as 1) above. No new equipment or operating practices are being introduced.
>
> (3) Involve a significant reduction in the margin of safety since the amendment does not affect any operating practices or limits nor any equipment or system important to safety.

In addition the Commission has previously provided guidance in the form of specific examples of amendments which do not involve a significant hazards consideration. The administrative nature of these changes. falls within those examples.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards consideration.

Local Public Document Room location: Moline Public Library, 504—17th Street, Moline, Illinois 61265.

Attorney for licensee: Mr. Michael I. Miller; Isham, Lincoln, & Beale, Three First National Plaza, Suite 5200, Chicago, Illinois 60602.

NRC Project Director: John A. Zwolinski.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station. Units 1 and 2, Rock Island County, Illinois, and Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of amendment request: May 14, 1986.

Description of amendment request: The proposed changes to the Technical Specifications for Quad Cities Units 1 and 2 and Dresden Units 2 and 3 would impose operability requirements on the existing 4 kv cross-tie which provides an alternate source of off-site AC power to the units' electrical distribution systems. The existing specification references the 4 kv cross-tie but does not require it to be operable if off-site AC power is available from more than one transmission line. The proposed amendments would require the cross-tie to be operable in addition to at least one other source of off-site power. In the event either source of off-site power becomes unavailable, the existing requirements and time limitations for restoring two sources of off-site power remain in effect.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists, as given in 10 CFR 50.92(c). The licensee has performed an evaluation using the criteria given in 10 CFR 50.92(c) and applying them to the proposed Technical Specification changes.

> The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated because deletion of the provision which allows the 4 kv cross-tie to be inoperable increases availability of the cross-tie and ensures its operability whenever either unit's reactor is made critical. This more stringent operability requirement guarantees that the cross-tie will be available as the second source of off-site power to provide sufficient capability to assure that design limits are not exceeded as a result of anticipated operational occurrences, and that in the event of a postulated accident, the core is cooled and containment integrity and other vital functions are maintained.
>
> The proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated because the changes only provide more positive enforcement of the general design criterion requirement that two independent sources of off-site power be available to permit functioning of structures, systems, and components important to safety. The new requirement that the 4 kv cross-tie be operable is in the conservative direction and does not allow any new or different modes of operation that could result in any new or different type of accident.
>
> The proposed amendments do not involve a significant reduction in a margin of safety because the more restrictive operability requirement on the 4 kv cross-tie assures that an adequate back-up supply of off-site power is available during plant operation to operate auxiliaries, to safely shutdown the plant, and to operate the engineered safeguards following an accident. The changes assure the maximum availability of off-site power during plant operation which actually increases the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Based on this review, the staff proposes to determine that the proposed amendments involve no significant hazards consideration.

Local Public Document Room location: Moline Public Library, 504—17th Street, Moline, Illinois 61265 (Quad Cities 1/2); and Morris Public Library, 604 Liberty Street, Morris, Illinois 60451 (Dresden 2/3).

Attorney for licensee: Mr. Michael I. Miller; Isham, Lincoln, & Beale, Three First National Plaza, Suite 5200, Chicago, Illinois 60602.

NRC Project Director: John A. Zwolinski.

Commonwealth Edison Company, Docket No. 50-265, Quad Cities Nuclear Power Station, Unit 2, Rock Island County, Illinois

Date of amendment request: October 28, 1986.

Description of amendment request: Commonwealth Edison (CECo) proposed to modify the Quad Cities Unit 2 Technical Specifications (TS) to support a planned modification to the Standby Liquid Control System (SBLC) to meet the requirements of 10 CFR 50.62. The specific changes to the TS involve replacing the boron concentration versus solution volume curve with a minimum allowable volume of 3321 gallons of solution at a minimum concentration of 14 weight percent. The required SBLC pump flow rate is increased from 39 to 40 gpm. Also the allowable setpoint band for the system pressure relief valves has been increased from the current 1400 to 1490 psig to a band of 1455 to 1545 psig to reflect the increased pump discharge pressure during two pump operation. Finally, the TS bases have also been revised to reflect the above changes.

Basis for proposed no significant hazards consideration determination: The facility change discussed in the licensee's submittal is being implemented to comply with the requirements of 10 CFR 50.62 and in accordance with 10 CFR 50.59. The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis.

> Commonwealth Edison has evaluated the proposed Technical Specification changes and determined they do not represent a significant hazards consideration. Based on the criteria for defining a significant hazards consideration established in 10 CFR 50.92(c), operation of Quad Cities in accordance with the proposed amendment will not:
>
> (1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes maintain the total amount of boron injection previously required by the Technical Specifications thereby maintaining the previous shutdown reactivity capability. The proposed changes are needed to implement the requirements of 10 CFR 50.62 and have no impact on systems or equipment that could potentially initiate or impact the probability of an accident.
>
> (2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the changes involve a system whose only function is to provide a backup shutdown capability. The changes do not affect any systems or equipment which could initiate an accident.
>
> (3) Involve a significant reduction in the margin of safety because the overall shutdown reactivity capability (i.e., total boron injection) of the SBLC system is not reduced by these changes. The proposed amendment supports required modifications which will increase the SBLC system injection rate, thereby increasing the margin of safety for Anticipated Transient without Scram events.

Based on the above discussion, Commonwealth Edison concludes the proposed Technical Specification changes do not represent a Significant Hazards Consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposed to determine that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Moline Public Library, 504—17th Street, Moline, Illinois 61265.

Attorney for licensee: Mr. Michael I. Miller; Isham, Lincoln, & Beale, Three First National Plaza, Suite 5200, Chicago, Illinois 60602.

NRC Project Director: John A. Zwolinski.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Benton County, Illinois

Date of application for amendments: September 19, 1986.

Description of amendments request: These amendments will extend the duration of Zion's Operating Licenses to allow for 40 years of operation. The

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current Zion Operating Licenses expire forty years from the issuance of Construction Permits CPPR–50 and 59, on December 26, 1968. The current situation allows for an operating life of thirty-five years, eight months for Zion Unit 1 and thirty-five years, one month for Zion Unit 2. Thus, an operating life extension of approximately four and one-half years for Zion Station will result from this proposal to allow the Zion Operating Licenses to expire forty years from the issuance of Operating Licenses DPR–39 and DPR–48 on April 6, 2013 and November 14, 2013, respectively.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists [51 FR 7751 (March 6, 1986)]. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Licensee provided the following discussion regarding the above three criteria:

Criterion 1

Zion Station will continue to be operated within its design limits. The surveillance and inspection programs that have been implemented in accordance with the Code of Federal Regulations, ASME Standards, and the Technical Specifications ensure that Zion Station will continue to operate as designed. This results in the continued validity of the assumptions and results of the Zion safety analysis.

Zion Station was originally designed for a forty year operating life and plant thermal cycles are being experienced at a rate that is less than that considered during Zion's design. Thus, the Station has not been experiencing any unexpected duty that could result in accelerated aging.

The extension of Zion's operating life to forty years will also not affect any external phenomena such as the occurrence of an earthquake or a tornado. Thus, the above discussion indicates that the probability of a previously analyzed accident will be unaltered due to the license extension because the overall plant performance is not expected to be altered. Zion Station will not be operated beyond its forty year life and all components will continue to function as intended. Thus, the probability of any accident occurring is unaltered.

The consequences of any previously evaluated accident will be likewise unaffected. Since the plant's system and component operability will be preserved, the applicable safety functions will always be available. Thus, the consequences of a postulated accident will not be altered from the previous evaluations.

Criterion 2

There will be no change in the operating conditions for Zion Station as a result of the license extension. There are no new factors, parameters, or conditions that might affect Zion Station. Since the plant operating conditions will not be altered, then the possibility for a new or different kind of accident could not be created.

Criterion 3

All plant systems and components will continue to function as intended. This will be ensured by the programs and requirements discussed above. This would include the maintenance of all pertinent plant safety functions. Since all safety functions will continue to be available and since safety system performance will not degrade, then the margin of safety will not be altered.

Therefore, since the application for amendment satisfies the criteria specified in 10 CFR 50.92, Commonwealth Edison has made a determination that the application involves no significant hazards consideration. The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis.

The licensee's request for extension of the operating license is based on the fact that a 40-year service life was considered during the design and construction of the plant. This does not mean, however, that some components will not require replacement during the plant lifetime. To accomplish this, design features were incorporated that maximize the inspectability of structures, systems and equipment. Surveillance and maintenance practices that are implemented in accordance with the ASME Code and the unit Technical Specifications provide assurance that any degradation in plant equipment will be identified and corrected. Examples of these practices include:

(1) The reactor vessel surveillance program established in accordance with 10 CFR 50, Appendix H.

(2) The fracture toughness requirements delineated in 10 CFR 50, Appendix G.

(3) The fracture toughness requirements established in 10 CFR 50.61 for protection against postulated Pressurized Thermal Shock events.

(4) The inspection and testing requirements of the ASME Standards, as required by 10 CFR 50.55a.

(5) The surveillance and operability requirements contained in the Zion Technical Specifications.

(6) The design control reviews required by 10 CFR 50.59, which ensure the preservation of the intended plant safety design functions.

In addition, surveillance capsules placed inside the reactor vessel provide a means of monitoring the cumulative effects of power operation.

Aging analyses have been performed for all safety related electrical equipment in accordance with the requirements of 10 CFR 50.49, "Environmental qualification of electrical equipment important to safety for nuclear power plants", identifying qualified lifetimes for this equipment. These lifetimes are incorporated into equipment maintenance and replacement practices to insure that all safety-related electrical equipment remains qualified and available to perform its safety function throughout a 40 year lifetime. Based on this, the Commission proposes to determine that the proposed changes to the Technical Specification involve no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Attorney to licensee: P. Steptoe, Esq., Isham, Lincoln and Beale, Counselors at Law, Three First National Plaza, 51st Floor, Chicago, Illinois 60602.

NRC Project Director: Steven A. Varga.

Detroit Edison Company, Docket No. 50–341, Fermi–2, Monroe County, Michigan

Date of amendment request: October 24, 1986.

Description of amendment request: The proposed amendment, if approved, would revise the Fermi-2 Operating License No. NPF–43 Plant Technical Specification 3/4.7.2, entitled, "Control Room Emergency Filtration System". The Fermi-2 Control Center Heating, Ventilation and Air Conditioning System (CCHVAC) is an engineered safety feature which is designed to ensure (1) that the ambient air temperature does not exceed the allowable temperature for continuous duty rating for the equipment and instrumentation cooled by the CCHVAC, and (2) that the control room will remain habitable for plant operations personnel during and following all design basis accident conditions.

Technical Specification 4.7.2.e.2 currently requires that at least once every 18 months the control room emergency filtration system be operated to demonstrate that the system will automatically switch to its recirculation mode of operation on each of the following actuation test signals:

(a) Control center inlet air radiation monitor,

(b) Reactor Building ventilation exhaust radiation monitor,

(c) Radwaste Building ventilation exhaust radiation monitor,

(d) Turbine Building ventilation exhaust monitor,

(e) Fuel pool ventilation exhaust monitor,

(f) Low reactor water level, and

(g) High drywell pressure.

This required surveillance verifies that on any one of the above listed actuation test signals, the CCHVAC automatically switches into recirculation mode; the isolation dampers close within 5 seconds of actuation; and the control room is maintained at a positive pressure of at least 0.125 inch water gauge relative to the outside atmosphere. During system operation, a flow rate less than or equal to 1800 cfm is maintained through the emergency makeup air filter. The proposed change will eliminate the Radwaste Building and the Turbine Building ventilation exhaust radiation monitors (items (c) and (d) above) from Technical Specification 4.7.2.e.2.

In a letter dated October 24, 1986 (VP-86-0132), the licensee indicated that, in addition to Technical Specification 4.7.2.e.2, the Radwaste Building and the Turbine Building ventilation exhausts are each continuously monitored with their own radiation monitors as required in Technical Specification 3.3.7.12, entitled, "Radioactive Gaseous Effluent Monitoring Instrumentation." A trip of either of these radiation monitors will place the CCHVAC in the recirculation mode, isolating the respective building ventilation exhaust effluent release pathways.

The licensee's evaluation of reportable events pursuant to 10 CFR 50.72 regarding software and hardware failures experienced with the Radwaste Building and Turbine Building ventilation exhaust radiation monitors in the CCHVAC system indicated that neither of these ventilation exhaust radiation monitors are necessary in the CCHVAC system, nor desirable for tripping the CCHVAC to enter the recirculation mode. The logic trips are not necessary because similar monitors in the Radwaste and Turbine Buildings will isolate the HVAC systems in those buildings terminating any release of radioactivity in progress before a control room habitability consideration arises. In the event of a situation where radionuclide concentrations in the air supply to the CCHVAC rises to a level which could adversely affect control room habitability, including failure of the Radwaste Building and Turbine Building HVAC trip functions, the CCHVAC system control center inlet air radiation monitor (item a above) would cause the CCHVAC system to trip into its recirculation mode. The other remaining Technical Specification 4.7.2.e.2 trip function monitors, listed above, will continue to provide "defense in depth" in that an alarm signal in any or all of the remaining CCHVAC system monitors could occur in anticipation of a reactor or fuel handling accident. Maintaining the Radwaste Building and Turbine Building ventilation exhaust radiation monitors in the CCHVAC system trip logic is considered by the licensee to be undesirable because of the likelihood of continuing spurious trip which would result in unnecessarily challenging the CCHVAC system, thereby reducing the reliability of this engineered safety feature.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the proposed change to Technical Specification 4.7.2.e.2: (1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change would not affect the ability to isolate the control room and all associated monitors would continue to provide isolation trip signals in their appropriate system areas. The proposed modification of the CCHVAC system trip logic interlocks will not change any of the parameters utilized in any previously analyzed accident, and the Radwaste Building and Turbine Building vent exhaust fans and dampers will continue to isolate their respective plant areas upon reaching the radiation monitor setpoint. In addition, the control room has two independent inlet radiation monitors that will place the CCHVAC system in a recirculation mode, if any high radiation level effluents are detected; (2) the change does not create the probability of a new or different kind of accident from any previously evaluated, since all of the effluent paths have the same monitoring and isolating features as in the original design. No new or different accident possibilities are created because the basis for the isolation of all of the individual building vent exhaust paths remains unchanged; (3) the change does not involve a significant reduction in safety margin, since there is no change to the monitor setpoints, design bases, or in the response time of effluent monitor isolation circuits. The Radwaste Building and the Turbine Building effluent paths will continue to be monitored for radiation, and will be surveillance tested to ensure they will trip closed as designed. The CCHVAC control center air radiation monitor will continue to monitor the incoming makeup air and isolate the CCHVAC upon sensing high radiation levels. The Reactor Building vent exhaust, fuel pool vent exhaust, and the north and south control center emergency air supply radiation monitoring channels will continue to initiate the recirculation mode of the CCHVAC system. In addition, the plant operator can manually isolate the control room and will continue to receive annunciator indications of radiation levels in the control room from the Radwaste Building vent exhaust, the Turbine Building vent exhaust, and the control center area radiation monitors. Therefore, sufficient redundancy for isolation of the CCHVAC system tests without the need for automatic isolation that would be provided by the monitors to be deleted, from Technical Specification 4.7.2.e.2.

The NRC staff generally agrees with the licensee's determinations and findings in support of the proposed Technical Specifications change, and proposes to evaluate the proposed change to confirm that no significant hazards will be involved with the charge if approved.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for the licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48909.

NRC Project Director: Elinor G. Adensam.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: October 27, 1986.

Description of amendment request: Surveillance Requirement 4.7.1.2.1a.2) for Catawba Units 1 and 2 presently requires that each steam turbine-driven auxiliary feedwater pump periodically be demonstrated operable by verifying that it develops a total dynamic head of at least 3550 feet at a flow of at least 400 gpm when the secondary steam supply pressure is greater than 600 psig and the auxiliary feedwater pump turbine is operating at 3600 rpm. The proposed amendments would maintain these same requirements, but change 3600 rpm to a value less than or equal to 3800 rpm.

Basis for proposed no significant hazards consideration determination: The proposed change would allow the rpm setting for the pump turbine governor to be adjusted up to 3800 rpm to achieve the same required total dynamic head under the same minimum conditions of flow and secondary steam supply pressure. The increased rpm adjustment would result in a slight increase in actual pump discharge flow and, thereby, enhance system safety performance. Although the pump and turbine would operate with reduced margin to the overspeed trip setpoints (4140 rpm for the electronic overspeed device and 4500 rpm for the mechanical overspeed device), such reduction is slight, and therefore, the proposed rpm setpoint is not expected to result in a significant change in the possibility that the pump safety function would be defeated by excessive overspeed. The licensee also states that the proposed change will not cause any adverse effects on the pump or pump turbine because both were designed and analyzed by the manufacturer for operation up to and including 3800 rpm.

The Commission has provided certain examples (51 FR 7744) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the staff has reviewed the licensee's request for the above amendments and determined that should this request be implemented, it would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed change would allow the turbine-driven pump to better fulfill its intended function during an accident and thus would potentially decrease the consequences of an accident. Also, it would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because operation of the auxiliary feedwater turbine-driven pump at the increased speed has been evaluated by the manufacturer and found acceptable and because the proposed change introduces no new mode of operation (only a slightly higher operating speed) and no physical modifications (other than adjustment of the pump turbine governor). Finally, it would not (3) involve a significant reduction in a margin of safety because, as discussed above, the accompanying increase in actual pump discharge flow would allow the pump to better perform its safety functions and the slight decrease in margin to the overspeed trip setpoints is not deemed significant. Thus, the overall safety margin is not significantly reduced. Accordingly, the Commission proposes to find that the change does not involve a significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: B.J. Youngblood.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: May 14 and July 14, 1986.

Description of amendment request: The proposed amendments would change the service designation of penetration number M348 in Technical Specification (TS) Table 3.6.1 "Secondary Containment Bypass Leakage Paths" and an associated footnote (Note 1) to indicate that this penetration, currently designated as the Upper Head Injection (UHI) Test Line, will be utilized for the post accident liquid sample (PALS) discharge line following removal of the UHI system. Similarly, associated valve numbers WL 1301B and WL 1302A on the PALS discharge line, which will receive a Phase A containment isolation signal for automatic closure within at least 15 seconds, would be added to TS Table 3.6-2 "Containment Isolation Valves" and noted to be effective upon removal of the UHI system.

Additional changes requested by the licensee are outside the scope of this notice.

Basis for proposed no significant hazards consideration determination: By previous license amendments No. 57 (Unit 1) and 38 (Unit 2), the Commission authorized changes to the McGuire TSs associated with physical removal of the UHI system, including changes to reflect deletion of UHI related containment penetrations and containment isolation valves once the UHI system is removed. By separate action (NUREG-0737, Item II.B.3), the Commission has provided a position on design of postaccident sampling capability which, in part, states that residues of sample collection should be returned to containment or to a closed system. The proposed amendment would authorize existing penetration M348, whose present service designation will no longer be applicable after UHI system removal, to be used for the PALS return line in accordance with with TMI Action Item II.B.3. The penetration and associated valving would continue to conform to the Commission's General Design Criteria regarding containment isolation (GDC-56) and leak rate testing capability, including 10 CFR 50, Appendix J.

The Commission has provided certain examples (51 FR 7744) of actions likely to involve no significant hazards consideration. The request involved in this case does not match any of those examples. However, the staff has reviewed the licensee's request and has determined that should this request be implemented, it would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) involve a significant reduction in a margin of safety, because the penetration presently exists through the containment vessel, no cutting of the containment vessel or other significant modification to the penetration will occur, and the change does not decrease the allowable leak rate of the containment or isolation requirements of the system (PALS) utilizing the penetration. The request also would not (3) create the possibility of a new or different kind of accident from any accident previously evaluated because the change in service designation does not involve any structural change to the existing penetration and the PALS lines and valves involve no new or novel features.

Accordingly, the Commission proposes to find that the changes do not involve a significant hazards consideration.

Local Public Document Room location: Atkins Library, University of

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North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: B.J. Youngblood.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: October 13, 1986.

Description of amendment request: This revision to the Technical Specifications seeks to increase the maximum fuel enrichment to 4.0 w/o U-235 from the current Technical Specification maximum allowable enrichment of 3.5 w/o U-235.

Basis for proposed no significant hazards consideration determination: By previous Amendments 35 (Unit 1) and 16 (Unit 2), the Commission authorized changes associated with replacement of the McGuire spent fuel storage racks with high density storage racks which allowed use of fuel having initial enrichments up to and including 4.0 w/o U-235. Use of higher enrichment fuel in the reactor core will be demonstrated to be acceptable by cycle-specific reload safety evaluations performed prior to each fuel loading. Therefore, the criticality potential related to the proposed amendments is associated with storage of unirradiated (new) fuel with the higher enrichment in the new fuel storage racks. In its letter of October 13, 1986, the licensee describes its criticality analysis which demonstrates the existing new fuel storage racks can safely accommodate new fuel at the proposed enrichment. Preliminary review by the NRC staff supports the results of the licensee's analysis.

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed these standards as they relate to these amendments and finds the following:

(1) Do the proposed license amendments involve a significant increase in the probability or consequences of an accident previously evaluated?

The increased fuel enrichment of up to 4.0 w/o U-235 will not affect the core operating parameters, such as power level, reactor coolant temperature, reactor coolant pressure and core peaking factors. These parameters are considered in detail in the core reload safety evaluations. As such, the operating transient analyses are not impacted solely by a change in the maximum allowable fuel enrichment.

The higher enrichments will facilitate extended fuel cycles. An extended fuel cycle will not increase the fuel rod gap activity since the activity reaches an equilibrium value prior to the end of the current fuel cycle. As such, the off-site dose consequences of a fuel handling accident will not be increased significantly due to an extended fuel cycle.

In conclusion, the proposed Technical Specifications change for maximum allowable enrichment and the associated storage of such new fuel will not significantly increase the probability or consequences of the FSAR design basis accidents.

(2) Do the proposed license amendments create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change seeks to increase the enrichment of the fuel pellets only. No hardware changes are necessary. The maximum power operation level will not be increased. As such, the requested change will not create a new or different kind of accident.

(3) Do the proposed amendments involve a significant reduction in a margin of safety?

The analysis provided by the licensee shows that the criticality design criteria specified by ANSI N 18.2-1973, Section 5.7.4.1 will not be exceeded if the new fuel is loaded into the existing new fuel storage racks.

Based on the above, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: B.J. Youngblood.

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: October 17, 1986.

Description of amendment request: The licensee proposes to modify Technical Specification 5.3.1 entitled "Reactor Core—Fuel Assemblies." This specification requires that each fuel rod have a nominal active fuel length of 136.7 inches. The proposed specification will require a fuel rod to have a nominal active fuel length of between 134.1 and 136.7 inches. The licensee also proposes that individual fuel assemblies contain fuel rods of the same nominal active fuel length.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety. The licensee addressed the above three standards in the amendment application. In regard to the first standard, the licensee provided the following analysis:

> Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.
>
> Modification to the nominal active fuel length will result in no changes to the plant procedures as described in the Final Safety Analysis Report (FSAR). There will be no changes to the plant's structure, systems, or components other than the fuel rods in new fuel assemblies. The only change to these fuel rods is to reduce the clad and active fuel length while increasing the lower end cap length. Both the overall fuel rod dimensions and its spatial orientation in the fuel bundle are unchanged.
>
> The core's total active fuel length is shortened by about 0.75%. Analysis of this design change indicates a negligible impact on safe operation of the plant as result of the design change impacts on the core power peaking and mechanical compatibility of reload fuel.
>
> By extending the lower spacer assembly, FPL is assuring that any debris entrapped in fresh fuel by the lower spacer grid will fret against solid zircaloy instead of fuel cladding material significantly lowering the probability of low burnup fuel failures. This

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> provides additional assurance that any type of fretting-related failures will not occur.
>
> Finally, there is no change in the probability of spacer grid damage during fuel loading.

In connection with the second standard, the licensee states that:

> Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.
>
> The proposed amendment will result in no changes to the plant's procedures, structures, systems, mode of operation or components other than the fuel rod modification. No new or different materials or manufacture techniques will be used to produce fuel rods. No additional tests or experiments not described in the FSAR are necessary to implement the proposed change.
>
> The proposed fuel design changes do not adversely impact the performance of fuel already residing in the core or of the reload fuel itself. No fuel rod mechanical properties have been changed with the exception of the cladding length, active fuel length and lower end cap length. Overall fuel rod length and clad and cap material composition remain unchanged.

Regarding the third standard, the licensee states that:

> Use of the modified specification would not involve a significant reduction in a margin of safety.
>
> No inputs or results from plant safety analysis require modifications as a result of the proposed change. Neither the plant's procedures, structures, systems, or components have change other than the fuel rod design. The impact of the design change on core power peaking is not significant and is well within the measurement uncertainties of these parameters. The difference between fuel safety limits and the results of the safety analysis, which is representative of the margin of safety, is unchanged.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon the review, it appears that the standards have been met because (1) on a fuel rod basis, only a small fraction of fuel is being removed and metal is being put in its place (removal of no more than 2.6 inches nominally out of a total of 136.7 inches nominally); (2) there is no difference between fuel safety limits and the results of the safety analysis; (3) no inputs or results from plant safety analysis require modification; and (4) no other core related technical specification changes, such as limited conditions for operation, are necessary.

Based upon the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NPC Project Director: Ashok C. Thadani.

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: September 2, 1986.

Description of amendment request: In Generic Letter (GL) 84-15, the Commission's staff informed the licensees that the frequency of diesel generator cold fast start tests from ambient conditions should be reduced. The licensees' submittal requests a change in the action statements of Technical Specification (TS) 3.8.1.1. Specifically, the time frame for demonstration of diesel generator operability would be changed from "within one hour" to "within 24 hours" if one AC power supply is inoperable, and to "within eight hours" if two AC power supplies are inoperable. The requirement to test the diesel generators every eight hours thereafter would be deleted.

Basis for proposed no significant hazards consideration determination: The purpose of the requested change is to increase diesel generator reliability by reducing excessive test starts and situations where the diesels are running parallel with the grid. The diesel generator manufacturer and the Commission's staff have identified excessive diesel generator testing as contributing to diesel degradation. The current TS requires that diesel generator operability be demonstrated within one hour if one or two AC power supplies are inoperable, and every eight hours thereafter. This could result in up to nine tests within 72 hours. In view of the Commission's guidance on reducing the number of diesel generator tests per GL 84-15, Crystal River Unit 3 frequently satisfies the action statement by running the diesels continuously (except in inclement weather) while loaded parallel to the grid to avoid starting them every eight hours. When the diesels are thus operated, they are subject to possible transients from the nonvital and offsite power systems. Revising the action statement would improve overall diesel reliability and availability.

The licensees have determined, and the Commission's staff agrees, that this amendment request does not involve a significant hazards consideration. Diesel generator reliability would still be demonstrated monthly. The change is consistent with the staff's position (per GL 84-15) concerning excessive diesel generator starts as a contributor to overall premature diesel degradation.

The Commission has proposed a determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that the operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any previously evaluated; or (3) involve a significant reduction in a margin of safety.

The probability or consequences of an accident previously evaluated would not be increased as a result of the proposed changes. Reducing the test frequency is consistent with the diesel manufacturer and GL 84-15 recommendations and will improve diesel reliability by minimizing severe test conditions which could lead to premature failures. Also, the possibility for an accident of a different type than previously analyzed is not created because the proposed changes affect only testing frequency. The changes involve no new mode of plant operation nor do they modify equipment or setpoints. Finally, the margin of safety, as defined in the basis for any TS, is not reduced. The changes do not affect the capability of the diesels to perform their function. Rather, the purpose of the changes is to enhance overall diesel generator reliability. Therefore, based on the above considerations the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629.

Attorney for licensee: R.W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733.

NRC Project Director: John F. Stolz.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Dockets Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2, Appling County, Georgia

Date of amendment request: August 27, 1986 augments the submittal of February 17, 1986.

Description of amendment request: This submittal augments the submittal of

February 17, 1986, which was noticed in the Federal Register on May 7, 1986 (51 FR 16927). This submittal augments the previous request for an amendment by proposing an additional change to the administrative Technical Specifications (TS) that would modify the wording in TS Section 6.5.1.6.F concerning review of reportable occurrence requiring notification to the Commission to make it consistent with the wording proposed for TS Section 6.6.1.b in the February 17, 1986 submittal. Specifically, it would change the requirement to review reportable occurrences requiring 24-hour notification to the Commission to require that all reportable occurrences requiring notification to the Commission be reviewed.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7751). An example (ii) of actions involving no significant hazards considerations is an amendment involving a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. The proposed Technical Specification modification imposes additional limitations, restrictions and controls and therefore falls within this example.

Therefore, since the application for amendment involves proposed changes that are similar to an example for which no significant hazards considerations exist, the Commission has made a proposed determination that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: Daniel R. Muller.

GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: October 23, 1986 (TSCR 148).

Description of amendment request: The proposed amendment would revise the requirements on the maximum radioiodine concentration allowed in the reactor coolant in Sections 3.6 and 4.6, Radioactive effluents, in the Appendix A Technical Specifications (TS). The proposed changes (1) add two new definitions to Section 1.0, Definitions, and to the Table of Contents, (2) reduce the maximum allowed concentration of radioiodine in the reactor coolant in Section 3.6, (3) add reporting requirements to Section 3.6 and (4) restrict the reactor modes, where a radioiodine sample is required to be taken, to the Run, Startup and Hot Shutdown Modes in Section 4.6.

Basis for proposed no significant hazards consideration determination: The licensee stated in its amendment request that on October 22, 1984, it submitted Technical Specification Change Request (TSCR) No. 69, Revision 1, "Radiological Effluent Environmental Technical Specifications." The TSCR No. 69, Revision 1 proposed changes to TS Sections 3.6 and 4.6 concerning reactor coolant system (RCS) radioiodine activity limits and surveillance requirements. These changes were proposed following discussions with the NRC staff during the integrated assessment of the Systematic Evaluation Program (SEP) for Topic XV-16, "Radiological Consequences of Failure of Small Lines Carrying Primary Coolant Outside Containment."

Subsequently, the NRC staff requested resubmittal of the proposed changes for RCS radioactivity limits by providing a definition for DOSE EQUIVALENT Iodine I-131, limits for non-iodine radioactivity in the RCS and an annual reporting requirement for radioiodine spiking as shown in Standard Technical Specifications for General Electric Boiling Water Reactors (NUREG-0123), and NRC Generic Letter 85-19, "Reporting Requirement on Primary Coolant Iodine Spikes." The staff also requested changes to the Limiting Conditions for Operation which are also given in NUREG-0123.

Therefore, the licensee has prepared TSCR 148 in response to the staff's request described above. The TSCR 148 includes the information requested with exceptions of non-iodine radioactivity limits and a part of the Limiting Conditions (i.e., sampling requirement following changes in thermal power or off-gas level). These exceptions are continuing to be evaluated by the licensee. Meanwhile, Specification No. 1302-28-001 "Technical Specification, Water Quality, Oyster Creek Nuclear Generating Station" addresses limit and monitoring requirements for non-iodine radioactive effluent at the plant stack in order to assure that radioactive material is not released to the environment in an uncontrolled manner and to assure that the radioactive concentrations of any material released is kept as low as is reasonably achievable.

This change request provides definitions, limiting conditions for operation, surveillance and an annual reporting requirement to incorporate the applicable requirements provided in the Standard Technical Specifications for General Electric Boiling Water Reactors and NRC Generic Letter 85-19. The licensee has determined that this chance request involves no significant hazards considerations in that operation of the Oyster Creek Plant in accordance with the proposed amendment will:

(1) Not involve a significant increase in the probability of an accident previously evaluated, because the primary coolant activity is not an initiator of an accident. Also, the proposed change will not increase the consequences of an accident, because the proposed change, a reduction of the primary coolant activity limit, will not result in an increased amount of radioactive release for design basis accidents previously evaluated; or

(2) Not create the probability of a new or different kind of accident from any accident previously evaluated because a bounding design basis accident associated with changes in the primary coolant activity level was already evaluated and reported in the updated Final Safety Analysis Report (FSAR) (i.e., Control Rod Drop Accident): or

(3) Not involve a significant reduction in a margin of safety because a more restrictive limit for the primary coolant radio-iodine activity will increase a margin of safety.

The staff has reviewed the licensee's no significant hazard considerations above and is in agreement with the conclusions drawn by the licensee.

Therefore, because the licensee's request meets the above three criteria in 10 CFR 50.92(c), the staff proposes to determine that the licensee's proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: Ernest L. Blake, Jr.; Shaw, Pittman, Potts, and Trowbridge, 1800 M Street NW., Washington, DC 20036.

NRC Project Director: John A. Zwolinski.

Indiana and Michigan Electric Company, Docket No. 50-315, Donald C. Cook Nuclear Plant, Unit No. 1, Berrien County, Michigan

Date of amendment request: October 31, 1986.

Description of amendment request: The proposed amendment would change the Technical Specifications to allow certain tests designated as 18 month

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surveillance to be delayed until the end of the next refueling outage currently rescheduled to begin during the second quarter of 1987. These tests could be done at power but if done at power, would represent some increase in risk from possible reactor trips and plant transients. This proposed amendment is unlike the Licensee's request dated October 1, 1986 in that the October 1, 1986 request was for an extension of surveillances that could only be done with the plant shutdown.

The tests in this request include channel calibrations of steam generator level, steam generator mismatch, pressurizer level, overtemperature/overpressure delta T, pressurizer pressure, lower containment pressure, steam line pressure, 4kV loss of voltage, and channel calibrations of the power operated relief valves. These channel calibrations are for instruments associated with the Engineered Safety Features Actuation System, the Remote Shutdown Monitoring System and the Post Accident Monitoring System. The request is also to extend the total interlock function tests for the P11 and P12 Engineered Safety Features interlocks.

Basis for proposed no significant hazards consideration determination: The Commission's standard for determining whether a significant hazards consideration exists is as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The changes proposed by the licensee will extend certain tests to the next refueling outage rather than perform the tests at power with new or revised procedures. The safety significance, therefore, is in consideration of extending some 18 month tests until about 24 months and the confidence that the components or systems will still perform their intended function with the extension of time.

An additional consideration is the risk of unwarranted reactor trips and plant transients if the licensee attempts the tests at power with new or revised procedures. The licensee has evaluated each test and has provided the basis for maintaining confidence that the components or systems will continue to function adequately. We have reviewed the licensee's submittal and summarize below our agreement with the licensee's findings.

The Engineered Safety Feature Activation System instrumentation have channel functional tests and channel checks periodically which demonstrate operability. Only the sensor is not checked in the channel functional tests, but the channel checks provide a comparison with other monitors and variables and would reveal any significant changes in the sensor. The Remote Shutdown Monitoring Instrumentation and the Post Accident Monitoring Instrumentation receive monthly channel checks which provide the comparison with other monitors and variables.

The extension will not result in a significant increase in the probability or consequences of a previously evaluated accident nor will it create the possibility of a new or different kind of an accident. Any loss of calibration during the extension is expected to be small and will not result in a significant reduction in the margin of safety. Further, the extension of time to perform the surveillance would negate the need to revise or prepare new procedures for the tests at power. These procedures and the tests have the potential for causing reactor trips and plant transients which have been evaluated and therefore do not represent new or different kinds of accidents. However, inadvertent trips from these procedures could result in some minor increase in risks and although the performance of the tests is not prohibited, the likely trips are unwarranted.

The Engineered Safety Features logic interlocks (P-11 and P-12) are tested each month by an automatic actuation logic test. The extension is for the interlock function test which is performed during the delta T/Tavg and pressurizer pressure channel calibrations. The sensor input and check against the output bistables will be delayed during the extension, however, the critical functioning of the actuation logic will be tested and there is little reason to believe that extending the full function test will have any effect on safety or operation. The extension will not result in a significant increase in the probability or consequences of a previously evaluated accident nor will it create the possibility of a new or different kind of an accident. Any loss of input calibration or output bistable interaction during the extension is expected to be small and will not result in a significant reduction in the margin of safety.

Based on the above, the staff has made a proposed determination that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 M Street, NW., Washington, DC 20036.

NRC Project Director: B.J. Youngblood.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 20, 1986, as supplemented by letter dated October 6, 1986.

Description of amendment request: The proposed changes would revise Technical Specification 3.1.2.1, "Boration Systems, Flow Paths—Shutdown", and 4.1.2.1, the associated surveillance requirement. The reason for these changes are to delete the requirement for a heat tracing circuit in the Boric Acid Makeup Tanks (BAMTs) and associated flow paths by reducing the maximum boron concentration in these tanks to less than or equal to 3.5 weight percent.

The heat tracing requirements for the boric acid makeup tanks and associated flow paths are no longer necessary because the maximum boron concentration in the tanks has been reduced to less than or equal to 3.5 weight percent. Chemical analyses have shown that a 3.5 weight percent solution of boric acid will remain dissolved (i.e., will not precipitate or "plate out") at solution temperatures above 50 °F. Reducing the boron concentration in these tanks requires that they maintain an increased water volume to meet the shutdown margin requirements of Technical Specification 3.1.1.2. The volume of borated water that must be maintained is equal to approximately 4,150 gallons of 2.25 weight percent boric acid. This amount of boron is sufficient to maintain the required shutdown margin during a xenon-free cooldown from 200 °F to 140 °F.

Basis for proposed no significant hazards considerations determination: The NRC staff proposes to determine that the proposed changes do not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in the margin of safety. The basis for this proposed finding is given below.

(1) Deleting the requirement for a heat tracing circuit by reducing the boric acid makeup tank boron concentration is accounted for by increasing the volume of borated water that must be maintained in the tanks. The amount of boron that must be available is equal to approximately 4,150 gallons of 2.25 weight percent boric acid. This amount of boron is sufficient to maintain the shutdown margin requirements of Technical Specification 3.1.1.2 during a xenon-free cooldown from 200 °F to 140 °F. In addition, controls on the boric acid makeup tank temperature ensure that the lack of heat tracing does not result in precipitation of the boron. The effect of the proposed changes, therefore, does not significantly increase the probability or consequences of any accident previously evaluated.

(2) The reason for requiring a heat tracing circuit was to ensure that the dissolved boric acid was in solution and hence, available for injection into the Reactor Coolant System in the event of an emergency. By lowering the boric acid concentration to a maximum of 3.5 weight percent, chemical analyses have shown there is no possibility of the boron precipitating out of solution as long as the temperature of the borated water remains above 50 °F; thus, there is no longer a need for heat tracing. Since the boron will be in solution when this flow path is credited and will therefore be available for emergencies, the proposed changes do not create the possibility of a new or different kind of accident from those previously evaluated.

(3) The intent of this Technical Specification is to ensure there is a flowpath of highly borated water available to achieve and maintain the required shutdown margin during an emergency. In order for the flowpath to be credited, the boron must remain in solution from the time it leaves the BAMTs until it reaches the Reactor Coolant System. Previous analyses have shown that by reducing the boric acid concentration to a maximum of 3.5 weight percent, the boron will remain in solution at temperatures above 50 °F. By compensating for the reduction in boron concentration by increasing the amount available in the BAMTs, there is a sufficient amount of boron to maintain the shutdown margin requirements of Technical Specification 3.1.1.2. Surveillance requirement 4.1.2.1 retains the requirements to verify that the flow path is in its correct position and has been amended to ensure that the boric acid solution in the BAMTs is greater than 55 °F when crediting this flowpath. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037.

NRC Project Director: George W. Knighton.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana.

Date of Amendment Request: August 20, 1986, as supplemented by two letters dated October 6, 1986.

Description of Amendment Request: The proposed changes would revise Technical Specification 3.1.2.2, "Boration Systems, Flow Paths—Operating", ACTION statement "a" to this specification and the associated Surveillance Requirement 4.1.2.2. The proposed changes would also reference a revised Technical Specification Figure 3.1-1 which shows the minimum Boric Acid Makeup Tank (BAMT) water volumes as a function of BAMT concentration and Refueling Water Storage Pool (RWSP) concentration. The reason for these changes is to delete the requirement for a heat tracing circuit in the BAMTs and associated flow paths by reducing the maximum boron concentration in the tanks to less than or equal to 3.5 weight percent.

Reducing the boron concentration in the BAMTs requires that they maintain a higher water volume in order to meet the safe shutdown requirements of Branch Technical Position RSB 5-1, "Design Requirements of the Residual Heat Removal System." The volume of borated water that is required from these tanks is shown in the revision to Figure 3.1-1. During a natural circulation cooldown with no letdown available, this figure shows the minimum volume of borated water necessary to maintain the required shutdown margin during the initial stages of plant cooldown and depressurization. Once the volume of water has been depleted, the RWSP is used to supply borated water to the RCS. This provides sufficient boron to meet the shutdown margin requirements for the remainder of the cooldown. Thus, both the BAMT(s) and the RWSP are required to maintain the shutdown margin requirements to Technical Specifications 3.1.1.1 and/or 3.1.1.2 during the natural circulation cooldown.

Previously, this specification has required at least one of the BAMTs to meet the requirements of Figure 3.1-1. The proposed change will add the flexibility of meeting the Limiting Condition for Operation (LCO) by combining the contents of both BAMTs. This option was added because the proposed revision to Figure 3.1-1 allows the boron concentration in the BAMTs to go as low as 2.25 weight percent. In this case the volume requirement of approximately 14,000 gallons cannot be met with a single tank. However, if the combined contents of both tanks are used to comply with the LCO, it must be shown that both boric acid makeup pumps and both gravity feed valves are OPERABLE. This ensures that both BAMTs have two independent flow paths for injecting their contents into the RCS.

The proposed change to ACTION statement "a" of this specification will simply refer to the actual shutdown margin Specification (either 3.1.1.1 or 3.1.1.2) instead of requiring the core to be at least 2% subcritical at an RCS temperature of 200 °F.

Basis for proposed no significant hazards consideration determination: The NRC staff proposes to determine that these changes do not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in the margin of safety. The basis for this proposed finding is given below.

(1) Deleting the requirement for a heat tracing circuit by reducing the boron concentration in the BAMTs is accounted for by increasing the volume of boric acid solution that must be contained in the tanks and by also crediting borated water from the RWSP. During a natural circulation cooldown with no letdown available (Branch Technical Position RSB 5-1), sufficient

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borated water is available in the BAMTs to maintain the required shutdown margin while the plant is depressurized to the point where borated water from the RWSP can be delivered to the RCS. This provides sufficient boron to ensure the shutdown margin requirements of Specification 3.1.1.1 and/or 3.1.1.2 are satisfied. Since the safe shutdown requirements of Branch Technical Position RSB 5-1 are satisfied, these changes do not significantly increase the probability or consequences of any accident previously evaluated.

(2) The reason for requiring a heat tracing circuit was to ensure that the dissolved boric acid was in solution and hence, available for injection into the Reactor Coolant System in the event of an emergency. By lowering the maximum boric acid concentration in the BAMTs to 3.5 weight percent, chemical analyses have shown that the boron will remain in solution at temperatures above 50 °F. Since requirements are in place to ensure that the BAMT solution remains above 55 °F when crediting this source of borated water, there is no longer a need for the heat tracing circuit. Therefore, since the proposed changes still ensure that the required boration flow paths are OPERABLE, it does not create the possibility of a new or different kind of accident from those previously evaluated.

(3) The intent of this Technical Specification is to ensure that there are two redundant flow paths from the borated water sources to the Reactor Coolant System and that both these flow paths remain OPERABLE. Surveillance requirement 4.1.2.2 retains the requirement to verify that each valve in the flow path is in its correct position and has been amended to verify that the borated water in the BAMTs is greater than 55 °F whenever the Reactor Auxiliary Building air temperature is less than 55 °F. Since chemical analyses have shown that a 3.5 weight percent solution of boric acid will remain in solution at temperatures above 50 °F, this Specification assures that the boric acid will remain in solution and will be able to be delivered to the RCS even if a single failure is assumed. Thus, the effect of the proposed changes does not involve a significant reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037

NRC Project Director: George W. Knighton.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana.

Date of amendment request: August 20, 1986, as supplemented by letter dated October 6, 1986.

Description of amendment request: The proposed changes would revise Technical Specification 3.1.2.8, "Borated Water Sources—Operating," ACTION statement "a" to this specification, the associated surveillance requirement 4.1.2.8 and the Bases section related to Boration Systems (3/4.1.2). The proposed changes would also reference a revised Technical Specification Figure 3.1-1 which shows the minimum Boric Acid Makeup Tank (BAMT) water volumes as a function of BAMT concentration and Refueling Water Storage Pool (RWSP) concentration. The reason for these changes are to delete the requirement for a heat tracing circuit in the BAMTs by reducing the maximum boron concentration in the tanks to less than or equal to 3.5 weight percent.

Reducing the boron concentration in the BAMTs requires that they maintain a higher water volume in order to meet the safe shutdown requirements of Branch Technical Position RSB 5-1, "Design Requirements of the Residual Heat Removal System." The volume of borated water that is required from these tanks is shown in the revision to Figure 3.1-1. During a natural circulation cooldown with no letdown available, this figure shows the minimum volume of borated water necessary to maintain the required shutdown margin during the initial stages of plant cooldown and depressurization. Once this volume of water has been depleted, the RWSP is used to supply borated water to the RCS. This provides sufficient boron to meet the shutdown margin requirements for the remainder of the cooldown. Thus, both the BAMT(s) and the RWSP are required to maintain the shutdown margin requirements of Technical Specifications 3.1.1.1 and/or 3.1.1.2 during the natural circulation cooldown.

Previously, this specification has required at least one of the BAMTs to meet the requirements of Figure 3.1-1. The proposed change will add the flexibility of meeting the Limiting Conditions for Operation (LCO) by combining the contents of both BAMTs. This option was added because the proposed revision to Figure 3.1-1 allows the boron concentration in the BAMTs to go as low as 2.25 weight percent. In this case the volume requirement of approximately 14,000 gallons cannot be met with a single tank. However, if the combined contents of both tanks are used to comply with LCO, it must be shown that both Boric Acid Makeup pumps and both gravity feed valves are OPERABLE. This ensures that both BAMTs have two independent flow paths for injecting their contents into the RCS.

The proposed change to ACTION statement "a" of this specification will simply refer to the actual shutdown margin Specification (either 3.1.1.1 or 3.1.1.2) instead of requiring the core to be at least 2% subcritical at an RCS temperature of 200 °F.

Basis for proposed no significant hazards consideration determination. The NRC staff proposes to determine that the proposed changes do not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in the margin of safety. The basis for this proposed finding is given below.

(1) Deleting the requirement for a heat tracing circuit by reducing the boron concentration in the BAMTs is accounted for by increasing the volume of boric acid solution that must be contained in the tanks and by also crediting borated water from the RWSP. During a natural circulation cooldown with no letdown available (Branch Technical Position RSB 5-1), sufficient borated water is available in the BAMTs to maintain the required shutdown margin while the plant is depressurized to the point where borated water from the RWSP can be delivered to the RCS. This provides sufficient boron to ensure the shutdown margin requirements of Specification 3.1.1.1 and/or 3.1.1.2 are satisfied. Since the safe shutdown requirements of Branch Technical Position RSB 5-1 are satisfied, these changes do not significantly increase the probability or consequences of any accident previously evaluated.

(2) The reason for requiring a heat tracing circuit was to ensure that the dissolved boric acid was in solution and hence, available for injection into the

Reactor Coolant System in the event of an emergency. By lowering the maximum boric acid concentration in the BAMTs to 3.5 weight percent, chemical analyses have shown that the boron would remain in solution at temperatures above 50 °F. Since requirements are in place to ensure that the BAMT solution remains above 55 °F when crediting this source of borated water, there is no longer a need for the heat tracing circuit. Therefore, since the boron will be in solution and therefore available for emergencies, it does not create the possibility of a new or different kind of accident from those previously evaluated.

(3) The intent of this Technical Specification is to ensure that there is enough boron available to maintain the required shutdown margin during an emergency. In order for the boron to be available, it must remain in solution from the time it leaves the boric acid makeup tanks until it reaches the Reactor Coolant System. Reducing the maximum boric acid concentration to 3.5 weight percent ensures that all the boron will remain in solution (as long as the solution temperature is greater than 50 °F) while increasing the required volume in the tanks ensures there is a sufficient amount of boron available. Surveillance requirement 4.1.2.8 retains the requirements to verify the boron concentration and water volume of the tanks and has been amended to ensure the boric acid solution is greater than 55 °F. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St. NW., Washington, DC 20037.

NRC Project Director: George W. Knighton.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana.

Date of Amendment Request: August 20, 1986 as supplemented by letter dated October 6, 1986.

Description of Amendment Request: The proposed changes would revise Technical Specification 3.1.2.7, "Borated Water Sources—Shutdown", and 4.1.2.7, the associated surveillance requirement. The reason for the changes is to delete the requirement for a heat tracing circuit and the reference to Figure 3.1–1 of the Technical Specifications by reducing the maximum boron concentration in the Boric Acid Makeup Tanks (BAMTs) to 3.5 weight percent. In place of the reference to Figure 3.1–1, this specification will provide the required boron concentration and water volumes that must be maintained in the BAMTs.

The heat tracing requirements for the boric acid makeup tanks and associated flow paths are no longer necessary because the maximum boric acid concentration in the tanks has been reduced to less than or equal to 3.5 weight percent. Chemical analyses have shown that a 3.5 weight percent solution of boric acid will remain dissolved (i.e., will not precipitate or "plate out") at solution temperatures above 50 °F. Reducing the boron concentration in these tanks requires that they maintain an increased water volume to meet the shutdown margin requirements of Technical Specification 3.1.1.2. The volume of borated water necessary to meet this requirement is approximately 4,150 gallons of 2.25 weight percent boric acid. This amount of boron is sufficient to maintain the required shutdown margin during a xenon-free cooldown from 200 °F to 140 °F.

By reducing the maximum boron concentration in the boric acid makeup tanks, chemical analyses have shown that there is no longer the possibility of the boron precipitating out of solution as long as the temperature of the boric acid remains above 50 °F. Thus, surveillance requirement 4.1.2.7 will be modified to require verification that the boric acid makeup solution is at a temperature greater than 55 °F whenever the Reactor Auxiliary Building air temperature is less than 55 °F. These changes are consistent with other Technical Specification surveillance requirements for the Reactor Auxiliary Building (RAB) and provides approximately 5 °F margin before precipitation of the boron is possible. Similarly, changing the frequency of the surveillance from every seven days to when the Reactor Auxiliary Building air temperature is less than 55 °F is justified because it is unlikely that the temperature in the RAB would fall below 55 °F.

Basis for proposed no significant hazards consideration determination: The NRC staff proposes to determine that these changes do not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in the margin of safety. The basis for this proposed finding is given below.

(1) Deleting the requirement for a heat tracing circuit by reducing the boric acid makeup tank boron concentration is accounted for by increasing the volume of borated water that must be contained in the tanks. The amount of borated water that must be available is equal to approximately 4,150 gallons of 2.25 weight percent boric acid. This amount of boron is sufficient to maintain the shutdown margin requirements of Technical Specification 3.1.1.2 during a xenon-free cooldown from 200 °F to 140 °F. In addition, controls on the boric acid makeup tank temperature ensure that the lack of heat tracing does not result in precipitation of the boron. The proposed changes, therefore, do not significantly increase the probability or consequences of any accident previously evaluated.

(2) The reason for requiring a heat tracing circuit was to ensure that the dissolved boric acid was in solution and hence, available for injection into the Reactor Coolant System in the event of an emergency. By lowering the boron concentration to a maximum of 3.5 weight percent, chemical analyses have shown there is no possibility of the boron precipitating out of solution as long as the temperature of the boric acid remains above 50 °F; thus there is no longer a need for heat tracing. Since the boron will be in solution when the BAMT flowpaths are credited and will therefore be available for emergencies, the proposed changes do not create the possibility of a new or different kind of accident from those previously evaluated.

(3) The intent of this Technical Specification is to ensure there is enough boron available to achieve and maintain the required shutdown margin during an emergency when the BAMT flowpaths are credited. In order for the boron to be available, it must remain in solution from the time it leaves the boric acid makeup tanks until it reaches the Reactor Coolant System. Previous analyses have shown that by reducing the boric acid concentration to a maximum of 3.5 weight percent, the boron will remain in solution at temperatures above 50 °F. By compensating for the reduction in boron concentration by increasing the volume available in the boric acid makeup tanks

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there is a sufficient amount of boron to maintain the shutdown margin requirements of Technical Specification 3.1.1.2. Surveillance requirement 4.1.2.7 retains the requirements to verify the boron concentration and water volume of the tanks and has been amended to ensure that the boric acid solution is always greater than 55 °F. Therefore, the effect of the proposed change does not involve a significant reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037.

NRC Project Director: George W. Knighton.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 1, 1986.

Description of Amendment Request: The proposed changes would revise Technical Specification 2.1.1.1, "Safety Limits, Reactor Core—DNBR"; 2.2.1, "Safety Limits, Reactor Trip Setpoints"; and the associated Bases to these Specifications. The reason for the proposed changes is to account for a different method of treating uncertainties in the CE-1 heat flux correlation and Departure from Nucleate Boiling Ratio (DNBR) calculation as applied to the 16 x 16 fuel assemblies of Waterford 3. Specifically, the proposed changes would combine the uncertainties associated with fuel manufacturing variations, as well as certain thermal-hydraulic uncertainties, using the methodology associated with the Statistical Combination of Uncertainties (SCU). These methods have been previously applied on other Combustion Engineering plants and have been approved by the NRC.

Use of the SCU methodology results in an increase in the minimum allowable value of the DNBR safety limit and the reactor trip setpoint for DNBR from a value of 1.205 to a Cycle 2 value of 1.260. The proposed new value would ensure, with a 95% confidence level, that if the hot channel in the core reaches the DNPP safety limit, there is still a 95% probability that departure from nucleate boiling has not occurred. This is the same probability/confidence level that applied to the 1.205 DNBR value that was used during Cycle 1. Thus, although some uncertainties would be removed from the actual Core Protection Calculator (CPC) calculation of core heat flux (and corresponding DNBR), they are factored into the determination of the reactor trip setpoint for low DNBR as well as the associated DNBP Safety Limit.

The proposed changes would also modify the pressurizer pressure range over which the DNBR algorithm used by the CPC's is valid. The new range would be from 1860 to 2375 psia and would be only slightly different from the range used during Cycle 1 (1845 to 2355 psia). The purpose of these proposed changes is to make the Waterford 3 parameter range consistent with ranges for other plants that utilize the CPC system. In addition, the licensee has requested that NOTE 6 to Table 2.2-1 be deleted. This is consistent with a previously issued license amendment for Waterford (Amendment No. 5, dated May 30, 1986), in which the list of CPC Addressable Constants was deleted. The CPC software has been designed with automatic acceptable input checks against limits that are specified by the CPC functional design specifications. Thus, inclusion of the addressable constants and software limit value described in NOTE 6 is redundant.

Basis for proposed no significant hazards consideration determination: The NRC staff proposes to determine that the proposed changes do not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of any accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in the margin of safety. The basis for this proposed finding is given below.

(1) The proposed changes to the DNBR and CPC DNBR-Low trip setpoint have been considered in all transients that require protection by the low DNBR trip. In addition, those design basis accidents which use the safety limit setting to predict the number of fuel pins which experience DNB have been evaluated using the new limit of 1.260. All Anticipated Operational Occurrences (AOO's) result in a DNBR which remains above the Cycle 2 safety limit of 1.26. All accidents which result in a DNBR less than 1.26 have been evaluated to ensure acceptable fuel performance and that the off-site doses do not exceed the guidelines specified in 10 CFR Part 100. Thus, the proposed changes will not significantly increase the probability or consequences of any accident previously evaluated.

(2) The proposed changes do not affect the logic used by the CPC's to perform their design function of protecting the core from a violation of Specified Acceptable Fuel Design Limits (SAFDL's) during an AOO. Several of the uncertainties used in the CPC calculation of hot channel DNBR have been removed from the actual heat flux calculation and statistically combined with other uncertainties to determine a new DNBR safety limit and DNBR-Low trip setpoint. The new safety limit provides the same probability/confidence level that DNB will not occur during an AOO. Thus, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The intent of the DNBR safety limit and CPC DNBR-Low trip is to prevent overheating of the fuel cladding and possible cladding perforation which would result in the release of fission products to the reactor coolant. This is accomplished by maintaining the DNBR in the hottest coolant channel in the core at a value greater than the safety limit during normal operation and all AOO's. The CPC's perform this protective function by continuously monitoring the DNBR in the "hot channel". The proposed changes made to the CPC's (i.e., removal of some uncertainties) have been taken into account in the SCU methodology by increasing the DNBR Safety Limit/Trip Setpoint from 1.205 to 1.260. This limit ensures, with a 95/95 probability/confidence level, that the hot channel will not experience DNB during an AOO. Thus, the proposed changes will not involve a significant reduction of the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037.

NRC Project Director: George W. Knighton.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana.

Date of Amendment Request: October 1, 1986.

Description of Amendment Request: The proposed changes would revise Table 3.3.2 of Technical Specification 3.3.1, "Reactor Protective Instrumentation Response Times". The reason for this change is to ensure that the response times associated with the Core Protection Calculator (CPC) calculation of a low Departure from Nuclear Boiling Ratio (DNBR), high Local Power Density (LPD) or low reactor coolant pump shaft speed reactor trip are consistent with the values used in the Cycle 2 safety analysis. The current values of the subject response times represent the conservatively long delay times that had to be assumed for the Cycle 1 safety analysis since plant specific measurements were not available. They were adequate to satisfy the acceptance criteria for low DNBR and high LPD during the limiting transients that were analyzed for Cycle 1.

The proposed CPC-related response times for Cycle 2 would be shorter (i.e., faster), than those used for Cycle 1. These values have been justified by the Cycle 2 safety analysis and are well within the actual response times measured prior to and during Cycle 1. Although these changes are not required for all the instruments shown in the proposed change to Table 3.3-2, the licensee has requested the changes at this time to eliminate unnecessary conservatisms in anticipation of potentially less favorable core parameters in future cycles.

The proposed increase in the hot and cold leg resistance temperature detector (RTD) response times is requested to account for the potential degradation of the RTD response times that have been observed at other plants. This proposed change will increase the likelihood that field measurements made on RTD response times will satisfy the Technical Specifications for Cycle 2 and future cycles. In addition, the footnote labeled "***" which follows Table 3.3.2 has been revised. The actual response time testing of these instruments in the field includes the time delay associated with the opening of the reactor trip breakers; hence, the footnote has been revised to reflect this. The Cycle 2 safety analysis was performed with the proposed response times discussed above; and the less favorable core parameters that result from an 18-month fuel cycle, and resulted in all applicable acceptance criteria being satisfied.

Basis for proposed no significant hazards consideration determination: The NRC staff proposes to determine that the proposed changes do not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of any accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in the margin of safety. The basis for this proposed finding is given below.

(1) The anticipated operational occurrences (AOO's) and accidents that require the CPCS to respond with shorter (faster) response times than those listed in the current Technical Specification 3.3.1 (Table 3.3-2) are: (1) The loss of load from one steam generator (i.e., spurious closure of a main steam isolation valve), which is dependent upon the maximum response time of the cold leg temperature instrumentation and internal processing of that signal by the CPC's; (2) the CEA withdrawal and steam line break, which are dependent upon the maximum response times of the neutron flux power input from the ex-core detectors; and (3) the loss of flow, which is dependent upon the maximum response time of the reactor coolant pump shaft speed signals. These events were analyzed using response times consistent with the proposed change to Table 3.3-2 and the less favorable Cycle 2 core parameters during the Cycle 2 safety analysis. The results of these analyses are presented in Section 7 of the Reload Analysis Report and show that the events are either bounded by the Cycle 1 safety analysis or they are within the acceptance criteria specified by the appropriate sections of the NRC Standard Review Plan. Thus, the proposed changes will not significantly increase the probability or consequences of any accident previously evaluated;

(2) The proposed changes are primarily a result of changes in the Cycle 2 core parameters and the subsequent reevaluation of the limiting AOO's. There has been no physical change to plant systems, structures or components. The only change to plant procedures will be a tightening of the acceptance criteria that must be satisfied when performing surveillance testing to verify the response times associated with internal CPC processing. Thus, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The intent of Table 3.3-2 is to ensure that the appropriate Engineered Safety Feature Actuation and/or reactor trip, which is associated with each protection system channel, is completed within the time limit assumed in the safety analysis. In this case, the response times assumed for the Cycle 2 safety analysis were somewhat faster than those used in the Cycle 1 analysis. Thus, in order to ensure the Cycle 2 analysis is valid, the actual response times must be less than or equal to the proposed change to Table 3.3-2. Since the Cycle 2 safety analysis has shown acceptable results using the response times listed in the proposed change to Table 3.3-2, there will not be a significant reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

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NRC Project Director: George W. Knighton.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of Amendment Request: October 1, 1986.

Description of Amendment Request: This is a request to revise Technical Specification B3/4.1.3 and 3.1.3.6, "Movable Control Assemblies" and "Regulating CEA Insertion Limits", respectively.

Technical Specification 3.1.3.6 imposes limits on the allowable position of the regulating Control Element Assembly (CEA) groups and on the allowable duration within a given position range. The CEA insertion limits are given by Figure 3.1-2. The proposed change will increase the maximum allowable insertion of Group 6 by 7.5 inches during long term steady state operation. It would also reduce the allowable insertion during transient operation for Groups 5 and 6 above 20%

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power. Between zero and 20% power, insertion of Group 4 would be limited to 60 inches.

Technical Specification 3.1.3.6 provides protection against a CEA ejection event. During such an event, limits are generally placed on how far CEA's may be inserted into the core in order to limit the event consequences—i.e., the greater the insertion, the larger the positive reactivity addition during a rod ejection. Because of the slightly higher fuel enrichments for Cycle 2, a slight increase in ejected rod reactivity would be expected in comparison to Cycle 1. The proposed change to Figure 3.1–2 will modify the insertion limits with respect to Cycle 1 to ensure that the consequences of the Cycle 2 CEA ejection are bounded by the Cycle 1 analysis presented in the FSAR.

Axial Shape Index (ASI). control is necessary during low power operation. ASI control can be provided by maneuvering Groups 5 and 6 essentially tip-to-tip within the limits established by the proposed change to Figure 3.1–2. An additional statement is proposed to be included in the Bases, B3/4.1.3 to clarify that this operation is permissible, and that proper protection against sequence error is provided for by the Core Protection Calculators.

Basis for proposed no significant hazards consideration determination: The NRC staff proposes to determine that the proposed changes do not involve a significant hazards consideration. As required by the criteria of 10 CFR 50.92(c), a proposed change to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of any accident previously evaluated; or (2) Create the possibility or a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in the margin of safety. The basis for this proposed finding is given below.

(1) The proposed change to Figure 3.1–2 allows less flexibility during operating at and during approach to steady state full power operation. The Cycle 1 Safety Analysis remains the bounding analysis for the CEA ejection event. Therefore, there will be no significant increase in the probability or consequences of any accident previously evaluated. The proposed change to the Bases is a statement of clarification for operation under analyzed conditions.

(2) The proposed change to the operating restrictions on CEA insertion limits remains bounded by the Cycle 1 analysis and, therefore, does not create any new fault or accident path. As such, it cannot create a new or different kind of accident than any previously evaluated. The statement in the Bases provides clarification for operation under analyzed conditions.

(3) The proposed change of Figure 3.1–2 ensures that the Cycle 2 CEA ejection event is less limiting than the Cycle 1 event. Therefore, the proposed change does not involve a significant reduction in a margin of safety. As clarification, the statement in the Bases has no impact on any safety margins.

The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 77511) of amendments that are considered not likely to involve significant hazards considerations. Example (iii) relates to a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the Technical Specifications, that the analytical methods used to demonstrate conformance with the Technical Specifications and regulations are not significantly changed, and that the NRC has previously found such methods acceptable.

The proposed change to Figure 3.1.2 is similar to Example (iii), since this change directly results from the Waterford 3 Cycle 2 reload, and is bounded by the Cycle 1 CEA Ejection Analysis.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

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NRC Project Director: George W. Knighton.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 1, 1986.

Description of amendment request: The proposed changes would revise ACTION statement "b" to Technical Specification 3.3.3.10, "Radioactive Effluent Monitoring Instrumentation", and ACTION statements 28, 29 and 30 to Table 3.3–12 of that same Specification. The reason for the proposed changes is to clarify the wording of the ACTION statements such that there is no confusion as to what actions must be taken when the minimum channels OPERABLE requirements of Table 3.3–12 are not satisfied.

ACTION statement "b" will be clarified by providing a 30-day time period in which to restore any required monitoring instrumentation (listed in Table 3.3–12) to OPERABLE status or, if unsuccessful, to explain in the next Semi-annual Effluent Release Report why the instrument was not restored in the specified time. Additional clarification will be added by including a statement that allows releases to continue as long as the specified ACTIONS of Table 3.3–12 are continued. This change is consistent with the proposed Revision 3 to NUREG–0472 (Standard Radiological. Effluent Technical Specifications for PWRs) in which the intent is to eliminate the need for a Licensee Event Report (LER) simply because the required instrumentation could not be restored to OPERABLE status within the specified time. The concentration of radionuclides released will remain within the limits specified in Technical Specification 3.11.1 and 10 CFR Part 20 Appendix B because the proposed changes require that the ACTIONS specified in Table 3.3–12 prior to and during any liquid effluent releases are continued. This will ensure that the levels of radioactive materials in bodies of water in unrestricted areas will not result in exposures to any member of the general public in excess of 3 millirems to the total body or 10 millirems to any organ. This is in accordance with 10 CFR 50 Appendix I, Section II.A.

ACTION statements 28, 29 and 30 to Table 3.3–12 will be clarified by removing any reference to a specified time period and replacing it with a provision that best efforts be made to repair the required instrumentation. In addition, the last statement of ACTION statement 28 will be deleted since it is already clear that releases through a specific pathway may not occur if the two conditions of this ACTION statement can not be satisfied.

This change is being proposed in order to make the ACTION statements of Table 3.3–12 consistent with the proposed change to ACTION statement "b". That is, since the proposed change to ACTION statement "b" will define the time limits and reporting requirements that must be adhered to whenever the minimum number of channels OPERABLE is less than that required by Table 3.3–12, there is no need to repeat them.

All proposed changes meet the intent of 10 CFR Part 50, Appendix A General Design Criteria 60, 63 and 64, which require a means to control and monitor all radiological storage areas and releases to the environment during normal operation, including anticipated operational occurrences and postulated accidents.

Basis for proposed no significant hazards consideration determination: The NRC staff proposes that the proposed changes do not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of any accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) 1nvolve a significant reduction in the margin of safety. The basis for this proposed finding is given below.

(1) The proposed changes to the technical specifications are administrative and do not affect the manner in which the plant is operated. The changes are meant to define the time limits and reporting requirements that must be adhered to whenever the minimum channels OPERABLE requirements of Table 3.3–12 are not satisfied and therefore, do not have an effect on any of the accident analyses. Thus, the proposed changes will not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) The proposed changes are meant to clarify the ACTION statements of Technical Specification 3.3.3.10 and do not make any changes to the facility or to the operating procedures. Since the liquid radiological effluents have no new pathways to the environment, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The intent of the technical specification is to comply with General Design Criteria 60, 63 and 64 by requiring a means to monitor and control radiological storage areas and releases to the environment. Normally this is accomplished using on-line instrumentation; however, in the event that the required instruments are not in service, compliance with these criteria is ensured by following the appropriate ACTION statements. Since the proposed changes to the ACTION statements are administrative, the proposed changes do not involve a significant reduction in the margin of safety.

As the changes requested by the licensee's October 1, 1986 submittal satisfy the criteria of 50.92, it is concluded that: (1) The proposed changes do not constitute a significant hazards consideration as defined by 10 CFR 50.92; (2) there is reasonable assurance that the health and safety of the public will not be endangered by the proposed changes; and (3) this action will not result in a condition which significantly alters the impact of the station on the environment as described in the NRC Final Environmental Statement.

Local public document room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Attorney for Licensee: Mr. Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037.

NRC Project Director: George W. Knighton.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of amendment request: April 3, 1981, as supplemented April 10, 1984 and September 12, 1985.

Description of amendment request: The amendment would revise the testing requirements for hydraulic shock suppressors (snubbers) and add requirements for mechanical snubber operability and testing. The proposed changes were made in response to an NRC request to upgrade the testing requirements for all safety-related snubbers to ensure a higher degree of operability. The changes involve: Clarifying the frequency for visual inspections, stating the requirements for functional testing of snubbers which visually appear inoperable, the inclusion of a formula for the selection of representative sample sizes, the clarifying of the testing acceptance criteria, and revising the method of snubber listing to incorporate more information.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (51 FR 7751). The examples of actions involving no significant hazards considerations include changes that constitute additional limitations or restrictions in the Technical Specifications. The proposed changes revise sections of the Technical Specifications related to the hydraulic snubbers to clarify requirements and include additional testing and incorporate both operability and testing requirements for mechanical snubbers. The requested changes upgrade the requirements for hydraulic snubbers and add requirements for mechanical snubbers.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed change adds additional and more restrictive limiting conditions for operation while the reactor is shut down and decay heat is being removed by the residual heat removal (RHR) system. The change provides the same seismic protection for the reactor cooling systems during shut down conditions as is provided during power operation. The remaining changes enclosed are administrative in nature and do not affect the design or operation of the Maine Yankee plant. Based on the above, the staff proposes to determine that the proposed amendment would involve no significant hazards considerations.

Local Public Document Room location: Wiscasset Public Library, High Street, Wiscasset, Maine.

Attorney for licensee: J. A. Ritscher, Esq., Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02210.

NRC Project Director: Ashok C. Thadani.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: October 16, 1985.

Description of amendment request: The proposed amendment would change Technical Specification 3.6 which pertains to the requirement for emergency diesel generator testing in the event that any component of one

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train of the emergency core cooling system (ECCS) becomes inoperable. This proposed amendment to the Technical Specification would delete that requirement.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazard exists as stated in 10 CFR 50.92(2). 10 CFR 50.91 requires that at the time a licensee requests an amendment it must provide to the Commission its analysis, using the standards in 10 CFR 50.92, about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the following analysis has been performed by the licensee:

> We have performed an evaluation in accordance with 10 CFR 50.91(a)(1) to determine whether this proposed change involves a significant hazards consideration as defined by 10 CFR 50.92. A summary of our evaluation follows.
>
> The accidents analyzed in the Maine Yankee Final Safety Analysis Report (FSAR) were evaluated. It was concluded that the proposed change would not cause a significant increase in the probability or consequences of the accidents analyzed in the FSAR. In fact, based on industry data and the Staff's evaluation in [Generic Letter 84–15], limiting the number of cold starts as proposed helps ensure higher diesel generator reliability by eliminating excessive testing that degrades diesel engines. The consequences of a loss of coolant accident are not affected by the proposed change since the reliability of the diesel generators continues to be adequately demonstrated through required testing.
>
> The proposed change does not create the possibility of a different kind of accident from any previously analyzed since the elimination of excessive diesel generator testing minimizes diesel engine degradation.
>
> Furthermore, the requirement to test, within two hours, the remaining ECCS component subsystem if the respective subsystem in the redundant train becomes inoperable and the inoperable system restored to operable status within 72 hours of discovering the nonconformance, maintains the margin of safety necessary to ensure that a reliable source of cooling water exists to mitigate the most limiting loss of coolant accident.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee in that; (1) The proposed change would not cause a significant increase in the probability or consequences of the accidents which were analyzed in the FSAR and the consequences of a loss of coolant accident are not affected by the proposed change because the reliability of the diesel generators continues to be demonstrated by other required testing; (2) the proposed change does not create the possibility of a different kind of accident from any previously analyzed because the elimination of some diesel generator testing lessens diesel engine degradation; and (3) the requirements to test, within 2 hours, the remaining ECCS component subsystem if the respective subsystem in the redundant train becomes inoperable, and to restore the inoperable system to operable status within 72 hours of discovery of the nonconformance, maintain the margin of safety which is necessary to ensure that a reliable source of cooling water exists to mitigate the most limiting loss of coolant accident. Therefore, based on this review, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Wiscasset Public Library, High Street, Wiscasset, Maine.

Attorney for licensee: J.A. Ritscher, Esq., Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02210.

NRC Project Director: Ashok C. Thadani.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: July 31, 1979, as amended on June 4, 1984, and September 15, 1986.

Description of amendment request: The proposed change in the Technical Specifications (TSs) would revise the licensee's earlier amendment requests of June 4, 1984 and July 31, 1979. The changes submitted on September 15, 1986 were requested as a result of the NRC staff's review of the licensee's earlier submittals. The licensee's original response of July 31, 1979 was in response to a NRC request to change the Peach Bottom Technical Specifications (TSs) in the area of containment purging dated November 29, 1978. The proposed changes include the following: (1) incorporation of a 90-hour purging restriction and definitions of conditions requiring no justification for purging, (2) limitations on the use of only one of the Standby Gas Treatment System (SGTS) trains during the power, startup, and hot shutdown, (3) operability requirements for SGTS whenever the purge system is in use, (4) additional action statement and surveillance requirements for the containment purge/vent isolation valves, and (5) correction of valve and penetration numbers involving purge/vent valves.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for determining whether license amendments involve significant hazards considerations by providing certain examples which were published in the **Federal Register** on March 6, 1986 (51 FR 7751). One of the examples (ii) of an action involving no significant hazards considerations is a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications; for example, more stringent surveillance requirement. The changes proposed by this amendment request fit this example. The proposed amendment would add limits on the number of hours permitted for purging operations to 90-hours per year. The current TSs have no time limit on purging operations. The other changes identified above would also add additional limitations or requirements not presently found in the Peach Bottom TSs, and, therefore, constitute additional restrictions and controls. The above changes are consistent with example (ii) of the Commission's guidance discussed above.

On the basis of the above, the Commission has made a proposed determination that the amendment application does not involve a significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Attorney for Licensee: Troy B. Conner, Jr., Esquire, 1747 Pennsylvania Avenue, NW. Washington, DC 20006.

NRC Project Director: Daniel R. Muller.

Portland General Electric Company, et al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: January 30, 1984, as revised and supplemented September 23, 1985, July 3, August 22, and October 17, 1986.

Description of amendment request: The proposed amendment to the Technical Specification (TS) would make numerous changes to the reactor trip system (RTS) and engineered safety features actuation system (ESFAS) instrumentation requirements. More specifically:

(a) Operating License Section 2.C(3) and Specifications 2.2.1 and 3/4.3.1 would be editorially revised to remove unnecessary numerals from the

Specification numbers, and correct the referencing of Specification 3/4.3.2.

(b) Specification 2.2.1 Bases for the following instrumentation, would be editorially revised to clarify their function: Intermediate and Source Range Neutron Flux, Pressurizer Pressure and Water Level, Loss of Flow, Reactor Coolant Pump Buses, Turbine Trip and Auto Safety Injection Input.

Specification 2.2.1 Bases for the following instrumentation would be editorially revised to clarify the descriptions to be more consistent with their design and accident analysis assumptions: Power Range Neutron Flux, Steam Flow/Feedwater Flow Mismatch, Low Steam Generator (SG) Water Level, and Reactor Coolant Pump (RCP) Breaker Position.

(c) Specification 3.0.3 would be revised to reflect the time required to achieve a particular MODE of operation, consistent with that stated in the Westinghouse Standard Technical Specifications (STS).

(d) Table 3.3–1 Reactor Trip System Instrumentation would be revised to clarify the Action Statements, and to provide consistency with Action Statements stated in the STS and model technical specifications provided by the staff in a letter to the Westinghouse Owners Group (WOG) dated July 24, 1985; would revise and clarify the Action Statement for the following Functional Units to be consistent with the STS: Overtemperature delta-T, Overpower delta-T, Pressurizer Pressure-Low and Pressurizer Level-High Trips, and RCP Breaker Position Trip; would invoke "Limiting. Condition for Operation (LCO) 3.0.4 not applicable" for the following Functional Units, to be consistent with the STS: Power Range Neutron Flux Trips, Pressurizer Pressure-High, Loss of Flow, SG Level-Low Low, Steam Flow/Feedwater Flow Mismatch Coincident with Low SG Level, and RCP Trips; would provide minor editorial clarifications for Auto Safety Injection Input, Reactor Trip Breakers and Automatic Trip Logic, Turbine Trip-Turbine Stop Valve Closure, P–13 Interlock, and surveillance requirements for those RTS channels which are shared with ESFAS; and would revise the Applicable MODES for Manual Reactor Trip, Intermediate Range Neutron Flux, and Source Range Neutron Flux, to be consistent with the STS.

(e) Table 3.3–2 Reactor Trip System Response Times would be editorially revised to relocate all "not applicable" trips from the body of the Table, into a new Note. Also, the Overtemperature delta-T response time would be revised to more accurately reflect the value associated with the FSAR accident analysis.

(f) Table 4.3–1, Reactor Trip System Instrumentation Surveillance Requirements would be revised to change the Channel Functional Test from monthly to quarterly; Two footnotes would be added to clarify the change in surveillance frequency; the channel functional test requirements and MODE applicability for the Manual Reactor Trip would be revised to agree with the STS; the Channel Functional Test requirement for Auto Safety Injection Input would be revised to agree with the STS; the Channel Calibration requirements for Power Range Neutron Flux and Rates, Intermediate, and Source Range Neutron Flux would be revised to more closely agree with the STS. Also, Specification 4.0.4 would be made "not applicable" for Source Range Neutron Flux; the applicable MODES would be revised for the following Functional Units to make them consistent with the revised Table 3.3–1: Pressurizer Pressure-Low, Pressurizer Pressure-High, Pressurizer Water Level-High, Loss of Flow-Single Loop, Loss of Flow-Two Loops, SG Water Level Low-Low, Steam Flow/Feedwater Flow Mismatch and Low SG Water Level, Undervoltage-RCP, Underfrequency-RCP, and RCP Breaker Position Trip; the applicable MODES for the Reactor Trip Breaker and Automatic Trip Logic would be revised to agree with the STS. In addition, a note would be added which would clarify the source of the trip input; and the notation will be revised to more closely agree with the STS and with staff guidance, and to maintain consistency with the revised Table 3.3–1.

(g) TS 3/4.3.2 will be editorially revised to remove unnecessary numerals from the specification number.

(h) Tables 3.3–3, 3.3–4, 3.3–5 and 4.3–2 would be reformatted to specify requirements for the actuation logic first, followed by the inputs to the logic.

(i) Table 3.3–3, ESFAS Instrumentation would be revised to reflect reworded Action Statements which would be more consistent with the STS, and editorial changes which would improve readability. In addition, notes are added or revised to clarify the applicability of MODES, Action Statements, LCO 3.0.4, and clarification of the Safety Injection Function; the Action Statements for the Functional Units Injection and Containment Spray would be revised to maintain consistency with TS Specification 3.6.3.1; Containment Isolation will be revised to remove ambiguity of applicable circuits; Containment Ventilation Isolation will be revised to reflect the appropriate testing requirements; the applicability of MODES, LCO 3.0.4, and Action Statements for Steam Line Isolation, Turbine Trip and Feedwater Isolation, and Auxiliary Feedwater Pumps Start would be revised to agree with the STS; the description of the P–12 ESF Interlock would be revised to correct an error in the Condition and Setpoint; and a description of the P–4 and P–14 interlocks would be added for clarity and consistency.

(j) Table 3.3–4 would be editorially revised to be consistent with Table 3.3–3, and to clarify the requirements for Manual Initiation and Actuation Logic.

(k) Table 3.3–5 would be editorially revised to improve the clarity of the Table.

(l) Table 4.3–2 would be revised to reflect changes to Channel Functional Test frequencies and applicable modes which surveillance is required, that are consistent with the STS; and would clarify the Table by providing notes of explanation and by revising the Table to maintain consistency with the revised Table 3.3–3.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (i) Involve a significant increase in the probability of consequences of an accident previously evaluated; or (ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) Involve a significant reduction in a margin of safety. The Commission has also provided guidance concerning the application of these standards by providing certain examples (March 6, 1986, 51 FR 7751).

Examples of amendments that are considered not likely to involve significant hazards considerations are "Example (i) A purely administrative change to the technical specifications: for example a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature," and "Example (vi) a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. . . ."

The proposed changes to: Operating License Section 2.C(3), Specifications

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2.2.1, 3/4.3.1 and 3/4.3.2; Specification 2.2.1 Bases; Table 3.3–1 as related to editorial clarifications for Auto Safety Injection Input, Reactor Trip Breakers and Automatic Trip Logic, Turbine Trip-Turbine Stop valve closure, P–13 Interlock, and surveillance requirements for those RTS channels which are shared with ESFAS; Table 3.3–2; Table 4.3–1 as related to the clarification of change in surveillance frequency; Table 3.3–3 as related to reformatting, the addition or revision of Notes pertaining to the applicability of MODES, Action Statements, and LCO 3.0.4, changes for the description of the Safety Injection function, Action Statements for the Functional Units Safety Injection and Containments Spray, and changes to the description of Containment Isolation and Containment Ventilation Isolation, clarification of the P–12 ESF Interlock, and description of the P–4 and P–14 interlocks; Table 3.3–4; Table 3.3–5; and Table 4.3–2 as related to providing notes of explanation, and revisions to maintain consistency with the revised Table 3.3–3; are encompassed by Example (i) since all of the changes either provide editionial consistency within the TS, provide clarification or correct errors within the TS. As such the NRC staff proposes to determine that these requested changes do not involve a significant hazards considerations.

The remaining changes to: Specification 3.0.3, Table 3.3–1, Table 3.3–2, Table 3.3–3, Table 4.3–1 and Table 4.3–2 fall into the category of changes made to conform to the Westinghouse STS, or with WCAP–10271 "Evaluation of Surveillance Frequencies and Out-of-Service Times for the Reactor Protection Instrumentation System." The staff, in its evaluation of the STS Rev. 4 prior to its publication, reviewed the contents of the Technical Specification. The issuance of the Westinghouse STS Rev. 4 reflects the staff's conclusion that the STS revisions were acceptable, and that the basis for the acceptability was that the changes were clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. By letters dated February 21, 1985, and July 24, 1985, the staff issued its Safety Evaluation regarding the specified acceptability of WCAP–10271, and provided model technical specifications which were considered acceptable to the staff.

The licensee's remaining proposed TS changes are encompassed by Example (vi) since the proposed changes may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but yet the results of the changes are clearly within all acceptable criteria as specified in the Standard Review Plan because the proposed changes are consistent with those which have been previously determined to be acceptable by the staff. As such, the NRC staff proposes to determine that these requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Multnomah County Library, 801 SW 10th Avenue, Portland, Oregon.

Attorney for licensee: J.W. Durham, Senior Vice President, Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204.

NRC Project Director: Steven A. Varga.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: December 6, 1984, as supplemented October 20, 1986.

Description of amendment request: The proposed amendment requests a revision to the Technical Specifications (TS) pertaining to the following TMI Action Plan Items set forth in NUREG–0737, "Clarification of TMI Action Plan Requirements" and as requested by the staff's Generic Letters 83–02 and 83–36.

I.A.1.3.1 Limit Overtime
I.A.1.3.2 Shift Manning
II.B.3 Postaccident Sampling Capability
II.F.1.1 Noble Gas Effluent Monitor
II.F.1.2 Sampling and Analysis of Plant Effluents
II.F.1.3 Containment High-Range Radiation Monitor
II.F.1.4 Containment Pressure Monitor
II.F.1.5 Containment Water Level Monitor
II.F.1.6 Containment Hydrogen Monitor
II.K.3.3 Reporting Safety Valve and Relief Valve Failures and Challenges
II.K.3.13 Reactor Core Isolation Cooling. (RCIC) Restart
II.K.3.22 RCIC Suction
II.E.4.2.7 Radiation Signal on Purge Valves

The proposed TS changes corresponding to the above items are as follows:

(a) I.A.1.3.1—Limit Overtime: The proposed changes define the limits on overtime work by plant staff members performing safety-related functions in accordance with the NRC Policy Statement on working hours (Generic Letter 82–12).

(b) I.A.1.3.2—Shift Manning: The proposed changes add an additional Senior Reactor Operator (SRO) to the shift crew to satisfy the minimum shift complement requirement.

(c) II.B.3—Post Accident Sampling: The proposed changes establish a program which requires implementation and maintenance of a post accident sampling capability.

(d) II.F.1.1—Noble Gas Effluent Monitor: The proposed changes define the instrumentation and calibration requirements for the noble gas effluent monitors and actions required when these operational limits are not met.

(e) II.F.1.2—Sampling and Analysis of Plant Effluents: The proposed changes establish a program which requires implementation and maintenance of a post accident sampling capability.

(f) II.F.1.3—Containment High-Range Monitor: The proposed changes define the instrumentation and calibration requirements for the containment high range monitor and actions required when these operational limits are not met.

(g) II.F.1.4—Containment Pressure Monitor: The proposed changes define the instrumentation and calibration requirements for the containment pressure monitor and also actions required when these operational limits are not met.

(h) II.F.1.5—Containment Water Level Monitor: The proposed changes define the instrumentation and calibration requirements for the containment water level monitor and also actions required when these operational limits are not met.

(i) II.F.1.6—Containment Hydrogen Monitor: The proposed changes provide limiting conditions for operation (LCOl and surveillance requirements for the Hydrogen/Oxygen Monitor.

(j) II.K.3.3—Reporting Safety Valve and Relief Valve Failures and Challenges: The proposed changes incorporate the requirement that an annual report of safety/relief valve challenges be submitted.

(k) II.K.3.13—RCIC Restart: The proposed changes incorporate the requirement for automatic restart of the RCIC system on low-low reactor water level following trip of the system on high reactor water level. Associated surveillance requirements are also proposed.

(l) II.K.3.22—RCIC Suction: The proposed changes incorporate the requirement for automatic switchover of the RCIC system suction from the condensate storage tank to the suppression pool when the condensate storage tank level is low. Associated surveillance requirements are also proposed.

(m) II.E.4.2.7—Radiation Signal on Purge Valves: The proposed changes incorporate the requirement that containment purge and vent isolation valves must close on a high radiation signal following a release of radioactive materials to the containment.

In addition to the TS changes described above, the proposed amendment adds a logic system functional test to the TS for the RCIC system and includes miscellaneous editorial changes which clarify and correct the TS.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7751) of actions likely to involve no significant hazards considerations. One of the examples relates to: "(i) A purely administrative change to technical specifications: For example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." Another example (ii) of actions involving no significant hazards consideration is a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications. The modifications to Technical Specifications in response to the above TMI Action Items requirements, as well as the addition of a logic system functional test for the RCIC system, constitute additional limitations, restrictions or controls not presently included in the Technical Specifications. Therefore, these proposed changes are similar to the Commission's example (ii) above.

The various editorial revisions contained in the proposed amendment include corrections of typographical errors, changes in nomenclature, and other changes intended to achieve consistency within the Technical Specifications. Therefore, these changes are similar to the Commission's example (i) above. Therefore, since the application for amendment involves proposed changes similar to examples for which no significant hazards consideration exist, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Attorney for licensee: Mr. Charles M. Pratt, Assistant General Counsel, Power Authority of the State of New York, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Daniel R. Muller.

Power Authority of the State of New York, Docket No. 50-333, James A FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: October 8, 1986.

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) to eliminate operability and testing requirements for the recirculation pump discharge bypass valves. These two valves and their associated piping are to be removed during an upcoming refueling outage.

General Electric, the reactor manufacturer, has recommended that certain BWRs, including FitzPatrick, remove the recirculation bypass valves and lines. Operating experience has shown that these valves are not required for normal or emergency operation of the recirculation system. Additionally, intergranular stress corrosion cracking (IGSCC) in the recirculation bypass lines has been determined to be a generic problem in BWRs similar in design to FitzPatrick. Removal of these lines will eliminate this source of potential cracking. Once the bypass valves are removed, the corresponding TS regarding operability and surveillance will no longer be needed.

Basis for proposed no significant hazards consideration determination: In accordance with the Commission's Regulations in 10 CFR 50.92, the Commission has made a determination that the proposed amendment involves no significant hazards considerations. To make this determination the staff must establish that operation in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The transient and accident analyses described in the Final Safety Analysis Report (FSAR) assume that either the recirculation discharge bypass valves are initially closed, or else close upon accident initiation. Removal of the bypass line and valves is consistent with these assumptions and therefore, does not increase the probability or consequences of an accident previously evaluated. Because, the bypass valves are not required for either normal or emergency operation of the recirculation system, removal of the bypass valves and lines will not introduce any new modes of failure. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident. Removal of the bypass piping will eliminate the possibility of IGSCC in these lines and thus will provide greater assurance of maintaining the integrity of the reactor coolant boundary. Therefore, the margin of safety will be increased rather than reduced.

Because, it has been established that plant operation in accordance with the proposed amendment would satisfy the three above stated criteria the staff has, therefore, made a proposed determination that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Attorney for licensee: Mr. Charles M. Pratt, Assistant General Counsel, Power Authority of the State of New York, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Daniel R. Muller.

Public Service Electric & Gas Company, Docket 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: September 12, 1986.

Description of amendment request: In a letter dated September 12, 1986, supplemented and revised by letter dated September 22, 1986, the licensee requested an amendment to Hope Creek Generating Station Technical Specifications (TS) 3/4.3.7.9 and 3/4.3.7.10. Technical Specifications 3/4.3.7.9 and 3/4.3.7.10 address radioactive liquid effluent monitoring instrumentation and radioactive gaseous effluent monitoring instrumentation, respectively.

The ACTION statements of these TS require that with less than the minimum number of effluent monitoring instrumentation channels operable, effluent releases via the pathway may continue for up to 30 days, provided that alternative measurement techniques are employed. After 30 days, the TS calls for terminating releases, requiring the plant to be shut down. The licensee's requested TS amendment would permit releases via the pathway indefinitely, provided that alternative techniques are employed. The licensee's proposed TS amendment is consistent with the intent of the TS, namely that alternative monitoring techniques are used to assess the effluents should the primary means not be available. Additionally,

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the proposed TS change would permit the licensee to change the effluent monitoring instrumentation channel Alarm/Trip setpoint to an acceptably conservative value, should the setpoint be discovered to be nonconservative. In all cases, should the instrumentation be inoperable for longer than 30 days, an explanation for its inoperability will be included in the next Semiannual Radioactive Effluent Release Report.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee responded to these standards as follows:

(1) This change in effluent monitoring instrumentation technical specifications allows the continued use of an effluent pathway while an instrument that monitors that pathway may be inoperable. Present wording of the specification allows continued use of the affected pathway for up to 30 days if prescribed sampling and analyses are performed and requires a report if the inoperable instrumentation is not restored in that time. Allowing continued use of the affected pathway beyond 30 days will not significantly increase the probability or consequences of an accident previously evaluated since prescribed sampling and analysis of any discharges via that pathway would be continued while the monitoring instrumentation is inoperable.

(2) The possibility for any previously unanalyzed accident is not created by this change since there is no physical change to any plant fission product boundary, safeguards equipment, or any procedure.

(3) While there may be some reduction in the plant's ability to make continuous, instantaneous evaluations of discharge levels with a monitoring instrument inoperable beyond the present 30 day limit, there are sampling and calculational methods available for making those determinations which provide adequate assurance that no margin of safety is significantly reduced by implementing this change.

Based on the above discussion, the staff agrees with the licensee's findings of no significant hazards consideration associated with the proposed amendment. Accordingly, the staff proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 South Broadway, Pennsville, New Jersey 08070.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: E. Adensam.

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: October 15, 1986.

Description of amendment request: The review and audit section (6.7) of the technical specifications (TS) requires the licensee to have an independent audit and review group known as the "Nuclear Safety Audit and Review Board (NSARB)." The NSARB provides an independent review and audit of activities dealing with plant operations, engineering design changes, radiological safety, and quality assurance practices. The licensee proposes to increase the membership of the plant staff to the NSARB from two to three members and to allow the three members to vote. A restriction would be imposed to the quorum requirements for the board to assure that plant personnel would not make up a majority of the board members.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of standards for determining if a no significant hazards consideration exists by providing examples of amendments that are considered not likely to involve significant hazards consideration (51 FR 7751). One of these examples (i) is a purely administrative change to technical specifications: For example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. The proposed change consists of clarification and correction of errors due to changes in requirements for an independent review committee specified in ANSI/ANS 3.2 (1982); a standard found acceptable by the Commission. The proposed change will strengthen the review capability of the board by involving experienced members of the plant staff while insuring the independence of the board consistent with the provision of ANSI/ANS 3.2. The proposed change is administrative in nature and in no way relaxes the intent of the TS or reduces the margin of safety. As a consequence of the above, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Attorney for licensee: Harry Voigt, LeBoeuf, Lamb, Leiby and McRae, Suite 1100, 1333 New Hampshire, NW., Washington, DC 20036.

NRC Project Director: George E. Lear, Director.

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: October 24, 1986.

Description of amendment request: The licensee plans to replace the Analog Rod Position Indication (ARPI) system with a Westinghouse Microprocessor Rod Position Indication (MRPI) system. The ARPI system is being replaced because the system requires a significant effort to maintain alignments, the aging system is prone to component failures, and spare parts are difficult to obtain. In addition, the replacement of the ARPI system will resolve human engineering discrepancies identified during the detailed control room design review; a licensing action of NUREG-0737 (Item 1.D.1.1).

As a result of the replacement of the ARPI system with the MRPI system, the licensee has proposed changes to the technical specification (TS) that (1) replaces the references to the ARPI system with references to the MRPI system, (2) clarifies the requirements related to the indicated positions versus demand positions, (3) allows the use of the process plant computer system as a backup to the MRPI cathode-ray tube (CRT) if the CRT should become inoperable, (4) remove the calibration requirement which is no longer necessary when the new system is operational, and (5) modify the rod movement test.

Basis for proposed no significant hazards consideration determination: This proposed change does not involve a significant hazards consideration because operation of R. E. Ginna Nuclear Power Plant in accordance with this change would not:

(1) Significantly increase the probability or consequences of an accident previously evaluated. The

MRPI system will indicate rod misalignment that bounds all potential accidents previously analyzed. The MRPI system has a faster response time than the existing ARPI system which tends to increase the level of safety.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The MRPI system provides the same interfaces as the existing ARPI system which results in having the same effects as the existing system during transients as well as during previously analyzed accident conditions. Furthermore, failure of the MRPI system causes loss of indication which is consistent with a failure of the existing system.

(3) Significantly reduce the margin of safety as defined in the basis for any technical specification. There is no reduction in the margin of safety since the existing bounds used in the safety analysis for the ARPI system are directly applicable to the MRPI system.

Based on our evaluation of the proposed change as summarized above, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Attorney for licensee: Harry Voigt, LeBoeuf, Lamb, Leiby and McRae, Suite 1100, 1333 New Hampshire, NW., Washington, DC 20036.

NRC Project Director: George E. Lear, Director.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: October 8, 1986.

Description of amendment request: The proposed amendment would remove from the Technical Specifications (TSs) the tabular listing of snubbers, as suggested. by Generic Letter 84-13 dated May 3, 1984.

Basis for proposed no significant hazards consideration determination: Generic Letter (GL) 84-13, May 3, 1984, "Technical Specifications for Snubbers" concludes that the tabular listing of snubbers included in Technical Specifications may be deleted by any licensee submitting a license amendment.

The removal of the tabular listing of snubbers from the Technical Specifications is of an administrative nature and does not in itself affect plant design or operation, involve modifications to plant equipment, or make changes that would affect plant safety analyses. Snubber operability and surveillance standards will remain in the Specifications. As part of the proposed amendment, the licensee has revised the wording in the snubber-related sections to conform to the Standard Technical Specifications and to the recommendations contained in GL 84-13. Additionally, the NRC staff has determined that inclusion of snubber listings in Technical Specifications is not necessary because any changes in snubber quantities, types, or locations are controlled by analysis methods approved by the NRC and under the provisions of 10 CFR 50.59 as changes to the facility.

The proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the removal of the snubber listing does not impact the existing snubber operability requirements.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change introduces no new mode of plant operation nor does it require physical modification to the plant.

(3) Involve a significant reduction in the margin of safety because it does not involve changes in plant design or operation or affect plant safety analyses. The purpose of the change is to conform to the NRC guidance in GL 84-13.

Based on the above, the Commission proposes to determine that the application for amendment does not involve a significant hazards consideration.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814.

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813.

NRC Project Director: John F. Stolz.

South Carolina Electric and Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of amendment request: August 2, 1985, supplemented September 11, 1986.

Description of amendment request: The amendment would change the qualification requirement contained in Technical Specification 6.5.3.1.e for individuals responsible for reviews performed in accordance with Technical Specifications 6.5.3.1.a through 6.5.3.1.d. The qualification requirement will become Section 4 of ANSI 18.1, 1971 instead of Section 4.4. This proposed change is being requested to correct inadequacies in the current Technical Specification wording which were identified by the staff during an inspection at the plant.

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (51 FR 7751) of actions likely to involve no significant hazards considerations. One of these, example (ii), involving no significant hazards considerations is ". . . a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement." The proposed change from the qualification requirement of Section 4.4 to all of Section 4 of ANSI 18.1, 1971, is similar to this example.

Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Attorney for licensee: Randolph R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218.

NRC Project Director: Lester S. Rubenstein.

South Carolina Electric and Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of amendment request: August 25, 1986, supplemented October 15, 1986.

Description of amendment request: The licensee has determined that some organization changes are required to enhance managerial accountability of the various groups in the Nuclear Operations Department. In addition, several editorial changes to Technical Specification (TS) Figures 6.2-1 and 6.2-2 are baing made to reflect correct titles and functional alignments. The title of Senior Vice President, Power Operations is changed to Senior Vice President, Nuclear Power, Construction and Production Engineering.

In the Nuclear Services Division, three group manager positions have been combined into two, resulting in greater efficiencies and tighter spans of control. Regulatory and Support Services, and Nuclear Education and Training are combined under one group manager, that of Nuclear Regulatory and

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Developmental Services. This position has the Manager, Nuclear Licensing; Manager Corporate Health Physics and Environmental Programs; Manager, Nuclear Operations Education and Training; and Manager, Nuclear Technical Education and Training reporting to him. There are no changes under Technical Services.

The Quality Services Organization now includes the Procurement Group of the Nuclear Operations Department. The title of Quality Services is changed to Quality and Procurement Services, now headed by a director who has the Manager, Materials and Procurement; Manager, Quality Assurance; and Manager, Quality Control reporting to him.

The Security Organization has been reporting administratively offsite and functionally onsite to the Group Manager, Technical and Support Services. This organization now reports administratively and functionally to Technical and Support Services. The Regulatory Compliance Group will now report offsite to the Manager, Nuclear Licensing in the Nuclear Regulatory and Developmental Services Organization. Functionally, this group will remain at the Station and fully support the Director of Nuclear Plant Operations.

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (51 FR 7751) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the staff has reviewed the licensee's request for the above amendment and determined that should this request be implemented, it will not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because overall commitments and functional capabilities are not reduced, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated because no organizational responsities are being eliminated. Also, it will not (3) involve a significant reduction in a margin of safety because organizational control and accountability are enhanced by these controls. Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Attorney for licensee: Randolph R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218.

NRC Project Director: Lester S. Rubenstein.

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: October 22, 1986.

Description of amendment request: The amendment request withdrew a request dated July 26, 1985, as supplemented December 5, 1985, which was noticed on May 21, 1986 (51 FR 18696). The proposed amendment would revise the Technical Specifications (TSs) to reflect administrative and organizational changes at Toledo Edison and an effort to revise the TSs to be more consistent with Babcock and Wilcox (B&W) Standard TSs, NUREG-0103, Revision 4. These proposed changes include revision of the reporting and advising relationship between the Company Nuclear Review Board (CNRB) and the President and Chief Operating Officer and Senior Vice President, Nuclear; and revision of the composition of the Station Review Board (SRB) to expand the range of expertise and reflect individual and/or group responsibility, organization and title changes. In addition, the proposed amendment would revise several sections of the TSs to be consistent with B&W Standard TSs, and revise organizational position titles and position responsibilities to reflect the current organization.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidelines concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7750). One of these examples (i) of actions involving no significant hazards considerations relates to amendments of a purely administrative change to TSs; for example, a change to achieve consistency throughout the TSs, correction of an error, or a change in nomenclature. The proposed revision concerns changes in position titles to reflect the current organization, and changes to make the TSs consistent with Standard B&W TSs, which match this example of an administrative change to the TSs. Furthermore, since the proposed amendment would not involve a modification to the way the facility is operated or a change to plant equipment, the proposed amendment meets the three criteria, specified in 10 CFR 50.92 and stated earlier in this notice, for not involving a significant hazards consideration.

Therefore, the Commission's staff proposes to determine that the application does not involve a significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: August 26, 1986.

Description of amendment request: By letter dated August 26, 1986, the licensee, Vermont Yankee Nuclear Power Corporation, submitted a proposed license amendment for NRC review and approval which would revise the Vermont Yankee Technical Specifications with respect to certain requirements. These changes would:

(1) Provide actual instrument numbers rather than an undefined number, and make the trip setting the same for common instruments which provide inputs to different systems.

(2) Provide revised calibration requirements for the Reactor Vessel Shroud instrumentation input to the Emergency Core Cooling Systems to reflect the replacement of level and pressure switches with analog loops.

(3) Delete a reference note from the Trip System logic tests for systems for which the note is inapplicable.

(4) Revise the Limiting Condition for operation with one of the Pressure Suppression Chamber—Reactor Building Vacuum Breaker Systems out of service, by revising the wording to better reflect the intent of the requirements to preserve both the containment isolation and vacuum relief functions.

Basis for proposed no significant hazards consideration determination: The licensee has evaluated the proposed change against the standards in 10 CFR 50.92 and has determined that the proposed change would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) Create the possibility of a new or different type of accident, or (3) Involve a significant reduction in a margin of safety. The licensee's determination is based on the following:

1. The proposed changes revise instrument tag numbers which will improve the clarity of the Technical Specifications. Revisions to the trip level

setpoints reflect the replacement of level and pressure switches with analog instruments. This change improves the consistency of the Technical Specifications for instruments common to more than one system. Replacement of switches with more reliable instrumentation improves plant reliability and does not change the design basis, protective function, redundancy, or logic of the original system. As such, this change does not impact the probability or consequences of any accident previously considered. Further, no change in any plant safety margin is required for the reasons stated above.

2. The proposed changes revise the surveillance and calibration requirements to reflect the replacement of level and pressure switches with analog instrumentation. These modified requirements are consistent with those previously approved for similar analog instrumentation utilized at Vermont Yankee. The previous requirement of once every three months was appropriate for level and pressure switches. The revised requirement of once every operating cycle is appropriate for the new analog loops because of the reduced setpoint drift. As such, there is no impact in the probability or consequences of accident previously evaluated by this change since it does not involve safety system or primary system boundaries. Similarly, no kinds of accident involving safety-related systems are created by this change, nor are any changes required in plant operating or design safety margins.

3. The proposed changes delete a reference note in order to improve and simplify the Technical Specifications. Because the note only applies to those which have pilot valves, reference to it is being deleted from those systems which do not have pilot valves. The deletion of an inapplicable reference to a table notation has no bearing on any accident previously evaluated, nor does it create the possibility of a new or different kind of accident. Similarly, no changes in any plant operating or design bases safety margins are required by the deletion.

4. A change is made to the Limiting Conditions for Operation (LCO) of the pressure suppression Chamber-Reactor Building vacuum breakers to better reflect the intent of the requirements. The previous LCO required locking the vacuum breaker closed if it was inoperable. The revised LCO specifies that a valve in the failed line must be verified to be in the isolated condition allowing greater flexibility in meeting the intent of the Technical Specification requirements. The new requirement meets the intent to isolate the failed vacuum breaker and also improves consistency between LCOs in the Technical Specifications. Because these changes provide greater flexibility in meeting an existing requirement and improve consistency with other containment isolation requirements in the Technical Specifications, the probability or consequences of any accident previously evaluated is not significantly increased. Additionally, the possibility of a new or different kind of accident from any accident previously evaluated is not created and no sigificant reduction in a margin of safety is involved.

Based on the above, the NRC staff agrees with the licensee's evaluation and proposes to determine that the proposed change involves no significant hazard considerations.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Attorney for licensee: John A. Ritscher, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Daniel R. Muller.

Washington Public Power Supply System, Docket No. 50-397, WNP-2, Richland, Washington

Dates of amendment request: June 13, June 18, 1985, and October 7, 1986.

Description of amendment request: This proposed amendment, if approved, would revise the WNP-2 Technical Specifications by removing a listing of containment penetration fuses and a surveillance requirement to test these fuses functionally on a rotating basis.

The fuses are listed in Table 3.8.4.2-1, Primary Containment Penetration Conductor Overcurrent Protective Devices, of the Technical Specifications. The intent of this technical specification is to assure primary containment electrical penetrations survive an electrical fault by a fuse or circuit breaker opening prior to threatening the design capability of the penetration. The fuses are sized to protect the equipment being supplied while the design rating of the penetration is in all cases higher; consequently, an equipment load and related fuse can be increased without challenging the design rating of the penetration. Containment penetration protection and safety are assured by the Supply System's formal design process that includes evaluations to insure that the design rating for the penetrations is not exceeded. As a result, the listing of fuse sizes for the containment penetration provides no safety assurance but imposes an unnecessary administrative burden on both the Supply System and the Commission.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

It has been determined that the requested amendment does not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated because any change in overload current protection characteristics will be effected within the penetration design rating thus the accident probability and consequences will remain within the bounding and previously evaluated accident event; or (2) create the possibility of a new or different kind of accident than previously evaluated because removing the listing of the fuses from the Technical Specifications does not remove the protection provided the penetration as the fuses will still be in place and any changes in fuse size will be controlled by the licensee's formal design process to assure adequate protection of the penetrations; therefore, no new accident scenarios are identified; or (3) involve a significant reduction in a margin of safety because the sizing of fuses within the design margin does not encroach on the overall margin of safety.

Accordingly, the Commission proposes to determine that the requested change to the WNP-2 Technical Specifications involves no significant hazards considerations.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorney for the Licensee: Nicholas Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street NW, Washington, DC 20036.

NRC Project Director: E. Adensam.

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Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of amendment request: October 9, 1986.

Description of amendment request: The proposed changes to the TS would revise Table 4.3-1 regarding surveillance requirements for power range and intermediate power range neutron flux channels.

The reactor protection system logic for high neutron flux levels has two possible settings, a high power set point, used for full power operations, and a low power set point, used for reactor operation with power below 15 Mwe (about 8% of rated power). Tests of the low power setting during power operation would cause a reactor trip. The proposed change would clarify that channel calibration of these channels will be performed on a refueling interval schedule rather than quarterly and that the monthly functional test of the channels will only include those parts of the test that can be performed at power, and thus they would exclude low set point calibration.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee states the following with respect to these three factors:

> This change has been evaluated and determined to involve no significant hazards consideration. The proposed amendment does not:
>
> Involve a significant increase in the probability or consequences of an accident previously evaluated. The channels will continue to be maintained in an operable condition by the daily monitoring and monthly functional check. This change is a clarification of practice and does not alter the safety analysis.
>
> Create the possibility of a new or different kind of accident from any accident previously evaluated. This change is a clarification of the technical specification requirements and does not alter plant operations; therefore, it does not create the possibility of a new or different kind of accident.
>
> Involve a significant reduction in a margin of safety. This change provides wording that is closer to the [Standard Technical Specifications] STS, but remains plant specific. Our use of the Channel Functional Test provides assurance of channel operability that is at least as good as that provided by the STS. Since this change provides clarification and not a change in practice there is not a significant reduction in the margin of safety.

Based on these findings, the licensee concluded that the proposed change does not involve a significant hazards consideration. The staff has reviewed the licensee's determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: George E. Lear.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this bi-weekly notice. They are repeated here because the bi-weekly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: October 20, 1986.

Brief description of amendment: The amendment would delete the operability requirement for containment cooler V 4A.

Date of publication of individual notice in **Federal Register**: October 31, 1986 (51 FR 39831).

Expiration date of individual notice: December 1, 1986.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Mississippi Power & Light Company, Middle South Energy, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: September 2, 1986 as amended on October 4, 13, and 24, 1986.

Brief description of amendment request: The proposed amendment would change the Grand Gulf Nuclear Station, Unit 1 (GGNS) facility operating license NPF-29 and pages 6-3 and 6-9 of the facility Technical Specifications to reflect the transfer of the authority to control and operate the GGNS from Mississippi Power and Light Company to Middle South Energy, Inc. (now renamed System Energy Resources, Inc.).

Date of publication of individual notice in **Federal Register**: November 3, 1986 (51 FR 39927).

Expiration date of individual notice: December 3, 1986.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

Carolina Power and Light Company, Docket No. 50-261, H.B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: August 13, 1986.

Brief description of amendment: The amendment deletes Section 5.3.1.6 of the Technical Specifications to be consistent with the Operating License Section 2.C.

Date of issuance: October 27, 1986.

Effective date: October 27, 1986.

Amendment No.: 104.

Facility Operating License No. DPR-23. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 24, 1986 (51 FR 33944). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 27, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Carolina Power and Light Company, Docket No. 50-261, H.B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: April 2, 1986.

Brief description of amendment: The amendment revises the Technical Specifications to incorporate a corporate reorganization, staff qualification changes, position title changes, plant nuclear safety committee membership changes, and plant modification approval authority changes.

Date of issuance: October 28, 1986.

Effective date: October 28, 1986.

Amendment No.: 105.

Facility Operating License No. DPR-23. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 13, 1986 (51 FR 28993). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 28, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Carolina Power and Light Company, Docket No. 50-261, H.B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: September 24, 1985.

Brief description of amendment: The amendment revises the Technical Specifications to remove redundant terms, delete obsolete requirements and to correct errors in terminology.

Date of issuance: October 28, 1986.

Effective date: October 28, 1986.

Amendment No.: 106.

Facility Operating License No. DPR-23. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 4, 1985 (50 FR 49782). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 28, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Carolina Power and Light Company, Docket No. 50-261, H.B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: July 17, 1984, as supplemented February 5, 1986.

Brief description of amendment: The amendment revises the Technical Specifications with regard to containment integrated leak rate test duration.

Date of issuance: October 28, 1986.

Effective date: October 28, 1986.

Amendment No.: 107.

Facility Operating License No. DPR-23. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 21, 1984 (49 FR 45944). The February 5, 1986, submittal supplemented the Bases section of the Technical Specifications and therefore, did not change the determination of the initial **Federal Register** notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 28, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Carolina Power and Light Company, Docket No. 50-261, H.B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: January 8, 1986.

Brief description of amendment: The amendment revises the Technical Specification to reduce the reporting requirements for primary coolant iodine spiking from a short-term report to an item included in the Annual Report.

Date of issuance: October 28, 1986.

Effective date: October 28, 1986.

Amendment No.: 108.

Facility Operating License No. DPR-23. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 4, 1986 (51 FR 20368). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 28, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Commonwealth Edison Company, Docket No. 50-454, Byron Station, Unit No. 1, Ogle County, Illinois

Date of applications for amendments: July 30, 1986 and August 5, 1986.

Brief description of amendments: The amendment approves changes to the Technical Specifications that (1) revise the end of cycle interpolation value for target flux difference, (2) delete exact grid plane locations, (3) delete maximum total weight of uranium, (4) delete minimum level, but retain minimum gallons for Diesel Fuel Supply System day tank, and (5) delete "during shutdown" for certain 18-month surveillance of seismic monitoring instrumentation.

Date of issuance: October 29, 1986.

Effective date: October 29, 1986.

Amendment No.: 4.

Facility Operating License No. NPF-37: Amendments revised the Technical Specifications.

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Date of initial notices in **Federal Register:** September 24, 1986 (51 FR 33945) and September 10, 1986 (51 FR 32265).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 29, 1986.

No significant hazards consideration comments received: No

Local Public Document Room location: Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois.

Commonwealth Edison Company, Docket No. 50–254, Quad Cities Nuclear Power Station, Unit 1, Rock Island County, Illinois

Date of application for amendment: August 26, 1986.

Brief description of amendment: Revises operating limit minimum critical power ratio (MCPR) for fuel in Cycle 9, and deletes MCPR for fuel types no longer in use.

Date of issuance: October 28, 1986.

Effective date: October 28, 1986.

Amendment No.: 97.

Facility Operating License No. DPR–29. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 24, 1986 (51 FR 33946). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 28, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Moline Public Library, 504 17th Street, Moline, Illinois 61265.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: August 29, 1986.

Brief description of amendment: The license amendment adds a second note of clarification to the definition of containment integrity in Technical Specification 1.8.2.b to permit normally closed manual isolation valves SI–V–863 A, B, C, and D to be opened for periodic surveillances. In addition, the amendment permits valve SA–V–413 to be opened. as required, to assure the operability of the containment continuous leak monitoring system and to allow for additional infrequent maintenance activities when containment integrity may be required.

Date of issuance: October 30, 1986.

Effective date: October 30, 1986.

Amendment No. 86.

Facility Operating License No. DPR–61. Amendment revised the technical specifications.

Date of initial notice in **Federal Register:** September 24, 1986 (51 FR 33947). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 30, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 124 Broad Street, Middletown, Connecticut 06457.

Consumers Power Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: August 20, 1979 and subsequently revised in mutual agreement between the Nuclear Regulatory Commission's staff and Consumers Power Company's staff. The amendment differs from the application in that the requirements to conduct an internal visual inspection and to verify adequate electrical resistance to ground as required in the existing Technical Specifications are retained.

Brief description of amendment: The amendment revised the surveillance requirements for the Westinghouse Electric Hydrogen Recombiners contained in Table 4.2.2, "Minimum Frequency for Equipment Tests", to those recommended for Westinghouse Electric Hydrogen Recombiner's in NUREG–0212, Revision 2, "Combustion Engineering Standard Technical Specifications."

Date of issuance: November 5, 1986.

Effective date: November 5, 1986.

Amendment No. 99.

Provisional Operating License No. DPR–20. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 21, 1983 (48 FR 56501). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 5, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Duke Power Company, et al., Docket Nos. 50–4.13 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: June 6, 1986, as supplemented September 9, 1986.

Brief description of amendments: The amendments modify the Technical Specifications to permit installation of a Boron Dilution Mitigation System.

Date of issuance: October 24, 1986.

Effective date: October 24, 1986.

Amendment Nos.: 17 and 7.

Facility Operating License Nos. NPF–35 and NPF–52. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 13, 1986 (51 FR 28997). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 24, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: August 4, 1986, and supplemented August 22, September 17, and October 6, 1986.

Brief description of amendments: The amendments modify, for one time only for each Unit, Technical Specification Table 3.7–1 related to the maximum allowable power range neutron flux high setpoint with inoperable steam line safety valves during four loop operation.

Date of issuance: October 28, 1986.

Effective date: October 28, 1986.

Amendment Nos.: 18 and 8.

Facility Operating License Nos. NPF–35 and NPF–52. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 10, 1986 (51 FR 32266). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 28, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: August 14, 1986, as supplemented October 6, 1986.

Brief description of amendment: This amendment extends the surveillance interval for reactor vessel internals vent valves (RVVVs) from once per 18 months to once per fuel cycle for Cycle 6 only. The licensee's request for a permanent extension of the surveillance interval for the RVVVs is being considered separately. Other changes requested in the August 14, 1986, request were approved by Amendment No. 93 dated October 21, 1986.

Date of issuance: November 7, 1986.

Effective date: November 7, 1986.

Amendment No.: 94.

Facility Operating License No. DPR–72. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 19, 1986 (51 FR 33322). Since the initial notice, the licensee submitted a supplement dated October 6, 1986, which responded to the Commission's request for additional information. The information did not change the original application in any way, and therefore did not warrant renoticing.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 7, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Crystal River Public Library, 668 NW. First Avenue, Crystal River, Florida 32629.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–321, Edwin I. Hatch Nuclear Plant, Unit No. 1, Appling County, Georgia

Date of application for amendment: March 5, 1979, as supplemented February 7, 1984.

Brief description of amendment: The amendment revised the Hatch Unit No. 1 Technical Specifications to reflect provisions of an updated containment leak rate test program.

Date of issuance: October 30, 1986.

Effective date: October 30, 1986.

Amendment No.: 131.

Facility Operating License No. DPR–57. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 25, 1984 (49 FR 17860). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 30, 1986, and Environmental Assessment dated October 7, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–366, Edwin I. Hatch Nuclear Plant, Unit No. 2, Appling County, Georgia

Date of amendment request: July 18, 1986.

Description of amendment request: The amendment (1) revises allowable values to provide for the use of Rosemount, as well as Barton, transmitters for certain instrumentation channels associated with the Analog Transmitter Trip System (ATTS); (2) provides administrative clarifications; (3) revises allowable values for instruments which actuate on high drywell pressure; and (4) lowers the core spray and residual heat removal low pressure coolant injection low reactor pressure injection permissive setpoints to allow for increased flexibility in the use of Rosemount transmitters for this trip function.

Date of issuance: November 6, 1986.

Effective date: November 6, 1986.

Amendment No.: 67.

Facility Operating License No. NPF–5: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 10, 1986 (51 FR 32268). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 6, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia

GPU Nuclear Corporation, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: June 1, 1979, revised October 22, 1984 and August 13, 1986 (TSCR 69).

Brief description of amendment: Authorizes changes to the Appendix A Technical Specifications (TS) to incorporate in the TS, the radiological effluent technical specifications (RETS) required by Appendix I to 10 CFR Part 50. These changes are (1) to revise TS Section 1.0, Definitions; TS Sections 3.1 and 4.1, Protective Instrumentation; TS Sections 3.6 and 4.6, Radioactive Effluents; TS Section 6.0, Administrative Controls; and (2) to add the new TS Sections 3.14 and 4.14, Solid Radioactive Waste; TS Sections 3.15 and 4.15, Radioactive Effluent Monitoring Instrumentation; and TS Section 4.16, Radiological Environmental Surveillance.

Date of issuance: October 6, 1986.

Effective date: 45 days after date of issuance.

Amendment No.: 108.

Provisional Operating License No. DPR–16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 27, 1985 (50 FR 7989). Since the initial notice, the licensee supplemented the application with a submittal dated August 13, 1986. This submittal contained minor clarifications and/or corrections to the proposed RETS. The August 13, 1986 changes do not affect the initial no significant hazards consideration determination nor the substance of the amendment. Therefore, renoticing of the proposed amendment was not warranted. A detailed discussion of these changes and the Commission's related evaluation of this amendment are contained in a Safety Evaluation dated October 6, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

GPU Nuclear Corporation, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: September 11, 1986 (TSCR 140)

Brief description of amendment: Authorizes two changes to Section 4.4, Emergency Cooling, of the Appendix A Technical Specifications (TS), which lists the surveillance requirements and the frequency of surveillance for the reactor emergency cooling systems. This amendment changes the stated frequency and pressure conditions for the Automatic Depressurization System (ADS) valve operability test in item 4.4.B.1 of Section 4.4 to after each refueling outage and at system operating pressure prior to exceeding 5 percent power. This change was to clarify the surveillance requirements of ADS valve operability in the TS.

Date of issuance: October 27, 1986.

Effective date: October 27, 1986.

Amendment No.: 109.

Provisional Operating License No. DPR–16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 24, 1986 (51 FR 33950). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated October 27, 1986.

No significant hazards consideration comments received: No.

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Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

GPU Nuclear Corporation, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: September 5, 1986 (TSCR 153).

Brief description of amendment: Authorizes a revision to the footnote, marked with an asterisk "*", to Table 3.1.1, Protective Instrumentation Requirements, of the Appendix A Technical Specifications (TS). The licensee can, with this change, have one channel of a protective instrument function made inoperable for up to 2 hours to conduct tests and calibrations of the protective instrumentative channels in accordance with the TS, without tripping the channel's associated trip system.

Date of issuance: October 27, 1986.

Effective date: October 27, 1986.

Amendment No.: 110.

Provisional Operating License No. DPR–16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 17, 1986 (51 FR 32980). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated October 27, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

GPU Nuclear Corporation, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: June 17, 1986, as supplemented September 17 and October 13, 1986 (TSCR 149).

Brief description of amendment: The amendment authorizes changes to Section 2.3, Limiting Safety System Settings, and to Section 3.10, Core Limits, of the Appendix A Technical Specifications (TS) to account for the Operating Cycle 11 reload. The changes to Section 2.3 increase (1) the neutron flux scram setting for the average power range monitors (APRM) and (2) the neutron flux control rod block setting. The changes to Section 3.10 increase the minimum critical power ratio (MCPR) limits and revise the maximum allowable average planar linear heat generation rate (MAPLHGR) for five loop and four loop operation in Figures 3.10–4 and 5, respectively. The changes to the figures replace the MAPLHGR for the existing fuel type P8DRB265L by that for the new fuel type P8DRB299. The MAPLHGR for the existing fuel types P8DRB239 and P8DRB265H in Figures 3.10–4 and 3.10–5 are not being changed by this amendment. Included with these changes are changes to the Bases for TS Sections 2.3 and 3.10.

Date of issuance: October 27, 1986.

Effective date: October 27, 1986.

Amendment No.: 111.

Provisional Operating License No. DPR–16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 16, 1986 (51 FR 25769). The September 17 and October 13, 1986 submittals provided clarifying information which did not change the substance of the application or the findings of the initial **Federal Register** notice.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated October 27, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

GPU Nuclear Corporation, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: September 11, 1986 (TSCR 147).

Brief description of amendment: Authorizes changes to the Appendix A Technical Specifications (TS). These changes (1) increase the high drywell pressure trip setpoint limit to 3.5 psig and (2) add a bypass to the high flow trip of the "B" Isolation Condenser when initiating the alternate shutdown. These are changes to Table 3.1.1, Protective Instrumentation Requirements, and the Bases for Section 3.1, Protective Instrumentation, of the TS.

Date of issuance: October 31, 1986.

Effective date: October 31, 1986.

Amendment No.: 112.

Provisional Operating License No. DPR–16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 17, 1986 (51 FR 32980). The Commission's related evaluation of this amendment and the response to the State of New Jersey, Bureau of Radiation Protection's comments are contained in a Safety Evaluation dated October 31, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Kansas Gas and Electric Company, Kansas City Power and Light Company, Kansas Electric Power Cooperative, Inc., Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of application for amendment: August 13, 1986

Brief description of amendment: The amendment modifies the Technical Specifications to delete the maximum uranium weight per fuel rod value.

Date of issuance: October 30, 1986.

Effective date: October 30, 1986.

Amendment No.: 3.

Facility Operating License No. NPF–42. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 10, 1986 (51 FR 32270). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 30, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas, and Washburn University School of Law Library, Topeka, Kansas.

Kansas Gas and Electric Company, Kansas City Power and Light Company, Kansas Electric Power Cooperative, Inc., Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of application for amendment: April 15, 1986, as supplemented July 29, 1986.

Brief description of amendment: The amendment permits licensed activities to be under the control of the Wolf Creek Nuclear Operating Corporation.

Date of issuance: November 4, 1986.

Effective date: January 1, 1987.

Amendment No.: 4.

Facility Operating License No. NPF–42. Amendment revised the Operating License and the Technical Specifications.

Date of initial notice in **Federal Register:** August 13, 1986 (51 FR 29002). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 4, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Emporia State University, William Allen White Library, 1200

Commercial Street, Emporia, Kansas 66801 and Washburn School of Law Library, Topeka, Kansas.

Long Island Lighting Company, Docket No. 50-322, Shoreham Nuclear Power Station, Suffolk County, New York

Date of application for amendment: June 26, 1986.

Brief description of amendment: Corrects an error in the Technical Specifications involving a listing of the types of radioactive waste shipping containers and solidification agents and corrects an internal inconsistency in the Technical Specifications regarding the approval process for the Process Control Program.

Date of issuance: November 3, 1986.

Effective date: November 3, 1986.

Amendment No. 3.

Facility Operating License No. NPF-36. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 27, 1986 (51 FR 30573). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 3, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 23212.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: July 29, 1986.

Brief description of amendment: This amendment revised the Technical Specifications to incorporate the specific requirements for iodine spiking into the annual report as recommended in Generic Letter 85-19 (Reporting Requirements on Primary Coolant System Iodine Spikes) and delete the primary coolant iodine activity report from Technical Specification 5.9.1.7, Special Reports, since this aspect of plant operation would be reported on an annual basis pursuant to the proposed Technical Specification 6.9.1.3.

Date of issuance: October 27, 1986.

Effective Date: October 27, 1986.

Amendment No.: 96.

Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 27, 1986 (51 FR 30561 at 30577).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 27, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wiscasset Public Library, High Street, Wiscasset, Maine.

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: June 14, 1985.

Brief description of amendment: The amendment would add "fail-to-start" to the automatic diesel generator trips that would not be bypassed upon loss of voltage on the emergency bus and/or safety injection actuation signal.

Date of issuance: October 29, 1986.

Effective date: October 29, 1986.

Amendment No.: 121.

Facilities Operating License No. NPF-1: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 9, 1986 (51 FR 12236). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 29, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Multnomah County Library, 801 SW. 10th Avenue, Portland, Oregon.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County New York

Date of application for amendment: October 9, 1984.

Brief description of amendment: The amendment revises the Technical Specifications to comply with the guidelines of Generic Letter 84-11 by imposing a more restrictive leakage limit as well as increased surveillance requirements.

Date of issuance: October 31, 1986.

Effective date: October 31, 1986.

Amendment No.: 102.

Facility Operating License No. DPR-59. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 21, 1984 (49 FR 45963). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 31, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: January 25, 1984.

Brief description of amendments: The amendments change the Technical Specifications to delete diesel generator Surveillance Requirement 4.8.1.1.2.d.6.

Date of issuance: October 28, 1986.

Effective date: October 28, 1986.

Amendment Nos.: 49 and 41.

Facility Operating License Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 28, 1984 (49 FR 38410). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 28, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37401.

Washington Public Power Supply System, Docket No. 50-397, WNP-2, Richland, Washington

Dates of amendment request: May 30, 1985, and September 30, 1985.

Brief description of amendment: This amendment revises Section 3/4.6.4 (Vacuum Relief) of the WNP-2 Technical Specifications to permit plant operation with two sets of the nine sets of suppression chamber-to-drywell vacuum breakers inoperable.

Date of issuance: October 31, 1986.

Effective date: October 31, 1986.

Amendment No.: 30.

Facility Operating License No. NPF-21: Amendment revises the Technical Specifications.

Date of initial notice in the **Federal Register:** January 15, 1986 (51 FR 1881). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 31, 1986.

No Significant Hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Washington Public Power Supply System, Docket No. 50-397, WNP-2, Richland, Washington

Dates of amendment request: October 28, 1985 and February 24, 1986.

Brief description of amendment: This amendment revises Sections 3.6.3 (Primary Containment Isolation Valves) and 3.6.5.2 (Secondary Containment

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Automatic Isolation Valves) of the WNP-2 Technical Specifications. The amendment allows reactor mode changes with primary or secondary containment isolation valves inoperable provided they are closed and secured.

Date of issuance: November 6, 1986.

Effective date: November 6, 1986.

Amendment No.: 31.

Facility Operating License No. NPF-21: Amendment revises the Technical Specifications.

Date of initial notice in the **Federal Register:** January 15, 1986 (51 FR 1882). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 6, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Washington Public Power Supply System, Docket No. 50-397, WNP-2, Richland, Washington

Date of amendment request: August 12, 1985.

Brief description of amendment: This amendment revises Section 3/4.3.7.12 (Radioactive Gaseous Effluent Monitoring Instrumentation) and 3/4.11.2.7 (Radioactive Effluents, Main Condenser) of the WNP-2 Technical Specifications to clarify the operating conditions for which radioactive effluent monitoring is required.

Date of issuance: November 6, 1986.

Effective date: November 6, 1986.

Amendment No.: 32.

Facility Operating License No. NPF-21: Amendment revises the Technical Specifications.

Date of initial notice in the **Federal Register:** October 9, 1985 (50 FR 41257). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 6, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Dated at Bethesda, Maryland this 13th day of November 1986.

For the Nuclear Regulatory Commission.

R. Wayne Houston,

Acting Director, Division of BWR Licensing Office of Nuclear Reactor Regulation.

[FR Doc. 86-26016 Filed 11-18-86; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-15409; File No. 812-6509]

Application for Exemption; Banco Central, S.A.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Banco Central, S.A.

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant seeks an order to permit it to issue and sell its equity securities in the United States, either directly or in the form of American depositary shares represented by American depositary receipts. The order requested will supplement a prior order, dated March 26, 1986, which exempted Applicant from all provisions of the 1940 Act in connection with the issuance and sale of its commercial paper notes and other debt securities in the United States (Investment Company Act Release No. 15015).

Filing Date: The application was filed on October 22, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 8, 1986. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notifications of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington DC. 20549. Banco Central, S.A., 49 calle de Alcalo, Madrid, Spain.

FOR FURTHER INFORMATION CONTACT: Thomas C. Mira, Staff Attorney (202) 272-7324 or Brion R. Thompson, Special Counsel (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant was chartered in 1919 to conduct a banking business and since that date has continuously functioned and been subject to extensive regulation as a bank in Spain. Applicant, together with its subsidiaries and associated companies ("Banco Central Group"), provides a comprehensive range of banking and other financial and related services in Spain and in more than 20 other countries. At December 31, 1985, Applicant ranked as the largest bank in Spain in terms of equity (approximately U.S. $910 million), total assets (approximately U.S. $17 billion) and deposits (approximately U.S. $12 billion).

2. The Banco Central Group has a significant presence in the United States. Applicant's United States banking activities are presently conducted through its branch office in New York City, and agency offices in San Francisco and Miami. In addition, Applicant owns a majority interest in Banco Central of New York, a bank chartered by the State of New York and insured and regulated by the Federal Deposit Insurance Corporation. The principal United States branch operations of the Banco Central Group are located in New York.

3. Applicant is registered as a bank holding company under the Bank Holding Company Act of 1956. Applicant is also subject to the provisions of the International Banking Act of 1978 ("IBA") and its activities are supervised and examined pursuant to the laws of the states of New York, California and Florida. Moreover, American Depositary Receipts representing interests in Applicant's common stock are listed on the New York Stock Exchange. As a result, Applicant is subject to periodic filing requirements under the Securities Exchange Act of 1934 ("1934 Act") and the regulation of the New York Stock Exchange.

4. The requested order is necessary and appropriate in the public interest because Applicant would be effectively precluded from publicly offering its equity securities in the United States if required to register as an investment company. Such exemptive order will facilitate an offering of Applicant's equity securities in the United States and, thus, will advance the IBA's policy objective of parity of treatment between domestic and foreign banks in like circumstances. It will also facilitate domestic investment by U.S. investors in

a major foreign issuer, subject to the protections afforded by the Securities Act of 1933 ("1933 Act") and the 1934 Act, and thereby advance the national goals of opening the U.S. capital markets to foreign entities and encouraging the free flow of capital among nations.

5. The requested order is consistent with the protection of investors because (1) the rationale for exempting U.S. banks from the coverage of the 1940 Act applies with equal force to Applicant; (2) all U.S. investors in Applicant's stock will be afforded the protections of the 1933 Act and the 1934 Act; and (3) the corporate democracy provisions contained in the 1940 Act are not necessary for the protection of investors.

6. The requested order is consistent with the purposes fairly intended by the policy and provisions of the 1940 Act because commercial banks such as Applicant were not within the intent of the 1940 Act.

7. Applicant undertakes that it will not make an offering of equity securities in the United States unless (a) the offering of such securities is registered under the 1933 Act or (b) in the opinion of Applicant's U.S. counsel an exemption from 1933 Act registration is available with respect to such offer and sale or (c) the staff of the Commission states that it would not recommend that the Commission take any action under the 1933 Act if such securities are not registered.

8. Applicant undertakes that any offering of its equity securities in the United States will be made on the basis of disclosure documents which are appropriate and customary for such offering, whether made pursuant to a registration statement under the 1933 Act or an exemption therefrom. In connection with any offer and sale by Applicant of its equity securities in the United States, Applicant undertakes that it will appoint an agent to accept service of process in any suit, action or proceeding with respect to such offer and sale instituted in any State or Federal court in New York City by the holder of any such securities, and will expressly submit to the jurisdiction of any such court for the purpose of any such suit, action or proceeding.

9. Applicant has no present intention to curtail its banking operations in the United States so that it would cease to be regulated as a bank in the United States; if, however, such operations are curtailed in the future with the result that it is no longer regulated as a bank in the United States, Applicant undertakes that it will continue to comply with its undertakings regarding its appointment of an agent in New York City and its submission to jurisdiction until such time as there are no holders in the United States of its equity securities issued in reliance upon the requested order. Applicant has no present intention to curtail its banking operations in Spain so that it would cease to be regulated as a bank in Spain and undertakes that no equity securities shall be offered or sold in the United States unless, at the time, Applicant is supervised and examined by governmental authorities in Spain having supervision over banks in that country and by State or Federal authorities in the United States having supervision over U.S. banks.

Applicant's Conditions

Applicant agrees that if the requested order is granted such order will be expressly conditioned on Applicant's compliance with the undertakings set forth above.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

November 13, 1986.

[FR Doc. 86-26106 Filed 11-18-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15406; (File No. 812-6471)]

Bank of Ireland and Bank of Ireland Financial, Inc.; Foreign Bank Application

November 13, 1986.

Notice is hereby given that Bank of Ireland ("BOI") and its wholly-owned United States subsidiary, Bank of Ireland Financial, Inc. ("Financial") (collectively, "Applicants"), c/o H. Rodgin Cohen, Esq., Sullivan & Cromwell, 125 Broad Street, New York, NY 10004, filed an application on September 4, 1986, and an amendment thereto on November 5, 1986, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act"), exempting BOI and Financial from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the text of the Act for the relevant provisions thereof.

According to Applicants, BOI was founded in 1783, is approximately the 188th largest commercial bank in the world, and its principal business consists of making loans and receiving deposits. On the basis of available statistics of the Central Bank of Ireland, BOI and its subsidiaries accounted for one-third of the total assets of all licensed banks in the Republic of Ireland. At March 31, 1986, its total assets amounted to approximately $9.1 billion.

BOI, directly and through its various subsidiaries and branches, also engages in a wide variety of other banking activities, including trust services, credit cards, foreign exchange, syndicated Eurocredits, investment management, leasing and project finance. BOI is subject to extensive regulation by Irish banking authorities administered by the Central Bank of Ireland which licenses and supervises all banks in Ireland and establishes specific capital adequacy and liquidity requirements, prescribed of primary and secondary liquid assets to total assets, and specific standards for and restrictions on investments.

Applicants state that Financial was organized under the laws of the State of Delaware on July 29, 1986, and has authorized capital stock consisting of 1000 shares of common stock, par value $1.00 per share. No capital stock or other securities of Financial have been issued to date. At the time of any issuance of debt securities of Financial, and so long as any such securities are outstanding, Financial will be a wholly-owned subsidiary of BOI. Financial's sole business will be the issuance of debt obligations guaranteed by BOI and the distribution of the proceeds thereof to BOI or other wholly-owned subsidiaries, direct or indirect, of BOI.

BOI proposes to issue and sell, or to cause Financial to issue and sell, in the United States unsecured prime quality, negotiable commercial paper notes (the "Notes") in bearer form, denominated in United States dollars. Applicants undertake to ensure that the Notes will not be advertised or otherwise offered for sale to the general public, but instead will be sold by a commercial paper dealer to institutional investors and other entities and individuals who normally purchase commercial paper notes.

Applicants represent that the terms of the Notes, including their negotiability, maturity and minimum denomination, the amount outstanding at any given time and the manner of offering them to investors will be such as to qualify them and the guarantees for the exemption from registration under the Securities Act of 1933 (the "1933 Act"), provided by section 3(a)(3) of the 1933 Act. Applicants undertake that neither BOI nor Financial will issue and sell the Notes until they have received an opinion of their United States legal counsel that the Notes and the guarantees would be entitled to such

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section 3(a)(3) exemption. Applicants do not request Commission review or approval of United States counsel's opinion letter regarding the availability of an exemption under section 3(a)(3) of the 1933 Act. Applicants represent that neither BOI nor Financial is subject to the reporting requirements of the Securities Exchange Act of 1934, and will not become subject to such requirements in connection with the issuance and sale of the Notes.

Applicants state that the Notes issued by BOI will rank *pari passu* among themselves and the Notes issued by Financial will rank *pari passu* among themselves, in each case prior to equity securities of Financial or BOI, as the case may be, and equally with all other unsecured indebtedness (including liabilities to depositors) of Financial and BOI, as the case may be. BOI's guarantees of the Notes (as described below) will rank *pari passu* among themselves, prior to equity securities of BOI and equally with all other unsecured indebtedness including liabilities to depositors of BOI.

Applicants may, from time to time, offer other debt securities, but not shares of their capital stock, for sale in the United States. Any such future offerings will be made with due regard to the provisions of Regulation D and the doctrine of "integration" referred to in Securities Act Releases Nos. 4434, 4552, 4708 and 6389 and various "no action" letters made public by the Commission. Applicants undertake that, for any future offering of their debt securities made pursuant to a registration statement under the 1933 Act, they will furnish a disclosure document to such persons and in such manner as may be required by the 1933 Act and the rules and regulations thereunder.

Applicants state that payment of the principal, interest and premium, if any, on existing and future Notes issued and sold by Financial will be unconditionally guaranteed by BOI. The proceeds of the sale of such Notes of Financial (to the extent not applied to the repayment of maturing Notes or to the payment of minimal current expenses) will be placed on short-term deposit with, or loaned to, BOI and other wholly-owned subsidiaries, direct or indirect, of BOI, and substantially all of Financial's assets will consist of amounts receivable from BOI or its wholly-owned subsidiaries. Such deposits or loans would be repaid to Financial on terms that are substantially similar to those of Financial's Notes to allow Financial to make timely payments on the Notes.

Applicants undertake to ensure that the dealer will provide each offeree of the Notes, as well as any future issues of debt securities in the United States (together hereinafter referred to as "Securities"), prior to purchase with a memorandum which briefly describes the business of BOI, including its most recent publicly available fiscal year-end balance sheet and profit and loss statement which shall have been audited in such manner as is customarily done for BOI by its statutory auditors for financial statements. Such memorandum will describe differences which are material to investors, if any, between the accounting principles applied in the preparation of such financial statements and "generally accepted accounting principles" as employed by banks in the United States. Applicants undertake that such memorandum and financial statements will be at least as comprehensive as those customarily used by United States bank holding companies in offering commercial paper in the United States and will be updated promptly to reflect material changes in the financial condition of BOI.

Applicants represent that their Securities shall have received prior to issuance one of the three highest investment grades from at least one nationally recognized statistical rating organization and that their United States counsel shall have certified that such rating has been received *provided, however,* that no such rating need be obtained with respect to any such issue if, in the opinion of United States counsel, such counsel having taken into account for the purpose thereof the doctrine of "integration" referred to in Rule 502 under the 1933 Act and various releases and relevant no-action letters made public by the Commission, an exemption from registration is available under section 4(2) of the 1933 Act.

Applicants may appoint a financial institution in the United States as its authorized agent to issue its Securities from time to time. BOI undertakes to appoint either such financial institution, Financial or some other United States person which normally acts in such capacity to accept any process which may be served in any action based on the Securities and instituted by the holder of such Securities in any State or Federal court. Applicants undertake that they will expressly accept the jurisdiction of any State or Federal court in the City and State of New York in respect of any such action. Such appointment of an authorized agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the Securities have been paid. Applicants also will be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of the Securities or otherwise in connection with the Securities. The authorized agent will not be a trustee for the holders of the Securities and will not have any responsibilities or duties to act for such holders as would a trustee.

Applicants consent to any order granting this application being expressly conditioned on their compliance with the undertakings set forth above. Applicants assert, for the reasons set forth in their application, that granting an exemptive order pursuant to section 6(c) of the Act is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 8, 1986 at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reason for such request, and the specific issues, if any, of fact or law that are disputed to the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. A copy of such request should be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-26107 Filed 11-18-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23792; File No. SR-NSCC-86-15]

Self-Regulatory Organizations; Proposed Rule Change By Relating to an Amendment to National Securities Clearing Corp.'s ("NSCC") Rules and Procedures

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 30, 1986, NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Modify National Securities Clearing Corporation's ("NSCC") SCC Division Rule 39 as follows:

Special Representative

Rule 39

* * * * *

A Special Representative, who operates an automated execution system where the Special Representative is always the contra side to each transaction, (hereinafter referred to throughout the Rules as a "Qualified Special Representative"), or such other Special Representatives as the Corporation may permit in its discretion, may elect to submit in automated form trade data from such automated execution systems as a locked-in trade which would appear on T-Contracts.

Modify NSCC's SCC Division Procedures II. B. 1., as follows:

II. Trade Comparison Service

* * * * *

B. NYSE/AMEX Equity Securities

* * * * *

1. Trade Input and Comparison

* * * * *

Trade data as submitted by Members is converted, if necessary, validated and matched by the Corporation to insure that the details of each trade are in agreement between the purchaser and seller. Results of this process are reported by the Corporation to Members on T+1 Contract lists. With regard to trade data reported by Self-Regulatory Organizations or other service bureaus *or Qualified Special Representatives,* which the Corporation may accept on behalf of a Member, the Corporation may report back such data to Members on T-Contract lists. T+1 Contract lists are available to Members on the morning of T+2. T-Contract lists are available to Members on the morning of T+1. Separate T+1 and T Contract lists are issued for transactions executed on the NYSE and AMEX.

* * * * *

Modify NSCC's Fee Structure, as follows:

V. Pass-Through and Other Fees

A. Participant Fees

Represents the monthly fee for each number assigned to a Member, Municipal Comparison Only Member or Fund/Serv Member for participation by each Member, Municipal Comparison Only Member or Fund/Serv Member under such number in one or more of the specified services provided by NSCC. The [six] *seven* services and their related base fees are:

* * * * *

7. Qualified Special Representatives—$500.00 per month

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Pursuant to NSCC Rule 39, Members are able to submit trade data on behalf of others through the special representative mechanism. To become a special representative, both sides must enter into a representative agreement and authorization agreement.

Several NSCC Members who are OTC market makers operate automated execution systems where they are always the contra party to the transaction. Pursuant to agreements which these market makers have with subscribers to their service, the subscribers must accept the terms of the trade. Currently, subscribers can appoint the market maker as a special representative and have him input this trade data to NSCC on T+1 or he can input the data himself.

Since the subscriber is required to accept the terms of the trade, these market makers have requested that they be able to input that data as a locked-in trade on trade date and have the trade appear on T-Contracts. By having the trades appear as a compared trade sooner, it would relieve one of their operational burdens. Further, since the proposed rule change will promote the prompt and accurate comparison of securities transactions eminating from OTC market makers' automated execution systems, the proposed rule change is consistent with the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

The proposed rule change will limit this service though, to those market makers who are always the contra side to each transaction, and they would still be required to enter into special representative agreements in order to input this data.

Additionally, in order to recover costs of initial changes to accept automated input and to update such periodically, each Member inputting the locked-in trade would be charged a monthly participant fee of $500.00 in addition to the transaction recording fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not perceive that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No comments on the proposed rule change have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the 1934 Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the 1934 Acts.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

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communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–NSCC–86–15 and should be submitted by December 10, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 12, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–26101 Filed 11–18–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–23791; File No. SR–OCC–86–19]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Options Clearing Corp.

The Options Clearing Corporation ("OCC"), on September 8, 1986, filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). The Commission is publishing this notice to solicit comment on the rule change.

The proposal amends OCC By-Laws Article VII, section 1, Interpretation and Policy .02 ("Interpretation"). The proposal broadens the authority of OCC Clearing Members to submit to OCC on expiration date (after the return of the Preliminary Exercise Report but before the return of the Final Exercise Report under OCC Rule 805) adjustments to correct *bona fide* errors or omissions on their exchange transactions in an expiring options series. Previously, the Interpretation limited such adjustments to expiring options having exercise prices within ⅝ point ($0.625) of the closing price of the underlying security. The proposal rescinds that limitation. OCC proposed the limitation in 1983 to minimize the volume of adjustments and related paperwork.[1] Since that time, however, OCC has implemented an on-line communications system (Clearing Member Accounting and Control System, *i.e.*, "C/MACS"). Because C/MACS has reduced significantly the volume of paperwork requiring OCC processing, OCC now believes that its system easily can handle greater adjustment processing. The adjustments will be conducted as an on-line C/MACS procedure. Moreover, OCC will continue to monitor the adjustments and foresees no particular monitoring problems due to elimination of the ⅝ point restriction.[2]

OCC states that the proposal is consistent with the purposes and requirements of section 17A of the Act in that it would promote the prompt and accurate clearance of securities transactions and protect investors by permitting inadvertent errors to be corrected.

The rule change has become effectively pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

You may submit written comment within 21 days after notice is published in the Federal Register. Please file six copies of your comment with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, with accompanying exhibits and all written comments, except for material that may be withheld from the public under 5 U.S.C. 552, are available at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–86–19 and should be submitted by December 10, 1986.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: November 12, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–26102 Filed 11–18–86; 8:45 am]

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[1] *See* File No. SR–OCC–83–11, which was approved by the Commission in Securities Exchange Act Release No. 19803 (May 23, 1983), 48 FR 24506 (June 1, 1983).

[2] OCC monitors the adjustments primarily through daily or weekly surveillance reports. The volume of adjustments and the types of adjustments are reviewed by OCC as key measures of whether the adjustment procedure is being abused.

[Release No. 34–23792; File Nos. SR–PCC–86–03 and SR–PSDTC–86–05]

Self-Regulatory Organizations; Pacific Clearing Corp. and Pacific Securities Depository Trust Co., Order Approving Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), the Pacific Clearing Corporation ("PCC") and the Pacific Securities Depository Trust Company ("PSDTC") (collectively, "PCC/PSDTC") filed with the Securities and Exchange Commission proposed rule changes that would establish an automated, on-line communications link between PCC/PSDTC and its Participants.[1] Participants would access PCC/PSDTC's existing automated securities processing system in several ways: (1) Through the Pacific Participant Terminal System ("PPTS"); and (2) via computer-to-computer transmission or magnetic tape through the Pacific Automated Services ("PASS"). Notice of the proposals was published in Securities Exchange Act Release Nos. 23457 (July 22, 1986), 51 FR 27105 (July 29, 1986), and 23456 (July 22, 1986), 51 FR 27106 (July 29, 1986). No comment letters were received. This Order approves the proposals.

I. Description of the Proposals

The proposed Pacific Participant Terminal System ("PPTS") would enable a PCC/PSDTC Participant to communicate electronically with PCC/PSDTC via a terminal located at the Participant's place of business. Each Participant would need to purchase or lease terminal equipment, *i.e.*, a screen-type terminal and a printer. A compatible personal computer ("PC"), which many businesses have on hand for other business purposes, also could be used to accomplish the link.

Through the terminal system, Participants could perform several functions that previously could be effected only through paper submissions. Each Participant could: (1) Affirm, cancel and print confirmations of trades submitted to the National Institutional Delivery System ("NIDS") and inquire on the status of NIDS trades throughout the NIDS processing cycle; and (2) effect free or valued depository movements of securities between its account and the account of another Participant, initiated cash only movements, and inquire on the status of these depository movements.

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[1] The two clearing agencies jointly operate one electronic communications system.

The system would contain multiple security features to reduce to the greatest extent possible the risk of unauthorized system access. Participants would access the system either through dedicated leased telephone lines[2] or by dial-up over commercial lines with a "call-back" verfication by the PCC/PSDTC system.[3] All participant terminal locations also would be identified by a terminal ID number, invisible to the user, which would be cross-referenced to the Participant's user passwords. This feature should ensure that the Participant will be able to access its own account(s) only. Moreover, each Participant would be assigned on Participant request unique multilevel user passwords, that could be used to restrict access by function.

The Pacific Automated Services System ("PASS") would be an integrated system that provides another alternative for the exchange of information between PCC/PSDTC and its Participants. PASS would permit PCC/PSDTC Participants to link their mainframe or microcomputer to PCC/PSDTC. Participants without an in-house data processing capability could use PCC/PSDTC's system, through PASS, to link directly to their data processing service bureaus. PCC/PSDTC Participants also could receive and send information through the physical exchange of magnetic tapes.

II. Rationale for the Proposal

PCC/PSDTC believe that the proposed rule changes are consistent with section 17A of the Act. PCC/PSDTC state that PPTS and PASS facilitate rapid and efficient communication between PCC/PSDTC and its Participants. This promotes the prompt and accurate clearance and settlement of securities transactions by eliminating the labor intensive processing of paper input. Additionally, PCC/PSDTC believe that the direct communicatons link between PCC/PSDTC and its Participants should encourage the use of National Clearance and Settlement System facilities. This increased use should result in further immobilization of securities certificates in the depository environment and should reduce the number of physical securities deliveries, consistent with the goals of section 17A.

III. Discussion

For reasons discussed below, the Commission agrees with PCC/PSDTC that the proposed rule changes are consistent with the Act and, therefore, is approving the proposals. The Commission believes that the proposal should facilitate the prompt and accurate clearance and settlement of securities transactions. The Commission also believes that the proposal contains sufficient safeguards to assure the safety of securities and funds in the custody or control of PCC/PSDTC.

The Commission agrees with PCC/PSDTC that the proposal should enhance PCC/PSDTC's ability to process securities transactions and should increase the operational efficiency of the clearing agencies. This will benefit Participants in several ways. First, the automated communications link should significantly speed up securities processing. Participants for the first time will have almost instantaneous access to a complete, current data base of their transactions and will be able to determine at any time the status of their transactions in the system. Second, the proposed system will reduce paper processing. No longer will Partcipants need to use the mail or messengers to deliver paper delivery instructions, reports and other documents. The system should substantially reduce costs related to preparing and delivering such documents as well.[4] Moreover, the proposed system should eliminate the high incidence of clerical errors typically associated with manual processing.

The Commission also believes that the proposed link should promote more widespread use of PCC/PSDTC's automated securities processing system. The dial-up access alternative is considerably more economical than dedicated line access and, therefore, affordable to more Participants. Indeed, for many Particpants, initial start-up costs should be minimal because existing hardware, *e.g.*, an IBM PC, modem and printer, simply would be used for an additional application.

Moreover, because the automated communication system should facilitate book-entry securities deliveries among Participants, fewer physical securities deliveries will occur. Thus, the system will reduce the related risk of loss of securities and funds.

Finally, the Commission believes that the security features built into the proposed system are adequate to assure the safeguarding of securities and funds in PCC/PSDTC's custody or control. While the Commission recognizes that no safeguarding system can completely guarantee the safety of securities and funds within the clearing agency's automated system from the risk of unauthorized system access, the Commission believes that clearing agencies' automated processing systems, and, in particular, systems that provide dial-up access, should contain safeguarding mechanisms adequately designed to reduce to the greatest extent possible the risk of unauthorized system access.[5] The Commission is satisfied that PCC/PSDTC's system safeguards, *e.g.*, use of dedicated lines or dial-up access controlled by terminal identification, multiple passwords, access restrictions by function and the call-back feature, are well-designed and should help ensure system integrity by maintaining a sufficient level of protection against the risk of unauthorized system access.

IV. Conclusion

Based on the foregoing, the Commission finds that the proposals (File Nos. SR-PCC-86-03 and SR-PSDTC-86-05) are consistent with the Act, and, in particular, with section 17A.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule changes be, and hereby are, approved.[6]

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: November 12, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-26103 Filed 11-18-86; 8:45 am]

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[2] Leased line configurations are direct from PCC/PSDTC to the Participant's location and would be the Participant's sole means of system access.

[3] The calling Participant is first prompted by the PCC/PSDTC system for the Participant's unique ID number. If the system confirms the ID number, the call is terminated. The system then immediately re-dials the terminal at the pre-determined, system-stored valid location tied to the ID number. If the ID number that the user provides is not recognized by the system on any attempt, a security message will be printed. After three failed attempts to enter the system, the system automatically shuts off and a data processing supervisor is alerted.

[4] Firms may realize even more cost savings because fewer resources will be needed to effect back-office operations.

[5] The Commission previously has addressed and approved dial-up access procedures and safeguards. *See* Securities Exchange Act Release Nos. 20519 (December 30, 1983), 49 FR 980 (January 6, 1984), approving File Nos. SR-DTC-79-8, SR-MSTC-77-8, SR-MCC-77-4 and SR-Philadep-83-3; 21227 (August 9, 1984), 49 FR 32898 (August 15, 1984), approving File No. SR-MSTC-84-05; and 22939 (February 24, 1986), 51 FR 7172 (February 28, 1986), approving File No. SR-OCC-85-20.

[6] The Commission directs PCC/PSDTC to monitor the adequacy of its safeguarding scheme with respect to dial-up access and to file necessary system changes with the Commission expeditiously under section 19(b) of the Act.

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[Release No. 34-23795; File Nos. SR-PSE-85-30, PSE-86-20]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc., Order Approving Proposed Rule Change and Notice and Order Granting Accelerated Approval

I. Introduction

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder, [2] the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Commission on October 7, 1985, and September 26, 1986, respectively, proposed rule changes to list and trade a broadbased market index option contract on the Financial News Composite Index ("FNCI" or "Index") and to alter its trading hours for index options. Notice of File No. SR–PSE–85–30 was given by the issuance of Securities Exchange Act Release No. 22536 (October 17, 1985), 50 FR 43050. No comments were received on the proposal. File No. SR–PSE–86–20, has not been noticed previously. The Commission has determined to approve the proposed rule changes.

II. Description of Proposals

The Financial News Network ("FNN") is a cable television network which provides live financial news programming to subscribers. FNN reaches approximately 22 million homes nationwide. On April 1, 1985, FNN began to disseminate the FNCI. The FNCI is a price weighted index [3] comprised of thirty domestic common stocks designed to track the overall stock market. Individual issues are selected from the more highly capitalized, publicly traded issues on the New York Stock Exchange ("NYSE"). In its filing, the PSE states that each of the underlying securities must meet the following criteria:

(1) The issue must have had an average daily trading volume of 100,000 shares for the 120 days prior to the day the issue is included in the Index; and

(2) The issue must have a minimum capitalization of one billion dollars. The stocks comprising the Index represent approximately 27 industry groups.[4] As of October 1, 1986, the aggregate capitalization of all 30 stocks in the FNCI was over $430 billion. During the last four month period, each of the stocks has had an average trading volume of at least 100,000 shares.

The price-weighted FNCI is calculated by adding the sum of one share of each of the 30 component stocks in the Index and dividing the sum by a constant divisor.[5] Accordingly, stocks with higher prices will influence the Index value more than the lower-priced stocks. As of October 10, 1986, the highest priced stock in the Index, IBM, represented 7.7% of the Index value. The three highest priced stocks have an aggregate weight of 20.39% of the Index value; the top six highest-priced stocks represent 35.38% of the Index value. The FNCI value will be calculated and disseminated at least once each minute during market hours.

A component of the FNCI will be replaced if any of the following events occurs: (1) A stock's capitalization falls below one billion dollars; (2) a corporation enters bankruptcy; (3) a substantial change in a corporation's business focus takes place; or (4) a corporation is merged out of existence. Whenever a stock is deleted, it will be replaced with a stock with a capitalization of at least one billion dollars and a minimum average liquidity of at least 100,000 shares per day.

The PSE proposes to apply its existing broad-based index options rules to trading options on the FNCI. In addition, quotes will be in fractions, and the Index multiplier will be the same as that provided for in Exchange Rule XXI, section 2. The PSE anticipates having ten point strike price intervals on the FNCI. The Exchange proposes to trade the FNCI option contract on the March cycle[6] with two near-term months and two far-term months. The FNCI contract will be a European-style[7] option. As such no exercise of the contract may be effected prior to the day proceeding expiration.[8]

The PSE also proposes to amend its Exchange Rules to alter its existing trading hours for index options from 6:30 a.m. to 1:10 p.m. Pacific time to 6:30 a.m. to 1:15 Pacific time in order to permit simultaneous trading of futures and options on the same indexes during the same time. Currently, the PSE has listed and permits trading of options on the PSE Technology Index, a price-weighted, broad-based index. The PSE indicates that trading hours for the PSE Technology Index futures contract on the Pacific Futures Exchange will be 6:30 a.m. until 1:15 p.m. Pacific Time. In addition, the PSE states that it has been informed by the International Futures Exchange, Ltd. ("Intex") that it will trade futures against the FNCI from 6:30 a.m. Pacific Time until 1:15 p.m. Pacific Time.[9]

III. Discussion

The PSE proposal to trade options on the FNCI does not, for the most part, raise novel questions. The Commission previously has approved the PSE broad-based index options rules that will be applied to the FNCI.[10] The Commission finds that the PSE proposed designation of the Index as broad-based is appropriate. As noted above, the FNCI contains stocks representing a diversity of business sectors. In addition, because the Index contains 30 stocks and is price-weighted, the PSE has ensured that no single stock or group of stocks should comprise a significant percentage of the Index.[11] The Commission notes

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[1] 15 U.S.C. 78s(b) (1982).

[2] 17 CFR 240. 19b–4 (1986).

[3] A price weighted index is calculated by adding the prices of one share of each of the companies in the index and dividing that sum by a pre-established divisor.

[4] These industry groups include manufacturing, computers, food services, pharmaceuticals, leisure, financial services, and communications.

[5] In keeping with Exchange Rule XXI, Section 5, the divisor will be adjusted only when necessary to maintain continuity of Index values. The PSE anticipates that the divisor will be modified only if an underlying security is subject to a stock split or stock dividend amounting to 10% or more of the current outstanding shares. The current divisor is 1.06502.

[6] The Index will trade on a January-March-June-September-December exercise cycle.

[7] A European-style option may be exercised only during a specified period (which may be as short as a single day) just before the option expires. This is in contrast to an American-styled option which may be exercised by the holder at any time after it is purchased until it expires. The writer of a European-style option is subject to the assignment of an exercise only during the exercise period.

[8] The PSE proposes to amend Exchange Rule XXI, Section 15, to permit the Exchange to list options on stock indexes on both American and European-style options.

[9] Intex is a fully automated futures exchange subject to oversight by the Government of Bermuda, which has the authority to investigate and impose sanctions, including suspending trading on the exchange, if Intex fails to carry out its obligations under Intex's enabling statute. The International Commodities Clearinghouse, Ltd. in London is Intex's clearinghouse.

[10] PSE Rule XXI.

[11] As a separate matter, the Commission notes the federal securities laws, unlike the regulations under the Commodity Exchange Act, do not contain an explicit "economic purpose" test for new options products. Nevertheless, to approve a new options proposal the Commission must be satisfied that its introduction is in the public interest [*see* section 6(b)(5) of the Act, 15 U.S.C. 78(f)(b)(5) (1984)]. Such a finding would be difficult with respect to an options product that served no hedging or other economic function because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the Commission accepts the PSE's representation that

Continued

that the dollar value of the 15,000 contract position limit[12] is unlikely to cause disruptions either by congestion or manipulation in the options or related markets.[13]

Furthermore, the Commission previously has approved options trading on European-style contracts, among them the Chicago Board Options Exchange's ("CBOE") Standard & Poor's 500 Index ("SPX"), which, like the FNCI, is a broad-based index option.[14] In approving the CBOE proposal, the Commission recognized that there are advantages to both American and European-style options, with purchasers generally benefiting from American-style options and sellers from European-style. With the latter type of option, the purchaser is disadvantaged to some extent because he must rely on the continued existence of a liquid secondary market in the options in order to close out an option position before expiration. In contrast, the writer of the contract benefits from the contract's European-style exercise feature, because the writer cannot be exercised against until expiration, and accordingly can engage in long-range planning and strategies. While the Commission recognizes that the European-style of the FNCI may limit the flexibility of options purchasers, we also believe that the exercise feature of the contract may facilitate certain trading strategies and prove useful to investors. These potential risks are fully described in the Options Disclosure Document issued pursuant to Rule 9b–1 under the Act. In light of this disclosure, the Commission is not inclined to substitute its judgment for the business judgment of a self-regulatory organization in matters of contract design, absent regulatory concern.

Similarly, the Commission believes that the use of price-weighting instead of market weighting does not raise problems under the Act.[15] The Commission previously has approved price-weighted indexes,[16] and does not believe that price-weighting poses insurmountable surveillance concerns. Price-weighting can ensure that no single stock or group of stocks comprise a significant percentage of the index (as compared with market value-weighted indices where one stock may compose 50% or more of the weight of the index). In the case of the FNCI, one stock—IBM—represents 7.7% of the Index value. No other stock represents more than 6% of the Index, and 27 of the 30 stocks in the Index individually account for no more than 5.3% of the Index value. If the index were calculated by weighing relevant capitalizations, IBM would, of course, compose an even larger percentage of the Index.[17] In addition, a price movement in a substantial number of stocks in the Index, or substantial price movements in a smaller number of stocks, should be detectable under the surveillance plan being proposed by the PSE.[18] We also note that the minimum capitalization and average daily volume requirements help to ensure that smaller, less liquid stocks are not included in the Index.

Finally, the Commission notes that the PSE Plans to jointly market its option on the FNCI Index with Intex's marketing of futures on the FNCI. Indeed, Intex, a computer-based futures market, plans to make its trading terminals available to PSE members. Accordingly, the PSE and Intex entered into a joint surveillance sharing agreement. Moreover, the Bermuda Minister of Finance has indicated that it does not believe that the Bermuda Protection of Trading Interests Act of 1981 [19] would frustrate such surveillance sharing efforts.[20] In view of these arrangements, the Commission believes that PSE has established an adequate regulatory framework for the intermarket surveillance of options trading on FNCI.[21]

IV. Conclusion

Under section 19(b)(2) of the Act, the Commission must approve a proposed rule change if it determines that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. The Commission believes that the Index should provide useful hedging and trading opportunities to investors, institutions, and traders. The Commission has reviewed carefully the rules proposed by the PSE to accommodate the listing and trading of FNCI options, and has concluded that the rules provide for adequate and proper regulation of the proposed market. Accordingly, the Commission finds that SR–PSE–85–30 is consistent with the requirements of the Act and the rules and regulations thereunder and, in particular, the requirements of section 6.

The PSE also requests that its proposal to alter its trading hours for index options, SR–PSE–86–20, be given accelerated effectiveness pursuant to section 19(b) of the Act because the Exchange wishes to implement the change at the same time that the Intex begins trading futures on the FNCI, and the new trading hours will be consistent with those of the other options exchanges.

The Commission finds that SR–PSE–86–20 is consistent with the requirements of the Act and the rules and requirements thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving SR–PSE–86–20 prior to the thirtieth day after the date of publication of notice of filing thereof

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the FNCI will serve an economic function in that availability of this Index will provide investors with added trading and hedging opportunities.

[12] At the current FNCI Index value of 161 on October 10, 1986, the dollar value of a 15,000 contract position would be $241.5 million.

[13] The Commission notes, in this regard, that while it continues to be concerned about the volatility which has been associated with certain so-called Expiration Fridays, it does not believe that the introduction of the FNCI will materially affect those developments. In any event, the Commission will continue its efforts to evaluate alternative methods of addressing Expiration Friday concerns.

[14] At the present time, four European-style option contracts are approved for trading in the United States. *See* Securities Exchange Act Release Nos. 22471 (September 26, 1985), 50 FR 40636, approving a CBOE proposal to trade European-style foreign currency options; 22309 (August 9, 1985), 50 FR 32934, approving a CBOE proposal to convert the SPX from an American to a European-style option; 22999 (March 12, 1986), 51 FR 9733, approving an American Stock Exchange, Inc. ("Amex") proposal to trade European-style 13-week Treasury bill options; and 2311 (June 16, 1986), 51 FR 21815, approving an Amex proposal to trade European-style options on the Institutional Index ("XII").

[15] It should be noted, however, that these practices may have implications with respect to matters in which the Commission does have a regulatory interst, *e.g.*, the use of price-weighting may influence the surveillance procedures PSE must put in place. *See* discussion, *infra*.

[16] *See e.g.*, Amex's Major Market Index, PSE's High Technology Index, and the New York Stock Exchange's ("NYSE") Beta Index.

[17] On October 10, 1986, IBM was trading at about $124.00 per share.

[18] The PSE has submitted a copy of its surveillance sharing agreement with Index for the Division's review. The PSE has also submitted a copy of a letter from the Bermuda Ministry of Finance to the PSE dated October 20, 1986. This letter reflects the stated policy of the Minister of Finance in favor of the agreement between the PSE and the Index for regulatory surveillance and evidences the Minister's assurance that be foresees no circumstances which would warrant invocation of the Protection of Trading Interests Act of 1981 to frustrate the surveillance sharing arrangement between the PSE and the Index.

[19] Bermuda 1981; No. 72 [December 29, 1981].

[20] Letter from Mansfield H. Brock, Jr., Financial Secretary for Ministry of Finance, Bermuda, to PSE, dated October 20, 1986.

[21] The NYSE originally had submitted a letter which raised concerns regarding PSE's surveillance sharing arrangements with Intex. *See* letter from Donald Solodar, Senior Vice President, Market Surveillance Services, NYSE, to Brandon Becker, Assistant Director, Division of Market Regulation, dated October 31, 1985. The Commission understands, however, that in view of subsequent developments regarding the Intex/PSE surveillance sharing agreement, the NYSE is no longer concerned about the adequacy of the agreement.

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because the rule change is substantively identical to rule changes previously filed by three other self-regulatory organizations that were approved by the Commission.[22] Those rule changes and the PSE's proposed rule change are intended to coordinate the close of trading in broad-based stock index futures contracts traded elsewhere, thus enhancing the ability to use these instruments for hedging purposes.

V. Solicitation of Comments

Interested persons are invited to submit written data views, and arguments concerning SR-PSE-86-20. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC Copies of such filings also will be available for inspection and copying at the principal office of the PSE. All submissions should refer to the file No. PSE-86-20 and should be submitted by December 10, 1986.

It is therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes be and hereby are, approved.

By the Commission.

Dated: November 12, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-26104 Filed 11-18-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23775; File No. SR-PSE-86-15]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change

The Pacific Stock Exchange, Inc. ("PSE") submitted a proposed rule change on July 22, 1986 pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] to amend PSE Rule VI, sections 48 and 79 (Commentary .06), and to institute a new Options Floor Procedure Advice ("OFPA"). The amended rules are designed to ensure that for certain series of options, non-broker dealer customer orders will be filled to a minimum depth of ten contracts by the market makers in the trading crowd. The Commission solicited comment on the proposal, but received none.[3]

Specifically, the proposed rule change would apply to near-term equity options which are at-the-money, just in or just out-of-the-money at the time the request for a bid or offer is made. The rule change would require that Order Book Officials ensure that when market makers are responsible for the best bid and/or best offer in a particular series, orders will be filled to a depth of at least ten contracts by the trading crowd market makers. Under the proposed rule change, if there is insufficient response to provide a depth of ten contracts, the Order Book Official will allocate contracts among the market makers in the trading crowd to satisfy the ten contract requirement. The proposed rule would apply only when the bid or offer is solicited by a floor broker representing a non-broker dealer customer order.

In its filing, PSE stated that the purpose of its proposed rule change is to benefit the public by increasing liquidity in the more popular option series. Guaranteed ten contract liquidity will, according to PSE, eliminate partially-filled retail orders. This will reduce commission costs for retail customers by ensuring that public orders can be filled in one transaction, rather than in several transactions. It will also be consistent with section 6 of the Act because it will facilitate transactions in securities and protect investors and the public interest. Accordingly, the Commission finds that the PSE proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposal is consistent with sections 6 and 11A of the Act.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 4, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-26105 Filed 11-18-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2261; Amdt. 1]

Alaska; Declaration of Disaster Area

The above-numbered Declaration (51 FR 40099), is hereby further amended to change the interest rate for non-profit, eleemosynary and similar organizations from 10.5 percent to 9.5 percent. Any loans approved to an organization in this group between October 1, 1986, and this date, will be automatically adjusted to reflect the new rate. All other information remains the same.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: November 13, 1986.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 86-26125 Filed 11-18-86; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2254; Amdt. 2]

Illinois; Declaration of Disaster Area

The above-numbered Declaration (51 FR 36891), as amended (51 FR 37998), is hereby further amended to change the interest rate for non-profit, eleemosynnary and similar organizations from 10.5 percent to 9.5 percent. Any loans approved to an organization in this group between October 1, 1986, and this date, will be automatically adjusted to reflect the new rate. All other information remains the same.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: November 13, 1986.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 86-26126 Filed 11-18-86; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2260; Amdt. 1]

Kansas; Declaration of Disaster Area

The above-numbered Declaration (51 FR 39731), is hereby further amended to change the interest rate for non-profit, eleemosynary and similar organizations from 10.5 percent to 9.5 percent. Any loans approved to an organization in this group between October 1, 1986, and this date, will be automatically adjusted to reflect the new rate. All other information remains the same.

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[22] Similar rule changes were filed by the CBOE, the Amex, and the NYSE. *See* Securities Exchange Act Release No. 22957 (February 27, 1986).

[1] 15 U.S.C. 78s(b)(1984).

[2] 17 CFR 240.19b-4 (1986).

[3] The proposed rule change was noticed in Securities Exchange act Release No. 23512 (August 6, 1986), 51 FR 29039 (August 13, 1986).

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008).

Dated: November 13, 1986.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 86-26127 Filed 11-18-86; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2258; Amdt. 2]

Missouri; Declaration of Disaster Area

The above-numbered Declaration (51 FR 37532), as amended (51 FR 40099), is hereby further amended to change the interest rate for non-profit, eleemosynary and similar organizations from 10.5 percent to 9.5 percent. Any loans approved to an organization in this group between October 1, 1986, and this date, will be automatically adjusted to reflect the new rate. All other information remains the same.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: November 13, 1986.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 86-26128 Filed 11-18-86; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2257; Amdt. 2]

Montana; Declaration of Disaster Area

The above-numbered Declaration (51 FR 37533), as amended (51 FR 40099), is hereby further amended to change the interest rate for non-profit, eleemosynary and similar organizations from 10.5 percent to 9.5 percent. Any loans approved to an organization in this group between October 1, 1986, and this date, will be automatically adjusted to reflect the new rate. All other information remains the same.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: November 13, 1986.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 86-26129 Filed 11-18-86; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2259; Amdt. 2]

Oklahoma; Declaration of Disaster Area

The above-numbered Declaration (51 FR 37533), as amended (51 FR 40099), is hereby further amended to change the interest rate for non-profit, eleemosynary and similar organizations from 10.5 percent to 9.5 percent. Any loans approved to an organization in this group between October 1, 1986, and this date, will be automatically adjusted to reflect the new rate. All other information remains the same.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008).

Dated: November 13, 1986.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 86-26130 Filed 11-18-86; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2253; Amdt. 2]

Wisconsin; Declaration of Disaster Area

The above-numbered Declaration (51 FR 36892), as amended (51 FR 39449), is hereby further amended to change the interest rate for non-profit, eleemosynary and similar organizations from 10.5 percent to 9.5 percent. Any loans approved to an organization in this group between October 1, 1986, and this date, will be automatically adjusted to reflect the new rate. All other information remains the same.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008).

Dated: November 13, 1986.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 86-26131 Filed 11-18-86; 8:45 am]

BILLING CODE 8025-01-M

Small Business Investment Company; Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.302 (a) and (b) limit the maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon a Small Concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "Debenture Rate", which is defined elsewhere in 13 CFR 107.3 in terms that require SBA to publish, from time to time, the rate charged on ten-year debentures sold by Licensees to the public. Notice of this rate will be published upon change in the Debenture Rate.

Accordingly, Licensees are hereby notified that effective November 4, 1986, and until further notice, the Debenture Rate to be used for computation of maximum cost of money pursuant to 13 CFR 107.302 (a) and (b) is 8.750% per annum.

13 CFR 107.302 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to section 308(i) of the Small Business Investment Act, as amended by section 524 of Pub. L. 96-221, March 31, 1980 (94 Stat. 161), to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

Dated: November 7, 1986.

John L. Werner,

Acting Deputy Associate Administrator for Investment.

[FR Doc. 86-26132 Filed 11-18-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 984]

Agency Forms Submitted for OMB Review

AGENCY: Department of State.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980, the Department has submitted a proposed collection of information to the Office of Management and Budget for review.

SUMMARY: The following summaries the information collection proposal submitted to OMB.

1. Title of information collection—Application for Confidential Verification of Birth.

Form number—DSP-16.

Originating office—Bureau of Consular Affairs.

Type of request—Reinstatement.

Frequency—On occasion.

Respondents—State vital statistics offices.

Estimated number of responses—3,000.

Estimated number of hours needed to respond—250.

Section 3504(h) of P.L. 96-511 does not apply.

Additional information or comments: Copies of the proposed form and supporting documents may be obtained from Gail J. Cook (202) 647-4086. Comments and questions should be

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directed to (OMB) Francine Picoult (202) 395-7231.

Dated: November 10, 1986.

Donald J. Bouchard,

Assistant Secretary for Administration.

[FR Doc. 86-26033 Filed 11-18-86; 8:45 am]

BILLING CODE 4710-24-M

[CM-8/1021]

Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on Tuesday, December 9, 1986, at 9:30 a.m. in Room 1406 of the Department of State, 2201 C Street, NW., Washington, DC.

The purpose of the meeting is to discuss matters relating to a possible accelerated procedure covering a CCITT Recommendation addressing digitally encoded algorithm (1.5 Mbs video telephony codec standard).

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Henry Marchese, AT&T (201) 234-3790.

Dated: November 12, 1986.

Earl S. Barbely,

Director, Office of Technical Standards and Development.

[FR Doc. 86-26064 Filed 11-18-86; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket 79-17; Notice 32]

Optional New Car Assessment Program Testing by Manufacturers

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for Comments on Optional New Car Assessment Program (NCAP) Testing by Manufacturers.

SUMMARY: This notice requests comments on an optional NCAP crash test program for motor vehicle manufacturers being proposed by NHTSA. The program would provide manufacturers with an opportunity to retest any of their vehicles which have been tested in NCAP and later modified with production changes to improve occupant protection. This optional test program would be conducted at the manufacturer's expense but under criteria established by the agency. The results would be identified as optional test program data and would be published by the agency in the NCAP press releases.

DATE: Written comments on this notice must be submitted no later than January 5, 1987.

ADDRESSES: Comments on this notice must refer to the docket and notice numbers set forth above and can be submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. Submissions containing information for which confidential treatment is requested should be submitted (3 copies) to Chief Counsel, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street SW., Washington, DC 20590, and 7 additional copies from which the purportedly confidential information has been deleted should be sent to the Docket Section.

FOR FURTHER INFORMATION CONTACT: Charles L. Gauthier, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202/366-4805).

SUPPLEMENTARY INFORMATION: Title II of the Motor Vehicle Information and Cost Savings Act (Pub. L. 92-513) requires the development and dissemination of comparative information on the crashworthiness, damage susceptibility, and ease of diagnosis and repair of motor vehicles. The foundation of Title II is the belief that, if consumers have valid comparative information on important motor vehicle characteristics, they will use that information in their vehicle purchase decisions, thereby encouraging motor vehicle manufacturers to improve the safety and reliability of their products. The experimental New Car Assessment Program (NCAP) addresses the crashworthiness ratings aspect of Title II by providing comparative safety performance information, in the form of dummy injury measurements, on selected vehicles which are crashed head-on into a fixed barrier at 35 mph. Consumers are informed of this crashworthiness information through news releases, the NHTSA Hotline, and media coverage of NCAP test results.

On several occasions manufacturers have made small but significant production line changes to vehicles to improve the performance of the vehicles in the NCAP test. When these vehicles were retested subsequently in NCAP, the production changes made noticeable improvements in the dummy injury measurements. However, because limitations on agency resources preclude immediate retest by the agency of every redesigned vehicle, consumers do not always learn about the improved vehicle performance. Consistent with its resources and its statutory mandate, the agency wishes to encourage manufacturers who have a strong interest in the performance of their vehicles in NCAP to continue to improve the performance of their vehicles. To inform consumers promptly about improved NCAP test results for previously tested vehicles and to maintain NCAP data as current as possible, such information should be made available as quickly as possible. For these reasons, the agency believes that the public interest would be served if it provided a means of public dissemination of new NCAP data obtained through an optional manufacturer-conducted test program proposed by the agency.

As noted above, the agency is not generally in a position to allocate funds and personnel to conduct a retest of an "improved" vehicle. In such situations, the agency is proposing that if a manufacturer retests an "improved" vehicle at its own expense and under strict conformance to NHTSA criteria (discussed below), the agency would publish the test results as part of an NCAP press release. These results would be annotated in some manner so that consumers would be aware that production changes were made to a model which was crashed in an earlier NCAP test. Comments are sought on how best to identify manufacturer data in the press release.

The criteria proposed by the agency for the optional NCAP crash test program for manufacturers would ensure comparability to the results obtained in government-conducted NCAP tests and would be strictly observed by a manufacturer that wished its test results to be publicized by the agency. The proposed criteria are as follows:

1. The manufacturer must provide technical data to the agency which describes the production design changes made to the vehicle, reasons why such changes are likely to significantly improve NCAP results and estimated or actual test results expected by the

manufacturer if the vehicle were retested. If changes have not been made to the vehicle subsequent to its NCAP test, the agency will not publish the retest results under this program. The agency is interested in comments on establishing a minimum level of improvement for publication under this program.

2. The test must be conducted at an independent test facility which has the capability of conducting crash tests in conformance with the NCAP test procedures. The agency is interested in comments on establishing objective standards for assessing the NCAP capability of a test facility.

3. The current NCAP test procedures as specified in Docket 79–17 must be used.

4. NHTSA will be notified of the day and time of the test and prior test preparation activities, and will have a representative present for the actual crash test and any vehicle/dummy preparation.

5. Public confidence in the program and the published results require that there be no possibility that a manfacturer could preselect the individual vehicle to be tested. Therefore, the test vehicle must be purchased at random by the test laboratory from a dealer. The agency wishes to emphasize that vehicle changes incorporated in the test vehicle must be production changes. Therefore, the test vehicle should be available at any dealership.

6. The electronic test data, test films, and test report must be completed according to the current NCAP test procedures. Copies of the electronic test data, test films, and test report are provided directly to NHTSA for analysis and validation in accordance with current agency procedures.

7. After validation, the test results would be published as part of NCAP results, along with a summary of the production changes made to the vehicle.

8. Manufacturers must agree in advance that, absent violations in the test protocol or equipment failure, the test results will be made publicly available regardless of their magnitude.

The intent of the above criteria is to ensure that vehicle retests which are arranged by manufacturers at their expense are conducted as identically as possible to the original NCAP test sponsored by NHTSA. Thus, random purchase of test vehicles, independent laboratory testing, and publication of results (no matter what they might be) must be assured. The benefits of such a program are timely and up-to-date crashworthiness data provided to consumers, fairness to manufacturers which have made vehicle safety improvements by replacing outdated data, and minimum expense to the taxpayers.

Interested persons are invited to submit comments on NHTSA's proposed optional NCAP test program as discussed above. Although the agency is currently considering adopting the program for vehicles previously tested in NCAP, comments are also requested on whether such data should be accepted for vehicles which were *not* previously tested in NCAP. Adoption of this second course of action could result in an expansion of the number of vehicles for which NCAP-type data would be available for consumers while minimizing the Government's cost of obtaining such data.

It is requested but not required that 10 copies of comments be submitted. A 45-day comment period is provided. All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies, from which proportedly confidential information has been deleted, should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be accepted, and will be available for examination in the docket at the above address both before and after that date. The agency will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material. Those persons desiring to be notified upon receipt of their comments in the public docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Issued on November 13, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86–[illegible] Filed 11–18–86; 8:45 am]

BILLING CODE 4910-59-M

Office of Commercial Space Transportation

[Notice No. 86–13; Docket 43810]

Expendable Launch Vehicle Program; Finding of No Significant Impact

AGENCY: Department of Transportation.

ACTION: DOT notice of finding of no significant impact (FONSI).

SUMMARY: DOT is issuing this notice to advise the public that a finding of no significant impact has been made on the expendable launch vehicle program.

SUPPLEMENTARY INFORMATION: On February 26, 1986[1] the Office of Commercial Space Transportation issued an Interim Final Rule setting forth licensing regulations for commercial space launch activities. Commercial Space Launch Act of 1984, Pub. L. 98–575 (the Act) authorizes the Secretary of Transportation (the Secretary) to oversee and coordinate commercial launch activities.

The regulations establish general procedures for the Office, set forth policy and procedures for licensing commercial launch activities, and prescribe general standards and information requirements for launch license applications. Taken together, these provisions constitute the Office's administrative framework for ensuring safe and responsible commercial launch activities and eliminating regulatory obstacles to the development of private launch and launch support services.

The Finding of No Significant Impact is based on the Office's environmental assessment of the commercial space transportation program. This programmatic assessment identified the impacts that the conduct of commercial launch activities would have on the human environment. None of these were significant. However, certain factors associated with individual launch proposals were not addressed in the assessment and may require further review during the licensing process. These include use of new propellants, new site development, or environmental effects associated with some payloads in the event of a launch accident.

FOR FURTHER INFORMATION CONTACT: Norman Bowles, Senior Regulatory

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[1] Published at 51 FR ([illegible]) February 26, 1986.

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Specialist, Office of Commercial Space Transportation, (202) 366–5770, or Gerald Musarra, Office of the General Counsel, (202) 366–9305, Department of Transportation, Washington, DC 20590.

Dated: November 3, 1986.

Donald R. Trilling,

Acting Deputy Director, Office of Commercial Space Transportation.

[FR Doc. 86–26067 Filed 11–18–86; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Dept. Circular—Public Debt Series—No. 37–86]

Treasury Notes of November 30, 1988, Series AG–1988

Washington, November 13, 1986.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $10,250,000,000 of United States securities, designated Treasury Notes of November 30, 1988, Series AG–1988 (CUSIP No. 912827 UG 5), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner discribed below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated December 1, 1986, and will accure interest from that date, payable on a semiannual basis on May 31, 1987, and each subsequent 6 months on November 30 and May 31 through the date that the principal becomes payable. They will mature November 30, 1988, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry from in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer from.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Standard time, Wednesday, November 19, 1986. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, November 18, 1986, and received no later than Monday, December 1, 1986.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Other are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commerical bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to whch tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action muder this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, December 1, 1986. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Wednesday, November 26, 1986. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, December 1, 1986. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 86-26151 Filed 11-17-86; 10:41 am]

BILLING CODE 4810-40-M

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Sunshine Act Meetings

Federal Register
Vol. 51, No. 223
Wednesday, November 19, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION:

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 1:20 p.m. on Thursday, November 13, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in the Hoxie State Bank, Hoxie, Kansas, which was closed by the State Bank Commissioner for the State of Kansas on Thursday, November 13, 1986; (2) accept the bid for the transaction submitted by Prairie Bank, Hoxie, Kansas, a newly-chartered State nonmember bank; (3) approve the applications of Prairie Bank, Hoxie, Kansas, for Federal deposit insurance and for consent to purchaase certain assets of and assume the liability to pay deposits made in The Hoxie State Bank, Hoxie, Kansas; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration for the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in room 6020 of the FDIC Building located at 550—17th Street, NW., Washington, DC

Dated: November 14, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-26160 Filed 11-17-86; 10:55 am]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM, BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, November 24, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 14, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-26118 Filed 11-17-86; 9:10 am]

BILLING CODE 6210-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 17, 24, December 1, and 8, 1986.

PLACE: Commission' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of November 17

Wednesday, November 19

10:00 a.m.
Disussion of Pending Investigations (closed—Ex. 5 & 7)
2:00 p.m.
Briefing in Advance of Publication of Draft NUREG-1150 (Source Term) (Public Meeting)

Thursday, November 20

10:00 a.m.
Briefing on Initiatives to Improve Maintenance Performance (Public Meeting)
2:00 p.m.
Periodic Meeting with NUMARC (Public Meeting)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, November 21

10:00 a.m.
Discussion/Possible Vote on Davis Besse Restart (Public Meeting)

Week of November 24—Tenative

Wednesday, November 26

10:00 a.m.
Briefing by Executive Branch (Closed—Ex. 1)
11:00 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of December 1—Tentative

Wednesday, December 3

10:00 a.m.
Briefing by Steering Group on Strategic Planning (Public Meeting)

Thursday, December 4

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of December 8—Tentative

Wednesday, December 10

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Thursday, December 11

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Affirmation of "Commission Decision in Uranium Miller's Hearing (In the Matter of American Nuclear Corporation et al. Docket No. 40-4492 et al.) (Public Meeting) is scheduled for November 14.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634-1410.

Robert B. McOsker,

Office of the Secretary.

November 13, 1986.

[FR Doc. 86-26179 Filed 11-17-86; 3:37 pm]

BILLING CODE 7590-01-M

TENNESSEE VALLEY AUTHORITY

TIME AND DATE: 9 a.m. (e.s.t.), Friday, November 21, 1986.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill drive, Knoxville, Tennessee.

STATUS: OPEN.

AGENDA

Approval of minutes of meeting held on October 31, 1986.

Discussion Item

1. Regional Industrial Development Information Management System. Staff will discuss the objectives and capabilities of the Regional Industrial Development Information Management System, a new project designed to introduce the use of microcomputers at industrial development offices to provide ready access to information necessary to help recruit new industry to the Tennessee Valley region.

Action Items

Old Business

*1. Supplement to Personal Services Contract No. TV-68867A with Coopers & Lybrand, Knoxville, Tennessee, for Professional Accounting and Specialized Consultation Services, Requested by the Comptroller.

*2. Supplement to Personal Services Contract No. TV-69344A with Coopers & Lybrand, Knoxville, Tennessee, for Services of Qualified Personnel to Provide Assistance to TVA in the Design and Implementation of an Accounting Information System, Requested by the Comptroller.

New Business

A—Budget and Financing

A1. Adoption of Supplemental Resolution Authorizing 1986 Series F Power Bonds.

A2. Resolution Authorizing the Chairman and Other Executive Officers to Take Further Action Relating to Issuance and Sale of 1986 Series F Power Bonds.

A3. Modification of Fiscal Year 1987 Capital Budget Financed from Power Proceeds and Borrowings—Replacement of Upper Waterwalls, Radiant Reheater, Extended Sidewall and Roof Tubes in Widows Creek Fossil Plant, Unit 7.

B—Purchase Awards

B1. Negotiation GG-463546—Indefinite Quantity Term Agreement for Genuine Pennsylvania Crusher Repair Parts for all Power Storerooms, Excluding Nuclear Power Storerooms.

*Item approve by individual Board members. This would give formal ratification to the Board's action.

B2. Invitation YB-101636—Direct Digital Monitoring and Control System for Power System Control Center.

B3. Req. 15—Term Coal for John Sevier Steam Plant.

C—Power Items

C1. Supplement No. 4 to Contract No. TV-62311A Between Tennessee Emergency Management Agency and TVA for Cooperation in the Development and Implementation of Radiological Emergency Plans as Required by the Nuclear Regulatory Commission and the Federal Emergency Management Agency.

C2. Supplement No. 6 to Subagreement No. 1 Under the Technical Assistance Plan and Interagency Agreement between TVA and United States Department of Energy (TV-68345A) for TVA Weld Quality Evaluation for Watts Bar Unit 1.

D—Personnel Items

D1. Consulting Contract with James R. McGuffey, Knoxville, Tennessee, to Provide Consulting Services in Connection with Issues Related to Welding Review Activity at Watts Bar Nuclear Plant, Requested by Office of Nuclear Power.

D2. Consulting Contract with Roy B. McCauley Associates, Worthington, Ohio, to Provide Expert Consulting Services in Connection with Issues Related to Welding Review Activity at Watts Bar Nuclear Plant, Requested by Office of Nuclear Power.

D3. Consulting Contract with Aptech Engineering Services, Inc., Palo Alto, California, to Provide Consulting Services in Connection with Issues Related to Welding Review Activity at Watts Bar Nuclear Plant, Requested by Office of Nuclear Power.

D4. Consulting Contract with Ammann & Whitney Consulting Engineers, New York, New York, for Edward Cohen to Serve as a Consultant Concerning Adequacy of Concrete at Watts Bar Nuclear Plant, Requested by Office of Nuclear Power.

D5. Supplement No. 2 to Personal Service Contract No. TV-6740A with General Physics Corporation, Columbia, Maryland, for Engineering and Related Support to the Technical Services Group at Browns Ferry Nuclear Plant, Requested by Office of Nuclear Power.

D6. Consulting Contract with Cataract, Inc., Newtown, Pennsylvania, for Donald B. Weaver to serve as a consultant in connection with the Atmospheric Fluidized Bed Combustion Project, Requested by Division of Energy Demonstrations and Technology, Office of Power.

E—Real Property Transactions

E1. Grant of Permanent Easement to City of Decatur, Alabama, for Public Recreation, Affecting 375 Acres of Wheeler Reservoir Land in Morgan County, Alabama (Point Mallard Park)—Track No. XTWR-83E.

E2. Sale of Permanent Easement to Eugene Brumbaugh for a Commercial Building, Affecting Approximately 0.05 Acre of Chatuge Reservoir Land In Towns County, Georgia—Track No. XCHR-75B.

E3. Sale of Term Easement Extension to North Alabama Shipping and Mining, Incorporated, for Barge Terminal, Affecting Approximately 3.4 Acres of Guntersville Reservoir Land in Jackson County, Alabama—Track No. XGR-7201E.

E4. Filing of Condemnation Cases.

F—Unclassified

F1. Authority to Write Off Uncollectible Accounts Receivable.

F2. Fertilizer Distribution Agreement with Laroche Industries, Inc., Atlanta, Georgia.

F3. Amendments to Terms and Conditions of the Voluntary Retirement Savings and Investment Plan for Members of the TVA Retirement System.

F4. Appointment of Paul R. Shlemon as Designated Agency Ethics Official.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: November 14, 1986.

W.F. Willis,

General Manager.

[FR Doc. 86-26159 Filed 11-17-86; 10:51 am]

BILLING CODE 8120-01-M

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Corrections

Federal Register
Vol. 51, No. 223
Wednesday, November 19, 1986

This section of the FEDERAL REGISTER contains editorial corrections of previously published Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency-prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Implementation of Special Refund Procedures

Correction

In notice document 86–25180 beginning on page 40503 in the issue of Friday, November 7, 1986 make the following correction:

On page 40507, in the second column, in paragraph (1), in the fifth line, "not" should read "now".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51639; FRL-3077-9]

Certain Chemical Premanufacture Notices

Correction

In notice document 86–20366 beginning on page 32245 in the issue of Wednesday, September 10, 1986, make the following correction: On page 32245, in the third column, in the **SUMMARY** paragraph, in the fifth line, after "premanufacture" insert "notice (PMN) to EPA at least 90 days before manufacture".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 83P-0003 et al.]

Approved Variances for Sunlamp Products; Availability

Correction

In notice document 86–20842 beginning on page 32847 in the issue of Tuesday, September 16, 1986, make the following correction:

On page 32848, in the table, in the entry for Docket No. 85V–0193, in the second column, "Eurton" should read "Eurotan".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-943-06-4220-10]

Public Lands in Nevada; Notice of Proposed Withdrawal

Correction

In notice document 86–18800 appearing on page 29705 in the issue of Wednesday, August 20, 1986, make the following corrections:

1. In the first column, under "T. 6 N., R. 33 E.," in the second line of "Sec. 24", add ", SW1/4;" at the end of the line.
2. In the second column, the FR Doc. number should read "86–18800".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD02 86-02]

Drawbridge Operation Regulations; Tennessee River, TN

Correction

In rule document 86–20479, beginning on page 32319, in the issue of Thursday, September 11, 1986, make the following correction:

§ 117.949 [Corrected]

On page 32320, first column, first line in the section heading, "Cumberland" should read "Tennessee".

BILLING CODE 1505-01-D

federal register

Wednesday
November 19, 1986

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 14

Federal Acquisition Regulation (FAR); Release of Solicitation Mailing Lists; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 14

Federal Acquisition Regulation (FAR); Release of Solicitation Mailing Lists

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a revision to Federal Acquisition Regulation (FAR) 14.205-5 to clarify that contracting offices may require written requests for the release of lists of prospective bidders furnished copies of plans and specifications on construction contracts. This revision is considered to be nothing more than a clarification of existing regulations and therefore does not require publication for public comment. However, any comments received before the expiration date of the public comment period will be considered in the formulation of the final rule.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before January 20, 1987, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW, Room 4041, Washington, DC 20405.

Please cite FAR Case 86-59 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96-354) does not apply because the proposed revision is not a "significant revision" as defined in FAR 1.501-1; i.e., it does not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the issuing agencies. Accordingly, and consistent with section 1212 of Pub. L. 98-525 and section 302 of Pub. L. 98-577 pertaining to publication of proposed regulations (as implemented in FAR Subpart 1.5, Agency and Public Participation), solicitation of agency and public views on the proposed revision is not required. Since such solicitation is not required, the Regulatory Flexibility Act does not apply. Although such solicitation is not required, comments are invited.

B. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because the proposed revision to FAR 14.205-5 does not impose any additional reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 14

Government procurement.

Dated: November 12, 1986.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Part 14 be amended as set forth below:

PART 14—SEALED BIDDING

1. The authority citation for Part 14 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

2. Section 14.205-5 is amended by adding in paragraph (b) a final sentence to read as follows:

14.205-5 Release of solicitation mailing lists.

* * * * *

(b) * * * Contracting offices may require written requests and establish appropriate procedures.

[FR Doc. 86-26058 Filed 11-18-86; 8:45 am]

BILLING CODE 6820-61-M

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federal register

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Part III

Environmental Protection Agency

40 CFR Part 261

Identification and Listing of Hazardous Waste; Used Oil; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH-FRL-3114-9]

Identification and Listing of Hazardous Waste; Used Oil

AGENCY: Environmental Protection Agency.

ACTION: Decision not to adopt proposed rule; tentative schedule to address issues still outstanding.

SUMMARY: The Agency has determined that used oil being recycled should not be listed as a hazardous waste under the Resource Conservation and Recovery Act (RCRA). EPA intends, however, to issue recycled oil management standards and is conducting studies necessary to determine what standards are appropriate under section 3014 of RCRA. EPA is also conducting certain studies to determine whether used oil being disposed of, i.e., not being recycled, should be listed as a RCRA hazardous waste, or whether it should be regulated instead under different statutes. This notice describes those studies currently underway and sets forth a tentative schedule describing when the Agency will address those issues still outstanding.

ADDRESS: Information sources used to develop this notice are available for public inspection at: EPA RCRA Docket (Sub-basement), 401 M Street SW., Washington, DC 20460.

For a listing of supporting documents and procedures for reviewing documents, see the "Supporting Documents" section in "Supplementary Information," below.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline, toll free at (800) 424–9346 or at (202) 382–3000. For technical information, contact Robert April, Chief of the Capacity and Storage Section, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Telephone (202) 382–7917. Single copies of this notice may be obtained from the RCRA Hotline at the number above.

SUPPLEMENTARY INFORMATION:

Outline of Today's Notice

I. Background
II. Decision Not To List Recycled Oil as a Hazardous Waste
  A. Threshold Legal Questions
  B. Basis for Not Listing Recycled Oil
III. Strategy To Control Used Oil Bound for Disposal
IV. Strategy To Control Used Oil Recycling
V. New Schedule
VI. CERCLA Reportable Quantities Proposal
VII. Supporting Documents
VIII. List of Subjects

I. Background

Section 3012 of RCRA, added to the statute by the Used Oil Recycling Act of 1980 and amended (and re-designated as section 3014) by the 1984 RCRA amendments, directs the Administrator to "promulgate regulations . . . as may be necessary to protect human health and the environment from hazards associated with recycled oil. In developing such regulations, the Administrator shall conduct an analysis of the economic impact of the regulations on the oil recycling industry. The Administrator shall ensure that such regulations do not discourage the recovery or recycling of used oil consistent with the protection of human health and the environment." Section 1004 of RCRA defines both "used oil" and "recycled oil." The term "recycled oil," and the phrase, "used oil recycling," include used oil being reused for any purpose, including used oil being refined or being processed into fuel. Also included, as EPA reads the statute, is used oil being stored, collected, or otherwise being managed *prior* to recycling. (See 50 FR 49216; November 29, 1985).

The statute requires EPA to make a determination as to whether to list used oil as a hazardous waste under RCRA section 3001. Section 8 of the Used Oil Recycling Act directs EPA to consider effects on recycling in determining whether to list. EPA was required to propose whether to identify or list used automobile and truck crankcase oil by November 8, 1985, and to make a final determination as to whether to identify or list any or all used oils by November 8, 1986. EPA is also to promulgate management standards by November 8, 1986 for recycled oil that is identified or listed. EPA's authority to regulate recycled oil, however, is not dependent on a hazardous waste listing. (See the discussion at 50 FR 1691; January 11, 1985.)

The statute thus carves out a special niche for recycled oil in Subtitle C that differs from all other wastes. Recycled oil is to be regulated under a special set of rules, effects on recycling must be taken into account in listing and regulating recycled oil, and EPA retains authority to regulate recycled oil under Subtitle C whether or not it is identified or listed as hazardous.

EPA has met some of these deadlines, and complied partially with the others. The Agency has issued final regulations prohibiting the burning of off-specification used oil in non-industrial boilers (50 FR 49064, November 29, 1985). Marketers of used oil fuel and burners of off-specification fuel must notify EPA of their activities and comply with certain notice and record keeping requirements. (Id.) The Agency has proposed to list all used oils as hazardous waste (50 FR 49258, November 29, 1985). EPA also proposed comprehensive management standards for recycled oil on the same date (50 FR 49212).

EPA received a great many comments on the proposed used oil management standards and listing. Most of these comments criticized the proposals, especially the proposed listing of used oil as a hazardous waste. The ultimate thrust of the negative comments was that the listing would not only discourage used oil recycling, but would ultimately be environmentally counterproductive because used oil left unrecycled would be disposed of in manners posing greater risk than recycling. Additionally, although many commenters supported, in general, the need for regulation of used oil (including management standards for recycled oil), some commenters indicated that certain of the proposed management standards would also discourage recycling. Particular negative factors singled out by commenters were the stigmatizing effect of a listing, and strict regulation of burners who have an easily-available virgin fuel substitute.

EPA responded with a supplemental notice of data availability (51 FR 8206; March 10, 1986). In that notice, the Agency requested comments on the option of regulating recycled oil without identifying or listing recycled oil as a hazardous waste, and listing used oil being disposed of as hazardous waste. Most commenters supported this option as a preferable alternative to listing all used oil.

Since the November 1985 and March 1986 notices, there have been a number of developments relevant to the proposals. First, EPA has investigated some of the major issues raised in the comments, including the effects of crude oil price drops on used oil recycling and the potential impacts of stigma associated with a hazardous waste listing. Second, Congress has exhibited continued interest in this area. The House Subcommittee on Energy, Environment, and Safety Issues Affecting Small Business held a used oil hearing on May 19, 1986. The Subcommittee's preliminary findings were that EPA's proposal would be counterproductive, due to adverse impacts that would follow a hazardous waste listing. (See the letter from Honorable Charles W. Stenholm, dated

6/18/86.) In addition, under the recently reauthorized Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or "Superfund"), certain generators of recycled oil would be eligible for a limited exclusion from CERCLA liability. Further, RCRA sections 3006 and 3008 were amended so that recycled oil would be subject to RCRA State authorization and criminal enforcement provisions whether or not it is listed or identified as a hazardous waste.

EPA has also conducted field studies in states where used oil has been listed as hazardous waste under State law. In general, we found that it was typical for used oil to be shipped from these States into States where used oil is not regulated. Finally, a series of information bulletins have been distributed to used oil generators and recyclers to clarify ambiguities in the present and proposed regulations. For example, EPA reiterated that industrial burners may burn used oil even if it is off-specification, provided that they notify EPA of their waste-as-fuel activities. Further, we reiterated that used oil is not now a hazardous waste, and notification does not create hazardous waste legal obligations. Copies of the information bulletins may be obtained by calling the RCRA Hotline at (800) 424–9346, or (202) 382–3000. For public review of the studies and other documents referenced above, see the "Supporting Documents" section below.

II. Decision Not to List Recycled Oil as a Hazardous Waste

As explained more fully below, EPA is meeting part of its statutory deadline of determining whether to list used oil by deciding not to list used oil being recycled, or being sent for recycling, as a hazardous waste. We have determined that listing recycled oil would discourage recycling of used oil. Our further concern is that displacement of this used oil from recycling could cause an increased quantity of used oil to be disposed of in uncontrolled ways, causing harm to the environment. This increased disposal could result from decreased use of used oil as fuel by industrial burners and decreased acceptance of do-it-yourselfer oil by service stations (and similar establishments), both attributable to costs and stigma associated with listing.

Balanced against the environmental harm likely to be associated with listing recycled oil is the fact that EPA can regulate used oil recycling without a listing. The quantity of used oil in question, absent the listing, would most likely be burned. Burning of used oil is now partially controlled under a combination of RCRA and Clean Air Act regulations, and EPA is conducting studies to determine what additional controls, if any, are necessary to adequately protect human health and the environment from the hazards associated with used oil burning. Listing recycled oil as a hazardous waste, however, is not necessary to promulgate additional rules for recycled oil. Therefore, we have concluded that the listing would discourage recycling, and, since listing is not necessary to regulation, have further concluded that listing could pose a net detriment to the environment.

The remainder of this unit of the preamble explains in more detail the Agency's decision not to list recycled oil. First, we address certain threshold legal questions the decision presents. Second, we discuss in detail the basis for the decision.

A. Threshold Legal Questions

1. Non-Technical Grounds for Listing Determination

In the past, EPA has based its decision as to whether to list a waste as hazardous purely on a technical determination of whether the waste satisfies the criteria for listing contained in § 261.11(a)(3), which implements RCRA section 3001. These criteria involve considerations of the hazards of the waste.

Our decision today is not based on the hazards of recycled oil. Rather, we believe that listing would discourage recycling of used oil and could have an environmentally counterproductive effect. We believe the statute indicates explicitly that the Agency is to consider effects on recycling in deciding whether to list recycled oil. Section 8 of the Used Oil Recycling Act (Pub. L. 96–463, section 8) states specifically that in determining whether or not to list used oil as a hazardous waste, "the Administrator shall ensure that the recovery and reuse of used oil are not discouraged." This provision was left unamended in 1984 and appears to the Agency to state clearly that non-technical factors, to the extent they bear on recycling of used oil, must be evaluated in determining whether to list recycled oil.

We note further that Congress has expressly provided EPA with authority to regulate recycled oil under Subtitle C whether or not recycled oil is identified or listed (section 3014(a); cf. H.R. Rep. No. 198, 98th Cong., 1st Sess. (69)). Recycled oil is the only type of waste for which this is the case. Since listing is not necessary to ensure Subtitle C regulatory control, EPA believes that the decision is more discretionary than other listing decisions and EPA can legitimately consider such non-technical factors as the effect on recycling and ultimate environmental effect of a listing determination.

The language of section 3014, taken as a whole, further reinforces our view that the Agency is to consider non-technical factors in determining whether to list. The sense of the statute is that EPA must look to the effect its regulations have on used oil recycling and protection of human health and the environment. An action which discourages recycling so as to cause, on balance, an environmentally-detrimental effect would not satisfy the statutory mandate. EPA believes that listing of recycled oil as a hazardous waste would probably be such an action. Congress appears to have allowed for this possibility by directing EPA to consider effects on recycling when determining whether to list, and providing the Agency alternative regulatory authorities to control recycled oil which is not identified or listed.

2. Authority to Make Identification and Listing Determinations Specific to Used Oil Being Disposed of

A second question is whether the Agency can make separate listing determinations for used oil being recycled and being disposed of. The Agency believes such an approach is allowable under the statute, largely for the same reasons discussed above. Congress directed the Agency to consider effects on recycling and ultimate environmental effects in developing recycled oil regulations. Listing recycled oil bears on these concerns. Congress also provided express authority over recycled oil not identified or listed as hazardous, another clear indication that recycled oil and other used oil can be classified differently. Congress has also recently stated, in the Conference report to the CERCLA amendments, that it was aware that EPA might not list recycled oil. Far from disapproving, Congress amended sections 3006 and 3008 for RCRA to provide for criminal enforcement and state authorization authority for recycled oil not identified or listed. Clearly, Congress sees no bar in distinguishing between recycled oil and other used oil when listing.

The Agency does not regard today's action as setting precedents for listing or identifying any other types of hazardous wastes. As explained above, recycled oil occupies a unique position in the

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Subtitle C structure, and is to be accorded distinct regulatory treatment. Our action is predicated on these distinctions and our conclusion that protection of human health and the environment is best served by regulating recycled oil without listing it as a hazardous waste.

B. Basis for Not Listing Recycled Oil

EPA has determined that recycled oil should not be listed as a hazardous waste. This determination is based on our conclusion that a listing could lead to major disruptions in the established used oil recycling system in the United States, and our further concern that such disruption could ultimately lead to significant amounts of used oil being disposed of in unsound ways. This finding caused EPA to reconsider the need for a listing, given the authority granted by RCRA section 3014(a), under which EPA may regulate recycled oil with or without a listing. [See the discussion above]. We are announcing the "no listing" decision today to clear up uncertainty experienced by the many affected parties. The supporting data and rationale for the no listing determination follow.

1. Public Comments

EPA was deluged with hundreds of comments opposing the listing of recycled used oil as a hazardous waste. In fact, of the over 800 public comments EPA received on its 11/29/85 used oil proposal (and the 3/10/86 supplementary notice), by far the most common comment was that listing recycled oil would disrupt established collection and recycling networks and ultimately lead to improper used oil disposal. EPA is particularly impressed by the broad range of parties who expressed this concern. In addition to generators and recyclers of used oil, some of the comments were from private groups and from State and local governments who have set up do-it-yourself (DIY) collection centers and who claimed that a listing would impair or put an end to such efforts. A central theme of the commenters' line of reasoning (although not fully articulated in all of the submissions) is that a successful national used oil recycling system depends on *voluntary* participation of private parties at certain crucial points, and that a recycled oil listing would seriously deter this participation.

Commenters cited concerns with CERCLA liability, with insurance rates, public and employee relations, and the "derived-from" rule (which provides that any waste generated by the treatment of a listed hazardous waste is iteself presumed to be hazardous). Parties whose participation was cited as likely to cease were service stations and others who act as DIY collection centers, and industrial fuel users. In the former case, commenters stressed that DIYs would have no place to take their used oil and would likely place it in their household garbage, down sewers, or dump it on the ground. In the latter case, commenters argued that industrial fuel is the major use of used oil, and given the nation's currently limited re-refining capacity (and the recent fall in oil prices), refusal of industrial burners to accept used oil fuels would cause "backups" throughout collection networks and ultimately could lead to unsound disposal (by generators left without a recycling outlet).

2. EPA Studies

In its initial proposal, EPA did not evaluate the effects listing might have on used oil recycling, believing that effects would result from imposition of management standards, 50 FR 49260. When commenters indicated that listing alone, apart from imposition of standards, could seriously discourage recycling, EPA conducted studies over the past several months to try to determine to what extent commenters' arguments could be corroborated, and what the environmental consequences could be if these claims were to become reality. We note that there is a distinct limit to the extent quantification is possible here, since to some extent what is involved is an emotional reaction, unquantifiable by its very nature. With this caveat, as explained below, EPA has estimated some of the magnitude of disruption reasonably likely to occur due to a recycled oil listing. Because much of this analysis involves a modeling of human behavior and predictions about recently volatile prices of crude oil, the estimates are only rough aproximations of what might occur. Nonetheless, the dislocations in the recycling market and the adverse impacts which could result are cause for serious concern. For public review of these studies, see the "Supporting Documents" section below.

a. *Burner notifications.*

In the Regulatory Impacts Analysis to support the 11/29/85 prospoal, EPA predicted that over 2,000 establishments would burn off-specification used oil as fuel, despite the listing of used oil as hazardous waste and the regulation of used oil burners. EPA has reviewed the notifications received from used oil burners (required by § 266.44(b), in rules issued final on 11/29/85 at 50 FR 49164) to determine whether such an estimate is correct. Through October 1986, only about 500 burner notifications have been received. Although much of the disparity is likely due to the availability of low priced virgin fuel oils, burners' concerns over the proposed listing and certain of the proposed management standards also seem to have caused reluctance to purchase used oil fuels. See, for example, comments of the National Asphalt Pavement Association (NAPA), dated 4/9/86. NAPA members burn large amounts of used oil and their comments indicate there would be reduced use of used oil as fuel if recycled oil is listed (or if certain management standards are imposed).

b. *Oil displacement.* EPA conducted analyses showing that, even in the absence of substantive controls on recycled oil, the listing of recycled oil as hazardous waste could cause an additional 61–128 million gallons per year (MGY) of used oil to be disposed of in uncontrolled ways, an increase of approximately 22–47 percent over baseline conditions. [The results presented here are from the report, by Temple, Barker, and Sloane, Inc., *Analysis of Possible Market Impacts Resulting from Stigmatizing Effects of Listing Recycled Oil,* dated November, 1986.] This disruption is attributable both to direct economic effects (e.g., costs of managing combustion residues as hazardous wastes) as well as psychological effects such as public relations problems, etc., which may translate into economic effects (e.g., the cost of an asphalt company hiring a community relations specialist to allow continued burning of used oil fuel). Some element of disruption could also result for non-economic reasons, with persons opting out of the recycled oil system to avoid handling a "hazardous waste." EPA has determined that the costs and stigma associated with listing recycled oil could significantly reduce the demand for used oil fuel. Re-refining would not be able to expand (at least in the short term) to the extent necessary to absorb all of the used oil displaced from burning. Generators would then have difficulty in finding recyclers willing to accept their used oil; and as a result, commercial auto centers would likely refuse to accept DIY-generated used oil and significantly increase the price charged for oil change services offered to the public. Reduced availability of DIY oil collection centers and higher oil change price for the public would increase DIY oil changes and would ultimately lead to increased uncontrolled disposal of used oil.

c. *Environmental hazards.* The release of 61–128 MGY of used oil into the environment would very likely threaten ground and surface waters with oil contamination, thereby endangering drinking water supplies and aquatic life. EPA was not able to quantify the environmental harm these releases could pose, but to put the quantities in perspective, one may note that the amount of oil accidentally spilled onto the territorial waters of the U.S. each year is typically only 10–20 MGY. (See the EPA Report to Congress, *Listing Waste Oil as a Hazardous Waste* (SW-909), January 1981, p. 9) Clearly, the displacement of used oil potentially associated with a recycled oil listing is cause for serious concern.

3. Administrative Concerns

In the **Federal Register** of March 10, 1986 (51 FR 8207), EPA indicated it was concerned that regulations issued for recycled oil not accompanied by listing recycled oil would be difficult to implement effectively because EPA would lack full RCRA State authorization and criminal enforcement authorities. EPA notes, however, that as part of the CERCLA Reauthorization, Congress amended RCRA to provide state authorization and criminal enforcement authorities for recycled oil not listed as a hazardous waste. (RCRA sections 3006 and 3008, as amended by section 205(i) of the Superfund Amendments Reauthorization Act.) These administrative concerns, then, are no longer valid.

4. Conclusion

The Agency cannot responsibly ignore the many comments urging us not to list recycled oil. Although analysis of the impacts of such a listing is difficult, we are today making such a decision based on the best available information. The Agency finds inherently reasonable the argument that listing will discourage voluntary participation in the used oil recycling system. There are objective costs associated with listing recycled oil: residues from use are automatically hazardous wastes (absent delisting), and recycled oil not already a CERCLA hazardous substance necessarily becomes one. The stigma associated with designation as a hazardous waste, although difficult to quantify, is nevertheless sufficiently apparent on this record for legitimate Agency concern. The Agency further believes that initial recycled oil collectors (particularly DIY oil collectors) and end users (particularly used oil fuel users) are the entities in the used oil recycling system particularly likely to cease recycling when faced with these kinds of pressures because they have easily available options which do not require utilization of recycled oil. This is particularly true of used oil burners.

Although not strictly necessary as a ground for decision, the Agency believes it prudent to consider the environmental effects of these possible large-scale dislocations. On this record, the Agency believes that given the present lack of re-refining capacity, significant shortfalls in burner capacity could cause recycled oil to back up through the system. It appears that such a shortfall has been developing since the proposal. This type of backup could lead to eventual unsound disposal with significant environmental detriment as generators are left without a recycled outlet. Indeed, this precise concern is raised in the legislative history of the 1984 amendments, with the conclusion that such dumping would "defeat the purposes of this legislation." H. Rep. No. 198, 98th Cong. 1st Sess. at 65; *see also id.* at 66 ("used oil ordinarily handled by [generators] certainly will be dumped if regulations are unduly stringent."). The Agency believes that this additional, mostly uncontrolled, disposal could pose a net detriment to the environment. This oil, if not for the listing, would probably be burned. Used oil burning is partially controlled now under the RCRA section 3014(a) rules promulgated on November 29, 1985 (50 FR 49164). These rules prohibit the most harmful practice, i.e., burning of off-specification fuel in nonindustrial boilers. Industrial burners may burn off-specification fuel provided they comply with the mainly administrative requirements of 40 CFR 266.44. Id. at 49195. We note that many industrial burners of used oil, such as new asphalt plants, have air pollution control equipment in place (due to Clean Air Act requirements that reduce risks from emissions. The Agency is currently conducting studies to determine if additional controls are necessary. (This is described in section IV of this preamble, below.) To the extent that additional requirements are deemed necessary, EPA can further control industrial burning under RCRA section 3014(a) *without* a listing. Therefore, the listing would increase disposal and cause adverse environmental effects without providing environmental benefits. The Agency's studies cited earlier corroborate this premise.

III— Strategy To Control Used Oil Bound For Disposal

EPA is currently considering options to control the disposal of used oil using one or more of several possible statutes. We continue to believe that improper disposal of used oil can cause serious environmental problems. Most commenters, in fact, supported this conclusion. The Agency believes, however, that some options not previously evaluated may achieve better environmental results as compared to the proposed RCRA hazardous waste listing. We are currently investigating whether disposal of used oil can be controlled under section 6 of the Toxic Substances Control Act (TSCA). This approach may have advantages when compared to a RCRA listing. EPA is investigating the TSCA option because any used oil hazardous waste listing, even if limited to used oil being disposed of, could be associated with some of the same impacts as a recycled oil listing. In other words, the disposal vs. recycling distinction could be lost on some and used oil would simply be considered "hazardous" for all practical purposes. We are not sure whether this would really be the case, given the indirect linkage between a "disposal only" listing and recycling. Since, however, a TSCA rule would probably create even less of a stigma than a RCRA disposal listing, we think the option is worth investigating further. It should be noted that TSCA section 6 provides EPA with strong regulatory authorities. For example, under section 6(a)(6)(A), EPA may *prohibit* forms of disposal that pose an unreasonable risk.

IV. Strategy to Control Used Oil Recycling

EPA is considering what management standards are necessary for recycled oil. We continue to believe that improper recycling of used oil can pose substantial environmental hazards. This conclusion was supported by many commenters. EPA believes that the regulations for used oil fuel issued in final form on November 29, 1985 (50 FR 49164), while addressing some of the more serious problems, do not by themselves provide adequate controls to ensure proper used oil recycling. For example, these regulations do not address road oiling, storage, and facility management (i.e., security provisions, financial arrangements for closure, etc.), and do not address actual emissions from industrial burning of off-specification used oil fuel.

EPA has concluded additional studies are necessary before issuing recycled oil management standards. We have concluded that we will not issue as a final rule the complete set of management standards proposed on November 29, 1985 (50 FR 49212) because some aspects of the proposal may have been so stringent as to cause impacts similar to a recycled oil listing. In particular, commenters (mainly used oil processors and used oil burners)

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maintained that EPA's proposal to apply full RCRA facility standards to burners would virtually eliminate used oil burning as a recycling outlet. Preliminary cost analyses conducted by EPA appear to confirm this claim. Because burning is the major end use for used oil (and because of the limitations on re-refining expansion cited above), EPA is very concerned about the possibility of such an outcome. This is particularly important given that many industrial facilities, such as new asphalt plants, often have in place air pollution control equipment that reduce toxic emissions from used oil burning. We are therefore re-evaluating our approach to regulating used oil burners to determine whether a reduced set of facility standards might be adequate, whether requirements might be phased-in over a period of time, and also to determine to what extent RCRA used oil emission standards can be coordinated with standards issued by the Agency under the Clean Air Act for fossil fuel burners. The latter aspect of our re-evaluation might result in similar regulations for "virgin" and used oils, and this might reduce industrial fuel users' hesitancy to purchase a "waste" or "used" oil fuel. Since the Agency will also, within the next several months, be proposing standards for underground petroleum storage tanks under RCRA Subtitle I, we will also be considering to what extent these standards can be applied to used oil tanks. Coordination or integration of the standards would facilitate administration of both programs by the Agency (and the States).

Another reason EPA is not issuing final management standards today is that we are reluctant to regulate recycling any further until the Agency's overall used oil strategy is more fully developed, i.e., we want to avoid piecemeal regulation so as not to create an incentive to dispose. We will, however, consider whether any of the November 29, 1985 proposal should be issued in final form before the comprehensive disposal controls are in place. These would be low cost provisions designed to facilitate enforcement of the regulations issued in final form on 11/29/85 (50 FR 49164). Comprehensive recycling management standards, however, will not be issued until the disposal controls (TSCA or RCRA) are also issued.

Finally, EPA is conducting evaluations of several residues, waste waters, and sludges associated with the recycling of used oil. EPA may list one or more of these waste streams as hazardous wastes even if used oil is not itself listed.

V. New Schedule

EPA has formulated two schedules. The first would involve the use of TSCA in lieu of a RCRA disposal listing, and the second would involve a RCRA listing for disposal.

TSCA and RCRA Approach

- Decision as to whether TSCA will be used—Early 1987.
- Proposed TSCA disposal controls—Late 1987.
- Proposed (RCRA) combustion controls—Late 1987.
- Final TSCA disposal controls, RCRA management standards and combustion controls—Mid 1989.

RCRA-Only Approach

- Decision as to whether TSCA will be used—Early 1987.
- Notice of any new RCRA listing data—Late 1987.
- Final used oil (disposal) listing and management standards—Mid 1988.
- Proposed combustion controls—Mid 1988.
- Final combustion controls—Mid 1989.

EPA needs the time outlined in the schedule above to carry out the studies discussed above, and then to undertake appropriate rulemaking activities. Some of the planned actions would require new proposals, hearings, analysis of public comments, etc. Even for those options that would not require a new proposal, EPA must still address the voluminous comments received on the original 11/29/85 proposal. EPA, therefore, cannot proceed any more quickly than we have outlined above.

VI. CERCLA Reportable Quantities Proposal

In conjunction with the proposed listing of used oil as a hazardous waste, EPA proposed a CERCLA reportable quantity (RQ) of 100 pounds. [50 FR 49267, November 29, 1985.] Today's decision to not list recycled oil as a hazardous waste renders part of the RQ proposal moot, i.e., recycled oil will not itself become a listed CERCLA hazardous substance. However, hazardous substances present in any used oil which are either not normally found in refined petroleum fractions or are present at levels exceeding those normally found in petroleum are subject to CERCLA. See 51 FR 8206; March 10, 1986. Used oil being disposed of, as discussed above, may yet be listed as a hazardous waste. Such used oil would then itself become a hazardous substance under CERCLA. If this is the decision EPA finally makes, we will at that time also make the final determination concerning the appropriate RQ for such used oil.

VII. Supporting Documents

Studies cited in the discussions above (as well as the public comments on the 11/29/85 and 3/10/86 proposals) are available for public inspection in the RCRA Docket, (Sub-basement), Docket #F-86-UODF-FFFFF, 401 M Street, SW., Washington, DC 20460. The most important documents are listed below. The docket is open to the public from 9:30 a.m. to 3:30 p.m., Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling Mia Zmud at (202) 475-9327 or Kate Blow at (202) 382-4675. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $0.20 per page.

Information Sources

1. *Public Comment Analysis for the Listing of Used Oil and Management Standards for Recycled Oil,* Four Volumes, by Versar, Inc., dated June 30, 1986.
2. *Analysis of Possible Market Impacts Resulting from Stigmatizing Effects of Listing Recycled Oil,* by Temple, Barker, and Sloane, Inc., dated November 1986.
3. Letter from Honorable Charles W. Stenholm to Lee Thomas, dated June 18, 1986.
4. *Assessment of State Used Oil Management Practices and Regulations,* Two Volumes, by Versar, Inc. June 19, 1986.
5. Information bulletins for used oil generators and recyclers, one bulletin dated 6/86, and two 8/86.
6. Memo to docket on used oil burner notifications, dated November 5, 1986.

Lists of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Dated: November 8, 1986.

Lee M. Thomas,

Administrator.

[FR Doc 86-26076 Filed 11-18-86 8:45 am]

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federal register

Wednesday
November 19, 1986

Part IV

Department of the Treasury

Office of Foreign Assets Control

31 CFR Part 545

South African Transactions Regulations; Comprehensive Anti-Apartheid Act Implementation and Product Guidelines; Final Rules

Department of State

South African Parastatal Organizations; Notice

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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 545

South African Transactions Regulations

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: This rule amends the South African Transactions Regulations, 31 CFR Part 545 (the "Regulations"), to implement certain provisions of the Comprehensive Anti-Apartheid Act of 1986, Pub. L. 99-440, 100 Stat. 1086, as amended by H.J. Res. 756, Pub. L. 99-631, ("the Act"). This rule relates solely to certain provisions of the Act that were effective on or immediately after its passage on October 2, 1986. Those provisions are section 301, prohibiting Krugerrand and other South African gold coin imports (Regulations, § 545.201); section 303, prohibiting the importation of products grown, produced, manufactured, marketed, or otherwise exported by South African parastatal organizations (Regulations, § 545.208); section 305, prohibiting loans to the Government of South Africa (Regulations, § 545.202); section 319, prohibiting the importation of South African agricultural products and articles suitable for human consumption (Regulations, § 545.205); section 320, prohibiting South African iron ore, iron and steel imports (Regulations, § 545.206); and section 323(a)(1), prohibiting importation of South African sugars, sirups, and molasses (Regulations, § 545.207).

EFFECTIVE DATE: Sections 545.205 and 545.207, 12:01 a.m. Eastern Daylight Time, October 3, 1986; all other affected sections, 12:01 a.m. Eastern Daylight Time, October 2, 1986.

FOR FURTHER INFORMATION CONTACT: Marilyn L. Muench, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, 1331 G Street NW., Washington, DC 20220 (telephone: 202/376-0408).

SUPPLEMENTARY INFORMATION: The purpose of the Act, as stated by the Congress, is to set forth a comprehensive framework guiding the efforts of the United States to help to end the apartheid system in South Africa and to assist in the establishment of a nonracial, democratic form of government in that country. In Executive Order 12571 of October 27, 1986, 51 FR 39505 (Oct. 29, 1986), the President delegated authority to the Secretary of the Treasury to implement the Act's prohibitions on imports of certain products (sections 301, 302, 303, 309, 319, 320, 323(a)(1), 510); loans to the South African Government and its controlled entities (section 305); new investments in South Africa (section 310); and the acceptance, receipt or holding of deposit accounts of the South African Government or its controlled entities by a United States depository institution (section 308). Existing regulations at 27 CFR Part 47 implement section 302 of the Act, while section 510 is being implemented by new Part 555, the Soviet Gold Coin Regulations, published on the same date as this rule.

The Act's restrictions on new investments in South Africa (including loans to the private sector) and South African Government bank accounts will become effective on November 16, 1986. Section 309 of the Act, banning importation of South African uranium oxide, uranium ore, coal, and textiles into the United States, will become effective on December 31, 1986. Regulations implementing these provisions will be issued at a later date.

Section 601 of the Act directs the President to continue in effect the measures imposed by Executive Order 12532 of September 9, 1985, 50 FR 36861 (Sept. 10, 1985), banning the importation of South African Krugerrands into the United States, and Executive Order 12535 of October 1, 1985, 50 FR 40325 (Oct. 3, 1985), prohibiting financial institutions in the United States from extending any loan or credit to the South African Government. The Act expands the Krugerrand import prohibition to bar importation of any gold coin minted in South Africa or offered for sale by the Government of South Africa (section 301). The Act also extends to all U.S. nationals, including their foreign branches, the existing prohibition on new loans to the Government of South Africa (section 305), and modifies the definition of the term "loan." This rule modifies the Regulations to conform with these provisions of the Act.

Pursuant to section 2 of Executive Order 12571, the Secretary of State is responsible for determining which entities are "parastatal organizations" for purposes of the Act. Determinations by the Department of State will be used as the exclusive guide for determining which South African entities are parastatal. The first notice concerning such organizations is being published today in conjunction with this final rule. Notices will be published in the **Federal Register** containing updated lists of parastatal organizations as required. Persons with specific questions concerning parastatal organizations may contact the Department of State, Office of Southern African Affairs, Washington, DC 20520 (telephone: 202/647-8433).

Guidelines are being published today in a separate notice related to this final rule delineating the products subject to the importation bans affecting agriculture, articles suitable for human consumption, iron ore, iron, and steel. The U.S. Customs Service will determine whether particular merchandise is subject to exclusion pursuant to these guidelines. It should be noted that agricultural products will continue to be subject to all applicable rules and regulations of the Fish and Wildlife Service of the Department of the Interior, the Department of Agriculture, and other interested agencies, and that the regulations contained in this final rule in no way affect the application of such other rules and procedures.

Section 3(6)(B) of the Act extends to Namibia the preexisting prohibitions of §§ 545.201 and 545.202 of the Regulations. This has been implemented by adding § 545.312 to the Regulations, defining South Africa to include any territory (including Namibia) under the administration, legal or illegal, of South Africa.

Section 603 of the Act provides civil and criminal penalties for violation of the Act, the Regulations and all related provisions. These penalties are implemented in § 545.701 of the Regulations.

Since these regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply. Because these regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal regulations.

List of Subjects in 31 CFR Part 545

Agricultural products, Food, Gold coins, Imports, Iron, Krugerrands, Loans, Namibia, Parastatal organizations, South Africa, Steel, and Sugar.

For the reasons set forth in the preamble, 31 CFR Part 545 is amended as follows:

PART 545—SOUTH AFRICAN TRANSACTIONS REGULATIONS

1. The Authority citation for Part 545 is revised to read as follows:

Authority: 50 U.S.C. 1701 et seq.; E.O. 12532, 50 FR 36861, Sept. 10, 1985; E.O. 12535, 50 FR 40325, Oct. 3, 1985; Pub. L. 99-440, 100 Stat. 1086; Pub. L. 99-631; E.O. 12571, 51 FR 39505, Oct. 29, 1986.

2. Section 545.101 is revised to read as follows:

§ 545.101 Relation of this part to other laws and regulations.

(a) This part is independent of the other parts of this chapter. No license or authorization contained in or issued pursuant to the other parts of this chapter authorizes any transaction prohibited by this part. In addition, no license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part.

(b) No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

3. Section 545.201 is revised to read as follows:

§ 545.201 Prohibition on importation of South African gold coins.

No person, including a bank, may import into the United States any South African Krugerrand, or any other gold coin minted in South Africa or offered for sale by the Government of South Africa.

4. Section 545.202 is revised to read as follows:

§ 545.202 Prohibition on loans.

(a) No national of the United States or financial institution in the United States may make or approve any loan or other extension of credit, directly or indirectly, to the Government of South Africa or to any corporation, partnership or other organization which is owned or controlled by the Government of South Africa.

(b) The prohibition contained in paragraph (a) of this section shall not apply to:

(1) A loan or extension of credit for any education, housing, health, or humanitarian benefit which (i) is available to all persons on a nondiscriminatory basis; or (ii) is available in a geographic area accessible to all population groups without any legal or administrative restriction, provided that no such loan shall be made without first obtaining a specific license pursuant to § 545.503; or

(2) A loan or extension of credit by a national of the United States that is not a financial institution in the United States, for which an agreement was entered into before October 2, 1986, or a loan or extension of credit by a financial institution in the United States for which an agreement was entered into before September 9, 1985.

5. Section 545.203 is revised to read as follows:

§ 545.203 Effective dates.

(a) The effective date of the import prohibition in § 545.201 with respect to Krugerrands is 12:01 a.m. Eastern Daylight Time, October 11, 1985. The effective date of all other prohibitions in § 545.201 is 12:01 a.m. Eastern Daylight Time, October 2, 1986.

(b) The effective date of the prohibition in § 545.202 with respect to financial institutions in the United States is 12:01 a.m. Eastern Standard Time, November 11, 1985. The effective date with respect to nationals of the United States that are not financial institutions in the United States is 12:01 a.m. Eastern Daylight Time, October 2, 1986.

(c) The effective date of the prohibitions in §§ 545.205 and 545.207 is 12:01 a.m. Eastern Daylight Time, October 3, 1986.

(d) The effective date of the prohibitions in §§ 545.206 and 545.208 is 12:01 a.m. Eastern Daylight Time, October 2, 1986.

6. Section 545.204 is revised to read as follows:

§ 545.204 Evasions.

The regulations set forth in this part shall apply to any person who undertakes or causes to be undertaken any transaction or activity with the intent to evade Executive Order 12532, Executive Order 12535, the Act, or these regulations.

7. Section 545.205 is added to Subpart B to read as follows:

§ 545.205 Prohibition on importation of South African agricultural products and food.

No (a) agricultural commodity or product or any byproduct or derivative thereof that is a product of South Africa, or (b) article that is suitable for human consumption that is a product of South Africa, may be imported into the United States.

8. Section 545.206 is added to Subpart B to read as follows:

§ 545.206 Prohibition on importation of iron ore, iron and steel.

No iron or steel produced or iron ore extracted in South Africa may be imported into the United States, except that any such commodity may be imported pursuant to a contract entered into before August 15, 1986, if no shipment of such commodity is imported by a national of the United States under such contract after December 31, 1986.

9. Section 545.207 is added to Subpart B to read as follows:

§ 545.207 Prohibition on sugar imports.

No sugars, sirups, or molasses that are products of the Republic of South Africa may be imported into the United States.

10. Section 545.208 is added to Subpart B to read as follows:

§ 545.208 Prohibition on importation of products from parastatal organizations.

(a) No article which is grown, produced, manufactured, marketed, or otherwise exported by a parastatal organization of South Africa may be imported into the United States, except for:

(1) Those strategic minerals for which the President has certified to the Congress that the quantities essential for the economy or defense of the United States are unavailable from reliable and secure suppliers; and

(2) Except as otherwise provided in this part, any article to be imported pursuant to a contract entered into before August 15, 1986, provided that no shipments may be received by a national of the United States under such contract after April 1, 1987.

(b) Pursuant to § 545.413 of this part, articles grown, produced, manufactured, marketed, or otherwise exported by a parastatal organization of South Africa, the importation of which is otherwise banned pursuant to Subpart B of this part, are not eligible for importation pursuant to section 303(a)(1) of the Act or § 545.208(a)(2) of this part.

(c) Nothing in this section prohibits the importation into the United States of any publication, including any book, newspaper, magazine, film, phonograph record, tape recording, photograph, microfilm, microfiche, poster, or any other similar material.

11. Section 545.301 is revised to read as follows:

§ 545.301 Krugerrands and gold coins.

The terms "Krugerrands" and "gold coins" include Krugerrands and gold coins of all denominations and sizes, and Krugerrands and gold coins that have been modified, as by addition of a clasp or loop, into items that can be worn as jewelry.

12. Section 545.302 is revised to read as follows:

§ 545.302 United States.

The term "United States" includes the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

13. Section 545.304 is revised to read as follows:

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§ 545.304 Loan.

(a) The term "loan" means any transfer or extension of funds or credit on the basis of an obligation to repay, or any assumption or guarantee of the obligation of another to repay an extension of funds or credit, including, but not limited to, overdrafts; currency swaps; the purchase of debt or equity securities issued by the Government of South Africa or a South African entity on or after the effective date; the purchase of a loan made by another person; the sale of financial assets subject to an agreement to repurchase; a renewal or refinancing whereby new funds or credits are transferred or extended to the Government of South Africa or a South African entity; or the issuance of a standby letter of credit.

(b) The term "loan" does not include normal short-term trade financing, as by commercial letters of credit, bankers' acceptances eligible for discount by a Federal Reserve Bank pursuant to paragraph 7 of section 13 of the Federal Reserve Act (12 U.S.C. 372), or similar trade credits; sales on open account in cases where such sales are normal business practice; or the rescheduling of existing loans, if no new funds or credits are thereby transferred or extended to a South African entity or the Government of South Africa.

14. Section 545.306 is revised to read as follows:

§ 545.306 Government of South Africa; South African Government.

The term "Government of South Africa" and "South African Government" include the government of the Republic of South Africa; the South African Reserve Bank; the government of any political subdivision of South Africa; the government of any territory (including Namibia) under the administration, legal or illegal, of South Africa; the governments of the "bantustans" or "homelands," to which South African blacks are assigned on the basis of ethnic origin, including the Transkei, Bophuthatswana, Ciskei, and Venda; and any entity controlled by the foregoing, as defined in § 545.307.

15. Section 545.310 is revised to read as follows:

§ 545.310 Affiliate.

The term "affiliate" includes, but is not limited to, an office, branch, or subsidiary.

16. Section 545.311 is added to Subpart C to read as follows:

§ 545.311 Prohibited borrower.

The term "prohibited borrower" means a person, including the Government of South Africa, to whom the making of a loan or other extension of credit is prohibited by the terms of § 545.202(a).

17. Section 545.312 is added to Subpart C to read as follows:

§ 545.312 South Africa.

The term "South Africa" includes the Republic of South Africa; any territory (including Namibia) under the administration, legal or illegal, of South Africa; and the "bantustans" or "homelands," to which South African blacks are assigned on the basis of ethnic origin, including the Transkei, Bophuthatswana, Ciskei, and Venda.

18. Section 545.313 is added to Subpart C to read as follows:

§ 545.313 National of the United States; U.S. national.

The terms "national of the United States" and "U.S. national" mean:

(a) A natural person who is a citizen of the United States, or who owes permanent allegiance to the United States, or is an alien lawfully admitted for permanent residence in the United States, as defined by section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)); or

(b) A corporation, partnership, or other business association which is organized under the laws of the United States, any State or territory thereof, or the District of Columbia, including foreign branches and offices of such entities.

(c) For purposes of §§ 545.206 and 545.208 of this part, the terms "national of the United States" and "U.S. national" also include any person located in the United States.

19. Section 545.314 is added to Subpart C to read as follows:

§ 545.314 South African entity.

The term "South African entity" means:

(a) A corporation, partnership, or other business association or entity organized in South Africa; or

(b) A branch, office, agency, or sole proprietorship in South Africa of a person that resides or is organized outside South Africa.

20. Section 545.315 is added to Subpart C to read as follows:

§ 545.315 Parastatal organization.

(a) For purposes of § 545.208, the term "parastatal organization" means a corporation, partnership, or entity owned, controlled or subsidized by the Government of South Africa, but does not mean a corporation, partnership, or entity which previously received start-up assistance from the South African Industrial Development Corporation but which is now privately owned.

(b) Pursuant to section 2 of Executive Order 12571, 51 FR 39505 (Oct. 29, 1986), the Secretary of State is responsible for determining which entities are parastatal organizations for purposes of this part. The Secretary of State will publish periodic notices in the Federal Register containing current lists of parastatal organizations. Determinations by the Department of State will be used as the exclusive guide for determining which South African entities are parastatal. Persons with specific questions concerning parastatal organizations may contact the Department of State, Office of Southern African Affairs, Washington, DC 20520.

21. Section 545.316 is added to Subpart C to read as follows:

§ 545.316 The Act.

The term "the Act" means the Comprehensive Anti-Apartheid Act of 1986, Pub. L. 99–440, 100 Stat. 1086, as amended by H.J. Res. 756, Pub. L. 99–631.

22. Section 545.402 is revised to read as follows:

§ 545.402 Effect of amendment of sections of this chapter or of other orders, etc.

Any modification of this chapter or of any regulation, ruling, order, instruction, direction or license issued by or under the direction of the Secretary of the Treasury shall not, unless otherwise specifically provided, be deemed to affect liability for any act performed or omitted, or any civil or criminal proceeding commenced, prior to such modification, and all penalties, forfeitures, and liabilities under any such regulation, ruling, order, instruction, direction or license shall continue and may be enforced as if such modification had not been made.

23. Section 545.403 is revised to read as follows:

§ 545.403 Krugerrand and gold coin jewelry.

Section 545.201 prohibits the importation into the United States of Krugerrands or any other South African gold coins that have been modified, as by the addition of a clasp or loop, into items that can be worn as jewelry. For example, importation of a necklace consisting of a gold coin mounted on a chain would be prohibited. Section 545.201 does not prohibit the reimportation into the United States of Krugerrand jewelry which was originally imported into the United States prior to October 11, 1985, or of other gold coin jewelry originally imported into the United States prior to October 2, 1986, provided that (a) the importer can demonstrate to the satisfaction of the Secretary of the Treasury or his delegate that the initial importation was made before the relevant effective date, and (b) the jewelry to be reimported is in small quantities and for personal use only.

24. Section 545.404 is revised to read as follows:

§ 545.404 Rescheduling existing loans.

Provided that no new funds or credits are thereby transferred or extended to a prohibited borrower, § 545.202 does not prohibit a national of the United States or a financial institution in the United States from rescheduling loans or otherwise extending the maturities of existing loans, or from charging fees, or interest at commercially reasonable rates, in connection therewith.

§ 545.405 [Removed]

25. Section 545.405 is removed.

26. Section 545.406 is revised to read as follows:

§ 545.406 Loans through intermediaries.

Section 545.202 prohibits a national of the United States or a financial institution in the United States from making a loan to any person in the United States or a foreign country, where the U.S. national or financial institution has reason to believe that the loan is being obtained for or on behalf of a prohibited borrower, and that the relevant funds or credit will be made available to a prohibited borrower.

27. Section 545.407 is revised to read as follows:

§ 545.407 Substitution of the South African Government as obligor.

Section 545.202 does not prohibit a national of the United States or a financial institution in the United States from complying with applicable laws, regulations or other directives of the South African Government requiring or permitting the South African Government to become the primary or secondary obligor with respect to an outstanding loan, provided that no new funds or credits are thereby transferred or extended to a prohibited borrower.

28. Section 545.408 is revised to read as follows:

§ 545.408 Approval of loans by foreign affiliates.

Section 545.202 prohibits nationals of the United States or financial institutions in the United States from approving loans by their foreign affiliates to prohibited borrowers.

29. Section 545.409 is revised to read as follows:

§ 545.409 Loan participations.

Section 545.202 prohibits a national of the United States or a financial institution in the United States from purchasing, or otherwise acquiring a participation in, all or part of any loan made by any other person or persons to a prohibited borrower, regardless of the date of the original loan. However, the prohibition of § 545.202 does not apply if, in the case of a financial institution, it is obligated to make the purchase under an agreement entered into before September 9, 1985, or, in the case of a national of the United States that is not a financial institution in the United States, it is obligated to make the purchase under an agreement entered into before October 2, 1986, or, in either case, such acquisition is incidental to the purchase or acquisition of an entity or all or substantially all of the assets of an entity that has previously made or acquired participations in such loans.

30. Section 545.410 is revised to read as follows:

§ 545.410 South African law.

If, under applicable laws of South Africa, a national of the United States or a financial institution in the United States cannot obtain enough information from a person in South Africa to enable it reasonably to conclude that a loan is not being obtained for or on behalf of a prohibited borrower, § 545.202 prohibits the loan.

31. Section 545.411 is added to Subpart D to read as follows:

§ 545.411 Third-country products otherwise exported from South Africa.

Products of third countries, *e.g.*, Lesotho, Botswana, or Swaziland, which are transshipped through South Africa for exportation to the United States will not be deemed "otherwise exported by a parastatal organization of South Africa" for purposes of § 545.208 merely because such goods are transported, graded, packaged, repackaged, containerized, or otherwise serviced in transit by a parastatal organization of South Africa. The foregoing interpretation shall not apply if the Government of South Africa or a parastatal organization has any financial interest in the export sale of such goods beyond remuneration for the fair value of services performed in South Africa in connection with such transshipment and exportation. This section shall not apply to the "bantustans" or "homelands" to which South Africa blacks are assigned on the basis of ethnic origin, including the Transkei, Bophuthatswana, Ciskei, and Venda, which, pursuant to § 545.312, are deemed part of South Africa.

32. Section 545.412 is added to Subpart D to read as follows:

§ 545.412 Release from bonded warehouse or foreign trade zone.

Goods subject to import restrictions pursuant to Subpart B of this part may be released from a bonded warehouse or a foreign trade zone if such goods were imported into the bonded warehouse or foreign trade zone prior to the effective date.

33. Section 545.413 is added to Subpart D to read as follows:

§ 545.413 Import prohibitions applied cumulatively.

An import transaction prohibited by any section of Subpart B of this part is prohibited, notwithstanding the applicability to the same transaction of any other, less restrictive section of that subpart.

Examples

(a) The importation under a pre-August 15, 1986, contract of steel marketed by a parastatal organization is prohibited after December 31, 1986, pursuant to the iron and steel ban in § 545.208. The longer parastatal importation period in § 545.208(a)(2) is not available to permit importations after December 31, 1986.

(b) Similarly, the ban in § 545.205 on agricultural imports is applicable to, and prohibits, all agricultural import transactions after October 2, 1986, regardless of the involvement of a parastatal organization.

34. Section 545.414 is added to Subpart D to read as follows:

§ 545.414 U.S. Customs Service rules of origin.

Determinations of country of origin for purposes of this part will be made in accordance with normal Customs rules of origin.

35. Section 545.501 is revised to read as follows:

§ 545.501 Effect of subsequent license or authorization.

No license or other authorization contained in this chapter or otherwise issued by or under the authority of the Secretary of the Treasury shall be deemed to authorize or validate any transaction effected prior to the issuance thereof, unless such license or other authorization specifically so provides.

36. Section 545.503 is revised to read as follows:

§ 545.503 Loans to benefit persons disadvantaged by the apartheid system.

(a) Specific licenses may be issued to financial institutions in the United States that are not nationals of the United States authorizing them to make

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loans to prohibited borrowers where it is determined that the loans will improve the welfare or expand the economic opportunities of persons in South Africa disadvantaged by the apartheid system, provided that no such loan will be authorized to any apartheid enforcing entity.

(b) Specific licenses may be issued to nationals of the United States or financial institutions in the United States where it is determined that the loans will finance any education, housing, or humanitarian benefit which (1) is available to all persons on a nondiscriminatory basis, or (2) is available in a geographic area accessible to all population groups without any legal or administrative restriction.

§ 545.504 [Removed]

37. Section 545.504 is removed.

38. Section 545.601 is revised to read as follows:

§ 545.601 Required records.

Every person engaging in any act or transaction subject to this part shall keep a full, complete, and accurate record relative to any such act or transaction either before, during, or after the completion thereof, including any transaction effected pursuant to license or otherwise, and such records shall be available for examination for two years after the date of such transaction.

39. Section 545.602 is revised to read as follows:

§ 545.602 Reports to be furnished on demand.

Every person is required to furnish under oath, in the form of reports or otherwise, at any time as may be required, complete information relative to any act or transaction subject to this part, regardless of whether such transaction is effected pursuant to license or otherwise. Such reports may be required to include the production of any books of account, contracts, letters, and other papers connected with any transaction in the custody or control of the persons required to make such reports. Reports with respect to transactions may be required before, during, or after such transactions are completed. The Secretary of the Treasury may, through any person or agency, conduct investigations, hold hearings, administer oaths, examine witnesses, receive evidence, take depositions, and require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation.

40. Section 545.701 is revised to read as follows:

§ 545.701 Penalties.

(a) Any person that violates any regulation, license, or order issued under this part shall be subject to a civil penalty of $50,000.

(b) Any person, other than an individual, that willfully violates any regulation, license, or order issued under this part shall be fined not more than $1,000,000.

(c) Any individual who willfully violates any regulation, license, or order issued under this part shall be fined not more than $50,000, or imprisoned not more than ten years, or both; and

(d) Whenever a person commits a violation as to which a penalty under paragraph (a), (b) or (c) of this section applies, the following shall also apply: (1) Any officer, director, or employee of such person, or any natural person in control of such person, who knowingly and willfully ordered, authorized, acquiesced in, or carried out the act or practice constituting the violation; and (2) any agent of such person who knowingly and willfully carried out such act or practice, shall be fined not more than $10,000, or imprisoned not more than five years, or both. However, this paragraph (d) shall not apply in the case of a violation by an individual of section 301(a) of the Act, § 545.201 of this part, or of any other regulation issued to carry out section 301(a) of the Act.

(e) A fine imposed under paragraph (b) of this section on an individual for an act or practice constituting a violation may not be paid, directly or indirectly, by the person committing the violation itself.

(f) Any individual who violates § 545.201 of this part relating to the prohibition on the importation of Krugerrands or other South African gold coins shall, instead of the penalties set forth in paragraph (b) of this section, be fined not more than five times the value of the Krugerrands or gold coins involved.

(The Act, § 603 (b) and (c).)

(g) Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000, or such greater amount as set forth in 18 U.S.C. 3623, or imprisoned not more than five years, or both.

(18 U.S.C. 1001, 3623.)

(h) Violations of this part may also be subject to relevant provisions of the Customs laws and other applicable laws.

41. In § 545.801, the text of paragraph (a) is added to read as follows:

§ 545.801 Licensing.

(a) *General licenses.* General licenses may be issued authorizing under appropriate terms and conditions certain types of transactions which are subject to the prohibitions contained in Subpart B of this part. Any and all such licenses will be set forth in Subpart E of this part. It is the policy of the Office of Foreign Assets Control not to grant applications for specific licenses authorizing transactions to which the provisions of an outstanding general license are applicable. Persons availing themselves of certain general licenses may be required to file reports and statements in accordance with the instructions specified in those licenses.

* * * * *

42. Section 545.805 is revised to read as follows:

§ 545.805 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take with respect to the subject matter of this part may be taken by the Director of the Office of Foreign Assets Control, or by any other person to whom the Secretary of the Treasury delegated authority so to act.

43. Section 545.807 is added to subpart H to read as follows:

§ 545.807 Certification concerning parastatal organizations.

(a) If the importer asserts that the imported articles were not grown, produced, manufactured, marketed, or otherwise exported by a parastatal organization, he shall file the following declaration with the U.S. Customs Service upon making an entry of goods from South Africa:

> These goods were obtained from ———, which is not a parastatal entity of South Africa, and these goods were not grown, produced, manufactured, marketed, or otherwise exported by a parastatal organization.

(b) If parastatal status is declared upon making an entry of goods from South Africa, or from a third country in the case of goods marketed or otherwise exported by a parastatal organization, the following declaration shall be filed:

These goods were grown, produced, manufactured, marketed or otherwise exported by ———, which is a parastatal organization of South Africa.

When entering parastatal goods as described above, a copy of the import contract or other evidence of the date of the import contract pertaining to the goods must be submitted evidencing that the contract was entered into prior to August 15, 1986. Importation shall be permitted only for parastatal goods not otherwise prohibited pursuant to Subpart B of this part, and only if the goods are imported prior to April 2, 1987.

Dated: November 12, 1986.

Cheryl A. Opacinch,

Acting Director, Office of Foreign Assets Control.

Approved: November 14, 1986.

Francis A. Keating II,

Assistant Secretary (Enforcement).

[FR Doc. 86-26117 Filed 11-17-86; 12:12 pm]

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31 CFR Part 545

South African Transactions Regulations—Product Guidelines

AGENCY: Department of the Treasury.

ACTION: Notice of interpretation.

SUMMARY: Notice is hereby given that the guidelines set forth below will be used by the U.S. Customs Service of the Department of the Treasury in determining which products are subject to the bans imposed by the Comprehensive Anti-Apartheid Act of 1986, Pub. L. 99-440, 100 Stat. 1086 ("the Act"), as amended by H.J. Res. 756,Pub. L. 99-631, on importation from South Africa of (a) agriculture and articles suitable for human consumption (section 319 of the Act) and (b) iron ore, iron, and steel (section 320 of the Act). Sections 319 and 320 of the Act are implemented in the South African Transactions Regulations, 31 CFR Part 545, at §§ 545.205 and 545.206, respectively, as set forth in a final rule regarding South Africa that is being published in conjunction with this notice.

EFFECTIVE DATES: 12:01 a.m. Eastern Daylight Time, October 3, 1986, as to § 545.205; 12:01 a.m. Eastern Daylight Time, October 2, 1986, as to § 545.206.

ADDRESSES: Copies of this notice and the South African Transactions Regulations are available at the Office of Foreign Assets Control, U.S. Department of the Treasury, 1331 G Street, NW., Washington, DC 20220. Copies of the notice are available at the U.S. Customs Service, Office of Commercial Operations, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Harrison Feese, U.S. Customs Service, Office of Commercial Operations, 1301 Constitution Avenue, NW., Washington, DC 20229 (telephone: 202/566-5307).

SUPPLEMENTARY INFORMATION: Section 319 of the Act (Regulations, § 545.205) prohibits the importation of South African agricultural products and articles suitable for human consumption. Section 320 of the Act (Regulations, § 545.206) prohibits the importation of South African iron ore, iron, and steel. Regulations implementing these and other sanctions against South Africa, as delegated to the Secretary of the Treasury pursuant to Executive Order 12571 of October 27, 1986, 51 FR 39505 (Oct. 29, 1986), are published on this same date in a final rule implementing amendments to the South African Transactions Regulations. This notice is published in conjunction with that final rule to inform interested persons of the guidelines to be employed by the U.S. Customs Service in determining which products are agricultural commodities, articles suitable for human consumption, iron ore, iron, or steel within the meaning of the Act. Persons with questions concerning such product classifications should contact the U.S. Customs Service office indicated above.

(Sections 319 and 320 of the Comprehensive Anti-Apartheid Act of 1986, Pub. L. 99-440, 100 Stat. 1086)

Product Guidelines

I. Agricultural Commodities and Articles Fit for Human Consumption

The categories (1) agricultural commodities, products, byproducts, or derivatives thereof, and (2) articles that are suitable for human consumption include all items classifiable in Schedule 1 of the Tariff Schedules of the United States ("TSUS"), except those listed in the following paragraph, and all other articles fit for human consumption by ingestion, such as, but not limited to, flavoring extracts, gelatin, polysaccharides, and drugs provided for in Schedule 4 and articles of gelatin provided for in Schedule 7.

The foregoing does not include any TSUS number in Schedule 1 covering products of countries other than South Africa, nor does it include items classifiable under TSUS numbers 100.03; 100.04; 184.54; 184.55; 186.50; 190.30; 190.35; 190.45; 190.47; 190.50; 190.60; 190.65; 190.68 (mounted or stuffed animals and parts of animals, which are the products of taxidermy); 190.80; and 190.85 through 190.93. In addition, the foregoing does not include skins of animals, or pets, provided they are imported for personal use only.

II. Iron Ore, Iron, and Steel

This category includes the following:

1. Iron ore—TSUS 601.24.
2. Iron or steel waste and scrap—TSUS 606.08 through 606.11.
3. Pig iron, cast iron and spiegeleisen—TSUS 606.13 through 606.19.
4. Sponge iron, iron and steel powders, grit and shot—TSUS 606.55 through 606.64.
5. Ingots, blooms, billets, slabs and sheet bars—TSUS 606.67 through 606.69.
6. Iron or steel forgings—TSUS 606.71 through 606.73.
7. Bars of iron and steel—TSUS 606.75 through 606.99.
8. Hollow drill steel—TSUS 607.05 through 607.09.
9. Wire rods—TSUS 607.14 through 607.59.
10. Plates, sheets and strip—TSUS 607.62 through 609.17.
11. Wire—TSUS 609.20 through 609.76.
12. Angles, shapes, sections, and sheet piling—TSUS 609.80 through 609.98.
13. Rails, joint bars and tie plates—TSUS 610.20 through 610.26.
14. Pipes and tubes, including blanks and fittings—TSUS 610.30 through 610.92.
15. Wire products—TSUS 642.02, 642.08, 642.11 through 642.16, and 642.20.

Dated: November 12, 1986.

Cheryl A. Opacinch,

Acting Director, Office of Foreign Assets Control.

Approved: November 14, 1986.

Francis A. Keating II,

Assistant Secretary (Enforcement).

[FR Doc. 86-26116 Filed 11-17-86; 12:12 pm]

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DEPARTMENT OF STATE

[Public Notice 983]

South African Parastatal Organizations

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of which corporations, partnerships, and entities are deemed to be "parastatal organizations" for purposes of the Comprehensive Anti-Apartheid Act of October 2, 1986 (Pub. L. 99–440).

EFFECTIVE DATE: 12:01 a.m., e.d.t., October 2, 1986.

FOR FURTHER INFORMATION CONTACT: Eric Benjaminson, Office of Southern African Affairs (202) 647–8433, or Lynda Clarizio, Office of the Legal Adviser (202) 647–4110.

SUPPLEMENTARY INFORMATION: Section 303(a) of the Comprehensive Anti-Apartheid Act of 1986 (Pub. L. 99–440), as amended, provides that no article which is grown, produced, manufactured by, marketed, or otherwise exported by a parastatal organization of South Africa may be imported into the United States, with certain limited exceptions. Section 314 of the Act prohibits U.S. Government procurement from parastatal organizations, except for items necessary for diplomatic and consular purposes.

Section 303(b) of the Act states that the term "parastatal organization" means a corporation, partnership, or entity owned, controlled, or subsidized by the Government of South Africa, but does not mean a corporation, partnership, or entity which previously received start-up assistance from the South African Industrial Development Corporation but which is now privately owned. Regulations have been promulgated by the Department of the Treasury to implement Section 303 (contained in the South African Transactions Regulations, 31 CFR, Part 545 (published on this date)).

Executive Order No. 12571 of October 27, 1986 provides that the Secretary of State is responsible for determining which corporations, partnerships, or entities are parastatal organizations within the meaning of the Act. Pursuant to Section 2 of the Executive Order, the Department of State has identified the organizations listed below as South African parastatal organizations.

Importers should be aware that the list of parastatal organizations is not all-inclusive. The list is based on information currently available to the U.S. Government. The Department of State intends to revise the list periodically. Before making a commitment to import, importers may wish to seek guidance from the Office of Southern African Affairs (AF/S), Department of State, Washington, DC 20520 (202–647–8433) to ascertain whether a corporation, partnership, or entity has been identified as a parastatal organization.

The Department of State has interpreted Section 303(b) to mean that a corporation, partnership, or entity is owned by the Government of South Africa if the South African Government holds more than fifty percent of the outstanding voting securities of the corporation, partnership, or entity concerned. A corporation, partnership, or entity is deemed to be controlled by the South African Government if the South African Government controls in fact the corporation, partnership, or entity concerned. This would include situations where the South African Government has the authority to manage, direct, or administer the affairs of a corporation, partnership, or entity.

In determining the existence of control, the Department of State has employed the same standards as those specified in the Regulations on South Africa and Fair Labor Standards, 22 CFR 60.2 (1985). These standards are also utilized by other departments of the U.S. Government. For example, control is presumed: where the South African Government owns more than twenty-five percent of the outstanding voting securities of a firm, if no other person owns an equal or larger percentage; where the majority of a firm's board of directors are South African Government officials; where a firm is operated by the South African Government pursuant to the provisions of an exclusive management contract; or where the South African Government has the authority to appoint the majority of the members of a firm's board of directors or a firm's chief operation officer. These factors, however, are not exhaustive. Other factors may be relevant in considering whether the South African Government exercises control over a firm.

A corporation, partnership, or entity is deemed to be subsidized by the South African Government if the corporation, partnership, or entity concerned is at the present time receiving any financial assistance on preferential terms from the South African Government, other than that generally available to the public. A corporation, partnership, or entity that is receiving a de minimis amount of assistance from the South African Government is presumed not to be "subsidized" by the South African Government for purposes of the Act. In interpreting the term subsidy in this manner, the Department of State has taken into account the use of the term in other U.S. laws and regulations, consistent with the purposes of section 303(b) of the Act.

Notwithstanding the above, any person who believes that, due to unique or special circumstances, a corporation, partnership, or entity should be included or excluded from the list of parastatal organizations may request that the Department review the particular case. All requests must be submitted in writing to the Office of Southern African Affairs. The Department of State may invoke the authorities set forth in section 603(a) of the Act in conducting such a review. Any submission should contain detailed information as to the stock ownership and composition of the board of directors of the particular corporation, partnership, or entity as well as the amount of any industry-specific assistance received by such corporation, partnership, or entity from the Govenment of South Africa. The Department of State will attempt to provide a response within thirty days. Any person who willfully makes a false or misleading statement in such a submission will be subject to the civil and criminal penalties set forth in section 603 (b) and (c) of the Act and 18 U.S.C. 1001.

This notice involves a foreign affairs function of the United States. It is excluded from the procedures of 5 U.S.C. 553 and 554 and Executive Order 12291. It implements a statutory requirement that entered into force on October 2, 1986, and Section 2 of Executive Order 12571.

In accordance with these authorities, the following have been identified as South African parastatal organizations:

African Body and Coach (Pty) Ltd. (Putco subsidiary)
Alein Karoo Landboukooperasie, Ltd. (ostrich products)
Altana (Pty) Ltd.
Aluminum Investment Co. (Pty) Ltd.
Alusaf (Pty) Ltd.
Alustang (Pty) Ltd.
Alzira Financial (Pty) Ltd.
Andromeda Electronic Systems (Pty) Ltd.
Armaments Corp. of South Africa Ltd. (Armscor)
Atlantis Aluminum (Pty) Ltd.
Atlantis Diesel Engines (Pty) Ltd.
Atlas Aircraft Ltd. (Armscor Subsidiary)
Atomic Energy Corp. of South Africa
Avon Wire (Pty) Ltd. (Union Steel subsidiary)
Bophuthatswana National Development Corp. Ltd.
Cape Town Iron and Steel Works (Pty) Ltd. (ISCOR subsidiary)

Central Energy Fund (Pty) Ltd. (and subsidiaries)
Ciskei People's Development Bank
Coastal Coal (Pty) Ltd. (ISCOR subsidiary)
Commission for Fresh Produce Markets
Community Development Fund
Computer Technology (Pty) Ltd. (Comtec)
Cooperative Wine Growers (KWV)
Corp. for Public Deposits
Council for Scientific and Industrial Research and its subsidiary institutes
Crown Body and Coach (Pty) Ltd. (Putco subsidiary)
Dalestone (Pty) Ltd. (ISCOR subsidiary)
Department of Posts and Telecommunications
Development Bank of Southern Africa (DBSA)
Donkerhoek Quartzite (Pty) Ltd. (ISCOR subsidiary)
Dubigeon Plastics SA (Pty) Ltd. (Putco subsidiary)
Dunswart Iron and Steel Works Ltd. (ISCOR subsidiary)
Duntex Property (Pty) Ltd.
The Durban Navigation Colleries (Pty) Ltd. (ISCOR subsidiary)
Electricity Supply Commission (Escom)
Eloptro (Pty) Ltd. (Armscor subsidiary)
Ernani Property (Pty) Ltd. (Armscor subsidiary)
Export Finance Development Co. (Pty) Ltd.
First National Development Corp. of Southwest Africa Ltd.
Fisheries Development Corp. of SA
Foskem (Pty) Ltd.
Grootageluk Coal Mine Construction Co. (Pty) Ltd. (ISCOR subsidiary)
Heckett SA (Pty) Ltd. (ISCOR subsidiary)
Hall and Pickles (Coastal) (Pty) Ltd. (Union Steel subsidiary)
Holbane Collery (ISCOR subsidiary)
Hooggenoeg Marketing (Pty) Ltd. (High Enough)
I Stores (Pty) Ltd. (ISCOR subsidiary)
Imcor Tim (Pty) Ltd. (Namibia) (ISCOR subsidiary)
Imcor Zinc (Pty) Ltd. (Namibia) (ISCOR subsidiary)
Industrial Development Corp. of South Africa Ltd. (IDC)
Industrial Minerals Development Co. (Pty) Ltd.
Infoplan (Armscor subsidiary)
International Karakul Secretariat
Iscor Berlin (Pty) Ltd. (ISCOR subsidiary)
Iscor Utility Stores (Pty) Ltd. (ISCOR subsidiary)
Kangwane Economic Development Corp. Ltd.
Kentron (Pty) Ltd. (Armscor subsidiary)
Kindoc Group
Konbel (Pty) Ltd.
Konchem (Pty) Ltd. (Armscor subsidiary)
Konoil (Pty) Ltd.
Kwandebele Development Corp. Ltd.
Kwazulu Finance Investment Corp. Ltd.
Land and Agricultural Bank of South Africa
Land and Agricultural Bank of Southwest Africa
Lebowa Development Corp. Ltd.
Light Metals Investment Co. (Pty) Ltd.
Lyttelton Engineering Works Ltd. (Armscor subsidiary)
Marmain (Pty) Ltd.
Mavaco (Pty) Ltd.
Mercedes Datakor (Pty) Ltd.
Minsa (Pty) Ltd. (ISCOR subsidiary)
Motor Vehicle Assurance Fund
Musgrave (Pty) Ltd. (Armscor subsidiary)
Nabucco Investments (Pty) Ltd.
Naschem (Armscor subsidiary)
National Building and Investment Corp. (Southwest Africa)
National Materials Service Corp. (Pty) (Union Steel subsidiary)
National Selections (IDC subsidiary)
Navik (Pty) Ltd.
Ootra Inmakers (Pty) Ltd. (Eastern Packers)
Palafos (Pty) Ltd.
Phosphate Development Corp. Ltd. (Foskor)
Pietersburg Iron Co. (Pty) Ltd. (ISCOR subsidiary)
Post Office Savings Bank
Pretoria Metal Pressings (Armscor subsidiary)
Public Investment Commissioners
Putco Ltd.
Qwaqwa Development Corp. Ltd.
Rand Water Board
Rehoboth Finance and Development Corp. Ltd.
Reinsurance Fund for Export Credit and Foreign Investment
Rosamond Properties (Pty) Ltd.
Rustenberg Industrial Finance (Pty) Ltd.
Saldok (Pty) Ltd.
Sapekoe (Pty) Ltd. (and subsidiaries)
Sasol Ltd. (and subsidiaries)
Sasol Three (Pty) Ltd.
Satchem (Pty) Ltd.
Shangaan/Tsonga Development Corp. Ltd.
Siemens Ltd.
Small Business Development Corp.
Somchem (Pty) Ltd. (Armscor subsidiary)
South Africa Abattoir Corp.
South Africa Abattoir Commission
South Africa Banana Boad
South Africa Banknote Co.
South Africa Broadcasting Corp.
South Africa Canning Fruit Board
South Africa Chicory Board
South Africa Citrus Board
South Africa Cotton Board
South Africa Dairy Board
South Africa Deciduous Fruit Board
South Africa Development Trust Co. Ltd.
South Africa Dried Fruit Board
South Africa Dry Bean Board
South Africa Egg Board
South Africa Gas Distribution Corp. Ltd.
South Africa Inventions Development Corp.
South Africa Iron and Steel Corp. (and subsidiaries) (ISCOR)
South Africa Karakul Board
South Africa Lucerne Seed Board
South Africa Maize Board
South Africa Meat Board
South Africa Mint
South Africa Mohair Board
South Africa Oilseed Board
South Africa Potato Board
South Africa Reserve Bank
South Africa Rooibos Board
South Africa Sugar Association
South Africa Tobacco Board
South Africa Transport Services (including South Africa Airways)
South Africa Wheat Board
South Africa Wool Board
South Atlantic Cable Co.
Southern Oil Exploration Corp. (Pty) Ltd. (Soekor)
Southern Oil Exploration Corp (Southwest Africa) (Pty) Ltd.
Southwest Africa Broadcasting Corp.
Southwest Africa Karakul Board
Southwest Africa Water and Electricity Corp. (Pty) Ltd.
Steel Sales Company of Africa (ISCOR subsidiary)
Suprachem (Pty) Ltd. (ISCOR subsidiary)
Swartklip Products (Pty) Ltd. (Armscor subsidiary)
Tecnetics (Pty) Ltd.
Thames Wire and Cable (Pty) Ltd.
Transkei Development Corp. Ltd.
Transvaal Copper Rod Co. Ltd. (Union Steel subsidiary)
Tshikondeni Mining Co. (Pty) Ltd. (ISCOR subsidiary)
Tusitala (Pty) Ltd.
Union Steel Corp.
Usco Aluminum Corp. (Pty) Ltd. (Union Steel subsidiary)
Usco Aluminum Systems (Pty) Ltd. (Union Steel subsidiary)

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Usco Huiseienaars (Pty) Ltd. (Union Steel subsidiary)
Usco Kabelmaatskappy (Pty) Ltd. (Union Steel subsidiary)
Vantin (Pty) Ltd. (ISCOR subsidiary)
Veldmaster (Pty) Ltd. (Union Steel subsidiary)
Veldmaster Incorporated (U.S.) (Union Steel subsidiary)
Venda Development Corp. Ltd.
Virema (Pty) Ltd.
Voms (Pty) Ltd. (Putco subsidiary)
Voms Parts (Pty) Ltd. (Putco subsidiary)
Vryheid (Natal) Railway Coal and Iron Co. (ISCOR subsidiary)
Yskor Landgoed (Pty) Ltd. (ISCOR subisdiary)
Yskor Newcastle Grondesit Ltd. (ISCOR subsidiary)

Dated: November 10, 1986.

Chester A. Crocker,
Assistant Secretary for African Affairs.

[FR Doc. 86-26114 Filed 11-17-86; 12:13 pm]

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federal register

Wednesday
November 19, 1986

Part V

Department of the Treasury

Office of Foreign Assets Control

31 CFR Part 555
Soviet Gold Coin Regulations; Final Rule

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DEPARTMENT OF THE TREASURY

31 CFR Part 555

Soviet Gold Coin Regulations

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: This rule implements section 510 of the Comprehensive Anti-Apartheid Act of 1986, Pub. L. 99-440, 100 Stat. 1086, as amended by H.J. Res. 756, Pub. L. 99-631, banning importation into the United States of any gold coin minted in the Union of Soviet Socialist Republics or offered for sale by the Government of the Union of Soviet Socialist Republics.

EFFECTIVE DATE: 12:01 a.m. Eastern Daylight Time, October 2, 1986.

FOR FURTHER INFORMATION CONTACT: Marilyn L. Muench, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, 1331 G Street, NW., Washington, DC 20220 (tel: 202-376-0408).

SUPPLEMENTARY INFORMATION: This rule sets forth the policies concerning the ban on importation into the United States of Soviet gold coins. The importation of such coins was banned as part of the Comprehensive Anti-Apartheid Act of 1986, which establishes policies and sanctions against South Africa (including a ban on importing South African gold coins) aimed at bringing an end to apartheid.

Since these regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply. Because these regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal regulations. The Office of Management and Budget control number for the information collection request contained in this document is 1505-0095.

List of Subjects in 31 CFR Part 555

Gold coins, Imports, Reporting and recordkeeping requirements, Soviet Union.

For the reasons set forth in the preamble, 31 CFR Part 555 is added as follows:

PART 555—SOVIET GOLD COIN REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
555.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

555.201 Prohibition on the importation of Soviet gold coins.
555.202 Effective date.
555.203 Evasions.

Subpart C—General Definitions

555.301 Gold coins.
555.302 United States.
555.303 Importation.
555.304 Person.
555.305 Entity.

Subpart D—Interpretations

555.401 Reference to amended sections.
555.402 Effect of amendment of sections of this chapter or of other orders, etc.
555.403 Gold coin jewelry.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

555.501 Effect of subsequent license or authorization.
555.502 Exclusion from licenses and authorizations.

Subpart F—Reports

555.601 Required records.
555.602 Reports to be furnished on demand.

Subpart G—Penalties

555.701 Penalties.

Subpart H—Procedures

555.801 Licensing.
555.802 Decisions.
555.803 Amendment, modification, or revocation.
555.804 Rulemaking.
555.805 Delegation by the Secretary of the Treasury.
555.806 Rules governing availability of information.

Authority: Pub. L. 99-440, 100 Stat. 1086; Pub. L. 99-631; E.O. 12571, 51 FR 39505, Oct. 29, 1986.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 555.101 Relation of this part to other laws and regulations.

(a) This part is independent of the other parts of this chapter. No license or authorization contained in or issued pursuant to the other parts of this chapter authorizes any transaction prohibited by this part. In addition, licenses or authorizations contained in or issued pursuant to any other provision of law or regulation do not authorize any transaction prohibited by this part.

(b) No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 555.201 Prohibition on the importation of Soviet gold coins.

No person, including a bank, may import into the United States any gold coin minted in the Union of Soviet Socialist Republics or offered for sale by the Government of the Union of Soviet Socialist Republics.

§ 555.202 Effective date.

The effective date of the prohibition in § 555.201 is 12:01 a.m. Eastern Daylight Time, October 2, 1986.

§ 555.203 Evasions.

The regulations set forth in this part shall apply to any person who undertakes or causes to be undertaken any transaction or activity with the intent to evade section 510 or related provisions of the Comprehensive Anti-Apartheid Act of 1986, Pub. L. 99-440, or these regulations.

Subpart C—General Definitions

§ 555.301 Gold coins.

The term "gold coins" includes gold coins of all denominations and sizes, and gold coins that have been modified, as by addition of a clasp or loop, into items that may be worn as jewelry.

§ 555.302 United States.

The term "United States" includes the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

§ 555.303 Importation.

The term "importation" means the bringing of any item within the jurisdictional limits of the United States with the intent to unlade it.

§ 555.304 Person.

The term "person" means an individual or an entity.

§ 555.305 Entity.

The term "entity" means a corporation, partnership, association, or other organization.

Subpart D—Interpretations

§ 555.401 Reference to amended sections.

Reference to any section of this chapter or to any regulation, ruling, order, instruction, direction or license issued pursuant to this chapter shall be deemed to refer to the same as currently amended unless otherwise so specified.

§ 555.402 Effect of amendment of sections of this chapter or of other orders, etc.

Any modification of this chapter or of any regulation, ruling, order, instruction, direction or license issued by or under the direction of the Secretary of the Treasury shall not, unless otherwise specifically provided, be deemed to affect liability for any act performed or omitted, or any civil or criminal proceeding commenced prior to such modification, and all penalties, forfeitures, and liabilities under any such regulation, ruling, order, instruction, direction or license shall continue and may be enforced as if such modification had not been made.

§ 555.403 Gold coin jewelry.

Section 555.201 prohibits the importation into the United States of gold coins that have been modified, as by the addition of a clasp or loop, into items that can be worn as jewelry. For example, importation of a necklace consisting of a Soviet gold coin mounted on a chain would not be authorized. Section 555.201 does not prohibit the reimportation into the United States of gold coin jewelry which was originally imported into the United States prior to October 2, 1986, provided that (a) the importer can demonstrate the date of the prior importation to the satisfaction of the Secretary of the Treasury or his delegate, and (b) the jewelry to be reimported is in small quantities and for personal use only.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

§ 555.501 Effect of subsequent license or authorization.

No license or other authorization contained in this chapter or otherwise issued by or under the authority of the Secretary of the Treasury shall be deemed to authorize or validate any transaction effected prior to the issuance thereof unless such license or authorization specifically so provides.

§ 555.502 Exclusion from licenses and authorizations.

The Secretary of the Treasury reserves the right to exclude any person or property from the operation of any license or to restrict the applicability thereof to any person or property. Such action shall be binding upon all persons receiving actual or constructive notice thereof.

Subpart F—Reports

§ 555.601 Required records.

Every person engaging in any act or transaction subject to this part shall keep a full, complete, and accurate record relative to any such act or transaction either before, during, or after the completion thereof, including any transaction effected pursuant to license or otherwise, and such records shall be available for examination for two years after the date of such transaction.

§ 555.602 Reports to be furnished on demand.

Every person is required to furnish under oath, in the form of reports or otherwise, at any time as may be required, complete information relative to any act or transaction subject to this part, regardless of whether such transaction is effected pursuant to license or otherwise. Such reports may be required to include the production of any books of account, contracts, letters, and other papers connected with any transaction in the custody or control of the persons required to make such reports. Reports with respect to transactions may be required before, during or after such transactions are completed. The Secretary of the Treasury may, through any person or agency, conduct investigations, hold hearings, administer oaths, examine witnesses, receive evidence, take depositions, and require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation.

(Approved by the Office of Management and Budget under control number 1505–0095)

Subpart G—Penalties

§ 555.701 Penalties.

(a) Any person that violates the provisions of section 510 of the Comprehensive Anti-Apartheid Act of 1986 ("the Act"), as implemented by § 555.201 of this part, related provisions of the Act, or any regulation, license, or order issued to carry out such provisions shall be subject to a civil penalty of $50,000.

(b) Any person, other than an individual, that willfully violates the provisions of section 510 of the Act, as implemented by § 555.201 of this part, related provisions of the Act, or any regulation, license, or order issued to carry out such provisions shall be fined not more than $1,000,000.

(c) Any individual who willfully violates the provisions of § 510 of the Act, as implemented by § 555.201 of this part, related provisions of the Act, or any regulation, license, or order issued to carry out such provisions shall be fined not more than $50,000, or imprisoned not more than 10 years, or both.

(d) Whenever a person commits a violation as to which a penalty under paragraphs (a), (b), or (c) of this section applies, (1) any officer, director, or employee of such person, or any natural person in control of such person who knowingly and willfully ordered, authorized, acquiesced in, or carried out the act or practice constituting the violation, and (2) any agent of such person who knowingly and willfully carried out such act or practice, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both.

(e) A fine imposed under paragraph (b) of this section on an individual for an act or practice constituting a violation may not be paid, directly or indirectly, by the person committing the violation itself.

(f) Any individual who violates section 510 of the Act, as implemented by § 555.201 of this part, related provisions of the Act, or any regulations issued to carry out such provisions shall be fined not more than five times the value of the gold coins involved.

(Comprehensive Anti-Apartheid Act of 1986, Pub. L. 99–440, secs. 510(b) and 603(b) and (c))

(g) Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000, or such greater amount as set forth in 18 U.S.C. 3623, or imprisoned not more than five years, or both.

(18 U.S.C. 1001, 3623)

(h) Violations of this part may also be subject to relevant provisions of the Customs laws and other applicable laws.

Subpart H—Procedures

§ 555.801 Licensing.

(a) *General licenses.* General licenses may be issued authorizing under appropriate terms and conditions certain types of transactions which are subject to the prohibitions contained in Subpart B of this part. All such licenses will be set forth in Subpart E of this part. It is the policy of the Office of Foreign Assets Control not to grant applications for specific licenses authorizing transactions to which the provisions of an outstanding general license are applicable. Persons availing themselves

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of a general license may be required to file reports and statements in accordance with the instructions specified in that license.

(b) *Specific licenses*—(1) *General course of procedure.* Transactions subject to the prohibitions contained in Subpart B of this part that are not authorized by general license may be effected only under specific licenses. The specific licensing activities of the Office of Foreign Assets Control are performed by its Washington office and by the Foreign Assets Control Division of the Federal Reserve Bank of New York.

(2) *Applications for specific licenses.* Applications for specific licenses to engage in any transaction prohibited under this part are to be filed in duplicate with the Federal Reserve Bank of New York, Foreign Assets Control Division, 33 Liberty Street, New York, NY 10045. Any person having an interest in a transaction or proposed transaction may file an application for a license authorizing such transaction, and there is no requirement that any other person having an interest in such transaction shall or should join in making or filing such application.

(3) *Information to be supplied.* The applicant must supply all information specified by the respective forms and instructions. Such documents as may be relevant shall be attached to each application except that documents previously filed with the Office of Foreign Assets Control may, where appropriate, be incorporated by reference. Applicants may be required to furnish such further information as is deemed necessary to a proper determination by the Office of Foreign Assets Control. Failure to furnish necessary information will not be excused because of any provision of the law of the Union of Soviet Socialist Republics. If an applicant or other party in interest desires to present additional information or discuss or argue the application, he may do so at any time before or after decision. Arrangements for oral presentation should be made with the Office of Foreign Assets Control.

(4) *Effect of denial.* The denial of a license does not Preclude the reopening of an application or the filing of a further application. The applicant or any other party in interest may at any time request explanation of the reasons for a denial by correspondence or personal interview.

(5) *Reports under specific licenses.* As a condition of the issuance of any license, the licensee may be required to file reports with respect to the transaction covered by the license, in such form and at such times and places as may be prescribed in the license or otherwise.

(6) *Issuance of license.* Licenses will be issued by the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury or by the Federal Reserve Bank of New York, acting in accordance with such regulations, rulings, and instructions as the Secretary of the Treasury or the Office of Foreign Assets Control may from time to time prescribe, or licenses may be issued by the Secretary of the Treasury acting directly or through a designated person, agency, or instrumentality.

§ 555.802 Decisions.

The Office of Foreign Assets Control or the Federal Reserve Bank of New York will advise each applicant of the decision respecting filed applications. The decision of the Office of Foreign Assets Control with respect to an application shall constitute a final agency action.

§ 555.803 Amendment, modification, or revocation.

The provisions of this part and any rulings, licenses, authorizations, instructions, orders or forms issued hereunder may be amended, modified, or revoked at any time.

§ 555.804 Rulemaking.

(a) All rules and other public documents are issued by the Secretary of the Treasury upon recommendation of the Director of the Office of Foreign Assets Control. Except to the extent that there is involved any military, naval, or foreign affairs function of the United States or any matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts, and except when interpretive rules, general statements of policy, or rules of agency organization, practice, or procedure are involved, or when notice and public procedure are impracticable, unnecessary, or contrary to the public interest, interested persons will be afforded an opportunity to participate in rulemaking through the submission of written data, views, or arguments, with oral presentation in the discretion of the Director. In general, rulemaking by the Office of Foreign Assets Control involves foreign affairs functions of the United States. Wherever possible, however, it is the practice to hold informal consultations with interested groups or persons before the issuance of any rule or other public document.

(b) Any interested person may petition the Director of the Office of Foreign Assets Control in writing for the issuance, amendment or revocation of any rule.

§ 555.805 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take with respect to the subject matter of this part may be taken by the Director of the Office of Foreign Assets Control, or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

§ 555.806 Rules governing availability of information.

(a) The records of the Office of Foreign Assets Control that are required by 5 U.S.C. 552 to be made available to the public shall be made available in accordance with the definitions, procedures, payment of fees, and other provisions of the regulations on the disclosure of records of the Office of the Secretary and of other bureaus and offices of the Department issued under 5 U.S.C. 552 and published as Part 1 of this Title 31 of the Code of Federal Regulations.

(b) Any form issued for use in connection with this part may be obtained in person from or by writing to the Office of Foreign Assets Control, Treasury Department, Washington, D.C. 20220, or the Foreign Assets Control Division, Federal Reserve Bank of New York, 33 Liberty Street, New York, NY 10045.

Dated: November 12, 1986.

Cheryl A. Opacinch,

Acting Director, Office of Foreign Assets Control.

Approved: November 14, 1986.

Francis A. Keating II,

Assistant Secretary (Enforcement).

[FR Doc. 86-26115 Filed 11-17-86; 12:14 pm]

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federal register

Wednesday,
November 19, 1986

Part VI

Department of Education

34 CFR Parts 668, 674, 675, 676, and 690
Student Assistance General Provisions, National Direct Student Loan Program, College Work-Study Program, Supplemental Educational Opportunity Grant Program and Pell Grant Program; Final Regulations

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DEPARTMENT OF EDUCATION

34 CFR Parts 668, 674, 675, 676, and 690

Student Assistance General Provisions, National Direct Student Loan Program, College Work-Study Program, Supplemental Educational Opportunity Grant Program, and Pell Grant Program

AGENCY: Department of Education.
ACTION: Final regulations.

SUMMARY: The Secretary amends Subpart A of the Student Assistance General Provisions regulations and the student eligibility criteria in the regulations for the National Direct Student Loan, College Work-Study, Supplemental Educational Opportunity Grant, and Pell Grant programs. These regulations, amended as a result of the Secretary's review of current regulations and recent statutory changes, consolidate program definitions, clarify requirements, and implement new statutory requirements.

These regulations do not reflect changes to the authorizing legislation for these programs made by the Higher Education Amendments of 1986 recently enacted by the Congress. Regulations to implement those changes will be issued as soon as possible.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Fred Sellers or Mike High, U.S. Department of Education, Office of Student Financial Assistance, 400 Maryland Avenue SW. (Regional Office Building 3, Room 4318), Washington, DC 20202. Telephone number (202) 472–4300.

SUPPLEMENTARY INFORMATION: This regulation amends Subpart A of the Student Assistance General Provisions regulations and makes several technical changes to the National Direct Student Loan (NDSL), College Work-Study (CWS), Supplemental Educational Opportunity Grant (SEOG), and Pell Grant programs.

A Notice of Proposed Rulemaking (NRPM) for the Student Assistance General Provisions regulations was published in the **Federal Register** on December 12, 1984, 49 FR 48494. These regulations were proposed to clarify requirements, to reduce administrative burden on postsecondary institutions, and to consolidate definitions and provisions common to the student financial assistance programs authorized by Title IV of the Higher Education Act of 1965, as amended (HEA) that were previously contained in the individual program regulations.

The comments on the NPRM have been reviewed, and final regulations for Subparts B, D, F, and G are being prepared for later publication. The Secretary is publishing Subpart A of the Student Assistance General Provisions regulations at this time to ensure that the definitions contained in Subpart A will become effective at the same time as final regulations for the GSL and PLUS programs become effective. In addition, these regulations amend the NDSL, CWS, SEOG, and Pell Grant program regulations to implement the requirements of Section 16032(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 and the Compact of Free Association.

The following is a discussion of the major changes contained in the final regulations. A summary of the comments received on Subpart A of the Student Assistance General Provisions regulations and the Department's response to those comments are included as an appendix to the regulations.

Revisions to the Notice of Proposed Rulemaking

Only a few significant changes have been made to Subpart A of the Student Assistance General Provisions regulations that were published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on December 12, 1984, 49 FR 48494. They are as follows:

Section 668.2 General definitions.

Enrolled: Two changes have been made to the definition of "enrolled." First, an exception has been made to the requirement that the student must have completed the registration requirements at the institution he or she is attending to be considered at that institution. The definition now specifies that a student is considered to be enrolled if he or she has completed the registration requirements other than the payment of tuition and fees. This change was made to eliminate the possibility that a student would be unable to satisfy an eligibility criterion for Title IV, HEA assistance because he or she was unable to use that assistance to pay his or her tuition and fee charges at the institution.

Second, the requirement that a student must have begun attending classes to be considered enrolled has been eliminated. This requirement was only relevant in establishing the date at which GSL funds could be released to the student. The Secretary is amending the GSL regulations separately to permit the release of GSL funds to the student prior to the first day of classes under certain conditions.

Regular student: The Secretary is revising the definition of "regular student" to eliminate the requirement that a regular student must be enrolled or accepted for enrollment in an "eligible program." A regular student is now defined as a student who is enrolled or accepted for enrollment at an institution for the purpose of obtaining a degree or certificate. The "eligible student" definitions for the NDSL, CWS, SEOG and Pell Grant programs (§§ 690.4, 674.9, 675.9, and 676.9) are amended to include enrollment in an eligible program as a criterion for an eligible student. The eligible program requirement is not applicable under the GSL and PLUS programs.

Sections 668.3 through 668.6 Definitions of eligible institutions—Ability to benefit.

An eligible institution or vocational school may admit as regular students persons beyond the age of compulsory school attendance in the State in which the institution or school is located who have the "ability to benefit" from the training it offers. The Secretary has become aware that there has been some confusion concerning the records needed to document a person's ability to benefit. To eliminate this confusion, the Secretary has modified the provisions proposed in §§ 668.3–668.6 to clarify that an institution must be able to demonstrate that it has developed and consistently applied its standards for determining a person's ability to benefit and must be able to demonstrate that each regular student admitted on the basis of its "ability to benefit" standard had that ability. Documentation of each regular student's ability to benefit must be retained by the institution for at least five years. In addition, the Secretary is amending the NDSL, CWS, SEOG, and Pell Grant program regulations to clarify that a student who does not have a high school diploma or recognized equivalent must have the ability to benefit from the training offered by that institution to be eligible for assistance from those programs.

Revisions to Program Regulations

Several changes have been made to the student eligibility criteria in the NDSL, CWS, SEOG, and Pell Grant program regulations to reflect changes made to the programs by the Compact of Free Association, Pub. L. 99–239, and by section 16032(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272. The affected sections are § 674.9 (NDSL), § 675.9 (CWS), § 676.9 (SEOG), and §§ 690.4 and 690.75 (Pell Grants). Similar changes are being made separately to final regulations for the GSL/PLUS and State Student Incentive Grant programs, which are expected to be published shortly.

Compact of Free Association

On January 14, 1986, President Reagan signed the Compact of Free Association, which will terminate the trusteeship status of certain islands in the Pacific that were previously part of the Trust Territory of the Pacific Islands. This Compact will create two new entities—the Federated States of Micronesia and the Marshall Islands. In addition, another separate Compact is currently under consideration by the Congress which will create an independent entity, the Republic of Palau. Although the first Compact was signed into law on January 14, 1986, the effective date is being delayed, pending enactment of the Palau Compact.

Under these Compacts of Free Association, the citizens of the affected islands will continue to be eligible for Title IV, HEA program assistance. Therefore, the Secretary is revising the student eligibility criteria in the Title IV, HEA program regulations to include the citizens of the Marshall Islands, the Federated States of Micronesia, and Republic of Palau, in anticipation that the Compacts will become effective in the near future. However, the Secretary has also retained the references to the Trust Territory of the Pacific Islands to maintain the eligibility of permanent residents of the Trust Territory until the Compacts become effective.

Consolidated Omnibus Budget Reconciliation Act of 1985

Section 16032(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 amended the HEA to make statutorily ineligible for all Title IV, HEA assistance a student or parent who is in default on a NDSL, GSL, or PLUS loan made for attendance at any institution or owes a repayment on a SEOG, Pell Grant, or SSIG awarded for attendance at any institution.

The NDSL, CWS, SEOG and Pell Grant program regulations have been amended to incorporate this eligibility criterion and to specify that a student who is in default on a National Defense (or Direct) Student Loan may receive further Title IV, HEA program assistance if the institution that made the loan, or the Secretary in the case of an assigned loan, certifies that the student has made satisfactory arrangements to repay the loan.

Waiver of Notice of Proposed Rulemaking

The changes to the NDSL, CWS, SEOG and Pell Grant program regulations as described above were not included in the notice of proposed rulemaking for the Student Assistance General Provisions regulations. In accordance with section 431(b)(2)(A) of the General Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on the proposed regulations. However, these changes do not implement substantive policy, but merely implement the terms of the Compact of Free Association and the statutory amendment contained in Section 16032(a) of Pub. L. 99–272. Therefore, the Secretary finds that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

These final regulations have been reviewed in accordance with Executive Order 12291. They are classified as nonmajor because they do not meet the criteria for major regulations established in the Order.

Assessment of Educational Impact

In the Notice of Proposed Rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the absence of any comments on this matter and the Department's own review, it has been determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 668, 674, 675, 676 and 690

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Education loan programs-education, Grant programs-education, Loan programs-education, Student aid, Reporting and recordkeeping requirements.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

Dated: October 10, 1986.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: Supplemental Educational Opportunity Grant Program, 84.007; Guaranteed Student Loan Program, 84.032; PLUS Program, 84.032; College Work-Study Program, 84.033; National Direct Student Loan Program, 84.038; Pell Grant Program, 84.063; State Student Incentive Grant Program, 84.069)

PART 668—[AMENDED]

The Secretary of Education amends Parts 668, 674, 675, 676 and 690 of Title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

Subpart A—General

Sec.

668.1 Scope.
668.2 General definitions.
668.3 Public or private nonprofit institution of higher education.
668.4 Proprietary institution of higher education.
668.5 Postsecondary vocational institution.
668.6 Vocational school.
668.7 Definition of an independent student.

* * * * *

1. The authority citation for Part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

2. Subpart A of the Table of Contents of Part 668 is revised to read as follows:

3. Part 668 is amended by revising Subpart A to read as follows:

Subpart A—General

§ 668.1 Scope.

(a) This part establishes general rules that apply to an institution that participates in any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA program).

(b) As used in this part, an "institution" includes—

(1) A public or private nonprofit institution of higher education as defined in § 668.3;

(2) A proprietary institution of higher education as defined in § 668.4;

(3) A postsecondary vocational institution as defined in § 668.5; and

(4) A vocational school as defined in § 668.6.

(c) The Title IV, HEA programs include—

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(1) The Pell Grant Program (20 U.S.C. 1070a; 34 CFR Part 690);

(2) The Supplemental Educational Opportunity Grant (SEOG) Program (20 U.S.C. 1070b; *et seq.;* 34 CFR Part 676);

(3) The State Student Incentive Grant (SSIG) Program (20 U.S.C. 1070c *et seq.;* 34 CFR Part 692);

(4) The Guaranteed Student Loan (GSL) Program (20 U.S.C. 1071 *et seq.;* 34 CFR Part 682);

(5) The PLUS Program (20 U.S.C. 1078-2; 34 CFR Part 683);

(6) The College Work-Study (CWS) Program (42 U.S.C. 2751 *et seq.;* 34 CFR Part 675); and

(7) The National Direct Student Loan (NDSL) Program (20 U.S.C. 1087aa *et seq.;* 34 CFR Part 674).

(Authority: 20 U.S.C. 1070 *et seq.*)

§ 668.2 General definitions.

The following definitions apply to all Title IV, HEA programs:

Academic year: (a) A period of time in which a full-time student is expected to complete the equivalent of at least two semesters, two trimesters or three quarters at an institution which measures academic progress in credit hours and uses a semester, trimester or quarter system;

(b) A period of time in which a full-time student is expected to complete at least 24 semester hours or 36 quarter hours at an institution which measures academic progress in credit hours but does not use a semester, trimester or quarter system; or

(c) At least 900 clock hours at an institution which measures academic progress in clock hours.

(Authority: 20 U.S.C. 1088)

Award year: The period of time from July 1 of one year through June 30 of the following year.

Campus-based programs: (a) The National Direct Student Loan (NDSL) Program (34 CFR Part 674);

(b) The College Work-Study (CWS) Program 34 CFR Part 675); and

(c) The Supplemental Educational Opportunity Grant (SEOG) Program (34 CFR Part 676).

Clock hour: The equivalent of—

(a) A 50 to 60 minute class, lecture or recitation;

(b) A 50 to 60 minute faculty supervised laboratory, shop training, or internship; or

(c) Sixty minutes of preparation in a program of study by correspondence.

College Work Study Program (CWS): The part-time employment program for students authorized by Title IC-C of the HEA.

(Authority: 42 U.S.C. 2751-2756b)

Defense loan: A loan made before July 1, 1972, Under Title II of the National Defense Education Act.

(Authority: 20 U.S.C. 421-429)

Dependent student: Any student who does not qualify as an independent student as defined in § 668.7.

Direct loan: A loan made after June 30, 1972, under Title IV-E of the HEA.

(Authority: 20 U.S.C. 1087aa *et seq.*)

Enrolled: The status of a student who—

(a) Has completed the registration requirements (except for the payment of tuition and fees) at the institution he or she is attending; or

(b) Has been admitted into a correspondence study program and has submitted one lesson, completed by him or her after acceptance for enrollment and without the help of a representative of the school.

Guaranteed Student Loan (GSL) Program: The student loan program authorized by Title IV-B of the HEA.

(Authority: 20 U.S.C. 1071 *et seq.*)

HEA: The Higher Education Act of 1965, as amended.

(Authority: 20 U.S.C. 1070 *et seq.*.)

National Defense Student Loan Program: The student loan program authorized by Title II of the National Defense Education Act of 1958.

(Authority: 20 U.S.C. 421-429)

National Direct Student Loan (NDSL) Program: The student loan program authorized by Title IV-E of the HEA.

(Authority: 20 U.S.C. 1087aa-1087ii)

One year training program: A program which is at least—

(a) Twenty-four semester or trimester hours or units, or 36 quarter hours or units at an institution using credit hours or units to measure academic progress;

(b) Nine hundred clock hours of supervised training at an institution using clock hours to measure academic progress; or

(c) Nine hundred clock hours in a correspondence program.

(Authority: 20 U.S.C. 1141(a))

Parent: A student's natural or adoptive mother or father. A parent also includes a student's legal guardian who has been appointed by a court and who is specifically required by the court to use his or her own resources to support the student.

Pell Grant Program: The grant program authorized by Title IV-A-1 of the HEA.

(Authority: 20 U.S.C. 1070a)

PLUS Program: The loan program authorized by Title IV-B of the HEA.

(Authority: 20 U.S.C. 1078-2)

Recognized equivalent of a high school diploma: (a) A General Education Development (GED) Certificate; or

(b) A State certificate received by a student after the student has passed a State authorized examination which the State recognizes as the equivalent of a high school diploma.

(Authority: 20 U.S.C. 1141(a))

Regular student: A person who is enrolled or accepted for enrollment at an institution for the purpose of obtaining a degree or certificate.

Secretary: The Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

Six month training program: (a) A program which is at least—

(1) Sixteen semester or trimester hours or units, or 24 quarter hours or units, at an institution using credit hours or units to measure academic progress;

(2) Six hundred clock hours of supervised training at an institution using clock hours to measure academic progress; or

(3) Six hundred clock hours in a correspondence program.

(b) A program which the Secretary determines is at least a six month training program on the basis of—

(1) A certification by the nationally recognized accrediting association that accredits the institution that the program offered by the institution is equal in course content and student workload to the comparable clock or credit hour program described in paragraphs (a)(1) through (3) of this definition; and

(2) The Secretary's ratification of that accrediting agency's determination.

(Authority: 20 U.S.C. 1088)

State: The States of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(Authority: 20 U.S.C. 1141(b); 20 U.S.C. 1088(a))

State Student Incentive Grant (SSIG) Program: The grant program authorized by Title IV-A-3 of the HEA.

(Authority: 20 U.S.C. 1070c *et seq.*)

Supplemental Educational Opportunity Grant (SEOG) Program: The grant program authorized by Title IV-A-2 of the HEA.

(Authority: 20 U.S.C. 1070b *et seq.*)

U.S. citizen or national: (a) A citizen of the United States; or (b) A person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

(Authority: 8 U.S.C. 1101)

(Authority: 20 U.S.C. 1070 *et seq.* unless otherwise noted)

§ 668.3 Public or private nonprofit institution of higher education.

(a) A public or private nonprofit institution of higher education is a public or private nonprofit educational institution which—

(1) Is in a State;

(2) Admits as regular students only persons who—

(i) Have a high school diploma;

(ii) Have the recognized equivalent of a high school diploma; or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located and, if the institution seeks to participate in a Title IV, HEA program other than the GSL, or PLUS programs, have the ability to benefit from the training offered.

(3) Is legally authorized to provide an educational program beyond secondary education in the State in which the institution is physically located;

(4) Provides—

(i) An educational program for which it awards an associate, baccalaureate, graduate, or professional degree;

(ii) At least a two year program which is acceptable for full credit toward a baccalaureate degree; or

(iii) At least a one year training program which leads to a certificate or degree and prepares students for gainful employment in a recognized occupation; and

(5) Is—

(i) Accredited by a nationally recognized accrediting agency or association;

(ii) Approved by a State agency recognized by the Secretary as a reliable authority on the quality of public postsecondary vocational education in its State, if the institution is a public postsecondary vocational educational institution;

(iii) An institution which has satisfactorily assured the Secretary that it will meet the accreditation standards of an approved agency or association within a reasonable time, considering the resources available to the institution, the period of time it has operated and its efforts to meet accreditation standards; or

(iv) An institution whose credits are determined by the Secretary to be accepted on transfer by at least three accredited institutions on the same basis as transfer credits from fully accredited institutions.

(b) For the purposes of this section, the Secretary publishes a list of nationally recognized accrediting agencies or associations and State approval agencies that the Secretary has determined to be reliable authorities as to the quality of education or training offered.

(c)(1) An institution that admits as regular students, persons who do not have a high school diploma or recognized equivalent and who are beyond the age of compulsory school attendance in the State in which the institution is located, shall develop and consistently apply standards for determining whether these students have the ability to benefit from the education or training it offers.

(2) An institution must be able to demonstrate, upon request of the Secretary, that each regular student it admitted who did not have a high school diploma or recognized equivalent satisfied the institution's standards under paragraph (c)(1) of this section.

(Authority: 20 U.S.C. 1085, 1094(b)(3) and 1141(a))

§ 668.4 Proprietary institution of higher education.

(a) A proprietary institution of higher education is an educational institution which—

(1) Is not a public or private nonprofit educational institution;

(2) Is in a State:

(3) Admits as regular students only persons who—

(i) Have a high school diploma;

(ii) Have the recognized equivalent of a high school diploma; or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located and have the ability to benefit from the training offered;

(4) Is legally authorized to provide postsecondary education in the State in which it is physically located;

(5) Provides at least a six month program of training to prepare students for gainful employment in a recognized occupation;

(6) Is accredited by a nationally recognized accrediting agency or association; and

(7) Has been in existence for at least two years. The Secretary considers a school to have been in existence for two years if it has been legally authorized to provide, and has provided, a continuous training program to prepare students for gainful employment in a recognized occupation during the 24 months (except for normal vacation periods) preceding the date of application for eligibility.

(b) For the purposes of this section, the Secretary publishes a list of nationally recognized accrediting agencies or associations and State approval agencies that the Secretary has determined to be reliable authorities as to the quality of education or training offered.

(c)(1) An institution that admits as regular students, persons who do not have a high school diploma or recognized equivalent and who are beyond the age of compulsory school attendance in the State in which the institution is located, shall develop and consistently apply standards for determining whether these students have the ability to benefit from the education or training it offers.

(2) An institution must be able to demonstrate, upon request of the Secretary, that each regular student it admitted who did not have a high school diploma or recognized equivalent satisfied the institution's standards under paragraph (c)(1) of this section.

Authority: (20 U.S.C. 1088(b), 1094(b)(3) and 1141(a))

§ 668.5 Postsecondary vocational institution.

(a) A postsecondary vocational institution is a public or private non-profit educational institution which—

(1) Is in the State;

(2) Admits as regular students only persons who—

(i) Have a high school diploma;

(ii) Have the recognized equivalent of a high school diploma; or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located and have the ability to benefit from the training offered.

(3) Is legally authorized to provide an educational program beyond secondary education in the State in which the institution is physically located;

(4) Provides at least a six-month program of training to prepare students for gainful employment in a recognized occupation;

(5) Is—

(i) Accredited by a nationally recognized accrediting agency or association;

(ii) Approved by a State agency recognized by the Secretary as a reliable authority on the quality of public postsecondary vocational education in its State, if the institution is a public postsecondary vocational educational institution;

(iii) An institution which has satisfactorily assured the Secretary that

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it will meet the accreditation standards of an approved agency or association within a reasonable time, considering the resources available to the institution, the period of time it has operated and its effort to meet accreditation standards; or

(iv) An institution whose credits are determined by the Secretary to be accepted on transfer by at least three accredited institutions on the same basis as transfer credits from fully accredited institutions.

(6) Has been in existence for at least two years. The Secretary considers an institution to have been in existence for two years if it has been legally authorized to provide, and has provided, a training program on a continuous basis to prepare students for gainful employment in a recognized occupation during the 24 months (except for normal vacation periods) preceeding the date of application for eligibility.

(b) For the purposes of this section, the Secretary publishes a list of nationally recognized accrediting agencies or associations and State-approval agencies that the Secretary has determined to be reliable authorities as to the quality of education or training offered.

(c)(1) An institution that admits as regular students, persons who do not have a high school diploma or recognized equivalent and who are beyond the age of compulsory school attendance in the State in which the institution is located, shall develop and consistently apply standards for determining whether these students have the ability to benefit from the education or training it offers.

(2) An institution must be able to demonstrate, upon request of the Secretary, that each regular student it admitted who did not have a high school diploma or recognized equivalent satisfied the institution's standards under paragraph (c)(1) of this section.

(Authority: 20 U.S.C. 1088, 1094(b)(3) and 1141(a))

§ 668.6 Vocational school.

(a) A vocational school is a business or trade school, or technical institution, or other technical or vocational school which—

(1) Is in a State;

(2) Admits as regular students only persons who—

(i) Have completed or left elementary or secondary school; and

(ii) Have the ability to benefits from the training offered.

(3) Is legally authorized in the State in which it is physically located to provide, and provides within that State, a program of postsecondary vocational or technical education that—

(i) Is designed to provide occupational skills more advanced than those generally offered at the high school level and to fit individuals for useful employment in recognized occupations;

(ii) Is no less than—

(A) Three hundred clock hours of supervised training at institutions using clock hours to measure academic progress; or

(B) eight semester or trimester hours or units or 12 quarter hours or units at institutions using credit hours or units to measure academic progress;

(iii) In the case of a program of study by correspondence, requires not less than an average of 12 hours of preparation per week over each 12-week period and completion in not less than six months; and

(iv) In the case of a flight school program, maintains current valid certification by the Federal Aviation Administration;

(4) Has been in existence for two years or has been specially determined by the Secretary to be a school meeting the other requirements of this section and to be eligible to participate in the GSL or PLUS programs; and

(5)(i) Is accredited by a nationally recognized accrediting agency or association recognized by the Secretary for this purpose; or

(ii) In the case of a public institution offering postsecondary vocational education, is approved by a State approval agency recognized by the Secretary for this purpose.

(b) For the purposes of this section, the Secretary published a list of nationally recognized accrediting agencies or associations and State approval agencies that the Secretary has determined to be reliable authorities as to the quality of education or training offered.

(c)(1) An institution that admits as regular students, persons who do not have a high school diploma or recognized equivalent and who have completed or left elementary or secondary school, shall develop and consistently apply standards for determining whether these students have the ability to benefit from the education or training it offers.

(2) An institution must be able to demonstrate, upon request of the Secretary, that each regular student it admitted who did not have a high school diploma or recognized equivalent satisfied the institution's standards under paragraph (c)(1) of this section.

(Authority: 20 U.S.C. 1085 and 1094(b)(3)).

§ 668.7 Definition of an independent student.

(a) An independent student is a student whom the Secretary considers to be independent of his or her parent(s) for purposes of the Pell Grant, Supplemental Educational Opportunity Grant, College Work-Study, National Direct Student Loan, Guaranteed Student Loan, and PLUS programs. The determination of whether the student is independent is based on the criteria set forth in paragraphs (b) through (d) of this section.

(b) Subject to the provisions of paragraphs (c) and (d) of this section, a student qualifies as an independent student for an award year if the student—

(1) Does not, during any of the relevant years described in paragraph (c) of this section, live for more than six weeks in the home of his or her parent(s) for whom income must be reported;

(2) Is not, for any of the relevant years described in paragraph (c) of this section, claimed as a dependent for Federal income tax purposes by those parent(s); and

(3) Does not, during any of the relevant years described in paragraph (c) of this section, receive financial assistance of more than $750 from those parent(s).

(c) Except as provided in paragraph (d) of this section, to qualify as an independent student for any award year—

(1) An unmarried student must satisfy the criteria set forth in paragraph (b) of this section for the first calendar year of the award year and the preceding calendar year; and

(2) A married student must satisfy the criteria set forth in paragraph (b) of this section for the first calendar year of the award year.

(d) The Secretary considers any student to be an independent student if, before the end of the award year—

(1) The student's parents die; or

(2) The student is declared a ward of a court.

(e) The following definition applies to this section;

Parent(s) for whom income must be reported: A parent for whom income must be reported under § 690.33 of the Pell Grant Program regulations, 34 CFR 690.33. For this purpose, the references in § 690.33(d) to the date of the student's application are to the date the student applies for a loan under the Guaranteed Student Loan or PLUS programs or applies to have his expected family contribution determined under the Pell Grant, Supplemental Educational

Opportunity Grant, College Work-Study, or National Direct Student Loan programs.

(Authority: 20 U.S.C. 1089(c)(2) and sec. 5 of Pub. L. 97–301 as amended by sec. 4 of Pub. L. 98–79)

PART 674—NATIONAL DIRECT STUDENT LOAN PROGRAM

4. The authority citation for Part 674 is revised to read as follows:

Authority: 20 U.S.C. 421–429 and 1087aa–1087ii, unless otherwise noted.

5. In § 674.9, paragraphs (a), (e)(2), (f) introductory text, and (f)(2) are revised to read as follows:

§ 674.9 Student eligibility.

(a) *Eligibility.* A student is eligible to receive an NDSL at an institution of higher education if the student—

(1) Is a regular student;

(2) Is enrolled or accepted for enrollment as at least a half-time undergraduate, graduate or professional student in an eligible program at that institution;

(3)(i) Has a high school diploma or recognized equivalent; or

(ii) Is above the age of compulsory school attendance in the State in which the institution he or she is attending is located and has the ability to benefit from the education or training offered by that institution;

(4)(i) Is a U.S. citizen or national;

(ii) Is a permanent resident of the U.S.;

(iii) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident;

(iv) Is a permanent resident of the Trust Territory of the Pacific Islands, or the Northern Mariana Islands; or

(v) Is a citizen of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau;

(5) Has financial need;

(6) Is maintaining satisfactory progress in the course of study he or she is pursuing according to the standards and practices of that institution;

(7) Does not owe a refund on a grant awarded under the Pell Grant, SEOG or SSIG programs to meet the cost of attending any institutions; and

(8) Is not in default on any loan made under the National Defense/Direct Student Loan, GSL, or PLUS programs to meet the cost of attending any institution.

* * * * *

(e) * * *

(2) *Overpayment of a Pell Grant due to institutional error.* If the institution makes an overpayment of a Pell Grant as a result of its own error and cannot correct it as specified in paragraph (e)(1) of this section, it may continue to disburse an NDSL to that student if the student—

* * * * *

(f) *Default on loans.* If a student is in default on a loan made under the National Defense/Direct Student Loan, GSL or PLUS programs for attendance at any institution, the institution may nevertheless make an NDSL payment to that student under the following conditions:

* * * * *

(2) *National Defense/Direct Student Loan.* An institution may make an NDSL or continue to advance NDSL funds to a student who is in default on a National Defense/Direct Student Loan if the institution that made the loan, or the Secretary, if the loan has been assigned to the Department of Education, certifies that the student has made satisfactory arrangements to repay that loan.

* * * * *

PART 675—COLLEGE WORK-STUDY PROGRAM

6. The authority citation for Part 675 is revised to read as follows:

Authority: 42 U.S.C. 2751–2756a, unless otherwise noted.

7. In § 675.9, paragraphs (a), (f)(2), (g) introductory text, and (g)(2) are revised to read as follows:

§ 675.9 Student eligibility.

(a) *Eligibility.* A student at an institution of higher education is eligible to receive part-time CWS employment under the CWS Program if the student—

(1) Is a regular student;

(2) Is enrolled or accepted for enrollment as an undergraduate, graduate or professional student in an eligible program at that institution;

(3)(i) Has a high school diploma or recognized equivalent; or

(ii) Is above the age of complusory school attendance in the State in which the institution he or she is attending is located and has the ability to benefit from the education or training offered by that institution;

(4)(i) Is a U.S. citizen or national;

(ii) Is a permanent resident of the U.S.;

(iii) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident;

(iv) Is a permanent resident of the Trust Territory of the Pacific Islands, or the Northern Mariana Islands; or

(v) Is a citizen of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau;

(5) Has financial need;

(6) Is maintaining satisfactory progress in the course of study he or she is pursuing according to the standards and practices of that institution;

(7) Does not owe a refund on a grant awarded under the Pell Grant, SEOG, or SSIG programs to meet the cost of attending any institution; and

(8) Is not in default on any loan made under the National Defense/Direct Student Loan, GSL, or PLUS programs to meet the cost of attending any institution.

* * * * *

(f) * * *

(2) *Overpayment of a Pell Grant due to institutional error.* If the institution makes an overpayment of a Pell Grant as a result of its own error and cannot correct it as specified in paragraph (f)(1) of this section, it may continue to employ that student under the CWS Program if the student—

* * * * *

(g) *Default on loans.* If a student is in default on a loan made under the National Defense/Direct Student Loan, GSL, or PLUS programs for attendance at any institution, the institution may nevertheless continue to employ that student under the CWS Program under the following conditions:

* * * * *

(2) *National Defense/Direct Student Loan.* An institution may continue to employ a student under the CWS Program who is in default on a National Defense/Direct Student Loan if the institution that made the loan, or the Secretary, if the loan has been assigned to the Department of Education, certifies that the student has made satisfactory arrangements to repay that loan.

* * * * *

PART 676—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

8. The authority citation for Part 676 is revised to read as follows:

Authority: 20 U.S.C. 1070b–1071b–3, unless otherwise noted.

9. In § 676.9, paragraphs (a), (e)(2), (f) introductory text, and (f)(2) are revised to read as follows:

§ 676.9 Student eligibility.

(a) *Eligibility.* A student is eligible to receive an SEOG at an institution of higher education if the student—

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(1) Is a regular student;

(2) Is enrolled or accepted for enrollment as an undergraduate student in an eligible program at that institution;

(3) Has not earned a baccalaureate or first professional degree;

(4)(i) Has a high school diploma or recognized equivalent; or

(ii) Is above the age of compulsory attendance in the State in which the institution he or she is attending is located and has the ability to benefit from the education or training offered by that institution;

(5)(i) Is a U.S. citizen or national;

(ii) Is a permanent resident of the U.S.;

(iii) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident;

(iv) Is a permanent resident of the Trust Territory of the Pacific Islands, or the Northern Mariana Islands; or

(v) Is a citizen of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau;

(6) Has financial need;

(7) Is maintaining satisfactory progress in the course of study he or she is pursuing according to the standards and practices of that institution;

(8) Does not owe a refund on a grant awarded under Pell Grant, SEOG, or SSIG programs to meet the cost of attending any institution; and

(9) Is not in default on any loan made under the National Defense/Direct Student Loan, GSL, or PLUS programs to meet the cost of attending any institution.

* * * * *

(e) * * *

(2) *Overpayment of a Pell Grant due to institutional error.* If the institution makes an overpayment of a Pell Grant as a result of its own error and cannot correct it as specified in paragraph (e)(1) of this section, it may continue to disburse SEOG funds to that student if the student—

* * * * *

(f) *Default on loans.* If a student is in default on a loan made under the National Defense/Direct Student Loan, GSL, or PLUS programs for attendance at any institution, the institution may nevertheless make an SEOG payment to that student under the following conditions:

* * * * *

(2) *National Defense/Direct Student Loan.* An institution may pay an SEOG to a student who is in default on a National Defense/Direct Student Loan if the institution that made the loan, or the Secretary, if the loan has been assigned to the Department of Education, certifies that the student has made satisfactory arrangements to repay the loan.

* * * * *

PART 690—PELL GRANT PROGRAM

10. The authority section for Part 690 is revised to read as follows:

Authority: 20 U.S.C. 1070a, unless otherwise noted.

§ 690.2 [Amended]

11. Section 690.2 is amended by removing the term "Act" from the listing of terms in § 690.2(a).

12. In § 690.4, paragraph (a) is revised to read as follows:

§ 690.4 Student eligibility.

(a) *Eligibility.* A student is eligible to receive a Pell Grant at an institution of higher education if the student—

(1) Is a regular student;

(2) Is enrolled as at least a half-time undergraduate student in an eligible program at that institution;

(3) Has not earned a baccalaureate or first professional degree;

(4)(i) Has a high school diploma or recognized equivalent; or

(ii) Is above the age of compulsory school attendance in the State in which the institution he or she is attending is located and has the ability to benefit from the education or training offered by that institution;

(5)(i) Is a U.S. citizen or national;

(ii) Provides evidence from the U.S. Immigration and Naturalization Service that he or she—

(A) Is a permanent resident of the United States; or

(B) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident;

(iii) Is a permanent resident of the Trust Territory of the Pacific Islands, or the Northern Mariana Islands; or

(iv) Is a citizen of the Marshall Islands, the Federated States of Micronesia or the Republic of Palau; and

(6) Meets the requirements of § 690.75.

* * * * *

13. In § 690.75 paragraphs (a)(3) and (a)(4) are revised, paragraph (a)(5) is removed, paragraph (a)(6) is redesignated as paragraph (a)(5), and the introductory text of paragraph (g) and paragraph (g)(2) are revised to read as follows:

§ 690.75 Determination of eligibility for payment.

(a) * * *

(3) Is not in default on any loan made under the National Defense/Direct Student Loan, GSL, or PLUS programs to meet the cost of attending any institution;

(4) Does not owe a refund on a grant awarded under the Pell Grant, SEOG or SSIG programs to meet the cost of attending any institution; and

* * * * *

(g) *Default on loans.* If a student is in default on a loan made under the National Defense/Direct Student Loan, GSL, or PLUS programs for attendance at any institution, the institution may nevertheless make a Pell Grant payment to that student under the following conditions:

* * * * *

(2) *National Defense/Direct Student Loan.* An institution may make a Pell Grant payment to a student who is in default on a National Defense/Direct Student Loan if the institution that made the loan, or the Secretary, if the loan has been assigned to the Department of Education, certifies that the student has made satisfactory arrangements to repay that loan.

* * * * *

Appendix—Summary of Comments and Responses

Note: This appendix will not be codified in the Code of Federal Regulations.

Section 668.2—General definitions.

Enrolled

Comment: Most of the commenters were opposed to the proposed requirement that a student must have begun attending classes in order to be considered enrolled. Several commenters thought that this new requirement would conflict with GSL and Pell disbursements. Several commenters suggested that this would present an administrative hardship since registration may occur one day and classes start a day or two later. Three commenters approved of the new requirement.

Response: A change has been made. Although the Pell Grant regulations explicitly permit payment to students before the first day of classes, the Secretary recognizes that the proposed definition of "enrolled" would prevent students from using GSL funds to pay institutional charges prior to the first day of classes. Therefore, the Secretary is amending the definition of "enrolled" to remove the requirement that a student must have begun attending classes. In addition, the Secretary is amending the GSL Program regulations separately to make the rules with regard to the release of GSL funds to a student similar to the rules governing the release of funds under the Pell Grant and campus-based programs.

Comment: Several commenters noted that the registration requirements at some institutions might include the payment of tuition and fees. Under the proposed definition of "enrolled," a student could not receive a GSL until the registration requirements were completed and thus would be prevented from using the GSL to pay his or her tuition and fee charges.

Response: A change has been made. The Secretary has amended the definition of "enrolled" to clarify that a student need not have paid tuition and fees at the institution to be considered enrolled at that institution.

Academic year

Comment: Several commenters asked whether the definition of "academic year" would be correct for GSL/PLUS purposes for correspondence schools or whether a separate definition is needed since the GSL/PLUS regulations define an academic year for programs of correspondence study as 18 months.

Response: No change has been made. The Secretary has concluded that a separate academic year definition for GSL recipients enrolled in programs of correspondence study is no longer necessary. However, the Secretary is amending the GSL regulations separately to specify the duration of eligibility for students enrolled in programs of correspondence study.

One year training program

Comment: Several commenters questioned the validity of equating 900 clock hours with 24 semester hours.

Response: No change has been made. The Secretary believes that 900 clock hours is the appropriate equivalent to two semesters, two trimesters, or three quarters. The 900 clock hours equivalent was calculated in the following manner: A one year program was considered to be one academic year of approximately nine months, or 36 weeks, in length. A full-time student in a clock-hour program is considered full-time if he or she takes 25 clock hours per week. Nine hundred hours is the product of multiplying 25 x 36. The definition of a full-time student in a clock-hour institution was changed from 25 hours to 24 hours so that the definition of a half-time student would include attendance for 12 rather than 12½ hours.

Parent

Comment: Two commenters felt that the definition of parent should include a stepparent. These commenters mistakenly thought that the Pell Grant regulations included a stepparent in the definition of a parent.

Response: No change has been made. This definition is not a change from the previous regulation nor is it different from the definition of parent in § 690.32 of the Pell Grant Program regulations, 34 CFR 690.32. A parent in the Pell Grant Program regulations, as well as in these regulations, includes the student's natural mother or father, or adoptive mother or father. A parent also includes a legal guardian who has been appointed by a court and who is specifically required by the court to use his or her own resources to support the student. A stepparent is not considered to be a parent under this definition, because a stepparent is not presumed to have the same responsibility to support the student as a natural or adoptive parent. However, § 690.33 of the Pell Grant Program regulations specifies that the income of a stepparent must be included in the assessment of annual adjusted family income under certain circumstances.

Regular Student

Comment: Several commenters asked whether a student admitted on a provisional, conditional, or probational basis is considered a regular student.

Response: No change has been made. A regular student is one who enrolls or is accepted for enrollment at an institution for the purpose of obtaining a degree or certificate at that institution. It is irrelevant whether the student is admitted on a provisional, conditional, or probational basis.

Section 668.3(c)-Public or private nonprofit institution of higher education.

Section 668.4(c)—Proprietary institution of higher education.

Section 668.5(c)—Postsecondary vocational institution.

Section 668.6(c)—Vocational school.

Ability to benefit

Comment: Several commenters were unclear as to whether an institution must document the ability to benefit of each student that it admits without a high school diploma or its equivalent, or whether it need only document the ability to benefit of those students who receive Federal student financial aid.

Response: No change has been made. This is an institutional eligibility requirement, as well as a student aid requirement. Therefore, an institution must document the ability to benefit of each regular student it admits on the basis of its ability to benefit standards, not just those who are receiving Federal student financial aid.

Proprietary institution of higher education and postsecondary vocational institution

Comment: One commenter felt that the definition of "proprietary institution of higher education" was not compatible with any definition of "higher education," because higher education should lead to a degree or certificate. Another commenter expressed the opinion that the definition of a "postsecondary vocational institution" should include proprietary institution.

Response: No change has been made. The four definitions of institutions are statutory and cannot be changed.

Vocational School

Comment: One commenter expressed concern that the use of credit hours to define the minimum program length for a vocational school would encourage institutions that use clock hours to convert to a disproportionately greater number of credit hours in order to make their students eligible for GSL.

Response: No change has been made. The definition of vocational school sets a minimum program length in terms of credit as well as clock hours to ensure that students enrolled in credit-hour programs are measured by the same standard of eligibility as students enrolled in clock-hour programs. For a credit-hour program, eight semester hours or 12 quarter hours is the equivalent of 300 clock hours with respect to the definition of an academic year, which has a minimum length of 24 semester hours, 36 quarter hours, or 900 clock hours.

Comment: Another commenter asked if the regulations imply that for vocational schools one quarter credit is the equivalent of 25 clock hours or that one semester credit is the equivalent to 37.5 clock hours.

Response: No change has been made. The minimum program lengths for vocational schools are based on the regulatory definition of an academic year, not on a comparison of credit and clock hours.

Section 668.7—Definition of an independent student.

Comment: Several commenters suggested that the criteria used to determine if a student is independent should be expanded to include the first calendar year of the award year and the two preceding calendar years, instead of just the first preceding calendar year. One commenter stated that married and unmarried students should have the same definition for self-support. One commenter suggested that "relevant dependency years" should be defined as the first calendar year of the award year and the three preceding calendar years.

Response: No change has been made. The Education Amendments of 1984 (Pub. L. 98-511) mandate that the criteria for determination of independent student status for academic years 1985–1986 and 1986–1987 be the same criteria as those in effect for academic year 1984–1985.

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

H.R. 2946/Pub. L. 99–650

District of Columbia Jury System Act. (Nov. 14, 1986; 7 pages) Price: $1.00

H.R. 3004/Pub. L. 99–651

To amend section 3006A of title 18, United States Code, to improve the delivery of legal services in the criminal justice system to those persons financially unable to obtain adequate representation, and for other purposes. (Nov. 14, 1986; 8 pages) Price: $1.00

H.R. 4378/Pub. L. 99–652

To provide standards for placement of commemorative works on certain Federal lands in the District of Columbia and its environs, and for other purposes. (Nov. 14, 1986; 5 pages) Price: $1.00

H.R. 4444/Pub. L. 99–653

Immigration and Nationality Act Amendments of 1986. (Nov. 14, 1986; 5 pages) Price: $1.00

H.R. 4745/Pub. L. 99–654

Sexual Abuse Act of 1986. (Nov. 14, 1986; 5 pages) Price: $1.00

H.R. 5028/Pub. L. 99–655

Entitled the "Lower Colorado Water Supply Act." (Nov. 14, 1986; 3 pages) Price: $1.00

H.R. 5363/Pub. L. 99–656

To amend the interest provisions of the Declaration of Taking Act. (Nov. 14, 1986; 2 pages) Price: $1.00

H.R. 5674/Pub. L. 99–657

Judicial Housekeeping Act of 1986. (Nov. 14, 1986; 2 pages) Price: $1.00

H.J. Res. 626/Pub. L. 99–658

To approve the "Compact of Free Association" between the United States and the Government of Palau, and for other purposes. (Nov. 14, 1986; 34 pages) Price: $1.25

S. 991/Pub. L. 99–659

To amend certain provisions of the law regarding the fisheries of the United States, and for other purposes. (Nov. 14, 1986; 37 pages) Price: $1.25

S. 1744/Pub. L. 99–660

To require States to develop, establish, and implement State comprehensive mental health plans. (Nov. 14, 1986; 73 pages) Price: $2.25

S. 2638/Pub. L. 99–661

National Defense Authorization Act for Fiscal Year 1987. (Nov. 14, 1986; 266 pages) Price: $7.50

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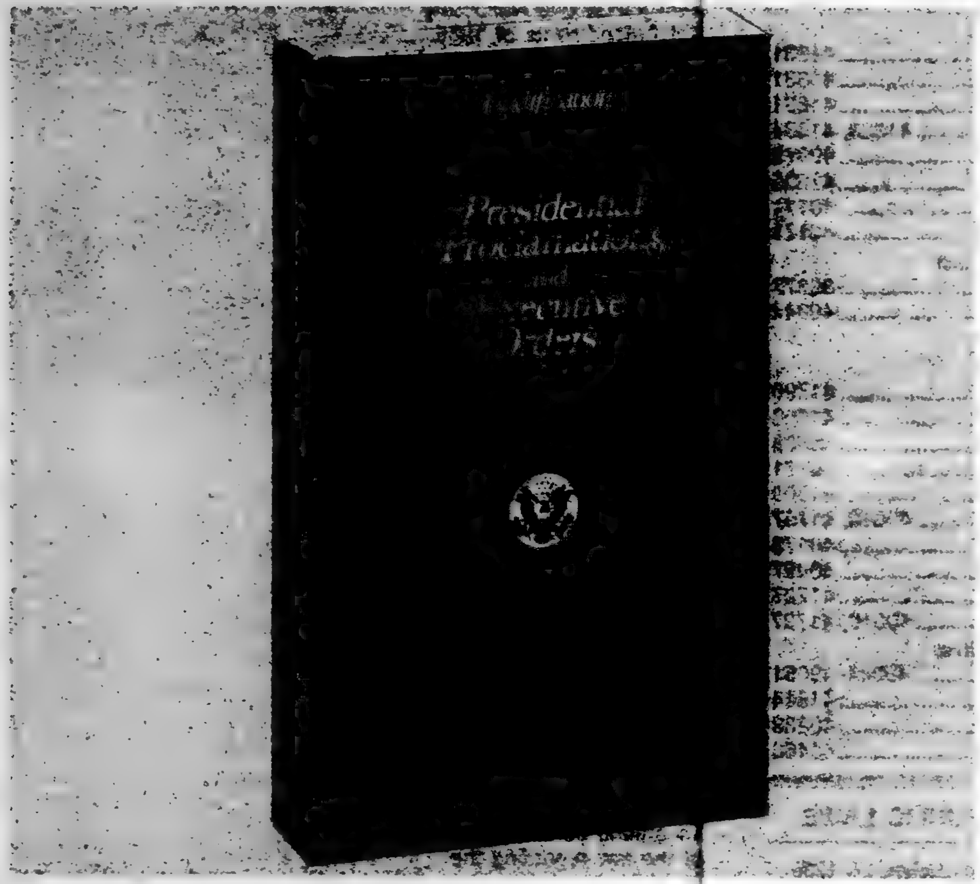

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CORRECTIONS

Beginning with the **Federal Register** of Wednesday, November 19, 1986, editorial corrections of previously published documents and Code of Federal Regulations volumes appear in a separate section called "Corrections." The Corrections section follows the Sunshine Act Meetings section.

These corrections in the past have appeared in the Rules and Regulations, Proposed Rules, or Notices section of the issue depending on the classification of the document corrected. They are now appearing in a separate section because of new production procedures.

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Presidential Documents

Title 3—

The President

Proclamation 5573 of November 18, 1986

National Community Education Day, 1986

By the President of the United States of America

A Proclamation

Education is a lifelong process. Local support for education helps to promote programs for learners of all ages, backgrounds, and needs and encourages full use of school facilities. As each community draws upon its own resources, new opportunities are created, helping many individuals achieve their goals and aspirations. These are the opportunities that have always sustained the freedoms and responsibilities so important to all Americans.

Public education is a community enterprise, and everyone in the community has a stake in the education of adults as well as children. Local citizen involvement is critical in deciding how the financial and educational resources of the community should be used. Many communities are making valuable efforts to promote the use of community resources in schools and colleges, citizen involvement in educational decision-making, the use of community resources to provide educational opportunities for learners of all ages and educational backgrounds, and interagency cooperation to assure effective use of limited resources.

The Congress, by Public Law 99-405, has designated November 18, 1986, as "National Community Education Day" and authorized and requested the President to issue a proclamation in observance of the day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Tuesday, November 18, 1986, as National Community Education Day. I invite State and local officials, educators, parents, students, and all Americans to participate in activities that recognize and show appreciation for what community resources are doing for education.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of November, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-26315
Filed 11-18-86; 4:10 pm]
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 86-359]

Golden Nematode; Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the Golden Nematode regulations by deleting Yates County in New York from the list of suppressive regulated areas. This rule is necessary in order to remove unnecessary restrictions on the interstate movement of regulated articles.

EFFECTIVE DATE: November 20, 1986.

FOR FURTHER INFORMATION CONTACT: Michael J. Shannon, Senior Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 6505 Belcrest Road, Room 663, Federal Building, Hyattsville, MD 20782, (301) 436-8295.

SUPPLEMENTARY INFORMATION:

Background

An interim rule published in the **Federal Register** on August 22, 1986, (51 FR 30049-30051) amended § 301.85-2a of the Golden Nematode quarantine and regulations (referred to below as the regulations; 7 CFR 301.85 through 301.85-10) by deleting Yates County in New York from the list of suppressive regulated areas. The regulations deleted unnecessary restrictions on the interstate movement of regulated articles. The interim rule became effective on the date of publication.

Comments were solicited for 60 days after publication of the interim rule. No comments were received in response to the interim rule. The factual situation set forth in the document of August 22, 1986, still provide a basis for the amendment made by the interim rule. Accordingly, we have determined that the amendment should remain effective as published in the **Federal Register** on August 22, 1986.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will have an effect on the economy of less than 100 million dollars; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

The interim rule removed restrictions on the interstate movement of regulated articles from Yates County in New York. The regulated articles that are affected by the interim rule represent significantly less than one percent of such articles that are moved interstate in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Golden nematode, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, the interim rule published at 51 FR 30049-30051 on August 22, 1986, is adopted as a final rule.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164-167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 17th day of November, 1986.

Richard R. Backus,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 86-26214 Filed 11-19-86; 8:45 am]

BILLING CODE 3410-34-M

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7 CFR Part 301

[Docket No. 86-339]

Imported Fire Ant Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms without change an interim rule published in the **Federal Register** on July 28, 1986, which amended the list of generally infested areas under the imported fire ant quarantine and regulations by designating previously nonregulated areas in Arkansas and South Carolina as generally infested areas and by expanding the previously designated generally infested areas in Alabama, Arkansas, Georgia, Mississippi, and South Carolina. The interim rule also made certain other nonsubstantive, editorial changes. This rule is necessary in order to impose certain restrictions on the interstate movement of regulated articles for the purpose of preventing the artificial spread of the imported fire ant.

EFFECTIVE DATE: November 20, 1986.

FOR FURTHER INFORMATION CONTACT: Charles H. Bare, Staff Officer, Field Operations Support Staff, Plant

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Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8295.

SUPPLEMENTARY INFORMATION:

Background

An interim rule published in the **Federal Register** on July 28, 1986 (51 FR 26855 through 26860) amended § 301.81–2a of the imported fire ant quarantine and regulations (7 CFR 301.81 *et seq.*, referred to below as the regulations) by designating previously nonregulated areas in Arkansas and South Carolina as generally infested areas and by expanding the previously designated generally infested areas in Alabama, Arkansas, Georgia, Mississippi, and South Carolina. The regulations, among other things, impose certain restrictions on the interstate movement of regulated articles from generally infested areas. The interim rule became effective on the date of publication.

Comments were solicited for 60 days after publication of the interim rule. No comments were received in response to the interim rule. The factual situations set forth in the document of July 28, 1986, still provide a basis for the amendments made by the interim rule. Accordingly, it has been determined that the amendments should remain effective as published in the **Federal Register** on July 28, 1986.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will have an estimated annual effect on the economy of approximately $4,700; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This action affects the interstate movement of regulated articles from specified areas in the States of Alabama, Arkansas, Georgia, Mississippi, and South Carolina. There are thousands of small entities that move such articles interstate from the above mentioned States and many more thousands of small entities that move such articles interstate from other States. However, based on information compiled by the Department, it has been determined that approximately 34 small entities move such articles interstate from the specified areas in those States. Further, the overall economic impact from this action is estimated to be approximately $4,700.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Imported fire ant.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, the interim rule published at 51 FR 26855–26860 on July 28, 1986, is adopted as a final rule.

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 17th day of November, 1986.

Richard R. Backus,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 86–26165 Filed 11–19–86; 8:45 am]

BILLING CODE 3410-34-M

FARM CREDIT ADMINISTRATION

12 CFR Parts 600, 601, 602, 603, 604, 611, 612, 613, 614, 615, 617, and 618

Miscellaneous Technical Changes

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration Board (Board) adopts technical amendments to certain regulations relating to the organization, authorities, and responsibilities of the Farm Credit Administration (FCA) and the Farm Credit System (System). The regulations implement statutory changes to the structure and operations of the FCA, the FCA Board, and the System resulting from the enactment of the Farm Credit Amendments Act of 1985 (1985 Amendments) and contain various other technical changes.

EFFECTIVE DATE: November 20, 1985.

FOR FURTHER INFORMATION CONTACT: Gary L. Norton, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22012–5090, (703) 883–4020.

SUPPLEMENTARY INFORMATION: The 1985 Amendments amended a number of sections of the Farm Credit Act of 1971 (Act) relating to the organization and operation of the FCA and the System. Among other things, the 1985 Amendments restructured the FCA by creating the FCA Board and dissolving the prior Federal Farm Credit Board; created the Farm Credit System Capital Corporation; changed the procedure for the selection of the seventh member of each Farm Credit district board; and deleted certain authorities of the FCA related to the delegation of functions and the auditing of System institutions. These amendments to FCA regulations implement these statutory changes and also include other technical amendments, including the elimination of gender-based designations.

The amendments contained in these regulations relate to the following matters:

(1) Substitute "Chairman" for "Governor";

(2) Eliminate gender-based designations;

(3) Provide for the election of at-large district directors;

(4) Update Federal agency designations, i.e., Office of Personnel Management (OPM) for Civil Service Commission;

(5) Provide for the reorganization of the FCA;

(6) Include appropriate references to the Farm Credit System Funding Corporation and the Farm Credit System Capital Corporation;

(7) Provide for yearly examination of System institutions by the FCA;

(8) Delete the authority of the FCA to audit System institutions;

(9) Delete the authority of the FCA to delegate matters to System institutions;

(10) Correct errors in numbering of regulations; and

(11) Delete certain redundant regulations.

In acting on the regulations, the Board determined that the amendments conform the regulations to statutory changes and relate to agency management and personnel and, therefore, do not involve rulemaking as defined in 5 U.S.C. 553(a)(2). The purpose of the rulemaking requirements of the Administrative Procedure Act is to allow public participation in the promulgation of rules which have a substantial impact on those regulated. Since these regulations contain nondiscretionary implementations of statutory changes or relate to agency management and personnel, no public participation is required under the Administrative Procedure Act nor would such participation serve a useful function.

Even if these regulations did involve rules for purposes of 5 U.S.C. 553(a), the Board finds that notice and public comment are unnecessary and contrary to the public interest. 5 U.S.C. 553(b) (A) and (B) provide that when regulations involve matters of agency organization, or where the agency finds for good cause that notice and public comment are unnecessary or contrary to the public interest, the agency may publish regulations in final form. As discussed above, these regulations involve technical amendments or conforming changes required by the 1985 Amendments. It would be contrary to the public interest to delay these changes since they are necessary to the public's awareness and understanding of the changes to the FCA's organization and operations which resulted from the 1985 Amendments. Without these amendments, the existing reuglations are inaccurate and confusing to the public.

For the same reasons, the Board has determined, in accordance with 5 U.S.C. 553(d), that these regulations will be effective immediately upon publication.

The Board has also determined, for the same reasons, that a delay in the effective date in accordance with § 5.17(b)(1) of the Act is unnecessary and would be contrary to the intent of Congress.

Accordingly, the Board directs that the regulations are effective immediately upon publication.

List of Subjects in 12 CFR Parts 600 through 604, 611 through 615, 617, and 618

Accounting, Agriculture, Archives and records, Banks, Banking, Civil rights, Conflict of interest, Credit, Freedom of information, Marital status discrimination, Organization and functions (Government agencies), Privacy, Religious discrimination, Rural areas, Sex discrimination, Sunshine Act.

As stated in the preamble, Parts 600 through 604, 611 through 615, 617, and 618 of Chapter VI, Title 12, of the Code of Federal Regulations are amended as follows:

1. Part 600 is revised to read as follows:

PART 600—ORGANIZATION AND FUNCTIONS

Subpart A—Farm Credit Administration

Sec.
600.1 Farm Credit Administration.
600.2 Farm Credit Administration Board.
600.3 Chairman of the Farm Credit Administration Board.
600.4 Office of Administration.
600.5 Office of Analysis and Supervision.
600.6 Office of Congressional and Public Affairs.
600.7 Office of Examination.
600.8 Office of General Counsel.
600.9 Other offices.

Subpart B—[Reserved]

Authority: 12 U.S.C. 2243, 2252.

§ 600.1 Farm Credit Administration.

The Farm Credit Administration is an independent agency in the executive branch of the Federal Government. It is composed of the Farm Credit Administration Board and such other personnel as are employed in carrying out the functions, powers, and duties vested in the Farm Credit Administration. The mailing address of the central offices of the Farm Credit Administration is McLean, Virginia 22102–5090. The hours of business are 8 a.m.–6 p.m., Monday through Friday, excluding holidays.

§ 600.2 Farm Credit Administration Board.

(a) *Organization.* The Farm Credit Administration Board (Board) is a full-time, three-member board entrusted with the responsibility to manage the Farm Credit Administration. The Board consists of three members appointed by the President with the advice and consent of the Senate. The Board may not contain more than two members of the same political party. One member is designated by the President as Chairman of the Board for the duration of such member's term. Each member of the Board shall serve a single 6-year term and cannot be reappointed except in the case of such members who are initially appointed for less than a 6-year term on initial formation of the Board or any member who is appointed to fill an unexpired term of less than 3 years. A member of the Board shall continue to serve subsequent to the expiration of that member's term until the point in time at which an eligible successor has taken his or her oath of office. A person appointed to the Board shall subscribe to the oath of office within 15 days after having received notice of appointment. Each Board member is assisted by a staff.

(b) *Functions and responsibilities.* The Board establishes and administers policy and directs the management and operation of the Farm Credit Administration. Specifically, the Board prescribes the rules and regulations necessary for the implementation of the Farm Credit Act of 1971, as amended, and provides for the examination of Farm Credit System institutions and for the performance of all the powers and duties vested in the Farm Credit Administration.

§ 600.3 Chairman of the Farm Credit Administration Board.

(a) The Chairman of the Board is the executive officer of the Board and the chief executive officer of the Farm Credit Administration. The Chairman is responsible for directing the implementation of the policies and regulations of the Board and the execution of all the administrative functions and duties of the Farm Credit Administration. The Chairman is the spokesperson for the Board in its dealings with other branches of the Federal Government and consults with the Secretary of the Treasury, Board of Governors of the Federal Reserve System, and the Secretary of Agriculture on specified matters.

(b) The Chairman is empowered with the authority to establish and fix the powers and duties of offices and divisions and such other units as the Chairman deems necessary for the efficient functioning of the Farm Credit Administration. The Chairman may appoint such personnel as may be necessary to carry out the functions of the Farm Credit Administration. The powers of the Chairman as chief executive officer of the Farm Credit Administration may be exercised and performed by the Chairman through such officers and employees of the Farm Credit Administration as the Chairman may designate.

(c) The Chairman shall enforce the rules and regulations and orders of the

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Board. In carrying out the aforementioned responsibilities, the Chairman is governed by the general policies adopted by the Board and by such regulatory decisions, findings, and determinations as the Board is authorized by law to formulate.

§ 600.4 Office of Administration.

The Office of Administration, headed by a Director, provides administrative management and services to the agency; administers strategic planning activities for the agency; represents the agency with other Federal agencies and departments; and provides the agency with document processing assistance. The Office of Administration contains five divisions, each of which is headed by a Chief. The divisions are organized as follows:

(a) The Administration Division administers agency support functions relating to financial and material resources such as preparation of the budget, accounting and payroll, contracting and purchasing, supplies and equipment, mail, telecommunications, graphic design, and printing and reproduction.

(b) The Human Resources Division administers agency personnel and general training programs, security, and ethics responsibilities for agency personnel; reviews the compensation programs of Farm Credit System institutions; and administers requests of Farm Credit System institutions for related approvals required under the Act.

(c) The Records and Projects Division directs the agency information resource program; administers the process for the election of district directors; and is the liaison with the Farm Credit System Building Association.

(d) The Information Processing Division administers the development and operation of the agency's electronic information processing facilities and operations; develops software and applications programs; and is responsible for electronic data security.

(e) The Examiner Training Division develops and administers a comprehensive training and development program for Farm Credit Administration examiners, including creating development programs for prescribed career tracks and designing and implementing programs to maintain the competence of middle-level and senior examiners.

§ 600.5 Office of Analysis and Supervision.

The Office of Analysis and Supervision, headed by a Director, supervises, establishes standards, enforces rules and regulations, approves certain bank and association actions required by the Act, collects data, and conducts analytical and economic studies of the Farm Credit System. The Office of Analysis and Supervision contains four divisions, each of which is headed by a Chief. The divisions are organized as follows:

(a) The Supervision Division monitors the compliance of Farm Credit System institutions with Farm Credit Administration rules and regulations; initiates, prepares, and pursues enforcement actions; and assists in the preparation of Farm Credit Administration rules and regulations.

(b) The Finance and Operations Division conducts special finance, security, accounting, or credit studies supporting the examination function and the development of agency policy, regulations, directives, and action by the Farm Credit Administration Board; analyzes and recommends agency action on approvals regarding mergers, charter amendments, or territorial changes of Farm Credit institutions; recommends agency action on approvals regarding bylaws and financial, security, accounting, or credit action required by the Act; and publishes and maintains the FCA Examination Manual.

(c) The Economic Analysis Division conducts economic research relevant to the activities of the Farm Credit Administration and the Farm Credit System. The Economic Analysis Division is responsible for providing advice to the Board on economic trends and otherwise furnishing assistance on economic issues arising in the examination, supervision, and planning functions.

(d) The System Data Analysis Division collects, reconciles, and interprets the financial data reported by Farm Credit System institutions and reports the results of its analysis to the Board and the appropriate offices and divisions in the agency.

§ 600.6 Office of Congressional and Public Affairs.

The Office of Congressional and Public Affairs, headed by a Director, is responsible for coordinating and disseminating all communication, written and oral, with Congress; monitoring and reporting legislation affecting the Farm Credit Administration or Farm Credit System institutions; advising and counseling the Farm Credit Administration Board on legislative affairs; acting, as directed by the Board, as spokesman for the Farm Credit Administration to members of Congress and congressional staff; directing timely responses to congressional inquiries from constituents; directing timely responses to hearing records; acting as liaison for the Board with congressional affairs departments of all financial regulators; planning and implementing all public communications; producing all news releases, newsletters, annual reports and similar publications; acting as first contact for the agency with the news media; advises and directs Board communication with the media; first source of contact with the public; is responsible for the public image of the Farm Credit Administration; functions as first source of information to Farm Credit System institutions and borrowers concerning the Farm Credit Administration; directs all communication and association with international publics and media; arranges briefings and documents for foreign visitors; and represents the Farm Credit Administration in world farm financial communities.

§ 600.7 Office of Examination.

The Office of Examination, headed by a Chief Examiner, is responsible for the planning and execution of examinations of Farm Credit System institutions and for the preparation of examination reports. The Chief Examiner is responsible for the management and operation of the examination function and for advising the Farm Credit Administration Board with respect to matters of policy, legislation, and regulation that relate to examination activity. The Office of Examination is composed of five divisions, each headed by a Chief, and each of which is responsible for conducting examination activities for the institutions assigned it. The divisions are organized as follows:

(a) Field Division A, headquartered in McLean, Virginia, with district examination teams in McLean, Virginia; Jackson, Mississippi; and Louisville, Kentucky; is responsible for the Baltimore, Louisville, and Jackson Districts.

(b) Field Division B, headquartered in McLean, Virginia, with district examination teams in McLean, Virginia; Albany, New York; Atlanta, Georgia; and Dallas, Texas; is responsible for the Springfield, Columbia, and Texas Districts.

(c) Field Division C, headquartered in Spokane, Washington, with district examination teams in Spokane, Washington; Sacramento, California; and St. Paul, Minnesota; is responsible for the Sacramento, Spokane, and St. Paul Districts.

(d) Field Division D, headquartered in St. Louis, Missouri, with district examination teams in St. Louis, Missouri; Omaha, Nebraska; and Oklahoma City, Oklahoma; is responsible for the St. Louis, Wichita, and Omaha Districts.

(e) The Credit Risk Evaluation Division, located in McLean, Virginia, is responsible for examining the Farm Credit System Capital Corporation, Federal Farm Credit Bank Funding Corporation, Central Bank for Cooperatives, international activities of the banks for cooperatives, National Cooperative Bank, Farm Credit Corporation of America, Farm Credit Leasing Services Corporation, and other service organizations incorporated under Title IV, Part C, of the Act, which are not subject to examination by a district team.

§ 600.8 Office of General Counsel.

The Office of General Counsel, headed by a General Counsel, provides legal services to the Farm Credit Administration. The Office of General Counsel is responsible for advising the Farm Credit Administration Board with respect to interpretations involving questions of law; for advising the Board and making recommendations on requests for approvals; for the preparation of legislation submitted by the Board to Congress; for the preparation of Board comments to Congress upon pending legislation; and for coordinating the preparation of the rules and regulations. The Office of General Counsel is also responsible for representing the Board and the Farm Credit Administration in judicial proceedings in which the Board or the agency is involved as a party or as amicus curiae, and in administrative proceedings under the Act. The Office of General Counsel is divided into two divisions, the Litigation and Enforcement Division and the Corporate and Administrative Division, each of which is headed by an Associate General Counsel.

§ 600.9 Other offices.

(a) The Office of Internal Audit, headed by a Director, is responsible for the internal audit function in the agency and reports directly to the Chairman. The internal audit function involves reviewing and evaluating the adequacy and effectiveness of the controls and procedures of all Farm Credit Administration operating and administrative offices.

(b) The Office of Equal Employment Opportunity, headed by a Director, promotes the principles of equal employment opportunity and ensures agency compliance with applicable law, regulation, and policy, and reports directly to the Chairman.

Subpart B—[Reserved]

PART 601—EMPLOYEE RESPONSIBILITIES AND CONDUCT

2. The authority citation for Part 601 is revised to read as follows:

Authority: 12 U.S.C. 2243, 2252.

3. Section 601.100 is amended by revising paragraph (b) to read as follows:

§ 601.100 General policy.

* * * * *

(b) All officers and employees have an obligation to the Government, to the people they serve, and to their fellow officers and employees to carry out the purpose and spirit of this policy.

* * * * *

4. Section 601.101 is revised to read as follows:

§ 601.101 Responsibilities.

(a) In the administration of the policy set forth in § 602.200 of this chapter, the rules and regulations thereunder, the Chief, Human Resources Division, Office of Administration, is responsible for:

(1) General coordination,

(2) Dissemination of information,

(3) Handling of complaints,

(4) Assignment of investigations,

(5) Administration interpretation, and

(6) Periodic review and evaluation of compliance.

(b) The Chief, Human Resources Division, Office of Administration, shall serve as counselor on ethical conduct and shall be responsible for assuring that counseling and interpretations on questions dealing with employee conduct and conflicts of interest are available to any officer or employee who desires advice and guidance on such questions.

5. Section 601.110 is amended by revising the introductory text and paragraphs (a), (b), (d) (4) and (5), (e), (f), (g), (h), and (i) to read as follows:

§ 601.110 Conflict of interest.

Except as specifically authorized by law or these regulations, no officer or employee of the Farm Credit Administration:

(a) Shall, in any manner directly or indirectly, participate in the deliberation upon, or the determination of, any question affecting that person's personal interests, those of any person related to that person by blood or marriage, or those of any partnership, association, or corporation in which that person is directly or indirectly interested;

(b) Shall, except in the performance of official duties, divulge to another person, or utilize for personal benefit or that of another, any fact or information acquired by such officer or employee, directly or indirectly, by virtue of that person's employment;

* * * * *

(d) * * *

(4) From any person who has an interest that may be substantially affected by the performance or nonperformance of such officer's or employee's official duty, any salary, loan, fee, commission, or honorarium or, for any purpose or in any way, any gift, favor, entertainment, or other benefit which might reasonably be interpreted by others as being of such nature that it could affect that person's impartiality; *Exception:* Such officer or employee may accept food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting where such officer or employee may properly be in attendance, may accept unsolicited advertising or promotional material such as pens, pencils, note pads, calendars and other items of nominal value, and may accept, with the written approval of the Chairman and upon such conditions as the Chairman may prescribe, any benefit otherwise enjoined hereby if the circumstances make clear that the motivating factor for the extension of such benefit is not based on the Government responsibilities of the officer or employee and the business of the other person concerned.

(5) Nothing in this part precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on that person's behalf, for excessive personal living expenses, gifts, entertainment or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under Agency orders when reimbursement is proscribed by Decision B–128527 of the Comptroller General dated March 7, 1967.

(e) Shall acquire, directly or indirectly (including acquisition by membership in syndicates), any lands, or any interest therein, including mineral interests and interests as mortgagee or lessee, which are owned by or mortgaged to any corporation regulated by the Farm

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Credit Administration or which were thus owned or mortgaged at any time within the preceding 12 months. However, such lands, or interests therein, may be acquired by will or inheritance or upon the written approval of the Chairman subject to such conditions as the Chairman may prescribe. As used in this paragraph, "mineral interests" means any interest in minerals, oil, or gas, including, but not limited to, any right derived directly or indirectly from a mineral, oil, or gas lease, deed or royalty conveyance;

(f) Shall participate directly or indirectly in any transaction concerning the purchase or sale of corporate stocks or bonds, commodities, or other property if such action might tend to interfere with the proper and impartial performance of that person's duties or bring discredit upon the Farm Credit Administration or any corporation under its supervision;

(g) Shall engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or otherwise conduct himself/herself in a manner which might be prejudicial and cause embarrassment to or criticism of the Government or the Farm Credit Administration or any corporation under its supervision or interfere with the efficient performance of that person's duties;

(h) Shall receive any salary or anything or monetary value from a private source as compensation for that person's services to the Government;

(i) Shall refuse to pay in a proper and timely manner each financial obligation which is imposed by law, such as Federal, State, or local taxes, or which he has acknowledged, or which has been reduced to judgment by a court. As used herein, "proper and timely" means in a manner which the Farm Credit Administration deems does not, under the circumstances, reflect adversely on the Farm Credit Administration as that person's employer. In the event of a dispute between an employee and an alleged creditor, this section does not require the Farm Credit Administration to determine the validity or amount of the disputed debt;

* * * * *

6. Section 601.126 is revised to read as follows:

§ 601.126 Teaching, writing, and lecturing.

(a) No officer or employee of the Farm Credit Administration shall receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the Farm Credit Administration or any institution regulated by the Farm Credit Administration, or draws substantially upon official data or ideas which have not become part of the body of public information.

(b) No officer or employee of the Farm Credit Administration shall, either for or without compensation, engage in teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the Office of Personnel Management or Board of Examiners for the Foreign Service that depends on information obtained as a result of that person's Government employment, except when that information has been made available to the general public or will be made available on request, or when the Chairman gives written authorization for use of nonpublic information on the basis that the use is in the public interest.

7. Section 601.127 is amended by revising paragraphs (c) and (e) to read as follows:

§ 601.127 Administrative approval to engage in outside employment.

* * * * *

(c) The request for approval will be submitted to the supervisor who will make a written recommendation for approval or disapproval and forward the request through the director of the appropriate office to the Chief of Human Resources Division. The Chief of Human Resources Division will notify employees in writing of the actions taken on their requests and the reasons for approval or disapproval. This notification will be coordinated and cleared with the employees' supervisor prior to issuance. All approved requests and a copy of the notification of the approval action will be maintained in the Human Resources Division.

* * * * *

(e) Failure to request administrative approval for outside employment or other outside activity for which approval is required is grounds for disciplinary action.

* * * * *

8. Section 601.130 is revised to read as follows:

§ 601.130 Farm Credit Administration examiners.

Farm Credit Administration examiners occupy positions established specifically by law to carry out special responsibilities. In order that they may carry out these responsibilities effectively, it is expected that they will refrain from action or conduct that may result in, or create the appearance of, obligating them to or causing them to be influenced by any of the officers or employees of the institutions examined, supervised, or regulated by the Farm Credit Administration.

9. Section 601.140 is revised to read as follows:

§ 601.140 Political activity.

Various provisions of Federal statutes and regulations prohibit or limit political activity on the part of officers and employees of Federal agencies. Any officer or employee who desires to have more detailed information should make inquiry of the Human Resources Division.

10. Section 601.141 is revised to read as follows:

§ 601.141 Prohibition against involvement in Farm Credit System elections of board members.

No officer or employee of the Farm Credit Administration, except as authorized in the discharge of his or her official duties, shall take any part, directly or indirectly, in the nomination or election of a member of a district Farm Credit board or the board of the Central Bank for Cooperatives or make any statement, either orally or in writing, which may be construed as intended to influence any vote in such designations, nominations, or elections. Any such officer or employee who violates the provisions of this section shall be dismissed.

11. Section 601.150 is amended by revising the introductory text and paragraphs (b) and (d) to read as follows:

§ 601.150 Distribution of printed material by employees.

The distribution of circulars, flyers, posters, etc., by individual Farm Credit Administration employee groups should be confined to material that will not result in embarrassment to the Farm Credit Administration. Distribution of any such material should be cleared with the Human Resources Division. Specifically, no circulars, flyers, posters, etc., may be so distributed which:

* * * * *

(b) Directly or indirectly attack or adversely reflect on the integrity or character of Members of Congress, the judiciary, the President or Members of the President's Cabinet, or any other Government official in a similarly responsible position:

* * * * *

(d) Directly or indirectly criticize the policies of another Government department or agency which relate to programs of the Farm Credit

Administration or institutions under its examination, supervision, or regulation.

12. Section 601.165 is amended by revising paragraph (b) to read as follows:

§ 601.165 Foreign decorations.

* * * * *

(b) Any Farm Credit Administration employee who has had such a present conferred on him or her must notify the Human Resource Division that it is being held by the State Department so that appropriate steps may be taken at time of the employee's retirement, for reporting to Congress.

13. Section 601.170 is amended by revising paragraphs (a)(2), (3), and (4) to read as follows:

§ 601.170 Statements of employment and financial interests.

(a) * * *

(2) Employees classified at the GS-13 level and above under 5 U.S.C. § 5332 or at comparable pay levels under other authority and who are identified by the Chief of Human Resources Division as holding positions requiring the incumbent thereof to exercise judgment in making Government decisions or taking actions where such decisions or actions may have an economic impact on the interest of any non-Federal enterprise, including the institutions of the Farm Credit System.

(3) Employees classified below the GS-13 level under 5 U.S.C. 5332 or at a comparable pay level under authority, and who are in positions which otherwise meet the criteria of paragraphs (a) (1) and (2) of this section, providing the Office of Personnel Management has approved the determination that the incumbents of such positions should be required to file statements of employment and financial interests in order to protect the integrity of the Government and to avoid the employee's involvement in a possible conflict-of-interest situation.

(4) An employee described in paragraph (a) (1) and (2) of this section may be exempted from the requirement for filing a statement of employment and financial interests when the Chief of Human Resources Division determines that the employee's duties are of such a nature, or are at such a level of responsibility and are subject to such a degree of supervision and review, that the possibility of his or her becoming involved in a conflict of interest is remote.

* * * * *

14. Section 601.171 is amended by revising the introductory text to read as follows:

§ 601.171 Time and place for submission of statements.

The statement of employment and financial interest, which need not include the amount of financial interest, indebtedness, or value of real property, shall be submitted to the designee of the Chairman not later than:

* * * * *

15. Section 601.176 is revised to read as follows:

§ 601.176 Confidentiality of statements.

The Farm Credit Administration shall hold each statement of employment and financial interest, and each supplementary statement, in confidence. To ensure this confidentiality, the designee of the Chairman shall review and retain such statements and maintain them in confidence, and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this subpart. The Farm Credit Administration will not disclose information from a statement except as the Office of Personnel Management or the Chairman may determine for good cause shown.

16. Section 601.178 is revised to read as follows:

§ 601.178 Review of statements.

The statement of employment and financial interests shall be reviewed by the designee of the Chairman to determine whether the statement reveals a conflict or an apparent conflict between the interests of the officer or employee and the performance of such officer's or employee's service for the Farm Credit Administration. If such conflict or apparent conflict cannot be resolved by consultation between the designee of the Chairman and the officer or employee, the conflict or apparent conflict shall be reported to the Chairman for such further handling or action as the Chairman may deem indicated under the circumstances.

17. Section 601.180 is revised to read as follows:

§ 601.180 Special Government employees.

In addition to those requirements of §§ 601.110 through 601.170 of this part which may be made conditions of employment of a special Government employee in writing at the time of that person's employment, or otherwise apply to that person by operation of law, such employee:

(a) Shall not use Government employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for the employee or another person, particularly one with whom the employee has family, business, or financial ties;

(b) Shall not use inside information obtained as a result of Government employment for private gain for the employee or another person either by direct action on the employee's part or by counsel, recommendation, or suggestion to another person, particularly one with whom the employee has family, business, or financial ties (for this purpose "inside information" means information obtained under Government authority which has not become part of the body of public information);

(c) Shall not use Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to the employee or another person, particularly one with whom the employee has family, business, or financial ties;

(d) Shall not while so employed or in connection with such employment receive or solicit from a person having business with the Farm Credit Administration anything of value as a gift, gratuity, loan, entertainment, or favor for the employee or another person, particularly one with whom the employee has family, business, or financial ties. However, such employee may accept food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting where such employee may properly be in attendance, may accept unsolicited advertising or promotional material such as pens, pencils, note pads, calendars and other items of nominal value, and may accept, with written approval of the Chairman and upon such conditions as he may prescribe, any benefit otherwise enjoined hereby if the circumstances make clear that the motivating factor for the extension of such benefit is not based on the Government responsibilities of the employee and the business of the other person concerned;

(e) Shall submit to the designee of the Chairman prior to the commencement of employment a statement of employment and financial interests in the form prescribed by the Office of Personnel Management which reports all other employment and any financial interests which relate either directly or indirectly to the employee's duties and responsibilities as a special Government employee. The employee shall keep such statement current throughout the period of employment by the submission of supplementary statements. The information contained in the statement shall be reviewed and otherwise handled as is provided in § 601.178 of

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this part with regard to statements of employment and financial interests required to be furnished by officers and employees. The Chairman may waive the requirements for the submission of such statement in the case of a special Government employee who is not a consultant or an expert when the Farm Credit Administration finds that the duties of the position held by that special Government employee are of a nature and at such a level of responsibilities the the submission of that statement by the incumbent is not necessary to protect the integrity of the Government.

§ 601.190 [Removed]

18. Section 601.190 is removed.

PART 602—RELEASING INFORMATION

19. The authority citation for Part 602 is revised to read as follows:

Authority: 12 U.S.C. 2243, 2252.

Subpart A—Information and Records Generally

20. Section 602.200 is revised to read as follows:

§ 602.200 General rule.

Except as necessary in performing official duties or as authorized by §§ 602.205 through 602.288 of this part, no one employed by the Farm Credit Administration shall disclose information of a type not ordinarily contained in published reports or press releases regarding the Farm Credit Administration or any banks or associations of the Farm Credit System or its borrowers or members. Information prepared for newspapers, publishing and broadcasting companies, and all new or revised publications shall be cleared with the Office of Congressional and Public Affairs.

21. Section 602.205 is revised to read as follows:

§ 602.205 Farm Credit Administration examination reports.

Reports of examinations of Farm Credit System institutions made by the Farm Credit Administration may be disclosed only with the consent of the Chairman of the Farm Credit Administration Board. Consent is given for disclosing reports of regular examinations to the Farm Credit System institution involved or interested, but disclosure of reports of special examinations shall be only by action or consent of the Chairman in each instance. Consent is also given for disclosing reports of regular examinations to authorized representatives of the Farm Credit Administration and, when requested for confidential use in official investigations of matters touched upon therein, to agents of the Federal Bureau of Investigation, Department of Justice; the Assistant Postmaster General, Inspection Service, U.S. Postal Service; the Secret Service; the Internal Revenue Service; Office of the Inspector General, Department of Agriculture; and the General Accounting Office.

§ 602.210 [Removed]

22. Section 602.210 is removed.

23. Section 602.215 is amended by revising the introductory text and paragraphs (a), (b), (c) and (e) to read as follows:

§ 602.215 Data regarding borrowers and loan applicants.

Because the relationship between borrowers and the institutions in the cooperative Farm Credit System is confidential, Farm Credit Administration personnel shall hold in strict confidence all information regarding character, credit standing, and property of borrowers and applicants for loans. They shall not exhibit or quote the following documents: Loan applications; letters and statements relative to the character, credit standing, and property of borrowers and applicants; recommendations of loan committees; and reports of inspectors, fieldmen, investigators, and appraisers, except as authorized by § 618.8320 of this chapter. This section is subject to the following further exceptions:

(a) Farm Credit Administration examiners and other accredited representatives of the Farm Credit Administration shall have free access to all information, records, and files.

(b) Accredited representatives of the offices named in § 602.205 of this part at their request, be given information pertinent to their official investigations of individual cases, and may examine such portions of the records and files as contain the information.

(c) Information concerning borrowers may be given for the confidential use of any Farm Credit System institution, or any Government agency, in contemplation of the extension of agricultural credit or the collection of loans.

* * * * *

(e) In litigation between a borrower (or that borrower's successor in interest) and the United States or a bank or association, any competent evidence may be introduced with respect to any relevant statements made orally or in writing by or to the borrower or that borrower's successor.

24. Section 602.220 is revised to read as follows:

§ 602.220 Waiver of restrictions.

If it appears that justice would be served by releasing information in circumstances forbidden by § 602.215 of this part, the restrictions of that section may be waived as to a particular case by the Chairman of the Farm Credit Administration Board. A recommendation for such waiver may be submitted by any institution concerned. Any such recommendation from a Federal land bank association or a production credit association shall be submitted through the appropriate Federal land bank or Federal intermediate credit bank, with the request that it be considered and forwarded to the Farm Credit Administration, if deemed advisable. Each such recommendation shall be supported by a statement of facts and approved by counsel for the forwarding bank. The recommendation should be addressed to the General Counsel, Farm Credit Administration.

§§ 602.235, 602.240 and 602.245 [Removed]

25. Sections 602.235, 602.240, and 602.245 are removed.

Subpart B—Availability of Records of the Farm Credit Administration

26. Section 602.260 is revised to read as follows:

§ 602.260 Request for records.

Requests for records, other than records identified in § 602.265(a) of this part which are available in a public reference facility in the offices of the Farm Credit Administration, shall be in writing, in an envelope clearly marked "FOIA Request," and addressed to the Freedom of Information Officer, Office of Congressional and Public Affairs, Farm Credit Administration, McLean Virginia 22102–5090. A request improperly addressed will be deemed not to have been received for purposes of the 10-day time period set forth in § 602.261(a) of this part until it is received, or would have been received with the exercise of due diligence by agency personnel, in the Office of Congressional and Public Affairs. Records requested in conformance with this subpart and which are not exempt records may be received in person or by mail as specified in the request. Records to be received in person will be available for inspection of copying during business hours on a regular business day in the public reference facility in the offices of the Farm Credit

Administration, McLean, Virginia 22102-5090.

27. Section 602.261 is amended by revising paragraphs (a), (b) (c), and (d) introductory test to read as follows:

§ 602.261 Response to requests for records.

(a) Within 10 days (excluding Saturdays, Sundays, and legal public holidays), or any extension thereof as provided in paragraph (d) of this section, of the receipt of a request in the Office of Congressional and Public Affairs, the Freedom of Information Officer shall determine whether to comply with or to deny such request and place a notice thereof in writing in the mails addressed to the requester.

(b) Within 30 days of the receipt of a notice denying, in whole or in part, a request for records, the requester may appeal the denial. The appeal shall be in writing addressed to the Director, Office of Administration, Farm Credit Administration, and both the letter and envelope shall be clearly marked "FOIA Appeal." An appeal improperly addressed shall be deemed not to have been received for purposes of the 20-day time period set forth in paragraph (c) of this section until it is received, or would have been received with the exercise of due diligence by agency personnel, in the Office of the Director, Office of Administration.

(c) Within 20 days (excluding Saturdays, Sundays, and legal public holidays), or any extension thereof as provided in paragraph (d) of this section, of the receipt of an appeal in the Office of the Director, Office of Administration, the Director shall act upon the appeal and place a notice of the determination thereof in writing in the mails addressed to the requester. If the determination on the appeal upholds in whole or in part the denial of the request for records, or, if a determination on the appeal has not been mailed at the end of the 20-day period or the last extension thereof, the requester is deemed to have exhausted that person's administrative remedies, giving rise to a right of review in a district court of the United States as specified in 5 U.S.C. 552(a)(4). When a determination cannot be mailed within the applicable time limit, the appeal will nevertheless be processed. In such case, upon the expiration of the time limit, the requester will be informed of the reason for the delay, of the date on which a determination may be expected to be mailed, and of that person's right to seek judicial review. The requester may be asked to forego judicial review until determination of the appeal.

(d) In unusual circumstances as specified in this paragraph the 10-day time limit prescribed in paragraph (a) of this section or the 20-day time limit prescribed in paragraph (c) of this section, or both, may be extended by the Freedom of Information Officer or the Director, Office of Administration, as the case may be, provided that the total of all extensions shall not exceed 10 days (excluding Saturdays, Sundays, and legal public holidays). Extensions shall be made by written notice to the requester setting forth the reasons for the extension and the date on which a determination is expected to be mailed. As used in this paragraph, "unusual circumstances" means, but only to the extent necessary to the proper processing of the request:

* * * * *

28. Section 602.265 is amended by revising paragraphs (c), (d)(2), and (e) to read as follows:

§ 602.265 Fees for provision of records.

* * * * *

(c) When a request for information which cannot be furnished by the Farm Credit Administration under paragraphs (a) and (b) of this section is received, fees shall be charged in accordance with the schedule contained in paragraph (d) of this section for services rendered in response to requests for Farm Credit Administration records under this Subpart B unless the Director, Office of Administration, determines that such charges or a portion thereof are not in the public interest because furnishing the information can be considered as primarily benefiting the general public. Fees shall not be charged where they would amount, in the aggregate, for a request or series of related requests, to less than $5. Fees shall not be charged if the records requested are not found, or if all of the records located are withheld as exempt. However, if the time expended in procesing the request is substantial, and if the requester has been notified of the estimated cost pursuant to paragraph (d) of this section and has been specifically advised that it cannot be determined in advance whether any records will be made available, fees may be charged.

(d) * * *

(2) For each one-quarter hour spent by clerical personnel in excess of the first quarter hour in searching for and producing a requested record, including services to transport personnel to places of record storage, or records to the location of personnel for the purpose of search, $1.50.

* * * * *

(e) Where it is anticipated that the fees chargeable under this section will amount to more than $25, and the requester has not indicated in advance a willingness to pay fees as high as are anticipated, the requester shall be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. When the anticipated fees exceed $50, a deposit of 50 percent of the anticipated fees must be made within 5 business days of the Farm Credit Administration's notice to the requester. Unless the request specifically states that whatever cost is involved will be acceptable, or acceptable up to a specified limit, a request that is expected to involve fees in excess of $25 will not be deemed to have been received for purposes of this subpart until the requester is notified of the anticipated cost and that person's agreement to bear it is received. The notice or request for an advance deposit shall extend an offer to the requester to confer with identified Farm Credit Administration personnel in an attempt to reformulate the request in a manner which will reduce the fees and meet the needs of the requester.

* * * * *

Subpart C—Testimony and Production of Documents in Legal Proceedings in Which the Farm Credit Administration Is Not a Named Party

29. Section 602.280 is revised to read as follows:

§ 602.280 General purposes.

The purposes of these rules are to maintain the confidentiality of official documents and information of the Farm Credit Administration, conserve the time of Farm Credit Administration employees for their official duties, maintain the impartial position of the Farm Credit Administration in litigation in which the Farm Credit Administration is not a named party, and enable the Chairman to determine when to authorize testimony and to produce documents in legal proceedings in which the Farm Credit Administration is not a named party. This subpart sets forth the procedures to be followed with respect to testimony concerning official matters and production of official documents of the Farm Credit Administration in legal proceedings in which the Farm Credit Administration is not a named party. This subpart in no way affects the rights and procedures governing public access to official documents pursuant to the freedom of information act or the privacy act. See Part 602, Subpart B, and Part 603 of this chapter.

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30. Section 602.281 is amended by revising paragraphs (a) through (j) to read as follows:

§ 602.281 Definitions.

* * * * *

(a) "Chairman" means the Chairman of the Farm Credit Administration Board or his or her designee.

(b) "Court" means any entity conducting a legal proceeding.

(c) "Demand" means any order, subpoena, or other legal process for testimony or documents.

(d) "Document" means any record or paper, including but not limited to a report, credit review, audit, examination, letter, telegram, memorandum, study, calendar and diary entry, log, graph, pamphlet, note, chart, tabulation, analysis, statistical or information accumulation, any kind of record of meetings and conversations, film impression, magnetic tape, or any electronic media, disk, film, or mechanical reproduction that is generated, obtained, or adopted by the FCA in connection with the conduct of its official business.

(e) "Employee" means any officer, former officer, employee or former employee of the FCA, any member of the Farm Credit Administration Board or former member of the Farm Credit Administration Board or the Federal Farm Credit Board, any receiver or conservator appointed by the FCA, or any agent or independent contractor acting on behalf of the FCA, even though the appointment or contract has terminated.

(f) "FCA" means the Farm Credit Administration.

(g) "FCA Counsel" means the General Counsel or his or her designee, a Department of Justice attorney, or counsel authorized by the FCA to act on behalf of the FCA or an employee.

(h) "General Counsel" means the General Counsel of the FCA or his or her designee.

(i) "Legal proceeding" means any administrative, civil, or criminal proceeding, including a discovery proceeding therein, before a court of law, administrative board or commission, hearing officer, or other body in which the FCA is not a named party or in which the FCA has not instituted the administrative investigation or administrative hearing.

(j) "Official" means concerning the authorized business of the FCA.

* * * * *

31. Section 602.282 is revised to read as follows:

§ 602.282 General policy.

It is the policy of the FCA that official documents will not be voluntarily produced and the FCA employees will not voluntarily appear as witnesses in any legal proceeding. Under appropriate circumstances, the Chairman may grant exceptions in writing to this policy when the Chairman determines that the disclosure of official documents or testimony would be in the best interest of the FCA or in the public interest.

32. Section 602.283 is revised to read as follows:

§ 602.283 Request for testimony or production of documents.

(a) No FCA employee shall give testimony concerning official matters nor produce any official documents in any legal proceeding without the prior written authorization of the Chairman.

(b) If testimony by an FCA employee concerning official matters or the production of official documents is desired, the requesting party or his or her counsel shall submit a letter to the Chairman setting forth the title of the case, the forum, the requesting party's interest in the case, a summary of the issues in the litigation, the reasons for the request, and a showing that the desired testimony, documents, or information are not reasonably available from any other source. If an appearance or testimony is requested, the letter shall also set forth the intended use of the testimony, a general summary of the scope of the testimony requested, and a showing that no document could be provided and used in lieu of the testimony or other appearance requested.

(c) The General Counsel is authorized to consult with the requesting party or his or her counsel to: (1) Refine and limit the request so that compliance is less burdensome, or (2) obtain information necessary to make the determination described in § 602.282 of this part. Failure of the requesting party or his or her counsel to cooperate in good faith with the General Counsel to enable the Chairman to make an informed determination under this subpart may serve as the basis for a determination not to comply with the request.

33. Section 602.284 is revised to read as follows:

§ 602.284 Scope of permissible testimony.

(a) The scope of permissible testimony by an FCA employee is limited to that set forth in the written authorization granted that employee by the Chairman.

(b) FCA employees are not authorized to give opinion testimony. The FCA, as the regulatory agency charged with the responsibility of examining, supervising, and regulating the banks and associations and other institutions organized or chartered under the Farm Credit Act of 1971, as amended, relies on the ability of its employees to gather full and complete information in order to carry out its statutory responsibilities. The use of FCA employees to give opinion testimony would hamper the FCA's ability to carry out its statutory responsibilities and would cause a serious administrative burden on the FCA's staff.

34. Section 602.285 is amended by revising paragraph (b) to read as follows:

§ 602.285 Manner in which testimony is given.

* * * * *

(b) Where, in response to a request, the Chairman determines that circumstances warrant authorizing testimony by an FCA employee, the requesting party shall cause a subpoena to be served on the employee in accordance with applicable Federal or State rules of procedure, with a copy of the subpoena sent by registered mail to the General Counsel.

* * * * *

35. Section 602.286 is revised to read as follows:

§ 602.286 Manner in which documents will be produced.

(a) An FCA employee's authorization to produce official documents is limited to the authority granted that employee by the Chairman.

(b) Prior to the release of any official documents authorized by the Chairman to be released, the requesting party shall obtain a protective order satisfactory in form to the FCA from the court before which the action is pending to preserve the confidentiality of the documents subsequently produced.

(c) Certified or authenticated copies of official FCA documents authorized by the Chairman to be released under this subpart will be provided upon request.

36. Section 602.288 is amended by revising paragraphs (b) and (c) to read as follows:

§ 602.288 Responses to demands served on FCA employees.

* * * * *

(b) When authorization to testify or to produce documents has not been granted by the Chairman, FCA counsel shall provide the party issuing the demand or the court with a copy of the regulations contained in this subpart and shall inform the party issuing the demand or the court that the employee upon whom the demand has been made is prohibited from testifying or producing documents without the prior approval of the Chairman.

(c) If the court rules that the demand must be complied with irrespective of instructions from the Chairman not to produce the documents or disclose the information sought, the FCA employee upon whom the demand has been made shall respectfully decline to comply with the demand.

* * * * *

37. Section 602.289 is revised to read as follows:

§ 602.289 Responses to demands served on non-FCA employees or entities.

(a) FCA reports of examinations or such other reports generated or adopted by the FCA, or any documents related thereto are the property of the FCA and are not to be disclosed to any person without the FCA's consent.

(b) If any person who has possession of an FCA report of examination or such other report generated or adopted by the FCA, or any documents related thereto is served with a demand in a legal proceeding directing that person to produce such FCA documents or to testify with respect thereto, such person shall immediately notify the FCA General Counsel of such service, of the testimony and described documents in the demand, and of all relevant facts. Such person shall also object to the production of such documents or information contained therein on the basis that the documents are the property of the FCA and cannot be released without FCA's consent and that their production must be sought from the FCA following the procedures set forth in § 602.283 (b) and (c) and § 602.286(b) of this part.

PART 603—PRIVACY ACT REGULATIONS

38. The authority citation for Part 603 is revised to read as follows:

Authority: 12 U.S.C. 2243, 2252.

39. Section 603.300 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 603.300 Purpose and scope.

(a) This part is published by the Farm Credit Administration pursuant to the Privacy Act of 1974 (Pub. L. 93–579, 5 U.S.C. 552a) which requires each Federal agency to promulgate rules to establish procedures for notification and disclosure to an individual of agency records pertaining to that person, and for review of such records.

(b) * * *

(1) Personnel and employment records maintained by the Farm Credit Administration which are not covered by §§ 293.101 through 293.108 of the regulations of the Office of Personnel Management (5 CFR 293.101 through 293.108), and

* * * * *

40. Section 603.305 is revised to read as follows:

§ 603.305 Definitions.

For the purposes of this part:

(a) "Agency" means the Farm Credit Administration.

(b) "Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(c) "Maintain" includes maintain, collect, use, or disseminate;

(d) "Record" means any item, collection, or grouping of information about an individual that is maintained by an agency including, but not limited to, that person's education, financial transactions, medical history, and criminal or employment history, and that contains that person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or photograph;

(e) "Routine use" means, with respect to the disclosure of a record, the use of such record for a purpose that is compatible with the purpose for which it was collected;

(f) "Statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8;

(g) "System of records" means a group of any records under the control of any agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

41. Section 603.310 is revised to read as follows:

§ 603.310 Procedures for requests pertaining to individual records in a record system.

(a) Any present or former employee of the Farm Credit Administration seeking access to that person's official civil service records maintained by the Farm Credit Administration shall submit a request in such manner as is prescribed by the Office of Personnel Management.

(b) Individuals shall submit their requests in writing to the Privacy Act Officer, Office of Congressional and Public Affairs, Farm Credit Administration, McLean, Virginia 22102-5090, when seeking to obtain from the Farm Credit Administration:

(1) Notification of whether the agency maintains a record pertaining to that person in a system of records;

(2) Notification of whether the agency has disclosed a record for which an accounting of disclosure is required to be maintained and made available to that person;

(3) A copy of a record pertaining to that person or the accounting of its disclosure;

(4) The review of a record pertaining to that person or the accounting of its disclosure. The request shall state the full name and address of the individual, and identify the system or systems of records believed to contain the information or record sought.

42. Section 603.315 is revised to read as follows:

§ 603.315 Times, places, and requirements for identification of individuals making requests.

The individual making written requests for information or records ordinarily will not be required to verify that person's identity. The signature upon such requests shall be deemed to be a certification by the requester that he or she is the individual to whom the record pertains, or the parent of a minor, or the duly appointed legal guardian of the individual to whom the record pertains. The Privacy Act Officer, however, may require such additional verification of identity in any instance in which the Privacy Act Officer deems it advisable.

43. Section 603.320 is amended by revising paragraphs (a) introductory text, (a)(3), (b), (c), and (d) to read as follows:

§ 603.320 Disclosure of requested information to individuals.

(a) The Privacy Act Officer shall, within a reasonable period of time after the date of receipt of a request for information of records:

* * * * *

(3) Notify the requester that fees for reproducing copies of records may be charged as provided in § 603.345 of this part.

(b) If access to a record is denied because the information therein has been compiled by the Farm Credit Administration in reasonable anticipation of a civil or criminal action proceeding, the Privacy Act Officer shall notify the requester of that person's right to judicial appeal under 5 U.S.C. 552a(g).

(c)(1) If access to a record is granted, the requester shall notify the Officer whether the requested record is to be

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copied and mailed to the requester or whether the record is to be made available for personal inspection.

(2) A requester who is an individual may be accompanied by an individual selected by the requester when the record is disclosed, in which case the requester may be required to furnish a written statement authorizing the discussion of the record in the presence of the accompanying person.

(d) If the record is to be made available for personal inspection, the requester shall arrange with the Privacy Act Officer a mutually agreeable time in the offices of the Farm Credit Administration for inspection of the record.

44. Section 603.325 is revised to read as follows:

§ 603.325 Special procedures for medical records.

Medical records in the custody of the Farm Credit Administration which are not subject to Office of Personnel Management regulations shall be disclosed either to the individual to whom they pertain or that person's authorized or legal representative or to a licensed physician named by the individual.

45. Section 603.330 is revised to read as follows:

§ 603.330 Request for amendment to record.

(a) If, after disclosure of the requested information, an individual believes that the record is not accurate, relevant, timely, or complete, that person may request in writing that the record be amended. Such a request shall be submitted to the Privacy Act Officer and shall contain identification of the system of records and the record or information therein, a brief description of the material requested to be changed, the requested change or changes, and the reason for such change or changes.

(b) The Privacy Act Officer shall acknowledge receipt of the request within 10 days (excluding Saturdays, Sundays, and legal holidays) and, if a determination has not been made, advise the individual when that person may expect to be advised of action taken on the request. The acknowledgment may contain a request for additional information needed to make a determination.

46. Section 603.335 is amended by revising the introductory text and paragraph (b) to read as follows:

§ 603.335 Agency review of request for amendment of record.

Upon receipt of a request for amendment of a record, the Privacy Act Officer shall:

* * * * *

(b) Inform the individual in writing of refusal to amend the record and of the reasons therefor, and advise that the individual may appeal such determination as provided in § 603.340 of this part.

47. Section 603.340 is amended by revising paragraphs (a) through (d) to read as follows:

§ 603.340 Appeal of an initial adverse determination of a request to amend a record.

(a) Not more than 10 days (excluding Saturdays, Sundays, and legal holidays) after receipt by an individual of an adverse determination on the individual's request to amend a record or otherwise, the individual may appeal to the Director, Office of Administration.

(b) The appeal shall be by letter, mailed or delivered to the Director, Office of Administration, Farm Credit Administration, McLean, Virginia 22102-5090. The letter shall identify the records involved in the same manner they were identified to the Privacy Act Officer, shall specify the dates of the request and adverse determination, and shall indicate the expressed basis for that determination. Also, the letter shall state briefly and succinctly the reasons why the adverse determination should be reversed.

(c) The review shall be completed and a final determination made by the Director not later than 30 days (excluding Saturdays, Sundays, and legal holidays) from receipt of the request for such review, unless the Director extends such 30-day period for good cause. If the 30-day period is extended, the individual shall be notified of the reasons therefor.

(d) If the Director refuses to amend the record in accordance with the request, the individual shall be notified of the right to file a concise statement setting forth that person's disagreement with the final determination and that person's right under 5 U.S.C. 552a(g)(1)(A) to a judicial review of the final determination.

* * * * *

PART 604—FARM CREDIT ADMINISTRATION BOARD MEETINGS

48. The authority citation for Part 604 is revised to read as follows:

Authority: 12 U.S.C. 2243, 2252.

49. The title of Part 604 is revised to read as follows:

PART 604—FARM CREDIT ADMINISTRATION BOARD MEETINGS

§ 604.300 [Redesignated as 604.400]

50. Section 604.300 is redesignated as § 604.400 amd revised to read as follows:

§ 604.400 Definitions.

For purposes of this part:

(a) "Agency" means the Farm Credit Administration.

(b) "Board" means the Farm Credit Administration Board.

(c) "Exempt meeting" and "exempt portion of a meeting" mean, respectively, a meeting or that part of a meeting designated as provided in § 604.430 of this part as closed to the public by reason of one or more of the exemptive provisions listed in § 604.420 of this part.

(d) "Meeting" means the deliberations of at least two (quorum) members of the Board where such deliberations determine or result in joint conduct or disposition of official Farm Credit Administration business.

(e) "Member" means any one of the members of the Board.

(f) "Open meeting" means a meeting or portion of a meeting which is not an exempt meeting or an exempt portion of a meeting.

(g) "Public observation" means the right of any member of the public to attend and observe, but not participate or interfere in any way in, an open meeting of the Board, within the limits of reasonable and comfortable accommodations made available for such purpose by the Farm Credit Administration.

§ 604.305 [Redesignated as § 604.405]

51. Section 604.305 is redesignated as § 604.405 and amended by revising paragraph (b) to read as follows:

§ 604.405 Notice of public observation.

* * * * *

(b) Notice of intention to exercise the right of public observation may be given in writing, in person, or by telephone to the official designated in § 604.440 of this part.

* * * * *

§ 604.310 [Redesignated]

52. Section 604.310 is redesignated as § 604.410 and revised to read as follows:

§ 604.410 Scope of application.

The provisions of this part apply to meetings of the Board, and do not apply to conferences or other gatherings of employees of the Farm Credit Administration who meet or join with others, except at meetings of the Board, to deliberate official agency business.

§ 604.315 [Redesignated as § 604.415]

53. Section 604.415 is redesignated as § 604.315 and revised to read as follows:

§ 604.415 Open meetings.

Every meeting and portion of a meeting of the Board shall be open to public observation unless the Board determines that such meeting or portion of a meeting will involve the discussion of matters which are within one or more of the exemptive provisions listed in § 604.420 of this part, and that the public interest is not served by the discussion of such matters in an open meeting.

§ 604.320 [Redesignated as § 604.420]

54. Section 604.320 is redesignated as § 604.420 and revised to read as follows:

§ 604.420 Exemptive provisions.

Except in a case where the Board determines that the public interest requires otherwise, a meeting or portion of a meeting may be closed to public observation where the Board determines that the meeting or portion of the meeting is likely to:

(a) Disclose matters that are:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy, and

(2) In fact properly classified pursuant to such Executive order;

(b) Relate solely to the internal personnel rules and practices of the Farm Credit Administration;

(c) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552): Provided, That such statute:

(1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(2) Establishes particular types of matters to be withheld;

(d) Disclose trade secrets and privileged or confidential commercial or financial information obtained from a person;

(e) Involve accusing any person of a crime, or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigator records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(1) Interfere with enforcement proceedings;

(2) Deprive a person of a right to a fair trial or an impartial adjudication;

(3) Constitute an unwarranted invasion of personal privacy;

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(5) Disclose investigative techniques and procedures; or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Disclose information contained in or related to examination, supervision, operating, or condition reports prepared by, on behalf of, or for the use of the Farm Credit Administration;

(i) Disclose information the premature disclosure of which would:

(1) Significantly endanger the stability of any Farm Credit System institution, including banks, associations, service organizations, or the Capital Corporation; or

(2) Be likely to significantly frustrate implementation of a proposed action of the Farm Credit Administration: *Provided*, said Administration has not already disclosed to the public the content or nature of its proposed action, or is not required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(j) Specifically concern participation by the Farm Credit Administration in a civil action or proceeding otherwise involving a determination on the record before an opportunity for a hearing.

§ 604.325 [Redesignated as § 604.425]

55. Section 604.325 is redesignated as § 604.425 and amended by revising paragraphs (a) and (c) to read as follows:

§ 604.425 Announcement of meetings.

(a) The Board meets in the offices of the Farm Credit Administration, McLean, Virginia 22102–5090, on the first Tuesday of each month.

* * * * *

(c) At the earliest practicable time, which is estimated to be not later than 8 days before the beginning of a meeting of the Board, the Farm Credit Administration shall make available for public inspection by posting notice on its public notice board in its offices, or pursuant to telephonic or written requests, the time, place, and subject matter of the meeting except to the extent that such information is exempt from disclosure under the provisions of § 604.420 of this part.

§ 604.330 [Redesignated as § 604.430]

56. Section 604.330 is redesignated as § 604.430 and amended by revising paragraphs (a) and (c) to read as follows:

§ 604.430 Closure of meetings.

(a) A majority of the meetings or portions of a majority of the meetings of the board are exempt by reason of § 604.420 (d), (h), (i)(1), or (j) of this part. An exempt meeting or an exempt portion of a meeting shall be closed to the public when at least two members of the Board vote by a recorded vote of the Board at the beginning of the exempt meeting or exempt portion of a meeting to close such meeting or such exempt portion, and the General Counsel, Farm Credit Administration, publicly certifies that, in his or her opinion, the meeting or portion of the meeting may be closed to the public stating each relevant exemptive provision listed in § 604.420 of this part.

* * * * *

(c) A copy of the certification of the General Counsel, together with a statement from the presiding officer of the meeting setting forth the time and place of an exempt meeting or an exempt portion of a meeting which was closed and the persons present, shall be retained by the Farm Credit Administration for a period of at least 2 years after the date of such closed meeting or closed portion of a meeting.

§ 604.335 [Redesignated as § 604.435]

57. Section 604.335 is redesignated as § 604.435 and amended by revising paragraphs (a), (c), (d), and (e) to read as follows:

§ 604.435 Record of closed meetings or closed portion of a meeting.

(a) The Farm Credit Administration shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each closed meeting or closed portion of a meeting, except that in the case of a meeting or portion of a meeting closed to the public pursuant to § 604.420 (d), (h), (i)(1), or (j) of this part, the Farm Credit Administration shall maintain either such transcript, recording, or a set of minutes.

* * * * *

(c) The Farm Credit Administration shall promptly make available to the public, in its offices, the transcript, electronic recording, or minutes, of the

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discussion of any item on the agenda of a closed meeting, or closed portion of a meeting, except for such item or items of discussion which the Farm Credit Administration determines to contain information which may be withheld under § 604.420 of this part. Copies of such transcript or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription.

(d) The Farm Credit Administration shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each closed meeting or closed portion of a meeting for a period of 2 years after the date of such closed meeting or closed portion of a meeting.

(e) All actions required or permitted by this section to be undertaken by the Farm Credit Administration shall be by or under the authority of the Director, Office of Administration.

§ 604.340 [Redesignated as § 604.440]

58. Section 604.340 is redesignated as § 604.440 and revised to read as follows:

§ 604.440 Requests for information.

Requests to the Farm Credit Administration for information about the time, place, and subject matter of a meeting, whether it or any portion thereof is closed to the public, and any requests for copies of the transcript or minutes, or of a transcript of an electronic recording of a closed meeting, or closed portion of a meeting, to the extent not exempt from disclosure by the provisions of § 604.420 of this part, shall be addressed to the Director, Office of Administration, Farm Credit Administration, McLean, Virginia 22102-5090.

PART 611—ORGANIZATION

59. The authority citation for Part 611 is revised to read as follows:

Authority: 12 U.S.C. §§ 2031, 2091, 2182, 2183, 2216–2216k, 2243, 2244, 2250, 2252.

Subpart A—Introduction

60. Section 611.100 is revised to read as follows:

§ 611.100 The Farm Credit Act.

The Farm Credit Act of 1971, Pub. L. 92-181, approved December 10, 1971, recodified and replaced the prior laws under which the Farm Credit Administration and the institutions of the Farm Credit System were organized and operated. The prior laws, which were repealed and superseded by the 1971 Act, are identified in section 5.40(a) of the Act. Section 5.40(b) retained the effectiveness of the existing regulations of the Farm Credit Administration and the Farm Credit System, the institutions' charters, bylaws, resolutions, stock classifications, policies, and elections until superseded, modified, or replaced under the authority of the Act. The Farm Credit Act Amendments of 1980, Pub. L. 96-592, amended the Farm Credit Act of 1971, effective December 24, 1980. The Farm Credit Amendments Act of 1985, Pub. L. 99-205, amended the Farm Credit Act of 1971, effective December 23, 1985. All references to "the Act" in this part shall be deemed to be references to the Farm Credit Act of 1971, as amended. All obligations and contracts under the prior laws remain enforceable unless and until modified by the Act.

Subparts B and C—[Reserved]

61. Subpart B consisting of § 611.200 and Subpart C are removed and reserved.

Subpart D—The Farm Credit System

62. Section 611.400 is amended by revising paragraph (a) to read as follows:

§ 611.400 System organization.

(a) The Farm Credit System includes the Federal land banks, the Federal land bank associations, the Federal intermediate credit banks, the production credit associations, the banks for cooperatives, service corporations authorized by section 4.25 of the Act, unincorporated service organizations formed pursuant to agreements authorized by 5.6(a)(5) of the Act, and the Farm Credit System Capital Corporation. Each institution is chartered by the Farm Credit Administration. Each of the banks, associations, service corporations, and the Capital Corporation is an instrumentality of the United States, created to carry out the congressional policy and objectives of the Act. These institutions are subject to the examination, supervision, and regulation of the Farm Credit Administration. Each bank has immediate supervisory responsibility over its respective associations in its district. The banks which are stockholders of a service corporation have, through their boards of directors, immediate supervisory responsibility over the service corporation.

* * * * *

Subpart E—Farm Credit Districts

63. Subpart E consisting of § 611.500 is revised to read as follows:

§ 611.500 District territories.

The United States is divided into 12 Farm Credit districts. The designation and territory comprising each district are as follows:

District No.	District name	Territory
1	Springfield	Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey.
2	Baltimore	Pennsylvania, Delaware, Maryland, Virginia, West Virginia, District of Columbia, Puerto Rico.
3	Columbia	North Carolina, South Carolina, Georgia, Florida.
4	Louisville	Ohio, Indiana, Kentucky, Tennessee.
5	Jackson	Alabama, Mississippi, Louisiana.
6	St. Louis	Illinois, Missouri, Arkansas.
7	St. Paul	Michigan, Wisconsin, Minnesota, North Dakota.
8	Omaha	Iowa, Nebraska, South Dakota, Wyoming.
9	Wichita	Oklahoma, Kansas, Colorado, New Mexico.
10	Texas	Texas.
11	Sacramento	California, Nevada, Utah, Arizona, Hawaii.
12	Spokane	Washington, Oregon, Montana, Idaho, Alaska.

Subpart F—General Rules for the Districts

64. Section 611.1000 is revised to read as follows:

§ 611.1000 Organization—district boards of directors.

(a) Each Farm Credit district shall have a district board of directors composed of seven members, nominated and elected as provided in section 5.2 of the Act. Limitations on the eligibility and term of office on the district board are specified in section 5.1 of the Act. The district board may adopt additional eligibility requirements, such as an age limitation of a number of successive terms for which a director will be eligible to serve. The members of each Farm Credit district board of directors shall operate as a single policymaking board. They also serve as the boards of directors of the Federal land bank, the Federal intermediate credit bank, and the bank for cooperatives in their respective districts. In neither capacity may board members engage in management functions. Whether acting as the board of directors for the district or ex officio as the boards for the district banks, they are responsible for coordinating the policies and functions of the banks and associations so that they complement the other institutions in the district.

(b) As provided in section 3.2 of the Act, the Central Bank for Cooperatives has a separate board of directors of not more than 13 members, one elected by each district board and a member-at-large appointed by the Farm Credit Administration. The powers, duties, responsibilities, and limitations of the Central Bank board are comparable to those of the district board acting ex officio as the board of directors of the district bank for cooperatives. In interpreting these regulations, the terms "district board" and "bank board" shall also be read to mean the Central Bank board, and the terms "board member," "district board member" and "bank board member," or "director" shall also be read to mean Central Bank board member. The principal purpose of the Central Bank is to participate in loans with the district banks for cooperatives.

65. Section 611.1010 is amended by revising paragraph (i) to read as follows:

§ 611.1010 Powers, duties, and responsibilities.

* * * * *

(i) Consider recommendations made in examination reports and take appropriate corrective actions, as determined by the board or as required by the Farm Credit Administration. If the district board fails to implement the corrective actions required by the Farm Credit Administration, the Farm Credit Administration may direct action as it deems appropriate to enforce compliance, including undertaking an enforcement action as provided in Part C, Title V, of the Act, or taking such other action as the Farm Credit Administration is permitted by law to undertake.

* * * * *

Subpart G—Mergers, Consolidations, and Charter Amendments of Associations

66. Section 611.1120 is amended by revising paragraphs (b) and (c) to read as follows:

§ 611.1120 General authority.

* * * * *

(b) The Farm Credit Administration may make changes in the charter of an association as may be requested by that association and approved by the Farm Credit Administration pursuant to § 611.1121 of this part.

(c) The Farm Credit Administration may, by order of the Chairman and on its own initiative, make changes in the charter of a Federal land bank association or a production credit association where the Chairman determines that the change is necessary for the accomplishment of the purposes of the Act.

Subpart H—Rules for Inter-System Fund Transfers

67. Section 611.1130 is amended by revising paragraph (d) to read as follows:

§ 611.1130 Inter-System transfer of funds and equities.

* * * * *

(d) A direction by the FCA for a transfer of funds or equities pursuant to this section shall be signed by the Chairman and shall establish the amount, timing, duration, repayment, and other terms of assessments necessary to accomplish such transfer, taking into consideration the financial condition of each institution to be assessed. Where the FCA directs a transfer of funds or equities between associations under paragraph (c) (1) or (2) of this section, it may authorize the district bank in which such associations are stockholder to accomplish the necessary assessments through debits and credits to the accounts of the bank.

Subpart I—Service Organizations

68. Section 611.1135 is amended by revising paragraphs (a), (b)(2), (b)(7), (c), (d)(1) introductory text, (d)(1)(iv), (d)(2), and (e) to read as follows:

§ 611.1135 Incorporation of service organizations.

(a) *General.* Any Farm Credit bank(s) may organize a corporation to perform, for or on behalf of the bank(s), any function or service that the bank(s) is authorized to perform under the Act and the regulations, except extending credit and providing the sale of insurance services. The bank(s) wishing to organize such a corporation shall submit an application to the Farm Credit Administration according to the application requirements of paragraph (b) of this section. If the proposal meets the requirements of the Act, the regulations, and any other conditions which the Chairman may impose, the Chairman may issue a charter for the service corporation making it a federally chartered instrumentality of the United States. Such service corporation shall be subject to examination, supervision, and by the Farm Credit Administration. Only Farm Credit banks are eligible to become stockholders in such a corporation. Each bank shall be eligible to become a stockholder of each service corporation organized under this section.

(b) * * *

(2) A request signed by the president(s) of the organizing bank(s) to the Chairman of the Farm Credit Administration to issue a charter, supported by a detailed statement demonstrating the need and the justification for the proposed entity.

* * * * *

(7) Any other supporting documentation as may be requested by the Chairman of the Farm Credit Administration.

(c) *Approval.* The Chairman may condition the issuance of a charter as he deems appropriate and for good cause may deny the application. Upon approval by the Chairman of a completed application, which shall be kept on file at the Farm Credit Administration, the Chairman shall issue a charter for the service corporation which shall thereupon become a corporate body and a Federal instrumentality.

(d) * * *

(1) The board of directors of the corporation may request that the Chairman amend the articles of incorporation by sending with its request a certified resolution of the board of directors of the service corporation and stating:

* * * * *

(iv) That the requisite shareholder approval has been obtained. The request shall be subject to the approval of the Chairman as stated in paragraphs (a) and (c) of this section.

(2) The Chairman may at any time make any and all changes in the articles of incorporation of a service corporation that he deems necessary and appropriate for the accomplishment of the purposes of the Act.

(e) *Amendment of bylaws.* Amendments of the bylaws of a service corporation shall require prior approval of the Chairman.

Subpart L—Liquidation of Associations

69. Section 611.1168 is revised to read as follows:

§ 611.1168 Final discharge and release of receiver.

The association shall continue as an association chartered in accordance with the Act until such time as the liquidation has been completed and the charter of the association has been canceled by the Chairman of the Farm Credit Administration. When the receiver recommends final distribution of assets or is otherwise relieved of its duties by the Farm Credit Administration, the receiver shall file

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with the Farm Credit Administration a detailed report in a form satisfactory to the Farm Credit Administration. Upon final liquidation of the receivership or when the receiver completes or is otherwise relieved of its duties, the receivership shall be examined and audited pursuant to § 617.7090 of this chapter. The receiver's accounts shall thereupon be approved or disapproved, and if approved, the receiver shall thereby be completely and finally released. The records of the receivership shall be stored and maintained in the manner directed by the Farm Credit Administration.

Subpart M—Liquidation of Banks

70. Section 611.1174 is amended by revising paragraphs (c) and (d)(5) to read as follows:

§ 611.1174 Creditor's claims and priority of claims.

* * * * *

(c) Except for any consolidated or Systemwide bonds issued on behalf of a bank which are assumed by one or more other banks of the System, when a bank is placed in receivership the Chairman shall assign such bank's primary liability (as that term is used in 12 U.S.C. 2155(a)) on bonds to the other banks of the System in accordance with 12 U.S.C. 2155(a) as of the date of the appointment of the receiver. Upon such assignment, the assignee banks shall acquire rights to and title in such assets of the bank as shall be eligible and available as collateral under 12 U.S.C. 2154(b) up to an aggregate value equal to the total amount of the bonds so assigned, with priority of claims as provided in paragraph (d) of this section.

(d) * * *

(5) All claims of holders of consolidated and Systemwide bonds and claims of the other banks of the System related to assignments made by the Chairman under paragraph (c) of this section.

* * * * *

71. Section 611.1176 is revised to read as follows:

§ 611.1176 Final discharge and release of receiver.

The bank in receivership shall continue as a bank chartered in accordance with the Act until such time as the liquidation has been completed and the charter of the bank has been canceled by the Chairman of the Farm Credit Administration. When the receiver recommends final distribution of assets or is otherwise relieved of its duties by the Farm Credit Administration, the receiver shall file a detailed report with, and in a form satisfactory to, the Farm Credit Administration. Unless the Farm Credit Administration otherwise directs, upon final liquidation of the receivership or when the receiver completes or is otherwise relieved of its duties, the receivership shall be examined and audited pursuant to § 617.7090 of this chapter. The receiver's accounts shall thereupon be approved or disapproved, and if approved, the receiver shall thereby be completely and finally released. The records of the receivership shall be stored and maintained in the manner directed by the Farm Credit Administration.

PART 612—PERSONNEL ADMINISTRATION

72. The authority citation for Part 612 is revised to read as follows:

Authority: 12 U.S.C. 2243, 2252.

Subpart B—Standards of Conduct for Directors, Officers, and Employees

73. Section 612.2130 is amended by revising paragraphs (p) and (t) to read as follows:

§ 612.2130 Definitions.

* * * * *

(p) "Service organization" means the Farm Credit System Capital Corporation, Federal Farm Credit Banks Funding Corporation, each service organization authorized by section 4.25 of the Act, and each unincorporated service organization formed pursuant to agreements authorized by section 5.8(a) of the Act.

* * * * *

(t) "System institution" and "institution" mean any bank, association, or service organization in the Farm Credit System, including the Federal land banks, Federal intermediate credit banks, banks for cooperatives, Central Bank for Cooperatives, Federal land bank associations, production credit associations, the Farm Credit System Capital Corporation, the Federal Farm Credit Banks Funding Corporation, and other service organizations.

74. Section 612.2150 is amended by revising paragraph (c) introductory text to read as follows:

§ 612.2150 Employees—prohibited acts.

* * * * *

(c) Except to the extent permitted under bank, Capital Corporation, or service organization policies and procedures which have been approved by the Farm Credit Administration pursuant to § 612.2160 of this part, an employee of a System institution:

* * * * *

75. Section 612.2200 is amended by revising the title and paragraph (a) to read as follows:

§ 612.2200 Soliciting support in election polls for association or district board membership.

(a) No employee or agent of a System institution shall take any part, directly or indirectly, in the nomination or election of members of a district, association, or service organization board, or make any statement, either orally or in writing, which may be construed as intended to influence any vote in such designations, nominations, or elections. These provisions shall not prohibit employees or agents from providing biographical and other information or engaging in other activities pursuant to the district policies and procedures for nominations and elections. This paragraph does not affect the right of an employee or agent to nominate or vote for directors of an institution in which the employee or agent is a voting member.

* * * * *

76. Section 612.2220 is revised to read as follows:

§ 612.2220 Political activity.

(a) No officer or employee of a System institution shall hold public office or be a candidate for such office unless the employing institution has, after investigation and consideration of all facts involved, determined in writing that such candidacy or holding of public office would not bring justified criticism on the grounds of political activities or partialities or in any other manner adversely affect the best interests of the institution or the System. All determinations made hereunder shall be reported to the board of directors of the institution concerned.

(b) No employee shall take an active part or issue public statements relating to the nomination or candidacy of any person or participate in partisan political campaigns for national or statewide elective office, in any way that would implicate by support, endorsement, or otherwise, the employee's connection with the System institution. This statement shall not be construed to prohibit an employee from expressing personal opinions on political affairs or candidates or making voluntary campaign contributions.

PART 613—ELIGIBILITY AND SCOPE OF FINANCING

77. The authority citation for Part 613 is revised to read as follows:

Authority: 12 U.S.C. 2243, 2252.

Subpart E—Nondiscrimination in Lending

78. Section 613.3170 is amended by revising paragraph (b) to read as follows:

§ 613.3170 Equal housing lender poster.

* * * * *

(b) The poster shall be at least 11 by 14 inches in size, and shall bear the logotype and legend set forth in § 613.3180(b) of this part and the following text:

WE DO BUSINESS IN ACCORDANCE WITH THE FEDERAL FAIR HOUSING LAW (TITLE VIII OF THE CIVIL RIGHTS ACT OF 1968) IT IS ILLEGAL, BECAUSE OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN TO:

- Deny a loan for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling or
- Discriminate in fixing the amount, interest rate, duration, application procedures, or other terms or conditions of such a loan.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST UNDER THIS LAW, YOU MAY SEND A COMPLAINT TO:

Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, DC 20410

or

Farm Credit Administration, McLean, VA 22102-5090

WE ALSO DO BUSINESS IN ACCORDANCE WITH THE EQUAL CREDIT OPPORTUNITY ACT

IT IS ILLEGAL TO DISCRIMINATE IN EXTENDING CREDIT:

- On the basis of race, color, religion, national origin, sex, marital satatus, or age (providing applicant has legal capacity to enter a binding contract)
- Because income is from public assistance
- Because a right was exercised under the Consumer Credit Protection Act

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST UNDER THIS LAW YOU MAY SEND A COMPLAINT TO THE FARM CREDIT ADMINISTRATION AT THE ABOVE ADDRESS.

PART 614—LOAN POLICIES AND OPERATIONS

79. The authority citation for Part 614 is revised to read as follows:

Authority: 12 U.S.C. 2183, 2199, 2202, 2243, 2244, 2252(a)(10).

§§ 614.4010, 614.4015, and 614.4020 [Removed]

Subpart A—General

80. Sections 614.4010, 614.4015, and 614.4020 are removed.

Subpart F—Security Requirements

81. Section 614.4260 is amended by revising paragraph (c)(5) to read as follows:

§ 614.4260 Banks for cooperatives.

* * * * *

(c) * * *

(5) Documents required in conjunction with these loans may be held by a custodian selected by the bank. In such cases the bank shall provide the custodian written instructions outlining procedures and practices to be followed in the acceptance, handling, and release of all related documents. The custodian shall be adequately bonded. The bank shall provide for periodic review of custodial activities by bank officials and shall establish that activities of the custodian are subject to review and examination by the Farm Credit Administration.

Subpart M—Loan Approval Requirements

82. Section 614.4450 is revised to read as follows:

§ 614.4450 General requirements.

Authority for loan approval is vested in the Farm Credit banks and associations.

83. Section 614.4460 is amended by revising paragraphs (a), (c), and (d) to read as follows:

§ 614.4460 Loan approval responsibility.

* * * * *

(a) Loans to a member of the Farm Credit Administration Board.

* * * * *

(c) Loans to a cooperative of which a member of the district bank or Central Bank board of directors is a member of the board of directors, an officer, or employee.

(d) Loans to the president of a Farm Credit bank.

* * * * *

Subpart P—Federal Intermediate Credit Bank Financing of Other Financing Institutions

84. Section 614.4590 is revised to read as follows:

§ 614.4590 General financing agreement.

An OFI desiring to access a Federal intermediate credit bank shall execute a general financing agreement. The agreement shall state the general terms and conditions under which loans will be discounted or made or credit otherwise extended and shall provide for the OFI to periodically furnish the bank acceptable financial reports and any data necessary to assure that the OFI remains in compliance with these regulations. The agreement shall further provide that the OFI, other than a State bank, trust company, or savings association, agrees, to examination by the Farm Credit Administration if such examination is requested by the Chairman. With respect to an OFI which is a State bank, trust company, or savings association, the agreement shall provide that such OFI, at the request of the Chairman, consents that reports of its examination by constituted State authorities may be furnished by such authorities to the Farm Credit Administration.

Subpart Q—Banks for Cooperatives Financing International Trade

85. Section 614.4710 is amended by revising the introductory text, paragraphs (a)(1) introductory text, (a)(1)(ii), (a)(2), (a)(3), (a)(4), (d)(1), (d)(2), and (e) to read as follows:

§ 614.4710 Bankers acceptance financing.

The Federal Farm Credit Banks Funding Corporation (Funding Corporation) is authorized to accept drafts or bills of exchange drawn upon banks for cooperatives. With the exception of acceptances eligible for purchase by the Federal Reserve banks under the direction and regulation of the Federal Open Market Committee and rediscounted, acceptances shall be subject to the provisions of §§ 614.4350, 614.4354, and 614.4360 of this part and must be combined with any other loans to the account party by the banks for cooperatives for the purpose of applying the lending limits of § 614.4354 of this part.

(a) * * *

(1) The Funding Corporation's authority to accept drafts or bills of exchange drawn upon a district bank for cooperatives having not more than 6 months' sight to run, exclusive of days of grace, that are derived from transactions involving the importation or exportation of agricultural commodities, farm supplies, or aquatic products from the United States; or are derived from transactions involving the domestic shipment of goods that were produced from agriculture or commercial fishing or that have an agriculturally or aquatically related purpose; or are secured at the time of

acceptance by totally covering readily marketable staples.

* * * * *

(ii) The sum of all acceptance liabilities outstanding described in paragraph (a)(1) of this section, exclusive of participations sold to others, issued to all borrowers shall not exceed 100 percent of the bank for cooperatives' net worth but the aggregate of acceptances growing out of domestic transactions shall not exceed 50 percent or net worth calculated on the date indicated in paragraph (a)(1)(i) of this section.

(2) The limit specified in paragraph (a)(1)(i) of this section is separate from and in addition to the lending limits of § 614.4354 of this part if the acceptances are rediscounted.

(3) During any period within which a bank for cooperatives holds its own acceptance, having given value therefor, the amount thereof shall be included against the lending limits set forth in § 614.4354 of this part of the customer for whom the acceptance was made.

(4) The terms and requirements for the offering and purchase of participations in acceptance financing shall be the same as those for loans issued under § 614.4334 of this part.

* * * * *

(d) * * *

(1) A district bank for cooperatives shall determine limits on purchasing participations in discounted acceptances of another bank for cooperatives on the same basis as prescribed in § 614.4354 of this part for purchasing participations in loans of another bank for cooperatives.

(2) Participations in discounted acceptances shall be offered in accordance with § 614.4334 of this part.

(e) *Funding Corporation.* All acceptances created by the 13 banks for cooperatives shall be physically accepted by the Funding Corporation when intended for rediscount.

86. Section 614.4900 is amended by revising paragraph (i) to read as follows:

§ 614.4900 Foreign exchange.

* * * * *

(i) The 13 banks for cooperatives shall use the Federal Farm Credit Banks Funding Corporation (Funding Corporation) for purposes of trading foreign exchange. All foreign exchange transactions shall be made by the Funding Corporation on behalf of the banks consistent with instructions received from the respective bank.

* * * * *

PART 615—FUNDING AND FISCAL AFFAIRS

87. The authority citation for Part 615 is revised to read as follows:

Authority: 12 U.S.C. 2154, 2243, 2252.

Subpart J—Prescription, Subscription, and Retirement of Stock

88. Section 615.5250 is amended by revising paragraph (b) to read as follows:

§ 615.5250 Responsibility.

* * * * *

(b) The Chairman shall prescribe the initial amount of authorized capital stock for a newly chartered production credit association.

Subpart O—Issuance of Farm Credit Securities

89. Section 615.5453 is revised to read as follows:

§ 615.5453 Definitive bonds.

Consolidated and consolidated Systemwide bonds and discount notes may be issued in definitive form as determined to be appropriate by the Finance Committees or their subcommittees and as approved by the Chairman of the Farm Credit Administration.

90. Section 615.5495 is amended by revising paragraph (b) to read as follows:

§ 615.5495 Lost, stolen, destroyed, mutilated or defaced Farm Credit securities, including coupons.

* * * * *

(b) Applicants for relief under paragraph (a) of this section, shall present claims and proof of loss (1) to the Claims Branch of the Securities Operations Division, Bureau of Public Debt, Department of the Treasury, Washington, DC 20226 in the case of consolidated or Systemwide obligations of the Farm Credit banks issued prior to May 1, 1978, or (2) to the Federal Farm Credit Banks Funding Corporation, 90 William Street, New York, NY 10038, in the case of consolidated or Systemwide obligations issued on or after May 1, 1978.

PART 617—EXAMINATIONS AND INVESTIGATIONS

91. The authority citation for Part 617 is revised to read as follows:

Authority: 12 U.S.C. 2243, 2252.

92. The title of Part 617 is revised to read as follows:

PART 617—EXAMINATIONS AND INVESTIGATIONS

93. The title of Subpart A is revised to read as follows:

Subpart A—Examinations

94. Section 617.7000 is revised to read as follows:

§ 617.7000 Farm Credit System institutions.

The Farm Credit Administration is required by § 5.19 of the Act to examine each System institution, including banks, associations, incorporated and unincorporated service organizations, and the Capital Corporation, and each of its agents, at such times as the Chairman may determine, but not less frequently than once each year. Such examinations shall be under the direction of the Chief Examiner of the Farm Credit Administration.

95. Section 617.7020 is revised to read as follows:

§ 617.7020 Other financing institutions.

(a) As a condition precedent to securing discount privileges with a bank of the Farm Credit System, any organization other than State banks, trust companies, and savings associations shall file with such bank its written consent to examination by the Farm Credit Administration pursuant to § 5.21 of the Act. Such organizations shall also agree to furnish the bank, the Farm Credit Administration, or any Farm Credit examiner, at any time upon call, full and current information regarding its financial conditions and operations.

(b) State banks, trust companies, and savings associations shall be required in like manner to file a written consent that reports of their examination by constituted state authorities may be furnished by such authorities upon the request of the Farm Credit Administration.

96. Section 617.7030 is revised to read as follows:

§ 617.7030 Farm Credit Administration examiners' responsibilities.

(a) Examinations and investigations shall be made by Farm Credit Administration examiners appointed by the Chairman. Such examinations and investigations shall be under the direction of the Chief Examiner. Their responsibilities are to be discharged in the interest of carrying out the Act and in the interest of the investing public, stockholders, and directors and employees of the System. Examiners shall have full authority to inquire into any and all matters which affect or may affect the interests of the Farm Credit Administration or any institution in the Farm Credit System. Such matters include, but are not limited to, the financial affairs, transactions, and condition of such institutions; effectiveness of management in all aspects of the operations of such institutions; compliance with all laws applicable, all regulations and procedures issued by the Farm Credit Administration and all institutions of the System, and all generally accepted business, management, credit, and accounting principles and standards as applicable to the operations of such institutions.

(b) To facilitate such inquiries, examiners are empowered to examine any documents and records in the custody of any Farm Credit institution; to take custody of such documents and records upon issuance of a receipt to the institution; to examine, with permission of the owner or custodian if needed, any other documents or records, wherever located, which may be pertinent to such inquiries; to interview any employee, borrower, or other person regarding any matters pertinent to such inquiries; to obtain signed or sworn statements and administer oaths; and to make personal observations of any physical conditions pertinent to such inquiries. Examiners are not authorized to issue to any person an order or instruction to perform or not to perform any action.

§§ 617.7050 and 617.7060 [Removed]

97. Sections 617.7050 and 617.7060 are removed.

98. Section 617.7070 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 617.7070 Coverage.

Examination of Farm Credit System institutions, and their agents, shall include but not be limited to the following:

(a) Examination of the books, accounts, financial records, files, and other papers.

* * * * *

99. Section 617.7080 is revised to read as follows:

§ 617.7080 Reports.

(a) The results of Farm Credit Administration examinations of banks, associations, service organizations, and the Capital Corporation shall be reported to the respective boards of directors at meetings which shall include an executive session with the board. Reports of examinations of associations shall also be submitted to the supervising bank for review and appropriate action.

(b) Reports of examinations are the property of the Farm Credit Administration and are furnished to the institution examined for its confidential use and may be disclosed only with the consent of the Chairman of the Farm Credit Administration. Consent is given for disclosing reports of regular examinations to the banks and associations involved or interested, but such disclosure of reports of special examinations shall be only by action or consent of the Chairman in each instance. Information needed for filing claims with surety companies, for establishing lines of credit, and for maintaining relations with other financial institutions may be extracted from such reports without further consent.

(c) Consent is given for disclosing reports of regular examinations to authorized representatives of the Farm Credit Administration and, when requested for confidential use in official investigations, to agents of the Federal Bureau of Investigation, Department of Justice; the Bureau of the Chief Postal Inspector, United States Postal Service; the Secret Service; the Internal Revenue Service; and the Office of Inspector General, United States Department of Agriculture.

(d) Reports of investigations are the property of the Farm Credit Administration. When such reports are furnished to concerned institutions for their confidential use, further disclosure of the reports shall be only by consent of the Chairman.

Subpart B—Investigations—Personnel

§ 617.7100 [Removed]

100. Section 617.7100 is removed.

PART 618—GENERAL PROVISIONS

101. The authority citation for Part 618 is revised to read as follows:

Authority: 12 U.S.C. 2183, 2243, 2244, 2252.

Subpart D—Procedures and Guidelines

102. Section 618.8100 is amended by revising the introductory text to read as follows:

§ 618.8100 Farm Credit Administration.

The Farm Credit Administration shall issue procedures and guidelines as necessary from time to time to facilitate carrying out requirements of the law and regulations. System institutions shall comply with such procedures and guidelines. These procedures will include but are not limited to the following:

* * * * *

Subpart E—Nomination and Election of Directors

§ 618.8150 [Removed]

103. Section 618.8150 is removed.

104. Section 618.8160 is amended by revising paragraphs (a) and (b) to read as follows:

§ 618.8160 District boards of directors.

(a) Polls for the nomination and election of district board directors shall be conducted by the election officer of the Farm Credit Administration appointed by the Chairman. The results of all such polls shall be certified by the Chief Examiner.

(b) Information pertaining to the results of any poll shall not be disclosed before the poll has closed, the voting results have been certified, and official announcement has been made by the Chairman, except that notification of the number of votes received by each nominee or candidate in a poll may be made to the nominees or candidates by the election officer. Information regarding voting by individual associations shall not be disclosed at any time.

* * * * *

Subpart F—Miscellaneous Provisions

§ 618.8200 [Removed]

105. Section 618.8200 is removed.

Subpart G—Releasing Information

106. Section 618.8340 is amended by revising paragraph (c) to read as follows:

§ 618.8340 Information regarding personnel.

* * * * *

(c) For use by their respective groups of associations and cooperatives in nominating and electing members of a district board, the banks may release lists of directors of their associations, and a bank for cooperatives may release lists of the cooperatives that hold stock in it.

* * * * *

§ 618.8350 [Removed]

107. Section 618.8350 is removed.

Subpart I—Federal Records

108. Section 618.8400 is revised to read as follows:

§ 618.8400 National Archives and Records Administration regulations.

The National Archives and Records Administration is the Federal agency responsible for promulgating rules and regulations governing the management and disposal of Federal records. Farm Credit Administration personnel shall manage and dispose of Federal records generated by or otherwise in possession of the Farm Credit Administration in accordance with such rules and regulations.

109. Section 618.8410 is revised to read as follows:

§ 618.8410 Transfers to Federal Records Center.

Any bank or office of joint services that wishes to be relieved of the custody of Federal records, but cannot do so either because authority to destory or microfilm them has not been obtained or because the retention periods approved by National Archives and the Congress require that the records be held either permanently or for further periods of time, may request the Farm Credit Administration to arrange with the National Archives and Records Administration to have such records transferred to a regional Federal Records Center.

Frank W. Naylor, Jr.,

Chairman, Farm Credit Administration.

[FR Doc. 86-25918 Filed 11-19-86; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-ASW-13, Amdt. 39-5468]

Airworthiness Directives; Bell Helicopter Textron, Inc. (BHTI), Model 206A, 206B, and 206L Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that requires removal and replacement of either the tail rotor (T/R) yoke or crosshead on certain BHTI Model 206A, 206B, and 206L helicopters. A T/R yoke, which may interfere with the T/R pitch links, has been made available as a replacement part. The AD is prompted by 25 reports of interference between the T/R yoke and pitch links. This interference can damage the T/R pitch links, initiate fatigue cracks, and result in failure of the T/R pitch link and loss of directional control of the helicopter. The AD is needed to prevent failure of the pitch links which could result in loss of directional control and loss of the helicopter.

EFFECTIVE DATE: December 15, 1986.

Compliance: As prescribed in body of AD.

FOR FURTHER INFORMATION CONTACT: Gary B. Roach, Helicopter Certification Branch, ASW-170, Aircraft Certification Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone number (817) 624-5179.

SUPPLEMENTARY INFORMATION: There have been 25 reports of interference between the T/R yoke and pitch links on Bell Helicopter Models 206A, 206B, and 206L. This interference only occurs when particular T/R yokes are installed in combination with particular T/R crossheads. The wear which occurs due to the interference could result in failure of the pitch links, loss of directional control, and probable loss of the helicopter. Since this condition is likely to exist or develop on other helicopters of the same type design, an airworthiness directive is being issued which requires inspection and replacement, as necessary, of either the T/R yoke or crosshead.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Bell Helicopter Textron, Inc.: Applies to Model 206A, 206B, and 206L helicopters certificated in any category equipped with T/R yoke Part Number (P/N) 206-011-619-101 in combination with T/R crosshead P/N 206-010-741-001 or -003.

Compliance is required as indicated unless already accomplished.

To prevent failure of the T/R pitch links, accomplish the following:

(a) Within the next 25 hours' time in service, inspect T/R assembly and determine if T/R yoke P/N 206-011-819-101 is installed in combination with T/R crosshead P/N 206-010-741-001 or -003. If this T/R yoke and crosshead combination is installed, either:

(1) Remove T/R yoke P/N 206-011-819-101 and replace it with T/R yoke P/N 206-011-811-009; or

(2) Remove T/R crosshead P/N 206-010-741-001 or -003 and replace it with T/R crosshead P/N 206-011-855-001 or 206-011-857-001.

(b) Alternative inspections, modifications, or other actions which provide an equivalent level of safety may be used when approved by the Manager, Helicopter Certification Branch, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101.

This amendment becomes effective December 15, 1986.

Issued in Fort Worth, Texas, on November 7, 1986.

Don P. Watson,

Acting Director, Southwest Region.

[FR Doc. 86-26135 Filed 11-19-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 422

Federal Old-Age, Survivors, and Disability Insurance—Organization and Procedures; Removal of List of Title II Application Forms

AGENCY: Social Security Administration, HHS.

ACTION: Final rule with comment period.

SUMMARY: We are removing the list of application forms for Social Security benefits from our regulations and replacing it with the general statement that a person must apply for benefits on an application we prescribe. The purpose of the change is to permit experimentation with a variety of applications consisting of computer printouts.

DATES: These final regulations are effective November 20, 1986. We will consider your comments if we receive them no later than January 20, 1987.

ADDRESSES: Send your written comments to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or deliver them to the Office of Regulations, Social Security Administration, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Cliff Terry, Office of Regulations, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-7519.

SUPPLEMENTARY INFORMATION: Section 422.505(a) of 20 CFR currently gives a complete list of the names and numbers of our standard printed forms for applying for Social Security benefits. We are starting to experiment with a variety of applications consisting of computer printouts. These printouts are similar in content to the traditional printed application forms, but are produced only after our employee has keyed into a computer terminal the answers the applicant has given to the relevant questions. Taking advantage of this fact, the computer may combine a question and the answer to it into a simple statement and include it in the printout. Also, it may omit questions that the computer recognizes as irrelevant as a result of answers to other questions. Phrasing may differ from that on the traditional printed forms.

All of these differences can make the application clearer and easier for the applicant to review for accuracy before signing it. In addition, the information on the application the claimant reviews is certain to be the same as the information already entered into the computer system for use in processing the claim and paying benefits; this fact removes the opportunity for error that exists when information has to be keyed into the computer by hand after the applicant has reviewed the handwritten answers on a traditional application form.

However, the differences between the computer printouts and the traditional forms also mean that the printouts are not covered by the existing list of acceptable application forms. Since we wish to experiment with the printouts, including their content and phrasing, it would not be practical to add any meaningful description of them as additional applications in the list. Therefore, we believe the existing list has become more of an obstacle to innovation than a useful source of information to potential applicants for benefits, and we propose to remove the list from § 422.505(a) and remove the reference to the list from § 404.611(a). Instead, § 404.611(a) will say a person "must apply for benefits on an application we prescribe." For the forseeable future, the forms now listed in § 422.505(a) will still be in use as applications, and the computer printouts will not be very different from them.

Regulatory Procedures

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act (APA) notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking and public comment procedures on this regulation since opportunity for public comment is unnecessary. It is unnecessary because these regulations merely remove the list of Social Security application forms from our regulations and do not grant or deny rights or impose obligations. For example, when the computer-printout applications are used, no additional questions beyond those which are set forth in current forms will be asked. Applicants will still sign printed applications, although they will be printed by the computer and only after appropriate information is entered.

Although these regulations are effective on publication, we will consider any comments received by the date shown above and revise these regulations if comments warrant.

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These regulations impose no new reporting/recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will have no economic impact; they only permit greater flexibility in the format of Social Security applications. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program Nos. 13.802-13.805, Social Security)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors, and Disability Insurance.

20 CFR Part 422

Administrative practice and procedure, Freedom of Information, Organization and functions (Government agencies), Social Security.

Dated: September 24, 1986.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: October 31, 1986.

Otis R. Bowen,

Secretary of Health and Human Services.

Subpart G of Part 404 and Subpart F of Part 422 of 20 CFR are amended as follows:

PART 404—[AMENDED]

1. The authority citation for Subpart G of Part 404 is revised to read as follows:

Authority: Secs. 202(j)(1), 205, and 1102 of the Social Security Act (42 U.S.C. 402(j)(1), 405, and 1302).

2. Paragraph (a) of § 404.611 is revised to read as follows:

§ 404.611 Filing of application with Social Security Administration.

(a) *General rule.* You must apply for benefits on an applications we prescribe. See § 404.614 for places where an application for benefits may be filed.

* * * * *

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PART 422—[AMENDED]

3. The authority citation for Subpart F of Part 422 is revised to read as follows:

Authority: Secs. 205, 1102, and 1871 (42 U.S.C. 405, 1302, and 1395hh). Section 422.512 is also issued under title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended (30 U.S.C. 901 et seq.)

4. Paragraph (a) of § 422.505 is revised to read as follows:

§ 422.505 Applications and related forms for retirement, survivors, and disability insurance programs.

(a) *Applications.* To facilitate claims taking, the Social Security Administration (SSA) has designed applications to be used by the public when claiming benefits under title II of the Social Security Act. Prescribed applications include our traditional printed forms and our computer printouts. The printouts are similar in content to the traditional application, forms, but are produced only after an SSA employee has keyed into a computer terminal the answers the applicant has given to the relevant questions. The information on the applications includes such items as date of birth, family relationship, work history, etc. The printout may omit questions that the computer recognizes as irrelevant as a result of the answers to other questions. Phrasing may differ from that on the traditional printed forms.

* * * * *

[FR Doc. 86–26192 Filed 11–19–86; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 761, 764, 769, 772, 773, 780, 784, 785, 816, and 817

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Compliance With Court Order

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; suspension.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is suspending certain portions of its permanent program regulations. OSMRE is taking these actions as a result of a District Court's decisions in Round III of the litigation on OSMRE's permanent program regulations.

EFFECTIVE DATE: December 22, 1986.

FOR FURTHER INFORMATION CONTACT: Richard Miller, Regulatory Development and Issues Management, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240 (202) 343–5241.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Rules Suspended
III. Procedural Matters

I. Background

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (the Act), sets forth general regulatory requirements governing surface coal mining and the surface operations and surface impacts of underground coal mining. OSMRE has by regulation implemented or clarified many of the general requirements of the Act and set performance standards to be achieved by different operations. See 30 CFR Chapter VII.

On March 13, 1979, OSMRE published regulations implementing the permanent regulatory program required by Title V of the Act. 44 FR 14902 *et seq.* A number of these regulations were challenged by States, coal industry representatives and citizen and environmental groups. *In Re: Permanent Surface Mining Regulation Litigation,* No. 79–1144 (D.D.C. 1980) (*In Re: Permanent (I)*). The District Court issued decisions in *In Re: Permanent (I)* in February and May 1980. Certain issues were appealed but the D.C. Circuit Court remanded the case on motion of the parties pending the outcome of OSMRE's program of regulatory reform. *In Re: Permanent (I),* Order (D.C. Cir., February 1, 1983).

Many of the regulations originally promulgated in 1979 were revised and repromulgated during 1983 as part of OSMRE's extensive program of regulatory reform. Citizen and environmental groups, as well as States and industry representatives, again challenged some of these new regulations in *In Re: Permanent Surface Mining Regulation Litigation (II),* No. 79–1144 (D.D.C. 1984 and 1985) (*In Re: Permanent (II)*). In that case the court divided its consideration of the challenged regulations into three rounds of briefing and oral argument, the last round of which was separated into two sets of briefings. Decisions were issued in *In Re: Permanent (II)* on July 6 and October 1, 1984, and on March 22 and July 15, 1985. This notice is issued to comply with the March 22, 1985 and July 15, 1985 Memorandum Opinions and orders.

An explanation of each of the regulations to be suspended, the basis upon which the court remanded them to the Secretary and the effect of the suspension of each regulation is provided below. Where necessary, OSMRE intends to propose revisions to the remanded rules consistent with the court's opinions.

Although affecting the Code of Federal Regulations, this suspension notice is an interpretative statement which describes how the Secretary is already implementing the court's decisions. Even in the absence of this notice, the Secretary's actions must be consistent with the court orders.

Most State programs were approved prior to the promulgation of the 1983 rules, and are generally based on OSMRE's 1979 rules. In a few instances, State program amendments were approved based on the 1983 revisions. State programs will remain in effect until the Director of OSMRE has examined the provisions of each State program to determine whether changes are necessary and has notified the State regulatory authority pursuant to 30 CFR 732.17 (c) and (d) that a State program amendment is required.

With respect to Federal lands, the Secretary is continually required to make programmatic decisions, such as whether and under what conditions to issue a Federal lands permit. Although 30 CFR 740.11 makes State programs applicable on Federal lands, the Secretary will not take any action which is inconsistent with the court's opinions. For Federal lands this kind of issue is likely to arise only in those instances where the District Court ruled that a particular provision is inconsistent with the Act rather than basing its decision solely on procedural grounds.

This suspension notice has a direct effect on States with Federal Programs and on Indian lands, the rules for which generally reference the remanded sections. In a few instances, a specific program will have an individually tailored provision rather than a cross-reference to a remanded section. Such provisions will not be affected by this notice.

This suspension notice is not intended to affect the Secretary's appeal of the court's decisions on any of these regulations. With regard to issues on appeal, this notice is intended to implement the court orders during the pendency of the appeals. Should the Secretary prevail in his appeal, today's suspensions are likely to be lifted as to the issues upon which he prevails.

II. Discussion of Rules Suspended

1. Section 701.5 Definition of "affected area"

OSMRE's March 1979 rules defined the term "affected area" so as to include, in relevant part, any land upon which surface mining activities or underground mining activities are conducted or located. The 1979 definition did not exclude "public roads."

On April 5, 1983, OSMRE adopted a revised definition of the term "affected area." 48 FR 14814. With respect to roads, the April 1983 definition of "affected area" was revised to include:

> every road used for purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road (a) was designated as a public road pursuant to the laws of the jurisdiction in which it is located; (b) is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and (c) *there is substantial (more than incidental) public use.* (Emphasis added).

The intent of the above quoted language was to exclude public roads from the definition of "affected area."

This rule was challenged insofar as it imposed the "more than incidental" public use test in determining whether a public road is part of the "affected area." The District Court determined that the rule improperly excluded from regulation some public roads which are included in the statutory definition of "surface coal mining operations." The rule was remanded because the coverage of the rule was related to use by the public rather than use for mining. *In Re: Permanent (II),* July 15, 1985 Mem. op. at 143.

In compliance with the Order, OSMRE is suspending the definition of "affected area" to the extent that it excludes public roads which are included in the definition of "surface coal mining operations." The suspension will have the effect of including in the "affected area" all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of regulated activities or for haulage. The definition of "affected area" with regard to areas other than public roads is not suspended. OSMRE recognizes that this suspension provides imperfect guidance in a difficult area. Thus, OSMRE intends to develop and propose at a later date a new rule to clarify the relationship between public roads and the "affected area."

2. Section 701.5 Definition of "previously mined area"

OSMRE's 1979 rules did not have a definition of "previously mined area" nor did those rules provide special performance standards for the remining of previously mined areas. On September 16, 1983 (48 FR 41720), OSMRE promulgated a definition of the term "previously mined area" in 30 CFR 701.5. The definition is used in determining whether operators may be eligible for a certain limited exception from the requirement for total highwall elimination. The exception appears in 30 CFR 816.106 and 817.106.

Under OSMRE's 1983 definition, "previously mined areas" meant "land disturbed or affected by earlier coal mining operations that was not reclaimed in accordance with the requirements of [30 CFR Chapter VII]."

OSMRE's definition was challenged because it allowed areas to be treated as "previously mined" even if they were mined after the Act's reclamation standards took effect and reclamation was required. Challengers to the rule contended that the definition was inconsistent with the Act because it allowed less than complete highwall elimination in areas mined after the Act's reclamation standards took effect. The District Court agreed and remanded the regulation. *In Re: Permanent (II),* July 15, 1985 Mem. op. at 118.

OSMRE is suspending the definition of "previously mined area" insofar as it applies to any area upon which operations were previously conducted which were required to comply with the Act's approximate original contour and highwall elimination requirements. Under this suspension, the remining of any area which was previously subject to a complete highwall elimination requirement will continue to be subject to such a requirement. OSMRE intends to solicit comments on this issue shortly in a proposed rule.

3. Section 761.5 Definition of "cemetery"

Section 522(e)(5) of the Act prohibits mining within 100 feet of cemeteries. OSMRE's 1979 definition of "cemetery" included all places where human bodies are interred.

On September 14, 1983 (48 FR 41312), OSMRE revised the definition of "cemetery" in 30 CFR 761.5. That definition was revised to reflect the August 6, 1981 decision of the United States Court of Appeals for the Sixth Circuit, *Holmes Limestone Co.* v. *Watt,* 655 F.2d 732 (6th Cir. 1981). In that case, the court ruled that the Act did not prohibit mining within 100 feet of private family burial grounds where the operator had obtained the owner's consent. The 1983 definition distinguished between cemeteries and private family burial grounds and expressly excluded private family burial grounds from the definition of "cemetery."

OSMRE's 1983 definition of "cemetery" was challenged for its exclusion of private family burial grounds. The District Court ruled that OSMRE had no basis for distinguishing between private family burial grounds and other cemeteries. *In Re: Permanent (II),* July 15, 1985 Mem. op. at 83.

OSMRE is suspending the definition to the extent that it excludes private family burial grounds from the definition of "cemetery." As suspended, "cemetery" will be defined as any place where human bodies are interred and will include private family burial grounds. In this instance, a proposed rule has already been published. See 51 FR 8471. If finalized, it will supersede this suspension.

4. Section 761.5 Definition of "significant recreational, timber, economic, or other values incompatible with surface coal mining operations"

Generally, Section 522(e)(2) of the Act prohibits coal mining on Federal lands in national forests, subject to several exceptions. One exception permits mining on Federal lands in national forests where there are no "significant recreational, timber, economic, or other values incompatible with surface coal mining operations", and, impacts are either incident to an underground coal mine or, if west of the 100th meridian, are in compliance with the Multiple-Use Sustained Yield Act of 1960 and certain other requirements.

OSMRE's 1983 definition of "significant recreational, timber, economic, or other values incompatible with surface coal mining operations" in 30 CFR 761.5 included consideration of whether the protected values could be damaged "beyond an operator's ability to repair or restore." Such a consideration was considered reasonable because certain values which could be restored after mining could be temporarily disrupted without mining being incompatible with the listed national forest uses.

OSMRE's rule was challenged. The plaintiffs contended that OSMRE's definition equated the determination with regard to compatibility with the determination that reclamation could be achieved. A determination that reclamation can be achieved must be made for all mines.

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The District Court ruled that the regulation was inconsistent with the Act and remanded the rule. The court found that the Secretary must look beyond reclaimability in making a compatibility determination. *In Re: Permanent (II),* July 15, 1985 Mem. op. at 80–81.

In compliance with the Order, OSMRE is suspending the definition of "significant recreational, timber, economic, or other values incompatible with surface coal mining operations" insofar as the values listed in the definition are evaluated for compatability with mining solely in terms of reclaimability. This will mean that reclaimability is but one factor to be considered in determining whether an operation would be incompatible with forest values and that a showing of damage to those values during the term of the mining could make the operation incompatible. OSMRE will consider the duration of the damage only as part of the determination of compatibility.

5. Section 761.5(a) Definition of "valid existing rights"

Section 522(e)(3) of the Act prohibits or limits surface coal mining operations on or near certain private, Federal and other public lands, subject to valid existing rights and except for those operations which existed on August 3, 1977. The Act does not define "valid existing rights" (VER), but the legislative history of the Act indicates that the VER provision was included in Section 522(e) to avoid takings of property without just compensation in violation of the Fifth Amendment to the United States Constitution.

OSMRE's first attempt to define VER was an unsuccessful effort to limit the exemption to those property rights in existence on August 3, 1977, the owners of which either had obtained all necessary mining permits on or before August 3, 1977, or could demonstrate that the coal for which the exemption was sought was both needed for, and immediately adjacent to, a mining operation in existence prior to August 3, 1977. (30 CFR 761.5(a), 44 FR 15342, March 13, 1979).

On judicial review, the court remanded to the Secretary that portion of the definition requiring the property owner to have obtained all permits necessary to mine ("all permits" test, 30 CFR 761.5(a)(2)(i)). Specifically, the court indicated that "a good faith attempt to obtain all permits before the August 3, 1977 cut-off date should suffice for meeting the all permits test." *In Re: Permanent (I),* February 26, 1980 Mem. op. at 20. To comply with the court's 1980 opinion, OSMRE suspended the definition only insofar as it required that to establish VER all permits must have been obtained prior to August 3, 1977. (45 FR 51547, 51548, August 4, 1980). The notice of suspension stated that, pending further rulemaking, OSMRE would interpret the regulation as including the court's suggestion that a good faith effort to obtain all permits would establish VER.

On June 10, 1982, OSMRE proposed three major options for revising the definition of VER, including a "good faith/all permits" test, and three alternatives which were variations of the major options. All of the proposed options were attempts to identify the class or classes of circumstances which would operate to effect takings under section 522(e), while excluding all else. These tests are referred to as "mechanical" tests. Commenters on the proposed rule criticized each option as either too broad or too narrow and many raised the issue of taking without compensation on one or more of the proposed options. These comments led OSMRE to examine the case law applying the Just Compensation Clause of the Fifth Amendment. As a result of that examination, OSMRE stated that "because the courts refuse to prescribe set formulas for takings, OSMRE is convinced that it cannot specifically delineate a class of circumstances with the assurance that the class is neither overinclusive or underinclusive of all potential takings which might result from section 522(e) prohibitions." 48 FR 41314, September 14, 1983. Therefore, on September 14, 1983, OSMRE promulgated a broad definition which relies on a general "takings" standard (48 FR 41312). VER is defined in § 761.5(a) as:

> Except for haul roads, that a person possesses valid existing rights for an area protected under section 522(e) of the Act on August 3, 1977, if the application of any of the prohibitions contained in that section to the property interest that existed on that date would effect a taking of the person's property which would entitle the person to just compensation under the Fifth and Fourteenth Amendments to the United States Constitution.
> 30 CFR 761.5(a) (1984).

In its March 22, 1985 decision, the court held that the broad takings standard represented such a significant departure from the mechanical tests of the proposed rule that a new notice and comment period was necessary. Accordingly, the court held that the promulgation of the VER definition in 30 CFR 761.5(a) violated the Administrative Procedure Act (APA), 5 U.S.C. 553, and remanded the definition to the Secretary for proper notice and comment. *In Re: Permanent (II),* March 22, 1985 Mem. op. at 11. Therefore, to comply with the court's order, OSMRE is suspending the definition of VER in 30 CFR 761.5(a) pending further rulemaking to define VER.

Effect of the VER Suspension

Federal Programs and Indian Lands Program. This suspension notice has a direct effect on Federal program States and on Indian lands, the rules for which directly reference the remanded section. The suspension of a section of the permanent regulatory program results in the suspension of the corresponding sections of each Federal program and the Indian lands program, unless a specific exception is provided.

The suspension of the VER definition has a particular impact in Federal program States (where OSMRE is the regulatory authority), because the suspension, without the substitution of some test, would leave such programs without regulatory criteria. This is especially important in Tennessee where a number of permit applications are pending and OSMRE will be called upon to make VER determinations before permits may be issued.

The suspension of the VER definition is of particular concern because of the possible effect the suspension could have on property rights. Creation of a regulatory vacuum would be unworkable in this instance because OSMRE does not wish to unduly delay the permitting process or be required to shut down ongoing operations merely because the agency lacks a regulatory definition of VER. However, during the period of the suspension, these problems will be avoided. Suspending the rule has the effect of undoing the improper promulgation and leaving in place the VER test in use before the 1983 definition was promulgated. That test was the 1979 test, including the "needed for and adjacent" test, as modified by the August 4, 1980 suspension notice which implemented the District Court's February 1980 opinion in *In Re: Permanent (I)* (the 1980 test). The suspension notice stated that pending further rulemaking OSMRE would interpret the regulation as including the court's suggestion that a good faith effort to obtain all permits would estabish VER. That interpretation remained in effect until October 14, 1983, when the 1983 VER definition became effective. Under the 1980 test, a demonstration of both property rights and that the person either had made a good faith effort to obtain all permits necessary to mine or that the coal is both needed for and adjacent to an ongoing surface coal mining operation is sufficient to establish VER.

Accordingly, OSMRE will make VER determinations in Federal program States and on Indian lands using the 1980 test. OSMRE will make VER determinations on a case-by-case basis after examining the particular facts of each case, and will consider property rights in existence on August 3, 1977, the owner of which by that date had made a good faith effort to obtain all permits, as one class of circumstances which would invariably entitle the property owner to VER. VER would also exist when there are property rights in existence on August 3, 1977, the owner of which can demonstrate that the coal is both needed for and immediately adjacent to a mining operation in existence prior to August 3, 1977.

Federal Lands Program

The Federal regulations at 30 CFR 740.11(a) which were adopted on February 16, 1983, provide that upon approval or promulgation of a regulatory program for a State, that program and the Federal lands rules, 30 CFR Subchapter D, shall apply to surface coal mining and reclamation operations on Federal lands. However, under 30 CFR 740.4(a)(4) and 745.13(o), the Secretary is responsible for making VER determinations on Federal lands within the boundaries of any areas specified in section 522(e)(1) or (e)(2) of the Act, which includes national parks and forests. The Secretary may not delegate that responsibility to a State.

During the period of the suspension OSMRE has decided, consistent with 30 CFR 740.11(a), to make VER determinations on Federal lands, and on non-Federal lands within the boundaries of (e)(1) areas where operations would affect the Federal interest, using the VER definition contained in the appropriate State or Federal regulatory program. Where the State regulatory program contains a VER definition similar to OSMRE's 1979 "all permits" test, OSMRE will apply the test to include the District Court's suggestion that a good faith effort to obtain all permits would establish VER. In States where the State program provides for a "takings" test, OSMRE will not process VER applications within units of the National Park System until a Federal rule is finalized. This decision is based on National Park Service concerns over potential impacts on such units. To date, no such VER applications have been received.

In promulgating a new definition for VER, OSMRE plans to address whether the definition contained in a State program adopted pursuant to the Act should apply or whether one definition should be used nationwide for all Federal VER determinations. The VER rulemaking will clarify what standard will be used, in States with a "takings" test, to process any VER applications within the boundaries of units of the National Park System which may be received although not acted upon prior to the effective date of the Federal rule.

6. Section 761.5(c) "Needed for and adjacent" test

The September 14, 1983 permanent program regulations included as part of the VER definition a specific test, known as the "needed for and adjacent" test, for determining VER. 30 CFR 761.5(c), 48 FR 41315–41316, 41349. The test had been promulgated as part of OSMRE's permanent program rules in March 1979 (30 CFR 761.5(a)(2)(ii) (1979)). The 1983 rules amplified the "needed for" portion of the definition so that the existing test provides:

> A person possesses valid existing rights if the person proposing to conduct surface coal mining operations can demonstrate that the coal is both needed for, and immediately adjacent to, an ongoing surface coal mining operation which existed on August 3, 1977. A determination that the coal is "needed for" will be based upon a finding that the extension of mining is essential to make the surface coal mining operation as a whole economically viable.
> 30 CFR 761.5(c) (1984).

The court concluded that the rule as promulgated did not have adequate notice and comment under the APA, because it was related to the overall VER definition remanded by the court and because nothing in the proposed rule suggested such an expansion of the "needed for and adjacent" test. The court therefore remanded the test to the Secretary for notice and comment in accordance with the APA. Therefore, OSMRE is suspending paragraph (c) of the VER definition to comply with the court's opinion.

7. Section 761.5(d) Continually created VER

On September 14, 1983, OSMRE added paragraph (d) to the definition of VER to provide for "continually created VER." The purpose of the provision is to avoid takings of property interests where areas come under the protection of section 522(e) of the Act after August 3, 1977. Paragraph (d) provides:

> Where an area comes under the protection of section 522(e) of the Act after August 3, 1977, valid existing rights shall be found if—
>
> (1) On the date the protection comes into existence, a validly authorized surface coal mining operation exists on that area; or
>
> (2) The prohibition caused by section 522(e) of the Act, if applied to the property interest that exists on the date the protection comes into existence, would effect a taking of the person's property which would entitle the person to just compensation under the Fifth and Fourteenth Amendments to the United States Constitution.
> 30 CFR 761.5(d) (1984).

The court upheld the concept of "continually created VER" but remanded for further notice and comment that portion of the regulation (30 CFR 761.5(d)(2)) which incorporates the takings test of § 761.5(a). Therefore, to comply with the court's order, OSMRE is suspending subparagraph (d)(2) of the VER definition insofar as it incorporates the takings test of paragraph (a). However, the "continually created VER" test in subparagraph (d)(1) will remain in effect.

8. Section 761.11(c) Requirement that historic places be "publicly owned"

Section 522(e)(3) of the Act prohibits mining that would adversely affect any "publicly owned park or places included in the National Register of Historic Sites" with certain exceptions. On September 14, 1983, OSMRE revised its regulations at 30 CFR 761.11(c) and applied the term "publicly owned" to both "park" and "places included in the National Register of Historic Places." This limited the application of the prohibition of mining only to publicly owned places listed in the National Register of Historic Places, and publicly owned parks.

OSMRE's interpretation was challenged. Plaintiffs contended that the prohibition of mining should be afforded to any place listed in the National Register of Historic Places, without regard to ownership.

The District Court agreed. The court held that the term "publicly owned" does not apply to "places included in the National Register of Historic Places." *In Re: Permanent (II),* July 15, 1985 Mem. Op. at 73–76.

OSMRE is suspending the words "publicly owned" the second time they appear in § 761.11(c). This will have the effect of extending the prohibition to mining which will adversely affect any places included in the National Register of Historic Places, without regard to ownership of the place.

A directly related provision is 30 CFR 761.12(f). This provision implements the exception in section 522(e)(3) of the Act which allows mining in historic places or parks when approved by the Federal, State, or local agency with jurisdiction over the place or park. Section 761.12(f) provides the mechanism for the approval. This notice will extend the

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approval mechanism to historic places which are not publicly owned so as to conform with the extended prohibition. Thus, OSMRE is suspending the words "publicly owned" when they appear before "place," and "National Register place" in § 761.12(f).

9. Section 761.11(h) Areas where mining is prohibited

Section 761.11(h) provides:

> There will be no surface coal mining, permitting, licensing, or exploration of *Federal lands* in the National Park System, National Wildlife System, National System of Trails, National Wilderness Preservation System, Wild and Scenic Rivers System, or National Recreation Areas unless called for by Acts of Congress. (Emphasis added.) 30 CFR 761.11(h) (1984).

OSMRE added § 761.11(h) in response to numerous comments from persons concerned that mining or drilling would occur in National Parks or other areas protected under section 522(e)(1) of the Act. The court held that there appeared to be no rational basis for distinguishing between Federal and non-Federal lands in this context, since section 522(e)(1) prohibits, subject to VER and except for operations existing on August 3, 1977, surface coal mining operations on *any lands* within the statutorily protected areas. The court remanded the rule for lack of adequate notice and comment. Therefore, OSMRE is suspending the rule to comply with the court order. Section 761.11(a), however, will continue to implement the section 522(e)(1) prohibition on mining within the protected areas.

10. Sections 764.15 and 769.14 Suspension of unsuitability petitions

OSMRE's rules governing unsuitability petitions, adopted on September 14, 1983, included provisions that authorized the suspension of the processing of petitions where consideration of the petition is premature because there is no real or foreseeable potential for mining. In adopting this rule OSMRE wanted to provide a mechanism to allow deferral of consideration of petitions for unsuitability determinations until mining was sufficiently likely that a decision on the petition would be meaningful. The petition suspension provisions apply to petitions for declaring Federal lands unsuitable, 30 CFR 769.14(b)(2), and to petitions to State regulatory authorities to declare non-Federal, non-Indian lands unsuitable, 30 CFR 764.15(a)(3). Should a petition be suspended, the rules require that it be processed as soon as it becomes ripe.

Plaintiffs challenged OSMRE's rules, contending that there was no basis in the Act for a ripeness determination. They also contended that it allowed OSMRE to waive the one-year statutory deadline in section 522(c) of the Act for petition decisions.

The District Court ruled that the regulations with regard to petition suspension were inconsistent with the Act and remanded the rules.

OSMRE is suspending the rules which authorize the suspension of petitions and all references in other portions of the rules to suspended petitions. Specifically, § 764.15(a)(3), which provides for petition suspensions by State regulatory authorities, is suspended. Section 764.15(a)(8), which provides for the resumption of processing of petitions where suspension has occurred and a permit application has since been filed, is also suspended.

With regard to petitions to designate Federal lands unsuitable, OSMRE is suspending all of paragraphs 769.14(a)(3), (b)(2), and (h). In addition, OSMRE is suspending the words "ripe for further processing" or "ripe" in §§ 769.14 (a)(1) and (c) respectively.

These suspensions mean that the regulatory authority may not suspend petitions to designate lands unsuitable. In the initial processing of petitions, the appropriate regulatory authority will make the completeness and other determinations required by the rules, but no ripeness or foreseeability of mining determination will be a prerequisite to petition processing.

11. Section 772.11(a) Coal exploration notices of intent

OSMRE's 1979 rules with regard to coal exploration required all persons who would conduct coal exploration and who would extract 250 tons or less of coal to file a notice of intent to explore. Those who would extract in excess of 250 tons were required to obtain a coal exploration permit.

OSMRE revised its rules with regard to coal exploration on September 8, 1983. The revised § 772.11(a) required that any person who intends to conduct coal exploration operations outside a permit area during which 250 tons or less of coal will be removed *and which may substantially disturb the natural land surface* must file a notice of intent to explore with the regulatory authority. Thus a notice of intent was not required in every case, but only where coal exploration would substantially disturb the land surface.

The District Court ruled that OSMRE had failed to adequately explain its departure from the previous rules, and remanded § 772.11(a).

OSMRE is suspending § 772.11(a) insofar as it limits the responsibility to submit a notice of intent to explore to those persons who will substantially disturb the natural land surface. This means that all persons conducting coal exploration will be required to submit a notice of intent to explore whether or not they will substantially disturb the natural land surface.

The requirement to file a notice of intent in the Tennessee Federal program, 30 CFR 942.772, which differs from both the 1979 and 1983 national rules, remains unaffected by this suspension.

12. Sections 772.11(b)(3) and 772.12(b) Coal exploration narrative

OSMRE's rules at 30 CFR 772.11(b)(3) and 772.12(b)(3) identify information which must be submitted as part of a notice of intent to explore or as part of an application for a coal exploration permit, respectively. Paragraphs 772.11(b)(3) and 772.12(b) require "a narrative or map." This allows the submission of either a narrative or a map. OSMRE adopted this provision because the District Court for the District of Columbia, in its May 16, 1980 decision in *In Re: Permanent (I)* had ruled that OSMRE had erred in its 1979 rules by requiring *both* a narrative description and a map.

OSMRE's 1983 rule was challenged because it does not require a narrative description of the exploration area in all instances. The plaintiffs contended that a map alone is insufficient to describe a proposed exploration area.

The District Court remanded OSMRE's rules. *In Re: Permanent (II),* July 15, 1985 Mem. op. at 139–140.

OSMRE is suspending §§ 772.11(b)(3) and 772.12(b)(3) insofar as they allow a coal exploration notice or application to be submitted which does not include a narrative describing the exploration area. This will mean that notices of intent and applications for coal exploration operations must include narratives.

13. Section 773.11 Continued operations under the initial regulatory program

Section 773.11(b)(2) permits an operator conducting operations under the initial regulatory program to continue to conduct such operation while the permanent program permit application is being processed, beyond eight months after the State program or Federal program has been approved. The regulation allows continued operations by operators who are operating with a valid initial program permit and operators who are lawfully operating in areas where no such permit is required.

Section 773.11(b)(2) was challenged because it permits mining by initial program operators who do not have an initial permit from the State. Challengers relied on § 506(a) of the Act, which provides for continued operations by persons operating "under a permit from the State. . . ." The District Court held that continued operation could only be allowed where initial program permits had been issued. The court remanded the rule.

OSMRE is suspending the phrase "under the initial regulatory program or" in § 773.11(b)(2). This will have the effect of limiting the authority to continue operations after eight months after a program is implemented to those operators who had a permit from the State during the initial regulatory program.

14. Sections 785.16, 816.133(d), and 817.133(d) Variances from approximate original contour

Section 515(e) of the Act authorizes a limited variance from the requirement to return mined lands to approximate original contour (AOC). OSMRE's September 1, 1983 rulemaking provided for variances from AOC restoration requirements in both steep slope and in non-steep slope areas. 48 FR 39892.

OSMRE was challenged on its adoption of a variance procedure applicable in non-steep slope areas. The challengers contended that the Act and legislative history only authorize variances from AOC in steep slope areas. The Secretary pointed to both pre- and post-enactment Congressional statements which support a more general variance provision.

The District Court ruled that the Act does not permit a variance from AOC unless steep slope mining is involved. *In Re: Permanent (II),* July 15, 1985 Mem. op. at 132. Accordingly, the District Court remanded §§ 785.16, 816.133(d) and 817.133(d).

OSMRE is therefore suspending §§ 785.16, 816.133(d) and 817.133(d) insofar as they permit the granting of variances from AOC for surface coal mining operations in non-steep slope areas.

15. Sections 780.21 and 784.14 Hydrologic information to be submitted

OSMRE's September 26, 1983 rulemaking concerned hydrologic resources information. 48 FR 43956. Sections 780.21(f) and 784.14(e) established the requirements for the probable hydrologic consequences (PHC) determination. This is the predictive estimate of the probable hydrologic consequences of the proposed operation upon the quantity and quality of ground water and surface water which must be submitted by the applicant.

Challengers to the regulations contended that OSMRE failed to require the information required by section 507(b)(11) of the Act. In particular, they contended that the rule should be remanded because it only requires operators to submit hydrologic information for operations conducted during the term of the permit, and not for the entire life of the mine.

The District Court ruled that section 507(b)(11) of the Act does permit a regulatory authority to require operators to submit hydrologic data for the life of the mine in the PHC determination. *In Re: Permanent (II),* July 15, 1985 Mem. op. at 16. It also ruled that the Secretary had erred by failing to provide an adequate explanation for not requiring life of the mine analysis in the PHC. Thus, the Court remanded the rule.

OSMRE will conduct a rulemaking at a later date in order to determine whether and under what circumstances hydrologic information submitted in the permit application must cover the life of the mine. In the interim, OSMRE is suspending §§ 780.21(f) and 784.14(e) to the extent that those sections limit a regulatory authority from requiring a permit applicant to address life-of-the-mine hydrologic impacts in the probable hydrologic consequences determination.

In Federal program States and on Indian lands, where OSMRE is the regulatory authority, this suspension means that in evaluating the appropriate scope of a PHC determination, OSMRE will determine on a case-by-case basis whether and to what degree a permit applicant should include hydrologic information for operations conducted outside of the permit area during the entire life of the operation.

16. Sections 816.46(b)(2) and 817.46(b)(2) Siltation structures

OSMRE's September 26, 1983 rulemaking established new requirements for siltation structures. 48 FR 43956. At 30 CFR 816.46(a)(3) and 817.46(a)(3), OSMRE requires that all surface drainage from a disturbed area be passed through a siltation structure. In §§ 816.46 and 817.46, OSMRE defined a siltation structure to include a sedimentation pond, a series of sedimentation ponds and other treatment facilities. Other treatment facilities were defined in that section to include treatments with point source discharges used to prevent additional contribution of suspended solids to streamflow or runoff outside the permit area. This requirement was adopted in order to implement sections 515(b)(10)(B) and 516(b)(9)(B) of the Act, which mandate the use of "best technology currently available" (BTCA) to prevent additional contributions of suspended solids to streamflow or runoff outside the permit area.

Challengers to this provision asserted that in certain circumstances siltation structures can cause long term and short term adverse effects on the hydrologic balance. In particular they pointed to problems in the Western United States such as increased erosion, channel deepening and enlargement, and increased flooding in low lying areas, attributed to siltation structures.

The District Court ruled that the September 26, 1983 preamble fails to articulate a reason for requiring siltation structures in every instance. *In Re: Permanent (II),* July 15, 1985 Mem. op. at 102–106. In particular the court noted that "the record evidence that pointed to potential negative impacts of siltation structures in the West was dismissed without reasoned analysis. 'OSMRE's recognition that the use of sedimentation ponds and other siltation structures in the West presents some problems', 48 FR 44030 (1983) was not followed by any recognition of what those problems are and why, in the face of those problems, siltation ponds were still considered BTCA." *Id.* Thus, the court remanded §§ 816.46(b)(2) and 817.46(b)(2).

OSMRE is suspending §§ 816.46(b)(2) and 817.46(b)(2). This means that the regulatory authority must determine on a case-by-case basis what constitutes the "best technology currently available" as required by the Act and 30 CFR 701.5 which defines BTCA. In many instances, State programs have defined BTCA and such definitions are to be followed. OSMRE anticipates that sedimentation ponds or some other siltation structure will most likely be the best technology currently available; however, a case-by-case determination should be made. Moreover, OSMRE is not suspending its performance standards with regard to siltation structures or sedimentation ponds. Thus, in those instances where sedimentation ponds or other siltation structures are determined to be BTCA, the performance standards in §§ 816.46(b), (c), and (d), and 817.46(b), (c), and (d) will continue to apply. Where BTCA includes a discharge from a point source, effluent limits will continue to apply and a NPDES permit is needed. In situations where sediment control measures other than siltation structures are determined as BTCA, the

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performance standards of §§ 816.45 and 817.45 will control.

17. Sections 816.49(a)(3), 816.49(a)(5)(i), 817.49(a)(3) and 817.49(a)(5)(i) Impoundments

On September 26, 1983, OSMRE also imposed new performance standards on impoundments. 48 FR 43956. OSMRE's rules at §§ 816.49(a)(3) and 817.49(a)(3) impose a minimum static safety factor of 1.5 and a seismic safety factor of 1.2 for all impoundments used for surface and underground mines, respectively. OSMRE's rules at §§ 816.49(a)(5)(i) and 817.49(a)(5)(i) establish stability requirements for foundation abutments and require sufficient foundation investigation and laboratory testing to determine design requirements for foundation stability.

Challengers to the rules contended that OSMRE's proposed rule had not included a static safety factor of 1.5 for small sedimentation ponds. They claimed that factor had only been proposed for larger sedimentation ponds. Similarly, they contended that the requirements for foundation investigation and laboratory testing were not proposed for small sedimentation ponds.

The District Court determined that OSMRE's rule must be remanded for additional rulemaking procedures to the extent that it applies to small sedimentation ponds not previously required to meet the 1.5 static safety factor. *In Re: Permanent (II),* July 15, 1985 Mem. op. at 108–113.

Accordingly, OSMRE is suspending §§ 816.49(a)(3), 816.49(a)(5)(i), 817.49(a)(3) and 817.49(a)(5)(i) insofar as they apply to small sedimentation ponds. Small sedimentation ponds are those ponds in which no embankment is more than 20 feet in height, measured from the upstream toe of the embankment to the crest of the emergency spillway and with a storage volume of less than 20 acre feet.

18. Sections 816.49(a)(9) and 817.49(a)(9) Underwater highwalls in impoundments

OSMRE's September 26, 1983 rulemaking included other regulations with regard to permanent impoundments. 48 FR 43956. Sections 816.49(a)(9) and 817.49(a)(9) allow the retention of segments of highwalls in certain impoundments if the segment is located underwater. OSMRE's rules allow the retention of such highwalls only where the vertical portion of the highwall is completely below the low-water line, and sufficiently so to provide adequate safety and access for the proposed water users.

Challengers to the rules contended that in all cases highwalls must be eliminated, and cited section 515(b)(3) of the Act. The District Court ruled that the Act did not authorize the retention of highwalls in impoundments, even if the highwall was under water. Thus, the Court remanded the regulations. *In Re: Permanent (II),* July 15, 1985 Mem. op. at 117.

OSMRE is suspending §§ 816.49(a)(9) and 817.49(a)(9) insofar as they permit the retention of highwalls in permanent impoundments. This will mean that underwater highwalls may not be retained in permanent impoundments. The requirement to eliminate highwalls underwater does not mean that the approximate premining contour must be achieved within the impoundment. As was required by the initial program rules at 30 CFR 715.14(e), only appropriate contour will be required within an impoundment so long as highwalls are eliminated.

19. Sections 816.49, 817.49, 816.84(b)(2) and 817.84(b)(2) MSHA size distinctions

OSMRE's regulations at §§ 816.49 and 817.49 classify impoundments based on size. Large impoundments are subject to more stringent requirements than smaller impoundments. OSMRE's regulations reference regulations of the Mine Safety and Health Administration (MSHA) at 30 CFR 77.216 for the size distinctions. Challengers to the regulations contended that OSMRE's adoption of the size distinctions used by MSHA was improper. They contended that OSMRE should independently classify impoundment size.

The District Court ruled that it was improper to rely on MSHA's size distinctions, and accordingly remanded §§ 816.49 and 817.49. *In Re: Permanent (II),* July 15, 1985 Mem. op. at 30–32.

OSMRE is not suspending those provisions. The effect of a suspension removing these distinctions would be either to require operators who have small impoundments to satisfy performance standards promulgated for large impoundments, or, in the alternative, to eliminate requirements for large impoundments to conform with the lesser standards imposed on small impoundments. The effect of either of these options would be to modify standards in a manner different than the rules in place before 1983. Thus, because it is impossible merely to undo the transaction, OSMRE will propose a new regulation on this subject to comply with the court order.

OSMRE's coal waste regulations also reference the MSHA size distinctions. Those regulations except small coal waste impounding structures from achieving the same combination spillway requirement as larger impounding structures. OSMRE is suspending §§ 816.84(b) and 817.84(b) to the extent that the combined spillway capacity of impounding structures consisting of or impounding coal waste, which do not meet the MSHA size criteria, are exempt from OSMRE's requirements. This means that any impounding structure, regardless of size, either made of or impounding coal mine waste must have a spillway or spillways able to safely pass the 100-year, 6-hour design precipitation event.

20. Sections 816.49(a)(8), 816.84(b), 817.49(a)(8), and 817.84(b) Numbers of spillways

OSMRE regulations at §§ 816.49(a)(8) and 816.84(b)(2) and 817.49(a)(8) and 817.84(b)(2) require that "the combination of principal and emergency spillways shall be able to safely pass the . . . design precipitation event."

OSMRE's regulation with regard to the necessity for having more than one spillway was challenged. In briefing the question, the Secretary determined that the challenge had merit and stated his intention to propose a rule specifying that one spillway capable of safely passing the design precipitation event may be used instead of separate principal and emergency spillways. *In Re: Permanent (II),* Federal Defendants' Memorandum in Support, filed December 17, 1984, p. 41 n. 26.

OSMRE is suspending §§ 816.49(a)(8), 816.84(b)(2), 817.49(a)(8), and 817.84(b)(2) to the extent that they require separate principal and emergency spillways where one spillway may safely pass the design storm event.

21. Sections 816.81(a) and 817.81(a) Coal waste gravity transport

OSMRE's September 26, 1983 rulemaking dealt with several coal waste issues. 48 FR 44006. In its 1979 rules OSMRE had required that coal mine waste be "hauled and conveyed and placed in a controlled manner." In revising the rules in 1983 OSMRE adopted a rule which required that coal mine waste be "placed in a controlled manner."

Challengers to the rule contended that the record did not support allowing end or side dumping of coal waste.

The District Court ruled that OSMRE's rule did not have sufficient explanation for deletion of the requirement that coal mine waste be "hauled and conveyed" and did not adequately justify the departure from the previous conclusion that end or side dumping were inherently dangerous activities, even where the operator is then required to take some additional step, like spreading the piles in layers. Thus, the court remanded the rule. *In Re: Permanent (II),* July 15, 1985 Mem. op. at 26–27.

Accordingly, OSMRE is suspending the rule to the extent that the end dumping or side dumping of coal waste is allowed.

22. Sections 816.81(c) and 817.81(c) Compaction of coal waste

OSMRE's 1979 regulations required coal waste banks to be "compacted to attain 90 percent of the maximum dry density to prevent spontaneous combustion . . . ." The regulations published on September 26, 1983 allow construction of coal waste banks without a specific compaction standard provided they achieve a minimum long term safety factor of 1.5. 30 CFR 816.81(c)(2); 817.81(c)(2). 48 FR 44006. This allows refuse piles to be constructed in some instances with less compaction than previously required.

Challengers to the 1983 rule contended that the Secretary erred by adopting a performance standard rather than a design standard.

The court ruled that the Secretary had failed to explain his removal of the design standard with regard to compaction, and failed to provide design standards for coal waste piles as required by section 515(f) of the Act. The court remanded the rule. *In Re: Permanent (II),* July 15, 1985 Mem. op. at 27–29.

Thus, OSMRE is suspending §§ 816.81(c)(2) and 817.81(c)(2) to the extent that they permit coal waste refuse piles to be constructed or modified with less compaction than necessary to attain 90 percent of the maximum dry density determined in accordance with the standard Proctor method. Use of the previous standard will be required until OSMRE adopts a further rule change.

23. Sections 816.83 and 817.83 Disposal of coal waste in two foot lifts

OSMRE's coal waste rules establish requirements for lift thickness. OSMRE's 1979 rules required that coal refuse banks not be constructed in lifts of thickness in excess of two feet. In its September 26, 1983 rules at §§ 816.83 and 817.83, 48 FR 44028 (1983), OSMRE deleted that requirement, and instead required coal refuse piles be constructed in accordance with the Mine Safety and Health Administration's (MSHA) rules at 30 CFR 77.215. MSHA's rules allow refuse piles to be constructed with lifts in excess of two feet thick if a 1.5 safety factor is attained and if approved by the MSHA district manager.

Challengers to the rule contended that the Secretary had failed to promulgate design requirements, as required by section 515(f) and that the Secretary had improperly delegated his responsibilities to MSHA.

The court ruled that the regulation violates section 515(f) of the Act by relying on a performance standard. *In Re: Permanent (II),* July 15, 1985 Mem. op. at 30.

Accordingly, OSMRE is suspending the rule to the extent that it allows coal waste refuse piles to be constructed in lifts larger than two feet in thickness. In Federal program States such as Tennessee, this means OSMRE will employ a maximum two foot lift standard in reviewing coal refuse pile designs until a new rule is promulgated.

24. Sections 816.89 and 817.89 Hazardous wastes

In its September 26, 1983 rulemaking with regard to coal waste, OSMRE adopted §§ 816.89(d) and 817.89(d). These provisions required coal operators to dispose of "hazardous" noncoal mine wastes consistent with the Resource Conservation and Recovery Act (RCRA), and 40 CFR Part 261.

The District Court ruled that §§ 816.89(d) and 817.89(d) were promulgated without notice and comment. Thus, OSMRE is suspending those provisions and will not enforce any requirements of RCRA regarding hazardous noncoal mine wastes. This suspension of OSMRE's rules is not intended to affect in any manner the applicability of the Environmental Protection Agency rules which implement RCRA.

25. Sections 816.116 and 817.116 Revegetation issues: Repair of rills and gullies and replanting of trees

Section 515(b)(20) of the Act establishes a five- or ten-year period of responsibility which begins after the last year of augmented seeding, fertilizing, irrigation or other work on reclaimed areas. OSMRE's rules governing revegetation, published on September 2, 1983, 48 FR 40153, raised two issues with regard to what postmining practices could be undertaken without restarting the five- or ten-year period of responsibility before which the operator's performance bond may not be fully released. These involve the concept of "normal conservation practices." OSMRE's rules at 30 CFR 816.116 and 817.116 allow normal conservation practices to occur without restarting the period of responsibility.

OSMRE's rules at §§ 816.116(c)(4) and 817.116(c)(4) permit the regulatory authority to "approve selective husbandry practices excluding augmented seeding, fertilization or irrigation without extending the period of responsibility for revegetation success and bond liability. . . ." OSMRE's preamble to that provision stated that "the repair of rills and gullies including reseeding can occur without extending the period of responsibility for revegetation success" only if it is approved by the regulatory authority after consideration of normal conservation practices in the region. 48 FR 40157.

Challengers to the rule contended that the repair of rills and gullies is never a "normal conservation practice." While the District Court did not find that the rule was unreasonable, it did not find support in the record for the proposition that repair of rills and gullies is a normal conservation practice.

Accordingly, the court determined that in the absence of such record support, OSMRE may not promulgate a rule that permits the repair of rills and gullies to be considered a normal conservation practice. *In Re: Permanent (II),* July 15, 1985 Mem. op. at 92–94. Accordingly, OSMRE is suspending 30 CFR 816.116(c)(4) and 817.116(c)(4) insofar as they allow the repair of rills and gullies to occur without restarting the period of responsibility for the areas of repair.

A closely related issue involves the replanting of trees. OSMRE's rules, at §§ 816.116(b)(3)(ii) and 817.116(b)(3)(ii), permit the inclusion of trees and shrubs which have been in place for three growing seasons, or in areas with a ten-year period of responsibility, for eight growing seasons in the determination of the number of trees and shrubs for the purpose of determining revegetation success. Challengers to the rule contended that the inclusion of trees which have been in place less than the full responsibility period is improper.

The District Court ruled that the record did not demonstrate that the replanting of trees is a normal husbandry practice, and accordingly, remanded the rule. *In Re: Permanent (II),* July 15, 1985 Mem. op. at 93–95.

Thus, OSMRE is suspending §§ 816.116(b)(3)(ii) and 816.117(b)(3)(ii) to the extent that they authorize the inclusion of trees and shrubs which have been in place less than the full period of responsibility in determining the success of stocking.

This will mean that OSMRE will not approve the determination of reclamation success or authorize bond

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release on the basis of trees or shrubs in place less than the applicable period of liability.

26. Sections 816.116(c)(2) and 817.116(c)(2) Period for measuring revegetation success

OSMRE's 1983 revegetation rules at §§ 816.116(c)(2) and 817.116(c)(2) provide that for areas which receive more than 26 inches of rainfall per year, "vegetation parameters identified in paragraph (b) of this section shall equal or exceed the approved success standard during the growing season of the last year of the responsibility period or, if required by the regulatory authority, during the growing seasons of the last two years of the responsibility period."

Challengers to the rule contended that the rule was inadequate, because revegetation success in areas with more than 26 inches of rainfall could not be demonstrated over less than the last two years of the responsibility period. They pointed to evidence in the rulemaking for OSMRE's 1979 rules which supported a two-year period for determining success.

The District Court ruled that OSMRE's change from a two-year to a one-year period for measuring attainment of revegetation success was not adequately supported in the record. The court remanded §§ 816.116(c)(2) and 817.116(c)(2). *In Re: Permanent (II)*, July 15, 1985 Mem. op. at 96–99.

Thus, OSMRE is suspending §§ 816.116(c)(2) and 817.116(c)(2) to the extent that these sections permit the determination of revegetation success to be measured over less than the growing seasons of the last two years of the responsibility period in areas with 26 inches or more of rainfall per year.

III. Procedural Matters

Executive Order 12291

The DOI has examined this suspension notice according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis. The promulgation in 1983 of the rules being suspended was not a major action and for the same reasons, neither is this suspension.

Regulatory Flexibility Act

The DOI also has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the suspension will not have a significant economic impact on a substantial number of small entities for the same reasons that the promulgation of the rules in 1983 did not have such an impact.

National Environmental Policy Act

The effect of the suspensions covered by this notice is covered in two environmental impact statements prepared by the Department of the Interior. These are the Final Environmental Impact Statement OSM–EIS–1 and the Final Environmental Impact Statement OSM–EIS–1: Supplement. These are on file at the OSMRE Administrative Record at 1100 L Street, NW., Washington, DC.

Paperwork Reduction Act

No new information collection requirements are imposed by the suspensions in Parts 701, 761, 764, 769, 773, 785, 816 and 817. Additional information requirements of Parts 772, 780 and 784 are imposed pursuant to court order in *In Re: Permanent Surface Mining Regulation Litigation (II)*, No. 79–1144 (D.D.C. July 15, 1985), and are covered by OMB approvals for these parts having Approval Numbers 1029–0033, 1029–0036, and 1029–0039, respectively. The obligation to respond is mandatory.

List of Subjects

30 CFR Part 701

Coal mining, Law enforcement, Surface mining, Underground mining.

30 CFR Part 761

Coal mining, Historic preservation, Monuments and Memorials, National forests, National parks, Reporting requirements, Surface mining, Underground mining, Wildlife refuges.

30 CFR Part 764

Administrative practice and procedure, Coal mining, Reporting requirements, Surface mining, Underground mining.

30 CFR Part 769

Administrative practice and procedure, Coal mining, Reporting requirements, Surface mining, Underground mining.

30 CFR Part 772

Coal mining, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 773

Coal mining, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 780

Coal mining, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 784

Coal mining, Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 785

Coal mining, Reporting requirements, Surface mining, Underground mining.

30 CFR Part 816

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 817

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Underground mining.

For the foregoing reasons, Parts 701, 761, 764, 769, 772, 773, 780, 784, 785, 816, and 817 are amended as follows:

Dated: November 10, 1986.

J. Steven Griles,

Assistant Secretary Land and Minerals Management.

PART 701—PERMANENT REGULATORY PROGRAM

1. The authority citation for Part 70 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 701.5 [Amended]

2. In § 701.5, the definition of "affected area" is suspended insofar as it excludes roads which are included in the definition of "surface coal mining operations."

3. In § 701.5, the definition of "previously mined area" is suspended insofar as it applies to areas upon which surface coal mining operations were previously conducted that were or should have been subject to the Act.

PART 761—AREAS DESIGNATED BY ACT OF CONGRESS

4. The authority citation for Part 761 is revised as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 761.5 [Amended]

5. In § 761.5, in the definition of "cemetery," the phrase "except for private family burial grounds" is suspended.

6. In § 761.5, the definition of "significant recreational, timber, economic, or other values incompatible with surface coal mining operations" is suspended insofar as the listed values

are evaluated for compatibility solely in terms of reclaimability.

7. In § 761.5, paragraphs (a) and (c) of the definition of "valid existing rights" are suspended, and subparagraph (d)(2) is suspended insofar as it incorporates the takings test of paragraph (a).

§ 761.11 [Amended]

8. In § 761.11(c), the words "publicly owned" immediately preceding the word "places" are suspended.

9. In § 761.11, paragraph (h) is suspended.

§ 761.12 [Amended]

10. In § 761.12(f)(1), the words "publicly owned" immediately preceding the word "place" and immediately preceding the word "National" are suspended.

PART 764—STATE PROCESSES FOR DESIGNATING AREAS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS

11. The authority citation for Part 764 is revised as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 764.15 [Amended]

12. Paragraphs (a)(3) and (a)(8) of § 764.15 are suspended.

PART 769—PETITION PROCESS FOR DESIGNATION OF FEDERAL LANDS AS UNSUITABLE FOR ALL OR CERTAIN TYPES OF SURFACE COAL MINING OPERATIONS AND FOR TERMINATION OF PREVIOUS DESIGNATIONS

13. The authority citation for Part 769 is revised as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 769.14 [Amended]

14. In paragraph (a)(1) of § 769.14, the words "ripe for further processing" are suspended.

15. Paragraphs (a)(3) and (b)(2) of § 769.14 are suspended.

16. In paragraph (c) of § 769.14, the word "ripe" is suspended.

17. Paragraph (h) of § 769.14 is suspended.

PART 772—REQUIREMENTS FOR COAL EXPLORATION

18. The authority citation for Part 772 is revised as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 772.11 [Amended]

19. In paragraph (a) of § 772.11, the phrase "during which 250 tons or less of coal will be removed and which will substantially disturb the natural land surface," is suspended.

20. Paragraph (b)(3) of § 772.11 is suspended to the extent that it does not require the submission of a narrative describing the exploration area.

§ 772.12 [Amended]

21. Paragraph (b)(3) of § 772.12 is suspended to the extent that it does not require the submission of a narrative describing the proposed exploration area.

PART 773—REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

22. The authority citation for Part 773 is revised as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 773.11 [Amended]

23. In paragraph (b)(2) of § 773.11, the phrase "under the initial regulatory program, or" is suspended.

PART 780—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENT FOR RECLAMATION AND OPERATION PLAN

24. The authority citation for Part 780 continues to read as follows:

Authority: Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*) and sec. 115, Pub. L. 98–146, 97 Stat. 938 (30 U.S.C. 1257).

§ 780.21 [Amended]

25. Paragraph (f) of § 780.21 is suspended insofar as it limits a regulatory authority from requiring an applicant to address life-of-the-mine hydrologic impacts in the probable hydrologic consequences determination.

PART 784—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENT FOR RECLAMATION AND OPERATION PLAN

26. The authority citation for Part 784 continues as follows:

Authority: Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*) and sec. 115, Pub. L. 98–146, 97 Stat. 938 (30 U.S.C. 1257), unless otherwise noted.

§ 784.14 [Amended]

27. Paragraph (e) of § 784.14 is suspended insofar as it limits a regulatory authority from requiring an applicant to address life-of-the-mine hydrologic impacts in the probable hydrologic consequences determination.

PART 785—REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

28. The authority citation for Part 785 is revised as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 785.16 [Amended]

29. Section 785.16 is suspended insofar as it authorizes any variance from approximate original contour for surface coal mining operations in any area which is not a steep slope area.

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

30. The authority citation for Part 816 continues as follows:

Authority: Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*) and sec. 115, Pub. L. 98–146, 97 Stat. 938 (30 U.S.C. 1257), unless otherwise noted.

§ 816.46 [Amended]

31. Paragraph (b)(2) of § 816.46 is suspended.

§ 816.49 [Amended]

32. Paragraphs (a)(3) and (a)(5)(i) of § 816.49 are suspended insofar as they apply to sedimentation ponds in which no embankment is at least twenty feet in height as measured from the upstream toe of the embankment to the crest of the emergency spillway and which have a storage volume of less than 20 acre feet.

33. Paragraph (a)(8) of § 816.49 is suspended insofar as it requires separate principal and emergency spillways where one spillway may safely pass the design storm event.

34. Paragraph (a)(9) of § 816.49 is suspended insofar as it permits the retention of highwalls in permanent impoundments.

§ 816.81 [Amended]

35. Paragraph (a) of § 816.81 is suspended insofar as it allows end dumping or side dumping of coal mine waste.

36. Paragraph (c)(2) of § 816.81 is suspended insofar as it allows coal waste refuse piles to be constructed or modified with compaction which does not attain 90 percent of the maximum dry density determined in accordance with the standard Proctor method.

§ 816.83 [Amended]

37. Section 816.83 is suspended insofar as it permits the construction of coal refuse piles using lifts of greater than 2 feet thickness.

§ 816.84 [Amended]

38. Paragraph (b)(2) of § 816.84 is suspended insofar as it permits any impounding structure which is constructed of coal mine waste or intended to impound coal mine waste to have spillways, the combined capacity of which do not safely pass the 100-year

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6-hour design precipitation event. It is also suspended insofar as it requires separate principal and emergency spillways where one will safely pass the 100-year 6-hour storm event.

§ 816.89 [Amended]

39. Paragraph (d) of § 816.89 is suspended.

§ 816.116 [Amended]

40. Paragraph (b)(3)(ii) of § 816.116 is suspended insofar as it permits the counting of trees and shrubs which have been in place less than the applicable period of responsibility in determining revegetation success.

41. Paragraph (c)(2) of § 816.116 is suspended insofar as it permits revegetation success to be measured over less than the growing seasons of the last two years of the responsibility period.

42. Paragraph (c)(4) of § 816.116 is suspended insofar as it permits the repair of rills and gullies without restarting the period of responsibility.

§ 816.133 [Amended]

43. Paragraph (d) of § 816.133 is suspended insofar as it authorizes any variance from approximate original contour for surface coal mining operations in any area which is not a steep slope area.

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

44. The Authority citation for Part 817 continues as follows:

Authority: Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*) and sec. 115, Pub. L. 98–146, 97 Stat. 938 (30 U.S.C. 1257), unless otherwise noted.

§ 817.46 [Amended]

45. Paragraph (b)(2) of § 827.46 is suspended.

§ 817.49 [Amended]

46. Paragraphs (a)(3) and (a)(5)(i) of § 817.49 are suspended insofar as they apply to sedimentation ponds in which no embankment is at least twenty feet in height as measured from the upstream toe of the embankment to the crest of the emergency spillway and which have a storage volume of less than 20 acre feet.

47. Paragraph (a)(8) of § 817.49 is suspended insofar as it requires separate principal and emergency spillways where one spillway may safely pass the design storm event.

48. Paragraph (a)(9) of § 817.49 is suspended insofar as it permits the retention of highwalls in permanent impoundments.

§ 817.81 [Amended]

49. Paragraph (a) of § 817.81 is suspended insofar as it allows end dumping or side dumping of coal mine waste.

50. Paragraph (c)(2) of § 817.81 is suspended insofar as it allows coal waste refuse piles to be constructed or modified with compaction which does not attain 90 percent of the maximum dry density determined in accordance with the standard Proctor method.

§ 817.83 [Amended]

51. Section 817.83 is suspended insofar as it permits the construction of coal waste refuse piles using lifts of greater than 2 feet thickness.

§ 817.84 [Amended]

52. Paragraph (b)(2) of § 816.84 is suspended insofar as it permits any impounding structure which is constructed of coal mine waste or intended to impound coal mine waste to have spillways, the combined capacity of which do not safely pass the 100-year 6-hour design precipitation event. It is also suspended insofar as it requires separate principal and emergency spillways where one will safely pass the 100-year 6-hour storm event.

§ 816.89 [Amended]

53. Paragraph (d) of § 817.89 is suspended.

§ 817.116 [Amended]

54. Paragraph (b)(3)(ii) of § 817.116 is suspended insofar as it permits the counting of trees and shrubs which have been in place less than the applicable period of responsibility in determining revegetation success.

55. Paragraph (c)(2) of § 817.116 is suspended insofar as it permits revegetation success to be measured over less than the growing seasons of the last two years of the responsibility period.

56. Paragraph (c)(4) of § 817.116 is suspended to the extent that it permits the repair of rills and gullies without restarting the period of responsibility.

§ 817.133 [Amended]

57. Paragraph (d) of § 817.133 is suspended insofar as it authorizes any variance from approximate original contour for surface coal mining operations in any area which is not a steep slope area.

[FR Doc. 86-26178 Filed 11-19-86; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 289

Availability of DoD Directives, DoD Instructions, DoD Publications, and Changes

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This rule updates DoD procedures on the availability of DoD Directives, DoD Instructions, DoD publications, and changes. It covers revisions on the availability of DoD Directives and Instructions, and publications to the public and U.S. Government Agencies other than the Department of Defense and the increase in subscription cost.

EFFECTIVE DATE: September 30, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Linda M. Lawson, Directives Division, Correspondence and Directives Directorate, Washington Headquarters Services, Washington, DC 20301–1155, telephone (202) 697–4111.

SUPPLEMENTARY INFORMATION: On August 16, 1967, there was published in the **Federal Register** (32 FR 117600) a final rule adoption, effective September 1, 1967, that announced a subscription service for DoD issuances. The following six amendments were published: December 27, 1968 (33 FR 19815), November 25, 1970 (35 FR 18047), September 21, 1977 (42 FR 47555), September 26, 1977 (42 FR 48885), April 19, 1978 (43 FR 16478), and July 6, 1983 (48 FR 31019). This revision amends the ordering and subscription services rendered by the Navy Publications and Printing Services and the availability of DoD publications.

List of Subjects in 32 CFR Part 289

DoD Directives System issuances, Availability to the public, Freedom of information.

Accordingly, Part 289 of Title 32 is revised to read as follows:

PART 289—AVAILABILITY OF DOD DIRECTIVES, DOD INSTRUCTIONS, DOD PUBLICATIONS, AND CHANGES

Sec.

289.1 Subscription services for DoD Directives and Instructions.
289.2 Ordering individual copies of DoD Directives and Instructions.
289.3 Ordering complete sets of DoD Directives and Instructions.
289.4 Ordering individual copies of DoD publications.

Authority: 10 U.S.C. 133, 31 U.S.C. 483a.

§ 289.1 Subscription services for DoD directives and instructions.

(a) DoD Directives, Instructions, and changes published in the Number Index section of DoD 5025.1–I, DoD Directives System Quarterly Index (except those issuances identified as classified) are available to the public and U.S. Government Agencies on a subscription basis for $16.00 a year. DoD Components must obtain DoD Directives and Instructions from their own publications channels.

(b) An annual subscription consists of one copy of each newly released and revised DoD Directive and Instruction published under the subject groups that are specified in a given subscription. Subscriptions are accepted for one or more subject groups. The subject groups are as follows:

1000 Manpower, Reserve Affairs, and Personnel
2000 International Programs and Security Assistance
3000 Planning, Research and Development, Intelligence, and Computer Technology
4000 Logistics, Acquisition, and Resources Management
5000 General Administration
5025.1–I DoD Directives System Quarterly Index
6000 Safety, Health, and Medical
7000 Comptrollership

(c) Subscription orders may be placed with the Director, Navy Publications and Printing Service, Building 4, Section D, 700 Robbins Avenue, Philadelphia, Pennsylvania 19111. Orders must be in writing, accompanied by a certified check or money order for $16.00 payable to the Navy Publications and Printing Service.

§ 289.2 Ordering individual copies of DoD Directives and Instructions.

(a) DoD Directives, Instructions, and changes published in the Number Index section of DoD 5025.1–I, DoD Directives System Quarterly Index (except those issuances identified as classified) are available to the public and U.S. Government Agencies without charge. DoD Components must obtain DoD Directives and Instructions from their own publications channels.

(b) Orders for individual copies are limited to five copies per line item.

(1) Written requests for individual copies should be submitted to the Commanding Officer, ATTN: Code 301, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pennsylvania 19120–5099. Urgent requests may be submitted by TELEX and telegraph. The TELEX number is 834295 and the Western Union telegraph number is 710–670–1685. The commercial telephone number is (215) 697–3321 or –2179. All requests must include personal or organization name and complete mailing address (street address or P.O. Box number, city, state, zip code, and country, if applicable).

§ 289.3 Ordering complete sets of DoD Directives and Instructions.

(a) A complete set of DoD Directives and Instructions listed in the Number Index section of DoD 5025.1–I, DoD Directives System Quarterly Index (except those issuances identified as classified) are available to the public and U.S. Government Agencies for $70.00. Those orders are filled on an "as available" basis. DoD Components must obtain DoD Directives and Instructions from their own publications channels.

(b) Orders for a complete set of DoD Directives and Instructions should be submitted to the Director, Navy Publications and Printing Service, Building 4, Section D, 700 Robbins Avenue, Philadelphia, Pennsylvania 19111. Orders must be in writing, accompanied by a certified check or money order for $70.00 payable to the Navy Publications and Printing Service.

§ 289.4 Ordering individual copies of DoD Publications.

(a) Requests for DoD publications and changes listed in the Number Index section of DoD 5025.1–I (except those publications identified as classified) should be forwarded to the various sources that are identified in the Availability Column of the DoD Publications subsection of DoD 5025.1–I. A fee will be charged for DoD Publications ordered from the National Technical Information Service, Springfield, Virginia.

(b) DoD 5025.1–I, DoD Directives System Quarterly Index, is available at cost from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161. This publication also may be ordered from the Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120–5099.

Patricia H. Means,
OSD Federal Register Liaison Officer, Department of Defense.

November 14, 1986.

[FR Doc. 86–26167 Filed 11–19–86; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-3114-4]

Approval and Promulgation of Implementation Plans; Connecticut; Reasonably Available Control Technology for Connecticut Charcoal Co.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan revision submitted by the State of Connecticut. This revision establishes and requires the use of reasonably available control technology (RACT) to control volatile organic compound (VOC) emissions from Connecticut Charcoal Co. (Connecticut Charcoal) in Union, Connecticut. The required RACT control methods center or incineration of VOC emissions and recordkeeping. The intended effect of this action is to approve a source-specific RACT determination submitted by the State in accordance with commitments made in its Ozone Attainment Plan which was approved by EPA on March 21, 1984 (49 FR 10542). This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: December 22, 1986.

ADDRESSES: Copies of the submittal are available for public inspection at Room 2313, JFK Federal Building, Boston, MA 02203; Public Information Reference Unit, EPA Library, 401 M Street SW., Washington, DC 20460; Office of the Federal Register, 1100 L Street NW., Room 8301, Washington, DC; and Air Compliance Unit, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106.

FOR FURTHER INFORMATION CONTACT: David Conroy, (617) 565–3244; FTS 835–3244 or Lynne Naroian, (617) 565–3246; FTS 835–3246.

SUPPLEMENTARY INFORMATION: On July 14, 1986 (51 FR 25371), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Connecticut. The NPR proposed to approve State Order No. 943 as a revision to the Connecticut SIP. The provisions of Connecticut's State Order define and impose RACT for Connecticut Charcoal as required by section 22a–174–20, subsection (ee) of the Connecticut Ozone Attainment Plan.

A description of the revision and EPA's rationale for approving it were provided in the NPR and will not be

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restated here. No public comments were received on the NPR.

Final Action

EPA is approving Connecticut State Order No. 943 as a revision to the Connecticut SIP. The Order was issued to Connecticut Charcoal on April 23, 1986, and it requires RACT on that facility to control VOCs.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 20, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, and Reporting and recordkeeping requirements.

Note.—Incorporation by reference of the State Implementation Plan for the State of Connecticut was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 7, 1986.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart H—Connecticut

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.370, is revised by adding paragraph (c)(36) as follows:

§ 52.370 Identification of plan.

*   *   *   *   *

(c) * * *

(36) Revision to the State Implementation Plan submitted on April 18, 1986, by the Commissioner of the Department of Environmental Protection.

(i) Incorporated by Reference:

(A) State Order No. 943 for Connecticut Charcoal Co., effective April 18, 1986, establishing and requiring reasonably available control technology for the control of volatile organic compounds from this facility.

[FR Doc. 86–26175 Filed 11–19–86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

48 CFR Parts 1401, 1405, 1406, 1414, 1415, 1419, 1420, 1428, 1437, 1452, and 1453

Acquisition Regulation; Miscellaneous Amendments

AGENCY: Department of the Interior.

ACTION: Final rule.

SUMMARY: This rule amends the Department of the Interior Acquisition Regulation (DIAR) to implement the Competition in Contracting Act of 1984 (Pub. L. 98–369) and corresponding Federal Acquisition Circulars. The rule also makes changes to internal procedures regarding the Department's small and disadvantaged business program and labor surplus area program; revisions to procedures for acquiring appraisal services; changes in contract insurance requirements; and procedures for calculating profit and fee objectives. A proposed rule and request for comments was published on April 1, 1986 (51 FR 11075–11081).

EFFECTIVE DATE: December 22, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. William Opdyke, Chief, Branch of Policy and Regulations, Office of Acquisition and Property Management, Department of the Interior, Washington, DC 20240, telephone (202) 343–3433.

SUPPLEMENTARY INFORMATION: This rule primarily concerns agency procedures that are required for the implementation of Pub. L. 98–369 and corresponding changes to the Federal Acquisition Regulation (FAR) made by Federal Acquisition Circulars. Minor revisions have been made to internal procedures for accomplishing the Department's small and disadvantaged business program in response to recommendations received from the House Subcommittee on SBA and SBIC Authority, Minority Enterprise, and General Small Business Problems to amplify current regulatory provisions relating to subcontracting plans submitted by a small number of contractors. Procedures for internal establishment of labor surplus area goals have been revised. Changes have been made to procedures used by the Department for acquiring real property appraisal services to clarify required coordination with the appropriate Office of the Solicitor and the assigned Assistant U.S. Attorney. The Department's Indemnification clause has been revised to impose insurance requirements only. Procedural requirements for calculating profit or fee prenegotiation objectives have been revised to clarify use of facilities capital cost of money.

Public Comment

Comments were requested by May 1, 1986. Three responses were received, two after the deadline date. All comments, however, were considered in adopting the final rule. One comment recommended that DIAR 1405.207 be revised to reference actions under FAR Subpart 6.3 and include supplies as well as services. This suggestion was adopted. Another comment suggested that clarifying revisions be made to the class justifications contained in Appendices A and B of the proposed rule. Coverage on class justifications for other than full and open competition has been removed from the final rule since subsection 961(a) of Pub. L. 99–145 exempts from the justification and approval requirements of Pub. L. 98–369 noncompetitive purchases where a statute expressly requires that the procurement be made from a specified source. A comment was made suggesting an editorial change in the coverage on acquisition of real property appraisals. This recommendation was adopted. Another comment suggested that several DIAR revisions first be proposed for inclusion in the FAR. Due to the nature of these revisions, this suggestion was not adopted. However, it has been brought to the attention of the FAR Secretariat for further consideration. Minor editorial changes have also been made in the final rule.

Primary Author

The primary author of this rule is Mr. William Opdyke, Office of Acquisition and Property Management, telephone (202) 343–3433.

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The Department has determined that this rule is not a major rule under Executive Order economic effect on a substantial number of small entities since no new requirements are being imposed on small entities or other parties eligible to contract with the Department. The information collection requirements referred to in this rule are prescribed by FAR 19.704(a) and are the responsibility of the FAR Secretariat, General Services Administration. This rule does not contain any new information collection requirements.

List of Subjects in 48 CFR Parts 1401, 1405, 1406, 1414, 1415, 1419, 1420, 1428, 1437, 1452, and 1453

Government procurement.

For the reasons set out in the preamble, Chapter 14 of Title 48 of the Code of Federal Regulations is amended as set forth below.

Dated: October 28, 1986.

Gerald R. Riso,

Assistant Secretary of the Interior.

1. The authority citation for 48 CFR Parts 1401, 1405, 1406, 1414, 1415, 1419, 1420, 1428, 1437, 1452, and 1453 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c), and 5 U.S.C. 301.

PART 1401—DEPARTMENT OF THE INTERIOR ACQUISITION REGULATION SYSTEM

1401.301 [Amended]

2. Section 1401.301(a) is amended by removing the reference to "FAR 1.301(a)" in the second sentence and inserting in its place the reference "FAR 1.301(a)(1)."

3. Section 1401.301(b) is amended by removing the reference to "FAR 1.301(b)" in the first sentence and inserting in its place the reference "FAR 1.301(a)(2)."

4. Section 1401.303 is amended by revising the title to read as follows:

1401.303 Publication and codification.

5. A new Part 1405 is added to read as follows:

PART 1405—PUBLICIZING CONTRACT ACTIONS

Subpart 1405.2—Synopses of Proposed Contract Actions

1405.202 Exceptions.
1405.207 Preparation and transmittal of synopses.

Subpart 1405.2—Synopses of Proposed Contract Actions

1405.202 Exceptions.

The Assistant Secretary—Policy, Budget and Administration is authorized to make the determination in FAR 5.202(b). A written determination documenting the reasons why advance notice is not appropriate or reasonable shall be submitted by the head of the contracting activity to the Director, Office of Acquisition and Property Management for further action including communication with the officials listed in FAR 5.202(b).

1405.207 Preparation and transmittal of synopses.

(a) In addition to the information required in FAR 5.207, each synopsis of a proposed contract action under FAR Subpart 6.3 shall include:

(1) A clear description of specific contractor qualifications or capabilities required for the product or service to meet the Government's minimum needs; and

(2) Information to be provided by prospective contractors and all factors to be used in evaluating this information, in order to determine whether other sources can meet the Government's needs.

(b) In the event the information in (a)(1) or (a)(2) above is too lengthy to be included in the synopsis, the synopsis shall identify the office where this information may be examined or obtained.

6. A new Part 1406 is added to read as follows:

PART 1406—COMPETITION REQUIREMENTS

Subpart 1406.5—Competition Advocates

1406.501 Requirement.
1406.502 Duties and responsibilities.

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c), and 5 U.S.C. 301.

Subpart 1406.5—Competition Advocates

1406.501 Requirement.

(a) The competition advocate for the Department of the Interior is the Chief, Division of Acquisition and Grants, Office of Acquisition and Property Management.

(b) Competition advocates for each bureau and office shall be as designated by the Assistant Secretary—Policy, Budget and Administration.

1406.502 Duties and responsibilities.

(a) The Chief, Division of Acquisition and Grants, Office of Acquisition and Property Management is responsible for preparing and submitting the annual report required by FAR 6.502(a)(3).

(b) The Director, Office of Acquisition and Property Management is responsible for preparing the annual report to Congress required by section 2732 of Pub. L. 98-369. The report shall be submitted to the Assistant Secretary—Policy, Budget and Administration for transmittal to each House of Congress. Bureau competition advocates shall furnish certain information, as may be required, to assist the Director, Office of Acquisition and Property Management in preparing the report.

PART 1414—SEALED BIDDING

7. The title of Part 1414 is revised to read as set forth above.

8. Sections 1414.404 and 1414.404-1 are added to Subpart 1414.4 to read as follows:

1414.404 Rejection of bids.

1414.404-1 Cancellation of invitations after opening.

The chief of the contracting office is authorized to make the written determination in FAR 14.404-1(c).

PART 1415—CONTRACTING BY NEGOTIATION

9. Section 1415.608 is added to Subpart 1415.6 to read as follows:

1415.608 Proposal evaluation.

The chief of the contracting office is authorized to make the determination in FAR 15.608(b).

10. Section 1415.902(d) is revised to read as follows:

1415.902 [Amended]

* * * * *

(d) When profit analysis is required, any prenegotiation cost objective established for the cost of money for facilities capital (see FAR 31.205-10) shall be subtracted from the overall cost objective established for the subfactor in 1415.905-1(a)(3) before calculation of the profit objective (see 1415.905-70(b)(1)).

* * * * *

1415.905 [Amended]

11. Section 1415.905(b) is amended by removing the reference "1415.905-1(a)(5)" and inserting in its place the reference "1415.905-1(a)(4)."

1415.905-1 [Amended]

12. Section 1415.905-1 is amended by removing the last sentence of paragraph (a); by adding the following sentence to the end of paragraph (a)(3): "Any cost objective for facilities capital cost of money and allowable under FAR 31.205-10 shall be subtracted from the cost objective established for this subfactor and shall not be considered in the cost base used for calculating the profit objective (see 1415.905-70(b)(1))."; by removing the last sentence of paragraph (a)(5); by redesignating paragraph (a)(4) as paragraph (a)(5); and by redesignating paragraph (a)(5) as paragraph (a)(4).

1415.905-70 [Amended]

13. Section 1415.905-70(b)(1) is amended by revising the third sentence to read as follows: "Any cost objective established for the cost of money for facilities capital shall be subtracted from the overall cost objective

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established for the 'conversion-related indirect costs' subfactor."

PART 1419—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

14. A new section 1419.705–6 is added to read as follows:

1419.705–6 Postaward responsibilities of the contracting officer.

In addition to the actions specified In FAR 19.705–6, the contracting officer shall also be responsible for the following:

(a) Forwarding a copy of each approved subcontracting plan to OSDBU within 10 working days after approval of the plan.

(b) Ensuring that the contractor is forwarding the original copy of the Standard Form 295, Summary Subcontracting Report, to the Department of the Interior, Director, OSDBU, 18th and C Streets NW., Washington, DC 20240, Room 2747.

(c) Forwarding a copy of the Standard Form 294, Subcontracting Report for Individual Contacts, received from individual contractors, within 10 working days, to OSDBU.

(d) Conducting on-site business and economic development program management reviews (see 504 DM 1) of a prime contractor's small and disadvantaged business subcontracting program. Reviews shall be conducted as required based on problems perceived such as insufficient progress in meeting subcontracting goals. The results of the review shall be documented in writing using the format shown at 1453.303–71. At the discretion of the contracting officer, the Business Utilization and Development Specialists (BUDS) may conduct the reviews. In addition to required bureau/office internal distribution, a copy of the review report shall be submitted to OSDBU within 25 working days after completion of the review.

PART 1420—LABOR SURPLUS AREA CONCERNS

15. Section 1420.102 is amended by adding an additional sentence to read as follows:

1420.102 General policy.

* * * Annual goals for contract awards to labor surplus area concerns on a set-aside basis shall be established by the heads of contracting activities using the procedures prescribed in 1419.202–70(b).

PART 1428—BONDS AND INSURANCE

1428.301 [Amended]

16. In section 1428.301 the third sentence is amended by removing "Indemnification" and inserting "Liability Insurance".

PART 1437—SERVICE CONTRACTING

17. Section 1437.7001 is amended by revising the first sentence to read as follows:

1437.7001 Policy.

Contracts for real property appraisal services shall be awarded in accordance with FAR 37.105. * * *

18. Section 1437.7002(a) is amended by revising the first sentence to read as follows:

1437.7002 Contractor qualification requirements.

(a) Prior to award of a contract for real property appraisal services when the services are required in support of court actions, the contracting officer shall coordinate with the appropriate Office of the Solicitor and obtain written concurrence from the Assistant U.S. Attorney assigned to represent the Government in the matter that the source to be selected possesses the necessary qualifications for adequate contract performance. * * *

PART 1452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1452.228–70 [Amended]

19. Section 1452.228–70 is amended by revising its caption to read "Liability insurance"; revising the title of the clause to read "LIABILITY INSURANCE—DEPARTMENT OF THE INTERIOR (JUL 1985)," and amending paragraph (a) of the clause by removing the first two sentences and inserting in their place the following: "(a) The Contractor shall procure and maintain during the term of this contract and any extension thereof liability insurance in form satisfactory to the Contracting Officer by an insurance company which is acceptable to the Contracting Officer."

PART 1453—FORMS

20. Section 1453.219–73 is added to read as follows:

1453.219–73 Subcontracting plan review.

The format shown in 1453.303–71 shall be used in documenting the results of the management review required in 1419.705–6.

21. Sections 1453.303—DI–1920, and 1453.303–70 are revised to read as follows:

1453.303—DI–1920 Department of the Interior, Form DI–1920, Structured Approach for Profit/Fee Objective.

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DEPARTMENT OF THE INTERIOR

DEPARTMENTAL MANUAL

STRUCTURED APPROACH FOR PROFIT/FEE OBJECTIVE

DEPARTMENT OF THE INTERIOR

CONTRACTOR | RFP/CONTRACT NO. | MOD. NO.

	FACTOR/SUBFACTOR	WEIGHT RANGE	Column A(%) WEIGHT ASSIGNED		Column B($) PRENEGOTIATION COST OBJECTIVE		Column C($) PROFIT/FEE OBJECTIVE (COLUMN A × COLUMN B)
	CONTRACTOR EFFORT						
	Material Acquisition						
		1% to 4%		×		=	
				×		=	
				×		=	
				×		=	
				×		=	
	Conversion of Direct Labor						
		4% to 12%		×		=	
				×		=	
				×		=	
				×		=	
				×		=	
	Conversion-Related Indirect Costs (Subtract Facilities Capital Cost of Money)						
		3% to 8%		×		=	
				×		=	
				×		=	
				×		=	
				×		=	
	Other Costs						
		1% to 3%		×		=	
				×		=	
				×		=	
				×		=	
				×		=	
	General Mangement						
		4% to 8%		×		=	
				×		=	
				×		=	
				×		=	
				×		=	
				×		=	
				×		=	
1	Total Contractor Effort (Add Columns)				$		$
	OTHER FACTORS	WEIGHT RANGE	WEIGHT ASSIGNED		TOTAL COST OBJECTIVE (FROM LINE 1, COLUMN B)		PROFIT/FEE OBJECTIVE (COLUMN A × COLUMN B)
2	Contract Cost Risk	0% to 7%		×		=	
3	Federal Socioeconomic Programs	+ − 0.5%		×		=	
4	Capital Investments	+ − 2%		×		=	
5	Cost Control and Other Past Accomplishments	+ − 1%		×		=	
6	Independent Development			×		=	
	TOTAL PROFIT/FEE OBJECTIVE (ADD LINES 1-6, COLUMN C)						$

DIAR (48 CFR) 1453 215-71

DI-1920
Revised August 1985)

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1453.303–70 Sample subcontracting plan outline format.

Small Business and Small Disadvantaged Business Subcontracting Plan Outline Format

Date:
Contractor:
Address:
Solicitation or Contract Number:
Item/Service:

The following, together with any attachments, is hereby submitted as a Subcontracting Plan to satisfy the applicable requirements of Public Law 95–507.

1. (a) The following goals will be applicable to any contract awarded as a result of this solicitation.

(i) Total dollars planned to be subcontracted to both large and small business under this contract $______.

Goals	Percent	Dollars
(ii) Small Business [1]	______	______
(iii) Small Disadv. Business [2]	______	______

[1] Small business (SB): Percent of total planned subcontracting dollars (i) under this contract which will go to subcontractors which are small business concerns. Total dollars planned to be subcontracted to small business.

[2] Small and disadvantaged business (SADB): Percent of total planned subcontracting dollars (i) under this contract which will go to subcontractors which are small business concerns owned and controlled by socially and economically disadvantaged individuals. Total dollars planned to be subcontracted to small disadvantaged businesses.

(b) The principal products and services that (name of bidder/offeror) anticipates to be subcontracted under this contract and the identification of the type of business concern planned to be utilized are as follows:

List products and services	Type of business to be utilized (check block)	
	Small bus.	Small disadv. bus.
....	( )	( )
....	( )	( )
....	( )	( )
....	( )	( )

(c) The following method was used in developing subcontract goals (e.g., what source lists were used and what organizations were or will be contacted to obtain SB of SDB sources)

(d) Indirect and overhead costs (check one): ( ) have been ( ) have not been included in the goals specified in 1(a)(ii) and 1(a)(iii).

If "have been" is checked, explain the method used in determining the proportionate share of indirect and overhead costs to be incurred with small business and small disadvantaged business subcontractors. If "have not been" is checked, explain why products or services included in the overhead and indirect cost base cannot be subcontracted to small business or small disadvantaged business.

2. The following individual will administer the subcontracting program:

Name:
Title:
Address:
Telephone:

This individual's specific duties, as they relate to the firm's subcontracting program, are as follows: General overall responsibility for review, monitoring and execution of the plan including but not limited to:

(a) Obtaining small and small disadvantaged business sources from all applicable agencies such as SBA and MBDA.

(b) Assuring inclusion of SB and SADB firms in all solicitations where appropriate.

(c) Attending or arranging for attendance at Business Opportunity Workshops, Minority Business Enterprise Seminars, Trade Fairs, etc.

(d) Conducting or arranging for the conduct of motivational training for purchasing personnel pursuant to the intent of Pub. L. 95–507.

(e) Monitoring attainment of proposed goals.

(f) Reviewing solicitations to delete statements, clauses, and other provisions which may tend to prohibit SB and SDB participation.

3. The bidder (offeror) agrees to initiate the following actions to assure that small and small disadvantaged business concerns will have an equitable opportunity to compete for subcontracts:

(a) Outreach efforts shall be established as follows:

(i) Contacts with minority and small business trade associations. Name at least three (3).

(ii) Contacts with business development organizations. Name at least two (2).

(iii) Attendance at small and minority business procurement conferences and trade fairs. Provide examples.

(b) The following internal efforts shall be conducted so as to guide and encourage buyers:

(i) Periodic workshops, seminars, and training programs.

(ii) Activities shall be monitored so as to evaluate compliance with this subcontracting plan.

(c) Small and disadvantaged business source lists, guides, and other relevant data identifying small and disadvantaged business vendors shall be maintained and utilized by the buyer in soliciting subcontracts.

(d) Additions to (or deletions from) the above listed efforts are as follows:

4. The bidder (offeror) agrees that the clause entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns" will be included in all subcontracts which offer further subcontracting opportunities, and all subcontractors, except small business concerns, which receive subcontracts in excess of $500,000 or in the case of a contract for the construction of any public facility, $1,000,000, will be required to adopt and comply with a subcontracting plan similar to this one. Such plans will be reviewed by comparing them with the provisions of Pub. L. 95–507, and assuring that all minimum requirements of an acceptable subcontracting plan shall be determined on a case-by-case basis depending on the supplies/services involved, the availability of potential small and disadvantaged subcontractors, and prior experience. Once approved and implemented, plans will be monitored through the submission of periodic reports, and/or, as time and availability of funds permit, periodic visits to the subcontractor facilities or reviews of applicable records and subcontracting program progress.

5. The bidder (offeror) agrees to cooperate in any studies or surveys as may be required by the contracting agency or the Small Business Administration in order to determine the extent of compliance by the bidder (offeror) with the subcontracting plan. Additionally, the bidder (offeror) agrees to assure that its subcontractors agree to submit Standard Forms 294 and 295.

6. The bidder (offeror) agrees to maintain at least the following types of records to document compliance with this subcontracting plan:

(a) Small and disadvantaged business source lists, guides and other data identifying SB and SADB vendors.

(b) Organizations contacted for small and disadvantaged business sources.

(c) On a contract-by-contract basis, records on all subcontract solicitations over $100,000, indicating on each solicitation (1) whether small businesses were solicited, and if not, why not; (2) whether small disadvantaged businesses were solicited, and if not, why not; and (3) reasons for the failure of solicited small businesses or small disadvantaged businesses to receive the subcontract award.

(d) Records to support other outreach efforts: Contacts with Minority and Small Business Trade Associations, Business Development Organizations, and attendance at small and minority business procurement conferences and trade fairs.

(e) Records to support internal activities to guide and encourage buyers: Workshops, seminars, training programs, and monitoring activities to evaluate compliance.

(f) On a contract-by-contract basis, records to support award data submitted to the Government to include name and address of subcontractor.

7. The bidder (offeror) agrees to:

(a) Assist small and small disadvantaged business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the bidder's (offeror's) lists of potential small business and small disadvantaged subcontractors are excessively long, reasonable effort shall be made to give all such concerns an opportunity to compete over a period of time.

(b) Provide adequate and timely consideration of the potentialities of small and small disadvantaged business concerns in all "make-or-buy" decisions.

(c) Counsel and discuss subcontracting opportunities with representatives of small and small disadvantaged business firms.

Signed:
Typed Name:
Title:
Date:

22. Section 1453.303–71 is added to read as follows:

1453.303–71 Format for review of contractor's subcontracting program.

Format for Review of Contractor's Subcontracting Program

Part I—General Information

1. Contractor's name and address (include zip code).

2. Contractor's subcontracting plan administrator (Small Business Liaison Officer—SBLO).

3. Business Utilization and Development Specialist (BUDS).

4. Contracting Officer (CO) or Administrative Contracting Officer (ACO).

5. Small Business Administration Subcontracting Specialist.

6. Date of (a) Last review; (b) This review;

7. Period covered by this review (a) From; (b) To.

8. Total active DOI contracts (a) Number; (b) Face Value.

9. Total subcontracting potential estimated to be: (a) Substantial (over 50%); (b) Moderate (30–50%); (c) Minimal (less than 30%); (d) Unknown.

10. Active contracts over $500,000 ($1 million if construction) that do not contain approved plans. (a) Number; (b) Face value (Identify and explain rationale for absence of plan.)

11. Active Contracts with Individual Subcontracting Plans. (a) Number; (b) Face value.

Part II—Contractor's Overall Performance Under Individual Subcontracting Plans

(Explain any negative findings, using Part III if additional space is required. Identify any exceptions that do not apply to all contracts detailed in Part I. This Part is to be reviewed in depth at least annually, and updated as required during interim reviews.)

1. Has a company wide policy statement been issued? Yes/No. If yes, by whom and date? How was it promulgated throughout the company?

2. Is the SBLO identified in Part I above responsible for all individual subcontracting plans detailed in Part I? Yes/No. Does the SBLO have adequate authority and responsibility to administer programs effectively? Yes/No. To whom does SBLO report?

3. Is there also a corporate SBLO? Yes/No. If yes, describe relationship between this division and the corporate SBLO.

4. Does contractor have an effective training program, particularly for buyers? Yes/No. Describe any incentive programs established for buyers or technicians to assist small and disadvantaged business (SADB) firms.

5. Does the contractor arrange solicitations, provide adequate bid preparation time, and adjust quantities, delivery schedules and specifications to enhance participation of SADB firms in the bidding process? Yes/No.

6. Does the contractor provide counseling assistance to SADB firms referred to it by the BUDS and by the SBA representative? Yes/No. Is such counseling effective? Yes/No.

7. Does the contractor provide technical, financial or other assistance to SADB firms? Yes/No. If yes, describe.

8. Does contractor counsel SADB firms as to why they may have failed to receive an award? Yes/No.

9. Does the contractor use DOI, SBA and other source lists to increase bidding opportunities? Yes/No. If yes, are listings being used effectively? Yes/No.

10. Does the contractor describe the method used in establishing individual contract goals? Yes/No. Is the method satisfactory? Yes/No. Is it detailed in the master plan? Yes/No. Is it detailed in subcontracting plans? Yes/No.

11. Are overhead items included in individual contract goals? Yes/No. If yes, does the contractor have a written procedure as to how these goals are to be allocated to individual contracts? Yes/No.

12. Does the contractor submit SF 294's and SF 295's in a timely manner? Yes/No. Are they accurate? Yes/No.

13. Describe the method used by BUDS in verifying accuracy of data reported on SF 294 and SF 295.

14. Does SF 295 contain allocable portions of overhead items as well as performance on individual contracts that do not require plans? Yes/No.

15. Describe methods used by contractor to monitor performance in meeting goals, including feedback mechanisms.

16. Are there written procedures to implement the program. Yes/ No. If yes, are they adequate to assure effective performance? Yes/No.

17. Is the contractor making satisfactory progress towards meeting all individual plan subcontracting goals? Yes/No. If no, explain in detail.

18. Check the appropriate box to indicate the records maintained by contractor.

( ) Small and disadvantaged business source lists, guides and other data identifying SADB vendors.

( ) Organizations contacted for small and disadvantaged business sources.

( ) Subcontract solicitations over $100,000, indicating on each solicitation:

(1) Whether small business was solicited, and if not why not.

(2) Whether small disadvantaged business was solicited, and if not why not.

(3) The reasons for the failure of solicited small businesses or small disadvantaged businesses to receive the subcontract award.

( ) Outreach Efforts:

(1) Contacts with Minority and Small Business Trade Associations, etc.

(2) Contacts with business development organizations, etc.

(3) Attendance at small and minority business procurement conferences and trade fairs.

( ) Internal activities to guide and encourage buyers: (1) Workshops; (2) Seminars; (3) Training programs; (4) Monitoring activities to evaluate compliance.

( ) Award data to include name and address of subcontractor.

( ) Certifications from small, small disadvantaged, women-owned, and labor surplus area business concerns.

19. Does the contractor use flow-down subcontracting plan clauses as required by its prime contract clauses? Yes/No. If yes, does the contractor obtain and review subcontractor plans to assure that a subcontractor's plan is in consonance with its own plan? Yes/No.

20. Does the contractor monitor subcontractor's performance against plan? Yes/No. If yes, how?

21. Do any of the individual subcontracting plans contain special features such as an incentive clause to which the above questions do not particularly apply? Yes/No. If yes, describe the special features and contractor's performance in detail.

22. Does the contractor have an acceptable Labor Surplus Area program, including records and reports? Yes/No.

23. Does the contractor recognize its obligation to use its best efforts in awarding subcontracts to women-owned business concerns, as required by FAR 52.219–13? Yes/No.

Part III—Remarks

(Cross reference all remarks to appropriate section in this report)

Part IV—Summary and Recommendation

1. Exit interview conducted with the following contractor representatives:______, on (date).

2. SBA representative did/did not participate in this review.

3. Contractor's performance in complying with subcontracting program and individual subcontracting plan requirements is: Outstanding; Acceptable; Marginal; Unsatisfactory.

(a) If performance is outstanding or acceptable, summarize basis for this rating;

(b) If performance is marginal or unsatisfactory, detail reason as appropriate and:

(i) Summarize program or plan deficiencies.

(ii) Identify recommendations made to the contractor to correct deficiencies.

[FR Doc. 86–26055 Filed 11–19–86; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 60854–6154]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule; extension of effective date.

SUMMARY: The Secretary of Commerce (Secretary) extends an emergency interim rule which changed regulations promulgated under the Pacific Coast Groundfish Fishery Management Plan for the sablefish fishery off Washington, Oregon, and California. It is necessary

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to extend the emergency interim rule through December 31, 1986, because the conditions requiring the emergency measure still exist. This action is intended to delay attainment of the sablefish quota to the end of the fishing year.

EFFECTIVE DATE: From November 20, 1986, through December 31, 1986.

ADDRESSES: Comments on this rule may be submitted to Rolland A. Schmitten, Director, Northwest Region National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115: or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206–526–6150; or E. Charles Fullerton, 213–514–6196.

SUPPLEMENTARY INFORMATION: Under section 305(e)(2) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Secretary issued an emergency interim rule effective August 22, 1986 (51 FR 29933, August 21, 1986) for sablefish caught off Washington, Oregon, and California. This rule allocated the amount of the 13 600-metric ton (mt) optimum yield (OY) quota for sablefish remaining on August 22, 1986, at 55 percent for trawl landings and 45 percent for fixed gear landings. The rule also imposed a trip limit on trawl landings of sablefish, with a provision for revising the allocations and the trawl trip limit in October. The reasons for the allocations and the trawl trip limit, which are discussed in the preamble to the emergency rule, still continue and are not repeated here.

The amount of OY remaining on August 22 (5,300 mt) and the allocations (2,915 mt for trawl landings and 2,385 mt for fixed gear landings) were announced on August 26, 1986 (51 FR 30365). As provided in the emergency rule, these amounts as well as the trawl trip limit were redetermined in October, using the best information then available. Effective October 23, 1986 (51 FR 37912, October 27, 1986), the allocations changed to 2,800 mt for trawl landings and 2,300 mt for fixed gear landings based on 5,100 mt of OY remaining on August 22, and the trawl trip limit increased from 8,000 pounds to 12,000 pounds to provide a reasonable opportunity for the trawl allocation to be taken.

The emergency rule states that further landings of sablefish will be prohibited by either gear type if the allocation for that gear type is reached, or by all gear types if the overall OY is reached. The fixed gear fishery for sablefish closed at 0001 hours Pacific Daylight time, October 23, 1986, when the fixed gear allocation of 2,300 mt was reached (51 FR 37913, October 27, 1986).

Classification

Recognizing that conditions within the fishery requiring the original emergency rule would exist until the end of the year, the Pacific Fishery Management Council announced its intent to extend this emergency rule when it recommended by majority vote that the Secretary take emergency action at its July 1986 meeting. This action is authorized by section 305(e)(3) of the Magnuson Act. The emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided for in section 8(a)(1) of the order. This rule is being reported to the Office of Management and Budget with an explanation of why is is not possible to follow the procedures of that order.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing.

(16 U.S.C. 1801 *et seq.*)

Dated: November 18, 1986.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 86–26241 Filed 11–18–86; 10:42 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 224
Thursday, November 20, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 810

United States Standards for Barley

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action supplements the proposed rule on the Official U.S. Standards for Grain published on October 2, 1986 at 51 FR 35224. It would further revise Subpart B—U.S. Standards for Barley by changing these standards to remove the special grades Tough, Stained, Bleached, and Bright; revise the definition of Sample grade, damaged kernels and the classes of malting barley; remove black barley as a grade determining factor, and revise certain names of terms relating to damaged or injured kernels. These changes and other miscellaneous nonsubstantive changes are proposed to simplify the barley standards, conform certain provisions and language to present trading practices and to other grain standards. In addition, comments are requested on the changes to the FGIS Instructions that would add protein content as an official criteria and make determination of plump barley available only upon request.

DATE: Comments must be submitted on or before December 22, 1986.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., Information Resources Staff, USDA, FIGS, Room 1661 South Building, 1400 Independence Avenue, SW., Washington, DC 20250, telephone (202) 382–1738. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., address as above, telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

D. R. Galliart, Acting Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities because those persons who apply the standards and most users of barley inspection services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities by FGIS employees or licensed persons.

Review of Standards

On October 2, 1986, a proposal was published in the **Federal Register** (51 FR 35224) which would reformat and make certain other changes to attain uniformity among all official grain standards. The proposed changes in that publication that affect the barley standards include: (1) Redesignating the special grade "weevily" to the more appropriate term "infested;" (2) Revising the definition of barley to restrict mixtures of other grains to 10.0 percent as currently stated in other grain standards; (3) Revising FGIS rounding procedures as stated in the section on Percentages to reflect rounding procedures performed by calculators and in computer applications; and (4) Further revise procedures for stating percentages so that all figures are reported to the nearest tenth percent, except for ergot which is reported to the nearest hundredth percent.

An Advance Notice of Rulemaking requesting public comment on the U.S. Standards for Barley was published in the September 12, 1980, **Federal Register** (45 FR 60648). Changes to the barley standards suggested by industry members during the comment period included: (1) A return to the previously used terminology of "injured-by-mold" and "injured-by-frost"; (2) a tightening of factors that would be applicable to 6-rowed as well as 2-rowed barley; (3) grading barley as malting barley only upon request of the applicant; and (4) showing the percentage of plump barley in terms of a whole percent instead of a range of 5 percent increments.

To gather additional information, discussions were held with industry representatives. These Organizations included the American Malting Barley Association; National Malting Barley Growers Association; National Feed Grains Council; Montana Elevator Operators Association; producer organizations in the states of Washington, Oregon, Montana, North Dakota, and Idaho; and individual grain handlers and producers. Also, four meetings were held with interested parties to discuss the issues concerning revising the barley standards.

Accordingly, the following changes to the barley standards are proposed which supplement those proposed changes that appear at 51 FR 35224:

1. Remove the requirement, "semisteely in mass," from the definition of malting barley and remove the special grades "Tough," "Stained," "Bleached," "and "Bright;"
2. Remove the terms "frost-damaged kernels (minor)," "mold-damaged kernels (minor)," and "heat-damaged kernels (minor)," and substitute the terms "injured-by-frost kernels," "injured-by-mold kernels," and "injured by-heat kernels," respectively and deletion of such terms, except for injured-by-heat, from the definition of damage;
3. Remove the term "black barley" as a grade-determining factor and include black barley under the definition of "other grains;"
4. Remove the requirement that barley containing smut in excessive amounts to be graded Sample grade;
5. Remove the requirement for wild bromegrass seeds in the definition of Sample grade; and
6. Include changes in language, format, and definitions to further update and conform the barley standards to other grain standards.

The current definitions for the three classes of malting barley provide that the barley be "not semisteely in mass." This quality evaluation is subjective, and not commonly used as a separate quality evaluation by the brewing industry because maltsters have their own objective tests available to indicate suitability for brewing purposes. Accordingly, FGIS proposes that the requirement "not semisteely in mass" be

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removed from the definition of malting barley as no longer necessary.

Currently, the special grade "Tough" is defined as barley that contains more than 14.5 percent moisture. Moisture content and as such "Tough" is not descriptive of grain quality. Moisture content is a condition of grain rather than a quality factor. Pursuant to current trade practices, discounts for moisture generally are assessed on the actual content rather than the Special grade to account for weight loss and drying costs to handlers. In addition, moisture content is required by regulation (7 CFR 800.162(a)) to be shown on all official certificates when an official grade determination is made. FGIS therefore proposes that the special grade "Tough" be removed. This proposed change would conform the barley standards to other grain standards.

The special grades "Stained," "Bleached," and "Bright" have not been applied in several years according to inspection information available to FGIS. Consequently these special grades appear to have little value in the barley standards. Present commercial practices have made their use no longer necessary. FGIS therefore proposes that the special grades "Stained," "Bleached," and "Bright' be removed. While not a special grade, stained would remain a criteria in determining numerical grades.

During meetings with the trade, several members suggested deletion of the current descriptive terms "frost-damaged kernels (minor)," "mold-damaged kernels (minor)," and "heat-damaged kernels (minor)" and substitution of the terms "injured-by-frost kernels," "injured-by-mold kernels," and "injured-by-heat kernels," respectively. The terms "injured-by-frost kernels" and "injured-by-mold kernels" include kernels which are slightly affected by adverse environmental factors and are not acceptable to maltsters because of unsatisfactory germination or other reasons. These kernels, however, are affected to such a slight degree that they are not considered damaged kernels in the inspection procedure. While kernels that are "injured-by-heat" are considered damaged kernels it was suggested that the term "injured by heat" was the descriptive term preferred by the trade. The terms "injured-by-frost kernels" and "injured-by-mold kernels" better describe and differentiate the condition of the kernels than the terms "frost-damaged kernels (minor)" and "mold-damaged kernels (minor)", especially when used in conjunction with the terms "frost-damaged kernels (major)" and "mold-damaged kernels (major)." The term "injured-by-heat kernels" is considered more descriptive than the term "heat-damaged kernels (minor)." FGIS therefore proposes that the terms "injured-by-frost kernels," "injured-by-mold kernels," and "injured-by-heat kernels" be substituted for the currently used "frost-damaged kernels (minor)," "mold-damaged kernels (minor)," and "heat-damaged kernels (minor)," respectively. Concurrently, the terms "frost-damaged kernels," "mold-damaged kernels," and "heat-damaged kernels" would be substituted for the currently used "frost-damaged kernels (major)," "mold-damaged kernels (major)," and "heat-damaged kernels (major)," respectively. In addition, the definition of damaged kernels would be revised to delete references to "frost-damaged kernels (minor)" and "mold-damaged kernels (minor)". However, in that definition, the term "heat-damaged (minor)" would be deleted and "injured-by-heat" substituted in its place. Further, all of the grading tables for barley would be revised to reflect proper use of the proposed terminology.

Barley with black colored hulls, referred to as black barley, is not used by brewers because of poor brewing characteristics. Black barley currently is a grading factor with specific grade limits for malting and nonmalting barley. For many years black barley has not been grown, and therefore has not been seen in commercial channels. FGIS therefore proposes that black barley be removed as a grade-determining factor and that black-colored barley kernels be included under the definition and limits for "other grains".

The requirement that six-rowed barley, two-rowed barley, and the class barley be graded U.S. Sample grade when the presence of smut is so great that one or more of the grade factors cannot be determined accurately has not been applied for many years because the presence of smut has been reduced due to seed treatment and other improvements. However, the special grade "Smutty" is retained to identify those samples which show the presence of smut.

Accordingly, FGIS proposes that the requirement regarding the presence of smut be removed from the definition of U.S. Sample grade for six-rowed barley, two-rowed barley, and the class barley.

Currently, when 8 or more unhulled wild bromegrass seeds are found, barley is graded Sample grade. The factor was included because the harsh awns of wild bromegrass were thought to stick in the mouths of livestock and cause distress. University animal specialists contacted by FGIS indicate that there has been no record of complaints about animals becoming adversely affected from ingesting wild bromegrass seeds. Accordingly, its proposed that wild bromegrasses be removed from the definition of U.S. Sample grade for six-rowed barley, two-rowed barley, and the class barley. The definition for "wild bromegrassess" would be removed as unnecessary.

In the inspection of barley, a threshold determination is made by official inspection personnel as to whether a sample represents barley of a malting or nonmalting variety or quality. The determination is based primarily on whether or not the barley is of a suitable malting type. The barely is then graded according to various factors for malting and nonmalting barley provided for in the standards. Some producers have asked that grading procedures be changed to allow an applicant for inspection to request that a sample be graded as a nonmalting barley without regard to barley variety or quality. It has been stated that in certain production areas, this provision would aid in the marketing of barley of malting quality for feed purposes.

In the normal marketing of grain, a lot of barley may be inspected several times from the time of delivery at the country elevator to final inspection at export. FGIS believes that permitting an applicant to choose between grading barley as malting or nonmalting would confuse the marketing of this grain. Therefore, this action does not include a proposal that would permit an applicant to request a sample of barley be graded as a malting or nonmalting barley. Furthermore, the barley standards provide for an optional grade designation which we believe addresses this concern.

The redesignation of the class Barley as Feed Barley was discussed in meetings with the industry as possibly enhancing the export of barley for feed purposes. However, because of the lack of a clear consensus among industry representatives, the change will not be proposed.

Other miscellaneous changes in language, format, and definitions are made to simplify, update and conform the barley standards to other grain standards, where appropriate.

Comments including data, views, and arguments are solicited from interested persons. Pursuant to section 4(b) of the Act, upon request, such information may be orally presented in an informal manner. Also, pursuant to section 4(b) of the United States Grain Standards Act, no standard or amendments or revocations of standards under the Act are to become effective less than one calendar year after promulgation, unless in the judgment of the Administrator the public health, interest, or safety require that they become effective sooner. FGIS intends that, if adopted, these changes will become effective on May 1, 1987 to coincide, as nearly as practicable, with the beginning of the crop year for barley and other grains, as stated in the proposed rule published on October 2, 1986. In addition, a 30 day comment period is determined to be adequate because this proposed rule is a supplement to the proposed rule published on October 2, 1986.

In addition to the recommended changes to the barley standards, industry representatives also suggested the following changes to the inspection procedures contained in FGIS Instructions:

1. Make information on the percentage of plump barley available upon request in place of the current procedure of showing the percentages on all samples of malting barley, and
2. Determine the protein content of barley upon request and show results on a moisture-free basis.

It was recommended that the determination of plump kernels be made only upon request instead of upon every sample grading malting barley because this determination is used primarily by maltsters for in-house quality. FGIS therefore requests views and comments on whether the FGIS Instructions should be revised to provide that the determination for plump kernels be made only upon request of the applicant for inspection.

Protein content may be useful information to a buyer. Methodology has been developed to determine protein content in barley using near infrared reflectance (NIR) instruments. Information on the protein content of barley is important in brewing. Brewers do not want a high level of protein in barley because of the undesirable effect on brewing characteristics. Livestock feeders like a high level of protein and find information on protein content valuable in the formulation of feeding rations.

Presently an inspection service providing information on protein content has not been available on an official basis. Protein is an official criteria under the U.S. Grain Standards Act for wheat. The percentage of protein would not be a grading factor, but would be additional information offered upon request, similar to protein in wheat. However, unlike wheat, barley is marketed on a moisture free basis when protein content is determined. FGIS therefore requests views and comments on whether the FGIS Instructions should be revised to provide that the protein content of barley be determined upon request of an applicant, and stated on a moisture-free basis.

List of Subjects in 7 CFR Part 810

Export, grain.

Accordingly, it is proposed that 7 CFR Part 810, Subpart B as proposed at 51 FR 35224 be further amended as follows:

PART 810—OFFICIAL U.S. STANDARDS FOR GRAIN

1. The authority citation for 7 CFR Part 810 continues to read as set forth below:

Authority: Sections 3A and 4, United States Grain Standards Act (7 U.S.C. 75a, 76).

Subpart B—United States Standards for Barley

2. Section 810.201 is revised to read as follows:

§ 810.201 Definition of barley.

Grain that, before the removal of dockage, consists of 50.0 percent or more of whole kernels of cultivated barley (*Hordeum vulgare* L. and *H. distichum* L.) and not more than 10.0 percent of other grains for which standards have been established under the United States Grain Standards Act. The term "barley" as used in these standards does not include hull-less barley or black barley.

3. Section 810.202 is amended by revising paragraphs (c)(1)–(3) and (d) to read as follows:

§ 810.202 Definition of other terms.

* * * * *

(c) *Classes.* * * *

(1) *Six-rowed Barley.* Barley of the six-rowed type with white hulls that contain not more than 10.0 percent of two-rowed barley. This class is divided into the following three subclasses:

(i) *Six-rowed Malting Barley.* Six-rowed barley of a suitable malting type that has 90.0 percent or more of kernels with white aleurone layers; that does not contain barley injured by frost or heat; that is not badly stained or materially weathered, blighted, ergoty, garlicky, infested, or smutty; and that otherwise meets the grade requirements of the subclass Six-rowed Malting Barley.

(ii) *Six-rowed Blue Malting Barley.* Six-rowed barley of a suitable malting type that has 90.0 percent or more of kernels with blue aleurone layers; that does not contain barley injured by frost or heat; that is not badly stained or materially weathered, blighted, ergoty, garlicky, infested, or smutty; and that otherwise meets the grade requirements for the subclass Six-rowed Malting Barley.

(iii) *Six-rowed Barley.* Any barley of the class Six-rowed Barley that does not meet the requirements of the subclass Six-rowed Malting Barley or Six-rowed Blue Malting Barley.

(2) *Two-rowed Barley.* Barley of the two-rowed type with white hulls that contain not more than 10.0 percent of six-rowed barley. This class is divided into the following two subclasses:

(i) *Two-rowed Malting Barley.* Two-rowed barley of a suitable malting type; that does not contain barley injured by mold, frost, or heat; that is not badly stained or materially weathered, blighted, ergoty, garlicky, infested, or smutty; and that otherwise meets the grade requirements for the subclass Two-rowed Malting Barley.

(ii) *Two-rowed Barley.* Two-rowed barley that does not meet the requirements of the subclass Two-rowed Malting Barley.

(3) *Barley.* Barley that does not meet the requirements for the classes Six-rowed Barley or Two-rowed Barley.

(d) *Damaged kernels.* Kernels, pieces of barley kernels, other grains, and wild oats that are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, germ-damaged, heat-damaged, injured-by-heat, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

* * * * *

4. Section 810.202 (g) and (h) are revised to read as follows:

* * * * *

(g) *Frost-damaged kernels.* Kernels, pieces of barley kernels, other grains, and wild oats that are badly shrunken and distinctly discolored black or brown by frost.

(h) *Injured-by-frost kernels.* Kernels and pieces of kernels of barley that are distinctly indented, immature or shrunken in appearance, or that are light green in color as a result of frost before maturity.

* * * * *

5. Section 810.202 (j), (k), (l), (m), and (n), are revised to read as follows:

* * * * *

(j) *Heat-damaged kernels.* Kernels, pieces of barley kernels, other grains, and wild oats that are materially discolored and damaged by heat.

(k) *Injured-by-heat kernels.* Kernels, pieces of barley kernels, other grains, and wild oats that are slightly discolored as a result of heat.

(l) *Mold-damaged kernels.* Kernels, pieces of barley kernels, other grains, and wild oats that are weathered and contain considerable evidence of mold.

(m) *Injured-by-mold kernels.* Kernels and pieces of kernels of barley containing slight evidence of mold.

(n) *Other grains.* Black barley, corn, cultivated buckwheat, einkorn, emmer, flaxseed, guar, hull-less barley, nongrain sorghum, oats, Polish wheat, popcorn, poulard wheat, rice, rye, safflower, sorghum, soybeans, spelt, sunflower seed, sweet corn, triticale, and wheat.

* * * * *

6. Section 810.202 is amended by removing paragraph (u); redesignating pargraphs (s) and (t) as (t) and (u); and by adding a new paragraph (s) to read as follows:

* * * * *

(s) *Stained barley.* Barley that is badly stained or materially weathered.

* * * * *

7. Section 810.203 and the undesignated center heading preceding it are revised to read as follows:

Principles Governing Application of Standards

§ 810.203 Basis of determination

All other determinations. Each determination of heat-damaged kernels, injured-by-heat kernels, and white are blue aleurone layers in Six-rowed barley is made on pearled, dockage-free barley. Other determinations not specifically provided for under the general provisions are made on the basis of the grain when free from dockage, except the determination of odor is made on either the basis of the grain as a whole or the grain when free from dockage.

8. Sections 810.204, 810.205, 810.206 and the undesigned center heading preceding them are revised to read as follows:

Grades and Grade Requirements

§ 810.204 Grades and grade requirements for the subclasses Six-rowed Malting Barley and Six-Rowed Blue Malting Barley.

Grade [1]	Minimum limits of—			Maximum limits of—				
	Test weight per bushel (pounds)	Suitable malting type (percent)	Sound barley [2] (percent)	Damaged kernels [2] (percent)	Foreign material (percent)	Other grains (percent)	Skinned and broken kernels (percent)	Thin barley (percent)
U.S. No. 1	47.0	95.0	97.0	2.0	1.0	2.0	4.0	7.0
U.S. No. 2	45.0	95.0	94.0	3.0	2.0	3.0	6.0	10.0
U.S. No. 3	43.0	95.0	90.0	4.0	3.0	5.0	8.0	15.0

[1] Six-rowed Malting Barley and Six-rowed Blue Malting Barley may contain: not more than 1.9 percent of injured-by-frost kernels that may include not more than 0.4 percent of frost-damaged kernels; not more than 0.2 percent of injured-by-heat kernels that may include not more than 0.1 percent of heat-damaged kernels; and may contain unlimited amounts of injured-by-mold kernels; however, mold-damaged kernels are scored as damaged kernels and against sound barley limits.

[2] Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels or scored against sound barley.

NOTE: Six-rowed barley that meets the requirements of U.S. No. 1 to U.S. No. 3, inclusive, for the subclasses Six-rowed Malting Barley and Six-rowed Blue Malting Barley is classified and graded according to the requirements in this section. Otherwise, it will be graded according to the requirements in § 810.206.

§ 810.205 Grades and grade requirements for the subclass Two-rowed Malting Barley.

Grade [1]	Minimum limits of—			Maximum limits of—			
	Test weight per bushel (pounds)	Suitable malting types (percents)	Sound barley [2] (percent)	Wild oats (percents)	Foreign material (percent)	Skinned and broken kernels (percent)	Thin barley (percent)
U.S. No. 1 choice	50.0	97.0	98.0	1.0	0.5	5.0	5.0
U.S. No. 1	48.0	97.0	98.0	1.0	0.5	7.0	7.0
U.S. No. 2	48.0	95.0	96.0	2.0	1.0	10.0	10.0
U.S. No. 3	48.0	95.0	93.0	3.0	2.0	10.0	10.0

[1] Two-rowed Malting Barley may contain: not more than 1.9 percent of injured-by-frost kernels that may include not more than 0.4 percent frost-damaged kernels; not more than 0.2 percent of injured-by-heat kernels that may include not more than 0.1 percent of heat-damaged kernels; and not more than 1.9 percent of injured-by-mold kernels that may include not more than 0.4 percent of mold-damaged kernels.

[2] Injured-by-frost kernels and injured-by-mold kernels are not scored against sound barley.

NOTE: Two-rowed barley that meets the requirements of U.S. No. 1 Choice to U.S. No. 3, inclusive, for the subclass Two-rowed Malting Barley is classified and graded according to the requirements in this section. Otherwise, it will be graded according to the requirements in § 810.206.

§ 810.206 Grades and grade requirements for the subclasses Six-rowed Barley, Two-rowed Barley and the class Barley.

Grade	Minimum limits of—		Maximum limits of—	Damaged kernels [1] (percent)			
	Test weight per bushel (pounds)	Sound barley (percent)		Heat-damaged kernels (percents)	Foreign material (percent)	Broken kernels (percent)	Thin barley (percent)
U.S. No. 1	47.0	97.0	2.0	0.2	1.0	4.0	10.0
U.S. No. 2	45.0	94.0	4.0	0.3	2.0	8.0	15.0
U.S. No. 3	43.0	90.0	6.0	0.5	3.0	12.0	25.0
U.S. No. 4 [2]	40.0	85.0	8.0	1.0	4.0	18.0	35.0
U.S. No. 5	36.0	75.0	10.0	3.0	5.0	28.0	75.0

U.S. Sample grade—U.S. Sample grade shall be barley that:

(a) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, 4, or 5; or

(b) Contains 8 or more stones that have an aggregate weight in excess of 0.2 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria spp.*), 2 or more castor beans (*Ricinus communis* L.), 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic sbustance(s), 6 or more cocklebur (*Xanthuim* spp.) or similar seeds singly or in combination, 2 or more rodent pellets, bird droppings, or equivalent quantity of other animal filth per 1,000 grams of barley; or

(c) Has a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or

(d) Is heating or otherwise or distinctly low quality.

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[1] Includes heat-damaged kernels. Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels.

[2] Barley that is badly stained or materially weathered shall be graded not higher than U.S. No. 4.

9. Section 810.207 and the undersignated center heading preceding it are revised to read as follows:

Special Grades and Special Grade Requirements

§ 810.207 Special grades and special grade requirements.

(a) *Blighted barley.* Barley that contains more than 4.0 percent of blight-damaged and/or mold-damaged kernels.

(b) *Ergoty barley.* Barley that contains more than 0.10 percent ergot.

(c) *Garlicky barley.* Barley that contains three or more green garlic bulblets, or an equivalent quantity of dry or partly dry bulblets in 500 grams of barley.

(d) *Infested barley.* Barley that is infested with live weevils or other insects injurious to stored grain according to procedures prescribed in FGIS Instructions.

(e) *Smutty barley.* Barley that has kernels covered with smut spores to give a smutty appearance in mass, or which contains more than 0.2 percent smut balls.

Dated: November 3, 1986.

D.R. Galliart,

Acting Administrator.

[FR Doc. 86–26164 Filed 11–19–86; 8:45 am]

BILLING CODE 3410–EN–M

Animal and Plant Health Inspection Service

9 CFR Parts 101, 102, 103, 104, 107, and 114

[Docket No. 86–024]

Viruses, Serums, Toxins, and Analogous Products; Experimental Products and Exempted Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Security Act of 1985 amended the Virus-Serum-Toxin Act of 1913 (VST Act) to give the Secretary of Agriculture jurisdiction over intrastate as well as interstate shipments of animal biologics, subject to certain exemptions. Products which are exported are now also subject to the Act. Under the VST Act, it is unlawful to import or to ship in or from the United States animal biologics that are worthless, contaminated, dangerous, or harmful. It is also unlawful to ship animal biologics which are manufactured within the United States and intended for use in the treatment of animals unless they are prepared in compliance with regulations prescribed by the Secretary in a properly licensed establishment.

The purpose of this proposed rule is to amend the regulations in several respects so that they conform to the 1985 amendments of the Act. It prescribes regulations exempting products prepared by a person for administration to that person's own animals, and products prepared by a veterinarian solely for administration to animals under that veterinarian's client-patient relationship. It also prescribes criteria for exempting from the requirement of preparation pursuant to a license those products which are prepared solely for distribution within the State of production pursuant to an approved State licensing program, and makes other conforming changes.

In order to assure that public concern for the environment, and the health and safety of both humans and animals are properly addressed, this proposed amendment also addresses environmental aspects of the use of biological products, especially those containing live organisms.

DATE: Comments must be received on or before January 5, 1987.

ADDRESS: Interested parties are invited to submit written data, views, or arguments regarding the proposed regulations to Steven R. Poore, Acting Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Peter L. Joseph, Senior Staff Veterinarian, Veterinary Biologics Staff, VS, APHIS, USDA, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–6332.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This proposed rule contains no new or amended recordkeeping, reporting, or application requirements or any type of information collection requirement subject to the Paperwork Reduction Act of 1980.

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1, and has been classified as a "Nonmajor Rule."

The proposed action would not have a significant effect on the economy and would not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It would also not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises, in domestic markets.

Certification Under the Regulatory Flexibility Act

The Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities. Its purpose is to prescribe procedures and criteria with respect to exemptions and other provisions mandated by the Virus-Serum-Toxin Act, as amended.

Background

In amending the Virus-Serum-Toxin Act of 1913 (VST Act) the Food Security Act of 1985 expanded the Department's authority over veterinary biologics in several respects. Under the amended statute, it is unlawful to ship or deliver for shipment any worthless, contaminated, dangerous, or harmful veterinary biologic intended for use in the treatment of animals anywhere in or from the United States. The preparation

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of such products in the District of Columbia, the Territories, or in any place under the jurisdiction of the United States is also prohibited. Previously, intrastate shipments and exports were not subject to the VST Act. It is also unlawful (subject to certain exemptions) to ship veterinary biologics, manufactured within the United States and intended for use in the treatment of animals, in or from the United States, unless they were prepared in compliance with regulations prescribed by the Secretary of Agriculture in an establishment licensed by the Secretary. Products prepared in the District of Columbia, in the Territories, or in any place under the jurisdiction of the United States must be prepared pursuant to a license. The amendment expands the Secretary's rulemaking authority by authorizing the promulgation of any rules and regulations deemed necessary to carry out the purposes of the Act (the main purpose being to prevent the distribution of worthless, contaminated, dangerous or harmful veterinary biologics for use in the treatment of animals, *i.e.*, diagnosis, prevention, and cure of disease). The Secretary is also authorized to inspect any establishment preparing animal biologics at any hour, day or night. Previously, only licensed establishments were subject to such inspection. Additionally, the amended statute contains provisions for detention, seizure, and condemnation of products. It also provides for injunctive relief and penalties for assaulting or resisting Department officials during their performance of official duties under the Act.

The current regulations in 9 CFR 103.3 contain widely used provisions for the interstate shipment of unlicensed biological products for experimental use in domestic animals for the purpose of evaluating such products. These products have been shipped for a variety of reasons, but mainly for field safety studies prior to licensing and release of the products for use in the general treatment of animals. Because of the expanded jurisdiction under the 1985 amendment to the VST Act, this proposed revision would amend § 103.3 of the regulations by deleting the reference to interstate shipments and by adding a provision for exports. This would have the effect of making the provisions of the section applicable to all shipments subject to the Act. The shipment of unlicensed biological products for experimental treatment of animals anywhere in or from the United States would be prohibited without prior authorization by the Deputy Administrator. Requests for authorization would need to be accompanied by information specified in the regulations, including information relevant to the product's effect on the environment. Additional safeguards and tests may be required in the case of products which contain live organisms and which are prepared either through conventional means or through the use of new biotechnology. For the purposes of the VST Act, the term "ship" shall be used in its broadest sense. It shall mean transportation by any means from one place to another and shall be synonymous with delivering for shipment.

Part 104 would be amended by revising § 104.4 pertaining to biological products imported for research and evaluation. Section 104.4(a) would be revised by stating that a permittee may be required to provide any information needed to properly assess an imported product's impact on the environment. Section 104.4(b) would be amended to prohibit any permittee or research investigator from shipping a product, imported under § 104.4, in or from the United States unless authorization to do so is obtained pursuant to the provisions of § 103.3 of the regulations.

The 1985 amendment of the VST Act provides that the Secretary shall exempt by regulation from the requirement of preparation pursuant to a license any animal biologics prepared by a person, firm, or corporation: (1) Solely for administration to animals of such person, firm, or corporation; (2) solely for administration to animals under a veterinarian-client-patient relationship in the course of such person's, firm's, or corporation's practice of veterinary medicine; and (3) solely for distribution within the State of production pursuant to a license granted by such State under a program determined by the Secretary to meet certain specified criteria. Certain provisions of the Act would still be applicable to such animal biologics, regardless of whether or not they are exempted from the licensing provisions. Anyone shipping products which are worthless, contaminated, dangerous, or harmful would be subject to the sanctions under the Act, including detention, seizure, and condemnation. A new Part 107 would provide for the exemptions specified in the amendment to the Act. The proposed regulations would include conditions to be met in order to establish a valid veterinarian-client-patient relationship. Such conditions have been established under the Federal Food, Drug, and Cosmetic Act for the purpose of applying the prescription drug restraints and have been accepted by the American Veterinary Medical Association. Veterinarians preparing products subject to the exemption under the Act would be required to maintain and make available for inspection such records as are necessary to establish that a valid veterinarian-client-patient relationship exists. Prior to the shipment of products which contain live organisms and which are prepared either through conventional means or through the use of new biotechnology, persons exempt from licensure would be required to provide any information necessary to determine the products' safety and effect on the environment.

Proposed § 107.2 of the regulations would address the criteria to be met by State licensing programs in order that State licensed products may be eligible for the statutory exemption. This provision of the regulations would specify that appropriate State officials would be responsible for providing the Agency with information to assure compliance with the provisions of the Act. The State officials would be required to identify each manufacturer and each product to be considered for exemption. Provisions for review of procedures used by State regulatory officials and on-site evaluation of facilities and products to be exempted would also be included in the proposed regulations.

The current regulations in 9 CFR 114.2(c) provide that, except for experimental products prepared in compliance with Part 103, no biological products may be prepared in a licensed establishment unless the person holding the establishment license also holds an unexpired, unsuspended, and unrevoked product license for each product. Section 114.2(b) provides that when an establishment license is issued for an interim period not to exceed 4 years, the establishment may continue preparing certain specified unlicensed products provided, that: (a) Such products were prepared in the establishment within the 12-month period prior to issuance of the establishment license; (b) the unlicensed products are not distributed interstate; (c) no new unlicensed products are prepared after issuance of the establishment license; and (d) other specified requirements are satisfied. By the end of the interim licensure period, all products in the establishment must be licensed. The purpose of § 114.2(b) is to give intrastate producers an opportunity to become licensed without being required to immediately remove all intrastate products from their premises.

The VST Act, as amended, requires that all veterinary biologics, except those exempted from licensure by regulation, shipped in or from the United States be produced pursuant to a license. However, the Act provides that products prepared for intrastate distribution or exportation during the 12-month period prior to the enactment of the Act (December 23, 1985) may continue to be produced and sold until January 1, 1990, *Provided,* that, an exemption is claimed by Janury 1, 1987. That exemption may then be extended by the Deputy Administrator for up to 12 months. In light of this provision, § 114.2(b) would continue in effect until January 1, 1990 (or where an exemption is extended, until the exemption expires). Under this proposal, interim licenses would be issued only until that time, and persons wishing to continue producing unlicensed products for intrastate distribution or for export would be required to claim the exemption provided for an § 114.2(d). Only licensed products may be shipped interstate.

Therefore, it is proposed that §§ 114.2(b) and 102.4(h) be amended to provide for interim licensure until January 1, 1990, unless the exemption granted for the unlicensed products produced in the establishment under § 114.2(d) is extended by the Deputy Administrator. In such case, the interim license shall continue until the exemption expires. Also, it would provide that an exemption must be claimed for all unlicensed products by January 1, 1987. Other conforming amendments would also be made.

The definition of research investigator or research sponsor in § 101.2 of the regulations would be amended to conform to the new authority under the Act by deleting reference to "interstate" movement.

List of Subjects in 9 CFR Parts 101, 102, 103, 104, 107, and 114

Animal biologics.

PART 101—DEFINITIONS

Accordingly, 9 CFR Part 101 would be amended as follows:

1. The authority citation for Part 101 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 101.2 would be amended by revising paragraph (o) to read as follows:

§ 101.2 Administrative terminology.

* * * * *

(o) *Research investigator or research sponsor.* A person who has requested authorization to ship an experimental biological product for the purpose of evaluating such product, or has been granted such authorization.

* * * * *

PART 102—LICENSES FOR BIOLOGICAL PRODUCTS

Accordingly, 9 CFR Part 102 would be amended as follows:

1. The authority citation for Part 102 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 102.4 would be amended by revising paragraphs (h)(1) and (h)(2) to read as follows:

§ 102.4 U.S. Veterinary Biologics Establishment License.

* * * * *

(h) * * *

(1) The U.S. Biologics Establishment License issued for an interim period shall expire January 1, 1990, unless an extension for exemption from licensing under the Act of products prepared solely for intrastate shipment or export is granted by the Deputy Administrator pursuant to § 114.2(d)(3). In such case, the licensee may retain the interim license until the exemption period ends.

(2) Prior to the expiration of the interim license, the licensee may request issuance of a license for an indefinite period by application as provided in § 102.3.

* * * * *

PART 103—EXPERIMENTAL PRODUCTION, DISTRIBUTION, AND EVALUATION OF BIOLOGICAL PRODUCTS PRIOR TO LICENSING

Accordingly, 9 CFR Part 103 would be amended as follows:

1. The authority citation for Part 103 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. The title, introductory paragraph, and paragraphs (a) and (c) of § 103.3 would be revised and a new paragraph (h) would be added as follows:

§ 103.3 Shipment of experimental biological products.

Except as provided in this section, no person shall ship or deliver for shipment in or from the United States, the District of Columbia, or any Territory of the United States any unlicensed biological product for experimental use in animals. For the benefit of license applicants and to permit and encourage research, a person may be authorized by the Deputy Administrator to ship unlicensed biological products for the purpose of evaluating experimental products by treating limited numbers of animals, *Provided,* that, the Deputy Administrator determines that the conditions under which the experiment is to be conducted are adequate to prevent the spread of disease and approves the procedures set forth in the request for such authorization. Special restrictions or tests may be imposed when they are deemed necessary or advisable by the Deputy Administrator. A request for authorization to ship an unlicensed biological product for experimental study and evaluation shall be accompanied by the following:

(a) One copy of permit or letter of permission from the proper State or foreign animal health authorities of each State or foreign country involved.

(b) * * *

(c) Two copies of a description of the product, recommendations for use, and results of preliminary research work.

* * * * *

(h) Any information the Deputy Administrator may require in order to assess the product's impact on the environment.

PART 104—PERMITS FOR BIOLOGICAL PRODUCTS

1. The authority citation for Part 104 continues to read as follows:

Authority: 21 U.S.C. 151–159; 37 Stat. 832–833.

2. Section 104.4 would be amended by revising paragraphs (a) and (b) to read as follows:

§ 104.4 Products for research and evaluation.

(a) An application for a U.S. Veterinary Biological Product Permit to import a biological product for research and evaluation shall be accompanied by a brief description of such product, methods of propagating antigens including composition of medium, species of animals or cell cultures involved, degree of inactivation or attenuation, recommendations for use, and the proposed plan of evaluation. The applicant shall also provide any information the Deputy Administrator may require in order to assess the product's impact on the environment.

(b)(1) A permit to import a biological product for research and evaluation shall not be issued unless the scientific capabilities of the investigator are determined to be adequate to safeguard domestic animals and protect public health, interest, or safety from any deleterious effects which might result from use of such product. Special restrictions or tests may be specified as

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part of the permit when they are deemed necessary or advisable by the Deputy Administrator.

(2) No person shall ship a product imported under this section for research and evaluation anywhere in or from the United States unless authorized by the Deputy Administrator in accordance with the provisions of § 103.3.

* * * * *

Accordingly, Chapter I, Subchapter E, of 9 CFR is amended by adding a new Part 107 to read as follows:

PART 107—EXEMPTIONS FROM PREPARATION PURSUANT TO AN UNSUSPENDED AND UNREVOKED LICENSE

Sec.

107.1 Veterinary practitioners and animal owners.

107.2 Products under State license.

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

§ 107.1 Veterinary practitioners and animal owners.

Products prepared as provided in paragraphs (a) and (b) of this section shall be exempt from preparation pursuant to an unsuspended and unrevoked license. The shipment of any such exempted products which are worthless, contaminated, dangerous, or harmful is prohibited, and any person shipping such products shall be subject to sanctions under the Act. Persons exempt from licensure under this part shipping products which contain live organisms shall provide any information the Deputy Administrator may require in order to assess the products' safety and effect on the environment. Such products shall not be shipped or delivered for shipment anywhere in or from the United States if they are worthless, contaminated, dangerous, or harmful.

(a)(1) Products prepared by a veterinary practitioner (veterinarian) solely for administration to animals in the course of a State licensed professional practice of veterinary medicine by such veterinarian under a veterinarian-client-patient relationship shall be exempt from licensing under the Act and regulations. Such a relationship is considered to exist when:

(i) The veterinarian has assumed the responsibility for making medical judgments regarding the health of the animal(s) and the need for medical treatment, and the client (owner or other caretaker) has agreed to follow the instructions of the veterinarian; and when

(ii) There is sufficient knowledge of the animal(s) by the veterinarian to initate at least a general or preliminary diagnosis of the medical condition of the animal(s). This means that the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal(s), and/or by medically appropriate and timely visits to the premises where the animal(s) are kept; and when

(iii) The practicing veterinarian is readily available for followup in case of adverse reactions or failure of the regimen.

(2) veterinarians preparing products subject to the exemption for products under this section shall maintain and make available for inspection by Veterinary Services representatives or other Federal employees designated by the Secretary such records as are necessary to establish that a valid veterinarian-client-patient relationship exists and that there is a valid basis for the exemption under this section.

(b) Products prepared by a person solely for administration to animals owned by that person shall be exempt from the requirement that preparation be pursuant to an unsuspended and unrevoked license.

§ 107.2 Products under State license.

(a) The Deputy Administrator shall exempt from the requirement of preparation pursuant to an unsuspended and unrevoked license, any biological product prepared solely for distribution within the State of production pursuant to a license granted by such State under a program determined by the Deputy Administrator to be consistent with the intent of the Act to prohibit the preparation, sale, barter, exchange, or shipment of worthless, contaminated, dangerous, or harmful biological products.

(b) A request for exemption under this section must be made by the appropriate State authority and shall include information demonstrating that:

(1) The State has the authority to license viruses, serums, toxins, and analogous products and establishments that produce such products; and

(2) The State has the authority to review the purity, safety, potency, and efficacy of such products prior to release to the market; and

(3) The State has the authority to review product tests results to assure compliance with applicable standards of purity, safety, and potency prior to release to the market; and

(4) The State has the authority to deal effectively with violations of State law regulating viruses, serums, toxins, and analogous products; and

(5) The State effectively exercises the authority specified in paragraphs (b) (1) through (4) of this section consistent with the intent of the Act prohibiting the preparation, sale, barter, exchange, or shipment of worthless, contaminated, dangerous, or harmful viruses, serums, toxins, or analogous products.

(c) Each product to be exempted and each establishment preparing such product shall be identified by the State and the State shall give written notification to the Deputy Administrator of each such product and establishment. The State shall also give written notice to the Deputy Administrator of each new license issued and of each license terminated.

(d) In order to determine whether a State exercises its authority with respect to biological products and establishments and whether its laws and regulations are being achieved, the Deputy Administrator, in cooperation with proper State authorities, may conduct an on-site evaluation of the State's program which may include inspection of establishments and/or products to be included under the exemptions in this section.

PART 114—PRODUCTION REQUIREMENTS FOR BIOLOGICAL PRODUCTS

Accordingly, Part 114 would be amended as follows:

1. The authority citation for Part 114 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 114.2 paragraphs (b) introductory text, (b)(1) and (c) would be revised and paragraph (b)(9) would be added to read as follows:

§ 114.2 Products not prepared under license.

* * * * *

(b) An establishment license may be issued for an interim period not to extend longer than January 1, 1990. The establishment may continue preparing certain specified unlicensed biological products with the permission of the Deputy Administrator; *Provided*, that:

(1) Such unlicensed products had been prepared in the establishment within the 12 months prior to December 23, 1985.

* * * * *

(9) An exemption has been claimed for the unlicensed products produced in the establishment pursuant to § 114.2(d) of this subchapter.

(c) Except as provided in Part 103 and § 114.2(b), a biological product shall not be prepared in a licensed establishment unless the person to whom the establishment license is issued holds an unexpired, unsuspended, and unrevoked product license issued by the Deputy

Administrator to prepare such biological product, or unless the products prepared are subject to the provisions of § 107.2 of this subchapter.

Done at Washington, DC, this 17th day of November 1986.

John K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 86-26166 Filed 11-19-86; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-214-AD]

Airworthiness Directives: Boeing Model 737 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) which would require modification of the aft airstair operating handle detent plate on certain Boeing Model 737 airplanes to reduce the aft airstair operating handle loads. A previous modification of these airplanes can cause handle operating forces to become excessive, thereby jeopardizing successful evacuation of the airplane.

DATES: Comments must be received on or before January 12, 1987.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-214-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Gardlin, Airframe Branch, ANM-120S; telephone (206) 431-1932. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-214-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

Boeing Service Bulletin 737-52-1083, dated June 4, 1982, describes a modification to the aft airstair deployment handle mechanism to increase the force required to move the handle from the normal open to the emergency open position. The modification was developed to reduce inadvertent emergency mode operation. However, during certification testing, it was discovered that the modification may result in handle forces exceeding 100 pounds. Since the handle motion is downward, persons weighing less than 100 pounds would have difficulty operating the handle. In addition, the force required might mislead others, who could otherwise open the door, to believe the handle was jammed and to abandon the exit. In either case, the successful evacuation of the airplane could be jeopardized. A maximum force of 78 pounds, measured in accordance with Figure 7. of Boeing Service Bulletin 737-52-1083, Revision 1, November 12, 1982, has been found acceptable by the FAA.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require further modification of the aft airstair deployment handle to reduce operating forces which might be unacceptably high and might jeopardize the success of an emergency evacuation.

It is estimated that approximately 35 airplanes of U.S. operators would be affected by this AD, that it would take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Modification parts are estimated at $200 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $12,600.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

According pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.15 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Boeing Model 737 airplanes, equipped with an aft airstair on which the detent plate modification described in Boeing Service Bulletin 737-52-1083, dated June 4, 1982, or later revisions, has been incorporated; certificated in any category. Compliance is required within one year after the effective date of this AD.

To ensure usability of the aft airstair exit in the event of an emergency evacuation,

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accomplish the following, unless previously accomplished:

A. Remove the aft airstair operating handle detent plate which has been modified in accordance with Boeing Service Bulletin 737–52–1083, and install an unmodified Boeing P/N 65–60510–1 aft airstair operating handle detent plate.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 13, 1986.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 86–26137 Filed 11–19–86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86–NM–200–AD]

Airworthiness Directives: British Aerospace Model BAC 1–11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require periodic inspection, and repair or replacement, as necessary, of the keel beam lateral diaphragm assembly on all Model BAC 1–11 200 and 400 series airplanes. This action is prompted by reports of cracks in the radii of the flanges of the keel beam lateral diaphragms attached to the keel beam structure immediately below the saddle bracket. This condition, if left uncorrected, could result in a situation where the keel structure cannot carry design loads.

DATES: Comments must be received no later than January 12, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 86–NM–200–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Inc., Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 86–NM–200–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on Model BAC 1–11 200 and 400 series airplanes. There have been reports of cracks in the radii of the flanges of the keel beam lateral diaphragms attached to the keel beam structure immediately below the saddle bracket. This condition, if not detected and corrected, could lead to significant damage to the saddle bracket and the inability of the keel structure to carry design loads.

British Aerospace has issued BAC 1–11 Alert Service Bulletin 53–A–PM5918, dated May 6, 1986, which describes procedures for repetitive inspections for cracks in the saddle bracket diaphragms, closing plate, and web angles, and replacement or repair, as necessary, if cracks are found. The CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require inspection and repair or replacement, as necessary, in accordance with British Aerospace BAC 1–11 Alert Service Bulletin, 53–A–PM5918, dated May 6, 1986.

It is estimated that 60 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required inspection, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $4,800.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($80). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to all Model BAC 1–11 200 and 400 series airplanes, certificated in any category. Compliance is required prior to the accumulation of 12,000 landings, or within the next 1,500 landings after the effective date of this AD, whichever occurs later.

To prevent failure of the keel structure to carry design loads due to structural crack propagation in the keel beam lateral diaphragm, accomplish the following, unless previously accomplished:

A. Inspect, and repair or replace, as necessary, the keel beam lateral diaphragm assembly in accordance with BAC 1–11 Alert Service Bulletin 53–A–PM5918, dated May 6, 1986.

B. Repeat the requirements of paragraph A., above, at intervals not to exceed 3,600 landings.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 1[illegible], 1986.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 86–26136 Filed 11–19–86; 8:45 am]

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14 CFR Part 39

[Docket No. 86–NM–208–AD]

Airworthiness Directives: McDonnell Douglas Model DC–9–10, –20, –30, –40, –50, and C–9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9 and C–9 (Military) series airplanes, which requires ultrasonic inspections of the wing flap hinge fitting attachment studs in accordance with a referenced service bulletin. This proposal would revise the AD to permit the use of later FAA-approved revisions to the applicable service bulletin.

DATE: Comments must be received no later than January 8, 1987.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (ATTN: ANM–103), Attention: Airworthiness Rules Docket No. 86–NM–208–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–L65 (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. John Cecil, Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514–6319.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 86–NM–208–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The FAA issued AD 79–03–01, Amendment 39–3403 (44 FR 5644), on January 17, 1979, to require repetitive ultrasonic inspections for cracking of wing flap hinge fitting studs at wing station X=333.148 on McDonnell Douglas DC–9 series airplanes, and replacement of cracked attachment studs. The AD was prompted by reports of cracked studs, attributed to fatigue. AD 79–03–01 specifically indicates that McDonnell Douglas Service Bulletin 57–118, dated November 4, 1977, is the only version of the service bulletin to be used for the accomplishment of the inspection and replacement procedures required by the AD.

FAA has reviewed and approved Revision 1 to McDonnell Douglas Service Bulletin 57–118, dated August 19, 1986, which provides additional procedures for inspecting certain wing flap hinge fitting attachment studs.

An amendment to AD 79–03–01 is being proposed to permit the use of both the original issue of McDonnell Douglas Service Bulletin 57–118 and later FAA-approved revisions to accomplish the requirements of AD 79–03–01.

This proposed AD would not increase the economic burden for any operator, since neither the applicability, the time intervals between inspections, the number of manhours to accomplish the modification, nor the parts used to accomplish the inspection, would be

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changed from that required by the existing AD.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model DC-9 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending AD 79-03-01, Amendment 39-3403 (44 FR 5644) as follows:

A. Change the words ". . . Douglas DC-9 Service Bulletin 57-118 dated November 4, 1977," found in paragraphs (a), (b)2, and (b)4, to read: ". . . McDonnell Douglas DC-9 Service Bulletin 57-118, Revision N.C., dated November 4, 1977, or later FAA-approved revision."

B. Delete the note found in section (a), which reads: "*NOTE:* Service Bulletin 57-118, dated November 4, 1977, is the only version of this Service Bulletin suitable for compliance with paragraphs (a) and (b) of this AD."

C. Change the words ". . . Chief, Aircraft Engineering Division, FAA Western Region," found in paragraphs (d) and (e), to read: ". . . Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region."

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-L65 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on November 12, 1986.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-26139 Filed 11-19-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154 and 271

[Docket No. RM87-5-000]

Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines

Issued: November 14, 1986.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of inquiry.

SUMMARY: The Federal Energy Regulatory Commission is issuing a notice of inquiry to investigate allegations of anticompetitive activity related to the relationship between interstate pipelines and their marketing affiliates. The notice of inquiry is intended to elicit constructive discussion on how to ensure competitive business practices by pipelines and their marketing affiliates in the natural gas sales and transportation markets. The notice of inquiry solicits comments on the Commission's legal authority to regulate pipeline-affiliated marketers, and the relevance of antitrust law toward this end. The notice also seeks comment on any evidence of unduly discriminatory transportation rates and conditions, capacity preferences, cross-subsidization, use of insider information, and the assignment of a pipeline's merchant function to an affiliated marketer. Commenters are also asked to discuss possible remedies, if the evidence ultimately discloses the actual existence of undue discrimination by interstate pipelines and their marketing affiliates. The notice invites all interested persons to participate in the inquiry and to bring to the Commission's attention any other matter which they believe will be useful to this inquiry.

DATES: Written comments must be received on or before December 29, 1986; an original and 14 copies should be filed.

ADDRESS: All comments should refer to Docket No. RM87-5-000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Peter J. Roidakis, Office of the General Counsel, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8224.

SUPPLEMENTARY INFORMATION:

[Docket No. RM87-5-000][1]

Notice of Inquiry

November 14, 1986.

I. Introduction

The Federal Energy Regulatory Commission is initiating an inquiry into the effects on competition in natural gas markets of certain pipeline business practices involving marketing affiliate relationships that have been alleged to have an anticompetitive impact.

The Notice of Inquiry (NOI) will focus on potential anticompetitive activity related to the alleged abuse of a pipeline's relationship with marketing affiliates.[2] It is intended as a broad inquiry into pipeline marketing affiliate practices, and the potential anticompetitive activities related to preferential advantages granted to the pipeline's marketing affiliate in transactions involving the natural gas sales and transportation markets.

II. Background

A. Changes in Industry Structure

The maturing of the natural gas industry and the phased removal of wellhead pricing under the Natural Gas Policy Act of 1978 (NGPA) have brought major changes to the natural gas industry over the past decade. The primary change has been the evolution of natural gas into a distinct economic commodity, separate from transportation, storage, and other related services. This change was in large part engendered by the decision of Congress in the NGPA to remove both price and non-price regulation from most first sales of natural gas (*see* NGPA sections 121 and 601(a)(1)). The result has been the evolution of a competitive spot market for gas, with brokers, marketers and producers competing for sales, often without the requirement of prior regulatory approval as to market entry, exit, or price. In addition, the development of a nationwide pipeline grid provides nationwide access to gas supplies, so long as there is non-discriminatory access to transportation facilities.

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[1] This notice of inquiry is being initiated in Docket No. RM87-5-000, and subsumes the interstate pipeline-marketing affiliate issues raised in the existing docketed petitions for rulemaking on these issues of Hadson Gas Systems, Inc. in Docket No. RM86-19-000, the Minnesota Department of Public Service in Docket No. RM87-1-000, and Shell Gas Trading Company in Docket No. RM87-2-000; those petitions are noticed herein. Answers already filed in the previously assigned dockets and related to interstate pipeline-marketing affiliate issues will be considered under Docket No. RM87-5-000. The Commission wishes to make clear that all interstate pipeline-marketing affiliate issues raised by Hadson, Minnesota, and Shell, even if not specifically referred to in the NOI text, are open for comment by any interested person.

[2] This is intended to include affiliated marketers of interstate pipelines only. It is not an inquiry into the affiliated entities limitation under section 601(b)(1)(E) (1982). The Commission states, however, that pending "affiliated entities test" cases (e.g., Tennessee Gas Pipeline Co., Docket No. TA82-2-9-000 *et al.*) will go forward and be dealt with by separate orders in those cases. In other words, no delay will be caused for those cases by the NOI.

Order Nos. 380,[3] 436,[4] and 451 [5] responded to these changed conditions in the natural gas industry. These orders were intended to remove certain barriers to competition, to further access to non-discriminatory transportation and to enhance the environment for market-responsive pricing.

Within this new environment, there has been increasing attention to the fact that many major pipelines are part of an integrated matrix of vertically and/or horizontally integrated companies. More specifically, attention has been directed by segments of the natural gas industry in claims filed with the Commission to potentials for abuse by interstate pipeline companies and their marketing affiliates, given the monopolistic nature of the transportation network in many areas.

The Commission has previously considered that possibility. In Order No. 436, for example, the Commission found that preference for affiliates was undue discrimination.[6] It indicated that "transportation tariffs, terms and conditions, including but not limited to prices, minimum volume or operational requirements, or schedules that are designed to favor pipeline affiliates over non-affiliated shippers are preferential or unduly discriminatory practices".[7] Also, in regard to selective discounting, the Commission established reporting requirements designed to limit the potential for affiliate transaction abuse, and required identification of the spread between chargeable and actually charged rates for shippers, and identification of any corporate affiliation with the shipper. *See* 18 CFR 284.7(d)(5). Broadly construed, these guidelines were intended to define the prohibited conduct, and to determine that the abuse of market power to influence the gas markets would not be tolerated.

Allegations of discrimination too subtle to be prevented even by these guidelines, however, have been made in the specific cases listed in section II.B below, as well as in petitions for rulemaking filed by Hadson Gas Systems, Inc., in Docket No. RM86-19-000, the Minnesota Department of Public Service, Energy Issues Intervention Office (EIIO), in Docket No. RM87-1-000, and Shell Gas Trading Company, (Shell), in Docket No. RM87-2-000. In light of these allegations and the further changes impending as a result of Order No. 451, the Commission has determined to issue this Notice Docket No. RM87-5-000 of Inquiry to ascertain whether the potentials for abuse reflected in the petitions and existing cases are actual anticompetitive barriers that should be remedied in a generic rule.

The Commission wishes to emphasize that its decision to issue this Notice is not intended and should not be construed as any retreat from its current commitment to pursue promptly and vigorously allegations of undue discrimination involving affiliated companies as it has done in the existing cases described in the next section. The Commission will continue to have several options for responding to affiliate discrimination issues, such as those raised by EIIO, Hadson, Shell and others, as well as the Commission on its own motion. These options include individual cases, enforcement investigation and rulemaking in addition to this Notice of Inquiry.

B. Some Cases With Marketing Affiliate Issues

The potential for pipeline affiliate abuse has already been alleged in actual disputes that have arisen in several cases. Some examples include *Northern Natural Gas Company*, Docket No. RP82-71-000 *et al.*, 20 DERC ¶ 61,040 (1982), where affiliate Enron allegedly required Northern Natural to modify its gas acquisition guidelines in order to maximize parent-company profits, which meant Northern could not pursue a least-cost gas acquisition policy for its customers; *Mountain Fuel Resources, Inc.*, Docket No. RP86-87, 36 FERC ¶ 61,150 (1986), and *ANR Pipeline Company*, Docket No. RP86-105, 35 FERC ¶ 61,400 (1986), where technical conferences were convened to Docket No. RM87-5-000 examine assertions of discriminatory transportation in favor of affiliates; and *Independent Petroleum Association of Mountain States (IPAMS)* v. *Panhandle Eastern Pipe Line Company*, Docket No. CP86-584, 36 DERC ¶ 61,282 (1986), where a hearing was ordered on allegations that Panhandle Eastern gave insider information to its marketing affiliate. Other cases include the *Southern Natural Gas Company* (SONAT) NGA section 7(c) case in Docket Nos. CP86-277-001 *et al.*, 36 FERC ¶ 61,275 (1986), related to its transportation policy and whether it was discriminatory, and *Texas Gas Transmission Corporation*, Docket No. CP86-349-001, 36 FERC ¶ 61,274 (1986), in which the Commission also required a log be kept of requests for transportation and their disposition as it did in the SONAT case. There are also several pipeline limited term abandonment (LTA) cases, with non-discriminatory requirements required by the Commission for released gas and program operation.[8] Although the Commission does not intend generally to defer action on pending cases or enforcement matters simply on the basis of the NOI, it has decided, by separate order, to stay the proceedings in *Tenngasco Corporation, et al.*, Docket No. CI86-168-000. As stated in that order, in light of the conflicting interpretations surrounding the intended scope of that proceeding the Commission has stayed that proceeding pending further consideration of the matter and its ruling on the motions of Tenngasco and Nagasco for reconsideration and rehearing.

III. Discussion

The Commission's objective in this Notice is to elicit constructive discussion on how to ensure competitive business practices in the natural gas sales and transportation markets by pipelines and their marketing affiliates. The Commission solicits general comments related to the issues already outlined and discussed further below, as

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[3] 49 FR 22778 (1984), FERC Stats. & Regs. [Regs. Preambles 1982-1985] ¶ 30,571.

[4] 50 FR 42408 (1985), FERC Stats. & Regs. [Regs. Preambles 1982-1985] ¶ 30,665.

[5] 51 FR 22168 (1986), FERC Stats. & Regs. ¶ 30,700.

[6] *See* 50 FR 42425 (Oct. 18, 1985).

[7] *Id.* at 42,434.

[8] *See e.g., Arkla Exploration Co.*, Docket No. CI86-376-000 *et al.*, 37 FERC ¶ 61,011 (1986), which stresses that as the Commission indicated in previous "LTA" orders, such certificates are conditioned on releasing program gas equally for all producer-suppliers and administering such LTA programs in a non-discriminatory manner. *See also Southern Natural Gas Company*, Docket No. CI86-371 *et al.* ("Southern shall offer to enter into releases and administer the program with all its producer-suppliers in a non-discriminatory manner. . . .") 36 DERC ¶ 61,401 at 62,014 (1986); *Tennecon Oil Co., et al.*, Docket No. CI86-254-000 *et al.* ("Under the Natural Gas Act Tennessee is required to release gas in a non-discriminatory manner. . . .") 36 FERC ¶ 61,399 at 62,006 (1986).

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well as answers to specific questions which the Commission believes will assist it in providing a generic solution, if needed, for these alleged problems. In addition, commenters are encouraged to bring to the Commission's attention any other matter which they believe will be useful to this Inquiry.

A. General Subjects on Which Comments are Solicited

1. The Commission's Legal Authority

The Natural Gas Act [9] and related case law prohibit any "undue discrimination." When similarly situated customers are accorded significantly different treatment, the regulated company must demonstrate the basis for discrimination. *Public Service Co. of Indiana* v. *FERC,* 575, F.2d 1204, 1213 (7th Cir. 1978)). In examining allegedly anticompetitive restrictions, the Commission has also adopted the "least competitively restrictive alternative test" which requires consideration of (1) any negative restrictions on competition and (2) the scope and duration of the restrictions, (3) whether an advantage to the public interest exists, (4) whether any alternative courses of action are available, and (5) if there are no alternatives, whether the offending provision is severable. *City of Huntingburg* v. *FPC,* 498 F.2d 778 (D.C. Cir. 1974). The Commission solicits comments on the application of these legal principles to this inquiry.

Shell raises the issue of whether a pipeline marketing affiliate's sales are "first sales" under section 2(21) of the NGPA. Section 601 of the NGPA provides that the Commission's jurisdiction under the NGA will not apply to "first sales" which occur after December 1, 1978 which were not "committed or dedicated to interstate commerce" prior to November 9, 1978, or to NGPA sections 102(c), 103(c) or 107(c)(1–4) gas. Section 2(21) provides that a first sale is generally "any sale of any volume of natural gas—(i) to any interstate pipeline or intrastate pipeline; (ii) to any local distribution company; (iii) to any person for use by such person;" and (iv) any sale which precedes any of these sales, or which follows such sales, were defined as such by the Commission to avoid circumvention of maximum lawful prices. Section 2(21)(B) provides that the sales just described do not include "the sale of any volume of natural gas by any interstate pipeline, intrastate pipeline, or local distribution company, or any affiliate thereof, unless such sale is attributable to volumes . . . produced by such . . . pipeline, or local distribution company, or any affiliate thereof." 15 U.S.C. 3301(21). The Commission seeks comments on the proper construction of section 2(21) and 601 of the NGPA with respect to the regulation of pipeline affiliate marketers.

The Commission also seeks comments on whether the definition of "affiliate" in NGPA section 2(27) should be used in these proceedings, or whether other criteria for affiliation should be adopted. (*E.g.* an analogy from securities law could be used, where a 10% ownership interest in an entity is conclusive as to an affiliate relationship.) Lacking any special definition for "affiliate" for this proceeding, the NGPA definition would provide that "[T]he term 'affiliate', when used in relation to any person, means another person which controls, is controlled by, or is under common control with, such person." 15 U.S.C. 3301(27) (1982).

2. Relevance of Antitrust Law

Legal precedent indicates that antitrust concepts are involved in determining whether an action is in the public interest and that the Commission, though not bound by antitrust laws, "is obliged to weigh antitrust policy." *Northern Natural Gas Co.* v. *FPC,* 399 F.2d 953, 958 (1968). Specifically, petitioner Hadson has suggested that the following antitrust principles may be relevant to this Notice of Inquiry:

(1) Section 2 of the Sherman Act prohibits monopolization, which consists of the *power* to fix prices or to exclude competition. *Attempts* to monopolize are also proscribed by section 2 of the Sherman Act.

(2) Refusals to deal by one possessing monopoly power in one market in order to obtain monopoly "leverage" in *another* market are also forbidden. *See Otter Tail Power Co.* v. *United States,* 410 U.S. 366 (1973). The "essential facilities doctrine" relates to a type of refusal to deal where access is denied to an essential facility, creating a "bottleneck." Liability arises if the following elements are present: (a) Control of the essential facility by a monopolist, (b) a competitor's inability practically or reasonably to duplicate the essential facility, (c) the denial of the use of the facility to a competitor, and (d) the feasibility of providing access to the facility.

(3) Contracts, combinations, and conspiracies in restraint of trade are *per se* violations of section 1 of the Sherman Act, even without any specific intent to do so.

(4) Another *per se* violation is the "tying" arrangement, whereby a seller conditions the sale of a product or service on the buyer's purchase of a separate product or service (the "tied" product) from the seller. Such tie-ins are prohibited by section 1 of the Sherman Act and section 3 of the Clayton Act.

(5) Other *per se* violations include joint refusals to deal or group boycott, and territorial and customer market allocations.

(6) Even if not *per se* illegal, other agreements can violate section 1 of the Sherman Act if they are *unreasonable* restraints of trade. Thus, dealing arrangements which create unreasonable conditions for entry into the market in which the affiliated purchaser deals would violate section 1 of the Sherman Act. A rule of reason analysis is used in such cases. To evaluate activities under the rule of reason standard it must be determined whether the activities are intended to effect some legitimate business purpose of whether the primary thrust of the agreement is to produce an adverse effect upon competition. Commenters are encouraged to indicate the proper application of these (or other) antitrust principles to the subject of the inquiry.

3. Discriminatory Transportation Rates and Conditions

Undue discrimination allegedly may arise if the pipeline abuses its ability to provide flexible transportation rates under Order No. 436. By selectively "flexing" a higher or lower rate to an affiliated shipper, both EIIO and Hadson allege that a pipeline may be able to assure a sales market or ascertain capacity for the pipeline's marketing affiliate. Although Order No. 436 requires data on selectively discounted transportation rates, as described *supra,* it has been argued that this data may need to be supplemented with new regulatory requirements in order to prevent certain anticompetitive actions under all circumstances.

For example, EIIO argues that the Order No. 436 reporting data may not reach the situation where a pipeline imposes excessive balancing penalties that unaffiliated shippers cannot risk paying. An affiliated shipper would arguably run no real risk of paying the identical penalty, however, because any balancing penalty would only cause an "in-house" transfer of funds from the broker to the pipeline to the holding company.

Another possibility that has been brought to the Commission's attention by EIIO is that pipelines may report identical discount rates for affiliates and non-affiliates but attach different conditions (for example, a longer term) for affiliates. Such more favorable conditions need not be reported under the current regulations. (Or, alternatively, the pipeline could charge high rates that it is no burden for the affiliate to pay "in-house".) Another transaction EIIO asserts may evade detection would occur where a shipper purchases gas from an affiliated broker or producer, and then arranges its own transportation with the pipeline. In turn, it is intimated that the pipeline, knowing the shipper's gas source, may preferentially offer the shipper a flexed discount rate as an inducement to continue purchasing from the affiliate.

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[9] 15 U.S.C. 717c(b) (1982).

4. Capacity Preferences

The affiliated pipeline/marketer relationship also presents the potential for abuse of the Commission's first-come, first serve principle of capacity allocation for both firm and interruptible transporation.

The reservation charge is designed to allocate firm transportation service to those willing to pay the charge on a first-come, first-serve basis. This reservation fee is intended to deter overbooking of unneeded capacity. Overbooking, however, may not be deterred in the case of affiliated marketers. In effect, these marketers may costlessly overbook firm transportation capacity because any reservation fee would only cause an "in-house" transfer of funds from the marketer to the pipeline. Overbooking in this fashion may prevent other parties from obtaining firm transportation service although they place greater value on this service than the marketing affiliate.

Another potential abuse is the potential reselling of the overbooked firm transportation service or capacity by the marketer. Should a marketing affiliate hold title to a significant portion of unneeded capacity, it may seek to resell this capacity. It is unclear whether the price it obtains for this capacity would be regulated. If this were unregulated, the monopoly profits pipeline regulation is intended to prevent would then simply be shifted to the unregulated marketing affiliate.

The marketing affiliate may also be given undue preference in the allocation of interruptible service. This would occur as the pipeline's queue is stacked in favor of the marketing affiliate, giving it a higher value of service than others lower in line, especially if a last-on, first-off policy is also employed.

5. Release Preferences

The potential for marketing affiliate abuse can also be extended to the treatment of released gas. By controlling release of the gas to affiliated marketers only, a holding company may obtain these economic benefits to the exclusion of other marketers at the cost of increased prices for the pipelines' firm customers.

6. Cross-Subsidization

Where affiliated firms have centralized operating systems, and share common use of facilities and personnel, these common costs must be allocated among the separate firms. To the extent more of these operating costs can be allocated to the regulated firm, the unregulated firm (in this case, the marketing affiliate) can reduce its price, increase its sales, and increase the overall rate of return to the parent company. Comments are sought on whether this ordinarily beneficial centralization and efficient use of resources should be limited because of possible monopolistic misuse.

7. Insider Information

The use of "insider information" can result in discrimination against non-affiliated marketers. For example, where an affiliated marketer assertedly knows the available capacity levels at various locations within a pipeline system, petitioners Hadson and EIIO have argued that it can then determine a viable transportation route acceptable to the pipeline, while a competitor without this "inside information" may be unable to do so.

The pipeline's marketing affiliate unavoidable may have information on availability or nonavailability of pipline receipt points. This information may make it easier for the marketing affiliate to arrange a sale and successfully route the gas to its customer, according to petitioners Hadson and EIIO.

One possible means of alleviating the insider information problem, if it exists, is to prohibit the sharing of employees and offices between the pipline and its gas marketing affiliate, and to make equally available to all potential shippers simultaneously all information, including operational and localized capacity constraints, required to obtain transportation from the pipeline. Other remedies suggested by petitioners include further refined regulation or possibly requiring total divestiture of the marketing affiliate.

Petitioner Hadson also describes a scenario where pipelines require a marketer-shipper to disclose the entire upstream route of the gas proposed for transportation. This may limit the flexibility of the shipper to make alternative arrangements in the face of pipeline operational problems, to which only an affiliated marketing company would be privy. In the hands of a pipeline with a monopoly over transportation, Hadson argues that such requirements, while ostensibly innocent, can be used to exclude competition. Comments are sought on these issues.

8. Marketing Affiliate Assumption of Pipeline Merchant Role

Shell is concerned that there is a potential that a pipeline could transfer all of its gas purchase and sales operations, including all existing purchase and sales contracts, to a marketing affiliate. If this happens, there is a potential that the pipeline could become an open-access transporter under Order No. 436 without the overall corporate organization being subject to the contract demand conversion/reduction requirements of the Order. This would occur because the pipeline itself no longer has sales contracts with customers. Comments are requested on the extent to which this potential evasion of an Order No. 436 requirement is likely to occur in practice. Also, giving up capacity allocation responsibility to a marketer may offer other opportunities for evasion by a pipeline of its statutory and regulatory obligations. The Commission solicits comments on whether there are legal, economic, or other realities that would either prevent or promote such action by pipelines. What options does the Commission have to prevent, limit, or condition such action by pipelines? Are there other ways that affiliates can be used to avoid the requirements of Order No. 436? What are the Commission's options for dealing with these actions?

9. Remedies

The Commission also seeks comments on what the remedies should be once a finding of undue discrimination or anticompetitive behavior is made. Particularly in the market at the very least need certain information to be made public by the pipeline or its marketing affiliate so they know when they have been discriminated against and so they will have data available to make out a *prima facie* case. Exactly what additional data should be made public is one of the subjects of this Notice of Inquiry. Furthermore, there must be a threat of strong penalties to restrain anticompetitive behavior, if, in fact, barriers to competition are being created by pipelines and their affiliated marketing companies. The Commission seeks comment on remedial options under the NGA, NGPA, antitrust law, or other authority.

Commenters are encouraged to offer discussions of a range of possible remedies to the potential marketing

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affiliate problems discussed above. The scope of these remedies could range from a "no-action" alternative that would rely entirely on the operation of the market, to a combination of market forces aided by minimum reporting requirements, to a "cost-based" monitoring of marketing affiliates, to divestiture of marketing affiliates as contrary to the public interest, or a requirement that they merge into the pipeline entity, or be deemed part of the pipeline entity, for NGA and other purposes.

Discussions of possible solutions should consider whether the proposed remedy reasonably assures the elimination of the abuse or tendency towards the alleged anticompetitive behavior in furtherance of the public interest. In other words, the Commission solicits proposed remedies to alleged problems that effectively promote competition while not attempting to punish. *See U.S.* v. *E.I. DuPont de Nemours & Co.*, 366 U.S. 316, 326–28 (1961).

B. Specific Questions for Response by All Commenters

The Commission believes responses to the following specific questions will be helpful in assessing the extent of the alleged anticompetitive barriers that are the subject of the Notice of Inquiry. These questions are asked *in addition to* comments solicited on the issues raised in the preceding discussion. In other words, interested persons are being asked to respond to *both* the preceding issues discussion and the questions posed for comment therein, *and* the questions listed below.

1. Which, if any, of the above-mentioned anticompetitive and discrimination concerns can be reduced to insignificance by increased competition among pipelines? Which ones will not be ameliorated by increased competition? Which ones will be worsened by competition?

2. What measures should the Commission develop to gauge the intensity of competition for gas and for transportation in particular markets?

3. What measures of economic performance should the Commission develop to gauge the efficiency of the natural gas pipeline industry, of individual pipelines, and of the system of regulation of pipelines?

4. Should the Commission impose jurisdiction over marketing affiliates of pipelines? If so, for determining accounting standards only, for determining accounting standards and information reporting requirements as needed from time to time, or for any other purpose?

5. Should the Commission develop and make extensive use of per se rules in regulating pipeline market structure and/or pipeline conduct, or should it rely primarily on case-by-case adjudication and rules of reason?

6. In particular, should the Commission adopt a per se rule that:

(a) Marketing affiliates of pipelines and pipelines must be separately incorporated.

(b) No person shall hold a position as employee and/or board member of both the pipeline and its marketing affiliate organizations.

(c) Marketing affiliates not be permitted access to the affiliated pipeline.

7. What definition of "anticompetitive behavior," "preferential treatment," "undue discrimination," and "affiliate" should be adopted for the purposes of this NOI?

8. What instances can be documented of actual or suggested preferential treatment to producers or customers who utilized an affiliated marketer?

9. Are there instances of pipelines and marketing affiliates lending natural gas to each other and other actions which relieve the affiliate of the same balancing requirements applicable to non-affiliated marketers or which provide the affiliate with gas on a preferential basis?

10. Have pipelines provided discounts through affiliated marketing entities to avoid application of the Commission's regulations regarding undue discrimination in transportation rates?

11. Should an expedited complaint procedure be established to facilitate redress for non-affiliated marketers of anticompetitive injury at the hands of pipelines and their marketing affiliates? How should such a procedure be structured?

12. What standards could the Commission impose in its regulations to promote arm's-length transactions between pipelines and their marketing affiliates?

13. What are the discriminatory, antitrust, or other implications of a pipeline assigning its sales contracts to its non-jurisdictional marketing affiliate prior to becoming an Order No. 436 open-access transporter, thus avoiding the contract demand reduction/ conversion requirements mandated in that rule?

14. When is a sale for resale in interstate commerce by an affiliate of an interstate pipeline a "first sale" under section 2(21) of the NGPA?

15. Should a distinction be made between such a sale by a marketing affiliate of an interstate pipeline which seeks to transport the gas which is purchased and sold *through the affiliate pipeline*, as opposed to other transactions by such affiliates?

16. Should a distinction be made between affiliates of former Class A interstate pipelines on the one hand, and Class B or C interstate pipelines, on the other?

17. Should a distinction be made for pipelines in the Outer Continental Shelf, on the grounds that the provisions of the Outer Continental Shelf Lands Act are adequate protection against undue discrimination in that area?

18. Assuming that the Commission finds that all marketing affiliates of interstate pipelines are subject to its NGA jurisdiction when they make sales for resale in interstate commerce, should the Commission divide such groups into classes, and authorize minimum NGA regulation (*e.g.*, blanket certificates with pregranted abandonment) for these affiliates not transporting gas from the sales in question through affiliated pipeline systems?

19. Does the Commission have jurisdiction over the margins to be charged by affiliated marketing companies, and if so, how should this jurisdiction be exercised?

20. Should notices of rate change as provided in section 4(d) of the NGA be waived by the Commission for spot sales by marketing companies?

21. What other measures should the Commission take to prevent undue discrimination by interstate pipelines in favor of their marketing affiliates through the granting of preferences, including but not limited to:

a. Allowing the affiliate marketing company early access to and knowledge of availability of gas released by the pipeline from its contracts.

b. Allowing preferred access to markets by recommending that potential customers contact the marketing affiliate.

c. Officially receiving pipeline affiliates requests for transportation under the first-Come, First-served rule ahead of other requests.

d. Processing transportation agreements more rapidly for affiliates than for others.

e. Expediting transportation certificates more rapidly where the shipper is an affiliate of the pipeline.

f. Permitting greater flexibility of receipt and redelivery points for affiliates than for others.

g. Placing pipeline affiliates lower on the list for interruption of interruptible capacity than non-affiliates.

h. Selective discounting in transportation rates in favor of affiliates over others.

i. Imposing stricter penalties for over and under deliveries for non-affiliates, either through the tariff or selective waivers thereof.

j. Lending or borrowing gas from affiliates to correct imbalances in affiliate transportation.

k. Installation of facilities to accept or deliver affiliates' gas, but refusing to do so for non-affiliates.

l. Transporting liquid or liquefiable hydrocarbons for affiliates at rates or conditions not offered to others.

m. Allowing processing opportunities to affiliates not available to others.

Commenters are asked to bring instances of what they believe to be undue discrimination as outlined above in 21(a–m) to the Commission's attention.

C. Specific Questions for Response by Pipelines

The following questions are addressed to interstate pipelines only, and are intended to gather information to help the Commission determine, on the basis of objective data, whether the allegations that have been made by Shell, Hadson, EIIO, and others have any basis.

22. Pipelines are asked to detail the organizational Structure of the pipeline and its corporate relationship to all corporate affiliates or subsidiaries including common employees.

23. Pipelines are asked to indicate, for 1985 and 1986, which producer/shippers, if any, have received transportation service from the pipeline without using the services provided by any marketing affiliate of the pipeline.

24. Pipelines are asked to provide what percentage and actual quantities of the pipeline's transportation involved a marketing affiliate in 1985 and 1986. How does this compare with the percentage of transportation provided for non-affiliates in 1985 and 1986?

25. Pipelines are asked to describe their policy with respect to requests for transportation service made by or on behalf of affiliated marketers, including but not limited to:

a. the basis of the transportation rate or applicable transportation tariff.

b. the average length of time it takes to arrange such transportation.

c. the average contract term (duration).

d. whether "released" gas is involved.

e. any and all other terms and conditions which are typically included in contracts with affiliates that would not typically be found in contracts with non-affiliates. (N.B. If this information is already on file, a pipeline may respond by referencing the location of the responsive information. The intent of the question is to identify under which specific tariffs or grandfathered authorizations the pipelines operate for affiliates, and for non-affiliates.)

26. Pipelines are asked to describe their policy with respect to requests for transportation service made by or on behalf of non-affiliated marketers, including but not limited to:

a. the basis of the transportation rate or applicable transportation tariff.

b. the average length of time it takes to arrange such transportation.

c. the average contract term (duration).

d. whether "released gas" is involved.

e. any and all terms and conditions which are typically included in contracts with non-affiliates that typically would not be found in contracts with affiliates, to the extent not already included in your answer to Question No. 25(e), above.

IV. Procedures For Comments

A. Written Comments

The Commission invites interested persons to submit comments, data, views, and other information concerning the matters set out in this notice.

To facilitate the Commission's review of the comments, commenters are requested to provide a 2–4 page executive summary of their position on the issues raised in this NOI. Commenters are requested to identify the page or section of the NOI that their discussion addresses and to use as many headings as possible. Additionally, commenters should double-space their comments, and only use white, 8½" by 11" paper.

The original and 14 copies of such comments must be received by the Commission before 5:00 p.m., Monday, December 29, 1986. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426 and should refer to Docket No. RM87-5-000.

All written comments will be placed in the Commission's public files and will be available for public inspection in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NW., Washington, DC 20426 during regular business hours.

B. Public Hearing

The Commission has not determined to convene a public conference for an oral presentation of views at this time. If any such conference is ultimately convened, the time, location and format will be published in the **Federal Register** at a later date.

(Natural Gas Act, as amended, 15 U.S.C. 717–717w; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432)

List of Subjects in 18 CFR Parts 154 and 271

Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–26207 Filed 11–19–86; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 155

[Docket No. 86N–0175]

Canned Dry Peas; Termination of Consideration of the Codex Standard

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking; termination of consideration.

SUMMARY: The Food and Drug Administration (FDA) is terminating consideration of amending the U.S. standards for canned dry peas based on the Codex Standard for Canned Mature Processed Peas (Codex Standard 81–1981) (Codex standard) because there is neither sufficient interest nor need to warrant proposing amendment of the U.S. standards for canned dry peas.

FOR FURTHER INFORMATION CONTACT: Howard A. Anderson, Center for Food Safety and Applied Nutrition (HFF–214), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–485–0118.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 30, 1986 (51 FR 19566), FDA published an advance notice of proposed rulemaking offering interested persons an opportunity to review the Codex Standard for Canned Mature Processed Peas and to comment on the desirability of, and need for, amendment of the U.S. standards of identity, quality, and fill of container for canned dry peas in 21 CFR 155.172. FDA requested comments by July 29, 1986, and stated that it would not propose to amend the standards for canned dry peas if the comments it received did not support this action.

One letter of comment from a trade association was received in response to the advance notice of proposed rulemaking. The comment did not support amendment of the U.S.

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standards of identity, quality, and fill of container for canned dry peas based on the Codex standard.

Having considered this comment, FDA has concluded that, at this time, there is neither sufficient interest nor need to warrant proposing amendment of the U.S. standards for canned dry peas under authority of section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341).

List of Subjects in 21 CFR Part 155

Food standards, Vegetables.

Therefore, under the procedures in 21 CFR 130.6, notice is given that the Commissioner of Food and Drugs has terminated consideration of amending the U.S. standards of identity, quality, and fill of container for canned dry peas based on the Codex standard. This action is without prejudice to further consideration of amending the U.S. standards of identity, quality, and fill of container for canned dry peas upon appropriate justification.

FDA will inform the Codex Alimentarius Commission that an imported food that complies with the requirements of the Codex standard may move freely in interstate commerce in this country, provided that it complies with applicable U.S. laws and regulations.

Dated: November 10, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86–26155 Filed 11–19–86; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

42 CFR Part 58

Grants for Graduate Programs in Health Administration

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed regulation would amend the existing regulations governing the program "Grants for Graduate Programs in Health Administration" to include a definition of "minority". This proposal also would revise the regulations to conform with the amendment to section 791 of the Act, as enacted on October 22, 1985, as part of Pub. L. 99–129, the Health Professions Training Assistance Act of 1985.

DATE: Comments must be received not later than January 20, 1987.

ADDRESSES: Send comments to: Public Health Professions Branch, Division of Associated and Dental Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–95, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number 301 443–6896.

FOR FURTHER INFORMATION CONTACT: Ronald B. Merrill, M.A., Senior Program Consultant; telephone number 301 443–6896.

SUPPLEMENTARY INFORMATION: Section 791 of the Public Health Service Act (the Act) authorizes the award of grants to public or nonprofit educational entities (including schools of social work and excluding schools of public health) to support graduate educational programs in health administration, hospital administration, and health planning.

Public Law 99–129 amended section 791(c)(2), which formerly required an applicant to provide an assurance that at least 25 individuals would complete the educational program. The amended provision allows an accredited graduate program in health administration to graduate 20 students, rather than 25, if more than 45% of the total enrollment of the program will be minority students in the school year beginning in the fiscal year for which funds are requested.

In accordance with this new assurance provision, the Department is proposing to include the following definition of "minority" in the regulations for this program.

"Minority" means an individual whose race/ethnicity is classified as American Indian or Alaskan Native, Asian or Pacific Islander, Black, or Hispanic.

The term "minority" as used in Pub. L. 99–129 was not defined. Since "minority" can be defined in various terms, e.g., economic, ethnic, language, racial, religious, sexual, etc., it is necessary to include a definition in the regulations to avoid confusion among the educational entities eligible to receive support under section 791.

The proposed definition was selected since it is consistent with the definition used in other Federal educational assistance programs, e.g., the Department of Education regulations for the Magnet School Assistance Program codified at 34 CFR Part 280.

Regulatory Flexibility Act and Executive Order 12291

These regulations govern a financial assistance program in which participation is voluntary. The rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291. For these reasons, the Secretary has determined this rule is not a major rule under Executive Order 12291 and a regulatory impact analysis is not required. Further, because the rule does not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required.

Paperwork Reduction Act of 1980

The information collection requirement in § 58.4 has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (OMB Approval Numbers 0915–0060 and 0915–0061).

List of Subjects in 42 CFR Part 58

Educational study programs, Grant programs—health, Health professions, Public health, Student aid.

Accordingly, Subpart A of 42 CFR Part 58 is proposed to be amended as set forth below.

(*Catalog of Federal Domestic Assistance,* No. 13.963, Grants for Graduate Programs in Health Administration)

Dated: September 30, 1986.

Robert E. Windom,

Assistant Secretary for Health.

Approved: November 6, 1986.

Otis R. Bowen,

Secretary.

PART 215—[AMENDED]

Subpart A—Grants for Graduate Programs in Health Administration

1. The authority citation is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended by 67 Stat. 631 (42 U.S.C. 216); sec. 791 of the PHS Act; 90 Stat. 2303–2304, 96 Stat. 2061, and 99 Stat. 543 (42 U.S.C. 295h).

2. Section 58.2 is amended by adding the following definition after the definition of "Graduate educational program" to read as follows:

§ 58.2 Definitions.

* * * * *

"Minority" means an individual whose race/ethnicity is classified as American Indian or Alaskan Native, Asian or Pacific Islander, Black, or Hispanic.

* * * * *

3. In § 58.4, paragraph (a) is revised to read as follows:

§ 58.4 What assurances must be provided in an application?

* * * * *

(a) At least 25 individuals will complete the graduate educational programs of the applicant for which the application was made in the school year beginning in the fiscal year for which an applicant receives a grant. However, if the number of minority students enrolled in the graduate health administration program in such school year will exceed a number equal to 45% of the number of all students that will be enrolled in the program, then the applicant must provide assurance that at least 20 individuals will complete the program; and

* * * * *

[FR Doc. 86-26162 Filed 11-19-86; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 685

[Docket No. 60964-6164]

Foreign Fishing; Pelagic Fisheries of the Western Pacific Region

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of withdrawal of proposed rulemaking and availability of amended fishery management plan and request for comments.

SUMMARY: NOAA withdraws a proposed rule to implement the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP) that appeared in the **Federal Register** on Tuesday, September 16, 1986 (51 FR 32808). The FMP has been amended by the Western Pacific Fishery Management Council (Council) in response to public comments; therefore, NOAA issues notice that the Council has submitted an amended FMP for review by the Secretary of Commerce (Secretary) which supersedes the FMP originally submitted by the Council. Copies of the resubmitted plan may be obtained from the Council at the address below.

DATE: Comments on the resubmitted plan should be submitted on or before January 23, 1987.

ADDRESS: Send comments to E. Charles Fullerton, Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731. Copies of the plan and its environmental assessment are available upon request from the Council at 1164 Bishop Street, Suite 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty Simonds (Executive Director, Western Pacific Fishery Management Council), 808-523-1368.

SUPPLEMENTARY INFORMATION: The Management Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*), requires that each fishery management council submit any fishery management plan it prepares to the Secretary for review and approval or disapproval. The Magnuson Act also requires that the Secretary, upon receiving the plan, must immediately publish a notice that the plan is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the plan.

Secretarial review of the Council-submitted FMP began August 11, 1986, and proposed implementing regulations were published in the **Federal Register** on September 16, 1986 (51 FR 32808). Public comment was requested on or before October 24, 1986. In response to public comments and comments from the Department of State, the Council amended the FMP on November 9, 1986. The Administrator of NOAA has determined that the amended FMP is a resubmission of the FMP requiring full Secretarial review under the Magnuson Act and has withdrawn the proposed rule published September 16, 1986. Proposed regulations to implement the resubmitted plan will be published within 30 days of receipt. The receipt date of the resubmitted FMP was November 10, 1986.

The resubmitted plan proposes: (1) To establish a review and implementation process for implementing area closures for foreign longline vessels in the FCZ, (2) to eliminate existing quotas on foreign longline catch in the open areas of the FCZ, (3) to require foreign longline vessels to submit effort plans and report catch data and fishery interactions with protected species in the FCZ, (4) to prohibit the use of drift gill nets in the FCZ, and (5) to establish a process to obtain data on the incidental catch of pelagic fishes in the FCZ by tuna pole-and-line and purse seine vessels. This FMP will replace most of the Preliminary Fishery Management Plan for Pacific Billfish and Oceanic Sharks implemented in 1980 at 50 CFR 611.61 and will regulate fishing in America Samoa, Guam, Hawaii, and U.S. possessions.

(16 U.S.C. 1801 *et seq*)

Dated: November 17, 1986.

William E. Evans,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

NOAA by this document withdraws the proposed rule that appeared at page 32808 in the **Federal Register** of Tuesday, September 16, 1986 (51 FR 32808).

[FR Doc. 86-26220 Filed 11-17-86; 4:24 pm]

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Notices

Federal Register
Vol. 51, No. 224
Thursday, November 20, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

National Poundage Quota for 1987—Crop Peanuts

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of proposed determination.

SUMMARY: The Secretary of Agriculture proposes that the national poundage quota for the 1987 crop of peanuts shall be 1,287,500 pounds.

The determination of the national quota is necessary to satisfy the statutory requirements of the Agricultural Adjustment Act of 1938, as amended (hereinafter referred to as "the Act").

DATE: Written comments must be received by December 5, 1986, in order to be assured of consideration.

ADDRESS: Send comments to Dr. Howard C. Williams, Director, Commodity Analysis Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013, (202) 447–3391. All written submissions will be made available for public inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday, in Room 3741–South Building, 14th and Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cypsy Banks,. Agricultural Economist, Agricultural Stabilization Service, USDA, Room 3732–South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–5953. The preliminary regulatory impact analysis describing the impact of implementing this determination will be available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice of determination has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major". It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, industries, Federal, State, or local governments or geographical regions, or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program that this final rule applies to are: Title—Commodity Loans and Purchases: Number 10.051, as found in the Catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

It has been determined that the Regulatory Flexibility Act is not applicable to this determination since ASCS is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this determination.

Section 358(q)(1) of the Act requires that the national poundage quota for peanuts for each of the 1986 through 1990 marketing years shall be established by the Secretary at a level that is equal to the quantity of peanuts in tons that the Secretary estimates will be devoted in each such marketing year to domestic edible, seed, and related uses. Section 358 further provides that the national poundage quota for any such marketing year shall not be less than 1,100,000 tons. The marketing year for the 1987 crop of peanuts runs from August 1, 1987 through July 31, 1988.

It is proposed that the national quota for the marketing year for the 1987 crop shall be 1,287,500 tons based on the following data:

Estimated Domestic Edible Use for the 1987–88 Marketing Year

	Tons
Domestic food	1,032,500
Seed	100,500
Related use:	
Crushing residual	128,750
Shrinkage	25,750
Total	1,287,500

In the *Oil Crops Situation and Outlook Yearbook*, July 1986, the Department published a revised peanut data series based upon a revised procedure for estimating domestic edible use. The revised procedure estimates domestic food use as the sum of: (1) Shelled peanuts used in primary products (less exports of prepared or preserved peanuts) and (2) domestic disappearance of roasting stock peanuts. Because these data do not include farm use, local sales and shrinkage, estimates of these uses have been included in the calculation of domestic edible requirements for the 1987–88 marketing year. This estimate was derived by comparing historical data showing the difference between total production and quantities of peanuts that were inspected. The estimate so derived was further refined by estimating, based on historical data, actual household use of peanuts on the producing farm. Seed use measures the quantity of peanuts expected to be needed to plant the succeeding (1988) crop. The seeding rate for this estimate was derived from survey data. The crushing residual is the inedible portion of farmer stock peanuts separated from the edible kernels during milling. Shrinkage is the weight loss occurring between harvest and production of the product. Both the shrinkage and crushing residual estimates were derived from inspection data.

Prior to the development of the revised procedure, domestic food use was estimated by applying the annual percentage change in the sum of shelled peanuts used in all primary products and apparent disappearance of roasting stock (reported in *Peanut Stocks and Processing*, National Agricultural Statistical Service, USDA) to the previous year's estimated domestic food use. Using the unrevised procedure, the 1986 national poundage quota was estimated to be 1,355,500 tons based on the following data:

Estimated Domestic Edible Use for the 1986–87 Marketing Year

	Tons
Domestic food	1,121,000
Seed	99,000
Related use (crushing residual)	135,500
Total	1,355,500

Had the revised procedure been used to determine the 1986 national poundage quota, it is estimated that the quota would have been 1,285,227 tons, about 5 percent less than the national poundage quota for the 1986 crop.

The revised data series eliminates the influence of trend growth of exports of inshell peanuts and peanut products from the domestic food use estimate. In addition, the revised procedure reflects more accurately survey data provided to the Department by peanuts handlers. This provides an improved measure of domestic food use.

Section 358(g)(2) of the Act requires the national poundage quota for a marketing year to be announced not later than December 15 preceding such marketing year.

Poundage quotas for the 1986–1990 crops of peanuts were approved by producers in a mail ballot held January 27–31, 1986.

Proposed Determination

A. Accordingly:

The national poundage quota for 1987-crop peanuts is hereby proposed to be 1,287,500 tons.

B. The statutory authority for this determination is: Sec. 358, 55 Stat. 88, as amended (7 U.S.C. 1358).

Signed at Washington, DC, on November 18, 1986.

Milton J. Hertz,

Administrator.

[FR Doc. 86–26300 Filed 11–18–86; 3:14 pm]

BILLING CODE 3410-05-M

Farmers Home Administration

Housing Preservation Grant Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The Farmers Home Administration (FmHA) announces that it is soliciting competitive applications under its Housing Preservation Grant (HPG) program. FmHA hereby announces that it will receive preapplications from December 2, 1986, and for ninety days thereafter until March 2, 1987.

DATE: The closing date for preapplications is March 2, 1987. Preapplications must be received by or postmarked on or before this date.

ADDRESS: Submission of preapplications will be to FmHA field offices; interested applicants must contact their State FmHA Office for this information.

FOR FURTHER INFORMATION CONTACT: John H. Pentecost, Senior Loan Officer, Multifamily Housing Processing Division, FmHA, USDA, Room 5337, South Agriculture Building, Washington, DC 20250, telephone (202) 382–8983 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: The regulations contained in 7 CFR Part 1944, Subpart N provide details on what information must be contained in the preapplication package. See 51 FR 17443, May 13, 1986. Entities wishing to apply for assistance should contact their FmHA State Office to receive further information and copies of the application package. Eligible entities for these competitively awarded grants include state and local governments, nonprofit corporations, Federally recognized Indian Tribes, and consortia of eligible applicants.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.433—Housing Preservation Grants. This program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V; 48 FR 29112, June 24, 1983). Applicants are also referred to 7 CFR Part 1944.674 and 1944.676 (d) and (e) for specific guidance on these requirements relative to the HPG program.

For FY 1987, HPG activities will continue to be limited to the homeowner aspect of the program. The Agency anticipates a proposed rule on the rental and cooperative portion of the preservation program within six months. Final rule and implementation of this aspect can be expected in time for use in the FY 1988 HPG program.

The funding instrument for the housing preservation grant program will be a grant agreement. The term of the grants can vary from one to two years, depending on available funds and demand. No maximum or minimum grant levels have been set, although, based on FY 1986 experience, the Agency anticipates that the average grant will be between $100,000 and $150,000 for a one-year proposal. For FY 1987, $19,140,000 is available and has been distributed under a formula allocation to States pursuant to 7 CFR Part 1940, Subpart L, Methodology and Formulas for Allocation of Loan and Grant Funds. Since the funding levels for FY 1987 is the same as FY 1986, States will receive the same initial allocation as last year.

Applications will be reviewed and rated on the project selection criteria contained in the regulations for the program. No additional points under the selection criteria will be awarded to current grantees as none will have been in operation long enough to achieve or nearly achieve the goals established for their current grant.

Decisions on funding will be based on the preapplications and notices of action on the preapplications should be made within 60 days of the closing date.

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Dated: November 14, 1986.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 86–26215 Filed 11–19–86; 8:45 am]

BILLING CODE 3410-07-M

Soil Conservation Service

Allis Sinkholes Critical Area Treatment RC&D Measure, Michigan

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Allis Sinkholes RC&D Measure, Presque Isle County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, State Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517–337–6702.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. A contact has been made with the State Historical Preservation Officer and concludes that it will have no effect on any cultural resources either eligible for or listed on the National Register of Historic Places. The State Archaeologist will be contacted if any land disturbance associated with this project and archaeological sites, features, or materials are encountered during actual construction. As a result of these findings, Mr. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for the installation of measures for critical area treatment. The planned works of improvement include the following items: 3,300 feet of rustic fence, 400 feet of stairway and 4 acres of seeding. Total construction cost is estimated to be $37,000, of which RC&D funds will pay 64% and local funds 36%.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner. The FONSI has been sent to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: November 7, 1986.

Homer R. Hilner,

State Conservationist.

[FR Doc. 86-26151 Filed 11-19-86; 8:45 am]

BILLING CODE 3410-16-M

Village of Berrien Springs—Flood Prevention RC&D Measure, Michigan

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Village of Berrien Springs RC&D Measure, Berrien County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, State Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517-337-6702.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. A contact has been made with the State Historical Preservation Officer and concludes that it will have no effect on any cultural resources either eligible for or listed on the National Register of Historic Places. The State Archaeologist will be contacted if any land disturbance associated with this project and archaeological sites, features, or materials are encountered during actual construction. As a result of these findings, Mr. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for the installation of measures for flood prevention. The planned works of improvement include the following items: 2,050 linear feet of levee and a pumping plant for internal drainage. Total construction cost is estimated to be $90,000, of which RC&D funds will pay 78% and local funds 22%.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner. The FONSI has been sent to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: November 7, 1986.

Homer R. Hilner,

State Conservationist.

[FR Doc. 86-26152 Filed 11-19-86; 8:45 am]

BILLING CODE 3410-16-M

Big Sandy Salinity Control Plan, Colorado River Salinity Control Program, Wyoming; Intent To Prepare an Environmental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the Big Sandy River Salinity USDA Salinity Control Plan in Sweetwater County, Wyoming.

FOR FURTHER INFORMATION CONTACT: Mr. Frank S. Dickson, Jr., State Conservationist, Soil Conservation Service, Room 3124, 100 East B Street, Casper, Wyoming 82601, telephone 307-261-5201.

SUPPLEMENTARY INFORMATION: The Soil Conservation Service had published a Findings of No Significant Impact (FONSI) for this project in the Federal Register, Vol. 51, No. 123, Thursday, June 26, 1986. As a result of comments relating to irrigation induced wetlands and an irrigation induced perennial stream, Frank S. Dickson, Jr., State Conservationist, has determined that the preparation and review of an environmental impact statement are needed for this project.

The Selected Plan calls for the following structures to be installed on a maximum of 15,700 acres of irrigated land to reduce salinity in the Colorado River Basin.

Distribution Pipeline and Risers
Motor, Pumps, and Valves
Low Pressure Sprinkler Irrigation Systems
Automated Border Irrigation Systems
Irrigation Wasteway System
Voluntary Wildlife Habitat Development and Enhancement (Wetland and Upland)

Actual acreage would vary depending on individual participation in the program. Participation would be voluntary and implemented through long-term contracts administered by the USDA Agricultural Stabilization and Conservation Service. Technical assistance for conservation planning, implementation of planned practices, assistance to realize irrigation water management objectives, and installation of wildlife practices would be provided by the Soil Conservation Service. A project team would consist of soil conservationists, an irrigation water management specialist, engineers, a biologist, civil engineering technicians, and soil conservation technicians. Additional irrigation water management assistance would be provided by the Cooperative Extension Service.

Other alternatives were investigated and included the following:

No action
Improved Water Management and Minimal Structural Improvements
High Pressure Sprinkler
Combination Sprinkler—Automated Border Systems
Land Retirement
Irrigation Retirement
Irrigation Water Reduction
Pump Saline Well Water to Evaporation Ponds

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement.

No additional scoping meetings are proposed. The written comments and subsequent meetings with commentors on the FONSI have scoped the issues that will be addressed in the environmental impact statement.

(Catalog of Federal Domestic Assistance Program No. 10.902, Conservation Operations Program. Executive Order No. 12372 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: November 10, 1986.

Frank S. Dickson,

State Conservationist.

[FR Doc. 86-26180 Filed 11-19-86; 8:45 am]

BILLING CODE 3410-16-M

Dry Creek Watershed, Oklahoma; Availability of a Record of Decision

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of a record of decision.

SUMMARY: Roland R. Willis, responsible federal official for projects administered under the provisons of Pub. L. 83-566 16, U.S.C. 1001-1008, in the State of Oklahoma, is hereby providing notification that a record of decision to proceed with the installation of the Dry Creek watershed project is available. Single copies of this record of decision may be obtained from Roland R. Willis at the address shown below.

FOR FURTHER INFORMATION CONTACT: Roland R. Willis, State Conservationist, Soil Conservation Service, USDA Agricultural Center Building, Stillwater, Oklahoma 74074, telephone (405) 624-4360.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials)

Dated: November 12, 1986.

Donald R. Vandersypen,

Asst. State Conservationist (WR).

[FR Doc. 86-2681 Filed 11-19-86; 8:45 am]

BILLING CODE 3410-16-M

High Sierra RC&D Measures, California; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Critical Area Treatment Measures, in the High Sierra RC&D area, California.

FOR FURTHER INFORMATION CONTACT: Mr. Eugene E. Andreuccetti, State Conservationist, Soil Conservation Service, 2121-C 2nd Street, Davis, California 95616-5475, telephone (916) 449-2848.

SUPPLEMENTARY INFORMATION: The environmental assessment of this Federal action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Eugene E. Andreuccetti, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for these measures.

These measures concern a plan for critical area treatment. The planned works of improvement include erosion control practices such as drop inlet pipe structures, diversion trenches, minor grading and shaping, and revegetation of exposed and critically eroding areas.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. The basic data developed during the environmental assessment are on file and may be reviewed by contracting Mr. Eugene E. Andreuccetti.

No administrative action or implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10,901, Resource Conservation and Development Program-Pub. L. 87-703, 16 U.S.C. 590 a-f, q)

Dated: November 12, 1986.

Eugene E. Andreuccetti,

State Conservationist.

[FR Doc. 86-26182 Filed 11-19-86; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 34-86]

Proposed Foreign-Trade Zone—Brunswick, GA; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Brunswick Foreign-Trade Zone, Inc., a Georgia private corporation, requesting authority to establish a general-purpose foreign-trade zone in Brunswick, Georgia, within the Brunswick Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on November 7, 1986. The applicant is authorized to make this proposal under section 52-10-4 of the Code of Georgia Annotated.

The proposed foreign-trade zone involves 3 sites totalling 158 acres in Brunswick, Glynn County. Site 1, located on Bay Street adjacent to the Georgia Ports Authority East River Terminal, is a 16-acre manufacturing facility for Concrete Products Corporation (CPC), an affiliate of the applicant. Site 2 is a 32-acre parcel on

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Lanier Blvd. at 4th Avenue, and Site 3 is a 110-acre parcel on the Brunswick River at Main Street. The facilities are owned and operated by either CPC or the applicant.

The application contains evidence of the need for zone services in the Brunswick area for the warehousing/distribution of chemicals, wood/paper products, insulation materials, computer supplies, and food products. No approvals for manufacturing are being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Howard Cooperman, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southeast Region, 99 S.E. 5th St., Miami, FL 33131; and Colonel Stanley G. Genega, District Engineer, U.S. Army Engineer District Savannah, P.O. Box 889, Savannah, GA 31402.

As part of its investigation, the examiners committee will hold a public hearing December 10, 1986, beginning at 9:00 a.m., in the conference room of the Brunswick Chamber of Commerce, 4 Glynn Ave., Brunswick.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by December 2. Instead of an oral presentation written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through January 15, 1987.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Port Director's Office, U.S. Customs
Service, 1609 Gloucester St.,
Brunswick, GA 31521

Office of the Executive Secretary,
Foreign-Trade Zones Board, U.S.
Department of Commerce, Room 1529,
14th and Pennsylvania, NW.,
Washington, DC 20230.

Dated: November 13, 1986.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 86–26188 Filed 11–19–86; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Certain Cotton Textile Products Produced or Manufactured in Guatemala Effective on January 1, 1987; Import Restraint Limit

November 14, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1987. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

The Bilateral Textile Agreement, effected by exchange of notes dated April 3, 1985, between the Governments of the United States and Guatemala establishes a specific restraint limit of 5,674,180 square yards for cotton yarn-dyed fabrics in Category 310/318, produced or manufactured in Guatemala and exported during the agreement year beginning on January 1, 1987 and extending through December 31, 1987. The letter which follows this notice directs the Commissioner of Customs to prohibit entry for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 310/318, produced or manufactured in Guatemala and exported during the year beginning on January 1, 1987 and extending through December 31, 1987, in excess of the designated restraint limit.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

William H. Houston III,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 14, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated April 3, 1985, between the Governments of the United States and Guatemala; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 310/318, produced or manufactured in Guatemala and exported during the twelve-month period beginning on January 1, 1987 and extending through December 31, 1987, in excess of 5,674,180 square yards.

This limit is subject to adjustment in the future according to the provisions of the bilateral agreement, which provide, in part, that: (1) The specific limits may be adjusted for carryover and carryforward and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumpton to include entry for consumption into the Commonwealth of Pureto Rica.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

William H. Houston III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–26183 Filed 11–19–86; 8:45 am]

BILLING CODE 3510-DR-M

Certain Cotton Textile Products Produced or Manufactured in Peru; Adjustment of Import Limits

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 20, 1986. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

A CITA directive dated April 11, 1986 (51 FR 12907) established limits for certain specified categories of cotton and wool textile products, including Categories 313, 317, 319 and 320, produced or manufactured in Peru and exported during the twelve-month period which began on May 1, 1986 and extends through April 30, 1987. The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of January 3, 1985, as amended, under the terms of which these limits were established, also includes provision for the carryover of shortfalls from the previous agreement year in certain categories (carryover) and for percentage increases in certain designated categories (swing), provided that a corresponding reduction in equivalent square yards is made in another specific limit. Under the foregoing provisions of the bilateral agreement and at the request of the Government of Peru, the limits established for Categories 313 and 317 are being increased by carryover and swing for goods exported during the twelve-month period which began on May 1, 1986 and extends through April 30, 1987. The limits for Categories 319 and 320 are being reduced to account for the amount of swing applied to Categories 313 and 317.

Accordingly, in the letter published below, the Chairman of CITA directs the Commissioner of Customs to adjust the restraint limits previously established for Categories 313, 317, 319 and 320.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 14, 1986.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on April 11, 1986 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton and wool textile products, produced or manufactured in Peru and exported during the twelve-month period which began on May 1, 1986 and extends through April 30, 1987.

Effective on November 20, 1986, the directive of April 11, 1986 is hereby further amended to adjust the previously established limits for cotton textile products in Categories 313, 317, 319 and 320, as provided under the terms of the bilateral agreement of January 3, 1985, as amended: [1]

Category	Adjusted 12-mo restraint limit [1]
313	21,648,340 square yards.
317	18,647,315 square yards of which not more than 5,512,694 square yards shall be in Category 317–S.[2]
319	21,587,250 square yards.
320	15,398,905 square yards.

[1] The limits have not been adjusted to reflect any imports exported after April 30, 1986.

[2] In Category 317, only T.S.U.S. items 320.—through 331.—with statistical suffixes 50, 87 and 93.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-26164 Filed 11-19-86; 8:45 am]

BILLING CODE 3510-DR-M

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[1] The agreement provides, in part, that: (1) Specific limits and sublimits may be exceeded by not more than seven percent for swing in any agreement period, provided that a corresponding reduction in equivalent square yards is made in another specific limit; (2) these limits may be adjusted for carryforward and carryover up to 11 percent of the applicable category limit or sublimit; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

Certain Cotton, Wool and Man-Made Fiber; Textile Products From Singapore; Adjustment of Import Restraint Limits

November 14, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 14, 1986. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 31 and June 5, 1986, between the Government of the United States and Singapore provides, among other things, for percentage increases in certain categories during and agreement year for carryforward and swing, provided corresponding reductions in equivalent square yards are made in other specific limits or sublimits during the same year to account for the application of swing. Pursuant to the terms of the agreement, the import restraint limits established for Categories 340, 342, 604, 635, 638, 639 and 648, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986, are being increased.

The limits for Categories 331, 334, 335, 337, 338, 339, 435, 634, 640 and 659 pt. (infants' sets in TSUSA numbers 384.2105, .2115, .2120, .2125, .2646, .2647, .2648, .2649, .2652, .8651, .8652, .8653, .8654, .9356, .9357, .9358, .9359 and .9365) are being reduced to account for swing applied to the other categories.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 17, 1983 (48 FR 15175), May 3, 1983 (48 FR 119924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 47782), and in Statistical Headnote 5, Schedule 3 of the Tariff

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Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textiles Agreements.

November 14, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: On June 12, 1986, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption, of cotton, wool, and man-made fiber textile products in certain specified categories, produced or manufactured in Singapore and exported during the twelve-month period beginning on January 1, 1986 and extending through December 31, 1986, in excess of designated restraint limits. The Chairman further advised you that the restraint limits are subject to adjustment.[1]

Effective on November 14, 1986, the directive of June 12, 1986 is hereby amended to include adjusted restraint limits for the following categories:

Category	Adjusted 12-mo. restraint limit [2]
331	271,520 dozen pairs.
334	35,472 dozen.
335	133,459 dozen.
337	47,718 dozen.
338	375,382 dozen.
339	464,923 dozen.

[2] The limits have not been adjusted to account for any imports exported after December 31, 1985.

	12-mo. limit [3]
340	584,210 dozen.
342	85,600 dozen.
435	1,027 dozen.
604	1,496,100 pounds.
634	124,000 dozen.
635	251,450 dozen.
638	450,500 dozen.
639	3,263,500 dozen.
640	89,780 dozen.
648	1,533,000 dozen.
659–I [4]	146,452 pounds

[3] See footnote 1.

[4] In Category 659, only TSUSA numbers 384.2105, .2115, .2120, .2125, .2646, .2647, .2648, .2649, .2652, .8652, .8651, .8653, .8654, .9356, .9357, .9358, .9359 and .9365.

The Committee for the Implemenation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–26185 Filed 11–19–86; 8:45 am]

BILLING CODE 3510–DR–M

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[1] The agreement of May 31 and June 5, 1986 concerning cotton, wool and man-made fiber textile products from Singapore provides, in part, that: (1) Specific limits may be increased by not more than seven percent during an agreement year, provided that an equal quantity in square yards equivalent is deducted from another specific limit; (2) specific limits may be exceeded for carryover and carryforward up to 11 percent of the applicable category limit except that no carryover will be available in the first year of the agreement and no carryforward in the final agreement year; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementations of the agreement.

Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Turkey; Adjustment of Import Restraint Limits

November 14, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 21, 1986. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

On December 27, 1985, a notice was published in the **Federal Register** (50 FR 52985) which established specific limits for cotton sheeting in Categories 313 and plied acrylic yarn in Category 604–A (only T.S.U.S.A. number 310.5049), produced or manufactured in Turkey and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986. The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 18, 1985, also includes provision for the carryover of shortfalls from the previous agreement year in certain categories. Under the foregoing provisions of the bilateral agreement and at the request of the Government of the Republic of Turkey, the limits established for Categories 313 and 604–A are being increased by carryover for goods exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

Accordingly, in the letter published below, the Chairman of CITA directs the Commissioner of Customs to adjust the restraint limits previously established for these categories.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 14, 1986.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on December 20, 1985 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton and man-made fiber textile products, produced or manufactured in the Republic of Turkey and exported during 1986.

Effective on November 21, 1986, the directive of December 20, 1985 is hereby amended to adjust the previously established limits for cotton and man-made fiber textile products in Categories 313 and 604–A [1], as provided under the terms of the bilateral agreement of October 18, 1985:[2]

Category	Adjusted 1986 limit [1]
313	17,649,000 square yards
604–A	693,949 pounds

[1] The limit has not been adjusted to account for any imports exported after December 31, 1985.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–26186 Filed 11–19–86; 8:45 am]

BILLING CODE 3510–DR–M

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[1] In category 604, only T.S.U.S.A. number 310.5049.

[2] The agreement provides, in part, that specific limits may be increased by designated percentages for swing, carryover and carryforward; however, carryforward will not be available in the final twelve-month agreement period.

Change in Officials Authorized To Issue Certifications for Exempt Cotton Textile Products Exported from Pakistan

November 14, 1986.

The Government of Pakistan has notified the United States Government under the terms of the Bilateral Cotton Textile Agreement of March 9 and 11, 1982, that Mr. M. E. Jalbani is now authorized to issue certifications for exempt cotton textile products from Pakistan. The purpose of this notice is to advise the public of this change.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–26187 Filed 11–19–86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, December 2, 1986; Tuesday, December 9, 1986; Tuesday, December 16, 1986; Tuesday, December 23, 1986; and Tuesday, December 30, 1986; at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

November 17, 1986.

[FR Doc. 86–26208 Filed 11–19–86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Intent To Grant Exclusive Patent License

Notice is hereby given of an intent to grant to Martin Marietta Energy Systems, Inc. (MMES) of Oak Ridge, Tennessee, an exclusive license, with the right to sublicense, under U.S. Patent No. 4,200,801, entitled "Portable Spotter for Fluorescent Contaminants on Surfaces." The patent is owned by the United States of America, as represented by the Department of Energy (DOE).

The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 60 days of this notice the Assistant General Counsel for Patents, Department of Energy, Washington, DC 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention in the United States, in which applicant states that he has already brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The Department will review all written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued in Washington, DC, on November 13, 1986.

J. Michael Farrell,

General Counsel.

[FR Doc. 86–26224 Filed 11–19–86; 8:45 am]

BILLING CODE 6450-01-M

Office of Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement; Canada

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" pursuant to general license issued by the U.S. Nuclear Regulatory Commission.

The subsequent arrangement to be carried out under the above-mentioned authority involves approval of the following sale: Contract No. S–CA–397, for the sale of 1.001 grams of uranium enriched to 49.38 percent in the isotope uranium-235, for use as standard reference material by the University du Quebec A Montreal, Canada.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that his subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: November 17, 1986.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86–26222 Filed 11–19–86; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement; Government of the United States of America and Australia

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Australia concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval for the return of 85 kilograms of U.S. origin irradiated research reactor fuel from the

HIFAR reactor in Australia for reprocessing and storage in U.S. Department of Energy Facilities. The return of highly enriched uranium (HEU) is consistent with U.S. nonproliferation policy in that it serves to reduce the amount of HEU abroad.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice .

For the Department of Energy.

Dated: November 17, 1986.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86–26221 Filed 11–19–86; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement; International Atomic Energy Agency and the United States of America Government

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the International Atomic Energy Agency (IAEA) concerning Peaceful Application of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned-agreement involves approval of the following sale:

Contract No. S–IA–144, for the sale of 0.001 grams of plutonium-239, 9.481 grams of uranium, containing 0.5 percent uranium-235, 1.001 grams of uranium enriched to 34.9 percent in uranium-235, and 6.004 grams of uranium enriched to 10.1 percent in uranium-235, for use as standard reference materials by the IAEA, Vienna, Austria.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: November 17, 1986.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86–26223 Filed 11–19–86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA C&E–87–02; OFP Case No. 62022–9329–20–24]

Acceptance of Petition for Exemption and Availability of Certification by Florida Energy Partners Limited Partnership and Metropolitan Dade County

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance.

SUMMARY: On October 30, 1986, Florida Energy Partners Limited Partnership and Metropolitan Dade County (petitioners) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for a proposed cogeneration facility of approximately 27.9 MWs which will be constructed and owned by the petitioners but operated by South Florida Cogeneration Associates located in Miami, Florida, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503.

Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

The facility for which the petitioners are requesting a permanent exemption is to be comprised of one gas turbine generator having the capability of burning natural gas or #2 oil. The facility will also contain one waste heat recovery boiler and extraction/condensing steam turbine. The steam turbine will accept high pressure steam from the boiler and deliver low pressure steam and/or generate additional electricity. The facility will provide all the current and future electrical and air conditioning requirements for the Downtown Government Center. Florida Power & Light (FP&L) will purchase over 50 percent of electricity produced.

The gas and oil required to operate the system will be less than the sum of the gas and oil to be consumed by the cogeneration facility which would be consumed in the absence of the cogeneration facility. The facility's design output will be 27,900 kw and 53.2 MM BTU/hr as thermal energy output.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room lE–190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before January 5, 1987. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA–093, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA C&E–87–02 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Myra L. Couch, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA–093, Washington, DC 20585, Telephone (202) 252–6769.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), the petitioners have certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(b); and
2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

On May 22, 1986, DOE published in the **Federal Register** (51 FR 18866) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of a cogeneration FUA permanent exemption, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. The petitioners have certified that they will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

DOE's Office of Environment, in consultation with the Office of General Counsel, will review the completed environmental checklist submitted by the petitioners pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on the petitioners' petition that the grant or denial of exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

The acceptance of the petition by ERA does not constitute a determination that the petitioners are entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on November 13, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-26226 Filed 11-19-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-53; OFP Case No. 61056-9296-01, 02-12]

Order Granting to Basic American Foods Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order granting exemption.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), to Basic American Foods (Basic or "the petitioner"). The permanent exemption is based on lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section, below.

DATES: The order shall take effect on January 20, 1987.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Steven Mintz, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW, Room GA-076, Washington, DC 20585, Telephone (202) 252-9506.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW, Washington, DC 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: On August 12, 1986, Basic petitioned ERA under section 212(a)(1)(A)(ii) of the Act and 10 CFR 503.32 for a permanent exemption to permit the use of natural gas or No. 2 fuel oil as the primary energy source for two 85.5 MW (net, approximate) auxiliary boiler steam systems designed to produce electricity and process steam at its American I cogeneration project in King City, California. The units for which the exemption is sought will be operated less than 1500 hours annually.

Procedural requirements: In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the **Federal Register** on September 5, 1986 (51 FR 31798), commencing a 45-day public comment period. A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on October 20, 1986; no comments were received and no hearing was requested.

Order Granting Permanent Exemption

Based upon the entire record of this proceeding, ERA has determined Basic American Foods has satisfied the eligibility requirements for the requested permanent exemption, as set forth in 10 CFR 503.32. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent exemption to Basic American Foods, to permit the use of oil or natural gas as the primary energy source for its proposed auxiliary boilers located at their American I Cogeneration Project in King City, California.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register**.

Issued in Washington, DC on November 13, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-26225 Filed 11-19-86; 8:45 am]

BILLING CODE 6450-01-M

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Federal Energy Regulatory Commission

[Docket Nos. ER87-74-000 et al.]

Electric Rate and Corporate Regulation Filings; Central Illinois Light Co. et al.

November 14, 1986.

Take notice that the following filings have been made with the Commission:

1. Central Illinois Light Company

[Docket No. ER87-74-000]

Take notice that on October 31, 1986, Central Illinois Light Company (CILCO) tendered for filing an executed power coordination agreement with the Illinois Municipal Electric Agency (IMEA) providing for specified transmission service for the City of Rock Falls, Illinois (Rock Falls). Transmission service will be provided for power and energy supplied by City Water, Light and Power (CWLP) in Springfield, Illinois and delivered to Commonwealth Edison Company (CECO) of Chicago, Illinois. CILCO, with the support of IMEA, requests waiver of the Commission's notice requirements to permit an effective date of December 1, 1986.

Comment date: December 1, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. New England Power Company

[Docket No. ER87-63-000]

Take notice that New England Power Company ("NEP") on October 31, 1986 filed two notices of termination relative to the following rate schedules:

Rate schedule No.	Other party	Term
309	Public Service Company of New Hampshire.	Nov. 1, 1979 to Oct. 31, 1986.
320	Bangor Hydro-Electric Company.	Nov. 1, 1984 to Oct. 31, 1986.

NEP states that these rate schedules have terminated in accordance with their own terms.

Comment date: December 1, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. The Cincinnati Gas & Electric Company

[Doc. No. ER87-62-000]

Take notice that The Cincinnati Gas & Electric Company (CG&E) on October 31, 1986, tendered for filing a proposed change in its FERC Electric Tariff, First Revised Volume No. 1, Rider F, Fuel Cost Adjustment which would cancel and supersede the current rate schedule in said tariff. The proposed change would allow for the recovery of purchased power capacity charges through the Fuel Cost Adjustment Clause provided the energy purchased meets the criteria established by the FERC in Order No. 352.

The reason stated by CG&E for the change in rate schedule is:

To update the fuel cost adjustment clause in accordance with FERC Order No. 352 in Docket No. RM83-62-000.

Copies of the filing were served upon the Villages of Bethel, Blanchester, Georgetown, Hamersville and Ripley, municipalities in the State of Ohio; and The Union Light, Heat and Power Company, a wholly owned subsidiary of CG&E, which ultimately serves retail consumers and one wholesale custoemr within the Commonwealth of Kentucky; and the West Harrison Gas and Electric Company, a wholly owned subsidiary of CG&E, which ultimately serves retail consumers within the State of Indiana; the Public Utilities Commission of Ohio; the Kentucky Public Service Commission and the Public Service Commission of Indiana.

Comment date: December 1, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power Corporation

[Docket No. ER87-68-000]

Take notice that on October 31, 1986, Florida Power Corporation (Florida Power) tendered for filing a Letter of Commitment dated October 21, 1986 providing for firm interchange service between Florida Power and the Sebring Utilities Commission. Florida Power states that the Letter of Commitment is executed pursuant to Service Schedule D of the Contract for Interchange Service dated February 1, 1980 between Florida Power and the Sebring Utilities Commission which contract is designated as Florida Power's Rate Schedule FERC No. 90. The Letter of Commitment is submitted for inclusion as a supplement of Service Schedule D.

Florida Power requests that the Letter of Commitment be permitted to become effective November 1, 1986, and therefore, requests waiver of the sixty day notice requirement. Copies of this filing have been served upon the Sebring Utilities Commission and the Florida Public Service Commission.

Comment date: December 1, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Iowa Public Service Company

[Docket No. EC87-2-000]

Take notice that on October 31, 1986, Iowa Public Service Company ("Public Service"), an Iowa corporation with its principal office at 401 Douglas Street, P.O. Box 778, Sioux City, Iowa 51102, filed a proposal to sell to the Municipal Electric Facilities of Cedar Falls, Iowa ("Cedar Falls") a certain ownership interest in 345 kV electric transmission facilities located in Woodbury and Plymouth Counties, Iowa. Application for the proposed sale of a certain ownership interest in said facilities is filed pursuant to section 203 of the Federal Power Act and Part 33 of the Commission's Regulations thereunder.

Applicant states that it is engaged in the generation, interstate transmission and sale, and distribution and sale at retail of electric energy.

Public Service states that it desires to sell to Cedar Falls desires to purchase an ownership interest in capacity of 15 MW in the George Neal Unit 4 Transmission Facilities located in Plymouth and Woodbury Counties, Iowa.

Said interest in transmission facilities proposed to be sold by Public Service and purchased by Cedar Falls concerns a transmission line operated at 345 kV and located in Woodbury and Plymouth Counties, Iowa: Beginning at the Neal 4 Generating Station and extending north 2.12 miles to the Public Service Raun Substation, then extending 23.45 miles in a north and easterly direction to the Western Area Power Administration ("WAPA") Sioux City Substation located south of Hinton, Iowa. Said line is operated and maintained by Public Service on behalf of all owners.

Applicant states that a copy of this Application has been mailed to the Iowa Utilities Board.

Comment date: December 1, 1986, in accordance with Standard Paragraph E at the end of this document.

6. Iowa Public Service Company

[Docket No. EC87-3-000]

Take notice that on October 31, 1986, Iowa Public Service Company ("Public Service"), an Iowa corporation with its principal office at 401 Douglas Street, P.O. Box 778, Sioux City, Iowa 51102, filed a proposal to sell to Algona Municipal utilities, Algona, Iowa ("Algona") certain ownership interests in 345 kV electric transmission facilities located in Woodbury and Plymouth Counties, Iowa. The Application for the proposed sale of a certain ownership interest in said facilities is filed pursuant to section 203 of the Federal Power Act and Part 33 of the Commission's Regulations thereunder.

Applicant states that it is engaged in the generation, interstate transmission and sale, and distribution and sale at retail of electric energy.

Public Service states that it desires to sell and Algona desires to purchase an additional ownership interest in capacity of 2 MW in the George Neal Unit 4 Transmission Facilities located in Plymouth and Woodbury Counties, Iowa.

Said interest in transmission facilities proposed to be sold by Public Service and purchased by Algona concerns a transmission line operated at 345 kV and located in Woodbury and Plymouth Counties, Iowa: Beginning at the Neal 4 Generating Station and entending north 2.12 miles to the Public Service Raun Substation, then extending 23.45 miles in a north and easterly direction to the Western Area Power Administration ("WAPA") Sioux City Sub-station located south of Hinton, Iowa. Said line is operated and maintained by Public Service on behalf of all owners.

Applicant states that a copy of this Application has been mailed to the Iowa Utilities Board.

Comment date: December 1, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. Georgia Power Company

[Docket No. EC87-4-000]

Take notice that on October 31, 1986, Georgia Power Company ("GPC") tendered for filing an application for an Order authorizing the sale of approximately 167 miles of transmission lines to the City of Dalton, Georgia, acting through its Board of Water, Light and Sinking Fund Commissioners ("Dalton").

GPC states that the proposed sale is the second of such transactions with Dalton pursuant to an Intergrated Transmission System Agreement which provides for the establishment of an integrated transmission system operated by GPC to carry the loads of GPC, Dalton and the other participants therein free of charge (subject to the conditions of the Transmission Agreement), and which requires an aggregate investment by each party in transmission facilities comprising the integrated transmission system in the proportion the load of each (as defined in the Transmission Agreement) bears to the aggregate load on such system. GPC further states that Dalton's aggregate investment in such facilities has fallen below the required amount and that the proposed sale will permit Dalton to achieve its requisite investment, thereby eliminating Dalton's payments for transmission services for so long as Dalton maintains such requisite investment.

Comment date: December 1, 1986, in accordance with Standard Paragraph E at the end of this notice.

8. Public Service Company of New Mexico

[Docket No. ER87-37-000]

Take notice that on October 21, 1986, San Diego Gas & Electric Company (SDG&E) and Public Service Company of New Mexico (PNM) tendered for filing a statement of reasons for proposed termination of Precommercial Energy Sale and Purchase Letter Agreement between SDG&E and PNM.

Comment date: December 1, 1986, in accordance with Standard Paragraph E at the end of this notice.

9. Pacific Gas and Electric Company

[Docket No. ER87-97-000]

Take notice that on November 12, 1986, pursuant to 18 CFR 35.12, the Pacific Gas and Electric Company (PG and E) requested approval for a two-year experiment, and tendered for filing and acceptance the Western Systems Power Pool Agreement (WSPP Agreement) and its attached Service Schedules. PG and E submitted this filing on behalf of itself and the following Western System Power Pool (WSPP or Pool) member utilities: Arizona Public Service Company, El Paso Electric Company, Nevada Power Company, Pacific Power and Light Company, Portland General Electric Company, Public Service Company of New Mexico, San Diego Gas and Electric Company, and Southern California Edison Company; and with the following additional participants: Arizona Electric Power Cooperative, Inc., Bonneville Power Administration, Northern California Power Agency, Sacramento Municipal Utility District, Salt River Project, and Department of Water Resources of the State of California.

The WSPP Agreement has a term of 24 months commencing on the requested effective date of February 1, 1987, unless the Commission specifies otherwise and the Participants agree. No transactions under the experiment will commence until the Commission has accepted the filing.

Copies of this filing were served upon the customers taking service under the affected rate schedules and tariffs, and upon the public utility regulatory commissions of the states of Arizona, California, Idaho, Montana, Nevada, New Mexico, Oregon, Texas, Washington, and Wyoming.

Comment date: December 1, 1986, in accordance with Standard Paragraph E at the end of this document.

10. Portland General Electric Company

[Docket No. ER87-71-000]

Take notice that Portland General Electric Company ("Portland") on October 31, 1986, tendered for filing, as an initial rate schedule, the Settlement Exchange Agreement between the United States of America, Department of Energy, acting by and through the Bonneville Power Administration ("Bonneville") and Portland General Electric Company, executed September 17, 1985.

The Agreement provides for the exchange of power and energy which is expected to commence on January 1, 1987.

Portland requests an effective date of January 1, 1987, the date service is expected to commence under the Agreement.

A copy of the filing was mailed to Bonneville.

Comment date: December 1, 1986, in accordance with Standard Paragraph E at the end of this notice.

11. Puget Sound Power & Light Company

[Docket No. ER87-66-000]

Take notice that Puget Sound Power & Light Company ("Puget") on October 31, 1986, tendered for filing, as an initial rate schedule, the Settlement Exchange Agreement between by the United States of America, Department of Energy, acting by and through the Bonneville Power Administration ("Bonneville") and Puget Sound Power & Light Company, executed September 17, 1985.

The Agreement provides for the exchange of power and energy which is expected to commence on January 1, 1987.

Puget requests an effective date of January 1, 1987, the date service is expected to commence under the agreement.

A copy of the filing was mailed to Bonneville.

Comment date: December 1, 1986, in accordance with Standard Paragraph E at the end of this notice.

12. System Energy Resources, Inc.

[Docket No. ER87-60-000]

Take notice that on October 30, 1986, System Energy Resources, Inc. (SERI) tendered for filing pursuant to Part 35 of the Commission's Regulations under the Federal Power Act Third Revised Sheet Schedule A (Depreciation Expense) of the Billing format appended to the Unit Power Sales Agreement dated June 10, 1982, as amended, between SERI and Arkansas Power & Light Company

(AP&L), Mississippi Power & Light Company (MP&L), Louisiana Company (MP&L) and New Orleans Public Service Inc. (NOPSI). SERI states that Third Revised Sheet Schedule A, which has been filed in compliance with Order paragraph (H) of Opinion No. 234, 31 FERC ¶ 61,305 (1985) and Order Accepting Revised Rate Schedule for Filing, 35 FERC ¶ 61,427 (1986), establishes a 3.1% annual depreciation rate for calculation of depreciation expense for Unit 1 of its Grand Gulf Nuclear Station.

SERI propose to make the depreciation rate of 3.1% per year effective as of January 1, 1987, when permission to utlize the units-of-production depreciation method expires.

Copies of the filing were served upon AP&L LP&L MP&L and NOPSI, the public service commissions of Arkansas, Louisiana, Mississippi and Misssouri and the Council of the City of New Orleans.

Comment date: December 1, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be concidered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26205 Filed 11-19-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-179]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol; Order Granting Rehearing Solely For the Purpose of Further Consideration

Issued: November 13, 1986.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

On October 14, 1986, the Cincinnati Gas & Electric Company (CG&E), Union Light, Heat and Power Company (Union Light) and Mountaineer Gas Company (Mountainer) filed a joint request for rehearing of the Commission's "Order Granting In Part and Denying In Part Petition for Clarification" issued on September 11, 1986,[1] regarding Columbia Gas Transmission Corporation (Columbia).

In order to afford additional time for consideration of the issues raised in the request for rehearing, it is necessary to grant rehearing for the limited purpose of further consideration.

The Commission orders:

Rehearing is hereby granted for the limited purpose of further consideration. As provided in Rule 713(d) [2] of the Commission's rules of practice and procedure, no answers to the request for rehearing will be entertained by the Commission.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-26206 Filed 11-19-86; 8:45 am]

BILLING CODE 6717-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Report Forms Under OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission. The proposed report form under review is listed below.

DATE: Comments must be received on or before January 5, 1987. If you anticipate commenting on a report form, but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Liaison Officer of your intent as early as possible.

ADDRESS: Copies of the proposed report form, the request for clearance, (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Liason Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT: EEOC Agency Liaison Officer: Margaret P. Ulmer, Financial and Resource Management Services, Room 386, 2401 E. Street, NW., Washington, DC, 20507; Telephone (202) 634-1932.

OMB Reviewer: James Mason, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC, 20503; Telephone (202) 395-6880.

Type of Request: Extension of a currently approved collection

Title: Elementary-Secondary Staff Information EEO-5

Frequency of Report: Biennially

Type of Respondent: State or local governments

Standard Industrial Classification (SIC) Code: 821

Description of Affected Public: Public elementary and secondary school systems and districts with 15 or more full-time employees.

Responses: 61,184

Reporting Hours: 309,896

Federal Costs: $60,000.00

Applicable under Section 3504(h) of Public Law 95-511: Not applicable

Number of Forms: 2

Data are used by EEOC to investigate charges of employment discrimination against public elementary and secondary school districts. Data are shared with the Department of Education (Office for Civil Rights and Center for Statistics), Department of Justice, and 33 State and 56 local FEPC agencies.

For the Commission.

JoAnn Henry,

Acting Management Director, Equal Employment Opportunity Commission.

[FR Doc. 86-26148 Filed 11-19-86; 8:45 am]

BILLING CODE 6570-06-M

FEDERAL RESERVE SYSTEM

Acquisition of Banks or Bank Holding Companies; Norris Kuenzel

The notificant listed below has applied for the Board's approval under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notice are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 5, 1986.

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[1] 36 FERC ¶ 61,269 (1986).

[2] 18 CFR 385.713(d) (1986).

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Norris Kuenzel*, Garnavillo, Iowa, to acquire 23.46 percent of the voting shares of Garnavillo Bank Corporation, Garnavillo, Iowa, and thereby indirectly acquire Garnavillo Savings Bank, Garnavillo, Iowa.

Board of Governors of the Federal Reserve System, November 14, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-26170 Filed 11-19-86; 8:45 am]

BILLING CODE 6210-01-M

Chemical New York Corp.; Proposal To Engage in Commercial Paper (or Other Short-Term Promissory Note) Placement Activities

Chemical New York Corporation ("Applicant"), New York, New York, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage in the activity of acting as agent for issuers of short-term promissory notes (including commercial paper) in connection with the placement of such notes with institutional purchasers. In addition to acting as agent for issuers of commercial paper, Applicant may provide, on a non-fee basis, information about market conditions to issuers.

Applicant would engage in the activities indirectly through Chemical Securities, Inc. ("Company"), New York, New York, a wholly-owned subsidiary. Applicant has previously applied for approval under § 225.25(b)(16) of Regulation Y (12 CFR 225.25(b)(16)) to underwrite and deal in U.S. government and municipal securities and money market instruments that banks are expressly authorized to underwrite and deal in under section 16 of the Glass-Steagall Act (12 U.S.C. 24 Seventh). The foregoing activities are presently conducted by Applicant's principal banking subsidiary, Chemical Bank, but would be transferred to Company. Applicant proposes to expand Company's activities by transferring to it commercial paper placement activities currently being performed by Chemical Bank. The activities would be conducted throughout the United States principally through Company's offices in New York. Offices of Company may be established in other locations in the future as Company may deem necessary and appropriate.

Section 4(c)(8) of the Bank Holding Company Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." The Board has not previously approved the proposed activities for bank holding companies.

Applicant states that the activities are so closely related to banking or managing or controlling banks as to be a proper incident thereto on the basis that banks engage in the activities, and because the activities are the functional equivalent of extending a short-term commercial bank loan to customers.

Commercial paper constitutes a security for purposes of the Glass-Steagall Act, which restricts the third party securities activities of banks and affiliates of banks. Section 20 of that Act (12 U.S.C. 377) prohibits affiliates of banks from being "engaged principally in the issue, flotation, underwriting, public sale, or distribution" of securities. In Applicant's opinion, it would not be engaged in such activities on the basis that the activities are limited to acting solely as agent for the customer and would not involve a public distribution of securities.

The U.S. District Court has ruled that similar activity conducted by Bankers Trust Company, a member bank, would constitute underwriting or the public sale or distribution of securities under sections 16 and 21 of the Glass-Steagall Act. *Securities Industry Association* v. *Board of Governors/Bankers Trust*, 627 F.Supp. 695 (D.D.C. 1986). An appeal of the court's decision is pending in the U.S. Court of Appeals for the D.C. Circuit.

Applicant also states that it would not be "engaged principally" in such activities because the gross revenue to be derived from the proposed activity will be no more than 5 percent of the Company's total gross revenue and assets at risk allocable to such activities will be a *de minimis* percentage of Company's total assets.

Comments are requested on the scope of activity permitted by the phrase "engaged principally" under the Glass-Steagall Act, including whether the phrase contemplates the type of test proposed by the Applicant, which is based on a percentage of the affiliate's total business activities, measured in terms of gross revenue. The Board also seeks comment on whether the term "engaged principally" in section 20 would preclude a member bank affiliate from engaging in activities restricted by this section on a substantial and regular or non-incidental basis and without regard to the amount of other activities conducted by the affiliate. While the Board has decided to publish Chemical's proposal for comment, the Board does not thereby take any position on the "engaged principally" issue under the Glass-Steagall Act. Publication of the proposal has been ordered by the Board solely in order to seek the views of interested persons on this question as well as other issues raised by the application.

Interested persons may express their views on whether the proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto," and whether the proposal as a whole can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on these questions must be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than December 19, 1986.

Board of Governors of the Federal Reserve System, November 14, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-26169 Filed 11-19-86; 8:45 am]

BILLING CODE 6210-01-M

BEST COPY AVAILABLE

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First Regional Bancorp, Inc., et al.; Notice of Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under § 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 10, 1986.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *First Regional Bancorp, Inc.*, Hartford, Connecticut; to engage *de novo* in purchasing participations in real estate loans and secured and unsecured commercial and consumer loans from its wholly owned subsidiary, First National Bank-CT, Hartford, Connecticut, pursuant to § 225.25(b)(1) (i), (iii) and (iv). These activities will be conducted in the State of Connecticut.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *James Madison Limited*, Washington, DC; to engage *de novo* in owning, installing, operating, and providing support services to automated teller machines in convenience stores, supermarkets, and other selected locations pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 14, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-26171 Filed 11-19-86; 8:45 am]

BILLING CODE 6210-01-M

Madison Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 10, 1986.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Madison Corporation*, Little Rock, Arkansas; to become a bank holding company by acquiring at least 86.07 percent of the voting shares of Madison Bank and Trust, Kingston, Arkansas.

2. *Montgomery County Bancshares, Inc.*, Little Rock, Arkansas; to acquire 100 percent of the voting shares of First National Bank in Mena, Mena, Arkansas.

Board of Governors of the Federal Reserve System, November 14, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-26172 Filed 11-19-86; 8:45 am]

BILLING CODE 6210-01-M

J.P. Morgan and Co., Inc.; Proposal To Offer Investment Advice and Securities Execution Services From One Subsidiary

J.P. Morgan and Company, Inc. ("JPM"), New York, New York, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), to expand the authority of its indirect wholly-owned subsidiary, J.P. Morgan Equities Inc. ("JPM Equities"), to include the provision of investment advisory services for "Institutional Customers" (as defined in its application). JPM Equities proposes to conduct these activities from offices in New York City and London, England, for its affiliates and for institutional customers in the United States and abroad.

By letter dated June 3, 1986, JPM was authorized by the Federal Reserve Bank of New York, pursuant to authority delegated by the Board, to engage in discount brokerage activities in accordance with § 225.25(b)(15) of the Board's Regulation Y. JPM now proposes to provide through JPM Equities investment advisory services, including portfolio investment advice and research, general economic advice, and forecasting to its affiliates and institutional customers. The Board has approved the separate provision of investment advisory services by bank holding company subsidiaries and has incorporated this activity into Regulation Y. (12 CFR 225.25(b)(4)).

The Board previously has determined by Order that the offering of investment advice and securities execution services to institutional customers from the same subsidiary of a bank holding company is a permissible nonbanking activity. *National Westminster Bank PLC*, 72 Federal Reserve Bulletin 584 (1986) (*"NatWest"*), a determination that is currently under challenge in *Securities Industry Association* v. *Board of Governors*, No. 86-1412 (D.C. Cir. filed July 14, 1986).

JPM has proposed certain modifications to the conduct of these activities that differ from the NatWest proposal. Those differences are:

1. The corporate title of JPM Equities will resemble that of Applicant's bank subsidiaries.

2. In addition to the combined provision of investment advice and securities execution services to institutional customers, JPM Equities also will offer discount brokerage services without investment advice, to non-institutional customers.

3. JPM Equities will exercise investment discretion with respect to customer accounts in certain "rare situations", as authorized by such customers.

4. JPM Equities will receive certain operational support services from its affiliates.

5. Although no officer of JPM Equities will provide investment advice or brokerage services on behalf of an affiliated bank, such services may be provided on behalf of one or more foreign securities affiliates.

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."

Any views or requests for hearing on the proposal should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, not later than December 12, 1986. Any request for a hearing must, as required by section 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, November 14, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-26168 Filed 11-19-86; 8:45 am]

BILLING CODE 6210-01-M

Sovran Financial Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 8, 1986.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Sovran Financial Corporation,* Norfolk, Virginia; to acquire Sovran Mortgage Corporation, Richmond, Virginia, and thereby engage in origination, marketing and servicing of FHA and VA insured as well as conventional residential and commercial loans, acting as agent in the sale of credit life, credit accident and health insurance, mortgage redemption, and mortgage accident and health insurance directly related to its extensions of credit pursuant to § 225.25(b)(1)(iii) and (8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 14, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-26173 Filed 11-19-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meetings in December

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meetings of one of the agency's national advisory bodies and an initial review committee. These committees will be open for discussion of administrative announcements and program developments. The committees will be performing initial review of applications for Federal assistance. Therefore, portions of the Mental Health Small Grant Review Committee meeting will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 10(d). Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92-463.

Committee Name: Mental Health Small Grant Review Committee.

Date and Time: December 3: 9:30 a.m.

Place: The Hampshire Hotel, 1310 New Hampshire Avenue, NW., Washington, DC 20036

Status of Meeting:

Open—December 3: 9:30-10:30 a.m.

Closed—Otherwise.

Contact: Betty Russell, Room 9C-05, Parklawn Building 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4843.

Purpose: The Committee is charged with the initial review of applications for research in all disciplines pertaining to alcohol, drug abuse, and mental health for support of research in the areas of psychology, psychiatry, and the behavioral biological sciences.

Committee Name: National Advisory Mental Health Council.

Date and Time: December 5: 9:00 a.m.

Place: National Institutes of Health, Building #31C, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Status of Meeting: OPEN

Contact: Rachel Driver, Room 9-105, Parklawn Building, 5600 Fishers Lane Rockville, MD 20857, (301) 443-3367.

Purpose: The Council advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health regarding policies and programs of the

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Department in the field of mental health. The Council reviews applications for grants-in-aid relating to research and training in the field of mental health and makes recommendations to the Secretary with respect to approval of applications for, and amount of, these grants.

Substantive information may be obtained from the contact persons listed above. Summaries of the meetings and rosters of committee members may be obtained as follows: NIAAA: Ms. Diana Widner, Committee Management Officer, Room 16C20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4375. NIMH: Ms. Joanna Kieffer, Committee Management Officer, Room 9–95, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

Dated: November 14, 1986.

Estelle O. Brown,

Committee Management Assistant, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 86–26153 Filed 11–19–86; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 86F–0373]

Combibloc, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Combibloc, Inc., has filed a petition proposing that the food additive regulations be amended to provide for an increase in the level of residual hydrogen peroxide that may be present when hydrogen peroxide is used to sterilize polymeric food-contact surfaces.

FOR FURTHER INFORMATION CONTACT: Thomas C. Brown, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 6B3962) has been filed by Combibloc, Inc., 4800 Roberts Rd., Columbus, OH 43228, proposing that § 178.1005 *Hydrogen peroxide solution* (21 CFR 178.1005) be amended to provide for an increase in the hydrogen peroxide limitation from the current 0.1 part per million to a level of 0.5 part per million. This will provide for an increase in the level of residual hydrogen peroxide that may be present when hydrogen peroxide is used to sterilize polymeric food-contact surfaces.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: November 5, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86–26136 Filed 11–19–86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86E–0357]

Determination of Regulatory Review Period for Purposes of Patent Extension; Orthoclone OKT*3

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Orthoclone OKT*3 and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Orthoclone OKT*3 (muromonab CD3) which is indicated for the treatment of acute allograft rejection in renal transplant patients. Based on this approval, Ortho Pharmaceutical Corp. now seeks patent term restoration.

FDA has determined that the applicable regulatory review period for Orthoclone OKT*3 is 2,301 days. Of this time, 1,488 days occurred during the testing phase of the regulatory review period, while 813 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* March 3, 1980. The applicant states that investigational exemption (IND) time for the drug product is inapplicable. However, FDA records indicate that an IND for the product became effective on March 3, 1980.

2. *The date the product license application was initially submitted with respect to the human drug product under section 351 of the Public Health Service Act:* March 29, 1984. FDA has verified that the product license application for the drug product was filed on March 29, 1984.

3. *The date the application was approved:* June 19, 1986. FDA verified that product license 996 for the drug product was approved on June 19, 1986.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension.

In its application for patent extension, this applicant seeks 201 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before January 20, 1987, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before May 19, 1987, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 14, 1986.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 86–26157 Filed 11–19–86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86M-0422]

Allergan Pharmaceuticals, Inc.; Premarket Approval of the Lens Plus OXYSEPT™ Disinfection System

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Allergan Pharmaceuticals, Inc., Irvine, CA, for premarket approval, under the Medical Device Amendments of 1976, of the Lens Plus OXYSEPT™ DISINFECTION SYSTEM for use with soft (hydrophilic) contact lenses. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by December 22, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

SUPPLEMENTARY INFORMATION: On November 29, 1985, Allergan Pharmaceuticals, Inc., Irvine, CA 92715, submitted to CDRH an application for premarket approval of the Lens Plus OXYSEPT™ DISINFECTION SYSTEM. The Lens Plus OXYSEPT™ DISINFECTION SYSTEM is a 3 percent hydrogen peroxide system consisting of the OXYSEPT™ 1 Disinfecting Solution, the OXYSEPT™ 2 or OXYSEPT™ 2/np Rinse and Neutralizer, and the OXYCUP™ Lens Case. The Lens Plus OXYSEPT™ DISNFECTION SYSTEM is indicated for use to disinfect, neutralize, and store soft (hydrophilic) contact lenses.

On May 23, 1986, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On September 30, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above.

The labeling of the Lens Plus OXYSEPT™ DISINFECTION SYSTEM states that the system is indicated for use to disinfect, neutralize, and store soft (hydrophilic) contact lenses. Manufacturers of soft (hydrophilic) contact lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the **Federal Register** of the approval of a new solution for use with an approved soft contact lens, the manufacturer of each lens shall correct its labeling to refer to the new solution at the next printing or at such other time as CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may at any time on or before December 22, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: November 13, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86–26154 Filed 11–19–86; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[OACT-014-N]

Medicare Program; Omnibus Budget Reconciliation Act of 1986; Effect of Provisions on Part A Deductible, Part A and B Premiums, and Economic Index

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

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SUMMARY: This notice announces the effects of the Omnibus Budget Reconciliation Act of 1986 on the Medicare Part A deductible, Medicare Part A and B premiums, and the Medicare economic index.

FOR FURTHER INFORMATION CONTACT: Roland King, (301) 594–2826.

SUPPLEMENTARY INFORMATION:

I. Background

As required by the Social Security Act (the Act) we must publish every year the new Medicare Part A (Hospital Insurance) inpatient hospital deductible, Part A premium rates, and Medicare Part B (Supplementary Medical Insurance) (SMI) premium rates. Section 1813(b) of the Act, as amended by section 9125 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) Pub. L. 99–272, requires the Secretary of Health and Human Services (HHS) to determine and publish, between July 1 and September 15 of the year, the amount of the inpatient hospital deductible applicable for the following calendar year. Section 1818(d)(2) of the Act requires the Secretary to determine and publish, during the next to last quarter of each calendar year, the amount of the monthly Part A premium for voluntary enrollment of the uninsured aged for the following calendar year. Section 1839(a) of the Act require the Secretary to announce each September the monthly SMI actuarial rates and resulting Part B premium for the following calendar year.

In addition, in order to implement section 1842(b)(3) of the Act and our regulations at 42 CFR 405.504, we publish an annual notice setting forth the Medicare economic index (MEI) for the following fee screen year (that is, the 12-month period for applying payment screens for determining reasonable charges under Medicare Part B). Until 1985, the fee screen year began on July 1 of each year. Section 2306 of Pub. L. 98–369 provided that, beginning October 1, 1985, fee screen years would begin on October 1 of each year. Subsequently, section 9301 of Pub. L. 99–272 further revised the underlying legislation, with the result that effective January 1, 1987, the fee screen year for Medicare Part B reasonable charge payments will begin on January 1 of each year. (See conforming changes to our regulations published October 1, 1986 at 51 FR 34975.)

On August 11, 1986, we published a proposed notice in the **Federal Register** (51 FR 28766) that would have revised the MEI to reflect a more accurate representation of changes in physicians' office space expenses. Since the MEI methodology we had used since its establishment in 1975 was a cummulative index methodology, we proposed to recompute the index base back to its beginning, in order to ensure that the index values for prospectively affected fee screen years would be accurately calibrated. We planned to finalize this notice and make the revised MEI effective on January 1, 1987.

The inpatient hospital deductible for 1987 was published in the **Federal Register** on September 15, 1986. The new deductible was announced as $572. The daily coinsurance amounts were: (a) $143 for the 61st through the 90th day of hospitalization; (b) $286 for lifetime reserve days; and (c) $71.50 for the 21st through 100th day of extended care services in a skilled nursing facility (51 FR 32691).

The Part A premium for the uninsured aged for the 12 months beginning January 1, 1987 was published in the **Federal Register** on October 1, 1986. The premium was announced as $248 (51 FR 35053).

On October 2, 1986 the monthly actuarial rates and Part B premium rates were published in the **Federal Register**. The 1987 monthly Part B premium was announced as $17.90 (51 FR 3591).

On October 21, 1986 new legislation was enacted. The Omnibus Budget Reconciliation Act of 1986, Pub. L. 99–509, amended those sections of the Act controlling the Part A deductible, Part A and B premiums, and the Medicare economic index. This notice explains the effect of these changes.

II. Part A Deductible for Calendar Year 1987

Section 1813 of the Act (42 U.S.C. 1395e) provides for an inpatient hospital deductible and certain coinsurance amounts to be deducted from the amount payable by Medicare for inpatient hospital services furnished an individual. Section 1813(b)(2) of the Act as amended by section 9125 of COBRA, Pub. L. 99–272, requires the Secretary of Health and Human Services (HHS) to determine and publish, between July 1 and September 15 of the year, the amount of the inpatient hospital deductible applicable for the following calendar year. As noted above, we announced, in a **Federal Register** notice on September 15, 1986, that the inpatient hospital deductible for 1987 was to be $572.

Section 9301 of the Omnibus Budget Reconciliation Act of 1986, Pub. L. 99–509, provides that the Part A deductible for 1987 will be $520. The daily coinsurance amounts will be: (a) $130 for the 61st through 90th days of hospitalization; (b) $260 for lifetime reserve days; and (c) $65 for the 21st through 100th days of extended care services in a skilled nursing faculty.

In subsequent years (that is, beginning with the deductible to be published in September 1987) the Part A deductible will be adjusted by the applicable percentage increase (as defined in section 1886(b)(3)(B) of the Act) which is applied under section 1886(d)(3)(A) for discharges in the fiscal year that begins on October 1 of the preceding calendar year, and adjusted to reflect changes in real case mix (determined on the basis of the most recent case-mix data available). Any amount which is not a multiple of $4 will be rounded to the nearest multiple of $4 (or, if it is midway between two multiples of $4, to the next higher mutliple of $4).

A new section 1813(b)(3) provides that a hospital stay which falls into two calendar years will have the deductible applied based on the first day of the hospitalization. Applicable cost sharing under Part A would continue to be determined based on the annual deductible in effect for the year in which the cost sharing days are incurred.

Under section 9301(b) of Pub. L. 99–509, this amendment applies to inpatient hospital services and post-hospital extended care services furnished on or after January 1, 1987, and is to be applied in calculating the Part A premium to be paid by the uninsured aged for months beginning with January 1, 1987. Section 9301(c) requires the Secretary to provide for the publication of the inpatient hospital deductible, and the affected coinsurance and premium amounts within 30 days of the date of enactment; that is, by November 20, 1986.

III. Part A Premium for Calendar Year 1987

Section 1818 of the Act provides for voluntary enrollment in Part A of Medicare, subject to payment of a monthly premium, of certain persons age 65 and older who are uninsured for Social Security or Railroad Retirement benefits and do not otherwise meet the requirements for entitlement to hospital insurance. (Persons insured under the Social Security or Railroad Retirement Acts need not pay premiums for hospital insurance.) Section 1818(d)(2) of the Act, as amended by section 606(b) of the Social Security Amendments of 1983 (Pub. L. 98–21) requires the Secretary to determine and publish, during the next to last quarter of each calendar year, the amount of the monthly Part A premium for voluntary enrollment for the following calendar year.

Based on the formula specified in the statute, the monthly hospital insurance premium for the uninsured aged for the 12-month period beginning January 1, 1987 was announced as $248. With the enactment of section 9301 of Pub. L. 99-509 (which set the Part A deductible at $520 for 1987), the Part A premium rate for calendar year 1987 had to be recalculated. The necessity was recognized by Congress in section 9301(b) of Pub. L. 99–509, which, in providing for the effective date of the new Part A deductible for 1987, noted its application to the 1987 Part A premium. Therefore, effective January 1, 1987, the new monthly premium rate will be $226.

Under section 1818(d)(2) of the Act, which was not amended by Pub. L. 99-509, to calculate the Part A premium for calendar year 1987, the 1973 base year premium ($33) is multiplied by the ratio of: (1) The 1987 inpatient hospital deductible to (2) the 1973 inpatient hospital deductible, rounded to the nearest multiple of $1, or, if midway between multiples of $1, to the next higher multiple of $1.

Since under section 1813(b)(1) of the Act, as amended by Pub. L. 99–509, the 1987 inpatient hospital deductible is $520, and the 1973 deductible was actuarially determined to be $76,* the monthly hospital insurance premium is $33 x (520/76)=$225.79, which is rounded to $226.

IV. Part B Premium Rate

The Secretary of Health and Human Services is required by section 1839(a) of the Act to issue two annual notices relating to the Medicare Part B Supplementary Medical Insurance (SMI) program. One notice announces two amounts that, according to actuarial estimates, will equal respectively, one-half of the expected average monthly cost of SMI for each aged enrollee (age 65 or over) and one-half of the expected average monthly cost of SMI for each disabled enrollee (under age 65) during the calendar year beginning the following January. These amounts are called "monthly actuarial rates." The second notice announces the monthly SMI premium rate to be paid by aged and disabled enrollees for the calendar year beginning the following January. (Although the costs to the program per disabled enrollee are higher than for the aged, the law provides that they pay the same premium amount.) We published in the **Federal Register** on October 2, 1986 (51 FR 35291) a notice setting forth both monthly actuarial rates and the Part B premium rate for 1987, promulgating a Part B premium for calendar year 1987 of $17.90. However, we stated clearly in the October 2 notice that it was possible that the Part B premium would not be increased, but would remain at $15.50 monthly. At the time that notice was published, section 1839(f)(1) of the Act, as amended by section 9313 of Pub. L. 99–272, stated that if no cost-of-living increase under section 215(i) of the Act becomes effective in December 1985, 1986, or 1987, there would be no increase in the SMI monthly premium paid by the enrollees for the following year. Therefore, the notice stated that if inflation was less than 3 percent, as appeared likely, Social Security beneficiaries would not receive a cost-of-living increase, under section 215(i) of the Act, as it existed at the time. However, section 9001 of Pub. L. 99–509 amended section 215(i) of the Act so that it no longer contains the 3 percent provision; therefore, since there will be a cost-of-living increase, we are confirming that the premium rate for calendar year 1987 will be $17.90.

Section 1839(f)(2) of the Act, added by Pub. L. 98–369 and amended by Pub. L. 98–617 and Pub. L. 99–272, provides that if there is a cost-of-living increase in Social Security benefits for 1987, as there now definitely will be, a beneficiary would be held harmless from a Part B premium increase for premiums deducted from his or her benefit payment. Under this section, if the dollar amount of a beneficiary's monthly benefit increase is less than the dollar amount of the increase in the premium, the beneficiary's premium is reduced so that the beneficiary receives at least the same amount as in December of the previous year.

V. Medicare Economic Index

Section 1842(b)(3) of the Social Security Act and our regulations at 42 CFR 405.504 require that the prevailing charge for a physician service in a locality not exceed the level in effect for that service in the locality on June 30, 1973, except to the extent justified on the basis of appropriate indicators of economic change. To accomplish this, we have established a Medicare economic index (MEI) for the purpose of determining prevailing charge levels. The basis for this index is set forth in § 405.504(a)(3). The index is comprised of two portions; one measuring changes in general levels (attributable to factors other than changes in productivity) and the other measuring changes in expenses of the kind incurred by physicians in the practice of medicine. The physician practice expense portion is currently composed of six components: (1) Salaries and wages; (2) office space; (3) drugs and supplies; (4) automobile expense; (5) malpractice insurance premiums; and (6) all other, miscellanous expenses.

Since 1975, when the first MEI was published, we have, when publishing the MEI for each successive fee screen year (FSY), recomputed the index base to its beginnings in 1971 to reflect the latest revisions of statistics and data on those earlier years. In view of this methodology, when the Bureau of Labor Statistics revised a measure of a subcomponent of the Housing component of the CPI, which affects the physician practice expense component of the MEI, we decided to incorporate the revised measure in the computations of ratios and values for all previous years. Therefore, on August 11, 1986, we proposed to revise the MEI to reflect a more accurate representation of changes in physicians' office space expenses. We had planned to finalize this change in the MEI to be applied to the fee screen year beginning January 1, 1987.

Subsequently, Pub. L. 99–509 was enacted, including provisions that set the 1987 MEI directly, and prohibit finalizing our August 11, 1986 proposal. Section 9331(c)(1) of Pub. L. 99–509 provides that the percentage increase in the Medicare economic index for FSY 1987 will be 3.2 percent for physicians' services. Section 9331(c)(2) states that the Secretary is not authorized to revise the MEI in a manner that would reflect the proposed revised housing cost measure for any period before January 1, 1985. Therefore, we do not plan to proceed with the August 11, 1986 proposal. Section 9331(c)(3) provides that for fee screen years after 1987, the MEI will be revised only to reflect year-to-year economic charges.

The "annualized" MEI increase for FSY 1987 beginning on January 1, 1987 is 3.2 percent. Note that the extra 1 percent rise that was included in the MEI increase of 4.15 percent (1.0415) for participating physicians' services effective May 1, 1986 will be permanently retained. The cumulative FSY 1987 MEI is therefore 2.218. (The cumulative FSY 1984 MEI of 2.063 multiplied by 1.0415 in effect yielded a cumulative figure of 2.149 for the May 1, 1986 reasonable charge update, and the latter mulitplied by 1.032 yields a cumulative FSY 1987 MEI of 2.218.)

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* Although the 1973 deductible was actually promulgated to be only $72, to comply with a ruling of the Cost of Living Council (See 37 FR 21452, October 11, 1972), the monthly premium for the 12-month period beginning January 1, 1987 was calculated using the $76 deductible for 1973, since this more closely satisfies the intent of the law.

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VI. Regulatory Impact Statement

This notice merely announces amounts required by legislation for the Part A deductible, Part A and B premiums and the MEI percentage increase for participating physicians' services. This notice is not a proposed rule or a final rule issued after a proposal, and does not alter any regulations. Therefore, we have determined, and the Secretary certifies, that no analyses are required under Executive Order 12291 or the Regulatory Flexibility Act (5 U.S.C. 601 through 612).

VII. Paperwork Reduction Act

The changes in this notice would not impose information collection requirements. Consequently, they need not be reviewed by the Executive Office fo Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

(Sec. 1813(b); 1818(d)(2); 1839(a), (e) and (f); and 1842(b)(3) of the Social Security Act; 42 U.S.C. 1395e(b); 1395i–2(d)(2); 1395r(a), (e) and (f); and 1395u(b)(3))

Dated: November 13, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: November 14, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86–26231 Filed 11–19–86; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting

Notice is hereby given of the meeting of the Interagency Technical Committee (IATC) on Heart, Blood Vessel, Lung, and Blood Diseases and Blood Resources, sponsored by the National Heart, Lung, and Blood Institute on December 16, 1986, from 1:00 p.m. to 4:00 p.m., Building 31, C Wing, Conference Room 8, at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting is open to the public. The Interagency Technical Committee (IATC) is meeting to examine and coordinate Federal research activities that concern heart, blood vessel, lung, and blood diseases and blood resources. This meeting will focus on data collection, issues, and problems. Attendance by the public will be limited to space available.

Dr. Lawrence Friedman, NHLBI, will speak on data collection in clinical trials, and Dr. Millicent Higgins, NHLBI, will speak on data collection in epidemiological studies. Dr. Donald Goldstone, from the National Center for Health Services Research, will provide an overview of the National Medical Expenditure Study. Dr. James S. Robertson, Department of Energy, will report on radon and female lung cancer.

For the detailed program information, agenda, and minutes of the meeting, contact: Ms. Jan Kaplan, Office of Program Planning and Evaluation, National Heart, Lung, and Blood Institute, Building 31, Room 5A03, NIH, 9000 Rockville Pike, Bethesda, Maryland 20892, (301) 496–5031.

Dated: November 14, 1986.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 86–26189 Filed 11–19–86; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

National Toxicology Program; Board of Scientific Counselors' Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting on December 12, 1986, of the National Toxicology Program (NTP) Board of Scientific Counselors, Reproductive and Developmental Toxicology Program Review Subcommittee. The meeting will be held in Conference Room A, Building 101, South Campus, National Institute of Environmental Health Sciences, Research Triangle Park, North Carolina.

The meeting begins at 9:00 a.m., and will be open to the public. The primary agenda topics are reviews of evaluations of the short-term *in vivo* developmental toxicity test (Chernoff/Kavlock test) and two *in vitro* tests for developmental toxicity by the NTP Reproductive and Developmental Toxicology Program, which includes efforts of the staff at the National Institute of Environmental Health Sciences, the National Center for Toxicological Research and the National Institute for Occupational Safety and Health.

The Executive Secretary, Dr. Larry Hart, Office of the Director, National Toxicology Program, P.O. Box 12233, Research Triangle Park, North Carolina 27709, telephone (919–541–3971), FTS (629–3971), will furnish the final agenda.

The roster of Subcommittee members and other program information will be available prior to and at the meeting, and summary minutes will be available subsequent to the meeting.

November 17, 1986.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 86–26190 Filed 11–19–86; 8:45 am]

BILLING CODE 4140-01-M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Marine Diesel Fuel and JP–5 Navy Fuel

The HHS' National Toxicology Program today announces the availability of the Technical Report describing the toxicology and carcinogenesis studies of Marine Diesel Fuel and JP–5 Navy Fuel. Marine diesel fuel is a common industrial and military fuel. JP–5 navy fuel is a jet fuel used exclusively by the U.S. Navy.

Toxicology and carcinogenicity studies were conducted by administering to groups of 49 or 50 male and 50 female $B6C3F_1$ mice 0, 250, or 500 mg/kg marine diesel fuel or JP–5 navy fuel in acetone by dermal application to the clipped dorsal interscapular region five days per week for 103 weeks.

Under the conditions of these two-year studies, marine diesel fuel at doses of 250 and 500 mg/kg resulted in dose-related increased incidences of squamous cell neoplasms of the skin (primarily carcinomas), providing equivocal evidence of carcinogenicity [1] for male and female $B6C3F_1$ mice. The sensitivity for detecting systemic carcinogenicity in female mice dosed with marine diesel fuel was reduced by poor survival. Under the conditions of these two-year dermal studies, JP–5 fuel at doses of 250 and 500 mg/kg provided no evidence of carcinogenicity for male and female $B6C3F_1$ mice.

Copies of *Toxicology and Carcinogenesis Studies of Marine Diesel Fuel and JP–5 Navy Fuel in* $B6C3F_1$ *Mice (Dermal Studies)* (TR 310) are available without charge from the NTP Public Information Office, MD B2–04, P.O. Box 12233, Research Triangle Park, NC 27709. Telephone: (919) 541–3991. FTS: 629–3991.

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[1] The NTP uses five categories of evidence of carcinogenicity to summarize the strength of the evidence observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

Dated: November 13, 1986.

David P. Rall,

Director.

[FR Doc. 86-26191 Filed 11-19-86; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Performance Review Board; Appointments

AGENCY: Department of the Interior.

ACTION: Notice of change in membership of the Office of the Solicitor Performance Review Board.

SUMMARY: This notice provides the names of replacement individuals to serve on the Office of the Solicitor Performance Review Board. The publication of these appointments is required by section 405(a) of the Civil Service Reform Act of 1978 (Pub. L. 95-454; 5 U.S.C. 4314(c)(4)).

DATE: These appointments are effective November 20, 1986.

FOR FURTHER INFORMATION CONTACT: Morris A. Simms, Director of Personnel, Office of the Secretary, Department of the Interior, 1800 C Street NW., Washington, DC 20240. Telephone Number: 343-6761.

Performance Review Board (PRB)—Changes as of October 21, 1986

Office of the Solicitor PRB

Howard Shafferman (Noncareer), Chairperson
Anthony Conte (Career, Field)
Timothy Elliott (Career)
Constance Harriman (Noncareer)
Charles Hughes (Career)
Alan Sears (Noncareer)

Dated: October 28, 1985

Gerald Riso,

Assistant Secretary—Policy, Budget Administration.

[FR Doc. 86-26146 Filed 11-19-86; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

[AA-6695-B]

Alaska Native Claims Selection; Port Graham Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Port Graham Corporation for approximately 275.52 acres. The lands involved are in the vicinity of Port Graham, Alaska.

Seward Meridian

T. 12 S., R. 13 W.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Times. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, any agency of the Federal government or regional corporation, shall have until December 22, 1986 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Joe J. Labay,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-26194 Filed 11-19-86; 8:45 am]

BILLING CODE 4310-JA-M

[AZ-040-07-4332-06]

Arizona; Amendment of Wilderness Study Area Boundaries

AGENCY: Bureau of Land Management, Interior.

ACTION: Changes in the Boundaries of Five Wilderness Study Areas.

SUMMARY: This notice serves as an amendment to previous wilderness inventory decisions made by the Bureau of Land Management (BLM) of Needle's Eye (AZ-040-1A), Fishhooks (AZ-040-14), Day Mine (AZ-040-16), Javelina Peak (AZ-040-48), and Dos Cabezas Mountains (formerly Happy Camp Canyon) (AZ-040-65) Wilderness Study Areas (WSA).

SUPPLEMENTARY INFORMATION: On June 28, and September 13, 1985, BLM's Safford District acquired, through exchange, 3,844 acres of State of Arizona land within or adjacent to Needle's Eye, Fishhooks, Day Mine, Javelina Peak, and Dos Cabezas Mountains WSAs. The following table identifies the acquired parcels by acreage and their relationship to the existing WSAs.

WSA	Acres	Location of the acquired land
Needle's Eye	231	Adjacent.
Fishhooks	202	Inholding.
Day Mine	640	Adjacent.
	40	Inholding.
Javelina Peak	960	Adjacent.
	23	Adjacent.
Dos Cabezas Mountains	591	Adjacent.
	597	Adjacent.
	560	Adjacent.
Total	3,844	

On July 23, 1985 and September 23, 1986, the BLM Director approved wilderness study of the acquired lands under section 202 of the Federal Land Policy and Management Act (FLPMA) of 1976. The lands listed in the above table are hereby added to the respective WSAs and will be incorporated into the Safford District's on-going wilderness studies.

The acquired lands were inventoried and found to possess the wilderness characteristics required by BLM inventory policy and section 2(c) of the Wilderness Act of 1964. Inventory reports were prepared in accordance with the guidelines of the BLM Wilderness Inventory Handbook. These reports describe the wilderness character of the acquired lands and are available for inspection at the Safford District Office.

These lands were acquired to consolidate public lands in areas with important multiple resource values. The amended WSA boundaries include the following acreages.

WSA	Previous WSA acreage	Acquired acreage to be studied under sec. 202 of FLPMA	New WSA acreage
Needle's Eye	9,485	231	9,716
Fishhooks	15,013	202	15,215
Day Mine	16,629	680	17,309
Javelina Peak	17,870	983	18,853
Dos Cabezas Mountains	16,761	1,748	18,509

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained by contacting Steve Knox, Bureau of Land Management, 425 E. 4th Street, Safford, Arizona 85546, or phone (602) 428-4040.

Dated: November 10, 1986.

Beaumont C. McClure,

Acting State Director.

[FR Doc. 86-26201 Filed 11-19-86; 8:45 am]

BILLING CODE 4310-32-M

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[CA-940-06-4212-13; CA 19154]

California; Exchange of Public and Private Lands in Riverside County and Opening Order

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of land exchange conveyance document and order opening lands acquired in this exchange.

SUMMARY: The purpose of this exchange was to acquire a portion of the non-Federal lands within the proposed 13,030-acre preserve for the Coachella Valley fringe-toed lizard. The lizard is Federally listed as threatened and State listed as endangered. The Bureau of Land Management's goal is to acquire 6,700 acres of land within the preserve. Other State or Federal agencies will acquire the remaining portion of the preserve. Within the preserve there are habitat and non-habitat areas for the fringe-toed lizards. The land acquired in this exchange is within a non-habitat area and will be used as a source of sand for the lizards' habitat areas. The public interest was well served through completion of this exchange. The land acquired in this exchange will be open to the operation of the public land laws and to the full operation of the United States mining laws and mineral leasing laws.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, California State Office (916) 978-4815.

The United States issued an exchange conveyance document to The Nature Conservancy on October 16, 1986, for the following described land under Sec. 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

San Bernardino Meridian, California

T. 3 S., R. 6 E.,
Sec. 14, Lots 1 to 8, inclusive, S½NW¼, W½SW¼, NE¼SE¼, and S½SE¼;
T. 3 S., R. 7 E.,
Sec. 28, Lots 1 to 8, inclusive, SW¼NE¼, S½NW¼, and S½;
Sec. 34, All;

Containing 1682.61 acres of public land.

In exchange for these lands the United States acquired the following described land from The Nature Conservancy:

San Bernardino Meridian, California

T. 4 S., R. 7 E.,
Sec. 7, Lots 1 and 2 in NW¼, and W½NW¼NE¼;

Except 50% of all mineral, gas, oil, and geothermal rights, and substances, under the real estate described in the Deed, without rights of surface entry, as reserved in the Deed from Lou R. Crandall and Marguerita Crandall, husband and wife; William V. Lawson and May Lou Lawson, husband and wife; Stanley N. Gleis and Kathleen R. Gleis, husband and wife; and William J.D. Lane and Kathleen C. Lane, husband and wife; each as to an undivided one-quarter interest, by Deed dated January 21, 1959, which recites as tenants in common, recorded April 27, 1971, as Instrument No. 43315 of Official Records of Riverside County, California;

Containing 186.17 acres of non-Federal land.

A payment in the amount of $6,000 has been paid to the United States by The Nature Conservancy to equlize values between the non-Federal lands and the public lands.

At 10 a.m. on December 22, 1986, the non-Federal lands described above shall be open to operation of the public land laws generally, subject to valid existing rights and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on December 22, 1986, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 10 a.m. on December 22, 1986, the non-Federal lands described above shall be open to applications under the United States mining laws and mineral leasing laws.

Inquiries concerning the land should be addressed to the Bureau of Land Management, Room E-2841, 2800 Cottage Way, Sacramento, California 95825.

Dated: November 12, 1986.

Sharon N. Janis,

Chief, Branch of Adjudication and Records.

[FR Doc. 86-26199 Filed 11-19-86; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-06-4212-13; CA 5626]

Exchange of Public and Private Lands in Lassen County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of land conveyance document.

SUMMARY: The purpose of this exchange was to acquire these non-Federal lands which have significant multiple-use values; i.e., recreational, cultural, wildlife, botanical, and scenic. These values far outweigh the values found on the Federal lands in this exchange. The public interest was well served through completion of this exchange.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, California State Office, (916) 978-4815.

The United States issued an exchange conveyance document to W.M. Beaty & Associates, Inc. on March 7, 1986, under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716), for the following described land:

Mount Diablo Meridian, California

T. 29 N., R. 9 E.,
Sec. 33, SE¼NE¼;
T. 29 N., R. 10 E.,
Sec. 1, Lots 3 and 4;
Sec. 2, Lot 1, SE¼NE¼, SW¼NW¼, and NW¼SW¼;
Sec. 3, SE¼NE¼;
Sec. 9, E½SE¼;
Sec. 10, SW¼NW¼;
Sec. 11, NW¼NW¼ and S½SW¼;
Sec. 14, NW¼;
T. 29 N., R. 11 E.,
Sec. 10, NW¼NE¼;
Sec. 19, SE¼NE¼;
Sec. 20, NW¼NE¼;
Sec. 21, NE¼NE¼;
T. 30 N., R. 11 E.,
Sec. 1, N½SW¼;
Sec. 5, Lots 1 and 2, S½NE¼, and NE¼SE¼;
Sec. 6, Lots 1 and 2 and SW¼NE¼;
Sec. 18, W½NE¼;
T. 31 N., R. 11 E.,
Sec. 26, SW¼SE¼.

Containing 1,392.07 acres of public land.

In exchange for these lands, the United States acquired the following described land from W.M. Beaty & Associates, Inc.:

Mount Diablo Meridian, California

T. 29 N., R. 9 E.,
Sec. 4, Portion of SW¼SW¼;
Sec. 17, Portion of SW¼;
T. 29 N., R. 11 E.,
Sec. 2, SE¼NW¼, SW¼NW¼, Lot 2, and portions of Lots 3 and 4;
Sec. 3, S½N½, N½SW¼, NW¼SE¼;
Sec. 4, W½SW¼, S½NE¼, NE¼SE¼;
Sec. 5, E½SE¼, NW¼SE¼, and portions of NW¼SW¼, SE¼NW¼;
Sec. 6, Portions of SE¼SW¼, SW¼SE¼;
T. 30 N., R. 9 E.,
Sec. 36, Portions of N½, NE¼SE¼;
T. 30 N., R. 11 E.,
Sec. 35, N½SE¼, SW¼SE¼, SE¼SW¼.

Containing 1,091.51 acres of non-Federal land.

A cash payment in the amount of $320 has been paid to the United States by W.M. Beaty & Associates, Inc. to equalize values between the non-Federal lands and public lands.

Inquiries concerning the land should be addressed to the Bureau of Land Management, Room E-2841, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825.

Dated: November 12, 1986.

Sharon N. Janis,

Chief, Branch of Adjudication and Records.

[FR Doc. 86-26200 Filed 11-19-86; 8:45 am]

BILLING CODE 4310-40-M

[CA-010-07-4352-10]

Designation of the Limestone Salamander Area of Critical Environmental Concern; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice that certain public lands in the Folsom Resource Area, Bakersfield District, California are designated as an Area of Critical Environmental Concern (ACEC)—Corrections.

SUMMARY: The following correction is made to a notice published in the **Federal Register** on Thursday, July 17, 1986, on page 25948. The first "T&R" listed should read "T. 3 S., R. 18 E., instead of "T. 1 S., R. 18 E.".

FOR FURTHER INFORMATION CONTACT: Deane K. Swickard, Folsom Resource Area Manager, 63 Natoma Street, Folsom, California 95630; (916) 985-4474.

Dated: November 13, 1986.

D.K. Swickard,

Area Manager.

[FR Doc. 86-26195 Filed 11-19-86; 8:45 am]

BILLING CODE 4310-40-M

[CA 940-07-4212-18, CA 18994, N-43627]

Clearing Title to Certain Lands Along the California-Nevada Boundary

November 6, 1986.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pub. L. 99-200 (99 Stat. 1663) is an act to clear title to certain lands along the California/Nevada boundary. Thousands of acres of public lands transferred by the United States to the State of California or to the State of Nevada on or before June 1, 1982, are now located within the other State according to the boundary between them established by the United States Supreme Court in the Case of California versus Nevada (447 U.S. 125 (1980)). Each State accepted such transfers as valid, and commencing over 125 years ago, conveyed substantially all of the land into private ownership. The original title of each State and political subdivisions thereof and subsequent private parties have been treated as good and valid for all governmental and private purposes. Pursuant to the provisions of this Act the Bureau of Land Management, California State Director, has been directed to publish the list of State patents or other conveyances agreed on by the two States for tracts of land affected.

EFFECTIVE DATE: December 23, 1985.

FOR FURTHER INFORMATION CONTACT: Virginia B. Henke, California State Office, 916-978-4749.

ADDRESS: Inquiries should be sent to:

Bureau of Land Management, California State Office, Chief, Branch of Adjudication and Records, 2800 Cottage Way (Room E-2841), Sacramento, CA 95825
Bureau of Land Management, Nevada State Office, P.O. Box 12000, Reno, Nevada 89520-0006
State of California, State Lands Commission, 1807 13th Street, Sacramento, CA 95814
State of Nevada, Division of State Lands, 201 S. Fall Street, Capitol Complex, Carson City, NV 89710

The following is a list of all State patents or other conveyances affected by this act:

Lands Patented by the State of Nevada Which Now Are Within the Boundaries of the State of California

T. 32 N., R. 17 E.
Sec. 13, portion NW¼NE¼, N½NW¼, lot 1 NW¼.
Patent No. 455
Patentee: William B. Tiffany
Date of Patent: 6/20/1872
Grant I.I.

T. 32 N., R. 17 E.
Sec. 13, SW¼SE¼, SE¼SW¼,
Sec. 24, W½NE¼, NE¼NW¼, W½SE¼,
Sec. 25, NW¼NE¼
Patent No. 446
Patentee: J. Humboldt Eaton
Date of Patent: 6/3/1872
Grant I.I.

T. 16 N., R. 18 E.
Sec. 30, portion Lot 1 NW¼.
Patent No. *779
Patentee: Joseph A. Todman
Date of Patent: 11/16/1874
Grant I.I.

T. 16 N., 18 E.
Sec. 30, Lot 2 NW¼.
Patent No. *534
Patentee: W. B. Campbell
Date of Patent: 5/28/1873
Grant I.I.

T. 16 N., R. 18 E.
Sec. 18, W½.
Patent No. *253
Patentee: Alexander Fraser
Date of Patent: 7/25/1870
Grant I.I.

T. 17 N., R 18 E.
Sec. 6, portion NW¼.
Patent No. *185
Patentee: I. B. Wallace
Date of Patent: 3/16/1870
Grant I.I.

T. 18 N., R 18 E.
Sec. 30, Lot 3.
Patent No. *11487
Patentee: H. B. R. Bushard
Date of Patent: 7/31/1941
Grant I.I.

T. 18 N., R. 18 E.
Sec. 30, portion NW¼.
Patent No. *343
Patentee: A. M. Wickes
Date of Patent: 5/2/1871
Grant I.I.

T. 18 N., N., R. 18 E.
Sec. 30, Lot 3 NW¼.
Patent No. *455
Patentee: William B. Tiffany
Date of Patent: 6/20/1872
Grant I.I.

T. 18 N., R. 18 E.
Sec. 19, Lot 3 SW¼,
Sec. 7, S½ Lots 2 & 3.
Patent No. *936
Patentee: Emily C. Fish
Date of Patent: 8/25/1875
Grant I.I.

T. 18 N., R. 18 E.
Sec. 18, Portion SW¼.
Patent No. *7570
Patentee: Edward J. McLaughlin
Date of Patent: 7/19/1913
Grant I.I.

T. 18 N., R. 18 E.
Sec. 18, S½ Lot 3 NW¼. N½ Lot 3 SW¼.
Patent No. *160
Patentee: Charles Webber
Date of Patent: 2/18/1870
Grant P.B.

T. 18 N., R. 18 E.
Sec. 18, N½ Lot 2 NW¼, N½ Lot 3 NW¼.
Patent No. *186
Patentee: I. B. Wallace
Date of Patent: 3/16/1870
Grant I.I.

T. 18 N., R. 18 E.
Sec. 18, S½ Lot 1 NW¼.
Patent No. *950
Patentee: Joseph N. Wallace
Date of Patent: 10/15/1875
Grant I.I.

T. 18 N., R., 18 E.
Sec. 18, S½ Lot 2 NW¼, N½ Lot 1 SW¼, N½ Lot 2 SW¼.
Patent No. *806
Patentee: Joseph N. Wallace
Date of Patent: 1/22/1975
Grant I.I.

T. 18 N., R. 18 E.
Sec. 6, S½ Lot 2 SW¼, Lot 3 SW¼, S½ Lot 3 NW¼.
Patent No. *710
Patentee: Henry L. Fish
Date of Patent: 2/25/1874
Grant I.I.

T. 18 N., R. 18 E.
Sec. 6, S½ Lot 2 NW¼.
Patent No. *816
Patentee: Mary A. Tiffany
Date of Patent: 3/4/1875
Grant: I.I.

T. 18 N., R. 18 E.
Sec. 6, N½ Lot 3 NW¼.
Patent No. *563
Patentee: William B. Tiffany
Date of Patent: 5/28/1873
Grant: I.I.

T. 18 N., R. 18 E.
Sec. 6, Portion Lot 1 NW¼.
Patent No. *140
Patentee: Waterman H. Morton
Date of Patent: 1/27/1870

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*Portion of Patent that now lies in California may not be all the lands as described in the original patent from the State of Nevada.

Grant: I.I.
T. 18 N., R. 18 E.
Sec. 6, N½ Lot 2 NW¼.
Patent No. *1001
Patentee: Mary Ann Tiffany
Date of Patent: 5/20/1876
Grant: I.I.
T. 18 N., R. 18 E.
Sec. 6, N½ Lot 1 SW¼.
Patent No. *1021
Patentee: Mary A. Tiffany
Date of Patent: 9/19/1876
Grant: I.I.
T. 18 N., R. 18 E.
Sec. 6, S½ Lot 1 SW¼.
Patent No. *1773
Patentee: Mary A. Tiffany
Date of Patent: 4/9/1883
Grant: I.I.
T. 18 N., R. 18 E.
Sec. 7, N½ Lot 1 NW¼.
Patent No. *975
Patentee: Henry C. Hunken
Date of Patent: 12/20/1875
Grant: I.I.
T. 19 N., R. 18 E.
Sec. 31, S½ Lot 3 SW¼, N½ Lot 2 SW¼.
Patent No. *809
Patentee: William B. Tiffany
Date of Patent: 2/8/1875
Grant: I.I.
T. 19 N., R. 18 E.
Sec. 31, N½ Lot 2 NW¼, S½ Lot 3 NW¼, N½ Lot 3 SW¼.
Patent No. *976
Patentee: Henry C. Hunken
Date of Patent: 12/20/1875
Grant: I.I.
T. 19 N., R. 18 E.
Sec. 31, Lot 1 SW¼.
Patent No. 1110
Patentee: William B. Tiffany
Date of Patent: 10/31/1877
Grant: I.I.
T. 19 N., R. 18 E.
Sec. 31, S½ Lot 2 SW¼.
Patent No. 1111
Patentee: Mary A. Tiffany
Date of Patent: 10/31/1877
Grant: I.I.
T. 19 N., R. 18 E.
Sec. 31, S½ Lot 1 NW¼.
Patent No. 1241
Patentee: Henry C. Hunken
Date of Patent: 10/15/1878
Grant: M.C.
T. 19 N., R. 18 E.
Sec. 31, N½ Lot 3 NW¼.
Patent No. 1067
Patentee: Truman H. Thompson
Date of Patent: 3/22/1877
Grant: I.I.
T. 19 N., R. 18 E.
Sec. 30, S½ Lot 3 SW¼.
Patent No. *506
Patentee: Truman H. Thompson
Date of Patent: 11/11/1872
Grant: I.I.
T. 19 N., R. 18 E.
Sec. 30, S½ Lot 2 SW¼.
Patent No. *580
Patentee: T.H. Thompson
Date of Patent: 6/13/1873
Grant: I.I.
T. 19 N., R. 18 E.
Sec. 30, N½ Lot 3 SW¼.
Patent No. *11670
Patentee: John C. Fugitt
Date of Patent: 5/26/1943
Grant: I.I.
T. 19 N., R. 18 E.
Sec. 30, N½ Lot 1 SW¼.
Patent No. *1240
Patentee: Christopher Haller
Date of Patent: 10/15/1878
Grant: M.C.
T. 19 N., R. 18 E.
Sec. 30, Lot 3 NW¼.
Patent No. *438
Patentee: John P. Foulks
Date of Patent: 6/3/1872
Grant: I.I.
T. 19 N., R. 18 E.
Sec. 30, S½ Lot 1 NW¼.
Patent No. *746
Patentee: J.P. Foulks
Date of Patent: 6/15/1874
Grant: I.I.
T. 19 N., R. 18 E.
Sec. 30, N½ Lot 1 NW¼.
Patent No. *754
Patentee: Joseph N. Wallace
Date of Patent: 6/3/1874
Grant: I.I.
T. 19 N., R. 18 E.
Sec. 19, S½ Lot 2 SW¼, S½ Lot 3 SW¼.
Patent No. *1070
Patentee: John P. Foulks
Date of Patent: 4/21/1877
Grant: I.I.
T. 19 N., R. 18 E.
Sec. 19, S½ Lot 1 SW¼.
Patent No. *977
Patentee: Henry C. Hunken
Date of Patent: 12/20/1875
Grant: U.
T. 19 N., R. 18 E.
Sec. 19, N½ Lot 3 SW¼, S½ Lot 3 NW¼.
Patent No. *1820
Patentee: Margaret Foulks
Date of Patent: 5/21/1883
Grant: I.I.
T. 19 N., R. 18 E.
Sec. 19, N½ Lot 3 NW¼.
Patent No. 1828
Patentee: W.H. Young
Date of Patent: 5/29/1883
Grant: I.I.
T. 19 N., R. 18 E.
Sec. 19, Lot 2 NW¼.
Patent No. 1066
Patentee: Joseph Jones
Date of Patent: 3/22/1877
Grant: I.I.
T. 19 N., R. 18 E.
Sec. 19, Lot 1 NW¼.
Patent No. 1068
Patentee: William H. Young
Date of Patent: 3/22/1877
Grant: I.I.
T. 19 N., R. 18 E.
Sec. 18, Lot 3 SW¼.
Patent No. *169
Patentee: Felix O'Neil
Date of Patent: 3/4/1870
Grant: I.I.
T. 19 N., R. 18 E.
Sec. 18, Lot 3 NW¼.
Patent No. *1857
Patentee: Philip Judkins
Date of Patent: 6/23/1883
Grant: I.I.
T. 19 N., R. 18 E.
Sec. 18, S½ Lot 1 NW¼, S½ Lot 2 NW¼.
Patent No. 5207
Patentee: Philip Judkins
Date of Patent: 5/12/1904
Grant: I.I.
T. 19 N., R. 18 E.
Sec. 6, S½ Lot 1 SW¼.
Patent No. *772
Patentee: William Merrill
Date of Patent: 7/7/1874
Grant: I.I.
T. 19 N., R. 18 E.
Sec. 6, S½ Lot 2 SW¼.
Patent No. *13373
Patentee: Hugh Holstrom
Date of Patent: 2/26/1962
Grant: I.I.
T. 20 N., R. 18 E.
Sec. 30, Portion SW¼SE¼, Lot 1 SW¼, Lot 2 SW¼, Lot 3 SW¼, S½ Lot 3NW¼.
Patent No. *839
Patentee: Moritz Lippman
Date of Patent: 5/20/1875
Grant: I.I.
T. 20 N., R. 18 E.
Sec. 30, S½ Lot 1 NW¼, Lot 2 Nw¼, N½ Lot 3 NW¼.
Patent No. *840
Patentee: Thomas K. Hymers
Date of Patent: 5/20/1875
Grant: I.I.
T. 20 N., R. 18 E.
Sec. 18, Lot 7.
Patent No. *13343
Patentee: Chris, Martin & Sophus Mortensen
Date of Patent: 3/13/1961
Grant: I.I.
T. 20 N., R. 18 E.
Sec. 6, Lot 5 NW¼.
Patent No. *2810
Patentee: John H. Merritt
Date of Patent: 12/31/1888
Grant: I.I.
T. 21 N., R. 18 E.
Sec. 30, Lots 1 and 2, SE¼NW¼, NE¼SW¼.
Patent No. *737
Patentee: George W. Browne
Date of Patent: 4/25/1874
Grant: I.I.
T. 21 N., R. 18 E.
Sec. 30, NE¼NW¼.
Patent No. *995
Patentee: John N. Pine
Date of Patent: 4/4/1876
Grant: I.I.
T. 13 N., R. 18 E.
Sec. 35, Portion NW¼, Portion SW¼NE¼.
Patent No. 485
Patentee: Caroline M. Lapham
Date of Patent: 10/7/1872
Grant: I.I.
T. 13 N., R. 18 E.
Sec. 34, SW¼NW¼, NE¼SW¼,
Sec. 33, N½SE¼, SW¼SE¼, SE¼NE¼.
Patent No. 427
Patentee: Freeman McComber
Date of Patent: 5/2/1872
Grant: I.I.
T. 13 N., R. 18 E.
Sec. 33, SE¼SE¼,
Sec. 34, SE¼SW¼.
Patent No. 852

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Patentee: Ellen D. McComber
Date of Patent: 5/25/1875
Grant: I.I.
T. 13 N., R. 18 E.
Sec. 34, W½SW¼.
Patent No. 852
Patentee: Freeman McComber
Date of Patent: 5/25/1875
Grant: I.I.
T. 13 N., R. 18 E.
Sec. 34, SE¼,
Sec. 35, W½SW¼.
Patent No. 456
Patentee: Ellen D. McComber
Date of Patent: 5/25/1875
Grant: I.I.
T. 13 N., R. 18 E.
Sec. 26, Lot 5,
Sec. 27, Portion SE¼SE¼,
Sec. 35, Portion NW¼NW¼,
Sec. 34, SE¼NW¼, S½NE¼.
Patent No. 59
Patentee: W.W. Lapham
Date of Patent: 6/26/1869
Grant: I.I.
T. 13 N., R. 18 E.
Sec. 33, SW¼SW¼.
Patent No. 2841
Patentee: William S. Bliss
Date of Patent: 4/9/1889
Grant: I.I.
T. 13 N., R. 18 E.
Sec. 36, Portion S½SW¼.
Patent No. 1331
Patentee: George F. Mills
Date of Patent: 8/6/1879
Grant: 16 & 36
T. 12 N., R. 19 E.
Sec. 36, Portion NE¼SE¼.
Patent No. 3260
Patentee: John Baldwin
Date of Patent: 6/7/1892
Grant: 2M
T. 12 N., R. 19 E.
Sec. 36, Portion NW¼NW¼, Portion SE¼NW¼.
Patent No. 9321
Patentee: Harrison Berry
Date of Patent: 9/18/1919
Grant: 2M
T. 12 N., R. 19 E.
Sec. 36, SW¼NW¼.
Patent No. 566
Patentee: William W. Wyatt
Date of Patent: 5/28/1873
Grant: 16 & 36
T. 12 N., R. 19 E.
Sec. 26, Portion SE¼SE¼.
Patent No. 9322
Patentee: George H. Fay
Date of Patent: 9/18/1919
Grant: U.
T. 12 N., R. 19 E.
Sec. 26, W½SW¼.
Patent No. 818
Patentee: James Hannum
Date of Patent: 3/19/1875
Grant: I.I.
T. 12 N., R. 19 E.
Sec. 27, Lot 7 NW¼.
Patent No. 7867
Patentee: Christina S. Speck
Date of Patent: 11/24/1914
Grant: 2M
T. 12 N., R. 19 E.
Sec. 22, Portion SW¼SE¼.
Patent No. 7878
Patentee: Chris Beck
Date of Patent: 12/3/1914
Grant: 2M
T 12 N., R. 19 E.
Sec. 22, portion SW¼NW¼.
Patent No. 4181
Patentee: Benjamin Palmer
Date of Patent: 2/3/1900
Grant: 2M.
T 12 N., R. 19 E., Lot 7
Sec. 21
Patent No. 3587
Patentee: Alexander Scossa
Date of Patent: 9/7/1895
Grant: 2M–C.
T 12 N., R. 19 E.
Sec. 21, SE¼NE¼, Lot 8 NE¼.
Patent No. 12537
Patentee: W.F. Dressler
Date of Patent: 6/7/1950
Grant: I.I. 2M.
T 12 N., R. 19 E.
Sec. 21, portion NE¼NE¼.
Patent No. 9381
Patentee: Frank E. Brockliss
Date of Patent: 11/28/1919
Grant: I.I.
T 12 N., R. 19 E.
Sec. 21, NW¼NE¼,
Sec. 16, portion SE¼SW¼, portion SW¼SE¼.
Patent No. 3232
Patentee: Wilhelm Dangberg
Date of Patent: 5/4/1892
Grant: 2M.
T 12 N., R. 19 E.
Sec. 16, SW¼SW¼, portion N½SW¼.
Patent No. *250
Patentee: David Jones
Date of Patent: 5/28/1870
Grant: 16 & 36.
T 11 N., R. 20 E.
Sec. 8, portion E½NE¼, E½SW¼.
Patent No. 787
Patentee: Abial S. Berry
Date of Patent: 11/6/1874
Grant: I.I.
T 11 N., R. 20 E.
Sec. 8, NW¼NW¼.
Patent No. 788
Patentee: Patrick Higgins
Date of Patent: 11/6/1874
Grant: I.I.
T 11 N., R. 20 E.
Sec. 8, SW¼NW¼, NW¼SW¼.
Patent No. 801
Patentee: William Salge
Date of Patent: 1/25/1875
Grant: I.I.
T 11 N., R. 20 E.
Sec. 8, fractional portion SW¼SW¼.
Patent No. 4913
Patentee: Dierich Panning
Date of Patent: 12/13/1902
Grant: I.I.
T 11 N., R. 20 E.
Sec. 8, portion E½NE¼.
Patent No. 5947
Patentee: Luigi DeLuchi
Date of Patent: 6/7/1907
Grant: 2M.
T 11 N., R. 20 E.
Sec. 7, lot 4, NW¼NE¼.
Patent No. 175
Patentee: Harriet Woodford
Date of Patent: 3/11/1870
Grant: I.I.
T 11 N., R. 20 E.
Sec. 7, lot 1, 2 & 3, NW¼.
Patent No. 1018
Patentee: Henry Neddenreip
Date of Patent: 7/26/1876
Grant: I.I.
T 11 N., R. 20 E.
Sec. 6, Lot 9, SE¼.
Patent No. 2923
Patentee: Theodor Tillman
Date of Patent: 5/23/1890
Grant: 2M.
T 11 N., R. 20 E.
Sec. 6, SW¼.
Patent No. 302
Patentee: Anthony Derrick
Date of Patent: 12/6/1870
Grant: I.I.
T 11 N., R. 20 E.
Sec. 6, W½NW¼.
Patent No. 62
Patentee: W.H. Smith
Date of Patent: 6/28/1869
Grant: I.I.
T 11 N., R. 20 E.
Sec. 25, portion W½NW¼, lot 4.
Patent No. 3944
Patentee: Elihu J. Kelley
Date of Patent: 11/1/1898
Grant: 2M.
T 11 N., R. 20 E.
Sec. 26, lot 10.
Patent No. 3945
Patentee: Seth Kelley
Date of Patent: 11/1/1898
Grant: 2M.
T 11 N., R. 20 E.
Sec. 23, portion SW¼SE¼.
Patent No. 8940
Patentee: Fritz Elges
Date of Patent: 12/8/1917
Grant: 2M.
T 11 N., R. 20 E.
Sec. 23, portion E½SW¼.
Patent No. 8944
Patentee: George Springmeyer
Date of Patent: 12/8/1917
Grant: 2M.
T 11 N., R. 20 E.
Sec. 23, portion SW¼NW¼.
Patent No. 5636
Patentee: George Soule
Date of Patent: 3/22/1906
Grant: 2M–C.
T 11 N., R. 20 E.
Sec. 22, lot 14,
Sec. 15, portion SE¼SW¼.
Patent No. 3755
Patentee: George W. Gallaner
Date of Patent: 10/6/1897
Grant: 2M.
T 11 N., R. 20 E.
Sec. 15, portion lot 2, SW¼.
Patent No. 4145
Patentee: William H. Harley
Date of Patent: 11/10/1899
Grant: 2M.
T 10 N., R. 21 E.
Sec. 25, portion NE¼NE¼.
Patent No. 12285
Patentee: James & Ida Compston
Date of Patent: 9/19/1947
Grant: 2M.

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T 10 N., R. 21 E.
  Sec. 24, portion lot 1, SW¼,
  Sec. 23, lots 1, 2, & 3, portion SE¼NE¼.
  Patent No. 8482
  Patentee: Len Derrick
  Date of Patent: 11/27/1916
  Grant: 2M.
T 10 N., R. 21 E.
  Sec. 6, lot 1, NE¼.
  Patent No. 4450
  Patentee: Mathias A. Jacobsen
  Date of Patent: 3/5/1901
  Grant: 2M.
T 11 N., R. 21 E.
  Sec. 31, portion NW¼SE¼, portion lot 6, SE¼.
  Patent No. 4121
  Patentee: Barney Riley
  Date of Patent: 10/2/1899
  Grant: 2M.
T. 9 N., R. 22 E.
  Sec. 24, portion 6.
  Patent No. 12650,
  Patentee: Vemba W. Pitts
  Date of Patent: 4/19/1951
  Grant: 2M.
T. 9 N., R. 22 E.
  Sec. 24, portion lots 1, 2, 3, 4 & 5,
  Sec. 13, portion SW¼ fractional quarter, portion S½NE¼,
  Sec. 14, portion lots 2, 3, 4 & 5.
  Patent No. 2142,
  Patentee: John P. Marshal
  Date of Patent: 8/20/1884
  Grant: 2M.
T. 9 N., R. 22 E.
  Sec. 14, portion, NE¼NW¼.
  Patent No. 2020
  Patentee: Richard Kirman
  Date of Patent: 1/4/1884
  Grant: 2M.
T. 9 N., R. 22 E.
  Sec. 14, portion lot 1,
  Sec. 15, portion lot 1.
  Patent No. 2284
  Patentee: Alfred P. Pike
  Date of Patent: 2/19/1885
  Grant: 2M, Indemnity.
T. 9 N., R. 22 E.
  Sec. 11, portion SW¼SW¼,
  Sec. 10, portion lots 6 & 7, SE¼, portion NE¼SE¼.
  Patent No. 2011
  Patentee: Barbara A. Lancaster
  Date of Patent: 12/12/1883
  Grant: 2M.
T. 9 N., R. 22 E.
  Sec. 10, portion lot 4, portion lot 5.
  Patent No. 2008
  Patentee: H. H. Lancaster
  Date of Patent: 12/12/1883
  Grant: 2M.
T. 9 N., R. 22 E.
  Sec. 10, portion lot 3.
  Patent No. 2009
  Patentee: G. W. Stout
  Date of Patent: 12/12/1883
  Grant: 2M.
T. 9 N., R. 22 E.
  Sec. 4, portion lots 4 & 5,
  Sec. 5, portion lot 3.
  Patent No. 8494
  Patentee: Tremnor Coffin
  Date of Patent: 11/27/1916
  Grant: 2M.
T. 9 N., R. 22 E.
  Sec. 5, portion lot 1 NE¼
  Patent No. 8489
  Patentee: William Bender
  Date of Patent: 11/27/1916
  Grant: 2M.
T. 10 N., R. 22 E.
  Sec. 32, portion NW¼NW¼.
  Patent No. 8479
  Patentee: Andrew S. Bryant
  Date of Patent: 11/27/1916
  Grant: 2M.
T. 9 N., R. 23 E.
  Sec. 30, portion lots 1, 2, 4 & 4, portion NW¼NE¼.
  Patent No. 8474
  Patentee: Joseph Platt
  Date of Patent: 11/27/1916
  Grant: 2M.
T. 9 N., R. 23 E.
  Sec. 19, portion SW¼.
  Patent No. 8466
  Patentee: Ezekiel Edgecomb
  Date of Patent: 11/27/1916
  Grant: 2M.
T. 7 N., R. 25 E.
  Sec. 35, portion NE¼SW¼.
  Patent No. 2159
  Patentee: George A. Green
  Date of Patent: 9/19/1884
  Grant: I.I.

Lands patented by the State of California which now are within the boundaries of the State of Nevada:

T. 1 N., R. 31 E.
  Sec. 12, portion SW¼NW¼.
  Patent No. Ind 2042
  Patentee: Oliver Bertrand
  Date of Patent: 10/27/1900
  Grant: Lieu.
T. 4 N., R. 36 E.
  Sec. 36, portion.
  Patent No. Sac. 4727
  Patentee: George B. and Gertrude Moss
  Date of Patent: 11/02/1950
  Grant: 16 & 36.
T. 5 S., R. 37 E.
  Sec. 5, portion tr. 39.
  Patent No. Ind. 3563
  Patentee: Robert C. Allen
  Date of Patent: 9/6/1923
  Grant: Lieu.
T. 5 S., R. 37 E.
  Sec. 16, portion NE¼NE¼NE¼.
  Patent No. Ind. 3141
  Patentee: James A. Little
  Date of Patent: 1/22/1912
  Grant: 16 & 36.
T. 5 N., R. 28 E.,
  Sec. 32, portion SW¼SW¼.
  Patent No. Ind. 3440
  Patentee: Edward Rondel
  Date of Patent: 6/2/1922
  Grant: Lieu.

For illustrative purposes maps (using the Department of the Interior, Bureau of Land Management Master Title Plats) and the above listed patents or conveyances are available for public inspection with the State Directors of the Bureau of Land Management, Department of the Interior, in California and Nevada, and with the State Lands Administrator of Nevada and State Lands Commissioner of California.

Sharon N. Janis,

Chief, Branch of Adjudication & Records.

[FR Doc. 86–26193 Filed 11–19–86; 8:45 am]

BILLING CODE 4310-40-M

[MT-030-07-4410-08]

Montana; Dickinson District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Dickinson District Office, Interior.

ACTION: Notice of meeting.

SUMMARY: The district advisory council for the Bureau of Land Management's Dickinson District will meet December 19, 1986, in Dickinson, North Dakota.

Two major topics will be discussed at the council meeting: alternative management proposals and expected environmental impacts presented in the Draft North Dakota Resource Management Plan, and proposed changes to the Federal coal management regulations.

The council is chartered by the Secretary of Interior to give citizen advice to the Dickinson District Manager regarding planning and management of public lands and resources.

The meeting is open to the public, and members of the public will be given the opportunity to make statements before the Council. Persons wishing to submit a written statement to the Council should send it to the Dickinson District Manager.

Location, Date, and Time: December 19, 1986, from 8:30 A.M. to approximately 3:00 P.M. Mountain Standard Time, Conference Room, Bureau of Land Management, 202 East Villard, Dickinson, North Dakota.

FOR FURTHER INFORMATION CONTACT: William F. Krech, District Manager; P.O. Box 1229, Dickinson, North Dakota 58602; Telephone (701) 225–9148.

William F. Krech,

District Manager.

[FR Doc. 86–26197 Filed 11–19–86; 8:45 am]

BILLING CODE 4310-DN-M

[UT-040-06-4830-12]

Utah; Cedar City District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 92–463, that a meeting of the Cedar City District Advisory Council will be held December 11, 1986.

The meeting will begin at 9:30 a.m. in the BLM office at 176 East DL Sergent

Drive, Cedar City, Utah. The agenda will include: update on several lands and mineral issues that the council has previously addressed, follow-up on the Escalante RAMP discussion of last meeting, land sale request in the Beaver County area, ORV designations, Christmas tree sales and trespass, and a discussion on the preplanning effort currently underway in the Dixie Resource Area.

All Advisory Council meetings are open to the public. Interested persons may make oral statements at 9:45 a.m. or submit written comments for the councils consideration. Anyone wishing to make an oral statement must notify the District Manager, 176 East DL Sargent Drive, Cedar City, Utah 84720 by Dec. 8, 1986. Depending on the number of persons wishing to make a statement, a per person time limit may be established by the District Manager or Council Chairman.

Dated: November 13, 1986.

Morgan S. Jensen,

District Manager.

[FR Doc. 86-26196 Filed 11-19-86; 8:45 am]

BILLING CODE 4310-DQ-M

Alaska; Proposed Reinstatement of a Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48734-AM has been received covering the following lands:

Copper River Meridian, Alaska

T. 4 S., R. 2 E.,
Sec. 29, S½NW¼.
(80 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from June 1, 1985, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48734-AM as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective September 1, 1985, subject to the terms and conditions cited above.

Dated: November 12, 1986.

Kay F. Kletka,

Acting Chief, Branch of Mineral Adjudication.

[FR Doc. 86-26198 Filed 11-19-86; 8:45 am]

BILLING CODE 4310-84-M

[WY920 07 4121-14; Coal Lease Application W-100441]

Black Butte Coal Co. Emergency By-Pass; Coal Lease Application W-100441

At 2:00 p.m., December 17, 1986, an authorized officer of the Bureau of Land Management, Wyoming State Office will offer the following described lands for competitive lease by sealed bid to the qualified bidder submitting the highest cash amount per acre, or fraction thereof, in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.). No bid will be considered which is less than $100 per acre and bids should be formulated on the basis of 1,218 acres. The minimum bid is not intended to represent fair market value.

Coal offered: The coal resource to be offered consists of all the recoverable coal in the following described lands located in Sweetwater County, Wyoming:

T. 19 N., R. 100 W., 6th P. M., WY
Sec. 12: All;
Sec. 24: W½E½, W½;
Sec. 26: Lots 4, 5.
Containing 1,217.98 acres.

The estimated total recoverable reserves are 11.7 million tons with the following estimated coal quality: BTU—9,313/lb; Sulphur—.28 percent; Ash—6.71 percent; Moisture—21.74 percent. The coal is classified as subbituminous. The above described lands lie within the Rock Springs Known Coal Leasing Area in Sweetwater County, Wyoming and contain three mineable coal seams averaging between 4.5 feet and 29 feet in thickness. The report indicating demonstrated in-place and recoverable reserves by coal seam is available for public review in case file W-100441.

Rental and Royalty

A lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre and a royalty payable to the United States of 12.5 percent of the value of coal produced by strip or auger mining methods and 8.0 percent of the value of coal produced by underground mining methods. The value of the coal shall be determined in accordance with 43 CFR 3485.2.

Advance Royalty

Upon request by the lessee, the authorized officer may accept, for a total of not more than 10 years, the payment of advance royalties in lieu of the condition of continued operation, consistent with the regulations. The advance royalty shall be based on a percent of the value of a minimum number of tons determined in the manner established by the advance royalty regulations in effect at the time the lessee requests approval to pay advance royalties in lieu of continued operation.

Where and When To Submit Bids

Sealed bids must be submitted on or before 1:00 p.m., December 17, 1986, to the Wyoming State Office, 2515 Warren Avenue, Cheyenne, Wyoming 82001. Sealed bids received after the hour specified will not be considered. The envelope used for the sealed bid should be plainly marked that it is not to be opened before the hour and date of the sale and should show that the bid is for coal lease W-100441. Sealed bids may not be modified or withdrawn unless the modification or withdrawal is received before 1:00 p.m., December 16, 1986, at the above address.

Sealed Bidding Requirements

No specific form of sealed bid is required. However, all bids must show the amount bid per acre, the total amount bid, the amount submitted with the bid, and must be signed by the bidder or a person authorized to act for the bidder. Each sealed bid must be accompanied by the following:

1. A bid deposit of one-fifth of the amount bid in cash, cashier's check, certified check, bank draft, money order, certificate of bidding rights, or personal check made payable to the order of the Bureau of Land Management.
2. A statement over the bidder's own signature with respect to citizenship and interests held, similar to that prescribed in 43 CFR Part 3472 and a statement as to the sole party in interest as specified in 43 CFR 3472.2-1. A lease will not be issued to a bidder who holds or controls more than 46,080 acres of Federal coal leases in any one state or more than 100,000 acres of Federal coal leases in the United States.
3. A completed and signed Form 1140-6, Independent Price Determination Certificate, to the effect that the bid was arrived at by the bidder independently and was tendered without collusion with any other bidder.

Bidders are warned against violation of section 1860, Title 18, U.S.C. prohibiting unlawful combination or intimidation of bidders.

Bid Opening

At 2:00 p.m., December 17, 1986, in the conference room, third floor, 2515 Warren Avenue, Cheyenne, Wyoming, the authorized officer will open and read all the sealed bids. If identical bids are

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received for the tract, the tying high bidders will be asked to submit follow-up sealed bids until a high bid is received. An apparent high bidder submitting a tie-breaking sealed bid shall tender, at the close of the sale, any additional amount necessary to bring the amount submitted with the original bid up to one-fifth of the final bid. The highest bid will be announced and the successful high bidder will be formally notified in writing after the State Director has made his determination. The Department of the Interior reserves the right to offer the lease to the next highest qualified bidder if the successful bidder fails to obtain the lease for any reason. If any bid is rejected, the deposit made on the day of the sale will be returned.

Consultation With the Attorney General

In accordance with the Federal Coal Leasing Amendments Act of 1976, and the implementing regulations 43 CFR 3422.3–4, the successful bidder and prospective lessee will be required to disclose the nature and extent of its coal holdings to the Department of Justice prior to lease issuance. The Department of Justice has devised a reporting form for the submission of this information and *will not accept* the data in any other form. To insure the confidentiality of the information submitted, the successful bidder is required to furnish the data in a separate envelope which has been clearly marked to show its contents. Information of the prospective lessee's non-coal-related holdings is not required. The lease will not issue until 30 days after this information has been received by the Attorney General or the Attorney General notifies the authorized officer that lease issuance would not create or maintain a situation inconsistent with the antitrust laws, whichever comes first.

Deferred Bonus

Payment of the bonus bid shall be on a deferred basis. One-fifth of the bonus will be payable on the day of the sale. The balance shall be paid in equal annual installments due and payable on the first four anniversary dates of the lease. If the lease is relinquished or otherwise terminated, the unpaid remainder of the bid shall be immediately payable to the United States.

Requirements for Mining and Reclamation Plan Approval

Mining of the coal and reclamation of the lands will be done in accordance with an approved mining plan and reclamation plan which must be developed to meet the requirements of (1) the lease, (2) 43 CFR Part 3480 and Chapter VII of Title 30 of the Code of Federal Regulations and (3) Wyoming Environmental Quality Act and Wyoming Land Quality Rules and Regulations as included in the State-Federal cooperative agreement.

Lease Issuance Requirements

Prior to the issuance of a lease, the successful bidder will be required to furnish the following:

1. First year's rental in the amount of $3,654.00.
2. The cost of advertising the sales notice in a local newspaper.
3. A lease bond in an amount sufficient to cover all regular requirements and the deferred bonus. The successful bidder will be notified in writing of the amount required. The lease bond will be reviewed when production begins and as the balance of bonus bid declines and will be adjusted accordingly.
4. The information required for antitrust review. (See Consultation with the Attorney General paragraph.)
5. Four executed copies of the lease form.

Lease Form and Stipulations

The attention of all prospective bidders is directed to the attached copy of the proposed coal lease and stipulations.

Hillary A. Oden,

State Director.

[FR Doc. 86–26150 Filed 11–19–86; 8:45 am]

BILLING CODE 4310-14-M

[WY920 07 4121-14]

Wyoming; Coal Lease Offering by Sealed Bid

U.S. Department of the Interior, Bureau of Land Management, Wyoming State Office, 2515 Warren Avenue, Cheyenne, Wyoming 82001. Notice is hereby given that certain coal resources in the lands hereinafter described, located in Sweetwater County, Wyoming will be offered for competitive lease by sealed bid. This offering is being made as a result of an emergency by-pass coal lease application filed by the Black Butte Coal Company in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq). The sale will be held at 2:00 p.m., December 17, 1986, in the third floor conference room at the above address.

Processing of the Black Butte emergency lease application and the related amendment to the Salt Wells Management Framework Plan have been completed. This includes an environmental assessment (EA) of the proposed coal development and plan amendment. The results of these activities were a finding of no significant environmental impacts from the proposed coal development, the amended planning decision that the Federal coal lands involved are acceptable for further leasing consideration and the decision to offer the Federal coal resources for lease. The emergency lease/plan amendment EA and Record of Decision, including mitigation requirements, are on file in the Wyoming State Office.

This tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets the fair market value determination of the tract. The minimum bid is $100 per acre. No bid less than $100 per acre will be considered. The minimum bid is not intended to represent fair market value. The fair market value will be determined by the Authorized Officer after the sale. Sealed bids must be submitted on or before 1:00 p.m., December 17, 1986, to the Wyoming State Office, 2515 Warren Avenue, Cheyenne, Wyoming 82001. Bids received after that time will not be considered.

Coal Offered

The coal resource to be offered consists of all the recoverable coal in the following described lands located in Sweetwater County, Wyoming:

T. 19 N., R. 100 W., 6th P.M., WY,
  Sec. 12: All;
  Sec. 24: W½E½, W½;
  Sec. 26: Lots 4, 5.

The 1,217.98 acre tract contains an estimated 11.7 million tons of recoverable coal with the following estimated coal quality: BTU—9,313/lb.; Sulphur—.26 percent; Ash—6.71 percent; Moisture—21.74 percent. The coal is classified as subbituminous.

Rental and Royalty

The lease issued as a result of this offering will provide for payment of annual rental of $3.00 per acre and a royalty payable to the United States of 12.5 percent of the value of coal produced by strip or auger mining methods and 8.0 percent of the value of coal produced by underground mining methods.

Deferred Bonus

Payment of the bonus bid for this lease shall be on a deferred basis. One-fifth of the bonus will be payable on the day of the sale. The balance shall be paid in equal annual installments due and payable on the first four anniversary dates of the lease.

Notice of Availability

Bidding instructions for the offered tract are included in the Detailed Statement of Lease Sale. Copies of the Statement and of the proposed coal lease are available at the Wyoming State Office. Case file documents are also available at that office for public inspection. Coal resource information pertaining to this tract is also available for public inspection in the Rock Springs District Office, Highway 191 North, Rock Springs, Wyoming 82902.

Hillary A. Oden,

State Director.

[FR Doc. 86-26149 Filed 11-19-86; 8:45 am]

BILLING CODE 4310-10-M

Arizona and California; Temporary Closure of Selected Public Lands in La Paz County, AZ, and San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure of selected public lands in La Paz County, Arizona, and San Bernardino County, California, during the operation of the 1987 SCORE Parker 400 off-road vehicle race.

SUMMARY: The District Managers of the Yuma District, the California Desert District, and the Phoenix District jointly announce the temporary closure of selected public lands under their respective administration. This action is being taken to provide for public safety and prevent unnecessary environmental degradation during the official permitted running of the 1987 SCORE Parker 400 off-road vehicle race.

EFFECTIVE DATES: January 29, 1987, through February 1, 1987.

FOR FURTHER INFORMATION CONTACT: Jerry L. Page, Supervisory Natural Resource Specialist, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86403, (602) 855-8017; Robert W. Schneider, Resource Protection Chief, Needles Resource Area, 901 Third Street, Needles, California 92363, (619) 326-3896; or Mike Feeney, Natural Resource Specialist, Lower Gila Resource Area, 2015 West Deer Valley Road, Phoenix, Arizona 85027, (602) 863-6711.

SUPPLEMENTARY INFORMATION: Specific restrictions and closure periods are as follows:

California Loop

1. The entire course is closed to public vehicle use from 6 a.m., Thursday, January 29, 1987, to 6 p.m. Sunday, February 1, 1987 (PST).

2. Between noon, Friday, January 30, 1987, and 3 p.m., Saturday, January 31, 1987 (PST), vehicles are prohibited within 1 mile of either side of existing roads making up the California Loop of the officially approved course. Access routes leading to the course are also closed. All closed routes will be posted throughout the closure period.

3. Spectator viewing is limited to four designated spectator areas located at:

a. Start/Finish area (approximately 5 miles east of Vidal Junction off State Route 62).

b. Vidal Junction (approximately 2 miles north of Vidal Junction adjacent to U.S. Highway 95).

c. Rice (approximately 18 miles west of Vidal Junction off State Route 62).

d. Thunder Alley (approximately 25 miles west of Vidal Junction off Cadiz Road).

Vehicle travel or parking outside these designated locations is prohibited. All vehicles operated within these four locations shall be legally registered for street and highway operation.

4. The previously used spectator viewing area located adjacent to U.S. Highway 95, approximately 18 miles north of Vidal Junction, is open *only* to official pitting activity. No spectators will be allowed at this location.

5. Spectators and vehicle parking along U.S. Highway 95 is prohibited.

6. All vehicles operated within designated pit areas shall be legally registered for street and highway operation.

Arizona Loop

1. The portion of the course comprised of BLM roads and ways is closed to public vehicle use from 6 a.m., Thursday, January 29, 1987, to 6 p.m. Sunday, February 1, 1987 (MST).

2. Vehicles are prohibited from the following five Wilderness Study Areas:

a. AZ-050-12 (Gibraltar Mountain)
b. AZ-050-14A/B (Cactus Plain)
c. AZ-050-15A (Swansea)
d. AZ-050-17 (East Cactus Plain)
e. AZ-050-71 (Buckskin Mountains)

3. The entire area encompassed by the Arizona Loop and all areas within 1 mile outside the Arizona Loop are closed to vehicles unless otherwise posted. Access routes leading to the course are closed to vehicles. All closed routes will be posted throughout the closure period.

4. Spectator viewing is limited to two designated spectator areas located at:

a. Arizona Start/Finish area (along Shea Road east of Parker, Arizona).

b. Bouse Road (about 1½ miles north of Bouse, Arizona).

Camping is allowed only in the two designated spectator areas. Vehicle travel or parking outside these designated locations is prohibited. All vehicles operated within these two locations shall be legally registered for street and highway operation.

5. Spectators and vehicle parking along Bouse Road, Shea Road, and Swansea Road is prohibited except for the two designated spectator areas.

6. All vehicles operated within designated pit areas shall be legally registered for street and highway operation.

Signs and maps directing the public to the Arizona and California spectator areas will be provided by the Bureau of Land Management and the event sponsor.

The above restrictions do not apply to emergency vehicles and vehicles owned by the United States, the States of Arizona and California, or the Counties of La Paz and San Bernardino. Vehicles under permit for operation by event participants must follow the race permit stipulations. Operators of permitted vehicles shall maintain a maximum speed limit of 30 mph on all BLM roads and ways. This speed limit shall not apply to vehicles entered in the race during race day, Saturday, January 31, 1987.

Authority for closure of public lands is found in 43 CFR Part 8340, Subpart 8341; 43 CFR Part 8360, Subpart 8364.1, and 43 CFR Part 8372. Persons who violate this closure order are subject to arrest and, upon conviction, may be fined not more than $1,000 and/or imprisoned for not more than 12 months.

Dated: November 13, 1986.

J. Darwin Snell,

Yuma District Manager.

H.W. Riecken,

Acting California Desert District Manager.

Marlyn V. Jones,

Phoenix District Manager.

[FR Doc. 86-26147 Filed 11-19-86; 8:45 am]

BILLING CODE 4310-32-M

Limitation of Vehicle Use on Four Routes Within Little Picacho Peak Wilderness Study Area 356, Imperial County, CA

AGENCY: Bureau of Land Management, Interior.

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ACTION: Closure of four vehicle routes to parking overnight wayside parking within Little Picacho Peak Wilderness Study Area #356, Imperial County, California.

SUMMARY: This vehicle route limitation notice affects four vehicle routes lying within T. 14 ½ S., R. 22 E., SBM and T. 15 S., R. 22 E., SBM, within the Little Picacho Peak Wilderness Study Area #356. This area is under the administrative responsibility of the El Centro Resource Area, California Desert District. Vehicle use on the affected routes is hereby limited to day use only. The routes are closed to overnight wayside parking.

The area along these routes is receiving increasing amounts of vehicle-based camping overflow from the adjacent Imperial Dam Long-term Visitor Area. This use threatens to impair the suitability of WSA #356 if allowed to continue. Although wayside camping along the routes has previously been limited to 14 days, this limitation has not been adequate to prevent damage to natural desert pavement surfaces and degradation of scenic values. Closure of the routes to overnight wayside parking will stop camping impacts and prevent impairment of wilderness suitability.

Use of the routes affected by this notice is being limited under the authority of 43 CFR 8364.1. This limitation order was effective November 4, 1986 and shall remain in effect until completion of the Vehicle Route Designation Amendment Process for this area. The affected routes have been posted "Day Use Only—No Overnight Camping". Maps showing the location of the affected routes are available from the El Centro Resource Area, 333 South Waterman Avenue, El Centro, California 92243.

Any person who knowingly and willfully violates this closure order may be subject to a fine of up to $1,000 or imprisonment of up to 12 months, or both under authority of 43 CFR 8364.1(d).

FOR FURTHER INFORMATION CONTACT: Gerald E. Hillier, District Manager, Bureau of Land Management, 1695 Spruce Street, Riverside, California 92507, (714) 351–6386.

Dated: November 12, 1986.

H.W. Riecken,

Acting District Manager.

[FR Doc. 86–26144 Filed 11–19–86; 8:45 am]

BILLING CODE 4310–40–M

Geological Survey

Application Notice Establishing the Closing Date for Transmittal of Applications Under the National Earthquake Hazards Reduction Program for Fiscal Year (FY) 1988

Applications are invited for research projects under the National Earthquake Hazards Reduction Program.

Authority for this program is contained in the Earthquake Hazards Reduction Act of 1977, Pub. L. 95–124. (42 U.S.C. 7701, et. seq.)

The purpose of this program is to support research in earthquake hazards and earthquake prediction to provide earth-science data and information essential to mitigate earthquake losses.

Applications may be submitted by educational institutions, private firms, private foundations, individuals, and agencies of State or local governments.

Closing Date for Transmittal of Applications: Applications for awards must be received on or before February 19, 1987.

Program Information: This program supports research related to the following general areas of national interest: (1) Current tectonic and earthquake potential studies—analysis of regional seismic network data, identification of source zone characteristics, and earthquake potential estimates; (2) earthquake prediction research—prediction methodology and evaluation, focused earthquake prediction experiments, and theoretical, laboratory, and fault zone studies; and (3) regional earthquake hazards assessments—mapping and synthesis of geologic hazards, loss estimation modeling, and implementation.

Application Forms: The program announcement is expected to be available on or about December 1, 1986, and may be obtained by writing to the U.S. Geological Survey, Branch of Procurement and Contracts, MS 205C, 12201 Sunrise Valley Drive, Reston, VA 22092 and requesting a copy of announcement 7234. All organizations that applied for a FY 1987 award and all organizations that requested to be retained on the mailing list since the last announcement will be mailed a copy of the program announcement.

Further Information: For further information contact Dr. Elaine Padovani, Deputy Chief, External Research Program, Office of Earthquakes, Volcanoes, and Engineering, U.S. Geological Survey, 12201 Sunrise Valley Drive, Reston, VA 22092. Telephone: 703–648–6722.

(Catalog of Federal Domestic Assistance Number 15.807)

Dated: November 5, 1986.

Roy J. Heinbuch,

Acting Assistant Director for Administration.

[FR Doc. 86–26158 Filed 11–19–86; 8:45 am]

BILLING CODE 4310–31–M

Minerals Management Service

Development Operations Coordination Document; Corpus Christi Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Corpus Christi Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 7654 and 6638, Blocks 266 and 267, respectively, East Cameron Area, offshore Louisiana. Proposed Plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on November 12, 1986. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Wholesalers Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention, OCS Plans. Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit, Phone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section /Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 13, 1968

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-26202 Filed 11-19-86; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Upper Delaware Citizens Advisory Council; Meeting

AGENCY: National Park Service; Upper Delaware Citizens Advisory Council, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: November 28, 1986, 7:00 p.m.

Inclement weather reschedule date: None.[1]

ADDRESS: Town of Tusten Hall, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent, Upper Delaware Scenic and Recreational River, Drawer C, Narrowsburg, NY 12764-0159. (717) 729-8251

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95-625, 16 U.S.C. 1274 note, to encourage maximum public involvent in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation of a management plan and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will include discussion of the final draft of River Management Plan. The meeting will be open to the public.

Any member of the public may file with the council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box 84, Narrowsburg, NY 12764. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Upper Delaware Scenic and Recreational River, River Road, 1¾ miles North of Narrowsburg, NY, Damascus Township, Pennsylvania.

Dated: November 5, 1986.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 86-26133 Filed 11-19-86; 8:45 am]

BILLING CODE 4310-70-M

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[1] Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL, and WVOS.

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Coordinating Council; meeting

The fourth quarterly meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention will be held in Washington, DC, on December 16, 1986. The meeting will take place in Conference room 220 at the Department of the Interior, Interior South Building, 1951 Constitution Avenue, NW., from 9:30 a.m. to 12:00 p.m. The public is welcome to attend.

The agenda will include matters related to the coordination of the Federal effort in the area of juvenile justice and delinquency prevention.

For further information, please contact Roberta Dorn, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531, (202) 724-7655.

Dated: November 17, 1986.

Approved:

Verne L. Speirs,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 86-26203 Filed 11-19-86; 8:45 am]

BILLING CODE 4410-18-M

MERIT SYSTEMS PROTECTION BOARD

Relocation of Regional Offices in Boston and St. Louis

AGENCY: Merit Systems Protection Board.

ACTION: Notice of change in address for two MSPB regional offices.

SUMMARY: Recently, the Boston and St. Louis regional offices of the U.S. Merit Systems Protection Board relocated.

DATE: November 20, 1986.

FOR FURTHER INFORMATION CONTACT: Michael W. Doheny, Acting Assistant Managing Director for Regional Operations, FTS: 653-7980.

SUPPLEMENTARY INFORMATION: Below are the new addresses for the Boston and St. Louis Regional Offices and the new telephone numbers for the Boston Regional Office:

Boston Regional Office, Merit Systems Protection Board, 10 Causeway Street, Suite 1078, Boston, Massachusetts 02222-1042, Telephone: FTS: 835-6650, Commercial: (617) 565-6650

St. Louis Regional Office, Merit Systems Protection Board, 911 Washington Avenue, Suite 615, St. Louis, Missouri 63101-1203, Telephone: FTS: 279-4295, Commercial: (314) 425-4295

Dated: November 14, 1986.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 86-26161 Filed 11-19-86; 8:45 am]

BILLING CODE 7400-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Humanities Panel; Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for

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financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

1. Date: December 1–2, 1986.
Time: 9:00 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for Central Disciplines in Undergraduate Education—Improving Introductory Courses and Fostering Coherence Throughout an Institution—for projects beginning after October 1, 1986.

2. Date: December 2, 1986.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Summer Stipends applications in Sociology, Psychology, and Education submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1987.

3. Date: December 2, 1986.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316
Program: This meeting will review Summer Stipends applications in American History I submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1987.

4. Date: December 3, 1986.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Summer Stipends applications in Modern European History, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1987.

5. Date: December 3, 1986.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316.
Program: This meeting will review Summer Stipends applications in Foreign Languages and Literatures; Linguistics, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1987.

6. Date: December 4–5,, 1986.
Time: 8-30 a.m. to 5:30 p.m.
Room: 430.
Program: This meeting will review applications submitted for Central Disciplines in Undergraduate Education—Promoting Excellence in A Field and Nontraditional Learners—for projects beginning after October 1, 1987.

7. Date: December 5, 1986.
Time: 8:30 a.m. to 5:30 p.m.
Room: 361
Program: This meeting will review Summer Stipends applications in Philosophy I, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1987.

8. Date: December 5, 1986.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Summer Stipends applications in American History II, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1987.

9. Date: December 8, 1986.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316
Program: This meeting will review Summer Stipends applications in Philosophy II, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1987.

10. Date: December 8, 1986.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Summer Stipends applications in Classics, Comparative Literature, Theory and Criticism, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1987.

11. Date: December 9, 1986.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Summer Stipends applications in Music and Dance, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1987.

12. Date: December 9, 1986.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316.
Program: This meeting will review Summer Stipends applications in Anthropology, Folklore, Archaeology, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1987.

13. Date: December 10, 1986.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316.
Program: This meeting will review Summer Stipends applications in Archaeology, Ancient, Medieval and Early Modern European History, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1987.

14. Date: December 11, 1986.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316.
Program: This meeting will review Summer Stipends applications in Communications, Theater and Film submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1987.

15. Date: December 11–12, 1986.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications submitted for the humanities submitted to the Projects category of the Interpretive Research Programs, Division of Research Programs, for projects beginning after July 1, 1987.

16. Date: December 12, 1986.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Summer Stipends applications in Art History, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1987.

17. Date: December 12, 1986.
Time: 9:00 a.m. to 5:30 p.m.
Room: 316–2
Program: This meeting will review applications submitted for the Constitutional Summer Stipends, Division of Fellowships and Seminars, for projects beginning after May 1, 1987.

18. Date: December 15, 1986.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review Summer Stipends applications in Romance Languages and Literatures submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1987.

19. Date: December 15, 1986.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316.
Program: This meeting will review Summer Stipends applications in African, Asian, and Latin American History and Politics submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1987.

20. Date: December 15–16, 1986.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for the humanities submitted to the Projects category of the Interpretive Research

Program, Division of Research Programs, for projects beginning after July 1, 1987.

21. Date: December 16, 1986.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315

Program: This meeting will review Summer Stipends applications in American Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1987.

22. Date: December 16, 1986.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316

Program: This meeting will review Summer Stipends applications in Religious Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1987.

23. Date: December 17, 1986.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316

Program: This meeting will review Summer Stipends applications in British Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1987.

24. Date: December 18, 1986.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315

Program: This meeting will review Summer Stipends applications in Modern American and British Literature submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1987.

25. Date: December 19, 1986.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316

Program: This meeting will review Summer Stipends applications in Political Science, Law, and Jurisprudence, Geography and Economics submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1987

Stephen J. McCleary,
Advisory Committee Management Officer.

[FR Doc. 86-26209 Filed 11-19-86; 8:45 am]
BILLING CODE 7536-01-M

Inter-Arts Advisory Panel (Folk Arts Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Folk Arts Section) to the National Council on the Arts will be held on December 10-12, 1986 from 9:00 a.m.-5:30 p.m. and on December 13, 1986 from 9:00 a.m.-3:30 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on December 13, 1986 from 11:30 a.m.-12:30 p.m. to discuss policy issues.

The remaining sessions of this meeting on December 10-12, 1986 from 9:00 a.m.-5:30 p.m. and on December 13, 1986 from 9:00 a.m.-11:30 a.m. and from 1:30 p.m.-3:30 p.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

John H. Clark,
Director, Council and Panel Operations, National Endowment for the Arts.

November 14, 1986.

[FR Doc. 86-26141 Filed 11-19-86; 8:45 am]
BILLING CODE 7537-01-M

Media Arts Advisory Panel (Radio Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Radio Section) to the National Council on the Arts will be held on December 16-18, 1986 from 9:00 am-6:00 pm in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

John H. Clark,
Director, Council and Panel Operations, National Endowment for the Arts.

November 14, 1986.

[FR Doc. 86-26142 Filed 11-19-86; 8:45 am]
BILLING CODE 7537-01-M

Music Advisory Panel (Orchestra Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Orchestra Section) to the National Council on the Arts will be held on December 9, 1986 from 9:00 a.m.-6:30 p.m.; on December 10, 1986 from 9:00 a.m.-9:30 p.m.; on December 11, 1986 from 9:00 a.m.-10:00 p.m.; and on December 12, 1986 from 9:00 a.m.-6:30 p.m. in room MO-7 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on December 12, 1986 from 1:00 p.m.-2:30 p.m. to review guidelines and the Five Year Plan.

The remaining sessions of this meeting on December 9, 1986 from 9:00 a.m.-6:30 p.m.; on December 10, from 9:00 a.m.-9:30 p.m.; on December 11, 1986 from 9:00 a.m.-10:00 p.m.; and on December 12, 1986 from 9:00 a.m.-12:00 noon and 2:30 p.m.-6:30 p.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC 20506, 202/682-5532, TTY 202/682-

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5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

November 14, 1986.

[FR Doc. 86–26143 Filed 11–19–86; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by December 22, 1986. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357–7934.

SUPPLEMENTAL INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional information was published in the **Federal Register** on July 17, 1986.

The application received is as follows:

1. *Applicant:* David H. Elliot, Institute of Polar Studies, The Ohio State University, Columbus, Ohio 43210.

Activity for Which Permit Requested: Enter site of special scientific interest. The applicant requests permission to enter Site of Special Scientific Interest No. 6, Byers Peninsula, to conduct geological field work.

Location: Byers Peninsula, Antarctica.

Dates: December 1986–January 1987.

Authority to publish this notice has been delegated by the Director of the National Science Foundation.

Charles E. Myers,

Permit Office.

[FR Doc. 86–26145 Filed 11–19–86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability—Extension of Comment Period

On October 28, 1986 (51 FR 39440), the Nuclear Regulatory Commission published a document announcing the availability of a draft of a new guide for public comment. The draft guide, entitled "Containment System Leakage Testing", is temporarily identified by its task number, MS 021–5.

The period for submitting public comments on this draft guide has been extended from December 29, 1986 until January 26, 1987. Comments or any other correspondence concerning this draft guide should mention the task number. Comments should be sent to the Rules and Procedures Branch, division of Rules and Records, Office of Administration, Room 4000 MNBB, Washington DC 20555.

Dated at Rockville, Maryland, this 13th day of November 1986.

Guy A. Arlotto,

Director, Division of Engineering Safety, Office of Nuclear Regulatory Research.

[FR Doc. 86–26210 Filed 11–19–86; 8:45 am]

BILLING CODE 7590-01-M

Consumer Power Co.; Midland Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an Order Revoking Construction Permit Nos. CPPR–81 and CPPR–82, which authorized construction of the Midland Plant, Units 1 and 2, located just south of the City of Midland in Midland County, Michigan. The construction permits are held by Consumers Power Company (CPC). The latest construction completion dates in the permits, as amended, were December 1, 1984 and July 1, 1984, respectively.

On May 24, 1984 and September 11, 1984, CPC filed a timely request to extend the latest completion dates to December 1, 1989 and July 1, 1989, respectively. On July 1, 1986, CPC withdrew its request to extend the latest completion dates in its construction permits.

Environmental Assessment:

Identification of Proposed Action: The proposed action is to issue an order that would terminate Construction Permit Nos. CPPR–81 and CPPR–82 for the Midland Plant, Units 1 and 2. This action was requested by CPC because it does not plan to complete the plant as nuclear-fueled units.

On July 1, 1986, CPC informed the Commission that it planned to convert Unit 1 at Midland to a gas-fired unit and to abandon Unit 2 in-place. It also stated that it is withdrawing its request to extend the construction permits' latest completion dates. The Nuclear Regulatory Commission staff (staff) requested additional information on the status of the plant and site on August 21, 1986, and CPC responded with additional detail on October 2, 1986.

By motion dated July 11, 1986, CPC requested the Atomic Safety and Licensing Board (ASLB) to authorize withdrawal of its application for a license to operate Units 1 and 2 at Midland. In this motion, CPC attested to the condition of the plant and requested the ASLB to terminate the operating license proceeding. The ASLB, in a Memorandum and Order dated September 26, 1986, ordered that the action on CPC's motion seeking authorization to withdraw the OL application be deferred pending preparation by the staff and consideration by the Board of an environmental assessment.

The staff conducted an inspection of the Midland site on October 15 and 16, 1986 to determine, among other things, whether CPC's site stabilization plan, outlined in the October 2, 1986 CPC letter had been satisfactorily completed and to determine whether the site stabilization plan considered all critical site areas. A particular effort was made to inspect areas of the site which could be subject to continued erosion and contribute silt to surface waterbodies, as well as identify areas where standing water could result in saturated soils. The entire site, including the cooling pond, was examined. In addition the staff inspected the transmission line corridor from the plant to the Tittabawassee substation and from the Tittabawassee substation to the Kewowa/Thetford substation at several locations.

In a letter dated November 14, 1986, the staff issued to CPC a report entitled "Inspection and Evaluation of the Midland Energy Center for Adequacy of the Stabilization Plan." In that report the staff did not identify any area that required attention that was not covered in the applicant's stabilization plan. Additionally, the site was adequately stabilized and there was no areas where erosion could lead to detrimental offsite environmental impact. The staff also inspected the auxiliary building underpinning to assure that this structure would cause no danger to the public or site usuers. This inspection is documented in a report dated October 28, 1986, Report No. 50-329/86001(DRP) and 50-330/86001(DRP), wherein the staff determined that the planned underpinning work to support the auxiliary building had been completed. Since the shutdown, over two years ago, the auxiliary building has experienced virtually no movement except for the seasonal variations with temperature. This indicates that the existing underpinning and lay-up grouting has left the building in a safe and stable condition, which can cause no damage to the public. Physical barriers are in place to prevent unauthorized access to the underpinning area.

The site cannot be used as a utilization facility. The control rods have either been sold or have been salvaged for the metal content. The pressure boundary remains breached because all four steam generators lack auxiliary feedwater lines. No nuclear fuel was ever received on site. These conditions, by themselves, preclude use of the facility as a nuclear power plant. In addition, CPC has started to cut and cap all steam and feedwater lines in order to meet Internal Revenue Service abandonment criteria. The staff observed that one steam and one feedwater line had been cut and capped and that approximately four square feet of pipe surface on one of the reactor coolant pump cold legs had been removed.

CPC is also a holder of two other NRC licenses, a fission chamber license and a by-product materials license. These two licenses will be terminated by separate actions of the NRC.

The staff concludes, based on its review and inspection, that the Midland site is in an environmentally stable condition and that Units 1 and 2 cannot be operated as nuclear power plants in their present condition.

Need For Proposed Action: The licensee has terminated construction of the nuclear power plant and has disabled the facility so that it cannot be operated as a utilization facility. The licensee intends to use the equipment and site for other purposes. This action would terminate the construction permits.

Environmental Impact: This is a simple administrative action of terminating the outstanding permits to reflect the fact that there are no longer utilization facilities under construction at the Midland site and that the site has been adequately stabilized. This action has no environmental impact.

Alternative Use of Resources: This action, for which there are no appropriate alternatives, does not involve the use of, and therefore will not affect available resources.

Agencies and Persons Contacted: The NRC staff reviewed CPC's request for termination of the construction permit and conducted the environmental review and inspection of the facility. The NRC did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for this proposed action. Based upon the environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the CPC's request for termination of Construction Permit Nos. CPPR-81 and CPPR-82, dated July 1 and 11, 1986, CPC's site stabilization report transmitted by letter dated October 2, 1986, and NRC staff's inspection reports transmitted by letters dated October 28, 1986 and November 14, 1986. These documents regarding the NRC staff's environmental assessment of the proposed action are available for inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the Grace A. Dow Memorial Library, 1710 West St. Andrews Road, Midland, Michigan 48640. Correspondence concerning this facility will continue to be maintained at these locations for at least one year.

Dated at Bethesda, Maryland, this 17th day of November 1986.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Standardization and Special Projects Directorate, Division of PWR Licensing-B, Office of Nuclear Reactor Regulation.

[FR Doc. 86-26213 Filed 11-19-86; 8:45 am]

BILLING CODE 7590-01-M

Applications for Licenses To Export Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application" please take notice that the Nuclear Regulatory Commission has received the following application for an export license. A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, the Secretary, U.S. Nuclear Regulatory Commission, and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear materials or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The information concerning this application follows.

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NRC EXPORT APPLICATIONS

Name of applicant, date of application, date received, application No.	Material type	Material in kilograms		End use	Country of destination
		Total element	Total isotope		
Transnuclear, Inc., Oct. 28, 1986, Oct. 29, 1986, XSNM02144, Amend. 03.	Enriched Uranium	Add'l 42.900	Add'l 40.026	Add'l fuel for BR-2 Research Reactor	Belgium.

Dated this 14th day of November 1986 at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Marvin R. Peterson,

Assistant Director, Export/Import and International Safeguards, Office of International Programs.

[FR Doc. 86-26212 Filed 11-19-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the full Committee, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or canceled since the last list of proposed meetings published October 23, 1986 (51 FR 37671). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 A.M. and Subcommittee meetings usually begin at 8:30 A.M. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, canceled, or rescheduled, or whether changes have been made in the agenda for the December 1986 ARCRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 202/634-3265, ATTN: Barbara Jo White) between 8:15 A.M. and 5:00 P.M., Eastern Time.

ACRS Subcommittee Meetings

Extreme External Phenomena, November 20, 1986, Washington, DC. The Subcommittee will continue its review of the Diablo Canyon long-term seismic program and the NRC Staff's Seismic Safety Research Program.

Spent Fuel Storage, November 21, 1986, Washington, DC. The Subcommittee will continue its review of 10 CFR Part 72 and Monitored Retrievable Storage (MRS).

Regional and I&E Programs, December 2, 1986, Glen Ellyn, IL. The Subcommittee will review the activities of the Office of Inspection and Enforcement which are under the control of the NRC Regional Offices. This meeting will focus on the activities under the purview of the Region III Office.

Waste Management, December 4 and 5, 1986, Washington, DC. The Subcommittee will review the following radioactive waste management topics: (1) The waste management aspects of the FY 1988 and FY 1989 NRC safety research program; (2) the NRC Staff's review of DOE's Final Environmental Assessment for the five nominated geologic repository sites; (3) assessing compliance with the EPA Standard for HLW repositories; (4) rulemaking to conform Part 60 to the EPA Standard; (5) States' implementation of the Low-Level Radioactive Waste Policy Amendments Act of 1985; (6) alternatives to shallow land burial; and (7) the safety assessment of alternatives to shallow land burial.

Containment Requirements, December 9, 1986, Washington, DC. The Subcommittee will discuss the NRR proposed generic letter on Mark I BWR containment requirements. Included will be a discussion of Revision 4, BWR Emergency Procedure Guidelines (covers venting concepts).

Safety Philosophy, Technology, and Criteria, December 10, 1986, Washington, DC. The Subcommittee will: (1) Discuss the implications of the Chernobyl accident, (2) continue its review of USI A-17, "Systems Interactions in Nuclear Power Plants," (3) review the status of the NRC's work on steam generator overfill, (4) discuss the NRC's proposed policy for reviewing reactivated license application for deferred or canceled nuclear power plants, and (5) discuss the status of the EDO's work on the implementation of the Commission's Safety Goal Policy.

Instrumentation and Control Systems, December 18, 1986, Washington, DC. The Subcommittee will discuss the effect of adverse conditions such as high temperature on solid-state components in nuclear power plants.

Severe Accidents, December 19, 1986, Washington, DC. The Subcommittee will discuss the NRR Implementation Plans for the Severe Accident Policy Statement regarding Individual Plant Examinations (IPE) for Existing Plants.

General Electric Reactors (ABWR), January 7, 1987, Washington, DC. The Subcommittee will begin its review of the ABWR. This will be a preliminary session to explore the status of this effort. A current description of the ABWR is sought as well as schedules from GE and the Staff.

Regulatory Policies and Practices, January 14, 1987, Washington, DC. The Subcommittee will begin its review of the nuclear plant regulatory process.

Regional and I&E Programs, January 20, 1987, Washington, DC. The Subcommittee will continue its review of the activities of the Office of Inspection and Enforcement.

Standardization of Nuclear Facilities, January 21, 1987, Washington, DC. The Subcommittee will review the NRC evaluation of Chapter I ("Overall Requirements") of the EPRI Advanced Light Water Reactor Program.

Structural Engineering, January 21 and 22, 1987, Albuquerque, NM. The Subcommittee will review the NRC safety research programs on containment integrity and Category I structures, and visit the contractor's test facilities.

Decay Heat Removal Systems, January 22, 1987, Washington, DC. The Subcommittee will continue its review of the NRR Resolution Position for USI A-45.

Advanced Reactor Designs, February 4, 1987, Washington, DC. The Subcommittee will review DOE advanced non-LWR designs regarding the use of proven technology and standardization.

Joint Seabrook/Occupational and Environmental Protection Systems/Severe Accidents, Date to be determined, Washington, DC. The Subcommittees will continue the review of Public Service of New Hampshire's updated probabilistic risk assessment for the Seabrook Nuclear Power Plant and its potential for supporting a reduction of the emergency planning zone for the site.

Seabrook Unit 1, Date to be determined (fall/winter), Washington, DC. The Subcommittee will review the application for a full power operating license for Seabrook Unit 1.

AC/DC Power Systems Reliability, Date to be determined (January), Washington, DC. The Subcommittee will review the proposed Station Blackout rule.

Metal Components, Date to be determined (January), Washington, DC. The Subcommittee will: (1) Hear a status report of the Whipjet program (application of broad scope GDC-4 criteria) as applied to a lead plant, Beaver Valley Unit 2: and (2) review public comments on NUREG-0313, Revision 2 (long range fix for BWR-IGSCC problems).

ACRS Full Committee Meeting

December 11-13, 1986: Items are *tentatively* scheduled.

*A. *NRC Regulatory Guides*—proposed revision of Regulatory Guide 1.63, Electric Penetration Assemblies in Containment Structures for Nuclear Power Plants.

*B. *Meeting with NRC Commissioners (tentative)*—discuss procedures for review and resolution of nuclear power plant accidents and incidents and standardization of nuclear power plants.

*C. *Safeguards and Security*—meeting with Director, Division of Safeguards, NMSS regarding security provisions at nuclear facilities.

*D. *Systems Interactions*—discuss resolution of ACRS comments in its report of May 13, 1986 regarding Resolution of USI A-17, Systems Interactions in Nuclear Power Plants.

*E. *Foreign Experience*—discuss implications of Chernoblyl Nuclear Plant accident to U.S. nuclear power plants.

*F. *Pressurized Thermal Shock*—discuss proposed NRC Regulatory Guide regarding pressurized thermal shock of reactor pressure vessels.

*G. *Reactor Operating Experience*—briefing and discussion of recent nuclear facility incidents and events.

*H. *Election of ACRS Officers for CY 1987 (Closed)*—discussion and election of candidates proposed for ACRS Officers for calendar year 1987.

*I. *Containment Capability*—discuss proposed NRC generic letter regarding dynamic type containment capability to contain severe accidents.

*J. *NRC Reorganization*—discuss proposed reorganization of NRC staff and assignment of personnel.

*K. *Improved Light-Water Reactors*—discuss proposed ACRS recommendations for improved light-water cooled and moderated nuclear power plants.

*L. *Reactivation of Deferred or Cancelled Nuclear Power Plants*—discuss proposed NRC policy regarding reactivation of nuclear power plants which have been deferred or cancelled.

*M. *Future Activities*—discuss anticipated ACRS subcommittee activities and items proposed for consideration by the ACRS.

*N. *ACRS Subcommittee Activities*—hear and discuss status reports regarding assinged ACRS subcommittee activities including resolution of outstanding ACRS comments regarding the Shearon Harris Nuclear Power Plant; waste management and disposal including proposed revisions to 10 CFR Part 60, Disposal of High-Level Radioactive Wastes in Geologic Repositories, low-level radwaste handling, and alternatives to shallow land burial, storage of spent nuclear power plant fuel and related revisions to 10 CFR Part 70, Domestic Licensing of Special Nuclear Material; and activities of NRC Regional Offices.

January 8-10, 1987—Agenda to be announced.

February 5-7, 1987—Agenda to be announced.

Dated: November 17, 1986.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 86-26204 Filed 11-19-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-482

Kansas Gas and Electric Co. et al.; Exemption

I.

Kansas Gas and Electric Company, Kansas City Power & Light Company, and Kansas Electric Power Cooperative, Inc., (the licensee) are the holders of Facility Operating License No. NPF-42 which authorizes operation of the Wolf Creek Generating Station (the facility) at steady-state reactor power levels not in excess of 3411 megawatts thermal. The license provides, among other things, that it is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect. The facility consists of a pressurized water reactor located at the licensee's site in Coffey County, Kansas.

II

Section 50.54(q) of 10 CFR Part 50 requires a licensee authorized to operate a nuclear power reactor to follow and maintain in effect emergency plans which meet the standards of 10 CFR 50.47(b) and the requirements of Appendix E to 10 CFR Part 50. Section IV.F.2 of Appendix E requires that each licensee at each site shall annually exercise its emergency plan.

III.

By letter dated March 20, 1986, the licensee requested an exemption from the schedular requirements of section IV.F.2 of Appendix E. The last annual emergency preparedness exercise was a full participation exercise conducted at the Wolf Creek Generating Station on November 20, 1985. The licensee requests that an exemption be granted to allow the next annual exercise to be deferred from its currently scheduled date of November 5, 1986, to the time period between January 1 and February 28, 1987.

The licensee states that major scheduling constraints are anticipated from the first refueling outage at Wolf Creek Generating Station which is scheduled for October 1986. The outage is expected to extend into November 1986, with an additional period of time required if any unanticipated difficulties arise. The licensee states that conducting the emergency plan exercise coincident with the refueling outage would require the reassignment of key supervisory and management personnel from crucial refueling outage activities to exercise activities, would unduly burden other staff including health physics and security personnel, and could potentially extend the outage.

The licensee has informed the NRC that state and local government agencies may participate at varying levels of participation in the licensee's proposed annual exercise. The licensee will also conduct a full participation exercise later in 1987 in which state and local governments will fully participate in accordance with the biennial frequency requirement of 10 CFR 50, Appendix E, section IV.F.3. This exercise schedule has been coordinated with the Federal Emergency Managment Agency (FEMA) Region VII.

Full participation exercises at Wolf Creek Generating Station with state and local government participation have been conducted annually during the previous two years, with the most recent full participation exercise conducted on November 20, 1985. This exercise involved appropriate full participation by all jurisdictions within the plume and ingestion exposure pathway emergency planning zones including the State of Kansas and Coffey County. A remedial exercise was conducted in April 1986 to

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correct a deficiency indentified by FEMA in monitoring and decontamination capabilities at a county relocation/reception center. Both NRC and FEMA have found that the implementation of onsite and offsite emergency plans was adequate to protect the health and safety of the public. These findings provide assurance that the licensee, state and local agencies have the capability to respond to an emergency at the Wolf Creek Generating Station.

An extensive amount of emergency plan training has been conducted by the licensee since the last exercise was held on November 20, 1985. The licensee conducted an offsite radiological monitoring drill on March 5, 1986, with state and local monitoring teams participating. The licensee conducted table top drills for primary and alternate Technical Support Center emergency response personnel in June 1986, for Operational Support Center emergency response personnel on June 25 and July 7, 1986, and for Emergency Operations Facility personnel in July 1986. Control room personnel participated in table top drills in August 1986, continuing for six weeks to include all six operating shifts. Home Office Emergency Center emergency response personnel are to participate in drills starting in October 1986, with eight sessions planned. Additionally, the licensee has conducted monthly and quarterly communications drills involving onsite and offsite response centers and organizations.

IV

Based on the above assurance related to maintenance of onsite preparedness and the adequacy of offsite emergency preparedness, we conclude that the licensee's request for an exemption is reasonable and that granting the requested exemption will not adversely affect the overall state of emergency preparedness for Wolf Creek Generating Station.

The Commission has determined that, pursuant to 10 CFR 50.12, the exemption requested by the licensee's letter dated March 20, 1986, as discussed above, is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security.

Finally, the exemption requested is a temporary one which will exist only for about two months and is necessary only because of scheduling restraints caused by the first refueling outage. The licensee has made a good faith effort to comply with the regulation by attempting to schedule the excerise earlier. Due to scheduling constraints of the Federal Emergency Management Agency, this was not possible. This situation constitutes the special circumstances described in 10 CFR 50.12(a)(2)(v).

Accordingly, the Commission hereby approves the exemption, modified as follows:

> The next emergency exercise at Wolf Creek Generating Station conducted pursuant to the requirement of 10 CFR 50, Appendix E, section IV.F.2, shall be conducted not later than February 28, 1987.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environement (51 FR 41172). This Exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 14th day of November 1986.

For The Nuclear Regulatory Commission.

George Lear,

Acting Deputy Director, Division of PWR Licensing-A, Office of Nuclear Reactor Regulation.

[FR Doc. 86-26211 Filed 11-19-86; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Northwest Conservation and Electric Power Plan Amendments; Statement of Policy

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Adoption of agency policy.

SUMMARY: On September 19, 1986, the Northwest Power Planning Council (Council) published a Draft Statement of Council Policy Implementing section 6(c) of the Northwest Electric Power Planning and Conservation Act (Act), 16 U.S.C. 839 (1980). Section 6(c) requires the Administrator of the Bonneville Power Administration (Bonneville) to conduct a public hearing on any Bonneville proposal to acquire a major resource or to implement a conservation measure that will conserve an equivalent amount of energy. The Administrator must determine whether the proposal is consistent with the Council's Northwest Conservation and Electric Power Plan (Plan). The Act gives the Council an opportunity to make its own subsequent determination regarding consistency with the Plan. Should either Bonneville or the Council find a proposal inconsistent, Bonneville can acquire the major resource only after receiving approval from the Congress. The Council took public comment at several regularly scheduled meetings and accepted written comments through October 16, 1986. The following policy, which addresses the procedures that the Council will employ in making a consistency determination and the criterion that the Council will employ, responds to the comments received.

FOR FURTHER INFORMATION CONTACT: Dulcy Mahar, Director of Public Information and Involvement, 850 S.W. Broadway, Suite 1100, Portland, Oregon 97205; (503) 222-5161, (toll-free) 1-800-222-3355 (in Montana, Idaho or Washington) or 1-800-452-2324 in Oregon.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory

Under section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839-839h (Supp. V 1981) (Act), the Administrator of the Bonneville Power Administration is directed to conduct a public hearing:

> [f]or each proposal under subsection (a), (b), (f), (h) and (l) of this section to acquire a major resource, to implement a conservation measure which will conserve an amount of electric power equivalent to that of a major resource, to pay or reimburse investigation and pre-construction expenses of the sponsors of a major resource, or to grant billing credits or services involving a major resource . . . .

This hearing must develop an adequate record to assist in evaluating the proposal so that the Administrator may make a finding, among others, that a proposal is either consistent or inconsistent with the Council's Northwest Conservation and Electric Power Plan. Once the Administrator's determination is sent to the Council, the Council may then make its own determination that the Administrator's proposal is consistent or inconsistent with the plan. If either Bonneville or the Council finds a proposal inconsistent with the plan, the Administrator may not implement the proposal without receiving authorization for expenditure of funds by an Act of Congress.

This statement announces the Council's policy toward implementation of its responsibilities under section 6(c) of the Northwest Power Act. It announces a final policy, but one that is intended to be subject to revision as experience is gained with the section 6(c) process. This statement is not intended to change the meaning of any part of the Northwest Power Act.

B. Scope of Policy Statement

This proposed policy statement is limited to only two of the activities made subject to review under the Act, a Bonneville proposal to acquire a major resource and a Bonneville proposal to implement a conservation measure that will conserve an amount of electric power equivalent to that of a major resource. The Council is not addressing the other two activities made subject to section 6(c) review, a Bonneville proposal to pay or reimburse investigation and preconstruction expenses of the sponsors of a major resource and a Bonneville proposal to grant billing credits or services involving a major resource. Neither is the Council determining any issue related to the consistency required pursuant to section 4(h)(10)(A) or any other provision of the Act.

C. Finality of Policy Statement

The Council recognizes that this policy statement is final for purposes of judicial review under section 9(e)(5) of the Northwest Power Act, or other applicable laws.

Given the necessarily preliminary level of current understanding of the types of resource acquisitions that may require review pursuant to section 6(c), the Council will, at least every five years, initiate a public policymaking concerning the Section 6(c) consistency criterion in order to evaluate evolving understandings of resource acquisitions and to assess the need for changes in interpretation. The Council understands that Bonneville also will initiate such a process concerning Bonneville's responsibilities under section 6(c), including threshold, process and consistency criterion, for the same purposes. The result of such public policymaking by the Council and Bonneville will be final actions for purposes of judicial review under Section 9(e)(5) of the Northwest Power Act, or other applicable laws.

II. Statement of Council Policy

A. Council Consistency Determination Process

If the Council elects, pursuant to section 6(c)(2), to review a Bonneville proposal under section 6(c)(1) for consistency with the Northwest Conservation and Electric Power Plan, it will do so by a majority vote of all the members within sixty days of receiving the Administrator's determination made pursuant to section 6(c)(1). In order to inform itself with respect to Bonneville's proposal, the Council may attend the hearing that Bonneville is required to conduct pursuant to section 6(c)(1)(B) and may consider the record developed by the Administrator in such proceeding. If the Council elects to review, it will also conduct its own analysis and public comment process prior to reaching its determination.

B. Council Consistency Criterion

If the Council elects to review a Bonneville proposal under section 6(c)(1) for consistency with the Northwest Conservation and Electric Power Plan, it will employ the following standard.

> A Bonneville proposal pursuant to Section 6(c)(1) of the Northwest Power Act shall be found consistent with the Northwest Conservation and Electric Power Plan if it is judged to be so structured that it will achieve substantially the goals and objectives of the plan in effect at the time the proposal is made.

Decision Document

I. Council Consistency Determination Process

A. Summary of Comments

A number of commenters said that the Council should not become a party at the hearing that Bonneville is required to conduct in reaching its consistency determination. PPC, WPUDA, NCAC, WPAG. In consultations held during the course of this policy making exercise, it became evident that at least some of these same commenters identified party status with assumption of an advocacy role.

Other commenters said that the Council itself should avoid excessive process, ICP, and noted that the Council's decision on consistency must follow that of the Administrator. PPC, WPAG. Although some commenters observed that Council participation in Bonneville's hearing process might facilitate review, WEUC, and called for as much public involvement as time would allow, WPAG, some of those same commenters said that the Council should limit its involvement in Bonneville's process to preserve its objectivity for the determination that it may also face. WPAG.

Another frequent comment was that the Council should not consider amending the power plan during the course of a section 6(c) review. PPC, WPAG. The policy that the Council has adopted provides for testing a Bonneville proposal against the plan in effect at the time the proposal is made. The Council agreed with those commenters who said that review should focus on consistency with the *existing* plan. PPC, for example, said that the plan should not become a "moving target." The Council and Bonneville have committed to consultations that would include representatives from the region prior to the time that a section 6(c) review might be initiated, and have agreed that such consultations constitute the appropriate time to address the advisability of modifying a Bonneville proposal or of amending the Council's power plan. Bonneville and the Council have also committed to periodic consultations with one another and representatives of the region to discuss potential proposals to acquire resources within the context of section 6(c).

B. Discussion.

Section 6(c)(2) of the Northwest Power Act provides that the Council "may" make a determination regarding the consistency of a Bonneville proposal "within sixty days of the receipt of the Administrator's decision . . . ." The Council's decision is to be "by a majority vote of all members of the Council . . . ." Thus, if the Council decides to review a Bonneville proposal, it will make its decision by a vote of at least five members, within sixty days of receiving the Administrator's determination, at either a regularly scheduled public meeting, or one specially called for this purpose.

Because the Act gives the Council only sixty days within which to make its decision, it will ordinarily be necessary for the Council and its staff to begin investigating a Bonneville proposal before the Administrator forwards his consistency finding. One important source the Council may use to inform itself about the proposal is the hearing that Bonneville is required to conduct under section 6(c)(1)(C). The question of what role, if any, the Council might play at Bonneville's hearing was the subject of considerable discussion during this policy making exercise. Because Bonneville has adopted hearing procedures modelled on section 7(i), the Council expects that it will participate in Bonneville's hearing and simply receive all documents filed and attend the hearing as an observer. The Council does not anticipate participating in the Bonneville hearing as an advocate arguing for or against consistency.

The Council's ordinary decision making process entails staff presentation of an issue paper, public comment, staff analysis and recommendation, and Council decision. The 60 day maximum established by section 6(c)(2) suggests that this process will have to be accomplished in less than the usual time. Shortening this schedule might be accomplished, in part, by having the Council staff publish an

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issue paper along with its own preliminary analysis as soon as possible after Bonneville's hearings. The Administrator's consistency determination and its supporting record could be made an appendix, if they were available. Public comment could be taken at the next scheduled Council meeting. The staff's analysis and recommendation could then be presented at the following Council meeting, or at a specially scheduled meeting, if that were necessary.

The Council has taken a position that will allow it to gain as much information as is possible for an observer at Bonneville's hearing. The Council does not intend to compromise its independence, should it elect to make a consistency determination. For its own consistency finding, the Council has outlined a process that will allow for more or less process, according to the complexity and controversial nature of the proposal. The Council recognizes that the Act contemplates two separate and independent consistency decisions: one determination required of the Administrator and another, subsequent determination at the option of the Council.

II. Council Consistency Criterion

A. Summary of Comments

A number of commenters said that the Council's plan should be general enough so that the Administrator has reasonable flexibility in selecting reasonable means to implement the plan. ICP, PPC, PNUCC, WPAG. Thus, for example, WPAG said that the plan should offer a general blueprint for Bonneville acquisitions that specifies type, quantity, cost, and timing of resource acquisitions. A proposal that satisfies each of those characteristics should be found consistent with the plan, WPAG said.

While most commenters who addressed the question of the consistency criterion favored a standard that was not overly exacting, PGE, PNUCC, MPC, and that would not be used to dictate detailed program design features, PNUCC, many said that the proposed criterion failed to meet the requirements of the Act. Changing the statutory requirement of consistency with the plan to substantial achievement of the goals and objectives of the plan constituted an improper attempt, some said, to amend the congressional provision through adoption of an interpretative rule. BLUMM, IDAG. Others said that this standard would introduce confusion into the region's planning process, IDAG, BLUMM, WPAG, NRDC, in that it fails to identify operative goals and objectives and appears to disclaim the binding force of *any* plan provisions. NRDC. Several commenters said that the policy should explain why it does not address pre-construction expenses and billing credits. Others noted that it would have to be applied on a case-by-case basis, ICP, PNUCC, and that it would have to be applicable to a variety of proposed major resources. PGE. Several commenters said that the criterion should be substantial compliance with the plan, ICP, for example, and others said that the criterion should be conformity with the overall objectives and intent presented in the plan. PNUCC, MPC.

NCAC offered detailed comments on the consistency criterion that favored a more exacting standard. A proposal should be found consistent, NCAC said, if it (1) demonstrates an ability to achieve an objective of the action plan, (2) incorporates all relevant activities of the action plan, and (3) is consistent with the resource portfolio's estimates of achievable resources and its resource priorities and schedules for resource acquisition. Other commenters agreed that the resource portfolio should operate as a hard constraint in determining consistency. NRDC, WPAG.

Several commenters were concerned that the draft consistency standard would, directly or indirectly, lead to adoption of a similar standard in judging whether Bonneville's is complying with its responsibilities under section 4(h)(1)(A) of the Act. NMFS, NWF, Blumm, IDAG. Commenters also were concerned with the draft's requirement that a Bonneville proposal "achieve substantially the goals and objectives of the power plan," because: the fish and wildlife program contains a large range of measures that may not be expressly incorporated into the power plan; the draft standard gives the region little guidance; and because the draft standard adds complexity to what is a simple statutory standard. NWF, NMFS, IDAG. Some suggested that the draft standard was not legally supportable. One commenter suggested that the draft standard was adequate because one of the basic goals and objectives of the plan is to satisfy the provisions of the fish and wildlife program. PNUCC. Hence, the commenters believed that the draft standard would be adequate to bring the question of specific consistency with the Fish and Wildlife Program provisions into the 6(c) hearing process. The determination of specific consistency with each program measure could only be accomplished when the details of a specific resource in question are known and only on a case-by-case within the 6(c) hearing process, said the commenter.

B. Discussion

In the 1986 Power Plan, the Council adopted an approach to implementation that aimed at giving Bonneville greater flexibility in planning the activities required to meet the goals and objectives of the plan. "Rather than specifying action items in great detail, as it did in the 1983 plan, the Council is providing Bonneville more flexibility in designing programs to achieve the objectives set forth in the Action Plan." 1986 Power Plan, p. 9–5. The consistency standard that the Council has adopted for making a determination pursuant to 6(c) reflects this same commitment to allowing Bonneville greater latitude in selecting the means to achieve the goals and objectives of the plan. "Goals and objectives" should be understood in a broad sense. It should be noted that the Council does not regard only those goals listed on page 3–1 and those objectives found in bold-face type in chapter 9 of the 1986 plan as the "goals and objectives" against which a given proposal is to be tested.

The Council, in making its consistency determination, will be faced with making a judgment about the extent to which a Bonneville proposal substantially achieves the plan's goals and objectives. If the Council were evaluating a Bonneville proposal against the current power plan, for example, it would look first at the goals and objectives set forth in the plan. Then the Council would consider the issues identified by the Council staff, public comment on those issues, the various activities that could be expected to acheive the relevant goals and objectives, including those selected by the Council and set forth in the most recent power plan, and judge the degree to which the proposal would be likely to achieve those goals and objectives.

Although the Council has adopted a standard that is not expressed with as much detail as some commenters have suggested, application of the Council's standard will include a comparison of the type quantity cost, and timing of a proposed resource with the schedule, cost, quantity, and priority of resources identified in the resource portfolio of the power plan. It will entail judging whether the activities Bonneville has proposed are likely to acheive substantially the goals and objectives of the power plan. The Council wishes to make clear that, as stated in the 1986 Power Plan, it intends to accord Bonneville greater flexibility in implementing the plan, and is not adopting a standard that would require every particular activity enumerated in the action plan to be implemented. The Council recognizes that it will be necessary for it to exercise its judgment, on a case-by-case basis, to determine whether the particular activities in a Bonneville proposal are likely to meet substantially the relevant goals and objectives of the plan.

The Northwest Power Act requires the Council to develop a Columbia River Basin Fish and Wildlife Program, which is incorporated by statute into the power plan. One goal of the plan is to protect, mitigate and enhance fish and wildlife in the Columbia River Basin in accordance with the provisions of the Council's fish and wildlife program. Therefore, each Bonneville proposal under section 6(c) must be evaluated for consistency with provisions of the fish and wildlife program relevant to the proposal. In this sense, under section 6(c), a finding of consistency with the goals and objectives of the power plan must resolve the issue of consistency with the fish and wildlife program for purposes of evaluating in proposal under section 6(c).

This policy decision regarding consistency for purposes of review pursuant to section 6(c) is not intended to have any implications with respect to the responsibilities of the Administrator in implementing the Council's fish and wildlife program pursuant to section 4(h)(10)(A), or any section of the Northwest Power Act other than section 6(c). Neither does this policy statement constitute in any manner a precedent for determining or interpreting consistency under section 4(h)(10)(A), or any section of the Northwest Power Act other than section 6(c).

III. Finality of Policy Statement

A. Summary of Comment

Commenters expressed concern that the Council's or Bonneville's policy statement would be deemed a final action under section 9(e)(5) of the Northwest Power Act, and therefore become final unless challenged within 90 days. WWP, ICP, PNUCC. They advised against such an outcome, because it could force litigation filed for protective purposes.

B. Discussion

The Council appreciates this concern, particularly because these policy statements have been developed without the benefit of any actual experience with the section 6(c) process. We strongly believe that the threshold, process and consistency criterion may be improved as the parties gain experience with section 6(c), and that these policy statements must be dynamic, and open to change. We cannot provide assurance that a court would not find this policy statement or Bonneville's policy to be final actions for purposes of section 9(e)(5).

However, in response to these concerns, the Council and Bonneville have provided for periodic reevaluations of the Council's policy statement and of Bonneville's policy. These reevaluations would allow each agency to incorporate the experience and knowledge gained through implementing the section 6(c) process. After such reevaluations, each agency would issue a policy statement or rule that would be subject to judicial review under section 9(e)(5) or other applicable law. By this provision, the Council hopes that interested parties will not feel it necessary to file protective actions merely because they fear that they will have no remedy 90 days after these actions become final.

The Council and Bonneville have reviewed each other's section 6(c) policy statements and agree that those policies and supporting documents are reasonable.

List of Abbreviations of Commenters Referred to in Decision Document

PPC—Public Power Council
WPUDA—Washington Public Utility Districts' Association
NCAC—Northwest Conservation Act Coalition
NRDC—Natural Resources Defense Council
WPAG—Western Public Agencies Group
ICP—Intercompany Pool
PNUCC—Pacific Northwest Utilities Conference Committee
WWP—Washington Water Power Company
WEUC—Washington Energy and Utilities Committee
PGE—Pacific Gas and Electric
MPC—Montana Power Company
BLUMM—Mike Blumm, Lewis & Clark Law School
MMFS—National Marine Fisheries Service
NWF—National Wildlife Federation

Issued in Portland, Oregon, on November 12, 1986.

Edward Sheets,
Executive Director.

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Northwest Conservation and Electric Power Plan; Proposed Model Conservation Standards Amendments, Hearings, and Public Comment Period

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of proposed amendments, hearings, and opportunity to comment regarding model conservation standards for new residential and commercial construction and surcharge recommendation.

SUMMARY: On April 27, 1983, the Pacific Northwest Electric Power and Conservation Planning Council (Council) adopted a Northwest Conservation and Electric Power Plan (Plan) including model conservation standards (MCS) (48 FR 24493, June 1, 1983). On December 4, 1985, the Council adopted amendments to the MCS (51 FR 7364, March 3, 1986), which were later incorporated in the 1986 Plan amendments (51 FR 16239, May 1, 1986).

The Council now proposes to further amend portions of the plan relating to the MCS. This notice describes the proposed amendments and explains how to participate in the amendment process. In an effort to complete this amendment process before the 1987 building season begins, the Council has, on its own motion and at the suggestion of the Bonneville Power Administration, decided to conduct this amendment process according to the schedule described below. This amendment process is separate from any Plan amendment process the Council may conduct in the future in response to petitions received from outside parties to amend the Plan regarding the MCS.

DATES ADDRESSES: Written comments regarding the proposed amendments should be postmarked no later than December 22, 1986. The period for oral public comment and consultation sessions will continue until 5 p.m. Pacific time on January 9, 1987. Public hearings on the proposed amendments will be held at the following places and times:

- Seattle, Washington, Friday, December 12, 10:00 a.m., Federal Building, South Auditorium, 915 Second Avenue.
- Missoula, Montana, Monday, December 15, 1986, 1:00 p.m., Missoula Sheraton Hotel, 200 S. Pattee.
- Boise, Idaho, Tuesday, December 16, 1986, 10:00 a.m., Red Lion Riverside, Cinnabar Room, 29th and Chinden.
- Portland, Oregon, Wednesday, December 17, 1986, 10:00 a.m Council

Central Offices, 850 SW. Broadway, Suite 1100.

The Council expects to take final action on these proposed MCS-related amendments at its January 14–15, 1987 meeting.

Guidelines for Presenting Oral Comments at Hearings

1. To reserve a time period for presenting oral comments at a hearing, contact Ruth Curtis, Information Coordinator, at the Council's central office (850 SW. Broadway, Suite 1100, Portland, Oregon, 97205 or (503) 222–5161 (toll free 1–800–222–3355 in Idaho, Montana, and Washington or 1–800–452–2324 in Oregon)) no later than the day before the hearing.

2. Those who do not reserve time periods will be permitted to present oral comments as time permits.

3. Use the hearing to summarize written comments. The comments themselves should not be read.

4. If possible, 10 (10) copies of written comments should be submitted to the Council recorder at the hearings. This person will be sitting at a table near the Council members and will be identified at the start of the hearing by the hearing chairman. When preparing these copies, refer to the instructions below for written coments.

5. Comment time may be limited on those occasions when the number of people signed up to testify is sufficiently large that it will be necessary to impose limits in order to allow all commentors a hearing. A 15-minute guideline is suggested.

6. Appearance at more than one hearing is unnecessary. At each hearing, scheduling preference will be given to individuals and groups which have not testified at other hearings.

Guidelines for Submitting Written Comments

1. All written comments must be sent to the Council's central office, Attn: Dulcy Mahar, Director of Public Information and Involvement, 850 SW. Broadway, Suite 1100, Portland, Oregon 97205 and must be postmarked by December 22, 1986. Comments postmarked after that date will not be considered.

2. Comments should be clearly marked "Comments on Model Conservation Standards for New Residential and Commercial Construction."

3. Written comments should be specific and concise and refer to sections or page numbers in the proposed MCS amendments.

4. If appropriate, submit a "marked up" copy of the proposed MCS (or appropriate sections) including suggestions and/or revisions. Suggested deletions should be lined out and placed in parentheses. Suggested new languge should be underlined.

5. Please type (double-spaced) comments, if possible. Use only one side of the paper.

6. Provide ten (10) copies of all comments and supporting materials if at all possible.

Additional Consultations

Individuals or groups wishing to discuss portions of the proposed MCS rule, in addition to testifying at the public hearings and submitting written comments, may contact the central or state offices of the Council listed below. To the extent that schedules allow, consultations will be held upon request until the end of the comment period at 5 p.m., January 9, 1987.

Central Office, Attn: Ruth Curtis, 850 SW. Broadway, Suite 1100, Portland, Oregon 97205, (503) 222–5161, 1–800–222–3355 (regional toll-free), 1–800–452–2324 (Oregon toll-free).

Idaho Council Office, Attn: Beth Heinrich, Statehouse Mail; Towers Building, 450 West State, Boise, Idaho 83720, (208) 334–2956.

Montana Council Office, Attn: Terri Wilner, Capitol Station, Helena, Montana 59620, (406) 444–3952.

Oregon Council Office, Attn: Judi Hertz, 505C State Office Building, 1400 SW. Fifth Avenue, Portland, Oregon 97201, (503) 229–5171.

Western Washington Council Office, Attn: Tess Nosbush, Olympic Tower Building, Suite 700, 217 Pine Street, Seattle, Washington 98101, (206) 464–6519.

Eastern Washington Council Office, Attn: Carol McAllister, Eastern Washington University, Anderson Hall #34, North 9th and Elm Street, P.O. Box B, Cheney, Washington 99004, (509) 359–7352.

FOR FURTHER INFORMATION CONTACT: Dulcy Mahar, Director of Public Information and Involvement, at the address and telephone numbers listed above for the Council's central office in Portland, Oregon.

SUPPLEMENTARY INFORMATION: Since the Council's first regional power plan was adopted on April 27, 1983, the Council and Bonneville have made substantial progress in their efforts to improve the energy efficiency of new buildings. Several local jurisdictions in the states of Washington and Idaho have adopted the MCS as codes. In addition, statewide code improvements have been achieved in Oregon and Washington, although not to the full levels of the MCS. Over 400 houses have been built to the MCS through the Residential Standards Demonstration Program (RSDP), a training program for builders, code officials, and other interested parties in the shelter industry. Even though the data from the RSDP have statistical limitations, the Council is encouraged by the fact that costs reported by the majority of RSDP builders were in accord with the Council's 1983 cost estimates.

Bonneville has an ongoing marketing and incentive program, Super Good Cents, aimed at achieving MCS levels of construction in new residences. Houses built and marketed through the Super Good Cents program are certified as being energy efficient by electrical utilities. The goal of certification is to get lenders, sellers and buyers to recognize the added value of an MCS home because it is less expensive to own and heat. Bonneville also has a continuing program to help train and educate the shelter industry, including lenders, about the advantages of building more efficient buildings. In addition, several investor-owned utilities in the region have established programs to market efficient building practices in their service territories.

The Council originally adopted the MCS in its 1983 Power Plan for the region (48 FR 24493, June 1, 1983). On July 26, 1985, the Council published proposed amendments to those standards (50 FR 30654, July 26, 1985). Hearings were held in the four Northwest states to receive oral public comment on the proposed amendments. Consultations were held with interested persons and groups. Extensive written public comments were also received. After review of the comments received, the Council published a reformulated version of the proposed rule and reopened the comment period (50 FR 40091, Oct. 1, 1985). Additional consultations and hearings were held in each of the Northwest states.

Based on the results of these consultations and public hearings the Council adopted a revised version of the MCS in December of 1985 and incorporated these revisions into its amended 1986 Plan. The MCS savings levels for both new residential and new commercial buildings adopted by the Council were equivalent to the MCS set forth and as amended by the Council in its 1983 plan.[1]

The Council's 1983 approach to the MCS emphasized the use of building codes as the least expensive way for the regional power system to acquire cost-effective conservation. State and local jurisdictions are still strongly encouraged to adopt the MCS for new residential and commercial buildings and conversions as building codes. The 1985 reformulation of the MCS, however, also focused on utility residential and commercial conservation programs. The MCS for utility programs were designed to encourage through marketing and financial assistance improved building practice and ultimate adoption of building codes at MCS levels by reducing the cost of the MCS.

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[1] In January, 1985, the Council amended the MCS adopted in the 1983 Plan to correct two technical, nonsubstantial errors (50 FR 5021, Feb. 5, 1985).

Section 4(f)(2) of the Northwest Power Act (16 U.S.C. 839 *et seq.*) provides for Council recommendation of a 10 percent to 50 percent surcharge on Bonneville customers for those portions of their loads within the region that are within states or political subdivisions which have not, or on customers which have not, implemented conservation measures that achieve savings of electricity comparable to those which would be obtained under the MCS. In its 1985 amendments, the Council recommended that Bonneville impose a surcharge on utilities that failed to take steps by designated dates that would result in achieving energy savings comparable to those obtainable through the MCS. Bonneville's draft surcharge policy, circulated for public comment in July, 1986, called for utilities to submit MCS plans by January 1, 1987, or be subject to a surcharge. However, a final surcharge policy is awaiting the conclusion of this amendment process.

The Council is interested in comments on all aspects of the proposed amendments appearing below. Additional comments on the following issues will be particularly useful:

1. What are the appropriate penetration rate targets for Bonneville's programs before Bonneville's programs should be phased out and local utilities' programs phased in?
2. Should Bonneville's budget for MCS activities be limited, and if so, at what dollar level and over what period of time?
3. What process and/or criteria should be used to adjust financial assistance levels in Bonneville's programs?
4. How should a utility's performance in the conduct of Bonneville's MCS programs or alternative programs be measured, and how can performance-based surcharges be implemented in the future?
5. What actions are most appropriate to insure adequate indoor air quality?

Proposed Amendments

If adopted by the Council, the proposed amendments would revise Volume I, Chapter 9, section I. 1.0 and Appendix 1–B of the 1986 Power Plan to read as follows:

1.0 New Residential (Site-built) and New Commercial Buildings

As directed by the Northwest Power Act, the Council designed the model conservation standards (MCS) to produce electricity savings that are both cost effective for the region and economically feasible for consumers. Since most residential and commercial buildings constructed today are likely to last considerably longer than the current surplus of electricity, all cost-effective conservation should be captured at the time the buildings are constructed. Where such cost-effective measures are not installed at the time of construction, it can be prohibitively expensive if not impossible to return to the structure and add the measures later. The result is that a cost-effective resource is lost to the region forever.

Goal

To improve the efficiency with which new residential and commercial buildings use electricity and to ensure that buildings converting from other fuels also use electricity efficiently. Bonneville should acquire all electric energy savings from new residential and new commercial buildings that are expected to cost less than 4.0 cents/kWhr in 1986 dollars. Economic feasibility for building owners must be maintained by Bonneville financial assistance for any measures which are regionally cost-effective but beyond the point of minimum life cycle cost to the consumer. To maintain economic feasibility, financial assistance should be at least equal to the difference between the present value life cycle cost of a building built to the minimum life cycle cost point and that of a building including all regionally cost-effective measures. New buildings must also maintain levels of indoor air quality that were typical in 1983. The measures required to achieve the goal of the MCS should be reliable and commercially available throughout the region. In designing and implementing programs to achieve this goal, Bonneville is expected to achieve the following objectives:

MCS Objectives

A. New electrically-heated residential buildings that comply with the MCS are to be built to the energy efficiency levels at least equal to those which would be achieved by using the illustrative component performance paths displayed in Table I–B–1 for each climate zone. New commercial buildings complying with the MCS whose primary space conditioning system is electric shall meet the specifications set forth in Appendix I–B–1. Conservation measures included in the MCS should provide reliable savings to the power system and be commercially available throughout the region.

B. Adequate and responsible actions should be taken to preserve indoor air quality levels at least equal to levels found in 1983.

C. All conservation measures should be economically feasible to consumers taking into account the financial assistance made available under the Act. Financial incentives from BPA and utilities should cover cost above the building owner's minimum life-cycle-cost point but the incentives for energy savings from the entire package of measures in the MCS should not be more than the regionally cost-effective limit. Within these limits, the incentives should be adjusted from time to time to achieve clearly defined penetration targets in MCS construction practice.

D. Amenity levels (e.g. comfort, window area, architectural styles, etc.) should be maintained.

E. Bonneville and the region's utilities should provide financial, marketing, and technical assistance to achieve the MCS regionwide. Current early adopter contracts should be fully honored.

F. Given that building practices change and new materials and information become available, BPA should commit to a regular and ongoing program of:

(1) data collection on cost, thermal performance, and environmental performance of new buildings constructed in the region,

(2) analysis of these data, sharing their results with the region, and program changes based firmly on the results of such analysis, and

(3) continued research and development and demonstration designed to lower costs, improve performance, ensure maintenance of indoor air quality, and enhance comfort and safety of buildings constructed to the MCS levels.

G. MCS programs should not significantly alter the consumer's choice of heating fuel.

H. Continuity of the MCS is very important. Both the programs developed to implement the MCS and the levels of efficiency required by the MCS should remain relatively stable for a period of three years. At the end of that time period, the Council will use new information gathered in the ensuing years to revise the MCS if appropriate and Bonneville should revise related MCS programs.

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Status and Review: Model Conservation Standards

Since the Council's first regional power plan was adopted on April 27, 1983, the Council and Bonneville have made substantial progress in their efforts to improve the energy efficiency of new buildings. Several local jurisdictions in the states of Washington and Idaho have adopted the model conservation standards (MCS) as codes. In addition, statewide code improvements have been achieved in Oregon and Washington, although not to the full levels of the MCS. Over 400 houses have been built to the MCS through the Residential Standards Demonstration Program (RSDP), a training program for builders, code officials, and other interested parties in the shelter industry. Even though the data from the RSDP have statistical limitations, the Council is encouraged by the fact that costs reported by the majority of RSDP builders were in accord with the Council's 1983 cost estimates. This result is remarkable in that most RSDP builders were constructing an MCS home for the first time.

Bonneville has an ongoing marketing and incentive program, Super Good Cents, aimed at achieving MCS levels of construction in new residences. Houses built and marketed through the Super Good Cents program are certified as being energy efficient by electrical utilities. The goal of certification is to get lenders, sellers and buyers to recognize the added value of an MCS home because it is less expensive to own and heat. Bonneville also has continuing program to help train and educate the shelter industry, including lenders, about the advantages of building more efficient buildings. In addition, several investor-owned utilites in the region have established a program to market efficient building practices in their service territories.

The Coucil adopted the MCS in its 1983 Power Plan for the region (48 FR 24493). On July 26, 1985, the Council published proposed amendments to those standards (50 FR 30654). Hearings were held in the four Northwest states to receive oral public comment on the proposed amendments. Consultations were held with interested persons and groups. Extensive written public comments were also received. After review of the comments received, the Council published a reformulated version of the proposed rule and reopened the comment period (50 FR 40091, Oct. 1, 1985). Additional consultations and hearings were held in each of the Northwest states.

Based on the results of these consultations and public hearings the Council adopted a revised version of the MCS in december of 1985. The MCS savings levels for both new residential and commercial buildings adopted by the Council were equivalent to the MCS set forth and as amended by the Council in its 1983 plan.

Following the adoption of the Council's 1986 Plan, the Administrator of the Bonneville Power Administration, at the request of the region's public utilities, agreed to conduct an independent review of the cost-effectiveness of the residential MCS. Based on its own analysis, Bonneville found the energy efficiency levels called for in the Council's residential MCS to be regionally cost-effective. Bonneville also identified what is believed to be less costly ways to meet the MCS, as well as additional measures that appear to be cost effective. Based on its analysis, Bonneville has suggested to the Council that it consider revising the MCS.

The MCS are designed to protect indoor air quality by including requirements to maintain air quality at levels common in 1983 in new non-MCS residential buildings. The Council also has included action items in this plan for the development by Bonneville of design, installation, and inspection standards for mechanical ventilation as well as the development of specifications for mitigating indoor air pollution problems through means other than increased ventilation, including but not limited to source control.

The savings resulting from the MCS will help the region avoid the construction of more expensive resources. The MCS are also designed to meet the Northwest Power Act's requirements that they produce all electrical energy savings that are cost effective for the region and economically feasible for consumers, taking into account financial assistance made available pursuant to the Act. The Council will continue to monitor the cost and performance of all the model conservation standards and will revise the MCS as appropriate. To give the MCS programs stability, the Council will plan their review and revision on a three year cycle, with only such interim changes as may be necessary to correct obvious errors and inequities. Data collection and analysis should be scheduled to be available when the Council next reviews the MCS.

The Council's 1983 approach to the MCS emphasized the use of building codes as the least expensive way for the regional power system to acquire cost-effective conservation. State and local jurisdictions are still strongly encouraged to adopt the MCS for new residential and commercial buildings and conversions as building codes. The 1985 reformulation of the MCS, however, also focused on utility residential and commercial conservation program. The MCS for utility programs were designed to encourage through marketing and financial assistance improved building practice and ultimate adoption of building codes at MCS levels by reducing the cost of the MCS.

To help jurisdictions and utilities prevent inefficient buildings from being converted to electricity for space heating and/or conditioning, the Council has included an MCS for conversions that calls upon state and local jurisdictions and utilities to require all regionally cost-effective conservation measures to be installed at the time of conversion.

The model conservation standards are contained in Appendiz I-B. It is important to note that paths and strategies to implement the MCS are intended to be flexible so as to promote code adoption and acceptance of the MCS by homebuyers and builders. The standard for new residential dwellings are stated in Appendix I-B in terms of a package of measures. While a residence built with these measures satifies the MCS by definition, the MCS is not meant to be a prescriptive standard. The illustrative prescriptive paths in Appendix I-B are provided as benchmarks against which to judge the equivalence of other combinations of measures or strategies to achieve the MCS. Any combination of measures or strategies that achieves equivalent electricity use is an acceptable path to the MCS.

Activities: Model Conservation Standards

Achieving the improved levels of building efficiency represented by the MCS is the goal of the Council. Bonneville has a key leadership role in achieving the goal of constructing more efficient buildings in the region.

Even though the benefits of building to the MCS are clear, homebuyers, commercial developers, builders, lenders, state and local governments and utilities need technical and financial assistance to make the transition to energy efficient buildings constructed at the level of the standards. Bonneville should continue activities to assist homebuyers, commercial building developers, state and local governments, builders, utilities, realtors, lenders, and appraisers to accurately evaluate building techniques that will achieve improved levels of electrical energy efficiency. This training and technical information is needed so that all of the decision makers involved in constructing and purchasing new buildings can make an informed decision that recognize the importance of energy efficient measures in the total costs of owning and heating or cooling the building. Bonneville activities listed below are those that the Council has determined are important in achieving its goal.

Bonneville activities are discussed in four sections below: (1) New electrically heated residences; (2) new commercial buildings; (3) conversions of buildings to electric space conditioning; and (4) general activities that relate to more than one of the building sectors.

1. *New electrically heated residential buildings.* Bonneville should develop and implement a work plan which includes the following actions:

- Assist states, local governments and/or utilities in their efforts to comply with the Council's residential model conservation standards (MCS), described in Appendix I–B.
- Maintain an aggressive energy efficient new home marketing program (e.g., Super Good Cents). The Super Good Cents and MCS adopter programs should include a path that allows the builder/homebuyer to choose mechanical ventilation with heat recovery (HRV) if the house is built very tight (i.e. 0.1 ach). Financial incentives for this path should include payments for the HRV at the cost-effective level, except that all existing MCS adoption contracts should be honored. Bonneville's incentives should be sufficient to encourage the further development of this technology.
- Establish a program to offer financial assistance to local utilities for both single family and multifamily dwellings. Bonneville should establish financial assistance levels that will achieve substantial market penetration of dwellings built to the MCS. The minimum value of financial assistance offered should be no less than the difference in net present value life cycle cost to the consumer between a house built to the minimum life cycle costs level and a house built to the full residential MCS level. The maximum value of financial assistance offered for energy savings should not exceed the Council's cost effectiveness limit for lost opportunity resources. Market penetration targets should be established in consultation with the Council, Bonneville's customers, state and local governments, and the shelter industry. Bonneville should also establish a procedure to adjust the financial assistance and/or marketing program to ensure that substantial penetration of the MCS is achieved. This procedure should start from a premise that within the bound of financial incentives described above, Bonneville should pay what is necessary to achieve the penetration targets. This may mean a constant budget for Bonneville's MCS programs since incentives per housing unit can be adjusted based upon penetration rates.

Bonneville should be supportive of MCS in non-full requirements customer's service territories. However, this should not be taken to imply that those utilities have no regional responsibility of their own to achieve MCS. As it indicated in Section III of this chapter, the Council feels that public utility commissions and the utilities they regulate should also consider the importance of the role they play in achieving the MCS.

Bonneville financial assistance to partial requirements customers and potential customers not currently purchasing from Bonneville should vary to reflect the benefits Bonneville is expected to receive in reduced load requirements, reduced exchange requirements, and improved building practice. The payments should take into consideration Bonneville's "Final Conservation Cost-Sharing Principles" (Office of Conservation, Bonneville Power Administration, January 21, 1985), which allow cost sharing with all Bonneville customers, including those with no load requirements on Bonneville.

Bonneville financial assistance should be offered regionwide—including to utilities not currently exchanging with Bonneville or purchasing power from Bonneville. There are several reasons for this. First, Bonneville could find itself obligated to meet future investor-owned utility loads under its current power sales contracts. Avoiding unnecessary increases in investor-owned utility load requirements would reduce future rate increases as well as other risks associated with expensive thermal plant construction. Second, when an investor-owned utility acquires new resources, its acquisition costs are not paid solely by that utility's customers. In significant part, the costs are paid by Bonneville and its customers. This occurs when these costs are included in an investor-owned utility's average system cost and are spread to all Bonneville customers through the exchange. This exchange was authorized by the Northwest Power Act and is designed to provide lower rates for the residential and small farm customers of investor-owned utilities. Energy efficient construction will help hold down the size and cost of the exchange. Third, it is important for the ultimate adoption of MCS building codes and reduction of MCS costs to pursue MCS construction and market development regionwide. Improving building practice is key to achieving MCS construction. This may not occur if the focus is solely on that portion of the region (approximately 40 percent) currently purchasing power from Bonneville.

- Refine a component trade-off system using the generalized paths shown in Table I–B–1 of Appendix I–B as the basis. At a minimum, component trade-offs should be included to account for variations in building thermal mass, heating system efficiency, solar orientation, envelope thermal efficiency, and mechanical ventilation without heat recovery. The point system is needed to give builders the flexibility they need to meet the wide range of characteristics desired by homebuyers. Moreover, the point system should be used to encourage builders to explore new strategies which might achieve the MCS goals more efficiently and at lower cost while promoting builder acceptance of the MCS and regional acceptance of programs to implement the MCS.
- Develop and implement in consultation with the region's electric utilities, other energy providers (such as the natural gas industry), state and local governments, utility regulatory commissions, and others, a method to monitor the effects of financial assistance on heating system choice of new homebuyers. The Council does not believe that consumer choice between competing energy sources will be significantly affected by financial assistance offered by Bonneville and/or utilities. The Council will analyze how the life cycle cost of gas-heated homes compares to electrically heated homes and will make that information available to interested parties.
- Request utilities to submit to Bonneville as soon as is practicable, a plan declaring how they intend to comply with the MCS for utility residential conservation programs.
- Expand Bonneville's existing Indoor Air Quality Research Program to:
- Continue research on technology that improves indoor air quality beyond the level attained in homes built to current practice.
- Assess the relative effectiveness of alternative source reduction and alternative ventilation systems and strategies for minimizing potential pollutant build-up, including but not limited to spot ventilation, whole house exhaust-only ventilation, ductless heat

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recovery ventilation, and whole house heat recovery ventilation.

- Monitor indoor air quality in a sample of new electrically heated homes and evaluate the effectiveness of natural ventilation (i.e., infiltration) compared to mechanical ventilation in maintaining clean air, given the same source strength and whole house ventilation rate.
- Identify the major indoor pollutants that may be significantly reduced or eliminated through source reduction actions that might be effected through building codes and product standards.
- Provide findings from indoor air quality research to local and state building code and public health agencies for their consideration.
- Heat recovery ventilation systems and/or alternative ventilation systems without heat recovery installed in all programs used to achieve the residential MCS should be certified as meeting design, installation and performance standards promulgated by Bonneville. Final standards for the design, installation, and performance of such ventilation systems should be established as soon as is practicable.
- Inspect heat recovery ventilators installed before the standards have been established and repair those units that are not meeting the certification standard. To the degree possible, inspect mechanical ventilation systems without heat recovery that were installed in MCS houses an ensure that they are working.
- Require that utilities operating the Bonneville/utility residential MCS program or an alternative program being used to comply with the residential standard offer to monitor the indoor air quality in any new dwelling serviced by that utility.
- Continue to provide technical and financial assistance to builders, insulation contractors, architects, designers, real estate appraisers, lenders, salespersons and code officials for the implementation of a uniform, regionwide energy efficiency certification system for new residential buildings.
- Provide information to homebuyers on energy efficient housing, including publications on how to operate an energy efficient house and equipment such as heat recovery ventilators and information on indoor air pollution sources and mitigation measures.
- Bonneville should develop paths in the Super Good Cents program to recognize that some new homes will be constructed from logs. Given that some consumers will choose log homes for amenity reasons, Bonneville should recommend ways of improving the efficiency of electrically heated log homes to levels that are regionally cost-effective. Since most log construction precludes wall insulation, BPA would emphasize ceiling and floor insulation, improved windows and doors, and the use of heat pumps. Incentives for these homes should follow the objectives of the MCS as set forth above.

2. *New commercial buildings.* Bonneville should develop and implement a work plan which includes the following activities:

- Assist states, local governments and/or utilities in their efforts to take actions through codes, a Bonneville/utility commercial MCS program, alternative programs, or a combination thereof which will result in compliance with the commercial buildings MCS.
- Request utilities or local jurisdictions to submit to Bonneville their plans for complying with the MCS for utility conservation programs for commercial buildings as soon as is practicable after this program has been developed by Bonneville.
- Develop and implement an aggressive energy efficient new commercial buildings marketing program, or an equally effective alternative strategy, similar to the Super Good Cents program for residential buildings. This should be made part of a comprehensive package to market efficient buildings, both residential and commercial. Evaluate the need for financial assistance to promote commercial buildings built to the MCS.
- Collect and evaluate data on new energy efficient commercial buildings built under the MCS adoption program or elsewhere. These data should be maintained and updated as necessary so they can be used in future planning and be used in information brochures on efficient building techniques.
- Continue the New Commercial Buildings Field Test Demonstration program conducted pursuant to the Council's 1983 plan. This program is designed to achieve approximately 30 new commercial buildings constructed to be approximately 30 percent more efficient than the Council's standard.
- Develop for commercial buildings an energy efficiency certification program.

3. *Residential and commercial buildings converting to electric space conditioning.* Bonneville should develop and implement a workplan which includes the following activities:

- Encourage and assist states, local governments or utilities to take actions through codes, alternative programs or a combination thereof to achieve electric power savings from buildings which convert to electrical space conditioning comparable to those savings that would be achieved by incorporating all efficiency improvements that could be installed up to the regionally cost-effective level. The Council will work with Bonneville in consultation with the interested regional parties to define the measures that are regionally cost effective.

4. *General activities for both residential and commercial buildings.* Bonneville should develop and implement a work plan which includes the following activities:

- Implement the Code Adoption Demonstration Program, which encourages utilities, states and local governments to achieve the MCS through adoption of equivalent codes. If codes adopted in a utility's jurisdiction vary in specifics from those of the MCS but result in equivalent electricity use in new buildings, the utility should be eligible for inclusion in the Code Adoption Demonstration Program. This "MCS adoption" program should be available throughout the region to jurisdictions which comply in aggregate with the MCS for new residential and commercial buildings through improvements in their building codes and should include the following elements:
- Financial assistance to help offset the incremental cost of electrically heated residential building construction to the MCS. This financial assistance should be available to any jurisdiction that adopts the MCS through codes before January 1, 1989. Financial assistance to MCS adopters should be set at or above financial assistance given to utilities participating in the Bonneville/utility MCS program, and should be established at levels required to meet the Washington State law or higher. However, any existing MCS adopter agreements should be honored.
- Inclusion of finanical assistance to commercial building developers in MCS adoption jurisdictions.
- Reimbursement to utilities and states or local governments for the costs of MCS-level code adoption and enforcement.
- Systematic evaluation of construction cost, fuel share impacts, thermal performance, occupant satisfaction, indoor air quality, overall compliance with code targets, and enforcement costs for both residential and commercial buildings.
- Education and training programs for builders, consumers, architects, designers, energy code enforcement officials, mechanical ventilation system designers, installers and servicing contractors, realtors, lenders and appraisers, and other appropriate

participants in the design, purchase, and construction of new buildings.

- Shelter industry training which focuses on the most cost efficient means of achieving the MCS.
- Implement programs to reimburse state and local governments throughout the region for the incremental costs of adopting and enforcing model conservation standards as codes. Reimbursement should be made available throughout the region and should continue as long as enforcement of the standards remains regionally cost effective.
- Establish and maintain a program to reimburse states or local governments for the incremental costs of adopting and enforcing codes that are designed to achieve only part of the savings represented by the MCS if the inspection and enforcement activities are undertaken as part of an overall program designed to meet the MCS. This reimbursement should be provided throughout the region so long as regionally cost effective.
- Design and implement a method or process for estimating costs of building to the MCS throughout the region. This activity should be aimed at producing annual reports on the estimated costs experienced by builders in MCS adoption jurisdictions, and by builders in the Bonneville/utility MCS programs throughout the region.
- Design a process to collect utility-specific data on the achievement of the number of MCS residences as a percentage of the total new residences with electric heat. The data should be the basis for a report published every year to notify utilities of their progress towards achieving the MCS in the previous year.
- Continue to collect and analyze data regarding energy use, structural specifications and operations of residences and commercial buildings through the existing End-use Load and Conservation Assessment Project (ELCAP).
- Establish, maintain and disseminate the results of an ongoing research and demonstration effort which focuses on the refinement of new residential and commercial building conservation technologies, construction techniques and products. This program should initially concentrate in the residential sector, identifying and/or developing better information on:
- Reducing uncontrolled air leakage.
- Providing more reliable ventilation both with and without heat recovery.
- Constructing highly insulated exterior walls.
- Develop the surcharge policy and impose a 10 percent surcharge on any utility that has not met all of the requirements of the MCS for utility conservation programs for new residential and new commercial buildings. The surcharge policy should be developed and the surcharge should be imposed pursuant to the Council's model conservation standards and surcharge recommendation included in Appendix I-B.

Appendix I-B—Model Conservation Standards for New Residential Buildings, New Commercial Buildings, Conversions, and Utility Residential and Commercial Conservation Programs; and Surcharge Methodology

The Model Conservation Standards

The Council has adopted five model conservation standards (MCS). The MCS include the MCS for new residential buildings, the MCS for utility residential conservation programs, the MCS for new commercial buildings, the MCS for utility commercial conservation programs, and the MCS for conversions.

The MCS for New Residential Buildings

The Council's model conservation standard for new single and multifamily electrically heated residential buildings[2] is as follows:

> New buildings are to be built to energy efficiency levels at least equal to those which would be achieved by using the illustrative component performance paths displayed in Table I-B-1 for each of the Northwest climate zones.[3] It is important to remember that these illustrative paths are provided as benchmarks against which other combinations of strategies and measures can be evaluated. Any combination of measures that result in equivalent electricity used for heating and maintain indoor air quality, is an acceptable path to achieve the MCS.
>
> Trade-offs among the components may be made so long as the overall efficiency and indoor air quality of the building are at least equivalent to a building containing the measures listed in Table I-B-1. Bonneville, in consultation with the Council, should develop other illustrative approaches for building to this standard and publish these as code versions of the standard.

TABLE I-B-1.—ILLUSTRATIVE PATHS FOR RESIDENCES BUILT TO THE MCS LEVEL

Component	Climate zone		
	Zone 1	Zone 2	Zone 3
Ceilings:			
Attic	R-38(U-0.032)[a]	R-49(U-0.022)	R-49(U-0.022)
Vaults	R-38(U-0.028)	R-38(U-0.028)	R-38(U-0.028)
Walls:			
Above grade	R-19(U-0.057)	R-24(U-0.045)	R-30(U-0.035)[b]
Below grade	R-19[c]	R-19	R-19
Floors:			
Crawlspaces and unheated basements	R-30(U-0.03)	R-30(U-0.03)	R-30(U-0.03)
Slab-on-grade perimeters	R-10	R-10	R-10
Glazing[d]	R-2.5 (U-0.40)	R-2.5 (U-0.40)	R-2.5 (U-0.40)
Maximum glazed area (percent floor area)	15	15	15
Exterior doors	R-5(U-0.19)	R-5(U-0.19)	R-5 (U-0.19)
Assumed thermal infiltration rate[e]	0.3 ach	0.3 ach	0.3 ach
Mechanical Ventilation[f]	ASHRAE 62-81	ASHRAE 62-81	ASHRAE 62-81

[a] R-values listed in this table are for the insulation only. U-values listed in this table are for the full assembly of the respective component.

[b] Multifamily exterior walls above grade in Zone 3 should be insulated to a nominal R-24 (U-0.045).

[c] Only the R-value is listed for below grade insulation. The corresponding U-value is not known with precision.

[d] U-values for glazing shall be the tested values for thermal transmittance due to conduction resulting from either the American Architectural Manufacturers Association (AAMA) 1503.1-1980 test procedure or the American Society for Testing and Materials (ASTM) C236 or C976 test procedures. Testing shall be conducted under established winter horizontal heat flow test conditions using a 15 mph wind speed and product sample sizes specified under AAMA 1503.1-1980. Testing shall be conducted by a certified testing laboratory. *EXCEPTION:* Site-built fixed glazing shall be exempt from the thermal testing requirements; provided the insulating glass is tested and certified under a Society of Insulated Glass Manufacturers of America (SIGMA) approved certification program as class "A" in accordance with ASTM E-744-81: and the insulating glass is installed either in an aluminium frame having a minimum 0.25 inch low conductance thermal break or in wood framing in accordance with SIGMA glazing specifications; and provided further, that site-built double glazed units with fixed panes shall have a dead air space between panes of not less than ½ inch and site-built triple glazed units with fixed panes shall have a dead air space between panes of not less than ¼ inch.

[e] Maximum air changes per hour (ach) allowed for determination of thermal losses due to air leakage.

[f] Indoor air quality should be comparable to levels found in non-MCS dwellings built in 1983. If additional ventilation is needed, it may be achieved through the use of mechanical systems which may or may not incorporate heat recovery. Mechanical ventilation systems shall be installed which are capable of providing the minimum outside air requirements specified in ASHRAE standard 62-81 for residential occupancies. These systems may or may not incorporate heat recovery.

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[2] Single family residences are defined to include duplexes. Multifamily residences include triplexes and larger structures up to and including 4-story low-rise residential structures. The standard applies to site-built residences and not to residences which are regulated under the National Manufactured Housing Construction and Safety Standards Act of 1974. 42 U.S.C. 5401 et seq. (1983).

[3] The Council has established climate zones for the region based on the number of heating degree days as follows: Zone 1—4–6,000 heating degree days; Zone 2—6–8,000 heating degree days; and Zone 3—over 8,000 heating degree days.

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The MCS for Utility Residential Conservation Programs

The MCS for utility residential conservation programs is that utilities must implement, in accordance with the requirements detailed below, the Bonneville/utility residential MCS program, an equivalent alternative program, or rely on improved building codes to the MCS level. The BPA/utility residential MCS program consists of an aggressive marketing[4] and financial assistance program made available by Bonneville and the local utility to homebuilders.

Financial Assistance

The level of total financial assistance for the Bonneville/utility residential MCS program should be no less than the difference in net present value of life cycle cost to the consumer between a house built to the minimum life cycle cost level and a house built to the full residential MCS level. The maximum value for the range will be the regional cost-effective limit for lost opportunity resources.

Submission of Utility Plans for Compliance With the MCS for Residential Programs

Utilities must, as soon as Bonneville considers practicable, submit to Bonneville an initial plan declaring how then intend to meet the MCS for utility residential conservation programs. The ultimate goal for such programs is to obtain, at least 85 percent of the savings which would have been obtained if all electrically heated residential buildings had been constructed to the residential MCS level.[5] In subsequent years, a utility may change its declaration, subject to the same Bonneville approvals required for the initial plan submissions.

There are several ways utilities can comply with the MCS for utility residential conservation programs. These are:

1. Submit and have approved by the Bonneville a declaration that the MCS for residential buildings has been or will be met no later than a date to be specified by Bonneville,[6] and for each subsequent year, through codes at MCS levels adopted and enforced by a state and/or local government;
2. Agree to adopt and implement the Bonneville/utility residential MCS program by a date to be specified by Bonneville.
3. Submit, an alternative program that will be implemented and enforced by a date to be specified by Bonneville and is initially approved by Bonneville, as being capable of providing savings equivalent to the Bonneville/utility residential MCS program and which does not duplicate the acquisition of other resources that are already in the Council's plan. Alternative programs may include, but are not limited to, state or local government or utility marketing programs, financial assistance, codes that achieve part of the MCS level of savings, or other measures to encourage energy efficient construction of new residential buildings or other lost opportunity conservation resources.

Surcharge Recommendation

The Council recommends that a 10 percent surcharge be imposed, on utilities which have not complied with the deadline established by Bonneville, to submit to Bonneville: (1) An initial plan for implementation of the Bonneville/utility residential MCS program; (2) a plan for implementation of an alternative program which is approved by Bonneville as being equivalent as set forth above; or (3) a declaration, approved by Bonneville, that the MCS for residential buildings will be met by building codes. This surcharge continues in effect until a utility has filed an initial plan and has obtained the necessary Bonneville approvals.

Minimum Performance Standard

In Bonneville's public hearings on the surcharge policy, the Council and Bonneville listened to the concerns of utilities over the workability of the Council's performance surcharge. Because of those concerns, and because the Council feels that with this amendment to the MCS, compliance should and will be desirable and voluntary, the council has removed the performance standard from this plan. However, the Council still feels strongly that, given the value of the MCS to the region, utilities should be responsible for working vigorously toward attainment of the MCS in their service territories. Bonneville should measure and report to the council the performance of utilities in attaining the MCS. If it is determined that a performance standard can be designed and implemented and the reports indicate that there are utilities that are not participating in good faith in the MCS programs, the Council will revisit the concept of performance surcharges.

A utility operating the Bonneville/utility residential MCS program or a program approved by Bonneville as equivalent should not be surcharged.

Exemptions

The Council finds there is no need for exemptions at this time. If Bonneville finds that hardship exists, Bonneville should assist in the implementation of the Bonneville MCS program in those jurisdictions.

The Model Conservation Standards for New Commercial Buildings

The Council's model conservation standard for new commercial buildings is as follows: New commercial buildings are to be constructed to achieve savings equivalent to those achievable through constructing buildings to the Council of American Building Officials (CABO) 1983 Model Energy Code, which is based on the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE), ASHRAE 90–80, with the following modifications. The ventilation requirements are those set forth in ASHRAE Standard 62–81, and the interior lighting standard for all office buildings and for those retail areas containing over 20,000 square feet is 1.5 watts per square foot. The lighting efficiency requirements for all commercial buildings are as shown in Table I–B–2.

The Council recognizes that in some situations the lighting budgets shown in Table I–B–2 may not provide acceptable lighting. Bonneville should develop, in consultation with the Council and other interested parties, an optional calculation for determining the maximum allowable lighting load. This procedure should be substantially similar to section 1–5342(d)2 of Title 24 of the California non-residential building energy standards, which allows lighting levels to increase in parallel with the documented visual requirements of the task.

Illustrative ways for a commercial building to meet this standard are described in those portions of Bonneville's Model Conservation Standards Equivalent Code Amendments to the Model Energy Code, dated July 1986, or Model Conservation Equivalent Code to Chapter 53 of the Uniform Building Code, dated July 1986, as they will be conformed to this rule and may be subsequently amended from time to time, which apply to all buildings except low-rise residential buildings. As with the residential MCS, flexibility is encouraged in designing paths to achieve the commercial MCS.

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[4] "Super Good Cents" is the current name given to the Bonneville marketing program to encourage residential construction at the MCS level of efficiency. The Council believes the design and features of the Super Good Cents program will, if implemented regionwide, provide a successful mechanism for advancing building practices to the full residential MCS level of savings throughout the region.

[5] 85 percent is the level of compliance that the Council believes is achievable by utility programs.

[6] Bonneville should establish the earliest practicable date for utilities to implement and enforce their plans to implement the residential MCS.

TABLE I-B-2.—INTERIOR LIGHTING POWER BUDGET [a]

Group and occupancy description	Lighting power budget [b] (W/sq ft)
A:	
Assembly w/stage	1.1
Stage lighting	Exempt
Assembly w/o stage: other than B and E	1.1
B:	
Gasoline service station	2.0
Storage garages	0.3
Office buildings, wholesale stores, police and fire stations	1.5
Retail stores:	
—less than 1,000 squre feet	4.5
—1,000 to 6,000 square feet	3.5
—6,000-20,000 square feet	2.5
—Over 20,000 square feet	1.5
Drinking and dining establishments	1.85
Food preparation task lighting	Exempt
Aircraft hangers	0.7
Process plants	1.0
Factories and workshops	2.0.
Storage structures	0.7
E:	
Schools and daycare centers	2.0
Audio-visual presentation lighting	Exempt
H:	
Storage structures	0.7
Handling areas	2.0
Paint shops	2.5
Paint spray booths	5.0
Auto repair booths	2.0
Aircraft repair hangers	2.0
I:	
Institutions	2.0
Administrative support areas	2.0
Nursing areas	0.9
Diagnostic, treatment, food service task lighting	Exempt
R.	
Dwelling units	Exempt
Other areas	1.1
Food preparation task lighting	Exempt

[a] Watts/sq. ft. of room may be increased by 2 percent per foot of height above 20 feet.

[b] Emergency exit lighting is exempt from interior lighting budget.

The Council's MCS for new commercial buildings were developed using the ASHRAE 90–80 standard originally issued in 1980. ASHRAE intends to adopt and issue an updated version of Standard 90 (ASHRAE 90.1). The ASHRAE standard serves as the basis for the Council of American Building Officials "Model Energy Code." Therefore, the Council intends to review the updated standard for potential adoption as its MCS. This review process will commence as soon as the ASHRAE standard has been adopted in its final form.

The MCS for Utility Commercial Conservation Programs

The model conservation standard for utility commercial conservation programs is that utilities must: (1) Implement a joint marketing program with Bonneville, which may contain financial assistance payments to developers (the Bonneville/utility commercial MCS program); or (2) Implement an equivalent alternative program; or (3) rely on improved building codes to the MCS levels.

Submission of Utility Plans for Compliance with the MCS for Commercial Programs

Utilities must as soon as Bonneville considers is practicable submit to Bonneville an initial plan declaring how they intend to meet the MCS for utility commercial conservation programs. The ultimate goal for such programs is to obtain, as soon as possible, at least 85 percent of the savings which would have been obtained if all commerical buildings had been constructed to the commercial MCS level.[7] In subsequent years, a utility may change its declaration, subject to the same Bonneville approvals required for the initial plan submission.

There are several ways utilities can comply with the MCS for utility commercial conservation programs. These are:

1. Submit and have approved by Bonneville, a declaration that the MCS for commercial buildings have been or will be met no later than a date to be specified by Bonneville,[8] and for each subsequent year, through codes at the MCS levels adopted and enforced by a state and/or local government;

2. Agree to adopt and implement the Bonneville/utility commercial MCS program, which may contain financial assistance payments by a date to be specified by Bonneville; or

3. Submit an alternative program that will be implemented and enforced by a date to be specified by Bonneville, and is initially approved by Bonneville as being capable of providing savings equivalent to the Bonneville/utility commercial MCS program, and which does not duplicate acquisition of other resources that are already in the Council's plan. Alternative programs may include, but are not limited to, state or local government or utility marketing programs, financial assistance, codes that achieve part of the MCS level of savings, or other measures to encourage energy efficient construction of new commercial buildings or other lost opportunity conservation resources.

Surcharge Recommendation

The Council recommends that a 10 percent surcharge be imposed on utilities which have not complied with the deadline established by Bonneville to submit an initial plan for implementation of the Bonneville/utility commercial MCS program, a plan for implementation of an alternative program which is approved by Bonneville as equivalent, as set forth above, or a declaration, approved by Bonneville, that the MCS for commercial buildings will be met by building codes at the MCS levels. This surcharge continues in effect until a utility has filed an initial plan and has obtained the necessary Bonneville approvals.

The total surcharge on a utility for failing to meet the MCS for residential and commercial utility programs should not exceed 10 percent of its rate at any time.

Exemptions

The Council finds there is no need for exemptions at this time. If Bonneville finds that hardship exists, Bonneville should assist in the implementation of the Bonneville MCS program in those jurisdictions.

The Model Conservation Standard for Buildings Converting to Electric Space Conditioning

The Council's Model Conservation Standard for residential and commercial buildings converting to electric space conditioning is that state or local governments or utilities should take actions through codes, alternative programs or a combination thereof the achieve electric power savings from buildings which convert to electrical space conditioning. These savings should be comparable to those savings that would be achieved if each building converting to electric space conditioning were upgraded to include all regionally cost-effective electricity conservation measures. Although the conversion standard is highly recommended, the Council is not recommending, at this time, that a surcharge be imposed for failure to act accordingly.

Surcharge Methodology

Section 4(f)(2) of the Northwest Power Act provides for Council recommendation of a 10 percent to 50 percent surcharge on Bonneville customers for those portions of their loads within the region that are within states or political subdivisions which have not, or on customers which have not, implemented conservation measures that achieve savings of electricity comparable to those which would be obtained under the model conservation standards. The purpose of the surcharge is twofold: (1) To recover

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[7] 85 percent is the level of compliance that the Council believes is achievable by utility programs.

[8] Bonnevile should establish the earliest practicable date for utilities to implement and enforce their plans to implement the commercial MCS.

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costs imposed on the region's electric system by failure to adopt the model conservation standards or achieve equivalent electricity savings, and (2) to provide a strong incentive to utilities and state and local jurisdictions to adopt and enforce the standards or comparable alternatives.

The administrator is responsible for implementing the surcharge in accordance with the Council methodology for the surcharge calculation. The Council recommends that the Bonneville Administrator impose surcharges as specified above. The method is set out below.

A. Identification of Customers Subject to Surcharge

In accordance with the schedule set forth above, the Administrator should identify those customers, states, or political subdivisions which have:

1. Failed to comply with the model conservation standards for utility residential and commercial conservation programs, including meeting all filing deadlines.

B. Calculation of Surcharge

The annual surcharge for noncomplying customers or customers in noncomplying jurisdictions is then calculated by the Bonneville Administrator as follows:

1. If the customer is purchasing firm power from Bonneville under a power sales contract and is not exchanging under a residential purchase and sales agreement, the surcharge is 10 percent of the cost to the customer of all firm power purchased from Bonneville under the power sales contract for that portion of the customer's load in jurisdictions not implementing the MCS or comparable programs.

2. If the customer is not purchasing firm power from Bonneville under a power sales contract but is exchanging (or is deemed to be exchanging) under a residential purchase and sales agreement, the surcharge is 10 percent of the cost to the customer of the power purchased from Bonneville in the exchange (or deemed to be purchased) for that portion of the customer's load in jurisdictions not implementing the MCS or comparable programs.

3. If the customer is purchasing firm power from Bonneville under a power sales contract and also is exchanging (or is deemed to be exchanging) under a residential purchase and sales agreement, the surcharge is: (a) 10 percent of the cost to the customer of firm power purchased under the power sales contract, *plus* (b) 10 percent of the cost to the customer of power purchased from Bonneville in the exchange (or deemed to be purchased) multiplied by the fraction of the utility's exchange load originally served by the utility's own resources.

This calculation of the surcharge is designed to eliminate the possibility of surcharging a utility twice on the same load. In the calculations, the portion of a utility's exchange resource purchased from Bonneville and already surcharged under the power sales contract is subtracted from the exchange resources before establishing a surcharge on the exchange load.

C. Evaluation of Alternatives and Electricity Savings

A method of determining the estimated electrical energy savings of an alternative conservation plan should be developed in consultation with the Council and included in Bonneville's policy to implement the surcharge.

Edward Sheets,

Executive Director.

[FR Doc. 86-26219 Filed 11-19-86; 8:45 am]

BILLING CODE 0000-OO-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 35-24238]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

November 13, 1986.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 8, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Pennsylvania Electric Company (70-4549)

Pennsylvania Electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907, an electric utility subsidiary company of General Public Utilities Corporation, a registered holding company, has filed a post-effective amendment to its application pursuant to sections 9(a) and 10 of the Act.

By orders dated November 17, 1967 and December 23, 1981 (HCAR Nos. 15899 and 22335), Penelec was authorized to acquire promissory notes through December 30, 1986 to be issued by Helvetia Coal Company ("Helvetia"), a nonaffiliated mining ccmpany, in an amount not to exceed $12,250,000, representing one-half of the estimated cost of Helvetia's coal mine. The other half of the financing for the coal mine was furnished by the New York State Electric and Gas Corporation ("NYSEG"), a utility not affiliated with Penelec. Currently, Penelec and NYSEG each have loaned Helvetia $11,625,000, or an aggregate of $23,250,000, pursuant to authorization for maximum aggregate loans of $24.5 million through December 30, 1986. Penelec and NYSEG currently have outstanding loans to Helvetia of $7,775,000, or an aggregate of $25,550,000. Penelec now seeks authority to acquire Notes ("Notes") of Helvetia up to the previously authorized limit of $12,250,000 until December 30, 1991 and to extend the maturity of such Notes until December 31, 1991.

Associated Natural Gas Company (70-6811)

Associated Natural Gas Company ("Associated"), 40 West Park Street, Blytheville, Arkansas 72315, a gas utility subsidiary of Arkansas Power & Light Company, an electric utility subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a further post-effective amendment to its declaration is this matter pursuant to section 6(a) and 7 of the Act.

By orders in this matter dated December 15, 1982, December 8, 1983, December 18, 1984, and January 10, 1986 (HCAR Nos. 22780, 23157, 23535, and 23990), Associated was authorized to make unsecured, short-term borrowings from Farmers Bank & Trust Co. ("Bank"), Blytheville, Arkansas, from time to time through January 10, 1987, in an aggregate principal amount not to exceed $3 million at any one time outstanding. At November 3, 1986, no such borrowings were outstanding.

Associated wants to extend this authorization and proposes to issue to the Bank its unsecured promissory notes payable not more than 270 days from the date of issuance. The notes may be renewed from time to time but will mature not later than one year from the effective date of the Commssion's order. They will bear interest at a rate per annum equal to the prime commercial loan rate (presently 7½%) of The Chase Manhattan Bank (N.A.), New York, New York, from time to time in effect, and, at the option of Associated, will be prepayable, in whole or in part, at any time without premium or penalty. Associated will not be required to maintain compensating balances with the Bank or to pay any commitment fees.

Consolidated Natural Gas Company (70–7295)

Consolidated Natural Gas Company ("Consolidated"), Four Gateway Center, Pittsburgh, Pennsylvania 15222, a registered holding company, has filed a declaration pursuant to sections 6(a) and 7 of the Act.

Consolidated proposes to borrow up to $50,000,000 for a period not exceeding eight years under a credit agreement with The Chase Manhattan Bank, N.A., acting for itself and as agent for certain foreign banks. The bank loans will be in the form of revolving credits through December 31, 1991, during which period, each bank will make loans to Consolidated from time to time up to the maximum of its commitment under the credit agreement. During the revolving-credit period, Consolidated may borrow, pay, or prepay and reborrow up to each bank's commitment. Under the terms of the credit agreement, each bank agrees to make a three-year term loan to Consolidated on December 31, 1991, in an amount not exceeding its commitment on the date of that loan. Each term loan will be evidenced by Consolidated's note payable in six equal semi-annual installments, with the final maturity no later than December 31, 1994.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–26163 Filed 11–19–86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 161—Minimum Aviation System Performance Standard for Radio Determination Satellite System; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of RTCA Special Committee 161 on Minimum Aviation System Performance Standard for Radio Determination Satellite System to be held on December 9–10, 1986, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Introductory Remarks; (2) Review Terms of Reference; (3) Briefings on Radio Determination Satellite System (RDSS); (4) Open Discussion of RDSS, (5) Develop Initial Work Program and Schedule of Accomplishments; (6) Task Assignments; (7) Other Business; and (8) Time and Place of Next Meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 12, 1986.

Wendie F. Chapman,

Designated Officer.

[FR Doc. 86–26140 Filed 11–19–86; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

Petitions for Exemption or Waiver of Compliance; Grafton and Upton Railroad Co. et al.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for an exemption from or waiver of compliance with certain requirements of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST–84–21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before January 8, 1987, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Grafton and Upton Railroad Company

Waiver Petition Docket Numbers LI–86–2 and SA–86–2

The Grafton and Upton Railroad Company (GU) seeks a permanent waiver of compliance with certain provisions of the Locomotive Safety Standards (49 CFR Part 229) and the Safety Appliance Standards (49 CFR Part 231) for a General Electric 44 ton, 380 horsepower switching locomotive numbered NEC 10.

The GU is a 15.5 mile, Class 1—10 mph shortline railroad that presently operates three trains per week in the Grafton, Massachusetts, area. The locomotive is not equipped with a slip/slide device as required by § 229.115, and the railroad states that because of their operation at low speed, one is not necessary. The NEC 10 is not equipped with side switching steps that conform to § 231.30. The railroad states that the locomotive can not be easily equipped with such steps because of clearance problems at customer locations.

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Tennessee Valley Railroad Museum, Inc.

Waiver Petition Docket Number RSGM-86-21

The Tennessee Valley Railroad Museum, Inc. (TVRM) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for three ALCO-GE diesel locomotives. The TVRM currently operates only under the jurisdiction of the Tennessee Department of Elevator and Boiler Inspection concerning boilers. The locomotives will operate mainly within the Chattanooga city limits through areas of light industry and residences. The petitioner indicates they have not had problems with vandalism concerning glazing. They desire to maintain the original appearance of these three locomotives and, therefore, are requesting a waiver for the cab window glazing.

Canadian National Railway

Waiver Petition Docket Number SA-86-8

The Canadian National Railway seeks a permanent waiver of compliance with § 231.6(c)(3) of the Safety Appliance Standards (49 CFR 231.6(c)(3)) for 390 five-unit container well cars. The horizontal side handhold has been the vertical handholds have been located to permit train crewmembers to hold on securely while standing on the sill step or while boarding the car.

Issued in Washington, DC, on November 12, 1986.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 86-26138 Filed 11-19-86; 8:45 am]

BILLING CODE 4910-06-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 224
Thursday, November 20, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:37 p.m. on Friday, November 14, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to adopt a resolution: (1) Making funds available for the payment of insured deposits made in First National Bank of Temple, Temple Oklahoma, which was closed by the Deputy Comptroller of the Currency on Friday, November 14, 1986, (2) accepting the bid of Union National Bank of Oklahoma, Temple, Oklahoma, a newly-chartered national bank subsidiary of The Union of Arkansas Corp., Little Rock, Arkansas, for the transfer of the insured and fully secured or preferred deposits of the closed bank, and (3) designating Union National Bank of Oklahoma as the agent for the Corporation for the payment of insured and fully secured or preferred deposits of the closed bank.

At that same meeting, the Board of Directors also: (1) Accepted the highest acceptable bid which may be submitted in accordance with the "Instructions for Bidding" for the purchase of assets of and the assumption of the liability to pay deposits made in The Bank of Northern California, San Jose, California, an insured State nonmember bank scheduled for closing later in the day by the Superintendent of Banks for the State of California, or (2) in the event no acceptable bid for a purchase and sssumption transaction is submitted, accepted the highest acceptable bid for an insured deposit transfer transaction which may be submitted, or (3) in the event no acceptable bid for either type transaction is submitted, made funds available for the payment of the insured deposits of the closed bank.

In calling the meeting, the board determined, on motin of Director C.C. Hope, Jr. (Appointive), seconded by Mr. Robert J. Herrmann, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(g)(A)(ii), and (c)(9)(B)).

Dated: November 17, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-26258 Filed 11-18-86; 12:06 pm]

BILLING CODE 6714-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

November 17, 1986.

TIME AND DATE: 10:00 a.m., Thursday, December 18, 1986.

PLACE: Room 600, 1730 K St., NW., Washington, DC.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Cases heard for oral argument on December 16, 1986, and December 17, 1986, including: NACCO Mining Co., LAKE 85-87-R, Greenwich Collieries, PENN 85-188-R, White County Coal Corporation, LAKE 86-58-R, and Emerald Mines Corporation, PENN 85-298-R. (Issues include whether an enforcement action under section 104(d) of the Mine Act, 30 U.S.C. 814(d), can be taken only when a violation is discovered during the course of an investigation and where the inspector actually observes the violation.)

It was determined by a unanimous vote of Commissioners that this meeting be closed.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653-5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 86-26238 Filed 11-18-86; 10:24 am]

BILLING CODE 6735-01-M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (51 FR 40370 November 6, 1986).

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Friday, October 31, 1986.

CHANGES IN THE MEETING: Additional meetings.

A closed meeting was held on Wednesday, November 12, 1986, at 9:15 a.m., to consider the following items.

Formal orders of investigation.
Administrative matter.

A closed meeting was held on Thursday, November 13, 1986, following the 10:00 a.m. open meeting, to considered the following item.

Consideration of *amicus* participation.

Chairman Shad and Commissioners Cox, Peters, Grundfest and Fleischman, determined that Commission business required the above change.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Patrick Daugherty at (202) 272-3077.

Jonathan G. Katz,

Secretary.

November 14, 1986.

[FR Doc. 86-26216 Filed 11-17-86; 4:18 pm]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of November 24, 1986:

An open meeting will be held on Tuesday, November 25, 1986, at 10:00 a.m., followed by a closed meeting.

The Commissioners, Counsel to the Commissioner, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

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Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Tuesday, November 25, 1986, at 10:00 a.m., will be:

1. Consideration of whether to adopt final amendments to the Industry Guides, "Statistical Disclosure by Bank Holding Companies". The amendments would call for disclosures regarding certain outstanding credits to borrowers in foreign countries experiencing liquidity problems that are expected to have a material impact on timely repayment of principal or interest, and certain restructurings of those outstanding credits. For further information, please contact Wayne G. Pentrack at (202) 272–2130.

2. Consideration of whether to issue an interpretive release regarding accounting for loan losses by registrants engaged in lending activities. The release would provide interpretive guidance regarding: (a) The need for procedural discipline in determining amounts of loan losses to be reported; (b) the requirement to account for loan collateral as repossessed, whether it is repossessed substantively or formally; and (c) valuation of substantively or formally repossessed loan collateral. For further information, please contact Wayne G. Pentrack at (202) 272–2130.

3. Consideration of whether to proposed for public comments Rules 11a–3 and 11c–1 under the Investment Company Act of 1940. Rule 11a–3 would allow open-end investment companies and their principal underwriters to make certain exchange offers to their own shareholders or to shareholders of another fund in the same family of funds. Rule 11c–1 would allow unit investment trusts and their sponsors to make certain exchange offers to unitholders of the same series or another series of the same trust or to unitholders of another unit investment trust having the same sponsor. For further information, please contact Brian P. Kindelan at (202) 272–2048.

4. Consideration of whether to adopt: (1) New Rule 14b–2, relating to banks' obligations in connection with forwarding communications to beneficial owners and supplying beneficial owners' names, addresses and securities positions to registrants; (2) corresponding and clarifying amendments to Rules 14a–1, 14a–13, 14b–1, 14c–1 and 14c–7; (3) a provision to new Rule 14b–2 and amendments to Rule 14b–1 excluding employee benefit plan participants from coverage of the shareholder communications rules; and (4) amendments to Rule 14a–3 regarding when and under what conditions registrants are no longer obligated to deliver annual reports or proxy statements to security holders. For further information, please contact Sarah A. Miller at (202) 272–2589.

The subject matter of the closed meeting scheduled for Tuesday, November 25, 1986, following the 10:00 a.m. open meeting, will be:

Formal order of investigation.

Institution of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

Settlement of injunctive actions.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Mahaffey at (202) 272–2091.

Jonathan G. Katz,

Secretary.

November 14, 1986.

[FR Doc. 86–26217 filed 11–17–86; 4:18 pm]

BILLING CODE 8010–01–M

Corrections

This section of the FEDERAL REGISTER contains editorial corrections of previously published Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency-prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ACTION

Student Service-Learning Projects; Availability of Funds

Correction

In notice document 86-24885 beginning on page 40234 in the issue of Wednesday, November 5, 1986, make the following correction:

On page 40234, third column, twenty-third line from the bottom, "43,000" should read "3,000".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 86-356]

Availability of a Draft Environmental Impact Statement on the Rangeland Grasshopper Cooperative Management Program

Correction

In notice document 86-25392 appearing on page 40470 in the issue of Friday, November 7, 1986, make the following correction: In the second column, insert an asterisk after the fifteenth, twenty-first and twenty-seventh lines.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51646; FRL-3100-7]

Toxic and Hazardous Substances Control; Certain Chemicals Premanufacture Notices

Correction

In notice document 86-24211 beginning on page 37969 in the issue of Monday, October 27, 1986, make the following corrections:

1. On page 37969, in the second column, in the fifth line under the caption **P 87-41**, "carbomonocyclic" was misspelled.
2. In the same column, in the eleventh line under the caption **P 87-42**, "date" should read "data".
3. On the same page, in the third column, the fourth line under the caption **P 87-44** should read "sulfo-6[(2-(sulfooxy)ethyl)sulfonyl],".
4. In the same column, in the last line under the caption **P 87-47**, insert a period after "oxo-".
5. On page 37970, in the second column, in the third line, "Confidential" was misspelled.
6. In the same column, in the sixth line under the caption **P 87-50**, insert ">" after "oral:".
7. On the same page, in the third column, in the first line, insert ">" after "oral:".
8. On page 37971, in the second column, in the eleventh line under the caption **P 87-70**, ">" should read "<".
9. In the same column, in the second line under the caption **P 87-71**, "Chemical" should read "Chemicals".
10. In the same column, in the ninth line under the caption **P 87-72**, insert a period after "submitted".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

Federal Old-Age, Survivors, and Disability Insurance; Wage Coverage

Correction

In proposed rule document 86-24221 beginning on page 39397 in the issue of Tuesday, October 28, 1986, make the following corrections:

On page 39398, in the first column, in the last complete paragraph, in the sixth line, insert "because" between "necessary" and "of"; and on the same page, in the second column, in the first complete paragraph, in the fourth line, "intended" should read "interned".

BILLING CODE 1505-01-D

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federal register

Thursday
November 20, 1986

Part II

Securities and Exchange Commission

17 CFR Part 210, Etc.

Proxy Rules; Final Rule and Proposed Rule

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 229, 239, 240, 249 and 270

[Release Nos. 33-6676; 34-23789; 35-24236; IC-15403; File No. S7-31-85]

Proxy Rules—Comprehensive Review

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission ("Commission") today announced the adoption of amendments to its proxy rules and certain other rules. The amendments bring to the proxy context the benefits of the integrated disclosure system. The amendments also include a compensation plan disclosure item that simplifies the proxy disclosure previously required. The amendments also require new registrants to provide disclosure concerning prior changes in accountants and any related disagreements. In addition, certain changes update the rules to comport with current practice, interpretations and other changes in laws and rules.

DATES: *Effective Date:* These amendments are effective January 20, 1987, for proxy statements filed on or after that date.

Compliance Date: Registrants are permitted, however, to comply with the amendments immediately after publication of this Release in the Federal Register. Such compliance must be with the amended rules as a whole.

FOR FURTHER INFORMATION CONTACT: Prior to the effective date, Alexander G. Shtofman or Caroline W. Dixon, (202) 272–2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. After the effective date, contact Cecelia D. Blye, (202) 272–2573, Office of Chief Counsel, Division of Corporation Finance.

SUPPLEMENTARY INFORMATION: The Commission today announced the adoption of revisions to the proxy and information statement rules [1] under the Securities Exchange Act of 1934 ("Exchange Act").[2] The Commission is adopting revisions to Regulation 14A,[3] including Schedules 14A [4] and 14B,[5] and Regulation 14C,[6] including Schedule 14C.[7] In addition, certain revisions have been made to Regulation S–K,[8] Form S–18,[9] Form S–4 [10] and Form 10–K.[11] Finally, corresponding amendments to a number of other rules, regulations, forms and schedules are being adopted in order to revise or correct references to Regulations and Schedules 14A and 14C.[12]

I. Executive Summary

In July 1985, the Commission proposed amendments to its proxy rules as part of its Proxy Review Program.[13] The proposed revisions were intended to simplify the proxy rules and to update the rules to accord with current practice, staff interpretations, new laws and other changes in Commission rules.[14] The Commission is now adopting certain of the proposals and is publishing for comment related proposals in a companion release, Securities Exchange Act Release No. 33–6675.

Among other things, the amendments adopted today apply the principles of the integrated disclosure system to proxy disclosure, streamline compensation plan disclosure and require disclosure by new registrants of changes in and disagreements with accountants. Consistent with the integrated disclosure system, the amendments as adopted allow certain company-specific (including financial) information required in connection with mergers, consolidations, acquisitions and similar matters to be incorporated by reference by eligible registrants pursuant to a system which is substantially the same as that contained in Form S–4. With respect to the authorization, issuance, modification or exchange of securities, the Commission has determined to retain the existing financial and related requirements applicable to these transactions and has adapted the principles of integrated disclosure in order to bring the proposed benefits to these transactions without an unintended increase in the information required. This has necessitated a modification of the rules as proposed. Pursuant to the modification, S–3 companies may incorporate by reference the required information from previously-filed documents and do not have to incorporate the entire annual report on Form 10–K and subsequent reports. The new rules also permit any registrant to incorporate by reference to documents delivered with the proxy statement.

Information with regard to compensation plans previously contained in three items is now condensed in a single item [15] and the disparities in disclosure requirements among different types of plans have been eliminated. The information required with respect to plans previously in effect is required only for plans in effect within the last three years, rather than five years. Registrants will no longer be required to disclose information concerning sales of securities subsequent to the exercise of options.

The Commission also is adopting proposals to require disclosure concerning changes in accountants and any related disagreements if a registrant was not subject to Exchange Act reporting requirements at the time a change in accountants occurred.[16] This would principally affect initial public offering registration statements and proxy statements of issuers newly registered under the Exchange Act.

The Commission has deferred consideration of the proposed requirement that a registrant disclose whether its independent auditor is a member of a voluntary self-regulatory organization which has both a peer review program and an independent oversight function. The Commission will reconsider this proposal after the completion of related private sector initiatives and review of the concept of mandatory peer review.

Part II of this release provides a synopsis of each of the proposed amendments to the proxy rules, which follows the structure of the regulations and schedules, and the Commission's action on such proposals.[17]

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[1] 17 CFR 240.14a–1 through 240.14c–101.

[2] 15 U.S.C. 78a–78kk (1982).

[3] 17 CFR 240.14a–1 through 240.14b–1.

[4] 17 CFR 240.14a–101.

[5] 17 CFR 240.14a–102.

[6] 17 CFR 240.14c–1 through 240.14c–101.

[7] 17 CFR 240.14c–101.

[8] 17 CFR Part 229.

[9] 17 CFR 239.28.

[10] 17 CFR 239.25.

[11] 17 CFR 249.310.

[12] The corresponding amendments affect: Rule 3–05(b) of Regulation S–X (17 CFR 210.3–05(b)), Rule 14f–1 (17 CFR 240.14f–1), Rule 13e–3 (17 CFR 240.13e–3) and Schedule 13E–3 (17 CFR 240.13e–100) under the Exchange Act; Forms N–14, S–4 and F–4 (17 CFR 239.23, 239.25 and 239.34) under the Securities Act of 1933; and Rule 20a–3 (17 CFR 270.20a–3) under the Investment Company Act of 1940.

[13] Release No. 33–6592 (July 19, 1985) [50 FR 29409].

[14] The proposals generated 52 comment letters. The letters of comment, as well as a copy of the summary of the comment letters prepared by the staff, are available for public inspection and copying at the Commission's Public Reference Room (File No. S–731–85).

[15] New Item 10 of Schedule 14A contains requirements previously contained in Items 9, 10 and 11.

[16] These changes are contained in Item 9 of Schedule 14A, Item 304 of Regulation S–K (17 CFR 229.304) and Form S–18.

II. Discussion

A. Regulations 14A and 14C

1. Registrant/Issuer; Security Holder/Shareholder

The Commission is replacing the term "issuer" with "registrant" and "shareholder" with "security holder," as proposed.

2. Executive Officer/Officer

In order to be consistent with Regulation S–K the Commission is, as proposed, replacing "officer" with "executive officer" in Item 5, Interest of Certain Persons in Matters to be Acted Upon, and Item 8, Compensation of Directors and Executive Officers, of Schedule 14A.

B. Rule 14a–1, Definitions

1. Technical Revision

The Commission has adopted, as proposed, a technical amendment to the first paragraph of Rule 14a–1 [18] to replace the phrase "terms used in §§ 240.14a–1 to 240.14a–10 and in Schedule 14A" by "terms used in this regulation" to clarify that the definitions are intended to apply to Regulation 14A in its entirety.

2. Last Fiscal Year

The Commission has adopted the proposed definition of "last fiscal year" to clarify the applicability of the definition to consent solicitations. A registrant's last fiscal year will not only be defined in terms of the date of the meeting, as in former rules, but also in terms of the date as of which consents or authorizations may be used to effect corporate action.

3. Record Date

A new defined term, "record date," has been adopted as proposed.

4. Solicitation

After consideration of a proposed revision to the definition of "solicitation", the Commission has concluded that the current definition and its judicial construction have worked well and that there is no need to revise the existing definition.

C. Rule 14a–2, Solicitations to Which § 240.14a–3 to § 240.14a–13 Apply

1. Solicitation Pursuant to Chapter 11 of Bankruptcy Reform Act

The Commission has amended Rule 14a–2 [19] as proposed to conform to changes in bankruptcy laws pursuant to the Bankruptcy Reform Act of 1978.[20] The revision to paragraph (a)(4) of Rule 14a–2 [21] will exempt a solicitation pursuant to a reorganization under Chapter 11, if such solicitation is made subsequent to or concurrently with the transmittal of a court approved disclosure statement.

D. Rule 14a–3, Information to be Furnished to Security Holders

1. Technical Revisions

The Commission has amended paragraph (b) of Rule 14a–3 [22] (and Rule 14c–3(a),[23] with regard to information statements) as proposed to clarify that the annual report to security holders is required whether the registrant is soliciting proxies or consents in connection with the annual election of directors.[24]

The proposed relocation of Paragraph (d) of Rule 14a–3 [25] to Rule 14a–13, Obligations of Registrants in Communicating with Beneficial Owners,[26] was adopted in a prior release with respect to the shareholder communications rules.[27]

2. Annual Report to Security Holders

The Commission is adopting, with a minor revision,[28] the proposed amendment to paragraph (b) of Rule 14a–3, to clarify that, if the registrant convenes a special meeting to elect directors in lieu of an annual meeting, the registrant must furnish an annual report to security holders in connection with such special meeting. This provision is intended to assure that the annual report be furnished in connection with the first meeting held during the year to elect directors. The Commission also solicited comment as to whether the rule should be modified to apply to elections of directors that take place either before or after the annual election in a given year. After consideration of the current requirement and of the public comment, the Commission believes that furnishing the annual report more than once per year is not necessary.

3. Rule 14a–3(b)(10), Furnishing of Information in Documents Filed Pursuant to Exchange Act Section 13(a) Subsequent to the Form 10–K.

The proposed amendments to Rule 14a–3 would have required an undertaking in the annual report to security holders or in the registrant's proxy statement for an annual meeting (or special meeting in lieu of the annual meeting) to provide, upon written request, information in addition to a copy of the annual report on Form 10–K.[29] A registrant would have been required to provide a copy of any information contained in Exchange Act Section 13(a) [30] reports filed during the period between the filing of the Form 10–K and the date a response was made to the request. Upon further consideration, the Commission has determined that the current requirement in Note D.2 of Schedule 14A that the registrant must undertake to furnish, upon request, copies of information incorporated by reference is adequate and responsive to investors' needs.

E. Rule 14a–4, Requirements as to Proxy

1. Rule 14a–4(d)(3)

As proposed, the Commission has added paragraph (d)(3) to Rule 14a–4 [31] to codify current interpretations that a proxy may not confer authority to vote at more than one meeting or consent solicitation.

2. Rule 14a–4(d)(4)

The Commission has revised Rule 14a–4 [32] to clarify that paragraph (d) applies to consent solicitations. The language of proposed paragraph (d)(4) has been revised to avoid any possible conflict with Rule 14a–4(c).[33] This

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[17] The discussion of Schedule 14A includes changes to Items 304 and 403 of Regulation S–K (17 CFR 229.403) and Form S–18, as well as of a clarifying instruction to Item 11 of Form 10–K. Technical revisions to Items 202 and 601 of Regulation S–K (17 CFR 229.202, 601) and to Forms S–4 and F–4 are noted in the last paragraph of Part II.

[18] 17 CFR 240.14a–1.

[19] 17 CFR 240.14a–2.

[20] 11 U.S.C. 101–151326, as amended by Act of November 6, 1978, Pub. L. No. 95–598, 92 Stat. 2549 (1978).

[21] 17 CFR 240.14a–2(a)(4).

[22] 17 CFR 240.14a–3(b).

[23] 17 CFR 240.14c–3(a).

[24] Because paragraph 11 of Rule 14a–3(b) repeats the substance of the note following paragraph 7, the note has been deleted as proposed.

[25] 17 CFR 240.14a–3(d).

[26] 17 CFR 240.14a–13.

[27] Securities Exchange Act Release No. 34–22533 (October 15, 1985) [50 FR 42672].

[28] The references to "special" meetings have been rephrased, but the substance remains the same.

[29] The registrant is currently required to provide an undertaking to furnish the Form 10–K upon request to security holders of record as of the date of the annual meeting. This remains unchanged.

[30] 15 U.S.C. 78m(a).

[31] 17 CFR 240.14a–4.

[32] 17 CFR 14a–4(d)(4).

[33] 17 CFR 240.14a–4(c). Rule 14a–4(c) permits the proxy to be drafted to give the proxy holder discretionary power to vote on certain matters enumerated in the provision. As proposed, the amendment to Rule 14a–4(d) would have provided in pertinent part that "no proxy shall confer authority . . . to consent to or authorize any action other than action proposed to be taken in the proxy

Continued

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addresses a concern raised by commentators.

Questions also have been raised about paragraph 14a–4(c)(1),[34] which permits a proxy statement or form of proxy to confer discretionary authority with respect to matters that the soliciting party does not know, a reasonable time prior to the solicitation, will be presented at the meeting. The purpose of this provision is only to allow the party filing the proxy statement to respond to proposals initiated by others.

3. Sufficiency of Current Requirements With Respect to Telegraphic Proxies

Rule 14a–4 applies to any form of written proxy, authorization or consent, including telexes, telegrams or cablegrams.[35] The Commission requested comment as to whether the current proxy card requirements are sufficient with respect to telegraphic proxies. After weighing various suggestions made by commentators and the fact that there is no indication of problems today, the Commission has determined not to change the current proxy card requirements.

F. Rule 14a–5, Presentation of Information in Proxy Statement

1. Technical Revision

As proposed, the requirements of paragraph (e) of Rule 14a–5 [36] have been moved to new Item 1 of Schedule 14A.

2. Standard With Regard to Information in Proxy Statement Not Known to Soliciting Persons

In the proposing release, the Commission inquired whether the standard in Rule 14a–5(b),[37] concerning information required in the proxy statement but not known to persons making a solicitation, should be revised to conform to the standard applied to Exchange Act reports [38] and registration statements filed pursuant to the Securities Act of 1933 ("Securities Act").[39] The Commission has determined not to change Rule 14a–5(b) because the current standard has worked well and there was little commentator support for the change.

G. Rule 14a–6, Filing Requirements

1. Technical Revisions [40]

Former paragraph (e) of Rule 14a–6 [41] has been divided as proposed into two paragraphs—paragraph (e), Release Dates, and paragraph (f), Public Availability of Information.

Paragraph (h),[42] Speeches, Press Releases and Scripts, has been amended as proposed to clarify that it also applies to material filed pursuant to Rule 14a–12, Solicitation Prior to Furnishing Required Proxy Statement.[43]

The proposed amendment to implement provisions of Exchange Act Section 14(g) (statutory filing fees for proxy solicitation material involving business combinations)[44] was adopted in an earlier release.[45] Pursuant to the amendment, paragraph (j), filing fees, refers to Rule 0–11 of the Securities Exchange Act.[46]

A new paragraph (l), Computing Time Periods, has been added as proposed to notify registrants that the filing date of a document shall be counted as the first day of the time period and that midnight of the last day shall constitute the end of the period.

2. New Note—Fundamental Changes in Preliminary Material

The Commission is adopting a proposed note to Rule 14a–6 [47] to make clear that the filing of revised preliminary proxy material will not recommence the ten day time period for which information must be on file with the Commission prior to the date definitive copies of such material are first sent or given to security holders, unless such revised material contains fundamental changes.

While Rule 14a–6 deals with the time periods for filing information with the Commission, questions have also been raised concerning time periods required for adequate dissemination of material changes. When there have been material changes in the proxy soliciting material or material subsequent events (in contrast to routine updating), an additional proxy card, along with revised or additional proxy soliciting material, should be furnished to security holders.[48] A sufficient period of time should be allowed for adeqluate dissemination of the material information to security holders prior to the meeting of security holders or the date on which the consents or authorizations may be used to effect the proposed action to permit security holders to assess the information and to change their voting decisions if desired.[49]

If a registrant is furnishing information at the S–3 level and incorporates by reference subsequently-filed documents, it may provide material information through such forward incorporation unless the incorporated information is a change to information previously delivered to all security holders.[50] However, the registrant must

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statement." Commentators suggested that the proposal be revised to make clear that paragraph (d) is not intended to prohibit a registrant's management from voting proxies on matters for which discretionary authority may be given pursuant to 14a–4(c), such as a matter presented at a meeting by a security holder. The language has been refined to provide that "no proxy shall confer authority . . . to consent to or authorize any action other than the action proposed to be taken in the proxy statement or matters referred to in paragraph (c) of this rule."

[34] 17 CFR 240.14a–4(c)(1).

[35] The validity of these forms, however, is a matter of state law.

[36] 17 CFR 240.14a–5(e).

[37] 17 CFR 240.14a–5(b).

[38] Rule 12b–21, 17 CFR 240.12b–21.

[39] Rule 409, 17 CFR 230.409 (identical to Rule 12b–21).

[40] The technical revisions made to Rule 14a–6 also include changing the title from "Material to be Filed" to "Filing Requirements" and adding captions to clarify the rule and make it easier to read. These changes are being adopted as proposed.

[41] 17 CFR 240.14a–6(e).

[42] Paragraph (g) has been redesignated Paragraph (h).

[43] 17 CFR 240.14a–12.

[44] 15 U.S.C. 78n(g) (1982).

[45] Securities Exchange Act Release No. 22781 (January 9, 1986) [51 FR 2472].

[46] 17 CFR 240.0–11.

[47] 17 CFR 240.14a–6.

[48] Where additional proxy soliciting material relating to the same meeting or subject matter is furnished to security holders subsequent to the proxy statement, Rule 14a–6(b) requires that such material be furnished to the Commission at least two business days prior to the date of furnishing the material to security holders.

[49] *See Bear, Stearns & Co. v. Anderson Clayton & Co.*, No. 8501, Del. Ch. Ct. (June 10, 1986) (three business day solicitation period not sufficient to allow security holders a reasonable opportunity to receive and consider additional soliciting material prior to the meeting). *See also, Smith v. Van Gorkom*, 488 A.2d 858, 893 (Del. 1985) ("in an appropriate case, an otherwise candid proxy statement may be so untimely as to defeat its purpose of meeting the needs of a fully informed electorate"). *Cf. Electronic Specialty Co. v. International Controls Corp.*, 409 F.2d 937, 944 (2d Cir. 1969) (describing district court opinion declining to order divestiture of shares acquired in tender offer or to enjoin voting and holding that withdrawal offer lasting for eight days afforded equivalent relief to rescission offer); *Allied Stores Corporation v. Campeau Acquisition Corp., et. al.*, No. 86 Civ. 7841 (S.D.N.Y. Oct. 10, 1986) (temporary restraining order issued for period of 10 days to allow shareholders reasonable opportunity to make informed choice in light of change in terms of tender offer); *Nicholson File Co. v. H.K. Porter Co.*, 341 F. Supp. 508, 513–514, 522 (D.R.I. 1972) aff'd 482 F.2d 421 (1st Cir. 1973) (curative letter and rescission offer mailed within seven days of a tender offer withdrawal date sufficient to counter any effect of misstatement); Securities Exchange Act Release No. 16343 (November 15, 1979) (Commission report under Exchange Act Section 21(a), stating that when facts change prior to meeting, appropriate steps should be taken to disseminate complete and accurate information to security holders; possibilities to be considered include postponing the meeting, sending a letter to all security holders advising them of the changes that have been made, revising the proxy statement and resoliciting proxies, and/or offering new proxy cards).

[50] See discussion in companion release of proposed Rule 14a–14.

furnish security holders with an additional proxy card, accompanied by a brief identification of the material information. While the entire 20 business day period specified in Note D.3 to Schedule 14A need not recommence, the registrant must allow sufficient time to afford security holders an opportunity to obtain and then consider the document containing the information incorporated by reference. It would not be necessary to provide as much time if the additional information is set forth in full in the material accompanying the proxy card.[51]

3. Identification of Changes From Prior Year

The Commission has determined to modify Note 1 to paragraph (a) of Rule 14a-6[52] and Note 2 to paragraph (a) of Rule 14c-5 (with respect to information statements).[53] These modifications, suggested by a commentator, will eliminate the administrative requirement to submit a marked copy of the preliminary proxy statement identifying the changes from the prior year's proxy statement and the requirement that a cover letter indicate whether the current preliminary material includes material changes from the prior year's material. These requirements have not proved useful to the staff in reviewing proxy materials and elimination of the requirement should benefit registrants. Registrants must continue to comply with paragraph (i) of Rule 14a-6[54] or paragraph (e) of Rule 14c-5,[55] which provide that, where amendments or revisions alter the text of the preliminary material, the changes are to be indicated by means of underscoring or in some other appropriate manner.

4. Proposed Rules 14a-6(f) and 14c-5(d), Public Availability of Released or Abandoned Proxy Material

The Commission had proposed to revise paragraph (f) of Rule 14a-6[56] and paragraph (d) of Rule 14c-5[57] to provide that preliminary proxy material "may be deemed available for public inspection when the staff determines that the registrant has released the proxy material to security holders or has abandoned the intention of releasing the proxy material." As the substance of the proposal is already mandated by the Freedom of Information Act ("FOIA"),[58] the Commission has determined that the proposed revisions are unnecessary. Under the FOIA, the Commission maintains that preliminary proxy material is confidential until definitive material is filed, the material has been released to security holders or no filing of definitive material is anticipated.[59] After definitive material has been filed, or in instances in which no filing of definitive material is anticipated, preliminary proxy material is made available to persons requesting the information under the FOIA.

H. Rule 14a-7, Mailing Communications for Security Holders.

The first paragraph of Rule 14a-7[60] has been revised as proposed to make clear that the rule applies to Regulation 14A in its entirety.

I. Rule 14a-8, Proposals of Security Holders

1. Eligibility

Rule 14a-8(a)(1)[61] has been revised as proposed to make clear that the securities owned by the proponent must be entitled to be voted "on the proposal."

2. Six Copies

Paragraph (d) of Rule 14a-8[62] has been amended as proposed to require the registrant to submit six instead of five copies of security holder proposals, no-action requests and all related materials.

J. Rule 14a-13, Obligations of Registrants in Communicating with Beneficial Owners

The proposed amendment to Rule 14a-13 to address the specific circumstances of solicitations and the election of directors at special meetings in lieu of annual meetings was adopted in a prior release.[63]

K. Headnotes to Schedule 14A, Information Required in Proxy Statement

Note A to Schedule 14A is being adopted as proposed. The first sentence continues to provide that where any item calls for information with respect to any matter to be acted upon and such matter involves other matters with respect to which information is called for by other items of Schedule 14A, registrants are required to give the information called for by such other items. A new example concerning authorization of securities in connection with an acquisition has been added to better illustrate application of the headnote.

New Note D, concerning incorporation by reference, has been adopted substantially as proposed. A revision based on a commentator's suggestion has been made to require a statement, located on the last page(s) of the proxy statement, listing all of the documents or portions of documents that are incorporated by reference. Listing the information in one place should facilitate security holder requests for information. Such treatment is consistent with Form S-4.

The Commission has adopted Note E substantially as proposed with a change in language to retain consistency with Forms S-2-3-4. The Commission notes that investment companies, and business development companies as defined in Section 2(a)(48) of the Investment Company Act of 1940,[64] are required to file on registration forms other than Forms S-2 and S-3. These companies, therefore, would not be considered to "meet the requirements" of Form S-2 or S-3 within the meaning of Note E, for purposes of Items 13(b)(1), 14(b)(1) and 14(b)(2).

L. Item 1, of Schedule 14A, Date, Time and Place Information[65]

1. Date, Time, Place and Mailing Address

The first sentence of paragraph (a) of Item 1 has been adopted as proposed to require a statement of the date, time and place of the security holders' meeting, and mailing address of registrant's executive offices.

2. Deadline for Submission of Consents

As proposed, the second sentence of paragraph (a) of Item 1 would have required the registrant to state the date, time and place of counting consents, if action was to be taken by written consent. This sentence, as adopted, has been clarified to require instead that the registrant specify the deadline for submitting consents, if state law requires that such a date be set or if the soliciting person intends to set such a date. The modification is intended to better reflect the actuality of consent solicitations and to make clear that Item

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[51] See supra n. 49.

[52] 17 CFR 240.14a-6(a).

[53] 17 CFR 240.14c-5(a).

[54] 17 CFR 240.14a-6(i).

[55] 17 CFR 240.14c-5(e).

[56] 17 CFR 240.14a-6(f).

[57] 17 CFR 240.14c-5(d).

[58] 5 U.S.C. 552 (1977 and Supp. 1986).

[59] *See* Securities Exchange Act Release No. 13030 (December 2, 1976) [41 FR 53784].

[60] 17 CFR 240.14a-7.

[61] 17 CFR 240.14a-8(a)(1).

[62] 17 CFR 240.14a-8(d).

[63] Securities Exchange Act Rel. No. 22533, October 15, 1985 [50 FR 42672].

[64] 15 U.S.C. 80a-2(a)(48).

[65] The addition of this new Item has neccessitated redesignation of former Items 1-8 as Items 2-9.

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1 does not require that a deadline be set in the absence of a state law requirement to do so.

3. Date of Mailing Proxy Statement and Form of Proxy and Date for Receipt of Security Holder Proposals

New paragraphs (b) (requiring a statement of the approximate date on which the proxy statement and form of proxy are first sent or given to security holders) and (c) (requiring a statement of the date by which security holder proposals must be received) have been relocated from Rule 14a–5(e) to Item 1 as proposed.

M. Item 2, Revocability of Proxy

In the proposing release, comment was solicited as to whether a specific note with regard to the revocability of written consents was necessary. The Commission believes that Item 2 adequately addresses questions of disclosure with regard to consents and thus has determined that no change to Item 2 is necessary.

N. Item 6, Voting Securities and Principal Holders Thereof; Item 403 of Regulation S–K, Securities Ownership

1. Technical Revision

Paragraphs (d), (e) and (g) of Item 6 have been consolidated as proposed and paragraph (d) has been corrected to call for information required by "Item 403," rather than "Item 403(a)," of Regulation S–K.[66]

2. Item 6(b), Criteria for Entitling Security Holders To Vote or Give Consent

A revision to the first sentence of Item 6(b) is being adopted as proposed. The previous reference to the record date for security holders entitled to vote "at the meeting" has been changed to a reference to the record date "with respect to this solicitation."

A commentator recommended, and the Commission is adopting, a similar refinement to the language of the second sentence of Item 6(b) to clarify the required disclosure. The second sentence of Item 6(b) formerly required disclosure of the "conditions" under which security holders other than holders on the record date were entitled to vote. The sentence has been revised to refer specifically to consents. It provides that, if the right to vote or give consent is not to be determined, in whole or in part, by reference to a record date, the registrant should indicate the criteria for determining which security holders are entitled to vote or give consent.[67]

3. Directors and Officers

The Commission has retained the reference in Item 403 of Regulation S–K to beneficial ownership by "directors and officers of the registrant," rather than amend the rule to apply to "directors and executive officers of the registrant."[68] For purposes of determining security ownership that management may be in a position to influence or control, the Commission believes that it is appropriate to continue to include all officers.

4. Address of Beneficial Owner

The Commission has amended Item 403 of Regulation S–K as proposed to permit a beneficial owner of more than 5% of a registrant's voting securities to provide a business or mailing address when an address must be disclosed.

O. Item 7, Directors and Executive Officers

1. Technical Revisions

Information required by Instruction 4 to Item 103 of Regulation S–K, Legal Proceedings,[69] has been relocated from Item 8, Compensation of Directors and Executive Officers, to Item 7 as proposed. Paragraphs (b) and (c) of Item 7 have been consolidated into one paragraph (c), as proposed. In addition, an inadvertent error, whereby it appeared that investment companies no longer had to disclose the information required by paragraphs (a), Transactions with Management and Others, and (c), Indebtedness of Management, of Item 404 of Regulation S–K,[70] was corrected.

2. Item 7 (e) and (f), Committees of Board of Directors; Number of Meetings and Directors Attendance

Although the Commission proposed no substantive change, it solicited comment as to whether the disclosure called for by paragraphs (e) and (f) of Item 7 (committees of the Board of Directors; number of meetings and director attendance) should be revised. As there was little support for such revision, no indication of undue burden and a number of comments supporting the interest of investors in such information, the current requirements have not been revised.

3. Item 7(h), Votes Cast Against or Withheld From Directors

In the proposing release, the Commission solicited comment as to whether the disclosure required by paragraph (h) of Item 7 (regarding directors with respect to whom 5% or more of the security holder vote was cast against or withheld) should be revised or should be retained. After consideration of the commentator response and review of the disclosure obtained pursuant to this requirement, the Commission has concluded that the information is not particularly useful to security holders and has determined to eliminate the requirement.

P. Item 8, Compensation of Directors and Executive Officers

1. Technical Revision

The title has been changed as proposed to reflect a previous change from "remuneration" to "compensation" in Item 402 of Regulation S–K.[71]

2. Compensation Plan Payment

As suggested by a commentator, an instruction has been added to Item 8 to codify a staff interpretation concerning the disclosure required by Item 402(b) of Regulation S–K (description of a compensation plan to which cash or noncash compensation was paid or distributed during the last fiscal year to executive officers).[72] The instruction provides that, where: (1) The plan became subject to disclosure because of an acquisition or merger and (2) within one year of the acquisition or merger such plan was terminated for purposes of prospective eligibility, the registrant need not provide a full description of the plan but instead may furnish disclosure limited to its obligations to individuals under the compensation plan.

Q. Item 9, Independent Public Accountants Peer Review

The Commission has determined not to adopt at this time the proposed revisions to Item 9 concerning disclosure with regard to the membership of the registrant's auditor in an organization that has a peer review program and an independent oversight function. This proposal as well as others are being examined in light of related private sector initiatives under consideration.[73]

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[66] 17 CFR 229.403(a).

[67] While the definition of "proxy" includes "consent", the Commission has added specific references to "consents" in instances where the absence of such language could cause confusion, as in Item 6(b).

[68] Commentary was solicited on the advisability of such a change.

[69] 17 CFR 229.103.

[70] 17 CFR 229.404 (a) and (c).

[71] 17 CFR 229.402.

[72] 17 CFR 229.402(b).

[73] The report of the Special Committee on Standards of Professional Conduct for Certified

Continued

R. Item 304 of Regulation S–K; Item 9, Independent Public Accountants

1. Item 304 of Regulation S–K

Prior to the proposal, Item 304 of Regulation S–K only required disclosure of recurring transactions or events that were the subject of a disagreement with a previous accountant. As proposed, the existing provisions of Item 304 have been designated as 304(b) [74] and new paragraph (a) has been added to the Item.[75] Pursuant to new paragraph (a), information concerning changes in and disagreements with accountants will now be provided wherever Item 304 disclosure is required, unless disclosure has previously been made. As proposed, these requirements will extend to those engaging in initial public offerings [76] and registrants newly subject to Exchange Act reporting requirements.[77]

2. Item 9 of Schedule 14A

In addition to requiring information concerning changes in accountants, Item 9 [78] of Schedule 14A required proxy statement disclosure concerning disagreements previously reported on Form 8–K. The Item called for a description of such disagreement and provided that the former accountant be afforded an opportunity to respond to the registrant's description.

The Commission proposed to amend Item 9 to require disclosure of disagreements in connection with changes in accountants since the last proxy statement for the most recent annual meeting, even though they have not been previously reported on Form 8–K.[79] The Commission has adopted that proposal and further modified the language to simply refer to the requirements of Item 304(a).[80]

Item 9 as proposed required disclosure of disagreements, notwithstanding prior disclosure. In contrast, proposed Item 304, which also required disclosure of disagreements, specified that the disclosure need not be provided if previously reported. Because the proposal called for information pursuant to both Item 9 and Item 304 in connection with proposed actions requiring financial statements, there was an ambiguity. The Commission is clarifying that the information need not be furnished if previously disclosed.[81] Accordingly, Item 9 as adopted no longer calls for information concerning disagreements because a proposed action requires the furnishing of financial statements.[82] Item 9 continues, however, to require the information, notwithstanding prior disclosure, when the annual election of directors or the election, approval or ratification of the accountant is involved.[83]

T. Item 10, Compensation Plans

1. Major Revisions

Former Items 9, 10 and 11 have been consolidated and simplified. Information with respect to plans previously in effect is to be required only for plans in effect within the last three years, rather than five years. In addition, the Commission has deleted the requirement to disclose information concerning the sale of securities subsequent to the exercise of options as unnecessary and unduly burdensome.

2. Clarifying Revisions

Certain clarifying revisions have been made throughout Item 10 to clarify that the disclosure required with respect to: (1) Directors who are not executive officers and (2) all employees is to be made on a group rather than individual basis. In addition, disclosure concerning executive officers is required only as to those in office at the time the proxy statement is distributed.

3. Disclosure of Accounting Treatment of Compensation Plan

In the proposing release, the Commission solicited comment on whether Item 10 should require disclosure of the accounting treatment to be accorded a compensation plan subject to approval. The Commission believes it is appropriate to await completion of the Financial Accounting Standards Board's project evaluating the measurement of compensation costs for stock option or stock award plans and accordingly has not amended Item 10 to require such disclosure.

4. Item 10(a)(3) of Schedule 14A; Item 11 of Form 10–K; Item 402(b) of Regulation S–K

Certain commentators highlighted a potential conflict between disclosure requirements of Item 10 of Schedule 14A and Item 11 of Form 10–K.

Item 10(a)(3) of Schedule 14A requires disclosure of the executive compensation information called for by Item 402(b) of Regulation S–K with respect to compensation plans currently in effect or in effect during the last three years, with certain specified exceptions. The information to be provided is aggregated for the three year period.

Public Accountants ("Anderson Committee"), entitled "Restructuring Professional Standards to Achieve Professional Excellence in a Changing Environment," included a recommendation to the American Institute of Certified Public Accountants ("AICPA") that, in effect, would require peer review of member firms. On October 16, 1986, the AICPA Council voted in favor of submitting the recommendation to the AICPA membership. The full membership of the AICPA will have to vote to approve the proposal before it can be implemented. In addition, Price Waterhouse has suggested that there be mandatory membership in a new statutory self-regulatory organization that would operate the peer review program currently being conducted by the SEC Practice Section of the AICPA. Other major accounting firms, in a document entitled "Recommendations to the AICPA Board of Directors," have recommended that all auditors of registrants filing with the Commission be members of the AICPA's SEC Practice Section and be subject to its peer review requirements. Finally, the National Commission on Fraudulent Financial Reporting has initially concluded that mandatory membership in a professional quality assurance program should be required by the SEC.

[74] Item 304(b) requires disclosure of the financial statement effect of subsequently accounting for similar transactions in a manner different than that preferred by the former accountant. This requirement has been amended as proposed to remove the threshold requirement of prior disclosure of the disagreement on Form 8–K.

[75] Item 304(a) requires the information called for by Item 4 of Form 8–K, if a change in accountants has taken place within 24 months prior to, or in any period subsequent to, the most recent financial statements. The changes subject to the disclosure requirements of Item 304 are those described in Form 8–K.

[76] As proposed, Form S–18 has been amended to require Item 304 disclosure. Item 11 of Form S–1 continues to require Item 304 information.

[77] Item 304 disclosure is required by Item 14 of Form 10 and Item 9 of Form 10–K.

[78] Item 9 was formerly designated Item 8.

[79] Removal of the 8–K trigger results in disclosure by those registrants that reported the disagreement on Forms 10–Q or N–SAR and those not subject to Exchange Act reporting requirements at the time the change occurred.

[80] The revised Item extends the rule to those registrants that have not previously engaged in solicitations subject to Regulation 14A, notwithstanding the fact that they may have held annual meetings previously or solicited proxies not subject to the Regulation. Thus, registrants having their first meeting subject to Regulation 14A must provide disclosure concerning disagreements that occurred in the most recent fiscal year and any subsequent period.

[81] Similar clarifying amendments have been made to Form S–4.

[82] Because Item 9 contains the requirement to state whether or not representatives of the accountants are expected to be present at the security holders' meeting with the opportunity to make a statement and to respond to appropriate questions, the Commission is adding the provision to items requiring financial statements (Items 13 and 14). This will assure that the information concerning the accountant's presence at the meeting will continue to be provided in the event that financial statements are required in connection with the action to be taken. This requirement also will continue to be required pursuant to Item 9(d), as adopted.

[83] Because Item 9 requires disclosure pursuant to Item 304(a), a sentence has been added to the instructions to Item 304 to clarify that, when required by Item 9, the disclosure is needed notwithstanding prior disclosure.

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Item 11 of Form 10-K also calls for disclosure of Item 402(b) information. The information required by Item 11 is ordinarily incorporated by reference from the registrant's definitive proxy statement or definitive information statement. Because the Form 10-K information is required for the most recent fiscal year, a question has arisen as to whether separate disclosure of plan payments for the last fiscal year only would be required even when Item 10 of Schedule 14A has been complied with. However, the instruction to Item 11 of Form 10-K will make clear that a registrant incorporating by reference the three year aggregated history of plan compensation required by Item 10(a)(3) of Schedule 14A will be deemed to have complied with the requirement of Item 11 of Form 10-K.

U. Item 11, Authorization or Issuance of Securities Otherwise than for Exchange, and Item 12, Modification or Exchange of Securities

No substantive changes have been made to these Items as proposed, except that the proposed requirement to provide the disclosure called for by Item 201 of Regulation S-K [84] has not been adopted.

V. Item 13, Financial and Company Information, and Item 14, Mergers, Consolidations, Acquisitions and Similar Matters

As proposed, Item 13 would have specified disclosure requirements for mergers, consolidations and acquisitions, and Item 14 would have specified the company specific requirements (including financial statements), common to Items 11, 12 and 13.

The Commission, upon reconsideration, has determined that the proposed Item 14 requirements unintentionally and unduly increased the disclosure requirements for registrants electing S-2 or S-3 level disclosure for Item 11 and 12 transactions. Therefore, the Commission has restructured Items 13 and 14.

Item 13, as adopted, provides the financial and other company-specific information required for Items 11 and 12 transactions, which parallel those formerly required by Item 15 of Schedule 14A. Item 13 also specifies the extent to which such information may be incorporated by reference from previously-filed documents or from the annual report to security holders. To avoid increasing substantially the disclosure obligations of registrants incorporating by reference, the proposal has been modified so that a registrant need not incorporate an entire document, but rather only those specific sections that provide the required information. Nor will Item 13 require a registrant incorporating by reference from a Form 10-K to incorporate subsequently filed reports.

New Item 13 also permits a registrant to incorporate by reference information meeting the requirements from its annual report to security holders or any previously-filed document, if the report or document is delivered with the proxy statement. Registrants meeting the requirements of Form S-3 may incorporate by reference without delivery of documents.[85]

New Item 14, Mergers, Consolidations, Acquisitions and Similar Matters, specifies both the required transaction-related disclosure (proposed in Item 13) and the financial and other company-specific information (proposed in Items 13 and 14) for such transactions.[86] The requirements are not materially different from those proposed, and are intended to bring the proxy disclosures into conformity with the Form S-4 disclosures [87] for the same types of transactions.[88] Consistent with Forms S-2-3-4, registrants electing to incorporate by reference must incorporate into the proxy statement the entire annual report on Form 10-K and subsequently filed reports.[89]

The Commission has, as proposed, retained the ability of registrants to incorporate by reference the required information from an annual report sent to security holders pursuant to Rule 14a-3 with respect to the same meeting as that to which the proxy statement relates. Thus, registrants providing information at the S-1 level may incorporate any of the required company-specific information contained in such an annual report.

An instruction to both Items 13 and 14 has been added that requires a registrant to furnish a draft of the financial statements incorporated in preliminary proxy material if the document containing the financial statements (*e.g.*, annual report on Form 10-K) has not yet been filed with or furnished to the Commission.[90]

W. Item 19, Amendment of Charter, Bylaws or Other Documents

As proposed, an instruction has been added that directs the registrant's attention to Release No. 34-15230 [91] regarding proxy disclosure of defensive corporate charter and bylaw amendments.

X. Schedule 14B

As proposed, the Commission is substituting in Schedule 14B the term "registrant" for "issuer" and is permitting the use of a business or mailing address rather than a residence address.

Y. Regulation 14C

The revisions being adopted as proposed to Regulation 14C correspond to revisions to Regulation 14A with the following exceptions:

(1) Rule 14c-2, Distribution of Information Statement

The Commission is adopting a proposed revision to paragraph (a) of Rule 14c-2 [92] that modifies the language to state more clearly its position that a registrant must furnish an information statement to every holder of a class of securities registered under Securities Exchange Act Section 12 [93] that is entitled to vote or to give consents or authorizations, if a proxy is not solicited from the security holder. The amendment makes clear that if the registrant solicits consents from a few security holders who have enough shares to approve the transaction, the registrant must furnish information statements to the remaining security holders as required by Rule 14c-2.[94]

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[84] 17 CFR 229.201. Market price of and dividends on the registrant's common equity and related stockholder matters.

[85] If Rule 14a-3 applies to the solicitation, S-3 registrants must continue to deliver the annual report to security holders.

[86] Questions have been raised with respect to the applicability of Rule 3-12 of Regulation S-X, 17 CFR 210.3-12, "Age of financial statements at effective date of registration statement or at mailing date of proxy statement" to the incorporation by reference of financial statements in satisfaction of a requirement to provide S-X financials. It is the Commission's view that whenever financial statements are so incorporated, including Forms S-2-3-4 as well as Items 13 and 14 of Schedule A, Rule 3-12 is deemed to apply.

[87] While Item 14 does not specifically require the description of the securities that would be required by Item 202 of Regulation S-K (17 CFR 229.202) if securities were being registered, in the event that a transaction subject to Item 14 involves the issuance of securities exempt from registration, a description of the new securities can be information material to the plan and thus required by Item 14. The Commission is today seeking comment as to whether Item 14 should be amended to specifically require Item 202 information. *See* companion Release 33-6675.

[88] If a preliminary proxy statement is filed meeting the requirements of Item 14 and the filing of a Form S-4 is contemplated for the transaction, the requirements of Form S-4 must be satisfied. The Commission is today proposing to amend Item 14 to conform its requirements to those of Form S-4 for S-1 level disclosure. *See* companion Release 33-6675.

[89] These requirements do not apply to registrants incorporating from an annual report sent to security holders pursuant to Rule 14a-3 with respect to the same meeting.

[90] The Commission has determined not to adopt a proposed instruction to proposed Item 14 that would have required a statement that the accountant was aware its report was to be made part of the proxy material, when that report was incorporated by reference. The Commission is clarifying the application of the existing requirement to file one manually signed copy of the accountant's report to situations where the financial statements are incorporated by reference. One manually signed copy of the report must be filed with the definitive proxy material, notwithstanding the fact that the financial statements do not appear in the proxy statement itself. The accountant's review obligations are unchanged.

[91] (October 13, 1978) [43 FR 49863].

[92] 17 CFR 240.14c-2(a).

(2) Rule 14c-3, Annual Report To Be Furnished Security Holders

As proposed, to avoid needless repetition, paragraphs (a)(1) through (a)(11), which formerly set forth the required annual report to security holders disclosure, will now require that the information specified in paragraph (b)(1) through (b)(11) of Rule 14a-3 [95] be provided in the annual report. As proposed, conforming references have been made to indicate which paragraphs are applicable to investment companies registered under the Investment Company Act of 1940.

Z. Schedule 14C, Information Required in Information Statement

Technical revisions to Schedule 14C that are being adopted as proposed are: (1) Renumbering of items to reflect deletion of Item 3, which is now part of new Item 1 of Schedule 14A; (2) revision of the list of Schedule 14A items that are not required in information statements to reflect new numbering of Schedule 14A items; (3) addition of Item 1(c) of Schedule 14A to the list of Schedule 14A items excluded from Schedule 14C; and (4) addition of a note to Item 1, stating that the notes at the beginning of Schedule 14A also apply to Schedule 14C.

AA. Other Technical Revisions

The Commission also is adopting additional technical changes: (1) The references to provisions of the Internal Revenue Code ("Code") in Item 202 of Regulation S-K are being changed to conform to corresponding changes in the Code; (2) certain portions of the exhibit table in Item 601 of Regulation S-K are being corrected to reflect accurately which exhibits should be supplied in connection with various filings or to clarify language used in the footnotes; and (3) references to Item 1 of Schedule 14A have been added to Item 18 of Form S-4 and to Item 18 of Form F-4.

III. Final Regulatory Flexibility Analysis

This final regulatory flexibility analysis, which relates to amendments to the proxy rules and certain other rules, has been prepared in accordance with 5 U.S.C. 604. The corresponding Initial Regulatory Flexibility Analysis is contained in the proposing release.

The Need for, and Objectives of the Comprehensive Revisions to the Proxy Rules

The Commission has recognized the need to clarify, to provide certainty by codifying staff interpretation, and to simplify the proxy rules. The principal purpose of the proxy rules, to ensure that information is made available to security holders being asked to vote on or consent to corporate action, is furthered by such clarification, codification and simplification. In addition, the revisions to Item 9 of Schedule 14A, Form S-18 and to Item 304 of Regulation S-K will assure that disclosure concerning changes in accountants and any related disagreements will be made in registration statements by registrants engaged in initial public offerings and in proxy statements and periodic filings by registrants not subject to Exchange Act filing requirements at the time a change in accountants occurred.

Issues Raised by Public Comment in Response to the Initial Regulatory Flexibility Analysis

One commentator, the American Bar Association, commented on the Initial Regulatory Flexibility Analysis contained in the proposing release. This commentator expressed the view that the proposed provisions, if adopted, would not have an adverse effect on competition or impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act.

The commentator also noted that, whereas it was conscious of the benefits of encouraging small businesses by minimizing their regulatory burden, it shared the Commission's view that exemption from the provisions of the proxy rules or Item 304 of Regulation S-K would not be justified. This commentator stated:

> It is fundamental to the capital formation process that investors who fund new enterprises be treated fairly and be given reasonable information concerning the businesses in which they invest. Moreover, requiring small businesses to live with appropriate regulations as a *quid pro quo* for access to public markets will doubtless have the salutary side effect of accustoming their managers to an ordered approach to the conduct of their businesses thus facilitating their future access to the capital markets.

Significant Alternatives

Pursuant to section 604 of the Regulatory Flexibility Act, the following types of alternatives were considered:

(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) The clarification, consolidation or simplification of compliance and reporting requirements under the rules for such small entities;

(3) The use of performance rather than design standards; and

(4) An exemption from coverage of the rules, or any part thereof, for small entities.

The Commission does not believe that the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities would be consistent with the Commission's statutory mandate to protect investors. The revisions to the proxy rules will, however, streamline and simplify reporting requirements under these rules for such small entities as well as for large entities. With respect to the amendments to Item 9 of Schedule 14A, Form S-18 and to Item 304 of Regulation S-K, an alternative would have been to exempt small entities that were not subject to Exchange Act filing requirements at the time of a change in accountants from furnishing the disclosure. Such an exemption, however, would not serve the purposes of the Commission's statutory mandate to protect investors. In the Commission's view, alternative (3) is not appropriate since the amendments are not related to either performance or design standards. Similarly, the Commission does not believe that other alternatives, such as exempting small entities from all or part of the proxy rules, would be consistent with the objectives of investor protection.

IV. Statutory Basis and Text of Amendments

The amendments to Items 202, 304, 403 and 601 of Regulation S-K, Rule 3-05 of Regulation S-X, Forms S-4, F-4, N-14, 10-K and S-18, Rule 13e-3, Schedule 13E-3, Rule 14f-1, Rule 20a-3 of the Investment Company Act of 1940 and to the proxy and information statement rules are being adopted by the Commission pursuant to Sections 6, 7, 8, 10, and 19(a) of the Securities Act of

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[93] 15 U.S.C. 78(*l*).

[94] 17 CFR 240.14c-2.

[95] 17 CFR 240.14a-3(b)(1) through 240.14a-3(b)(11).

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1933, Sections 3, 10, 12, 13, 14, 15(d), 17 and 23(a) of the Securities Exchange Act of 1934, and Sections 20(a) and 38(a) of the Investment Company Act of 1940.

List of Subjects in 17 CFR Parts 210, 229, 239, 240, 249 and 270

Reporting and recordkeeping requirements, Securities.

V. Text of Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for Part 210 continues to read, in part, as follows:

Authority: Secs. 6, 7, 8, 10, 12, 13, 15, 19, 23, 48 Stat. 78, 79, amended, 81, as amended, 85, as amended, 892, as amended, 894, 895, as amended, 901, as amended, secs. 5, 14, 20, 49 Stat. 812, 827, 833, secs. 8, 30, 31, 38, 54 Stat. 803, 836, 838, 841; 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 781, 78m, 78o, 78w, 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, § 210.3–05 also issued under 15 U.S.C. 77aa, 78n and 80a–20.

§ 210.3–05 [Amended]

2. In paragraph (b)(1), introductory text, of § 210.3–05 the reference to "Item 15" is removed and replaced with the words "Item 14."

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER THE SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The authority citation for Part 229 continues to read, in part, as follows:

Authority: Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 901; secs. 205, 209, 48 Stat. 906, 908; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 301, 54 Stat 857; secs. 8, 202, 68 Stat. 685, 686; secs. 3, 4, 5, 6, 78 Stat. 565–568, 569, 570–574; sec. 1, 79 Stat. 1051; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 28(c) 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 11, 18, 89 Stat. 117, 118, 119, 155; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 781, 78m, 78n, 78l(d), 78w(a). * * *

4. In § 229.202, paragraph (b)(9) is revised to read as follows:

§ 229.202 (Item 202) Description of registrant's securities.

* * * * *

(b) * * *

* * * * *

(9) If debt securities are to be offered at a price such that they will be deemed to be offered at an "original issue discount" as defined in paragraph (a) of section 1273 of the Internal Revenue Code (26 U.S.C. 1273), or if a debt security is sold in a package with another security and the allocation of the offering price between the two securities may have the effect of offering the debt security at such an original issue discount, the tax effects thereof pursuant to sections 1271–1278;

* * * * *

5. By revising § 229.304 to read as follows:

§ 229.304 (Item 304) Changes in and disagreements with accountants on accounting and financial disclosure.

(a) If a change in accountants has taken place within 24 months prior to, or in any period subsequent to, the date of the most recent financial statements, the information called for by Item 4 of Form 8–K (§ 249.308 of this chapter) or, with respect to registered investment companies, Items 77K or 102J of Form N–SAR (§ 274.101 of this chapter) shall be disclosed.

(b) If, (1) in connection with a change in accountants subject to paragraph (a) of this section, there was any disagreement of the type described in Item 4(b) of Form 8–K or Item 77K or 102J of Form N–SAR; (2) during the fiscal year in which the change in accountants took place or during the subsequent fiscal year, there have been any transactions or events similar to those which involved such disagreement; and (3) such transactions or events were material and were accounted for or disclosed in a manner different from that which the former accountants apparently would have concluded was required, state the existence and nature of the disagreement and also state the effect on the financial statements if the method had been followed which the former accountants apparently would have concluded was required. These disclosures need not be made if the method asserted by the former accountants ceases to be generally accepted because of authoritative standards or interpretations subsequently issued.

Instructions to Item 304: 1. The disclosure called for by paragraph (a) of this section need not be provided if it has been previously reported (as that term is defined in Rule 12b–2 under the Exchange Act (§ 240.12b–2 of this chapter)); the disclosure called for by paragraph (a) must be provided, however, notwithstanding prior disclosure, if required pursuant to Item 9 of Schedule 14A (§ 240.14a–101 of this chapter). The disclosure called for by paragraph (b) of this section must be furnished, where applicable, notwithstanding any prior disclosure about accountant changes or disagreements.

2. When disclosure is required by paragraph (a) of this section the accountant's letter referred to in Item 4(d) of Form 8–K or Item 77K or 102J of Form N–SAR shall be filed as an exhibit to the report or registration statement. When the document is an annual report to security holders pursuant to Rule 14a–3 (§ 240.14a–3 of this chapter) or Rule 14c–3 (§ 240.14c–3 of this chapter), or is a proxy or information statement filed pursuant to the requirements of Schedules 14A or 14C (§ 240.14a–101 and § 240.14c–101 of this chapter), no such exhibit shall be required, and in lieu of a letter pursuant to Item 4(d) of Form 8–K or Item 77K or 102J of Form N–SAR, the registrant, prior to filing such materials with or furnishing such materials to the Commission, shall furnish the disclosure required by this section to any former accountant engaged by the registrant during the period set forth in paragraph (a) of this section. If that accountant believes that the statements made in response to this section are incorrect or incomplete, he may present his views in a brief statement, ordinarily expected not to exceed 200 words, to be included in the annual report or proxy or information statement. This statement shall be submitted to the registrant within ten business days of the date the accountant receives the registrant's disclosure.

3. The information required by this section need not be provided for companies being acquired by the registrant that are not subject to the filing requirements of either section 13(a) or 15(d) of the Exchange Act.

6. By amending paragraph (a) of § 229.403 by adding a sentence after the first complete sentence. The first complete sentence is republished.

§ 229.403 (Item 403) Security ownership of certain beneficial owners and management.

(a) *Security ownership of certain beneficial owners.* Furnish the following information, as of the most recent practicable date, substantially in the tabular form indicated, with respect to any person (including any "group" as that term is used in section 13(d)(3) of the Exchange Act) who is known to the registrant to be the beneficial owner of more than five percent of any class of the registrant's voting securities. The address given in column (2) may be a business, mailing or residence address. * * *

* * * * *

7. By revising the Exhibit Table of § 229.601 to read as follows:

§ 229.601 (Item 601) Exhibits.

* * * * *

EXHIBIT TABLE

	Securities Act forms											Exchange Act forms			
	S-1	S-2	S-3	S-4[3]	S-8	S-11	S-18	F-1	F-2	F-3	F-4[3]	10	8-K	10-Q	10-K
(1) Underwriting agreement	X	X	X	X		X	X	X	X	X	X		X		
(2) Plan of acquisition, reorganization, arrangement, liquidation or succession	X	X	X	X		X		X	X	X	X	X	X	X	
(3) Articles of incorporation and by-laws	X			X		X	X			X	X			X	
(4) Instruments defining the rights of security holders, including indentures	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(5) Opinion re legality	X	X	X	X	X	X	X	X	X	X	X				
(6) Opinion re discount on capital shares	X	X		X		X	X	X	X		X	X			
(7) Opinion re liquidation preference	X	X		X		X	X	X	X		X	X			
(8) Opinion re tax matters	X	X	X	X		X	X	X	X	X	X				
(9) Voting trust agreement	X			X		X	X	X			X	X			X
(10) Material contracts	X	X		X		X	X	X	X		X	X			X
(11) Statement re computation of per share earnings	X	X		X		X		X	X		X	X		X	X
(12) Statements re computation of ratios	X	X	X	X		X		X	X		X	X			X
(13) Annual report to security holders, Form 10-Q or quarterly report to security holders[1]		X		X											X
(14) Material foreign patents	X			X			X	X			X	X			
(15) Letter re unaudited interim financial information	X	X	X	X	X	X	X	X	X	X	X			X	
(16) Letter re change in certifying accountant	X[4]	X[4]		X[4]		X[4]	X[4]					X[4]	X		X[4]
(17) Letter re director resignation													X		
(18) Letter re change in accounting principles														X	X
(19) Previously unfiled documents														X	X
(20) Report furnished to security holders														X	
(21) Other documents or statements to security holders													X		
(22) Subsidiaries of the registrant	X			X		X		X			X	X			X
(23) Published report regarding matters submitted to vote of security holders														X	X
(24) Consents of experts and counsel	X	X	X	X	X	X	X	X	X	X	X		X[2]	X[3]	X[2]
(25) Power of attorney	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(26) Statement of eligibility of trustee	X	X	X	X		X	X	X	X	X	X				
(27) Invitations for competitive bids	X	X	X	X			X	X	X	X	X				
(28) Additional exhibits	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(29) Information from reports furnished to State insurance regulatory authorities	X	X	X	X	X							X			X

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[1] Where incorporated by reference into the text of the prospectus and delivered to security holders along with the prospectus as permitted by the registration statement; or, in the case of the Form 10-K, where the annual report to security holders is incorporated by reference into the text of the Form 10-K.

[2] Where the opinion of the expert of counsel has been incorporated by reference into a previously filed Securities Act registration statement.

[3] An exhibit need not be provided about a company if: (1) With respect to such company an election has been made under Forms S-4 of F-4 to provide information about such company at a level prescribed by Forms S-2, S-3, F-2 or F-3 and (2) the form, the level of which has been elected under Forms S-4 or F-4, would not require such company to provide such exhibit if it were registering a primary offering.

[4] If required pursuant to Item 304 of Regulation S-K.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

8. The authority citation for Part 239 continues to read, in part, as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a, et seq., * * *

9. Paragraph (i) of Item 11 of Form S-1 (§ 239.11) is revised to read as follows [note that the text of Form S-1 does not appear in the Code of Federal Regulations]:

§ 239.11 Form S-1, General form of registration statement.

* * * * *

Form S-1

* * * * *

Part I. Information Required in Prospectus.

* * * * *

Item 11. Information With Respect to the Registrant.

* * * * *

(i) Information required by Item 304 of Regulation S-K (§ 229.304 of this chapter), changes in and disagreements with accountants on accounting and financial disclosure;

* * * * *

10. Paragraph (b)(8) of Item 11 of Form S-2 (§ 239.12) is revised to read as follows [note that the text of Form S-2 does not appear in the Code of Federal Regulations]:

§ 239.12 Form S-2, For registration under the Securities Act of 1933 of securities of certain issuers.

* * * * *

Form S-2

* * * * *

Part I. Information Required in Prospectus.

* * * * *

Item 11. Information With Respect to the Registrant.

* * * * *

(b) * * *

(8) Furnish information concerning changes in and disagreements with accountants on accounting and financial disclosure required by Item 304 of Regulation S-K (§ 229.304) of this chapter.

* * * * *

11. Item 27 of Form S-11 (§ 239.18) is revised to read as follows [note that the text of Form S-11 does not appear in the Code of Federal Regulations]:

§ 239.18 Form S-11, For securities of certain real estate companies.

* * * * *

Form S-11

* * * * *

Part I. Information Required in Prospectus.

* * * * *

Item 27. Financial Statements and Information

Include in the prospectus the financial statements required by Regulation S-X, the supplementary financial information required by Item 302 of Regulation S-K (§ 229.302 of this chapter) and the information concerning changes in and disagreements with accountants on accounting and financial disclosure required by Item 304 of Regulation S-K (§ 229.304 of this chapter). * * *

* * * * *

12. Section 239 23 is amended by revising Item 7 of Form N-14 (§ 239.23) to read as follows (the Instruction following (c)(1) remains unchanged) [note that the text of Form N-14 does not appear in the Code of Federal Regulations]:

§ 239.23 Form N-14, for the registration of securities issued in business combination transactions.

* * * * *

Form N-14

* * * * *

Item 7. Voting Information

(a) If proxies are to be solicited, include, where applicable, the information called for by Items 2 and 4 of Schedule 14A (17 CFR

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240.14a–101) of Regulation 14A under the 1934 Act.

(b) If the transaction is an exchange offer or if proxies are not to be solicited, include, where applicable, the information called for by Item 2 of Schedule 14C (17 CFR 240.14c–101) under the 1934 Act, and state the date, time and place of the meeting of the security holders, unless such information is otherwise disclosed in material furnished to security holders with the information statement.

(c) In addition to the information called for by paragraphs (a) and (b) above, include:

(1) the information called for by Item 3 of Schedule 14A (17 CFR 240.14a–101) of Regulation 14A under the 1934 Act; * * *

(2) the information called for by Item 21 of Schedule 14A (17 CFR 240.14a–101) of Regulation 14A under the 1934 Act about both the registrant and the company being acquired;

(3) the information called for by Items 6(a) and (b) of Schedule 14A (17 CFR 240.14a–101) of Regulation 14A under the 1934 Act about both the registrant and the company being acquired;

* * * * *

13. Section 239.25 is amended by revising paragraph (b)(3)(vi) of Item 12, paragraphs (a)(1)–(6) of Item 18 and paragraphs (a)(2), (3), and (5)–(7) of Item 19 of Form S–4 (§ 239.25) to read as follows [note that the text of Form S–4 does not appear in the Code of Federal Regulations]:

§ 239.25 Form S–4, for the registration of securities issued in business combination transactions.

* * * * *

Form S–4

* * * * *

Part I. Information Required in the Prospectus.

* * * * *

Item 12. Information with Respect to S–2 or S–3 Registrants.

* * * * *

(b) * * *

(3) * * *

(vi) Item 304 of Regulation S–K (§ 229.304 of this chapter), changes in and disagreements with accountants on accounting and financial disclosure.

* * * * *

D. Voting and Management Information

Item 18. Information if Proxies, Consents or Authorizations are to be Solicited.

(a) If proxies, consents or authorizations are to be solicited, furnish the following information, except as provided by paragraph (b) of this Item:

(1) The information required by Item 1 of Schedule 14A, date, time and place information;

(2) The information required by Item 2 of Schedule 14A, revocability of proxy;

(3) The information required by Item 3 of Schedule 14A, dissenters' rights of appraisal;

(4) The information required by Item 4 of Schedule 14A, persons making the solicitation;

(5) With respect to both the registrant and the company being acquired, the information required by:

(i) Item 5 of Schedule 14A, interest of certain persons in matters to be acted upon; and

(ii) Item 6 of Schedule 14A, voting securities and principal holders thereof;

(6) The information required by Item 21 of Schedule 14A, vote required for approval; and

(7) With respect to each person * * *

* * * * *

Item 19. Information if Proxies, Consents or Authorizations are not to be Solicited or in an Exchange Offer.

(a) If the transaction is an exchange offer or if proxies, consents or authorizations are not to be solicited, furnish the following information, except as provided by paragraph (c) of this Item;

(1) The information required by Item 2 of Schedule 14C, statement that proxies are not to be solicited;

(2) The date, time and place of the meeting of security holders, unless such information is otherwise disclosed in material furnished to security holders with the prospectus.

(3) The information required by Item 3 of Schedule 14A, dissenters' rights of appraisal;

* * * * *

(5) With respect to both the registrant and the company being acquired, the information required by Item 6 of Schedule 14A, voting securities and principal holders thereof;

(6) The information required by Item 21 of Schedule 14A, vote required for approval; and

(7) With respect to each person * * *

* * * * *

14. Section 239.28 is amended by revising Item 21 of Form S–18 (§ 239.28) to add new paragraph (k) to read as follows [note that the text of Form S–18 does not appear in the Code of Federal Regulations]:

§ 239.28 Form S–18, optional form for the registration of securities to be sold to the public by the issues for an aggregate cash price not to exceed $7,500,000.

* * * * *

Form S–18

* * * * *

Item 21. Financial statements

* * * * *

(k) Furnish the information required by Item 304 of Regulation S–K (§ 239.304 of this chapter), changes in and disagreements with accountants on accounting and financial disclosure.

* * * * *

15. Section 239.34 is amended by revising paragraphs (a) (1)–(6) including the Instruction following paragraph (a)(4) of Item 18 and paragraphs (a) (2), (3) and (5)–(7), including the Instruction following paragraph (a)(5) of Item 19 of Form F–4 (§ 239.34 of this chapter) to read as follows [note that the text of Form F–4 does not appear in the Code of Federal Regulations]:

§ 239.34 Form F–4, for registration of securities of certain foreign private issuers issued in certain business combination transactions.

* * * * *

Form F–4

* * * * *

D. *Voting and Management Information.*

* * * * *

Item 18. Information if Proxies, Consents or Authorizations Are To Be Solicited

(a) If proxies, consents or authorizations are to be solicited, furnish the following information, except as provided by paragraph (b) of this Item:

(1) The information required by Item 1 of Schedule 14A, date, time and place information;

(2) The information required by Item 2 of Schedule 14A, revocability of proxy;

(3) The information required by Item 3 of Schedule 14A, dissenters' rights of appraisal;

(4) The information required by Item 4 of Schedule 14A, persons making the solicitation;

(5) With respect to both the registrant and the company being acquired, the information required by;

(i) Item 5 of Schedule 14A, interests of certain persons in matters to be acted upon; and

(ii) Item 6 of Schedule 14A, voting securities and principal holders thereof.

Instruction

The information specified in Item 4 of Form 20–F may be provided in lieu of the information specified in Item 6(d) of Schedule 14A.

(6) The information required by Item 9 of Schedule 14A, independent public accountants;

(7) The information required by Item 21 of Schedule 14A, vote required for approval;

* * * * *

Item 19. Information if Proxies, Consents or Authorizations Are Not To Be Solicited in an Exchange Offer

(a) If the transaction is an exchange offer or if proxies, consents or authorizations are not to be solicited, furnish the following information, except as provided by paragraph (b) of this Item:

(1) The information required by Item 2 of Schedule 14C, statement that proxies are not to be solicited:

(2) The date, time and place of the meeting of security holders, unless such information is otherwise disclosed in material furnished to security holders with or preceding the prospectus.

(3) The information required by Item 3 of Schedule 14A, dissenters' rights of appraisal;

* * * * *

(5) With respect to both the registrant and the company being acquired, the information required by Item 6 of Schedule 14A, voting securities and principal holders thereof.

Instruction

The information specified in Item 4 of Form 20–F may be provided in lieu of the information specified in Item 6(d) of Schedule 14A.

(6) The information required by Item 9 of Schedule 14A, independent public accountants;

(7) The information required by Item 21 of Schedule 14A, vote required for approval, and

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

16. The authority citation for Part 240 continues to read, in part, as follows:

Authority: Sec. 23, 48 Stat. 901, as amended U.S.C. 78w. * * *

§ 240.13e–3 [Amended]

17. In § 240.13e–3 in paragraphs (a)(3)(i)(C), (c)(2) and (e)(1) the reference to "240.14a–103" is removed and replaced with the reference "240.14b–1" and in paragraph (f)(1)(ii) the reference to "Rule 14a–3(d) [§ 240.14a–3(d)]" is removed and replaced with "Rule 14a–13(a) [§ 240.14a–13(a)]."

§ 240.13e–100 [Amended]

18. By amending § 240.13e–100 by removing the reference to "240.14a–103" and replacing it with "240.14b–1" in paragraph (a) and General Instructions F and G.

19. By revising § 240.14a–1 to read as follows:

§ 240.14a–1 Definitions.

Unless the context otherwise requires, all terms used in this regulation have the same meanings as in the Act or elsewhere in the general rules and regulations thereunder. In addition, the following definitions apply unless the context otherwise requires:

(a) *Associate.* The term "associate," used to indicate a relationship with any person, means (1) any corporation or organization (other than the registrant or a majority owned subsidiary of the registrant) of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities; (2) any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity; and (3) any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is a director or officer of the registrant or any of its parents or subsidiaries.

(b) *Last fiscal year.* The term "last fiscal year" of the registrant means the last fiscal year of the registrant ending prior to the date of the meeting for which proxies are to be solicited or, if the solicitation involves written authorizations or consents in lieu of a meeting, the earliest date they may be used to effect corporate action.

(c) *Proxy.* The term "proxy" includes every proxy, consent or authorization within the meaning of section 14(a) of the Act. The consent or authorization may take the form of failure to object or to dissent.

(d) *Proxy statement.* The term "proxy statement" means the statement required by § 240.14a–3(a) whether or not contained in a single document.

(e) *Record date.* The term "record date" means the date as of which the record holders of securities entitled to vote at a meeting or by written consent or authorization shall be determined.

(f) *Registrant.* The term "registrant" means the issuer of the securities in respect of which proxies are to be solicited.

(g) *Solicitation.* (1) The terms "solicit" and "solicitation" include:

(i) Any request for a proxy whether or not accompanied by or included in a form of proxy:

(ii) Any request to execute or not to execute, or to revoke, a proxy; or

(iii) The furnishing of a form of proxy or other communication to security holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy.

(2) The terms do not apply, however to the furnishing of a form of proxy to a security holder upon the unsolicited request of such security holder, the performance by the registrant of acts required by § 240.14a–7, or the performance by any person of ministerial acts on behalf of a person soliciting a proxy.

20. Section 240.14a–2 is amended by revising the section heading, introductory paragraph, and paragraphs (a) introductory text, (a)(4), (a)(6), (b) introductory text, (b)(1) and (b)(2)(ii) to read as follows:

§ 240.14a–2 Solicitations to which § 240.14a–3 to § 240.14a–13 apply.

Sections 240.14a–3 to 240.14a–13 apply to every solicitation of a proxy with respect to securities registered pursuant to section 12 of the Act, whether or not trading in such securities has been suspended, except that:

(a) Sections 240.14a–3 to 240.14a–13 do not apply to the following:

* * * * *

(4) Any solicitation with respect to a plan of reorganization under Chapter 11 of the Bankruptcy Reform Act of 1978, as amended, if made after the entry of an order approving the written disclosure statement concerning a plan of reorganization pursuant to section 1125 of said Act and after, or concurrently with, the transmittal of such disclosure statement as required by section 1125 of said Act;

* * * * *

(6) Any solicitation through the medium of a newspaper advertisement which informs security holders of a source from which they may obtain copies of a proxy statement, form of proxy and any other soliciting material and does no more than (i) name the registrant, (ii) state the reason for the advertisement, and (iii) identify the proposal or proposals to be acted upon by security holders.

(b) Sections 240.14a–3 to 240.14a–6 and 240.14a–10 to 240–14a–13 do not apply to the following:

(1) Any solicitation made otherwise than on behalf of the registrant where the total number of persons solicited is not more than ten; and

(2) * * *

(ii) The advisor discloses to the recipient of the advice any significant relationship with the registrant or any of its affiliates, or a security holder proponent of the matter on which advice is given, as well as any material interests of the advisor in such matter.

* * * * *

21. Section 240–14a–3 is amended by revising paragraph (b) introductory text, revising the heading of "NOTE 1" after paragraph (b)(1) to read "NOTE," revising (b)(4), and (b)(6) through (b)(10), and Notes after (b)(10) and (b)(11), revising (b)(13), (c), and the Note following paragraph (c), removing the Note after paragraph (b)(7), removing paragraph (d) and redesignating and revising paragraphs (e) and (f) as paragraphs (d) and (e) to reads as follows:

§ 240.14a–3 Information to be furnished to security holders.

* * * * *

(b) If the solicitation is made on behalf of the registrant and relates to an annual (or special meeting in lieu of the annual) meeting of security holders, or written consent in lieu of such meeting, at which directors are to be elected, each proxy statement furnished pursuant to paragraph (a) of this section shall be accompanied or preceded by an annual report to security holders as follows:

* * * * *

(4) The report shall contain information concerning changes in and disagreements with accountants on accounting and financial disclosure

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required by Item 304 of Regulation S-K (§ 229.304 of this chapter).

* * * * *

(6) The report shall contain a brief description of the business done by the registrant and its subsidiaries during the most recent fiscal year which will, in the opinion of management, indicate the general nature and scope of the business of the registrant and its subsidiaries.

(7) The report shall contain information relating to the registrant's industry segments, classes of similar products or services, foreign and domestic operations and exports sales required by paragraphs (b), (c)(1)(i) and (d) of Item 101 of Regulation S–K (§ 229.101 of this chapter).

(8) The report shall identify each of the registrant's directors and executive officers, and shall indicate the principal occupation or employment of each such person and the name and principal business of any organization by which such person is employed.

(9) The report shall contain the market price of and dividends on the registrant's common equity and related security holder matters required by Item 201 of Regulation S–K (§ 229.201 of this chapter).

(10) The registrant's proxy statement, or the report, shall contain an undertaking in bold face or otherwise reasonably prominent type to provide without charge to each person solicited upon the written request of any such person, a copy of the registrant's annual report of Form 10–K, including the financial statements and the financial statement schedules, required to be filed with the Commission pursuant to Rule 13a–1 under the Act for the registrant's most recent fiscal year, and shall indicate the name and address (including title or department) of the person to whom such a written request is to be directed. In the discretion of management, a registrant need not undertake to furnish without charge copies of all exhibits to its Form 10–K provided the that copy of the annual report on Form 10–K furnished without charge to requesting security holders is accompanied by a list briefly describing all the exhibits not contained therein and indicating that the registrant will furnish any exhibit upon the payment of a specified reasonable fee which fee shall be limited to the registrant's reasonable expenses in furnishing such exhibit. If the registrant's annual report to security holders complies with all of the disclosure requirements of Form 10–K and is filed with the Commission in satisfaction of its Form 10–K filing requirements, such registrant need not furnish a separate Form 10–K to security holders who receive a copy of such annual report.

Note.—Pursuant to the undertaking required by paragraph (b)(10) of this section, a registrant shall furnish a copy of its annual report on Form 10–K (§ 249.310 of this chapter) to a beneficial owner of its securities upon receipt of a written request from such person. Each request must set forth a good faith representation that, as of the record date for the solicitation requiring the furnishing of the annual report to security holders pursuant to paragraph (b) of this section, the person making the request was a beneficial owner of securities entitled to vote.

(11) * * *

Note.—Registrants are encouraged to utilize tables, schedules, charts and graphic illustrations of present financial information in an understandable manner. Any presentation of financial information must be consistent with the data in the financial statements contained in the report and, if appropriate, should refer to relevant portions of the financial statements and notes thereto.

* * * * *

(13) Paragraph (b) of this section shall not apply, however, to solicitations made on behalf of the registrant before the financial statements are available if a solicitation is being made at the same time in opposition to the registrant and if the registrant's proxy statement includes an undertaking in bold face type to furnish such annual report to all persons being solicited at least 20 calendar days before the date of the meeting or, if the solicitation refers to a written consent or authorization in lieu of a meeting, at least 20 calendar days prior to the earliest date on which it may be used to effect corporate action.

(c) Seven copies of the report sent to security holders pursuant to this rule shall be mailed to the Commission, solely for its information, not later than the date on which such report is first sent or given to security holders or the date on which preliminary copies of solicitation material are filed with the Commission pursuant to Rule 14a–6(a), whichever date is later. The report is not deemed to be "soliciting material" or to be "filed" with the Commission or subject to this regulation otherwise than as provided in this Rule, or to the liabilities of section 18 of the Act, except to the extent that the registrant specifically requests that it be treated as a part of the proxy soliciting material or incorporates it in the proxy statement or other filed report by reference.

Note.—To assist the staff, managements of registrants are requested to indicate in a letter transmitting to the Commission copies of their annual reports to security holders or in a separate letter at or about the time the annual report is furnished to the Commission, whether the financial statements in the report reflect a change from the preceding year in any accounting principles or practices or in the method of applying any such principles or practices.

(d) An annual report to security holders prepared on an integrated basis pursuant to General Instruction H to Form 10–K (§ 249.310) may also be submitted in satisfaction of this rule. When filed as the annual report on Form 10–K, responses to the Items of that form are subject to section 18 of the Act notwithstanding paragraph (c).

(e) Notwithstanding paragraphs (a) and (b) of this section:

(1) A registrant is not required to send an annual report to a security holder of record having the same address as another security holder of record, provided that (i) such security holders are not holding such registrant's securities in nominee name, (ii) at least one report is sent to a holder of record at that address and (iii) the holders of record to whom a report is not sent agree thereto in writing; and

(2) Unless state law requires otherwise, a registrant is not required to send an annual report or proxy statement to a security holder if (i) an annual report and a proxy statement for two consecutive annual meetings or (ii) all, and at least two, checks (if sent by first class mail) in payment of dividends or interest on securities during a twelve month period have been mailed to such security holder's address and have been returned undeliverable. However, a registrant's obligation to deliver an annual report or a proxy statement under this section is reinstated once it has such security holder's current address.

22. Section 240.14a–4 is amended by removing the words "issuer's" and "issuer" and replacing them with the words "registrant's" and "registrant" in paragraph (a) and in Instruction 2 after paragraph (b)(2)(iv), by removing the word "shareholder" and replacing it with the words "security holder" in paragraphs (b)(2) (iii) and (iv), by revising paragraphs (c)(4) and (d) to read as follows:

§ 240.14a–4 Requirements as to proxy.

* * * * *

(c) * * *

(4) Any proposal omitted from the proxy statement and form of proxy pursuant to § 240.14a–8 or § 240.14a–9 of this chapter.

* * * * *

(d) No proxy shall confer authority (1) to vote for the election of any person to any office for which a bona fide nominee is not named in the proxy statement, (2) to vote at any annual meeting other than the next annual meeting (or any adjournment thereof) to be held after the date on which the proxy statement and form of proxy are first sent or given to security holders, (3) to vote with respect to more than one meeting (and any adjournment thereof) or more than one consent solicitation or (4) to consent to or authorize any action other than the action proposed to be taken in the proxy statement, or matters referred to in paragraph (c) of this rule. A person shall not be deemed to be a bona fide nominee and he shall not be named as such unless he has consented to being named in the proxy statement and to serve if elected.

* * * * *

23. Section § 240.14a–5 is amended by revising paragraph (c), removing the word "leading" and replacing it with "leaded" in paragraph (d), removing paragraph (e), removing the words "issuer" and "issuer's" and replacing them with "registrant" and "registrant's" in paragraph (f) and redesignating paragraph (f) as paragraph (e) to read as follows:

§ 240.14a–5 Presentation of information in proxy statement.

* * * * *

(c) Any information contained in any other proxy soliciting material which has been furnished to each person solicited in connection with the same meeting or subject matter may be omitted from the proxy statement, if a clear reference is made to the particular document containing such information.

* * * * *

24. Section § 240.14a–6 is amended by revising the section heading, paragraph (a)(1), adding new NOTE 1 after paragraph (a), revising "NOTE:" after (a) to read "NOTE 2:" and revising the word "company" to read "registrant" in Note 2 and removing the last three sentences of Note 2, revising paragraphs (b), (c), and (d), removing the Note after paragraph (c), by redesignating paragraphs (e) through (j) as (f) through (k) and adding a new paragraph (e), revising newly redesignated paragraphs (f), (h), (j) and (k), by adding paragraph headings to newly redesignated paragraphs (g) *"Communications not required to be filed"* and (i) *"Revised material"* and adding new paragraph (l) to read as follows:

§ 240.14a–6 Filing requirements.

(a) *Preliminary proxy statement.* Five preliminary copies of the proxy statement and form of proxy and any other soliciting material to be furnished to security holders concurrently therewith shall be filed with the Commission at least 10 calendar days prior to the date definitive copies of such material are first sent or given to security holders, or such shorter period prior to that date as the Commission may authorize upon a showing of good cause thereunder.

Note 1.—The filing of revised material does not recommence the ten day time period unless the revised material contains material revisions or material new proposal(s) that constitute a fundamental change in the proxy material.

Note 2.—The official responsible for the preparation of the preliminary material should make every effort to verify the accuracy and completeness of the information required by the applicable rules. The preliminary material should be filed with the Commission at the earliest practicable date.

(b) *Preliminary additional materials.* Five preliminary copies of any additional soliciting material relating to the same meeting or subject matter furnished to security holders subsequent to the proxy statement shall be filed with the Commission at least 2 business days prior to the date copies of such material are first sent or given to security holders, or such shorter period prior to such date as the Commission may authorize upon a showing of good cause therefor.

(c) *Definitive proxy statement.* Eight definitive copies of the proxy statement, form of proxy and all other soliciting material, in the form in which such material is furnished to security holders, shall be filed with, or mailed for filing to, the Commission not later than the date such material is first sent or given to any security holders. Three copies of such material shall at the same time be filed with, or mailed for filing to, each national securities exchange upon which any class of securities of the registrant is listed and registered.

(d) *Personal solicitation materials.* If the solicitation is to be made in whole or in part by personal solicitation, three copies of all written instructions or other material which discusses or reviews, or comments upon the merits of, any matter to be acted upon and which is furnished to the individuals making the actual solicitation for their use directly or indirectly in connection with the solicitation shall be filed with the Commission by the person on whose behalf the solicitation is made at least five calendar days prior to the date copies of such material are first sent or given to such individuals, or such shorter period prior to that date as the Commission may authorize upon a showing of good cause therefor.

(e) *Release dates.* All preliminary material filed pursuant to paragraph (a) or (b) of this section shall be accompanied by a statement of the date on which definitive copies therefor filed pursuant to paragraph (c) of this section are intended to be released to security holders. All definitive material filed pursuant to paragraph (c) of this section shall be accompanied by a statement of the date on which copies of such material have been released to security holders, or, if not released, the date on which copies thereof are intended to be released. All material filed pursuant to paragraph (d) of this section shall be accompanied by a statement of the date on which copies thereof are intended to be released to the individual who will make the actual solicitation.

(f) *Public availability of information.* All copies of preliminary material filed pursuant to this Regulation shall be clearly marked "Preliminary Copies," shall be for the information of the Commission only and shall not be deemed available for public inspection until definitive material has been filed with the Commission except that such material may be disclosed to any department or agency of the United States Government and to the Congress, and the Commission may make such inquiries or investigation in regard to the material as may be necessary for an adequate review thereof by the Commission.

* * * * *

(h) *Speeches, press releases and scripts.* Notwithstanding the provisions of paragraphs (a) and (b) of this section, of § 240.14a–11(e) and of § 240.14a–12(b), copies of soliciting material in the form of speeches, press releases and radio or television scripts may, but need not, be filed with the Commission prior to use or publication. Definitive copies, however, shall be filed with or mailed for filing to the Commission as required by paragraph (c) of this section not later than the date such material is used or published. The provisions of paragraphs (a) and (b) of this section and of § 240.14a–11(e) and of § 240.14a–12(b) shall apply, however, to any reprints or reproductions of all or any part of such material.

* * * * *

(j) *Fees.* At the time of filing the preliminary proxy solicitation material, the persons upon whose behalf the solicitation is made, other than companies registered under the Investment Company Act of 1940, or where an application or declaration under the Public Utility Holding Company Act of 1935 is involved, shall pay to the Commission the following applicable fee: (1) For preliminary proxy material which solicits proxies for election of directors or other business

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for which a stockholder vote is necessary, but apparently no controversy is involved, a fee of $125: (2) for proxy material where a contest as set forth in Rule 14a–11 is involved, a fee of $500 from each party to the controversy; and (3) for proxy material involving acquisitions, mergers, spinoffs, consolidations or proposed sales or other dispositions of substantially all the assets of the company, a fee established in accordance with Rule 0–11 (§ 240.0–11 of this chapter) shall be paid. No refund shall be given.

(k) *Merger proxies.* Notwithstanding the foregoing provisions of this section, any proxy statement, form of proxy or other soliciting material included in a registration statement filed under the Securities Act of 1933 on Form N–14, S–4 or F–4 (§ 239.23, 25 or 34 of this chapter) shall be deemed filed both for the purposes of that Act and for the purposes of this section, but separate copies of such material need not be furnished pursuant to this section nor shall any fee be required under paragraph (j) of this section. However, any additional soliciting material used after the effective date of the registration statement on Form N–14, S–4 or F–4 shall be filed in accordance with this section unless separate copies of such material are required to be filed as an amendment of such registration statement.

(l) *Computing time periods.* In computing time periods beginning with the filing date specified in Regulation 14A (§§ 240.14a–1 to 240.14b–1 of this chapter), the filing date shall be counted as the first day of the time period and midnight of the last day shall constitute the end of the specified time period.

25. Section 240.14a–7 is amended by revising the introductory text, in paragraphs (a) through (c) removing the word "issuer" and replacing it with the word "registrant," and in paragraph (b)(2) removing the word "solicited" and replacing it with the word "soliciting" to read as follows:

§ 240.14a–7 Mailing communications for security holders.

If the registrant has made or intends to make any solicitation subject to this regulation, the registrant shall perform such of the following acts as may be duly requested in writing with respect to the same subject matter or meeting by any security holder who is entitled to vote on such matter or to vote at such meeting and who shall defray the reasonable expenses to be incurred by the registrant in the performance of the act or acts requested.

* * * * *

26. Section 240.14a–8 is amended by revising paragraph (a)(1)(i), (a)(3)(i), (c)(3), and (d), and in the following paragraphs of § 240.14a–8 removing the words "an issuer," "issuer's" and "issuer" and replacing them with the words "a registrant," "registrant's" and "registrant" in paragraphs: (a) introductory text, (a)(1)(ii), (a)(2), (a)(3), the Note following (a)(3)(ii), (a)(4), (b)(1), (b)(2), (c) introductory text, the Note to (c)(1), (c)(2), (c)(4) through (c)(12), (e), and the last paragraph.

§ 240.14a–8 Proposals of security holders.

(a) * * *

Eligibility. (i) At the time he submits the proposal, the proponent shall be a record or beneficial owner of at least 1% or $1000 in market value of securities entitled to be voted on the proposal at the meeting and have held such securities for at least one year, and he shall continue to own such securities through the date on which the meeting is held. If the registrant requests documentary support for a proponent's claim that he is the beneficial owner of at least $1000 in market value of such voting securities of the registrant or that he has been a beneficial owner of the securities for one or more years, the proponent shall furnish appropriate documentation within 14 calendar days after receiving the request. In the event the registrant includes the proponent's proposal in its proxy soliciting material for the meeting and the proponent fails to comply with the requirement that he continuously hold such securities through the meeting date, the registrant shall not be required to include any proposals submitted by the proponent in its proxy material for any meeting held in the following two calendar years.

* * * * *

(3) * * *

(i) *Annual Meetings.* A proposal to be presented at an annual meeting shall be received at the registrant's principal executive offices not less than 120 calendar days in advance of the date of the registrant's proxy statement released to security holders in connection with the previous year's annual meeting of security holders except that if no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than 30 calendar days from the date contemplated at the time of the previous year's proxy statement, a proposal shall be received by the registrant a reasonable time before the solicitation is made.

* * * * *

(c) * * *

(3) If the proposal or the supporting statement is contrary to any of the Commission's proxy rules and regulations, including Rule 14a–9 [§ 240.14a–9 of this chapter], which prohibits false or misleading statements in proxy soliciting materials;

(d) Whenever the registrant asserts, for any reason, that a proposal and any statement in support thereof received from a proponent may properly be omitted from its proxy statement and form of proxy, it shall file with the Commission, not later than 60 calendar days prior to the date the preliminary copies of the proxy statement and form of proxy are filed pursuant to Rule 14a–6(a) § 240.14a–6(a) of this chapter], or such shorter period prior to such date as the Commission or its staff may permit, six copies of the following items: (1) The proposal; (2) any statement in support thereof as received from the proponent; (3) a statement of the reasons why the registrant deems such omission to be proper in the particular case; and (4) where such reasons are based on matters of law, a supporting opinion of counsel. The registrant shall at the same time, if it has not already done so, notify the proponent of its intention to omit the proposal from its proxy statement and form of proxy and shall forward to him a copy of the statement of reasons why the registrant deems the omission of the proposal to be proper and a copy of such supporting opinion of counsel.

* * * * *

§ 240.14a–11 [Amended]

27. Section 240.14a–11 is amended by removing the word "issuer" and replacing it with the word "registrant" in paragraphs (b)(1), (b)(2), (b)(6), (c)(1), through (c)(3).

28. Section 240.14a–13 is amended by revising paragraph (a) introductory text and paragraphs (a)(1) and (a)(2) to read as follows:

§ 240.14a–13 Obligation of registrants in communicating with beneficial owners.

(a) If the registrant knows that securities of any class entitled to vote at a meeting (or by written consents or authorizations if no meeting is held) with respect to which the registrant intends to solicit proxies, consents or authorizations are held of record by a broker, dealer, bank or voting trustee, or their nominees, the registrant shall:

(1) By first class mail or other equally prompt means, inquire of such record holder whether other persons are the beneficial owners of such securities and, if so, the number of copies of the proxy, and other soliciting material necessary to supply such material to beneficial

owners; and, in the case of an annual (or special meeting in lieu of the annual) meeting, or writtent consent in lieu of such meeting, at which directors are to be elected, the number of copies of the annual report to security holders necessary to supply such material to beneficial owners if such reports are to be distributed by the broker, dealer, bank voting trustee or their nominees;

(2) Make the inquiry at least 20 calendar days prior to the record date of the meeting of security holders, or (i) if such inquiry is impracticable 20 calendar days prior to the record date of a special meeting, as many days before such meeting as is practicable or, (ii) if consents or authorizations are solicited and such inquiry is impracticable 20 calendar days before the earliest date on which they may be used to effect corporate action, as many days as is practicable, or (iii) at such later time as the rules of a national securities exchange on which the class of securities in question is listed may permit for good cause shown; and

* * * * *

29. By revising § 240.14a–101 to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

Notes.—A. Where any item calls for information with respect to any matter to be acted upon and such matter involves other matters with respect to which information is called for by other items of this schedule, the information called for by such other items also shall be given. For example, where a solicitation of security holders is for the purpose of approving the authorization of additional securities which are to be used to acquire another specified company, and the registrants' security holders will not have a separate opportunity to vote upon the transaction, the solicitation to authorize the securities is also a solicitation with respect to the acquisition. Under those facts, information required by Items 11, 13 and 14 shall be furnished.

B. Where any item calls for information with respect to any matter to be acted upon at the meeting, such item need be answered in the registrant's soliciting material only with respect to proposals to be made by or on behalf of the registrant.

C. Except as otherwise specifically provided, where any item calls for information for a specified period with regard to directors, executive officers, officers or other persons holding specified positions or relationships, the information shall be given with regard to any person who held any of the specified positions or relationships at any time during the period. Information need not be included for any portion of the period during which such person did not hold any such position or relationship, provided a statement to that effect is made.

D. Information may be incorporated by reference only in the manner and to the extent specifically permitted in the items of this schedule. Where incorporation by reference is used, the following shall apply:

1. Any incorporation by reference of information pursuant to the provisions of this schedule shall be subject to the provisions of Rule 24 of the Commission's Rules of Practice (§ 201.24 of this chapter) restricting incorporation by reference of documents which incorporate by reference other information. A registrant incorporating any documents, or portions of documents, shall include a statement on the last page(s) of the proxy statement as to which documents, or portions of documents, are incorporated by reference. Information shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear or confusing.

2. If a document is incorporated by reference but not delivered to security holders, include an undertaking to provide, without charge, to each person to whom a proxy statement is delivered, upon written or oral request of such person and by first class mail or other equally prompt means within one business day of receipt of such request, a copy of any and all of the information that has been incorporated by reference in the proxy statement (not including exhibits to the information that is incorporated by reference unless such exhibits are specifically incorporated by reference into the information that the proxy statement incorporates), and the address (including title or department) and telephone numbers to which such a request is to be directed. This includes information contained in documents filed subsequent to the date on which definitive copies of the proxy statement are sent or given to security holders, up to the date of responding to the request.

3. If a document or portion of a document other than an annual report sent to security holders pursuant to the requirements of Rule 14a–3 (§ 240.14a–3 of this chapter) with respect to the same meeting or solicitation of consents or authorizations as that to which the proxy statement relates is incorporated by reference in the manner permitted by Item 13(b) or 14(b) of this schedule, the proxy statement must be sent to security holders no later than 20 business days prior to the date on which the meeting of such security holders is held, or if no meeting is held, the earlier of 20 business days prior to (1) the date of such vote, consent or authorization, or (2) the date the transaction is consummated or the votes, consents or authorizations may be used to effect the corporate action.

E. In Items 13 and 14 of this Schedule, the reference to "meets the requirements of Form S–2" shall refer to a registrant or to an "other person" specified in Item 14(a) of this Schedule which meets the requirements for use of Form S–2 (§ 239.12 of this chapter) and the reference to "meets the requirement of Form S–3" shall refer to a registrant or to an "other person" specified in Item 14(a) of this Schedule which meets the following requirements:

(1) The registrant or other person meets the requirements of General Instruction I.A. of Form S–3 (§ 239.13 of this chapter); and

(2) One of the following is met:

(i) The registrant or other person meets the aggregate market value requirement of General Instruction I.B.1 of Form S–3; or

(ii) Action is to be taken as described in Items 11, 12 and 14 of this schedule which concerns non-convertible debt or preferred securities which are "investment grade securities" as defined in General Instruction I.B.2 of Form S–3, except that the time by which the rating must be assigned shall be the date on which definitive copies of the proxy statement are first sent or given to security holders; or

(iii) The registrant or other person is a majority-owned subsidiary and one of the conditions of General Instruction I.C. of Form S–3 is met.

Item 1. Date, time and place information. (a) State the date, time and place of the meeting of security holders, and the complete mailing address, including ZIP Code, of the principal executive offices of the registrant, unless such information is otherwise disclosed in material furnished to security holders with or preceding the proxy statement. If action is to be taken by written consent, state the date by which consents are to be submitted if state law requires that such a date be specified or if the person soliciting intends to set a date.

(b) On the first page of the proxy statement, state the approximate date on which the proxy statement and form of proxy are first sent or given to security holders.

(c) Furnish the information required to be in the proxy statement by Rule 14a–5(e) (§ 240.14a–5(e) of this chapter).

Item 2. Revocability of proxy. State whether or not the person giving the proxy has the power to revoke it. If the right of revocation before the proxy is exercised is limited or is subject to compliance with any formal procedure, briefly describe such limitation or procedure.

Item 3. Dissenters' right of appraisal. Outline briefly the rights of appraisal or similar rights of dissenters with respect to any matter to be acted upon and indicate any statutory procedure required to be followed by dissenting security holders in order to perfect such rights. Where such rights may be exercised only within a limited time after the date of adoption of a proposal, the filing of a charter amendment or other similar act, state whether the persons solicited will be notified of such date.

Instruction. Indicate whether a security holder's failure to vote against a proposal will constitute a waiver of his appraisal or similar rights and whether a vote against a proposal will be deemed to satisfy any notice requirements under State law with respect to appraisal rights. If the State law is unclear, state what position will be taken in regard to these matters.

Item 4. Persons Making the Solicitation—(a) Solicitations not subject to Rule 14a–11 (§ 240.14a–11 of this chapter.) (1) If the solicitation is made by the registrant, so state. Give the name of any director of the registrant who has informed the registrant in writing that he intends to oppose any action intended to be taken by the registrant and indicate the action which he intends to oppose.

(2) If the solicitation is made otherwise than by the registrant, so state and give the

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names of the persons by whom and on whose behalf it is made.

(3) If the solicitation is to be made otherwise than by the use of the mails, describe the methods to be employed. If the solicitation is to be made by specially, engaged employees or paid solicitors, state (i) the material features of any contract or arrangement for such solicitation and identify the parties, and (ii) the cost or anticipated cost thereof.

(4) State the names of the persons by whom the cost of solicitation has been or will be borne, directly or indirectly.

(b) *Solicitations subject to Rule 14a–11 (§ 240.14a–11 of this chapter).* (1) State by whom the solicitation is made and describe the methods employed and to be employed to solicit security holders.

(2) If regular employees of the registrant or any other participant in a solicitation have been or are to be employed to solicit security holders, describe the class or classes of employees to be so employed, and the manner and nature of their employment for such purpose.

(3) If specially engaged employees, representatives or other persons have been or are to be employed to solicit security holders, state (i) the material features of any contract or arrangement for such solicitation and the identity of the parties, (ii) the cost or anticipated cost thereof and (iii) the approximate number of such employees of employees or any other person (naming such other person) who will solicit security holders).

(4) State the total amount estimated to be spent and the total expenditures to date for, in furtherance of, or in connection with the solicitation of security holders.

(5) State by whom the cost of the solicitation will be borne. If such cost is to be borne initially by any person other than the registrant, state whether reimbursement will be sought from the registrant, and, if so, whether the question of such reimbursement will be submitted to a vote of security holders.

(6) If any such solicitation is terminated pursuant to a settlement between the registrant and any other participant in such solicitation, describe the terms of such settlement, including the cost or anticipated cost thereof to the registrant.

Instructions. 1. With respect to solicitations subject to Rule 14a–11 (§ 240.14a–11 of this chapter), costs and expenditures within the meaning of this Item 4 shall include fees for attorneys, accountants, public relations or financial advisers, solicitors, advertising, printing, transportation, litigation and other costs incidental to the solicitation, except that the registrant may exclude the amount of such costs represented by the amount normally expended for a solicitation for an election of directors in the absence of a contest, and costs represented by salaries and wages of regular employees and officers, provided a statement to that effect is included in the proxy statement.

2. The information required pursuant to paragraph (b)(6) of this Item should be included in any amended or revised proxy statement or other soliciting materials relating to the same meeting or subject matter furnished to security holders by the registrant subsequent to the date of settlement.

Item 5. Interest of certain Persons in Matters To Be Acted Upon—(a) *Solicitations not subject to Rule 14a–11 (§ 240.14a–11 of this chapter).* Describe briefly any substantial interest, direct or indirect, by security holdings or otherwise, of each of the following persons in any matter to be acted upon, other than elections to office:

(1) If the solicitation is made on behalf of the registrant, each person who has been a director or executive officer of the registrant at any time since the beginning of the last fiscal year.

(2) If the solicitation is made otherwise than on behalf of the registrant, each person on whose behalf the solicitation is made.

Any person who would be a participant in a solicitation for purposes of Rule 14a–11 (§ 240.14a–11 of this chapter), as defined in paragraph (b) (3), (4), (5) and (6) thereof, shall be deemed a person on whose behalf the solicitation is made for purposes of this paragraph (a).

(3) Each nominee for election as a director of the registrant.

(4) Each associate of any of the foregoing persons.

Instruction. Except in the case of a solicitation subject to this regulation made in opposition to another solicitation subject to this regulation, this sub-item (a) shall not apply to any interest arising from the ownership of securities of the registrant where the security holder receives no extra or special benefit not shared on a pro rata basis by all other holders of the same class.

(b) *Solicitation subject to Rule 14a*–11 (§ 240.14a–11 of this chapter). (1) Describe briefly any substantial interest, direct or indirect, by security holdings or otherwise, of each participant as defined in Rule 14a–11 (§ 240.14a–11 of this chapter), paragraph § 240.14a–11(b) (2), (3), (4), (5) and (6) (Rule X-14a–11), in any matter to be acted upon at the meeting, and include with respect to each participant the information, or a fair and adequate summary thereof, required by Items 2(a), 2(d), 3, 4(b) and 4(c) of Schedule 14B (§ 240.14a–102 of this chapter).

(2) With respect to any person, other than a director or executive officer of the registrant acting solely in that capacity, who is a party to an arrangement or understanding pursuant to which a nominee for election as director is proposed to be elected, describe any substantial interest, direct or indirect, by security holdings or otherwise, that he has in any matter to be acted upon at the meeting, and furnish the information called for by Item 4 (b) and (c) of Schedule 14B.

Item 6. Voting securities and principal holders thereof. (a) As to each class of voting securities of the registrant entitled to be voted at the meeting (or by written consents or authorizations if no meeting is held), state the number of shares outstanding and the number of votes to which each class is entitled.

(b) State the record date, if any, with respect to this solicitation. If the right to vote or give consent is not to be determined, in whole or in part, by reference to a record date, indicate the criteria for the determination of security holders entitled to vote or give consent.

(c) If action is to be taken with respect to the election of directors and if the persons solicited have cumulative voting rights: (1) Make a statement that they have such rights, (2) briefly describe such rights, (3) state briefly the conditions precedent to the exercise thereof, and (4) if discretionary authority to cumulate votes is solicited, so indicate.

(d) Furnish the information required by Item 403 of Regulation S–K (§ 229.403 of this chapter) to the extent known by the persons on whose behalf the solicitation is made.

(e) If, to the knowledge of the persons on whose behalf the solicitation is made, a change in control of the registrant has occurred since the beginning of its last fiscal year, state the name of the person(s) who acquired such control, the amount and the source of the consideration used by such person or persons; the basis of the control, the date and a description of the transaction(s) which resulted in the change of control and the percentage of voting securities of the registrant now beneficially owned directly or indirectly by the person(s) who acquired control; and the identity of the person(s) from whom control was assumed. If the source of all or any part of the consideration used is a loan made in the ordinary course of business by a bank as defined by section 3(a)(6) of the Act, the identity of such bank shall be omitted provided a request for confidentiality has been made pursuant to section 13(d)(1)(B) of the Act by the person(s) who acquired control. In lieu thereof, the material shall indicate that the identity of the bank has been so omitted and filed separately with the Commission.

Instruction. 1. State the terms of any loans or pledges obtained by the new control group for the purpose of acquiring control, and the names of the lenders or pledgees.

2. Any arrangements or understandings among members of both the former and new control groups and their associates with respect to election of directors or other matters should be described.

Item 7. Directors and executive officers. If action is to be taken with respect to the election of directors, furnish the following information in tabular form to the extent practicable. If, however, the solicitation is made on behalf of persons other than the registrant, the information required need be furnished only as to nominees of the persons making the solicitation.

(a) The information required by instruction 4 to Item 103 of Regulation S–K (§ 229.103 of this chapter) with respect to directors and executive officers.

(b) The information required by Items 401 and 404 (a) and (c) of Regulation S–K (§ 229.401 and § 229.404 of this chapter).

(c) With respect to registrants other than investment companies registered under the Investment Company Act of 1940, furnish the information required by Item 404(b) of Regulation S–K (§ 229.404 of this chapter).

(d) With respect to investment companies registered under the Investment Company Act of 1940, indicate by an asterisk any nominee or director who is or would be an "interested person" within the meaning of section 2(a)(19) of the Investment Company Act of 1940 and briefly describe the relationships by reason of which such person is deemed an "interested person."

(e)(1) State whether or not the registrant has standing audit, nominating and compensation committees of the Board of Directors, or committees performing similar functions. If the registrant has such committees, however designated, identify each committee member, state the number of committee meetings held by each such committee during the last fiscal year and describe briefly the functions performed by such committees. In the case of investment companies registered under the Investment Company Act of 1940, indicate by an asterisk whether that member is an "interested person" as defined in section 2(a)(19) of that Act. Information concerning compensation committees is not required of registered investment companies whose management functions are performed by external managers.

(2) If the registrant has a nominating or similar committee, state whether the committee will consider nominees recommended by security holders and, if so, describe the procedures to be followed by security holders in submitting such recommendations.

(f) State the total number of meetings of the board of directors (including regularly scheduled and special meetings) which were held during the last full fiscal year. Name each incumbent director who during the last full fiscal year attended fewer than 75 percent of the aggregate of (1) the total number of meetings of the board of directors (held during the period for which he has been a director) and (2) the total number of meetings held by all committees of the board on which he served (during the periods that he served).

(g) If a director has resigned or declined to stand for re-election to the board of directors since the date of the last annual meeting of security holders because of a disagreement with the registrant on any matter relating to the registrant's operations, policies or practices, and if the director has furnished the registrant with a letter describing such disagreement and requesting that the matter be disclosed, the registrant shall state the date of resignation or declination to stand for re-election and summarize the director's description of the disagreement.

If the registrant believes that the description provided by the director is incorrect or incomplete, it may include a brief statement presenting its view of the disagreement.

Item 8. Compensation of directors and executive officers. (See Note C at the beginning of Schedule 14A).

Furnish the information required by Item 402 (§ 229.402 of this chapter) of Regulation S–K if action is to be taken with regard to (i) the election of directors, (ii) any bonus, profit sharing or other compensation plan, contract, or arrangement in which any director, nominee for election as a director, or executive officer of the registrant will participate, (iii) any pension or retirement plan in which any such person will participate or (iv) the granting or extension to any such person of any options, warrants or rights to purchase any securities, other than warrants or rights issued to security holders as such, on a pro rata basis. However, if the solicitation is made on behalf of persons other than the registrant the information required need to be furnished only as to nominees of the persons making the solicitation and associates of such nominees.

Instruction. If an otherwise reportable compensation plan became subject to such requirements because of an acquisition or merger and, within one year of the acquisition or merger, such plan was terminated for purposes of prospective eligibility, the registrant may furnish a description of its obligation to the designated individuals pursuant to the compensation plan. Such description may be furnished in lieu of a description of the compensation plan in the proxy statement.

Item 9. Independent public accountants. If the solicitation is made on behalf of the registrant and relates to: (1) The annual (or special meeting in lieu of annual) meeting of security holders at which directors are to be elected, or a solicitation of consents or authorizations in lieu of such meeting or (2) the election, approval or ratification of the registrant's accountant, furnish the following information describing the registrant's relationship with its independent public accountant:

(a) The name of the principal accountant selected or being recommended to security holders for election, approval or ratification for the current year. If no accountant has been selected or recommended, so state and briefly describe the reasons therefor.

(b) The name of the principal accountant for the fiscal year most recently completed if different from the accountant selected or recommended for the current year or if no accountant has yet been selected or recommended for the current year.

(c) The proxy statement shall indicate: (1) Whether or not representatives of the principal accountant for the current year and for the most recently completed fiscal year are expected to be present at the security holders' meeting, (2) whether or not they will have the opportunity to make a statement if they desire to do so, and (3) whether or not such representatives are expected to be available to respond to appropriate questions.

(d) If a change or changes in accountants have taken place since the date of the proxy statement for the most recent annual meeting of security holders (or, if this is the first meeting for which a proxy statement is required, within 12 months prior to, and any period subsequent to, the date of the end of most recent fiscal year), notwithstanding any previous disclosure, provide the information required by Item 304(a) of Regulation S–K (§ 229.304 of this chapter).

Item 10. Compensation Plans. If action is to be taken with respect to any plan pursuant to which cash or noncash compensation may be paid, furnish the following information with respect to any such plan.

(a) *All Plans.*

(1) Describe briefly the material features of the plan, identify each class of persons who will be eligible to participate therein, indicate the approximate number of persons in each such class and state the basis of such participation.

(2) State the benefits or amounts which will be received by or allocated to each of the following under the plan, if such benefits or amounts are determinable: (i) Each person (stating name and position) specified in paragraph (a)(1)(i) of Item 402 of Regulation S–K (§ 229.402 of this chapter); (ii) all current executive officers as a group; (iii) all directors who are executive officers as a group; (iv) all employees as a group. If such benefits or amounts are not determinable, state the benefits or amounts which would have been received by or allocated to each of the following for the last fiscal year if the plan had been in effect, if such benefits or amounts may be determined: (i) Each person (stating name and position) specified in paragraph (a)(1)(i) of Item 402 of Regulation S–K (§ 229.402 of this chapter); (ii) all current executive officers as a group; (iii) all directors who are not executive officers as a group; (iv) all employees as a group.

(3) Furnish the information called for by Item 402(b) of Regulation S–K (§ 229.402 of this chapter) with respect to all compensation plans now in effect or in effect during the last three years except that information called for in subparagraphs (b)(1) (vi) and (vii) and (b)(4) of Item 402(b) of Regulation S–K (§ 229.402 of this chapter) should be furnished with respect to the last three fiscal years for the following: (i) Each person (stating name and position) specified in Item 402(a)(1)(i) of Regulation S–K (§ 229.402 of this chapter); (ii) all current executive officers as a group; (iii) all directors who are not executive officers as a group, if such persons may participate in the plan; and (iv) all employees as a group, if such persons may participate in the plan. Such information is in lieu of the information otherwise called for by Item 402(b) of Regulation S–K (§ 229.402 of this chapter) in connection with the disclosure required by Item 8 of this schedule.

(4) If the plan to be acted upon can be amended, otherwise than by a vote of security holders, to increase the cost thereof to the registrant or to alter the allocation of the benefits as between the groups specified in paragraph (a)(3), state the nature of the amendments which can be so made.

(b) *Specific Plans.*

(1) With respect to any pension or retirement plan submitted for security holder action, state: (i) The approximate total amount necessary to fund the plan with respect to past services, the period over which such amount is to be paid and the estimated annual payments necessary to pay the total amount over such period; and (ii) the estimated annual payment to be made with respect to current services. In the case of a pension or retirement plan, information called for by paragraph (a)(2) of this Item may be furnished in the format specified by paragraphs (b) (2) and (3) of Item 402 of Regulation S–K (§ 229.402 of this chapter).

(2) With respect to options, warrants or rights submitted for security holder action: (i) state: (A) The title and amount of securities called for or to be called for by such options, warrants or rights; (B) the prices, expiration dates and other material conditions upon

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which the options, warrants or rights may be exercised; (C) the consideration received or to be received by the registrant or subsidiary for the granting or extension of the options, warrants or rights; (D) the market value of the securities called for or to be called for by the options, warrants or rights as of the latest practicable date; and (E) in the case of options, the federal income tax consequences of the issuance and exercise of such options to the recipient and to the registrant; and (ii) state separately the amount of such options by the following persons if such benefits or amounts are determinable: (A) Each person (stating name and position) specified in paragraph (a)(1)(i) of Item 402 of Regulation S–K (§ 229.402 of this chapter); (B) all current executive officers as a group; (C) all directors who are not executive officers as a group; (D) each nominee for election as a director; (E) each associate of any of such directors, executive officers or nominees; (F) each other person who received or is to receive 5 percent of such options, warrants or rights; and (G) all employees as a group.

Instructions

1. The term "plan" as used in this Item means any plan as defined in Instruction 3 of paragraph (b) of Item 402 of Regulation S–K (§ 229.402 of this chapter).

2. If action is to be taken with respect to a material amendment or modification of an existing plan, the item shall be answered with respect to the plan as proposed to be amended or modified and shall indicate any material differences from the existing plan.

3. If the plan to be acted upon is set forth in a written document, three copies thereof shall be filed with the Commission at the time preliminary copies of the proxy statement and form of proxy are filed pursuant to paragraph (a) of Rule 14a–6 (§ 229.14a–6 of this chapter).

4. Paragraphs (a)(3) and (b)(2)(ii) do not apply to warrants or rights to be issued to security holders as such on a pro rata basis.

5. The Commission should be informed, as supplemental information, when the proxy statement in preliminary form is filed, as to when the options, warrants or rights and the shares called for thereby will be registered under the Securities Act or, if such registration is not contemplated, the section of the Securities Act or rule of the Commission under which exemption from such registration is claimed and the facts relied upon to make the exemption available.

Item 11. Authorization or issuance of securities otherwise than for exchange. If action is to be taken with respect to the authorization or issuance of any securities otherwise than for exchange for outstanding securities of the registrant, furnish the following information:

(a) State the title and amount of securities to be authorized or issued.

(b) Furnish the information required by Item 202 of Regulation S–K (§ 229.202 of this chapter). If the terms of the securities cannot be stated or estimated with respect to any or all of the securities to be authorized, because no offering thereof is contemplated in the proximate future, and if no further authorization by security holders for the issuance thereof is to be obtained, it should be stated that the terms of the securities to be authorized, including dividend or interest rates, conversion prices, voting rights, redemption prices, maturity dates, and similar matters will be determined by the board of directors. If the securities are additional shares of common stock of a class outstanding, the description may be omitted except for a statement of the preemptive rights, if any. Where the statutory provisions with respect to preemptive rights are so indefinite or complex that they cannot be stated in summarized form, it will suffice to make a statement in the form of an opinion of counsel as to the existence and extent of such rights.

(c) Describe briefly the transaction in which the securities are to be issued including a statement as to (1) the nature and approximate amount of consideration received or to be received by the registrant and (2) the approximate amount devoted to each purpose so far as determinable for which the net proceeds have been or are to be used. If it is impracticable to describe the transaction in which the securities are to be issued, state the reason, indicate the purpose of the authorization of the securities, and state whether further authorization for the issuance of the securities by a vote of security holders will be solicited prior to such issuance.

(d) If the securities are to be issued otherwise than in a public offering for cash, state the reasons for the proposed authorization or issuance and the general effect thereof upon the rights of existing security holders.

(e) Furnish the information required by Item 13(a) of this schedule.

Item 12. Modification or exchange of securities. If action is to be taken with respect to the modification of any class of securities of the registrant, or the issuance or authorization for issuance of securities of the registrant in exchange for outstanding securities of the registrant furnish the following information:

(a) If outstanding securities are to be modified, state the title and amount thereof. If securities are to be issued in exchange for outstanding securities, state the title and amount of securities to be so issued, the title and amount of outstanding securities to be exchanged therefor and the basis of the exchange.

(b) Describe any material differences between the outstanding securities and the modified or new securities in respect of any of the matters concerning which information would be required in the description of the securities in Item 202 of Regulation S–K (§ 229.202 of this chapter).

(c) State the reasons for the proposed modification or exchange and the general effect thereof upon the rights of existing security holders.

(d) Furnish a brief statement as to arrears in dividends or as to defaults in principal or interest in respect to the outstanding securities which are to be modified or exchanged and such other information as may be appropriate in the particular case to disclose adequately the nature and effect of the proposed action.

(e) Outline briefly any other material features of the proposed modification or exchange. If the plan of proposed action is set forth in a written document, file copies thereof with the Commission in accordance with § 240.14a–6.

(f) Furnish the information required by Item 13(a) of this Schedule.

Instruction. If the existing security is presently listed and registered on a national securities exchange, state whether the registrant intends to apply for listing and registration of the new or reclassified security on such exchange or any other exchange. If the registrant does not intend to make such application, state the effect of the termination of such listing and registration.

Item 13. Financial and other information. (*See* Notes D and E at the beginning of this Schedule.)

(a) Information required.

If action is to be taken with respect to any matter specified in Item 11 or 12, furnish the following information:

(1) Financial statements meeting the requirements of Regulation S–X, including financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that pursuant to which action is to be taken as described in this proxy statement;

(2) Item 302 of Regulation S–K, supplementary financial information;

(3) Item 303 of Regulation S–K, management's discussion and analysis of financial condition and results of operations;

(4) Item 304 of Regulation S–K, changes in and disagreements with accountants on accounting and financial disclosure; and

(5) A statement as to whether or not representatives of the principal accountants for the current year and for the most recently completed fiscal year:

(i) Are expected to be present at the security holders' meeting;

(ii) Will have the opportunity to make a statement if they desire to do so; and

(iii) Are expected to be available to respond to appropriate questions.

(b) Incorporation by reference.

The information required pursuant to paragraph (a) of this Item may be incorporated by reference into the proxy statement as follows:

(1) S–3 registrants.

If the registrant meets the requirements of Form S–3(*see* Note E to this Schedule), it may incorporate by reference to previously-filed documents any of the information required by paragraph (a) of this Item, provided that the requirements of paragraph (c) are met. Where the registrant meets the requirements of Form S–3 and has elected to furnish the required information by incorporation by reference, the registrant may elect to update the information so incorporated by reference to information in subsequently-filed documents.

(2) All registrants.

The registrant may incorporate by reference any of the information required by paragraph (a) of this Item, provided that the information is contained in an annual report to security holders or a previously-filed statement or report, such report or statement is delivered to security holders with the proxy statement and the requirements of paragraph (c) are met.

(c) Certain conditions applicable to incorporation by reference.

Registrants eligible to incorporate by reference into the proxy statement the information required by paragraph (a) of this Item in the manner specified by paragraphs (b)(1) and (b)(2) may do so only if:

(1) The information is not required to be included in the proxy statement pursuant to the requirement of another Item;

(2) The proxy statement identifies on the last page(s) the information incorporated by reference; and

(3) The material incorporated by reference substantially meets the requirements of this Item or the appropriate portions of this Item.

Instructions to Item 13.

1. Notwithstanding the provisions of this Item, any or all of the information required by paragraph (a) of this Item not material for the exercise of prudent judgment in regard to the matter to be acted upon may be omitted. In the usual case the information is deemed material to the exercise of prudent judgment where the matter to be acted upon is the authorization or issuance of a material amount of senior securities, but the information is not deemed material where the matter to be acted upon is the authorization or issuance of common stock, otherwise than in an exchange, merger, consolidation, acquisition or similar transaction, the authorization of preferred stock without present intent to issue or the authorization of preferred stock for issuance for cash in an amount constituting fair value.

2. In order to facilitate compliance with Rule 2–02(a) of Regulation S–X, one copy of the definitive proxy statement filed with the Commission shall include a manually signed copy of the accountant's report. If the financial statements are incorporated by reference, a manually signed copy of the accountant's report shall be filed with the definitive proxy statement.

3. Notwithstanding the provisions of Regulation S–X, no schedules other than those prepared in accordance with Rules 12–15, 12–28 and 12–29 (or, for management investment companies, Rules 12–12 through 12–14) of that regulation need be furnished in the proxy statement.

4. Unless registered on a national securities exchange or otherwise required to furnish such information, registered investment companies need not furnish the information required by paragraphs (a)(2) or (3) of this Item.

5. If the registrant submits preliminary proxy material incorporating by reference financial statements required by this Item, the registrant should furnish a draft of the financial statements if the document from which they are incorporated has not been filed with or furnished to the Commission.

Item 14. Mergers, consolidations, acquisitions and similar matters. (See Notes A, D and E at the beginning of this Schedule.)

If action is to be taken with respect to any transaction involving: (i) The merger or consolidation of the registrant into or with any other person or of any other person into or with the registrant, (ii) the acquisition by the registrant or any of its security holders of securities of another person, (iii) the acquisition by the registrant of any other going business or of the assets thereof, (iv) the sale or other transfer of all or any substantial part of the assets of the registrant, or (v) the liquidation or dissolution of the registrant, furnish the following information:

(a) Information about the transaction.

Furnish the following information concerning the registrant and (unless otherwise indicated) each other person: Which is to be merged into the registrant or into or with which the registrant is to be merged or consolidated; the business or assets of which are to be acquired; which is the issuer of securities to be acquired by the registrant in exchange for all or a substantial part of the registrant's assets; or which is the issuer of securities to be acquired by the registrant or its security holders:

(1) The name, complete mailing address (including the ZIP Code) and telephone number (including the area code) of the principal executive offices.

(2) A brief description of the general nature of the business conducted by the other person.

(3) A summary of the material features of the proposed transaction. If the transaction is set forth in a written document, file three copies thereof with the Commission at the time preliminary copies of the proxy statement and form of proxy are filed pursuant to Rule 14a–6(a)(§ 240.14a–6(a) of this chapter). The summary shall include, where applicable:

(i) A brief summary of the terms of the transaction agreement;

(ii) The reasons for engaging in the transaction;

(iii) An explanation of any material differences in the rights of security holders of the registrant as a result of this transaction;

(iv) A brief statement as to the accounting treatment of the transaction; and

(v) The federal income tax consequences of the transaction.

(4) A brief statement as to dividends in arrears or defaults in principal or interest in respect of any securities of the registrant or of such other person and as to the effect of the transaction thereon and such other information as may be appropriate in the particular case to disclose adequately the nature and effect of the proposed action.

(5) The information required by Item 301 of Regulation S–K (§ 229.301 of this chapter) (selected financial data) for (i) the registrant; (ii) the other person; and (iii) 1 if material, the registrant or the other person on a pro forma basis, giving effect to the transaction.

(6) In comparative columnar form, historical and pro forma per share data of the registrant and historical and equivalent pro forma per share data of the other person for the following items:

(i) Book value per share as of the date financial data is presented pursuant to Item 301 of Regulation S–K(§ 229.301 of this chapter) (selected financial data);

(ii) Cash dividends declared per share for the periods for which financial data is presented pursuant to Item 301 of Regulation S–K (§ 229.301 of this chapter) (selected financial data); and

(iii) Income (loss) per share from continuing operations for the periods for which financial data is presented pursuant to Item 301 of Regulation S–K(§ 229.301 of this chapter) (selected financial data).

Instruction to paragraph (a)(6).

For a business combination accounted for as a purchase, the pro forma and equivalent pro forma income (loss) from continuing operations per share and equivalent pro forma cash dividends declared per share shall be presented only for the most recent fiscal year and interim period. Equivalent pro forma per share amounts shall be calculated by multiplying the pro forma income (loss) per share before non-recurring charges or credits directly attributable to the transaction, pro forma book value per share, and the pro forma dividends per share of the registrant by the exchange ratio so that the per share amounts are equated to the respective values for one share of the other person.

(7) Financial information required by Article 11 of Regulation S–X (§ 210.11–01 et seq. of this chapter) with respect to this transaction.

Instructions to paragraph (a)(7).

1. Any other Article 11 information that is presented (rather than incorporated by reference) pursuant to other Items of this schedule shall be presented together with the information provided pursuant to paragraph (a)(7), but the presentation shall clearly distinguish between this transaction and any other.

2. If pro forma financial information with respect to all other transactions is incorporated by reference pursuant to paragraph (b) of this Item, only the pro forma results need be presented as part of the pro forma financial information required by this Item.

(8) A statement as to whether any federal or state regulatory requirements must be complied with or approval must be obtained in connection with the transaction and if so the status of such compliance or approval.

(9) If a report, opinion or appraisal materially relating to the transaction has been received from an outside party, and such report, opinion or appraisal is referred to in the proxy statement, furnish the same information as would be required by Item 9(b)(1) through (6) of Schedule 13E–3 (§ 240.13e–100 of this chapter).

(10) A description of any past, present or proposed material contracts, arrangements, understandings, relationships, negotiations or transactions during the periods for which financial statements are presented or incorporated by reference pursuant to this Item between the other person or its affiliates and the registrant or its affiliates such as those concerning a merger, consolidation or acquisition; a tender offer or other acquisition of securities; an election of directors; or a sale or other transfer of a material amount of assets.

(11) As to each class of securities of the registrant or of the other person which is admitted to trading on a national securities exchange or with respect to which a market otherwise exists, and which will be materially affected by the transaction, state the high and low sale prices (or in the absence of trading in a particular period, the

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range of the bid and asked prices) as of the date preceding public announcement of the proposed transaction, or if no such public announcement was made, as of the day preceding the day the agreement or resolution with respect to the action was made.

(12) A statement as to whether or not representatives of the principal accountants for the current year and for the most recently completed fiscal year

(i) Are expected to be present at the security holders' meeting;

(ii) Will have the opportunity to make a statement if they desire to do so; and

(iii) Are expected to be available to respond to appropriate questions.

(b) Information about the registrant and the other person.

Furnish the information specified below for the registrant and for the other person designated in paragraph(a) of this Item, if applicable (hereinafter all references to the registrant should be read to include a reference to such other person unless the context otherwise indicates):

(1) Information with respect to S–3 registrants.

If the registrant meets the requirements of Form S–3 (See Note E to this Schedule) and elects to furnish information in accordance with the provisions of this paragraph, furnish information as required below.

(i) Describe any and all material changes in the registrant's affairs that have occurred since the end of the latest fiscal year for which audited financial statements were included in the latest annual report to security holders and that have not been described in a report on Form 10–Q (§ 249.308(a) of this chapter) or Form 8–K(§ 249.308 of the chapter) filed under the Exchange Act;

(ii) Include in the proxy statement, if not incorporated by reference from the reports filed under the Exchange Act specified in paragraph (b)(1)(iii) of this Item, from a proxy or information statement filed pursuant to section 14 of the Exchange Act, from a prospectus previously filed pursuant to Rule 424 under the Securities Act (§ 230.424 of this chapter) or from a Form 8–K filed during either of the two preceding fiscal years:

(A) Financial information required by Rule 3–05(§ 210.3–05 of this chapter) and Article 11 of Regulation S–X with respect to transactions other than that pursuant to which action is to be taken as described in this proxy statement.

(B) Restated financial statements prepared in accordance with Regulation S–X (Part 210 of this chapter), if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements;

(C) Restated financial statements prepared in accordance with Regulation S–X where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11–01(b) of Regulation S–X (§ 210.11(b) of this chapter); or

(D) Any financial information required because of a material disposition of assets outside the normal course of business.

(iii) Incorporate by reference into the proxy statement the documents listed in paragraphs (A) and (B) below:

(A) The registrant's latest annual report on Form 10–K(§ 249.310 of this chapter) filed pursuant to section 13(a) or 15(d) of the Exchange Act which contains financial statements for the registrant's latest fiscal year for which a Form 10–K was required to be filed;

(B) All other reports filed pursuant to section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report referred to in paragraph(b)(1)(iii)(A) of this Item.

(iv) The proxy statement also shall state on the last page(s) that all documents subsequently filed by the registrant pursuant to sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, prior to one of the following dates, whichever is applicable, shall be deemed to be incorporated by reference into the proxy statement:

(A) If a meeting of security holders is to be held, the date on which such meeting is held;

(B) If a meeting of security holders is not to held, the date on which the consents or authorizations are used to effect the proposed action.

(2) *Information with respect to S–2 or S–3 registrants.*

(i) *Information required to be furnished.*

If the registrant meets the requirements of Form S–2 or Form S–3 (*See* Note E of this Schedule) and elects to comply with this paragraph, furnish the information required by either paragraph (A) or (B) of this paragraph. However, the registrant shall not provide information in the manner allowed by paragraph (A) of this paragraph, if the financial statements in the registrant's latest annual report to security holders do not reflect: restated financial statements prepared in accordance with Regulation S–X if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements; restated financial statements prepared in accordance with Regulation S–X where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are signficant pursuant to Rule 11–01(b) of Regulation S–X; or any financial information required because of a material disposition of assets outside of the normal course of business.

(A) If the registrant elects to furnish information pursuant to this paragraph (b)(2)(i)(A) and delivers the proxy statement together with its latest annual report to security holders which, at the time of original preparation met the requirements of either Rule 14a–3 (§ 240.14a–3 of this chapter) or 14c–3 (§ 240.14c–3 of this chapter), or a complete and legible facsimile of such latest annual report to security holders:

(*1*) Indicate that the proxy statement is accompanied by the registrant's latest annual report to security holders.

(*2*) Provide financial and other information with respect to the registrant in the form required by Part I of Form 10–Q as of the end of the most recent fiscal quarter which ended after the end of the latest fiscal year for which audited financial statements were included in the latest report to security holders and more than 45 days prior to the date the proxy statement is filed in definitive form (or as of a more recent date) by one of the following means:

(i) Including such information in the proxy statement;

(ii) Providing without charge to each person to whom a proxy statement is delivered a copy of the registrant's latest Form 10–Q; or

(iii) Providing without charge to each person to whom a proxy statement is delivered a copy of the registrant's latest quarterly report that was delivered to its security holders and that included the required financial information.

(*3*) If not reflected in the registrant's latest annual report to security holders, provide information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that as to which action is to be taken as described in the proxy statement.

(*4*) Describe any and all material changes in the registrant's affairs that have occurred between the end of the latest fiscal year for which audited financial statements were included in the latest annual report to security holders and the date the definitive proxy statement is filed and that were not described in a Form 10–Q or quarterly report delivered with the proxy statement in accordance with paragraph (b)(2)(i)(A)(*2*) (ii) or (iii).

(B) If the registrant does not elect to furnish information and deliver its latest annual report to security holders pursuant to paragraph (b)(2)(i)(A):

(*1*) Furnish a brief description of the business done by the registrant and its subsidiaries during the most recent fiscal year as required by Rule 14a–3 (§ 240.14a–3 of this chapter) to be included in an annual report to security holders. The description also should take into account changes in the registrant's business that have occurred between the end of the last fiscal year and the filing of definitive proxy materials.

(*2*) Include financial statements and information as required by Rule 14a–3(b)(1) (§ 240.14a–3(b)(1) of this chapter) to be included in an annual report to security holders. In addition, provide:

(*i*) The interim financial information required by Rule 10–01 of Regulation S–X (§ 210.10–01 of this chapter) for a report on Form 10–Q;

(*ii*) Financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that as to which action is to be taken as described in this proxy statement;

(*iii*) Restated financial statements prepared in accordance with Regulation S–X if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements;

(*iv*) Restated financial statements prepared in accordance with Regulation S-X where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11–01(b) of Regulation S-X (§ 210.11–01 of this chapter); and

(*v*) Any financial information required because of a material disposition of assets outside of the normal course of business.

(*3*) Furnish the information required by the following:

(*i*) Item 101 (b), (c)(1)(i) and (d) of Regulation S–K (§ 229.101 of this chapter), industry segments, classes of similar products or services, foreign and domestic operations and import sales;

(*ii*) Item 102 of Regulation S–K (§ 229.102 of this chapter) for any property involved in the transaction, if such disclosure is material to the security holder's understanding of the transaction;

(*iii*) Item 201 of Regulation S–K (§ 229.201 of this chapter), market price of and dividends on the registrant's common equity and related stockholder matters;

(*iv*) Item 301 of Regulation S–K (§ 229.301 of this chapter), selected financial data;

(*v*) Item 302 of Regulation S–K (§ 229.302 of this chapter), supplementary financial information;

(*vi*) Item 303 of Regulation S–K (§ 229.303 of this chapter), management's discussion and analysis of financial condition and results of operations; and

(*vii*) Item 304 of Regulation S–K (§ 229.304 of this chapter), changes in and disagreements with accountants on accounting and financial disclosure.

(ii) *Incorporation of certain information by reference.* If the registrant meets the requirements of Form S–2 or S–3 (*See* Note E of this Schedule) and elects to furnish information in accordance with the provisions of paragraph (b)(2)(i) of this Item:

(A) Incorporate by reference into the proxy statement the documents listed in paragraphs (1) and (2) below and, if applicable, the portions of the documents listed in paragraphs (3) and (4) below.

(*1*) The registrant's latest annual report on Form 10–K filed pursuant to section 13(a) or 15(d) of the Exchange Act which contains audited financial statements for the registrant's latest fiscal year for which a Form 10–K was required to be filed.

(*2*) All other reports filed pursuant to section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report referred to in paragraph (a)(2)(i)(A)(*1*).

(*3*) If the registrant elects to deliver its latest annual report to security holders pursuant to paragraph(b)(2)(i)(A) of this Item, the information furnished in accordance with the following:

(*i*) Item 101 (b), (c)(1)(i) and (d) of Regulation S–K, industry segments, classes of similar products or services, foreign and domestic operations and export sales;

(*ii*) Item 201 of Regulation S–K, market price of and dividends on the registrant's common equity and related stockholder matters;

(*iii*) Item 301 of Regulation S–K, selected financial data;

(*iv*) Item 302 of Regulation S–K, supplementary financial information;

(*v*) Item 303 of Regulation S–K, management's discussion and analysis of financial condition and results of operations; and

(*vi*) Item 304 of Regulation S–K, changes in and disagreements with accountants on accounting and financial disclosure.

(*4*) If the registrant elects, pursuant to paragraph (b)(2)(i)(A)(*2*)(*iii*) of this Item, to provide a copy of its latest quarterly report which was delivered to security holders, financial information equivalent to that required to be presented in Part I of Form 10–Q.

(B) The registrant also may state, if it so chooses, that specifically described portions of its annual or quarterly report to security holders, other than those portions required to be incorporated by reference pursuant to paragraphs (b)(2)(ii)(A) (*3*) and (*4*) of this Item, are not part of the proxy statement. In such case, the description of portions that are not incorporated by reference or that are excluded shall be made with clarity and in reasonable detail.

(3) *Information with respect to registrants other than S–2 or S–3 registrants.*

(i) If the registrant does not meet the requirements of Form S–2 or S–3 (*See* Note E of this Schedule), or elects to comply with this paragraph (b)(3) in lieu of (b)(1) or (b)(2), furnish the following information:

(A) In addition to the brief description of the other person's business required to be in the proxy statement by paragraph (a)(2) of this Item, a brief description of the business done by the registrant and the other person and their subsidiaries during the most recent fiscal year as required by Rule 14a–3 (§ 240.14a–3 of this chapter) to be included in an annual report to security holders. The description also shall take into account changes in the business that have occurred between the end of the latest fiscal year and the date the definitive proxy statement is filed.

(B) Information relating to industry segments, classes of similar products or services, foreign and domestic operations and export sales required by paragraphs (b), (c)(1)(i) and (d) of Item 101 of Regulation S–K (§ 229.101 of this chapter).

(C) Information relating to property required by Item 102 of Regulation S–K (§ 229.102 of this chapter) shall be provided for any property involved in the plan described pursuant to this Item, if such disclosure is material to the security holder's understanding of the transaction.

(D) Information required by Item 201 of Regulation S–K (§ 229.201 of this chapter), market price of and dividends on the registrants' common equity and related stockholder matters.

(E) Financial statements meeting the requirements of Regulation S–X, including financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that as to which action is to be taken as described in this proxy statement.

(F) Item 301 of Regulation S–K, selected financial data;

(G) Item 302 of Regulation S–K, supplementary financial information;

(H) Item 303 of Regulation S–K, management's discussion and analysis of financial condition and results of operations; and

(I) Item 304 of Regulation S–K, changes in and disagreements with accountants on accounting and financial disclosure.

(ii) If the other person is not subject to the reporting requirements of either section 13(a) or 15(d) of the Exchange Act; or, because of section 12(i) of the Exchange Act, has not furnished an annual report to security holders pursuant to Rule 14a–3 (§ 240.14a–3 of this chapter) or Rule 14c–3 (§ 240.14c–3 of this chapter) for its latest fiscal year, furnish:

(A) the financial statements that would have been required to be included in an annual report to security holders pursuant to Rules 14a–3(b)(1) and (b)(2) had the company been required to furnish such a report; *provided, however,* that the balance sheet for the year preceding the latest full fiscal year and the income statements for the two years preceding the latest full fiscal Year need not be audited if they have not previously been audited. In any case, such financial statements need be audited only to the extent practicable.

(B) The quarterly financial and other information that would have been required had the company been required to file Part I of Form 10–Q (§ 249.308a) for the most recent quarter for which such a report would have been on file at the time the proxy statement is mailed or for a period ending as of a more recent date.

(C) The information required by paragraphs (b)(3)(i)(A)–(D) and (F)–(I) of this Item.

(c) *Additional method of incorporation by reference.*

In lieu of the provision of information about the registrant and the other person required in paragraph (b) of this Item, the registrant may incorporate by reference into the proxy statement the information required by paragraph (b)(3) of this Item if it is contained in an annual report sent to security holders pursuant to the requirement of Rule 14a–3 (§ 240.14a–3 of this chapter) with respect to the same meeting or solicitation of consents or authorizations as that to which the proxy statement relates, provided such information substantially meets the requirements of paragraph (b)(3) of this Item or the appropriate portions of paragraph (b)(3) of this Item.

Instructions to Item 14.

1. In order to facilitate compliance with Rule 2–02(a) of Regulation S–X, one copy of the definitive proxy statement filed with the Commission shall include a manually signed copy of the accountant's report. If the financial statements are incorporated by reference, a manually signed copy of the accountant's report shall be filed with the definitive proxy statement.

2. Notwithstanding the provisions of this Item, any or all of the required financial statements and related information which are not material for the exercise of prudent judgement in regard to the matter to be acted upon may be omitted.

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3. If the registrant or any of its securities or assets are to be acquired by the other person, the information regarding the other person that is required by this Item, other than information required by paragraphs (a)(1)–(3) and (a)(8)–(11) of this Item, need be provided only to the extent that; (1) the registrant or its security holders who are entitled to vote or give an authorization or consent with regard to the action will become or remain security holders of the other person; or (2) such information is otherwise material to an informed voting decision.

4. If the plan being voted on involves only the registrant and one or more of its totally held subsidiaries and does not involve a liquidation of the registrant or a spin-off, the information required by this Item, other than information required by paragraphs (a)(1)–(4) and (a)(8)(11) of this Item, may be omitted.

5. Notwithstanding the provisions of Regulation S–X, no schedules other than those prepared in accordance with Rules 12–15, 12–28 and 12–29 (or, for management investment companies, Rules 12–12 through 12–14) of that regulation need be furnished in the proxy statement.

6. Unless registered on a national securities exchange or otherwise required to furnish such information, registered investment companies need not furnish the information required by paragraphs (a)(5), (b)(3)(i) (F), (G) or (H) of this Item.

7. If the registrant submits preliminary proxy material incorporating by reference financial statements required by this Item, the registrant should furnish a draft of the financial statements if the document from which they are incorporated has not been filed with or furnished to the Commission.

Item 15. Acquisition or disposition of property. If action is to be taken with respect to the acquisition or disposition of any property, furnish the following information:

(a) Describe briefly the general character and location of the property.

(b) State the nature and amount of consideration to be paid or received by the registrant or any subsidiary. To the extent practicable, outline briefly the facts bearing upon the question of the fairness of the consideration.

(c) State the name and address of the transferer or transferee, as the case may be and the nature of any material relationship of such person to the issuer or any affiliate of the issuer.

(d) Outline briefly any other material features of the contract or transaction.

Item 16. Restatement of accounts. If action is to be taken with respect to the restatement of any asset, capital, or surplus account of the registrant furnish the following information:

(a) State the nature of the restatement and the date as of which it is to be effective.

(b) Outline briefly the reasons for the restatement and for the selection of the particular effective date.

(c) State the name and amount of each account (including any reserve accounts) affected by the restatement and the effect of the restatement thereon. Tabular presentation of the amounts shall be made when appropriate, particularly in the case of recapitalizations.

(d) To the extent practicable, state whether and the extent, if any, to which, the restatement will, as of the date thereof, alter the amount available for distribution to the holders of equity securities.

Item 17. Action with respect to reports. If action is to be taken with respect to any report of the registrant or of its directors, officers or committees or any minutes of a meeting of the security holders, furnish the following information:

(a) State whether or not such action is to constitute approval or disapproval of any of the matters referred to in such reports or minutes.

(b) Identify each of such matters which it is intended will be approved or disapproved, and furnish the information required by the appropriate item or items of this schedule with respect to each such matter.

Item 18. Matters not required to be submitted. If action is to be taken with respect to any matter which is not required to be submitted to a vote of security holders, state the nature of such matter, the reasons for submitting it to a vote of security holders and what action is intended to be taken by the registrant in the event of a negative vote on the matter by the security holders.

Item 19. Amendment of character, bylaws or other documents.

If action is to be taken with respect to any amendment of the registrant's charter, bylaws or other documents as to which information is not required above, state briefly the reasons for and the general effect of such amendment.

Instructions. 1. Where the matter to be acted upon is the classification of directors, state whether vacancies which occur during the year may be filled by the board of directors to serve only until the next annual meeting or may be so filled for the remainder of the full term.

2. Attention is directed to the discussion of disclosure regarding anti-takeover and similar proposals in Release No. 34–15230 (October 13, 1978).

Item 20. Other proposed action. If action is to be taken with respect to any matter not specifically referred to above, describe briefly the substance of each such matter in substantially the same degree of detail as is required by Items 5 to 19, inclusive, above.

Item 21. Vote required for approval. As to each matter which is to be submitted to a vote of security holders, other than elections to office or the selection or approval of auditors, state the vote required for its approval.

30. Section 240.14a–102 is amended by removing the words "issuer" or "issuers" and replacing them with the words "registrant" or "registrants" in Item 1, Item 2(c), Item 3 (a), (b), (c), (e), (f) and (g) and Item 4(c) (1) and (2) and revising Item 2(b)(1) to read as follows:

§ 240.14a–102 Schedule 14B, information to be included in statements filed by or on behalf of a participant (other than the issuer) pursuant to § 240.14a–11(c) (Rule 14a–11(c)).

* * * * *

Item 2. * * *

(b) State the following:

(1) Your business, mailing or residence address.

* * * * *

31. By amending § 240.14c–1 by removing the word "issuer" and replacing it with the word "registrant" in paragraph (a), by removing paragraph (c), by redesignating paragraph (d) as (c) and revising it, by redesignating paragraph (e) as (d) and by adding new paragraphs (e) and (f) to read as follows:

§ 240.14–1 Definitions.

* * * * *

(c) *Last fiscal year.* The term "last fiscal year" of the registrant means the last fiscal year of the registrant ending prior to the date of the meeting with respect to which an information statement is required to be distributed, or if the information statement involves consents or authorizations in lieu of a meeting, the earliest date on which they may be used to effect corporate action.

* * * * *

(e) *Record date.* The term "record date" shall mean the date as of which the record holders of securities entitled to vote at a meeting or by written consent or authorization shall be determined.

(f) *Registrant.* The term "registrant" means the issuer of a class of securities registered pursuant to section 12 of the Act.

32. By revising § 240.14c–2 as follows:

§ 240.14c–2 Distribution of information statement.

(a) In connection with every annual or other meeting of the holders of a class of securities registered pursuant to section 12 of the Act, including the taking of corporate action with the written authorization or consent of the holders of a class of securities so registered, the registrant of such securities shall transmit a written information statement containing the information specified in Schedule 14C (§ 240.14c–101) or written information statements included in registration statements filed under the Securities Act of 1933 on Form S–4 or F–4 (§ 239.25 or 239.34 of this chapter) or Form N–14 (§ 239.23 of this chapter), and containing the information specified in such form, to every security holder of the class that is entitled to vote or give an authorization or consent in regard to any matter to be acted upon and from whom a proxy, authorization or consent is not solicited on behalf of the registrant pursuant to section 14(a) of the Act: *Provided however,* that (1) in the case of a class of securities in unregistered or bearer form, such statements need be transmitted only to those security holders whose names are known to the registrant, and (2) no such statements need to be transmitted to a security holder if a registrant would be excused from delivery of an annual report or a proxy statement under Rule 14a-3(e)(2) (§ 240.14a-3(e)(2)) if such section were applicable.

(b) The information statement shall be sent or given at least 20 calendar days prior to the meeting date or, in the case of corporate action taken pursuant to the consents or authorizations of security holders, at least 20 calendar days prior to the earliest date on which the corporate action may be taken.

33. In § 240.14c-3 by revising paragraph (a) introductory text, (a)(1) and (a)(2) to read as follows, removing (a)(3) through (a)(12) including the notes after (a)(7) and (a)(10), and by removing the words "issuer," "issuers" and "shareholders" and replacing them with the words "registrant," "registrants" and "security holders" respectively in paragraph (b) and the note following paragraph (b):

§ 240.14c-3 Annual report to be furnished security holders.

(a) If the information statement relates to an annual (or special meeting in lieu of the annual) meeting, or written consent in lieu of such meeting, of security holders at which directors are to be elected, it shall be accompanied or preceded by an annual report to such security holders.

(1) The annual report shall contain the information specified in paragraphs (b)(1) through (b)(11) of Rule 14a-3 (§ 240.14a-3 of this chapter.)

(2) Paragraphs (b)(5) through (b)(11) of Rule 14a-3 shall not apply to an investment company registered under the Investment Company Act of 1940. Subject to the requirements of paragraphs (b)(1) through (b)(4) of Rule 14a-3, the annual report to security holders of such investment company may be in any form deemed suitable by management.

* * * * *

§ 240.14c-4 [Amended]

34. By amending § 240.14c-4 by removing the word "issuer" and replacing it with the word "registrant" and by removing the word "to" in the phrase "within the power to" and replacing it with the word "of" so that the phrase would read "within the power of" in paragraph (b) and by placing a comma between the words "presentation" and "financial" in the first sentence of paragraph (c).

35. By revising § 240.14c-5 as follows:

§ 240.14c-5 Filing requirements.

(a) *Preliminary information statement.* Five preliminary copies of the information statement shall be filed with the Commission at least 10 calendar days prior to the date definitive copies of such statement are first sent or given to security holders, or such shorter period prior to that date as the Commission may authorize upon a showing of good cause therefor. In computing the 10-day period, the filing date of the preliminary copies is to be counted as the first day and the 11th day is the date on which definitive copies of the information statement may be mailed to security holders.

Note 1.—The filing of revised material does not recommence the ten day time period unless the revised material contains material revisions or material new proposal(s) that constitute a fundamental change in the information statement.

Note 2.—The officials responsible for the preparation of the information statement should make every effort to verify the accuracy and completeness of the information required by the applicable rules. The preliminary statement should be filed with the Commission at the earliest practicable date.

(b) *Definitive information statement.* Eight definitive copies of the information statement, in the form in which it is furnished to security holders, shall be filed with, or mailed for filing to, the Commission not later than the date it is first sent or given to any security holders. Three copies thereof shall at the same time be filed with, or mailed for filing to, each national securities exchange upon which any security of the registrant is listed and registered.

(c) *Release dates.* All preliminary material filed pursuant to paragraph (a) of this section shall be accompanied by a statement of the date on which copies thereof filed pursuant to paragraph (b) of this section are intended to be released to security holders. All definitive material filed pursuant to paragraph (b) of this section shall be accompanied by a statement of the date on which copies of such material have been released to security holders or, if not released, the date on which copies thereof are intended to be released.

(d) *Public availability of information.* All copies of material filed pursuant to paragraph (a) of this section shall be clearly marked "Preliminary Copies" and shall be for the information of the Commission only and shall not be deemed available for public inspection until definitive material has been filed with the Commission except that such material may be disclosed to any department or agency of the United States Government and to the Congress and the Commission may make such inquiries or investigation in regard to the material as may be necessary for an adequate review thereof by the Commission.

(e) *Revised information statements.* Where any information statement filed pursuant to this section is amended or revised, two of the copies of such amended or revised material filed pursuant to this section shall be marked to indicate clearly and precisely the changes effected therein. If the amendment or revision alters the text of the material, the changes in such text shall be indicated by means of underscoring or in some other appropriate manner.

(f) *Merger material.* Notwithstanding the foregoing provisions of this section, any information statement or other material included in a registration statement filed under the Securities Act of 1933 on Form N-14, S-4, or F-4 (§ 239.23, 25 or 34 of this chapter) shall be deemed filed both for the purposes of that Act and for the purposes of this section, but separate copies of such material need not be furnished pursuant to this section, nor shall any fee be required under paragraph (a) of this section. However, any additional material used after the effective date of the registration statement on Form N-14, S-4, or F-4 shall be filed in accordance with this section, unless separate copies of such material are required to be filed as an amendment of such registration statement.

(g) *Fees.* At the time of filing the preliminary information statement, the registrant shall pay to the Commission a fee of $125, no part of which shall be refunded, except, however, when filing a preliminary information statement regarding an acquisition, merger, spinoff, consolidation or proposed sale or other disposition of substantially all the assets of the company, the registrant shall pay the Commission a fee established in accordance with Rule 0-11, (§ 240.0-11 of this chapter).

36. Section 240.14c-7 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 240.14c-7 Providing copies of material for certain beneficial owners.

If the registrant knows that securities of any class entitled to vote at a meeting, or by written authorizations or consents if no meeting is held, are held of record by a broker, dealer, bank or voting trustee, or their nominees, the registrant shall:

(a) By first class mail or other equally prompt means, inquire of such record holder whether other persons are the

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beneficial owners of such securities and, if so, the number of copies of the information statement necessary to supply such material to beneficial owners and, in the case of an annual (or special meeting in lieu of the annual) meeting, or written consent in lieu of such meeting, at which directors are to be elected, the number of copies of the annual report to security holders, necessary to supply such material to such beneficial owners for whom proxy material has not been and is not to be made available if such reports are to be distributed by the brokers, dealer, bank, voting trustee or their nominees; and

* * * * *

37. By revising § 240.14c–101 to read as follows:

§ 240.14c–10 Schedule 14C. Information required in information statement.

Note.—Where any item, other than Item 4, calls for information with respect to any matter to be acted upon at the meeting or, if no meeting is being held, by written authorization or consent, such item need be answered only with respect to proposals to be made by the registrant.

Item 1. Information required by Items of Schedule 14A (17 CFR 240.14a–101). Furnish the information called for by all of the items of Schedule 14A of Regulation 14A (17 CFR 240.14a–101) (other than Items 1(c). 2, 4 and 5 thereof) which would be applicable to any matter to be acted upon at the meeting if proxies were to be solicited in connection with the meeting. Notes A, C, D, and E to Schedule 14A are also applicable to Schedule 14C.

Item 2. Statement that proxies are not solicited. The following statement shall be set forth on the first page of the information statement in bold-face type:

We Are Not Asking You for a Proxy and You are Requested Not To Send Us a Proxy

Item 3. Interest of certain persons in or opposition to matters to be acted upon. (a) Describe briefly any substantial interest, direct or indirect, by security holdings or otherwise, of each of the following persons in any matter to be acted upon, other than elections to office:

(1) each person who has been a director or officer of the registrant at any time since the beginning of the last fiscal year;

(2) each nominee for election as a director of the registrant;

(3) each associate of any of the foregoing persons.

(b) Give the name of any director of the registrant who has informed the registrant in writing that he intends to oppose any action to be taken by the registrant at the meeting and indicate the action which he intends to oppose.

Item 4. Proposals by security holders. If any security holder entitled to vote at the meeting or by written authorization or consent has submitted to the registrant a reasonable time before the information statement is to be transmitted to security holders a proposal, other than elections to office, which is accompanied by notice of his intention to present the proposal for action at the meeting the registrant shall, if a meeting is held, make a statement to that effect, identify the proposal and indicate the disposition proposed to be made of the proposal by the registrant at the meeting.

Instructions. 1. This item need not be answered as to any proposal submitted with respect to an annual meeting if such proposal is submitted less than 60 days in advance of a day corresponding to the date of mailing a proxy statement or information statement in connection with the last annual meeting of security holders.

2. If the registrant intends to rule a proposal out of order, the Commission shall be so advised at the time preliminary copies of the information statement are filed with the Commission, together with a statement of the reasons why the proposal is not deemed to be a proper subject for action by security holders.

§ 240.14f–1 [Amended]

38. By revising § 240.14f–1 by removing the phrase "Items 5 (a), (d), (e), and (f), 6 and 7 of Schedule 14A of Regulation 14A" and replacing it with the phrase "Items 6 (a), (d) and (e), 7 and 8 of Schedule 14A of Regulation 14A (§ 240.14a–101 of this chapter)."

PART 249—FORMS, SECURITIES EXCHANGE ACT 1934

39. The authority citation for Part 249 continues to read, in part, as follows:

Authority: Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; * * *

§ 249.210 [Amended]

40. Section 249.210 is amended by changing the title of Item 14 from "Disagreements with Accountants on Accounting and Financial Disclosure" to "Changes in and Disagreements with Accountants on Accounting and Financial Disclosure," [note that the text of Form 10 does not appear in the Code of Federal Regulations.]

41. Section 249.310 is amended by adding an Instruction to Items 9 and 11 of Form 10–K (§ 249.310) to read as follows [note that the text of Form 10–K does not appear in the Code of Federal Regulations]:

§ 249.310 Form 10–K, annual report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.

* * * * *

Form 10–K

* * * * *

Item 9. *Changes in and disagreements with accountants on accounting and financial disclosure.*

* * * * *

Item 11. *Executive compensation.*

Furnish the information required by Item 402 of Regulations S–K (§ 229.402) of this chapter.

Instruction

A registrant complying with paragraph (a)(3) of Item 10 of Schedule 14A (§ 240.14a–101 of this chapter) will be deemed to have complied with the requirements of this Item 11.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

42. The authority citation for Part 270 continues to read, in part, as follows:

Authority: Secs. 38, 40, 54 Stat. 841, 842; 15 U.S.C. 80a–37, 80a–39, * * *

43. By revising paragraph (a) of § 270.20a–3 to read as follows:

§ 270.20a–3 Information as to certain transactions.

(a) This section shall apply to a solicitation if (1) the information specified in Item 7, Directors and executive officers, of Schedule 14A of Regulation 14A (§ 240.14a–101 of this chapter) is required to be furnished for an investment company, or (2) action is to be taken with respect to an investment advisory contract.

* * * * *

By the Commission.

Jonathan G. Katz,
Secretary.
November 10, 1986.

[FR Doc. 86–25898 Filed 11–19–86; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 239, and 240

[Rel. Nos. 33-6675; 34-23788; 35-24235; IC-15402; File No. S7-29-86]

Proxy Rules—Conforming Amendments; Rule Providing for Modified or Superseded Documents; Deletion of Redundant Language Exempting Public Utility Holding Companies and Subsidiaries From Proxy Filing Fees Where an Application or Declaration is Involved

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Commission is proposing an amendment further conforming the proxy disclosure for mergers and similar transactions to that required for registration of securities in certain business combinations and clarifying the timing requirements for such transactions where incorporation by reference is used. The Commission also is proposing a rule concerning modified or superseded statements in documents incorporated by reference into a proxy statement. In addition, the Commission is proposing revisions clarifying application of disclosure requirements concerning changes in accountants and deleting redundant language in the proxy statement fee regulation.

DATE: Comments should be received on or before December 22, 1986.

ADDRESS: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7-29-86. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Alexander G. Shtofman or Caroline W. Dixon, (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance.

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment proposed revisions to the proxy rules [1] under the Securities Exchange Act of 1934 ("Exchange Act").[2] The Commission is proposing revisions to Regulation 14A,[3] including Schedule 14A.[4] In addition, the Commission is publishing for comment a proposed new rule, Rule 14a-14, which will be part of Regulation 14A. Finally, corresponding amendments are being proposed to Forms S-4 [5] and F-4 [6] and to Item 304 of Regulation S-K.[7]

I. Discussion of Proposals

A. Conforming Certain Disclosure Under Schedule 14A to Form S-4

Transactions subject to Item 14 of Schedule 14A, Mergers, Consolidations, Acquisitions and Similar Matters, and business combinations registered on Form S-4 require substantially similar decisions by security holders. The Commission believes that the company-specific information requirements for Item 14 and Form S-4 should be parallel and is proposing amendments to Item 14 to conform them.[8] Essentially, these conforming changes will require a registrant complying with the requirements of Item 14 by disclosure in the proxy statement (rather than incorporation by reference of the Form 10-K) to include all the issuer specific information currently required in an S-4 registration statement. These conforming changes will have no effect on an S-2 or S-3 level company incorporating the required disclosure by reference into the proxy statement; such a registrant incorporates its Form 10-K, which contains the information. Thus, these same changes remedy the inconsistent disclosure requirements of various registrants subject to Item 14. Specifically, Item 14(b)(3), Information with Respect to Registrants Other than S-2 or S-3 Registrants, is proposed to be amended to require registrants [9] to furnish all the information required by Item 101, Description of Business,[10] Item 102, Description of Property [11] and Item 103, Legal Proceedings,[12] of Regulation S-K.

The Item 14 requirements for transaction information were conformed to Form S-4 in the companion release. As noted in that release, if the transaction involves the issuance of securities exempt from registration, information concerning the new class or series of securities can be material to the transaction.[13] The Commission seeks comment as to whether there should be a specific requirement to include all of the information that would be required by Item 202 of Regulation S-K [14] if securities were being registered and, if so, whether such a requirement should apply to all issuances of securities exempt from registration.

B. New Rule 14a-14, Modified or Superseded Documents

At the suggestion of a commentator on the proxy rule proposals published for comment in Release No. 33-6592 (July 19, 1985), the Commission is proposing a new rule, Rule 14a-14, similar to Rule 412 under the Securities Act of 1933.[15] The new rule would govern the treatment of a statement in a document incorporated by reference into a proxy statement which is subsequently modified or superseded by a statement in a later document also incorporated by reference.

The rule would provide that, for purposes of the proxy statement, a statement in a document incorporated by reference would be deemed to be modified or superseded by a statement in the proxy statement or in any other subsequently filed document(s) incorporated by reference. The rule also would provide (1) that the making of a modifying or superseding statement would not be deemed an admission that the first statement was false or misleading and (2) that the prior form of any statement so modified or superseded would not be deemed to constitute a part of the proxy statement.

C. Changes in and Disagreements With Accountants

The revisions to Item 14 of Schedule 14A and to Item 304 of Regulation S-K, Changes in and Disagreements With Accountants on Accounting and Financial Disclosure, adopted today,

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[1] 17 CFR 240.14a-1 through 240.14c-101.

[2] 15 U.S.C. 78a-78kk.

[3] 17 CFR 240.14a-1 through 240.14b-1.

[4] 17 CFR 240.14a-101.

[5] 17 CFR 239.25.

[6] 17 CFR 239.34.

[7] 17 CFR 229.304.

[8] As noted in companion Release No. 33-6676 ("companion release"), fn. p. 35 (Part II, V), if a preliminary proxy is filed meeting the requirements of Item 14 and the filing of a Form S-4 is contemplated for the transaction, the requirements of Form S-4 must be satisfied.

[9] The information required with respect to non-reporting companies will be amended to conform with Form S-4.

[10] 17 CFR 229.101.

The description of business currently required is the brief description required by Rule 14a-3 (17 CFR 240.14a-3) to be included in an annual report to security holders, updated to the filing of the definitive proxy statement, plus information relating to industry segments, classes of similar products or services, foreign and domestic operations and export sales required by paragraphs (b), (c)(1)(i) and (d) of Item 101 of Regulation S-K.

[11] Currently, information relating to property required by Item 102 of Regulation S-K (17 CFR 229.102) is required only for any property involved in the plan.

[12] 17 CFR 229.103.

[13] *See* companion release, fn. p. 35 (Part II, V).

[14] 17 CFR 229.202.

[15] 17 CFR 230.412.

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contain a potential ambiguity. Instruction 3 to Item 304 provides that the information required by Item 304 need not be provided for non-reporting companies being acquired by the registrant, while Item 14 specifies that Item 304 information is required for such persons. The Commission believes that Item 14 should control to assure that the financial disclosure required by paragraph (b) of Item 304 is provided. The Commission, however, does not believe it necessary to provide paragraph (a) information with respect to the acquired company and has so specified.[16]

D. Rule 14a–6, Filing Requirements

The proposed revision to Rule 14a–6[17] would delete the language in paragraph (j) stating that a transaction involving an application or declaration under Public Utility Holding Company Act of 1935[18] ("PUHCA") is exempt from the proxy solicitation filing fee, because that language is redundant. Rule 14a–2[19] provides that Rules 14a–3[20] to 14a–12[21] do not apply to "any solicitation which is subject to Rule 62[22] under the Public Utility Holding Company Act."[23] It also should be noted that as a PUHCA Rule 62 transaction is exempt from the Exchange Act proxy rules, an application or declaration under PUHCA would also be exempt from the filing fee requirements of Rule 14a–6(j).[24]

E. Timing of Sending Proxy Statement or Prospectus

Questions have been raised about the language in Note D.3. to Schedule 14A and Instruction A.2 of Form S–4 concerning the time when proxy statements and prospectuses must be sent to security holders when incorporation by reference is used. The Commission is proposing for comment revisions to this language which clarify that, if no meeting is held, the materials must be sent at least 20 business days prior to the date the votes, consents or authorizations may be used to effect the corporate action. The proposed changes will conform the language to that used in Rules 14a–3(b)(13),[25] 14a–13(a)(2),[26] and 14c–2(b).[27]

F. Corresponding Amendments

If Rule 14a–14 is adopted as proposed, technical amendments may be made to various proxy rules should they need references to Rule 14a–14.

II. Request for Comment

Any interested persons wishing to submit written comments on the proposed revision to the rules, as well as on other matters that might have an impact on the proposals contained herein, are requested to do so. The Commission also requests comment on whether the proposed rules, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a)[28] of the Exchange Act.

III. Cost-Benefit Analysis

To evaluate the benefits and costs associated with proposed amendments to Item 14 of Schedule 14A, Rule 14a–6, Item 304 of Regulation S–K, and Form S–4 and proposed New Rule 14a–14 the Commission requests commentators to provide views and data as to the costs and benefits associated with the rules conforming proxy statement disclosure for mergers and similar matters to that required for certain business combinations, clarifying disclosure requirements concerning changes in accountants in certain circumstances, deleting redundant language in the proxy statement fee regulation and addressing modified or superseded statements in documents incorporated by reference into the proxy statement. The Commission notes that certain of the proposals will not have an effect (Rule 14a–6 amendment and Rule 14a–14) on costs. Any increased costs associated with conforming the information required for mergers and similar transactions should be minimal as the information required is currently required of registrants in other contexts. The deletion of the requirement in specified circumstances of certain information related to changes in accountants will decrease costs to registrants.

IV. Initial Regulatory Flexibility Analysis

This initial regulatory flexibility analysis concerns proposed Rule 14a–14 and proposed amendments to Rule 14a–6, Item 14 of Schedule 14A, Item 304 of Regulation S–K and Form S–4. The analysis has been prepared by the Commission in accordance with 5 U.S.C. 604.

Reasons for, and Objectives of, the Proposals

Certain of the proposed amendments to Item 14, Mergers, Consolidations, Acquisitions and Similar Matters, of Schedule 14A, if promulgated, would require provision of additional items of information in connection with such transactions. The objective of the amendments is to conform the company-specific information required in the proxy context to that required in Form S–4 because the same types of transactions are subject to Item 14 and Form S–4 and require substantially similar decisions by security holders. The revisions also will cure an inconsistency in the requirements arising out of the different information delivery requirements.

Proposed Rule 14a–14, if promulgated, would govern the treatment of a statement in a document incorporated by reference in a proxy statement that is modified or superseded by a statement in the proxy statement or in another later-filed document also incorporated by reference in the proxy statement. The rule would provide that, for purposes of the proxy statement, a statement in a document incorporated by reference would be deemed to be modified or superseded by a statement in the proxy statement or in any other subsequently filed documents incorporated by reference therein. The rule also would provide that the making of a modifying or superseding statement would not be deemed an admission that the first statement was false or misleading and that any statement so modified or superseded would not be deemed in its prior form to constitute a part of the proxy statement. The objective of proposed Rule 14a–14 is to facilitate a registrant's ability to update information included in a document that is incorporated by reference in a proxy statement without requiring any additional action by the registrant. The Commission believes that efforts to make disclosure to investors more meaningful and accurate are to be encouraged and the proposed rule is intended to further this goal.

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[16] A corresponding amendment has been proposed to Item 17 of Form S–4 to require only the information required by paragraph (b) of Item 304 in the same circumstances. In addition, the Commission is proposing to delete from Items 18 and 19 of Form F–4 the requirement to provide the information called for by Item 9 of Schedule 14A in order to make Form F–4 consistent with Forms F–1–2–3.

[17] 17 CFR 240.14a–6.

[18] 15 U.S.C. 79–79z–6.

[19] 17 CFR 240.14a–2.

[20] 17 CFR 240.14a–3.

[21] 17 CFR 240.14a–12.

[22] 17 CFR 250.62.

[23] PUHCA Rule 62(a) covers reorganizations subject to Commission approval and transactions that are the subject of applications or declarations filed with the Commission. Other public utility holding company solicitations are governed by PUHCA Rule 61, which provides that such solicitations are subject to Exchange Act Section 14(a).

[24] 17 CFR 240.14a–6(j).

[25] 17 CFR 240.14a–3(b)(13).

[26] 17 CFR 240.14a–13(a)(2).

[27] 17 CFR 240.14c–2(b).

[28] 15 U.S.C. 78w(a).

Other proposed revisions to Item 14 of Schedule 14A and to Item 304 of Regulation S–K are intended to clarify a potential ambiguity between the two Items where a nonreporting company is being acquired by the registrant. The revised requirements, if promulgated, will no longer require certain information with respect to changes in accountants in these circumstances. Furthermore, the comparable provisions of Form S–4 will no longer require this information if the proposal is promulgated. This is consistent with the objective of other proposed changes to make comparable the requirements of Item 14 of Schedule 14A and Form S–4.

The proposed revision to Rule 14a–6 is intended to eliminate a redundancy in the proxy rules but will have no substantive effect.

Legal Basis

The proposed amendments would be promulgated pursuant to sections 6, 7, 10 and 19(a) of the Securities Act of 1933 and sections 14 and 23(a) of the Securities Exchange Act of 1934.

Small Entities Subject to the Rules

A small business for purposes of the Regulatory Flexibility Act is defined by Rule 0–10 under the Exchange Act.[29] The rule provides that, when used in reference to a registrant pursuant to the Exchange Act, small business means a registrant that, on the last day of its most recent fiscal year, had total assets of five million dollars or less. The proxy rules apply to proxy solicitations or information statements of registrants with securities either listed on a national securities exchange pursuant to section 12(b) or registered pursuant to section 12(g) of the Exchange Act.

The Commission estimates that 28 percent, or 2772, of the roughly 9900 issuers registered under section 12 are companies having total assets not exceeding five million. A small percentage of the 2772 registrants engage annually in transactions subject to Item 14 of Schedule 14A.

A small issuer for purposes of the Regulatory Flexibility Act is defined by Rule 157 [30] under the Securities Act as an issuer whose total assets on the last day of its most recent fiscal year were $5 million or less and that is engaged or proposing to engage in an offering of securities which does not exceed $5 million. In the recent experience of the Commission, several hundred registration statements a year may be filed with the Commission by small issuers, an even smaller number of those registration statements will be filed on Form S–4, and only certain of those filed on Form S–4 will involve the acquisition of a non-reporting company.

Reporting Recordkeeping and Other Compliance Requirements

The Commission believes that proposed Rule 14a–14 and the proposed amendments to Item 304 of Regulation S–K, Form S–4 and Item 14 of Schedule 14A would not result in any significant increase in reporting or recordkeeping requirements. With regard to the proposed increase in certain informational requirements of Item 14 to parallel those of Form S–4, in the event that a preliminary proxy statement is filed requiring Item 14 disclosure and the transaction contemplated requires a filing on Form S–4, the requirements of Form S–4 would have to be complied with in any event. In these circumstances the proposed change will have no impact.

Relatively few small entities annually will engage in transactions subject to Item 14 that would not also require a registration on Form S–4 and compliance with its higher requirements. With respect to those that would provide more information pursuant to the amendments to Item 14, if promulgated, the Commission believes that requiring the same information from all registrants for Item 14 transactions is preferable to exempting small entities from all or part of these requirements. Furthermore, the Commission notes that the information which will be required if the proposal is promulgated is information that the small entities are currently required to provide to the Commission in other contexts; it should not be unduly burdensome for those entities to provide the information to their security holders. The Commission, however, invites public comment on the appropriateness of extending an exemption to or providing for different compliance or reporting requirements for small entities.

Proposed Rule 14a–14 facilitates a registrant's ability to update information included in a document that is incorporated by reference in a proxy statement without requiring any additional action by the registrant and without imposing any additional reporting, recordkeeping or compliance requirements.

Item 14 of Schedule 14A, as adopted today, provides that, where a non-reporting company is being acquired by the registrant, all of the information called for by Item 304 of Regulation S–K with respect to changes in and disagreements with accountants must be disclosed. The proposed changes would specify in the instructions to Item 304 and in Item 14 that only the information called for by Item 304(b) need be provided. Further, the proposal, if promulgated, will reduce the requirement in Form S–4 to provide the information called for by Item 304 for non-reporting companies being acquired to a requirement only to provide the information required by Item 304(b).

The proposed technical revision to Rule 14a–6, if promulgated, will have no substantive effect and will thus not result in any additional reporting, recordkeeping or other compliance requirements.

Overlapping or Conflicting Federal Rules

The Commission does not believe that the proposed rules duplicate or conflict with any existing rule provisions.

Significant Alternatives

The Commission has requested comments on the appropriateness of extending an exemption to or providing different compliance or reporting requirements for small entities for transactions requiring compliance with Item 14 of Schedule 14A that would not otherwise involve registration on Form S–4. As noted, however, the Commission does not believe such different treatment would be warranted in light of the minor burden compliance would impose and the Commission's statutory mandate. Furthermore, the Commission believes that it is appropriate to conform the requirements of Item 14 and Form S–4 as they involve substantially the same decision by security holders.

In the Commission's view, Item 14 has aspects of both design and performance standards chosen to provide investors with the information they need to make informed investment decisions. Any greater emphasis on performance standards would likely neither benefit investors nor reduce significantly the burden of compliance.

Proposed Rule 14a–14 provides relief that any other approach is unlikely to provide.

Solicitation of Comments

The Commission encourages the submission of written comments with

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[29] 17 CFR 240.0–10.

[30] 17 CFR 230.157.

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respect to any aspect of this initial regulatory flexibility analysis. Such written comments will be considered in the preparation of the final regulatory flexibility analysis, if the proposed rule is adopted. Persons wishing to submit written comments should file four copies thereof with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7- -86. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549

V. Statutory Basis and Text of Proposed Amendments Authority

The amendments to Item 304 of Regulation S–K, Form S–4, Form F–4 and to the proxy rules are being proposed by the Commission pursuant to sections, 6, 7, 10 and 19(a) of the Securities Act of 1933 and Sections 14 and 23(a) of the Securities Exchange Act of 1934.

List of Subjects in 17 CFR Parts 229, 239 and 240

Reporting and recordkeeping requirements, securities.

Text of Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER THE SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY CONSERVATION ACT OF 1975—REGULATION S–K

1. The authority citation for Part 229 continues to read, in part, as follows:

Authority: Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 901; secs. 205, 209, 48 Stat. 906, 908; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 301, 54 Stat 857; secs. 8, 202, 68 Stat. 685, 686; secs. 3, 4, 5, 6, 78 Stat. 565–568, 569, 570–574; sec. 1, 79 Stat. 1051; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 28(c) 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 11, 18, 89 Stat. 117, 118, 119, 155; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 781, 78m, 78n, 781(d), 78w(a). * * *

2. Instruction 3 of § 229.304 is revised as follows.

§ 229.304 (Item 304) Changes in and disagreements with accountants on accounting and financial disclosure.

* * * * *

Instructions

1 * * *

2. * * *

3. The information required by Item 304(a) need not be provided for a company being acquired by the registrant that is not subject to the reporting requirements of either section 13(a) or 15(d) of the Exchange Act, or, because of section 12(i) of the Exchange Act, has not furnished an annual report to security holders pursuant to Rule 14a–3 or Rule 14c–3 for its latest fiscal year.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

3. The authority citation for Part 239 continues to read, in part, as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a *et seq.*, * * *

4. Section 239.25 is amended by revising general instruction A.2 and paragraph (b)(6) of Item 17 to read as follows [note that the text of Form S–4 does not appear in the Code of Federal Regulations]:

§ 239.25 Form S–4, for the registration of securities issued in business combination transactions.

* * * * *

Form S–4

* * * * *

General Instruction

A. Rule as to Use of Form S–4:

1. * * *

2. If the registrant meets the requirements of and elects to comply with the provisions in any item of this Form or Form F–4 (§ 239.34 of this chapter) that provides for incorporation by reference of information about the registrant or the company being acquired, the prospectus must be sent to the security holders no later than 20 business days prior to the date on which the meeting of such security holders is held or, if no meeting is held, at least 20 business days prior to the date the votes, consents or authorizations may be used to effect the corporate action. * * *

* * * * *

Part I Information Required in the Prospectus

* * * * *

Item 17. Information With Respect to Companies Other than S–2 or S–3 Companies

* * * * *

(b) * * *

(6) Item 304(b) of Regulation S–K, changes in and disagreements with accountants on accounting and financial disclosure.

* * * * *

5. Section 239.34 is amended by removing paragraph (a)(6) of Items 18 and 19 and by redesignating paragraph (a)(7) as (a)(6) and (a)(8) as (a)(7). [note that the text of Form F–4 does not appear in the Code of Federal Regulations]:

§ 239.34 Form F–4, for registration of securities of certain foreign private issuers issued in certain business combination transactions.

* * * * *

Form F–4

* * * * *

Part I Information Required in the Prospectus

* * * * *

Item 18. Information if Proxies, Consents or Authorizations Are To Be Solicited

(a) * * *

Instruction

The information specified in Item 4 of Form 20–F may be provided in lieu of the information specified in Item 6(d) of Schedule 14A.

(6) The information required by Item 22 of Schedule 14A, vote required for approval;

(7) With respect to each person who will serve as a director or an executive officer * * *

* * * * *

Item 19. Information if Proxies, Consents or Authorizations Are Not To Be Solicited in an Exchange Offer

(a) * * *

Instruction

The information specified in Item 4 of Form 20–F may be provided in lieu of the information specified in Item 6(d) of Schedule 14A.

(6) The information required by Item 22 of Schedule 14A, vote required for approval;

(7) With respect to each person who will serve as a director or an executive officer * * *

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

6. The authority citation for Part 240 continues to read, in part, as follows:

Authority: Sec. 23, 48 Stat. 901, as amended, 15 U.S.C. 78w, * * *

7. The introductory text of paragraph (j) of § 240.14a–6 is revised as follows:

§ 240.14a–6 Filing requirements.

* * * * *

(j) *Fees.* At the time of filing the preliminary proxy solicitation material, the persons upon whose behalf the solicitation is made, other than companies registered under the Investment Company Act of 1940, shall pay to the Commission the following applicable fee: * * *

* * * * *

8. By adding § 240.14a–14 to read as follows:

§ 240.14a–14 Modified or superseded documents.

(a) Any statement contained in a document incorporated or deemed to be incorporated by reference shall be deemed to be modified or superseded, for purposes of the proxy statement, to the extent that a statement contained in the proxy statement or in any other subsequently filed document that also is or is deemed to be incorporated by reference modifies or replaces such statement.

(b) The modifying or superseding statement may, but need not, state it has modified or superseded a prior statement or include any other information set forth in the document that is not so modified or superseded. The making of a modifying or superseding statement shall not be deemed an admission that the modified or superseded statement, when made, constituted an untrue statement of a material fact, an omission to state a material fact necessary to make a statement not misleading, or the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business or artifice to defraud, as those terms are used in the Securities Act of 1933, the Securities Exchange Act of 1934 ("the Act"), the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940, or the rules and regulations thereunder.

(c) Any statement so modified shall not be deemed in its unmodified form to constitute part of the proxy statement for purposes of the Act. Any statement so superseded shall not be deemed to constitute a part of the proxy statement for purposes of the Act.

9. Section 240.14a–101 is amended by revising Note D.3., and Item 14.(b)(3) (i) (A), (B), and (C), and (ii)(C); and by adding Item 14.(b)(3)(ii) (D) and (E) to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

Note: A. * * *

B. * * *

C. * * *

D. * * *

3. If a document or portion of a document other than an annual report sent to security holders pursuant to the requirements of Rule 14a–3 (§ 240.14a–3 of this chapter) with respect to the same meeting or solicitation of consents or authorizations as that to which the proxy statement relates is incorporated by reference in the manner permitted by Item 13(b) or 14(b) of this schedule, the proxy statement must be sent to security holders no later than 20 business days prior to the date on which the meeting of such security holders is held or, if no meeting is held, at least 20 business days prior to the date the votes, consents or authorizations may be used to effect the corporate action.

* * * * *

Item 14. Mergers, Consolidations, Acquisitions and Similar Matters

* * * * *

(b). Information about the registrant and the other person.

* * * * *

(3) *Information with respect to registrants other than S–2 or S–3 registrants.*

(i) * * *

(A) Information required by Item 101 of Regulation S–K (§ 229.101 of this chapter), description of business.

(B) Information required by Item 102 of Regulation S–K (§ 229.102 of this Chapter), description of property.

(C) Information required by Item 103 of Regulation S–K (§ 229.103 of this chapter), legal proceedings.

* * * * *

(ii) * * *

(A) * * *

(B) * * *

(C) A brief description of the business done by the company which indicates the general nature and scope of the business;

(D) The information required by paragraphs (b)(3)(i) (D) and (F)–(H) of this Item and the information required by Item 304(b) of Regulation S–K (§ 229.304 of this chapter).

(E) Schedules required by Rules 12–15, 28 and 29 of Regulation S–X.

* * * * *

By the Commission.

Jonathan G. Katz,

Secretary.

November 10, 1986.

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

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Columbia River Gorge National Scenic Area Act. (Nov. 17, 1986; 29 pages) Price: $1.00

H.R. 5730/Pub. L. 99-664

Haida Land Exchange Act of 1986. (Nov. 17, 1986; 7 pages) Price: $1.00

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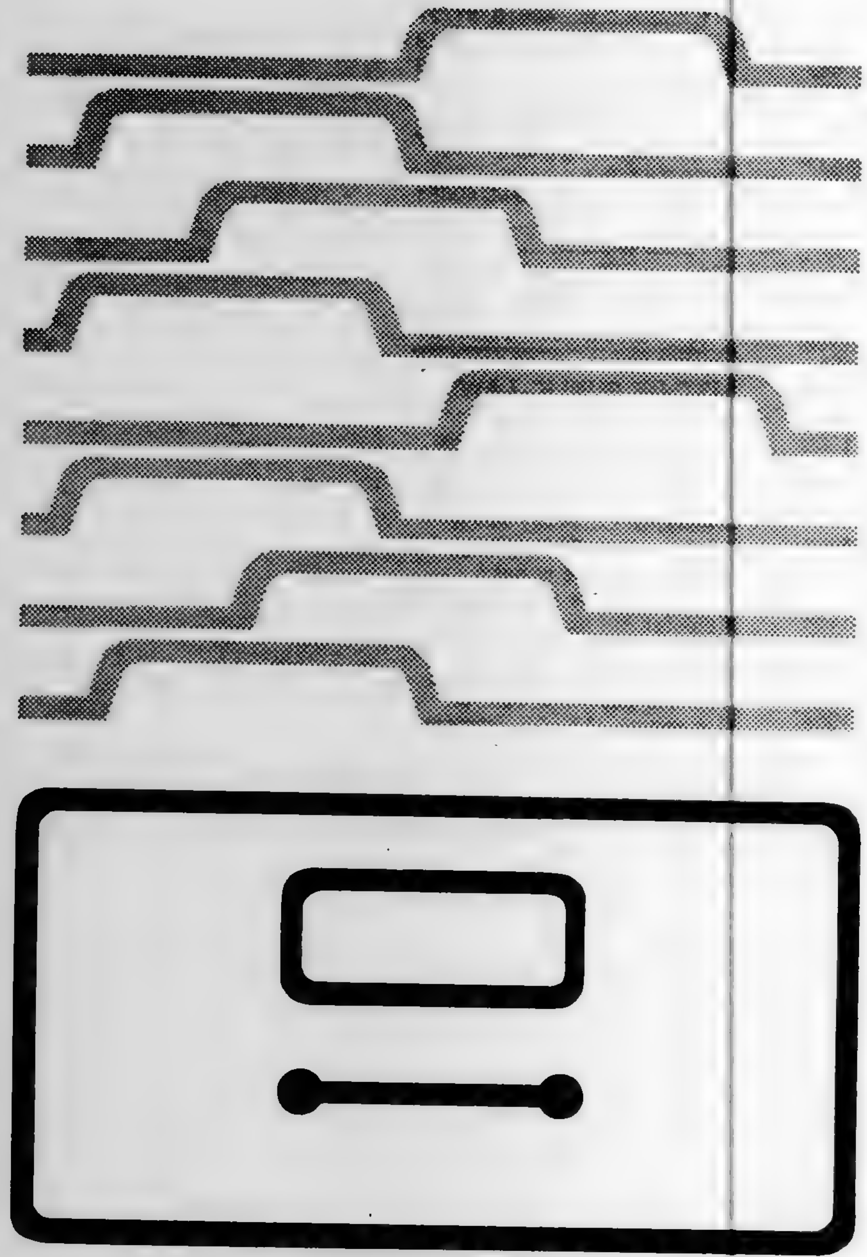

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CORRECTIONS

Beginning with the **Federal Register** of Wednesday, November 19, 1986, editorial corrections of previously published documents and Code of Federal Regulations volumes appear in a separate section called "Corrections." The Corrections section follows the Sunshine Act Meetings section.

These corrections in the past have appeared in the Rules and Regulations, Proposed Rules, or Notices section of the issue depending on the classification of the document corrected. They are now appearing in a separate section because of new production procedures.

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Rules and Regulations

Federal Register
Vol. 51, No. 225
Friday, November 21, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 635]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 635 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period November 21 through 27, 1986. Such action is needed to balance the supply of fresh navel oranges with the demand for such period, due to the marketing situation confronting the orange industry.

DATE: Regulation 635 (§ 907.935) is effective for the period November 21 through 27, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202–447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This rule is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1986–1987 adopted by the Navel Orange Administrative Committee. The committee met publicly on November 18, 1986, at Lindsay, California, to consider the current and prospective conditions of supply and demand and recommended, by a vote of 7 to 4, a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that demand has declined.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. To effectuate the declared purposes of the act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Agricultural Marketing Service, Marketing agreements and orders, California, Arizona, Oranges (navel).

1. The authority citation for 7 CFR Part 907 continues to read:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.935 Navel Orange Regulation 635 is hereby added to read:

§ 907.935 Navel Orange Regulation 635.

The quantities of navel oranges grown in California and Arizona which may be handled during the period November 21 through November 27, 1986, are established as follows:

(a) District 1: 854,066 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons.

Dated: November 19, 1986.

Thomas R. Clark,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–26454 Filed 11–20–86; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 910

[Lemon Reg. 536]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 536 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 230,000 cartons during the period November 23 through November 29, 1986. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 536 (§ 910.836) is effective for the period November 23 through November 29, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of

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business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1986–1987. The committee met publicly on November 18, 1986, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a vote of 11 to 0, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that demand is very light for larger sizes of lemons. However, demand is expected to remain steady during the Thanksgiving holiday period.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, and Lemons.

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.836 is added to read as follows:

§ 910.836 Lemon Regulation 536.

The quantity of lemons grown in California and Arizona which may be handled during the period November 23 through November 29, 1986, is established at 290,000 cartons.

Dated: November 19, 1986.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86-26453 Filed 11-20-86; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 100

Statement of Organization; Ports of Entry for Aliens Arriving by Vessel or by Land Transportation

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule designates Mariposa, Arizona as a class "A" port of entry and thereby properly identifies the facility as a port of entry designated for entry of all aliens. A full range of immigration services is available at Mariposa and the port is regularly staffed by inspectors of the United States Immigration Service.

EFFECTIVE DATE: November 21, 1986.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633–3048.

For specific information: Kathryn E. Sheehan, Immigration Inspector, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633–2725.

SUPPLEMENTARY INFORMATION: Under the present Service organization, Nogales, Arizona is one port of entry, encompassing Mariposa, Arizona. The Mariposa port, located five miles west of Nogales, has been operational since October 18, 1982. It is open daily for fourteen hours, and via two vehicle and one pedestrian lane, over 1.5 million entries are processed each year with traffic crossing expected to increase as nearby population centers continue to grow. The creation of two separate ports of entry would facilitate budget and resource allocations, staffing, and administrative functions.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because this rule relates to agency management.

In accordance with 5 U.S.C. 605(b) the Commissioner of Immigration and Naturalization certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This order is not a rule within the definition of section 1(a) of E.O. 12291 as it relates solely to agency management.

List of Subjects in 8 CFR Part 100

Administrative practice and procedure, Organization and functions (government agencies).

Accordingly, Title 8 of the Code of Federal Regulations is amended as follows:

PART 100—STATEMENT OF ORGANIZATION

1. The authority citation for Part 100 continues to read as follows:

Authority: Sec. 103 of the Immigration and Nationality Act; 8 U.S.C. 1103.

2. In § 100.4(c)(2), the introductory text and District No. 18 are revised as follows:

§ 100.4 Field service.

* * * * *

(c) * * *

(2) *Ports of entry for aliens arriving by vessel or by land transportation.* Subject to the limitations prescribed in this subparagraph, the following places are hereby designated as ports of entry for aliens arriving by any means of travel other than aircraft. The designation of such a port of entry may be withdrawn whenever, in the judgment of the Commissioner, such action is warranted. The ports are listed according to location by districts and are designated either Class A, B, or C. Class A means that the port is a designated port of entry for all aliens. Class B means that the port is a designated port of entry for aliens who at the time of applying for admission are lawfully in possession of valid alien registration receipt cards or valid nonresident aliens' border-crossing identification cards or are admissible without documents under the documentary waivers contained in Part 212 of this chapter. Class C means that the port is a designated port of entry only for aliens who are arriving in the United States as crewmen as that term

is defined in section 101(a)(10) of the Act with respect to vessels.

* * * * *

District No. 18—Phoenix, Ariz.

Class A

*Douglas, Ariz.
*Lukeville, Ariz.
*Mariposa, Ariz.
*Naco, Ariz.
*Nogales, Ariz.
*Sasabe, Ariz.
*San Luis, Ariz.

* * * * *

Dated: November 4, 1986.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 86-26240 Filed 11-20-86; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 86-109]

Tuberculosis in Cattle; State Designations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the regulations governing the interstate movement of cattle because of tuberculosis by raising the designation of Illinois from a modified accredited area to an accredited-free State. It has been determined that Illinois meets the criteria for designation as an accredited-free State.

The regulations do not impose restrictions on the interstate movement of cattle not known to be affected with or exposed to tuberculosis from either accredited-free States or modified accredited areas. However, the designation for any given jurisdiction can affect the marketability of cattle from that jurisdiction, since some prospective cattle buyers prefer to buy cattle from accredited-free States.

DATES: Interim rule effective November 21, 1986. We will consider your comments if we receive them on or before January 20, 1987.

ADDRESSES: Send written comments to Steven R. Poore, Acting Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 86-109. Written comments may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Ralph L. Hosker, Domestic Programs Support Staff, VS, APHIS, USDA, Room 815, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8438.

SUPPLEMENTARY INFORMATION:

Background

The "Tuberculosis in Cattle" regulations (contained in 9 CFR Part 77 and referred to below as the regulations) regulate the interstate movement of cattle because of tuberculosis. The requirements of the regulations concerning the interstate movement of cattle not known to be affected with or exposed to tuberculosis are based on whether the cattle are moved from jurisdictions designated as accredited-free States, modified accredited areas, or nonmodified accredited areas. The criteria for determining the status of States (the term State is defined to mean any State, territory, the District of Columbia, or Puerto Rico) or portions of States are contained in a document captioned "Uniform Methods and Rules—Bovine Tuberculosis Eradication," which has been made part of the regulations by incorporation by reference. Generally the status of States or portions of States is determined based on the rate of tuberculosis infection present and the effectiveness of a tuberculosis control and eradication program.

Sections 77.7 and 77.8 of the regulations provide the following with respect to the interstate movement of cattle not known to be affected with or exposed to tuberculosis:

Section 77.7 Movement from accredited-free States and modified accredited areas.

Cattle not known to be affected with or exposed to tuberculosis, originating in an accredited-free State or a modified accredited area, may be moved interstate without restriction.

Section 77.8 Movement from nonmodified accredited areas.

Cattle not known to be affected with or exposed to tuberculosis, originating in a nonmodified accredited area, shall only be moved interstate if:

(a) Such cattle are accompanied by a certificate stating that such cattle have been classified negative to an official tuberculin test, which was conducted within 30 days prior to the date of movement. All cattle not individually identified by a registration name and number shall be individually identified by a Veterinary Services approved metal eartag or tattoo; or

(b) Such cattle are from an accredited herd and they are accompanied by a certificate showing the cattle to be from such a herd; or

(c) Such cattle are moved interstate directly to slaughter to an establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or to a State inspected slaughtering establishment which has inspection by a State inspector at the time of slaughter.

Prior to the effective date of this document, Illinois, among other States, was designated under § 77.5 of the regulations as modified accredited area. The Deputy Administrator has determined that Illinois meets the criteria for designation as an accredited-free State. Therefore, this document amends the regulations by adding Illinois to the list of accredited-free States in § 77.4.

As noted above, the regulations do not impose restrictions on the interstate movement of cattle not known to be affected with or exposed to tuberculosis from accredited-free States or modified accredited areas. However, the designation for any given jurisdiction can affect the marketability of cattle from that jurisdiction, since some prospective cattle buyers often prefer to buy cattle from accredited-free States.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of the State of Illinois will not cause a significant effect on marketing patterns and will not have a significant economic impact on those persons affected by this document.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. It is necessary to change the regulations immediately so that they accurately reflect the current tuberculosis status of Illinois and thereby provide prospective cattle buyers with accurate and up-to-date information which may affect the marketability of cattle.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest, and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register.** Comments have been solicited for 60 days after publication of this document. A document discussing comments received and any amendments required will be published in the **Federal Register.**

List of Subjects in 9 CFR Part 77

Animal diseases, Cattle, Transportation, Tuberculosis.

PART 77—TUBERCULOSIS IN CATTLE

Accordingly, 9 CFR Part 77 is amended as follows:

1. The authority citation for Part 77 continues to read as set forth below:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 77.4, paragraph (b) is revised to read as follows:

§ 77.4 Accredited-free States.

* * * * *

(b) The following States are hereby designated accredited-free States: Alaska, Arizona, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Wisconsin, Wyoming, and the Virgin Islands of the United States.

Done in Washington, DC, this 18th day of November, 1986.

B.G. Johnson,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 86–26311 Filed 11–20–86; 8:45 am]

BILLING CODE 3410-34-M

Packers and Stockyards Administration

9 CFR Part 202

Rules of Practice Governing Proceedings Under the Packers and Stockyards Act; Rules Applicable to Reparation Proceedings

AGENCY: Packers and Stockyards Administration, U.S.D.A.

ACTION: Final rule

SUMMARY: Amends § 201.111 of the existing "Rules of Practice Governing Proceedings Under the Packers and Stockyards Act—Reparation Proceedings". This amendment limits the right to oral hearing to cases involving ten thousand dollars ($10,000) or more in alleged damages. In cases involving less than that amount, an oral hearing may be held at the discretion of the presiding officer.

EFFECTIVE DATE: December 22, 1986. Reparation proceedings pending on such date in which oral hearings have not been scheduled shall be handled pursuant to the rules as amended herein. Other such proceedings shall be handled pursuant to the rules as previously in effect.

FOR FURTHER INFORMATION CONTACT: Harold W. Davis, Director, Livestock Marketing Division, U.S. Department of Agriculture, Washington, DC 20250 (202) 447–6951.

SUPPLEMENTARY INFORMATION: Section 309 of the Packers and Stockyards Act, 1921, as amended, provides, among other things, for reparation cases, private actions for damages for certain violations, in which the Secretary adjudicates claims for monetary damages. The Department's decision in any such cases is subject to judicial review, that is, it can be contested further in court by any party.

An analysis was made of reparation cases handled by the Department since January 1980. The amounts involved ranged from $250.00 to over $500,000.00. Forty-four percent (44%) involved less than $10,000. Many of these cost more to litigate than the amount involved. The cost, to all parties, including the Agency, of an oral hearing is estimated to generally range from $5,000 to $10,000. Providing discretionary authority to grant oral hearings in cases involving less than $10,000 will significantly decrease the cost of such proceedings to the Department and also to the private parties in the cases.

Justice will continue to be served in cases where less than $10,000 is involved. Such cases will be handled by written hearings, which are already authorized in the current rules.

Public participation in this amendment is not believed to be necessary because the amendment is expected to have little, if any, impact other than to provide the same action more efficiently.

Notice of proposed rulemaking is not required by law for this amendment on the basis that it constitutes "rules of agency * * * procedure, or practice" under 5 U.S.C. 553(b)(A).

The amendment is not within the Department's criteria for designating rules as "significant," published at 43 FR 21986 *et seq.* in compliance with Executive Order 12044 on "Improving Government Regulations."

About proceedings pending on the effective date of this amendment, we believe the fact that any such proceeding is handled pursuant to the rules as amended will not affect its outcome.

Executive Order

Regulatory impact analysis is not required for this amendment because it has been determined not to be a "major" rule as defined by section 1(B) of E.O. 12291. It will not have an annual effect on the economy of $100 million or more, will not result in major increases in costs or prices for consumers, individual industries, Government agencies, or geographic regions, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets.

Regulatory Flexibility Act

This amendment has been determined not to have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1980 (44 U.S.C. 250)

No information collection requirements are affected by this amendment.

List of Subjects in 9 CFR Part 202

Administrative practice and procedure, Reparation proceedings.

Done at Washington, DC, this 18th day of November, 1986.

B.H. (Bill) Jones,

Administrator, Packers and Stockyards Administration.

PART 202—[AMENDED]

Accordingly, Title 9 CFR Part 202 is amended as set forth below:

1. The authority citation for Part 202 continues to read as follows:

Authority: Sec. 407, 42 Stat. 169, as amended, 72 Stat. 1750, 77 Stat. 79, and 90 Stat. 1252–3 (7 U.S.C. 228); 7 CFR 2.17, 2.56.

2. Section 202.111 is revised to read as follows:

§ 202.111 Rule 11: Hearing, oral or written.

(a) *When held.* A hearing, oral or written, shall be held unless: (1) Each respondent admits or is deemed to admit sufficient allegations of the complaint to support the full amount claimed by the complainant as reparation; (2) each respondent admits liability to the complainant in the full amount claimed by the complainant as reparation; (3) before a hearing has been completed the parties agree in writing that the proceeding may be decided on the basis of the record as it stands at the time such agreement is filed; or (4) before a hearing has been completed the parties settle their dispute or the complainant withdraws the complaint.

(b) *Whether oral or written.* The hearing provided for in paragraph (a) of this section shall be oral if: (1) $10,000 or more is in controversy and any respondent files a written request for an oral hearing with such respondent's answer; or (2) $10,000 or more is in controversy and any complainant files a written request for an oral hearing on or before the 10th day after service on such complainant of notice that no respondent has filed a timely request for an oral hearing; or (3) less than $10,000 is in controversy and the presiding officer determines, upon written request by any party thereto, that an oral hearing is necessary to establish the facts and circumstances giving rise to the controversy. The hearing shall be written if not oral.

(c) *Withdrawal of request.* If $10,000 or more is in controversy and a party has timely filed a request for oral hearing, such party may withdraw such request at any time prior to completion of an oral hearing. If such a withdrawal leaves no pending request for oral hearing in the proceeding, and if the presiding officer has not decided that the hearing should be oral, each other party shall be served with notice of this and shall be given 10 days to request an oral hearing. If any party files a request for oral hearing in such time, the hearing shall be oral in accordance with paragraph (b) of this section.

(d) *Presiding Officer's recommendation.* The presiding officer may recommend voluntary withdrawal of a request for oral hearing, timely filed. Declining to make such withdrawal shall not affect the rights or interests of any party.

(e) *Representation.* Any party may appear in an oral hearing, or file evidence in a written hearing, in person or by counsel or other representative. For unethical or contumacious conduct in or in connection with a proceeding, the presiding officer may preclude a person from further acting as attorney or representative for any party to the proceeding; any such order of the presiding officer shall be served on the parties; an appeal to the Judicial Officer may be taken from any such order immediately.

[FR Doc. 86–28254 Filed 11–20–86; 8:45 am]

BILLING CODE 3410-02-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Ch. VII

Joint Policy Statement on Basic Financial Services; Interpretive Ruling and Policy Statement Number 86–2

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interpretive Ruling and Policy Statement Number 86–2.

SUMMARY: The NCUA Board has adopted as its statement of general policy for federally insured credit unions the Federal Financial Institutions Examination Council (FFIEC) policy entitled "Joint Policy Statement on Basic Financial Services."

EFFECTIVE DATE: November 4, 1986.

ADDRESS: National Credit Union Administration Board, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Nicholas Veghts, Office of Examination and Insurance, at the above address, or telephone: (202) 357–1065.

SUPPLEMENTARY INFORMATION: At their October 2, 1986, meeting, the FFIEC approved a recommendation to the five regulatory financial agencies to adopt the Joint Policy Statement on Basic Financial Services. This Statement encourages efforts of trade associations and individual depository institutions toward the offering of basic financial services that would be accessible to low and moderate-income customers. It does not identify any particular accounts or services that institutions should offer. Instead, it identifies in broad terms the basic concepts that should be considered:

- A safe place to keep money
- A way to get cash; and
- A way to make third-party payments.

The Statement also states that any programs offered should be consistent with safe and sound business practices.

Dated this 4th day of November 1986.

By the National Credit Union Administration Board.

Rosemary Brady,

Secretary of the Board.

Interpretive Ruling and Policy Statement Number 86–2; Joint Policy Statement on Basic Financial Services

NCUA wishes to encourage such efforts by trade associations and individual credit unions that promote the offering of basic financial services, consistent with safe and sound business practices. While the specific types of services will, of course, vary because of differences in local needs and in the characteristics of individual credit unions, we encourage efforts to meet certain minimum needs of all consumers, in particular:

- The need for a safe and accessible place to keep money;
- The need for a way to obtain cash (including, for example, the cashing of government checks);
- The need for a way to make third party payments.

We believe that industry trade associations have a key role to play in this effort, and are in a position to encourage a constructive response without the rigidities of legislation or regulation. We realize that some associations have such programs already underway.

These programs could usefully:

1. Encourage members to offer and appropriately publicize low-cost basic

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financial services such as those listed above.

2. Survey the current availability of such services among member credit unions.

3. Make available to members not providing such services material reflecting the successful experiences of other organizations.

[FR Doc. 86-26253 Filed 11-20-86; 8:45 am]

BILLING CODE 7535-01-M

FARM CREDIT ADMINISTRATION

12 CFR Parts 620 and 621

Disclosure to Shareholders; Accounting and Reporting Requirements

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration Board (FCA Board) adopted final amendments to existing regulations Part 620—Disclosure to Shareholders, and Part 621—Accounting and Reporting Requirements. The amendments to Part 620 delete certain disclosure requirements; limit specified disclosures to particular relevant situations; and make various related and technical changes. The amendments to Part 621 correct certain accounting provisions that may result in the misclassification of some loans in the financial statements of Farm Credit System (System) institutions.

EFFECTIVE DATE: These regulations shall become effective November 21, 1986; however, an officer or director who resigns from office before July 1, 1987, and does not stand for reelection in 1987 shall not be required to make disclosures otherwise required under § 620.3(j)(3) of the regulations.

FOR FURTHER INFORMATION CONTACT: Gary L. Norton, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020.

SUPPLEMENTARY INFORMATION:

Part 620—Discussion

On March 13, 1985, the Farm Credit Administration (FCA) adopted final regulations requiring the preparation and distribution of financial and operating reports to shareholders. See 51 FR 8644 (March 13, 1986). The final regulations established standards for the form, content, and distribution of annual reports by System banks and associations to shareholders. These regulations were further supplemented to require quarterly financial reporting as well. See 51 FR 21336 (June 12, 1986). Prior to the adoption of these regulations, no uniform standards existed and there was considerable variation in the reports of System institutions. The FCA regulations are modeled after regulations of Federal bank regulatory agencies and the Securities and Exchange Commission (SEC) applicable to banks and bank holding companies that are public companies under the Securities Exchange Act of 1934 (1934 Act), but are tailored to take into account structural and operational differences between System institutions and other federally chartered financial institutions and the value of disclosure to the participation of shareholders in their cooperative lending institutions.

Since the regulations were adopted, the FCA received a number of comments related to paragraph (j)(3) of § 620.3 regarding disclosures of indebtedness to the institution by senior officers and directors, their immediate families, and affiliated organizations.

This paragraph of the regulation requires that the reporting institution state in its annual report to shareholders, if true, that there have been loans outstanding during the last fiscal year to date to senior officers and directors that were made in the ordinary course of business on the same terms available to other persons for comparable transactions and that do not involve more than a normal risk of collectibility. Disclosure of loans to senior officers and directors, and their immediate families, and affiliated organizations need be made only if the loans do not meet these criteria. If a loan to any of the specified persons meets any of the disclosure criteria under the regulation, the person's name and the particulars of the loan as specified in the regulation must be described.

The comments received fall primarily into several categories. Some of the commentators objected to any disclosures of loans to officers, directors, their immediate families, and affiliates to shareholders, believing such disclosure constitutes an invasion of their privacy. Some of these commentators appear to believe that disclosure is routinely required even if the loans are performing loans, made in the ordinary course of business and on the same terms available to other borrowers. The majority of the other commentators do not object to some disclosure of senior officers' and directors' loans, but disagree with requiring the disclosure of loans made to immediate family members and affiliated organizations that meet the disclosure criteria. These commentators believe that such disclosure constitutes an inappropriate invasion of privacy of persons who have nothing to do with management of the institution; interferes with the control of immediate family members and affiliated organizations over disclosures of their private business affairs; is inconsistent with the alleged understanding by such persons at the time the loans were executed that the loan terms would be kept confidential; and will result in a flood of litigation. A number of commentators recommended that if a disclosure of loans to family members is to be made, disclosure only be required where a business relationship between such family members exists.

Another category of commentators suggested that no disclosures of the type described be required with respect to an officer or director who resigns or otherwise leaves office during the fiscal year or declines to stand for reelection. These commentators believe no useful purpose is served in requiring such disclosure if the persons involved have no further connection with the management or board of the institution.

Many of the comment letters reflect a lack of familiarity with the disclosure requirements for public companies, asserting incorrectly that FCA regulations are more extensive than those of other Federal regulators of publicly held financial institutions. While there are minor differences between the regulators, the basic regulatory framework and disclosure format is substantially similar to that of the other Federal regulators.

While the FCA has not taken a position on whether the voting stock of System institutions constitutes a security under the 1934 Act, the FCA's regulation is premised upon the belief that the System as an interdependent unit, whose stock is widely held and whose debt securities are widely distributed to and traded by the public, should be subject to disclosure requirements similar to those required of other public companies. The stock of System institutions does represent an economic interest in, and obligation to the respective institutions which carries attendant risks. In addition, such disclosure is needed to provide shareholders with sufficient information to hold directors and officers accountable for the performance of their fiduciary duties, to alert them to conflicts of interests or potential conflicts of interest, and to act as a prophylactic to keep such conflicts from arising. Further, the Board believes that since stockholders of System institutions are also borrowers from those institutions, FCA disclosure requirements can be viewed as protecting borrowers rights to full information concerning the operations of the institutions and the relationship and dealing of director and officers, and their associates, to the institution.

The FCA Board considered and rejected assertions that the requirements of the regulation amount to an interference with, or an invasion of personal rights of privacy. The System is part of the larger financial community and, as such, must be prepared to operate by standards similar to those that apply to other financial institutions such as bank holding companies, commercial banks, savings and loan associations, savings banks, and finance companies whose equities and debt obligations are widely held by the public. For years, the officers and directors of those other publicly owned institutions have been subject to the same type of disclosure required under the subject regulations. The public policy decision was made long ago that one who chooses to serve as an officer or director of a public financial institution must accept the fact that his or her direct and indirect interests in or relationships with the institution should be subject of disclosure to persons to whom a fiduciary duty is owed. It should be noted that in spite of these and other factors, public financial institutions have not been unable to attract qualified persons to serve as officers and directors, and there is no reason to believe that the System will not be able to continue to do so once those participating in its management and boards adjust to comparable regulation.

The FCA Board also considered the purposes and value of the regulation in the context of the agency's changed regulatory approach which is designed to reflect the mandate of the Farm Credit Amendments Act of 1985 that the agency operate as an arm's-length regulator. The FCA believes that approaches such as disclosure to shareholders can provide an appropriate market-type substitute for more direct FCA regulation in some areas.

Some commentators noted the existence of State privacy laws which they allege may be violated by the disclosure regulations. The FCA Board notes that such State laws do not in any way interfere with the application of the disclosure regulations of any of the various Federal financial regulators. Where a Federal agency lawfully adopts such regulations, State laws on the subject are preempted to the extent they interfere with the application of the regulations. The fact that this issue has long ago been resolved is evidenced by the historic compliance with similar Federal disclosure regulations by banks, thrift institutions, and public companies located in the States where the concerned communicators reside.

The FCA Board has determined that, notwithstanding the soundness of the basis for and approach of the regulations some changes can be made in the regulations, to respond to the concerns of the commentators without compromising the effectiveness of the regulation.

First, since the purpose of the disclosure is to provide sufficient information to shareholders to evaluate the performance of directors and senior officers of their fiduciary duties, the FCA Board has determined that it is not necessary to name a family member whose loan is required to be disclosed. Rather, it is sufficient to disclose: (1) The name of the officer or director involved; (2) the fact that a loan has been made by the institution to a member of his or her immediate family or affiliated organization that meets the disclosure criteria; and (3) the information about the loan specified in the regulation. The FCA Board has further determined that in order to accomplish the purposes of the regulation, the definition of immediate family should include, consistent with the practice of the other Federal financial institution regulators, spouse, mothers- and fathers-in-law, brothers- and sisters-in-law, and sons- and daughters-in-law. This change would further protect the privacy of immediate family members by expanding the class of persons to whom the disclosure could be attributable, thereby making the individual less likely to be identifiable.

In addition, the FCA Board has determined that certain of the specific disclosures required are relevant only in certain situations. For example, the interest rate and repayment terms are pertinent only if the loan was made on preferential terms. The amount past due and the reason the loan involves more than a normal risk of collectibility is pertinent only if the loan is disclosed because it involves more than a normal risk of collectibility.

Accordingly, the FCA Board amends 12 CFR 620.3(j)(3) so that where the regulation requires disclosure of loans made by the institution to a family member or affiliated organization of an officer or director, the name of the family member or organization need not be stated. Instead, the revised regulation requires only the disclosure of (1) the name of the senior officer or director, (2) the fact that the loan to an immediate family member meets one of the regulatory criteria for disclosure, and (3) the specific information concerning the loan required by the regulation. Similarly, the FCA Board amends § 620.3(j)(2)—Transactions other than loans, to delete the requirement to disclose the name of the immediate family member or an affiliated organization. In addition, the FCA Board amends § 620.3(j)(3)(i) to clarify that the provision applies to members of the immediate family and affiliated organizations of senior officers and directors.

Section 620.3(j)(3) is further amended to require that the loan interest rate and repayment terms be disclosed only if the loan is made on preferential terms, and to require that the amount past due and the reason the loan involved more than a normal risk of collectibility be disclosed only if the loan involves more than a normal risk of collectibility. It should be noted that this aspect of the modified disclosure applies also to loans of a senior officer or director which are required to be disclosed.

Finally, the FCA Board amends in 12 CFR 620.1(c) the definition of immediate family to include spouse, parents, children, siblings, mothers- and fathers-in-law, brothers- and sisters-in-law, and sons- and daughters-in-law.

With respect to the commentators' suggestion that the disclosure provisions should not apply to senior officers or directors who resign or otherwise leave office during the fiscal year, the FCA Board has determined that the effectiveness of the regulation would be compromised if officers and directors could avoid disclosure by leaving office prior to the end of the fiscal year. The preventive effect of the regulation would be undermined if this were permitted. Shareholders would be deprived of meaningful information about potential conflicts of interest which may have involved persons servicing the institution during the course of the year which would give them a basis for holding past and current members of management and board accountable. Also, shareholders would be deprived of relevant information that they would find useful were such persons to run for election at a later date. While disclosure is required of a nominee for director, such disclosure relates only to the prior fiscal year. For these reasons, the FCA Board declines to make the change requested by the commentators.

The FCA Board has determined that, as a transitional matter, it is appropriate to allow an officer or director who

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resigns or otherwise leaves office prior to July 1, 1987, and does not stand for election in 1987 to avoid the requirements of § 620.3(j)(3). The FCA Board is persuaded by the argument that such persons originally undertook their duties without knowledge that in doing so they might be required to make disclosures concerning their financial affairs and those of their immediate families and affiliated organizations. Therefore, the FCA will not consider as a violation of the regulation the omission of disclosure otherwise required by the regulation with respect to senior officers or directors who resign or otherwise leave office prior to the end of fiscal 1986 and who do not intend to run for reelection in 1987.

Part 621—Discussion

Existing regulation § 621.2(a)(15)(iv) defines "nonaccrual loan" to include (1) all loans 90 days past due unless adequately secured and in process of collection and (2) all loans past due for 180 days without regard to the adequacy of the security or collection efforts. This definition is consistent with the definition of nonaccrual loans used by other Federal bank regulators except that other regulators do not use the 180-day criterion. The 180-day criterion was designed to encourage prompt servicing of past due loans by limiting the phrase "in process of collection" to servicing actions which have corrected deficiencies within 180 days.

The FCA Board believes loans should be classified as nonaccrual if they are not fully collectible with respect to principal and interest. The FCA Board has determined that a criterion that is based solely on time past due may result in the classification of some loans as nonaccrual even if they are fully collectible. The FCA Board believes there are other methods of encouraging prompt collection that do not have this effect.

Accordingly, the FCA Board adopts an amendment to the regulation that eliminates the 180-day criterion and defines "in process of collection" more broadly to encourage prompt collection and establish clearly definable minimum standards for System institutions to follow in determining whether past due loans are in process of collection. The existing regulation provides that a loan is in process of collection when collection of the debt is proceeding in due course through legal action or, in appropriate circumstances, through collection efforts not involving formal legal action that are reasonably expected to result in repayment of the debt in full or in its restoration to current status. Under the revised rule, a loan will be considered in process of collection only if a written plan of collection meeting the requirements of the regulation has been adopted by the institution and is documented in the loan file, the borrower and the institution have acted substantially in accordance therewith, and collection efforts are proceeding in due course. The regulation requires that the plan specify (1) the reasons the selected collection method was chosen over other methods; (2) the approvals necessary to implement the plan in accordance with the institution's policies and procedures; and (3) the actions necessary to collect the debt and the dates by which such actions must be accomplished. Where actions by the borrower are necessary, the plan must include the borrower's written agreement to complete the actions by the specified dates. The requirement to specify the reasons the selected collection method was chosen is intended to encourage consideration of various alternatives for correcting delinquencies, including restructurings.

Under both the current and the revised regulation, a loan past due 90 days or more but not well secured must be transferred to nonaccrual status regardless of whether it is "in process of collection."

The FCA Board finds, pursuant to 5 U.S.C. 553(b), that a notice and comment period is impracticable, unnecessary, and contrary to the public interest and adopts the amendments in final. A notice and comment period is unnecessary for Part 620 because the Board adopts the amendments in response to concerns raised by comments received after the regulation was adopted in final and with respect to Part 621 because the issue has been the subject of extensive informal comment and discussion with the commentators overwhelmingly in favor of deleting the 180-day requirement, and the amendments relax a reporting requirement. A notice and comment period is impracticable and contrary to the public interest for Part 620 because it would create uncertainty about the regulation's requirements at a time when institutions should be gearing up for the preparation of the 1986 annual report to shareholders and the resulting delay could interfere with the distribution of annual reports to shareholders in a timely manner. A notice and comment period is impracticable and contrary to the public interest for Part 621 because the delay that would result could cause nonaccrual loans to be overstated in yearend 1986 financial statements. These changes are in no way detrimental to the broader public interest in that they do not compromise in any way the effectiveness of the regulations in serving their intended purposes.

The FCA Board has further determined that in light of the adjournment of Congress and the urgent need for this regulation to become effective, it is necessary to invoke the emergency provision contained in § 5.17(b)(2) of the Farm Credit Act of 1971, as amended. By invoking this exception, the effective date of the regulation will not be delayed until the expiration of the 30 days during which either or both Houses of Congress are in session.

For the same reasons that a notice and comment period is impracticable, unnecessary and contrary to the public interest, the FCA Board has determined, pursuant to 5 U.S.C. 553(d), that the 30-day period specified therein should be waived so that the amendments will be effective immediately upon publication in the **Federal Register**.

List of Subjects in 12 CFR Parts 620 and 621

Disclosure to shareholders, Annual reports, Quarterly reports, Association annual meeting information statement, Accounting and reporting requirements, Reporting and recordkeeping requirement, Report of condition and performance.

For the reasons set forth in the preamble, Chapter VI, Title 12, of the Code of Federal Regulations is amended as follows:

PART 620—DISCLOSURE TO SHAREHOLDERS

1. The authority citation for Part 620 is revised to read as follows:

Authority: Secs. 5.17(9) and (10), Pub. L. 99-205, 99 Stat. 1678, 12 U.S.C. 2252.

Subpart A—Annual Reports to Shareholders

2. Section 620.1 is amended by revising paragraph (c) to read as follows:

§ 620.1 Definitions.

* * * * *

(c) "Immediate family" means spouse, parents, siblings, children, mothers- and fathers-in-law, brothers- and sisters-in-law, and sons- and daughters-in-law.

* * * * *

3. Section 620.3 is amended by revising paragraphs (j)(2), (j)(3)(i), (3) (ii) introductory text, (3)(ii)(A), (B), (D), (E), (F), and (G), and by removing

paragraphs (j)(3)(ii) (H) and (I), to read as follows:

§ 620.3 Contents of the annual report to shareholders.

* * * * *

(j) * * *

(2) Transactions other than loans. For each person who served as a senior officer or director on January 1 of the year following the fiscal year of which the report is filed, or at any time during the fiscal year just ended, describe briefly any transaction or series of transactions other than loans that occurred at any time since the last annual meeting between the institution and such person, any member of the immediate family of such person, or any organization with which such person is affiliated. State the name of the officer or director who entered into the transaction or whose immediate family member or affiliated organization entered into the transaction, the nature of the person's interest in the transaction, and the terms of the transaction. No information need be given where the purchase price, fees, or charges involved were determined by competitive bidding or where the amount involved in the transaction (including the total of all periodic payments) does not exceed $5,000, or the interest of the person arises solely as a result of his or her status as a stockholder of the institution and the benefit received is not a special or extra benefit not available to all stockholders.

(3) * * *

(i) To the extent applicable, state that the institution has had loans outstanding during the last full fiscal year to date to its senior officers and directors, their immediate family members, and any organizations with which such senior officers or directors are affiliated.

* * * * *

(ii) If the conditions stated in paragraph (j)(3)(i) of this section do not apply to the loan(s) of any person who has served as a senior officer or director since the start of the previous fiscal year, or any member of such person's immediate family, or any organization with which such person is or has been affiliated since the start of the previous fiscal year, state:

(A) The name of the officer or director to whom the loan was made or to whose relative or affiliated organization the loan was made.

(B) The largest aggregate amount of each indebtedness outstanding at any time during the last fiscal year.

(C) * * *

(D) The amount outstanding as of the lastest practicable date.

(E) The reasons the loan does not comply with the criteria contained in paragraphs (j)(3(i)(A) through (C) of this section.

(F) If the loan does not comply with paragraph (j)(3)(i)(B) of this section, the rate of interest payable on the loan and the repayment terms.

(G) If the loan does not comply with paragraph (j)(3)(i)(C) of this section, the amount past due, if any, and the reason the loan is deemed to involve more than a normal risk of collectibility.

* * * * *

PART 621—ACCOUNTING AND REPORTING REQUIREMENTS

4. The authority citation for Part 621 is amended to read as follows:

Authority: Sec. 5.17 (9) and (10), Pub. L. 99–205, 99 Stat. 1678, 12 U.S.C. 2252(a)(9), (10).

Subpart A—Accounting Requirements

5. Section 621.2 is amended by removing paragraph (a)(15)(iv) and by revising paragraphs (a)(11), (15)(iii), and (18)(ii) to read as follows:

§ 621.2 Definitions.

(a) * * *

(11) A debt shall be considered in process of collection only if all of the following conditions are met:

(i) A written plan of collection, reasonably expected to result in repayment of the debt or in its restoration to current status, has been prepared by the lending institution setting forth clearly:

(A) The reasons the selected method of collection was chosen over alternate methods,

(B) All approvals necessary to implement the entire plan in accordance with the lending institution's policies and procedures, and

(C) The specific actions that must be taken by the lending institution and the borrower in order to achieve collection in full, or restoration to current status, together with the dates by which each of those actions is expected to be completed.

(ii) If full collection of the debt or its restoration to current status is dependent upon completion of any action by the borrower, the plan shall include the borrower's written agreement to complete all such actions by the dates set forth in the plan of collection.

(iii) It is severely past due and not adequately secured, not in process of collection, and not fully collectible with respect to all principal and interest.

(iv) Collection efforts are proceeding in due course.

* * * * *

(15) * * *

(iii) The plan is documented in the loan filie and the institution and the borrowers(s) have acted substantially in accordance therewith.

* * * * *

(18) * * *

(ii) Are past due 90 days or more but adequately secured and in process of collection; or

* * * * *

Kenneth J. Auberger,

Secretary, Farm Credit Administration Board.

[FR Doc. 86–26252 Filed 11–20–86; 8:45 am]

BILLING CODE 6705-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 425

Regulatory Flexibility Act Review of the Trade Regulation Rule for Use of Negative Option Plan by Sellers in Commerce

AGENCY: Federal Trade Commission.

ACTION: Announcement of results of review of Rule under Regulatory Flexibility Act.

SUMMARY: In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) and a published Plan for Periodic Review of Commission Rules (46 FR 35118 (1981)), the Federal Trade Commission has conducted a review of the Rule on the Use of Negative Option Plans by Sellers in Commerce (16 CFR Part 425). The Commission concludes that based on its review: there is a continued need for the Rule; there is no reason to believe that the Rule has had a significant economic impact on a substantial number of small entities; and the Rule should not be changed.

FOR FURTHER INFORMATION CONTACT: Lewis Franke, Attorney, Federal Trade Commission, 6th and Pennsylvania Ave. NW., Washington, DC 20580. Tel (202) 376–2891.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act requires the Federal Trade Commission to conduct a periodic review of rules issued by the Commission which have or will have a significant economic impact upon a substantial number of small entities and, if it has such impact, whether the particular rule should be amended to

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minimize any significant economic impact on small entities (5 U.S.C. 610).

The Negative Option Rule was promulgated by the Commission on February 15, 1973 and became effective on June 7, 1974 (38 FR 4896 (1973)).

The Rule requires sellers who use negative option plans to comply with certain requirements with respect to their promotional materials, the sending and return of merchandise, and the cancellation of memberships. A negative option plan refers to a plan under which a seller periodically sends to subscribers of the plan an announcement which identifies the merchandise the seller intends to send to subscribers and subscribers are later billed for the merchandise unless the subscriber, by a specified date, instructs the seller not to send the merchandise.

For the purposes of this review, on March 31, 1986 the Commission published a notice in the **Federal Register** soliciting comments on the Rule's impact on small entities (51 FR 11883–11884 (1986)). Questions were posed on: (1) Whether the Rule has had a significant economic impact on a substantial number of small entities; (2) the continued need for the Rule; (3) what burdens, if any, compliance with the Rule (including certain time limitations placed on sellers) places on small entities; (4) what changes if any should be made to the Rule to minimize the economic impact on small entities; (5) to what extent the Rule overlaps, duplicates or conflicts with other laws; and (6) whether any changed conditions have occurred that affect the Rule.

Five organizations submitted comments. Based on the comments received, the Commission has no basis to conclude that the rule has had a significant economic impact on a substantial number of small entities.

The comments further indicate that there is a continuing need for the Rule, that the Rule is accomplishing the objectives contemplated by the Commission, that the Rule serves the interests of both consumers and industry, and that compliance with the Rule, including the time limitations, imposes no undue burdens on industry.

List of Subjects in 16 CFR Part 425

Federal Trade Commission, Trade practices, Advertising.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 86–26259 Filed 11–20–86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 133

[Docket No. 85P–0182]

Grated Cheeses; Amendment of the Standard of Identity; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date for compliance with the final rule amending the standard of identity for grated cheeses. The final rule amending this standard was published in the **Federal Register** of August 25, 1986 (51 FR 30210).

DATES: Effective November 21, 1986, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date. Voluntary compliance may have begun October 24, 1986.

FOR FURTHER INFORMATION CONTACT: Karen L. Carson, Center for Food Safety and Applied Nutrition (HFF–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0110.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 25, 1986 (51 FR 30210), FDA issued a final rule amending the standard of identity for grated cheeses (21 CFR 133.146) to provide for the use of safe and suitable anticaking agents, including powdered cellulose. This action was based on a petition from the National Cheese Institute, the Kroger Co. (Pace Dairy Foods), Sargento Cheese Co., Inc., Schreiber Foods, Inc., and Paniplus Co. (a wholly-owned subsidiary of Continental Baking Co., Inc.).

Any person who would be adversely affected by the regulation could have, at any time on or before September 24, 1986, filed written objections to the final regulation and requested a hearing on the specific provisions to which there were objections. No objections or requests for a hearing were received.

List of Subjects in 21 CFR Part 133

Cheese, Food standards.

PART 133—CHEESES AND RELATED CHEESE PRODUCTS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Food Safety and Applied Nutrition (21 CFR 5.62), notice is given that Part 133, as amended in the **Federal Register** of August 25, 1986 (51 FR 30210), will become effective November 21, 1986. Voluntary compliance may have begun October 24, 1986.

Dated: November 7, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86–26237 Filed 11–20–86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 200, 215, 235, 236, 247, 812, 880, 881, 882, 883, 884, 886 and 912

[Docket No. R–86–974; FR–1588]

Restriction on Use of Assisted Housing

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of deferred effective date.

SUMMARY: In accordance with the HUD appropriation for fiscal year 1987, this document defers, until at least October 1, 1987, the previously announced effective date for a final rule published on April 1, 1986, entitled "Restriction on Use of Assisted Housing" (commonly referred to as the "alien rule"), and of technical amendments to the rule. HUD will publish further notice concerning the effective date of the alien rule.

FOR FURTHER INFORMATION CONTACT: *With reference to today's publication:* Grady J. Norris, Assistant General Counsel for Regulations, Office of General Counsel, Department of Housing and Urban Development, Washington, DC 20410; telephone (202) 755–7055.

For Parts 200, 215, 236, 247, 812, 880, 881, 883, 884 and 886: James Tahash, Program Planning Division, Office of Multifamily Housing Management, Department of Housing and Urban Development, Washington, DC 20410; telephone (202) 426–3944.

For Part 235: John Coonts, Single Family Development Division, Office of Single Family Housing, Department of Housing and Urban Development, Washington, DC 20410; telephone (202) 755–6720.

For Part 912: Edward Whipple, Rental and Occupancy Branch, Office of Public Housing, Department of Housing and Urban Development, Washington, DC 20410; telephone (202) 426–0744.

For Part 882: Madeline Hastings, room 6124, Existing Housing Division, (202) 755–6887, or Gerald Benoit, Room 6128, Voucher Housing Division, (202) 755–6477.

(These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

History

Section 214 of the Housing and Community Development Act of 1980 (as amended by section 329(a) of the Housing and Community Development Amendments of 1981) (42 U.S.C. 1436a) prohibits the Secretary from making financial assistance available under the United States Housing Act of 1937 (Public Housing and section 8), sections 235 and 236 of the National Housing Act, or section 101 of the Housing and Urban Development Act of 1965 (rent supplement), for the benefit of any alien who is not a lawful resident of the United States.

On April 1, 1986, the Department published a final alien rule (51 FR 11198) to implement section 214. Corrections and technical amendments to the April 1, 1986 alien rule were published on April 25, 1986 (51 FR 15611), July 16, 1986 (51 FR 25687), July 28, 1986 (51 FR 26876), and September 29, 1986 (51 FR 34570).

The originally announced effective date of the April 1, 1986 alien rule was July 30, 1986. Two extensions of the effective date were previously announced:

(1) On July 28, 1986, the effective date of the alien rule was delayed to September 30, 1986 (51 FR 26876) in response to a request by several Members of Congress in view of the possible enactment of pending legislation, containing amendments to section 214, during the 1986 Congressional session.

(2) On September 29, 1986, the effective date of the alien rule was further delayed to December 31, 1986 (51 FR 34570), in response to a second Congressional request. At the time of the extension, several legislative proposals for amendment of section 214 were being considered by the Congress. The September 29, 1986 notice of extension explained that the purpose of the extension action was to allow additional time for HUD to take any appropriate action in response to legislation which might be enacted in the ninety-ninth Congress (and to address concerns raised in pending litigation on the alien rule).

New Laws

Two new laws affecting the implementation of section 214 were in fact enacted at the end of the Congressional session.

The first law is HUD's appropriation for fiscal year 1987, section 101(g), Pub. L. 99–500 (signed by the President on October 18, 1986), making appropriations as provided for in H.R. 5313, under H. Rept. No. 99–977 (filed in the House of Representatives October 7, 1986), which restricts use of appropriated funds for implementation or enforcement of the April 1, 1986 alien rule.

The second law is the 1986 immigration reform, which directly amends section 214. The amendments require that: (1) An individual must declare in writing whether he or she is a citizen or legal alien, (2) an alien must present documentation of legal immigration status, and (3) HUD must establish procedures for verification of alien status from automated and other systems of the Immigration and Naturalization Service (INS) (Immigration Reform and Control Act of 1986, sections 121(a)(4), 121(b)(6), 121(c)(4), Pub. L. 99–603, signed by the President on November 6, 1986).

Statutory Moratorium on HUD Implementation or Enforcement of Alien Rule: HUD Appropriation for Fiscal Year 1987

The HUD appropriation for FY 87 provides (section 101(g) of Pub. L. 99–500) that:

> None of the funds appropriated by this or any other Act shall be used to implement or enforce the regulations published on April 1, 1986, at 51 FR 11198–11231 [the HUD alien rule].

This appropriation language originated in the appropriation bill reported by the House Committee on Appropriations (H.R. 5313). The Appropriations Committee Report (H. Rep. 99–731, July 31, 1986, p. 20) states:

> Legislation revising the underlying requirements for verification of eligibility is under consideration by the Congress. The [appropriation] bill includes language prohibiting the implementation of HUD regulations that would restrict the eligibility of aliens for Federal housing assistance during fiscal year 1987. This language would prevent the hardship that would needlessly result from imposing the regulations without giving the Congress sufficient time to assess the full implications of HUD's proposed actions. (H.R. Rep. No. 731, 99th Cong., 2d Sess. (1986), 20).

Immigration Reform Act

The Immigration Reform Act (section 121 of Pub. L. 99–603) amends section 214 to require HUD to verify the legal status of an alien for whom HUD provides the benefit of HUD housing assistance. An individual must declare whether he or she is a citizen or a legal alien. If an alien, the individual must submit documents to show eligible status. The documents must be sent to INS for verification. If an individual is not eligible, assistance must be denied or terminated after affording the opportunity for a fair hearing. The Act also authorizes HUD to pay 100 percent of costs incurred by a public housing agency (PHA) in implementing the alien status verification system. The Act allows HUD to waive use of the INS systems for verification of legal status if a particular verification program would not be cost-effective, or would be redundant.

Deferral of Effective Date

In accordance with the HUD appropriation for fiscal year 1987, this document defers, until at least October 1, 1987, and subject to any intervening legislative changes, the previously announced effective date of the alien rule published on April 1, 1986 and the subsequently published amendments to the rule.

In addition, the alien rule will not be made effective until promulgation, after notice and opportunity for public comment, of regulation revisions to implement the amendments of section 214 contained in the Immigration Reform Act. HUD is currently examining what regulatory action may be necessary to implement these amendments.

It is the position of the Department that the statutory prohibition on housing assistance for illegal aliens, which is contained in section 214 as amended by the 1986 immigration reform legislation, is not self-implementing. Owners and PHAs may not take any action to deny or terminate assistance pursuant to section 214 before the effective date of a HUD regulation implementing this statute.

HUD will subsequently publish further notice concerning the effective date of the alien rule.

Dated: November 13, 1986.

J. Michael Dorsey,

Acting Secretary.

[FR Doc. 86–26177 Filed 11–20–86; 8:45 am]

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Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 812

[Docket No. R-86-1205; FR-1829]

Shared Housing in the Section 8 Existing Housing Program; Correction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule that was published on June 11, 1986 (51 FR 21300) and previously corrected on July 3, 1986 (51 FR 24324) and on August 18, 1986 (51 FR 29463). Amendatory language contained in this final rule with respect to § 812.2 relied upon the anticipated prior effectiveness of a change to be made in the format by another final rule entitled "Restriction on Use of Assisted Housing," which was originally published on April 1, 1986 (51 FR 11198). That rule has not been made effective, and the terms of the Department's appropriation for Fiscal Year 1987 (section 101(g), Pub. L. 99500 (approved October 18, 1986)) prohibit implementation of the April 1, 1986 rule until at least October 1, 1987. Therefore, this correction revises the format of § 812.2 so that the amendatory instruction of the June 11 rule makes sense. In addition, this correction eliminates an obsolete reference to a defined term for "nonimmigrant student alien"—a change that would have been accomplished by the earlier effectiveness of the April 1, 1986 rule.

EFFECTIVE DATE: The rule published June 11, 1986, which this document corrects, has not yet become effective. HUD will publish a notice of the effective date in a future issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500. (This is not a toll-free number.)

PART 812—[CORRECTED]

Accordingly, the Department corrects FR Document 86–13126 published on June 11, 1986, as set forth below. With respect to § 812.2, this correction supersedes the correction published on August 18, 1986 at 51 FR 29463.

§ 812.2 [Corrected]

In the rule published on June 11, on page 21307, column 3, the amendatory instruction for item 2 is corrected to read:

"2. Section 812.2 is amended as follows:

a. By removing paragraph (d)(2) and paragraph (g);

b. By removing the alphabetical designations in front of the defined terms and by alphabetizing the list of definitions;

c. By removing the designation "(1)" from the term "Family" and redesignating subparagraphs (i), (ii), and (iii) as paragraphs (a), (b), and (c).

d. By revising the definitions of disabled person, displaced person, elderly family, family, handicapped person and single person; and by adding definitions of elderly person and live-in aide, to read as follows:".

Dated: November 17, 1986.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 86–26176 Filed 11–20–86; 8:45 am]

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24 CFR Part 885

[Docket No. N-86-1652; FR-2302]

Loans for Housing for the Elderly or Handicapped; Fiscal Year 1987 Interest Rate

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of section 202 loan interest rate-fiscal year 1987.

SUMMARY: This Notice establishes 9.25 percent per annum as the interest rate for loans that are made during Fiscal Year 1987 for housing for the elderly or handicapped under section 202 of the Housing Act of 1959.

FOR FURTHER INFORMATION CONTACT: Robert W. Wilden, Director, Assisted Elderly and Handicapped Housing Division, 451 Seventh Street SW., Room 6116, Washington, DC 20410–8000, telephone (202) 426–8730. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Under 24 CFR 885.410(g)(2), the Secretary of Housing and Urban Development is required to publish an annual notice establishing the interest rate for loans for housing for the elderly or handicapped under section 202 of the Housing Act of 1959. This interest rate may not exceed either:

(1) A rate determined by the Secretary of the Treasury to be the average interest rate on all interest-bearing obligations of the United States then forming a part of the public debt computed at the end of the fiscal year immediately prior to the date on which the loan is made, plus an allowance to cover administrative costs and probable losses under the program. (This allowance has been determined by the Secretary of Housing and Urban Development to be one-fourth of one percent (.25%) per annum for both the construction and permanent loan periods); or

(2) Any statutory ceiling on interest rates or allowances for administrative costs and probable losses for such loans as may be applicable. (24 CFR 885.410(g)(1).)

On September 30, 1986, the President signed Joint Resolution 353 (Pub. L. 99–430). This law provides that section 202 loans made in Fiscal Year 1987 shall bear an interest rate that does not exceed 9.25 percent per annum (including the allowance for administrative costs and probable losses).

The interest rate on the described interest-bearing obligations of the United States at the end of Fiscal Year 1986 (as determined by the Secretary of the Treasury) was 9.25 percent per annum. This rate plus the .25 percent per annum allowance for administrative costs and probable losses yields an interest rate of 9.50 percent per annum, a rate in excess of 9.25 percent per annum. Accordingly, this Notice announces that the Secretary of HUD has established the interest rate for section 202 loans made during Fiscal Year 1987 at the statutory ceiling of 9.25 percent per annum.

Under 24 CFR 50.20(l) an environmental finding is not necessary because the statutorily required establishment of interest rates is among matters that are categorically excluded from the environmental requirements of 24 CFR Part 50.

Authority: Sec. 202, Housing Act of 1959, U.S.C. 1701q; Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 13, 1986.

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 86–26242 Filed 11–20–86; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1978

Rules Implementing Section 405 of the Surface Transportation Assistance Act of 1982; Interim Final Rule; Request for Comments

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Interim rule; adoption of rules of procedure; request for comments.

SUMMARY: Section 405 of the Surface Transportation Assistance Act of 1982 (hereinafter the "STAA"), Pub. L. 97–424, 96 Stat. 2097, 2157–58, enacted January 6, 1983 (49 U.S.C. 2301 *et seq.)*, provides protection to employees in the trucking industry from discrimination on account of activity related to commercial motor vehicle safety. Interpretive rules for section 405 will be proposed in Subpart A of Part 1978, which will be published at a later date. This subpart sets forth rules of practice and procedure for implementing section 405. Although this rule is procedural in nature and, thus, not subject to the notice and comment procedures of the Administrative Procedure Act, OSHA invites those concerned with this interim final rule to submit comments. A final rule will be published after the Agency receives and reviews the public's comments.

DATES: These rules are effective December 22, 1986. Comments, in duplicate, must be received on or before December 22, 1986.

ADDRESS: Send comments, in duplicate, to: Eugene A. Lopez, Office of the Solicitor, Room S–4004, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James Foster, Office of Information, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3637, Washington, DC 20210, (202–523–8151).

SUPPLEMENTARY INFORMATION:

I. General Information

Pursuant to section 405 a covered employee who believes he or she has been discriminated against because of activity related to commercial motor vehicle safety or health may file a complaint with the Secretary of Labor (Secretary) within 180 days after the alleged discrimination. The Secretary will then investigate the complaint and within sixty days after it was filed issued findings as to whether there is reason to believe that section 405 has been violated.

If the Secretary finds that the complaint has merit he will also issue a preliminary order requiring, where appropriate, abatement of the violation, reinstatement with back pay and related compensation, the payment of compensatory damages, and the payment of the employee's expenses in bringing the complaint. Either the employee or the person named in the complaint may object to the findings, the preliminary order, or both, but the filing of an objection does not operate as a stay of a reinstatement order. If no objection is filed within thirty days, the findings and the preliminary order are final. However, if a timely objection is filed the objecting party is entitled to a hearing on the objection. Within 120 days of the conclusion of the hearing a final order will be issued. A party aggrieved by the final order may seek judicial review in a court of appeals within sixty days after the order. The Secretary may seek enforcement of preliminary and final orders in the federal district courts. The validity of a final order may not be challenged in enforcement proceedings.

Pursuant to Secretary's Order No. 9–83, 48 FR 35736 (August 5, 1983) the Assistant Secretary for Occupational Safety and Health (OSHA) has been delegated the authority of the Secretary to administer section 405, with certain exceptions, because he has the responsibility of administering section 11(c) of the Occupational Safety and Health Act of 1970 (OSH Act), 29 U.S.C. 660(c). Section 11(c) is similar to section 405 in that both sections protect employees against discrimination on account of activity related to occupational safety or health. Administrative law judges of the Department of Labor conduct hearings under section 405 and the Secretary may review their decisions. The Office of the Solicitor of Labor provides legal advice to the Assistant Secretary, and represents the Assistant Secretary in administrative litigation and represents the Secretary in the Federal courts.

These rules, together with those rules set forth at 29 CFR Part 18, set forth procedures for the submission of complaints under section 405, investigations, issuance of findings and preliminary orders, objections thereto, litigation before administrative law judges, post-hearing administrative review, withdrawals and settlements, judicial review, and judicial enforcement. The procedures are designed to achieve the just and speedy resolution of section 405 cases.

II. Regulatory Impact Analysis

In accordance with Executive Order 12291 (46 FR 13193, February 17, 1981), OSHA has carefully assessed the potential impact of these rules of procedure for section 405 cases. OSHA has concluded that this regulation is not a "major" rule under Executive Order 12291 which would necessitate further economic impact evaluation and the preparation of a regulatory analysis.

Finally, OSHA finds that the provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96–353, 94 Stat. 1164, 5 U.S.C. 601 *et. seq.*) do not apply because these rules, procedural in nature, are not subject to the notice and comment procedures of the Administrative Procedure Act.

III. Paperwork Reduction Act

OSHA has determined that the provisions of the Paperwork Reduction Act of 1980, (44 U.S.C. Chapter 35), do not apply to these rules because they govern the conduct of administrative actions and investigations involving an agency against specific individuals or entities. 5 CFR 1320.3(c).

IV. Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210. These rules are issued pursuant to section 405 of the Surface Transportation Assistance Act of 1982 (Pub. L. 97–424), 49 U.S.C. 2301 *et seq.*) and Secretary of Labor's Order No. 9–83, 48 FR 35736, and No. 18–75, December 10, 1975, and with respect to the procedures dealing with the relationship between section 405 and section 11(c) procedures, pursuant to section 11(c)(2) of the Occupational Safety and Health Act of 1970 [29 U.S.C. 660(c)(2)] and section 8(g)(2) of the OSH Act [29 U.S.C. 657(g)(2).]

Accordingly, pursuant to section 405 of the Surface Transportation Assistance Act of 1982, Pub. L. 97–424, 49 U.S.C. 2305, sections 11(c)(2) and 8(g)(2) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 660(c)(2) and 657(g)(2), 5 U.S.C. 553, and Secretary's Order No. 9–83, 48 FR 35736, Part 1978 is added to Title 29 of the Code of Federal Regulations as set forth below. No notice or opportunity for comments need be provided because these rules are rules of practice and

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procedure and, therefore, are exempt from rulemaking procedures under section 553(b)(A) of the Administrative Procedure Act, 5 U.S.C. 553(b)(A). However, public comments are invited for a period of 30 days following publication of this interim rule. Comments raising significant issues will be addressed at the time of issuance of a final rule.

List of Subjects in 29 CFR Part 1978

Employer-employee relations; Administrative practice and procedure, Labor; Occupational safety and health.

Signed at Washington, DC this 19th day of November, 1986.

John A. Pendergrass,

Assistant Secretary.

PART 1978—RULES FOR IMPLEMENTING SECTION 405 OF THE SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982 (STAA)

Subpart A—Interpretive Rules—[Reserved]

Subpart B—Rules of Procedure

Complaints, Investigations, Findings and Preliminary Orders

Sec.
1978.100 Purpose and scope.
1978.101 Definitions.
1978.102 Filing of discrimination complaint.
1978.103 Investigation.
1978.104 Issuance of findings and preliminary orders.
1978.105 Objections to the findings and the preliminary orders.

Litigation

1978.106 Scope of rules; applicability of other rules; notice of hearing.
1978.107 Parties.
1978.108 Captions; titles of cases.
1978.109 Decisions and orders.
1978.110 Judicial review.
1978.111 Withdrawal of section 405 complaints, objections, and findings; settlement.

Miscellaneous Provisions

1978.112 Arbitration or other proceedings.
1978.113 Judicial enforcement.
1978.114 Statutory time periods.
1978.115 Special circumstances; waiver of rules.

Authority: Sec. 405 of the Surface Transporation Assistance Act of 1982 (Pub. L. 97–424, 49 U.S.C. 2301 *et seq.*) and Secretary of Labor's Order No. 9–83, 48 FR 35736, and No. 18–75, December 10, 1975, and with respect to the procedures dealing with the relationship between sec. 405 and section 11(c) procedures, pursuant to sec. 11(c)(2) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 660(c)(2)) and sec. 8(g)(2) of the OSH Act (29 U.S.C. 657(g)(2)).

Subpart A—Interpretive Rules—[Reserved]

Subpart B—Rules of Procedure

Complaints, Investigations, Findings and Preliminary Orders

§ 1978.100 Purpose and scope.

(a) This subpart implements the procedural aspects of section 405 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 2305, which provides for employee protection from discrimination because the employee has engaged in protected activity pertaining to commercial motor vehicle safety and health matters.

(b) Procedures are established by this subpart pursuant to the statutory provision set forth above for the expeditious handling of complaints of discrimination made by employees, or persons acting on their behalf. These rules, together with those rules set forth at 29 CFR Part 18, set forth the procedures for submission of complaints under section 405, investigations, issuance of findings and preliminary orders, objections thereto, litigation before administrative law judges, post-hearing administrative review, withdrawals and settlements, judicial review and enforcement, and deferral to other forums.

§ 1978.101 Definitions.

(a) "Act" means the Surface Transportation Assistance Act of 1982 (STAA) (49 U.S.C. 2301 *et seq.*).

(b) "Secretary" means Secretary of Labor or persons to whom authority under the Act has been delegated.

(c) "Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health or the person or persons to whom he or she delegates authority under the Act.

(d) "Employee" means (i) a driver of a commercial motor vehicle (including an independent contractor while in the course of personally operating a commercial motor vehicle); (ii) a mechanic; (iii) a freight handler; or (iv) any individual other than an employer; who is employed by a commercial motor carrier and who in the course of his employment directly affects commercial motor vehicle safety, but such term does not include an employee of the United States, any State, or a political subdivision of a State who is acting within the course of such employment.

(e) "OSHA" means the Occupational Safety and Health Administration.

(f) "Complainant" means the employee who filed a section 405 complaint or on whose behalf a complaint was filed.

(g) "Named person" means the person alleged to have violated section 405.

(h) "Person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives or any group of persons.

§ 1978.102 Filing of discrimination complaint.

(a) *Who may file.* An employee may file, or have filed by any person on the employee's behalf, a complaint alleging a violation of section 405.

(b) *Nature of filing.* No particular form of complaint is required.

(c) *Place of filing.* The complaint should be filed with the OSHA Area Director responsible for enforcement activities in the geographical area where the employee resides or was employed, but filing with any OSHA officer or employee is sufficient. Addresses and telephone numbers for these officials are set forth in local telephone directories.

(d) *Time for filing.* (1) Section 405(c)(1) provides that an employee who believes that he has been discriminated against in violation of section 405 (a) or (b) ". . . may, within one hundred and eighty days after such alleged violation occurs," file or have filed by any person on the employee's behalf a complaint with the Secretary.

(2) A major purpose of the 180-day period in this provision is to allow the Secretary to decline to entertain complaints which have become stale. Accordingly, complaints not filed within 180 days of an alleged violation will ordinarily be considered to be untimely.

(3) However, there are circumstances which will justify tolling of the 180-day period on the basis of recognized equitable principles or because of extenuating circumstances, *e.g.*, where the employer has concealed or misled the employee regarding the grounds for discharge or other adverse action; or where the discrimination is in the nature of a continuing violation. The pendency of grievance-arbitration proceedings or filing with another agency are examples of circumstances which do not justify a tolling of the 180-day period. *International Union of Electrical Workers* v. *Robbins & Meyers*, 429 U.S. 229 (1976). The Assistant Secretary will not ordinarily investigate complaints which are determined to be untimely.

(e) *Relationship to section 11(c) complaints.* A complaint filed by an employee within thirty days of the alleged violation or otherwise timely filed pursuant to section 11(c) of the OSH Act, which alleges discrimination relating to safety or health, shall be deemed to be a complaint filed under both section 405 and section 11(c).

Normal procedures for investigations under both sections will be followed, except as otherwise provided.

(f) Upon receipt of a valid complaint, OSHA shall notify the named person of the filing of the complaint, and of his or her rights under 29 CFR 1978.102(b).

§ 1978.103 Investigation.

(a) OSHA shall investigate and gather data concerning the case as it deems appropriate.

(b) Within twenty days of his or her receipt of the complaint the named person may submit to OSHA a written statement and any affidavits or documents explaining or defending his or her position. Within the same twenty days the named person may request a meeting with OSHA to present his or her position. The meeting will be held before the issuance of any findings or preliminary order. At the meeting the named person may be accompanied by counsel and by any persons with information relating to the complaint, who may make statements concerning the case.

§ 1978.104 Issuance of findings and preliminary orders.

(a) After considering all the relevant information collected during the investigation, the Assistant Secretary will issue, within sixty days of the filing of the complaint, written findings as to whether there is reasonable cause to believe that the named person or others have discriminated against the complainant in violation of section 405 (a) or (b). If the Assistant Secretary concludes that there is reasonable cause to believe that a violation has occurred, he shall accompany his findings with a preliminary order providing the relief prescribed in section 405(c)(2)(B). Such order will include, where appropriate, a requirement that the named person abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay), terms, conditions and privileges of the complainant's employment; and payment of compensatory damages. At the complainant's request the order may also assess against the named party the complainant's costs and expenses (including attorney's fees) reasonably incurred in filing the complaint.

(b) The findings and the preliminary order shall be sent by certified mail, return receipt requested, to all parties of record. The letter accompanying the findings and order shall inform the parties of the right to object to the findings and/or the order and shall give the address of the Chief Administrative Law Judge. At the same time, the Assistant Secretary shall file with the Chief Administrative Law Judge, U.S. Department of Labor, the original complaint and a copy of the findings and/or order.

(c) Upon the issuance of findings that there is reasonable cause to believe that a violation has occurred, any pending section 11(c) complaint will be suspended until the section 405 proceeding is completed. When the section 405 proceeding is completed the Assistant Secretary will determine what action, if any, is appropriate on the section 11(c) complaint. If the Assistant Secretary's findings indicate that a violation has occurred, the Assistant Secretary shall make a separate determination as to whether section 11(c) has been violated.

§ 1978.105 Objections to the findings and the preliminary order.

(a) *Basic procedures.* Within thirty days of receipt of the findings or preliminary order the named person or the complainant, or both, may file objections to the findings or preliminary order providing relief or both and request a hearing on the record. The objection and request shall be in writing and shall state whether the objection is to the findings or the preliminary order or both. Such objection shall also be considered a request for a hearing. The date of the postmark shall be considered to be the date of filing. Objections shall be filed with the Chief Administrative Law Judge, U.S. Department of Labor, Washington, DC and copies of the objections shall be mailed at the same time to the other parties of record, including the Assistant Secretary's designee who issued the findings and order.

(b) *Effective date of findings and preliminary order and failure to object.* (1) The findings and the preliminary order shall be effective thirty days after the named person's receipt thereof, or on the compliance date set forth in the preliminary order, whichever is later, unless an objection to the findings or preliminary order has been timely filed. However, the portion of any preliminary order requiring reinstatement shall be effective immediately upon the named person's receipt of the findings and preliminary order, regardless of any objections thereto.

(2) If no timely objection is filed with respect to either the findings or the preliminary order, such findings or preliminary order, as the case may be, shall become final and not subject to judicial review.

Litigation

§ 1978.106 Scope of rules; applicability of other rules; notice of hearing.

(a) Except as otherwise noted, hearings shall be conducted in accordance with the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges promulgated at 29 CFR Part 18, 48 FR 32538 (July 15, 1983), amended at 49 FR 2739 which are hereby incorporated by reference. Hearings shall be conducted as hearings *de novo.*

(b) Upon receipt of an objection, the Chief Administrative Law Judge shall immediately assign the case to a judge who shall, within seven days following the receipt of the objection, notify the parties, by certified mail, of the day, time, and place of hearing. The hearing shall commence within 30 days of the filing of the objection, except upon a showing of good cause or unless otherwise agreed to by the parties.

(c) If both complainant and the named person object to the findings and/or order, the objections shall be consolidated and a single hearing shall be conducted. If the objections are not received simultaneously, the hearing shall commence within 30 days of the receipt of the later objection.

(d) At the time the hearing order issues, the judge may order the prosecuting party to file a prehearing statement of position, which shall briefly set forth the issues involved in the proceeding and the remedy requested. Such prehearing statement shall be filed within three days of the receipt of the hearing order and shall be served on all parties by certified mail. Thereafter, within three days of receipt of the prosecuting party's prehearing statement, the other parties to the proceeding shall file prehearing statements of position.

§ 1978.107 Parties.

(a) In any case in which only the named person objects to the findings or the preliminary order the Assistant Secretary ordinarily shall be the prosecuting party. In such a case the complainant shall also be a party and may engage in discovery, present evidence or otherwise act as a party. The named person shall be the party-respondent. If, at any time after the named person files objections, the Assistant Secretary and complainant agree, the complainant may present the case to the judge. Under such circumstances the case will be handled as if it had arisen under paragraph (b) of this section.

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(b) In any case in which only the complainant objects to findings that the complaint lacks merit, to the preliminary order, or to both, the complainant shall be the prosecuting party. The Assistant Secretary may as of right intervene as a party at any time in proceedings under this paragraph. The named person shall be the party-respondent.

(c) In any case in which both the complainant and the named person object to the preliminary order the Assistant Secretary shall be the prosecuting party. The complainant and the named person shall be party-respondents. In any such case, if the named person also objected to the findings the Assistant Secretary, complainant, and named party shall each have the party status, rights, and responsibilities set forth in paragraph (a) of this section with respect to the findings.

§ 1978.108 Captions; titles of cases.

(a) Cases described in § 1978.106(a) shall be titled: *Assistant Secretary of Labor for Occupational Safety and Health, Prosecuting Party* and *(Name of Complainant), Complainant* v. *(Name of named person), Respondent.*

(b) Cases described in § 1978.106(b) shall be titled: *(Name of complainant), Complainant* v. *(Name of named person), Respondent.*

(c) Cases described in § 1978.106(c) shall be titled: *Assistant Secretary of Labor for Occupational Safety and Health, Prosecuting Party* v. *(Name of person), Respondent.*

* * * * *

(Name of Complainant), Complainant v. *(Name of named person), Respondent.*

(d) The titles listed in paragraphs (a), (b), and (c) of this section shall appear at the left upper portion of the intitial page of any pleading or document (other than exhibits) filed.

§ 1978.109 Decisions and orders.

(a) *Administrative Law Judge decisions.* The administrative law judge shall issue a decision within 30 days after the close of the record. The close of the record shall occur no later than 30 days after the filing of the objection, except upon a showing of good cause or unless otherwise agreed to by the parties. For the purposes of the statute the issuance of the judge's decision shall be deemed the conclusion of the hearing. The decision shall contain appropriate findings, conclusions, and an order pertaining to the remedy which, among other things, may provide for reinstatement of a discharged employee and also may include an award of the complainant's costs and expenses (including attorney's fees) reasonably incurred in bringing and litigating the case, if the complainant's position has prevailed. The decision shall be forwarded immediately, together with the record, to the Secretary for review by the Secretary or his or her designee. The decision shall be served upon all parties to the proceeding.

(b) The administrative law judge's decision and order concerning whether the reinstatement of a discharged employee is appropriate shall be effective immediately upon receipt of the decision by the named person. All other portions of the judge's order are stayed pending discretionary review by the Secretary.

(c) *Final order.* (1) Within 120 days after issuance of the administrative law judge's decision and order, the Secretary shall issue a final decision and order based on the record and the decision and order of the administrative law judge.

(2) The parties may file with the Secretary briefs in support of or in opposition to the administrative law judge's decision and order within thirty days of the issuance of that decision unless the Secretary, upon notice to the parties, establishes a different briefing schedule.

(3) The findings of the administrative law judge with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be considered conclusive.

(4) Where the Secretary determines that the named party has not violated the law, the final order shall deny the complaint.

(5) The final decision and order of the Secretary shall be served upon all parties to the proceeding.

§ 1978.110 Judicial review.

(a) Within 60 days after the issuance of a final order under § 1978.109, any person adversely affected or aggrieved by such order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the person resided on the date of the violation (49 U.S.C. 2305(d)(1)).

(b) A final order of the Secretary shall not be subject to judicial review in any criminal or other civil proceedings (49 U.S.C. 2305(d)(2)).

(c) The record of a case, including the record of proceedings before the administrative law judge, shall be transmitted by the Secretary to the appropriate court pursuant to the rules of such court.

§ 1978.111 Withdrawal of section 405 complaints, objections, and findings; settlement.

(a) At any time prior to the filing of objections to the findings or preliminary order, an employee may withdraw his or her section 405 complaint by filing a written withdrawal with the Assistant Secretary. The Assistant Secretary shall thereafter determine whether the withdrawal shall be approved. The Assistant Secretary shall notify the named person of the approval of any withdrawal.

(b) The Assistant Secretary may withdraw his findings or a preliminary order at any time before the expiration of the 30-day objection period, provided that no objection has yet been filed, and substitute new findings or preliminary order. The date of the receipt of the substituted findings or order shall begin a new 30-day objection period.

(c) At any time before the findings or order become final, a party may withdraw his objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the Secretary. The judge or the Secretary, as the case may be, shall affirm any portion of the findings or preliminary order with respect to which the objection was withdrawn.

(d) At any time after the filing of a section 405 complaint by an employee and before the findings and/or order become final, the case may be settled if the Assistant Secretary, the complainant, and the named person agree to a settlement. If such settlement is reached after objections have been filed pursuant to § 1978.104, notice of settlement shall be filed with the administrative law judge or the Secretary, as the case may be. However, if the named person makes an offer to settle the case which the Assistant Secretary, when acting as the prosecuting party, deems to be a fair and equitable settlement of all matters at issue and the complainant refuses to accept the offer, the Assistant Secretary may decline to assume the role of prosecuting party as set forth in § 1978.106(a). In such circumstances, the Assistant Secretary shall immediately notify the complainant that his review of the settlement offer may cause the Assistant Secretary to decline the role of prosecuting party. After the Assistant Secretary has reviewed the offer and when he or she has decided to decline the role of prosecuting party, the Assistant Secretary shall immediately notify all parties of his decision in writing and, if the case is before the administrative law judge, or the

Secretary on review, a copy of the notice shall be sent to the appropriate official. Upon receipt of the Assistant Secretary's notice, the parties shall assume the roles set forth in § 1978.106(b).

Miscellaneous Provisions

§ 1978.112 Arbitration or other proceedings.

(a) *General.* (1) An employee who files a complaint under section 405 of the Act may also pursue remedies under grievance arbitration proceedings in collective bargaining agreements. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board. The Secretary's jurisdiction to entertain section 405 complaints, to investigate, and to determine whether discrimination has occurred, is independent of the jurisdiction of other agencies or bodies. The Secretary may proceed with the investigation and the issuance of findings and orders regardless of the pendency of other proceedings. *MacDonald* v. *City of West Branch, Michigan,* _____ U.S. _____, 104 S. Ct. 1799 (1984). See *Alexander* v. *Gardner-Denver Co.,* 415 U.S. 36 (1974).

(2) However, the Secretary also recognizes the national policy favoring voluntary resolution of disputes under procedures in collective bargaining agreements. See, e.g., *Barrentine* v. *Arkansas-Best Freight System,* 450 U.S. 728, (1981); *Boys Markets, Inc.* v. *Retail Clerks,* 398 U.S. 235 (1970); *Republic Steel Corp.* v. *Maddox,* 379 U.S. 650 (1965); *Carey* v. *Westinghouse Corp.,* 375 U.S. 261 (1964). By the same token, due deference should be paid to the jurisdiction of other forums established to resolve disputes which may also be related to section 405 complaints.

(3) Where complainant is in fact pursuing remedies other than those provided by section 405, the Secretary may, in his or her discretion, postpone a determination of the section 405 complaint and defer to the results of such proceedings. See *Burlington Truck Lines, Inc.* v. *U.S.,* 371 U.S. 156 (1962).

(b) *Postponement of determination.* When a complaint is under investigation pursuant to § 1978.102, postponement of determination would be justified where the rights asserted in other proceedings are substantially the same as rights under section 405 and those proceedings are not likely to violate rights guaranteed by section 405. The factual issues in such proceedings must be substantially the same as those raised by a section 405 complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination. See *Rios* v. *Reynolds Metals, Co.,* 467 F.2d 54 (5th Cir., 1972); *Spielberg Manufacturing Co.,* 112 NLRB 1080 (1955).

(c) *Deferral to outcome of other proceedings.* A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-by-case basis, after careful scrutiny of all available information. Before the Secretary defers to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular, and free of procedural infirmities, and that the outcome of the proceedings was not repugnant to the purpose and policy of the Act. See *Spielberg Manufacturing Company,* 112 NLRB 1080, 1082 (1955). In this regard, if such other actions initiated by a complainant are dismissed without adjudicatory hearing thereof, such dismissal will not ordinarily be regarded as determinative of the section 405 complaint.

§ 1978.113 Judicial enforcement.

Whenever any person has failed to comply with a preliminary order of reinstatement or a final order or the terms of a settlement agreement, the Secretary may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to occur.

§ 1978.114 Statutory time periods.

The time requirements imposed on the Secretary by these regulations are directory in nature. While every effort will be made to meet these requirements, there may be instances when it is not possible to meet these requirements. Failure to meet these requirements does not invalidate any action by the Assistant Secretary or Secretary under section 405.

§ 1978.115 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of these rules, or for good cause shown, the judge or the Secretary on review may, upon application, after 3 days notice to all parties and intervenors, waive any rule or issue such orders as justice or the administration of section 405 requires.

[FR Doc. 86–26350 Filed 11–20–86; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 223, and 252

Federal Acquisition Regulation Supplement Concerning Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives at Contractor Facilities

AGENCY: Department of Defense (DOD).

ACTION: Interim rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory Council has approved temporary revisions to the Defense Federal Acquisition Regulation Supplement (DFARS) which address requirements specified within DoDI 5220.30, entitled "Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives at Contractor Facilities," dated 26 September 1984. The DFARS revisions prescribe a contract clause for uniform use in all contracts involving arms, ammunition and explosives, which clause incorporates DoD Instruction 5220.30 by reference. Unless sooner rescinded or extended the DFARS revisions expire 30 September 1987, which period will allow sufficient time for conversion of the physical security standards within DoDI 5220.30 to an appropriate military specification or military standard.

DATES: *Effective date:* The interim rule is effective October 31, 1986, and expires on September 30, 1987, unless sooner rescinded.

Comments: Interested parties are invited to submit written comments on or before January 20, 1987, to the Executive Secretary, DAR Council, at the address below. Comments received will be considered in revising the interim rule which will be implemented by Departmental guidance. Please cite DAR Case 85–102 in all correspondence related to this subject.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, Attn: Mr. Charles W. Lloyd, Executive Secretary, ODASD(P)DARS, c/o OASD(A&L)(MRS), Room 3C841, The Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

Recent investigation by the DOD Inspector General has revealed a lack of uniform compliance by DOD contracting

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personnel in ensuring that the physical security standards prescribed by DoDI 5220.30 are incorporated within DOD contracts involving the manufacture or use of arms, ammunition and explosives. These standards were first made applicable to DOD contractors by DoDI 5100.84, entitled "Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives at Contractor Facilities," dated 23 September 1980. The present successor DoDI 5220.30 embodies physical security standards prescribed earlier by DoDI 5100.84; by DOD 5100.76-M entitled, "Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives," dated 1 June 1978; and, by regulations issued by the Treasury Department, Bureau of Alcohol, Tobacco and Firearms (BATF) pursuant to 18 U.S.C. 842(j), codified at 27 CFR Part 55. Unless sooner rescinded or extended, the DFARS revisions will expire on 30 September 1987 which will allow sufficient time for adoption of an appropriate military specification or standard replacing the physical security standards presently prescribed within DoDI 5220.30.

The DFARS revisions approved by the DAR Council include a contract clause which highlights principal aspects of DoDI 5220.30 such as (1) the requirement that contractors allow representatives of the Defense Investigative Service (DIS) access to facilities at reasonable time for compliance reviews, and (2) the requirement that subcontractors must comply with DoDI 5220.30 where subcontracts involve arms, ammunition or explosives. Pending conversion to a military specification or standard, which will be available to contractors from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120, contracting officers are directed by the revisions to provide a copy of DoDI 5220.30 to contractors/offerors upon request. Use of the DoDI will facilitate contractor compliance with BATF storage standards codified at 27 CFR Part 55, which have been inserted within the DoDI.

B. Determination To Issue an Interim Rule

Theft or loss of sensitive DoD arms, ammunition and explosives, made possible by inadequate contractor physical security, could potentially result in loss of life or the diversion of these items for illegal purposes. Therefore, DoD concludes that compelling reasons exist and require issuance of an interim rule without prior publication for public comment.

C. Regulatory Flexibility Act

The interim rule incorporates by reference, in standard contract format, requirements which have been prescribed previously by the Treasury Department and by the DoD pursuant to statutory authority, and which have been applicable to DoD contracts since 23 September 1980. However, recent investigations by the DoD IG revealed a lack of uniform compliance by DoD contracting officers in incorporating the appropriate physical security standards in contracts. This interim rule establishes uniform procedures for use by Government personnel in implementing these long standing procedures. Accordingly, the Department certifies that this rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 et seq. A regulatory flexibility analysis has therefore not been performed. Comments are invited from small entities and other interested parties.

D. Paperwork Reduction Act

The interim rule incorporates previously established information collection requirements within the meaning of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., as implemented by regulations prescribed within 5 CFR Part 1320, and does not require additional information collection efforts by contractors. Accordingly, the Act is inapplicable and approval by OMB of the interim rule is not required. Nothwithstanding the inapplicability of the Act, the interim rule has been adopted in a manner consistent with DoD policy of reducing paperwork burdens on the public by directing that contracting officers provide a copy of DoDI 5220.30 to contractors/offerors upon request. Additionally, the DoDI incorporates BATF standards published in 27 CFR Part 55 which are not otherwise readily available to contractors. The intended conversion of DoDI 5220.30 to a military specification or standard by 30 September 1987, available through the U.S. Naval Publications and Forms Center, will further facilitate public access.

List of Subjects in 48 CFR Parts 204, 223, and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, the DoD FAR Supplement contained in 48 CFR Parts 204, 223 and 252 is amended as set forth below.

1. The authority citation for 48 CFR Parts 204, 223 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 204—ADMINISTRATIVE MATTERS

2. Section 204.202 is amended by adding to paragraph (c), paragraph (6) to read as follows:

204.202 DoD distribution requirements.

* * * * *

(c) * * *

(6) One copy or an extract to the cognizant Defense Investigative Service (DIS) office as listed in DoDI 5220.30, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives at Contractor Facilities whenever the clause prescribed at 223.7103 is included in the contract.

* * * * *

3. Section 204.470 is added to read as follows:

240.470 Physical security of conventional arms, ammunition, and explosives.

Policies and procedures regarding physical security requirements peculiar to selected Conventional Arms, Ammunition, and Explosives are addressed in Subpart 223.71.

PART 223—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

4. A new Subpart 223.71, consisting of sections 223.7100 through 223.7105, is added to read as follows:

Subpart 223.71—Safeguarding Conventional Arms, Ammunition, and Explosives Within Industry

Sec.

223.7100	Scope of subpart.
223.7101	Definitions.
223.7102	Policy.
223.7103	Preaward responsibilities.
223.7104	Notification to DIS.
223.7105	Clause.

Subpart 223.71—Safeguarding Conventional Arms, Ammunition, and Explosives Within Industry

223.7100 Scope of subpart.

This subpart prescribes policy, procedures, responsibilities and requirements for safeguarding Conventional Arms, Ammunition, and Explosives (AA&E) located at contractor or subcontractor facilities.

223.7101 Definitions.

Conventional arms, ammunition, and explosives as used in this subpart means only those items covered by DoDI 5220.30, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives at Contractor Facilities. In general, these items include sensitive (attractive to criminal elements), conventional (non-nuclear) material which are man portable and easily employed with little modification, or associated firing components.

223.7102 Policy.

The physical security requirements of DoDI 5220.30, "Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives at Contractor Facilities," are to be applied to all contracts involving conventional AA&E.

223.7103 Preaward responsibilities.

(a) Techical or requirements organizations initiating purchase requests must identify when AA&E is involved and which physical security requirements in DoDI 5220.30 apply; and

(b) The contracting officer prior to award of a contract involving AA&E shall request the cognizant Defense Investigative Service (DIS) Industrial Security office to evaluate and certify the prospective contractor's ability to safeguard AA&E consistent with DoDI 5220.30. This should be accomplished as part of the normal Preaward Survey process by completing Item "G" section III and Block 23 of the Standard Form 1403.

223.7104 Notification to DIS.

Whenever the clause 252.223-7003 is included in a contract, the contracting activity shall provide an extract or a copy of the contract to the cognizant DIS office (see 204.203(c)(6)).

223.7105 Clause.

The contracting officer shall insert the clause at 252.223-7003, Safeguarding Arms, Ammunition, and Explosives in all solicitations and contracts involving any AA&E covered by DoDI 5220.30. The clause need not be included in contracts performed in Government-Owned Contractor Operated ammunition production facilities. The contracting officer shall provide a copy of DoDI 5220.30 to each contractor/offeror upon request.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 252.223-7003 is added to read as follows:

252.223-7003 Safeguarding arms, ammunition, and explosives.

As prescribed in 223.7105, insert the following clause:

Safeguarding Arms, Ammunition, and Explosives (Oct 1986)

(a) The Contractor shall comply with the applicable requirements of Enclosure (2) to DoDI 5220.30, entitled "Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives at Contractor Facilities," in effect on the date of award of this contract. A copy of the DoD Instruction is available from the contracting officer upon request.

(b) The Contractor shall allow representatives of the Defense Investigative Service (DIS) access, at all reasonable times, into its facilities for purposes of reviewing its compliance with the physical security standard applicable to this contract.

(c) The Contractor shall insert this clause, including this paragraph (c) with appropriate changes in the designation of the parties, in all subcontracts hereunder which involve Conventional Arms, Ammunition, and Explosives (AA&E) as defined in section 223.7101 of the DoD FAR Supplement.

(d) The Contractor shall provide a copy of any subcontract involving AA&E to the cognizant DIS office within ten (10) days after issuance of the subcontract.

(e) Nothing contained herein shall relieve the Contractor from complying with applicable Federal, state and local laws, ordinances, codes and regulations (including the obtaining of licenses and permits) in connection with performance of this contract. Nothing contained herein shall be construed as relieving the Contractor from its responsibilities for the physical security at contractor or subcontractor facilities.

(End of clause)

[FR Doc. 86-26302 Filed 11-20-86; 8:45 am]

BILLING CODE 3810-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1063

[Ex Parte No. MC-95 (Sub-4)]

Practices of Motor Common Carriers of Passengers; Checked Baggage Prohibitions and Liability Exemptions

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a rule (proposed at 49 FR 26439, June 23, 1986) allowing motor passenger carriers to refuse to accept money as checked baggage and to disclaim liability for loss or damage to any money unknowingly accepted in checked baggage. The Commission has found the rule, requested by the National Bus Traffic Association, Inc., to be a commercially reasonable approach to an obvious problem. NBTA had asserted that the present liability for lost money harms motor passenger carriers both in terms of claims that they have been required to pay and because of enhanced security measures they have been required to invoke.

EFFECTIVE DATE: December 22, 1986.

FOR FURTHER INFORMATION CONTACT:

James L. Brown, (202) 275-7898;
or
Louis E. Gitomer, (202) 275-7691.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

The Commission certifies that the adopted rules will not have a significant economic impact on a substantial number of small entities. The amendment will have a small beneficial impact on small passenger carriers by relieving them of some of the burden of questionable liability claims.

List of Subjects in 49 CFR Part 1063

Aged, Baggage, Blind, Buses, Handicapped, Motor carriers.

Decided: November 14, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,
Secretary.

Appendix

Title 49 of the Code of Federal Regulations is amended as follows:

PART 1063—REGULATIONS GOVERNING THE ADEQUACY OF INTERCITY MOTOR COMMON CARRIER PASSENGER SERVICE

1. The authority citation for 49 CFR Part 1063 is revised to read as follows:

Authority: 5 U.S.C. 553 and 559, and 49 U.S.C. 10102, 10321, 10701, 10702-10705, 10706, 10721, 10722, 10724, 10730, 10741, 10761, 10762, 10764, 10922, 11101, 11141-11145, 11701, 11702, 11707, 11708, 11901, 11904, 11906, 11909, 11910, and 11914.

2. Section 1063.4 is amended by revising paragraphs (c) (2) and (3) as follows:

§ 1063.4 Baggage service.

* * * * *

(c) * * *

(2) Carriers may refuse to accept as checked baggage and, if unknowingly accepted, may disclaim any liability for loss or damage to the following articles:

(i) Articles whose transportation as checked baggage is prohibited by law or regulation;

(ii) Fragile or perishable articles, articles whose dimensions exceed the size limitations in the carrier's tariff, receptacles with articles attached or protruding, guns, and materials that have a disagreeable odor;

(iii) Money; and

(iv) Those other articles that the Commission decides, on a case-by-case basis on petition by the carrier, may be transported with no liability or may be refused as part of checked baggage.

(3) All other articles must be accepted as checked baggage and liability for them may not be eliminated. However, carriers need not offer excess value coverage on valuable articles. "Valuable articles" include negotiable instruments, valuable papers, manuscripts, irreplaceable publications, documents, jewelry, watches, and other articles of extraordinary value.

* * * * *

[FR Doc. 86-26277 Filed 11-20-86; 8:45 am]

BILLING CODE 7035-01-M

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49 CFR Part 1152

[Ex Parte No. 274 (Sub-8) [1]]

Exemption of Out of Service Rail Lines

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: On reopening, the Commission is reaffirming its decisions to exempt from regulation under 49 U.S.C. 10903-05 rail line abandonments and trackage rights and service discontinuances where no traffic has originated or terminated on the line for at least 2 years, subject to certain conditions, including the standard labor protective conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979) (*OSL*). The Commission is also reaffirming its adoption of the rules at 49 CFR 1152.50 with an amendment to clarify that parties seeking greater labor protection than the standard conditions set forth in *OSL* must file a petition for partial revocation of the exemption. These actions are being taken following the findings of the U.S. Court of Appeals for the D.C. Circuit that the Commission's prior decision was inadequate in several areas.

EFFECTIVE DATE: The decision and rules are effective on December 22, 1986.

FOR FURTHER INFORMATION CONTACT: Joseph Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: The final rules being reaffirmed in this decision were published at 48 FR 27547, June 16, 1983 and 49 FR 17002, April 23, 1984, as amended at 49 FR 396, January 4, 1984, 50 FR 8335, March 1, 1985 and 50 FR 24649, June 12, 1985.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC metropolitan area) or toll free (800) 424-5403.

The Commission certified, in the prior proceedings, that these actions will not have a significant economic impact on a substantial number of small entities. We reaffirm that finding.

This action will not significantly affect either the quality of the human environment or energy conservation.

List of Subjects in 49 CFR Part 1152

Administrative practice and procedure, Railroads, and Labor.

Decided: November 3, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Vice Chairman Simmons and Commissioner Lamboley dissented with separate expressions.

Noreta R. McGee,

Secretary.

Appendix

Title 49 of the Code of Federal Regulations is amended as follows:

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

1. The authority citation for 49 CFR Part 1152 continues to read as follows:

Authority: 5 U.S.C. 553, 559, and 704; 16 U.S.C. 1247(d); 31 U.S.C. 9701; 45 U.S.C. 904 and 915; and 49 U.S.C. 10321, 10362, 10505, and 10903 *et seq.*

2. Section 1152.50 is amended by adding a new paragraph (d)(5) to read as follows:

§ 1152.50 Exempt abandonments and discontinuances of trackage rights.

* * * * *

(d) * * *

(5) To address whether the standard labor protective conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979), adequately protect affected employees, a petition for partial revocation of the exemption under 49 U.S.C. 10505(d) must be filed.

[FR Doc. 86-26278 Filed 11-20-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting: Nontoxic Shot Approval Procedures

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: Traditionally, shotshell loads used for hunting waterfowl have been made of lead. As a consequence, spent lead shot is deposited in feeding areas by hunters, where it is frequently mistaken for seeds or grit and ingested by migratory birds and other wildlife. Moreover, spent lead shot that is lodged in the body tissues or contained in the digestive tract of the prey of certain predators, such as bald eagles, is sometimes ingested by these predators as they consume their prey. Ingested lead pellets from both these sources are known to cause sickness and/or death to migratory birds and other wildlife.

A procedure was developed in 1976 for obtaining nontoxic status for shotshell loads that might be used as an alternative to lead shot (50 CFR 20.134). The Fish and Wildlife Service (FWS) had finalized at that time a regulation requiring nontoxic shot for waterfowl hunting in certain areas (50 CFR 20.21(j)). The descriptions of areas in which nontoxic shot is required are presented in 50 CFR 20.108. The only approved nontoxic shot at the present time is steel shot.

It is the responsibility of the Director, FWS, to determine the nontoxic status of shot materials to be used for migratory bird hunting (50 CFR 20.134(a)). Considerable information has accumulated on the subject of lead poisoning among birds since nontoxic shot approval procedures were first developed in 1976. The procedures developed in 1976 were reviewed in 1984 and found to be inadequate in several respects. A proposed rule was offered by the FWS on July 22, 1985 (50 FR 29706) as a revision of 50 CFR 20.134. Comments on the proposal were accepted until September 22, 1985. This final rule establishes toxicity testing procedures that will be followed to

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[1] The instant decision embraces Ex Parte No. 274 (Sub-No. 8A), *Exemption of Out of Service Rail Lines*, 1 I.C.C. 2d 55 (1984).

determine if candidate shot can be approved by the Director, FWS, as nontoxic shot.

EFFECTIVE DATE: This final rule becomes effective on December 22, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240 (202/254-3207).

SUPPLEMENTARY INFORMATION: This revision differs from the former regulation in the following ways:

1. The former regulation required extensive ballistics and toxicity testing before an application could be made. This revision does not require ballistics testing and allows for exchanges of information between the developer and the Director, and guidance from the Director prior to extensive and relatively costly toxicity testing.
2. The former regulation was inflexible with respect to testing procedures. This revision allows for adjustments in procedures by the Director based upon information gathered during preliminary tests.
3. The former procedure compared the toxicity of the candidate material to the toxicity of lead. In this revision the candidate material is compared to steel shot and to lead shot.
4. The former rule had rigid timeframes for public comment and for decisions by the Director. This revision allows the Director to adjust these schedules to the information needs relating to a particular material being tested.
5. Both the former rule and the revision place responsibility for testing and the costs of testing on the developer. However, this revision establishes a procedure that allows the Director to consult with the developer to make certain that expenditures by the developer relate to questions essential to the Director's decision regarding the status of the shot material.

Summary of Public Comment

This rule was published as a proposal for public comment on July 22, 1985 (50 FR 29788). Public comment was received for 60 days following that date. Eleven letters of comment and one phone call were received. Seven of these contacts were from State wildlife agencies, three were from private wildlife organizations, and one from a munitions manufacturer. The State agencies were Delaware Division of Fish and Wildlife; New Jersey Division of Fish, Game, and Wildlife; New York Department of Environmental Conservation; Indiana Department of Natural Resources; Illinois Natural History Survey Division; Nebraska Game and Parks Commission; and Kansas Fish and Game. Private wildlife conservation organizations offering comments were the National Wildlife Federation, Wildlife Legislative Fund of America, and Waterfowl Habit Owners Alliance. The Federal Cartridge Corporation provided a letter of comment. The following paragraphs summarize these comments and offer FWS responses.

Comment: Three States and one private organization expressed concern that under the new regulation the Director has too much latitude in approving or rejecting a candidate material.

FWS response: The Director was given this latitude in order to permit the termination of those tests found not to be necessary, or to add new tests, if necessary. The final rule has been modified to make it clearer that this latitude relates to testing procedures, not to approval of the candidate shot. A candidate must pass the described tests, or their equivalent, to be approved. In some cases the Director could be required to make major changes in the testing procedures, depending on the composition of the material being tested. Prior to final approval of a nontoxic shot, the Director will publish this proposed action for comment. Included in that proposal will be a summary of all test results relating to the proposed action. Consequently, the Director's decision will not be made without public participation, and that point is now included in the final rule.

Comment: Two States and one private organization expressed concern over the comparisons being made in tests and the manner in which acceptable or unacceptable levels of mortality are to be determined. These included (1) objections to using lead shot instead of steel shot as a benchmark, (2) use of an arbitrary percentage, and (3) use of no actual limit of acceptable mortality.

FWS response: The use of steel shot and lead shot in tests of the candidate shot allows several comparisons among a negative control (lead), acceptable control (steel), neutral control (sham-dose), and the candidate. This type of testing yields the most information possible for making decisions, and the FWS has decided to retain it in this final rule. With regard to statistical significance, the proposal permitted a range from 0.01 to 0.10. A more positive statement is made by setting this level at 0.05, and that is how the final rule is worded. A maximum mortality level of 20 percent of that occurring with similar doses of lead shot was included in the proposed rule. That level of mortality was criticized in comments as arbitrary and contrary to the statistical procedures that were outlined in the proposal. This percentage was introduced into the process to give a finite level of tolerance for mortality as compared to other statements of a statistical nature. However, the FWS agrees that the statistical statements are adequate for the decision process and has removed the statement regarding 20 percent of the mortality due to lead shot. Instead, judgments regarding the performance of the candidate shot are based on its performance relative to steel shot, lead shot, and sham-dosings, and the statistical significance of the various comparisons that result from this experimental design. The terms *significant* and *significantly*, as used in these test procedures, refer to a ($P<0.05$) finding of significance. A statistical test that achieves a specified significance level provides objective support for the conclusion that the tested data sets are different. A significance level of 0.05 indicates that if the experiment were to be conducted 100 times under identical conditions, the results would be different from those observed not more than five times.

Comment: Two States and one private organization expressed concern over the term, *sublethal*, and how it is to be defined.

FWS response: We have deleted the term, *sublethal effects*, and replaced it in this final rule with, *effects on the previously mentioned physiological parameters*.

Comments: Two States requested a definition of the term *cold weather*.

FWS response: The FWS has revised the rule to utilize test sites where the mean monthly temperature (December-February) is between 30° and 40° F.

Comment: One State and one private organization expressed concern over the soft food diet used in Tests 1 and 3 and no grit accessibility.

FWS response: Commercially developed duck feeds were chosen for Test 1 to provide an initial test that would not be a worst case situation (corn diet, cold weather) but would show mortality from lead shot at some but probably not all of the prescribed doses. A desired result of the first test was to establish a dose response that could be compared among controls, lead shot, and steel shot. Any candidate that did poorly here would not be tested further. If the candidate passed this test, it would be subjected to a worst case (corn diet, cold weather) in Test 2. A candidate shot would have to be relatively nontoxic in order to pass Tests 1 and 2. The final test, Test 3, is an effort to determine if any effects on reproduction can be demonstrated.

Grit accessibility is omitted in the test design because: (1) it is not needed for a commercial food or corn diet, and (2) grit would have to be standardized to permit valid comparisons between tests peformed at different locations. For example, all grit must contain no calcium, or all grit must contain a fixed amount of calcium, and so on, or a variety of other elements. This would be difficult, if not impossible, to standardize. Consequently, we have chosen to remove grit from the tests.

Comment: A toxicity test for raptors should be included, since raptors are known to feed on crippled, sick, or dead waterfowl that contain lead shot.

FWS response: Toxicity tests for raptors would be desirable but have not been developed at this time. Captive stocks of raptors suitable for testing in this manner do not exist. Based on previous research, we believe it reasonable to assume that shot types that are nontoxic to ducks will be nontoxic to raptors.

Comment: The age of mallards to be tested should be standardized. The proposal implies all ages less than 8 months are acceptable.

FWS response: The age is now stated as approximately 6 to 8 months.

Comment: In Test 3 eggs are left to be incubated by the mallard female rather than collected and placed in an incubator. Captive mallard females are notoriously poor mothers, and this will confound results.

FWS response: In similar tests conducted at the FWS' Patuxent Wildlife Research Center, mallard females have not been poor mothers. In this test, we are more interested in the incubation behavior of the female than in the hatchability of the eggs.

Comment: Fluoroscopy is being used to check on the retention of dosed shot. Daily examination of feces would be a more positive check on this.

FWS response: The cost of pen construction and labor to examine the feces of each test animal on a daily basis was considered excessive in relation to the gains to be made over fluoroscopy.

Comment: The type of hand-reared mallard to be tested should be specified in the regulation.

FWS response: At this point we have no evidence that the genetic makeup of the test mallard is critical to the outcome of the tests. Wild mallards brought into captivity for this purpose are under stress and do not survive as well as birds that are accustomed to pens. It is important that the test animals be mallards of approximately the same size and plumage as wild mallards, and they should be hatched in captivity. We have reworded the regulation to make this point clear.

Comment: These tests are unrealistic with respect to numbers of pellets dosed that diets used. They do not simulate what is happening to wild waterfowl that consume lead shot.

FWS response: It is not the purpose of these tests to simulate what will happen to a wild duck that ingests a pellet. These tests have a single purpose of comparing the *relative* toxicity to mallards of lead, steel, and a candidate material under a standard set of experimental conditions.

Comment: The Federal Cartridge Corporation recommended a 6-part ballistics testing procedure for determining the ballistic performance and acceptability of a candidate shot type, that would strengthen those currently at § 20.134.

FWS response: The necessity for the FWS to set ballistics standards for candidate shot has been reconsidered and a determination made that the existing ammunition industry standards and market forces are sufficient to regulate ballistic acceptability of candidate shot types.

Comment: Numerous wording changes were recommended by the State Natural History Survey of Illinois and by the National Wildlife Federation. These changes were to clarify meaning or improve the instructions in various ways.

FWS response: Many of these wording changes have been incorporated into this final rule.

Economic Assessment

In accordance with Executive Order 12291, it has been determined that this rule is not a major rule. Since no application has been received since 1976, and few applications are likely to occur in the future, it is unlikely that the current regulations or this proposed revision will have any economic effect on small entities. Therefore, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it was determined that this rule would not have a significant economic effect on a substantial number of small entities. A copy of the analysis relating to these decisions, the "Determination of Effects of Proposed Revision of Nontoxic Shot Approval Procedures," can be obtained from the U.S. Fish and Wildlife Service (MBMO), Washington, DC 20240.

Paperwork Reduction Act

This final rule will result in the collection of information from, or place recordkeeping on, the public. The information collection requirements contained in § 20.134 (nontoxic shot approval procedures) have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018.0067.

Authorship

The primary author of this final rule is Keith A. Morehouse, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

PART 20—[AMENDED]

In light of the foregoing, 50 CFR Part 20 is amended as follows:

1. The authority citation continues to read as follows:

Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 701–708h) sec. 3(h), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712); Alaska Game Act of 1925, 43 Stat. 739, as amended, 54 Stat. 1103–04, unless otherwise noted.

2. Section 20.134 is revised to read as follows:

§ 20.134 Nontoxic shot.

(a) *Approval.* (1) The information collection requirements contained in § 20.134 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0067. The information is being collected to provide a basis for which the Director, Fish and Wildlife Service, can conduct a methodical an objective review to approve/disapprove nontoxic shot status sought by an applicant. The information will be used for toxicity assessment of candidate shot submitted for approval by applicant. Response is required to obtain a benefit.

(2) The Director, U.S. Fish and Wildlife Service, shall determine that a specific type of shot material is acceptable for the purposes of 50 CFR 20.21(j), if after a review of applications and supporting data submitted in accordance with this section, together with all other relevant evidence, including public comment, it is concluded that the spent shot material does not impose a significant danger to migratory birds and other wildlife or their habitats.

(b) *Application and review.* (1) All applications under this section shall be submitted to the Director and shall include:

(i) A minimum of 25 pounds of the candidate shot in size equivalent to #4.

(ii) A description of the chemical composition of the candidate shot and a statement of the expected composition variability during large-scale production.

(iii) The applicant's assessment of the potential toxicity of the candidate shot to migratory birds and other wildlife species as compared to lead shot and steel shot.

(iv) The applicant's assessment of the environmental fate of the candidate shot when spent and of any human health or safety issues that may be of concern.

(2) If the Director concludes, on the basis of the technical and scientific data contained in the applicant's submission, that this candidate shot is worthy of further testing, the applicant is notified to submit a plan for conducting initial screening evaluations as outlined in paragraph (c) of this section. The Director shall specify what portion of paragraph (c)(1) should be conducted and any modifications to the procedures that might be necessary. The Director will then announce in the **Federal Register** that a candidate material that shows promise has been identified and further testing will be considered when the developer submits a satisfactory initial screening plan. This announcement will include a description of the chemical composition of the candidate shot.

(3) The initial screening plan submitted by the applicant will be reviewed by the Director. The Director may decline to approve the plan, or any part of it, if deficient in any manner with regard to timing, format, or content requirements that he has placed upon it. The Director, or authorized representative, may inspect laboratory facilities to be used.

(4) Initial screening tests, as described in paragraph (c)(1) of this section, will then be conducted, analyzed, and reported by the applicant to the Director.

(5) The Director will then review results, analytical procedures, and conclusions from screening tests. Within 30 days of receipt of the report, the Director will conditionally approve or unconditionally reject the candidate material and provide written explanation for these decisions.

(6) If the Director conditionally approves the candidate material, the applicant will be advised of the second phase of tests, as described in paragraph (c)(2) of this section. The applicant will be advised to develop and submit a plan for conducting a 30-day dosing test using mallards on a diet of commercial available duck food (paragraph (c)(2) of this section; Toxicity Test 1).

(7) The plan for conducting the 30-day dosing test (Toxicity Text 1) on a diet of commercially available duck food will be submitted to the Director for review and approval. The Director, or authorized representative, will then inspect the test facilities and review the test procedures.

(8) Toxicity Test 1, if approved, is then conducted, analyzed, and reported by the applicant to the Director.

(9) The Director reviews the results and within 30 days will conditionally approve or unconditionally reject the candidate material and provide written explanation for these decisions. If conditionally approved, guidance for further testing is provided the applicant.

(10) This process of requesting a plan, reviewing the plan, accepting or rejecting the plan, conducting tests, analyzing results, reporting results to the Director, followed by a decision by the Director to continue or terminate testing, with written explanation for the rationale, may be repeated as Tests 2 and 3 (described in paragraph (c)(2) of this section) are performed. Following satisfactory completion of Tests 1, 2, and 3, or their equivalent, and publication of a summary of results in the **Federal Register** for public comment, the candidate material is concomitantly proposed for inclusion in 50 CFR 20.21(j).

(11) For the purposes of § 20.134, the terms *significant* and *significantly* refer to a ($P \leqq 0.05$) finding of significance.

(c) *Outline of procedures for testing*—(1) *Initial screening tests.* These tests will be performed on the candidate shot if the inital submission of information required under paragraphs (b)(1)(i) through (v) of this section by the applicant, indicates that it qualifies for further testing. The Director will provide instructions to the applicant concerning the conduct of the following tests.

(i) The candidate shot will be chemically analyzed by the Service or an independent laboratory and the results will be compared to the applicant's descriptions of shot composition and composition variability.

(ii) The candidate shot will be run thorugh a standardized test *in vitro* (see below) that will assess its erosion, in an environment simulating *in vivo* conditions of a waterfowl gizzard, and any release of components into a liquid medium. Erosion characteristics will be compared to those of lead shot and steel shot of comparable size.

Standardized Test for Erosion Rate

Reference: Kimball, W.H., and Munir, Z.A. 1971. The corrosion of lead shot in a simulated waterfowl gizzard. J. Wildl. Mgmt. 35(2):360–365.

Materials

Atomic absorption spectrophotometer.
Drilled aluminum block to support test tubes.
Thermostatically controlled stirring hot plate.
Small teflon coated magnets.
Hydrochloric acid (pH 2.0) and pepsin.
Capped test tubes.
Lead, steel, and candidate shot.

Procedures

Hydrochloric acid and pepsin are added to each capped test tube at a volume and concentration that will erode a single #4 lead shot at a rate of 5 mg/day. Three test tubes, each containing either lead shot, steel shot, or candidate shot, are placed in the aluminum block on the stirring hot plate. A teflon coated magnet is added to each test tube and the hot plate is set at 42°C and 500 rpm. Erosion of shot will be determined on a daily basis for 14 consecutive days by weighing the shot and analyzing the digestion solution with an atomic absorption spectrophotometer. The 14-day procedure will be replicated five times.

Analysis

Erosion rates of the three types of shot will be compared by appropriate analysis of variance and regression procedures. The statistical analysis will determine whether the rate of erosion of the candidate shot is significantly greater or less than that of lead and steel. This determination is important to any subsequent toxicity testing.

(2) *Toxicity tests.* The three tests described in this section represent an evaluation of three major categories of toxic effects: short-term periodic exposure; chronic exposure under adverse environmental conditions; and chronic exposure impact on reproduction. The detail of the experimental procedure can be modified, if necessary, to address the specific composition and erosion characteristics of the candidate shot. The inclusion of lead shot and steel shot control groups is considered necessary for dealing with the experimental variability associated with tests being performed by different laboratories under a variety of conditions beyond control of the experimental protocol. Statistical analyses will be performed on all data from each test. Toxicity tests 1–3 are designed for testing the effects of metal or metalloid shot. If the candidate is not metal or metalloid, other testing procedures will have to be developed to evaluate the effects of the components of the candidate shot. In every case, the test animals will be exposed to the candidate material:

(i) Both acutely and chronically;

(ii) Both stressed and non-stressed by diet and temperature; and

(iii) With comparisons made to lead and steel shot regarding mortality and sublethal effects.

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When special consideration is given to potential impacts on species other than migratory birds and to the environmental fate of nonmetal or nonmetalloid candidate shot, further testing beyond that outlined in this paragraph (c) might be required.

Test 1 (Short-term, 30-day toxicity test using a commercially available duck food).

Materials

100 male and 100 female hand-reared mallards approximately 6 to 8 months old.
These mallards must have plumage and body conformation that resemble wild mallards.
200 elevated, outdoor 1-meter square pens of vinyl-coated wire equipped with food containers and waterers.
Laboratory equipped to perform fluoroscopy, required blood and tissue assays, tissue metal analyses, and necropsies.
Commercial duck food.
Lead, steel, and candidate shot.

Procedures

Mallards will be housed individually in outdoor pens and given *ad libitum* access to food and water. After 3 weeks, they will be randomly assigned to 10 groups (10 males and 10 females/group) and sham-dosed (control) or dosed with two, four, or eight pellets of lead, steel or the candidate shot. Birds will be fluoroscoped 1 week after dosage to check for shot retention. Birds will be observed daily for signs of intoxication and mortality over a 30-day period. Body weight will be determined at the time of dosing, and at days 15 and 30 of the test.

On days 0, 3, 9, 15 and 30, blood will be collected by venipuncture for determination of hematocrit, hemoglobin concentration, red blood cell delta-aminolevulinic acid dehydratase, and zinc protoporphyrin concentration. All survivors will be sacrificed on day 30, and liver delta-aminolevulinic acid dehydratase, and total and protein bound glutathione concentration will be determined. The liver and other appropriate organs will be removed from the sacrificed birds and from other birds dying prior to sacrifice on day 30. The organs will be analyzed for lead and other metals contained in the steel and candidate shot. All birds dying prior to sacrifice will be necropsied to determine pathological conditions associated with death.

Analysis

Mortality among the specified groups will be analyzed with appropriate chi-square statistical procedures. Any effects on the previously mentioned physiological parameters caused by the candidate shot must be significantly less than those caused by lead shot and must not be significantly greater than those caused by steel shot. Physiological data and tissue residue data will be analyzed by analysis of variance or other appropriate statistical procedures to include the factors of shot type, dose, and sex. Comparisons between sacrificed birds and birds dying before sacrifice will be made whenever sample sizes are adequate for a meaningful comparison. The applicant will ensure that copies of all the raw data and statistical analyses accompany the report of this test when it is sent to the Director.

Test 2 (Chronic, 14-week toxicity test in cold weather using a nutritionally-deficient diet). This test will be conducted at a location where the mean monthly temperature during December, January, and February is between 30° and 40°F.

Materials

56 male and 56 female hand-reared mallards approximately 6 to 8 months old. The mallards must have plumage and body conformation that resemble wild mallards.
112 elevated, outdoor 1-meter square pens of vinyl/coated wire equipped with food containers and waterers.
Laboratory equipped to perform fluoroscopy, and required blood and tissue assays, tissue metal analysis, and necropsies.
Whole kernel corn.
Lead, steel, and candidate shot.

Procedures

Mallards will be individually assigned to outdoor, 1-meter square pens of vinyl-coated wire during the first week of December and acclimated to an *ad libitum* diet of whole kernel corn for 2 weeks. Birds will be randomly assigned to seven groups (8 males and 8 females/group) and sham-dosed (control) or dosed with one or four #4 pellets of lead, steel, or the candidate shot.

Birds will be weighed and fluoroscoped weekly. All recovered shot will be weighed to measure erosion. Blood parameters determined in Test 1 will be measured again in this test using blood samples drawn at the initiation of dosage, 24 hours after dosage, and at the end of weeks 1, 2, 4, 8 and 14. At the end of 84 days, all survivors will be sacrificed. The liver and other appropriate organs will be removed from the sacrificed birds and birds dying prior to sacrifice on day 84. The organs will be analyzed for lead and other metals contained in the steel and candidate shot. All birds dying prior to sacrifice will be necropsied to determine pathological conditions associated with death.

Analysis

Mortality among the specified groups will be analyzed with appropriate chi-square statistical procedures. Any effects on the previously mentioned physiological parameters caused by the candidate shot must be significantly less than those caused by lead shot and must not be significantly greater than those caused by steel shot. Physiological data and tissue residues will be analyzed by analysis of variance or appropriate statistical procedures to include the factors of shot type, dose, and sex. Comparisons between sacrificed birds and birds dying before sacrifice will be made whenever sample sizes are adequate for a meaningful comparison. The applicant will ensure that copies of all the raw data and statistical analyses accompany the report of this test when it is sent to the Director.

Test 3 (Chronic dosage study that includes reproductive assessment using a commercially available duck food diet).

Materials

200 male and 200 female hand-reared mallards that have not been through a reproductive season. These mallards must have plumage and body conformation that resemble wild mallards.
Pens capable of holding 5–10 ducks each.
200 elevated, outdoor pens at least 1-meter square, covered with vinly-coated wire, and equipped with feeders, waterers and nest boxes.
Laboratory equipped to perform fluoroscopy and required blood assays.
Commercial duck food (developer pellets, breeder pellets, and starter mash).
Lead, steel and candidate shot.

Procedures

Mallards will be randomly assigned to 10 groups (20 males and 20 females/group) in January and held in same-sex groups of 5–10 individuals until mid-February. The mallards will then be randomly paired, within each group, and moved to outdoor pens (one pair per pen). Ducks will be provided with an *ad libitum* diet of commercial developer pellets until initiation of laying, when the pairs will be switched to breeder pellets. Ducks will be sham-dosed (controls) or dosed with three #4 pellets of lead, steel or candidate shot. Dosing will occur using three different dosing schedules: (1) In January; 2 weeks after initiation of the study; (2) at the initiation of laying; and (3) at both times designated in (1) and (2). The single control group will be sham-dosed at both times.

Birds will be fluoroscoped 1 week after dosage to check shot retention, and weighed every 2 weeks. Blood parameters determined in Tests 1 and 2 will be measured again in this test using blood samples drawn at initiation of the study, at time of dosing, at initiation of incubation, and at sacrifice. All birds will be sacrificed when reaching 7 days of age.

Clutches will be candled to determine fertility of the eggs. Nests will be checked daily to determine the fate of eggs and ducklings. Ducklings will be provided with starter mash after hatching.

Analysis

Any mortality, reproductive inhibition, or effects on the previously mentioned physiological parameters must be significantly less than those caused by lead shot and must not be significantly greater than those caused by steel shot. Physiological and reproductive data will be analyzed by analysis of variance or other appropriate statistical procedures. The applicant will ensure that copies of all raw data and statistical analyses accompany the report of this test when it is sent to the Director.
(Information collection requirements approved by the Office of Management and Budget under control no. 1018-0067)

Dated: October 24, 1986.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-26292 Filed 11-20-86; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 20

Migratory Bird Hunting; Criteria and Schedule for Implementing Nontoxic Shot Zones for 1987–1988 and Subsequent Waterfowl Hunting Seasons.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: When consumed by waterfowl, bald eagles and other migratory birds, spent lead shot often produce lead poisoning and death. As lead poisoning is a significant annual mortality factor for certain species of migratory birds that indirectly results from sport harvest of waterfowl, the annual process of deciding whether, where, and how migratory bird hunting will be allowed under the Migratory Bird Treaty Act must take into account where further curtailment of shot deposition is necessary to protect these species from lead shot exposure and the resultant mortality. To eliminate lead poisoning as a major mortality factor in waterfowl, bald eagles, and certain other migratory birds, the Fish and Wildlife Service (FWS) will ban the use of lead shot for hunting waterfowl and coots nationwide by the 1991–1992 season. This final rule describes the mechanism and schedule by which the nationwide ban on the use of lead shot for hunting waterfowl and coots will be implemented.

EFFECTIVE DATE: December 22, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Matomic Building—Room 536, Washington, DC 20240 (202/254–3207).

SUPPLEMENTARY INFORMATION: Wildlife biologists and others have known at least for the last 100 years that spent lead shot deposited during hunting can cause sickness and death when ingested by waterfowl. In earlier decades, when waterfowl populations were greater in number, this incidental hunting-related mortality was judged too insignificant to warrant measures to attempt to eliminate the problem.

Increasingly, continental waterfowl populations have come under stress from destruction and degradation of their habitat, periodic adverse weather cycles and disease on crowded migration and wintering habitats. By the 1960's and 1970's it became obvious to wildlife managers that there was a need to find an alternative to lead shot because of its toxicity. In 1976, the Department of the Interior published a Final Environmental Statement (FES–76) on the proposed use of steel shot for hunting waterfowl in the United States. The action presented at that time sought to limit further deposition of lead shot in areas used by waterfowl in order to eliminate lead poisoning from ingested lead shot as a significant mortality factor among these birds. This action continues to be implemented 10 years after it was first presented.

Since 1976, nontoxic shot has been required for hunting waterfowl at numerous locations throughout the United States. These requirements are now reflected in both State and Federal hunting regulations. In 1985, about 30 percent of the average annual waterfowl harvest in the United States occurred in designated nontoxic shot zones in 33 States. In 1986, about 49 percent of the average annual waterfowl harvest in the United States will occur in nontoxic shot zones in 44 States.

The majority of wildlife managers and many hunters understand the need for conversion to a nontoxic shot in order to maintain waterfowl populations. However, there are those who believe that steel shot (currently the only approved nontoxic shot available) is not the answer, that it will damage their guns and cripple more waterfowl than lead shot. These concerns are true in part. Shotguns with thin-walled barrels or barrels made of soft steel should not be used for firing steel loads. However, modern shotguns available from the major American arms manufacturers and others are safe for use with steel shot. Numerous tests relating to crippling loss with steel shot have produced results as varied as their individual objectives. There is no clear evidence that a greater crippling loss results from use of steel shot.

Criticism about the need to convert to nontoxic shot also centers on the lack of hunter-observed, lead poisoning mortality. This results from the fact that most lead poisoning occurs after the hunting season when waterfowl can feed undisturbed on hunted areas where shot has been deposited recently and the fact that lead poisoning is a slow, debilitating disease that makes its victims susceptible to predation or other diseases. When encountered, these birds are often mistaken for cripples. Although these factors make it difficult to provide absolute numbers of lead poisoned birds, it is known that signficant losses are occurring annually across the nation, and they are controllable as an acceptable nontoxic substitute for lead shot is available.

In making the annual decision whether, where, and how migratory bird hunting will be allowed under the terms of the Migratory Bird Treaty Act, as amended (16 U.S.C. 703 *et seq.*; 40 Stat. 755), the Secretary of the Interior is required to determine the capability of waterfowl and other migratory bird resources to sustain a sport harvest throughout the various portions of their range. The Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; 87 Stat. 884) requires Federal agencies to conserve endangered species and avoid jeopardizing their continued existence; the Secretary must consider where it is necessary to require nontoxic shot in order to reduce exposure of bald eagles to lead shot in their waterfowl prey. If a determination is made that the use of lead shot must be avoided for the migratory bird hunting to remain in compliance with the requirements of these statutes, the Secretary must implement a program that meets those requirements.

As previously stated, the FWS has implemented a nontoxic shot program since 1976 to alleviate the lead poisoning problem in waterfowl. Only in the past few years, since FES–76 was completed, has it become apparent that lead poisoning from waterfowl hunting is manifesting itself in the endangered and threatened bald eagle populations of the United States. To date, 125 bald eagles have been diagnosed by the FWS' National Wildlife Health Center as dying from lead poisoning; the major source of this lead exposure is believed to be lead pellets embedded in or ingested by hunter-crippled or -killed waterfowl. Accordingly, the FWS has completed a Final Supplemental Environmental Impact Statement (SEIS) on the use of lead shot for hunting migratory birds in the United States, in which a complete review and analysis of the lead poisoning problem in migratory birds is made. Evidence is presented in the Final SEIS that lead poisoning among waterfowl and bald eagles is of sufficient magnitude that a program to ban the use of lead shot for waterfowl and coot hunting nationwide is necessary for the Secretary to comply with statutory requirements.

Information detailing the developing of the Final SEIS strategy to eliminate lead toxicity as a major mortality factor in waterfowl and coots appears in the preamble to the proposed rule for this final rule published in the **Federal Register** on Friday, June 27, 1986 (51 FR 23444). Information on the justification for selecting this strategy (Alternative VII$_3$) has also been set out in the Final SEIS; the June 27, 1986, **Federal Register** proposed rule for this final rule; and in the Record of Decision (ROD) confirming selection of the preferred alternative and published in the **Federal**

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Register on August 20, 1986 (51 FR 29673). In compliance with 40 CFR 1505.2, the ROD was signed by the Director, FWS, and the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, on August 11, 1986.

This rule will fully implement the preferred alternative of the Final SEIS by setting criteria and a schedule for establishing nontoxic shot zones for the 1987–1988 waterfowl hunting season and beyond, culminating in a nationwide ban on the use of lead shot by the 1991–1992 hunting season. The decision criteria noted in the amendatory language of this rule (recommended to the FWS by comments of the International Association of Fish and Wildlife Agencies) are similar to those published at 50 FR 30849 and are discussed also in the Final SEIS. The current FWS strategy, utilizing criteria for identifying areas necessary for bald eagle and waterfowl protection, is an integral part of this alternative and will apply for the 1986–1987 waterfowl hunting season (see 51 FR 31429).

Since 1978, the FWS has not been able to implement or enforce nontoxic shot zones in a State without approval of the appropriate State authorities. This restriction on use of funds by the FWS has been contained in the Interior Department Appropriations Act each year since 1978 (Pub. L. 98–473, Section 305). As a consequence of this restriction the FWS can only implement and enforce nontoxic shot zones for waterfowl and coot hunting with the approval of State authorities. If States do not approve nontoxic shot zones when current FWS guidelines and criteria indicate that such zones are necessary to protect migratory birds, the FWS will not open the areas to waterfowl and coot hunting. This action is taken pursuant to the FWS' responsibilities under the Migratory Bird Treaty Act and, in the case of zones proposed for bald eagle protection, the Endangered Species Act, and the Bald and Golden Eagle Protection Act of 1940, as amended (16 U.S.C. 668–668d; 54 Stat. 250).

Summary of Comments on the Proposed Rule

Over 175 comments on the proposed rule have been received; only 46 were received prior to comment period closure. Of those received subsequent to comment period closure, virtually all support FWS action to ban the use of lead shot nationwide by 1991–1992 for hunting waterfowl and coots. All letters have been reviewed for relevancy to this particular proposal and substantive comments are addressed in this final rule, or elsewhere as noted.

Of the 46 comments received during the comment period, 17 are from State fish and game organizations and the remainder are from national, State, or local conservation/wildlife organizations, a Member of Congress, a waterfowl hunting group, a Flyway Council, and private individuals. States providing comments are AZ, CA, DE, FL, GA, IL, MD, ME, MI, MO, NE, NH, NJ, RI, TX, VT, and WI. One copy of a letter to "State and Federal Fish and Wildlife Administrators" urging observance of the zone conversion schedule in Appendix N of the Final SEIS was received from the Federal Arms Corporation. Overall, 20 letters were in general support of the proposed rule, 22 generally against, 2 had no stated or obvious position, and 2 supported a nationwide lead to steel shot conversion but not as proposed by the FWS. Of the States responding, 11 supported the proposal, 3 States opposed the proposal, 2 States had no stated position for or against, and 1 State supported a conversion but not as proposed by the FWS in this rule. The comments noted below are represented in approximately 15–20 of the 46 letters, but not all cite each and every issue. These comments are not responded to in this final rule as they are similar, if not identical, to comments received from the general public on the proposed rule titled "Zones in which lead shot will be prohibited for waterfowl and coot hunting in the 1986–1987 hunting season" of January 6, 1986 (51 FR 409) and were responded to as a preliminary final rule in Appendix O of the Final SEIS on the use of lead shot for hunting migratory birds in the United States completed in June of 1986 and announced in the **Federal Register** on June 27, 1986 (51 FR 23443) and July 11, 1986 (51 FR 25249). This preliminary final rule (Appendix O), with comments and responses, was published as a final rule on September 3, 1986 (51 FR 31429). Further, most of the subjects listed are treated in the Final SEIS and referenced accordingly so that the reader may obtain and review scientific studies upon which this final rule action is taken. The list of issues (with the September 3, 1986 (51 FR 31429) 1986–1987 nontoxic shot zone rule Issue and/or SEIS reference) is as follows:

- Arguments against the lead shot-lead poisoning connection in waterfowl and bald eagles, including situations involving shooting over fields and over deep water, observers noting absence of carcasses, perceived documentation deficiencies, etc. (see, for example, Issues 1, 2, 7, and 8 and Chapter III of the SEIS);
- Relative merits of the "hotspots" approach vs. the current phase-in strategy (see, for example, Issue 5 and Chapters II and IV of the SEIS);
- Crippling and shooting performance of lead vs. steel shot (see, for example, Issue 12 and Chapter III, page 86, of the SEIS);
- Cost of steel vs. lead shot and availability of steel shot (see, for example, Issue 14 and Chapter III, page 90, of the SEIS);
- Compatibility of steel shot with weapons and safety (see, for example, Issue 13 and Chapter IV, pages 11–15 of the SEIS);
- Feasibility of implementing a nationwide ban earlier than the 1991–1992 hunting season (see, specifically, page S–3 and Chapter IV of the SEIS);
- General allegations of arbitrariness in FWS' actions to eliminate lead poisoning as a mortality factor in waterfowl and coot (see, for example, Issue 3);
- Enforcement concerns (see, Chapter IV, page 57, of the SEIS);
- Proposed adoption of alternatives which were discussed in the SEIS (see, page S–3 and Chapter IV of the SEIS);
- Proposal that the FWS should redouble efforts to find a suitable nontoxic alternative to lead (see, for example, Issue 14 and Chapter III, page 90, of the SEIS); and
- An argument that the FWS, through this and other actions establishing nontoxic (steel) shot zones, is violating the Stevens amendment to the Interior Department Annual Appropriations Act (see, for example, Issue 22).

Other, specific issues raised by commentors and not previously publicly analyzed by the Service are responded to as follows:

Responses to General Comments on the Proposed Rule

Issue 1: The National Wildlife Federation (NWF) commented that the FWS should promulgate a single, final steel shot regulation (zones) for all years for the reasons that: (a) It will help assure adequate ammunition inventories; (b) it will assist the interpretation and education (I&E) efforts of the States; (c) it will be an affirmative action that will reinforce public confidence in the FWS' intent to phase out lead shot by 1991–92; and (d) "up to the minute biological factors" are not considered in establishing steel shot zones.

Response: The FWS believes that it would be neither appropriate nor time effective to attempt to promulgate one rule that covers all zones for all hunting years through the nationwide ban year of 1991–1992. "Up to the minute biological factors" may not be a prominent part of the strategy to establish nontoxic shot zones; however, it is quite likely that the zone establishment process leading to a nationwide ban will be a dynamic one. It is anticipated that the acceleration and deferral provisions of this final rule, especially the former, will create some State-by-State deviation from the proposed schedule published in Appendix N of the SEIS. Acceleration and/or deferral within the schedule would necessitate amending the NWF's suggested single, total phase-in encompassing rule on an annual basis, in effect requiring unnecessary and burdensome replication of State and Federal efforts. Further, the Stevens amendment to the Department's annual appropriations act, that requires State concurrence on implementation and enforcement on an annual basis, would be in conflict with such an action. Too, there may yet be future Congressional repeal or other modification of the Stevens Amendment to the Interior Department Annual Appropriations Act that would impact this rulemaking process.

The FWS believes that there is adequate advance notice within Appendices N and O of the SEIS to facilitate supply of nontoxic shot ammunition in 1986–1987 and in future years, and to allow the States to be effective in their I&E programs. There has been no request by the major American ammunition manufacturers for a single rule to facilitate their distribution of ammunition supplies; their only concern has been for a 12–14 month period over which to plan for yearly distribution.

In light of this final rule and other recent developments, there should remain little doubt what the intentions of the Department and the FWS are in regard to the elimination of lead toxicity as a significant mortality factor in certain migratory birds.

Issue 2: The National Rifle Association of America and the Wisconsin Department of Natural Resources stated that these nontoxic shot restrictions should be placed on shotshells only and, thus, allow the use of lead shot by muzzleloading waterfowl and coot hunters.

Response: The FWS believes that a "fairness" principle should be a primary consideration; lead shot from muzzleloading contributes to the lead poisoning problem. Thus, the FWS will require *all* waterfowlers using firearms to use nontoxic shot in established nontoxic shot zones. Further, the FWS believes that it is unnecessary to make this exemption given what is known about pressures that are generated by muzzleloading weapons. However, as with those using shotshells, it is likely not a good safety practice to use firearms with thin-walled barrels. At least one reloading manual provides data on steel shot loading in muzzleloading shotguns; this source acknowledges that the data were developed using a barrel that will accommodate higher than normal pressures (i.e., a pressure barrel) but that this use is a common practice in loading data development.

For this current 1986–1987 hunting year, a contradiction within the regulations, those at 50 CFR 20.108 and those in the "taking" section (§ 20.21), will allow muzzleloading waterfowl hunters to use lead shot. However, the FWS intends to resolve this contradiction in favor of steel shot for 1987 and beyond by amending § 20.21(j) in a separate rulemaking.

Issue 3: The Central Flyway Council, Delaware Department of Natural Resources and Environmental Control, Maine Department of Inland Fisheries and Wildlife, New Jersey Department of Environmental Protection, Rhode Island Department of Environmental Management, Texas Parks and Wildlife Department, and Vermont Department of Fish and Game all expressed in some way concern that counties were not necessarily logical units on which to base nontoxic shot zone establishment.

Response: The FWS agrees that adhering strictly to county boundaries may confuse or otherwise make difficult management and enforcement of nontoxic shot zones. However, maintaining the integrity of the strategy to convert in a systematic and priority manner is of paramount importance. Thus, to accommodate problems where, for example, county boundaries are indistinct and where enforcement may be difficult, a provision has been added in § 20.143 that allows States, at their prerogative, to extend nontoxic shot zones into adjacent counties to complete logical ecological units, or for other reasons. Nonetheless, the minimum unit that must be converted, according to the schedule, will be the county listed for that particular year. This provision is consistent with that allowing acceleration of the schedule.

Issue 4: The Central Flyway Council, Maine Department of Inland Fisheries and Wildlife, Michigan Department of Natural Resources, and Missouri Department of Conservation each expressed a desire to allow a State to move forward to conversion on an independent schedule or to maintain current zones as status quo until a statewide conversion date could be targeted.

Response: The FWS believes that the acceleration option of this strategy provides sufficient flexibility needed by a State to develop a statewide conversion plan consistent with the national plan. For the purposes of converting areas in priority order, there is a need to preserve the integrity of the strategy that was adopted by the majority of the International Association of Fish and Wildlife Agencies' member States and subsequently recommended to the FWS and selected as the strategy for eliminating lead toxicosis as a major mortality in certain migratory birds.

Issue 5: One commentor stated that the most effective means of obtaining compliance with a ban on lead shot is to place restrictions on ammunition manufacture and import.

Response: The FWS is not authorized to regulate the manufacture of shot, but only the manner and extent of migratory bird hunting. Moreover, the FWS believes that manufacture and import restrictions are not viable means of obtaining compliance with nontoxic shot use in nontoxic shot zones. Lead shot loads in sizes that would be affected are legally used in upland gamebird shooting (pheasants, turkey) and in hunting marshbirds (crane, gallinule, rail) and other wildlife species as well. Thus, it would not be reasonable to simply ban the manufacture or import of certain lead shot sizes such as those larger than 4's or 6's, for example.

Issue 6: One commentor requested clarification of the use of eagle criteria and eagle zoning beyond the 1986–1987 waterfowl hunting season, and the New Jersey Department of Environmental Protection also asked if existing nontoxic shot zones would be eligible for study and deferral.

Response: There is no provision for utilizing eagle criteria for expanding nontoxic shot zones after the 1986–1987 waterfowl hunting season; the expansion of zoning for nontoxic shot use after this season is based only on waterfowl harvest density. Inasmuch as the conversion to nontoxic shot for 1987 and beyond is based on waterfowl harvest density, beginning with the most and ending with the least dense areas, this strategy should also provide a priority protection for bald eagles utilizing lead shot contaminated waterfowl in their food base.

This adopted strategy (51 FR 29673) calls for all established nontoxic shot zones to remain for the 1987–1988 and future waterfowl hunting seasons.

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Further, the schedule provides a 2-year lag period between study and deferral for data collection, data synthesis, and reporting of results in a manner that is sensitive to the need for public awareness. It will not be possible to study an area in 1986–1987 for deferral in 1987–1988; the study, analyses, reporting and negotiation aspects would leave insufficient time for publication and scheduling. The SEIS has clearly stated (page II–13) that the schedule has progressed beyond the point in time that 20+ zones would be triggered for monitoring, i.e., they would have had to have been studied in 1985–1986.

Under this new strategy the rules changed sufficiently that areas having met the former criteria but that do not meet current criteria are exempt from conversion, except as per the schedule given in Appendix N of the SEIS. The FWS is discontinuing its Lead Poisoning Monitoring Program activities on Federal refuges.

There is no provision for rescinding nontoxic shot zones in the future as both the FWS and the Department are committed to the newly adopted strategy and schedule for eliminating lead toxicosis in waterfowl and other migratory birds caused by the use of lead shot in waterfowling. Section 20.143 has been changed to reflect that there will be no deferral or rescission of established nontoxic shot zones.

Issue 7: The New Jersey Department of Envinronmental Protection (NJDEP) requested information on the source of the harvest data used to derive the conversion schedule.

Response: It is assumed that this reference by the NJDEP is to the list of converting counties by year contained in Appendix N of the SEIS that resulted from the schedule in the proposed rule for this final rule. The harvest data per county was obtained from Carney et al. 1983 (Distribution of waterfowl species harvested in States and counties during 1971–1980. U.S. Fish and Wildlife Ser. Spec. Sci. Rpt.—Wildl. No. 254). The county area database, that included both land and water areas, was obtained from the U.S. Bureau of the Census. These data will be used in determining at what point in time a county must convert. The county harvest densities, i.e., the prioritized schedule of counties converting, obtained when using the U.S. Bureau of the Census database may vary from those results obtained when using county area data from other sources.

Issue 8: The Florida Game and Fresh Water Fish Commission suggested that to avoid confusion, inasmuch as "triggered" has been used in the past in a different context, "converted" should be substituted for that term in § 20.143(d).

Response: Section 20.143(d) of the proposed rule, now (f) of the final rule, has been rewritten accordingly.

Issue 9: The Delaware Department of Natural Resources and Environmental Control has requested that some explanation be made for moving the 3-dead-waterfowl criteria from triggering for monitoring to [triggering for] conversion.

Response: The FWS believes that the 3-dead-bird criterion for converting areas being studied for deferral is a valid determination of an area's potential for lead shot exposure, and, therefore, lead poisoning in waterfowl and coots. The FWS will retain this criterion as a threshold for nondeferral; this is consistent with the way that the selected strategy is presented in the Final SEIS.

As a result of the foregoing public input and other supplementary information, three significant textual changes have been made to the proposed rule. These changes, contained in an expanded § 20.134, are as follows:

- For clarification, it is noted that established nontoxic shot zones may not be monitored for deferrral or rescission from conversion in any manner;
- For clarification and to provide flexibility, States may accelerate conversion on less than a county basis for purposes of completing a biological or enforcement/management unit; however, the minimum conversion unit (county) must be adhered to; and
- For clarification, when a county is converted to nontoxic shot status it will be added to the list of nontoxic shot zones contained in § 20.108 and all the existing prohibitions on use of lead shot will apply.

Other changes made in proposed rule are editorially minor in nature.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

In accordance with Executive Order 12291, a determination has been made that this rule is not a major rule. In accordance with the Regulatory Flexibility Act, a determination has been made that this rule, if implemented without adequate notice, could result in lead shot ammunition supplies for which there would be no local demand. Conversely, nontoxic shot zones could conceivably be established where little or no nontoxic shot ammunition would be available to hunters. The FWS believes, however, that adequate notice has been provided and that sufficient supplies of nontoxic shot ammunition will be available to hunters. Therefore, this rule would not have a significant economic effect on a substantial number of small entities.

Paperwork Reduction Act

This rule will not result in the collection of information from, or place recordkeeping requirements on, the public under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Environmental Considerations

As noted above, pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332)), a Final SEIS on the use of lead shot for hunting migratory birds in the United States has been completed. As previously noted herein, a ROD on the SEIS has been completed as required by 40 CFR 1505.2. Pursuant to the Endangered Species Act, as section 7 consultation was done on the potential impacts of this action on bald eagles and is included in the Final SEIS. These documents are available for public inspection and copying in Room 536 Matomic Building, 1717 H Street NW., Washington, DC 20240, or may be obtained by mail, addressing the Director at the above location.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Accordingly, Part 20, Subchapter B, Chapter I of Title 50 of the Code of Federal Regulations is amended as set forth below:

PART 20—[AMENDED]

1. The authority citation for Part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 701–708h); sec. 3(h), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712); Alaska Game Act of 1925, 43

739, as amended, 54 Stat. 1103–04, unless otherwise noted.

2. Subpart M is added to read as follows:

Subpart M—Criteria and Schedule for Implementing Nontoxic Shot Zones for the 1987–1988 and Subsequent Waterfowl Hunting Seasons

Sec.
20.140 Purpose and scope.
20.141 Definitions.
20.142 Applicability.
20.143 Criteria and schedule for conversion to nontoxic shot.

Subpart M—Criteria and Schedule for Implementating Nontoxic Shot Zones for the 1987–1988 and Subsequent Waterfowl Hunting Seasons

§ 20.140 Purpose and scope.

The regulations of this subpart apply to the designation, implementation and enforcement of nontoxic shot zones for waterfowl hunting in the United States for the 1987–1988 and subsequent hunting seasons. The regulations of this Subpart do not apply to the issuance of regulations under Part 21 of this title or under Subparts A through J and L and N of this part.

§ 20.141 Definitions.

As used in this subpart:

(a) "Nontoxic Shot" means any shot-type that does not cause sickness and death when ingested by migratory birds as determined by criteria established under § 20.134. The only nontoxic shot currently approved by the Director, U.S. Fish and Wildlife Service, is steel shot.

(b) "Nontoxic Shot Zones" means all land and water areas within the boundaries of the United States where the use of nontoxic shot is required for waterfowl hunting. A zone may be all or part of a county designated and/or established for nontoxic shot use.

(c) "Waterfowl" means the Anatidae (ducks, geese [including brant], and swans) and coots (*Fulica americana*).

§ 20.142 Applicability.

This subpart applies to persons of all ages engaged in waterfowl hunting in the established nontoxic shot zones and to all of the boroughs, counties, or parishes within the separate States, without exception. Possession and use of nontoxic shot (including shotshells and loose shot for use in muzzleloading), for all legal gauges of shotguns, is required for waterfowl hunting in nontoxic shot zones. The Secretary of the Interior, acting through the Fish and Wildlife Service, will not open a zone to waterfowl hunting where the Fish and Wildlife Service is prevented from establishing the zone as a nontoxic shot zone under the criteria of this subpart.

§ 20.143 Criteria and schedule for conversion to nontoxic shot.

The criteria and procedures specified below will be followed in the conversion nationwide to the use of nontoxi shot for waterfowl hunting. As of the 1991–1992 season, nontoxic shot will be required in *all* waterfowl hunting in the United States.

(a) Beginning in the 1987–1988 water fowl hunting season, implementation of nontoxic shot zones is on a decremental basis with regard to the intensity of average annual waterfowl harvest per square mile of a particular county; the initial harvest level triggering monitoring/conversion is 20 or more birds per square mile, decreasing by 5 birds per square mile each successive waterfowl hunting season until the nationwide ban season is reached in 1991–1992. Data on average annual waterfowl harvest are from Carney et al. 1983; data on county size have been obtained from the U.S. Bureau of the Census. Table I illustrates the schedule for conversion to nontoxic shot.

TABLE I.—SCHEDULE FOR MONITORING AND/OR CONVERTING COUNTIES TO NONTOXIC SHOT ZONES FOR HUNTING WATERFOWL

Average annual waterfowl harvest per mi ^{2}* (by county)	Hunting season in which—		
	Monitoring must begin to defer implementation	Qualifying areas converted	Nontoxic shot required in deferred areas
20 or more	1985–86	1987–88	1991–92
15 or more	1986–87	1988–89	1991–92
10 or more	1987–88	1989–90	1991–92
5 or more	1988–89	1990–91	1991–92
less than 5	1989–90	1991–92	1991–92

* Average harvest is based on Carney et al. 1983 (Distribution of waterfowl species harvested in states and counties during 1971–80 hunting seasons. U.S. Fish and Wildlife Service Special Scientific Report—Wildlife No. 254).

(b) If States, through monitoring, demonstrate during annual Fish and Wildlife Service Regulations Committee meetings that neither of the following two decision criteria are met in a county scheduled for conversion to a nontoxic shot zone, that conversion can be deferred until (but not beyond) the 1991–92 hunting season (monitoring of the latter must include a sample of at least 100 birds of waterfowl species susceptible to lead poisoning):

(1) Dead waterfowl; 3 or more individual specimens confirmed as lead-poisoned during the monitoring year, nor

(2) Ingested shot in gizzards; 5 percent or greater of the sample have gizzards with 1 or more lead shot, and

(i) Liver lead; 5 percent or greater of the sample have livers with concentrations of lead 2 ppm or higher (wet weight), or

(ii) Blood lead; 5 percent or greater of the sample have blood with concentrations of lead 0.2 ppm or higher (wet weight),

(iii) Protoporphyrin; 5 percent or greater of the sample have blood with protoporphyrin concentrations of 40 ug/dl or higher.

(c) Established nontoxic shot zones will not be eligible for deferral or rescission from conversion in any manner.

(d) There is no deferral past the 1991–1992 nationwide conversion year. States may elect to forgo monitoring and/or otherwise convert to nontoxic shot zones on an accelerated basis, i.e., less than a county, countywide or statewide.

(e) States may accelerate conversion on less than a county basis for purposes of completing a biological or enforcement/management unit; however, the minimum conversion schedule [set out in the June, 1986, Final Supplemental Environmental Statement on the use of lead shot for hunting migratory birds in the United States, Appendix N] will be adhered to.

(f) Where a portion, but not all, of a county is included in nontoxic shot zones for the 1986–87 or later waterfowl hunting season, the remainder of the county will convert in the year that it would otherwise be converted on the basis of its total county waterfowl harvest density.

(g) When a county is converted to nontoxic shot status under this paragraph, it will be added to the list of nontoxic shot zones contained in §20.108 and all the prohibitions of §20.21(j) will apply.

Dated: October 24, 1986.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–28291–Filed 11–20–86; 8:45 am]

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Proposed Rules

Federal Register
Vol. 51, No. 225
Friday, November 21, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Doc. No. 3182S]

General Administrative Regulations, Suspension and Debarment

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby proposes to amend 7 CFR Part 400, General Administrative Regulations, by adding a new Subpart E, to be known as 7 CFR Part 400-Subpart E, Suspension and Debarment. The intended effect of this proposed rule is to provide procedures for the suspension and debarment of individuals and firms from contracting with FCIC. Under the provisions of this proposed rule, FCIC would, for all procurement and non-procurement activities and programs, adopt, with limited reservations, the suspension and debarment regulations issued by the Department of Agriculture. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than January 20, 1987, to be sure of consideration.

ADDRESS: Written comments on this rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is November 1, 1991.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the authority contained in section 506(e) of the Federal Crop Insurance Act, as amended, FCIC may adopt, amend, and repeal bylaws, rules and regulations governing the manner in which its business may be conducted and the powers granted to it by law may be exercised and enjoyed. (7 U.S.C. 1506(e).)

In accordance with this authority, FCIC proposes to issue a new Subpart E, to 7 CFR Part 400, setting forth the procedures under which FCIC may suspend or debar individuals and firms from contracting with FCIC. In order to conform FCIC's suspension and debarment procedures with those of the U.S. Department of Agriculture, FCIC preposes, for all procurement and non-procurement activities and programs, to adopt the Department's suspension and debarment regulations found at 48 CFR 409.403 *et seq.*, since the regulations land procedures are similar for both procurement and non-procurement activities and programs. The regulations are proposed to be adopted, as outlined herein, except that, (1) FCIC's suspension and debarment proceedings shall not be applicable to contracts for crop insurance entered into between the Corporation and individuals in their capacity as insured producers, and (2) the authority to suspend or debar is reserved to the Manager, FCIC, or the Manager's designee.

FCIC is soliciting public comment on this proposed rule for 60 days following its publication in the **Federal Register**. Written comments received pursuant to this notice will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 400

General administrative regulations; Crop insurance, Administrative practice and procedure, Government contracts, Penalties.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend 7 CFR Part 400, General Administrative Regulations, by adding a new Subpart E—Suspension and Debarment, to read as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

* * * * *

Subpart E—Suspension and Debarment

Sec.
400.40 Purpose.
400.41 Suspension and debarment.
400.42 Scope.

Subpart E—Suspension and Debarment

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

§ 400.40 Purpose.

This part prescribes the terms and conditions under which persons or business entities may be suspended or debarred from contracting with the Federal Crop Insurance Corporation (FCIC).

§ 400.41 Suspension and debarment.

The provisions of 48 CFR 409.403 *et seq.* shall be applicable to all FCIC suspension and debarment proceedings, except that, the authority to suspend or debar is reserved to the Manager, FCIC, or the Manager's designee.

§ 400.42 Scope.

FCIC suspension and debarment proceedings shall not be applicable to a contract for crop insurance entered into between FCIC and individuals in their capacity as insured producers, or a contract for crop insurance entered into between a multi-peril insurance company and individuals in their capacity as insured producers, for which such contract is reinsured by FCIC.

Done in Washington, DC on November 13, 1986.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86–26336 Filed 11–20–86; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 1032

[Docket No. AO–313–A36]

Milk in the Southern Illinois Marketing Area; Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: The hearing is being held to consider milk industry proposals to amend the Southern Illinois milk marketing order. Two proposals would expand the marketing area to include the city of St. Louis, 24 central Missouri counties and part of St. Clair County in Illinois. An additional proposal, for which expedited considerations has been requested, would revise the standards for regulating distributing plants that meet the regulatory provisions of more than one Federal milk order. Other proposals would revise location adjustments, pooling standards, the producer milk definition, classification provisions and provide for a seasonal plan for paying producers. The proposals were submitted by six cooperative associations and by a handler who operates a regulated distribution plant. Proponents contend that the changes are necessary to reflect changed marketing conditions.

DATE: The hearing will convene at 9:00 a.m., local time, on December 9, 1986.

ADDRESS: The hearing will be held at the Henry VIII Hotel, 4690 N. Lindbergh, Bridgeton, Missouri 63044, (314) 731–3040.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Henry VIII Hotel, 4690 N. Lindbergh, Bridgeton, Missouri 63044, beginning at 9:00 a.m., local time, on December 9, 1986, with respect to proposed amendments to be tentative marketing agreement and to the order regulating the handling of milk in the Southern Illinois marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedures (7 CFR Part 900.12(d)) with respect to Proposal No. 1.

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act" (Publ. L. 96–354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

Proposal Nos. 2 and 3, which would redefine the marketing area, raise the issue of whether the provisions of the present order would tend to effectuate the declared policy of the Act, if they are applied to the marketing area as proposed to be redefined and, if not, what modifications of the provisions of the order would be appropriate.

List of Subjects in 7 CFR Part 1032

Milk marketing orders, Milk, dairy products.

The authority citation for Part 1032 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Mid-America Dairymen, Inc.

Proposal No. 1

In § 1032.7, revise paragraph (d)(2) to read as follows:

§ 1032.7 Pool plant.

* * * * *

(d) * * *

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a duly regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which during the month there is a greater quantity of route disposition, except filled milk, in the marketing area regulated by the other order than in the Southern Illinois marketing area: *Provided,* That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which more than 50 percent of such route disposition is made in such other marketing area notwithstanding the provisions of this

paragraph, it is regulated under such other order;

* * * * *

Proposal No. 2

Redesignate the Southern Illinois marketing area as the "Southern Illinois-Eastern Missouri marketing area" and add certain Missouri and Illinois territory to the Southern Zone (where a plus 9-cent location adjustment and $2.01 differential value apply) of the expanded and redesignated marketing area by revising § 1032.2 to read as follows:

§ 1032.2 Southern Illinois-Eastern Missouri marketing area.

"Southern Illinois-Eastern Missouri marketing area", hereinafter called the "marketing area," means all the territory within the following counties, together with all municipal corporations therein and all institutions owned or operated by the Federal, State, county, or municipal governments located wholly or partially within such counties:

Base Zone The Illinois counties of Bond, Calhoun, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, Edwards, Effingham, Fayette, Greene, Jasper, Jefferson, Jersey, Lawrence, Macoupin, Madison (Alton township only), Marion, Montgomery, Richland, Shelby, Wabash, Washington and Wayne;

Northern Zone The Illinois counties of Champaign, DeWitt, Douglas, Edgar, Logan, Macon, McLean, Menard, Morgan, Moultrie, Piatt, Sangamon and Vermilion;

Southern Zone The Illinois counties of Franklin, Hamilton, Jackson, Madison (except Alton township), Monroe, Perry, Randolph, Saline, St. Clair, White and Williamson;

The Missouri counties of Bollinger, Cape Girardeau, Crawford, Franklin, Jefferson, Perry, St. Charles, St. Louis, St. Francois, Ste. Genevieve, Warren and Washington; and

The City of St. Louis.

Proposed by Packet Dairy, Inc.

Proposal No. 3

Add the following 12 Missouri counties to the proposed expanded Southern Zone of the marketing area:

Audrain
Boone
Callaway
Cole
Gasconade
Lincoln
Maries
Miller
Montgomery
Osage
Phelps
Pulaski

Proposed by Associated Milk Producers, Inc.; Land O'Lakes, Inc.; Mid-America Dairymen, Inc.; Midwest Dairymen's Co.; Prairie Farms Dairy, Inc.; and Wisconsin Dairies Cooperative

Proposal No. 4

Add a new § 1032.4 defining inventory to read as follows:

§ 1032.4 Inventory.

Inventory shall consist of all fluid milk products in bulk or packaged form and products specified in § 1032.40(b)(1) that are still in the possession and control of the handler regardless of where the products are located.

Proposal No. 5

In § 1032.7, the introductory text and paragraph (b) are revised to read as follows:

§1032.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means a plant specified in paragraph (a), (b), or (c) of this section. For purposes of determining pool plant status pursuant to this section, Grade A receipts from dairy farmers shall include al quantities of milk pooled pursuant to § 1032.13(b) by an operator of a pool plant.

(a) * * *

(b) A supply plant from which during the month of December an amount equal to 40 percent or more, and for all other months 50 percent or more, of its receipts of Grade A milk from dairy farmers and handlers described in § 1032.9(c) is moved to and received at a pool plant(s) described in paragraph (a) of this section which have at least 50 percent Class I use (not including filled milk) of the total of such supply plant milk and producer milk receipts in the months of August through February and 40 percent in other months: *Provided*, That a supply plant owned and operated by a qualified cooperative needs to only ship a minimum of 25 percent of its Grade A receipts if at least 75 percent of all producer receipts of the cooperative were received at pool distributing plants the preceding September through august period.

* * * * *

Proposal No. 6

Revise § 1032.9(a) to read as follows:

§ 1032.9 Handler.

* * * * *

(a) Any person in his capacity as the operator of one or more pool plants;

* * * * *

Proposal No. 7

Revise § 1032.13(b) to read as follows:

§ 1032.13 Producer milk.

* * * * *

(b) * * *

(1) Milk of a producer diverted from a pool plant for the account of the plant operator to another handler's pool plant(s) for not more days of production of such producer's milk than is physically received at a pool plant(s) from which diverted;

(2) Milk of a producer diverted from a pool plant to a nonpool plant that is not a producer-handler plant on any number of days during the months of May, June, and July; and on any day of any other month, provided that one delivery of each producer's milk is physically received at a pool plant;

(3) The total quantity of milk diverted by a cooperative association to nonpool plants during each of the months of September through April may not exceed 25 percent or 35 percent during the months of August and December of the quantity of producer milk that the cooperative association causes to be delivered to or diverted from pool plants during the month;

(4) The total quantity of milk diverted by the operator of a pool plant (other than a cooperative association) to nonpool plants durng each of the months of September through April may not exceed 25 percent or 35 percent during the months of August and December of the quantity of milk received at or diverted from such pool plant during the month that is not under the control of a cooperative association that diverts milk pursuant to paragraph (c)(3) of this section;

(5) Any milk diverted to nonpool plants in excess of the limits prescribed in paragraphs (b) (2), (3), and (4) of this section shall not be producer milk. The diverting handler may designate the dairy farmers whose diverted milk will not be producer milk, otherwise the milk last diverted—in lots of an entire day's production—shall be excluded first in determining which milk should not be producer milk; and

(6) For pricing purposes, milk diverted pursuant to paragraph (b) of this section shall be deemed to be received by the diverting handler at the location of the plant to which diverted.

Proposal No. 8

§ 1032.19 [Removed]

Terminate § 1032.19, which defines a reload point.

Proposal No. 9

§ 1032.51 [Amended]

In § 1032.51, delete the last sentence, which reads: "For the purpose of computing the Class I price, the resulting price shall be not less than $4.33".

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Proposed by Land O'Lakes, Inc.

Proposal No. 10

Revise § 1032.52(a)(2) (ii) and (iii) to read as follows: As an alternative to revising § 1032.52(a)(2)(iii), delete such provision.

§ 1032.52 Plant location adjustments for handlers.

(a) * * *

(2) * * *

(ii) *Minus 17 cents.* In the counties of Adams and Schuyler in the State of Illinois and Fountain, Parke, Vermillion and Warren in the State of Indiana.

(iii) No location adjustment shall apply at a plant located north of Interstate Highway 80 or in the State of Missouri south and east of Interstate Highway 44 that was not in the area described in paragraph (a)(2)(i) of this section.

Proposed by Prairie Farms Dairy, Inc.

Proposal No. 11

Revise § 1032.15(b)(1) to read as follows:

§ 1032.15 Fluid milk product.

* * * * *

(b) * * *

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent non-fat milk solids, whey, and buttermilk used by commercial food processing establishments including restaurants; and

* * * * *

Proposal No. 12

Revise § 1032.40 (b)(3) and (4)(v) to read as follows:

§ 1032.40 Classes of utilization.

* * * * *

(b) * * *

(3) In fluid milk products and fluid cream products except those disposed of in individualized serving containers, disposed of to any commercial food processing establishment including restaurants (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) * * *

(v) Custards, puddings and all mixtures such as biscuit and pancake mixes; and

* * * * *

Proposal No. 13

§ 1032.52 [Amended]

Revise § 1032.52(a)(1) to provide a plus 32-cent location adjustment in Jackson County, Illinois.

Proposal No. 14

Revise § 1032.60 by adding paragraphs (h) and (i) to read as follows:

§ 1032.60 Handler's value of milk for computing uniform price.

* * * * *

(h) Subtract in the case of milk delivered during each of the months of April, May, and June an amount equal to 90 cents per hundredweight of producer milk; provided that such adjustment does not provide a uniform price at a location less than the Class III price; and

(i) Add in the case of milk delivered during each of the months of September, October and November, 33⅓ percent of the total amount subtracted pursuant to paragraph (h) of this section.

Proposal No. 15

Replace § 1032.41 (Shrinkage) with a Loss Product Allowance provision to read as follows:

§ 1032.41 Loss product allowance.

All product unaccounted for as well as livestock feed, dumpage, and route returns will be classified as Class I. To compensate a handler for such unavoidable losses, a handler will receive a monetary deduction from the handler's use value computation based only on product pounds handled as follows:

(a) Total allowance will be 2.0 percent of the Class I differential at location applied to total pounds pooled. There will be no pyramiding of the allowance. Assignment of the allowance will be as follows:

(1) Handler who assumes the loss from farm to plant will receive an allowance of .50 percent applied to producer pounds pooled.

(2) Handler who assumes the loss associated with handling, processing, and distributing will receive an allowance of 1.50 percent applied to all pool bulk product pounds received.

Note.—There will be several other provisions that would need to be changed to conform with such allowances.

Proposed by the Dairy Division, Agricultural Marketing Service

Proposal No. 16

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, Donald R. Nicholson, P.O. Box 1485, Maryland Heights, Missouri 63043 or from the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office only)
Office of the Market Administrator, Southern Illinois Marketing Area

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on November 18, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86-26337 Filed 11-20-86; 8:45 am]

BILLING CODE 3410-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-3115-2]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

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SUMMARY: USEPA is proposing to disapprove a revision to the Illinois State Implementation Plan (SIP) for total suspended particulates (TSP). The revision pertains to a variance from Illinois Pollution Control Board Rule 203(d)(5)(J) until July 1, 1986, for hot scarfing operations at LTV Steel Corporation's Chicago Works. USEPA's action is based upon a revision which was submitted by the State.

DATE: Comments on this revision and on the proposed USEPA action must be received by December 22, 1986.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Randolph O. Cano, at (312) 886–6035, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6035.

SUPPLEMENTARY INFORMATION: On February 13, 1985, the Illinois Environmental Protection Agency (IEPA) submitted to USEPA a proposed temporary revision to the Illinois State Implementation Plan (SIP). The proposed SIP revision would grant LTV Steel Corporation (LTV) a variance from Rule 203(d)(5)(J) [recodified as 325 IAC 212.451]. The variance would expire on July 1, 1986, or 60 days after any final Illinois Pollution Control Board (IPCB) Order on a request for site-specific relief for LTV's 44-inch hot scarfing machine. Rule 203(d)(5)(J) requires that all hot scarfing machines shall be controlled by pollution control equipment. Emissions from this equipment shall not exceed 0.03 grains per dry standard curbic foot (gr/dscf) during hot scarfing operations. LTV's Chicago Works is located in an area which is classified as nonattainment with respect to the National Ambient Air Quality Standards (NAAQS) for particulate matter.

LTV (formerly Republic Steel) submitted an Alternative Control Strategy Permit Application (ACS) to IEPA on February 8, 1982. The ACS would offset excess emissions from the basic oxygen furnace shop (Q–BOP) and hot scarfing machine with over control of blast furnace casthouse emissions.[1] On March 16, 1982 IEPA issued a "Notice of Incompleteness" contesting the sufficiency of information in the ACS application. IEPA and LTV have subsequently had numerous discussions on the feasibility of applying an ACS to the hot scarfer, but have not reached an agreement.

LTV filed a petition with the IPCB for a variance from Rule 203(d)(5)(J) on July 30, 1984. IEPA recommended that the variance be granted. On January 10, 1985, the IPCB granted the variance until July 1, 1986, or until 60 days after any final Board Order on a request for site-specific regulatory relief for LTV's 44-inch hot scarfing machine, whichever is earlier.

On June 7, 1985, USEPA notified IEPA by letter that the variance could not be approved because it did not contain an emission limitation for the hot scarfer and because the variance would relax the SIP in a nonattainment area without a demonstration of attainment. IEPA responded on July 9, 1985, to request that USEPA remove the proposed SIP revision from further consideration until IEPA provided additional information.

On July 18, 1985, IEPA submitted to USEPA an amended petition filed by LTV and a June 27, 1985, IPCB Order. LTV requested and the IPCB granted a 0.06 gr/dscf emission limitation for the hot scarfer. However, the State failed, at that time, to submit a modeled demonstration that approval of this variance will not cause the TSP NAAQS to be exceeded.

USEPA's policy precludes the approval of a relaxed emission limit in an area designated nonattainment, unless it can be demonstrated that the area in which a source is located and has impacts is actually attaining the NAAQS and that the SIP is adequate to attain and maintain the NAAQS, even with the relaxed emission limit. Otherwise, USEPA would have no assurance that the relaxation did not jeoperdize the attainment and maintenance of the NAAQS in the sources impact area. This USEPA policy is contained in the July 29, 1983, memorandum on Source Specific SIP Revisions from Sheldon Meyers, then Director of USEPA's Office of Air Quality, Planning, and Standards.

On September 26, 1985, Illinois submitted a modeling analysis as additional information for the variance request. This modeling indicates that the increased emissions which would be allowed by the variance would not have a significant impact (i.e., less than 5 micrograms per cubic meter, 24-hour average) on the particulate level around the plant. This modeling analysis addresses only emissions from the hot scarfer and does not provide an attainment demonstration in the nonattainment area. It, therefore, does not satisfy USEPA's requirement for a modeled demonstration of attainment in the impact area of the source, as specified in the Sheldon Meyers' policy memorandum. USEPA proposes to disapprove the incorporation of this variance for LTV into the Illinois SIP because the State has failed to demonstrate that the SIP, as a whole despite the relaxation, will provide for the attainment and maintenance of the TSP NAAQS in the area in which the hot scarfer is located and has an impact. Public comments are invited on this proposed SIP revision and on USEPA's proposed disapproval. Public comments received by the date indicated above will be considered in the development of USEPA's final rule.

Under 5 U.S.C. section 605(b), USEPA must determine whether this proposed rulemaking action, if finally adopted, would have a significant economic impact on a substantial number of small entities. This action concerns a single entity—LTV Steel Corporation. Further, LTV Steel Corporation is not a small entity. This regulation, therefore, will not have a significant economic impact on a substantial number of small entities.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Authority: 42 U.S.C. 7401–7642.

Dated: March 28, 1986.

Valdas V. Adamkus,

Regional Administrator.

Editorial note.—This document was received at the Office of the Federal Register on November 18, 1986.

[FR Doc. 86–26284 Filed 11–20–86; 8:45 am]

BILLING CODE 6560-50-M

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[1] The variance which is the subject of today's proposed rulemaking only concerns emissions from hot scarfing. It does not concern emissions from the Q–BOP.

DEPARTMENT OF DEFENSE

48 CFR Parts 203 and 252

Federal Acquisition Regulation Supplement Concerning Fraud, Waste and Abuse Awareness Programs

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory Council has approved a proposed rule and request for public comment containing certain revisions to the DoD Federal Acquisition Regulation Supplement (DFARS) pertaining to the prevention and elimination of fraud, waste and abuse in defense contracting. If adopted as a final rule, the revisions would require that DoD prime contracts and subcontracts contain a contract clause whereby contractors agree to establish fraud, waste and abuse awareness programs of a formality and scope appropriate to their particular circumstances. The proposed clause would require that awareness programs contain certain essential elements, including employee orientations and posting of DoD Inspector General Hotline procedures. DoD prime contracts awarded using small purchase procedures of FAR Part 13 would be exempt from the requirement as would be subcontracts not exceeding $25,000.

Comments: Interested parties are invited to submit written comments on or before January 20, 1986, to the Executive Secretary, DAR Council, at the address below, to be considered in formulation of a final rule. Please cite DAR Case 84–164 in all correspondence related to this subject.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, Attn: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(A&L) (M&RS), Room 3C841, The Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

An increasing number of defense contractors have voluntarily adopted employee orientation programs designed to prevent and eliminate fraudulent and wasteful practices in defense procurement. These laudatory programs generally supplement and complement standards of conduct and ethics training conducted by many firms in the ordinary course of business. In furtherance of these initiatives and for the purpose of providing greater emphasis upon prevention efforts, the DAR Council has proposed a contractual requirement that contractors develop fraud, waste and abuse awareness programs tailored to their unique circumstances (e.g. the extent to which a firm may engage in government contracting). Subcontracts not exceeding $25,000 would be exempt from the contract requirement, as would prime contracts entered into using the small purchase procedures of FAR Part 13. The proposed DFARS revisions have been structured in a manner which allows maximum flexibility and latitude, while preserving program features deemed essential by the DoD.

B. Regulatory Flexibility Act

The proposed revisions are not expected to have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 et seq., therefore preparation of a Regulatory Flexibility Analysis is not required. However, consistent with section 603(c)(3) of the Act and DoD policy concerning the reduction of burdens upon small businesses, contractual requirements have been stated in terms of performance objectives rather than design standards which allows small businesses greater flexibility in formulating programs tailored to their unique circumstances. Additionally, contracts entered into under small purchase procedures, and subcontracts not exceeding $25,000 have been exempted from the requirement, consistent with section 603(c)(4) of the Act. Comments are invited from small businesses and other interested parties.

C. Paperwork Reduction Act

The proposed DFARS revisions do not constitute a collection of information within the meaning of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., as implemented within regulations prescribed by OMB at 5 CFR Part 1320. However, consistent with the purposes of the Act and DoD policy concerning the reduction of paperwork burdens on the public, compliance with the proposed rule will not entail reporting requirements nor require that contractors generate a system of records. Since many firms currently conduct and document ethics orientations with their employees, the provision in the proposed rule, that contractors document the fact of having conducted employee orientations, is not deemed to impose an additional requirement on the private sector.

List of Subjects in 48 CFR Parts 203 and 252

Procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, 48 CFR Parts 203 and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 203 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35 and DoD FAR Supplement 201.301.

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. A new Subpart 203.70, consisting of sections 203.7001 and 203.7002, is proposed to be added to read as follows:

Subpart 203.70—Fraud, Waste and Abuse Awareness Programs

Sec.
203.7001 Policy.
203.7002 Contract clause.

Subpart 203.70—Fraud, Waste and Abuse Awareness Programs

203.7001 Policy.

The prevention and elimination of fraud, waste and abuse is the responsibility of the government, its prime contractors and subcontractors at every tier. Contractors should develop and implement employee fraud, waste and abuse awareness programs. Essential elements of such programs are the display of posters providing information on the Government Inspector General Hotline Procedures, new employee orientation and continued education of employees as to their responsibilities in eliminating fraud, waste and abuse.

203.7002 Contract clause.

The contracting officer shall insert the clause at 252.203–7001, Contractor Fraud, Waste and Abuse Awareness Program, in all solicitations and contracts except those using small purchase procedures in Part 13. The clause may be used in small purchases at the discretion of the contracting officer.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. Section 252.203–7001 is proposed to be added to read as follows:

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252.203-7001 Contractor Fraud, Waste and Abuse Awareness Program.

As prescribed in 203.7002, insert the following clause:

Contractor Fraud, Waste and Abuse Awareness Program (_____ 1986)

(a) The contractor agrees to maintain an employee fraud, waste and abuse awareness program. The purpose of this program is to inform employees of their duties, rights and responsibilities for preventing and reporting fraud, waste and abuse. The formality of the program and its scope shall be established as appropriate for the circumstances. However, the contractor agrees to include the following elements:

(1) Employee orientation that describes employee responsibilities for preventing and reporting fraud, waste and abuse. Employees shall be informed of the fines and penalties for: False claims and false statements to the Government; misappropriating properties purchased for use on Government contracts; product substitution; collusive bids; and bribery, unlawful gratuities, mail fraud and wire fraud. Employees shall be informed that, pursuant to 10 U.S.C. 2409, they may not be discharged, demoted or otherwise discriminated against as a reprisal for disclosing to a Member of Congress or an authorized official of the Department of Defense or the Department of Justice information relating to a substantial violation of law related to a defense contract. In addition, employees should be made aware of unethical practices reflecting an actual or apparent conflict of interest (e.g., subcontractor kickbacks, or vendor gratuities).

(2) Prominent display of posters that provide information on Government Inspector General Hotline procedures. Such posters shall be posted in conspicuous places that are available to employees and applicants for employment. Hotline posters are available from the Government. If contractor developed posters are used, they shall, as a minimum, provide Hotline telephone numbers and state that Government Hotline procedures assure employee anonymity.

(3) Informing employees of their responsibilities for assuring the accuracy of their time charges to Government and, in turn, the integrity of the contractor's timekeeping system. Employees should be informed that willfully or knowingly mischarging their time may result in false claims or false statements to the Government and may subject them to a fine and/or imprisonment.

(4) Periodic discussions with employees of their responsibilities and liabilities while working on Government contracts to assure a continual awareness of the Contractor's program for prevention of fraud, waste and abuse.

(b) The contractor shall document employee orientations.

(c) The contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts in excess of $25,000.

(End of clause)

[FR Doc. 86-26301 Filed 11-20-86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 172

[Docket No. HM-198; Notice No. 86-6]

Molten Sulfur; Molten Materials Generally

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: RSPA is proposing to regulate molten sulfur as a hazardous material and make it subject to the hazard warning communications requirements. The proposed changes would cummunicate warning of hazard by means of markings, shipping papers, labeling and placarding. The proposed changes are necessary so that emergency response personnel will have sufficient warning to help them adequately handle incidents involving this material. RSPA is also soliciting information concerning other molten materials, to determine if there is a need to make them subject to the regulations.

DATE: Comments must be received by February 19, 1987.

ADDRESS: Address comments to: Dockets Branch, Office of Hazardous Materials Transportation (DHM-53), U.S. Department of Transportation, Washington, DC 20590. Comments should be submitted, identifying the docket number (Docket HM-198) and, when possible, in five copies. The Dockets Branch is located in Room 8426 of the Nassif Building, 400 Seventh Street SW., Washington, DC. Office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Irving R. Abis, Standards Division, Telephone: (202) 366-4488 or Charles Hochman, Technical Division, Telephone: (202) 366-4545. Office of Hazardous Materials Transportation, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The National Transportation Safety Board (NTSB) has recommended that the RSPA: (1) Regulate molten sulfur and, as appropriate, other molten materials, as hazardous materials, (2) prescribe packaging and handling standards, and (3) incorporate information relating to the hazards of these materials into warning devices and publications available to emergency responders and others involved in the transportation of molten materials.

As background to its Safety recommendation I-85-19, issued on August 12, 1985, the NTSB stated the following:

> About 11:50 a.m., P.s.t., on January 19, 1985, a tractor with two tank trailers, operated by Cal Tank Lines, struck the concrete median barrier of the southbound lanes of Interstate 680 on the Benicia-Martinez bridge in Benicia, California. The trailers, carrying molten sulfur, overturned into the northbound lanes. One trailer was destroyed by ensuing fires, and the other was breached in several places. The molten sulfur splashed onto vehicles traveling in the northbound lanes as well as onto the roadway and its shoulders. The sulfur was ignited by an undetermined source and burned for approximately 3 hours. The driver of the truck and the driver of one of the vehicles in the northbound lanes died, and 26 persons were taken to local hospitals; 3 persons were admitted. Persons were evacuated from the area near the accident site, and the roadway was closed for 15 minutes.
>
> Firefighters reported that when they arrived visibility was extremely poor due to a heavy white smoke. In their haste to attend the injured, and because bystanders appeared to be suffering no ill effects from the smoke, the initial responders carried out rescue operations without donning any protective breathing apparatus. These firefighters later were treated for breathing difficulties related to vapors from the burning material. When the fire chief arrived, he tried to identify the cargo by looking for placards, but there were none on the trailers. After the injured had been sent to the hospital, the firefighters turned their attention to dealing with the material spilled from the trailers. Firefighters, now in chemical protective suits, attempted to plug the holes in one of the trailers using wooded plugs, but they were unsuccessful because the molten material ignited the plugs. At the same time, other firefighters were hesitant to apply extinquishants to the burning material on the ground since they did not know what the material was.
>
> About 1:15 p.m., two firefighters approached the cab of the truck and found a waybill and other papers on the ground outside the tractor. Using information from these papers, the carrier was contacted, and at 1:30 p.m. the material was identified as molten sulfur. By that time, several additional persons had been sent to the hospital suffering from either contact burns due to the molten sulfur or inhalation of its combustion products. Even after the firefighters learned the identity of the material, they had difficulty finding information on how to handle the emergency and how to treat those injured in the emergency response guidebooks they had available. Ultimately, the fire chief finally was able to find limited information on handling molten sulfur in the

> U.S. Department of Transportation's (DOT) 1984 *Emergency Response Guidebook.*
>
> The molten sulfur was a causal factor in the two deaths and in most of the injuries involved in this accident. When firefighters arrived, the truck driver was alive, but trapped in the cab of his truck. Firefighters attempted to extricate the driver but were forced to retreat due to the heat from the burning sulfur. Sometime after 11:30 p.m., the driver's body was removed from the cab of the truck. The coroner's report listed the cause of the driver's death as "inhalation of fire and smoke with asphyxiation." The other fatality was splashed by molten sulfur as the tanks climbed the barrier. He died 3 days later of thermal burns. Many of those injured as a result of this accident suffered irritation of the mucous membranes. Sulfur dioxide, a combustion product of sulfur, produces this effect.

The NTSB continued:

> While the temperature at which molten sulfur is transported is not sufficient to ignite most combustibles, its elevated temperature presents a hazard nevertheless, as this accident involving the deaths of 2 persons and injury to 26 others and substantial property damage demonstrated. The Safety Board is concerned that there may be other unregulated molten materials in the transportation system which also might cause severe casualties involving persons, damage to property, and major disruption to communities.
>
> Therefore the National Transportation Safety Board recommends that the Research and Special Programs Administration:
>
> Regulate molten sulfur and, as appropriate, other molten materials, as hazardous materials, prescribe packaging and handling standards, and incorporate information relating to the hazards of these materials into warning devices and publications available to emergency responders and others involved in the transportation of molten materials. (Class II, Priority Action) (I–85–19).
>
> Classify as priority action on the proposed rulemaking in Docket HM–178 regarding the definition of a flammable solid, and establish a timetable for its completion. Include in the final rule test requirements and clear, objective criteria for shippers to identify those materials included in this hazard class. (Class II, Priority Action) (I–85–20).

RSPA has conducted an analysis of the inherent hazards involved in the transportation of molten materials to determine whether these materials are adequately regulated to provide safe transportation. As part of this analysis, RSPA reviewed the results of a separate investigation of the Benicia, California accident conducted by the National Fire Protection Association that was discussed in the January 1986 issue of *Fire Journal.* Analysis of the investigation report showed the following:

1. Detailed emergency response information on molten sulfur was not immediately available because molten sulfur is not subject to regulation as a hazardous material.
2. Firefighters had difficulty confirming the nature of the cargo.
3. Visibility at the site was severely limited as a result of fog and dense vapors of sulfur dioxide.

RSPA agrees with the NTSB's assessment that molten sulfur should be regulated as a hazardous material. RSPA believes that analysis of the investigation of this incident and other incidents involving molten sulfur justifies the regulation of this material as a flammable solid, even though it may not be in a solid state during transportation. This action is necessary so that emergency response personnel will have sufficient initial warning information to assist them in handling this kind of incident. RSPA has not determined if specific packaging standards are necessary. In this notice RSPA is proposing that molten sulfur be subject only to the general packaging requirements contained in § 173.24. This section contains general packaging requirements for the transportation of all hazardous materials.

This notice also solicits comments on the nature and scope of the transportation of molten sulfur and other molten materials that are currently not regulated as hazardous materials. Evaluation of these comments will aid RSPA in determining whether other molten materials should be regulated, and if specific packaging standards are necessary for the safe transportation of molten sulfur and other molten materials. RSPA will evaluate these comments and then determine if it will propose further amendments to the HMR.

In this notice, RSPA proposes to specifically list molten sulfur in the Hazardous Materials Table (HMT) in § 172.101, and classify the material as a flammable solid. Solid sulfur is currently regulated domestically as ORM–C only for shipments by vessel. Approximately 6 million long tons of molten sulfur are shipped domestically by highway and rail each year. Sulfur, in a molten state, is not currently listed as a hazardous material in the HMT. However, molten sulfur is listed in the Optional Hazardous Materials Table, § 172.102, reflecting regulated status in the International Maritime Dangerous Goods (IMDG) Code. (This table is used for import and export shipments by vessel.) Furthermore, the U.S. Coast Guard presently regulates bulk vessel movements of molten sulfur in Subchapter O of 46 CFR. If the rules proposed in this notice are adopted, molten sulfur would be treated in the same manner as in the U.N. Recommendations. However, since it is unclear whether or not molten sulfur meets the current flammable solid definition contained in § 173.150, the RSPA is proposing to include a plus mark (+) associated with the entry in the HMT. This would indicate that molten sulfur is subject to the regulations as a flammable solid whether or not the material meets the definition of the hazard class contained in § 173.154.

The definition of a flammable solid is less than precise. The NTSB pointed this out in the background to its Safety Recommendations I–85–19 and 1–85–20. A more precise flammable solid definition is under study by the United Nations Committee of Experts on the Transportation of Dangerous Goods (U.N.). Despite the current efforts to improve the definition, the U.N. recommendations classify molten sulfur an a flammable solid.

In addition to proposing to regulate the transportation of molten sulfur, which would have the effect of requiring shipping papers, marking, labeling, and transport vehicle placarding, the RSPA is soliciting comments on the following questions in order to determine the need for further regulation of molten sulfur and other molten materials as appropriate:

1. What molten materials, not currently regulated by DOT, are being transported?
2. At what temperatures are these materials transported?
3. What modes of transportation are being used for the transportation of molten materials?
4. What packagings (bulk and/or non-bulk) are being used for the transportation of molten materials?
5. What is the minimum/maximum quantity of molten materials being transported in any one transport vehicle?
6. What are the hazards associated with the transportation of specific types of molten materials?
7. Should shipping papers, markings, and placarding be required for shipments of all or specific molten materials?
8. Are DOT packaging standards, including specification packagings, necessary for the safe transportation of molten materials?
9. What packaging design criteria are used to minimize the loss of lading as a result of a collision or overturn?
10. Does industry have, or is industry working on, packaging standards for the transportation of any molten material?

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11. What accident data is available to demonstrate the suitability of presently used packagings for molten materials?

The RSPA has determined that this rulemaking: (1) Is not "major" under Executive Order 12291; (2) is not "significant" under DOT's policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (40 U.S.C. 4321 et seq.). A regulatory evaluation is available for review in the docket. Based on limited information concerning the size and nature of entities likely affected, I certify that this proposed regulation will not, if promulgated, have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 49 CFR Part 172

Hazardous materials transportation, Labeling, packaging, and containers.

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

1. The authority citation for Part 172 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, and 1808; 49 CFR part 1, unless otherwise noted.

§ 172.101 [Amended]

2. In § 172.101, the Hazardous Materials Table would be amended by adding a new entry as follows:

§ 172.101 Hazardous Materials Table.

+/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	Identification number	Label(s) required (if not excepted)	Packaging		Maximum net quantity in one package		Water shipments		
					Exceptions	Specific requirements	Passenger carrying aircraft or railcar	Cargo aircraft only	Cargo vessel	Passenger vessel	Other requirements
1	2	3	3(a)	4	5(a)	5(b)	6(a)	6(b)	7(a)	7(b)	7(c)
	ADD										
•	Sulfur, molten	Flammable solid	UN 2448	Flammable solid	None	173.24	Forbidden	Forbidden	1	1	Stow separated from oxidizers and away from living quarters.

Issued in Washington, DC, on November 17, 1986, under authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 86–26260 Filed 11–20–86; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Lomatium bradshawii (Bradshaw's lomatium)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Lomatium bradshawii* (Bradshaw's lomatium) to be an endangered species. This action is being taken because the few remnant populations of the species are being threatened by habitat alteration or destruction through agricultural or residential development and competition with encroaching woody vegetation. *Lomatium bradshawii* occurs in isolated pockets of remaining native bottom land prairie habitat in the Willamette Valley of Oregon. A determination of *Lomatium bradshawii* to be an endangered species would implement the protection provided by the Endangered Species Act of 1973, as amended. Comments and materials related to the proposal are now being solicited.

DATES: Comments from the public and the State of Oregon must be received by January 20, 1987. Public hearing requests must be received by January 5, 1987.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232. Comments and materials relating to this rule are available for public inspection by appointment during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

Lomatium bradshawii (Bradshaw's lomatium) is a member of a native lowland prairie community endemic to the Willamette Valley of Oregon. It was first collected in 1916 at Salem, and was described as *Leptotaenia bradshawii* in 1934. It was included in *Lomatium* in 1942. It is usually found on low swales in soils that are wet much of the year.

The most significant threat to this plant's survival has been the conversion of native prairie habitat to agricultural land. This habitat is very valuable and productive as farmland, and consequently most of such land in the Willamette Valley is now in agricultural use. Recently, residential/industrial development has encroached upon much of the remaining habitat that supports *Lomatium bradshawii.*

There are eight or nine populations remaining within the plant's former range, scattered from Salem to just south of Eugene, Oregon. These populations vary in size from several thousand plants to only a few individuals. The vigor of these populations also varies considerably. Two of these populations are vulnerable to further suburban development.

The continued existence of this species is threatened by land use conversion, which is eliminating the native prairies in favor of agriculture and other developments. Suppression of fire in some areas also appears to be allowing encroachment of prairie habitat by woody vegetation, resulting in a decline of the *Lomatium.* This rule proposes to determine *Lomatium bradshawii* to be endangered, and implements the protection provided by the Endangered Species Act of 1973, as amended.

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of former Section 4(c)(2) of the Act (petition acceptance is now governed by Section 4(b)(3) of the Act), and of its intention to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to Section 4 of the Act.

This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Lomatium bradshawii* was included in the July 1, 1975, notice of review and in the June 16, 1976, proposal.

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was established for proposals already over 2 years old. On December 10, 1979, the Service published a notice of the withdrawal of the still-pending portion of the June 16, 1976, proposal, along with four other proposals that had expired. The withdrawal of the proposal to list *Lomatium bradshawii* was not based on biological considerations, but instead was the result of the administrative requirements of the Act prior to the 1982 Amendments. An updated notice of review, published on December 15, 1980 (45 FR 82480), listed *Lomatium bradshawii* in Category 1, which comprises taxa for which sufficient information is available to support proposal of listing as endangered or threatened. On February 15, 1983, the Service published notice (48 FR 6752) of its finding that the petitioned listing of this species may be warranted, in accord with section 4(b)(3)(A) of the Act, as amended in 1982. On October 13, 1983, October 12, 1984, and again on October 11, 1985, the petition finding was made that listing of this taxon was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Such a finding requires that the petition be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. Therefore, a new finding must be made; the Service finds that the petitioned action is warranted and hereby publishes a proposal to list the species as endangered, in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to *Lomatium bradshawii* (Rose *ex* Math.) Math. & Const. (Bradshaw's lomatium) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Although this species was known historically throughout the Willamette Valley of Oregon, habitat of *Lomatium bradshawii* has been mostly developed for agriculture or urbanization, leaving a few small preserves that are generally managed for grazing, or wildlife, or not managed at all. Today there are eight or possibly nine known remaining populations of the species.

Invasion of prairie vegetation by various woody plant species has also caused decline in *Lomatium bradshawii* at some sites. Prairies in the Willamette Valley apparently require periodic burning to prevent such encroachment. Because seeds and young plants of the *Lomatium* do not survive fire, however, burning at too frequent an interval can prevent establishment of new individuals of the species (Kagan 1980).

Two existing populations are located near Corvallis, Oregon: one on the Finley National Wildlife Refuge (NWR) and the other just northeast of Corvallis. The population on Finley NWR was recently rediscovered and presently consists of about 60 individual plants. The habitat on the refuge is managed by the U.S. Fish and Wildlife Service, primarily as a natural area. Past management practices included some controlled burning to prevent the encroachment of shrubs on the native grassland. Future refuge habitat management activities will include provisions to improve the status of this population.

The second site, at the Jackson-Frazier wetland northeast of Corvallis, consisted until recently of a remnant population of several hundred plants. An adjoining wet prairie of approximately 75 acres north of this area functioned as the watershed critical to this population. A large portion of this population was destroyed by construction of a housing development in 1980. The area supporting the remaining *Lomatium* plants was plowed in November 1985, about 400 plants still survive in 1986 (Kagan, pers. comm.).

Other remaining populations of *L. bradshawii* are in and around Eugene, Oregon. One is located near the Long Tom River, northwest of Eugene, Oregon. It formerly occurred on both private and Bureau of Land Management (BLM) land. The portion of the habitat on private land and some adjacent habitat on BLM land has been plowed, destroying approximately half of the total population. The remainder of this population, occurring on BLM land, has been subject to light grazing in the past but has never been plowed. Future management of this land is undetermined, and it remains unfenced at this time.

The second of these more southern populations, and the largest extant population of the species, numbering in the tens of thousands, is located in Eugene near Willow Creek. This site supports a diverse plant community, a relict of the Willamette Valley bottom land prairie. Another plant candidate for listing, *Erigeron decumbens* var. *decumbens* (Willamette daisy) also occurs at this site. This land is privately owned and has been under consideration for residential development in the past. Currently, it is leased to the Nature Conservancy, and the local community is negotiating to attempt to preserve the land.

The third population in the Eugene area is located near the Fern Ridge Reservoir on land administered by the Army Corps of Engineers. Although about 100 individuals of the *Lomatium* have been destroyed here in recent years, apparently as a result of permanent flooding of a portion of the area, the remaining population is estimated to comprise about 10,000 plants.

The fourth population in the Eugene area was discovered near Mt. Pisgah in 1985. It comprises about 100–200 individuals.

Three other recently discovered small populations, of fewer than 100 individuals each, occur in or near Eugene, Oregon. One is located in Eugene along Amazon Creek. Although this land has been managed for recreation for many years, a very small population of *Lomatium bradshawii* occurs at the site. Another population has been discovered west of Eugene

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near an electric power substation. A third was discovered a few miles south of Eugene along the Camas Swale near Interstate 5. *Lomatium bradshawii* has not been seen at Camas Swale for two years, and may now be extirpated there. These populations are very small and their continued existence is doubtful.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Although the species is not known to be threatened now by collecting or vandalism, its rarity makes it vulnerable to any potential threat of taking.

C. *Disease or predation.* Grazing may have formerly contributed to a reduction in the range of *Lomatium bradshawii,* but it is believed that grazing was never a significant problem. Land use conversion and introduction of forage plants for the purposes of grazing livestock may have been a significant problem. This issue was addressed under factor A.

Lomatium bradshawii is known to be affected by a number of parasites. A fungus, a spittle bug, two species of aphids, and an unidentified insect predator (of the fruit) have been associated with *L. bradshawii* (Kagan 1980). They are not known to present a threat to the species as a whole; however, they could threaten small and stressed populations. Further work is necessary to determine the significance of any such threats.

D. *The inadequacy of existing regulatory mechanisms.* Oregon has at this time no conservation authority specifically for *Lomatium bradshawii* or any protection authority for rare plants in general. Official listing under the Act would provide a means by which various conservation and recovery actions can be implemented to ensure the continued existence of this plant throughout its range. If the species were listed, it would also receive the protection of section 7(a)(2) of the Act; BLM, the Fish and Wildlife Service, and the Army Corps of Engineers would have to insure that their land management activities affecting resident populations of Bradshaw's lomatium are not likely to jeopardize the continued existence of the species. (*See* discussion under "Available Conservation Measures," below.).

E. *Other natural or manmade factors affecting its continued existence.* The remaining small populations are all disjunct and geographically (thus genetically) isolated from each other. Inbreeding depression in these small populations may be a real threat to their long-term survival (Kagan 1980). Further study is necessary to assess the significance of inbreeding.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Lomatium bradshawii* as endangered. This species has been reduced to a few remnant populations as a result of conversion of its habitat in the Willamette Valley to urban and agricultural use. Therefore, the Service believes that Bradshaw's lomatium is in danger of extinction throughout all or a significant portion of its range. No critical habitat is proposed to be designated, for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. Because there are only eight known remaining populations of *Lomatium bradshawii,* the plant could be threatened by taking or vandalism if its localities are made widely known. Taking, an activity which is difficult to detect and control, is not regulated by the Endangered Species Act with respect to plants, except for a prohibition against removal and reduction to possession of endangered plants from lands under Federal jurisdiction. Publication of critical habitat descriptions would make this species more vulnerable to collection and vandalism pressures and increase enforcement problems. Therefore, it would not be prudent to determine critical habitat for *Lomatium bradshawii* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides authority for land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibition against removal and reduction to possession on Federal land are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, (revised by 51 FR 19926, June 3, 1986). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. In the case of *L. bradshawii,* the management of Finley National Wildlife Refuge, the management of the area under the jurisdiction of the Army Corps of Engineers near Fern Ridge Reservoir, and BLM's management of public land on which this species occurs would be subject to these requirements.

The Act and its implementing regulations found at 50 CFR 17.61 and 17.62 set forth a series of general trade prohibitions and exceptions that apply to endangered plant species. With respect to *Lomatium bradshawii,* all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell, or offer this species for sale in interstate or foreign commerce, or to remove this species from areas under Federal jurisdiction and reduce it to possession. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. Because this species is not known to be cultivated and is rare in the wild, it is anticipated that few, if any, trade permits would ever be sought or issued. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final rule resulting from this proposal will be accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning the following:

(1) Biological, commercial, or other relevant data concerning any threat (or lack thereof) to *Lomatium bradshawii;*

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Lomatium bradshawii.*

Final promulgation of a regulation on *Lomatium bradshawii* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested in writing within 45 days of the proposed rule's publication. Requests should be addressed to the Regional Director (see **ADDRESSES**).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Kagan, J.S. 1980. The Biology of *Lomatium bradshawii* (Apiaceae), a rare plant of Oregon. Unpublished Report. 71 pp.

Author

The primary author of this rule is Peter A. Stine, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, P.O. Box 50167, Honolulu, Hawaii 96850.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Apiaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*		
Apiaceae—Parsley family:						
Lomatium bradshawii	Bradshaw's lomatium	U.S.A. (OR)	E		NA	NA
*	*	*	*	*	*	*

Dated: October 17, 1986.

Susan Recce,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–26290 Filed 11–20–86; 8:45 am]

BILLING CODE 4310-55-M

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Notices

Federal Register
Vol. 51, No. 225
Friday, November 21, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Special Volunteer Programs, Availability of Funds; Demonstration Grants

The Office of Voluntarism Initiatives of ACTION announces the availability of funds during fiscal year 1987 for a demonstration grant under the Special Volunteer Programs authorized by the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113, Title I, Part C; 42 U.S.C. 4992).

The purpose of this competitive announcement is to identify and support an innovative project that can demonstrate an ability to work with, support, and encourage the development of various volunteer groups and individuals throughout the nation who are working to prevent drug use among youth.

A. Objective

Volunteer Demonstration Projects address areas of human concern where citizens, as volunteers, can contribute toward the overall health and well-being of their communities. This particular request for applications is designed to fund a national drug information resource center with the demonstrated capability of providing a substantial amount of technical information and assistance both over the phone and in writing to the general public with regard to drug use prevention, especially in areas such as: Volunteer parent, citizen, and youth group development; current pharmacological data on illegal drugs; and conference organizing.

This project must also be capable of identifying volunteer drug use prevention efforts throughout the country, enabling the public to learn of volunteer drug use prevention groups in their own states and/or communities from which they can obtain advice and information.

B. Eligible Applicants

Only applications from private non-profit incorporated organizations and public agencies will be considered.

C. Time Period and Scope of the Grant

The budget period for this demonstration grant begins on January 1, 1987 and ends June 30, 1987. Publication of this announcement does not obligate ACTION to award any specific number of grants or to obligate any specific amount of money for demonstration grants.

D. General Criteria for Grant Selection

Grant applications will be reviewed and evaluated in comparison with the criteria outlined below, as appropriate, as well as conformance to the instructions included in the application. Grant applicants with a demonstrated competence in drug use prevention efforts using volunteers will be given preference.

The General Criteria are as follows:

1. Experience in managing a high-volume, toll-free number and responding to large numbers of oral and written inquiries per year in order to give technical assistance and accurate information to the general public regarding the prevention of drug use by youth, especially in areas such as:

Volunteer parent, citizen, and youth group development; current pharmacological information on illegal drugs; the identification of local volunteer groups throughout the country; and organizing drug use prevention conferences.

2. Evidence of cooperation on the part of a large number of parent, citizen, and youth groups throughout the country willing to serve as volunteer resources in the area of drug use prevention among youth.

3. Promise of developing innovation or knowledge in the area of preventing drug use among youth and demonstrated ability to survey the impact of drug use prevention activities and provide survey results to volunteer organizations.

4. Capability of proposed staff, including demonstrated achievements in the drug use prevention field and providing technical assistance to volunteer organizations such as parent, citizen, and youth groups.

5. Capability of obtaining support from a broad range of private and public organizations for the volunteer movement which seeks to prevent drug use among the nation's youth.

6. Carefully formulated, time-phased and measurable objectives with feasible methods for meeting those objectives.

7. Feasibility of proposed budget. While applicants are not required to contribute a specific portion of the project's costs, they are encouraged to do so. Applicants capable of such contributions should specify the sources and amounts of non-federal contributions, and the sources and nature of in-kind, non-federal contributions.

8. Plans for becoming self-sufficient following the completion of the project supported by ACTION funds.

E. Application Review Process

ACTION's Office of Volunteerism Initiatives staff, which has expertise in volunteer demonstration programs, will review and evaluate all eligible applications submitted under this announcement. ACTION's Associate Director for Volunteerism Inititatives will make the final selection from among the highest ranked applications. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

F. Application Submission and Deadline

One signed original and two copies of all completed applications must be submitted to the Associate Director for Volunteerism Initiatives, Room 516, 806 Connecticut Avenue, NW., Washington, DC 20525. The deadline for receipt of applications is December 19, 1986. Only those that are received by 5:00 P.M. on this date will be eligible for consideration.

All grant applications must consist of:

a. Application for Federal Assistance (Form A–1017) with narrative budget justification and a narrative of project goals and objectives.

b. CPA certification of accounting capability.

c. Articles of incorporation.

d. Proof of non-profit status, which should be made through documentation.

e. Resume of candidates for the position of project director, if available, or the resume of the director of the applicant agency or project.

f. List of sponsor's governing board members and their relationship to the community.

To receive an application form, please call ACTION's Office of Volunteerism Initiatives at (202) 634–9749.

Signed at Washington, DC this 14th day of November 1986.

Donna M. Alvarado,

Director.

[FR Doc. 86–26324 Filed 11–20–86; 8:45 am]

BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE

Forest Service

Dixie National Forest, Garfield County, UT; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, in accordance with the Memorandum of Understanding with the Bureau of Land Management (BLM), dated June 19, 1984, will be the lead agency in the preparation of the environmental impact statement (EIS) to determine if lands within the Escalante Known Geological Structure (KGS) should be offered for competitive oil and gas lease. The BLM, which has the authority to issue oil and gas leases on Federal lands, has been requested to offer for lease certain lands within the KGS near Escalante, Utah. The BLM will be a cooperating agency in the preparation of the EIS as defined in 40 CFR 1501.6.

Previous scoping and environmental analysis of the effects of oil and gas leasing in the Escalante KGS indicated the need for the Forest Service to prepare an EIS.

The EIS will analyze a full range of leasing alternatives including "No Action"—the offering of no new leases—while considering rights granted by existing oil and gas leases within the KGS. Other alternatives that will be considered are various levels of leasing and assumed levels of development including the leasing of all available lands within the KGS as well as full field development.

Special provisions are contained in the Utah Wilderness Act of 1984 for CO_2 leasing in designated areas within the KGS. Issues related to the special provisions will be addressed in the EIS. A portion of the KGS includes lands within the Box-Death Hollow Wilderness. Leasing within the Wilderness is prohibited by the Utah Wilderness Act of 1984. Several leases that predate the Utah Wilderness Act exist within the Wilderness. The EIS will not address additional leasing within the Wilderness.

The majority of the lands administered by the BLM within the KGS are designated as the Phipps-Death Hollow Instant Study Area (ISA). The processing of new leases within the ISA is also currently prohibited. The EIS may refer to the ISA but no further consideration will be given to issuing new leases in the ISA.

Federal, state, and local agencies; oil and gas industry; and other individuals or organizations who were interested in or affected by the proposal were invited to participate in the scoping process. This process included:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.
4. Review of a preliminary environmental assessment.

The Fish and Wildlife Service will be invited as a cooperating agency to evaluate potential impacts on threatened and endangered species if any such species are found to exist in the KGS.

Issues previously scoped were analyzed and made available to the public in a preliminary environmental assessment in May 1986. The Forest Supervisor held a public meeting during the scoping process on June 18, 1986, from 9 a.m. to 8 p.m. All new issues and concerns shall be analyzed and made available to the public in a draft EIS on or about December 15, 1986. The final EIS is scheduled for June 1987.

Written comments and suggestions concerning the EIS analysis should be sent to Mr. Hugh Thompson, Forest Supervisor, Dixie National Forest, 82 North 100 East, Cedar City, UT 84720.

Mr. J.S. Tixier, Regional Forester, Intermountain Region, is the responsible official for this EIS.

Questions regarding the proposal and EIS should be directed to Mr. Calvin Bird, Forest Land Planner, Dixie National Forest, 82 North 100 East, Cedar City, UT 84720, (801) 586–2421; or Douglas Austin, District Ranger, Escalante Ranger District, Escalante, UT 84726, (801) 826–4221.

Dated: November 10, 1986.

J.S. Tixier,

Regional Forester, Intermountain Region.

[FR Doc. 86–26239 Filed 11–20–86; 8:45 am]

BILLING CODE 3410-11-M

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Judicial Review; Public Meeting

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Judicial Review of the Administrative Conference of the United States. The committee has scheduled this meeting to consider a draft recommendation on establishment of a Freedom of Information Act ombudsman office, based on a study by Professor Mark H. Grunewald of Washington and Lee University School of Law.

DATE: Thursday, December 4, 1986, at 10:00 a.m.

Location: Gelman Building, 2120 L Street NW., Lower Level, Hearing Room No. 1, Washington, DC.

Public participation: The committee meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: Michael W. Bowers, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037. Telephone: (202) 254–7065.

SUPPLEMENTARY INFORMATION: The Committee on Judicial Review previously considered the Freedom of Information Act ombudsman concept at meetings held on October 28 and November 13, but failed to reach agreement on a proposed recommendation. The committee will continue its deliberations at the meeting on December 4.

Dated: November 19, 1986.

Richard K. Berg,

General Counsel.

[FR Doc. 86–26395 Filed 11–20–86; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–607]

Initiation of Antidumping Duty Investigation; Certain Silica Filament Fabric From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

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SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of certain silica filament fabric from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether there is a reasonable indication that imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 11, 1986, and we will make ours on or before April 6, 1987.

EFFECTIVE DATE: November 21, 1986.

FOR FURTHER INFORMATION CONTACT: Mary Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1769.

SUPPLEMENTARY INFORMATION: .

The Petition

On October 27, 1986, we received a petition filed in proper form by Ametek, Inc. (Haveg Division), and by HITCO, on behalf of the U.S. industry producing certain silica filament fabric. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of certain silica filament fabric from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioners supporting the allegations.

We examined the petition on certain silica filament fabric from Japan and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether certain silica filament fabric from Japan is being, or is likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by April 6, 1987.

Scope of Investigation

The product covered by this investigation is certain woven fabric, of glass (silica filaments), whether or not colored, containing not over 17 percent of wool by weight, as currently provided for in items 338.25 and 338.27 of the *Tariff Schedules of the United States.*

United States Price and Foreign Market Value

Petitioners based United States price on a U.S. importer's price list and petitioners' estimates of the importer's bid prices in the United States. Petitioners made adjustments to the delivered prices for freight, brokerage, insurance, U.S. duties, and U.S. sales expenses.

Petitioners based foreign market value for certain silica filament fabric on home market sales to Japanese dealers. They made adjustments for quantity discounts, freight, and selling expenses. Based on a comparison of United States prices and foreign market values, petitioners allege dumping margins of 85 to 359 percent.

After analysis of petitioners' allegations and supporting data, we conclude that a formal investigation is warranted.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonpriviledged and nonproprietary information. We will also allow the ITC access to all priviledged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by December 11, 1986, whether there is a reasonable indication that imports of certain silica filament fabric from materially injure, or threaten material injury to, a U.S. industry. If its determination is negative the investigation will terminate; otherwise it will proceed according to the statutory and regulatory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

November 17, 1986.

[FR Doc. 86-28322 Filed 11-20-86; 8:45 am]

BILLING CODE 3510-DS-M

Automated Manufacturing Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Automated Manufacturing Equipment Technical Advisory Committee will be held December 12, 1986, 9:30 a.m., Herbert C. Hoover Building, Room 1092, 14th Street and Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to automated manufacturing equipment and related technology.

Agenda

1. Opening remarks by the Chairperson.
2. Presentation of papers or comments by the public.
3. Discussion of Numerically Controlled Machines.
4. Discussion of Programmable Controllers.
5. Discussion of Local Area Networking.
6. Discussion of 1987 Plan.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Public Law 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202/377–4217. For further information or copies of the minutes, Betty Ferrell at call 202/377–4959.

Dated: November 17, 1986.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 86–26316 Filed 11–20–86; 8:45 am]

BILLING CODE 3510-DT-M

Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held December 12, 1986, 1:30 p.m. in the Herbert C. Hoover Building, Room 4830, 14th Street & Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology & Policy Analysis with respect to questions that affect the level of export controls applicable to computer systems or technology.

Open Session

1. Opening Remarks by the Chairperson.
2. Presentation of papers or comments by the public.
3. Subcommittee Reports:
   Licensing Procedures and Regulations Subcommittee;
   Software Subcommittee; and
   Hardware Subcommittee.

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202/377–4127. For further information or copies of the minutes, call Betty Ferrell at 202/377–2583.

Dated: November 13, 1986.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 86–26317 Filed 11–20–86; 8:45 am]

BILLING CODE 3510-DT-M

Hardware Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held December 10, 1986, 3:00 p.m. in the Herbert C. Hoover Building, Room B-841, 14th Street and Constitution Avenue NW., Washington, DC. The Hardware Subcommittee was formed to study computer hardware with the goal of making recommendation to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

Agenda

1. Introduction of Members and Guests.
2. Opening remarks by the Chairperson.
3. Presentation of papers or comments by the public on technical matters relating to the export of computer hardware.

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Goverment In The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meeting and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202–377–4217. For further information contact Betty A. Ferrell, 202–377–2583.

Dated: November 17, 1986.

Margaret A. Cornejo,

Director Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 86–26318 Filed 11–20–86; 8:45 am]

BILLING CODE 3510-DT-M

Joint Meeting of the Automated Manufacturing Equipment Technical Advisory Committee and The Computer Systems Technical Advisory Committee; Partically Closed Meeting

A joint meeting of the Automated Manfacturing Equipment Technical Advisory Committee and the Computer Systems Technical Advisory Committee will be held December 11, 1986, 9:00 a.m. in the Herbert C. Hoover Building, Room 4830, 14th Street & Constitution Avenue, NW., Washington, DC.

Open Session

1. Introduction of members and guests.
2. Presentation of papers or comments by the public.
3. Discussion of Programmable Controllers.
4. Discussion of Local Area Networking.
5. Discussion of Control Equipment for Shop Floors.
6. Discussion of Software Process Control.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal

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Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned under Executive Order 12356. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202/377–4127. For further information or copies of the minutes, call Betty Ferrell at 202/377–2583.

Dated: November 17, 1986.

Margaret A. Cornejo,

Director Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 86–26319 Filed 11–20–86; 8:45 am]

BILLING CODE 3510–DT–M

Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee will be held December 11, 1986, 3:00 p.m., in the Herbert C. Hoover Building, Room 4830, 14th Street and Constitution Avenue, NW., Washington, DC. The Licensing Procedures and Regulations Subcommittee was formed to review the procedural aspects of export licensing and recommend areas where improvements can be made.

Open Session

1. Opening Remarks by the Chairperson.
2. Presentation of papers or comments by the public on proposed equipment decontrol and discussions on problems experienced in obtaining export licenses.
3. Discussion and formulation of a proposal to revise U.S. export controls regarding West/West export licenses.
4. Proposed reformatting of ECCN 1565A.
5. Proposed changes to Service Supply Licenses.
6. Proposed changes to GTE.
7. Proposed changes to GLV Limits.
8. Proposed changes to Amendments Form.
9. Parts and Components comments.
10. Discussion on Reexports; Bulk Licenses; General License Certified End-User (GCEU); raising of PDR limits for signatory and nonsignatory countries; proposed expansion of G–COM.

Executive Session

11. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202/377–4127. For further information or copies of the minutes, call Betty Ferrell at 202/377–2583.

Dated: November 17, 1986.

Margaret A. Cornejo,

Director, Technical Support Staff Office of Technology and Policy Analysis.

[FR Doc. 86–26320 Filed 11–20–86; 8:45 am]

BILLING CODE 3510–DT–M

Software Subcommittee of the Computer Systems Technical Advisory Committee; Closed Meeting

A meeting of the Software Subcommittee of the Computer Systems Technical Advisory Committee will be held December 12, 1986, 9:00 a.m. in the Herbert C. Hoover Building, Room 4830, 14th Street and Constitution Avenue, NW., Washington, DC. The Software Subcommittee was formed to study computer software with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

The Committee will meet only in executive session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM Control Program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meeting and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202–377–4217. For further information contact Betty A. Ferrell, 202–377–2583.

Dated: November 17, 1986.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 86–26321 Filed 11–20–86; 8:45 am]

BILLING CODE 3510–DT–M

Petitions by Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing on the dates indicated from the following firms: (1) FX Systems Corporation, 77 Cornell Street, Kingston, New York 12401, producer of electronic instrumentation devices (August 12, 1986); (2) Universal Clothes, Inc., 826 Broadway, New York 10013, producer of men's and women's jackets (August 14, 1986); (3) DVE Manufacturing Company, P.O. Box 288, Lewiston, Maine, 04240, producer of painters' caps (September 4, 1986); (4) Defender, Inc., 26th and Reed Street, Philadelphia, Pennsylvania 19146, producer of men's, women's and children's swimsuits, shorts, shirts, jogging suits and protective athletic pads (September 4, 1986); (5) Chimney Mountain Craftsmen, Inc., producer of wood furniture (September 8, 1986); (6) Northeast Wire Company, Inc., 60 Jackson Street, Holyoke, Massachusetts 01040, producer of insulated wire (September 8, 1986); (7) Wikstrom

Machines, Inc., 187–88 Hollis Avenue, Hollis, New York 11423, producer of welding machines (September 10, 1986); (8) W. J. Young Fastener and Machinery Company, Inc., Peabody Industrial Park, Peabody, Massachusetts 01960, producer of shoe machinery and shoe nails (September 10, 1986); (9) Ornamental Blown Glass, Inc., 20630 56th Avenue West, Area A, Lynnwood, Washington 98036, producer of glass vases, bottles, lamps, bowls and Christmas ornaments (September 12, 1986); (10) Brookman Cast Industries, Inc., 3530 Brady Court N.E., Salem, Oregon 97308, producer of parts for ski lift chair grips and other steel castings (September 15, 1986); (11) Nordic Tugs, Inc., P.O. Box 314, Woodinville, Washington, 98072, producer of pleasure power boats (September 15, 1986); (12) Posilock Puller, Inc., P.O. Box 248, Cooperstown, North Dakota 58425, producer of gear and bearing pullers (September 16, 1986); (13) South & Jones Timber Company, Inc., P.O. Box 788, Evanston, Wyoming 82930, producer of softwood lumber (September 18, 1986); (14) VanRich Casting Corporation, P.O. Box 17216, Portland, Oregon 97217, producer of valve boxes, counterweights-general machinery and truck and trailer parts (September 19, 1986); (15) Summers Manufacturing Company, Inc., 338 Railway Avenue, Maddock, North Dakota 58348, producer of agricultural machinery (September 22, 1986); (16) Supreme Leather Products, 32 Lawrence Street, Spring Valley, New York 10977, producer of miscellaneous leather products (September 30, 1986); (17) Video Interface Products, Inc., 20516 Lorne, Taylor, Michigan 48180, producer of video processors (September 30, 1986); (18) Wrightco Motorcycle Accessories, 17580 SE Sunnyside Road, Boring, Oregon 97009, producer of motorcycle tie-downs and hand guards (September 30, 1986); (19) Acme Precision Screw Products, Inc., 623 Glide Street, Rochester, New York 14606, producer of industrial fasteners and machine copier parts (September 30, 1986); (20) Di/An Controls, Inc., 944 Dorchester Avenue, Massachusetts 02125, producer of computerized printers and control systems (October 7, 1986); (21) Ultimate Support Systems, Inc., P.O. Box 470, Fort Collins, Colorado 80524–4700, producer of keyboard and other instrument stands (October 7, 1986); (22) Gem Electric Manufacturing Company, Inc., P.O. Box 11128, Hauppauge, New York 11788, producer of multiple outlets (October 7, 1986); (23) The Commercial Forgings Company, 3714 East 93rd Street, Cleveland, Ohio 44105, producer of printing press rolls (October 9, 1986); (24) Champion Glove Manufacturing Company, Inc., 2200 East Ovid, Des Moines, Iowa 50313, producer of sport and athletic gloves and sports accessories (October 10, 1986); (25) Pheoll Manufacturing Company, 5700 West Roosevelt Road, Chicago, Illinois 60650, producer of metal fasteners (October 9, 1986); (26) Midwestco Enterprises, Inc., 2735 North Ashland Avenue, Chicago, Illinois 60614, producer of electric transformers (October 10, 1986); (27) Polymer Plastics Corporation, 65 Davids Drive, Hauppauge, New York, 11788, producer of interior and exterior coatings and toppings (October 14, 1986); (28) Elite Electronic International Corporation, 301 West Hoffman Avenue, Lindenhurst, New York 11757, producer of electronic ignitions, regulators and resistors (October 15, 1986); (29) Roman Art Embroidery Corporation, 443 Summer Street, Brockton, Massachusetts 02402, producer of emblems and caps (October 29, 1986); and (30) America the Elegant, Inc., 3101 South Harbor Boulevard, Santa Ana, California 92704, producer of waterbed frames and other bedroom furniture (November 3, 1986).

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (Pub. L. 93–618), as amended. Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request of a hearing must be received by the Certification Division, Office of Trade Adjustment Assistance, Room 4015A, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.309, Trade Adjustment Assistance. Inasfar as this notice involves petitions for the determination of eligibility under the Trade Act of 1974, the requirements of Office of Management and Budget Circular No. A–95 regarding review by clearinghouses do not apply.

S. Cassin Muir,

Acting Chief, Certification Division, Office of Trade Adjustment Assistance.

[FR Doc. 86–26313 Filed 11–20–86; 8:45 am]

BILLING CODE 3510-DR-M

Applications for Duty-Free Entry of Scientific Instruments; University of Utah et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with §§ 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 86–150R. Applicant: University of Utah, Department of Biology, Salt Lake City, UT 84112. Instrument: Mass Spectrometer System, Model Delta E. Manufacturer: Finnigan MAT, West Germany. Original notice of this resubmitted application was published in the **Federal Register** of April 16, 1986.

Docket No. 87–021. Applicant: The University of Denver, 2101 East Wesley, Denver, CO 80208–0179. Instrument: NO_2 in Air Monitor, Model Luminax LMA–3. Manufacturer: Scintrex, Canada. Intended use: The instrument is intended to be used for studies of oxides of nitrogen, peroxycetyl nitrate, ozone and free radicals in air pollution and acid rain. Field experiments will be conducted to better determine the causes and effects of acid rain. Application received by Commissioner of Customs: October 28, 1986.

Docket No. 87–022. Applicant: Shadyside Hospital, 5230 Centre Avenue, Pittsburgh, PA 15232. Instrument: Electron Microscope, Model CM 10 with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended use: The instrument is intended to be used for studies of ultrastructural changes in biological medical specimens and human biopsy material. The instrument will also be used to teach courses in electron microscopy procedures and hands on experience for board preparation. Application received by Commissioner of Customs: October 29, 1986.

Docket No. 87–023. Applicant: University of Alaska, Geophysical Institute, Fairbanks, AK 99775–0800. Instrument: Imaging Photon Detector with Dual Ported Memory. Manufacturer: Hovemere Ltd., United Kingdom. Intended use: The instrument will be used to image chemical releases in space from rockets, satellites and the Space Shuttle. Application received by Commissioner of Customs: October 30, 1986.

Docket No. 87–024. Applicant: Albion College, Albion, MI 49224. Instrument: Rapid Kinetics Accessory of UV/Vis Spectrophotometers, Model SFA–11. Manufacturer: Hi-Tech Scientific Limited, United Kingdom. Intended use: The instrument will be used to investigate the rate of chemical reactions involving transition metal complexes. Both rates of electron transfer and rates of substitution will be measured. The initial research will be a study of the chromate-iodide reaction to determine why this reaction deviates from first order kinetics, and to develop a better understanding of the mechanism of this important reaction. In addition, the instrument will be used for educational purposes in the courses Chemistry 325: Advanced Laboratory—Projects and in Chemistry 411: Directed Study. Application received by Commissioner of Customs: October 30, 1986.

Docket No. 87–025. Applicant: Northwestern University, Department of Chemistry, 2145 Sheridan Road, Evanston, IL 60201. Instrument: Surface Analysis Instrument, Model Mk II. Manufacturer: VG Instruments, United Kingdom. Intended use: The instrument will be used for qualitative and quantitative analysis of the surface properties of single crystal metals and solid catalysts which generally consists of ceramic powder impregnated with small metal, metal alloy, or metal oxide particles. Application received by Commissioner of Customs: November 3, 1986.

Docket No. 87–026. Applicant: University of Kentucky, Department of Chemistry, Chemistry-Physics Building, Room 120, Lexington, KY 40506–0055. Instrument: Second Harmonic Generator (Laser), Model Hyper-Trak 1000. Manufacturer: Lumonics, Inc., Canada. Intended use: The instrument is an accessory to an existing laser system which is used to frequency double the output of the dye laser in order to provide tunable ultraviolet radiation. This electromagnetic energy is used to study the fundamental spectroscopic properties of small gas phase molecules. The samples to be studied are many and varied, but generally include small organic and inorganic compounds. In addition, the instrument will be used for educational purposes in the following courses: CHE 395, Independent Research, CHE 522, Instrumental Analysis, CHE 532, Spectrometric Identification of Organic Compounds, CHE 533, Qualitative Organic Analysis Laboratory, CHE 625, Optical Method of Analysis and CHE 790, Research in Chemistry. Application received by Commissioner of Customs: November 3, 1986.

Docket No. 87–027. Applicant: The University of Michigan, 2200 Bonisteel Boulevard, Ann Arbor, MI 48109. Instrument: Electron Microscope, Model EM 902 with Imaging Spectrometer. Manufacturer: Carl Zeiss, West Germany. Intended use: The instrument will be used to examine the internal structure of chromosome fibers of red blood cells and sperm, with the intention of identifying the general patterns of chromosome folding in all higher cells, including man. Application received by Commissioner of Customs: November 3, 1986.

Docket No. 87–028. Applicant: National Bureau of Standards, Building 223, Room A331, Gaithersburg, MD 20899. Instrument: Surface Forces Apparatus, Model Mk II with Accessories. Manufacturer: Anutech Pty., Ltd., Australia. Intended use: The instrument is intended to be used to investigate the effect of environment on the surface forces that develop when two surfaces are brought into close proximity. Ceramic materials such as aluminum oxide and silica immersed in aqueous environments will be studied. The data on surface forces obtained will be used to understand process of fracture, lubrication and colloidal interaction of ceramic materials. Application received by Commissioner of Customs: November 3, 1986.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–26323 Filed 11–20–86; 8:45 am]

BILLING CODE 3510–DS–M

[Application #86–00006]

Export Trade Certificate of Review

ACTION: Notice of issuance of an export trade certificate of review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to Abreu de la Mota & Associates International, Inc. (ADLM). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97–290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register.** Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

ADLM intends to export livestock (for slaughter or for breeding), grain (corn, wheat and soybeans), computer software and technology, and closed-circuit television security systems ("Goods"); and computer programming, communication and other related services ("Services"). In addition, ADLM will offer the following export trade facilitation services in connection with the foregoing Goods and Services: Management consulting, market research and analysis, freight forwarding, export documentation, trade mission organization, financial services, risk management, and public relations and government relations services.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Members

The members of ADLM include Mr. Francisco J. Abreu, President of Abreu de la Mota & Associates International,

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Inc., and G & M Industries, Inc. of Somerville, New Jersey.

Export Trade Activities and Methods of Operation

ADLM and its members may:

1. Enter into exclusive agreements with U.S. suppliers for the export of Goods and Services. These agreements may contain price, quantity, and territorial restrictions, as well as specify the mode of transport, parts and service requirements, payment, and other terms.

2. Enter into exclusive agreements with domestic or foreign export intermediaries for the export of consigned Goods and Services. These agreements may contain price, quantity, and territorial restrictions, as well as specify the mode of transport, parts and service requirements, payment, and other terms.

3. Act as a broker or procuring agent in the Export Markets.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: November 17, 1986.

James V. Lacy,

Director, Office of Export Trading Company Affairs.

[FR Doc. 86-26375 Filed 11-20-86; 8:45 am]

BILLING CODE 3510-DR-M

[C-122-602]

Rescheduling of the Public Hearing; Certain Softwood Lumber Products from Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce is rescheduling the public hearing in the countervailing duty investigation of certain softwood lumber products from Canada. The hearing will now be held at 9:00 a.m. on December 4, 1986, at the U.S. Department of Commerce, Room 6802, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who have requested the opportunity to participate in the hearing must submit at least 15 copies of the proprietary version and five copies of the nonproprietary version of the pre-hearing briefs to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address by November 28, 1986. Oral presentations will be limited to issues raised in the briefs. In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, all further written views will be considered for the final determination if received within ten days after the hearing transcript is available.

FOR FURTHER INFORMATION CONTACT: Gary Taverman or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC. 20230; telephone (202) 377-0161 or (202) 377-2438.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

November 18, 1986.

[FR Doc. 86-26403 Filed 11-20-86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will convene a public meeting of its Shrimp Advisory Panel, January 6-7, 1987, and of its Shrimp Scientific and Statistical Committee, January 8-9, 1987, to review the 1985 Texas closure; social and economic surveys of the impact of the closure; the transboundary study; turtle excluder devices; white shrimp; the impact of oil platform removal, and proposals for fishery management plan amendment. The public meetings will be held at the Landmark Motor Hotel Inn, 2601 Severn Avenue, Metairie, LA. For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609; telephone: (813) 228-2815.

Dated: November 13, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-26257 Filed 11-20-86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; Ms. Janice M. Straley (P263A)

On September 10, 1986, notice was published in the **Federal Register** (51 FR 32239) that an application had been filed by Ms. Janice M. Straley, P.O. Box 273, Sitka, Alaska 99835, to inadvertently harass during photo-identification activities humpback whales (Megaptera novaeangliae), killer whales (Orcinus orca), and minke whales (Balaenoptera acutorostrata).

Notice is hereby given that on November 14, 1986, as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361-1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 is based on a finding that such Permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220 through 222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review by interested persons in the following offices:

Protected Species Division, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC; and

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802.

Dated: November 17, 1986.

William E. Evans,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 86-26333 Filed 11-20-86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; Gerald G. Joyce (P385)

On September 23, 1986, notice was published in the **Federal Register** (51 FR 33789) that an application had been filed by Gerald G. Joyce, 826 NE. 80th Street, Seattle, Washington 98115, to harass and radio tag minke whales, (*Balaenoptera acutorostrata*) in Antarctic waters.

Notice is hereby given that on November 14, 1986, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

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The Permit is available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805 Washington, DC; and

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115.

Dated: November 17, 1986.

William E. Evans,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 86-26332 Filed 11-20-86; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Import Limits for Certain Cotton and Man-Made Fiber Apparel Products Produced or Manufactured in Jamaica

November 17, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 21, 1986. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202)377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota reopenings, please call (202) 377-3715.

Background

The Governments of the United States and Jamaica have exchanged diplomatic notes on a new bilateral agreement concerning trade in cotton and man-made fiber textile products, produced or manufactured in Jamaica and exported during the period which began on September 1, 1986 and extends through December 31, 1989.

The agreement establishes designated consultation levels for Categories 331/631 (cotton and man-made fiber gloves), 338/339 (cotton knit shirts), cotton and man-made fiber woven shirts in Category 340/640 with a sublimit for yarn-dyed shirts, and cotton trousers in Category 347/348, exported during the first agreement year which began on September 1, 1986 and extends through December 31, 1987. In the directive which follows this notice, the CITA Chairman directs the Commissioner of Customs to prohibit entry for consumption, or withdrawal from warehouse for consumption, of textile products in the foregoing categories in excess of the designated sixteen-month limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1986).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

November 18, 1986.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 17, 1986.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended, (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton and Man-Made Fiber Textile Agreement of August 27, 1986, between the Governments of the United States and Jamaica and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on November 21, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of textile products in the following categories, produced or manufactured in Jamaica and exported during the sixteen-month period which began on September 1, 1986 and extends through December 31, 1987, in excess of the following limits:[1]

Category	16-mo. restraint limit[1]
331/631	300,000 dozen pairs.
338/339	275,000 dozen.
340/640	375,000 dozen of which not more than 275,000 dozen shall be in TSUSA numbers 381.5610, 381.5625, 381.5660, 381.3132, 381.3142, 381.3152, 381.9535, 381.9547 and 381.9550.
347/348	425,000 dozen.

[1] The restraint limits have not been adjusted to account for imports exported after August 31, 1986.

Textile products in the foregoing categories which have been exported to the United States prior to September 1, 1986 shall not be subject to this directive.

Textile products in Categories 331/631, 338/339, 340/640 and 347/348, which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-26314 Filed 11-20-86; 8:45 am]

BILLING CODE 3510-DR-M

Adjusting the Import Limits for Certain Cotton Textile Products Produced or Manufactured in the Philippines

November 17, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 21, 1986. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

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[1] The restraint limits have not been adjusted to account for imports exported after August 31, 1986.

Background

A CITA directive dated December 20, 1985 (50 FR 52830) established limits for certain specified categories of cotton, wool and man-made fiber textile products, including Category 369, produced or manufactured in the Philippines and exported during the agreement year which began on January 1, 1986 and extends through December 31, 1986. At the request of the Government of the Republic of the Philippines, pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of November 24, 1982, as amended, between the Governments of the United States and the Republic of the Philippines, the designated consultation limit for Category 369 is being increased for 1986 only by 150,000 pounds to 1,509,611 pounds, of which not more than 870,798 pounds shall be a sublimit for 369 pt, shop towels (only TUSA 366.2840).

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the restraint limit previously established for the Category 369, as indicated.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

November 18, 1986.

Committee for the Implementation of Textile Agreements

November 17, 1986.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on December 20, 1985 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

Effective on November 21, 1986, the directive of December 20, 1985 is hereby further amended to include adjusted restraint limit for cotton textile products in Category 369:[1]

Category	Adjusted 12-mo limit[1]
369	1,509,611 pounds of which not more than 870,798 pounds shall be in TSUSA 366.2840.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1985.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-26312 Filed 11-20-86; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR THE PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1987; Establishment; Correction

In FR Doc. 86-27445 appearing at page 39945 in the issue for Monday, November 3, 1986, make the following corrections:

1. On page 39946, second column, under CLASS 1005, the first line under Sling, Adjustable, Small Arms should read "1005-01-216-4510."

2. On page 39946, second column, CLASS 1670, the line under Harness, Parachutist should read "1670-01-227-7992."

3. On page 39947, first column, under CLASS 4240, the first line under Harness, Head should read "4240-01-M14-0174." Same column, under CLASS 4240, after the fifth line insert "Modification Kit, Head Harness, 4240-01-220-3201" as the next lines.

4. On page 39948, first column, under CLASS 6515, the line under Case, Ear Plug should read "6515-01-212-9452 (80% of Gov't Rgmt)."

5. On page 39948, third column, after the fifteenth line, insert "6532-01-058-2518" as the next line.

6. On page 39953, second column, mid-way down, under Towel, Paper, first line, insert "(For GSA Regions 1, 3 (excluding New Cumberland, Pennsylvania depot), 4, 5, 6, 7, W and the Navy Pack for Charleston, South Carolina depot only)" as the next lines.

7. On page 39955, third column, under CLASS 8440, Belt, Trousers, insert the following as lines twenty-eight through thirty-eight:

8440-01-187-7286
8440-01-175-7851
8440-01-175-7853
8440-01-175-7859
8440-01-204-2810
8440-01-175-7854
8440-01-175-7852
8440-01-181-4410
8440-01-181-4411
8440-01-204-2810
8440-01-175-7860

8. On page 39958, first column, mid-way down, under Department of the Air Force insert "Westover Air Force Base, Massachusetts" as the next line.

C. W. Fletcher,

Executive Director.

[FR Doc. 86-26287 Filed 11-20-86; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1987; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1987 commodities to be produced by and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: November 21, 1986.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On June 7, 1985, July 3, 1986, August 29, 1986 and September 12, 1986 the Committee for Purchase from the Blind and Other Severely Handicapped published notices (50 FR 24018 and 51 FR 24430, 30899, and 32516) of additions to Procurement List 1987, November 3, 1986 (51 FR 39946). One comment was received in response to the notice of the proposed addition of Microfiche Reproduction service at the Headquarters, USMC (Navy Annex), Washington, DC. The commenter indicated that his firm was the current contractor for the service under the SBA 8(a) program and wished to continue to provide it to the Government. He indicated that his firm does not exceed the Small Business size standard under the Standard Industrial Class (SIC)

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[1] The agreement provides, in part, that: (1) specific limits may be exceeded during the agreement year by designated percentages; (2) Specific limits may be adjusted for swing, carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

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which covers his current contract. He stated that 94% of his employees are minorities and that 20–23% of his employees would be laid off if the service is added to the Procurement List since his firm does not have sufficient additional work to permit their continued employment. He indicated that this service represents about 20% of his firms average sales during the past three years. The commenter stated that the contracting officer has indicated that the SIC may be changed to the standard for microfiche services and if this occurs, his firm would not qualify as a small business. He indicated that his contract for this service represents 10% of his firm's current revenue and 30% of the revenue of the operating division that supports the service. He stated that his firm remains a certified SBA 8(a) firm through April 1988 and that it is entitled by Federal Acquisition Regulations to two additional option years under its existing contract.

The sales information provided by the current contractor was a three-year average. The annual value of his firm's contract represents about 12.6% of its current annual sales.

The contracting agency has indicated that future procurements, if this service is not added to the Procurement List, will be set-aside for bidding by small businesses only. The Small Business Administration has confirmed that the current contractor no longer meets the size standard for this procurement and agreed that the service should be added to the Procurement List. Although the firm may be eligible to receive contracts for other commodities and services due to different size standards for the items involved, as indicated by SBA, it is not eligible to receive a contract for this service either under the SBA 8(a) program or under a competitive procurement set-aside for bidding by small businesses only.

The Federal Acquisition regulation mentioned by the commenter does not entitle his firm to receive a contract for two option years. The regulation cited states that contracts shall specify option periods. The decision on the exercise of an option is a unilateral right of the Government. The Marine Corps has confirmed that it does not intend to contract with the firm involved after completion of its current contract period.

In view of the above, it has been determined that the addition of this service to the Procurement List would not cause severe impact on the current contractor since its current contract will not be extended and it would not be eligible to bid on future competitive procurements of this service.

Additions

After considerations of the relevant matter presented, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 5 Stat. 77 and 41 CFR 51–2.6. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodities and service listed.

c. The action will result in authorizing small entities to produce the commodities and services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1987:

Commodities

Stay, Fence
  5660–00–943–9927
  5660–00–904–8023
  5660–00–607–0286
  5660–00–607–0287

Trousers, Operating, Surgical
  6532–00–299–9828
  6532–00–299–9829
  6532–00–299–9830
  6532–00–299–9831

Services

Federal Building and U.S. Courthouse
  110 S. 4th Street
  Minneapolis, Minnesota

Microfiche Reproduction
  Headquarters, USMC (Navy Annex)
  Washington, DC

C.W. Fletcher,

Executive Director.

[FR Doc. 86–26299 Filed 11–20–86; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1987; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1987 commodities to be produced by workshops for the blind or other severely handicapped.

Comments Must Be Received on or Before: December 24, 1986.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509..

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities to Procurement List 1987, November 3, 1986 (51 FR 39946):

Commodities

Strap, Webbing
  5340–01–114–7712

Bandage, Cotton, Elastic
  6510–00–935–5821
  6510–00–935–5822

Case, Ear Plug
  6515–00–212–9452
  (portion of Government requirement not on Procurement List)

Cap, Canteen, Water
  8465–00–930–2077

Water Bag, Nylon Duck
  8465–01–185–5511

Stool
  P.S. Items #127–A, 127–B, 127–C, and 127–D.

C.W. Fletcher,

Executive Director.

[FR Doc. 86–26298 Filed 11–20–86; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Agency Information Collection Activities Under OMB Review

ACTION: Public information collection requirement submitted to OMB for review.

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) title of information collection and form number, if applicable; (3) abstract statement of the need for and the uses to be made of the information collected; (4) an

estimate of the number of responses; (5) an estimate of the total number of hours needed to provide the information; (6) to whom comments regarding the information collection are to be forwarded; and (7) the point of contact from whom a copy of the information proposal may be obtained.

Revision

DoD FAR Supplement Part 208

The reporting requirement contained in 208.404 is in the form of a reduced number of solicitations to be issued by the Department of Defense and a reduced number of responses to be submitted by contractors.

Businesses or others for profit/small business organizations.

Responses: 26,035,000.

Burden Hours: 90,470,000.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone (202) 746-0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Owen Green, DAR Council, ODASD(P)/DARS, c/o OASD(A&L)(M&RS), Room 3C841, Pentagon, Washington, DC 20301-3062. This is a revision of an existing collection.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

November 18, 1986.

[FR Doc. 86-28328 Filed 11-20-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board Meeting; Ad Hoc Committee on Air Base Performance

November 13, 1986.

The USAF Scientific Advisory Board Ad Hoc Committee on Air Base Performance will meet at The Center for Naval Analyses, Alexandria VA, on December 11-12, 1986, from 8:30 a.m. to 5:00 p.m.

The purpose of this meeting is to receive briefings on and to discuss factors affecting air base development, performance, and survivability, threats to air bases, basing posture, and logistics. The Committee will also begin formulating a report.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-28329 Filed 11-20-86; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board Meeting; Ad Hoc Committee on Space-Based Radar

November 13, 1986.

The USAF Scientific Advisory Board Ad Hoc Committee on Space-Based Radar will meet at the Pentagon, Room 5D982, on December 18-19, 1986, from 8:30 a.m. to 5:00 p.m. each day.

The purpose of this meeting is to receive briefings on, to discuss, and to advise senior Air Force personnel on the feasibility of pursuing a proposed modification to a shuttle imaging radar experiment.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-28330 Filed 11-20-86; 8:45 am]

BILLING CODE 3910-01-M

Agency Information Collection Activities Under OMB Review

ACTION: Public information collection requirement submitted to OMB for review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) title of information collection and form number, if applicable; (3) abstract statement of the need for and the use to be made of the information collected; (4) type of respondent; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; and (8) the point of contact from whom a copy of the information proposal may be obtained.

Extension of a Currently Approved Collection

Proposal for an Advertising Copy Evaluation Survey

The purpose of the survey is to generate quantified insights into how individuals within target audiences perceive Air Force advertising before it is produced in final form. Survey results will be used to help insure that the advertising approved will communicate precisely those ideas intended. The affected public is a nationally representative sample of young people, ages 17-25 years, who are not in the military services.

Individuals
Responses 1,000
Burden hours 418

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone number (202) 746-0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. O. F. Stumbaugh, HQ USAFRS/RSAANR, Randolph AFB TX 78150-5421, telephone (512) 652-4916.

November 18, 1986

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-28327 Filed 11-20-86; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Agency Information Collection Activities Under OMB Review

ACTION: Public Information collection requirement submitted to OMB for review.

SUMMARY: The Department of Defense has submitteed to OMB for review the following proposal for the collection of

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information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) title of information collection and form number if applicable; (3) abstract statement of the need for and the uses to be made of the information collected; (4) type of respondent; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; and (8) the point of contact from whom a copy of the information proposal may be obtained.

Extension

Application to transit or visit the Kwajalein Missile Range

Controlled access is essential to maintaining the security of Kwajalein Missile Range, and to ensuring the safety of personnel and vessels desiring to enter or transit the Kwajalein Atoll.

Individuals

Responses: 902

Burden hours: 150

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0993.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Ms. Angela R. Petrarca, DAIM–ADI–M, Room 1C638, The Pentagon, Washington, DC 20310–07000, telephone (202) 695–1671.

November 18, 1986.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86–26326 Filed 11–20–86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement, Advisory Council on Educational Statistics. (ACES); Meeting

AGENCY: Office of Educational Research and Improvement, Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Educational Statistics. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: December 15–16, 1986.

ADDRESS: 555 New Jersey Avenue NW., Room 326, Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: Iris Silverman, Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue, Room 400J, Washington, DC 20208. Telephone: (202) 357–6831.

SUPPLEMENTARY INFORMATION: The Advisory Council on Education Statistics is established under section 406(c)(1) of the Education Amendments of 1974, Pub. L. 93–380. The Council is established to review general policies for the operation of the Center for Education Statistics (CES) in the Office of Educational Research and Improvement and is responsible for establishing standards to insure that statistics and analyses disseminated by the Center are of high quality and are not subject to political influence.

The meeting of the Council is open to the public. The proposed agenda includes the following:

- Follow-up to the evaluation report on the Center for Education Statistics conducted by the Committee on National Statistics, National Research Council.
- Statistical standards program.
- Role of State Administrative Record Systems in the Redesign of the Elementary and Secondary Education data system.
- Student assessment.
- Such old and new business as the Chairman or membership may put before the Council.

Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue NW., Room 400J, Washington, DC 20208.

Dated: November 14, 1986.

Chester E. Finn, Jr.,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 86–26296 Filed 11–20–86; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3116-1]

Environmental Impact Statements and Regulations Prepared November 3, Through 7, 1986; Availability of EPA Comments

Availability of EPA comments prepared November 3, 1986 through November 7, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. D–AFS–K65108–CA, Rating LO, Los Padres Nat'l Forest, Land and Resource Mgmt. Plan, CA. SUMMARY: EPA has no objections to the proposed plan, but requests further information in the final EIS regarding the development of riparian standards, compliance with California water quality protection guidelines, riparian and water quality mitigation measures, and future environmental analyses regarding the use of herbicides in the Los Padres National Forest.

ERP No. D–FRC–LO5195–ID, Rating 3, Salmon R. Basin, Fifteen Hydroelectric Power Projects, Construction, Operation, and Maintenance, Licenses, ID. SUMMARY: EPA believes the information presented in the draft EIS is insufficient to determine the adverse impacts, either from individual projects or cumulative effects. The main shortcomings are: (1) Lack of finalized instream flow studies; (2) lack of site specific geotechnical data; (3) unknown adequacy of mitigation measures; and (4) inappropriate treatment of alternatives. In addition, mitigation is not proposed for impacts that remain after proposed measures are applied. EPA believes that the deficiencies are of such a magnitude that additional evaluations should receive public review at the draft stage. EPA, therefore, recommends that a supplemental or revised draft EIS be prepared. Unless the issues addressed can be resolved prior to the filing fo the final EIS, this EIS is a candidate for referral to the Council on Environmental Quality.

ERP No. RD–NOA–G91001–00, Rating EC2, Red Drum Fishery of the Gulf of

Mexico Fishery Mgmt. Plan, Off the Coasts of TX, LA, MS, FL, and AL. SUMMARY: EPA expresses environmental concerns with the proposed fishery management plan. Although the draft EIS adequately addressed the background information and related commercial and recreational fishing statistics and analysis, EPA found that the EIS lacks sufficient consideration of potential cumulative impacts. The draft EIS should also evaluate possible mitigation such as the use of aquacultural technologies to alleviate some of the harvest pressures and supplement the red drum population.

Final EISs

ERP No. F-BLM-G60006-NM, Southern Rio Grande Plan, State Land Exchange and Tenure Adjustments, NM. SUMMARY: EPA has no objections to the proposed action as described.

ERP No. F-BLM-L70005-OR, Baker Resource Area, Resource Mgmt. Plan, OR. SUMMARY: EPA was concerned that the final EIS did not clearly show: (1) How the proposed Standard Operating Procedures (SOPs) will adequately protect against adverse environmental impacts; and (2) how the SOPs will be reviewed and revised as necessary. EPA believes the Record of Decision should specify how the monitoring program will function to determine that the SOPs are applied and are functioning fully.

ERP No. FA-COE-K36014-CA, Upper Santa Ana River Main Stem and Santiago Creek Flood Control Project and Mentone Dam Upstream Flood Storage Alternatives, CA. SUMMARY: EPA expressed concerns about the Corps' potential deletion of one area from the total mitigation package and noted that, with its deletion, the project fails to comply with U.S. Clean Water Act (CWA) section 404(b)(1) Guidelines. EPA asked that if the Corps' intends to seek a CWA section 404(r) exemption from Congress to fund the project, that the environmental statement submitted to Congress contain a statement that the project does not, in EPA's judgment, comply with the section 404(b)(1) Guidelines.

ERP No. F-COE-K85058-CA, Lighthouse Marina Residential and Commercial Development, Construction and Operation, section 10 and 404 Permits, Sacramento R., CA. SUMMARY: EPA noted that the final EIS did not adequately discuss a wide number and variety of environmental protection issues. These include: (1) Information on the mitigation proposal and the impacts of various alternatives, as required by the NEPA; (2) the extent of wetlands subject to the CWA section 404 jurisdiction appear to be seriously under-estimated, thus not giving an accurate picture of the project's impacts; (3) the project's compliance with section 176(c) of the CAA; (4) the availability of adequate wastewater treatment capacity for the project; and (5) the project's overall compliance with the NEPA. EPA recommended that the Corps' prepare a supplement to the final EIS, and if one is not prepared, that the Corps' deny the section 404 permit application.

ERP No. F-FAA-J51007-CO, Stapleton International Airport Runway Expansion, Approval, CO. SUMMARY: EPA is still concerned about wetland impacts and requested that wetlands be avoided as much as possible during final design. EPA also requested that, if additional air analysis does show "hot spots", mitigation to reduce CO levels would be needed. When completed the groundwater monitoring plan should be sent to EPA for review.

ERP No. F-FHW-K40150-CA, D Street Extension, Construction, Myrtle Street/Soto Rd. to Second St., CA. SUMMARY: EPA made no formal comments. EPA reviewed the final EIS and found it to be adequate.

Dated: November 18, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86-26304 Filed 11-20-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3115-9]

Environmental Impact Statements Filed November 10 Through 14, 1986; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed November 10, 1986 through November 14, 1986, pursuant to 40 CFR 1506.9.

EIS No. 860468, Draft, BLM, WY, Washakie Resource Area, Resource Management Plan and Wilderness Study Areas Recommendations Big Horn, Washakie and Hot Springs Counties, Due: February 19, 1987, Contact: Roger Inman (307) 347-9871.

EIS No. 860469, Draft, MMS, AK, 1987 Beaufort Sea Outer Continental Shelf (OCS) Oil and Gas Sale 97, Leasing, Due: January 6, 1987, Contact Richard Roberts (907) 261-4662.

EIS No. 860470, Final, AFS, NM, Gila National Forest, Land and Resource Management Plan, Due: December 22, 1986, Contact: David Dahl (505) 388-8201.

EIS No. 860471, Final, FHW, MI, Detroit Travel Information Center Construction and Associated Roadway Improvements, near I-75 and the Ambassador Bridge, Wayne County, December 22, 1986, Contact: Thomas Fort, Jr. (517) 377-1879.

EIS No. 860472, Final, BLM, MT, Headwaters Resource Area, Black Sage and Yellowstone River Island Wilderness Study Areas, Wilderness Designation, Park and Jefferson Counties, Due: December 22, 1986, Contact: Gary Leppart (406) 494-5059.

EIS No. 860473, Final, BLM, ID, Owyhee Planning Area, Wilderness Study Areas, Wilderness Designation Owyhee County, Due: December 22, 1986, Contact: David Brunner (208) 334-1582.

EIS No. 860474, FSuppl, USN/COE, NJ, Naval Weapons Station Earle Logistic Support Systems, Modernization, Expansion and Issuance of COE sections 10 Rivers and Harbors Act of 1899, 404 Clean Water Act of 1972, and 103 Marine Protection, Research and Sanctions Act of 1972 Permits, Project Modifications, Colt Neck, Monmouth County, Due: December 22, 1986, Contact: T.W. Bone (215) 897-6262.

EIS No. 860475, Final, CDB, CA, Anaverde Retention Basin, Construction, Flood Control Project, CDBG, Los Angeles County, Due: December 22, 1986, Contact: N.C. Datwyler (213) 226-8111.

EIS No. 860476, Final, UAF, NV, Groom Mountain Range Addition, Nellis AFB, Bombing and Gunnery Range, Renewed Withdrawal from Public Lands, Lincoln County, Due: December 22, 1986, Contact: Alton Chaves (804) 764-4430.

Amended Notice

EIS No. 860460, Final, AFS, NM, Lincoln National Forest, Land and Resource Management Plan, Due: December 15, 1986, Published FR: 11-14-86—Incorrect state.

Dated: November 18, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86-26305 Filed 11-20-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3115-7]

Intent To Prepare a Supplemental Environmental Impact Statement; Deer Island, Boston, MA

AGENCY: Environmental Protection Agency (EPA), Region I.

BEST COPY AVAILABLE

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ACTION: Preparation of a supplemental environmental impact statement (SEIS) on the marine wastewater conveyance facilities and outfall(s) for the Massachusetts Water Resources Authority (MWRA) wastewater treatment facilities at Deer Island, Boston, Massachusetts.

PURPOSE: The MWRA is undertaking facilities planning for the construction of major wastewater treatment facilities serving metropolitan Boston pursuant to a schedule mandated by the U.S. District Court, District of Massachusetts, in *U.S.* v. *M.D.C. et al.*, Civil Action No. 85-0489-MA and a related case. In accordance with the EPA procedures for the implementation of the National Environmental Policy Act (NEPA), 40 CFR Part 6, EPA intends to prepare a SEIS on the marine wastewater conveyance facilities and outfall(s) associated with these facilities. This notice of intent is issued pursuant to 40 CFR 6.510(a)(1) and 6.105(e). The decision to prepare a SEIS is consistent with § 1502.9(c) of the Council on Environmental Quality (CEQ) Regulations, 40 CFR 1502.9(c).

FOR FURTHER INFORMATION CONTACT: Ronald G. Manfredonia, EPA-Water Management Division, John F. Kennedy Federal Building, Boston, MA 02203, Telephone (617) 565-3555 or FTS 835-3555.

SUMMARY:

A. Background.

Planning for treatment of metropolitan Boston's wastewater has been proceeding for several years. A major aspect of this planning, the siting of the wastewater treatment facilities, culminated in February 1986 with the MWRA's decision to site the treatment plant at Deer Island. The MWRA's siting decision was supported by EPA's Record of Decision (ROD). The FEIS and ROD concluded that the environmental impacts of certain components of the facilities planning, which included the wastewater conveyance facilities and outfall(s), were not site determinative. This SEIS will satisfy the need, identified in the ROD, for further Federal environmental review of the wastewater conveyance facilities and the outfall(s).

The MWRA is now preparing an Environmental Impact Report (EIR) under the Massachusetts Environmental Policy Act on the facilities plan for all components of the Deer Island facilities. To the maximum extent feasible, EPA, MWRA and other affected State agencies intend to coordinate this SEIS with the EIR, in accordance with 40 CFR 1506.2. The U.S. Army Corps of Engineers will act as a cooperating agency for this enviromental review pursuant to 40 CFR 1501.6.

B. Description of EPA Action

EPA action in connection with construction of the wastewater conveyance systems and construction and operation of the outfall(s) may include Federal construction grants, requiring NEPA compliance. Other related federal actions requiring environmental review in connection with the wastewater conveyance systems and outfall(s) may include: (1) Dredge and fill permits and (2) designation of an ocean disposal site for excavated materials resulting from construction and tunneling.

C. Principle Issues and Alternatives

Selection of the type of conveyance systems (pipelines, tunnels, combination and outfall/diffuser design) and the appropriate construction methods to be used. Selection of the appropriate route for the conveyance systems. Selection of the appropriate site for the ourfall.

D. Public and Private Involvement and Participation

Full public participation by interested Federal, State, and local agencies as well as other concerned organizations and private citizens is invited. All interested persons are encouraged to submit their names and addresses to the person listed above for inclusion on the mailing list for newsletters, the draft SEIS and related public information.

The Massachusetts Executive Office of Environmental Affairs, EPA and MWRA will conduct two scoping meetings to ascertain public and agency views. The first meeting will be for the general public and will assist EPA in developing the scope of work for the SEIS. This meeting will be held on: December 11, 4:00-6:00 p.m. in the auditorium of the Department of Transportation at 55 Broadway, Kendall Square, Cambridge, MA. The second meeting will be held for Federal and State agencies and public groups on: December 15, 9:30 a.m. in the Executive Dining Room (RM E226), JF Kennedy Federal Building, Boston, MA. EPA invites written comments on the proposed scope of work for the SEIS until December 19, 1986. All comments on this Notice of Intent should be addressed to Director, Water Management Division, EPA, Region I, JFK Federal Building, Boston, MA. 02203.

E. Timing

It is anticipated that the draft SEIS will be available by September 1987 and the Final SEIS will be issued in February 1988. Copies will be available at EPA, Region I and local depositories.

F. A more detailed notice is available from EPA, Region I at the above address.

Dated: November 18, 1986.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 86-26303 Filed 11-20-86; 8:45 am]

BILLING CODE 6560-50-M

[Docket No. ECAO-HA-84-2]

Draft Health Assessment Document for Acrolein

AGENCY: Environmental Protection Agency.

ACTION: Availability of first external review draft.

SUMMARY: This notice announces the availability of the first external review draft of a Health Assessment Document for Acrolein.

DATES: The Agency will make the document available for public review and comment on or about Thursday, November 24, 1986. Comments must be postmarked by Monday, January 23, 1987.

ADDRESSES: To obtain a copy of the document, interested parties should contact the ORD Publications Center, CERI-FRN, U.S. Environmental Protection Agency, 26 West St. Clair Street, Cincinnati, OH 45268, (513) 569-7562 or FTS 684-7562, and request the first external review draft of the Health Assessment Document for Acrolein. Please provide your name, mailing address, and the EPA document number, EPA/600/8-86/014A.

The draft document will also be available for public inspection and copying at the EPA library, EPA headquarters, Waterside Mall, 401 M Street SW., Washington, DC.

Comments on the draft should be sent to the Project Manager for Acrolein, U.S. Environmental Protection Agency, Environmental Criteria and Assessment Office, MD-52, Research Triangle Park, NC 27711.

FOR FURTHER INFORMATION CONTACT: Ms Diane Ray, U.S. Environmental Protection Agency, Environmental Criteria and Assessment Office MD-52, Research Triangle Park, NC 27711, (919) 541-3637 or FTS 629-3637.

SUPPLEMENTARY INFORMATION: In May 1985, EPA's Office of Air Quality Planning and Standards (OAQPS) requested that the Environmental Criteria and Assessment Office (ECAO), Office of Health and Environmental

Assessment (OHEA), prepare a health assessment document for acrolein. The document will be used by EPA in the decision-making process to possibly regulate acrolein under the Clean Air Act as Amended, 42 U.S.C. 7401 *et seq.*

Dated: November 10, 1986.

Vaun A. Newill,

Assistant Administrator for Research and Development.

[FR Doc. 86-26285 Filed 11-20-86; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3116-6]

Workshop on Arsenic; Public Meeting

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a workshop to be held by the Environmental Protection Agency (EPA) at Marriott's Hunt Valley Inn in Hunt Valley, MD (near Baltimore) for peer review of a draft report on arsenic prepared for EPA's Risk Assessment Forum.

DATES: The workshop will be held on December 2 and 3, 1986, from 8:30 a.m. to 5:00 p.m. Members of the public may attend as observers.

FOR FURTHER INFORMATION CONTACT: Dr. Frank Gostomski, Chairman of the Technical Panel, U.S. Environmental Protection Agency (EPA), WH-585, 401 M Street SW., Washington DC, 20460, (202) 245-3030 (FTS: 245-3030).

SUPPLEMENTARY INFORMATION: The EPA Risk Assessment Forum was established to promote scientific consensus on risk assessment issues and to ensure that this consensus is incorporated into appropriate risk assessment guidance. To accomplish this, the Risk Assessment Forum calls on experts from throughout the Agency to study and report on these issues from an Agency-wide scientific perspective.

Major scientific controversies have existed for many years, both within EPA, and outside the Agency, concerning potential health effects from exposure to ingested arsenic. A Technical Panel on Arsenic was formed to study these issues and prepare a report on arsenic health effects for Agency-wide concurrence and use. The Panel's draft report, entitled "*Special Report on Arsenic and Certain Human Health Effects,*" will be peer reviewed at the December workshop. The Technical Panel will revise the report in line with peer review comments, as appropriate, and the revised report will be presented to the Risk Assessment Forum.

Dated: November 14, 1986.

Vaun A. Newill,

Assistant Administrator for Research and Development.

[FR Doc. 86-26286 Filed 11-20-86; 8:45 am]

BILLING CODE 6560-50-M

[Docket No. ECAO-HA-83-1; FRL-3117-5]

Non-Carcinogenic Health Aspects of Chromium

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a workshop to be held by EPA's Environmental Criteria and Assessment Office in Classroom 3 of the Environmental Research Center, Research Triangle Park, North Carolina. This workshop has been arranged to facilitate peer review of a draft update as a potential addendum to the information covering non-carcinogenic health aspects discussed in the Health Assessment Document for Chromium (EPA/600/8-83/014F).

DATE: The workshop will be held on Tuesday, November 25, 1986, from 8:30 a.m. to 5:00 p.m. Members of the public are invited to attend as observers.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Kawecki of TRC Consultants at (202) 337-0307. He will arrange seating for those planning to attend the workshop.

SUPPLEMENTARY INFORMATION: In August, 1984, EPA's Environmental Criteria and Assessment Office (ECAO), Office of Health and Environmental Assessment (OHEA), completed a health assessment document for chromium. On June 10, 1985, EPA's Office of Air Quality Planning and Standards (OAQPS) published in the **Federal Register** (50 FR 24317) its intention to add either chromium or hexavalent chromium (CR^{+6}) to the list of hazardous pollutants under section 112 of the Clean Air Act As Amended, 42 U.S.C., 7401 *et seq.*

The workshop draft of the update will be made available to the public at the meeting, and observers will have an opportunity to make brief oral statements. Any formal release of an external review draft of the document will be announced in a subsequent **Federal Register** notice, and ample opportunity will be provided for public review and submission of written comments.

Dated: November 18, 1986.

Vaun A. Newill,

Assistant Administrator for Research and Development.

[FR Doc. 86-26404 Filed 11-20-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Advisory Board; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, announcement is made of the following FEMA Advisory Board meeting:

Name: Federal Emergency Management Agency Advisory Board.

Date of Meeting: December 10, 1986.

Time: 9:00 a.m. to 4:00 p.m.

Place: Federal Emergency Management Agency, Emergency Information and Coordination Center, 500 C Street, SW., Washington, DC 20472.

Purpose: FEMA executives will provide reports on the agency's budget and personnel. The status of a review of civil defense programs will be provided and discussed. Program development concepts for the protection of national infrastructure assets will be discussed. A working session on the future work agenda for the Board FAB Panels will be conducted. Discussions will include classified information. The Director has determined that the Board meeting should be closed to the public in accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 USC App. II, (1982)), because discussions will involve information that is specifically authorized to be kept "Secret" in the interest of national defense and is properly classified pursuant to the Executive Order.

Robert H. Morris,

Deputy Director.

[FR Doc. 86-26245 Filed 11-20-86; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-778-DR]

Oklahoma; Major-Disaster Declaration; Amendment

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oklahoma (FEMA-778-DR), dated October 14, 1986, and related determinations.

DATED: November 14, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

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Notice.—The notice of a major disaster for the State of Oklahoma, dated October 14, 1986, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 14, 1986:

Adair, Noble, Nowata, Okfuskee, Okmulgee, and Rogers Counties for Public Assistance.
The City of Norman and the City of Shawnee for Public Assistance.
Adair, Blaine, Caddo, Canadian, Cleveland, Comanche, Creek, Delaware, Garfield, Haskell, Mayes, Noble, Nowata, Oklahoma, Okmulgee, Pawnee, and Sequoyah Counties as adjacent areas for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Acting Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 86–26244 Filed 11–20–86; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

November 17, 1986.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822)

OMB Desk Officer—Robert Neal—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–6880)

Proposal To Approve Under OMB Delegated Authority the Implementation of the Following Report

1. Report title: One-Time Market Research Project on Currency Design Changes
   Agency form number: FR 3040
   OMB Docket number: 7100–0221
   Frequency: One-time
   Reporters: Individuals
   Small businesses are not affected.
   General description of report:

This information collection is voluntary [12 U.S.C. 411–421] and is given confidential treatment [5 U.S.C. 552(b)(5)].

Findings of the proposed research will be used to help communicate to the public the reasons for the changes in the features of currency and how the new features should be used to identify genuine from counterfeit currency. It is also hoped that insight will be gained on fostering public understanding of the changes.

Board of Governors of the Federal Reserve System, November 17, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86–26251 Filed 11–20–86; 8:45 am]

BILLING CODE 6210-01-M

Federal Open Market Committee; Domestic Policy Directive of September 23, 1986

In accordance with § 217.5 of its rules regarding availability of information, there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on September 23, 1986.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests some pickup in the growth of economic activity from the slow pace in the second quarter. In August total nonfarm payroll employment grew considerably further, with employment in manufacturing rising for the first time since January. The civilian unemployment rate edged down further to 6.8 percent. Industrial production rose slightly in July and August after declining on balance during the first half of the year. Consumer spending has remained relatively strong in recent months, with gains in retail sales in August paced by a sharp rise in auto sales. Housing starts in July and August stayed at a relatively high level. Business capital spending appears to have remained sluggish, reflecting weakness in nonresidential construction. A more moderate rate of wage increases has been sustained in recent months, while broad measures of prices have firmed somewhat due to developments in food and energy markets.

The trade-weighted value of the dollar against major foreign currencies is essentially unchanged on balance since the August 19 meeting of the Committee. Preliminary data for the U.S. merchandise trade deficit in July indicate a larger deficit than in previous months.

Growth of M2 and especially of M3 moderated in August, but expansion of these two aggregates for the year through August has been at the upper end of their respective ranges established by the Committee for 1986. In August M1 continued to grow very rapidly. Expansion in total domestic nonfinancial debt remains appreciably above the Committee's monitoring range for 1986. Short-term interest rates have declined further since the August meeting of the Committee while long-term market rates have risen on balance. On August 20, the Federal Reserve Board approved a reduction in the discount rate from 6 to 5½ percent.

The Federal Open Market Committee seeks monetary and financial conditions that will foster reasonable price stability over time, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. In furtherance of these objectives the Committee agreed at the July meeting to reaffirm the ranges established in February for growth of 6 to 9 percent for both M2 and M3, measured from the fourth quarter of 1985 to the fourth quarter of 1986. With respect to M1, the Committee recognized that, based on the experience of recent years, the behavior of that aggregate is subject to substantial uncertainties in relation to economic activity and prices, depending among other things on the responsiveness of M1 growth to changes in interest rates. In light of these uncertainties and of the substantial decline in velocity in the first half of the year, the Committee decided that growth of M1 in excess of the previously established 3 to 8 percent range for 1986 would be acceptable. Acceptable growth of M1 over the remainder of the year will depend on the behavior of velocity, growth in the other monetary aggregates, developments in the economy and financial markets, and price pressures. Given its rapid growth in the early part of the year, the Committee recognized that the increase in total domestic nonfinancial debt in 1986 may exceed its monitoring range of 8 to 11 percent, but felt an increase in that range would provide an inappropriate benchmark for evaluating longer-term trends in that aggregate.

For 1987 the Committee agreed on tentative ranges of monetary growth, measured from the fourth quarter of 1986 to the fourth quarter of 1987, of 5½ to

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[1] Copies of the Record of policy actions of the Committee for the meeting of September 23, 1986, are available upon request to The Board of Governors of the Federal Reserve System, Washington, DC 20551.

8½ percent for M2 and M3. While a range of 3 to 8 percent for M1 in 1987 would appear appropriate in the light of most historical experience, the Committee recognized that the exceptional uncertainties surrounding the behavior of M1 velocity over the more recent period would require careful appraisal of the target range at the beginning of 1987. The associated range for growth in total domestic nonfinancial debt was provisionally set at 8 to 11 percent for 1987.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. This action is expected to be consistent with growth in M2 and M3 over the period from August to December at annual rates of 7 to 9 percent. While growth in M1 is expected to moderate from the exceptionally large increase during the past several months, that growth will continue to be judged in the light of the behavior of M2 and M3 and other factors. Slightly greater reserve restraint would, or slightly lesser reserve restraint might, be acceptable depending on the behavior of the aggregates, taking into account the strength of the business expansion, developments in foreign exchange markets, progress against inflation, and conditions in domestic and international credit markets. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that reserve conditions during the period before the next meeting are likely to be associated with a Federal funds rate persistently outside a range of 4 to 8 percent.

By order of the Federal Open Market Committee, November 14, 1986.

Normand Bernard,

Assistant Secretary, Federal Open Market Committee.

[FR Doc. 86-26250 Filed 11-20-86; 8:45 am]

BILLING CODE 6210-01-M

City National Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 8, 1986.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *City National Bancshares, Inc.*, Miami, Florida; to become a bank holding company by acquiring 98.31 percent of the voting shares of City National Bank Corporation, Miami, Florida, and thereby indirectly acquire City National Bank of Miami, Miami, Florida, and 93.98 percent of the voting shares of City National Bank of Florida, Hallandale, Florida.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Alta Vista Bancshares, Inc.*, Alta Vista, Iowa; to become a bank holding company by acquiring 61 percent of the voting shares of Alta Vista State Bank, Alta Vista, Iowa. Comments on this application must be received by December 11, 1986.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *New Mexico Bank Investors, Inc.*, Raton, New Mexico; to become a bank holding company by acquiring 97 percent of the voting shares of International State Bank, Raton, New Mexico.

D. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *N.U.B. Corp.*, Salt Lake City, Utah; to become a bank holding company by acquiring 62 percent of the voting shares of Salt Lake Bancorporation, Sandy, Utah. Comments on this application must be received by December 11, 1986.

Board of Governors of the Federal Reserve System, November 17, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-26273 Filed 11-20-86; 8:45 am]

BILLING CODE 6210-01-M

Security Pacific Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of

Governors not later than December 11, 1986.

A. **Federal Reserve Bank of San Francisco.** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Pacific Corporation,* Los Angeles, California; to merge with Westamerica Bancorporation, San Rafael, California, and thereby indirectly acquire Westamerica Bank, N.A., San Rafael, California.

In connection with this application, Applicant also proposes to acquire Weststar Mortgage Company, Santa Rosa, California, and thereby engage in mortgage banking pursuant to § 225.25(b)(1)(iii); and acquire Learnex Corp., San Rafael, California, and thereby engage in financial institutions sales personnel training pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 17, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-26274 Filed 11-20-86; 8:45 am]

BILLING CODE 6210-01-M

Sovran Financial Corp. et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a) (2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 12, 1986.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Sovran Financial Corporation,* Richmond, Virginia, to conduct, pursuant to section 4(c)(8)(D) of the Bank Holding Company Act, the general insurance agency activities of Sovran Insurance, Inc., (formerly Suburban Insurance, Inc.), Rockville, Maryland, a wholly-owned subsidiary of Sovran Bank/Maryland (formerly Suburban Bank), Rockville, Maryland.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street N.W., Atlanta, Georgia 30303:

1. *Farmers and Merchants Bancorp, Inc.,* Dover, Tennessee; to acquire Peoples' Insurance Agency, Inc., Dover, Tennessee, and thereby engage in general insurance activities pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in Dover and Bumpus Mills, Tennessee. Comments on this application must be received by December 10, 1986.

Board of Governors of the Federal Reserve System, November 17, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-26275 Filed 11-20-86; 8:45 am]

BILLING CODE 6210-01-M

WGNB Corp. et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in §225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices fo the Board of Governors not later than December 11, 1986.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *WGNB Corporation,* Carrollton, Georgia; to engage *de novo* through its subsidiary, WGNB Insurance, Ltd, Grand Turk, British West Indies, in underwriting, as reinsurer, insurance written in connection with extensions of credit pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Landmark Financial Group, Inc.,* Fort Worth, Texas; to engage *de novo* through its subsidiary, Landmark Service Corporation, Fort Worth, Texas, in full pay-out personal property leasing pursuant to § 225.25(b)(5) of the Board's Regulation Y.

2. *United City Corporation,* Plano, Texas; to engage *de novo* in selling credit life, disability or involuntary unemployment insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 17, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-26276 Filed 11-20-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Mortality Study of Diesel-Exposed Miners; Open Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Date: December 8, 1986.

Time: 8:30 a.m.–12 noon.

Place: Room 138, Appalachian Laboratory for Occupational Safety and Health, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

Purpose: To discuss the research protocol of a project involving a mortality study of the effects, if any, of diesel exhaust among miners. Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Additional information and copies of the research protocol may be obtained from: John Gamble, Ph.D., Division of Respiratory Disease Studies, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, Telephones: FTS: 923-4476, Commercial: 304/291-4476.

Dated: November 17, 1986.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 86-26246 Filed 11-20-86; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 86F-0418]

Cryovac Division, W.R. Grace & Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Cryovac Division, W.R. Grace & Co., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of ethylene-vinyl acetate copolymers as a packaging material intended to contact food during irradiation.

FOR FURTHER INFORMATION CONTACT: Leonard C. Gosule, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B3968) has been filed by the Cryovac Division, W.R. Grace & Co., P.O. Box 464, Duncan, SC 29334-0464, proposing that § 179.45 *Packaging materials for use during the irradiation of prepackaged foods* (21 CFR 179.45) be amended to provide for the safe use of ethylene-vinyl acetate copolymers, complying with § 177.1350 *Ethylene-vinyl acetate copolymers* (21 CFR 177.1350), as a packaging material intended to contact food during irradiation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: November 6, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-26235 Filed 11-20-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86F-0420]

Milk Industry Foundation, NutraSweet Co., and Beatrice Dairy Products, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Milk Industry Foundation, the NutraSweet Co., and Beatrice Dairy Products, Inc., have filed a petition proposing that the food additive regulations be amended to provide for the use of aspartame as a sweetener in yogurt-type products.

FOR FURTHER INFORMATION CONTACT: Carl L. Giannetta, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 6A3964) has been filed by the Milk Industry Foundation, 888 16th St. NW., Washington, DC 20006; Beatrice Dairy Products, Inc., 1526 South State St., Chicago, IL 60605; and the NutraSweet Co., 4711 Golf Rd., Skokie, IL 60076, proposing that § 172.804 *Aspartame* (21 CFR 172.804) be amended to provide for the use of aspartame as a sweetener in yogurt-type products.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: November 6, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-26236 Filed 11-20-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86F-0413]

Rohm and Haas Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Rohm and Haas Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of allylmethacrylate as a component of acrylic copolymer adhesives used in food packaging.

FOR FURTHER INFORMATION CONTACT: Leonard Gosule, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 6B3967) has been filed by Rohm and Haas Co., Philadelphia, PA 19105, proposing that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of allylmethacrylate as a component of acrylic copolymer adhesives used in food packaging.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the

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notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: November 6, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-26233 Filed 11-20-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86F-0419]

Societe De Fabrication D'Elements Catalytiques; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Societe De Fabrication D'Elements Catalytiques has filed a petition proposing that the food additive regulations be amended to provide for the safe use of zirconium oxide with yttrium oxide supported by amorphous carbon as an ultrafiltration membrane for use in food processing.

FOR FURTHER INFORMATION CONTACT: Leonard C. Gosule, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 6B3950) has been filed by Societe De Fabrication D'Elements Catalytiques, Boite postale No. 201, 84500 Bollene, France, proposing that the food additive regulations be amended to provide for the safe use of zirconium oxide with yttrium oxide supported by amorphous carbon as an ultra-filtration membrane for use in food processing.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: November 6, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-26234 Filed 11-20-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-010-07-4332-08; FES 86-48]

Owyhee Planning Area, ID; Environmental Impact Statement; Availability

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability of a final Environmental Impact Statement (EIS) for the wilderness proposals on five wilderness study areas in the Owyhee Planning Area of Idaho.

SUMMARY: The Owyhee EIS assesses the environmental consequences of managing five wilderness study areas (WSAs) as wilderness or non-wilderness and of managing a portion of one of those WSAs as wilderness. The alternatives assessed in the Owyhee EIS include: (1) A "no action/no wilderness" alternative for each WSA; (2) an "all wilderness" alternative for each WSA; (3) two "partial wilderness" alternatives for the North Fork Owyhee River WSA (one with special stipulations for juniper control); and (4) an "all wilderness" alternative with special stipulations for juniper control for Big Willow Spring WSA.

The names of the five WSAs analyzed in the Owyhee EIS, their total acreage, and the proposed action for each are as follows:

—North Fork Owyhee River—51,390 acres, 41,665 suitable (including 115 acres outside the WSA boundary), and 9,840 acres non-suitable for wilderness designation.
—Big Willow Spring—6,210 acres, all non-suitable for wilderness designation.
—Squaw Creek Canyon—10,780 acres, all non-suitable for wilderness designation.
—Middle Fork Owyhee River—14,180 acres, all non-suitable for wilderness designation.
—West Fork Red Canyon—12,970 acres, all non-suitable for wilderness designation.

Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of Interior and President to Congress. The final decision on wilderness designation rests with Congress.

In any case, no final decision on these proposals can be made during the 30 days following the filing of this EIS. This complies with the Council on Environmental Quality Regulations 40 CFR 1506.10b(2).

SUPPLEMENTARY INFORMATION: A limited number of individual copies of this EIS may be obtained from the District Manager, Boise District Office, 3948 Development Avenue, Boise, Idaho 83705. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th and C Streets, NW., Washington, DC 20240

or

Bureau of Land Management, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706

FOR FURTHER INFORMATION CONTACT: David Brunner, District Manager, Boise District Office, 3948 Development Avenue, Boise, Idaho 83705, Telephone (208) 334-1582.

Dated: November 13, 1986.

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 86-26053 Filed 11-20-86; 8:45 am]

BILLING CODE 4310-GG-M

[MT-930-07-4332-08; FES 86-47]

Headwaters Resource Area, Montana; Environmental Impact Statement; Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the final Environmental Impact Statement for the Headwaters Resource Area wilderness proposals.

SUMMARY: The Final Environmental Impact Statement for the Headwaters Resource Area assesses the environmental consequences of managing two wilderness study areas as wilderness or nonwilderness.

The two wilderness study areas in the environmental impact statement, their total acreages, and the proposed action for each are: Black Sage (5,926 acres, all nonsuitable) and Yellowstone River Island (53 acres, all nonsuitable).

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior and the President to Congress.

The final decision on wilderness designation rests with Congress.

FOR FURTHER INFORMATION CONTACT: Gary Leppart, Area Manager, Headwaters Resource Area, BLM, P.O. Box 3388, Butte, Montana 59702, Phone (406) 494-5059.

SUPPLEMENTARY INFORMATION: Copies of the Final Environmental Impact Statement may be obtained from the Area Manager, Headwaters Resource Area, P.O. Box 3388, Butte, Montana 59702. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th and C Streets, NW., Washington, DC 20420
Montana State Office, Bureau of Land Management, 222 North 32nd Street, Billings, Montana 59107

Dated: November 13, 1986.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 86-26054 Filed 11-20-86; 8:45 am]

BILLING CODE 4310-DN-M

[UT-020-07-4410-08-2000]

Salt Lake District; Preparation of a Resource Management Plan/Environmental Impact Statement; Pony Express Resource Area, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: A Resource Management Plan (RMP) and Environmental Impact Statement (EIS) covering the Pony Express Resource Area (PERA) will be prepared by the Salt Lake District of the Bureau of Land Management (BLM). The PERA contains 2,033,954 acres of public land within Tooele, Utah, and Salt Lake Counties, Utah. The plan will be entitled the "Pony Express RMP/EIS".

Presently, three issues have been identified for inclusion in the Pony Express RMP/EIS. These are vegetation management, land ownership adjustments, and recreation. To assure that all significant issues are known, four public issue-scoping workshops will be held. The date, time and location of each workshop is:

December 9, 3:30 p.m., Ibapah School, Ibapah, Utah
December 10, 6:30 p.m., Courthouse Auditorium, 47 South Main, Tooele, Utah
December 16, 6:30 p.m., Salt Lake District BLM Office, 2370 South 2300 West, Salt Lake City, Utah
December 17, 6:30 p.m., Conference Room, Uinta National Forest Office, 88 West 100 North, Provo, Utah.

Following the completion of scoping, an interdisciplinary planning team will, in Fiscal Year 1987, analyze the present management situation and identify the planning alternatives that will be addressed in the RMP/EIS. At least four alternatives are anticipated to be identified. Among these will be the "no action," and "preferred" alternatives as well as two or more alternatives analyzing the impacts of different levels of emphasis on environmental values, resource use, and commodity production. The planning team will contain the expertise to address the disciplines of geology, minerals, realty, wildlife, recreation, watershed, range, cultural resources, socio-economics, wilderness, forestry, fire management, and visual resources.

In fiscal year 1988, the planning team will prepare the draft RMP/EIS and proposed RMP/final EIS documents. Public participation activities will include a request for written comments during a 90 day review period for the draft RMP/EIS, a public hearing held within the review period, and a 30 day protest period after the proposed RMP/final EIS is released. The dates, times, and locations of these public participation activities will be announced through the media and mailings to interested parties prior to each activity.

Nominations of potential Areas of Environmental Concern (ACEC) are also requested. Nominations must be accompanied by descriptive materials, maps, and evidence of the relevance and importance of the values or hazards involved. The District Manager will prepare a writen evaluation of each nomination in support of his decision to recommend or not recommend the area as an ACEC.

FOR FURTHER INFORMATION CONTACT: Dennis Oaks, Team Leader for the Pony Express RMP/EIS, Salt Lake District Office, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah 84119, (801) 524-6767.

Documents relevant to this planning action are available for examination at the Salt Lake District Office during business hours from 7:30 a.m. to 4:00 p.m., Monday through Friday.

Deane Zeller,

Salt Lake District Manager.

[FR Doc. 86-26247 Filed 11-20-86; 8:45 am]

BILLING CODE 4310-DQ-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701-TA-270 (Final) and 731-TA-313 and 314 (Final)]

Certain Brass Sheet and Strip From France and Italy

AGENCY: United States International Trade Commission.

ACTION: Extension of deadline for submitting posthearing briefs in connection with final countervailing investigation No. 701-TA-270 (Final), Certain Brass Sheet and Strip from France, and final antidumping investigations Nos. 731-TA-313 and 314 (Final), Certain Brass Sheet and Strip from France and Italy.

EFFECTIVE DATE: November 10, 1986.

FOR FURTHER INFORMATION CONTACT: George L. Deyman (202-523-0481), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION: Effective August 22, 1986, the Commission instituted the subject investigations and established a schedule for their conduct (51 FR 32255, September 10, 1986). Subsequently, the Department of Commerce extended the date for making its final determinations in the countervailing duty investigation on imports from France and in the antidumping investigations on imports from France and Italy from November 3, 1986, to January 5, 1987. The Commission, therefore, is extending the deadline for filing all written submissions, including posthearing briefs, in its investigations until January 1, 1987.

For further information concerning these investigations see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, Title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: November 19, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-26435 Filed 11-20-86; 8:45 am]

BILLING CODE 7020-02-M

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[Investigation No. 701-TA-269 (Final)]

Certain Brass Sheet and Strip From Brazil

AGENCY: United States International Trade Commission.

ACTION: Institution of a final countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigation No. 701–TA–269 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of brass sheet and strip, other than leaded brass and tin brass sheet and strip,[1] not cut, pressed, or stamped to nonrectangular shape, provided for in item 612.39 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a final determination, to be subsidized by the Government of Brazil. The Commission must make its final injury determination by seventy-five (75) days after notification of Commerce's final determination (see sections 705(a) and 705(b) of the act (19 U.S.C. 1671d(a) and 1671d(c))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of genreal application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), ans Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: November 10, 1986.

FOR FURTHER INFORMATION CONTACT: George Deyman (202–523–0481), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–724–0002. Information may also be obtained via electronic mail by accessing the Office of Investigations' remote bulletin board system for personal computers at 202–523–0103.

SUPPLEMENTARY INFORMATION:

Background.

This investigation is being instituted as a result of an affirmative final determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 701 of the Act (19 U.S.C. 1671) are being provided to manufacturers, producers, or exporters in Brazil of certain brass sheet and strip. The investigation was requested in a petition filed on March 10, 1986, by counsel on behalf of American Brass, Buffalo, NY; Bridgeport Brass Corp., Indianapolis, IN; Chase Brass & Copper Co., Dolon, OH; Hussey Copper Ltd., Leetsdale, PA; The Miller Co., Meriden, CT; Olin Corp. (Brass Group), East Alton, IL; and Revere Copper Products, Inc., Rome NY. The following trade unions are also petitioners: The International Association of Machinists and Aerospace Workers; the International Union, Allied Industrial Workers of America (AFL–CIO); Mechanics Educational Society of America, Local 56; and the United Steelworkers of America (AFL–CIO/CLC). In response to that petition the Commission conducted a preliminary countervailing duty investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (51 FR 16235, May 1, 1986).

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report

A public version of the prehearing staff report in this investigation will be placed in the public record on November 14, 1986, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The hearing to be held in connection with this investigation will be held concurrently with the hearing already scheduled in investigations Nos. 701–TA–270 (Final) and 731–TA–311 through 317 (Final) concerning certain brass sheet and strip from Brazil, Canada, France, Italy, the Republic of Korea, Sweden, and West Germany. The hearing will begin at 9:30 a.m. on December 1, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. If not already made in connection with the peviously scheduled investigations, requests to appear at the hearing in connection only with investigation No. 701–TA–269 (Final) should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on November 21, 1986. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on November 25, 1986, in Room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is November 24, 1986.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions

All legal arguments, economic anaylsis, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on December 8, 1986. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before December 8, 1986.

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[1] The chemical compositions of the products under investigation are currently defined in the Copper Development Association (C.D.A.) 200 series or the Unified Numbering System U.N.S.) C20000 series. Products whose chemical compositions are defined by other C.D.A. or U.N.S. series are not covered by this investigation.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority

This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: November 19, 1986.

Kenneth R. Mason,

Secretary

[FR Doc. 86-26436 Filed 11-20-86; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30925]

Boston and Maine Corp.; Lease and Trackage Rights Exemption; Springfield Terminal Railway Co.; Exemption

Boston and Maine Corporation (B&M) and Springfield Terminal Railway Company (ST) filed a notice of exemption for B&M to (1) lease to ST certain lines of railroad in Connecticut and western Massachusetts and (2) to assign to ST trackage rights to operate over certain additional lines in Connecticut and western Massachusetts.[1] The purpose of these transactions is to enable ST to carry on operations now performed by B&M.

ST is a wholly-owned subsidiary of B&M. B&M, in turn, is a wholly-owned subsidiary of Guilford Transportation Industries, which also owns Maine Central Railroad Company and Delaware and Hudson Railway Company. As a result of the proposed transactions it is anticipated that ST will provide a more responsive and efficient service to rail customers than B&M is now providing. B&M will improve its financial viability by eliminating operations which are costly to perform in relation to the revenues which are realized. With a lower cost structure, ST should be able to perform such operations on a profitable basis.

Since B&M and ST are members of the same corporate family, both the lease and the assignment of trackage rights fall within the class of transactions that are exempt from the prior review requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(3). The transactions will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

As a condition to use of this exemption any employees affected by the lease transaction will be protected pursuant to *Mendocino Coast Ry., Inc.—Lease and Operate,* 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980). Any employees affected by B&M's assignment of trackage rights to ST will be protected pursuant to *Norfolk & Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast, supra,* 360 I.C.C. 653 (1980). Together, these conditions satisfy the statutory requirements of 49 U.S.C. 10505(g)(2).

Decided: November 5, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86-25822 Filed 11-20-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30882]

Nashville & Eastern Railroad Authority and Nashville & Eastern Railroad Corp.; Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from all of the provisions of 49 U.S.C. Subtitle IV the operation of approximately 131.11 miles of rail line, including the line between Nashville and Monterey, TN, two branch lines and a spur. Petitioners must serve a copy of this decision upon all shippers on the line.

A notice of exemption under 49 CFR 1150.31 for acquisition of the line by NERA and operation by NERR was filed on August 18, 1986, and the parties could consummate those proposals as of August 25, 1986. NERR also filed a notice of exemption under 49 CFR 1180.2(d)(2) for the continuance in control by its shareholders of controlling interests in two other nonconnecting railroads which operate lines owned by other public authorities.

DATES: Petitions for reconsideration must be filed by December 16, 1986. Petitions for stay must be filed by December 8, 1986.

ADDRESSES: Applicants' representative: John F. McHugh, 19 Rector St., Suite 1400, New York, NY 10006.

FOR FURTHER INFORMATION CONTACT: Joseph Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: November 14, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Commissioner Lamboley dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 86-26279 Filed 11-20-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Office of Justice Programs

President's Child Safety Partnership, Hearings

AGENCY: Office for Victims of Crime, Department of Justice.

ACTION: Notice of Hearings.

SUMMARY: The Office for Victims of Crime announces the seventh in a series

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[1] By order dated April 13, 1982, the Special Court, Regional Rail Reorganization Act of 1973, directed the Consolidated Rail Corporation (Conrail) to convey these lines and certain related rights to B&M and directed B&M to conduct freight operations over such lines.

of public hearings to be held by the President's Child Safety Partnership in Los Angeles, California on Thursday, December 4, 1986.

SUPPLEMENTARY INFORMATION: The President's Child Safety Partnership (hereafter referred to as the Partnership) is holding a series of seven public hearings on the issue of child safety and victimization. The Partnership, which was announced by the President on April 29, 1985, and which held its initial meeting on January 16, 1986, consists of 24 members from the public, private (both corporate and nonprofit), state and local, and Federal sectors, and includes a wide range of expertise in fields related to child safety and victimization. Its first six public hearings were held on April 15–16, in New York City; May 1, in Chicago, Illinois; May 20, in Austin, Texas; June j17, in Denver, Colorado; July 14, in Seattle, Washington; and October 23, in Tampa, Florida. The Partnership functions solely as an advisory committee in full compliance with the provisions of the Federal Advisory Committee Act.

The Partnership members recognize the magnitude and complexity of the child safety problem, and realize that the only way to effectively address it is through the help and support of a wide group of organizations, agencies, and individuals, with the focus being on the private sector. Consequently, the Partnership will seek the input of these groups on a broad range of issues. The input received through both written and oral testimony will be used by the Partnership to make recommendations to the President on ways in which we can both prevent the victimization of our country's children and more fully involve the private sector in responding to the problem.

The scope of the Partnership inquiry and the recommendations the Partnership will make will cover a broad range of offenses against children, specifically: child physical abuse and neglect; child sexual abuse and molestation; theft, assault, robbery, and murder of children; parental and stranger abduction of children; exploitation of children (prostitution, pornography), runaway children (recognizing the extreme vulnerability of runaways to victimization); and drug abuse.

The seventh hearing of the Partnership will seek to examine a variety of child safety and victimization issues in the areas of child safety in school settings; causes and treatment of child abusers; parents' perspective on child safety; and system's response to child safety issues.

Oral and written testimony will be solicited from the public. The testimony will be used as a basis for making recommendations to the President.

Location/Dates

The seventh public hearing of the Partnership will be held:

Date: Thursday, December 4, 1986
Place: George Washington Senior High School, 10860 South Denker Avenue, Los Angeles, California
Time: 9:00 a.m.–6:00 p.m.
Seats available to the public: 50

Procedure

The Partnership invites all interested parties to submit written testimony or program information regarding any of the aforementioned aspects of child safety and victimization. Persons interested in providing written testimony should submit it to: William Modzeleski, Office of Justice Programs, Office for Victims of Crime, 633 Indiana Avenue, NW., Washington, DC 20531. If possible, all written testimony should be typed and submitted in duplicate. All written testimony is due not later than December 31, 1986, but should be submitted as soon as possible for maximum consideration.

Persons interested in providing oral testimony at the hearing in Los Angeles should notify Mr. William Modzeleski in writing (same address as above), as soon as possible, and in no event later than December 1, 1986. The Partnership will make the final determinations as to what persons/organizations will be invited to provide oral testimony.

Conduct of Hearings

The hearings, which will be open to the public, will begin at 9:00 a.m. The Chairman of the Partnership, or his designee, will preside at the hearing. Other members of the Partnership will join the Chairman. Four panels will be established to present testimony on child safety in school settings; causes and treatment of child abusers; parents' perspective on child safety; and system's response to child safety issues. Each panel will be comprised of not more than five persons representing a broad array of disciplines. These will not be judicial or evidentiary-type hearings and there will not be any cross-examination. However, clarifying questions and extensive discussion by Partnership members regarding relevant child safety and child victimization issues will follow each panel presentation.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding official.

A transcript of the hearing will be made. The entire record of the hearing, including transcript, will be retained by the Partnership, and will be available to the public. Any person may purchase a copy of the transcript from the transcribing organization.

For further general information on the Partnership hearings contact: Mr. William Modzeleski, President's Child Safety Partnership, 633 Indiana Avenue, NW., Washington, DC 20531. Phone: (202) 272–6500.

Dated: November 17, 1986.

Richard B. Abell,

Acting Assistant Attorney General, Office of Justice Programs.

[FR Doc. 86–26455 Filed 11–21–86; 8:45 am]

BILLING CODE 4410-18-M

President's Child Safety Partnership; Meeting

AGENCY: Office for Victims of Crime, Department of Justice.

ACTION: Notice of Meeting.

SUMMARY: The Office for Victims of Crime announces a meeting of the President's Child Safety Partnership.

SUPPLEMENTAL INFORMATION: Notice is hereby given that the fourth meeting of the President's Child Safety Partnership (hereinafter referred to as the Partnership) will be held on December 5 from 8:00 a.m. to approximately 3:00 p.m., at the Century Plaza Hotel, 2025 Avenue of the Stars, Los Angeles, California 90067.

The meeting, which will be open to the public, will be presided over by the Chairman of the Partnership. The purpose of the meeting will be to further discuss matters related to the three priority areas for Partnership action: Private sector involvement, awards, and information/public awareness.

Meeting time will also be devoted to discussion of the conduct of the first six public hearings (see adjacent Federal Register Notice). A period for public comments will be set aside. Approximately fifty seats will be available for the public, on a first-come, first-served basis. The agenda will be available at the meeting.

A transcript of the meeting will be made. The entire record of the transcript will be retained by the President's Child Safety Partnership, and will be available to the public. Any person may purchase a copy of the transcript from the reporter.

FOR FURTHER INFORMATION CONTACT: Mr. William Modzeleski, President's Child Safety Partnership, 633 Indiana

Avenue, NW., Washington, DC 20531. Phone (202) 272-6500.

Dated: November 17, 1986.

Richard B. Abell,

Acting Assistant Attorney General, Office of Justice Programs.

[FR Doc. 86-26456 Filed 11-21-86; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Officedocument entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State,and page number(s). Dates of publication in the Federal Register arein parentheses following the decisions being modified.

Volume I:

New Jersey:	
NJ86-4 (Jan. 3, 1986)	pp. 624,628.
New York:	
NY86-2 (Jan. 3, 1986)	p. 658.
NY86-8 (Jan. 3, 1986)	p. 711.
NY86-10 (Jan. 3, 1986)	pp. 730-734.
NY86-11 (Jan. 3, 1986)	pp. 737-738.
NY86-17 (Jan. 3, 1986)	p. 778.
NY86-18 (Jan. 3, 1986)	p. 784 p. 790a-790b.
Pennsylvania:	
PA86-5 (Jan. 3, 1986)	p. 830.
PA86-6 (Jan. 3, 1986)	p. 843.

Volume II:

Kansas:	
KS86-8 (Jan. 3, 1986)	p. 335.
Wisconsin:	
WI86-13 (Jan. 3, 1986)	pp. 1005-1006.

Volume III:

Arizona:	
AZ86-2 (Jan. 3, 1986)	p. 18.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 60 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S.
Government Printing Office,
Washington, DC 20402 (202) 783-3238

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 14th Day of November 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86-26108 Filed 11-20-86; 8:45 am]

BILLING CODE 4510-27-M

Pension and Welfare Benefits Administration

[Application No. D-6791; et al.]

Proposed Exemptions; Texas Instruments Inc., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department)

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of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Texas Instruments Incorporated Employees Pension Plan (the Plan) Located in Dallas, TX

[Application No. D-6791]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale of certain real property by Texas Instruments Incorporated (TI), the Plan sponsor, to the Plan, and the leaseback of that property to TI, provided that all the terms of the sale and the leaseback are as favorable to the Plan, as those obtainable in an arms'-length transaction with an unrelated party on the date(s) the proposed transactions are consummated.

Summary of Facts and Representations

1. The Plan is a defined benefit plan with an estimated 52,000 participants and total assets of $800 million dollars as of May 31, 1986. All assets of the Plan are held in a single trust for which Republic Bank Dallas, N.A., a national banking association, acts as trustee (the Trustee). TI is a Delaware corporation engaged in the development, manufacture and sale of a variety of products in the electrical and electronic industry for industrial, consumer and government markets.

2. On August 1, 1963, TI acquired approximately 115.7 acres of commercial property located in Plano, Texas (the Property) from an unrelated party at a cost of $266,000. The Property is located within a commercial area that is in proximity to the North Dallas region and that has experienced rapid development over recent years. Improvements to the Property consist of an office and radar testing building of approximately 29,300 square feet (the Tower). In addition, there are certain radar tower antennae apparatuses erected at various places on the site[1] (Improvements to the Property also include an old house and barn currently leased together on a month-to-month basis to an individual. Such improvements have only a nominal value in relation to the value of the Property as a whole.) TI currently uses the Property, including the Tower, as a radar testing range.

3. The applicant proposes that the Property, exclusive of the Tower, be sold to the plan by TI for the amount of $37.3 million. This amount represents the fair market value of the Property as established by Howard W. Durham, Jr., CRE, MAI, SREA, President of H.W. Durham & Associates, an independent real estate appraiser located in Dallas, Texas (the Appraiser). The Appraiser, who was selected by the Trustee, has extensive experience in appraising real property in the region encompassing the Property. The Appraiser determined that as of May 2, 1986 the fair market value of the Property (exclusive of the Tower) was $37.3 million. The Appraiser also states that the fair market rental value of the Property (for a five-year period) is at 9 percent and represents a fair market rental value of $3.4 million per annum. The Appraiser opines that the $3.4 million annual rental should be all net, and should have a two-year cancellation notice.

4. At the time the Plan acquires the Property, the Plan will enter into a written lease agreement with TI (the Lease). Subject to the Plan's right to terminate the lease on 24 month's notice, the Lease will be for a single term of five years. Thus, pursuant to the Lease, TI will have no right to extend the term of the Lease, but the Plan will have the right to terminate, on 24 months' prior notice to TI, TI's tenancy before the expiration of the five-year term. TI will lease the Property for the specific purpose of utilizing it for radar testing operations. Under the terms of the Lease, TI will pay all real estate taxes, assessments, water and sewer rents, charges for public utilities, insurance and all other licenses and permit fees and other governmental charges, general and special, ordinary and extraordinary, during the Lease term. The rental rate will be $3.7 million per annum, payable monthly in advance on the first day of each month during the term of the lease. This rental amount exceeds the fair market rental value of the Property.

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[1] TI will retain ownership of the Tower and will arrange and pay all associated costs for removal of the Tower from the Property at such time as TI ceases to lease the Property. The underlying land will not be damaged as a result of the removal of the Tower. TI will restore the surface of the Property to its natural state upon termination of its lease of the Property.

Upon termination of the Lease (whether at the expiration of the Lease term or upon early termination of the Lease by the Plan), the fair market value of the Property will be determined by an independent appraisal. If the fair market value of the Property is less than the Plan's acquisition cost of $37.3 million, TI will make a cash payment to the Plan in the amount by which the fair market value of the Property at the time of the termination of the Lease is below the Plan's cost for the purchase of the Property from TI.

5. In connection with the proposed sale of the Property and the Lease (the Sale and Leaseback), Texas American Bank/Fort Worth, N.A. (the Bank) has been retained to act as an independent fiduciary on behalf of the Plan. The Bank represents that it has no prior or existing business relationship, including overlapping directorships, with TI or the Plan. As of December 31, 1985, the Bank had in excess of $3.6 billion in assets under discretionary management, including more than $600 million of assets in retirement plans. The Bank will possess complete authority and responsibility for deciding on behalf of the Plan whether it should enter the Sale and Leaseback. The Bank has completed significant investigative activities in respect to the Sale and Leaseback, and has made the following representations:

(a) The Bank has, and will continue to, evaluate, negotiate and approve the Sale and Leaseback, including all the specific terms of the Lease. It will exercise final authority to determine the purchase price of the Property. Appropriate consideration will be given to the Appraiser's final determination of the fair market value and fair market rental value of the Property.

(b) Prior to making its final decision as to the Plan's entering the Sale and Leaseback, the Bank will update and supplement, as appropriate, its review of the investment strategies, portfolio composition and performance of the Plan, and will take all appropriate steps to finalize its review of the economic aspects and, with the assistance of independent legal counsel, the legal aspects of the Sale and Leaseback.

(c) Following consummation of the Sale and Leaseback, the Bank will be involved in all aspects of the continuing management of the Property, including such matters as land planning, zoning and condemnation. The Bank will continue to monitor the Lease for the duration of its term. It will act on behalf of the Plan in monitoring the collection of rental payments and the enforcement, if necessary, of appropriate remedies on behalf of the Plan in the event of TI's default under the Lease.

6. The Bank represents that the terms of the Lease are superior to terms of similar transactions between unrelated parties. It states that yields on similar lease agreements it administers for similar plans are yielding 10 percent on 3-year leases, and the Lease would produce a yield of 10 percent on a 5-year lease, terminable upon 24 months notice, on a highly marketable tract of land. In view of all of the relevant factors pertaining to the Lease, including the Lease term, early termination provisions of the Lease, and the character of the Property, the fair market rental value of the Property is not expected to change in any material respect during the term of the Lease, so there is no need to provide for rental adjustments during the term.

8. The Bank represents that it has examined the Plan's overall investment portfolio and has determined that after the Sale and Leaseback have been consummated, the Property will represent 5 percent of total Plan assets. Further, the Bank states that it has considered the liquidity needs of the Plan and the proposed Sale and Leaseback will not impair the liquidity necessary for the Plan to meet its obligations.

9. The Bank has further determined that the proposed Sale and Leaseback would be in the interests of the Plan and its participants and beneficiaries because the Property is being purchased near the low point of a real estate cycle which has reduced land prices in the area where the property is located. The Plan will have the advantage of a triple net, five year lease which should carry this investment through the current economic cycle. Further, the Plan has the option of terminating the Lease in the event it becomes more advantageous to devote the Property to other uses before the five year term expires. The Bank states that the future of the Property is excellent due to its size and location, the recent zone change from industrial to office/retail and its accessibility to a new proposed highway system which would cross the entire site.

10. In summary, the applicant represents that the proposed transactions meet the statutory criteria of section 408(a) because:

(1) The transactions have been approved by the Bank, as independent fiduciary of the Plan;

(2) The sales price of the Property has been determined by an independent appraiser;

(3) The fair market rental value of the Property has been determined by an independent appraiser and the Plan will receive fair market rental value under the Lease;

(4) The independent fiduciary will monitor and enforce the terms and conditions of the Lease on behalf of the Plan; and

(5) The independent fiduciary has determined that the Sale and Leaseback are in the interests of and protective of the Plan and its participants and beneficiaries.

Notice to Interested Persons: Notice of the proposed exemption will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 5 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of pendency of the exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing. Comments and hearing requests must be received within 35 days of the date of publication of this notice.

For Further Information Contact: Linda Hamilton of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Steamfitters Pension Fund Local Union No. 475 (the Pension Plan); Steamfitters Welfare Fund (the Welfare Plan) Local Union No. 475; Steamfitters Annuity Fund (the Annuity Plan) Local Union No. 475; and Steamfitters Education Fund (the Education Plan) Local Union No. 475 (the Last 3 plans Together, the Related Plans; All 4 Plans together, the Plans) Located in Warren, NJ

[Application Nos. D–6736 Thru D–6739]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to (1) the sale of a certain parcel of real property (the Property) to the Pension Plan by Steamfitters Hall, Inc. (SHI), for $830,000 in cash, provided such amount is not greater than the fair market value of the Property on the date of the sale; and (2) the subsequent leasing of space in the Property by the Pension Plan to Steamfitters Local Union No. 475 (the Union) and to the Related Plans, under the terms described in this notice of proposed exemption, provided such terms are not less favorable to the Plans

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than those obtainable in an arm's length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plans are all jointly administered multi-employer employee benefit plans. The Plans are administered by ten trustees. The members of the board of trustees of each of the Plans are identical. Among the Plans, only the Welfare Plan is a party in interest with respect to the Pension Plan, as it provides administrative services to the Pension Plan. The Welfare Plan also provides administrative services to the Education Plan and the Annuity Plan. The applicants represent that the provision of such services by the Welfare Plan is exempt from the prohibitions of section 406(a) and section 406(b)(2) of the Act by virtue of the class exemptions provided in Prohibited Transaction Exemption 76–1 and Prohibited Transaction Exemption 77–10, respectively.[2]

2. The subject proposed transactions involve the Property, which consists of 7.71 acres located at 136 Mount Bethel Road, Warren, New Jersey. The improvements consist of two one-story masonry buildings with a shared paved parking lot and a frame barn with a storage shed. At present (and until the proposed transactions are consummated), the building fronting on Mt. Bethel Road (the Office Building), composed of 2,400 square feet, is partially occupied by the Union, and the remainder is leased by SHI to the Plans. SHI is a non-profit real estate holding corporation of the Union. The Pension and Welfare Plans make lease payments in the amount of $11,000 per year to SHI, and the Education and Annuity Plans pay $2,400 per year. The lease is a gross rental at $14.25 per square foot, which includes all taxes, heat, air conditioning, electric, maintenance and cleaning. The Office Building is utilized by all parties as office space for their administrative staffs.

3. The building at the rear portion of the Property (the Education Building), containing 6,400 square feet, was leased from SHI to the Education Plan in an unimproved or warehouse condition as a facility to train apprentices and journeymen in the skills of the steamfitting and pipefitting trade. The Education Plan made all necessary leasehold improvements to make the structure suitable for its purposes at the beginning of the leasehold. The lease agreement is for successive one year terms subject to the Education Plan's right to renew the lease from year to year until February 28, 2007. For each one year lease term, the Education Plan must remit $27,360 or $2,280 by the first of each month. The lease agreement is triple net, with the Education Plan responsible for all expenses related to the leased premises. The rent is subject to adjustment on the sixth, eleventh, sixteenth and twenty-first years of the lease agreement. The rent is adjusted to accord with the fair market value of the property as a garage as determined by an independent and qualified appraiser.

4. The applicants represent that the current leasing arrangements are renewals of binding contracts that were in effect on July 1, 1974, and were therefore exempt from the prohibited transaction provisions of the Act and the Code until June 30, 1984.[3] The applicants further represent that they will, within 60 days of the granting of the exemption proposed herein, pay the applicable excise taxes resulting from the application of section 4975 of the Code to the existing lease transaction between SHI and the Plans.

5. The trustees of the Pension Plan propose to purchase the entire Property and improvements from SHI and to continue leasing the improvements to the current occupants with certain minor changes as set forth below. The proposed purchase price of the Property is $830,000, representing approximately 2.89% of the Pension Plan's assets. Messrs. Jeffrey R. and Robert W. Hendricks (the Hendrickses), independent appraisers in West Orange, New Jersey, have appraised the Property as having a fair market value of $900,000 as of April 1, 1986. The sale will be a cash sale, and the Pension Plan will pay no real estate commissions with respect to the sale.

6. Subsequent to the date of closing, the Pension Plan will continue to occupy 733 square feet or by approximately 30.5% of the Office Building and will lease the remaining portions of the Office Building to the Related Plans in the following proportions: (1) The Welfare Plan will lease 746 square feet, or 31.1%; (2) the Annuity Plan will lease 722 square feet or 30.1%; and (3) the Education Plan will lease 199 square feet, or 8.3%. In addition, the Union will move its administrative office from the Office Building to the Education Building. To accommodate the Union, the Education Plan will surrender 1,800 square feet now under lease from SHI. The Education Plan will thus lease 4,600 square feet of the Education Building, or 72%, while the Union leases the remainder. An appraisal of the fair market rental value of both the Office Building and the Education Building was made by the Hendrickses as of April 1, 1986. The Hendrickses determined the fair market rental value, on a net, net basis, to be $17 per square foot for the Office Building and $7.50 per square foot for the Education Building.

7. The lease of the Office Building is contained in an agreement among the trustees of the Pension Plan and the trustees of the Related Plans. The lease is for a term of five years, although it may be terminated by any party thereto on six months written notice. The initial annual rental will be $17.00 per square foot. The lease is double net, with each Related Plan responsible for its proportionate percentage of the cost of maintenance and nonstructural repairs, utility charges and municipal real estate taxes. The Pension Plan will be responsible for all structural repairs and fire and hazard insurance and its proportionate percentage of the cost of nonstructural repairs and maintenance, utility charges and municipal real estate taxes. All occupants of the Office Building will be entitled to use of the adjacent parking area. Rent is payable in equal monthly installments and will be adjusted every two and one-half years during the lease term to the then-current fair market rental value as determined by a qualified and independent appraiser selected by the Pension Plan's independent fiduciary (see rep. 10, below). Any subsequent renewal of the lease agreement must be approved as being appropriate for the Pension Plan by its independent fiduciary. Similarly, the trustees of the Related Plans must determine on behalf of each of those Plans whether such renewal is appropriate for and in the best interest of each Related Plan.

8. The lease of the Education Building is contained in two separate lease agreements. The first agreement is between the trustees of the Pension Plan and the authorized officers of the Union. The lease is for an initial term of five years with an option, held by the Union, to extend the term for an additional five years. The initial annual rental under the lease will be $17 per square foot. The lease is double net, with the Union responsibile for its proportionate percentage of the cost of maintenance and non-structural repairs, utility charges and municipal real estate taxes. The Pension Plan is responsible for

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[2] In this proposed exemption, the Department expresses no opinion as to whether such provision of services is exempt under the two class exemptions.

[3] In this proposed exemption, the Department expresses no opinion as to whether the existing leases were exempt from the prohibited transaction provisions until June 30, 1984, by reason of section 414(c)(2) of the Act.

structural repairs and fire and hazard insurance on the Education Building. Rent is payable in equal monthly installments and will be adjusted every two and one-half years during the lease term and any renewals thereof to an amount not less than the current fair market value as determined by a qualified and independent appraiser selected by the Pension Plan's independent fiduciary.

9. Under the second lease agreement, the Pension Plan will take as assignee from SHI an agreement between SHI and the trustees of the Education Plan. (The Hendrickses took this lease into account in determining the fair market value of the Property to be $900,000 as of April 1, 1986.) The lease was originally to expire on February 28, 1983, with an option, held by the Education Plan, to renew the lease from year-to-year until February 28, 2007. The initial annual rental under the lease is at $4.25 per square foot. The rent is at $4.25 per square foot because the Education Building was originally leased to the Education Plan as a garage. (The Union's lease for the Education Building will have an initial rental rate of $17 per square foot because that lease is for improved office space.) The Education Plan subsequently made substantial leasehold improvements to utilize the Building as an educational facility. The lease is triple net, with the Education Plan paying its proportionate percentage of all operating expenses with respect to the property, including all tax increases over the base year of 1982, maintenance and repair costs, insurance and utilities. The rent is payable in equal monthly installments, and it is to be adjusted during the sixth, eleventh, sixteenth and twenty-first years of the lease term and any renewals thereof to an amount not less than the then-current fair market rental value for the Education Building as a garage. In the case of both leases for the Education Building, any renewals must be approved as being appropriate for and in the best interest of the Pension Plan by the independent fiduciary for the Plan. Similarly, the trustees for the Education Plan must determine whether such renewal is appropriate for and in the best interest of the plan.

10. The Trust Department of the Peapack-Gladstone Bank, Gladstone, New Jersey (the Bank) has been appointed to act as the independent fiduciary for the Pension Plan with respect to the subject transactions. The Bank represents that it is completely independent of the Union, SHI, the Pension Plan and the Related Plans, and that it is aware of its responsibilities and liabilities as a fiduciary under the Act.

11. The Bank has reviewed the appraisals, all terms and conditions of the proposed transactions, and the needs of the Pension Plan, and has determined that the purchase of the Property and the subsequent leases are in the best interest of the Pension Plan for the following reasons: (a) The purchase price of the Property, which is less than the appraised fair market value of the Property, represents less than 3% of the Pension Plan's current assets; (b) the expected rate of return of 9.2% is favorable; (c) the appreciation potential of the Property is excellent; (d) the fair market rental value of the Property will be reappraised every two and one-half years over the terms of the leases by a qualified independent appraiser (every five years for the lease between the Pension Plan and the Education Plan for the Education Building), and the rental rates will be adjusted accordingly; and (e) the Pension Plan will be able to continue to occupy the convenient Office Building and will therefore be able to avoid the disruption and expenses of relocation. The Bank will monitor the leases on behalf of the Pension Plan on a daily basis. Such enforcement duties will include the selection of appraisers on behalf of the Pension Plan, the determination as to whether any renewals of the leases are appropriate for and in the best interest of the Pension Plan, and ensuring that the Pension Plan receives at least fair market value for the Property, as determined every two and one-half years and five years by a qualified independent appraiser.

12. The trustees of the Related Plans represent that they have reviewed the needs of each of the Related Plans, the terms and conditions of the leases, including the length of the leases, the initial rental rates and the appraisal of the Property by the Hendrickses, and have determined that the proposed leases are appropriate for and in the best interest of each of the Related Plans. The trustees represent in addition that the amount of space in the Buildings being leased by each of the Related Plans is appropriate and necessary for the needs of each of the Related Plans.

13. In summary, the applicants represent that the proposed transaction satisfies the criteria of section 408 (a) of the Act because: (a) The Property represents less than 3% of the Pension Plan's assets; (b) the purchase price of the Property is less than the fair market value as established by independent appraisal; (c) the fair market rental value of the Property has been determined by independent appraisal; (d) the Bank has determined that the transactions are appropriate for the Pension Plan and in the best interest of its participants and beneficiaries; and (e) the Bank will monitor the leases on behalf of the Pension Plan and take whatever action is necessary to enforce that Plan's rights under the leases.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

BFS, Inc. Profit Sharing Plan and Style Center, Inc. Profit Sharing Plan (the Plans) Located in Honolulu, Hawaii

[Application Nos. D-6675 and D-6676]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), (b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale by the Plans to BFS, Inc. (BFS) of interests in the Captain Cook Lands Partnership (the Partnership), provided the Plans receive no less than fair market value for the interests at the time of sale.

Summary of Facts and Representations

1. The Profit Sharing Plan of Style Center, Inc. (the Style Center Plan) is a profit sharing plan for the employees of Style Center, Inc. (Style Center). As of March 31, 1985, the Style Center Plan had 16 participants and total assets of $235,080. The Profit Sharing Plan of BFS, Inc. (the BFS Plan) is a profit sharing plan for the employees of BFS. As of December 31, 1985, the BFS Plan had approximately 140 participants and total assets of approximately $2,400,000. The Hawaiian Trust Company is the trustee of the Plans. BFS and Style Center are corporations both engaged in retail merchandising in the State of Hawaii. Mr. and Mrs. Kiyoshi Kamitaki own all of the stock of Style Center. BFS is a wholly-owned subsidiary of Maui Varieties, Ltd. (Maui), a closely held corporation. The majority of the stock of Maui is owned by members of the family of Kiyoshi Kamitaki. Over the past few years, BFS has rendered bookkeeping services to the Style Center Plan. These services have been limited to maintaining the records of the

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individual accounts in the Style Center Plan and have been performed without compensation.

2. The Partnership was formed in July 1969 for the purpose of holding certain real property. The predecessor plans of the Plans were original partners in the Partnership along with Kiyoshi Kamitaki and other related persons.[4] The only asset of the Partnership is undeveloped real property consisting of 73.5 acres located in the Kona District on the Island of Hawaii. The property was acquired by the Partnership during 1969 from a party unrelated to the Plans at a cost of $110,250. The property is unused vacant land which earns no income. The annual costs for real property taxes and miscellaneous expenses related to the holding of the property amount to approximately $2,100. The Partnership purchased the property for $32,000 in cash, with the balance paid to the seller in five yearly installments plus interest at a rate of eight percent per annum on the balance. As of April 10, 1986, the BFS Plan had a 40 percent interest and the Style Center Plan had a 15 percent interest in the Partnership. The interest in the Partnership held by Kiyoshi Kamitaki at that time amounted to ten percent.

3. BFS, Maui and Style Center entered into a "Guaranty of Profit Sharing Investment" (the Guaranty) in July 1969, which was amended in July 1978 and subsequently extended. The current Guaranty is due to expire in December 1989. The Guaranty provides that the Plans will realize an annual increase in the value of their interests in the Partnership representing no less than a nine percent compound annual return (seven percent before 1980) on the cumulative amounts the Plans have invested in the Partnership. If the return is less than nine percent, as determined by an annual appraisal, then BFS, Style Center and Maui will contribute the amounts necessary to achieve a nine percent return for each of the Plans.[5] The Guaranty also provides that BFS, Style Center and Maui will purchase the Plans' interests in the Partnership at the expiration of the term of the Guaranty. These entities also have an option to purchase the interests upon 30 days written notice.

4. An appraisal was made by Kent M. Nakashima (Nakashima), a real estate broker in Kona, Hawaii, as to the value on December 31, 1985, of the real property owned by the Partnership. The applicant represents that Nakashima is independent of the Plans. Considering the rocky soil classification and steep access, Nakashima believes the highest and best use of the property would be for limited ranching or orchard production. Nakashima states that, after careful comparison of the subject property with other available comparable parcels, the estimated fair market value of the property, would be $6,994 per acre or approximately $514,100.

5. The Plans propose to sell their interests in the Partnership to BFS. BFS will pay pro rata amounts for the interests based on the appraisal price stated in the application or fair market value at the time of sale based on an updated independent appraisal, whichever is higher. The sale will be entirely for cash, and the Plans will pay no commissions in connection with the transaction. According to the applicant, it is unlikely that an unrelated third party would be willing to purchase the Partnership interests (or the real property owned by the Partnership) at the same price in the near future. The proceeds of the sale will be invested in assets which are more liquid and produce income for the Plans.

6. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (1) The sale of the Partnership interests will be entirely for cash and the Plans will pay no commissions in regard to the sale; (2) BFS will pay an amount based on the appraisal price stated in the application for the interests or fair market value at the time of sale, whichever is higher; (3) the amount paid by BFS will be based on a current appraisal made by an appraiser who is independent of the Plans; and (4) the proceeds of the sale will be invested in assets which are more liquid and produce income for the Plans.

For Further Information Contact: Paul Kelty of the Department, telephone (202) 523-8196. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 18th day of November 1986.

Elliot I. Daniel,

Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86-26310 Filed 11-20-86; 8:45 am]

BILLING CODE 4510-29-M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Revision of Form for OMB Review

AGENCY: U.S. Office of Personnel Management.

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[4] The Department herein is proposing exemptive relief solely with respect to the sale by the Plans to BFS of interests in the Partnership. Other transactions which may have resulted in conflicts of interest by reason of the sharing of the Partnership investment between the Plans and parties in interest or fiduciaries with respect to the Plans are not the subject of this exemption.

[5] The applicant represents that because of the increases in the value of the real property owned by the Partnership, no cash payments to the Plans have been made under the Guaranty.

ACTION: Notice of proposed revision of form submitted to OMB for clearance.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, this notice announces a proposed revision of a form that collects information from the public. The Ethics in Government Act of 1978 (Pub. L. 95–521, as amended) requires that a financial disclosure report be filed by candidates for nomination or election to the office of the President or Vice President and nominees to positions requiring the advice and consent of the Senate. The Standard Form 278, Executive Personnel Financial Disclosure Report, solicits the information required by law. For copies of this proposal, call Joseph P. Reid, Acting Agency Clearance Officer, at (202) 632–7720.

DATES: Comments on this proposal should be received on or before December 1, 1986.

ADDRESSES: Send or deliver comments to:

Joseph P. Reid, Acting Agency,
Clearance Officer, U.S. Office of
Personnel Management, 1900 E Street,
NW., room 6410, Washington, DC
20503

and

Katie Lewin, Information Desk Officer,
Office of Information and Regulatory
Affairs, Office of Management and
Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Joseph P. Reid (202) 632–7720, Office of Personnel Management.

David H. Martin,
Director, Office of Government Ethics.

[FR Doc. 86–26309 Filed 11–20–86; 8:45 am]

BILLING CODE 6325-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Hydropower Assessment Steering Committee; Meeting

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting. Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Hydropower Assessment Steering Committee to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, I–4 Activities will include:

- Hydro assessment study report.
- Consultation on salmon and steelhead system objective and policies issue paper.
- FERC update.
- Other.
- Public comment.

DATE: November 26, 1986, 10:00 a.m.

ADDRESS: The meeting will be held in the Council's central office, 850 S.W. Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Peter Paquet 503–222–5161.

Edward Sheets,
Executive Director.

[FR Doc. 86–26256 Filed 11–20–86; 8:45 am]

BILLING CODE 0000-00-M

POSTAL RATE COMMISSION

[Docket No. A87–4; Order No. 721]

Centerfield, UT 84622 (Mardell and Elva Jensen, Petitioners); Notice and Order Accepting Appeal and Establishing Procedural Schedule

Issued: November 7, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Bonnie Guiton, Vice-Chairman; John W. Crutcher; Henry R. Folsom and Patti Birge Tyson.

Docket Number: A87–4.

Name of affected post office: Centerfield, UT 84622.

Name(s) of Petitioner(s): Mardell and Elva Jensen.

Type of determination: Consolidation.

Date of filing of appeal papers: October 31, 1986.

Categories of issues apparently raised:

1. Effect on employees [39 U.S.C. 404(b)(2)(B)].
2. Economic savings [39 U.S.C. 404(b)(2)(D)].

Other legal issues may be disclosed by the record when it is filed; or conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before November 17, 1986.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,
Secretary.

Appendix

October 31, 1986—Filing of Petition.

November 7, 1986—Notice and Order of Filing of Appeal.

November 25, 1986—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)].

December 5, 1986—Petitioners' Participant Statement or Initial Brief [*see* 39 CFR 3001.115 (a) and (b)].

December 26, 1986—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].

January 12, 1987—Petitioners' Reply Brief should petitioners choose to file one [*see* 39 CFR 3001.115(d)].

January 20, 1987—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].

February 27, 1987—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 86–26232 Filed 11–20–86; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

November 14, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(*f*)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

American Motors Corp.
  $2.375 Cumulative Convertible Preferred
  Par Value, $.01 (File No. 7–9375)
Andarko Petroleum Corp.
  Common Stock, $1.00 Par Value (File No. 7–9376)
Hanson Trust PLC
  American Depository Shares (File No. 7–9377)
Olin Corp.
  Common Stock, $1.00 Par Value (File No. 7–9378)

These securities are listed and registered on one or more other national securities exchange and are reported in

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the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 8, 1986, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-26306 Filed 11-20-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

November 14, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Commerical Credit Co.
  Common Stock, $.01 Par Value (File No. 7-9366)
Environmental Systems Co.
  Common Stock, $.01 Par Value (File No. 7-9367)
King World Productions, Inc.
  Common Stock, $.01 Par Value (File No. 7-9368)
National Westminster Bank
  ADS (File No. 7-9369)
News Corporation, Ltd.
  ADR (File No. 7-9370)
Premark International, Inc.
  Common Stock, $1.00 Par Value (File No. 7-9371)
Supermarkets General Corp.
  Common Stock $1.00 Par Value (File No. 7-9372)
SSMC, Inc.
  Common Stock, $1.00 Par Value (File No. 7-9373)
Stanhome, Inc.
  Common Stock, $.26 Par Value (File No. 7-9374)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 8, 1986, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-26263 Filed 11-20-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

November 14, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Chemical Waste Management, Inc.
  Common Stock, $.01 Par Value (File No. 7-9350)
Centex Corp.
  Common Stock, $.25 Par Value (File No. 7-9351)
Empire District Electric Co.
  Common Stock, $1.00 Par Value (File No. 7-9352)
First Capital Holdings
  Common Stock, $.01 Par Value (File No. 7-9353)
Green Tree Acceptance, Inc.
  Common Stock, $.01 Par Value (File No. 7-9354)
Gelco Corp.
  Common Stock, $.50 Par Value (File No. 7-9355)
International Technology Corp.
  Common Stock, $1.00 Par Value (File No. 7-9356)
Manville Corp.
  $5.40 Cumulative Preferred (File No. 7-9357)
Pep Boys—Manny Moe & Jack
  Common Stock, $1.00 Par Value (File No. 7-9358)
Reliance Group Holdings
  Common Stock, No Par Value (File No. 7-9359)
Panosophic Systems, Inc.
  Common Stock, No Par Value (File No. 7-9360)
Service Corp. International
  Common Stock, $1.00 Par Value (File No. 7-9361)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 8, 1986, written data, views and arguments concerning the above-referenced applications. Persons desiring to makewritten comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-26264 Filed 11-20-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

November 14, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Angell Care Master Limited Partnership
  Units (File No. 7-9318)
Counsellors Tandem Securities Fund, Inc.
  Common Shares $.01 Par Value (File No. 7-9319)
La Quinta Motor Inns Limited Partnership
  Units (File No. 7-9320)
Liberty All-Star Equity Fund
  Shares of Beneficial Interest (File No.

7–9321)

- National Westminster Bank PLC
  - American Depository Shares (File No. 7–9322)
- Patten Corporation
  - Common Stock, $.01 Par Value (File No. 7–9323)
- Perkins Family Restaurants, L.P.
  - Depositary Units (File No. 7–9324)
- JWP, Inc.
  - Common Stock, $.10 Par Value (File No. 7–9325)
- Transco Energy Company
  - $4.75 Cumulative Convertible Preferred, No Par Value (File No. 7–9326)
- Warner Communications Inc.
  - $4.75 Cumulative Convertible Preferred A, $1.00 Par Value (File No. 7–9327)
- USPCI, Inc.
  - Common Stock, $.10 Par Value (File No. 7–9328)
- Adams Russell Co.
  - Common Stock, $.50 Par Value (File No. 7–9329)
- Alfin Fragrances Inc.
  - Common Stock, $.01 Par Value (File No. 7–9330)
- Affiliated Publications
  - Common Stock, $.01 Par Value (File No. 7–9331)
- Bolar Pharmaceutical Co. Inc.
  - Common Stock, $.01 Par Value (File No. 7–9332)
- Cablevision Systems
  - Class A Common Stock, $.01 Par Value (File No. 7–9333)
- Counterwide Mtge. Investments
  - Common Stock, $.01 Par Value (File No. 7–9334)
- Forest Laboratories Inc.
  - Common Stock, $.10 Par Value (File No. 7–9335)
- Mark IV Industries Ltd.
  - Common Stock, $.01 Par Value (File No. 7–9336)
- Laser Industries Ltd.
  - Ordinary Shares, $.10 Par Value (File No. 7–9337)
- Mayflower Group
  - Common Stock, No Par Value (File No. 7–9338)
- Ply Gem Industries Inc.
  - Common Stock, $.25 Par Value (File No. 7–9339)
- Tridex Corporation
  - Common Stock, No Par Value (File No. 7–9340)
- Teleflex Inc.
  - Common Stock, $1.00 Par Value (File No. 7–9341)
- Total Petroleum North American Ltd.
  - Common Stock, No Par Value (File No. 7–9342)
- Tech Sym. Corporation
  - Common Stock, $.10 Par Value (File No. 7–9343)
- Westburne Int'l Industries Ltd.
  - Common Stock, No Par Value (File No. 7–9344)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 8, 1986, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–26265 Filed 11–20–86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

November 14, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

- Commercial Credit Company
  - Common Stock (File No. 7–9346)
- Banc One Corporation
  - Common Stock, No Par Value (File No. 7–9347)
- Dayton-Hudson Corporation
  - Common Stock, $1.00 Par Value (File No. 7–9348)
- Donnelley (R.R.) and Sons Company
  - Common Stock, $1.25 Par Value (File No. 7–9349

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 8, 1986, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–26266 Filed 11–20–86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

November 14, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

- Hanson Trust PLC
  - American Depository Shares (File No. 7–9362)
- Lucky Stores, Inc.
  - Common Stock, $1.25 Par Value (File No. 7–9363)
- NL Industries, Inc.
  - Depository Receipts (File No. 7–9364)
- SSMC Inc.
  - Common Stock, $1.00 Par Value (7–9365)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 8, 1986, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such

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applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-26267 Filed 11-20-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

November 14, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Westvaco Corporation

Common Stock, $5.00 Par Value (File No. 7-9315)

Barclays PLC

American Depository Shares (File No. 7-9316)

Anadarko Petroleum Corporation

Common Stock, $1.00 Par Value (File No. 7-9317)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 8, 1986, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-26268 Filed 11-20-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

November 14, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

ICN Pharmaceuticals, Inc.

Common Stock, $1.00 Par Value (File No. 7-9379)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 8, 1986 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-26269 Filed 11-20-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23718; File No. 600-21]

Self-Regulatory Organizations; Application for Registration as a Clearing Agency

On October 6, 1986, The Intermarket Clearing Corporation ("ICC) filed with the Commission an application for registration as a clearing agency under section 17A of the Securities Exchange Act of 1934, 15 U.S.C. 78q-1, (the "Act") and Rule 17Ab2-1(c)(1) (17 CFR 240.17Ad2-1(c)(1)) thereunder.

Pursuant to that Rule, the Commission may grant ICC registration as a clearing agency and exempt it from one or more of the requirements of section 17A(b)(3) (A) through (I) of the Act. ICC's registration under Rule 17Ab2-1(c)(1), however, would be temporary in that it cannot be effective for more than eighteen months from the date on which registration is made effective by the Commission (or such longer period as ordered by the Commission). Moreover, the Commission, under paragraph (c)(2) of the Rule, must determine nine months after the effective date of ICC's temporary registration either to: (i) Grant ICC registration without exempting it from one or more of the requirements as to which the Commission is directed to make a determination under section 17A(b)(3) (A) through (I) of the Act; or (ii) institute proceedings to determine whether registration should be denied at the expiration of the eighteen month (or longer) registration period.

You are invited to submit written data, views and arguments concerning the foregoing application within thirty days of the date of publication of this notice in the **Federal Register**. Such written data, views and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with Rule 17Ab2-1(c)(2). Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to the appropriate file number. Copies of the application and of all written comments will be available for inspection at the Securities and Exchange Commission's Public Reference Room 450 Fifth Street, NW., Washington, DC 20549.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: October 16, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-26262 Filed 11-20-86; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-7885]

Issuer Delisting; Application To Withdraw From Listing and Registration; Cyprus Mines Corp.

November 17, 1986.

Cyprus Mines Corporation ("Company") has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the 8½% Sinking Fund Debentures, due April 15, 2001, from listing and registration on the New York Stock Exchange, Inc. ("NYSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

Of the Debentures originally issued, $80 million in principal amount were outstanding as of June 19, 1986 (excluding $14 million in principal amount beneficially owned by Cyprus Minerals). According to a record holder listing dated as of June 19, 1986, there were 14 holders of record. On that date, Cede & Co. was the largest single holder of record with total record ownership of $77,752,000. According to a position listing furnished by Cede & Co., as of June 19, 1986, the Debentures then held in the name of Cede & Co. were held for the accounts of approximately 22 participants in the clearing agency system maintained by The Depository Trust Company.

Trading volume in the Debentures has been minimal. According to informaton published in *The Wall Street Journal*, during all 1984 the total principal amount of trades was only $68,000; during all of 1985, $15,000; and from January 1, 1986 through June 15, 1986, $25,000.

Any interested person may, on or before December 9, 1986, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-26270 Filed 11-20-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15412; 812-6474]

Merrill Lynch Mortgage Investors, Inc.; Application for Exemption

November 14, 1986.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("the 1940 Act").

Applicant: Merrill Lynch Mortgage Investors, Inc. ("Applicant").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant seeks an order conditionally exempting Applicant and certain trusts that it may form from all provisions of the 1940 Act in connection with its proposed issuance of collateralized mortgage obligations and sale of beneficial ownership interests in such trusts.

DATE: *Filing Date:* The Application was filed on September 9, 1986, and amended on October 6, November 3, November 4, and November 5, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 5, 1986. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Merrill Lynch Mortgage Investors, Inc., 2121 Jan Jacinto, Suite 1100, Dallas, Texas 75201.

FOR FURTHER INFORMATION CONTACT: Fran Pollack at (202) 272-2856 or Special Counsel Karen Skidmore at (202) 272-3023, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicant's Representations

1. Applicant is a direct, wholly-owned limited purpose financing subsidiary of Merrill Lynch Mortgage Capital, Inc., a Delaware corporation, which is a wholly-owned indirect subsidiary of Merrill Lynch & Co., Inc., a Delaware corporation. Applicant, a newly-formed Delaware Corporation, was organized to facilitate the financing of mortgage loans through the issuance of one or more series of bonds secured by such mortgages and it will not engage in any business or investment activities unrelated to such purpose.

2. Applicant will form separate trusts ("Trusts") for the limited purpose of issuing one or more series ("Series") of collateralized mortage obligations ("Bonds") and investing in certain Mortgage Certificates [1] which will be used to collateralize such Bonds.

3. Each Trust will be established under a separate deposit trust agreement ("Trust Agreement") between Applicant, acting as depositor, and a bank or trust company or other fiduciary acting as owner-trustee ("Owner Trustee"). Each Trust will issue one or more Series of Bonds under the terms of an indenture ("Indenture") between the Owner Trustee and an independent trustee ("Trustee"), as supplemented by one or more series supplements. The Indenture will be qualified under the Trust Indenture Act of 1939 unless an appropriate exemption is available.

4. In the case of each Series of Bonds: (a) Each Trust will hold no substantial assets other than the Mortgage Certificates; (b) the Bonds will be secured by Mortgage Certificates having collateral value determined under the Indenture, at the time of issuance and following each payment date, equal to or greater than the outstanding principal balance of the Bonds; (c) distributions of principal and interest received on the Mortgage Certificates securing the Bonds and any applicable reserve funds, plus reinvestment income thereon, will be sufficient to pay all interest on the Bonds and to retire each class of Bonds by its stated maturity; and (d) the Mortgage Certificates will be assigned by the Owner Trustee to the Trustee and will be subject to the lien of the related Indenture.

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[1] By definition, the "Mortgage Certificates" collateralizing the Bonds will consist of (1) "fully-modified" pass-through mortgage-backed certificates guaranteed by the Government National Mortgage Association ("GNMA Certificates"), (2) mortgage participation certificates issued by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates"), and (3) guaranteed mortgage pass-through securities issued by the Federal National Mortgage Association ("FNMA Certificates"). All or a portion of the Mortgage Certificates securing a Series of Bonds may be "partial pool" Mortgage Certificates. Some of the GNMA Certificates securing a Series of Bonds may be backed by mortgage loans that provide for payments during the initial portion of their term that are less than the actual amount of principal and interest payable thereon on a level debt service basis ("GPM GNMA Certificates"). In addition to the Mortgage Certificates directly securing the Bonds, a series may have additional collateral which may include certain collection accounts and reserve funds as specified in the related Indenture.

5. In addition to the issue and sale of the Bonds, Applicant intends to sell the beneficial interests in each Trust to a limited number, in no event more than one hundred, of sophisticated institutional investors in transactions exempt from the registration requirements of the Securities Act of 1933 ("1933 Act") under section 4(2) thereof. Such institutional investors may include one or more banks, savings and loan associations, insurance companies, and pension plans or other investors that would have prior experience in making investments in mortgage related securities or real estate ("Eligible Institutions"). Each Eligible Institution will be required to represent that it is purchasing such beneficial interests for investment purposes. In addition, the Trust Agreement relating to each Trust will further prohibit the transfer of any certificates for such beneficial interests if there would be more than one hundred owners of such certificates at any time.

6. Neither the holders of the beneficial interests of any of the Trusts, the Owner Trustee nor the Trustee will be able to impair the security afforded by the Mortgage Certificates to the holders of the Bonds. That is, without the consent of each Bondholder to be affected, neither the holders of the beneficial interest of any of the Trusts, the Owner Trustee nor the Trustee will be able to: (1) Change the stated maturity on any Bonds; (2) reduce the principal amount or the rate of interest on any Bonds; (3) change the priority of payment on any class of any Series of Bonds; (4) impair or adversely affect the Mortgage Certificates securing a Series of Bonds; (5) permit the creation of a lien ranking prior to or on a parity with the lien of the related Indenture with respect to the Mortgage Certificates; or (6) otherwise deprive the Bondholders of the security afforded by the lien of the related Indenture.

7. The sale of the beneficial interests in each Trust will not alter the payment of cash flows under the Indenture including the amounts to be deposited in the collection account or any reserve fund created pursuant to the Indenture to support payments of principal and interest on the Bonds.

8. No holder of a controlling interest in the Trust (as the term "control" is defined in Rule 405 under the 1933 Act), will be affiliated with either the custodian or the statistical rating agency rating the Bonds. None of the owners of the beneficial interests in the Trust will be affiliated with the Trustee.

9. The interests of the Bondholders will not be compromised or impaired by the ability of the Applicant to sell beneficial interests in each Trust, and there will not be a conflict of interest between the Bondholders and the holders of the beneficial interests for several reasons: (a) The Collateral which initially will be deposited into each Trust and will be pledged to secure the Bonds issued by such Trust will not be speculative in nature because it will consist solely of GNMA Certificates, FNMA Certificates or FHLMC Certificates, which Mortgage Certificates are guaranteed as to timely payment of interest and timely or ultimate payment of principal by each respective agency; (b) the Bonds will only be issued provided an independent nationally recognized statistical rating agency has rated such Bonds in one of the two highest rating categories, which by definition means that the capacity of the issuing Trust to repay principal and interest on the Bonds is extremely strong; (c) the Indenture under which the Bonds will be issued subjects the collateral pledged to secure the Bonds, all income contributions thereon and all proceeds from a conversion, voluntary or involuntary, of any such collateral to a first priority perfected security interest in the name of the Trustee on behalf of the Bondholders;[3] and (d) the owners of the beneficial interests will be entitled to receive current distributions representing the residual payments on the collateral from each Trust in accordance with the terms of the applicable Trust Agreement, which distributions are analogous to dividends payable to a shareholder of a corporate issuer of collateralized mortgage obligations. Furthermore, unless the Trust elects to be treated as a "real estate mortgage investment conduit" under the Internal Revenue Code of 1986, the beneficial interest owners will be liable for the expenses, taxes and other liabilities of the Trust (other than the principal and interest on the Bonds) to the extent not previously paid from the trust estate. The choice of the form of issuer for the collateralized mortgage obligations and the identity of the owners of the beneficial interests in such issuer, however, will not alter in any way the payments made to the holders of such collateralized mortgage obligations, which are payments governed by an Indenture which will meet the requirements of the Trust Indenture Act of 1939.

10. The aggregate interests of the owners of the beneficial interests in the collateral and the expected returns earned by such owners will be far less than the payments made to Bondholders. Applicant does not intend to deposit in any Trust, Mortgage Certificates with a collateral value which exceeds 110% of the aggregate principal amount of the related Bonds.

11. Except to the extent permitted by the limited right to substitute collateral; it will not be possible for the owners of the beneficial interests to alter the collateral initially deposited into a Trust, and in no event will such right to substitute collateral result in a diminution in the value or quality of such collateral. Although it is possible that any collateral substituted for collateral initially deposited into a Trust may have a different prepayment experience than the original collateral, the interests of the Bondholders will not be impaired because: (a) The prepayment experience of any collateral will be determined by market conditions beyond the control of the owners of the beneficial interests, which market conditions are likely to affect all mortgage certificates of similar payment terms and maturities in a similar fashion; (b) the interests of the holders of the beneficial interests are not likely to be greatly different from those of the Bondholders with respect to collateral prepayment experience; and (c) to the extent that it may be possible for the owners of the beneficial interests to cause the substitution of collateral which has a different prepayment experience than the original collateral, this situation is no different for the Bondholders than the traditional collateralized mortgage obligation structure where bonds are issued by an entity that is a wholly-owned subsidiary. Further, due to the fact that there usually will be more than one owner of the Trust, it appears less likely that the owners will be able to agree on any desired substitution of collateral than if there were a single owner who could unilaterally decide on the timing and execution of the substitution.

12. For additional representations and conditions concerning classes of Bonds, certain optional and mandatory redemption features, and the application

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[3] The Indenture further specifically provides that no amounts may be released from the lien of the Indenture to be remitted to the issuing Trust (and any owner of the beneficial interests thereof) until (i) the Trustee has made the scheduled payment of principal and interest on the Bonds, (ii) the Trustee has received all fees currently owed to it, and (iii) to the extent required by any supplemental indentures executed in connection with the issuance of the Bonds, deposits have been made to certain reserve funds which will ultimately be used to make payments of principal and interest on the Bonds. Once amounts have been released from the lien of the Indenture, the Trust Agreement for each Trust will provide that the Owner Trustee under the Trust Agreement will have a lien superior to that of the owners of the beneficial interests of the Trust to the remaining cash flow.

of "excess cash flow," see the application.

13. The requested order is necessary and appropriate in the public interest because: (a) The Trusts should not be deemed to be entities to which the provisions of the 1940 Act were intended to be applied; (b) the Trusts may be unable to proceed with their proposed activities if the uncertainties concerning the applicability of the 1940 Act are not removed; (c) the Trust's activities are intended to serve a recognized and critical public need; (d) granting of the requested order will be consistent with the protection of investors because they will be protected during the offering and sale of the Bonds by the registration or exemption provisions of the 1933 Act and thereafter by the Trustee representing their interests under the Indenture; and (e) the beneficial interests in the Trusts will be held entirely by the Applicant or offered only to a limited number of sophisticated institutional investors through private placements.

Applicant's Conditions

Applicant agrees that if an order is granted it will be expressly conditioned on the following conditions:

(1) Each Series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration pursuant to section 4(2) of the 1933 Act.

(2) The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934, as amended. However, the collateral directly securing the Bonds will be limited to GNMA Certificates, FNMA Certificates, or FHLMC Certificates.

(3) If new mortgage collateral is substituted, the substitute collateral will: (i) Be of equal or better quality than the collateral replaced; (ii) have similar payment terms and cash flow as the collateral replaced; (iii) be insured or guaranteed to the same extent as the collateral replaced; and (vi) meet the conditions set forth in paragraphs (2) and (4). In addition, new collateral may not be substituted for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as mortgage collateral. In no event may any new mortgage collateral be substituted for any substitute mortgage collateral.

(4) All Mortgage Certificates, funds, accounts or other collateral securing a Series of Bonds ("Collateral") will be held by a Trustee, or on behalf of a Trustee by an independent custodian. The custodian may not be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405) of the Applicant. The Trustee will be provided with a first priority perfected security or lien interest in and to all collateral.

(5) Each Series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating agency that is not affiliated with the Applicant. The Bonds will not be considered "redeemable securities" within the meaning of section 2(a)(32) of the 1940 Act.

(6) No less often than annually, an independent public accountant will audit the books and records of each Trust and, in addition, will report on whether the anticipated payments of principal and interest on the mortgage collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's reports will be provided to the Trustee.

(7) In addition, the above representations regarding the equity interests (and more fully described in the application) will be express conditions to the requested order.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-26271 Filed 11-20-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15414; File No. 811-3998]

Morgan Grenfell International Dollar Fund; Application for Deregistration

AGENCY: Security and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("1940").

Applicant: Morgan Grenfell International Dollar Fund.

Relevant 1940 Act Section: Deregistration under section 8 (f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

DATE: *Filing Date:* The application was filed on September 5, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 8, 1986. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 520 Madison Avenue, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Sherry A. Hutchins, Staff Attorney (202) 272-2799 or Brion Thompson, Special Counsel (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3262 (in Maryland (301) 253-4300).

Applicant's Representations

(1) On March 29, 1984, Applicant filed a notification of registration on Form N-8A, a registration statement on Form N-1A and registered as an open-end diversified management company. The registration statement was declared effective June 8, 1984.

(2) The Board of Trustees of Applicant determined to liquidate Applicant and Applicant was dissolved under Massachusetts law on June 27, 1986. Applicant's sole shareholder consented to such termination.

(3) Applicant never made a public offering of its securities, has no debts or other liabilities outstanding and is not a party to any litigation or administrative proceedings. Applicant has no shareholders and is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Dated: November 14, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-26272 Filed 11-20-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM-8/1023]

Advisory Committee on South Africa; Closed Meeting

The Advisory Committee on South Africa will meet in a closed session on December 2.

1986. The meeting will commence at 9 a.m. and will be held in Room 7219, Department of State, Washington, DC.

The session will be closed to the public pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(1) and (c)(9)(B). The Committee will have access to and will discuss classified information. Disclosure of the Committee's deliberations could adversely affect the Committee's ability to function as a group in providing the Secretary of State with advice on matters of critical importance to the conduct of United States foreign policy. The purpose of the meeting will be to discuss the current situation in South Africa and to evaluate U.S. policy toward South Africa.

Requests for further information should be directed to: Ann Miller (202) 632-0190, 1730 K Street NW., Washington, DC 20006.

Dated: November 18, 1986.

C. William Kontos,

Executive Director.

[FR Doc. 86-28340 Filed 11-20-86; 8:45 am]

BILLING CODE 4710-26-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Privacy Act of 1974; Proposed Changes to a System of Records

AGENCY: Office of the Comptroller of the Currency; Treasury.

ACTION: Notice of proposed change to system of records.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974, the Office of the Comptroller of the Currency (Office) gives notice of a change to Treasury/Comptroller .013, the system of records entitled the Enforcement and Compliance Information System (ECIS). The changes are proposed in order to permit the Office to maintain additional information within the system concerning individuals who are the subject of or witnesses in investigations, enforcement actions, and criminal referrals instituted by the agency. The expansion of the system will facilitate the performance of the Office's law enforcement functions.

DATES: Comments must be received no later than December 22, 1986. The changes to the system of records will become effective January 20, 1987.

ADDRESS: Comments should be sent to Communications Division, Office of the Comptroller of the Currency, Washington, DC 20219, Attn: Lynnette Carter, (202) 447-1800.

FOR FURTHER INFORMATION CONTACT: Laura Hedal, Attorney, Securities and Corporate Practices Division, (202) 447-1954, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

1. Purpose

ECIS is a system of records containing names of persons who are suspected of crimes or violations of law or who have been the subject of administrative enforcement actions. This information is used to enhance the Office's ability to track criminal referrals, to analyze applications for bank charters and changes in bank control and to evaluate proposed bank directors or officers.

2. Reasons for the Changes

The proposed amendments will expand the purpose of the system to include records contained in those investigation, enforcement action, and criminal referral files maintained by the Office which will be indexed and retrievable by name of individual. Maintaining the proposed additional information within the system of records will enhance the Office's ability to conduct investigations and to carry out enforcement actions against individuals pursuant to its authority under the Securities Exchange Act of 1934 and the national banking laws (12 U.S.C. 1818 and 1817(j)).

3. Changes to the System

ECIS will be expanded to include information about individuals who are the subject of or have been or may be witnesses in investigations, enforcement actions, and criminal referrals instituted by this Office pursuant to its enforcement authority under the Securities Exchange Act of 1934 and the national banking laws. The categories of records maintained in the system will be enlarged to include information describing the known or suspected violations of law, evidentiary material, transcripts of testimony, documents prepared for administrative or court proceedings, related correspondence and staff memoranda. The record source categories will be expanded to include information contained in filings made with the Office pursuant to law and to include communications and documents received by the Office in the course of its bank regulatory functions. In addition, six new routine uses are published for the system. Certain of the records maintained in the system will now be stored in investigation and enforcement action files and in criminal referral files which will be indexed and retrievable by name of individual. The Director of the Securities and Corporate Practices Division is named as an additional systems manager.

The Office is also publishing technical amendments in the category entitled "Systems Exempted from Certain Provisions of the Act" changing the citations from 5 U.S.C. 552a(j)(4) to 5 U.S.C. 552a(j)(2). This will correct typographical errors which appeared in the previously published ECIS system notice, (50 FR 30834).

Treasury/Comptroller .013

SYSTEM NAME:

Enforcement and Compliance Information System—Treasury/Comptroller .013.

SYSTEM LOCATION:

Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, D.C. 20219

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and entities involved in actual or suspected fraudulent activities or other violation of law, and bank directors, officers and shareholders named in administrative enforcement actions; actual or potential witnesses in investigations and enforcement actions.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information identifying the individual, describing the known or suspected criminal activity or violation of law or the enforcement action in which the individual is involved or named, giving the bank name and location, and where applicable, the law enforcement agency to which referred and date referred, indicating if a grand jury subpoena has been issued, indicating other actions, and identifying the OCC attorney. These records also include evidentiary material, transcripts of testimony, documents prepared for administrative or court proceedings, correspondence and staff memoranda.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 481, 1817(j), 1818, and 1820; 15 U.S.C. 78c(a)(34), 78l(i), 78u, 78o-4.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used: (1) To provide the Department of Justice with periodic reports which indicate the number, place and individual identity of outstanding potential criminal violations of the law which have been referred to the Department. (2) To provide the Office of the Comptroller of the Currency with statistical information to respond to general information requests from the

Congress. (3) To disclose information to foreign governments in accordance with formal or informal international agreements. (4) To disclose information to the news media in accordance with guidelines contained in 28 CFR 50.2 which covers release of information relating to civil and criminal proceedings. (5) To disclose information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation. (6) To provide information or records to any other appropriate domestic or foreign governmental agency or self-regulatory organization charged with the responsibility of administering law or investigating or prosecuting violations of law or charged with enforcing or implementing a statute, rule, regulation, order or license. (7) To disclose information to a court, magistrate, or administrative tribunal, including disclosure to opposing counsel or potential or actual witnesses in the course of discovery, in litigation or settlement negotiations, or in response to a subpoena, where relevant or potentially relevant to the proceeding. (8) To disclose information of federally insured financial institutions in connection with such institutions' hiring or retention of an employee, when considered appropriate. (9) When considered appropriate, to disclose information to a bar association, the American Institute of Certified Public Accountants, or other professional organization performing similar functions, for possible disciplinary action. (10) To disclose information to members of Congress in response to an inquiry made at the request of the individual to whom the record pertains. (11) To disclose information to any person with whom the Comptroller contracts to reproduce, by typing, photocopying or other means, any record within this system for use by the Comptroller and its staff in connection with their official duties or to any person who is utilized by the Comptroller to perform clerical or stenographic functions relating to the offical business of the Comptroller.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records will be maintained in general correspondence files, enforcement action and investigatory files, criminal referral files, in card files and on computer discs.

RETRIEVABILITY:

Some records will be indexed by bank name and location. In addition, records on computer discs or in enforcement action, investigatory, or criminal referral files will be indexed by name of individual. Records on computer discs will also be indexed by code provision known or suspected to be violated.

SAFEGUARDS:

Correspondence files are stored in the Office's central file room and may only be retrieved by authorized personnel. Enforcement, investigation, and criminal referral files are stored in lockable file cabinets and accessible only to authorized personnel. Card files will be stored in lockable file cabinets. Computer discs will be accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Records are periodically updated to reflect changes and maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Enforcement and Compliance Division, and Director, Securities and Corporate Practices Division, Law Department, Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

NOTIFICATION PROCEDURE:

Certain records in this system are exempt from notification requirements under 5 U.S.C. 552a(k)(2) of the Act as relating to investigatory material compiled for law enforcement purposes. Requests relating to records not subject to the exemption should contain the following elements: (1) Identity of the record system; (2) identity of the category and type of records sought; (3) the location of the Comptroller of the Currency office where the record might be stored; and (4) at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information).

RECORD ACCESS PROCEDURES:

Submit requests to Director, Public Affairs, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

CONTESTING RECORD PROCEDURES:

Submit requests to Director, Public Affairs, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

RECORD SOURCE CATEGORIES:

Examination of national banks by national bank examiners; investigations performed by agency attorneys and notifications from the Department of Justice, other Federal and State law enforcement agencies, and other Federal and State bank regulatory agencies; filings made with the Office of the Comptroller of the Currency pursuant to law; communications and documents received by the agency in the course of its bank supervisory activities.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Components of the system have been designated as exempt under 5 U.S.C. 552a(j)(2). To the extent that the exemption under 5 U.S.C. 552a(j)(2) does not apply, components of the system are exempt under 5 U.S.C. 552a(k)(2).

Dated: November 17, 1986.

John F. W. Rogers,

Assistant Secretary of the Treasury (Management).

[FR Doc. 86-26307 Filed 11-20-86; 8:45 am]

BILLING CODE 4810-31-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Renewal of NTT Agreement; Request for Comments

AGENCY: Trade Policy Staff Committee, Office of the United States Trade Representative, Executive Office of the President.

ACTION: Request for comments.

SUMMARY: In connection with the renewal of the agreement between the United States and Japan relating to government procurement in the field of telecommunications (the "NTT Agreement"), the Trade Policy Staff Committee requests comments from the public.

DATE AND ADDRESS: Interested parties should submit written comments no later than December 5, 1986 to Carolyn Frank, Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative, 600 17th St., NW, Room 521, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Beverly Vaughan, Director for Procurement Trade Policy Office of the U.S. Trade Representative, (202) 395-3063.

SUPPLEMENTARY INFORMATION: On December 19, 1980, the United States entered into an agreement with Japan relating to government procurement in the field of telecommunications (TIAS 9961). This agreement, commonly known as the "NTT Agreement", was continued in effect by an exchange of letters between the governments of the United States and Japan on January 30, 1984, effective January 1, 1984 (TIAS ———). The scheduled expiration date for the NTT Agreement as extended is December 31, 1987.

The Office of the U.S. Trade Representative intends to renew the

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NTT Agreement. To assist in this process, comments are solicited from interested parties. Comments should state views concisely and with particularity, and should state the nature of the interest of the party on whose behalf comments are submitted. Comments must be submitted in 20 copies by December 5, 1986 to the Trade Policy Staff Committee at the address above.

Donald Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 86-26457 Filed 11-21-86; 8:45 am]

BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 225
Friday, November 21, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" ANNOUNCEMENT OF PREVIOUS CITATION: Vol. 51 No. 220, page 41460.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: November 21, 1986 at 10:00 a.m.

CHANGES: Agenda revised to add item 2, Operating Plan, and to change the time of the meeting.

LISTED BELOW IS THE REVISED AGENDA:

Commission Meeting, Monday, November 24, 1986, 1:00 p.m.

Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

Open to the Public

1. General Policy Statement

The Commission will consider a proposed Statement of General Policy concerning the structure and workings of the Commission Staff and the flow of information within the Agency.

2. FY 1987 Operating Plan

The Commission will consider the 1987 Operating Plan.

The Commission decided that Agency business required scheduling this meeting without normal advance notice.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Edward J. Chapin,

Acting Deputy Secretary.

[FR Doc. 86-26426 Filed 11-19-86; 2:22 p.m.]

BILLING CODE 6355-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., November 25, 1986.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Yangming Marine Transport, Evergreen Marine Corporation and Orient Overseas Container Line, Inc.; Proposed Investigation of Unfiled Agreements.
2. Fact Finding Investigation No. 14—Possible Unlawful Activity of Eller & Company, Inc., Harrington & Company, Inc., and Continental Stevedoring and Terminal, Inc.
3. Classification of Nauru Pacific Line and National Shipping Corporation of the Philippines as Controlled Carriers.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary (202) 523-5725.

Joseph C. Polking,

Secretary.

[FR Doc. 86-26376 Filed 11-19-86; 11:23 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Tuesday, November 18, 1986.

The business of the Board required that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

PLACE: 20th Street and Constitution Avenue, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS CONSIDERED: Federal Reserve Bank director matter.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: November 18, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-26334 Filed 11-18-86; 5:02 pm]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, November 26, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 18, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-26335 Filed 11-18-86; 5:02 pm]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Monday, November 24, 1986.

The business of the Board requires that this meeting be held with less than one week's advance notice to the public and no earlier announcement of the meeting was practicable.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed amendment to Regulation D (Reserve Requirements of Depository Institutions) to index the low reserve tranche for transactions accounts, the reserve requirements exemption amount, and the reporting cutoff level for 1987.

Discussion Agenda

2. Consideration of proposal for public comment regarding real estate activities of bank holding companies. (Proposed earlier for public comment; Docket No. R-0537)

3. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

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Dated: November 18, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-26373 Filed 11-19-86; 10:54 am]

BILLING CODE 8210-01-M

POSTAL SERVICE

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. section 552b), hereby gives notice that it intends to hold meetings at 1:00 p.m. on Monday, December 1, 1986, in Washington, DC, and at 8:30 a.m. on Tuesday, December 2, 1986, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. As indicated in the following paragraph, the December 1 meeting is closed to public observation. The December 2 meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

At its meeting on November 4, 1986, the Board voted in accordance with the provisions of the Government in the Sunshine Act to close to public observation its meeting scheduled for December 1, 1986, to consider the Postal Rate Commission's Recommended Decision on Destination-BMC Parcel Post. (See 51 FR 41044, November 12, 1986.)

Agenda

Monday Session

December 1, 1986—1:00 p.m. (Closed)

1. Consideration of Postal Rate Commission's Recommended Decision on Destination-BMC Parcel Post.

Tuesday Session

December 2, 1986—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, November 3-4, 1986.
2. Remarks of the Postmaster General.
3. Officer Compensation.
4. Consideration of the FY 1986 Financial Statements.
5. Briefing on Procurement Study.
6. Postal Service Budget Program.
7. FY 87 Borrowing.
8. Annual Comprehensive Statement to Congress.
9. Chief Postal Inspector's Report on Consumer Protection (Pub. L. 98-186).
10. Capital Investments:
    a. Montgomery, Alabama, GMF.
    b. Gainesville, Florida, GMF.
    c. Small parcel sorters.
11. Tentative agenda for January 5-6, 1987, meeting in Washington, DC.

David F. Harris,

Secretary.

[FR Doc. 86-26351 Filed 11-19-86; 10:20 am]

BILLING CODE 7710-12-M

Corrections

Federal Register
Vol. 51, No. 225
Friday, November 21, 1986

This section of the FEDERAL REGISTER contains editorial corrections of previously published Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency-prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Bureau of Standards

[Docket No. 60116-6175]

Federal Information Processing Standards Publication 125; MUMPS; Approval

Correction

In notice document 86-24660 beginning on page 40056 in the issue of Tuesday, November 4, 1986, make the following corrections: On page 40057, in the second column, in the third line of paragraph e., insert "program" after "automatic"; and in the fifth line, insert "generator" after "program".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-140079; FRL-3100-1]

Contractor and Subcontractor Access to Confidential Business Information

Correction

In notice document 86-24132 beginning on page 37786 in the issue of Friday, October 24, 1986, make the following corrections:

1. On page 37787, in the first column, second paragraph, thirteenth line, "CFR" should read "CRC"; and on the same page, second column, third line from the bottom, insert "be" after "may".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00233; FRL-3102-2]

FIFRA Scientific Advisory Panel; Open Meeting

Correction

In notice document 86-24197 beginning on page 37785 in the issue of Friday, October 24, 1986, make the following corrections:

1. On page 37785, in the last line of the second column, after "Agency's" insert "proposed regulatory decision on dinocap."
2. On the same page, the first two lines of the third column should be moved to become the last two lines of column three.
3. On the same page, in the third column, in the eighteenth line from the bottom, "Francis" should read "Frances".
4. On page 37786, delete the first two lines of the first column.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Morantel Tartrate Cartridge

Correction

In rule document 86-25541 appearing on page 41081 in the issue of Thursday, November 13, 1986, make the following correction:

In the third column, in the second line of the Authority, "360(i)" should read "360b(i)".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD3-85-81]

Establishment of a Special Anchorage Area; Hudson River, Tarrytown, NY

Correction

In rule document 86-24796 appearing on page 39857 in the issue of Monday, November 3, 1986, make the following correction:

§ 110.60 [Corrected]

In the third column, in the fourth line of paragraph (p-1), the N. long. description should read "73°52'04" W".

BILLING CODE 1505-01-D

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federal register

Friday
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Part II

Department of Justice

Bureau of Prisons

28 CFR Part 544

Control, Custody, Care, Treatment and Instruction of Inmates; Adult Basic Education (ABE) Programs; Interim Rule

28 CFR Part 545

Control, Custody, Care, Treatment and Instruction of Inmates; Financial Responsibility Program; Proposed Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 544

Control, Custody, Care, Treatment and Instruction of Inmates; Adult Basic Education (ABE) Programs

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule.

SUMMARY: In this document, the Bureau of Prisons is amending its final rule on adult basic education (ABE) programs to clarify an issue concerning the promotion of an inmate above the fourth grade level of pay when that inmate has been exempted from the rule's mandatory ABE educational requirements.

EFFECTIVE DATE: November 21, 1986.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/272–6874.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its final rule on adult basic education (ABE) programs. A final rule on this subject was published in the **Federal Register** June 10, 1986 (at 51 FR 21114 et seq.). The present amendment is intended to clarify the Bureau's rule regarding promotions to pay grades above the fourth grade level for inmates exempted by § 544.71(a) from the mandatory ABE educational requirements.

Section 544.71(a) states that the ABE provisions of the subpart on adult basic education programs apply to all inmates in Federal institutions except those inmates for whom the Bureau believes it is inappropriate to require placement in a *mandatory* ABE program. Six exemptions are listed. Section 544.71(a)(1)–(3), exempts pre-trial inmates, inmates committed for study and observation under 18 U.S.C. 4205(c), and sentenced aliens with deportation detainers. These exemptions were not based on the inmate's efforts, but rather on the nature of the inmate's confinement, and the belief that it was not feasible to require ABE participation.

The exemptions in § 544.71(a) (4) and (5) include inmates who during their present confinement previously completed the ABE program or who were already occupying a grade level 1, 2, or 3 UNICOR or IPP work assignment at the time the increased academic grade level requirement was implemented. Both of these exemptions recognized the efforts previously made by the affected inmates, in accordance with the Bureau policy then in effect. The last exemption, § 544.71(a)(6), authorizes Wardens to exempt, for good cause, other inmates from the provisions of the rule.

Section 544.71(a) did not specifically address the issue of pay compensation above the fourth grade, and it appears that some institutions have interpreted paragraphs (a) (1) through (3) to apply to both the educational and pay requirements, while other institutions have interpreted the exemption as limited to the education area. The present revision is intended to clarify the Bureau's policy by stating that the exemptions listed in (a) (1) through (3) are limited to the educational area, while the exemptions listed in paragraph (a) (4) through (6) apply to both the educational and pay compensation area. For an inmate exempted by (a) (1) through (3) to go above the 4th grade of compensation, that inmate must voluntarily enroll in, and complete the ABE program, or obtain a "good cause" exemption from the Warden. Section 544.71(a)(6) is amended to reflect this intent.

This revision will not affect the current earning status of those inmates within paragraphs (a) (1) through (3) who are already being compensated at pay Grades 1, 2, or 3. If the inmate should subsequently lose this status, that inmate would then fall under the provisions of this rule. The rule, as amended, eliminates any preferential treatment based solely on the nature of the inmate's confinement, while not penalizing the efforts of other inmates or those already exempted. Based on these facts, plus the fact that Wardens are authorized to exempt any inmate from the provisions of this rule, the Bureau of Prisons finds good cause under 5 U.S.C. 553, to make this amendment effective immediately, without notice of proposed rulemaking, an opportunity for public comment, or a delay in the effective date. The Bureau has decided, however, to publish this amendment as an interim rule to determine if any further revision or clarification will be required. Public comment received on or before the closing date will be considered prior to publication of the final amendment.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entitites.

List of Subjects in 28 CFR Part 544

Education, Libraries, Prisoners, Recreation.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), 28 CFR, Chapter V, Subchapter C, Part 544, Subpart H is amended as set forth below.

Dated: November 17, 1986.

Norman A. Carlson,

Director, Bureau of Prisons.

SUBCHAPTER C—INSTITUTION MANAGEMENT

PART 544—EDUCATION

In Subchapter C, Part 544, amend Subpart H to read as follows:

Subpart H—Adult Basic Education (ABE) Program

A. The authority citation for Part 544, Subpart H continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

§ 544.71 [Amended]

B. In Part 544, Subpart H, revise § 544.71(a)(6) to read as follows:

§ 544.71 Applicability

(a) * * *

(6) Other inmates who, for good cause, the Warden may determine are exempt from the provisions of this rule. Inmates exempted under the provisions of paragraphs (a) (1), (2), and (3) of this section ordinarily may not be promoted above the fourth grade of compensation unless they meet the 8.0 academic achievement level. The Warden may, for good cause, exempt individuals from this requirement, and shall document the basis for the exemption.

* * * * *

[FR Doc. 86–26293 Filed 11–20–86; 8:45 am]

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 545

Control, Custody, Care, Treatment and Instruction of Inmates, Financial Responsibility Program

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons is publishing a new proposed rule on the Bureau's inmate financial responsibility program. The rule describes the Bureau's policy on encouraging inmates to satisfy legitimate financial obligations by providing inmates with the opportunity to develop a financial plan.

DATE: Comments on this rule must be received on or before December 22, 1986.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street, NW., Washington, DC 20534. Comments received will be available for examination by interested persons at the above address.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/272-6874.

SUPPLEMENTARY INFORMATION: Pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(q), notice is hereby given that the Bureau of Prisons intends to publish in the **Federal Register** a new proposed rule on the inmate financial responsibility program.

The Bureau's proposed rule on inmate financial responsibilty is intended to encourage inmates to satisfy legitimate financial obligations. The rule requires that staff review an inmate's financial obligation(s), ordinarily during initial classification, and develop a plan to meet those obligation(s) by using the inmate's outside resources and/or institution earnings for payment. Inmates already classified at the time the rule is implemented would be reviewed, and have a financial plan developed, at their next scheduled review at the institution. The rule requires inmates to be responsible for making all payments required by the plan. The rule also requires that staff consider the inmate's efforts to meet identified obligations as indicative of the inmate's acceptance of financial responsibility.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

Interested persons may participate in this proposed rule making by submitting data, views, or arguments in writing to the Bureau of Prisons, Room 770, 320 1st Street NW., Washington, D.C. 20534. Comments received will be considered before final action is taken. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Part 545

Prisoners.

SUBCHAPTER C—INSTITUTION MANAGEMENT

In consideration of the the foregoing, it is proposed to amend Subchapter C of 28 CFR, Chapter V, by adding a new Subpart B to Part 545.

PART 545—WORK AND COMPENSATION

Part 545, Subpart B consisting of §§ 545.10 and 545.11 is added to read as follows:

Subpart B—Inmate Financial Responsibility Program

Sec.
545.10 Purpose and Scope.
545.11 Procedures.

Authority: 5 U.S.C. 301; 18 U.S.C. 3013, 4001, 4042, 4081, 4082, 5006-5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

Subpart B—Inmate Financial Responsibility Program

§ 545.10 Purpose and Scope.

The Bureau of Prisons encourages each sentenced inmate to satisfy his legitimate financial obligations. As part of the initial classification process, Bureau staff will provide the inmate with the opportunity to develop a financial plan for satisfying these obligations. At subsequent program reviews, Bureau staff shall consider the inmate's efforts to meet these financial obligations as indicative of the inmate's acceptance of responsibility.

§ 545.11 Procedures.

Unit staff shall meet with each inmate with identified financial obligation(s) to develop a plan for meeting the obligation(s) by using the inmate's outside resources and/or institution earnings for payment.

(a) *Developing a Financial Plan.* At initial classification, the unit team will review an inmate's financial obligations. All documentation should be considered, including, but not limited to, the Pre-Sentence Report and the Judgment and Commitment Order(s). A financial plan shall be developed and documented and will include the following obligations, in priority order:

(1) Special assessments imposed under 18 U.S.C. 3013;

(2) Court-ordered restitution;

(3) Fines and court costs;

(4) Judgments in favor of the United States; and

(5) Other debts owed the federal government.

(b) *Payment.* The inmate is responsible for making all payments required by the financial responsibility plan, and for providing documentation to staff. Payments may be made from earnings of the inmate within the institution and/or from outside resources. The minimal amount of payment that may be made by a participant will be set by the Assistant Director, Correctional Programs Division.

(c) *Monitoring.* An inmate's participation in the financial responsibility plan will be reviewed each time staff assess the inmate's demonstrated level of responsible behavior, including when determining security/custody classification level, eligibility for community activities, good time status, housing assignments, work assignments, etc. Progress on the financial responsibility plan will be reported to the United States Parole Commission. An inmate who fails to demonstrate financial responsibility may not secure a UNICOR work assignment, nor receive performance pay above the maintenance pay level. An inmate already in a UNICOR work assignment or receiving performance pay who fails to make adequate progress on the financial plan will be considered for removal from UNICOR, or reduction to the maintenance pay level of performance pay.

Dated: November 17, 1986.

Norman A. Carlson,

Director, Bureau of Prisons.

[FR Doc. 86-26295 Filed 11-20-86; 8:45 am]

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Part III

Department of Agriculture

Cooperative State Research Service

Special Research Grants Program for Fiscal Year 1987; Solicitation of Applications

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DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Special Research Grants Program for Fiscal Year 1987; Solicitation of Applications

Applications are invited for competitive grant awards under the Special Research Grants Program for Fiscal Year 1987.

The authority for this program is contained in section 2(c)(1) of the Act of August 4, 1965, Pub. L. 89–106, as amended (7 U.S.C. 450i(c)(1)). This program is administered by the Cooperative State Research Service (CSRS) of the U.S. Department of Agriculture (USDA). Under this program, and subject to the availability of funds, the Secretary may award grants for periods not to exceed five years, for the support of research projects to further the programs discussed below. Proposals may be submitted by any land-grant college or university, research foundation established by a land-grant college or university, State agricultural experiment station, and any college or university having a demonstrable capacity in food and agricultural research. Proposals from scientists at non-United States organizations will not be considered for support.

Applicable Regulations

Regulations applicable to this program include the following: (a) The regulation governing the Special Research Grants Program, 7 CFR Part 3400 (50 FR 5498, February 8, 1985), which sets forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects; and (b) the USDA Uniform Federal Assistance Regulations, 7 CFR Part 3015.

Introduction to Program Description

Standard grants will be awarded to support basic studies in selected areas of: (1) Animal health research and (2) aquaculture research. Consideration will be given to proposals that address innovative as well as fundamental approaches to the research areas outlined below and that are consistent with the mission of USDA. The following specific program areas and guidelines are thus provided as a base from which proposals may be developed:

Program Area

1.0 Animal Health Research

CSRS Contacts:

Dr. Dyarl D. King; Telephone: (202) 447–6428

Dr. Howard S. Teague; Telephone: (202) 447–3847

Funds will be awarded to support research seeking solutions to health problems of livestock and poultry and major aquaculture species. A total of $5,408,340 has been appropriated for this program area for Fiscal Year 1987. No more than $150,000 will be awarded for the support of any one project under the program area. A proposal will not be evaluated by more than one peer panel in the Animal Health program area.

Investigators and co-investigators who have received Special Research Grant awards in the Animal Health area during the past five years must include a brief summary of progress and a list of publications resulting from such grants.

The overall objective of this research is to develop and/or refine methodologies for suppression of animal losses due to infectious and noninfectious diseases and internal and external parasites of livestock, poultry and major aquaculture species.

Research should be directed toward: (1) Basic studies to clarify high priority infectious and noninfectious diseases and parasites or their interactive effects on animal health; and (2) development of practical, implementable management systems for the producer to prevent or alleviate these significant causes of animal losses. Interdisciplinary research is encouraged on predisposing factors to animal disease including the effects of production environment. Research may include clarification of complex or unknown etiologies including nutritional, physiological, genetic, and environmental interactions; development of improved methods of detecting disease agents or antibodies in animals, animal products, tissues, etc.; clarification of disease pathogenesis; determination of methods of disease transmission including transmission by embryo transfer, artificial insemination and importation of animal products (such studies should mimic as closely as possible the normal conditions of collection, preparation and use of these items); development of improved methods of immunization against disease agents that will provide solid and persistent protection without compromising diagnosis; development of alternative disease eradication methods so as to limit the use and dependence on biotoxic substances (such alternatives may include biologic methods, sterile male techniques, artificial pheromones, etc.); development of other disease prevention, control and eradication technology; and evaluation of the economics of disease and disease prevention or control.

The specific commodity areas, and their subcategories (not prioritized), in which projects will be funded are listed below. The commodity areas will be funded in the approximate percentages shown. Utilizing the recommendations of the peer panels, the Administrator of CSRS will make the final determination on specific grants to be awarded.

1.1 Beef Cattle (approximately 41 percent of available funds)

(1) Respiratory diseases.
(2) Reproductive diseases.
(3) Digestive and enteric diseases.
(4) Parasitic diseases.
(5) Metabolic diseases.

1.2 Dairy Cattle (approximately 18 percent of available funds)

(1) Mastitis.
(2) Reproductive diseases.
(3) Respiratory diseases.
(4) Digestive and enteric diseases.
(5) Metabolic diseases.

1.3 Swine (approximately 18 percent of funds available)

(1) Enteric diseases.
(2) Respiratory diseases.
(3) Reproductive diseases.
(4) Metabolic and musculoskeletal diseases.
(5) Parasitic diseases.

1.4 Poultry (approximately 13 percent of funds available)

(1) Respiratory diseases.
(2) Metabolic and immunologic diseases.
(3) Enteric diseases.
(4) Skeletal diseases.

1.5 Sheep and Goats (approximately 5 percent of available funds)

(1) Musculoskeletal diseases.
(2) Respiratory diseases.
(3) Digestive and enteric diseases.
(4) Internal parasitic diseases.

1.6 Horses (approximately 3 percent available funds)

(1) Respiratory diseases.
(2) Digestive and enteric diseases.
(3) Reproductive diseases.
(4) Musculoskeletal diseases.
(5) Parasitic diseases.

1.7 Aquaculture (approximately 2 percent of available funds)

(1) Infectious diseases.

(2) Parasitic diseases.

Program Area

2.0 Aquaculture Research

CSRS Contacts:

Dr. Meryl Broussard; Telephone: (202) 447–6014
Dr. Howard S. Teague; Telephone: (202) 447–3847

A total of $270,180 has been appropriated for this program area for Fiscal Year 1987. No more than $80,000 will be awarded for support of any one project under this program area, regardless of the amount requested. The objective of this research is to provide and improve upon the scientific and technical base needed by the aquaculture industry.

Proposals focused on production of commercially important aquaculture species in the following *specific areas of inquiry* will be considered:

2.1 Improved Production Efficiency in Nutrient Requirements, Reproduction and Breeding, and Disease and Parasite Control

2.2 Improved Water Quality for Production

How To Obtain Application Materials

Copies of this solicitation, the "Research Grant Application Kit," and the Administrative Provisions governing this program, 7 CFR Part 3400 (50 FR 5498, February 8, 1985), may be obtained by writing to the following address or by calling the telephone number below: Grants Administrative Management, Attention: Proposal Services Unit, Office of Grants and Program Systems, U.S. Department of Agriculture, Room 005, J.S. Morrill Building, 15th and Independence Ave., SW., Washington, DC 20251; telephone number (202) 475–5049.

What To Submit

An original and 9 copies of each proposal submitted are requested. This number of copies is necessary to permit thorough, objective peer evaluation of all proposals received before funding decisions are made.

Each copy of the proposal must include a Form S&E–661, "Grant Application," which is included in the "Research Grant Application Kit." Proposers should note that one copy of this form, must contain pen and ink signatures of the Principal Investigator(s) and the Authorized Organizational Representatitive.

Members of review committees and the staff expect each project description to be complete in itself. Grant proposals must be limited to 10 pages (single-spaced) exclusive of required forms, bibliography and vitae of the principal investigators, senior associates and other professional personnel. Attachment of appendices is discouraged and should be included only if pertinent to the understanding of the proposal.

All copies of a proposal must be mailed in one package. Also, please see that each copy of each proposal is stapled securely in the upper left-hand corner. DO NOT BIND. Information should be typed on one side of the page only. Every effort should be made to ensure that the proposal contains all pertinent information when initially submitted. Prior to mailing, compare your proposal with the Application Requirements checklist contained in the "Research Grant Application Kit" and instructions contained in the regulations governing the Special Research Grants Program, 7 CFR Part 3400.

Applicants should not submit the same research proposal twice in the same fiscal year to different research program area categories within the Special Research Grants Program. Duplicate proposals will be returned without review.

Where and When To Submit Grant Applications

Each research grant application must be submitted by the date set forth below to: Grants Administrative Management, Attention: Proposal Services Unit, Office of Grants and Program Systems, U.S. Department of Agriculture, Room 005, J.S. Morrill Building, 15th and Independence Avenue, SW., Washington, DC 20251.

To be considered for funding during Fiscal Year 1987, *proposals must be received* in the Grants Administrative Management office *postmarked no later than February 16, 1986* for both the Animal Health Research and the Aquaculture Research program areas.

One copy of each proposal not selected for funding will be retained for a period of one year. The remaining copies will be destroyed.

Special Instructions

The Special Research Grants Program should be indicated in Block 7, and the applicable program area and commodity area should be indicated in Block 8 on Form S&E–661 provided in the Research Grant Application Kit. *Select one program area only.* The number assigned to the commodity area must also be cited in Block 8. Example: (Animal Health, 1.5 Sheep and Goats). The final determination of the program area and commodity area will be made by agency staff members and/or the appropriate peer review panel. The code numbers assigned to commodity areas and specific areas of inquiry are listed below:

1.0	Animal Health Research (use appropriate commodity area 1.1 through 1.7)
1.1	Beef Cattle
1.2	Dairy Cattle
1.3	Swine
1.4	Poultry
1.5	Sheep and Goats
1.6	Horses
1.7	Aquaculture
2.0	Aquaculture Research
2.1	Nutrient Requirements, Reproduction and Breeding, and Disease and Parasite Control.
2.2	Water Quality for Production.

Supplementary Information

The Special Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.200. For reasons set forth in the final-rule related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0525–0001.

The award of any grants under the Special Research Grants Program during FY 1987 is subject to the availability of funds.

Done at Washington, DC, this 17th day of November 1986.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 86–26255 Filed 11–20–86; 8:45 am]

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Part IV

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171 and 172
Hazardous Substances; Final Rule

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 172

[Docket No. HM-145F, Amdt. Nos. 171-90, 172-108]

Hazardous Substances

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule amends the Hazardous Materials Regulations (HMR) by incorporating into these regulations, as hazardous materials, substances designated as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA); Pub. L. 96-510). This action is necessary to comply with the Superfund Amendments and Reauthorization Act of 1986. The intended effect of this action is to enable carriers of hazardous materials to specifically identify CERCLA hazardous substances and to make the required notification if a discharge occurs.

EFFECTIVE DATE: This regulation is effective January 1, 1987. Under this final rule, the exceptions provided in 49 CFR 172.101(j) will apply only to a hazardous substance that is subject to an entry in the 49 CFR 172.101 Table prior to January 1, 1987, unless there is a difference in its reportable quantity as specified in the Appendix adopted herein.

FOR FURTHER INFORMATION CONTACT: Lee Jackson (202) 366-4488 or George Cushmac (202) 366-4545, Office of Hazardous Materials Transportation, RSPA, Washington, DC 20590. Questions about hazardous substance designations or reportable quantities should be directed to the EPA. Call the RCRA/Superfund hotline at (800) 424-9346 or, in Washington, DC (202) 382-3000.

SUPPLEMENTARY INFORMATION:

I. Background

On October 17, 1986, the President signed into law the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499), which made several important changes to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). Section 202 of Pub. L. 99-499 amended section 306 of CERCLA to require that the Secretary list *and regulate* hazardous substances listed or designated under section 101(14) of CERCLA as hazardous materials within thirty days of enactment of the Amendments. RSPA is today publishing a final rule under Docket HM-145F to fulfill this requirement.

RSPA has been considering incorporating CERCLA hazardous substances into the Hazardous Materials Regulations (HMR, 49 CFR Parts 171-179) under Docket HM-145E, and published both an advance notice of proposed rulemaking (ANPRM, 49 FR 35965, August 8, 1983) and a notice of proposed rulemaking (NPRM, 51 FR 22902, June 23, 1986) dealing with these issues. The Superfund Amendments of 1986 have overtaken most of the issues presented in these two notices. In this final rule, RSPA has selected the most practical method of listing and regulating hazardous substances in order to comply with the statutory deadline. A few issues remain, such as whether or not to remove the hazardous substance discharge notification requirement found at 49 CFR 171.17 from the HMR. These issues will be dealt with in the future under Docket HM-145E. Issues raised in HM-145E which are dealt with in this final rule will not be raised again under Docket HM-145E.

Today's rule includes a list of current hazardous substances with their reportable quantities (RQs), funished by the U.S. Environmental Protection Agency (EPA). This list appears in an Appendix to § 172.101 (Appendix) which replaces the CERCLA List. In addition, the rule contains amendments which apply the HMR to these hazardous substances. It is RSPA's intention to make changes from time to time to the list of hazardous substances or their RQs in the Appendix as adjustments are made by EPA.

The listing of hazardous substances and application of the HMR to them in this rule is being done differently from procedures which have been required until now. Formerly, hazardous substances were integrated into the Hazardous Materials Table (Table) found at 49 CFR 172.101. This listing of hazardous substances in the Table contained the normal complement of entries (i.e., proper shipping name, hazard class, identification number, required labels, packaging requirements, quantity limitations aboard aircraft, and entries for water shipments), and in addition, for each hazardous substance, the notation "E" was placed in column 1 with an italicized "RQ" notation in column 2 following the proper shipping name which in turn was followed by two numbers: the reportable quantity in both pounds and kilograms. When a hazardous substance was shipped (and by definition, at least a reportable quantity of the material had to be present in the package), both the shipping paper and the package (unless it was a bulk package (greater than 110 gallons)) had to bear the notation "RQ". This was to alert persons that a reportable quantity of a hazardous substance was present, and, should a spill occur, require the spill to be reported to the National Response Center (NRC).

In this final rule, RSPA is not integrating hazardous substances into the Table, but is placing them in a separate list, along with the reportable quantity for each substance, in the Appendix. In fact, this rule removes the special notations ("E" in column 1 and "RQ" and quantities in column 2) for hazardous substances presently in the Table. Where the hazard class for the hazardous substance is "ORM-E" (Other Regulated Material, category E), which means that that material does not meet any DOT hazard class definition except ORM-E, and is regulated only because it is a hazardous substance, the entire entry is removed from the Table. All specified hazardous substances listed and regulated under the HMTA are now found in the separate list in the Appendix. The only generic hazardous substance entry now present in the Table is "Hazardous substance, liquid or solid, n.o.s." The hazard class is ORM-E and the identification (ID) number is NA9188. One other ORM-E entry remains in the table, i.e., "Hazardous waste, liquid *or* solid, n.o.s."; ID number NA 9189. Materials which are designated hazardous substances and which satisfy a DOT hazard class other than ORM-E will be listed in both the Table and the Appendix, but the special notations no longer appear in the Table. This rule also removes the "CERCLA List" that appears after the Table and replaces that list with the Appendix.

RSPA has chosen this approach because of the great difficulty RSPA has with classing these materials. In order to place them in the Table, RSPA must determine their proper hazard class, using the hazard class definitions found in the HMR. RSPA has not been able to do this in a timely fashion due to the inherent differences in the technical and programmatic approach to these materials taken by RSPA and EPA on whose initial determinations RSPA relies.

EPA adjusted the reportable quantities of a number of hazardous substances in a final rule published on April 4, 1985 (50 FR 13456). Following this rule, RSPA published the notice of proposed rulemaking (NPRM) under Docket HM-145E. In the NPRM, RSPA proposed to integrate approximately 200 of these hazardous substances into the Table. Although RSPA has information from EPA on the physical, chemical, and toxicological properties of those materials, this NPRM was not published until June 23, 1986. This was due to the difficulty in determining the proper hazard class for the materials because they were either not suited to the established process for hazardous materials classification or because many of them were relatively obscure materials. In some cases DOT was not even able to establish the physical state (solid, liquid, or gas) for the materials designated by EPA. Given the size of this problem and the short time available to issue regulations in accordance with Pub. L. 99–499, RSPA has decided to abandon this approach and let shippers, who should know the properties of their materials, determine their proper shipping names, hazard classes, and the correct identification numbers. To do this, a shipper has the Table with its specific and generic entries, the hazard class definitions contained in Part 173, and the list of hazardous substances, including their RQ's, as designated by EPA in the Appendix. Under the HMR it has always been the responsibility of the shipper to class each material for shipment (except for explosives which require prior laboratory testing), and that responsibility remains in this final rule.

RSPA is aware that this approach will create some inconsistencies in the application of the regulations. For example, asbestos is presently regulated as an ORM–C, but the regulations only apply to asbestos that has commercial value, not waste asbestos. The packaging for commercial asbestos is specified at § 173.1090. However, asbestos is on the EPA list of hazardous substances at a reportable quantity of one pound, and this applies to all asbestos, commercial and waste, provided it is in a friable (loose) form. Therefore, under this rule commercial asbestos is regulated as an ORM–C, with packaging specified at § 173.1090, and waste asbestos is regulated as an ORM–E, with packaging specified at § 173.1300. This inconsistency occurs because of the statutory mandate in the Superfund Amendments to regulate all hazardous substances. RSPA will undertake regulatory action in the near future to correct this and other inconsistencies. Because the determination of the appropriate degree of regulation is discretionary, unlike today's action which is based on a statutory mandate, the future rulemaking will provide for notice and comment. Interested persons should withhold their comments until that notice is published.

Other than the expanded list of hazardous substances and the relocation of hazardous substances from the table to the Appendix, the regulatory requirements remain essentially the same. The shipper will have to determine the hazard class and proper shipping name for the material and the authorized packaging for the material using the Table and the packing authorizations contained in Part 173. When a hazardous substance is present in a shipment (i.e., there is a reportable quantity or more of the designated material in the package), the shipping paper entry must contain the notation "RQ". This requirement is unchanged. When the proper shipping name does not contain the name of the constituents which make the material a hazardous substance, that information must be added in association with the basic description. This requirement is also unchanged. In the case of waste streams, RSPA is requiring the use of the EPA waste number instead of the entire narrative waste stream description. The EPA waste number for the waste stream must be entered in association with the proper shipping name. In the case of a hazardous substance which satisfies one of the EPA "ICRE" hazardous waste characteristics of ignitibility, corrosivity, reactivity, or extraction procedure toxicity (EP toxicity), the requirement for additional information must be satisfied by using the letters, "EPA" followed by the word "ignitibility", or "corrosivity", or "reactivity", or "EP toxicity", as appropriate, in association with the basic description.

Procedures for marking non-bulk packagings (those of 110 gallons or less) also remain essentially the same. The "RQ" notation is required when a hazardous substance is present and if the proper shipping name does not include the constituent or constituents which make the material a hazardous substance, that information must be added in association with the proper shipping name. As is the case with shipping papers, when the hazardous substance is a waste stream or a waste material exhibiting an EPA "ICRE" characteristic, the additional identifying information required in the marking in association with the proper shipping name must be the waste stream number or, for the ICRE materials, the letters "EPA" and the word "ignitibility", or "corrosivity", or "reactivity", or "EP toxicity" as appropriate.

The regulatory action in this final rule is mandated by statute, and, for this reason, with one exception, RSPA is not affording persons affected by this rule the relief afforded by § 172.101(j) which allows up to one year after a change in the Table to use up stocks of preprinted shipping papers and to ship packages that were marked prior to the change. The exception is that RSPA is allowing preprinted shipping papers to be used and previously marked packages of hazardous substances to be transported if prepared in conformance with the requirements for hazardous substances prior to January 1, 1987. For example, shipping papers for a hazardous substance which read: "RQ, Adipic acid, ORM–E, NA9077", may be used until exhausted or until January 1, 1988, whichever comes first. After exhaustion or one year, such a shipment would have to be described as: "RQ, Hazardous substance, solid, n.o.s., ORM–E, NA9188, (adipic acid)". This also applies to marked packages. However, if the reportable quantity for the material has changed and the shipping paper entry or package marking does not reflect the reportable quantity as it appears in the Appendix in this rule, the shipment does not qualify for the exception in § 172.101(j) and must comply with the new requirements after January 1, 1987.

II. Review by Sections

Section 171.8. The definition of a hazardous material is revised to specifically include hazardous substances. The definition of a hazardous substance is revised to reference a new Appendix to § 172.101 which follows the Hazardous Materials Table (Table) at § 172.101. This Appendix replaces the CERCLA List currently shown and contains all hazardous substances and their reportable quantities. Reference to petroleum products has been removed from the hazardous substance definition since the determination of what materials should be designated as hazardous substances rests with EPA. Reference to "or in one transport vehicle if not packaged" has been removed since RSPA considers vehicles to be packagings when they are the primary means of containment (i.e., are used to transport materials in bulk).

Section 171.11. The wording of (d)(1)(i) of this section is amended to require the display of the waste stream number or "EPA" and the applicable ICRE characteristic on shipping papers.

Section 171.12a. The wording of (a)(3)(i) of this section is amended to require the display of the waste stream

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number or "EPA" and the applicable ICRE characteristic on shipping papers.

Section 172.101, Preamble. Paragraph (b) is revised to eliminate all references to the letter "E" in the Table. Subparagraph (c)(9) is revised to remove reference to "E" and "reportable quantity" and to add provisions for selecting proper shipping names for hazardous substances.

Section 172.101, Hazardous Materials Table. The Table is revised by removing the letter "E" from Column 1 of the Title heading and all places where it appears in Column 1 of the Table. All RQ designations and quantities are removed from the descriptions in Column 2 of the Table (for example, "*(RQ–1000/454)*"). The Table is revised by removing all entries for hazardous substances which only meet the definition of the ORM–E hazard class, with the exception of the generic entry "Hazardous substance, liquid *or* solid, n.o.s.". This includes removing the following five entries with "*See*" references to certain hazardous substances classed as ORM–E:

(1) 2,4-D ester. *See* 2,4-Dichlorophenoxyacetic acid ester;

(2) EDTA. *See* Ethylenediaminetetraacetic acid;

(3) PCB. *See* Polychlorinated biphenyls;

(4) 2,4,5-T amine, ester, *or* salt. *See* 2,4,5-Trichlorophenoxyacetic acid, amine, ester, *or* salt;

(5) 2,4,5-TP ester. *See* 2,4,5-Trichlorophenoxypropionic acid ester.

The entry "Hazardous waste, liquid *or* solid, n.o.s." remains in the Table and continues to bear the ORM–E hazard class designation. Hazardous substances meeting only the DOT hazard class definition for ORM–E appear in the new Appendix to § 172.101, along with all of the other CERCLA hazardous substances. Certain hazardous substances which satisfy the definition of a DOT hazard class other than ORM–E remain in the Table and also appear in the new Appendix. However, the "E" symbol, "RQ", and quantities no longer appear in the Table for these materials.

Section 172.101, Appendix. The CERCLA List is removed and replaced by an Appendix entitled "List of Hazardous Substances and Reportable Quantities." The appendix lists those materials which are hazardous substances as listed or designated under Section 101(14) of CERCLA.

Section 171.102. Paragraph (*e*) of this section is amended to require display of the waste stream number or "EPA" and the applicable ICRE characteristic on shipping papers.

Section 172.203. Paragraph (c) is amended to reference the new Appendix of hazardous substances which follows the Table and to require that hazardous substance constituents be shown in parentheses in assocation with the basic description, if the proper shipping name does not identify the hazardous substance constituents as shown in Appendix A to § 172.101. A new sentence is added to this section to require that a waste stream number or "EPA" and the applicable ICRE characteristic be shown, instead of the name of the constituent from the Appendix, in parentheses on the shipping paper in association with the basic description for those waste materials which are either waste streams or exhibit an ICRE characteristic.

Section 172.324. Paragraph (a) is revised to require the name of a hazardous substance constituent to be shown as a package marking, if the proper shipping name does not identify the hazardous substance constituent, as shown in the Appendix to § 172.101. Paragraph (b) is revised to require that all packages of 110 gallons or less that contain waste streams or waste exhibiting ICRE characteristics, be marked in association with the proper shipping name with the waste stream number or "EPA" and the appropriate ICRE characteristic in parentheses. Existing paragraph (b) is redesignated as paragraph (c).

III. Administrative Notices

1. Because the amendments adopted herein are mandated by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499, October 17, 1986), and are to be adopted within 30 days of enactment, I find under 5 U.S.C. 553, that notice and public procedure are contrary to the public interest. In addition, due to the limited time available to prepare this final rule, no determinations have been made under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

2. Under the terms of "DOT Regulatory Policies and Procedures" (44 FR 11034, February 26, 1979), I have determined that this rulemaking is an emergency rulemaking because it is governed by a short-term statutory deadline, therefore, no determination is made as to whether it is "significant".

3. I certify that this rulemaking does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*).

Although the provisions of Pub. L. 99–499 provide insufficient time for RSPA to perform required analyses and make required findings under the statutory, regulatory, and executive authorities noted above, the agency is aware that a rulemaking of such broad and immediate applicability may produce significant impacts on industry segments, a substantial number of which may be small enterprises. In order to comply with the mandate of Pub. L. 99–499, RSPA has chosen a regulatory approach which both complies with the purpose of the Congress and presents the least possible disruption to the regulatory scheme of the HMR.

Because RSPA's role in regulating hazardous substances is directly tied to EPA's ongoing hazardous substances responsibility, primarily through the agency's determination of reportable quantities, there will be a mechanism for RSPA's oversight of the transportation impacts of these amendments as the agency conducts rulemaking to provide concordance with EPA requirements. As the need for adjustments to these amendments is demonstrated, RSPA will modify the requirements to the extent consistent with the intent of Congress expressed in Pub. L. 99–499.

List of Subjects

49 CFR Part 171

Hazardous materials transportation, Definitions.

49 CFR Part 172

Hazardous materials transportation, Hazardous substances.

In consideration of the foregoing Parts 171 and 172 of Title 49, Code of Federal Regulations are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 is revised to read as follows:

Authority: 49 U.S.C. 1802, 1803, 1804, and 1808; Pub. L. 99–499; and 49 CFR Part 1, unless otherwise noted.

2. In § 171.8, the definitions for "Hazardous material" and "Hazardous substances" are revised to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

"Hazardous material" means a substance or material, including a hazardous substance, which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated.

"Hazardous substance" for the purposes of this subchapter, means a material, including its mixtures and solutions, that—

(1) Is listed in the Appendix to § 172.101 of this subchapter;

(2) Is in a quantity, in one package, which equals or exceeds the reportable quantity (RQ) listed in the Appendix to § 172.101 of this subchapter; and

(3) When in a mixture or solution, is in a concentration by weight which equals or exceeds the concentration corresponding to the RQ of the material, as shown in the following table:

RQ pounds (kilograms)	Concentration by weight	
	Percent	PPM
5000 (2270)	10	100,000
1000 (454)	2	20,000
100 (45.4)	0.2	2,000
10 (4.54)	0.02	200
1 (0.454)	0.002	20

* * * * *

3. In § 171.11 paragraph (d)(1)(i) is revised to read as follows:

§ 171.11 Use of ICAO Technical Instructions.

* * * * *

(d) * * *

(1) * * *

(i) The name of the hazardous substance shall be entered on shipping papers in parentheses in association with the basic description, and in association with the proper shipping name required to be marked on the package, unless the proper shipping name required by the ICAO Technical Instructions already includes the name of the hazardous substance. For waste streams or for wastes which exhibit an EPA characteristic of ignitibility, corrosivity, reactivity, or EP toxicity, the basic description shall be followed by the waste stream number in parentheses or by the letters "EPA" and the word "ignitibility" or "corrosivity" or "reactivity", or "EP toxicity", in parentheses, as appropriate; and

4. In § 171.12a, paragraph (a)(3)(i) is revised to read as follows:

§ 171.12a Canadian shipments and packagings.

* * * * *

(a) * * *

(3) * * *

(i) The name of the hazardous substance shall be entered on shipping papers and in association with the proper shipping name required to be marked on the package, in parentheses, unless the proper shipping name required by the TDG regulations already includes the name of the hazardous substance. For waste streams or for wastes which exhibit an EPA characteristic of ignitibility, corrosivity, reactivity, or EP toxicity, the basic description shall be followed by the waste stream number in parentheses or by the letters "EPA" and the word "ignitibility" or "corrosivity" or "reactivity", or "EP toxicity", in parentheses, as appropriate; and

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

5. The authority citation for Part 172 is revised to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, and 1808; Pub. L. 99–499; and 49 CFR Part 1, unless otherwise noted.

6. In § 172.101, paragraphs (b) and (c)(9) are revised to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(b) Column 1 contains the three symbols as appropriate: Plus (+) and the letters "A" and "W".

(1) The plus (+) fixes the proper shipping name and the hazard class for that entry without regard to whether the material meets the definition of that class. An alternate proper shipping name and hazard class may be authorized by the Director, Office of Hazardous Materials Transportation, RSPA.

(2) A letter "A" restricts the application of this subchapter to materials offered or intended for transportation by aircraft, unless the material is a hazardous substance or a hazardous waste.

(3) The letter "W" restricts the application of this subchapter to materials offered or intended for transportation by vessel, unless the material is a hazardous substance or a hazardous waste.

(c) * * *

(9) *Hazardous substance.* The Appendix to this section lists materials which are listed or designated as hazardous substances under section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Proper shipping names for hazardous substances (See Appendix and § 171.8 of this subchapter) shall be determined as follows:

(i) If the hazardous substance appears in the table by technical name, then the technical name is the proper shipping name.

(ii) If the hazardous substance does not appear in the table and is not a forbidden material (See §§ 173.21, 173.51, 183.86, and 173.114a of this subchapter), then an appropriate generic shipping name must be selected corresponding to the hazard class of the material as determined by the defining criteria of this subchapter and the hazard precedence prescribed in § 173.2 of this subchapter. For example, a hazardous substance which meets the definition of a flammable liquid might be described as "Flammable liquid, n.o.s." or other appropriate shipping name corresponding to the flammable liquid hazard class.

* * * * *

7. In § 172.101, the Hazardous Materials Table is amended as follows:

a. "E/" is removed from the heading of Column 1;

b. The symbol "E" is removed from Column 1;

c. All reportable quantity (RQ) designations and quantities are removed from the descriptions in Column 2 (e.g., *"(RQ–1000/454))"*;

d. The phrase *"(these materials may contain various hazardous substances for which the appropriate RQ applies)"* is removed from the Column 2 entry for "Motor fuel antiknock compound";

e. All entries in the table that are classed "ORM–E" as shown in Column 3 are removed from the table, except for the following two generic entries: "Hazardous substance, liquid *or* solid, n.o.s." and "Hazardous waste, liquid *or* solid, n.o.s", and

f. The following five *"See"* references to certain materials classed ORM–E are removed from the table:

(a) "2,4-D ester. *See* 2,4-Dichlorophenoxyacetic acid ester";

(b) "EDTA. *See* Ethylenediaminetetraacetic acid";

(c) "PCB. *See* Polychlorinated biphenyls";

(d) "2,4,5-T amine, ester, *or* salt. *See* 2,4,5-Trichlorophenoxyacetic acid, amine, ester, *or* salt"; and

(e) "2,4,5-TP ester. *See* 2,4,5-Trichlorophenoxypropionic acid ester".

8. The CERCLA list which follows the Table is removed and an Appendix to § 172.101 is added to read as follows:

Appendix to § 172.101—List of Hazardous Substances and Reportable Quantities

1. This Appendix lists materials and their corresponding reportable quantities (RQs) which are listed or designated as "hazardous substances" under section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA; Pub. L. 96–510). A material in this list is regulated as a hazardous material under this subchapter if it meets the definition of a hazardous substance in § 171.8 of this subchapter.

2. Column 1 of the list, entitled *"Hazardous substances"*, contains the names of

hazardous substances. Elements and compounds are listed first, in alphabetical sequence. Following the listing of elements and compounds is a listing of waste streams and their corresponding "F numbers". They are listed in numerical sequence by "F number". Column 2 of the list, entitled *"Synonyms"*, contains the names of synonyms for certain of the elements and are listed for waste streams. Synonyms are useful in identifying hazardous substances and in selecting proper shipping names. Column 3 of the list, entitled *"Reportable quantity (RQ)"*, contains the reportable quantity (RQ), in pounds and kilograms, for each hazardous substance listed in Column 1.

3. The procedure for selecting a proper compounds listed in Column 1. No synonyms shipping name for a hazardous substance is set forth in § 172.101(c)(9).

4. A series of notes is used throughout he list to provide additional information concerning certain hazardous materials. These notes are explained at the end of the list.

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LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous Substance	Synonyms	Reportable Quantity(RQ) Pounds(Kilograms)
Acenaphthene		100 (45.4)
Acenaphthylene		5000 (2270)
Acetaldehyde *	Ethanal	1000 (454)
Acetaldehyde, chloro-	Chloroacetaldehyde	1000 (454)
Acetaldehyde, trichloro-	Chloral	1 (0.454)
Acetamide, N-(aminothioxomethyl)-	1-Acetyl-2-thiourea	1000 (454)
Acetamide, N-(4-ethoxyphenyl)-	Phenacetin	1 (0.454)
Acetamide, N-fluoren-2-yl-	2-Acetylaminofluorene	1 (0.454)
Acetamide, 2-fluoro-	Fluoroacetamide	100 (45.4)
Acetic acid *		5000 (2270)
Acetic acid, ethyl ester	Ethyl acetate	5000 (2270)
Acetic acid, fluoro-, sodium salt	Fluoroacetic acid, sodium salt	10 (4.54)
Acetic acid, lead salt	Lead acetate	5000 (2270)
Acetic acid, thallium(I) salt	Thallium(I) acetate	100 (45.4)
Acetic anhydride *		5000 (2270)
Acetimidic acid, N-[(methylcarbamoyl)oxy]thio-methyl ester	Methomyl	100 (45.4)
Acetone *	2-Propanone	5000 (2270)
Acetone cyanohydrin *	Propanenitrile, 2-hydroxy-2-methyl- 2-Methyllactonitrile	10 (4.54)
Acetonitrile *	Ethanenitrile	5000 (2270)
3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin and salts	Warfarin	100 (45.4)
Acetophenone	Ethanone, 1-phenyl-	5000 (2270)
2-Acetylaminofluorene	Acetamide, N-fluoren-2-yl-	1 (0.454)
Acetyl bromide *		5000 (2270)
Acetyl chloride *	Ethanoyl chloride	5000 (2270)
1-Acetyl-2-thiourea	Acetamide, N-(aminothioxomethyl)-	1000 (454)
Acrolein *	2-Propenal	1 (0.454)
Acrylamide	2-Propenamide	5000 (2270)
Acrylic acid *	2-Propenoic acid	5000 (2270)
Acrylonitrile *	2-Propenenitrile	100 (45.4)
Adipic acid		5000 (2270)
Alanine, 3-[p-bis(2-chloroethyl)amino]phenyl-, L-	Melphalan	1 (0.454)
Aldicarb	Propanal, 2-methyl-2-(methylthio)-, O-[(methylamino)carbonyl]oxime	1 (0.454)
Aldrin *	1,2,3,4,10-10-Hexachloro-1,4,4a,5,8,8a-hexahydro- 1,4:5,8-endo,exo-dimethanonaphthalene	1 (0.454)
Allyl alcohol *	2-Propen-1-ol	100 (45.4)
Allyl chloride *		1000 (454)
Aluminum phosphide *		100 (45.4)
Aluminum sulfate *		5000 (2270)
2-Amino-1-methyl benzene	o-Toluidine	1 (0.454)
4-Amino-1-methyl benzene	p-Toluidine	1 (0.454)
5-(Aminomethyl)-3-isoxazolol	3(2H)-Isoxazolone, 5-(aminomethyl)-	1000 (454)
4-Aminopyridine	4-Pyridinamine	1000 (454)
Amitrole	1H-1,2,4-Triazol-3-amine	1 (0.454)
Ammonia *		100 (45.4)
Ammonium acetate		5000 (2270)
Ammonium benzoate		5000 (2270)
Ammonium bicarbonate		5000 (2270)
Ammonium bichromate	Ammonium dichromate @	1000 (454)
Ammonium bifluoride *		100 (45.4)
Ammonium bisulfite *		5000 (2270)
Ammonium carbamate *		5000 (2270)
Ammonium carbonate *		5000 (2270)
Ammonium chloride		5000 (2270)
Ammonium chromate		1000 (454)
Ammonium citrate, dibasic		5000 (2270)
Ammonium dichromate @	Ammonium bichromate	1000 (454)
Ammonium fluoborate *		5000 (2270)
Ammonium fluoride *		100 (45.4)
Ammonium hydroxide *		1000 (454)
Ammonium oxalate *		5000 (2270)
Ammonium picrate *	Phenol, 2,4,6-trinitro-, ammonium salt	10 (4.54)
Ammonium silicofluoride *		1000 (454)
Ammonium sulfamate		5000 (2270)
Ammonium sulfide *		100 (45.4)
Ammonium sulfite		5000 (2270)
Ammonium tartrate		5000 (2270)
Ammonium thiocyanate		5000 (2270)
Ammonium thiosulfate		5000 (2270)
Ammonium vanadate	Vanadic acid, ammonium salt	1000 (454)
Amyl acetate *		5000 (2270)
iso-Amyl acetate		
sec-Amyl acetate		
tert-Amyl acetate		
Aniline *	Benzenamine	5000 (2270)
Anthracene		5000 (2270)

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity(RQ) Pounds(Kilograms)
Antimony ¢		5000 (2270)
ANTIMONY AND COMPOUNDS		**
Antimony pentachloride *		1000 (454)
Antimony potassium tartrate *		100 (45.4)
Antimony tribromide *		1000 (454)
Antimony trichloride *		1000 (454)
Antimony trifluoride *		1000 (454)
Antimony trioxide		1000 (454)
Aroclor 1016	POLYCHLORINATED BIPHENYLS (PCBs)	10 (4.54)
Aroclor 1221	POLYCHLORINATED BIPHENYLS (PCBs)	10 (4.54)
Aroclor 1232	POLYCHLORINATED BIPHENYLS (PCBs)	10 (4.54)
Aroclor 1242	POLYCHLORINATED BIPHENYLS (PCBs)	10 (4.54)
Aroclor 1248	POLYCHLORINATED BIPHENYLS (PCBs)	10 (4.54)
Aroclor 1254	POLYCHLORINATED BIPHENYLS (PCBs)	10 (4.54)
Aroclor 1260	POLYCHLORINATED BIPHENYLS (PCBs)	10 (4.54)
Arsenic * ¢		1 (0.454)
Arsenic acid *		1 (0.454)
ARSENIC AND COMPOUNDS		**
Arsenic disulfide *		5000 (2270)
Arsenic(III) oxide	Arsenic trioxide *	5000 (2270)
Arsenic(V) oxide	Arsenic pentoxide *	5000 (2270)
Arsenic pentoxide *	Arsenic(V) oxide	5000 (2270)
Arsenic trichloride *		5000 (2270)
Arsenic trioxide *	Arsenic(III) oxide	5000 (2270)
Arsenic trisulfide *		5000 (2270)
Arsine, diethyl-	Diethylarsine	1 (0.454)
Asbestos * ¢¢		1 (0.454)
Auramine	Benzenamine, 4,4'-carbonimidoylbis (N,N-dimethyl-	1(0.454)
Azaserine	L-Serine, diazoacetate (ester)	1 (0.454)
Aziridine	Ethylenimine	1 (0.454)
Azinphos methyl @	Guthion *	1 (0.454)
Azirino(2',3':3,4)pyrrolo(1,2-a)indole-4,7-dione,6-amino-8-[((aminocarbonyl)oxy) methyl]-1,1a,2,8,8a, 8b-hexahydro-8a-methoxy-5-methyl-	Mitomycin C	1 (0.454)
Barium cyanide *		10 (4.54)
Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	3-Methylcholanthrene	1 (0.454)
Benz[c]acridine	3,4-Benzacridine	1 (0.454)
3,4-Benzacridine	Benz[c]acridine	1 (0.454)
Benzal chloride	Benzene, dichloromethyl-	5000 (2270)
Benz[a]anthracene	Benzo[a]anthracene 1,2-Benzanthracene	1 (0.454)
1,2-Benzanthracene	Benz[a]anthracene Benzo[a]anthracene	1 (0.454)
1,2-Benzanthracene, 7 12-dimethyl-	7,12-Dimethylbenz[a]anthracene	1 (0.454)
Benzenamine	Aniline *	5000 (2270)
Benzenamine, 4,4'-carbonimidoylbis (N,N-dimethyl-	Auramine	1(0.454)
Benzenamine, 4-chloro-	p-Chloroaniline	1000 (454)
Benzenamine, 4-chloro-2-methyl-, hydrochloride	4-Chloro-o-toluidine, hydrochloride	1 (0.454)
Benzenamine, N,N-dimethyl-4-phenylazo-	Dimethylaminoazobenzene	1 (0.454)
Benzenamine, 4,4'-methylenebis(2-chloro-	4,4'-Methylenebis(2-chloroaniline)	1 (0.454)
Benzenamine, 2-methyl-, hydrochloride	o-Toluidine hydrochloride	1 (0.454)
Benzenamine, 2-methyl-5-nitro-	5-Nitro-o-toluidine	1 (0.454)
Benzenamine, 4-nitro-	p-Nitroaniline	5000 (2270)
Benzene *		1000 (454)
Benzene, 1-bromo-4-phenoxy-	4-Bromophenyl phenyl ether	100 (45.4)
Benzene, chloro-	Chlorobenzene *	100 (45.4)
Benzene, chloromethyl-	Benzyl chloride *	100 (45.4)
Benzene, 1,2-dichloro-	o-Dichlorobenzene * 1,2-Dichlorobenzene	100 (45.4)
Benzene, 1,3-dichloro-	m-Dichlorobenzene 1,3-Dichlorobenzene	100 (45.4)
Benzene, 1,4-dichloro-	p-Dichlorobenzene * 1,4-Dichlorobenzene	100 (45.4)
Benzene, dichloromethyl-	Benzal chloride	5000 (2270)
Benzene, 2,4-diisocyanatomethyl-	Toluene diisocyanate *	100 (45.4)
Benzene, dimethyl	Xylene * (mixed)	1000 (454)
m-Benzene, dimethyl	m-Xylene	
o-Benzene, dimethyl	o-Xylene	
p-Benzene, dimethyl	p-Xylene	
Benzene, hexachloro-	Hexachlorobenzene	1 (0.454)
Benzene, hexahydro-	Cyclohexane *	1000 (454)
Benzene, hydroxy-	Phenol *	1000 (454)
Benzene, methyl-	Toluene *	1000 (454)
Benzene, 1-methyl-2,4-dinitro-	2,4-Dinitrotoluene *	1000 (454)
Benzene, 1-methyl-2,6-dinitro-	2,6-Dinitrotoluene *	1000 (454)
Benzene, 1,2-methylenedioxy-4-allyl-	Safrole	1 (0.454)
Benzene, 1,2-methylenedioxy-4-propenyl-	Isosafrole	1 (0.454)
Benzene, 1,2-methylenedioxy-4-propyl-	Dihydrosafrole	1 (0.454)
Benzene, 1-methylethyl-	Cumene	5000 (2270)
Benzene, nitro-	Nitrobenzene *	1000 (454)
Benzene, pentachloro-	Pentachlorobenzene	10 (4.54)
Benzene, pentachloronitro-	Pentachloronitrobenzene	1 (0.454)
Benzene, 1,2,4,5-tetrachloro-	1,2,4,5-Tetrachlorobenzene	5000 (2270)
Benzene, trichloromethyl-	Benzotrichloride	1 (0.454)
Benzene, 1,3,5-trinitro-	sym-Trinitrobenzene *	10 (4.54)
Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester	Ethyl 4,4'-dichlorobenzilate	1 (0.454)
1,2-Benzenedicarboxylic acid anhydride	Phthalic anhydride	5000 (2270)
1,2-Benzenedicarboxylic acid, [bis(2-ethylhexyl)] ester	Bis(2-ethylhexyl)phthalate	1 (0.454)
1,2-Benzenedicarboxylic acid, dibutyl ester	Di-n-butyl phthalate Dibutyl phthalate n-Butyl phthalate *	10 (4.54)
1,2-Benzenedicarboxylic acid, diethyl ester	Diethyl phthalate	1000 (454)

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity(RQ) Pounds(Kilograms)
1,2-Benzenedicarboxylic acid, dimethyl ester	Dimethyl phthalate	5000 (2270)
1,2-Benzenedicarboxylic acid, di-n-octyl ester	Di-n-octyl phthalate	5000 (2270)
1,3-Benzenediol	Resorcinol *	5000 (2270)
1,2-Benzenediol,4-[1-hydroxy-2-(methylamino)ethyl]-	Epinephrine	1000 (454)
Benzenesulfonic acid chloride	Benzenesulfonyl chloride	100 (45.4)
Benzenesulfonyl chloride	Benzenesulfonic acid chloride	100 (45.4)
Benzenethiol	Phenyl mercaptan @ Thiophenol	100 (45.4)
Benzidine *	(1,1'-Biphenyl)-4,4'diamine	1 (0.454)
1,2-Benzisothiazolin-3-one,1,1-dioxide, and salts	Saccharin and salts	1 (0.454)
Benzo[a]anthracene	Benz[a]anthracene 1,2-Benzanthracene	1 (0.454)
Benzo[b]fluoranthene		1 (0.454)
Benzo(k)fluoranthene		1 (0.454)
Benzo[j,k]fluorene	Fluoranthene	100 (45.4)
Benzoic acid		5000 (2270)
Benzonitrile *		5000 (2270)
Benzo[ghi]perylene		5000 (2270)
Benzo[a]pyrene	3,4-Benzopyrene	1 (0.454)
3,4-Benzopyrene	Benzo[a]pyrene	1 (0.454)
p-Benzoquinone	1,4-Cyclohexadienedione	10 (4.54)
Benzotrichloride	Benzene, trichloromethyl-	1 (0.454)
Benzoyl chloride *		1000 (454)
1,2-Benzphenanthrene	Chrysene	1 (0.454)
Benzyl chloride *	Benzene, chloromethyl-	100 (45.4)
Beryllium ¢	Beryllium dust ¢	1 (0.454)
BERYLLIUM AND COMPOUNDS		**
Beryllium chloride *		5000 (2270)
Beryllium dust ¢	Beryllium ¢	1 (0.454)
Beryllium fluoride *		5000 (2270)
Beryllium nitrate *		5000 (2270)
alpha - BHC		1 (0.454)
beta - BHC		1 (0.454)
delta - BHC		1 (0.454)
gamma - BHC	Hexachlorocyclohexane (gamma isomer) Lindane *	1 (0.454)
2,2'-Bioxirane	1,2:3,4-Diepoxybutane	1 (0.454)
(1,1'-Biphenyl)-4,4'diamine	Benzidine *	1 (0.454)
(1,1'Biphenyl)-4,4'-diamine,3,3'-dimethyl-	3,3'-Dimethylbenzidine	1 (0.454)
(1,1'-Biphenyl)-4,4'diamine,3,3'dichloro-	3,3'-Dichlorobenzidine	1 (0.454)
(1,1'-Biphenyl)-4,4'diamine,3,3'dimethoxy-	3,3'-Dimethoxybenzidine	1 (0.454)
Bis(2-chloroethoxy) methane	Ethane, 1,1'-[methylenebis(oxy)]bis(2-chloro-	1000 (454)
Bis(2-chloroethyl) ether	Dichloroethyl ether Ethane, 1,1'-oxybis(2-chloro-	1 (0.454)
Bis(2-chloroisopropyl) ether	Propane, 2,2'-oxybis(2-chloro-	1000 (454)
Bis(chloromethyl) ether	Methane, oxybis(chloro-	1 (0.454)
Bis(dimethylthiocarbamoyl) disulfide	Thiram	10 (4.54)
Bis(2-ethylhexyl)phthalate	1,2-Benzenedicarboxylic acid, [bis(2-ethylhexyl)]ester	1 (0.454)
Bromine cyanide	Cyanogen bromide *	1000 (454)
Bromoacetone *	2-Propanone, 1-bromo-	1000 (454)
Bromoform	Methane, tribromo-	100 (45.4)
4-Bromophenyl phenyl ether	Benzene, 1-bromo-4-phenoxy-	100 (45.4)
Brucine	Strychnidin-10-one, 2,3-dimethoxy-	100 (45.4)
1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	Hexachlorobutadiene *	1(0.454)
1-Butanamine, N-butyl-N-nitroso-	N-Nitrosodi-n-butylamine	1 (0.454)
Butanoic acid, 4-[bis(2-chloroethyl)amino]benzene-	Chlorambucil	1 (0.454)
1-Butanol	n-Butyl alcohol *	5000 (2270)
2-Butanone	Ethyl methyl ketone @ Methyl ethyl ketone *	5000 (2270)
2-Butanone peroxide	Methyl ethyl ketone peroxide *	10 (4.54)
2-Butenal	Crotonaldehyde *	100 (45.4)
2-Butene, 1,4-dichloro-	1,4-Dichloro-2-butene *	1 (0.454)
Butyl acetate *		5000 (2270)
iso-Butyl acetate		
sec-Butyl acetate		
tert-Butyl acetate		
n-Butyl alcohol *	1-Butanol	5000 (2270)
Butylamine *		1000 (454)
iso-Butylamine		
sec-Butylamine		
tert-Butylamine		
Butyl benzyl phthalate		100 (45.4)
n-Butyl phthalate *	Di-n-butyl phthalate Dibutyl phthalate 1,2-Benzenedicarboxylic acid, dibutyl ester	10 (4.54)
Butyric acid *		5000 (2270)
iso-Butyric acid		
Cacodylic acid	Hydroxydimethylarsine oxide	1 (0.454)
Cadmium ¢		1 (0.454)
Cadmium acetate		100 (45.4)
CADMIUM AND COMPOUNDS		**
Cadmium bromide		100 (45.4)
Cadmium chloride		100 (45.4)
Calcium arsenate *		1000 (454)
Calcium arsenite *		1000 (454)
Calcium carbide *		10 (4.54)
Calcium chromate	Chromic acid, calcium salt	1000 (454)
Calcium cyanide *		10 (4.54)
Calcium dodecylbenzene sulfonate		1000 (454)
Calcium hypochlorite *		10 (4.54)
Camphene, octachloro-	Toxaphene *	1 (0.454)

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity(RQ) Pounds(Kilograms)
Captan		10 (4.54)
Carbamic acid, ethyl ester	Ethyl carbamate (Urethan)	1 (0.454)
Carbamic acid, methylnitroso-, ethyl ester	N-Nitroso-N-methylurethane	1 (0.454)
Carbamide, N-ethyl-N-nitroso-	N-Nitroso-N-ethylurea	1 (0.454)
Carbamide, N-methyl-N-nitroso-	N-Nitroso-N-methylurea	1 (0.454)
Carbamide, thio-	Thiourea	1 (0.454)
Carbamimidoselenoic acid	Selenourea	1000 (454)
Carbamoyl chloride, dimethyl-	Dimethylcarbamoyl chloride	1 (0.454)
Carbaryl *		100 (45.4)
Carbofuran *		10 (4.54)
Carbon bisulfide *	Carbon disulfide *	100 (45.4)
Carbon disulfide *	Carbon bisulfide *	100 (45.4)
Carbonic acid, dithallium (I) salt	Thallium(I) carbonate	100(45.4)
Carbonochloridic acid, methyl ester	Methyl chlorocarbonate	1000 (454)
Carbon oxyfluoride	Carbonyl fluoride	1000 (454)
Carbon tetrachloride *	Methane, tetrachloro-	5000 (2270)
Carbonyl chloride	Phosgene *	10 (4.54)
Carbonyl fluoride	Carbon oxyfluoride	1000 (454)
Chloral	Acetaldehyde, trichloro-	1 (0.454)
Chlorambucil	Butanoic acid, 4-[bis(2-chloroethyl)amino]benzene-	1 (0.454)
Chlordane *	Chlordane, technical * 4,7-Methanoindan, 1,2,4,5,6,7,8,8-octachloro-3a,4,7,7a-tetrahydro-	1 (0.454)
CHLORDANE (TECHNICAL MIXTURE AND METABOLITES)		**
Chlordane, technical *	Chlordane * 4,7-Methanoindan, 1,2,4,5,6,7,8,8-octachloro-3a,4,7,7a-tetrahydro-	1 (0.454)
CHLORINATED BENZENES		**
CHLORINATED ETHANES		**
CHLORINATED NAPHTHALENE		**
CHLORINATED PHENOLS		**
Chlorine *		10 (4.54)
Chlorine cyanide	Cyanogen chloride *	10 (4.54)
Chlornaphazine	2-Naphthylamine, N,N-bis(2-chloroethyl)-	1 (0.454)
Chloroacetaldehyde	Acetaldehyde, chloro-	1000 (454)
CHLOROALKYL ETHERS		**
p-Chloroaniline	Benzenamine, 4-chloro-	1000 (454)
Chlorobenzene *	Benzene, chloro-	100 (45.4)
4-Chloro-m-cresol	p-Chloro-m-cresol Phenol, 4-chloro-3-methyl-	5000 (2270)
p-Chloro-m-cresol	Phenol, 4-chloro-3-methyl- 4-Chloro-m-cresol	5000 (2270)
Chlorodibromomethane		100 (45.4)
1-Chloro-2,3-epoxypropane	Epichlorohydrin * Oxirane, 2-(chloromethyl)-	1000 (454)
Chloroethane	Ethyl chloride @	1 (0.454)
2-Chloroethyl vinyl ether	Ethene, 2-chloroethoxy-	1000 (454)
Chloroform *	Methane, trichloro-	5000 (2270)
Chloromethane	Methane, chloro- Methyl chloride	1 (0.454)
Chloromethyl methyl ether	Methane, chloromethoxy- Methylchloromethyl ether @	1 (0.454)
beta-Chloronaphthalene	Naphthalene, 2-chloro- 2-Chloronaphthalene	5000 (2270)
2-Chloronaphthalene	beta-Chloronaphthalene Naphthalene, 2-chloro-	5000 (2270)
2-Chlorophenol	o-Chlorophenol Phenol, 2-chloro-	100 (45.4)
o-Chlorophenol	Phenol, 2-chloro- 2-Chlorophenol	100 (45.4)
4-Chlorophenyl phenyl ether		5000 (2270)
1-(o-Chlorophenyl)thiourea	Thiourea, (2-chlorophenyl)-	100 (45.4)
3-Chloropropionitrile	Propanenitrile, 3-chloro-	1000 (454)
Chlorosulfonic acid *		1000 (454)
4-Chloro-o-toluidine, hydrochloride	Benzenamine, 4-chloro-2-methyl-, hydrochloride	1 (0.454)
Chlorpyrifos *		1 (0.454)
Chromic acetate		1000 (454)
Chromic acid *		1000 (454)
Chromic acid, calcium salt	Calcium chromate	1000 (454)
Chromic sulfate *		1000 (454)
Chromium ¢		1 (0.454)
CHROMIUM AND COMPOUNDS		**
Chromous chloride		1000 (454)
Chrysene	1,2-Benzphenanthrene	1 (0.454)
Cobaltous bromide		1000 (454)
Cobaltous formate		1000 (454)
Cobaltous sulfamate		1000 (454)
Coke Oven Emissions		1 (0.454)
Copper ¢		5000 (2270)
COPPER AND COMPOUNDS		**
Copper cyanide *		10 (4.54)
Coumaphos *		10 (4.54)
Creosote		1 (0.454)
Cresols *	Cresylic acid	1000 (454)
m-Cresols	m-Cresylic acid	
o-Cresols	o-Cresylic acid	
p-Cresols	p-Cresylic acid	
Cresylic acid	Cresols *	1000 (454)
m-Cresols	m-Cresylic acid	
o-Cresols	o-Cresylic acid	
p-Cresols	p-Cresylic acid	
Crotonaldehyde *	2-Butenal	100 (45 4)
Cumene	Benzene, 1-methylethyl-	5000 (2270)

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LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity(RQ) Pounds(Kilograms)
Cupric acetate		100 (45.4)
Cupric acetoarsenite *		100 (45.4)
Cupric chloride *		10 (4.54)
Cupric nitrate *		100 (45.4)
Cupric oxalate		100 (45.4)
Cupric sulfate		10 (4.54)
Cupric sulfate ammoniated		100 (45.4)
Cupric tartrate		100 (45.4)
CYANIDES		**
Cyanides (soluble cyanide salts), not elsewhere specified *		10 (4.54)
Cyanogen *		100 (45.4)
Cyanogen bromide *	Bromine cyanide	1000 (454)
Cyanogen chloride *	Chlorine cyanide	10 (4.54)
1,4-Cyclohexadienedione	p-Benzoquinone	10 (4.54)
Cyclohexane *	Benzene, hexahydro-	1000 (454)
Cyclohexanone		5000 (2270)
1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	Hexachlorocyclopentadiene *	1 (0.454)
Cyclophosphamide	2H-1,3,2-Oxazaphosphorine,2-[bis(2-chloroethyl)amino] tetrahydro-2-oxide	1 (0.454)
2,4-D Acid	2,4-D *, salts and esters * 2,4-Dichlorophenoxyaceticacid, salts and esters	100 (45.4)
2,4-D Esters *		100 (45.4)
2,4-D *, salts and esters *	2,4-D Acid 2,4-Dichlorophenoxyacetic acid *, salts and esters *	100 (45.4)
Daunomycin	5,12-Naphthacenedione, (8S-cis)-8-acetyl-10-[3-amino-2,3,6-trideoxy-alpha-L-lyxo-hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-.	1 (0.454)
DDD	Dichlorodiphenyl dichloroethane TDE * 4,4' DDD	1(0.454)
4,4' DDD	DDD Dichlorodiphenyl dichloroethane TDE *	1(0.454)
DDE	4,4' DDE	1 (0.454)
4,4' DDE	DDE	1 (0.454)
DDT *	Dichlorodiphenyl trichloroethane * 4,4'DDT	1 (0.454)
4,4'DDT	DDT * Dichlorodiphenyl trichloroethane *	1 (0.454)
DDT AND METABOLITES		**
Decachlorooctahydro-1,3,4-metheno-2H-cyclobuta[c,d]-pentalen-2-one	Kepone *	1 (0.454)
Diallate	S-(2,3-Dichloroallyl) diisopropylthiocarbamate	1 (0.454)
Diamine	Hydrazine *	1 (0.454)
2,4-Diaminotoluene	2,4-Toluenediamine * Toluene-2,4-diamine	1 (0.454)
Diazinon *		1 (0.454)
Dibenz[a,h]anthracene	Dibenzo[a,h]anthracene 1,2:5,6-Dibenzanthracene	1 (0.454)
1,2:5,6-Dibenzanthracene	Dibenz[a,h]anthracene Dibenzo[a,h]anthracene	1 (0.454)
Dibenzo[a,h]anthracene	Dibenz[a,h]anthracene 1,2:5,6-Dibenzanthracene	1 (0.454)
1,2:7,8-Dibenzopyrene	Dibenz[a,i]pyrene	1 (0.454)
Dibenz[a,i]pyrene	1,2:7,8-Dibenzopyrene	1 (0.454)
1,2-Dibromo-3-chloropropane	Propane, 1,2-dibromo-3-chloro-	1(0.454)
Dibutyl phthalate	Di-n-butyl phthalate n-Butyl phthalate * 1,2-Benzenedicarboxylic acid, dibutyl ester	10 (4.54)
Di-n-butyl phthalate	Dibutyl phthalate n-Butyl phthalate * 1,2-Benzenedicarboxylic acid, dibutyl ester	10 (4.54)
Dicamba		1000 (454)
Dichlobenil		100 (45.4)
Dichlone		1 (0.454)
S-(2,3-Dichloroallyl) diisopropylthiocarbamate	Diallate	1 (0.454)
3,5-Dichloro-N-(1,1-dimethyl-2-propynyl)benzamide	Pronamide	5000 (2270)
Dichlorobenzene (mixed)		100 (45.4)
1,2-Dichlorobenzene	Benzene, 1,2-dichloro- o-Dichlorobenzene *	100 (45.4)
1,3-Dichlorobenzene	Benzene, 1,3-dichloro- m-Dichlorobenzene	100 (45.4)
1,4-Dichlorobenzene	Benzene, 1,4-dichloro- p-Dichlorobenzene *	100 (45.4)
m-Dichlorobenzene	Benzene, 1,3-dichloro- 1,3-Dichlorobenzene	100 (45.4)
o-Dichlorobenzene *	Benzene, 1,2-dichloro- 1,2-Dichlorobenzene	100 (45.4)
p-Dichlorobenzene *	Benzene, 1,4-dichloro- 1,4-Dichlorobenzene	100 (45.4)
DICHLOROBENZIDINE		**
3,3'-Dichlorobenzidine	(1,1'-Biphenyl)-4,4'diamine,3,3'dichloro-	1 (0.454)
Dichlorobromomethane		5000 (2270)
1,4-Dichloro-2-butene *	2-Butene, 1,4-dichloro-	1 (0.454)
Dichlorodifluoromethane *	Methane, dichlorodifluoro-	5000 (2270)
Dichlorodiphenyl dichloroethane	DDD TDE * 4,4' DDD	1(0.454)
Dichlorodiphenyl trichloroethane *	DDT * 4,4'DDT	1 (0.454)
1,1-Dichloroethane	Ethane, 1,1-dichloro- Ethylidene dichloride	1000 (454)
1,2-Dichloroethane	Ethane, 1,2-dichloro- Ethylene dichloride *	5000 (2270)

List of Hazardous Substances and Reportable Quantities—Continued

Hazardous Substance	Synonyms	Reportable Quantity(RQ) Pounds(Kilograms)
1,1-Dichloroethylene	Ethene, 1,1-dichloro-	5000 (2270)
	Vinylidene chloride *	
1,2-trans-Dichloroethylene *	Ethene, trans-1,2-dichloro-	1000 (454)
Dichloroethyl ether	Bis (2-chloroethyl) ether	1 (0.454)
	Ethane, 1,1'-oxybis(2-chloro-	
2,4-Dichlorophenol	Phenol, 2,4-dichloro-	100 (45.4)
2,6-Dichlorophenol	Phenol, 2,6-dichloro-	100 (45.4)
2,4-Dichlorophenoxyacetic acid *, salts and esters *	2,4-D Acid	100 (45.4)
	2,4-D *, salts and esters *	
Dichlorophenylarsine	Phenyl dichloroarsine *	1 (0.454)
Dichloropropane *		1000 (454)
1,1-Dichloropropane		1000 (454)
1,3-Dichloropropane		1000 (454)
1,2-Dichloropropane	Propylene dichloride *	1000 (454)
Dichloropropane - Dichloropropene (mixture)		100 (45.4)
Dichloropropene *		100 (45.4)
2,3-Dichloropropene		100 (45.4)
1,3-Dichloropropene *	Propene, 1,3-dichloro-	100 (45.4)
2,2-Dichloropropionic acid *		5000 (2270)
Dichlorvos *		10 (4.54)
Dieldrin *	1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-endo,exo-1,4:5,8-dimethanonaphthalene.	1 (0.454)
1,2:3,4-Diepoxybutane	2,2'-Bioxirane	1 (0.454)
Diethylamine *		1000 (454)
Diethylarsine	Arsine, diethyl-	1 (0.454)
1,4-Diethylene dioxide	1,4-Dioxane *	1 (0.454)
O,O-Diethyl S-[2-(ethylthio)ethyl] phosphorodithioate	Disulfoton *	1 (0.454)
N,N'-Diethylhydrazine	Hydrazine, 1,2-diethyl-	1 (0.454)
O,O-Diethyl S-methyl dithiophosphate	Phosphorodithioic acid, O,O-diethyl S-methyl ester	5000 (2270)
Diethyl-p-nitrophenyl phosphate	Phosphoric acid, diethyl p-nitrophenyl ester	100 (45.4)
Diethyl phthalate	1,2-Benzenedicarboxylic acid, diethyl ester	1000 (454)
O,O-Diethyl O-pyrazinyl phosphorothioate	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester	100 (45.4)
Diethylstilbestrol	4,4'-Stilbenediol, alpha,alpha'-diethyl-	1 (0.454)
1,2-Dihydro-3,6-pyridazinedione	Maleic hydrazide	5000 (2270)
Dihydrosafrole	Benzene, 1,2-methylenedioxy-4-propyl-	1 (0.454)
Diisopropyl fluorophosphate	Phosphorofluoridic acid, bis(1-methylethyl) ester	100 (45.4)
Dimethoate	Phosphorodithioic acid, O,O-dimethyl S-[2(methylamino)-2-oxoethyl] ester	10 (4.54)
3,3'-Dimethoxybenzidine	(1,1'-Biphenyl)-4,4'diamine,3,3'dimethoxy-	1 (0.454)
Dimethylamine *	Methanamine, N-methyl-	1000 (454)
Dimethylaminoazobenzene	Benzenamine, N,N-dimethyl-4-phenylazo-	1 (0.454)
7,12-Dimethylbenz[a]anthracene	1,2-Benzanthracene, 7,12-dimethyl-	1 (0.454)
3,3'-Dimethylbenzidine	(1,1'Biphenyl)-4,4'-diamine,3,3'-dimethyl-	1 (0.454)
alpha,alpha-Dimethylbenzylhydroperoxide	Hydroperoxide, 1-methyl-1-phenylethyl-	10 (4.54)
3,3-Dimethyl-1-(methylthio)-2-butanone, O-[(methylamino)carbonyl] oxime	Thiofanox	100 (45.4)
Dimetbylcarbamoyl chloride	Carbamoyl chloride, dimethyl-	1 (0.454)
1,1-Dimethylhydrazine *	Hydrazine, 1,1-dimethyl-	1 (0.454)
1,2-Dimethylhydrazine	Hydrazine, 1,2-dimethyl-	1 (0.454)
O,O-Dimethyl O-p-nitrophenyl phosphorothioate	Methyl parathion *	100 (45.4)
Dimethylnitrosamine	N-Nitrosodimethylamine	1 (0.454)
alpha,alpha-Dimethylphenethylamine	Ethanamine, 1,1-dimethyl-2-phenyl-	5000 (2270)
2,4-Dimethylphenol	Phenol, 2,4-dimethyl-	100 (45.4)
	2,4-Xylenol @	
Dimethyl phthalate	1,2-Benzenedicarboxylic acid, dimethyl ester	5000 (2270)
Dimethyl sulfate *	Sulfuric acid, dimethyl ester	1 (0.454)
Dinitrobenzene * (mixed)		100 (45.4)
m-Dinitrobenzene		100 (45.4)
o-Dinitrobenzene		100 (45.4)
p-Dinitrobenzene		100 (45.4)
4,6-Dinitro-o-cresol and salts	Phenol, 2,4-dinitro-6-methyl-, and salts	10 (4.54)
4,6-Dinitro-o-cyclohexylphenol *	Phenol, 2-cyclohexyl-4,6-dinitro-	100 (45.4)
Dinitrophenol *		10 (4.54)
2,5-Dinitrophenol		10 (4.54)
2,6-Dinitrophenol		10 (4.54)
2,4-Dinitrophenol *	Phenol, 2,4-dinitro-	10 (4.54)
Dinitrotoluene *		1000 (454)
3,4-Dinitrotoluene		
2,4-Dinitrotoluene *	Benzene, 1-methyl-2,4-dinitro-	1000 (454)
2,6-Dinitrotoluene *	Benzene, 1-methyl-2,6-dinitro-	1000 (454)
Dinoseb	Phenol, 2,4-dinitro-6-(1-methylpropyl)-	1000 (454)
Di-n-octyl phthalate	1,2-Benzenedicarboxylic acid, di-n-octyl ester	5000 (2270)
1,4-Dioxane *	1,4-Diethylene dioxide	1 (0.454)
DIPHENYLHYDRAZINE		**
1,2-Diphenylhydrazine	Hydrazine, 1,2-diphenyl-	1 (0.454)
Diphosphoramide, octamethyl-	Octamethylpyrophosphoramide	100(45.4)
Dipropylamine	1-Propanamine, N-propyl-	5000 (2270)
Di-n-propylnitrosamine	N-Nitrosodi-n-propylamine	1 (0.454)
Diquat		1000 (454)
Disulfoton *	O,O-Diethyl S-[2-(ethylthio)ethyl]phosphorodithioate	1 (0.454)
2,4-Dithiobiuret	Thioimidodicarbonic diamide	100 (45.4)
Dithiopyrophosphoric acid, tetraethyl ester	Tetraethyldithiopyrophosphate	100 (45.4)
Diuron		100 (45.4)
Dodecylbenzenesulfonic acid *		1000 (454)
Endosulfan *	5-Norbornene-2,3-dimethanol,1,4,5,6,7,7-hexachloro,cyclic sulfite	1 (0.454)
alpha - Endosulfan		1 (0.454)
beta - Endosulfan		1 (0.454)
ENDOSULFAN AND METABOLITES		**
Endosulfan sulfate		1 (0.454)
Endothall	7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid	1000 (454)
Endrin *	1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-endo,endo-1,4:5,8-dimethanonaphthalene.	1 (0.454)
Endrin aldehyde		1 (0.454)

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity(RQ) Pounds(Kilograms)
ENDRIN AND METABOLITES		**
Epichlorohydrin *	1-Chloro-2,3-epoxypropane Oxirane, 2-(chloromethyl)-	1000 (454)
Epinephrine	1,2-Benzenediol,4-[1-hydroxy-2-(methylamino)ethyl]	1000 (454)
Ethanal	Acetaldehyde *	1000 (454)
Ethanamine, 1,1-dimethyl-2-phenyl-	alpha,alpha-Dimethylphenethylamine	5000 (2270)
Ethanamine, N-ethyl-N-nitroso-	N-Nitrosodiethylamine	1 (0.454)
Ethane, 1,2-dibromo-	Ethylene dibromide *	1000 (454)
Ethane, 1,1-dichloro-	Ethylidene dichloride 1,1-Dichloroethane	1000 (454)
Ethane, 1,2-dichloro-	Ethylene dichloride * 1,2-Dichloroethane	5000 (2270)
Ethane, 1,1,1,2,2,2-hexachloro-	Hexachloroethane *	1 (0.454)
Ethane, 1,1'-[methylenebis(oxy)]bis(2-chloro-	Bis(2-chloroethoxy)methane	1000 (454)
Ethane, 1,1'-oxybis-	Ethyl ether *	100 (45.4)
Ethane, 1,1'-oxybis(2-chloro-	Bis (2-chloroethyl) ether Dichloroethyl ether	1 (0.454)
Ethane, pentachloro-	Pentachloroethane	1 (0.454)
Ethane, 1,1,1,2-tetrachloro-	1,1,1,2-Tetrachloroethane *	1 (0.454)
Ethane, 1,1,2,2-tetrachloro-	1,1,2,2-Tetrachloroethane *	1 (0.454)
Ethane, 1,1,2-trichloro-	1,1,2-Trichloroethane	1 (0.454)
Ethane, 1,1,1-trichloro-2,2-bis(p-methoxyphenyl)-	Methoxychlor	1 (0.454)
1,2-Ethanediylbiscarbamodithioic acid	Ethylenebis(dithiocarbamic acid)	5000 (2270)
Ethanenitrile	Acetonitrile *	5000 (2270)
Ethanethioamide	Thioacetamide	1 (0.454)
Ethanol, 2,2'-(nitrosoimino)bis-	N-Nitrosodiethanolamine	1 (0.454)
Ethanone, 1-phenyl-	Acetophenone	5000 (2270)
Ethanoyl chloride	Acetyl chloride *	5000 (2270)
Ethenamine, N-methyl-N-nitroso-	N-Nitrosomethylvinylamine	1 (0.454)
Ethene, chloro-	Vinyl chloride *	1 (0.454)
Ethene, 2-chloroethoxy-	2-Chloroethyl vinyl ether	1000 (454)
Ethene, 1,1-dichloro-	Vinylidene chloride * 1,1-Dichloroethylene	5000 (2270)
Ethene, 1,1,2,2-tetrachloro-	Perchloroethylene Tetrachloroethene Tetrachloroethylene	1 (0.454)
Ethene, trans-1,2-dichloro-	1,2-trans-Dichloroethylene *	1000 (454)
Ethion *		10 (4.54)
2-Ethoxyethanol	Ethylene glycol monoethyl ether *	1 (0.454)
Ethyl acetate	Acetic acid, ethyl ester	5000 (2270)
Ethyl acrylate *	2-Propenoic acid, ethyl ester	1000 (454)
Ethylbenzene *		1000 (454)
Ethyl carbamate (Urethan)	Carbamic acid, ethyl ester	1 (0.454)
Ethyl chloride @	Chloroethane	1 (0.454)
Ethyl cyanide	Propanenitrile	10 (4.54)
Ethyl 4,4'-dichlorobenzilate	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester	1 (0.454)
Ethylene dibromide *	Ethane, 1,2-dibromo-	1000 (454)
Ethylene dichloride *	1,2-Dichloroethane Ethane, 1,2-dichloro-	5000 (2270)
Ethylene glycol monoethyl ether *	2-Ethoxyethanol	1 (0.454)
Ethylene oxide *	Oxirane	1 (0.454)
Ethylenebis(dithiocarbamic acid)	1,2-Ethanediylbiscarbamodithioicacid	5000 (2270)
Ethylenediamine *		5000 (2270)
Ethylenediamine tetraacetic acid (EDTA)		5000 (2270)
Ethylenethiourea	2-Imidazolidinethione	1 (0.454)
Ethylenimine	Aziridine	1 (0.454)
Ethyl ether *	Ethane, 1,1'-oxybis-	100 (45.4)
Ethylidene dichloride	Ethane, 1,1-dichloro- 1,1-Dichloroethane	1000 (454)
Ethyl methacrylate	2-Propenoic acid, 2-methyl-, ethyl ester	1000 (454)
Ethyl methanesulfonate	Methanesulfonic acid, ethyl ester	1 (0.454)
Ethyl methyl ketone @	2-Butanone Methyl ethyl ketone *	5000 (2270)
Famphur	Phosphorothioic acid, O,O-dimethyl O-[p-[(dimethylamino)-sulfonyl] phenyl] ester	1000 (454)
Ferric ammonium citrate		1000 (454)
Ferric ammonium oxalate		1000 (454)
Ferric chloride		1000 (454)
Ferric dextran ***	Iron dextran ***	5000 (2270)
Ferric fluoride		100 (45.4)
Ferric nitrate *		1000 (454)
Ferric sulfate		1000 (454)
Ferrous ammonium sulfate		1000 (454)
Ferrous chloride *		100 (45.4)
Ferrous sulfate		1000 (454)
Fluoranthene	Benzo[j,k]fluorene	100 (45.4)
Fluorene		500 (2270)
Fluorine *		10 (4.54)
Fluoroacetamide	Acetamide, 2-fluoro-	100 (45.4)
Fluoroacetic acid, sodium salt	Acetic acid, fluoro-, sodium salt	10 (4.54)
Formaldehyde *	Methylene oxide	1000 (454)
Formic acid *	Methanoic acid	5000 (2270)
Fulminic acid, mercury(II)salt	Mercury fulminate	10 (4.54)
Fumaric acid		5000 (2270)
Furan *	Furfuran	100 (45.4)
Furan, tetrahydro-	Tetrahydrofuran *	1000 (454)
2-Furancarboxaldehyde	Furfural *	5000 (2270)
2,5-Furandione	Maleic anhydride *	5000 (2270)
Furfural *	2-Furancarboxaldehyde	5000 (2270)
Furfuran	Furan *	100 (45.4)
D-Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-	Streptozotocin	1 (0.454)

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity(RQ) Pounds(Kilograms)
Glycidylaldehyde	1-Propanal, 2,3-epoxy-	1 (0.454)
Guanidine, N-nitroso-N-methyl-N'-nitro-	N-Methyl-N'-nitro-N-nitrosoguanidine	1 (0.454)
Guthion *	Azinphos methyl @	1 (0.454)
HALOETHERS		**
HALOMETHANES		**
Heptachlor *	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	1 (0.454)
HEPTACHLOR AND METABOLITES		**
Heptachlor epoxide		1 (0.454)
Hexachlorobenzene	Benzene, hexachloro-	1 (0.454)
Hexachlorobutadiene *	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	1(0.454)
HEXACHLOROCYCLOHEXANE (all isomers)		**
Hexachlorocyclohexane (gamma isomer)	gamma - BHC Lindane *	1 (0.454)
Hexachlorocyclopentadiene *	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	1 (0.454)
1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-endo,endo-1,4:5,8-dimethanonaphthalene	Endrin *	1 (0.454)
1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-endo,exo-1,4:5,8-dimethanonaphthalene	Dieldrin *	1 (0.454)
Hexachloroethane *	Ethane, 1,1,1,2,2,2-hexachloro-	1 (0.454)
Hexachlorohexahydro-endo,endo-dimethanonaphthalene	1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4,5,8-endo,endo-dimethanonaphthalene	1 (0.454)
1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4,5,8-endo,endo-dimethanonaphthalene	Hexachlorohexahydro-endo,endo-dimethanonaphthalene	1 (0.454)
1,2,3,4,10-10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo,exo-dimethanonaphthalene	Aldrin *	1 (0.454)
Hexachlorophene	2,2'-Methylenebis(3,4,6-trichlorophenol)	100(45.4)
Hexachloropropene	1-Propene, 1,1,2,3,3,3-hexachloro-	1000 (454)
Hexaethyl tetraphosphate *	Tetraphosphoric acid, hexaethyl ester	100 (45.4)
Hydrazine *	Diamine	1 (0.454)
Hydrazine, 1,2-diethyl-	N,N'-Diethylhydrazine	1 (0.454)
Hydrazine, 1,1-dimethyl-	1,1-Dimethylhydrazine *	1 (0.454)
Hydrazine, 1,2-dimethyl-	1,2-Dimethylhydrazine	1 (0.454)
Hydrazine, 1,2-diphenyl-	1,2-Diphenylhydrazine	1 (0.454)
Hydrazine, methyl-	Methyl hydrazine *	10 (4.54)
Hydrazinecarbothioamide	Thiosemicarbazide	100 (45.4)
Hydrochloric acid *		5000 (2270)
Hydrocyanic acid *	Hydrogen cyanide	10 (4.54)
Hydrofluoric acid *	Hydrogen fluoride *	100 (45.4)
Hydrogen cyanide	Hydrocyanic acid *	10 (4.54)
Hydrogen fluoride *	Hydrofluoric acid *	100 (45.4)
Hydrogen phosphide	Phosphine *	100 (45.4)
Hydrogen sulfide *	Hydrosulfuric acid Sulfur hydride	100 (45.4)
Hydroperoxide, 1-methyl-1-phenylethyl-	alpha,alpha-Dimethylbenzylhydroperoxide	10 (4.54)
Hydrosulfuric acid	Hydrogen sulfide * Sulfur hydride	100 (45.4)
Hydroxydimethylarsine oxide	Cacodylic acid	1 (0.454)
2-Imidazolidinethione	Ethylenethiourea	1 (0.454)
Indeno(1,2,3-cd)pyrene	1,10-(1,2-Phenylene)pyrene	1 (0.454)
Iron dextran ***	Ferric dextran ***	5000 (2270)
Isobutyl alcohol	1-Propanol, 2-methyl-	5000 (2270)
Isocyanic acid, methyl ester	Methyl isocyanate *	1 (0.454)
Isophorone		5000 (2270)
Isoprene *		1000 (454)
Isopropanolamine dodecylbenzene sulfonate		1000 (454)
Isosafrole	Benzene, 1,2-methylenedioxy-4-propenyl-	1 (0.454)
3(2H)-Isoxazolone, 5-(aminomethyl)-	5-(Aminomethyl)-3-isoxazolol	1000 (454)
Kelthane		10 (4.54)
Kepone	Decachlorooctahydro-1,3,4-metheno-2H-cyclobuta[c,d]-pentalen-2-one	1 (0.454)
Lasiocarpine		1 (0.454)
Lead @		1 (0.454)
Lead acetate	Acetic acid, lead salt	5000 (2270)
LEAD AND COMPOUNDS		**
Lead arsenate *		5000 (2270)
Lead chloride *		100 (45.4)
Lead fluoborate *		100 (45.4)
Lead fluoride *		100 (45.4)
Lead iodide		100 (45.4)
Lead nitrate *		100 (45.4)
Lead phosphate	Phosphoric acid, lead salt	1 (0.454)
Lead stearate		5000 (2270)
Lead subacetate		1 (0.454)
Lead sulfate *		100 (45.4)
Lead sulfide		5000 (2270)
Lead thiocyanate		100 (45.4)
Lindane *	gamma - BHC Hexachlorocyclohexane (gamma isomer)	1 (0.454)
Lithium chromate		1000 (454)
Malathion *		100 (45.4)
Maleic acid *		5000 (2270)
Maleic anhydride *	2,5-Furandione	5000 (2270)
Maleic hydrazide	1,2-Dihydro-3,6-pyridazinedione	5000 (2270)
Malononitrile	Propanedinitrile	1000 (454)
Melphalan	Alanine, 3-[p-bis(2-chloroethyl)amino]phenyl-, L-	1 (0.454)
Mercaptodimethur		10 (4.54)
Mercuric cyanide *		1 (0.454)
Mercuric nitrate *		10 (4.54)
Mercuric sulfate *		10 (4.54)
Mercuric thiocyanate		10 (4.54)
Mercurous nitrate *		10 (4.54)
Mercury *		1 (0.454)

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LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity(RQ) Pounds(Kilograms)
MERCURY AND COMPOUNDS		**
Mercury, (acetato-O)phenyl-	Phenylmercuric acetate	100 (45.4)
Mercury fulminate	Fulminic acid, mercury(II)salt	10 (4.54)
Methacrylonitrile	2-Propenenitrile, 2-methyl-	1000 (454)
Methanamine, N-methyl-	Dimethylamine *	1000 (454)
Methane, bromo-	Methyl bromide *	1000 (454)
Methane, chloro-	Methyl chloride *	1 (0.454)
Methane, chloromethoxy-	Chloromethyl methyl ether Methylchloromethyl ether @	1 (0.454)
Methane, dibromo-	Methylene bromide	1000 (454)
Methane, dichloro-	Methylene chloride *	1000 (454)
Methane, dichlorodifluoro-	Dichlorodifluoromethane *	5000 (2270)
Methane, iodo-	Methyl iodide	1 (0.454)
Methane, oxybis(chloro-	Bis(chloromethyl) ether	1 (0.454)
Methane, tetrachloro-	Carbon tetrachloride *	5000 (2270)
Methane, tetranitro-	Tetranitromethane *	10 (4.54)
Methane, tribromo-	Bromoform	100 (45.4)
Methane, trichloro-	Chloroform *	5000 (2270)
Methane, trichlorofluoro-	Trichloromonofluoromethane	5000 (2270)
Methanesulfenyl chloride, trichloro-	Perchloromethyl mercaptan @ Trichloromethanesulfenyl chloride	100 (45.4)
Methanesulfonic acid, ethyl ester	Ethyl methanesulfonate	1 (0.454)
Methanethiol	Methyl mercaptan * Thiomethanol	100 (45.4)
4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-a,4,7,7a-tetrahydro-	Heptachlor *	1 (0.454)
Methanoic acid	Formic acid *	5000 (2270)
4,7-Methanoindan, 1,2,4,5,6,7,8,8-octachloro-3a,4,7,7a-tetrahydro-	Chlordane * Chlordane, technical *	1 (0.454)
Methanol *	Methyl alcohol *	5000 (2270)
Methapyrilene	Pyridine, 2-[(2-(dimethylamino)ethyl)-2-thenylamino]-	5000 (2270)
Methomyl	Acetimidic acid, N-[(methylcarbamoyl)oxy]thio-, methyl ester	100 (45.4)
Methoxychlor	Ethane, 1,1,1-trichloro-2,2-bis(p-methoxyphenyl)-	1 (0.454)
Methyl alcohol *	Methanol *	5000 (2270)
Methylamine @	Monoethylamine *	100 (45.4)
2-Methylaziridine	1,2-Propylenimine	1 (0.454)
Methyl bromide *	Methane, bromo-	1000 (454)
1-Methylbutadiene	1,3-Pentadiene	100 (45.4)
Methyl chloride *	Methane, chloro-	1 (0.454)
Methyl chlorocarbonate	Carbonochloridic acid, methyl ester	1000 (454)
Methyl chloroform *	1,1,1-Trichloroethane *	1000 (454)
Methylchloromethyl ether @	Chloromethyl methyl ether Methane, chloromethoxy-	1 (0.454)
3-Methylcholanthrene	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	1 (0.454)
4,4'-Methylenebis(2-chloroaniline)	Benzenamine, 4,4'-methylenebis(2-chloro-	1 (0.454)
2,2'-Methylenebis(3,4,6-trichlorophenol)	Hexachlorophene	100(45.4)
Methylene bromide	Methane, dibromo-	1000 (454)
Methylene chloride *	Methane, dichloro-	1000 (454)
Methylene oxide	Formaldehyde *	1000 (454)
Methyl ethyl ketone *	2-Butanone Ethyl methyl ketone @	5000 (2270)
Methyl ethyl ketone peroxide *	2-Butanone peroxide	10 (4.54)
Methyl hydrazine *	Hydrazine, methyl-	10 (4.54)
Methyl iodide	Methane, iodo-	1 (0.454)
Methyl isobutyl ketone	4-Methyl-2-pentanone	5000 (2270)
Methyl isocyanate *	Isocyanic acid, methyl ester	1 (0.454)
2-Methyllactonitrile	Acetone cyanohydrin * Propanenitrile, 2-hydroxy-2-methyl-	10 (4.54)
Methyl mercaptan *	Methanethiol Thiomethanol	100 (45.4)
Methyl methacrylate *	2-Propenoic acid, 2-methyl-, methyl ester	1000 (454)
N-Methyl-N'-nitro-N-nitrosoguanidine	Guanidine, N-nitroso-N-methyl-N'-nitro-	1 (0.454)
Methyl parathion *	O,O-Dimethyl O-p-nitrophenyl phosphorothioate	100 (45.4)
4-Methyl-2-pentanone	Methyl isobutyl ketone	5000 (2270)
Methylthiouracil	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-	1 (0.454)
Mevinphos *		10 (4.54)
Mexacarbate *		1000 (454)
Mitomycin C	Azirino(2',3':3,4)pyrrolo(1,2-a)indole-4,7-dione,6-amino-8-[((aminocarbonyl)oxy) methyl]-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-.	1 (0.454)
Monoethylamine *		100 (45.4)
Monomethylamine	Methylamine @	100 (45.4)
5,12-Naphthacenedione, (8S-cis)-8-acetyl-10-[3-amino-2,3,6-trideoxy-alpha-L-lyxo-hexopyranosyl) oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-.	Daunomycin	1 (0.454)
Naphthalene *		100 (45.4)
Naphthalene, 2-chloro-	beta-Chloronaphthalene 2-Chloronaphthalene	5000 (2270)
1,4-Naphthalenedione	1,4-Naphthoquinone	5000 (2270)
2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'- dimethyl-(1,1'-biphenyl)-4,4'-diyl)-bis(azo)]bis(5-amino-4-hydroxy)-tetrasodium salt.	Trypan blue	1 (0.454)
Naphthenic acid		100 (45.4)
1,4-Naphthoquinone	1,4-Naphthalenedione	5000 (2270)
alpha-Naphthylamine	1-Naphthylamine	1 (0.454)
beta-Naphthylamine	2-Naphthylamine	1 (0.454)
2-Naphthylamine, N,N-bis(2-chloroethyl)-	Chlornaphazine	1 (0.454)
1-Naphthylamine	alpha-Naphthylamine	1 (0.454)
2-Naphthylamine	beta-Naphthylamine	1 (0.454)
alpha-Naphthylthiourea	Thiourea, 1-naphthalenyl-	100 (45.4)
Nickel ¢		1 (0.454)
Nickel ammonium sulfate		5000 (2270)
NICKEL AND COMPOUNDS		**
Nickel carbonyl *	Nickel tetracarbonyl	1 (0.454)
Nickel chloride *		5000 (2270)

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity(RQ) Pounds(Kilograms)
Nickel cyanide *	Nickel(II) cyanide	1 (0.454)
Nickel(II) cyanide	Nickel cyanide *	1 (0.454)
Nickel hydroxide		1000 (454)
Nickel nitrate *		5000 (2270)
Nickel sulfate		5000 (2270)
Nickel tetracarbonyl	Nickel carbonyl *	1 (0.454)
Nicotine * and salts *	Pyridine, (S)-3-(1-methyl-2-pyrrolidinyl)-, and salts	100 (45.4)
Nitric acid *		1000 (454)
Nitric oxide *	Nitrogen(II) oxide	10 (4.54)
p-Nitroaniline *	Benzenamine, 4-nitro-	5000 (2270)
Nitrobenzene *	Benzene, nitro-	1000 (454)
Nitrogen dioxide *	Nitrogen(IV) oxide	10 (4.54)
Nitrogen(II) oxide	Nitric oxide *	10 (4.54)
Nitrogen(IV) oxide	Nitrogen dioxide *	10 (4.54)
Nitroglycerine *	1,2,3-Propanetriol, trinitrate-	10 (4.54)
Nitrophenol * (mixed)		100 (45.4)
m-Nitrophenol		100 (45.4)
o-Nitrophenol	2-Nitrophenol	100 (45.4)
p-Nitrophenol	Phenol, 4-nitro- 4-Nitrophenol	100 (45.4)
o-Nitrophenol *	2-Nitrophenol *	100 (45.4)
p-Nitrophenol *	Phenol, 4-nitro- 4-Nitrophenol *	100 (45.4)
2-Nitrophenol *	o-Nitrophenol *	100 (45.4)
4-Nitrophenol *	p-Nitrophenol * Phenol, 4-nitro-	100 (45.4)
NITROPHENOLS		**
2-Nitropropane	Propane, 2-nitro-	1 (0.454)
NITROSAMINES		**
N-Nitrosodi-n-butylamine	1-Butanamine, N-butyl-N-nitroso-	1 (0.454)
N-Nitrosodiethanolamine	Ethanol, 2,2'-(nitrosoimino)bis-	1 (0.454)
N-Nitrosodiethylamine	Ethanamine, N-ethyl-N-nitroso-	1 (0.454)
N-Nitrosodimethylamine	Dimethylnitrosamine	1 (0.454)
N-Nitrosodiphenylamine		100 (45.4)
N-Nitrosodi-n-propylamine	Di-n-propylnitrosamine	1 (0.454)
N-Nitroso-N-ethylurea	Carbamide, N-ethyl-N-nitroso-	1 (0.454)
N-Nitroso-N-methylurea	Carbamide, N-methyl-N-nitroso-	1 (0.454)
N-Nitroso-N-methylurethane	Carbamic acid, methylnitroso-, ethyl ester	1 (0.454)
N-Nitrosomethylvinylamine	Ethenamine, N-methyl-N-nitroso-	1 (0.454)
N-Nitrosopiperidine	Pyridine, hexahydro-N-nitroso-	1 (0.454)
N-Nitrosopyrrolidine	Pyrrole, tetrahydro-N-nitroso-	1 (0.454)
Nitrotoluene *		1000 (454)
m-Nitrotoluene		
o-Nitrotoluene		
p-Nitrotoluene		
5-Nitro-o-toluidine	Benzenamine, 2-methyl-5-nitro-	1 (0.454)
5-Norbornene-2,3-dimethanol,1,4,5,6,7,7-hexachloro,cyclic sulfite	Endosulfan *	1 (0.454)
Octamethylpyrophosphoramide	Diphosphoramide, octamethyl-	100(45.4)
Osmium oxide	Osmium tetroxide	1000 (454)
Osmium tetroxide	Osmium oxide	1000 (454)
7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid	Endothall	1000 (454)
1,2-Oxathiolane, 2,2-dioxide	1,3-Propane sultone	1 (0.454)
2H-1,3,2-Oxazaphosphorine,2-[bis(2-chloroethyl) amino] tetrahydro-2-oxide	Cyclophosphamide	1 (0.454)
Oxirane	Ethylene oxide *	1 (0.454)
Oxirane, 2-(chloromethyl)-	Epichlorohydrin * 1-Chloro-2,3-epoxypropane	1000 (454)
Paraformaldehyde *		1000 (454)
Paraldehyde *	1,3,5-Trioxane, 2,4,6-trimethyl-	1000 (454)
Parathion *	Phosphorothioic acid, O,O-diethyl O-(p-nitrophenyl)ester	1 (0.454)
Pentachlorobenzene	Benzene, pentachloro-	10 (4.54)
Pentachloroethane	Ethane, pentachloro-	1 (0.454)
Pentachloronitrobenzene	Benzene, pentachloronitro-	1 (0.454)
Pentachlorophenol *	Phenol, pentachloro-	10 (4.54)
1,3-Pentadiene	1-Methylbutadiene	100 (45.4)
Perchloroethylene *	Ethene, 1,1,2,2-tetrachloro- Tetrachloroethene Tetrachloroethylene *	1 (0.454)
Perchloromethyl mercaptan @	Methanesulfenyl chloride, trichloro- Trichloromethanesulfenyl chloride	100 (45.4)
Phenacetin	Acetamide, N-(4-ethoxyphenyl)-	1 (0.454)
Phenanthrene		5000 (2270)
Phenol *	Benzene, hydroxy-	1000 (454)
Phenol, 4-chloro-3-methyl-	p-Chloro-m-cresol 4-Chloro-m-cresol	5000 (2270)
Phenol, 2-chloro-	o-Chlorophenol 2-Chlorophenol	100 (45.4)
Phenol, 2-cyclohexyl-4,6-dinitro-	4,6-Dinitro-o-cyclohexylphenol *	100 (45.4)
Phenol, 2,4-dichloro-	2,4-Dichlorophenol	100 (45.4)
Phenol, 2,6-dichloro-	2,6-Dichlorophenol	100 (45.4)
Phenol, 2,4-dimethyl-	2,4-Dimethylphenol 2,4-Xylenol @	100 (45.4)
Phenol, 2,4-dinitro-6-(1-methylpropyl)-	Dinoseb	1000 (454)
Phenol, 2,4-dinitro-6-methyl-, and salts	4,6-Dinitro-o-cresol and salts	10 (4.54)
Phenol, 2,4-dinitro-	2,4-Dinitrophenol *	10 (4.54)
Phenol, 4-nitro-	p-Nitrophenol * 4-Nitrophenol *	100 (45.4)
Phenol, pentachloro-	Pentachlorophenol *	10 (4.54)
Phenol, 2,3,4,6-tetrachloro-	2,3,4,6-Tetrachlorophenol *	10 (4.54)
Phenol, 2,4,5-trichloro-	2,4,5-Trichlorophenol *	10 (4.54)
Phenol, 2,4,6-trichloro-	2,4,6-Trichlorophenol *	10 (4.54)
Phenol, 2,4,6-trinitro-, ammonium salt	Ammonium picrate *	10 (4.54)

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Hazardous Substance	Synonyms	Reportable Quantity(RQ) Pounds(Kilograms)
Phenyl dichloroarsine *	Dichlorophenylarsine	1 (0.454)
1,10-(1,2-Phenylene)pyrene	Indeno(1,2,3-cd)pyrene	1 (0.454)
Phenyl mercaptan @	Benzenethiol Thiophenol *	100 (45.4)
Phenylmercuric acetate	Mercury, (acetato-O)phenyl-	100 (45.4)
N-Phenylthiourea	Thiourea, phenyl-	100 (45.4)
Phorate	Phosphorodithioic acid, O,O-diethyl S-(ethylthio), methylester	10 (4.54)
Phosgene *	Carbonyl chloride	10 (4.54)
Phosphine *	Hydrogen phosphide	100 (45.4)
Phosphoric acid *		5000 (2270)
Phosphoric acid, diethyl p-nitrophenyl ester	Diethyl-p-nitrophenyl phosphate	100 (45.4)
Phosphoric acid, lead salt	Lead phosphate	1 (0.454)
Phosphorodithioic acid, O,O-diethyl S-(ethylthio), methyl ester	Phorate	10 (4.54)
Phosphorodithioic acid, O,O-diethyl S-methyl ester	O,O-Diethyl S-methyl dithiophosphate	5000 (2270)
Phosphorodithioic acid, O,O-dimethyl S-[2 (methylamino)-2-oxoethyl] ester	Dimethoate	10 (4.54)
Phosphorofluoridic acid, bis(1-methylethyl) ester	Diisopropyl fluorophosphate	100 (45.4)
Phosphorothioic acid, O,O-diethyl O-(p-nitrophenyl) ester	Parathion *	1 (0.454)
Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester	O,O-Diethyl O-pyrazinyl phosphorothioate	100 (45.4)
Phosphorothioic acid, O,O-dimethyl O-[p-[(dimethylamino)-sulfonyl] phenyl] ester	Famphur	1000 (454)
Phosphorus *		1 (0.454)
Phosphorus oxychloride *		1000 (454)
Phosphorus pentasulfide *	Phosphorus sulfide Sulfur phosphide	100 (45.4)
Phosphorus sulfide	Phosphorus pentasulfide * Sulfur phosphide	100 (45.4)
Phosphorus trichloride *		1000 (454)
PHTHALATE ESTERS		**
Phthalic anhydride	1,2-Benzenedicarboxylic acid anhydride	5000 (2270)
2-Picoline	Pyridine, 2-methyl-	5000 (2270)
Plumbane, tetraethyl-	Tetraethyl lead *	10 (4.54)
POLYCHLORINATED BIPHENYLS (PCBs) *		10 (4.54)
Aroclor 1016	POLYCHLORINATED BIPHENYLS (PCBs)	10 (4.54)
Aroclor 1221	POLYCHLORINATED BIPHENYLS (PCBs)	10 (4.54)
Aroclor 1232	POLYCHLORINATED BIPHENYLS (PCBs)	10 (4.54)
Aroclor 1242	POLYCHLORINATED BIPHENYLS (PCBs)	10 (4.54)
Aroclor 1248	POLYCHLORINATED BIPHENYLS (PCBs)	10 (4.54)
Aroclor 1254	POLYCHLORINATED BIPHENYLS (PCBs)	10 (4.54)
Aroclor 1260	POLYCHLORINATED BIPHENYLS (PCBs)	10 (4.54)
POLYNUCLEAR AROMATIC HYDROCARBONS		**
Potassium arsenate *		1000 (454)
Potassium arsenite *		1000 (454)
Potassium bichromate	Potassium dichromate @	1000 (454)
Potassium chromate		1000 (454)
Potassium cyanide *		10 (4.54)
Potassium dichromate @	Potassium bichromate	1000 (454)
Potassium hydroxide *		1000 (454)
Potassium permanganate *		100 (45.4)
Potassium silver cyanide		1 (0.454)
Pronamide	3,5-Dichloro-N-(1,1-dimethyl-2-propynyl)benzamide	5000 (2270)
1-Propanal, 2,3-epoxy-	Glycidylaldehyde	1 (0.454)
Propanal, 2-methyl-2-(methylthio)-,O-[(methylamino)carbonyl]oxime	Aldicarb	1 (0.454)
1-Propanamine	n-Propylamine *	5000 (2270)
1-Propanamine, N-propyl-	Dipropylamine	5000 (2270)
Propane, 1,2-dibromo-3-chloro-	1,2-Dibromo-3-chloropropane	1(0.454)
Propane, 2-nitro-	2-Nitropropane	1 (0.454)
Propane, 2,2'-oxybis(2-chloro-	Bis(2-chloroisopropyl) ether	1000 (454)
1,3-Propane sultone	1,2-Oxathiolane, 2,2-dioxide	1 (0.454)
Propanedinitrile	Malononitrile	1000 (454)
Propanenitrile	Ethyl cyanide	10 (4.54)
Propanenitrile, 3-chloro-	3-Chloropropionitrile	1000 (454)
Propanenitrile, 2-hydroxy-2-methyl-	Acetone cyanohydrin * 2-Methyllactonitrile	10 (4.54)
1,2,3-Propanetriol, trinitrate-	Nitroglycerine *	10 (4.54)
1-Propanol, 2,3-dibromo-, phosphate (3:1)	Tris(2,3-dibromopropyl)phosphate	1 (0.454)
1-Propanol, 2-methyl-	Isobutyl alcohol	5000 (2270)
2-Propanone	Acetone *	5000 (2270)
2-Propanone, 1-bromo-	Bromoacetone *	1000 (454)
Propargite		10 (4.54)
Propargyl alcohol *	2-Propyn-1-ol	1000 (454)
2-Propenal	Acrolein *	1 (0.454)
2-Propenamide	Acrylamide	5000 (2270)
Propene, 1,3-dichloro-	1,3-Dichloropropene *	100 (45.4)
1-Propene, 1,1,2,3,3,3-hexachloro-	Hexachloropropene	1000 (454)
2-Propenenitrile	Acrylonitrile *	100 (45.4)
2-Propenenitrile, 2-methyl-	Methacrylonitrile	1000 (454)
2-Propenoic acid	Acrylic acid *	5000 (2270)
2-Propenoic acid, ethyl ester	Ethyl acrylate *	1000 (454)
2-Propenoic acid, 2-methyl-, ethyl ester	Ethyl methacrylate	1000 (454)
2-Propenoic acid, 2-methyl-, methyl ester	Methyl methacrylate *	1000 (454)
2-Propen-1-ol	Allyl alcohol *	100 (45.4)
Propionic acid *		5000 (2270)
Propionic acid, 2-(2,4,5-trichlorophenoxy)-	Silvex 2,4,5-TP @ 2,4,5-TP acid	100 (45.4)
Propionic anhydride		5000 (2270)
n-Propylamine *	1-Propanamine	5000 (2270)
Propylene dichloride *	1,2-Dichloropropane	1000 (454)
Propylene oxide *		100 (45.4)
1,2-Propylenimine *	2-Methylaziridine	1 (0.454)
2-Propyn-1-ol	Propargyl alcohol *	1000 (454)
Pyrene		5000 (2270)

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity(RQ) Pounds(Kilograms)
Pyrethrins		1 (0.454)
4-Pyridinamine	4-Aminopyridine	1000 (454)
Pyridine *		1000 (454)
Pyridine, 2-[(2-(dimethylamino)ethyl)-2- thenylamino]-	Methapyrilene	5000 (2270)
Pyridine, hexahydro-N-nitroso-	N-Nitrosopiperidine	1 (0.454)
Pyridine, 2-methyl-	2-Picoline	5000 (2270)
Pyridine, (S)-3-(1-methyl-2-pyrrolidinyl)-, and salts.	Nicotine * and salts *	100 (45.4)
4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-	Methylthiouracil	1 (0.454)
Pyrophosphoric acid, tetraethyl ester	Tetraethyl pyrophosphate *	10 (4.54)
Pyrrole, tetrahydro-N-nitroso-	N-Nitrosopyrrolidine	1 (0.454)
Quinoline		5000 (2270)
RADIONUCLIDES ***		1 (0.454)
Reserpine	Yohimban-16-carboxylic acid,11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy]-, methyl ester.	5000 (2270)
Resorcinol *	1,3-Benzenediol	5000 (2270)
Saccharin and salts	1,2-Benzisothiazolin-3-one,1,1-dioxide, and salts	1 (0.454)
Safrole	Benzene, 1,2-methylenedioxy-4-allyl-	1 (0.454)
Selenious acid		10 (4.54)
Selenium ¢		100 (45.4)
SELENIUM AND COMPOUNDS		**
Selenium dioxide	Selenium oxide *	10 (4.54)
Selenium disulfide	Sulfur selenide	1 (0.454)
Selenium oxide *	Selenium dioxide	10 (4.54)
Selenourea	Carbamimidoselenoic acid	1000 (454)
L-Serine, diazoacetate (ester)	Azaserine	1 (0.454)
Silver ¢		1000 (454)
SILVER AND COMPOUNDS		**
Silver cyanide *		1 (0.454)
Silver nitrate *		1 (0.454)
Silvex	Propionic acid, 2-(2,4,5-trichlorophenoxy)- 2,4,5-TP @ 2,4,5-TP acid	100 (45.4)
Sodium *		10 (4.54)
Sodium arsenate *		1000 (454)
Sodium arsenite *		1000 (454)
Sodium azide *		1000 (454)
Sodium bichromate	Sodium dichromate @	1000 (454)
Sodium bifluoride *		100 (45.4)
Sodium bisulfite *		5000 (2270)
Sodium chromate		1000 (454)
Sodium cyanide *		10 (4.54)
Sodium dichromate @	Sodium bichromate	1000 (454)
Sodium dodecylbenzene sulfonate		1000 (454)
Sodium fluoride *		1000 (454)
Sodium hydrosulfide *		5000 (2270)
Sodium hydroxide *		1000 (454)
Sodium hypochlorite *		100 (45.4)
Sodium methylate *		1000 (454)
Sodium nitrite *		100 (45.4)
Sodium phosphate, dibasic		5000 (2270)
Sodium phosphate, tribasic		5000 (2270)
Sodium selenite *		1000 (454)
4,4'-Stilbenediol, alpha,alpha'-diethyl-	Diethylstilbestrol	1 (0.454)
Streptozotocin	D-Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-	1 (0.454)
Strontium chromate		1000 (454)
Strontium sulfide		100 (45.4)
Strychnidin-10-one, and salts	Strychnine * and salts *	10 (4.54)
Strychnidin-10-one, 2,3-dimethoxy-	Brucine	100 (45.4)
Strychnine * and salts *	Strychnidin-10-one, and salts	10 (4.54)
Styrene		1000 (454)
Sulfur hydride	Hydrogen sulfide * Hydrosulfuric acid	100 (45.4)
Sulfur monochloride		1000 (454)
Sulfur phosphide	Phosphorus pentasulfide * Phosphorus sulfide	100 (45.4)
Sulfur selenide	Selenium disulfide	1 (0.454)
Sulfuric acid		1000 (454)
Sulfuric acid, dimethyl ester	Dimethyl sulfate *	1 (0.454)
Sulfuric acid, thallium(I) salt	Thallium(I) sulfate *	100 (45.4)
2,4,5-T acid	2,4,5-T * 2,4,5-Trichlorophenoxyacetic acid *	1000 (454)
2,4,5-T amines *		5000 (2270)
2,4,5-T esters *		1000 (454)
2,4,5-T salts *		1000 (454)
2,4,5-T *	2,4,5-T acid 2,4,5-Trichlorophenoxyacetic acid *	1000 (454)
TDE *	DDD Dichlorodiphenyl dichloroethane 4,4' DDD	1(0.454)
1,2,4,5-Tetrachlorobenzene	Benzene, 1,2,4,5-tetrachloro-	5000 (2270)
2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)		1 (0.454)
1,1,1,2-Tetrachloroethane *	Ethane, 1,1,1,2-tetrachloro-	1 (0.454)
1,1,2,2-Tetrachloroethane *	Ethane, 1,1,2,2-tetrachloro-	1 (0.454)
Tetrachloroethene	Ethene, 1,1,2,2-tetrachloro- Perchloroethylene * Tetrachloroethylene *	1 (0.454)
Tetrachloroethylene *	Ethene, 1,1,2,2-tetrachloro- Perchloroethylene * Tetrachloroethene	1 (0.454)
2,3,4,6-Tetrachlorophenol	Phenol, 2,3,4,6-tetrachloro-	10 (4.54)
Tetraethyl lead *	Plumbane, tetraethyl-	10 (4.54)

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List of Hazardous Substances and Reportable Quantities—Continued

Hazardous Substance	Synonyms	Reportable Quantity(RQ) Pounds(Kilograms)
Tetraethyl pyrophosphate *	Pyrophosphoric acid, tetraethyl ester	10 (4.54)
Tetraethyldithiopyrophosphate	Dithiopyrophosphoric acid, tetraethyl ester	100 (45.4)
Tetrahydrofuran *	Furan, tetrahydro-	1000 (454)
Tetranitromethane *	Methane, tetranitro-	10 (4.54)
Tetraphosphoric acid, hexaethyl ester	Hexaethyl tetraphosphate *	100 (45.4)
Thallic oxide	Thallium(III) oxide	100 (45.4)
Thallium ¢		1000 (454)
THALLIUM AND COMPOUNDS		**
Thallium(I) acetate	Acetic acid, thallium(I) salt	100 (45.4)
Thallium(I) carbonate	Carbonic acid, dithallium (I) salt	100(45.4)
Thallium(I) chloride		100 (45.4)
Thallium(I) nitrate		100 (45.4)
Thallium(III) oxide	Thallic oxide	100 (45.4)
Thallium(I) selenide		1000 (454)
Thallium(I) sulfate *	Sulfuric acid, thallium(I) salt	100 (45.4)
Thioacetamide	Ethanethioamide	1 (0.454)
Thiofanox	3,3-Dimethyl-1-(methylthio)-2-butanone,O-[(methylamino)carbonyl] oxime	100 (45.4)
Thioimidodicarbonic diamide	2,4-Dithiobiuret	100 (45.4)
Thiomethanol	Methanethiol Methyl mercaptan *	100 (45.4)
Thiophenol *	Benzenethiol Phenyl mercaptan @	100 (45.4)
Thiosemicarbazide	Hydrazinecarbothioamide	100 (45.4)
Thiourea	Carbamide, thio-	1 (0.454)
Thiourea, (2-chlorophenyl)-	1-(o-Chlorophenyl)thiourea	100 (45.4)
Thiourea, 1-naphthalenyl-	alpha-Naphthylthiourea	100 (45.4)
Thiourea, phenyl-	N-Phenylthiourea	100 (45.4)
Thiram	Bis(dimethylthiocarbamoyl) disulfide	10 (4.54)
Toluene *	Benzene, methyl-	1000 (454)
Toluene-2,4-diamine	2,4-Diaminotoluene 2,4-Toluenediamine *	1 (0.454)
2,4-Toluenediamine *	Toluene-2,4-diamine 2,4-Diaminotoluene	1 (0.454)
Toluene diisocyanate *	Benzene, 2,4-diisocyanatomethyl-	100 (45.4)
o-Toluidine hydrochloride	Benzenamine, 2-methyl-, hydrochloride	1 (0.454)
o-Toluidine	2-Amino-1-methyl benzene	1 (0.454)
p-Toluidine	4-Amino-1-methyl benzene	1 (0.454)
Toxaphene *	Camphene, octachloro-	1 (0.454)
2,4,5-TP @	Propionic acid, 2-(2,4,5-trichlorophenoxy)- Silvex 2,4,5-TP acid	100 (45.4)
2,4,5-TP acid esters	2,4,5-TP ester @	100 (45.4)
2,4,5-TP acid	Propionic acid, 2-(2,4,5-trichlorophenoxy)- Silvex 2,4,5-TP @	100 (45.4)
2,4,5-TP ester @	2,4,5-TP acid esters	100 (45.4)
1H-1,2,4-Triazol-3-amine	Amitrole	1 (0.454)
Trichlorfon		100 (45.4)
1,2,4-Trichlorobenzene		100 (45.4)
1,1,1-Trichloroethane *	Methyl chloroform *	1000 (454)
1,1,2-Trichloroethane	Ethane, 1,1,2-trichloro-	1 (0.454)
Trichloroethene	Trichloroethylene *	1000 (454)
Trichloroethylene *	Trichloroethene	1000 (454)
Trichloromethanesulfenyl chloride	Methanesulfenyl chloride, trichloro- Perchloromethyl mercaptan @	100 (45.4)
Trichloromonofluoromethane	Methane, trichlorofluoro-	5000 (2270)
Trichlorophenol *		10 (4.54)
2,3,4-Trichlorophenol		
2,3,5-Trichlorophenol		
2,3,6-Trichlorophenol		
Phenol, 2,4,5-trichloro-	2,4,5-Trichlorophenol	10 (4.54)
Phenol, 2,4,6-trichloro-	2,4,6-Trichlorophenol	10 (4.54)
3,4,5-Trichlorophenol		
2,4,5-Trichlorophenol *	Phenol, 2,4,5-trichloro-	10 (4.54)
2,4,6-Trichlorophenol *	Phenol, 2,4,6-trichloro-	10 (4.54)
2,4,5-Trichlorophenoxyacetic acid *	2,4,5-T * 2,4,5-T acid	1000 (454)
Triethanolamine dodecylbenzene sulfonate		1000 (454)
Triethylamine		5000 (2270)
Trimethylamine *		100 (45.4)
sym-Trinitrobenzene *	Benzene, 1,3,5-trinitro-	10 (4.54)
1,3,5-Trioxane, 2,4,6-trimethyl-	Paraldehyde	1000 (454)
Tris(2,3-dibromopropyl) phosphate	1-Propanol, 2,3-dibromo-, phosphate (3:1)	1 (0.454)
Trypan blue	2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'-dimethyl-(1,1'-biphenyl)-4,4'-diyl)-bis(azo)]bis(5-amino-4-hydroxy)-tetrasodium salt.	1 (0.454)
Unlisted Hazardous Wastes Characteristic of Corrosivity		100(45.4)
Unlisted Hazardous Wastes Characteristic of EP Toxicity		
Arsenic D004		1 (0.454)
Barium D005		1000 (454)
Cadmium D006		1 (0.454)
Chromium D007		1 (0.454)
Lead D008		1 (0.454)
Mercury D009		1 (0.454)
Selenium D010		10 (4.54)
Silver D011		1 (0.454)
Endrin D012		1 (0.454)
Lindane D013		1 (0.454)
Methoxychlor D014		1 (0.454)
Toxaphene D015		1 (0.454)
2,4-D D016		100 (45.4)
2,4,5-TP D017		100 (45.4)

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity(RQ) Pounds(Kilograms)
Unlisted Hazardous Wastes Characteristic of Ignitability		100 (45.4)
Unlisted Hazardous Wastes Characteristic of Reactivity		100 (45.4)
Uracil, 5-[bis(2-chloroethyl)amino]-	Uracil mustard	1 (0.454)
Uracil mustard	Uracil, 5-[bis(2-chloroethyl)amino]-	1 (0.454)
Uranyl acetate *		100 (45.4)
Uranyl nitrate *		100 (45.4)
Vanadic acid, ammonium salt	Ammonium vanadate	1000 (454)
Vanadium(V) oxide	Vanadium pentoxide *	1000 (454)
Vanadium pentoxide *	Vanadium(V) oxide	1000 (454)
Vanadyl sulfate		1000 (454)
Vinyl acetate *		5000 (2270)
Vinyl chloride *	Ethene, chloro-	1 (0.454)
Vinylidene chloride *	Ethene, 1,1-dichloro- 1,1-Dichloroethylene	5000 (2270)
Warfarin	3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin and salts	100 (45.4)
Xylene * (mixed)	Benzene, dimethyl	1000 (454)
m-Benzene, dimethyl	m-Xylene	
o-Benzene, dimethyl	o-Xylene	
p-Benzene, dimethyl	p-Xylene	
Xylenol *		1000 (454)
2,4-Xylenol @	2,4-Dimethylphenol Phenol, 2,4-dimethyl-	100 (45.4)
Yohimban-16-carboxylic acid,11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy]-, methyl ester.	Reserpine	5000 (2270)
Zinc ¢		1000 (454)
ZINC AND COMPOUNDS		**
Zinc acetate		1000 (454)
Zinc ammonium chloride		1000 (454)
Zinc borate		1000 (454)
Zinc bromide		1000 (454)
Zinc carbonate		1000 (454)
Zinc chloride		1000 (454)
Zinc cyanide *		10 (4.54)
Zinc fluoride		1000 (454)
Zinc formate		1000 (454)
Zinc hydrosulfite *		1000 (454)
Zinc nitrate *		1000 (454)
Zinc phenolsulfonate		5000 (2270)
Zinc phosphide *		100 (45.4)
Zinc silicofluoride		5000 (2270)
Zinc sulfate		1000 (454)
Zirconium nitrate *		5000 (2270)
Zirconium potassium fluoride		1000 (454)
Zirconium sulfate *		5000 (2270)
Zirconium tetrachloride *		5000 (2270)
F001		1 (0.454)
The following spent halogenated solvents used in degreasing and sludges from the recovery of these solvents in degreasing operations:.		
(a) Tetrachloroethylene		1# (0.454)
(b) Trichloroethylene		1000# (454)
(c) Methylene chloride		1000 (454)
(d) 1,1,1-Trichloroethane		1000 (454)
(e) Carbon tetrachloride		5000# (2270)
(f) Chlorinated fluorocarbons		5000 (2270)
F002		1 (0.454)
The following spent halogenated solvents and the still bottoms from the recovery of these solvents.		
(a) Tetrachloroethylene		1# (0.454)
(b) Methylene chloride		1000 (454)
(c) Trichloroethylene		1000# (454)
(d) 1,1,1-Trichloroethane		1000 (454)
(e) Chlorobenzene		100 (45.4)
(f) 1,1,2-Trichloro-1,2,2-trifluoroethane		5000 (2270)
(g) o-Dichlorobenzene		100 (45.4)
(h) Trichlorofluoromethane		5000 (2270)
F003		100 (45.4)
The following spent non-halogenated solvents and solvents		
(a) Xylene		1000 (454)
(b) Acetone		5000 (2270)
(c) Ethyl acetate		5000 (2270)
(d) Ethylbenzene		1000 (454)
(e) Ethyl ether		100 (45.4)
(f) Methyl isobutyl ketone		5000 (2270)
(g) n-Butyl alcohol		5000 (2270)
(h) Cyclohexanone		5000 (2270)
(i) Methanol		5000 (2270)
F004		1000 (454)
The following spent non-halogenated solvents and the stillbottoms from the recovery of these solvents: (a) Cresols/Cresylic acid (b) Nitrobenzene.		
F005		100 (45.4)
The following spent non-halogenated solvents and the stillbottoms from the recovery of these solvents: (a) Toluene (b) Methyl ethyl ketone (c) Carbon disulfide (d) Isobutanol (e) Pyridine.		
F006		1 (0.454)
Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum,(2) tin plating on carbon steel, (3) zinc plating (segregated basis) on carbonsteel, (4) aluminum or zinc-aluminum plating on carbon steel, (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel, and (6) chemical etching and milling of aluminum		

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity(RQ) Pounds(Kilograms)
F007		
Spent cyanide plating bath solutions from electroplating operations		10 (4.54)
F008		
Plating bath sludges from the bottom of plating baths fromelectroplating operations where cyanides are used in the process (except for precious metals electroplating plating bath sludges).		10 (4.54)
F009		
Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process (except for precious metals electroplating spent stripping and cleaning bath solutions).		10 (4.54)
F010		
Quenching bath sludge from oil baths from metal heat treating operations where cyanides are used in the process (except for precious metals heat-treating quenching bath sludges).		10 (4.54)
F011		
Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations (except for precious metals heat treating spent cyanide solutions from salt bath pot cleaning).		10 (4.54)
F012		
Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process (except for precious metals heat treating quenching wastewater treatment sludges).		10 (4.54)
F019		
Wastewater treatment sludges from the chemical conversion coating of aluminum		1 (0.454)
F020		
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri-or-tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. (This listing does not include wastes from the production of hexachlorophene from highly purified 2,4,5-trichlorophenol.).		1 (0.454)
F021		
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of pentachlorophenol, or of intermediates used to produce its derivatives..		1 (0.454)
F022		
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzenes under alkaline conditions..		1 (0.454)
F023		
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- and tetrachlorophenols. (This listing does not include wastes from equipment used only for the productionor use of hexachlorophene from highly purified 2,4,5-trichlorophenol.).		1 (0.454)
F024		
Wastes, including but not limited to distillation residues, heavy ends, tars, and reactor cleanout wastes, from the production of chlorinated aliphatic hydrocarbons, having carbon content from one to five, utilizing free radical catalyzed processes. (This listing does not include light ends, spent filters and filter aids, spent dessicants(sic), wastewater, wastewater treatment sludges, spent catalysts, and wastes listed in Section 261.32.).		1 (0.454)
F026		
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzene under alkaline conditions.		1 (0.454)
F027		
Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derivedfrom these chlorophenols. (This listing does not include formulations containing hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component.).		1 (0.454)
F028		
Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027..		1 (0.454)
K001		
Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol.		1 (0.454)
K002		
Wastewater treatment sludge from the production of chrome yellow and orange pigments.		1 (0.454)
K003		
Wastewater treatment sludge from the production of molybdate orange pigments		1 (0.454)
K004		
Wastewater treatment sludge from the production of zinc yellow pigments		1 (0.454)
K005		
Wastewater treatment sludge from the production of chrome green pigments		1 (0.454)
K006		
Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated).		1 (0.454)
K007..		
Wastewater treatment sludge from the production of iron blue pigments		1 (0.454)
K008		
Oven residue from the production of chrome oxide green pigments		1 (0.454)
K009		
Distillation bottoms from the production of acetaldehyde from ethylene		1 (0.454)

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity(RQ) Pounds(Kilograms)
K010 Distillation side cuts from the production of acetaldehyde from ethylene		1 (0.454)
K011 Bottom stream from the wastewater stripper in the production of acrylonitrile		1 (0.454)
K013 Bottom stream from the acetonitrile column in the production of acrylonitrile		1 (0.454)
K014 Bottoms from the acetonitrile purification column in the production of acrylonitrile		5000 (2270)
K015 Still bottoms from the distillation of benzyl chloride		1 (0.454)
K016 Heavy ends or distillation residues from the production ofcarbon tetrachloride		1 (0.454)
K017 Heavy ends (still bottoms) from the purification column inthe production of epichlorohydrin.		1 (0.454)
K018 Heavy ends from the fractionation column in ethyl chlorideproduction		1 (0.454)
K019 Heavy ends from the distillation of ethylene dichloride inethylene dichloride production.		1 (0.454)
K020 Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production.		1 (0.454)
K021 Aqueous spent antimony catalyst waste from fluoromethanes production		1 (0.454)
K022 Distillation bottom tars from the production of phenol/acetone from cumene		1 (0.454)
K023 Distillation light ends from the production of phthalic anhydride from naphthalene		5000 (2270)
K024 Distillation bottoms from the production of phthalic anhydride from naphthalene		5000 (2270)
K025 Distillation bottoms from the production of nitrobenzene by the nitration of benzene.		1 (0.454)
K026 Stripping still tails from the production of methyl ethyl pyridines		1000 (454)
K027 Centrifuge and distillation residues from toluene diisocyanate production		1 (0.454)
K028 Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane.		1 (0.454)
K029 Waste from the product steam stripper in the production of1,1,1-trichloroethane		1 (0.454)
K030 Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene.		1 (0.454)
K031 By-product salts generated in the production of MSMA and cacodylic acid		1 (0.454)
K032 Wastewater treatment sludge from the production of chlordane		1 (0.454)
K033 Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane.		1 (0.454)
K034 Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane.		1 (0.454)
K035 Wastewater treatment sludges generated in the production of creosote		1 (0.454)
K036 Still bottoms from toluene reclamation distillation in theproduction of disulfoton		1 (0.454)
K037 Wastewater treatment sludges from the production of disulfoton		1 (0.454)
K038 Wastewater from the washing and stripping of phorate production		1 (0.454)
K039 Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate.		10 (4.54)
K040 Wastewater treatment sludge from the production of phorate		1 (0.454)
K041 Wastewater treatment sludge from the production of toxaphene		1 (0.454)
K042 Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T.		1 (0.454)
K043 2,6-dichlorophenol waste from the production of 2,4-D		1 (0.454)
K044 Wastewater treatment sludges from the manufacturing and processing of explosives.		10 (4.54)
K045 Spent carbon from the treatment of wastewater containing explosives		10 (4.54)
K046 Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds.		100 (45.4)
K047 Pink/red water from TNT operations		10 (4.54)
K048 Dissolved air flotation (DAF) float from the petroleum refining industry		1 (0.454)
K049 Slop oil emulsion solids from the petroleum refining industry		1 (0.454)

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Hazardous Substance	Synonyms	Reportable Quantity(RQ) Pounds(Kilograms)
K050 Heat exchanger bundle cleaning sludge from the petroleum refining industry		1 (0.454)
K051 API seperator sludge from the petroleum refining industry		1 (0.454)
K052 Tank bottoms (leaded) from the petroleum refining industry		10 (4.54)
K060 Ammonia still lime sludge from coking operations		1 (0.454)
K061 Emission control dust/sludge from the primary production of steel in electric furnaces.		1 (0.454)
K062 Spent pickle liquor from steel finishing operations		1 (0.454)
K069 Emission control dust/sludge from secondary lead smelting		1 (0.454)
K071 Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used.		1(0.454)
K073 Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production.		1 (0.454)
K083 Distillation bottoms from aniline extraction		100 (45.4)
K084 Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.		1 (0.454)
K085 Distillation or fractionation column bottoms from the production of chlorobenzenes.		1 (0.454)
K086 Solvent washes and sludges, caustic washes and sludges, orwater washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.		1 (0.454)
K087 Decanter tank tar sludge from coking operations		100 (45.4)
K093 Distillation light ends from the production of phthalic anhydride from ortho-xylene		5000 (2270)
K094 Distillation bottoms from the production of phthalic anhydride from ortho-xylene		5000 (2270)
K095 Distillation bottoms from the production of 1,1,1-trichloroethane		1 (0.454)
K096 Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane.		1 (0.454)
K097 Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane.		1 (0.454)
K098 Untreated process wastewater from the production of toxaphene		1 (0.454)
K099 Untreated wastewater from the production of 2,4-D		1 (0.454)
K100 Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.		1 (0.454)
K101 Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.		1 (0.454
K102 Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.		1 (0.454)
K103 Process residues from aniline extraction from the production of aniline		100 (45.4)
K104 Combined wastewater streams generated from nitrobenzene/aniline chlorobenzenes.		1 (0.454)
K105 Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes.		1 (0.454)
K106 Wastewater treatment sludge from the mercury cell process in chlorine production.		1 (0.454)
K111 Product washwaters from the production of dinitrotoluene via nitration of toluene.		1 (0.454)
K112 Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene..		1 (0.454)
K113 Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene..		1 (0.454)
K114 Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene..		1 (0.454)
K115 Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene..		1 (0.454)
K116 Organic condensate from the solvent recovery column in theproduction of toluene diisocyanate via phosgenation of toluenediamine..		1 (0.454)

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity(RQ) Pounds(Kilograms)
K117		1 (0.454)
Wastewater from the reaction vent gas scrubber in the production of ethylene bromide via bromination of ethene..		
K118		1 (0.454)
Spent absorbent solids from purification of ethylene dibromide in the production of ethylene dibromide..		
K136		1# (0.454)
Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene..		

Footnotes:

- indicates that the RQ is subject to change when the assessment of potential carcinogenicity and/or chronic toxicity is complete

¢ - no reporting of releases of this hazardous substance is required if the diameter of the pieces of the solid metal released is equal to or exceeds 100 micrometers (0.004 inches)

¢¢ - the RQ for asbestos is limited to friable forms only

* - indicates that this material appears by name in the Hazardous Materials Table

** - indicates that no RQ is being assigned to the generic or broad class

*** - Iron dextran was designated as a hazardous substance under CERCLA solely because of its listing as a hazardous waste under Section 3001 of RCRA. The Agency (EPA) recently proposed to delist iron dextran under RCRA(50 FR 46468-46470, November 8,1985). The Agency has also proposed to delist iron dextran from Table 302.4 of 40 CFR 302.4 and thereby remove its designation as a CERCLA hazardous substance.

@ - indicates that the name was added by RSPA because (1) the name is a synonym for a specific hazardous substance and (2) the name appears in the Hazardous Materials Table as a proper shipping name.

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9. In § 172.102, paragraph (e) is revised to read as follows:

§ 172.102 Purpose and use of Optional Hazardous Materials Table for international shipments.

* * * * *

(e) If a hazardous material that is a hazardous substance is offered, accepted or transported under an acceptable shipping name from the Optional Table that does not contain the name of the hazardous substance, the name of the hazardous substance must be entered, in parentheses, in association with the proper shipping name. For waste streams or for wastes which exhibit an EPA characteristic of ignitibility, corrosivity, reactivity, or EP toxicity, the basic description must be followed by the waste stream number in parentheses or by the letters "EPA" and the word "ignitability" or "corrosivity" or "reactivity", or "EP toxicity", in parentheses, as appropriate.

* * * * *

10. In § 172.203, paragraph (c) is revised to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(c) *Hazardous substances.* (1) If the proper shipping name for a mixture or solution that is a hazardous substance does not identify the constituents making it a hazardous substance, the name or names of such hazardous substance constituents as shown in the Appendix to § 172.101 must be entered in parentheses in association with the basic description. For waste streams or for wastes which exhibit an EPA characteristic of ignitibility, corrosivity, reactivity or EP toxicity the basic description must be followed by the waste stream number in parentheses or by the letters "EPA" and the word "ignitibility", or "corrosivity", or "reactivity", or "EP toxicity", in parentheses, as appropriate. These requirements also apply when descriptions from the Optional Table in § 172.102 are used.

(2) The letters "RQ" must be entered on the shipping paper either before or after the basic description required by § 172.202 for each hazardous substance. For example: "RQ, Cresol, Corrosive material, UN 2076"; or "Hazardous substance, liquid, n.o.s., ORM-E, NA 9188 (Adipic Acid), RQ".

* * * * *

11. § 172.324 is revised to read as follows:

§ 172.324 Hazardous substances.

(a) Except as provided in paragraph (b) of this section, if the proper shipping name for a mixture or solution that is a hazardous substance does not identify the constituents making it a hazardous substance, the name or names of such hazardous substance constituents as shown in the Appendix to § 172.101 must be marked in parentheses in association with the proper shipping name on each packaging having a capacity of 110 gallons or less. This requirement also applies when descriptions from the Optional Table in § 172.102 are used.

(b) Those packages with a capacity of 110 gallons or less which contain waste streams or wastes which exhibit an EPA characteristic of ignitibility, corrosivity, reactivity, or EP toxicity, must be marked in parentheses in association with the proper shipping name with the applicable waste stream number or the letters "EPA" and the word "ignitibility", or "corrosivity", or "reactivity", or "EP toxicity" as appropriate.

(c) The letters RQ must be displayed in association with the proper shipping name on a packaging having a capacity of 110 gallons or less that contains a hazardous substance.

Issued in Washington, DC on November 17, 1986 under authority delegated in 49 CFR 1.53.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

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For information on briefings in New York, NY, and Pittsburgh, PA, see announcement on the inside cover of this issue.

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WHO: The Office of the Federal Register.

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WHEN: December 5 at 10:00 a.m.,

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Title 3—

The President

Proclamation 5574 of November 20, 1986

The National Floral Emblem of the United States of America
The Rose

By the President of the United States of America

A Proclamation

Americans have always loved the flowers with which God decorates our land. More often than any other flower, we hold the rose dear as the symbol of life and love and devotion, of beauty and eternity. For the love of man and woman, for the love of mankind and God, for the love of country, Americans who would speak the language of the heart do so with a rose.

We see proofs of this everywhere. The study of fossils reveals that the rose has existed in America for age upon age. We have always cultivated roses in our gardens. Our first President, George Washington, bred roses, and a variety he named after his mother is still grown today. The White House itself boasts a beautiful Rose Garden. We grow roses in all our fifty States. We find roses throughout our art, music, and literature. We decorate our celebrations and parades with roses. Most of all, we present roses to those we love, and we lavish them on our altars, our civil shrines, and the final resting places of our honored dead.

The American people have long held a special place in their hearts for roses. Let us continue to cherish them, to honor the love and devotion they represent, and to bestow them on all we love just as God has bestowed them on us.

The Congress, by Senate Joint Resolution 159, has designated the rose as the National Floral Emblem of the United States and authorized and requested the President to issue a proclamation declaring this fact.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the rose as the National Floral Emblem of the United States of America.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of November, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-26605
Filed 11-21-86; 11:02 am]
Billing code 3195-01-M

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Presidential Documents

Executive Order 12574 of November 20, 1986

Establishing an Experimental Program Within the President's Commission on Executive Exchange

By the authority vested in me as President by the Constitution and statutes of the United States of America, including the Executive Exchange Program Voluntary Services Act of 1986 (5 U.S.C. 4103 note, 100 Stat. 964), it is hereby ordered as follows:

Section 1. *Establishment of the Program.* Effective October 1, 1986, there is established, within the Executive Exchange Program of the President's Commission on Executive Exchange, an experimental program under which Executive agencies of the government may accept voluntary services for the United States from private sector participants in the Executive Exchange Program.

Sec. 2. *Program Limits.* The experimental program shall be conducted during the fiscal years 1987 through 1989, and not more than ten individuals may commence participation in the program during any fiscal year. Acceptance of voluntary services from such individuals may not result in the displacement of any employee of the government.

Sec. 3. *Participant Restrictions.* An individual participating in the experimental program shall be considered an employee of the agency to which assigned for purposes of any laws, rules, and regulations of the United States, except that such individual shall not be covered by chapters 51, 53, 63, 83, 87, or 89 of title 5, United States Code, or any comparable provisions relating to classification, pay, leave, retirement, life insurance, or health benefits for employees of the government.

Ronald Reagan

THE WHITE HOUSE,
November 20, 1986.

[FR Doc. 86-26606
Filed 11-21-86; 11:03 am]
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-CE-47-AD; Amdt. 39-5447]

Airworthiness Directives; British Aerospace (BAe) Jetstream Model 3101; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction of final rule.

SUMMARY: This action corrects Airworthiness Directive (AD) 86-21-09, Amendment 39-5447 (51 FR 37385), applicable to BAe Jetstream Model 3101 airplanes modified in accordance with Arkansas Modification Center, Inc. (AMC) Supplemental Type Certificate (STC) No. SA5900SW baggage pod airplanes. This correction is necessary because of a typographical error in reference to FAR 21.197 when the AD was published in the **Federal Register.**

EFFECTIVE DATE: December 1, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Ebina, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, Brussels, Belgium; Telephone (322) 513.38.30; or Mr. Harvey A. Chimerine, FAA, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION: Subsequent to the issuance of AD 86-21-09, Amendment 39-5447 (51 FR 37385), applicable to BAe Jetstream Model 3101 fitted with an AMC STC No. SA5900SW baggage pod airplanes, the FAA found that a typographical error was included in paragraph (c) in the body of the AD, which listed an incorrect FAR reference when the AD was published in the **Federal Register.** Therefore, action is taken herein to make this correction. Since this action only corrects a typographical error, it imposes no additional burden on the public. Therefore, notice and procedure hereon are unnecessary and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By correcting the following AD:

In FR Doc. 86-CE-47-AD (51 FR 37385), appearing in the **Federal Register** of October 22, 1986, make the following correction:

Change paragraph (c) of the AD to read:

> Aircraft may be flown in accordance with FAR 21.197 to a location where this Airworthiness Directive (AD) can be accomplished.

Issued in Kansas City, Missouri, on November 14, 1986.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 86-26363 Filed 11-21-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket Number 85-ANE-31; Amdt. 39-5458]

Airworthiness Directives; Rolls-Royce (R-R) plc (Formerly Rolls-Royce Limited) RB211-22B and -524 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires initial and repetitive inspections, and removal from service, of intermediate pressure (IP) compressor rotor assemblies and IP turbine disks on certain R-R RB211 engines that have been oversped in excess of 115 percent IP rotational speed (N2). The affected rotors and disks may have sustained unacceptable damage when oversped, which could lead to an uncontained disk failure.

DATES: Effective December 20, 1986.

Compliance Schedule—As prescribed in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register on December 20, 1986.

ADDRESSES: The applicable mandatory service bulletin (SB) may be obtained from Rolls-Royce plc, Technical Publications Department, P.O. Box 31, Derby DE2 8BJ, England. A copy of the mandatory SB is contained in Rules Docket Number 85-ANE-31, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Engine Certification Branch, ANE-141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7084.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include a new AD requiring initial and repetitive inspections, and removal from service, of certain IP compressor rotor assemblies and IP turbine disks that have been oversped in excess of 115 percent N2 was published in the **Federal Register** on March 11, 1986 (51 FR 8333).

The proposal was prompted by testing and analysis that have shown it is possible to sustain unacceptable damage from an overspeed in excess of 115 percent N2. There have been no failures to date of any disks or rotors that have been oversped in excess of 115 percent N2; however, it is necessary to remove and inspect, and retire from service those components that have sustained unacceptable damage.

Since this condition is likely to exist or develop on other engines of the same type design, the AD requires initial and repetitive inspections, and removal from service if necessary, of IP compressor rotor assemblies and IP turbine disks that have been oversped in excess of 115 percent N2 through 120 percent N2

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inclusive prior to revised overspeed inspection requirements that had been introduced in the overhaul manual on August 13, 1982. The inspection requirements introduced on August 13, 1982, are deemed adequate. It also requires removal and retirement from service of IP compressor rotor assemblies and IP turbine disks that have been oversped in excess of 120 percent N2 prior to the August 13, 1982, overhaul manual revision, or in excess of 110 percent N2 on gauges calibrated only to 110 percent N2 in the absence of any other substantiating data that could verify the magnitude of the overspeed. The wording in the compliance section has been expanded for clarity, and the compliance schedule has been changed to eliminate unduly restrictive requirements while maintaining an equivalent level of safety. Since the new compliance schedule is less restrictive, no further notice is needed.

Interested persons have been afforded the opportunity to participate in the making of this amendment, and due consideration has been given to all relevant data and comments received. Two comments were received.

One commenter proposed two alternative statements as follows:

(a) Under the caption "SUMMARY," the statement "This notice proposes to adopt an airworthiness directive (AD) which would require the removal, for inspection or retirement from service, in accordance with a Rolls-Royce Mandatory service bulletin (SB), of certain intermediate pressure (IP) compressor rotor assemblies and IP turbine discs on certain Rolls-Royce RB211 engines that have been oversped in excess of 115 percent IP rotational speed (N2) prior to revised overspeed rules being introduced in mid 1982. The affected discs and rotors, having been inspected and returned to service under the requirements then in force, may have suffered damage which could lead to an uncontained failure if allowed to remain in service unconditionally."

(b) Under the heading "THE PROPOSED AMENDMENT," the statement "Compliance is required as indicated, unless already accomplished. To retrospectively apply more rigorous limitations to those IP compressor and IP turbine discs previously inspected and returned to service following overspeed in excess of 115 percent in order to prevent possible uncontained failures, accomplish the following . . ."

The FAA has not incorporated these statements exactly as stated, but has changed the wording of the AD to adopt the commenter's point of retroactively applying more stringent inspection requirements on only the pre-August 13, 1982, oversped components.

The remaining commenter requested an extension of the reinspection interval to coincide with the engine shop visit. The FAA has determined that the request cannot be granted since no data were provided to show that an equivalent level of safety would be maintained under the commenter's proposal.

Conclusion

The FAA has determined that this regulation involves approximately 477 RB211 engines at an estimated cost of $1,750,000 per year.

The FAA has also determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since this regulation affects only operators using Lockheed L-1011 aircraft in which the RB211 engines are installed, none of which are believed to be small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, and Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Rolls-Royce plc (formerly Rolls-Royce Limited): Applies to Rolls-Royce (R–R) RB211-22B and -524 series turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent intermediate pressure compressor (IPC) rotor and turbine (IPT) disk uncontained failure, remove and inspect or retire from service IPC rotors and IPT disks which were oversped prior to August 13, 1982, using the laboratory inspection referred to in R–R Mandatory Service Bulletin (SB) RB.211-72-5887, Revision 2, dated August 23, 1985 or FAA approved equivalent as follows:

(a) For rotors and disks oversped in excess of 115 percent intermediate pressure rotor speed (N2) up to and including 120 percent N2:

(1) Inspect for cracks at the first engine shop visit after the effective date of this AD, after having accumulated 4,000 or more cycles since overspeed.

(2) Reinspect, thereafter, at intervals not to exceed 4,500 cycles in service.

(3) Remove and retire cracked parts from service, prior to further flight, and replace with serviceable parts.

(b) Remove and retire from service rotors and disks oversped in excess of 120 percent N2 at the first engine shop visit after the effective date of this AD, after having accumulated 3,000 or more cycles since overspeed.

(c) Rotors and disks which have experienced multiple overspeeds are subject to the more stringent requirements of the applicable paragraphs (a) or (b) above for each of the overspeed events.

(d) Rotors and disks that have experienced an overspeed that was read on a gauge calibrated only to 110 percent N2, and in the absence of substantiating data as to the magnitude of the overspeed, must be considered as having oversped beyond 120 percent N2 and are subject to the requirements of paragraph (b) above.

Note.—Shop visit is defined as the input of an engine into a repair shop where the subsequent engine maintenance entails one or more of the following:

(a) Separation of a major engine flange (lettered or numbered) other than flanges mating with major sections of the nacelle or reverser. Separation of flanges purely for purposes of shipment, without subsequent internal maintenance, is not a "shop visit".

(b) Removal of a disk, hub, or spool.

(c) Removal of a main or angle gearbox.

(d) Removal of fuel nozzles.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance time specified in this AD.

R–R Mandatory SB RB.211-72-5887, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Rolls-Royce plc, Technical Publications Department, P.O. Box 31, Derby DE2 8BJ, England. This document also may be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Rules Docket Number 85–ANE–31, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

This amendment becomes effective on December 20, 1986.

Issued in Burlington, Massachusetts, on October 29, 1986.

Clyde DeHart, Jr.,

Acting Director, New England Region.

[FR Doc. 86–26385 Filed 11–21–86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86–ASW–21; Amdt. 39–5432]

Airworthiness Directive; Sikorsky Aircraft Model S–76A and S–76B Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Sikorsky Model S–76A and S–76B helicopters by individual letters. The AD requires a visual inspection of the pilot's yaw control rods for dents, cracks, distortion, and straightness prior to further flight and an inspection for condition of heat treatment within 25 hours' time in service. The AD is needed to prevent operation with a failed pilot's yaw control rod which could result in loss of directional control of the helicopter.

DATES: Effective November 24, 1986, as to all persons except those persons to whom it was made immediately effective by individual priority letter AD No. 86–14–07, issued July 9, 1986, which contained this amendment.

Compliance—As required in the body of the AD.

The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of November 24, 1986.

ADDRESS: The applicable alert service bulletin may be obtained from Sikorsky Aircraft Division, United Technologies Corporation, North Main Street, Stratford, Connecticut 06601.

A copy of the alert service bulletin is contained in the Rules Docket, Docket Number 86–ASW–21, Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106, and may be examined between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Cheryl McCabe, ANE–152, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7112.

SUPPLEMENTARY INFORMATION: On July 9, 1986, priority letter AD No. 86–14–07 was issued and made effective immediately as to all known U.S. owners and operators of certain Sikorsky Model S–76A and S–76B helicopters. The AD required inspection and replacement of certain yaw control rods which may have been improperly heat treated during manufacture. AD action was necessary to prevent failure of the yaw control rods which could result in loss of directional control.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately to recipients of the priority letter, as to all known U.S. owners and operators of certain Sikorsky Model S–76A and S–76B helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons. Standard provisions have been added to allow a ferry flight and to allow equivalent means of compliance.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, and Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Sikorsky Aircraft: Applies to all Model S–76A helicopters certificated in any category and model S–76B helicopters, serial numbers 760262, 760269, 760299, 760303, and 760310 through 760319, certificated in any category.

Compliance is required as indicated, unless already accomplished.

To prevent operation with a failed pilot's yaw control rod assembly, P/N 76400–00034–041, accomplish the following:

(a) Prior to further flight, inspect the push rod assembly in accordance with section E, paragraph 1, of Sikorsky Alert Service Bulletin (ASB) No. 76–67–22A, Revision A dated July 7, 1986, or an FAA-approved equivalent. If no dent, crack, distortion, or bowing is detected in the rod, install a placard legible to the pilot and in full view of the pilot stating "single pilot operation prohibited." This placard is to remain until the inspection required by paragraph (b) below is accomplished.

(b) Within the next 25 hours' time in service after the effective date of this AD, inspect the push rod assembly for condition of heat treat in accordance with section E, paragraph 2, of Sikorsky ASB No. 76–67–22A, Revision A, dated July 7, 1986, or an FAA-approved equivalent.

(c) If as a result of the inspection of paragraph (a), a dent, crack, distortion, or bowing is detected or if as a result of the inspection of paragraph (b) above, the heat treat (hardness) is incorrect, replace the rod assembly with a new or serviceable component that complies with this AD prior to further flight.

(d) Aircraft may be ferried in accordance with the provisions of FAR §§ 21.197 and 21.199 to a base where the requirements of the AD can be accomplished.

(e) Upon request, an alternate method of compliance which provides an equivalent level of safety with the requirements of this AD may be approved by the Manager, Boston Aircraft Certification Office, New England

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Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7110.

Sikorsky Aircraft ASB No. 76-67-22A identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Sikorsky Aircraft, Division of United Technologies, North Main Street, Stratford, Connecticut 06601. This document also may be examined at the Rules Docket, Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas, 76106.

This amendment becomes effective October 20, 1986, as to all persons except those persons to whom it was made immediately effective by individual priority letter AD No. 86-14-07 issued July 9, 1986, which contained this amendment.

Issued in Fort Worth, Texas, on September 24, 1986.

Don P. Watson,

Acting Director, Southwest Region.

[FR Doc. 86-26386 Filed 11-21-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 81-ASW-63; Amendment 39-5459]

Airworthiness Directives; Fairchild Models SA26-T and SA26-AT Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 81-26-05, applicable to Fairchild (previously Swearingen) Models SA26-T and SA26-AT airplanes. This revision clarifies the inspection procedures to prevent improper wing assembly and provides an alternate means of compliance by authorizing the installation of a wing spar strap modification with adjusted inspection intervals.

DATE: Effective December 29, 1986.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Fairchild Aircraft Corp. Service Bulletin 26-57-40-015 applicable to this AD may be obtained from Fairchild Aircraft Corp., Post Office Box 32486, San Antonio, Texas 78284, Telephone (512) 824-9421 or the Rules Docket at the address below. STC SA2830NM information applicable to this AD may be obtained from AviaDesign Inc., Hangar 1, 173 Durley Ave., Camarillo Airport, Camarillo, California 93010; Telephone (805) 987-2871.

FOR FURTHER INFORMATION CONTACT: Michele M. Owsley, Airplane Certification Branch, Aircraft Certification Division, ASW-150, Federal Aviation Administration, Post Office Box 1689, Fort Worth, Texas 76101; Telephone (817) 624-5161.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring use of revised inspection procedures to prevent improper wing assembly and providing an alternate means of compliance by authorizing the installation of a wing spar strap modification with adjusted inspection intervals on Fairchild Models SA26-T and SA26-AT airplanes was published in the Federal Register on August 22, 1986 (51 FR 30070-30072). The proposal resulted from reports of improperly reassembled wings following inspections required by existing AD 81-26-05 to inspect for corroded or cracked bolts and cracked wing fittings. Concurrently, Supplemental Type Certificate (STC) SA1830NM was issued which provides structural reinforcement of the wing spar.

Interested persons have been provided an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change.

The FAA has determined there are approximately 125 airplanes affected by this regulation. The cost of performing the inspections required by this AD has been revised to reflect inflationary increases and is now estimated at $336 per inspection. The cost of modifying the airplane in accordance with STC SA1830NM is estimated to be $16,900 per airplane. The total cost is approximately $2.5 million for the life of the fleet.

Because the potential cost reduction made available by the proposal is small, few if any small entities are expected to experience a significant economic impact as the result of this proposal.

Therefore, I certify that this action: (1) Is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of the draft final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(G) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending AD 81-26-05 as follows:

Fairchild Aircraft Corp.: Applies to Models SA26 (S/N T26-2 through T26-99), and SA26-AT (S/N T26-100 through T26-999) airplanes certificated in any category.

Compliance: Required within the next 25 hours time in service after the effective date of this AD, and thereafter at intervals not to exceed 200 hours time-in-service since last compliance, unless already accomplished.

To prevent a failure at the lower forward wing station 99 attach joint, accomplish the following:

(a) In accordance with Fairchild Service Bulletin 26-57-40-015, issued January 18, 1972, as revised June 26, 1986:

(1) Remove the lower forward wing station 99 attach joint coverplate and wing attach bolt.

(2) Inspect the lower forward wing station 99 attaching fitting for deterioration and cracks and, prior to further flight, replace damaged parts with new parts of the same part numbers.

(3) Inspect the lower forward wing station 99 attach bolt for identifying part number, deterioration and cracks and, prior to further flight, replace any damaged bolt or bolt not identified as P/N MS20014-29 bolt with a new P/N MS20014-29 bolt.

(b) When the wing has been modified by (STC) SA1830NM, "Installation of Wing Spar Reinforcement," the inspection intervals required by this AD may be increased from 200 hours time-in-service to 1,500 hours time-in-service or every 3 years since last compliance, whichever occurs first.

(c) The intervals between repetitive inspections required by this AD may be adjusted up to 10 percent of the specified interval to allow accomplishing these inspections concurrent with other scheduled maintenance of the airplane.

(d) A special flight permit may be issued in accordance with FAR 21.197 to a location where this AD may be accomplished.

(e) An equivalent method of compliance with this AD may be used when approved by the Manager, Airplane Certification Branch, ASW-150, Southwest Regional Office, FAA, Fort Worth, Texas 76101; Telephone (817) 624–5150.

All persons affected by this AD may obtain copies of the documents referred to herein upon request to Fairchild Aircraft Corp., Post Office Box 32486, San Antonio, Texas 78284; and AviaDesign, Inc., Hangar 1, 173 Durley Avenue, Camarillo Airport, Camarillo, California 93010; or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This Ad revises AD 81–26–05, Amendment 39–4286.

This amendment becomes effective on December 29, 1986.

Issued in Kansas City, Missouri, on November 12, 1986.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 86–26384 Filed 11–21–86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 82–ASW–77, Amdt. 39–5456]

Airworthiness Directives; Sikorsky Model S–76A

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) which requires an initial and repetitive inspection and replacement, as necessary, of main landing gear positioning rod end fittings on all Sikorsky Model S–76A helicopters. This amendment requires installation of an improved main landing gear modification kit which eliminates the necessity of repetitive inspections of certain landing gears on Sikorsky Model S–76A helicopters. The AD is needed to prevent a possible fatigue failure of other main landing gear components which could result in a landing gear failure on certain S–76A helicopters.

EFFECTIVE DATE: December 22, 1986.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 1, 1986.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable Customer Service Notice (CSN) 76–134 dated May 6, 1983, and 76–134A dated January 10, 1984, may be obtained from: Sikorsky Aircraft, Division of United Technologies Corporation, Attention: Commercial Product Support Department, 6900 Main Street, Stratford, Connecticut 06601–1381.

Copies of the CSN are contained in the Rules Docket, Docket Number 82–ASW–77, in the Office of the Regional Counsel, Federal Aviation Administration, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106, and may be examined between the hours of 8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Donald F. Thompson, Airframe Branch, ANE–152, Boston Aircraft Certification Office, New England Region, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone (617) 273–7113.

SUPPLEMENTARY INFORMATION: A proposal to amend Amendment 39–4508 (47 FR 54290), AD 82–25–1, of Part 39 of the Federal Aviation Regulations to include an amendment requiring installation of an improved main landing gear modification kit that eliminates the necessity of repetitive inspections of certain landing gears on certain Sikorsky Model S–76A helicopters was published in the **Federal Register** on July 9, 1986, (51 FR 24844).

The proposal was prompted by the original design S–76A main landing gear rod ends that are still subject to cracking and therefore require replacement with improved rod ends rather than inspected at 100-hour intervals.

Additionally, other landing gear components which were not previously evaluated for fatigue characteristics should be replaced with improved components to prevent possible failure of the original design parts. Failure of these original design landing gear parts could lead to a safety of flight or landing problem. Only the improved rod ends should be used in conjunction with the other improved landing gear components noted in CSN 76–134 and CSN 76–134A.

The FAA determined that the original main landing gear positioning rods, rod ends, and interconnect bellcranks identified in CSN 76–134 and CSN 76–134A which apply to certain helicopters should be removed from service and replaced with new or modified main landing gear components with the attaching hardware described in the service notice. The replacement components as well as other landing gear components were evaluated for fatigue strength and are identified as having service life limits that are prescribed in Amendment 39–5298 (51 FR 17009), AD 86–09–11.

Since these conditions are likely to exist or develop on other Model S–76A helicopters, the amendment requires, for those S–76A helicopters with serial numbers prior to 760308, removal of certain of the original main landing gear positioning rods, rod ends, and interconnect bellcranks from further service on Sikorsky Model S–76A helicopters as prescribed.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One comment was received. The commenter pointed out that the differences between CSN 76–134 and CSN 76–134A are basically editorial in nature. It was suggested that operators that have complied with the instructions of either CSN 76–134 or CSN 76–134A should be determined to have met the requirements of the AD amendment. The FAA agrees, and the amendment as adopted is revised accordingly.

Conclusion

The FAA has determined that this regulation involves approximately 20 helicopters. The cost of the modification is estimated to be $175 for each helicopter, or a total of approximately $3,500. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, and Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending Amendment 39–4508 (47 FR 54290), AD 82–25–1, as follows:

(a) Revise the applicability statement by adding the phrase "having serial numbers prior to 760308."

(b) Add the following paragraph and note after the fourth paragraph that ends "or as specified in an FAA-approved equivalent instruction."

Within the next 300 hours' time in service but no later than 6 months after the effective date of this amendment, unless already accomplished, replace rod end fitting, P/N KR10MEAK and mating parts with rod end fitting P/N 1945E235 and all improved parts contained in Sikorsky's main landing gear structural improvement kit P/N 76070-25004-011 in accordance with Sikorsky CSN 76-134 dated May 6, 1983, or CSN 76-134A dated January 10, 1984, paragraphs A through D. Revise the aircraft weight and balance.

Note.—Installation of the P/N 76070-25004-011 main landing gear structural improvement kit terminates the inspection requirements of this AD. Paragraph B(1)(e) of each CSN requires reidentification of a modified bellcrank to P/N 76250-02104-042.

Service lives and mandatory inspection requirements for specific parts contained in the landing gear structural improvement kit are contained in the Airworthiness Limitations Sections, Chapter 4 of the Revised Sikorsky S-76A Maintenance Manual No. SA 4047-76-2-1 (replacement serialized parts) and are also stated in Amendment 39-5298, AD 86-09-11 (replacement non-serialized parts).

(c) Revise third and last paragraph telephone number to (617) 273-7118.

(d) Add the following new paragraph after the fifth paragraph that begins "Alternate inspections * * *"

This procedure shall be done in accordance with prescribed parts of Sikorsky CSN 76-134, dated May 6, 1983, or CSN 76-134A, dated January 10, 1984. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Sikorsky Aircraft, Division of United Technologies Corporation, Attention: Commercial Product Support Department, 6900 Main Street, Stratford, Connecticut 06601-1381. Copies may be inspected at Office of Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas, or the office of the **Federal Register**, 1100 L Street, NW., Room 8401, Washington, DC.

This amendment becomes effective on December 1, 1986.

This amendment amends Amendment 39-4508, AD 82-25-1.

Issued in Forth Worth, Texas, on October 23, 1986.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 86-26341 Filed 11-21-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-ANM-22]

Alteration of Billings, MT, Control Zone; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects FR Doc. 86-11598. The Final Rule on the alteration of the Billings, Montana, Control Zone incorrectly gave the docket number as 86-ANM-22. This document corrects it to 85-ANM-22. No change in the control zone description is required.

EFFECTIVE DATE: November 24, 1986.

FOR FURTHER INFORMATION CONTACT: Katherine G. Paul, ANM-535, Federal Aviation Administration, Docket No. 85-ANM-22, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2535.

Issued in Seattle, Washington, on November 10, 1986.

William E. O'Neill,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 86-26343 Filed 11-21-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-ANM-18]

Alteration of Lewistown, MT, and Ogden Municipal Airport, UT, Control Zones

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the status of the Lewistown, Montana, Control Zone from full-time to part-time and deletes the specified effective hours from the Ogden Municipal Airport part-time control zone.

EFFECTIVE DATE: 0901 UTC, February 12, 1987.

FOR FURTHER INFORMATION CONTACT: Katherine G. Paul, ANM-535, Federal Aviation Administration, Docket No. 86-ANM-18, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2535.

SUPPLEMENTARY INFORMATION:

History

On May 21, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to change the Lewistown, Coppertown, Bozeman, Montana; and Idaho Falls, Idaho, Control Zones from full-time to part-time and to delete the specified effective hours from the Ogden Municipal Airport part-time control zone (51 FR 18603).

A temporary reduction in personnel staffing of the Flight Service Stations at these locations resulted in weather observations not being available 24 hours a day. Recently, the Flight Service Stations at Coppertown and Bozeman, Montana; and Idaho Falls, Idaho, have resumed 24-hour operations. Therefore, these locations have been deleted from the Final Rule.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for the deletion of Coppertown and Bozeman, Montana; and Idaho Falls, Idaho, Control Zones, this amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations changes the status of the Lewistown, Montana, Conrol Zone from full-time to part-time and deletes the specified effective hours from the Ogden Municipal Airport part-time control zone.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment.

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. By amending § 71.171 as follows:

Lewistown, Montana [Amended]

Add "The control zone shall be effective during the specified dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory."

Ogden Municipal Airport, Utah [Amended]

Delete "from 0600 to 2200 hours, local time, daily."

Add "The control zone shall be effective during the specified dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory."

Issued in Seattle, Washington, on November 10, 1986.

William E. O'Neill,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 86–26342 Filed 11–21–86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86–ACE–05]

Alteration of Transition Area, St. Louis, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the St. Louis, Missouri, transition area by removing thereform the 2,500 and 4,500-foot airspace descriptions. This action will eliminate redundancy since the Illinois and Missouri airspace descriptions already provide for that airspace. It will not require any charting changes or increase the size of any existing airspace.

EFFECTIVE DATE: February 12, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (806) 374–3408.

SUPPLEMENTARY INFORMATION: The purpose of this amendment is to alter the St. Louis, Missouri, transition area by deleting the 2,500 and 4,500-foot airspace presently described in that transition area. The Illinois and Missouri transition areas already provide for that airspace, so it is unnecessary to have it reiterated in the St. Louis transition area description. Since this action does not require charting changes or increase the size of the St. Louis transition area, and eliminates a redundancy, notice and public procedure hereon are unnecessary and good cause exists for making this amendment effective in less than thirty (30) days.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B, dated January 2, 1986.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[Amended]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 71 of the FAR (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

St. Louis, Missouri

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Lambert-St. Louis International Airport (lat. 38°44'50"N., long. 90°21'55"W.); within 5 miles southeast and 8 miles northwest of the Lambert-St. Louis International Airport Runway 24 ILS localizer northeast course, extending from the 10-mile radius area to 12 miles northeast of the Runway 24 OM; within 5 miles southwest and 9 miles northeast of the Lambert-St. Louis International Airport Runway 12R ILS localizer northwest course extending from the Runway 12R OM to 12 miles northwest of the OM; within a 7-mile radius of St. Charles Smart Airport, St. Charles, Missouri (lat. 38°55'43"N., long. 90°25'41"W.); within an 8-mile radius of Civic Memorial Airport, Alton, Illinois (lat. 38°53'30"N., long. 90°03'00"W.) within a 6.5-mile radius of Weiss Municipal Airport, Fenton, Missouri (lat. 38°32'15"N., long. 90°26'50"W.).

This amendment becomes effective at 0901 UTC February 12, 1987.

Issued in Kansas City, Missouri, on November 10, 1986.

T.R. Beckloff, Jr.,

Manager, Air Traffic Division.

[FR Doc. 86–26387 Filed 11–21–86; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[IC–15410; S7–14–86]

Investment Company Act; Use of Magnetic Tape, Disk, or Other Computer Storage Medium

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting an amendment to a recordkeeping rule under the Investment Company Act of 1940 to permit registered investment companies to preserve required records on magnetic tape, disk, or other computer storage medium. By enlarging the range of acceptable storage media, the amendment would create more flexibility for investment companies in their recordkeeping. The amendment also would result in savings of time and cost to registered investment companies and Commission examiners.

EFFECTIVE DATE: November 24, 1986.

FOR FURTHER INFORMATION CONTACT: R. Michael Parker, Senior Compliance Examiner, (202) 272–2025, or John McGuire, Attorney, (202) 272–2107, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: On June 19, 1986,[1] the Commission proposed an amendment to rule 31a–2 [17 CFR 270.31a–2], a recordkeeping rule under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] (the "1940 Act"), relating to the preservation of required records. After considering the comments received, the Commission is adopting the amendment substantially as proposed. The amendment, which permits investment companies to store

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[1] Investment Company Act Rel. No. 15155 (June 19, 1986) (51 FR 23244 (June 26, 1986)).

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required records [2] in a computer storage medium, is consistent with rule 204–2 [17 CFR Part 275.204–2] under the Investment Advisors Act.[3] Under amended rule 31a–2, investment companies could preserve records in computer format provided: (1) The records exist in original form in a computer storage medium; (2) records stored on a computer storage medium are capable of immediate access and retrieval; (3) printouts of the records or copies of the computer tape or disk are promptly provided to Commission examiners upon request; (4) one other copy of the computer storage medium is stored separately from the original; and (5) procedures are used for maintenance and preservation of, and access to, records so as to reasonably safeguard them from loss, alteration, or destruction.

Discussion

Three commenters submitted views on the proposal. They supported the amendment, expressing the view that permitting computer storage would be helpful to investment companies. None of the commenters, however, attempted to quantify the specific costs and benefits of the amendment.

In response to the comments received, the Commission is making one modification to the rule as proposed. Two commenters expressed concern about the condition in the proposal that investment companies produce computer-stored records "immediately" upon request of Commission examiners. They suggested, as an alternative, that investment companies be required to produce such records either within 24 hours or "promptly," as required of investment advisers under rule 204–2.[4] While rule 31a–2 requires that investment companies retaining records on microfilm provide enlargements immediately on request, the Commission is modifying the amendment in response to these comments to require that records maintained on film or computer medium be produced "promptly" on request. This would make amended rule 31a–2 consistent with amended rule 204–2. Commenters on the amendment to rule 204–2 stated that 24 hours would be sufficient time to retrieve computer-stored records requested by Commission examiners. While the "promptly" standard would not impose any specific time limit, the Commission would expect that only in unusual circumstances would an investment company be permitted to delay furnishing computer-stored records for more than 24 hours. At the same time, the Commission believes that in many cases an investment company would be able, and therefore would be required, to furnish records immediately or within a few hours of a request.

The amended rule would permit investment companies that use computer systems in their operations to use the systems for record retention, but would not require them to do so. Investment companies could continue to store required records in hard copy or on photographic film. The Commission wishes to emphasize that investment companies storing records on computer storage medium are responsible for meeting all applicable conditions of the rule amendment. This means, for example, that an investment company using computer record storage in reliance on the rule must have computer capacity sufficient to promptly produce records requested by Commission examiners. Also, if an investment company discontinues its computer system or changes to a system incompatible with its previous system, it would have to make adequate provisions to ensure that it can promptly make available to Commission examiners all required records.

The amendment permits Commission examiners to specify whether an investment company must produce computer-stored records in printouts or provide a copy of the computer tape or disk. Because examiners are beginning to use personal computers in conducting inspections, examiners may ask investment companies to provide a download of the records in a format for use in a personal computer. While the Commission is not requiring at this time that a download usable in a personal computer must be provided, it would expect that investment companies would provide such a download where feasible. Producing such a download should be a cost-effective way for an investment company to supply computer-stored records during an examination.

The rule limits the types of records which can be stored in computer systems to those which exist in original form on a computer storage medium. Specifically, paragraph (f)(2) of the rule permits computer storage of records that, in the ordinary course of the investment company's business, are created by the investment company on electronic media or are received by the investment company solely on electronic media or by electronic data transmission. The principal effect of this condition will be to require that communications in hard copy form sent or received by the investment company be retained in that form or on photographic film, except where the communications sent by the investment company are created on electronic media. This means, for example, that hard copies of correspondence sent by the adviser to clients would have to be retained unless the correspondence was created on word processing or other electronic media. Also, if an investment company receives correspondence by both electronic media and hard copy, the hard copy correspondence must be retained or stored on film.

While the amendment requires that procedures be used to both permit access to records and safeguard them from loss, it does not impose specific requirements which, in some cases, might be unnecessarily restrictive or which could become outdated as newer technologies become available. For example, while the amendment requires investment companies to store a duplicate of the computer storage medium separately from the original, it does not require that the duplicate be stored off-site. Further, the amendment does not specify how frequently the duplicate records should be updated to incorporate new records, nor does it specify what other safeguards should exist to protect the integrity of the computer-stored records. Instead, the amendment requires investment companies to maintain procedures so as to reasonably ensure that computer-stored records are not altered, lost, or destroyed. This approach gives investment companies flexibility in determining what procedures to use.

The amendment will become effective immediately upon publication in the **Federal Register**. The amendment relieves a restriction and the Commission finds that, because the amendment permits investment companies flexibility in devising record retention systems, good cause exists to make it effective immediately.

Regulatory Flexibility Act Analysis

A summary of the Initial Regulatory Flexibility Analysis, which the Commission prepared in accordance with 5 U.S.C. 603 regarding the amendment to rule 31a–2, was published in Investment Company Act Release No. 15155. No comments were received on this analysis. The Commission has prepared a Final Regulatory Flexibility Analysis. A copy of the Final Regulatory

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[2] Investment companies are required to preserve records under rules 31a–1 and 31a–2 [17 CFR 270.31a–1 and 31a–2].

[3] In Investment Advisers Act Rel. No. 952 [Jan. 11, 1985] [50 FR 2542 (Jan. 17, 1985)], the Commission amended rule 204–2 to permit advisers to store required records in computer systems.

[4] Rule 204–2(g)(1)(ii).

Flexibility Analysis may be obtained by contacting John McGuire, Esq., Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW. Washington, DC 20549, (202) 272-2107.

Statutory Basis

The amendment adopted herein is adopted pursuant to the authority contained in section 38 [15 U.S.C. 80a-37] of the Investment Company Act of 1940.

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Amendment

Title 17, Chapter II of the Code of Federal Regulations is hereby amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read in part as follows:

Authority: Secs. 38, 40, 54, Stat. 841, 842; (15 U.S.C. 80a-37 * * * § 270.31a-2 also issued under 15 U.S.C. 80a-31(a).

2. § 270.31a-2 is amended by revising paragraph (f)(1), redesignating (f)(2) as (f)(3), and adding (f)(2) as follows:

§ 270.31a-2 Records to be preserved by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.

* * * * *

(f)(1) The records required to be maintained and preserved under paragraphs (a) through (d) of Rule 31a-1 and paragraphs (a) through (c) of Rule 31a-2 may be immediately produced or reproduced on photographic film or, as provided in paragraph (f)(2) of this section, on magnetic tape, disk, or other computer storage medium, and be maintained and preserved for the required time in that form. If such records are produced or reproduced by photographic film or computer storage medium by, or on behalf of, an investment company, such investment company shall:

(i) Arrange the records and index and file the films or computer storage medium in such a manner as to permit the immediate access and retrieval of any particular record;

(ii) Be ready at all times to provide, and promptly provide, any facsimile enlargement of film or computer printout or copies of the computer storage medium that the Commission, by its examiners or other representatives, or the directors of such investment company may request;

(iii) Store separately from the original one other copy of the photographic film or computer storage medium for the time required;

(iv) With respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction; and

(v) With respect to records stored on photographic film, at all times have available for examination of its records by the Commission, pursuant to section 31 of the Investment Company Act of 1940, or by the directors of such investment company, facilities for immediate, easily readable projection of the photographic film and for producing easily readable facsimile enlargements.

(2) Under paragraph (f)(1) of this section, an investment company may maintain and preserve on computer tape, disk, or other computer storage medium records that, in the ordinary course of the investment company's business, are created by, or on behalf of, the investment company on electronic media or are received by, or on behalf of, the investment company solely on electronic media or by electronic data transmission.

* * * * *

By the Commission.

Dated: November 13, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-26406 Filed 11-21-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

Wyoming Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval, with certain exceptions, of proposed amendments submitted by the State of Wyoming as modifications to its permanent regulatory program (hereinafter referred to as the Wyoming program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed revisions to nine chapters of the State regulations involve definitions, permit application requirements, permits for special categories of surface coal mining, environmental protection performance standards, variances for surface coal mining operations, procedures applicable to surface coal mining operations, required studies for surface coal mining permit applications and assistance for such studies, permit revisions, inspections, enforcement, and civil penalties for surface coal mining operations. Wyoming proposed these modifications chiefly in response to revisions to the corresponding Federal regulations.

EFFECTIVE DATE: September 1, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry R. Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 100 East B Street, Room 2128 Casper, Wyoming 82601-1918, Telephone: (307) 261-5776.

SUPPLEMENTARY INFORMATION:

I. Background.

Information concerning the general background on the Wyoming program submission and the approval process, as well as the Secretary's findings, the disposition of comments and an explanation of the conditions of approval can be found in the November 26, 1980 **Federal Register** (45 FR 78637-78684). Subsequent actions on conditions of approval and program amendments are identified at 30 CFR 950.11 and 950.15.

II. Submission of Amendments

On May 1, 1986, the State of Wyoming submitted proposed amendments revising nine chapters of its approved permanent program regulations, known as the Rules and Regulations of the Wyoming Department of Environmental Quality, Land Quality Division (LQD). The proposed revisions involve definitions, permit application requirements, permits for special categories of surface coal mining, environmental protection performance standards, variances for surface coal mining operations, procedures applicable to surface coal mining operations, required studies for surface coal mining permit applications and assistance for such studies, permit revisions, inspections, enforcement and civil penalties for surface coal mining operations.

The May 21, 1986 **Federal Register** announced receipt of the proposed amendments and invited public comment on their adequacy (51 FR 18621). Since no one requested a public

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hearing, none was held. The comment period closed on June 20, 1986.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the amendments submitted by Wyoming on May 1, 1986. Only those revisions of particular interest are discussed below. Any revisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal rules, although further changes in the affected provisions may be needed, as listed in the regulatory reform review letter sent to Wyoming on December 23, 1985. The Director may also require further changes in the future as a result of his ongoing review of the Wyoming program in light of Federal regulatory revisions and court decisions. Revisions which are not discussed contain language similar to the corresponding Federal rules, concern nonsubstantive wording changes, or involve provisions which lack a Federal counterpart and which do not adversely affect other aspects of the program.

1. Chapter I—Authorities and Definitions

(a) Wyoming has added a definition of the term "applicant" at Section 2(f). This definition includes any person seeking a permit, permit revision, renewal, transfer or other approval from the Administrator to conduct mining and reclamation operations, but it excludes subsidiaries or parents of the person. The Federal regulations at 30 CFR 701.5 contain a similar definition, but the Federal definition lacks the explicit exclusion of the proposed State rule and it also includes persons seeking approval for coal exploration.

The Federal regulations at 30 CFR 778.14(c) require compliance information concerning violations received by the applicant *or* any subsidiary, affiliate or persons controlled by or under common control with the applicant. Since Wyoming has also proposed to amend its regulations at Chapter II, Section 3(a)(ii)(B) to include compliance information requirements similar to these listed at 30 CFR 778.14(c), Wyoming's proposed definition of "applicant" will have no effect on its ability to collect compliance information in accordance with its program. Therefore, the Director finds that the proposed State definition of the term "applicant" is no less effective than the Federal rule in this respect. However, the definition is less effective than the Federal rule in that it does not include persons seeking approval for coal exploration activities. Therefore, the Director is requiring that Wyoming further amend its definition of "applicant" to include such persons.

(b) Wyoming has deleted its definition of "coal processing plant" at Chapter I, Section 2(m) and has replaced it with the term "coal preparation plant", which is similarly defined as a facility where run-of-the-mine coal is subjected to chemical or physical processing or preparation to separate the coal from its impurities. The corresponding Federal definition of this term at 30 CFR 701.5 was remanded by the U.S. District Court for the District of Columbia in *In re: Permanent Surface Mining Regulation Litigation II* (C.A. 79–1144, July 6, 1984) because the court held that facilities that in any way leach or chemically or physically process coal must be regulated, even if they do not separate coal from its impurities. As a result of the court decision, OSMRE promulgated a revised definition which deleted the separation from impurities test (50 FR 28186, July 10, 1985). Since the Wyoming definition of "coal preparation plant" retains this test, the Director finds that it is less effective than the Federal definition at 30 CFR 701.5 and he is not approving the phrase "to separate the coal from its impurities" within the proposed State definition.

Also, Wyoming defines coal preparation plants as including only those facilities that process run-of-the-mine coal. Both SMCRA Section 701(28) and the Federal regulations (30 CFR 700.5) define "surface coal mining operations" as, *inter alia*, activities conducted on the land surface in connection with a coal mine. The preamble to the revised Federal definition of this term at 30 CFR 700.5 states that "in connection with" should be interpreted to include facilities which receive a significant portion of their coal from a mine, facilities which receive a significant portion of the output from a mine, facilities which have an economic relationship with a mine, or any other type of integration, regardless of ownership (48 FR 20393, May 5, 1983). In the same rulemaking, OSMRE considered limiting its definition of "coal preparation plant" to those facilities which process or prepare run-of-the-mine coal; however, it decided that to do so would be too restrictive (48 FR 20394–20395, May 5, 1983). Therefore, the Director finds that Wyoming's definition is less effective than the corresponding Federal definition, and he is not approving the term "run-of-the-mine" within the proposed State definition of "coal preparation plant".

(c) At Chapter I, Section 2 (aw) and (by), Wyoming has revised its definitions of "impoundment" and "sedimentation pond" in a manner which combines portions of those definitions as they existed in the Federal regulations at 30 CFR 701.5 both before and after the revisions of September 26, 1983. Since the preamble to the September 26, 1983 **Federal Register** states that the definitions were revised solely for purposes of clarification, not for alteration of meaning, and since the State revisions have the same effect, the Director finds that the revised State definitions are no less effective than the Federal definitions. Although the State definition of "impoundment" does not specifically include structures intended to retain sediment, it does include those intended to retain water, slurry, or other liquid or semi-liquid material. The Director finds that sediment retention structures will also, in practice, be designed to retain water or slurry and that there is thus no effective difference between the State and Federal definitions.

2. Chapter II—Permit Applications

(a) Wyoming has revised its regulations at Chapter II, Section 2(a)(i)(E)(I) to delete the requirement that the applicant or operator submit, as part of the permit application, a study of fish and wildlife observed within one mile of the proposed permit area. The Federal provisions at 30 CFR 779.20 and 783.20 require not only the submission of information concerning fish and wildlife resources on the permit area but also a study of those portions of the adjacent areas where effects on such resources may reasonably be expected to occur. Since the memorandum of understanding required by Chapter II, Section 3(a)(vi)(E) of the State's regulations has not yet been developed in the requisite detail, i.e., it does not address the nature and extent of fish and wildlife studies required as part of all coal mining permit applications, the Director finds that, by deleting the fish and wildlife information requirements for adjacent areas, Wyoming has rendered its program less effective than the Federal requirements. Therefore, he is not approving the proposed deletion of the one-mile criterion.

(b) Wyoming has revised its approved regulations at Chapter II, section 2(b)(iii)(G) concerning permit application information requirements for roads and other transportation facilities by adding the phrase "if appropriate" in the sentence requiring "a classification and description, including maps and cross-sections, if appropriate, of all roads . . ., other transportation facilities, shipping areas and rights-of-way to be built or utilized during the operations." The corresponding Federal rules at 30 CFR 780.37 and 784.24 require that each application contain a detailed description, including a map, appropriate cross-sections, and other information, of each road, conveyor or rail system to be constructed, used or maintained within the permit area. The Director interprets the proposed addition to the State rule as modifying only the term "cross-sections," not all preceding language, and, on that basis, he finds that the revised State rule is no less effective than the Federal requirements. The Director notes that descriptions and maps are thus required for *all* such facilities under both State and Federal rules.

(c) Wyoming has revised Chapter II, section 3(a)(i)(B) of its regulations to more clearly define, by type of business enterprise, which individuals affiliated with the permit applicant must be identified in the application. Since the revision contains language similar to and more specific than that of the Federal regulations at 30 CFR 78.13(c), the Director finds that it is no less effective than the Federal rules. However, the State regulations do not contain a provision comparable to that portion of 30 CFR 778.13(b) which requires that the application also include that name, address and telephone number of the operator if he or she is not the applicant. Therefore, the Director is requiring that Wyoming further amend its program to request this information.

(d) Wyoming has revised its geological information requirements for permit applications at Chapter II, section 3(a)(vi)(B) to allow the Administrator to waive the requirement for test borings or core samples as unnecessary. The corresponding Federal rules at 30 CFR 780.22(d) and 784.22(d) allow such a waiver only if the regulatory authority determines that the collection and analysis of such data is unnecessary because other equivalent information is available to the regulatory authority in a satisfactory form. Therefore, the Director finds that Wyoming's proposed revision is less effective than the Federal regulations, and he is requiring that the State submit further amendments to its program to clarify that the Administrator may waive the requirement for test borings or core samples only if he determines that such data collection and analysis is unnecessary because other equivalent information is available to him in a satisfactory form.

(e) Wyoming has revised its baseline surface water data requirements at Chapter II, section 3(a)(vi)(H)(II) by deleting the requirement to provide data on acidity. The Director finds that this deletion would render the Wyoming program less effective than the Federal regulations at 30 CFR 780.21(b)(2) and 784.14(b)(2), which require the applicant to provide baseline acidity and alkalinity information if there is a potential for acid drainage from the proposed mining operation. Therefore, he is not approving the State's proposed deletion of existing Chapter II, section 3(a)(vi)(H)(II)(3), which requires data on acidity.

(f) Wyoming has revised its regulations at Chapter II, section 3(a)(vi)(J)(II) by identifying the specific groundwater quality parameters that must be included in the groundwater description in each permit application. The revised State regulation requires that the water quality description include, at a minimum, information on total dissolved solids, total and dissolved iron and total manganese. The revised Wyoming regulation corresponds to the Federal regulations at 30 CFR 780.21(b)(1) and 784.14(b)(1), which require groundwater information on dissolved solids, pH, total iron and total manganese. Since the Wyoming provision does not include pH, the Director finds that the State regulation is less effective than the Federal requirement, and he is, therefore, requiring that Wyoming submit further amendments to require that pH be included in the list of required parameters.

(g) Wyoming has revised its permit application information requirements at Chapter II, section 3(a)(vi)(M) of its regulations by deleting the requirement that applicants show the elevations and locations of any baseline data gathering stations. The Director finds that this deletion would render the Wyoming program less effective than the Federal regulations at 30 CFR 779.25(a)(2) and 783.25(a)(2) that require that this information be provided. Therefore, he is not approving the State's proposed deletion of existing Chapter II, section 3(a)(vi)(M).

(h) At Chapter II, section 3(b)(ix)(D), Wyoming has revised its regulations relating to the collecting, recording and reporting of water quality and quantity data. The Wyoming regulation corresponds to the Federal regulations at 30 CFR 780.21(i) and (j) and 784.14(h) and (i) relating to the water quality and quantity monitoring plan that must be included in each application for a surface coal mining permit. The Federal regulations require, among other things, that the water monitoring data be submitted to the regulatory authority at least quarterly. The revised Wyoming rule would instead require that all water monitoring data be available for inspection at the mine site and that all water monitoring data for each monitoring location be submitted annually to the regulatory authority as part of the operator's required annual report.

The Director finds the alternative reporting requirements proposed by Wyoming to be no less effective than the Federal provisions since the State's approach provides for adequate access by enforcement personnel during routine mine site inspections. However, the Director also finds that Wyoming omitted a necessary regulatory citation in the preparation of this proposed regulation. In identifying the water quality parameters that must be monitored, Wyoming correctly identified the surface water parameters at Chapter II, section 3(a)(vi)(H), but omitted the groundwater parameters at Chapter II, section 3(a)(vi)(J). Therefore, the Director is requiring that Wyoming further amend its rules to correct this omission and render the State program no less effective than the Federal rules.

(i) At Chapter II, section 3(b)(xvi), Wyoming has revised its regulations concerning permit application requirements for proposed excess spoil disposal sites. The Federal regulations at 30 CFR 780.35(b) require that each application contain the results of a geotechnical investigation of the proposed disposal site. The State has revised its regulations by inserting the limiting phrase "where necessary due to stability concerns" when describing the need for a geotechnical investigation. The Director finds that, by making this requirement discretionary rather than mandatory, the State has rendered its regulations at Chapter II, section 3(b)(xvi) less effective than the Federal regulations at 30 CFR 780.35(b). Therefore, the Director is not approving the addition of this phrase to the State rules.

3. Chapter IV—Environmental Protection Performance Standards

(a) Wyoming has revised Chapter IV, section 2(c)(iii)(A) of its regulations concerning the demonstration that an operator must make when proposing to use subsoil or other materials in lieu of topsoil. The State's proposed provision requires only that the operator demonstrate by analysis or test plots that the substitute material is suitable as an alternative resoiling material. The

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corresponding Federal provisions at 30 CFR 816.22(b) and 817.22(b) require that the operator demonstrate that the resulting soil medium would be equal to or more suitable for sustaining vegetation than the existing topsoil, and that it is the best available in the permit area to support vegetation. Therefore, the Director finds that Wyoming's proposed revisions are less effective than the Federal rules, and he is requiring that the State further amend its program to address these deficiencies.

(b) Wyoming has revised its regulations at Chapter IV, section 2(c)(iv)(B) by adding a provision that allows for the blocking of ephemeral drainages if environmentally sound methods for dealing with runoff control and sedimentation are approved by the Administrator. The proposed rule does not specifically address the situation in which the blocking of an ephemeral drainageway could result in the impounding of water. However, the Director is approving Wyoming's proposed revisions with the understanding that the phrase "environmentally sound methods for dealing with runoff control and sedimentation" means that Wyoming will require compliance with the applicable impoundment and sedimentation pond regulations at Chapter IV, section 3 (g) and (h) if such impounding in blocked ephemeral drainageways occurs.

(c) Wyoming has revised its regulations concerning revegetation requirements at Chapter IV, sections 2(d) and 3(d), and has replaced current Guideline 2 on the same topic with Appendix A, "Vegetation Sampling Methods and Reclamation Success Standards for Surface Coal Mining Operations". Most changes involve clarification of the options (control, reference and comparison areas) available for evaluating revegetation success on lands not used for forestland or cropland. Other changes parallel revisions to the corresponding Federal regulations at 30 CFR 816.111 through 816.116 and 817.111 through 817.116. One other significant change establishes a specific shrub mosaic success standard for land with a landlife postmining land use.

Appendix A is currently incorporated by reference only in Chapter II, section 3(a)(vi)(D)(II) of the regulations, which concerns descriptions of premining conditions for permit applications. However, the introductory material of the Appendix indicates that it is also to be used to achieve compliance with Chapter IV, sections 2(d) and 3(d), which establish postmining sampling requirements and revegetation success standards, and the Director is approving Appendix A on that basis. In addition, although the introduction to Appendix A states that its procedures are required, most of the document expresses those requirements in terms of "should" instead of "must." In approving Appendix A, the Director is hence interpreting "should" to mean "must", rather than one of the term's more discretionary definitions. To be no less effective than 30 CFR 816.116 and 817.116, operators must be required to comply with both the rules and Appendix A.

In general, the Director finds Appendix A and the revised regulations to be no less effective than the Federal rules; however, he is requiring that Wyoming further amend its program to address the following deficiences:

(i) Part II.C.1.a. of Appendix A allows ocular estimation of species cover, vegetative cover and total ground cover of randomly or systematically located quadrats when sampling plant communities of the control areas, reference areas and the areas affected by mining. Since ocular estimates are known to be highly dependent upon the training, experience and objectivity of the estimator, (47 FR 12599, March 23, 1982), Wyoming must include some other mechanism to check or confirm ocular quadrat estimates to ensure the collection of consistent, objective data and consistent decisions regarding performance bond release.

(ii) The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that the standards for revegetation success and statistically valid sampling techniques for the parameters of ground cover, production and stocking be selected by the regulatory authority and be included in the approved regulatory program. While Appendix A provides general and often detailed guidance on sampling concepts and data anaysis, it fails to identify the sampling techniques that are required to be included as part of an approved program by 30 CFR 816/817.116(a)(1). To be no less effective than the Federal regulations, Wyoming must revise Appendix A to prescribe the specific techniques which operators can use to evaluate revegetation success.

(iii) Part IV.D of Appendix A establishes a maximum sample size of either 30 or 50 depending on the sampling method used. The basis for establishment of these maxima include the assumption that the permit area is not larger than 10,000 acres. In addition, Appendix A, like Guideline 2, continues to provide for data analysis using the 80 percent statistical confidence level (alpha=0.2).

The Federal regulations at 30 CFR 816.116(a) (1) and (2) and 817.116(a) (1) and (2) require the use of statistically valid sampling techniques and the 90 percent confidence interval (i.e., a one-sided test with a 0.10 alpha error probability). To be no less effective than the Federal regulations, Wyoming must revise Appendix A to require use of the 90% confidence level rather than the 80% level. The Director reminds Wyoming that, while he is not imposing a required amendment on this subject in this rulemaking, he has, by letter dated December 23, 1985, previously required that Wyoming adopt the 90% confidence interval. This requirement stands unchanged.

In addition, while the Director recognizes that maximum sample sizes are a practical necessity under the variable vegetative cover situations frequently encountered in Wyoming, he is deferring approval of the proposed maximum sample sizes until Wyoming submits additional documentation that these sizes are adequate for the indicated acreages, and that further sampling beyond the indicated maximum numbers would not significantly improve the accuracy of the estimate of the population mean.

(iv) Part VIII.D of Appendix A provides that postmining cropland restoration shall be deemed complete when the lands's productive capability is equivalent to premining conditions for at least two consecutive crop years. Appendix A further provides that equivalency can be assessed by direct comparison of postmining production data with accurate premining production data.

The Federal regulations at 30 CFR 816.116(b)(2) and 817.116(ab)(2) require that crop production on reclaimed lands be at least equal to that of a reference area or other appropriate success standard, such as average county yields from similar nonmined soils. Because of agronomic advances, including improved or increased management inputs and improved varieties and strains, during the time lapse that will occur between collection of premining and postmining data, the use of unadjusted premining data will most likely result in a success standard that is not representative of the production of unmined soils that are similar to the soils of the permit area before the area was mined. The Director therefore approves this provision with the understanding that Wyoming will adjust the premining data in accordance with the agronomic advances that occur from date of collection until start of collection of data for bond release.

In addition, 30 CFR 816.116(c)(3) and 817.116(c)(3) require that, in areas of 26.0 inches or less average annual precipitation, production standards must be met for at least the last two consecutive years of the ten-year minimum responsibility period, not any two consecutive crop years within that period as provided by Appendix A. The Director is thus requiring that Wyoming further amend its program to be no less effective than the Federal rules.

(v) Wyoming has revised Chapter IV, section 2(d)(vi) of its regulations to require that prior to bond release the vegetative cover *and total ground cover* of the reclaimed area by at least equal to the cover on the area before mining. Prior to the revision, the rule required that the vegetative cover be at least equal to the premining cover. The Federal regulations at 30 CFR 816.111(a)(3) and 817.111(a)(3) require that the vegetative cover of reclaimed areas be at least equal to that of the natural vegetation of the area. Since Wyoming defines "cover" as vegetation, litter and rock on the soil surface, the Director finds that the proposed revision would render the Wyoming program less effective than the Federal regulations. Therefore, he is not approving this modification.

(vi) Wyoming has revised Chapter IV, section 2(d)(vi) of its regulations to allow the use of unspecified alternative success standards when approved by the Administrator. The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that success standards be included in an approved regulatory program, and the preamble to the revised Federal regulations further clarifies that this means they are to be subject to public review and comment. Therefore, the Director cannot approve language allowing alternative success standards in the absence of an explanation as to what they are and how the operator's success in attaining them will be evaluated.

(vii) Wyoming has revised Chapter IV, section 3(d)(vi)(D) to require that, where trees are part of the approved reclamation plan, at the time of bond release, trees used to meet the required stocking rate shall be healthy, and at least 80 percent shall have been in place for at least eight years. In *In re: Permanent Surface Regulation Litigation II* (C.A. 79–1144, July 15, 1985), the U.S. District Court for the District of Columbia remanded the corresponding Federal rules at 30 CFR 816.116(b)(3)(ii) and 817.116(b)(3)(ii) to the extent that they allowed the replanting of trees and shrubs without restarting the 5 or 10 year responsibility period. Therefore, the Director is approving the Wyoming rule only with the understanding that its provisions shall not be interpreted as allowing trees and shrubs that are planted/replanted during the ten-year responsibility period to be counted when determining the success of stocking and the adequacy of planting arrangements at the time of bond release. Only plants in place at the start of the responsibility period and natural regeneration meeting the requirements of this rule may be so counted.

(d) Wyoming has revised Chapter IV, section 2(j) of its regulations to specify that roads and railroads need be included in the permit area only from that point where they provide exclusive service to the operator. The previous rule required inclusion of all access roads and rail spurs from the point where they joined the main line or a spur serving another mine. In addition, the previous rule did not require that they be constructed or upgraded before being considered part of the permit area, as the proposed rules do. The revised rule is less effective than the Federal regulations since 30 CFR 700.5 defines "surface coal mining operations" as including all lands affected by the construction of new roads or the improvement *or use* of existing roads to gain access to the site. Therefore, the Director is not approving this proposed rule to the extent that it would exempt certain roads without regard to the effect of mining use on the road.

(e) Wyoming has revised its regulations at Chapter IV, section 2(l)(ii)(F) by adding language concerning interim mine stabilization for surface coal mining operations. Specifically, the revised provision reads as follows, "Any coal mine operator who requests interim mine stabilization shall have a public notice pursuant to W.S. 35–11–406 (j) and (k)." The Director finds that the interim mine stabilization requirements of section 2 only pertain to noncoal mining operations and, by adding the phrase "coal mine operator," Wyoming has proposed a revision that is in conflict with other requirements of the approved permanent program. In support of the Director's interpretation of this provision, the reader is directed to two previous **Federal Register** notices. The March 31, 1980, **Federal Register** (45 FR 20947) announcing the Secretary's partial approval of the Wyoming program submission contains a finding concerning contemporaneous reclamation, which states that Wyoming uses the more specific requirements of Chapter IV, section 3 to supersede the more general requirements of Chapter IV, section 2 when addressing surface coal mining and reclamation operations. The November 26, 1980, **Federal Register** (45 FR 78652) announcing the Secretary's conditional approval of the Wyoming program states at Finding 13.66 that Chapter IV, section 3 of the Wyoming regulations requires backfilling and grading to follow mining on a time and space schedule that is no less effective than the Federal provisions addressing contemporaneous reclamation. This finding also reiterates the fact that Chapter IV, section 3 takes precedence over Chapter IV, section 2 if a conflict develops between the two sections. Both of the above findings are based on the language of Chapter IV, section 1 which reads, "This chapter sets forth the environmental protection performance standards applicable to all mining operations. No mining operation shall be conducted except in compliance with the requirements hereof. For surface coal mining operations, if the requirements of section 2 and section 3 conflict, section 3 shall be controlling."

Therefore, the Director finds that the interim mine stabilization provisions of Chapter IV, section 2 cannot be used for delaying reclamation for surface coal mining operations, and for this reason he is not approving the State's proposed addition at Chapter IV, section 2(l)(ii)(F).

(f) Wyoming has revised its regulations at Chapter IV, section 3(a)(i) concerning backfilling and grading requirements for surface coal mining operations by deleting the specific time and space requirements for contemporaneous reclamation and replacing them with the more general requirement that backfilling and grading follow coal removal "as contemporaneously as possible based upon the mining conditions." The State's proposed language is analogous to the revised Federal standards at 30 CFR 816.100 and 817.100. However, these Federal rules were remanded by the U.S. District Court for the District of Columbia in *In re: Permanent Surface Mining Regulation Litigation II* because they failed to provide adequate guidelines to the States in the enforcement of the contemporaneous reclamation requirement of section 515(b)(16) of SMCRA. This issue is currently on appeal on behalf of the Secretary.

Therefore, pending a decision on the appeal, the Director is not acting on these proposed revisions to the Wyoming regulations.

(g) Wyoming has revised its regulations at Chapter IV, section 3(a)(iii) by, *inter alia*, adding language identifying the various provisions of the Wyoming regulations allowing deviation from approximate original contour requirements. The proposed regulation reads as follows: "All affected lands shall be returned to their approximate original contour except as authorized by a variance or exemption under Chapter V, sections 6 and 7 of Chapter IX, or Chapter VIII." The Director assumes the State meant to cite the provisions of sections 6 and 7 of Chapter V rather than Chapter IX, since Chapter IX has no such sections, while sections 6 and 7 of Chapter V address backfilling and grading requirements for auger mining operations and remining operations which affect previously disturbed land. Regardless, the Director finds that the revised Wyoming rule is no less effective than the Federal regulations at 30 CFR 816.102 (a)(2) and (k) and 817.102 (a)(2) and (k). However, the Director notes that, in his March 31, 1986 decision (51 FR 10827–10832) approving sections 6 and 7 of Chapter V in general, he did not approve the special backfilling and grading requirements for auger mining operations on previously mined areas at section 6(e), nor did he approve the general waiver of highwall elimination requirements for remining operations at section 7(a)(ii). In addition, in this rulemaking, the Director is not approving the proposed revisions to Chapter IX which would provide for a general variance from approximate original contour requirements.

(h) Wyoming has revised Chapter IV, section 3(a)(iv)(B) of its regulations concerning the elimination of highwalls to specify that incomplete highwall elimination may be allowed only when authorized in accordance with Chapter V, section 6. The corresponding Federal regulations at 30 CFR 816.102(a)(2) and 817.102(a)(2) require the elimination of all highwalls except for operations on previously mined areas containing a preexisting highwall where the volume of all reasonably available spoil is insufficient to completely backfill the reaffected highwall.

It appears that the State has incorrectly referenced the auger mining provisions of Chapter V, section 6, rather than the remining provisions of Chapter V, section 7. As discussed in the previous finding, the Director did not approve that portion of Chapter V, section 6 which Wyoming is referencing in this proposed regulation. However, in the same rulemaking he also required that Wyoming submit further amendments to remedy the deficiencies identified in sections 6 and 7.

Therefore, in the expectation that Wyoming will submit these additional amendments by the required date, the Director finds that Chapter IV, section 3(a)(iv)(B) as proposed is no less effective than the Federal regulations. However, the Director notes that approval of this rule will have no practical effect at the present time, since section 6 of Chapter V as currently approved contains no highwall elimination variance.

(i) Wyoming has revised its regulations at Chapter IV, section 3(a)(iv)(C) concerning spoil placement outside the mined-out area. The State's proposed provision is intended to be analogous to the Federal provisions at 30 CFR 816.102(d). However, the proposed Wyoming rules do not include the three specific requirements of 30 CFR 816.102(d) (1)–(3) and 817.102(d) (1)–(3) that, prior to placement of spoil outside the mined-out area, (1) all vegetative and organic material shall be removed from the area, (2) the topsoil on the area shall be removed, segregated, stored and redistributed, and (3) the spoil shall be backfilled and graded in accordance with permanent program performance standards. The Director finds that by omitting these three requirements, Wyoming has rendered its program less effective than the Federal provisions, and he is therefore requiring that the State further amend its program to address this deficiency.

(j) Wyoming has revised its excess spoil disposal requirements at Chapter IV, section 3(c)(i) to allow the placement of excess spoil fills on slopes greater than 20 degrees if the Administrator determines that the stability of the structure will conform to all regulatory requirements. The Federal regulations at 30 CFR 816.71(d)(2) and 817.72(d)(2) require that, where excess spoil is to be placed on slopes this steep, keyway cuts or rock toe buttresses shall be constructed to ensure the stability of the fill. The Wyoming rules contain no similar requirement. Therefore, the Director finds that the proposed revisions to the Wyoming regulations at Chapter IV, section 3(c)(i) are less effective than the Federal rules, and he is requiring that the State further amend its program to address this deficiency.

(k) The revised Wyoming rules at Chapter IV, section 3(c)(i) concerning excess spoil do not incorporate the Federal requirement at 30 CFR 816.71(e)(2) and 817.72(e)(2) that all excess spoil be placed in horizontal lifts not exceeding four feet in thickness. The Federal rules allow placement in lifts greater than four feet only if, as part of the design and other materials submitted with the permit application, the operator demonstrates, and a qualified registered professional engineer certifies, that the design will ensure the stability of the fill and meet all other applicable requirements. However, the Wyoming rules at Chapter IV, section 3(c)(i)(C) do require that *all* excess spoil piles be designed in accordance with all regulatory requirements and standards (including stability) and that the design be so certified by a qualified registered professional engineer. Since the Wyoming rules at Chapter IV, section 3(c)(i)(E) further allow the Administrator to limit the horizontal lifts to four feet or less as necessary to ensure the stability of the fill, the Director finds that, with respect to lift thickness, the proposed Wyoming rules are no less effective than the Federal requirements. In making this finding, the Director assumes that all fill designs and the certifications required by Chapter IV, section 3(c)(i)(C) will specifically address lift thickness and its effect on structural stability. In light of the extensive discussion of this matter in the preamble to the revised Federal rules (48 FR 32915–32916, July 19, 1983), the Director will pay particular attention to this subject in his oversight of the Wyoming program.

(l) Wyoming has revised its coal mine waste disposal regulations at Chapter IV, section 3(c)(ii) by, *inter alia*, deleting the requirement that coal mine waste piles be constructed in layers no more than 24 inches thick and compacted to be no less than 90 percent of the maximum dry density. Although the September 21, 1983 revisions to the Federal rules at 30 CFR 816.81, 817.81, 816.83 and 817.83 also deleted these requirements, the U.S. District Court for the District of Columbia subsequently ruled that the placement of these design criteria with performance standards violated section 515(f) of SMCRA, which requires that the Secretary establish standards and criteria regulating the design of coal mine waste piles (*In re: Permanent Surface Mining Regulation Litigation II*, July 15, 1985). This issue is currently on appeal on behalf of the Secretary. Pending the outcome of that litigation, the Director is not acting at this time on Wyoming's proposed deletion of its specific coal mine waste lift thickness and compaction density requirements at Chapter IV, section 3(c)(ii)(C)(I).

(m) Wyoming has revised its regulations at Chapter IV, section 3(a)(ix) concerning cut-and-fill terraces. The revised Wyoming provision is analogous to the Federal provision at 30 CFR 816.102(g) and 817.102(g) that was remanded by the U.S. District Court for the District of Columbia in *In re: Permanent Surface Mining Regulation Litigation II*. The court held that the

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Federal rules granted an exemption to the requirements of section 515(b)(3) of SMCRA, which requires that mined land be returned to approximate original contour, by not providing adequate national guidelines for cut-and-fill terraces. The court stated that it is only through such guidelines that the Secretary can ensure that the statutory requirements of section 515(b)(3) of SMCRA will be met. Therefore, in accordance with the court's decision, the Director is not approving the proposed revisions to Chapter IV, section 3(a)(ix).

(n) Wyoming has revised its regulations at Chapter IV, section 3(b)(iv) to require that all rills and gullies that preclude achievement of the approved postmining land use or the reestablishment of the vegetative cover be regraded or otherwise stabilized. The corresponding Federal rules at 30 CFR 816.95(b) and 817.95(b) require that rills and gullies which form in areas that have been regraded and topsoiled and which disrupt the approved postmining land use or the reestablishment of the vegetative cover shall be filled, regraded or otherwise stabilized. The Director finds that the proposed Wyoming provision at Chapter IV, section 3(b)(iv) concerning the elimination of rills and gullies to be no less effective than the Federal regulations with the understanding that the terms "preclude" and "disrupt" are meant to have substantially the same meaning. OSMRE will monitor the State's implementation of these regulations during the oversight process.

(o) Wyoming has revised its regulations at Chapter IV, section 3(h) to allow the retention of highwalls in impoundments provided the highwall is located far enough below the low-water line to provide adequate safety and access for the proposed water users. The State proposed to delete the existing requirement for complete highwall elimination at Chapter IV, section 3(h)(ii)(A) and replace it with the indicated provision for highwall retention at Chapter IV, section 3(h)(iii)(B). In *In re: Permanent Surface Mining Regulation Litigation II* (July 15, 1985), the U.S. District Court for the District of Columbia held that the highwall retention provisions of the corresponding Federal rules at 30 CFR 816.49(a)(9) and 817.49(a)(9) were inconsistent with the requirements of section 515(b)(3) of SMCRA, which requires the complete elimination of highwalls. This issue is currently on appeal on behalf of the Secretary. Therefore, pending a decision on that appeal, the Director is not acting on the proposed deletion of the highwall elimination requirement at Chapter IV, section 3(h)(iii)(A) and the addition of the highwall retention provision for impoundments at Chapter IV, section 3(h)(iii)(B).

(p) Wyoming has revised its regulations at Chapter IV, section 3(h)(iii)(F) pertaining to inspections and examinations of impoundments to provide that all impoundments shall be examined at least quarterly by a qualified person designated by the operator to ensure that all structures are maintained in accordance with the requirements of Chapter IV. Impoundments subject to 30 CFR 77.216 must be inspected in accordance with 30 CFR 77.216–3 by or under the direction of a qualified registered professional engineer. An inspection report must be completed promptly after each inspection, and all reports must be retained at the minesite and annually submitted to the Administrator after being certified by a qualified registered professional engineer. The rules also specify that the inspection reports must contain certain information relative to impoundment status and safety.

The revised rules combine elements of the Federal regulations concerning examination of impoundments at 30 CFR 816.49(a)(11) and 817.49(a)(11) and inspection of impoundments at 30 CFR 816.49(a)(10) and 817.49(a)(10). However, the Director finds that the Wyoming rules are less effective than the Federal regulations in that they fail to meet all requirements for either examination or inspection or provide adequate alternatives. Therefore, he is requiring that Wyoming further amend its program to address the following deficiencies:

(i) The revised rules do not include any requirement that impoundments not meeting the criteria of 30 CFR 77.216(a) be examined at least quarterly for appearances of structural weakness and other hazardous conditions.

(ii) The revised rules do not require that *all* impoundments be inspected by a qualified registered professional engineer or other qualified professional specialist under the engineer's direction. Nor do they require that such inspections be made regularly during construction, upon completion of construction and at least annually until removal of the structure or release of the performance bond.

(iii) The revised rules do not require that each inspection report contain the engineer's certification that the impoundment has been constructed and maintained as designed and in accordance with the approved plan and Chapter IV.

(q) Wyoming has revised its regulations concerning roads at Chapter IV, section 2(j) and section 3(j) (i) and (ii) to delete most design criteria and replace them with performance standards. The corresponding Federal regulations at 30 CFR 816.150, 816.151, 817.150 and 817.151 were similarly revised on May 16, 1983; however, on October 1, 1984, the U.S. District Court for the District of Columbia remanded these rules to the Secretary for failure to provide adequate public notice under the Administrative Procedure Act (*In re: Permanent Surface Mining Regulation Litigation II*). On February 21, 1985 the Secretary suspended these rules in accordance with the court's decision (50 FR 7274). Therefore, until revised Federal regulations are promulgated, the Director is comparing proposed State program amendments concerning roads only with the applicable provisions of SMCRA. Paragraph (b)(17) of section 515 of SMCRA requires that surface coal mining and reclamation operations be conducted so as to insure that access roads are constructed, maintained and reclaimed in a manner which will control or prevent erosion and siltation, water pollution, damage to fish or wildlife or their habitat, or public or private property. Paragraph (b)(18) of section 515 of SMCRA requires that operators refrain from the construction of roads or access ways up a stream bed or drainage channel or in such proximity to such channel so as to seriously alter the normal flow of water. Except as discussed in Finding 3(d) of this notice, the Director finds that Wyoming's proposed revisions to its road requirements are not less stringent than the requirements of SMCRA.

(r) Wyoming has revised its fish and wildlife performance standards at Chapter IV, section 3(p)(i)(E) to require that the operator promptly report any endangered or threatened species or bald or golden eagle nest found within the permit area after permit approval. The corresponding Federal regulations at 30 CFR 816.97 (b) and (c) and 817.97 (b) and (c) contain similar provisions, but they also specify that the regulatory authority must then consult with the U.S. Fish and Wildlife Service and, where appropriate, the State fish and wildlife agency, to identify whether, and under what conditions, the operator may then proceed. Wyoming has included a somewhat similar provision, which requires consultation only "as necessary", in Chapter IV, section 3(p)(iii); however, it is not clear that this provision applies to the situation

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described in Chapter IV, section 3(p)(i)(E).

Therefore, the Director finds that Wyoming's proposed rules at Chapter IV, section 3(p) are less effective than the Federal regulations, and he is requiring that Wyoming further amend its program to require consultation with the appropriate agencies under the identified circumstances.

4. Chapter IX—Variances for Surface Coal Mining Operations

Wyoming has revised its regulations at Chapter IX by adding section 1(a)(ii)(C), section 2(c) and section 3 to provide for a general variance from the requirement to restore the affected area to the approximate original contour. The Federal regulations at 30 CFR 785.16, 816.133(d) and 817.133(d) originally provided for a similar variance; however, the U.S. District Court for the District of Columbia (*In re: Permanent Surface Mining Regulation Litigation II*, C.A. 79–1144, July 15, 1985) remanded these rules because they permitted variances from approxmiate original contour for other than steep slope mining operations. The court ruled that such variances were inconsistent with paragraphs (b)(3) and (e) of section 515 of SMCRA.

Therefore, in accordance with the court's decision, the Director finds that the proposed addition of section 1(a)(ii)(C), section 2(c) and section 3 to the Wyoming regulations at Chapter IX would render the Wyoming program less stringent than the requirements of SMCRA, and he is not approving them.

5. Chapter XVII—Inspections, Enforcement and Penalties for Surface Coal Mining Operations

Wyoming has revised Chapter XVII by adding a new paragraph (a) to section 2 to establish a new enforcement scheme. The State is apparently interested in implementing an enforcement system similar to those now in effect in West Virginia and Pennsylvania, both of which allow for citation of minor infractions of the approved program in inspection reports rather than through the issuance of the more standard notice of violation form. In Wyoming's proposed system, the issuance of a citation, which would be a notation of the operator's infraction in an inspection report, would not be taken into consideration when determining whether a pattern of violations exists. The proposed amendment provides examples of minor infractions which might be considered appropriate for notation in the inspection report and lists criteria for such notations. However, as proposed, the Wyoming proposal is not adequately limited to violations which are only minor. In addition, it does not ensure that operators who repeatedly incur minor infractions or who do not abate the minor infractions in a timely manner will be formally cited in a notice of violation. Likewise, the State does not ensure that minor infractions beyond some specified threshold number will be considered for purposes of determining a pattern of violations. Hence, there would be no individual or cumulative effect on the operator's civil penalty status or record of violations. Nor is there a specified penalty or other consequence for failure to abate.

The Director finds, based on the above discussion, that the enforcement system proposed by Wyoming does not provide for adequate enforcement of the approved Wyoming program in a manner no less effective than the Federal requirements at 30 CFR Subchapter L. Therefore, he is not approving this proposed amendment.

IV. Public Comments

The Director solicited public comment on the proposed amendment in the May 21, 1986 **Federal Register** (51 FR 18621), No comments were received. Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), comments were also solicited from various Federal agencies. Comments were received from the U.S. Department of the Interior, Fish and Wildlife Service (FWS) and the U.S. Department of Labor, Mine Safety and Health Administration (MSHA).

The following discussion summarizes all comments received and the Director's responses.

1. MSHA commented that Wyoming's proposed addition to Chapter IV, section 3(r) concerning protection of underground mining conflicts with the Federal provision at 30 CFR Part 816.79(b). MSHA interprets the Federal rule to mean that all permits must first be reviewed and approved by the regulatory authority before being forwarded to MSHA for review and approval.

The Director does not agree. The proposed Wyoming rule requires approval from MSHA for operations proposed to be conducted within 500 feet of an active underground mine. This is no less effective than 30 CFR Part 816.79(b), which requires joint approval by the regulatory authority and MSHA of activities closer than 500 feet to an active underground mine. Joint approval may and, for reasons of efficiency, probably would involve a concurrent review process.

2. The FWS recommended that the applicant be required to consult the Wyoming Game and Fish Department (WGFD) during development of the revegetation plan for the proposed permit.

The Director finds that the commenter's concern is adequately addressed in Wyoming's proposed Chapter II, section 2(b)(iii)(C), which requires that the WGFD and the Wyoming Department of Agriculture be consulted regarding revegetation procedures for wildlife habitat, critical habitat, croplands, and erosion control techniques as applicable to the revegetation plan. In addition, the new shrub mosaic requirements at Chapter IV, section 3(d)(vi)(A) were developed in consultation with the WGFD.

3. The FWS requested that proposed Chapter II, section 2(a)(i)(E)(I) also address threatened and endangered plants and invertebrates in accordance with the Endangered Species Act.

The Director finds that the commenter's concerns with respect to plants are adequately addressed in Wyoming's proposed Chapter II, section 2(a)(i)(B)(III). Also, the special fish and wildlife requirements for surface coal mining operations in Chapter II, section 3(a)(vi)(E) and section 3(b)(iv)(B)(I) pertain to information required for any State or Federally listed endangered or threatened plant or animal species, vertebrate or invertebrate.

4. The FWS suggested deleting the phrase "whenever practicable" in Wyoming's proposed Chapter II, section 2(b)(iii)(C) and adding the provision that the applicant should be required to consult with the WGFD in the preparation of the reclamation plan.

The Director believes that the FWS has misinterpreted this proposed rule. Previously, "whenever practicable" referred to consultation with the WGFD; it now refers to consideration of the State Conservation Commission standards for mine reclamation. The revised rule makes consultation with the WGFD on revegetation procedures in the permit application mandatory in all cases. The State rule is thus no less effective than the Federal regulations at 30 CFR 817.116(b)(3)(i) and 817.116(b)(3)(i). Regarding consultation with the WGFD during the preparation of reclamation plans, the Director notes that Wyoming requires such consultation whenever required by the Federal rules; consultation on every component is not necessary.

5. The FWS opposed the deletion of Chapter II, section 3(b)(xii)(B)(III)(8), which required that any proposed alternative postmining land use be approved only if State and Federal fish and wildlife agencies have approved a

mitigation plan for any adverse effects on fish or wildlife.

The Director notes that the Federal regulations at 30 CFR 816.133(c)(3) and 817.133(c)(3) do not contain such a requirement, although they, like the proposed Wyoming rules at Chapter II, section 3(b)(xii)(C)(IV)(4), do require that the land use changes not cause or contribute to a violation of Federal, State or local law. Wyoming's proposed revisions are no less effective than the Federal rules.

6. The FWS recommended that the highwall retention provisions for soft rock surface mining, as proposed by Wyoming at Chapter IV, section 2(b)(ii)(D), also be incorporated into the hard rock surface mining section, Chapter IV, section 2(b)(iii).

The Director finds that since SMCRA does not pertain to hard rock mining operations, OSMRE has no authority to require Wyoming to adopt such a provision. As a point of clarification, although Wyoming's definition of soft rock surface mining includes coal, highwall retention is not allowable for surface coal mining operations. As explained in Chapter IV, section 1, the provisions of Wyoming's Chapter IV, section 3 take precedence over Chapter IV, section 2.

7. The FWS states that Wyoming's proposed Chapter IV, section 2(d)(v), which revises the requirements for reclaiming areas with introduced, naturalized, or non-indigenous native plant species, should require the approval of WGFD when the approved postmining land use includes wildlife. Also, the FWS recommends that native species be utilized in all seed mixtures and that all use of aggressive introduced plant species, particularly crested wheatgrass, be discouraged.

The Director finds that the FWS's concerns are adequately addressed in Wyoming's proposed Chapter II, section 2(b)(iii)(C) which requires consultation with the WGFD regarding revegetation procedures for wildlife habitat, critical habitat, croplands, and erosion control techniques. Appendix A of the State rules also strongly discourages the use of crested wheatgrass for even temporary stabilization purposes.

8. With respect to Wyoming's proposed Chapter IV, section 2(f)(ii), which requires consultation with the WGFD prior to the approval of a diversion of a perennial or intermittent stream, the FWS commented that, in accordance with the Federal Fish and Wildlife Coordination Act, the FWS should also be consulted prior to the approval of a diversion or modification of any stream.

The Director recognizes that the Wyoming permanent program is deficient in that it does not clearly require coordination with applicable requirements of the Fish and Wildlife Coordination Act. By letter dated December 23, 1985, the Director required that Wyoming amend its program to correct this deficiency. No further action in this rulemaking is necessary since the language of the rule in question has not been altered.

9. The FWS opposed Wyoming's proposed addition at Chapter IV, section 2(j)(i) granting the Administrator discretion to approve roads constructed up a stream channel or so close that the material would spill into the channel, stating that at no time should such construction be allowed.

As discussed in Finding 3(q) of this notice, the Federal regulations corresponding to this proposed rule have been suspended, and the only standard of comparison is section 515(b)(18) of SMCRA, which requires that operators refrain from constructing roads up stream beds or drainage channels or in such proximity to such channels so as to seriously alter the normal flow of water. The Director finds that the provisions of Chapter IV, section 3 (j)(i)(D), (j)(ii)(B), and (j)(ii)(C)(IV), which take precedence over the provisions of section 2, will effectively preclude any abuse of the discretion granted to the Administrator in section 2(j)(i). Section 515(b)(18) of SMCRA does not require the absolute prohibition recommended by the FWS.

10. The FWS also objected to proposed Chapter IV, section 3(j)(ii)(B), which would prohibit stream fords unless they were specifically approved by the Administrator as temporary routes during construction periods. The FWS noted that the rule which the proposed version would replace allowed the Administrator to approve fords only as temporary routes across ephemeral or intermittent streams and then only if they would not adversely affect stream sedimentation or fish, wildlife or related environmental values.

The Director recognizes the FWS concerns; however, in the absence of any corresponding Federal rules (as discussed in his response to the preceding comment), he believes that the requirement of Chapter IV, section 3(j)(i)(C) that all operators use the best technology currently available to prevent damage to fish, wildlife and related environmental values in the location, construction, maintenance and reclamation of roads will afford a level of protection substantially equivalent to that provided by the former rule. Since paragraphs (b)(17) and (b)(18) of section 515 of SMCRA do not expressly regulate stream fords in a manner other than that specified by Wyoming at Chapter IV, section 3(j)(i)(C), the Director finds that the proposed Wyoming rules are no less stringent than the requirements of SMCRA.

11. The FWS stated that it opposes Wyoming's proposed shrub mosaic requirements at Chapter IV, section 3(d)(vi)(A) if shrub restoration is just a goal rather than a required standard like other revegetation success standards.

The Director interprets Wyoming's use of the term "goal" as equivalent in meaning to that of a required standard, and he is approving the proposed rule on that basis.

12. The FWS stated that the consultation provisions of proposed Chapter IV, section 3(p)(iii) should include the mechanism the Administrator will use to assure consultation with the FWS under the provisions of section 7 of the Endangered Species Act (ESA).

As discussed in the preamble to the revised Federal regulations at 30 CFR 816.97 (b) and (c) and 817.97 (b) and (c), the Director does not believe that the formal consultation requirements of section 7(a) of the ESA apply to State regulatory authorities. However, in recognition of its obligation under the ESA to use its authority to further the ESA's objectives, OSMRE has included a requirement that FWS consultation occur under certain circumstances (48 FR 30318–30320, June 30, 1983). While selection of the actual mechanism used is the discretion of the regulatory authority, OSMRE encourages Wyoming and the FWS to develop a memorandum of understanding on this subject. The FWS also stated that this consultation should occur as early in the permitting process as possible. The Director finds this comment to be misplaced since Chapter IV contains performance standards to be followed after permit issuance.

13. The FWS commented that wildlife should be inserted as a use in Wyoming's proposed Chapter IX, section 1(a)(ii)(C)(I) dealing with requirements for obtaining a variance from approximate original contour.

As explained in Finding 4 of this notice, the Director is disapproving this entire proposed rule for reasons unrelated to the FWS concern; hence, the comment is moot.

V. Director's Decision

The Director, based on the above findings, is approving the proposed amendments submitted by Wyoming on May 1, 1986, with the exception of those provisions determined to be inconsistent

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with SMCRA or the Federal regulations. For those amendments relating to issues currently under appeal on behalf of the Secretary with the U.S. Court of Appeals, the Director is taking no action at this time, pending decisions on the appeals. In addition, as indicated in the findings, he is requiring that Wyoming submit a number of further program amendments. The Director has notified Wyoming, pursuant to 30 CFR 732.17, that certain required program amendments will be necessary. The Federal rules at 30 CFR Part 950 are being amended to implement this decision. This final rule is being made effective retroactively to September 1, 1986, to coincide with the effective date of the regulations in Wyoming as specified by the amendment submitted on May 1, 1986.

The Director is disapproving the following provisions of the proposed amendments:

(1) As discussed in Finding 1(b), the phrases "run-of-the-mine" and "to separate the coal from its impurities" within the definition of "coal preparation plant" at Chapter I, section 2(m) of the regulations;

(2) As discussed in Finding 2(a), deletion of the phrase "observed within one (1) mile of the proposed permit area" at Chapter II, section 2(a)(i)(E)(I);

(3) As discussed in Finding 2(e), deletion of the requirement at Chapter II, section 3(a)(vi)(H)(II)(3) to collect baseline surface water data on acidity;

(4) As discussed in Finding 2(g), deletion of the locational data requirements for monitoring stations at Chapter II, section 3(a)(vi)(M);

(5) As discussed in Finding 2(i), addition of the phrase "where necessary due to stability concerns" in Chapter II, section 3(b)(xvi);

(6) As discussed in Finding 3(c)(v), replacement of the word "is" with the phrase "the vegetative cover and total ground cover are" in Chapter IV, section 2(d)(vi);

(7) As discussed in Finding 3(c)(vi), addition of the phrase "or an alternative success standard approved by the Administrator" to Chapter IV, section 2(d)(vi);

(8) As discussed in Finding 3(d), replacement of the word "access" with the phrase "constructed or upgraded" in the introductory paragraph of Chapter IV, section 2(j), and the entire introductory paragraph to the extent that it excludes certain existing roads from regulation without regard to the effect of mining use on the road;

(9) As discussed in Finding 3(e), addition of paragraph (F) to Chapter IV, section 2(l)(ii);

(10) As discussed in Finding 3(m), all revisions to Chapter IV, section 3(a)(ix) concerning cut-and-fill terraces;

(11) As discussed in Finding 4, addition of sections 1(a)(ii)(C), 2(c), and 3 to Chapter IX, which would have provided a general variance from the approximate original contour requirements; and

(12) As discussed in Finding 5, all revisions to Chapter XVII, which would have introduced a new enforcement scheme.

In addition, the Director is deferring action on the following provisions of the proposed amendments:

(1) As discussed in Finding 3(c)(iii), the maximum sample sizes prescribed by Appendix A of the LQD Rules and Regulations;

(2) As discussed in Finding 3(f), all revisions to the contemporaneous reclamation requirements of Chapter IV, section 3(a)(i);

(3) As discussed in Finding 3(l), deletion of the coal mine waste pile lift thickness and dry density requirements from Chapter IV, section 3(c)(ii); and

(4) As discussed in Finding 3(o), deletion of the highwall elmination requirement of Chapter IV, section 3(h)(iii)(A) and addition of highwall retention provisions at Chapter IV, section 3(h)(iii)(B).

Effect of Director's Decision

Section 503 of SMCRA establishes that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, the Secretary's regulations at 30 CFR 732.17(a) require that any alteration of an approved State program must be submitted to OSMRE as a program amendment. Thus any changes to the program are not enforceable by the State until approved by the Director. The Federal regulations at 30 CFR 732.17(g) clearly prohibit any unilateral changes to approved State programs. In his oversight of the Wyoming program, the Director will recognize only the statutes and regulations approved by him, and will require the enforcement by Wyoming of only such provisions.

VI. Procedural Requirements

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that, for purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), this rule will not have a significant economic effect on a substantial number of small entities. This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 950

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: November 18, 1986.

Arthur W. Abbs,

Acting Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

PART 950—WYOMING

30 CFR Part 950 is amended as follows:

1. The authority citation for Part 950 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 950.10(a) is revised to read as follows:

§ 950.10 State regulatory program approval.

* * * * *

(a) Office of Surface Mining Reclamation and Enforcement, Administrative Record, 1100 "L" Street NW., Room 5315, Washington, DC 20240, Telephone: (202) 343–5492.

* * * * *

3. Section 950.12 is added to read as follows:

§ 950.12 State program provisions and amendments disapproved.

(a) The following provisions of the Rules and Regulations of the Land Quality Division of the Wyoming Department of Environmental Quality, as submitted on May 1, 1986, are hereby disapproved:

(1) The phrases "run-of-the-mine" and "to separate the coal from its impurities" within the definition of "coal preparation plant" at Chapter I, section 2(m);

(2) Deletion of the phrase "observed within one (1) mile of the proposed permit area" at Chapter II, section 2(a)(i)(E)(I);

(3) Deletion of the requirement at Chapter II, section 3(a)(vi)(H)(II)(3) to collect baseline surface water data on acidity;

(4) Deletion of the locational data requirements for monitoring stations at Chapter II, section 3(a)(vi)(M);

(5) Addition to the phrase "where necessary due to stability concerns" in Chapter II, section 3(b)(xvi);

(6) Replacement of the word "is" with the phrase "the vegetative cover and total ground cover are" in Chapter IV, section 2(d)(vi);

(7) Addition of the phrase "or an alternative success standard approved by the Administrator" to Chapter IV, section 2(d)(vi);

(8) Replacement of the word "access" with the phrase "constructed or upgraded" in the introductory paragraph of Chapter IV, section 2(j), and the entire introductory paragraph to the extent that it excludes certain existing roads from regulation without regard to the effect of mining use on the road;

(9) Addition of paragraph (F) to Chapter IV, section 2(l)(ii) concerning interim mine stabilization for surface coal mining operations;

(10) All revisions to Chapter IV, section 3(a)(ix) concerning cut-and-fill terraces;

(11) Addition of section 1(a)(ii)(C), section 2(c), and section 3 to Chapter IX, which would have provided a general variance from the approximate original requirements; and

(12) All revisions to Chapter XVII, which would have introduced a new enforcement scheme.

(b) [Reserved]

4. A new paragraph (i) is added to § 950.15 to read as follows:

§ 950.15 Approval of regulatory program amendments.

* * * * *

(i) The following amendments to the Wyoming permanent regulatory program, as submitted to OSMRE on May 1, 1986, are approved effective November 24, 1986 with the exceptions identified herein or in § 950.12:

(1) Modifications to Chapters I, II, III, IV, IX, XII, XXIII and XIV of the Rules and Regulations of the Wyoming Department of Environmental Quality, Land Quality Division, concerning definitions, permit application requirements, performance standards, variances, the small operator assistance program, permit revisions, and permit approval requirements. However, no action is currently being taken on the following proposed amendments:

(i) All revisions to the contemporaneous reclamation requirements of Chapter IV, section 3(a)(i);

(ii) Deletion of the coal mine waste pile lift thickness and dry density requirements from Chapter IV, section 3(c)(ii), and

(iii) Deletion of the highwall elimination requirement of Chapter IV, section 3(h)(iii)(A) and addition of highwall retention provisions at Chapter IV, section 3(h)(iii)(B).

(2) Replacement of Guideline 2 with Appendix A, "Vegetation Sampling Methods and Reclamation Success Standards for Surface Coal Mining Operations," of the Rules and Regulations of the Wyoming Department of Environmental Quality, Land Quality Division, with the exception of the maximum sample sizes specified therein in Part IV.D.

5. Paragraphs (e) through (q) are added to 30 CFR 950.16 to read as follows:

§ 950.16 Required program amendments.

* * * * *

(e) By June 30, 1987, Wyoming shall submit revisions to the definition of "applicant" at Chapter I, section 2(f) of the LQD rules to include persons requesting approval of coal exploration, or otherwise propose to amend its program to be no less effective than the Federal rules.

(f) By June 30, 1987, Wyoming shall submit rules requiring the name, address, and telephone number of the operator if different from the applicant, or otherwise propose to amend its program in a manner no less effective than 30 CFR 778.13(b).

(g) By June 30, 1987, Wyoming shall submit revisions to the LQD rules at Chapter II, section 3(a)(vi)(B) or otherwise propose to amend its program to provide that the Administrator may waive the requirement for test borings or core samples only if he determines the collection and analysis of such data is unnecessary because other equivalent information is available to him in a satisfactory form.

(h) By June 30, 1987, Wyoming shall submit revisions of the LQD rules at Chapter II section 3(a)(vi)(J)(II) or otherwise propose to amend its program to provide that the groundwater quality description in a permit application must include pH.

(i) By June 30, 1987, Wyoming shall submit revisions to the LQD rules at Chapter II section 3(b)(ix)(D) or otherwise propose to amend its program to specify the minimum groundwater quality parameters that must be monitored.

(j) By June 30, 1987, Wyoming shall submit revisions to the LQD rules at Chapter IV section 2(c)(iii)(A) or otherwise propose to amend its program to require that an operator proposing the use of a topsoil substitute or supplement demonstrate that the resulting soil medium would be equal to or more suitable for sustaining vegetation than the existing topsoil, and that it would be the best available in the permit area to support vegetation.

(k) By June 30, 1987, Wyoming shall submit revisions to Part II.C.l.a of Appendix A of the LQD rules or otherwise propose to amend its program to include some other mechanism to check or confirm ocular quadrat estimates of ground cover to ensure the collection of consistent, objective data.

(l) By June 30, 1987, Wyoming shall submit revisions to Appendix A of the LQD rules or otherwise propose to amend its program to specify the sampling techniques which operators will be allowed to use to evaluate the parameters of ground cover, production and stocking.

(m) By June 30, 1987, Wyoming shall submit revisions to Part VIII.D of Appendix A of the LQD rules or otherwise propose to amend its program to clarify that operators must meet cropland success standards during at least the last two consecutive crop years of the responsibility period.

(n) By June 30, 1987, Wyoming shall submit revisions to the LQD rules at Chapter IV, section 3(a)(iv)(C) or otherwise propose to amend its program to require that, prior to placement of spoil outside the mined-out area, (1) all vegetative and organic material be removed from the area, (2) the topsoil on the area be removed, segregated, and stored or redistributed, and (3) the spoil be backfilled and graded in accordance with permanent program performance standards.

(o) By June 30, 1987, Wyoming shall submit revisions to the LQD rules at Chapter IV section 3(c)(i) or otherwise propose to amend its program to require that, where excess spoil fills are to be placed on slopes greater than 20 degrees, keyway cuts or rock toe buttresses shall be constructed to ensure the stability of the fill.

(p) By June 30, 1987, Wyoming shall submit revisions to the LQD rules at Chapter IV section 3(h)(iii)(F) or

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otherwise propose to amend its program to require that:

(1) All impoundments be examined at least quarterly for appearances of structural weakness and other hazardous conditions;

(2) All impoundments be inspected by a qualified registered professional engineer, or other qualified professional specialist under the engineer's direction, regularly during construction, upon completion of construction and at least annually until removal of the structure or release of the performance bond; and

(3) Each inspection report be certified by the engineer that the impoundment has been constructed and maintained as designed and in accordance with the approved plan and Chapter IV.

(q) By June 30, 1987, Wyoming shall submit revisions to the LQD rules at Chapter IV section 3(p)(i)(E) or otherwise propose to amend its program to require that, after an operator notifies the Administrator of the presence of an endangered or threatened species or bald or golden eagle nest, the Administrator must then consult with the U.S. Fish and Wildlife Service and, where appropriate, the Wyoming Fish and Game Department, to identify whether, and under what conditions, the operator may then proceed.

[FR Doc. 86-26431 Filed 11-21-86; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Honolulu Regulation 86-08]

Security Zone Regulations; Tinian, Commonwealth of Northern Marianas Islands

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a security zone around US Maritime Preposition Ships which will be moored at Mooring A located at 14°58'57.0" N, 145°35'40.8" E. and Mooring B located at 14°58'15.9" N, 145°35' 54.8" E. in the Pacific Ocean off Tinian, Northern Marianas Islands. The nearly rectangular-shaped security zone will be in effect at all times while one, or more, of the Maritime Preposition Ships is in the zone or moored at Moorings A or B. Additionally, a 50-yard security zone will remain in effect in all directions around Moorings A and B when no vessels are moored thereto. The zone is needed to safeguard Maritime Preposition Ships against destruction from sabotage or other causes of similar nature. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation becomes effective on November 14, 1986. Comments on this regulation must be received on or before January 30, 1987.

ADDRESS: Comments should be mailed to Commander, US Coast Guard Marianas Section, Box 176, FPO San Francisco 96630-5000. The comments will be available for inspection and copying at the Coast Guard Marine Safety Department of the Marianas Section Office in the Government of Guam Commercial Port Building. Normal office hours are between 7:30 a.m. and 3:30 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Commander J.M. MacDonald, (671) 339-6100, US Coast Guard Marianas Section Office, Guam.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Following normal rulemaking procedures would have been impractical and contrary to the public interest. The request for this regulation was not received until October 28, 1986 and there was not sufficient time remaining to publish a proposal in advance of the event for which the regulation is needed. Likewise, there was not sufficient time to provide for a delayed effective date. Immediate action is needed to prevent injury or damage to persons and equipment incident to the mooring of the first Maritime Preposition Ships in the port. Further, as a military affairs function of the United States, this regulation is exempt from the requirements of 5 U.S.C. 553, including the requirements for a notice of proposed rulemaking. Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "address" in the preamble. Commenters should include their names and addresses, identify the docket number for the regulation, and give reasons for their comments. Based upon comments received, the regulation may be changed.

Drafting Information

The drafters of this regulation are Commander J.M. MacDonald, Project Officer, USCG Marianas Section Office, and Lieutenant Commander R.W. Bogue, Project Attorney, Fourteenth Coast Guard District Legal Office.

Discussion of the Regulation

The Navy has requested that a security zone be established. The incident requiring this regulation began on October 16, 1986 with the arrival at Tinian of the first of four Maritime Preposition Ships to be stationed in the Guam/Tinian area. Since Moorings A and B are Navy offshore moorings, and the zone is located in excess of 5000 feet from the entrance to main shipping channel for Tinian Harbor, there should be no adverse impact on harbor use due to this security zone. This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

Final Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5.

2. Section 165.1403 is added to read as follows:

§ 165.1403 Security Zone: Tinian, Commonwealth Northern Marianas Islands.

(a) *Location*. The following is designated as a Security Zone: The waters of the Pacific Ocean off Tinian between 14°59'04.9" N, 145°34'58.6" E to 14°59'20.1" N, 145°35'41.5" E to 14°59'09.8" N, 145°36'02.1" E to 14°57'49.3" N, 145°36'28.7" E to 14°57'29.1" N, 145°35'31.1" E and back to 14°59'04.9" N, 145°34'58.6" E. This zone is in effect when one, or more, of the Maritime Preposition Ships is in the zone or moored at Mooring A located at 14°58'57.0" N and 145°35'40.8" E or Mooring B located at 14°58'15.9" N, 145°35'54.8" E. Additionally, a 50-yard security zone will remain in effect in all directions around Moorings A and B when no vessels are moored thereto.

Note: All positions of latitude and longitude are from International Spheroid, Astro Pier 1944 (Saipan) Datum (DMA Chart 81071).

(b) *Regulations.* (1) In accordance with general regulations in § 165.33 of this part, entry into this Security Zone is prohibited unless authorized by the Captain of the Port.

Effective date: This regulation becomes effective on November 14, 1986.

Dated: November 14, 1986.

C.W. Gray,

Captain, U.S. Coast Guard, Captain of the Port, Honolulu, Hawaii.

[FR Doc. 86-26445 Filed 11-21-86; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-3116-4]

Approval and Promulgation of Implementation Plans; Vermont; Certification of No Facilities Subject to CEM Requirements

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is codifying at 40 CFR 52.2378 a certification that no facilities are located in the State of Vermont subject to the Continuous Emissions Monitoring (CEM) requirements of 40 CFR Part 51, Appendix P. The intended effect of this action is to codify this information submitted by the Vermont Agency of Environmental Conservation (AEC) in accordance with 40 CFR Part 51.19(e).

DATE: This action will be effective January 23, 1987, unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2312, JFK Federal Building, Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2313, JFK Federal Bldg., Boston, MA 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; Office of the Federal Register, 1100 L St., NW., Room 8301, Washington, DC, and Agency of Environmental Conservation, Air Pollution Control Division, Building 3 South, 103 South Main Street, Waterbury, VT 05676.

FOR FURTHER INFORMATION CONTACT: Lorenzo Thantu, (617) 565-3250; FTS 835-3250.

SUPPLEMENTARY INFORMATION: Forty CFR Part 51, under § 51.19(e), requires states to revise their State Implementation Plans (SIPs) to include CEM requirements for certain stationary source categories. The applicability criteria for identifying subject facilities are provided in 40 CFR Part 51, Appendix P.

40 CFR Part 51, Appendix P identifies the types of facilities subject to these requirements and states the minimum requirements for continuous emission monitoring, recording, and reporting. When a state does not have any facilities subject to 40 CFR Part 51, Appendix P within its boundaries, EPA requires that a negative declaration be submitted to fulfill the requirements of 40 CFR 51.19(e).

On June 6, 1986, the Vermont AEC submitted a negative declaration to EPA which certifies that there are no facilities subject under the applicability criteria of the CEM requirements of 40 CFR Part 51, Appendix P. By submitting this negative declaration letter, the AEC has fulfilled its responsibility under 40 CFR 51.19(e).

In the event that a new facility is proposed for location in the State of Vermont at some future date, CEM would be required under either the provisions of the applicable New Source Performance Standard or Vermont Air Pollution Control Regulation 5-405, Required Air Monitoring.

EPA is codifying this information without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective January 23, 1987.

Final Action: EPA is codifying at 40 CFR 52.2378 that no facilities subject to the CEM requirements of 40 CFR Part 51, Appendix P are located within the boundaries of the State of Vermont. The Vermont AEC submitted this negative declaration to fulfill the requirements of 40 CFR 51.19(e).

Under 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 23, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, and Reporting and Recordkeeping requirements.

Dated: November 7, 1986.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart UU—Vermont

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Subpart UU is amended by adding § 52.2378 to read as follows:

§ 52.2378 Certification of no facilities.

On June 6, 1986, the Vermont Agency of Environmental Conservation submitted a letter certifying that there are no facilities within the State's boundaries subject to the Continuous Emissions Monitoring requirements of 40 CFR Part 51, Appendix P. This negative declaration was submitted to EPA in accordance with 40 CFR 51.19(e).

[FR Doc. 86-26282 Filed 11-21-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-5-FRL-3110-5]

Approval and Promulgation of Implementation Plans; Illinois, Indiana, Michigan, Ohio, and Wisconsin

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

VOL 51
ISS 226
NO 24
1986
UMI

SUMMARY: The USEPA is approving "negative declarations" from the States of Illinois, Indiana, Michigan, Ohio, and Wisconsin for certain sources of volatile organic compounds (VOC). These sources are synthetic organic chemical manufacturing industry (SOCMI) leaks, SOCMI air oxidation, natural gas/gasoline processing leaks, emissions from the manufacture of high density polyethylene, polypropylene, and polystyrene resins, and petroleum dry cleaning emissions.

Section 172 of the Clean Air Act requires that each State with an ozone extension area develop reasonably available control technology (RACT) emission limits for certain VOC sources within the extension area. The VOC sources that have to be addressed are those covered under the Control Techniques Guidelines (CTG's) issued by USEPA. If USEPA issues a CTG for which the State has no sources, the State can submit a "negative declaration." Approval of the "negative declaration" by USEPA exempts that State from developing a control plan for VOC sources in that CTG category.

DATE: This action will be effective January 23, 1987 unless notice is received within 30 days from publication that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the States' submittals and other materials related to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Colleen W. Comerford, at (312) 886-6034, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604
U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington DC 20460
Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706
Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206
Michigan Department of Natural Resources, Air Quality Division, 7150 Harris Drive, Lansing, Michigan 48909
Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216
Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707
Office of the Federal Register, Room 8301, 1100 L Street NW., Washington, DC

Written comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine McMahan, (312) 886-6031.

SUPPLEMENTARY INFORMATION:

Background

Section 172 of the Clean Air Act allows USEPA to grant extensions to those States that could not demonstrate attainment of the ozone standard by December 31, 1982, if certain conditions were met by the State in revising its air pollution control program. The revised programs had to include additional RACT emission limits for various types of VOC sources located in the areas needing the extension.

Since the States of Illinois, Indiana, Michigan Ohio, and Wisconsin could not demonstrate attainment of the ozone NAAQS by the required date of December 31, 1982, the States requested, and received, extensions to December 31, 1987. The extensions obligated the States to develop RACT regulations for those sources addressed by Group III CTG's (RACT III), and to develop RACT regulations for major sources not addressed by a CTG (major non-CTG RACT), for VOC sources in their respective ozone nonattainment areas.

During 1983 and 1984, several Group III CTG's were published in the **Federal Register**. They addressed the following sources:

Source	Publication date	Federal Register cite	Date regulations due from States to USEPA
1. Emissions from large petroleum dry cleaners	Oct. 6, 1982	47 FR 44155	Jan. 1, 1984.
2. Emissions from manufacture of high-density polyethylene, polypropylene, and polystyrene resins.	Nov. 14, 1983	48 FR 51849	Jan. 1, 1985.
3. Natural gas/gasoline processing plants leaks	Feb. 6, 1984	49 FR 4432	Jan. 1, 1986.
4. Synthetic organic chemical polymer and resin manufacturing leaks (SOCMI leaks).	Apr. 10, 1984	49 FR 14181	Do.
5. Synthetic organic chemical polymer and resin manufacturing air oxidation (SOCMI oxidation).	Dec. 28, 1984	49 FR 50442	Do.

Negative Declarations

In response to the publication of the CTG's listed above, five of the States located in Region V submitted letters stating that they had no sources in one or more of the specified CTG categories. The States of Illinois, Indiana, Michigan, Ohio, and Wisconsin all submitted negative declarations. The table below indicates, by State, the CTG categories for which USEPA has received a negative declaration and the date of the declaration.

State	Resin emissions	Natural gas leaks	SOCMI leaks	SOCMI oxidation	Dry cleaners
Illinois	X (6/16/86) [2]	X (11/14/85)			
Indiana	X (4/14/86)	X (3/24/86)	X (3/24/86)	X (3/24/86)	X (4/14/86)
Michigan	X (5/17/85) [1]			X (8/12/85)	X (10/10/85)
Ohio	X (4/9/86) [2]	X (4/9/86)			
Wisconsin	X (9/19/84)	X (6/6/85)	X (11/7/84)	X (11/7/84)	

[1] The State of Michigan plans to submit a statewide polystyrene rule sometime in 1986. This rule will apply to one source, Dow Chemical, which is not located in the Michigan extension area.

[2] The States of Ohio and Illinois submitted negative declarations for polyethylene and polypropylene, but not polystyrene resins. Both States are in the process of developing regulations for polystyrene resin manufacturers.

USEPA has reviewed the available source and emissions data for each of the extension areas in question, and has determined that the negative declarations from the five States are acceptable.

Conclusion

USEPA has concluded that the negative declarations submitted by Illinois, Indiana, Michigan, Ohio and Wisconsin are acceptable. A review of the available source and emissions data indicates that there are no major sources in the categories for which the States have submitted negative declarations. Therefore, USEPA is approving these submittals. This action exempts the States from developing a plan for control of VOC emissions from those source categories for which they have no sources.

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on January 23, 1987. However, if we receive notice by December 24, 1986 that someone wishes to submit critical comments, *then* USEPA will publish: (1) A notice that withdraws the action; and, (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period. USEPA will only do this for those States for which it receives comments and not for all five States.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 23, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Ozone, Hydrocarbons, Intergovernmental relations.

Note.—Incorporation by reference of the State Implementation Plan for the States of Illinois, Indiana, Michigan, Ohio, and Wisconsin was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 29, 1986.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Illinois, Indiana, Michigan, Ohio, and Wisconsin

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(55) as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(55) On November 14, 1985, the State of Illinois submitted a negative declaration for natural gas/gasoline processing plants.

(i) Incorporation by reference.

(A) Letter dated November 14, 1985, from Michael J. Hayes, Manager, Division of Air Pollution Control, Illinois Environmental Protection Agency.

* * * * *

Subpart P—Indiana

3. Section 52.770 is amended by adding paragraph (c)(59) as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(59) On March 24, 1986, the State of Indiana submitted a negative declaration for synthetic organic chemical manufacturing industry (SOCMI) source leaks and oxidation, and for natural gas/gasoline processing plants. On April 14, 1986, the State of Indiana submitted a negative declaration for manufacturers of high-density polyethylene, polypropylene, and polystyrene resins, and for large petroleum dry cleaners.

(i) Incorporation by reference.

(A) Letter dated March 24, 1986, from Harry D. Williams, Director, Air Pollution Control Division, Indiana State Board of Health. Letter dated April 14, 1986, from Walter J. Kulakowski, Assistant Commissioner for Air Management, Department of Environmental Management.

* * * * *

Subpart X—Michigan

4. Section 52.1170 is amended by adding paragraph (c)(82) as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(82) The State of Michigan submitted negative declarations for several volatile organic compound source categories, as follows:

October 10, 1983—Large petroleum dry cleaners;
May 17, 1985—High-density polyethylene, polypropylene, and polystyrene resin manufacturers;
June 12, 1985—Synthetic organic chemical manufacturing industry sources (SOCMI) oxidation.

(i) Incorporation by reference.

(A) Letters dated October 10, 1983, May 17, 1985, and June 12, 1985, from Robert P. Miller, Chief, Air Quality Division, Michigan Department of Natural Resources. The letter dated June 12, 1985, includes pages 2–119 and 2–120 from the revised 1982 Air Quality Implementation Plan for Ozone and Carbon Monoxide in Southeast Michigan.

* * * * *

Subpart KK—Ohio

5. Section 52.1870 is amended by adding paragraph (c)(76) as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(76) On April 9, 1986, the State of Ohio submitted a negative declaration for natural gas/gasoline processing plants and manufacturers of high-density polyethylene and polypropylene resins.

(i) Incorporated by reference.

(A) Letter dated April 9, 1986, from Warren W. Tyler, Director, State of Ohio Environmental Protection Agency.

* * * * *

Subpart YY—Wisconsin

6. Section 52.2570 is amended by adding paragraph (c)(46) as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(46) The State of Wisconsin submitted negative declarations for several volatile organic compound source categories, as follows:

November 7, 1984—Synthetic organic chemical manufacturing industry sources (SOCMI) leaks and oxidation;
September 19, 1984—High-density polyethylene, polypropylene, and polystyrene resin manufacturers;
June 6, 1986—Natural gas/gasoline processing plants leaks.

(i) Incorporation by reference.

(A) Letters dated November 7, 1984, September 19, 1984, and June 6, 1985, from Donald F. Theiler, Director, Bureau of Air Management, Wisconsin Department of Natural Resources.

(ii) Additional information.

(A) Letter dated January 24, 1986, from PPG Industries, Inc., stating that they do not produce as an intermediate or final product any of the chemicals listed in 40 CFR Part 60, Subpart VV, § 60.489(a).

* * * * *

[FR Doc. 86–20418 Filed 11–21–86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-6-FRL-3117-6]

Approval and Promulgation of Implementation Plans; Texas Revision to the General Rules and Regulation VI for New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

VOL
51
ISS
226
NO
24
1986
UMI

SUMMARY: This notice approves revisions to the Texas State Implementation Plan (SIP) pertaining to new source review (NSR) for nonattainment areas. Specifically, the State revised the General Rules, and Regulation VI of the Texas Air Control Board (TACB) Regulations. The approval is based on the review of revisions which were adopted by the Board on September 20, 1985, and submitted to EPA by the Governor on December 13, 1985.

DATES: This action will be effective January 23, 1987 unless notice is received within 30 days from publication that adverse or critical comments will be submitted.

ADDRESSES: Copies of the incorporation by reference materials may be examined during normal business hours at the following locations:

EPA, Region 6, Air Programs Branch, 1201 Elm Street, Dallas, Texas 75270
Texas Air Control Board, 6330 Hwy. 290 East, Austin, Texas 78723
Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460
The Office of the Federal Register, 1100 L Street NW., Rm 8301, Washington, DC

FOR FURTHER INFORMATION CONTACT: Ross Fanning, SIP/New Source Section, Air Programs Branch, EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270, (214) 767–1518. Reference Docket File Number TX–86–03.

SUPPLEMENTARY INFORMATION: On September 20, 1985, after adequate public hearing, the TACB adopted revisions to the General Rules and to Regulation VI. These revisions were submitted to EPA by the Governor on December 13, 1985.

The revision to the General Rules consisted of the addition of a qualifying statement to the definition of "major facility/stationary source." The amendment clarifies the intent of the definition, and specifies that it is applicable in nonattainment areas.

Section 116.11 of Regulation VI was revised to provide for a different schedule for permit fee calculation. The maximum project cost for fee calculation was increased, as was the maximum fee to be paid.

The amendments to the General Rules and Regulation VI were reviewed against the requirements of the Federal Clean Air Act and 40 CFR 51.18. They are at least as stringent as all applicable requirements.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective January 23, 1987.

Final Action

By this notice, EPA is approving revisions to TACB General Rules and Regulation VI. Specifically, EPA approves amendments to the definition of "major facility/stationary source" and § 116.11 of Regulation VI as adopted by the Board on September 20, 1985.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 23, 1987. This action may not be challenged later in proceeding to enforce its requirements. [See 307(b)(2).]

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Ozone, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Note.—Incorporation by reference of the State Implementation Plan for the State of Texas was approved by the Director of the Federal Register on July 1, 1982.

Dated: October 31, 1986.

Lee M. Thomas,
Administrator.

PART 52—[AMENDED]

40 CFR Part 52 is amended as follows:

Subpart SS—Texas

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2270 is amended by adding paragraph (c)(63) as follows:

§ 52.270 Identification of plan.

* * * * *

(c) * * *

(63) Revisions to TACB Regulation VI and definitions in the General Rules were submitted by the Governor on December 13, 1985.

(i) Incorporation by reference. December 13, 1985 letter from the Governor to EPA, and Revisions adopted on September 20, 1985, include the following changes to Regulation VI and the General Rules. Revisions to § 116.11 were made, and § 101.1 of the General Rules was revised to include an amendment to the term "major facility/stationary source."

[FR Doc. 86–26419 Filed 11–21–86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-3-FRL-3105-9; Commonwealth of Virginia EPA Docket No. AM056VA]

Approval and Promulgation of Implementation Plans Approval of Revision to the Virginia State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice approves the Commonwealth of Virginia's request to repeal EPA's SIP revision approval of January 31, 1980, 45 FR 6942 (and all amendments thereto). This revision consisted of the construction permit and offset provisions for Hampton Roads Energy Company's (HREC) proposed refinery and terminal. This action includes the repeal of 40 CFR 52.2425 and 52.2426. This final rulemaking action would release the Virginia Department of Highways and Transportation (VDHT) from offset responsibilities and revoke the construction permit issued to HREC.

The emission offset affects four Air Quality Control Regions (AQCR) in Virginia. The repeal would permit the use of cutback asphalt throughout the State except for areas where Volatile Organic Compounds (VOC) emissions control regulations in the Virginia SIP continue to be applicable.

This action will have no effect in ozone non-attainment areas or attainment areas where restriction of cutback asphalt is regulated as part of the control strategy. Therefore, EPA is approving this revision to the Virginia SIP, as it conforms to the Clean Air Act, and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

EFFECTIVE DATES: This action is a Direct Final Rule and is effective January 23, 1987 unless notice is received by December 24, 1986 that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the SIP revision and the accompanying support documents are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Management Division
841 Chestnut Building, Philadelphia, PA 19107, Attn: Esther Steinberg (3AM11)

Commonwealth of Virginia, State Air Pollution Control Board, Room 801, Ninth Street Office Building, Richmond, Virginia 23219, Attn: W.W. Parks

SUPPLEMENTARY INFORMATION:

Background

On November 28, 1977, the Commonwealth of Virginia submitted to EPA, Region III a revision to the Virginia State Implementation Plan (SIP). The revision provided an offset of VOC emissions through a program of substitution of emulsion based asphalt for "cutback material" by the Virginia Department of Highways and Transportation (VDHT). The Commonwealth's submittal also included the original permit to construct the refinery, issued to the Hampton Roads Energy Company (HREC) on December 8, 1975, and the extension granted to HREC on October 5, 1977. The Commonwealth requested VOC offsets achieved through the asphalt substitution program and the October 5, 1977 permit to be made part of the Virginia SIP. Supplemental information was submitted on March 17, 1978, May 26, 1978, and August 9, 1978. This information included letters from the Commissioner of the VDHT and the Deputy Attorney General confirming the emission offset and its enforceability. The August 9 submittal also included a revised permit issued to HREC on August 8, 1978. On January 31, 1980, 45 FR 6942, EPA granted approval of an offset provision to be part of the Virginia State Implementation Plan. (See 40 CFR Part 52.2420(c)(26)). An additional extention was granted by EPA on July 15, 1983 to HREC for a Permit to Construct.

On October 28, 1985, the Commonwealth submitted to EPA Region III a revision to the Virginia SIP. This revision consists of a repeal of the permit and emission offset for the Hampton Roads Energy Company's proposed refinery and terminal in Portsmouth, VA. The emission offset was supplied by Virginia Department of Highways and Transportation through the Asphalt Substitution Program. A Public Hearing was held on September 9, 1985 in accordance with the requirements of 40 CFR 51.4.

Under the emission offset provision no AQCR has taken credit for reduced VOC emissions as part of a Reasonable Further Progress (RFP) report. Also, the provision had no effect on the redesignation of Hampton Roads Interstate AQCR to attainment status, since the offset did not apply in the region. The repeal applies to state Regions V and VI and parts of III and IV. The action excludes those areas which have been designated by the State as areas requiring VOC RACT measures. Therefore, this action will have no effect in ozone non-attainment areas or attainment areas where restriction of cutback asphalt is regulated as part of the control strategy.

The emission offset repeal would apply to the following areas:

1. State Region III

Central Virginia Intrastate AQCR Counties: Amelia, Brunswick, Lunenburg, Mecklenburg, Nottoway.

2. State Region IV

Northeastern Virginia Intrastate AQCR Counties: Caroline, Essex, Gloucester, King and Queen, King George, King William, Lancaster, Mathews, Middlesex, Northampton, Northumberland, Richmond, Spotsylvania, Westmoreland.

3. State Region V

State Capital Intrastate AQCR Counties: Charles City, Dinwiddie, Goochland, Greensville, Hanover, Colonial Heights City, Emporia City, New Kent, Powhatan, Prince George, Surry, Sussex, Hopewell City, Petersburg City.

4. State Region VI

Hampton Roads Intrastate AQCR Counties: Isle of Wight, Southampton, Franklin City.

The repeal will void the provisions of 40 CFR 52.2425 and 52.2426. These provisions were granted so as to allow HREC to construct a refinery and terminal without adverse impact on ozone standards in the Portsmouth area. The control strategy involved an emission offset through the use of an emulsion base asphalt for the VDHT. Because of HREC withdrawal of the Permit to Construct, the need for an offset is no longer warranted.

EPA Final Action

EPA has reviewed this request in accordance with its own ozone policy, 40 CFR Part 51, and section 110 of the Clean Air Act, and is today approving this SIP revision. Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709). The Office of Management and Budget has exempted this rule form the requirement of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 23, 1987. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Intergovernmental cooperation.

Dated: October 17, 1986.

Lee M. Thomas,
Administrator.

Part 52 of Chapter I, Title 40, 40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

Subpart VV—Virginia

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2420 is amended by adding paragraph (c)(88) as follows:

§ 52.2420 Identification of plan.

* * * * * * *

(c) * * *

(88) The repeal of § 52.2420(c)(26) pertaining to a permit and emission offset for the Hampton Roads Energy Company's proposed refinery and terminal in Portsmouth, Virgina.

§§ 52.2425 and 52.2426 [Amended]

3. Sections 52.2425 and 52.2426 are removed and reserved.

[FR Doc. 86–25104 Filed 11–21–86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-5-FRL-3116-2]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking.

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NO 24
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UMI

SUMMARY: The USEPA announces final approval of a revision to the Wisconsin State Implementation Plan (SIP) for sulfur dioxide (SO_2). The revision modifies certain SO_2 emission limits applicable in the Village of Brokaw, located in Marathon County, Wisconsin. USEPA's action is based on a SIP revision request that was submitted by the State of Wisconsin on February 17, 1983. A notice of proposed rulemaking on this revision appeared in the August 17, 1983 (48 FR 37232), **Federal Register**.

EFFECTIVE DATE: This final rulemaking becomes effective on December 24, 1986.

ADDRESSES: Copies of this SIP revision and other materials related to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Colleen W. Comerford, at (312) 886-6034, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Copies of this revision to the Wisconsin SIP are available for inspection at:

The Office of the Federal Register, 1100 L Street, NW., Room 8301, Washington, DC.

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460.

Wisconsin Department of Natural Resources, Bureau of Air Management (AIR/3), 101 South Webster, Madison, Wisconsin 53707.

FOR FURTHER INFORMATION CONTACT: Uylaine McMahan, (312) 886-6031.

SUPPLEMENTARY INFORMATION:

Background

On February 17, 1983, the Wisconsin Department of Natural Resources (WDNR) submitted a SIP revision request to USEPA. The revision pertains to the SO_2 portion of the Wisconsin SIP, as approved by USEPA on April 9, 1981 (46 FR 21165), and modifies the SO_2 reasonably available control technology (RACT) emission limits applicable in the Village of Brokaw, Marathon County, Wisconsin. The SIP revision pertains to only one source, Wausau Papers, Inc. (Wausau Papers). These modified limits are contained in section NR 154.12(4) of the Wisconsin Administrative Code. A public hearing on the revision was held in Wausau, Wisconsin, on July 1, 1982. The SIP revision, identified as Natural Resource Board Order A-9-82, was published in the Wisconsin Administrative Register in December 1982, and took effect in Wisconsin on January 1, 1983.

SO_2 SIP Revision Description

The revision to section NR 154.12(4) will modify the SIP in two ways. First, it will limit the maximum sulfur content in fuel oil burned in boilers at Wausau Papers to 1.0 percent by weight, where a stack of 160 feet (48.8 meters) or more in height is used. If a stack height of less than 160 feet is used, the maximum sulfur content remains at the current SIP limit of 0.22 percent by weight. Second, the revision will modify the process emission limit for Wausau Papers. The process emissions from individual units within the paper mill, specifically the Copeland recovery system, pulp papermill cooking acid plant, and pulp digester blow stack, when vented to a common stack of 160 feet or more, will be limited to a combined total of 228 pounds per hour. If these process emissions are not combined to a common stack of 160 feet or more, the individual process emission limitations contained in the current SIP must be met. These are as follows:

Copeland recovery system—113 lbs/hr
Pulp papermill acid plant—22 lbs/hr
Pulp digester blow stack—20 lbs/hr

To support this revision, the WDNR submitted a Technical Support Document with its SIP revision request. This document, together with the results of a USEPA air quality modeling analysis, demonstrates that the combined process emission limitation of 228 pounds per hour, with boilers burning 1.0 percent sulfur fuel oil, at a good engineering practice stack height of 160 feet, will attain the SO_2 ambient air quality standards. In addition, a stack test was conducted in December 1982 at Wausau Papers that showed compliance with the 228 pounds per hour emission limitation for combined process emissions.

Compliance with the combined process limitations is achieved through the use of a SO_2 scrubbing system. In the notice of proposed rulemaking (August 17, 1983; 48 FR 37232), USEPA strongly recommended continuous emission monitoring (CEM) on all SO_2 sources with scrubber systems, but did not make it a condition for approval. In a December 24, 1984, letter to the WDNR, USEPA renewed its recommendation. The WDNR responded that they believe the CEMs do not work adequately in wet acidic atmospheres and, therefore, considers CEMs an inappropriate compliance method for Wausau Papers. USEPA does not agree with this response, and continues to recommend that the WDNR include CEMs as part of Wausau Papers' compliance plan. USEPA recognizes the current compliance test method, a stack test using Reference Methods 2 and 6, Appendix A, 40 CFR Part 60, with results averaged over a 3-hour sampling period, per the underlying federally approved SIP.

Regulatory History

The Brokaw SO_2 SIP revision was submitted to USEPA on February 17, 1983. On March 14, 1983, the WDNR also requested that USEPA redesignate the corporate limits of Brokaw from primary and secondary nonattainment, to attainment for SO_2. USEPA proposed to approve these actions on August 17, 1983 (48 FR 37232) and October 13, 1983 (48 FR 46550), respectively. However, the approval of the redesignation was conditioned on the approval of the SIP revision, because approval of the SIP revision would indicate that the SIP strategy is sound, and that the air quality improvement could be attributed to enforceable emission reductions. This, in turn, would fulfill the USEPA requirement for redesignation that the emission reductions be actual and enforceable. The redesignation of Brokaw is being addressed in a separate notice of final rulemaking. Today's action pertains to the Brokaw SO_2 emission limitations only.

Prior to final rulemaking on the Brokaw SIP revision, USEPA's stack height regulations have been challenged in, and were eventually remanded by, the U.S. Circuit Court of Appeals for the District of Columbia Circuit. Consequently, on July 9, 1985 (50 FR 27892), USEPA promulated revisions to the stack height rules pursuant to Section 123 of the Clean Air Act, as amended. The Brokaw SIP revision was reviewed in light of the revised stack height rules, as well as subsequent guidance pertaining to the new rule. Wausau Papers has increased the stack heights of the boiler stack and the process stack to 160 feet (48.8 meters). Since there are no restrictions on stack height increases up to 213 feet (65 meters), the new actual stack height is fully creditable under USEPA's stack height rule. In addition, Wausau Papers has combined all boiler sources to vent to one stack of 160 feet (48.8 meters) and combined all process sources to vent to another stack of the same height. Combining stacks is allowed if plantwide SO_2 emissions do not exceed 5000 tons per year. Under this SIP revision, emissions from Wausau Papers will total approximately 2800 tons per year. Therefore, USEPA has determined that the stack height changes at Wausau Papers are allowable under USEPA's rule.

Conclusion

USEPA has reviewed this SIP revision and has determined that it meets the requirements of the Clean Air Act. On August 17, 1983 (48 FR 37232), USEPA published a notice proposing to approve this SIP revision in the **Federal Register**. No public comments were received on this action. Therefore, USEPA is taking final action to approve the revisions to section NR 154.12(4) of the Wisconsin Administrative Code, Brokaw RACT Sulfur Limitations, as a part of the Wisconsin SIP.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 23, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

List of Subjects in 40 CFR Part 52

Intergovernmental relations, Air pollution control, Incorporation by Reference, Sulfur oxides.

Note.—Incorporation by reference of the State Implementation Plan for the State of Wisconsin was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: September 29, 1986.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart YY—Wisconsin

Title 40 of the Code of Federal Regulations, Chapter I, Part 52 is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2570 is amended by adding new paragraph (c)(45) as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(45) Submittal from the State of Wisconsin, dated February 17, 1983, modifying the SO_2 emission limits applicable in the Village of Brokaw, Marathon County, Wisconsin.

(i) *Incorporation by reference.* (A) Letter from the Wisconsin Department of Natural Resources, dated February 17, 1983, and revised SO_2 emission limits for the Village of Brokaw, Marathon County, Wisconsin, which are contained in section NR 154.12(4) of the Wisconsin Administrative Code. The revisions consist of limiting the maximum sulfur content in fuel oil burned in boilers to 1.0 percent by weight, where a stack of 160 feet or more is used; limiting process emissions from the Copeland recovery system, pulp papermill cooking acid plant, and pulp digester blow stack to a combined total of 228 pounds of SO_2 per hour, when vented to a common stack of 160 feet of more. If a stack height of less than 160 feet is used, or if the process emissions are not vented to a common stack of 160 feet or more, then the emission limits approved by USEPA on April 9, 1981, must be met. See (c)(15). The emission limits were effective January 1, 1983.

[FR Doc. 86–26280 Filed 11–21–86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[A-5-FRL-3116-3]

Approval of Areas For Air Quality Planning Purposes; Attainment Status Designations; Wisconsin

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking.

SUMMARY: This final rulemaking action revises the Sulfur Dioxide (SO_2) attainment status designation for the corporate limits of the Village of Brokaw, from primary and secondary nonattainment to attainment. This revision is based on a redesignation request from the State of Wisconsin dated March 14, 1983, and on supporting technical data submitted by the State. USEPA proposed to approve the redesignation on October 13, 1983 (48 FR 46550). An attainment status designation can be changed if warranted by the available data, in accordance with the Clean Air Act and USEPA policy. In today's action, USEPA is approving the redesignation as requested by the State of Wisconsin.

EFFECTIVE DATE: This final rulemaking becomes effective on December 24, 1986.

ADDRESSES: Copies of the redesignation request, technical support document, and the supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V. Air and Radiation Branch (5AR-26), 230 S. Dearborn Street, Chicago, Illinois 60604

Wisconsin Department of Natural Resources, Bureau of Air Management (AIR/3), 101 South Webster, Madison, Wisconsin 53707

FOR FURTHER INFORMATION CONTACT: Uylaine McMahan, (312) 886–6031.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the Act, the Administrator of USEPA has promulgated a National Ambient Air Quality Standards (NAAOS) attainment status for each area of Wisconsin. On March 3, 1978 (43 FR 8962), the Village of Brokaw was designated primary and secondary nonattainment with respect to SO_2. These area designations may be revised whenever the available data warrant a revision, consistent with the policies discussed below.

USEPA's criteria for Section 107 redesignations are summarized in two policy memoranda: (1) An April 21, 1983, memorandum from Sheldon Meyers, then Director of the Office of Air Quality Planning and Standards, entitled "Section 107 Designation Policy Summary"; and (2) a December 23, 1983, memorandum from G.T. Helms, Chief of the Control Programs Operation Branch, entitled "Section 107 Designation Policy Summary"; and (2) a December 23, 1983, memorandum from G.T. Helms, Chief of the Control Programs Operation Branch, entitled "Section 107 Questions and Answers." In general, all available information relative to the attainment status of the area should be reviewed, including the most recent eight consecutive quarters of monitored ambient air quality data, evidence of an implemented control strategy, any available air quality modeling analyses, and source emissions data. It should also be determined whether the monitoring data accurately characterize the worst-case air quality in the area. Information submitted to support attainment redesignations must adequately and accurately reflect long-term source operating rates and local economic conditions in the area being redesignated.

According to the April 21, 1983, memorandum, an attainment designation can be changed using only the four most recent quarters of ambient air quality data, if: (1) An acceptable state-of-the-art modeling analysis is provided showing that the basic SIP strategy is sound; and (2) that actual, enforceable emission reductions are responsible for the recent air quality improvement.

As required by USEPA's April 21, 1983, memorandum, the WDNR, in support of its redesignation request for Brokaw, provided a modeling analysis and evidence of an implemented control strategy, in addition to four quarters of monitoring data showing attainment. The WDNR also submitted a revision to

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the SO_2 SIP for the Village of Brokaw to USEPA on February 17, 1983. This revision changed the SO_2 emission limits for Wausau Papers, Inc., which is located in the Village of Brokaw, Marathon County.[1]

The WDNR submitted a March 12, 1982, modeling analysis to USEPA as an addendum to the technical support document indicating that the revised Brokaw SO_2 limits, and the associated SO_2 emission reductions required by this SIP revision, would assure the attainment and maintenance of the SO_2 NAAQS. Wausau Papers was also certified by the State to be in compliance with the revised emission limits.

To document the predicted ambient air improvement, the WDNR submitted a total of four quarters of 1982 ambient air quality data showing no violations, from the one monitoring site operating in Brokaw during that year. In addition, monitoring data taken during 1983, 1984, and 1985 show no violations of the NAAQS. However, the monitoring data did show violations during 1980 and 1981, prior to the State giving Wausau Papers its revised limits. Therefore, the available modeling data submitted by the State indicate that the SO_2 emission reductions required by the SIP revision are responsible for this improvement in air quality.

USEPA proposed to approve the State's revised emission limits for Wausau Papers, Inc., as a revision to the SO_2 portion of the SIP on August 17, 1983 (48 FR 37232), based on the monitoring, modeling and compliance data submitted by the State. (These limits are being approved elsewhere in today's **Federal Register**.) USEPA proposed to approve the Brokaw SO_2 redesignation on October 13, 1983 (48 FR 46550) based on monitoring, modeling, and compliance data, as well as the August 17, 1983, proposed approval of the Brokaw SO_2 SIP revision. No comments on USEPA's proposed redesignation were received.

Conclusion

In today's rulemaking action, USEPA is approving the State's request to redesignate the corporate limits of Brokaw from primary and secondary non-attainment to attainment. USEPA is taking this action because the State has provided the following: evidence that the recent air quality improvement is a result of an implemented control strategy for the area (i.e., an approvable SIP revision for Wausau Papers, and certification of compliance); an acceptable modeling analysis indicating that the Village of Brokaw control strategy including the emission reductions required by the SIP revision for Wausau Papers, will assure the attainment and maintenance of the SO_2 NAAQS; and four quarters' of air quality data showing no violations during 1982. In addition, air quality data taken by the State during 1983, 1984, and 1985 show no violations of the NAAQS.

In the notice of proposed rulemaking (October 13, 1983; 48 FR 46550), USEPA stated that it would take action to finally approve the redesignation after it had approved the revised emission limitation for Wausau Papers, Inc. This sequence of events is necessary because the SIP revision is being used by the State as part of the technical support for the redesignation. USEPA has approved the SO_2 SIP revision for Wausau Papers elsewhere in today's **Federal Register**. Therefore, USEPA is approving the redesignation of Brokaw to attainment for SO_2.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 23, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

List of Subjects in 40 CFR Part 81

Intergovernmental relations, Air pollution control, National parks, Wilderness areas.

Dated: September 29, 1986.

Lee M. Thomas,

Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 81.350—Wisconsin, the attainment status designation table for SO_x is amended by revising the entry for Marathon County, to read as follows:

§ 81.350 Wisconsin.

* * * * *

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[1] The SIP revision modifies Section NR 154.12(4) of the Wisconsin Administrative Code in two ways: (1) It limits the percent sulfur burned in boilers to 1.0% by weight at Wausau Papers; and (2) it limits the combined process emissions from Wausau Papers to 228 lbs of SO_2/hour. Both limitations are based on the use of a stack height of 160 feet or more.

WISCONSIN—SO_x

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * *	*	*	*	*
AQCR 26				
Marathon County:				
Rothschild Sub-city area defined as follows:	X	X		
North: State Highway 29 from E bank of Wisconsin River E to Volkman Street.				
East: Volkman Street from State Highway 29 S to Lemke Avenue.				
South: Lemke Avenue Volkman Street W to Becker Avenue, Becker Avenue from Lemke Avenue W to Francis Street.				
Weston Avenue from Frances Street extended to E bank of Wisconsin River..				
West: E bank of Wisconsin River, Weston Avenue extended N to State Highway 29.				
Town of Rib Mountain, Sub-town area defined as follows.		X		
The NW ¼ of Section 23.				
The NW ¼ of Section 23.				
The NW ¼ of Section 25.				
Town of Weston, Sub-town area defined as follows.		X		
North: State Highway 29 from Volkman Street N to Jelinck Avenue E to Alderson Street.				
East: Alderson Street from Jelinck Avenue S to Weston Avenue.				
South: Weston Avenue from Alderson Street W to Volkman Street.				
West: Volkman Street from Weston Avenue N to State Highway 29.				
Remainder of Marathon County				X
* * *	*	*	*	*

[FR Doc. 86-26281 Filed 11-21-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 412 and 413

[BERC-420-FC]

Medicare Program; Fiscal Year 1987 Changes to the Inpatient Hospital Prospective Payment System

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This rule implements those portions of sections 9302 and 9303 of the Omnibus Budget Reconciliation Act of 1986 affecting fiscal year 1987 payments to prospective payment hospitals and hospitals excluded from the prospective payment system. The changes in the law affecting prospective payment hospitals concern the update factor; reductions in the standardized amounts to reflect differences in payment for outliers between urban and rural hospitals; revised rural referral center criteria; and reductions in payments for capital-related costs. For hospitals excluded from the prospective payment system, the changes affect the rate-of-increase limits (target amounts).

DATES:

Effective Date: This rule is effective October 1, 1986.

Comment Date: As discussed in section VI of this preamble, comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on January 23, 1987.

ADDRESS: Mail comments to the following address:

Health Care Financing Administration,
Department of Health and Human
Services, Attention: BERC-420-FC,
P.O. Box 26676, Baltimore, Maryland
21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey
Building, 200 Independence Ave. SW.,
Washington, DC, or

Room 132, East High Rise Building, 6325
Security Boulevard, Baltimore,
Maryland.

In commenting, please refer to file code BERC-420-FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave. SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT:

Bruce Oliver, (301) 597-1869 (Capital-related costs)

Linda Magno, (310) 594-9343 (Other matters)

SUPPLEMENTARY INFORMATION:

I. Background

A. Prospective Payment

On September 3, 1986 we published a final rule in the **Federal Register** (51 FR 31454) to implement the fourth and final year of the transition period of the prospective payment system. In that rule we set forth the methods, amounts, and factors for determining the Federal fiscal year (FY) 1987 prospective payment rates. We also established new target rate percentages for determining the rate-of-increase limits for FY 1987 for hospitals excluded from the prospective payment system.

In addition, we made the following changes:

- We recomputed the hospital market basket using data from a more recent base year and recalculated the weights of each of the components of the hospital market basket.
- We discussed several decisions and current provisions of the regulations in 42 CFR Parts 412 and 413 (the latter of which was formerly 42 CFR Part 405, Subpart D, which was redesignated on September 30, 1986 (51 FR 34790)).
- We also discussed comments and responses and made changes to the May 6, 1986 interim final rule (51 FR 16772), which implemented sections 9101 through 9105 and 9112 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272).

B. Capital Related Costs

The Social Security Amendments of 1983 (Pub. L. 98-21), which established the prospective payment system, excluded capital-related costs (including depreciation, leases and rentals, interest, and a return on equity capital for proprietary hospitals) from the definition of inpatient operating costs and provided that capital-related costs would continue to be paid for on a reasonable cost basis. This exclusion was to expire with cost reporting periods beginning on or after October 1, 1986, but was extended through cost reporting periods beginning before October 1, 1987, by the Urgent Supplemental Appropriations Act (Pub. L. 99-349). Regulations providing for payment of capital-related costs under the prospective payment system are located at §§ 412.113 and 413.64.

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II. Summary of New Legislation

On October 21, 1986, the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) was enacted. Portions of sections 9302 and 9303 of Pub. L. 99–509 made the following amendments, which concern Medicare payments to hospitals in FY 1987, to section 1886 of the Social Security Act (the Act). The changes under section 9302 of Pub. L. 99–509 are as follows:

- For discharges occurring on or after October 1, 1986 and before October 1, 1987, the Federal standardized amounts for prospective payment hospitals are increased by 1.15 percent.
- For cost reporting periods beginning on or after October 1, 1986 and before October 1, 1987, the hospital-specific rates are increased by 1.15 percent.
- For cost reporting periods beginning on or after October 1, 1986 and before October 1, 1987, the rate-of-increase limits for hospitals excluded from the prospective payment system are increased by 1.15 percent.
- For discharges occurring on or after October 1, 1986, each of the standardized amounts (national and regional, urban and rural) is reduced by a proportion, estimated by the Secretary, of total DRG payments represented by outlier payments in urban and rural areas, respectively.
- Rural referral center criteria are changed as follows:
  - —The regional case-mix index value is the median for urban hospitals in each region, excluding those hospitals with approved teaching programs; and
  - —The number of discharges is reduced to the lower of 5,000 discharges or the regional median number of discharges for urban hospitals.

In addition, hospitals that were classified as referral centers on October 21, 1986 (the date of enactment of Pub. L. 99–509) retain that status through cost reporting periods beginning before October 1, 1989.

Section 9303 of Pub. L. 99–509 reduces the amounts of payments for capital-related costs attributable to inpatient services of prospective payment hospitals otherwise determined to be reasonable under current law as follows:

- By 3.5 percent for payments attributable to portions of cost reporting periods occurring during FY 1987;
- By 7 percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during FY 1988; and
- By 10 percent for payments attributable to portions of cost reporting periods or discharges (as the case may be), occurring during FY 1989.

This section further provides that these reductions shall not apply to sole community hospitals as defined in section 1886(d)(5)(C)(ii) of the Act. Moreover, this section of the law provides that hospitals in Puerto Rico subject to the prospective payment system shall also be subject to the foregoing limitations for capital-related costs, but not before October 1, 1987.

III. Changes to the Prospective Payment System

A. Increase in the Prospective Payment Rates and Rate-of-Increase Limits

Section 9303(a)(1) of Pub. L. 99–509 amended section 1886(b)(3)(B)(i)(II) of the Act to provide that for FY 1987 the applicable increase is 1.15 percent. Therefore, for discharges occurring on or after October 1, 1986 and before October 1, 1987, the standardized amounts are increased by 1.15 percent, and for cost reporting periods beginning during FY 1987, the hospital-specific rates, and the target rate-of-increase limits for excluded hospitals and units are increased by 1.15 percent. We are revising §§ 412.63, 412.73, and 413.40 to implement these changes.

We also note that section 9302(a)(1) directs that, for FY 1988, the applicable percentage increase in the update factor is to be the increase in the hospital market basket minus two percentage points. However, because this provision applies to FY 1988, we are not making conforming changes in regulations text at this time.

B. Separate Outlier Offsets for Urban and Rural Hospitals

Section 1886(d)(5)(A) of the Act requires that, in addition to the basic prospective payment rates, payments must be made for discharges involving day outliers and may be made for cost outliers. Section 1886(d)(3)(B) of the Act correspondingly requires that the standardized amounts be reduced by the proportion of estimated total DRG payments attributable to estimated outlier payments. Furthermore, section 1886(d)(5)(A)(iv) of the Act further directs that outlier payments may not be less than five percent nor more than six percent of total payments projected to be made based on the prospective payment rates in any year. In the September 3, 1986 final rule, we set the outlier thresholds so as to result in estimated outlier payments equal to five percent of total prospective payments (that is, estimated outlier payments plus regular prospective payments per discharge, excluding indirect medical education payments and disproportionate share hospital payments) for FY 1987 (51 FR 31523).

Section 9302(b)(1) of Pub. L. 99–509 amended section 1886(d)(3)(B) of the Act by requiring that, effective with discharges occurring on or after October 1, 1986, each national and regional standardized amount be reduced for hospitals located in urban areas and for hospitals located in rural areas based on the estimated proportion of total DRG payments attributable to outlier payments for hospitals in urban areas and for hospitals in rural areas, respectively. Consequently, instead of the uniform five percent reduction factor applying equally to all the standardized amounts, there are now two separate reduction factors, one applicable to the urban national and regional standardized amounts and the other applicable to the rural national and regional standardized amounts. Rates for urban hospitals, which are projected to receive outlier payments in excess of five percent of total DRG payments, are reduced by that larger percentage (instead of by five percent) and therefore decrease. Rates for rural hospitals, which are projected to receive outlier payments of less than five percent of total DRG payments, are reduced by the lower percentage (instead of by five percent) and therefore increase.

In addition, section 9302(b)(3) of Pub. L. 99–509 requires that the separate outlier offset provisions in section 9302(b)(1) for urban and rural hosptials result in a reduction of the standardized amounts for outlier payments that is at the same level as if the provision had not been enacted. As further required by section 9302(b)(3) of Pub. L. 99–509, the outlier thresholds and standards for discharges in FY 1987 remain the same as those published in the September 3, 1986 final rule (51 FR 31523).

As discussed above, the law (section 9302(b)(1) of Pub. L. 99–509) requires that separate outlier reductions be applied to each of the urban and rural standardized amounts so as to reflect projected outlier experience for FY 1987 for urban hospitals and for rural hospitals, respectively. Given the requirements (section 9302(b)(3) of Pub. L. 99–509) that the rates incorporating these separate outlier adjustments result in the same level of total prospective payment system outlays as the rates with the previous uniformly applied five percent outlier adjustment, and that the outlier thresholds in effect on October 1, 1986 be maintained, we used an iterative simulation process to achieve the desired effect on payments.

Using the most current data available, that is, bills for FY 1985 discharges from hospitals currently subject to the prospective payment system received in HCFA through June 1986 (approximately 10 million discharges), we ran a baseline simulation using the PRICER program to price each case. Estimated payments were calculated using FY 1987 standardized amounts computed on the same basis as those published in the September 3, 1986 final rule (51 FR 31530), except that these rates were updated by 1.15 percent as prescribed by section 9302(a)(1) of Pub. L. 99–509 rather than by .5 percent (as announced in the September 3, 1986 final rule).

From this simulation we calculated the ratio of total outlier payments to total payments (including outliers). We computed separate outlier payment ratios for hospitals in urban areas and for hospitals in rural areas. In addition, we calculated the total operating payments under the prospective payment system that we estimate would have occurred in FY 1987 using standardized amounts that were reduced uniformly for outliers by five percent. This amount served as the aggregate prospective payment target that had to be maintained after the urban and rural standardized amounts were differentially adjusted for urban and rural outlier ratios, respectively.

The next step was to remove the effect of the five percent outlier adjustment from the FY 1987 standardized amounts and replace it with the outlier ratios for urban hospitals and rural hospitals as computed in the price simulation. However, these outlier ratios do not reflect our estimate of outlier payment ratios in FY 1987 because they are based on standardized payment amounts uniformly reduced by five percent. Therefore, further simulations were required to refine the outlier payment ratios used in computing the standardized amounts and to ensure that the total payment constraint was met.

We then used these revised rates to rerun the price simulation to refine the outlier payment ratios used to offset the standardized amounts in order to determine if aggregate payments based on these differentially adjusted rates equal the target payment amount computed in the baseline price simulation.

The entire simulation process was repeated until such time that the outlier ratios computed in the simulation and used to adjust the standardized rates resulted in total aggregate payments equal to the baseline target amount that represents our estimate of total prospective payment system payments for FY 1987 that would have been incurred had this provision not been implemented.

The outlier adjustment factors that replace the .95 uniform outlier adjustment (announced in the September 3, 1986 final rule), are as follows:

OUTLIER REDUCTION FACTORS

Urban	Rural
.94632	.97620

We are amending § 412.63(c)(3) to implement these changes.

C. Adjustments for Rural Referral Centers

Section 1886(d)(5)(C)(i) of the Act provides for exceptions and adjustments to the prospective payment amounts as the Secretary deems appropriate to take into account the special needs of regional and national referral centers. In order to qualify as a rural referral center under § 412.96(c), a hospital must meet two mandatory criteria (case-mix index and number of discharges) and at least one of three optional criteria (specialty composition of medical staff, source of inpatients, or volume of referrals), in addition to being located in a rural area.

Section 9302(d)(1) of Pub. L. 99–509 amended section 1886(d)(5)(C)(i) of the Act by providing that the—

- Regional case mix be equal to the median case mix for urban hospitals in each region, excluding hospitals with approved teaching programs; and
- Number of discharges criterion is at least 5,000 discharges per year or, if less, the median number of discharges for urban hospitals in the region in which the hospital is located, as published in the September 3, 1986 final rule (51 FR 31471).

Although the statutory language refers to the case mix of rural hospitals and of urban hospitals, excluding those with approved teaching programs, we believe that this provision was intended to refer to the case-mix index, since the case-mix index is the only objective measure we have of a hospital's case mix and the only measure that allows us to make comparisons across hospitals. Moreover, we believe this statutory change was intended to modify the particular numeric case-mix index standards published September 3, 1986 through a simple recalculation based on data already available to us rather than through restructuring the nature of the case mix criteria. Therefore, we have modified the case-mix index standards by recalculating the median case-mix index values for urban hospitals in each region, excluding from the calculation those hospitals with approved teaching programs.

To determine the case-mix index criteria, we are defining hospitals with approved teaching programs as those hospitals receiving an indirect medical education payment as provided in § 412.118. We believe that the criterion to qualify for such an adjustment (a hospital's ratio, for purposes of indirect medical education payments, of full-time equivalent interns and residents to the number of beds must be greater than zero) is appropriate in defining a hospital as having an approved teaching program. This definition of teaching hospitals is consistent with the definition that we have used in the annual studies of the impact of the prospective payment system as required by section 603(a)(2)(A) of Pub. L. 98–21, other reports to Congress (such as the Report on the Prospective Payment System for Hospitals in Areas Outside the 50 States and the District of Columbia), and regulatory impact analyses in previous prospective payment rules. Moreover, there is a statistically significant positive relationship between hospitals' teaching status, so defined, and their case-mix indexes. That is, teaching hospitals have higher case-mix indexes, on average, than nonteaching hospitals, all other things being equal.

Based on the foregoing, we excluded hospitals receiving indirect medical education payments from the calculation of the median case-mix index for each region. The revised regional case-mix index criteria for a hospital, based on its discharges subject to prospective payment occurring during Federal FY 1985, are as follows:

Region:

1	1.0749
2	1.0713
3	1.1124
4	1.0926
5	1.0827
6	1.1125
7	1.1009
8	1.1577
9	1.1566

Therefore, to meet the case-mix criterion for FY 1987, a hospital's case-mix index for Medicare discharges in FY 1985 must be at least equal to the above appropriate regional value or the national value (1.1275) published in the September 3, 1986 final rule (51 FR 31474).

These provisions are reflected in the amendments to §412.96(c).

In addition, section 9302(d)(2) of Pub. L. 99–509 extends referral center classification so that a hospital classified as a referral center under

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section 1886(d)(5)(C)(i) of the Act as of October 21, 1986 (the date of enactment of Pub. L. 99–509) continues to be classified as a referral center for cost reporting periods beginning on or after October 1, 1986, and before Octoberr 1, 1989. Because the extension of referral center classification does not affect the FY 1987 prospective payment rates, we are not amending § 412.96(f) at this time (although we will make the necessary conforming changes at a later time in another **Federal Register** document). Hospitals classified as referral centers as of October 21, 1986 retain that status through cost reporting periods beginning before October 1, 1989.

Section 9302(d)(3) of Pub. L. 99–509 requires that total payments to hospitals for inpatient hospital services not change (that is, neither increase nor decrease) as a result of the referral center provisions enacted in section 9302(d) (1) and (2) of Pub. L. 99–509. Therefore, because we estimate that the revised referral center criteria permit an additional 61 hospitals to qualify as rural referral centers, we are multiplying the adjusted standardized amounts for all hospitals by a budget neutrality factor of .99839 to ensure that total payments under section 1886 of the Act neither increase nor decrease as a result of the increase in payments to those rural referral centers.

D. Capital-Related Costs

Section 9303(a) of Pub. L. 99–509 amended section 1886(g) of the Act by adding a new paragraph (g)(3), which imposes reductions in the amounts otherwise payable with respect to all the capital-related costs of inpatient hospital services of hospitals subject to the prospective payment system. As described earlier, the reductions are expressed in percentages (three and one-half, seven and 10) to be applied to payments for portions of cost reporting periods (or, for FYs 1988 and 1989, discharges, as the case may be) occurring during each of Federal FYs 1987, 1988 and 1989, respectively.

The Conference Committee report directs that all capital costs (including return on equity capital payments for proprietary hospitals, and including continued exemption from offset of investment income earned on funded depreciation) be included in the base for calculating the reductions. Moreover, the Conference Committee expressed the intent that the reductions will be implemented on a pro rata monthly basis in situations where a hospital's cost reporting period overlaps two Federal fiscal years. (See H.R. Rep. 99–1012, 99th Cong., 2d. Sess., 281 (1986).)

The legislation provides an exemption for sole community hospitals (as defined in section 1886(d)(5)(C)(ii) of the Act) from the reductions in capital-related payments. The legislation also applies to Puerto Rico hospitals, which are scheduled to become subject to the prospective payment system in FY 1988, but not before October 1, 1987. Therefore, the 3.5 percent limitation for FY 1987 will not apply to Puerto Rico hospitals.

We are revising § 413.64(k) to implement these changes.

IV. Table

This section contains the table of adjusted standardized amounts referred to in this preamble. The amounts replace those amounts that were published in the September 3, 1986 final rule (51 FR 31530) and are effective with discharges occurring on or after October 1, 1986.

TABLE 1.—ADJUSTED STANDARDIZED AMOUNTS, LABOR/NONLABOR

Region	Urban		Rural	
	Labor related	Nonlabor related	Labor related	Nonlabor related
1. New England (CT, ME, MA, NH, RI, VT)	2239.54	829.06	2096.37	651.23
2. Middle Atlantic (PA, NJ, NY)	2063.82	803.47	2141.54	659.63
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	2198.97	747.32	1946.84	546.11
4. East North Central (IL, IN, MI, OH, WI)	2289.98	874.41	1982.80	614.47
5. East South Central (AL, KY, MS, TN)	2069.40	858.70	1927.56	509.06
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	2135.28	781.23	1804.23	527.18
7. West South Central (AR, LA, OK, TX)	2149.88	730.25	1813.85	509.28
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	2084.49	784.00	1786.08	571.47
9. Pacific (AK, CA, HI, OR, WA)	2045.36	900.80	1791.88	664.55
10. National	2158.76	811.55	1889.56	560.33

V. Regulatory Impact Analysis

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for a rule such as this that is likely to meet criteria for a "major rule". A major rule is one that will result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or any geographical regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We have determined that this rule, in itself, will not meet any of these criteria, because it merely conforms the text of the regulations to statutory amendments that are already in effect. It is those amendments to the statute, and not this rule, that impact upon the economy and the public. Therefore, a regulatory impact analysis is not required.

Section 9302(a)(1) of Pub. L. 99–509, which amended section 1886(b)(3), provides that for FY 1987 the applicable percentage increase for payments for both prospective payment and excluded hospitals is 1.15 percent. Section 9302(b) of Pub. L. 99–509, which amended section 1886(d)(3)(B) of the Act, directs the Secretary to compute separate outlier offsets to the urban standardized amounts and to the rural standardized amounts, and to adjust the standardized payment amounts to maintain the same total amont paid to hospitals under the prospective payment system. Also, section 9302(d) of Pub. L. 99–509, which amended section 1886(d)(5)(c)(i) of the Act, requires the Secretary to adjust the standardized amounts for the effects of revising the case-mix and discharge qualifying criteria for rural referral centers mandated by this section of the statute in order to maintain the same total amount paid to prospective payment hospitals. The enactment of all three provisions affects the prospective payment rates, and therefore requires us to compute and publish new rates. In addition to issuing new rates, we are also revising § 413.64 to conform it to section 9303 of Pub. L. 99–509, which provides that payments for capital-related costs made to prospective payment hospitals will be reduced by 3.5 percent effective for portions of hospital cost reporting periods occurring in FY 1987.

Although the changes to §§ 412.63 and 413.64 being announced in this document may result in a redistribution of benefits or a reduction in program expenditures that exceeds the $100 million threshold established under the Executive Order for performing a regulatory impact analysis, the changes to the regulations are merely for the purpose of conforming the text of the regulations to the explicit requirements of the statute.

Section 9302(d) of Pub. L. 99–509, which amended section 1886(d)(5)(C)(i) of the Act, revises the case-mix and discharge criteria that a hospital located in a rural area of the country and subject to the prospective payment system is required to meet in order to be designated a rural referral center. Hospitals that meet these criteria are paid for inpatient services furnished to Medicare patients on the basis of the higher urban standardized amounts rather than on the rural amounts. Although section 9302(d) of Pub. L. 99–509 afforts the Secretary greater interpretive latitude with respect to the implementation of this provision than the other provisions of law being implemented in this document, we do not believe that the economic effects of implementing this provision will exceed $100 million for FY 1987, or meet the other criteria for a major rule.

B. Regulatory Flexibility Act

We generally prepare and publish a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a regulation would not have a significant economic impact on a substantial number of small entities. However, section 601 of the RFA makes it clear that these requirements only apply when an agency is required to issue a rule under the notice-and-comment procedures of the Administrative Procedure Act (APA) (5 U.S.C 553).

As discussed below, the issuance of updated prospective payment rates is explicity excluded from APA requirements under section 9302(f) of Pub. L. 99–509. Further, the amendments to regulations being made in this rule, for the most part, are technical in nature, and merely conform our regulations to the statute. Thus, it is clear that these regulation changes in themselves would not result in any effects that would meet the threshold criterion of the RFA. Therefore, the RFA does not apply to this rule.

VI. Other Required Information

A. Waiver of Proposed Rulemaking

1. As noted above, section 9302(f) of Pub. L. 99–509 requires publication of new payment rates for prospective payment hospitals and new target rate-of-increase limits for hospitals excluded from the prospective payment system to be effective on October 1, 1986 without regard to the provisions of the APA.

As to amendments to the regulations themselves, we follow APA rulemaking procedures and ordinarily publish a notice of proposed rulemaking in the Federal Register for substantive rules to provide a period for public comment. However, as explained below, notice of proposed rulemaking is unnecessary, and we find good cause to waive the procedure.

2. The changes to the regulations we are publishing in this final rule under section 9302 of Pub. L. 99–509 (that is, the applicable percentage change, the outlier offsets to the standardized amounts for rural and urban hospitals, and most provisions concerning rural referral center criteria) are mandated by statute and require little interpretation.

These changes are necessary in order to explain how we derived these rates and to conform the regulations to the requirements of section 9302 of Pub. L. 99–509 so as to avoid the confusion that would result from retaining inconsistent provisions in the regulations. For these reasons, we find that proposed rulemaking is unnecessary in this case. Nonetheless, our decision conerning the definition of approved teaching programs for purposes of establishing rural referral center case-mix index criteria did require interpretation. Consequently, we are providing a 60-day period for public comment, and we will consider comments concerning that provision that we receive by the end of the comment period in determining whether changes to that policy are necessary.

Because of the large number of items of correspondence we normally receive concerning regulations, we cannot acknowledge or respond to the comments individually. However, as indicated above, if we decide that changes concerning our definition of approved teaching programs are necessary as a result of our consideration of timely comments, we will issue a final rule and respond to the comments in the preamble of that rule.

3. The amendments we are making to the regulations concerning the reductions in payments for capital-related costs are merely conforming changes required by a self-implementing provison of the law that was effective on October 1, 1986 (that is, section 9303(a) of Pub. L. 99–509). Accordingly, proposed rulemaking for these amendments is unnecessary, and we find good cause to waive the procedure.

B. Waiver of 30-Day Delay in Effective Date

We normally provide a delay of 30 days in the effective date of all final rules. However, section 9302(f) of Pub. L. 99–509 requires that we publish prospective payment rates and target rate-of-increase limits to be effective for discharges occurring and cost reporting periods beginning on or after October 1, 1986. In addition, the reductions in capital/related costs imposed under section 9303 of Pub. L. 99–509 are also effective on October 1, 1986.

The provisions of these final regulations conform to the clear direction provided in the law. For this reason, and also for purposes of placing the rates and regulations into operation as soon as possible, a delayed effective date is both impractical and unnecessary. Therefore, we find good cause to waive the usual 30-day delay.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511) requires that any information collection reuirements included in a regulatory document must be submitted to and approved by the Executive Office of Management and Budget (EOMB) before the public is required to comply with those requirements. The requirements of these regulations do not impose any information collection requirements that must be approved under the Paperwork Reduction Act. Therefore, they need not be reviewed by EOMB for that purpose.

List of Subjects

42 CFR Part 412

Health facilities, Medicare.

42 CFR Part 413

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Chapter IV is amended as set forth below:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Subchapter B—Medicare Programs

I. Part 412 is amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

A. The authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102, 1122, 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1320a-1, 1395hh, and 1395ww).

B. In Subpart D, § 412.63, the introductory text of paragraphs (c)(2) and (c)(3) is republished; paragraphs (c)(1) (c)(2)(iv), (c)(3)(i), and (c)(3)(iii) are revised; current paragraphs (e), (f), (g), and (h) are redesignated as paragraphs

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(g), (h), (i), and (j) respectively; a new paragraph (e) is added; a new paragraph (f) heading is added and the paragraph is reserved; newly redesignated paragraph (g)(1) is revised; newly redesignated paragraph (g)(4) is removed; and newly redesignated paragraph (j) is revised, to read as follows:

Subpart D—Basic Methodology for Determining Federal Prospective Payment Rates

§ 412.63 Federal rates for fiscal years after Federal fiscal year 1984.

* * * * *

(c) *Updating previous standardized amounts.*

(1) HCFA computes an average standardized amount for hospitals in urban areas and rural areas within the United States, and urban areas and rural areas within each region.

(2) Each of those amounts is equal to the respective adjusted average standardized amount computed for fiscal year 1984 under § 412.62(g)—

* * * * *

(iv) Adjusted for budget neutrality under paragraph (h) of this section.

(3) For fiscal year 1986 and thereafter. HCFA computes, for urban and rural hospitals in the United States and for urban and rural hospitals in each region, average standardized amount equal to the respective adjusted average standardized amounts computed for the previous fiscal year—

(i) Increased by the applicable percentage increase determined under paragraphs (d) through (g) of this section;

* * * * *

(iii) For discharges occurring on or after October 1, 1985 and before October 1, 1986, reduced by a proportion (estimated by HCFA) of the amount of payments based on the total amount of prospective payments that are additional payment amounts attributable to outlier cases under Subpart F of this part, and for discharges occurring on or after October 1, 1986, reduced by a proportion (estimated by HCFA) of the amount of payments that, based on the total amount of prospective payments for urban hospitals and the total amount of prospective payments for rural hospitals, are additional payments attributable to outlier cases in such hospitals under Subpart F of this part.

* * * * *

(e) *Applicable percentage change for fiscal year 1987.* The applicable percentage change for fiscal year 1987 is 1.15 percent.

(f) *Applicable percentage change for fiscal year 1988.* [Reserved]

(g) *Determining applicable percentage changes for fiscal year 1989 and following:*

(1) The Secretary determines for each fiscal year, beginning with fiscal year 1989, the applicable percentage change that applies for purposes of paragraph (c)(3) of this section as the applicable percentage increase for discharges in that fiscal year.

* * * * *

(j) *Adjusting for different area wage levels.* HCFA adjusts the proportion (as estimated by HCFA from time to time) of Federal rates computed under paragraph (i) of this section that are attributable to wages and labor-related costs for area differences in hospital wage levels by a factor (established by HCFA) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level.

C. In Subpart E, § 412.73, paragraph (c)(4) is revised; paragraph (c)(5) is redesignated as (c)(6), the paragraph heading is revised, and the paragraph text is removed and reserved; and a new paragraph (c)(5) heading is added and the paragraph is reserved, to read as follows:

Subpart E—Determination of Transition Period Payment Rates

§ 412.73 Determination of the hospital-specific rate.

* * * * *

(c) *Updating base-year costs.*

* * * * *

(4) *For Federal fiscal year 1987.* The amount determined under paragraph (c)(3)(ii) of this section is updated by 1.15 percent.

(5) *For Federal fiscal year 1988.* [Reserved]

(6) *For Federal fiscal years 1989 and following.* [Reserved]

* * * * *

D. In Subpart G, § 412.96, the title of paragraph (c) is revised, and paragraphs (c)(1) and (c)(2)(i) are revised to read as follows:

Subpart G—Special Treatment of Certain Facilities

§ 412.96 Special treatment: Referral centers.

* * * * *

(c) *Alternative criteria.* * * *

(1) *Case-mix index.* HCFA sets forth national and regional case-mix index values in each year's annual notice of prospective payment rates published under § 412.8(b). The methology HCFA uses to calculate these criteria is described in paragraph (g) of this section. The hospital's case-mix index for discharges (not including discharges from distinct part units excluded from the prospective payment system under Subpart B of this part) during the Federal fiscal year that ended one year prior to the beginning of the cost reporting period for which the hospital is seeking referral center status must be at least equal to—

(i) For hospitals applying for rural referral center status for cost reporting periods beginning on or after October 1, 1985 and before October 1, 1986, the national or regional case-mix index value; or

(ii) For hospitals applying for rural referral center status for cost reporting periods beginning on or after October 1, 1986, the national case-mix index value as established by HCFA or the median case-mix index value for urban hospitals located in each region. In calculating the median case-mix index for each region, HCFA excludes the case-mix indexes of hospitals receiving indirect medical education payments as provided in § 412.118.

(2) *Number of discharges.* (i) HCFA sets forth the national and regional numbers of discharges in each year's annual notice of prospective payment rates published under § 412.8(b). The methodology HCFA uses to calculate these criteria is described in paragraph (h) of this section. Except as provided in paragraph (c)(2)(ii) of this section for an osteopathic hospital, for the hospital's most recently completed cost reporting period, its number of discharges (not including discharges from distinct part units excluded from the prospective payment system under Subpart B of this part or from newborn units) is at least equal to—

(A) For hospitals applying for rural referral center status for cost reporting periods beginning on or after October 1, 1985 and before October 1, 1986, the number of discharges under either the national or regional criterion; or

(B) For hospitals applying for rural referral center status for cost reporting periods beginning on or after October 1, 1986, 5,000 discharges or, if less, the median number of discharges for urban hospitals located in each region.

* * * * *

II. Part 413 is amended as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

A. The authority citation for Part 413 continues to read as follows:

Authority: Sections 1102, 1122, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1320a-1, 1395f(b), 1395g, 1395l(a), 1395x(v), 1395hh, 1395rr, and 1395ww).

B. In Subpart C, § 413.40, the introductory text in paragraph (c)(3)(i) is republished; paragraph (c)(3)(i)(B) is revised; the text in paragraph (c)(3)(i)(C) is removed, the heading is revised and the paragraph is reserved; and a new paragraph (c)(3)(i)(D) is added to read as follows:

Subpart C—Limits on Cost Reimbursement

§ 413.40 Ceiling on rate of hospital costs increases.

* * * * *

(c) *Procedure for establishing the ceiling (target amount).*

* * * * *

(3) *Target rate percentage.* (i) The applicable target rate percentage is determined as follows:

* * * * *

(B) *Federal fiscal year 1987.* The applicable target rate percentage for cost reporting periods beginning on or after October 1, 1986 and before September 30, 1987 is 1.15 percent.

(C) *Federal fiscal year 1988.* [Reserved]

(D) *Federal fiscal years 1989 and following.* The applicable target rate percentage for cost reporting periods beginning during FY 1989 and in all fiscal years thereafter is determined using the methodology set forth in § 412.63(g)(1) through (g)(3) of this chapter.

* * * * *

C. In Subpart E, § 413.64, paragraph (k)(1)(iii) is revised and a new paragraph (k)(6) is added to read as follows:

Subpart E—Payments to Providers

§ 413.64 Payment to providers: Specific rules.

* * * * *

(k) *Prospective payments*—(1) *General rule.* * * *

(iii) *Other payments.* Medical education costs are reimbursed as described in § 413.85, and capital-related costs, except as provided in paragraph (k)(6) of this section, are reimbursed using Medicare principles of reimbursement.

* * * * *

(6) *Reduction to capital-related payments.*

(i) Except for sole community hospitals as defined in § 412.92 of this chapter, the amount of capital-related payments (including a return on equity capital as provided under § 413.157) is reduced by—

(A) Three and one-half percent for payments attributable to portions of cost reporting periods occurring during Federal FY 1987;

(B) Seven percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during Federal FY 1988; and

(C) Ten percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during Federal FY 1989.

(ii) If a hospital's cost reporting period encompasses more than one Federal fiscal year, the reductions to capital-related payments are determined on a prorated monthly basis.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance Program)

Dated: November 18, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: November 19, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-26475 Filed 11-20-86; 12:00 pm]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket No. 85-88; FCC 86-472]

Common Carrier Services; Detariffing of Billing and Collection Services

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: The Commission has denied petitions for reconsideration of its *Report and Order* in CC Docket No. 85-88, 102 FCC 2d 1150 (1986) (51 FR 8499; March 12, 1986) (*Detariffing Order*) to detariff billing and collection services provided by local exchange carriers to interexchange carriers for interstate services, effective January 1, 1987, because the policy revisions requested by the petitioners are unnecessary. The Commission has also adopted technical revisions to Part 69 of its Rules to implement its decision since the *Detariffing Order* did not adopt all of the necessary rule revisions regarding cost allocations because of other proceedings which were pending at that time.

EFFECTIVE DATE: January 1, 1987.

ADDRESS: 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Mark C. Wolf, Tariff Division, Common Carrier Bureau (202) 632-6917.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order* in CC Docket No. 85-88, FCC 86-472, Adopted October 23, 1986 and Released November 6, 1986.

The full text of this Commission action is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. In this *Memorandum Opinion and Order (MO&O)*, we are considering a petition for reconsideration filed by MCI Telecommunications Corporation (MCI) and a petition for reconsideration and clarification filed by Southwestern Bell Telephone Company (SWB) of our *Detariffing Order*. SWB requests that the scheduled January 1, 1987 detariffing date be deferred and that the extent to which we preempted state regulation of billing and collection should be clarified. MCI argues that local exchange carriers should be required to furnish customer billing name and address information to interexchange carriers under tariff.

2. The Commission finds that granting these requests is not necessary and that the petitions should be denied. However, the Commission did not make all the technical revisions to Part 69 of the Rules in the *Detariffing Order* necessary to implement that decision because some pending proceedings were likely to result in changes in relevant rules that would be effective before January 1, 1987. Those proceedings have now been completed, and revisions have been adopted in Part 69 changing references to the billing and collection element to describe a billing and collection category.

3. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), it

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is certified that these final rules do not have a significant impact on a substantial number of small entities because billing and collection costs are presently allocated in accordance with these rules. These final rules do not change this allocation and do not impose additional costs or burdens on local exchange carriers or interexchange carriers.

Ordering Clauses

4. Accordingly, it is ordered that the petitions for reconsideration filed by Southwestern Bell Telephone Company and MCI Telecommunications Corporation are denied.

5. It is further ordered, pursuant to sections 4(i), 4(j), 201–205, 218, 220 and 403 of the Communications Act, 47 U.S.C. 154(i), 154(j), 201–205, 218, 220 and 403, that the rules shown below are adopted, effective January 1, 1987.

6. It is further ordered that CC Docket No. 85–88 is terminated.

List of Subjects in 47 CFR Part 69

Access charges.

Rule Changes

PART 69—ACCESS CHARGES

Part 69 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 69 continues to read as follows:

Authority: 47 U.S.C. 154(i), 154(j), 201, 202, 203, 205, 218, 403, and 410.

2. Section 69.3 is amended by revising paragraphs (e)(3) and (e)(4) to read as follows and by adding the following new paragraph (e)(8):

§ 69.3 Filing of access service tariffs.

* * * * *

(e) * * *

(3) Such a tariff that cross-references an association charge for any carrier's carrier access element other than the Carrier Common Line element must cross-reference association charges for all carrier's carrier access charges other than the Carrier Common Line element;

(4) Any charge in such a tariff that is not an association charge must be computed to reflect the combined investment and expenses of all companies that participate in such a charge;

* * * * *

(8) Such a tariff shall not contain charges included in the billing and collection category.

§ 69.4 [Amended]

3. Section 69.4(c) is removed.

4. Section 69.306 (b) and (e) are revised to read as follows:

§ 69.306 Central Office Equipment.

* * * * *

(b) Category 1 COE (Manual Switchboards) shall be apportioned among the interexchange category and the access elements as follows. COE 1 that is used for intercept services shall be assigned to the Intercept element. COE 1 that is used for directory assistance shall be assigned to the information element. COE 1 other than service observation boards that is not assigned to the Intercept or Information elements shall be assigned to the interexchange category. Service observation boards shall be apportioned among the interexchange category and the Intercept, Information, Common Transport and Local Switching access elements and the billing and collection category based on the remaining combined investment in COE 1 through COE 6, excluding the non traffic sensitive portion of COE 6.

* * * * *

(e) Category 4 COE (Automatic Message Recording Equipment) that is used for the duration of an interstate call that is deemed to be exchange equipment for purposes of the Modification of Final Judgment in *United States v. Western Electric Company* shall be assigned to the billing and collection category. All other COE 4 that is used for the duration of an interstate call shall be assigned to the interexchange category. Category 4 COE used only momentarily to record information about interstate switched private service traffic that is deemed to be exchange equipment for purposes of the Modification of Final Judgment in *United States v. Western Electric Company* shall be assigned to the Special Access element. All other COE 4 that is used only momentarily to record information about interstate switched private services traffic shall be assigned to the interexchange category. If a telephone company offers billing and collection services, it shall assign one-half the investment in COE 4 that is used only momentarily to record information about interstate message service to the billing and collection category and one-half of this investment to the Local Switching element. If it offers no billing and collection services, it shall assign the investment in COE 4 used only momentarily to record information about interstate message service to the Local Switching element.

* * * * *

5. Section 69.307(d) is revised to read as follows:

§ 69.307 Buildings.

* * * * *

(d) Category 1C space investment (Dial Switching) shall be apportioned among the interexchange category and the Line Termination, Local Switching, Common Transport and Special Access elements and the billing and collection category. Such investment shall be apportioned in the same proportions as combined investment in COE categories 2, 3, 4, 5, 6 and 7.

* * * * *

6. Section 69.404 (a) and (b) are revised to read as follows:

§ 69.404 Traffic expenses.

(a) The Network Administration portion of Accounts 621 and 624 shall be apportioned among the interexchange category and the Intercept, Information, Common Transport, Line Termination, Local Switching and Special Access elements and the billing and collection category in the same proportions as investments in COE categories 1, 2, 3, 4, 5, 6 and 7.

(b) The Centralized Ticket Investigation portion of Account 624 should be directly assigned to the billing and collection category.

* * * * *

7. Section 69.405(c)(1) (iii), (iv) and (viii) are revised to read as follows:

§ 69.405 Commercial expenses.

* * * * *

(c) * * *

(1) * * *

(iii) End user service order processing, payment and collection, and billing inquiry expenses attributable to interstate private line service offered by an interexchange carrier shall be assigned to the billing and collection category.

(iv) End user service order processing, payment and collection, and billing inquiry expenses attributable to the company's own interstate message toll service, including WATS, shall be assigned to the interexchange category. End user service order processing, payment and collection, and billing inquiry expenses attributable to interstate message toll service, including WATS, offered by an interexchange carrier shall be assigned to the billing and collection category. End user payment and collection and billing inquiry expenses attributable to End User Common Line access billing shall be assigned to the Common Line element.

* * * * *

(viii) Interexchange carrier service order processing, payment and collection, and billing expenses attributable to billing and collection service shall be assigned to the billing and collection category.

* * * * *

8. Section 69.406(c) is revised to read as follows:

§ 69.406 Revenue Accounting Expenses.

* * * * *

(c) All other Revenue Accounting Expenses shall be assigned to the billing and collection category.

9. Section 69.607(c) is revised to read as follows:

§ 69.607 Disbursement of Carrier Common Line revenues.

* * * * *

(c) The hypothetical net balance for each company shall be the sum of the hypothetical net balances for each access element. Such hypothetical net balances shall be computed in accordance with §§ 69.608–69.610.

10. Section 69.610(a) is revised to read as follows:

§ 69.610 Other hypothetical net balances.

(a) The hypothetical net balance for an access element other than a Common Line element shall be computed as provided in this section.

* * * * *

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 86-26439 Filed 11-21-86; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 655

[Docket No. 60107-6045]

Atlantic Mackerel, Squid, and Butterfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of final squid purchase ratios for 1986.

SUMMARY: NOAA confers benefits upon foreign nations based on their purchase of U.S.-caught and U.S.-processed squid and the purchase ratios which allocate squid to the total allowable level of foreign fishing (TALFF). The previously proposed *Loligo* and *Illex* purchase/TALFF ratios have been increased. This action is intended to promote the objectives of the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP).

EFFECTIVE DATE: November 21, 1986.

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, (NMFS), 617–281–3600, ext. 273.

SUPPLEMENTARY INFORMATION: A notice of an increased allocation of *Loligo* to TALFF of 1,442 metric tons (mt) and proposed squid ratios for *Loligo* and *Illex* was published on September 30, 1986 (51 FR 34644), in which the Director, Northeast Region, NMFS (Regional Director), proposed to allocate TALFF based on purchase ratios of one mt of TALFF for each one mt of U.S.-processed squid purchased by the foreign partner (1:1) and one mt of TALFF for each two mt (1:2) of squid purchased from an over-the-side joint venture. These ratios applied to both *Loligo* and *Illex* . That notice was effective September 25, 1986, with a 15-day comment period ending October 10, 1986.

Three comments were received. Based upon those comments, the Regional Director has revised ratios upward for both *Loligo* and *Illex*. The revised ratios are as follows:

Loligo—one and one-half mt of TALFF for each one mt of U.S.-processed *Loligo* purchased by a foreign partner (1.5:1 instead of 1:1) and one mt of TALFF for each two mt (remains 1:2) of U.S.-harvested *Loligo* purchased from an over-the-side joint venture.

Illex—two mt of TALFF for each one mt of U.S.-processed *Illex* purchased by a foreign partner (2:1 instead of 1:1) and one mt TALFF for each one mt (1:1 instead of 1:2) of U.S.-harvested *Illex* purchased from an over-the-side joint venture.

Comments on the increased *Loligo* allocation to TALFF and the squid purchase ratios were submitted by the Government of Spain, the Government of Italy on behalf of the Unionpesca Italia, Srl. (Unionpesca), and the representative of the Associated Vessels Service, Inc (AVS), successor to the Stonavar joint venture. This notice responds to comments concerned with the 1,442-mt *Loligo* increase to TALFF and the squid purchase ratios.

Comment: No comments opposed the release of 1,442 mt of *Loligo* to TALFF. Two commenters stated that the amount of *Loligo* released to TALFF was not adequate compensation for their purchases.

Response: The release of 1,442 mt of *Loligo* to TALFF (51 FR 34644, September 30, 1986) was an initial release pending verification of purchases by the companies involved with two joint ventures purchasing U.S.-harvested and U.S.-processed squid. Preliminary findings by NOAA, based upon documented proof of squid purchases, also concluded that the 1,442 mt was not sufficient. On October 28, 1986 (51 FR 39377), NOAA released an additional 1,441 mt of *Loligo*, which, with 117 mt of previously released bycatch, increased the total amount of *Loligo* TALFF to 3,000 mt

Based upon the final proof of purchases, and these final established ratios for *Loligo* squid, specific TALFF allocations will be released by the Department of State to the foreign nations whose representatives participated in the squid purchase agreements during 1986. NOAA believes that these allocations to TALFF of the remaining available amounts of *Loligo* will carry foreign vessels to the end of the fishing year, December 31.

Comment: A commenter stated that *Loligo* releases to TALFF were not timely since they had first requested a release in July of this fishing year.

Response: On May 9, 1986, final inital annual specifications for squid were published (51 FR 17190). At that time, squid TALFFs were designated only as a bycatch amount, 866 mt each for *Loligo* and *Illex*, as required by § 655.21 (b)(1)(iv) and (b)(3)(iii). At its July 1986 meeting, the Mid-Atlantic Fishery Management Council (Council) passed a motion recommending to the Regional Director that squid purchase ratios be established for the 1986 fishing year. These ratios were to confer benefits to foreign nations participating with the U.S. squid industry to increase purchases of both *Loligo* and *Illex* squids. With that recommendation, and the concurrence of the New England Fishery Management Council, NOAA sought to strike a balance between the development of the U.S. fishing industry which is the objective of both the Magnuson Act and the FMP, and rewarding foreign nations for their efforts toward that end.

Because of the unpredictable nature of the squid resource, and the yet to be adduced proof of foreign purchases of U.S. product, NOAA was cautious about increasing the Initial Optimum Yields (IOYs) in order to provide TALFF. Great reliance was placed on the flexibility provided by the FMP to address whatever contingency might arise. The approach was well taken in light of the unexpected abundance of *Loligo* squid during the months of July and August. U.S. fishermen harvested nearly 3,000 mt during this period, some of which went to foreign joint venture partners. Additional releases of *Loligo* squid from the remainder between Allowable Biological Catch (ABC) and IOY were made to the joint venture processing (JVP) specification to sustain these joint

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ventures: 500 mt on August 5 (51 FR 28241 August 6, 1986); 500 mt on August 14 (51 FR 29555, August 19, 1986); and 800 mt on September 2 (51 FR 31774, September 5, 1986). Each of these releases reduced the amount of *Loligo* squid available for TALFF. Once NOAA determined that the joint ventures could not reasonably be expected to need additional amounts of *Loligo* squid, it released all possible amounts to TALFF.

Comment: All three commenters stated that other interests in Spain and Italy had purchased processed *Loligo* and *Illex*. Both Spain and Italy believed that they were entitled to greater squid TALFFs based upon their respective total national purchases. One commenter stated that TALFF cannot be allocated to individual companies.

Response: Under the Magnuson Act, any squid allocation is made to a foreign nation and not a company. Confusion may have arisen from the Council's recommendation that any squid TALFF generated by the application of the purchase ratios be allocated to "any foreign partner" and not based solely upon that nation's purchases of squid.

The Magnuson Act is clear in its objective to develop the U.S. fishing industry and displace foreign fishing interests. In furtherance of that objective, the Act invests the Council and the Secretaries of State and Commerce with broad discretion as to how TALFF will be determined and allocated. The Council has recommended that squid TALFFs should be generated based on the performance of joint venture partners who purchase U.S.-harvested and U.S.-processed product. This fits squarely within the FMP and the Act which seek to reward foreign nations for developing existing and new opportunities for fishery trade, particularly through the purchase of fish or fishery products from U.S. processors or fishermen. This language appears, in part, as one of the eight criteria which form the basis for any allocation of TALFF made by the Secretary of State. It does not, however, guarantee that all purchases from a nation will be rewarded. The amount of squid available for TALFF this year will be allocated primarily to reward foreign nations for their active participation in the squid fishery by advancing existing opportunities for the U.S. fishing industry through shoreside and at-sea purchases. These TALFF rewards will be generated primarily through the application of the ratios discussed below to purchases by the foreign joint venture partners. If application of these ratios does not result in allocating the entire amount of squids available for TALFF, other purchases from these foreign nations will be considered to the extent possible.

Comment: All three commenters stated that NOAA should reinstate the original squid purchase ratios recommended by both Councils.

Response: As stated above, the domestic harvesters who participated in the *Loligo* over-the-side venture required additional amounts of *Loligo* from the differential between ABC and IOY to augment joint venture processing amounts (JVP). These *Loligo* releases reduced the amount that was available for TALFF. Based upon the available 3,000-mt TALFF, and the three commenters' request to reinstate the original Council purchase ratios, the Regional Director has increased the proposed *Loligo* purchase ratios as closely as possible to those recommended by the Councils. Thus, TALFF will be based upon the purchase ratio of one and one-half mt of TALFF for each one mt of U.S.-processed *Loligo* purchased by the foreign partner (1.5:1) and one mt TALFF for each two mt of U.S.-harvested *Loligo* purchased from an over-the-side joint venture (1:2).

Also as stated above, based upon the availability of *Illex* within the amount between the ABC and the IOY, NOAA has accepted the purchase ratio for *Illex* recommended by the Councils. Consequently, the purchase ratio of two mt of TALFF for each one mt of U.S. processed *Illex* purchased by the foreign partner (2:1) and one mt of TALFF for each one mt of U.S.-harvested *Illex* purchased from an over-the-side joint venture (1:1) are reestablished.

The Regional Director believes the increased squid ratios will benefit the U.S. industry and foster further development of the squid industry.

Numerous other comments not germane to either the *Loligo* TALFF increase or the squid purchase ratios were submitted. Commenters stated that (1) the domestic annual processing amount was set too high, (2) directed foreign fishing for *Loligo* should be allowed from January 1 to March 31 of the 1987 fishing year, and (3) butterfish bycatch should be increased to provide sufficient amounts to pursue directed *Loligo* fisheries. These comments are not addressed in this notice. Comments concerning squid specifications should be resubmitted during the comment period for the proposed preliminary initial specifications for the 1987 fishing year, which will be published shortly. Comments concerning fishing practices during the beginning of the 1987 fishing year should be directed to the Council.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 655

Fisheries, Reporting and recordkeeping requirements.

Dated: November 19, 1986.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 86-26465 Filed 11-21-86; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 226
Monday, November 24, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 319

[Docket No. 85-009P]

Standard for Frankfurters and Similar Cooked Sausages

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the standard of identity in the Federal meat inspection regulations for frankfurters and similar cooked sausages (9 CFR 319.180) and cheesefurters and similar products (9 CFR 319.181) to provide for a maximum combination of 40 percent of fat and added water in those products and to continue restricting the maximum fat content to no more than 30 percent of the finished products. This would provide processors more flexibility than they have under the current standard to produce lower fat frankfurters and similar cooked sausages. Current standards require that products contain no more than 30 percent fat and no more than 10 percent added water. This proposed rule is the result of a petition submitted by the American Meat Institute.

In addition, FSIS solicits public comment on the option of eliminating the standard for frankfurters since no standard setting maximum fat or added water content is currently in place for analogous products prepared with poultry meat, e.g., chicken frankfurters. The public is asked to comment on whether the proposed standard would be anti-competitive and stifle product innovation. FSIS is also examining the efficacy of substituting the proposed standard with appropriate product labeling such as percentage ingredient labeling for items such as fat, added water, and/or protein. FSIS asks interested parties to discuss the need for labeling and the costs and usefulness of different labeling approaches.

DATE: Comments must be received on or before January 23, 1987.

ADDRESS: Written comments to: Policy Office, Attn: Linda Carey, Room 3168, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also "Comments" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: Margaret O'K. Glavin, Director, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6042.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this proposed rule is not a "major rule" under Executive Order 12291. This proposed rule would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; or have significant adverse effects on competition, employment, investments, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets because no mandatory labeling changes would be required.

Effect on Small Entities

The Administrator has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601) because no mandatory labeling changes would be required; instead processor flexibility would be increased.

The elimination of any standard for fat and water content in frankfurters would provide maximum processor flexibility. Mandatory labeling imposed in place of the standard would create associated costs and burdens on processors.

Comments

Interested persons are invited to submit comments concerning the proposal. Written comments must be sent in duplicate to the Policy Office and should refer to the docket number located in the heading of this document. All comments submitted in response to this proposal will be available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday and Friday.

Background

The American Meat Institute (AMI) has petitioned the Agency to establish a new standard for a "Lite Frankfurter" and other similar cooked sausages now provided for in 319.180 of the Federal meat inspection regulations (9 CFR 319.180). The petitioner requests that the new standard provide for a minimum protein content of 11.5 percent and a maximum fat content of 22.5 percent with no specific restriction on the amount of added water. The petitioner further requests that the name "Lite Frankfurter" be acceptable without further label statement requirements.

For at least the last 30 years, the Federal meat inspection regulations (9 CFR 319.180) have required that all cooked sausages contain no more than 10 percent added water. This requirement applies to all types of cooked sausages such as frankfurters, bologna, braunschweiger, cooked salami, and Polish sausage. The standard requested by the petitioner would not limit the amount of added water, although the added water would be indirectly controlled through the establishment of protein and fat limits. The result would be that the amount of added water could be increased above the present 10 percent limit; however, as a result, the amount of fat would be required to be less than now allowed in cooked sausages meeting the present standard. The present standard for frankfurters and similar cooked sausages permits a maximum fat content of 30 percent. Also, the present standard does not specify a minimum protein content. The standard indirectly controls the protein content by the limits established for fat and added water.

The Standards and Labeling Division (SLD) of FSIS which is responsible for approving labeling under the Federal Meat Inspection Act (FMIA) subject to appeal to the Administrator (Sec. 21 U.S.C. 607 (d) and (e), 9 CFR 317.4, 317.5, 335.12) has approved labeling for such "Lite" sausages on a case-by-case basis. Under SLD's present policy, developed during the course of approval of such

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labeling, the term "Lite" may be used on the labeling of products which have significantly less of a component if the term "Lite" is explained on the labeling. In the case of frankfurters and similar products, which have a 30 percent fat limit, a reduction of 17 percent (to 25 percent total fat) has been considered significant. Therefore, SLD has approved a "Frankfurter" to be labeled "Lite" provided the fat content does not exceed 25 percent. Recently, SLD has amended its policy on approval of labeling containing the term "Lite". Under the new label approval policy, a significant reduction is defined as a reduction of 25 percent. This means that in the case of frankfurters, which have a 30 percent fat limit, a reduction to 22.5 percent fat will be needed to use the term "Lite". As before, an explanation of the term "Lite" must be provided on the label. The explanation may include nutrition labeling or a statement comparing the fat content of the "Lite" product to the standard, to a regular product prepared by the processor, to a market basket sample, a leading brand or brands, or to an acceptable recent reference. A "Lite" frankfurter, under SLD's policy, would have a protein level of around 12.5 percent because of the added water and fat limitations in the present standard.

A review of nutritional information that accompanied labels approved for frankfurters and similar cooked sausages during the period of July 1983 to April 1984 shows that many processors are providing consumers with products containing 22.5 percent fat or less and a protein content above 12.5 percent (most frequently 14 to 16 percent). A small portion of this protein arises from the addition of flavors and binders of animal or vegetable origin, which varies among manufacturers. In the last 10 years, SLD has approved, on a case-by-case basis, labels for frankfurters and similar cooked sausages as "Lower Fat" products. Some of these products have a fat content as low as 20 percent.

The Petition

AMI asserts that the existing regulations and policies cannot generally be applied to lower fat cooked sausages because a significant reduction in fat results in dry and unpalatable products. Further, the petitioner claims that SLD's current policy on the use of the term "Lite" on a cooked sausage label is overly restrictive and largely unnecessary. AMI asserts that current nomenclature for product with more than 10 percent added water is unreasonably burdensome labeling and has acted to inhibit the marketing of these sausages. AMI also asserts that the policy requiring an explanation of the term "Lite" on labeling is without precedent and is inconsistent with FDA's approach to "reduced calorie" claims. The petitioner argues that there is no need for a mandatory quantitative comparison because the composition and labeling of these products would be tightly controlled by the new standard. In addition, the petitioner mistakenly claims that SLD policy requires nutrition labeling in conjunction with the term "Lite", and suggest that this would be unnecessary if a "Lite Sausage" standard were to be adopted.

AMI recommends a maximum total fat content of 22.5 percent for a "Lite" cooked sausage. This is a 25 percent reduction from the current standard of no more than 30 percent fat.

The petitioner also asserts that the new standard should at least maintain the same protein levels that consumers have come to associate with traditional cooked sausages. The petitioner claims that the vast majority of cooked sausages have a minimum of 11 percent protein and therefore recommends a minimum of 11.5 percent protein in the standard for "Lite Frankfurters" as a reasonable and achievable requirement.

The Center for Science in the Public Interest (CSPI) has also been in direct communication with the Agency concerning the AMI petition. CSPI contends that the proposed AMI standard would not result in a product that is sufficiently low in fat or calories to be called "Lite". CSPI adds that it believes that the term "Lite" would deceive consumers into purchasing the product because they would falsely believe that the product was low in fat or calories.

CSPI also does not agree that palatable lower fat products cannot be prepared under the present standard, and points out the presence in the marketplace of cooked sausages that are lower in fat without exceeding the 10 percent added water limit.

CSPI believes that consumers will assume that products labeled "Lite" will not only be lower in fat but also higher in protein. Although CSPI does not object to these products containing more than 10 percent added water, it does believe that this fact should be prominently displayed on the label. CSPI does not see a reason for devising a new standard.

Finally, the Western States Meat Association's Board of Directors submitted a resolution that asked the Department to consider standards that would provide flexibility to its industry to market products that are gaining consumer acceptance but do not degenerate or lower product quality.

Agency Response and Proposal

In general, the Agency believes that the request of the petitioner (AMI) is in keeping with the Agency's desire to facilitate the marketing, when possible, of lower fat products. Frankfurters and similar cooked sausages are important components of the American diet, and it is desirable to encourage a variety of such products as long as they are not nutritionally inferior to similar products presently in the marketplace.

The petitioner's claim that under the present standard a significant reduction in fat results in dry and unpalatable products is not supported. Many processors are providing consumers with products containing 22.5 percent fat or less and a protein content above 12.5 percent.

Notwithstanding this, the Agency believes that it is appropriate to allow cooked sausages with more added water as long as these products are not nutritionally inferior to the presently available cooked sausages. As a result, the Agency is proposing to amend the standard for frankfurters and similar cooked sausages (9 CFR 319.180(a) and (b)) to provide for a maximum combination of 40 percent of fat and added water in those products and to continue restricting the maximum fat content to no more than 30 percent of the finished products. This would assure that the products are comparable from a protein, vitamin, and mineral standpoint to the products presently in the marketplace, but at the same time allow for greater flexibility in product formulation.

The Agency also believes that this approach is preferable to the petitioner's approach because setting an appropriate protein content based on currently available information would be quite difficult. The proposed rule, on the other hand, is restricted to water and fat limits already addressed in the regulations and would allow lower fat levels without the need for additional controls associated with setting new protein levels.

The Agency also questions the wisdom of including in a product standard a specific term such as "Lite" when so many other terms could legitimately be used and when the term itself can be used in different ways and contexts.

To restrict terminology this way does not seem reasonable and precludes the use of tems that are just as useful and informative. The Agency believes that standardizing varieties of a product simply to permit manufacturers to avoid a labeling explanation would unduly restrict competition and discourage manufacturers from providing to consumers information now available. Also such a position would be inconsistent with the Agency's policies that assure labeling is not false or misleading and encourage manufacturers to provide additional information. Further, if the term were added to the regulations, this likely would preempt its use in any other context. Therefore, the Agency is not proposing to include the term "Lite" in the regulations.

The Agency also notes that the Federal Food and Drug Administration (FDA) regulations require that labels with the term "Lite" include full nutrition labeling. USDA does not require nutrition labeling, but nutrition labeling may be an acceptable means of explanation. For example, a company can compare the macro nutrient content, i.e., the calorie, protein, carbohydrate, and fat content, of a "Lite" cooked sausage product to the standard cooked sausage using the recognized nutrition labeling format. A comparison of the percentage of the U.S. Recommended Daily Allowance for Vitamins, minerals, and protein may also be included. The Agency also notes that many companies under the jurisdiction of the FDA also provide useful explanatory information such as "One-third less calories than our regular product."

Therefore, the Agency is not proposing to adopt a "Lite Sausage" standard *per se*. The Agency continues to believe that an explanation of the term is necessary to prevent labeling from misleading consumers. It is important that the consumer understand the meaning of the term "Lite", and such a term should be explained whenever it is used because of its inherent vagueness. As discussed, the explanation may take the form of nutrition labeling or a suitable quantitative comparative statement of fat content.

Accordingly, the Agency is proposing to amend that portion of § 319.180(a) and (b) reading: "the sausage shall contain no more than 10 percent of added water" and substitute therefore the following: "the sausage shall contain no more than 40 percent of a combination of fat and added water". The standards would continue to provide that the finished product shall not contain more than 30 percent fat.

Even though FSIS is proposing a new standard of identity for frankfurters, the Agency is actively considering the option of eliminating the standard since no standard setting maximum fat or added water content is currently in place for analogous products prepared with poultry meat, e.g., chicken frankfurters. While the proposed frankfurter standard offers processors more flexibility in product formulation, it may still be anti-competitive and hinder innovation. FSIS solicits public comment on whether there is a market failure that creates a need for the frankfurter standard and on the benefits and costs to industry and consumers associated with eliminating the standard.

In addition to eliminating the standard, FSIS is considering the use of appropriate labeling. Already, CSPI has stated that without appropriate labeling, consumers will be deceived into thinking that the new frankfurters are not only lower in fat but higher in protein. FSIS solicits comments on CSPI's contention and on whether without a standard there would be a market failure creating the need for labeling. One labeling alternative that FSIS has identified as potentially appropriate is labeling each package of frankfurters with the relative percentage of fat, added water, and/or protein. This approach may be easiest for processors because their products are formulated by percentage. However, FSIS is not yet endorsing any specific labeling alternative and actively solicits public comment on the advantages and disadvantages of percentage labeling as well as suggestions on what other types of labeling would be preferable. In evaluating labeling alternatives, commenters are asked to discuss the specific information problems consumers face, the costs and burdens on processors, the technical feasibility of such labeling, and the public's ability to use the labeling effectively.

List of Subjects in 9 CFR Part 319

Meat and meat food products, Standards of identity, Food labeling.

PART 319—[AMENDED]

Accordingly, Part 319 of the Federal meat inspection regulations would be amended as follows:

1. The authority citation for Part 319 continues to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended, (21 U.S.C. 601 *et seq.*); 72 Stat. 862, 92 Stat. 1069, as amended, (7 U.S.C. 1901 *et seq.*) 76 Stat. 663 (7 U.S.C. 450 *et seq.*)

§ 319.180 [Amended]

2. Section 319.180(a) and (b) would be amended by removing that portion of the fourth sentence in paragraph (a) and that portion of the fifth sentence in paragraph (b) reading: "but the sausage shall contain no more than 10 percent of added water" and substituting therefore the following: "but the sausage shall contain no more than 40 percent of a combination of fat and added water".

§ 319.181 [Amended]

3. Section 319.181 would be amended by removing that portion of the last sentence reading: "These products shall contain no more than 10 percent of added water and/or ice, 30 percent fat" and substituting therefore the following: "These products shall contain no more than 40 percent of a combination of fat and added water, no more than 30 percent fat".

Done at Washington, DC on November 20, 1986.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 86-26397 Filed 11-21-86; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; Docket No. R-0545]

Truth in Lending; Variable-Rate Disclosure Under Regulation Z

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is republishing for comment a proposed amendment to Regulation Z (Truth in Lending) that would require creditors to provide more information about the variable-rate feature of adjustable-rate mortgages than is currently required under Regulation Z. The proposed rule would supersede the Board's proposed rule on variable-rate mortgages published for comment on May 15, 1985 [50 FR 20221]. The current proposal would require creditors to distribute to consumers an educational booklet about adjustable-rate mortgages, and to provide a more detailed description of the variable-rate feature, along with an historic example, at the time an application form is given to the consumer or before the consumer pays a non-refundable fee, whichever is earlier. These revisions are intented to address concerns regarding the adequacy of information given to consumers applying for adjustable-rate mortgages and regarding the creditor burden of duplicative federal regulations.

DATE: Comments must be received on or before January 20, 1987.

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ADDRESS: Comments should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to the 20th Street courtyard entrance, 20th Street, between C Street and Constitution Avenue, NW., Washington, DC, between 8:45 a.m. and 5:15 p.m. weekdays. Comments should include a reference to Docket No. R–0545. Comments may be inspected in Room B–1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Michael Bylsma, Senior Attorney, or Sharon Bowman, Staff Attorney, Division of Consumer and Community Affairs, at (202) 452–3667 or (202) 452–2412, or Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544, Board of Governors of the Federal Reserve System, Washington, DC, 20551.

SUPPLEMENTARY INFORMATION:

(1) Background

Recently the Board has been working with the other federal financial regulatory agencies to develop a uniform set of disclosures for adjustable-rate mortgages (ARMs). This effort arose because of concern about the different disclosure requirements imposed by the various federal agencies. Currently, four federal agencies require that lenders subject to their regulations provide specific disclosures about ARMs to borrowers. Under Regulation Z, the Board requires that a variable-rate feature be described briefly to consumers. In contrast to Regulation Z, the regulations of two other federal financial agencies and the Department of Housing and Urban Development (HUD) call for more extensive, detailed information. The Federal Home Loan Bank Board (FHLBB) requires variable-rate disclosures for federally-chartered savings and loan associations and also for certain other lenders that wish to market their loans to federally-chartered savings and loans (12 CFR 545.33). The Office of the Comptroller of the Currency (OCC) mandates variable-rate disclosures for national banks and other lenders that seek to market their loans to national banks (12 CFR Part 29). Under the "Alternative Mortgage Transaction Parity Act of 1982" (12 U.S.C. 3802), state-chartered institutions and other mortgage lenders may take advantage of federal authorization of ARMs by following the rules of the FHLBB or the OCC. Finally, HUD prescribes disclosures for lenders wishing to participate in the Federal Housing Administration (FHA) insurance program (24 CFR Parts 203 and 234).

The federal financial agencies believe that this regulatory structure, which requires different disclosures by different lenders delivered at different times, is causing problems for both consumers and mortgage lenders. The ability of consumers to understand and make important decisions about ARMs before entering into these transactions may be hampered by their receipt of different information about ARM programs depending on what type of lender they have approached. This problem is exacerbated by the variety of ARM products now being offered as well as the complexity of some of these programs. At the same time, these regulatory requirements have proven burdensome to the mortgage industry, particularly when mortgage lenders must satisfy more than one regulation in order to take full advantage of the secondary market. Under certain circumstances, lenders who wish to originate mortgages for possible sale to either a federal savings and loan association or to a national bank may have to make disclosures under both agencies' rules. Furthermore, it has been claimed that the variety of regulatory requirements has hampered the development of a thriving secondary market for ARMs.

Based on recommendations by the Federal Financial Institutions Examination Council (FFIEC) and its own analysis, the Board proposed in May 1985 to amend Regulation Z to provide more information to consumers about ARMs and to encourage uniform disclosures among the agencies. The FFIEC had two recommendations for the Board, which grew out of the work of a task force composed of representatives from HUD, the OCC, the FHLBB, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Board. These recommendations were: (1) Consumers should be given information about ARMs before they submit a loan application or pay any fee; and (2) the disclosures should include an explanation of the nature of ARMs, including an example of payment changes that would result in a creditor's ARM program assuming 2 percentage points index rate increases in each of the first three years of a mortgage.

On May 15, 1985, the Board published its proposed amendment to Regulation Z which incorporated the recommendations of the FFIEC and which would have eliminated the provision of Regulation Z (footnote 43) that permits creditors to substitute the disclosures required by other federal regulations for the variable-rate disclosure required by Regulation Z. Specifically, the Board proposed that creditors make available to consumers information explaining ARMs and stated that the *Consumer Handbook on Adjustable Rate Mortgages* could be used by creditors to fulfill the requirement. The Board further proposed that detailed, transaction-specific disclosures be given to the consumer, including an example of the consumer's payment terms if the index rate increased 2 percentage points in each of the first three years.

The Board reviewed over 500 comments on its May 1985 proposal. All of the commenters addressing the issue supported the goal of uniformity in adjustable-rate mortgage disclosures. About 80% of the 200 commenters who expressed their opinion on the best way to achieve uniformity favored the Board's retaining footnote 43 until the other federal financial agencies agreed upon a uniform disclosure rule. A majority of the commenters on the issue also supported the Board's proposal to require creditors to make available the *Consumer Handbook on Adjustable Rate Mortgages*, or a comparable brochure.

About one-third of the commenters generally opposed to the proposed rule opposed it because of the payment example required and the possible increase in expense and burden to creditors. Furthermore, approximately one-half of the commenters addressed the proposal that the example of rate increases be transaction-specific. Nearly 70 percent of these commenters opposed the requirement, citing their concern about the anticipated high cost of preparing the transaction-specific disclosures. They also stated that these disclosures would be difficult to prepare within three days after application. A majority of the commenters on the issue—particularly savings and loan associations, banks, and other creditors—opposed the proposed example based on assumed 2 percentage points per year index rate increases for three years, although many commenters misunderstood how the example would apply in specific transactions. Some of these commenters preferred an example based on the historical movement of an index rather than a specified increase.

In August 1985, the FFIEC discussed the negative public comments received on the Board's proposal, and recommended that the FFIEC Consumer Compliance Task Force develop a different approach to ARM disclosures. In October 1985, the Task Force recommended to the FFIEC that "generic" loan program disclosures be developed, but asked the FFIEC to decide whether the payment example should be based on assumed 2 percentage points annual increases in index values. The ARM disclosure proposal was discussed at three subsequent meetings of the FFIEC in late 1985 and in 1986. During that period, the Federal financial agencies received letters from members of Congress recommending that the disclosures show the borrower's maximum rate and payment exposure. On August 11, 1986, the FFIEC approved a proposal requiring that creditors provide two types of disclosures: (1) The *Consumer Handbook on Adjustable Rate Mortgages*, or a suitable substitute, and (2) disclosures that fully describe each of the creditor's ARM programs, with a 15-year historical example of how changes in the index or formula values used to compute interest rates would have affected the interest rates and payments on a $10,000 loan. In addition, the maximum interest rate and payment that could result under the program for the $10,000 loan would be disclosed.

(2) Proposed Amendment

Based on recommendations from the FFIEC, the Board is republishing for comment amendments to Regulation Z to provide more information to consumers about adjustable-rate mortgages. Like the original proposal published in May 1985, this proposal provides for a handbook to be distributed to consumers, as well as detailed disclosures about a creditor's ARM loan programs. Some provisions of the new proposal, however, most notably the example of rate adjustments, differ significantly from the earlier proposal.

As proposed earlier, the amendments would apply only to transactions secured by the consumer's principal dwelling. This would include all purchase-money mortgages, in which the consumer is obtaining a mortgage loan for the purpose of purchasing a home, as well as all transactions in which the consumer is using the home as security for a loan. (Home equity lines, in which an open-end line of credit is secured by the consumer's home, would not be subject to the new requirements, which apply only to closed-end mortgages.) All other consumer credit transactions that contain a variable-rate feature would continue to be subject to the current variable-rate disclosure requirements in Regulation Z.

In its earlier proposal, the Board solicited comment on whether the timing for the ARM disclosures should be earlier than proposed (for purchase-money ARMs, three days after a creditor's receipt of a written application). As recommended by the FFIEC, the Board is now proposing that ARM disclosures, including both the ARM brochure and the other detailed ARM information, be provided to prospective borrowers when an application form is furnished or before the payment of a non-refundable fee, whichever is earlier. This rule is consistent with the FHLBB's current timing rule for distribution of the ARM brochure. It would permit creditors to provide the detailed disclosures to consumers as an insert to the handbook when it is given. This change also reflects the views of some of the commenters on the Board's original proposal, who felt that ARM information should be provided to consumers as early as possible—particularly, before payment of an application fee—in order for consumers to use the information for comparison shopping. Disclosure at this point in time is possible under the new proposal because, unlike the original proposal, the new rule would require that disclosures reflect ARM loan program features, but not the terms of individual transactions. A special timing rule applies in cases where an ARM application reaches a creditor by way of an intermediary agent or broker in footnote 45b. In such cases, both the ARM brochure and the other detailed ARM information must be placed in the mail or delivered not later than three business days after the creditor receives the consumer's application.

Under the new timing rule, variable-rate disclosures would be given to consumers earlier than the standard Truth in Lending information required by § 226.18. A sentence would be added to § 226.17(b) to cross-reference the early timing requirement for ARMs. For purchase-money ARMs, the standard Truth in Lending disclosures generally are provided three days after a creditor's receipt of a written application. For other ARMs, the Truth in Lending disclosures are not given until consummation of the transaction, which is typically at closing. Because of this difference in the timing of disclosures under § 226.19(b), a new paragraph (f)(2) would be added to § 226.18 to require that the later Truth in Lending disclosures make reference to the earlier ARM information received by consumers, as well as state that an adjustable-rate feature exists.

A new paragraph (b)(1) requiring an ARM brochure has been added to § 226.19. The method of providing this disclosure differs from that originally proposed. The May 1985 proposal required that an ARM brochure be made available to consumers so that they would have a chance to pick up a copy and review it before entering into the application process. The new proposal, instead, would require that creditors give each consumer a brochure, rather than simply making the brochures available, when an application form is given to a consumer or before a consumer pays a non-refundable fee, whichever is earlier. This provision mirrors the rule that the FHLBB has had in effect for federally-insured savings associations since August 1985. The rule ensures that every consumer considering applying for an ARM will receive a brochure at an early stage in the application process.

As proposed in May 1985, the *Consumer Handbook on Adjustable Rate Mortgages*, developed by the Board and the FHLBB, may be used by creditors to fulfill this requirement if they choose. The new proposal would also permit creditors to provide a "suitable substitute" in place of the consumer handbook. Rather than the Board's evaluating whether an individual creditor's ARM brochure is a "suitable substitute," the regulation would require individual creditors to make a good faith determination of whether a brochure is, in fact, a suitable substitute. The Board envisions that substitutes must be, at a minimum, comparable to the consumer handbook in substance and comprehensiveness, recognizing that some lenders' brochures may contain more detailed descriptions of their particular ARM programs than contained in the *Consumer Handbook*.

The remainder of the proposal contains the revisions that would be made to the variable-rate disclosures currently required by Regulation Z. These revisions have been made in proposed § 2267.19(b)(2). Like the original proposal, the new proposal requires that detailed, specific information about all major aspects of a variable-rate feature be clearly disclosed to consumers. To illustrate the proposed requirements, sample form H-14 has been revised, and model clauses have been included in a proposed revision to Appendix H-4.

Many of the disclosures in the new proposal, other than the example of rate and payment changes, are similar to those originally proposed by the Board in May 1985. Creditors would be required to identify the index to which interest rate changes are tied, or provide a brief description of the formula used in calculating changes if no index is used.

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A new requirement, which is currently included in both the OCC's and the FHLBB's disclosure rules, would be the disclosure of a source of information about an index. For example, if index values are listed in the *Wall Street Journal*, creditors could make such a statement in disclosing a source of information about their index. The proposal also would call for an explanation of how the interest rate will be determined, for example, by a statement that the interest rate will be based on a specified index plus a margin. Furthermore, creditors would be required to include a statement suggesting that consumers ask for the current margin value and interest rate. As proposed in May 1985, creditors would need to alert consumers about a discount feature when the initial rate is discounted. As required now by the Board, the OCC, and the FHLBB, the frequency of rate and payment adjustments also would be disclosed, along with rate and payment caps. If no payment or rate caps exist, the disclosure would indicate conspicuously that there are no limits on potential increases in payments or rates. If the presence of rate or payment caps would result in interest rate carryover or negative amortization, the disclosure statement would need to contain a statement about those features, as now mandated in the OCC's disclosure rule. Two proposed disclosures that were not contained in the Board's original May 1985 proposal are the fact that a loan program contains a demand feature, if applicable, and a statement reflecting what information will be contained in an adjustment notice and when such notice will be provided. Finally, creditors would be required to include a notice to consumers that disclosure forms are available for the creditor's other ARM loan programs.

The most significant change from the May 1985 proposal is the type of example mandated in the variable-rate disclosures. The Board's earlier proposal would have required creditors to show the effects of rate changes on a particular loan. In contrast, the new proposal would provide for an example based on a $10,000 loan, as does the current OCC rule. As a result, the disclosures could be pre-printed for each loan program and given to consumers with an ARM handbook. Creditors also would be required to include a statement on the disclosure form explaining to consumers how to calculate their actual monthly payment amount for a loan amount other than $10,000. The example based on $10,000 reflects the recommendation of the FFIEC, and is premised, in part, on the rationale that figures based on a $10,000 example provide information that consumers can use with minimal difficulty to calculate their actual monthly payments for a specific transaction. In addition to the effect on monthly payments, the example would need to reflect the effect of index rate changes on the outstanding loan balance as of the end of the year.

The other major change to the example contained in the Board's earlier proposal is the assumed index rate changes on which the example must be based. The May 1985 proposal would have required that two examples be shown: one based on an assumed increase of 2 percentage points in the index rate in each of the first three years and one based on no changes in the index rate during the loan term. In contrast, the new proposal has deleted the example of no changes in index rates and would require that the example shown be based on the history of the specific index or formula to be used in the loan program. The index values used in the example will begin with the value for 1977 and be updated annually to add ther values for additional years until a 15-year history is shown. For example, the disclosures for an ARM made in 1987 would include index values for each year from 1977 through 1986. In each subsequent year until 1991, a creditor's disclosures would include the index value for one more year. From that time forward, lenders would show a "rolling history" of index values, updated annually, for the preceding 15 years.

If the values for an index have not been available back to 1977, creditors would need only go back as far as the values have been available in giving the history. The history should reflect the method of choosing values for each program. For instance, if an average of index values is used, averages would be used in the history, but if a single index value as of a certain date is used, that value would be shown. If a creditor uses an index value as of a certain date in making interest and payment adjustments, and this date is changed several times annually, the creditor may assume one date on which to base the history of index values for each loan program. Only one index value per year need be shown, even if the program provides for adjustments to the interest rate or payment more than once in a year. In such cases, the creditor may assume that the index rate remained constant for the full year for the purpose of calculating the interest rate, payment, and loan balance. Updating would be necessary only when done to reflect the most recent index values.

The provision that the example be based on the historical performance of individuals indices reflects the recommendation of the FFIEC. This type of example also was recommended by some of the commenters on the Board's earlier proposal. Some of these commenters felt that the example based on assumed 2 percentage points increases for three years was too negative and, in fact, misleading to consumers when used for ARMs tied to stable indices, such as the cost of funds.; Furthermore, some commenters asserted that consumers would be in a better position to compare ARM programs with an example based on the past performance of different indices, rather than an example based on arbitrary assumed increases.

The payment and outstanding loan balance figures in the example would reflect all significant loan program terms. For example, features such as rate and payment caps, a discounted interest rate, negative amortization, and interest carryover would need to be taken into account by creditors in calculating the payment and outstanding balance figures. Because disclosures would be given early, creditors would need to assume a value for the margin in order to do the calculations for the example. Creditors may select a margin that they have used during the preceding six months and disclose on the form that the margin is one that they have used recently. The margin selected may be used until a creditor updates the disclosure form to reflect the most recent 15 years of index values.

Another significant change from the Board's earlier proposal is the requirement that the maximum interest rate and payment be disclosed. These disclosures would be calculated based on a $10,000 loan that is originated at the most recent interest rate shown in the historical example, and would assume that the interest rate then increases as rapidly as possible under the program. Thus, in a loan with interest rate limitations, or "caps," of 2 percentage points per year, and 5 percentage points for the life of the loan, the maximum interest rate would be 5 percentage points higher than the most recent rate shown in the historical example. Furthermore, the loan would not reach the maximum interest rate increased until the third year of the loan because of the 2 percent annual limitations. Consequently, the maximum payment disclosed would reflect the amortization of the loan during that period. Statement of a maximum interest rate and payment would not be required if the loan contained no caps, although the disclosure would state conspicuously that there are no limits on potential increases in payment or rates.

As mentioned earlier, the ARM disclosures given before application would state what information will be provided in notices of adjustments and the timing for such notices. A paragraph also has been added as § 226.20(c) to require a subsequent disclosure form. Regulation Z does not presently require this subsequent disclosure although the OCC and the FHLBB regulations require it. The new paragraph, which largely tracks the OCC's rule, would require notice of the adjusted payment amount, interest rate, index rate, and loan balance. The creditor also would be required to disclose the extent to which any increase in the interest rate has not been fully implemented at the adjustment date (for example, if the new index rate plus margin would exceed an interest rate adjustment cap), and the payment that would be required to fully amortize a loan (if different from the payment already disclosed). In transactions providing that payment adjustments may accompany each interest rate adjustment, creditors would be required to send borrowers notice at least 30, but not more than 120, days before the effective date of each scheduled interest rate adjustment. This notice would be required to be given, for example, whenever an interest rate adjustment is accompanied by a payment adjustment, or whenever an interest rate adjustment is made and could have been accompanied by a payment adjustment except for the effect of a payment cap. Notice also would be given whenever interest rate adjustments and accompanying payment adjustments can be made periodically under the loan agreement but are not made because, for example, the index values have not changed or an interest rate cap has prevented any such adjustments. However, creditors would be required to send borrowers notice only each year if interest rate adjustments are made without accompanying payment adjustments. Thus, for example, in transactions where the interest rate may be adjusted more frequently than the payment, the creditor would be required to send at least one notice each year during which there have been interest rate adjustments but no accompanying payment adjustments.

Finally, another significant change from the Board's original proposal is the retention and renumbering of footnote 43 to Regulation Z. The Board had originally proposed deleting footnote 43, which allows creditors to utilize the variable-rate disclosures of other agencies in place of the variable-rate disclosures required under Regulation Z. The board believed that eliminating the footnote would encourage further movement by the agencies toward uniform disclosures. In view of the progress that has been made among the federal financial agencies in agreeing to uniform ARM disclosures, the Board believes that the provision should be retained. This will also benefit lenders originating ARMs insured by the Federal Housing Administration which will continue to have separate disclosure requirements. HUD interprets its statute as requiring creditors to provide a schedule of payments showing how a consumer's actual payments—based on a consumer's actual loan amount—would change if the index increased 1 percentage point in each of the first five years of the loan. HUD has advised that the FFIEC—recommended disclosure requirements do not fully meet the minimum satutory requirements for "transaction-specific" disclosures on FHA-insured ARMs. Although the FFIEC recommendation for disclosures which can be pre-printed and distributed before application differs from HUD's minimum requirements, the impact on consumers and the industry may be minimal. Of all the ARMs outstanding, a total of about 8,000 have been insured by FHA since mid-1984—approximately less than 1 percent of the total ARMs in existence.

(Because the new disclosure requirements appear in § 226.19(b), footnote 43 would be redesignated as footnote 45a. The existing footnote 44 (discussing § 226.18(h)) would be redesignated as footnote 43.) Under footnote 45a creditors could continue to use other agencies' disclosures without facing the current problem of overlapping and duplicative regulations of the federal financial agencies. Creditors also will be permitted to utilize the subsequent disclosure requirements of other federal agencies in place of the subsequent disclosure requirements of § 226.20(c). (A footnote 45b would be added to the regulation to permit this substitution. Existing footnote 45 a would be redesignated as footnote 45c.)

(3) Economic Impact Statement

The Board's Division of Research and Statistics has prepared an economic impact statement on the proposed revisions to Regulation Z. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC, 20551, at (202) 452-3245.

List of Subjects in 12 CFR Part 226

Advertising, Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Truth in Lending.

PART 226—[AMENDED]

Certain conventions have been used to highlight the proposed revisions. New language is shown inside arrows, while language that would be removed is set off with brackets. Pursuant to authority granted in section 105 of the Truth in Lending Act (15 U.S.C. 1604 as amended), the Board proposes to amend Regulation Z (12 CFR Part 226) as follows:

1. The authority citiation for Part 226 continues to read:

Authority: Sec. 105, Truth in Lending Act, as amended by sec. 605, Pub. L. 96-221, 945 Stat. 170 (15 U.S.C. 1604 *et seq.*).

2. *Text of proposed revision.* The Board proposes to amend 12 CFR Part 226 by revising paragraph (b) of § 226.17, by removing footnote 43 from paragraph (f) of § 226.18, by redesignating paragrpah (f) of § 226.18 as paragraph (f)(1) and republished, by adding paragraph (f)(2) to § 226.18, by redesignating footnote 44 to be footnote, 43, by redesignating footnote 45 to be footnote 44 and reserving footnote 45, by redesignating paragraphs (a) and (b) of § 226.19 to be paragraphs (a)(1) and (2) and republished, by adding new paragraph (b) to § 226.19, by redesignating footnote 45a to be footnote 45d, by adding footnote 45b and 45c, by adding paragraph (c) to § 226.20, and by redesignating existing H-4 as H-4(A), adding H-4(B) and (C), and revising H-14 of Appendix H to read as follows:

Subpart C—Closed-End Credit

§ 226.17 General disclosure requirements.

* * * * *

(b) *Time of disclosures.* The creditor shall make disclosures before consummation of the transaction. In certain residential mortgage transactions, special timing requirements are set forth in § 226.19(a). ▸In certain variable-rate mortgage transactions, special timing requirements for variable rate disclosures are set forth in § 226.19(b).◂ In certain transactions involving mail or telephone orders or a series of sales, the timing of the disclosures may be

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delayed in accordance with paragraphs (g) and (h) of this section.

* * * * *

§ 226.18 Content of disclosures.

* * * * *

(f) *Variable rate.* ▸(1)◂ If the annual percentage rate may increase after consummation ▸and the transaction is not secured by the consumer's principal dwelling◂, the following disclosures: [[43]]

[1] (i) The circumstances under which the rate may increase.

[2] (ii) Any limitations on the increase.

[3] (iii) The effect of an increase.

[4] (iv) An example of the payment terms that would result from an increase.

▸(2) If the annual percentage rate may increase after consummation and the transaction is secured by the consumer's principal dwelling, the following disclosures:

(i) The fact that the transaction contains a variable-rate feature.

(ii) A statement that variable-rate disclosures have been provided earlier.◂

* * * * *

§ 226.19 Certain residential ▸ and variable-rate◂ mortgage transactions.

(a) ▸*Residential mortgage transactions subject to RESPA.*◂

▸(1)◂ *Time of disclosure.* In a residential mortgage transaction subject to the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) the creditor shall make good faith estimates of the disclosures required by § 226.18 before consummation, or shall deliver or place them in the mail not later than three business days after the creditor receives the consumer's written application, whichever is earlier.

[b] ▸(2)◂ *Redisclosure required.* If the annual percentage rate in the consummated transaction varies from the annual percentage rate disclosed under § 226.18(e) by more than 1/8 of 1 percentage point in a regular transaction or more than 1/4 of 1 percentage point in an irregular transaction, as defined in § 226.22, the creditor shall disclose the changed terms no later than consummation or settlement.

▸(b) *Certain variable-rate mortgage disclosure requirements.*[44a] If the annual percentage rate may increase after consummation and the transaction is secured by the consumer's principal dwelling, the following disclosures must be provided at the time an application form is provided or before the consumer pays a non-refundable fee, whichever is earlier:[44b]

(1) The booklet titled *Consumer Handbook on Adjustable Rate Mortgages* published by the Board and the Federal Home Loan Bank Board, or a suitable substitute.

(2) A loan program disclosure for each variable-rate program in which the consumer expresses an interest. The following disclosures, as applicable, shall be provided:

(i) The fact that the interest rate, payment, or term of the loan can change.

(ii) The index or formula used in making adjustments, and a source of informtion about the index or formula.

(iii) An explanation of how the interest rate and payment will be determined, including an explanation of how the index is adjusted, such as by the addition of a margin.

(iv) A statement that the consumer should ask about the current margin value and current interest rate.

(v) The fact that the interest rate will be discounted.

(vi) The frequency of interest rate and payment changes.

(vii) Any rules relating to changes in the index, interest rate, payment amount, and outstanding loan balance including, for example, an explanation of interest rate or payment limitations, negative amortization, and interest rate carryover.

(viii) A conspicuous statement that there are no limitations on payment or interest rate increases.

(ix) An historical example, based on a $10,000 loan amount, illustrating how payments and the loan balance would have been affected by interest rate changes implemented according to the terms of the loan program. The example shall be based upon index values beginning in 1977 and be updated annually until a 15-year history is shown. Thereafter, the example shall reflect the most recent 15 years of index values. The example shall reflect all significant loan program terms, such as negative amortization, interest rate carryover, interest rate discounts, and interest rate and payment limits, that would have been affected by the index movement during the period.

(x) An explanation of how the consumer may calculate the payments for the loan amount to be borrowed based on the most recent payment shown in the historical example.

(xi) In loans subject to overall limitations, a statement of the maximum interest rate and payment for a $10,000 loan originated at the most recent interest rate shown in the historical example assuming the maximum periodic increase in rates and payments under the program.

(xii) The fact that the loan program contains a demand feature.

(xiii) The type of information that will be provided in notices of adjustments and the timing of such notices.

(xiv) A statement that disclosure forms are available for the creditor's other variable-rate loan programs.◂

§ 226.20 Subsequent disclosure requirements.

* * * * *

▸(c) *Variable-rate adjustments.*[45c] A scheduled adjustment to the interest rate with or without a corresponding adjustment to the payment in a variable-rate transaction subject to section 226.19(b) is an event requiring new disclosures to the consumer. At least once each year during which an interest rate adjustment is implemented without an accompanying payment change, or, if the loan documents provide for a payment change accompanying each interest rate adjustment, at least 30, but no more than 120, days before the effective date of each scheduled interest rate adjustment, the following disclosures:

(1) The current and prior interest rates.

(2) The index values upon which the current and prior interest rates are based.

(3) The extent to which the creditor has foregone any increase in the interest rate.

(4) The contractual effects of the adjustment, including the payment due after the adjustment is made and the loan balance.

(5) The payment, if different from that referred to in paragraph (c)(4), that would be required to fully amortize the loan at the new interest rate over the remainder of the loan term.◂

[[43]] Information provided in accordance with variable rate regulations of other federal agencies may be substituted for the disclosures required by paragraph (f) of this section.]

▸[44a] Information provided in accordance with variable-rate regulations of other federal agencies may be substituted for the disclosures required by paragraph (b) of this section.◂

▸[44b] Disclosures must be delivered or placed in the mail not later than three business days following receipt of a consumer's written application when the application reaches the creditor through an intermediary agent or broker.◂

▸[45c] Information provided in accordance with variable-rate subsequent disclosure regulations of other federal agencies may be substituted for the disclosures required by paragraph (c) of this section.◂

Appendix H—Close-End Model Forms and Clauses

[H-4—Variable-Rate Model Clauses (§ 226.18(f))]

▶H-4(A) Variable-Rate Model Clauses (under § 226.18(f)(1))◀

*   *   *   *   *

▶H-4(B) Variable-Rate Model Clauses (under § 226.18(f)(2))

Your loan contains a variable-rate feature. Disclosures about the variable-rate feature have been provided to you earlier.◀

▶H-4(C) Variable-Rate Model Clauses (under § 226.19(b))

This disclosure describes the features of the Adjustable Rate Mortgage (ARM) program you are considering. Information on other ARM programs is available upon request.

How Your Interest Rate is Determined

• Your interest rate will be based on [an index plus a margin] [a formula].

—[The interest rate will be the rate of (identification of index) plus our margin. Ask for our current margin.]

—[The interest rate will be the rate of (identification of formula).]

—[The initial interest rate is not based on the index/formula used to make later adjustments and will be __ __ percentage points higher/lower for (time period).]

How Your Interest Rate Can Change

• Your interest rate can change (frequency).

• [Your interest rate cannot increase or decrease more than __ percentage points at each adjustment.]

• [Your interest rate cannot increase or decrease more than __ percentage points over the term of the loan.]

• [Change in the index not passed on as changes in the interest rate will be carried over to subsequent interest rate adjustment dates.]

• [THERE ARE NO LIMITS ON INCREASES TO YOUR INTEREST RATE.]

How Your Payment Can Change

• Your (principal and interest) payment can change (frequency) baed on changes in the interest rate.

• [Your payment cannot increase more than (amount or percentage) at each adjustment.]

• [If your payment is inadequate to fully amortize your loan in the remaining term at the new interest rate, unpaid interest will be added to the loan balance.]

• [THERE ARE NO LIMITS ON INCREASES TO YOUR MONTHLY PAYMENTS OTHER THAN LIMITS ON CHANGES IN INTEREST RATES.]

• [If any payment is not sufficient to cover the interest due, the difference will be added to your loan amount. Your loan cannot increase by more than __%.]

• You will be notified in writing __ days before the effective date of any scheduled interest rate adjustment that may be accompanied by a payment adjustment. This notice will contain information about your index and interest rates, payment amount, and loan balance.

• [You will be notified once each year during which interest rate adjustments, but no payment adjustments, have been made to your loan. This notice will contain information about your index and interest rates, payment amount, and loan balance.]

Example

The example below shows how your payments would have changed under this ARM program based on actual index changes that occurred from 1977 to 1991. This does not necessarily indicate how your index will change in the future.

The example is based on the following assumptions:

Amount	$10,000
Term	
Payment adjustment	(frequency)
Interest adjustment	(frequency)
[Margin]*	
[Margin]*	
[Caps]	(periodic interest rate cap) (lifetime interest rate cap) [No interest rate cap] [No payment cap] [Interest rate carryover] [Negative amoritzation] [Interest Rate discount] of __ percentage points for (time period).]
Index	(identification of index or formula)

Year	Index (percent)	Margin (percent)	Interest rate (percent)	Monthly payment (dollars)	Remaining balance (dollars)
1977					
1978					
1979					
1980					
1981					
1982					
1983					
1984					
1985					
1986					
1987					
1988					
1989					
1990					
1991					

To see what your payments would have been during that period, divide your mortgage amount by $10,000; then multiply the monthly payment by that amount. (For example, in 1991 the monthly payment for a mortgage amount of $60,000 taken out in 1977 would be:

$60,000 ÷ 10,000 = 6, and 6 × $__ = $__ per month.)◀

▶H-4(D) Variable-Rate Model Clauses (Under § 226.20(c))

Your new interest rate will be __%, which is based on an index value of __%.

Your prior interest rate was __%, which was based on an index value of __%.

Your new loan balance is $__ __.

[The new interest rate does not reflect __ percentage point change in the index value which was not added because of __ __.]

[The new payment will be $__ __.]

[Changes in the index not passed on in this change to the interest rate will be carried over to subsequent interest rate adjustment dates.]

[Your (new) (existing) payment will not be sufficient to cover the interest due and the difference will be added to the loan amount. The payment amount that would be necessary to amortize the loan at the new interest rate is $__ __.]◀

[The following interest rate adjustments have been implemented this year without changing your payment: __ __. These interest rates were based on the following index values: __ __.]◀

H-14 Variable-Rate Mortgage Sample

▶This disclosure describes the features of the Adjustable Rate Mortgage (ARM) program you are considering. Information on other ARM programs is available upon request.

How Your Interest Rate is Determined

• Your interest rate will be based on an index rate plus a margin.

—The interest rate will be the rate of a 1-year Treasury Bill adjusted to a constant maturity, plus our margin. Ask us for our current interest rate and margin.

—You can find information about the index rate in the H-15 (519) series which is published weekly by the Federal Reserve Board.

• Your interest rate will equal the index rate plus our margin unless interest rate "caps" limit the amount of change in the interest rate.

How Your Interest Rate Can Change

• Your interest rate can change yearly.

• Your interest rate cannot increase or decrease more than 2 percentage points per year.

• Your interest rate cannot increase or decrease more than 5 percentage points over the term of the loan.

• Changes in the index not passed on as changes in the interest rate will be carried over to subsequent interest rate adjustment dates.

How Your Monthly Payment Can Change

• Your monthly (principal and interest) payment can change yearly based on changes in the interest rate.

• THERE ARE NO LIMITS ON INCREASES TO YOUR MONTHLY PAYMENTS OTHER THAN LIMITS ON CHANGES IN INTEREST RATES.

• For example, on a $10,000, 30-year loan with an initial interest rate of 10.73% (which is the interest rate shown in the interest rate column below for the year 1986), the maximum amount that the interest rate could rise under this program is 5 percentage points, to 15.73%, and the monthly payment could rise to a maximum of $131.59.

• You will be notified in writing 30 days before the annual interest rate and payment adjustment may be made. This notice will contain information about your index and interest rates, payment amount, and loan balance.

▶*This is a margin we have used recently; your margin may be different.◀

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Example

The example below shows how your payments would have changed under this ARM program based on actual index changes that occurred from 1977 to 1986. This does not necessarily indicate how your index will change in the future. The example is based on the following assumptions:

Amount $10,000
Term .... 30 years
Payment adjustment .... 1 year
Interest adjustment ...... 1 year
Margin .... 3 percent *
Caps .... 2% annual interest rate
Index .... 1-year Treasury Bill adjusted to a constant maturity.
5% lifetime interest rate
No payment caps
Interest rate carryover

Year (as of January)	Index (percent)	Margin (percent)	Interest rate (percent)	Monthly payment (dollars)	Remaining balance (dollars)
1977					
1978	5.29	3	8.29	75.41	9,921.14
1979	7.28	3	10.28	89.59	9,863.27
1980	10.41	3	12.28**	104.34	9,820.02
1981	12.06	3	13.29***	111.91	9,779.79
1982	14.08	3	13.29***	111.91	9,733.88
1983	14.32	3	13.29***	111.91	9,681.45
1984	8.62	3	11.62	99.96	9,602.56
1985	9.90	3	12.90	106.92	9,530.07
1986	9.02	3	12.02	102.86	9,436.19
	7.73	3	10.73	94.39	9,309.94

►*This is a margin we have used recently; your margin may be different.
**This interest rate reflects a 2% annual interest rate cap.
***This interest rate reflects a 5% lifetime interest rate cap.◄

To see what your payments would have been during that period, divide your mortgage amount by $10,000; then multiply the monthly payment by that amount. (For example, in 1986 the monthly payment for a mortgage amount of $60,000 taken out in 1977 would be: $60,000÷$10,000=6, and 6×$94.39=$566.34 per month.)◄

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 17, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-26248 Filed 11-21-86; 8:45 am]

BILLING CODE 6210-01-M

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12 CFR Part 226

[Reg. Z; Docket No. R-0545A]

Proposed Update to Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed official staff interpretation.

SUMMARY: The Board is publishing for comment proposed changes to the official staff commentary to Regulation Z (Truth in Lending). The proposed commentary would offer guidance to creditors in complying with the provisions of a proposed amendment to Regulation Z that is being published for comment in this issue of the **Federal Register.** The regulatory amendment would require creditors to provide more information about certain variable-rate loans than is currently required. The proposed revisions include new material as well as numerous technical changes in existing material. The text of the major additions proposed for the commentary begins with comment 226.18(f)(2)–1, which follows the summary of proposed commentary revisions.

DATE: Comments must be received on or before January 20, 1987.

ADDRESS: Comments should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to the 20th Street courtyard entrance, 20th Street, between C Street and Constitution Avenue, NW., Washington, DC, between 8:45 a.m. and 5:15 p.m. weekdays. Comments should include a reference to Docket No. R-0545A. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Sharon Bowman, Staff Attorney, or Michael Bylsma, Senior Attorney, Division of Consumer and Community Affairs, at (202) 452–2412 or (202) 452–3667, or Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) Background

This proposed official staff interpretation is being published in conjunction with the proposed amendment to Regulation Z to provide more information to consumers about variable-rate mortgage transactions secured by a consumer's principal dwelling. The commentary would apply and interpret the requirements of this proposed amendment to Regulation Z. It is expected that these revisions, pending public comment on the proposed amendments to the regulation and the commentary, will be adopted in final form in April 1987, with optional compliance until the date for mandatory compliance of October 1, 1987.

(2) Proposed Revisions

The following is a brief description of the proposed revisions to the commentary:

Subpart C—Closed-End Credit

Section 226.17—General Disclosure Requirements

17(a) Form of Disclosures

Paragraph 17(a)(1). The information contained in the fifth bullet under comment 17(a)(1)–5, which discusses disclosure of a variable-rate feature on other documents, would be deleted, since similar information would be required under new paragraph (f)(2) of § 226.18. In addition, the ninth bullet under comment 17(a)(1)–5 (discussing negative amortization) would be revised to change the reference from § 226.18(f)(3) to new § 226.18(f)(1)(iii).

17(b) Time of Disclosures

Comment 17(b)–1 would be expanded to cover the timing requirements for variable-rate mortgage transactions secured by the consumer's principal dwelling. This expansion points out the new early timing requirement contained in proposed § 226.19(b) for these variable-rate mortgages.

17(c) Basis of Disclosures and Use of Estimates

Paragraph 17(c)(1). The first bulleted paragraph in comment 17(c)(1)–2 (discussing preferential employee rates) would be revised to change the reference from § 226.18(f) to § 226.19(b). This change would clarify that certain preferred-rate employee loans are variable-rate transactions subject to the new disclosure requirements of proposed § 226.19(b). In addition, comment 17(c)(1)–9 would be revised to incorporate material on discounted variable-rate transactions currently comprising comment 18(f)–8. Similarly, the material currently in comment 18(f)–6 would be incorporated in comment 17(c)(1)–10 as examples of other variable-rate transactions. The reference in the second bullet under comment 18(f)–6 to including the conditions for imposition of the shared-appreciation feature would be deleted, as would the reference to the hypothetical example in the third bullet under this comment. In addition, the discussion on graduated-payment mortgages and step-rate transactions without a variable-rate feature would be deleted. The material currently in comment 18(f)–7 would be incorporated in new comment 17(c)(1)–11, although the language requiring disclosure of the fact that payments may increase, as well as the circumstances of and any limits on such an increase, would be deleted. This material previously in comments 18(f)–6 through 18(f)–8 would be included in the commentary to § 226.17 since it illustrates the disclosures generally required under Truth in Lending for these transactions. As a result of these additions, existing comments 17(c)(1)–9 (on Morris Plans) and 17(c)(1)–10 (concerning the number of transactions) would be redesignated as 17(c)(1)–12 and 17(c)(1)–13, respectively.

17(f) Early Disclosures

As a result of the proposed revisions to § 226.19 of the regulation, the reference in comment 17(f)–3 to § 226.19(b) would be revised to reference § 226.19(a)(2).

Section 226.18—Content of Disclosures

18(f) Variable Rate

Comment 18(f)–1 would be expanded to clarify that variable-rate loans secured by the consumer's principal dwelling are subject to the special early disclosure requirements of proposed § 226.19(b).

Comments 18(f)–5 through 18(f)–8 would be deleted. The material currently in comments 18(f)–6 through 18(f)–8 would be moved to paragraph 17(c)(1) to illustrate the disclosures generally required under Truth in Lending. The material currently in comment 18(f)–5 would be moved to new § 226.19(b), which contains the new disclosure requirements. Similarly, the material currently in comment 18(f)–6 would be moved to new comment § 226.19(b)–4 to clarify that these transactions are subject to this section's general disclosure requirements, with certain enumerated exceptions. The information currently in comment 18(f)–6 relating to the basis for disclosures would not be transferred to new comment 19(b)–4.

The current headings referring to paragraphs 18(f) (1) through (4) would be changed to reference paragraphs 18(f)(1) (i) through (iv) to reflect the fact that current § 226.18(f) of the regulation would become § 226.18(f)(1).

Comment 18(f)(2)–1 would be added to clarify that, where a variable-rate transaction is secured by the consumer's principal dwelling, later Truth in Lending disclosures must state that the variable-rate feature exists, as well as refer to the variable-rate disclosures that should have been provided to consumers earlier pursuant to proposed § 226.19(b).

Section 226.19—Certain Residential Mortgage Transactions

The title of this section of the commentary would be changed to read "Certain Residential and Variable-Rate Mortgage Transactions" to parallel the proposed change to § 226.19 of the regulation. That section now incorporates the new disclosure provisions for variable-rate mortgages secured by the consumer's principal dwelling.

19(a) Time of Disclosure

Since paragraph 19(b) would be revised to encompass the new material concerning variable-rate mortgage transactions secured by the consumer's principal dwelling, the current heading referring to 19(a) would be redesignated as 19(a)(1). Existing comments 19(a)–1 through 19(a)–5 would become comments 19(a)(1)–1 through 19(a)(1)–5.

19(b) Redisclosure Required

As a result of the change to paragraph 19(b) to incorporate new material, the current heading referring to 19(b) would be redesignated as 19(a)(2). Existing comments 19(b)–1 through 19(b)–4 would become comments 19(a)(2)–1 through 19(a)(2)–4.

Comment 19(b)–1 would be added to clarify that the proposed new requirements of § 226.19(b) would apply to all transactions in which the annual percentage rate may increase after consummation and where the transaction is secured by the consumer's principal dwelling.

Comment 19(b)–2 would be added to explain the timing for disclosures pursuant to proposed § 226.19(b). It clarifies that creditors must generally give the disclosures required under this section when an application form is provided or before a non-refundable fee is paid, whichever is earlier. The comment also offers guidance on situations where the creditor receives applications through an intermediary agent or broker. It explains that, in such cases, the creditor may deliver the required disclosures or mail them no later than three business days after the creditor receives the written application.

Comment 19(b)–3, which was previously included in the general variable-rate discussion under § 226.18(f) as comment 18(f)–5, would be added to this section of the commentary to clarify that creditors may substitute information provided in accordance with the variable-rate regulations of other federal agencies for the disclosure requirements of § 226.19(b). The references to footnote 43 and § 226.18(f) would be changed to reference footnote 45a and § 226.19(b), respectively.

Comment 19(b)–4, which incorporates material previously included in comment 18(f)–6, would be added to this section of the commentary to clarify that such transactions are subject to the general disclosure requirements of § 226.19(b), with certain enumerated exceptions. The last sentence in the first bullet under comment 18(f)–6 referring to the disclosures that must be given for renegotiable rate mortgages would be deleted, as would the third and fourth sentences in the second bullet under this comment dealing with disclosures for shared-equity mortgages. In the discussion on preferred-rate employee loans contained in the third bullet under comment 18(f)–6, the language would be revised to take into account transactions where the initial underlying rate is fixed, and the reference to the hypothetical example in the last sentence would be deleted.

Paragraph 19(b)(1). Comment 19(b)(1)–1 would be added to make clear that a creditor must provide either the *Consumer Handbook on Adjustable Rate Mortgages* or a suitable substitute to consumers at an early stage of the application process. It explains that the substitute should at least be comparable to the *Consumer Handbook* in substance and comprehensiveness, but may offer more detailed information about ARMs than the *Consumer Handbook.*

Paragraph 19(b)(2). Comment 19(b)(2)–1 would be added to explain that a creditor must provide disclosures for each of the creditor's variable-rate

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programs in which the consumer expresses an interest, as well as any additional disclosures requested after initial disclosures have been made under this section. Comment 19(b)(2)–2 would be added to clarify that the disclosures required under proposed § 226.19(b)(2) need only be made as applicable, and comment 19(b)(2)–3 would explain the circumstances under which a creditor must give revised disclosures under this section.

Comments to proposed § 226.19(b)(2) (i) through (xiv) have been added to describe the requirements imposed by these paragraphs concerning disclosure of detailed, specific information about all major aspects of a variable-rate transaction secured by a consumer's principal dwelling. In general, under proposed § 226.19(b)(2), creditors would be required to identify the index to which interest rate changes are tied, or provide a brief description of the formula used in calculating changes if no index is used, as well as disclose a source of information about the index. Proposed § 226.19(b)(2) would also require an explanation of how a consumer's interest rate and payment will be determined and a statement telling consumers to ask for the current margin value and interest rate. Creditors would also need to provide consumers with information about a discount feature when the initial rate is discounted, and disclose the frequency of rate and payment adjustments, as well as the existence of rate and payment caps. If no payment or rate caps exist, the disclosure would indicate conspicuously that there are no limits on potential increases in payments or rates. If the presence of rate or payment caps would result in interest rate carryover or negative amortization, the disclosure statement would need to contain a reference to those features. A creditor would also have to disclose if a loan program contains a demand feature, and state what information will be contained in an adjustment notice and when such notice will be provided. Creditors would also be required to provide consumers with a statement that disclosure forms are available for other variable-rate loan programs.

In addition to these disclosures, § 226.19(b)(2) would require creditors to provide a fifteen-year historical example of how changes in the index or formula values used to compute interest rates would have affected the interest rates and payments on a $10,000 loan made at the beginning of that period. The creditor would also need to disclose the maximum interest rate and payment that could result under the loan program for a $10,000 loan. Section 226.19(b)(2) would also require a creditor to explain how a consumer can calculate his or her payments for a loan amount other than $10,000.

The comments to paragraphs 19(b)(2) (i) through (xiv) would clarify these proposed disclosure requirements and illustrate how a creditor may comply with these provisions.

Section 226.20—Subsequent Disclosure Requirements

20(b) Assumptions

Comment 20(b)–6 would be amended to clarify that assumptions of variable-rate transactions secured by the consumer's principal dwelling are not subject to the disclosure provisions of proposed §§ 226.18(f)(2)(ii) or 226.19(b).

20(c) Variable-Rate Adjustments

Comment 20(c)–1 would be added to explain what subsequent disclosures are required in cases where a rate adjustment is scheduled in a variable-rate transaction subject to proposed § 226.19(b). Comment 20(c)–2 would clarify that shared-equity loans and preferred-rate employee loans with an underlying fixed rate would be exempt from the proposed subsequent disclosure requirements of § 226.20.

Appendix H—Closed-End Model Forms and Clauses

Appendix H has been revised to illustrate the new disclosures that would be required under the proposed regulatory amendments. Model H–4 would contain model forms H–4(A), H–4(B), H–4(C), and H–4(D), with commentary provided for each form. Model H–4(A) contains the material currently in Model H–4, while Model H–4(B) would be added to illustrate the variable-rate disclosures required under proposed § 226.18(f)(2). Similarly, Model H–4(C) would be added to illustrate the early disclosures required under proposed § 226.19(b), while Model H–4(D) would be added to explain the requirements of the adjustment notice provided for in proposed § 226.20(c). These additions would be numbered as paragraphs four through seven in Appendix H. Existing paragraphs five through eight, which incorporate commentary on Models H–5 through H–9, would be renumbered as paragraphs eight through eleven.

The commentary to current Sample H–14 would be replaced by commentary for the new Sample H–14. It explains how a creditor may adapt the model clauses in Model H–4(C) to the creditor's own particular variable-rate program. As a result of the addition of Models H–4(B) through H–4(D), current paragraphs nine through twenty in Appendix H, which incorporate commentary on the sample forms, would be renumbered as paragraphs twelve through twenty-three.

List of Subjects in 12 CFR Part 226

Advertising, Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Truth in lending.

Certain conventions have been used to highlight the proposed revisions. New language is shown inside arrows, while language that would be removed is set off with brackets. Pursuant to authority granted in section 105 of the Truth in Lending Act (15 U.S.C. 1604 as amended), the Board proposes to amend the official staff commentary to Regulation Z (12 CFR Part 226 Supp. I) as follows:

PART 226—[AMENDED]

(1) The authority citation for Part 226 continues to read:

Authority: Sec. 105, Truth in Lending Act, as amended by sec. 605, Pub. L. 96–221, 94 Stat. 170 (15 U.S.C. 1604 *et seq.*).

(2) *Text of proposed revisions.* The proposed revisions to the commentary (Supplement I to 12 CFR Part 226) include removing the information contained in the fifth bullet under comment 17(a)(1)–5 and changing the reference in the ninth bullet under this comment from § 226.18(f)(3) to § 226.18(f)(1)(iii); revising comment 17(b)–1, changing the reference in the first bullet under comment 17(c)(1)–2 from § 226.18(f) to § 226.19(b); redesignating existing comments 17(c)(1)–9 and 17(c)(1)–10 as comments 17(c)(1)–12 and 17(c)(1)–13, respectively and adding new comments 17(c)(1)–9 through 17(c)(1)–11; changing the reference in comment 17(f)–3 from § 226.19(b) to § 226.19(a)(2); revising comment 18(f)–1; removing comments 18(f)–5 through 18(f)–8; redesignating comments 18(f)(1)–1, 18(f)(2)–1, 18(f)(3)–1, 18(f)(4)–1 and 18(f)(4)–2 as comments 18(f)(1)(i)–1, 18(f)(1)(ii)–1, 18(f)(1)(iii)–1, 18(f)(1)(iv)–1, and 18(f)(1)(iv)–2, respectively; adding new comment 18(f)(2)–1; revising the title to the commentary on § 226.19; redesignating paragraphs 19(a) and 19(b) as paragraphs 19(a)(1) and 19(a)(2), respectively; redesignating comments 19(a)–1 through 19(a)–5 as comments 19(a)(1)–1 through 19(a)(1)–5 and comments 19(b)–1 through 19(b)–4 as 19(a)(2)–1 through 19(a)(2)–4; adding new comments 19(b), (b)(1), (2) and (2)(i)–(xiv); revising comment 20(b)–6 introductory text and the concluding

paragraph and adding comments 20(c)–1 and 20(c)–2; amending the commentary to Appendix H by redesignating H–5 through H–20 as H–8 through H–23, adding new comments H–5 through H–7, and revising newly redesignated H–18, to read as follows:

Supplement I—Proposed Official Staff Interpretation

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Section 226.17—General Disclosure Requirements.

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17(b) Time of disclosures.

1. *Consummation.* As a general rule, disclosures must be made before "consummation" of the transaction. The disclosures need not be given by any particular time before consummation, except in certain mortgage transactions ▶and variable-rate mortgage transactions secured by the consumer's principal dwelling◀ under § 226.19. (See the commentary to § 226.2(a)(13) regarding the definition of consummation.)

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17(c) Basis of Disclosures and Use of Estimates.

Paragraph 17(c)(1)

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▶9. *Discounted variable-rate transactions.* In some variable-rate transactions, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate charged to consumers is lower than the rate would be if it were calculated using the index or formula. However, in some cases the initial rate may be higher. In a discounted transaction, for example, a creditor may calculate interest rates according to a formula using the six-month Treasury bill rate plus a 2 percent margin. If the Treasury bill rate at consummation is 10 percent, the creditor may forgo the 2 percent spread and charge only 10 percent for a limited time, instead of setting an initial rate of 12 percent.

- When creditors use an initial interest rate that is not calculated using the index or formula for later rate adjustments, the disclosures should reflect a composite annual percentage rate based on the initial rate for as long as it is charged and, for the remainder of the term, the rate that would have been applied using the index or formula at the time of consummation. The rate at consummation need not be used if a contract provides for a delay in the implementation of changes in an index value. For example, if the contract specifies that rate changes are based on the index value in effect 45 days before the change date, creditors may use the index value in effect not more than 45 days before consummation in calculating a composite annual percentage rate.
- The effect of the multiple rates must also be reflected in the calculation and disclosure of the finance charge, total of payments, and payment schedule.
- If a loan contains a rate or payment cap that would prevent the initial rate or payment, at the time of the first adjustment, from changing to the rate determined by the index or formula at consummation, the effect of that rate or payment cap should be reflected in the disclosures.
- Because these transactions involve irregular payment amounts, an annual percentage rate tolerance of ¼ of 1 percent applies, in accordance with § 226.22(a)(3) of the regulation.
- Examples of discounted variable-rate transactions include—

—A 30-year loan for $100,000 with no prepaid finance charges and rates determined by the Treasury bill rate plus 2 percent. Rate and payment adjustments are made annually. Although the Treasury bill rate at the time of consummation is 10 percent, the creditor sets the interest rate for one year at 9 percent, instead of 12 percent according to the formula. The disclosures should reflect a composite annual percentage rate of 11.63 percent based on 9 percent for one year and 12 percent for 29 years. Reflecting those two rate levels, the payment schedule should show 12 payments of $804.62 and 348 payments of $1,025.31. The finance charge should be $266,463.32 and the total of payments $366,463.32.

—Same loan as above, except with a 2 percent rate cap on periodic adjustments. The disclosures should reflect a composite annual percentage rate of 11.53 percent based on 9 percent for the first year, 11 percent for the second year, and 12 percent for the remaining 28 years. Reflecting those three rate levels, the payment schedule should show 12 payments of $804.62, 12 payments of $950.09, and 336 payments of $1,024.34. The finance charge should be $265,234.76, and the total of payments $365,234.76.

—Same loan as above, except with a 7½ percent cap on payment adjustments. The disclosures should reflect a composite annual percentage rate of 11.64 percent, based on 9 percent for one year and 12 percent for 29 years. Because of the payment cap, five levels of payment should be reflected. The payment schedule should show 12 payments of $804.62, 12 payments of $864.97, 12 payments of $929.86, 12 payments of $999.60, and 312 payments of $1,070.03. The finance charge should be $277,037.96, and the total of payments $377,037.96.

This paragraph does not apply to variable-rate loans in which the initial interest rate is set according to the index or formula used for later adjustments but is not set at the value of the index or formula at consummation. For example, if a creditor commits to an initial rate based on the formula on a date prior to consummation, but the index has moved during the period between that time and consummation, a creditor should base its disclosures on the initial rate.

10. *Other variable-rate transactions.* Examples of variable-rate transactions include:

- Renegotiable rate mortgage instruments that involve a series of short-term loans secured by a long-term obligation, where the lender is obligated to renew the short-term loans at the consumer's option. At the time of renewal, the lender has the option of increasing the interest rate. Disclosures must be given for the longer term of the obligation, with all disclosures calculated on the basis of the rate in effect at the time of consummation of the transaction.
- "Shared-equity" or "shared-appreciation" mortgages that have a fixed rate of interest and an appreciation share based on the consumer's equity in the mortgaged property. The appreciation share is payable in a lump sum at a specified time. Disclosures must be based on the fixed interest rate. If the transaction is not secured by the consumer's principal dwelling, the creditor should refer to comment 18(f)–1. Disclosures under § 226.18(f) would include, for example, the time at which the shared appreciation would be collected and the limitation on the creditor's share. If the transaction is secured by the consumer's principal dwelling the creditor should refer to § 226.19(b). (As discussed in § 226.2, other types of shared-equity arrangements are not considered "credit" and are not subject to Regulation Z.)
- Preferred-rate employee loans where the terms of the legal obligation provide that the rate will increase only if the employee leaves the employ of the creditor and the note reflects the preferred rate. The disclosures are to be based on that rate.

11. *Growth-equity mortgages.* Also referred to as payment-escalated mortgages, these mortgage plans involve scheduled payment increases to prematurely amortize the loan. The initial payment amount is determined as for a long-term loan with a fixed interest rate. Payment increases are scheduled periodically, based on changes in an index. The larger payments result in accelerated amortization of the loan. In disclosing these mortgage plans, creditors may either:

- Estimate the amount of payment increases, based on the best information reasonably available; or
- Disclose by analogy to the variable-rate disclosures. (This discussion does not apply to growth-equity mortgages in which the amount of payment increases can be accurately determined at the time of disclosure. For these mortgages, as for graduated-payment mortgages, disclosures should reflect the scheduled increases in payments.)◀

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Section 226.18—Content of Disclosures

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18(f) Variable Rate

1. *Coverage.* The requirements of § 226.18(f) apply to all transactions in which the terms of the legal obligation allow the creditor to increase the rate originally disclosed to the consumer. It includes not only increases in the interest rate but also increases in other components, such as the rate of required credit life insurance. The provisions, however, do not apply to increases resulting from delinquency (including late payment), default, assumption, acceleration or transfer of the collateral. ▶Moreover, loans in which the annual percentage rate may increase after consummation and where the transaction is secured by the consumer's principal dwelling

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are subject to the special early disclosure requirements of § 226.19(b).◆

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18(f)(2)

◆1. *Disclosure required.* In a variable-rate transaction that is secured by the consumer's principal dwelling, the creditor must give special early disclosures under § 226.19(b) in addition to the later Truth in Lending disclosures required under § 226.18(f)(2). The creditor, in making disclosures under § 226.18(f)(2), must state that the variable-rate feature exists and that variable-rate disclosures have been provided earlier.◆

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Section 226.19—Certain Residential ◆and Variable-Rate◆ Mortgage Transactions.

* * * * *

19(b) ◆Variable-Rate Mortgage Transactions

1. *Coverage.* The requirements of § 226.19(b) apply to all transactions in which the annual percentage rate may increase after consummation and where the transaction is secured by the consumer's principal dwelling. It includes not only purchase-money mortgages, where the consumer obtains a mortgage loan to purchase a home, but also other closed-end transactions in which the consumer uses the home as security for a loan. All other variable-rate transactions which are not secured by the consumer's principal dwelling are subject to the disclosure requirements of § 226.18(f)(1).

2. *Timing.* A creditor must generally give the disclosures required under this section at the time an application form is provided or before the consumer pays a non-refundable fee, whichever is earlier. In cases where a creditor receives a written application through an intermediary agent or broker, however, footnote 45b provides that the creditor shall deliver the disclosures or place them in the mail not later than three business days after the creditor receives the consumer's written application.

3. *Other variable-rate regulations.* Transactions in which the creditor is required to comply with and has complied with variable-rate regulations of other federal agencies are exempt from the requirements of § 226.19(b), by virtue of footnote 45a. Those variable-rate regulations include the adjustable mortgage loan instrument regulation issued by the Federal Home Loan Bank Board (12 CFR 545.33), and the adjustable-rate mortgage regulation issued by the Comptroller of the Currency (12 CFR 29), and the adjustable-rate mortgage regulations issued by the Department of Housing and Urban Development (24 CFR 203 and 24 CFR 234). The exception in footnote 45a is also available to creditors that are required by state law to comply with the federal variablerate regulations noted above and to creditors that are authorized by title VIII of the Depository Institutions Act of 1982 (12 U.S.C. 3801 *et seq.*) to make loans in accordance with those regulations. Creditors using this exception should comply with the timing requirements of those regulations rather than the timing requirements of Regulation Z in making the variable-rate disclosures.

4. *Examples of variable-rate transactions.* The following transactions, if secured by the consumer's principal dwelling, constitute variable-rate transactions subject to the disclosure requirements of § 226.19(b) unless specifically exempted. (If these variable-rate transactions are not secured by the consumer's principal dwelling, disclosures pursuant to § 226.18(f)(1) must be provided.)

- Renegotiable rate mortgage instruments that involve a series of short-term loans secured by a long-term obligation, where the lender is obligated to renew the short-term loans at the consumer's option. At the time of renewal, the lender has the option of increasing the interest rate.
- "Shared-equity" or "shared-appreciation" mortgages that have a fixed rate of interest and an appreciation share based on the consumer's equity in the mortgaged property. The appreciation share is payable in a lump sum at a specified time. Sections 226.19(b)(2) (iv), (v), (ix), (x), (xi) and (xiii) do not apply to shared-equity mortgages, however. (As discussed in § 226.2, other types of sharedequity arrangements are not considered "credit" and are not subject to Regulation Z.)
- Preferred-rate employee loans where the terms of the legal obligation provide that the initial underlying rate is fixed, but will increase if the employee leaves the employ of the creditor, and the note reflects the preferred rate. The disclosures are to be based on that rate. Where the underlying fixed-rate loan has such a variable-rate feature, the disclosures under §§ 226.19(b)(2) (ix), (x), (xiii) and (xiv) are inapplicable.

(Graduated-payment mortgages and step-rate transactions without a variable-rate feature are not considered variable-rate transactions.)

Paragraph 19(b)(1)

1. *Substitutes.* Creditors who wish to use ARM information publications other than the *Consumer Handbook on Adjustable Rate Mortgages* must make a good faith determination that their brochures are suitable substitutes to the *Consumer Handbook.* A substitute is suitable if it is, at a minimum, comparable to the *Consumer Handbook* in substance and comprehensiveness. Creditors are permitted to provide more detailed information about ARMs than is contained in the *Consumer Handbook.*

Paragraph 19(b)(2)

1. *Disclosure for each variable-rate program.* In variable-rate transactions subject to § 226.19(b) requirements, a creditor must provide disclosures that fully describe each of the creditor's variable-rate loan programs in which the consumer expresses an interest at the time an application form is provided or before the consumer pays a non-refundable fee, whichever is earlier. Moreover, if a consumer requests disclosures for other ARM programs, a creditor must provide disclosures for as many other of the creditor's ARM programs as the consumer requests.

2. *As applicable.* The disclosures required by this section need only be made as applicable. Any disclosure not relevant to a particular transaction may be eliminated. For example, if the transaction does not contain a demand feature, the disclosure required under § 226.19(b)(2)(xii) need not be given.

3. *Revisions.* A creditor must revise the disclosures required under this section generally in two circumstances—once a year when the new index value becomes available and when the loan program changes.

Paragraph 19(b)(2)(i)

1. *Change in interest rate, payment, or term.* A creditor must disclose the fact that the terms of the legal obligation permit the creditor, after consummation of the transaction, to increase (or decrease) the interest rate, payment, or term of the loan initially disclosed to the consumer. For example, the disclosures might read, "Your payment can change yearly based on changes in the interest rate."

Paragraph 19(b)(2)(ii)

1. *Identification of index or formula.* If a creditor ties interest rate changes to a particular index, this fact must be disclosed, along with a source of information about the index. For example, if a creditor uses the 1-year Treasury Bill rate as its index, the disclosure might read, "Your index is the rate for a 1-year Treasury Bill adjusted to a constant maturity published weekly in the *Wall Street Journal.*" If no particular index is used, the creditor must briefly describe the formula used to calculate interest rate changes.

2. *Changes at creditor's discretion.* If interest rate changes are at the creditor's discretion, this fact must be disclosed. If an index is internally defined, such as by a creditor's prime rate, the creditor should either briefly describe that index or state that interest rate changes are at the creditor's discretion.

Paragraph 19(b)(2)(iii)

1. *Determination of interest rate and payment.* This section requires an explanation of how the creditor will determine the consumer's interest rate and payment. In cases where a creditor bases its interest rate on a specific index (such as the 1-year Treasury Bill rate) and adjusts the index through the addition of a margin, for example, the disclosure might read, "Your interest rate is based on the index plus a 2% margin, and your payment will be based on the interest rate."

Paragraph 19(b)(2)(iv)

1. *Current margin value and interest rate.* Because the disclosures can be prepared in advance, the interest rate and margin may be several months old when the disclosures are delivered. A statement, therefore, is required alerting the consumers to the fact that they should inquire about the current margin value applied to the index and the current interest rate. For example, the disclosure might state, "You should ask us for our current interest rate and margin."

Paragraph 19(b)(2)(v)

1. *Discounted interest rate.* In some variable-rate transactions, creditors may set an initial interest rate that is not determined by the index or formula used to make later

interest rate adjustments. Typically, this initial rate charged to consumers is lower than the rate would be if it were calculated using the index or formula. However, in some cases the initial rate may be higher. If the initial interest rate contains a discount feature, creditors must alert the consumer to this fact, as well as disclose the amount of the discount and the period for which the low initial rate applies. For example, if a creditor discounted a consumer's initial rate for six months, the disclosure might state, "Your initial interest rate is not based on the index used to make later adjustments and will be 3 percentage points lower than the index and margin for the first six months." (See the commentary to § 226.17(c)(1) for a further discussion of discounted variable-rate transactions.) This paragraph does not apply to variable-rate loans in which the initial interest rate is set according to the index or formula used for later adjustments but is not set at the value of the index or formula at consummation. For example, this paragraph does not apply if a creditor commits to an initial rate based on the formula on a date prior to consummation, but the index has moved during the period between that time and consummation.

Paragraph 19(b)(2)(vi)

1. *Frequency.* The frequency of interest rate and payment adjustments must be disclosed. If interest rate changes will be imposed more frequently or at different intervals than payment changes, then a creditor must reveal the frequency and timing of both types of changes. For example, in a variable-rate transaction where interest rate changes are made monthly, but payment changes would only occur on an annual basis, this fact must be disclosed.

Paragraph 19(b)(2)(vii)

1. *Rate and payment caps.* If the variable-rate transaction limits changes (increases or decreases) in the interest rate or payment, the creditor must disclose those limitations.

2. *Negative amortization and interest rate carryover.* A creditor must disclose, where applicable, the possibility of negative amortization. For example, the disclosure might state, "If any of your payments is not sufficient to cover the interest due, the difference will be added to your loan amount." In addition, the creditor must disclose the existence of any interest rate carryover provisions. For example, if the index rises 3 percentage points during the year, the loan contains a 2 percentage cap on annual changes (increases or decreases) in the interest rate, and the creditor may impose the additional percentage point the following year, the creditor must disclose the fact that changes in the index will be carried over to subsequent interest rate adjustment dates. The disclosure might state, "Changes in the index not passed on as changes in the interest rate will be carried over to subsequent interest rate adjustment dates."

3. *Conversion option.* If a loan program permits consumers to convert their variable-rate loans to fixed-rate mortgages at a designated time, the rules relating to this feature must be disclosed.

4. *Preferred-rate employee loans.* This provision applies to preferred-rate employee loans, where the rate will increase if the employee leaves the creditor's employ, whether or not the underlying rate is fixed or variable. For example, in transactions where the terms of the legal obligation provide that the initial underlying rate is variable, but also provide that the rate will increase if the employee leaves the employ of the creditor, the creditor must disclose that the rate may increase if the employee leaves the creditor's employ.

Paragraph 19(b)(2)(viii)

1. *Conspicuous statement.* The requirement that a creditor provide a "conspicuous" statement that there are no limits on increases in a borrower's payment or interest rate may be satisfied through the use of boldface print, underscoring, or capital letters to disclose this information. (See the commentary to § 226.17(a)(2) for additional information concerning how to make disclosures more conspicuous.)

Paragraph 19(b)(2)(ix)

1. *Index movement.* This section requires a creditor to provide an historical example, based on a $10,000 loan amount originating in 1977, showing how interest rate changes implemented according to the terms of the loan program would have affected payments and the loan balance at the end of each year during a 15 year period. Pursuant to this section, the creditor must provide a history of index values for the preceding 15 years. Initially, the disclosures would give a 10-year history of the index values beginning with 1977 values. Each year thereafter, disclosures pursuant to this section would include an additional year of index values until 15 years of values are shown. The 15-year history in the disclosures must reflect the most recent 15 years of index values. If the values for an index have not been available for 15 years, a creditor need only go back as far as the values are available in giving a history. If a creditor uses an index value as of a certain date, which is changed several times annually, the creditor may assume one date on which to base the history of index values. In all cases, only one index value per year need be shown. Thus, in transactions where interest rate adjustments are implemented more frequently than once per year, a creditor may assume that the interest rate and payment resulting from the index value chosen will stay in effect for the entire year for purposes of calculating the loan balance as of the end of the year and for reflecting other loan program terms. Moreover, if a creditor uses an average of index values or any other index formula, the history given should reflect those values. In cases where interest rate changes are at the creditor's discretion (see the commentary to § 226.19(b)(2)(ii)), the creditor must provide a history of the rates imposed for the preceding period, beginning with an initial 10-year history of rates starting in 1977. Each year thereafter, disclosures would include an additional year until 15 years of index values are shown. In giving this history, the creditor need only go back as far as the creditor's rates can reasonably be determined.

2. *Selection of margin.* For purposes of the disclosure required under § 226.19(b)(2)(ix), a creditor may select a margin that has been used during the six months preceding preparation of the disclosures, and should disclose that the margin is one that the creditor has used recently. A creditor is permitted to assume a representative margin in order to make calculations for the historical example required under this section since the disclosure form must be given early in the application process. The margin selected may be used until a creditor updates the disclosure form to reflect the most recent index values.

Paragraph 19(b)(2)(x)

1. *Calculation of payments.* A creditor is required to include a statement on the disclosure form that explains how a consumer may calculate his or her actual monthly payments for a loan amount other than $10,000. The example should be based upon the most recent payment shown in the historical example. The creditor, however, is not required to calculate the consumer's payments. (See the model clauses in H–4(C).)

Paragraph 19(b)(2)(xi)

1. *Maximum interest rate and payment.* The disclosure form must state the maximum interest rate and payment for a $10,000 loan, based on the most recent interest rate shown in the historical example. In calculating the maximum payments under this section, a creditor should assume that the interest rate has increased as rapidly as possible under the loan program, and the maximum payment disclosed should reflect the amortization of the loan during this period. Thus, in a loan with 2 percent annual (and 5 percent overall) interest rate limitations or "caps," the maximum interest rate would be 5 percentage points higher than the most recent rate shown in the historical example. Moreover, the loan would not reach the maximum interest rate increase until the third year because of the 2 percent annual rate limitations, and the maximum payment disclosed would reflect the amortization of the loan during this period. The requirement that the maximum interest rate and payment be disclosed would not be required if the loan contained no caps, although the disclosure under § 226.19(b)(2)(viii) would state that there are no limits on potential increases in rates or payments.

Paragraph 19(b)(2)(xii)

1. *Demand feature.* If a variable-rate loan subject to § 226.19(b) requirements contains a demand feature, this fact must be disclosed. (Pursuant to § 226.18(i), creditors would also disclose the demand feature in the standard disclosures given later.)

Paragraph 19(b)(2)(xiii)

1. *Adjustment notices.* A creditor must disclose to the consumer what information will be contained in subsequent notices of adjustments and when such notices will be provided. (See § 226.20(c) regarding notices of adjustments.) For example, in transactions providing that payment adjustments may accompany each interest rate adjustment, the disclosure might state, "You will be notified at least 30, but no more than 120, days before the effective date of any scheduled interest

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rate adjustment that may be accompanied by a payment adjustment. This notice will contain information about the index and interest rates, payment amount, and loan balance." In transactions where the creditor would be required to send at least one notice each year during which there have been interest rate adjustments without accompanying payment adjustments, the disclosure might read, "You will be notified once each year during which interest rate adjustments, but no payment adjustments, have been made to your loan. This notice will contain information about the index and interest rates, payment amount, and loan balance."

Paragraph 19(b)(2)(xiv)

1. *Multiple loan programs.* A creditor who offers multiple variable-rate loan programs is required to have disclosures for each variable-rate loan program offered pursuant to § 226.19(b)(2). The creditor must inform the consumer that other variable-rate programs exist, and that disclosure forms are available for these additional loan programs. For example, the disclosure form might state, "Information on other ARM programs is available upon request"◂

Section 226.20—Subsequent Disclosure Requirements.

* * * * *

20(b) Assumptions

* * * * *

6. *Disclosures.* For transactions that are assumptions within this provision, the creditor must make disclosures based on the "remaining obligation." For example:

* * * * *

If a transaction involves add-on or discount finance charges, the creditor may make abbreviated disclosures, as outlined in § 226.20(b) (1) through (5). ▸Creditors providing disclosures pursuant to this section for assumptions of variable-rate transactions secured by the consumer's principal dwelling need not provide new disclosures under § 226.18(f)(2)(ii) or 226.19(b).◂

* * * * *

▸20(c) Variable-Rate Adjustments

1. *Additional disclosures.* This section would require a creditor to provide certain limited disclosures in cases where an adjustment to the interest rate is scheduled in a variable-rate transaction subject to § 226.19(b). A notice of a scheduled rate adjustment must be sent to the consumer, whether or not the scheduled rate adjustment is accompanied by a corresponding adjustment to the consumer's payment. There are two timing rules, depending on whether payment changes may accompany interest rate changes. In transactions where the interest rate may be adjusted more frequently than the payment, a creditor is required to send at least one notice each year during which interest rate adjustments have occurred without accompanying payment adjustments. In transactions providing for payment adjustments to accompany each interest rate adjustment, a creditor must notify borrowers at least 30, but not more than 120, days before the effective date of each scheduled rate adjustment. The disclosure must include the new payment amount, the current and prior interest and index rates and the loan balance, as well as notify the consumer of the extent to which any increase in the interest rate has been foregone. The disclosure must also state the payment that would be required to fully amortize the loan if this amount is different from the payment already disclosed. Information about this adjustment notice should be provided to the consumer in the variable-rate loan disclosures provided under § 226.19(b)(2)(xiii).

2. *Exceptions.* Section 226.20(c) does not apply to shared-equity loans and preferred-rate employee loans with an underlying fixed rate.◂

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Appendix H—Closed-End Model Forms and Clauses

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▸5. *Model H–4(B).* This model clause illustrates the variable rate disclosure required under § 226.18(f)(2), which would alert consumers to the fact that the transaction contains a variable-rate feature and that earlier disclosures were provided under § 226.19(b) in cases where the variable-rate transaction is secured by the consumer's principal dwelling.

6. *Model H–4(C).* This model clause illustrates the early disclosures required generally under § 226.19(b) when the variable-rate transaction is secured by the consumer's principal dwelling. It includes information on how the consumer's interest rate is determined and how it can change over the term of the loan, and explains changes that may occur in the borrower's monthly payment. In variable-rate loans where there are no limits on increases in the borrower's interest rate or in the monthly payment (other than limits on changes in interest rates), this fact must be expressed conspicuously. The model clause includes an example of this disclosure. (See the commentary to § 226.19(b)(2)(viii) for a discussion of what is included in the meaning of the term "conspicuous.") The model clause also contains an example of how to disclose historical changes in the index or formula values used to compute interest rates for the preceding 15 years. In addition, the model clause illustrates the disclosure required to explain how a consumer may calculate his or her actual monthly payments for a loan amount other than $10,000.

7. *Model H–4(D).* This model clause illustrates the adjustment notice required under § 226.20(c). The notice should contain the new payment amount, the current and prior interest and index rates, and the loan balance. The adjustment notice must also disclose the extent to which any increase in interest rate has been foregone, and, where different from the payment already disclosed, the payment that would be required to fully amortize the loan.◂

* * * * *

▸18. *Sample H–14.* This sample disclosure form illustrates the disclosures under section 19(b) for a variable-rate mortgage where the annual percentage rate may increase after consummation and the transaction is secured by the consumer's principal dwelling. The sample form shows a creditor how to adapt the model clauses in Appendix H–4(C) to the creditor's own particular variable-rate program. The sample disclosure form describes the features of a specific variable-rate mortgage program and alerts the consumer to the fact that information on other variable-rate programs is available upon request. It includes information on how the borrower's interest rate is determined and how it can change over time, and explains how the monthly payment can change based on a $10,000 loan amount, payable in 360 monthly installments, based on historical changes in the values for a 1-year Treasury Bill adjusted to a constant maturity for the period of January 1977 to January 1986. This 10-year history reflects the requirement under § 226.19(b)(2)(ix) that the index history begin with index values for 1977. Thus, the index history in 1986 would contain only 10 years of index values. In making these disclosures in 1991, however, a creditor would need to show a 15-year index history beginning with the values in 1977. The sample disclosure also illustrates the requirement under § 226.19(b)(2)(xi) that the maximum interest rate and payment be shown for a $10,000 loan originated at the most recent rate shown in the historical example. In the sample, the loan is assumed to have an initial interest rate of 10.73% (which was the rate in 1986 for the index used) and has 2 percent annual (and 5 percent overall) interest rate limitations or caps. Thus, the maximum amount that the interest rate could rise under this program is 5 percentage points higher than the 10.73% initial rate to 15.73%, and the monthly payment could rise from $94.39 to a maximum of $131.89. The loan would not reach the maximum interest rate increase until its third year because of the 2 percent annual rate limitations, and the maximum payment disclosed would reflect the amortization of the loan during that period. The sample disclosure form also reflects the requirement that, in cases where there is no limit on increases in the borrower's monthly payments (other than limits on increases in interest rates), that this fact must be stated conspicuously. (See the commentary to § 226.19(b)(2)(viii) for a discussion of what is included in the meaning of the term "conspicuous.") The sample form also illustrates how to provide consumers with a method for calculating their actual monthly payment for a loan amount other than $10,000.◂

Board of Governors of the Federal Reserve System, November 17, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-26249 Filed 11-21-86; 8:45 am]

BILLING CODE 6210-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 129

Small Business Development Center Program

AGENCY: Small Business Administration.

ACTION: Extension of comment period on proposed rulemaking.

SUMMARY: On October 23, 1986, the Small Business Administration (SBA) published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) regarding the Small Business Development Center Program (see 51 FR 37580).

That publication provided that comments on the NPRM would be received for a period of 60 days from the date of publication. This notice extends the comment period pertaining to the NPRM for an additional 30 days to allow the public more time to consider this comprehensive proposal.

DATE: Comments on the above-referenced proposed rule must be received by January 21, 1987.

ADDRESS: Written comments should be addressed to: Johnnie L. Albertson, Deputy Associate Administrator for Business Development/Small Business Development Centers, 1441 L Street, NW., Room 317, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Freddie Collins, Special Assistant to the Deputy Associate Administrator for Business Development/Small Business Development Centers, (202) 653-6768.

SUPPLEMENTARY INFORMATION: In order to provide more time for public comment on the above-referenced proposed rules, SBA is hereby extending the comment period relative to the proposal for an additional 30 days.The public is encouraged to supply written comments to the address indicated above so that a complete record can be established in this rulemaking.

Dated: November 10, 1986.

Charles L. Heatherly,

Acting Administrator.

[FR Doc. 86-26374 Filed 11-21-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. 1

[Docket No. 25128; Summary Notice No. PR-86-19]

Summary of Rulemaking Petition Received From USAir, Inc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for rulemaking.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of a petition by USAir, Inc., seeking additional restrictions on high density airport slots awarded in a lottery conducted under Special Federal Aviation Regulation (SFAR) No. 48. The additional restrictions would be requirements that a carrier drawing slots in the lottery operate the slots (1) for 2 years (in lieu of the current 90 days), (2) using aircraft which are in the carrier's fleet and which have 56 or more seats, and (3) using aircrews which are the employees of the carrier, before the carrier would be permitted to transfer the slots by other than a one-for-one trade. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and be received on or before December 5, 1986.

ADDRESS: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 25128, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: David L. Bennett, Office of the Chief Counsel, AGC-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-3491.

SUPPLEMENTARY INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rule Docket (AGC-204), Room 916, FAA Headquarters Building (FOB-10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-3644.

Petitioner requests that the requirements of the SFAR No. 48 (51 FR 8632; March 12, 1986) be amended to increase the restrictions which apply to the transfer of slots selected in a special lottery. SFAR No. 48 provided for the withdrawal and allocation of up to 5 percent of the air carrier slots at LaGuardia, O'Hare International, and Washington National Airports. Participation in the allocation lottery was limited to new entrant carriers and limited incumbent carriers with fewer than 8 slots at the airport. The rule provided for two lotteries, the first of which was conducted on March 27, 1986. The second and final SFAR No. 48 lottery is scheduled for December 9.

SFAR No. 48 provided that slots selected in the lottery could not be sold or traded on other than a one-for-one basis for slots at the same airport until the carrier had operated the slots with aircraft having 56 or more seats for 90 days.

Petitioner states that the 90-day restriction does not serve the policy of the special lottery to permit entry and expansion by new entrant and limited incumbent carriers at high density airports. Several carriers which selected slots in the lottery operated them for the minimum time and then sold them. To avoid this result in the secondary lottery, petitioner requests that SFAR No. 48 be amended to prohibit a carrier from transferring a slot drawn in the lottery, except for trades on a one-for-one basis for another slot at the same airport unless the carrier operates the slot:

(1) For a 2-year period.

(2) With aircraft having 56 or more seats;

(3) With aircraft which are part of the carrier's fleet, as verified by their inclusion on the FAA's list of Active Aircraft for that carrier), and

(4) With aircrews that are employees of the carrier.

Issued in Washington, DC, on November 17, 1986.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement.

[FR Doc. 86-26346 Filed 11-21-86; 8:45 am]

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14 CFR Parts 71 and 73

[Airspace Docket No. 86-AGL-25]

Proposed Relocation and Subdivision of Restricted Area R-5503 Wilmington, OH, Into R-5503A and R-5503B

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to subdivide and relocate Restricted Area R-5503 Wilmington, OH. The proposal would relocate the existing restricted area to the east by approximately 10 to 15 nautical miles. The relocated segment, designated R-5503A, would extend from 4,500 feet mean sea level (MSL) to Flight Level (FL) 600. An additional area, R-5503B extending from FL 240 to FL 600, would be established to the west of the relocated area. The proposed changes are needed to provide unencumbered airspace in the vicinity of Federal Airway V-5 between the Port Columbus, OH, and Greater Cincinnati, OH, Airports. The additional airspace is essential to Air Route Traffic Control Center (ARTCC) operations due to a forthcoming major expansion of activities at Greater Cincinnati Airport by Delta Airlines and Comair, Inc.

DATE: Comments must be received on or before December 29, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 86-AGL-25, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Aeronautical Information Requirements Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-0246.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AGL-25." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering amendments to Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to move Restricted Area R-5503, Wilmington, OH, approximately 10 to 15 nautical miles to the east and to include new R-5503A and R-5503B into the Continental Control Area. The relocated airspace would be designated as R-5503A with vertical limits from 4,500 feet MSL to FL 600. A second segment, designated as R-5503B, would be established west of R-5503A extending from FL 240 to FL 600. The floor of R-5503A would be 4,500 feet MSL vice the current 4,000 feet MSL for R-5503. It is essential for ARTCC operations to obtain additional unencumbered airspace in the vicinity of VOR Federal Airway V-5 between the Port Columbus, OH, and Cincinnati, OH, Airports. The combination of heavy civil and military traffic and the present configuration of R-5503 create a concentration of aircraft along V-5. Presently, arrivals and departures for Cincinnati travel V-5 headon. An already crowded situation is forecast to worsen as Delta Airlines and Comair, Inc., increase their Cincinnati operations by approximately 150% and 50% respectively starting in late 1986. Due to this increase in civil aviation traffic around Cincinnati, Indianapolis ARTCC needs access to the airspace in the northwest portion of the current R-5503. However, the present design of R-5503 provides the minimum acceptable size to accommodate using agency missions. Moving R-5503 eastward ensures that the using agency retains sufficient airspace to meet its requirements while allowing separate arrival and departure corridors for Cincinnati, reducing controller workload, and reducing the possibility of inadvertent intrusion into hazardous restricted airspace. A separate docket action, 86-AGL-20, proposes a minor adjustment to VOR Federal Airway V-493 to accommodate the relocation of R-5503. Overall, aviation safety and efficient airspace utilization will be enhanced by this proposal. Sections 71.151 and 73.55 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Continental control area and restricted areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.151 [Amended]

2. § 71.151 is amended as follows:

R-5503 Wilmington, OH [Removed]

R-5503A Wilmington, OH [New]

R-5503B Wilmington, OH [New]

PART 73—[AMENDED]

3. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 73.55 [Amended]

4. § 73.55 is amended as follows:

R-5503 Wilmington, OH [Removed]

R-5503A Wilmington, OH [Removed]

Boundaries. Beginning at lat. 39°30′00″N., long. 82°55′45″W.; to lat. 39°23′00″N., long. 82°47′30″W.; to lat. 39°18′45″N., long. 82°48′00″W.; to lat. 38°52′40″N., long. 82°54′00″W.; to lat. 38°49′00″N., long. 82°02′00″W.; to lat. 38°54′40″N., long. 83°54′45″W.; to lat. 39°11′05″N., long. 83°54′45″W.; to lat. 39°30′00″N., long. 83°19′20″W.; to the point of beginning.

Designated altitudes. 4,500 feet MSL to FL 600.

Time of designation. 0600–2200 hours, local time, Monday–Saturday; other times by NOTAM.

Controlling agency. FAA, Indianapolis ARTCC.

Using agency. U.S. Air Force, 4950 Test Wing/DO, Wright-Patterson AFB, OH.

R-5503B Wilmington, OH [New]

Boundaries. Beginning at lat. 39°30′00″N., long. 83°19′20″W.; to lat. 39°11′05″N., long. 83°54′45″W.; to lat. 38°54′40″N., long. 83°54′45″W.; to lat. 38°59′00″N., long. 84°05′00″W.; to lat. 39°16′00″N., long. 84°05′00″W.; to lat. 39°26′00″N., long. 83°48′00″W.; to lat. 39°30′00″N., long. 83°39′00″W.; to the point of beginning.

Designated altitudes. FL 240 to FL 600.

Time of designation. By NOTAM.

Controlling agency. FAA, Indianapolis ARTCC.

Using agency. U.S. Air Force, 4950 Test Wing/DO, Wright-Patterson AFB, OH.

Issued in Washington, DC, on November 14, 1986.

Harold H. Downey,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–26345 Filed 11–21–86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–71]

Occupational Exposure to Methylene Chloride

AGENCY: Occupational Safety and Health Administration (OSHA), Labor Department.

ACTION: Advance Notice of Proposed Rulemaking (ANPR).

SUMMARY: The Occupational Safety and Health Administration is considering revising the present occupational health standard regulating employee exposure to methylene chloride (also known as methylene dichloride, dichloromethane or DCM), 29 CFR 1910.1000, Table Z–2. Recent scientific studies have reported that inhalation of DCM caused cancer in two animal species. As a result of the report of these animal studies, several Federal agencies have taken actions that could result in new regulation of methylene chloride, and several unions have also petitioned OSHA to act expeditiously on issuing a revised standard.

The results of the animals studies indicate that the present OSHA standards (permissible exposure limit (PEL) for DCM of 500 parts per million parts of air (ppm) as an 8-hour time weighted average (TWA), 1000 ppm as a ceiling concentration, and 2000 ppm as a maximum peak for a period not to exceed 5 minutes in any 2 hours) may not provide exposed workers adequate protection against potential cancer risks and other adverse health effects, including DCM's suppression of the blood's ability to transport oxygen. In addition, human studies have shown DCM to be a neurotoxin and to impair the capacity of blood to transport oxygen, an effect similar to that produced by carbon monoxide exposure.

This notice summarizes the potential adverse health effects associated with exposure to DCM and invites interested parties to submit comments, recommendations, data and information on several important issues. Based on the information expected to be gathered as a result of this notice, OSHA will decide upon the action that must be taken to provide workers the necessary protection.

DATE: Comments in response to this Advance Notice of Proposed Rulemaking should be submitted on or before February 23, 1987.

ADDRESS: Comments, in quadruplicate, should be mailed or delivered to the Docket Office, Occupational Safety and Health Administration, Docket No. H–71, Room N–3670, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone No. (202) 523–7894).

All materials submitted will be available for inspection and copying at this address.

FOR FURTHER INFORMATION CONTACT: James F. Foster, Director Office of Information and Consumer Affairs, Room N–3641, Occupational Safety and Health Administration U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523–8151.

SUPPLEMENTARY INFORMATION:

a. Background

OSHA's current Permissible Exposure Limit (PEL) for Methylene Chloride (dichloromethane or DCM) is 500 ppm as an 8-hour time weighted average (TWA), 1000 ppm as a ceiling concentration, and 2000 ppm as a maximum peak for a period not to exceed 5 minutes in any 2 hours.

The current standard provides that administrative and engineering controls must be implemented to reduce exposures to within the PEL whenever feasible. When such controls are not feasible to achieve full compliance, personal protective equipment or any other protective measure shall be used to keep the exposure or employees to DCM within the limits prescribed in 29 CFR 1910.1000.

The current standard for DCM was adopted in 1971 as a national consensus standard under Section 6(a) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655).

The source of the standard (Ex. 7–001) was the American National Standards Institute (ANSI) standard for acceptable concentrations of methylene chloride (ANSI—Z37.23–1969).

The ANSI exposure limits were intended to protect workers from injury to the neurological system including loss of awareness and functional deficits linked to anesthetic and irritating properties of DCM which had been observed from excessive, acute or chronic exposures to DCM in humans and experimental animals. The potential

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for DCM to cause cancer (and/or reproductive damage) and the effect of carbon monoxide were not the basis for the establishment of the current exposure limits for DCM.

Although the American Conference of Governmental Industrial Hygienists (ACGIH) lowered the Threshold Limit Value (TLV) of DCM from 500 ppm to 100 ppm in 1975 (Ex. 7-011), OSHA's PEL was not changed.

In March 1976, the National Institute for Occupational Safety and Health (NIOSH) published "Criteria for a recommended standard for DCM" (Ex. 2), which recommended a reduction of the occupational exposures to DCM to 75 ppm, as TWA, and a lower peak exposure not to exceed 500 ppm. Since the recommended TWA assumed the absence of exposure to carbon monoxide (CO), further reduction based on the ambient level of CO was also recommended.

The International Labor Office in Geneva, in its 1984 publication (Ex. 7-050), listed DCM standards for Rumania, Poland and the USSR as 145, 14.5, and 14.5 ppm, respectively.

In March 1985, the National Toxicology Programs (NTP) reported the final results of animal studies indicating that DCM is a potential cancer causing agent. Subsequently, the Environmental Protection Agency (EPA), upon receipt of the NTP studies, initiated a risk assessment evaluation to determine whether or not DCM presents an unreasonable risk to human health or environment and to determine if regulatory actions are needed to eliminate or reduce exposures. The NTP study is discussed in more detail in the health effects section of this notice.

Other Federal regulatory actions soon followed:

On April 11, 1985, the U.S. Consumer Product Safety Commission (CPSC) released its risk assessment findings and began to consider a regulatory action to ban DCM containing products and to develop a voluntary hazard communication program for consumers.

On May 14, 1985, EPA announced the initiation of a 180-day priority review (50 FR 20126) under section 4(f) of the Toxic Substances Control Act (TSCA). Further, in this May 14, 1985 publication, EPA considered DCM a probable human carcinogen and classified it as Group B2, in accordance with its interim guidelines for cancer risk (49 FR 46294).

On July 19, 1985, in response to the NTP report of March, 1985, and the EPA action of May, 1985, Owen Bieber, President of International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) petitioned OSHA to act expeditiously on reducing workers' exposure to DCM. Specifically, Mr. Bieber requested that: (1) OSHA publish a hazard alert; (2) OSHA issue an emergency temporary standard (ETS); and (3) OSHA begin work on a new permanent standard for controlling DCM exposure. Subsequently, several other unions joined UAW in petitioning OSHA to act on revising the current standard.

In meeting its mandate under section 4(f) of TSCA to initiate a requlatory action, on October 17, 1985, EPA published an Advance Notice of Proposed Rulemaking (ANPR) (50 FR 42037) for the purpose of collecting the necessary information required for initiating a rulemaking. In this notice, EPA established December 16, 1985, as its deadline for receiving comments.

On December 18, 1985, the U.S. Food and Drug Administration (FDA) published a proposal to ban the use of methylene chloride as an ingredient in aerosol cosmetic products (50 FR 51551). This proposal was based on a risk assessment that used the NTP animal data.

In March 1986, in response to the UAW petition, OSHA issued a "Guideline for Controlling Exposure to Methylene Chloride." This document was intended to provide information to employers and workers on risks and methods of controlling exposure (Ex. 8-011).

In April 1986, NIOSH provided OSHA with a Current Intelligence Bulletin on metylene chloride reflecting the findings of the NTP study (Ex. 8-026). In it, NIOSH concluded that methylene chloride should be regarded as a potential occupational carcinogen and that exposure be controlled to the lowest feasible level.

In May 29, 1986, the Occupational Safety and Health Reporter (BNA) published the announced intention of the American Conference of Governmental Industrial Hygienists (ACGIH) to lower the Threshold Limit Value (TLV) for Methylene Chloride (DCM) from 100 ppm to 50 ppm and to classify DCM as A2 (an industrial substance suspect of carcinogenic potential for man (Ex. 8-207)).

Also in November 1986, OSHA notified the UAW that it had granted in part and denied in part the UAW petition. OSHA denied the request for an ETS (Ex. 3-001), but agreed that work on a permanent 6(b) standard should commence. This ANPR begins that process and is intended to gather information on risk assessments and feasibility of control measures.

While pursuing this course of action, OSHA has also been participating in an interagency committee to define regulatory needs for chlorinated solvents in general. This effort is being led by EPA, and it includes representatives from OSHA, FDA, and CPSC. Its focus is on manufacturing, use, and disposal of the highest volume chlorinated solvents, which include DCM, perchloroethylene, trichloroethylene, carbon tetrachloride, methyl chloroform, and CFC-113.

All of these chemicals are considered to be toxic to humans or hazardous to the environment. Four of them have positive evidence of carcinogenicity. The interagency committee was created (1) to avoid duplication and inconsistency among the several government agencies regulating chlorinated solvents; (2) to account for potential interchangeability among these solvents; and (3) to avoid transfer of risks from one medium—air, water, waste—or one population—workers, consumers, general public—to another as a result of piecemeal and uncoordinated regulation.

As with DCM, OSHA's current standards for these chlorinated solvents may not be adequately protective. OSHA will continue to explore this issue with the interagency committee while proceeding with its current effort on DCM. All information derived from the interagency committee will be shared and will be incorporated into OSHA's docket on DCM.

b. Chemical Identifications and Properties

Methylene chloride (Chemical Abstracts Service Registry Number 75-09-2) is a member of the aliphatic halogenated hydrocarbon family and has a chemical formula of CH_2Cl_2, a molecular weight of 84.9, a boiling point at 760 mm Hg of 39.8 °C (104°F), a specific gravity of 1.3, a vapor density (relative to air) of 2.9, and a vapor pressure at 20 °C (68 °F) of 350 mm Hg. It has low water solubility (1.32 gm per 100 gm of water at 20 °C), an extensive oil and fat solubility, and a low flammability potential. It is used as a flame suppressant in solvent mixtures (lower explosive limit of 12% and upper explosive limit of 19%). It is colorless volatile liquid with a chloroform-like odor and threshold odor warning properties at approximately 200 ppm. Contact with strong oxidizers, caustics and active metal powder may cause explosions and fires. Decomposition products during combustion or fire include phosgene, hydrogen chloride and carbon monoxide.

c. Production and Use

Methylene chloride is widely used in industrial processes, food preparation, and agriculture (Ex. 7–009). In industry, DCM is used as a solvent in paint removers, degreasing agents, aerosol propellants, and triacetate solutions; as a blowing agent in flexible urethane foams; and as a process solvent in the manufacture of steroids, antibiotics, vitamins, and tablet coatings. DCM has been used in foodstuffs and cosmetics as an extraction solvent (for spice oleoresins, hops, and caffeine) and has been exempted from certification by the U.S. Food and Drug Administration (50 FR 51553). In addition, DCM has been used as an inhalation anesthetic and as a fumigant grain and strawberries.

(i) Production

Available information indicates that there are two basic processes utilized for the production of DCM. The first process utilizes methane and chlorine (also called methane chlorination process) in a closed reactor. The chlorinated methane is then fed into a series of scrubbers, strippers and distillation columns to separate excess methane, hydrochloric acid and methyl chloride. Two chemicals are produced by this process, methylene chloride and carbon tetrachloride. Sulphuric acid is used as a drying agent. After methylene chloride is dried, inhibitors are added to retard degradation before storage or shipping.

The second process utilizes methyl chloride and chlorine (also called chlorination of methyl chloride) in a reactor vessel. The process flow then passes through a hydrochloric acid stripper.

Methylene chloride is produced by four major companies with plants at six locations (*Diamond Shamrock Corp.*, at Belle, W.V.; *Dow Chemical Co.*, at Freeport, Tx. and Plaquemine, La.; *Linden Chemical Co.*, at Moundsville, W.V.; and *Vulcan Chemicals* at Geismar, La. and Wichita, Kansas). Methylene chloride is shipped in bulk by rail, trucks and barges or in 55 gallon drums.

The total U.S. production was estimated in 1983 to be 265,000 metric tons, of which 13,000 tons were exported. Recent data, however, indicate that both the production and use volumes of DCM are declining.

(ii) Industrial Use

DCM has been widely used in various industrial operations because it is believed to have low toxicity potency. DCM has been used as a substitute for carbon tetrachloride and other chlorinated or fluorinated hydrocarbons, after the hazardous properties of these other chemicals were identified.

There are nine major industrial uses of DCM, which are listed in table (1) in the order of DCM rate of consumption or use. Whenever applicable, in each use category, information on the extent of the chemical recoverability is noted. The recoverable solvent, in most cases, is regarded as an index of the effectiveness of controls that limit the amount of fugitive emissions which affect occupational and environmental concentrations and workers exposure.

TABLE 1.—ESTIMATED PRODUCTION AND EXPOSED WORKERS*

	Tons	Percent	Number of plants	Workers
1. Aerosol	69,400	26.2	112	91,507
2. Paint remover	63,100	23.8	128	38,400
3. Miscellaneous use	48,225	18.2	N/K	614,370
4. Foam blowing	22,700	8.6	86	567
5. Degreasing and reclaiming	16,400	6.2	36,645	228,016
6. Electronic	16,400	6.2	343	21,666
7. Pharmaceutical	11,375	4.3	67	19,046
8. Triacetate fiber	2,250	0.8	2	920
9. PolyCarbonate resin	2,150	0.8	2	1,200
10. (Export)	13,000	4.9	N/A	N/A
11. Production	265,000	100	6	1,200
Total	265,000	100		1,016,894

N/K—Not known.
N/A—Not applicable.
*Source: (Ex. 7–009).

1. Aerosols

It is estimated that 26.2% (69,400 tons) of the total production is used in aerosol packaging such as coatings, paint removers, hair sprays, room deodorants, herbicides and insecticides. None of DCM being used in this category is recoverable.

2. Paint Remover

Because of the unique characteristics of DCM, its second major use is as a paint remover. DCM has a unique ability to penetrate, blister and lift paint coatings. It is estimated that 23.8% (63,100 tons) of the total U.S. production is used as paint remover. None of DCM being used in this category is recoverable.

3. Other Miscellaneous Use

18.2% (48,225 tons) of the total U.S. production is used in various industrial processes such as photographic film splicing and gluing, production of adhesives, solvent, cleaning and thining agents for plastics and ink. None of DCM being used in this category is recoverable.

4. Polyurethane Foam Blowing

There are 81 plants consuming 8.6% (22,700 tons) of DCM in the foam blowing of polyurethanes. None of DCM being used in this category is recoverable.

5. Metal Degreasing

There are 35,200 cold degreasers consuming 12,600 tons, 950 open top degreasers consuming 2,700 tons and 410 conveyorized vapor degreasers consuming 1,100 tons of DCM. Out of 16,400 tons used in degreasing, 4,229 tons are estimated to be reclaimed (recovered) in 283 plants throughout the U.S. The percent of recovery varies significantly with the type of degreasing operations (55%, 22% and 16% for the three degreasing operations, respectively).

6. Electronic

There are 16,400 tons of DCM, all of which is assumed to be released into the air, used by 432 electronic production facilities. Basically, DCM is used in the production of printed circuit boards (using photoresist chemicals) for the purpose of removing or stripping the

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remaining or unwanted "resist" chemicals. DCM also is used as a vapor degreaser for removing flux from wave soldered circuit boards and as a diffusing element for introducing impurities into semiconductors to modify their electrical properties. None of DCM used in this category is believed to be recoverable.

7. Pharmaceuticals

There are 11,373 tons of DCM used in 1,200 pharmaceutical production facilities. Most of this amount is used in pill coating and the remainder is used in the extraction of reserpine, cephalothin, cephaloride, cephaprin, tolbutamide and estrone and in the production of several steroids, antibiotics and vitamins.

8. Extrusion of Triacetate Fibers

There are 2,250 tons of DCM used to dissolve triacetate polymer flake for extruding fibers. *Celanese Corp.* is the only company that uses DCM in the production of triacetate fibers, at two sites, Rock Hill, S.C. and Cumberland, Md. None of the DCM used in this category is recoverable.

9. Production of Polycarbonate Resins

There are 2,150 tons of DCM used by two facilities (General Electric, at Mont Vernon, Indiana, and Mobay at Cedar Bayou, Texas) for the production of polycarbonate resins.

In this process, DCM is used as a solvent in the polymerization reaction of bisphenol A and phosgene in the presence of pyridine. The methylene chloride polymer is precipitated by alphatic hydrocarbon, filtered and then dried. Information on recovery of DCM in the distillation columns and from the drying process is lacking at this time.

d. Occupational Exposure

The primary source of occupational exposure date is the Pedco Environmental, Inc. (PEI) report prepared for EPA (Ex. 7–009). This report indicates that a large number of workers are exposed to high levels of DCM in the workplace. Estimates of occupational exposure levels were based on data from several sources including reports submitted to EPA under TSCA section 8(a), (d), and (e); OSHA's Inspection Summary Reports; the NIOSH Health Hazard Evaluation Reports HHEs); the NIOSH National Occupational Hazard Survey (NOHS); and industrial trade association reports. The OSHA and HHE reports contain extensive monitoring data for most of the industrial uses of methylene chloride. For three exposure categories—DCM production, paint remover/formulation, and polycarbonate resin production—no monitoring data was available, and PEI assumed exposure was at the OSHA PEL. This appears to be a considerable overestimate and OSHA expects to be able to make better estimates on the basis of new field survey data from NIOSH. This new data may also allow OSHA to refine the estimates for other industry categories. In eight exposure categories where data were lacking, estimates for the total exposed population were made based on individual plant work forces and the total number of plants estimated for the entire industry.

A summary of the occupational exposure data and population at risk reported by PEI is shown in Table (2).

Since the current permissible exposure level (PEL) for DCM, as an eight-hour time weighted average (TWA) is 500 ppm or 1750 milligrams per cubic meter of air (1750 mg/m ³), it is estimated that approximately 26,000 workers may be exposed to levels approaching the current PEL.

TABLE 2.—SUMMARY OF OCCUPATIONAL EXPOSURE TO METHYLENE CHLORIDE [1]

[PEI Associates, 1985]

Industry category	Job category	Estimated number of workers	8-hr TWA exposure (ppm) [2]
Methylene chloride manufacturing.	Production worker	[3] 1,200	500
Aerosol packing	Packer	[3] 896	81
Aerosol use	Spray painter	14,296	13
	Mold release	25,972	23
	Other worker	50,343	7
Paint remover formulation.	Production filing	1,280	500
Paint remover use	Paint stripper	[3] 7,680	16
	Water wash	[3] 25,600	19
	Other worker	[3] 3,840	55
Polyurethane foam blowing.	Foam operator	[3] 405	15
	Other worker	[3] 162	28
Metal degreasing	Degreaser	227,848	13
Solvent recovery	Solvent reclaimer	[3] 170	4
Pharmaceutical solvent.	Production worker	19,046	41
Triacetate extrusion.	Extrusion	340	426
	Finish	460	31
	Other worker	120	298
Photographic applications.	Splicer	1,376	1
Solvent for plastics	Gluer	1,514	128
	Assembler	984	57
	Other worker	8,022	6
Adhesives use	Laminator	1,368	9
	Gluer	280	2
	Other worker	901	4
Printing	Printer	43,931	5
	Platemaker	15,911	9
	Other worker	27,531	10
Production solvent	Compounder	15,041	13
	Other worker	1,531	2
Electronic	Assembler	10,399	4
	Other Worker	11,267	8
Cleaning solvent	Maintenance	49,884	9
	Painter	1,831	9
	Machine operator	78,951	9
	Assembler	22,252	268
Polycarbonate resin production.	Production worker	1,200	500
Not classified [4]	Other worker	342,064	17
Total		1,016,894	[5] (22.4)

[1] Values are based on the geometric mean of the monitoring samples reported for a given job category.

[2] ppm=(mg/m³x24.45)/(mol.wt. 84.9) or mg/m³x0.288 or 1 ppm=3.4 mg/m³

[3] Estimated number of workers based on average number of workers per plant multiplied by the total number of plants identified.

[4] The "not classified" category represents data obtained from surveys of many types of industrial plants which are not well defined from "Analysis of the Applicability of TSCA Section 4(f) to Methylene Chloride", May 1985.

[5] Industry wide Average Exposure Level.

e. Health Effects

1. Absorption, Metabolism and Elimination

Humans and laboratory animals readily absorb DCM by inhalation and ingestion. Dermal absorption of DCM has been observed in rats (Ex. 7–012) and humans (Ex. 7–013). In humans, absorption of DCM following dermal exposure occurs more slowly than absorption occurring after ingestion or inhalation. DCM is distributed throughout the body after being inhaled or ingested by humans or laboratory animals. DCM has been detected in the urine of dogs and humans (Exs. 7–014, 7–015), in human milk (Ex. 7–016), and in the kidney (Ex. 7–017), liver, and brain (Ex. 7–018) of humans accidentally poisoned by the chemical.

When DCM is taken into the body, it is metabolized to carbon monoxide (Exs. 7–023, 7–005) as an end-product via one metabolic pathway (the P-450 mixed function oxidase pathway located in the microsomal fraction of the cell). That is, the biotransformation of DCM to carbon monoxide occurs through the process of microsomal oxidative dechlorination (Ex. 7–024) which takes place primarily in the liver.

DCM is also metabolized to carbon dioxide (Exs. 7–024, 7–025) as an end product (with formaldehyde and formic acid as metabolic intermediates) via another metabolic pathway (the glutathione-dependent enzyme found in the cystosolic fraction of the liver cell (Ex. 7–025)). The detection of formic acid in the urine of workers exposed to DCM has led investigators to suggest that DCM is first metabolized to formaldehyde and then to formic acid (Ex. 7–019).

Both pathways (microsomal, yielding carbon monoxide, and cytosolic, yielding carbon dioxide) generate metabolically active intermediates, formyl chloride and S-chloromethyl glutathione, which are theoretically capable of binding to cellular macromolecules such as DNA (Ex. 4–005).

In vivo data suggest that during exposure to low concentrations of methylene chloride, the two pathways appear to be utilized concurrently. The metabolism of DCM by both pathways is dose dependent; i.e., the percentage of the total dose that is metabolized decreases with increasing dose concentrations, indicating that at high doses, the metabolic pathways become saturated. The oxidative (microsomal) pathway appears to be more readily saturated than the glutathione-dependent (cytosolic) pathway (Ex. 7–007).

The carbon monoxide generated as an end product of methylene chloride metabolism impairs the ability of the blood to transport oxygen to the tissues. Hemoglobin has a strong affinity for carbon monoxide, approximately 210 times greater than for oxygen. This results in carbon monoxide being readily attached to hemoglobin and slowly dissociated. Once the carboxyhemoglobin is formed, the hemoglobin becomes unavailable to transport oxygen and the release of oxygen from oxygenated hemoglobin is affected.

Elimination of DCM from the body occurs primarily through pulmonary excretion; approximately 85% is excreted unchanged. Small amounts of DCM are eliminated via the kidney. The plasma half-life of inhaled DCM in humans is estimated to be 40 minutes (Ex. 7–015). Elimination of DCM from human muscle and adipose tissue has been estimated to occur in 60–80 minutes and 240 minutes, respectively (Exs. 7–023, 7–005).

2. Non-Carcinogenic Health Effects

DCM has been associated with several adverse health effects (in addition to cancer) as reported in EPA's Health Assessment Document for DCM (Ex. 4–005). These include effects on the cardiovascular system, the central nervous system, as well as possible effects on the kidneys and liver. These effects were observed in studies of workers and laboratory animals. Central nervous system effects have been observed in humans at concentrations at or above 200 parts per million parts of air (ppm). Kidney, liver or cardiovascular effects either have not been reported in humans or have been reported only at concentrations above 500 ppm, the current OSHA standard.

Central nervous system depression has accompanied accidental DCM poisoning, indicating that the chemical crosses the blood/brain barrier (Ex. 7–017, 7–019). DCM also crosses the placental barrier, but teratogenic effects were not observed in studies in which DCM was administered by inhalation to Swiss-Webster mice and to Long-Evans and Sprague-Dawley rats (Exs. 7–020, 7–021, 7–022).

Various *in vivo* toxicity experiments have established the liver as the primary target organ for DCM, and central nervous system depression as the major grossly observable effect. In cases of accidental poisoning in humans, the prominent effects include central nervous system depression, behavioral changes, irritation of the mucous membranes, cardiovascular effects, pulmonary irritation and edema, and carboxyhemoglobinemia.

In single dose experiments in mice, the subcutaneous and intraperitioneal LD_{50} values for DCM were found to be 6,452 and 1,987 mg/kg, respectively (Exs. 7–027, 7–028). When dogs, rabbits, guinea pigs, and rats were exposed to air containing 5,000 ppm DCM (7 hours per day, 5 days per week for up to 6 months) only the guinea pigs were affected (Ex. 7–003). Decreased growth in the guinea pigs was the only observable effect; no DCM-related lesions were seen. Exposure to DCM at a concentration of 10,000 ppm (4 hours per day, 5 days per week for up to 8 weeks) produced fatty metamorphosis of the liver in guinea pigs and dogs, but no DCM-related lesions were seen in rats and rabbits. In addition, exposure to DCM was associated with increased incidence of hepatic hemosiderosis, cytomegaly, cytoplasmic vacuolization, necrosis, granulomatous inflammation, and bile duct fibrosis in rats.

3. Carcinogenic effects

Data provided in a recent NTP biossay (Ex. 4–035) demonstrate that DCM is a carcinogen in two species of laboratory animals, rats and mice.

In this study, eight-week-old F 344/N rats and nine-week-old B6C3F1 mice were exposed to various concentrations of DCM through inhalation. Fifty rats of each sex were exposed to DCM at concentrations of 0, 1000, 2000, or 4000 ppm, while the same number of mice were exposed to concentrations of 0, 2000, or 4000 ppm of DCM. The inhalation exposures were administered 6 hours a day, 5 days a week for 102 weeks. All animals were observed for mortality, and moribund animals were sacrificed. All animals were necropsied and histologically examined.

The incidence of mammary adenoma or fibroadenoma in the male rats was 0/50 (number of animals with the response/number of animals examined for that response) in the controls (o ppm), 0/50 in the low-dose group (1000 ppm), 2/50 in the mid-dose group (2000 ppm), and 5/50 in the high-dose group (4000 ppm). Combining subcutaneous tissue fibromas with mammary tumors increased the tumor incidence to 1/50, 1/50, 4/50 and 9/50 for the control, low-, mid- and high-dose groups, respectively.

The incidence of mammary adenoma or fibroadenoma in the female rats was 5/50 in the controls, 11/50 in the low-dose group, 13/50 in the mid-dose group, and 23/50 in the high-dose group. The combined incidence of several other tumors of the mammary gland (adenoma, fibroadenoma, adenocarcinoma, or mixed malignant tumors) was also significantly increased in the treated female rats.

In the female mice, the incidence of alveolar/bronchiolar adenoma (lung) was 2/50 in the controls, 23/48 in the low-dose group, and 28/48 in the high-dose group. The incidence of alveolar/bronchiolar carcinoma was 1/50 in the control group, 13/48 in the low-dose group, and 29/48 in the high-dose group. The number of females with either alveolar-bronchiolar adenoma or carcinoma combined was 3/50 in the control group, 30/48 in the low-dose group, and 41/48 in the high-dose group. The incidence of hepatocellular adenoma (liver) was 2/50 in the controls, 6/48 in the low-dose group, and 22/48 in the high-dose group. The incidence of hepatocellular carcinoma was 1/50 in the controls, 11/48 in the low-dose group, and 32/48 in the high-dose group, while the number of female mice with either hepatocellular carcinoma or adenoma combined was 3/50 in the control group, 16/48 in the low-dose group, and 40/48 in the high-dose group.

In the male mice, the incidence of alveolar/bronchiolar adenoma was 3/50 in the control group, 19/50 in the low-dose group, and 24/50 in the high-dose group. The incidence of alveolar/bronchiolar carcinoma was 2/50 in the control group, 10/50 in the low-dose group, and 28/50 in the high-dose group, while the number with either adenoma or carcinoma combined was 5/50 in controls, 27/50 in the low-dose group, and 40/50 in the high-dose group. The incidence of hepatocellular carcinoma was 13/50 in the controls, 15/49 in the low-dose group, and 26/49 in the high-dose group. The incidence of hepatocellular adenoma or carcinoma combined was 22/50 is controls, 24/49 in the low-dose group, and 33/49 in the high-dose group. The incidence of hepatocellular adenomas was not

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significantly increased as compared to controls.

In summary, there was a positive but marginal trend in the incidence of hepatocellular neoplastic nodules or hepatocellular carcinomas (combined) in female rats. The incidence of squamous metaplasia of the nasal cavity was higher in female than male rats. The incidence of increased mononuclear cell leukemia was also noted. Exposure to DCM was also associated with increased incidence of lung tumors (alveolar, bronchiolar adenomas and carcinomas) in mice.

In addition to the hepatocellular adenomas and carcinomas, and liver and lung neoplasms, testicular atrophy (male) and uterine and ovarian atrophy (female) and cytologic degeneration of liver were also increased in mice. These adverse health effects may have an additional impact on the new revised DCM standard.

DCM induced a dose-dependent, statistically significant increase in liver and lung adenomas and carcinomas in both sexes of mice. It also produced a dose-related, increased incidence of mammary gland fibroadenomas in female rats. In male rats, the combined incidence of mammary gland tumors and subcutaneous tissue fibromas was statistically significant.

Based on the above findings, NTP concluded that there was *some evidence* of carcinogenicity in male rats (neoplasms of mammary gland), and *clear evidence* of carcinogenicity in female rats (neoplasms of mammary gland) and in both male and female mice (alveolar/bronchiolar neoplasms and hepatocellular neoplasms).

The tumors observed in the NTP bioassay are consistent with the types of tumors observed in several other oncogenicity studies (Ex. 4–005) of DCM. Three other studies (Exs. 4–025, 7–029, 7–030) reported an increase in benign mammary tumors in rats, as well as increases of other tumors at other sites.

Dow Chemical Company in 1980 (Ex. 4–025) tested male and female Syrian hamsters with air concentrations of 0, 500, 1,500, or 3,500 ppm DCM (6 hours per day, 5 days per week) for 2 years. These exposures did not adversely affect survival or produce DCM-related lesions. When male and female Sprague-Dawley rats were exposed under the same conditions, reduced survival was seen in the group of females exposed at the highest concentration. Dose-related increases were observed in the total number of fibromas or fibroadenomas in the mammary gland of females. The increase in fibromas reflected an increase in the number of tumors found in individual animals, since the number of females with mammary tumors did not increase. Increased incidences of mammary tumors were also found in male rats exposed at 1,500 or 3,500 ppm DCM, although the increases were not as pronounced as those seen in females. Male rats also demonstrated a statistically significant increase of sarcomas of the salivary gland region at these two dose levels.

In a subsequent inhalation study by Dow Chemical Company in 1982, (Ex 7–029) male and female Sprague-Dawley rats were exposed to DCM at concentrations of 0, 50, 200, and 500 ppm. The 500 ppm concentration produced mammary fibroma/fibroadenomas in males and females, but salivary gland tumors were not observed. Exposure to DCM at concentrations of 200 ppm or less could not be associated with tumor production.

In 2-year studies sponsored by the National Coffee Association (Exs. 7–030, 4–029), F344 rats were administered 0, 5, 50, 125, and 250 mg/kg per day of DCM in drinking water and $B6c3F_1$ mice were administered 0, 60, 125, 185, and 250 mg/kg per day in drinking water. The "no evidence" of chemically induced carcinogenesis could be associated with the relatively low doses being administered to the animals.

A review of two epidemiology studies (Exs. 4–027, 4–030. 8–014c) on workers in plants using DCM, concluded that design limitations of these studies made them inadequate to assess the statistical significance of cancer mortality. Moreover, neither study reported a statistical increase in death from cancer except the occurrence of 8 pancreatic cancer deaths (vs. 3.1 expected) among the cohort. Study limitations such as small population of workers and insufficient follow-up periods prevented obtaining conclusive results.

4. Risk Assessment

The NTP bioassays have provided clear evidence of carcinogenicity in female rats and in both sexes of mice. EPA (50 FR 42037), FDA (50 FR 51551) and CPSC (Ex. 5–005) determined that these data are suitable for use in a quantitative assessment of risks to human populations exposed to DCM. Briefly, the results of these risk assessments are listed below:

The EPA Cancer Assessment Group (CAG) assumes that humans and animals exposed to equal doses of a carcinogen on a $(mg/kg)^{2/3}$ basis over equivalent proportions of a lifetime will encounter the same degree of cancer risks (Ex. 4–006. pp. 101–3). This means that a rodent with weight WR, exposed to a dose of D mg/kg/day and a human exposed to a dose of $D\ (WH/WR)^{-1/3}$ mg/kg/day would be expected to encounter the same lifetime cancer risks.

The dose conversion factors are:

1 mg/kg/day for male rat=0.186 mg/dk/day for human

1 mg/kg/day for female rat=0.158 mg/kg/day for human

1 mg/kg/day for male mice=0.0809 mg/kg/day for human

1 mg/kg/day for female mice=0.0770 mg/kg/day for human

The standard CAG assumption of a human inhalation rate of 20 m^3/day is applied to obtain an estimate of the unit risk for a human inhaling 1 ug/m^3 of DCM continuously over a lifetime.

A continuous exposure to 1 ug/m^3 of DCM is equal to an exposure of 1 ug/m^3X10^{-3} mg/ug X 20 m^3day X (1/70) kg=2.86 X 10^{-4} mg/kg/day.** exposure). Using the NTP female mouse data and the multistage model, an upper-limit incremental lifetime cancer risk estimate of 4.1×10^{-6} is calculated for this exposure. That is, a continuous exposure to 1 $\mu g/m^3$ of DCM over a lifetime, will yield upper-limit incremental life cancer risk estimates of 4.1×10^{-6} (4.1 cases per million exposed workers).

Since 1 $\mu g/m^3$ DCM is equivalent to 2.88×10^{-4} ppm, the upper-limit incremental life cancer risk estimate is $(4.1 \times 10^{-6})/(2.88 \times 10^{-4}) = 1.4 \times 10^{-2}$. That is a continuous exposure at 1 ppm will yield 1.4 excess cancer cases per hundred workers.

The continuous lifetime equivalent DCM exposure of the Kodak employees (Exs. 4–027, 4–030, 7–040, 8–014c) in the aforementioned epidemiological studies was estimated to be between 1.88 and 7.52 ppm. based on a 20 year exposure for the 252 long-term workers. Based on the upper-limit incremental lifetime cancer risk estimate of 1.4×10^{-2} ppm $^{-1}$ for continuous human exposure, the upper bound of the lifetime cancer risk encountered by these workers is estimated to between 0.026 $(1.88 \times 1.4 \times 10^{-2})$ and 0.105. $(7.52 \times 1.4 \times 10^{-2})$. This is equivalent to 6.6(0.026×2.52) to 26.5 (0.105×2.52) excess cancer deaths over the life time of 252 (2.52×100) workers. However, EPA stated that "because the study follow-up period was 21 years and most workers were not observed until death, it is probable that only a fraction of the estimated excess cancer deaths were seen." In the absence or a more rigorous method, it is estimated by CAG/EPA that the fraction of cancer cases that would be observed in the follow-up period is approximately 43% of the calculated value. Thus the 95% upper limits are 6.6×43%=2.8 and 26.5×43%=11.3 cancer death due to DCM exposure at 1.88 and 7.52 ppm, respectively. The power of the study to detect an excess of 2.8 deaths from total cancer is 0.07. The power to detect 11.3 cancer deaths is 0.51.

** 1 ug/m^3=2.86x10^{-4} mg/kg/day (continous exposure).

1 ppm=1 mg/kg/day.

1 ppm=3472 ug/m^3.

1 ug/m^3=2.88X20^{-4} ppm.

The ability of the Friedlander et al. study (Exs. 4–027, 4–030) to detect excess lung cancer deaths is calculated similarly by obtaining an estimate of risk for lung cancer from the observed excess of lung tumors in female mice. Again using the NTP mouse data for lung carcinoma or adenoma, the upper-limit incremental unit lung cancer risk estimate for humans is found to be 9.5×10^{-3} (ppm $^{-1}$) for continuous exposure. Using this risk value for total cancers leads to the estimate of an upper bound of 1.9 to 7.7 lung cancers due to DCM exposure, which is well above the power of the Friedlander study in which 8.1 lung cancer deaths were expected. The power of the Friedlander approach to detect such risks is 0.09 and 0.62 for the 1.9 and 7.7 lung cancers, respectively.

In conclusion, based on current published data, the essentially negative Friedlander studies do not appear to have the power to rule out an overall cancer risk or the lung cancer risk that is predicted from the NTP mice study.

Consistent with EPA's assessment (50 FR 42037), FDA, in its risk assessment, concluded that the epidemiological results must be considered inconclusive due to design limitations such as small numbers of workers and insufficient duration of exposure. In its risk assessment, FDA calculated exposure estimates and assumed that a consumer will use a DCM hair spray once a day, that the spray period is 5 seconds, that the consumer will remain in the spraying zone for 5 to 10 minutes, and that the average concentration of methylene chloride in the breathing zone is 50 ppm for consumers (equivalent to 0.174 ppm continuous exposure relative to 357 ppm continuous exposure for mice exposed to 2000 ppm for 6 hour/day for 5 days/week). Using the incidence of benign and malignant neoplasms in female mice exposed at 2000 ppm (NTP Study), FDA estimated the upper bound lifetime cancer risk for *consumers* to be ranging from 1×10^{-3} (1 in 1000) to $1\times\ ^{-4}$ (in 10,000) depending on the extrapolation method (mg/Kg/day or ppm air concentration).

Since the DCM time weighted average concentration for hair dressers is in the order of one magnitude (1.74 ppm), based on FDA's determations, the upper bound lifetime cancer risk would range from 1 in 100 to 1 in 1000. At the current OSHA's PEL of 500 ppm, the time weighted average for continuous exposure is 500 ppm × (8/24) hours. × (5/7 day = 119 ppm (684 times the consumers exposure or 86 times the hair dressers exposure).

If the FDA approach is used, it appears that the upper bound estimate of lifetime cancer risk for industrial workers at the current PEL would be ranging from

$$(1\times10^{-3}\times684) = (2 \text{ in } 3) = 66.6\times10^{-2}$$
$$\text{to } (1\times10^{-4}\times684) = (2 \text{ in } 30) = 6.66\times10^{-2}$$

Since EPA's and FDA's risk assessments used different approaches and assumptions, OSHA is currently conducting a detailed risk assessment that meets OSHA's needs and that takes into account a more appropriate assumptions as to prevailing occupational exposure levels and risks. However, even though the risk data of EPA and FDA do not meet OSHA's need, OSHA has determined, preliminarily, that the available risk information does warrant the initiation of revised DCM standard.

CPSC does not have a formal risk assessment available at this time, but plans to make their staff assessment available to the public in the near future. On February 28, 1986, CPSC expressed concern that the regulation of DCM would be too late for many consumers (estimated 1,380 Americans/year) contracting cancer from use of DCM containing paint strippers (Ex. 5–005).

5. Mutagenic Effects

Mutagenicity data indicate that DCM is a mutagen with the potential for inducing gene mutations in exposed human cells.

DCM is mutagenic in *Salmonella typhimurium* in the presence and absence of S9 (rat-liver microsomal activation mixture, also called rat-liver homogenate) when the cells are exposed to DCM vapor in a desiccator (Ex. 7–034). The International Agency for Research on Cancer (IARC) (Ex.7–035) has concluded that DCM is mutagenic in *S. typhimurium* TA98 and TA100. The vapor is also mutagenic in the plant *Tradescantia* and causes mitotic recombination and gene conversion in yeast. DCM has given mixed results in the sex-linked recessive lethal assay in Drosophila and in cell tranformation studies *in vitro*. Most *in vivo* or *in vitro* studies in mammalian systems have given negative results. DCM, however, did induce some chromosomal aberrations in Chinese hamster cells (Ex. 7–049).

Investigation of the role of bacterial metabolism in the mutagenicity of DCM revealed that *S. typhimurium* strain TA100 metabolized this compound to water-soluble metabolites and to both carbon monoxide and carbon dioxide. The detection of these gases suggests that metabolism by the bacteria occurs by pathways similar to those known in the rat. Furthermore, DCM is shown to be a C–1 substrate for bacterial strain DM–1, the metabolic pathways again being very similar to those in mammalian systems. The finding of a large number of water-soluble metabolites in the metabolism of DCM by TA100 is consistent with the use of the compound as a C–1 substrate by these bacteria also.

Deactivation of the mutagenic metabolites occurs mainly by rapid chemical decomposition and is relatively independent of the site of formation or the distribution of deactivating enzymes (Ex. 7–036). Consequently, the lack of mutagenicity in mammalian systems may be due to the inability of the target cells to metabolize DCM or to the instability of mutagenic metabolities (if formed by the S9) preventing transport into the cell and interaction with the DNA.

6. Environmental Effects

Environmental effects information is limited. Some of these effects are summarized in EPA's 1980 Criteria Document (Ex. 4–007) for fresh water and salt water which was developed for certain halomethanes, including DCM. In this document. EPA collected some information on the toxicity of DCM to aquatic species. These effects, and any other environmental effects identified, will be evaluated as part of this rulemaking, to the extent that OSHA's revised standard may have an impact in this area.

7. Conclusion

In conclusion, the available body of information on DCM provides sufficient evidence of carcinogenicity in two animal species and positive indications of mutations in three organisms, but the human epidemiological data are considered inconclusive. OSHA determined that the inconclusiveness of the human data are due to lack of definitive studies follow-up as well as possible dilution of data. Therefore, OSHA uses the carcinogenicity evidence in the published animal studies, supported by the positive mutagenicity assays, as the basis for publishing this ANPRM.

It should be noted that several industry-sponsored metabolic and pharmacokinetic studies are now under way that may answer some of the

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questions about the metabolism of DCM. OSHA will take these data into consideration during the analyses and assessments of DCM hazards.

Other relevant information on the effects of DCM on man and the environment is summarized in the EPA Health Assessment Document (EPA 600/8-82-004F) (Ex. 4-005).

f. Request for Comments

Interested parties are requested to submit, in quadruplicate, written comments, and additional data related to the information provided in this Advance Notice of Proposed Rulemaking. To supplement previous submissions to OSHA's and EPA's dockets, new submissions, written comments, suggestions, and any information on industrial production, consumption, use, recovery, and distribution of DCM are herein solicited. It would facilitate the Agency's action, if interested parties address their comments to the issues listed below. Information is specifically requested in response to the following issues:

A. Health Effects

(1) What studies, including their strengths and weaknesses (if any) should OSHA consider in its assessment of potential health risks, especially the carcinogenic, chronic neurological effects, encephalopathy, teratogenic and mutagenic effects of DCM?

(2) What dermal absorption studies are available and what is the extent of potential adverse health effects resulting from dermal exposure?

(3) Are there studies or evidence indicating the combined effects of inhalation and dermal exposures?

(4) How should OSHA estimate the significance of risk at the current exposure limits, including risks at the 1000 ppm STEL and 2000 ppm peak. Specifically:

(a) What methods are most appropriate to quantify the risk of cancer and other adverse health effects from exposure to DCM?

(b) Which studies of DCM should be used for a quantitative risk assessment?

(c) Which tumor incidences, in which animal species, by which route(s) of administration and dose level(s), should be selected for use?

(d) How should dose levels in experimental studies be converted to equivalent dose for occupationally exposed persons and how should the dose levels be expressed?

(e) Should corrections be made for species-to-species extrapolation and for combined routes of exposure (i.e. dermal and inhalation)? How?

(f) Which mathematical models should be used for describing the dose response relationship between DCM occupational exposures and the risk of cancer or other health effects?

(g) Are there data available to indicate a "dose-rate" effect for DCM exposure? (i.e., are any health effects of DCM dependent on the time period over which exposure occurs rather than solely on the total dose received?)

B. Permissible Exposure Levels

Before the release of the recent animal studies indicating the potential human carcinogenicity of DCM, ACGIH, in 1975, recommended reducing the PEL from 500 ppm to 100 ppm. In 1976, NIOSH recommended a reduction of the TLV from 500 ppm to 75 ppm (in the absence of carbon monoxide) and lowering it further if CO was present. On April 18, 1986, NIOSH published the Current Intelligence Bulletin (CIB) No. 46; Methylene Chloride (Ex. 8-026). In its CIB, NIOSH recommended that "methylene chloride be regarded as a potential occupational carcinogen" and "be controlled to the lowest feasible limit." On May 21, 1986, ACGIH announced the TLV's intended change for DCM (Ex. 8-027). In it, ACGIH reduced the TLV from 100 ppm to 50 ppm, eliminated the STEL of 500 ppm, and classified DCM as an industrial substance suspect of carcinogenic potential for man (A2). These recommendations, combined with the new evidence of the potential carcinogenicity of DCM, indicate that OSHA should consider lowering the current permissible exposure limit.

Based on quantitative risk assessment data:

(1) Should a revised standard be developed to include an 8-hour time weighted average, ceiling limit, an action level or a combination of limits?

(2) What permissible exposure limits should be proposed and what support, in the health evidence, is available for these numbers?

(3) What data support the feasibility for measuring the lower permissible limits (including accuracy and precision of collection and analytical procedures)?

(4) What data support the technological feasibility for achieving lower permissible limits for the major industrial sectors (e.g. production facilities, degreasing, paint removal, extrusion of triacetate fiber, pharmaceutical, electronic, foam blowing, aerosol packaging, production of polycarbonate resins, photographic, adhesive, and other industrial usage)?

(5) How should the standard deal with the effects of occupational exposures to DCM in conjunction with those of carbon monoxide (metabolite of DCM), and possibly phosgene (product of DCM heat decomposition)? Should the PEL for DCM be lower when these other substances are present? How should an air monitoring strategy deal with such combined exposures?

C. Production and Control Systems

(1) What are current production and industrial processes and their associated engineering controls?

(2) Are there data indicating the efficiency of the currently employed control techniques?

(3) Is there any industrial sector or industrial operation within a certain sector that can demonstrate infeasibility of employing engineering methods for controlling workers' exposure at lower than current limits?

(4) What are the potential modifications in process or production technologies that are available or can be implemented for reducing workers' exposures?

(5) What level of exposure reduction can be expected from employing specific process modifications or installing specific engineering controls?

D. Substitution Availability

(1) Are there substitutes for DCM and what are their limitations?

(2) For any available substitute, are there studies available documenting potential adverse health effects?

(3) Are there unique situations or industrial operations or uses where substitutes are determined to be either unavailable or infeasible to use for controlling workers' exposures?

(4) Are there industrial uses where substitutes can replace only a portion of the total DCM in a mixture?

(5) What is the extent and the impact of such partial substitution?

(6) How efficient are substitutes as compared to DCM in specific industrial uses?

(7) Are there non-chemical substitutes for uses that now employ methylene chloride?

E. Protective Equipment and Respirators

(1) What types of respirators are available for protection against DCM? What type are currently being supplied by employers for protection against DCM?

(2) What other types of protective equipment, such as gloves and aprons, are currently being supplied by employers?

(3) What is the durability or resistivity of this protective equipment to DCM?

(4) Under what conditions (e.g. exposure level, type of operation,

duration of exposure) do employers presently provide protective equipment and respirators to their exposed employees?

F. Workers Exposure and Monitoring

(1) What are the job categories for each operation or process within each industrial sector (i.e. production, reclamation, degreasing, extrusion of triacetate fibers, pharmaceutical, electronic, foam blowing, aerosol packing, production of polycarbonate resins, photographic, adhesive, pesticides and paint remover), in which workers are potentially exposed to DCM? For each job category, please provide a brief description of the operation.

(2) How many workers are exposed or have the potential for exposure to DCM in each job category?

(3) What are the frequency, duration and levels of exposures to DCM at each job category? Please include the sampling and analytical methods and type of samples used for determining exposure levels.

(4) What engineering controls are in use and what are the types of protective equipment available or in use for each job category?

(5) What methods are currently available to measure DCM in the workplace? Please provide details on the accuracy and precision of the sampling method, the range and limits of detection, methods of validation of sampling and analyses, and chemical interferences.

G. Workers Training

(1) Describe the training workers currently receive to lower the risk associated with DCM exposure (e.g. length of course, topics covered, frequency, and availability of audio visual aids, and written operating instructions).

(2) Is there any evidence documenting the effectiveness of the training being received by the employee (e.g. decreased absenteeism, decreased medical/insurance costs, decrease in accident rates/severity, increase in productivity)?

(3) What are the basic elements considered in developing or revising the training given to workers in the DCM industry?

H. Medical Surveillance

(1) What elements are appropriate for inclusion in medical and clinical examinations performed to identify overexposed workers and/or to indicate the status of workers' health?

(2) What documentation is available to correlate DCM exposure with specific illnesses or ailments?

(3) Do employers currently provide specific tests or procedures as part of medical surveillance for DCM-exposed employees? What is the basis for selecting or choosing these tests or procedures? At what frequency these tests are performed?

(4) What are the exposure levels encountered by workers (including type of operations or job classifications) who are covered by medical surveillance programs?

(5) What evidence is available indicating risk reduction due to implementation of medical surveillance programs?

I. Control Measures and Benefits

(1) What are the costs of implementing engineering controls or modifications to production and process equipment (either currently in place or planned to be instituted for reducing worker's exposures)? How much reduction in employee exposure can be achieved by each particular control measure? What are the service life and maintenance costs for this equipment?

(2) What is the cost of the personal protective equipment currently in use or projected for future use? Which employees or job descriptions would be required to wear what type of equipment? (Please indicate the type of protective equipment as well as process descriptions).

(3) What is the cost of the currently employed and/or projected medical surveillance program?

(4) What is the cost of the currently instituted and/or projected training program?

(5) What is the cost of the currently employed and/or projected personnel exposure monitoring and sampling analyses?

(6) What values can be determined for benefits of reduced DCM exposure, such as projected reductions in medical treatment, insurance premiums, and workers compensation payments, decreased absenteeism and employment turnover, and increased productivity?

J. Environmental Effects

The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C 4321, et seq.), the Council on Environmental Quality (CEQ) regulations (40 CFR Ch. V Part 1500) and the Department of Labor (DOL) NEPA Compliance Regulations (29 CFR Part 11) require that Federal agencies give appropriate consideration to environmental issues and impacts of proposed actions significantly affecting the quality of the human environment. OSHA is currently collecting written information and data on possible environmental impacts that may occur outside of the workplace as a direct or indirect result of promulgation of a revised standard for occupational exposure to DCM. Such information should include any negative or positive environmental effects that could be expected to result from a revised regulation. Specifically, OSHA requests comments and information on the following:

1. How might a revised regulation for DCM exposure affect the environment?

2. What is the potential direct or indirect impact on water and air pollution, energy usage, solid waste disposal or land use?

3. How would DCM substitutes (if available) alter the ambient air quality, water quality, solid waste disposal and/or land use?

K. Impact on Small Entities

Under the Regulatory Flexibility Act (5 USC 602 et seq.), agencies are required to assess the impact of proposed and final rules on small entities. In that regard, OSHA solicits the following information:

(1) How many and what kind of small businesses or other small entities would be affected by regulating exposures to DCM?

(2) Could difficulties be encountered by small entities when attempting to comply with specific provisions of a DCM regulation covering such areas as exposure monitoring, exposure limits, methods of compliance, medical surveillance, respirators, protective clothing, hygiene facilities, recordkeeping, housekeeping information and training and labels and signs?

(3) Could such provisions be modified for small entities which would assure equivalent protection of the health of their employees?

L. Duplication/Overlapping/Conflicting Rules

(1) Are there other federal regulations which may duplicate, overlap or conflict with an OSHA regulation concerning DCM?

(2) Are there critical federal programs

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(defense, energy. . . .) which may be impacted by an OSHA regulation concerning DCM?

M. Financial and Economic Profile

(1) What are the total annual volumes and dollar values (for the last 5 years or relevant business cycle) of production, shipments, inventories, imports and exports of DCM? Are these expected to increase or decrease in future years?

(2) What are the total annual investments of companies engaged in DCM production, distribution and use (for the last 5 years) categorized as replacement, expansion, modernization and health and safety programs?

(3) For the last 5 years, what are the total assets, stockholders' equity, net worth, depreciation charges, debt-equity ratios and rate of return on assets and equity?

(4) For each DCM facility, what was the date it began operation and how much longer it is expected to remain in operation?

(5) How would the balance of trade in this or related products be affected by a more stringent U.S. occupational or health standard for DCM?

(6) What were the total annual employment and labor turnover for the industry for at least the last 5 years?

(7) Are there any unique characteristics of this industry (e.g. rental of capital equipment, unique employee skills) that could affect the ability to achieve compliance with a DCM standard?

(8) What is the degree of market concentration in the industry including the role of small business and approximate number of firms?

(9) What is the geographic distribution of the industry and its customers?

(10) What were the total annual volume and dollar value of DCM product output, shipments and inventories for at least 5 years? How much DCM is manufactured by companies for their own use as a raw material or product (captive use)?

(11) What are the availability, price and serviceability of substitutes for products containing DCM?

(12) Assuming no change in regulation, what are the projected trends in the use of DCM?

(13) If the market price of DCM were to increase by 5%, by approximately what percent would consumers decrease their consumption of DCM?

(14) How profitable are the production processes which either produce or consume DCM? Are there other processes available?

(15) What is the gross annual consumption of DCM? What is the approximate, annual consumption of DCM per firm?

(16) Does the company purchase DCM, from one or several suppliers of the product, and where are these suppliers located geographically with respect to the facility that uses or processes it?

(17) For products in which DCM is used, what portion of the cost could be accounted for by the use of DCM?

(18) Compared to other chemicals used in DCM production or product formulation or to potential substitutes for DCM, how would DCM rate as to the hazard it poses to exposed employees and why?

(19) As a firm using DCM, what other chemicals covered by OSHA standards are currently used in the plant? How would engineering controls or process modification for DCM affect exposure to these other chemicals?

g. References

The exhibits referred to in this notice are available for inspection and copying at the OSHA Technical Data Center, Docket Office (Docket H-71) Room N-3670, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Public Participation

Interested persons are invited to submit comments on these and other pertinent issues related to the development of a revised standard for occupational exposure to DCM by February 23, 1987. Comments should be sent in quadruplicate to the Docket Officer, at the address noted above where they will be available for inspection and copying. The data received will be carefully reviewed by OSHA for use in preparation of a Notice of Proposed Rulemaking for DCM.

Statutory Authority

This document was prepared under the direction of John A. Pendergass, Assistant Secretary of Labor for Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to section 6(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593; 29 U.S.C. 655).

Signed at Washington, DC, this 18th day of November 1986.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 86-26331 Filed 11-21-86; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Reopening and Extension of Public Comment Period on a Proposed Amendment to the Arkansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Reopening and extension of public comment period.

SUMMARY: By a letter dated March 10, 1986, Arkansas submitted proposed program amendments. This was in response to OSMRE notifying the State that certain changes were necessary to ensure consistency with the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and revised Federal regulations. OSMRE published a notice in the **Federal Register** on April 15, 1986, announcing receipt of the amendments and inviting public comment on the adequacy of the proposed amendments (51 FR 12713-12714).

On September 3, 1986, OSMRE sent Arkansas a list of concerns regarding the proposed amendment. By letter dated October 17, 1986, Arkansas formally responded to the list and resubmitted a revised package. The resubmission contains some differences from the initial set of rules that were announced in the April 15, 1986 **Federal Register**.

Accordingly, OSMRE is reopening and extending the comment period on the State's March 10, 1986 amendments as modified on October 17, 1986. This action is being taken to provide the public an opportunity to consider the adequacy of the revised proposed amendments.

DATES: Written comments, data or other relevant information relating to this rulemaking not received on or before 4:30 p.m. December 9, 1986, will not necessarily be considered in the Director's decision.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. James Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103.

Copies of the Arkansas program, the proposed modifications to the program, and the administrative record of the Arkansas program are available for public review and copying at the

OSMRE offices and the State regulatory authority office listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m. excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting the OSMRE Tulsa Field Office.

Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103, Telephone: (918) 745–7927

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, N.W., Room 5315A, Washington, D.C. 20240, Telephone: (202) 343–4855

Department of Pollution Control and Ecology, 8001 National Drive, P.O. Box 9583, Little Rock, Arkansas 72209, Telephone: (501) 371–2130

FOR FURTHER INFORMATION CONTACT: Mr. James Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103, Telephone: (918) 745–7927.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior conditionally approved the Arkansas program on November 21, 1980. Information pertinent to the general background, revisions, modifications and amendment to the permanent program submissions, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Arkansas program can be found in the November 21, 1980 **Federal Register** (45 FR 77003–77017). Subsequent actions concerning the approval and program amendments are identified at 30 CFR 904.10, 904.15 and 904.16.

III. Submission of Amendment

In accordance with the provisions of 30 CFR 732.17(d) through (f), on April 17, 1985, OSMRE notified Arkansas of the changes necessary to ensure that the approved State regulatory program was consistent with SMCRA and no less effective than its implementing regulations. To comply with this letter, the State of Arkansas completed a partial rewrite of the affected regulations governing its permanent regulatory program.

By letter of March 10, 1986, Arkansas submitted these regulations to OSMRE as a program amendment [Administrative Record No. AR–302]. The proposed regulations, consisting of sections 701.5, 761, 762.5, 764, 771.23(c)(4), 772.2, 776, 779, 780, 784.20, 785, 786, 788.16(d), 795, 800, 805, 806.11(b), 807.11(d)(2)(v), 808.14, 815.15(a), 816, 819.11(c)(1)&(2), 823, 826.12(c), 827.11, 842.16(a), 843.11(a)(2)&(3) and 845.12(b) would replace the currently approved regulations.

After considering comments and reviewing the proposed amendment, a letter was written to the State dated September 3, 1986, identifying 22 substantive changes that were required in order for the Director to approve these provisions. The letter also listed a number of minor typographical and editorial changes which would improve clarity and readability of the rules when they were finally adopted by Arkansas. In response to the letter the State submitted a revised amendment to OSMRE on October 17, 1986 (Administrative Record No. AR–312).

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the proposed regulations satisfy the criteria for approval of State program amendments set forth at 30 CFR 732.15 and 732.17. If the amendment are found to be in accordance with SMCRA and no less effective than the Federal regulations, they will be approved and the amendment will become part of the Arkansas permanent regulatory program.

List of Subjects in 30 CFR Part 904

Coal mining, Intergovernmental relations, Suface mining, Underground mining.

Dated: November 18, 1986.

Brent Walquist,

Assistant Director, Program Policy.

[FR Doc. 86–26432 Filed 11–21–86; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 917

Withdrawal of a Proposed Rulemaking To Amend the Kentucky Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Withdrawal of a proposed rule.

SUMMARY: OSMRE is announcing the withdrawal of a proposed rulemaking for an amendment submitted by the Commonwealth of Kentucky to amend its permanent regulatory program (hereinafter referred to as the Kentucky program). The proposed amendment pertained to effluent limitations and water quality standards for surface and underground mining; and to secondary coal recovery operations. The proposed amendment was withdrawn by Kentucky in a letter to OSMRE dated October 14, 1986.

DATE: Effective November 24, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone: (606) 233–7327.

SUPPLEMENTARY INFORMATION: On July 29, 1986, Kentucky submitted proposed amendments to its approved regulatory program. The amendments proposed to revise 405 KAR 16:070 and 405 KAR 18:070 of the Kentucky Administrative Regulations, concerning water quality standards and effluent limitations for surface and underground mines. The amendments also proposed to add new regulations at 405 KAR 8:060 and 405 KAR 20:090 to establish permit requirements and performance standards for secondary coal recovery operations, and to address the required amendments at 30 CFR 917.16(c)(2).

On September 11, 1986, OSMRE published a notice on the **Federal Register** announcing receipt of the amendment and soliciting public comment on its adequacy (51 FR 32336). The comment period ended on October 14, 1986.

On October 14, 1986, Kentucky sent a letter to OSMRE to withdraw the amendments. Kentucky expects to submit a modified proposal at a later date. When Kentucky submits the modified proposal OSMRE will announce another comment period.

Dated: November 18, 1986.

Brent Walquist,

Assistant Director, Program Policy.

[FR Doc. 86–26434 Filed 11–21–86; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 938

Public Comment and Opportunity for Public Hearing on Modifications to the Pennsylvania Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of a program amendment submitted by the Commonwealth of Pennsylvania as a modification to the Pennsylvania Permanent Regulatory Program

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(hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment includes revisions to the Pennsylvania Surface Mining Conservation and Reclamation Act pertaining to licensing requirements, water supply replacement insurance, permit issuance, prohibition of burning of underground anthracite coal, right of entry based on leases for bituminous, anthracite and non coal minerals, timing of informal conferences and permit review, reclamation of forfeited sites and the creation of Mining and Reclamation Advisory Board. The amendments also include proposed regulations on bond forfeiture at Chapter 86 to implement section 18 of the Pennsylvania Surface Mining Conservation and Reclamation Act.

This notice sets forth the times and locations that the Pennsylvania program and the proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program provisions, and the procedures that will be followed regarding the public hearing.

DATES: Written comments not received on or before 4:00 p.m. December 24, 1986, will not necessarily be considered.

If requested, a public hearing on the proposed modifications will be held on December 19, 1986, beginning at 9:00 a.m. at the location shown below under "**ADDRESSES**".

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business December 19, 1986.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. Robert Biggi, Harrisburg Field Office, Office of Surface Mining, 101 South 2nd Street, Suite L-4, Harrisburg, Pennsylvania 17101.

If a public hearing is held its location will be: Penn Harris Motor Inn and Convention Center at the Camp Hill Bypass and U.S. 11 and 15, Camp Hill, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Biggi, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, 101 South 2nd Street, Suite L-4, Harrisburg, Pennsylvania 17101; Telephone: (717) 782-4036.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Pennsylvania program, the proposed modifications to the program, a listing of any scheduled public meeting and all written comments received in response to this notice will be available for review at the OSMRE offices and the office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each person may receive, free of charge, one single copy of the proposed modifications by contacting the Harrisburg Field Office.

Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, 101 South 2nd Street, Suite L-4, Harrisburg, Pennsylvania 17101

Office of Surface Mining Reclamation and Enforcement, Administrative Record Room, 1100 L Street, NW., Washington, DC 20240

Pennsylvania Department of Environmental Resources, Fulton Bank Building, Third and Locust Streets, Harrisburg, Pennsylvania 17120

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than Harrisburg, Pennsylvania, will not necessarily be considered and included in the Adminisrative Record for this final rulemaking.

Public Hearing

Persons wishing to comment at a public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business December 9, 1986. If no one requests to comment at a public hearing, the hearing will not be held.

If only one person requests to comments, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Background on the Pennsylvania State Program

On February 29, 1980, the Secretary of the Interior received a proposed regulatory program from the State of Pennsylvania. On October 22, 1980, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary disapproved the Pennsylvania praogram. The State resubmitted its program on January 25, 1982, and subsequently the Secretary approved the program subject to the correction of minor deficiencies. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982 Federal Register notice (47 FR 33050). Subsequent action concerning the conditions of approval and program amendments are identified at 30 CFR 938.11 938.15 and 938.16.

III. Submission of Program Amendment

On September 24, 1986, Pennsylvania submitted for OSMRE a proposed amendment to the State program (OSMRE Administrative Record PA 612). The amendment includes revisions to the Pennsylvania Surface Mining Conservation and Reclamation Act pertaining to licensing requirements, water supply replacement insurance, permit issuance, prohibition of burning of underground anthracite coal, right of entry based on leases for bituminous, anthracite and non coal minerals, timing of informal conferences and permit review, reclamation of forfeited sites and the creation of Mining and Reclamation Advisory Board. The amendments also include proposed regulations on bond forfeiture at Chapter 86 to implement section 18 of the Pennsylvania SMCRA. Specifically the existing regulations of Chapter 86 at sections 86.182 and 86.186-190 are proposed for amendment.

The Director is seeking comment on the adequacy of the proposed amendment in satisfying the criteria for approval of State program amendments set forth at 30 CFR 732.15 and 732.17. Comments should specifically address whether the proposed amendments are in accordance with SMCRA and no less effective than the Federal regulations.

The full text of the proposed amendment is available for review in the OSMRE Administrative Record under No. PA 612 at the addresses listed above.

IV. Additional Determinations

1. Compliance With the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: November 18, 1986.

Arthur W. Abbs,

Acting Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 86-26433 Filed 11-21-86; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Extension of Time for Comments on Bank Secrecy Act Regulations

AGENCY: Office of the Secretary, Treasury.

ACTION: Proposed rule; extension of comment period.

SUMMARY: Notice is hereby given that the Department of the Treasury is extending the comment period on the Amendments to the Implementing Regulations; the Bank Secrecy Act published in the **Federal Register** on August 25, 1986 (51 FR 30233).

DATE: Comments will now be accepted through December 24, 1986.

ADDRESS: Address written comments to Jonathan J. Rusch, Director, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4317, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Linda Noonan, Attorney Advisor, Office of the Assistant General Counsel (Enforcement), Department of the Treasury, Room 2000, 1500 Pennsylvania Ave., NW., Washington, DC 20220, (202/566-2941).

Dated: November 18, 1986.

Francis A. Keating II,

Assistant Secretary (Enforcement).

[FR Doc. 86-26377 Filed 11-21-86; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD12 86-13]

Anchorage Regulations; San Francisco Bay

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a petition by the Richardson Bay Regional Agency for removal of the designation of San Francisco Bay Anchorage No. 3, Belvedere Cove, as a Federal General Anchorage.

DATES: Comments must be received on or before January 8, 1987.

ADDRESSES: Comments should be mailed or hand-delivered to Marine Safety Division, Twelfth Coast Guard District, Coast Guard Island, Building 54-B, Room 250, Alameda, CA 94501-5100. The comments and other materials referenced in this notice will be available for inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Stephen J. Danscuk at (415) 437-3465.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice [CGD12-86-13] and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. The proposed rules may be revised in light of comments received. All comments submitted before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Lieutenant Stephen J. Danscuk, project officer, Twelfth Coast Guard District Marine Safety Division, and Lieutenant Commander Wayne Raabe, project attorney, Twelfth Coast Guard District Legal Office.

Discussion of the Proposed Regulation

On August 7, 1986, the Coast Guard received a petition from the Richardson Bay Regional Agency (composed of a member from each of the governing bodies of Sausalito, Tiburon, Mill Valley, Belvedere and Marin County) requesting removal of the designation of San Francisco Bay Anchorage No. 3, Belvedere Cove, as a Federal General Anchorage. Portions of this petition are included in this proposal.

At the present time, San Francisco Bay Anchorage No. 3, the area known as Belvedere Cove, is designated as a Federal General Anchorage. The Richardson Bay Regional Agency petition seeks to remove this designation based upon the lack of need for this area as a general anchorage, and in the interests of navigational safety. Given that there are numerous mooring floats in Belvedere Cove and virtually no open spaces for anchoring, they believe that this designation is in the interests of navigation, safety, and recreational boating activities. Existing mooring floats would continue to be used in this area. Further, there are no services available to boaters in Belvedere Cove, such as fuel docks, pump-out facilities or public berths or tie-ups. Due to its sheltered nature, Belvedere Cove is extensively used by very small boats (such as Lasers and Sunfish) and sailing classes. The use of this area for anchoring significantly conflicts with these uses and creates a hazardous condition.

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The Richardson Bay Regional Agency cites the following reasons for petitioning the Coast Guard for changes to these areas:

1. There is not adequate space in Belvedere Cove for anchoring in addition to the mooring which is now allowed and which would continue to be permitted under a proposed local ordinance of the Richardson Bay Regional Agency.

2. There are no services available to boaters in Belvedere Cove, such as fuel docks, pump out facilities, public berths and tie ups.

3. Belvedere Cove is used extensively by very small boats and sailing classes since it is a sheltered harbor. The use of this area for anchoring creates a hazardous condition for these uses.

4. There is virtually no use of Belvedere Cove for commercial navigation.

A review of Coast Guard statistics on use of Anchorage No. 3, maintained by Vessel Traffic Service San Francisco, indicates minimal commercial use of this anchorage for the past year. Having reviewed the analyses and solutions posed by the Richardson Bay Regional Agency, and reviewing historic use and need of this anchorage area, the Coast Guard concurs that there is insufficient need to retain Belvedere Cove as a general anchorage. The Coast Guard concurs with the reasoning for removal of the designation of Belvedere Cove as a Federal General Anchorage and finds it appropriate for proposal as a change to existing federal regulations.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. There is no economic impact associated with removal of the designation of Belvedere Cove as a general anchorage.

Since the impact of this proposal is expected to be minimal the Coast Guard certifies that if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Chapter I of Title 33, Code of Federal Regulations, as follows:

PART 110—ANCHORAGE REGULATIONS

Subpart B—Achorage Grounds

1. The authority citation for Part 110 Subpart B continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

§ 110.224 San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and connecting waters, Calif. [Amended]

2. By removing Anchorage No. 3 and its associated General Location, Purpose, and Specific Regulations from Table 110.224(d)(1).

3. By removing 33 CFR paragraph (e)(1) *Anchorage No. 3,* from § 110.224.

4. By redesignating paragraphs (e)(2) through (e)(21) as paragraphs (e)(1) through (e)(20) without content change.

Dated: September 30, 1986.

John D. Costello,

Vice Admiral, U.S. Coast Guard Commander, Twelfth Coast Guard District.

[FR Doc. 86–26446 Filed 11–21–86; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-326, RMs-5323, 5588, 5592]

Radio Broadcasting Services; Albany, Buffalo, Ilion, Utica, NY, and Boston, MA

AGENCY: Federal Communication Commission.

ACTION: Proposed rule; extension of time.

SUMMARY: At the request of Mohawk Valley Telecasters, Inc. the time for filing reply comments is extended to respond to the counterproposals to assign VHF TV Channel 4 to Ilion, New York, or to Albany, New York, as a reserved noncommercial educational channel on a short-spaced drop-in basis, and to the opposition to the change in offset designation for Channel 4 at Buffalo, New York.

DATE: Reply comments must be filed on or before November 14, 1986.

ADDRESS: Federal Communication Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Richard F. Swift, Tierney & Swift, 1000–19th St. NW., Washington, DC 20036 (Counsel to Mohawk Valley Telecasters); Alfred C. Cordon, Dennis J. Kelley, Cordon & Kelly, 1920 N Street NW, 2nd Fl., Washington, DC 20036 (Counsel to Buffalo Broadcasting) James L. Oyster, 8315 Tobin Rd., Annandale, Virginia, 22003–1101 (Counsel to Mohawk Valley Broadcasting); and Robert A Woods, Malcolm G. Stevenson, Schwartz, Woods & Miller, 1325—18th St. NW., Suite 206, Washington, DC 20036 (Counsel to Mohawk-Hudson Council).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order Exending Time for Filing Reply Comments, MM Docket No. 86–326, adopted October 15, 1986, and released October 21, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Proposed of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission's consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communication Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–26440 Filed 11–21–86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

[Docket No. 61096-6196]

Proposed Regulations Governing Approaching Humpback Whales in Hawaiian Waters

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes this rule for the protection of the humpback whale, an endangered species, when it is in Hawaiian waters. These regulations would not allow vessels or people to approach whales closer than 100 yards or aircraft closer than 1,000 feet of any whale and would replace the current "Notice of Interpretation of Harassment of Humpback Whales in Hawaiian Waters" (44 FR 1113, January 4, 1979) with enforceable regulations. This action is necessary to reduce the level of disturbance experienced by humpback whales from vessel traffic.

DATES: Written comments are being solicited from the general public, user interests, state and local agencies, and other Federal agencies and will be accepted until December 24, 1986. A public hearing is scheduled for December 15, 1986 at a location to be arranged in Lahaina, Maui.

ADDRESS: Send Comments to E.C. Fullerton, Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731, Telephone: (213) 514-6201.

FOR FURTHER INFORMATION CONTACT:

Doyle E. Gates, Administrator, Western Pacific Program Office, National Marine Fisheries Service, P.O. Box 3830, Honolulu, HI 96812, Telephone: (808) 955-8831;

H.E. Witham, Senior Resident Agent, Enforcement Division, Southwest Region, National Marine Fisheries Service, P.O. Box 50246, Honolulu, HI 96850, Telephone: (808) 546-5679; or

James H. Lecky, Wildlife Biologist, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731, Telephone: (213) 514-6664.

SUPPLEMENTARY INFORMATION:

Background

As a result of commercial whaling during the first half of this century, the number of humpback whales (*Megaptera novaeangliae*) in the North Pacific is seriously reduced from former levels. It is now the second most depleted of all the North Pacific great whales. Population levels have declined from an estimated 15,000 (Rice 1978) in 1905 to a present estimate of 1,200 (Rice and Wolman 1979). Humpback whales received protection in 1966 when the International Whaling Commission placed a prohibition on commercial whaling of this species. In 1970, the humpback whale was designated an endangered species under the Endangered Species and Conservation Act of 1969 (since superseded by the Endangered Species Act of 1973, as amended). The Marine Mammal Protection Act of 1972, and the Convention on International Trade in Endangered Species of Wild Fauna and Flora, March 3, 1973, also provide some measure of protection from direct take (injury and mortality) and from international trade in whale products.

Estimates of the number of humpback whales that winter in Hawaiian waters range from about 650 to 1,000 animals (Rice and Wolman 1979; Darling and Morowitz 1983). It is believed that whales which winter in Hawaii are part of one eastern North Pacific stock which also breeds in Mexican waters and summers throughout Alaskan waters (Darling and McSweeney 1985).

Each year, humpback whales begin arriving in the Hawaiian Islands area in late October. Their numbers usually peak in late February. The whales return each year to the waters inside the 100-fathom isobath surrounding the main Hawaiian Islands to calve, nurse, and breed. Hawaii provides the only habitat under U.S. jurisdiction used by humpback whales for these purposes. The major areas of concentration are around Penguin Bank, the waters bounded by the islands of Molokai, Lanai, Maui, and Kahoolawe, and the northwest coastal waters of the island of Hawaii from Hilo to Keahole Point. The annual northward migration begins in April, and by mid-May, most of the humpback whales have left the Hawaiian Islands area.

Coastal waters of the Hawaiian Islands comprise preferred calving, nursing, and breeding habitat for approximately half of the North Pacific population of humpback whales. Activities that force the humpback whales to abandon these breeding grounds or interrupt breeding and calf-rearing behaviors may result in a lower birth rate. These activities assume greater importance since currently there is no evidence of recovery, or population growth, of humpback whales in the North Pacific (Johnson and Wolman 1984). While in the Hawaiian Islands area, humpback whales are the subject of whale watching and scientific research. Marine construction, recreational boating, commercial shipping, private and military aircraft flights, and turbidity resulting from agricultural run off also are affecting the behavior and distribution of humpback whales. Glockner-Ferrari and Ferrari (1985) report a decrease in the number of cows and calves seen annually in the nearshore waters of the Lahaina, Maui, area. Results of recent aerial surveys (Forestell, in prep.) bear out earlier observations (Herman *et al.*, 1980) that increased human activity in localized areas is correlated with a decrease in the number of whales using those areas. Whales appear to be continuing to avoid the Lahaina area and, recently, are avoiding the Keawakapu area off Maui, near the site of a recently built and heavily used public boat ramp (Forestell, in prep.).

During the late 1970's, NMFS became concerned that harassment of whales, associated with increasing interest in whale watching could lead to adverse effects on the humpback whales that breed in Hawaii. Much of the problem appeared to be the result of inexperienced boaters who were not familiar with whale behavior or proper conduct for vessel operators in the vicinity of whales. NMFS decided that a public education program would be an effective way to deal with the problem. In 1979, NMFS published a "Notice of Interpretation" (44 FR 1113, January 4, 1979) to inform the public of activities that could be interpreted as harassment of whales. The "Notice of Interpretation" contained guidelines for approaching whales and proper conduct of vessel operators when following or watching whales.

Since 1979, the number of vessels registered in Maui County increased from 835 to 1223. Many of these vessels operate in the same areas used by females to rear calves. A boat ramp constructed at Keawakapu in 1983 improved access to Malaea Bay, an important calving area. Prior to construction of the ramp, vessels were launched at Lahaina or Makena and infrequently used Malaea Bay. Since the ramp opened, an average of 50 vessels are launched in Malaea Bay daily. During peak periods, more than 100 vessels may be launched in a day (Witham pers. comm.). Hawaii's Visitor Bureau estimates that 52% of the State's annual 5 million visitors use the state's ocean resources. Increasing tourist traffic leads to increased water-based recreational services. Jet ski rentals, small boat rentals, and parasail

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operations have increased in the last seven years. An accelerated interest in whale watching has supported an increase in the number of commercial whale watching boats from 18 to 65 over the same period.

Observations of NMFS enforcement agents and complaints from the public indicate that vessels and aircraft frequently approach closer than the distances prescribed in the "Notice of Interpretation." This is likely contributing to the increasing levels of disturbance and may be a factor in the redistribution of whales in the vicinity of Lahaina, Maui. In addition, the studies referenced in this rule indicate more restrictive management measures are needed to control human interactions with humpback whales in Hawaii.

Studies of whale behavior conducted in the vicinity of vessels in Hawaii (Bauer and Herman 1985) and Alaska (Johnston 1985) indicate that whales may respond to vessel traffic at distances from one to several kilometers. Responses are manifested by increased dive times, decreased blow intervals, avoidance responses, and increases in aggressive displays. These responses appear to be short in duration, but a cumulative exposure to increasing levels of vessel traffic may deter whales from their preferred habitat.

Whale watching from private platforms and commercial vessels is a major component of the increasing vessel traffic in Hawaii. This activity can be both beneficial and deterimental to the whales. It provides a tool for educating the public about the status of whale populations and encourages public support for management programs to recover depleted whale populations. Also it provides an opportunity to familiarize the public with other marine environmental issues. Whale watching can also be detrimental because it can result in disturbing whales and contribute to an increased cumulative degradation of the whales' breeding habitat from human activities.

NMFS's intent in proposing these regulations is to minimize the detrimental effects of whale encounters without losing the beneficial aspects. There is little information available to provide guidance on what constitutes an acceptable distance for approaching whales. In 1978 and 1979, Jones and Swartz (1984) investigated the effects of whale watching on gray whales in San Ignacio Lagoon, Baja California, Mexico. San Ignacio is one of several lagoons used by gray whales for calving and nursing. Because gray whales calve in shallow confined lagoons, it was suspected that whale watching might be more detrimental in the lagoons than in the open ocean. However, Jones and Swartz detected no significant difference in whale distribution on days when vessels were present and says when vessels were absent. They also found no significant difference in calf mortality between San Ignacio Lagoon and adjacent lagoons where no whale watching occurred. A preliminary study of the effect of whale watching on humpback whales in the southern Gulf of Maine was done from 1979 to 1983. The study found no change in the whales' calving intervals, or calf survivorship, and concluded that whale watching in the southern Gulf of Maine, up to 1983, did not affect the survival of the species (Chu *et al.*, 1985).

While the available scientific information on the effects of vessel traffic and whale watching does not provide precise guidance on proximity limit for approaching whales, NMFS is establishing 100 yards as an approach limit in Hawaiian waters based on its experience in enforcing the prohibition of harassment. Activities that are initiated or occur within 100 yards of a whale have a high probability of causing harassment. NMFS's experience with the commercial whale watching industry indicates that whales can be followed at a distance of 100 yards or more without disturbing them.

The calving and breeding areas designated in the "Notice of Interpretation" are not being included in the proposed rule because more recent studies on the distribution of whales (Forestell 1985) indicate that persistent and distinct calving areas probably do not exist. The 100-yard minimum does not eliminate the prohibition of harassment outside that limit. Any actions occurring beyond 100 yards that result in harassment are still prohibited by the Endangered Species Act and the Marine Mammal Protection Act.

NMFS will continue to monitor the effects of all activities occurring in proximity to whales in order to determine if additional measures are necessary to protect humpback whales. NMFS will also continue to consult with Federal agencies (e.g., the Army Corps of Engineers and the Maritime Administration) as required by section 7 of the Endangered Species Act.

CLASSIFICATION: Applicability to other Laws, Regulations and Requirements.

NMFS has prepared an environmental assessment in which it determined that approval and implementation of the proposed rule and the alternatives would not significantly affect the quality of the human environment, and that the preparation of an environmental impact statement would not be required by section 102(2) of the National Enviornmental Policy Act or its implementing regulations.

The National Marine Fisheries Service has made a preliminary determination under Executive Order 12291 that the proposed action will not result in (1) an annual effect on the economy of $100 million or more; (2) major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprise to compete in domestic or export markets.

This rule does not contain a collection of information requirements for purposes of the Paperwork Reduction Act.

NMFS has determined that the proposed action will not have a significant impact on a substantial number of small businesses, and there will not be a difference in degree of impact due to varying sizes of businesses affected.

List of Subjects in 50 CFR Part 222

Endangered and Threatened Species.

Dated: November 18, 1986.

James E. Douglas, Jr.,

Acting Deputy Assistant Administrator for Fisheries.

For the reasons set forth in the preamble, it is proposed to amend 50 CFR Part 222 by adding a new Subpart D to read as follows:

PART 222—[AMENDED]

1. The authority citation for Part 222 continues to read as follows:

Authority: 16 U.S.C. 1531–1543.

2. A new Subpart D consisting of § 222.31 is added, to read as follows:

Subpart D—Special Prohibitions

Sec.
222.31 Approaching humpback whales in Hawaii.

Subpart D—Special Prohibitions

§ 222.31 Approaching humpback whales in Hawaii.

Except as provided in §§ 222.23–222.28 (Scientific permits) it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or to cause to be committed, within 200 nautical miles of the Islands of Hawaii, any of the following acts with respect to humpback whales (*Megaptera novaeangliae*):

(a) To operate any aircraft within 1,000 feet of any humpback whale or;

(b) Approaching, by any means, within 100 yards of any humpback whale;

(c) Causing a vessel or other object to approach within 100 yards of any humpback whale; or

(d) Disrupting the normal behavior or prior activity of a whale by any other act or omission. A disruption of normal behavior may be manifested by, among other actions on the part of the whale, a rapid change in direction or speed; escape tactics such as prolonged diving, underwater course changes, underwater exhalation or evasive swimming patterns; interruptions of breeding or nursing activities; attempts by a whale to shield a calf from a vessel or human observer by tail swishing or by other protective movements; or the abandonment of a previously frequented area.

[FR Doc. 86-26371 Filed 11-21-86; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 661

[Docket No. 61104-6204]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to implement the seventh amendment (amendment) to the Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California commencing in 1978 (FMP). The amendment provides a formula for annual alteration of the escapement goal for Oregon coastal natural coho salmon based on stock abundance, increases the flexibility of inseason management provisions, and modifies the allocation scheme for coho salmon south of Cape Falcon, Oregon. It is intended to allow an equitable division of ocean harvest between recreational and commercial fisheries of the maximum number of salmon surplus to inside fishery and spawning needs.

DATE: Comments on the amendment and the proposed rule are invited until January 2, 1987.

ADDRESSES: Comments may be sent to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115; or E. Charles Fullerton, Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731. Copies of the seventh amendment, including the environmental assessment and the regulatory impact review/initial regulatory flexibility analysis, are available from the Pacific Fishery Management Council, 2000 SW. First Avenue, Suite 420, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206-526-6150; E. Charles Fullerton, 213-514-6196; or Joseph C. Greenley, Pacific Fishery Management Council, 503-221-6352.

SUPPLEMENTARY INFORMATION:

Background

Under the Magnuson Fishery Conservation and Management Act (Magnuson Act), the FMP was prepared by the Pacific Fishery Management Council (Council), and was approved by the Secretary of Commerce (Secretary) on March 2, 1978. Since then, the FMP has been amended six times, with implementing regulations codified at 50 CFR Part 661. From 1979 to 1983, the FMP was amended annually. In 1984, a framework amendment was implemented which provided the mechanism for making preseason and inseason adjustments in the regulations without annual amendments (49 FR 43679, October 31, 1984).

Development of the seventh amendment began in 1985. A draft document was distributed to interested persons for review in August 1986. Comments were invited, and five public hearings were held August 27-28, 1986. After considering the comments received during the comment period, at public hearings, and during the July and September (1986) Council meetings, and after receiving advice from the Council's Salmon Plan Development Team, Salmon Advisory Subpanel, and Scientific and Statistical Committee, the Council made its final selection of options for the amendment at its September 17-18, 1986, meeting in Portland, Oregon.

The major purposes of the seventh amendment are to (1) provide a formula for annual alteration of the escapement goal for Oregon coastal natural (OCN) coho salmon based on stock abundance; (2) increase the flexibility of inseason management provisions to be more responsive to changing biological, social, and economic conditions during the season; and (3) modify the allocation schedule for coho salmon south of Cape Falcon, Oregon, to provide the optimum yield to recreational and commercial fisheries at varying stock abundance levels. These issues are described below.

Amendment Issue 1—Stock Abundance-Dependent Formula for Annual Determination of the Oregon Coastal Natural (OCN) Coho Salmon Escapement Goal

The amendment implements the use of a formula to adjust escapement goals for OCN coho based on expectations of stock abundance.

In 1982, the Oregon Department of Fish and Wildlife (ODFW) established a stock rebuilding schedule and a long-term annual escapement goal of 200,000 OCN coho. The ODFW escapement goal for OCN coho was promulgated in federal regulations implementing the framework amendment in 1984.

In 1983, adverse environmental conditions (from "El Nino" effect) drastically reduced abundance of one of the three cycles of OCN coho and made attainment of the 1983 goal, and three years later the 1986 goal, incompatible with the socio-economic needs of the ocean fisheries. (The other two cycles of OCN coho have been rebuilt to approach an annual natural spawning escapement of 200,000 adults returning to Oregon coastal streams.)

Federal regulations were implemented in 1986, under the Magnuson Act mandate to manage the ocean salmon fisheries to achieve optimum yield, which allowed a higher level of ocean harvest than that which was likely to meet the OCN coho 1986 escapement goal (51 FR 16522, May 5, 1986). Nevertheless, the 1986 escapement is expected to be 80-90 percent of the original 1986 escapement goal of 170,000 fish—a considerable improvement over the 1983 parent stock which returned to coastal streams at only 41 percent of that year's escapement goal of 140,000 fish.

Under the framework rebuilding schedule, the escapement goal for OCN coho adults beginning in 1987 is 200,000 fish. The new stock abundance-dependent escapement goal would provide increased flexibility to respond to socio-economic concerns at stock sizes below 400,000 coho salmon, while rebuilding OCN coho salmon stocks. A spawning escapement goal floor of 135,000 coho is established for stock sizes of up to 270,000 coho. Between stock sizes of 270,000 and 400,000, the spawning escapement goal will be one-half of the estimated stock size. For stock sizes above 400,000, the escapement goal will be 200,000 coho salmon.

Two alternate methods of estimating the abundance of coho salmon south of Leadbetter Point, Washington, have been employed in recent years. One

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method, recommended by the ODFW was used in 1985 and 1986 and is known as the "partitioning method." The partitioning method is being refined by ODFW and will be evaluated by Council advisors early in 1987. Another method of estimating coho abundance, the Oregon Production (OPI) method, is described in the framework regulations (49 FR 43686–43687, October 31, 1984).

The amendment deletes the description of methodology to estimate OPI coho abundance. Instead, with advice from its scientific advisors, the Council will choose the best scientific methodology to estimate OCN coho abundance each year. The resulting OCN coho abundance estimate will be the basis for determining the allowable harvest and the escapement goal for the upcoming season.

Amendment Issue 2—Inseason Management Flexibility

The amendment increases the flexibility of the framework inseason management provisions.

The 1984 framework amendment provided authority to make certain inseason modifications to ocean salmon regulations when necessary to facilitate meeting the objectives of the FMP. Numerous incidents arose during the first season under these inseason management provisions when the Council, its advisors, or the States recommended an inseason change which could not be implemented. Several of the framework provisions were too narrow in scope, and others were unclear as to what modifications could be made under them.

As a result, the Council recommended that increased inseason management flexibility be tested during the 1986 season. An emergency rule similar to that being proposed in the amendment was implemented (51 FR 18451, May 20, 1986), and proved to be more responsive to the changing biological, social, and economic conditions of the fishery.

Under the revised inseason management authority contained in the amendment, increased management flexibility is achieved by authoriziing any inseason regulatory change so long as specified factors are considered and the adjustment is consistent with Ocean escapement goals, conservation of the salmon resource, any adjudicated Indian fishing rights, and the ocean allocation scheme in the FMP. The provision to adjust abundance estimates in season was included in the option recommended by the Council in case accepted methodology to do so becomes available.

Although consultation with fishery participants prior to taking inseason action is not required by this rule, State and federal manageers have indicated publicly that they will continue to consult with user representatives prior to making inseason adjustments.

Amendment Issue 3—Allocation of Coho Salmon South of Cape Falcon, Oregon

The amendment modifies the allocation scheme for coho salmon south of Cape Falcon, Oregon, originally established in 1984 by the framework amendment.

The framework allocation schedule has become increasingly controversial due primarily to the relatively low abundance of coho salmon in the OPI area south of Leadbetter Point, Washington, in recent years, and the disastrous effect this decreased abundance has had on the economy of coastal communities. As a result, in May 1985 the Oregon Fish and Wildlife Commission (OFWC) commissioned a study of the economic aspects of the recreational/commercial allocation of coho salmon in the ocean fisheries. An August 1985 progress report on the economic study concluded "that a reasonable reallocation of the allowable cocho catch from commercial to recreational could significantly increase coastal community income, provided wise choices are made about the accompanying regulations and coho stock sizes increase above the depressed levels recently experienced." On January 24, 1986, following extensive public review of the report, the OFWC urged fishery participants to develop a new allocation schedule which would more adequately reflect the socio-economic needs of the coastal communities and the user groups.

A revised allocation was negotiated subsequently by commerical and recreational representatives and adopted by the OFWC. It forms the basis of the revised allocation scheme in the seventh amendment.

The new allocation schedule provides that sufficient coho will be allocated to the commerical fishery at low stock levels to provide for incidental hooking mortality in a commerical all-salmon-except-coho fishery. An allowance for incidental coho mortality in the commerical all-salmon-except-coho fishery will have priority in the allocation scheme.

The new allocation schedule also increases the likelihood that recreational fisheries south of Cape Falcon will complete their established seasons by increasing the recreational share of allowable harvest.

Under the amendment, commerical and recreational seasons and coho quotas will be established preseason. The coho quotas will be calculated from the modified allocation schedule. Near the first of August each year, fishery managers will estimate the number of coho salmon needed to complete the recreational seasons and reallocate any unneeded recreational fish to the commercial fishery ("roll-over provision"). Transfers between the commerical and recreational fisheries south of Cape Falcon, Oregon, other than the "roll-over provision," are not authorized.

Classification

Section 304(a)(1)(C)(ii) of the Magnuson Act requires the Secretary to publish regulations proposed by a Council within 230 days of receipt of the FMP amendment and regulations. At this time, the Secretary has not determined that the FMP amendment this rule would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period on the proposed rule.

The Council prepared an environmental assessment for this amendment and concluded that there will be no significant impact on the environment as a result of this rule. The enviornmental assessment is part of the seventh amendment and may be obtained from the Council at the address listed above.

The NOAA Administrator had determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination was based on analysis of the regulatory impact review (RIR) prepared for this rule. This proposed rule, if adopted, may have a significant economic impact on a substantial number of small businesses for purposes of the Regulatory Flexibility Act, and thus required an initial regulatory flexibility analysis (IRFA). The RIR/IRFA may be obtained from the Council at the address listed above. A summary of the economic impacts set forth below all apply to small business entities because this industry consist only of small entities.

Amendment Issue 1—Escapement Goal for Oregon Coastal Natural (OCN) Coho Salmon—A scenario of low OCN coho abundance compared to other OPI stocks was utilized to estimate the difference in socio-economic benefits between options. Under this scenario, net economic benefits of $1,112,000 to $1,234,000 were estimated. Details of the increases or decreases by specific fishery are provided in the RIR/IRFA.

Amendment Issue 2—Inseason Management Flexibility—The options were analyzed with respect to the impacts on management costs and opportunities to provide more effective utilization of available harvest. The selected option 2 provides the greatest potential for shaping fisheries to obtain the maximum benefits inseason. While both options may result in similar or slightly highter inseason management costs compared to the status quo, the need for costly FMP amendments would be reduced.

Amendment Issue 3—Allocation of Coho Salmon South of Cape Falcon, Oregon—The estimated change in net economic value resulting from the adoption of a revised allocation schedule depends on the increase in recreational allocation of a range of total available harvests and the degree of utilization of the additional allocation. An increase in net economic value from $295,000 to $3,080,000 was calculated. The amount of personal income generated in coastal communities would follow a similar trend.

This proposed rule is exempt from the procedures of Executive Order 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act, as amended by Pub. L. 97-453, require the Secretary to publish this proposed rule within 30 days of its receipt. The proposed rule is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow procedures of the order.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of the States of Washington, Oregon, and California, and the San Francisco Bay Conservation and Development Commission (Commission). NMFS has submitted this determination for review by the responsible state agencies and the San Francisco Bay Commission under section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 661

Fisheries, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 19, 1986.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 661 is proposed to be revised to read as follows:

PART 661—[AMENDED]

1. The authority citation for Part 661 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 661.20, the introductory text of paragraph (a) is revised to read as follows:

§ 661.20 Annual actions.

(a) The Secretary will annually establish or, as necessary, adjust management specifications for the commercial, recreational, and treaty Indian fisheries by publishing a notice in the **Federal Register** under § 661.23. Management specifications may include allowable ocean harvest levels (including quotas), allocations, management boundaries and zones, minimum size limits, gear definitions, seasons, and selective fisheries for each fishery and may be specified as follows:

* * * * *

3. In § 661.21, paragraph (b) is revised to read as follows:

§ 661.21 Inseason actions.

* * * * *

(b) *Flexible inseason management provisions.* (1) Flexible inseason management provisions include, but are not limited to, the following:

(i) Modification of quotas and/or fishing seasons.

(ii) Modifications in the species which may be caught and landed during specific seasons and the establishment or modification of limited retention regulations.

(iii) Changes in recreational bag limits and recreational fishing days per calendar week.

(iv) Establishment or modification of gear restrictions.

(v) Modification of boundaries, including landing boundaries, and establishment of closed areas.

(2) The procedures for development and implementation of flexible inseason management provisions are described in § 661.23 and in the Appendix to this Part, Section III.

4. In the Appendix, paragraph II.B.1(a) is revised to read as follows:

APPENDIX

* * * * *

II. Annual Changes to Management Specifications

* * * * *

B. *Procedures for Establishing and Adjusting Annual Management Measures.* 1. Allowable ocean harvest levels and quotas.

* * * * *

(a) *Coho south of Leadbetter Point.* A preseason estimate will be made each year of the Oregon coastal natural coho salmon stock size, using the best scientific information and methodology available as determined by the Council.

5. In the Appendix, paragraphs II.B.2(b)(i) and (b)(iii) are revised, paragraph II.B.2(b)(ii) is redesignated as paragraph (b)(iv), and a new paragraph II.B.2(b)(iii) is added to read as follows:

APPENDIX

* * * * *

II. * * *

* * * * *

B. * * *

2. Allocation of Ocean harvest levels.

* * * * *

(b) *Coho south of Cape Falcon.* (i) The following allocation schedule will be used in determining preseason allocation shares of coho salmon south of Cape Falcon, Oregon. The respective shares may be altered inseason if coho surplus to completing the recreational season are reallocated to the commercial fishery in accordance with paragraph 2(b)(iii) of this section below.

Allowable ocean harvest (thousands of fish)	Commercial		Recreational	
	Number (thousands)	Percentage	Number (thousands)	Percentage
2,700	2,230	82.6	470	17.4
2,600	2,140	82.3	460	17.7
2,500	2,050	82.0	450	18.0
2,400	1,960	81.7	440	18.3
2,300	1,870	81.3	430	18.7
2,200	1,780	80.9	420	19.1
2,100	1,690	80.5	410	19.5
2,000	1,600	80.0	400	20.0
1,900	1,510	79.5	390	20.5
1,800	1,420	78.9	380	21.1
1,700	1,330	78.2	370	21.8
1,600	1,240	77.5	360	22.5
1,500	1,150	76.7	350	23.3
1,400	1,060	75.7	340	24.3
1,300	970	74.6	330	25.4
1,200	880	73.3	320	26.7
1,100	790	71.8	310	28.2
1,000	700	70.0	300	30.0
900	610	67.8	290	32.2
800	520	65.0	280	35.0
700	434	62.0	266	38.0
600	348	58.0	252	42.0
500	262	52.4	238	47.6
400	176	44.0	224	56.0
350	133	38.0	217	62.0
300	100	33.3	200	66.7
200	33	[1] 16.5	[1] 167	[1] 83.5
100	[1]	[1]	[1]	[1]

[1] An incidental coho allowance associated with any commercial all-salmon-except-coho fishery will be deducted from the recreational share during periods of low stock abundance when the troll allocation of coho under the schedule would be insufficient to allow for incidental hooking mortality of coho during a troll all-salmon-except-coho fishery.

(ii) The allocation schedule is based on the following formula.

(*A*) Up to 350,000 allowable ocean harvest: the first 150,000 fish will be allocated to the recreational fishery. Additional fish will be allocated 66.7 percent to troll and 33.3 percent to recreational. The incidental coho mortality for a commercial all-expert-coho fishery will be deducted from the troll allocation. If the troll allocation is insufficient for this purpose, the remaining number of coho needed for this estimated incidental coho mortality will be deducted from the recreational share.

(*B*) From 350,000 to 800,000 allowable ocean harvest: the recreational allocation is equal to 14 percent of the allowable harvest above 350,000 fish, plus 217,000 fish. The remainder of the allowable ocean harvest will be allowable to the troll fishery.

(*C*) Above 800,000 allowable ocean harvest: the recreational allocation is equal to 10 percent of the allowable harvest above 800,000 fish, plus 280,000 fish. The remainder of the allowable ocean harvest will be allocated to the troll fishery.

(*D*) The above formula will be used to interpolate between allowable harvest levels shown in the table above.

(iii) On or about August 1 each year, the Salmon Plan Development Team will estimate the number of coho salmon needed to complete the recreational seasons. Any coho salmon allocated to the recreational fishery which are not needed to complete the recreational seasons will be reallocated to the commercial fishery.

* * * * *

6. In the Appendix, the heading of section III.B. is revised to read "General procedures for flexible inseason management provisions" and paragraph III.B.1 is revised to read as follows:

APPENDIX

* * * * *

III. Inseason Changes to Management Measures

* * * * *

B. *General procedures for flexible inseason management provisions.* 1. Fishery managers must determine that any inseason adjustment in management measures is consistent with fishery regimes established by the U.S.-Canada Pacific Salmon Commission, ocean escapement goals, conservation of the salmon resource, and adjudicated Indian fishing rights, and the ocean allocation scheme in the FMP. In addition, all inseason adjustments will be based on consideration of the following factors:

(a) Predicted sizes of salmon runs;

(b) Harvest quotas and hooking mortality limits for the area and total allowable impact limitations if applicable;

(c) Amount of the recreational, commercial, and treaty Indian catch for each species in the area to date;

(d) Amount of recreational, commercial, and treaty Indian fishing effort in the area to date;

(e) Estimated average daily catch per fisherman;

(f) Predicted fishing effort for the area to the end of the scheduled season; and

(g) Other factors as appropriate.

* * * * *

7. In the Appendix, the introductory text of paragraph III.B.2 is revised to read as follows:

APPENDIX

* * * * *

III. * * *

* * * * *

B. * * *

2. For those actions taken during the season, the following procedures will be followed:

* * * * *

8. In the Appendix, sections, III. C through III. F are removed.

9. In Appendix section IV, the table entitled "Summary of Specific Management Goals for Stocks in the Salmon Management Unit" is revised to read as follows:

SUMMARY OF SPECIFIC MANAGEMENT GOALS FOR STOCKS IN THE SALMON MANAGEMENT UNIT

System	Spawning [1] escapement goal	Rebuilding schedule
Sacramento Fall Chinook [2]	Range of 122–180,000 for natural and hatchery	
Klamath Fall Chinook	97,500 natural; 17,500 hatchery	Achieve in-river run sizes (natural and hatchery continued) as follows: 1983-86—68,900 1987-90—82,700 1991-94—99,200 1995-98—[3] 115,000+
Oregon Coastal Chinook	150–200,000 natural	
Columbia River Chinook:		
Upper River Fall	40,000 bright adults above McNary Dam	
Upper River Summer	80,000 adults above Bonneville	
Upper River Spring	100–200,000 adults above Bonneville	
Upper River Spring (Willamette)	30–35,000	
Columbia River and Oregon Coastal Coho	Oregon coastal natural (OCN) coho spawning escapement goal is based on OCN coho stock abundance. See footnote 4, below	
Puget Sound Pink	900,000 natural	
Lake Washington Sockeye [5]	300,000 to Lake Washington	
Columbia River Sockeye [5]	80,000 over Priest Rapids	

[1] Represents adult natural spawning escapement goal for viable natural stocks or adult hatchery return goal for stocks managed for artificial production

[2] The Sacramento River escapement goal is presented as a range within which annual escapements can be expected to vary. Achieving the upper end of the range, especially for the upriver chinook stocks, will be contingent upon solving the problems associated with the Red Bluff Diversion Dam.

[3] The long-term Klamath River escapement goals of 115,000 chinook is spawning escapement to which in-river harvest must be added to calculate the ocean escapement goal.

[4] Achieve escapement of OCN coho natural spawning stocks as follows:

Estimated stock size	Spawning escapement goal
Up to 270,000	135,000.
270,000 to 400,000	One-half of stock size.
Over 400,000	200,000.

[5] These stocks represent a negligible component of the Washington ocean harvest.

[FR Doc. 86-26464 Filed 11-19-86; 4:38 pm]

BILLING CODE 3510-27-M

Notices

Federal Register
Vol. 51, No. 226
Monday, November 24, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.
Title: Survey of Inshore Shrimp Fishery in the Gulf of Mexico.
Form Number: Agency—N/A; OMB—0648–0171.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 300 respondents; 230 reporting hours.
Needs and Uses: The U.S. shrimp fishery in the Gulf of Mexico has been in a depressed state during the last several years. Data collected will be used to refine management strategies for this fishery.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations.
Frequency: One background interview and a monthly intercept survey.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Sheri Fox, 395–3785.

Agency: National Oceanic and Atmospheric Administration.
Title: Survey of Intent and Capacity to Harvest and Process Fish and Shellfish.
Form Number: Agency—N/A; OMB—0648–0114.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 215 respondents; 42 reporting hours.
Needs and Uses: Assessments are made of the U.S. fishing industry's intent and capacity to harvest and process fish and shellfish. Results are used to establish allocations of fishery resources among users and in determining the impact of management measures.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations.
Frequency: Semi-annually; annually.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Sheri Fox, 395–3785.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: November 18, 1986.

Edward Michals,

Departmental Clearance Officer, Information Management Division Management.

[FR Doc. 86–26414 Filed 11–21–86; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Technical Information Service.

Title: Assessment of the Foreign Technical Information Market in the United States; Follow-up Questionnaire.

Form Number: Agency—N/A; OMB—0605–0017.

Type of Request: Revision of currently approved collections.

Burden: 9,400 respondents; 4,700 reporting hours.

Needs and Uses: This survey is aimed at individuals who responded to a previous questionnaire and who have been exposed to NTIS' foreign technical information resources. The results of this survey will determine whether foreign information available from NTIS has been useful, what difficulties have been encountered in using foreign information, and suggestion to improve the format for presenting foreign information.

Affected Public: State or local governments; businesses or other for-profit institutions; federal agencies or employees; non-profit institutions; small businesses or organizations.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Timothy Sprehe, 395–4814.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: November 19, 1986.

Ed Michals,

Departmental Clearance Officer, Information Management Division, Office of Information Resources Management.

[FR Doc. 86–26415 Filed 11–21–86; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[A-122-020]

Pig Iron From Canada; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration/Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 14, 1986, the Department of Commerce published the preliminary results of its administrative review and tentative determination to revoke in part the antidumping finding on pig iron from Canada. The review covers one manufacturer and/or exporter of this merchandise to the United States and the period July 1, 1983 through June 30, 1985.

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke in part. We received no comments. Based on our analysis, the final results of review are

unchanged from those presented in the preliminary results.

EFFECTIVE DATE: November 24, 1986.

FOR FURTHER INFORMATION CONTACT: Americo A. Tadeu or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255/3601.

SUPPLEMENTARY INFORMATION:

Background

On August 14, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 29142) the preliminary results of its administrative review and tentative determination to revoke in part the antidumping finding on pig iron from Canada (36 FR 1370, July 24, 1971). We began this review under our old regulations. After the promulgation of our new regulations, one respondent, Dofasco, Inc., requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of pig iron, which is used in steel production and in the iron foundry industry for making iron castings such as pipe, automobile castings, and machine parts. Pig iron is currently classifiable under items 606.1300 and 606.1500 of the Tariff Schedules of the United States Annotated.

The review covers one manufacturer and/or exporter of Canadian pig iron to the United States and the period July 1, 1983 through June 30, 1985.

Final Results of the Review

We invited interested parties to comment on the preliminary results and tentative determination to revoke in part. We received no comments or requests for a hearing. Based on our analysis, the final results of our review are unchanged from those we presented in the preliminary results. We determine that no margin exists for Dofasco, Inc. for the period July 1, 1983 through June 30, 1985.

Further, as provided for in section 751(a)(1) of the Tariff Act, since there was no margin the Department shall not require a cash deposit of estimated antidumping duties for Dofasco, Inc. For any shipments from the remaining four known manufacturers and/or exporters not covered by this review, the cash deposit will continue to be at the rates published in the final results of the last administrative review for each of those firms (50 FR 11003, March 19, 1985). For any shipments from a new exporter not covered by this or prior administrative reviews, whose first shipments of Canadian pig iron occurred after June 30, 1985, and who is unrelated to Dofasco, Inc., or any other previously reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of Canadian pig iron entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: November 19, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-26468 Filed 11-21-86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; Mr. Nelio B. Barros and Dr. Daniel K. Odell (P38B)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: Mr. Nelio B. Barros and Dr. Daniel K. Odell, Division of Biology and Living Resources, Rosenstiel School of Marine and Atmospheric Science, University of Miami, 4600 Rickenbacker Causeway, Miami, Florida 33149.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals:

Tucuxi (*Sotalia fluviatilis*) 1 skull & stomach contents

Southern bottlenose dolphin (*Tursiops truncatus*) 1 skull.

4. Type of Activity: Importation for scientific research

5. Present Location of Specimens: Natural History Museum of Curitiba, Parana, Brazil.

6. Period of Activity: 2 Years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: November 17, 1986.

William E. Evans,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 86-26372 Filed 11-21-86; 8:45 am]

BILLING CODE 3510-22-M

[Modification No. 4 to Permit No. 347]

Marine Mammals Permit Modification; Southwest Fisheries Center

Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 347 issued to the Southwest Fisheries Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038, on July 25, 1981 (46 FR 38950), as modified on February 7, 1983 (48 FR 6381), September 1, 1983 (48 FR 40933), and January 28, 1986 (51 FR 4409), is further modified as follows:

Section A.1 is deleted and replaced by:

"1. Up to 5100 California sea lions *(Zalophus californianus)* may be taken for mark/recapture studies as described in the application and modification request."

Section B.5 is deleted and replaced by:

"5. This permit is valid with respect to the activities authorized herein until December 31, 1988."

This modification became effective on November 17, 1986.

The Permit, as modified, and documentation pertaining thereto are available for review in the following offices:

Protected Species Division, National Marine Fisheries Service, 1825 Connecticut Avenue, Room 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: November 17, 1986.

William E. Evans,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 86-26390 Filed 11-21-86; 8:45 am]

BILLING CODE 3510-22-M

Patent and Trademark Office

Advisory Committee for Patents and Trademarks; Establishment

In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2.) and General Services Administration Interim Rule on Federal Advisory Committee Management, 41 CFR Part 101-6, as amended, and after consultation with GSA, the Secretary of Commerce has determined that the establishment of the Advisory Committee for Patents and Trademarks is in the public interest in connection with the performance of duties imposed on the Department by law.

1. The Committee will advise the Patent and Trademark Office on broad policy issues involving both patents and trademarks, and the overall operation of the Office including matters concerning office-wide Automation programs.

2. The Committee will consist of at least 10 but no more than 18 members to be appointed by the Assistant Secretary and Commissioner of Patents and Trademarks to assure a balanced representation among patent and trademark attorneys, corporate executives, technical research directors, inventors, the judiciary, professional patent and trademark searchers, information specialists and publishers, automation experts, consumer groups, entrepreneurs, and educators. The Committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act, 15 days from the date of the publication of this notice.

Interested persons are invited to submit comments regarding the establishment of the Advisory Committee for Patents and Trademarks. Such comments, as well as any inquiries, may be addressed to the Executive Assistant to the Assistant Secretary and Commissioner of Patents and Trademarks, U.S. Department of Commerce, Washington, DC 20231, phone: 703-557-3071, or the Department's Committee Management Analyst, phone: 202-377-4217.

Dated: November 14, 1986.

Donald J. Quipp,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 86-26451 Filed 11-21-86; 8:45 am]

BILLING CODE 3510-16-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Limit for Certain Cotton Textile Products Produced or Manufactured in India

November 18, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 18, 1986. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

A CITA directive of February 14, 1986, as amended, which established import limits for specified categories of cotton, wool and man-made fiber textile products, including women's, girls' and infants' cotton blouses and shirts in Category 341, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986, was published in the **Federal Register** on February 20, 1986 (51 FR 6159).

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 21, 1986, as amended, between the Governments of the United States and India the restraint limit for Category 341 is being increased 40,113, dozen, from 2,275,411 dozen to 2,315,524 dozen, for the current agreement year to account for carryforward applied to the 1985 agreement year that was charged to the limit for the current year but was not used.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textiles Agreements.

Committee for the Implementation of Textiles Agreements

November 18, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of February 14, 1986, from the Chairman of the Committee for the Implementation of Textile Agreements, which established restraint limits for certain specified categories of textile products, produced or manufactured in India.

Effective on November 18, 1986, the directive of February 14, 1986 is hereby amended to increase the previously established restraint limit for cotton textile products in Category 341 to 2,315,524 dozen [1] under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 21, 1982, and amended.[2]

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-26376 Filed 11-21-86; 8:45 am]

BILLING CODE 3510-DR-M

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[1] The limit has not been adjusted to account for any imports exported after December 31, 1985.

[2] The bilateral agreement provides, in part, that: (1) Certain group and specific limits may be exceeded by designated percentages for swing, carryover and carryforward, and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

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Adjustment of Import Restraint Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in Romania

November 18, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 25, 1986. For further information contact Kathryn Cabral, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

On December 26, 1985 a notice was published in the **Federal Register** (50 FR 52829), which announced import restraint limits for man-made fiber textile products in Categories 604 and 635, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986. In accordance with the terms of the Bilateral Wool and Man-Made Fiber Textile Agreement on November 7 and 16, 1984, and at the request of the Socialist Republic of Romania, swing and carryforward are being applied to the restraint limit previously established for man-made fiber textile products in Category 604, increasing it from 3,005,163 pounds to 3,395,834 pounds, for the current agreement year. The limit for Category 635 is being reduced from 52,677 dozen to 31,794 dozen to account for swing being applied to Category 604. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the restraint limits previously established for Categories 604 and 635.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 18, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on December 20, 1985 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain wool and man-made fiber textile products, produced or manufactured in the Socialist Republic of Romania and exported during 1986.

Effective on November 25, 1986, the directive of December 20, 1986 is hereby further amended to adjust the previously established limits for man-made fiber textile products in Categories 604 and 635, as provided under the terms of the bilateral agreement of November 7 and 16, 1984:[1]

Category	Adjusted 1986 limit[1]
604	3,395,834 pounds.
635	31,794 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1985.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–26379 Filed 11–21–86; 8:45 am]

BILLING CODE 3510–DR–M

Import Control Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

November 18, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 25, 1986. For further information contact Kathy Davis, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377–4212.

Background

In consultations held under the terms of the bilateral agreement of November 18, 1982, as amended, concerning cotton, wool and man-made fiber textile products, between representatives of the American Institute in Taiwan (AIT) and the Coordination Council for North American Affairs (CCNAA), the CCNAA agreed to limit shipments from Taiwan of man-made fiber coveralls and overalls in Category 659–C (only T.S.U.S.A. numbers 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607, and 384.9310) to 1,121,377 pounds during the agreement year which began on January 1, 1986 and extends through December 31, 1986. Accordingly, in the letter which follows this notice, the CITA Chairman directs the Commissioner of Customs to control imports at the agreed limit.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textiles Agreements.

Committee for the Implementation of Textile Agreements

November 18, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 27, 1985 which directed you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in Taiwan.

Effective on November 25, 1986, the directive of December 27, 1986 is hereby further amended to establish a level of 1,121,377 pounds[1] for man-made fiber textile products in Category 659–C[2] produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

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[1] The agreement provides, in part, that: (1) Specific limits may be increased for carryover and carryforward; consultations may be held to adjust levels for categories not subject to specific limits; and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

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[1] The level has not been adjusted to account for any imports exported after December 31, 1985.

[2] In Category 659, only T.S.U.S.A. numbers 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607, and 384.9310.

Textile products in Category 659–C which have been exported to the United States prior to January 1, 1986 shall not be subject to this directive.

Textile products in Category 659–C which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textiles Agreements.

[FR Doc. 86–26380 Filed 11–21–86; 8:45 am]

BILLING CODE 3510-DR-M

Establishing Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Colombia

November 19, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 25, 1986. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

The Governments of the United States and the Republic of Colombia have agreed to extend their expiring Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 1 and August 11, 1982, as amended, for six months, beginning on July 1, 1986 and extending through December 31, 1986. The agreement, as amended and extended, included limits for Categories 330–359, 431–459 and 630–659, as a group, and for individual Categories 313, 315, 338, 363, 433, 434, 435, 442, 443, 444, 448, 633, 641 and 666, produced or manufactured in Colombia and exported during the six-month period which began on July 1, 1986 and extends through December 31, 1986. The agreed limits for the foregoing categories have not been adjusted to account for any charges for imports during the restraint period. Such charges will be made to these limits as the data become available.

The bilateral agreement also provides for percentage increases in certain limits during an agreement year (swing) and for carryover of shortfalls from the previous agreement period (carryover). Under the terms of the bilateral agreement, and at the request of the Republic of Colombia, the restraint limits established for Categories 435, 442, 444 and 448 are being increased, variously, for swing and carryover, and a special increase granted, for the six-month restraint period. In addition, at the request of the Republic of Colombia, the consultation levels for Categories 338, 434 and 666 are being increased.

Accordingly, in the letter published below, the CITA Chairman directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile products in the group and individual limits which are in excess of the six-month limit which began on July 1, 1986 and extends through December 31, 1986.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

November 19, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 1 and August 11, 1982, as amended and extended, between the Governments of the United States and the Republic of Colombia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on November 25, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Colombia and exported during the six-month period which began on July 1, 1986 and extends through December 31, 1986, in excess of the following restraint limits:

Category	6-mo. restraint limit[1]
330–359, 431–459, 630–659, as a group.	31,766,444 square yards equivalent.
313	7,613,452 square yards.
315	3,210,000 square yards.
338	111,111 dozen.
363	2,143,625 numbers.
433	3,606 dozen.
434	1,852 dozen.
435	5,191 dozen.
442	8,641 dozen.
443	6,176 dozen.
444	3,539 dozen.
448	5,836 dozen.
633	80,943 dozen.
641	114,111 dozen.
666	384,615 pounds.

[1] The limits have not been adjusted to account for any imports exported after June 30, 1986.

In carrying out this directive, entries of textile products listed in the table above, which have been exported during previously established restraint periods which ended on June 30, 1986, shall, to the extent of any unfilled balances, be charged against the established limits for such goods during those periods. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the limits set forth in this directive. Charges will be provided in a separate directive.

The limits set forth above are subject to further adjustment in the future according to the provisions of the bilateral agreement between the Governments of the United States and Colombia, which provide, in part, that specific limits may be increased by designated percentages for swing, carryover and carryforward; and administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the bilateral agreement. Appropriate adjustments, referred to above, will be made to you by letter.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754, November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumpiton to include entry for consumption into the Commonwealth of Puerto Rico.

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The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-26466 Filed 11-21-86; 8:45]

BILLING CODE 3510-DR-M

Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Thailand; Correction

November 19, 1986.

On November 6, 1986 a notice was published in the **Federal Register** (51 FR 40350), which announced import limits for cotton and man-made fiber textile products in Categories 300, 301, 611 and 669 pt. (polypropylene bags). The following paragraph should have been included as paragraph one in the letter to the Commissioner of Customs which followed that notice:

> This directive cancels and supersedes the directive of August 13, 1986 and that portion of the directive of December 19, 1985 which established a sublimit of 4,822,912 pounds for cotton textile products in Category 301 pt. (only TSUSA numbers 300.6026 and 300.6028).

The limit established in the letter for man-made fiber textile products in Category 669 pt.[4] should be corrected to read "850,000 pounds."

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-26467 Filed 11-21-86; 8:45 am]

BILLING CODE 3510-DR-M

Bilateral Textile Consultations With the Government of the People's Republic of China Concerning Cotton, Wool and Man-Made Fiber Textile Products; Request for Public Comment; Correction

November 19, 1986.

The ninety-day restraint levels for Categories 330/630 and 435 in the letter to the Commissioner of Customs dated October 17, 1986 (51 FR 37471) should be corrected to 658,766 dozen for Category 330/630 and 3,669 dozen for Category 435.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-26469 Filed 11-21-86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Tues. & Wed., 9-10 December 1986.

Times of Meeting: 0830-1630 hours each day.

Place: U.S. Army Training & Doctrine Command, Ft. Monroe, VA.

Agenda: The Army Science Board Ad Hoc Subgroup for Army Analysis will meet for briefings by TRADOC Staff covering analytical support being provided to Army Materiel Acquisition Process. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86-26566 Filed 11-21-86; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Decision To Proceed With the North River Access at the Fleet Ballistic Missile Submarine Support Base, Kings Bay, GA

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Regulations (40 CFR Part 1500), the U. S. Navy announces its decision to proceed with the North River Access restriction at the Fleet Ballistic Missile Submarine Support Base Kings Bay, Georgia.

The restriction consists of completing the security barrier for the southern perimeter of the Submarine Base, at the North River. Draft and Final Environmental Impact Statments (EISs) were filed with the Environmental Protection Agency (EPA) and the public on May 8, 1986 and September 12, 1986, respectively. Alternatives considered included "no action"; administrative closure; restricting access to various lengths of the North River; use of fixed, floating or gate barriers extending to different depths in the river; and using either barbed or plain wire beneath the water's surface. Alternatives which could not meet security requirements were subsequently eliminated from consideration. A floating barrier extending approximately 12 inches below the surface of the water across the river at a location 60-80 feet north of New Peter-Point Road bridge was the alternative selected.

This barrier would restrict surface traffic from entering the base while permitting the passage of wildlife, especially the Manatee, which is endangered species. The river barrier noted above will be installed in cooperation with U.S. Fish and Wildlife Service and the Georgia State Department of Natural Resources. Socioeconomic factors were evaluated as well as potential impacts to surface waters and land use. No significant short or long term impacts were identified as a result of the project except for the restriction to river traffic as noted.

Dated: November 18, 1986.

Harold L. Stoller,

CDR JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 86-26358 Filed 11-21-86; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Soviet Submarine Threat will meet on December 8, 1986 at the Pentagon, Room 5B725, Washington, DC. The meeting will commence at 9:00 A.M. and terminate at 3:00 P.M. on December 8, 1986. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to assess the potential of U.S. defensive systems now in the pipeline to meet the Soviet submarine threat, as well as from an overall system approach, determine the major elements required to match the threat and recommend modifications, if required, to current Navy programs in order to maintain technological superiority. The agenda for the meeting will consist of technical briefings and discussions addressing the Soviet submarine threat. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of the Chief of Naval Research (Code OONR), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: November 17, 1986.

Harold R. Stoller,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 86–26359 Filed 11–21–86; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Integrated Avionics for Advanced Aircraft and Aircraft Retrofit will meet on December 8–11, 1986. The meeting will be held at the Pentagon, Washington, DC on December 8 and 9; the Naval Air Development Center, Warminster, Pennsylvania on December 10; and the Wright-Patterson Air Force Base, Dayton, Ohio on December 11, 1986. The meeting will commence at 8:00 A.M. and terminate at 4:00 P.M. on December 8, 9, and 10; and commence at 8:00 A.M. and terminate at 1:00 P.M. on December 11, 1986. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to define what is meant by integrated avionics, what new aircraft and avionics suites should be addressed, assess common service requirements, and determine if the magnitude of the problem necessitates the establishment of a separate joint program office. The agenda will include technical briefings and discussions addressing integrated avionics technologies of the services. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA. 22217–5000, Telephone number (202) 696–4870.

Dated: November 17, 1986.

Harold R. Stoller, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 86–26360 Filed 11–21–86; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Application Notice for New Awards Under Training Personnel for the Education of the Handicapped: State Education Agency Programs

AGENCY: Department of Education.

ACTION: Withdrawal notice.

SUMMARY: An application notice for fiscal year 1987 for the State Education Agency Program grants was published on July 14, 1986, at 51 FR 25388 as part of the application notice for grants under the Training Personnel for the Education of the Handicapped program. Subsequently, Congress passed, and the President signed, the Education of the Handicapped Act Amendments of 1986, Pub. L. 99–457. Pub. L. 99–457 amends section 632 by requiring that each State Education Agency receive a grant. This amendment changes the basis on which grants to State Education Agencies are awarded and, therefore, a new funding priority is necessary.

That part of the July 14, 1986, notice dealing with the State Education Agency Programs (84.029H) at 51 FR 25390, is withdrawn. A new notice regarding the State Education Agency Programs will be issued which is consistent with the amendment of section 632 by Pub. L. 99–457.

FOR FURTHER INFORMATION CONTACT: Frank S. King, Division of Personnel Preparation, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4625, Mary E. Switzer Building, Washington, DC 20202. Telephone: (202) 732–1086.

Program Authority: (20 U.S.C. 1432).

(Catalog of Federal Domestic Assistance No. 84.029H; State Education Agency Programs)

Dated: November 19, 1986.

Carol R. Inman,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 86–26450 Filed 11–21–86; 8:45 am]

BILLING CODE 4000-01-M

List of Applications Accepted for Review by Education Appeal Board

AGENCY: Department of Education.

ACTION: Notice of applications for review accepted for hearing by Education Appeal Board.

SUMMARY: This notice lists the applications for review accepted for hearing by the Education Appeal Board (Board) between July 24, 1986, and October 14, 1986. A summary of each appeal has been included to help potential intervenors. In addition, the notice explains how interested third parties may intervene in proceedings before the Board.

FOR FURTHER INFORMATION CONTACT: Ernest C. Canellos, Chairman, Education Appeal Board, 400 Maryland Avenue, SW. (Room 1065, FOB–6), Washington, D.C. 20202. Telephone: (202) 732–1756).

SUPPLEMENTARY INFORMATION: Under sections 451 through 454 of the General Education Provisions Act (20 U.S.C. 1234 *et seq.*), the Education Appeal Board has authority to conduct: (1) audit appeal hearings, (2) withholding, termination, and cease and desist hearings initiated by the Secretary of Education, and (3) other proceedings designated by the Secretary as being within the jurisdiction of the Board.

The Secretary has designated the Board as having jurisdiction over appeal proceedings related to final audit determinations, the withholding or termination of funds, and cease and desist actions for most grant programs administered by the Department of Education (ED). The Secretary also has designated the Board as having jurisdiction to conduct hearings concerning most ED-administered programs that involve: (a) a determination that a grant is void, (b) the disapproval of a request for permission to incur an expenditure during the term of a grant, or (c) determinations regarding cost allocation plans or special rates negotiated with specified grantees.

Regulations governing Board jurisdiction and procedures were published in the **Federal Register** on May 18, 1981, at 46 FR 27304 (34 CFR Part 78).

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Applications Accepted

Appeal of the State of Indiana, Docket No.: 16(216)86, ACN: 05–65002

The State appealed a final letter of determination issued by the Assistant Secretary for Elementary and Secondary Education. The underlying audit reviewed the State's implementation and administration of Title IV of the Elementary and Secondary Education Act for a two year period ending June 30, 1983.

The Assistant Secretary sustained the auditor's findings that costs associated with the Title IV program were improperly charged to Federal grants after expiration of the statutory period of availability.

The Department seeks a refund of $574,192. The State disputes all liability.

Appeal of the State of Louisiana, Docket No.: 17(217)86, ACN: 06–62003

The State appealed a final letter of determination issued by the Division of Certification and Program Review.

The final letter of determination was based upon a Single System Audit of the State of Louisiana for the fiscal year ending June 30, 1984.

Specific program costs attributable to Chapter 2 of the Education Consolidation and Improvement Act of 1981 were disallowed because they did not solely or directly benefit the program.

The Department seeks a refund of $12,506. The State disputes liability in the amount of $12,500.

Appeal of the State of California, Docket No.: 18(218)86, ACN: 09–50284

The State appealed a final letter of determination issued by the Grants and Contracts Service. The underlying audit reviewed unemployment insurance charges to Federal grants during the period January 1, 1981, through June 30, 1984.

The final audit determination seeks to establish joint and several liability against the State and the California Employment Development Department which administers the unemployment compensation fund. The disallowance is based on an allegedly higher unemployment insurance contribution rate for employees of federally-funded programs than for employees of State-funded programs.

The Department requests a refund of $10,006,057. The State disputes this liability and questions the validity of the audit, the imposition of interest charges, and the authority of the Department to audit these funds.

Appeal of the Indiana State Library, Docket No.: 19(219)86, ACN: 05–65013

The Indiana State Library (the Library) appealed a final letter of determination issued by the Assistant Secretary for Educational Research and Improvement. The underlying audit reviewed the Library's administration of the Library Services and Construction Act program for the period between July 1, 1983, and June 30, 1985.

The Assistant Secretary disallowed expenses because specific salary and fringe benefits were not adequately documented.

The Department seeks a refund of $79,637. The Library disputes all liability.

Appeal of the State of Indiana, Docket No.: 20(220)86, ACN: 05–65006

The State appealed a final letter of determination issued by the Acting Regional Commissioner, Rehabilitation Services Administration. The underlying audit reviewed the administration of grant awards for the period between July 1, 1981, and June 30, 1983.

The Acting Regional Commissioner sustained the auditor's findings that the State had failed to maintain a quality assurance program in conjunction with the counselor performance evaluation and failed to maintain and establish policies to govern the rate of payment for all purchased vocational rehabilitation services.

The Department seeks a refund of $197,223. The State concedes $1,025, leaving $196,198 in dispute.

Appeal of Housing, Industry, Training, Inc., Docket No.: 22(222)86, ACN: 08–50490

Housing, Industry, Training, Inc. (HIT) of Mandan, North Dakota, appealed a final letter of determination issued by the Grants and Contracts Service (GCS). The underlying audit reviewed the grant allocations to the Center for Independent Living for the period of September 15, 1984, through June 30, 1986.

GCS disallowed certain costs associated with space rental and janitorial services.

The Department seeks a refund of $5,924. HIT disputes all liability.

Intervention

Regulations establishing intervention procedures for the Education Appeal Board in 34 CFR 78.43 provide that an interested person, group, or agency may, upon application to the Board Chairman, intervene in appeals before the Education Appeal Board.

An application to intervene must indicate to the satisfaction of the Board Chairman or, as appropriate, the Panel Chairperson, that the potential intervenor has an interest in, and information relevant to, the specific issues raised in the appeal. If an application to intervene is approved, the intervenor becomes a party to the proceedings.

Applications to intervene, or questions, should be addressed to Ernest C. Canellos, Chairman, Education Appeal Board, 400 Maryland Avenue, S.W. (Room 1065, FOB–6), Washington, D.C. 20202. Telephone: (202) 732–1756.

(20 U.S.C. 1234)

(Catalog of Federal Domestic Assistance No. not applicable)

Dated: November 19, 1986.

Peter R. Greer,

Deputy Under Secretary, Intergovernmental and Interagency Affairs.

[FR Doc. 86–28449 Filed 11–21–86; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Compliance With the National Environmental Policy Act; Notice of Project Termination and Cessation of Preparation of an Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice is hereby given that the Department of Energy (DOE) will not prepare and issue a final environmental impact statement (EIS) to assess the environmental impacts associated with construction and operation of a Central Waste Disposal Facility (CWDF) for low-level radioactive waste within the Oak Ridge reservation, in the environs of Oak Ridge, Tennessee. Plans for the project, as described in the draft EIS, have been terminated.

SUMMARY: In accordance with section 102(2)(C) of the National Environmental Policy Act (NEPA), as amended, the DOE prepared and issued a draft EIS (DOE/EIS–0110–D, September 1984) to assess the environmental implications of constructing and operating a CWDF for low-level radioactive waste within the Oak Ridge reservation near Oak Ridge, Tennessee. A notice of the availability of the draft EIS for agency and public comment and a notice of a public hearing with regard to the project were given in the **Federal Register** and local news media in September 1984.

Because of issues raised during the NEPA process and other contributing factors, the CWDF project has been canceled. Consequently, the DOE will not prepare and issue a final EIS for this action. The Department is considering new alternatives for disposal of the low-level waste and will prepare the appropriate NEPA document for the new proposed action. If an EIS is required,

the Department will issue a Notice of Intent.

All correspondence concerning the CWDF should be addressed to R.C. Sleeman, U.S. Department of Energy, Post Office Box E, Oak Ridge, Tennessee 37831.

General information on the NEPA process as followed by DOE may be obtained from Dr. Robert Stern, Office of Environmental Guidance, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated this 3d day of November at Washington, D.C.

Mary L. Walker,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 86-26393 Filed 11-21-86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Patton Oil Co.; Proposed Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed consent order and opportunity for comment.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces a proposed Consent Order for $1,100,742.17 with Patton Oil Co., and provides an opportunity for public comment on the terms and conditions of the proposed Consent Order.

DATE: November 10, 1986.

Comments by: December 24, 1986.

ADDRESS: Send comments to Patton Oil Co., Comments, Office of the Solicitor, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Gregory Lattimer, Office of the Solicitor (RG-43), Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585. Copies of the proposed Consent Order may be obtained free of charge by writing or calling this office at (202) 252-4803.

SUPPLEMENTARY INFORMATION: On October 21, 1986, the ERA executed a proposed Consent Order with Patton Oil Co. Under 10 CFR 205.100J(b), a proposed Consent Order which involves the sum of $500,000 or more, excluding interest and penalties, becomes effective no sooner than thirty (30) days after publication of a notice in the **Federal Register** requesting comments concerning the proposed Consent Order. Although ERA has signed and tentatively accepted the proposed Consent Order, the ERA may, after consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate a modification of the Consent Order, or issue the Consent Order as signed.

I. Background

During the period June 1, 1979 through April 30, 1980, Patton Oil Co. (Patton) was the operator and working interest owner in the Gibson property located in Edwards County, Kansas. As a result of this activity Patton was a "producer" of crude oil, as defined in 10 CFR 212.31 and was therefore subject to the provisions of the Mandatory Petroleum Price Regulations located at 10 CFR Part 212, Subpart D, which governed the first sale of domestic crude oil prior to decontrol on January 28, 1981.

The ERA conducted an audit of the books and records of Patton for the period June 1, 1979 to April 30, 1980, and on May 24, 1984 issued a Proposed Remedial Order (PRO) to Patton. The PRO alleged that Patton caused overcharges in the amount of $982,956.41 during the audit period attributable to sales from the Gibson property. The PRO ordered Patton to refund the overcharge amount, plus interest to DOE for proper distribution. Patton filed a Notice of Objection to the PRO on June 25, 1984. Patton's Statement of Objections (S/O) to the PRO was filed on October 2, 1984. In its S/O Patton objected to the property definition relied upon by ERA in calculating overcharges and raised several additional defenses which it claimed reduced its liability for overcharges.

Throughout the Remedial Order Proceeding, Patton has claimed that its treatment of its operated lease as multiple properties was consistent with the crude oil provisions of the Mandatory Petroleum Price Regulations. In taking this position, Patton contends that it has met the factual criteria necessary to qualify for several of the exceptions to single property treatment. Based on an analysis of the firm's arguments and the entire record in this proceeding, and in light of the expense to the government associated with any additional litigation, ERA believes that a payment of $1,100,742.17 is a satisfactory compromise of the issues raised in this audit.

II. The Consent Order.

The proposed Consent Order has been entered into in order to resolve all civil and administrative disputes, claims, and causes of action by DOE relating to Patton's compliance with the federal petroleum price and allocation regulations during the period June 1, 1979 through April 30, 1980. Although Patton contends that in all respects it correctly construed and complied with applicable regulations, Patton has entered into this proposed Consent Order to avoid possible further expense and disruption of its business. DOE believes the proposed Consent Order is in the public interest and provides a satisfacory resolution of the issues raised by the audit.

III. Refunds.

Under the terms of the proposed Consent Order, Patton shall pay to DOE the sum of $988,742.17 upon the effective date of the Consent Order. An additional payment of $112,000 plus accrued interest on this amount, shall be tendered to DOE one year after the effective date of the Consent Order. The refund amounts will be deposited in a suitable account for appropriate distribution by DOE.

VI. Submission of Written Comments.

Interested persons are invited to submit written comments concerning the terms and conditions of this proposed Consent Order to the address given above. The ERA will consider all comments it receives by 4:30 P.M., local time, on the 30th day after the date of publication of this notice. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures in 10 CFR 205.9(*f*).

Issued in Washington, DC on this 10th day of November 1986.

Marshall Staunton,

Acting Solicitor, Office of the Solicitor, Economic Regulatory Administration.

[FR Doc. 86-26394 Filed 11-21-86; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95-621) signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of surcharge. The statute requires that the ultimate costs of gas to the industrial facility should not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA, section 204(e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prices and the high cost gas incremental pricing threshold which are to be effective December 1, 1986. These prices are based on the prices of alternative fuels.

FOR FURTHER INFORMATION CONTACT: Leroy Brown, Jr., Department of Energy, Energy Information Administration, 1000 Independence Avenue, SW., Room BE-034, Washington, DC 20585, Telephone: (202) 252-6077.

Section I.

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. FERC, by an Interim Rule issued on April 2, 1981, in Docket No. RM79-21, revised the methodology for calculating the monthly alternative fuel price ceilings for State regions. Under the revised methodology, the applicable alternative fuel price ceiling published for each of the contiguous States shall be the lower of the alternative fuel price ceiling for the State or the alternative fuel price ceiling for the multistate region in which the State is located.

The price ceiling is expressed in dollars per million British Thermal Units (BTU's). The method used to determine the price ceilings is described in Section III.

State	Dollars per million BTU's
Alabama [1]	1.71
Arizona [2]	1.47
Arkansas [1]	1.81
California [1]	1.47
Colorado [2]	1.52
Connecticut [1]	1.52
Delaware [1]	1.82
Florida [1]	1.57
Georgia [1]	1.67
Idaho [2]	1.52
Illinois	1.47
Indiana [1]	1.68
Iowa	1.72
Kansas	1.74
Kentucky	1.69
Louisiana	1.76
Maine [1]	1.52
Maryland [1]	1.82
Massachusetts	1.45
Michigan [1]	1.63
Minnesota [1]	1.95
Mississippi [1]	1.71
Missouri	1.68
Montana [2]	1.52
Nebraska [1]	1.95
Nevada [2]	1.47
New Hampshire [1]	1.52
New Jersey	1.52
New Mexico [1]	1.81
New York [1]	1.82
North Carolina [1]	1.71
North Dakota [1]	1.95
Ohio	1.44
Oklahoma [1]	1.81
Oregon	1.33
Pennsylvania	1.73
Rhode Island [1]	1.52
South Carolina [1]	1.71
South Dakota [1]	1.95
Tennessee	1.69
Texas [1]	1.81
Utah [2]	1.52
Vermont [1]	1.52
Virginia	1.65
Washington	1.23
West Virginia [1]	1.68
Wisconsin [1]	1.68
Wyoming [2]	1.52

[1] Region based price as required by FERC Interim Rule, issued on April 2, 1981, in Docket No. RM-79-21.

[2] Region based price computed as the weighted average price of Regions E, F, G, and H.

Section II. Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during September 1986 was $14.55 per barrel. The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which the incremental pricing threshold becomes effective. The prices found in *Platt's Oilgram Price Report* are given for each trading day in the form of high and low prices for No. 2 fuel oil in Metropolitan New York and Northern New Jersey. A lag adjustment factor was calculated using the average of the low posted price for these two areas for the ten trading days ending November 14, 1986, and dividing that price by the corresponding average price computed from prices published by Platt's for the month of September 1986. This lag adjustment factor was applied to the September price yielding $14.44 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NGPA, Title II, section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective December 1, 1986, is $3.24 per million BTU's.

Section III. Method Used to Compute Price Ceilings

The FERC, by Order No. 50, issued on September 28, 1979, in Docket No. RM79-21, established the basis for determining the price ceilings required by the NGPA. FERC also, by Order No. 167, issued in Docket No. RM81-27 on July 24, 1981, made permanent the rule that established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceilings. In addition, the FERC, by Order No. 181, issued on November 6, 1981, in Docket No. RM81-28, established that price ceilings should be published for only the 48 contiguous States on a permanent basis.

A. Data Collected

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1 percent sulfur content by weight) residual fuel oil: for each selling price, the number of gallons sold to large industrial users in the months of July 1986, August 1986, and September 1986.[1] All reports of volume sold and price were identified by the State into which the oil was sold.

B. Method Used to Determine Alternative Price Ceilings

(1) Calculation of Volume-Weighted Average Price

The prices which will become effective December 1, 1986, (shown in section I) are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, July 1986, August 1986, and September 1986. Reported prices for sales in July 1986 were adjusted by the percent change in the nationwide volume-weighted average price from July 1986 to September 1986. Prices for August 1986 were similarly adjusted by the percent change in the nationwide volume-weighted average price from August 1986 to September 1986. The volume-weighted 3-month average of the adjusted July 1986 and August 1986, and the reported September 1986 prices were then computed for each State.

(2) Adjustment for Price Variation

States were grouped into the regions identified by the FERC (see section III.C.). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in Section III.B.(1) above) for each State was adjusted downward by two times this standard deviation for the region to form the adjusted weighted average price for the State.

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[1] Large Industrial User—A person/firm which purchases No. 6 fuel oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal, State, or Local), and the military are excluded.

(3) Calculation of Ceiling Price

The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in section III.B(1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted average price (as calculated in Section III.B.(2)) was compared to this average low price, and the higher of the values was selected as the base for determining the alternative fuel price ceiling for each State. For those States which had no reported sales during one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State alternative fuel price ceiling base. The State's alternative fuel price ceiling base was compared to the alternative fuel price ceiling base for the multistate region in which the State is located and the lower of these two prices was selected as the final alternative fuel price ceiling base for the State. The appropriate lag adjustment factor (as discussed in section III.B.4) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the State (expressed in dollars per million BTU's).

There were insufficient sales reported in Region G for the months of July 1986, August 1986, and September 1986. The alternative fuel price ceilings for the States in Region G were determined by calculating the volume-weighted average price ceilings for Region E, Region F, Region G, and Region H.

(4) Lag Adjustment

The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that *Platt's Oilgram Price Report* publication provides timely information relative to the subject. The prices found in *Platt's Oilgram Price Report* publication are given for each trading day in the form of high and low prices for No. 6 residual oil in 20 cities throughout the United States. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 high sulfur residual fuel oil for the ten trading days ending November 14, 1986, and dividing that price by the corresponding weighted average price computed from prices published by Platt's for the month of September 1986. A regional lag adjustment factor was similarly calculated for four regions. These are: one for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G combined; and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in Section III.B.(3).

Listing of States by Region

States were grouped by the FERC to form eight distinct regions as follows:

Region A	*Region B*
Connecticut	Delaware
Maine	Maryland
Massachusetts	New Jersey
New Hampshire	New York
Rhode Island	Pennsylvania
Vermont	
Region C	*Region D*
Alabama	Illinois
Florida	Indiana
Georgia	Kentucky
Mississippi	Michigan
North Carolina	Ohio
South Carolina	West Virginia
Tennessee	Wisconsin
Virginia	
Region E	*Region F*
Iowa	Arkansas
Kansas	Louisiana
Missouri	New Mexico
Minnesota	Oklahoma
Nebraska	Texas
North Dakota	
South Dakota	
Region G	*Region H*
Colorado	Arizona
Idaho	California
Montana	Nevada
Utah	Oregon
Wyoming	Washington

Issued in Washington, DC, November 20, 1986.

L.A. Pettis,

Deputy Administrator, Energy Information Administration.

[FR Doc. 86-26481 Filed 11-20-86; 10:51 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

Determinations Under the Natural Gas Policy Act for OCS Leases Issued on or After April 20, 1977

Issued November 19, 1986.

On September 27, 1983, the Federal Energy Regulatory Commission (Commission) issued Order No. 336 under Docket Nos. RM83-3 and RM81-12 (48 FR 44,506 September 29, 1983). In that order, the Commission amended its regulations relating to filing requirements for well category applications under the Natural Gas Policy Act of 1978 (NGPA). The determination process for natural gas produced from a new lease, i.e., a lease entered into on or after April 20, 1977, on the Outer Continental Shelf (OCS), and qualifying as new natural gas under Section 102 of the NGPA, was amended in two respects. First, the Commission eliminated the requirement that a determination be made for each well producing gas from a new OCS lease. Second, in lieu of filing an application for each well, the Commission now permits the grant of a new OCS lease to constitute the requisite jurisdictional agency determination that the gas is produced from a new OCS lease.

Under the revised procedures, the U.S. Department of Interior, Minerals Management Service (MMS), must file within 60 days of the grant of the lease a notice of determination which includes the lease number, the area and block number, and the date on which the OCS lease was issued by the Secretary of the Interior. The determination is subject to Commission review in the same manner as other jurisdictional agency determinations.

On October 29, 1986, the Commission received notice from MMS, Gulf of Mexico OCS Region, that 101 leases were issued as a result of OCS Sale 104 for the Central Gulf of Mexico on April 30, 1986. Gas produced from the following leases has been determined to be gas produced from a new OCS lease under NGPA section 102:

Lease No. OCS-G	Area	Block	Effective date
8400	West Cameron	28	6-1-86
8401	West Cameron	55F	7-1-86
8402	West Cameron	141	6-1-86
8403	West Cameron	142	7-1-86
8404	West Cameron	208	6-1-86
8405	West Cameron, West	304	7-1-86
8406	West Cameron, West	314	7-1-86
8407	West Cameron, West	315	7-1-86
8408	West Cameron, West	402	6-1-86
8409	West Cameron, South	472	6-1-86
8410	West Cameron, South	585	7-1-86
8411	West Cameron, South	599	7-1-86

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Lease No. OCS-G	Area	Block	Effective date
8412	West Cameron, South	510	7-1-86
8413	East Cameron	14G	7-1-86
8414	East Cameron	51	7-1-86
8416	East Cameron	149	6-1-86
8417	East Cameron	188	7-1-86
8418	East Cameron	189	7-1-86
8420	East Cameron, South	364	7-1-86
8421	Vermilion	43	7-1-86
8423	Vermilion	195	7-1-86
8424	Vermilion	207	7-1-86
8426	Vermilion, South	274	7-1-86
8427	Vermilion, South	341	6-1-86
8428	Vermilion, South	279	6-1-86
8431	South Marsh Island, South	111	7-1-86
8432	Eugene Island	49	6-1-86
8433	Eugene Island	179	7-1-86
8434	Eugene Island	190	7-1-86
8435	Eugene Island	232	6-1-86
8436	Eugene Island	234	6-1-86
8437	Eugene Island	235	6-1-86
8438	Eugene Island	241	6-1-86
8439	Eugene Island, South	317	7-1-86
8441	Ship Shoal	117	7-1-86
8442	Ship Shoal	118	7-1-86
8443	South Timbalier	75	7-1-86
8444	South Timbalier	84	7-1-86
8445	South Timbalier, South	270	7-1-86
8446	South Timbalier, South	274	7-1-86
8448	South Timbalier, South	279	6-1-86
8449	South Timbalier, South	303	7-1-86
8450	South Timbalier, South	304	7-1-86
8451	South Timbalier, South	306	71—86
8452	Grand Isle, South	104	7-1-86
8453	Grand Isle, South	110	7-1-86
8454	West Delta	36G	7-1-86
8455	West Delta	78F	6-1-86
8456	West Delta	78G	6-1-86
8457	West Delta	97	6-1-86
8458	West Delta, South	121	7-1-86
8459	West Delta, South	122	7-1-86
8460	Main Pass	44	7-1-86
8461	Main Pass	59	7-1-86
8462	Main Pass, South & East	206	6-1-86
8463	Main Pass, South & East	240	7-1-86
8465	Main Pass, South & East	275	7-1-86
8467	Main Pass, South & East	315	7-1-86
8469	Viosca Knoll	871	6-1-86
8470	Viosca Knoll	872	6-1-86
8471	Viosca Knoll	873	6-1-86
8472	Viosca Knoll	916	6-1-86
8473	Viosca Knoll	917	6-1-86
8474	Viosca Knoll	955	6-1-86
8475	Viosca Knoll	957	6-1-86
8476	Viosca Knoll	983	7-1-86
8478	Ewing Bank	783	7-1-86
8479	Ewing Bank	827	7-1-86
8480	Ewing Bank	870	7-1-86
8481	Ewing Bank	957	7-1-86
8483	Mississippi Canyon	72	8-1-86
8484	Mississippi Canyon	84	8-1-86
8485	Mississippi Canyon	128	8-1-86
8486	Mississippi Canyon	208	6-1-86
8487	Mississippi Canyon	252	6-1-86
8488	Mississippi Canyon	504	6-1-86
8489	Mississippi Canyon	538	6-1-86
8490	Mississippi Canyon	539	6-1-85
8491	Mississippi Canyon	582	6-1-86
8492	Mississippi Canyon	583	6-1-86
8493	Mississippi Canyon	612	6-1-86
8494	Mississippi Canyon	613	6-1-86
8495	Mississippi Canyon	656	6-1-86
8496	Mississippi Canyon	657	6-1-86
8497	Mississippi Canyon	673	6-1-86
8498	Mississippi Canyon	674	6-1-86
8499	Mississippi Canyon	717	6-1-86
8500	Green Canyon	55	7-1-86
8501	Green Canyon	120	6-1-86
8502	Green Canyon	122	6-1-86
8503	Green Canyon	168	6-1-86
8504	Green Canyon	209	6-1-86
8505	Atwater Valley	387	6-1-86
8506	Atwater Valley	388	6-1-86
8507	Atwater Valley	427	6-1-86
8508	Atwater Valley	428	6-1-86
8509	Atwater Valley	429	6-1-86
8510	Atwater Valley	430	6-1-86
8511	Atwater Valley	431	6-1-86
8512	Atwater Valley	471	6-1-86
8513	Atwater Valley	472	6-1-86

The complete list of OCS leases submitted by the MMS for this sale, with area and block descriptions, is available for inspection at the Commission's Division of Public Information, Romm 100, 825 North Capitol St., Washington, DC. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within twenty days after this notice is issued by the Commission.

Kenneth F. Plumb,

Secretary

[FR Doc. 86-26458 Filed 11-21-86; 8:45 am]

BILLING CODE 6717-01-M

Determinations Under the Natural Gas Policy Act for OCS Leases Issued on or After April 20, 1977

Issued November 19, 1986.

On September 27, 1983, the Federal Energy Regulatory Commission (Commission) issued Order No. 336 under Docket Nos. RM83-3 and RM81-12 (48 FR 44,508 September 29, 1983). In that order, the Commission amended its regulations relating to filing requirements for well category applications under the Natural Gas Policy Act of 1978 (NGPA). The determination process for natural gas produced from a new lease, i.e., a lease entered into on or after April 20, 1977, on the Outer Continental Shelf (OCS), and qualifying as new natural gas under section 102 of the NGPA, was amended in two respects. First, the Commission eliminated the requirement that a determination be made for each well producing gas from a new OCS lease. Second, in lieu of filing an application for each well, the Commission now permits the grant of a new OCS lease to constitute the requisite jurisdictional agency determination that the gas is produced from a new OCS lease.

Under the revised procedures, the U.S. Department of Interior, Minerals Management Service (MMS), must file within 60 days of the grant of the lease a notice of determination which includes the lease number, the area and block number, and the date on which the OCS lease was issued by the Secretary of the Interior. The determination is subject to Commission review in the same manner as other jurisdictional agency determinations.

On September 2, 1986, the Commission received notice from MMS, Gulf of Mexico OCS Region, that 30 leases were issued as a result of OCS Sale 94 for the Eastern Gulf of Mexico on December 18, 1985. Notice of these determinations was issued by the Commission on September 12, 1986. On October 28, 1986, MMS notified the Commission that eight additional leases have been granted under this same sale. Gas produced from the following leases has been determined to be gas produced from a new OCS lease under NGPA section 102:

Lease No. OCS-G	Area	Block	Effective date
8361	FMG	411	8-1-86
8362	FMG	412	8-1-86
8363	FMG	455	8-1-86
8364	FMG	456	8-1-86
8365	FMG	499	8-1-86
8366	FMG	500	8-1-86
8367	FMG	543	8-1-86
8368	FMG	587	8-1-86

The complete list of OCS leases submitted by the MMS for this sale, with area and block descriptions, is available for inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, DC. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within twenty days after this notice is issued by the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26459 Filed 11-21-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-206-008]

Northern Natural Gas Company; Tariff Revisions and Rate Adjustment

November 18, 1986.

Take notice that on November 10, 1986, Northern Natural Gas Company, Division of Enron Corp. (Northern) tendered for filing with the Commission certain revised tariff sheets, to be effective as noted on the sheets, to be included in its FERC Gas Tariff, Third Revised Volume No. 1.

Northern states that in the Stipulation and Agreement of Settlement in Docket No. RP85-206-000 dated April 11, 1986 (RP85-206 Settlement), it agreed to file, within 115 days from the date such settlement was certified by the Administrative Law Judge to the Commission, new tariff sheets to implement the provisions of the RP85-206 settlement effective the later of January 1, 1987 or the first day of the billing month following the date the Commission order approving the RP85-206 Settlement becomes final.

Northern further states that the parties agreed in the RP85-206 Settlement to implement certain provisions of the Stipulation and

Agreement of Settlement in Docket No. RP82-71 (RP82-71 Settlement). Such RP82-71 Settlement provisions include Phases I, II & III of the Firm Entitlement Adjustment Program and the proposed General Service Rate Schedule (GS-1) for which Northern has requested certificate authority in applications in Docket Nos. CP85-636, CP85-775, CP86-633, and CP85-511, respectively. The hardship provisions of the RP82-71 Settlement have been incorporated herein. Northern also desires to offer a Contract Demand Reductions/Conversions Program as part of its implementation of an open transportation system under Order No. 436, as proposed in the RP85-206 Settlement. Rate adjustments reflecting the changes in the D-1 billing demand units associated with the First Year's Contract Demand Reduction/Conversions and the impact of any additional transfers to GS-1 Rate Schedule are filed herein.

Northern requests waiver of all Commission rules and regulations as necessary to permit the tariff sheets to be effective the beginning of the gas day on October 1, 1986. Copies of this filing were served on all of Northern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before November 25, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-28460 Filed 11-21-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-18-000]

Northwest Alaskan Pipeline Co.; Tariff Changes

November 18, 1986.

Take notice that on November 14, 1986, Northwest Alaskan Pipeline Company ("Northwest Alaskan"), 295 Chipeta Way, Salt Lake City, Utah 84108-0900, tendered for filing in Docket No. RP87-18-000, the following tariff sheets to its FERC Gas Tariff Original Volume No. 2.:

Nineteenth Revised Sheet No. 5
Fourth Revised Sheet No. 150
Second Revised Sheet No. 172
First Revised Sheet No. 172A
First Revised Sheet No. 172B
First Revised Sheet No. 172C
Third Revised Sheet No. 186A
Fourth Revised Sheet No. 200
Second Revised Sheet No. 272
First Revised Sheet No. 272A
First Revised Sheet No. 272B
First Revised Sheet No. 272C
Fourth Revised Sheet No. 286
Second Revised Sheet No. 450
Second Revised Sheet No. 467
First Revised Sheet No. 467A
First Revised Sheet No. 467B
First Revised Sheet No. 467C
First Revised Sheet No. 476D
First Revised Sheet No. 477A

Northwest Alaskan states that it is submitting Nineteenth Revised Sheet No. 5 reflecting a decrease in total demand charges for Canadian gas purchased by Northwest Alaskan from Pan-Alberta Gas Ltd. ("Pan-Alberta") and resold to three of Northwest Alaskan's U.S. purchasers, Northern Natural Gas Company, Division of Enron Corp. ("Northern"), Panhandle Eastern Pipe Line Company ("Panhandle"), and Pacific Interstate Transmission Company ("PIT"), under Rate Schedules X-1, X-2 and X-4 respectively, and essentially no change in total demand charges for gas resold to Northwest Alaskan's fourth U.S. purchaser, United Gas Pipe Line Company ("United") under Rate Schedule X-3.

Northwest Alaskan states that it is submitting Nineteenth Revised Sheet No. 5 pursuant to the provisions of the amended purchase agreements between Northwest Alaskan and Northern, Panhandle, United and PIT, and pursuant to Rate Schedules X-1, X-2, X-3, and X-4, which provide for Northwest Alaskan to file 45 days prior to the commencement of the next demand charge period (January 1, 1987 through June 30, 1987) the demand charges and demand charge adjustments which Northwest Alaskan will charge during that period.

Northwest Alaskan requests that Nineteenth Revised Sheet No. 5 becomes effective January 1, 1987.

Northwest Alaskan states that the remaining above-referenced tariff sheets incorporate administrative changes to Exhibit A of Northwest Alaskan's tariff as a result of a change in the manner in which the NOVA portion of Pan-Alberta's demand charge is determined. Northwest Alaskan requests waiver of § 154.22 and special permission under § 154.51 of the Commission's regulations as well as waiver of any other rules and regulations the Commission deems necessary in order to allow these tariff sheets to become effective November 1, 1986, the effective date of the Eighth Amending Contract to the Western Contract and the Eighteenth and Nineteenth Amending Contracts to the Eastern Contract between Northwest Alaskan and Pan-Alberta.

Northwest Alaskan states that a copy of this filing is being served on Northwest Alaskan's customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure. All such motions or protests should be filed on or before 11-25, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-28461 Filed 11-21-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-1-002]

Northwest Pipeline Corp.; Compliance Filing

November 18, 1986.

Take notice that on November 14, 1986, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance Thirtieth Revised Sheet No. 10 to be a part of its FERC Gas Tariff, First Revised Volume No. 1. Thirtieth Revised Sheet No. 10 reflects an increase in its jurisdictional sales rates of 1.142¢ per therm or approximately $21.3 million. The purpose of this filing is to reflect the impact of a renegotiated contract with Northwest's Canadian supplier of natural gas, Westcoast Transmission Company Limited (Westcoast). The new contract covers the period November 1, 1986 through October 31, 1987.

Northwest states that the instant filing is made in compliance with the Commission's October 31, 1986 order in this docket and has requested waivers to allow an effective date of December 1, 986. A copy of this filing has been served on all parties of record in Docket No. RP72-154, on all jurisdictional customers, and affected state regulatory commissions.

Any persons desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825, North Capitol Street NE, Washington DC 20426, in accordance with Rules 211 or 214 of the Commission's rules of practice and procedure. All such motions or protests should be filed on or before November 25, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26462 Filed 11-21-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-88-000, etc.]

Phillips Petroleum Company, et al.; Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates [1]

November 19, 1986.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before December 3, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI87-88-000 (CI77-412), B, Oct. 28, 1986.	Phillips Petroleum Company, 336 HS&L Building, Bartlesville, Okla. 74004.	United Gas Pipe Line Company, Waveland Field, Hancock County, Mississippi.	(1)	
CI79-645-002, F, Nov. 3, 1986	Shell Offshore Inc. (Succ in Interest to Petro-Lewis Funds, Inc.), P.O. Box 4480, Houston, Texas 77210	Florida Gas Transmission Company, Mississippi Canyon Block 194 Field, Offshore Lousiana.	(2)	
CI75-497-000, D, Nov. 3, 1986	Sun Exploration and Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	Michigan Wisconsin Pipeline Company, Seiling Field, Woodward County, Oklahoma.	(3)	
G-5663-000, D, Nov. 3, 1986	Amoco Production Company, P.O. Box 3092, Houston, Texas 77253.	Natural Gas Pipeline Company of America, East Bay City Field, Matagorda County, Texas.	(4)	
G-4579-039, D, Oct. 31, 1986	Cities Service Oil and Gas Corp., P.O. Box 300, Tulsa, Okla. 74102.	Northern Natural Gas Company, Div. of Enron Corp., Sec. 23-31S-34W, Seward County, Kansas.	(5)	
CI85-32-001, F, Oct. 30, 1986	Mobile Exploration and Producing North America Inc. (Partial Succ. in Interest to Texaco Inc.) Nine Greenway Plaza—Suite 2700, Houston, Texas 77046	Columbia Gas Transmission Corporation, Vermilion Bay, Vermilion and Iberia Parishes, Louisiana.	(6)	
G-13098-001, D, Nov. 3, 1986	ARCO Oil & Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas.	Northern Natural Gas Company, Div. of Enron Corp., Mocane-Laverne Field, Beaver County, Oklahoma.	(7)	
CI87-84-000 (CI67-1208), B, Oct. 27, 1986.	do	United Gas Pipe Line Company, East Franklin Field, St. Mary Parish, Louisiana.	(8)	
CI87-82-000 (CI73-254), B, Oct. 27, 1986.	BHP Petroleum (Americas) Inc., 1300 Post Oak Tower, 5051 Westheimer, Houston, Texas 77056.	Northern Natural Gas Company, Div. of Enron Corp., Bechthold Field, South Lipscomb County, Texas.	(9)	
CI87-98-000, B, Nov. 3, 1986	Kaiser Energy, Inc., P.O. Box 8, Ravenswood, W. Va. 26164.	Consolidated Gas Transmission Corporation, Elk-Poca Field, Kenna Quad, Ripley District, Jackson County, West Virginia.	(10)	
CI87-70-000, (G-3966), B, Oct. 20, 1986.	Colonial Exploration and Development Inc., 811 Dallas—Suite 1424, Houston, Texas 77002.	Texas Gas Pipe Line Corporation, Nome Field, Jefferson County, Texas.	(11)	
CI87-100-000 (CI76-509) B, Nov. 4, 1986.	Amoco Production Company, P.O. Box 3092, Houston, Texas 77253.	Texas Gas Pipeline Corporation, Marrs McLean Field, Jefferson County, Texas.	(12)	
CI87-101-000, B, Nov. 5, 1986	Texaco Producing Inc., P.O. Box 52332, Houston, Texas 77052.	Phillips Petroleum Company, Eunice Plant and Skaggs Drinkard Field, Lea County, New Mexico.	(14)	
CI87-104-000, (G-6986), B, Nov. 7, 1986	Amoco Production Company	Nueces Corporation, Aqua Dulce Field, Nueces County, Texas.	(15)	
CI77-89-001, D, Nov. 7, 1986	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	Arkansas Louisiana Gas Company, Ivan Field, Bossier & Webster Parishes, Louisiana.	(16)	
CI62-356-000, D, Nov. 7, 1986	Anadarko Petroleum Corporation, P.O. Box 1330, Houston, Texas 77251-1330.	Northern Natural Gas Company, Div. of Enron Corp., Hugoton Field, Stevens County, Kansas.	(5)	
CI87-103-000, F, Nov. 7, 1986	Conoco Inc. (Partial Succ. in Interest to ARCO Oil & Gas Co., Division of Atlantic Richfield Company), P.O. Box 2197, Houston, Texas 77252.	Transco Gas Supply Company, Eugene Island Blocks 242 and 243, Offshore Louisiana.	(17)	
CI87-107-000 (CI61-1291), B, Nov. 10, 1986.	Union Oil Company of California, P.O. Box 7600, Los Angeles, Calif. 90051.	Phillips Petroleum Company, Azalea Field, Midland County, Texas.	(18)	
CI86-106-000, B, Nov. 10, 1986	Hamon Operating Company	Transcontinental Gas Pipe Line Corp., Gueydan Field, Vermilion Parish, Louisiana.	(19)	
CI87-105-000, F, Nov. 5, 1986	Cities Service Oil & Gas Corp., (Partial Succ. in Interest to Mesa Petroleum Company, Operator), et al. P.O. Box 300, Tulsa, Okla. 74102.	Northern Natural Gas Company, Div. of Enron. Corp., Gooch Field, Texas County, Oklahoma.	(20)	

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[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

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Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI86-700-000 (CI75-60), B, Aug. 22, 1986.	Fina Oil and Chemical Company, 8350 N. Central Expressway, Suite 1866, Dallas, Texas 75206.	United Gas Pipe Line Company, West Greta Field, Refugio County, Texas.	(21)	
CI80-62-002, F, Nov. 7, 1986	Conoco Inc. (Succ. in Interest to ARCO Oil and Gas Company, Division of Atlantic Richfield Company).	Transco Gas Supply Company, East Cameron Block 97, Offshore Louisiana.	(22)	
CI72-390-000, D, Nov. 10, 1986	Texaco Producing Inc.	United Gas Pipe Line Company, East Texas Field, Gregg County, Texas.	(23)	

[1] Phillips Petroleum Company has assigned all its interest to Texas Crude Exploration Inc. This change in ownership occurred by assignment effective 7-1-86 and executed on 10-2-86.

[2] Effective as of 9-1-86, SOI acquired certain interest in the Mississippi Canyon Block 194 Field, Offshore Louisiana, from Petro-Lewis Funds, Inc.

[3] Property sold to Bill Bowers.

[4] By assignment, effective 10-1-85, Amoco sold its interest in various properties to W. C. Martin Inc., Rieden Ltd. Inc. and Natural Gas Management Company.

[5] Release of gas for irrigation fuel.

[6] Effective 7-8-83, MEPNA, acquired certain interest previously held by Texaco, Inc., and MEPNA also proposes to add a new delivery point.

[7] Assignment executed 11-16-84, ARCO assigned its interest in certain acreage to Richard L. Parker.

[8] All of the property covered by Rate Schedule No. 309 was surrendered in the years 1969 through 1971, the last lease being surrendered in September, 1971.

[9] BHP Petroleum (Americas) Inc. assigned certain acreage to Charles H. Bentley, effective 5-1-80.

[10] Due to facility constraints of purchaser, purchaser has agreed to give up its rights to gas from two existing wells and any future wells drilled between April 17, 1986, and April 17, 1990.

[11] Not used.

[12] Texas Gas Pipe Line Corporation (TGPL), has sold its Nome Field facilities to Winnie Pipeline Company (WPL), an intrastate marketer. TGPL no longer purchases gas in this area. WPL wants to purchase this gas; however, they cannot buy gas dedicated for sale to the interstate market.

[13] Frost National Bank Gas Unit 2 is the only property dedicated to the gas contract. The last producing well in the unit was plugged and abandoned in 1981.

[14] The terms of Applicant's contract with Phillips expired 11-21-86, with day-to-day sales thereafter. Applicant intends to enter into a percentage-of-proceeds type arrangement to provide for the processing at TPI's Eunice Plant of the gas from the leases previously contracted and delivered to Phillips. After processing, 60% of the residue gas would continue to be sold to El Paso by TPI at its Eunice, New Mexico Plant but under TPI's G.R.S. No. 390, Certificate No. CI72-771 and 40% of the residue gas would be sold to Northern Natural Gas Company by TPI at its Eunice, New Mexico Plant but under TPI's FERC No. 389, Certificate No. CI72-762.

[15] The casinghead gas sales contract covered by Rate Schedule No. 187 was terminated in December, 1978. The only lease dedicated to said contract expired on 12-31-78. Last production from the lease was 9-27-74. The only well on the lease was plugged and abandoned on 3-10-76.

[16] Property sold to TXO Production Corp.

[17] Effective 6-1-86, Conoco acquired the interest previously held by ARCO Oil and Gas Company, Division of Atlantic Richfield Company in Eugene Island Block 242 (OCS-G-2898) and ⅔ (two-thirds) of Eugene Island Block 243 (OCS-G-2899), Offshore Louisiana.

[18] The pressure of the gas being delivered had decreased to a level below 250 psig. The last delivery of high pressure gas was made in November, 1985. Gas below the minimum 250 psig is being delivered to the same buyer and is sold in the interstate market under a percentage of proceeds type gas purchase contract.

[19] Gas production has ceased from this well. There will be no future development. Pipeline wishes to remove facilities previously used by the well.

[20] Applicant is filing to continue to sell its interest under contract dated 4-17-68 under its own Rate Schedule and Certificate.

[21] The farmout agreement covering Applicant's interest in the subject acreage terminated due to lack of production, and the section 108 well that is subject to the application, being incapable of production, has been plugged and abandoned.

[22] Effective 6-1-86, Conoco acquired the interest previously held by ARCO Oil and Gas Company, Division of Atlantic Richfield Company in East Cameron Block 97 (OCS-G-3294).

[23] On 6-1-86, Texaco Producing Inc. assigned the W. D. Lacy Lease in Gregg County, Texas to R. A. Miller Energy Inc.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 86-26361 Filed 11-21-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-51-000]

American Cyanamid Co.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

November 13, 1986.

On October 29, 1986, American Cyanamid Company (Applicant), of Chemical Products Division, Warners Plant, P.O. Box 31, Linden, New Jersey 07036, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Linden, New Jersey. The facility will consist of two combustion turbine generating units with two heat recovery steam generators. Steam produced by the facility will be used for various chemical manufacturing processes and heating buildings. The electric power production capacity of the facility will be 5.4 MW. The primary energy source will be natural gas with No. 2 fuel oil as a backup fuel. The installation of the facility will begin in July 1987.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26362 Filed 11-21-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP86-105-003 and RP86-169-001]

ANR Pipeline Co.; Notice of Compliance Filing

November 17, 1986.

On November 5, 1986, ANR Pipeline Company (ANR), tendered for filing proposed changes in its F.E.R.C. Gas Tariff, Original Volume Nos. 1 and 1-A, to become effective as the dates indicated below. ANR's filing states that this submission effectuates the changes required by the Commission in its Orders dated October 21, 1986 at Docket No. RP86-105-000 and October 31, 1986 at Docket Nos. RP86-169-000 and RP86-105-000.

The tariff sheets listed below were submitted by ANR to become effective on the dates indicated:

Tariff sheet	Effective date
Original Volume No. 1:	
Substitute First Revised Sheet No. 85	Nov. 1, 1986.
Original Volume No. 1-A:	
Second Substitute Original Sheet No. 5	July 1, 1986.
Substitute Original Sheet No. 6	Do.
Original Sheet Nos. 6A and 6B	Do.
First Revised Sheet Nos. 11 through 13	Nov. 1986.
First Revised Sheet Nos. 32 through 35	Do.
Substitute First Revised Sheet No. 133	Do.

ANR states that Substitute First Revised Sheet No. 85 of its Original Volume No. 1 tariff reflects the deletion of ANR's take-or-pay tracker in compliance with Ordering Paragraph C of the Commission's October 31, 1986 Order.

Insofar as ANR's Volume No. 1-A tariff is concerned, Sheet Nos. 5, 6, 6A and 6B reflect ANR's compliance with Ordering Paragraphs A(1) and A(3) of the Commission's October 21, 1986 Order. Sheet Nos. 11 through 13 and 32 through 35 reflect the correction of improper pagination in compliance with Ordering Paragraph A of the Commission's October 31, 1986 Order. Sheet No. 133 reflects revisions made in compliance with Ordering Paragraph A(4) of the Commission's Order dated October 21, 1986.

Any person desiring to be heard or to protest said filing should file a motion to

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intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before November 24, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26362 Filed 11-21-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-89-000]

EnTrade Corp.; Application for Certificate of Public Convenience and Necessity, and for Pre-Granted Abandonment

November 19, 1986.

Take notice that on October 30, 1986, EnTrade Corporation (EnTrade), pursuant to sections 4 and 7 of the Natural Gas Act, 15 U.S.C. 717 (c) and (f), and the provisions of 18 CFR Part 157, applied for a blanket certificate of public convenience and necessity and for pre-granted abandonment to permit the sale, and pre-granted abandonment of the sale, of natural gas which remains subject to the Commission's jurisdiction under the Natural Gas Act (NGA) for which producers have already received abandonment authority under section 7(b) of the NGA in separate proceedings.

EnTrade states that it is seeking additional authority to purchase and resell natural gas abandoned pursuant to the Commission's recent orders allowing producers to abandon gas with a maximum lawful price equal to or below the maximum lawful price for NGPA section 109 gas. EnTrade is not seeking such authority with regard to any gas not previously abandoned by Commission order, nor is it seeking any transportation authority. EnTrade currently has limited-term abandonment authority for the purchase and resale of natural gas whose maximum lawful price is greater than the NGPA section 109 maximum lawful price (*Tenneco Oil Company, et al.*, 33 FERC (CCH) ¶ 61,134 (1985)), which authority was extended by the Commission through March 31, 1987, in *Marathon Oil Company, et al.*, 34 FERC (CCH) ¶ 61,317 (1986).

EnTrade states that it has been offered gas for which producers have received abandonment authority that it cannot purchase and resell to its markets, and is aware of other gas for which such authority is being sought. In addition, EnTrade's first limited/term abandonment will expire on March 31, 1987, and EnTrade seeks through this application to receive blanket authority for the resale of abandoned gas, without any limitation on term, other than the underlying abandonment authority of the producer involved in the transactions. EnTrade seeks this authority subject to the same terms and conditions as contained in the original order granting such authority, other than the termination date for such authority.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 3, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearings.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26364 Filed 11-21-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-1-4-000 and 001]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

November 17, 1986.

Take notice that on November 10, 1986, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 tendered for filing with the Commission the following revised tariff sheets in its FERC Gas Tariff, First Revised Volume No. 1, containing changes in rates and certain other tariff provisions:

Third Substitute Sixteenth Revised Sheet No. 7
Fourth Revised Sheet No. 7-A
Eighth Revised Sheet No. 8
Ninth Revised Sheet No. 8
Substitute Third Revised Sheet No. 66
Substitute Second Revised Sheet No. 70
Second Revised Sheet No. 72
Substitute Second Revised Sheet No. 75
Substitute Original Sheet No. 75-A
First Revised Sheet No. 81
Substitute Original Sheet No. 82

The above listed tariff sheets are proposed for effectiveness on November 1, 1986, except Eighth and Ninth Revised Sheet No. 8; Eighth Revised Sheet No. 8 is proposed for effectiveness on February 1, 1986 and Ninth Revised Sheet No. 8 for effectiveness on October 1, 1986.

Granite State has also submitted for filing a superseding Gas Sales Contract with Bay State Gas Company (Bay State) reducing firm daily delivery obligations to Bay State under Rate Schedule DC-1 from 83,640 Mcf to 80,566 Mcf, effective November 1, 1986.

According to Granite State, the proposed rate adjustments are submitted pursuant to the purchased gas cost and transportation cost adjustment provisions in its tariff to reflect (1) a reduction in its available gas for system supply authorized in the amended certificate issued in Docket No. CP84-50-000 at Consolidated Gas Supply Corporation, et al., 27 FERC ¶ 61,426 (1984) in which a purchase of gas from Consolidated Gas Transmission Corporation was terminated (2) a partial replacement supply from Algonquin Gas Transmission Company (Algonquin) was authorized and (3) firm transportation services by Texas Eastern Transmission Corporation (Texas Eastern) and Algonquin were also terminated, as of November 1, 1986. Granite State further states that the revised tariff sheets also reflect a reduction in a rate for a storage service provided by Penn-York Energy Corporation and a rate for a storage-related transportation service provided by Tennessee Gas Pipeline Company, a Division of Tenneco Inc. which Granite State is authorized to track in orders issued in Granite State Gas Transmission, Inc. et al., 21 FERC ¶ 61,199 (1982) and Tennessee Gas Pipeline Co., et al., 18 FERC ¶ 61,013 (1982), respectively.

Granite State further states that its proposed rates and tariff changes are applicable to its two affiliated distribution company customers: Bay State and Northern Utilities, Inc. (Northern Utilities). According to Granite State, the effect on Bay State of the revised rates for services under Rate Schedule CD-1 on Third Substitute Sixteenth Revised Sheet No. 7 is an increase of $854,724 on an annualized basis compared with the rates on Second Substitute Sixteenth Revised

Sheet No. 7, effective September 1, 1986, and the revised rates for Northern Utilities, for service under Rate Schedule CD-2, calculated on the same basis result in an annual increase of $244,604. According to Granite State, the foregoing takes into account all the changes in the sources and costs of gas supply available to Granite State as of November 1, 1986, compared to the gas supply and costs as of September 1, 1986 and, in the case of Bay State, the discontinuance of the costs for the firm transportation services rendered by Texas Eastern and Algonquin.

According to Granite State, copies of the filing were served upon its customers and the regulatory commissions of the State of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20460, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 24, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26365 Filed 11-21-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-57-013]

Natural Gas Pipeline Company of America; Notice of Petition to Amend

November 13, 1986.

Take notice that on October 8, 1986, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, P.O. Box 1207, Lombard, Illinois 60148, filed in Docket No. CP85-57-013 a petition to amend the order issued November 12, 1985, as amended March 13, 1986, pursuant to section 7(c) of the Natural Gas Act so as to authorize the extension of the Interruptible Optional Service (IOS) program to December 31, 1987, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Natural states that by the order issued November 12, 1985 (33 FERC ¶ 61,188), in Docket No. CP85-57-000, the Commission approved a settlement submitted by Natural embodying its IOS program. It is further stated that the settlement provided, among other provisions, for a term ending December 31, 1985. Natural indicates that by the order issued March 13, 1986 (34 FERC ¶ 61,335) in Docket No. CP85-57-003, the Commission authorized an extension of the term of the IOS services until December 31, 1986, while leaving all other conditions in the approved settlement the same, except one. Natural further indicates that the original order permitted Natural to make IOS sales to end-use customers of Natural's customers. Natural explains that the March 13, 1986, order eliminated this provision. Natural states that in the petition herein, it seeks extension of the term of the IOS program until December 31, 1987, together with certain modifications.

Natural states that the major provisions of its IOS program as currently authorized are as follows:

(1) Blanket authority for on-system sales for a limited period ending December 31, 1986. Within limitations described below, IOS gas would be available to on-system customers of Natural.

(2) Total IOS sales would be limited to the cumulative aggregate volume for the period commencing October 1, 1984, by which Natural's sales fell short of the entitlements of its customers.

(3) IOS sales would be made at rates between a floor and a ceiling. The floor is Natural's average gas costs per the PGA (inclusive of deferred purchase gas cost adjustments), plus fuel, a 6 cent increment for out-of-pocket expenses and the GRI surcharge. A ceiling of the DMQ-1 or G-1 commodity rate, as applicable, would apply to all sales. The IOS rate would be determined monthly at Natural's option and reflected on a revised Tariff Sheet posted five (5) days prior to the beginning of a month.

(4) Natural would credit to Account 191 the gas cost component of revenues from IOS sales and would retain all other revenues from such sales.

(5) Natural's distribution company customers would be eligible to make IOS purchases in any month to the extent they had purchased a threshold volume that month. This threshold volume is based on the lower of a percentage of monthly entitlements or a percentage of purchases by that customer for the corresponding month of the period year. Such percentages are to be published in Natural's tariff prior to the beginning of each month and may not exceed 90 percent.

(6) The program provides for monthly reports.

Natural proposes to continue the IOS program until December 31, 1987, in its existing form except for the modifications described herein.

Natural requests the issuance of a certificate of public convenience and necessity to authorize:

(1) The extension of the IOS program, amended as set out below, to December 31, 1987.

(2) Thresholds and IOS rates to be filed twenty-four (24) hours prior to the first of the month for which a change is elected.

(3) IOS rates set at the start of a month may be lowered on twenty-four (24) hours' notice during that month in which event all IOS volumes purchased during the month are billed at the lowest IOS rates made effective during that month.

(4) The IOS rates to be revised such that they consist of a gas and non-gas cost component:

—The non-gas cost component would be set at Natural's discretion, but not to exceed the non-gas cost component of the currently effective DMQ-1 or G-1 rates and;

—The gas cost component would always be equal to the cost component of Natural's commodity rate, as reflected in Natural's currently effective PGA.

(5) The threshold percentage established by Natural may be one of the following:

—A percentage of monthly entitlements only,

—A percentage of purchases for the corresponding month of the prior year only, or

—The lower of a percentage of entitlements or a percentage of purchases for the corresponding month or the prior year.

(6) IOS rates and percentages effective shall remain in effect until changed by Natural.

(7) Waiver of the Commission's filing fee requirements under § 381.204 of its Regulations.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before December 1, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be

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considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26366 Filed 11-21-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-3-59-007]

Northern Natural Gas Co.; Change in Rates

November 17, 1986.

Take notice that on November 7, 1986, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing with the Commission the following tariff sheet to be included in Northern's FERC Gas Tariff, Third Revised Volume No. 1:

Third Revised Volume No. 1

Forty-Third Revised Sheet No. 4a

Northern states that this filing involves Northern's proposal to reflect its Canadian gas costs on "as-billed" basis as originally filed on July 11, 1986 in Docket No. TA86-3-59. As a result of settlement negotiations, Northern states that an agreement has been reached by the parties in such proceeding to reflect the cost of gas purchased by Northern from Canadian suppliers on an "as-billed" basis as follows:

(1) the portion of Canadian gas costs billed to Northern by its Canadian suppliers as a commodity charge will be included in Northern's commodity rates;

(2) fifty percent of demand charges billed to Northern by its Canadian suppliers as a demand charge will be included in the D-1 component of Northern's demand rates and the remaining 50 percent of such Canadian demand charges will be included in the D-2 component of Northern's demand rates.

Northern asserts that a Stipulation and Agreement (S&A) is being filed contemporaneously with this filing to reflect the agreement reached by the parties. Paragraph 3 of Section I of that S&A states that Northern will make the filing herein to adjust its market area sales demand rates to reflect the demand rate design described in 2 above.

Accordingly, Northern is filing the following adjustments to its demand rates:

	Present rate	Proposed rate	Adjustment
D-1 Demand Rate—Zone 1	$6.877	$7.540	$.663
D-1 Demand Rate—Zone 2	7.515	8.178	.663
D-1 Demand Rate	.1962	.1730	(.0232)

Per Paragraph 3 of Section I of the S&A, Northern submits the above-referenced tariff sheet to be effective for the billing month of November, 1986, or if not approved in time for such billing, then effective on the first billing month after Commission acceptance of such tariff sheet.

Copies of the filing were served on all of Northern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 208 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 24, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26367 Filed 11-21-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-1-43-002]

Northwest Central Pipeline Corp.; Proposed Changes in FERC Gas Tariff

November 17, 1986.

Take notice that Northwest Central Pipeline Corporation (Northwest Central) on November 6, 1986 tendered for filing Revised Original Sheet Nos. 83a and 83b to its FERC Gas Tariff, Original Volume No. 1.

Revised Original Sheet Nos. 83a and 83b are being filed in compliance with Order Paragraph (C) of the Commission's order of October 22, 1986 in Docket No. TA87-1-43-000 and 001. Ordering Paragraph (C) required Northwest Central to file revised tariff sheets to clarify its flexible PGA proposal by:

(a) Stating that the term "Purchase Gas Adjustment" means a fully supported PGA, as opposed to an interim adjustment;

(b) Stating that the calculation of interim adjustments will be consistent with the calculation of Northwest Central's semi-annual PGA, as set forth in Section 21 of its General Terms and Conditions; and

(c) Stating that it will exclude the effects of storage activity from the determination of gas costs for its flexible PGA in determining compliance with the three percent limitation.

Northwest Central states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 24, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26368 Filed 11-21-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-63-006]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

November 17, 1986.

Take notice that on November 5, 1986, Southern Natural Gas Company (Southern) tendered for filing the following revised sheets to its FERC Gas Tariff:

Sixth Revised Volume No. 1

Seventy-First Revised Sheet No. 4A
Second Revised Sheet No. 4B
Original Sheet No. 30I
Original Sheet No. 30J

Original Volume No. 2

Sixteenth Revised Sheet No. 242

Southern states that these sheets are in compliance with the Commission's April 30, 1986 and October 28, 1986 orders in Docket No. RP86-63-000. Southern further states that the only difference between these revised tariff sheets and its September 30, 1986 compliance filing in this proceeding is the utilization of the D–2 annual units contained in the original rate filing of March 31, 1986 in Docket No. RP86–83–000.

Southern requests whatever waivers of the Commission regulations as may be necessary in order to permit its proposed tariff sheets to become effective October 1, 1986. Copies of this filing were served upon Southern's jurisdictional customers, interested state public commissions and all parties of record.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before the November 24, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–26369 Filed 11–21–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85–170–003]

Texas Eastern Transmission Corp.; Petition for Extension of Authority To Institute Direct Billing Procedure for Retroactive Production-Related Cost Allowances

November 17, 1986.

Take notice that on November 12, 1986, Texas Eastern Transmission Corporation (Texas Eastern) filed a petition requesting the Commission to extend through September 30, 1987 its direct billing program to recover production-related cost allowances authorized by 18 CFR 271.1104 of the Commission's regulations as promulgated under Order No. 94, et al. By order dated September 30, 1985 and December 12, 1985, the Commission granted Texas Eastern's petitions in Docket No. RP85–170–000 to institute a direct billing for retroactive production-related cost allowances Texas Eastern paid or would soon pay to its producers and pipeline suppliers. Texas Eastern requests that it be permitted to extend its direct billing procedure previously authorized by the Commission through September 30, 1987. Texas Eastern desires a twelve-month extension to allow it to directly bill its customers for the "yet to be invoiced" amounts of its producers and pipeline suppliers. In all other respects, Texas Eastern's previously authorized direct billing procedures will remain in full force and effect.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 24, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–26370 Filed 11–21–86; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–180708; FRL–3116–7]

California Department of Food and Agriculture; Receipt of Application for Emergency Exemption To Use Hydrogen Cyanamide; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUBJECT: EPA has received a request for an emergency exemption from the California Department of Agriculture and Consumer Services (hereafter referred to as the "Applicant") to use the active ingredient hydrogen cyanamide (Dormex) to promote uniform bud break in 15,000 acres of table grapes grown in the Coachella Valley in Riverside County, California. Dormex contains an unregistered active ingredient and, therefore, in accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant the exemption.

DATE: Comments must be received on or before December 9, 1986.

ADDRESSES: Three copies of written comments, bearing the identifying notation "OPP–180708," should be submitted by mail to: Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (TS–767C), Officer of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (17 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption to permit the use of the unregistered plant regulator, hydrogen cyanamide (CAS 420–04–2), manufactured as Dormex, by SKW Trostberg Aktiengesellschaft, to promote uniform bud-break in table grapes grown in the Coachella Valley in Riverside County, California. Information in accordance with 40 CFR Part 166 was submitted as part of this request.

Approximately 16,000 acres of table grapes, *Vitis* spp., are grown in the Coachella Valley. The Applicant indicates that California growers of early market table grapes are facing economic losses due to increasing competition from foreign imports from Mexico and Chile. The Applicant states

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that table grapes grown in the Coachella Valley may not experience adequate winter chilling to promote uniform bud break and fruit ripening in the spring. As a result, cane growth can be delayed and uneven, causing the harvest to be late and allowing foreign competition to dominate the market. Currently there are no registered materials to promote uniform bud-bread in grapes.

Dormex will be applied by ground at a maximum rate of 4 gallons product (16 pounds active ingredient) per acre. Applications will be made once in dormancy after pruning sometime between December 1 and February 15, 1986 to approximately 16,000 acres of table grapes in Riverside County.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for the opportunity for public comment on the application. Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above. The comments must be received on or before December 9, 1986, and should bear the identifying notation "OPP-180708." All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Agency, accordingly, will review and consider all comments during the comment period in determining whether to issue the emergency exemption requested by the California Department of Food and Agriculture.

Dated: November 19, 1986.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-26392 Filed 11-21-86; 8:45 am]

BILLING CODE 6560-50-M

[SAB-FRL-3117-4]

Science Advisory Board Environmental Engineering Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a two-day meeting of the Environmental Engineering Committee of the Science Advisory Board will be held at the Environmental Protection Agency, Room 1101 of the West Tower, Waterside Mall, 401 M Street SW., Washington, DC on December 15-16, 1986, the meeting will begin at 8:30 a.m. and last until 5:30 p.m. on December 15, and begin at 8:30 a.m. and last until 12:00 noon on December 16.

The purpose of the meeting will be to complete a review of technical documents supporting Agency regulations for the reuse and disposal of municipal treatment plant sludges under section 405(d) of the Clean Water Act, and proposed revisions to the Agency's Ocean Dumping Regulations (40 CFR 220-229). The committee will also conduct general business from 8:30 to 9:30 on Tuesday the 16th.

The meeting is open to the public. Any member of the public wishing to participate or obtain further information about the meeting should contact Mr. Eric Malès, Executive Secretary at (202) 382-2552, or Dr. Terry F. Yosie, Director, Science Advisory Board, at (202) 382-4126. For further technical information on the documents supporting the development of national criteria for sludge management, interested parties should contact Al Rubin (Chief, Waste Water Solids Criteria Branch, Office of Water) at 202/245-3036. For further technical information on the document supporting the distinctions between sludge and dredge materials, interested parties should contact Al Wastler (Senior Science Advisor, Office of Marine and Estuarine Protection) at 202/382-5455.

Public comment will be accepted at the meeting. Written comments will be accepted in any form, and there will be opportunity for brief oral statements. Anyone wishing to make oral or written comments must contact Mr. Malès prior to December 8, 1986 in order to be placed on the agenda. Any member of the public wishing to attend should contact Mrs. Brenda Browne at (202) 382-2552.

Dated: November 18, 1986.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 86-26422 Filed 11-21-86; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3093-2]

Denial of Application for Waiver of Oxides of Nitrogen (NOx) Standard for 1981 Through 1984 Model Year Light-Duty Diesel Vehicles; Summary of Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This action denies an application by Holzer's Imported Car Service, Inc. ("HICS") for a waiver of the oxides of nitrogen (NOx) standard applicable under section 202(b)(1)(B) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7521(b)(1)(B), to 1981 and subsequent model year light-duty motor vehicles. One of HICS' imported vehicles is not eligible to receive a waiver under section 202(b)(6)(B) of the Act, 42 U.S.C. 7521(b)(6)(B). Moreover, HICS did not show that its vehicles met the substantive waiver criteria.

ADDRESS: Information relevant to this denial, including the decision document, is contained in Public Docket EN-85-01 at the Central Docket Section of the Environmental Protection Agency, Gallery I, 401 M Street SW., Washington, DC 20460, and is available for review between the hours of 8:00 a.m. and 4:00 p.m. As provided in 40 CFR Part 2, EPA may charge a reasonable fee for copying services. Interested parties may also obtain the decision document by contacting the Manufacturers Operations Division as indicated below.

FOR FURTHER INFORMATION CONTACT: Richard Bergovoy, Attorney/Advisor, Manufacturers Operations Division (EN-340F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-2522.

SUPPLEMENTARY INFORMATION: Section 202(b)(6)(B) of the Act authorizes the Administrator, upon application by any manufacturer, to waive the 1.0 gram per vehicle mile (g/mi) NOx standard for 1981 through 1984 model year light-duty diesel vehicles. Holzer's Imported Car Service, Inc. (HICS) applied in 1984 for a NOx waiver for certain European-version diesel vehicles which it imports into the United States for resale. I am denying HICS' waiver application as to one vehicle because its NOx emissions were in compliance with the statutory standard of 1.0 g/mi. I am denying HICS' application as to all of its other vehicles because they have failed to meet the substantive waiver criteria in regard to necessity for the waiver and fuel economy benefit. Additionally, almost all the test data submitted by HICS were generated using incorrect testing procedures.

My decision to deny the waiver application is based on the statutory criteria and my determinations about the engine families covered by the applications. I have considered information submitted in the form of written and oral comments. *See* 50 FR 11739 (March 25, 1985) (notice of hearing and opportunity for comment). My reasoning is explained in detail in a decision document which may be obtained as noted above. NOTE: The Office of Management and Budget

(OMB) has exempted this action from the requirements of sections 3 and 7 of Executive Order 12291.

Under section 307(b)(i) of the Clean Air Act (Act), EPA has determined that this decision is a final Agency action of nationwide scope and effect. Accordingly, judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit on or before January 23, 1987. Under section 307(b)(2) of the Act, this final action and the basis for it may not be challenged later in civil or criminal proceedings brought by EPA to enforce this action.

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to determine whether a regulation will have a significant effect on a substantial number of small entities so as to require a regulatory flexibility analysis. The denial of this NOx waiver application directly affects only HICS. Hence, pursuant to 5 U.S.C. 605(b), I hereby certify that these rules will not have a significant economic impact on a substantial number of small entities.

Dated: November 17, 1986.

Lee M. Thomas,

Administrator.

[FR Doc. 86-26420 Filed 11-21-86; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3117-7]

Establishment of the Office of Ombudsman

AGENCY: Environmental Protection Agency.

ACTION: Notice of the establishment of the Office of Ombudsman.

SUMMARY: This action announces the establishment of the Office of Ombudsman under the Hazardous and Solid Waste Amendments of 1984 (HSWA). It is the function of the Office of Ombudsman to receive individual complaints, grievances and problems submitted by any person with respect to any program or requirement under the Resource Conservation and Recovery Act (RCRA). The establishment of the Office of Ombudsman shall not affect any procedures for grievances, appeals, or administrative matters in any other provision of law, or any Federal regulation. The objective of the RCRA Ombudsman program is to ensure that the general public is provided assistance with complaints or problems. The RCRA Ombudsman should not be used routinely, but rather as a last resort.

Request for general information on the RCRA Programs may be obtained by calling the RCRA Hotline toll free (800) 424-9364, or in Washington, DC by calling 382-3000.

ADDRESSES: To submit a complaint, grievance or problem contact the RCRA Ombudsman in EPA headquarters in Washington or in one of the regional offices:

Robert J. Knox, Director, Office of Ombudsman, U.S. Environmental Protection Agency, Office of Solid Waste and Emergency, Response (WH-562A), 401 M Street SW., Washington, DC 20460, (202) 475-9361.

EPA Region 1

Paul Ciriello, JFK Federal Building, Boston, MA 02203, Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, Vermont

EPA Region 2

RCRA Ombudsman, 26 Federal Plaza, New York, NY 10278, (212) 264-2515, New Jersey, New York, Puerto Rico, Virgin Islands

EPA Region 3

Charles Howard, 841 Chestnut Street, Philadelphia, PA 19107, (215) 597-0982, Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia

EPA Region 4

Dean Norris, 345 Courtland Street, NE, Atlanta, GA 30365, (404) 881-4727, Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

EPA Region 5

Kenneth Westlake, 230 South Dearborn Street, Chicago IL 60604, (312) 353-5821, Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

EPA Region 6

Holly Anderson, 1201 Elm Street, Dallas, TX 75270, (214) 767-0176, Arkansas, Lousiana, New Mexico, Oklahoma, Texas

EPA Region 7

Jack Coakley, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 236-2852, Iowa, Kansas, Missouri, Nebraska

EPA Region 8

Charles Stevens, One Denver Place, 999 18th Street, Suite 1300, Denver, CO 80202-2413, (303) 293-1694, Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

EPA Region 9

William D. Wilson, 215 Fremont Street, San Francisco, CA 94105, (415) 974-8391, Arizona, California, Hawaii, Nevada, American Samoa, Guam, Trust Territories of the Pacific

EPA Region 10

David Teeter, 1200 Sixth Avenue, Seattle, WA 98101 (206) 442-2871, Alaska, Idaho, Oregon, Washington.

FOR FURTHER INFORMATION CONTACT: Robert J. Knox, Director, Office of Ombudsman, U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response (WH-562A), 401 M Street, SW., Washington, DC 20460, (202) 475-9361.

Dated: November 18, 1986.

J.W. McGraw,

Acting Assistant Administrator, Solid Waste and Emergency Response.

[FR Doc. 86-26423 Filed 11-21-86; 8:45 am]

BILLING CODE 6560-50-M

[Docket No. ECAO-HA-84-3; FRL-3117-3]

Draft Health Assessment Document for Phosgene

AGENCY: Environmental Protection Agency.

ACTION: Availability of first external review draft.

SUMMARY: This notice announces the availability of the first external review draft of a Health Assessment Document for Phosgene.

DATES: The Agency will make the document available for public review and comment on or about December 1, 1986. Comments must be postmarked by January 30, 1987.

ADDRESSES: To obtain a copy of the document, interested parties should contact the ORD Publications Center, CERI-FRN, U.S. Environmental Protection Agency, 26 West St. Clair Street, Cincinnati, OH 45268, (513) 569-7562 or FTS/684-7562, and request the first external review draft of the Health Assessment Document for Phosgene. Please provide your name, mailing address, and the EPA document number, EPA/600/8-86/022A.

The draft document will also be available for public inspection and copying at the EPA library, EPA headquarters, Waterside Mall, 401 M Street SW., Washington, DC.

Comments on the draft should be sent to the Project Manager for Phosgene, U.S. Environmental Protection Agency, Environmental Criteria and Assessment Office, MD-52, Research Triangle Park, NC 27711.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Ray, U.S. Environmental Protection Agency, Environmental Criteria and Assessment Office, MD-52, Research Triangle Park, NC 27711, (919) 541-3637 or FTS/629-3637.

SUPPLEMENTARY INFORMATION: In March 1985, Office of Air Quality Planning and Standards (OAQPS) requested that the Environmental Criteria and Assessment Office (ECAO), Office of Health and Environmental Assessment (OHEA), prepare a health assessment document

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for phosgene. The document will be used by EPA in the decision-making process to possibly regulate phosgene under the Clean Air Act as amended, 42 U.S.C., 7401 *et seq.*

Dated: November 17, 1986.

Vaun A. Newill,

Assistant Administrator for Research and Development.

[FR Doc. 86-26421 Filed 11-21-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

November 14, 1986

The Federal Communication Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB No.: None
Title: Section 73.1690, Modification of Transmission Systems
Action: New collection
Respondents: Licensees of broadcast stations
Estimated Annual Burden: 30 Recordkeepers; 8 Hours.

Federal Communication Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-26442 Filed 11-21-86; 8:45 am]

BILLING CODE 6712-01-M

Advisory Committee for the ITU World Administrative Radio Conference on the Use of the Geostationary Satellite Orbit and the Planning of the Space Services Utilizing It (Space WARC Advisory Committee); Main Committee Meeting

November 14, 1986.

The Space WARC Advisory Committee will convene its next meeting on December 3, 1986. The Committee will be reviewing the work of the working groups and will be considering recommendations and advice to the Commission concerning U.S. participation within the intersessional work program of the International Telecommunication Union in preparation for the second session in 1988. Details regarding the date, place and agenda of the meeting are provided below.

Chairman: Ronald F. Stowe (202) 383-6433
Vice Chairman: Stephen E. Doyle (916) 355-6941
Date: Wednesday, December 3, 1986
Time: 9:30 a.m.-1:00 p.m.
Location: Federal Communications Commission, 1919 M Street NW., Room 856, Washington, DC 20554
Designated Federal Employee: Thomas S. Tycz, (202) 632-3214
Agenda:
(1) Adoption of Agenda
(2) Status of ITU Preparatory Activities
(3) Working Group Reports
(4) Recommendations for Notice of Inquiry
(5) Date of Next Meeting
(6) Other Business
(7) Adjournment.

For additional information, please contact Thomas S. Tycz (202) 632-3214.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-26443 Filed 11-21-86; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 85-166, Phase I; FCC 86-466]

Investigation of Special Access Tariffs of Local Exchange Carriers

AGENCY: Federal Communications Commission (FCC).

ACTION: Memorandum Opinion and Order on Reconsideration.

SUMMARY: This action disposes of petitions for reconsideration of decisions made in *Investigation of Special Access Tariffs of Local Exchange Carriers,* CC Docket No. 85-166, Phase I, FCC 86-52, released January 24, 1986, which completed Phase I of the Commission's investigation of special access rates and rate structure in that docket. The Commission reviewed the petitions and responsive pleadings and affirmed its previous decisions on the issues they raised.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Krevor, tele: 202-632-6917.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order on Reconsideration* in CC Docket No. 85-166, Phase I, FCC 86-466, adopted October 23, 1986 and released November 5, 1986.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order on Reconsideration

1. On January 24, 1986, the Commission released a Memorandum Opinion and Order completing Phase I of its investigation of special access rates and rate structure in Docket 85-166 (*Phase I Order*). In the *Phase I Order,* the Commission resolved issues relating to certain aspects of the special access rate structure as well as questions regarding cost allocations to various special access rate elements. It also prescribed a 1.6 to 1 ratio between 4-wire and 2-wire channel termination rates and directed carriers to adjust their rates accordingly.

2. Petitions for Reconsideration of the *Phase I Order* were filed by the Television User Parties (User Parties), Western Union Telegraph Company (Western Union), and the International Telephone and Telegraph Company (ITT). The User Parties sought reconsideration of that part of the *Phase I Order* which disallowed 50 percent of the local exchange carriers' (LECs') investment in unused polyethylene shielded video (PSV) cable. Western Union sought reconsideration of the allocation of voice-grade performance and facility interface costs to channel termination rates as well as the allocation of central office and other related costs to metallic services which it alleges do not use facilities. It also argued that the LECs improperly failed to reduce their metallic channel termination rates in light of the Commission's prescription of a 1.6 to 1 ratio of 4-wire to 2-wire channel termination rates. Finally, ITT sought reconsideration of the Commission's decision to prescribe a single ratio for 4-wire to 2-wire channel termination rates which applies nationwide. Responsive pleadings were filed.

3. The Commission denied the petitions. It concluded that the petitioners had failed to demonstrate that the findings and conclusions reached in the *Phase I Order* were in error or should be modified. For example, the User Parties presented no facts to support disallowance of the entire unused PSV investment or that undercut the Commission's conclusion that the 50 percent disallowance represents a reasonable balance of the interests of carriers and ratepayers taking into account equitable considerations. The Commission also concluded that Western Union's petition is largely a re-argument of issues that have been fully developed and resolved in this and previous proceedings. Accordingly, it affirmed the various cost allocation decisions reached in the *Phase I Order*. It also rejected Western Union's request for adjustment of the rate for 2-wire metallic service concluding that the carrier had not demonstrated why the differential that had existed previously between this rate and the rate for 2-wire voice grade service should be maintained.

5. Finally, with regard to ITT's petition, the Commission concluded that in the absence of more reliable data from the LECs supporting alternate ratios, the prescription of a 1.6 to 1 nationwide ratio between 4-wire and 2-wire channel termination rates should be retained. It stated, however, that carriers may be able to demonstrate, based on their own costs, that a different ratio should be applied and emphasized its willingness to consider properly supported requests for waiver of the prescription. The Commission also affirmed the Common Carrier Bureau's previous grant of a waiver of the 1.6 to 1 prescription to Southwestern Bell Telephone Company and denied ITT's separate petition for reconsideration of that Bureau action. See *Investigation of Special Access Tariffs of Local Exchange Carriers*, CC Docket No. 85-166, Phase I, Mimeo No. 2757, released February 21, 1986.

Ordering Clauses

4. Accordingly, It Is Ordered that the petitions for reconsideration filed by the Television User Parties, Western Union Telegraph Company and the International Telephone and Telegraph Company regarding the *Phase I Order* Are Denied.

6. It Is Further Ordered that the petition for reconsideration filed by the International Telephone and Telegraph Company against the Common Carrier Bureau's Order in CC Docket No. 85-166, Mimeo No. 2757, released February 21, 1986 Is Denied.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-26441 Filed 11-21-86; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Abbeville Educational Broadcasting Foundation, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and State	File No.	MM Docket No.
A. Abbeville Educational Broadcasting Foundation Abbeville, LA.	BPED-831103AG	86-426
B. TRC Educational Broadcasting Foundation Lafayette, LA.	BPED-831219AN	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entiretly under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, A, B
2. 307(b)—Noncommercial Educational, A, B
3. Contingent Comparative—Noncommercial Educational, A, B
4. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 86-26437 Filed 11-21-86; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Robert G. Payne, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A. Robert G. Payne, Ft. Mitchell, AL.	BPH-841220MB	86-427
B. Bohenan Broadcasting, Ft. Mitchell, AL.	BPH-850506NN	
C. Minority Radio Associates, Ft. Mitchell, AL.	BPH-850531MM	
D. Rosie R. Strong & Kathryn G. Cason, Ft. Mitchell, AL.	BPH-850531MS	
E. Janice M. Camba, Ft. Mitchell, AL.	BPH-850531ND	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown befoe each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Financial, E
2. Air Hazard, A, C, D, E
3. Comparative, A, B, C, D, E
4. Ultimate, A, B, C, D, E

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 86-26438 Filed 11-21-86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice of the filing of the

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following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-003938-002.

Title: Los Angeles Terminal Agreement.

Parties:

The City of Los Angeles (Port)
American President Lines, Ltd. (APL)

Synopsis: The proposed amendment would modify the compensation to be paid by APL to the Port and would add new force majeure provisions. It would also settle differences between the parties concerning wharfage due on invitee cargo during the first five years of the agreement's term.

Agreement No.: 217-010723-001.

Title: International Navigation Ltd./Lash Carriers, Inc. Space Charter and Cooperative Working Agreement.

Parties:

International Navigation Limited
Lash Carriers, Inc.

Synopsis: The proposed amendment would reduce the number of vessels subject to the agreement from three to two and would change the name of one of the vessels.

Agreement No.: 224-011029.

Title: Oakland Terminal Agreement.

Parties:

City of Oakland (Port)
Schnitzer Steel Products Co. (SSP)

Synopsis: The proposed agreement would permit the Port to lease 1.84 acres of water area in the Port's Inner Harbor to SSP for use in its cargo loading and discharging operations.

Agreement No.: 224-011030.

Title: Anchorage Terminal Agreement.

Parties:

Municipality of Anchorage (Port)
Sea-Land Service, Inc. (Sea-Land)

Synopsis: Under the terms of the proposed agreement the Port would purchase a container crane and related equipment to be conveyed, installed and delivered by Sea-Land. Sea-Land would also improve two existing cranes. During the twenty-year term of the agreement Sea-Land would have preferential use of the cranes. The parties have requested a shortened review period.

Agreement No.: 224-011031.

Title: Los Angeles Terminal Agreement.

Parties:

The City of Los Angeles
American President Lines, Ltd. (APL)

Synopsis: The proposed agreement would provide for the replacement of four container-handling cranes to accommodate a new type of container vessel to be used in APL's trans-pacific service.

By Order of the Federal Maritime Commission.

Dated: November 19, 1986.

Joseph C. Polking,

Secretary.

[FR Doc. 86-26427 Filed 11-21-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Chemical New York Corp.; Proposal To Underwrite and Deal in Certain Securities to a Limited Extent

Chemical New York Corporation ("Applicant"), New York, New York, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage through Chemical Securities, Inc. ("Company"), New York, New York, or through one or more wholly-owned subsidiaries of Company, in the activities of underwriting and dealing in, to a limited extent, the following securities which are eligible for purchase by banks for their own account but not eligible for banks to underwrite and deal in (hereinafter "ineligible securities"):

(1) Commercial paper;

(2) Municipal revenue obligations (including certain industrial development bonds);

(3) Mortgage-related securities (obligations secured by, or representing interests in, residential real estate mortgages);

(4) Consumer-receivable-related securities (obligations secured by, or representing an interest in, loans or receivables of a type generally made to or due from consumers) (hereinafter "CRRs").

Applicant has previously applied for approval under § 225.25(b)(16) of Regulation Y (12 CFR 225.25(b)(16)) to engage, *de novo* through Company in underwriting and dealing in securities and money market instruments that banks are expressly authorized to underwrite and deal in under section 16 of the Glass-Steagall Act (12 U.S.C. 24 Seventh), including U.S. government obligations and general obligations of states and their political subdivisions. The foregoing activities are presently conducted by Applicant's principal banking subsidiary, Chemical Bank. Applicant expects that the underwriting and dealing activities in eligible securities presently conducted by Chemical Bank will ultimately be transferred to Company.

Upon consummation of the proposal, Company would commence underwriting and dealing in ineligible securities subject to the limitations set forth in the application. The activities would be performed principally through Company's offices in New York, serving customers throughout the United States. Company may establish offices in other locations as it deems necessary and appropriate.

Section 4(c)(8) of the Bank Holding Company Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." The Board has not previously approved the proposed activities for bank holding companies.

Applicant states that the proposed activities are so closely related to banking or managing or controlling banks as to be a proper incident thereto on the basis of its belief that banks engage in activities that it believes are functionally and operationally similar to those involved in the application, including discounting commercial paper, underwriting and dealing in eligible U.S. government and municipal securities, mortgage-backed securities and money market instruments; assessing credit and interest rate risk; and originating, purchasing and pooling mortgage and consumer loans.

In determining whether a particular activity is a proper incident to banking, the Board considers whether the performance of the activity by an affiliate of a holding company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest or unsound banking practices. Applicant maintains that permitting bank holding companies to engage in the proposed activities would be procompetitive and would enable holding companies to provide increased services to customers. In addition, Applicant believes the proposal would not result in adverse effects.

The application also presents issues under section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, such as Chemical Bank, with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities.

Applicant states that it would not be "engaged principally" in such activities on the basis of restrictions that would limit the amount of the proposed activity relative to the total business conducted by Company and relative to the total market in such activity.

During any two year period, the Company's underwriting and dealing in ineligible securities ("ineligible activities") will account for no more than 15 percent of its total activities, measured by compliance with two of the three indicia set forth below:

(1) the dollar volume of underwriting commitments (or underwriting or primary sales if larger) and dealer or secondary sales attributable to ineligible activities, compared with total dollar volume of all of Company's activities;

(2) the average assets acquired in connection with ineligible activities, compared with the average assets acquired in connection with all of Company's activities; and

(3) the gross income from ineligible activities, compared with the gross income from all of Company's activities.

In addition, Applicant will limit Company's involvement in the market for ineligible activities through the following restrictions:

(1) The volume of all municipal revenue securities underwritten by Company in any one calendar year shall not exceed three percent of the total amount of such securities underwritten domestically by all firms during the previous calendar year.

(2) The amount of all municipal revenue securities held by Company for dealing at any one time shall not exceed three percent of the total amount of such securities underwritten domestically by all firms during the previous calendar year.

(3) The aggregate volume of all mortgage-related securities and CRRs underwritten by Company in any one calendar year shall not exceed three percent of the total aggregate amount of such securities underwritten domestically by all firms during the previous calendar year.

(4) The aggregate amount of all mortgage-related securities and CRRs held by Company for dealing at any one time shall not exceed three percent of the total aggregate amount of such securities underwritten domestically by all firms during the previous calendar year.

(5) The total amount of commercial paper outstanding on any day underwritten by Company shall not exceed 10 percent of the average daily amount of dealer-placed commercial paper outstanding during the prior four calendar quarters (Applicant would reduce this limit from 10 percent to 3 percent if the Board determines that such a reduction in market share is legally required).

(6) The total amount of commercial paper held in inventory by Company on any day shall not exceed 10 percent of the average daily amount of dealer-placed commercial paper outstanding during the prior four calendar quarters. (Applicant would reduce this limit from 10 percent to 3 percent if the Board determines that such a reduction in market share is legally required).

In addition, Applicant has stated that it would be prepared to conduct all of the proposed activities in a single corporation should the Board decide that the activities of Company and one or more of its subsidiaries may not be viewed on a consolidated basis for section 20 purposes.

In publishing Chemical's proposal for comment, the Board does not take any position on the "engaged principally" issue under the Glass-Steagall Act or other issues raised by the proposal under the Bank Holding Company Act. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal is consistent or inconsistent with the Glass-Steagall Act or that the proposal meets or is likely to meet the standards of the Bank Holding Company Act. The Board previously published for comment applications by Citicorp (50 FR 20847), J.P. Morgan & Co. Incorporated (50 FR 41025) and Bankers Trust (51 FR 16590) to underwrite and deal in the proposed ineligible securities.

Comments are requested on the scope of activity permitted by the phrase "engaged principally" under the Glass-Steagall Act, including whether the phrase contemplates the type of limitations involved in this application, which are based on Applicant's market share and on a percentage of the affiliate's total business activities. The Board also seeks comment on whether the term "engaged principally" in section 20 would preclude a member bank affiliate from engaging in activities restricted by this section on a substantial and regular or non-incidental basis and without regard to the amount of other activities conducted by the affiliate.

Comments are also requested on whether the proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto," and whether the proposal as a whole can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."

Upon the expiration of the public comment period, depending upon the comments received, the Board may wish first to consider the legal issue presented by the application under the Glass-Steagall Act in order to determine whether there is a legal basis for considering whether the activities could be permitted for a bank holding company under the Bank Holding Company Act.

Any request for a hearing on these questions must, as required by section 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than December 19, 1986.

Board of Governors of the Federal Reserve System, November 18, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–26399 Filed 11–21–86; 8:45 am]

BILLING CODE 6210-01-M

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John E. Goodenow et al.; Acquisitions of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 10, 1986.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *John E. Goodenow & Gerald Schmitz*, Wall Lake, Iowa, to acquire 38.3 percent and 27.9 percent, respectively, of the voting shares of Fairmont Bancorporation, Fairmont, Minnesota, and thereby indirectly acquire Fairmont National Bank, Fairmont, Minnesota.

2. *Mr. Harris A. Peterson*, Grand Forks, North Dakota; to acquire 60 percent of the voting shares of Crookston Financial Services, Inc., Crookston, Minnesota, and thereby indirectly acquire Crookston National Bank, Crookston, Minnesota.

Board of Governors of the Federal Reserve System, November 18, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-26400 Filed 11-21-86; 8:45 am]

BILLING CODE 6210-01-M

Sovran Financial Corp., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C.1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 12, 1986.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Sovran Financial Corporation*, Norfolk, Virginia; to acquire Cash Flow, Inc., Norfolk, Virginia, and thereby engage in the administration of the Cash Flow Network and Switch; standardization of Cash Flow Products; administration of complimentary network affiliations, and analysis and implementation of other electronic funds transfer related ventures pursuant to § 225.25(b)(7) of the Board's Regulation Y.

2. *Sovran Financial Corporation*, Norfolk, Virginia; to acquire Sovran Leasing Corporation, Richmond, Virginia, and thereby engage in commercial financing; making, acquiring and/or servicing for its own account and for the account of others, loans and leases of real and personal property; arranging, financing, financial structuring and analysis of equipment leasing problems pursuant to § 225.25(b)(1)(iv) and (5) of the Board's Regulation Y.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Eastman National Bankshares, Inc.*, Newkirk, Oklahoma; to acquire The Eastman Company, Newkirk, Oklahoma, and thereby engage in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y. Comments on this application must be received by December 10, 1986.

Board of Governors of the Federal Reserve System, November 18, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-26401 Filed 11-21-86; 8:45 am]

BILLING CODE 6210-01-M

Sovran Financial Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 12, 1986.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Sovran Financial Corporation,* Norfolk, Virginia; to engage *de novo* through its subsidiary, Sovran Equity Mortgage Corporation, Richmond, Virginia, in making, acquiring, and servicing, for its own account or for the account of others, loans secured principally by second mortgages on real property; acting as agent in the sale of credit life insurance and accident and health insurance in connection with such loans pursuant to § 225.25(b)(1)(iii) and (8) of the Board's Regulation Y.

B. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Texas Commerce Bancshares, Inc.,* Houston, Texas; to engage *de novo* through its subsidiary, Texas Commerce Investment Management Co., Houston, Texas, in advising a mortgage or real estate trust of a company registered under the Investment Company Act of 1940 and providing portfolio investment advice to any person, economic information and advice, statistical forecasting services and industry studies and providing financial advice to state and local governments pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 18, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-26662 Filed 11-21-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Reestablishment of Committees

Pursuant to the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92-463, 86 Stat. 770-776) and the Anti-Drug Abuse Act of 1986, (Pub. L. 99-570, section 501(j)), the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, (ADAMHA), announces the reestablishment, effective December 31, 1986, of the following committees:

Alcohol Biomedical Research Review Committee
Alcohol Psychosocial Research Review Committee
Drug Abuse Biomedical Research Review Committee
Drug Abuse Clinical and Behavioral Research Review Committee
Drug Abuse Epidemiology, Prevention, and Services Research Review Comm.

The duration of these committees is continuing unless formally determined by the Administrator, ADAMHA, that termination would be in the best public interest.

Dated: November 17, 1986.

Donald Ian Macdonald,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 86-26416 Filed 11-21-86; 8:45 am]

BILLING CODE 4160-20-M

Reestablishment of Committees

Pursuant to the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92-463, 86 Stat. 770-776) and the Anti-Drug Abuse Act of 1986, (Pub. L. 99-570, section 501(j)), the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, (ADAMHA), announces the reestablishment, effective December 15, 1986, of the following committees:

Life Course and Prevention Research Review Committee
Mental Health Research Education Review Committee
Research Scientist Development Review Committee.

The duration of these committees is continuing unless formally determined by the Administrator, ADAMHA, that termination would be in the best public interest.

Dated: November 17, 1986.

Donald Ian Macdonald,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 86-26417 Filed 11-21-86; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

Advisory Committee; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Circulatory System Devices Panel

Date, time, and place. December 12, 8:30 a.m., Auditorium, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m.; open committee discussion, 9:30 a.m. to 12 m.; closed presentation of data and closed committee deliberations, 1 p.m. to 4 p.m.; Keith Lusted, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7594.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of medical devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 28, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the current information on strut fracture, thrombosis and thromboembolism rates of the Shiley 60° convexo-concave valves in order to determine if the smaller-sized valves (21-27 millimeters) currently on the market may still be considered safe and effective from a clinical risk-benefit perspective.

Closed presentation of data. Trade secret and/or confidential commercial or financial information will be presented to the committee regarding manufacturing and quality control methods, and sales and distribution figures for these valves. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial or financial information regarding manufacturing and quality control methods, sales and distribution figures for these valves, and possibly similar data on other premarket approval valves on the market. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

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Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA-305), Rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: November 14, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 86-26356 Filed 11-21-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85N-0569]

Health Aspects of Sugar Alcohols and Lactose; Availability of Report

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the final report of the Federation of American Societies for Experimental Biology (FASEB) on sugar alcohols and lactose is available to the public. The final report was issued on October 20, 1986.

ADDRESSES: Requests for a copy of the final report should be sent to FASEB's Special Publications Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, along with $15 to cover the cost. In the near future, the report will be available from the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161. Copies are on display at the Life Sciences Research Office, FASEB (address above), and at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

F.R. Senti, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, 301-530-7030

or

Catherine J. Bailey, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-8950.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 17, 1986 (51 FR 2577), FDA announced that the Life Sciences Research Office (LSRO) of FASEB, under its contract with FDA

(223-83-2020), was undertaking a study of certain effects observed in animal experiments in which the test animals were fed sugar alcohols or lactose. In response to a request from FDA, the Scientific Steering Group that FASEB established under the contract recommended that LSRO appoint an ad hoc expert panel to study this matter. As a result, LSRO established the ad hoc Expert Panel on Sugar Alcohols and Lactose (the Expert Panel).

The Expert Panel conducted a closed meeting on February 3 and 4, 1986, to review study objectives, define the scope of the task, develop plans for an open meeting, and begin evaluation of the available scientific data and information (51 FR 2577; January 17, 1986). Subsequently, the Expert Panel conducted an open meeting on April 7, 1986, to receive written and oral views, information, and data. The Expert Panel also held closed meetings on April 7, continuing until April 9, 1986, and again on June 23 and 24, 1986, to consider all the information and views received at the open meeting, written submissions, and all other published data and information obtained in the course of the study. The April and June meetings were announced in the **Federal Register** of March 7, 1986 (51 FR 8030).

The Expert Panel presented its evaluation of the data and information that it received to FASEB. FASEB has reviewed the Expert Panel's work and has prepared and submitted to FDA a final report entitled "Health Aspects of Sugar Alcohols and Lactose." This report is now available to the public.

Dated: November 18, 1986.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-26355 Filed 11-21-86; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Application Announcement and Proposed Funding Preferences for Cooperative Agreements for Area Health Education Center Programs

The Health Resources and Services Administration announces that applications are now being accepted for Fiscal Year 1987 Cooperative Agreements for Area Health Education Center (AHEC) Programs under the authority of Section 781(a)(1) of the Public Health Service Act, as amended by Pub. L. 98-129, and invites comments on the proposed additional funding preferences listed below.

The Administration's budget request for Fiscal Year 1987 does not include funding for this program. This notice regarding applications does not reflect any change in this policy. However, should funds become available unexpectedly for this purpose, this contingency action will assure that grants can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year.

Section 781(a)(1) authorizes Federal assistance to medical and osteopathic schools which have cooperative arrangements with one or more public or nonprofit private area health education centers for the planning, development and operation of area health education center programs. New applications, submitted under this authority will be accepted from medical and osteopathic schools for the purpose of planning, developing and operating new area health education center programs. Applicants may request up to three years of support with the expectation that centers planned and developed in years one and two would be operational no later than the third year.

To be eligible to receive support for an area health education center cooperative agreement, the applicant must be a public or nonprofit private accredited school of medicine or osteopathy, or consortium of such schools, or the parent institution on behalf of such school(s).

To receive support, programs must meet the requirements of the regulations as set forth in 42 CFR Part 57, Subpart MM.

Personnel of the Bureau of Health Professions have substantial programmatic involvement with the planning, developing, and administering of the AHEC projects by:

1. Reviewing and approving plans, upon which continuation of the cooperative agreement is contingent, to permit appropriate direction and redirection of activities.
2. Reviewing all contracts and agreements among recipient medical or osteopathic schools, other health professions schools and community-based centers.
3. Participating with project staff in the development of funding projections.
4. Developing with project staff individual project data collection systems and procedures.
5. Participating with project staff in the design of project evaluation protocols and methodologies.

Section 781(e)(2) of the Act requires that not more than 75 percent of total operating funds of a program in any year shall be provided by the Secretary.

In making awards for Fiscal Year 1987, the following funding preferences are established:

(1) Competing continuation applications,

(2) Planning and development projects under section 781(a)(1), and

(3) Supplements to existing awards.

Proposed Additional Funding Preferences

It is proposed that after a 30-day public comment period, additional funding preferences will be given to:

(1) Applications proposing Centers that serve health manpower shortage areas with a greater proportion of American Indian/Alaskan Natives, Asian/Pacific Islanders, Blacks and/or Hispanics; or low-income individuals.

An individual will be deemed to be of "low income" if that individual comes from a family with an annual income below a level based on low income thresholds according to family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary for use in all health professions programs. The following income figures determine what constitutes a low income family for purposes of the Area Health Education Centers Program for Fiscal Year 1987.

Size of family [1]	Level [2]
1	$7,200
2	9,400
3	11,100
4	14,200
5	16,800
6 or more	18,900

[1] Includes only dependents based on Federal income tax forms.

[2] Adjusted gross income for calendar year 1985, rounded to $100.

An application will be evaluated with respect to other approved applications to determine whether it has a "greater proportion" of the stated minority individuals.

(2) Applications proposing Centers located in primary care health manpower shortage areas designated under section 332 of the Public Health Service Act.

Interested persons are invited to comment on the proposed funding preferences. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1987 award cycle, this comment period has been reduced to 30 days. All comments received by December 24, 1986, will be considered before the final funding preferences are established. No funds will be allocated or final selections made until a final notice is published indicating whether the proposed funding preferences are to be applied.

Written comments should be addressed to: Acting Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Rm. 4C–25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions at the above address (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (U–76), Bureau of Health Professions, Health Resources and Services Administration, Rockville, Maryland 20857, Telephone: (301) 443–6857.

Questions regarding programmatic information should be directed to: Division of Medicine, Area Health Education Center Branch, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 4C–05, Rockville, Maryland 20857, Telephone: (301) 443–6950.

The standard application form and specific instructions for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

The application deadline date is December 30, 1986. Applications will be considered as meeting the deadline if they are either:

(1) *Received* on or before the deadline date, or

(2) *Postmarked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

This program is listed at 13.824 in the *Catalog of Federal Domestic Assistance.* Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, or 45 CFR Part 100.

Dated: November 17, 1986.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 86–26357 Filed 11–21–86; 8:45 am]

BILLING CODE 4160-15-M

Office of Human Development Services

Federal Allotments to States for Social Services Expenditures; Social Services Block Grant Act; Promulgation for Fiscal Year 1988

AGENCY: Office of Human Development Services, HHS.

ACTION: Notification of allocation of title XX—social services block grant allotments for fiscal year 1988.

SUMMARY: This issuance sets forth the individual allotments to States for Fiscal Year 1988 pursuant to Title XX of the Social Security Act, as amended (Act). The allotments to the States published herein are based upon the authorization set forth in section 2003 of the Act and are contingent upon Congressional appropriations actions for the fiscal year. If Congress enacts and the President approves an amount different from the authorization, the allotments will be adjusted proportionately.

FOR FURTHER INFORMATION CONTACT: HDS Regional Administrators.

SUPPLEMENTARY INFORMATION: Section 2003 of the Act authorizes $2.7 billion for Fiscal Year 1988 and provides that it be allocated as follows:

(1) Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands each receive an amount which bears the same ratio to $2.7 billion as its allocation for Fiscal Year 1981 bore to $2.9 billion.

(2) The remainder of the $2.7 billion is allotted to each State in the same proportion as that State's population is to the population of all States, based upon the most recent data available from the Department of Commerce.

For Fiscal year 1988, the allotments are based upon the Bureau of Census population statistics contained in its publication "Current Population Reports" (Series P–26 No. 85–52–C issued August 1986), which is the most recent satisfactory data available from the Department of Commerce at this time as to the population of each State and of all States.

EFFECTIVE DATE: The allotments shall be effective October 1, 1987.

FISCAL YEAR 1988 FEDERAL ALLOTMENTS TO STATES SOCIAL SERVICES—TITLE XX BLOCK GRANTS

Total	$2,700,000,000
Alabama	45,222,719
Alaska	5,859,497
Arizona	35,843,025
Arkansas	26,530,811
California	296,517,528
Colorado	36,337,877
Connecticut	35,696,819
Delaware	6,995,407
Dist. of Columbia	7,040,393
Florida	127,829,251
Georgia	67,209,890
Guam	465,517
Hawaii	11,853,953
Idaho	11,302,868
Illinois	129,729,932
Indiana	61,845,245
Iowa	32,435,295
Kansas	27,554,255
Kentucky	41,904,961
Louisiana	50,396,171
Maine	13,091,083
Maryland	49,395,220
Massachusetts	65,477,908
Michigan	102,209,417
Minnesota	47,157,140
Mississippi	29,387,457
Missouri	56,559,326
Montana	9,289,720
Nebraska	18,062,095
Nevada	10,526,850
New Hampshire	11,224,142
New Jersey	85,047,052
New Mexico	16,307,620
New York	199,998,907
North Carolina	70,347,701
North Dakota	7,703,945
No. Mariana Islands	93,103
Ohio	120,833,844
Oklahoma	37,125,141
Oregon	30,219,708
Pennsylvania	133,306,362
Puerto Rico	13,965,517
Rhode Island	10,886,742
South Carolina	37,642,487
South Dakota	7,962,617
Tennessee	53,556,475
Texas	184,107,412
Utah	18,500,714
Vermont	6,016,950
Virgin Islands	465,517
Virginia	64,173,298
Washington	49,586,413
West Virginia	21,773,485
Wisconsin	53,702,881
Wyoming	5,724,537

Dated: November 18, 1986.

G. Barry Nielsen,

Acting Director, Office of Policy, Planning, and Legislation.

Approved: November 18, 1986.

Jean K. Elder,

Acting Assistant Secretary for Human Development Services.

[FR Doc. 86–26398 Filed 11–21–86; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[N–45131; 4310–HC; 7–00154]

Airport Lease Application; Nevada

Notice is hereby given that pursuant to the Act of May 24, 1928 (49 U.S.C. 211–214), Bevada, Inc. has applied for an airport lease for the following land:

Mount Diablo Meridian, Nevada

T. 5 S., R. 43 E., (unsurveyed)
Sec. 17, SW¼SW¼;
Sec. 18, SE¼SE¼;
Sec. 19, E½;
Sec. 20, NW¼NW¼;
Sec. 30, NE¼.
Containing 180 acres, more or less.

The area described is located in Esmeralda County, Nevada. The application was filed on October 6, 1986, and on that date the land was segregated from all other forms of appropriation under the public land laws.

For a period of 45 days from the date of this notice, interested persons may submit comments to the District Manager, Bureau of Land Management, Battle Mountain District, N. 2nd and Scott Streets, P.O. Box 1420, Battle Mountain, Nevada 89820.

Terry L. Plummer,
District Manager.

[FR Doc. 86-26452 Filed 11-21-86; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Availability of the Arctic National Wildlife Refuge, Alaska, Coastal Plain Resource Assessment and Draft Legislative Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: As required by section 1002(h) of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), the U.S. Fish and Wildlife Service has prepared a report to Congress concerning the coastal plain of the Arctic National Wildlife Refuge, Alaska. In accordance with 40 CFR 1506.4 and 1506.8 of the Council on Environmental Quality's regulations to implement the National Environmental Policy Act (NEPA), this report incorporates a legislative environmental impact statement (LEIS). This draft report/LEIS is being made available for public review and comment due to the court's order in *Trustees for Alaska, et al.* v. *Donald Hodel, et al.,* Civ. No. A85-551 (D. Ak. Feb. 25, 1986). The United States has appealed the district court's ruling to the ninth circuit court of appeals because the government feels that the district court imposed administrative requirements in the preparation of the report/LEIS not required by law. The government's appeal was argued on September 3, 1986, but a date for the ninth circuit's decision is not known and no decision has been rendered yet. Even though the government feels that the district court's ruling is wrong, the Department of the Interior is commencing the administrative process laid down by the district court because a final report/LEIS has already been delayed beyond the September 1986 deadline established by ANILCA and so that the process can be completed in time to give the members of Congress sufficient opportunity to consider the report/LEIS during their upcoming term. Should the court of appeals rule in the government's favor before it completes the steps imposed by the district court, the Department of the Interior will review the course of action which it is now commencing and advise the public through a future public notice of any changes that might be made in the procedures to be followed in completing and submitting the final report/LEIS to Congress.

DATES: Comments must be submitted on or before January 23, 1987, to receive consideration.

ADDRESS: Comments should be addressed to the Director, U.S. Fish and Wildlife Service, Division of Refuges, Room 2343 Main Interior Building, 18th and C Sts. NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Noreen Clough, U.S. Fish and Wildlife Service, Division of Refuges, 18th and C Streets NW., Room 2343 Main Interior Building, Washington, DC, 20240, telephone (202) 343-4313; or Clay Hardy, U.S. Fish and Wildlife Service, Division of Planning, 1011 E. Tudor Road, Anchorage, AK 99503, telephone (907) 786-3388.

Copies of the draft report/LEIS have been sent to all Federal, state and local agencies with jurisdiction by law or special expertise; to concerned conservation organizations; to affected Native regional and village corporations and other organizations; and to the oil and gas industry. Copies have also been distributed to selected members of Congress. Additionally, copies have been made available at major libraries in the State of Alaska and the other 49 states, in the Arctic National Wildlife Refuge headquarters in Fairbanks, and all regional offices of the Fish and Wildlife Service, as listed below:

Arctic National Wildlife Refuge, 101 12th Ave., Box 20, Fairbanks, AK 99701, telephone (907) 456-0250.

U.S. Fish and Wildlife Service, Refuges and Wildlife, Lloyd 500 Building, Suite 1692, 500 NE Multnomah St., Portland, OR 97232, telephone (503) 231-6118.

U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 Gold Ave. SW., Room 1306, Albuquerque, NM 87103, telephone (505) 766-2321.

U.S. Fish and Wildlife Service, Refuges and Wildlife, Federal Building, Fort Snelling, Twin Cities, MN 55111, telephone (612) 725-3563.

U.S. Fish and Wildlife Service, Refuges and Wildlife, Richard B. Russell Federal Bldg., 75 Spring St., Atlanta, GA 30303, telephone (404) 221-3588.

U.S. Fish and Wildlife Service, Refuges and Wildlife, One Gateway Center, Suite 700, Newton Corner, MA 02158, telephone (617) 965-5100.

U.S. Fish and Wildlife Service, Refuges and Wildlife, 134 Union Blvd., Lakewood, CO 80225, telephone (303) 236-7920.

Individuals wanting a copy of the document should contact Ms. Clough or Mr. Hardy.

Public meetings on the report/LEIS will be held in Anchorage and Kaktovik, Alaska, during the week of January 5, 1987. The exact times and locations will be announced in a future **Federal Register** notice and in local newspapers in the affected areas. A public meeting will also be held on January 9, 1987, at 1:30 p.m., in the Main Interior Building Auditorium, 18th and C Streets, NW., Washington, DC.

SUPPLEMENTARY INFORMATION: Section 1002(h) of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. 3142(h), of December 2, 1980, requires that the Secretary of the Interior prepare and submit to Congress a report concerning the resources of the 1.5-million acre coastal plain of the 19-million acre Arctic National Wildlife Refuge, Alaska. This report is to contain the following:

(1) The identification of those areas within the Arctic Refuge coastal plain ("1002 area") that have oil and gas production potential and estimates of the volume of oil and gas;

(2) A description of the fish and wildlife, their habitats, and other resources in the 1002 area;

(3) An evaluation of the adverse effects of carrying out futher exploration, development and production of oil and gas on the 1002 area;

(4) A description of how oil and gas, if produced within the 1002 area, may be transported to processing facilities;

(5) An evaluation of how this oil and gas relates to the national need for additional domestic sources of oil and gas; and

(6) The recommendations of the Secretary with respect to whether further exploration for, and the development and production of oil and gas in the 1002 area should be permitted and, if so, what additional legal authority is necessary to ensure that the adverse effects of such activities on fish

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and wildlife, their habitat, and other resources are avoided or minimized.

The draft report/LEIS culminates more than 5 years of biological baseline studies, surface geological studies, and two seasons of seismic exploration surveys. The analyses of the data represent the exhaustive efforts of more than 50 scientists of the Department of the Interior. The draft report/LEIS has been prepared by the Fish and Wildlife Service, with cooperation from the U.S. Geological Survey and Bureau of Land Management.

Section 1002(h)(6) asks for a recommendation as to whether or not the coastal plain should be opened for oil and gas activity. To assist in making this recommendation, the draft report/LEIS analyzes a range of alternatives for management of the 1002 area: opening the entire area for oil and gas leasing; opening a limited area to oil and gas leasing; permitting additional exploration, including exploratory wells; taking no action regarding oil and gas activity but including the 1002 area in the comprehensive conservation planning process for the entire refuge; or designating the 1002 area as wilderness. The potential environmental consequences of implementing these alternatives are also examined.

Based on the analyses presented, on the national need for domestic sources of oil and gas, and on the ability of industry to minimize damage as learned from oil and gas activities elsewhere in the Alaskan arctic, the proposed action (preferred alternative) in the draft report/LEIS is to lease the entire 1002 area for further oil and gas exploration and development. To afford the special protection necessary to conserve the high natural resource values of the 1002 area the proposed action asks for authority to impose restrictions to ensure environmental integrity during all oil and gas operations. It is further recommended that development to be designed so as to result in no necessary adverse effects, and that unavoidable habitat losses be fully compensated.

During the early stages of preparing a preliminary draft report and detailed legislative environmental impact statement (LEIS) for departmental review, legal action was taken against the Department and the Fish and Wildlife Service by Trustees for Alaska and other environmental groups in *Trustees for Alaska, et al.*, Civ. No. A85-551 (D. AK. Feb. 25, 1986). The plaintiffs contended that the Department's plans (i.e., to circulate the report/LEIS for public comment concurrently with its submittal to Congress and to forward any comments received and the Department's responses subsequently) failed to fully comply with the National Environmental Policy Act (NEPA), and the Department must provide an opportunity for public participation in preparation of the report/LEIS in advance of its submittal to Congress. The court ruled in favor of the plaintiffs and by court order dated February 25, 1986, directed the Department to prepare both a draft and final report/LEIS's, and permit public review and comment on the draft LEIS. The court further directed that public meetings on the draft report/LEIS be held in Alaska and elsewhere and that the Department's responses to public comments be published locally before or at the time the final report/LEIS is submitted to Congress. It is the position of the Department and the Service that a draft report/LEIS need not be circulated in advance and that a single detailed report/LEIS, as provided for in 40 CFR 1506.8(b)(2), fully complies with the requirements of NEPA. Therefore, the Department has appealed the court's decision.

The appeal was argued on September 3, 1986. No decision has been issued yet and it is not possible to ascertain when the court of appeals will rule. Section 1002(h) of ANILCA requires the report be submitted by Congress no later than September 2, 1986. However, as a result of the lawsuit and appeal, submission of the report has been delayed. To afford the new Congress adequate time to consider the findings and recommendations of the Department of the Interior, the decision has been made to proceed with the administrative process imposed by the district court. By initiating the steps necessary to permit the early submission of the report/LEIS to the upcoming session of Congress, the Department of the Interior does not intend to disavow the government's position in *Trustees for Alaska v. Hodel*, not has it requested the Department of Justice to withdraw its appeal.

Unless the public is notified otherwise in a future public notice, public comments will be included, together with the Department's responses, in the final report/LEIS and forwarded concurrently to the Congress with the Secretary's final report/LEIS and the Record of Decision for consideration by Congress in deciding the future management of the Arctic Refuge coastal plain.

Dated: November 19, 1986.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 86-26489 Filed 11-21-86; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Western Sand and Gravel, Inc. et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on November 14, 1986 a proposed Consent Decree in *United States* v. *Western Sand & Gravel, Inc.*, Civil Action No. 86-0608-B and the consolidated case of *Violet* v. *Western Sand & Gravel, Inc.*, Civil Action No. 83-0788-B , was lodged with the United States District Court for the District of Rhode Island. The proposed consent decree concerns the discharge of pollutants from a hazardous waste site in Burrillville and North Smithfield, Rhode Island. The proposed consent decree requires the defendants to undertake certain site cleanup actions, prepare and implement a long-term groundwater contamination study, and reimburse the United States and State of Rhode Island for costs incurred and to be incurred in cleaning up the hazardous waste site and ensuring safe drinking water supplies for neighboring residences.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Western Sand and Gravel, Inc.*, D.J. Ref. #90-11-2-63.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Room 208 Federal Building and Courthouse, Kennedy Plaza, Providence, Rhode Island 02903; at the Region I Office of the Environmental Protection Agency, Office of Regional Counsel, 20th Floor, John F. Kennedy Federal Building, Boston, Massachusetts, 02203; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice at the above address. In requesting a copy, please enclose a check in the amount of $18.40

payable to the Treasurer of the United States, to cover the cost of reproduction.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-26381 Filed 11-21-86; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

United States v. Rohm and Haas Co. Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)(–(h), that a complaint, proposed final judgment, stipulation, and competitive impact statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Rohm and Haas Company*.

The complaint of the United States in this case alleges that the effect of Rohm and Haas Company's May 29, 1984 acquisition of the ion exchange resins business and assets of a subsidiary of Diamond Shamrock Corporation, Duolite International Inc., may be substantially to lessen competition in the United States in the sale of ion exchange resins in violation of section 7 of the Clayton Act (15 U.S.C. 18). Ion exchange resins are synthetic resinous beads principally used to remove objectionable ions from aqueous solutions thereby purifying the solution. In 1983, total sales of ion exchange resins in the United States were approximately $112 million. Rohm and Haas accounted for approximately 35 percent of those sales, and Duolite accounted for approximately 16 percent of those sales.

The proposed Final Judgment would require Rohm and Haas, through a broker, to divest the Duolite ion exchange resin plant, which is located in Redwood City, California, and a non-exclusive technology license for the manufacture and sale of the ion exchange resins that Diamond Shamrock produced at the plant at any time during the two year period prior to the acquisition.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to P. Terry Lubeck, Chief, Litigation II Section, Antitrust Division, Room 10-437 Judiciary Center Building, U.S. Department of Justice, Washington, DC 20001 (202/724-7966).

Dated: November 17, 1986.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Rohm and Haas Company*, Defendant.

[Civil No. 86-3091]

Filed: November 10, 1986.
Judge Gasch.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

(1) The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court;

(2) The parties shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment;

(3) In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: ———.

For the Plaintiff United States of America:

Douglas H. Ginsburg,

Assistant Attorney General.

Roger B. Andewelt,

P. Terry Lubeck,

Mark C. Schechter,

Attorneys, Antitrust Division, U.S. Department of Justice.

Burney P.C. Boote,

Robert M. Huber,

Attorneys, Antitrust Division, U.S. Department of Justice, Washington, DC 20530, (202) 724-7966.

For Defendant Rohm and Haas Company

Ky P. Ewing, Jr.,

Vinson and Elkins, 1455 Pennsylvania Avenue, N.W., Washington, DC 20004-1007, Attorney for Rohm and Haas Company.

Stipulation Approved for Filing

Done this ——— day of November, 1986.

United States District Judge.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Rohm and Haas Company*, Defendant.

[Civil Action No. 86-3091]

Filed: November 10, 1986.
Entered: ———.
Judge Gasch.

Final Judgment

Whereas, plaintiff, United States of America, having filed its Complaint herein on ———, and plaintiff and defendant, by their respective attorneys, having consent to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

And whereas, the defendant has agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, prompt and certain divestiture is the essence of this agreement;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendant under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II

As used in this Final Judgment:

A. "Rohm and Haas" means defendant, Rohm and Haas Company; each division, subsidiary of affiliate thereof; and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them.

B. "Diamond Shamrock" means Diamond Shamrock Corporation; and each division, subsidiary or affiliate thereof.

C. "Redwood City plant" means the Ion Exchange Resin plant coated at Redwood City, Calfiornia, that Rohm and Haas purchased from Diamond Shamrock on May 29, 1984.

D. "Ion Exchange Resin" means a solid resinous material comprising a polymeric matrix having fixed, charged sites distributed throughout the matrix and having associated with those sites ionized, exchangeable ions, wherein the electric charges of the sites are opposite to those of the ions.

E. "Specified Resins" means all Ion Exchange Resins that Diamond Shamrock produced at the Redwood City plant at any time during the two (2) year period ending May 29, 1984.

F. "Ion Exchange Technology" means all technology, information, and know-how, whether patented or unpatented, that Diamond Shamrock used at the Redwood City plant to produce any of the Specified Resins and that Rohm and Haas acquired from Diamond Shamrock on May 29, 1984.

G. "Ion Exchange Assets" means all of the following:

(1) the land comprising the Redwood City plant site, consisting of approximately 11 acres;

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(2) all buildings, fixtures, machinery, and equipment located on the Redwood City Plant site at the time of its acquisition by Rohm and Haas;

(3) A non-exclusive license to practice the Ion Exchange Technology for the manufacture and sale of ion exchange resins anywhere in the world; and

(4) Ion Exchange Resins inventory existing at the Redwood City plant at the time of the divestiture required by Section IV. of this Final Judgment.

H. "Divestiture" (and "to divest") means:

(1) the sale of the assets identified in Sections II.G. (1), (2) and (4) above, and

(2) the license of the Ion Exchange Technology as described in section II.G.(3) above.

I. "Person" means any natural person, corporation, association, firm, partnership, or other business or legal entity.

III

A. The provisions of this Final Judgment shall apply to Rohm and Haas, its successors and assigns, and to all other persons in active concern or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Except for section IV.F. of this Final Judgment, nothing herein contained shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

C. Rohm and Haas shall require, as a condition of the sale or other disposition of all or substantially all of its assets or stock, that the purchaser agree to be bound by the provisions of this Final Judgment.

IV

A. Rohm and Haas is hereby ordered and directed to:

(1) divest to a purchaser, or pursuant to Section IV.C. more than one purchaser, all of its direct and indirect ownership and control of the Ion Exchange assets; and

(2) in the event of such divestiture, refrain from using the Duolite trademark in the United States, except to the extent necessary under United States laws to maintain Rohm and Haas' rights to the trademark and as provided in section IV.H. of this Final Judgment.

B. Divestiture of the Ion Exchange Assets shall be accomplished so as to obtain the highest dollar value then obtainable for the Ion Exchange Assets, but shall not be made to a producer of Ion Exchange Resins without plaintiff's permission.

C. Rohm and Haas may divest less than all of the Ion Exchange Assets, and to more than one purchaser, but only with the written approval of the plaintiff. In the event that the plaintiff approves a sale to a purchaser pursuant to this paragraph, such sale shall fully discharge Rohm and Haas' obligation to divest the Ion Exchange Assets under Section IV.A.(1) of this Final Judgment.

D. Rohm and Haas shall continue to operate the Redwood City plant until the divestiture required by Section IV.A. is completed or at least until one hundred and eighty days after the filing of the Complaint in this action, and shall use its best efforts to retain present plant personnel, provided that nothing contained herein shall be construed to deny Rohm and Haas the opportunity to petition the Court to be permitted to discontinue any operation at the Redwood City plant if, in the reasonable opinion of Rohm and Haas, the continuation of such operation would pose an unreasonable risk of harm to plant personnel or the public. After such date, Rohm and Haas shall be free to cease operations at the Redwood City plant and discharge plant personnel, subject only to the right of representatives of the Department of Justice to apply to the Court under Section V.D. of this Final Judgment for an order compelling Rohm and Haas to continue to operate the Redwood City plant. Until this Final Judgment shall be discharged, Rohm and Haas shall not dismantle or remove any equipment from the Redwood City plant.

E. Any license of the Ion Exchange Technology may contain appropriate provisions (1) Requiring the licensee to hold in confidence and not disclose the licensed technology to third parties, other than an assignee of the entire license, (2) restricting the licensee's right to sublicense the licensed technology without the prior written consent of Rohm and Haas, (3) requiring the licensee to indemnify and hold Rohm and Haas harmless against claims by third parties who purchase Specified Resins produced with the licensed technology, and (4) disclaiming any warranties that might be implied in connection with the license of the technology, including any warranty that the licensed technology will produce Ion Exchange Resins of a certain grade or quality, or at certain costs, or will achieve certain production yields, or that any Specified Resin will be merchantable or fit for any particular purpose.

F. Subject to the provisions set out in Section IV.G. of this Final Judgment, which is subject to any orders or directions the Court may issue on motion of Rohm and Haas under Section XIV. of this Final Judgment, Rohm and Haas shall:

(1) furnish to all bona fide prospective purchasers who so request all pertinent information regarding the Ion Exchange Assets, the Specified Resins, Ion Exchange Technology, and the assistance Rohm and Haas shall provide pursuant to Sections VIII. and IX. of this Final Judgment;

(2) provide such information to the plaintiff at the time it furnishes such information to any other person; and

(3) permit all bona fide prospective purchasers to have access to personnel at Rohm and Haas' Redwood City plant and to Rohm and Haas personnel who have responsibilities for Rohm and Haas' Ion Exchange Resin business at the Redwood City plant, and to make such inspection of the physical facilities at the Redwood City plant, and any and all financial and operation records, documents, and information as may be relevant to the divestiture required under Section IV.

G. Rohm and Haas may decline to furnish or grant any prospective purchaser access to any confidential or proprietary information relating to the Ion Exchange Assets, the Specified Resins, or the Ion Exchange Technology, or to permit such person access to the Redwood City plant unless such person shall have executed an appropriate confidentiality agreement that shall prohibit such person from disclosing or using (except for purposes of evaluating the acquisition of the assets to be divested pursuant to the terms of this Final Judgment, or unless such person purchases the assets to be divested pursuant to the terms of this Final Judgment) any confidential information of Rohm and Haas for a period of ten (10) years from the date of the confidentiality agreement. In addition, Rohm and Haas may decline to furnish any prospective purchaser with the recipes and operating instructions for the production of the Specified Resins unless and until such person shall have offered to enter into an agreement to purchase the Specified Resins or Ion Exchange Technology covered by the disclosure.

H. Notwithstanding Rohm and Haas' obligation under Section IV.A.(2) of this Final Judgment, and subject to the right of a purchaser of the Ion Exchange Assets to purchase inventories of Ion Exchange Resins as provided in section II.G.(4) of this Final Judgment, Rohm and Haas may dispose of already packaged stocks bearing the Duolite trademark existing in the United States on the closing date of the required divestiture.

V

A. First San Francisco Corporation shall act as an independent broker with full power and authority to carry out the divestiture ordered in Section IV. of this Final Judgment at such price and on such terms as are then obtainable upon a reasonable effort by the independent broker, subject to the provisions of section VI. of the Final Judgment, and shall have such other powers as the Court deems appropriate. The independent broker shall serve at the cost and expense of Rohm and Haas. The compensation of such broker shall be based on a fee arrangement providing the independent broker with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished. Only the independent broker, and not Rohm and Haas, shall have the right to effect divestitute under Section IV. of this Final Judgment, but Rohm and Haas shall use all reasonable efforts to assist the independent broker in accomplishing the required divestiture. Rohm and Haas may object to a proposed divestiture pursuant to this Final Judgment only if (1) The circumstances of such divestiture indicate malfeasance on the part of the independent broker, or (2) the proposed divestiture does not satisfy the requirements set forth in Section IV.B. of this Final Judgment. Any such objection by Rohm and Haas must be conveyed in writing to the plaintiff and the independent broker within fifteen (15) days after the independent broker has notified Rohm and Haas of the proposed sale.

B. The independent broker shall commence efforts to find a purchaser and to effect the required divestiture immediately upon the date of the filing of the Complaint in this civil action. The independent broker shall at all times use its best efforts to effect divestiture of the Ion Exchange Assets. Rohm and Haas shall promptly notify the independent broker of any contact it has had with any person that has made an offer or expressed an interest or desire to acquire any of the Ion Exchange Assets together with full details of the same.

C. The independent broker shall have full and complete access to the personnel, books, records, and facilities of Rohm and Haas related to the Ion Exchange Assets, and Rohm and Haas shall develop such financial or other information relevant to the Ion Exchange Assets as the independent broker may request. Rohm and Haas shall take no action to interfere with or impede the independent broker's accomplishment of the required divestiture.

D. Thirty (30) days from the date of the filing of the Complaint in this civil action and every thirty (30) days thereafter until the divestiture required by Section IV of this Final Judgment has been completed, the independent broker shall submit a report to the parties and the Court setting forth the independent broker's efforts to accomplish the required divestiture. If the independent broker has not accomplished such divestiture within one hundred and eighty (180) days after filing of the Complaint in this civil action, the independent broker shall thereupon promptly file with the Court a report setting forth: (1) The independent broker's efforts to accomplish the required divestiture, (2) the reasons, in the independent broker's judgment, why the required divestiture has not been accomplished, and (3) the independent broker's recommendations. The independent broker shall at the same time furnish such report to the parties, which shall each have the right to be heard and to make additional recommendations consistent with this Final Judgment. The Court shall thereafter enter such orders as it shall deem appropriate, which shall, if necessary, include extending the term of the independent broker's appointment if the independent broker is in active negotiations with a prospective purchaser or if the Court finds that Rohm and Haas has filed to comply with its obligations under this Final Judgment, and which may also include an order deeming the purposes of this Final Judgment to have been fully complied with by the efforts made by the independent broker through such date and relieving Rohm and Haas of further obligations under this Final Judgment.

VI

At least thirty (30) days prior to the scheduled closing date of the proposed divestiture pursuant to Section IV of this Final Judgment, the independent broker shall notify the plaintiff and Rohm and Haas of the proposed divestiture. The notice shall set forth the details of the proposed transaction and, for each person not previously identified who offered or expressed an interest or desire to acquire any ownership interest in the Ion Exchange Assets, the name, address, and telephone number of that person together with full details of that person's interest or desire to acquire such ownership interest, and certify that the proposed divestiture is to the highest bidder. Withiin fifteen (15) days after receipt of notice of the proposed divestiture, the plaintiff may request from Rohm and Haas and the proposed purchaser additional information concerning the proposed divestiture. Rohm and Haas shall furnish the additional information requested from it within twenty (20) days of the receipt of the request, unless plaintiff shall agree to extend the time. Until plaintiff certifies in writing that it is satisfied that the proposed purchaser has provided the additional information requested from it, the divestiture shall not be consummated. Within thrity (30) days after receipt of the notice or within fifteen (15) days after receipt of the additional information from Rohm and Haas and the proposed purchaser, whichever is later, unless Rohm and Haas shall agree to extend the time, plaintiff shall notify in writing Rohm and Haas and the independent broker if it objects to the proposed divestiture. If plaintiff fails to object within the period specified, or if plaintiff notifies in writing Rohm and Haas and the independent broker that it does not object, the divestiture may be consummated, subject only to Rohm and Haas' right to object to the sale under the proviso in Section V.A. Upon objection by the plaintiff, the proposed divestiture shall not be consummated unless approved by the Courts. Upon objection by Rohm and Haas under Section V.A. of this Final Judgment, the proposed divestiture shall not be consummated unless approved by the Court. The one hundred and eighty (180) day time peridd set forth in Section V.D. of this Final Judgment shall be tolled from the time either the plaintiff or Rohm and Haas files with the Court such an objection to the proposed divestiture, until the conclusion of any Court proceeding relating to such objection. In any such proceeding involving any objection by Rohm and Haas, Rohm and Haas shall have the burden of proof.

VII

Rohm and Haas shall not finance without the plaintiff's permission all or any part of the purchase of the Ion Exchange Assets pursuant to the divestiture required by Section IV. of this Final Judgment.

VIII

A. Upon request of the purchaser, Rohm and Haas shall use its best efforts to make available, at a reasonable time and place and for a period not to exceed one hundred and eighty (180) days from the closing date of the required divestiture, qualified technical personnel to assist the purchaser to design a laboratory for research and development with respect to Specified Resins.

B. Upon request of the purchaser, Rohm and Haas shall use its best efforts to make available, at a reasonable time and place and for a period not to exceed one hundred and eighty (180) days from the closing date of the required divestiture, qualified technical personnel to advise the purchaser on the production of Specified Resins.

C. Upon request of the purchaser, Rohm and Haas shall use its best efforts to make available, at a reasonable time and place and for a period not to exceed one hundred and eighty (180) days from the closing date of the required divestiture, qualified personnel to assist the purchaser to hire and train a sales and technical support staff for marketing Specified Resins.

D. If, within ninety (90) days from the closing date of the required divestiture, the purchaser states that it intends to relocate the Ion Exchange Resin production equipment currently located at the Redwood City plant to some other location, upon request of the purchaser, Rohm and Haas shall use its best efforts to make available, at a reasonable time and place and until one hundred and eighty (180) days following the closing date of the required divestiture, qualified technical personnel to advise the purchaser on transferring and reassembling the production equipment. In the event that the purchaser chooses to transfer the Ion Exchange Resin production equipment currently located at the Redwood City plant to some other location pursuant to this paragraph, and at the request of the purchaser, the time periods provided for in section VIII.A.–D. of this Final Judgment shall be tolled until such time as the relocated facility is operational, but not to exceed three hundred and sixty (360) days.

E. All assistance and advice made available pursuant to this Section VIII. shall be made available at cost (salary, benefits, and out-of-pocket expenses), determined in accordance with generally accepted accounting principles. Any controversy concerning the cost of the assistance and advice shall be settled by arbitration.

F. With respect to Rohm and Haas' obligations under this Section VIII. to provide advice and/or assistance in the start-up of anion resin production, if, in the reasonable opinion of Rohm and Haas, Rohm and Haas employees engaged in furnishing on-site assistance during the start-up of anion resin production would be exposed to undue risk of bodily harm as a result of the purchaser's failure to install adequate systems and equipment to protect the health and safety of persons involved in the production of anion resins, then Rohm and Haas may refuse to furnish such on-site assistance, provided that Rohm and Haas shall promptly notify in writing representatives of the Department of Justice, and the purchaser, of such refusal. Such notice shall state why, in the opinion of Rohm and Haas, such operation is unsafe, and describe the systems or equipment Rohm and Haas believes is required to render such operation safe and estimate the current cost of the systems or equipment. The Department shall have fifteen (15) days from the receipt of such notice in which to notify Rohm and Haas that it either disagrees with Rohm and Haas' conclusion or lacks sufficient information upon which to form a belief as to the safety of the anion operation. If the Department shall fail to so notify Rohm and Haas, then Rohm and Haas shall not be required to furnish on-site assistance to the purchaser in the start-up of anion resin production, unless and until the purchaser shall have installed the systems or equipment Rohm and Haas believes is required to render the operation safe. If the Department shall so notify Rohm and Haas, then Rohm and Haas shall have fifteen (15) days from the receipt

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of such notice in which to petition the Court for an order relieving it of its responsibility to furnish the purchaser with on-site assistance in the start-up of anion resin production. If Rohm and Haas shall file its petition within the aforesaid period, then Rohm and Haas shall not be required to furnish the purchaser with on-site assistance in the start-up of anion resin production until the Court has ruled on Rohm and Haas' petition. If, under this section VIII.F., Rohm and Haas refuses to provide on-site assistance in the start-up of anion resin production, the time period provided in section VIII.B. of this Final Judgment (as applicable to Rohm and Haas' obligation to provide advice on the production of anion resins) shall be tolled from the time of such refusal until the Court has ruled on Rohm and Haas' petition.

IX

At the closing of the required divestiture, Rohm and Haas shall furnish to the purchaser at no charge a list of: (1) The names and addresses of all persons in the United States that purchased one or more Specified Resins at any time during the period beginning May 29, 1982 and ending on the tenth day preceding the closing date of the required divestiture, and (2) for each such person, the Specified Resins the person purchased and the amounts (by calendar year) of such purchases.

X

Rohm and Haas shall provide current Rohm and Haas employees who were formerly employees of Diamond Shamrock in the United States at the time Rohm and Haas acquired the Redwood City plant and who leave Rohm and Haas to work for the purchaser within sixty (60) days of the closing date of the required divestiture with a severance package equal to the severance package equal to the severance package Diamond Shamrock offered to its employees at the time Rohm and Haas acquired the Redwood City plant. Rohm and Haas will make the same severance payment to other employees of Rohm and Haas who are engaged in the production, sales, or marketing of Ion Exchange Resins in the United States and who leave Rohm and Haas to work for the purchaser within sixty (60) days of the date of the closing of the required divestiture on the first anniversary date of such person's employment with the purchaser, provided that such employee has worked for the purchaser for one (1) year.

XI

At the time of the required divestiture, Rohm and Haas shall enter into a reasonable arbitration agreement with the purchaser concerning controversies to be settled by arbitration pursuant to this Final Judgment. When any controversy is submitted to arbitration, Rohm and Haas shall promptly notify plaintiff in writing of the controversy being arbitrated and shall promptly serve a copy of the final award on plaintiff.

XII

Rohm and Haas shall require, as a condition of its sale or other disposition of all, or substantially all, of the assets used by it in the production, distribution, and sale of Ion Exchange Resins other than the Ion Exchange Assets, that the acquiring party agree to be bound by the provisions of this Final Judgment, and that such agreement be filed with this Court.

XIII

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Rohm and Haas made to its principal office, be permitted:

(1) access during office hours of Rohm and Haas to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Rohm and Haas, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) subject to the reasonable convenience of Rohm and Haas and without restraint or interference from it, to interview officers, employees and agents of Rohm and Haas, who may have counsel present, regarding any such matter.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to Rohm and Haas' principal office, Rohm and Haas shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section XIII. shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Rohm and Haas to plaintiff, Rohm and Haas represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Rohm and Haas marks each pertinent page of such material, "subject to claim of protection under Rule 26(c)(7A) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to Rohm and Haas prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XIV

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XV.

This Final Judgment will expire on the tenth anniversary of its date of entry.

XVI

Entry of this Final Judgment is in the public interest.

United States District Judge.

Dated: ———.

United States District Court For The District of Columbia

United States of America, Plaintiff, v. *Rohm and Haas Company*, Defendant.

[Civil Action No. 86–309]

Filed: November 10, 1986.
Judge Gasch.

Competitive Impact Statement

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)–(h)), the United States of America files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of Rohm and Haas Company in this civial antitrust proceeding.

I. Nature and Purpose of the Proceeding

This civil action began on ———, 1986, when the United States filed a Complaint alleging that the acquisition by Rohm and Haas Company (hereinafter "Rohm and Haas") of the assets of the ion exchange resins business of Duolite International, Inc. (hereinafter "Doulite USA"), a subsidiary of Diamond Shamrock Corporation (hereinafter "Diamond"), violated section 7 of the Clayton Act (15 U.S.C. 18). The Complaint alleges that the effect of the acquisition may be substantially to lessen competition for sale in the production of ion exchange resins in the United States. Ion exchange resins are synthetic resinous beads principally used to remove objectionable ions from aqueous solutions thereby purifying the solutions. The Complaint requests that Rohm and Haas be required to divest the assets comprising the Duolite USA ion exchange resins business and to continue to operate the business until the earlier of the completion of the required divestiture or one hundred and eighty days after the filing of the Complaint.

The United States and Rohm and Haas have stipulated that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act. Entry of the proposed Judgment will terminate the action, except that the Court will retain jurisdiction to construe, modify, and enforce the Judgment, and to punish violations of the Judgment.

II. Events Giving Rise to the Alleged Violation

On May 19, 1984, Rohm and Haas purchased from Diamond for about $45 million the Duolite USA ion exchange resins business and assets, located at Redwood City, California, and the Duolite International, S.A. (hereafter "Duolite France") ion exchange resins business and assets, located at Chauny, France. At the time of the acquisition, Rohm and Haas and Duolite USA both produced ion exchange resins for sale in the United States. Rohm and Haas is now, and was then, the world's largest producer of ion exchange resins. At the time of the acquisition, Diamond, through Duolite USA and Duolite France and a facility located in Wales, was the World's second largest producer of such resins. In the United States, Rohm and Haas ranked first and Duolite USA ranked third based on sales. The Complaint alleges that in 1983, Rohm and Haas and Duolite USA together accounted for about $57 million or about 50 percent of the $112 million of United States sales of ion exchange resins.

The complaint alleges that for antitrust purposes the relevant product market is ion exchange resins and the relevant geographic market is the United States, and that the combination of the ion exchange resins businesses of Rohm and Haas and Duolite USA may substantially lessen competition in the ion exchange resins market in the United States in violation of section 7 of the Clayton Act.

Ion exchange resins are used principally to remove objectionable ions from aqueous solutions. Resins are small, solid, water-insoluble, synthetic resinous beads that contain either positively or negatively charged replaceable ions. When resins are brought in contact with an aqueous solution, they exchange unobjectionable ions located on the beads for objectionable ions in the solution, thereby removing the objectionable ions from the solution. Resins have a broad range of uses in there general applications: industrial water treatment; home water treatment; and specialty applications.

The Complaint alleges that the production of ion exchange resins for sale in the United States is highly concentrated. In 1983, Rohm and Haas accounted for approximately 35 percent of the sales of ion exchange resins in the United States, and Duolite USA accounted for 16 percent of United States sales. The Herfindahl-Hirschman Index ("HHI"), a measure of market concentration, was about 2559 in the market for ion exchange resins in the United States prior to Rohm and Haas' acquisition of Duolite USA. The combination of Rohm and Haas and Duolite USA increased the HHI 1020 points to a postmerger HHI of 3579.

Successful new entry into the production and sale of ion exchange resins involves significant time and costs. A small but significant nontransitory price increase would not induce new entry.

III. Explanation of the Proposed Final Judgment and Its Anticipated Effects on Competition

The United States brought this action because the effect of the acquisition by Rohm and Haas of the assets of the ion exchange resins business of Duolite USA may be substantially to lessen competition in violation of Section 7 of the Clayton Act in the production of ion exchange resins for sale in the United States. The anticompetitive effects associated with Rohm and Haas' acquisition of the Duolite USA assets would be eliminated if those assets could be sold to a purchaser that would operate the business as an active and independent competitor of Rohm and Haas.

To this end, section IV of the proposed Final Judgment would require Rohm and Haas to divest the Duolite USA ion exchange resins assets it acquired from Diamond to a purchaser acceptable to the United States. In addition, this section of the proposed Final Judgment would require Rohm and Haas to continue to operate its Redwood City Plant until the divestiture required by the proposed Final Judgment is completed, or at least until one hundred and eighty days after the filing of the Complaint in this action.

Section V of the proposed Final Judgment provides that the sale of the assets would be accomplished by First San Francisco Corporation, an independent broker, whose term of apppintment will commence upon the filing of the Complaint. The independent broker, and not Rohm and Haas, would have the right to sell the business. The independent broker would be required to sell the ion exchange resins assets at the best price obtainable to a purchaser acceptable to the United States. If the independent broker has not accomplished the divestiture within one hundred and eighty (180) days after the Complaint is filed, the Court would have the power to enter such orders as it shall deem apropriate. Further, Rohm and Haas would be required to pay all of the independent broker's expenses in selling the assets.

Section VI of the proposed Final Judgment would provide the United States with an opportunity to review any proposed divestiture before it occurs. Under section VI, the United States could request information from Rohm and Haas and the proposed purchaser to assess a proposed divestiture. If the United States requests such information from Rohm and Haas and the proposed purchaser, the divestiture could not be consummated until the United States certifies in writing that it is satisfied that Rohm and Haas and the proposed purchaser have provided the additional information. Rohm and Haas and the proposed purchaser could not consummate the divestiture until 20 days after they have supplied the information. If the United States were to object to a divestiture of the Duolite assets proposed under section IV, the divestiture could not be completed unless approved by the Court.

Section VII of the proposed Final Judgment would prevent Rohm and Haas from financing without the permission of the United States all or any part of the divestiture required by the Final Judgement.

Under Section VIII, Rohm and Haas would be required, upon request of the purchaser, to use its best efforts to provide technical assistance to assist the purchaser to design an R&D laboratory, to advise the purchaser on the production of ion exchange resins,and to assist the purchaser to hire and train a sales and technical support staff for marketing resins. Section VIII also would require Rohm and Haas, if the purchaser decides to relocate the production equipment currently located at the Redwood City plant, and requests Rohm and Haas' assistance, to advise the purchaser on the relocation. Rohm and Haas would be required to make all such assistance available at cost.

Section IX would require Rohm and Haas to provide the purchaser at no charge a list of customers for ion exchange resins produced at Redwood City.

Section X would require Rohm and Haas to provide current Rohm and Haas employees who leave Rohm and Haas to work for the purchaser the same severance package that Diamond offered to its employees at the time Rohm and Haas acquired Duolite. Section XIII would permit the United States to obtain information and documents concerning compliance with the proposed Final Judgment.

Finally, Section XV would provide that the Final judgment would expire on the tenth anniversary of the date of entry of the Final Judgment.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who had been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment would neither impair nor assist the bringing of any private antitrust damage actions. Under provisions of section 5(a) of the Clayton Act (15 U.S.C. 16(a)), entry of the proposed Final Judgment would have no prima facie effect in any subsequent private lawsuit that may be brought against the defendant.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and defendant Rohm and Haas have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the Antitrust Procedures and Penalties Act, provided that the United States has not withdrawn its consent. The Act conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The Act provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wants to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to: P. Terry Lubeck, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, Washington, DC 20530.

Under section XIV. of the proposed Final Judgment, the Court would retain jurisdiction over this matter for the purpose of enabling the United States or Rohm and Haas to apply to the Court for such further orders or directions as may be necessary or appropriate for the construction, implementation, modification, or enforcement

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of compliance with the Judgment, or for the punishment of any violations of the Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered only one alternative to settling this matter with the proposed Final Judgment. The alternative considered was to file suit seeking, in addition to divestiture of the Duolite USA ion exchange resin assets, divestiture of the assets of the ion exchange resins business of Duolite France, which Rohm and Haas also acquired at the same time from Diamond. At the time of the acquisition, Duolite France's ion exchange resins business, which Rohm and Haas still operates in Chauny, France, produced resins for sale in the United States and France as well as other parts of the world in competition with Rohm and Haas.

The United States decided to accept the proposed Final Judgment, rather than to file suit seeking divestiture of the assets of both Duolite USA and Duolite France, because the United States concluded that a prompt divestiture of Duolite USA would offer the best result for United States consumers of ion exchange resins. At the time Rohm and Haas acquired it, Duolite France played only a minor role in the United States ion exchange resins market. Duolite France accounted for about 6 percent of the combined sales in the United States of Duolite France and Duolite USA and only about one percent of total sales of all competitors in the United States market. Moreover, since the acquisition, Rohm and Haas has spent considerable time and money making the French facility more efficient, by combining its technology with that of Duolite France, and as a result, the French facility has substantially improved Rohm and Haas' competitive position in foreign markets. Rohm and Haas would argue in litigation that the pro-competitive effects resulting from these increased efficiencies far outweigh any alleged anticompetitive effect in the United States market attributable to the Duolite France assets.

Although the United States can present arguments to counter these points, a significant risk exists that after litigation on the merits, a court would order a divestiture limited to the assets of Duolite USA. In addition, litigation is not only risky but is also likely to be quite costly and lengthy. Accordingly, United States resin consumers would be denied, until the litigation was completed, the prospect of the competition created by a prompt divestiture of the assets of Duolite USA.

Under the circumstances, the United States has determined that the public interest in preserving competition in the market for ion exchange resins would be served best by obtaining Rohm and Haas' consent to an enforceable decree requiring it to divest the assets of Duolite USA. Although the proposed Final Judgment may not be entered until the criteria established by the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)–(h)) have been satisfied, the public will benefit immediately from the safeguards in the proposed Final Judgement because Rohm and Haas has stipulated to comply with the terms of the Judgment pending its entry by the Court.

VII. Determinative Documents

No documents were determinative in the formulation of the proposed Final Judgment. Consequently, the United States has not attached any such documents to the proposed Final Judgment.

Dated: ———, 1986.

Respectfully submitted,

Burney P.C. Boote,

Attorney, U.S. Department of Justice, Antitrust Division, Room 10–437, Judiciary Center Building, Washington, DC 20001, 202/724–7969.

[FR Doc. 86–26428 Filed 11–21–86; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

Advisory Council on Employee Welfare and Pension Benefit Plan; Meeting

Pursuant to Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 29 U.S.C. 1142, a meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Tuesday, December 16, 1986, in Room S–4215C, U.S. Department of Labor Building, Third and Constitution Avenue, NW. Washington, DC.

The purpose of the meeting, which will begin at 9:30 a.m., is to consider the items listed below and to invite public comment on any aspect of the administration of ERISA.

1. Installation of New Members.
2. Hear Status Report of Advisory Council Work Group on Individual Benefit Reporting and Recordkeeping.
3. Council Discussion: New Enforcement Strategy.
4. Statements from the Public.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before December 12, 1986, to Charles W. Lee, Jr., Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals wishing to address the Advisory Council should forward their request to the Executive Secretary or telephone (202/523–8753). Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record.

Signed at Washington, DC, this 18th day of November, 1986.

Dennis M. Kass,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 86–26388 Filed 11–21–86; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefit Plans; Work Group Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Individual Benefit Reporting and Recordkeeping of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9:30 a.m., December 17, 1986, at the U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5437B, Washington, DC 20210.

This four-member work group was formed by the Advisory Council to study issues relating to individual benefit reporting and recordkeeping for employee benefit pension plans covered by ERISA.

The purpose of the December 17 meeting is to study regulatory issues relating to individual benefit reporting and recordkeeping by ERISA covered employee benefit pension plans.

Signed at Washington, DC this 18th day of November, 1986.

Dennis M. Kass,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 86–26389 Filed 11–21–86; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted by December 15, 1986.

ADDRESSES: Send comments to Mrs. Judy Egan, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503; (202-395-6880). In addition, copies of such comments may be sent to Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5464).

FOR FURTHER INFORMATION CONTACT: Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5464) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the reinstatement of a previously approved collection for which approval has expired. The entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to prepare the form.

This entry is not subject to 44 U.S.C. 3504 (h).

Title: Music Presenters and Festivals Application Guidelines FY 1988.

Frequency of Collection: One-time.

Respondents: Non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from nonprofit organizations that apply for funding under specific Program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 375.

Estimated Hours for Respondents to Provide Information: 17,884.

Murray R. Welsh,

Director, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 86-26382 Filed 11-21-86; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Forms Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357-9451.

OMB Desk Officer: Carlos Tellez, (202) 395-7340.

I. *Title*: Higher Education Surveys (previously "Higher Education Panel".

Affected Public: Non-profit Institutions.

Number of Respondents: 400 respondents, total of 3,600 burden hours.

Abstract: The panel surveys are responsive to a variety of policy issues. Topics are not predetermined. Survey instruments are designed specifically for each survey. Recent individual surveys served program management needs, research objectives, and general purposes not available through existing information sources.

II. *Title*: 1987 Survey of Doctorate Recipients.

Affected Public: Individuals or Households.

Number of Respondents: 50,100 respondents, total of 5,993 burden hours.

Abstract: This survey will collect demographic and employment data on PH.D. scientists, engineers, and humanists. This information will be used in policy and planning activities by government agencies, educational institutions, and private industry.

Dated: November 18, 1986.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 86-26429 Filed 11-21-86; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel on Measurement Methods and Data Improvement; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel on Measurement Methods and Data Improvement.

Date/Time: December 8-9, 1986: 9:00 a.m. to 6:00 p.m.

Place: Room 1242, National Science Foundation, 1800 G Street, NW., Washington, DC 20550

Type of Meeting: Closed—December 8-9, 1986: 9:00 a.m. to 6:00 p.m.

Contact Person: Dr. Murray Aborn, Program Director, Measurement Methods and Data Improvement, Room 312, National Science Foundation, Washington, DC 20550; Telephone (202) 357-7328.

Summary of Minutes: May be obtained from the contact person, Dr. Murray Aborn, at the above address

Purpose of Advisory: To provide advice and recommendations concerning support for research and research-related projects in Measurement Methods and Data Improvement.

Agenda: Review and evaluation of research and research-related proposals as part of the selection process.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in Sunshine Act.

Authority To Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 86-26430 Filed 11-21-86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Containment Requirements; Meeting

The ACRS Subcommittee on Containment Requirements will hold a meeting on December 9, 1986, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, December 9, 1986—1:00 P.M. until the conclusion of business

The Subcommittee will discuss the NRR proposed generic letter on Mark I BWR containment requirements. Included will be a discussion of Revision 4, BWR Emergency Procedure Guidelines (covers venting concepts).

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions

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with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Dean Houston (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: November 19, 1986

Morton W. Liberkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-26470 Filed 11-21-86; 8:45 am]

BILLING CODE 7590-01-M

PENSION BENEFIT GUARANTY CORPORATION

Exemption From Bond/Escrow Requirement Relating to Sale of Assets by an Employer Who Contributes to a Multiemployer Plan; Hudson I.C.S.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of exemption.

SUMMARY: The Pension Benefit Guaranty Corporation has granted a request from Hudson I.C.S. for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended. A notice of the request for exemption from the requirement was published on September 19, 1986 (51 FR 33324). The effect of this notice is to advise the public of the decision on the exemption request.

ADDRESSES: The request for an exemption and the PBGC response to the request are available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: John Carter Foster, Attorney, Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; telephone 202-778-8850 (202-778-8859) for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

Section 4204 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980, ("ERISA" or "the Act"), provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1)(A)-(C), are that—

(A) The purchaser has an obligation to contribute to the plan with respect to the operations for substantially the same number of contribution base units for which the seller was obligated to contribute;

(B) The purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred (the amount of the bond or escrow is doubled if the plan is in reorganization in the year in which the sale occurred); and

(C) The contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale.

Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. The granting of an exemption or variance from the bond/escrow requirement does not constitute a finding by the PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1).

Under the PBGC's regulation on variances for sales of assets (29 CFR Part 2643), a request for a variance or waiver of the bond/escrow requirement under any of the tests established in the regulation (§§ 2643.12-2643.14) is to be made to the plan in question. The PBGC will consider waiver requests only when the request is not based on satisfaction of one of the four regulatory tests or when the parties assert that the financial information necessary to show satisfaction of one of the regulatory tests is privileged or confidential financial information with the meaning of section 552(b)(4) of the Freedom of Information Act.

Under § 2643.3 of the regulation, the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

Decision

On September 19, 1986 (51 FR 33326), the PBGC published a request from Hudson I.C.S. ("the Buyer") for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) as it applies to the purchase of the assets of the Hudson Lumber Company ("the purchased facility") from the Berol Corporation ("the Seller"). The sale of assets became effective on or about June 21, 1985. No comments were received in response to the notice.

Employees at the purchased facility are covered by a multiemployer pension plan, and Lumber Industry Pension Fund ("the Fund"). The Buyer has assumed the obligation to contribute to the Fund on behalf of the employees at the purchased facility and the Seller has agreed to be secondarily liable for any withdrawal liability should the Buyer withdraw from the Fund within five years of the sale. The seller's potential withdrawal liability is estimated to be between $3,395,586 and $3,719,237. The amount of the bond/escrow that would be required of the Buyer under section

4204(a)(1)(B) is $645,162.09 (the annual contribution the Seller made to the Fund for the plan year preceding the plan year in which the sale of assets occurred).

According to its consolidated financial statements, dated March 29, 1986, the Buyer meets the requirements of the net tangible assets test described in 29 CFR 2643.14(a)(2). These financial statements indicate that the buyer's net tangible assets exceed the estimated withdrawal liability. The Buyer has requested confidential treatment of these statements on the ground they are confidential within the meaning of 5 U.S.C. 552(b)(4) in that the information is of a type that would customarily not be released to the public by the Buyer and its disclosure is likely to cause substantial harm to the Buyer's competitive position.

Based on the facts of this case and the representations and statements made in connection with the request for an exemption, the PBGC has determined that an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purposes of Title IV of ERISA and would not significantly increase the risk of financial loss to the plan. Therefore, the PBGC hereby grants the request for an exemption for the bond/escrow requirement. The granting of an exemption or variance from the bond/escrow requirement of section 4204(a)(1)(B) does not constitute a finding by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). The determination of whether the transaction satisfies such other requirements is a determination to be make by the plan sponsor.

Issued at Washington, DC, on this 14th day of November 1986.

Kathleen P. Utgoff,

Executive Director.

[FR Doc. 86-26396 Filed 11-21-86; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-23809; File No. SR-CBOE-86-36]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc.; Relating to Listing Australian Dollar Option Contracts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 27, 1986, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change provides for the listing of Australian dollar option contracts, which contracts will be traded under the Exchange's current rules for the trading of other foreign currency option contracts. The contract size will be 50,000 Australian dollars; exercise prices will be quoted in United States dollars, that is, cents per unit of underlying currency; bids and offers normally shall be expressed as follows: ¢.01.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to add Australian dollar option contracts to the foreign currency option contracts already traded on the Exchange. Australian dollar option contracts will be traded in the same manner as other foreign currency option contracts are traded on the Exchange. The statutory basis for the proposed rule change is section 6(b)(5) of the Securities Exchange Act of 1934 ("the Act"), in that the proposed rule change will enable investors to trade Australian dollar option contracts on the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 15, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 14, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-26406 Filed 11-21-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-23801; File No. SR-PHLX-86-32]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given

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that on September 19, 1986, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange ("PHLX" or the "Exchange") proposes to amend its Exchange Rule 1014(c)(i) to narrow the bid-ask differential applicable to single equity options and index options (the latter by operation of Exchange Rule 1000(a)) traded on the Exchange. (Italics indicates material proposed to be added; brackets indicate material proposed to be deleted.)

Obligations and Restrictions Applicable to Specialists and Registered Options Traders

Rule 1014 (a)–(c): No change.

(i) Options on Stocks. (A) Bidding and/or offering so as to create differences of no more than ¼ of $1 between the bid and the offer for each option contract for which the prevailing bid is $1 or less, no more than ⅜ of $1 where the prevailing bid is more than $1 but does not exceed *$5* [$3], no more than ½ of $1 where the prevailing bid is more than *$5* [3] but does not exceed $10, no more than ¾ of $1 where the prevailing bid is more than $10 but less than $20, and no more than $1 where the prevailing bid is $20 or more provided that the Exchange may establish differences other than the above for one or more series or classes of options.

(B)–(e)(iii): No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to improve price continuity in single equity options contracts and index options contracts for which the prevailing bid does not exceed $5 by narrowing the maximum allowable bid-ask differential. The proposed amendment to Rule 1014 would require a specialist or registered options trader to bid or offer so as to create a difference of no more than ⅜'s of $1 between the bid and offer for each option contract for which the prevailing bid is more than $1 but does not exceed $5. The previous parameters allowed ½ point differentials for bids or offers where the prevailing bid was more than $3.

The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 ("the Act") in that it can be expected to promote the maintenance of fair and orderly markets and in particular section 6(b)(5) of the Act which provides in pertinent part that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the 1934 Act to allow the Exchange to coordinate the systems changes necessary for this proposed rule change and rapidly implement narrow bid-ask parameters. The proposal should assist in the maintenance of price continuity in the Exchange's equity and index option products.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof because the proposed rule change can be expected to promote the maintenance of fair and orderly markets, increase pricing efficiency in PHLX equity and index options, and provide narrower bid/ask spreads to investors in these products.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 15, 1986.

It is therefore ordered, that the above referenced rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 13, 1986.

Jonathan G. Katz,
Secretary.

[FR Doc. 86-26409 Filed 11-21-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-23810; File No. SR-PHLX-86-38]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Incorporated; Relating to Options Trading on the Australian Dollar

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 24, 1986, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange ("PHLX" or the "Exchange") proposes to trade options on the Australian dollar ("A$"). The Australian dollar contract will be traded pursuant to PHLX Rules which govern the trading of foreign currency options. Australian dollar option specifications will be as follows:

Contract Size—50,000 Units (At today's value of $.635 per Australian dollar, the contract value in dollar terms would be approximately $31,750.)

Strike Price Intervals—1 cent (For example, if the Australian dollar is valued at $.63, strike prices would be 62, 63 and 64.)

Premium Quotations—cents per unit currency:

.01 = $5.00
.1 = $50.00
1.0 = $500.00

Minimum Premium—.01 cents per unit of currency or $5.00.

Bid/Offer Differentials:

.40 or less=.04=$20.00
.41 to 1.60=.08=$40.00
More than 1.60=.12=$60.00

In order to list options on the Australian dollar, it is necessary to amend the following PHLX rules:

1000(b)(13)
1000(b)(15)
1009(d)
1014(c)(ii)
1033(b)(ii)
1034(ii)

(Brackets indicate deletions; Italics indicates additions.)

Rule 1000. Applicability, Definitions and References

(a) No change.

(b) 1 through 12—No change.

(b)(13) Foreign Currency—The term "foreign currency" means the standard unit of the official medium of exchange of a sovereign government other than the United States Government (e.g., the British pound, the German mark, the Swiss franc, the Canadian dollar, the French franc, *The Australian dollar*, or the Japanese yen.) or the official medium of exchange of the European Economic Community's European Monetary System.

(b)(14) No change.

(b)(15) Unit of Underlying Foreign Currency—The term "unit of underlying foreign currency" means a single unit of the foreign currency which the Options Clearing Corporation shall be obligated to sell (in the case of a call option) or purchase (in the case of a put option) upon the valid exercise of a foreign currency option contract (e.g., one British pound, one German mark, one Swiss franc, one Canadian dollar, one French franc, *one Australian dollar*, one Japanese yen, or one European Currency Unit).

* * * * *

Rule 1009. Approval of Underlying Stocks or Underlying Foreign Currencies

(a) No change.

(b) No change.

(c) No change.

(d) The British pound, the German mark, the Swiss franc, the Canadian dollar, the French franc, *The Australian dollar*, the Japanese yen, and the European Currency Unit each may be approved as an underlying foreign currency for options transactions by the Exchange, subject to any approval criteria the Exchange may deem necessary or appropriate in the interests of maintaining a fair and orderly market or for the protection of investors. In the event that any of the sovereign governments or the European Economic Community's European Monetary System issuing any of the above-mentioned currencies should isue a new currency intended to replace one of the above-mentioned currencies as the standard unit of the official medium of exchange of such government, such new currency also may be approved as an underlying foreign currency for options transactions by the Exchange, subject to any approval criteria the Exchange may deem necessary or appropriate in the interests of maintaining a fair and orderly market or for the protection of investors, and options trading in such new currency may occur simultaneously with options trading in any of the above-mentioned currencies; provided, however, that the Exchange shall withdraw its approval of options transactions in the currency which is intended to be replaced by such new currency as expeditiously as it deems consistent with the maintenance of a fair and orderly market or the protection of investors.

* * * * *

Rule 1014. Obligations and Restrictions Applicable to Specialists and Registered Options Traders

(a) No change.

(b) No change.

(c)(i) No change.

(c)(ii) Options on Foreign Currencies—In the case of option contracts on the British pound, bidding and/or offering so as to create differences of not more than $.0020 between the bid and the offer for each option contract for which the bid is $.0200 or less, no more than $.0040 where the bid is more than $.0200 but does not exceed $.0800, and no more than $.0060 where the bid is more than $.0800.

In the case of option contracts on the German mark, Swiss franc, *Australian dollar* and [in the case of option contracts on the] European Currency Unit, bidding and/or offering so as to create differences of no more than $.0004 between the bid and the offer for each option contract for which the bid is $.0040 or less, no more than $.0005 where the bid is more than $.0040 but does not excees $.0160, and no more than $.0006 where the bid is more than $.0160.

In the case of option contracts on the Canadian dollar, bidding and/or offering so as to create differences of no more than $.0005 between the bid and the offer for each option contract for which the bid is $.0050 or less, no more than $.0010 where the bid is more than $.0050 but does not exceed $.0200, and no more than $.0015 where the bid is more than $.0200.

In the case of option contracts on the French franc, bidding and/or offering so as to create differences of not more than $.0002 between the bid and the offer for each option contract for which the bid is $.0020 or less, no more than $.00040 where the bid is more than $.0020 but does not exceed $.0080 and no more than $.0006 where the bid is more than $.0080.

In the case of option contracts on the Japanese yen, bidding and/or offering so as to create differences of not more than $.000004 between the bid and the offer for each option contract for which the bid if $.000040 or less, no more than $.000005 where the bid is more than $.000040 but does not exceed $.000160, and no more than $.000006 where the bid is more than $.000160.

The Exchange may establish, however, differences other than the above for one or more series of classes

of foreign currency options. The bid-ask differentials as stated above shall apply to all but the longest term series of foreign currency options open for trading in each class. For these series, the bid-ask differentials shall be twice those stated above.

* * * * *

Rule 1033. Bids and Offers—Premium

(a) No change.

(b)(i) No change.

(b)(ii) In the case of options on foreign currencies, in terms of dollars per unit of the underlying foreign currency. However, the first two decimal places shall be omitted from all bid and offer quotations for the British pound, the German mark, the Swiss franc, the Canadian dollar, *the Australian dollar* the French franc, and the European Currency Unit and the first four decimal places shall be omitted from all bid and offer quotations for the Japanese yen (e.g., a bid of ".88" for an option contract on the German mark shall represent a bid to pay $.0088 per unit of underlying foreign currency—i.e., a premium of $550—for an option contract having a unit of trading of 62,500 marks; a bid of "9.2" for an option contract on the British pound shall represent a bid to pay $.0920 per unit of underlying foreign currency—i.e., a premium of $1,150—for an option contract having a unit of trading of 12,500 pounds; a bid of .44 for an option contract on the ECU shall represent a bid to pay .0044 per unit of underlying foreign currency—i.e., a premium of $275—for an option contract having a unit of trading of 62,500 ECU's; a bid of ".52" for an option contract on the French franc shall represent a bid to pay .0052 per unit of underlying foreign currency—i.e., a premium of $650—for an option contract having a unit of trading of 125,000 francs; and a bid of "1.6" for an option contract on the Japanese yen shall represent a bid to pay $.000160 per unit of underlying foreign currency—i.e., a premium of $2,000—for an option contract having a unit of trading of 6,250,000 yen.

* * * * *

Rule 1034. Minimum Fractional Changes

(i) No change.

(ii) In the case of options on foreign currencies, $.0005 for option contracts on the British pound, $.0001 for option contracts on the German mark, $.0001 for option contracts on the Swiss franc, $.0001 for option contracts on the Canadian dollar, *.0001 for option contracts on the Australian dollar,* $.0001 for option contracts on the ECU, $.00005 for option contracts on the French franc and $.000001 for option contracts on the Japanese yen.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The proposed rule change would permit Phlx to list options on the Australian dollar. As with other cuurrencies subject to options trading on the Phlx, the Australian dollar accounts for a major portion of interbank foreign exchange market turnover,[1] is issued by a country with substantial trade relations with the U.S., and is not pegged to a fixed rate of exchange vis a vis the U.S. dollar. The Chicago Mercantile Exchange has recently applied to the Commodities Futures Trading Commission ("CFTC") to initiate currency futures trading in the Australian dollar. According to the Phlx, the Philadelphia Board of Trade, a subsidiary of the Phlx, plans to submit a filing with the CFTC respecting foreign currency futures trading on the Australian dollar.

The Phlx asserts that the proposed rule change is consistent with section (6)(b)(5) of the Securities Exchange Act of 1934 in that it will facilitate transactions in securities and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the propose rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 15, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 14, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-26410 Filed 11-21-86; 8:45 am]

BILLING CODE 8010-01-

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[1] This fact was confirmed by Mr. John Fraser, Minister for Economics, Australian Embassy, Washington, DC, in an October 14, 1986 telephone conversation with Mr. Murray Ross, Secretary, Phlx. Mr. Fraser estimates that the Australian dollar traditionally accounts for 2.5% or more of U.S. interbank currency trading. Staff officials of the Federal Reserve Bank of New York on October 6, 1986 stated in a telephone conversation with Mr. Bruce Teague, Vice President, Phlx, that over the last six months, the Australian dollar was the fifth most active U.S. interbank traded currency.

[Rel. No. 34-23821; File No. SR-Phlx-86-36]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc.; Relating to Use of Irrevocable Letters of Credit for Foreign Currency Option Margin

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 20, 1986 the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, ("Phlx or Exchange") proposes to amend Exchange Rule 722 regarding the pilot program respecting use of irrevocable letters of credit for foreign currency option margin. The Phlx also requests Commission approval of the pilot program on a permanent basis. Italics indicate material to be added; brackets indicate material to be deleted.

Rule 722—Margin Accounts

(a)-(d) No Change.

* * * Commentary:

.01-.05 No Change.

.06 [Both] U.S. [and non-U.S.] institutions:

(A) (1) must supply the Exchange at the time of application for approval with its most recent annual financial report, and, in the event such report is as of a date more than 90 days prior to the date of application, its most recent published quarterly financial statements;

(2) must supply the Exchange subsequent to approval with annual reports and quarterly financial statements as issued; and

(3) must provide the Exchange, in a form satisfactory to the Exchange, appropriate documentation as to individuals authorized to sign letters of credit on the institution's behalf and the institution's legal authority to issue letters of credit [; and].

(B) Non-U.S. Institutions:

(1) must supply the Exchange at the time of application for approval with its most recent annual financial report, and, in the event such report is as of a date more than 90 days prior to the date of application, its most recent published semi-annual financial statements;

(2) must supply the Exchange subsequent to approval with annual reports and semi-annual financial statements as issued; and

(3) must provide the Exchange, in a form satisfactory to the Exchange, appropriate documentation as to individuals authorized to sign letters of credit on the institution's behalf and the institution's legal authority to issue letters of credit.

.07-.09 No change.

.10 [A member organization's ability to accept a letter of credit is satisfaction of the margin due with respect to a customer's foreign currency option position(s) shall continue for a period of one year from the effective date of the amendment of Rule 722(2)(J), unless sooner terminated pursuant to the second sentence hereof. During the one-year period subsequent to the effective date of the amendment of Rule 722(c)(2)(J).] *T*[t]he Exchange may, at any time, on its own initiative or at the direction of the Securities and Exchange Commission or the Board of Governors of the Federal Reserve System, suspend, terminate or otherwise modify a member organization's ability to accept a letter of credit in satisfaction of a customer's margin obligations.

.11 No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to request Commission approval, on a permanent basis, of the Phlx foreign currency option irrevocable letters of credit program embodied in Phlx Rule 722—Margin Accounts. The Phlx foreign currency option letters of credit program was approved as a pilot program by the Commission in December 1983 after review by the staff of the Federal Reserve Board.[1] The pilot program originally limited the use of letters of credit to initial margin requirements. In October 1984, the Phlx reported to the Commission on its experience with the pilot program.[2] The report recommended that the pilot program be extended to permit the use of letters of credit to satisfy both initial and maintenance margin requirements; it also suggested modification of certain reporting requirements imposed on broker-dealers accepting letters of credit. In June 1985, the Commission approved these further amendments to Phlx Rule 722.[3] In April 1986, the Phlx reported to the Commission that the pilot program was positioned for significantly expanded utilization.[4] Since that report, another domestic financial institution, Pittsburgh National Bank, has been approved by the Phlx for participation in the program and significantly larger letters of credit have been issued by existing participants.

The Phlx believes that the proposed rule change is consistent with section 6(b)(5) of the Securities Exchange Act of 1934 since it facilitates trading activities of customers, enabling them to effect different trading strategies in foreign currency options without immediate concern for cash flow problems arising from margin requirements. The Phlx asserts that the growth of the use of letters of credit has been orderly and undertaken in a prudent manner by issuing institutions and accepting broker-dealer organizations. The proposed rule change takes into account the different financial reporting timetable non-U.S. institutions operate under; it provides an alternative semi-annual standard for submission of such information to the Exchange since quarterly financial statements are unavailable from non-U.S. institutions. The Phlx anticipates that usage of letters of credit will accelerate as recognition of their flexibility in margining and trading of foreign currency options is perceived by customers, financial institutions, and clearing broker-dealer organizations. An important factor in achieving increased use of letters of credit is the recognition which will be fostered by Commission approval of this

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[1] Securities Exchange Act Release No. 34-20407, December 16, 1983, 48 FR 56682.

[2] Letter from Robert B. Gilmore, Senior Vice President, Phlx, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated October 19, 1984.

[3] Securities Exchange Act Release No. 34-22180, June 28, 1985, 50 FR 31802.

[4] Letter from Susan R. Mann, Vice President, Phlx, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated April 30, 1986.

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rule change, which will take the program from a pilot to a permanent status.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self- regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule, change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 15, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 17, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 26411 Filed 11-21-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 15412; (File No. 811-3161)]

Franklin Mesbic Corp.; Application for an Order Declaring that Applicant Has Ceased to be an Investment Company

November 13, 1986

Notice is hereby given that Franklin Mesbic Corporation ("Applicant"), 1 Rockefeller Plaza, New York, New York 10020, registered under the Investment Company Act of 1940 ("Act") as an closed-end, diversified, management investment company, filed an application on July 8, 1986, and amendments thereto on September 12, and November 7, 1986, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the applicable provisions thereof.

Applicant is registered under the Act and filed a registration statement pursuant to Section 8(b) of the Act on March 30, 1981. Applicant states that it has not more than 100 securityholders for purposes of section 3(c)(1) of the Act and rules thereunder, has never made a public offering of its securities, and does not propose to make a public offering or engage in business of any kind. Applicant also states that it still exists as a New York corporation, but that it never had any assets nor conducted any business, and, thus, no funds are available for the cost of dissolution and no distributions were made to its shareholders. Applicant further states that it has not transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of Applicant, that it is not a party to any litigation or administrative proceeding and does not propose to engage in any business activities other than those necessary for winding-up its affairs.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 9, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-26412 Filed 11-21-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15417; (812-6483)]

National Australia Bank Limited; Application for Exemption

November 17, 1986.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("the 1940 Act").

Applicant: National Australia Bank Limited ("Applicant") (formerly National Commercial Banking Corporation of Australia Limited).

Relevant 1940 Act Sections: Exemption requested under Section 6(c) from all provisions.

Summary of Applicant: Applicant seeks an order amending an existing order to permit it to issue and sell its equity securities in the United States, either directly or in the form of American Depository Shares, evidenced by American Depository Receipts. The prior order (Investment Company Act Release No. 13520, September 21, 1983) permits Applicant to issue and sell its commercial paper and other debt securities in the United States.

DATE: *Filing Date:* The application was filed on September 23, 1986, and amended on October 21, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on December 12, 1986. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o David M. Huggin, Esq., Sullivan & Cromwell, 125 Broad Street, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney (202) 272–2847 or Brion R. Thompson, Special Counsel (202) 272–3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations:

1. Applicant is a private trading bank licensed under the Banking Act 1959 of the Commonwealth of Australia (the "Banking Act") to carry on the business of banking in Australia. A "trading bank" as that term is used in Australia is the same as a "commercial bank" as that term is generally understood in the United States.

2. Applicant's principal business, similar to that of major United States banks, is the receipt of deposits and the making of loans, but it also conducts or engages in, either directly or through subsidiaries, a savings bank business, the provision of consumer credit, lease and mortgage finance, factoring, merchant banking, insurance, travel, trust and investment services, and share and stockbrokerage.

3. Applicant currently ranks as the third largest trading bank in Australia, among the ten largest companies in Australia, and was ranked 108th among the world's largest commercial banks at year end 1985. As of March 31, 1986, Applicant had total assets, on a consolidated basis, of A$39.2 billion, of which A$25.3 billion (64.5%) consisted of loans, advances, bills discounted and other lending (including loans to authorized dealers in the short term money market, money at short call—overseas and amounts due from other banks), and total liabilities of A$37.1 billion, of which A$29.9 billion (80.6%) consisted of deposits, both time and demand (including amounts due to banks). Its consolidated net operating profit for the six months ended March 31, 1986, was A$153.4 million, of which 94.2% was attributable to its banking business.

4. Applicant is subject to extensive regulation by the Reserve Bank of Australia under the Banking Act. Such regulation includes, *inter alia*, statutory reserve deposit requirements, prudential supervision of banking operations and capital adequacy, controls over lending, interest rates and types of investments, and reporting requirements. Applicant also complies with the Reserve Bank's guidelines regarding association with non-bank institutions. Applicant is also subject to extensive regulation by the Victorian (State) Corporate Affairs Office and the Australian Associated Stock Exchange, and to inspection by the Commonwealth Auditor General at least annually.

5. With respect to its operations in the United States, Applicant operates a full federal branch in New York, a limited federal branch in Chicago, a state agency in Los Angeles, and three representative offices. The full and limited federal branches are licensed under the provisions of the International Banking Act of 1978 ("the IBA") and, therefore, are subject to most of the restrictions on interstate banking and on non-banking activities imposed by the Bank Holding Company Act of 1956. Applicant is also subject to extensive supervision and regulation by the Comptroller of the Currency including, but not limited to, furnishing financial and other information, lending and other prudential limitations, and reserve and reporting requirements similar to those imposed on domestic banks. The Los Angeles agency is licensed and subject to extensive regulation by the Superintendent of Banks of the State of California.

6. As of March 31, 1986, Applicant had Stockholders Funds of A$2.1 billion and A$1.8 billion of assets recorded on the books of its United States branches and agency. The figures included herein are unaudited, and on March 31, 1986, the noon buying rate for cable transfers in New York City payable in Australian dollars, as certified for customs purposes by the Federal Reserve Bank of New York, was U.S. $0.7116 = A$1.00.

7. Applicant believes its assets, two branches and state agency in the United States constitutes a bona fide presence in the United States.

8. The proposed offer and sale of Applicant's equity securities in the United States would be either (a) pursuant to a firm commitment underwritten public offering registered under the Securities Act of 1933 (the "1933 Act"), (b) pursuant to an exemption from the registration requirements of the 1933 Act which, in the opinion of U.S. counsel to Applicant, was available to Applicant with respect to such offers and sales, or (c) pursuant to the advice of the staff of the SEC that it would not recommend that the SEC take any action under the 1933 Act if such offers and sales were made without registering such securities under the 1933 Act.

9. In connection with any registered public offering, or in connection with listing Applicant's equity securities on a national securities exchange or having such securities quoted on an "automated inter-dealer quotation system," Applicant's equity securities would be registered under the Securities Exchange Act of 1934 (the "1934 Act") and Applicant would thereafter file periodic reports pursuant to the 1934 Act. In addition, Applicant currently makes available to the SEC the documents required to establish the exemption from registration under the 1934 Act found in Rule 12g3–2(b) thereunder, which exemption is currently available to it.

10. The requested order is both necessary and appropriate in the public interest because Applicant would be effectively precluded from issuing and selling its equity securities in the United States if it were required to register as an investment company and comply with the provisions of the 1940 Act. Such a result would be both inherently inequitable and in direct conflict with the objective of the IBA which was intended to place United States and foreign banks on a basis of competitive equality in their transactions in the United States. The order also enables investors to purchase in the United States equity securities issued by Applicant with the protection of the disclosure provisions of the 1933 Act.

11. The order is consistent with the protection of investors because: (1) There are already in place regulatory structures which afford sufficient protection for investors; (2) Applicant is subject to a regulatory structure comparable to that imposed on the United States banks; and (3) the particular abuses against which the 1940 Act was directed are not present in the instant case.

12. The order is consistent with the purposes fairly intended by the policy and provisions of the 1940 Act since Applicant is a closely regulated banking entity with investments and objectives totally different from the investment companies at which the 1940 Act is directed and for which its substantive provisions are neither necessary nor suitable.

13. Applicant undertakes that any offering of its equity securities in the United States will be made on the basis of disclosure documents which are appropriate and customary for such offering, whether made pursuant to a

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registration statement under the 1933 Act or an exemption therefrom.

14. In connection with any such offering in the United States, Applicant also undertakes to appoint an agent to accept service of process in any action based on the equity securities and instituted in any State or Federal court located in New York City by a holder thereof and will expressly submit to the jurisdiction of any such court for the purposes of any such action. Such appointment of an agent to accept service of process and such consent to jurisdiction will be irrevocable so long as any of the equity securities issued in reliance on the amended order sought hereby are outstanding in the United States.

15. Applicant further undertakes to only issue equity securities in the United States so long as it is supervised and examined by governmental authorities in Australia having the power of supervision over banks in that country and by State or Federal authorities in the United States having the power of supervision over banks in this country. Applicant represents that it presently intends to maintain its banking operations in Australia, and has no present intention to curtail such operations so that it would cease to be regulated as a bank in Australia.

16. Applicant represents that it presently intends to maintain its banking operations in the United States. If, however, such operations in the future are curtailed with the result that Applicant is no longer regulated as a bank in the United States, Applicant will continue to comply with its undertakings concerning appointment of an agent in New York City and submission to jurisdiction, as set forth in the Application, until such time as there shall be no holders in the United States of equity securities of the Applicant issued in reliance upon any Commission order made pursuant to the Application.

Applicant's Conditions:

Applicant consents to any Commission order being expressly conditioned on its compliance with the undertakings and representations contained in the Application.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-26413 Filed 11-21-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-23804; File No. S7-820]

Options Price Reporting Plan: Notice of Immediate Effectiveness of Amendment

On October 28, 1986, the participants in the "Options Price Reporting Authority"("OPRA") submitted to the Commission, pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"), an amendment to the "Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information,"[1] which was submitted to the Commission pursuant to section 11A(a)(3)(B) of the Act.[2]

I. Description of the Amendment

OPRA proposes to establish a fee to be paid by vendors and subscribers who furnish a voice-synthesized market data service to their customers. The fee would be established at a monthly rate of $5.00 per active computer port through which the service is provided.

II. Purpose of the Amendment

OPRA indicates that the purpose of the new fee is to permit securities firms and others to offer a voice-synthesized market data service to their customers without requiring the customers who receive the service to become OPRA subscribers and pay applicable subscriber fees. Currently, OPRA contracts state that OPRA vendors may provide such a service to only OPRA subscribers. Several firms have indicated to OPRA that they could lower the cost of providing current market information to their customers by having computers that can respond to customer's inquiries with quotations delivered in synthesized speech. However, such a service would not be practical if every customer who could make an inquiry of a computer had to be an OPRA subscriber subject to subscriber fees. The proposed new fee would replace such a requirement by imposing a small device chage on the firm providing the service. The charge is consistent with OPRA's present fee structure, which imposes a charge upon professional subscribers based upon the number of devices through which current market information may be accessed. The new fee has been established at a level below the aggregate subscriber fee that would be payable if a voice-synthesized service could be offered only to subscribers.

III. Manner of Implementation of the Amendment

The Voice-Synthesized Market Data Service Fee will be implemented by adopting a Voice-Synthesized Market Data Service Rider to OPRA's existing vendor and subscriber agreements,[3] which must be executed by every subscriber of vendor who wishes to offer this service. The Rider describes the terms and conditions governing the service.

IV. Request for Comment

Pursuant to Rule 11Aa3-2(c)(3) under the Act, the amendment and the Voice-Synthesized Market Data Service Fee and Rider became effective upon filing with the Commission. The Commission, however, may summarily abrogate the amendment within 60 days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3-2(c)(2), if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to and perfect the mechanisms of a national market system, or otherwise in furtherance of the purposes of the Act. In order to assist the Commission in determining whether to abrogate the amendment and to require refiling and further review, interested persons are invited to submit their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission 450 Fifth Street, N.W., Washington, DC 20549, by December 15, 1986. All communications should refer to File No. S7-820.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30-3(a)(27).

Dated: November 14, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-26407 Filed 11-21-86; 8:45 am]

BILLING CODE 8010-01-M

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[1] *See* Securities Exchange Act Release No. 17638 (March 18, 1981).

[2] The Commission previously, by order, granted registration to OPRA as a securities information processor. At that time, OPRA's functions were limited to the collection and dissemination of options last sale reports. *See* Securities Exchange Act Release No. 12035 (January 22, 1976), 41 FR 4372. In order to comply with the procedures of Rule 11Aa3-2 applicable to the establishment of fees for exclusive securities processors, OPRA has filed this fee as a Plan amendment under the Rule.

[3] *See* Exhibit A of OPRA's submission filed October 28, 1986.

DEPARTMENT OF STATE

Advisory Committee on International Investment, Technology, and Development; Meeting

The Department of State will hold a meeting of the Advisory Committee on International Investment, Technology, and Development on December 12, 1986 from 9:30 a.m. to 12:30 p.m. The meeting will be held in Conference Room 1107 of the Department of State, 2201 C Street NW., Washington, DC 20520.

At the end of this year the Department will reorganize the Advisory Committee. Consequently, this will be the last session of the Committee as it is presently constituted. The various functions of the Committee will continue. A brief explanation of the plans for reorganization will be given at the December 8 meeting.

Agenda and Approximate Times:

—9:30 OECD—Latest developments, including a discussion of priorities and future directions for international investment in the OECD.

Members are encouraged to make comments or suggestions on how U.S. interests related to international investment can best be served in the OECD.

William B. Milam, Deputy Assistant Secretary for International Finance and Development, Department of State.

—10:15 Multilateral Investment Guarantee Agency (MIGA). Recent Developments. James Conrow, Deputy Assistant Secretary for Developing Nations, Department of the Treasury.

—11:00 Bilateral Investment Treaties (BITs): Where do we stand? William B. Milam, Clarke N. Ellis, Director, Office of Investment Affairs, Department of State.

—11:30 UN Code of Conduct on TNCs and UN Commission on TNCs. Latest developments and significant issues: Clarke N. Ellis and Walter Lockwood, Deputy Director, Office of Investment Affairs, Department of State.

—12:00 Reorganization of the Committee: Walter Lockwood.

Access to the State Department is controlled. Therefore, members of the public must contact the Office of Investment Affairs, (202) 647-2585, in order to arrange admittance. Please use the C Street entrance.

The Chairman will, as time permits, entertain comments from members of the public at the meeting.

Dated: November 13, 1986.

Walter B. Lockwood, Jr.,

Executive Secretary.

[FR Doc. 86-26352 Filed 11-21-86; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements: Submittals to OMB on November 17, 1986

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on November 17, 1986, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson, or Cordelia Shepherd, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street SW., Washington, DC 20590, telephone (202) 366-4735, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the **"For Further Information Contact"** paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB oficials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on November 17, 1986.

DOT No: 2817
OMB No: 2135-0002
By: St. Lawrence Seaway Development Corporation
Title: Application for Preclearance
Form(s): S/VM 429-01-80 (Canadian form)
Frequency: On occasion
Respondents: Businesses or other for-profit
Need/Use: Used by the Corporation to determine whether vessels are properly fitted in a manner to allow it to safely transit through the Seaway system.

DOT No: 2818
OMB No: 2135-0003
By: St. Lawrence Seaway Development Corporation
Title: Transit Declaration
Form(s): S/VM 755-11-77 (Canadian form)
Frequency: On occasion
Respondents: Businesses or other for-profit
Need/Use: Assessment of toll charges in accordance with the St. Lawrence Seaway Tariff of Tolls.

DOT No: 2819
OMB No: 2135-0004
By: St. Lawrence Seaway Development Corporation
Title: Seaway Explosive Permit
Form(s): SLSDC-10-7-1-6200.31
Frequency: On occasion
Respondents: Businesses or other for-profit
Need/Use: Providing for certain safeguards in transiting the Seaway system.

DOT No: 2820
OMB No: 2130-0523
By: Federal Railroad Administration
Title: Rear-End Marking Devices
Form(s): None
Frequency: Recordkeeping and On occasion
Respondents: Railroads
Need/Use: The Federal Railroad Administration reviews and evaluates the data to determine if the device meets critical angle, color and intensity requirements.

Dot No: 2821
OMB No: 2130-0519
By: Federal Railroad Administration
Title: Bad Order and Home Shop Card
Form(s): None

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Frequency: On occasion
Respondents: Railroads
Need/Use: The Bad Order and Home Shop Card allows a railroad to move defective freight cars to a designated repair point and allows the Federal Railroad Administration to determine if cars which are an immediate hazard are being moved in trains.

Dot No: 2822
OMB No: New
By: Federal Highway Administration
Title: Certification of Enforcement of Heavy Vehicle Use Tax
Form(s): None
Frequency: Annually
Respondents: States
Need/Use: For FHWA to obtain a certification from each State as proof of payment of the vehicle use tax.

Dot No: 2823
OMB No: New
By: Federal Highway Administration
Title: Nationwide Truck Activity and Commodity Survey
Form(s): None
Frequency: One time only
Respondents: Farms/businesses or other organizations
Need/Use: To provide DOT essential data for the analysis of highway user charges, truck size and weight issues, and related aspects of the Federal-Aid Highway Program.

Dot No: 2824
OMB No: 2125-0040
By: Federal Highway Administration
Title: Annual Interstate Maintenance Program
Form(s): N/A
Frequency: Annually
Respondents: State highway agencies
Need/Use: To meet the requirements contained in 23 CFR Subpart E, which requires each state to certify that the Interstate System is being maintained in accordance with an approved Interstate Maintenance Program.

Dot No: 2825
OMB No: 2120-0505
By: Federal Aviation Administration
Title: Indirect Air Carrier Security, FAR-109
Form(s): None
Frequency: On occasion
Respondents: Businesses (Indirect Air Carriers)
Need/Use: Security programs required by FAR-109 set forth procedures to be used by indirect air carriers in carrying out their responsibilities involving the protection of persons and property against acts of criminal violence and aircraft piracy in the forwarding of package cargo.

Dot No: 2826
OMB No: 2130-0004
By: Federal Railroad Administration
Title: Railroad Locomotive Safety Standards
Form(s): FRA-F-6180-49A
Frequency: On occasion and Recordkeeping
Respondents: Railroads
Need/Use: The Federal Railroad Administration utilizes the information in the enforcement of the Locomotive Inspection Act and in post accident investigations.

Dot No: 2827
OMB No: 2115-0066
By: Federal United States Coast Guard
Title: Shipping Articles
Form(s): CG-705A
Frequency: On occasion
Respondents: U.S. Merchant Seamen and Shipping Companies
Need/Use: This information collection requirement is needed by the Coast Guard to meet statutory obligations. The shipping articles are used to ensure that various navigational statutes are being complied with for its commercial vessel safety program. This information is used by (1) the Coast Guard as a permanent voyage/contractual record; (2) seamen to obtain their entitlements or benefits; and (3) casualty investigators to examine the qualifications of crew members.

Dot No: 2828
OMB No: 2115-0111
By:United States Coast Guard
Title: Course Approvals for Merchant Marine Training Schools
Form(s): N/A
Frequency: Every 5 years for reporting; 1 year for recordkeeping
Respondents: Merchant Marine Training Schools
Need/Use: This information collection requirement is needed and used by the Coast Guard to approve the curriculum, facility and faculty for these training schools. Collection of this information ensures that training programs meet minimum standards. The courses may be substituted for required sea experience or training.

DOT No: 2829
OMB No: 2115-0514
By: U.S. Coast Guard
Title: Licenses and Certificates of Registry for U.S. Merchant Marine Personnel
Form(s): CG-887, CG-2849, CG-2967, CG-3750, CG-4865, CG-5205, CG-5206
Frequency: Every five years
Respondents: Vessel pilot, master, chief engineer, chief mate, second or third mate, first, second or third engineer, radio officer, staff officer, and operators of small passenger or uninspected towing vessels
Need/Use: This information collection requirement is needed and used by the Coast Guard to identify licensed officers as qualified to serve on a vessel in one of the above capacities.

DOT No: 2830
OMB No: 2115-0003
By: United States Coast Guard
Title: Casualty Reporting Requirement
Form(s): CG-2692 and CG-2692A
Frequency: On occasion
Respondents: Owners, agents, or persons in charge of vessels and outer-continental shelf facilities
Need/Use: These information requirements are required by 46 USC 6101 and 43 U.S.C. 1348. The information is needed to inform the Coast Guard that a vessel or personnel casualty has occurred and to conduct investigations as required by 46 U.S.C. 6301. The information is used to initiate suspension and revocation proceedings against licenses or documents held be merchant seamen due to negligence, in attention to duty, misconduct or violation of law or regulation connected with the casualty. These investigative reports are used by other Federal, state or local agencies for law enforcement or other purposes; by law firms for litigation purposes, and by shipping companies, seamen unions, researchers and other interested parties.

DOT No: 2831
OMB No: New
By: National Highway Traffic Safety Administration
Title: Letter to Motor Vehicle Manufacturers
Form(s): None
Frequency: One time only
Respondents: Motor vehicle manufacturers
Need/Use: To prepare a report to Congress (requested by the Committee on Appropriations) that analyzes the auto manufacturers' methods of meeting the crash protection requirements of FMVSS No. 208.

DOT No: 2832
OMB No: 2127-0047
By: National Highway Traffic Safety Administration
Title: 49 CFR Odometer Disclosure Statement, Part 580
Form(s): None
Frequency: On Occasion
Respondents: Individuals thru small businesses
Need/Use: 15 U.S.C. 1988 requires the Secretary to prescribe rules regarding the transferor of a motor vehicle to give a written disclosure statement to the transferee.

DOT No: 2833
OMB No: 2115-0063

By: U.S. Coast Guard
Title: U.S. Merchant Mariners Documents with Various Endorsements
Form(s): CG-2838
Frequency: On occasion
Respondents: Personnel manning or employed aboard U.S. merchant vessels
Need/Use: This information collection requirement is needed to ensure the effectiveness of the commercial vessel safety program. The information is used by the Coast Guard and shipping companies to determine qualifications of shipboard personnel and to ensure that only qualified personnel sail U.S. merchant vessels.

Issued in Washington, DC on November 17, 1986.

John E. Turner,

Director of Information Resource Management.

[FR Doc. 86-26338 Filed 11-21-86; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended November 14, 1986

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 44496

Date Filed: November 14, 1986.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 12, 1986.

Description: Application of Nippon Cargo Airlines Co., Ltd., pursuant to section 402 of the Act and Subpart Q of the Regulations, applies for an amendment of its foreign air carrier permit for authority to engage in charter foreign air transportation of property and mail between the United States and Japan.

Docket No. [illegible]

Dated Filed: November 13, 1986.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 11, 1986.

Description: Amendment No. 2 to the Application of Cathay Pacific Airways Limited to operate scheduled air services with passenger/combination aircraft over U.K. Route 6 as described in the Air Transport Services Agreement between the United Kingdom of Great Britain and Northern Ireland and the United States.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-26340 Filed 11-21-86; 8:45 am]

BILLING CODE 4910-62-M

Aviation Proceedings; Agreements Filed During the Week Ending November 14, 1986

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 44488

Parties: Members of International Air Transport Association.

Date Filed: November 13, 1986.

Subject: CAFs ex UK/Gibraltar to So Atlantic Points.

Proposed Effective Date: December 1, 1986.

Docket No. 44489 R-1 & R-3

Parties: Members of International Air Transport Association.

Date Filed: November 13, 1986.

Subject: Amend Within Africa Fares and CAFs.

Proposed Effective Date: December 1, 1986.

Docket No. 44490

Parties: Members of International Air Transport Association.

Date Filed: November 13, 1986.

Subject: CAFs ex UK/Gibraltar to select Mid Atlantic.

Proposed Effective Date: December 1, 1986.

Docket No. 44491 R-1 & R-3

Parties: Members of International Air Transport Association.

Date Filed: November 13, 1986.

Subject: Auth-Eur Arbitraries and Excursion Fares.

Proposed Effective Date: December 1, 1986.

Docket No. 44492 R-1 & R-3

Parties: Members of International Air Transport Association.

Date Filed: November 13, 1986.

Subject: Amend Jap/Kor-Eur Afr CAFs/Fares.

Proposed Effective Date: December 1, 1986.

Docket No. 44493

Parties: Members of International Air Transport Association.

Date Filed: November 13, 1986.

Subject: Increase rates ex Yemen by 7%.

Proposed Effective Date: December 1, 1986.

Docket No. 44494 R-1 & R-3

Parties: Members of International Air Transport Association.

Date Filed: November 13, 1986.

Subject: Aust/NZ-Japan CAFs and Japan-Asia PEX fares.

Proposed Effective Date: December 1, 1986.

Docket No. 44485

Parties: Alaska Air Group, Inc., Alaska Airlines Inc., Jet America Airlines, Inc. and San Juan Airlines, Inc.

Date Filed: November 10, 1986.

Subject: Joint Application of Alaska Air Group, Inc., Alaska Airlines, Inc., Jet America Airlines, Inc. and San Juan Airlines, Inc. for an exemption from the 45-day notice requirement of § 303.57(a) of the Regulations in connection with the proposed acquisition by Alaska Air Group of 50 percent of the common stock of San Juan. Alaska Air Group recently entered into an agreement of San Juan. Alaska Air Group recently entered into an agreement to acquire 50 percent of the outstanding common stock of San Juan and it is contemplated that the closing will take place on November 30, 1986.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-26339 Filed 11-21-86; 8:45 am]

BILLING CODE 4910-62-M

[Docket No. 43343; Notice 86-14]

Filing, Posting and Publishing of Tariffs by Air Carriers and Foreign Air Carriers; Formation of an Advisory Committee

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of formation of an advisory committee.

SUMMARY: The Department hereby announces the establishment of an advisory committee to make continuing recommendations on the technical, operational, and policy issues involved in the implementation of the proposed automated tariff filing and information system. The committee is to be composed of representatives of interests that would be affected by an electronic

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tariff filing system, including representatives of airline tariff agents, airlines, consumer groups, airline industry associations, and the information industry.

DATE: The Advisory Committee Charter (attached as Appendix A) will be filed with the Secretariat, General Services Administration, 15 days after the date of this notice. Comments and requests to participate as members of the Committee (original and 12 copies) are due by December 9, 1986.

ADDRESS: Comments and requests to participate should be mailed to Docket Clerk, C-55, Docket 43343, Department of Transportation, Room 4107, 400 7th Street, SW., Washington, DC 20590. Comments will be available for review by the public at this address from 9:00 a.m. through 5:00 p.m., Monday through Friday. Persons wishing acknowledgment of their comments should include a stamped, self-addressed postcard with their comments. The docket clerk will time and date-stamp the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: Desta McDowell or Thomas Moore, Tariffs Division, Office of Aviation Operations, P-44, Department of Transportation, 400 7th St., SW., Washington, DC 20590, telephone (202) 366-2414.

SUPPLEMENTARY INFORMATION: On August 19, 1985, the Department of Transportation (DOT) issued an Advance Notice of Proposed Rulemaking (50 FR 33452) announcing its intention to consider development of an electronic tariff filing system and requesting public comment on that idea.

As required by sections 403 and 1601 of the Federal Aviation Act of 1958, as amended (the Act), and as implemented in international aviation agreements, both U.S. and foreign airlines must file their international passenger fares, cargo rates, and related rules with DOT for approval prior to implementation. DOT is responsible for reviewing all such proposed fares, rates, and rules, determining whether they should be accepted, rejected, or suspended, certifying the accuracy of the tariffs, negotiating fares/rates/rules with foreign governments, and maintaining public tariff files. In addition, under section 403 of the Act and Subpart N of Part 221 of DOT Regulations (14 CFR Part 221), each airline is required to post a copy of its proposed and currently effective tariffs at each of its sales locations.

The current system is implemented manually, and it has remained virtually unchanged since 1938. Although the major airlines and tariff filing agents have computerized their tariff data systems, DOT has not. As a result, airlines have the burden of converting computerized fare and rate data back into printed form for the sole purpose of meeting the statutory filing requirements.

The proposal to automate the tariff system stems from the need to update the existing antiquated paper tariff procedures that have been tremendously burdened by the competitive growth in international aviation, and our interest in responding to requests from U.S. airline executives to bring the government's tariff function into some equality with the airlines' computerized systems.

The tariff volume is enormous; there are more than one million currently effective international fares, rates, and rules on file at DOT, and the Office of Aviation Operations (OAO) is reviewing new filings at the rate of more than 650 pages a day. Since 1980, the number of pages filed has increased at an average rate of eight percent a year. This trend is accelerating as price competition continues to evolve in international aviation markets. During the first nine months of 1986, volume increased 17 percent over the same period in 1985.

If the trend continues, OAO will handle in excess of 175,000 pages for 1986. In the last ten years the number of international filings per tariff analyst has increased 400 percent. Numerous administrative and procedural changes have been instituted in response to this upsurge in activity, but, at this rate of filings, the staff is still overburdened. Automation of tariff filing procedures will reduce the time spent in processing and filing paper documents and automate many of the routine information checks which are now done manually. In addition, time spent researching historical data will be greatly reduced.

The system has become expensive and unwieldly for the airlines as well, since they must print, file and distribute a complete page of tariff data, printed on two sides, whenever a single item on a page is amended. Preliminary results of a cost/benefit analysis currently being conducted by the Vanguard Corporation indicate that the combined federal and industry costs associated with the current tariff filing system amount to approximately $11,300,000, or $78.50 per page of tariffs now being filed. Approximately 78 percent of the total cost is supported by the private sector. With the accelerated rate of filings in competitive markets, tariff production and distribution have become significant expense items for many airlines and a considerable administrative burden.

Comments on the Advance Notice of Proposed Rulemaking (ANPRM)

In response to the ANPRM, the Department received comments from 17 parties: two tariff publishers (Airlines Tariff Publishing Company (ATPCO) and Official Airline Guides, Inc. (OAG)), the International Air Transport Association (IATA), Air Transport Association of America (ATA), five U.S. carriers (American Airlines, Inc. Continental Air Lines, Inc., Northwest Airlines, Inc., The Flying Tiger Line Inc., and Transamerica Airlines, Inc.), three foreign carriers (British Airways Plc., KLM Royal Dutch Airlines, and Varig Brazilian Airlines), one commuter airline (Harbor Airlines), two private firms (Transax Data Corporation and Numerax Transportation Traffic Services, Inc.), the Information Industry Association, and one private citizen. The proposal to establish an electronic tariff filing system was very favorably received by all parties except Transamerica and Harbor Airlines, who were concerned that the costs would be burdensome to small carriers. As noted in the ANPRM, however, we expect to continue the filing of paper tariff documents for any airline that would experience financial hardship if compelled to use an electronic system.

Both of the major tariff agents, who handle approximately 98 percent of all tariff filings submitted to the Department, endorsed the proposal to substitute electronic filing and distribution of tariff data for printed documents and requested that a group be created at an early stage to assist with the plans for the system.

ATPCO urged that before final action is taken to establish—or even develop—a program of the type envisioned in the ANPRM, the Department create an advisory committee or working group of policy and technical experts, representing all interested parties, to study and advise how best to deal with the problems involved in the design of such a program.

OAG suggested a meeting with other vendors and airlines to design specifications for the system. OAG says that "knowing what is required in the DOT reports and analysis will enable OAG to determine that all necessary data elements have been provided in a filing, and that necessary support data . . . are available."

IATA supported the Department's rulemaking initiative and its intention to consult with interested parties.

ATA urged DOT to create a joint government-industry group to examine the implications of automating the tariff filing system. The group should be composed of individuals who possess policy and technical expertise and should have responsibility for ascertaining the various needs of an automated system and exploring the means to meet those needs.

The majority of airlines who responded to the ANPRM expressed enthusiastic support for an electronic tariff system and for a joint industry/government group to work together on the system design.

American and Continental strongly concurred with the ATPCO recommendation.

Northwest supported a joint effort by industry and government to develop this system, but did not specifically call for an industry advisory group.

Flying Tiger recommended that before the DOT takes any action, an international task force composed of DOT officials, tariff publishers, and airline representatives should be established "to study the complexities of the current tariff filing system and design computerized procedures most suitable to meet the unique needs of the Department and the carriers."

British Airways suggested an initial meeting of interested parties and the establishment of an industry-government task force or working group, and expected to be "fully involved" in whatever process DOT may establish.

KLM suggested that DOT and its automation experts develop an informal face-to-face dialogue with groups of industry experts with the objective of defining the scope and standards of a proposed DOT automated tariff system. KLM would be willing to provide its experts for such a task.

VARIG suggested an on-going working group composed of DOT, airlines, and filing agents.

The Information Industry Association emphasized the importance of seeking the perspective and advice of the interested and expert outside groups which will be providing and using the relevant systems and information and expressed hope that there will be future opportunity for consultation and comment as the project progresses.

In summary, the majority of commenters believe it is essential that DOT establish an industry advisory or work group to assist in system development. We agree. We believe that discussion and recommendations by those interests affected by automation of tariff filing during the process of designing and implementing the system are essential to the success of this effort. These interests can anticipate and address many potential problem areas. Moreover, the dynamic nature of the aviation industry is such that conditions can change and unexpected contingencies arise during the course of the project. The availability of a standing body of representatives of affected interests to evaluate and make recommendations on problems as they arise is critical.

Finally, this approach is consistent with that recommended by a recent congressional report (House Report 99-560, 992 Cong., 2nd Sess., Electronic Collection and Dissemination of Information by Federal Agencies: A Policy Overview, Committee on Government Operations (1986)), specifically, that an automated information system be developed with the assistance of private industry expertise and be responsive to the needs of outside users.

Purpose of the Advisory Committee

The principal aim in developing an electronic filing system is to provide the Department with the ability to receive, process, analyze, and store tariff matter in an electronic data processing environment compatible with the responsibilities of the Department and attuned to the needs of all users. In addition to the mechanics of system design, the Committee will be asked to consider the following policy goals:

(1) An electronic tariff system will enhance the Department's ability to fulfill its tariff processing responsibilities.

(2) Private sector resources will be used wherever feasible.

(3) The system will improve the availability and dissemination of tariff matter to the public.

(4) The electronic tariff environment will be compatible with systems used in the airline industry and will thereby minimize disruption to existing industry systems.

(5) The system will reduce the paperwork burden of manual tariff processing which now exists on the government and the airlines.

(6) The impact of an electronic tariff system on tariff posting requirements will be evaluated.

(7) A reasonable fee schedule will be established which will not deter or impair full public use of tariff information.

(8) DOT will ensure the integrity of the electronic tariff system.

(9) Airlines will be allowed to file tariffs electronically on an individual basis or through an appointed agent; airlines for whom electronic filing would be burdensome will be allowed to continue filing tariffs in a paper format.

(10) The system will provide historical retention, retrieval, and reproduction capabilities.

(11) The system will have adequate security features to prevent loss of data and unauthorized access to, or modification of, the ETS database.

(12) The system will create the potential for interagency sharing of air tariff information.

(13) Direct competition with organizations commercially engaged in the dissemination of tariff data will be avoided except where inconsistent with statutory responsibilities for maintaining the public availability of this information.

The nature and complexity of the issues to be considered in automation of the tariff system require careful evaluation and close cooperation with the aviation industry to insure that we meet the needs of all users. Against this background, we see public discussion and recommendations of the foregoing policy goals as an important aspect of the Advisory Committee's function.

In anticipation of the need to address the many questions that would arise in developing an electronic tariff system, the Department's staff, since publication of the ANPRM in August 1985, has been engaged in:

(1) Analyzing and documenting the needs of the Department in collecting and processing tariff filings and Special Tariff Permission and waiver applications;

(2) Studying record layouts of passenger fare data provided by the tariff publishers;

(3) Completing a cost/benefit analysis of alternative methods for processing tariff data in conjunction with Vanguard Technologies Corporation at DOT's Transportation Computer Center; and

(4) Preparing estimates of tariff volume and preliminary studies of ADP requirements of an electronic tariff filing system, in conjunction with the DOT Transportation Systems Center.

Findings of these studies will be discussed fully with the Advisory Committee.

Committee Membership and Organization

Representatives will serve on the Advisory Committee without compensation or reimbursement of out-of-pocket expenses. Facilities and support staff for the Committee will be provided by the Department at its office in Washington, DC.

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Meetings of the Committee will be held in Washington, DC and will be open to the public. Records of the proceedings will be maintained. Regular meetings of the Committee will be held not more than four times per year. Subcommittees may be formed to work on particular subject areas and members may be asked to attend additional meetings as necessary.

In addition to required agency representatives, the Advisory Committee will consist of 10–20 persons (that is, either individuals or representatives of organizations) whose interests are affected by the proposed electronic tariff filing system.

Those persons shall include:

Airline tariff agent representatives,
Airline representatives,
Airline association representatives,
Consumer group representatives, and
Information industry representatives.

Organizations or persons wishing to participate as voting members of the Advisory Committee should so indicate in their comments and advise as to the interest they wish to represent and why they can adequately represent that interest. The Secretary shall appoint members to the Committee upon recommendation of the Assistant Secretary for Policy and International Affairs. Individuals or organizations not chosen as voting members of the Committee may attend the meetings and participate in the public discussion portion of the sessions.

Upon receipt of all comments and requests to participate, the Department will issue invitations to those who are selected as members of the Committee and publish a Notice announcing the date and agenda of its first meeting.

Issued this 18th day of November 1986, at Washington, DC.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

Appendix A—Department of Transportation; Advisory Committee Charter; Electronic Tariff Filing System Advisory Committee

Purpose: This Charter establishes an Advisory Committee for the Department of Transportation's Electronic Tariff Filing System and sets forth guidelines for its operation.

Scope and Objectives: The Committee shall advise the Department on the technical, operational and policy objectives of an automated tariff filing and information system currently in the initial conceptual phase. The advice and recommendations of the Committee shall be the result of its independent, collective judgment. The Committee shall act solely in an advisory capacity to the Department of Transportation and shall not exercise program management responsibility nor make decisions directly affecting the programs on which it provides advice.

Duties: The Committee shall be responsive to specific assignments made by the Sponsor and shall meet from time to time to review the progress of the Electronic Tariff Filing System and address the matters that may arise during this period. It shall make specific recommendations to the Sponsor on how DOT should proceed in resolving these matters.

Duration: The Committee shall terminate upon full implementation of the final automated system, or two years from the date of filing this charter, whichever shall occur first.

Official To Whom the Committee Reports: Assistant Secretary for Policy and International Affairs or his/her designee through the Committee sponsor.

Sponsor and Office of Support: The Director of the Office of Aviation Operations shall be the Sponsor and his/her office shall furnish support services.

Estimated Annual Cost: $5,000 and .30 work-years.

Membership: The Committee shall consist of no less than 10 and no more than 20 members appointed by the Secretary of Transportation on the recommendation of the Assistant Secretary for Policy and International Affairs. Committee members shall be appointed for two years. The Committee shall be comprised of persons who represent the interests affected by the Electronic Tariff Filing System, including persons representing tariff agents, airlines, consumer groups, airline industry associations, and the information industry.

Officers: The Assistant Secretary for Policy and International Affairs shall appoint an employee of the Department of Transportation as Executive Director and Chairperson of the Committee. The Assistant Secretary for Policy and International Affairs shall designate other officers as needed.

Meetings: The Committee shall hold meetings as required, but not to exceed four per year. Meetings shall be held at the call of the Chairperson, with the agenda for each meeting approved in advance by the Chairperson. All meetings will be conducted in accordance with the requirements of section 10 of the Federal Advisory Committee Act (5 U.S.C. App. 1 & 10).

Compensation for Members: The members shall receive neither salary compensation nor reimbursement for travel expenses.

Subcommittees: The sponsor is authorized to establish subcommittees from among the membership.

Filing Date: ———. This is the effective date of this Charter, which will expire two years from that date unless sooner terminated or extended.

[FR Doc. 86-26424 Filed 11-21-86; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 86-13]

Lower Mississippi River Waterway Safety Advisory Committee; Solicitation for Applications to Membership

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is seeking applications for appointment to membership on the Lower Mississippi River Waterway Safety Advisory Committee. Present appointments to membership will expire with the present committee charter on 1 August 1987. Approximately twenty-four memberships will be filled.

Applicants may be State and local government, the marine industry, environmental groups, academia, and other interested parties. To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women.

The purpose of the committee is to provide consultation and advice on all areas of maritime safety affecting this waterway. The committee normally meets once each quarter at various locations within the New Orleans area. Members serve voluntarily, without compensation from the Federal Government for salary, travel, or per diem. Term of membership will not exceed the expiration of the committee charter, 1 August 1989.

DATES: Requests for applications should be received no later than 15 December 1986. Completed applications should be returned no later than 30 January 1987.

ADDRESS: Persons interested in applying should write to Commander, Eighth Coast Guard District (mps), Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130-3396.

FOR FURTHER INFORMATION CONTACT: Commander David F. Withee, USCG, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard Distict (mps), Hale Boggs Federal Building, Room 1341, 500 Camp Street, New Orleans, LA 70130-3396; (504) 589-6901.

Dated: November 10, 1986.

E.B. Acklin,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard District, Acting.

[FR Doc. 86-26448 Filed 11-21-86; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Aircraft Position Lights

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comments.

SUMMARY: The proposed TSO–C30c prescribes the minimum performance standards that aircraft position lights must meet to be identified with the marking "TSO–C30c."

DATE: Comments must identify the TSO file number and be received on or before March 17, 1987.

ADDRESS: Send all comments on the proposed technical standard order to:

Technical Analysis Branch, AWS–120,
Aircraft Engineering Division, Office of Airworthiness—File No. TSO–C30c,
Federal Aviation Administration, 800 Independence Avenue SW.,
Washington, DC 20591.

or deliver comments to:

Federal Aviation Administration, Room 335, 800 Independence Avenue SW.,
Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AWS–120, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267–9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB–10A), 800 Independence Avenue SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

Background

The Federal Aviation Regulation (FAR) sections .1385 through .1397 of FAR 91.73 provide requirements for installation of position lights on U.S. registered civil aircraft. TSO–C30c proposes to update the minimum performance standards that describe a suitable means for equipment complying with these regulations.

How To Obtain Copies

A copy of the propsed TSO–C30c may be obtained by contacting the person under "**FOR FURTHER INFORMATION CONTACT.**" TSO–C30c references Society of Automotive Engineers, Inc. (SAE), Aerospace Standard (AS) Document No. AS 8037, dated January 1986, for the minimum performance standard, and Radio Technical Commission for Aeronautics (RTCA) Document No. DO–160B, dated July 1984 for the environmental standard. SAE AS Document No. AS 8037 may be purchased from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096. RTCA/DO–160B may be purchased from the Radio Technical Commission for Aeronautics Secretariat, One McPherson Square, Suite 500, 1425 K Street NW., Washington, DC 20005.

Issued in Washington, DC, or November 17, 1986.

Thomas E. McSweeny,

Manager, Aircraft Engineering Division, Office of Airworthiness.

[FR Doc. 86–28347 Filed 11–21–86; 8:45 am]

BILLING CODE 4910–13–M

Anticollision Light Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comments.

SUMMARY: The proposed TSO–C96a prescribes the minimum performance standards that anticollision light systems must meet to be identified with the marking "TSO–C96a."

DATE: Comments must identify the TSO file number and be received on or before March 17, 1987.

ADDRESS: Send all comments on the proposed technical standard order to:

Technical Analysis Branch, AWS–120,
Aircraft Engineering Division, Office of Airworthiness—File No. TSO–C96a,
Federal Aviation Administration, 800 Independence Avenue, SW.,
Washington, DC 20591

or deliver comments to:

Federal Aviation Administration, Room 335, 800 Independence Avenue, SW.,
Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AWS–120, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

Background

The Federal Aviation Regulations (FAR) sections .1397 and .1401 of FAR Pats 23, 25, 27 and 29, FAR 91.33, FAR 91.73 provide requirements for installation of anticollision lights on U.S. registered civil aircraft. TSO–C96a proposes to update the minimum performance standards that describe a suitable means for equipment complying with these regulations.

How to obtain copies

A copy of the proposed TSO–C96a may be obtained by contacting the person under "For Further Information Contact." TSO–C96a references Society of Automotive Engineers, Inc. (SAE), Aerospace Standard (AS) Document No. AS 8017A, dated January 30, 1986, for the minimum performance standard, and Radio Technical Commission for Aeronautics (RTCA) Document No. DO–160B, dated July 1984 for the environmental standard. SAE AS Document No. AS 8017A may be purchased from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096. RTCA/DO–160B may be purchased from the Radio Technical Commission for Aeronautics Secretariat, One McPherson Square, Suite 500, 1425 K Street, NW., Washington, DC 20005.

Issued in Washington, DC, on November 17, 1986.

Thomas E. McSweeny,

Manager, Aircraft Engineering Division, Office of Airworthiness.

[FR Doc. 86–28348 Filed 11–21–86; 8:45 am]

BILLING CODE 4910–13–M

BEST COPY AVAILABLE

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Federal Highway Administration

Environmental Impact Statement; Fairbanks, AK

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed road project in Fairbanks, Alaska.

FOR FURTHER INFORMATION CONTACT:

Barry F. Morehead, Division Administrator, Federal Highway Administration, P.O. Box 1648, Juneau, Alaska, 99802, Telephone: (907) 586-7428

Michael Tinker, Regional Environmental Coordinator, Alaska Department of Transportation and Public Facilities, 2301 Peger Road, MS 2550-08, Fairbanks, Alaska 99709-6394, Telephone: (907) 451-2238.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Alaska Department of Transportation and Public Facilities and URS/Thomas and Associates, will prepare an environmental impact statement (EIS) on a proposal to improve the South Cushman Road through the southern portion of Fairbanks, Alaska. Depending upon the alternative(s) selected, proposed improvements would reconstruct and widen the existing two lane road to a possible five lanes. Other alternatives, such as new couplets, roads and interchanges may also be constructed. The "do nothing" alternative and upgrading the existing facility will be considered. Improvements to the corridor are considered necessary to provide for the existing and projected traffic demands.

A scoping meeting for the South Cushman project will be held on November 13, 1986 at 8:30 a.m. at the Alaska Department of Transportation and Public Facilities Planning Section offices, 600 University Avenue, Fairbanks, Alaska. Letters inviting participation in the scoping meeting and process were sent to all pertinent Federal, State, local, and private agencies that have authority or interest in the proposed project.

Issued on: November 14, 1986.

Robert E. Ruby,

Assistant Division Administrator, Federal Highway Administration, Juneau, Alaska.

[FR Doc. 86-28353 Filed 11-21-86; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement: Fairbanks, AK

AGENCY Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Fairbanks, Alaska.

FOR FURTHER INFORMATION CONTACT:

Mr. Barry Morehead, Division Administrator, Federal Highway Administration, P.O. Box 1648, Juneau, Alaska 99802

Mr. Bob Thomas, Project Manager, URS/Thomas, 3515 Industrial Avenue, Fairbanks, Alaska 99701, Telephone: (907) 451-7455

Mr. Michael Tinker, Alaska Department of Transportation and Public Facilities, 2301 Peger Road, Fairbanks, Alaska 99709-6394, Telephone: (907) 451-2238.

SUPPLEMENTARY INFORMATION: The proposed highway project involves widening and rehabilitating University Avenue between the Parks Highway on the south and College Road on the north. The project length is approximately 2.5 miles. Widening of the facility is needed to accommodate projected traffic demands of the next 20 years.

Possible alternatives include a non-action alternative and the proposed action, upgrading the existing University Avenue. Construction on new alignment, mass transit or multimodal design are not considered reasonable alternatives.

Scoping is a process of identifying and determining the significance of areas of concern early in a project development. A scoping meeting for this proposed project will be held on November 13, 1986, 1:30 p.m., at the Alaska Department of Transportation and Public Facilities, 600 University Avenue, Fairbanks, Alaska.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and Federally assisted programs and projects apply to this program)

Issued on November 14, 1986.

Robert E. Ruby,

Acting Division Administrator, Juneau.

[FR Doc. 86-28354 Filed 11-21-86; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

Petitions for Exemption or Waiver of Compliance, Bay Colony Railroad Corp. et al

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for an exemption from or waiver of compliance with certain requirements of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST-84-21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. Communications received before January 8, 1987 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m. to 5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Bay Colony Railroad Corporation

(Waiver Petition Docket Numbers RSGM-86-25, SA-86-8 and LI-86-4)

The Bay Colony Railroad Corporation (BCLR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223), the Safety Appliance Standards (49 CFR Part 231) and the Locomotive Safety Standards (49 CFR Part 229) for two locomotives, numbers BCLR 410 and BCLR 411. The locomotive glazing presently installed is Duolite Safety Glass and does not comply with 49 CFR Part 223. The locomotive switching steps and uncoupling mechanisms do not comply with 49 CFR Part 231, and the locomotives are not equipped with slip/slide protective devices (49 CFR 229.115) and speed indicators (49 CFR 229.117). The BCLR 410 and BCLR 411 are General Electric 44-ton, 400 horsepower switching locomotives built in 1949 and 1956, respectively. The BCLR indicates the locomotives will be used largely on trackage within yard limits.

Santa Cruz, Big Tree and Pacific Railway Company

(Waiver Petition Docket Number SA-86-5)

The Santa Cruz, Big Tree and Pacific Railway Company (SCBT&P) seeks a permanent waiver of compliance with certain provisions of the Safety Appliance Standards (49 CFR Part 231) for locomotive number 20. The locomotive corner stairways do not comply with 49 CFR 231.29. The SCBT&P 20 is a 44-ton Whitcomb diesel locomotive. The railroad indicates that the locomotive will be used in road service between their Roaring Camp depot through park lands to the city of Santa Cruz.

Issued in Washington, DC on November 17, 1986.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 86-26425 Filed 11-21-86; 8:45 am]

BILLING CODE 4910-06-M

UNITED STATES INFORMATION AGENCY

Radio Engineering Advisory Committee; Meeting

The Radio Engineering Advisory Committee of the United States Information Agency (USIA) will meet in Washington, DC, on Friday, December 12, 1986, to discuss current operations and future plans of the Voice of America (VOA). The meeting will be held at the USIA Headquarters Building, 301 4th Street, SW., Washington, DC. The meeting will begin at 8 a.m. Point of contact for the meeting is Jeri Glinski, telephone (202) 485-8048.

This meeting will include reports from senior members of the VOA management and engineering staff on the progress being made on the overall VOA modernization and enhancement effort. Specific topics of discussion will include the testing of 500 kW high frequency broadcasting transmitters, the status of site negotiations and major construction projects and other technical and regulatory issues relating to VOA modernization.

This meeting will be closed to the public because issues relating to future site negotiations for VOA relay stations will be discussed throughout the meeting. This meeting will be closed because disclosure of the matters to be discussed is likely to divulge information that is: (A) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy, and (B) in fact, is properly classified pursuant to such Executive Order (5 U.S.C. 552b(c)(1)).

Dated: November 13, 1986.

Charles Z. Wick,

Director.

[FR Doc. 86-26405 Filed 11-21-86; 8:45 am]

BILLING CODE 8230-01-M

Fulbright Teacher Exchange Program

Note.–This is a reprint of the announcement which appeared in the **Federal Register** of November 18, 1986 on page 41720. Some of the narrative material was inadvertently omitted from the original announcement.

The United States Information Agency seeks to secure the services of two institutions of higher education to coordinate and implement orientation/workshop programs in the United States for the Fulbright Teacher Exchange Program. The Fulbright Teacher Exchange Program provides opportunities for U.S. teachers to exchange teaching positions with foreign counterpart teachers for an academic year.

Universities or colleges in metropolitan Washington, DC, with schools or colleges of education or graduate programs in international studies, and located within reasonable proximity of Washington, DC's international gateway airports, are invited to submit project proposals for a grant. Universities and colleges in California with schools or colleges of education or graduate programs in international studies, and located in San Francisco or Los Angeles or within reasonable proximity of one of those cities' international gateway airports, are invited to submit project proposals for a grant. For application information, please contact Mr. David N. Levin no later than December 10, 1986, at the following address: Teacher Exchange Branch (E/ASX), Office of Academic Programs, United States Information Agency, 301 Fourth Street, SW., Washington, DC, 20547. Phone: (202) 485-2555.

Dated: November 19, 1986.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 86-26483 Filed 11-21-86; 8:45 am]

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Sunshine Act Meetings

Federal Register
Vol. 51, No. 226
Monday, November 24, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Monday, December 1, 1986, 2:00 p.m. (eastern time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 E Street, NW., Washington, DC 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

Open

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. Certification of New Mexico Human Rights Commission
4. Request for Approval of the Annual Report on the Employment of Minorities, Women, and Handicapped Individuals in the Federal Government for Fiscal Year 1984

Closed

1. Litigation Authorization: General Counsel Recommendations
2. Proposed Contract for Expert Services In Connection With A Court Case
3. Agency Adjudication and Determination on the Record of Federal Agency Discrimination Complaint Appeals

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634–6748.

Dated and issued: November 19, 1986.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 86–26463 Filed 11–19–86; 4:27 pm]

BILLING CODE 6750-06-M

Corrections

Federal Register
Vol. 51, No. 226
Monday, November 24, 1986

This section of the FEDERAL REGISTER contains editorial corrections of previously published Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency-prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51647; FRL-3104-5]

Certain Chemicals Premanufacture Notices

Correction

In notice document 86–24664 beginning on page 39795 in the issue of Friday, October 31, 1986, make the following corrections:

On page 39795, third column, first complete paragraph, seventh line, remove "December 20, 1986." from the seventh line and place on the eighth line, after "97,".

On page 39796, third column, under **P 87–91**, third line, "Import" should read "Production".

On the same page, same column, under **P 87–92**, first line, insert "." after the first word.

On page 39797, second column, under **P 87–99**, fourth line, "2,3, dihydro–" should read "2,3–dihydro–".

On the same page, third column, under **P 86–103**, fifth line, remove ";" after "methylethenyl".

On the same page, same column, under **P 87–105**, third line, "(S)" should read "(G)", and on the fourth line, "N,M" should read "N,N".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59779; FRL-3104-3]

Certain Chemicals Premanufacture Notices

Correction

In notice document 86–24666 beginning on page 39798 in the issue of Friday, October 31, 1986, make the following corrections:

On page 39798, second column, ninth line from the bottom in the **SUMMARY**, "commerces" should read "commences".

On page 39799, first column, under **Y 86–211**, eleventh line, "Toxicity" was misspelled.

On the same page, same column, under **Y 86–212**, eighth line, "Environmental" was misspelled.

Also on the same page, same column, under **Y 86–213**, third line, "Chemical" was misspelled, on the eighth and ninth lines "fluorescent" was misspelled, and on the tenth line, "227,00" should read "227,000".

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Part II

Department of Health and Human Services

Public Health Service; Office of the Assistant Secretary for Health; Alcohol, Drug Abuse, and Mental Health Administration; National Institutes of Health; Centers for Disease Control; Health Resources and Services Administration; and Food and Drug Administration

Privacy Act of 1974; Annual Publication of Systems of Records

VOL 51 ISS 226 NO 24 1986 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Office of the Assistant Secretary for Health

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Office of the Assistant Secretary for Health (OASH), Public Health Service (PHS), HHS.

ACTION: OASH is publishing this document to meet the requirements of the Office of Management and Budget (OMB) Circular No. A-130, "Management of Federal Information Resources," Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," which limits republication to revised system notices only.

SUMMARY: This preamble summarizes significant changes to systems of individually identifiable records which have occurred since the 1985 annual publication. Eleven of these revised systems are published in their entirety below and are complete as of the date of signature. None of the modifications being made meets the Office of Management and Budget (OMB) criteria either for a new or altered system report, or for an advance period of public comment.

OASH has added one new system of records to its inventory since the 1985 annual publication. OASH also has revised its system notices to comply with the OMB "Privacy Act Guidance Update" of May 24, 1985, regarding the addition of a routine use permitting disclosure of information for purposes of prosecution and defense, as stated below. In addition, OASH has reviewed all system notices and has made changes to improve the clarity and specificity of the notices, as discussed below.

OASH is republishing the inventory of all of its current systems of records. An asterisk indicates that a system notice has been revised and is being republished below. For the remaining systems, the citation of the most recent publication of each system is provided following the system's title.

SUPPLEMENTARY INFORMATION:

A. General Information

1. The routine uses set forth in each notice describe permissible disclosures outside the Department of records in that system, which may be made without the consent of individuals who are the subjects of those records. Additional disclosures without consent of subject individuals are permitted by the Privacy Act (5 U.S.C. 552a) itself in section 3(b), as follows:

"(1) To those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

"(2) Required under section 552 of this title (the Freedom of Information Act);

"(3) For a routine use (as described in the routine use section of each specific system notice);

"(4) To the Bureau of Census for purposes of planning or carrying out a sensus or survey or related activity pursuant to the provisions of title 13;

"(5) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

"(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has value;

"(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

"(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of such individual;

"(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

"(10) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

"(11) Pursuant to the order of a court of competent jurisdiction; or

"(12) To a consumer reporting agency in accordance with section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952(d))."

2. Except as noted below, all changes being published are editorial in nature, clarify and update existing statements, and reflect organizational, address, and other miscellaneous administrative revisions which have occurred since the system notices were last published.

B. Specific Information

1. OASH published one new system of records during the year: 09-37-0019, "National Medical Expenditure Survey, HHS/OASH/NCHSR," 51 FR 2762, January 21, 1986.

2. OASH added a routine use permitting disclosure of information to the Department of Justice, courts, and other tribunals for purposes of prosecution and defense litigation to all system notices published below except #09-37-0003, in accordance with the OMB "Privacy Act Guidance Update" of May 24, 1985.

3. OASH reviewed the "Safeguards" section of all Privacy Act system notices to ensure that the published description fully and accurately reflects the manner in which both manual and computerized records in each system are protected. As a result, the "Safeguards" section of all notices of OASH systems of records has been reformatted to delineate clearly who the authorized user are and what physical and procedural safeguards are being used to protect the records.

4. OASH reviewed the "Authorities" section of all Privacy Act system notices and has added, where appropriate, a description of the title following the legal citation. OASH made this change to aid the reader who has no access to the documents cited.

5. OASH deleted from system #09-37-0017 the statement indicating that certain records would be exempt from access pursuant to U.S.C. 552a (k)(5) and (k)(6) pending the Secretary's approval. The Secretary has postponed approval of the exemption until a departmentwide policy regarding the confidentiality of individually identifiable personnel records has been established.

6. The Commissioned Personnel Operations Division (CPOD/OASH) extensively revised its system notices (#09-37-0002, 09-37-0003, 09-37-0005, 09-37-0006, and 09-37-0008) to reflect more accurately the interaction between that Division, which is responsible for the daily administration of the commissioned corps, and the various agencies and organizations to which PHS commissioned officers are assigned, and to provide greater specifity and clarity. Specifically, CPOD:

a. Deleted from systems #09-37-0002 and 09-37-0005 the statement indicating that certain records in these systems were exempt from access pursuant to 5 U.S.C. 552a (k)(5) and (k)(6); these exemptions have never been published due to an administrative oversight.

CPOD will reapply for these exemptions after a departmentwide policy regarding the confidentiality of individually identifiable personnel records has been established;

b. Deleted from system #09–37–0002 the routine use permitting disclosure of information to Federal agencies regarding cost-of-living adjustments of retired officers' pay, because such disclosures are no longer being made;

c. Changed in system #09–37–0005 the title of the seventh Board from "Continuation Pay (CP) Review Board" to "Dental Officer Special Pay Review Board," to satisfy statutory changes regarding continuation pay;

d. Deleted from system #09–37–0005 all reference to the eleventh Board, the "Board for Correction;" those records are now maintained separately in system #09–37–0017;

e. Changed the title of system #09–37–0006 from "PHS Commissioned Corps Grievance, Non-Board and Pre-Board Involuntary Retirement/Separation, and Disciplinary Files, HHS/OASH/OM," to the more descriptive title of "PHS Commissioned Corps Grievance, Investigatory, and Disciplinary Files, HHS/OASH/OM";

f. Revised the "System Location" section of system #09–37–0006 to indicate that records may also be maintained at offices and organizations to which an individual commissioned officer is assigned.

Readers who notice any inadvertent errors or omissions in OASH system notices are invited to bring them to my attention of the following address: Department of Health and Human Services, Public Health Service, Office of the Assistant Secretary for Health, Office of Management, 5600 Fishers Lane, Room 17–25, Rockville, Maryland 20857.

Dated: October 14, 1986.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

Office of the Assistant Secretary of Health Inventory of Privacy Act Systems of Records

*09–37–0001 Office of the Assistant Secretary for Health Correspondence Control System, HHS/OASH/OM

*09–37–0002 PHS Commissioned Corps Personnel Records, HHS/OASH/OM

*09–37–0003 PHS Commissioned Corps Medical Records, HHS/OASH/OM

*09–37–0005 PHS Commissioned Corps Board Proceedings, HHS/OASH/OM

*09–37–0006 PHS Commissioned Corps Grievance, Investigatory, and Disciplinary Files, HHS/OASH/OM

*09–37–0008 PHS Commissioned Corps Unofficial Personnel Files and Other Station Files, HHS/OASH/OM

*09–37–0009 Applicants for National Center for Health Statistics Technical Assistance, HHS/OASH/NCHS

*09–37–0010 Health and Demographic Surveys Conducted in Probability Samples of the U.S. Population, HHS/OASH/NCHS, 49 FR 37693, September 25, 1984

*09–37–0011 Health Manpower Inventories and Surveys, HHS/OASH/NCHS, 49 FR 37694, September 25, 1984

*09–37–0012 Vital Statistics for Births, Deaths, Fetal Deaths, Marriages and Divorces Occurring in the United States During Each Year, HHS/OASH/NCHS, 49 FR 37695, September 25, 1984

*09–37–0013 Health Resources Utilization Statistics, HHS/OASH/NCHS, 49 FR 37697, September 25, 1984

*09–37–0014 Curricula Vitae of Consultants to the National Center for Health Statistics, HHS/OASH/NCHS

*09–37–0015 National Center for Health Services Research and Health Care Technology Assessment (NCHSR) Grants Records System, HHS/OASH/NCHSR

*09–37–0016 Users of Health Statistics, HHS/OASH/NCHS

*09–37–0017 Proceedings of the Board for Correction of Public Health Service Commissioned Corps Records, HHS/OASH/OM

*09–37–0018 Disaster Health Services Information Systems, HHS/OASH/DEP, 50 FR 38212, September 20, 1985

*09–37–0019 National Medical Expenditure Survey, HHS/OASH/NCHSR, 51 FR 2762, January 21, 1986

09–37–0001

SYSTEM NAME:

Office of the Assistant Secretary for Health Correspondence Control System, HHS/OASH/OM.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Public Health Service Executive Secretariat, Room 710H, Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, DC 20201

Office of Population Affairs, OASH, 200 Independence Ave. SW., Washington, DC 20201

National Center for Health Statistics, Room 2–19, 3700 East-West Highway, Hyattsville, MD 20782

National Center for Health Services Research and Health Care Technology Assessment, Parklawn Building, Room 18–23, 5600 Fishers Lane, Rockville, Maryland 20857 and

Federal Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have contacted either the Assistant Secretary for Health, the Surgeon General, a Deputy Assistant Secretary, or a PHS Staff Office Director, or have been contacted in writing by one of these officials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Hard copies of the actual correspondence, 3 x 5 card file, and computer or word processor printout and tape or disk control system records of that correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 Departmental Regulations.

PURPOSE(S):

To control and track all correspondence documents addressed or directed to the Assistant Secretary for Health or his subordinates as indicated above, as well as documents initiated by them, in order to assure timely and appropriate attention.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

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*Indicates that the system notice is being republished below.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Correspondence records are maintained in hard copy. Control records are maintained in 3 x 5 card file and on computer or word processor printout, tape, and disk.

RETRIEVABILITY:

Hard copy records are indexed alphabetically by name of addressee and date of outgoing correspondence; or by name of sender and date of incoming correspondence; or by subject. Records may also be cross-referenced.

SAFEGUARDS:

1. Authorized Users: Office directors, correspondence assistants, and professional and support staff with designated functional responsibilities directly relating to the purpose of the correspondence.

2. Procedural Safeguards: Confidential and/or sensitive documents are either handcarried or transmitted in sealed envelopes. Employees who handle correspondence are instructed to observe established office procedures to protect correspondence documents from unauthorized access. The computerized subsystem is protected by passwords assigned to specific correspondence assistants; passwords are changed periodically; the password is changed when a correspondence assistant terminates employment.

3. Physical Safeguards: 24-hour guard service in buildings, locked rooms after office hours, lockable file cabinets, word processing disks are off-loaded and stored when not in use.

RETENTION AND DISPOSAL:

Records may be retired to a Federal Records Center and subsequently disposed of in accordance with the Office of the Assistant Secretary for Health records control schedule. The records control schedule may be obtained by writing to the appropriate System Manager at the address for that official which is indicated under System Location above.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Public Health Service Executive Secretariat (address as above), Staff Assistant to the Deputy Assistant Secretary for Population Affairs (address as above); Director, National Center for Health Statistics (address as above; Director, National center for Health Services Research and Health Care Technology Assessment (address as above).

Policy coordination is provided by: Director, Office of Organization Management Systems, Office of Management, Room 17–51, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

NOTIFICATION PROCEDURE:

Inquiries should indicate the name of the individual with whom the Office of the Assistant Secretary for Health corresponded, the date of the incoming correspondence, if any, and the date of the outgoing correspondence. Inquiries should be addressed to the appropriate System Manager, listed above, not to the policy coordination official.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters must state that they are who they claim to be, and understand that obtaining information under false pretenses is subject to a maximum statutory penalty of 5,000.00 dollars.

Requesters may also ask for an accounting of disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the appropriate System Manager at the address for that official specified under System Location above, and reasonably identify the record, specify the information to be contested, the corrective action sought, and the reason for seeking the correction, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Records are derived from incoming correspondence to, and the outgoing correspondence of, the Assistant Secretary for Health or his subordinates as indicated above.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–37–002

SYSTEM NAME:

PHS Commissioned Corps General Personnel Records, HHS/OASH/OM.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Commissioned Personnel Operations Division, Office of Personnel Management/OM/PHS, Room 4–35, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Records in this system are kept at the address shown above when the person to whom the record pertains has an active or potentially active relationship with the PHS Commissioned Corps personnel system. Two years from the time the relationship ceases to be active, the records are sent to the address shown below:

General Services Administration,
Federal Records Center, 111
Winnebago Street, St. Louis, MO
63116

Records in this system that are kept at the St. Louis location are considered closed. A record is closed two years from the date on which one of the following occurs: A final decision has been made that an applicant is no longer under consideration for an appointment to the commissioned corps; the person to whom the record pertains has permanently severed all ties with PHS; or the person to whom the record pertains is deceased.

Critical data that can be used to construct key actions concerning an individual's appointment, creditable service, compensation, retirement, or benefits may be micro-fiched and stored at a location apart from the system locations shown above to serve as an emergency data base in the event the original records are destroyed. Because this data is intended to be used only in the event that the original records are destroyed, it includes only duplicates of existing records maintained at the system locations shown above. For this reason, disclosure from and access to this data will generally be unnecessary, since requests for disclosure or access will be granted from the original records.

Names and addresses of contractors given information under routine use 9 can be obtained from the system manager at the Rockville, Maryland location identified above.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are part of or who have some relationship with the Public Health Service (PHS) Commissioned Corps, including: Active duty commissioned officers, former commissioned officers, inactive reserve officers, retired commissioned officers, deceased commissioned officers, dependents and survivors of the above, former spouses of retired officers, and applicants to the PHS Commissioned Corps.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain:

1. Applications for appointment, references and other documents relating to qualifications or suitability for appointment and assignment, including

medical intern and residency evaluations;

2. Official Personnel Folders (OPFs), for all officers who are, or were at one time, on active duty, which include: All documents related to the application and appointment process; effectiveness reports; career development and training records; documents relating to assignment, promotion, retention, separation, and all other personnel actions; records of personnel actions relating to pay, travel, and allowances (including overseas educational allowances for dependents); documentation of dependant status used to determine entitlement or eligibility for benefits and identification and privilege cards; applications and records of Service action relating to the Commissioned Officer Residency Deferment Program and Commissioned Officer Student Training and Extern Programs; survivor benefit elections; information supporting officer awards, honors and commendations, documentation supporting non-board terminations and reprimands issued after final administrative action; pay records and medical data after separation or death of the subject individual; and leave records;

3. Worksheets, internal forms, internal memoranda, and other documents which result in, or contribute to an action resulting in a record identified in 2. above;

4. Service Record Cards (summarizing personnel actions); and

5. Correspondence relating to the above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Public Health Service Act (42 United States Code (U.S.C.) 202–217, 218a, 224, 228, 233, and other pertinent sections); The Social Security Act (42 U.S.C. 410(m) et seq.); portions of Title 10, U.S.C., related to the uniformed services; portions of Title 37, U.S.C., related to pay and allowances for members of the uniformed services; portions of Title 38, U.S.C., related to benefits administered by the Veterans Administration; sections of 50 U.S.C. App., related to the selective service obligation and the Soldiers' and Sailors' Civil Relief Act; Executive Order (E.O.) 9397, "Numbering System for Federal Accounts Relating to Individual Persons;" E.O. 10450, "Security Requirements for Government Employment;" and E.O. 11140, which delegates the authority to administer the PHS Commissioned Corps from the President to the Secretary, DHHS.

PURPOSES:

The information is used by the Commissioned Personnel Operations Division (CPOD) to:

1. Determine qualifications and suitability for appointment, selection, career development, training, promotions, assignments, mobilization, temporary duty, and other types of officer utilization;

2. Determine eligibility for pay, allowances, entitlements, privileges, and benefits;

3. Prepare the Commissioned Officer Roster and Promotion Seniority of the Public Health Service;

4. Determine the eligibility or entitlements of dependents and beneficiaries for benefits based on the service of a PHS commissioned officer;

5. Give legal force and effect to personnel transactions and establish officer rights and obligations under the pertinent laws and regulations governing the commissioned corps personnel system;

6. Provide material for research by the Office of the Secretary, HHS, and the Office of the Assistant Secretary for Health, PHS, concerning the activities of health professionals.

7. Provide information to DHHS components seeking to collect an overdue debt to the Federal government, but only to the extent necessary to collect that overdue debt; and

8. Provide information about professional qualifications, past performance, and career interests of PHS officers to Department offcials involved in the selection or assignment of an officer to a particular program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records or information from these records may be used:

1. To locate individuals for personnel research or survey response, and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

2. To disclose information to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

3. To the Department of Justice, to a court of other tribunal, when:

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court, or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records are collected.

4. To disclose information, such as, but not limited to, name, home address, social security number, earned income withholding status, and amount of taxes withheld, to the Department of Treasury for the following purposes: preparation and issuance of salary, retired pay, and annuity checks; issuance of U.S. Savings bonds; recording income information; and collecting income taxes.

5. To disclose to State and local government agencies having taxing authority pertinent records relating to employees, retirees, and annuitants, including name, home address, social security number, earned income, and amount of taxes withheld, when these agencies have entered into tax withholding agreements with the Secretary of Treasury, but only to those State and local taxing authorities for which a member, retiree, or annuitant is or was subject to tax, regardless of whether tax is or was withheld.

6. To disclose pertinent information to appropriate Federal, State, or local agencies; international agencies; or foreign governments responsible for investigating, prosecuting, enforcing, or implementing statutes, rules, regulations, or orders, when PHS becomes aware of evidence of a potential violation of civil or criminal law.

7. To disclose information to an individual who has been asked to provide a reference, to the extent necessary to clearly identify the individual to whom the reference will pertain, inform the source of the purpose(s) of the reference, and to identify the type of information requested from the source, where

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necessary to obtain information relevant to an agency decision concerning the hiring or retention of any employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit.

8. To disclose to any agency in the executive, legislative, or judicial branch; the District of Columbia Government; a State or local government agency; a professional credentialing agency; or a nonprofit institution; in response to its request, or at the initiation of the Public Health Service, information in connection with the hiring of an employee; the issuance of a security clearance; the conducting of a security or suitability investigation of an individual; the classifying of jobs; the letting of a contract; the issuance of a license, grant or other benefit by the requesting agency; or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. Information disclosed to professional credentialing of licensing organizations may be made through the computer matching program described in the **Federal Register**, January 10, 1986 (52 FR 1302).

9. When the Department contemplates contracting with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records. These safeguards are explained in the section entitled "Safeguards."

10. To disclose information to the Department of State and officials of foreign governments for the issuance of passports, visas, and other clearance before an active, retired, or inactive reserve officer is assigned to that country.

To disclose information to the Department of Labor, Veterans Administration, Social Security Administration, or other Federal agencies having special employee benefit programs; to a national, State, county, or municipal agency; or to a publicly recognized charitable organization when necessary to adjudicate a claim under a benefit program, or to conduct analytical studies of benefits being paid under such programs, provided such disclosure is consistent with the purposes for which the informatin was originally collected.

12. To disclose information to the Office of Management and Budget (OMB) at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19, or for budgetary or management oversight purposes.

13. When an individual to whom a record pertains is mentally incompetent or under other legal disability, information in the individual's record may be disclosed to any person who is legally responsible for the care of the individual, to the extent necessary to assure payment of benefits to which the individual is entitled.

14. In response to interrogatories in the prosecution of a divorce action or settlement for purposes stated in 10 U.S.C. 1408 ("The Former Spouses' Protection Act").

15. To disclose information about the entitlements and benefits of a beneficiary of a deceased active duty officer, retiree, or annuitant for purposes of making disposition of the estate.

16. To disclose information to the Department of Defense, United States Coast Guard, or Federal Emergency Management Agency, to the extent necessary to facilitate participation of PHS members in planning, training, and emergency operations in support of civil defense activities, and to provide support in the event of a national emergency.

17. To disclose information to Government training facilities (Federal, State, and local) and to non-Government training facilities (e.g., private vendors of training courses or programs, private schools) for training purposes, such as crediting of work experience in the Commissioned Officer Student Training and Extern Program, or verification of status or income.

18. To disclose information to the Defense Enrollment/Eligibility Reporting System (DEERS), uniformed services medical treatment facilities and to the Department of Defense Office of the Civilian Health and Medical Program of the Uniformed Services, when the information is needed to verify the eligibility of an officer, his/her dependents, or a former spouse for medical benefits.

19. To disclose information to agencies or organizations established in medically underserved areas who apply to the National Health Service Corps for the assignment of commissioned officers to such agencies or organizations.

20. To disclose information on officers assigned to Federal health care facilities to private sector (i.e., other than Federal, State, or local government) agencies, boards, or commissions (e.g. the Joint Commission on Accreditation of Hospitals), to obtain accreditation or other approval rating and only to the extent that the information disclosed is relevant and necessary for that purpose.

21. When Federal agencies having the power to subpoena other Federal agencies' records, such as the Internal Revenue Service or the Civil Rights Commission, issue a subpoena to the Department for records in this system of records, the Department may make such records available.

22. To disclose to a private employer who considers hiring a former officer information such as the officer's dates of employment, salary, job title and description, duty station, and character and nature of separation.

23. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

24. To disclose to Federal and non-Federal agencies information allowing the consideration and selection of officers for honor awards made as a result of the individual's work as a commissioned officer, and to publicize those awards granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize officer awards and honors.

25. To disclose information to officials of the Selective Service Administration to allow crediting of active service performed by an individual with PHS so that the individual may be properly classified if draft laws once again become operative.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated files are stored on disks, micro-fiche, and magnetic tapes. Nonautomated (hard-copy) files are kept in offices, and may be stored in Lektrievers, Conserv-a-files, safes, cabinets, bookcases, or desks.

RETRIEVABILITY:

Alphabetically by name, by PHS serial number, and by Social Security Number in accordance with Section 7(a)(2)(B) of the Privacy Act and

Executive Order 9397, "Numbering System for Federal Accounts Relating to Individual Persons".

SAFEGUARDS:

1. *Authorized Users.*

a. *Automated Records.* Access to and use of automated records is limited to personnel employed in the Commissioned Personnel Operations Division, Office of Personnel Management/OM/PHS whose official duties require such access. The Commissioned Officers Systems Division (COSD), Office of Human Resource Information Management, Office of the Assistant Secretary for Personnel Administration, Office of the Secretary, provides computer design, programming and support to CPOD, and has access to the data to the extent necessary to facilitate the provision of these services to CPOD. However, COSD personnel are not authorized to grant access to or make disclosures from automated data in this system to *anyone* or any *organization* without the express written approval of the Assistant Director for Operations, CPOD.

b. *Nonautomated records.* Access to and use of nonautomated records is limited to departmental employees whose official duties require such access or to individuals needing access to the information for purposes stated under routine uses. These individuals are permitted access to records only after they have satisfactorily identified themselves as having an official need to review the information and have provided satisfactory proof of their identities. Access is also granted to individuals who have written permission to review the record when that permission has been obtained from the individual to whom the record pertains. All individuals from outside the Department, to whom disclosure is made pursuant to a routine use, must complete Privacy Act nondisclosure oaths and must submit written requests for access to these records showing the name and employing office of the requester, the date on which the record is requested, and the purpose for reviewing the information in the record. This written request is then placed into the record.

2. *Physical safeguards.*

a. *Automated records.* Terminals by which automated records are accessed are kept in offices secured with combination locks. Automated records on magnetic tape, disks, and other computer equipment are kept in rooms designed to protect the physical integrity of the record media and equipment. These rooms are within inner offices to which access is permitted only with special clearance. Outer offices are secured with combination locks. During nonwork hours all cabinets, storage facilities, rooms and offices are locked and the premises are patrolled regularly by building security forces.

b. *Nonautomated records.* Nonautomated records are kept in such a way as to prevent observation by unauthorized individuals while the records are actively in use by an authorized employee. When records are not in use, they are closed and secured in desk drawers with locks, metal filing cabinets with locks, or other security equipment, all of which are kept inside authorized office space which is locked whenever it is not in use. Keys to furniture and equipment are kept only by the individual who is assigned to that furniture or equipment and by the CPOD security officer.

3. *Procedural safeguards.*

a. *Automated records.* Automated records are secured by assigning individual access codes to authorized personnel, and by use of passwords for specific records created by authorized personnel. Access codes and passwords are changed for each authorized user approximately every 90 days, on a random schedule. In addition, programming for automated records allows authorized personnel to access only those records that are essential to their duties. No access is permitted to automated records from remote terminal sites maintained by individuals or organizations outside of CPOD.

b. *Nonautomated records.* All files are secured when employees are absent from the premises and are further protected by combination locks on entryways and by the building security force. Official records may not be removed from the physical boundaries of CPOD. When records are needed at a remote location, copies of the records will be provided. When copying records for authorized purposes, care is taken to ensure that any imperfect or extra copies are not left in the reproduction room where they can be read, but are destroyed or obliterated.

4. *Implementing Guidelines.* Safeguards for automated records are provided in accordance with Part 6 of the Department's Information Resources Management Manual. Safeguards for nonautomated records are provided in accordance with chapters 45–13 and PHS.hf:45–13 of the Department's General Administration Manual.

5. *Contractor Guidelines.* A contractor who is given records under routine use 9 must maintain the records in a secured areas, allow only those individuals immediately involved in the processing of the records to have access to them, prevent any unauthorized persons from gaining access to the records, caution employees about the confidentiality of the records, and return the records to the System Manager immediately upon completion of the work specified in the contract. Contractor compliance is assured through inclusion of Privacy Act requirements in contract clauses, and through monitoring by contract and project officers. Contractors who maintain records are instructed to make no disclosure of the records except as authorized by the System Manager.

RETENTION AND DISPOSAL:

These records are maintained for varying periods of time. Applicant files of individuals selected for appointment as commissioned officers become the Official Personnel Folder. Applicant files of individuals not selected for appointment are maintained for two years after the application process has been completed and are then destroyed, unless an applicant requests that the file be held open for an additional year. The OPF is maintained for two years after an officer separates from active duty, at which time such officer's OPF is transferred to a Federal Records Center for permanent storage.

The records of a retired or deceased officer are maintained until two years after an individual's death and are then transferred to a Federal Records Center for permanent storage, unless a dependent of a deceased officer continues to receive benefits from PHS based upon the deceased's PHS service. When a dependent or beneficiary dies or becomes ineligible for further benefits based on a deceased officer's service, all records are maintained for one year, in the event information is needed from the records to help settle an estate, and are then transferred to the Federal Records Center for permanent storage.

Service Record Cards, which list critical data with regard to the dates of all officers' appointments, reassignments, separations, retirements and deaths are maintained permanently by the System Manager.

SYSTEM MANAGER AND ADDRESS:

Director, CPOD (See System Location above).

NOTIFICATION PROCEDURE:

Same as Access Procedures. Requesters should also reasonably specify the record contents being sought.

RECORD ACCESS PROCEDURES:

1. *General procedures.* An individual seeking access to his/her records may initially contact any CPOD office or employee for information about

obtaining access to the records. CPOD employees will inform each individual of the appropriate procedures to follow. Each individual seeking access will be required to verify his/her identity to the satisfaction of the CPOD employee providing access. Refusal to provide sufficient proof of identity will result in denial of the request for access until such time as proof of identity can be obtained. The system manager, the Director, CPOD, has delegated authority to release automated records to the Assistant Director for Operations, CPOD and the authority to release nonautomated records to the CPOD Privacy Act Coordinator and Branch Chiefs.

2. *Requests in person.* An individual who is the subject of a record and who appears in person seeking access shall provide his/her name and at least one piece of tangible identification (e.g., PHS Commissioned Corps Identification Card, driver's license, passport, or voter registration card). Identification cards with current photographs are preferred but not required. The record will be reviewed in the presence of an appropriate CPOD employee, who will answer questions and ensure that the individual neither removes nor inserts any material into the record without the knowledge of the CPOD employee. If the individual requests a copy of any records reviewed, the CPOD employee will provide them to the individual. The CPOD employee will record the name of the individual granted access, the dates and times of access, and information about the verification of identity on a separate log sheet maintained in the office of the CPOD employee who reviewed the record.

3. *Requests by mail.* Written requests must be addressed to the System Manager or the CPOD Privacy Act Coordinator, at the address shown as the system location above. All written requests must be signed by the individual seeking access. A comparison will be made of that signature and the signature maintained on file prior to release of the material requested. Copies of the records to which access has been requested will be mailed to the individual. The original version of a record will not be released except in very unusual situations when only the original will satisfy the purpose of the request.

4. *Requests by phone.* Because positive identification of the caller cannot be established with sufficient certainty, telephone requests for access to records generally will not honored.

5. *Accounting of disclosures.* An individual who is the subject of records maintained in this record system may also request an accounting of all disclosures that have been made from that individual's records, provided that disclosures have in fact been made.

CONTESTING RECORD PROCEDURES:

Contact the System Manager at the address specified under System Location above and reasonably identify the record. Specify the information being contested. State the corrective action sought, with supporting justification, along with information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

From individual officers, applicants, persons providing references, dependents, former spouses of retired officers, governmental and private training facilities, health professional licensing and credentialing organizations, government officials and employees and from the records contained in the following systems: 09-37-0003, "PHS Commissioned Corps Medical Records," HHS/OASH/OM; 09-37-0005, "PHS Commissioned Corps Board Proceedings," HHS/OASH/OM; 09-37-0006, "PHS Commissioned Corps Grievance, Investigatory, and Disciplinary Files," HHS/OASH/OM; 09-37-0008, "PHS Commissioned Corps Unofficial Personnel Files and Other Station Files," HHS/OASH/OM; and 09-90-0017, "Pay, Leave and Attendance Records," HHS/OS/ASPER.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-37-0003

SYSTEM NAME:

PHS Commissioned Corps Medical Records, HHS/OASH/OM.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Medical Branch, Commissioned Personnel Operations Division, Room 4A-07, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Records in this system are kept at the address shown above for the period of time during which the person to whom the record pertains has an active or potentially active relationship with the PHS Commissioned Corps personnel system. Two years from the time the relationship ceases to be active, the records are combined with the Official Personnel File in record system 09-37-0002 and transferred to the storage facility at the address shown below:

General Services Administration,
Federal Records Center, 111
Winnebago Street, St. Louis, MO
63118

Names and addresses of contractors given information under routine use 5 can be obtained from the system manager at the first location identified above.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

PHS commissioned officers (including active, inactive, terminated, retired and deceased officers); applicants to the commissioned corps; and incapacitated dependents of officers when officers request certification of dependents' incapacities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical files and records on individuals identified above; medical board records from Medical Review Boards—General and Psychiatric, and Appeals Boards, including board reports, any records of discussions held by board members, and supporting medical documents; death case files and supporting documents; and correspondence relating to the above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Public Health Service Act (42 U.S.C. 202-217, 218a, 224, 228, 233, and other pertinent sections); The Social Security Act (42 U.S.C. 410(m) et seq.); portions of Title 10, U.S.C., related to the uniformed services; portions of Title 37, U.S.C., related to pay and allowances for members of the uniformed services; portions of Title 38, U.S.C., related to benefits administered by the Veterans' Administration; sections of 50 U.S.C. App., related to the selective service obligation and the Soldiers and Sailors' Civil Relief Act; Executive Order (E.O.) 9397, "Numbering System for Federal Accounts Relating to Individual Persons;" E.O. 10450, "Security Requirements for Government Employment;" and E.O. 11140, which delegates the authority to administer the PHS Commissioned Corps from the President to the Secretary, DHHS.

PURPOSE(S):

The information is used by the Commissioned Personnel Operations Division (CPOD) to:

1. Evaluate applicant for appointment and officers for reassignment and fitness for duty;

2. Make determinations about the level of an officer's disability and entitlement to disability severance or retired pay;

3. Make determinations about the level of a dependent's disabilities or incapacities which may make the dependent eligible for benefits from PHS;

4. Make budgetary estimates about the cost of disability severance and retired pay;

5. Prepare reports or provide statistical information relating to the medical status of officers;

6. Provide information relating to the death of officers to the Social Security Administration or other Department components to determine the social security benefits or other benefits which may be available to the survivors of deceased officers;

7. Provide information to help adjudicate post-service claims for benefits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information from these records may be used:

1. To disclose information to the Veterans' Administration, Bureau of Prisons (Department of Justice), Coast Guard (Department of Transportation), Agency for International Development (Department of State), Department of Defense, Environmental Protection Agency, and other Federal agencies where commissioned officers are assigned or are receiving medical treatment, to ensure continuity of care.

2. To disclose information to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

3. To promote continuity of care by supplying information to medical care facilities and/or practitioners who, under contract or due to an emergency, provide treatment to officers and their dependents.

4. When an individual to whom a record pertains is mentally incompetent or under other legal disability, information in the individual's record may be disclosed to any person who is legally responsible for the care of the individual, to the extent necessary to assure payment of benefits to which the individual is entitled.

5. When the Department contemplates contracting with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records. These safeguards are explained in the section entitled "Safeguards."

6. In the event of litigation where the defendant is:

a. The Department, any component of the Department, or any employee of the Department in his or her official capacity;

b. The United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or

c. Any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated files are stored on disks, micro-fiche, and magnetic tapes. Nonautomated (hard-copy) files are kept in offices, and stored in Lektrievers, Conserv-a-files, safes, cabinets, bookcases, or desks.

RETRIEVABILITY:

Alphabetically by name, by PHS serial number, and by Social Security Number in accordance with Section 7(a)(2)(B) of the Privacy Act and Executive Order 9397, "Numbering System for Federal Accounts Relating to Individual Persons".

SAFEGUARDS:

1. *Authorized Users.*

a. *Automated Records.* Access to and use of automated records is limited to personnel employed in the Medical Branch, and certain employees of the Office of the Director, CPOD. Selected information may be released to employees in the Commissioned Personnel Operations Division, Office of Personnel Management, OM, whose official duties require such access. The Commissioned Officers Systems Division (COSD), Office of Human Resource Information Management, Office of the Assistant Secretary for Personnel Administration, Office of the Secretary, provides computer design, programming and support to CPOD, and has access to the data to the extent necessary to facilitate the provision of these services. However, COSD personnel are not authorized to grant access to or make disclosures from automated data in this system to *anyone* or any *organization.*

b. *Nonautomated records.* Access to and use of nonautomated records is limited to Medical Branch, CPOD employees, certain members of the Office of the Director, CPOD, departmental employees whose official duties require such access, or to individuals needing access to the information for purposes stated under routine uses. These individuals are permitted access to records only after they have satisfactorily identified themselves as having an official need to review the information and have provided satisfactory proof of their identities. Access is also granted to individuals who have written permission to review the record when that permission has been obtained from the individual to whom the record pertains. All individuals other than CPOD employees must complete Privacy Act nondisclosure oaths and must submit written requests for access to these records showing the name and employing office of the requester, the date on which the record is requested, and the purpose for reviewing the information in the record. This written request is then placed into the record.

2. *Physical safeguards.*

a. *Automated records.* Terminals by which automated records are accessed are kept in offices secured with combination locks. Automated records on magnetic tape, disks, and other computer equipment are kept in rooms designed to protect the physical integrity of the record media and equipment. These rooms are within inner offices to which access is permitted only to those with special clearance. Outer offices are secured with combination locks. During nonwork hours all cabinets, storage facilities, rooms and offices are locked and the permises are patrolled regularly by building security forces.

b. *Nonautomated records.* Nonautomated records are kept in such a way as to prevent observation by unauthorized individuals while the records are actively in use by an authorized employee. When records are not in use, they are closed and secured in desk drawers with locks, metal filing cabinets with locks, or other security equipment, all of which are kept inside authorized office space which is locked whenever it is not in use. Keys to furniture and equipment are kept only by the individual who is assigned to that furniture or equipment and by the CPOD security officer.

3. *Procedural safeguards.*

a. *Automated records.* Automated records are secured by assigning

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individual access codes to authorized personnel, and by use of passwords for specific records created by authorized personnel. Access codes and passwords are changed for each authorized user approximately every 90 days, on a random schedule. In addition, programming for automated records allows authorized personnel to access only those records that are essential to their duties. No access is permitted to automated records from remote terminal sites maintained by individuals or organizations outside of OPM.

b. *Nonautomated records.* All files are secured when employees are absent from the premises and are further protected by combination locks on entryways and by the building security force. Official records may not be removed from the physical boundaries of Medical Branch, CPOD. When records are needed at a remote location, copies of the records will be provided. When copying records for authorized purposes, care is taken to ensure that any imperfect or extra copies are not left in the reproduction room where they can be read, but are destroyed or obliterated.

4. *Implementing Guidelines.* Safeguards for automated records are provided in accordance with Part 6 of the Department's Information Resources Management Manual. Safeguards for nonautomated records are provided in accordance with chapters 45–13 and PHS.hf:45–13 of the Department's General Administration manual.

5. *Contractor Guidelines.* A contractor who is given records under routine use 6 must maintain the records in a secured area, allow only those individuals immediately involved in the processing of the records to have access to them, prevent any unauthorized persons from gaining access to the records, caution employees about the confidentiality of the records, and return the records to the System Manager immediately upon completion of the work specified in the contract. Contractor compliance is assured through inclusion of Privacy Act requirements in contract clauses, and through monitoring by contract and project officers. Contractors who maintain records are instructed to make no disclosure of the records except as authorized by the System Manager.

RETENTION AND DISPOSAL:

When an officer terminates his/her commission, records are incorporated into the Official Personnel Folder (see system 09–37–0002, "PHS Commissioned Corps Personnel Files" for more information) and transferred to a Federal Records Center within two years after the officer is separated from the commissioned corps. Medical records on nonselected applicants are destroyed after five years. Records of retirees are incorporated into their OPF's following retirement and are retained and disposed of in accordance with procedures explained in system 09–37–0002, unless the individual is on the temporary disability retirement list, in which case the file is maintained under the same conditions as an active duty officer's file until the individual is permanently retired, returned to active duty, or terminated. Medical records of a dependent incapable of self support are maintained until the dependent is no longer eligible for benefits from PHS for which time the records are transferred to a Federal Records Center for permanent storage.

SYSTEM MANAGER(S) AND ADDRESS:

Director, CPOD (See System location above).

NOTIFICATION PROCEDURE:

Same as Access Procedures. Requesters should also reasonably specify the record contents being sought.

RECORD ACCESS PROCEDURES:

1. *General procedures.* An individual seeking access to his/her records may initially contact any CPOD office or employee for information about obtaining access to the records. CPOD employees will inform each individual of the appropriate procedures to follow. Each individual seeking access will be required to verify his/her identity to the satisfaction of the CPOD employee providing access. Refusal to provide sufficient proof of identity will result in denial of the request for access until such time as proof of identity can be obtained.

If a determination is made that the material sought contains medical information that is likely to have an adverse effect on the requester, the requester shall be asked to designate in writing a responsible representative who will be willing to review the record and inform the subject individual of the material's contents at the representative's discretion. Such a representative must provide proof that he/she is duly authorized to review the record by either the individual or the individual's legal guardian. A parent or guardian who requests notification of, or access to, a dependent/incompetent person's record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify his/her relationship to the dependent/incompetent person as well as his/her own identity.

2. *Requests in person.* An individual who is the subject of a record and who appears in person seeking access shall provide his/her name and at least one piece of tangible identification (e.g., PHS Commissioned Corps Identification Card, driver's license, passport, or voter registration card). Identification cards with current photographs are preferred but not required. The record will be reviewed in the presence of an appropriate CPOD employee, who will answer questions and ensure that the individual neither removes nor inserts any material into the record without the knowledge of the CPOD employee. If the individual requests a copy of any records reviewed, the CPOD employee will provide them to the individual. The CPOD employee will record the name of the individual granted access, the dates and times of access, and information about the verification of identity on a separate log sheet maintained in the office of the CPOD employee who reviewed the record.

3. *Requests by mail.* Written requests must be addressed to the System Manager, the CPOD Privacy Act Coordinator, or the Medical Branch at the address shown as the system location above. All written requests must be signed by the individual seeking access. A comparison will be made of that signature and the signature maintained on file prior to release of the material requested. Copies of the records to which access has been requested will be mailed to the individual. The original version of a record will not be released except in very unusual situations when only the original will satisfy the purpose of the request.

4. *Requests by phone.* Because positive identification of the caller cannot be established with sufficient certainty, telephone requests for access to records generally will not be honored.

5. *Accounting of Disclosures.* An individual who is the subject of records maintained in this record system may also request an accounting of all disclosures that have been made from that individual's records, provided that disclosures have in fact been made.

CONTESTING RECORD PROCEDURES:

Contact the System Manager at the address specified under System Location above and reasonably identify the record. Specify the information being contested. State the corrective action sought, with supporting justification, along with information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

From individual officers and other commissioned corps officials; applicants; private and Government physicians; hospitals and clinics rendering treatment; investigative reports; records contained in system 09-37-0002, "PHS Commissioned Officer Personnel Records," HHS/OASH/OM; records from system 09-15-0008, "Emergency Non-PHS Treatment Authorization File, HHS/HRSA/BHCDA;" records from system 09-15-0029, "PHS Beneficiary-Contract Medical/Health Care Records, HHS/HRSA/BHCDA;" death certificates and reports of death; and from survivors and executors of estates.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-37-0005

SYSTEM NAME:

PHS Commissioned Corps Board Proceedings, HHS/OASH/OM.

SYSTEM CLASSIFICATION:

None.

SYSTEM LOCATION:

Commissioned Personnel Operations Division, Office of Personnel Management/OM/PHS, Room 4-35, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Names and addresses of contractors given information under routine use 4 can be obtained from the system manager at the address shown above.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Commissioned officers (including active, inactive, terminated, retired, and deceased officers) and applicants to the PHS Commissioned Corps.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in the system consist of the following:

1. Commissioned Officers Awards Board files consisting of nominations, citations, and related documents.
2. Appointment Board files consisting of applications, references, school transcripts, transmutation charts, and other materials used in the appointment examination process.
3. Promotion Board files consisting of Commissioned Officer Effectiveness Reports (COERs), recommendations from PHS components, citations and awards, information pertaining to disciplinary actions, and other materials used to examine candidates for promotion.
4. Involuntary Separation Board files consisting of COERs, PHS component recommendations with respect to separations, information pertaining to disciplinary actions, references, and statements of the officer with respect to marginal or substandard performance.
5. Board of Inquiry files consisting of COERs, PHS component allegations of misconduct, documentation relating to misconduct, and statements of the officer relating to alleged instances of misconduct.
6. Retirement Board files consisting of COERs, PHS component evaluations on the continued need for the officer, and statements of the officer concerning his/her request for retirement.
7. Dental Officer Special Pay Review Board files consisting of COERs, Continuation Pay and Additional Special Pay contracts, certification of eligibility by PHS components, school transcripts, and related documents.
8. Medical Officer Special Pay Review Board files consisting of performance evaluations, retention special pay contracts, certification of eligibility by PHS components, school transcripts, and related documents.
9. Assimilation Board files consisting of performance evaluations, PHS component recommendations, awards and citations, and information pertaining to disciplinary actions.
10. Three-Year File Review Board files consisting of performance evaluations, recommendations from PHS components, citations and awards, and information pertaining to disciplinary actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Public Health Service Act (42 U.S.C. 202—217, 218a, 224, 228, 233, and other pertinent sections); The Social Security Act (42 U.S.C. 410(m) et seq.); portions of Title 10, U.S.C., related to the uniformed services; portions of Title 37, U.S.C., related to pay and allowances for members of the uniformed services; portions of Title 38 U.S.C. related to benefits administered by the Veterans Administration; sections of 50 U.S.C. App., related to the selective service obligation and the Soldiers' and Sailors' Civil Relief Act; Executive Order (E.O.) 9397, "Numbering System for Federal Accounts Relating to Individual Persons;" E.O. 10450, "Security Requirements for Government employment;" and E.O. 11140, which delegates the authority to administer the PHS Commissioned Corps from the President to the Secretary, DHHS.

PURPOSE(S):

Used by PHS Commissioned Corps Boards to recommend or decide on appropriate actions in the areas of commissioned corps personnel administration listed above, and by the Commissioned Personnel Operations Division (CPOD) in the preparation of the "PHS Commissioned Officer Roster and Promotion Seniority of the Public Health Service," which contains the names and status of officers on active duty.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records or information from these records may be used:

1. To disclose information to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.
2. To the Department of Justice, to a court or other tribunal, when:
   (a) HHS, or any component thereof; or
   (b) Any HHS employee in his or her official capacity; or
   (c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or
   (d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components.

Is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that is each case, HHS determines that such disclosure is compatible with the purpose for which the records are collected.

3. To disclose pertinent information to appropriate Federal, State, or local agencies; international agencies; or foreign governments responsible for investigating, prosecuting, enforcing, or implementing statutes, rules, regulations, or orders, when PHS becomes aware of evidence of a potential violation of civil or criminal law.
4. When the Department contemplates contracting with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to

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maintain Privacy Act safeguards with respect to such records. These safeguards are explained in the section entitled "Safeguards."

5 To disclose information to the Department of Labor, Veterans Administration, Social Security Administration, or other Federal agencies having special employee benefit programs; to a national, State, county, or municipal agency; or to a publicly recognized charitable organization when necessary to adjudicate a claim under a benefit program, or to conduct analytical studies of benefits being paid under such program, provided such disclosure is consistent with the purposes for which the information was originally collected.

6. To the Office of Management and Budget (OMB) at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19, or for budgetary or management oversight purposes.

7. To disclose information to Government training facilities (Federal, State, and local) and to non-Government training facilities (e.g., private vendors of training courses or programs, private schools) for training purposes, such as crediting or work experience in the Commissioned Officer Student Training and Extern Program, or verification of status or income.

8. When an individual to whom a record pertains is mentally incompetent or under other legal disability, information in the individual's record may be disclosed to any person who is legally responsible for the care of the individual, to the extent necessary to assure payment of benefits to which the individual is entitled.

9. To disclose to Federal and non-Federal agencies information allowing the consideration and selection of officers for honor awards made as a result of the individual's work as a commissioned officer, and to publicize those awards granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize officer awards or honors.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information and files related to boards and their proceedings exist in hard-copy form, with supporting data stored on automated word processing tapes, micro-fiche, and disks.

RETRIEVABILITY:

Alphabetically by name of officer for records in hard-copy form, and by access code for information stored on automated disks and tapes.

SAFEGUARDS:

1. *Authorized Users.*

a. *Automated Records.* Access to and use of automated records is limited to CPOD personnnel involved in the specific Board process for which the information was collected. Selected information may be release to employees in the Office of Personnel Management, OM, whose offical duties require such access. The Commissioned Officers Systems Division (COSD), Office of Human Resource Information Management, Office of the Assistant Secretary for Personnel Administration, Office of the Secretary, provides computer design, programming and support to CPOD, and has access to the data to the extent necessary to facilitate the provision of these services. However, COSD personnel are not authorized to grant access to or make disclosures from automated data in this system to *anyone* or any *organization.*

b. *Nonautomated records.* Access to and use of nonautomated records is limited to CPOD personnel involved in the specific Board process for which the information was collected, departmental employees whose official duties require such access or to individuals needing access to the information for purposes stated under routine uses. Individuals other than CPOD employees are permitted access to records only after they have satisfactorily identified themselves as having an official need to review the information and have provided satisfactory proof of their identities. Access is also granted to individuals who have written permission to review the record when that permission has been obtained from the individual to whom the record pertains. All individuals from organizations outside the Department, to whom disclosure is made pursuant to a routine use, must complete Privacy Act nondisclosure oaths and must submit a written request for access to these records showing the name and employing office of the requester, the date on which the record is requested, and the purposed for reviewing the information in the record. This written request is then placed into the record.

2. *Physical safeguards.*

a. *Automated records.* Terminals by which automated records are accessed are kept in offices secured with combination locks. Automated records on magnetic tape, disks, and other computer equipment are kept in rooms designed to protect the physical integrity of the record media and equipment. These rooms are within inner offices to which access is prohibited except to those with special clearance for access into the area. Outer offices are secured with combination locks and the combinations are changed periodically. During nonwork hours all cabinets, storage facilities, rooms and offices are locked and the premises are patrolled regularly by building security forces.

b. *Nonautomated records.* Nonautomated records are kept in such a way as to prevent observation by unauthorized individuals while the records are actively in use by an authorized employee. When records are not in use, they are closed and secured in desk drawers with locks, metal filing cabinets with locks, or other security equipment, all of which is kept inside authorized office space which is locked whenever it is not in use. Keys to furniture and equipment are kept only by the individual who is assigned to that furniture or equipment and by the CPOD security officer.

3. *Procedural safeguards.*

a. *Automated records.* Automated records are secured by assigning individual access codes to authorized personnel, and by use of passwords for specific records created by authorized personnel. Access codes and passwords are changed for each authorized user approximately every 90 days, on a random schedule. In addition, programming for automated records allows authorized personnel to access only those records that are essential to their duties. No access is permitted to automated records from remote terminal sites maintained by individuals or organizations outside of OPM.

b. *Nonautomated records.* All files are secured when employees are absent from the premises and are further protected by combination locks on entryways, to which the combinations are periodically changed, and by the building security force. Official records may not be removed from the physical boundaries of the offices in which the personnel who work with the records are assigned unless the records are hand-carried and safeguarded by the individuals authorized to use the records. When copying records for authorized purposes, care is taken to ensure that any imperfect or extra copies are not left in the reproduction room where they can be read, but are destroyed or obliterated.

4. *Implementing Guidelines.* Safeguards for automated records are provided in accordance with Part 6 of the Department's Information Resources

Management Manual. Safeguards for nonautomated records are provided in accordance with chapters 45–13 and PHS.hf:45–13 of the Department's General Administration Manual.

5. *Contractor Guidelines.* A contractor who is given records under routine use 4 must maintain the records in a secured area, allow only those individuals immediately involved in the processing of the records to have access to them, prevent any unauthorized persons from gaining access to the records, caution employees about the confidentiality of the records, and return the records to the System Manager immediately upon completion of the work specified in the contract. Contractor compliance is assured through inclusion of Privacy Act requirements in contract clauses, and through monitoring by contract and project officers. Contractors who maintain records are instructed to make no disclosure of the records except as authorized by the System Manager.

RETENTION AND DISPOSAL:

Material from board files which result in a personnel action affecting an individual are placed into the individual's OPF after the board has completed its deliberations and/or the action has been effected, and are then treated in the same manner as other material in system 09–37–0002, "PHS Commissioned Corps Personnel Records, HHS/OASH/OM," with the following exception: files pertaining to involuntary separation/retirement boards and boards of inquiry are only incorporated into system 09–37–0002 to the extent required to provide sufficient documentation of an involuntary or adverse action. Remaining involuntary separation/retirement board or board of inquiry records remain in this system for as long as they are needed for administrative purposes, after which time they are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, CPOD (See System Location above).

NOTIFICATION PROCEDURE:

Same as Access Procedures. Requesters should also reasonably specify the record contents being sought.

RECORD ACCESS PROCEDURES:

1. *General procedures.* An individual seeking access to his/her records may initially contact any CPOD office or employee for information about obtaining access to the records. CPOD employees will inform each individual of the appropriate procedures to follow. Each individual seeking access will be required to verify his/her identity to the satisfaction of the CPOD employee providing access. Refusal to provide sufficient proof of identity will result in denial of the request for access until such time as proof of identity can be obtained.

If a determination is made that the material sought contains medical information that is likely to have an adverse effect on the requester, the requester shall be asked to designate in writing a responsible representative who will be willing to review the record and inform the subject individual of the material's contents at the representative's discretion. Such a representative must provide proof that he/she is duly authorized to review the record by either the individual or the individual's legal guardian. A parent or guardian who requests notification of, or access to, a dependent/incompetent person's record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify his/her relationship to the dependent/incompetent person as well as his/her own identity.

2. *Requests in person.* An individual who is the subject of a record and who appears in person seeking access shall provide his/her name and at least one piece of tangible identification (e.g., PHS Commissioned Corps Identification Card, driver's license, passport, or voter registration card). Identification cards with current photographs are preferred but not required. The record will be reviewed in the presence of an appropriate CPOD employee, who will answer questions and ensure that the individual neither removes nor inserts any material into the record without the knowledge of the CPOD employee. If the individual requests a copy of any records reviewed, the CPOD employee will provide them to the individual. The CPOD employee will record the name of the individual granted access, the dates and times of access, and information about the verification of identity on a separate log sheet maintained in the office of the CPOD employee who reviewed the record.

3. *Requests by mail.* Written requests must be addressed to the System Manager at the address shown as the system location above. All written requests must be signed by the individual seeking access. A comparison will be made of that signature and the signature maintained on file prior to release of the material requested. Copies of the records to which access has been requested will be mailed to the individual. The original version of a record will not be released except in very unusual situations when only the original will satisfy the purpose of the request.

4. *Requests by phone.* Because positive identification of the caller cannot be established with sufficient certainty, telephone requests for access to records generally will not be honored.

5. *Accounting of Disclosures.* An individual who is the subject of records maintained in this record system may also request an accounting of all disclosures that have been made from that individual's records, provided that disclosures have in fact been made.

CONTESTING RECORD PROCEDURES:

Contact the System Manager at the address specified under System Location above and reasonably identify the record. Specify the information being contested. State the corrective action sought, with supporting justification, along with information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

From individuals themselves or their service records; efficiency and progress reports; persons providing references; reports of findings and recommendations made by Board members; supervisors; private and Government physicians; hospitals and clinics rendering treatment; licensure and professional credentialing organizations; investigative reports; law enforcement organizations; court records; death certificates and reports of death; survivors and executors of estates; and records contained in systems 09–37–0002, "PHS Commissioned Corps Personnel Records," HHS/OASH/OM; 09–37–0003, "PHS Commissioned Corps Personnel Records," HHS/OASH/OM; 09–37–0006, "PHS Commissioned Corps Personnel Records," HHS/OASH/OM; "PHS Commissioned Corps Grievance, Investigatory, and Disciplinary Files," HHS/OASH/OM; and 09–37–0008, "PHS Commissioned Corps Unofficial Personnel Files and Other Station Files," HHS/OASH/OM.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–37–0006

SYSTEM NAME:

PHS Commissioned Corps Grievance, Investigatory, and Disciplinary Files, HHS/OASH/OM.

SECURITY CLASSIFICATION:

None.

BEST COPY AVAILABLE

SYSTEM LOCATION:

Office of the Director, Commissioner Personnel Operations Division Office of Personel Management/OM/PHS, Room 4–35, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Offices and organizations to which an individual commissioned officer is assigned. The exact location of any record may be obtained by contacting the Director, CPOD, at the address shown above.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

PHS Commissioned Corps officers, including active duty, inactive, terminated, separated and deceased officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files concerning grievances filed by or against commissioned officers; investigative files, records related to disciplinary actions, records related to involuntary retirements and involuntary separations (non-board or pre-board actions) taken against commissioned officers; and correspondence related thereto.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Public Health Service Act (42 U.S.C. 202–217, 218a, 224, 228, 233, and other pertinent sections); The Social Security Act (42 U.S.C. 410(m) et seq.); portions of Title 10, U.S.C., related to the uniformed services; portions of Title 37, U.S.C., related to pay and allowances for members of the uniformed services; portions of Title 38, U.S.C., related to benefits administered by the Veterans Administration; sections of 50 U.S.C. App., related to the selective service obligation and the Soldiers' and Sailors' Civil Relief Act; Executive Order (E.O.) 9397, "Numbering System for Federal Accounts Relating to Individual Persons;" E.O. 10450, "Security Requirements for Government Employment;" and E.O. 11140, which delegates the authority to administer the PHS Commissioned Corps from the President to the Secretary, DHHS.

PURPOSE(S):

Used by the Commissioned Personnel Operations Division (CPOD) to: Investigate allegations of misconduct or marginal and substandard performance; and to process and decide grievances, involuntary retirements, involuntary separations, or disciplinary actions. These records may also be used by officials elsewhere in the Department who have the authority to review or make decisions about grievances.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information from these records may be used:

1. To disclose information to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

2. To the Department of Justice, to a court or other tribunal, when:

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court, or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records are collected.

3. To disclose pertinent information to appropriate Federal, State, or local agencies; international agencies; or foreign governments responsible for investigating, prosecuting, enforcing, or implementing statutes, rules, regulations, or orders, when PHS becomes aware of evidence of a potential violation of civil or criminal law.

4. When Federal agencies having the power to subpoena other Federal agencies' records, such as the Internal Revenue Service or the Civil Rights Commission, issue a subpoena to the Department for records in this system of records, the Department may make such records available.

5. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored primarily in hard-copy form in safes and locked metal filing cabinets in interior offices, with supporting data stored on automated word processing tapes, micro-fiche, and disks.

RETRIEVABILITY:

Alphabetically by the name of the officer.

SAFEGUARDS:

1. *Authorized Users.*

a. *Automated Records.* Access to and use of automated records is limited to CPOD personnel involved in the grievance or investigation for which the information was collected. Selected information may be released to employees in the Office of Personnel Management, OPM, whose official duties require such access. The Commissioned Officers Systems Division (COSD), Office of Human Resource Information Management, Office of the Assistant Secretary for Personnel Administration, Office of the Secretary, provides computer design, programming and support to CPOD, and has access to the data to the extent necessary to facilitate the provision of these services. However, COSD personnel are not authorized to grant access to or make disclosures from automated data in this system to *anyone* or any *organization.*

b. *Nonautomated records.* Access to and use of nonautomated records is limited to CPOD personnel involved in the specific grievance or investigatory process for which the information was collected. These records may be copied and related to Departmental officials involved in a decisionmaking capacity in a given case. These individuals are permitted access to records only after they have provided satisfactory proof of their identities. Access is also granted to individuals, such as attorneys, who have written permission to review the record when that permission has been obtained from the individual to whom the record pertains. All individuals from organizations outside the Department, to whom disclosure is made pursuant to a routine use, must complete Privacy Act nondisclosure oaths and must submit a written request for access to these records showing the name and employing office of the requester, the date on which the record is requested, and the purpose for reviewing the information in the record. In certain cases, CPOD may require notarization of the document giving CPOD permission to disclose a record to a third party. This written request is then placed into the record.

2. *Physical safeguards.*

a. *Automated records.* Terminals by which automated records are accessed are kept in offices secured with combination locks, the combinations to which are changed periodically. Automated records on magnetic tape, disks, and other computer equipment are kept in rooms designed to protect the physical integrity of the record media and equipment. These rooms are within inner offices to which access is permitted only to those with special clearance. Outer offices are secured with combination locks and the combinations are changed periodically. During nonwork hours all cabinets, storage facilities, rooms and offices are locked and the premises are patrolled regularly by building security forces.

b. *Nonautomated records.* Nonautomated records are kept in such a way as to prevent observation by unauthorized individuals while the records are actively in use by an authorized employee. When records are not in use, they are closed and secured in desk drawers with locks, metal filing cabinets with locks, or other security equipment, all of which is kept inside authorized office space which is locked whenever it is not in use. Keys to furniture and equipment are kept only by the individual who is assigned to that furniture or equipment and by the CPOD security officer.

3. *Procedural safeguards.*

a. *Automated records.* Automated records are secured by assigning individual access codes to authorized personnel, and by use of passwords for specific records created by authorized personnel. Access codes and passwords are changed for each authorized user approximately every 90 days, on a random schedule. In addition, programming for automated records allows authorized personnel to access only those records that are essential to their duties. No access is permitted to automated records from remote terminal sites maintained by individuals or organizations outside of OPM.

b. *Nonautomated records.* All files are secured when employees are absent from the premises and are further protected by combination locks on entryways, to which the combinations are periodically changed, and by the building security force. Official records may not be removed from the physical boundaries of the offices in which the personnel who work with the records are assigned unless the records are hand-carried and safeguarded by the individuals authorized to use the records. When copying records for authorized purposes, care is taken to ensure that any imperfect or extra copies are not left in the reproduction room where they can be read, but are destroyed or obliterated.

4. *Implementing Guidelines.* Safeguards for automated records are provided in accordance with Part 6 of the Department's Information Resources Management Manual. Safeguards for nonautomated records are provided in accordance with chapters 45–13 and PHS.hf:45–13 of the Department's General Administration Manual.

RETENTION AND DISPOSAL:

Grievance files are destroyed after two years, or earlier if no longer needed for administrative purposes. Records which directly support personnel actions affecting an individual are placed into the individual's OPF after a final, official decision has been made and/or the action has been effected, and are then treated in the same manner as other material in system 09–37–0002, "PHS Commissioned Corps Personnel Records, HHS/OASH/OM." Investigatory records concerning cases in which no final decisions have been made, or which are ongoing over a period of time are kept indefinitely until a final decision is made. Records concerning cases which are closed or on which final action has been taken, but which are not essential to document or support the final action, are retained as long as they are needed for administrative purposes and are then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, CPOD (See System Location above).

NOTIFICATION PROCEDURE:

Same as Access Procedures. Requesters should also reasonably specify the record contents being sought.

RECORD ACCESS PROCEDURES:

1. *General procedures.* An individual seeking access to his/her records may initially contact any CPOD office or employee for information about obtaining access to the records. CPOD employees will inform each individual of the appropriate procedures to follow. Each individual seeking access will be required to verify his/her identity to the satisfaction of the CPOD employee providing access. Refusal to provide sufficient proof of identity will result in denial of the request for access until such time as proof of identity can be obtained.

If a determination is made that the material sought contains information that is likely to have an adverse effect on the health of the requester, the requester shall be asked to designate in writing a responsible representative who will be willing to review the record and inform the subject individual of the material's contents at the representative's discretion. Such a representative must provide proof that he/she is duly authorized to review the record by either the individual or the individual's legal guardian. A parent or guardian who requests notifiction of, or access to, a dependent/incompetent person's record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify his/her relationship to the dependent/incompetent person as well as his/her own identity.

2. *Requests in person.* An individual who is the subject of a record and who appears in person seeking access shall provide his/her name and at least one piece of tangible identification (e.g., PHS Commissioned Corps Identification Card, driver's license, passport, or voter registration card). Identification cards with current photographs are preferred but not required. The record will be reviewed in the presence of an appropriate CPOD employee, who will answer questions and ensure that the individual neither removes nor inserts any material into the record without the knowledge of the CPOD employee. If the individual requests a copy of any records reviewed, the CPOD employee will provide them to the individual. The CPOD employee will record the name of the individual granted access, the dates and times of access, and information about the verification of identity on a separate log sheet maintained in the office of the CPOD employee who reviewed the record.

3. *Requests by mail.* Written requests must be addressed to the System Manager at the address shown as the system location above. All written requests must be signed by the individual seeking access. A comparison will be made of that signature and the signature maintained on file prior to release of the material requested. Copies of the records to which access has been requested will be mailed to the individual. The original version of a record will not be released except in very unusual situations when only the original will satisfy the purpose of the request.

4. *Requests by phone.* Because positive identification of the caller

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cannot be established with sufficient certainty, telephone requests for access to records generally will not be honored.

5. *Accounting of Disclosures.* An individual who is the subject of records maintained in this record system may also request an accounting of all disclosures that have been made from that individual's records, provided that disclosures have in fact been made.

CONTESTING RECORD PROCEDURES:

Contact the System Manager at the address specified under System Location above and reasonably identify the record. Specify the information being contested. State the corrective action sought, with supporting justification, along with information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

From individuals themselves or their service records; efficiency and progress reports; persons providing references; reports of findings and recommendations made by commissioned corps Board members; supervisors; private and Government physicians; hospitals and clinics rendering treatment; licensure and professional credentialing organizations; investigative reports; law enforcement organizations; court records; death certificates and reports of death; survivors and executors of estates; and records contained in systems 09-37-0002, "PHS Commissioned Corps Personnel Records," HHS/OASH/OM; 09-37-0003, "PHS Commissioned Officer Medical Records," HHS/OASH/OM; and 09-37-0008, "PHS Commissioned Corps Unofficial Personnel Files and Other Station Files," HHS/OASH/OM.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-37-0008

SYSTEM NAME:

PHS Commissioned Corps Unofficial Personnel Files and Other Station Files, HHS/OASH/OM.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Operating offices (duty stations) of the Department or of other agencies and organizations to which PHS Commissioned Corps officers are assigned.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants to the PHS commissioned corps; active-duty, inactive reserve, retired and former officers; and dependents of the above.

CATEGORIES OF RECORDS IN THE SYSTEM:

Training records, financial management records, travel and transportation documents, approval of outside activity records, and other documents used solely by personnel employed at a field station. Duplication of personnel records contained in system 09-37-0002, "PHS Commissioned Corps Personnel Records," HHS/OASH/OM, such as long-term training records, billet descriptions, performance evaluations, specialty board examination requests, medical intern and residency evaluations, leave records, identification and privilege card records, and correspondence relating to the individuals covered. Duplication of records contained in systems 09-37-0005, "PHS Commissioned Corps Board Records, HHS/OASH/OM," and 09-37-0006, "PHS Commissioned Corps Grievance, Investigatory, and Disciplinary Files, HHS/OASH/OM," but only to the extent that the records are needed to resolve an official Board action, grievance, or other investigation involving officials and officers assigned to field stations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Public Health Service Act, (42 United States Code (U.S.C.) 202—217, 218a, 224, 228, 233, and other pertinent sections); The Social Security Act (42 U.S.C. 410(m) et seq.); portions of Title 10, U.S.C., related to the uniformed services; portions of Title 37, U.S.C., related to pay and allowances for members of the uniformed services; portions of Title 38, U.S.C., related to benefits administered by the Veterans Administration; sections of 50 U.S.C. App., related to the selective service obligation and the Soldiers' and Sailors' Civil Relief Act; Executive Order (E.O.)9397, "Numbering System for Federal Accounts Relating to Individual Persons;" E.O. 10450, "Security Requirements for Government Employment;" and E.O. 11140, which delegates the authority to administer the PHS Commissioned Corps from the President to the Secretary, DHHS.

PURPOSE(S):

Records and information in this system are used by the offices to which PHS commissioned officers are actually assigned for the purposes of making determinations about an individual's training, leave, job assignments, local benefits, performance appraisals, grievances, certain disciplinary actions and related employment matters. Records which are originally collected as part of this system are also used as primary source documents for personnel administration matters which are the responsibility of the Commissioned Personnel Operations Division/OPM/OM/OASH.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information from these records may be used:

1. To disclose information to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

2. To the Department of Justice, to a court or other tribunal, when:

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court, or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records are collected.

3. To disclose pertinent information to appropriate Federal, State, or local agencies responsible for investigating, prosecuting, enforcing, or implementing statutes, rules, regulations, or orders, when PHS becomes aware of evidence of a potential violation of civil or criminal law.

4. To disclose information to an individual who has been asked by PHS to provide a reference, to the extent necessary to clearly identify the individual to whom the reference will pertain, inform the source of the purpose(s) of the reference, and to identify the type of information requested from the source, where necessary to obtain information relevant to an agency decision concerning the hiring or retention of any employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a

contract, or the issuance of a license, grant, or other benefit.

5. To disclose to any agency in the executive, legislative, or judicial branch; the District of Columbia government; a State or local government agency; or a nonprofit institution; but only after being authorized to make such disclosure by the Office of the Assistant Secretary for Health, information in connection with the hiring of an employee; the issuance of a security clearance; the conducting of a security or suitability investigation of an individual; the classifying of jobs; the letting of a contract; the issuance of a license, grant or other benefit by the requesting agency; or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

6. When Federal agencies having the power to subpoena other Federal agencies' records, such as the Internal Revenue Service or the Civil Rights Commission, issue a subpoena to the Department for records in this system of records, the Department may make such records available.

7. To disclose information to the Department of Labor, Veterans Administration, Social Security Administration, or other Federal agencies having special employee benefit programs; a national, State, county, or municipal agency; or a publicly recognized charitable organization; when necessary to adjudicate a claim under a benefit program, or to conduct analytical studies of benefits being paid under such programs provided such disclosure is consistent with the purposes for which the information was originally collected.

8. When an individual to whom a record pertains is mentally incompetent or under other legal disability, information in the individual's record may be disclosed to any person who is legally responsible for the care of the individual, to the extent necessary to assure payment of benefits to which the individual is entitled.

9. In response to interrogatories in the prosecution of a divorce action or settlement for purposes stated in 10 U.S.C. 1408.

10. To disclose information to Government training facilities (Federal, State, and local) and to non-Government training facilities (e.g., private vendors of training courses or programs, private schools) for training purposes, such as crediting of work experience in the Commissioned Officed Student Training and Extern Program, or verification of status or income.

11. To disclose information to the Defense Enrollment/Eligibility Reporting System (DEERS), uniformed services medical treatment facilities and to the Department of Defense Office of the Civilian Health and Medical Program of the Uniformed Services, when the information is needed to verify the eligibility of an officer, his/her dependents, or a former spouse for medical benefits.

12. To disclose information to agencies or organizations established in medically underserved areas who apply to the National Health Service Corps for the assignment of commissioned officers to such agencies or organizations.

13. To disclose information on officers assigned to Federal health care facilities to private sector (i.e., other than Federal, State, or local government) agencies, boards, or commissions (e.g., the Joint Commission on Accreditation of Hospitals), to obtain accreditation or other approval rating and only to the extent that the information disclosed is relevant and necessary for that purpose.

14. To disclose to Federal and non-Federal agencies information allowing the consideration and selection of officers for honor awards made as a result of the individual's work as a commissioned officer, and to publicize those awards granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize officer awards or honors.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored in hard-copy form in locked metal filing cabinets, lektreivers, Conserv-a-files, and safes in interior offices.

RETRIEVABILITY:

Alphabetically by the name of the officer.

SAFEGUARDS:

1. *Authorized Users:* Access to and use of these records is limited to duty station personnel involved in the personnel/administrative activities for which the records were collected. These records may be copied and released to other departmental employees, and individuals from outside the Department who represent organizations to which commissioned officers are assigned, when they have a need to know information from these records in order to perform their official duties. These individuals are permitted access to records only after they have provided satisfactory proof of their identities. All individuals from organizations outside the Department, to whom disclosure is made pursuant to a routine use, must complete Privacy Act nondisclosure oaths and must submit written requests for access to these records showing the name and employing office of the requester, the date on which the record is requested, and the purpose for reviewing the information in the record. This written request is then placed into the record.

2. *Physical safeguards.* These records are kept in such a way as to prevent observation by unauthorized individuals while the records are actively in use by an authorized employee. When records are not in use, they are closed and secured in desk drawers with locks, metal filing cabinets with locks, or other security equipment, all of which is kept inside authorized office space which is locked whenever it is not in use. Keys to furniture and equipment are kept only by the individual who is assigned to that furniture or equipment and by the facility security officer.

3. *Procedural safeguards.* All files are secured when employees are absent from the premises and are further protected by locks on entryways, to which the combinations are periodically changed, and by the building security force. Official records may not be removed from the physical boundaries of the offices in which the personnel who work with the records are assigned unless the records are hand-carried and safeguarded by the individuals authorized to use the records. When copying records for authorized purposes, care is taken to ensure that any imperfect or extra copies are not left in the reproduction room where they can be read, but are destroyed or obliterated.

4. *Implementing Guidelines.* Safeguards for nonautomated records are provided in accordance with chapters 45–13 and PHS.hf:45–13 of the Department's General Administration Manual.

RETENTION AND DISPOSAL:

Station personnel files are destroyed two years after the individual to whom the records pertain permanently leaves the duty station. Leave records are forwarded to an individual's new duty station, or if the officer is leaving active duty, the leave record card is sent to CPOD and incorporated in record system 09–37–0002, "PHS Commissioned Corps Personnel Records/HHS/OASH/OM. Grievance records are destroyed two years from the date on which the grievance was settled. Other records are retained until there is no further

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administrative need to retain them, or until the individual leaves the Department, and are then either destroyed, or, if appropriate, are combined with the records described in system 09–37–0002. Identification and privilege cards and records are disposed of when the officer and his/her dependents are no longer entitled to use them.

SYSTEM MANAGER(S) AND ADDRESS:

The Director, CPOD/OPM/OM, is the overall system manager. Inquiries concerning these records may be addressed to Director, Commissioned Personnel Operations Division, Room 4A–15, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857; or by contacting the duty station to which the individual to whom the records pertain is assigned.

NOTIFICATION PROCEDURE:

Same as Access Procedures. Also, the individual seeking access should reasonably describe the type of record being sought.

RECORD ACCESS PROCEDURES:

1. *General procedures.* An individual seeking access to his/her records may initially contact any CPOD office or employee for information about obtaining access to these records. CPOD employees will inform each individual of the appropriate procedures to follow. Individuals may also seek access to these records by initially contacting the duty station at which they believe the records are located. Individuals at the duty station will ascertain whether the records being sought are maintained at that location. If the records are not located at that duty station, the employee will instruct the individual to address his/her inquiry to CPOD. Regardless of where the records are actually located, the procedures to be followed are explained below.

Each individual seeking access will be required to verify his/her identity to the satisfaction of the employee providing access. Refusal to provide sufficient proof of identity will result in denial of the request for access until such time as proof of identity can be obtained.

2. *Requests in person.* An individual who is the subject of a record and who appears in person seeking access shall provide his/her name and at least one piece of tangible identification (e.g., PHS Commissioned Corps Identification Card, driver's license, passport, or voter registration card). Identification cards with current photographs are preferred but not required. The record will be reviewed in the presence of an appropriate employee, who will answer questions and ensure that the individual neither removes nor inserts any material into the record without the knowledge of the employee. If the individual requests a copy of any records reviewed, the employee will provide them to the individual. The employee will record the name of the individual granted access, the dates and times of access, and information about the verification of identity on a separate log sheet maintained in the office of the employee who reviewed the record.

3. *Requests by mail.* Written requests may be addressed to the System Manager at the address shown as the system location above, or directed to the specific duty station involved. All written requests must be signed by the individual seeking access. A comparison will be made of that signature and the signature maintained on file prior to release of the material requested. Copies of the records to which access has been requested will be mailed to the individual. The original version of a record will not be released except in very unusual situations when only the original will satisfy the purpose of the request.

4. *Requests by phone.* Because positive identification of the caller cannot be established with sufficient certainty, telephone requests for access to records generally will not be honored.

5. *Accounting of Disclosures.* An individual who is the subject of records maintained in this record system may also request an accounting of all disclosures that have been made from that individual's records, provided that disclosures have in fact been made.

CONTESTING RECORD PROCEDURES:

Contact the appropriate official indicated under System Manager above; reasonably identify the record; and specify the information being contested. State the corrective action sought, with supporting justification, along with information to show how the record is inaccurate, incomplete, untimely, or irrelevant. The duty station will refer requests for record correction to the Director, CPOD, when it appears that a correction of a record in this system will be inconsistent with other commissioned corps records maintained by CPOD in other record systems.

RECORD SOURCE CATEGORIES:

Information is furnished by the subject individual, persons who provide references, reports of supervisors and other officials, from personnel actions taken by CPOD, and from the records contained in the following systems: 09–37–0002, PHS Commissioned Corps Personnel Records," HHS/OASH/OM; 09–37–0005, "PHS Commissioned Corps Board Proceedings," HHS/OASH/OM; and 09–37–0006, "PHS Commissioned Corps Grievance, Investigatory, and Disciplinary Files," HHS/OASH/OM.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–37–0009

SYSTEM NAME:

Applicants for National Center for Health Statistics Technical Assistance, HHS/OASH/NCHS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Room 2–19, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for and students of concentrated, intensive short-term courses related to health statistics. They are employees of Federal, State, and local governments and other persons in health-related fields engaged in collecting and analyzing vital and health statistics.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applicant form which contains brief education information, current employment, and courses in which applicant is interested.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 304(b)(1) (42 U.S.C. 242b), authorizing the Secretary to use resources to provide technical assistance.

PURPOSE(S):

To set up courses, notify applicants of acceptance or non-acceptance, and acceptance for a future course if necessary. Used exclusively within the National Center for Health Statistics (NCHS).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Alphabetically filed in file cabinet.

RETRIEVABILITY:

Retrievable by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for the particular records maintained. NCHS implements personnel, physical, and procedural safeguards as follows:

(1) Authorized Users: Records are used only by staff administering the technical assistance programs.

(2) Physical Safeguards: Routine building security.

(3) Procedural Safeguards: Persons other than staff authorized to work with the records are not allowed access to them.

These safeguards are established in accordance with guidelines in DHHS Chapter 45–13 of the General Administration Manual, in supplementary Chapter PHS.hf:45–13, and in the NCHS Staff Manual on Confidentiality.

RETENTION AND DISPOSAL:

File destroyed six months after each course is completed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Center for Health Statistics, Center Building, Room 2–19, 3700 East-West Highway, Hyattsville, Maryland 20782

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Positive identification is required from anyone seeking access. Requestors should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above, reasonably identify the record, specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Voluntary submission of Application Form by person wishing to take the courses.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-37-0014

SYSTEM NAME:

Curricula Vitae of Consultants to the National Center for Health Statistics, HHS/OASH/NCHS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Room 2–19, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782; and offices of contractors employed to develop and maintain curricula vitae on consultants to the National Center for Health Statistics (NCHS). Contractor locations are available upon request directed to the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are current or potential consultants to NCHS. These are persons with special expertise who may be able to assist NCHS on a consultant basis in the planning and conducting of surveys, studies, statistical reporting programs, or statistical analyses of data, or in providing training and technical assistance, or assisting in conducting conferences.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to the professional training and experience of the consultant. This includes address; current position; employer; duties; place, time, and length of education; degrees received; honors received; former positions and work experiences; memberships in professional organizations; special committee and task force assignments; offices held; publications; references; health condition; availability for, and interest in travel and accepting certain assignments; compensation required, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 304(b) (42 USC 242b), authorizing the Secretary to take the necessary steps to implement statistical and epidemiological activities relating to health.

PURPOSE(S):

The data are used by staff of NCHS or its contractors for selecting consultants to assist in projects conducted or sponsored by NCHS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Where Federal agencies having the power to subpoena other Federal agencies' records, such as the Internal Revenue Service or the Civil Rights Commission, issue a subpoena to the Department for records in this system of records, the Department will make such records available.

2. The Department occasionally contracts with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records are disclosed to such a contractor. The contractor is required to maintain Privacy Act safeguards with respect to such records.

3. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. The Department of Health and Human Services (HHS) may disclose informaton from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORS IN THE SYSTEM:

STORAGE:

The information is contained on paper records and computer-readable tape.

RETRIEVABILITY:

Information is retrieved by name, address, speciality, and by other characteristics.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for the particular records maintained. NCHS implements personnel, physical, and procedural safeguards as follows:

(1) Authorized Users: Records are used only by staff whose official duties require them to use records on consultants.

(2) Physical Safeguards: Records are maintained in locked metal files or in a locked room when not in use. Computerized files are further protected by the Resource Access Control Facility ("RACF").

(3) Procedural Safeguards: Persons other than staff authorized to work with the records are not allowed access to them.

These safeguards are established in accordance with guidelines in DHHS Chapter 45–13 of the General Administration Manual, in supplementary Chapter PHS.hf:45–13, and in the NCHS Staff Manual on Confidentiality.

RETENTION AND DISPOSAL:

Records are maintained permanently until the consultant's death, disability for consultant work, or request that his/her records be removed from the file.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Center for Health Statistics, Center Building, Room 2–19, 3700 East-West Highway, Hyattsville, Maryland 20782.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager. Information needed consists of name of individual.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requestors should also reasonably specify the record contents being sought. Positive identification is required from anyone seeking access. Individuals may also request an accounting of disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURES:

Write to the official at the address specified under notification procedures above, and reasonably identify the record, specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Records are obtained from the consultants themselves, except that references may be obtained from present and former employers or supervisors of the consultants, or from individuals given as references by the consultants.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–37–0015

SYSTEM NAME:

National Center for Health Services Research and Health Care Technology Assessment (NCHSR) Grants Records System, HHS/OASH/NCHSR.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Center for Health Services Research and Health Care Technology Assessment, Room 18A–12, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Federal Records Center, 4205 Suitland Road, Suitland, Maryland 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Principal Investigators.

CATEGORIES OF RECORDS IN THE SYSTEM:

Grant files, including summary reports, grant applications, grant award notices, credit reports, summary comments of peer reviewers, salary information, staffing lists, general project correspondence, and Social Security Numbers (optional).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Title II, Administration, Section 304, (General Authority Respecting Health Statistics and Health Services Research, Evaluations, and Demonstrations (42 U.S.C. 242b)), Section 305, (National Center for Health Services Research (42 U.S.C. 242c)), Section 308, (General Provisions Respecting Sections 304, 305, 306, and 307 (42 U.S.C. 242m)), Title XII, Emergency Medical Services Systems, Section 1205, (Grants and Contracts for Research (42 U.S.C. 300d–4)).

PURPOSE(S):

The information in this system is used to facilitate day-to-day grants management operations and for purposes of review, analysis, planning and policy formulation by NCHSR staff members and by other components of DHHS.

These records may be referred to the DHHS fiscal office for the purpose of debt collection.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PROPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. The Department may disclose information from this system of records to the Department of Justice, to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal, is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. NCHSR may disclose information about an individual grant applicant to credit reporting agencies to obtain a credit report in order to determine his/her creditworthiness.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 522a(b)(12): Disclosure may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)): The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal Government; typically, to provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records. Disclosure of records is limited to the individual's name, address, Social Security number, and other information necessary to establish the individual's identity; the amount, status, and history of the claim; and the agency or program under which the claim arose. This disclosure will be made only after the procedural requirements of 31 U.S.C. 3711(f) have been followed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual files (file folders).

RETRIEVABILITY:

Retrievable by name and grant number.

SAFEGUARDS:

1. Authorized Users: Only staff members of the Grants Management Branch (GMB) have regular access.
2. Physical Safeguards: Locked file cabinets, general building security.
3. Procedural Safeguards: NCHSR staff may inspect and review records on a need-to-know basis only, with the approval and in the presence of GMB staff.
4. These safeguards are in compliance with DHHS Chapter 43-13 and Chapter PHS.hf: 45-13 of the General Administration Manual.

RETENTION AND DISPOSAL:

Approved grant applications and their respective files are retained at NCHSR for two years beyond the termination date of the project. Rejected grant applications are held for one year. The grant files are then retired to a Federal Records Center and subsequently disposed of in accordance with the PHS/OASH records control schedule. The records control schedule may be obtained by writing to the System Manager at the following address.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Grants Management Branch; National Center for Health Services Research and Health Care Technology Assessment, Parklawn Building, Room 18A-12, 5600 Fishers Lane, Rockville, Maryland 20857.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the above address.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Positive identification is required, except that no verification of identity shall be required where the record is one which is required to be disclosed under the Freedom of Information Act. You may also request an accounting of disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above and reasonably identify the record, specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Applications, reports and correspondence from the research community, and statements from grant review committees; consumer reporting agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-37-0016

SYSTEM NAME:

Users of Health Statistics, HHS/OASH/NCHS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Room 2-19, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782; and offices of contractors employed to survey, process, or otherwise develop information regarding users of data from the National Center for Health Statistics (NCHS). Contractor locations are available upon request directed to the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are past, present, or potential users of health statistics and would therefore have special interests in the programs conducted by NCHS, such as (1) persons who subscribe to NCHS publication series, (2) persons who purchase NCHS public use data tapes or publications, (3) persons who contact NCHS to request data or information on health statistics, (4) persons who attend health statictics conferences, and (5) persons known from their publications or otherwise to have a research, legislative, policy, or adminstrative interest in data produced by NCHS.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of information relating to the professional health statistical interests of health statistics users, such as their: Name, address, position, organization, education, memberships in professional organizations, special committee and task force assignments, offices held in organizations, publications, health statistics meetings attended, uses made of health statistics, health statistics projects, purchases of NCHS tapes or publications, and expressions of interests and concerns about health statistics.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 308(g)(2) (42 U.S.C. 242m(g)(2), which authorizes the Secretary to take necessary action to assure that appropriate, high quality data are disseminated on as wide a basis as is practicable.

PURPOSE(S):

NCHS uses the data in detemining how improvements can be made in (1) the content and methodology of its data programs, (2) its data publications, (3) dissemination of health statistics, and (4) meetings or other means for soliciting users' concerns and knowledge sharing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. The Department occasionally contracts with a private firm for the purpose of conducting surveys or collecting, analyzing, aggregating, otherwise refining, or evaluating data in this system. Relevant records are disclosed to such a contractor. The contractor is required to maintain Privacy Act safeguards with respect to such records.

2. Disclosure may be made to a congressional office from the record of

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an individual in response to an inquiry from the congressional office made at the request of that individual.

3. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information is contained on paper records and/or computer-readable tape.

RETRIEVABILITY:

Information is retrieved by name, and may also be retrievable by unique identifying number, address, specialty, or other identifying characteristics.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for the particular records maintained in each project.

NCHS and its contractors implement personnel, physical, and procedural safeguards such as the following:

(1) Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to authorized contractor personnel, the NCHS project officer, and NCHS employees whose duties require the use of such information. One-time and special access to the data is controlled by the System Manager, the NCHS Project Officer, and the Contract and/or Project Director. Furthermore, all employees of NCHS and contractor personnel with access to NCHS records are required, as a condition of employment, to sign an affidavit binding them to nondisclosure of identifiable individuals' information.

(2) Physical Safeguards: Records are stored in locked files or secured areas. Computer terminals are in secured areas. Computerized files are further protected by the Resources Access Control Facility ("RACF").

(3) Procedural Safeguards: Data stored in computers are accessed through the use of passwords/keywords known only to the principal investigators or authorized personnel. These passwords/keywords are changed frequently.

Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act. Privacy Act requirements are specifically included in contracts for research activities related to this system. The HHS project directors, contract officers, and project officers oversee compliance with these requirements.

The particular safeguards implemented in each project are developed in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS hf. 45–13; Part 6, "ADP Systems Security," of the HHS Information Resources Manual; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained for various periods of time depending upon how useful they are considered to be, in accordance with NCHS policy. Some records of users may be maintained indefinitely. Disposal methods include burning or shredding hard copy and erasing computer tapes and disks.

SYSTEM MANAGER AND ADDRESS:

Director, National Center for Health Statistics, Center Building, Room 2–19, 3700 East-West Highway, Hyattsville, MD 20782.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager. Information needed consists of name and address of individual.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requestors should also reasonably specify the record contents being sought. Positive indentification is required from anyone seeking access. You may also request an accounting of disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURES:

Write to the official at the address specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Records may be obtained from (1) order forms for publications or public use data tapes, (2) mailing lists, (3) registration forms of meetings, (4) author information in books and journals, (5) reference citations, and (6) reports of colleagues.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–37–0017

SYSTEM NAME:

Proceedings of the Board for Correction of Public Health Service Commissioned Corps Records, HHS/OASH/OM.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Board for Correction of PHS Commissioned Corps Records, HHS/OASH/OM, Room 17–65, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; and Washington National Records Center, 4205 Suitland Road, Suitland, Maryland 20409. Records also may be located at the contractor site. The names and addresses of contractors used by the Board for Correction can be obtained from the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Commissioned Officers of the PHS Commissioned Corps, and former officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Commissioned Officer case files consisting of applications requesting corrections of alleged errors or injustices, administrative reports, case summaries, findings, conclusions, recommendations, Board decisions, and related documents, including copies of records from other systems of records as specified under Record Source Categories below.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1552 "Correction of Military Records"; Public Health Service Act, 42 U.S.C. 213a(a)(12); Executive Order 9397, "Numbering System for Federal Accounts Relating to Individual Persons."

PURPOSE(S):

This system of records in used:

1. To process requests from present or former Commissioned Officers for the correction of alleged errors or injustices resulting from the administration of laws and regulations;

2. To review and adjudicate these requests;

3. To disclose the decisions of the Board for Correction to the Commissioned Personnel Operations Division (CPOD) for appropriate action;

4. To document all actions and activities of the Board of Correction.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. These records may be used to disclose information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. These records may be used to disclose pertinent information to appropriate Federal, State, or local agencies; international agencies; or foreign governments responsible for investigating, prosecuting, enforcing, or implementing statutes, rules, regulations, or orders, when PHS becomes aware of evidence of a potential violation of civil or criminal law.

4. Disclosure of information may be made to private contractors who record and transcribe tapes of Board for Correction meetings. Contractors are required to comply with Privacy Act safeguards and the HHS Privacy Act Regulations with respect to such records. These safeguards are explained in the section entitled "Safeguards."

5. Disclosure of information may be made to properly identified attorneys of subject individuals or their personally designated representatives, to court-appointed representatives of mentally incompetent or otherwise legally handicapped subject individuals and to guardians to the extent necessary to assure attainment of rights or payment of benefits to which such individuals would be entitled.

6. Disclosure of information may be made to Federal, State or local government agencies (such as those concerned with disability compensation, health and human services, hospitals, and legal affairs) or to public interest organizations (such as the American Red Cross, the American Civil Liberties Union, Disabled American Veterans, and the Legal Aid Society) when the subject individual's request for correction will affect the individual's entitlement to rights or benefits, and when such agencies may have information which will assist the Board for Correction in clarifying that entitlement.

7. Disclosure of information may be made to authorized experts or consultants in a Federal agency or in the private sector if the Board for Correction has determined that it needs such opinions to arrive at an equitable decision concerning the subject individual's request. Consultants or experts are required to comply with Privacy Act safeguards and the HHS Privacy Act Regulations with respect to such records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, word processing disks and microfiche.

RETRIEVABILITY:

Alphabetically by name, by service number, and by Social Security Number (SSN).

SAFEGUARDS:

1. *Authorized Users:* The System Manager and/or the Executive Secretary of the Board for Correction, will control access to the data. Additional authorized personnel having access to the data are: (1) The Director, Office of Management; (2) Designated clerical support staff in the offices of the System Manager and the Executive Secretarty; (3) Board for Correction members on a need-to-know basis; and (4) Experts, consultants or private contractors when approved by the System Manager.

2. *Physical Safeguards:* Hard-copy records, word processing disks and microfiche are stored in locked metal file cabinet located in an inner office occupied continuously during working hours and locked at all other times. The doors to the inner and outer offices are secured with combination locks. The building has a 24-hour security guard, and entry into the building is controlled before and after normal working hours. A contractor who is given records must maintain the records in a secured area, allow only those individuals immediately involved in the processing of the records to have access to them, prevent any unauthorized persons from gaining access to the records, caution employees about the confidentiality of the records, and return the records to the System Manager immediately upon completion of the work specified in the contract.

3. *Administrative Safeguards:* Authorized personnel have been trained to comply with provisions of the Privacy Act and the HHS Privacy Act Regulations. Records are transmitted in sealed envelopes and are identified as confidential material. When copying records for authorized purposes, care is taken to ensure that no imperfect or extra pages are left in the reproduction room. These pages are disposed of by shredding. Contractor compliance is assured through inclusion of privacy requirements in contract clauses, and through monitoring by contract and project officers. Contractors who maintain records are instructed to make no disclosure of the records except as authorized by the System Manager.

RETENTION AND DISPOSAL:

Records are transferred to the Washington National Records Center (WNRC) one year after CPOD has implemented the Board for Correction's (favorable) decision, or three years after the Board for Correction has denied the applicant's request, whichever applies to the final disposition of a case. Records are destroyed by the WNRC after 20 years by pulping.

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SYSTEM MANAGERS AND ADDRESS:

Chairperson, Board for Correction of PHS Commissioned Corps Records, Room 17–51, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

NOTIFICATION PROCEDURES:

To determine if a record exists, the subject individual should contact the System Manager at the above address. A subject individual who appears in person is required to provide his/her name and at least one piece of tangible identification (e.g., PHS Commissioned Corps Identification Card, driver's license, Social Security card, or discharge or separation papers). An individual making a written inquiry is required to sign the request mailed to the System Manager. The signature given is compared with the signature on file prior to release of the material requested.

If the subject individual is represented by an attorney, other than the one shown on the application to the Board for Correction, it would be necessary to have in the case file a dated letter signed by the subject individual giving the name of the attorney and stating that he/she has been authorized access to the case file. If the subject individual is represented by another person, it would also be necessary to have in the case file a dated letter signed by the individual giving the name of the representative and stating that he/she has been authorized access to the case file. In both instances, the persons representing the subject individual would be required to present documentation identifying him/herself as being the person mentioned in the application or in a letter on file with the Board for Correction.

If the subject individual is judged to be mentally incompetent to handle his/her personal affairs, a court order should have been issued to that effect. The person identifying him/herself as representing the subject individual in this circumstance would be required to present a copy of the court order and to personally identify him/herself as being the person mentioned in the order.

If the subject individual is physically incapacitated, a medical statement certifying to the physical disability would be required, signed and dated by a licensed physician. The person presenting this statement would be required to personally identify him/herself and provide documentation of his/her relationship to the subject individual (e.g., marriage license, birth certificate, etc.).

If the subject individual is deceased, proof of death would be required, signed and dates by the appropriate certifying agency of Government. The person presenting this document would be required to personally identify him/herself and provide documentation of his/her relationship to the decreased (e.g., marriage license, birth certificate, etc.).

If a determination is made that the material sought contains medical information that is likely to have an adverse effect on either the subject individual or the determination of his/her request, the requester (whether the subject individual, his/her personal representative, an attorney other than the one shown on the application to the Board for Correction, a court appointed representative, or a guardian) shall be asked to designate in writing a physician or other health professional who is willing to review the material and inform the requester of its contents, at the discretion of the health professional. The person designated to evaluate the medical information must provide proof that he/she is duly authorized by the requester to review the material.

RECORD ACCESS PROCEDURE:

Same as Notification Procedures. The requester is required to specify reasonably the contents of the records being sought. Access to records granted exemptions from the Privacy Act access requirements is made at the discretion of the System Manager subject to the appropriate approvals. Denial of access is ultimately appealable to the Assistant Secretary for Health, Room 716G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C. 20201.

The requester may also ask for an accounting of disclosures that have been made of his/her records, if any.

CONTESTING RECORD PROCEDURES:

If access has been granted, the requester shall contact the System Manager above, reasonably identify the records, specify the information being contested, and state the corrective action sought, with supporting documentation to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Records are obtained from applicants: reports of findings and recommendations made by Board for Correction members; Board for Correction decisions; supervisors; private and Government physicians; hospitals and clinics rendering treatment; investigative reports; death certificates and reports of death; survivors and executors of estates; private and Government agency reports of service delivery, compensation, disability and legal opinions; and records contains in systems 09–37–0002, "PHS Commissioned Corps Personnel Records, HHS/OASH/OM"; 09–37–0003, "PHS Commissioned Officer Medical Records, HHS/OASH/OM"; 09–37–0005, "PHS Commissioned Corps Board Proceedings, HHS/OASH/OM"; 09–37–0006, "PHS Commissioned Corps Grievance; Non-Board and Pre-Board Involuntary Retirement/Separation, and Disciplinary Files, HHS/OASH/OM"; 09–37–0008, "PHS Commissioned Corps Unofficial Personnel Files and other Station Files, HHS/OASH/OM."

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 86–25458 Filed 11–21–86; 8:45 am]

BILLING CODE 4160–17–M

Alcohol, Drug Abuse, and Mental Health Administration

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Department of Health and Human Services (DHHS); Public Health Service (PHS); Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA)

ACTION: Privacy Act: Annual republication of notices of systems of records.

SUMMARY: ADAMHA is publishing this document to meet the requirements of OMB Circular A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records about Individuals," 3a(8), which requires that agencies review each system of records annually and publish any minor changes in the **Federal Register** (FR). ADAMHA has reviewed all of its systems and is republishing all except the systems for Saint Elizabeths Hospital.

SUPPLEMENTARY INFORMATION: ADAMHA last republished all of its systems of records on October 13, 1982; on November 29, 1983, and September 25, 1984, only systems with significant (i.e., not editorial) changes were republished. In 1985 only a listing of systems was published.

ADAMHA is currently republishing all of its headquarters systems. Nineteen systems for Saint Elizabeths Hospital are not being republished since those records will be transferred to the District of Columbia in 1987 in accordance with the Saint Elizabeths Hospital and District of Columbia

Mental Health Services Act, Pub. L. 98-621.

The following information summarizes the current status of all systems of records which ADAMHA maintains:

1. Changes

Changes appearing in this year's publication include, but are not necessarily limited to, the following:

a. Titles, addresses, and room numbers were updated and minor editorial changes make the systems clearer and more accurate.

b. In systems 09-30-0022 and 09-30-0027, routine use numbers 1 and 3 respectively were revised to clarify the types of contractors who may have access to records.

c. In systems 09-30-0020, 09-30-0022, 09-30-0036, and 09-30-0048 the defense litigation routine use has been deleted since these systems are covered by section 523 or 527 of the PHS Act (42 U.S.C. 290dd3 or 290ee3).

d. In system 09-30-0047 the litigation routine use, number 1, has been revised to show use only in defense of the Department.

e. Revisions clarified the Safeguards by reformatting the language, the Notification Procedures and Records Access Procedures by adding additional language, and the Authority through editorial changes.

2. System Notices Deleted

No system notices have been deleted since the publication of the ADAMHA table of contents on October 10, 1985, *FR*, Vol, 50, No. 197, P. 41414.

3. Section 3(b) of the Privacy Act permits the following types of disclosures for which no routine use is required, in addition to those made at the request of the subject individual.

"(1) To those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

"(2) Required under section 552 of this title;

"(3) For a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

"(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

"(5) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

"(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

"(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

"(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

"(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress, or subcommittee of any such joint committee;

"(10) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

"(11) Pursuant to the order of a court of competent jurisdiction; or

"(12) To a consumer reporting agency in accordance with section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 3711(f)."

4. Readers who notice any errors or omissions in ADAMHA system notices are invited to bring them to my attention at the following address: Alcohol, Drug Abuse, and Mental Health Administration, 5600 Fishers Lane, Room 12-105, Rockville, Maryland 20857.

Dated: November 3, 1986.

Charles A. Coffindaffer,

Deputy Executive Officer, Alcohol, Drug Abuse, and Mental Health Administration.

5. Table of Contents

The following is a list of system notices which ADAMHA currently maintains:

09-30-0004 Intramural Research Program Records of Research Performed on In- and Out-Patients with Various Types of Mental Illness, HSS/ADAMHA/NIMH
*09-30-0005 Saint Elizabeths Hospital Research Subjects Data Records, HHS/ADAMHA/NIMH
*09-30-0006 Saint Elizabeths Hospital Medical Support Programs File Systems, HHS/ADAMHA/NIMH
*09-30-0007 Saint Elizabeths Hospital Clinical Support Services Record System, HHS/ADAMHA/NIMH
*09-30-0008 Saint Elizabeths Hospital Social Services Record System, HHS/ADAMHA/NIMH
*09-30-0009 Saint Elizabeths Hospital Multidisciplinary Raw Data Consultation Files, HHS/ADAMHA/NIMH
*09-30-0010 Saint Elizabeths Hospital Juvenile Education Monitoring System, HHS/ADAMHA/NIMH
*09-30-0011 Saint Elizabeths Hospital Emergency Psychiatric Service Non-Admission File System, HHS/ADAMHA/NIMH
*09-30-0012 Saint Elizabeths Hospital Pre-Service Education Records, HHS/ADAMHA/NIMH
*09-30-0013 Saint Elizabeths Hospital Training Videotape Records, HHS/ADAMHA/NIMH
*09-30-0014 Saint Elizabeths Hospital Financial System, HHS/ADAMHA/NIMH
*09-30-0015 Saint Elizabeths Hospital General Security System, HHS/ADAMHA/NIMH
*09-30-0016 Saint Elizabeths Hospital Patients' Personal Property Record System, HHS/ADAMHA/NIMH
*09-30-0017 Saint Elizabeths Hospital Legal Office Record System, HHS/ADAMHA/NIMH
*09-30-0018 Saint Elizabeths Hospital Area D Community Mental Health Center Citizens Advisory Group Records, HHS/ADAMHA/NIMH
*09-30-0019 Saint Elizabeths Hospital Court-Ordered Forensic Investigatory Materials File, HHS/ADAMHA/NIMH
09-30-0020 Patient Records on PHS Beneficiaries (1935-1974) and Civilly Committed Drug Abusers (1967-1976), HHS/ADAMHA/NIDA
09-30-0022 National Institute on Drug Abuse, Addiction Research Center, Federal Prisoner and Non-Prisoner Patient Files, HHS/ADAMHA/NIDA
09-30-0023 Records of Contracts Awarded to Individuals, HHS/ADAMHA/OA
*09-30-0024 Saint Elizabeths Hospital General Administrative Record System, HHS/ADAMHA/NIMH
*09-30-0026 Saint Elizabeths Hospital Research Project Records, HHS/ADAMHA/NIMH
09-30-0027 Grants and Cooperative Agreements: Research, Research Training, Research Scientist Development, Education, Demonstration, Prevention, Fellowships, Clinical Training, Community Programs, HHS/ADAMHA/OA
*09-30-0028 Saint Elizabeths Hospital General Medical/Clinical Records System and Related Indexes, HHS/ADAMHA/NIMH
09-30-0029 Records of Guest Workers, HHS/ADAMHA/OA
09-30-0030 Records of Visiting Fellows, HHS/ADAMHA/OA
*09-30-0031 Saint Elizabeths Hospital Management Information Reporting System, HHS/ADAMHA/NIMH
09-30-0033 Correspondence Files, HHS/ADAMHA/OA
09-30-0035 Three Mile Island Mental Health Survey Respondents Record, HHS/ADAMHA/NIMH
09-30-0036 Alcohol, Drug Abuse, and Mental Health Epidemiological and Biometric Research Data HHS/ADAMHA/OA
09-30-0037 Psychotherapy of Opiate-Dependent Individuals, HHS/ADAMHA/NIDA
09-30-0038 Subject-Participants in Pharmacokinetic Studies on Drugs of Abuse, HHS/ADAMHA/NIDA

09-30-0039 Drug Abuse Treatment Outcome Prospective Study (TOPS), HHS/ADAMHA/NIDA
09-30-0041 Subject-Participants in Drug Abuse Research Studies Supporting New Drug Applications, HHS/ADAMHA/NIDA
09-30-0043 Shipment Records of Drugs of Abuse of Authorized Researchers, HHS/ADAMHA/NIDA
09-30-0047 Patient Records on Chronic Mentally Ill Merchant Seamen Treatment at Nursing Homes in Lexington, Kentucky (1942 to the Present), HHS/ADAMHA/NIMH
09-30-0048 Intramural Research Program Records of In- and Out-Patients with Various Types of Alcohol Abuse and Dependence, Relatives of Patients with Alcoholism, and Healthy Volunteers, HHS/ADAMHA/NIAAA

*These systems are for Saint Elizabeths Hospital. Since the records are being transferred to the District of Columbia in 1987, they are not being republished below.

09-30-0004

SYSTEM NAME:

Intramural Research Program Records of Research Performed on In- and Out-Patients with Various Types of Mental Illness. HHS/ADAMHA/NIMH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health
9000 Rockville Pike
Bethesda, Maryland 20205 AND
Saint Elizabeths Hospital
Washington, D.C. 20032

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

In- and out-patients with emotional, psychiatric, and neurophysiological disability, normal subjects, and research subjects.

CATEGORIES OF RECORDS IN THE SYSTEM:

Research data of wide variety including biochemical measures, psychophysiological and psychological tests, questionnaires, clinical and behavioral observations and interviews, physical examinations, and correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Sections 301, 302, and 303 (42 U.S.C. 241, 242, 242a).

PURPOSE(S):

These records are used for diagnosis and treatment of patients with neuropsychiatric illnesses; behavioral research relating to the causes, diagnoses, and treatment of neuropsychiatric disorders; and basic research on behavioral processes and personality development.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record may be disclosed for a research purpose, when the Department:

(a) has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

(b) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(c) has required the recipient to--(1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except--(A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

(d) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

2. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

3. In the event of litigation where the defendant is (a) the Department, and component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

In original state; files, indexes, magnetic and other tapes.

RETRIEVABILITY:

Retrieved by name (coded).

SAFEGUARDS:

Safeguards:

1. Authorized Users: Only authorized medical and research staff have access to these records.

2. Physical Safeguards: Magnetic tapes, files, indexes, and other tapes that contain individually identifiable data are stored in a locked cabinet in a limited access area.

3. Procedural Safeguards: Magnetic data are further protected by special account numbers and passwords.

4. Implementation Guidelines: DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual, and Part 6, 'ADP System Security' in the HHS ADP Systems Security Manual.

RETENTION AND DISPOSAL:

Records may be retired to a Federal Records Center and subsequently disposed of in accordance with the ADAMHA Records Control Schedule. The records control schedule and disposal standard for these records may be obtained by writing the System Manager at the address below.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Intramural Research Program
National Institute of Mental Health
Building 10, Room 4N-224
9000 Rockville Pike
Bethesda, Maryland 20205

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address above. Provide notarized signature as proof of identity. The request should include as much of the following information as possible: (a) full name; (b) nature of illness (if any); (c) ward or laboratory; (d) title of study; (e) name of

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researcher conducting study. An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. A parent or guardian who requests notification of child's/incompetent person's record shall at the time the request is made designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The designate will receive the record in all cases and upon review will determine whether the record should be made available to the parent or guardian.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information gathered from individuals under study, either patient or normal subject, contract surveys, hospital records, medical and nursing staff notes.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-30-0020

SYSTEM NAME:

Patient Records on PHS Beneficiaries (1935-1974) and Civilly Committed Drug Abusers (1967-1978) Treated at the PHS Hospitals in Fort Worth, Texas, or Lexington, Kentucky. HHS/ADAMHA/NIDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Addiction Research Center
National Institute on Drug Abuse
Francis Scott Key Medical Center
4940 Eastern Avenue
Baltimore, Maryland 21224

Federal Records Center
1557 St. Joseph Avenue
East Point, Georgia 30344

Washington National Records Center
4205 Suitland Road
Washington, D.C. 20409

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilly committed narcotic addicts (1967-1978) and adult PHS beneficiaries (1935-1974) treated at either the PHS hospital in Fort Worth, Texas, or Lexington, Kentucky.

CATEGORIES OF RECORDS IN THE SYSTEM:

Administrative records, such as treatment admission and release dates, name and address, and other demographic data; medical records, such as, but not limited to, medical history information, drug abuse/use data as well as treatment information, any laboratory tests, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Narcotic Addict Rehabilitation Act of 1966, and Narcotic Addict Rehabilitation Amendments of 1971, Titles I and III (42 U.S.C. 3411 et seq. and 28 U.S.C. 2901 et seq.), and Public Health Service Act, Sections 321-326, 341(a) and (c) (42 U.S.C. 248-253, 257(a) and (c)).

PURPOSE(S):

The records were collected originally to monitor the individual's progress while being treated at either of two PHS hospitals and to ensure continuity of that care. These systems are now inactive. The records are used to respond to requests from subject individuals (or his/her designated representative) to (1) establish eligibility for certain Federal benefits for the individual or his/her dependent(s), and (2) provide information to subsequent health care providers at the request of the individual regarding medical treatment received to ensure continuity of care.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records at National Institute on Drug Abuse (NIDA) are on microfilm and contain only part of the admission and discharge information. The microfilm is stored in a file cabinet in a locked room. Records sent to Federal Records Center are stored in GSA-approved storage containers.

RETRIEVABILITY:

The administrative records and microfilm are filed by patient name.

The medical records are filed either by patient name or by patient's hospital number with a cross-reference list at NIDA matching number to name.

SAFEGUARDS:

Safeguards:

1. Authorized Users: Only the System Manager and designated staff.

2. Physical Safeguards: The microfilm is in a room which has limited access. The room is located in a building with a 24-hour security patrol/television surveillance system. Sign in and out procedures are used at all times.

3. Procedural Safeguards: Only the System Manager and his/her staff have access to the microfilm information and have been trained in accordance with the Privacy Act.

4. Implementation Guidelines: DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual.

RETENTION AND DISPOSAL:

All administrative and medical records have been retired to a Federal Records Center. The records collected under the Narcotic Addict Rehabilitation Act of 1966 will be destroyed when they are 25 years old, which will be in 2003 because the last patient was released from treatment in 1978. The PHS beneficiaries' records will be destroyed at the same time. The records will be shredded in 2003 upon written request from the System Manager.

SYSTEM MANAGER(S) AND ADDRESS:

Librarian
Addiction Research Center
National Institute on Drug Abuse
Francis Scott Key Medical Center
4940 Eastern Avenue
Baltimore, Maryland 21224

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address above. An individual may learn if a record exists about himself or herself upon written request with a notarized signature. The request should include, if known: patient hospital record number, full name or any alias used, patient's address during treatment, birth date, veteran status (if applicable) and approximate dates in treatment.

An individual who requests notification of a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record

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and inform the individual of its content at the representative's discretion.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification Procedures above, and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Patients; patients' drug treatment program counselors; court records; hospital personnel.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-30-0022

SYSTEM NAME:

National Institute on Drug Abuse, Addiction Research Center, Federal Prisoner and Non-Prisoner Research Files, HHS/ADAMHA/NIDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

NIDA Addiction Research Center
Francis Scott Key Medical Center - Building C
4940 Eastern Avenue
Baltimore, Maryland 21224

Maryland Medical Laboratories, Inc.
Pathology Building
1901 Silver Spring Road
Baltimore, Maryland 21227

Federal Records Center
1557 St. Joseph Avenue
East Point, Georgia 30344

Washington National Records Center
4205 Suitland Road
Washington, D.C. 20409

Bionetics, Inc.
Francis Scott Key Medical Center - Building C
4940 Eastern Avenue
Baltimore, Maryland 21224

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Volunteers, adult males (from 1968 to present), adult females (beginning in 1985) and adolescents (ages 13-18, beginning in 1985) involved in clinical research projects conducted at the Addiction Research Center (ARC). This system also includes records on adult Federal prisoners involved in research projects at ARC when located at Lexington, Kentucky, from 1968-1976, and some records from system 09-30-0020 to be used for statistical research only.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records involved are administrative, medical and research records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 301(a) (42 U.S.C. 241(a)); Sections 341(a) and 344(d) (42 U.S.C. 257(a) and 260(d)); Sections 503 and 515 (42 U.S.C 290aa-2 and 290cc). These sections authorize the conduct of research in all areas of drug abuse.

PURPOSE(S):

(1) To collect and maintain a data base for research activities at ARC, and (2) to enable Federal drug abuse researchers to evaluate and monitor the subjects' health during participation in a research project. The areas of research include, but are not limited to, biomedical, clinical, behavioral, pharmacological, psychiatric, psychosocial, epidemiological, etiological, statistical, treatment and prevention of narcotic addiction and drug abuse.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. The Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) uses a contractor to recruit volunteers and to screen these individuals for their acceptability to participate in specific research projects, and limits the contractor's access to the records to these procedures. ADAMHA also uses a contractor to perform routine medical laboratory tests on blood and urine samples. These routine tests verify that the subject is in good health. Both contractors disclose records from this system only to ADAMHA and are required to maintain Privacy Act safeguards with respect to such records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data may be stored in file folders or on computer disks or magnetic tapes.

RETRIEVABILITY:

Administrative and medical records are indexed and retrieved by the subject's name. Research records are indexed and retrieved by the subject's name and an identification code.

SAFEGUARDS:

Safeguards:

1. Authorized Users: Only authorized ARC staff (Principal Investigator and his/her research team) are allowed access to these files. The contractor staff has access to the files during the recruitment/screening process. The medical laboratory contractor has access only to the blood or urine samples provided them by ARC.

2. Physical Safeguards: Files and file rooms are locked after business hours. Building has controlled entry (sign in and out) at all times with a 24-hour guard/television surveillance system. The computer terminals are in a further secured area.

3. Procedural Safeguards: All users of personal information in connection with the performance of their jobs protect information from unauthorized personnel. Access codes to the research records are available only to the Principal Investigator and his/her research team. Access to the records is strictly limited to those staff members trained in accordance with the Privacy Act. The contractor staff members are required to secure the information in accordance with the Privacy Act. ARC Project Officer and contracting officials will monitor contractor compliance.

4. Implementation Guidelines: DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual; and Chapter 6-05, 'Risk Management,' under Part 6 in the Department's ADP Systems Security Manual.

In addition, because much of the data collected in these research projects are sensitive and confidential, special safeguards have been established. Certificates of confidentiality have been issued under Protection of Identity—Research Subjects Regulations (42 CFR Part 2a) to those projects initiated since February 1980. This authorization enables persons engaged in research on mental health, including research on the use and effect of psychoactive drugs, to protect the privacy of research subjects by withholding their names or other identifying characteristics from all persons not connected with the conduct of the research. Persons so authorized may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceeding to identify such individuals.

In addition, these records are subject to 42 CFR Part 2, the Confidentiality of Alcohol and Drug Abuse Patient Records Regulations (42 CFR 2.56), which state: 'Where the content of patient records has been disclosed pursuant to these regulations for the purpose of conducting scientific research...information contained therein which would directly or indirectly identify any patient may not be disclosed by the recipient thereof either voluntarily or in response to any legal process whether Federal or State.'

RETENTION AND DISPOSAL:

Records will be disposed of in accordance with the ADAMHA Records Control Schedule, i.e., when the records are 10 years old or no longer required for administrative or research purposes. The records on individuals who do not qualify for a specific research project are kept for one year by the contractor who then destroys them by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Research Support Branch
NIDA Addiction Research Center
Francis Scott Key Medical Center - Building C
4940 Eastern Avenue
Baltimore, Maryland 21224

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address above. Provide a notarized signature is proof of identity. The request should include the patient's register number and/or the number of years of incarceration (for prisoner subjects), full name at time of participation in the research project, date(s) of research participation, and title of research project or name of drug being studied. An individual who requests notification of a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or legal guardian who requests notification of an adolescent's record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or legal guardian must verify in writing the relationship to the adolescent as well as his/her own identity.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures that have been made of his/her records, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought and reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

The individual; observations and medical recordings (such as blood pressure, dosage of compound administered, etc.) made by the Principal Investigator and his/her research team; system of records number 09-30-0020; drug treatment programs; Bureau of Prisons; case workers; psychiatrists; research laboratories; and pharmacies and hospitals. Many of these records are confidential and privileged communication is guaranteed under Section 344(d) of the PHS Act.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-30-0023

SYSTEM NAME:

Records of Contracts Awarded to Individuals. HHS/ADAMHA/OA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institute on Drug Abuse
Contracts Management Branch
Room 10-49, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

National Institute on Alcohol Abuse and Alcoholism
Contracts Management Branch
Room 14C-06, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

National Institute of Mental Health
Contracts Management Branch, OPS
Room 18-101, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

Procurement Section
Saint Elizabeths Hospital
Washington, D.C. 20032

Washington National Records Center
4205 Suitland Road
Washington, D.C. 20409

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

An individual who receives a contract as well as individuals who apply or compete for an award but do not receive the award and their consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Curriculum vitae, salary information, evaluations of proposals by contract review committees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Sections 301, 503, 502 and 504) (42 U.S.C. 241, 290aa-2, 290aa-1, and 290-aa3). NIDA: Drug Abuse Prevention, Treatment and Rehabilitation Act, Section 410 (21 U.S.C. 1177). NIAAA: Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Section 311 (42 U.S.C. 4577). NIMH: Community Mental Health Centers Act.

PURPOSE(S):

To document the history of each contract procurement action and award made within ADAMHA to an individual. The records are also used by contract review committee members when evaluating a proposal submitted by an individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided

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however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. A record from this system may be disclosed to the following entities in order to help collect a debt owed the United States:

(a) to another Federal agency so that agency can effect a salary offset;
(b) to another Federal agency so that agency can effect an administrative offset under common law or under 31 U.S.C. 3716 (withholding from money payable to, or held on behalf of, the individual);
(c) to the Treasury Department to request his/her mailing address under I.R.C. 6103(m)(2) in order to locate him/her or in order to have a credit report prepared;
(d) to agents of the Department and to other third parties to help locate him/her in order to help collect or compromise a debt;
(e) to debt collection agents under 31 U.S.C. 3718 or under common law to help collect a debt; and
(f) to the Justice Department for litigation or further administrative action.

Disclosure under part (d) of this routine use is limited to the individual's name, address, Social Security number, and other information necessary to identify him/her. Disclosure under parts (a)-(c) and (e) is limited to those items; the amount, status, and history of the claim; and the agency or program under which the claim arose. An address obtained from IRS may be disclosed to a credit reporting agency under part (d) only for purposes of preparing a commercial credit report on the individual. Part (a) applies to claims or debts arising or payable under the Social Security Act if and only if the employee consents in writing to the offset.

4. ADAMHA may disclose information from its records in this system to consumer reporting agencies in order to obtain credit reports to verify credit worthiness of contract applicants. Permissible disclosures include name, address, Social Security number or other information necessary to identify the individual; the funding being sought; and the program for which the information is being obtained.

5. When a debt becomes partly or wholly uncollectable, either because the time period for collection under the statute of limitations has expired or because the Government agrees with the individual to forgive or compromise the debt, a record from this system of records may be disclosed to the Internal Revenue Service to report the written-off amount as taxable income to the individual.

6. A record from this system may be disclosed to another Federal agency that has asked the Department to effect an administrative offset under common law or under 31 U.S.C. 3716 to help collect a debt owed the United States.

Disclosure under this routine use is limited to: name, address, Social Security number, and other information necessary to identify the individual, information about the money payable to or held for the individual, and other information concerning the administrative offset.

7. ADAMHA may disclose from this system of records to the Department of Treasury, Internal Revenue Service (IRS): (1) A delinquent debtor's name, address, Social Security number, and other information necessary to identify the debtor; (2) the amount of the debt; and (3) the program under which the debt arose, so that IRS can offset against the debt any income tax refunds which may be due to the debtor.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 522a(b)(12). Disclosures may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681 (F)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of such disclosures is to provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records. Information disclosed will be limited to name, Social Security number, address, other information necessary to establish the identity of the individual, and amount, status, and history of the claim, and the agency or program under which the claim arose. Such disclosures will be made only after the procedural requirements of 31 U.S.C. 3711(f) have been met.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Documents filed in folders in enclosed and/or locked file cabinets.

RETRIEVABILITY:

By contract number and cross indexed by individual's name.

SAFEGUARDS:

Safeguards:

1. Authorized Users: Federal contract and support personnel, Federal contract review staff and outside consultants acting as peer reviewers of the project.

2. Physical Safeguards: All folders are in file cabinets in a room that is locked after business hours in a building with controlled entry (picture identification). Files are withdrawn from cabinet for Federal staff who have a need to know by a sign in and out procedure.

3. Procedural Safeguards: Access to records is strictly limited to those staff members trained in accordance with the Privacy Act.

4. Implementation Guidelines: DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual.

RETENTION AND DISPOSAL:

Records are retired to a Federal Records Center and subsequently disposed of in accordance with the ADAMHA Records Control Schedule. The records control schedule and disposal standard for these records may be obtained by writing the System Manager at the address below.

SYSTEM MANAGER(S) AND ADDRESS:

National Institute on Drug Abuse
Chief, Contracts Management Branch, OPS
Room 10-49, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

National Institute on Alcohol Abuse and Alcoholism
Chief, Contracts Management Branch
Room 14C-06, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

National Institute of Mental Health
Chief, Contracts Management Branch
Room 18-101, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

Procurement Officer
Saint Elizabeths Hospital
Washington, D.C. 20032

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the appropriate System Manager at the address above. An individual may learn if a record exists about himself/herself upon written request with notarized signature. The request should include, if known, contractor's name, contract number, and approximate date contract was awarded. An individual may also request accounting of disclosures that have been made of his/her record, if any.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above and reasonably identify the record, specify the information being contested, the corrective action sought, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Contract proposals and supporting contract documents, contract review committees, site visitors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-30-0027

SYSTEM NAME:

Grants and Cooperative Agreements: Research, Research Training, Research Scientist Development, Education, Demonstration, Prevention, Fellowships, Clinical Training, Community Programs. HHS/ADAMHA/OA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institute on Drug Abuse
Grants Management Branch
Room 10-25, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

National Institute on Alcohol Abuse and Alcoholism
Grants Management Branch
Room 16-86, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

National Institute of Mental Health
Grants Management Branch, OPS
Room 7C-23, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

Washington National Records Center
4205 Suitland Road
Washington, D.C. 20409

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Principal investigators, program directors, trainees, fellows, research scientist development awardees, and other employees of applicant or grantee institutions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Grant and cooperative agreement applications and review history, including curriculum vitae, salary information, summary of review committee deliberations and supporting documents, progress reports, financial records, payback records of research training awardees (i.e., recipients under the National Research Services Awards Program), and payback records of clinical training awardees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Sections 301, 303, 487, 504(f), 504(g), 510, 511, 512, 515(b)(2) and (3), 516 (42 U.S.C. 241, 242a, 288, 290aa-3, 290bb, 290bb-1, 290bb91a, 290cc, 290cc-2); Pub. L. 99-319, Protection and Advocacy of Mentally Ill Individuals Act of 1986; Refugee Assistance Act of 1980, Section 501(c), Pub. L. 96-422; Refugee Assistance - Mental Health, 9 U.S.C.1521 et. seq.; and Mental Health Disaster and Emergency Mental Health Disaster Relief Act of 1974, Section 413, Pub. L. 93-288.

PURPOSE(S):

Records are maintained as official documentation relevant to the review, award, and administration of grant programs. Specifically, records are: 1. used by staff program and management specialists for purpose of awarding and monitoring grant funds; 2. used to maintain communication with former trainees/fellows who have incurred an obligation for research training under the National Research Service Awards Program (42 U.S.C. 290aa-3 or for clinical training (42 U.S.C. 242a).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Referrals may be made of assignments of research investigators and project monitors on specific research projects to the National Technical Information Service (NTIS), Department of Commerce, to contribute to the Smithsonian Science Information Exchange.

2. Disclosure may be made to qualified experts not within the definition of Department employees for opinion during the application review process.

3. Disclosure may be made to ADAMHA contractors for the purpose of providing services related to the grant review or for carrying out quality assessment, program evaluation, and management reviews. Contractors are required to maintain Privacy Act safeguards with respect to the records.

4. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal (e.g., the Department of Justice) or State (e.g., the State's Attorney's Office), charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto for litigation.

5. Disclosure may be made to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

6. Where Federal agencies having the power to subpoena other Federal agencies' records, such as the Internal Revenue Service or the Civil Rights Commission, issue a subpoena to the Department for records in this system of records, the Department will make such records available.

7. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

8. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

9. A record from this system may be disclosed to the following entities in

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order to help collect a debt owed the United States:

(a) to another Federal agency so that agency can effect a salary offset;
(b) to another Federal agency so that agency can effect an administrative offset under common law or under 31 U.S.C. 3716 (withholding from money payable to, or held on behalf of, the individual);
(c) to the Treasury Department to request his/her mailing address under I.R.C. 6103(m)(2) in order to locate him/her or in order to have a credit report prepared;
(d) to agents of the Department and to other third parties to help locate him/her in order to help collect or compromise a debt;
(e) to debt collection agents under 31 U.S.C. 3718 or under common law to help collect a debt; and
(f) to the Justice Department for litigation or further administrative action.

Disclosure under part (d) of this routine use is limited to the individual's name, address, social security number. and other information necessary to identify him/her. Disclosure under parts (a)-(c) and (e) is limited to those items; the amount, status, and history of the claim; and the agency or program under which the claim arose. An address obtained from IRS may be disclosed to a credit reporting agency under part (d) only for purposes of preparing a commercial credit report on the individual. Part (a) applies to claims or debts arising or payable under the Social Security Act if and only if the employee consents in writing to the offset.

10. ADAMHA may disclose information from its records in this system to consumer reporting agencies in order to obtain credit reports to verify credit worthiness of grant/cooperative agreement applicants. Permissible disclosures include name, address, Social Security number or other information necessary to identify the individual; the funding being sought; and the program for which the information is being obtained.

11. When a debt becomes partly or wholly uncollectable, either because the time period for collection under the statute of limitations has expired or because the Government agrees with the individual to forgive or compromise the debt, a record from this system of records may be disclosed to the internal revenue service to report the written-off amount as taxable income to the individual.

12. A record from this system may be disclosed to another Federal agency that has asked the Department to effect an administrative offset under common law or under 31 U.S.C. 3716 to help collect a debt owed the United States.

Disclosure under this routine use is limited to: name, address, Social Security number, and other information necessary to identify the individual, information about the money payable to or held for the individual, and other information concerning the administrative offset.

13. ADAMHA may disclose from this system of records to the Department of Treasury, Internal Revenue Service (IRS): (1) A delinquent debtor's name, address, Social Security number, and other information necessary to identify the debtor; (2) the amount of the debt; and (3) the program under which the debt arose, so that IRS can offset against the debt any income tax refunds which may be due to the debtor.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681 (f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of such disclosures is to provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records. Information disclosed will be limited to name, Social Security number, address, other information necessary to establish the identity of the individual, the amount, status, and history of the claim, and the agency or program under which the claim arose. Such disclosures will be made only after the procedural requirements of 31 U.S.C. 3711(f) have been met.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Noncomputerized documents are filed in folders in enclosed file cabinets and open shelves. Information on 3 x 5 cards in file cabinets. Computerized records exist in tape and disk form.

RETRIEVABILITY:

By grant numbers and cross-indexed by name.

SAFEGUARDS:

Safeguards:

1. Authorized Users: Access is limited to the Chief, Grants Management Branch, and staff authorized by him/her: grants specialists, grants technicians, program officials, assigned computer personnel, and possibly contractor staff including the project director and research associates.

2. Physical Safeguards: Records are maintained in a secured area. During normal work hours, area is staffed by authorized personnel who must show identification for entry. At other times, the computer area is locked. Hard copy files are stored in rooms which are locked at night. A 24-hour security guard patrols building.

3. Procedural Safeguards: Computer records are password protected; passwords are changed periodically. Contractors working on computerized records are given passwords to access data only on a need-to-know basis.

4. Implementation Guidelines: DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual and Part 6, 'ADP System Security' of the ADP Systems Security Manual.

RETENTION AND DISPOSAL:

Records are retired to a Federal Records Center 2 years after termination of support and the completion of final audit.

SYSTEM MANAGER(S) AND ADDRESS:

National Institute on Drug Abuse
Chief, Grants Management Branch, OA
Room 10-25, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

National Institute on Alcohol Abuse and Alcoholism
Chief, Grants Management Branch
Room 16-86, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

National Institute of Mental Health
Chief, Grants Management Branch
Room 7C-23, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the appropriate System Manager at the above address. Verifiable proof of identity is required.

RECORD ACCESS PROCEDURES:

Same as notification procedure. Requesters should also reasonably specify the record contents being sought, and should provide the official grant number when possible. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURES:

Contact the appropriate System Manager at the address specified above and reasonably identify the record, specify the information being contested, the corrective action sought, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Applicants, grantees, fellows, trainees, personnel at grantee institution on whom the record is maintained, Federal advisory committees, site visitors, consultants, references.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-30-0029

SYSTEM NAME:

Record of Guest Workers. HHS/ADAMHA/OA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Alcohol, Drug Abuse, and Mental Health Administration
Division of Personnel Management
Room 15C-18, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

Alcohol, Drug Abuse, and Mental Health Administration
Personnel Office
Room 4C-101, Building 10
9000 Rockville Pike
Bethesda, Maryland 20205

Addiction Research Center
National Institute on Drug Abuse
P.O. Box 5180
Baltimore, Maryland 21224

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals using ADAMHA facilities who are not employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal information including name, address, date and place of birth, education, employment, purpose for which ADAMHA facilities are desired, outside sponsor and ADAMHA sponsor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 301, (42 U.S.C. 241).

PURPOSE(S):

To document individual's presence at ADAMHA and as a record that the individual is not performing services for ADAMHA and is therefore not an employee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to the U.S. Office of Personnel Management for program evaluation purposes.

2. Disclosure may be made to institutions providing financial support for subject individual.

3. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

4. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Safeguards:

1. Authorized Users: Authorized employees of the Division of Personnel Management and ADAMHA managers and supervisors with legitimate interest in guest worker.

2. Physical Safeguards: Records are stored in locked rooms.

3. Procedural Safeguards: Authorized individuals have been trained in accordance with the Privacy Act.

4. Implementation Guidelines: DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual.

RETENTION AND DISPOSAL:

Retained for 2 years after completion of visit, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director
Division of Personnel Management, ADAMHA
Room 12-95, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

NOTIFICATION PROCEDURE:

To determine if a record exists, contact the System Manager at the address above. Individuals who request notification in person must supply one proof of identity containing individual's complete name and one other identifier with picture (e.g., driver's license, building pass). Individuals who request notification by mail must supply notarized signature as proof of identity.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information to be contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Subject individual and ADAMHA sponsor.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-30-0030

SYSTEM NAME:

Record of Visiting Fellows. HHS/ADAMHA/OA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Alcohol, Drug Abuse, and Mental Health Administration
Division of Personnel Management
Room 15C-18, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

Alcohol, Drug Abuse, and Mental Health Administration

BEST COPY AVAILABLE

Personnel Office
Room 4C-101, Building 10
9000 Rockville Pike
Bethesda, Maryland 20205

Addiction Research Center
National Institute on Drug Abuse
P.O. Box 5180
Baltimore, Maryland 21224

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals undergoing training who are not employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal information including name, address, date and place of birth, education, qualifications for training, stipend information, visa information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Sections 301 and 504 (42 U.S.C. 241 and 290aa-1).

PURPOSE(S):

To maintain information concerning their training while at ADAMHA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to the U.S. Office of Personnel Management for program evaluation purposes.

2. Disclosure may be made to the General Accounting Office for fund disbursement determinations.

3. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

4. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Safeguards:

1. Authorized Users: Access is limited to authorized employees of the Division of Personnel Management and ADAMHA managers and supervisors with a legitimate interest in the individual as a trainee.

2. Physical Safeguards: Records are kept in locked rooms accessible only to authorized employees.

3. Procedural Safeguards: Authorized users have been trained in accordance with the Privacy Act.

4. Implementation Guidelines: DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual.

RETENTION AND DISPOSAL:

Retained for 2 years after completion of fellowship, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director
Division of Personnel Management,
ADAMHA
Room 12-95, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

NOTIFICATION PROCEDURE:

To determine if a record exists, contact the System Manager at the address above. Individuals who request notification in person must supply one proof of identity containing individual's complete name and one other identifier with picture (e.g., driver's license, building pass). Individuals who request notification by mail must supply notarized signature as proof of identity.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any..

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information to be contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Fellowship applicant.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-30-0033

SYSTEM NAME:

Correspondence Files. HHS/ADAMHA/OA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

ADAMHA Executive Secretariat
Room 12-94, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

Executive Secretariat, National Institute on Drug Abuse
Room 10A-23, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

Executive Secretariat, National Institute on Alcohol Abuse and Alcoholism
Room 16-97, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

Washington National Records Center
4205 Suitland Road
Washington, D.C. 20409

Executive Secretariat, National Institute of Mental Health
Room 17C-25, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who request information on ADAMHA programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Sections 301, 302, 303 and Title V, Part A and B, (42 U.S.C. 241, 242, 242a, and 290aa-dd).

PURPOSE(S):

To provide reference retrieval and control to assure timely and appropriate attention.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the request of that individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Correspondence records maintained in hard copy; control records maintained on computer printout, tape, and disk.

RETRIEVABILITY:

Hard copy records indexed alphabetically by name and date of outgoing correspondence, by subject, and/or by computerized numerical code. Records are cross-referenced in detail on computer.

SAFEGUARDS:

Safeguards:

1. Authorized Users: Authorized correspondence control staff in each location and managers and supervisors on a need-to-know basis.

2. Physical Safeguards: Records are maintained in file cabinets in a locked, secure location; computer system records are secured through the use of passwords which are changed frequently.

3. Procedural Safeguards: Only authorized personnel have access to files and passwords.

4. Implementation Guidelines: DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual and Part 6, 'ADP System Security' in the HHS ADP Systems Security Manual.

RETENTION AND DISPOSAL:

Records are retired to the Federal Records Center after 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Same as location.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself by contacting the applicable System Manager at the address above. Give name and approximate date of records requested. Individuals who request notification in person must supply one proof of identity containing individual's complete name and one other identifier with picture (e.g., driver's license, building pass). Individuals who request notification by mail must supply notarized signature as proof of identity.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURES:

Contact the appropriate official at the address specified under Notification Procedures above and reasonably identify the record. Specify the information to be contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Records are derived from incoming and outgoing correspondence.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-30-0035

SYSTEM NAME:

Three Mile Island Mental Health Survey Respondents Records. HHS/ADAMHA/NIMH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Western Psychiatric Institute and Clinic
University of Pittsburgh
Pittsburgh, Pennsylvania 15260

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons participating in the Three Mile Island Study of mental health sponsored by the National Institute of Mental Health following the nuclear reactor accident of March 19, 1979. Control group participants from Beaver County, Pennsylvania, are also included. The research and control groups both consist of workers in nuclear plants, mothers of young children, and mental health system clients.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, and responses to the following interview instruments, as appropriate: sociodemographic information; physical illness overview; life events; symptom check list-90; social network interview; current mental health; job related issues; Langner screening inventory; and schedule for affective disorders and schizophrenia, lifetime version (SADS-L). The current mental health and the SADS-L instruments include interviewers' interpretations and diagnoses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 301 (42 U.S.C. 241).

PURPOSE(S):

The system is created to enable the Government to arrange for followup study at a later date. Such a followup would demonstrate whether any mental health effects detected in this study are of a transient or long-term nature. Without such knowledge, it is impossible to develop realistic plans for adequately meeting people's needs in times of disaster. Currently, for example, in the absence of knowledge about the duration of disaster-precipitated mental health problems, Federal grants for providing mental health services to disaster victims are limited to a 6-month period. Followup studies, such as the one proposed here, would help to ascertain the soundness of such a policy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record may be disclosed for a research purpose, when the Department:

(a) has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

(b) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable

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form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(c) has required the recipient to--(1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature retaining such information, and (3) make no further use or disclosure of the record except--(a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law;

(d) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

2. Disclosure of relevant records may be made to a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system. The contractor will be required to maintain Privacy Act safeguards with respect to such records.

3. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Safeguards:

1. Authorized Users: Contractor or grant personnel whose duties require the use of information in the file for research purposes.

2. Physical Safeguards: Original questionnaires were converted to microfiche, and the questionnaires destroyed by shredding. Two sets of microfiche, including the cross indexes, are being maintained in separate locations. Records are maintained in numerical order by the assigned identification number. An index is also maintained by name and identification number for cross reference. The microfiche are boxed and sealed and are stored in a secured safe and/or vault.

3. Procedural Safeguards: Access to the safe and/or vault in which the microfiche are stored is permitted only if authorized in writing by the Director of Sponsored Research or an authorized university official.

4. Implementation Guidelines: DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual.

RETENTION AND DISPOSAL:

Retention of microfiche will not exceed 22 years from date of recording. Destruction will be by burning, certified by an authorized unversity official.

SYSTEM MANAGER(S) AND ADDRESS:

Chief
Emergency Services Branch
Division of Education and Service
Systems Liaison
National Institute of Mental Health
Room 7C-02, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

NOTIFICATION PROCEDURE:

To determine if a record exists, contact the System Manager at the address above. Written requests must contain full name and notarized signature, and address at time of interview. Requests made in person require identification, such as driver's license, union card, passport, or notarized statement that the person is who he/she claims to be.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought, including the name of the interview instrument(s), if known. Because the current mental health instrument and the schedule for affective disorders and schizophrenia include interviewer diagnoses, these portions of the record constitute medical records. An individual who requests notification of, or access to, a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individuals in the system.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-30-0036

SYSTEM NAME:

Alcohol, Drug Abuse, and Mental Health Epidemiologic and Biometric Research Data. HHS/ADAMHA/OA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records are located at the research facilities which collect or provide research data for this system under contract to the agency. Contractors may include, but are not limited to, research centers, clinics, hospitals, universities, research foundations, national associations, and coordinating centers. Records may also be located at the research facilities of the Division of Biometry and Epidemiology, National Institute on Alcohol Abuse and Alcoholism (NIAAA); the Division of Clinical Research and Division of Epidemiology and Statistical Analysis, National Institute on Drug Abuse (NIDA); and the Division of Biometry and Applied Sciences and the Division of Clinical Research, National Institute of Mental Health (NIMH); and the Finance and Coverage Policy Staff, Office of the Administrator (OA). A current list of sites is available by writing to the appropriate System Manager at the address below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are the subjects of research in epidemiologic, clinical, methodologic, and longitudinal research studies and surveys of mental health and alcohol and drug use/abuse and mental, alcohol, and/or drug abuse disorders. These individuals are selected as representative of the general adult and/or child population or of special groups. Special groups include, but are not limited to, normal individuals serving as controls; clients referred for or receiving medical, mental health, and alcohol and/or drug abuse related treatment and prevention services; providers of services; demographic sub-groups as applicable, such as age, sex, ethnicity, race, occupation, geographic location; and groups exposed to hypothesized risks, such as relatives of individuals who have experienced mental health and/or alcohol, and/or drug abuse disorders, life stresses, or have previous history of mental, alcohol, and/or drug abuse related illness.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains data about the individual as relevant to a particular research study. Examples include, but are not limited to, items about the health/mental health and/or alcohol or drug consumption patterns of the individual; demographic data; past and present life experiences; personality characteristics; social functioning; utilization of health/mental health, alcohol, and/or drug abuse services; family history; physiological measures; and characteristics and activities of health/mental health, alcohol abuse, and/or drug abuse care providers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 301 (42 U.S.C. 241, General Research and Investigation Authorities); Public Health Service Act, Sections 301, 302, 303 and Title V, Parts A and B (42 U.S.C. 241, 242, 242(a), and 290 (aa-dd)); Drug Abuse Prevention, Treatment, and Rehabilitation Act, Section 410 (42 U.S.C. 1177); Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act, Section 311 (42 U.S.C 4591).

PURPOSE(S):

The purpose of the system of records is to collect and maintain a data base for research activities of the Division of Biometry and Applied Sciences and the Division of Clinical Research, NIMH, and the Division of Biometry and Epidemiology of NIAAA, the Division of Epidemiology and Statistical Analysis and the Division of Clinical Research, both of NIDA, and the Finance and Coverage Policy Staff, OA. Analyses of these data involve groups of individuals with given characteristics and do not refer to specific individuals. The generation of information and statistical analyses will ultimately lead to a better description and understanding of mental, alcohol, and/or drug abuse disorders, their diagnosis, treatment and prevention, and the promotion of good physical and mental health.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record may be disclosed for a research purpose, when the Department:

(a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; e.g., disclosure of alcohol or drug abuse patient records will be made only in accordance with the restrictions of confidentiality statutes and regulations 42 U.S.C. 290 (dd-3), 42 U.S.C. 290 (ee-3), 42 C.F.R. Part 2, and where applicable, no disclosures will be made inconsistent with an authorization of confidentiality under 42 U.S.C. 242a and 42 C.F.R. Part 2a;

(b) Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(c) Has required the recipient to—(1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except—(A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law; and

(d) Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by, these provisions.

2. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from a congressional office made at the written request of that individual.

3. In the event of litigation, where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee; the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected (e.g., disclosure may be made to the Department of Justice or other appropriate Federal agencies in defending claims against the United States when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of the individual's participation in activities of a Federal Government supported research project).

4. The Department contemplates that it will contract with a private firm for the purpose of collecting, analyzing, aggregating, or otherwise refining records in this system. Relevant records will be disclosed to such contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored on index cards, file folders, computer tapes and disks, microfiche, microfilm, and audio and video tapes. Normally, the factual data, with study code numbers, are stored on computer tape or disk, while the key to personal identifiers is stored separately, without factual data, in paper files.

RETRIEVABILITY:

During data collection stages and followup, if any, retrieval by personal identifier (e.g., name or medical record number) is necessary. During the data analysis stage, data are normally retrieved by the variables of interest (e.g., diagnosis, age, occupation).

SAFEGUARDS:

Safeguards:

1. Authorized Users: Access to identifiers and to link files is strictly limited to the authorized personnel whose duties require such access. Procedures for determining authorized access to identified data are established as appropriate for each location. Personnel, including contractor personnel, who may be so authorized include those directly involved in data

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collection and in the design of research studies, e.g., interviewers and interviewer supervisors; project managers; statisticians involved in designing sampling plans.

2. Physical Safeguards: Records are stored in locked rooms, locked file cabinets, and/or secured computer facilities. Personal identifiers and link files are separated as much as possible and stored in locked files. Computer data access is limited through the use of key words known only to authorized personnel.

3. Procedural Safeguards: Collection and maintenance of data is consistent with legislation and regulations in the protection of human subjects, informed consent, confidentiality, and confidentiality specific to drug and alcohol abuse patients where these apply. When an Institute Division or a contractor provides anonymous data to research scientists for analysis, study numbers which can be matched to personal identifiers will be eliminated, scrambled, or replaced by the agency or contractor with random numbers which cannot be matched. Contractors who maintain records in this system are instructed to make no further disclosure of the records. Privacy Act requirements are specifically included in contracts for survey and research activities related to this system. The HHS project directors, contract officers, and project officers oversee compliance with these requirements.

4. Implementation Guidelines: DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual and Part 6, 'ADP System Security' of the HHS ADP Systems Security Manual.

RETENTION AND DISPOSAL:

Personal identifiers are retained only as long as they are needed for the purposes of the current research project, and for followup studies generated by the present study. Removal or disposal of identifiers is done according to the storage medium (e.g., erase computer tape, shred or burn index cards, etc.). A staff person designated by the System Manager will oversee and will describe and confirm the disposal in writing.

SYSTEM MANAGER(S) AND ADDRESS:

The policy coordinating official for this system of records is also the System Manager for NIMH, Division of Clinical Research subsystem.

Director, Division of Biometry and Applied Sciences
National Institute of Mental Health
Room 18C-26, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

Director, Division of Clinical Research
National Institute of Mental Health
Room 10-105, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

Director, Division of Biometry and Epidemiology
National Institute on Alcohol Abuse and Alcoholism
Room 14C-26, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

Director, Division of Clinical Research
National Institute on Drug Abuse
Room 10A-38, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

Director, Division of Epidemiology and Statistical Analysis
National Institute on Drug Abuse
Room 11A-55, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

Finance and Coverage Policy Staff
Office of the Administrator
Room 13C-06, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the appropriate System Manager at the address above. Provide individual's name; current address; date of birth; date, place and nature of participation in specific research study; name of individual or organization administering the research study (if known); name or description of the research study (if known); address at the time of participation; and a notarized statement by two witnesses attesting to the individual's identity.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

An individual who requests notification of, or access to, a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

CONTESTING RECORD PROCEDURES:

Contact the appropriate official at the address specified under System Manager(s) above and reasonably identify the record, specify the information being contested, and state corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

The system contains information obtained directly from the subject individual by interview (face-to-face or telephone), by written questionnaire, or by other tests, recording devices or observations, consistent with legislation and regulation regarding informed consent and protection of human subjects. Information is also obtained from other sources, such as health, mental health, alcohol, and/or drug abuse care providers; relatives; guardians; and clinical medical research records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

one.

09-30-0037

SYSTEM NAME:

Psychotherapy of Opiate-Dependent Individual. HHS/ADAMHA/NIDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Drug Dependence Treatment and Research Center
Philadelphia Veterans Administration Hospital (116D)
University of Pennsylvania
39th Street and Woodland Avenue
Philadelphia, Pennsylvania 19104

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Research subjects are adult clients admitted to a participating drug abuse treatment program offered by and located in the Philadelphia Veterans Administration Hospital, between September 30, 1977, and September 29, 1981.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address of study subjects and their responses to interview instruments and tests in the following areas: Sociodemographic characteristics; and psychiatric diagnosis; symptom, social functioning, and personality measures. Information on the drug abuse treatment and psychotherapy provided, and therapists' evaluations, are also included.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Drug Abuse Prevention, Treatment and Rehabilitation Act (1972), Section 410 (21 U.S.C. 1177); Public Health Act, Sections 301 and 515 (42 U.S.C. 241 and 290cc).

PURPOSE(S):

The system was created to provide a data base to be used by NIDA for research leading to a better knowledge and understanding of the psychiatric status of opiate-dependent individuals and to determine the efficacy of psychotherapy as part of a treatment program for such individuals. We do not anticipate any disclosure of individually identifiable information to other persons or organizations within the Department of Health and Human Services. Should a request for disclosure occur within the Department, such as provided by Section 3(b) of the Privacy Act, disclosure would not be permitted except in accordance with confidentiality regulations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record may be disclosed for a research purpose, when the Department:

(a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

(b) Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(c) Has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except: (A) In emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on interview forms, audiotapes, keypunch cards, magnetic tapes, and disks.

RETRIEVABILITY:

Research records and locational information for followup are maintained in numerical order by assigned client number. A list is also maintained by name and assigned client number for cross reference.

SAFEGUARDS:

1. Authorized Users: Federal Project Officer and staff (administrative assistant secretary) and contract staff designated on the negotiated contract to work as part of the contract staff. These persons could be, but not limited to, Project Director, and his/her assistants and secretary. All contract staff are required to maintain all Privacy Act safeguards requirements.

2. Physical Safeguards: Records are stored in files that are locked in a room that is locked after hours. The building has controlled entry (i.e., picture identification and/or sign in and out procedures). The computerized information is password protected and the passwords are changed periodically.

3. Procedural Safeguards: An authorization under Section 303(a) of the Public Health Service Act as amended (42 U.S.C. 242a(a), implemented by confidentiality regulations (42 CFR Part 2a), has been issued to the contractor to assure that the contractor may not be compelled in any legal proceeding to identify the research subjects. In addition, these records are subject to the protective restrictions of the Confidentiality of Alcohol and Drug Abuse Patient Records Regulations (42 CFR 2.56).

Project documentation, including cross-reference list, completed interview forms, audiotapes, and computerized data files, is maintained under strict controls in a secure room at the contractors' facilities to ensure data integrity and confidentiality. The list, interview forms and audiotapes are stored in a locked and secure work space until data is entered on magnetic media and verified. The forms and cross-reference list are destroyed by burning or shredding, and audiotapes are erased when the connection to the individual is no longer necessary in the analysis of the data. The analysis is now in progress (1986) and is expected to be completed in approximately 5 years (1991). After study source documents are disposed of, no connection can be made between computer file data and the individual. Magnetic tapes and disks are kept in a vault area. During all stages of processing and storage, senior project personnel control access to and removal and replacement of all documents from specified working and storage areas. Access is permitted only upon the written authority of the Principal Investigator or Co-Principal Investigators. The contractor has developed an extensive computer facilities security system which is used by programmers to protect computer account codes and data from access by unauthorized users.

4. Implementation Guidelines: DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual, and Part 6, 'ADP System Security' in the HHS ADP Systems Security Manual.

RETENTION AND DISPOSAL:

After all data collection and processing are completed (which is anticipated to be no more than five years after the analysis of the data is completed), the NIDA project officer will authorize, in writing, the destruction of the personal identifiers and source documents unless the information is needed for research purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Project Officer, Psychotherapy of
Opiate-Dependent Individuals
Technology Transfer Branch
Division of Prevention and
Communications
National Institute on Drug Abuse
Room 10A-37, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address above. An individual may learn if a record exists about himself or herself upon written request with notarized signature. The request should include, if known: name of the researcher, name of the study, location of the research site, approximate date of data collection, any alias used by individual, and assigned client number.

An individual who requests notification of, or access to, a medical record, shall, at the time the request is made, designate in writing a responsible

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representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Research subjects, drug treatment programs, clinical evaluators, counselors, psychiatrists, psychotherapists, family members, research assistants, pharmacies, hospitals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-30-0038

SYSTEM NAME:

Subject-Participants in Pharmacokinetic Studies on Drugs of Abuse. HHS/ADAMHA/NIDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Department of Psychiatry
School of Medicine
University of North Carolina
Chapel Hill, North Carolina 27514

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Normal, healthy adults who voluntarily participate in studies on the pharmacokinetics of drugs of abuse, at the University of North Carolina, during the period November 1979 through September 1984.

CATEGORIES OF RECORDS IN THE SYSTEM:

Research records on each subject-participant contain the following information: name; clinician's records including medical history, laboratory test results, physical examinations, psychological profile, and drug use profile; drug study data including records of drugs administered, exposures to radioactivity, and drug reactions; and date of study in which the subject participated.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Sections 301(a), 503 and 515 (42 U.S.C. 241(a), 290aa-2 and 290cc).

PURPOSE(S):

The primary purpose of this system is to support research on the pharmacokinetics of drugs of abuse. The term 'pharmacokinetics' refers to the manner in which the human body processes a drug.

The clinical investigator used data of a medical nature that is contained in the system to make determinations regarding drug dosages and/or radiochemical exposures appropriate to the individual human subject-participants, in order to preserve and protect the health of each. The system also provides baseline data for studying the drug effects.

The Food and Drug Administration (FDA) also may use the records in routine inspections FDA conducts in accordance with its responsibilities to develop standards on the composition, quality, safety, and efficacy of drugs administered to humans, and to monitor experimental usage of drugs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. We may disclose to a congressional office the record of an individual in response to a verified inquiry from the congressional office made at the written request of the individual.

2. The School of Medicine of the University of North Carolina, an ADAMHA contractor, uses the records in this system to accomplish the research purpose for which the records are collected. The contractor is required to maintain Privacy Act safeguards with respect to such records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The contractor maintains the records on paper in file folders.

RETRIEVABILITY:

The contractor indexes and retrieves the records by the subject-participant's name.

SAFEGUARDS:

1. Authorized Users: Only the contract Project Director and his/her research team and the Federal Project Officer and his/her support staff have access to these records.

2. Physical Safeguards: The contractor keeps all records in a locked metal file cabinet in premises with limited accessibility. Only the clinical investigator (Project Director) has the key to the locked files.

3. Procedural Safeguards: Only the contract staff have access to the files. Persons other than subject participants who request individually identifiable data from a record, must provide written consent from the subject participant permitting the requested disclosure. The only exception would be for disclosure to persons or organizations permitted by the Privacy Act, Section 3(B) to obtain personally identifiable data.

4. Implementation Guidelines: DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual. In addition, the contract staff complies with contractor's (School of Medicine of the University of North Carolina) standard procedures for safeguarding data.

RETENTION AND DISPOSAL:

The records will be kept no later than September 1989 (5 years after the anticipated completion of the studies). At that time, the NIDA project officer will authorize in writing the clinical investigators to destroy the records by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Project Officer
Pharmacokinetic Studies on Drugs of Abuse (Contract No. 271-80-3705)
Division of Preclinical Research
National Institute on Drug Abuse
Alcohol, Drug Abuse, and Mental Health Administration
Room 10A-19, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

NOTIFICATION PROCEDURE:

To determine if a record exists, an individual should provide a written request with a notarized signature to:

Research Physician for NIDA's Contract No. 271-80-3705
Pharmacokinetic Studies on Drugs of Abuse
School of Medicine
University of North Carolina
Chapel Hill, North Carolina 27514

Provide the following information: Subject-participant's full name and a letter of request (or permission, if the requester is not the subject-participant) with notarized signature of the individual who is the subject of the record, approximate date(s) of experiment(s) in which the individual participated, and drug name (if known). In addition, an individual who requests notification of, or access to, a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its content at the representative's discretion.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURES:

Contact the System Manager at the address above and reasonably identify the record, specify the information to be contested, the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

The subject-participants and the contractor personnel conducting the research studies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-30-0039

SYSTEM NAME:

Drug Abuse Treatment Outcome Prospective Study (TOPS). HHS/ADAMHA/NIDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Computer Applications Center
Research Triangle Institute
Box 12194
Research Triangle Park, North Carolina 27709

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Voluntary adult clients of federally funded treatment programs, including Treatment Alternative Street Crime (TASC) programs of the Department of Justice, who have requested to be included in TOPS. Data collection began in 1979 and will continue through 1986.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories are: demographic data, treatment outcome data, treatment process data, client locater information, and personal identifiers (name and assigned numerical identifier).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Sections 301(a), 503 and 515 (42 U.S.C. 241(a), 290aa-2 and 290cc).

PURPOSE(S):

The purpose of the system is to compile information on drug abusers who obtain treatment in Federally funded drug abuse treatment programs in order to derive information on the effectiveness of treatment environments and abusers' behavior and characteristics subsequent to treatment. Researchers and drug abuse service providers may use the aggregate data to address issues and generate hypotheses to understand better the interactions among the client, clinic, and community.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Within the restrictions set forth in HHS regulations concerning the confidentiality of drug abuse patient records (42 CFR 2.56), we may disclose a record for a research purpose, when the Department: (a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (b) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (c) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except: (A) In emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law; (d) has secured a written statement attesting to the recipient's understanding of, and willingness to, abide by these provisions.

2. The Research Triangle Institute, an ADAMHA contractor, uses the records in this system to accomplish the research purpose for which the records are collected. In the event of followup studies or continuation studies because the contract has been terminated for convenience by the Government, we may disclose records in this system to a subsequent ADAMHA contractor. We would require the new contractor to maintain Privacy Act safeguards with respect to such records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Interview forms, magnetic tapes, and disks.

RETRIEVABILITY:

Records are indexed and retrieved by name and unique numerical identifier. In order to relate the data collected to specific individuals, one must use the link file discussed under Safeguards.

SAFEGUARDS:

1. Authorized Users: Contractor personnel, the agency project officer, and agency employees whose duties require the use of the information in the system.

2. Physical Safeguards: The data management task leader, the project leader, or the project director provide technical supervision of all data collection and processing activities. Individually identified forms are stored in a secure, vault-like room provided for this purpose. Authorized personnel have access to the room by one locked door with controlled entry, i.e., only on the written authority of the professional staff member in charge. Computerized records are kept in a vault area with limited accession.

3. Procedural Safeguards: Because some of the data collected in this study, such as data on drug use, are sensitive and confidential, special safeguards have been established. A Certificate of Confidentiality has been issued under 42 CFR Part 2a. This authorization enables persons engaged in research on mental health, including research on the use and effect of psychoactive drugs, to protect the privacy of research subjects by withholding the names or other identifying characteristics from all persons not connected with the conduct of the research. Persons so authorized may not be compelled in any Federal, State, or local civil, criminal,

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administrative, legislative, or other proceedings to identify such individuals. In addition, these records are subject to 42 CFR Part 2, the Confidentiality of Alcohol and Drug Abuse Patient Records Regulations (42 CFR 2.56), which state: 'Where the content of patient records has been disclosed pursuant to [these regulations] for the purpose of conducting scientific research...information contained therein which would directly or indirectly identify any patient may not be disclosed by the recipient thereof either voluntarily or in response to any legal process whether Federal or State.'

Another safeguard is that the forms containing subject identification information for client followup and data matching purposes do not include any reference to the purpose of the study. Identification and location information is kept separate from any information that would suggest that the respondent has been in a drug treatment program.

Information on completed forms is entered immediately on the computer. Completed forms and computerized data are released only to authorized persons. Only aggregate data are provided and used in the preparation of necessary and appropriate reports.

A link file system is used. This system has three components: (1) Personal information, (2) data base information, and (3) the link file, which contains identifying number pairs which can be used to match data with individuals. The advantage of this system is that the data base can be used directly for report generation, etc., without the use of decrypting subroutines or access to the personal information or matching link files.

In addition, the computer center being utilized has developed an extensive security system to protect computer account codes and data. This system is described in a publication that is available from the System Manager upon request.

We do not anticipate any disclosure of individually identifiable information to other persons or organizations within the Department of Health and Human Services. Nor does the contractor provide individually identification information to the Department of Justice, with which NIDA has a cooperative agreement for this study.

4. Implementation Guidelines: We used the National Bureau of Standards guidelines and Part 6, HHS ADP Systems Security Manual, 'ADP System Security' in developing the computer safeguard procedures. Safeguards for nonautomated records are in accordance with DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual. In addition, project staff complies with the contractor's (Research Triangle Institute) standard procedures for safeguarding data.

The contractor provides only aggregate information to NIDA.

RETENTION AND DISPOSAL:

The contractor destroys interview forms by shredding or burning immediately after contractor staff have completed and verified direct entry on magnetic tape or disk storage. The contractor will destroy individual identification and location data by shredding or burning, under the explicit written authorization of the System Manager, which is anticipated to be no longer than 5 years after the termination of the study unless the information is needed for research purposes. We will retain aggregate data tapes for research purposes. These tapes will not have any individually identifiable information. In accordance with the ADAMHA Records Control Schedule, these tapes will be retained for 5 years after completion of the project. At that time, the tapes will be retired to the Federal Records Center and destroyed when they are 10 years old or when they are no longer needed for research purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Treatment Outcome Prospective Study (TOPS)
Chief, Clinical Medicine Branch
Division of Clinical Research
National Institute on Drug Abuse
Alcohol, Drug Abuse, and Mental Health Administration
Room 10A-08, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address above. An individual may learn if a record exists about himself/herself upon written request, with notarized signature. The request should include, if known, name of the researcher, location of the research site, approximate date of data collection, any alias used, and subject identification number.

An individual who requests notification of a medical record shall, at the time the request in made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

Persons other than subject individuals, who request individually identifiable data from a record must provide written consent from the subject individual permitting the requested disclosure. The only exception (if not in conflict with confidentiality regulations) would be for disclosure to persons or organizations permitted by the Privacy Act, Section 3(b), to obtain personally identifiable data.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Research subjects, and staff in participating drug abuse treatment programs, written clinical evaluations, counselors, psychiatrists, psychotherapists, family members, research assistants, hospitals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-30-0041

SYSTEM NAME:

Subject-Participants in Drug Abuse Research Studies Supporting New Drug Applications. HHS/ADAMHA/NIDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

LAAM: Dixon and Williams Pharmaceutical
43 Old Woods Road
Bernardville, New Jersey 07924
Addiction Research Center
National Institute on Drug Abuse
Francis Scott Key Medical Center
4940 Eastern Avenue
Baltimore, Maryland 21224

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Voluntary adult clients of federally funded and other drug abuse treatment programs who have requested to receive naltrexone or levo-alpha acetylmethadol (LAAM) as part of their treatment. Data collection for LAAM began in 1975 and continued through September 1979; and, for naltrexone began in 1977 and continued through June 1984.

CATEGORIES OF RECORDS IN THE SYSTEM:

Demographic data, treatment outcome data, treatment process data, client locator information, and personal identifiers (name and assigned numerical identifier).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Sections 301(a), 303, 503, and 515 (42 U.S.C. 241(a), 242a, 290aa-2 and 290cc).

PURPOSE(S):

1. To maintain information on the effectiveness of drugs with abuse potential in various treatment environments and modalities and changes in the behavior and characteristics of drug abusers who received these substances as part of their treatment regimen.

2. To provide data required by the Food and Drug Administration (FDA) to support new drug applications for various drugs with abuse potential. A new drug application is a notice to FDA that a pharmaceutical company believes they have enough data to demonstrate the safety and efficacy of a substance to satisfy FDA for marketing the substance. FDA may also use the records in routine inspections. FDA conducts in accordance with its responsibilities to develop standards on the composition, quality, safety and efficacy of drugs administered to humans, and to monitor experimental usage of drugs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

ADAMHA contractor(s) use the records in the system in order to accomplish the research and development purposes for which the records were collected. In the event of a followup study or continuation study, the responsible project officer may disclose records in this system to a subsequent ADAMHA contractor(s). Any new contractor(s) is and would be required to maintain Privacy Act safeguards with respect to such records and to comply with the confidentiality restrictions of 42 CFR Part 2.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Interview forms, magnetic tapes, disks and microfiche in boxes in closed cabinets in a locked room with limited accessibility.

RETRIEVABILITY:

The records are indexed and retrieved by subject-participant's name and unique numerical identifier. In order to relate the data collected to specific individuals, however, one must use the link file discussed under safeguards.

SAFEGUARDS:

1. Authorized Users: For the naltrexone study, the System Manager or Federal Project Officer and only authorized contract staff have access to the records (computerized and hard copy files) in the system. The contractor provides only aggregate data in reports to NIDA, FDA, or the public. Only the NIDA personnel mentioned previously and selected authorized contract staff have access to the stored LAAM records.

A certificate of confidentiality has been issued to researchers conducting the naltrexone study under 42 CFR, Part 2, Protection of Identity--Research Subjects. This authorization enables persons engaged in research on mental health, including research on the use and effect of psychoactive drugs, to protect the privacy of research subjects by withholding the names or other identifying characteristics from all persons not connected with the conduct of the research. Persons so authorized may not be compelled in any Federal, State or local civil, criminal, administrative, legislative, or other proceedings to identify such individuals. The LAAM study was not conducted under a certificate of confidentiality. These regulations do not prohibit voluntary disclosure by the researcher. However, the records of both studies also are subject to 42 CFR Part 2, the Confidentiality of Alcohol and Drug Abuse Patient Records Regulations (42 CFR 2.56), which state: 'Where the content of patient records has been disclosed. Pursuant to (these regulations) for the purpose of conducting scientific research information contained therein which would directly or indirectly identify any patient may not be disclosed by the recipient thereof either voluntarily of in response to any legal process whether Federal or State.'

The contractor's institutional review board reviewed and approved the safeguards described above in accordance with 45 CFR Part 46 on the Protection of Human Subjects.

2. Physical Safeguards: For the naltrexone records, the contractor(s) stored individually identified forms in a locked room with controlled entry. The contractor staff entered the collected information onto computer tape or disks as soon after contact with the subject-participant as possible, and NIDA now stores the computerized records in a secured area with access limited as above.

For the LAAM records, NIDA stores the individually identified forms in a lockable cabinet in a secure room. Only authorized NIDA personnel, i.e., Addiction Research Center professional staff (research psychologist or medical officer) and their support staff (program assistant, clerk-typist, or secretary) have access to the room with controlled entry. The room is in a building which has a 24-hour guard/television surveillance system and has controlled entry (picture identification sign in and out procedures) at all times.

Another safeguard for both studies is that the forms containing subject identification information do not include any reference to the purpose of the study. The identification information is separate from any information that would suggest that the respondent is or has been in a drug abuse treatment program. In addition, the computer center being utilized for naltrexone has developed an extensive security system to protect computer account codes and data.

3. Procedural Safeguards: Access to the computerized records of the naltrexone study is protected by a computerized password routine which is changed periodically. In addition, the project staff complies with the contractor's standard procedures for safeguarding data. The link file system that identifies individuals with personal data has three components: (1) Identification information, (2) data base information, and (3) the link file, which contains identifying number pairs which match data with individuals. The advantage of this system is that one may use the baseline data directly for report generation, etc., without using the subroutines or accessing the personal information or link files.

4. Implementation Guidelines: DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual and Part 6, 'ADP System Security' in the HHS ADP Systems Security Manual.

RETENTION AND DISPOSAL:

The naltrexone ARC staff will destroy identifiable information by shredding or burning when it is no longer needed for analysis or research purposes; then the tapes will be erased. NIDA will destroy individual identification and match-up information by shredding or burning 5 years after FDA completes the review and approves the new drug applications.

NIDA will retain the aggregate data tapes from both studies for research purposes. These tapes will not have any

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individually identifiable information. In accordance with the FDA regulations governing new drug applications, the aggregate tapes will be retained for 5 years after FDA approves the new drug applications. At that time, the tapes will be retired to the Federal Records Center and destroyed when they are 5 years old or when they are no longer needed for research purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Project Officer, Naltrexone Study
Addiction Research Center
National Institute on Drug Abuse
Francis Scott Key Medical Center
4940 Eastern Avenue
Baltimore, Maryland 21224
Project Officer, LAAM Records
Addiction Research Center
National Institute on Drug Abuse
Francis Scott Key Medical Center
4940 Eastern Avenue
Baltimore, Maryland 21224

NOTIFICATION PROCEDURE:

An individual may determine if a record exists about himself/herself upon written request, with notarized signature if request is made by mail, or with suitable identification if request is made in person, to the appropriate system manager at the address above. The following information should be included, if known: subject-participant's full name and a letter of request with notarized signature of the subject-participant of the record, any alias used, subject-participant's identification number, name of the researcher, name of clinic or research center, name of substance, and approximate date of study participation.

An individual who requests notification of a medical record must, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above and reasonably identify the record, specify the information being contested, the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Research subject-participants, staff in the participating drug abuse treatment programs, written clinical evaluations, private physicians, counselors, psychiatrists, psychotherapists, family members, research assistants, and hospital records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-30-0043

SYSTEM NAME:

Shipment Records of Drugs of Abuse to Authorized Researchers. HHS/ADAMHA/NIDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Research Technology Branch
Division of Preclinical Research
National Institute on Drug Abuse
Room 10A-19, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857
Research Triangle Institute
Research Triangle Park, North Carolina 27709

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual researchers and organizations who are registered with the Drug Enforcement Administration (DEA), Department of Justice (DOJ), some since 1966, and who have voluntarily submitted documentation to the National Institute on Drug Abuse (NIDA) in order to obtain, through the NIDA Drug Supply Program (DSP), drugs of abuse for use in a research project.

CATEGORIES OF RECORDS IN THE SYSTEM:

While the records in this system are research project-related, they support the eligibility of individual researchers to receive drugs of abuse. Types of information contained in the records are: Researcher's name, curriculum vitae, research protocol, DEA and (if applicable) Nuclear Regulatory Commission registration numbers (when a radiolabeled compound is requested and shipped), business address (location of research project) and telephone number, summary of research project(s), requests for substance(s), name and amount of each compound requested and shipped, dates material is shipped and received, shipment numbers, and order form numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Sections 301(a), 503 and 515 (42 U.S.C. 241(a), 290aa-2, and 290cc); Controlled Substances Act of 1970 (21 U.S.C. 801 et seq.); Atomic Energy Act of 1954, as amended, Section 81 (42 U.S.C 2111); and Energy Reorganization Act of 1974, Section 201 (42 U.S.C. 5841). Energy Reorganization Act of 1974, Section 201 (42 U.S.C. 5841).

PURPOSE(S):

To facilitate operation of DSP which is a centralized research support service through which the United States Government supplies to the national and international scientific community for research purposes, most Schedule I and many Schedule II-V controlled and noncontrolled substances as specified in the Controlled Substances Act (CSA) of 1970 (21 U.S.C. 801 et seq.). Controlled substances are chemicals and other substances, and their immediate precursors, that the Attorney General has determined to have such potential for abuse as to warrant regulation under the CSA. Some of these substances are radiolabeled materials. Radiolabeled materials are substances to which a small amount of radioactivity is added for use in various studies, such as drug metabolism and mechanisms of drug actions.

This system of records was established to facilitate DSP by enabling NIDA:

1. To verify that requests for drugs of abuse, some of which are radiolabeled, are from authorized individuals/organizations for use in a research project;
2. To verify that the amounts of the materials requested by researchers for animal, in vivo, and in vitro research are justified and available;
3. To supply controlled substances in amounts approved by the Food and Drug Administration (FDA) to researchers conducting research with human subjects;
4. To ship these materials securely in accordance with CSA and the Atomic Energy Act; and
5. To maintain records of these transactions.

FDA also may use the records in routine inspections in accordance with FDA's responsibilities to develop standards on the composition, safety, and efficacy of drugs administered to humans, and to monitor experimental usage of drugs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. We may disclose the record of an individual to a congressional office in response to a verified inquiry from the

congressional office made at the written request of the individual.

2. We may disclose information to DEA, DOJ, to enable DEA to carry out its responsibilities as described in the Controlled Substances Act of 1970.

3. An ADAMHA contractor routinely uses the records in this system to ship controlled substances to authorized recipients. Such contractor is required to maintain Privacy Act safeguards with respect to these records.

4. An ADAMHA contractor may have access to the records in this system in the performance of its software modification/correction tasks specified in its contract. Such contractor is required to maintain Privacy Act safeguards with respect to these records.

5. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

NIDA maintains 'hard copy' records in file folders and automated records on computer disk.

RETRIEVABILITY:

Authorized NIDA and contractor personnel index and retrieve the computerized records by a researcher code number assigned by a computer program at the time a new record is established. Authorized NIDA personnel index and retrieve 'hard copy' records by researcher's name. NIDA maintains a computerized, alphabetical cross-reference list that matches names and numbers.

SAFEGUARDS:

1. Authorized Users: The Chief, Research Technology Branch and his or her support staff, program assistant and clerk-typist, and the contracts' project directors and their support staffs have access to the records.

2. Physical Safeguards: The 'hard copy' records and main computer are physically located at the Parklawn Building, Rockville, Maryland. The computerized records are kept in a room with limited admittance. The room is locked after working hours. The 'hard copy' records are stored in locked file cabinets in a room with very limited admittance. This room is also locked after working hours. The Parklawn Building has a 24-hour guard patrol service.

3. Procedural Safeguards: The terminals are housed in a secured work area with limited admittance. Contract personnel use a password identification system to obtain access; NIDA changes the passwords periodically.

4. Implementation Guidelines: DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual, and Part 6, 'ADP System Security,' in the HHS ADP Systems Security Manual.

RETENTION AND DISPOSAL:

NIDA maintains an individual's record for 5 years after the researcher's last request for, or shipment of, a drug of abuse. We consider the record inactive after that, and erase it from the computer disk by a delete routine. The delete routine automatically deletes the computerized cross-reference as well. We destroy the 'hard copy' record by shredding. The system is checked once a year for inactive records.

SYSTEM MANAGER(S) AND ADDRESS:

Project Director, Drug Supply Program
Research Technology Branch
Division of Preclinical Research
Room 10A-19, Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address above. An individual may learn if a record exists about himself or herself upon written request. The request should include the researcher's name and business address at the time of last shipment. The request must be signed in ink by the individual researcher. Verifiable proof of identity is required.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Initial source is the individual researcher. Some of the DEA registration information provided by a researcher is verified through a DEA computer check. FDA provides information concerning type and amount of controlled substance(s) to be shipped to an individual researcher for research projects involving human subjects.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-30-0047

SYSTEM NAME:

Patient Records on Chronic Mentally Ill Merchant Seamen Treated at Nursing Homes in Lexington, Kentucky (1942 to the Present). HHS/ADAMHA/NIMH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

CONTRACTOR: Commonwealth of Kentucky, Department of Mental Health/Mental Retardation, Mental Health Branch, Cabinet for Human Resources, 275 E. Main Street, Frankfort, Kentucky 40621. SUBCONTRACTORS: Homestead Nursing Center, Inc., 1608 Versailles Road, Lexington, Kentucky 40505.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Chronic mentally ill former merchant seamen originally treated at PHS Hospitals in Fort Worth, Texas, and Lexington, Kentucky, and now in nursing homes in Lexington, Kentucky (1942 to the present).

CATEGORIES OF RECORDS IN THE SYSTEM:

Administrative records, such as admission and release dates; name, address, Social Security number, and other demographic data; medical records, such as, but not limited to, psychological, medical and social evaluations as well as treatment information, any laboratory test, etc.

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 9079 (1942) authorizes the care and treatment of these individuals.

PURPOSE(S):

The records are used to facilitate patient care, to monitor progress, and to ensure quality and continuity of care.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. In the event of litigation where the defendant is (a) the Department, and component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

2. Disclosure may be made to National Institute of Mental Health (NIMH) contractors and subcontractors, including nursing home staff, for the purpose of carrying out and maintaining quality care. Contractors maintain, and are also required to ensure that the subcontractors maintain, Privacy Act safeguards with respect to the records.

3. Disclosure may also be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual or his legally authorized representative.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy files stored in locked file cabinets in the State office. In the nursing homes records are hard copy maintained at nursing stations.

RETRIEVABILITY:

The records are retrieved by patient name.

SAFEGUARDS:

1. Authorized Users: Only the System Manager and designated staff, designated contractor staff and appropriate subcontractor staff at the nursing home.

2. Physical Safeguards: The State records are stored in locked file cabinets. These cabinets are in a room within a building that is locked at night after business hours. Patient records of subject individuals at the nursing homes are commingled with the records of other patients at nursing stations under the supervision of the attendant on duty.

3. Procedural Safeguards: Only the System Manager, contractor staff and appropriate nursing home staff have access to the files. Only those authorized personnel are allowed to gain access to material in the locked file cabinets.

4. Implementation Procedures: DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 in the General Administration Manual.

RETENTION AND DISPOSAL:

The administrative and medical records will be retained for 25 years after last treatment or after the death of a patient, and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Project Officer for Kentucky Contract
State Planning and Human Resources
Development Branch
Division of Education and Service
Systems Liaison
National Institute of Mental Health
Room 11C-16, Parklawn Building
5600 Fishers Lane
Rockville, MD 20857

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address above. An individual or his legally authorized representative may learn if a record exists about himself upon written request with notarized signature. The request should include full name or any alias used and birth date.

An individual or his legally authorized representative who requests notification of, or access to, a medical record shall, at the time the request is made, designate a family physician or other health professional (other than a family member) to whom the record will be released. The representative must verify relationship to the individual as well as his/her own identity.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures. Requestors should also reasonably specify the record contents being sought. An individual or his legally authorized representative may also request an accounting of disclosures that have been made of the subject individual's records, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information to be contested, and state the corrective action sought with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Patients; legally authorized representatives; nursing home and hospital personnel.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-30-0048

SYSTEM NAME:

Intramural Research Program Records of In- and Out-Patients With Varies Types of Alcohol Abuse and Dependence, Relatives of Patients With Alcoholism, and Healthy Volunteers. HHS/ADAMHA/NIAAA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. A list of specific project sites is available from the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

In- and out-patients with alcohol abuse and dependence, alcohol-induced organic brain syndromes; their relatives; and healthy volunteers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Research data of wide variety including biochemical measures, psychophysiological and psychological tests, questionnaires, clinical and behavioral observations and interviews, physical examinations, and correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, as amended, Sections 301 (42 U.S.C. 241) and 510 (42 U.S.C. 290bb). These sections authorize the conduct of general health research and research into alcoholism and alcohol abuse.

PURPOSE(S):

These records are used for diagnosis and treatment of patients with alcohol abuse and dependence and related conditions; behavioral research relating to the causes, diagnoses, and treatment of addictions; and basic research on behavioral and biological processes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system are covered by Section 527 of the Public Health Service Act (42 U.S C. 290ee-3) and 42 CFR, Chapter I, Subchapter A, Part 2, on confidentiality of alcohol and drug abuse patient records. In accordance with these regulations, the records are confidential and may only be disclosed with the written consent of the patient with specific restrictions, and without the patient's consent in the following instances: (1) To medical personnel to the extent necessary to meet a bona fide emergency; (2) to qualified personnel for the purpose of conducting scientific research; or (3) if authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefore, after certain considerations, and with appropriate safeguards. Routine uses of information in this system are limited to the following:

1. A record may be disclosed for a research purpose, when the Department: (a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (b) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (c) has required the recipient to—(1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except—(A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law; (d) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

2. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office at the written request of that individual, in accordance with 42 CFR, Chapter I, Subchapter A, Part 2.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored in file folders, on index cards, computer tapes and disks, microfiche, microfilm and audio and video tapes. Normally the factual data, with study code numbers, are stored on computer tape or disk, while the key to personal identifiers is stored separately, without factual data, in paper files.

RETRIEVABILITY:

During data collection stages and followup, retrieval by personal identifier (e.g., name or medical record number) is necessary. During the data analysis stage, data are normally retrieved by variables of interest, e.g., age, diagnosis, etc.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for the particular records maintained in each project. Depending on the sensitivity of the project, additional safeguards may be added.

1. Authorized Users: Only NIAAA medical and research staff have access to these records, as authorized by the system manager.
2. Physical Safeguards: Records are stored in locked rooms, locked file cabinets, and/or secured computer facilities. Personal identifiers and link codes are separated as much as possible and stored in locked files.
3. Procedural Safeguards: Collection and maintenance of data are consistent with legislation and regulations for protection of human subjects, informed consent, confidentiality, and confidentiality specific to drug and alcohol abuse patients. Computer data access is limited through the use of key words, a series of account numbers, and passwords which are changed frequently and known only to authorized personnel.
4. Implementation Guidelines: DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual, and Part 6, 'ADP System Security' in the HHS Information Resource Management Manual.

RETENTION AND DISPOSAL:

Records are held for 5 years after completion of the project, retired to a Federal Records Center, and subsequently disposed of after 10 years.

SYSTEM MANAGER(S) AND ADDRESS:

Clinical Director
Laboratory of Clinical Studies
Division of Intramural Clinical and Biological Research
National Institute on Alcohol Abuse and Alcoholism
Building 10, Room 3B-19
9000 Rockville Pike
Bethesda, Maryland 20892

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address above. Provide notarized signature as proof of identity. The request should include as much of the following information as possible: (a) Full name; (b) nature of illness (if any); (c) title of study; (d) name of researcher conducting study. An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. A parent or guardian who requests notification of child's/incompetent person's record shall at the time the request is made designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The designee will receive the record in all cases and upon review will determine whether the record should be made available to the parent or guardian.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosures of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

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RECORD SOURCE CATEGORIES:

Information gathered from individuals under study, either patient or normal subject, contract surveys, hospital records, medical and nursing staff notes, and from Privacy Act system of records 90-25-0099, 'Clinical Research: Patient Medical Records, HHS/NIH/CC.'

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 86–25459 Filed 11–21–86; 8:45 am]

BILLING CODE 4160-30-M

National Institutes of Health

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Public Health Service, DHHS.

ACTION: Privacy Act: Annual republication of notices of revised systems of records.

SUMMARY: The National Institutes of Health (NIH) has conducted a comprehensive review of all Privacy Act systems of records and is publishing the resulting revisions. None of the revisions meet the OMB criteria either for a new or altered system report or for an advance period of public comment. These changes are in compliance with Circular A–130, Appendix 1. The notices republished below are complete and accurate as of August 31, 1986.

Included is a list of nine systems of records that have been deleted since the 1985 republication and a complete list of the systems of records that NIH currently maintains. In addition, we are summarizing the major alterations to three system notices which will be published in full at a later date.

SUPPLEMENTARY INFORMATION: The following information summarizes the current status of all systems of records which NIH maintains:

A. Revised System Notices. We have revised the system notices republished below as follows:

09–25–0007, "Administration: National Institutes of Health Safety Shoes and Safety Glasses Issuance Program, HHS/NIH/ORS" has been revised to reflect a narrowing in the purpose for the information collected. The purpose and the system name has been changed to reflect this narrowing of purpose. The new title is 09–25–0007, "Administration: National Institutes of Health Safety Glasses Issuance Program, HHS/NIH/ORS."

09–25–0011, "Clinical Research: Blood Donor Records, HHS/NIH/CC" has been updated to reflect changes in the safeguard, retrievability, retention and disposal, and routine use sections. The update is to provide a clearer and more accurate description of each of the sections. The system location and system manager and address have been revised.

09–25–0033, "International Activities: Fellowships Awarded by Foreign Organizations, HHS/NIH/FIC" has been updated to reflect changes in the safeguards section and to state more precisely the purpose for this system.

09–25–0034, "International Activities: Scholars Program, HHS/NIH/FIC" has been revised to reflect minor changes in the system name, categories of individuals, purpose, authority and storage sections. These changes provide a clearer and more accurate description of each of the sections. The new name for this system of records is 09–25–0034, "International Activities: Scholars in Residence Program, HHS/NIH/FIC." In addition, the system location and manager address has been updated.

09–25–0035, "International Activities: International Health Exchange Programs Participants, HHS/NIH/FIC" has been revised to state more accurately the purpose of this system of records.

09–25–0036, "Grants: IMPAC (Grant/Contract Information), HHS/NIH/DRG has been updated to reflect minor changes in the purpose section and a routine use. The change in the routine use does not significantly change the system and it is the result of not needing this type of disclosure. The change in the purpose section is the result of a narrowing of the scope of the system. The Office of Health Research, Statistics and Technology, PHS, no longer receives services provided by this program.

09–25–0069, "NIH Clinical Center Admissions of the National Cancer Institute, HHS/NIH/NCI" has been revised to reflect a minor increase in the number of records in this system. The records in system 09–25–0131, "Clinical Research: Clinical Epidemiologic Studies in the Division of Etiology, HHS/NIH/NCI" have been transferred and subsumed into system 09–25–0069. There is no significant increase in the number of records in the resulting system and the purpose of the system remains the same. In addition, the system location and system manager address has been updated.

09–25–0075, "Administration: Institutions Submitting Assurances for Protection from Research Risks and Animal Welfare, HHS/NIH/OD" has been updated to provide a more accurate description of the system name, categories of individuals covered by the system, purpose, safeguards, record source, and retrievability sections.

09–25–0099, "Clinical Research: Patient Medical Records, HHS/NIH/CC" has been updated to provide a more accurate description of the records in this system and a clearer statement of purpose of the system. The system notice has also been revised to reflect the changes in the system location and system manager.

09–25–0108, "Personnel: Guest Workers/Visiting Fellows/Student Scientists/Scientists Emeriti, HHS/NIH/DPM" has been revised to provide a more accurate description of the purpose and system name. The revised name is 09–25–0108, "Personnel: Guest Researchers/Student Scientists/Scientists Emeriti, HHS/NIH/DPM." The system location, safeguards, notification procedures, and contesting records procedures sections have been updated.

09–25–0112, "Grants: Research Training, Fellowship and Construction Application and Awards, HHS/NIH/OD" has been revised. The system name and routine use of records maintained have been updated to more accurately reflect the current system of records. The new system name is 09–25–0112, "Extramural Awards: Research, Research Training, Fellowship and Construction Applications and Awards, HHS/NIH/OD." In addition, the system location and manager address has been revised.

09–25–0124, "Administration: Pharmacology Research Associates, HHS/NIH/NIGMS" has been updated to reflect the changes in the safeguards section and the system location and manager address.

09–25–0140, "International Activities: Scientific Visitors at the National Institutes of Health, HHS/NIH/FIC" has been updated to reflect minor changes to the system. These changes include revisions to the system name, categories of individuals, categories of records, authority, purpose, storage, retrievability, safeguards, system location and system manager and address sections. The system name has been changed to 09–25–0140, "International Activities: International Scientific Research in NIH Intramural Laboratories."

B. In each of the following systems of records, the safeguards section has been updated to provide a clearer description of safeguards implemented.

09–25–0053, "Clinical Research: Vision Studies, HHS/NIH/NEI."

09–25–0091, "Administration: General Files on Employees, Donors and Correspondents, HHS/NIH/NEI."

09–25–0121, "International Activities: Senior International Fellowship Program, HHS/NIH/FIC."

09-25-0126, "Clinical Research: National Heart, Lung, and Blood Institute Epidemiological and Biometric Studies, HHS/NIH/NHLBI."
09-25-0134, "Clinical Research: Epidemiology Studies, National Institute of Environmental Health Sciences, HHS/NIH/NIEHS."
09-25-0154, "Biomedical Research: Records of Subjects in Cancer Studies of the Division of Cancer Prevention and Control, HHS/NIH/NCI" has been updated to reflect changes in the system name, location, and managers address. The change in the system name is the result of a reorganization within the NCI.

C. The following systems have been updated to reflect a change in the system locations and system manager addresses. These changes do not affect the access by the individual to the individual's records.

09-25-0003, "Administration: Authorized Radionuclide Users File, HHS/NIH/ORS."
09-25-0008, "Administration: Radiation Workers Monitoring, HHS/NIH/ORS."
09-25-0010, "Research Resources: Registry of Individuals Potentially Exposed to Microbial Agents, HHS/NIH/NCI."
09-25-0012, "Clinical Research: Candidate Normal Volunteer Records, HHS/NIH/CC."
09-25-0013, "Clinical Research: Preadmission Medical Records, HHS/NIH/CC."
09-25-0014, "Clinical Research: Student Records, HHS/NIH/CC."
09-25-0042, "Clinical Research: National Institute of Dental Research Patient Records, HHS/NIH/NIDR."
09-25-0044, "Clinical Research: Sensory Testing Research Program, HHS/NIH/NIDR."
09-25-0046, "Clinical Research: Catalog of Clinical Specimens from Patients, Volunteers and Laboratory Personnel, HHS/NIH/NIAID."
09-25-0048, "Clinical Research: Serology-Epidemiology Parasite Research HHS/NIH/NIAID."
09-25-0049, "Clinical Research: Atlanta Federal Prison Malaria Research Projects, HHS/NIH/NIAID."
09-25-0054, "Administration: Property Accounting, HHS/NIH/ORS."
09-25-0057, "Clinical Research: Burkitt's Lymphoma Registry, HHS/NIH/NCI."
09-25-0060, "Clinical Research: Division of Cancer Treatment Clinical Investigations, HHS/NIH/NCI."
09-25-0074, "Clinical Research: Division of Biology and Diagnosis Patient Trials, HHS/NIH/NCI."
09-25-0077, "Clinical Research: Biological Carcinogenesis Branch Human Specimen Program, HHS/NIH/NCI."
09-25-0087, "Administration: Employees and Consultants, HHS/NIH//NIAID."
09-25-0115, "Administration: Curricula Vitae of Consultants and Clinical Investigators, HHS/NIH/NIAID."
09-25-0117, "International Activities: U.S.-Japan Program Panel Members, HHS/NIH/NIAID."
09-25-0133, "Clinical Research: Kidney Transplant Histocompatibility Study (KTHS), HHS/NIH/NIAID."
09-25-0143, "Biomedical Research: Records of Subjects in Clinical, Epidemiologic and Biometric Studies of the National Institute of Allergy and Infectious Diseases."
09-25-0148, "Contracted and Contract-Related Research: Records of Subjects in Clinical, Epidemiological and Biomedical Studies of the National Institute of Neurological and Communicative Disorders and Stroke, HHS/NIH/NINCDS."
09-25-0152, "Biomedical Research: Records of Subjects in National Institute of Dental Research Contracted Epidemiological and Biometric Studies, HHS/NIH/NIDR."
09-25-0153, "Biomedical Research: Records of Subjects in Biomedical and Behavioral Studies of Child Health and Human Development, HHS/NIH/NICHD."
09-25-0156, "Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of NIH, HHS/NIH/OD."

D. The following systems have been updated to reflect a change in the authority for maintenance of the system:

09-25-0042, "Clinical Research: National Institute of Dental Research Patient Records, HHS/NIH/NIDR."
09-25-0152, "Biomedical Research: Records of Subjects in National Institutes of Dental Research Contracted Epidemiological and Biometric Studies, HHS/NIH/NIDR."

E. The following systems have been updated to reflect a change in the method of retention and disposal:

09-25-0117, International Activities: U.S.-Japan Program Panel Members, HHS/NIH/NIAID" has been modified in accordance with the NIH Records Control Schedule.

F. Deleted Systems of Records. The following systems of records which appeared in the 1985 annual publication are now being deleted.

09-25-0009, "Administration: Radiotheraphy Patient File, HHS/NIH/ORS" was published in the **Federal Register** November 29, 1983, Vol. 48, No. 230, pp. 53837. The system has been terminated and the records disposed of in the manner described in the notice.

09-25-0088, "Clinical Research: Researchers Using H-2 Soluble Antigen and H-2 Antiserum, HHS/NIH/NIAID" published in the **Federal Register**, October 13, 1982, Vol. 47, No. 198, pp. 45817 is being deleted as the system is no longer being used. The records have been destroyed in accordance with the system notice.

09-25-0089, "Clinical Research: HLA Antigen and Tray Users, HHS/NIH/NIAID published in the **Federal Register**, October 13, 1982, Vol. 47, No. 198, pp. 45817 is being deleted as the system is no longer being used. The records have been destroyed in accordance with the system notice.

09-25-0131, "Clinical Research: Clinical Epidemiologic Studies in the Division of Etiology, HHS/NIH/NCI" published in the **Federal Register**, October 13, 1982, Vol. 47, No. 198, pp. 45838 has been deleted. The records in this system have been transferred and subsumed into system 09-25-0069, "NIH Clinical Center Admissions of the National Cancer Institute, HHS/NIH/NCI."

09-25-0135, "Grants: PROPHET System Applicants Research Prospectuses, HHS/NIH/DRR" was published in the **Federal Register**, October 13, 1982, Vol. 47 No. 198, pp. 45843. This system is being deleted as the system has been terminated and the records disposed of as described in the system notice.

09-25-0141, "Patient and Donor Records in the Blood Component Support Program for the Division of Cancer Treatment, HHS/NIH/NCI" published in the **Federal Register** in Vol. 47, No. 198, pp. 45845 is being deleted as the system has been terminated. The records have been destroyed in accordance with the statement in the system notice.

09-25-0147, "Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the National Heart, Lung, and Blood Institute, HHS/NIH/NHLBI" was published in the **Federal Register**, September 13, 1982, Vol. 47, No. 198, pp. 45849. The records are covered by an NIH-wide umbrella system of records 09-25-0156.

09-25-149, "Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of National Institute of General Medical Sciences, HHS/NIH/NIGMS" was published in the **Federal Register**, Vol. 47, No. 198, pp. 45852. The records are covered by an NIH wide umbrella system of records 09-25-0156.

09-25-0150, "Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the National Institute of Environmental Health Sciences, HHS/NIH/NIEHS" was published in the **Federal Register**, October 13, 1982, Vol. 47, No. 198, pp. 45853. The records are covered by an NIH-wide umbrella system of records 09-25-0156.

G. Major Alteration to Systems of Records. The following systems of records which appeared in the 1984 annual publication are in the process of being modified:

09-25-0102, "Administration: Grants Associates Program Working Files, HHS/NIH/DRG" is being modified to expand the present system of records

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from one which includes only records on grants associates to one which includes the records of three new training programs.

09–25–0151, "Administration: ALERT Records Concerning Investigations or Determinations of Misconduct by Current or Potential Recipients of Funds for Biomedical Research, HHS/NIH/OD" is being modified to expand the system from one which is used solely by the National Institutes of Health to one serving all PHS agencies and staff offices which award contracts, grants or cooperative agreements for research, research training and related activities. In addition, a new routine use will allow PHS to inform responsible officials of an institution or organization when PHS takes an administrative action or imposes a sanction affecting awards to that institution or organization.

09–25–0093, "Administration: Administration Authors, Reviewers and Members of the *Journal of the National Cancer Institute,* HHS/NIH/NCI" is being modified to expand the present system of records from one which includes records on authors, reviewers and members of the JNCI to records which also includes data on *Cancer Treatment Reports* and *NCI Monographs.*

H. New Routine Use: The following systems which appeared in the 1984 annual publication have been revised to add a new routine use.

09–25–0005, "Administration: Library Circulation and User I.D. File, HHS/NIH/OD" is being modified to include a new routine use which will permit disclosure to a contractor. This system was published in the **Federal Register** on October 10, 1986.

We are republishing only those system notices which have been changed. All system notices were last published in the **Federal Register**, Vol. 47, No. 198, pp. 45773–45856, October 13, 1982 and selectively updated in Vol. 48, No. 230, pp. 53833–53852, November 29, 1983, and Vol 49, No. 187, pp. 37705–37715, September 25, 1984, and October 10, 1985, Vol. 50, No. 197, pp. 41415–41417.

The following is a list of active systems of records maintained by NIH.

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09–25–0001, Clinical Research: Patient Records, HHS/NIH/NHLBI, publ. **Federal Register**, Vol. 49, No. 187, p. 37707.
09–25–0002, Clinical Research: Patient Phonocardigram Record, HHS/NIH/NHLBI, publ. **Federal Register**, Vol. 38, No. 230, p. 53836.
09–25–0003, Administration: Authorized Radionuclide Users File, HHS/NIH/ORS, publ. **Federal Register**, Vol. 48, No. 198, p. 45776.
09–25–0004, Administration: Registry of Individuals Exposed to Chemical Carcinogens, HHS/NIH/ORS, publ. **Federal Register**, Vol. 47, No. 198, p. 45777.
09–25–0005, Administration: Library Circulation and User I.D. File, HHS/NIH/OD, publ. **Federal Register**, Vol. 47, No. 198, p. 45778.
09–25–0007, Administration: National Institutes of Health Safety Glasses Issuance Program, HHS/NIH/ORS, publ. **Federal Register**, Vol. 47, No. 198, p. 45778.
09–25–0008, Administration: Radiation Workers Monitoring, HHS/NIH/ORS, publ. **Federal Register**, Vol. 48. No. 129, p. 30760.
09–25–0010, Research Resources: Registry of Individuals Potentially Exposed to Microbial Agents, HHS/NIH/NCI, publ. **Federal Register**, Vol. 48, No. 129, p. 30760.
09–25–0011, Clinical Research: Blood Donor Records, HHS/NIH/CC, publ. **Federal Register**, Vol. 48, No. 230, p. 53838.
09–25–0012, Clinical Research: Candidate Normal Volunteer Records, HHS/NIH/CC, publ. **Federal Register**. Vol. 47, No. 198, p. 45782.
09–25–0013, Clinical Research: Preadmission Medical Records, HHS/NIH/CC, publ. **Federal Register**, Vol. 48, No. 230, p. 53839.
09–25–0014, Clinical Research: Student Records, HHS/NIH/CC, publ. **Federal Register**, Vol. 47, No. 198, p. 45784.
09–25–0015, Clinical Research: Collaborative Clinical Epilepsy Research, HHS/NIH/NINCDS, publ. **Federal Register**, Vol. 48, No. 230, p. 53840.
09–25–0016, Clinical Research: Collaborative Perinatal Project, HHS/NIH/NINCDS, publ. **Federal Register**, Vol. 47, No. 198, p. 45785.
09–25–0019, Clinical Research: Genetic Counseling, HHS/NIH/NINCDS, publ. **Federal Register**, Vol. 48, No. 230, p. 53841.
09–25–0020, Clinical Research: Genetics of Neurological Disorders, HHS/NIH/NINCDS, publ. **Federal Register**, Vol. 48, No. 230, p. 53841.
09–25–0021, Clinical Research: Guam Patient Control Registry, HHS/NIH/NINCDS, publ. **Federal Register** , Vol. 48, No. 230, p. 53842.
09–25–0026, Clinical Research: Nervous System Studies, HHS/NIH/NINCDS, publ. **Federal Register**, Vol. 48, No. 230, p. 53843.
09–25–0028, Clinical Research: Patient Medical Histories, HHS/NIH/NINCDS, publ. **Federal Register**, Vol. 48, No. 230, p. 53844.
09–25–0031, Clinical Research: Serological and Virus Data in Studies Related to the Central Nervous System, HHS/NIH/NINCDS, publ. **Federal Register**, Vol. 48, No. 230, p. 53845.
09–25–0033, International Activities: Fellowships Awarded by Foreign Organizations, HHS/NIH/FIC, publ. **Federal Register**, Vol. 49, No. 187, p. 37708.
09–25–0034, International Activities: Scholars in Residence Program, HHS/NIH/FIC, publ. **Federal Register**, Vol. 47, No. 198, p. 45792.
09–25–0035, International Activities: International Health Exchange Programs Participants, HHS/NIH/FIC, publ. **Federal Register**, Vol. 47, No. 198, p. 45793.
09–25–0036, Grants: IMPAC (Grant/Contract Information), HHS/NIH/DRG, publ. **Federal Register**, Vol. 48, No. 230, p. 53846.
09–25–0037, Clinical Research: Gerontology Research Center Longitudinal Aging Study, HHS/NIH/NIA, publ. **Federal Register**, Vol. 47, No. 198, p. 45795.
09–25–0038, Clinical Research: Patient Data, HHS/NIH/NIADDK, publ. **Federal Register**, Vol. 47, No. 198, p. 45795.
09–25–0039, Clinical Research: Diabetes Mellitus Research Study of Southwestern American Indians, HHS/NIH/NIADDK, publ. **Federal Register**, Vol. 47, No. 198, p. 45796.
09–25–0040, Clinical Research: Southwestern American Indian Patient Data, HHS/NIH/NIADDK, publ. **Federal Register**, Vol. 47, No. 198, p. 45797.
09–25–0041, Research Resources: Scientists Requesting Hormone Distribution, HHS/NIH/NIADDK, publ. **Federal Register**, Vol. 47, No. 198, p. 45798.
09–25–0042, Clinical Research: National Institute of Dental Research Patient Records, HHS/NIH/NIDR, publ. **Federal Register**, Vol. 47, No. 198, p. 45798.
09–25–0044, Clinical Research: Sensory Testing Research Program, HHS/NIH/NIDR, publ. **Federal Register**, Vol. 47, No. 198, p. 45798.
09–25–0046, Clinical Research: Catalog of Clinical Specimens from Patients, Volunteers and Laboratory Personnel, HHS/NIH/NIAID, publ. **Federal Register**, Vol. 47, No. 198, p. 45802.
09–25–0048, Clinical Research: Serology-Epidemiology Parasite Research HHS/NIH/NIAID, publ. **Federal Register**, Vol. 47, No. 198, p. 45803.
09–25–0049, Clinical Research: Atlanta Federal Prison Malaria Research Projects, HHS/NIH/NIAID, publ. **Federal Register**, Vol. 48, No. 230, p. 53838.
09–25–0053, Clinical Research: Vision Studies, HHS/NIH/NEI, publ. **Federal Register**, Vol. 47, No. 198, p. 45803.
09–25–0054, Administration: Property Accounting, HHS/NIH/ORS, publ. **Federal Register**, Vol. 49, No. 189, p. 37709.
09–25–0057, Clinical Research: Burkitt's Lymphoma Registry, HHS/NIH/NCI, publ. **Federal Register**, Vol. 47, No. 198, p. 45807.
09–25–0060, Clinical Research: Division of Cancer Treatment Clinical Investigations, HHS/NIH/NCI, publ. **Federal Register**, Vol. 47, No. 198, p. 45808.
09–25–0067, Clinical Research: National Cancer Incidence Surveys, HHS/NIH/NCI, publ. **Federal Register**, Vol. 47, No. 198, p. 45809.
09–25–0069, NIH Clinical Center Admissions of the National Cancer Institute, HHS/NIH/NCI, publ. **Federal Register**, Vol. 47, No. 198, p. 45811.
09–25–0074, Clinical Research: Division of Cancer Biology and Diagnosis Patient Trials, HHS/NIH/NCI, publ. **Federal Register**, Vol. 47, No. 198, p. 45812.
09–25–0075, Administration: Institutions Submitting Assurances for Protection from Research Risks and Animal Welfare, HHS/NIH/OD, publ. **Federal Register**, Vol. 49, No. 187, p. 33710.
09–25–0077, Clinical Research: Biological Carcinogenesis Branch Human Specimen Program, HHS/NIH/NCI, publ. **Federal Register**, Vol. 48, No. 129, p. 30761.

09–25–0078, Administration: Consultant File, HHS/NIH/NHLBI, publ. **Federal Register**, Vol. 49, No. 187, p. 37711.
09–25–0087, Administration: Employees and Consultants, HHS/NIH/NIAID, publ. **Federal Register**, Vol. 47, No. 198, p. 45816.
09–25–0091, Administration: General Files on Employees, Donors and Correspondents, HHS/NIH/NEI, publ. **Federal Register**, Vol. 47, No. 198, p. 45818.
09–25–0093, Administration: Administration Authors, Reviewers and Members of the Journal of the National Cancer Institute, HHS/NIH/NCI, publ. **Federal Register**, Vol. 47, No. 198, p. 45819.
09–25–0096, Contracts: National Cancer Institute Contract Management System Principal Investigators, Project Officers and Contract Specialists, HHS/NIH/NCI, publ. **Federal Register**, Vol. 47, No. 198, p. 45820.
09–25–0099, Clinical Research: Patient Medical Records, HHS/NIH/CC, publ. **Federal Register**, Vol. 48, No. 129, p. 30762.
09–25–0100, Clinical Research: Neuropharmacology Studies, HHS/NIH/NINCDS, publ. **Federal Register**, Vol. 47, No. 198, p. 45822.
09–25–0102, Administration: Grants Associates Program Working Files, HHS/NIH/DRG, publ. **Federal Register**, Vol. 47, No. 198, p. 45822.
09–25–0105, Administration: Health Records of Employees, Visiting Scientists, Fellows, Contractors, and Relatives of Inpatients. HHS/NIH/OD, publ. **Federal Register**, Vol. 49, No. 187, p. 37712.
09–25–0106, Administration: Executive Secretariat Correspondence Records, HHS/NIH/OD, publ. **Federal Register**, Vol. 47, No. 198, p. 45824.
09–25–0108, Personnel: Guest Researchers/Student Scientists/Scientists Emeriti, HHS/NIH/DPM, publ. **Federal Register**, Vol. 47, No. 198, p. 45825.
09–25–0112, Extramural Awards: Research, Research Training, Fellowship and Construction Application and Awards, HHS/NIH/OD, publ. **Federal Register**, Vol. 48, No. 230, p. 53849.
09–25–0115, Administration: Curricula Vitae of Consultants and Clinical Investigators, HHS/NIH/NIAID, publ. **Federal Register**, Vol. 47, No. 198, p. 45828.
09–25–0117, International Activities: U.S.-Japan Program Panel Members, HHS/NIH/NIAID, puhl. **Federal Register**, Vol. 47, No. 198, p. 45829.
09–25–0118, Contracts: Professional Services Contractors, HHS/NIH/NCI, publ. **Federal Register**, Vol. 47, No. 198, p. 45830.
09–25–0121, International Activities: Senior International Fellowship Program, HHS/NIH/FIC, publ. **Federal Register**, Vol. 47, No. 198, p. 45830.
09–25–0124, Administration: Pharmacology Research Associates, HHS/NIH/NIGMS, publ. **Federal Register**, Vol. 47, No. 198, p. 45832.
09–25–0126, Clinical Research: National Heart, Lung and Blood Institute Epidemiological and Biometric Studies, HHS/NIH/NHLBI, publ. **Federal Register**, Vol. 47, No. 198, p. 45833.
09–25–0128, Clinical Research: Neural Prosthesis and Biomedical Engineering Studies, HHS/NIH/NINCDS, publ. **Federal Register**, Vol. 49, No. 187, p. 37712.
09–25–0129, Clinical Research: Clinical Research Studies Dealing with Hearing, Speech, Language and Chemosensory Disorders, HHS/NIH/NINCDS, publ. **Federal Register**, Vol. 47, No. 198, p. 45836.
09–25–0130, Clinical Research: Studies in the Division of Cancer Cause and Prevention, HHS/NIH/NCI, publ. **Federal Register**, Vol. 47, No. 198, p. 45837.
09–25–0133, Clinical Research: Kidney Transplant Histocompatibility Study (KTHS), HHS/NIH/NIADDK, publ. **Federal Register**, Vol. 47, No. 198, p. 45839.
09–25–0134, Clinical Research: Epidemiology Studies, National Institute of Environmental Health Sciences, HHS/NIH/NIEHS, publ. **Federal Register**, Vol. 47, No. 198, p. 45840.
09–25–0138, Biomedical Research: Studies of Possible Influence on Cognitive and Emotional Development of Children, HHS/NIH/NICHD, publ. **Federal Register**, Vol. 47, No. 198, p. 45843.
09–25–0140, International Activities: International Scientific Research in NIH Intramural Laboratories, HHS/NIH/FIC, publ. **Federal Register**, Vol. 47, No. 198, p. 45844.
09–25–0142, Clinical Research: Records of Subjects in Intramural Research, Epidemiology, Demography and Biometry Studies on Aging, HHS/NIH/NIA, publ. **Federal Register**, Vol. 47, No. 198, p. 45846.
09–25–0143, Biomedical Research: Records of Subjects in Clinical, Epidemiologic and Biometric Studies of the National Institute of Allergy and Infectious Diseases, HHS/NIH/NIAID, publ. **Federal Register**, Vol. 47, No. 198, p. 45847.
09–25–0148, Contracted and Contract-Related Research: Records of Subjects in Clinical, Epidemiological and Biomedical Studies of the National Institute of Neurological and Communicative Disorders and Stroke, HHS/NIH/NINCDS, publ. **Federal Register**, Vol. 47, No. 198, p. 45850.
09–25–0151, Administration: ALERT Records Concerning Investigations or Determinations of Misconduct by Current or Potential Recipients of Funds for Biomedical Research, HHS/NIH/OD, publ. **Federal Register**, Vol. 48, No. 230, p. 53851.
09–25–0152, Biomedical Research: Records of Subjects in National Institute of Dental Research Contracted Epidemiological and Biometric Studies, HHS/NIH/NIDR, publ. **Federal Register**, Vol. 47, No. 191, p. 43430.
09–25–0153, Biomedical Research: Records of Subjects in Biomedical and Behavioral Studies of Child Health and Human Development, HHS/NIH/NICHD, publ. **Federal Register**, Vol. 48, No. 143, p. 00748.
09–25–0154, Biomedical Research: Records of Subjects in Cancer Studies of the Division of Cancer Prevention and Control, HHS/NIH/NCI, publ. **Federal Register**, Vol. 48, No. 227, p. 52981.
09–25–0156, Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of NIH, HHS/NIH/OD, publ. **Federal Register**, Vol. 50, No. 162, p. 33853.

Dated: November 7, 1986.

James B. Wyngaarden,
Director, National Institutes of Health.

09–25–0007

SYSTEM NAME:

Administration: NIH Safety Glasses Issuance Program, HHS/NIH/ORS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 13, Room G901, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

Write to the system manager at the address below for the address of any Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NIH employees who apply for safety glasses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Explanation of eye impact and hazard occupation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7902.

PURPOSE OF THE SYSTEM:

Records are used for proper distribution of safety glasses and for proof of delivery.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEMS, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided,

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however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

(1) Authorized users: Access is limited to personnel involved in safety glasses issuance program, to supervisors of employees who have requested glasses and to personnel involved in accounting.

(2) Physical safeguards: Record storage locations are locked when unattended.

(3) Procedural safeguards: Access to file rooms and files is controlled by System Manager or designee.

RETENTION AND DISPOSAL:

Years at NIH: Retained until employee terminates hazardous occupation.

System manager and address: Nurse, Building 13 Health Unit, Building 13, G901, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to the System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Write to the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested, the corrective action sought, and the reasons for the correction, with supporting information to how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Previous employer and education institutions.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0011

SYSTEM NAME:

Clinical Research: Blood Donor Records, HHS/NIH/CC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 10A, Room 1E33, NIH, 9000
Rockville Pike, Bethesda, MD 20892
Washington National Records Center,
4205 Suitand Road, Suitland, MD
20409

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Donors of blood and blood components to be used in the NIH Clinical Center for patient infusions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Past donations, blood types, phenotype. Laboratory results on each unit-record are hepatitis B antigen testing, serologic reactions on all blood samples, donations of blood or blood components.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

"Preparation of Biological Products" of the Public Health Service Act (42 U.S.C. 263).

2. To provide a medical history of all donors for the transfusion records of each blood unit.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to HHS contractors and their staff in order to accomplish the purposes for which the records are collected. The recipients are required to comply with the requirements of the Privacy Act with respect to such records.

Certain infectious diseases may be reported to state government as required by law.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in a computer file, on donor cards, and on microfilm.

RETRIEVABILITY:

Records are retrieved by a unique control number assigned to each individual donor.

SAFEGUARDS:

Authorized Users: Access is granted only to authorized employees of the Department of Transfusion Medicine including physicians, nurses technologists, computer operators and the secretary to the Chief. Physical Safeguards: Record facilities are locked when system personnel are not present.

PROCEDURAL SAFEGUARDS:

Access to manual files is limited to authorized users. Access to computerized records is controlled by the use of security codes known only to the authorized users.

These practices are in compliance with the standards of chapter 45-13, of the HHS General Administration Manual, Supplementary chapter PHS hf: 45-13, and Part 6, "ADP System Security" of the HHS Information Resource Management Manual.

RETENTION AND DISPOSAL:

Donor cards are retained for 18 months and then microfilmed. Microfilm is retained indefinitely in accordance with the NIH Records Control Schedule, item 3000-E-50. Disposal method include burning or shredding paper materials and erasing computer tapes.

SYSTEM MANAGER AND ADDRESS:

Chief, Department of Transfusion Medicine, CC, Building 10A, Room 1E33, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to the System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing, a responsible representative, who may be a physician, who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

To obtain access to a record, contact the systen manager at the address specified above. Requesters should provide the same information as is required under the notification procedures above. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Write to the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested, the corrective action sought, and the reasons for the correction, with supporting justification.

RECORD SOURCE CATEGORIES:

Data are collected from the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0033

SYSTEM NAME:

International Activities: Fellowships Awarded by Foreign Organizations, HHS/NIH/FIC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 38A, Room 615, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

Write to System Manager at the address below for the address of any Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. citizens qualified in health-related sciences submitting applications through NIH for fellowships for study abroad.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications and associated records and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2421.

PURPOSE OF THE SYSTEM:

(1) To perform scientific reviews and evaluations of applicants' suitability for referral to awarding organization in foreign countries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

After review by the operating agency review panel the applications and all supporting documents are forwarded to the foreign organizations or agencies making awards.

In addition, such application may be made available to authorized employees and agents of the Federal Government for purposes of investigations, inspections and audits, and, in appropriate cases, to the Department of Justice for prosecution under civil and criminal laws.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name and fellowship number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

(1) Authorized users: Employees who maintain records in this system are instructed to grant regular access only to FIC program staff. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

(2) Physical safeguards: The records are maintained in locked file cabinets, and offices are locked during off-duty hours.

(3) Procedural safeguards: Access to file rooms and files is strictly controlled by files staff. Records may be removed from files only at the request of the system manager or other authorized employees.

RETENTION AND DISPOSAL:

Years at NIH: 1.

Number of years held at Federal Records Center before disposal: 5.

SYSTEM MANAGER AND ADDRESS:

Chief, International Research Awards Branch, FIC Building 38A, Room 615, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Requests for notification of or access to records should be addressed to the System Manager, as listed above. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

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RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Applicants and persons supplying references.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0034

SYSTEM NAME:

International Activities: Scholars Residence Program, HHS/NIH/FIC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 16, Room 202, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

Write to System Manager at the address below for the address of any Federal Records Center where records may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Distinguished scientists scholars invited to accept NIH scholarships.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employment and education histories; references.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2421, "International Cooperation" of the PHS ACT.

PURPOSE OF THE SYSTEM:

To administer and award scholorships to distinguished scientists.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

After review by the operating agency review panel the applications and all supporting documents are forwarded to the foreign organizations or agencies making awards .

In addition, such application may be made available to authorized employees and agents of the Federal Government for purposes of investigations, inspections and audits, and, in appropriate cases, to the Department of Justice for prosecution under civil and criminal laws.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to FIC program staff. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

Physical Safeguards: The records are maintained in locked file cabinets, and offices are locked during off-duty hours.

Procedural Safeguards: Access to files is strictly controlled by files staff. Records may be removed from files only at the request of the system manager or other authorized employees.

RETENTION AND DISPOSAL:

Years at NIH: 1. Number of years held at Federal Records Center before disposal: 5.

SYSTEM MANAGER AND ADDRESS:

Chief, Scholars-in-Residence Program, FIC, Building 16A, Room 102, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Requests for notification of or access to records should be addressed to the system manager, as listed above. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought.

RECORD SOURCE CATEGORIES:

Information obtained from individuals, reference sources, and persons supplying recommendations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0035

SYSTEM NAME:

International Activities: International Health Exchange Programs Participants, HHS/NIH/FIC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 38A, Room 612, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

Write to system manager at the address below for the address of the Federal Records Center where records may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. citizens applying for participation in international health exchange programs through NIH.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications and associated records and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2421.

PURPOSE OF THE SYSTEM:

To administer individual health exchange programs and prepare for scientific review and approval.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

To qualified experts not within the definition of Department employees as prescribed in Department Regulations for opinions as a part of the application review process.

Information is furnished to pertinent staff of the relevant foreign ministry for acceptance purposes.

Applications are made available to authorized employees and agents of the Federal Government for the purpose of inspections and audits, and, in appropriate cases, to the Department of Justice for investigation under civil and criminal laws.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to FIC program staff. Other one time and special access by other employees is granted on a need to know basis as specifically authorized by the system manager.

Physical Safeguards: Records are kept in locked file cabinets. Offices are locked during off-duty hours.

Procedural Safeguards: Access to files is strictly controlled by files staff. Files may be removed only at the request of the system manager or other authorized employee.

RETENTION AND DISPOSAL:

Years at NIH: 1. At Federal Records Center: 5.

SYSTEM MANAGER AND ADDRESS:

Coordinator, U.S. Foreign Health Exchange Program, Building 38A, Room 612, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification.

RECORD SOURCE CATEGORIES:

Information is obtained from applicants and individuals who supply references.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0036

SYSTEM NAME:

Extramural Awards: IMPAC (Grant/Contract Information), HHS/NIH/DRG.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Westwood Building, 5333 Westbard Avenue, Bethesda, MD 20892;
and
Building 12, NIH Computer Center, 9000 Rockville Pike, Bethesda, MD 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicant and Principal Investigators; Program Directors; NRSA Trainees and Fellows; Research Career Awardees; and Public Advisory Committee Members.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications, awards, associated records and trainee appointments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241c, 58 Stat. 691 c & d repealed.

PURPOSE OF THE SYSTEM:

(1) To support centralized grant programs of the Public Health Service. Services are provided in the areas of grant application assignment and referral, initial review, council review, award processing and grant accounting. The data base is used to provide complete, accurate, and up-to-date reports to all levels of management.

(2) To maintain communication with former fellows and trainees who have incurred a payback obligation through the National Research Service Award Program.

(3) To maintain current and historical information pertaining to the establishment of chartered public advisory committees of the National Institutes of Health and the appointment of their members.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the National Technical Information Service (NTIS), Department of Commerce, for dissemination of scientific and fiscal information on funded awards (abstract of research projects and relevant administrative and financial data).

To the cognizant audit agency for auditing.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

To qualified experts not within the definition of Department employees as prescribed in Department Regulations

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for opinions as a part of the application review process.

To a Federal agency, in response to its request, in connection with the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision in the matter.

A record may be disclosed for a research purpose, when the Department:

(A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

(B) Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(C) Has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law;

(D) Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

The Department contemplates that it may contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor will be required to maintain Privacy Act safeguards with respect to such records.

To the grantee institution in connection with performance or administration under the conditions of the award.

To the Department of Justice, or to a court or other tribunal, from this system of records when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on discs and magnetic tapes.

RETRIEVABILITY:

Records are retrieved by name, application, grant or contract ID number.

SAFEGUARDS:

Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to PHS extramural staff. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

PHYSICAL SAFEGUARDS:

Physical access to DRG work areas is restricted to DRG employees.

PROCEDURAL SAFEGUARDS:

Access to source data files is strictly controlled by files staff. Records may be removed from files only at the request of the system manager or other authorized employee. Access to computer files is controlled by the use of registered accounts, registered initials, keywords, etc. The computer system maintains an audit record of all attempted and successful requests for access.

RETENTION AND DISPOSAL:

Records are retained in accordance with the NIH Records Control Schedule, item 4000-A-2, which allows IMPAC records to be kept as long as there is an administrative need for the information.

SYSTEM MANAGER AND ADDRESS:

Chief, Statistics and Analysis Branch, Division of Research Grants, Westwood Building, 5333 Westbard Avenue, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: Privacy Act Coordinator, Division of Research Grants, Westwood Building, 5333 Westbard Avenue, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification.

RECORD SOURCE CATEGORIES:

Individual, individual's educational institution and references.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0069

SYSTEM NAME:

NIH Clinical Center Admissions of the National Cancer Institute, HHS/NIH/NCI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Landow Building, Rms. BC37 and 3C25,
7910 Woodmont Avenue, Bethesda,
MD 20892;
and
DCRT, Building 12A, 9000 Rockville
Pike, Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former cancer patients with and without related diseases admitted to the NIH Clinical Center or the National Cancer Institute (NCI).

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical histories, reports and correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 281, 282.

PURPOSE OF THE SYSTEM:

National Cancer Institute physicians and supporting staff are involved in research on the cause and diagnosis of disease and the treatment of patients, requiring the maintenance of working files to chart progress, responses to treatment, etc.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Disclosure may be made to a contractor when the Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders and on computer files.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to physicians, scientists and support staff of the National Cancer Institute and the Clinical Center whose duties require the use of such information. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the System Manager.

PHYSICAL SAFEGUARDS:

Records are kept in limited access areas. Offices are locked during off-duty hours. Input data for computer files is coded to avoid individual identification.

PROCEDURAL SAFEGUARDS:

Access to manual files is strictly controlled by files staff. Files may be accessed only at the request of the system manager or other authorized employee. Access to computer files is controlled through security codes known only to authorized users. Access codes are changed frequently.

These practices are in compliance with the standards of chapter 45-13 of the HHS General Administration Manual, Supplementary chapter PHS hf: 45-13, and Part 6, "ADP System Security" of the HHS Information Resource Management Manual.

RETENTION AND DISPOSAL:

Records are retained in accordance with the NIH Records Control Schedule, item 3000-G-3. The records control schedule may be obtained by writing to the System Manager at the address below.

SYSTEM MANAGER AND ADDRESS:

Chief, Clinical Genetics Section, Division of Etiology, NCI, Rm. 8C37, Landow Bldg., 7910 Woodmont Avenue, Bethesda, MD 20892

Chief, Family Studies, Environmental Epidemiology Branch, Room 8C41, Landow Building, 7910 Woodmont Avenue, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetetnt person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notifiction procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Patients' personal physicians, NIH staff treating the patients or performing tests, and patients themselves.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0075

SYSTEM NAME:

Administration: Institutions Submitting Assurances for Protection from Research Risks and Animal Welfare, HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

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SYSTEM LOCATION:

NIH, Building 31, Room 4B09, 9000 Rockville Pike, Bethesda, MD 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons on committees at institutions submitting assurances to the National Institutes of Health pertaining to the protection of the rights and welfare of human research subjects and the welfare of research animals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Research protocol, identification of Principal Investigator, institution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241(c)(g).

PURPOSE OF THE SYSTEM:

Monitoring of research proposals that involve human subjects or animals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on computer files.

RETRIEVABILITY:

Records are retrieved by name of institutional official, committee member or institutional name.

SAFEGUARDS:

Authorized Users: Members of the professional staff of the Office for Protection from Research Risks (OPRR) may use information from the file in connection with follow-up procedures of research proposals identified as involving human research subjects or animal subjects.

Physical Safeguards: Records are maintained in offices which are monitored during business hours and are locked during off-duty hours.

Procedural Safeguards: Requests for information from the file are made to the Information Officer who supervises and is responsible for the file. Computer files are password protected.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, supplementary chapter PHS hf: 45–13, and Part 6, "ADP System Security of the HHS Information Resource Management Manual.

RETENTION AND DISPOSAL:

Records are kept for 6 years after the end of a research project or 6 years after final action in any case involving litigation.

SYSTEM MANAGER AND ADDRESS:

Director, OPRR, Building 31, Room 4B09, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought.

RECORD SOURCE CATEGORIES:

Assurances subsitted by institutions regarding human subjects or animals in research.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0099

SYSTEM NAME:

Clinical Research: Patient Medical Records. HHS/NIH/CC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Patient Medical Records: Building 10, Room 1N116, 9000 Rockville Pike, Bethesda, MD 20892
Patient Nutrition Records: Building 10, Room B1S–229, 9000 Rockville Pike, Bethesda, MD 20892

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Registered Clinical Center patients. Some individuals not registered as patients but seen in Clinical Center for diagnostic tests.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical treatment records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 USC 241, 248.

PURPOSE OF THE SYSTEM:

1. To provide a continuous history of the treatment and diet afforded individual patients in the Clinical Center; 2. To provide a data base for the clinical research conducted within the hospital.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be used to respond to Congressional inquiries for constituents concerning admission to NIH Clinical Center. Social Work Department may give pertinent information to community agencies to assist patients or their families. Referring physicians or agencies receive medical information for continuing patient care.

Information regarding diagnostic problems, or having unusual scientific value may be shared with organizations or consultants other than HHS components or employees. For example, tissue specimens may be sent to the Armed Forces Institute of Pathology; X-rays may be sent for the opinion of a radiologist with extensive experience in a particular kind of diagnostic radiology.

Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to protect such records from improper disclosure.

Records may be disclosed to representatives of the Joint Commission on Accreditation of Hospitals conducting inspections to insure that the quality of Clinical Center medical record-keeping meets established standards.

Certain infectious diseases are reported to State Government as required by law.

Medical information may be disclosed to Medical Examiners as required by state regulations.

Medical information may be disclosed to tumor registries for maintenance of health statistics.

Referrals may be made of assignments of research investigators and project monitors to specific research projects to the Smithsonian Institution to contribute to the Smithsonian Science Information Exchange, Inc.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, on microfiche and computer tapes.

RETRIEVABILITY:

Records are retrieved by unit number, patient name, and/or hospital I.D. number.

SAFEGUARDS:

(1) Authorized Users: Employees maintaining the patient medical records in this system are instructed to grant regular access only to physicians and dentists and other health care professionals participating in patient care or for whom a specific authorization is on file. Limited access is granted to the Clinical Center dietitians and dietetic technician to the nutrition records.

(2) Physical Safeguards: All record facilities are locked when system personnel are not present. Access to nutrition records is by sign-on codes.

(3) Procedural Safeguards: Access to files is strictly controlled by the system manager. Records may be removed only by system personnel following receipt of a request signed by an authorized user. Access to computerized records is controlled by the use of security codes known only to the authorized user. Codes are user- and function-specific. Special sign-on codes are given dietitians and dietetic technicians for access to the nutrition records.

These practices are in compliance with standards of chapter 45–13 of the HHS General Administration Manual, Supplementary chapter PHS hf: 45–13, and Part 6, "ADP System Security" of the HHS Information Resource Management Manual.

RETENTION AND DISPOSAL:

Records are retained in accordance with the NIH Records Control Schedule, item 3000–E–22. The records control schedule may be obtained by writing to the System Manager at the address below.

SYSTEM MANAGER AND ADDRESS:

Chief, Medical Record Department, Building 10, Room 1N116, 9000 Rockville Pike, Bethesda, MD 20892;

Chief, Nutrition Department, Building 10, Room 1C–371, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a records exists, write to the System Manager at the above address. The requester must provide tangible proof of identity, such as a driver's license. If no identification papers are available, the requester must verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative. The representative may be a physician, or other health professional, or other responsible individual, who has indicated that he or she is willing to review the record and inform the subject individual of its contents at the representative's discretion. The subject individual will be granted direct access unless it is determined that such access is likely to have an adverse effect on him or her. In that case, the medical/dental record will be sent to the designated representative. The individual will be informed in writing if the record is sent to the representative.

A parent or guardian who requests notification of or access to a child's/incompetent person's record shall designate in writing a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child/incompetent person as well as his/her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the System Manager and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction.

RECORD SOURCE CATEGORIES:

Referring physicians, other medical facilities (with patient's consent), patients, relatives of patients.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0106

SYSTEM NAME:

Personnel: Guest Researchers/Student Scientist/Scientists Emeriti, HHS/NIH/DPM.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of the Associate Director for Intramural Affairs, NIH, Building 1,

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Room 103, 9000 Rockville Pike,
Bethesda, MD. 20892.

Personnel and Administrative Offices of the National Institutes of Health (NIH).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals using NIH facilities who are not NIH employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal information including name, address, date and place of birth, education, employment, purpose for which NIH facilities are desired, outside sponsor, and NIH sponsor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 USC 241. Public Health Service Act.

PURPOSE OF THE SYSTEM:

To determine eligibility to use NIH facilities, to document the individual's presence at NIH, and to record that the individual is not performing a service for the government.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made:

To U.S. Office of Personnel Management for program evaluation purposes;

To General Accounting Office for fund disbursement determinations;

To institutions providing financial support;

To a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

(1) Authorized users: Access is granted only to personnel staff, administrative office staff and management officials directly involved in the administration of the Guest Researcher, Student Scientist and Scientist Emeriti programs.

(2) Physical safeguards: Record facilities are locked when system personnel are not present.

(3) Procedural safeguards: Access to files is strictly controlled by system personnel. Records may be removed from the file only with the approval of the system manager or other authorized employees.

The particular safeguards implemented at each site are developed in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS.hf: 45–13, and part 6, "ADP Systems Security", of the HHS Information Resources Management Manual.

RETENTION AND DISPOSAL:

Years at NIH: 3 years after visit. Disposal methods include burning or shredding paper materials.

SYSTEM MANAGER AND ADDRESS:

Assistant Director for Operations, Division of Personnel Management, Bldg. 1, Rm 19, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists and where it is located, contact: Privacy Act Coordinator, DPM, Building 31, Room 1C39, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Contact the Personnel Officer or Administrative Officer in whose office the record is located and provide verification of identity as described under notification procedure above. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Subject individual, NIH sponsor, funding institution.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0112

SYSTEM NAME:

Extramural Awards: Research, Research Training, Fellowship and Construction Applications and Awards. HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

See Appendix I.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Grant and Cooperative Agreements Applicants and Principal Investigators; Program Directors; Institutional and Individual Fellows; Research Career Awardees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Grant and cooperative agreement applications and review history, awards, financial records, progress reports and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act: 42 USC 241, 241(c), (d), 276, 281, 285h 287, 288, 289 (a), (d), (e), (i), 289(k-2), 487 and (Pub. L. 95-224) Federal Grant and Cooperative Agreement Act of 1977.

PURPOSE OF THE SYSTEM:

1. Information provided is used by NIH staff for review, award, and administration of grant and cooperative agreement programs and projects.

2. Information is also used to maintain communication with former fellows who have incurred an obligation through the National Research Service Award Program.

3. Staff may also use curriculum vitae to identify candidates who may serve as ad hoc consultants or committee and council members in the grant and contract peer review process.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made:

(1) To the National Technical Information Service (NTIS), U.S. Department of Commerce for dissemination of scientific and fiscal information on funded awards (abstracts and relevant administrative and financial data).

(2) To the cognizant Audit Agency for auditing;

(3) To the Department of Justice, a court or other tribunal, from the system of records when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in an effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the record were collected.

(4) To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual;

(5) To qualified experts not within the definition of Department employees as prescribed in Department Regulations, 45 CFR 56.2, for opinions as a part of the application review and award process;

(6) To a Federal agency, in response to its request, in connection with the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter;

(7) A record may be disclosed for a research purpose, when the Department: (A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

(8) To a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in a system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records;

(9) To the grantee institution in connection with performance or administration under the terms and conditions of the award, or in connection with problems that might arise in performance or administration if an award is made on a grant proposal.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in file folders, on computer tapes, microfilm and discs, cards and in notebooks.

RETRIEVABILITY:

Retrieved by name, grant and cooperative agreement number.

SAFEGUARDS:

A variety of physical and procedural safeguards are implemented, as appropriate, at the various locations of this system:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to officials whose duties require use of the information. These officials include review groups, grants management staff, other extramural program staff, health scientist administrators, data processing and analysis staff and management officials with oversight responsibilities for extramural programs. Other one-time and special access is granted on an individual basis as specifically authorized by the System Manager. Authorization for access to computerized files is controlled by the System Manager or designated official and is granted on a 'need to know' basis. Lists of authorized users are maintained.

2. Physical Safeguards: Secured facilities, locked rooms, locked cabinets, personnel screening; records stored in order of grant numbers which are randomly assigned.

3. Procedural Safeguards: Access to file rooms and files strictly controlled by files staff or other designated officials; charge-out cards identifying users required for each file used; inactive records transferred to controlled storage in Federal Records Center in a timely fashion; retrieval of records from inactive storage controlled by the system manager or designated official and by the NIH Records Management Officer; computer files are password protected and access is actively monitored by the Computer Center to prevent abuse. Employees are given specialized training in the requirements of the Privacy Act as applied to the grants program.

These practices are in compliance with the standards of chapter 45-13 of the HHS General Administration Manual, Supplenentary chapter PHS of: 45-13, and Part 6, "ADP System Security of the HHS Information Resource Management Manual."

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RETENTION AND DISPOSAL:

Years at NIH: 1 year after close out except for Construction Grants which are retained for 3 years after close-out. Years at Federal Records Center: 5 years except for National Research Service Awards, 9 years and Construction Awards, 12 years.

SYSTEM MANAGER AND ADDRESS:

See Appendix II.

NOTIFICATION PROCEDURE:

Write to official at the address specified in Appendix II to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Write to the official at the address specified in Appendix IV to obtain access to a record, and provide the same information as is required under the Notification Procedures above. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified in Appendix II and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction.

RECORD SOURCE CATEGORIES:

Information submitted by applicant; supplemented by outside reviewers and internal staff.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix I—System Location

National Cancer Institute, Westwood Building, Room 633, 5333 Westbard Avenue, Bethesda, MD 20892.

National Heart, Lung and Blood Institute, Westwood Building, Room 7A11, 5333 Westbard Avenue, Bethesda, MD 20892

National Library of Medicine, Building 38A, Room 5N509, 8600 Rockville Pike, Bethesda, MD 20892

National Institute of Allergy and Infectious Diseases, Chief, Grants Management Branch, EAP, Room 728, Westwood Building, 5333 Westbard Avenue, Bethesda, MD 20892

Chief, Data Control Section OAM, Room 733, Westwood Building, 5333 Westbard Avenue, Bethesda, MD 20892

National Institute of Diabetes, Digestive and Kidney Diseases, Westwood Building, Room 610, 5333 Westbard Avenue, Bethesda, MD 20892

National Institute of Arthritis, Westwood Building, 5333 Westbard Avenue, Bethesda, MD 20892

National Institute of Child Health and Human Development, Landow Building, Room A621, 7910 Woodmont Avenue, Bethesda, MD 20892

National Institute on Aging, Building 31, Room 5C39, 9000 Rockville Pike, Bethesda, MD 20892

National Institute of Dental Research, Grants Management Officer, Westwood Building, Room 518, 5333 Westbard Avenue, Bethesda, MD 20892

National Institute of Environmental Health Sciences, Grants Management Officer, Building 3, Room 314, 104 T.W. Alexander Drive, Research Triangle Park, North Carolina 27709

National Institute of General Medical Sciences, Grants Management Officer, Westwood Building, Room 936, 5333 Westbard Avenue, Bethesda, MD 20892

National Institute of Neurological and Communicative Disorders and Stroke, Federal Building, Room 10A12, 7550 Wisconsin Avenue, Bethesda, MD 20892

National Eye Institute, Building 31, Room 6A47, 9000 Rockville Pike, Bethesda, MD 20892

Division of Research Resources, Building 31, Room 5B34, 9000 Rockville Pike, Bethesda, MD 20892

National Center for Nursing Research, Building 38A, Room B2–E17, 9000 Rockville Pike, Bethesda, Md 20892

Washington National Records Center, 4205 Suitland Road, Suitland, Maryland

Appendix II—System Manager and Address

National Cancer Institute, Grants Privacy Act Coordinator, Room 8A18, Westwood Building, 5333 Westbard Avenue, Bethesda, MD 20892

National Heart, Lung and Blood Institute, Administrative Officer, Division of Extramural Affairs, Room 5A15, Westwood Building, 5333 Westbard Avenue, Bethesda, MD 20892

National Library of Medicine, Associate Director for Extramural Programs, Building 38A, Room 5N505, 9000 Rockville Pike, Bethesda, MD 20892

National Institute of Allergy and Infectious Diseases, Chief, Grants Management Branch, Room 710, Westwood Building, Bethesda, MD 20892

National Institute of Diabetes, Digestive and Kidney Diseases, Grants Management Officer, Room 639, Westwood Building, 5333 Westbard Avenue, Bethesda, MD 20892

National Institute of Child Health and Human Development, Chief, Office of Grants & Contracts, Room A621, Landow Building, Bethesda, MD 20892

National Institute on Aging, Grants Management Officer, Room 5C39, Building 31

National Institute of Dental Research, Grants Management Officer, NIDR, Room 518, Westwood Building, 5333 Westbard Avenue, Bethesda, MD 20892

National Institute of Environmental Health Sciences, Grants Management Officer, Extramural Program, Room P.O. Box 12233, Research Triangle Park, NC 27709

National Institute of General Medical Sciences, Grants Management Officer, NIGMS, Room 938, Westwood Building, 5333 Westbard Avenue, Bethesda, MD 20892

National Institute of Neurological and Communicative Disorders and Stroke, Grants Management Officer, Room 1004A, Federal Building, Bethesda, MD 20892

National Center for Nursing Research, Acting Director, Division of Extramural Programs, Building 38A, Room B2E17, 9000 Rockville Pike, Bethesda, MD 20892

National Eye Institute, Grants Management Officer, Room 6A52, Building 31, 9000 Rockville Pike, Bethesda, MD 20892

Division of Research Resources, Director, Office of Grants and Contracts Management, Room 5B34, Building 31, 9000 Rockville Pike, Bethesda, MD 20892

Appendix III—Notification Procedures

National Cancer Institute, Chief, Grants Administration Branch, Room 8A18, Westwood Building

National Heart and Lung Institute, Privacy Act Coordinator, NHLI, Room 5A50, Building 31

National Library of Medicine, See Appendix II.

National Institute of Allergy and Infectious Diseases, See Appendix II.

National Institute of Diabetes, Digestive and Kidney Diseases, Administrative Officer, Room 9A46, Building 31

National Institute of Child Health and Human Development, See Appendix II.

National Institute on Aging, See Appendix II.

National Institute of Dental Research, See Appendix II.

National Institute of Environmental Health Sciences, See Appendix II.

National Institute of General Medical Sciences, See Appendix II.

National Institute of Neurological and Communicative Disorders and Stroke, See Appendix II.

National Eye Institute, See Appendix II.

National Center for Nursing Research, See Appendix II

Division of Research Resources, See Appendix II.

Appendix IV—Record Access Procedures

National Cancer Institute, Chief, Grants Administration Branch, Room 8A18, Westwood Building

National Heart and Lung Institute, See Appendix III.

National Library of Medicine, See Appendix II.

National Institute of Allergy and Infectious Diseases, Privacy Act Coordinator, Room 705, Westwood Bldg.

National Institute of Arthritis, Diabetes, Digestive and Kidney Diseases, See Appendix III.

National Institute of Child Health and Human Development, See Appendix II.

National Institute on Aging, See Appendix II.

National Institute of Dental Research

Grants Management Officer, NIDR, Room 518, Westwood Building
National Institute of Environmental Health Sciences, See Appendix II.
National Institute of General Medical Sciences, Privacy Act Coordinator, Room 9A05, Westwood Building
National Institute of Neurological and Communicative Disorders and Stroke, Head, Administration Mgmt. Section, Room 8A47, Building 31
National Eye Institute, Administrative Officer, Room 6A31, Building 31
Division of Research Resources, Privacy Act Coordinator, Room 5B13, Building 31.

09-25-0124

SYSTEM NAME:

Administration: Pharmacology Research Associates, HHS/NIH/NIGMS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institutes of Health, Westwood Bldg., Room 919, 5333 Westbard Avenue, Bethesda, Maryland 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records are stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for positions as Pharmacology Research Associates with the National Institute of General Medical Sciences (NIGMS).

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual application forms, academic transcripts and references.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 209.

PURPOSE OF THE SYSTEM:

(1) For review, award, and administration of the Pharmacology Research Associate Program (PRAT).

(2) For consideration of the applicant by other NIH Associate Programs at the applicant's request.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

By name of applicant.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

(1) Authorized users: Employees who maintain the system are instructed to grant access only to authorized personnel (System Manager and staff assigned to the program).

(2) Physical safeguards: The records are maintained in locked file cabinets when not in use and system location is locked during non-working hours.

(3) Procedural safeguards: Access to file rooms and files is strictly controlled by responsible individuals who have been instructed in the Privacy Act requirements. Records are returned to the locked cabinets when not in use.

RETENTION AND DISPOSAL:

1. Records of applicants who are admitted to the program are kept not more than five years. 2. Records of applicants who are not admitted to the program are kept for one year. All records are shredded after proper time has elapsed.

SYSTEM MANAGER AND ADDRESS:

Director, PRAT Program, Pharmacological Sciences, NIGMS, Westwood Bldg., Room 919, Bethesda, Maryland 20892.

NOTIFICATION PROCEDURE:

To determine if a file exists, write to the System Manager and provide the following information: applicant's name, date of application.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Write to System Manager and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction.

RECORD SOURCE CATEGORIES:

Information provided by applicants, university registrars, and references.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0140

SYSTEM NAME:

International Activities: International Scientific Researchers in Intramural Laboratories at the National Institutes of Health, HHS/NIH/FIC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Fogarty International Center, Building 16A, Room 101; and
Division of Computer Research and Technology, Building 12A, Room 3061, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Ancillary records are located in the Office of the Associate Director for Intramural Affairs, laboratories, administrative and personnel offices where participants are assigned. Write to System Manager at the address below for the address of the Federal Records Center where records are stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Health scientists at all levels of their postdoctoral or equivalent research careers who are invited to the National Institutes of Health for further training

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or to conduct research in their biomedical specialties under the auspices of FIC's administration of International Activities. Most of these scientists are foreign, however some may be resident aliens or U.S. citizens.

Individuals in these catagories include Visiting Associates, Visiting Scientists, Foreign Special Experts who are employees and Visiting Fellows, Guest Researchers, Exchange Scientists, International Research Fellows, and Fogarty Scholars and Residents who are not employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

History of fellowship, employment and/or stay at NIH; education, immigration data and references. For payroll purposes, social security numbers are requested of all applicants accepted into the program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2421 and Section 307 of the Public Health Service Act.

PURPOSE OF THE SYSTEM:

To document the individual's presence at the NIH, to record immigration history of the individual in order to verify continued eligibility in existing programs, and to meet requirements of 22 CFR,"Foreign Relations"

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Information is made available to authorized employees and agents of the US, including the General Accounting Office, for purposes of investigations, inspections and audits, and in appropriate cases, to the Department of Justice for prosecution under civil and criminal laws.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

3. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders and on file cards, computer tapes and microfilm.

RETRIEVABILITY:

By name, country of citizenship, institution, fellowship number.

SAFEGUARDS:

A variety of safeguards is implemented for the various sets of records included under this system according to the sensitivity of the data they contain.

(1) Authorized Users. Employees who maintain records in this system are instructed to grant regular access only to FIC program staff. Other one time and special access by other employees is granted on a need to know basis as specifically authorized by the System Manager.

(2) Physical Safeguards. The records are maintained in locked file cabinets, and offices are locked during off-duty hours.

(3) Procedural Safeguards. Access to files is strictly controlled by files staff. Records may be removed from files only at the request of the system manager or other authorized employees. For computerized records, access is controlled by the use of security codes known only to authorized users; access codes are changed periodically. The computer system maintains an audit record of all requests for access.

These practices are in compliance with the standards of chapter 45–13 of the HHS General Administration Manual, supplementary chapter PHS hf: 45–13, and Part 6, "ADP System Security" of the HHS Information Resource Management Manual.

RETENTION AND DISPOSAL:

Records of successful are retained indefinitely.

SYSTEM MANAGER AND ADDRESS:

Chief, International Visitors Center, Building 16, Room 101, Fogarty International Center, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

NOTIFICATION PROCEDURE:

Requests for notification of or access to records should be addressed to the System Manager as listed above. Verification of identity is required.

RECORD ACCESS PROCEDURE:

Same as notification procedure. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official listed under notification procedure above, and reasonably identify the record, and specify the information to be contested, and state the corrective action sought and the reasons for the correction.

RECORD SOURCE CATEGORIES:

Subject individuals and other federal agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0053

SYSTEM NAME:

Clinical Research: Vision Studies, HHS/NIH/NEI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 10, Room 10N325, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients and subjects in the National Eye Institute research studies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical history as relevant to vision research.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 289i, 289k.

PURPOSE OF THE SYSTEM:

1. To gather photographic evidence of various stages or progressions of certain visual disorders; 2. To record certain diagnostic test results (such as color vision testing) in the compilation of empirical data to support research evaluations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

Information may be used to respond to Congressional inquiries for constituents concerning admission to the NIH Clinical Center.

Certain infectious diseases may be reported to State Government as required by law.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file cabinets.

RETRIEVABILITY:

Records are retrieved by name and cross referenced by anatomical entity.

SAFEGUARDS:

Employees who maintain records in this system are instructed to grant regular access only to HHS scientists conducting research and physicians treating the patient whose records are involved. Other one time and special access by other employees is granted on a need to know basis as specifically authorized by the system manager. File cabinets are in locked rooms and access to files is strictly controlled. Specifically, records may be removed from files only at the request of the System Manager or authorized employees.

RETENTION AND DISPOSAL:

Records are retained in accordance with the NIH Records Control Schedule, item 3000–G–3. The records control schedule may be obtained by writing to the System Manager at the address below.

SYSTEM MANAGER AND ADDRESS:

Clinical Director, NEI, Building 10, Room 10N313, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, contact: Executive Officer, NEI, Building 31, Room 6A05, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought.

RECORD SOURCE CATEGORIES:

Medical examinations conducted by and under the direction of the research investigators.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0091

SYSTEM NAME:

Administration: General Files on Employees, Donors and Correspondents. HHS/NIH/NEI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 31, Room 6A03, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system are stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Donors of gifts, employees, correspondents of the National Eye Institute (NEI).

CATEGORIES OF RECORDS IN THE SYSTEM:

Budget, administrative services, correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 289i.

PURPOSE OF THE SYSTEM:

1. To authorize and approve payment of official travel;
2. To identify certain donors of unconditional gifts to the National Eye Institute;
3. To record certain delegations, permit holders, and submitters of suggestions;
4. To maintain a mailing list of persons in the vision research community;
5. To provide service or information to specific requesters;
6. To maintain accountability records of federal property custodians;
7. To communicate with collaborating investigators in vision research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided,

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however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name and subject area.

SAFEGUARDS:

Employees who maintain records in this system are instructed to grant regular access only to staff with designated responsibilities directly related to the purpose for which the records are kept. Other one time and special access by other employees is granted on a need to know basis as specifically authorized by the System Manager.

RETENTION AND DISPOSAL:

Years at NIH: 1. Disposal methods include burning or shredding paper materials.

SYSTEM MANAGER AND ADDRESS:

Executive Officer, NEI, Building 31, Room 6A05, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: Records Management Officer, NEI, Building 31, Room 6A31, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction.

RECORD SOURCE CATEGORIES:

Individuals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0121

SYSTEM NAME:

International Activities: Senior International Fellowships Program. HHS/NIH/FIC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Bldg. 38A, Room 617, NIH, 9000 Rockville Pike, Bethesda, MD, 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system are stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for Senior International Fellowships.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications and associated records and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 242e.

PURPOSE OF THE SYSTEM:

For award and administration of fellowships to outstanding faculty members in mid-career from U.S. biomedical research and educational institutions for study abroad.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Each fellow's home institution receives a notice of award and funding for the fellowship.

Applications are made available to authorized employees and agents of the U.S., including the General Accounting Office for purposes of investigations, inspections and audits, and in appropriate cases, to the Department of Justice for proper action under civil and criminal laws.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and computer discs.

RETRIEVABILITY:

Name and fellowship number.

SAFEGUARDS:

(1) Authorized Users. Employees who maintain records in this system are instructed to grant regular access only to Fogarty International Center (FIC) program staff. Other one time and special access by other employees is granted on a need to know basis as specifically authorized by the the System Manager.

(2) Physical Safeguards. The records are stored in locked file cabinets and offices are locked during off-duty hours.

(3) Procedural Safeguards. Access to files is strictly controlled by files staff. Records may be removed from files only at the request of the System Manager or other authorized employees. For computerized records access is controlled by the use of security codes known to authorized users and access codes are changed periodically. The computer system maintains an audit record of all requests for access.

RETENTION AND DISPOSAL:

Number of years held at NIH: 1. Number of years held at Federal Records Center before disposal: 5.

SYSTEM MANAGER AND ADDRESS:

Chief, International Research Awards Branch, Bldg. 38A, Room 617, 9000 Rockville Pike, Bethesda, Md. 20892.

NOTIFICATION PROCEDURE:

Requests for notification of or access to records should be addressed to the system manager, listed above. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction.

RECORD SOURCE CATEGORIES:

Information obtained from applicants and persons supplying recommendations through the Division of Research Grants.

RETRIEVABILITY:

Records are retrieved by name and cross referenced by anatomical entity.

SAFEGUARDS:

Employees who maintain records in this system are instructed to grant regular access only to HHS scientists conducting research and physicians treating the patient whose records are involved. Other one time and special access by other employees is granted on a need to know basis as specifically authorized by the system manager. File cabinets are in locked rooms and access to files is strictly controlled. Specifically, records may be removed from files only at the request of the system manager or authorized employees.

RETENTION AND DISPOSAL:

Records are retained in accordance with the NIH Records Control Schedule, item 3000-G-3. The records control schedule may be obtained by writing to the System Manager at the address below.

RECORD SOURCE CATEGORIES:

Medical examinations conducted by and under the direction of the research investigators.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0126

SYSTEM NAME:

Clinical Research: National Heart, Lung, and Blood Institute Epidemiological and Biometric Studies.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records included in this system are located in hospitals, universities, research centers, research foundations, and coordinating centers under contract with the National Heart, Lung, and Blood Institute, and in NHLBI facilities in Bethesda, Maryland. A list of locations is available from the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Participants in these studies include (1) individuals who have been or who are presently being treated by the National Heart, Lung, and Blood Institute, for diseases or conditions of the heart, lung, blood vessels and blood; (2) individuals whose physical, genetic, social, economic, environmental, behavioral or nutritional conditions or habits are being studied in relation to the incidence of heart, lung, blood vessel and blood diseases among human beings; (3) normal volunteers who have agreed to provide control data germane to these studies.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a variety of clinical, medical, and statistical information resulting from or contained in research findings, medical histories, vital statistics, personal interviews, questionnaires, or direct observation. The system also includes records of current addresses of study participants, photographs, fingerprints, and correspondence from or about participants in these studies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 412, 413 of the Public Health Service Act (42 U.S.C. 287a, 287b)

PURPOSE OF THE SYSTEM:

(1) Summaries of data resulting from these studies are used by the National Heart, Lung, and Blood Institute to monitor and evaluate the incidence of the diseases or the conditions under investigation and the relationship of various factors to the occurrence of these diseases. (2) The summaries are also used for program planning and evaluation purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to protect such records from improper disclosure.

2. Referrals may be made of assignments of research investigators and project monitors to specific research projects to the Smithsonian Institution to contribute to the Smithsonian Science Information Exchange, Inc.

3. In the event the Department deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosures may be made to the Department of Justice for the purpose of obtaining its advice.

4. Where the appropriate official of the Department, pursuant to the Department's Freedom of Information Regulation determines that it is in the public interest to disclose a record which is otherwise exempt from mandatory disclosure, disclosure may be made from this system of records.

5. The Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

6. In the event of litigation where the defendant is: (a) The Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

7. Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessments, medical audits or utilization review.

8. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry

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from the congressional office made at the request of that individual.

9. A record may be disclosed for a research purpose, when the Department: (a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (b) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (c) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; (d) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data may be stored in file folders, magnetic tapes or discs, punched cards, bound note books.

RETRIEVABILITY:

Name and/or participant identification number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

1. Authorized users: Employees who maintain records in this system are instructed to grant regular access only to authorized researchers, physicians and their assistants whose duties require the use of such information.

2. Physical safeguards: Records are kept in locked file cabinets and in some instances in locked offices or guarded buildings. Locations are locked during non-working hours, and are attended at all times during working hours.

3. Procedural safeguards: Access to the data is controlled by the System Manager and the Project Officer. Data stored in computers is accessed through the use of key words known only to principal investigators or authorized personnel.

The particular safeguards implemented at each site are developed in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS.hf: 45–13, and part 6, ADP Systems Security, of the HHS ADP Systems Manual.

RETENTION AND DISPOSAL:

Records are retained and destroyed according to the authority of the NIH Records Control Schedule (HHS Records Management Manual, Appendix B–361), section 3000–G. For a copy of this authority, write to the System Manager.

SYSTEM MANAGER AND ADDRESS:

Associate Director for Epidemiology and Biometry, National Heart, Lung, and Blood Institute, Federal Building, 2C–08, 7550 Wisconsin Avenue, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, contact: NHLBI Privacy Coordinator, Building 31, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

Requesters must provide the following information in writing:

1. Full name;
2. Name and location of research study; and
3. Approximate dates of enrollment.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

System Manager as indicated above. The contestor must reasonably specify in writing the record contents at issue and state the corrective action sought and the reasons for the correction.

RECORD SOURCE CATEGORIES:

Information contained in these records is obtained directly from individual participants and from medical and clinical research observations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–134

SYSTEM NAME:

Clinical Research: Epidemiology Studies, National Institute of Environmental Health Sciences. HHS/NIH/NIEHS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institute of Environmental Health Services (NIEHS), Environmental Biometry Branch, P.O. Box 12233, Research Triangle Park, North Carolina 27709.

and at hospitals, medical schools, universities, research institutions, commercial organizations, state agencies, and collaborating government agencies. Inactive records may be stored in a Federal Records Center. A list of locations and contracts is available upon request made to the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Adults and minors, both male and female, with known or suspected diseases, maladies, chemical or biological contaminations, as well as normal or non-suspect individuals and minors in control or study groups for the purposes of comparison. Individuals included in this system of records normally have volunteered to participate in the study and voluntarily provided information for inclusion in the system. The participants may be, but are not limited to, patients; workers subject to specific environments; individuals selected because of social, nutritional, physical, genetic and economic conditions and behavioral characteristics; and members of the general population subject to the variety of contaminants present in the environment.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a variety of records pertinent to an individual's current health status: Medical history; occupational history and work environments; and selected items of personal data such as smoking habits, family size, family medical history and domiciles. Examples of information which may be included in this system are name, social security number, date of birth, weight, height, sex, race, medical history, blood type, laboratory results, examination findings, current and previous medications received, list of employers, descriptions of the work environment, substances or compounds routinely handled or exposed to, and a history of current and previous residences.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241.

PURPOSE OF THE SYSTEM:

National Institute of Environmental Health Sciences uses the data collected to: (1) Determine whether or not general conditions, chemicals and/or other substances found in the environment have effects on the health and well being of individuals or groups of individuals; (2) Determine how these conditions, chemicals or other substances, acting by themselves or in combination, produce adverse effects on health; (3) Identify individual or group characteristics that make a person susceptible to chemical contamination, disease or other adverse health effects from these environmental conditions or agents; (4) Determine whether there is a general or background level of exposure or other chemical effects in a local area, regional area, or nationally as well as within general or specific work environments; (5) Develop and/or validate epidemiologic or laboratory methods for detecting adverse effects due to environmental exposures; (6) Determine the scientific basis for advising regulatory agencies such as the Environmental Protection Agency, the National Institute of Occupational Safety and Health and the Department of Labor's Occupational Safety and Health Administration regarding the adverse health effects of substances and conditions found in the environment; (7) Determine the scientific basis for advising local, state, other governmental agencies and international governments regarding the adverse health effects of substances and conditions found in the environment; (8) Determine the scientific basis for advising the Congress, industry, workers, scientific or public agencies and other interested parties regarding the known or potential for adverse health effects from exposure to substances or conditions found in the environment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to protect such records from improper disclosure.

2. Disclosure may be made to a congressional office from the record of the individual in response to an inquiry from the congressional office, made at the request of the individual, and in the case of a minor, the minor's parent or legal guardian.

3. Referrals may be made of assignments of research investigators and project monitors to specific research projects to the Smithsonian Institution to contribute to the Smithsonian Science Information Exchange, Inc.

4. In the event the Department deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosure may be made to the Department of Justice for the purpose of obtaining its advice.

5. Where the appropriate official of the Department, pursuant to the Department's Freedom of Information Regulation determines that it is in the public interest to disclose a record which is otherwise exempt from a mandatory disclosure, disclosure may be made from this system of records.

6. The Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

7. In the event of litigation where the defendant is: (a) The Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored in one of a combination of the following mediums: file folders, data forms, punch card, magnetic tape discs.

RETRIEVABILITY:

Information is retrieved by personal identifier such as name or code number. Social security numbers which are supplied on a voluntary basis also are used for retrieval.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

(1) Authorized users: Use of these records is limited to those persons whose official duties require such access. Access to the information is controlled by the Project Officer or his representative at remote locations. Contractors or collaborating researchers, by formal agreement, comply with the provisions of the Privacy Act and Department regulations.

(2) Physical safeguards: Hard copy data is maintained in locked file cabinets at the National Institute of Environmental Health Sciences or remote study locations. Information stored in computer systems is accessible

only through proper sequencing of signal commands and access codes specifically assigned to the Project Officer or contractor in accordance with Departmental standards and National Bureau of Standards guidelines.

(3) Procedural safeguards: Subjects directly participating in studies are advised that their identity is known only to those persons involved in conducting the study, and that any published findings will be in a format which precludes individual identification.

The particular safeguards implemented at each site are developed in accordance with chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS.hf: 45-13, and part 6, ADP Systems Security, of the HHS ADP Systems Manual.

RETENTION AND DISPOSAL:

The records are maintained until they are no longer required for the research purpose(s) for which the record was established. The records are destroyed by shredding, burning, or other appropriate means so as to render them illegible. Computer tapes and discs are erased.

SYSTEM MANAGER AND ADDRESS:

Chief, Biometry Branch, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, North Carolina 27709.

NOTIFICATION PROCEDURE:

Normally, individuals would know whether a file existed on the basis of their voluntary participation and provision of data. However, individuals may write to the System Manager to determine if a file exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine. In writing, they should provide the following data:

a. Complete name at the time of the study.

b. Birthdate.

c. Home address at the time of the study.

d. The facility where the examination was given or information otherwise collected.

e. Date, or approximate dates when information was collected or an examination conducted.

f. Name of study if known.

g. A current name, address and telephone number where they can be reached.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

The same information as outlined under notification procedures is needed for access to records. The request should be addressed to the System Manager.

CONTESTING RECORD PROCEDURE:

Write to the System Manager and specify the record and the information to be contested, and state the corrective action sought and the reasons for the correction.

RECORD SOURCE CATEGORIES:

HHS agencies, institutions under contract to the U.S. Government, universities, medical schools, hospitals, commercial, institutions, labor and trade organizations, State agencies, international agencies, foreign governments, other U.S. Government agencies, patients and normal volunteers, physicians, researchers and other collaborating personnel.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0154

SYSTEM NAME:

Biomedical Research: Records of Subjects in Clinical Studies of the Division of Cancer Prevention and Control, HHS/NIH/NCI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Blair Building, Room 6A01, NIH, 9000 Rockville Pike, Bethesda, MD 20892
Building 12, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

and at hospitals, medical schools, universities, research institutions, commercial organizations, collaborating State and Federal Government agencies, and Federal Records Centers. Write to System Manager at the address below for the address of current locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Adults and children in the following categories: Patients with cancer; persons for whom cancer risk can potentially be lowered; and persons without signs or symptoms who may be identified through screening and detection methods as having cancer or being at increased risk of developing cancer. For certain types of epidemiologic studies, e.g., case-control studies, NCI may also collect, for purposes of comparison, records on other persons. These comparison groups could include normal individuals (e.g., family members or neighborhood controls), or other patient groups (e.g., hospital controls) who do not have cancer or are not at a particularly high risk of developing cancer.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information identifying participants (such as name, address, social security number), medical records, progress reports, correspondence, epidemiological data, and records on biological specimens (e.g., blood, tumors, urine, etc).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 301, Research and Investigation, and Title IV, Part A, National Cancer Institute, of the Public Health Service Act (42 U.S.C. 241, and 281-286).

PURPOSES:

Records in this system will be used: (1) To evaluate cancer control programs, including prevention, screening, detection, diagnosis, treatment, rehabilitation, and continuing care; (2) to identify characteristics of persons who may be particularly susceptible to environmental or occupational factors or substances which cause or prevent cancer, and/or to cancer; (3) to determine risk factors or substances which cause or prevent cancer, and the ways in which they do so; (4) to evaluate statistical and epidemiological methodologies for risk factor assessment, clinical trials, cancer control studies, and the study of the natural history of cancers; (5) to plan for, administer, and review research activities as described in the above purposes; (6) information from this system may be reported to the Food and Drug Administration (FDA) as a condition for approval of clinical investigations of new drugs, or to report adverse effects of drugs so that FDA can make informed decisions on authorizing use of such drugs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purposes for which the records are collected. The recipients are required to comply with the requirements of the Privacy Act with respect to such records.

2. Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessments, medical audits or utilization review.

3. The Department contemplates that it may contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor will be required to comply with the requirements of the Privacy Act with respect to such records.

4. A record may be disclosed for a research purpose, when the Department: (A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (b) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (c) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; (e) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

5. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

6. In the event of litigation where the defendant is: (a) The Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, microfilm, charts, graphs, computer tapes, disks, and punch cards.

RETRIEVABILITY:

By name, Social Security Number when supplied voluntarily or contained in existing records used in projects under this system, or other identifying number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

(1) Authorized users: Employees who maintain records in this system are instructed to grant regular access only to physicians, scientists, and support staff of the National Cancer Institute (NCI), or its contractors, grantees or collaborators who need such information in order to contribute to the research or administrative purposes of the system. The System Manager specifically authorizes one-time and special access by others on a need-to-know basis consistent with the purposes and routine uses of the system.

(2) Physical safeguards: Records are kept in limited access areas. Offices and records storage locations are locked during off-duty hours. Input data for computer files is coded to avoid individual identification. Where possible, information on individual identities is kept separate from data used for analysis.

(3) Procedural safeguards: Access to manual files is granted only to authorized personnel, as described above. Access to computer files is controlled through security codes known only to authorized users. Names and other details necessary to identify individuals are not included in data files used for analysis. These files are indexed by code numbers. Code numbers and complete identifiers are linked only if there is a specific need, such as for data verification.

Contractors, grantees or collaborators who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act. Privacy Act requirements are specifically included in contracts and in agreements with grantees or collaborators participating in research activities supported by this system. HHS project director, contract officers and project officers oversee compliance with these requirements.

The particular safeguards implemented at each site are developed in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS.hf: 45–13, and part 6, ADP Systems Security, of the HHS ADP Systems Manual.

RETENTION AND DISPOSAL:

NCI retains research records in accordance with the NIH Records Control Schedule, item 3000–G–3, which allows the system manager to keep the records as long as they are useful in scientific research. Contractors, grantees and collaborators who receive disclosures of records from this system retain the records only as long as necessary to accomplish the purpose for which the disclosures are made. Inactive records may be transferred to a Federal Records Center. Disposal methods include burning hard copy and erasing computer tapes and disks.

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SYSTEM MANAGER AND ADDRESS:

Chief, Biometrics and Operations Research Branch, DCPC, National Cancer Institute, Blair Building, Room 6A01, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a file exists, write to the system manager and provide the following information:

a. System name: "Biomedical Research: Records of Subjects in Cancer Studies of the Division of Resources, Centers and Community Activities";

b. Complete name at time of participation;

c. Facility and home address at the time of participation;

d. In some cases, where records are retrieved by an identifying number, such as the Social Security Number or Hospital Identification Number, it may be necessary to provide that number. In some cases, to ensure proper identification it may be necessary to provide date(s) of participation (if known), birthdate, or disease type (if known).

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a maximum fine of five thousand dollars.

Individuals seeking notification of or access to medical records should designate a representative (including address) who may be a physician, other health professional, or other responsible individual, who would be willing to review the record and inform the subject individual of its contents, at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURES:

Write to the system manager and provide the same information as requested under the notification procedure above. Requesters should also reasonably specify the record contents being sought. You may also request a list of accountable disclosures which have been made of your record.

CONTESTING RECORD PROCEDURES:

Write to the system manager, identify the record, and specify the information contested. State the corrective action sought and your reasons for requesting the correction, and provide supporting information to show that the record is inaccurate, incomplete, irrelevant, untimely, or unnecessary.

RECORD SOURCE CATEGORIES:

HHS agencies, institutions under contract to the U.S. Government, such as universities, medical schools, hospitals, research institutions, commercial institutions, state agencies, other U.S. Government agencies, patients and normal volunteers, physicians, research investigators and other collaborating personnel.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0003

SYSTEM NAME:

Administration: Authorized Radionuclide Users File, HHS/NIH/ORS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 21, Room 116, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Research Investigators within NIH and outside holding NIH-NRC Board License for radioactive material.

CATEGORIES OF RECORDS IN THE SYSTEM:

Radioactive material users.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241.

PURPOSE OF THE SYSTEM:

To provide adequate administrative controls to assure compliance with NIH Radiation Safety policy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Training and experience information transferred to place of new employment.

2. Personnel exposure data transferred to place of new employment.

3. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. Disclosure may be made from this system of records by the Department of Health and Human Services (HHS) to the Department of Justice, or to a court or other tribunal, when: (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file cabinet.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Measures to unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

(1) Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to staff Health Physicists, staff Physical Science Technicians, and administrative personnel of the branch.

(2) Physical Safeguards: Records are generally stored in locked file cabinets or in cabinets that are in rooms that can be locked during off-duty hours.

(3) Procedural Safeguards: Access to files is strictly limited to Radiation Safety Branch personnel staff. Records may be removed from files only at the request of authorized personnel. For computerized records, access is controlled by the use of security codes known only to authorized users.

RETENTION AND DISPOSAL:

Records are retained in accordance with the NIH Records Control Schedule, items 1300–B–13 through 16. The records control schedule may be obtained by writing to the system manager at the address below.

SYSTEM MANAGER AND ADDRESS:

Chief, Data and Analytical Services Section, Radiation Safety Branch, ORS, Building 21, Room 233, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to System Manager to determine if a record exists.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing, a responsible representative, who may be a physician, who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Write to the official under notification procedures above, and reasonably identify the record and specify the information to be contested, the corrective action sought, and the reasons for the correction, with supporting justification.

RECORD SOURCE CATEGORIES:

Individual, previous employers and educational institutions.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0008

SYSTEM NAME:

Administration: Radiation Workers Monitoring, HHS/NIH/ORS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 21, Rooms 134, NIH, 9000
Rockville Pike, Bethesda, MD 20892
and
Building 12, Computer Center, 9000
Rockville Pike, Bethesda, MD 20892

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NIH workers using radioactive materials or radiation producing equipment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Radiation exposure incident reports, film badge exposure reports, urine and whole body counting reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7902.

PURPOSE OF THE SYSTEM:

(1) To assure legal compliance with requirement of Nuclear Regulatory Commission to maintain internal and external radiation exposure data and any radiation incident follow-up reports. (2) To monitor personnel exposures in order that they be maintained at the lowest levels reasonably achievable.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Radiation exposure history may be transferred to new employer or to Nuclear Regulatory Commission on their request.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when: (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such Records by the Department of Justice court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in card file and on computer tapes.

RETRIEVABILITY:

Records are retrieved by name and group number.

SAFEGUARDS:

Measures to unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

(1) Authorized Users: Access to information stored is limited to the system manager and Radiation Safety Branch (RSB) staff.

(2) Physical Safeguards: Information is filed in cabinets in Building 21 or in computer disc files or magnetic drum mass storage. Building 21 is locked during non-working hours. In addition there is a security fence with locked gate surrounding Building 21. File cabinets are in rooms with RSB employees who monitor access to the information therein.

(3) Procedural Safeguards: Access to computer files is limited only to personnel who know the account initial set assigned by the Division of Computer Research and Technology (DCRT), file names, storage locations, and keywords protecting these files. Access to file cabinets is controlled by office personnel who personally recognize RSB staff members.

RETENTION AND DISPOSAL:

Years at NIH: Indefinite.

SYSTEM MANAGER AND ADDRESS:

Chief, Data and Analytical Services Section, Radiation Safety Branch, DS, NIH, Building 21, Room 283, 9000 Rockville Pike, Bethesda, MD 20892

NOTIFICATION PROCEDURE:

Write to the System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Write to the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested, the corrective action sought, and the reasons for the correction, with supporting justification.

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RECORD SOURCE CATEGORIES:

Previous employer and education institutions, laboratory supervisor.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0010

SYSTEM NAME:

Research Resources: Registry of Individuals Potentially Exposed to Microbial Agents, HHS/NIH/NCI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Landow Building, Room 9A22, 7910 Woodmont Ave., Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals potentially exposed to biohazardous microbial agents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Microbial agents registry.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241.

PURPOSE OF THE SYSTEM:

1. To serve as a base for health and safety for individuals and organizations involved in use of potentially hazardous agents.
2. To identify potential hazards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders and on magnetic tape.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Authorized Users: Employees authorized to use the records include professional staff in the Biological Carcinogenesis Branch who have been informed of the need for maintaining confidentiality of the records.

Physical Safeguards: Office records are kept in closed cabinets in offices which are locked during off-duty hours.

Procedural Safeguards: Access to the file is strictly controlled by the system manager and his designee, and records may be removed from files only at the request of the system manager or other authorized employee. Access to computerized records is controlled by the use of security codes known only to the authorized users.

The particular safeguards implemented at each site are developed in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS.hf: 45–13, and part 6, "ADP Systems Security", of the HHS ADP Systems Manual.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER AND ADDRESS:

Chief, Biological Carcinogenesis Branch, NCI, Landow Building, Room 9A22, 7910 Woodmont Ave., Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to the System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Information is obtained from individuals and/or organizations providing specimens.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0012

SYSTEM NAME:

Clinical Research: Candidate Normal Volunteer Records, HHS/NIH/CC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 10, Room 2N–230, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Normally healthy individuals who volunteer to participate in NIH studies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Program application, health questionnaire and record of participation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 263.

PURPOSE OF THE SYSTEM:

1. To determine suitability for participation in the normal volunteer program.
2. To document remuneration of normal volunteers.
3. To provide a record of participation to be used (a) in writing letters of recommendation/reference for the volunteer, and (b) preparing reports on the normal volunteer program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Clinical research data are made available to approved or collaborating researchers, including HHS contractors and grantees.

Certain infectious diseases may be reported to state government as required by law.

Information may be used to respond to congressional inquiries for constituents concerning admission to the NIH Clinical Center.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Program applications and health questionnaires are stored in file folders. Records of participation are stored on index cards.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Authorized Users: Access is granted only to the Normal Volunteer Program staff in the Office of Special Programs and to NIH physicians who have requested the recruitment of volunteers for their clinical research projects.

Physical Safeguards: Record facilities are locked when system personnel are not present.

Procedural Safeguards: Access to the files is strictly controlled by the files staff. Records may be removed from the file only at the request of the System Manager or other authorized employees.

RETENTION AND DISPOSAL:

Program applications and health questionnaires are kept for 36 months (3 years) after an individual leaves NIH. Applications which are eligible but not accepted may be kept for 1 year.

SYSTEM MANAGER AND ADDRESS:

Assistant Director for Special Program, Building 10, Room 2N–230, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to the System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of, or access to, a medical record shall, at the time the request is made, designate in writing, a responsible representative, who may be a physician, who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

To obtain access to a record, contact: Assistant Director for Special Programs, Building 10, Room 2N226, NIH, 9000 Rockville Pike, Bethesda, MD 20892, and provide the information described under Notification Procedures above. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Write to the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested, the corrective action sought, and the reasons for the correction, with supporting justification.

RECORD SOURCE CATEGORIES:

Volunteer, sponsoring contractor.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0013

SYSTEM NAME:

Clinical Research: Preadmission Medical Records, HHS/NIH/CC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 31, Room 1C255, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Potential patients.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical history and letters from individuals and referring physicians.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 248.

PURPOSE OF THE SYSTEM:

To determine appropriateness of individual for participation in clinical research projects.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be used to respond to congressional inquiries for constituents concerning admission to the NIH Clinical Center.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Authorized Users: The patient referral staff maintains the records in this system and grants regular access only to physicians and dentists participating in patient care at the Clinical Center, NIH. Physical Safeguards: All record facilities are locked when system personnel are not present.

PROCEDURAL SAFEGUARDS:

Access to the file is strictly controlled by the files staff. Records may be removed from the file only at the request of the System Manager or other authorized employees.

RETENTION AND DISPOSAL:

Years at NIH: 3. Disposal methods include burning or shredding paper materials.

SYSTEM MANAGER AND ADDRESS:

Chief, Office of Clinical Reports & Inquiries, Building 31, Room 2B58 NIH,9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to the Systems Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the

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request is made, designate in writing, a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

To obtain access to a record, contact:
Director, Clinical Center, Building 10,
Room 2C-124, NIH, 9000 Rockville Pike,
Bethesda, MD 20892.

and provide the information described under Notification Procedures above. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Write to the official at the address specified under notification procedures above, and reasonably identify the record and specify the infonmation to be contested, the corrective action sought, and the reasons for the correction, with supporting justification.

RECORD SOURCE CATEGORIES:

Referring physicians, subject individuals, families or members of Congress.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0014

SYSTEM NAME:

Clinical Research: Student Records, HHS/NIH/CC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 10, Room 2N-222(A), NIH, 9000 Rockville Pike, Bethesda, MD 20892.

Write to the System Manager at the address below for the address of any Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Potential and accepted Medical Staff and Research Fellows, medical students, and other students in NIH training programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application forms, transcripts, references, evaluations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241.

PURPOSE OF THE SYSTEM:

1. To identify candidates for Medical Staff and Research Fellow, clinical elective, and other training positions.
2. To maintain a permanent record of those individuals who have received clinical research training at the NIH for historical and reference uses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be used to respond to congressional inquiries for constituents concerning admission to the program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE.

RECORDS ARE STORED IN FILE FOLDERS.

Retrievability:

Records are retrieved by name and year.

SAFEGUARDS:

Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to health care personnel of the NIH who are involved in the evaluation and selection of training candidates.

Physical Safeguards: Records are maintained in locked cabinets with access limited to authorized personnel (systems manager and staff).

Procedural Safeguards: Access to the file is strictly controlled by the files staff. Records may be removed from the file only at the request of the System Manager or other authorized employees.

RETENTION AND DISPOSAL:

Years at NIH: Records may be retired to a Federal Records Center and subsequently disposed of in accordance with the NIH Records Control Schedule. The records control schedule may be obtained by writing to the System Manager at the address below.

SYSTEM MANAGER AND ADDRESS:

Assistant Director for Special Programs, Building 10, Room 2N224, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to the System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

To obtain access to a record, contact the System Manager at the above address and provide the information described under Notification Procedures above. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Write to the System Manager at the address specified above, and reasonably identify the record and specify the information to be contested, the corrective action sought, and the reasons for the correction, with supporting justification.

RECORD SOURCE CATEGORIES:

Applicants, universities and teachers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0042

SYSTEM NAME:

Clinical Research: National Institute of Dental Research Patient Records, HHS/NIH/NIDR.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 10, Room 1S217A, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients and other participants in current and past research projects of the National Institute of Dental Research (NIDR).

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical and dental histories, dental pathologies and therapies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 285h.

PURPOSE OF THE SYSTEM:

(1) To record the diagnosis and treatment of patients with diseases of

the mouth, tongue, teeth and surrounding tissues;

(2) To record the normal condition of the mouth, tongue, teeth and surrounding tissues of individuals referred to the dental clinic;

(3) To provide clinical data for research into the etiology, treatment and prevention of oral diseases;

(4) For review and planning of the NIDR clinical program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the clinical and research purposes for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records. Certain infectious diseases are reported to state governments as required by law.

Information may be used to respond to congressional inquiries for constituents concerning admission to the NIH Clinical Center.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, when a claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name and hospital ID number.

SAFEGUARDS:

Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to dentists, physicians, dental hygienists, dental assistants and other health care personnel involved in the care and treatment of patients in the NIDR dental clinic, and to referring professionals. Other one time and special access by other employees is granted on a need to know basis as specifically authorized by the System Manager.

Physical Safeguards: Records are stored in a cabinet which is locked at all times when not in use.

Procedural Safeguards: Access is controlled by clerical staff of the Dental Clinic during clinic hours, and by the Officer of the Day when the clinic is closed.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule, Manual Chapter 1743 (HHS Records Management Manual, Appendix B-361), Manual Chapter 1743, item 3000-G-3, which allows records to be kept as long as they are useful in scientific research. Records will be destroyed by shredding or burning.

SYSTEM MANAGER AND ADDRESS:

Chief Clinical Investigations and Patient Care Branch, NIDR, Building 10, Room 1S-217A, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists contact: NIDR Privacy Act Coordinator, Westwood Building, Room 535, 5333 Westbard Avenue, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification.

RECORD SOURCE CATEGORIES:

Individual, parents or guardians.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0044

SYSTEM NAME:

Clinical Research: Sensory Testing Research Program, HHS/NIH/NIDR.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 31, Room 1S217A, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Infants, children and adults participating in the Sensory Testing Research Program of the National Institute of Dental Research (NIDR).

CATEGORIES OF RECORDS IN THE SYSTEM:

Test results, extracts from medical records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 288a.

PURPOSE OF THE SYSTEM:

(1) To record the medical/dental histories of individuals participating in the Sensory Testing Research Program;

(2) To record the results of chemosensory tests of individuals participating in the Sensory Testing Research Program;

(3) For research on sensitivity to oral nasal stimulation;

(4) For review and planning of the Clinical Investigations and Patient Care Branch program.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to HHS contractors, grantees, referring health professionals and collaborating researchers and their staff in order to accomplish the clinical and research purposes for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

Certain infectious diseases are reported to state governments as required by law.

Information may be used to respond to congressional inquiries for constituents concerning admission to the NIH Clinical Center.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, when a claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders and data books.

RETRIEVABILITY:

Records are retrieved by name, date of observation and age of subject.

SAFEGUARDS:

Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to Clinical Investigations Section staff, to scientist colleagues by invitation of the principal investigator and to referring professionals. Other one time and special access by other employees is granted on a need to know basis as specifically authorized by the System Manager.

Physical Safeguards: Records are stored in rooms which are locked at all times when not in use. Computer terminals are in secured areas.

Procedural Safeguards: Access is controlled by Clinical Investigation Section staff.

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

These safeguards are in compliance with the standards of chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS.hf: 45–13, and part 6, ADP Systems Security, of the HHS ADP Systems Manual.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule (HHS Records Management Manual, Appendix B–361), item 3000–G–3, which allows records to be kept as long as they are useful in scientific research. Disposal is by shredding or burning.

SYSTEM MANAGER AND ADDRESS:

Research Physiologist, Clinical Investigations, NIDR, Building 10, Room 1A05, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists contact: NIDR Privacy Act Coordinator, Westwood Building, Room 535, 5333 Westbard Avenue, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

09–25–0046

SYSTEM NAME:

Clinical Research: Catalog of Clinical Specimens from Patients, Volunteers and Laboratory Personnel, HHS/NIH/NIAID.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 7, Rooms 301 and 202, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients, volunteers, laboratory personnel in the National Institute of Allergy and Infectious Diseases (NIAID).

CATEGORIES OF RECORDS IN THE SYSTEM:

Clinical specimens, attendant data and laboratory results.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 289a, 289c.

PURPOSE OF THE SYSTEM:

For diagnostic and epidemiologic studies of viral respiratory diseases and hepatitis, conducted by NIAID staff.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

Certain infectious diseases are reported to state governments as required by law.

Information may be used to respond to congressional inquiries for constituents concerning admission to the NIH Clinical Center.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, when a claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in data books.

RETRIEVABILITY:

Records are retrieved by name, patient or study number.

SAFEGUARDS:

Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to HHS scientists conducting research, and staff whose duties require the use of such information. Other one time and special access by other employees is granted on a need to know basis as specifically authorized by the System Manager.

Physical Safeguards: Data books are kept in locked rooms. Offices are locked during off-duty hours.

Procedural Safeguards: Access to files is strictly controlled by files staff. Records may be removed from files only at the request of the System Manager or other authorized employee.

RETENTION AND DISPOSAL:

Records are retained in accordance with the NIH Records Control Schedule, item 3000-G-3. The records control schedule may be obtained by writing to the System Manager at the address below.

SYSTEM MANAGER AND ADDRESS:

Chief, Respiratory Viruses Section, LID, NIAID, Building 7, Room 104, NIH, 9000 Rockville Pike, Bethesda, MD 20892

and

Chief, Hepatitis Virus Section, NIAID, Building 7, Room 202, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to Privacy Act Coordinator, NIAID, Westwood Building, Room 703, 5333 Westbard Avenue, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedure above. Requesters should also reasonably specify the record contents being sought. You may also request a list of accountable disclosures that have been made of your record.

CONTESTING RECORD PROCEDURE:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Information contained in these records is obtained directly from individual participants and from medical records, field study records, and clinical research observations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0048

SYSTEM NAME:

Clinical Research: Serology-Epidemiology Parasite Research, HHS/NIH/NIAID.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Rocky Mountain Laboratories, NIH, Hamilton, MT 59840.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Blood or parasite donors participating in serology-epidemiology parasite research of the National Institute of Allergy and Infectious Diseases (NIAID).

CATEGORIES OF RECORDS IN THE SYSTEM:

Results of blood tests and possible case histories.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 289a, 289c.

PURPOSE OF THE SYSTEM:

For serologic and epidemiologic studies on parasitic and rickettsial diseases (Rocky Mountain spotted fever, in particular) conducted by NIAID staff.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

Certain infectious diseases are reported to state governments as required by law.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, when a claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or

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necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to HHS scientists conducting research, and staff whose duties require the use of such information. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

Physical Safeguards: Offices are locked during off-duty hours.

Procedural Safeguards: Access to files is strictly controlled by files staff. Records may be removed from files only at the request of the system manager or other authorized employee.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule, Manual Chapter 1743 (HHS Records Management Manual, Appendix B-361), item 3000-G-3, which allows records to be kept as long as they are useful in scientific research. Records which are judged to have no further reference value are destroyed or burned.

SYSTEM MANAGER AND ADDRESS:

Chief, Rocky Mountain Operations Branch, Rocky Mountain Laboratories, NIH, Hamilton, MT 59840.

NOTIFICATION PROCEDURE:

To determine if a record exists write to: Privacy Act Coordinator, NIAID, Westwood Building, Room 703, Westbard Avenue, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

Individuals seeking notification of or access to medical records should designate a representative (including address) who may be a physician, other health professional, or other responsible individual, who would be willing to review the record and inform the subject individual of its contents, at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as notification procedure above. Requesters should also reasonably specify the record contents being sought. You may also request a list of accountable disclosures that have been made of your record.

CONTESTING RECORD PROCEDURE:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Personal physician of donor and state health departments.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0049

SYSTEM NAME:

Clinical Research: Atlanta Federal Prison Malaria Research Projects, HHS/NIH/NIAID.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 8, Room 124, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Prisoners in the Atlanta Federal Prison who have volunteered to participate in malaria research studies of the National Institute of Allergy and Infectious Diseases (NIAID).

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical history records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 289a, 289c.

PURPOSE OF THE SYSTEM:

For malaria research studies of the NIAID.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Certain infectious diseases are reported to state governments as required by law.

A record may be disclosed for a research purpose when the Department:

(A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

(B) Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(C) Has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law;

(D) Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the

Justice Department has agreed to represent such employee, for example, when a claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to HHS scientists conducting research, and staff whose duties require the use of such information. Authorized users are located in the Malaria Section, Laboratory of Parasitic Diseases, NIAID. Other one time and special access by other employees is granted on a need to know basis as specifically authorized by the System Manager.

Physical Safeguards: Offices are locked during off-duty hours.

Procedural Safeguards: Access to files is strictly controlled by files staff. Records may be removed from files only at the request of the System Manager or other authorized employee.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule, Manual Chapter 1743 (HHS Records Management Manual, Appendix B-361), item 3000-G-3, which allows records to be kept as long as they are useful in scientific research. Disposal by shredding or burning.

SYSTEM MANAGER AND ADDRESS:

Head, Malaria Section, NIAID, Building 8, Room 124, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists write to: Privacy Act Coordinator, NIAID, Westwood Building, Room 703, 5333 Westbard Avenue, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as notification procedure above. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, reasonably identify the record, specify the information to be contested, state the corrective action sought and the reasons for the correction, with supporting justification.

RECORD SOURCE CATEGORIES:

Individuals, referring physicians, collaborating scientists, hospitals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0054

SYSTEM NAME:

Administration: Property Accounting, HHS/NIH/ORS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 13, Room 2W35, NIH, 9000 Rockville Pike, Bethesda, MD 20892
NIH Computer Center, Building 12, 9000 Rockville Pike, Bethesda, MD 20892
Building 31, Room B1C06, NIH, 9000 Rockville Pike, Bethesda, MD 20892
Office of Facilities Engineering, MD 102-01, NIEHS, P.O. Box 12233, Research Triangle Park, NC 27709.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the National Institutes of Health who are issued tools or card keys.

CATEGORIES OF RECORDS IN THE SYSTEM:

Property management.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 5 U.S.C. 5901; 5 U.S.C. 7903; 40 U.S.C. 318a; 42 U.S.C. 241.

PURPOSE OF THE SYSTEM:

Used for tool and card keys issuance and control.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, and on computer-sensitive media.

RETRIEVABILITY:

Records are retrieved by name.

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SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

(1) Authorized users: Employees who maintain records in this system are instructed to grant regular access to those officials whose duties require use of the information. Other one-time and special access is granted on a need to know basis and release is specifically authorized by the System Manager or other authorized personnel.

(2) Physical safeguards: Records are kept in officially designated office locations which are locked when unattended by office personnel.

(3) Procedural safeguards: Access to file rooms and files is strictly controlled by office personnel. Access to computerized records is controlled by keyword codes available to authorized users.

RETENTION AND DISPOSAL:

Records are kept until two years after an item is released by an individual.

SYSTEM MANAGER AND ADDRESS:

For tools: Administrative Officer, DES, Building 13, Room 2W35, NIH, 9000 Rockville Pike, Bethesda, MD 20892

For card keys: Security Specialist, DS, Protection and Security Management Branch, Building 31, Room B1C06, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to the System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Write to the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested, and the corrective action sought.

RECORD SOURCE CATEGORIES:

Data is obtained from the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0057

SYSTEM NAME:

Clinical Research: Burkitt's Lymphoma Registry, HHS/NIH/NCI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Landow Building, Room 3C25, 7910 Woodmont Avenue, Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients with Burkitt's Lymphoma in the registry of the National Cancer Institute.

CATEGORIES OF RECORDS IN THE SYSTEM:

Clinical abstracts, pathology reports, and other laboratory correspondence with attending physicians.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 281, 282.

PURPOSE OF THE SYSTEM:

Epidemiologic research on Burkitt's Lymphoma.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Disclosure may be made to a contractor when the Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to physicians, scientists and support staff of the National Cancer Institute whose duties require the use of such information. Other one time and special access by other employees is granted on a need to know basis as specifically authorized by the System Manager.

Physical Safeguards: Records are kept in a limited access area. Offices are locked during off-duty hours.

Procedural Safeguards: Access to manual files is strictly controlled by files staff. Files may be accessed only at the request of the System Manager or other authorized employee.

RETENTION AND DISPOSAL:

Records are retained in accordance with the NIH Records Control Schedule, item 3000-G-3. The records control schedule may be obtained by writing to the System Manager at the address below.

SYSTEM MANAGER AND ADDRESS:

System Manager, American Burkitt's Lymphoma Registry, Division of Cancer Etiology, NCI, Landow Building, Room 3C-25, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought.

RECORD SOURCE CATEGORIES:

Hospitals, physicians.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0060

SYSTEM NAME:

Clinical Research: Division of Cancer Treatment Clinical Investigations, HHS/NIH/NCI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 10, Room 13C103, NIH, 9000 Rockville Pike, Bethesda, MD 20892
and
Frederick Cancer Research Facility, Building 567, Room 129, Frederick, MD 21701.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All patients who have been hospitalized in the National Cancer Institute.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 281, 282.

PURPOSE OF THE SYSTEM:

1. Patient care and treatment. 2. Clinical and epidemiological research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Disclosure may be made to a contractor when the Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic tapes and on index cards.

RETRIEVABILITY:

Records are retrieved by patient name or number.

SAFEGUARDS:

Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to physicians, scientists and support staff of the National Cancer Institute, or its contractors, whose duties require the use of such information. Other one time and special access by other employees is granted on a need to know basis as specifically authorized by the System Manager.

Physical Safeguards: Records are kept in a limited access area. Offices are locked during off-duty hours. Input data for computer files is coded to avoid individual identification.

Procedural Safeguards: Access to manual files is strictly controlled by files staff. Files may be accessed only at the request of the System Manager or other authorized employee. Access to computer files is controlled through security codes known only to authorized users. Access codes are changed frequently.

RETENTION AND DISPOSAL:

Records are retained in accordance with the NIH Records Control Schedule, item 3000-G-3. The records control schedule may be obtained by writing to the System Manager at the address below.

SYSTEM MANAGER AND ADDRESS:

Head, Biostatistic and Data Management Branch, Building 10, Room 13C103, 9000 Rockville Pike, Bethesda, MD 20892
and
Chief, Clinical Research Branch, Biological Response Modifiers Program, Frederick Cancer Research Facility, Building 567 Room 129, Frederick, MD 21701.

NOTIFICATION PROCEDURE:

Write to System Manager for the appropriate location to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform

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the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought.

RECORD SOURCE CATEGORIES:

Hospital medical records, referring physician, referring hospitals, clinical laboratories, patient contact, and Central Tumor Registries.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0074

SYSTEM NAME:

Clinical Research: Division of Cancer Biology and Diagnosis Patient Trials, HHS/NIH/NCI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Blair Building, Room 3A05, 9000 Rockville Pike, Bethesda, MD 20892, and at hospitals and clinics, educational and research institutions, Federal, State or local government agencies, and private facilities.

CATAGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Cancer patients, individuals undergoing biopsies, and normal controls in clinical studies of the Division of Cancer Biology and Diagnosis (DCBD).

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical & treatment history.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 281, 282.

PURPOSE OF THE SYSTEM:

This system is used to support research: (1) To compare cancer diagnostic tests; (2) to develop statistical methodology; (3) to trace the natural history of the cancer under study; and (4) to develop, evaluate and verify biological markers for early cancer detection and for monitoring treatment success.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. Disclosure may be made to a contractor when the Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

4. In the event of litigation where the defendant is: (a) The Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in files and on computer tapes and discs.

RETRIEVABILITY:

Records are retrieved by coded identification number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

1. Authorized users: Employees who maintain records in this system are instructed to grant regular access only to physicians, scientists and support staff of the National Cancer Institute and its contractors whose duties require the use of such information. Other one time and special access by other employees is granted on a need to know basis as specifically authorized by the System Manager.

2. Physical safeguards: Records are kept in limited access areas. Offices are locked during off-duty hours. Input data for computer files is coded to avoid individual identification.

3. Procedural safeguards: Access to manual files is strictly controlled by files staff. Files may be accessed only at the request of the System Manager or other authorized employee. Access to computer files is controlled through security codes known only to authorized users. Access codes are changed frequently.

The particular safeguards implemented at each site are developed in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS.hf: 45–13, and part 6, ADP Systems Security, of the HHS ADP Systems Manual.

RETENTION AND DISPOSAL:

Records are retained in accordance with the NIH Records Control Schedule, item 3000–G–3. The records control schedule may be obtained by writing to the System Manager at the address below.

SYSTEM MANAGER AND ADDRESS:

Computer Systems Manager, Blair Building, Room 3A05, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Hospitals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0077

SYSTEM NAME:

Clinical Research: Biological Carcinogenesis Branch Human Specimen Program, HHS/NIH/NCI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

Landow Bldg., Rm. 9A22, 7910 Woodmont Avenue, Bethesda, MD 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Cancer and other patients, and normal donors of biopsy and tumor specimens, seen at clinically oriented organizations under contract to the National Cancer Institute. Both adults and children are covered.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical history and diagnostic information about the donor, information on the type of specimen, location of repository (if specimen is stored before use), and distribution record.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 281, 282.

PURPOSE OF THE SYSTEM:

(1) For cancer research, using by products of cancer treatment, such as biopsy and tumor specimens that would normally be discarded, to allow interpretation of experimental results; (2) To project future research needs; (3) To monitor and evaluate the NCI distribution system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, magnetic tape, discs.

RETRIEVABILITY:

Retrieved by name of donor and cross-referenced by identifying number, procurement source, and various epidemiological characteristics.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to physicians, scientists and support staff of the National Cancer Institute whose duties require the use of such information. Other one time and special access by other employees is granted on a need to know basis as specifically authorized by the System Manager.

2. Physical Safeguards: Records are kept in a limited access area. Offices are locked during off-duty hours. Input data for computer files is coded to avoid individual identification.

3. Procedural Safeguards: Access to manual files is strictly controlled by files staff. Files may be accessed only at the request of the System Manager or other authorized employee. Access to computer files is controlled through security codes known only to authorized users.

These practices are in compliance with the standards of chapter 45-13 of the HHS General Administration Manual, Supplementary chapter PHS of 45-13, and Part 6, "ADP System Security of the HHS Information Resource Management Manual.

RETENTION AND DISPOSAL:

Records are retained in accordance with the NIH Records Control Schedule, item 3000-G-3. The records control schedule may be obtained by writing to the System Manager at the address below.

SYSTEM MANAGER AND ADDRESS:

Deputy Chief, Biological Carcinogenesis Branch, Division of Cancer Etiology, Landow Building, Room 9A-22, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of, or access to, a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or

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other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought.

RECORD SOURCE CATEGORIES:

Specimen Report Form filled out by the organization providing specimens.

Systems exempted from certain provisions of the act:

None.

09-25-0087

SYSTEM NAME:

Administration: Employees and Consultants. HHS/NIH/NIAID.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Write to System Manager at the address below for the address of the Federal Records Center where records from this system are stored.

Building 31, Room 7A32, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former key professional employees of the Institute and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Press releases, curriculum vitae and photographs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 289a.

PURPOSE OF THE SYSTEM:

For background records to provide public announcements on National Institute of Allergy and Infectious Diseases (NIAID) Council members, advisors and guest lecturers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

1. Authorized users: Employees who maintain records in this system are instructed to grant regular access only to staff whose duties require the use of such information. Authorized users are located in the Office of the Director, NIAID. Other one time and special access by other employees is granted on a need to know basis as specifically authorized by the System Manager.

2. Physical Safeguards: Records in this system are stored in file folders which are kept in locked cabinets. The building is locked during off duty hours.

3. Procedural Safeguards: Access to files is strictly controlled by files staff. Records may be removed from files only at the request of the System Manager or other authorized employee.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule, Manual Chapter 1743 (HHS Records Management Manual, Appendix B-361), item 8000-A-1.

SYSTEM MANAGER AND ADDRESS:

Chief, Office of Research Reporting & Public Response, Building 31, Room 7A32, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as record notification procedures. Requesters should also reasonably specify the record contents being sought. You may also request a list of accountable disclosures that have been made of your record.

CONTESTING RECORD PROCEDURE:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Individuals and newspaper clippings.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0115

SYSTEM NAME:

Administration: Curricula Vitae of Consultants and Clinical Investigators, HHS/NIH/NIAID.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Write to System Manager at the address below for the address of the Federal Records Center where records are stored.

Building 31, Room 747, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Consultants and Clinical Investigators under National Institute of Allergy and Infectious Diseases (NIAID) Investigational New Drug Applications.

CATEGORIES OF RECORDS IN THE SYSTEM:

Curriculum vitae.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 USC 241, 289a.

PURPOSE OF THE SYSTEM:

(1) To maintain a record of the investigators under Investigational New Drug (IND) applications; (2) To appoint consultants to the Clinical Research Subpanel (CRS).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective represention of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in books.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: NIAID Privacy Act Coordinator, Room 703, Westwood Building, 5333 Westbard Avenue, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as record notification procedures. Requesters should also reasonably specify the record contents being sought. You may also request a list of accountable disclosures that have been made of your record.

CONTESTING RECORD PROCEDURE:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Individuals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

09-25-0117

SYSTEM NAME:

International Activities: US-Japan Program Panel Members, HHS/NIH/NIAID.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Westwood Building, Room 749, 5333 Westbard Avenue, Bethesda, MD 20892.

Write to System Manager at the address below for the address of the Federal Records Center where records are stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Panel Members of the U.S. Japan Cooperative Medical Science Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters of appointment, curriculum vitae & correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 USC 241, 289a.

PURPOSE OF THE SYSTEM:

(1) For use in administering the U.S.-Japan Cooperative Medical Science program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has any interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

1. Authorized Users: Employees who maintain records in this system are instructed to grant access only to National Institute of Allergy and Infectious Diseases (NIAID) staff whose duties require the use of such information. Authorized users are located in; the Microbiology and Infectious Diseases Program, NIAID. Other one time and special access by other employees is granted on a need to know basis as specifically authorized by the System Manager.

2. Physical Safeguards: Building is locked during off-duty hours.

3. Procedural Safeguards: Access to files is strictly controlled by files staff. Records may be removed from files only at the request of the System Manager or other authorized employee.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule, Manual Chapter 1743 (HHS Records Management Manual, Appendix B-361), item 1100-J-a, which allows records to be kept for five years. Records are to be offered to the National Archives when 20 years old.

SYSTEM MANAGER AND ADDRESS:

Special Assistant to the Director, Microbiology and Infectious Diseases, Program, NIAID, Westwood Building, Room 737, 5333 Westbard Avenue, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: NIAID Privacy Act Coordinator, Room 703, Westwood Building, 5333 Westbard Avenue, Bethesda, MD 20892.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a

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criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as record notification procedures. Requesters should also reasonably specify the record contents being sought. You may also request a list of accountable disclosures that have been made of your record.

CONTESTING RECORD PROCEDURE:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Panel members.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0133

SYSTEM NAME:

Clinical Research: Kidney Transplant Histocompatibility Study (KTHS) HHS/NIH/NIAID.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records included in this system are located in hospitals, research foundations, and universities under contract, in Federal Records Centers and in the National Institute of Allergy and Infectious Diseases (NIAID) facilities in Bethesda, MD. Write to the System Manager at the address below for the addresses of current locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients who have received kidney transplants and donors of kidneys transplanted at participating institutions during the period January 1, 1974, through December 31, 1976.

CATEGORIES OF RECORDS IN THE SYSTEM:

Clinical and medical records containing information on clinical examinations, laboratory findings, and related research records. For kidney recipients, a demographic profile is also included.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241a, and 289c.

PURPOSE OF THE SYSTEM:

(1) To study the relevance of tissue typing to the outcome of kidney transplants. (2) To study the influence of organ preservation techniques and various surgical and medical therapies on the outcome of kidney transplants.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

2. In the event of litigation where the defendant is: (a) The Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

3. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to protect such records from improper disclosure.

4. Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessments, medical audits or utilization review.

5. Certain infectious diseases are reported to State Governments as required by law.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, punched cards, and magnetic tapes or discs.

RETRIEVABILITY:

Information is retrieved by name and location of study and by transplant number.

SAFEGUARDS:

1. Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to NIAID staff whose duties require the use of such information. Authorized users are located in the Genetics and Transplantation Biology Branch, Immunology and Allergic and Immunologic Diseases Program, NIAID.

2. Physical Safeguards: Records in this system are stored in locked cabinets. Access to the computer files is by key word.

3. Procedural Safeguards: Access to files is strictly controlled by files staff. Records may be removed from files only at the request of the System Manager or other authorized employee. For computerized records, access is controlled by the use of security codes known only to authorized users.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule, Manual Chapter 1743 (HHS Records Management Manual, Appendix B-361), item 3000-G-3, which allows records to be kept as long as they are useful in scientific research. Disposal is by burning or shredding and computer tapes are erased.

SYSTEM MANAGER AND ADDRESS:

Chief, Genetics and Transplantation Biology Branch, IAIDP, National Institute of Allergy and Infectious Diseases, NIH, Westwood Building, Room 754, 5333 Westbard Avenue, Bethesda, Maryland, 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: Privacy Act Coordinator, NIAID, Westwood Building, Room 703, 5333 Westbard Avenue, Bethesda, Maryland 20892, and provide the following information: 1. Full name; 2. Name and location of clinical trial facility; 3. Approximate dates of enrollment in the research study.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate a responsible representative in writing who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedure. Requesters should also reasonably specify the record contents being sought. You may also request a list of accountable disclosures that have been made of your record.

CONTESTING RECORD PROCEDURE:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Information contained in these records is obtained directly from individual participants and from medical records and clinical research observations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0143

SYSTEM NAME:

Biomedical Research: Records of Subjects in Clinical, Epidemiologic and Biometric Studies of the National Institute of Allergy and Infectious Diseases, HHS/NIH/NIAID.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

At National Institutes of Health facilities in Bethesda, Maryland, and at hospitals, medical schools, universities, research institutions, commercial organizations, state agencies, and collaborating Federal agencies. Inactive records may be retired to Federal Records Centers. A list of locations is available upon request from the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients with infectious diseases, immunologic diseases involving adverse reactions of the body (e.g. allergic reactions) and related diseases (e.g. Acquired Immunodeficiency Disease Syndrome/AIDS), normal healthy volunteers who serve as controls for comparison with patients, relatives of patients and other individuals whose characteristics or conditions are being studied for possible connections with the occurrence of the diseases under investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a variety of clinical, medical, and epidemiological information resulting from or contained in direct observations, medical records and other histories, vital statistics reports, records on biological specimens (e.g., blood, urine, etc.), personal interviews, questionnaires, progress reports, correspondence or research findings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 289a, 289c.

PURPOSE OF THE SYSTEM:

This system will be used to support:

1. Epidemiologic, clinical and biometric investigations into the causes, nature (morbidity and mortality), outcome, therapy and cost of infectious, immunologic and related diseases;

2. Review and evaluation of the progress of these research projects, and identification of and planning for improvements or for additional research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to protect such records from improper disclosure.

2. Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessments, medical audits or utilization review.

3. A record may be disclosed for a research purpose, when the Department:

(A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

(B) Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(C) Has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except: (a) In emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law;

(D) Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

4. In the event the Department deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosures may be made to the Department of Justice for the purpose of obtaining its advice.

5. The Department contemplates that it may contract with one or more private firms for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor will be required to maintain Privacy Act safeguards with respect to such records.

6. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in

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defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

7. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data may be stored in file folders, computer-accessible forms (e.g. tapes or discs), punched cards, bound notebooks, microfilm, charts, graphs, and X-rays.

RETRIEVABILITY:

Information is retrieved by name and/or participant identification number.

SAFEGUARDS:

Access to or disclosure of information is limited to collaborating researchers, contractors and NIAID employees who are involved in the conduct, support or review and evaluation of the research activities supported by this system. Contractors and collaborating researchers are required to comply with the provisions of the Privacy Act and with Department regulations.

Data are kept in secured areas (e.g. rooms which are locked when not in regular use, buildings with controlled access). Data stored in computer-accessible form is accessed through the use of key words known only to principal investigators or authorized personnel; all other information is stored in locked files.

These and other appropriate safeguards are implemented in each project in accordance with chapter 45-13 of the HHS General Administration Manual, supplementary chapter PHS hf. 45-13, and part 6, Systems Security, of the HHS Information Resources Management Manual.

RETENTION AND DISPOSAL:

Records at contractor facilities are retained and destroyed according to the terms of the contract. Records at NIAID facilities are retained and destroyed in accordance with the authority provided in the NIH Records Control Schedule (HHS Records Management Manual, Appendix B-361), item 3000-C-3, which allows the records to be kept until the System Manager determines that the data has no further value for scientific research. Disposal methods include burning or shredding hard copy and erasing computer tapes and discs.

SYSTEM MANAGER AND ADDRESS:

Chief, Epidemiology and Biometry Section, MIDP, National Institute of Allergy and Infectious Diseases, Westwood Building, Room 739, 5333 Westbard Avenue, Bethesda, Maryland 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: NIAID Privacy Act Coordinator, Room 703, Westwood Building, 5333 Westbard Avenue, Bethesda, MD 20892, and provide the following information: 1. System name; 2. Complete name and home address at the time of the study; 3. Birthdate; 4. Facility conducting study; 5. Disease type (if known); 6. Approximate dates of enrollment in the research study.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to five thousand dollar fine.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing, a responsible representative who may be a physician, other health professional, or other responsible individual, who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. You may also request a list of accountable disclosures that have been made of your record.

CONTESTING RECORD PROCEDURE.

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Information contained in these records is obtained directly from individual participants, from physicians, research investigators and other collaborating persons and from medical records and clinical research observations at hospitals, HHS agencies, universities, medical schools, research institutions, commercial institutions, state agencies, collaborating Federal agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0148

SYSTEM NAME:

Contracted and Contract-Related Research: Records of Subjects in Clinical, Epidemiological and Biomedical Studies of the National Institute of Neurological and Communicative Disorders and Stroke, HHS/NIH/NINCDS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

At National Institutes of Health facilities in Bethesda, Maryland, and at hospitals, medical schools, universities, research institutions, commercial organizations, state agencies, and collaborating Federal agencies. Inactive records may be retired to Federal Records Centers. A list of locations is available upon request from the respective System Managers of the subsystems included in this notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients with neurological diseases, communicative disorders, stroke, and related diseases; normal, healthy volunteers who serve as controls for comparison with patients; relatives of patients; and other individuals whose characteristics or conditions are suited for possible connections with the occurrence of the diseases under investigations. Subject individuals include both adults and children.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a variety of clinical, biomedical, and epidemiological information resulting from or contained in direct observations, medical records and other histories, vital statistics reports, records on biological specimens (e.g., blood, urine, etc.), personal interviews, questionnaires, progress reports, correspondence, or research findings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 241, Research and Investigation, and 289a, Establishment of Institutes, of the Public Health Service Act (42 U.S.C. 301, 431).

PURPOSE OF THE SYSTEM:

This system will be used to support (1) contracted and contract-related epidemiological, clinical and biometric investigations into the causes, nature, outcome, therapy, prevention and cost of neurological and communicative disorders and stroke; (2) review and evaluation of the progress of these research projects, and identification and planning for improvements or for additional research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to protect such records from improper disclosure.

2. Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessments, medical audits or utilization review.

3. A record may be disclosed for a research purpose, when the Department:

(A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

(B) Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(C) Has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law;

(D) Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

4. In the event the Department deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosures may be made to the Department of Justice for the purpose of obtaining its advice.

5. The Department contemplates that it may contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor will be required to maintain Privacy Act safeguards with respect to such records.

6. In the event of litigation where the defendant is: (a) The Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such enployee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

7. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data may be stored in file folders, computer-accessible forms (e.g. tapes or discs), punched cards, bound notebooks, microfilm, charts, graphs and X-rays.

RETRIEVABILITY:

Information is retrieved by name and/or patient identification number.

SAFEGUARDS:

Access to or disclosure of information is limited to collaborating researchers, contractors and employees, and other authorized biomedical researchers who are involved in the conduct, support or review and evaluation of the research activities supported by this system. Contractors and collaborating or other researchers are required to comply with the provisions of the Privacy Act and with HHS Privacy Act regulations.

Data are kept in secured areas (e.g. rooms which are locked when not in regular use, buildings with controlled access). Data stored in computer-accessible form is accessed through the use of key words known only to principal investigators or authorized personnel; all other information is stored in locked files.

These and other appropriate safeguards are implemented in each project in accordance with chapter 45-13 of the HHS General Administration Manual, supplementary chapter PHS hf. 45-13, and Part 6, Systems Security, of the HHS Information Resources Management Manual.

RETENTION AND DISPOSAL:

Records at contractor facilities are retained and destroyed as specified in individual contracts. Records at NIH facilities are retained and destroyed in accordance with the NIH Records Control Schedule (HHS Records Management Manual, Appendix B-361), item 3000-G-3, which allows the records to be kept until the System Manager determines that the data has no further value for scientific research. Disposal methods include burning or shredding hard copy and erasing computer tapes and discs.

SYSTEM MANAGERS AND ADDRESSES:

NINCDS research activities are divided, functionally and administratively, into five programs and one office. In effect, there are six subsystems within this single umbrella system. System Managers have been

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designated for each subsystem as follows:

Chief, Office of Biometry and Field Studies, Federal Building, Room 7A12, 7550 Wisconsin Avenue, Bethesda, MD 20892

Director, Communicative Disorders Program, Federal Building, Room 1C11, 7550 Wisconsin Avenue, Bethesda, MD 20892

Director, Fundamental Neurosciences Program, Federal Building, Room 916, 7550 Wisconsin Avenue, Bethesda, MD 20892

Director, Neurological Disorders Program, Federal Building, Room 716, 7550 Wisconsin Avenue, Bethesda, MD 20892

Director, Stroke and Trauma Program, Federal Building, Room 8A08, 7550 Wisconsin Avenue, Bethesda, MD 20892

Director, Intramural Research Program, NIH Building 36, Room 5A05, 9000 Rockville Pike, Bethesda, MD 20892

NOTIFICATION PROCEDURE:

To detemine if a record exists, write to: NINCDS Privacy Act Coordinator, Federal Building, Room 816, 7550 Wisconsin Avenue, Bethesda, MD 20892, and provide the following information: 1. System name; 2. Complete name and home address at the time of the study; 3. Birthdate; 4. Facility conducting the study; 5. Disease type (if known); 6. Approximate dates of enrollment in the research study.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a 5,000 dollar fine.

Individuals seeking notification of or access to medical records should designate a representative (including address) who may be a physician, other health professional, or other responsible individual, who would be willing to review the record and inform the subject individual of its contents, at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notifications procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Write to the System Manager and reasonably identify the record, specify the information being contested and state the corrective action sought and the reasons for the correction.

RECORD SOURCE CATEGORIES:

Information in these records is obtained directly from individual participants, and from physicians, research investigators and other collaborating persons, and from medical records and clinical research observations at hospitals, HHS agencies, universities, medical schools, research institutions, commercial institutions, state agencies, and collaborating Federal agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0152

SYSTEM NAME:

Biomedical Research: Records of Subjects in National Institute of Dental Research Contracted Epidemiological and Biometric Studies, HHS/NIH/NIDR.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records included in this system are collected by contractors and are located in hospitals and clinics; research centers; educational institutions; commercial; local, State and Federal government agencies; and in National Institute of Dental Research (NIDR) facilities. Inactive records may be stored at Federal Records Centers. A list of locations and contracts is available upon request from the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Voluntary participants in epidemiological and biometric studies sponsored by NIDR, including adults and minors, both male and females, with known or suspected diseases or disorders of the teeth and supporting structures, as well as normal or nonsuspect individuals in control or study groups for purposes of comparison.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of medical and dental records and information resulting from personal interviews, questionnaires, or direct observation. The system may also include current addresses of study participants, radiographs, records on biological specimens (e.g., teeth, plaque, etc.), study models, computerized epidemiological data and correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 301, Research and Investigations and 422, National Institute of Dental Research, of the Public Health Service Act (42 U.S.C. 241, 288a).

PURPOSE:

This system is used to: 1. Support research on diseases and disorders of the oral cavity (teeth and their supporting structures); their causes and treatment; the incidence and prevalence of these diseases and disorders; and familial, demographic and behavioral factors related to their causes and treatment.

2. Provide data for program review, evaluation, planning, and administrative accountability.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff for the purpose of analyzing data and preparing scientific reports and articles in order to accomplish the research purpose for which the records are collected. The recipients are required to maintain Privacy Act safeguards with regards to such records.

2. Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessment, medical audits or utilization review.

3. A record may be disclosed for a research purpose, when the Department:

(A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

(B) Has determined that the research purpose, (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(C) Has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the audit, or (d) when required by law;

(D) Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

4. The Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor will be required to maintain Privacy Act safeguards with respect records.

5. Disclosure may be made to a congressional office from the record to an individual in response to an inquiry from the congressional office made at the request of the individual.

6. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data may be stored in file folders, magnetic tapes or disks, punched cards, or bound notebooks.

RETRIEVABILITY:

Information is retrieved by name and/or a participant identification number.

SAFEGUARDS:

(1) Authorized Users: Employees who maintain records in this systems are instructed to grant regular access only to contractor personnel; consultants to the contractor; the NIDR project officer; and NIDR employees whose duties require the use of such information. Access to the data controlled by the Project Director, the NIDR Project Officer, and/or the System Manager.

(2) Physical Safeguards: Records are stored in locked files or secured areas. Computer terminals are in secured areas.

(3) Procedural Safeguards: Names and other identifying particulars are deleted when data from original records is encoded for analysis. Encoded data is indexed by code numbers. Tables linking these code numbers with actual identifiers are maintained separately. Code numbers and identifiers are linked only if there is a specific need. Data stored in computers is accessed through the use of keywords known only to the principal investigators or authorized personnel. These keywords are changed frequently.

The particular safeguards implemented in each project will be developed in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS hf. 45–13, Part 6, "ADP Systems Security," of the HHS Information Resources Management Manual.

RETENTION AND DISPOSAL:

Records at contractor facilities are retained and disposed of under the authority of the institutional records control schedule. Records at NIDR facilities are retained and disposed of under the authority of the NIH Records Control Schedule (DHHS Records Management Manual, Appendix B–361), item 3000–G–3, which allows records to be kept as long as they are useful in scientific research.

Disposal methods include burning or shredding hard copy and erasing computer tapes and discs.

SYSTEM MANAGER AND ADDRESS:

Chief, Contract Management Section, Extramural Program, National Institute of Dental Research, Westwood Building, Room 521, 5333 Westbard Avenue, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

Write to: Privacy Act Coordinator, National Institute of Dental Research, Westwood Building, Room 535, 5333 Westbard Avenue, Bethesda, MD 20892; and provide the following information in writing: 1. Full name at time of participation in the study; 2. Name and description of the study; 3. Location and approximate dates of participation.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five-thousand dollar fine.

An individual who requests notification of, or access to, a medical or dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, the medical record of a child or incompetent person shall designate a family physician or other health professional (other than a family member) to whom the records, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURES:

Same as notification. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Contact the System Manager at the address above. The contestor must reasonably identify the record, specify in writing the information being contested, and state the corrective action sought, and the reason(s) for the corrective action, with supporting justification.

RECORD SOURCE CATEGORIES:

Information contained in these records is obtained directly from individual participants and from medical/dental and clinical research observations.

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SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0153

SYSTEM NAME:

Biomedical Research: Records of Subjects in Biomedical and Behavioral Studies of Child Health and Human Development, HHS/NIH/NICHD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records included in this system are located in hospitals and clinics, research centers, educational institutions, commercial organizations, local and State agencies, and other Executive Branch agencies of the Federal Government under contract to the National Institute of Child Health and Human Development (NICHD), and in NICHD facilities in Bethesda, Maryland. Inactive records may be stored at Federal Records Centers. A list of specific locations and contractors is available upon request from the System Manager, whose address is listed below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Participants in these studies include adults and children (a) who are presently or have been treated by the NICHD, (b) whose physical, genetic, social, economic, environmental, behavioral or nutritional conditions or habits are being studied by the NICHD, or (c) normal volunteers who have agreed to provide control data for purposes of comparison.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a variety of clinical, medical, and statistical information collected in biomedical and behavioral research studies, such as medical histories, vital statistics, personal interviews, questionnaires, current addresses of study participants, radiographs, records on biological specimens, study models, and correspondence from or about participants in these studies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 301, Research and Investigation, and Section 441, National Institute of Child Health and Human Development, of the Public Health Service Act as amended (42 U.S.C. Sections 241, 289d).

PURPOSES OF THE SYSTEM:

This system is used: 1. For program review, evaluation, planning, and administrative management for research on child health and human development; 2. to monitor the incidence, prevalence or development of the disease, condition, behavior, or health status under investigation; 3. to determine the relation of various factors (e.g., social, economic, environmental, physical, and medical) to the occurrence of the disease, condition, development, behavior, or health status under investigation; 4. to identify abnormal disease, condition, or health status and inform the Centers for Disease Control (CDC) or the Food and Drug Administration (FDA) of the existence of such conditions. CDC uses this information in fulfilling its congressionally mandated responsibility for the monitoring of disease and prevention of epidemics. FDA uses this information in carrying out its congressional mandate for controlling certain potentially harmful products.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff for the purpose of analyzing data and preparing scientific reports and articles in order to accomplish the research purpose for which the records are collected. The recipients are required to comply with the requirements of the Privacy Act with respect to such records.

2. Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessment, medical audits or utilization review.

3. The Department contemplates that it may contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor will be required to comply with the requirements of the Privacy Act with respect to such records.

4. Certain infectious diseases are reported to State governments as required by law.

5. A record may be disclosed for a research purpose, when the Department:

(A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

(B) Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(C) Has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law;

(D) Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

6. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

7. In the event of litigation where the defendant is: (a) The Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data may be stored in file folders, microfilm, magnetic tapes or disks, punched cards, or bound notebooks.

RETRIEVABILITY:

Information is retrieved by name and/or a participant identification number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

(1) Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to contractor personnel; consultants to the contractor; the NICHD project officer; and NICHD employees whose duties require the use of such information. One time and special access to the data is controlled by the System Manager, the NICHD Project Officer, and the Contract and/or Project Director.

(2) Physical Safeguards: Records are stored in locked files or secured areas. Computer terminals are in secured areas.

(3) Procedural Safeguards: Names and other identifying particulars are deleted when data from original records is encoded for analysis. Encoded data is indexed by code numbers. Tables linking these code numbers with actual identifiers are maintained separately. Code numbers and identifiers are linked only if there is a specific need, such as alerting the volunteer subjects to any findings in the study that might affect their health. Data stored in computers is accessed through the use of passwords/keywords known only to the principal investigators or authorized personnel. These passwords/keywords are changed frequently.

The particular safeguards implemented in each project will be developed in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS hf. 45–13; Part 6, "ADP Systems Security," of the HHS ADP Systems Manual, and the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule, Manual Chapter 1743 (HHS Records Management Manual, Appendix B–361), item 3000-G-3, which allows records to be kept as long as they are useful in scientific research.

Disposal methods include burning or shredding hard copy and erasing computer tapes and disks.

SYSTEM MANAGER AND ADDRESS:

Chief, Contracts Management Section, NICHD, Landow Building, Room 6C33, 7910 Woodmont Avenue, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: NICHD Privacy Act Coordinator, Building 31, Room 2A11, 9000 Rockville Pike, Bethesda, MD 20892; and provide the following information in writing: 1. Full name and address at time of participation in the study; 2. Name or description of the study; 3. Location and approximate dates of participation.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of, or access to, a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, the medical record of a child or incompetent person shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify his or her relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURES:

Same as notification procedure above. Requesters should also reasonably specify the record contents being sought. You may also request a list of accountable disclosures that have been made of your record.

CONTESTING RECORD PROCEDURES:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Information contained in these records is obtained directly from individual participants, medical and clinical research observations, and other federal agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0153

SYSTEM NAME:

Biomedical Research: Records of Subjects in Biomedical and Behavioral Studies of Child Health and Human Development, HHS/NIH/NICHD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records included in this system are located in hospitals and clinics, research centers, educational institutions, commercial organizations, local and State agencies, and other Executive Branch agencies of the Federal Government under contract to the National Institute of Child Health and Human Development (NICHD), and in NICHD facilities in Bethesda, Maryland. Inactive records may be stored at Federal Records Centers. A list of specific locations and contractors is available upon request from the System Manager, whose address is listed below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Participants in these studies include adults and children (a) who are presently or have been treated by the NICHD, (b) whose physical, genetic, social, economic, environmental, behavioral or nutritional conditions or habits are being studied by the NICHD, or (c) normal volunteers who have agreed to provide control data for purposes of comparison.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a variety of clinical, medical, and statistical information collected in biomedical and behavioral research studies, such as medical histories, vital statistics, personal interviews, questionnaires, current addresses of study participants, radiographs, records on biological specimens, study models, and correspondence from or about participants in these studies.

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 301, Research and Investigation, and Section 441, National Institute of Child Health and Human Development, of the Public Health Service Act as amended (42 U.S.C. Sections 241, 298d).

PURPOSES:

This system is used: 1. For program review, evaluation, planning, and administrative management for research on child health and human development; 2. to monitor the incidence, prevalence or development of the disease, condition, behavior, or health status under investigation; 3. to determine the relation of various factors (e.g., social, economic, environmental, physical, and medical) to the occurrence of the disease, condition, development, behavior, or health status under investigation; 4. to identify abnormal disease, condition, or health status and inform the Centers for Disease Control (CDC) or the Food and Drug Administration (FDA) of the existence of such conditions. CDC uses this information in fulfilling its congressionally mandated responsibility for the monitoring of disease and prevention of epidemics. FDA uses this information in carrying out its congressional mandate for controlling certain potentially harmful products.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff for the purpose of analyzing data and preparing scientific reports and articles in order to accomplish the research purpose for which the records are collected. The recipients are required to comply with the requirements of the Privacy Act with respect to such records.

2. Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessment, medical audits or utilization review.

3. The Department contemplates that it may contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor will be required to comply with the requirements of the Privacy Act with respect to such records.

4. Certain infectious diseases are reported to State governments as required by law.

5. A record may be disclosed for a research purpose, when the Department:

(A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

(B) Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(C) Has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law;

(D) Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

6. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

7. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data may be stored in file folders, microfilm, magnetic tapes or disks, punched cards, or bound notebooks.

RETRIEVABILITY:

Information is retrieved by name and/or a participant identification number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

(1) Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to contractor personnel; consultants to the contractor; the NICHD project officer; and NICHD employees whose duties require the use of such information. One-time and special access to the data is controlled by the System Manager, the NICHD Project Officer, and the Contract and/or Project Director.

(2) Physical Safeguards: Records are stored in locked files or secured areas. Computer terminals are in secured areas.

(3) Procedural Safeguards: Names and other identifying particulars are deleted when data from original records is encoded for analysis. Encoded data is indexed by code numbers. Tables linking these code numbers with actual identifiers are maintained separately. Code numbers and identifiers are linked only if there is a specific need, such as alerting the volunteer subjects to any findings in the study that might affect their health. Data stored in computers is accessed through the use of passwords/keywords known only to the principal investigators or authorized personnel. These passwords/keywords are changed frequently.

The particular safeguards implemented in each project will be developed in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS hf. 45–13;

Part 6, "ADP Systems Security," of the HHS Information Resources Manual, and the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule, Manual Chapter 1743 (HHS Records Management Manual, Appendix B-361), item 3000-G-3, which allows records to be kept as long as they are useful in scientific research.

Disposal methods include burning or shredding hard copy and erasing computer tapes and disks.

SYSTEM MANAGER AND ADDRESS:

Chief, Contracts Management Section, NICHD, Landow Building, Room 6C33, 7910 Woodmont Avenue, Bethesda, MD 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: NICHD Privacy Act Coordinator, Building 31, Room 2A11, 9000 Rockville Pike, Bethesda, MD 20892; and provide the following information in writing: 1. Full name and address at time of participation in the study; 2. Name or description of the study; 3. Location and approximate dates of participation.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five-thousand dollar fine.

An individual who requests notification of, or access to, a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, the medical record of a child or incompetent person shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify his or her relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURES:

Same as notification procedure above. Requesters should also reasonably specify the record contents being sought. You may also request a list of accountable disclosures that have been made of your record.

CONTESTING RECORD PROCEDURES:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Information contained in these records is obtained directly from individual participants, medical and clinical research observations, and other federal agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0156

SYSTEM NAME:

Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the National Institutes of Health, HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

This system of records is an umbrella system comprising separate sets of records located either in the organizations responsible for conducting evaluations or at the sites of programs or activities under evaluation. Locations include National Institutes of Health (NIH) facilities in Bethesda, Maryland, or facilities of contractors of the NIH. Write to the appropriate System Manager below for a list of current locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are those who provide information or opinions that are useful in evaluating programs or activities of the NIH, other persons who may participate in or benefit from NIH programs or activities; or other persons included in evaluation studies for purposes of comparison. Such individuals may include (1) participants in research studies; (2) applicants for and recipients of grants, fellowships, traineeships or other awards; (3) employees, experts and consultants; (4) members of advisory committees; (5) other researchers, health care professionals, or individuals who have or are at risk of developing diseases or conditions studied by NIH; or (6) persons who provide feedback about the value or usefulness of information they receive about NIH programs, activities or research results.

CATEGORIES OF RECORDS IN THE SYSTEM:

This umbrella system of records covers a varying number of separate sets of records used in different evaluation studies. The categories of records in each set depend on the type of program being evaluated and the specific purpose of the evaluation. In general, the records contain two types of information: (1) information identifying subject individuals, and (2) information which enables NIH to evaluate its programs and services.

(1) Identifying information usually consists of a name and address, but it might also include a patient identification number, grant number, Social Security Number, or other identifying number as appropriate to the particular group included in an evaluation study.

(2) Information used for evaluation varies according to the program evaluated. Categories of evaluative information include personal and medical data on participants in clinical and research programs; publications, professional achievements and career history of researchers; and opinions and other information received directly from individuals in evaluation surveys and studies of NIH programs.

The system does not include any master list, index or other central means of identifying all individuals whose records are included in the various sets of records covered by the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for this system comes from the following general authorities regarding the establishment of the National Institutes of Health, its general authority to conduct and fund research and to provide training assistance, and its general authority to maintain records in connection with these and its other functions (42 U.S.C. 203, 241, 289l–1 and 44 U.S.C. 3101).

PURPOSE OF THE SYSTEM:

This system supports evaluation of the policies, programs, organization, methods, materials, activities or services used by NIH in fulfilling its legislated mandate for:

(1) Conduct and support of biomedical research into the causes, prevention and cure of diseases;

(2) Support for training of research investigators;

(3) Communication of biomedical information.

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This system is not used to make any determination affecting the rights, benefits or privileges of any individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Disclosure may be made to HHS contractors and collaborating researchers, organizations, and State and local officials for the purpose of conducting evaluation studies or collecting, aggregating, processing or analyzing records used in evaluation studies. The recipients are required to protect the confidentiality of such records.

(2) Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessments, medical audits or utilization review.

(3) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data may be stored in file folders, bound notebooks, or computer-accessible media (e.g., magnetic tapes or discs).

RETRIEVABILITY:

Information is retrieved by name and/or participant identification number within each evaluation study. There is no central collection of records in this system, and no central means of identifying individuals whose records are included in the separate sets of records that are maintained for particular evaluation studies.

SAFEGUARDS:

A variety of safeguards is implemented for the various sets of records in this system according to the sensitivity of the data each set contains. Information already in the public domain, such as titles and dates of publications, is not restricted. However, sensitive information, such as personal or medical history or individually identified opinions, is protected according to its level of sensitivity. Records derived from other systems of records will be safeguarded at a level at least as stringent as that required in the original systems. Minimal safeguards for the protection of information which is not available to the general public include the following:

Authorized Users: Regular access to information in a given set of records is limited to NIH or to contractor employees who are conducting, reviewing or contributing to a specific evaluation study. Other access is granted only on a case-by-case basis, consistent with the restrictions required by the Privacy Act (e.g., when disclosure is required by the Freedom of Information Act), as authorized by the System Manager or designated responsible official.

Physical Safeguards: Records are stored in closed or locked containers, in areas which are not accessible to unauthorized users, and in facilities which are locked when not in use. Records collected in each evaluation project are maintained separately from those of other projects. Sensitive records are not left exposed to unauthorized persons at any time. Sensitive data in machine-readable form may be encrypted.

Procedural Safeguards: Access to records is controlled by responsible employees and is granted only to authorized individuals whose identities are properly verified. Data stored in computers is accessed only through the use of key words known only to authorized personnel. Contracts for operation of this system of records require protection of the records in accordance with these safeguards; NIH project and contracting officers monitor contractor compliance.

These practices are in compliance with the standards of chapter 45–13 of the HHS General Administration Manual, supplementary chapter PHS hf: 45–13, and Part 6, "ADP Systems Security," of the HHS Information Resource Management Manual.

RETENTION AND DISPOSAL:

Studies, analyses, reports, and statistical compilations created or collected in evaluation of NIH mission-related activities are scheduled for permanent retention by the National Archives as part of the historical record of the NIH, as provided by the NIH Records Control Schedule, section 1100–C. Working papers, extra copies, or records not used in evaluations of major programs of the NIH or any of its Bureaus, Institutes or Divisions are destroyed no later than 5 years after completion of the evaluation study (NIH Records Control Schedule, items 1100–C–12d, 1100–C–14b, 1100–C–15b, 1900–A–4). Disposal methods include burning or shredding of hard copy and erasing magnetic media.

POLICY COORDINATION FOR THIS SYSTEM IS PROVIDED BY:

Associate Director for Program Planning and Evaluation, National Institutes of Health, Building 1, Room 137, 9000 Rockville Pike, Bethesda, MD 20892.

SYSTEM MANAGERS AND ADDRESSES:

See Appendix 1.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the official of the organization responsible for the evaluation, as listed in Appendix 2. If you are not certain which component of NIH was responsible for the evaluation study, or if you believe there are records about you in several components of NIH, write to: NIH Privacy Act Coordinator, Building 31, Room 3B07, 9000 Rockville Pike, Bethesda, MD 20892.

Requesters must provide the following information: 1. Full name; 2. Name and location of the evaluation study or other NIH program in which the requester participated; 3. Approximate dates of participation.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing, a responsible representative, who may be a physician, other health professional, or other responsible individual, who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. You may also request a list of accountable disclosures that have been made of your record.

CONTESTING RECORD PROCEDURES:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Information contained in these records is obtained directly from individual participants; from systems of records 09–25–0036, "Grants: IMPAC (Grants/Contract Information), HHS/NIH/DRG," 09–25–0112, "Grants: Research, Research Training, Fellowship and Construction Applications and Awards, HHS/NIH/OD"; other records maintained by the operating programs of NIH; the National Academy of Sciences and other contractors; grantees or collaborating researchers; or publicly available sources such as bibliographies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix 1—System Managers

NIH, Office of the Director: Chief, Program Evaluation Branch, OPPE, NIH, Building 1, Room 234, 9000 Rockville Pike, Bethesda, MD 20892

National Heart, Lung and Blood Institute (NHLBI): Director, Office of Program Planning & Evaluation, NHLBI, NIH, Building 31, Room 5A03, Bethesda, MD 20892

National Library of Medicine (NLM): Special Assistant for Operations Research, Office of the Director, NLM, NIH, Building 38, Room 2S18, Bethesda, MD 20892

National Eye Institute (NEI): Associate Director for Program Planning, Analysis and Evaluation, NEI, NIH, Building 31, Room 6A25, Bethesda, MD 20892

National Institute on Aging (NIA): Evaluation Officer, NIA, NIH, Building 31, Room 5C11, Bethesda, MD 20892

National Institute of Allergy and Infectious Diseases (NIAID): Chief, Evaluation Section, Office of Program Planning and Evaluation, NIAID, NIH, Building 31, Room 7A19, Bethesda, MD 20892

National Institute of Child Health and Human Development (NICHD): Chief, Office of Planning and Evaluation, NICHD, NIH, Building 31, Room 2A10, Bethesda, MD 20892

National Institute of Dental Research (NIDR): Chief, Office of Planning, Evaluation and Communications, NIDR, NIH, Building 31, Room 2C36, Bethesda, MD 20892

National Institute of Environmental Health Sciences (NIEHS): Program Analyst, Office of Program Planning and Evaluation, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, N.C. 27709

National Institute of General Medical Sciences (NIGMS): Associate Director for Evaluation, NIGMS, Westwood Building Room 9A18, 5333 Westbard Avenue, Bethesda, MD 20892

Fogarty International Center (FIC): Assistant Director for Planning and Evaluation, FIC, NIH, Building 38A, Room 607, Bethesda, MD 20892

Division of Research Grants (DRG): Assistant Director for Special Projects, DRG, Westwood Building, Room 457, National Institutes of Health, Bethesda, MD 20892

Division of Research Resources: Program Analyst, Office of Program Planning and Evaluation, DRR, NIH, Building 31, Room 5B54, Bethesda, MD 20892

Appendix 2—Notification and access officials

NIH, Office of the Director: Chief, Program Evaluation Branch, OPPE, NIH, Building 1, Room 234, 9000 Rockville Pike, Bethesda, MD 20892

National Heart, Lung and Blood Institute (NHLBI): Privacy Act Coordinator, NHLBI, NIH, Building 31, Room 5A29, Bethesda, MD 20892

National Library of Medicine (NLM): Special Assistant for Operations Research, Office of the Director, NLM, NIH, Building 38, Room 2S18, Bethesda, MD 20892

National Eye Institute (NEI): Executive Officer, NEI, NIH, Building 31, Room 6A25, Bethesda, MD 20892

National Institute on Aging (NIA): Evaluation Officer, NIA, NIH, Building 31, Room 5C11, Bethesda, MD 20892

National Institute of Allergy and Infectious Diseases (NIAID): Chief, Evaluation Section, Office of Program Planning and Evaluation, NIAID, NIH, Building 31, Room 7A19, Bethesda, MD 20892

National Institute of Child Health and Human Development (NICHD): Chief, Office of Planning and Evaluation, NICHD, NIH, Building 31, Room 2Al0, Bethesda, MD 20892

National Institute of Dental Research (NIDR): Chief, Office of Planning, Evaluation and Communications, NIDR, NIH, Building 31, Room 2C36, Bethesda, MD 20892

National Institute of Environmental Health Sciences (NIEHS): Program Analyst, Office of Program Planning and Evaluation, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, N.C. 27709

National Institute of General Medical Sciences (NIGMS): Privacy Act Coordinator, NIGMS, NIH, Building 31, Room 4A52, Bethesda, MD 20892

Fogarty International Center (FIC): Assistant Director for Planning and Evaluation, FIC, NIH, Building 38A, Room 607, Bethesda, MD 20892

Division of Research Grants (DRG): Assistant Director for Special Projects, DRG, Westwood Building, Room 457, National Institutes of Health, Bethesda, MD 20892

Division of Research Resources: Program Analyst, Office of Program Planning and Evaluation, DRR, NIH, Building 31, Room 5B54, Bethesda, MD 20892

[FR Doc. 86–25720 Filed 11–21–86; 8:45 am]

BILLING CODE 4140-01-M

Centers for Disease Control

Privacy Act of 1974; Republication of Systems of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of republication of notices of systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Centers for Disease Control (CDC) is publishing a notice describing the existence and character of each system of records. This publication covers all systems of records maintained by CDC and its organizational components, including the National Institute for Occupational Safety and Health (NIOSH).

Several of the notices which were published in the last comprehensive republication in 1982 have been deleted, consolidated with, or subsumed under other systems of records, as described below. In addition, all the notices have been modified to clarify the descriptions and to ensure that they are complete, accurate and timely.

CDC also proposes to establish new routine uses permitting disclosure of information to contractors from two Privacy Act systems of records maintained by the CDC: 09-20-0089, "Studies of Treatment of Tuberculosis and other Mycobacterioses, HHS/CDC/CPS'; and 09-20-0157 "Clinical Laboratory Personnel Proficiency Test Results (Medicare), HHS/CDC/LPO." Contracting for the services specified below is intended to accomplish the purposes of the two systems in a more efficient manner.

None of these changes requires a report of altered system to be sent to the Congress and the Office of Management and Budget. The notices are complete and accurate as of September 15, 1986. Readers who notice any inadvertent error or omission in CDC system notices are invited to bring them to the attention of David K. Rowe, Privacy Act Officer, Centers for Disease Control, 1600 Clifton Road, N.E., Bldg. 1, Rm. B-68, Atlanta, GA 30333.

DATES: PHS invites interested parties to submit comments on the proposed new routine uses on or before (30 days after publication). The Centers for Disease Control will adopt the new routine uses without further notice 30 days after the date of publication, unless PHS receives comments which would result in a contrary determination.

SUPPLEMENTARY INFORMATION: These notices include several changes which have been made since the last comprehensive annual publication.

A. DELETED SYSTEMS OF RECORDS:

The following systems of records have been deleted:

(1) 09-20-0083, Diagnostic Methods for Identification of Occupational Diseases through Biopsy and/or Autopsy Specimens. HHS/CDC/NIOSH. (Records in this system have been subsumed under 09-20-0117.)

(2) 09-20-0086, Surveillance of Persons on Isoniazid Preventive Treatment for Tuberculosis. HHS/CDC/CPS. (Records in this system have been subsumed under 09-20-0089.)

(3) 09-20-0087, Surveillance of Inadvertent Vaccination during Pregnancy. HHS/CDC/CPS. (Records in this system have been subsumed under 09-20-0136.)

(4) 09-20-0088, Subacute Sclerosing Panencephalitis Surveillance. HHS/CDC/CPS. (Records in this system have been subsumed under 09-20-0136.)

(5) 09-20-0093, Tuberculosis Preventive Therapy Studies. HHS/CDC/CPS. (Records in this system have been subsumed under 09-20-0089.)

(6) 09-20-0094, Studies of Drug Resistant Tuberculosis Cases/Contacts. HHS/CDC/CPS. (Records in this system have been subsumed under 09-20-0089.)

(7) 09-20-0095, Varicella Zoster Immune Globulin Records on High Risk Immunosuppressed Children Exposed to Chickenpox. HHS/CDC/CPS. (Records in this system have been subsumed under 09-20-0136.)

(8) 09-20-0097, Studies of the Effects of BCG Vaccinations for Tuberculosis. HHS/CDC/CPS. (Records in this system have been subsumed under 09-20-0089.)

(9) 09-20-0098, Congenital Rubella Registry. HHS/CDC/CPS. (Records in this system have been subsumed under 09-20-0136.)

(10) 09-20-0107, Dengue and Research Studies. HHS/CDC/CID. (Records in this system have been subsumed under 09-20-0136.)

(11) 09-20-0148, Results of Occupational Hearing Studies. HHS/CDC/NIOSH. (Records in this system have been subsumed under 09-20-0118.)

(12) 09-20-0150, Morbidity Studies in Coal Mining Activities. HHS/CDC/NIOSH. (Records in this system have been subsumed under 09-20-0149.)

(13) 09-20-0151, Mortality Studies in Coal Mining Activities. HHS/CDC/NIOSH. (Records in this system have been subsumed under 09-20-0153.)

(14) 09-20-0152, Mortality Studies in Non-Coal Mining Activities. HHS/CDC/NIOSH. (Records in this system have been subsumed under 09-20-0153.)

(15) 09-20-0155, Morbidity Studies in Metal and Non-Metal Mining Activities. HHS/CDC/NIOSH. (Records in this system have been subsumed under 09-20-0149.)

(16) 09-20-0156, Cytotechnologists Proficiency Answer Sheets and Test Results (Medicare). HHS/CDC/LPO. (Records in this system have been subsumed under 09-20-0157.)

(17) 09-20-0158, Independent Laboratory Directors Proficiency Answer Sheets and Exam Results (Medicare). HHS/CDC/LPO. (Records in this system have been subsumed under 09-20-0157.)

B. MODIFICATION OF SAFEGUARDS:

The safeguards category has been modified in each system notice to more accurately and completely describe the policies and practices relating to the safeguarding of records and data.

C. REVISION OF SYSTEM AUTHORITY:

The system authority category has been revised in systems 09-20-0106, 09-20-0113, and 09-20-0136 to reflect the additional legislative authority, Section 308(d) of the Public Health Service Act, pertaining to the granting of an assurance of confidentiality relating to records in these systems.

D. CLARIFICATION OF SYSTEM PURPOSE, CATEGORIES OF RECORDS AND CATEGORIES OF INDIVIDUALS:

The system purpose, categories of records and categories of individuals sections have been revised in systems 09-20-0089, 09-20-0117, 09-20-0118, 09-20-0149, 09-20-0153, and 09-20-0157 to more clearly describe the systems. In each case, these revisions reflect the subsumption of a number of similar systems and more accurately reflect the program's actual operations. The changes in wording do not involve any changes in the scopes of the system notices as originally published.

E. RENAMING OF SYSTEMS:

The names of the following systems have been changed to more accurately describe the types of records covered:

(1) 09-20-0055 has been retitled Administrative Files for Research/Demonstration and Training Grants, and Cooperative Agreement Applications. HHS/CDC/NIOSH.

(2) 09-20-0149 has been retitled Morbidity Studies in Coal Mining, Metal and Non-metal Mining and General Industry. HHS/CDC/NIOSH.

(3) 09-20-0153 has been retitled Mortality Studies in Coal Mining, Metal and Non-metal Mining and General Industry. HHS/CDC/NIOSH.

(4) 09-20-0157 has been retitled Clinical Laboratory Personnel Proficiency Test Results (Medicare). HHS/CDC/LPO.

F. ADDITION OF ROUTINE USE:

The following routine use has been added to systems 09-20-0089 and 09-20-0157:

The Centers for Disease Control is under contract with private firms for the purpose of collating, analyzing or otherwise refining records in this system. Relevant records are maintained by the contractors. The con- tractors are required to maintain Privacy Act safeguards with respect to such records.

System 09-20-0089 requires the above routine use for those instances in which CDC staff has determined the need for outside contractors to perform specific work in support of the tuberculosis control activities described in the purpose of the system. The contractor will review and refine data pertaining to individuals who receive treatment relating to tuberculosis. Other contractor services such as the enhancement of automated systems and other computer operations are also contemplated.

The same routine use is also necessary for system 09-20-0157 in connection with the certification testing of clinical laboratory personnel. Pub. L. 99-272 extended the Medicare proficiency examination authority for health care personnel. Procedures must be in place for the formal test- ing of the proficiency of such clinical laboratory personnel as cytotech- nologists, clinical laboratory technicians and technologists. This routine use will enable CDC to utilize contractor services in handling many of the administrative requirements of the project including the refinement of computer services and the maintenance of accurate records on the examinees.

G. DISCLOSURES PERMITTED BY PRIVACY ACT:

Disclosures without consent of subject individuals are permitted by the Privacy Act in Section 3(b), as follows:

'(1) to those officers and employees of the agency which maintains the record who have a need for the records in the performance of their duties;

'(2) required under section 552 of this title (the Freedom of Information Act);

'(3) for a routine use as defined in * * * (The Privacy Act and described in the routine use section of the specific notices of systems of records published in the **Federal Register**);

'(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

'(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

'(6) to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

'(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

'(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of such individual;

'(9) to either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

'(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

'(11) pursuant to the order of a court of competent jurisdiction; or

'(12) to a consumer reporting agency in accordance with section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952(d)).'

Dated: October 20, 1986.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

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09-20-0117 Medical and Test Record Results of Individuals Involved in NIOSH Laboratory Studies. HHS/CDC/NIOSH.

09-20-0118 Study at Work Sites where Agents Suspected of Being Occupational Hazards Exist. HHS/CDC/NIOSH.

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09-20-0153 Mortality Studies in Coal Mining, Metal and Non-metal Mining and General Industry. HHS/CDC/NIOSH.

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09-20-0157 Clinical Laboratory Personnel Proficiency Test Results (Medicare). HHS/CDC/LPO.

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09-20-0160 Records of Subjects in Health Promotion and Education Studies. HHS/CDC/CHPE.

09-20-0161 Records of Health Professionals in Disease Prevention and Control Training Programs. HHS/CDC/CPS.

09-20-0162 Records of Subjects in Agent Orange, Vietnam Experience, and Selected Cancers Studies. HHS/CDC/CEH.

09-20-0000

SYSTEM NAME:

Cooperative Mycoses Study. HHS/CDC/CID.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Adults and children who were infected with histoplasmosis, blastomycosis, coccidioidomycosis, aspergillosis, and other miscellaneous fungal infections, and who participated in the cooperative mycoses study conducted between 1947 and 1973 at the former CDC Kansas City Field Station, Ecological Investigations Division, Kansas City, KS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical records and related papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 301, "Research and Investigation" (42 U.S.C. 241).

PURPOSE(S):

The study was to evaluate the treatment of systemic fungal diseases by the U.S. Public Health Service and clinicians in selected hospitals and sanitoriums.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical

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condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored in file folders and approved FRC boxes at the Federal Records Center.

RETRIEVABILITY:

Records are indexed and retrieved by name.

SAFEGUARDS:

1. AUTHORIZED USERS: Access is granted to only a limited number of researchers and designated support staff of the Centers for Disease Control (CDC), the CDC Records Officer, and FRC officials, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. PHYSICAL SAFEGUARDS: Electronic anti-intrusion devices are in operation at the Federal Records Center.

3. PROCEDURAL SAFEGUARDS: Users of individually identified data protect information from public scrutiny, and only specifically authorized personnel may be admitted to the record storage area. CDC employees who maintain records are instructed to check with the system manager prior to making disclosures of data.

4. IMPLEMENTATION GUIDELINES: DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual. FRC safeguards are in compliance with GSA Federal Property Management Regulations, Subchapter B—Archives and Records.

RETENTION AND DISPOSAL:

Records are maintained at the Federal Records Center until 20 years old and are then destroyed by paper recycling process, unless needed for further study.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Center for Infectious Diseases, Bldg. 1, Rm. 6013, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either (1) submit a notarized request to verify their identity or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child by means of a birth certificate or court order, as well as verify that he or she is who he or she claims to be.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individual medical records of patients in participating hospitals and sanitoriums.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-20-0001

SYSTEM NAME:

Certified Interpreting Physician File. HHS/CDC/NIOSH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), 944 Chestnut Ridge Road, Morgantown, WV 26505.

Data are also occasionally located at contractor sites as studies are developed, data collected, and reports written. A list of contractor sites where individually identifiable data are currently located is available upon request to the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Physicians who have been certified to interpret X-rays under the Federal Mine Health and Safety Actof 1977.

CATEGORIES OF RECORDS IN THE SYSTEM:

Qualifications of physicians.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Mine Health and Safety Act of 1977, Section 501, "Research" (30 U.S.C. 951).

PURPOSE(S):

The main purpose is to provide certified physicians to read X-rays. Data is provided to the Social Security Administration to be used in approving Title IV benefits under the Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Name and address supplied to coal operators and X-ray facilities so that they may contact physicians to do work for them.

Name, address and Social Security number supplied to Department of Labor to be used in approving Title IV Benefits under the Act.

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

Records subject to the Privacy Act are disclosed to private firms for data entry, computer systems analysis and computer programming services. The contractors promptly return data entry records after the contracted work is completed. The contractors are required to maintain Privacy Act safeguards.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice to enable the Department to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected. The only types of litigative proceedings that NIOSH is authorized to request are (1) enforcement of a subpoena issued to an employer to provide relevant information, or (2) contempt citation against an employer for failure to comply with a warrant obtained by the Institute.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer tapes/disks and printouts, microfilm.

RETRIEVABILITY:

Name and/or social security number, supplied on a voluntary basis are the indices used to retrieve records.

SAFEGUARDS:

1. AUTHORIZED USERS: Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control (CDC) or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. PHYSICAL SAFEGUARDS: Locked cabinets in locked rooms, 24-hour guard service in buildings, personnel screening and escorting of visitors, a limited access, secured computer room with fire extinguishers and overhead sprinkler system, computer terminals and automated records located in secured areas.

3. PROCEDURAL SAFEGUARDS: Protection for computerized records includes programmed verification of valid user identification code, account code and password prior to acceptance of a terminal session or job submission, and frequently changed passwords. Knowledge of individual tape passwords is required to access tapes, and access to systems is limited to users obtaining prior supervisory approval. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

4. IMPLEMENTATION GUIDELINES: The safeguards outlined above are developed in accordance with Chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS.hf: 45-13; Part 6, "Automated Information System Security," of the HHS Information Resources Management Manual; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained indefinitely unless disposal of a record is requested by the individual physician. Disposal methods include erasing computer tapes, burning or shredding printouts or transferring records to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), 944 Chestnut Ridge Road, Morgantown, WV 26505.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself by contacting the system manager at the address above.Requesters in person must provide driver's license or other positive identi-fication. Individuals who do not appear in person must either (1) submit a notarized request to verify their identity or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subjectto a $5,000 fine.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information is obtained directly from the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-20-0027

SYSTEM NAME:

Radiation Exposure Records for NIOSH Employees. HHS/CDC/NIOSH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), 944 Chestnut Ridge Road, Morgantown, WV 26505and

Office of Administrative and Management Services, CP Bldg., Rm. 119, NIOSH, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Data are also occasionally located at contractor sites, as studies are developed, data collected, and reports written. A list of contractor sites, where individually identifiable data are currently located, is available upon request to the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and past NIOSH employees.

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CATEGORIES OF RECORDS IN THE SYSTEM:

X-ray exposure levels.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Occupational Safety and Health Act, Section 19, "Programs of Federal Agencies" (29 U.S.C. 668).

PURPOSE(S):

The purpose of this system is to maintain X-ray exposure records to prevent toxic exposure to harmful rays.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

Records subject to the Privacy Act are disclosed to private firms for data entry, computer systems analysis and computer programming services. The contractors promptly return data entry records after the contracted work is completed. The contractors are required to maintain Privacy Act safeguards.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice to enable the Department to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected. The only types of litigative proceedings that NIOSH is authorized to request are (1) enforcement of a subpoena issued to an employer to provide relevant information, or (2) contempt citation against an employer for failure to comply with a warrant obtained by the Institute.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual files, computer tapes/disks and printouts.

RETRIEVABILITY:

Name is the index used to retrieve records from this system.

SAFEGUARDS:

1. AUTHORIZED USERS: Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control (CDC) or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. PHYSICAL SAFEGUARDS: Locked cabinets in locked rooms, 24-hour guard service in buildings, personnel screening and escorting of visitors, a limited access, secured computer room with fire extinguishers and overhead sprinkler system, computer terminals and automated records located in secured areas.

3. PROCEDURAL SAFEGUARDS: Protection for computerized records includes programmed verification of valid user identification code, account code and password prior to acceptance of a terminal session or job submission, and frequently changed passwords. Knowledge of individual tape passwords is required to access tapes, and access to systems is limited to users obtaining prior supervisory approval. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

4. IMPLEMENTATION GUIDELINES: DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual.

RETENTION AND DISPOSAL:

Record copy maintained in agency for three years in accordance with retention schedules. Source documents disposed of when no longer needed in the study, as determined by the system manager, and as provided in the signed consent form, as appropriate. Disposal methods include burning or shredding paper materials, erasing computer tapes or transferring records to the Federal Records Center. Records destroyed by paper recycling process when 20 years old, unless needed for further study.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), 944 Chestnut Ridge Road, Morgantown, WV 26505and

Safety Officer, Office of Administrative and Management Services, NIOSH, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Policy coordination provided by: Director, Office of Program Support, Bldg. 1, Rm. 2011, Centers for Disease Control, 1600 Clifton Road,Atlanta, GA 30333.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either (1) submit a notarized request to verify their identity or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requestersshould also reasonably specify the record contents being sought.

An accountingof disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information is obtained directly from the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-20-0055

SYSTEM NAME:

Administrative Files for Research/Demonstration and Training Grants, and Cooperative Agreements Applications. HHS/CDC/NIOSH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Research Grants, National Institutes of Health (NIH), Westbard Bldg., Westbard Avenue, Bethesda, Maryland 20014

Grants Management Office, Procurement and Grants Office, Rm. 321, Buckhead Bldg., Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333

Grants Program Activity, Office of the Director, National Institute for Occupational Safety and Health (NIOSH), Bldg. 1, Rm. 3053, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333

Division of Training and Manpower Development, Division of Biomedical and Behavioral Science, Division of Physical Science and Engineering, and Division of Surveillance, Hazard Evaluations, and Field Studies, NIOSH, 4676 Columbia Parkway, Cincinnati, Ohio 45226

Division of Respiratory Disease Studies and Division of Safety Research, NIOSH, 944 Chestnut Ridge Road, Morgantown, WV 26505and

Federal Records Center, 4205 Suitland Road, Suitland, Maryland 20409, and 1557 St. Joseph Avenue, East Point, GA 30344.

A list of contractor sites where individually identifiable data are currently located is available upon request to the system manager.

Data are also occasionally located at grantee sites as studies are developed, data collected, and reports written. A list of grantee sites where individually identifiable data are currently located is available upon request to the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for occupational safety and health research and demonstration grants, and training grants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Draft and final grant application and review history, awards, financial records and progress reports and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Occupational Safety and Health Act, Section 20, "Research and Related Activities" and Section 21, 'Training and Employee Education" (29 U.S.C. 669, 670).

PURPOSE(S):

The purpose of this system is to review grant applications for research and training and to administer funded grants. This information is provided to the National Institutes of Health and to components of the Centers for Disease Control (CDC) including NIOSH for review.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Referrals may be made of assignments of research investigators and project monitors on specific research projects to the National Technical Information Service (NTIS), Department of Commerce, to contribute to the Smithsonian Science Information Exchange.

To the cognizant audit agency for auditing.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

To qualified experts not within the definition of Department employees as prescribed in Department regulations for opinions as a part of the application review process.

To a Federal agency, in response to its request, in connection with the letting of a contract, or the issuance of a license, grant, cooperative agreement, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

To individuals and organizations deemed qualified by PHS to carry out specific research related to the review and award processes of PHS.

To the grantee institution relative to performance or administration under the terms and conditions of the award.

Records subject to the Privacy Act are disclosed to private firms for data entry, computer systems analysis and computer programming services. The contractors promptly return data entry records after the contracted work is completed. The contractors are required to maintein Privacy Act safeguards.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

5x8 cards, computer tapes/discs and printouts, notebooks, and file folders.

RETRIEVABILITY:

Name is the index used to retrieve information.

SAFEGUARDS:

1. AUTHORIZED USERS: Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control (CDC) or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. PHYSICAL SAFEGUARDS: Locked cabinets in locked rooms, personnel screening and escorting of visitors, electronic anti-intrusion devices in

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operation at the Federal Records Center, a limited access, secured computer room with fire extinguishers and overhead sprinkler system, computer terminals and automated records located in secured areas.

3. PROCEDURAL SAFEGUARDS: Protection for computerized records includes programmed verification of valid user identification code, account code and password prior to acceptance of a terminal session or job submission, and frequently changed passwords. Knowledge of individual tape passwords is required to access tapes, and access to systems is limited to users obtaining prior supervisory approval. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

4. IMPLEMENTATION GUIDELINES: The safeguards outlined above are developed in accordance with Chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS.hf: 45-13; Part 6, "Automated Information System Security," of the HHS Information Resources Management Manual; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31). FRC safeguards are in compliance with GSA Federal Property Management Regulations, Subchapter B—Archives and Records.

RETENTION AND DISPOSAL:

Approved and funded applications are kept for one year beyond closeout, and then sent to the Federal Records Center (FRC) for 10 years, after which time they are destroyed. Unsuccessful applications are retained for up to 2 years at the agency, and then sent to the FRC for 10 years. Draft applications are kept for one year or until an official application is received (at which time the draft is destroyed). Disposal methods include the paper recycling process, burning or shredding paper materials, and erasing computer tapes.

SYSTEM MANAGER(S) AND ADDRESS:

Grants Management Officer, Procurement and Grants Office, Buckhead Bldg., Rm. 321, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333and

Associate Director for Grants, Grants Program Activity, Office of the Director, NIOSH, Bldg. 1, Rm. 3053, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Policy coordination is provided by: Director, Office of Program Support, Bldg. 1, Rm. 2011, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself by contacting the appropriate system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either (1) submit a notarized request to verify their identify or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information is obtained directly from the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-20-0059

SYSTEM NAME:

Division of Training Mailing List. HHS/CDC/NIOSH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Training and Manpower Development (DTMD), National Institute for Occupational Safety and Health (NIOSH), Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Data are also occasionally located at contractor sites as studies are developed, data collected, and reports written. A list of contractor sites where individually identifiable data are currently located is available upon request to the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have taken a NIOSH training course or who ask to be placed on the list.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names and addresses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Occupational Safety and Health Act, Section 21, "Training and Employee Education" (29 U.S.C. 670).

PURPOSE(S):

The purpose of this system is to advise prospective students of upcoming NIOSH training courses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

Records subject to the Privacy Act are disclosed to private firms for data entry, computer systems analysis and computer programming services. The contractors promptly return data entry records after the contracted work is completed. The contractors are required to maintain Privacy Act safeguards.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer tapes/disks and printouts, addressograph plates.

RETRIEVABILITY:

Name and student number are the indices used to retrieve records from this system.

SAFEGUARDS:

1. AUTHORIZED USERS: Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control (CDC) or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. PHYSICAL SAFEGUARDS: Locked cabinets in locked rooms, 24-hour guard service in buildings, personnel screening of visitors, a limited access, secured computer room with fire extinguishers and overhead sprinkler system, computer terminals and automated records located in secured areas.

3. PROCEDURAL SAFEGUARDS: Protection for computerized records includes programmed verification of valid user identification code, account code and password prior to acceptance of a terminal session or job submission, and frequently changed passwords. Knowledge of individual tape passwords is required to access tapes, and access to systems is limited to users obtaining prior supervisory approval. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

4. IMPLEMENTATION GUIDELINES: The safeguards outlined above are developed in accordance with Chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS.hf: 45-13; Part 6, "Automated Information System Security," of the HHS Information Resources Management Manual; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Record copy maintained from three to ten years in accordance with retention schedules. Source documents for computer disposed of when no longer needed in the study, as determined by the system manager. Disposal methods include erasing computer tapes and burning or shredding paper materials.

SYSTEM MANAGER(S) AND ADDRESS:

Audio Visual Production Officer, Division of Training and Manpower Development (DTMD), National Institute for Occupational Safety and Health (NIOSH), Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either (1) submit a notarized request to verify their identify or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information is obtained directly from the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-20-0089

SYSTEM NAME:

Studies of Treatment of Tuberculosis and other Mycobacterioses. HHS/CDC/CPS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Tuberculosis Control, Freeway Office Park, Rooms 145-149, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333and

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

A list of contractor sites where individually identified data are currently located is available upon request to the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Adults and children with tuberculosis or other mycobacterial diseases having been or currently being treated or observed by a limited number of participating local or county health departments, clinics, and hospitals (from 1959 until the present time), including those individuals in selected areas receiving isoniazid therapy or BCG vaccinations, and patients for whom routine tuberculosis treatment is ineffective. Also included are contacts to tuberculosis patients, adults with inactive tuberculosis, and controls.

CATEGORIES OF RECORDS IN THE SYSTEM:

Abstracts of medical data pertaining to clinical trials, including medical history, skin tests, physical examinations, laboratory test results, X-ray results, medications prescribed, smoking habits, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 301, "Research and Investigation" (42 U.S.C. 241).

PURPOSE(S):

To determine the effectiveness and safety of a variety of treatments and preventive measures for tuberculosis

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and other mycobacterial diseases, to determine the best measures against drug resistant tuberculosis, and to monitor incidence of complications among individuals who have received preventive therapy, including isoniazid.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records may be disclosed to health departments and other public health or cooperating medical authorities in connection with program activities and related collaborative efforts to deal more effectively with diseases and conditions of public health significance.

A record may be disclosed for a research purpose, when the department:(A) has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;(B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;(C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law;(D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

The Department is under contract with private firms for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records are maintained by the contractors. The contractors are required to maintain Privacy Act safeguards with respect to such records.

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Cards, file folders, computer tapes/disks and printouts.

RETRIEVABILITY:

Records are retrieved by the participant's name and/or study I.D. number.

SAFEGUARDS:

1. AUTHORIZED USERS: Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control (CDC), or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. PHYSICAL SAFEGUARDS: Locked cabinets in locked rooms, 24-hour guard service in buildings, personnel screening of visitors, electronic anti-intrusion devices in effect at the Federal Records Center, fire extinguishers, overhead sprinkler system and card-access control equipment in the computer room, computer terminals and automated records located in secured areas.

3. PROCEDURAL SAFEGUARDS: Protection for computerized records includes programmed verification of valid user identification code, account code and password prior to acceptance of a terminal session or job submission, frequently changed passwords, and Vault Management System. Knowledge of individual tape passwords is required to access tapes, and access to systems is limited to users obtaining prior supervisory approval. When Privacy Act tapes are scratched, a special "certified" process is performed in which tapes are completely written over to avoid inadvertent data disclosure. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

4. IMPLEMENTATION GUIDELINES: The safeguards outlined above are developed in accordance with Chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS.hf: 45-13; Part 6, "Automated Information System Security," of the HHS Information Resources Management Manual; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31). FRC safeguards are in compliance with GSA Federal Property Management Regulations, Subchapter B—Archives and Records.

RETENTION AND DISPOSAL:

Records are maintained in agency for five years. Disposal methods include erasing computer tapes, burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Records destroyed by paper recycling process when 20 years old, unless needed for further study.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Tuberculosis Control, Center for Prevention Services, Freeway Office Park, Rm. 111, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either (1) submit a notarized request to verify their identity or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child by means of a birth certificate or court order, as well as verify that he or she is who he or she claims to be.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individuals, state and local health departments, hospitals, laboratories, clinics, and family members of study participants.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-20-0090

SYSTEM NAME:

Studies of Testing for Tuberculosis and other Mycobacterioses. HHS/CDC/CPS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Tuberculosis Control, Center for Prevention Services, Freeway Office Park, Rm.s 127, 137, 142, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333and

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Study participants include patients, clientele, and employees of local and county health departments, hospitals, and other institutions currently observing and/or treating cases of tuberculosis and other mycobacterial diseases. Participants include adults and children.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 301, "Research and Investigation" (42 U.S.C. 241).

PURPOSE(S):

To study the diagnostic value of tests used to identify persons infected with M. tuberculosis or sensitized by other mycobacteria. These records may also be used by the Food and Drug Administration in conducting research related to Investigational New Drugs (IND).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Test results will be returned to the collaborating physician or responsible hospital official.

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Cards, file folders, computer tapes/disks and printouts.

RETRIEVABILITY:

Records are retrieved by name and I.D. number.

SAFEGUARDS:

1. AUTHORIZED USERS: Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control (CDC), as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. PHYSICAL SAFEGUARDS: Locked cabinets in locked rooms, 24-hour guard service in buildings, personnel screening of visitors, electronic anti-intrusion devices in operation at the Federal Records Center, fire extinguishers, overhead sprinkler system and card-access control equipment in the computer room, computer terminals and automated records located in secured areas.

3. PROCEDURAL SAFEGUARDS: Protection for computerized records includes programmed verification of valid user identification code, account code and password prior to acceptance of a terminal session or job submission, frequently changed passwords, and Vault Management System. Knowledge of individual tape passwords is required to access tapes, and access to systems is limited to users obtaining prior supervisory approval. When Privacy Act tapes are scratched, a special "certified" process is performed in which tapes are completely written over to avoid inadvertent data disclosure. Additional

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safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance is restricted to specifically authorized personnel.

4. IMPLEMENTATION GUIDELINES: The safeguards outlined above are developed in accordance with Chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS.hf: 45-13; Part 6, "Automated Information System Security," of the HHS Information Resources Management Manual; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31). FRC safeguards are in compliance with GSA Federal Property Management Regulations, Subchapter B—Archives and Records.

RETENTION AND DISPOSAL:

Records are maintained in agency for five years. Disposal methods include erasing computer tapes, burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Records destroyed by paper recycling process when 20 years old, unless needed for further study.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Tuberculosis Control, Center for Prevention Services, Freeway Office Park, Rm. 111, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either (1) submit a notarized request to verify their identity or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child by means of a birth certificate or court order, as well as verify that he or she is who he or she claims to be.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individuals and hospitals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-20-0096

SYSTEM NAME:

Records of Tuskegee Study Health Benefit Recipients. HHS/CDC/CPS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Center for Prevention Services, Freeway Office Park, Rm. 308, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333and

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Adult participants in the study and their family members.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 301, "Research and Investigation" (42 U.S.C. 241).

PURPOSE(S):

To determine eligibility and provide medical benefits for participants and qualified family members.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record may be disclosed for a research purpose, when the Department:(A) has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;(B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;(C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law;(D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

Records may be disclosed to health departments and other public health or cooperating medical authorities in connection with program activities and related collaborative efforts to deal more effectively with diseases and conditions of public health significance.

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Records are retrieved alphabetically by name.

SAFEGUARDS:

1. AUTHORIZED USERS: Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control (CDC), as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. PHYSICAL SAFEGUARDS: Locked cabinets in locked rooms, electronic anti-intrusion devices in operation at the Federal Records Center, 24-hour guard service in buildings, personnel screening of visitors.

3. PROCEDURAL SAFEGUARDS: Users of individually identified data protect information from public scrutiny, and only specifically authorized personnel may be admitted to the record storage area. CDC employees who maintain records are instructed to check with the system manager prior to making disclosures of data.

4. IMPLEMENTATION GUIDELINES: DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual. FRC safeguards are in compliance with GSA Federal Property Management Regulations, Subchapter B—Archives and Records.

RETENTION AND DISPOSAL:

Records are maintained in agency for five years. Disposal methods include erasing computer tapes, burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Records are to be maintained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Center for Prevention Services, Freeway Office Park, Rm. 310, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either (1) submit a notarized request to verify their identity or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subjectto a $5,000 fine.

An individual who requests notification of or access to medical recordsshall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child by means of a birth certificate or court order, as well as verify that he or she is who he or she claims to be.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known; (3) nature of the questionnaire or study in which the requester participated.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accountingof disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Participants and family members of participants entitled to medical care; Social Security Administration for Medicare information; and State welfare departments for information on Medicaid.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-20-0102

SYSTEM NAME:

Alien Mental Waiver Program. HHS/CDC/CPS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Visa Medical Activity, Division of Quarantine, Center for Prevention Services, Freeway Office Park, Rm. 208, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333and

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Immigrant aliens with waivers of excludability who are mentally retarded or who have had one ormore attacks of insanity.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical history files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 325, "Examination of Aliens" (42 U.S.C. 252); Immigration and Nationality Act, Section 212(g), "Application for Waiver of Grounds of Excludability" (8 U.S.C. 1182(g)).

PURPOSE(S):

To comply with the requirements of Section 212(g) of the Immigration and Nationality Act, the Centers for Disease Control (CDC)must receive and maintain medical records on aliens who apply for waivers of excludability due to mental retardation or a previous attack of insanity. CDC is furnished with a copy of the alien's medical examination

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report and psychiatric/psychological evaluation and uses the information to process the initial applications for such waivers and for periodic medical surveillance and evaluation of individual cases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Department of State (DOS) or Immigration and Naturalization Service (INS) obtains initial medical examinations and submits to the Division of Quarantine, CDC. Final diagnosis returned to submitter. Alien or sponsor furnishes copy of medical file to local health care facility in the United States.

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Individual file folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

1. AUTHORIZED USERS: Access is granted to only a limited number of personnel, i.e., program manager and immediate staff members, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. PHYSICAL SAFEGUARDS: Locked cabinets in locked rooms, 24-hour guard service in buildings, personnel screening of visitors, electronic anti-intrusion devices in operation at the Federal Records Center.

3. PROCEDURAL SAFEGUARDS: Users of individually identified data protect information from public scrutiny, and only specifically authorized personnel may be admitted to the record storage area. CDC employees who maintain records are instructed to check with the system manager prior to making disclosures of data.

4. IMPLEMENTATION GUIDELINES: DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual. FRC safeguards are in compliance with GSA Federal Property Management Regulations, Subchapter B—Archives and Records.

RETENTION AND DISPOSAL:

Records are maintained in agency for six years. Disposal methods include burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Records destroyed by paper recycling process when 10 years old, unless needed for further study.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Quarantine, Center for Prevention Services, Freeway Office Park, Rm. 201, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either (1) submit a notarized request to verify their identity or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or mentally incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or mentally incompetent person by means of a birth certificate or court order, as well as verify that he or she is who he or she claims to be.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Prior to alien's arrival in the U.S., medical information supporting the diagnosis of mental retardation or other mental disorders is submitted by Department of State and/or Justice Department (INS); after arrival, mental status evaluations submitted by medical specialists, schools, or institutions.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-20-0103

SYSTEM NAME:

Alien Tuberculosis Followup Program HHS/CDC/CPS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Visa Medical Activity, Division of Quarantine, Center for Prevention Services, Freeway Office Park, Rm. 208, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Immigrant aliens with Tuberculosis.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical history.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 325, "Examination of Aliens" (42 U.S.C 252); Immigration and Nationality Act, Section 212(g), "Application for Waiver of Grounds of Excludability" (8 U.S.C. 1182(g)).

PURPOSE(S):

To provide a record system for the surveillance and periodic medical evaluation of immigrant aliens with tuberculosis.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to State health departments, city health departments or the courts, private physicians or other health care facilities that will provide medical care for the immigrant alien.

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Card files, computer tapes/disks and printouts.

RETRIEVABILITY:

Records are retrieved by name, Alien Registration Number, and by year of birth.

SAFEGUARDS:

1. AUTHORIZED USERS: Access is granted to only a limited number of personnel, i.e., designated members of the Division of Quarantine and the Division of Tuberculosis Control, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. PHYSICAL SAFEGUARDS: Locked cabinets in locked rooms, 24-hour guard service in buildings, personnel screening of visitors, fire extinguishers, overhead sprinkler system and card-access control equipment in the computer room, computer terminals and automated records located in secured areas.

3. PROCEDURAL SAFEGUARDS: Protection for computerized records includes programmed verification of valid user identification code, account code and password prior to acceptance of a terminal session or job submission, frequently changed passwords, and Vault Management System. Knowledge of individual tape passwords is required to access tapes, and access to systems is limited to users obtaining prior supervisory approval. When Privacy Act tapes are scratched, a special 'certified" process is performed in which tapes are completely written over to avoid inadvertent data disclosure. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

The Centers for Disease Control (CDC) employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance is restricted to specifically authorized personnel.

4. IMPLEMENTATION GUIDELINES: The safeguards outlined above are developed in accordance with Chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS.hf: 45-13; Part 6, "Automated Information System Security," of the HHS Information Resources Management Manual; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Card files are maintained in agency for two years. Destroyed by paper recycling process after 2 years. Computer file maintained 4 years at CDC. Records destroyed by erasing tape after 4 years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Quarantine, Freeway Office Park, Rm. 201, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either (1) submit a notarized request to verify their identity or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child by means of a birth certificate or court order, as well as verify that he or she is who he or she claims to be.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

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RECORD SOURCE CATEGORIES:

Information obtained from alien's visa medical documents at port of entry by Quarantine Inspectors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-20-0106

SYSTEM NAME:

Specimen Handling for Testing and Related Data. HHS/CDC/CID.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Center for Infectious Diseases, Bldg.. 4, Rm. B-35, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333

Epidemiology Program Office, Bldg.. 1, Rm. 5009, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333

San Juan Laboratories, Center for Infectious Diseases, Centers for Disease Control, San Juan, Puerto Rico 00936

Center for Prevention Services, Freeway Office Park, Rm. 310, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333and

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

A list of contractor sites where individually identifiable data are currently located is available upon request to the appropriate system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Adults and children whose specimens have been submitted to the Centers for Disease Control (CDC) for testing.

CATEGORIES OF RECORDS IN THE SYSTEM:

Results of diagnostic tests involving microbiology, clinical chemistry, hematology, immunology, genetics and pathology.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 301, "Research and Investigation," (42 U.S.C. 241); Sections 304, 306 and 308(d) which discuss authority to grant assurances of confidentiality for health research and related activities (42 U.S.C. 242 b, k, and m(d)).

PURPOSE(S):

For documentation of test results which are returned to submitter. Used between specialty units for research purposes; and for epidemiological investigations, for epidemic causes, prevention, family groupings of diseases, and geographical location of specific diseases; also, used by epidemiologists and researchers in determining drug resistance of specific organisms.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The following routine uses apply to all records in this system except those maintained under an assurance of confidentiality provided by Section 308(d) of the Public Health Service Act (unless expressly authorized in the consent form or stipulated in the Assurance Statement):

CDC is under contract with private firms for the purposes of collating, analyzing, aggregating, or otherwise refining records in this system. Relevant records are disclosed to such contractors. The contractors are required to maintain Privacy Act safeguards with respect to such records.

A record may be disclosed for a research purpose, when the Department:(A) has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;(B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;(C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law;(D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

To individuals and organizations deemed qualified by the Secretary to carry out quality assessment, medical audits, or utilization review.

Records may be disclosed to Health Departments and other public health or cooperating medical authorities in connection with program activities and related collaborative efforts to deal more effectively with diseases and conditions of public health significance.

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Original Form - file folders; microfilm copies, computer tapes/disks and printouts.

RETRIEVABILITY:

Retrieved by name or designated number furnished by the submitter, CDC identifying number, and/or microfilm number.

SAFEGUARDS:

1. AUTHORIZED USERS: Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of CDC or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. PHYSICAL SAFEGUARDS: Locked cabinets in locked rooms, 24-hour guard service in buildings, personnel screening of visitors, electronic anti-intrusion

devices in operation at the Federal Records Center (FRC), fire extinguishers, overhead sprinkler system and card-access control equipment in the computer room, computer terminals and automated records located in secured areas.

3. PROCEDURAL SAFEGUARDS: Protection for computerized records includes programmed verification of valid user identification code, account code and password prior to acceptance of a terminal session or job submission, frequently changed passwords, and Vault Management System. Knowledge of individual tape passwords is required to access tapes, and access to systems is limited to users obtaining prior supervisory approval. When Privacy Act tapes are scratched, a special 'certified" process is performed in which tapes are completely written over to avoid inadvertent data disclosure. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

4. IMPLEMENTATION GUIDELINES: The safeguards outlined above are developed in accordance with Chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS.hf: 45-13; Part 6, "Automated Information System Security," of the HHS Information Resources Management Manual; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31). FRC safeguards are in compliance with GSA Federal Property Management Regulations, Subchapter B—Archives and Records.

RETENTION AND DISPOSAL:

Records are maintained in agency for five years. Disposal methods include erasing computer tapes, burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Records destroyed by paper recycling process when 10 years old, unless needed for further study.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Center for Infectious Diseases, Bldg.. 1, Rm. 6013, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333

Chief, Dengue Branch, Division of Vector-Borne Viral Diseases, Center for Infectious Diseases, Centers for Disease Control, GPO Box 4532, San Juan, Puerto Rico 00936

Director, Epidemiology Program Office, Bldg.. 1, Rm. 5009, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333and

Director, Center for Prevention Services, Freeway Office Park, Rm. 310, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Policy coordination is provided by: Director, Office of Program Support, Bldg.. 1, Rm. 2011, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself by contacting the appropriate system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either (1) submit a notarized request to verify their identity or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child by means of a birth certificate or court order, as well as verify that he or she is who he or she claims to be.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Approved public health laboratories, Federal medical facilities, private physicians.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-20-0112

SYSTEM NAME:

CDC Exchange Visitor and Guest Researcher Records. HHS/CDC/PMO.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Commissioned Corps & Fellow Program Section, Personnel Management Office, Bldg.. 1, Rm. 1042, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333and

National Personnel Records Center (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Visiting Fellows, Visiting Associates, Visiting Scientists, Staff Fellows, Guest Researchers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications, requests for appointment, curriculum vitae, letters of reference.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 207(g),(h), "Appointment of Personnel," Section 208, "Pay and Allowances," and Section 301, "Research and Investigation" (42 U.S.C. 209(g),(h), 210 and 241).

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PURPOSE(S):

This system is utilized by the Centers for Disease Control (CDC) officials for the purpose of review of applications and supporting documents in order to award fellowships; and for determinations regarding salary or stipend increases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, computer tapes/disks and printouts.

RETRIEVABILITY:

The system is accessed by name of the individual, exchange visitor or guest researcher.

SAFEGUARDS:

1. AUTHORIZED USERS: Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of CDC, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. PHYSICAL SAFEGUARDS: Locked cabinets in locked rooms, 24-hour guard service in buildings, personnel screening of visitors, fire extinguishers, overhead sprinkler system and card-access control equipment in the computer room, computer terminals and automated records located in secured areas.

3. PROCEDURAL SAFEGUARDS: Protection for computerized records includes programmed verification of valid user identification code, account code and password prior to acceptance of a terminal session or job submission, frequently changed passwords, and Vault Management System. Knowledge of individual tape passwords is required to access tapes, and access to systems is limited to users obtaining prior supervisory approval. When Privacy Act tapes are scratched, a special 'certified" process is performed in which tapes are completely written over to avoid inadvertent data disclosure. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance is restricted to specifically authorized personnel.

4. IMPLEMENTATION GUIDELINES: The safeguards outlined above are developed in accordance with Chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS.hf: 45-13; Part 6, "Automated Information System Security," of the HHS Information Resources Management Manual; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are maintained in agency for two years. Disposal methods include erasing computer tapes, burning or shredding paper materials or transferring records to the National Personnel Records Center where records are retained in accordance with retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Commissioned Corps & Fellow Program Section, Personnel Management Office, Bldg.. 1, Rm. 1042, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either (1) submit a notarized request to verify their identity or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Secured from applicant.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-20-0113

SYSTEM NAME:

Epidemic Investigation Case Records. HHS/CDC/CID.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Center for Infectious Diseases, Bldg. 1, Rm. 6013, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333

Epidemiology Program Office, Bldg. 1, Rm. 5009, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333

Center for Prevention Services, Freeway Office Park, Rm. 313, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333

Center for Environmental Health, Chamblee Bldg. 27, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333and

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Adults and children with disease and other health conditions of public health significance, their contacts, others with possible exposure and appropriate controls.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical histories, case reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 301, "Research and Investigation," (42 U.S.C. 241); Sections 304, 306, and 308(d), which discuss authority to grant assurances of confidentiality for health research and related activities (42 U.S.C. 242 b, k, and m(d)); and Section 361, "Quarantine and Inspection, Control of Communicable Diseases,' (42 U.S.C. 264).

PURPOSE(S):

The record system is used by professional staff at the Centers for Disease Control (CDC) for more complete knowledge of the disease/condition in the following ways: (1) An examination of existing files enables investigators to determine areas that have been adequately investigated and to specify those that might be pursued; or (2) Records may later be examined in the light of future discoveries and proven associations so that relevant data collected at the time of the outbreak may be analyzed and reassessed. CDC may or may not request duplicate copies of these State and/or local health department records for further analysis following completion of the field investigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The following routine uses apply to all records in this system except those maintained under an assurance of confidentiality provided by Section 308(d) of the Public Health Service Act (unless expressly authorized in the consent form or stipulated in the Assurance Statement):

These records may be disclosed, i.e., returned to the State and/or local health departments in order for them to take measures to control, prevent, or treat disease and to conduct follow-up activities with patients and others contacted during the investigations. Private physicians may also be supplied pertinent medical information on their patients from these records.

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, cards, computer tapes/disks and printouts.

RETRIEVABILITY:

Retrieved alphabetically by name.

SAFEGUARDS:

1. AUTHORIZED USERS: Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of CDC, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. PHYSICAL SAFEGUARDS: Locked cabinets in locked rooms, 24-hour guard service in buildings, personnel screening of visitors, electronic anti-intrusion devices in operation at the Federal Records Center (FRC), fire extinguishers, overhead sprinkler system and card-access control equipment in the computer room, computer terminals and automated records located in secured areas.

3. PROCEDURAL SAFEGUARDS: Protection for computerized records includes programmed verification of valid user identification code, account code and password prior to acceptance of a terminal session or job submission, frequently changed passwords, and Vault Management System. Knowledge of individual tape passwords is required to access tapes, and access to systems is limited to users obtaining prior supervisory approval. When Privacy Act tapes are scratched, a special 'certified" process is performed. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data. CDC employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance is restricted to specifically authorized personnel.

4. IMPLEMENTATION GUIDELINES: The safeguards outlined above are developed in accordance with Chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS.hf: 45-13; Part 6, "Automated Information System Security," of the HHS Information Resources Management Manual; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31). FRC safeguards are in compliance with GSA Federal Property Management Regulations, Subchapter B—Archives and Records.

RETENTION AND DISPOSAL:

Records are maintained in agency for four years. Disposal methods include erasing computer tapes, burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Records destroyed by paper recycling process when 20 years old, unless needed for further study.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Center for Infectious Diseases, Bldg. 1, Rm. 6013, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333

Director, Epidemiology Program Office, Bldg. 1, Rm. 5009, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333

Director, Center for Environmental Health, Chamblee Bldg. 27, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333and

Director, Center for Prevention Services, Freeway Office Park, Rm. 316, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Policy coordination is provided by: Director, Office of Program Support, Bldg. 1, Rm. 2011, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself by contacting the appropriate system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either (1) submit a notarized request to verify their identity or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child by means of a birth certificate or court order, as well as verify that he or she is who he or she claims to be.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individuals, State and local health departments, and private physicians.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-20-0117

SYSTEM NAME:

Medical and Test Record Results of Individuals Involved in NIOSH Laboratory Studies. HHS/CDC/NIOSH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Biomedical and Behavioral Science (DBBS), National Institute for Occupational Safety and Health (NIOSH), Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226

Division of Standards Development and Technology Transfer (DSDTT), National Institute for Occupational Safety and Health (NIOSH), Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226 and

Federal Records Center, 3150 Bertwynn Drive, Dayton, Ohio 45439.

A list of contractor sites where individually identifiable data are currently located is available upon request to the system manager.

Also, occasionally data may be located at the facilities of collaborating researchers where analyses are performed, data collected and reports written. A list of these facilities is available upon request to the system manager.

Data may be located only at those facilities that have an adequate data security program and the collaborating researcher must return the data to NIOSH or destroy individual identifiers at the conclusion of the project.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Volunteer subjects from the general population.

CATEGORIES OF RECORDS IN THE SYSTEM:

Occupational history, medical history, results of medical tests including biopsy specimens, demographic data, results of psychological and psychometric tests, and data necessary to interpret the medical results.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Occupational Safety and Health Act, Section 20, "Research and Related Activities" (29 U.S.C. 669).

PURPOSE(S):

This system is to develop composite data summaries to support the development of criteria for occupational safety and health standards, and to provide other recommendations for improving worker safety and health.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

Records subject to the Privacy Act are disclosed to private firms for data entry, computer systems analysis and computer programming services. The contractors promptly return data entry records after the contracted work is completed. The contractors are required to maintain Privacy Act safeguards.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice to enable the Department to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected. The only types of litigative proceedings that NIOSH is authorized to request are (1) enforcement of a subpoena issued to an employer to provide relevant information, or (2) contempt citation against an employer for failure to comply with a warrant obtained by the Institute.

Disclosure may be made to NIOSH collaborating researchers (NIOSH contractors, grantees, or other Federal or State scientists) in order to accomplish the research purpose for which the records are collected. The collaborating researchers must agree in writing to comply with the confidentiality provisions of the Privacy Act and NIOSH must have determined that the researchers' data security procedures will protect confidentiality.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual files, computer cards, computer tapes/disks, computer listings, microfilm.

RETRIEVABILITY:

Name and case number are the indexes used to retrieve records from this system.

SAFEGUARDS:

1. AUTHORIZED USERS: Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control (CDC) or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. PHYSICAL SAFEGUARDS: Locked cabinets in locked rooms, 24-hour guard service in buildings, personnel screening of visitors, electronic anti-intrusion devices in operation at the Federal Records Center (FRC), a limited access, secured computer room with fire extinguishers and overhead sprinkler system, computer terminals and automated records located in secured areas.

3. PROCEDURAL SAFEGUARDS: Protection for computerized records includes programmed verification of valid user identification code, account code and password prior to acceptance of a terminal session or job submission, and frequently changed passwords. Knowledge of individual tape passwords is required to access tapes, and access to systems is limited to users obtaining prior supervisory approval. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

4. IMPLEMENTATION GUIDELINES: The safeguards outlined above are developed in accordance with Chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS.hf: 45-13; Part 6, "Automated Information System Security," of the HHS Information Resources Management Manual; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31). FRC safeguards are in compliance with GSA Federal Property Management Regulations, Subchapter B—Archives and Records.

RETENTION AND DISPOSAL:

Records are maintained in agency for three years. Personal identifiers are destroyed as soon as they are no longer necessary for the protection of the individuals involved. Disposal methods include erasing computer tapes, burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Records destroyed by paper recycling process when 20 years old, unless needed for further study.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Biomedical and Behavioral Science (DBBS), National Institute for Occupational Safety and Health (NIOSH), Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226and

Medical Officer, Division of Standards Development and Technology Transfer (DSDTT), National Institute for Occupational Safety and Health (NIOSH), Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Policy coordination is provided by: Director, Office of Program Support, Bldg.. 1, Rm. 2011, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself by contacting the appropriate system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either (1) submit a notarized request to verify their identity or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information is obtained directly from the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-20-0118

SYSTEM NAME:

Study at Work Sites where Agents Suspected of Being Occupational Hazards Exist. HHS/CDC/NIOSH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Biomedical and Behavioral Science, (DBBS), National Institute for Occupational Safety and Health (NIOSH), Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226and

Federal Records Center, 3150 Bertwynn Drive, Dayton, Ohio 45439.

A list of contractor sites where individually identifiable data are currently located is available upon request to the system manager.

Also, occasionally data may be located at the facilities of collaborating researchers where analyses are performed, data collected and reports written. A list of these facilities is available upon request to the system manager. Data may be located only at those facilities that have an adequate data security program and the collaborating researcher must return the data to NIOSH or destroy individual identifiers at the conclusion of the project.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subjects employed at specific sites under study.

CATEGORIES OF RECORDS IN THE SYSTEM:

Occupational history, medical history, results of medical tests including results of hearing tests, demographic data, employee records, psychological and psychometric tests, and data necessary to interpret the medical results.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Occupational Safety and Health Act, Section 20, "Research and Related Activities" (29 U.S.C. 669).

PURPOSE(S):

This system is to determine the relationship between worker exposure to hazardous agents or stressors and occupational disease. This information is used to recommend procedures to reduce the incidence of occupational disease.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

Records subject to the Privacy Act are disclosed to private firms for data entry, computer systems analysis and computer programming services. The contractors promptly return data entry records after the contracted work is completed. The contractors are required to maintain Privacy Act safeguards.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice to enable the Department to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected. The only types of litigative proceedings that NIOSH is authorized to request are (1) enforcement of a subpoena issued to an employer to provide relevant information, or (2) contempt citation against an employer for failure to comply with a warrant obtained by the Institute.

Disclosure may be made to NIOSH collaborating researchers (NIOSH contractors, grantees, or other Federal or State scientists) in order to accomplish the research purpose for which the records are collected. The collaborating researchers must agree in writing to comply with the confidentiality provisions of the Privacy Act and NIOSH must have determined that the researchers' data security procedures will protect confidentiality.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual files, computer cards, computer tapes/disks, computer listings, microfilm.

RETRIEVABILITY:

Name and case number are the indexes used to retrieve records from this system.

SAFEGUARDS:

1. AUTHORIZED USERS: Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control (CDC) or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. PHYSICAL SAFEGUARDS: Locked cabinets in locked rooms, 24-hour guard service in buildings, personnel screening of visitors, electronic anti-intrusion devices in operation at Federal Records Center (FRC), a limited access, secured computer room with fire extinguishers and overhead sprinkler system, computer terminals and automated records located in secured areas.

3. PROCEDURAL SAFEGUARDS: Protection for computerized records includes programmed verification of valid user identification code, account code and password prior to acceptance of a terminal session or job submission, and frequently changed passwords. Knowledge of individual tape passwords is required to access tapes, and access to systems is limited to users obtaining prior supervisory approval. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

4. IMPLEMENTATION GUIDELINES: The safeguards outlined above are developed in accordance with Chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS.hf: 45-13; Part 6, "Automated Information System Security," of the HHS Information Resources Management Manual; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31). FRC safeguards are in compliance with GSA Federal Property Management Regulations, Subchapter B—Archives and Records.

RETENTION AND DISPOSAL:

Records are maintained in agency for three years. Personal identifiers are destroyed as soon as the system has stabilized, and statistical summaries can be run. Disposal methods include erasing computer tapes, burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Records destroyed by paper recycling process when 20 years old, unless needed for further study.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Biomedical and Behavioral Science (DBBS), National Institute for Occupational Safety and Health (NIOSH), Robert A. Taft

Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either (1) submit a notarized request to verify their identity or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information is obtained directly from the individual and from employee records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-20-0136

SYSTEM NAME:

Epidemiologic Studies and Surveillance of Disease Problems. HHS/CDC/CID.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Center for Infectious Diseases, Bldg. 1, Rm. 6013, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333

San Juan Laboratories, Center for Infectious Diseases, Centers for Disease Control, San Juan, Puerto Rico 00936

Center for Prevention Services, Freeway Office Park, Rm. 313, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333

Center for Environmental Health, Chamblee Bldg. 27, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333

Epidemiology Program Office, Bldg. 1, Rm. 5009, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333and

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

A list of contractor sites where individually identifiable data are currently located is available upon request to the appropriate system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Adults and children with diseases and other preventable conditions of public health significance; also included are control group participants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case reports, medical records, questionnaires, and related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 301, "Research and Investigation," (42 U.S.C. 241); Sections 304, 306 and 308(d) which discuss authority to grant assurances of confidentiality for health research and related activities (42 U.S.C. 242 b, k, and m(d)).

PURPOSE(S):

This record system enables Centers for Disease Control (CDC) officials to better understand disease patterns in the United States, develop programs for prevention and control of health problems, and communicate new knowledge to the health community.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The following routine uses apply to all records in this system except those maintained under an assurance of confidentiality provided by Section 308(d) of the Public Health Service Act (unless expressly authorized in the consent form or stipulated in the Assurance Statement):

CDC is under contract with private firms for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records are maintained by such contractors. Contractors are required to maintain Privacy Act safeguards with respect to such records.

A record may be disclosed for a research purpose, when the Department:(A) has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;(B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identified form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;(C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law;(D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessment, medical audits or utilization review.

Records may be disclosed to health departments and other public health or cooperating medical authorities in connection with program activities and related collaborative efforts to deal more effectively with diseases and conditions of public health significance.

Disclosure may be made to a congressional office from the record of

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an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer tapes/disks and printouts and file folders.

RETRIEVABILITY:

By name of individual and by identification number.

SAFEGUARDS:

1. AUTHORIZED USERS: Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of CDC or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. PHYSICAL SAFEGUARDS: Locked cabinets in locked rooms, 24-hour guard service in buildings, personnel screening of visitors, electronic anti-intrusion devices in operation at the Federal Records Center (FRC), fire extinguishers, overhead sprinkler system and card-access control equipment in the computer room, computer terminals and automated records located in secured areas.

3. PROCEDURAL SAFEGUARDS: Protection for computerized records includes programmed verification of valid user identification code, account code and password prior to acceptance of a terminal session or job submission, frequently changed passwords, and Vault Management System. Knowledge of individual tape passwords is required to access tapes, and access to systems is limited to users obtaining prior supervisory approval. When Privacy Act tapes are scratched, a special 'certified" process is performed in which tapes are completely written over to avoid inadvertent data disclosure. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

4. IMPLEMENTATION GUIDELINES: The safeguards outlined above are developed in accordance with Chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS.hf: 45-13; Part 6, "Automated Information System Security," of the HHS Information Resources Management Manual; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31). FRC safeguards are in compliance with GSA Federal Property Management Regulations, Subchapter B—Archives and Records.

RETENTION AND DISPOSAL:

Record copy of study reports maintained in agency from two to three years in accordance with retention schedules. Source documents for computer disposed of when no longer needed by program officials. Personal identifiers may be deleted from records when no longer needed in the study as determined by the system manager, and as provided in the signed consent form, as appropriate. Disposal methods include erasing computer tapes, burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Records destroyed by paper recycling process when 20 years old, unless needed for further study.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Center for Infectious Diseases, Bldg. 1, Rm. 6013, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333

Director, Center for Prevention Services, Freeway Office Park, Rm. 310, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333

Director, Center for Environmental Health, Chamblee Bldg. 27, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333 and

Director, Epidemiology Program Office, Bldg. 1, Rm. 5009, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Policy coordination is provided by: Director, Office of Program Support, Bldg. 1, Rm. 2011, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself or may obtain information concerning participation in epidemiological studies or surveillance activities by contacting the appropriate system manager at the address listed above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either (1) submit a notarized request to verify their identity or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion. A parent or guardian who requests notification of, or access to, a child's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child by means of a birth certificate or court order, as well as verify that he or she is who he or she claims to be.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the first official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individuals, private physicians, State and local health departments, and other health care providers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-20-0137

SYSTEM NAME:

Passport File. HHS/CDC/IHPO.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

International Health Program Office, Bldg. 14, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The Centers for Disease Control (CDC) employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Passport status records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, Government Organization and Employees (5 U.S.C. 301).

PURPOSE(S):

To show status of passports of CDC employees who travel to foreign countries on official business.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

1. AUTHORIZED USERS: Access is granted to only a limited number of International Health Program Office personnel and designated support staff of CDC, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.
2. PHYSICAL SAFEGUARDS: Locked cabinets in locked rooms, 24-hour guard service in buildings, personnel screening of visitors.
3. PROCEDURAL SAFEGUARDS: Users of individually identified data protect information from public scrutiny, and only specifically authorized personnel may be admitted to the record storage area. CDC employees who maintain records are instructed to check with the system manager prior to making disclosures of data.
4. IMPLEMENTATION GUIDELINES: DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual.

RETENTION AND DISPOSAL:

Records are maintained in agency for five years. When passports expire or when they are cancelled, they are returned to the subject individual. If the individual does not wish to receive the cancelled or expired passport, the document is destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, International Health Program Office, Bldg. 14, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either (1) submit a notarized request to verify their identity or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

CDC employees.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-20-0138

SYSTEM NAME:

Epidemic Intelligence Service Officers Files. HHS/CDC/EPO.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Epidemiology Program Office, Bldg.. 1, Rm. 3061, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333and

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

EIS Officers - Current, alumni and applicants.

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CATEGORIES OF RECORDS IN THE SYSTEM:

Applications, interview materials, letters of recommendations, call-to-duty papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 203, "Commissioned Corps" and Section 207, "Appointment of Personnel' (42 U.S.C. 204, 209).

PURPOSE(S):

The system is designed to process individual applications for the Epidemic Intelligence Service Officer program, and to assess a candidate's suitability for a position in the program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

1. AUTHORIZED USERS: Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control (CDC), as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. PHYSICAL SAFEGUARDS: Locked cabinets in locked rooms, 24-hour guard service in buildings, personnel screening of visitors, electronic anti-intrusion devices in operation at the Federal Records Center (FRC).

3. PROCEDURAL SAFEGUARDS: Users of individually identified data protect information from public scrutiny, and only specifically authorized personnel may be admitted to the record storage area. CDC employees who maintain records are instructed to check with the system manager prior to making disclosures of data.

4. IMPLEMENTATION GUIDELINES: DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual. FRC safeguards are in compliance with GSA Federal Property Management Regulations, Subchapter B—Archives and Records.

RETENTION AND DISPOSAL:

Records are maintained in agency for eight years. Disposal methods include burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation. Destroyed by paper recycling process after 16 years unless needed for further analysis.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Epidemiology Program Office, Bldg. 1, Rm. 5009, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either (1) submit a notarized request to verify their identity or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Educational institutions, previous employers and subject individuals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-20-0147

SYSTEM NAME:

Occupational Health Epidemiological Studies. HHS/CDC/NIOSH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Surveillance, Hazard Evaluation, and Field Studies (DSHEFS), National Institute for Occupational Safety and Health (NIOSH), Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226and

Federal Records Center, 3150 Bertwynn Drive, Dayton, Ohio 45439.

A list of contractor sites where individually identifiable data are currently located is available upon request to the system manager.

Also, occasionally data may be located at the facilities of collaborating researchers where analyses are performed, data collected and reports written. A list of these facilities is available upon request to the system manager. Data may be located only at those facilities that have an adequate data security program and the collaborating researcher must return the data to NIOSH or destroy individual identifiers at the conclusion of the project.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Industrial workers exposed to physical and/or chemical agents that may damage the human body in any way. Some examples are: (1) organic carcinogens, (2) inorganic carcinogens, (3) mucosal or dermal irritants, (4) fibrogenic materials, (5) acute toxic agents including sensitizing agents, (6) neurotoxic agents, (7) mutagenic (male and female) and teratogenic agents, (8) bio-accumulating non-carcinogen agents, and (9) chronic vascular disease-causing agents. Also included are those individuals in the general population who have been selected as control groups.

CATEGORIES OF RECORDS IN THE SYSTEM:

Physical exams, sputum cytology results, questionnaires, demographic information, smoking history, occupational histories, previous and current employment records, urine test records, X-rays, medical history, pulmonary function test records, medical disability forms, blood test records, driver's license data, hearing test results, spirometry results are examples of the records in this system. The specific types of records collected and maintained are determined by the needs of the individual study.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 301, "Research and Investigation" (42 U.S.C. 241); Occupational Safety and Health Act, Section 20, "Research and Related Activities" (29 U.S.C. 669); Federal Mine Safety and Health Act of 1977, Section 501, "Research" (30 U.S.C. 951).

PURPOSE(S):

Studies carried out under this system are to evaluate mortality and morbidity of occupationally related diseases, to determine the cause and prevention of diseases of industrial origin, and lead toward future prevention of occupationally related diseases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

Portions of records (name, Social Security number if known, date of birth, and last known address) may be disclosed to one or more of the sources selected from those listed in Appendix I, as applicable. This may be done solely for obtaining a determination as to whether or not an individual has died. The purpose of determining death is so that NIOSH may obtain death certificates, which state the cause of death, from the appropriate Federal, State or local agency. Cause of death enables NIOSH to evaluate whether excess occupationally related mortality is occurring.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

Records subject to the Privacy Act are disclosed to private firms for data entry, computer systems analysis and computer programming services. The contractors promptly return data entry records after the contracted work is completed. The contractors are required to maintain Privacy Act safeguards.

Test data which indicate the existence of cancer may be provided to the State Cancer Registry where the State has a legally constituted cancer registry program which provides for the confidentiality of information.

Certain communicable diseases may be reported to State and/or local Health Departments where the State has a legally constituted reporting program for communicable diseases and which provides for the confidentiality of the information.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice to enable the Department to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected. The only types of litigative proceedings that NIOSH is authorized to request are (1) enforcement of a subpoena issued to an employer to provide relevant information, or (2) contempt citation against an employer for failure to comply with a warrant obtained by the Institute.

Disclosure may be made to NIOSH collaborating researchers (NIOSH contractors, grantees, or other Federal or State scientists) in order to accomplish the research purpose for which the records are collected. The collaborating researchers must agree in writing to comply with the confidentiality provisions of the Privacy Act and NIOSH must have determined that the researchers' data security procedures will protect confidentiality.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual files, card files, computer tapes/disks and printouts, microfilm, microfiche, and other files as appropriate.

RETRIEVABILITY:

Name, assigned number, plant name, year tested are some of the indices used to retrieve records from these systems. Other retrieval methods are utilized as individual research dictates.

SAFEGUARDS:

1. AUTHORIZED USERS: Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control (CDC) or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. PHYSICAL SAFEGUARDS: Locked cabinets in locked rooms, 24-hour guard service in buildings, personnel screening of visitors, electronic anti-intrusion devices in operation at the Federal Records Center (FRC), fire extinguishers, overhead sprinkler system and a limited access, secured computer room, computer terminals and automated records located in secured areas.

3. PROCEDURAL SAFEGUARDS: Protection for computerized records includes programmed verification of valid user identification code, account code and password prior to acceptance of a terminal session or job submission, and frequently changed passwords. Knowledge of individual tape passwords is required to access tapes, and access to systems is limited to users obtaining prior supervisory approval. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned

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to CDC or destroyed, as specified by the contract.

4. IMPLEMENTATION GUIDELINES: The safeguards outlined above are developed in accordance with Chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS.hf: 45-13; Part 6, "Automated Information System Security," of the HHS Information Resources Management Manual; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31). FRC safeguards are in compliance with GSA Federal Property Management Regulations, Subchapter B—Archives and Records.

RETENTION AND DISPOSAL:

Records are maintained in agency for three years. Every attempt is made to strip personal identifiers from records and destroy the records when they are no longer needed. Disposal methods include erasing computer tapes, burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Records destroyed by paper recycling process when 20 years old, unless needed for further study.

SYSTEM MANAGER(S) AND ADDRESS:

Program Management Officer, Division of Surveillance, Hazard Evaluations, and Field Studies (DSHEFS), National Institute for Occupational Safety and Health (NIOSH), Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either (1) submit a notarized request to verify their identity or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Vital status information is obtained from Federal, State and local governments and other available sources selected from those listed in Appendix I. Information is obtained directly from the individual and employer records, whenever possible.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

APPENDIX I - Potential Sources for Determination of Vital Status

Military RecordsAppropriate State Motor Vehicle Registration DepartmentsAppropriate State Driver's License DepartmentsAppropriate State Government Divisions of: Assistance Payments (Welfare), Social Services, Medical Services, Food Stamp Program, Child Support, Board of Corrections, Aging;Indian Affairs, Workman's Compensation, Disability InsuranceRetail Credit Association Follow upVeterans Administration FilesAppropriate employee union or association recordsAppropriate company pension or employment recordsCompany group insurance recordsAppropriate State Vital Statistics OfficesLife Insurance CompaniesRailroad Retirement BoardArea Nursing HomesArea Indian Trading PostsMailing List Correction Cards (U.S. Postal Service)Letters and telephone conversations with relativesLetters and telephone conversations with former employees of the same establishment as cohort memberAppropriate local newspaper (obituaries)Social Security AdministrationInternal Revenue ServiceNational Death Index

09-20-0149

SYSTEM NAME:

Morbidity Studies in Coal Mining, Metal and Non-metal Mining and General Industry. HHS/CDC/NIOSH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), 944 Chestnut Ridge Road, Morgantown, WV 26505.

A list of contractor sites where individually identifiable data are currently located is available upon request to the system manager.

Also, occasionally data may be located at the facilities of collaborating researchers where analyses are performed, data collected and reports written. A list of these facilities is available upon request to the system manager. Data may be located only at those facilities that have an adequate data security program and the collaborating researcher must return the data to NIOSH or destroy individual identifiers at the conclusion of the project.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons working, or having worked at coal mining operations, mining operations other than coal and at workplaces not identified as surface mining or below ground mining operations and exposed or potentially exposed to substances which are known or suspected respiratory irritants or carcinogens. Also included are those indi-viduals in the general population who have been selected as a control group.

CATEGORIES OF RECORDS IN THE SYSTEM:

Previous and current employment records, medical and occupational histories, demographic data, X-rays, smoking histories, results of medical tests such as pulmonary function data and spirometry test results, permission forms, industrial environmental data, and questionnaires. The specific types of records collected and maintained are determined by the research needs of the specific study.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Occupational Safety and Health Act, Section 20, "Research and Related

Activities" (29 U.S.C. 669); Federal Mine Safety and Health Act of 1977, Sections 203, "Medical Examinations" and 501, "Research" (30 U.S.C. 843, 951); Public Health Service Act, Section 301, "Research and Investigation" (42 U.S.C. 241).

PURPOSE(S):

The purpose of this system is to investigate occupationally related diseases at workplaces identified as general industry, surface mining, or below ground mining operations and to determine the cause and prevention of such diseases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data may be sent to State Vital Statistics Divisions to obtain death certificates, and to Missing Person Location Agencies to find those individuals who cannot otherwise be located.

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

Records subject to the Privacy Act are disclosed to private firms for data entry, computer systems analysis and computer programming services. The contractors promptly return data entry records after the contracted work is completed. The contractors are required to maintain Privacy Act safeguards.

Data on the incidence of pneumoconiosis may be sent to the Mining Safety and Health Administration, Department of Labor.

Test data which indicate the existence of cancer may be provided to the State Cancer Registry where the State has a legally constituted cancer registry program which provides for the confidentiality of information.

Certain communicable diseases may be reported to State and/or local Health Departments where the State has a legally constituted reporting program for communicable diseases and which provides for the confidentiality of the information.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice to enable the Department to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected. The only types of litigative proceedings that NIOSH is authorized to request are (1) enforcement of a subpoena issued to an employer to provide relevant information, or (2) contempt citation against an employer for failure to comply with a warrant obtained by the Institute.

Disclosure may be made to NIOSH collaborating researchers (NIOSH contractors, grantees, or other Federal or State scientists) in order to accomplish the research purpose for which the records are collected. The collaborating researchers must agree in writing to comply with the confidentiality provisions of the Privacy Act and NIOSH must have determined that the researchers' data security procedures will protect confidentiality.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer cards, tapes/disks and printouts, microfiche, and manual files.

RETRIEVABILITY:

Name and/or assigned numerical identifier, plant name, study are some of the indices used to retrieve records from this system. Social security numbers, supplied on a voluntary basis may occasionally be used for data retrieval.

SAFEGUARDS:

1. AUTHORIZED USERS: Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control (CDC) or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. PHYSICAL SAFEGUARDS: Locked cabinets in locked rooms, 24-hour guard service in buildings, personnel screening and escorting of visitors, a limited access, secured computer room with fire extinguishers and overhead sprinkler system, computer terminals and automated records located in secured areas.

3. PROCEDURAL SAFEGUARDS: Protection for computerized records includes programmed verification of valid user identification code, account code and password prior to acceptance of a terminal session or job submission, and frequently changed passwords. Knowledge of individual tape passwords is required to access tapes, and access to systems is limited to users obtaining prior supervisory approval. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

4. IMPLEMENTATION GUIDELINES: The safeguards outlined above are developed in accordance with Chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS.hf: 45-13; Part 6, "Automated Information System Security," of the HHS Information Resources Management Manual; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records maintained in agency for three years. Source documents for computer disposed of when no longer needed in the study, as determined by the system manager, and as provided in the signed consent form, as appropriate. Disposal methods include erasing computer tapes,burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Records destroyed by paper recycling process when 20 years old, unless needed for further study.

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SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), 944 Chestnut Ridge Road, Morgantown, WV 26505.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either (1) submit a notarized request to verify their identity or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject toa $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requestersshould also reasonably specify the record contents being sought. An accountingof disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual and from employer industry records. Vital status information is obtained from Federal, State and local governments and other available sources.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-20-0153

SYSTEM NAME:

Mortality Studies in Coal Mining, Metal and Non-metal Mining and General Industry. HHS/CDC/NIOSH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), 944 Chestnut Ridge Road, Morgantown, WV 26505.

A list of contractor sites where individually identifiable data are currently located is available upon request to the system manager.

Also, occasionally data may be located at the facilities of collaborating researchers where analyses are performed, data collected and reports written. A list of these facilities is available upon request to the system manager. Data may be located only at those facilities that have an adequate data security program and the collaborating researcher must return the data to NIOSH or destroy individual identifiers at the conclusion of the project.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons working, or having worked at coal mining operations, mining operations other than coal and at workplaces not identified as surface mining or below ground mining operations and exposed or potentially exposed to substances which are known or suspected respiratory irritants or carcinogens. Also included are those indi-viduals in the general population who have been selected as a control group.

CATEGORIES OF RECORDS IN THE SYSTEM:

Previous and current employment records, medical and occupational histories, demographic data, X-rays, smoking histories, results of medical tests such as pulmonary function data and spirometry test results, permission forms, industrial environmental data, and questionnaires. The specific types of records collected and maintained are determined by the research needs of the specific study.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Occupational Safety and Health Act, Section 20, "Research and Related Activities" (29 U.S.C. 669); Federal Mine Safety and Health Act of 1977, Section 4, "Mandatory Safety and Health Standards" and Section 501, "Research" (30 U.S.C. 811, 951); Public Health Service Act, Section 301, "Research and Investigation" (42 U.S.C. 241).

PURPOSE(S):

The purpose of this system is to investigate occupationally related diseases at workplaces identified as general industry, surface mining or below ground mining operations, to determine the cause and prevention of such diseases, and to evaluate whether excess occupationally related mortality is occurring.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data may be sent to State Vital Statistics Divisions to obtain death certificates, and to Missing Person Location Agencies to find those individuals who cannot otherwise be located.

Portions of records (name, social security number if known, date of birth, and last known address) may be disclosed to one or more other sources selected from those listed in Appendix I, as applicable. This may be done solely for obtaining a determination as to whether or not an individual has died. The purpose of determining death is so that NIOSH may obtain death certificates, which state the cause of death, from the appropriate Federal, State, or local agency. Cause of death enables NIOSH to evaluate whether excess occupationally related mortality is occurring.

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

Records subject to the Privacy Act are disclosed to private firms for data entry, computer systems analysis and computer programming services. The contractors promptly return data entry records after the contracted work is completed. The contractors are required to maintain Privacy Act safeguards.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice to enable the Department to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected. The only types of litigative proceedings that NIOSH is authorized to request are (1) enforcement of a subpoena issued to an employer to provide relevant information, or (2) contempt citation against an employer for failure to comply with a warrant obtained by the Institute.

Disclosure may be made to NIOSH collaborating researchers (NIOSH contractors, grantees, or other Federal or State scientists) in order to accomplish the research purpose for which the records are collected. The collaborating researchers must agree in writing to comply with the confidentiality provisions of the Privacy Act and NIOSH must have determined that the researchers' data security procedures will protect confidentiality.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer cards, tapes/disks and printouts, microfiche, and manual files.

RETRIEVABILITY:

Name and/or assigned numerical identifier, plant name, study are some of the indices used to retrieve records from this system. Social security numbers, supplied on a voluntary basis may occasionally be used for data retrieval.

SAFEGUARDS:

1. AUTHORIZED USERS: Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control (CDC) or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. PHYSICAL SAFEGUARDS: Locked cabinets in locked rooms, 24-hour guard service in buildings, personnel screening and escorting of visitors, a limited access, secured computer room with fire extinguishers and overhead sprinkler system, computer terminals and automated records located in secured areas.

3. PROCEDURAL SAFEGUARDS: Protection for computerized records includes programmed verification of valid user identification code, account code and password prior to acceptance of a terminal session or job submission, and frequently changed passwords. Knowledge of individual tape passwords is required to access tapes, and access to systems is limited to users obtaining prior supervisory approval. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

4. IMPLEMENTATION GUIDELINES: The safeguards outlined above are developed in accordance with Chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS.hf: 45-13; Part 6, "Automated Information System Security," of the HHS Information Resources Management Manual; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records maintained in agency for three years. Source documents for computer disposed of when no longer needed in the study, as determined by the system manager, and as provided in the signed consent form, as appropriate. Disposal methods include erasing computer tapes, burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Records destroyed by paper recycling process when 20 years old, unless needed for further study.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), 944 Chestnut Ridge Road, Morgantown, WV 26505.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either (1) submit a notarized request to verify their identity or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject toa $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study or treatment, if known; and (3) nature of the questionnaire or study in which the requester participated.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requestersshould also reasonably specify the record contents being sought. An accountingof disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual, company personnel records, death certificates, and from industry and trade union records. Vital status information is obtained from Federal, State and local governments and other available sources.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

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APPENDIX I - Potential Sources for Determination of Vital Status

Military RecordsAppropriate State Motor Vehicle Registration DepartmentsAppropriate State Drivers License DepartmentsAppropriate State Government Divisions of: Assistance Payments (Welfare), Social Services, Medical Services, Food Stamp Program, Child Support, Board of Corrections, Aging;Indian Affairs, Workman's Compensation, Disability InsuranceVeterans Administration FilesAppropriate employee union or association recordsAppropriate company pension or employment recordsCompany group insurance recordsAppropriate State Vital Statistics OfficesLife Insurance CompaniesRailroad Retirement BoardArea Nursing HomesArea Indian Trading PostsMailing List Correction Cards (U.S. Postal Service)Letters and telephone conversations with relativesLetters and telephone conversations with former employees of the same establishment as cohort memberAppropriate local newspaper (obituaries)Social Security AdministrationInternal Revenue Service

09-20-0154

SYSTEM NAME:

Medical and Laboratory Studies. HHS/CDC/NIOSH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), 944 Chestnut Ridge Road, Morgantown, WV 26505.

A list of contractor sites where individually identifiable data are currently located is available upon request to the system manager.

Also, occasionally data may be located at the facilities of collaborating researchers where analyses are performed, data collected and reports written. A list of these facilities is available upon request to the system manager. Data may be located only at those facilities that have an adequate data security program and the collaborating researcher must return the data to NIOSH or destroy individual identifiers at the conclusion of the project.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have had physical examinations at DRDS or who have had biochemical tests done on various samples submitted to DRDS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Analyses of biochemical data, occupational and medical histories, and results of medical tests. The specific types of records collected and maintained are determined by the needs of the individual study.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Mine Safety and Health Act of 1977, Section 501, "Research" (30 U.S.C. 951); Occupational Safety and Health Act, Section 20, "Research and Related Activities" and Section 22(d), "Authority of Director, National Institute for Occupational Safety and Health" (29 U.S.C. 669, 671(d)).

PURPOSE(S):

The purpose of this system is to perform medical and epidemiological research, statistical analysis, and to identify early indicators of occupationally related diseases (biochemical indices); data is given to other NIOSH units for biochemical and epidemiological studies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data may be sent to State Vital Statistics Divisions to obtain death certificates, and to Missing Person Location Agencies to find those individuals who cannot otherwise be located.

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

Records subject to the Privacy Act are disclosed to private firms for data entry, computer systems analysis and computer programming services. The contractors promptly return data entry records after the contracted work is completed. The contractors are required to maintain Privacy Act safeguards.

Test data which indicate the existence of cancer may be provided to the State Cancer Registry where the State has a legally constituted cancer registry program which provides for the confidentiality of information.

Certain communicable diseases may be reported to State and/or local Health Departments where the State has a legally constituted reporting program for communicable diseases and which provides for the confidentiality of the information.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice to enable the Department to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected. The only types of litigative proceedings that NIOSH is authorized to request are (1) enforcement of a subpoena issued to an employer to provide relevant information, or (2) contempt citation against an employer for failure to comply with a warrant obtained by the Institute.

Disclosure may be made to NIOSH collaborating researchers (NIOSH contractors, grantees, or other Federal or State scientists) in order to accomplish the research purpose for which the records are collected. The collaborating researchers must agree in writing to comply with the confidentiality provisions of the Privacy Act and NIOSH must have determined that the researchers' data security procedures will protect confidentiality.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer cards, tapes/disks and printouts; microfiche, and manual files.

RETRIEVABILITY:

Name and case number are the indices used to retrieve records from this system.

SAFEGUARDS:

1. AUTHORIZED USERS: Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers

for Disease Control (CDC) or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. PHYSICAL SAFEGUARDS: Locked cabinets in locked rooms, 24-hour guard service in buildings, personnel screening and escorting of visitors, a limited access, secured computer room with fire extinguishers and overhead sprinkler system, computer terminals and automated records located in secured areas.

3. PROCEDURAL SAFEGUARDS: Protection for computerized records includes programmed verification of valid user identification code, account code and password prior to acceptance of a terminal session or job submission, and frequently changed passwords. Knowledge of individual tape passwords is required to access tapes, and access to systems is limited to users obtaining prior supervisory approval. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

4. IMPLEMENTATION GUIDELINES: The safeguards outlined above are developed in accordance with Chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS.hf: 45-13; Part 6, "Automated Information System Security," of the HHS Information Resources Management Manual; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are maintained in agency for three years. Source documents for computer disposed of when no longer needed in the study, as determined by the system manager, and as provided in the signed consent form, as appropriate. Disposal methods include erasing computer tapes,burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Records destroyed by paper recycling process when 20 years old, unless needed for further study.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), 944 Chestnut Ridge Road, Morgantown, WV 26505.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either (1) submit a notarized request to verify their identity or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information is obtained directly from the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-20-0157

SYSTEM NAME:

Clinical Laboratory Personnel Proficiency Test Results (Medicare). HHS/CDC/LPO.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Laboratory Program Office, Executive Park, Bldg. 24, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333and

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

A list of contractor sites where individually identifiable data are currently located is available upon request to the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Clinical laboratory technicians and technologists, cytotechnologists, independent laboratory directors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Answer sheets, examination scores.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Social Security Act, Section 1123 "Qualifications for Health Care Personnel" (42 U.S.C. 1320a-2).

PURPOSE(S):

To maintain a record of examination scores. When applicable, answer sheets are used to revalidate results.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

The Centers for Disease Control is under contract with private firms for the purpose of collating, analyzing, or otherwise refining records in this system. Relevant records are maintained by the contractors. The contractors are required to maintain Privacy Act safeguards with respect to such records.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity;

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or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer-generated listings filed by discipline, and by State, in file folders. Computer tapes filed at the Federal Records Center.

RETRIEVABILITY:

Listings and answer sheets are retrieved by examination discipline, State, examinee's name and address, and examination number.

SAFEGUARDS:

1. AUTHORIZED USERS: Access is granted to only a limited number of Laboratory Program Office personnel and designated support staff of the Centers for Disease Control (CDC), or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. PHYSICAL SAFEGUARDS: Locked cabinets in locked rooms, 24-hour guard service in buildings, personnel screening of visitors, electronic anti-intrusion devices in operation at the Federal Records Center.

3. PROCEDURAL SAFEGUARDS: Users of individually identified data protect information from public scrutiny, and only specifically authorized personnel may be admitted to the record storage area. CDC employees who maintain records are instructed to check with the system manager prior to making disclosures of data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

4. IMPLEMENTATION GUIDELINES: DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual. FRC safeguards are in compliance with GSA Federal Property Management Regulations, Subchapter B—Archives and Records.

RETENTION AND DISPOSAL:

Records are retained in agency for three years. Disposal methods include erasing computer tapes, burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Records destroyed by paper recycling process after 15 years, unless needed for further study.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Laboratory Program Office, Executive Park, Bldg. 24, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either (1) submit a notarized request to verify their identity or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

The following information should be provided when requesting notification: (1) Full name; (2) approximate date(s) of the examination(s); (3) name of the examination and location at which examination was administered.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Scored examinations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-20-0159

SYSTEM NAME:

Records of Subjects in Certification, Testing, Studies of Personal Protective Devices, and Accident Investigations. HHS/CDC/NIOSH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Safety Research (DSR), National Institutefor Occupational Safety and Health (NIOSH), 944 Chestnut Ridge Road, Morgantown, WV 26505.

A list of contractor sites where individually identifiable data are currently located is available upon request to the system manager.

Also, occasionally data may be located at the facilities of collaborating researchers where analyses are performed, data collected and reports written. A list of these facilities is available upon request to the system manager. Data may be located only at those facilities that have an adequate data security program and the collaborating researcher must return the data to NIOSH or destroy individual identifiers at the conclusion of the project.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals exposed to hazardous work environments and individuals selected as control groups are covered by this system. Additionally, the system pertains to individuals selected to test the interaction between people, personal protection or safety equipment, users of such equipment, and a hazardous environment. Some examplesinclude individuals involved in investigated accidents and persons selected to perform respirator facepiece fit tests, perform lifting and manual materials handling studies, perform work tests while wearing protective equipment, perform strength test studies, and perform hand speed tests.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains such records as physical examinations, questionnaires, results of laboratory tests (physiological measures and performance tests), workplace performance records, occupational histories, medical histories, demographic data, and related medical information. The specific types of records collected and maintained are determined by the needs of the individual study.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 301, "Research and Investigation" (42 U.S.C. 241); Occupational Safety and Health Act, Section 20, "Research and Related Activities" (29 U.S.C. 669); and Federal Mine Safety and Health Act of 1977, Section 501, "Research" (30 U.S.C. 951).

PURPOSE(S):

The purpose of this system is to permit acquisition of information related to certification and performance of personal protective equipment, and safety research studies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office, made at the written request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

Portions of records (name, Social Security number if known, date of birth, and last known address) may be disclosed to one or more sources selected from those listed in Appendix I. This may be done to determine if the individual has died so that a death certificate can be obtained. Knowing the cause of death enables NIOSH to evaluate whether excess occupationally-related mortality is occurring.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice to enable the Department to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected. The only types of litigative proceedings that NIOSH is authorized to request are (1) enforcement of a subpoena issued to an employer to provide relevant information, or (2) contempt citation against an employer for failure to comply with a warrant obtained by the Institute.

Records subject to the Privacy Act are disclosed to private firms for data entry, computer systems analysis, and computer programming services. The contractors promptly return data entry records after the contracted work is completed. The contractors are required to maintain Privacy Act safeguards.

Disclosure may be made to NIOSH collaborating researchers (NIOSH contractors, grantees, or other Federal or State scientists) in order to accomplish the research purpose for which the records are collected. The collaborating researchers must agree in writing to comply with the confidentiality provisions of the Privacy Act and NIOSH must have determined that the researchers' data security procedures will protect confidentiality.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual files, computer cards, tapes/disks and printouts, microfilm, index audiogram files, audiograms, questionnaire forms.

RETRIEVABILITY:

Name, assigned number, plant name, and year tested are some of the indices used to retrieve records from these systems. Other retrieval methods are utilized as individual research dictates.

SAFEGUARDS:

1. AUTHORIZED USERS: Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of the Centers for Disease Control (CDC) or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. PHYSICAL SAFEGUARDS: Locked cabinets in locked rooms, 24-hour guard service in buildings, personnel screening and escorting of visitors, a limited access, secured computer room with fire extinguishers and overhead sprinkler system, computer terminals and automated records located in secured areas.

3. PROCEDURAL SAFEGUARDS: Protection for computerized records includes programmed verification of valid user identification code, account code and password prior to acceptance of a terminal session or job submission, frequently changed passwords. Knowledge of individual tape passwords is required to access tapes, and access to systems is limited to users obtaining prior supervisory approval. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

4. IMPLEMENTATION GUIDELINES: The safeguards outlined above are developed in accordance with Chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS.hf: 45-13; Part 6, "Automated Information System Security," of the HHS Information Resources Management Manual; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are maintained in agency for three years. Personal identifiers are stripped from records when no longer needed. Disposal methods include erasing computer tapes, burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Records destroyed by paper recycling process when 20 years old, unless needed for further study.

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SYSTEM MANAGER(S) AND ADDRESS:

Special Assistant to the Director, Division of Safety Research (DSR), National Institute for Occupational Safety and Health (NIOSH), 944 Chestnut Ridge Road, Morgantown, WV 26505.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either (1) submit a notarized request to verify their identity or (2) must certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known, and (3) nature of the questionnaire or study in which the requester participated.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual and from employer records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-20-0160

SYSTEM NAME:

Records of Subjects in Health Promotion and Education Studies. HHS/CDC/CHPE.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Center for Health Promotion and Education, Bldg. 3, Rm. 117, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

A list of contractor sites where individually identifiable data are currently located is available upon request to the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Adults and children, including health and education agency administrators, school health personnel, teachers, parents, and students who participate in studies and surveys designed to obtain data on their knowledge, attitudes, and reported behavior related to a variety of health problems and/or other potential preventable conditions of public health significance; also included are control group participants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Responses to questionnaires by adults and children, including health and education agency administrators, school health personnel, teachers, parents, and students, pertaining to health knowledge, attitudes and behavior, site visit data, organizational data regarding health education in school curriculum, course content, medical histories, demographic data of the survey population as well as identification data for follow-up purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 301, "Research and Investigation" (42 U.S.C. 241).

PURPOSE(S):

This record system enables the Centers for Disease Control (CDC) officials to develop and evaluate existing health promotion programs for disease prevention and control, and to communicate new knowledge to the health community for the implementation of such programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to CDC contractors in the conduct of research studies covered by this system notice and in the preparation of scientific reports, in order to accomplish the stated purpose of the system. The recipients will be required to maintain Privacy Act safeguards with respect to such records.

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer tapes/disks and printouts, file folders.

RETRIEVABILITY:

Name of individual, identification number, school name and year tested are some of the indices used to retrieve records from this system.

SAFEGUARDS:

1. AUTHORIZED USERS: Access is granted to only a limited number of researchers and designated support staff of CDC or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. PHYSICAL SAFEGUARDS: Locked cabinets in locked rooms, 24-hour guard service in buildings, personnel screening of visitors, fire extinguishers, overhead sprinkler system and card-access control equipment in the computer room, computer terminals and automated records located in secured areas.

3. PROCEDURAL SAFEGUARDS: Protection for computerized records

includes programmed verification of valid user identification code, account code and password prior to acceptance of a terminal session or job submission, frequently changed passwords, and Vault Management System. Knowledge of individual tape passwords is required to access tapes, and access to systems is limited to users obtaining prior supervisory approval. When Privacy Act tapes are scratched, a special 'certified" process is performed in which tapes are completely written over to avoid inadvertent data disclosure. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

4. IMPLEMENTATION GUIDELINES: The safeguards outlined above are developed in accordance with Chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS.hf: 45-13; Part 6, "Automated Information System Security," of the HHS Information Resources Management Manual; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are maintained in agency for two years. Source documents for computer disposed of when no longer needed by program officials. Personal identifiers may be deleted from records when no longer needed in the study as determined by the system manager, and as provided in the signed consent form, as appropriate. Disposal methods include erasing computer tapes, burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Records destroyed by paper recycling process when 20 years old, unless needed for further study.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Center for Health Promotion and Education, Bldg. 3, Rm. 117, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either (1) submit a notarized request to verify their identity or (2) must certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to a child's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child by means of a birth certificate or court order, as well as verify that he or she is who he or she claims to be.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known, and (3) nature of the questionnaire or study in which the requester participated.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individuals, and participating public and private schools which maintain records on enrolled students.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-20-0161

SYSTEM NAME:

Records of Health Professionals in Disease Prevention and Control Training Programs. HHS/CDC/CPS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Center for Prevention Services, Freeway Office Park, Rm. 310, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333

Laboratory Program Office, Executive Park, Bldg. 24, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333 and

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

A list of contractor sites where individually identifiable data are currently located is available upon request to the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Physicians, nurses, physician assistants, clinician trainees, and other health personnel who have participated in training activities, surveys, and studies developed by the Centers for Disease Control (CDC), and control group health professionals who have not participated in training activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Responses to questionnaires by physicians, nurses, physician assistants, clinician trainees, and related health personnel, pertaining to knowledge, attitude and practices relating to health problems, diseases and/or other potential preventable conditions of public health significance; health care and related training data; and demographic data of the survey population as well as identification data for followup purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 301, "Research and Investigation" (42 U.S.C. 241).

PURPOSE(S):

This record system enables CDC officials to maintain training records and assess the impact of the agency's training programs on the knowledge, attitudes and practices of clinicians and other health care personnel, in order to develop improved training curricula and

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programs for disease prevention and control for such health care personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to CDC contractors in the conduct of training surveys and studies covered by this system notice and in the preparation of scientific reports, in order to accomplish the stated purposes of the system. The recipients will be required to maintain Privacy Act safeguards with respect to such records.

CDC is under contract with private firms for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records are disclosed to such contractors. The contractors are required to maintain Privacy Act safeguards with respect to such records.

Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer tapes/disks and printouts, file folders.

RETRIEVABILITY:

Name of individual respondent, identification number, and type of training received are some of the indices used to retrieve records from this system.

SAFEGUARDS:

1. AUTHORIZED USERS: Access is granted to only a limited number of personnel, i.e., CDC Project Officer, interviewers and designated support staff of CDC or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. PHYSICAL SAFEGUARDS: Locked cabinets in locked rooms, 24-hour guard service in buildings, personnel screening of visitors, electronic anti-intrusion devices in operation at the Federal Records Center, fire extinguishers, overhead sprinkler system and card-access control equipment in the computer room, computer terminals and automated records located in secured areas.

3. PROCEDURAL SAFEGUARDS: Protection for computerized records includes programmed verification of valid user identification code, account code and password prior to acceptance of a terminal session or job submission, frequently changed passwords, and Vault Management System. Knowledge of individual tape passwords is required to access tapes, and access to systems is limited to users obtaining prior supervisory approval. When Privacy Act tapes are scratched, a special "certified" process is performed in which tapes are completely written over to avoid inadvertent data disclosure. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

4. IMPLEMENTATION GUIDELINES: The safeguards outlined above are developed in accordance with Chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS.hf: 45-13; Part 6, "Automated Information System Security," of the HHS Information Resources Management Manual; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31). FRC safeguards are in compliance with GSA Federal Property Management Regulations, Subchapter B—Archives and Records.

RETENTION AND DISPOSAL:

Records are maintained in agency for two years. Disposal methods include erasing computer tapes, burning or shredding paper materials or transferring records to the Federal Records Center when no longer needed for evaluation and analysis. Records destroyed by paper recycling process after 12 years, unless needed for further study.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Center for Prevention Services, Freeway Office Park, Rm. 310, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333

Director, Laboratory Program Office, Executive Park, Bldg. 24, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Policy coordination is provided by: Director, Office of Program Support, Bldg. 1, Rm. 2011, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself by contacting the appropriate system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either (1) submit a notarized request to verify their identity or (2) must certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

The following information must be provided when requesting notification: (1) Full name; (2) name of the clinic/organization in which requester was employed at time of training or survey participation, and (3) nature of the training or survey questionnaire in which the requester participated.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individuals in the system and selected clinics which employ individuals who are in the system.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-20-0162

SYSTEM NAME:

Records of Subjects in Agent Orange, Vietnam Experience, and Selected Cancers Studies. HHS/CDC/CEH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Chronic Diseases Division, Center for Environmental Health, Chamblee Bldg. 25, Centers for Disease Control, 1600 Clifton Road,Atlanta, GA 30333and

Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

Data are located at contractor sites as data are collected. A list of contractor sites where individually identified data are currently located is available upon request to the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Selected male U.S. Army veterans at grade E-5 or below who enlisted or were drafted for one tour of duty in Vietnam or other countries during 1966 - 1972; males with birthdates 1929-1953 who have cases of selected cancers (specifically, lymphomas, soft tissue sarcomas, nasal and nasopharyngeal, and primary liver) diagnosed between December 1, 1984 to November 30, 1986; also included are control group participants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information identifying the participants (such as name, address, social security number, military service number, telephone number, date of birth), interview questionnaire responses, medical, laboratory, and psychological test result data, and records on biological specimens (e.g. blood, tumor, urine, etc.).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 96-151, "Veterans Health Programs Extension and Improvement Act of 1979" (38 U.S.C. 219 note); Public Law 97-72, "Veterans' Health Care, Training, and Small Business Loan Act of 1981" (38 U.S.C. 219 note); Public Health Service Act, Sections 304, 306, and 308(d), which discuss authority to grant assurances of confidentiality for health research and related activities (42 U.S.C. 242 b, k, and m(d)).

PURPOSE(S):

Records in this system are used to support studies to assess the health of Vietnam veterans relative to the health of other men of similar age. Specifically this information should enable the Centers for Disease Control (CDC) to:

1. Evaluate the relationship of documented exposure to herbicides used in Vietnam (primarily Agent Orange) to possible adverse health consequences. Such possible effects to be evaluated include dermatologic, neurological, psychological, immunological, carcinogenic, reproductive, gastrointestinal, and others.
2. Assess the health effects of service in Vietnam (including factors other than herbicide exposure) as opposed to the experiences of veterans who served in other countries.
3. Evaluate the risk of selected cancers among Vietnam veterans in contrast to men of similar age who did not serve in Vietnam.

Portions of records (i.e., name, social security number or military service number, date of birth) may be disclosed to the National Center for Health Statistics for obtaining a determination of vital status. Death certificates stating the cause of death will then be obtained from the appropriate Federal, State, or local agency to enable CDC to evaluate whether excess mortality is occurring among Vietnam veterans. Portions may also be disclosed to the Social Security Administration who will provide additional sources of information for locating veterans involved in the study.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records may be disclosed to Department of Health and Human Services contractors to locate veterans, cancer cases and controls, conduct interviews, perform medical examinations, analyze pathology specimens, and similar medical services, so that the research purposes for which the records are collected may be accomplished. The contractor must comply with the requirements of the Privacy Act with respect to such records.

Portions of records (i.e., name, social security number or military service number) may be disclosed to other Federal agencies such as the Veterans Administration and Internal Revenue Service only to obtain information to aid in locating veterans involved in the study. These disclosures will be made to update locating information provided by the Army and Joint Services Environmental Support Group.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, microfilm, computer cards, tapes/disks and printouts.

RETRIEVABILITY:

By name, social security number or military service number (when supplied voluntarily or contained in existing records used in studies under this system), or other identifying number.

SAFEGUARDS:

Records in this system are collected under an Assurance of Confidentiality authorized by Section 308(d) of the Public Health Service Act. To comply with this Assurance, the following special safeguards are necessary:

1. AUTHORIZED USERS: Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of CDC or its contractors, as authorized by the Project Director to accomplish the stated purposes for which the data in this system has been collected.
2. PHYSICAL SAFEGUARDS: Questionnaires and other source data are maintained in locked fire-resistant cabinets in locked rooms. When entered into the computer, individually identified information is kept separate from data used for analysis. Tape data are stored in fire-resistant safes. There is 24-hour guard service in buildings, personnel screening of visitors, fire extinguishers, overhead sprinkler system and card-access control equipment in the computer room, and computer terminals and automated records are located in secured areas. Electronic anti-intrusion devices are in operation at the Federal Records Center.
3. PROCEDURAL SAFEGUARDS: Protection for computerized records includes programmed verification of valid user identification code, account code and password prior to acceptance of a terminal session or job submission and frequently changed passwords. Knowledge of individual tape

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passwords is required to access tapes, and access to systems is limited to users obtaining prior supervisory approval. Names and other details necessary to identify individuals are not included in data files used for analysis. These files are indexed by code numbers which are linked with complete identifiers only if there is a specific need such as data verification or followup interviews. Keys which link identification numbers to names are stored separately with access limited to CDC project officers and authorized staff.

CDC and contractor employees who maintain records are instructed in specific rules of conduct to protect the security and confidentiality of records in accordance with Section 308(d) of the Public Health Service Act. When individually identified records are being used in a room at a contractor site, admittance to the room is restricted to employees pledged to confidentiality under this statute. All data will be either returned to CDC or destroyed, as specified by the contract.

Appropriate Privacy Act provisions and confidentiality provisions under Section 308(d) of the Public Health Service Act are included in contracts. The CDC Project Director, contract officers, and project officers oversee compliance with these requirements.

4. IMPLEMENTATION GUIDELINES: The safeguards outlined above are developed in accordance with Chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS.hf: 45-13; Part 6, "Automated Information System Security," of the HHS Information Resources Management Manual; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31). FRC safeguards are in compliance with GSA Federal Property Management Regulations, Subchapter B—Archives and Records.

RETENTION AND DISPOSAL:

CDC retains research records in accordance with the CDC Records Control Schedule Item 37, which allows the system manager to maintain the records for 20 years unless needed for future reference. Because five-year mortality updates are planned until the study population expires, and health information from the questionnaire will be correlated with the mortality data, the computerized records to which questionnaire data will be converted may be kept as long as research needs dictate. Contractors will retain the records only as long as necessary to complete data collection and verify CDC's receipt of the data in usable form.

Records may be transferred to a Federal Records Center for storage when no longer needed for evaluation or analysis and will be retained there subject to statutory confidentiality requirements. Disposal methods include the paper recycling process, shredding hardcopy records, and erasing computer tapes and disks.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Agent Orange Projects, Chronic Diseases Division, Center for Environmental Health, Chamblee Bldg. 25, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself by contacting the system manager at the address above. Persons who knowingly and willfully request or acquire a record pertaining to an individual under false pretenses are subject to a $5,000 fine for this criminal offense. Requesters in person must provide photo identification (such as driver's license) or other positive identification (i.e., place of birth, etc.) that would authenticate the identity of the individual making the request. Individuals who do not appear in person must submit a notarized request to verify their identity. A guardian who requests notification of, or access to, a mentally incompetent or severely physically impaired person's record must provide a birth certificate (or notarized copy), court order, or other competent evidence of guardianship. An individual who requests notification of, or access to, a medical record shall at the time the request is made, designate in writing a responsible representative (who may be a physician, other health professional, or other responsible individual) who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

In addition, the following information must be provided when requesting notification: (1) Full name and social security or military service number; (2) nature of the study in which the requester participated.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Subject individuals, Department of Defense (Army and Joint Services Environmental Support Group), Surveillance, Epidemiology, and End Results Centers (cancer registries). Records are derived from U.S. Army system of records: AO708.02ADAPC, "Official Military Personnel File.'

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 86-25461 Filed 11-21-86; 8:45 am]

BILLING CODE 4160-18-M

Health Resources and Services Administration

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Department of Health and Human Services; Public Health Service (PHS); Health Resources and Services Administration (HRSA).

ACTION: HRSA is publishing this document to meet the requirements of Office of Management and Budget (OMB) Circular No. A-130, Management of Federal Information Resources, Appendix I Federal Agency Responsibilities for Maintaining Records About Individuals.

SUMMARY: This preamble summarizes significant changes to systems of individually identifiable records which have occurred since the 1983 annual republication. Notices of modified systems of records maintained by HRSA follow this preamble, as well as notices of systems which remain unchanged since the last comprehensive republication. The notices include modification for the purpose of clarity, timeliness, and correctness, and are current and complete as of the signature date below. None of the modifications being made at this time meets the OMB criteria for a new or altered system report, or for an advanced period for public comment.

SUPPLEMENTARY INFORMATION:

A. General Information

Notices published below describe systems of records maintained by the Health Resources and Services Administration (HRSA).

The routine uses set forth in each notice describe permissible disclosure outside the Department of records in the system, which may be made without the consent of individuals who are the subjects of those records. Additional disclosures without the consent of subject individuals are permitted by the Privacy Act (5 U.S.C. 552a) itself in section 3(b), as follows:

"(1) To those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

"(2) Required under section 552 of this title (the Freedom of Information Act);

"(3) For a routine use (as described in the routine use section of each specific system notice);

"(4) To the Bureau of the Census for the purpose of carrying out a census or survey or related activity pursuant to the provisions of title 13;

"(5) To a recipient who has provided the agency with adequate advance written assurances that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

"(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of the General Services or his designee to determine whether the record has such value;

"(7) To another agency or to an instrumentality of any government jurisdiction within or under the control of the United States for civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

"(8) To a person pursuant to a showing of compelling circumstances affecting the health and safety of an individual if, upon such disclosure, notification is transmitted to the last known address of such individual;

"(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress, or subcommittee of any joint committee;

"(10) To Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

"(11) To an authorized individual pursuant to an order of a court of competent jurisdiction; or

"(12) To a consumer reporting agency in accordance with section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952(d))."

B. Specific Information

1. System Deleted: 09–15–0018, Unofficial Vital Record System, HHS/HRSA/IHS, 48 FR 53891, November 29, 1983. Data from this system of records is no longer retrieved by personal identifier, such as name or any other specific designation assigned to an individual for purposes of information retrieval. 09–15–0050, National Research Service Awards, HHS/HRSA/BHPr, 48 FR 53910, November 29, 1983. This program and system of records has been transferred to the National Institutes of Health.

2. New Routine Uses: The Health Resources and Services Administration has added new routine uses to the following systems of records: 09–15–0019, Health and Medical Records System, HHS/HRSA/IHS, 51 FR 16212–16220, May 1, 1986. 09–15–0044, Health Educational Assistance Loan Program (HEAL) Loan Control Master File, HHS/HRSA/BHPr, 51 FR 16220–16223, May 1, 1986.

One new routine use was added to each of 15 systems of records on October 1, 1986. The system notices affected are listed below:

09–15–0002 Records of Patients' Personal Valuables and Monies, HHS/HRSA/BHCDA, 51 FR 35054, October 1, 1986
09–15–0003 Contract Physicians and Consultants, HHS/HRSA/BHCDA
09–15–0022 Accounts Receivable, HHS/HRSA/OA
09–15–0026 Medical Fellowships and Educational Loans, HHS/HRSA/OA
09–15–0027 National Health Service Corps (NHSC) and Indian Health Service (IHS) Pre-Application Recruitment and Provider File, HHS/HRSA/BHCDA
09–15–0028 PHS Clinical Affiliation Trainee Records, HHS/HRSA/BHCDA
09–15–0036 Indian Health Service Scholarship Program, HHS/HRSA/IHS
09–15–0037 PHS and National Health Service Corps (NHSC) Scholarship Program, HHS/HRSA/BHCDA
09–15–0040 Health Professions Student Loan Repayment Program, HHS/HRSA/BHPr
09–15–0041 Health Professions Student Loan Cancellation, HHS/HRSA/BHPr
09–15–0042 Physician Shortage Area Scholarship Program, HHS/HRSA/BHCDA
09–15–0043 Cuban Loan Program, HHS/HRSA/OA
09–15–0045 HRSA Loan Repayment/Debt Management Records System, HHS/HRSA/OA
09–15–0046 Health Professions Planning and Evaluation, HHS/HRSA/OA
09–15–0052 Nurse Practitioner Traineeships, HHS/HRSA/BHPr

Readers who notice any errors or omissions in HRSA system notices which follows are invited to bring them to my attention at the following address: Department of Health and Human Services, Public Health Services, Health Resources and Service Administration, Office of the Administrator, Office of Operations and Management, Room 14A–03, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: October 23, 1986.

James A. Walsh,

Associate Administrator for Operations and Management.

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09–15–0003 Contract Physicians and Consultants, HHS/HRSA/BHCDA.
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09–15–0001

SYSTEM NAME:

Division of Federal Occupational and Beneficiary Health Services, Health and Counseling Records. HHS/HRSA/BHCDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

A current list of health and counseling unit sites is available by writing to the System Manager at the address below.

Data are also occasionally located at medical laboratories, medical consultants, or computer processing firm sites. A list of sites where individually identifiable data is currently located is available upon request to the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal employees enrolled in PHS/Division of Federal Occupational and Beneficiary Health Services (DFOBHS) Health Units and individuals examined/treated/counseled by DFOBHS staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

Health records including examination, diagnostic, counseling treatment data, information for program eligibility, social data, laboratory findings, nutrition and dietetic files, nursing notes, mental health files, and immunization registers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title V (5 U.S.C. 7901), Health Service to Employees, and OMB Circular No. A-72.

PURPOSE(S):

Employees are provided occupational health services (on a voluntary basis). Data are necessary to ensure:

1. Proper evaluation, diagnosis, treatment, and referral to maintain continuity of care.

2. A medical history of the total health care and medical treatment received by the individual.

3. Planning for further care of the patient.

4. A means of communication among members of the health care team who contribute to the patient's care.

5. A legal document of health care rendered.

6. A tool for evaluating quality of health care rendered.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Certain records may be disclosed to medical laboratories, medical consultants, or computer processing firms under a service contract agreement. Recipients are required to maintain adequate safeguards with respect to such records.

2. In the event of a change in sponsorship of a PHS/DFOBHS health care unit or in a case of mass transfer of employees covered by a PHS/DFOBHS health care unit to one served by a nondepartmental organization, the health records will be transferred to the custodianship of the new organization.

3. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

4. In the event of litigation where the defendant is

(a) The Department, any component of the Department, or any employee of the Department in his or her official capacity;

(b) The United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or

(c) Any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual,

disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

5. Disclosure may be made to the U.S. Department of Labor, Office of Workers' Compensation Program (OWCP), of those files of persons claiming compensation benefits due to personal injury while on the job.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Alphabetically by last name.

SAFEGUARDS:

1. Authorized Users: DFOBHS Health Unit personnel, physicians, nurses, and other allied health professionals.

2. Physical Safeguards: All documents are secured during lunch hours and nonworking hours in locked file cabinets or locked storage areas.

3. Procedural Safeguards: All users of personal information in connection with the performance of their jobs protect information from the public view and from unauthorized personnel entering an unsupervised office. Access to records is strictly limited to those staff members trained in accordance with the DFOBHS Manual of Operations. The contractor is required to maintain confidentiality safeguards with respect to these records. These safeguards are in accordance with DHHS Chapter 45–13 and supplementary Chapter PHS.hf: 45–13 of the General Administration Manual.

RETENTION AND DISPOSAL:

Number of years held—Period of service or 6 years if inactive. Thereafter, retired to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Federal Occupational and Beneficiary Health Services, Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, Room 7–36, 5600 Fishers Lane, Rockville, MD 20857.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address above. Individual must provide positive identification, such as driver's license, passport, voter registration card, union card, or a written certification verifying his or her identity. Individuals must provide treatment location and approximate date of treatment. Requesters should also reasonably specify the record contents being sought. An individual who requests access to a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Contact the System Manager at the above address and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting justification.

RECORD SOURCE CATEGORIES:

Information is obtained from the Federal employee, the x-ray, laboratory, and EKG contractors, physician and nurse notes, OWCP and personnel office; or supplied by a member of the individual's family, or derived from information supplied by the individual. Information may also be supplied from sources to whom the employee has been referred for assistance, Department oficials, or program counselors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-15-0002

SYSTEM NAME:

Record of Patients' Personal Valuables and Monies, HHS/HRSA-BHCDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Financial Management Department, Gillis W. Long Hansen's Disease Center, Carville, Louisiana 70721.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals admitted to the Gillis W. Long Hansen's Disease Center (GWLHDC).

CATEGORIES OF RECORDS IN THE SYSTEM:

Information regarding personal valuables such as watches or rings, and monies checked in by the patients for safe-keeping.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 321 of the Public Health Service Act, as amended (42 U.S.C. 248), Hospitals, Medical Examinations, and Medical Care.

PURPOSE(S):

The purpose of the system is to provide for the safekeeping of patients' valuables. Records may also be used by the HHS Audit Agency for audit purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

2. The Department may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Valuables and monies are sealed in an envelope and filed in a locked safe.

RETRIEVABILITY:

Name and hospital record number.

SAFEGUARDS:

1. Authorized Users: GWLHDC personnel responsible for the security of valuables and monies. GWLHDC cashiers, nurses, and physicians.

2. Physical Safeguards: All documents are protected during lunch hours and nonworking hours in locked file cabinets or locked storage areas.

3. Procedural Safeguards: All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised office. Access to records is strictly limited to those staff members trained in accordance with the DHHS Chapter 45-13 and Chapter PHS.hf: 45-13 of the General Administration Manual.

RETENTION AND DISPOSAL:

Number of years held: Until audited by HHS Audit Agency. How destroyed: Incinerator.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Financial Management Department, Gillis W. Long Hansen's Disease Center, Carville, Louisiana 70721.

NOTIFICATION PROCEDURE:

Write to the Financial Management Department, Gillis W. Long Hansen's Disease Center, Carville, Louisiana 70721. Individual must provide positive identification such as driver's license, passport, voter registration card, union card, or a written certification verifying his or her identity. Requesters should also reasonably specify the record contents being sought.

RECORD ACCESS PROCEDURE:

Same as notification procedures.

CONTESTING RECORD PROCEDURES:

Write to the official at the address specified in the notification procedures above, and reasonably identify the record, specify the information to be contested, and state the corrective action sought, with supporting justification.

RECORD SOURCE CATEGORIES:

Patient and admission record.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-15-0003

SYSTEM NAME:

Contract Physicians and Consultants, HHS/HRSA/BHCDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, 5600 Fishers Lane, Rockville, Maryland 20857. Gillis W. Long Hansen's Disease Center, Carville, Louisiana 70721.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Medical and allied health professionals (e.g., physicians, nurses, physical therapists, and dentists) who have contracted with the Bureau of Health Care Delivery and Assistance to provide services to beneficiaries.

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CATEGORIES OF RECORDS IN THE SYSTEM:

Duplicate of original contract and personal data qualifications. Original contracts developed by the Gillis W. Long Hansen's Disease Center.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 320 of the Public Health Service Act, as amended (43 U.S.C. 225), Receipt, Apprehension, Treatment and Release of Lepers; Section 321 of the Public Health Service Act, as amended (42 U.S.C. 248), Hospitals, Medical Examinations, and Medical Care; and Section 326 of the Public Health Service Act, as amended (42 U.S.C. 253), Services to Coast Guard, Coast and Geodetic Survey, and Public Health Service.

PURPOSE(S):

To monitor contract negotiations and compliance, to review credentials, and to collect statistical data required to manage the program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

2. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevent records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

3. Where a contract between a component of the Department and a labor organization recognized under E.O. 11491 provides that the agency will disclose personal records relevant to the organization's mission, records in this system of records may be disclosed to such organization.

4. The Department may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Name and contract number.

SAFEGUARDS:

1. Authorized Users: PHS medical and financial management staff and contracting personnel.

2. Physical Safeguards: All documents are protected during lunch hours and nonworking hours in locked file cabinets or locked storage areas.

3. Procedural Safeguards: All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised office. Access to records is strictly limited to those staff members trained in accordance with DHHS Chapter 45–13 and Chapter PHS.hf: 45–13 of the General Administration Manual.

RETENTION AND DISPOSAL:

Duplicate contracts: Held 1–3 years dependent upon renewal. Destroyed by shredding.

Original Contracts: 1. Transactions of more than $10,000: Destroy 6 years and 3 months after final payment. 2. Transactions of $10,000 or less: Destroy 3 years after final payment.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Federal Occupational and Beneficiary Health Services, Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, Room 7–36, 5600 Fishers Lane, Rockville, Maryland 20857; and General Services Officer, Gillis W. Long Hansen's Disease Center, Carville, LA 70721.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address above. The individual must provide positive identification, such as driver's license, passport, voter registration card, or written certification verifying his or her identity. Requesters should also reasonably specify the record contents being sought.

RECORD ACCESS PROCEDURE:

Same as notification procedures.

CONTESTING RECORD PROCEDURES:

Write to the System Manager at the address specified above, and reasonably identify the record, specify the information to be contested, and state the corrective action sought, with supporting justification.

RECORD SOURCE CATEGORIES:

Medical, allied health professionals and dentists.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–15–0004

SYSTEM NAME:

Federal Employee Occupational Health Data System, HHS/HRSA/BHCDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Federal Occupational and Beneficiary Health Services, Bureau of Health Care Delivery and Assistance, 5600 Fishers Lane, Rockville, MD 20857.

Data are also occasionally located at medical laboratories, medical consultants, or computer processing firm sites. A list of sites where individually identifiable data is currently located is available upon request to the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal employees enrolled in PHS/Division of Federal Occupational and Beneficiary Health Services (DFOBHS) Health Units.

CATEGORIES OF RECORDS IN THE SYSTEM:

Health record derived data organized and presented for analysis and program planning purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title V (5 U.S.C. 7901), Health Service to Employees, and OMB Circular No. A–72.

PURPOSE(S):

The system is designed to provide health record derived data for program analysis and planning purposes in a fashion to reduce the manual information processing workload of unit physicians, nurses, and other health professionals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. U.S. Department of Labor, Office of Workers' Compensation Programs (OWCP), may be given access to files of those persons claiming compensation benefits due to personal injury while on the job.

2. Certain records may be disclosed to medical laboratories, medical consultants, or computer processing firms under service contract agreement. Recipients are required to maintain adequate safeguards with respect to such records.

3. In the event of a change in sponsorship of a PHS/DFOBHS health care unit or in a case of mass transfer of employees covered by a PHS/DFOBHS health care unit to one served by a nondepartmental organization, the health records will be transferred to the custodianship of the new organization.

4. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

5. In the event of litigation where the defendant is

(a) The Department, any component of the Department, or any employee of the Department in his or her official capacity;

(b) The United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or

(c) Any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual.

disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape and disc.

RETRIEVABILITY:

Name and Social Security numbers, which are supplied on a voluntary basis, are used for retrieval.

SAFEGUARDS:

1. Authorized Users: DFOBHS personnel, health unit physicians, nurses, and other allied health professionals.

2. Physical Safeguards: Magnetic tapes, discs, and other computer equipment and computerized data are stored in areas where fire and life safety codes are strictly enforced. Twenty-four hours, 7-day security guards perform random checks on the physical security of the data. All documents are protected during lunch hours and nonworking hours in locked file cabinets or locked storage areas.

3. Procedural Safeguards: A password is required to access the terminal and a data set name controls the release of data only to authorized users. All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised office. Access to records is strictly limited to those staff members trained in accordance with the DFOBHS Manual of Operations. The contractor is required to maintain confidentiality safeguards with respect to these records.

These safeguards are in accordance with DHHS Chapter 45–13 and supplementary Chapter PHS.hf: 45–13 of the General Administration Manual.

RETENTION AND DISPOSAL:

Number of years held: Permanently or until 5 years after record becomes inactive. Purged from computer and stored on computer tape for a period of 5 years after files become inactive.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Federal Occupational and Beneficiary Health Services, Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, 5600 Fishers Lane, Rockville, MD 20857.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address above. Individuals must provide positive identification, such as driver's license, passport, voter registration card, union card, or a written certification verifying his or her identify. Individuals must provide treatment locations and approximate date of treatment. Requestors should also reasonably specify the record contents being sought. An individual who requests access to a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as notification procedures.

CONTESTING RECORD PROCEDURES:

Contact the System Manager at the above address and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting justification.

RECORD SOURCE CATEGORIES:

Information is obtained from the Federal employee, the x-ray, laboratory, and EKG contractors, physician and nurse notes, OWCP and personnel office.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–15–0007

SYSTEM NAME:

Patients Medical Record System PHS Hospitals-Clinics, HHS/HRSA/BHCDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

See Appendixes 1 and 2.

Data are also occasionally located at medical laboratories, medical consultants, or computer processing firm sites. A list of sites where individually identifiable data is currently located is available upon request to the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals examined and/or treated at former Public Health Service Hospitals and Clinics and the Gillis W. Long Hansen's Disease Center, Carville, Louisiana.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical examination, diagnostic and treatment data; information for proof of

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eligibility; social data such as address and birthdate; disease registers, such as Hansen's disease and tumor and surgical procedure registers; treatment logs, summaries and correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 320 of the Public Health Service Act, as amended (42 U.S.C. 255), Receipt, Apprehension, Treatment and Release of Lepers; Section 321 of the Public Health Service Act, as amended (42 U.S.C. 248), Hospitals, Medical Examinations, and Medical Care; and Section 326 of the Public Health Service Act, as amended (42 U.S.C. 253), Service to Coast Guard, Coast and Geodetic Survey, and Public Health Service.

PURPOSE(S):

The purposes of this system are:

1. To serve as a basis for planning patient care and for continuity in the evaluation of the patient's condition and treatment to furnish documentary evidence of the course of the patient's medical evaluation, treatment and change in condition during the hospital stay, ambulatory care or emergency visit, or while being followed in a facility-based home care program;

2. To document communications between the responsible practitioner and any other health professional's contribution to the patient's care and treatment in order to assist in protecting the legal interests of the patient, the hospital or clinic, and responsible practitioners;

3. To provide data for use in facility management, continuing education, Department initiatives, quality assurance activities and research at the Gillis W. Long Hansen's Disease Center, Carville, Louisiana.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to:

(1) Any community health organization, government agency, private physician and/or company which has requested or arranged for an examination, treatment or care of an individual.

(2) Army, Navy, Air Force to report results of examination/treatment of their uniformed service personnel.

(3) Department of Transportation to report results of examination/treatment of their uniformed services personnel found to be suffering from conditions that render them hazardous to themselves or to others.

(4) Department of Commerce to report results of examination/treatment of uniformed services and other personnel of that agency.

(5) Immigration and Naturalization Service to report results of examination/treatment of aliens examined and treated for and in behalf of that agency.

(6) Bureau of Prisons (BP) to report results of examination and treatment of patients examined and/or treated for and on behalf of the BP.

(7) Federal, state or private health benefit plans for billing purposes.

(8) U.S. Department of Labor, Office of Workers' Compensation Programs for persons claiming compensation benefits due to personal injury while employed by the Government.

(9) Organizations such as Joint Commission on Accreditation of Hospitals for accreditation of hospitals and clinics, and American Medical Association for accreditation of resident training programs. Medical records are used to document quality of service by health care providers.

(10) Health professions students serving an affiliation at the institution and their parent education program; students provide patient care and use medical records in performance of their duties.

(11) Nonagency physicians providing continuing care to current and former PHS beneficiaries, laboratories performing tests for the continuing care of these patients, and successor organizations providing health care in former PHS hospitals and clinics.

(12) Veterans Administration to assist uniformed service personnel, retirees and veterans to obtain medical care or benefits.

(13) Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

(14) Disclosure may be made to a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. The contractor is required to maintain Privacy Act safeguards with respect to such records.

(15) A record may be disclosed for a research purpose, when the Department: (a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (b) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (c) has required the recipient to—(1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except—(A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law; (d) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

(16) Organizations deemed qualified by the Secretary to carry out quality assessment, medical audits or utilization review.

(17) Information regarding the commission of crimes or the reporting or occurrence of communicable diseases, tumors, child abuse, births, deaths, alcohol or drug abuse, etc. as may be required by health providers and facilities, by state law, or regulation of the department of health or other agency of the state or its subdivision in which the facility is located. Disclosure may be made to organizations as specified by the state law or regulation such as birth and deaths to vital statistics agencies and crimes to law enforcement agencies. Disclosure of the contents of records which pertain to patient identity, diagnosis, prognosis or treatment of alcohol or drug abuse is restricted under the provisions of the Confidentiality of Alcohol and Drug Abuse Patient Records Regulations 42 CFR Part 2 as authorized by 21 U.S.C. 1175 and 42 U.S.C. 4582, as amended by Pub. L. 93-283. To the extent possible, identical restrictions are applied to the disclosure of the contents of records pertaining to individuals with other programs who are participating in employee counseling programs.

(18) In the event of litigation where the defendant is

(a) The Department, any component of the Department, or any employee of the Department in his or her official capacity;

(b) The United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or

(c) Any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual.

disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

(19) To organizations or individuals with agreements to provide photocopying or medical record data abstracting services.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, magnetic tape, punch cards, microfilm.

RETRIEVABILITY:

Indexed by name, register number, number control register, disease and operation, and uniformed services service number (which is the Social Security number (SSN)). Those records indexed by SSN are retrieved in accordance with section 7(a)(2)(B) of the Privacy Act.

SAFEGUARDS:

1. Authorized Users: Health care practitioners, and other allied health personnel, medical and allied health students and administrative personnel for determination of eligibility for care and facility management; qualified research personnel with approved protocol; PHS Commissioned Personnel Operations Division; and PHS Claims Officer.

2. Physical Safeguards: Magnetic tapes, discs, other computer equipment and other forms of personal data are stored in areas where fire and life safety codes are strictly enforced. Twenty-four-hour, 7-day security guards perform random checks on the physical security of the data. All documents are protected during lunch hours and nonworking hours in locked file cabinets or locked storage areas.

3. Procedural Safeguards: A password is required to access the terminal and a data set name controls the release of data only to authorized users. All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised office. Access to records is strictly limited to those staff members trained in accordance with Privacy Act safeguards. The contractor is required to maintain confidentiality safeguards with respect to these records. These safeguards are in accordance with DHHS Chapter 45–13 and supplementary Chapter PHS.hf: 45–13 of the General Administration Manual, and Part 6 of the DHHS Information Resources Management Manual. The Memorandums of Agreement between the successor organizations and the Public Health Service require the successor organizations to comply with the Privacy Act. PHS and HHS guidelines have been provided to each successor organization.

RETENTION AND DISPOSAL:

Number of years held (or successor organization) (since 1970)—5 years after last activity. Number of years then held at Federal Record Center (See appendix 2) before disposal—45 years for active duty uniformed service personnel, 20 years for all others. How destroyed: The disposal standard for these records may be obtained by writing to the System Manager at the address below.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Federal Occupational and Beneficiary Health Services, Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, Room 7–36, 5600 Fishers Lane, Rockville, Maryland, 20857, and Chief, Medical Record Department, Gillis W. Long Hansen's Disease Center, Carville, LA 70721.

NOTIFICATION PROCEDURE:

To determine the existence of a record, write to the facility where treatment was rendered if listed in Appendix 1. (Note that the facility may now be operated under a different name by the successor organization.) If the facility is not listed, write to: Director, Public Health Service Data Center, 10000 Aerospace Road, Warehouse No. 1, Lanham, Maryland 20706. Requests for records at the Federal Records Centers must be processed through the System Manager or the Public Health Service Health Data Center, Lanham, Maryland. (After November 1, 1986, write to: Public Health Service Data Center, Gillis W. Long Hansen's Disease Center, Carville, LA 70721.) If requesting records by mail, a written certification verifying identity must be provided. If appearing in person at the Gillis W. Long Hansen's Disease Center, Carville, LA, positive identification such as a driver's license, passport, or voter's registration card must be provided. An individual who requests access to a medical/dental record shall designate in writing, at the time the request is made, a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. Finally, a parent or guardian who requests notification of access to a child's/incompetent person's record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child/incompetent person as well as his/her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified in the notification procedures above, and reasonably identify the record, specify the information to be contested, and state the corrective action sought, with supporting justification.

RECORD SOURCE CATEGORIES:

Individual, health care personnel, other hospitals and physicians, employers, social agencies, maritime unions, shipping companies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix 1

A. Public Health Service Facilities

Director, Gillis W. Long Hansen's Disease Center, Carville, Louisiana 70721.

Director, Public Health Service Health Data Center, Gillis W. Long Hansen's Disease Center, Carville, Louisiana 70721.

B. Successor Organizations

Director, Wyman Park Health System, Inc., 3100 Wyman Park Drive, Baltimore, Maryland 21211.

Director, Brighton Marine Public Health Center, 77 Warren Street, Boston, Massachusetts 02135.

Administrator, Lutheran Downtown Health Care Services, 1313 Superior Avenue, Cleveland, Ohio 44114.

Director, Hospital of St. John, 2050 Space Park Drive, Nassau Bay, Texas 77058.

Administrator, Martins Point Health Center, 331 Veranda Street, Portland, Maine 0410

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Officer-in-Charge, U.S. Army, St. Louis Outpatient Clinic, 1520 Market Street, St. Louis, Missouri 63103.
Director, Pacific Medical Center, 1200 12th Avenue South, Seattle, Washington, 98144.
Director, Bayley Seton Hospital, Bay Street and Vanderbilt Avenue, Staten Island, New York 10304.

Appendix 2—Federal Records Centers

Areas Served

Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and Rhode Island:
  Federal Archives & Records Center, 380 Trapelo Road, Waltham, Massachusetts 02154.
New York, New Jersey, Puerto Rico, the Virgin Islands, and the Panama Canal Zone:
  Federal Archives & Records Center, Military Ocean Terminal, Bldg. 22, Bayonne, NJ 07002.
  Delaware and Pennsylvania east of Lancaster:
  Federal Archives and Records Center, 5000 Wissahickon Avenue, Philadelphia, PA 19144.
District of Columbia, Maryland, Virginia, and West Virginia:
  Washington National Records Center, Washington, DC 20409.
North Carolina, South Carolina, Tennessee, Mississippi, Alabama, Georgia, Florida and Kentucky:
  Federal Archives & Records Center, GSA, 1557 St. Joseph Avenue, East Point, GA 30344.
Illinois, Wisconsin and Minnesota:
  Federal Archives and Records Center, GSA, 7358 South Pulaski Road, Chicago, IL 60629.
Indiana, Michigan, and Ohio:
  Federal Records Center, 3150 Springboro Road, Dayton, Ohio 45439.
Greater St. Louis Area:
  National Personnel Records Center, (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118.
Texas, Oklahoma, Arkansas, Louisiana, and New Mexico:
  Federal Archives & Records Center, P.O. Box 6216, Ft. Worth, TX 76115.
Nevada (except Clark County), California (except Southern California), and American Samoa:
  Federal Archives & Records Center, 1000 Commodore Drive, San Bruno, CA 94066.
Clark County, Nevada; Southern California (Counties of San Luis Obispo, Kern, San Bernadino, Santa Barbara, Ventura, Los Angeles, Riverside, Orange, Imperial, Inyo, and San Diego), and Arizona:
  Federal Archives & Records Center, P.O. Box 6719, Laguna Niguel, CA 92677.
Washington, Oregon, Idaho, Alaska, Hawaii, and Pacific Ocean Area (except American Samoa):
  Federal Archives & Records Center, 6125 Sand Point Way, Seattle, WA 98115.

09-15-0008

SYSTEM NAME:

Emergency Non-PHS Treatment Authorization File, HHS/HRSA/BHCDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, 5600 Fishers Lane, Rockville, MD 20857.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are eligible for emergency care paid by the Public Health Service at non-PHS medical facilities and who had such care.

CATEGORIES OF RECORDS IN THE SYSTEM:

Eligibility information and reasons for emergency care.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 320 of the Public Health Service Act, as amended (42 U.S.C. 255), Receipt, Apprehension, Treatment and Release of Lepers; Section 321 of the Public Health Service Act, as amended (42 U.S.C. 248), Hospitals, Medical Examinations, and Medical Care; and Section 326 of the Public Health Service Act, as amended (42 U.S.C. 253), Services to Coast Guard, Coast and Geodetic Servey, and Public Health Service.

PURPOSE(S):

To determine eligibility for medical care by PHS, to document expenditure of public funds; to review and evaluate the quality of medical care.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to insurance companies for third party reimbursement.

2. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

3. In the event of litigation where the defendant is

(a) The Department, any component of the Department, or any employee of the Department in his or her official capacity;

(b) The United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or

(c) Any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual,

disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Document files.

RETRIEVABILITY:

None.

SAFEGUARDS:

1. Authorized Users: Administrative officials, physicians; or other health care professionals; financial management personnel, HRSA; HHS Audit Agency for audit purposes.

2. Physical Safeguards: All documents are protected during lunch hours and nonworking hours in locked file cabinets and locked storage areas.

3. Procedural Safeguards: All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised office. Access to records is strictly limited to those staff members trained in accordance with DHHS Chapter 45–13 and supplementary Chapter PHS.hf: 45–13 in the General Administration Manual.

RETENTION AND DISPOSAL:

Held for possible audit by HHS Audit Agency. Then destroyed by shredding or incineration.

SYSTEM MANAGER(S) AND ADDRESS:

Division of Federal Occupational and Beneficiary Health Services, Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, 5600 Fishers Lane, Rockville, MD 20857, and Chief, Medical Record Department, Gillis W. Long Hansen's Disease Center, Carville, LA 70721.

NOTIFICATION PROCEDURE:

To determine the existence of a record, write to the facility where treatment or service was rendered.

Individual must provide positive identification, such as driver's license, passport, voter's registration card, union card, or a written certification verifying his or her identity. Requesters should also reasonably specify the record contents being sought.

RECORD ACCESS PROCEDURE:

Same as notification procedures.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified in the notification procedures above, and reasonably identify the record, specify the identification to be contested, and state the corrective action sought, with supporting justification.

RECORD SOURCE CATEGORIES:

Individual or someone acting in his/her behalf, and providers of medical care.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-15-0019

SYSTEM NAME:

Health and Medical Records System, HHS/HRSA/IHS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Indian Health Service (IHS) hospitals, health centers, school health centers, health stations, field clinics, Service Units, Area and Program Offices (Appendix 1), and Regional Federal Records Centers (Appendix 2). Automated records, including Patient Care Information System (PCIS) records, are stored at the Data Processing Service Center, IHS, located in Albuquerque, New Mexico (Appendix 1). Records may also be located at hospitals and offices of health care providers who are under contract to IHS. A current list of contractor sites is available by writing to the appropriate System Manager (Area or Service Unit Director) at the address shown in Appendix 1.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, including both IHS beneficiaries and nonbeneficiaries, who are examined/treated on an inpatient and/or outpatient basis by IHS staff and/or contract (including tribal contract) health care providers.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Health and medical records containing: Examination, diagnostic and treatment data; proof of eligibility; social data such as name, address, date of birth, tribe; case records for special programs such as: Dental, social service, mental health, nursing; and laboratory test results.

2. Follow-up registers of individuals with specific health conditions or a particular health status such as: Tumors, communicable diseases, hospital commitment, suspected and confirmed physical child abuse and neglect, immunizations, self-destructive behavior, or handicap.

3. Logs of individuals provided health care by staffs of specific hospital components such as: Surgery, emergency, obstetric delivery, x-ray and laboratory.

4. Operation and/or disease indices for particular hospitals which list each relevant patient by the operation or disease.

5. Monitoring strips and tapes such as fetal monitoring strips and EEG and EKG tapes.

6. In the Anchorage, Alaska; Billings, Montana; and Tucson, Arizona Area Offices automated patient medical records are maintained in the Patient Care Information System (PCIS) which provides for structured patient medical summaries to IHS and contract health care providers, such as: Name; beneficiary code; Social Security Number (SSN) (voluntary); address; tribe; date of birth; and examination, diagnostic and treatment results.

7. Third-party reimbursement records containing name, address, date of birth, date of admission and Medicare or Medicaid claim numbers, SSN (voluntary), health plan name, insurance number, employment status, and other relevant claim information necessary to process and validate third-party reimbursement claims.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 321 of the Public Health Service Act, as amended, (42 U.S.C. 248), "Hospitals, Medical Examinations and Medical Care." Section 327A of the Public Health Service Act, as amended, (42 U.S.C. 254a-1), "Hospital-Affiliated Primary Care Centers." Indian Self Determination and Education and Assistance Act (25 U.S.C. 450). Snyder Act (25 U.S.C. 13). Indian Health Care Improvement Act (25 U.S.C. 1601 et. seq). Construction of Community Hospitals Act (25 U.S.C. 2005-2005f). Indian Health Service Transfer Act (42 U.S.C. 2001-2004).

PURPOSE:

The purposes of this system are:

1. To provide a description of a patient's illness, the treatment administered and results achieved, and to plan for future care of the patient.

2. To provide IHS program officials with statistical data upon which the health care program is evaluated and modified to meet future needs.

3. To serve as a means of communication among members of the health care team who contribute to the patient's care by integrating information from visits with that from IHS facilities which have provided treatment.

4. To serve as the official documentation of health care rendered.

5. To contribute to continuing education of IHS staff to improve their competency to deliver health care services.

6. For disease surveillance purposes. For example:

(a) The Centers for Disease Control may use these records for their monitoring of various communicable diseases among persons residing within the United States; and

(b) The National Institutes of Health may use these records for their review of the prevalance of particular diseases (e.g., malignant neoplasms, diabetes mellitus, arthritis, metaboloism and digestive diseases) for various ethnic groups of the Nation.

7. To compile and provide aggregated program statistics. Upon request of other components of the Department, IHS will provide statistical information, from which individual identifiers have been removed, such as:

(a) To the National Center for Health Statistics, for its dissemination of aggregated health statistics for various ethnic groups;

(b) To the Assistant Secretary for Population Affairs to keep a record of the number of sterilizations provided through the use of Federal funds;

(c) The the Health Care Financing Administration for the documentation of IHS health care covered by the Medicare and Medicaid programs for third-party reimbursement; and

(d) To the Bureau of Suppport Services, Health Care Financing Administration, to determine the prevalence of end-stage renal disease among the American Indian and Alaska Native population and to coordinate the care of American Indian and Alaska Native patients with this condition.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

If a portion of a health or medical record indicates a diagnosis, prognosis, referral, or treatment of alcohol or drug

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abuse, then the Confidentiality of Alcohol and Drug Abuse Patient Records Regulations, 42 CFR Part 2 apply. In general under these regulations, the only disclosures of a diagnosis, prognosis, referral or treatment of alcohol or drug abuse which may be made without patient consent are: (1) To meet medical emergencies (42 CFR Part D, Sec. 2.51), (2) for research, audit, evaluation and examination (42 CFR Part D, Secs. 2.52, 2.53, 2.54 and 2.56), (3) for supervision and regulation of narcotic maintenance and detoxification programs (42 CFR Part D, Sec. 2.55), (4) pursuant to a court order (42 CFR 2.61–2.67), and (5) pursuant to a qualified service organization agreement, as defined in 42 CFR 2.11. In all other situations, written consent of the patient is required prior to disclosure of alcohol or drug abuse information under the routine uses listed below.

Individuals acting in loco parentis to minors, as well as parents, legal guardians, and custodians may act on behalf of the subject individual for purposes of giving consent for disclosures to others when it is determined that the subject individual is a minor who is unable to or cannot exercise with appropriate understanding, the right of consent by himself or herself.

1. Records may be disclosed to State local or other authorized organizations which provide health services to American Indians and Alaska Natives, or provide third-party reimbursement or fiscal intermediary functions, for the purpose of planning for or providing such services, billing or collecting third-party reimbursements and reporting results of medical examination and treatment.

2. Records may be disclosed to Federal and non-Federal school systems which serve American Indians and Alaska Natives for the purpose of student health maintenance.

3. Records may be disclosed to organizations deemed qualified by the Secretary to carry out quality assessment, medical audits, or utilization review.

4. Records may be disclosed to authorized organizations, such as the United States Office of Technology Assessment, or individuals for conduct of analytical and evaluation studies sponsored by the IHS.

5. Records may be disclosed to a congressional office in response to a verified inquiry from that office made at the written request of the subject individual.

6. A record may be disclosed for a research purpose, when the Department:

(a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

(b) Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(c) Has required the recipient to—(1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except—(A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

(d) Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

7. Information regarding the commission of crimes or the reporting of occurrences of communicable diseases, suspected or confirmed physical child abuse or neglect, births, or deaths, etc., may be disclosed by health providers and facilities to State and local agencies as required by State and local law. The disclosure of patient information or alcohol or drug abuse for purposes of criminal investigations or prosecution of the patient must be authorized by court order issued under 42 CFR 2.65.

8. Information regarding suspected cases of physical child abuse or neglect may be disclosed to members of community child protective teams (comprised of representatives of tribes, Bureau of Indian Affairs, a child protective service agency, the judicial system(s) (local, State, tribal), law enforcement officers (State, county, tribal or local and IHS) for the purposes of establishing a diagnosis, formulating a treatment plan, monitoring the plan, investigating reports of suspected physical child abuse or neglect and making recommendations to the appropriate court of competent jurisdiction. The disclosure of patient information on alcohol or drug abuse for the purpose of criminal investigation or prosecution of the patient for suspected child abuse or neglect must be authorized by a court order issued under 42 CFR 2.65.

9. The Department may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when:

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

10. Records may be disclosed to the Bureau of Indian Affairs and its contractors for the identification of American Indian and Alaska Native handicapped children to permit that Bureau to carry out the Education for All Handicapped Children Act of 1975 (20 U.S.C. 1401 et seq.).

11. Records may be disclosed to an IHS contractor for the purpose of computerized data entry or maintenance of records contained in this system. The contractor shall be required to maintain Privacy Act safeguards with respect to the receipt and processing of such records.

12. Records may be disclosed to a health care provider under contract to IHS (including tribal contractors) to permit the contractor to obtain health and medical information about the subject individual in order to provide appropriate health services to that individual. The contractor shall be required to maintain Privacy Act safeguards with respect to the receipt and processing of such records.

13. Records may be disclosed to the State of Alaska, Department of Health

and Social Services (DHSS) (which supplies part or all of this information to IHS), in response to its request for patient summaries, portions of immunization registers, disease indices and other computer-generated medical summaries. This information assists DHSS in its provisions of health care to the subject individual. Disclosure to the State of Alaska's DHSS is limited to information concerning its patients.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, ledgers, card files, microfiche, microfilm, punch cards, computer tapes, disk packs and automatic files.

RETRIEVABILITY:

Indexed by name, record number, and SSN and cross-indexed. SSN is supplied on a voluntary basis.

SAFEGUARDS:

1. Authorized Users. Access is limited to authorized IHS personnel and IHS contractors and subcontractors in the performance of their duties. Authorized personnel include: Medical records personnel, health care providers, authorized researchers, medical audit personnel, and health care team members.

2. Physical Safeguards. Records are kept in locked metal filing cabinets or in a secured room at all times when not actually in use during working hours and at all times during nonworking hours. Magnetic tapes, disks, other computer equipment and other forms of personal data are stored in areas where fire and life safety codes are strictly enforced.

Telecommunication equipment (computer terminals, modems and disks) of the Patient Care Information System (PCIS) are maintained in locked rooms during nonworking hours. Combinations on door locks are changed periodically and whenever a PCIS employee resigns, retires or is reassigned.

3. Procedural Safeguards. Within each facility a list of personnel or categories of personnel having a demonstrable need for the records in the performance of their duties has been developed and is maintained. Procedures have been developed and implemented to review one-time requests for disclosure to personnel who may be on the authorized user list. Proper charge-out procedures are followed for the removal of all records from the area in which they are maintained. Persons who have a need to know are entrusted with records from this system of records and are instructed to safeguard the confidentiality of these records. They are to make no further disclosure of the records except as authorized by the System Manager and permitted by the Privacy Act, and to destroy all copies or to return such records when the need to know has expired. Procedural instructions include the statutory penalties for noncompliance.

The following automated information systems (AIS) security procedural safeguards are in place for automated health and medical records maintained in the Patient Care Information System. A profile of automated systems security is maintained. Security clearance procedures for screening individuals, both Government and contractor personnel, prior to their participation in the design, operation, use or maintenance of IHS automated information systems are implemented. The use of current passwords and log-on codes is required to protect sensitive automated data from unauthorized access. Such passwords and codes are changed periodically. An automated audit trail is maintained. Only authorized IHS Data Processing Service Center staff may modify automated files in batch mode. Personnel at remote terminal sites may only retrieve automated data. Such retrievals are password protected.

Privacy Act requirements and specified Automated Information System security provisions are specifically included in contracts and agreements and the System Manager or his/her designee oversees compliance with these contract requirements.

4. Implementing Guidelines. DHHS Chapter 45–13 and supplementary Chapter PHS.hf: 45–13 of the General Administration Manual; and Part 6, "ADP Systems Security," of the DHHS Information Resources Management Manual.

RETENTION AND DISPOSAL:

Patient listings which may identify individuals are maintained in IHS Area and Program Offices permanently. Inactive records are held at the facility which provided health services from three to seven years and then are transferred to the appropriate Federal Records Centers. Monitoring strips and tapes (i.e., fetal monitoring strips and EEG and EKG tapes) which are not stored in the patient's official medical record, are stored at the health facility for one year and are then transferred to the appropriate Federal Records Center. (See Appendix 2 for Federal Records Center addresses.) Records are retained at the Regional Federal Records Centers for 25 years. Disposal methods include burning or shredding of hard copy and erasing of magnetic media.

SYSTEM MANAGER(S) AND ADDRESS:

Policy-Coordinating Offical: Director, Division of Clinical and Environmental Health Services, Indian Health Service, Room 6A–55, 5600 Fishers Lane, Rockville, Maryland 20857.

See Appendix 1. The IHS Area/Program Office Directors and Service Unit Directors listed in Appendix 1 are System Managers.

NOTIFICATION PROCEDURE:

General Procedure. Requests must be made to the appropriate System Manager (IHS Area/Program Office Director or Service Unit Director). An individual who requests a copy of, or access to, a medical record shall at the time the request is made designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. Such a representative may be an IHS health professional. When an individual is seeking to obtain information about himself/herself which may be retrieved by a different name of identifier than his/her current name or identifier, he/she shall be required to produce evidence to verify that he/she is the person whose record he/she seeks.

No verification of identity shall be required where the record is one which is required to be disclosed under the Freedom of Information Act.

Requests In Person. Identification papers with current photographs are preferred but not required. If a subject individual has no identification but is personally known to the designated agency employee, such employee shall make a written record verifying the subject individual's identity. If the subject individual has no identification papers, the responsible System Manager or designated agency official shall require that the subject individual certify in writing that he/she is the individual who he/she claims to be and that he/she understands that the knowing and willful request or acquisition of records concerning an individual under false pretenses is a criminal offense subject to a $5,000 fine. If an individual is unable to sign his/her name when required, he/she shall make his/her mark and have the mark verified in writing by two additional persons.

Requests By Mail. Written requests must contain the name and address of the requester, his/her date of birth and at least one piece of information which is also contained in the subject record.

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and his/her signature for comparison purposes. If the written request does not contain sufficient information, the System Manager shall inform the requester in writing that additional, specified information is required to process the request.

Requests By Telephone. Since positive identification of the caller cannot be established, telephone requests are not honored.

Parents and Legal Guardians. Parents of minor children and legal guardians of legally incompetent individuals shall verify their own identification in the manner described above, as well as their relationship to the individual whose record is sought. A copy of the child's birth certificate or court order establishing legal guardianship may be required if there is any doubt regarding the relationship of the individual to the patient.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures. Requesters should also provide a reasonable description of the record being sought. Requesters may also request an accounting of disclosures that have been made of their record, if any.

CONTESTING RECORD PROCEDURES:

Write to the appropriate IHS Area/Program Office Director or Service Unit Director at his/her address specified in Appendix 1, and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Patient and/or family members, IHS health care personnel, contract health care providers, State and local health care provider organizations, and Medicare and Medicaid funding agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

APPENDIX 1—System Managers and IHS Locations Under Their Jurisdiction Where Records Are Maintained

Director, Aberdeen Area, Indian Health Service, Federal Building, 115 Fourth Avenue, SE., Aberdeen, South Dakota 57401
Director, Rapid City Service Unit, Rapid City Indian Hospital, Rapid City, South Dakota 57701
Director, Cheyenne River Service Unit, Eagle Butte, Indian Hospital, Eagle Butte, South Dakota 57625
Director, Fort Berthold Service Unit, Minni-Tohe Indian Health Center, New Town, North Dakota 58763
Director, Fort Totten Service Unit, Fort Totten Indian Health Center, Fort Totten, North Dakota 58335
Director, Pine Ridge Service Unit, Pine Ridge Indian Hospital, Pine Ridge, South Dakota 57770
Officer in Charge, Wanblee Indian Health Center, Wanblee, South Dakota 57577
Director, Rosebud Service Unit, Rosebud Indian Hospital, Rosebud, South Dakota 57570
Director, Sisseton-Wahpeton Service Unit, Sisseton Indian Hospital, Sisseton, South Dakota 57262
Director, Flandreau Indian School Health Center, Flandreau, South Dakota 57028
Director, Wahpeton Indian School Health Center, Wahpeton, North Dakota 58075
Director, Standing Rock Service Unit, Fort Yates Indian Hospital, Fort Yates, North Dakota 58538
Director, McLaughlin Indian Health Center, McLaughlin, South Dakota 57642
Director, Turtle Mountain Service Unit, Belcourt Indian Hospital, Belcourt, North Dakota 58316
Director, Omaha-Winnebago Service Unit, Winnebago Indian Hospital, Winnebago, Nebraska 68071
Director, Yankton-Wagner Service Unit, Wagner, South Dakota 57380
Director, Pierre Service Unit, Ft. Thompson Indian Health Station, Ft. Thompson, South Dakota 57339
Director, Pierre Indian School Health Center, c/o Ft. Thompson Indian Health Station, Ft. Thompson, South Dakota 57339
Director, Lower Brule Indian Health Center, Lower Brule, South Dakota 57548
Director, Bemidji Program Office, Indian Health Service, 203 Federal Buliding, Bemidji, Minnesota 56601
Director, Eastern Michigan Service Unit, Kincheloe Indian Health Center, Kincheloe, Minnesota 49788
Director, Greater Leach Lake Service Unit, Cass Lake Indian Hospital, Cass Lake, Minnesota 56633
Director, Inger Indian Health Station, Inger Route, Deer River, Minnesota 56636
Director, Squaw Lake Indian Health Station, Squaw Lake, Minnesota 56681
Director, Ball Club Indian Health Station, Ball Club, Minnesota 56622
Director, Onigum Indian Health Station, Star Route, Walker, Minnesota 56484
Director, Red Lake Service Unit, Red Lake Indian Hospital Red Lake, Minnesota 56671
Director, Ponemah Indian Health Station, Ponemah, Minnesota 56666
Director, White Earth Service Unit, White Earth Indian Health Center, White Earth, Minnesota 65691
Director, Naytahwaush Indian Health Station, Naytahwaush, Minnesota 56566
Director, Pine Point Indian Health Station, White Earth, Minnesota 56591
Director, Alaska Area Native Health Service, P.O. Box 7-741, Anchorage, Alaska 99510
Director, Anchorage Servce Unit, PHS, Alaska Native Medical Center, P.O. Box 7-741, Anchorage, Alaska 99510
Director, Alaska Native Health Center, St. George Island, Alaska 99660
Director, Alaska Native Health Center, St. Paul Island, Alaska 99660
Director, Barrow Service Unit, Barrow Alaska Native Hospital, Barrow, Alaska 99723
Director, Bristol Bay Area Service Unit, Bristol Bay Area Alaska Native Hospital, Dillingham, Alaska 99576
Director, Interior Alaska Service Unit, Alaska Native Health Center, 1638 Cowles Street, Fairbanks Alaska 99701
Director, PHS Alaska Native Health Center, Tanana, Alaska 99777
Director, Fort Yukon Alaska Native Health Center, Fort Yukon, Alaska 99740
Director, Southeast Area Regional Health Center, 3272 Hospital Drive, Juneau, Alaska 99801
Director, Kotzebue Service Unit, Kotzebue Alaska Native Hospital, Kotzebue, Alaska 99752
Director, Mt. Edgecumbe Service Unit, Mt. Edgecumbe Alaska Hospital, 222 Tongass Drive, Sitka, Alaska 99835
Director, Ketchikan Alaska Native Health Center, 3289 Tongass Avenue, Ketchikan, Alaska 99901
Director, Annette Island Service Unit, Metlakatla Alaska Native Health Center, Box 428, Metlakatla, Alaska 99926
Director, Yukon-Kuskokwim-Delta Service Unit, Yukon-Kuskokwim-Delta Regional Hospital, Indian Health Service, Bethel, Alaska 99559
Director, Albuquerque Area, Indian Health Service, 505 Marquette, NW., Suite 1502, Albuquerque, New Mexico 87102
Director, Albuqerque Service Unit, Albuquerque Indian Hospital, 801 Vassar Drive, NE, Albuquerque, New Mexico 87106
Director, Isleta Indian Health Center, P.O. Box 429, Isleta, New Mexico 87022
Director, Jemez Indian Health Center, P.O. Box 256, Jemez Pueblo, New Mexico 87024
Chief, Dental Program, IHS Dental Training Center, Southwestern Indian Polytechnical Inst., 9168 Coors Road NW., P.O. Box 25927, Albuquerque, New Mexico 87125
Director, Indian School Health Center, Southwestern Indian Polytechnical Inst., 9168 Coors Road NW., P.O. Box 25927, Albuquerqoe, New Mexico 87125
Director, Sandia Indian Health Station, Sandia, New Mexico 87047
Director, Santa Ana Indian Health Station, P.O. Box 580, Bernalillo, New Mexico 87004
Director, Zia Indian Health Station, General Delivery, San Ysidro, New Mexico 87053
Director, Mescalero Service Unit, Mescalero Indian Hospital, P.O. Box 210, Mescalero, New Mexico 88340
Director, Santa Fe Service Unit, Santa Fe Indian Hospital, 1700 Cerrillos Road, Santa Fe, New Mexico 87501
Director, Dulce Indian Health Center, Dulce, New Mexico 87528
Director, Taos Indian Health Center, Taos, New Mexico 87571
Director, Santa Clara Indian Health Center, P.O. Box 1322, Espanola, New Mexico 87532
Director, Santo Domingo Indian Health Station, Santo Domingo, New Mexico 87052

Director, San Juan Indian Health Station, San Juan, New Mexico 87566
Director, Cochiti Indian Health Station, Cochito, New Mexico 87041
Director, San Felipe Indian Health Station, General Delivery, San Felipe Pueblo, New Mexico 87001
Director, Southern Colorado-Ute Service Unit, P.O. Box 778, Ignacio, Colorado 81137
Director, Ignacio Indian Health Center, Ignacio, Colorado 81137
Director, Towaoc Indian Health Center, Towaoc, Colorado 81334
Director, White Mesa Indian Health Station, General Delivery, Towaoc, Colorado 81334
Director, Zuni-Ramah Service Unit, Zuni Indian Hospital, Zuni, New Mexico 87327
Director, Acoma-Canoncito-Laguna Service Unit, Acoma-Canoncito-Laguna Indian Hospital, P.O. Box 130, San Fidel, New Mexico 87049
Director, Laguna Indian Health Center, P.O. Box 199, New Laguna, New Mexico 87038
Director, Canoncito Indian Health Station, c/o Acoma-Canoncito-Laguna Indian Hospital, P.O. Box 130, San Fidel, New Mexico 87049
Director, Billings Area Indian Health Service, P.O. Box 2143, Billings, Montana 59103
Director, Blackfeet Service Unit, Browning Indian Hospital, Browning, Montana 59417
Director, Heart Butte Indian Health Station, Heart Butte, Montana 59448
Director, Crow Service Unit, Crow Indian Hospital, Crow Agency, Montana 59022
Director, Lodge Grass Indian Health Center, Lodge Grass, Montana 59050
Director, Pryor Indian Health Station, Pryor, Montana 59066
Director, Flathead Service Unit, St. Ignatius Indian Health Center, St. Ignatius, Montana 59865
Director, Polson Indian Health Center, 320–B 4th Avenue East, Polson, Montana 59860
Director, Fort Belknap Service Unit, Harlem Indian Hospital, Harlem, Montana 59526
Director, Hays Indian Health Station, Hays, Montana 59527
Director, Fort Peck Service Unit, Poplar Indian Health Center, Poplar, Montana 59255
Director, Wolf Point Indian Health Center, Wolf Point, Montana 59201
Director, Wind River Service Unit, Fort Washakie Indian Health Center, Fort Washakie, Wyoming 82514
Director, Arapahoe Indian Health Center, Arapahoe, Wyoming 82510
Director, Northern Cheyenne Service Unit, Lame Deer Indian Health Center, Lame Deer, Montana 59043
Director, Rocky Boy's Service Unit, Rocky Boy's Indian Health Center, Box Elder, Montana 59521
Director, Navajo Area Indian Health Service, P.O. Box G, Window Rock, Arizona 86515
Director, Chinle Service Unit, Chinle Comprehensive Health Facility, P.O. Box P.H., Chinle, Arizona 86503
Director, Tasilee Indian Health Center, P.O. Box 467, Tasilee, Arizona 86556
Director, Many Farms Indian School Health Center, c/o Chinle Comprehensive Health Facility, P.O. Box P.H., Chinle, Arizona 86503
Director, Pinon Indian Health Station, Pinon, Arizona 86510
Director, Rock Point Indian Health Station, c/o Chinle Comprehensive Health Facility, P.O. Box P.H. Chinle, Arizona 86503
Director, Crownpoint Service Unit, Crownpoint Indian Hospital, Crownpoint, New Mexico 87313
Director, Pueblo Pintado Clinic, c/o Community Health Services, Crownpoint Indian Hospital, Crownpoint, New Mexico 87313
Director, Fort Defiance Service Unit, Fort Defiance Indian Hospital, Fort Defiance, Arizona 86504
Medical Office in Charger, Toyei Indian Health Clinic, Fort Defiance, Arizona 86504
Director, Gallup Service Unit, Gallup Indian Medical Center, Gallup, New Mexico 87301
Medical Officer in Charge, Tohatchi Indian Health Center, Gallup, New Mexico 87301
Director, Dzilth-Na-O-Dith-Le Indian Health Center, Star Route 4, P.O. Box 5400, Bloomfield, New Mexico 87413
Director, Sanostee Indian Health Clinic, c/o Shiprock Indian Hospital, Field Health, Shiprock, New Mexico 87420
Director, Todalena Indian Health Clinic, c/o Shiprock Indian Hospital, Field Health, Shiprock, New Mexico 87420
Medical Officer in Charge, Fort Wingate Indian School Health Center, Fort Wingate, New Mexico 87316
Director, Kayenta Service Unit, Kayenta Indian Health Center, Kayenta, Arizona 86033
Director, Inscription House Indian Health Center, P.O. Box 7397, Shonto, Arizona 86054
Director, Dennehotso Indian Health Center, c/o Kayenta Indian Health Center, Kayenta, Arizona 86033
Director, Shiprock Service Unit, Shiprock Indian Hospital, Shiprock, New Mexico 87420
Director, Teec Nos Pos Indian Health Center, P.O. Drawer D., Teec Nos Pos, Arizona 86514
Director, Tuba City Service Unit, Tube City Indian Hospital, Tuba City, Arizona 86406
Director, Winslow Service Unit, Winslow Indian Health Center, P.O. Box 40, Winslow, Arizona 86047
Director, Dilkon Indian Health Center, P.O. Box 40, Winslow, Arizona 86047
Director, Leupp Indian School Health Center, c/o Winslow Indian Health Center, P.O. Drawer 40, Winslow, Arizona 86047
Director, Leupp Indian Health Center, c/o Winslow Indian Health Center, Community Health Services, Winslow, Arizona 86047
Director, Oklahoma City Area, Indian Health Service, 215 Dean A. McGee Street NW., Oklahoma City, Oklahoma 73102–3477
Director, Ada Service Unit, Ada Indian Hospital, 1001 North Country Club Drive, Box 1564, Ada, Oklahoma 74820
Director, Wewoka Indian Health Center, Wewoka, Oklahoma 74884
Director, Tishomingo Indian Health Center, Tishomingo, Oklahoma 73460
Director, Claremore Service Unit, Claremore Indian Hospital, Claremore, Oklahoma 74017
Director, Delaware District (Jay) Indian Health Center, Jay, Oklahoma 74346
Director, Miami Indian Health Center, P.O. Box 1498, Miami, Oklahoma 74354
Director, Locust Grove Indian Health Station, Locust Grove, Oklahoma 74352
Director, Clinton Service Unit, Clinton Indian Hospital, Clinton, Oklahoma 73601
Director, Watonga Indian Health Center, P.O. Box 878, Watonga, Oklahoma 73772
Director, Concho Indian Health Center, Concho, Oklahoma 73022
Director, Kansas Service Unit, Holton Indian Health Center, Holton, Kansas 66436
Facility Director, Lawrence (Haskell) Indian Health Center, Lawrence, Kansas 66044
Director, Lawton Service Unit, Lawton Indian Hospital, Lawton, Oklahoma 73501
Director, Anadarko Indian Health Center, Anadarko, Oklahoma 73005
Director, Riverside Indian Health Station, Anadarko, Oklahoma 73005
Director, Carnegie Indian Health Center, Carnegie, Oklahoma 73015
Director, Pawnee Service Unit, Pawnee Indian Health Center, Pawnee, Oklahoma 74058
Director, Pawhuska Indian Health Center, Pawhuska, Oklahoma 74056
Director, White Eagle Indian Health Center, Route 4, Ponca City, Oklahoma 74601
Director, Shawnee Service Unit, Shawnee Indian Health Center, Shawnee, Oklahoma 74801
Director, Tahlequah Service Unit, W.W. Hastings Indian Hospital, 1120 Grand, Tahlequah, Oklahoma 74464
Director, Talihina Service Unit, Talihina Indian Hospital, Talihina, Oklahoma 74571
Director, John Anderson Memorial Health Center, USPHS Indian Health Center, Broken Bow, Oklahoma 74728
Director, Hugo Indian Health Center, 100 E. Main, Hugo, Oklahoma 74743
Director, McAlester Indian Health Center, McAlester, Oklahoma 74501
Director, Jones Academy Indian Health Station, Heartshorne, Oklahoma 74547
Director, Phoenix Area, Indian Health Service, 3738 N. 16th Street, Suite A, Phoenix, Arizona 85016–5981
Director, Colorado River Service Unit, Parker Indian Hospital, Route 1, P.O. Box 12, Parker, Arizona 85344
Director, Peach Springs Indian Health Center, Peach Springs, Arizona 86434
Director, Chemehuevi Indian Health Clinic, Chemehuevi Valley, California 92363
Director, Havasupai Indian Clinic, Supi, Arizona 86435
Director, Fort Yuma Service Unit, Winterhaven Indian Hospital, P.O. Box 1368, Yuma, Arizona 85364
Director, Riverside Indian School Health Center, 8934 Magnolia, Riverside, California 92363
Director, Keams Canyon Service Unit, Keams Canyon Indian Hospital, P.O. Box 98, Keams Canyon, Arizona 86034
Director, Second Mesa Indian Health Station, General Delivery, Second Mesa, Arizona 86043
Director, Owyhee Service Unit, Owyhee Indian Hospital, P.O. Box 212, Owyhee, Nevada 89832
Director, Southern Bands Indian Health Clinic, 1545 Silver Eagle Road, Elko, Nevada 89801

Director, Phoenix Service Unit, Phoenix Indian Medical Center, 4212 North 16th Street, Phoenix, Arizona 85016
Director, Fort Mcdowell Indian Health Station, c/o Phoenix Indian Medical Center, 4212 North 16th Street, Phoenix, Arizona 85016
Director, Salt River Indian Health Center, Route 1, Box 115, Scottsdale, Arizona 85257
Director, Gila Crossing Indian Health Clinic, Route 1, Box 770, Laveen, Arizona 85339
Director, San Lucy Indian Health Station, c/o Phoenix Indian Medical Center, 4212 North 16th Street, Phoenix, Arizona 85016
Director, Phoenix Indian School Health Center, c/o Phoenix Indian Medical Center, 4212 North 16th Street, Phoenix, Arizona 85016
Director, Sacaton Service Unit, Sacaton Indian Hospital, Sacaton, Arizona 85247
Director, San Carlos Service Unit, San Carlos Indian Hospital, San Carlos, Arizona 85550
Director, Bylass Indian Health Clinic, Bylass, Arizona 85530
Director, Schurz Service Unit, Schurz Indian Hospital, Schurz, Nevada 89427
Director, Stewart Indian Health Station, Stewart, Nevada 89437
Director, Fort McDermitt Indian Health Station, P.O. Box 475, McDermitt, Nevada 89421
Director, Pyramid Lake Indian Health Clinic, Nixon, Nevada 89424
Director, Unitah and Ouray Service Unit, Fort Duchesne Indian Health Center, P.O. Box 160, Fort Duchesne, Utah 84026
Director, Whiteriver Service Unit, Whiteriver Indian Hospital, Whiteriver, Arizona 85941
Director, Cibicue Indian Health Center, Cibicue, Arizona 85911
Director, Portland Area, Indian Health Service, Room 476, Federal Building, 1220 Southwest Third Avenue, Portland, Oregon 97204-2892
Director, Chemawa Indian Health Center, 3750 Hazelgreen Road, NE., Salem, Oregon 97303
Director, Colville Service Unit, Colville Indian Health Center, Nespelem, Washington, 99155
Director, Inchellium Indian Health Center, Inchelium, Washington 99138
Director, Fort Hall Service Unit, Fort Hall Indian Health Center, P.O. Box 317, Fort Hall, Idaho 83203
Director, Northern Idaho Service Unit, Northern Idaho Indian Health Center, P.O. Drawer 376, Lapawai, Idaho 83540
Director, Kamiah Indian Health Station, Kamiah, Idaho 83536
Director, Coeur d'Alene Indian Health Station, Coeur d'Alene, Idaho 83814
Director, Warm Springs Service Unit, Warm Springs Indian Health Center, Warm Springs, Oregon 97761
Director, Puget Sound Service Unit, Kitsap Indian Health Center, 1212 South Judkins, Seattle, Washington 98144
Director, Yakima Service Unit, Yakima Indian Health Center, Route 1, Box 1104, Toppenish, Washington, 98948
Director, Umatilla Service Unit, Yellowhawk Indian Health Center, P.O. Box 159, Pendleton, Oregon 97801
Director, Taholah Service Unit, Taholah Indian Health Center, P.O. Box 219, Taholah, Washington 98587
Director, Queets Indian Health Station, c/o Service Unit Director, Taholah Indian Health Center, P.O. Box 219, Taholah, Washington 98587
Director, Neah Bay Service Unit, Neah Bay Indian Health Center, P.O. Box 416, Neah Bay, Washington 98357
Director, Northwest Washington Service Unit, Lummi Indian Health Center, 2592 Kwina Road, Bellingham, Washington 98225
Director, Wellpinit Service Unit, Wellpinit Indian Health Center, P.O. Box 391, Wellpinit, Washington 99040
Director, Tucson Program Office, Indian Health Service, P.O. Box 11340, Tucson, Arizona 85734
Director, Sells Service Unit, Sells Indian Hospital, Sells, Arizona 85634
Director, Santa Rosa Indian Health Center, Star Route, Box 71, Sells, Arizona 85634
Director, San Xavier Indian Health Center, Tucson, Arizona 85734
Director, Nashville Program Office, Indian Health Service, Oak Towers Building, 1101 Kermit Drive, Suite 810, Nashville, Tennessee 37217-2191
Director, Cherokee Service Unit, Cherokee Indian Hospital, Cherokee, North Carolina 28719
Program Office Director, California Program Office, Indian Health Service, 2999 Fulton Avenue, Sacramento, California 95821

Appendix 2—Federal Archives and Records Centers

District of Columbia, Maryland (except U.S. Court Records for Maryland)
  Washington National Records Center, 4205 Suitland Road, Suitland, Maryland 20409
GSA Region 1—Connecticut, Maine, and Rhode Island
  Federal Archives and Records Center, 380 Trapelo Road, Waltham, MA 02154
GSA Region 2—New York
  Federal Archives and Records Center, Military Ocean Terminal, Bldg. 22, Bayonne, NJ 07002
GSA Region 3—Pennsylvania
  Federal Archives and Records Center, 5000 Wissahickon Avenue, Philadelphia, PA 19144
GSA Region 4—Alabama, Florida, Mississippi and North Carolina
  Federal Archives and Records Center, 1557 St. Joseph Avenue, East Point, GA 30344
GSA Region 5—Wisconsin, Minnesota and U.S. Court Records for Michigan
  Federal Archives and Records Center, 7358 South Pulaski Rd., Chicago, IL 60629
GSA Region 5—Michigan (except U.S. Court Records)
  Federal Records Center, 3150 Springboro Road, Dayton, OH 45439
GSA Region 6—Kansas, Iowa and Nebraska
  Federal Archives and Records Center, 2306 East Bannister Rd., Kansas City, MO 64131
GSA Region 7—Louisiana, New Mexico, Oklahoma and Texas
  Federal Archives and Records Center, P.O. Box 6216, Ft. Worth, TX 76115
GSA Region 8—Colorado, Wyoming, Utah, Montana, North Dakota and South Dakota
  Federal Archives and Records Center, P.O. Box 25307, Denver, CO 80225
GSA Region 9—California (except Southern California) and Nevada (except Clark County)
  Federal Archives and Records Center, 1000 Commodore Drive, San Bruno, CA 94066
GSA Region 9—Arizona: Clark County, Nevada and Southern California (Counties of San Luis Obispo, Kern, San Bernardino, Santa Barbara, Ventura, Los Angeles, Riverside, Orange, Imperial Inyo, and San Diego)
  Federal Archives and Records Center, 24000 Avila Road, Laguna Niguel, CA 92677
GSA Region 10—Washington, Oregon, Idaho and Alaska
  Federal Archives and Records Center, 6125 Sand Point Way, Seattle, WA 98115

09-15-0022

SYSTEM NAME:

Accounts Receivable, HHS/HRSA/OA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

1. Chief, Debt Management Branch, Division of Fiscal Services, Health Resources and Services Administration, 5600 Fishers Lane, Rockville, Maryland 20857.

2. Chief, Financial Management Department, Gillis W. Long Hansen's Disease Center, Carville, Louisiana 70721.

3. Washington National Records Center, 4205 Suitland Road, Washington, D.C. 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients and PHS employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Billing to individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 321 of the Public Health Service Act, as amended (42 U.S.C. 248), Hospitals, Medical Examinations, and Medical Care.

PURPOSE(S):

To bill and collect funds due the Federal Government. Records may be used by the HHS Audit Agency and HHS claims office for audit purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

1. Information may be provided to any Government agency which had requested or arranged for treatment or care of an individual by the Bureau of Medical Services.

2. Disclosure may be made to a congressional office from the record of

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an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

3. The Department may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 158a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purposes of this disclosure are: (1) To provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records, and (2) to enable HRSA to improve the quality of loan and scholarship decisions by taking into account the financial reliability of applicants. Disclosure of records will be limited to the individual's name, Social Security number (SSN), and other information necessary to establish the identity of the individual, the amount, status, and history of the claim, and the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File Folders.

RETRIEVABILITY:

Retrievable by name.

SAFEGUARDS:

1. Authorized Users: Billing clerks, cashiers, and HRSA financial management personnel.

2. Physical Safeguards: All documents are protected during lunch hours and nonworking hours in locked file cabinets and locked storage areas.

3. Procedural Safeguards: All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised office. Access to records is strictly limited to those staff members trained in accordance with DHHS Chapter 45-13 and Chapter PHS.hf: 45-13 of the General Administration Manual.

RETENTION AND DISPOSAL:

Number of years held: Until audited. How destroyed: Incinerator.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Coordinating Official: Director, Division of Fiscal Services, HRSA, Room 16-05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Chief, Debt Management Branch, Division of Fiscal Services, Health Resources and Services Administration, 5600 Fishers Lane, Rockville, Maryland 20857.

Chief, Financial Management Department, Gillis W. Long Hansen's Disease Center, Carville, Louisiana 70721.

NOTIFICATION PROCEDURE:

Contact the Division of Fiscal Services, HRSA, for records from the former PHS hospitals and clinics. For records pertaining to care at the Gillis W. Long Hansen's Disease Center, contact the Chief, Financial Management Department, Gillis W. Long Hansen's Disease Center, Carville, Louisiana 70721. Individuals must provide positive identification, such as driver's license, passport, voter's registration card, union card, or a written certification verifying his or her identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Write to appropriate Financial Management Offices as listed in the Notification Procedure and reasonably identify the record, specify the information to be contested, and state the corrective action sought, with supporting justification.

RECORD SOURCE CATEGORIES:

From individual medical record.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-15-0026

SYSTEM NAME:

Medical Fellowships and Educational Loans, HHS/HRSA/OA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Fiscal Services, Health Resources and Services Administration, Room 16-48, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, and Regional Federal Records Center.

Washington National Records Center, 4205 Suitland Road, Washington, D.C. 20409

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants and recipients of fellowships, grants, and loans administered by the Health Resources and Services Administration.

CATEGORIES OF RECORDS IN THE SYSTEM:

Fellowship, Grants and Loan Applications. Promissory note signed by the individual receiving the loan.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 301 of the Public Health Service Act, as amended (42 U.S.C. 241), Research and Investigations.

PURPOSE(S):

To support the HRSA's accounting system of obligations and payments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

2. The Department may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

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(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the fair Credit Reporting Act (15 U.S.C. 158a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purposes of this disclosure are: (1) To provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records, and (2) to enable HRSA to improve the quality of loan and scholarship decisions by taking into account the financial reliability of applicants. Disclosure of records will be limited to the individual's name, Social Security number (SSN), and other information necessary to establish the identity of the individual, the amount, status, and history of the claim, and the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Retrievable by name.

SAFEGUARDS:

1. Authorized Users: Accounting clerks, accountants and auditors that are performing the accounting function for this program.

2. Physical Safeguards: Files are kept in locked metal filing cabinets during lunch hours and nonworking hours. Twenty-four hour, 7-day security guards perform random checks on the physical security of the data. Files are stored in areas where fire and life safety codes are strictly enforced.

3. Procedural Safeguards: All users of personal information in connection with the performance of their jobs protect information from the public view and from unauthorized personnel entering an unsupervised office. Access to records is strictly limited to those staff members trained in accordance with the Privacy Act and the following guidelines.

Implementation Guidelines: DHHS Chapter 45–13 and supplementary Chapter PHS.hf: 45–13 of the General Administration Manual.

RETENTION AND DISPOSAL:

Number of years held: 2 yrs. 1 yr. Warehouse. Number of years held at Federal Records Center before disposal: 7 yrs. How destroyed: in accordance with items 4.b and 4.c of Schedule 3.OSA General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Accounting and Finance Branch, Division of Fiscal Services, Health Resources and Services Administration, Parklawn Bldg., Rm. 16–16, 5600 Fishers Lane, Rockville, MD 20857.

NOTIFICATION PROCEDURES:

Requests must be made to the System Manager.

Requests in person: A subject individual who appears in person at a specific location seeking access to or disclosure of records relating to him/her shall provide his/her name, current address, and at least one piece of tangible identification such as driver's license, passport, voter registration card, or union card. Identification papers with current photographs are preferred but not required. If a subject individual has no identification but is personally known to an agency employee, such employee shall make a written record verifying the subject individual's identity. Where the subject individual has no identification papers, the responsible agency official shall require that the subject individual certify in writing that he/she is the individual whom he/she claims to be and that he/she understands that the knowing and willful request or acquisition of records concerning an individual under false pretenses is a criminal offense subject to a $5,000 fine. In some situations additional identification may be requested. Some examples include the request for access to (1) records which contain sensitive information, (2) different records for persons with the same name, and (3) records which contain an apparent discrepancy between information contained in the records and that provided by the individual requesting access to the record. No verification of identity shall be required where the record is one which is required to be disclosed under the Freedom of Information Act.

Requests by mail: Request for information and/or access to records received by mail must contain information providing the identity of the writer and a reasonable description of the record desired. Written requests must contain the name and address of the requestor, his/her date of birth and at least one piece of information which is also contained in the subject record, and his/her signature for comparison purposes.

Requests by telephone: Since positive identification of the caller cannot be established, telephone requests are not honored.

RECORD ACCESS PROCEDURES:

Write to System Manager. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Write to the System Manager and reasonably identify the record, specify the information to be contested, and state the corrective action sought, with supporting justification.

RECORD SOURCE CATEGORIES:

Individual applicants for loans supply the information.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

SYSTEM NAME:

National Health Service Corps (NHSC) and Indian Health Service (IHS) Pre-Application recruitment and Provider File, HHS/HRSA/BHCDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Health Service Corps, Parklawn Building, 5600 Fishers Lane Rockville, MD 20857, and Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NHSC volunteer or scholarship applicants who wish to be assigned to health manpower shortage areas and individuals who indicate an interest in an assignment at an Indian Health Service location.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employment data, private practice data, preference for site-selection, personal and professional background information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 333 of the Public Health Service Act, as amended (42 U.S.C. 254f), Assignment of Corps Personnel; and Section 338C of the Public Health Service Act, as amended (42 U.S.C. 294v), Private Practice.

PURPOSE(S):

Matching applicants for assignment to health manpower shortage areas and Indian Health Service locations most suited to their interest. Users· Used by Regional Offices, IHS Area Offices and Service Units to prenegotiate assignments. Used PHS-wide for recruitment programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

2. The Department may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when:

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statue, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State, or local, charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual files, computer tape and disk, punched cards.

RETRIEVABILITY:

Applicant name and number.

SAFEGUARDS:

1. Authorized users: System manager, Director and staff of the Office of Data Management; and the Chief and staff of the Recruitment and Placement Branch, NHSC and IHS.

2. Physical Safeguards: Locked area and file cabinets. ADP remote stations and files are locked during non-standard working hours, with periodic checks made by building security force. Individual files are in locked cabinets inside a secured area.

3. Procedural Safeguards: Codes by which automatic files may be accessed are changed periodically. This procedure also includes deletion of access codes when employees leave. New employees are briefed and the guard office is notified of all staff members authorized to be in secured area during non-standard working hours. This list is revised as employees are gained or lost. Backup files are maintained in an off-site facility with fire extinguishers and controlled entrances and exists.

These safeguards are in compliance with Implementation Guidelines: DHHS Chapter 45–13, and supplementary Chapter PHS.hf: 45–13 of the General Administration Manual; and with the DHHS Information Resources Management Manual, Part 6, "ADP Systems Security."

RETENTION AND DISPOSAL:

Maintained for three years; the historical tapes are sent to a Federal records center and the initial record is destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Health Service Corps, BHCDA/HRSA, Parklawn Building, Room 6–40, 5600 Fishers Lane, Rockville, MD 20857.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager. The System Manager will then refer the requester to the appropriate Regional Office. Only Regional Offices disperse such records. The Regional Health Administrator will request individuals to provide positive identification, such as a driver's license, passport, voter's registration card, union card, or a written certification verifying his or her identity. Requesters should reasonably specify the record contents being sought.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Write to System Manager.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above, and reasonably identify the record, specify the information to be contested, and state the corrective action sought, with supporting justification.

RECORD SOURCE CATEGORIES:

Letters of inquiry, NHSC Site Selection Questionnaire; NHSC Private Practice Option Agreements; and Bureau of Health Professions scholarship source tape.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–15–0026

SYSTEM NAME:

PHS Clinical Affiliation Trainee Records, HHS/HRSA/BHCDA.

SYSTEM CLASSIFICATION:

None.

SYSTEM LOCATION:

Gillis W. Long Hansen's Disease Center, Carville, Louisiana 70721.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Students in PHS training programs or serving clinical affiliation in Gillis W. Long Hansen's Disease Center.

CATEGORIES OF RECORDS IN THE SYSTEM:

Transcripts of past education, application for training, training program staff and clinical supervisor evaluations and progress reports, course grades and evidence of completion of training requirements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 320 of the Public Health Service Act, as amended (42 U.S.C. 255), Receipt, Apprehension, Treatment and Release of Lepers; Section 321 of the Public Health Service Act, as amended (42 U.S.C. 248), Hospitals, Medical Examinations, and Medical Care; and Section 327A of the Public Health Service Act, as amended (42 U.S.C. 254), Sharing of Medical Care Facilities and Resources.

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PURPOSE(S):

To provide communication between educational and supervisory staff for evaluation of trainees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made:

1. To Educational Program staff of affiliated college/university to provide reports of student trainee's progress in training;

2. To representatives of medical/allied health training program accreditation of PHS Training Programs;

3. To prospective employers for professional reference;

4. To professional boards or associations to certify the student's progress in or completion of training as required for professional license, registration certification, etc.

5. To a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

6. The Department may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File Folders.

RETRIEVABILITY:

Alphabetically by last name.

SAFEGUARDS:

1. Authorized Users: Director of Education at the Gillis W. Long Hansen's Disease Center, work and staff supervisors and administrative personnel.

2. Physical Safeguards: All documents are protected during lunch hours and nonworking hours in locked file cabinets and locked storage areas.

3. Procedural Safeguards: All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised office.

Access to records is strictly limited to those staff members trained in accordance with DHHS Chapter 45-13 and Chapter PHS.hf: 45-13 of the General Administration Manual.

RETENTION AND DISPOSAL:

Number of years held: 10 years, then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Personnel Office, Gillis W. Long Hansen's Disease Center, Carville, Louisiana 70721.

NOTIFICATION PROCEDURE:

The individual should contact the Director, Gillis W. Long Hansen's Disease Center, Carville, Louisiana 70721, and provide name, date of birth and approximate dates of training to allow positive identification of the record.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Contact the facility mentioned at the address specified in the notification procedures above, and reasonably identify the record, specify the information to be contested, and state corrective action sought, with supporting justification.

RECORD SOURCE CATEGORIES:

Individual, clinical supervisors, instructors, training program staff and administrative personnel of facility and affiliated college/university.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-15-0029

SYSTEM NAME:

PHS Beneficiary-Contract Medical/Health Care Records, HHS/HRSA/BHCDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

1. Director, Division of Federal Occupational and Beneficiary Health Services, Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, Room 7-38, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

2. U.S. Public Health Service Health Data Center, Gillis W. Long Hansen's Disease Center, Carville, LA 70721.

3. See Appendix 2 of Patient Medical Records System PHS Hospital/Clinics, 09-15-0007, for location of Federal Records Centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are or were legally entitled to health care by the Public Health Service and who have received health care from health professionals or facilities under contract or agreement to the Public Health Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

May include any or all of the following: Diagnostic (laboratory/X-ray, etc.) and treatment data, sociologic information, invoices for services, eligibility data including employment history, uniformed services information (employing services, service numbers, duty station, etc.).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 320 of the Public Health Service Act, as amended (42 U.S.C. 255) Receipt, Apprehension, Treatment and Release of Lepers; Section 321 of the Public Health Service Act, as amended (42 U.S.C. 248), Hospitals Medical Examinations, and Medical Care; and Section 326 of the Public Health Act, as amended (42 U.S.C. 253), Services to Coast Guard, Coast and Geodetic Survey, and Public Health Service.

PURPOSE(S):

To serve as a basis for payment for patient care and for continuity in the evaluation of the patient's condition and treatment; to furnish documentary evidence of the course of the patient's medical evaluation and treatment to document communications between the responsible practitioner and any other health professionals contributing to the patient's care and treatment; to verify patient eligibility; and to ensure quality assurance, and to monitor contract compliance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to medical laboratories and facilities, and non

agency physicians. Recipients are required to maintain adequate safeguards with respect to such records.

2. To Department of Transportation and Department of Commerce to report results of examination and/or treatment of that agency's personnel.

3. To the Veterans Administration to assist uniformed services personnel, retirees and veterans to obtain medical care or benefits.

4. To a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

5. To a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

6. In the event of litigation where the defendant is

(a) The Department, any component of the Department, or any employee of the Department in his or her official capacity;

(b) The United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or

(c) Any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual,

disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

6. Information regarding the commission of crimes or the reporting of occurrences of communicable diseases, tumors, child abuse, births, deaths, alcohol or drug abuse, etc., may be disclosed as required by health providers and facilities by State law or regulation of the department of health or other agency of the State or its subdivision in which the facility is located. Disclosures will be made to organizations as specified by the State law or regulation, such as births and deaths to the vital statistics agency and crimes to law enforcement agencies. Disclosure of the contents of records which pertain to patient identity, diagnosis, prognosis or treatment of alcohol or drug abuse is restricted under the provisions of the Confidentiality of Alcohol and Drug Abuse Patient Records Regulation 42 CFR Part 2, as authorized by 21 U.S.C. 1175 and 42 U.S.C. 4582, as amended by Pub. L. 93-282.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Name, uniformed service number (which is the Social Security number (SSN)), and/or Z number. Those records indexed by SSN are maintained and retrieved in accordance with section 7(a)(2)(8) of the Privacy Act.

SAFEGUARDS:

1. Authorized Users: Supervisory contracting officials who review the contractor's records annually, doctors, dentists, nurses, allied health professionals and administrative staff in the contractor's office or System Manager's staff.

2. Physical Safeguards: All documents are protected during lunch hours and nonworking hours in locked file cabinets and locked storage areas.

3. Procedural Safeguards: All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised office. Access to records is strictly limited to those staff members trained in accordance with DHHS Chapter 45-13; and Chapter PHS.hf: 45-13 of the General Administration Manual.

RETENTION AND DISPOSAL:

Retained in the contracting professional's facility files until the contract is terminated. Then turned over to the Division of Federal Occupational and Beneficiary Health Services for transmittal to a new contracting professional to the Medical Branch, Commissioned Personnel Operations Division, or storage at a Federal Records Center. When stored in a Federal Records Center, records are stored for 50 years for active duty uniformed service personnel, and 25 years for all others. Destruction at that time is in accordance with standard practices of the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Federal Occupational and Beneficiary Health Services, Bureau of Health Care Delivery and Assistance, Room 7-36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857; and Director, Gillis W. Long Hansen's Disease Center, Carville, LA 70721.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the facility where care has been obtained. Individual must provide name, beneficiary category, date of birth, service number/Z number (if applicable) and name and location of source of contract care. Identification such as driver's license, passport, voter's registration card, union card, or a written certification verifying the individual's identity is required. An individual who requests access to a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. Requesters should also reasonably specify the record content being sought.

RECORD ACCESS PROCEDURES:

Same as notification procedures.

CONTESTING RECORDS PROCEDURES:

Contact the official at the appropriate address specified in the notification procedures above, and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting justification.

RECORD SOURCE CATEGORIES:

Individual, employers, other medical care providers, families and social agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-15-0036

SYSTEM NAME:

Indian Health Service Scholarship Programs, HHS/HRSA/IHS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Scholarship Branch, Indian Health Service, Room 6A-23, 5600 Fishers Lane, Rockville, Maryland 20857, and Washington National Records Center, 4205 Suitland Road, Suitland, Maryland 20409.

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have applied for, persons who have been approved to receive, persons who are receiving, and persons who have received scholarship grant funds administered by the Indian Health Service (IHS) since January 1978, such as, but not necessarily limited to, the Health Professions Pregraduate Scholarship Program for Indians, the Health Professions Preparatory Scholarship Program for Indians, and the Health Professions Scholarship Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include all grant applications; associated forms from selected applicants only; selection and performance records; progress reports; vouchers of expenditures; and Social Security numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 103 of the Indian Health Care Improvement Act, 25 U.S.C. 1613, Health Professions Preparatory Scholarship Program for Indians, and the Health Professions Pregraduate Scholarship Program for Indians.

Section 104 of the Indian Health Care Improvement Act, 42 U.S.C. 294y–1, Health Professions Scholarship Program.

Section 4 of the Debt Collection Act of 1982, Pub. L. 97–365, 5 U.S.C. 5514 note, Requirement That Applicant Furnish Taxpayer Identifying Number.

PURPOSE OF THE SYSTEM:

The purpose of this system of records is to select candidates for the Indian Health Service scholarship programs, to monitor the scholarship-related activities of candidates selected, and to evaluate the effectiveness of the programs. Scholarship-related activities are defined as enrollment and attendance in IHS-funded courses, the receipt by the student of a monthly stipend and the expenditure of funds by the student for the purchase of supplies (including books), equipment, tuition, fees and other reimbursable and justified expenditures authorized by IHS.

Records may be transferred to system No. 09–15–0045, "Health Resources and Services Administration Loan Repayment/Debt Management Records System, HHS/HRSA/OA," for debt collection purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Records may be disclosed to a congressional office in response to a verified inquiry from that office made at the written request of the subject individual.

2. Records may be disclosed to authorized persons employed by the grantee institution (the institution which the recipient of a scholarship grant is attending) as needed for the administration of a scholarship grant award.

3. Records may be disclosed to other Federal agencies that also provide scholarship funding at the request of these Federal agencies in conjunction with a matching program conducted by these Federal agencies to detect or curtail fraud and abuse in Federal scholarship programs, and to collect delinquent loans or benefit payments owed to the Federal Government.

4. IHS will provide to any person requesting it a list of recipients of scholarship grants, including the school attended and tribal affiliation of each recipient.

5. The Department may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 158a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purposes of these disclosures are: (1) To provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records, and (2) to enable HRSA to improve the quality of loan and scholarship decisions by taking into account the financial reliability of applicants. Disclosure of records will be limited to the individual's name, Social Security number (SSN), and other information necessary to establish the identity of the individual, the amount, status, and history of the claim, and the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in folders, ledgers, and on electronic word processing diskettes.

RETRIEVABILITY:

Records which identify individual persons are indexed by name or identification number of scholarship grant applicant or recipient.

SAFEGUARDS:

1. Authorized Users: Access is limited only to authorized personnel in the performance of their duties. Authorized personnel include: the system manager, his/her staff, IHS Area/Program Scholarship Coordinators, IHS Headquarters Branch Chiefs acting as advisors to scholarship recipients, staff of the IHS Grants Management Office, and IHS Headquarters and Area/Program Offices.

2. Physical Safeguards: Paper records are stored in locked file cabinets. The records storage area is secured during off-duty hours.

Word processing diskettes are stored in areas where fire and life safety codes are strictly enforced. Word processing diskettes are off-loaded and stored in locked cabinets when not in use.

3. Procedural Safeguards: All IHS personnel who make use of records contained in this system are made aware of their responsibilities under the provisions of the Privacy Act and are required to maintain Privacy Act safeguards with respect to such records.

The records storage area is not left unattended during office hours, including lunch hours. Records are not removed from this area in which they are maintained in the absence of proper charge-out procedures. Twenty-four hour, seven-day security guards perform random checks on the physical security of the records storage area and word processing diskettes. A data set name controls the release of data to only authorized users.

When copying records for authorized purposes, care is taken to ensure that any imperfect pages are not left in the reproduction room where they can be read, but are destroyed or obliterated.

4. Implementing Guidelines: DHHS Chapter 45–13 and supplementary Chapter PHS.hf: 45–13 of the General Administration Manual, "Information on Individuals Obtained in Grant Application."

RETENTION AND DISPOSAL:

Scholarship application materials are returned to unsuccessful applicants. Records in the system are retained by IHS for one year after the final award payment has been made by IHS and are then retired to a Federal Records Center. Records are shredded or burned by the Federal Records Center four years after they are received.

SYSTEM MANAGER AND ADDRESS:

Chief, Scholarship Branch, Indian Health Service, 5600 Fishers Lane, Room 6A–23, Rockville, Maryland 20857.

NOTIFICATION PROCEDURE:

Requests by mail or in person: To substantiate the identity of subject individual seeking access to his/her scholarship grant application and/or performance record the requester must provide his/her name, signature, and Grant Identification Number; and to identify the record sought the requester must provide dates of attendance, school(s) of attendance, and field or speciality or courses taken.

In addition, the requester is informed that provision of the SSN may assist in the verification of the identity of the person as well as the identification of his/her record. The requester is informed that provision of his/her SSN is voluntary and that the individual will not be refused access to his/her record for failure to disclose his/her SSN.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also provide a reasonable description of the record being sought.

Requesters may also request an accounting of disclosures that have been made of their record, if any.

CONTESTING RECORD PROCEDURES:

Contact the System Manager, provide a reasonable description of the record, specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individuals whose records are contained in the system, third parties who provide references concerning the subject individuals, and schools that individuals in the system attend or have attended.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–15–0037

SYSTEM NAME:

Public Health Service Scholarship and National Health Service Corps Scholarship Program, HHS/HRSA/BHCDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Health Services Scholarships, Bureau of Health Care Delivery and Assistance, 5600 Fishers Lane, Rockville, MD 20857.

Division of Computer Research and Technology, NIH Building 12, 9600 Rockville Pike, Bethesda, Maryland 20205.

Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for and recipients of Public Health Service and National Health Service Corps Scholarships.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application and associated forms; recipient records contain progress reports, payroll forms, deferment and placement data, and Social Security numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 338 of the Public Health Service Act, as amended (42 U.S.C. 294t), National Health Service Corps Scholarship Program.

PURPOSE(S):

To select and monitor scholarship recipients. After the award is made, the Health Resources and Services Administration and the Department's Central Payroll use the records for the following purposes: payment tracking; deferment of service obligation; default, placement, and claims determination.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Names, disciplines, current mailing addresses, and dates of graduation of scholarship recipients are made available to designated coordinators at each school of medicine, osteopathy, and dentistry participating in the Scholarship Program for the purpose of guiding and informing these recipients about the nature of their forthcoming professional service obligation in health manpower shortage areas.

2. Name of scholarship recipient, professional school he or she is attending and the date of graduation are made available to health professions associations and other interested health professions groups which have responsibility for coordinating funds paid to students from Federal and other sources.

3. A record may be disclosed for a research purpose, when the Department:

(A) Has determined that the use of disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

(B) Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(C) Has required the recipients to—(1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual, (b) for use in another research project under these same conditions and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of conducting an audit related to the research project if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law;

(b) Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

4. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

5. The Department may disclose information from this system of records

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to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

6. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular progress statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State, or local, charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 522a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 158a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purposes of this disclosure are: (1) To provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records, and (2) to enable HRSA to improve the quality of loan and scholarship decisions by taking into account the financial reliability of applicants. Disclosure of records will be limited to the individual's name, Social Security number (SSN), and other information necessary to establish the identity of the individual, the amount, status, and history of the claim, and the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and magnetic tape.

RETRIEVABILITY:

Name, award number, university, or Social Security Number.

SAFEGUARDS:

1. Authorized Users:

Administrative and staff personnel of the Division of Health Services Scholarships, Office of Financing Services, and the National Health Service Corps, Bureau of Health Care Delivery and Assistance, who have responsibility for implementing the NHSC Scholarship Program.

2. Physical Safeguards:

Magnetic tapes, discs, other computer equipment, and other forms of personal data are stored in areas where fire and life safety codes are strictly enforced. Twenty-four hour, 7-day security guards perform random checks on the physical security of the data. All nonautomated documents are protected during lunch hours and nonworking hours in locked file cabinets or locked storage areas.

3. Procedural Safeguards:

A password is required to access the terminal and a data set name controls the release of data to only authorized users. All users of personal information in connection with the performance of their jobs (see Authorized Users, above) protect information from public view and from unauthorized personnel entering an unsupervised office.

The foregoing safeguards are in accordance with DHHS Chapter 45–13 and supplementary Chapter PHS.hf: 45–13 "Safeguarding Records Contained in Systems of Records," of the General Administration Manual; and with the DHHS Information Resources Management Manual, Part 6, "ADP Systems Security."

RETENTION AND DISPOSAL:

Applications of individuals not selected for participation in the Scholarship program are retained for 6 months, then destroyed by shredding. Applications, contracts, and other records of selectees to the Program are retained through the completion or other disposition of the Scholarship service obligation, then sent to the Federal Records Center for an additional 7-year retention period and destroyed in accordance with Federal Records Center disposal standards.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Health Services Scholarships, BHCDA, 5600 Fishers Lane, Rockville, MD 20857.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager and provide reasonably specific information on the record contents being sought.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures.

CONTESTING RECORD PROCEDURES:

Contact the System Manager giving a reasonable description of the record, specify the information you want to contest, and state the corrective action sought, with supporting justification.

RECORD SOURCE CATEGORIES:

Dean or Registrar of the educational institution attended; internship and/or residency training site supervisor; personnel records of the PHS Commissioned Personnel Operations Division, Office of Personnel Management/OASH.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–15–0038

SYSTEM NAME:

Disability Claims of the Nursing Student Loan Program, HHS/HRSA/BHPr.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration Room 8–23, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for cancellation of nursing student loans due to disability.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letter requests claiming disability, correspondence, payment determinations and medical records or reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 836 of the Public Health Service Act, as amended (42 U.S.C. 297b), Nursing Student Loan Provisions.

PURPOSE(S):

To determine the eligibility of applicants who request loan cancellation due to total and permanent disability.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

2. In the event of litigation where the defendant is

(a) The Department, any component of the Department, or any employee of the Department in his or her official capacity;

(b) The United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or

(c) Any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual,

disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

3. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State or local, charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders. Medical records and reports are temporarily held during medical evaluation and then returned to and retained by nursing schools upon final determination of claim validity.

RETRIEVABILITY:

Name of individual.

SAFEGUARDS:

1. Authorized Users: Access to Borrower's Files is limited to only those individuals within the Department having a substantiated need for information. These individuals must have available proof of employment.

2. Physical Safeguards: File folders, medical records, reports and other forms of personal data are stored in areas where files are locked or rooms locked during off duty hours.

3. Procedural Safeguards: All users of personal information in connection with the performance of their job protect information from public view and from unauthorized personnel entering an unsupervised office. Access to records is strictly limited to those staff members training in accordance with the Privacy Act.

4. Implementation Guidelines: DHHS Chapter 45–13 and supplementary Chapter PHS.hf: 45–13 of the General Administration Manual.

RETENTION AND DISPOSAL:

Records will be retained for 6 years after phase out of loan program; 1 year on site and 5 years at the Federal Records Center. Records are disposed of in accordance with the Records Control Schedule of the Health Resources and Services Administration. Contact the System Manager for the disposal standards.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Student and Institutional Support Branch/Division of Student Assistance, BHPr/HRSA, Parklawn Building Room 8–38, 5600 Fishers Lane, Rockville, MD 20857.

NOTIFICATION PROCEDURE:

Request must be made to the System Manager. An individual who requests notification of, or access to, a medical record shall at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

Requests in person: A subject individual who appears in person at a specific location seeking access or disclosure of records relating to him/her shall provide his/her name, current address, and at least one piece of tangible identification such as driver's license, passport, voter registration card, or union card. Identification papers with current photographs are preferred but not required. Additional identification may be requested when there is a request for access to records which contain an apparent discrepancy between information contained in the record and that provided by the individual requesting access to the record. No verification of identity shall be required where the record is one which is required to be disclosed under the Freedom of Information Act.

Requests by mail: Requests for information and/or access to records received by mail must contain information providing the identity of the writer and a reasonable description of the record desired. Written requests must contain the name and address of the requester, his/her date of birth and at least one piece of information which is also contained in the subject record, and his/her signature for comparison purposes.

Requests by telephone: Since positive identification of the caller cannot be established, telephone requests are not honored.

RECORD ACCESS PROCEDURES:

Contact the Systems Manager and give a reasonable description of the record. An individual who requests access of a medical record shall at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

CONTESTING RECORDS PROCEDURES:

Contact the System Manager and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting justification.

RECORD SOURCE CATEGORIES:

Individual claimants.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–15–0039

SYSTEM NAME:

Disability Claims in the Health Professions Student Loan Program, HHS/HRSA/BHPr.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Room 8–23, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Washington National Records Center, 4205 Suitland Road, Suitland, MD. 20409.

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for cancellation of health professions student loans due to disability. These health professions are included: Medicine, dentistry, osteopathy, optometry, pharmacy, podiatry, veterinary medicine.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letter requests claiming disability, correspondence, payment determinations and medical records or reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 741(d) of the Public Health Service Act, as amended (42 U.S.C. 294n), Health Prefessions Student Loan Program provisions.

PURPOSE(S):

To determine the eligibility of applicants who request loan cancellation due to total and permanent disability.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS:

1. Disclosure may be made to a congressional office from the records of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

2. In the event of litigation where the defendant is

(a) The Department, any component of the Department, or any employee of the Department in his or her official capacity;

(b) The United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or

(c) Any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual,

disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

3. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State or local, charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders. Medical records and reports are temporarily held during medical evaluation and then returned to and retained by health professions schools upon final determination of claim validity.

RETRIEVABILITY:

Name of individual.

SAFEGUARDS:

1. Authorized Users: Access to Borrower's Files is limited to only those individuals within the Department having a substantiated need for information. These individuals must have available proof of employment.

2. Physical Safeguards: File folders, medical records, report and other forms of personal data are stored in areas where files are locked or rooms locked during off duty hours.

3. Procedural Safeguards: All users of personal information in connection with the performance of thier jobs protect information from public view and from unauthorized personnel entering an unsupervised office. Access to records is strictly limited to those staff members trained in accordance with the Privacy Act.

4. Implementation Guidelines: DHHS Chapter 45–13 and supplementary Chapter PHS. hf: 45–13 of the General Administration Manual.

RETENTION AND DISPOSAL:

Records will be retained for 6 years after phaseout of loan program; 1 year on site and 5 years at the Federal Records Center. Records are disposed of in accordance with the Records Controls Schedule of the Health Resources and Services Administration. Contact the Systems Manager for the disposal standard.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Student and Institutional Support Branch/Division of Student Assistance, BHPr/HRSA, Room 8–38, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

NOTIFICATION PROCEDURE:

Requests must be made to the System Manager. An individual who requests notification of, or access to, a medical record shall at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual or its contents at the representative's discretion.

Requests in person: A subject individual who appears in person at a specific location seeking access or disclosure of records relating to him/her shall provide his/her name, current address, and at least one piece of tangible identification such as driver's license, passport, voter registration card, or union card. Identification papers with current photographs are preferred but not required. Additional identification may be requested when there is a request for access to records which contain an apparent discrepancy between information contained in the record and that provided by the individual requesting access to the record. No vertification of identity shall be required where the record is one which is required to be disclosed under the Freedom of Information Act.

Request by mail: Requests for information and/or access to records received by mail contain information providing the identity of the writer and a reasonable description of the record desired. Written requests must contain the name and address of the requester, his/her date of birth and at least one piece of information which is also contained in the subject record, and his/her signature for comparison purposes.

Requests by telephone: Since positive identification of the caller cannot be established, telephone requests are not honored.

RECORD ACCESS PROCEDURE:

Contact the System Manager and give a reasonable description of the record. An individual who requests access of a medical/dental record shall at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

CONTESTING RECORD PROCEDURES:

Contact the System Manager giving a reasonable description of the record, specify the information you want to contest, and state the corrective action sought, with supporting justification.

RECORD SOURCE CATEGORIES:

Individual claimants.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-15-0040

SYSTEM NAME:

Health Professions Student Loan Repayment Program, HHS/HRSA/BHPr.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Room 8-23, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Division of Computer Research and Technology, NIH Building 12, 9000 Rockville Pike, Bethesda, MD 20205.

Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for repayment of health professions student loans—medicine, dentist, osteopathy, optometry, pharmacy, podiatry, verterinary medicine.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application and associated forms, correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 741(f) of the Public Health Service Act, as amended (42 U.S.C. 294n), Health Professions Student Loan Program provisions.

PURPOSE(S):

Date have been used by Loan Repayment Program Staff to identify the borrowers participating in the program, to determine eligibility of loan applicants, to determine current status of loan repayment agreements, to calculate amounts received under agreements, and to compile and generate managerial and statistical reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1.Disclosure may be made to a congressional office from the records of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

2. The Department may disclose information from this system of records to the Department of Justice, or to a court or other tirbunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines the the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State or local, charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and magnetic tapes.

RETRIEVABILITY:

Name of individual.

SAFEGUARDS:

1. Authorized Users: Access to Borrower's Files is limited to only those individuals within the Department having a substantiated need for information. These individuals must have available proof of employment.

2. Physical safeguards: All files are kept in standard locking file cabinets which are locked during non-duty hours. Magnetic tapes and computer equipment are access controlled by system manager.

3. Procedural Safeguards: A password is required to access the terminal and a data set name controls the release of data to only authorized users. All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised office. Access to records is strictly limited to those staff members trained in accordance with the Privacy Act.

4. Implementation Guidelines: DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual; and the DHHS Information Resources Management Manual, Part 6, "ADP Systems Security."

RETENTION AND DISPOSAL:

Records will be retained for 6 years after completion of the service obligation or repayment to the Secretary in cases of default; 1 year on site and 5 years at the National Records Center. Records on magnetic tape are retained for 5 years and then they are destroyed. Records are disposed of in accordance with the Records Control Schedule of the Health Resources and Services Administration. Contact the System Manager for the disposal standard.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Student and Institutional Support Branch/Division of Student Assistance, BHPr/HRSA, Room 8-38, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

NOTIFICATION PROCEDURE:

Requests must be made to the System Manager.

Requst in person: A subject individual who appears in person at a specific location seeking access or disclosure of records relating to him/her shall provide his/her name, current address, and at least one piece of tangible identification such as driver's license, passport, voter registration card, or union card. Identification papers with current photographs are preferred but not required. Additional identification may be requested when there is a request for access to records which contain an apparent discrepancy between information contained in the record and that provided by the individual requesting access to the record. No verification of identity shall be required where the record is one which is required to be disclosed under the Freedom of Information Act.

Requests by mail: Requests for information and/or access to records received by mail must contain information providing the identity of the writer and a reasonable description of the record desired. Written requests must contain the name and address of the requester, his/her date of birth and at least one piece of information which is also contained in the subject record, and his/her signature for comparison purposes.

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Requests by telephone: Since positive identification of the caller cannot be established, telephone requests are not honored.

RECORD ACCESS PROCEDURE:

Contact the System Manager and give a reasonable description of the record.

CONTESTING RECORD PROCEDURES:

Contact the System Manager giving a reasonable description of the record, specify the information you want to contest, and state the corrective action sought, with supporting justification.

RECORD SOURCE CATEGORIES:

Applicant, applicant's health professions school and lending institutions.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-15-0041

SYSTEM NAME:

Health Professions Student Loan Cancellation, HHS/HRSA/BHPr.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Room 8-23, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for health professions student loan cancellation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application and associated forms, correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 741(f) of the Public Health Service Act, as amended (42 U.S.C. 294n), Health Professions Student Loan Program provisions.

PURPOSE(S):

To identify students participating in the cancellation program. To compile and generate managerial and statistical reports for program evaluation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES;

1. Disclosure may be made to a congressional office from the records of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

2. The Department may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her indivudal capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, or whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State or local, charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Name of individual.

SAFEGUARDS:

1. Authorized Users: Access to Borrower's Files is limited to only those individuals within the Department having a substantiated need for information. These individuals must have available proof of employment.

2. Physical Safeguards: All folders are kept in standard locking file cabinets which are locked during non-duty hours. Rooms are locked during non-duty hours.

3. Procedural Safeguards: All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised office. Access to records is strictly limited to those staff members trained in accordance with the Privacy Act.

4. Implementation Guidelines: DHHS Chapter 45-13 and supplementary Chapter PHS hf: 45-13 of the General Administration Manual.

RETENTION AND DISPOSAL:

Records will be retained for 5 years after retirement of the completion of the request of cancellation of the loan. Records are disposed of in accordance with the Records Control Schedule of the Health Resources and Services Administration. Contact the System Manager for the disposal standard.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Student and Institutional Support Branch/Division of Student Assistance, BHPr/HRSA, Room 8-38, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

NOTIFICATION PROCEDURE:

Requests must be made to the Systems Manager.

Requests in person: A subject individual who appears in person at a specific location seeking access or disclosure of records relating to him/her shall provide his/her name, current address, and at least one piece of tangible identification such as a driver's license, passport, voter registration card, or union card. Identification paper with current photographs are preferred but not required. Additional identification may be requested when there is a request for access to records which contain an apparent discrepancy between information contained in the record and that provided by the individual requesting access to the record. No verification of identity shall be required where the record is one which is required to be disclosed under the Freedom of Information Act.

Requests by mail: Requests for information and/or access to records received by mail must contain information providing the identity of the writer and a reasonable description of the record desired. Written requests must contain the name and address of the requester, his/her date of birth and at least one piece of information which is also contained in the subject record, and his/her signature for comparison purposes.

Requests by telephone: Since positive identification of the caller cannot be established, telephone requests are not honored.

RECORD ACCESS PROCEDURE:

Contact the System Manager and give a reasonable description of the record.

CONTESTING RECORD PROCEDURE:

Contact the System Manager giving a reasonable description of the record, specify the information you want to contest, and state the corrective action sought, with supporting justification.

RECORD SOURCE CATEGORIES:

Applicant, school and State Health Authority.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-15-0042

SYSTEM NAME:

Physician Shortage Area Scholarship Program, HHS/HRS/BHCDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Health Services Scholarships, Bureau of Health Care Delivery and Assistance, 5600 Fishers Lane, Rockville, MD 20857.

Division of Computer Research and Technology, NIH, Building 12, 9000 Rockville Pike, Bethesda, MD 20205.

Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for the recipients of Physician Shortage Area grants in the field of medicine and osteopathy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Grant applications, awards, and correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 409(b) of the Health Professions Educational Assistance Act of 1976, (42 U.S.C. 259g).

PURPOSE(S):

To select award recipients, and to monitor their payments, their continued eligibility, and their placement in health manpower shortage areas in fulfillment of their service obligations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

2. The Department may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is revelant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 158a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purposes of this disclosure are: (1) To provide an incentive for debtors to repay delinquent Federal Government debts by making these debts of their credit records, and (2) to enable HRSA to improve the quality of loan and scholarship decisions by taking into account the financial reliability of applicants. Disclosure of records will be limited to the individual's name, Social Security number (SSN), and other information necessary to establish the identity of the individual, the amount, status, and history of the claim, and the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and magnetic tape.

RETRIEVABILITY:

Name or program ID number.

SAFEGUARDS:

1. Authorized Users:

Administrative and staff personnel of the Division of Health Services Scholarships and other components of the Bureau of Health Care Delivery and Assistance who have responsibility for implementing the NHSC Scholarship Program.

2. Physical Safeguards:

Magnetic tapes, disks, other computer equipment, and other forms of personal data are stored in areas where fire and life safety codes are strictly enforced. Twenty-four hour, 7-day security guards perform random checks on the physical security of the data. All documents are protected during lunch hours and nonworking hours in locked file cabinets or locked storage areas.

3. Procedural Safeguards:

A password is required to access the terminal and a data set name controls the release of data to only authorized users. All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised office. Access to records is strictly limited to those staff members trained in accordance with the Privacy Act.

Implementation Guidelines: DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual; and the DHHS Information Resources Management Manual, Part 6, "ADP Systems Security."

RETENTION AND DISPOSAL:

Applications, contracts and other records of selectees to the program are retained through the completion or other disposition of the scholarship service obligation. The records are then sent to the Federal Records Center for a seven year retention period and then disposed of in accordance with the Health Resources and Services Administration Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Health Services Scholarships, BHCDA, 5600 Fishers Lane, Rockville, MD 20857.

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NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager. Individual must provide positive identification, such as driver's license, passport, voter's registration card, union card, or a written certification verifying his or her identity. Requestors should also reasonably specify the record contents being sought.

RECORD ACCESS PROCEDURE:

Same as Notification Procedures.

CONTESTING RECORD PROCEDURES:

Contact the System Manager giving a reasonable description of the record, specify the information you want to contest, and state the corrective action sought, with supporting justification.

RECORD SOURCE CATEGORIES:

Applicant and applicant's health professions school.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-15-0043

SYSTEM NAME:

Cuban Loan Program, HHS/HRSA/OA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Debt Management Branch, Division of Fiscal Services, OA/HRSA, Room 16A-08, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants and recipients of Cuban Loan for medical students.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications, and associated forms, correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Migration and Refugee Assistance Act of 1962 (8 U.S.C. 1255).

PURPOSE(S):

The purposes of this record system are to:

(a) Maintain, by borrower, all information relative to the application for and/or awarding of a medical school loan to an individual who qualifies under the Migration and Refugee Assistance Act;

(b) Provide proof of the notice of award, amount of original indebtedness and repayment schedule; and

(c) Support all repayment claims and/or necessary collection actions until the loan obligation is satisfied.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

2. The Department may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State or local, charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 158a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purposes of this disclosure are: (1) To provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records, and (2) to enable HRSA to improve the quality of loan and scholarship decisions by taking into account the financial reliability of applicants. Disclosure of records will be limited to the individual's name, Social Security number (SSN), and other information necessary to establish the identity of the individual, the amount, status, and history of the claim, and the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files of individual borrowers are maintained in a standard upright file cabinet. All original promissory notes are kept in a fire-proof file safe.

RETRIEVABILITY:

All record files are maintained and indexed alphabetically by last name and can be retrieved accordingly.

SAFEGUARDS:

1. Authorized Users: Access to Borrower's Files is limited to only those individuals within the Department having a substantiated need for information. These individuals must have available proof of employment.

2. Physical Safeguards: All folders are kept in standard up-right locking file cabients which are locked during non-duty hours. Original Promissory Notes are maintained in a fire-proof file safe. Twenty-four hour, seven days a week, security guards perform random checks on the physical security of the data.

3. Procedural safeguards: All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised office. Access to records is strictly limited to those staff members trained in accordance with the Privacy Act.

Implementation Guidelines: DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual; and the DHHS Information Resources Management Manual, Part 6, "ADP Systems Security."

RETENTION AND DISPOSAL:

Records will remain onsite until all financial obligations have been satisfied. Records will then be forwarded to the Federal Records Center for 10 years.

Records are disposed of in accordance with the Records Control Schedule of the Health Resources and Services

Administration. Contact the System Manager for the disposal standard.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Debt Management Branch, Division of Fiscal Services, OA/HRSA, Room 16A-08, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

NOTIFICATION PROCEDURE:

To determine if a record exists, an individual must either come to the office or write to the System Manager. Individuals in either case, must provide positive identification, such as a driver's license, passport, voters registration, union card, or a written certification verifying his or her identity. The person should then be able to reasonably specify the contents of the record being sought.

RECORD ACCESS PROCEDURE:

Contact the System Manager and give a reasonable description of the record.

CONTESTING RECORD PROCEDURES:

To contest the contents of a record, an individual must contact the System Manager, identify him or herself and give a reasonable description of the record. He or she must then specify the information being contested and state the corrective action being sought, with supporting justification.

RECORD SOURCE CATEGORIES:

Applicant and applicant's health professions school.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-15-0044

SYSTEM NAME:

Health Education Assistance Loan Program (HEAL) Loan Control Master File, HHS/HRSA/BHPr.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Room 8-23, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Records are also located at contractor sites. A list of contractor sites where individually identifiable data are currently located is available upon request to the System Manager.

Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for and recipients of Health Education Assistance Loans.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains name, social security number or other identifying number, birthdate, demographic background, educational status, loan location and status, and financial information about the individual for whom the record is maintained. Contains lender and school identification.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 727 and 728 of the Public Health Service Act, as amended (42 U.S.C. 294), which authorize the establishment of a Federal program of student loan insurance;

Section 739 of the Public Health Service Act, as amended (42 U.S.C. 2941), which directs the Secretary to require institutions to provide information for each student who has a loan;

Debt Collection Act of 1982 (5 U.S.C. 5514 note); and

Section 222 of the Health Professions Training Assistant Act of 1985 (50 U.S.C. App. 462 note), which provides for a study on compliance with the Selective Service Act.

PURPOSE(S):

Purpose of this system is (1) to identify students participating in the HEAL Program; (2) to determine eligibility of loan applicants and to compute insurance premium for Federal insurance; (3) to monitor the loan status of HEAL recipients, which includes the collection of overdue debts owed under the HEAL Program; and (4) to compile and generate managerial and statistical reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to Federal, State, or local agencies, to private parties such as relatives, present and former employers, business and personal associates, educational and financial institutions, and collection agencies. The purpose of such disclosures is to verify the identity of the loan applicant, to determine program eligibility and benefits, to enforce the conditions or terms of the loan, to counsel the borrower in repayment efforts, to investigate possible fraud and abuse, to verify compliance with program regulations, and to locate delinquent borrowers through preclaims assistance. Information may be disclosed to educational or financial institutions to assist them in loan management.

2. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

3. The Department may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

4. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State or local, charged with enforcing or implementing the statute or any rule, regulation or order issued pursuant thereto.

5. HRSA will disclose from this system of records a delinquent debtor's name, address, Social Security number, and other information necessary to identify him/her; the amount, status, and history of the claim, and the agency or program under which the claim arose, as follows:

a. To another Federal agency so that agency can effect a salary offset for debts owed by Federal employees; if the claim arose under the Social Security Act, the employee must have agreed in writing to the salary offset.

b. To another Federal agency so that agency can effect an authorized administrative offset; i.e., withhold money payable to or held on behalf of debtors other than Federal employees.

c. To the Treasury Department, Internal Revenue Service (IRS), to request a debtor's current mailing

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address to locate him/her for purposes of either collecting or compromising a debt, or to have a commercial credit report prepared.

6. Records may be disclosed to the General Accounting Office and to the Office of Management and Budget for auditing financial obligations to determine compliance with programmatic, statutory, and regulatory provisions.

7. HRSA may disclose information from this system of records to a consumer reporting agency (credit bureau) to obtain a commercial credit report for the following purposes:

a. To establish creditworthiness of a loan applicant; and

b. To assess and verify the ability of a debtor to repay debts owed to the Federal Government.

Disclosures are limited to the individual's name, address, Social Security number and other information necessary to identify him/her; the funding being sought or amount and status of the debt; and the program under which the application or claim is being processed.

8. HRSA may disclose to the Treasury Department, Internal Revenue Service (IRS), information about an individual applying for a loan under any loan program authorized by the Public Health Service Act to find out whether the loan applicant has a delinquent tax account. This disclosure is for the sole purpose of determining the applicant's creditworthiness and is limited to the individual's name, address, Social Security number; other information necessary to identify him/her, and the program for which the information is being obtained.

9. HRSA will report to the Treasury Department, Internal Revenue Service (IRS), as taxable income, the written-off amount of a debt owed by an individual to the Federal Government when a debt becomes partly or wholly uncollectable—either because the time period for collection under the statute of limitations has expired, or because the Government agrees with the individual to forgive or compromise the debt.

10. HRSA will disclose to debt collection agents, other Federal agencies, and other third parties who are authorized to collect a Federal debt, information necessary to identify a delinquent debtor. Disclosure will be limited to the debtor's name, address, Social Security number, and other information necessary to identify him/her; the amount, status, and history of the claim, and the agency or program under which the claim arose.

11. HRSA will disclose information from this system of records to any third party that may have information about a delinquent debtor's current address, such as a U.S. post office, a consumer reporting agency (credit bureau), a State motor vehicle administration, a professional organization, an alumni association, etc., for the purpose of obtaining the debtor's current address. This disclosure will be limited to information necessary to identify the individual.

12. Records may be disclosed to the Director, Selective Service, for the purpose of determining if draft eligible students participating in the HEAL program are registrants of the Military Selective Service System. Disclosure will be limited to the eligible student's name and other information necessary to determine if the individual is a registrant of the Military Selective Service System. The purpose of this disclosure will result in aggregate data which HEAL program managers will use to determine if health professions schools are engaged in a pattern or practice of not complying with the Military Selective Service Act.

13. Records may be disclosed to Department contractors and subcontractors for the purpose of assisting HEAL program managers in collating, compiling, aggregating, or analyzing records used in administering the HEAL program. Contractors maintain, and are also required to ensure that subcontractors maintain, Privacy Act safeguards with respect to the records.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552(a)(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 158a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purposes of these disclosures are: (1) To provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records, and (2) to enable HRSA to improve the quality of loan and scholarship decisions by taking into account the financial reliability of applicants. Disclosure of records will be limited to the individual's name, Social Security number (SSN), and other information necessary to establish the identity of the individual, the amount, status, and history of the claim, and the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, magnetic tape, and disc packs.

RETRIEVABILITY:

Social Security Number or other identifying number.

SAFEGUARDS:

1. Authorized Users: Access is limited to authorized HEAL personnel and contractors responsible for administering the HEAL program. Authorized personnel include HEAL employees and officials, financial and fiscal management personnel, computer personnel, and program managers who have responsibilities for implementing the HEAL program.

2. Physical Safeguards: Magnetic tapes, disc packs, computer equipment and other forms of personal data are stored in areas where fire and life safety codes are strictly enforced. All documents are protected during lunch hours and nonworking hours in locked file cabinets or locked storage areas. Twenty-four hour, seven-day security guards perform random checks on the physical security of the records storage areas.

3. Procedural Safeguards: A password is required to access the terminal and a data set name controls the release of data to only authorized users. All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised office.

Access to records is strictly limited to those staff members trained in accordance with the Privacy Act and ADP security procedures. Contractors are required to maintain, and are also required to ensure that subcontractors maintain, confidentiality safeguards with respect to these records. Contractors and subcontractors are instructed to make no further disclosure of the records except as authorized by the System Manager and permitted by the Privacy Act. All individuals who have access to these records receive the appropriate ADP security clearances. HEAL personnel make site visits to ADP facilities for the purpose of ensuring that ADP security procedures continue to be met. Privacy Act and ADP system security requirements are specifically included in contracts. The HRSA project directors, project officers, and the System Manager oversee compliance with these requirements.

4. Implementing Guidelines: The safeguards described above were established in accordance with DHHS Chapter 45–13 and supplementary Chapter PHS.hf: 45–13 of the General Administration Manual; and the DHHS Information Resources Management Manual, Part 6, "ADP Systems Security."

RETENTION AND DISPOSAL:

Records will be retained for 5 years after the loan is repaid (1 year on site and 4 years at the Federal Records Center). Stored computer data is retained for aggregate purposes and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, HEAL Branch/Division of Student Assistance, BHPr/HRSA, Room 8–39, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

NOTIFICATION PROCEDURE:

To find out if the system contains records about you contact the System Manager.

Requests in person: A subject individual who appears in person at a specific location seeking access or disclosure of records relating to him/her shall provide his/her name, current address, and at least one piece of tangible identification such as driver's license, passport, voter registration card, or union card. Identification papers with current photographs are preferred but not required. Additional identification may be requested when there is a request for access to records which contain an apparent discrepancy between information contained in the record and that provided by the individual requesting access to the record. No verification of identity shall be required where the record is one which is required to be disclosed under the Freedom of Information Act.

Requests by mail: Written requests for information and/or access to records received by mail must contain information providing the identity of the writer and a reasonable description of the record desired.

Written requests must contain the name and address of the requester, his/her date of birth and at least one piece of information which is also contained in the subject record, and his/her signature for comparison purposes.

Requests by telephone: Since positive identification of the caller cannot be established, telephone requests are not honored.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also provide a reasonable description of the record being sought.

Requesters may also request an accounting of disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the System Manager, provide a reasonable description of the record, specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individual loan recipients, HEAL schools, lenders, and holders of HEAL loans and their agents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–15–0045

SYSTEM NAME:

Health Resources and Services Administration Loan Repayment/Debt Management Records Systems, HHS/HRSA/OA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Fiscal Services, Office of the Administrator, HRSA, Parklawn Building, Room 16–05, 5600 Fishers Lane, Rockville, MD 20857.

Bureau of Health Professions, HRSA, Parklawn Building, Room 8–05, 5600 Fishers Lane, Rockville, MD 20657.

Indian Health Service, HRSA, Parklawn Building, Room 5A–55, 5600 Fishers Lane, Rockville, MD 20657.

Bureau of Health Care Delivery and Assistance, HRSA, Parklawn Building, Room 7–05, 5600 Fishers Lane, Rockville, MD 20857.

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

Division of Computer Research and Technology, NIH, Building 12, 9000 Rockville Pike, Bethesda, MD 20205.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have received student loans, scholarships, traineeships, or grant funds under Titles III, VII, and VIII of the Public Health Service Act, as amended, and who are delinquent in repaying either loans or funds owed in lieu of a service obligation under such programs. The individuals covered by this system include health professionals and students in various health professions: physicians, dentists, pharmacists, optometrists, podiatrists, veterinarians, public health personnel, nurses, audiologists, speech pathologists, health care administration personnel, medical technologists, chiropractors, clinical psychologists, and any other health personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains loan repayment status, amounts of student indebtedness, schools of attendance of borrowers, lending institutions of borrowers, tax identification numbers (Social Security numbers), billing notices, and demographic information pertaining to borrowers funded by HRSA.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Subpart II, Part D, Title III of the Public Health Service Act, as amended (42 U.S.C. 254d–294y), National Health Service Corps Program, which includes the Indian Health Scholarship Program;

Subpart I, Part C, Title VII of the Public Health Service Act, as amended (42 U.S.C. 294–2941), Federal Program of Insured Loans to Graduate Students in Health Professions Schools;

Subpart II, Part C, Title VII of the Public Health Service Act, as amended (42 U.S.C. 294m–294q), Health Professions Student Loans;

Section 822 of the Public Health Service Act, as amended (42 U.S.C. 296m), Nurse Practitioner Programs;

Section 830 of the Public Health Service Act, as amended (42 U.S.C 297), Traineeships for Advanced Training of Professional Nurses;

Subpart II, Part B, Title VIII of the Public Health Service Act, as amended (42 U.S.C. 297a–297h), Nursing Student Loans;

Health Professions Educational Assistance Act of 1976, Pub. L. 94–484, Section 409(b) (42 U.S.C. 295g);

Migration and Refugee Assistance Act of 1962, Pub. L. 87–510 (22 U.S.C. 2601);

Indian Health Care Improvement Act, Pub. L 94–437, as amended (25 U.S.C. 1601 et seq.); and

Debt Collection Act of 1982, Pub. L. 97–365 (5 U.S.C. 5514 note).

PURPOSE(S):

The purpose of the system is to protect the programmatic and financial integrity of Federal funds awarded to individuals through student loans, scholarships, traineeships, and educational grants administered by the Health Resources and Services Administration (HRSA). This system is maintained to reduce the amount of outstanding debts owed to the Federal Government.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

1. Records may be disclosed to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

2. Records may be disclosed to authorized persons employed at educational institutions where the recipient received a loan, scholarship, or grant. The purpose of this disclosure is to assist institutions in identifying delinquent borrowers and to enforce the conditions and terms of such loans, scholarships and grants.

3. HRSA will disclose from this system of records a delinquent debtor's name, address, Social Security number, and other information necessary to identify him/her; the amount, status, and history of the claim, and the agency or program under which the claim arose, as follows:

a. To another Federal agency so that agency can effect a salary offset for debts owed by Federal employees; if the claim arose under the Social Security Act, the employee must have agreed in writing to the salary offset.

b. To another Federal agency so that agency can effect an authorized administrative offset; i.e., withhold money payable to or held on behalf of debtors other than Federal employees.

c. To the Treasury Department, Internal Revenue Service (IRS), to request a debtor's current mailing address to locate him/her for purposes of either collecting or compromising a debt, or to have a commercial credit report prepared.

4. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State or local, charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

5. The Department may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

6. Records may be disclosed to the General Accounting Office and to the Office of Management and Budget for auditing financial obligations to determine compliance with programmatic, statutory, and regulatory provisions.

7. HRSA may disclose information from this system of records to another agency that has asked the Department to effect an administrative offset to help collect a debt owed to the United States. Disclosure is limited to the individual's name, address, Social Security number, and other information necessary to identify the individual; information about the money payable to or held for the individual, and other information concerning the administrative offset.

8. HRSA may disclose information from this system of records to a consumer reporting agency (credit bureau) to obtain a commercial credit report for the following purposes:

a. To establish creditworthiness of a loan/grant/scholarship/traineeship applicant; and

b. To assess and verify the ability of a debtor to repay debts owed to the Federal Government.

Disclosures are limited to the individual's name, address, Social Security number and other information necessary to identify him/her; the funding being sought or amount and status of debt, and the program under which the application or claim is being processed.

9. HRSA may disclose to the Treasury Department, Internal Revenue Service (IRS), information about an individual applying for a loan under any loan program authorized by the Public Health Service Act to find out whether the loan applicant has a delinquent tax account. This disclosure is for the sole purpose of determining the applicant's creditworthiness and is limited to the individual's name, address, Social Security number; other information necessary to identify him/her, and the program for which the information is being obtained.

10. HRSA will report to the Treasury Department, Internal Revenue Service (IRS), as taxable income, the written-off amount of a debt owed by an individual to the Federal Government when a debt becomes partly or wholly uncollectable—either because the time period for collection under the statute of limitations has expired, or because the Government agrees with the individual to forgive or compromise the debt.

11. HRSA will disclose to debt collection agents, other Federal agencies, and other third parties who are authorized to collect a Federal debt, information necessary to identify a delinquent debtor. Disclosure will be limited to the debtor's name, address, Social Security number, and other information necessary to identify him/her; the amount, status, and history of the claim, and the agency or program under which the claim arose.

12. HRSA will disclose information from this system of records to any third party that may have information about a delinquent debtor's current address, such as a U.S. post office, a State motor vehicle administration, a professional organization, an alumni association, etc., for the purpose of obtaining the debtor's current address. This disclosure will be limited to information necessary to identify the individual.

13. HRSA will disclose information concerning a delinquent debtor from this system of records to the Department of Justice for litigation or further administrative action.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 158a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purposes of these disclosures are: (1) To provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records, and (2) to enable HRSA to improve the quality of loan and scholarship decisions by taking into account the financial reliability of applicants. Disclosure of records will be limited to the individual's name, Social Security number (SSN), and other information necessary to establish the identity of the individual, the amount, status, and history of the claim, and the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, ledgers, magnetic tapes, and electronic word processing diskettes.

RETRIEVABILITY:

Records are retrievable by name, Social Security number (SSN), award number, and by school of attendance.

SAFEGUARDS:

1. Authorized User: Employees and officials directly responsible for programmatic or fiscal activity, including administrative and staff personnel, financial management personnel, computer personnel, and managers who have responsibilities for implementing HRSA-funded programs.

2. Physical Safeguards: Twenty-four hour building security guard. File folders, reports and other forms of personnel data, and electronic diskettes are stored in areas where fire and life safety codes are strictly enforced. All documents and diskettes are protected during lunch hours and non-duty hours in locked file cabinets or locked storage areas. Magnetic tapes and computer matching tapes are locked in a computer room and tape vault.

3. Procedural Safeguards: Password protection of automated records is provided. All authorized users protect information from public view and from unauthorized personnel entering an office.

Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the System Manager and permitted by the Privacy Act. Privacy Act requirements are specifically included in contracts. The HRSA project directors, project officers, and the System Manager oversee compliance with these requirements.

4. Implementing Guidelines: The safeguards described above were established in accordance with DHHS Chapter 45–13 and supplementary Chapter PHS.hf: 45–13 of the General Administration Manual; and the DHHS Information Resources Management Manual, Part 6, "ADP Systems Security."

RETENTION AND DISPOSAL:

Records are retained by the responsible organizations listed under "System Location" for two years after completion of the repayment of the loan. The records are then sent to the Federal Records Center for a four-year retention period, and are subsequently disposed of in accordance with the HRSA Records Control Schedule. The records control schedule and disposal standards for these records may be obtained by writing to the System Manager at the address below.

SYSTEM MANAGER(S) AND ADDRESS:

Policy-Coordinating Official: Associate Administrator for Operations and Management, HRSA, Room 14A–03, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857

Office of the Administrator: Chief, Debt Management Branch, Division of Fiscal Services, HRSA, Room 16A–09, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857

Indian Health Service: Chief, Financial Management Branch, IHS, Room 5A–38, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857

Bureau of Health Care Delivery and Assistance: Director, Office of Financing Services, BHCDA, Room 7–39, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857

Bureau of Health Professions: Director, Office of Debt Management, BHPr, Room 8A–43, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

NOTIFICATION PROCEDURE:

To find out if the system contains records about you contact the System Manager.

Requests in person: A subject individual who appears in person at a specific location seeking access to or disclosure of records relating to him/her shall provide his/her name, current address, and at least one piece of tangible identification such as driver's license, passport, voter registration card, or union card. Identification papers with current photographs are preferred but not required. If a subject individual has no identification but is personally known to an agency employee, such employee shall make a written record verifying the subject individual's identity. Where the subject individual has no identification papers, the responsible agency official shall require that the subject individual certify in writing that he/she is the individual who he/she claims to be and that he/she understands that the knowing and willful request or acquisition of a record concerning an individual under false pretenses is a criminal offense subject to a $5,000 fine. In addition, the following information is needed: (1) The name of the student assistance program the he/she participated in, (2) dates of enrollment in the program, and (3) school(s) of attendance.

In addition, be informed that provision of the SSN may assist in the verification of your identity as well as the identification of your record. Providing your SSN is voluntary and you will not be refused access to your record for failure to disclose your SSN.

Requests by mail: Written requests must contain the name and address of the requester, his/her date of birth, and his/her signature which is either notarized to verify his/her identity or a written certification that the requester is who he/she claims to be and understands that the knowing and willful request or acquisition of records concerning an individual under false pretenses is a criminal offense subject to a $5,000 fine. In addition, the following information is needed: (1) The name of the student assistance program that he/she participated in, (2) dates of enrollment in the program, and (3) school(s) of attendance.

In addition, be informed that provision of the SSN may assist in the verification of your identity as well as the identification of your record. Providing your SSN is voluntary and you will not be refused access to your record for failure to disclose your SSN.

Requests by telephone: Since positive identification of the caller cannot be established, telephone requests are not honored.

RECORD PROCEDURES:

Same as notification procedures. Requesters should also provide a reasonable description of the record being sought.

Requesters may also request an accounting of disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the appropriate System Manager, provide a reasonable description of the record, specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individuals whose records are contained in the system: Federal organizations, including but not limited to the Office of Inspector General/DHHS, and the Office of the Administrator, the Bureau of Health Professions, the Indian Health Service, and the Bureau of Health Care Delivery and Assistance—all of which administer HRSA-funded programs; participating schools; lending institutions; consumer reporting agencies (credit bureaus); and other Federal agencies, including but not limited to the Department of Treasury,

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Internal Revenue Service (IRS), and the U.S. Post Office.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-15-0046

SYSTEM NAME:

Health Professions Planning and Evaluation, HHS/HRSA/OA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Grants and Procurement Management, Health Resources and Services Administration, 5600 Fishers Lane, Rockville, MD 20857. In addition, data are at contractor and field work sites as studies are developed, data collected, and reports written. You may request a list of locations where individually identifiable data are currently located from the System Manager, Division of Grants and Procurement Management, HRSA, Room 13A-03, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Health professionals and students in the various health professions. Physicians, dentists, pharmacists, optometrists, podiatrists, veterinarians, public health personnel, audiologists, speech pathologists, health care administration personnel, nurses, allied health personnel, medical technologists, chiropractors, clinical psychologists, and other health personnel may be included.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, health profession, education history, academic grades, employment history, nationality, race, ethnicity, economic background, and sex. The specific data items collected and maintained are determined by the needs of the individual project.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 708 (42 U.S.C. 292h), Health Professions Data, Section 787 (42 U.S.C. 295g-7), Educational Assistance to Individuals from Disadvantaged Backgrounds, Section 798 (42 U.S.C. 295h-7), Educational Assistance to Disadvantaged Individuals in Allied Health Training, and Section 820 (42 U.S.C. 296k), Special Project Grants and Contracts.

PURPOSE(S):

The Health Resources and Services Administration uses various records in this system to identify problems in the health care training and delivery systems to plan programs to correct those problems, and to evaluate the effectiveness of the resultant programs. The agency assesses the current supply of health professionals and predicts the supply needs of the future. The agency determines nationwide requirements as well as the needs of specific areas.

The agency also collects data on the educational system which supplies health professionals and on specific health education programs. The data are used to develop and test new methods of training and utilizing health professionals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

2. A record may be disclosed for a research purpose, when the Department:

(a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

(b) Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(c) Has required the recipient to—(1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except—(A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law; and

(d) Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

3. Disclosure may be made to HHS contractors and their staff, in order to accomplish any of the purposes of the system of records. The recipients are required to protect such records from improper disclosure and to maintain Privacy Act safeguards.

4. The Department may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, magnetic tape, card files, microfilm, microfiche, and disk storage. The needs of each project determine the types of storage actually used.

RETRIEVABILITY:

By name. In some instances an assigned number may be used to retrieve records.

SAFEGUARDS:

Locked building, locked rooms, locked file cabinets, personnel screening, locked computer rooms and computer tape vault, guard service, password protection of automated records and limited access to only authorized personnel may be used. Particular safeguards are selected as appropriate to the type of records included in each project. Authorized personnel are generally limited to contractor personnel directly involved in data collection, compilation, and analysis. (Safeguards are in accordance with Part 6, ADP Systems Security, of the Department's Information Resources Management Manual, with Chapter 45–13, Safeguarding Records Contained in Systems of Records, of the Department's General Administration Manual, and with supplementary Chapter PHS.hf: 45–13.)

RETENTION AND DISPOSAL:

The contractor removes personal identifiers and destroys the records when they are no longer needed, as appropriate to the specific project. (Records may be retired to a Federal Records Center and subsequently disposed of in accordance with the Records Control Schedule of the Health Resources and Services Administration.) You may obtain a copy of the disposal standard for a particular project by writing to the System Manager.

SYSTEM MANAGER(S) AND ADDRESS:

Contracting Officer, Division of Grants and Procurement Management, HRSA, Room 13A–03, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

NOTIFICATION PROCEDURE:

To determine if you are the subject of a record, contact the System Manager and provide suitable identification and, if possible, information about the specific project.

RECORD ACCESS PROCEDURES:

To obtain access to your record, contact the System Manager and provide suitable identification, a reasonable description of the record and, if possible, information about the specific project.

CONTESTING RECORD PROCEDURES:

To correct your record, contact the System Manager and provide (a) suitable identification, (b) a reasonable description of the record, (c) the specific information you want corrected, and (d) a precise description of the correction, with supporting justification.

RECORD SOURCE CATEGORIES:

Subject individuals, State and local health departments, other health providers, health professions schools, and health professions associations may provide information depending on the individual project involved.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–15–0052

SYSTEM NAME:

Nurse Practitioner Traineeships, HHS/HRSA/BHPr.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Program Support, Room 8C–22, Division of Nursing, Room 5C–26, BHPr, HRSA, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409.

Health Resources and Services Administration, Debt Management Branch, DFS/OA/HRSA, Parklawn Building, Room 16–08, 5600 Fishers Lane, Rockville, MD 20857.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals selected to receive nurse practitioner traineeships by schools participating in the program.

CATEGORIES OF RECORDS IN THE SYSTEM:

A trainee's case file contains a "Traineeship Award Agreement," "Verification of Address Card," and related correspondence with the individual and school(s) attended. Personal information includes name, current address, home address and address of the primary medical care practice location. Social Security medical records or reports may be included when a trainee has requested suspension or cancellation of the payment or practice obligation because of medical disability. After determination of the claim, medical records will be returned to the subject individual or authorized representative.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 822(b) of the Public Health Service Act, as amended (42 U.S.C. 296m), Nurse Practitioner Traineeships.

PURPOSE(S):

The purpose of the system is to carry out the Department's responsibilities for the Nurse Practitioner Traineeship Program. The Health Resources and Services Administration uses the records to: (1) Determine eligibility of trainees selected by participating schools, (2) determine that the nature, location and duration of practice meets the service commitment of nurses who completed their training, and (3) recover funds from trainees who do not fulfill their practice commitment.

The records in the system are also used by the Health Resources and Service Administration, Accounting and Finance Branch, to monitor the contractual obligations of trainees found to be in default. If the trainee does not fulfill the service commitment, the trainee must repay the traineeship support received, plus interest, to the U.S. Treasury.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

2. The Department may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof, or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the Court or other tribunal is relevant and necessary to the litigation and would help the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. Disclosure may be made to organizations considered qualified by the Secretary to conduct studies to evaluate the program.

4. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State or local, charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

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POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, magnetic tape, and disk storage.

RETRIEVABILITY:

By name of individual.

SAFEGUARDS:

1. Authorized Users: Access to Borrower's Files is limited to only those individuals within the Department having a substantiated need for information. These individuals must have available proof of employment.

2. Physical Safeguards: All folders are kept in standard locking file cabinets which are locked during non-duty hours.

3. Procedural Safeguards: All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised office. Access to records is strictly limited to those staff members trained in accordance with the Privacy Act.

4. Implementation Guidelines: DHHS Chapter 45–13 and supplementary Chapter PHS:hf: 45–13 of the General Administration Manual.

RETENTION AND DISPOSAL:

Cases files are retired to a Federal Records Center three years after all activity is terminated, usually when the practice or payment obligation has been fulfilled or cancelled. Records are disposed of in accordance with the Records Control Schedule of the Health Resources and Services Administration. You may obtain a copy of the disposal standard by writing to the System Manager.

SYSTEM MANAGER(S) AND ADDRESS:

Grants Management Officer, Officer of Program Support, BHPr/HRSA, Room 8C–22, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

NOTIFICATION PROCEDURE:

To determine if your are the subject of a record, contact the System Manager and provide suitable identification. An individual who requests notification of a medical/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORDS ACCESS PROCEDURE:

To obtain access to your record, contact the System Manager and provide suitable identification and a reasonable description of the record.

CONTESTING RECORD PROCEDURES:

To correct your record, contact the System Manager and provide (a) suitable identification, (b) a reasonable description of the record, (c) the specific information you want corrected, and (d) a precise description of the correction, with supporting justification.

RECORD SOURCE CATEGORIES:

Individuals in the system and participating institutions.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 86–25603 Filed 11–21–86; 8:45 am]

BILLING CODE 4160–15–M

Food and Drug Administration

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Public Health Service, HHS.

ACTION: Republication of Food and Drug Administration (FDA) Privacy Act Systems of Records.

SUMMARY: FDA is republishing each of its current systems of records. Pub. L. 97–375, the Congressional Reports Elimination Act, amended the Privacy Act to limit republication to revised system notices only. FDA has revised each of its system notices to enhance specificity and to clarify the effects of reorganization. These notices are complete as of October 1, 1986.

SUPPLEMENTARY INFORMATION: 1. The routine uses set forth in each notice describe permissible disclosures outside the Department of records in that system, which may be made without the consent of individuals who are the subject of those records. Additional disclosures without consent of subject individuals are permitted by the Privacy Act in section 3(b), as follows:

"(1) To those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

"(2) Required under section 552 of this title (the Freedom of Information Act);

"(3) For a routine use (as described in the routine use section of each specific system notice);

"(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

"(5) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

"(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has value;

"(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

"(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of such individual;

"(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

"(10) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

"(11) Pursuant to the order of a court of competent jurisdiction; or

"(12) To a consumer reporting agency in accordance with section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952(d))."

2. In accordance with guidance from the Office of Management and Budget (OMB), FDA has added a new routine use to twelve of its thirteen systems of records. The new routine use permits disclosure of individually identified information to the Department of Justice and to tribunals for both prosecution and defense litigation. A more limited litigation routine use permitting disclosure only as necessary to defend the Agency has been deleted from all FDA systems of records with the exception of system 09–10–0017, Epidemiological Research Studies of the Center for Devices and Radiological Health.

3. The safeguards section of each system notice has been reformatted in accordance with existing policy.

Dated: October 1, 1986.

Jack W. Martin,

Associate Commissioner for Public Affairs.

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09-10-0003 FDA Credential Holder File. HHS/FDA/ORA

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09-10-0005 State Food and Drug Official File. HHS/FDA/ORA

09-10-0007 Science Advisor Research Associate Program (SARAP). HHS/FDA/ORA

09-10-0008 Radiation Protection Program Personnel Monitoring System. HHS/FDA/CDRH

09-10-0009 Special Studies and Surveys on FDA-Regulated Products. HHS/FDA/OMO

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09-10-0011 Certified Retort Operators. HHS/FDA/CFSAN

09-10-0013 Employee Conduct Investigative Records. HHS/FDA/OMO

09-10-0015 Blood Donors for Tissue Typing Sera and Cell Analysis and Related Research. HHS/FDA/CDB/OB

09-10-0017 Epidemiological Research Studies of the Center for Devices and Radiological Health. HHS/FDA/CDRH

09-10-0018 Employee Identification Card Information Record. HHS/FDA/OMO/DMS

09-10-0002

SYSTEM NAME:

Regulated Industry Employee Enforcement Records. HHS/FDA/OMO/DMS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Administrative Services Branch (HFA-210), 5600 Fishers Lane, Rockville, MD 20857.

Administrative Branches at Field/District Offices. For the location of Field/District Offices, see Appendix A.

For the location of Federal Archives and Records Centers, see Appendix B.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of enterprises regulated by FDA and other individuals subject to FDA enforcement actions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Includes correspondence, memoranda, inspection reports, and related documents that are investigatory material compiled for law enforcement purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Food, Drug and Cosmetic Act (21 U.S.C. 321 et seq.), the Public Health Service Act (42 U.S.C. 201 et seq.), and authority delegated to the Commissioner, 21 CFR Part 5.

PURPOSE(S):

To provide records used by FDA employees in investigations of possible violation of the law.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records that indicate violation or potential violation of law may be: (1) Referred for investigation and possible enforcement action under the applicable Federal, State, or foreign laws to the Department of Justice; an appropriate State food and drug enforcement health agency or licensing authority; or, the government of a foreign country; or (2) disclosed in administrative or court proceeding in determining whether a record is relevant to an Agency decision concerning documents of investigatory materials.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from that congressional office at the request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal, is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual files are maintained in letter-size folders. Automated files are maintained on computer discs and tapes stored in a locked safe.

RETRIEVABILITY:

Indexed by company or subject, sometimes with individual name in a cross-index on an automated index system.

SAFEGUARDS:

1. *Authorized users:* Administrative Services Branch personnel.

2. *Physical safeguards:* Records are kept in locked cabinets in a secured area, locked rooms, locked buildings and limited access to Administrative Services Branch authorized personnel. Computer tapes and discs are stored in a locked safe.

3. *Procedural (or technical) safeguards:* Computer software providing restricted commands.

4. *Implementation guidelines:* Safeguards are established in accordance with Chapter 45-13 and PHS hf: 45-13 of the Department's General Administration Manual and Part 6 of the Department's ADP Systems Manual.

RETENTION AND DISPOSAL:

Records may be retired to a Federal Records Center and subsequently disposed of in accordance with FDA's Records Control Schedule. The Records Control Schedule and disposal standard for these records may be obtained by writing to the system manager at the address below.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Administrative Services Branch (HFA-210), 5600 Fishers Lane, Rockville, MD 20857.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about him or her upon written request, with notarized signature if request is made by mail, or with identification if request is made in person, directed to:

FDA Privacy Act Coordinator (HFI-30),
Food and Drug Administration, 5600
Fishers Lane, Rockville, MD 20857

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Access to record systems which have been granted an exemption from the Privacy Act access requirement may be

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made at the discretion of the system manager. If access is denied to requested records, an appeal may be made to:

Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857

You may also request an accounting of disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURES:

If access has been granted, contact the official at the address specified under notification procedures and reasonably identify the record, specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained, from third parties such as consumers, scientists, representatives of other companies, state agencies, or developed by FDA during investigations for law enforcement purposes.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from access and contest and certain other provisions of the Privacy Act (5 U.S.C. 552a (c)(3), (d) (1) to (4), (e)(3), (e)(4) (G) to (H) and (f), to the extent that it includes investigatory material compiled for law enforcement purposes, including criminal law enforcement purposes, where access would be likely to prejudice the conduct of the investigation.

Appendix A—Addresses and working hours of the Food and Drug Administration Field Offices

The following is a list of the Food and Drug Administration Field Offices, their addresses and working hours where individuals may have access to records in Food and Drug Administration Privacy Act Record Systems:

Boston District Office

Region I

585 Commercial Street, Boston, MA 02109
Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.)

Brooklyn District Office

Region II

850 3rd Avenue, Brooklyn, NY 11232
Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.)

New York Import District

Region II

830 3rd Avenue, 4th Floor, Brooklyn, NY 11232
Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.)

Buffalo District Office

Region II

599 Delaware Avenue, Buffalo, NY 14202
Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.)

Newark District Office

Region II

20 Evergreen Place, East Orange, NJ 07018
Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.)

San Juan District Office

Region II

P.O. Box 5719, Puerta de Tierra Station, San Juan, PR 00906-5719
Office hours: 8:00 a.m. to 4:30 p.m. (a.t.)

Philadelphia District Office

Region III

2nd and Chestnut Streets, Room 900 Philadelphia, PA 19106
Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.)

Baltimore District Office

Region III

900 Madison Avenue, Baltimore, MD 21201
Office hours: 7:45 a.m. to 4:15 p.m. (e.s.t.)

Atlanta District Office

Region IV

60 Eighth Street, N.E., Atlanta, GA 30309
Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.)

Nashville District Office

Region IV

297 Plus Park Boulevard, Nashville, TN 37217
Office hours: 8:00 a.m. to 4:30 p.m. (c.t.)

Orlando District Office

Region IV

7200 Lake Ellenor Drive, Suite 120, Orlando, FL 32809
Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.)

Chicago District Office

Region V

433 W. Van Buren Street, Room 1222, Chicago, IL 60604
Working hours: 8:00 a.m. to 4:30 p.m. (e.s.t.)

Cincinnati District Office

Region V

1141 Central Parkway, Cincinnati, OH 45202
Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.)

Detroit District Office

Region V

1560 East Jefferson Avenue, Detroit, MI 48207
Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.)

Minneapolis District Office

Region V

240 Hennepin Avenue, Minneapolis, MN 55401
Office hours: 8:00 a.m. to 4:30 p.m. (c.t.)

Dallas District Office

Region VI

3032 Bryant Street, Dallas, TX 75204
Office hours: 8:00 a.m. to 4:30 p.m. (c.t.)

New Orleans District Office

Region VI

4298 Elysian Fields Avenue, New Orleans, LA 70122
Office hours: 8:00 a.m. to 4:30 p.m. (c.t.)

Kansas City Field Office

Region VII

1009 Cherry Street, Kansas City, MO 64106
Office hours: 8:00 a.m. to 4:30 p.m. (c.t.)

St. Louis Station

Region VII

808 North Collins, Lacledes Landing, St. Louis, MO 63102
Office hours: 8:00 a.m. to 4:30 p.m. (c.t.)

Denver Field Office

Region VIII

721 19th Street, U.S. Customhouse, Room 500, Denver, CO 80202
Working hours: 8:00 a.m. to 4:30 p.m. (m.t.)

San Francisco District Office

Region IX

50 U.N. Plaza Federal Office Building, Room 526, San Francisco, CA 94102
Working hours: 8:00 a.m. to 4:30 p.m. (p.t.)

Los Angeles District Office

Region IX

1521 W. Pico Boulevard, Los Angeles, CA 90015-2486
Office hours: 8:00 a.m. to 4:30 p.m. (p.t.)

Seattle Field Office

Region X

909 1st Avenue, Room 5009, Seattle, WA 98174
Office hours: 8:00 a.m. to 4:30 p.m. (p.t.)
Minneapolis Center for Microbiological Investigations, 240 Hennepin Avenue, Minneapolis, MN 55401
Office hours: 8:00 a.m. to 4:30 p.m. (c.t.)
Winchester Engineering and Analytical Center, 109 Holton Street, Winchester, MA 01890
Office hours: 8:00 a.m. to 4:30 p.m. (e.s.t.)
Houston Resident Post, 1440 N. Loop, Suite 250, Houston, TX 77009
Office hours: 8:00 a.m. to 4:30 p.m. (c.t.)

Appendix B—General Services Administration, Federal Archives, and Records Centers

National Centers

District of Columbia, Maryland, Virginia, and West Virginia except for U.S. Court records for Maryland, Virginia, and West Virginia:
  Washington National Records Center, Washington, D.C. 20409
  National Personnel Records Center (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118
  National Personnel Records Center (Military Personnel Records), 9700 Page Boulevard, St. Louis, MO 63132

Regional Centers

GSA Region I

Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and Rhode Island
Federal Archives and Records Center, 380 Trapelo Road, Waltham, MA 02154

GSA Region 2

New York, New Jersey, Puerto Rico, the Virgin Islands, and the Panama Canal Zone
Federal Archives and Records Center, Military Ocean Terminal, Building 22, Bayonne, NJ 07002

GSA Region 3

Delaware, Pennsylvania east of Lancaster, and U.S. Court records for Maryland, Virginia, and West Virginia
Federal Archives and Records Center, 9th and Market Streets, Room 1330, Philadelphia, PA 19107
Pennsylvania except areas east of Lancaster, Federal Records Center, Defense Activities Building 308, Mechanicsburg, PA 17055

GSA Region 4

North Carolina, South Carolina, Tennessee, Mississippi, Alabama, Georgia, Florida, and Kentucky
Federal Archives and Records Center, 1557 St. Joseph Avenue, East Point, GA 30344

GSA Region 5

Illinois, Wisconsin, Minnesota, and U.S. Court records for Indiana, Michigan, and Ohio
Federal Archives and Records Center, 7358 South Pulaski Road, Chicago, IL 60629
Indiana, Michigan, and Ohio except for U.S. Court records
Federal Records Center, 3150 Bertwynn Drive, Dayton, OH 45439

GSA Region 6

Kansas, Iowa, Nebraska, and Missouri except Greater St. Louis area
Federal Archives and Records Center, 2306 East Bannister Road, Kansas City, MO 64131

GSA Region 7

Texas, Oklahoma, Arkansas, Louisiana, and New Mexico
Federal Archives and Records Center, P.O. Box 6216, Fort Worth, TX 76115
Shipping address only (do not use for mail), 4900 Hemphill Street, Building 1, Dock 1, Fort Worth, TX

GSA Region 8

Colorado, Wyoming, Utah, Montana, North Dakota, and South Dakota
Federal Archives and Records Center, Building 48, Denver Federal Center, P.O. Box 25307, Denver, CO 80225

GSA Region 9

American Samoa, California, except Southern California, and Nevada, except Clark County
Federal Archives and Records Center, 1000 Commodore Drive, San Bruno, CA 94066
Arizona; Clark County, Nevada; and Southern California (counties of San Luis Obispo, Kern, San Bernardino, Santa Barbara, Ventura, Los Angeles, Riverside, Orange, Imperial, Inyo, and San Diego).
Federal Archives and Records Center, 2400 Avila Road, Laguna Niguel, CA 92677

GSA Region 10

Washington, Oregon, Idaho, Alaska, Hawaii, and Pacific Ocean areas (except American Samoa)
Federal Archives and Records Center, 6125 Sand Point Way, N.E., Seattle, WA 98115

09-10-0003

SYSTEM NAME:

FDA Credential Holder File. HHS/FDA/ORA/ORO.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

FDA Employees:

Services Unit (HFA-227), Office of Management and Operations, 5600 Fishers Lane, Rockville, MD 20857
Office Services Section (HFA-230), Office of Management and Operations, 200 C Street, SW., Washington, DC 20204
Division of Field Investigations (HFC-130), Office of Regulatory Affairs, 5600 Fishers Lane, Rockville, MD 20857

Administrative Branch at Field/District Office. For the location of Field/District Offices, see Appendix A to system notice 09-10-0002, Regulated Industry Employee Enforcement Records, HHS/FDA/OMO/DMS.

State and Local Employees: Division of Federal-State Relations (HFC-151), 5600 Fishers Lane, Rockville, MD 20857.

Administrative Branch at Field/District Offices. For the location of Field/District Offices, see Appendix A to system notice 09-10-0002, Regulated Industry Employee Enforcement Records, HHS/FDA/OMO/DMS.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FDA employees and state and local government employees who have been issued FDA credentials for enforcement activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains name, job title, height, weight, color of eyes and hair, duty status, and for state and local government employees, professional qualifications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 702 to 704, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 372 to 374).

PURPOSE(S):

To issue or reissue credentials which are used to gain entry to regulated establishments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to provide assurance to regulated enterprises that an individual is a duly designated enforcement officer and, in the case of state employees, an officer commissioned as an officer of the Department.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal, is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and on computer tapes.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

1. *Authorized users*: Administrative Services Branch and Office of Regulatory Affairs personnel.

2. *Physical safeguards*: Records are kept in locked cabinets in a secured area; locked rooms, locked buildings and limited access to authorized

personnel. Computer tapes and discs are stored in locked safe.

3. *Procedural (or technical) safeguards:* Computer software providing restricted commands.

4. *Implementation guidelines:* Safeguards are established in accordance with Chapter 45–13 and PHS hf:45–13 of the Department's General Administration Manual and Part 6 of the Department's ADP Systems Manual.

RETENTION AND DISPOSAL:

Records are retained as long as individual is a duly designated or commissioned official; inactive files destroyed after 10 years. The records are destroyed by shredding, burning, or other appropriate means so as to render them illegible.

SYSTEM MANAGER(S) AND ADDRESS:

FDA Employees:

Chief, Services Unit (HFA–227), Office of Management and Operations, 5600 Fishers Lane, Rockville, MD 20857

Chief, Office Services Section (HFA–230), Office of Management and Operations, 200 C Street, SW., Washington, DC 20204

Administrative Branch at Field/District Offices. For the location of Field/District Offices, see Appendix A to system notice 09–10–0002, Regulated Industry Employee Enforcement Records, HHS/FDA/OMO/DMS.

Federal-State Officer at Field/District Offices. For the location of Field/District Offices, see Appendix A to system notice 09–10–0002, Regulated Industry Employee Enforcement Records, HHS/FDA/OMO/DMS.

State Employees: Director, Division of Federal-State Relations (HFC–151), 5600 Fishers Lane, Rockville, MD 20857.

Administrative Branch at Field/District Offices. For the location of Field/District Offices, see Appendix A to system notice 09–10–0002, Regulated Industry Employee Enforcement Records, HHS/FDA/OMO/DMS.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about him or her upon written request, with notarized signature if request is made by mail, or with identification if request is made in person, directed to:

FDA Privacy Act Coordinator (HFI–30),
Food and Drug Administration, 5600
Fishers Lane, Rockville, MD 20857

RECORD ACCESS PROCEDURES:

Same as notification procedure. Requesters should also reasonably specify the record contents being sought. You may also request an accounting of disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedure above and reasonably identify the record, specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–10–0004

SYSTEM NAME:

Communications (Oral and Written) With the Public, HHS/FDA/OMO/DMS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Administrative Services Branch (HFA–210), 5600 Fishers Lane, Rockville, MD 20857

Office of Legislative Affairs (HFW–1), 5600 Fishers Lane, Rockville, MD 20857

Administrative Branch at Field/District Offices. For the location of Field/District Offices, see Appendix A to system notice 09–10–0002, Regulated Industry Employee Enforcement Records, HHS/FDA/OMO/DMS.

For the location of Federal Archives and Records Centers, see Appendix B to system notice 09–10–0002, Regulated Industry employee Enforcement Records, HHS/FDA/OMO/DMS.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, other than employees of enterprises regulated by FDA, who communicate with FDA or, in some cases, are the subject of communications by others with FDA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Includes correspondence from and to individuals, summaries of conversations prepared by FDA employees, and records prepared by FDA as a follow-up to consumer complaints, oral and written. Administrative Services Branch files include copies of correspondence received from the public, and the FDA reply. The Office of Legislative Affairs maintains duplicates of letters FDA sends to members of Congress and summaries of oral inquiries in files organized by members' names. The Office of Legislative Affairs maintains a manual control system and the Executive Secretariat, Office of the Commissioner, maintains an automated control system of pending correspondence requiring a reply.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 et seq.); the Public Health Service Act (42 U.S.C. 201 et seq.), and authority delegated to the Commissioner (21 CFR 5.1).

PURPOSE(S):

To aid FDA employees in carrying out their responsibilities, e.g., responding to follow-up correspondence on complaints, requests for information, etc.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records that indicate violation or potential violation of law may be: (1) Referred for investigation and possible enforcement action under the applicable Federal, State, or foreign laws to the Department of Justice; an appropriate State food and drug enforcement health agency or licensing authority; or the government of a foreign country; or (2) disclosed in administrative or court proceedings in determining whether a record is relevant to an agency decision concerning documents of investigatory materials.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal, is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual records are maintained in letter-size folders. Automated records are maintained on computer tapes and discs and stored in a locked safe.

RETRIEVABILITY:

Records are arranged by company or by subject. A computer index gives correspondent's name, date of letter, subject, and location. Field offices file consumer complaints by complaint number.

SAFEGUARDS:

1. *Authorized users:* FDA employees who display an FDA identification card; GAO employees upon approval of GAO Liaison Officer, Operations Coordination Staff, OMO, employees of DHHS agencies other than FDA whose duties require the use of information in the system.
2. *Physical safeguards:* Records are stored in locked cabinets in secured areas, locked buildings and locked rooms. Computer tapes and discs are stored in a locked safe.
3. *Procedural (or technical) safeguards:* Computer software providing restricted commands. Employees of DHHS agencies other than FDA must display government identification card, complete agreement between FDA and the agency concerned, and sign a commitment to protect privileged information.
4. *Implementation Guidelines:* Safeguards are established in accordance with Chapter 45–13 and PHS hf:45–13 of the Department's General Administration Manual and part 6 of the Department's ADP Systems Manual.

RETENTION AND DISPOSAL:

Records may be retired to a Federal Records Center and subsequently disposed of in accordance with FDA's Records Control Schedule. The Records Control Schedule and disposal standard for these records may be obtained by writing to the system manager at the appropriate address below.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Administrative Services Branch (HFA–210), 5600 Fishers Lane, Rockville, MD 20857

Office of Legislative Affairs (HFW–1), 5600 Fishers Lane, Rockville, MD 20857

Administrative Branch at Field/District Offices. For the location of Field/District Offices, see Appendix A to system notice 09–10–0002, Regulated Industry Employee Enforcement Records, HHS/OMO/DMS.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about him or her upon written request with notarized signature if request is made by mail, or with identification if request is made in person, directed to:

FDA Privacy Act Coordinator (HFI–30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857

RECORD ACCESS PROCEDURES:

Same as notification procedure. Requesters should also reasonably specify the record contents being sought. You may also request an accounting of disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedure above and reasonably specify the record, information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained or others (generally members of Congress) who write to FDA about them.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–10–0005

SYSTEM NAME:

State Food and Drug Official File. HHS/FDA/ORA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Federal-State Relations (HFC–151), 5600 Fishers Lane, Rockville, MD 20857.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

State Officials who have responsibilities related to those of the Food and Drug Administration.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains name, date of birth, education and professional experience, and state in which employed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 702(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 372(a)).

PURPOSE(S):

To provide FDA with the names of State Officials who have responsibilities related to those of the Food and Drug Administration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal, is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in letter-size manila folders.

RETRIEVABILITY:

Indexed by name and state.

SAFEGUARDS:

1. *Authorized users:* Personnel of the Division of Federal State Relations who

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are engaged in contracts or any other activity involving commissioning.

2. *Physical safeguards:* Records are kept in locked cabinets in a secured area, locked rooms and locked building.

3. *Procedural safeguards:* Users of personal information in the performance of their duties have been instructed to protect personal information from public view and from unauthorized personnel. Access is strictly limited to those staff members trained in accordance with the Privacy Act.

4. *Implementation guidelines:* Safeguards are established in accordance with Chapter 45-13 and PHS hf:45-13 of the Department's General Administration Manual.

RETENTION AND DISPOSAL:

Records are retained as long as individual is a state employee.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Federal-State Relations (HFC-151), 5600 Fishers Lane, Rockville, MD 20857.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about him or her upon written request, with notarized signature if request is made by mail, or with identification if request is made in person, directed to:

FDA Privacy Act Coordinator (HFI-30),
Food and Drug Administration, 5600
Fishers Lane, Rockville, MD 20857

RECORD ACCESS PROCEDURES:

Same as notification procedure. Requests should also reasonably specify the records content being sought. You may also request an accounting of disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedure above and reasonably identify the record, specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-10-0007

SYSTEM NAME:

Science Advisor Research Associate Program (SARAP). HHS/FDA/ORA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Field Science (HFC-140), Office of Regional Operations, 5600 Fishers Lane, Rockville, MD 20857.

For the location of Federal Archives and Records Centers, see Appendix B to system notice 09-10-0002, Regulated Industry Employee Enforcement Records, HHS/FDA/OMO/DMS.

categories of individuals covered by the system:

FDA field personnel who have applied to participate in full-time research effort under the program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains name, curriculum vitae, description of research proposal, budget, and statement of career goals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 702(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 372(a); Sections 301 of the Public Health Service (42 U.S.C. 241) and 311 of the PHS Act (42 U.S.C. 243).

PURPOSE(S):

To monitor the progress of research objectives of approved individual SARAP research projects.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal, is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in letter-size manila folders.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

1. *Authorized users:* Personnel of the Division of Field Science.

2. *Physical safeguards:* Records are kept in locked cabinets in a secured area, locked rooms, and locked building.

3. *Procedural safeguards:* Users of personal information in the performance of their duties have been instructed to protect such information from public view and from unauthorized personnel. Access is strictly limited to those staff members trained in accordance with the Privacy Act.

4. *Implementation guidelines:* Safeguards are established in accordance with Chapter 45-13 and PHS hf:45-13 of the Department's General Administration Manual.

RETENTION AND DISPOSAL:

Records may be retired to a Federal Records Center and subsequently disposed of in accordance with FDA's Records Control Schedule. The Records Control Schedule and disposal standard for these records may be obtained by writing the system manager at the address below.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Field Science (HFC-140), Office of Regional Operations, 5600 Fishers Lane, Rockville, MD 20857.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about him or her upon written request, with notarized signature if request is made by mail, or with identification if request is made in person, directed to:

FDA Privacy Act Coordinator (HFI-30),
Food and Drug Administration, 5600
Fishers Lane, Rockville, MD 20857

RECORD ACCESS PROCEDURES:

Same as notification procedure. Requesters should also reasonably specify the record contents being sought. You may also request an accounting of disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedure above and reasonably identify the record, specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-10-0006

SYSTEM NAME:

Radiation Protection Program Personnel Monitoring System. HHS/FDA/CDRH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Health Physics (HFZ-60),
Center for Devices and Radiological Health, 5600 Fishers Lane, Rockville, MD 20857
Radiation Detection Company, 162
Wolfe Road, P.O. Box 1414,
Sunnyvale, CA 94088

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. Public Health Service and other personnel in clinics, laboratories, hospitals, research facilities, etc., who work with ionizing radiation sources and are required to be monitored by Nuclear Regulatory Commission or Occupational Safety and Health Administration regulations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains name, date of birth, social security account number, job code, period of exposure, effective date, and radiation exposure value.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Atomic Energy Act of 1954 (68 Stat. 919 et seq.). Nuclear Regulatory Commission Regulations, 10 CFR Part 20; Occupational Safety and Health Act of 1970 (84 Stat. 1590 et seq.), Occupational Safety and Health Administration Regulations, 29 CFR 1910.96.

PURPOSE(S):

To monitor incremental and accumulated exposure to ionizing radiation for radiation protection purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Results are disclosed to employers, i.e., clinics, laboratories, etc., after the end of each monitoring period.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Disclosure may be made to HHS contractors and their staff in order to accomplish the purpose for which the records are collected. The recipients are required to protect such records from improper disclosure.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal, is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

SAFEGUARDS:

1. *Authorized users*: Authorized CDRH and contractor personnel who must have access to information in the system in the performance of their duties.

2. *Physical safeguards*: Hard copies are filed in secured files, locked building with controlling security personnel stationed at key access points to the record area.

3. *Procedural (or technical) safeguards*: Computer software is password protected and access is restricted by Resource Access Control Facility (RACF). Contractor is required to maintain confidentiality safeguards with respect to these records.

4. Implementation guidelines: Safeguards are established in accordance with Chapter 45-13 and PHS hf:45-13 of the Department's General Administration Manual and Part 6 of the Department's ADP Systems Manual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on magnetic disc computer data bank, with back-up stored securely off-site. Hard copies are maintained in letter-size folders.

RETRIEVABILITY:

Indexed by name, social security account number, and facility.

RETENTION AND DISPOSAL:

Indefinite retention on magnetic disc.

SYSTEM MANAGER(S) AND ADDRESS:

Personnel Monitoring Program, Office of Health Physics (HFZ-60), Center for Devices and Radiological Health, 5600 Fishers Lane, Rockville, MD 20857.

NOTIFICATION PROCEDURE:

An individual may learn of his or her record upon written request, with notarized signature if request is made by mail, or with identification if request is made in person, directed to:

FDA Privacy Act Coordinator (HFI-30),
Food and Drug Administration, 5600
Fishers Lane, Rockville, MD 20857

RECORD ACCESS PROCEDURES:

Same as notification procedure. Requesters should also reasonably specify the record contents being sought. You may also request an accounting of disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedure above and reasonably identify the record, specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-10-0009

SYSTEM NAME:

Special Studies and Surveys on FDA-Regulated Products. HHS/FDA/OMO.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Negotiated Contracts Branch (HFA-510), Office of Management and Operations, 5600 Fishers Lane, Rockville, MD 20857.

A current list of contact sites is available by writing to the system manager at the address below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, specialty groups, and households participating voluntarily in studies and surveys conducted or sponsored by FDA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data collected vary with each study/survey. Normal standard information for individuals or household members varies but could include name, age, sex, marital status, address or locale of residence, etc. Nondemographic items relate to experience with, or opinions about, a particular product. Patient medical records may be included in some cases involving specific health problems.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 701(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

PURPOSE(S):

Used to provide data on individuals, specialty groups, e.g., physicians and households participating voluntarily in studies and surveys conducted or sponsored by FDA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the records of an individual in response to an inquiry from the congressional office made at the request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal, is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

Disclosure may be made to HHS contractors and their staff in order to accomplish the purpose for which the records are collected. The recipients are required to protect such records from improper disclosure.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Questionnaires and data are files in standard filing equipment. Some statistical data are stored on magnetic tape.

RETRIEVABILITY:

Accessed by ID number assigned by FDA or contractor during collection process. Individual files are maintained in agency and/or contractor's custody until all collection procedures are completed.

SAFEGUARDS:

1. *Authorized users:* Authorized program personnel.

2. *Physical safeguards:* Questionnaires and data are maintained in locked containers in secured area. Magnetic tapes are maintained in secured computer facilities. Locked buildings, locked rooms, locked file cabinets and locked tape vaults.

3. *Procedural (or technical) safeguards:* Access limited by computer password which is changed periodically. Confidentiality safeguards with respect to these records are required to be maintained.

4. *Implementation guidelines:* Safeguards are established in accordance with Chapter 45-13 and PHS hf: 45-13 of the Department's General Administration Manual and Part 6 of the Department's ADP Systems Manual.

RETENTION AND DISPOSAL:

Questionnaires and data are retained until all statistical problems are resolved; then destroyed. The records are destroyed by shredding, burning, or other appropriate means so as to render them illegible.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Negotiated Contracts Branch (HFA-510), 5600 Fishers Lane, Rockville, MD 20857

Office of Epidemiology and Biostatistics (HFN-700), 5600 Fishers Lane, Rockville, MD 20857

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about him or her upon written request, with notarized signature if request is made by mail, or with identification if request is made in person, directed to:

FDA Privacy Act Coordinator (HFI-30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857

RECORD ACCESS PROCEDURES:

Same as notification procedure. Requesters should also reasonably specify the record contents being sought. An individual who requests notification of, or access to, a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the records and inform the subject individual of its contents at the representative's discretion. You may also request an accounting of disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURES:

Contact the offical at the address specified under Notification Procedure above and reasonably identify the record, specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained or patient's medical records, depending on the type of survey or study.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

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09–10–0010

SYSTEM NAME:

Bioresearch Monitoring Information System. HHS/FDA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Scientific Investigations (HFN–340), Office of Compliance, 7520 Standish Place, Rockville, MD 20855
Division of Biological Investigational New Drugs (HFN–823), Office of Biologics Research and Review, 8800 Rockville Pike, Bethesda, MD 20205
Bioresearch Monitoring Staff (HFZ–341), Center for Devices and Radiological Health, 8757 Georgia Avenue, Silver Spring, MD 20910

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Clinical investigators who are conducting, or have conducted, clinical studies of new drugs and devices under investigational new drug and investigational device exemption requests.

CATEGORIES OF RECORDS IN THE SYSTEM:

Automated file is maintained on all clinical investigators; contains name, education, professional qualifications and background, Program Oriented Data Systems (PODS) locator code, and information on studies conducted. Manual file contains, in addition to that same information, investigatory material collected by, or developed by, FDA, during investigations of possible violations of statutes and regulations governing new drug and/or device studies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 505(i)(3), Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)(3); 21 CFR Part 312 (New drugs for investigational use). Section 505(i)(3), Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(j); 21 CFR Part 812 (New devices for investigational use); 21 CFR Part 813 (Intraocular lenses for investigational use).

PURPOSE(S):

To provide controls to assure that investigators meet requirements of statute or regulations governing new drug and device studies. To serve as a data base for the effective performance of activities necessary for the conduct of the bioresearch monitoring program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records that indicate violation or potential violation of law may be: (1) Referred for investigation and possible enforcement action under the Federal, State, or foreign laws to the Department of Justice, Office of the Inspector General, an appropriate State food and drug enforcement agency or licensing authority, or the government of a foreign country where studies are being or have been conducted; (2) disclosed in administrative or court proceedings in determining whether a record is relevant to an agency decision concerning investigatory materials; (3) disclosed to an HHS funding office providing financial support to a bioresearch study.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when:

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal, is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual files compiled of investigations of possible violations of statutes and regulations are maintained in letter-size manila folders and on microfilm. Automated files are maintained on magnetic disk or tape.

RETRIEVABILITY:

Indexed by name or code number.

SAFEGUARDS:

1. *Authorized users:* Staff of the Division of Scientific Investigations, Division of Drug Information Resources, Management and Data Systems Branch, Division of Biological Investigational New Drugs, inspectors in the Office of Biologics, Personnel of the Office of Device Evaluation, Personnel of the Bioresearch Monitoring Staff, Personnel of the Office of Compliance and District Consumer Safety Officers who gather data during inspections and investigations.

2. *Physical safeguards:* Files are stored in secured areas, locked buildings, locked rooms, locked tape vaults and lockable data media cabinets.

3. *Procedural (or technical) safeguards:* Limited access and computer password which is changed periodically.

4. *Implementation guidelines:* Safeguards are established in accordance with General Administration Manual and Part 6 of the Department's ADP Systems Manual.

RETENTION AND DISPOSAL:

Records output from the system for reference printout or computer output microfilm are retained for one update cycle, or quarterly. Disposal of records is accomplished through a disintegrator or shredder.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Division of Scientific Investigation (HFN–341), Office of Compliance, 7520 Standish Place, Rockville, MD 20855
Director, Division of Biological Investigational New Drugs (HFN–823), Office of Biologics Research and Review, 8800 Rockville Pike, Bethesda, MD 20205
Director, Bioresearch Monitoring Staff (HFZ–341), Center for Devices and Radiological Health, 8757 Georgia Avenue, Silver Spring, MD 20910

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about him or her upon written request with notarized signature if request is made by mail, or with identification if request is made in person, directed to:

FDA Privacy Act Coordinator (HFI–30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857

RECORD ACCESS PROCEDURES:

Same as notification procedure. Requesters should also reasonably specify the record contents being sought. Access to record systems which have

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been granted an exemption from the Privacy Act requirements may be made at the discretion of the system manager. If access is denied to requested records, an appeal may be made to:

Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857

You may also request an accounting of disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURES:

If access has been granted, contact the offical at the address specified under notification procedure above and reasonably identify the record, specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained. Some material is obtained from third parties, e.g., drug companies, publications, or is developed by FDA.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from access and contest and certain other provisions of the Privacy Act (5 U.S.C. 552a(c)(3), (d) (1) to (4), (e)(3), (e)(4) (G) to (H) and (f) to the extent that it includes investigatory material compiled for law enforcement purposes, including criminal law enforcement purposes, where access would be likely to prejudice the conduct of the investigation.

09-10-0011

SYSTEM NAME:

Certified Retort Operators. HHS/FDA/CFSAN.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Food Chemistry and Technology (HFF-210), Center for Food Safety and Applied Nutrition, 200 C Street, SW, Washington, DC 20204.

For the location of Federal Archives and Records Centers, see Appendix B to system notice 09-10-0002, Regulated Industry Employee Enforcement Records, HHS/FDA/OMO/DMS.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Food industry employees who have attended courses of instruction relating to operation of retorts.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains name and training records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 404 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 344).

PURPOSE(S):

To ascertain that programs exist in regulated establishments relating to food industry employees instructed in operating retorts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system showing a low-acid canned food establishment not having supervised canning retort operations may be: (1) Referred for investigation and possible enforcement action against the company and responsible officials, to the Department of Justice, or appropriate State food and drug law enforcement agencies, or (2) disclosed in administrative or court proceedings in determining whether a record is relevant to an agency decision concerning documents of investigatory materials.

Most records in the system may be disclosed to a food company who may be advised as to whether an individual has satisfied FDA requirements.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal, is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in standard filing equipment.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

1. *Authorized users:* Limited access to professional staff and secretary of the Regulatory Food Chemistry Branch.

2. *Physical safeguards:* Records are stored in locked containers in locked rooms and building.

3. *Procedural safeguards:* Users of personal information in connection with the performance of their jobs have been instructed to protect such information from public view and from unauthorized personnel. Access to records is strictly limited to those staff members trained in accordance with the Privacy Act.

4. *Implementotion guidelines:* Safeguards are established in accordance with Chapter 45-13 and PHS hf:45-13 of the Department's General Administration Manual.

RETENTION AND DISPOSAL:

Records may be retired to a Federal Records Center and subsequently disposed of in accordance with FDA's Records Control Schedule. The Records Control Schedule and disposal standard for these records may be obtained by writing to the system manager at the address below.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Food Chemistry and Technology (HFF-210), 200 C Street, SW., Washington, DC 20204.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about him or her upon written request, with notarized signature if request is made by mail, or with identification if request is made in person, directed to:

FDA Privacy Act Coordinator (HFI-30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857

RECORD ACCESS PROCEDURE:

Same as notification procedure. Requesters should also reasonably specify the record contents being sought. You may also request an accounting of disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under the notification procedure and reasonably identify the record, specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Educational institutions that conduct retort operator training.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-10-0013

SYSTEM NAME:

Employee Conduct Investigative Records. HHS/FDA/OMO.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Ethics and Program Integrity (HFA-20), Office of Management and Operations, 5600 Fishers Lane, Rockville, MD 20857.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees or former employees, or special Government employees of FDA who are alleged to have violated FDA or Departmental regulations and/or Federal statutes.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system includes records relating to correspondence concerning an individual's employment status or conduct while employed by FDA. Examples of these records include: correspondence from employees, members of Congress and members of the public alleging misconduct by an official of FDA. It also contains reports of investigations to resolve allegations of misconduct or violations of statutes, with related exhibits of statements, affidavits or records obtained during the investigation; reports of action taken by management; decisions on any misconduct substantiated by the investigation; and reports of legal action resulting from violations of statutes referred for prosecution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Title 18, U.S.C. (e.g., 18 U.S.C. 201, 203, 207, 208, 209, 1905); 21 U.S.C. 331; 28 U.S.C. 535(b); 44 U.S.C. 3101; E.0. 10450 and 222; 45 CFR Part 73.

PURPOSE(S):

To provide management with information needed to take actions against complaints or alleged violations. These complaints may be referred to the Office of Inspector General, Office of the Secretary, HHS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records that indicate violation or potential violation of law regulation and/or policy may be: (1) Referred for investigation and possible enforcement action under the applicable Federal, state, or foreign laws to the Department of Justice; an appropriate state food and drug enforcement health agency or licensing authority; or the government of a foreign country; or (2) disclosed in administrative or court proceedings in determining whether a record is relevant to an agency decision concerning documents of investigatory materials.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal, is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, in folders, in file cabinets.

RETRIEVABILITY:

Alphabetically by name.

SAFEGUARDS:

1. *Authorized users*: Limited access to Division of Ethics and Program Integrity Staff and authorized support staff of the Office of Management and Operations.

2. *Physical safeguards*: Records are maintained in locked rooms within a locked secured area protected by a 24-hour building guard service.

3. *Procedural safeguards*: Users of personal information in connection with the performance of their jobs have been instructed to protect such information from public view and from unauthorized personnel. Access is strictly limited to those employees trained in accordance with the Privacy Act.

4. *Implementation guidelines*: Safeguards are established in accordance with Chapters 45-13 and PHS hf:45-13 of the Department's General Administration Manual.

RETENTION AND DISPOSAL:

Records are retained until 5 years after termination of employment of subject individual or when no longer needed for reference. Disposal of records is accomplished by shredding, burning, or other appropriate means so as to render them illegible.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Ethics and Program Integrity (HFA-20), Office of Management and Operations, 5600 Fishers Lane, Rockville, MD 20857.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about him or her upon written request, with notarized signature if request is made by mail, or with identification if request is made in person, directed to:

FDA Privacy Act Coordinator (HFI-30),
Food and Drug Administration, 5600
Fishers Lane, Rockville, MD 20857

RECORD ACCESS PROCEDURE:

Same as notification procedure. Requesters should also reasonably specify the record contents being sought. Access to record systems which have been granted an exemption from the Privacy Act access requirement may be made at the discretion of the system manager. If access is denied to requested records an appeal may be made to:

Commissioner, Food and Drug
Administration, 5600 Fishers Lane,
Rockville, MD 20857

You may also request an accounting of disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURES:

If access has been granted, contact the official at the address specified under notification procedure above and

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reasonably identify the record, specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from FDA personnel and FDA records, subjects of investigations, complaints, witnesses, other Federal agencies, State and local agencies, and personal observations by the investigator.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from access and contest and certain other provisions of the Privacy Act, (5 U.S.C. 552a(c)(3), (d) (1) to (4), (e)(3), (e)(4) (G) to (H), and (f)), to the extent that it includes investigatory material compiled for law enforcement purposes, including criminal law enforcements.

09-10-0015

SYSTEM NAME:

Blood Donors for Tissue Typing Sera and Cell Analysis and Related Research. HHS/FDA/CDB/OB.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Histocompatibility Laboratory, Division of Blood and Blood Products (HFN-830), Center for Drugs and Biologics, 8800 Rockville Pike, Bethesda, Maryland 20205.

For the location of Federal Archives and Records Centers, see Appendix B to system notice 09-10-0002, Regulated Industry Employee Enforcement Records, HHS/FDA/OMO/DMS.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Volunteer blood donors and patients of the National Naval Medical Center and the National Institutes of Health Clinical Center who volunteer to be part of the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain name, address, phone number, sex, religion, race, age, disease (if any), number of pregnancies, number of children, and the results of blood typing.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 351, 42 U.S.C. 262.

PURPOSE(S):

To provide data to be used in evaluating histocompatability testing sera submitted by manufacturers for approval and release on the market.

On occasion, employees and patients of the National Institutes of Health Clinical Center and the National Naval Medical Center allow the laboratory to perform tissue typing. In these instances, it is necessary to provide the physician involved with precise data to properly identify the patient.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal, is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Standard filing equipment, and on magnetic tapes, and disks.

RETRIEVABILITY:

Usually by an assigned 'cell number.' Also, alphabetically, by name.

SAFEGUARDS:

1. *Authorized users:* Staff of the Division of Blood and Blood Products who require access to these records in the performance of their duties.

2. *Physical safeguards:* Locked filing equipment, locked rooms and buildings.

3. *Procedural (or technical) safeguards:* Computer password which is changed periodically.

4. *Implementation guidelines:* Safeguards are established in accordance with Chapter 45-13 and PHS hf:45-13 of the Department's General Administration Manual and Part 6 of the Department's ADP Systems Manual.

RETENTION AND DISPOSAL:

Records may be retired to a Federal Records Center and subsequently disposed of in accordance with FDA's Records Control Schedule. The Records Control and disposal standard for these records may be obtained by writing to the system manager at the address below.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Blood and Blood Products (HFN-830), Histocompatibility Laboratory, Center for Drugs and Biologics, 8800 Rockville Pike, Bethesda, MD 20205.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about him or her upon written request, with notarized signature if request is made by mail, or with identification if request is made in person, directed to:

FDA Privacy Act Coordinator (HFI-30),
Food and Drug Administration, 5600
Fishers Lane, Rockville, MD 20857

RECORD ACCESS PROCEDURES:

Same as notification procedure. Requesters should also reasonably specify the record contents being sought. An individual who requests notification of, or access to, a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. You may also request an accounting of disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedure above and reasonably identify the record, specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Volunteer blood donors and patients of the National Naval Medical Center and the National Institutes of Health Clinical Center.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-10-0017

SYSTEM NAME:

Epidemiological Research Studies of the Center for Devices and Radiological Health. HHS/FDA/CDRH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Epidemiology Branch (HFZ-116), Division of Biometric Sciences, Center for Devices and Radiological Health, 12200 Wilkins Avenue, Rockville, MD 20857.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have been exposed to radiation (ionizing, nonionizing, sonic) from either medical, occupational or environmental sources; patients with cancer, birth defects, or other diseases or conditions which result from radiation exposure; unexposed persons (e.g., family members) for the purpose of making comparisons.

CATEGORIES OF RECORDS IN THE SYSTEM:

ID number, Social Security number which is supplied on a voluntary basis, name, demographic characteristics, radiation exposure, occupational and personal health histories, medical data, and information on or from death certificates, if deceased.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Sections 301, 310, 354, 356, and 357, 42 U.S.C. 241, 242A, 263b, 263c, and 263d. Federal Food, Drug, and Cosmetic Act, Section 702(a), 21 U.S.C. 372(a). Reorganization Plan No. 3 of 1970, Section 2.

PURPOSE(S):

To maintain records used by epidemiologists, statisticians, and authorized staff for epidemiological research and analyses on the effect of radiation exposure.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record may be disclosed for a research purpose, when the Department: (a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (b) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (c) has required the recipient to—(1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except— (A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law; (d) has secured a written statement attesting to the recipient's understanding of, and willingness to abide these provisions.

Records in the system may be made available to Federal, state, and local agencies having an interest in protecting the public from the effects of radiation.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, on punch cards and on magnetic tape and discs, computer printouts and on microfiche.

RETRIEVABILITY:

Records are retrieved by name and study number.

SAFEGUARDS:

1. *Authorized users:* Designated employees of the Center for Devices and Radiological Health.

2. *Physical safeguards:* Data collection instruments are stored in locked file cabinets, locked rooms, and locked buildings.

3. *Procedural (or technical) safeguards:* Name listings and log books containing information to permit the identification of an individual and microfilmed records are kept in locked files. Computer password is changed periodically.

4. *Implementation guidelines:* Safeguards are established in accordance with Chapter 45-13 and PHS hf:45-13 of the Department's General Administration Manual and Part 6 of the Department's ADP Systems Manual.

RETENTION AND DISPOSAL:

One year to permanently, depending on the length of follow-up required to complete all phases of the study. The records are destroyed by shredding, burning, or other appropriate means so as to render them illegible. Computer tapes and discs are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Epidemiology Branch (HFZ-116), Division of Biometric Sciences, Center for Devices and Radiological Health, 5600 Fishers Lane, Rockville, MD 20857.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about him or her upon written request, with notarized signature if request is made by mail, or with identification if request is made in person, directed to:

FDA Privacy Act Coordinator (HFI-30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857

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RECORD ACCESS PROCEDURES:

Same as notification procedure. Requesters should also reasonably specify the record contents being sought. An individual who requests notification of, or access to, a medical record shall at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. You may also request an accounting of disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedure above and reasonably identify the record, specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individuals in the system of records, employers, health care providers and facilities, administrative and vital statistics agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-10-0018

SYSTEM NAME:

Employee Identification Card Information Record. HHS/FDA/OMO/DMS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Personal Property Management Section,
Services Unit (HFA-227), 5600 Fishers
Lane, Rockville, MD 20857
Metropolitan Office Services Section
(HFA-230), 200 C Street, SW.,
Washington, DC 20204

Administrative Branch at Field/District Offices. For the location of Field/District Offices, see Appendix A to system notice 09-10-0002, Regulated Industry Employee Enforcement Records, HHS/FDA/OMO/DMS.

CATEGORIES OF INDIVIDUAL COVERED BY THE SYSTEM:

Approximately 8,000 FDA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains name, mail routing code, office telephone number, building, room number, birthdate, identification photograph, height, color of eyes, and type of appointment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 471, et seq; Management and Disposal of Government Property Act.

PURPOSE(S):

The system is designed to maintain a record of all holders of FDA identification cards, Forms FD 1887 and 1887h, for renewal and recovery purposes and to identify numbers of lost or stolen cards. The system may also be used at FDA Headquarters to locate employees whose names have not been entered in the FDA locator system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal, is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Forms filed in folders in a locked filing cabinet. Computer tapes and discs stored in a locked safe.

RETRIEVABILITY:

Information is filed and retrieved by name and date of birth.

SAFEGUARDS:

1. *Authorized users:* Authorized FDA personnel whose official duties require access for issuance, renewal, retrieval, and location purposes.

2. *Physical safeguards:* All Forms FDA 2823 are kept in locked file cabinets and the minicomputers at Headquarters are maintained in secured areas. Computer discs and tapes are stored in locked safe.

3. *Procedural (or technical) safeguards:* Computer software providing restricted commands.

4. *Implementation guidelines:* Safeguards are established in accordance with Chapter 45-13 and PHS hf:45-13 of the Department's General Administration Manual and Part 6 of the Department's ADP Systems Manual.

RETENTION AND DISPOSAL:

Records are maintained as long as the ID cards are valid. Computer tapes are erased immediately upon termination of employment and inactive forms are destroyed after 6 months by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Administrative Services Branch (HFA-210), 5600 Fishers Lane, Rockville, MD 20857.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about him or her upon written request, with notarized signature if request is made by mail, or with identification if request is made in person, directed to:

FDA Privacy Act Coordinator (HFI-30),
Food and Drug Administration, 5600
Fishers Lane, Rockville, MD 20857

RECORD ACCESS PROCEDURES:

Same as notification procedure. Requesters should also reasonably specify the record contents being sought, and provide any other names officially used during period of employment. You may also request an accounting of disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedure above and reasonably identify the record, specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 86-25482 Filed 11-21-86; 8:45 am]

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federal register

Monday
November 24, 1986

Part III

Department of Agriculture

7 CFR Part 8

4-H Club Name and Emblem; Proposed Rule

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DEPARTMENT OF AGRICULTURE

7 CFR Part 8

4-H Club Name and Emblem

AGENCY: Department of Agriculture.

ACTION: Proposed rule.

SUMMARY: The Department of Agriculture proposes to amend the final rule on use of the 4-H Club Name and Emblem as published in the **Federal Register** on August 2, 1985. The proposed amendment will provide information on the definition of terms used in this Part, and will further define and expand use of the 4-H name and emblem in 4-H fund-raising activities.

DATE: Comments must be submitted on or before December 24, 1986.

ADDRESS: Comments may be mailed to: Dr. Donald Stormer, Deputy Administrator, 4-H—Youth Programs, Extension Service, U.S. Department of Agriculture, Washington, DC 20250, Telephone: 202/447-5853.

FOR FURTHER INFORMATION CONTACT: Dr. V. Milton Boyce, telephone: 202/447-6527.

SUPPLEMENTARY INFORMATION: On August 2, 1985, the Department of Agriculture published a final rule in the **Federal Register** that established procedures for authorizing use of the 4-H Club name and emblem. These regulations appear in 7 CFR Part 8. Since publication of the final rule, it has been determined that clarification is needed with respect to the specific delegations of authority for authorizing use of the 4-H Club name and emblem at the various administrative levels. Further, because of continuing problems and concerns in the area of 4-H fund raising as well as potential confusion regarding the proper use of the 4-H name and emblem in connection with 4-H fund raising, it was concluded that clarification and modification of the section on use of the 4-H name and emblem in fund raising is needed. A summary of the proposed amendments to the final rule follows:

(1) Section 8.3. *Definitions.* It is proposed that this section include specific definitions of the Cooperative Extension Service, State Cooperative Extension Service and County Cooperative Extension Service.

(2) Section 8.9. *Use in 4-H Fund Raising.* It is proposed that this section be expanded to provide for use of the 4-H name and emblem on, or in association with, commercial products and services when the effect is to promote 4-H educational programs. Such use of the 4-H name and emblem, including its use in tributes to 4-H contained on or associated with commercial products or services, will be permitted in accordance with this policy, as long as no endorsement or the appearance of an endorsement of the product is either intended or effected and all moneys received, less those necessary to cover reasonable expenses, are expended on behalf of 4-H educational programs.

Executive Order 12291

These proposed regulations were reviewed under the USDA criteria established to implement Executive Order 12291, "Federal Regulations." It is determined that this action should not be classified as a major rule under those criteria. It will not have an effect on the economy of $100 million or more, nor cause a major increase in costs or prices, nor cause significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the United States-based firms to compete with foreign-based competitors.

Regulatory Flexibility Act

This Department has certified that this document would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Therefore, no regulatory flexibility analysis has been prepared.

Environmental Impact Statement

This proposed regulation will not significantly affect the human environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

Any information collection or recordkeeping requirements imposed on the public by this proposed rule will not be implemented until such time as they have been approved, in accordance with section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq., by the Office of Management and Budget.

List of Subjects in 7 CFR Part 8

4-H Club Signs and Symbols.

PART 8—[AMENDED]

For the reasons set out in the preamble, Part 8 of Title 7 of the *Code of Federal Regulations* is proposed to be amended as set forth below.

1. The authority citation for Part 8 of Title 7 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 707.

2. The following paragraphs are added after the first paragraph of § 8.3:

§ 8.3 Definitions.

* * * * *

The term "Cooperative Extension Service" as used in this part includes the entire Cooperative Extension System consisting of the Extension Service, United States Department of Agriculture; the State Cooperative Extension Services; and the County Cooperative Extension Services.

The term "County Cooperative Extension Service" as used in this part refers to a county Extension office operating under a State Cooperative Extension Service.

The term "Extension Service, United States Department of Agriculture" as used in this part means the Federal agency within the United States Department of Agriculture which administers Federal agricultural cooperative extension programs.

The term "State Cooperative Extension Service" as used in this part means an organization established at the land-grant college or university under the Smith-Lever Act of May 8, 1914, as amended (7 U.S.C. 341-349); section 209(b) of the Act of October 26, 1974, as amended (D.C. Code, sec. 31-1719(b)); or section 1444 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3221).

3. Section 8.9 is revised as follows:

§ 8.9 Use in 4-H fund raising.

(a) Fund-raising programs using the 4-H Club Name or Emblem may be carried out for specific educational purposes. Such fund-raising programs and use of the 4-H name and emblem on, or associated with, products and services for such purposes must have the approval of the appropriate Cooperative Extension office, as follows:

(1) Approval of the County Cooperative Extension Service, or the appropriate land-grant institution, if the fund-raising program is confined to a county.

(2) Approval of the State Cooperative Extension Service, or the appropriate land-grant institution, if the fund-raising program is multi-county or State-wide.

(3) Approval of the Administrator of the Extension Service, United States Department of Agriculture, or a designee, if the fund-raising program is multi-State of Nationwide.

(b) When used to promote 4-H educational programs, the 4-H Club name and emblem, subject to obtaining authorization as provided in these regulations, may be used on or associated with products and services sold in connection with 4-H fund-raising programs so long as no endorsement or the appearance of an endorsement of a commercial firm, product or service is either intended or effected. Tributes to 4-H contained on or associated with commercial products or services, when such products or services are used for fund-raising activities, are subject to the requirements of this paragraph. All moneys received from 4-H fund-raising programs, except those necessary to pay reasonable expenses, must be expended to further the 4-H educational programs.

Done at Washington, DC, this 20th day of October, 1986.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 86-[illegible] Filed 11-21-86; 8:45 am]

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CFR CHECKLIST

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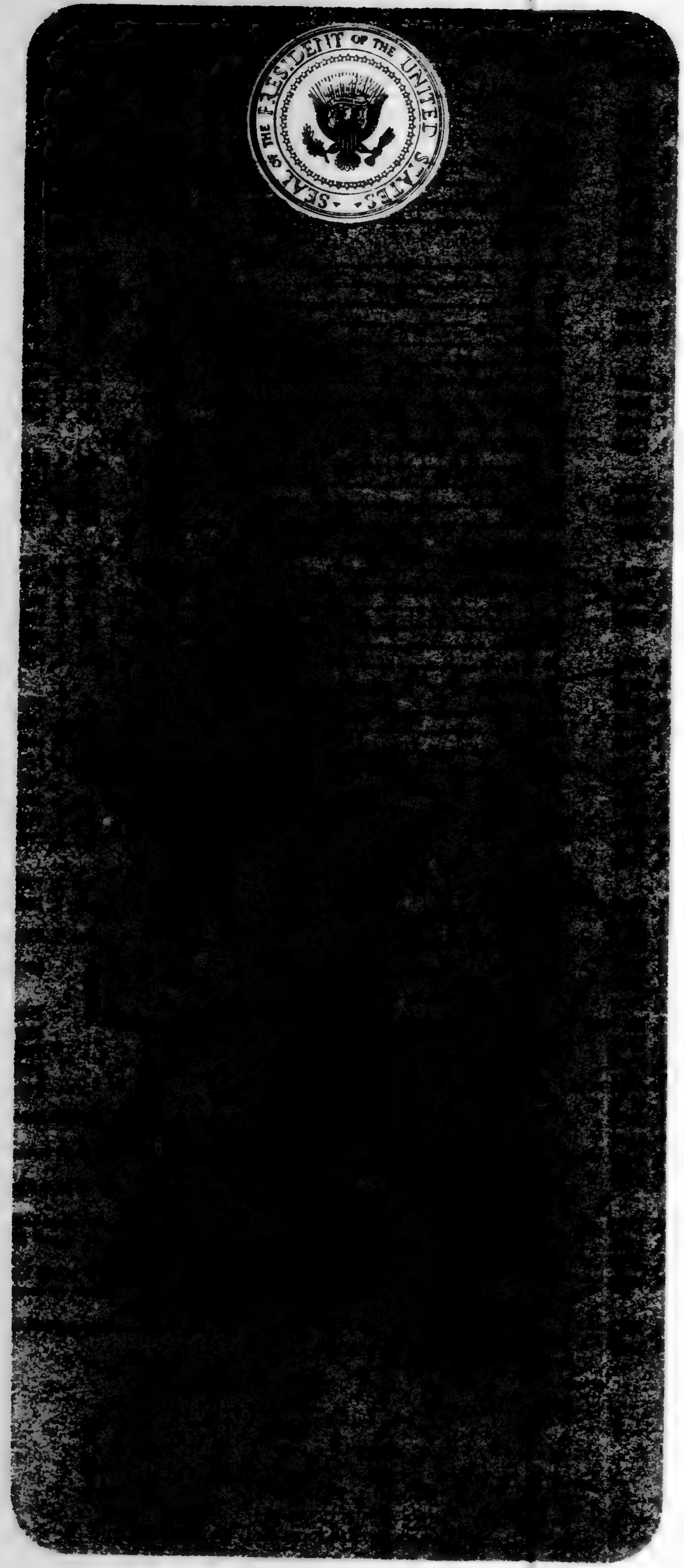

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Federal Register
Vol. 51, No. 227
Tuesday, November 25, 1986

Presidential Documents

Title 3—

The President

Proclamation 5575 of November 20, 1986

National Home Care Week, 1986

By the President of the United States of America

A Proclamation

Home health care is an American tradition. When illness strikes our loved ones, we wish to care for them at home unless hospital or other care is clearly needed. This care is supplemented by the many members of our system of home health care providers who give special assistance to families and can make the difference in preventing, postponing, or limiting institutional care.

Our home health care system includes untold numbers of churches, volunteer groups, private agencies, and families, as well as government programs. All Americans can be proud of this effort for those in need, and of this national commitment to our American values of strong family life and neighbor helping neighbor.

Let us continue to emphasize the benefits of home health care. Let us also give much-deserved thanks and recognition to the dedicated men and women of our home health care system who help us care for our loved ones, preserve their independence, and keep our families intact.

The Congress, by Public Law 99–535, has designated the week of November 30 through December 6, 1986, as "National Home Care Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of November 30 through December 6, 1986, as National Home Care Week, and I call upon the appropriate government officials, interested organizations and associations, and all Americans to observe this week with appropriate activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of November, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86–28691
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Presidential Documents

Proclamation 5576 of November 21, 1986

National Family Week, 1986

By the President of the United States of America

A Proclamation

Family life and the life of freedom are interdependent. In the arena of the family, children learn the most important lessons they will ever receive about their inherent dignity as individuals. They learn as well about the social and religious traditions that unite generation to generation, and they begin to acquire the values for which their ancestors sacrificed so much for freedom.

The centrality of the family is acknowledged even by those forces that would weaken or destroy it. Totalitarian societies see in the family a natural enemy, a bulwark of basic loyalties and inherited ideals that places allegiance in relationships that precede the claims of the state. Corrosive influences such as illegal drugs and pornography seek to substitute for the permanent bonds of family life a transient and ultimately false sense of happiness and fulfillment. Against these forces the family can often seem helpless and ineffective, but experience shows that it is in being tested that the strength of the family finally reveals itself. After all, the family has been with us from the dawn of human history, and there is no reason to believe that it will not endure.

National Family Week affords all Americans the opportunity to frankly face and assess the quality of family life in our Nation and to reflect on what each of us can do as a father, daughter, mother, son, or grandparent—as a member of a family—to strengthen this divine institution. Better yet, let us undertake this reflection as families and as a family of free people. As Chesterton said, "The family is the test of freedom." Let us make this another test America refuses to fail.

The Congress, by Public Law 99-94, has authorized and requested the President to issue a proclamation in observance of "National Family Week."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of November 23, 1986, as National Family Week. I invite the Governors of the several States, the chief officials of local governments, and all Americans to celebrate this week with appropriate ceremonies and activities. Taking note that this observance coincides with the celebration of Thanksgiving, I ask that all Americans give thanks to God on that day for the blessings of family life in our Nation and for His continued favor on our people.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of November, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-26692
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Rules and Regulations

Federal Register
Vol. 51, No. 227
Tuesday, November 25, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 140

Debt Collection; Income Tax Refund Offset

AGENCY: Small Business Administration.

ACTION: Final rule and request for comments.

SUMMARY: Section 2653 of the Deficit Reduction Act authorizes the Secretary of the Treasury to offset the income tax refund due an individual taxpayer who has a delinquent debt obligation to the Federal Government when other collection efforts have failed to recover the amount due. This rule provides that the Administrator of the Small Business Administration or his designee may notify the Internal Revenue Service that an individual is responsible for a past-due, legally enforceable debt so that an income tax refund offset can be effectuated. It also provides definitions and guidelines for uniform application of the process. Due to the immediate need for these procedures, the Small Business Administration publishes them as a final regulation with an invitation to comment.

DATES: Effective November 25, 1986, through December 31, 1987. Comments to be received by January 26, 1987.

ADDRESS: Send comments to: Fred Hanus, Financial Analyst, Office of Portfolio Management, Small Business Administration, 1441 L Street, NW., Room 813, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Fred Hanus, Financial Analyst, Office of Portfolio Management, Small Business Administration, 1441 L Street, NW., Room 813 Washington, DC 20416. Telephone (202) 653–6900 (This is *not* a toll free number).

SUPPLEMENTARY INFORMATION: These regulations are adopted to implement 31 U.S.C. 3720A. That statute authorized agencies to notify the Internal Revenue Service (IRS) that individuals owe the Agency past-due legally enforceable debts. The IRS may then withhold income tax overpayments that would otherwise be refunded to the individual. The overpayments are instead credited to the debt.

The IRS published regulations implementing the statute at 26 CFR 301.6402–6T. The Small Business Administration (SBA) relied on the IRS regulations in requesting offset against tax refunds payable from January 1, 1987, through December 31, 1987. In order to more fully explain procedures which are unique to SBA, these regulations are published.

The rule provides that before SBA will refer a debt to IRS, notice of that intention will be sent to the debtor. This notice will inform the debtor of the nature and amount of the debt and will advise that SBA will request IRS to offset any tax refund payable to the debtor unless full payment is made within 60 days. It will also advise the debtor of the right to review of the claim and provide the address at which to request a review. The debtor is presumed to receive the notice 3 days after mailing.

The rule requires a debtor requesting a review to do so in writing within 60 days of the notice from SBA. The request must state why the debt is not past due or is not legally enforceable and include any documents which the borrower wishes SBA to consider. A debtor requesting a review prior to the deadline has the full 60 days to submit additional evidence. However, the initial request for review must inform SBA of the intention to send additional documents.

Since this rule is procedural in nature and since the procedures themselves require that actual notice be sent to all persons affected thereby, it is not subject to the notice and public comments requirements of the Administrative Procedures Act. 5 U.S.C. 553(b)(A). However, in compliance with SBA's policy of allowing comment when possible, public comment is requested. If the authority for IRS offsets is extended, any comments will be considered before proposing any extension of the effective date of this final rule. See Pub. L. 98–369, section 2653c, 98 Stat. 1156.

Executive Order 12291

These regulations are not a major rule because they will not have an annual economic effect of $100 million or more. They will not increase costs to any entity nor adversely affect competition or employment in the United States.

Regulatory Flexibility Act Certification

SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities. SBA will notify the Internal Revenue Service only of debts owed by individuals. Therefore, no small entities will be affected.

Paperwork Reduction Act of 1980

This rule requires individuals to submit information if they wish to dispute SBA's claim. 13 CFR 140.6(e). This information requirement is part of an administrative action which begins when SBA sends a notice to a particular party as required by § 140.6(c). Therefore, this collection is exempt from the requirements of the Paperwork Reduction Act. 5 CFR 1320.3(c).

Accordingly 13 CFR Part 140 is amended as follows:

PART 140—DEBT COLLECTION

1. The Authority Citation is revised to read as follows:

Authority: Sec. 5(b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6), 31 U.S.C. 3720A.

2. Insert in the table of contents for Part 140 the new section title:

Sec.
140.6 Income tax refund offset.

3. Add a new, § 140.6 Income Tax Refund Offset, as follows:

§ 140.6 Income Tax Refund Offset.

(a) *Definitions.*

(1) Past Due. Any accelerated debt or any judgment debt is past due for the purpose of this section, and remains past due until paid in full. An unaccelerated debt is past due if, at the time of the notice required by paragraph (c), any part of the debt had been due, but not paid for at least 90 days. Such an unaccelerated debt remains past due until paid current.

(2) Legally Enforceable. A debt is legally enforceable if there is any forum, including State or Federal court or administrative agencies, in which SBA's claim would not be barred on the date of

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offset. Non-judgment debts are enforceable for ten years. Judgment debts are enforceable beyond ten years.

(3) Debt. A debt eligible for offset of tax overpayment is the principal amount loaned but not repaid or otherwise due, plus interest accrued to the date of referral, penalties, and costs, including any fee charged by the Internal Revenue Service. If a note has not been accelerated, the principal amount eligible for offset is limited to the principal portion of installments due, but not paid, as of the day of referral.

(4) Notice. Notice means the information sent to the debtor pursuant to paragraph (c) of this section. The information may be included on or with a bill or monthly statement. The date of notice is three days after mailing by SBA.

(5) Dispute. A dispute is a written statement that all or part of an alleged debt is not past due or is not legally enforceable supported by documentation or other evidence. Offers of compromise, repayment plans, requests for deferrals and other requests or offers are not disputes.

(b) *Referral.* SBA may request the IRS to offset any tax refund payable to an individual who has a past due, legally enforceable debt of $25.00 or more due to the Agency. SBA shall make the referral in the form and on the dates prescribed by the IRS.

(c) *Notice.* Before making a referral, SBA will mail a notice to the debtor's last known address stating that SBA intends to refer the debt to IRS for a tax refund deduction unless the debtor pays the past due amount or disputes the debt according to the procedures explained below within 60 days. The notice will include an address where disputes must be sent.

(d) *Other Preconditions.* Prior to referring a debt, SBA will:

(1) Disclose the loan status to a consumer reporting agency as provided by 31 U.S.C. 3711(f) and implemented in 13 CFR 140.3; and

(2) Satisfy any other conditions prescribed by the Secretary of the Treasury in 26 CFR 301.6402–6T or other regulations.

(e) *Disputes.* A debtor may request a review by SBA if the debtor believes that all or part of the debt is not past due or legally enforceable as follows:

(1) The debtor must send a written request for review to the address provided in the notice.

(2) The request must state the amount disputed and the reasons why the debtor believes that the debt is not past due or is not legally enforceable.

(3) The request must include any documents which the debtor wishes to be considered or state that additional information will be submitted within the time permitted.

(4) The request, and any additional information submitted pursuant to paragraph (e)(3) of this section, must be received by SBA, at the address stated in the notice, within 60 days of the notice provided for in paragraph (c) of this section.

(f) *Reviews.* The SBA field office responsible for servicing a debt will review disputes. SBA shall consider any documentation and arguments submitted by the debtor and agency records. A decision that any disputed portion of the debt is eligible to be referred shall be reviewed and concurred in by a supervisory official. SBA shall send a written notice of the decision to the debtor.

(g) *Change In Amount Due.* SBA will notify IRS of any reduction in the amount due within 10 business days of receipt of payments or notice of other reductions. SBA will not report increases in the amount due after the original referral. However, any fee charged by IRS may be imposed and added to the balance at the time of offset.

(h) *Prior Reviews.* Any debt which has been reviewed pursuant to this section, or any other section of this part, or which has been reduced to a judgment, may not be disputed except on the grounds of payments made, or events occurring, subsequent to the previous review.

(i) *Simultaneous Referrals.* SBA may refer a debt to IRS for a tax refund offset and take additional action at the same time or in sequence. Such additional action may include, but is not limited to, disclosing the debt to a consumer reporting agency as permitted by 31 U.S.C. 3711(f) and 13 CFR 140.3. When SBA makes simultaneous or sequential referrals, only one review is required, provided that:

(1) SBA gives notice of each intended action at least 60 days before the first action;

(2) The review granted is the broadest permitted for any of the proposed actions; and

(3) All the referrals occur within 6 months of the notice.

Dated: November 6, 1986.

Charles L. Heatherly,

Acting Administrator.

[FR Doc. 86–26124 Filed 11–24–86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Approval of Amendments to the Virginia Permanent Regulatory and Abandoned Mine Land Reclamation Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval, with certain exceptions, of proposed amendments submitted by the Commonwealth of Virginia as modifications to its permanent regulatory and abandoned mine land reclamation programs (hereinafter referred to as the Virginia programs) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of new regulations which, except for certain existing operations, would completely replace those now implementing Chapter 19, Title 45.1 of the Code of Virginia, known as the Virginia Coal Surface Mining Control and Reclamation Act of 1979, as amended.

EFFECTIVE DATE: November 25, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. William Thomas, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Big Stone Gap, Virginia 24219. Telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Virginia programs on December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval, can be found in the December 15, 1981 Federal Register (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15, and 946.25.

II. Submission of Amendment

In accordance with the provisions of 30 CFR 732.17(d) through (f), on March 25, 1985, the Director notified Virginia of the changes necessary to ensure that the approved regulatory program was no less effective than SMCRA and its implementing regulations as revised since December 15, 1981, when the Virginia program was originally approved. To comply with this letter and to meet other needs and State objectives, the Commonwealth elected to undertake a complete rewrite of the regulations governing its permanent regulatory and abandoned mine land reclamation programs.

By letter of November 8, 1985, Virginia submitted these regulations to OSMRE for review as a program amendment (Administrative Record No. VA 571). The proposed regulations, consisting of Parts 480–03–19.700 through 480–03–19.882, would replace parts V700 through V882 of the currently approved regulations, although the current performance standards of Subchapters VK and the current permit application content requirements of Subchapter VG would remain in effect in mines operating under existing permits until those permits are either renewed or significantly revised.

The Director announced receipt of this proposed amendment in the December 20, 1985 **Federal Register** (50 FR 51885–51886), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on its substantive adequacy. No comments were received by January 21, 1986, the close of the comment period, and since no one requested an opportunity to testify, the public hearing scheduled for January 8, 1986 was cancelled.

By letter of April 22, 1986 (Administrative Record No. VA 574), OSMRE notified Virginia of certain areas (the definitions of "affected area", "adverse physical impact", "fragile lands", "historic lands" and "valid existing rights"; permit application requirements with respect to processing times, lands unsuitable determinations, standards for approval of existing structures, ground water monitoring frequency, sites eligible for listing on the National Register of Historic Places, and subsidence control plans; award of costs and attorney's fees; sampling techniques for evaluation of revegetation success; success standards for cropland; consultation with forestry and wildlife agencies on certain revegetation success standards; augmentative practices; the static safety factor for backfilled steep slopes; spillway requirements for sedimentation ponds; and certain aspects of the administrative and judicial review process) in which the proposed amendment appeared to be less effective than the Federal regulations or in conflict with the decision in *In re: Permanent Surface Mining Regulation Litigation II* (Civil Action 79–1144, D.D.C. 1984 and 1985).

By letter dated May 27, 1986 (Administrative Record No. VA 575), Virginia responded to these concerns, which were further discussed at a May 28, 1986 meeting of OSMRE and Virginia personnel. The minutes of this meeting have been entered in the Virginia administrative record as Document No. VA 576.

By letter dated August 14, 1986 (Administrative Record No. VA 577), Virginia submitted additional proposed regulatory changes, policy statements and other clarifying materials designed to address all OSMRE concerns. OSMRE announced receipt of these materials in the September 9, 1986 **Federal Register** (51 FR 32106–32107) and, in the same notice, reopened the public comment period until September 24, 1986.

A summary of the comments received and the Director's responses to them can be found in the section of this notice entitled "Public Comment."

III. Director's Findings

1. General

After a thorough review pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director finds that the proposed amendments, with certain exceptions, as submitted on November 8, 1985, and as revised and clarified on August 14, 1986, are no less stringent than the requirements of SMCRA and no less effective than the corresponding Federal regulations.

In general, the revised regulations are identical to the corresponding Federal regulations, with minor changes to improve clarity and specificity and to replace Federal references and terms with State references and terms. Where deemed necessary or useful, Virginia has also incorporated specifications and design criteria formerly found in its technical handbook into the new regulations. The revised rules deviate from the Federal language to include this material, to reflect the decisions of the U.S. District Court for the District of Columbia in *In re: Permanent Surface Mining Regulation Litigation II* (hereinafter referred to as *In re: Permanent II*), to conform to State requirements concerning administrative procedures and reviews, and to retain certain previously approved alternatives ("State windows") to the Federal regulations. The Director finds that none of these changes alters the original findings, made at the time of program approval as required by section 503 of SMCRA and 30 CFR 732.15(b), concerning the State's authority and capability to implement, administer and enforce a program to regulate coal exploration and surface coal mining and reclamation operations (46 FR 61089–61090, December 15, 1981).

Only those provisions of particular interest are discussed below. Any provisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal rules, although the Director may require further changes in the future as a result of Federal regulatory revisions, court decisions and his ongoing oversight of the Virginia program. Provisions which are not discussed either contain language similar to the corresponding Federal rules or previously approved State alternatives, or involve provisions which add specificity or lack a Federal counterpart and which do not adversely affect other aspects of the program.

2. Implementation of Revised Regulations

Section 480–03–19.700.3 provides that, for existing operations permitted pursuant to Chapter 19, Title 45.1 of the Code of Virginia as approved on December 15, 1981, all provisions of the new Chapter 19 regulations (except the performance standards of Subchapter VK and those portions of Subchapter VG concerning the content of permit applications) being considered in this rulemaking will become effective when approved by the Secretary of the Interior. The rule states that performance standards and permit application content requirements will not apply to existing operations until the permits for such operations are either renewed or significantly revised. In the interim, the performance standards and permit application content requirements of the December 15, 1981 rules will apply to such operations. The Director interprets the references to the December 15, 1981 rules as meaning those rules as subsequently amended prior to this rulemaking, not just those rules as in existence on that date.

Virginia has assured the Director that it will not allow an operator to selectively revise a permit solely to take advantage of any less stringent provision in the revised rules being approved today. If an operator wishes to so revise a permit, he will need to incorporate all applicable provisions concerning the subject in question. In addition, Virginia rule 480–03–19.774.11(b) provides that the Division may at any time order reasonable revision of a permit to ensure compliance with the Act and regulatory program, thus authorizing the Division to require corrective and/or preventive measures where the need for such action arises.

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The Director, based on the understandings and interpretations set forth in this discussion, finds Virginia rule 480–03–19.700.3 to be consistent with the requirements of SMCRA and the Federal regulations.

3. Bonding

Virginia proposes to revise Subchapter VI of its bonding regulations to limit the use of incremental bonding to participants in the bond pool, which the Director approved earlier as an acceptable alternative bonding system under Section 509(c) of SMCRA (47 FR 41556–41558, September 21, 1982). On October 1, 1984, the U.S. District Court for the District of Columbia ruled that Federal regulatory provisions allowing the posting of bond for increments smaller than the entire area covered by the initial term of the permit were in conflict with section 509(a) of SMCRA (*In re: Permanent II*), and, on February 21, 1985, the Secretary suspended the remanded rules (50 FR 7274). However, the court's decision does not affect alternative bonding systems approved under Section 509(c) of SMCRA. Virginia rule 480–03–19.801.11(c) provides that commencement of participation in the bond pool constitutes an irrevocable commitment by the permittee to participate for the duration of surface mining operations on the entire permit area. Therefore, the Director finds that Virginia's revised bonding rules (Subchapter VJ) are no less effective than Subchapter J of the Federal regulations.

4. Definition of "Affected Area"

In *In re: Permanent II* (July 15, 1985), the U.S. District Court for the District of Columbia remanded the Federal definition of "affected area" at 30 CFR 701.5 because it excluded all public roads with more than incidental public use, an exclusion which the court found to be inconsistent with the definition of "surface coal mining and reclamation operations" at section 701(28) of SMCRA. Although, unlike the Federal rule, the Virginia definition of "affected area" in §480–03–19.700.5 does not contain criteria defining a public road, it does specifically exclude public roads, a term which is then defined separately in a manner similar to the criteria established in the Federal rule.

Therefore, in accordance with the court's decision, the Director finds that the Virginia definition of "affected area" is less stringent than SMCRA, and he is not approving it to the extent that it excludes public roads without regard to the effect of mining use upon the road. However, since the court did not remand the Federal definition of "public road" at 30 CFR 761.5, which contains the same criteria, the Director is not extending this finding to the similar State definition of "public road" in section 480–03–19.700.5.

5. Valid Existing Rights

The U.S. District Court for the District of Columbia remanded those portions of the definition of "valid existing rights" at 30 CFR 761.5 that substitute a broad constitutional takings test for the previously used "all permits" test (*In re: Permanent II*, March 22, 1985). The court ruled that the Secretary had failed to provide adequate notice and opportunity for comment under the Administrative Procedure Act. The proposed Virginia definition of "valid existing rights" in section 480–03–19.700.5 would replace the current "all permits" test with a constitutional takings test in a manner identical to that discussed above. Therefore, until OSMRE promulgates revised rules in accordance with the court's decision of otherwise determines the effect of the decision on State programs, the Director is deferring a final decision on the Virginia definition. In the interim, the current "all permits" test will remain the only approved means of determining the existence of valid existing rights in Virginia.

The court also remanded 30 CFR 761.11(h), which states that there will be no mining on certain Federal lands unless authorized by acts of Congress, on identical grounds, while indicating that the rule had serious substantive deficiencies as well. Proposed Virginia rule 480–03–19.761.11(h) is identical to the remanded Federal rule. Therefore, the Director finds the proposed rule to be less stringent than Section 522(e) of SMCRA, and he is not approving it.

6. Existing Structures

Virginia rule 480–03–19.773.16(c) lists the specific performance standards that various kinds of existing structures must meet to be considered in compliance with the performance standards of the State law and Subchapter VK of the regulations. The Federal regulations at 30 CFR 701.11(d), 773.15(c)(6) and 773.17(f) require, in effect, that existing structures meet performance standards no less effective than those of Subchapter K, the permanent program standards; however, the standards to be met are not specifically enumerated.

OSMRE initially expressed concern about the adequacy of certain provisions of the revised rules, and, on August 14, 1986, Virginia responded with further revisions and a letter of clarification. The Commonwealth explained that sections 480–03–19.773.16(c)(8)(ii) and 480–03–19.773.16(c)(9)(ii), which require that excess spoil fills and coal processing waste disposal areas achieve necessary stability with an adequate margin of safety, mean that the facility as a whole must meet the minimum static safety factors specified in Subchapter VK of the regulations. The proposed rules [sections 480–03–19.773.16 (c)(8)(vii) and (9) (viii)] also require that placement of additional spoil or waste on an existing disposal structure be in accordance with the applicable requirements of Subchapter VK. The Virginia letter explains that "applicable" was used in place of "all" since standards governing such activities as topsoil handling and spoil placement could not be applied to that portion of the existing structure already in place. All additional spoil or waste would be placed in accordance with all the performance standards of Subchapter VK relevant to that stage of construction. Based on these explanations, the Director finds that Virginia rule 480–03–19.773.16(c), as submitted on November 8, 1985, and as modified and clarified on August 14, 1986, is no less effective than the Federal regulations concerning existing structures.

7. Guidelines for Significant Permit Revisions

Both the Federal regulations at 30 CFR 774.13(b)(2) and the proposed Virginia rule at section 480–03–19.774.13 (b)(2) require the regulatory authority to establish guidelines setting forth the scale or extent of revisions for which all permit application information requirements and procedures shall apply. By letter of August 14, 1986, Virginia submitted a listing of the circumstances under which a revision would be considered significant (and for which all application requirements and procedures would apply) and those under which it would be considered minor. The Director finds that the guidelines proposed by Virginia comply with and are no less effective than the Federal requirements.

8. Ground Water Monitoring

Virginia rules 480–03–19.780.21 (i) and 480–03–19.784.14 (h) specify that ground water monitoring plans shall require the monitoring of ground water and the submission of monitoring data "on a quarterly basis or as otherwise specified by the Division." The Federal rules at 30 CFR 780.21(1) and 784.14(h) require monitoring and data submission *at least* every three months for each location, unless a lesser frequency is later approved during the reclamation phase pursuant to a demonstration made in accordance with 30 CFR 816.41 (c)(3) or 817.41 (c)(3).

By letter of August 14, 1986, Virginia clarified that the phrase "on a quarterly basis or as otherwise specified by the Division" means at least quarterly and that any other monitoring and reportng interval specified by the Division will be more frequent. Less frequent monitoring will be approved only after the conditions set forth by Virginia rules 480–03–19.816.41 (c)(6) of 480–03–19.817.41 (c)(6), the State counterparts to 30 CFR 816.41(c)(3) and 817.41(c)(3), have been met. Therefore, the Director finds that, with this clarification, the Virginia rules concerning ground water monitoring plans are no less effective than the Federal rules.

9. Subsidence

Virginia rule 480–03–19.784.20(f)(2) requires that subsidence control plans address damage to structures or facilities only to the extent required under State law. Section 480–03–19.817.121(c)(2) requires that permittees correct material damage to facilities or structures, or compensate their owners for the full diminution in value, only to the extent required under State law. As originally promulgated, the corresponding Federal regulations at 30 CFR 784.20(f)(2) and 817.121(c)(2) contained identical provisions. However, on February 21, 1985 (50 FR 7278), the Secretary suspended the phrase "to the extent required under State law" in order to comply with the U.S. District Court's decision in *In re: Permanent II* (October 1, 1984), which remanded this portion of the rule for failure to provide adequate notice and opportunity for comment.

Therefore, the Director finds that Virginia rules 480–03–19.784.20(f)(2) and 480–03–29.817.121(c)(2) are less effective than the corresponding Federal rules, as revised by the suspension, to the extent that the State rules contain the phrase "to the extent required under State law," and he is not approving the inclusion of this phrase within the State rules.

10. Award of Costs and Fees

Unlike the Federal regulations at 43 CFR 4.1294(b), Virginia rule 480–03–19.789.1(e) does not allow the award of appropriate costs and expenses (including attorney's fees) from the Commonwealth to any person who makes a substantial contribution to a full and fair determination of the issues in any administrative proceeding and who at least partially prevails on the merits of the issues. In an amendment approved June 6, 1983 (48 FR 25184–25186), Virginia revised section 45.1–249(e) of its statute to authorize the Division to issue regulations permitting such awards, but the regulations themselves have never been promulgated.

Therefore, the Director finds Viriginia rule 480–03–19.789.1(e) less effective than the corresponding Federal rule and he is requiring that the Commonwealth further amend its program to address this deficiency.

11. Revegetation

(a) The Federal rules at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring the parameters of ground cover, production and stocking be selected by the regulatory authority and be included in the approved regulatory program. The preamble to these rules (48 FR 40150, September 2, 1983) further explains that the selected sampling techniques and success standards are to be subject to review and public comment. On August 14, 1986, Virginia submitted its selected techniques for review as part of this program amendment.

(i) To measure ground cover, the Division prescribes use of the cross-hair sighting tube point-frequency method, as described on pages 30–33 of a publication of the Pennsylvania State University entitled "Measurement of Plant Cover to Evaluate Revegetation Success (Agronomy Series 67)," by J.V. Raelson and G.W. McKee. The Director finds that proper use of this technique as described in Attachment #1 of the August 14, 1986 letter will provide statistically valid results and that it is, therefore, no less effective than the Federal requirements. He notes, however, that the referenced publication discusses OSMRE standards for ground cover which have since been superseded and are no longer valid. Therefore, the portion concerning standards rather than techniques should be disregarded.

Virginia also proposed another ground cover sampling technique, a line transect method taken from USDA Agriculture Handbook No. 537 for Area IV, for use only on small mine sites. However, the excerpted description of this method in Attachment #2 of the August 14, 1986 letter fails to indicate how many transects must be taken, how this number will be determined, and how the transects will be located. Since this information is essential to ensuring the statistical validity of the results, the Director finds that the description of this method is less effective than the Federal requirements, and he is requiring that Virginia further amend its program to supply the deficient information. In addition, the first operation of the sample calcuation formula needs to be changed to indicate division rather than addition.

(ii) Virginia proposes to adopt the line transect method used by the Virginia Division of Forestry for measuring stocking rates. The Director finds that the procedure as described in Attachment #3 of the August 14, 1986 letter is not less effective than the Federal requirements. In doing so, the Director assumes that the starting point of the first transect will be determined in a random fashion.

(iii) Virginia also states that any U.S. Soil Conservation Service methodology will be acceptable for measuring the productivity of grazing land, pasture land and cropland. Since no procedures, actual methodology, or specific textual reference or excerpts are supplied, the Director if unable to evaluate the statistical validity of the result obtained through use of these unspecified methods. Therefore, he is requiring that Virginia further amend its program to more precisely define the allowable methodology for use in measuring productivity.

(b) The Federal rules at 30 CFR 816.116(b)(3)(i) and 817.116(b)(3)(i) require that the regulatory authority specify minimum stocking levels and planting arrangements on the basis of local and regional conditions after consultation with the State agencies responsible for the administration of forestry and wildlife programs. Virginia's August 14, 1986 letter documents that the State fish and wildlife agency and State and Federal forestry and conservation agencies were consulted in the preparation of stocking and plant arrangement standards for postmining land uses involving woody plants. The Director finds that Virginia has demonstrated that the required consultation has occurred; however, the correspondence submitted with the August 14, 1986 letter indicates that the publication detailing local and regional requirements for stocking and planting arrangements for land uses involving wildlife management, recreation, shelter belts and noncommercial forestland is still in preparation. In that Virginia rules 480–03–19.816(b)(3)(i) and (b)(3)(v)(A) require that the Division approve stocking rates, planting arrangements and species composition on the basis of local and regional conditions, the Director finds that they are no less effective than the Federal rules. However, he notes that implementation of these rules requires finalization and OSMRE approval of the document mentioned above.

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(c) The Federal rules at 30 CFR 816.116(b)(2) and 817.116(b)(2) provide that crop production shall be at least equal to that of a reference area or such other success standards as approved by the regulatory authority. Virginia rules 480–03–19.816.116(b)(2) and 480–03–19.817.116(b)(2), as revised on August 14, 1986, provide that, for areas developed for use as cropland, crop production on the revegetated area shall be at least equal to that of a reference area or the yields for reference crops from unmined lands, as determined from the current yield records of representative local farms in the surrounding area or from average county yields recognized by the U.S. Department of Agriculture. Because yields vary significantly among major soil types, the Director assumes that yield data comparisons will either involve sites with similar soils or be adjusted accordingly. On this basis, the Director finds the Virginia rules to be no less effective than the Federal regulations.

(d) On July 15, 1985, the U.S. District Court for the District of Columbia (*In re: Permanent II*) remanded 30 CFR 816.116(b)(3)(ii), 817.116(b)(3)(ii), 816.116(c)(4), and 817.116(c)(4) because the Secretary failed to demonstrate that the replanting of trees and shrubs and the repair of rills and gullies were normal conservation practices not requiring the restarting of the responsibility period. Since Virginia rules 480–03–19.816.116(b)(3)(ii), 480–03–19.817.116(b)(3)(ii), 480–03–19.816.116(c)(3), and 480–03–19.817.116(c)(3) are similar to the remanded Federal rules, the Director is not approving them to the extent that they could be interpreted as allowing the repair of rills and gullies and the replanting of trees and shrubs without restarting the responsibility period.

The court also remanded 30 CFR 816.116(c)(2) and 817.116(c)(2), which allowed measurement of revegetation success over a period other than the final two years of the responsibility period, because the Secretary failed to demonstrate that such a measurement would be an accurate evaluation of revegetation success. Since the Virginia rules at 480–03–19.816.116(c)(2) and 480–03–19.817.116(c)(2) contain similar provisions, the Director is deferring action on these rules until revised Federal regulations are promulgated in accordance with the court's decision. In the interim, the current requirements of V816.116(b)(1) and V817.116(b)(1) for measurement during the last two consecutive years of the responsibility period will remain in effect.

12. Backfilling and Grading

In approving the Virginia program, the Secretary found that the Virginia regulations allowing steep slope areas to be backfilled in a manner which would result in a static safety factor of less than 1.3 were acceptable under certain conditions, provided the Commonwealth did not allow any such sites to remain at a static safety factor of less than 1.2 (46 FR 61092–61093, December 15, 1981). By letter of August 14, 1986, Virginia reaffirmed this commitment, stating that, in applying the provisions of §§ 480–03–19.816.107(e) and 480–03–19.817.107(e), the Division would not approve any final backfilled area having a static safety factor of less than 1.2. Therefore, the Director finds that the Virginia rules are no less effective than the Federal regulations at 30 CFR 816.102(a)(3) and 817.102(a)(3).

13. Sedimentation Pond Spillways

Virginia rules 480–03–19.816.46(c)(2)(ii) and 480–03–19.817.46(c)(2)(ii) provide that temporary ponds may use a single spillway of the pipe and riser design if the riser is no less than 15 inches in diameter, the barrel is no less than 12 inches in diameter and a properly designed anti-vortex device and trash rack are securely installed on top of the riser. The Federal rules at 30 CFR 816.46(c)(2)(ii) and 817.46(c)(2)(ii) state that such ponds may use a single spillway if the spillway (1) is an *open* channel of nonerodible construction capable of maintaining sustained flows and (2) is not earth or grass-lined. The U.S. Soil Conservation Service (SCS) criteria for ponds of this size, as contained in Publication No. 378, "Ponds", specify that a single closed-conduit spillway may be used in place of separate principal and emergency spillways only if the conduit has a cross-sectional area of three square feet or more, an inlet that will not clog and an elbow designed to facilitate the passage of trash. Therefore, OSMRE requested that Virginia supply further justification for its proposal.

In its letter of August 15, 1986, Virginia notes that it has 20 years of regulatory experience with ponds with single closed-conduit spillways, and that it has observed little difficulty with these structures attributable to spillway design. Virginia currently require a minimum riser diameter of 21 inches and a minimum barrel diameter of 15 inches, which the revised rules would reduce to 15 and 12 inches, respectively. The Division has found the current minima to be excessive for haul road sumps and other temporary ponds serving a minimal drainage area. Virginia further notes that a West Virginia SCS publication, the "Erosion and Sediment Control Handbook for Urban Areas", waives the emergency spillway requirement for small ponds (those with an embankment height under 5 feet and a drainage area under 20 acres), and establishes a minimum riser diameter of 12 inches and a minimum barrel diameter of 8 inches for such structures.

In addition, Virginia emphasizes that the standards in question apply only to temporary ponds subject to frequent monitoring, and that the minimum sizes were selected for maintenance purposes and protection against clogging rather than to assure passage of a certain volume of runoff. Regardless of the minimum spillway size specifications, all ponds must be designed to meet effluent limitations and to safely discharge peak flows from the design storm. To minimize clogging potential, the proposed rule also requires anti-vortex devices and trash racks for all such ponds.

The Director finds Virginia's arguments persuasive, and he therefore finds that the Commonwealth's spillway design requirements are no less effective than the corresponding Federal rules.

14. Administrative and Judicial Review

(a) The Director finds that section 480–03–19.842.15 of the Virginia rules is inconsistent with the Federal regulations at 30 CFR 842.15(d) in that it does not provide that the DMLR Director's decisions on citizen requests for review of an inspector's decision not to inspect or take enforcement action with respect to any violation alleged by that citizen are appealable in accordance with section 9–6.14.12 of the Virginia Administrative Process Act. Similarly, the Director finds that section 480–03–19.843.12 of the Virginia rules is less effective than the Federal regulations at 30 CFR 843.12(i) in that the Commonwealth fails to specify that the DMLR Director's decision on whether to allow an extension of the abatement period for a violation beyond 90 days is also formally appealable. By letter of August 14, 1986, Virginia agreed to submit further amendments to correct these deficiencies, as the Director is requiring in this notice.

(b) Section 480–03–19.843.15 of the Virginia rules contains no counterpart to the Federal regulations at 30 CFR 843.15(b), which provide that a notice or order ceasing mining shall not expire after 30 days if the permittee or operator waives his or her right to an informal hearing or consents to holding the hearing more than 30 days after issuance of the notice or order.

Therefore, the Director finds the Virginia rules to be less effective than the Federal rules, and he is requiring that the Commonwealth further amend its program to include such a specification.

(c) The Director finds that Virginia rules 480–03–19.845.17(b) and 480–03–19.845.18(b)(1) are less effective than the Federal regulations at 30 CFR 845.17(b)(2) and 845.18(b)(1) in that they do not specify that the failure of the Division to serve any proposed assessment or to hold any requested assessment conference within the prescribed time limits shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty is assessed can prove actual prejudice as a result of the delay, and unless that person makes a timely objection to the delay. Therefore, he is requiring that Virginia further amend its program to include similar provisions.

IV. Public Comment

As discussed in the section of this notice entitled "Submission of Amendment", the Director solicited public comment and provided opportunity for a public hearing on the proposed amendment. No comments were received, and since no one requested an opportunity to testify at a public hearing, no hearing was held.

Pursuant to section 503(b) of SMCRA, 30 CFR 732.17(h)(10)(i), 30 CFR 884.14(a)(2) and 30 CFR 884.15, comments were also solicited from various Federal agencies with an actual or potential interest in the Virginia programs. The Environmental Protection Agency and the Mine Safety and Health Administration concurred in the amendments. A summary of other comments received and the Director's responses to them appears below:

1. The U.S. Fish and Wildlife Service supported the amendments, but noted that it had never received notification of receipt of permit applications, nor had any other type of coordination occurred. The Director has taken note of these concerns and will monitor compliance with all requirements of the Virginia programs as part of his ongoing oversight of those programs.

2. The Advisory Council on Historic Preservation (ACHP) supported the proposed amendment, but expressed concern that the program as a whole would not provide adequate protection for historic lands. Specifically, the ACHP stated that the revised rules lack (1) criteria for the denial of permits where the operation would adversely affect any publicly owned park or any place included in the National Register of Historic Places (NRHP) and (2) provisions for the conditioning of permits to require that properties eligible for listing be protected or subjected to documentation or data recovery prior to destruction.

With respect to the ACHP's first concern, Virginia rule 480–03–19.773.15(c)(3)(ii) forbids the approval of permits subject to the prohibitions or limitations of section 480–03–19.761.11, which, in paragraph (c), prohibits any mining which would adversely affect any publicly owned park of any place included in the NRHP unless the mining is approved by the Division and the agency with jurisdiction over the park or place.

With respect to sites eligible for listing on the NRHP, the Director notes that Virginia rules 480–03–19.773.12 and 480–03–19.773.13(a)(3)(ii) require compliance with the National Historic Preservation Act (NHPA) and coordination of permit application review with the State Historic Preservation Officer. Section 480–03–19.773.15(a)(1) grants the Division the authority to grant, require modification of, or deny any permit application. In addition, all grant agreements providing funding for the Virginia programs contain a clause requiring the Commonwealth to assist the Secretary in his duty to comply with the NHPA. Hence, the Director believes Virginia's program provisions concerning historic sites are consistent with Federal provisions.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendments submitted by Virginia on November 6, 1985, as revised and clarified on August 14, 1986, with the exception of those provisions determined to be inconsistent with SMCRA, the Federal regulations or court decisions concerning those regulations. In addition, as indicated in Findings 10, 11(a)(1), 11(a)(iii) and 14, he is requiring that Virginia submit a number of further regulatory program amendments. Pursuant to 30 CFR 732.17 the Director has notified the Commonwealth that certain regulatory program amendments will be necessary. The Federal rules at 30 CFR Part 946 codifying decisions concerning the Virginia programs are being amended to implement this decision. The final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

The Director is disapproving the following provisions or potential interpretations, as indicated, of the proposed amendment:

(1) As discussed in Finding 4, the definition of "affected area" at section 480–03–19.700.5 to the extent that it could be interpreted as excluding all public roads with more than incidental public use;

(2) As discussed in Finding 5, section 480–03–19.761.11(h) in its entirety; and

(3) As discussed in Finding 9, the phrase "to the extent required under State law" as contained in sections 480–03–19.784.20(f)(2) and 480–03–19.817.121(c)(2).

Pending promulgation of revised Federal regulations in accordance with the decisions of the U.S. District Court for the District of Columbia in *In re: Permanent II,* the Director also is not currently approving the following provisions or potential interpretations, as indicated, of the proposed amendment:

(1) As discussed in Finding 5, the definition of "valid existing rights" at section 480–03–19.700.5;

(2) As discussed in Finding 11(d), sections 480–03–19.816.116(b)(3)(ii), 480–03–19.817.116(b)(3)(ii), 480–03–19.816.116(c)(3) and 480–10–19.817.116(c)(3) to the extent that they could be interpreted as allowing the replanting of trees and shrubs and the repair of rills and gullies without requiring the restarting of the five-year responsibility period; and

(3) As discussed in Finding 11(d), sections 480–03–19.816.116(c)(2) and 480–03–19.817.116(c)(2) to the extent that they would allow the measurement of revegetation success during a period other than the final two years of the responsibility period.

Effect of Director's Decision

Section 503 of SMCRA establishes that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, the Secretary's regulations at 30 CFR 732.17(a) require that any alteration of an approved State program must be submitted to OSMRE as a program amendment. Thus, any changes to the program are not enforceable by the State until approved by the Director. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Virginia program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Virginia of only such provisions.

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VI. Additional Determinations

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 946

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: November 19, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

PART 946—VIRGINIA

30 CFR Part 946 is amended as follows:

1. The authority citation for Part 946 continues to read as follows:

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 946.10 is revised to read as follows:

§ 946.10 State regulatory program approval.

The Virginia regulatory program, as submitted on March 3, 1980, as amended and clarified on June 16, 1980, as resubmitted on August 13, 1981, and as clarified in a meeting with OSMRE on September 21 and 22, 1981, and in a letter to the director of the Office of Surface Mining on October 15, 1981, is conditionally approved, effective December 15, 1981. Effective January 1, 1985, the Department of Mines, Minerals and Energy replaces the Department of Conservation and Economic Development as the regulatory authority in Virginia for all surface coal mining and reclamation operations and all exploration operations on non-Federal and non-Indian lands. Copies of the approved program as amended are available for review at the following locations:

(a) Virginia Division of Mined Land Reclamation, 622 Powell Avenue, Big Stone Gap, Virginia 24219.

(b) Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Room 214, Powell Valley Square Shopping Center, Route 23, Big Stone Gap, Virginia 24219.

(c) Office of Surface Mining Reclamation and Enforcement, Flannagan and Carroll Streets, Lebanon, Virginia 24266.

(d) Office of Surface Mining Reclamation and Enforcement, Room 5315, 1100 L Street NW., Washington, DC 20240.

3. A new paragraph (b) is added to § 946.12 to read as follows:

§ 946.12 State program provisions and amendments disapproved.

* * * * * *

(b) The following provisions of the coal surface mining reclamation regulations promulgated pursuant to Chapter 19, Title 45.1 of the Code of Virginia (1950), as submitted on November 8, 1985, as hereby disapproved:

(1) The definition of "affected area" in section 480–03–19.700.5 to the extent that it could be interpreted as excluding all public roads with more than incidental public use;

(2) Section 480–03–19.761.11(h), which prohibits mining on certain Federal lands, in its entirety; and

(3) The phrase "to the extent required under State law" as contained in sections 480–03–19.784.20(f)(2) and 480–03–19.817.121(c)(2).

4. A new paragraph (r) is added to § 946.15 to read as follows:

§ 946.15 Approval of regulatory program amendments.

* * * * *

(r) The following amendments to the Virginia permanent regulatory program, as submitted on November 8, 1985, and as revised and clarified on August 14, 1986, are approved effective [November 25, 1986] with the exception of the provisions identified in § 946.12(b) and paragraphs (r)(1)(i) through (r)(1)(iii) of this section:

(1) Except as provided in section 480–03–19.700.3, replacement of all existing coal surface mining reclamation regulations promulgated pursuant to Chapter 19, Title 45.1 of the Code of Virginia (1950) with a new set of regulations, consisting of Parts 480–03–19.700 through 480–03–19.850, developed pursuant to the same statutory authority. This approval is conditional upon final promulgation of these regulations in a form substantively identical to that in which they were submitted on November 8, 1985, and revised on August 14, 1986. Pending promulgation of revised Federal regulations, the following provisions are not being approved at this time:

(i) The definition of "valid existing rights" in section 480–03–19.700.5,

(ii) Sections 480–03–19.816.116(b)(3)(ii), 480–03–19.817.116(c)(3)(ii), 480–03–19.816.116(c)(3) and 480–03–19.817.116(c)(3) to the extent that they could be interpreted as allowing the replanting of trees and shrubs and the repair of rills and gullies without requiring the restarting of the five-year responsibility period, and

(iii) Sections 480–03–19.816.116(c)(2) and 480–03–19.817.116(c)(2) to the extent that they would allow the measurement of revegetation success during a period other than the final two years of the responsibility period.

(2) Certain techniques for measuring revegetation success as submitted on August 14, 1986; and

(3) Guidelines for determining when an application for a permit revision must be handled in accordance with all permit application informational and procedural requirements, as submitted on August 14, 1986.

5. Section 946.16 is added to read as follows:

§ 946.16 Required program amendments.

Pursuant to 30 CFR 732.17, Virginia is required to submit the following proposed program amendments by the dates specified:

(a) By September 1, 1987, Virginia shall submit revisions to its coal surface mining reclamation regulations at section 480–03–19.789.1(e) to provide for the award of appropriate costs and expenses (including attorney's fees) from the Commonwealth to any person who makes a substantial contribution to a full and fair determination of the issues in any administrative proceeding and who at least partially prevails on the merits of the issues.

(b) By September 1, 1987, Virginia shall revise its ground cover measurement technique for small areas, as contained in Attachment #2 of the portion of the August 14, 1986 submission concerning revegetation issues, to specify how many transects must be taken, how this number will be determined, and how the transects will be located on the ground.

(c) By September 1, 1987, Virginia shall submit materials detailing the sampling techniques to be used to measure the productivity of grazing land, pasture land and cropland.

(d) By September 1, 1987, Virginia shall submit revisions to its coal surface mining reclamation regulations at section 480–03–19.842.15 or otherwise propose to amend its program to provide that the Director's decisions on citizen requests for review of an inspector's decision not to inspect or take enforcement action with respect to any violation alleged by that citizen are appealable in accordance with section 9–6.14:12 of the Virginia Administrative Process Act.

(e) By September 1, 1987, Virginia shall submit revisions to its coal surface mining reclamation regulations at § 480–03–19.843.12 or otherwise propose to amend its program to specify that the Director's decision on whether to allow an extension of the abatement period for a violation beyond 90 days is formally appealable in accordance with the Virginia Administrative Process Act.

(f) By September 1, 1987, Virginia shall submit revisions to its coal surface mining reclamation regulations at section 480–03–19.843.15 or otherwise propose to amend its program to provide that a notice or order ceasing mining shall not expire after 30 days if the permittee or operator waives his or her right to an informal hearing or consents to holding the hearing more than 30 days after issuance of the notice or order.

(g) By September 1, 1987, Virginia shall submit revisions to its coal surface mining reclamation regulations at sections 480–03–19.845.17(b) and 480–03–19.845.18(b)(1) or otherwise propose to amend its program to specify that the failure of the Division to serve any proposed assessment or to hold any requested assessment conference within the prescribed time limits shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty is assessed can prove actual prejudice as a result of the delay and unless that person makes a timely objection to the delay.

6. 30 CFR 946.20 is revised to read as follows:

§ 946.20 Abandoned mine land reclamation plan approval.

Virginia Abandoned Mine Land Reclamation Plan as submitted on September 22, 1980, is approved effective December 15, 1981. Copies of the approved plan are available for review at the following locations:

(a) Virginia Division of Mined Land Reclamation, 622 Powell Avenue, Big Stone Gap, Virginia 24219.

(b) Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Room 214, Powell Valley Square Shopping Center, Route 23, Big Stone Gap, Virginia 24219.

(c) Office of Surface Mining Reclamation and Enforcement, Room 5315, 1100 L Street NW., Washington, DC 20240.

7. Section 946.25 is added to read as follows:

§ 946.25 Approval of abandoned mine land reclamation plan amendments.

(a) The following amendment as submitted on November 8, 1985 is approved effective November 25, 1986: Replacement of Subchapter VR of the Virginia coal surface mining reclamation regulations promulgated under Chapter 19, Title 45.1 of the Code of Virginia (1950) with a new Subchapter VR, consisting of Parts 480–03–19.874 through 480–03–19.882, promulgated under the same statutory authority. This approval is conditional upon final promulgation of these regulations in a form substantively identical to that in which they were submitted on November 8, 1985.

(b) [Reserved]

[FR Doc. 86–26524 Filed 11–24–86; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 99

Procedures for States and Localities to Request Indemnification

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: The Department of Defense (DoD), Office of Personnel Management (OPM), and Central Intelligence Agency (CIA) conduct national security investigations of individuals for the purpose of determining eligibility for access to classified information or for assignment to or retention in sensitive national security duties. An essential element of these national security investigations is the review of State and local criminal history record information. While many States and localities have voluntarily provided criminal history record information to the DoD, OPM, and CIA, a significant number, because of their laws or policies, have not done so. Congress, therefore, enacted 5 U.S.C. 9101 which establishes a mandatory mechanism for access to such records for the purpose described above. The unique combination of national security concerns, issues of states' rights, and a need to respect the privacy rights of Americans, led Congress to include an indemnification provision in the law. These regulations describe who may request an indemnification agreement and prescribe the mandatory provisions of the Uniform Federal Agency Indemnification Agreement, the procedures for requesting the agreement, and the procedures for giving notice of claims within the scope of the agreement.

EFFECTIVE DATE: December 26, 1986.

FOR FURTHER INFORMATION CONTACT: Edward J. Shapiro, Assistant General Counsel (Legal Counsel), Department of Defense, Washington, DC 20301–1600, Telephone (202) 697–2714.

SUPPLEMENTARY INFORMATION: These procedures were prepared by a working group established by the U.S. Department of Justice and represent the interpretation of DoD, OPM, and CIA of Title VII of Pub. L. 99–169.

List of Subjects in 32 CFR Part 99

National security investigations, Indemnification.

Accordingly, Title 32, Chapter I, Subchapter B is amended to add Part 99 to read:

PART 99—PROCEDURES FOR STATES AND LOCALITIES TO REQUEST INDEMNIFICATION

Sec.
99.1 Scope and purpose.
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Appendix—Addresses of Relevant U.S. Government Agencies

Authority: Access to Criminal History Records for National Security Purposes, of The Intelligence Authorization Act for Fiscal Year 1986, Pub. L. No. 99–169, Secs. 801–803, 99 Stat. 1002, 1008–1011 (1985) (codified in part at 5 U.S.C. § 9101).

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§ 99.1 Scope and purpose.

(a) The Department of Defense (DoD), Office of Personnel Management (OPM), or Central Intelligence Agency (CIA) has the right to criminal history information of States and local criminal justice agencies in order to determine whether a person may:

(1) Be eligible for access to classified information;

(2) Be assigned to sensitive national security duties; or

(3) Continue to be assigned to national security duties.

(b) This part sets out the conditions under which the DoD, OPM, or CIA may sign an agreement to indemnify and hold harmless a State or locality against claims for damages, costs, and other monetary loss caused by disclosure or use of criminal history record information by one of these agencies.

(c) The procedures set forth in this part do not apply to situations where a Federal agency seeks access to the criminal history records of another Federal agency.

(d) By law these provisions implementing 5 U.S.C. 9101 (b)(3) shall expire December 4, 1988, unless the duration of said section is extended or limited by Congress.

§ 99.3 General definitions.

For the purposes of §§ 99.1 through 99.9 of this part:

Criminal history record information: information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, information, or other formal criminal charges and any disposition arising therefrom, sentencing, correction supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system. The term does not include those records of a State or locality sealed pursuant to law from access by State and local criminal justice agencies of that State or locality.

Criminal justice agency: Federal, State, and local agencies including (a) courts, or (b) a government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice.

Department of Defense: the Defense Investigative Service, National Security Agency, Naval Investigative Service, Air Force Office of Special Investigations, and Army Intelligence and Security Command.

Federal agency: the Department of Defense, the Office of Personnel Management, or the Central Intelligence Agency, or any other Federal agency subsequently authorized by Congress to obtain access to criminal history records information.

Locality: any local government authority or agency or component thereof within a State having jurisdiction over matters at a county, municipal or other local government level.

State: any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of Pacific Islands, and any other territory or possession of the United States.

§ 99.5 Eligibility for indemnification.

As provided for under 5 U.S.C. 9101(b)(3), a State or locality may request an indemnification agreement.

(a) To be eligible for an indemnification agreement a State or locality must have had a law in effect on December 4, 1985 that prohibited or had the effect of prohibiting the disclosure of criminal history record information to the DoD, OPM, or CIA.

(b) A State or locality is also eligible for an indemnification agreement if it meets the conditions of paragraph (a) of this section, but nevertheless provided criminal history record information to the DoD, OPM, or CIA on or before December 4, 1985.

§ 99.7 Procedures for requesting an indemnification agreement.

When requesting an indemnification agreement, the State or locality must notify each Federal agency as appropriate, at the address listed in the appendix to this part, of its eligibility of an indemnification agreement. It must also:

(a) Certify that on December 4, 1985, the State or locality had in effect a law which prohibited or had the effect of prohibiting the disclosure of criminal history record information to the DoD, OPM, or CIA; and

(b) Append to the request for an indemnification agreement a copy of such law.

§ 99.9 Terms of indemnification.

The terms of the Uniform Federal Agency Indemnification Agreement (UFAIA), must conform to the following provisions:

(a) Eligibility: The State or locality must certify that its law prohibits or has the effect of prohibiting the disclosure of criminal history record information to the DoD, OPM, or CIA for the purposes described in section 910.101(a) and that such law was in effect on December 4, 1985.

(b) *Liability:*

(1) The Federal agency agrees to indemnify and hold harmless the State or locality from any claim for damages, costs and other monetary loss arising from the disclosure or negligent use by the DoD, OPM, or CIA of criminal history record information obtained from that State or locality pursuant to 5 U.S.C. 9101(b). The indemnification will include the officers, employees, and agents of the State or locality.

(2) The indemnification agreement will not extend to any act or omission prior to the transmittal of the criminal history record information to the Federal agency.

(3) The indemnification agreement will not extend to any negligent acts on the part of the State or locality in compiling, transcribing or failing to delete or purge any of the information transmitted.

(c) Consent and access requirements:

(1) The Federal agency when requesting criminal history record information from the State or locality for the release of such information will attest that it has obtained the written consent of the individual under investigation after advising him or her of the purposes for which that information is intended to be used.

(2) The Federal agency will attest that it has advised that individual of the right to access that information.

(d) Purpose requirements: The Federal agency will use the criminal history record information only for the purposes stated in § 910.101(a).

(e) Notice, litigation and settlement procedures:

(1) The state or locality must give notice of any claim against it on or before the 10th day after the day on which claim against it is received, or it has notice of such a claim.

(2) The notice must be given to the Attorney General and to the United States Attorney of the district embracing the place wherein the claim is made.

(3) The Attorney General shall make all determinations regarding the settlement or defense of such claims.

Appendix—Addresses of Relevant U.S. Government Agencies

Department of Defense, Office of the General Counsel, Room 3E988, Washington, DC 20301–1600

Office of Personnel Management, Office of Federal Investigations, P.O. Box 886, Washington, DC 20044

Central Intelligence Agency, Attention: Office of General Counsel, Washington, DC 20505

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

November 18, 1986.

[FR Doc. 86–26325 Filed 11–24–86; 8:45 am]

BILLING CODE 3810-01-M

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32 CFR Part 150

Courts of Military Review; Rules of Practice and Procedure

AGENCY: DOD.

ACTION: Final rule.

SUMMARY: This part publishes the rules of practice and procedure for courts of military review, pursuant to the Uniform Code of Military Justice, Article 66(f) (10 U.S.C. 866). When the title "The Judge Advocate General" is used in a rule, it includes the General Counsel of the Department of Transportation when the Coast Guard is not operating as a service in the Navy. This part applies to The Judge Advocates General of the Department of the Air Force, the Army, and the Navy, and the General Counsel of the Department of Transportation.

EFFECTIVE DATE: March 1, 1985.

FOR FURTHER INFORMATION CONTACT: Captain Ronnie D. James, HQ USAF/JAJM, Bolling Air Force Base, Washington, DC 20332–6128, telephone (202) 767–1539.

SUPPLEMENTARY INFORMATION: This revision, in conformity with the Military Justice Act of 1983 and Manual for Courts-Martial 1984, changes past practice and procedures in several significant areas, and alters other procedures and terminology to conform to federal practice; § 150.21 establishes procedures for government appeals; § 150.14 provides for waiver or withdrawal of appellate review; §§ 150.10, 11, and 12 consolidate and rearrange former §§ 150.10, 150.11, 150.12 and 150.15; § 150.13 permits notice to be filed with the court instead of The Judge Advocate General; § 150.19 extends time for reconsideration of a decision from 10 to 20 days, but permits time to begin running upon service on counsel instead of the accused; § 150.20 details requirements for extraordinary writs; § 150.15 conforms terminology concerning briefs to federal practice; § 150.17 styles enbanc requests as suggestions instead of motions.

List of Subjects in 32 CFR Part 150

Administrative practice and procedure; Courts; Military law.

Accordingly, 32 CFR Part 150 is revised to read as follows:

SUBCHAPTER C—REGULATIONS PERTAINING TO MILITARY JUSTICE

PART 150—COURTS OF MILITARY REVIEW RULES OF PRACTICE AND PROCEDURE

Sec.
150.1 Name and seal.
150.2 Jurisdiction.
150.3 Scope of review.
150.4 Quorum.
150.5 Place for filing papers.
150.6 Signing of papers.
150.7 Computation of time.
150.8 Qualification of counsel.
150.9 Conduct of counsel.
150.10 Request for appellate defense counsel.
150.11 Assignment of counsel.
150.12 Retention of civilian counsel.
150.13 Notice of appearance of counsel.
150.14 Waiver or withdrawal of appellate review.
150.15 Assignments of error and briefs.
150.16 Oral arguments.
150.17 En banc proceedings.
150.18 Orders and decisions of the court.
150.19 Reconsideration.
150.20 Petitions for extraordinary relief, answer, and reply.
150.21 Appeals by the United States.
150.22 Petitions for new trial.
150.23 Motions.
150.24 Continuances and interlocutory matters.
150.25 Suspension of rules.
150.26 Internal rules.
150.27 Recording, photographing, broadcasting, or telecasting of hearings.
150.28 Format for direction for review.
150.29 Format for assignment of errors and brief on behalf of accused.

Authority: Sec. 866, 70A Stat 69; 10 U.S.C. 866.

Editorial Note: This regulation appears in the following DoD Joint Publications: AFR 111–4; AR 27–13; NAVSO P–2319; CGM 5800.5B, 1 March 1985.

§ 150.1 Name and seal.

(a) The titles of the Courts of Military Review of the respective services are:

(1) United States Army Court of Military Review.

(2) United States Navy-Marine Court of Military Review.

(3) United States Air Force Court of Military Review.

(4) United States Coast Guard Court of Military Review.

(b) Each Court is authorized a seal in the discretion of the Judge Advocate General concerned. The design of such seal shall include the title of the Court.

§ 150.2 Jurisdiction

(a) The jurisdiction of the Court is as follows:

(1) Review Under Article 66. All cases of trial by court-martial in which the sentence as approved extends to:

(i) Death; or

(ii) Dismissal of a commissioned officer, cadet or midshipman, dishonorable or bad conduct discharge, or confinement for one year or longer; and the accused has not waived or withdrawn appellate review.

(2) Review upon Direction of the Judge Advocate General Under Article 69. All cases of trial by general court-martial in which there has been a finding of guilty and a sentence

(i) For which Article 66 does not otherwise provide appellate review, and

(ii) Which the Judge Advocate General forwards to the Court for review, and

(iii) In which the accused has not waived or withdrawn appellate review.

(3) Review Under Article 62. All cases of trial by court-martial in which a punitive discharge may be adjudged and a military judge presides, and in which the Government appeals an order or ruling of the military judge that terminates the proceedings with respect to a charge or specification or excludes evidence that is substantial proof of a fact material to the proceedings.

(4) Review Under Article 73. All petitions for a new trial in cases of trial by court-martial which are referred to the Court by the Judge Advocate General.

(b) Extraordinary Writs. The Court may, in its discretion, entertain petitions for extraordinary relief including, but not limited to, writs of mandamus, writs or prohibition, writs of habeas corpus, and writs or error coram nobis.

(c) Effect of Sections on Jurisdiction. Nothing in these sections shall be construed to extend or limit the jurisdiction of the Court of Military Review as established by law.

§ 150.3 Scope of review.

In cases referred to it for review pursuant to Article 66, the Court may act only with respect to the findings and sentence as approved by the convening authority. In determining an appeal under Article 62, the Court may act only with respect to matters of law. The Court may, in addition, review such other matters and take such other action as it determines to be proper under substantive law.

§ 150.4 Quorum.

(a) *In panel.* When sitting in panel, a majority of the judges assigned to that panel constitutes a quorum for the purpose of hearing or determining any matter referred to the panel. The determination of any matter referred to the panel shall be according to the opinion of a majority of the judges participating in the decision. However,

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any judge present for duty may issue all necessary orders concerning any proceedings pending on panel and any judge present for duty, or a Clerk of Court or Commissioner or whom the Court has delegated authority, may act on uncontested motions, provided such action does not finally dispose of a petition, appeal, or case before the Court.

(b) *En banc.* When sitting as a whole, a majority of the judges of the Court constitutes a quorum for a purpose of hearing and determining any matter before the Court. The determination of any matter before the Court shall be according to the opinion of a majority of the judges participating in the decision. In the absence of a quorum, any judge present for duty may issue all necessary orders concerning any proceedings pending in the Court preparatory to hearing or decision thereof.

§ 150.5 Place for filing papers.

When the filing of a notice of appearance, brief, or other paper in the office of a Judge Advocate General is required by these rules, such papers shall be filed in the office of the Judge Advocate General of the appropriate armed force. If transmitted by mail or other means, they are not filed until received in such office.

§ 150.6 Signing of papers.

All formal papers shall be signed and shall show, typewritten or printed, the signer's name, address, military grade (if any), and the capacity in which the paper is signed. Such signature constitutes a certification that the statements made therein are true and correct to the best of the knowledge, information, and belief of the person signing the paper and that the paper is filed in good faith and not for purposes of unnecessary delay.

§ 150.7 Computation of time.

In computing any period of time prescribed or allowed by these rules, by order of the Court, or by any applicable statute, the day of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.

§ 150.8 Qualification of counsel

(a) *All counsel.* Counsel in any case before the Court shall be a member in good standing of the bar of a Federal Court, the highest court of a State or another recognized bar.

(b) *Military counsel.* Assigned appellate defense and appellate government counsel shall, in addition, be qualified in accordance with Articles 27(B)(1) and 70(a), Uniform Code of Military Justice.

(c) *Admission.* Each Court may license counsel to appear before it. Otherwise, upon entering an appearance, counsel shall be deemed admitted *pro hac vice,* subject to filing a certificate setting forth required qualifications if directed by the Court.

(d) *Suspension.* No counsel may appear in any proceeding before the Court while suspended from practice by the Judge Advocate General of the service concerned.

§ 150.9 Conduct of counsel.

The conduct of counsel appearing before the Court shall be in accordance with rules of conduct prescribed pursuant to Rule for Courts-Martial 109 by the Judge Advocate General of the service concerned. In addition, the Court may exercise its inherent power to regulate counsel appearing before it, including the power to remove on an ad hoc basis counsel misbehaving before or in relation to their appearance before the Court. Conduct deemed by the Court to warrant consideration of suspension or other professional discipline shall be reported by the Court to the Judge Advocate General concerned.

§ 150.10 Request for appellate defense counsel.

An accused may be represented before the court by appellate counsel detailed pursuant to Article 70(a) or by civilian counsel provided by the accused, or both. An accused who does not waive appellate review pursuant to Rule for Courts-Martial 1110 shall, within 10 days after service of a copy of the convening authority's action under Rule for Courts-Martial 1107(h), forward to the convening authority or the Judge Advocate General.

(a) A request for represenation by military appellate defense counsel, or

(b) Notice that civilian counsel has been retained or that action has been taken to retain civilian counsel (must include name and address of civilian counsel) or,

(c) Both a request for representation by military appellate defense counsel under Rule 10(a) and notice regarding civilian counsel under Rule 10(b), or

(d) A waiver of representation by counsel.

§ 150.11 Assignment of counsel.

(a) When a record of trial is referred to the Court

(1) if the accused has requested representation by appellate defense counsel, pursuant to Article 70(c)(1), counsel detailed pursuant to article 70(a) will be assigned to represent the accused;

(2) if the accused gives notice that he or she has retained or has taken action to retain civilian counsel, appellate defense counsel shall be assigned to represent the interests of the accused pending appearance of civilian counsel. Assigned defense counsel will continue to assist after appearance by civilian counsel unless excused by the accused;

(3) if the accused has neither requested appellate counsel nor given notice of action to retain civilian counsel, but has not waived representation by counsel, appellate defense counsel will be assigned to represent the accused, subject to excusal by the accused or by direction of the Court.

(b) In any case

(1) the Court may request counsel when counsel have not been assigned;

(2) pursuant to Article 70(c)(2), appellate defense counsel will represent the accused when the United States is represented by counsel before the Court.

§ 150.12 Retention of civilian counsel.

When civilian counsel represents an accused before the Court, the Court will notify counsel when the record of trial is received. If both civilian and assigned appellate defense counsel represent the accused, the Court will regard civilian counsel as primary counsel unless notified otherwise. Ordinarily, civilian counsel will use the accused's copy of the record. Civilian counsel may reproduce, at no expense to the Government, appellate defense counsel's copy of the record.

§ 150.13 Notice of appearance of counsel.

Military and civilian appellate counsel shall file a written notice of appearance with the Court. The filing of any pleading relative to a case which contains the signature of counsel constitutes notice of appearance of such counsel.

§ 150.14 Waiver or withdrawal of appellate review.

Withdrawals from appellate review, and waivers of appellate review filed after expiration of the period prescribed by Rule for Courts-Martial 1110(f)(1), will be referred to the Court for consideration. At its discretion, the Court may require the filing of a motion for withdrawal, issue a show cause order, or grant the withdrawal without further action, as may be appropriate. The Court will return the record of trial, in a case withdrawn from appellate review, to the Judge Advocate General for action pursuant to Rule for Courts-Martial 1112.

§ 150.15 Assignment of error and briefs.

(a) *General provisions.* Appellate counsel for the accused may file an assignment of error if any are to be alleged, setting forth separately each error asserted. The assignment of errors should be included in a brief for the accused (§150.29). An original of all assignments of error and briefs, and as many additional copies as shall be prescribed by each service, shall be submitted. Briefs and assignments of errors shall be typewritten, double-spaced on white paper, and securely fastened at the top. All references to matters contained in the record shall show record page numbers and any exhibit designations. A brief on behalf of the government shall be of like character as that prescribed for the accused.

(b) *Number of briefs.* Appellate counsel shall be limited to the filing of one brief for each side unless the Court otherwise permits or directs.

(c) *Time for filing.* Any brief for an accused shall be filed within 30 days after appellate counsel has been notified of the receipt of the record in the Office of the Judge Advocate General. If the Judge Advocate General has directed appellate government counsel to represent the United States, such counsel shall file an answer on behalf of the government within 30 days after any brief and assignment of errors has been filed on behalf of an accused. If no brief is filed on behalf of an accused, a brief on behalf of the government may be filed within 30 days after expiration of the time allowed for the filing of a brief on behalf of the accused.

§ 150.16 Oral arguments.

Oral arguments may be heard in the discretion of the Court upon motion by either party or when otherwise ordered by the Court. The motion of a party for oral argument shall be made when that party's pleading is filed or within 5 days after the filing of any response thereto permitted under these rules.

§ 150.17 En banc proceedings.

(a) A majority of the judges present for duty may order that any appeal or other proceeding be considered or reconsidered, except as indicated in paragraph (c), by the Court sitting as a whole. Such consideration or reconsideration ordinarily will not be ordered except:

(1) When consideration by the full Court is necessary to secure or maintain uniformity of decision, or

(2) When the proceedings involve a question of exceptional importance, or

(3) When a sentence being reviewed pursuant to Article 66 extends to death.

(b) A party may suggest the appropriateness of consideration or reconsideration by the Court as a whole. If a party desires to suggest in cases being reviewed pursuant to Article 66, that a matter be considered initially by the Court as a whole, the suggestion must be filed with the Court within 5 days after the government files its answer to the assignment of errors, or the accused files a reply if permitted to do so under § 150.15(b). In other proceedings the suggestion must be filed with the party's initial petition or other initial pleading, or within 5 days after the response thereto is filed. A suggestion for reconsideration by the Court as a whole must be made within the time prescribed by § 150.19 for filing a motion for reconsideration. No response to the suggestion may be filed unless the Court shall so order.

(c) The suggestion of a party for consideration or reconsideration by the Court as a whole shall be transmitted to each judge of the Court who is present for duty, but a vote need not be taken to determine whether the cause shall be considered or reconsidered by the Court as a whole unless a judge requests a vote on such a suggestion made by a party. En banc reconsideration of an en banc decision will not be held unless one member of the original majority concurs in a vote for reconsideration.

§ 150.18 Orders and decisions of the court.

The Court shall give notice of its orders and decisions pursuant to Rule for Courts-Martial 1203. The Court shall immediately serve such orders or decisions, when rendered, on appellate defense counsel, government counsel and The Judge Advocate General, or designee, as appropriate.

§ 150.19 Reconsideration.

(a) The Court may, in its discretion and on its own motion, enter an order to reconsider its decision in any case not later than 30 days after service of such decision on the accused's appellate defense counsel or on the accused, if the accused is not represented by appellate counsel, provided a petition for grant of review or certificate for review has not been filed with the United States Court of Military Appeals, or a record of trial for review under Article 67(b) has not been received by that Court. Copies of such order will be served on appellate defense counsel and appellate government counsel. No briefs or arguments shall be received unless the order so directs.

(b) Provided a petition for grant of review or certificate for review has not been filed with the United States Court of Military Appeals, or a record of trial for review under Article 67(b) has not been received by the United States Court of Military Appeals, the Court may, in its discretion, reconsider its decision in any case upon motion filed either:

(1) By appellate defense counsel within 20 days after receipt by counsel, or by the accused if the accused is not represented by counsel, of a decision or order, or

(2) By appellate government counsel within 20 days after the decision or order is received by counsel.

(c) A motion for reconsideration shall briefly and directly state the grounds for reconsideration, including a statement of facts showing jurisdiction in the Court. A reply to the motion for reconsideration will be received by the Court only if filed within 5 days of receipt of a copy of the motion. Oral arguments shall not be heard on a motion for reconsideration unless ordered by the Court. The original of the motion filed with the Court shall indicate the date of receipt of a copy of the same by opposing counsel.

(d) The time limitations prescribed by this rule shall not be extended under the authority of § 150.24 or § 150.25 beyond the expiration of the time for filing a petition for review by the United States Court of Military Appeals, except that the time for filing briefs by either party may be extended for good cause.

§ 150.20 Petitions for extraordinary relief, answer, and reply.

(a) *Petition for extraordinary relief.* A petition for extraordinary relief in the number of copies required by the Court shall be accompanied by proof of service on each party respondent and will contain:

(1) A previous history of the case including whether prior actions have been filed or are pending for the same relief in this or any other court and the disposition or status of such actions;

(2) A concise and objective statement of all facts relevant to the issue presented and of any pertinent opinion, order or ruling;

(3) A copy of any pertinent parts of the record and all exhibits related to the

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petition if reasonably available and transmittable at or near the time the petition if filed;

(4) A statement of the issue;

(5) The specific relief sought;

(6) Reasons for granting the writ;

(7) The jurisdictional basis for relief sought and the reasons why the relief sought cannot be obtained during the ordinary course of appellate review;

(8) If desired, a request for appointment of appellate counsel.

(b) *Format.* The title of the petition shall include the name, military grade and service number of each named party and, where appropriate, the official military or civilian title of any named party acting in an official capacity as an officer or agent of the United States. When an accused has not been named as a party, the accused shall be identified by name, military grade and service number by the petitioner and shall be designated as the real party in interest.

(c) *Electronic message petitions.* The Court will docket petitions for extraordinary relief submitted by means of an electronic message. The message will conclude with the full name and address of petitioner's counsel, if any, and will state when the written petition and brief, when required, were placed in the mail addressed to the Court and to all named respondents.

(d) *Notice to the Judge Advocate General.* Immediately upon receipt of any petition, the Clerk shall forward a copy of the petition to the appropriate Judge Advocate General or designee.

(e) *Briefs.* Each petition for extraordinary relief must be accompanied by a brief in support of the petition unless it is filed *in propria persona.* The Court may issue a show cause order in which event the respondent shall file an answer within 10 days of the receipt of the show cause order. The petitioner may file a reply to the answer within 5 days of receipt of the answer.

(f) *Initial actions by the Court.* The Court may dismiss or deny the petition, order the respondent to show cause and file an answer within the time specified, or take whatever other action it deems appropriate.

(g) *Oral argument and final action.* The Court may set the matter for oral argument. However, on the basis of the pleadings alone, the Court may grant or deny the relief sought or make such other order in the case as the circumstances may require. This includes referring the matter to a special master, who need not be a military judge, to further investigate; to take evidence; and to make such recommendations as the Court deems appropriate.

§ 150.21 Appeals by the United States.

(a) *Restricted filing.* Only a representative of the government designated by the Judge Advocate General of the respective service may file an appeal by the United States under Article 62.

(b) *Counsel.* Counsel must be qualified and appointed, and give notice of appearance in accordance with these rules and those of the Judge Advocate General concerned.

(c) *Form of appeal.* The appeal must include those documents specified by Rule for Courts-Martial 908 and by applicable regulations of the Secretary concerned. A certificate of the Notice of Appeal described in Rule for Courts-Martial 908(b)(3) must be included. The certificate of service must reflect the date and time of the military judge's ruling or order from which the appeal is taken, and the time and date of service upon the military judge.

(d) *Time for filing.* All procedural Rules of the Court shall apply except as noted herein:

(1) The representative of the Government designated by the Judge Advocate General shall decide whether to file the appeal with the Court of Military Review. The trial counsel shall have 20 days from the date written notice is filed with the trial Court to forward the appeal, including an original and three copies of the record of trial, to the representative of the Government designated by the Judge Advocate General. The person designated by the Judge Advocate General shall promptly file the original record with the Clerk of the Court of Military Review and forward one copy to opposing counsel. Appellate government counsel shall have 20 days (or more upon a showing of good cause made by motion for enlargement within the 20 days) from the date the record is filed with the Court to file the appeal with supporting brief with the Court of Military Review. Should the Government decide to withdraw the appeal after the record is received by the Court of Military Review, appellate government counsel shall notify in writing the Court of Military Review. Appellate brief(s) shall be prepared in the manner prescribed by § 150.15.

(2) Appellee shall prepare an answer in the manner prescribed by § 150.15 and shall file such answer within 20 days after any filing of the government brief.

(e) The government shall diligently prosecute all appeals by the United States and the Court will give such appeals priority over all other proceedings where practicable.

§ 150.22 Petitions for new trial.

(a) *General provisions.* The Court shall, as soon as practicable after receipt from the Judge Advocate General of a petition for a new trial is a case pending before the Court, notify appellate counsel of such receipt.

(b) *Additional investigation.* The Court on considering a petition for a new trial may, when it deems appropriate, refer the matter to Judge Advocate General who shall cause further investigation to be made and to report the results therefor to the Court.

(c) *Answer.* Appellate government counsel shall file an answer to a petition for new trial within 10 days after being notified of the receipt thereof by the Court.

(d) *Briefs.* Any brief in support of a petition for new trial shall be filed within 10 days of appellate government counsel's answer. If appellate government counsel fails to file an answer, accused may file a brief within 10 days after the expiration of the time allowed for the filing of appellate government counsel's answer. Appellate government counsel's brief shall be filed within 10 days of the filing of accused's brief. If accused fails to file a brief, appellate government counsel may file a brief within 10 days after the expiration of the time allowed for filing of accused's brief.

(e) *Oral argument.* Except when ordered by the Court, oral argument shall not be permitted on a petition for a new trial.

§ 150.23 Motions.

(a) *Content.* All motions, unless made during the course of a hearing, shall state with particularity the relief sought and the grounds therefor. Motions, pleadings, and other papers desired to be filed with the Court may be combined in the same document, with the heading indicating, for example "MOTION TO FILE (SUPPLEMENTAL ASSIGNMENT OF ERRORS) (CERTIFICATE OF CORRECTION) (SUPPLEMENTAL PLEADING)", or "ASSIGNMENT OF ERRORS AND MOTION TO FILE ATTACHED REPORT OF MEDICAL BOARD".

(b) *Opposition.* Any opposition to a motion shall be filed within 5 days after receipt by the opposing party of service of the motion.

(c) *Leave to file.* Any pleading not required by these rules shall be accompanied by a motion for leave to file such pleading.

(d) *Oral argument.* Except when ordered by the Court, oral argument shall not be permitted on motions.

§ 150.24 Continuances and interlocutory matters.

Except as otherwise provided in § 150.19(d) the Court, in its discretion, may extend any time limits prescribed and may dispose of any interlocutory or other appropriate matter not specifically covered by these rules, in such manner as may appear to be required for a full, fair, and expeditious consideration of the case. See § 150.4.

§ 150.25 Suspension of rules.

For good cause shown, the Court acting as a whole or in panel may suspend the requirements or provisions of any of these rules in a particular case on petition of a party or on its own motion and may order proceedings in accordance with its discretion.

§ 150.26 Internal rules.

The Chief Judge of the Court has the authority to prescribe internal rules for the Court.

§ 150.27 Recordings, photographing, broadcasting, or telecasting of hearings.

The recording, photographing, broadcasting, or televising of any session of the Court or other activity relating thereto is prohibited unless specifically authorized by the Court sitting as a whole.

§ 150.28 Format for direction for review.

Format for Direction for Review in the United States Army* Court of Military Review

United States v.	Director for Review
Private (E-1) JOHN RICHARD DOE, SSN 000-00-000, Company, 300th Infantry Division, APO New York 09000.	Case No. ______ Tried at ______, on ______ before a G.C.M. appointed by ______

To the Honorable, the Judges of the United States Army* Court of Military Review

1. Pursuant to the Uniform Code of Military Justice, Article 69, and the Rules of Practice and Procedure for Courts of Military Review, Rule 2b, the record of trial in the above-entitled case is forwarded for review pursuant to the Uniform Code of Military Justice, Article 66.

2. The accused was found guilty of a violation of the Uniform Code of Military Justice, Article(s) ______, was sentenced to ______ on ______ at ______ by ______. The convening authority (approved the sentence) (approved only so much of the sentence as provided for ______) and the case was received in the United States Army* Judiciary on ______.

3. In review pursuant to Uniform Code of Military Justice, Article 66, it is requested that attention be given to the following issues:

A. WHETHER THE SPECIFICATION OF CHARGE I FAILS TO STATE AN OFFENSE UNDER THE UNIFORM CODE OF MILITARY JUSTICE IN THAT IT DOES NOT ALLEGE THAT ACCUSED'S ABSENCE WAS WITHOUT AUTHORITY.

B. WHETHER THE MILITARY JUDGE FAILED TO TAILOR HIS INSTRUCTIONS ON SENTENCE TO THE MATTERS PRESENTED IN EXTENUATION AND MITIGATION.

John H. Brown,
Major General, USA, The Judge Advocate General.

Received a copy of the foregoing Direction for Review this ______ day of ______ 19—.

Robert Jones,
Colonel, JAGC, Chief, Government Appellate Division.

Harry Arnold,
Colonel, JAGC, Chief, Defense Appellate Division.

John C. Smith, Esq.,
1 Ace Street, Union, New Jersey 07083.

§ 150.29 Format for assignment of errors and brief on behalf of accused.

Format for Assignment of Errors and Brief on Behalf of Accused (Rule 16) in the United States Army [1] Court of Military Review

United States v.	Assignment of Errors and Brief on Behalf of Accused
Private (E-1) JOHN RICHARD DOE, SSN 000-00-000, U.S. Army, Replacement Detachment, 300th Administration Company, 300th Infantry Division, Fort Gordon, Georgia, 31093.	Case No. ______ Tried at ______, on ______ before a G.C.M. appointed by ______

To the Honorable, the Judges of the United States Army [1] Court of Military Review

On ______, the accused was tried by general court-martial. The charges and specifications upon which he was arraigned, his pleas, and the court-martial's findings were as follows:

Chg.	Art UCMJ	Specs	Summary of offense	Pleas	Findings
I	86	1	AWOL (28 Jan ______ 28 Feb ______)	G	G
		2	AWOL (3 Mar ______ 3 Apr ______)	G	G
II	121		Larceny of $100.00, property of U.S. Government	NG	G

He was sentenced to dishonorable discharge, forfeiture of all pay and allowances, confinement at hard labor for 2 years, and reduction to the lowest enlisted grade. The convening authority approved only so much of the sentence as provides for bad conduct discharge, forfeiture of $50.00 pay per month for 6 months, and reduction to the lowest enlisted grade.

Statement of Facts

Those facts necessary to a disposition of the assigned errors are set forth in the argument, infra.[2]

Errors and Argument

I. Specification 1 of Charge I Fails to State an Offense Under the Uniform Code of Military Justice.

The allegation of absence in Specification 1 of Charge I fails to indicate that the absence was "without proper authority." The United States Court of Military Appeals has held that such an omission is fatal to the legal sufficiency of the specification. *United States v. Schultz,* 16 U.S.C.M.A. 468, 37 C.M.R. 108 (1967); *United States v. Fout,* 3 U.S.C.M.A. 565, 13 C.M.R. 121 (1953).

Wherefore, the findings as to Specification 1 of Charge I should be set aside and the sentence reassessed on the basis of the remaining charges and specifications.

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* Use Navy-Marine Corps, Air Force, or Coast Guard as the case may be.

[1] Use Navy-Marine Corps, Air Force, or Coast Guard as the case may be.

[2] Where a statement of facts generally applies to all of the assigned errors, it may be set forth here.

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II. The Military Judge Failed to Tailor His Instructions on Sentence to the Matters Presented in Mitigation and Extenuation.

There was extensive evidence presented on behalf of accused to establish his proper exemplary conduct in civilian and military life. (R. 108–133). The military judge limited his instructions on sentence to the maximum authorized punishment and the voting procedure.

In *United States* v. *Wheeler*, 17 U.S.C.M.A. 274, 38 C.M.R. 72 (1967), the failure of the military judge to tailor the instructions on sentence to the evidence presented in mitigation and extenuation was held to require a rehearing on sentence.

Wherefore, the sentence should be set aside and a rehearing authorized thereon.

Sentence Appropriateness

Accused is an 18-year old first time offender (Post-trial Review, p. 3) and has sincerely urged his restoration to duty. (R. 100). His immediate superiors have expressed their willingness to have accused return to his organization. (R. 110).

Wherefore, only so much of the sentence as provides for forfeiture of $50.00 pay per month for 6 months, confinement at hard labor for 6 months, and reduction to the lowest enlisted grade should be approved by his Honorable Court.

Date

John C. Smith, Esq.,

1 Ace Street, Union, New Jersey 07083.

Albert Jones,

Captain, JAGC, Appellate Defense Counsel.

Harry Arnold,

Colonel, JAGC, Appellate Defense Counsel.

Certificate of Service

I certify that a copy of the foregoing was mailed or delivered to appellate Government counsel on the _____ day of ______, 19____.

Name

Address

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

November 19, 1986.

[FR Doc. 86–26504 Filed 11–24–86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Honolulu Regulation 86–06]

Security Zone Regulations; Outer Apra Harbor, Guam, Marianas Islands

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a security zone around US Maritime Preposition Ships which will be moored at mooring buoy No. 702 located at 13°27'27.1" N, 144°38'8.1" E in Outer Apra Harbor, Guam, Marianas Islands. The security zone will extend for a distance of 100 yards in all directions from the Maritime Preposition Ships and mooring buoy No. 702. Additionally, a 50 yard security zone will remain in effect in all directions around mooring buoy No. 702 when no vessels are moored thereto. The zone is needed to safeguard Maritime Preposition Ships against destruction from sabotage or other causes of similar nature. Entry into this zone is prohibited unless authorized by the Captain of the Port.

DATES: This regulation becomes effective on October 16, 1986. Comments on this regulation must be received on or before December 31, 1986.

ADDRESS: Comments should be mailed to Commander, US Coast Guard Marianas Section, Box 176, FPO San Francisco 96630–5000. The comments will be available for inspection and copying at the Coast Guard Marine Safety Department of the Marianas Section Office in the Government of Guam Commercial Port Building.

Normal office hours are between 7:30 AM and 3:30 PM Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Commander J.M. MacDonald, (671) 339–6100, US Coast Guard, Marianas Section Office, Guam.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Following normal rulemaking procedures would have been impractical and contrary to the public interest. The request for this regulation was not received until October 14, 1986 and there was not sufficient time remaining to publish a proposal in advance of the event for which the regulation is needed. Likewise, there was not sufficient time to provide for a delayed effective date. Immediate action is needed to prevent injury or damage to persons and equipment incident to the mooring of the first Maritime Preposition Ships in the port. Further, as a military affairs function of the United States, this regulation is exempt from the requirements of 5 U.S.C. 553, including the requirements for a notice of proposed rulemaking. Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "address" in the preamble. Commenters should include their names and addresses, identify the docket number for the regulation, and give reasons for their comments. Based upon comments received, the regulation may be changed.

Drafting Information

The drafters of this regulation are Commander J.M. MacDonald, Project Officer, USCG Marianas Section Office, and Lieutenant Commander R.W. Bogue, Project Attorney, Fourteenth Coast Guard District Legal Office.

Discussion of the Regulation

The Navy has requested that a security zone be established. The incident requiring this regulation will begin on October 16, 1986 with the arrival in Apra Harbor of the PFC Dewayne T. Williams, one of four Maritime Preposition Ships to be stationed in the Guam area. Since mooring buoy No. 702 is a Navy maintained mooring buoy, and is located in excess of 500 yards from the main shipping channel in a general anchorage area, there should be no adverse impact on harbor use due to this security zone. This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulation

PART 165—[AMENDED]

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. Section 165.1401 (d) and (e) are added to read as follows: § 165.1401 Apra Harbor, Guam—security zone.

* * * * *

(d) *Location.* The following is designated as Security Zone C—The waters of Apra Outer Harbor, Guam around Naval mooring buoy No. 702 located at 13°27'27.1"N and 144°38 ' 8.1" E and Maritime Preposition Ships moored thereto. The security zone will extend 100 yards in all directions around the vessel and its mooring. Additionally a 50 yard security zone will remain in effect in all directions around buoy No. 702 when no vessels are moored thereto.

(e) *Regulations.* (1) In accordance with general regulations in § 165.33 of this part, entry into Security Zone C is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation becomes effective on October 16, 1986.

Dated: October 16, 1986.

C.W. Gray,

Captain, U.S. Coast Guard, Captain of the Port, Honolulu, Hawaii.

[FR Doc. 86-26444 Filed 11-24-86; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-3106-8]

Approval and Promulgation of Implementation Plans; Massachusetts; Minor Amendments to the SIP

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan revisions submitted by the Commonwealth of Massachusetts. These revisions involve regulatory changes to SIP regulations previously approved by EPA involving New Source Review and Ash Content of Fuels. These revisions are administrative and/or procedural in nature, and do not affect air quality or the ability of the Commonwealth of Massachusetts to attain and maintain the National Ambient Air Quality Standards (NAAQS) for the criteria pollutants. The intended effect of this action is to approve revisions made by the Commonwealth of Massachusetts in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This action will be effective January 26, 1987, unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2312, JFK Federal Building, Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2312, JFK Federal Building, Boston, MA 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; Office of the Federal Register, 1100 L Street, NW., Washington DC.; and the Department of Environmental Quality Engineering, Division of Air Quality Control, One Winter Street, 8th floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Lorenzo Thantu, (617) 223-4880; FTS 223-4880.

SUPPLEMENTARY INFORMATION: On December 3, 1985, January 31, and February 11, 1986, the Commonwealth of Massachusetts submitted revisions to its State Implementation Plan (SIP). These revisions include regulatory changes to SIP regulations previously approved by EPA, 310 CMR 7.02(2)(b) and 310 CMR 7.05(4).

The New Source Review regulation, 310 CMR 7.02(2)(b) is being corrected to include the term "major" before the word "modification." This section was meant to apply to major modifications in nonattainment areas by requiring major modifications to meet the requirements of 310 CMR 7.00 Appendix A, Emissions Offsets and Nonattainment Review, where the term "Major Modification" is defined.

Therefore, Regulations 310 CMR 7.02(2)(b) is amended by inserting the word "major" between the words "proposed" and "modification." Regulation 310 CMR 7.05(4), "Ash Content of Fuels," is being amended to include facilities located in the Berkshire Air Pollution Control District (BAPCD) among those subject to the existing subsection (b)(2) rather than the existing subsection (a). This amendment will allow facilities in the BAPCD (as facilities located in all other Massachusetts Air Pollution Control Districts are already allowed) to burn fossil fuel containing an ash content in excess of nine percent (9%) by dry weight, provided application is made to the Department of Environmental Quality Engineering (DEQE) and approved in writing by that agency.

In written testimony dated December 12, 1984, EPA requested that the amendment to allow facilities located in the BAPCD to be added to those subject to Regulation 310 CMR 7.05(4)(b) be evaluated for impacts on the National Ambient Air Quality Standards. The DEQE submitted additional information to address EPA's comments. EPA has evaluated this information and concludes that:

1. The facilities located in the BAPCD will now be regulated under § 7.05(4)(b) which will place more stringent plan review requirements upon those facilities than is currently required.

2. The amendment in no way alters the DEQE's responsibility to evaluate the impacts on the NAAQS by facilities making application to burn fossil fuel with an ash content in excess of nine percent by dry weight in all districts.

No adverse or critical comments were received at the public hearings that were held on November 27, 28, 29 and 30, 1984.

EPA is approving these SIP revisions without prior proposal because the Agency views these as noncontroversial amendments and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective January 26, 1987.

Final Action

EPA is approving the following revisions:

(1) A correction to Regulation 7.02(2)(b) to include the term "major" before the word "modification."

(2) An amendment to Regulation 310 CMR 7.05(4), Ash Content of Fuels, to include facilities located in the BAPCD among those subject to existing subsection (b)(2). This amendment will allow facilities in the BAPCD (as facilities located in all other Massachusetts Air Pollution Control Districts are already allowed) to burn fossil fuel containing an ash content in excess of nine percent by dry weight, provided application is made to the DEQE and approved in writing by the DEQE.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this

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action must be filed in the United States Court of Appeals for the appropriate circuit by January 26, 1987. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Reporting and Recordkeeping requirements, Incorporation by reference.

Note.—Incorporation by reference of the State Implementation Plan for the Commonwealth of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 29, 1986.

Lee M. Thomas,
Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

Subpart W—Massachusetts

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1120 is amended by adding paragraph (c)(69) as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(69) Revisions to federally approved regulations 310 CMR 7.02(2)(b) and 310 CMR 7.05(4) were submitted on December 3, 1985, January 31, 1986 and February 11, 1986 by the Department of Environmental Quality Engineering.

(i) Incorporation by Reference

(A) Regulation 310 CMR 7.02(2)(b), Department of Environmental Quality Engineering, Air Pollution Control, is corrected to include the word "major" before the word "modification".

(B) Regulation 310 CMR 7.05(4), Department of Environmental Quality Engineering, Air Pollution Control, Ash Content of Fuels.

(ii) Additional Materials

(A) The nonregulatory portions of the state submittals.

* * * * *

3. Section 52.1167 is amended by adding the following entries to Table 52.1167 at the following lines:

§ 52.1167 EPA-approved Massachusetts State regulations.

* * * * *

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	Section 52.1120(c)	Comments/unapproved sections
*	*	*	*	*	*	*
310 CMR 7.02	Plans and approval and emission limitations.	12/3/85 1/31/86 2/11/86	* * * Nov. 25, 1986.	* * * 51 FR 42564	69	Adds the word "major" before the word "modification" at 7.02(2)(b).
310 CMR 7.05(4)	Ash content of fuels	12/3/85 1/31/86 2/11/86	Nov. 25, 1986.	* * * 51 FR 42564	69	Includes Berkshire Air Pollution Control District to 7:05(4)(b)(2) so facilities in that district can apply to burn fossil fuel with an ash content in excess of 9 pct by dry weight.
*	*	*	*	*	*	*

[FR Doc. 86-25342 Filed 11-24-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-1-FRL-3106-9]

Approval and Promulgation of Implementation Plans; Massachusetts; Temporary Sulfur-in-Fuel Revision for the Boston Housing Authority's Mission Hill Extension Family Development Facility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today approving a revision to the Massachusetts State Implementation Plan (SIP) which will allow the Boston Housing Authority's Mission Hill Extension Family Development facility in Boston, Massachusetts to increase the sulfur content of its residual fuel oil for up to 30 months. The burning of less expensive, higher sulfur content fuel oil will provide this source with some of the capital needed to implement permanent energy conservation measures.

EFFECTIVE DATE: November 25, 1986.

FOR FURTHER INFORMATION CONTACT: Cynthia L. Greene, (617) 223–5133; (FTS) 223–5133.

ADDRESSES: Copies of the Massachusetts submittal, which is incorporated by reference, are available for public inspection during regular business hours at the Environmental Protection Agency, Region I, Room 2313, JFK Federal Building, Boston, Massachusetts 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC; and the Department of Environmental Quality Engineering, 8th Floor, One Winter Street, Boston, Massachusetts 02108.

SUPPLEMENTARY INFORMATION: On May 12, 1986, the Massachusetts Department of Environmental Quality Engineering (DEQE) submitted a SIP revision for the Boston Housing Authority's Mission Hill Extension Family Development facility, in Boston, Massachusetts. The revision allows the burning of 2.2% sulfur fuel oil in the facility's boilers for 30 months or less. During this time period, the Boston Housing Authority has committed to implement permanent energy conservation measures. The facility will use the savings realized during the temporary (30 months or less) utilization of less expensive 2.2% sulfur fuel oil to defray the costs of implementing the permanent energy conservation measures. The facility will return to burning 0.5% sulfur fuel oil by May 25, 1989.

Background

This temporary sulfur-in-fuel revision is being approved pursuant to the provisions of Regulation 310 CMR 7.19, "Interim Sulfur-in-Fuel Limitation for Fossil Fuel Utilization Facilities Pending Energy Conservation Measures." EPA's proposal to approve this regulation in a Notice of Proposed Rulemaking (NPR) on December 16, 1980 (45 FR 82675), specifies the requirements and conditions which sources must meet in order to qualify for temporary sulfur-in-fuel relaxations and the procedures which the Massachusetts DEQE must use to determine that the emissions will not violate any National Ambient Air Quality Standards (NAAQS). Only sources rated at less than 250 million Btu per hour heat input, which are currently burning residual fuel oil, and have made a commitment to either (a) convert to an alternate fuel, or (b) implement conservation measures, are eligible for a temporary sulfur-in-fuel revision not to exceed 30 months. In the NPR, EPA also proposed approval of all individual sources that meet the eligibility requirements of this regulation.

EPA Evaluation

EPA has determined that the DEQE has approved the Boston Housing Authority's request to burn higher sulfur fuel oil at its Mission Hill Extension Family Development facility in accordance with the provisions of Regulation 310 CMR 7.19, and agrees that no air quality standards will be violated by the temporary burning of 2.2% sulfur fuel oil at this facility. EPA received no comments on its December 16, 1980 (45 FR 82675) proposal to approve individual sources of sulfur-in-fuel relaxations, and DEQE received no comments on its proposed approval of the temporary sulfur-in-fuel relaxation at the Boston Housing Authority facility in Boston. Since the public has had these other opportunities to comment, and since the Boston Housing Authority's facility is a small source (each piece of equipment is less than 250 million Btu per hour heat input), EPA is taking final action today to approve this SIP revision without first publishing a new proposed rulemaking. EPA believes that publishing a new NPR is unnecessary. EPA finds good cause for making this action effective immediately because the implementation plan is already in effect under State law and because this action imposes no additional regulatory burden.

Final Action

EPA is approving the proposed temporary sulfur-in-fuel relaxation to burn 2.2% sulfur fuel oil for the Boston Housing Authority's Mission Hill Extension Family Development facility.

Under 5 U.S.C. 605(b), the Administrator has certified that this action will not have significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 26, 1987.

This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

List of Subjects in 40 CFR Part 52

Intergovernmental relations, Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxides, Lead, Particulate matter, Carbon monoxide, and Hydrocarbons, Incorporation by reference.

Note.—Incorporation by Reference for the State Implementation Plan for the State of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

Dated: October 17, 1986.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52, Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart W—Massachusetts

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1120, is amended by adding paragraph (c) (71) as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(71) A revision submitted on May 12, 1986 allowing the burning of 2.2% sulfur content fuel oil at the Boston Housing Authority, Mission Hill Extension Family Development facility in Boston, Massachusetts for a period of up to 30 months, commencing on November 25, 1986.

(i) Incorporation by reference.

(A) Letter dated March 5, 1986 for the Mission Hill Extension Family Development facility, from Richard J. Chalpin, Acting Regional Engineer, allowing the temporary use of less expensive 2.2% sulfur fuel oil (for 30 months from the date of publication); the savings from which will be used to implement permanent energy conservation measures to reduce the on-site consumption of petroleum products. At the end of the temporary use period, the Boston Housing Authority, Mission Hill Extension Family Development facility will return to the use of 0.5% sulfur fuel oil. The particulate emission rate for this facility will not exceed 0.12 lbs per million Btu.

(B) Statements of Agreement signed April 4, 1986 by Doris Bunte, Administrator of Boston Housing Authority.

(C) Memorandum from Bruce K. Maillet to S. Russell Sylva dated April 18, 1986, subject: Decision Memo.

2. Section 52.1167, is amended by adding the following entry to Table 52.1167 at the following line:

§ 52.1167 EPA-approved Massachusetts State regulations.

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved section
310 CMR 7.19.	Interim sulfur-in-fuel limitations for fossil fuel utilities pending conversion to an alternative fuel or implementation of permanent energy conservation measures.	05/12/86	Nov. 25, 1986.	51 FR 42585	71	Mission Hill Extension Family Development facility, in the Boston Housing Authority, Boston, MA to burn 2.2% until (30 months from FR citation).

[FR Doc. 86-25341 Filed 11-24-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[Region II Docket No. 60; A-2-FRL-3106-3]

Approval and Promulgation of Implementation Plans; New Jersey Lead Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces, with one exception, final approval by the Environmental Protection Agency (EPA) of the New Jersey State Implementation Plan (SIP) for the attainment and maintenance of the national ambient air quality standards for lead. Final action is not being taken today with respect to the Borough of Carteret, where EPA is temporarily deferring action on the SIP until a revised control plan for the United States Metals Refining Company (USMR) is received from the State. Since EPA has found the majority of the New

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Jersey SIP approvable, there is no good reason to delay final action on this part of the SIP while the State revises its control plan for USMR. Action on this revised control plan will be proposed in a future **Federal Register** notice as soon as possible after the plans's receipt. The State of New Jersey has submitted this SIP as required by section 110 of the Clean Air Act and 40 CFR Part 51.

EFFECTIVE DATE: This action is effective on November 25, 1986.

ADDRESSES: Copies of the State's submittals, public comments received on EPA's two notices of proposed rulemaking, and EPA Technical Support Documents concerning this action are available for inspection during normal business hours at the following locations:

Environmental Protection Agency, Region II, Jacob K. Javits Federal Building, 26 Federal Plaza, Room 1005, New York, New York 10278
New Jersey Department of Environmental Protection, Labor and Industry Building, John Fitch Plaza, Trenton, New Jersey 08625.

Copies of the States submittals are available at the following locations:

Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460
Office of the Federal Register, 1100 L Street NW., Room 8301, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II, Jacob K. Javits Federal Building, 26 Federal Plaza, Room 1005, New York, New York 10278 (212) 264-3067.

SUPPLEMENTARY INFORMATION:

I. Background

On October 6, 1983, as required by section 110 of the Clean Air Act and 40 CFR Part 51, New Jersey submitted to the Environmental Protection Agency (EPA) a draft State Implementation Plan (SIP) for the attainment and maintenance of the air quality standards for lead. After review of the draft SIP, on December 29, 1983 (48 FR 57331), EPA determined that the draft New Jersey Lead SIP did not meet all the requirements of section 110(a) of the Clean Air Act and 40 CFR Part 51, Subparts B and E. In brief, EPA found that the October 6, 1983 submittal did not demonstrate attainment and maintenance of the lead standards in three urban areas (the Cities of Newark, Jersey City, and Trenton) in which air monitoring data had shown violations of the lead standards, nor for all of the "significant" point sources that were identified by the State. (A "significant" point source is any source that emits at least 25 tons of lead per year or, in the case of certain specified lead industrial source categories, five tons per year.) The State identified five significant point sources: (1) Delco Remy, Division of General Motors Corporation, New Brunswick (Delco Remy), (2) National Smelting of New Jersey, Inc., Pedricktown (National Smelting), (3) Federated Metals, Inc., Newark (Federated Metals), (4) United States Metals Refining Co., Carteret (USMR), and (5) E.I. DuPont de Nemours and Co., Inc., Deepwater (Dupont), and two potential significant point sources (6) Heubach, Inc., Newark (Heubach) and (7) Rollins Environmental Services, Inc., Logan Township (Rollins). The draft SIP also did not provide adequately for the review of existing, new or modified lead sources with the potential to emit more than five tons per year of lead, as required under 40 CFR 51.18 and EPA policy. In addition, EPA requested that the State provide the procedures it used in preparing the emission inventories contained in its draft SIP.

Supplemental information on the Lead SIP was submitted to EPA by New Jersey on May 1, June 18, and August 15, 1984, and on February 7, 1985. Therefore, on February 25, 1985 (50 FR 7614), EPA reproposed action on the SIP in order to provide the public with the opportunity to comment on the significant changes made to the October 6, 1983 draft SIP and on EPA's review of these changes. In its supplemental information, the State addressed all the requirements identified in EPA's December 29, 1983 proposed rulemaking with two exceptions. The SIP still did not contain an adequate demonstration of attainment and maintenance for all significant sources and it still did not provide adequately for the review of existing, new or modified lead sources with the potential to emit more than five tons per year.

Subsequent to EPA's February 25, 1985 notice of proposed rulemaking, the State supplemented its Lead SIP on April 22, April 29, May 17, and July 16, 1985 with the following submittals:

- April 22, 1985—a letter transmitting revised Subchapters 8 and 18 of Chapter 27, Title 7 of the New Jersey Administrative Code (N.J.A.C. 7:27-8, "Permits and Certificates," and N.J.A.C. 7:27-18, "Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality in Nonattainment Areas (Emission Offset Rule)." (A public hearing was held on August 2, 1984 on the revisions to Subchapters 8 and 18. Subchapter 8 was adopted February 4, 1985 and became effective on April 5, 1985; Subchapter 18 was adopted January 10, 1985 and became effective on March 11, 1985.)
- April 29, 1985—a letter transmitting the Lead SIP in its final modified form as requested in EPA's December 29, 1983 and February 25, 1985 proposed rulemakings and in correspondence between EPA and the State.
- May 17, 1985—a letter transmitting revised Subchapter 13 of Chapter 27, Title 7 of the New Jersey Administrative Code (N.J.A.C. 7:27-13, "Ambient Air Quality Standards"). (A public hearing was held on August 2, 1984. Subchapter 13 was adopted on April 26, 1985 and became effective on June 25, 1985.)
- July 16, 1985—a letter transmitting the following revisions to the Lead SIP:

—The date for completion of the "RACT-plus studies" for Delco Remy by October 1, 1985 was changed to November 1, 1985. (This study is currently anticipated to be completed by January 1, 1986.)

—The date for adoption of revisions to Subchapter 6, entitled "Control and Prohibition of Particles from Manufacturing Process," was changed from January 1, 1986 to June 30, 1986. The regulations to be adopted under Subchapter 6 will incorporate maximum allowable emissions rates for lead.

—The date for adopting regulations to Subchapter 19, tentatively entitled "Fuel Standards," to control the combustion of liquid fuels was changed from November 1, 1985 to April 1, 1986.

—The June 1, 1985 date to begin operations of the ambient monitor sited in the vicinity of the Dupont facility was changed to September 1, 1985. (The monitor was installed by September 1985.)

—The frequency of conducting sampling by USMR was changed from every other day to every third day. In addition, the State will initially analyze all samples for comparison with results reported by USMR. After samples have been analyzed for two calendar quarters, the State will make a determination as to whether a spot check analysis will be sufficient for quality assurance.

II. Review of the Final Lead SIP

Based on the submittals received from the State, EPA finds that the New Jersey Lead SIP adequately provides for attainment and maintenance of the lead standards with the exception previously noted. Specifically, the May 1, 1984 submittal demonstrated attainment and maintenance of the lead standards in the three urban areas of Newark, Jersey City, and Trenton by using a statistical analysis of the relationship between decreases in lead in the air and the reduction of lead in gasoline. The quantity of lead in gasoline and ambient air concentrations of lead were found to be closely related. Since the quantity of lead in gasoline will be substantially less than its 1982 value and in 1982 no urban area in New Jersey experienced violation of the lead standards, the State expects that the lead standards will be maintained in these three urban areas. The SIP also provides details on the methods the State employed to estimate fugitive lead emissions. These included field investigations, use of emission factors and engineering calculations.

Subsequent submittals by the State on April 22, 1985 and May 17, 1985 transmitted adopted revisions to Subchapter 8, "Permits and Certificates," Subchapter 13, "Ambient Air Quality Standards," and Subchapter 18,[*] "Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality in Nonattainment Areas (Emission Offset Rule)."

Subchapter 18 defines a "major facility" for lead as any stationary source of lead that emits, or has the potential to emit, five tons per year or more of lead or lead compounds measured as lead, and defines a "significant new increase" in lead emissions as a rate increase of 0.6 tons per year of either actual emissions or in the capability to increase emissions. Subchapter 18 also requires that fugitive lead emissions, to the extent quantifiable, be entered into the total emissions from major facilities. Subchapter 8 requires that all major new lead point sources or significant new increases in lead emissions at major facilities be analyzed to determine whether a violation of the standards for lead will occur. In Subchapter 13, the State adopted air quality standards for lead. EPA finds the revisions to these regulations adequate for the review of existing, new or modified lead sources, with the potential to emit more than five tons of lead per year.

In addition, the subsequent submittals from the State provide an adequate demonstration of the attainment of the lead standards by the 1988 deadline (three years from today's date) for all significant lead sources in New Jersey with the exception of USMR. The SIP identifies five significant point sources and two additional sources that have the potential to be significant sources. The status of the sources requiring review and evaluation are:

- *Delco Remy* (lead-acid storage battery manufacturer and secondary lead smelter)—Modelling performed by the State predicted a marginal violation of the ambient lead standards. Due to uncertainty in the accuracy of the lead emission rates employed in the model, the State sited a high-volume air sampler (ambient monitor) near the location of the modelled violation. Violations of the lead standards have been measured by this monitor. When an ambient violation is measured and the suspected source of the violation has "reasonably available control technology" (RACT) applied to all process and non-process emission points, EPA policy allows a "RACT-plus studies" approach for an approvable SIP. Delco-Remy is carrying out such a study under a detailed study protocol included in the SIP. The study is designed to identify individual emission points that may be contributing to the measured violation and includes a schedule for the implementation of the needed control measures. In addition, the State has committed to adopting regulations under Subchapter 6 to incorporate specific maximum lead emissions in the event that such limits are determined to be required as supplemental regulatory authority to attain the lead standards in the vicinity of the Delco Remy facility. EPA received a draft of this study from NJDEP on March 26, 1986. It shows that ambient levels of lead in the vicinity of Delco Remy are below the standard. The monitored violations during the fourth quarter of 1983 and first quarter of 1984 are attributed to the burning of non-commercial fuel oil in combination with malfunctioning control equipment.

To maintain the standard, NJDEP is revising the permits (consistent with the modeling results) for Delco Remy to reflect emission rates no greater than twice the stack test rates. There are 19 stacks at the Delco Remy facility emitting lead; to date, 15 of these stacks have been tested; the emission rates allowed by the permits are substantially higher than the emission rates actually observed during stack tests. In addition, if the stack test emission rates for the four stacks that are to be tested in the fall of 1986 are substantially lower than permitted rates, the permits for these stacks will also be revised. These permits will be incorporated into the SIP.

- *National Smelting* (lead smelter)—National Smelting has permanently ceased operations, and all of the facility's operating permits have been terminated by the State.
- *Federated Metals* (secondary lead smelter)—Federated Metals has also permanently ceased operations, and all of its operating permits have been terminated by the State.
- *USMR* (secondary copper smelter)—As a part of its Lead SIP, New Jersey has submitted an Administrative Consent Order that it issued to USMR requiring specific control measures to result in 90 percent control efficiency of fugitive emissions. Modelling of the facility had shown that implementation of the measures contained in this Order should have provided for attainment of the lead standards in its vicinity. To confirm this demonstration, two ambient monitors were established near the predicted point of maximum impact.

However, it is now apparent that this demonstration of attainment was inaccurate and that additional control measures are needed at this location. This is because, despite the implementation of all control measures contained in the New Jersey Order, violations continue to be monitored. Therefore, EPA's proposed approval of the SIP's control strategy with regard to USMR has been shown to be based on an apparently erroneous demonstration of attainment.

Because this information has only recently come to light and because on March 4, 1986, an NJDEP Administrative Order cited USMR for a number of violations (which collectively represent violations of NJDEP regulations, permit conditions, terms of the 1984 Consent Order, and of the New Jersey Air Pollution Control Act), EPA is not taking action today on the SIP with respect to the Borough of Carteret, where USMR is located.

The principal provisions of the March 4, 1986 Administrative Order require that USMR submit to the NJDEP (i) inventory and operational information on its refining and smelting activity, including its anticipated closure date (October 1, 1986), (ii) an analysis of its past, present, and future staffing levels for its smelting and refining operations, and (iii) a workplan (and time schedule

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[*] EPA is approving in today's Federal Register notice only those revisions to Subchapter 18 that relate to the Lead SIP.

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for its implementation), prepared by an independent lead consultant, by which USMR will achieve and maintain the ambient air quality standard for lead.

In addition, USMR is required to (i) hire a second independent consultant who will, pending NJDEP approval, conduct stack emissions testing of the cupola stack for ten parameters, including lead, and (ii) install four additional high-volume ambient air samplers, the filters of which will be analyzed for lead and other pollutants.

As a result of the Administrative Order, EPA expects to receive from the State a revised control plan for this source. At that time, EPA will provide in the **Federal Register** an opportunity for public comment on the State's submittal. However, if after December 30, 1987 the State fails to provide the expected control plan, EPA will propose a federal strategy.

- *Dupont* (lead gasoline additive manufacturer)—Modelling performed by the State predicted marginal attainment of the standards in the vicinity of the Dupont facility. The State is operating an ambient monitor in the vicinity of the facility to confirm the attainment status. Monitoring data for the last two quarters of 1985 and the first quarter of 1986 shows attainment of the standards in the vicinity of the facility.
- *Heubach* (lead chromate pigment manufacturer)—Modelling by the State of the allowable emission rates listed in the facility's operating permit predicted a violation of the lead standards. The facility indicated that the emission rates used by the State in its dispersion modelling were much higher than actual values. As in the case with Delco Remy, the State elected to carry out a "RACT-plus studies" investigation for Heubach in order to confirm the attainment status of this facility and implement additional controls if necessary.

The study was completed in January 1986 and submitted to EPA by NJDEP on February 28, 1986. Based on the findings that RACT has been adequately demonstrated, emission rates have been quantified, monitored ambient levels are below the standard, and dispersion modelling predicts total concentrations below the standard, the "RACT-plus study" results show that lead air quality standards have been and will continue to be attained in the vicinity of the Heubach plant. Therefore, it does not appear that any orders or additional control measures are necessary.

However, the State is revising the facility's operating permit (consistent with the modelling results), lowering allowable emissions limits to reflect actual or stack test rates. These permits will be incorporated into the SIP. Also, ambient lead monitoring will be continued in the vicinity of the plant.

- *Rollins* (waste chemical incinerator)—The State's analysis revealed negligible fugitive emissions and predicted no violation of the lead standard as a result of the emissions from the Rollins facility.

III. Public Comments

A. Introduction

During the public comment period established by its December 29, 1983 proposal, EPA received comments from five commentors. As a result of EPA's February 25, 1985 reproposal, comments were received from two commentors. A majority of the issues raised by the commentors on the December 29, 1983 proposal were resolved by the State in its supplemental submittals prior to the EPA's February 25, 1985 reproposal. Comments are summarized and discussed in this Section of today's notice.

B. Comments on the December 29, 1983 Proposal

1. Resource Recovery Facilities

Comment: The SIP does not provide for adequate control strategies for lead emissions from resource recovery facilities. The projected emission inventory does not specify the locations of planned resource recovery facilities or the ambient air quality impact of their lead emissions.

Response: The New Jersey Lead SIP requires that, prior to the issuance of an operating permit to a new resource recovery facility, it be evaluated to demonstrate that the impact of its emissions will not cause a violation of the lead standards. These facilities are subject to provisions of State regulations contained in the SIP (e.g., Subchapters 8, 13, and 18) and EPA Prevention of Significant Deterioration (PSD) regulations, 40 CFR Part 52, which prevent construction of a facility that will cause a violation of air quality standards.

Comment: Resource recovery facilities are planned for the most densely populated counties in the State. The same populations that have been subject to high lead concentrations from a variety of sources will again be subject to additional emissions released from these facilities. A study should be conducted to determine if densely populated areas are a desirable location for resource recovery facilities from the standpoint of lead.

Response: As previously noted, before any resource recovery facility receives an operating permit, the facility has to demonstrate that it will not cause a violation of the ambient standards for lead or other pollutants.

Comment: EPA should establish an interim date for reexamination of the New Jersey Lead SIP, requiring submittal of an entire new Lead SIP by the State with public comments, if more than three resource recovery facilities are in operation before 1994.

Response: A revision to the SIP may be required if, under provisions of section 110(a)(2)(H) of the Clean Air Act, the plan is found "substantially inadequate." Because, as discussed earlier, the SIP contains an adequate mechanism for analyzing the impact of new sources, such a finding appears unlikely.

Comment: The State's "RACT-plus studies" program for Heubach fails to consider the potential lead emissions from the Essex County resource recovery facility as a possible area source in its assessment of ambient lead concentrations.

Response: As stated earlier, before a resource recovery facility can operate, the State must determine the impact of its emissions. Modeling done of the Essex County resource recovery facility has shown that ambient concentrations of lead at ground level will be "less than significant" and thus need not be specifically considered in the Heubach "RACT-plus studies."

2. Stationary Source Control Measures

Comment: In determining needed control measures, the State inspected Federated Metals during curtailed operations and calculated fugitive emissions without returning to the facility when it was operating at full capacity. The State failed to take into account that Federated Metals is adjacent to a densely populated residential neighborhood and is in an area already exposed to high concentrations of lead and subject to additional impacts from heavily traveled roadways and the planned Essex County resource recovery facility.

Response: Federated Metals has permanently ceased operations and all operating permits have been terminated.

Comment: The State has not evaluated Alpha Metals, Inc., Jersey City; Campbell Soup Co., Camden; E.I DuPont de Nemours and Co., Newark and Rollins Environmental Services, Inc., Logan Township for actual lead emissions and ambient lead concentrations. The SIP states that these facilities are permitted to emit more than five tons per year.

Response: The SIP demonstrates that the lead standards will be attained and maintained in the vicinity of all significant point sources that emit 25 tons or more, or in the case of certain specified lead source categories, five tons per year or more. The SIP identifies and evaluates five sources, as previously mentioned, which included Heubach (formerly E.I.Dupont de Nemours). In addition, the State identified Rollins as a "potential" significant source requiring review. Modeling based on stack test results and assuming no fugitive emissions based on site inspection predicted no violation of the ambient standards for lead in the vicinity of the facility. Under EPA guidelines, Alpha Metals and Campbell Soup are not considered to be significant point sources, and thus no formal demonstration of attainment is necessary.

Comment: The Lead SIP refers to five point sources as major potential violators of the lead standard. However, the SIP contains no strategy for dealing with these sources. Although five separate consent orders are to be negotiated with these sources, it is not apparent what these orders will require of the sources or what effect they will have on lead emissions.

Response: The five point sources that this comment refers to are: (1) Delco-Remy, (2) National Smelting, (3) USMR, (4) Federated Metals, and (5) DuPont. See section II of today's notice for a discussion of each source.

3. Air Quality Monitoring

Comment: The State has not committed to carrying out all of the data collection activities necessary to provide an accurate picture of the extent of lead pollution in New Jersey. The SIP contains inadequate air monitoring data and information on fugitive emissions.

Response: The State operates ambient monitors in the vicinity of all significant sources located in New Jersey. Lead monitors are in place at Heubach, USMR, Delco Remy, National Smelting, and Dupont. In addition, lead monitors are also located in many urban areas including Trenton, Jersey City, Newark, Clifton, Union City, Pennsauken and Camden. (Monitoring for lead was discontinued at the Camden site as of June 30, 1984.)

Comment: Having only one monitor at Military Park in downtown Newark is not adequate to measure the air quality of Essex County. The State has identified four point sources that are of concern in Essex County: Heubach, Federated Metals, Essex Metal Alloy, and Arlington Lead Burning. Nothing in the SIP indicates that the State knows what the air quality in the Ironbound District of Newark actually is.

Response: The lead monitor at Military Park, Newark is representative of a large part of Newark, where high concentrations of lead can occur due to emissions from mobile and industrial sources. The SIP describes the procedures used to demonstrate that all areas of New Jersey will attain the lead standards. These procedures include consideration of both monitoring and modelling data. They are useful for indicating attainment of the lead standards in all parts of Newark and the remainder of Essex County.

Comment: The SIP ignores obvious pollution hot spots. For example, there is no monitoring in the Bayway area of Elizabeth.

Response: The SIP addresses all areas of the State where high lead emissions could cause violations of the lead standards. The procedures that the State used to demonstrate statewide attainment of the standards is described in this document.

Comment: The State has too few monitors to measure lead emissions from mobile sources and no sampling program to measure re-entrained highway dust. Areas most affected by lead emissions from mobile sources have not been identified.

Response: Monitors that reflect traffic oriented lead exposure are located in Newark, Union City, Clifton, Trenton, Jersey City, and Pennsauken. The Clifton and Pennsauken monitors are specifically sited near major roadways to measure lead emissions from mobile sources and re-entrained highway dust. These monitors, which are primarily affected by motor vehicles, have shown a downward trend in lead concentrations and have recorded no violations of the standards since 1979.

Comment: Modelling at Dupont shows marginal attainment in the vicinity of this facility. Consequently, the State should commit to installation of a monitoring network.

Response: An ambient monitor for lead has been sited in the vicinity of the Dupont facility. The monitor shows attainment of the standard in the vicinity of the facility.

4. Mobile Source Control Measures

Comment: The SIP depends on the federal phase down of lead in gasoline for the reduction of lead from mobile sources, but without data to support this assumption or without adopting additional control strategies.

Response: The State's legal authority to regulate the amount of lead in fuels is restricted under section 211 of the Clean Air Act. A new lead standard of 0.10 gram of lead per leaded gallon of gasoline (gplg) became effective on January 1, 1986 (an interim standard of 0.50 gplg had become effective on July 1, 1985). Prior to July 1, 1985 the standard was 1.10 gplg. In view of this schedule, it is acceptable for the State to assume that a reduction in lead emissions from motor vehicles would occur without a New Jersey control strategy. Data from the Clifton and Pennsauken monitors will be used to confirm this assumption.

Comment: The SIP fails to determine the effectiveness of the New Jersey Inspection and Maintenance (I/M) program in preventing misfueling. The State's intentions to promulgate "undefined" anti-tampering and anti-misfueling regulations at some "undetermined" point in the future makes reviewing these regulations impossible.

Response: The State's I/M program serves to control the amount of carbon monoxide and hydrocarbons emitted from motor vehicles. Fueling with leaded gasoline in vehicles designed for unleaded gasoline poisons the catalytic converter, thereby, increasing the hydrocarbon and carbon monoxide emissions by more than 400 percent. Therefore, an I/M program in and of itself can deter motorists from misfueling.

Under provisions of recently promulgated revisions to Subchapter 15, "Control and Prohibition of Air Pollution from Light-Duty Gasoline-Fueled Motor Vehicles," New Jersey's anti-tampering program started in December, 1985 and will be phased-in through May 1987. 1982 and newer vehicles are now covered; on January 1, 1987, 1979–1981 vehicles will be included and on May 1, 1987 it will include 1975 and later vehicle models. The antitampering inspection consists of a visual check of the catalytic converter and the fuel neck inlet restrictor. (The restrictor is a device that prevents the use of the larger-sized nozzle that dispenses leaded gasoline.) Motorists tampering with their fuel neck inlet restrictor or catalytic converter are required to replace their catalytic converter.

Comment: A recent audit by EPA at four private garages showed that three of the garages had not failed any vehicles for excess emissions. State inspection stations have 20 to 25% emission failure rates. It is difficult to predict if this "indifferent" attitude by the private garages toward emissions will also prevail in the anti-tampering inspection.

Response: Beginning May 1, 1985 all garages in the private inspection system must use the high quality test equipment specified in Subchapter 15. The mandatory recording on a tape-cassette

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of each emission test and the printing of test results for the motorist helps to ensure adequate quality control. In addition, all garages must have mechanics who are certified in vehicle emissions testing. The State will continue to audit the activities of the private garages.

Comment: Every vehicle should be inspected at a State inspection station at least every other year to ensure compliance with requirements of the I/M program.

Response: The purpose of allowing private garages to perform inspections was to reduce waiting lines and alleged overcrowding at the State inspection stations. EPA approved this modification to the New Jersey I/M program as meeting Clean Air Act requirements.

5. General Comments

Comment: The National Smelting facility has been shut down. The State should take prompt action in cleaning up the remaining slag heaps, which have been modelled to predict an ambient lead concentration of 0.8 $\mu g/m^3$. The State could use the $600,000 held in escrow from an earlier consent order with the facility to fund the clean-up.

Response: It is our understanding that the State is considering the possibility of using the escrow funds for the purpose of removing the remaining slag heaps.

Comment: EPA required that the State revise three existing State air pollution regulations (Subchapters 8, 13 and 18) to adequately provide for the review of new sources. The State's failure to adopt final regulations as part of the SIP does not give adequate opportunity for public participation.

Response: The final revisions to Subchapters 8, 13, and 18 have been submitted to EPA as part of the Lead SIP. The public was given an opportunity to comment during a public hearing held prior to the adoption of the revisions of these regulations.

Comment: Issues affecting air quality in the Ironbound District of Newark have been ignored in the SIP. Recent soil sampling in the Ironbound, conducted by EPA as part of its dioxin investigation, have revealed lead concentrations in soil to be as high as 1600 milligrams per kilogram. Also, the heavy traffic in the Ironbound District would contribute to excessive amounts of lead from vehicle exhaust emissions and from "kicking up" dust and dirt in which lead has been entrained.

Response: The State is operating ambient monitors in Newark which are affected by lead emissions from industrial and mobile sources. EPA finds these ambient monitors to be an adequate indication of the air quality in Newark, and finds that the State has submitted an adequate demonstration for the attainment of the lead standards for the City of Newark. In addition, although the State has conducted some soil sampling, soil sampling is not required by EPA as part of a State's demonstration for the attainment and maintenance of the lead standards.

In general, EPA regulations and policy required the State to demonstrate attainment and maintenance of the lead standards only in the vicinity of significant sources and where violations have been measured with ambient monitors. The State has met these requirements.

C. Comments on the February 25, 1985 Reproposal

1. Stationary Source Control Measures

Comment: Instead of performing "RACT-plus studies" for Delco Remy, and Heubach, the State should develop and implement emission control strategies immediately for these two facilities. This urgent need results from:

- Monitoring data which showed a measured quarterly average concentration at the Delco Remy facility of 2.12 $\mu g/m^3$ for the fourth quarter of 1983 and 1.73 $\mu g/m^3$ for the first quarter of 1984.
- A State estimated lead concentration at the Heubach facility of 7.0 $\mu g/m^3$.

EPA allows a "RACT-plus studies" approach to SIP development.

Response: In cases where RACT is in place and a demonstration of attainment of the air quality standards is inconclusive, EPA allows a "RACT-plus studies" approach to SIP development. The "RACT-plus studies" approach consists of: (1) A justification that the levels of emission controls in existence or adopted constitute RACT, (2) a determination of any additional emission points that may possibly be controlled and potential control measures that go beyond RACT, and (3) an air monitoring network. Delco-Remy and Heubach both have RACT level emission controls and air monitors in place. The cause of the measured and modelled violations are thereby being determined so that control measures can be selected and implemented.

Comment: The State proposes to have by January 1986 control measures that will lead to attainment of the lead standards in the vicinity of both the Heubach and Delco-Remy facilities. Thus, under the SIP, control measures will not be implemented until one year prior to the attainment deadline. These control measures should have been selected in time for submission in the SIP so that the public could review and comment on them in sufficient time for changes to be made prior to the attainment deadline.

Response: The cause of the violations and the necessary control strategies will be determined and implemented earlier than the attainment deadline. (**Note.**—Attainment is required by 1988.) Public review and comment will be necessary if any SIP revision is needed.

Comment: The State uses general and imprecise language to describe the ambient air monitoring program for Dupont; the cursory reference in the Lead SIP does not appear to conform to the rather specific condition established by EPA.

Response: In the operation of the air monitor at Dupont, the State will follow the sampling and analytical procedures as outlined in EPA's regulations found in 40 CFR Part 58. EPA finds this air monitoring protocol to be adequate for obtaining air monitoring data.

2. General Comments

Comment: The SIP emphasizes proposed anti-tampering regulations as a means of significantly reducing the incidence of misfueling in New Jersey. These proposed regulations include a test paper examination for the presence of lead in the vehicle exhaust, which would then enable the inspector to detect misfueling. However, revisions to Subchapter 15 adopted on June 5, 1985 did not include the lead test paper procedure as a mandatory screening procedure.

Response: Plumbtesmo paper is a litmus type paper which can be used to detect lead deposits in the tailpipe of vehicles designed to use unleaded gasoline. A positive result indicates that the car has used leaded gasoline sometime in the past.

It is EPA's understanding that the State has studied the use of such paper for possible future incorporation into its anti-tampering program. NJDEP is preparing a written report describing this study. The State's failure to incorporate a plumbtesmo test in its initial anti-tampering program does not invalidate the attainment demonstration in the New Jersey Lead SIP.

Comment: The SIP should include an explicit State commitment to allocate appropriate financial and staff resources to obtain the reduction of lead emissions at existing lead sources. In the past, there have been assertions that the State lacks the staff and finances to undertake enforcement actions under particular environmental laws. To avoid this possibility in the future with regard to existing sources of lead emissions, the State should now make these commitments explicit in the SIP and thereby ensure enforcement in the future.

Response: Each year, EPA awards to the State air pollution control grant funds for implementing the State's air pollution control program. As part of this process, the State develops a comprehensive work plan that reflects the priorities established by EPA and the State. This process will help to ensure that adequate resources are available for complying with the provisions of the Lead SIP.

Comment: The State has committed itself to a schedule for adopting regulations that incorporates maximum allowable lead emission limitations (Subchapter 6) and regulations to govern the combustion of liquid fuels (Subchapter 19), as required by EPA. However, these regulations, which are an essential part of any enforcement strategy, should be adopted before approval of the Lead SIP. Otherwise, a vital control element is left to future development, without any present means of assessing its actual or potential effectiveness to reduce lead emissions.

Response: EPA did require the State to adopt regulatory changes to Subchapters 6, 8, 13, and 18. With the exception of Subchapter 6, these have been submitted to EPA. Subchapter 6 would limit emissions from the Heubach and Delco Remy facilities in the event such limits are determined necessary. The date for revisions to Subchapter 6 is deferred until after the completion of the "RACT-plus studies" to allow the State to determine the specific controls which may be necessary. In addition, EPA accepts June 30, 1986 as an appropriate date for the adoption of Subchapter 19 since EPA did not require its adoption as a measure to attain and maintain the standards for lead.

Comment: A significant amount of material has not yet been submitted to EPA by the State. This material should now be available to the public for review and comment. As such, EPA should formally extend the comment period to allow for review and comment.

Response: Submittals that were received from the State following the end of the formal comment period were not available for public review and comment. Even though the majority of the Lead SIP was available prior to the end of the comment period, EPA extended the comment period for the two commentors who requested such an extension. These two commentors provided the only comments received on EPA's February 25, 1985 **Federal Register** notice of proposed rulemaking.

D. Comments on USMR

1. Comments on the December 29, 1983 Proposal

Comment: Present operations and controls at USMR were evaluated by the State and the facility and recommendations for the development of state-of-the-art controls have been incorporated into the consent order which now governs the operations at USMR. Extensive modelling conducted by USMR and the State have indicated that, upon completion of the items required by the consent order, USMR will operate within the emissions limits proposed or enforced by the State. In addition, since the signing of the consent order, USMR has complied with the terms of the order.

Response: EPA agrees that USMR has completed all measures to control emissions from the cupola stack as set forth in the consent order. However, as mentioned in section II of today's notice, because of continued measured violations of the lead standards, additional control measures appear necessary.

Comment: The reliance on consent orders instead of specific emission standards violates the Clean Air Act requirements that SIPs be specific and enforceable. In addition, the use of a consent order for USMR is unworkable, based on the history of USMR's compliance with control permits and consent order deadlines.

Response: Consent orders are a legally enforceable means of assuring the reduction of emissions from specific stationary sources. See section II of today's notice for a discussion of USMR.

2. Comments on the February 25, 1985 Reproposal

Comment: USMR has submitted air quality data to the State from monitoring conducting from July through September 1984. The data is part of an October 1984 report entitled, "Air Quality Assessment of USMR/AMAX Stack and Fugitive Process Emissions." The USMR smelter, however, was not in operation during most of July, nor in August, September, October or November. In addition, USMR admits that an on-site audit of one monitor, during this period, revealed a discrepancy in its flowrate. Therefore, statistics or data derived prior to the approval of the monitoring protocol should not be used or incorporated into the SIP.

Response: This monitoring data is not part of the SIP and was not relied on when developing control strategies for USMR.

Comment: USMR is sampling only on every-third-day instead of every other day as specified in the monitoring protocol.

Response: The monitoring protocol has been changed to reflect an every-third-day sampling frequency. Every-third-day monitoring is twice as often as EPA regulations require and provides sufficient data to determine the ambient concentration of lead.

Comment: The State should establish more stringent review procedures or have an independent party review the monitoring being done by USMR at its facility.

Response: The State has committed initially to analyzing all samples taken at USMR, and will determine, after two calendar quarters of data has been analyzed, whether a less exhausting spot check analysis will be sufficient for maintaining quality control. This procedure provides sufficient oversight of the USMR monitoring program.

Comment: The two monitors that EPA required to be established at USMR will not reflect maximum emissions impact.

Response: The air monitoring sites established by the State and USMR meet EPA's requirement in that they are located "near sites predicted by dispersion modeling to experience the maximum impacts of the facility's emissions." The predicted peak concentration is located in the waterway between Staten Island and New Jersey, the Arthur Kill. The only off-plant and non-water location where violations are predicted by modelling is across the Arthur Kill on Staten Island. Monitoring was not found to be possible in this area since it is an active landfill and no stable site could be found. However, New York State has sited an ambient monitor on Staten Island near the landfill. The existing on-plant USMR monitoring sites are closer to the location of the predicted peak concentration than other off-plant sites that are on-land, including the Fresh Kills Landfill.

Comment: The monitoring practices at USMR should conform to a final protocol, including a more complete monitoring capability. No monitoring data should be accepted until EPA and the public review the monitoring protocol and it becomes part of the SIP.

Response: EPA finds that USMR's protocol, as contained in the SIP, is acceptable. The public was given an opportunity to comment on the monitoring protocol for USMR during EPA's December 29, 1983 and February 25, 1985 proposed actions.

Comment: In addition to the two monitors that are part of the SIP's monitoring protocol for the USMR facility, USMR operates two other monitors. Previous monitoring revealed that some of the highest concentrations of pollutants were recorded during various periods at the northwest monitor as a result of sea breeze effects, thermal internal boundary layer (TIBL) effects, downwash, inversions and wind direction during the warmer weather. EPA should, therefore, require the use of these two additional monitors at USMR or similar ones off-site.

Response: The national ambient air quality standards for lead are based on a quarterly average. Although high daily average concentrations can occur, quarterly average concentrations are predicted to be lower at the sites to the west of the facility, where the commentor suggest the two additional monitors be sited.

Comment: It is not clear whether the Climatological Dispersion Model (CDM) used by the State to estimate lead concentrations in the vicinity of USMR incorporated the sea breeze effects from southeasterly winds, or whether it even has the capacity to do so. If the CDM model is not capable of considering specific meteorological conditions at USMR, then the conclusion that the peak impact will occur 500 meters east of the facility, may be a significant error. This may be especially true where trapping of pollutants occur because of various conditions other than westerly winds.

Response: The meteorological data used by the State is representative of the area around USMR. EPA has reviewed the modelling done by the State for its Lead SIP and EPA is confident that the modelling predicts the correct area for the peak concentrations from lead emitted by USMR.

Comment: USMR will be utilizing the two monitors that are located on USMR property. Because they are located on plant property, the two monitors are not necessarily in the ambient air, as defined by EPA. The State may, therefore, have to relocate these monitors.

Response: The two monitors are sufficiently close to the boundary line of the USMR plant property to be representative of the air outside of the plant.

Comment: The State monitored total suspended particulates (TSP) at the Carteret Sewage Treatment plant until at least 1980. Very significant concentrations of TSP were measured at this site. If the site is still available it should be utilized as part of the monitoring that is to be conducted under the Lead SIP. If the site is no longer available, another site should be located in Carteret to measure TSP and lead concentrations.

Response: The State operates a National Air Monitoring Station for TSP at the Carteret Sewage Treatment Plant; it will be available for SIP monitoring for TSP. Since the monitoring sites near USMR are near the area of peak concentration, monitoring for lead at Carteret is not needed.

Comment: The SIP states that the USMR consent order will result in a 90 percent reduction in fugitive emissions, but no percentage reduction is specified in the consent order. The SIP does not include an evaluation of actual controls to be used at USMR and their emissions reduction potential.

Response: See section II of today's notice for a discussion of USMR.

Comment: EPA should consider the recent data in an April report prepared by USMR that contains the monitoring data that covers the period of October 1984 through December 1984. The data in the report demonstrates a dramatic exceedence of the lead standards in the vicinity of USMR and should be considered prior to the approval of the SIP.

Response: See section II of today's notice for a discussion of USMR.

IV. Conclusion

Based on its review of the submitted documents and the comments received, EPA finds that the New Jersey SIP adequately provides for the attainment and maintenance of the air quality standards for lead in all areas of New Jersey with the exception of the Borough of Carteret. Therefore, EPA is today approving the New Jersey Lead SIP for the entire State with the exception of this borough. When the State submits a revised control plan for USMR, EPA in another **Federal Register** notice will propose action on this specific part of the SIP.

At that time, the public will have an opportunity to comment on the State's submittal. However, if the State after reasonable time fails to provide the expected control plan, EPA will propose a federal strategy.

Today's action is being made effective immediately since the SIP revision being approved is already in effect and EPA's approval imposes no additional regulatory burden.

Under Executive Order 12291, today's action is not "Major." Because full approval is not being taken, today's action has been submitted to the Office of Management and Budget (OMB) for review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the U.S. Court of Appeals for the appropriate circuit within 60 days of today. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2).).

List of Subjects in 40 CFR Part 52

Air pollution control, Lead, and Incorporated by references.

Note.—Incorporation by reference of the State Implementation Plan for the State of New Jersey was approved by the Director of the Federal Register on July 1, 1982.

Dated: October 31, 1986.

Lee M. Thomas,

Administrator, Environmental Protection Agency.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40, Chapter I, Subchapter C, Part 52, Code of Federal Regulations is amended as follows:

Subpart FF—New Jersey

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1570 paragraph (c) is amended by adding new paragraph (c)(38) as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

(38) The New Jersey State Implementation Plan for attainment and maintenance of the lead standards was submitted on May 1 and August 15, 1984, and on April 22, April 29, May 17, and July 16, 1985 by the New Jersey Department of Environmental Protection.

(i) Incorporated by reference:

(A) Revisions to N.J.A.C. 7:27–8, "Permits and Certificates," effective April 5, 1985.

(B) Revisions to N.J.A.C. 7:27–13, "Ambient Air Quality Standards," effective June 25, 1985.

(C) Revisions to N.J.A.C. 7:27–18, "Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality (Emission Offset Rule)," effective March 11, 1985.

(D) A July 16, 1985 letter from the Department of Environmental Protection; with attachment of letter dated July 15, 1985, contains schedules for revising N.J.A.C. 7:27–6, "Control and Prohibition of Particles from Manufacturing Process," to incorporate maximum allowable emission rates for lead and for adopting a new section, N.J.A.C. 7:27-19, to govern the combustion of liquid fuels, if necessary.

(E) "RACT-plus studies" to determine strategies to eliminate violation of the lead standards in the vicinity of Heubach, Inc., Newark and Delco Remy, New Brunswick will be completed by November 1, 1985 and control measures will be selected by January 1986.

(ii) Additional material:

(A) Narrative submittal of the Lead SIP, including attainment demonstration, air quality data and summary of both current and projected lead emissions.

3. Section 52.1580 is amended by adding to the table the pollutant lead, "Pb," in a new last column and by adding a new footnote e, as follows (footnote a. is republished):

§ 52.1580 Attainment dates for national standards.

* * * * *

Air quality control region and nonattainment area	Pollutant	
		Pb
New Jersey-New York-Connecticut Interstate AQCR:		
The City of Jersey City		a
Remainder of Hudson County (excluding Jersey City).		a
The City of Newark (east of the Garden State Parkway).		a
The City of Newark (west of the Garden State Parkway).		a
The City of Elizabeth		a
The City of Linden		a
The Borough of Carteret		a
The Township of Woodbridge		a
The City of Perth Amboy		a
The City of Paterson		a
The City of Hackensack		a
The Town of Morristown		a
The Borough of Somerville		a
The City of Asbury Park		a
The Borough of Freehold		a
Remainder of AQCR		a
Metropolitan Philadelphia Interstate AQCR:		
The City of Camden		a
The City of Trenton		a
The City of Burlington		a
The Borough of Penns Grove		a
Remainder of AQCR		a
New Jersey Intrastate AQCR:		
The City of Bridgeton		a
The City of Atlantic City		a
Toms River (portion of Dover Township).		a
Remainder of AQCR		a
Northeast Pennsylvania-Upper Delaware Valley Interstate AQCR.		a

* * * * *

a. Air quality levels presently attain standards or area is unclassifiable.

* * * * *

e. Attainment date to be specified in future plan submittal.

4. Section 52.1605 is amended by revising the entries for Subchapter 8, 13 and 18 to the table as follows:

§ 52.1605 EPA—approved New Jersey regulations.

State regulation	State effective date	EPA approved date	Comments
* * *	*	*	* *
Subchapter 8, "Permits and Certificates".	Apr. 5, 1985	Nov. 25, 1986, 51 FR 42573.	
* * *	*	*	* *
Subchapter 13, "Ambient Air Quality Standards".	June 25, 1985	Nov. 25, 1986, 51 FR 42573.	
* * *	*	*	* *
Subchapter 18, "Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality in Nonattainment Areas (Emission Offset Rule)" (except as noted regarding sections 18.1 and 18.2(e)(1)).	Sept. 8, 1980	Apr. 15, 1981, 46 FR 21996.	The definitions of "significant emission increase," in §§ 18.1, and 18.2(e)(1) are disapproved. Federally promulgated regulations (40 CFR 52.1578(c), published at 46 FR 21996 on Apr. 15, 1981) are applicable.
Subchapter 18, "Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality (Emission Offset Rule)".	Mar. 11, 1985	Nov. 25, 1986, 51 FR 42573.	The approval of this version of Subchapter 18 only relates to the review of major sources of lead and the review of significant increases of lead emissions at major sources.
* * *	*	*	* *

[FR Doc. 86-25501 Filed 11-24-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 190

[ANR FRL-3117-8]

Denial of Petitions by the American Mining Congress Regarding Environmental Radiation Standards at Uranium Mills

AGENCY: Environmental Protection Agency.

ACTION: Denial of petitions for reconsideration.

SUMMARY: This notice announces the Agency's decision to deny petitions of the American Mining Congress (AMC) regarding application of the environmental radiation standards at 40 CFR Part 190 to uranium mills.

ADDRESSES: Docket R-82-2 containing material relevant to this action is located in the U.S. Environmental Protection Agency (EPA), Central Docket Section, Room WSM-2903B, 401 M Street SW., Washington, DC 20460. The docket may be inspected between 8 a.m. and 4 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Allan C.B. Richardson, Office of Radiation Programs (ANR-460), U.S. Environmental Protection Agency, Washington, DC 20460, Telephone 202-475-9620.

SUPPLEMENTARY INFORMATION: In October 1980, the AMC petitioned EPA to reopen rulemaking proceedings for the purpose of reconsidering the Agency's environmental radiation standards for nuclear power operations (40 CFR Part 190) as they apply to uranium mills. The AMC further requested EPA to stay the effective date of these standards at uranium mills pending consideration of its petition (hereinafter referred to as the Petition). The standards had been promulgated by EPA in Jaunary 1977 (42 FR 2858, January 13, 1977) and were to become effective at uranium mills in December 1980. In April 1981, EPA denied AMC's request for a stay, based on a preliminary finding that the request for reconsideration was not likely to be granted.

In July 1985, the AMC submitted an additional petition (hereinafter referred to as the Further Petition) to EPA citing additional reasons for reopening rulemaking proceedings.

The Petition is based on several assertions, which may be summarized as follows:

1. Important new information developed since the promulgation of 40 CFR Part 190 shows that the application of these standards to uranium mills is not cost-effective. This information requires EPA to revise these standards so that only cost-effective controls are required at uranium mills.

2. The health risks from uranium milling operations are quite small and do not support a need for the standards.

3. The rulemaking record was inadequate to support the standard of 25 millirem to the whole body or any organ (except the thyroid) of any member of the public.

The Further Petition contained additional assertions, which may be summarized as follows:

4. A subcommittee of EPA's Science Advisory Board reviewed the risk assessment methodology used for setting standards under the Clean Air Act and made significant criticism of EPA's assessments which are germane to reassessment of these standards.

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5. The EPA relied on the radiation protection principle that exposures to radiation should be "as low as reasonably achievable" (ALARA). This reliance in a standard-setting process is incorrect. The EPA must also make a threshold finding of significant risk before it can issue health standards.

6. The EPA did not consider risk estimates developed by prestigious scientific groups in developing these radiation protection standards.

7. The results of a court case reveal that a 25 millirem dose (the value of one of the standards) is insignificant in terms of average exposure to natural background radiation.

8. The standards at 40 CFR Part 190 are inconsistent with principles of radiation protection recommended by National Council on Radiological Protection and Measurements (NCRP) and adopted by EPA in a related regulatory context. Also, these standards are inconsistent with the recommendations of the International Commission on Radiological Protection (ICRP).

The EPA has reviewed each of these contentions in detail. This review included a re-evaluation of risks and control technology costs. We have also considered the results of a comprehensive study by the Nuclear Regulatory Commission (NRC), the Generic Environmental Impact Statement on Uranium Milling (NRC80), and the results of recent NRC experience in implementing the 40 CFR Part 190 standards at uranium mills.

Based on this review, we have reached the following conclusions:

1. The petitions contain no new information related to risk assessment, the cost of emission control, or compliance assessment which warrants reopening the rulemaking proceedings. Without this standard, the dose to persons near uranium mills is estimated to be about 200 mrem/yr to the lung (from airborne particulates, primarily uranium from yellowcake drying operations), and about 300 mrem/yr to the bone (from windblown particulates from the tailings) (EPA79b). The EPA considers the level of risk from such doses to be significant and not minimal. A reanalysis confirms EPA's conclusion in 1977 that uranium mills can meet the 40 CFR Part 190 standards at reasonable cost. The EPA established the standards based on protection of both individuals and populations. The limit of 25 mrem/yr was chosen based on an analysis of effects on populations and on assuring that risk to individuals is limited (EPA76a).

Comparison of doses from various sources to background radiation may be useful to set priorities for efforts to reduce their contributions to hazards to public health (to the extent that they are avoidable), but they are not useful for deciding the appropriate level of control for a specific source. That decision must be based upon the specifics peculiar to the type of source under consideration, as was done in the case of the standards at 40 CFR Part 190.

2. The petitions contain no new information regarding the rulemaking record which warrants reopening of the proceedings. The procedures used by EPA in setting the standards were reasonable and proper and we find no basis for the contention that the administrative record was inadequate to support the standards. The questions raised by the EPA's Science Advisory Board were adequately answered in an EPA publication entitled "Radionuclides, Response to Comments for Final Rules, Volume II" and do not change the conclusions of EPA's analysis. That analysis also included the recommendations of other scientific groups whenever they were applicable.

3. The limit proposed by NCRP is not a primary standard, but is incorporated as a variance to the Clean Air Act standards. Such variances may be granted by the Administrator of EPA if they are properly justified. However, in the case of uranium mills, the data collected since 40 CFR 190 was promulgated indicate that uranium mills can generally comply with the 40 CFR Part 190 standards without undue difficulty.

With respect to the use of ICRP recommendations for risk weighting factors, EPA calculated risk directly in its analysis, while ICRP's risk factors do so in the calculation of "effective dose." In either case, for analysis of risk, the results are comparable. EPA notes that the 40 CFR Part 190 standard is not exclusively a risk-based standard, but included other considerations that are independent of the choice of weighting factors. Therefore, it was not relevant whether or not the ICRP weighting factors were used in the analysis for the 40 CFR Part 190 standards.

The anlaysis supporting these conclusions is provided in a separate document entitled "Analysis of the American Mining Congress' Petitions for Reconsideration and Revision of 40 CFR Part 190 Standards and for Postponement of Effective Date." This analysis has been placed in the docket and a limited number of copies are available for distribution to the public upon request.

Conclusion

For the reasons stated above, these petitions to reopen the rulemaking proceeding for the purpose of reconsidering 40 CFR Part 190 as it applies to uranium mills are denied. The previous denial of AMC's request for a stay of the effective date of these standards at uranium mills is reaffirmed

Dated: November 13, 1986.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

[FR Doc. 86-26514 Filed 11-24-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR PART 64

[Docket No. FEMA 67-37]

National Flood Insurance; Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the third column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified	Date ¹
Region I				
Connecticut: Hartford, city of, Hartford County.	[illegible]	June 30, 1970, Emerg.; Apr. 28, 1972, Reg.; Dec. 4, 1986, Susp.	July 1, 1970, July 1, 1974 Sept. 29, 1978, and Dec. 4, 1986.	Dec. 4, 1986.
Region II				
New York: Florida, village of, Orange County.	360615	July 28, 1975, Emerg.; Dec. 4, 1986, Reg.; Dec. 4, 1986, Susp.	Mar. 22, 1974, June. 11, 1976, and Dec. 4, 1986.	Do.
Region IV				
Kentucky: Clark County, unincorporated areas.	210278B	May 13, 1976, Emerg.; Dec. 4, 1986, Reg.; Dec. 4, 1986, Susp.	Aug. 5, 1977 and Dec. 4, 1986.	Do.
Region V				
Wisconsin:				
Gratiot, village of, Lafayette County	550229C	Mar. 16, 1976, Emerg.; Dec. 4, 1986, Reg.; Dec. 4, 1986, Susp.	Jan. 16, 1974, May. 14, 1976, and Dec. 4, 1986.	Do.
Lafayette County, unincorporated areas.	550222B	Mar. 10, 1972, Emerg.; Sept. 15, 1978, Reg.; Dec. 4, 1986, Susp.	Dec. 27, 1974, Sept. 15, 1978, and Dec. 4, 1986.	Do.
Belmont, village of, Lafayette County	550225B	July 25, 1975, Emerg.; Dec. 4, 1986, Reg.; Dec. 4, 1986, Susp.	May 17, 1974, May 21, 1976 and Dec. 4, 1986.	Do.
Region VII				
Kansas: Andover, city of, Butler County	200383B	Feb. 7, 1977, Emerg.; Dec. 4, 1986, Reg.; Dec. 4, 1986, Susp.	Aug. 6, 1976, Aug. 2, 1977 and Dec. 4, 1986.	Do.
Region III—Minimal Conversions				
Pennsylvania:				
Arona, borough of, Westmoreland County.	420871B	Apr. 9, 1976, Emerg.; Dec. 1, 1986, Reg.; Dec. 1, 1986, Susp.	Aug. 9, 1974, May 7, 1976 and Dec. 1, 1986.	Do.
Gibson, township of, Susquehanna County.	[illegible]	Oct. 3, 1973, Emerg.; Dec. 1, 1986, Reg.; Dec. 1, 1986, Susp.	Apr. 4, 1975 and Dec. 1, 1986	Do.
Grugan, township of, Clinton County	421539B	Apr. 6, 1977, Emerg.; Dec. 1, 1986, Reg.; Dec. 1, 1986, Susp.	Nov. 8, 1974, July 23, 1976 and Dec. 1, 1986.	Do.
Ohiopyle, borough of, Fayette County	421641B	Mar. 8, 1985, Emerg.; Dec. 1, 1986, Reg.; Dec. 1, 1986, Susp.	Jan. 31, 1975, Mar. 19, 1976 and Dec. 1, 1986.	Do.
Otter Creek, township of, Mercer County.	422488A	June 2, 1976, Emerg.; Dec. 1, 1986, Reg.; Dec. 1, 1986, Susp.	Jan. 31, 1975 and Dec. 1, 1986	Do.

[1] Certain Federal assistance no longer available in special flood hazard areas.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

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Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 86–26500 Filed 11–24–86; 8:45am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[PR Docket No. 86–63; FCC 86–429]

Amateur Radio Service; Examination Credit for Written Elements

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: This document adopts rules to allow re-examination credit for written elements passed during a previous amateur operator examination. These rules are being adopted in order to allow volunteer-examiner coordinators and volunteer examiners greater latitude, and to give applicants additional examination opportunities.

EFFECTIVE DATE: December 1, 1986, subject to Office of Management and Budget approval of associated changes to FCC Form 610.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Special Services Division, Private Radio Bureau, (202) 632–4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR Docket No. 86–63, adopted October 6, 1986, and released November 7, 1986.

The full text of the Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcript Services, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC., 20037.

Summary of Report and Order

In the *Notice of Proposed Rule Making* in this proceeding, 51 FR 6446, February 24, 1986, the Commission proposed rules to allow re-examination credit for written elements passed during an otherwise unsuccessful amateur operator examination. This *Report and Order* adopts rules which effectuate the proposal.

Until these rules were adopted, credit could only be given for telegraphy examination elements. Adoption of these rules provides volunteer-examiner coordinators (VEC's) and volunteer examiners (VE's) greater latitude. It also permits an applicant to take a written element before a telegraphy element.

Amateur service rules were amended to clarify that Novice system VE's are not required to issue a Certificate of Successful Completion of Examination (CSCE) upon an applicant's successful completion of Elements 1(A) or 2. Instead, an applicant may now receive examination credits for Elements 1(A) and 2 from the administering VE's by producing a photocopy of a pending application which indicates the person has qualified for a Novice operator license.

A newly filled out FCC Form 610 will still be required each time a person takes an amateur operator examination. If the examination results in eligibility for a new or upgraded license, administering VE's and the coordinating VEC review and forward the application.

The FCC held that since the CSCE is a valid document for telegraphy element credit, it should prove equally valid for written element credit. Suggestions that the CSCE should be altered to prevent possible misuse were rejected. The FCC said it had no substantial evidence of any significant misuse of the CSCE's for telegraphy element credit.

The rules adopted herein require modification of FCC Form 610. Specifically, they require new VE certifications and new instructions to applicants and VE's in Section II. These rule changes have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act. A copy of the modified FCC Form 610 we are adopting has been placed in the docket file associated with this proceeding. It is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW. Washington, DC.

In accordance with section 605 of the Regulatory Flexibility Act of 1980 (5 U.S.C. 605), we certify that these rule changes will not have a significant economic impact on a substantial number of small entities, because these entities may not use the Amateur service for commercial radio communications. (See 47 CFR 97.3(b)).

Ordering Clauses

Accordingly, IT IS ORDERED that under the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended (47 U.S.C. 154(i) and 303(r)), Part 97 of the Commission's rules is amended as set forth below. These rule changes are effective December 1, 1986, contingent upon Office of Management and Budget approval of the changes to FCC Form 610 also adopted herein.

It is further ordered, subject to the approval of the Office of Management and Budget, that FCC Form 610 is revised as set forth in the docket file associated with this proceeding.

List of Subjects in 47 Part 97

Amateur radio; Examinations.

The collection of information requirement contained in these rule changes has been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons wishing to comment on this collection of information requirement should direct their comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for Federal Communications Commission.

William J. Tricarico,

Secretary.

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 97—AMATEUR RADIO SERVICE

1. The authority citation for Part 97 continues to read:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. Paragraph (b) of § 97.25 is revised to read:

§ 97.25 Examination credit.

* * * * *

(b) Upon presentation of a certificate of successful completion of an examination (see § 97.28(e)) for any examination element examiners shall give applicants for amateur radio operator licenses examination credit for any element that has been successfully completd within the previous 365 days. Examiners shall give applicants credit for Elements 1(A) or 2 upon presentation of a photocopy of FCC Form 610 which has been submitted to the FCC indicating the applicant has qualified for the Novice operator license within the previous 365 days.

* * * * *

3. Paragraph (e) of § 97.28 is revised to read:

§ 97.28 Examination administration.

* * * * *

(e) A certificate of successful completion of an examination will be issued by the examiners to an applicant who successfully completes an examination element coordinated by a VEC under Subpart I. A certificate is valid for a period of 365 days from the date of its issuance.

* * * * *

[FR Doc. 86-26485 Filed 11-24-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. T84-01; Notice 11]

Final Listing of High Theft Lines for 1987 Model Year; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; technical amendment.

SUMMARY: This agency has completed all of its actions for determining which carlines will be subject to the marking requirements of the motor vehicle theft prevention standard for the 1987 model year. NHTSA has previously published a listing of those carlines which were selected as high theft carlines beginning with the 1987 model year. However, some of the carlines selected as high theft lines are nevertheless *not* subject to the theft prevention standard for the 1987 model year. Three 1987 lines selected as high theft lines are not subject to the theft prevention standard because they were introduced into commerce before the effective date of the theft prevention standard (April 24, 1986). Twelve carlines have received exemptions from complying with the requirements of the theft prevention standard because they have standard equipment anti-theft devices. This final listing is intended to inform the public, particularly law enforcement groups, of the carlines that are subject to the marking requirements of the theft prevention standard for the 1987 model year.

EFFECTIVE DATE: This listing becomes effective November 25, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Brian McLaughlin, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202-366-4808).

SUPPLEMENTARY INFORMATION: On October 24, 1985, NHTSA published a new Part 541, *Federal Motor Vehicle Theft Prevention Standard;* 50 FR 43166. Part 541 sets forth performance requirements for inscribing or affixing identification numbers into or onto covered original equipment major parts, and the replacement parts for those original equipment parts, on all vehicles in lines selected as high theft lines.

Section 603(a)(2) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2023(a)(2); hereinafter "the Cost Savings Act") specifies that NHTSA shall select the high theft lines with the agreement of the manufacturer, if possible. Accordingly, on April 8, 1986, this agency published a listing of those lines selected as high theft lines beginning with the 1987 model year; 51 FR 11919. However, that notice stated that there were two possible circumstances in which a carline listed in the notice would not be required to be marked in accordance with the theft prevention standard for the 1987 model year.

First, three of the high theft lines had 1987 models introduced into commerce before April 24, 1986, the effective date for Part 541. For the purposes of Title VI of the Cost Savings Act, a line's model year begins on the day on which a vehicle in that line is introduced into commerce in the United States. The legislative history of Title VI states, "The [theft prevention] standard cannot apply to a car in the middle of the model year." H.R. Rep. No. 1087, 98th Cong., 2d Sess., at 11 (1984). Accordingly, this agency has concluded that if a 1987 model year version of a carline selected as a high theft line was introduced into commerce before the effective date of Part 541, it is not subject to the requirements of Part 541 during the 1987 model year. Such lines will, however, be subject to Part 541 beginning in the 1988 model year.

Second, section 605 of the Cost Savings Act (15 U.S.C. 2025) provides that a manufacturer may petition to have a high theft line exempted from the requirements of Part 541, if the line is equipped as standard equipment with an anti-theft device. The exemption is granted if NHTSA determines that the standard equipment anti-theft device is likely to be as effective as compliance with Part 541 in reducing and deterring motor vehicle thefts. NHTSA has exempted twelve high theft lines under this statutory provision.

This revised listing is intended to inform the public, particularly law enforcement groups, of which carlines are subject to the marking requirements of the theft prevention standard for the 1987 model year. This listing does not add any more lines to the group listed in the April 8, 1986 notice as subject to Part 541. It does, however, delete some lines from that listing. Since such deletions do not impose any additional obligations on any party, but instead relieve some manufacturers from compliance with Part 541, NHTSA finds for good cause that this notice should be effective as soon as it is published in the **Federal Register.**

NHTSA also finds for good cause that notice and opportunity for comment on this listing are unnecessary. All of the lines listed herein have already been selected as high theft lines in accordance with the criteria set forth in Title VI of the Cost Savings Act. Further, all of the lines exempted from Part 541 were exempted in accordance with Title VI. Public comment on the selections and exemptions is not contemplated by Title VI, and is unnecessary after the selections and exemptions have been made in accordance with the statutory criteria.

Regulatory Impacts.

NHTSA has determined that this rule deleting some previously listed lines from the listing of those subject to the requirements of the vehicle theft prevention standard is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. As noted above, the deletions have all been made in accordance with the provisions of the Cost Savings Act, and the manufacturers of the deleted lines have already been informed that those lines are not subject to the requirements of Part 541 for the 1987 model year. This listing does not actually exempt lines from the requirements of Part 541; it only informs the general public of such exemptions. Since the only purpose of this final listing is to inform the public of prior final agency action for the 1987 model year, a full regulatory evaluation has not been prepared.

The agency has also considered the effects of this listing under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As

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noted above, the effect of this notice is simply to inform the public of those lines that will be subject to the requirements of Part 541 for the 1987 model year. The agency believes this information will not have any economic impact on small entities.

Finally, the agency has considered the environmental impacts of this rule, in accordance with the National Environmental Policy Act, and determined that it will not have any significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 541

Administrative practice and procedure, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

PART 541—[AMENDED]

In consideration of the foregoing, 49 CFR Part 541 is amended as follows:

1. The authority citation for Part 541 continues to read as follows:

Authority: 15 U.S.C. 2021–2024, and 2026; delegation of authority at 49 CFR 1.50.

2. Appendix A of Part 541 is revised and Appendices A–I and A–II are added to read as follows:

Appendix A—Lines Subject to the Requirements of this Standard .

Manufacturer	Subject lines
BMW	3—Carline.
	5—Carline.
	6—Carline.
	7—Carline.
Chrysler	Chrysler Executive Sedan/Limousine.
	Chrysler Fifth Avenue/Newport.
	Chrysler Laser.
	Chrysler LeBaron/Town & Country.
	Chrysler LeBaron GTS.
	Dodge Aries.
	Dodge Daytona.
	Dodge Diplomat.
	Dodge Lancer.
	Dodge 600.
	Plymouth Caravelle.
	Plymouth Gran Fury.
	Plymouth Reliant.
	"Q" Car.
Ferrari	Mondial 8.
	308.
	328.
Ford	Ford Mustang.
	Ford Thunderbird.
	Mercury Capri.
	Mercury Cougar.
	Lincoln Continental.
	Lincoln Mark.
	Lincoln Town Car.
	Merkur Scorpio.
	Merkur XR4Ti.
General Motors	Buick Electra.
	Buick LeSabre.
	Buick Riviera.
	Cadillac DeVille.
	Cadillac Eldorado.
	Cadillac Seville.
	Chevrolet Camaro.
	Chevrolet Nova.
	Oldsmobile Delta 88.
	Oldsmobile 98.
	Oldsmobile Toronado.
	Pontiac Bonneville.
	Pontiac Fiero.
	Pontiac Firebird.
Honda	Acura Legend.
Jaguar	XJ.
	XJ–6.
	XJ–40.
Maserati	Biturbo.
	Quattroporte.
Mazda	GLC.
	626.
Mercedes-Benz	190 D/E.
	260 E.
	300 D/E.
	300 TD.
	300 SDL.
	380 SEC/500 SEC.
	380 SEL/500 SEL.
	380 SL.
	420 SEL.
	560 SEL.
	560 SEC.
	560 SL.
Mitsubishi	Cordia.
	Tredia.
Porsche	911.
	928.
Reliant	SSI.
Saab	900.
	9000.
Subaru	XT.
Toyota	Camry.
	Celica.
	Corolla/Corolla Sport.
	MR2.
	Starlet.
Volkswagen	Audi Quattro.
	Volkswagen Cabriolet.
	Volkswagen Rabbit.
	Volkswagen Scirocco.

Appendix A–I—1987 Lines Introduced Into Commerce Before April 24, 1986, Which Are Not Subject to the Requirements of This Standard Until the 1988 Model Year

Manufacturer	Line
Alfa Romeo	Milano 161.
Mazda	RX–7.
Porsche	924S.

Appendix A–II—Lines Exempted from the Requirements of this Standard Pursuant to 49 CFR Part 543

Manufacturer	Exempted lines
Austin Rover	Sterling
Chrysler	Chrysler Conquest
General Motors	Cadillac Allante
	Chevrolet Corvette
Isuzu	Impulse
Mitsubishi	Galant
	Starion
Nissan	Maxima
	300 ZX
Toyota	Celica Supra
	Cressida
Volkswagen	Audi 5000S

Issued on November 20, 1986.

Diane K. Steed,

Administrator.

[FR Doc. 86–26479 Filed 11–24–86; 8:45 am]

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Proposed Rules

Federal Register
Vol. 51, No. 227
Tuesday, November 25, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1036

[Docket Nos. AO-179-A49 and AO-179-A49-RO1]

Milk in the Eastern Ohio-Western Pennsylvania Marketing Area; Decision on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts certain changes in the plant location pricing structure of the Eastern Ohio-Western Pennsylvania milk order based on industry proposals considered at a public hearing held August 7-8, 1985 and on testimony presented at a reopened hearing held March 12-14, 1986. It would establish a single Class I price differential throughout the marketing area and within Pennsylvania at the present Zone 2 price level. The changes are needed to reflect current marketing conditions and to assure orderly marketing in the area. A referendum will be conducted to determine whether producers who supplied milk during May 1986 favor the issuance of the order.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The proposed amendments modify the plant location pricing structure of the order to make it conform more closely to current economic conditions that exist in the marketplace. The principal changed marketing condition involves the location of the market's milk producers in relation to where a majority of the milk is processed for the market. Reflection of this and other changed marketing conditions through amendments proposed herein will not result in a significant added price impact on regulated handlers. In fact, approximately 88 percent of the Class I milk, delivered to 23 of the 28 distributing plants on the market, will be in a situation of no difference or a negative difference in handler fluid milk cost.

Prior Documents in this proceeding:

Notice of Hearing: Issued July 19, 1985; published July 24, 1985 (50 FR 30204).

Suspension Order: Issued September 4, 1985; published September 10, 1985 (50 FR 36865).

Partial Recommended Decision: Issued February 14, 1986; published February 21, 1986 (51 FR 6245).

Notice of Reopened Hearing: Issued February 14, 1986; published February 21, 1986 (51 FR 6241).

Partial Final Decision: Issued July 24, 1986; published July 30, 1986 (51 FR 27178).

Final Order: Issued August 19, 1986; published August 26, 1986 (51 FR 30325).

Recommended Decision: Issued September 12, 1986; published September 19, 1986 (51 FR 33273).

Preliminary Statement

Public hearings were held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area. The hearings were held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), at Strongsville, Ohio, on August 7-8, 1985, pursuant to a notice of hearing issued July 19, 1985 (50 FR 30204) and at Indianapolis, Indiana, on March 12-14, 1986, pursuant to a notice of hearing issued February 14, 1986 (51 FR 6241).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Marketing Programs, on September 12, 1986, filed with the Hearing Clerk, United States Department of Agriculture, a recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, except that a new paragraph has been added at the end of issue 3.

The material issues on the records of hearings relate to:

1. Pool plant qualifications.
2. Diversions to nonpool plants.
3. Location adjustments.

This decision deals only with issue 3. The other issues, 1 and 2, were dealt with in a previous decision.

Findings and Conclusions

Background Statement

Since the time that this proceeding originated (Notice of hearing issued July 19, 1985; published July 24, 1985 (50 FR 30204)), the Congress enacted the Food Security Act of 1985 (Pub. L. 99-198), which, among other things, mandated increases in the Class I differentials of 35 Federal milk orders including the Eastern Ohio-Western Pennsylvania order. These increases became effective May 1, 1986. At that time, the Class I differential for the Eastern Ohio-Western Pennsylvania milk order increased 10 cents per hundredweight. In light of this, the proceeding on proposed amendments to change the location adjustment provisions of the Eastern Ohio-Western Pennsylvania order was reopened (Notice issued February 14, 1986; published February 21, 1986 (51 FR 6241)) at the request of proponent Milk Marketing, Inc. (MMI).

At the reopened hearing in Indianapolis, Indiana, MMI reiterated its support of the proposal for a single Class I price throughout the order's marketing area. However, the primary purpose of MMI's testimony at this hearing was to point out that the 10-cent increase in the Class I differential

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mandated for Zone 1 should likewise apply to its initial proposal. As revised at the reopened hearing, MMI proposed that the Class I differential throughout the marketing area and at plants located in Pennsylvania should be $2.00.

3. *Location Adjustments.* The order's location pricing structure should be revised to eliminate the pricing zones within the marketing area and to modify the application of location adjustments at plants located outside the marketing area. As adopted, a single Class I price differential of $2.00 would apply at all plants in the marketing area and at plants located outside the marketing area within Pennsylvania.

Currently, the marketing area is divided into four pricing zones; namely, Zones 1, 2, 3, and 4. Zone 1 includes the Ohio counties of Ashland, Ashtabula, Carroll, Geauga, Guernsey (only the townships of Londonderry, Millwood, and Oxford), Harrison, Holmes, Monroe, Portage, Stark (Sugar Creek Township only), Trumbull (only the townships of Bazetta, Bloomfield, Bristol, Champion, Farmington, Fowler, Greene, Gustavus, Hartford, Johnston, Kinsman, Mecca, Mesopotamia, Southington, and Vernon), Tuscarawas, and Wayne; and the Pennsylvania counties of Clarion (the townships of Ashland, Beaver, Licking, Madison, Perry, Piney, Richland, Salem, and Toby only), Crawford, Erie, and Venango. Zone 2 includes the Ohio counties of Belmont, Columbiana, Jefferson, Lorain, Mahoning, Medina, Stark (except Sugar Creek Township), Summit, and Trumbull (the townships of Braceville, Brookfield, Howland, Hubbard, Liberty, Lordstown, Newton, Vienna, Warren, and Weathersfield only); the Pennsylvania counties of Armstrong, Beaver, Butler, Fayette, Greene, Lawrence, Mercer, Washington, and Westmoreland (except the boroughs of Bolivar, Donegal, Ligonier, New Florence, and Seward and the townships of Cook, Donegal, Fairfield, Ligonier, and St. Clair); and the West Virginia counties of Barbour, Brooke, Doddridge, Hancock, Harrison, Lewis, Marion, Marshall, Monongalia, Ohio, Preston, Randolph, Taylor, Tucker, Tyler, Upshur, and Wetzel. Zone 3 includes the Ohio counties of Cuyahoga and Lake (Cleveland metropolitan area), and Zone 4 includes the Pennsylvania county of Allegheny (Pittsburgh metropolitan area).

Under the present order, the Class I prices applicable to milk received at plants in Zones 2, 3, and 4 are 5 cents, 8 cents, and 10 cents more, respectively, than the Zone 1 price, which is $1.95 over the basic formula price for the second preceding month. At a plant outside the marketing area, the Class I price is that applicable at the nearest of certain cities to such plant (Canton and Cleveland, Ohio; Erie, Pittsburgh, and Uniontown, Pennsylvania; and Clarksburg, West Virginia), reduced at a rate of 1.5 cents for each 10 miles or fraction thereof that such plant is located from the city hall of the nearest city. The uniform price to producers whose milk is delivered to plants in the respective zones or to plants where location adjustments apply is adjusted in the same amount as the Class I price.

MMI proposed eliminating the present four pricing zones and establishing a single Class I price differential of $2.00 to be applicable at plants in the marketing area and at plants located outside the marketing area in Pennsylvania. The proponent cooperative stated that the current zones and location differentials were established in 1972 as incentives to attract milk from the principal milk production areas to bottling plants which at that time were located in the market's main population centers of Pittsburgh, Pennsylvania and Cleveland, Ohio. The proponent's spokesman emphasized that since the implementation of the four pricing zones, changes in market conditions have occurred. Specifically, he indicated there has been a decrease in the number of pool distributing plants in the major population centers which has resulted in a reduction in the need for producer milk receipts in these areas. Because adequate supplies of fluid milk can now be obtained from producers who are located nearby to fluid plants, MMI contends that the plant location pricing incentives are no longer needed to move milk from where it is produced to where it is needed. The cooperative's spokesman added that its proposal would not result in any significant change in the total value of Class I milk in the pool.

A second witness speaking for MMI stated that the present market situation is characterized by fewer distributing plants that have distribution areas which go beyond zone borders. Because of zone pricing, handlers who compete for sales in the same areas pay unequal amounts for their raw product. Thus, he stressed that adoption of MMI's proposal is the only remedy available to prevent unfair competition that can occur from unequal product pricing brought on by zone pricing.

A spokesman for National Farmers Organization (NFO) supported proponent's proposal. He stated that adopting a single Class I differential throughout the marketing area will increase returns to many producers who supply milk to the market.

A representative of a small cooperative in the market, Tri-County Producers Cooperative (Tri-County), likewise supported MMI's proposal for a single Class I price throughout the order's marketing area and in Pennsylvania. However, he requested that the Class I differential be $2.25 in order to encourage producers to continue to produce for the Grade A market.

A producer who presently ships to a distributing plant located in Zone 3 opposed any change in the present location pricing structure. He stated that the present pricing zone system is a more equitable way to pay producers because it tends to offset the higher hauling rates to the major population centers. He also contended that many small dairy farmers would suffer drops in income if zone pricing were eliminated.

A witness testifying on behalf of a handler who operates a pool distributing plant in Zone 1, Meadow Brook Dairy, objected to changing the present location pricing structure as proposed by the cooperative. The principal basis for the handler's objection is that the Class I price for plants in Zone 1 would be increased 5 cents while the Class I price for competing plant operators in Zone 2 would remain the same. This in turn, the witness claimed, would adversely change the handler's competitive position for Class I sales with Zone 2 handlers.

The entire location pricing structure of the order was last reviewed at a public hearing held in January 1972. The redefining of the zones and changes in the rates applicable in each zone resulting from that proceeding became effective on January 1, 1973 and have remained in effect continuously since then. The basis of their adoption is set forth in the findings of the Assistant Secretary in his decision of November 3, 1972 (37 FR 23782), official notice of which is taken.

In his decision at that time, the Assistant Secretary concluded that, "Greater monetary incentive is needed if producers, responding to the minimum prices established by the order, are to deliver adequate quantities of milk to plants in these population centers [1] when alternative plant outlets nearer their farms are available. A producer whose farm is nearer to a secondary population center in the marketing area than to Pittsburgh or Cleveland frequently can achieve a better net return, after paying hauling cost, by shipping to the secondary market. This has been particularly true with the price realized for milk delivered to any other point in the marketing area, except the Pittsburgh district where a 10-cent higher price has applied."

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[1] Refers to the market's major population centers of Pittsburgh and Cleveland.

When the present location price structure became effective January 1, 1973, most of the market's fluid milk processing plants were located in or near urban population centers, and substantial quantities of milk were needed there, more than what was produced locally. Therefore, price incentives were provided to attract milk from the rural production areas to the milk deficient urban demand centers. Because a higher value was placed on milk in urban areas in order to attract adequate milk supplies, producers and supply plant operators shipped milk to urban fluid operations and received better net returns than what they would have received if one price applied throughout the market area (i.e. flat pricing). Otherwise, because most fluid milk is shipped directly from farms to distributing plants, the distant producers would have shipped milk to outlets nearest their own localities.

The record clearly demonstrates that a shift in the location of distributing plants has occurred since the 1972 hearing. Today, most of the market's distributing plants are no longer located in the urban population centers. Rather, the urban population centers are being served by fluid bottlers who are located nearer to their sources of milk. Consequently, bulk milk now does not have to move the longer distances to urban areas. Those fluid plants that remain in urban areas are able to obtain sufficient milk supplies from nearby producers, for whom the urban distributing plants offer them the best market for their milk with or without the 5 cent, 8 cent, or 10 cent added location value.

Zones 3 and 4 (the Cleveland and Pittsburgh areas), although still the leading population centers of the market, are no longer significant fluid milk processing centers. In December 1974, 2.3 million pounds of milk daily or 40 percent of total producer milk used in Class I that month was needed by Zone 3 and 4 fluid plants (1.2 million pounds and 1.1 million pounds respectively). However, in December 1985, only 1.0 million pounds of milk daily or 18 percent of total producer milk used in Class I that month was needed (0.7 million pounds in Zone 3 and 0.3 million pounds in Zone 4). This amount could have been supplied totally by nearby producers. The producers in the Ohio counties of Cuyahoga and Lake and their surrounding counties of Ashtabula, Geauga, Lorain, Medina, Portage, and Summit produced 1.2 million pounds daily in December 1985, and the producers in Allegheny County, Pennsylvania and its surrounding counties of Armstrong, Beaver, Butler, Washington, and Westmoreland produced 1.0 million pounds daily. In total, the local producers produced 2.2 million pounds of milk daily in December 1985, which well exceeded the 1.0 million pound daily Class I needs of the Zone 3 and 4 fluid handlers.

Presently, Zone 2 distributing plants process the overwhelming majority of Class I milk priced under the order. In fact, almost the entire decrease in the proportion of total Class I milk processed in Zones 3 and 4 since December 1974 (22 percent) has translated into the increase in the proportion of total Class I milk processed in Zone 2 since that time (20 percent).

Similar to Zone 3 and 4 fluid handlers, the needs of the Zone 2 fluid processors can be met by local producers. In December 1985, the amount of milk processed by fluid handlers located in the present Zone 2 and in Cambria County, Pennsylvania, was 120.4 million pounds. In this same month, producers located in Zone 2 and in the adjacent out-of-area counties of Bedford, Blair, Cambria, Centre, Clearfield, Indiana, Jefferson, and Somerset, Pennsylvania; Garrett, Maryland; and Erie and Huron, Ohio, produced 156.1 million pounds.

The needs of the Class I handlers in Zone 1 also were met by local producers' production. In December 1985, the total supply of 137.8 million pounds from Zone 1 producers far surpassed the Class I demands, which were 20.4 million pounds.

The record clearly demonstrates that the Class I needs of fluid handlers are now more than adequately met by locally-produced milk. Because milk does not have to be transported long distances to meet the needs of urban fluid bottlers, there is no longer a need to provide price incentives to attract sufficient supplies of milk for metropolitan-based distributing plants. Producers who supply the Zone 1 distributing plants move their milk supplies no less a distance than those who supply the plants in Zones 2, 3, or 4. Therefore, it is impractical and unnecessary to provide location adjustments at plant locations in the marketing area or at Pennsylvania plant locations outside the marketing area.

Another point that must be addressed concerns the alternative outlets of producers. A rationale used to implement zone pricing in 1972 was that producers and supply plant operators must be compensated through the use of zone differentials or they would choose not to ship their milk to the urban fluid plants. Therefore, the value of milk increased as milk moved from Zone 1 to and through Zones 2, 3, and 4 to reflect the cost of transportation. Presently, as indicated earlier in this decision, the demands of fluid operators in all zones can be adequately met by nearby producers. No alternative now exists for producers, that is, they supply the closest distributing plant because distant plants no longer need supplemental supplies.

The changes adopted herein will provide a better pattern of inter-order price alignment. For example, establishing a Class I price differential level 5 cents higher than that now applicable at Zone 1 plants in Ohio is needed to maintain alignment with prices in the Ohio Valley milkshed ($2.00 vs. $2.04). The 5-cent higher price for plants in the Pennsylvania segment of Zone 1 will result in a pricing pattern which will minimize price differences at plants located near each other and will be more representative of competitive alternative market prices than the present order prices for the area.

Eliminating zone pricing and establishing a single Class I differential of $2.00 throughout the marketing area and within Pennsylvania will bring about more orderly and more equitable marketing. A slight gain in total returns will be realized by producers in the aggregate. On an individual basis, producers whose milk is marketed by plants in Zone 1 will receive about 4 cents more per hundredweight than what they now receive. However, producers associated with plants in Zones 2, 3, and 4 will receive, respectively, about 1, 4, and 6 cents less than what they presently receive.

Conversely, handlers will all be paying equal amounts for Class I milk. Compared with current raw product costs, Zone 1 handlers will be paying 5 cents more per hundredweight, while Zone 3 and 4 handlers will be paying 3 cents and 5 cents less per hundredweight respectively. The raw product cost in Zone 2 will remain the same. Because the proposed Class I differential of $2.00 already applies to almost three-fourths (70 percent in December 1985) of Class I producer milk, such relative changes for producers and handlers should not impact the market's supply situation.

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Also, because approximately 73 percent of producer milk is now priced at plus 5 cents or more, a differential of $2.00 must be maintained. Only about 27 percent of producer milk is priced at the present base price (Zone I price). Therefore, it would be appropriate to adopt the present Zone 2 price for Class I milk in the marketing area and at all plants located outside the marketing area within Pennsylvania.

Extending the area in which no location adjustments would apply to plants located outside of the marketing area within Pennsylvania, as adopted herein, will improve somewhat the price alignment among Order 36, Order 4, and local nearby unregulated handlers competing for milk supplies, particularly, in the Pennsylvania counties of Bedford, Cambria and Somerset. This is an area of relatively heavy milk production from which these handlers regularly compete for milk supplies. Thus, the higher price proposed for this area will result in a closer relationship of prices between the only pool plant located in the area at Johnstown, Pennsylvania, with other handlers competing for milk supplies. It will result in a more realistic inter-market alignment of prices in the general area.

In a post-hearing brief, the Johnstown pool handler objected to the proposed elimination of the location adjustment at his plant location because it would result in a net increase in milk costs. The brief was general in nature on this particular point and did not indicate with any specificity in terms of the record evidence why the proposed change should not be adopted.

As indicated elsewhere, the Erie, Pennsylvania handler opposed the proposed price increase for Zone 1 contending that plenty of milk is readily available at present prices and the proposed 5-cent increase would only serve to develop increased supplies of milk. In view of the current level of prices paid to producers in the area where the Erie handler procures milk, the nominal increase of about 4 cents in the Zone I blend price will not appreciably affect the supply of producer milk for the market.

Additionally, this handler claimed that the proposed price increase would adversely affect its competitive position for Class I milk sales with other handlers in the market. However, the record evidence does not demonstrate that the proposed price increase is such as to impede sales of Class I milk by the Erie handler in the market.

An exception to the recommended decision was filed by the dairy producer who had testified against the elimination of zone pricing at the hearing in Strongsville, Ohio. His exception, which reiterated the points made in his testimony, provided no basis to warrant not revising the plant location pricing structure of the order and is thus denied.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. The briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Eastern Ohio-Western Pennsylvania order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an ORDER amending the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision and the two documents annexed hereto be published in the **Federal Register.** The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which is published with this decision.

Referendum Order To Determine Producer Approval: Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that a referendum be conducted and completed on or before the 25th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300 *et seq.*), to determine whether the issuance of the attached order as amended and as hereby proposed to be amended, regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the Eastern Ohio-Western Pennsylvania marketing area.

The representative period for the conduct of such referendum is hereby determined to be May 1986.

The agent of the Secretary to conduct such referendum is hereby designated to be C. Mack Endsley.

List of Subjects in 7 CFR Part 1036

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC on November 18, 1986.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 86-26505 Filed 11-24-86; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25 and 121

[Docket No. 25003; Petition Notice PR-86-12A]

Petition of Air Transport Association (ATA) and Aerospace Industries Association (AIA); Reopening of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Petition for rulemaking; reopening of comment period.

SUMMARY: This notice announces the reopening of the comment period for Petition Notice PR-86-12 (51 FR 26168; July 21, 1986) which invited comments relative to a joint petition of ATA and AIA to amend §§ 25.853 and 121.312 of the FAR to require different test procedures from those proposed in Notice of Proposed Rulemaking (NPRM) 85-10 (50 FR 15038; April 18, 1985) relative to acceptance criteria for materals used in the interiors of transport category airplane cabins. This reopening is necessary to afford all interested parties an opportunity to present their views on the petition for rulemaking.

DATE: Comments must be received on or before January 21, 1987.

ADDRESS: Send comments on Petition Notice PR-86-12 in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn.: Rule Docket (AGC-204), 800 Independence Avenue SW., Washington, DC 20591, or deliver in triplicate to Room 915G, 800 Independence Avenue SW., Washington, DC. Comments must be marked: Docket No. 25008. Comments may be inspected in Room 915G weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Office of the Regional Counsel (ANM-7), FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. Comments in the information docket may be inspected in the Office of the Regional Counsel weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gary L. Killion, Regulations Branch (ANM-112), Transport Standards Staff, Aircraft Certification Division, FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168, telephone (206) 431-2912.

SUPPLEMENTARY INFORMATION:

Discussion

The ATA and the AIA petition was published in the Federal Register on July 21, 1986, (51 FR 26168) with a 4-month comment period (which closed on November 19, 1986). Amendment 25-61 (which resulted from NPRM 85-10) was also published in the Federal Register on July 21, 1986, (51 FR 26206). This amendment, as adopted, provided a 6-month comment period on the final flammability criteria for the purpose of possibly refining either the test procedures or acceptance criteria. This comment period will close on January 21, 1987. Because of the interrelationship between the subject petition and Amendment 25-61, the FAA has determined that reopening the comment period on the petition to be consistent with the closing date for comments on Amendment 25-61 would be in the public interest. The agency's final decision on the petition will, of course, be consistent with any action taken with respect to Amendment 25-61.

Issued in Washington, DC on November 17, 1986.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

[FR Doc. 86-26344 Filed 11-24-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 61809-6200]

Direct Investment Surveys; Raising Exemption Levels for BE-605, 606B, 133B, and 133C Surveys

AGENCY: Bureau of Economic Analysis, Commerce.

ACTIONS: Notice of proposed rulemaking.

SUMMARY: This notice sets forth proposed rules to amend 15 CFR Part 806 by raising the exemption level for four mandatory direct investment surveys conducted by the Bureau of Economic Analysis (BEA). The four surveys are quarterly survey BE-605, Transactions of U.S. Affiliate, Except an Unincorporated Bank, With Foreign Parent; quarterly survey BE-606B, Transactions of U.S. Banking Branch or Agency With Foreign Parent; annual survey BE-133C, Schedule of Expenditures for Property, Plant, and Equipment of U.S. Direct Investments Abroad; and annual survey BE-133B, Followup Schedule of Expenditures for Property, Plant, and Equipment of U.S. Direct Investments Abroad. The exemption levels for the BE-605 and 606B quarterly surveys would be raised from $10,000,000 to $15,000,000 and the levels for the BE-133C and 133B annual surveys would be raised from $8,000,000 to $10,000,000.

The purpose of these changes is to reduce the number of survey reports filed, thus significantly reducing the reporting and processing burden.

DATE: Any comments on this proposed rule will receive consideration if submitted in writing on or before January 28, 1987.

ADDRESS: Send comments to Office of the Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230. Responses to this notice will be available for public inspection from 8:00 a.m. to 4:00 p.m. in Room 608, 1401 K Street, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: George R. Kruer, Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230, phone (202) 523-0657.

SUPPLEMENTARY INFORMATION: The four direct investment surveys for which exemption levels would be raised under this proposed rule are part of BEA's regular investment data collection program. The surveys are mandatory and are conducted pursuant to the International Investment and Trade in Services Survey Act (22 U.S.C. 3101-3108).

The exemption level for a given survey is the level of a U.S. or a foreign affiliate's assets, sales, or net income below which reporting is not required. Consequently, raising the exemption level will lower the number of reports to be filed, and will significantly reduce both the reporting burden on U.S. businesses and the processing burden on BEA.

The increase in the exemption level for the BE-605 and BE-606B surveys would be effective beginning with the reports to be filed for the first quarter of 1987. The increase in the exemption level for the BE-133C survey would be effective beginning with the report due

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June 1, 1987, and the increase in the exemption level for the BE–133B survey would be effective beginning with the report due December 1, 1987.

Executive Order 12291

BEA has determined that this program rulemaking is not "major" as defined in E.O. 12291 because it is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The surveys covered by these proposed rules contain collection of information requirements subject to the Paperwork Reduction Act. Current OMB approval of the collection of information requirements for the BE–605 and BE–606B surveys (OMB Nos. 0608–0009 and 0608–0023) will expire February 29, 1987; requests for review and re-approval of the collection of information requirements for these surveys, with the higher exemption levels, have been submitted to OMB.

The collection of information requirements for the BE–133C and BE–133B surveys, with current exemption levels, have been approved by OMB (OMB Nos. 0608–0024 and 0608–0020). The paperwork to raise the exemption levels and reduce the reporting burden for these two surveys is pending OMB approval.

Comments regarding these collection of information requirements may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Bureau of Economic Analysis, Washington, DC 20503.

Regulatory Flexibility Act

The General Counsel, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because it raises exemption levels, thereby reducing reporting requirements of small entities. Therefore, a regulatory flexibility analysis was not prepared.

List of Subjects in 15 CFR Part 806

Balance of payments, Economic statistics, Foreign investment in the United States, Reporting requirements, U.S. investment abroad.

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR Part 806 as follows:

PART 806—[AMENDED]

1. The authority citation for 15 CFR Part 806 continues to read as follows:

Authority: 5 U.S.C. 301, 22 U.S.C. 3101–3108, and E.O. 11961, as amended.

§ 806.14 [Amended]

2. In § 806.14(f)(1), the exemption level of $8,000,000 is changed to read "$10,000,000."

3. In § 806.14(f)(2), the exemption level of $8,000,000 is changed to read "$10,000,000."

§ 806.15 [Amended]

4. In § 806.15(h)(1), the exemption level of $10,000,000 is changed to read "$15,000,000."

5. In § 806.15(h)(2), the exemption level of $10,000,000 is changed to read "$15,000,000."

Dated: October 24, 1986.

Allan H. Young,

Director, Bureau of Economic Analysis.

[FR Doc. 26486 Filed 11–24–86; 8:45 am]

BILLING CODE 3510–06–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket Nos. 76P–0296–PRC and 84N–0153]

Food Labeling; Definitions of Cholesterol Free, Low Cholesterol, and Reduced Cholesterol

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the food labeling regulations to define, and to provide for the proper use of, the terms "cholesterol free," "low cholesterol," and "cholesterol reduced" in the labeling of foods; and to provide for use of other truthful and nonmisleading statements about cholesterol content on food labeling. The proposed rule will permit meaningful declarations about the cholesterol content of foods while preventing misleading claims about this food component. It also will amend current regulations regarding label declaration of the cholesterol and fatty acid content of foods. In addition, FDA is proposing to set forth related agency policies.

DATES: Written comments by January 26, 1987. The agency proposes that any final rule that may issue based upon this proposal become effective in accordance with a uniform effective date for compliance with food labeling requirements which is announced by notice in the **Federal Register** and which is not sooner than 1 year following publication of any final rule based upon this proposal.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David Hattan, Center for Food Safety and Applied Nutrition (HFF–204), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–245–3117.

SUPPLEMENTARY INFORMATION:

I. Background

A. Cholesterol and Fat

For more than 30 years there has been controversy over the role of dietary fat and cholesterol in the development and treatment of disease of the heart and arteries. To understand the nature of this controversy, one must understand certain basic facts about fat, fatty acids, and cholesterol, which are collectively referred to as "lipids."

Fat is present in most foods, regardless of whether the foods are of plant or animal origin. The amount of fat present in foods varies, ranging from being present in only trace amounts in leafy vegetables to being the major component of cooking oils. A breakdown of fat yields fatty acids and glycerol.

The chemical structures of the fatty acids in a fat are responsible for the fat's characterizing properties. A fatty acid may be saturated or unsaturated. The degree of unsaturation is determined by the number of carbon atoms that are double bonded to each other in the fatty acid. The more carbon atoms that are double bonded to each other, the more unsaturated is the fatty acid. A fatty acid with a single double bond is called a "monounsaturated fatty acid." A fatty acid with two or more double bonds is usually referred to as a "polyunsaturated fatty acid."

Fat from either plant or animal sources usually contains both saturated and unsaturated fatty acids. However, fats from animal sources usually contain more saturated fatty acids than do fats from plant sources.

Cholesterol differs from fat and fatty acids in that it occurs in significant amounts only in animal tissues. Although most food products that have animal-derived ingredients contain varying amounts of cholesterol, cholesterol is only a minor constituent compared with other components. For instance, it is present in those foods in much smaller quantities than fat.

Cholesterol and fat as components of the diet are not chemically or functionally alike. While both are lipids, cholesterol is a complex chemical belonging to a class of chemical compounds called "sterols." Fats, as stated above, are made up primarily of fatty acids and glycerol and belong to a class of chemical compounds called "glycerides." Both fatty acids and cholesterol are ingested as components of food. Cholesterol and most fatty acids are also synthesized by the body. Cholesterol is important to several body functions, including the synthesis of steroid hormones. Fats are mainly associated in the body with the production and storage of energy. Dietary fats are the source of essential fatty acids that are not synthesized by the body.

B. Diet and Heart Disease

Coronary heart disease is the single most common cause of death and disability in the United States today. It accounts for more deaths annually than any other disease, including all forms of cancer combined (Ref. 1).

An elevated blood cholesterol level has been implicated as a factor in the development of atherosclerosis or "hardening of the arteries," a major contributor to coronary heart disease. In atherosclerosis, a buildup of solid material in and on the walls of blood vessels occurs that restricts the flow of blood. This material, referred to as "plaque," usually contains an appreciable amount of cholesterol.

For many individuals, there appears to be a correlation between the severity of the plaque deposits and the levels of cholesterol in the blood. Many questions about the buildup of plaque remain unanswered, however, including why plaque deposits are formed, what role the level of cholesterol in the blood plays in plaque formation, and whether, and to what extent, the consumption of saturated fatty acids and cholesterol in the diet influences blood cholesterol levels. In addition, several factors other than blood levels of cholesterol, such as high blood pressure, cigarette smoking, diabetes mellitus, and obesity, seem to be linked to the development of atherosclerosis (Refs. 2 and 3).

C. Opinions of Expert Organizations and Institutions

One aspect of the controversy over the role of dietary fat and cholesterol in the development of heart disease is whether healthy individuals should alter their consumption of these food components.

In 1979, the Surgeon General issued a report on health promotion and disease prevention entitled "Healthy People" (Ref. 8). The report concluded that, given what is known or strongly suspected about the relationship between diet and disease, Americans would probably be healthier if, among other dietary changes, they consumed less saturated fats and cholesterol. This position was reaffirmed in advice to the public to "avoid too much fat, saturated fat, and cholesterol" (Ref. 9) contained in "Nutrition and Your Health, Dietary Guidelines for Americans," published jointly by the Department of Health and Human Services and the U.S. Department of Agriculture (USDA) in 1980 and revised in 1985.

A consensus development conference on lowering blood cholesterol levels was held by the National Institutes of Health on December 10–12, 1984. The consensus panel of experts concluded in its report that "elevated blood cholesterol level is a major cause of coronary artery disease," and that "there is no doubt that appropriate changes in our diet will reduce blood cholesterol levels." The panel cited epidemiologic data and over a dozen clinical trials that it said offered reasonable assurance that reducing blood cholesterol levels will afford significant protection against coronary heart disease. Accordingly, the consensus panel recommended that "all Americans (except children under 2 years of age) be advised to adopt a diet that reduces total dietary fat intake from the current level of about 40 percent of total calories to 30 percent of total calories, reduces saturated fat intake to less than 10 percent of total calories, increases polyunsaturated fat intake but to no more than 10 percent of total calories, and reduces daily cholesterol intake to 250 to 300 mg" (Ref. 5).

For some time, the American Heart Association (AHA) has recommended that most people should lower their dietary intake of lipids, particularly cholesterol and saturated fatty acids. AHA recommends that for healthy adults the calories derived from fat should constitute less than 30 percent of total caloric intake. For individuals with one or more risk factors, AHA recommends that total caloric intake from fat should be less than 25 percent. AHA also recommends that adults in the general population consume an average of less than 300 milligrams (mg) of cholesterol per day (Ref. 2).

The American Medical Association (AMA) issued a statement in 1983 that recommends dietary modifications for persons with hypercholesterolemia (high serum cholesterol) and hypertriglyceridemia (high serum triglycerides). AMA suggests that such persons consume a diet in which no more than 30 to 35 percent of calories are derived from fat and in which there is less than 300 mg of cholesterol per day (Ref. 4).

In 1984, the Inter-Society Commission for Heart Disease Resources published a statement recommending a reduction in dietary cholesterol to no more than 250 mg per day, a reduction in total fat intake to less than 30 percent of calories, and an adjustment in fat intake to provide no more than 8 percent of calories from saturated fat (Ref. 6). The Commission was created in 1969, in response to Public Law 89–239, to develop guidelines for optimal medical resources for the prevention and treatment of cardiovascular disease. The membership of the Commission includes the AMA, AHA, American College of Cardiology, American College of Physicians, American Public Health Association, and 12 other medical associations.

The World Health Organization (WHO) Expert Committee on Prevention of Coronary Heart Disease recommends that in countries with a high incidence of coronary heart disease, such as the United States, blood cholesterol levels should be lowered through progressive changes in eating patterns, including consumption of under 300 mg of cholesterol per day and less than 10 percent of energy intake as saturated fat (Ref. 7).

In January 1984, the National Heart, Lung, and Blood Institute (NHLBI) released the results of a 7 to 10 year clinical study. These results showed that reduction in serum cholesterol by means of the cholesterol-lowering drug cholestyramine resulted in a reduction in fatal and nonfatal heart attacks (Ref. 10). In addition, the study results revealed a linear correlation between cholesterol lowering and a reduction in risk of coronary heart disease. In the study which involved 3,806 men at high risk of developing coronary heart disease, a 19 percent reduction in coronary heart disease risk was obtained as a direct result of an 8 percent reduction in plasma cholesterol. Coronary heart disease risk was

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reduced by 50 percent for participants who obtained a 25 percent reduction in total plasma cholesterol. Thus, on the average, for every 1 percent drop in plasma cholesterol, there was a 2 percent reduction in coronary heart disease risk.

Before initiation of the study, all potential participants were placed on a diet that contained about 400 mg of cholesterol per day and that was designed to provide a polyunsaturated-to-saturated fatty acid ratio of approximately 0.8. This diet was designed to lower cholesterol levels by 3 to 5 percent. The diet was offered to all potential participants at the second of five screening visits because, when the study began, many physicians were recommending such a diet to hypercholesterolemic patients. NHLBI hoped that such a diet, along with a nutrition counseling program, would facilitate recruitment of participants. Moreover, because the diet was introduced before random assignment into treatment groups, it was possible to exclude from the study men whose plasma cholesterol levels were highly sensitive to diet. The study began 3 months after the dietary changes were made. By that time, the diet had resulted in a 3.5 percent reduction in total plasma cholesterol and a 4.0 percent fall in LDL-cholesterol, a low density lipoprotein-cholesterol complex associated with increased risk of coronary heart disease (Ref. 11).

Therefore, although the study was not designed to assess directly whether cholesterol lowering by diet prevents coronary heart disease, NHLBI concluded that "* * * its findings, taken in conjunction with the large volume of evidence relating diet, plasma cholesterol levels and CHD [coronary heart disease] support the view that cholesterol lowering by diet also would be beneficial" (Ref. 10).

An additional concern regarding the consumption of fat has surfaced in recent years as a result of epidemiological studies that have repeatedly shown an association between dietary fat and the occurrence of cancer at several sites (Ref. 12). While the data are not entirely consistent and hence the relationship between dietary fat and cancer is not clear, the Committee on Diet, Nutrition, and Cancer of the National Academy of Sciences recommends that the consumption of both saturated and unsaturated fats be reduced in the average U.S. diet.

II. Need for Change in Current Regulations

A. Current Regulations

In the **Federal Register** of January 19, 1973 (38 FR 2132) and of March 14, 1973 (38 FR 6961), as a result of increasing knowledge about the clinical application of medical concepts concerning dietary fat and cholesterol, FDA adopted its current regulations relating to labeling foods with information on cholesterol, fat, and fatty acid composition. These provisions were designed to assist individuals on fat-modified diets in purchasing food. In addition, they were intended to help prevent consumers from being misled by claims indicating that a number of common foods with relatively high levels of fats were valuable in the control or reduction of blood cholesterol levels and thus were appropriate for the prevention or treatment of diseases of the heart and arteries.

Because of the agency's concern about the improper and misleading use of information regarding cholesterol, the current regulations are quite restrictive concerning the use of such information. Except for the inclusion of fatty acid and cholesterol content information in nutrition labeling (21 CFR 101.9), and as limited by 21 CFR 101.25(b), the only references to cholesterol that the agency presently permits on the label are the statement required by § 101.25(d) when cholesterol information is provided that: "Information (or "this information") on fat (and/or cholesterol, where appropriate) content is provided for individuals who, on the advice of a physician, are modifying their dietary intake of fat (and/or cholesterol, where appropriate)," and the statement permitted by § 101.25(g), which advises consumers where on the label cholesterol information may be found. FDA's regulations make no other provision for the inclusion of cholesterol information in food labeling.

B. Need for Change

A common theme of the organizations that have expressed an opinion on the influence of diet on the development of heart disease is that it would be beneficial for the general population to have more information about the cholesterol and fat content of foods. This theme is supported by the National Cholesterol Education Program (NCEP), which is being coordinated by NHLBI. NCEP's mission is the reduction of coronary heart disease morbidity and mortality related to elevated blood cholesterol. This mission is to be accomplished through extensive cooperation and coordination of many government and private sector health organizations. NCEP plans to develop programs for health professionals, their patients, and the public to increase awareness of the importance of lowering elevated blood cholesterol levels and, in part, to provide necessary information to use dietary changes to accomplish this lowering.

Recognition of the value of more information about the cholesterol and fat content of foods provides a new impetus to amend existing labeling regulations to encourage the quantitative declaration of cholesterol and fatty acids on food labels. In addition, the Consensus Development Conference on Lowering Blood Cholesterol to Prevent Heart Disease and the Inter-Society Commission on Heart Disease Resources have specifically recommended that labeling regulations be reviewed and revised to assist the consumer in easily determining the amount and type of fat and cholesterol present and to encourage the manufacture of nutritious products low in saturated fats and cholesterol (Refs. 5 and 6).

III. FDA's Response to Need for Change

There has been only limited use of fatty acid and cholesterol labeling since the current regulations became effective. Manufacturers have objected to the form of the fatty acid and cholesterol labeling that the regulations permit and to the prohibition of any labeling statements about cholesterol and fatty acids not expressly permitted by the regulations.

Several manufacturers filed petitions between 1973 and 1975 seeking to establish common or usual name regulations for specially processed breakfast meat and egg replacements and to use terms such as "cholesterol free" and "cholesterol reduced" as part of the statement of identity. By letter, FDA denied each of these petitions on May 3, 1976, stating that any reference to cholesterol in the name of a food would give that food a special dietary significance that, based on current knowledge about the value of dietary cholesterol control, it does not deserve.

General Mills, Inc., Miles Laboratories, Inc., Standard Brands, Inc., and SmithKline Corp. jointly filed a petition for reconsideration of the agency's denial (Docket No. 76P-0296-PRC). They focused on use of the term "cholesterol free" as a designation for certain classes of foods. They argued that although this term could be misleading when used in the name of some foods, the cholesterol-free designation was entirely proper and not misleading for the products specifically mentioned in their original petitions.

While reconsidering its denial of these petitions, FDA concluded that it would be appropriate to examine consumer views on cholesterol labeling. Therefore, the agency included cholesterol labeling as a topic in its consumer food labeling surveys conducted in 1978 (Ref. 13) and in 1983 (in conjunction with NHLBI) (Ref. 14) and in the 1978 food labeling hearings it conducted jointly with USDA and with the Federal Trade Commission's (FTC) Bureau of Consumer Protection (Ref. 15).

In preparing this proposal on cholesterol labeling, the agency has examined and taken into consideration all of the information on cholesterol that it has received in response to its consumer food labeling surveys, the tri-agency hearings, and the December 21, 1979 (44 FR 75990), **Federal Register** notice that described the results of those hearings, as well as those issues raised in the industry's petition for reconsideration.

Having reconsidered its earlier denial of the industry's petitions, FDA finds that it would not be appropriate to propose the common or usual name regulations that the petitioners requested because the thrust of such an action would be too narrow. FDA does find, however, that the petitioners' concerns about the restrictiveness of the existing regulations are appropriate. FDA agrees that regulations restricting truthful and nonmisleading product information are not in the consumer's best interest.

Furthermore, although the benefits of a reduction in total dietary fat and cholesterol for the general population have not been shown beyond doubt, the agency is impressed by the recommendations concerning dietary intake of these substances that it has described above and by the results of the recent NHLBI study.

Moreover, the FDA/NHLBI consumer survey found that 65 percent of the respondents were concerned about their consumption of cholesterol (Ref. 14). Of those concerned, 12 percent had been advised by a physician or other health professional to reduce cholesterol and another 35 percent decided to reduce cholesterol in their diet on their own initiative.

The agency's present position, therefore, is to encourage the voluntary declaration of cholesterol and fatty acid content on labeling to assist individuals in lowering their intake of these substances should they so desire, as well as to assist those individuals who have been medically directed to modify their intake of these substances. Since total fat is already a mandatory part of nutrition labeling, no changes concerning fat content declarations are being proposed.

This rulemaking does not purport to deal with whether it is possible to use the food label to communicate explicit health-related information and does not reach the issue of the type of information, if any, on cholesterol and health that might be appropriate for food labeling. FDA is currently considering these issues in another proceeding (reference health claims proposal). The agency notes, however, that responsible communication on food labeling about the current state of knowledge on the relationship between nutrition and health may raise extremely difficult and complex issues. For example, the manner in which health-related information is presented can directly call into play the misbranding and new drug provisions of the act. In the case of cholesterol, it must be clear to consumers that the consumption of a specific food is not likely to contribute significantly to a change in blood cholesterol levels without a modification of the diet to reduce the total amount of fat, saturated fat, and cholesterol consumed. The possibility for confusion resulting from unsubstantiated or misleading health-related information on food labels provides the basis for the prohibition in § 101.9(i)(1) of claims that a specific product in and of itself is effective in the prevention, cure, mitigation, or treatment of any disease or symptom.

Nonetheless, as a result of its review of the petition for reconsideration, of the reports referenced above, and of the fact that large numbers of people, whether on their own initiative or under the direction of a physician, want to follow diets that are lower in fat and cholesterol, FDA has tentatively concluded that its present regulations are unduly restrictive. The agency believes that more information on cholesterol content than it currently permits could be provided on food labels without being false or misleading. Significant segments of the public health community are recommending that individuals modify their total intake of these substances to effect changes in the levels of lipid components in the blood. Consequently, informative labeling that will help individuals identify foods for inclusion in fat- and cholesterol-modified diets should be provided. The agency is proposing to amend its present regulations accordingly.

In addition, in the interest of streamlining and ensuring the consistency of food labeling regulations, the proposed rule deletes certain unnecessary provisions of the existing regulations that are duplicative or merely restate statutory provisions. The general approach taken by the agency in this proposal is consistent with the approach that it took with respect to sodium labeling and should not be construed as a change in policy with respect to sections 201(n) and 403(a) of the act or other implementing provisions.

Inasmuch as this proposal addresses the underlying concern of the petitioners who submitted the petition for reconsideration, and would permit labeling similar to that requested, the agency views this proceeding as a final disposition of the petition.

IV. Use of Standardized Terms and Their Definitions

This proposed rule would establish definitions for the terms "cholesterol free," "low cholesterol," and "reduced cholesterol." These definitions appear in proposed § 101.25(a)(3). FDA is proposing these definitions under sections 201(n) and 403(a) of the act. Those sections authorize the agency to prohibit labeling that is false or misleading in that it fails to reveal material facts with respect to consequences that may result from the use of the article. Because many medical professionals are asking their patients to reduce their dietary intake of cholesterol and to modify the dietary intake of fatty acids, and because consumers are concerned about and wish to reduce their intake of cholesterol and to modify their intake of fatty acid, it is important that label statements not convey a misleading impression about the cholesterol or fatty acid content of a food.

The agency believes that the establishment of specific definitions designed to standardize certain terms used by manufacturers to describe the cholesterol content of a food is desirable. FDA is concerned that without clear guidance, manufacturers might use the same terms on products that vary widely in cholesterol content. FDA is encouraging manufacturers to use these terms; moreover, FDA is proposing to permit use of comparative terms describing cholesterol content so long as they are truthful and not misleading, as discussed below.

FDA requests comments on the proposed definitions and any suggestions as to other definitions that might more effectively inform consumers about a food's cholesterol content. The agency will consider and respond to all such comments in any final rule published on this matter.

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In developing these definitions, FDA examined cholesterol data for approximately 450 cholesterol-containing food products. The agency tabulated and examined this information on the basis of cholesterol content per serving of food, cholesterol content per 100 grams of food, cholesterol content per 100 kilocalories (Calories) of the food, and cholesterol contribution on the basis of estimated frequency of consumption of the food (Ref. 16). (Data tables of cholesterol content information have been placed on file with the Dockets Management Branch, Food and Drug Administration.) The agency also examined other data bases specifying cholesterol content of foods (Refs. 17 and 18).

Having completed this examination, the agency is proposing that the definitions of the terms describing cholesterol content be based on the cholesterol content per serving of food. The agency believes that labeling claims should relate as simply and directly as possible to consumer experience and understanding, and that, as a result of current nutrition labeling practices, consumers are most familiar with descriptions of food in terms of servings. Moreover, in 1981, FDA published the results of a survey of consumers, nutritionists, and food industry representatives concerning what nutrition information they felt should be included in food labels to make those labels most useful to consumers in improving nutritional status and reducing dietary health problems. All groups of respondents preferred having nutrition information continue to be presented on a "per serving" basis rather than in terms of 100 gram or 100 Calorie units (Ref. 19).

Accordingly, FDA is proposing to eliminate the dual labeling provisions established in current § 101.25(b)(2) that require the declaration of cholesterol both in terms of milligrams per serving and milligrams per 100 grams of food. A large number of consumers have commented that the dual requirement is confusing and unnecessary. Under the proposal, cholesterol content will only have to be declared quantitatively in terms of milligrams per serving.

A. Cholesterol Free

FDA is proposing to define the term "cholesterol free" to describe foods containing less than 2 mg of cholesterol per serving. A food inherently having less than 2 mg of cholesterol per serving, e.g., peanut butter, may appropriately be described as a "cholesterol-free food," as long as any labeling claim to that effect clearly refers to all such food and not merely to the particular brand to which the labeling attaches (e.g., "peanut butter, a cholesterol-free food"). Foods that ordinarily contain less than 2 mg of cholesterol per serving include fruits, vegetables, grains, nuts, and seeds, as well as fats and oils derived solely from vegetable sources.

Under the proposed regulation, the term "cholesterol free" can also be used to describe foods that have been formulated or processed specifically to lower the cholesterol content, provided that those foods are substitutes for, and resemble in organoleptic properties, foods containing higher levels of cholesterol. For example, breakfast meat analogs made with soy or other nonmeat ingredients may be formulated to substitute for sausage products. If such analogs are made to contain less than 2 mg of cholesterol, they may be labeled as "cholesterol free."

FDA is proposing to define the term "cholesterol free" to include food with less than 2 mg of cholesterol per serving because it is not practical or reasonable to establish an absolute zero level requirement in analytic terms. The variability in ordinary methodology used to determine cholesterol content does not generally permit precise determination of cholesterol below the 2 mg per serving level. However, although in some cases it may be possible analytically to detect levels of cholesterol of 2 mg or less, such low levels of cholesterol are biologically and nutritionally insignificant. In addition, it is not technologically feasible to remove all traces of cholesterol from foods.

Some may contend that the term "cholesterol free" will mislead consumers into believing that food so labeled is completely without cholesterol. However, the agency believes that no harm will result from any technical misunderstanding caused by the use of this term because foods containing less than 2 mg of cholesterol per serving contain a trivial amount of cholesterol compared to the total dietary intake of cholesterol for any particular individual. FDA established a policy of using "free" as a descriptor of dietetically insignificant components when it adopted regulations for sodium content (49 FR 15510; April 18, 1984). Medically, such insignificant amounts of cholesterol represent a functional, or biological, zero level.

B. Low Cholesterol

The agency is proposing to define the term "low cholesterol" to describe foods that contain less than 20 mg of cholesterol per serving. A food inherently containing less than 20 mg of cholesterol per serving may appropriately be described as "a low cholesterol food," provided that any labeling claim to that effect clearly refers to all foods of that type and not merely to the particular brand to which the labeling attaches. The term "low cholesterol" can also be used to describe foods that have been formulated or processed specifically to lower the cholesterol content, provided that such foods are substitutes for, and resemble in organoleptic properties, foods containing higher levels of cholesterol. For example, a manufacturer produces a quiche mix that contains over 300 mg cholesterol per serving. By removing the egg yolks, however, the manufacturer develops a new formulation that contains less than 20 mg cholesterol per serving. The quiche mix made by the new formulation may be labeled as "low cholesterol quiche mix".

FDA selected the 20-mg-per-serving cutoff as a result of the agency's examination of cholesterol content of foods (Refs. 16, 17, and 18). The agency found that foods containing less than 20 mg of cholesterol per serving are generally those that have been identified as useful to persons who want to control or moderate their cholesterol intakes or to maintain their cholesterol intakes at relatively low levels (Refs. 20 and 21).

In addition, the agency's survey of cholesterol content of foods suggests that the 20-mg level is a convenient cutoff point. Almost 25 percent of the cholesterol-containing foods surveyed contain less than 20 mg of cholesterol per serving (Ref. 16). These foods include products such as skim and lowfat milk, cheeses and yogurt made from skim and lowfat milk, and a wide assortment of processed items such as many types of bread, cereals, macaroni, crackers, and other baked items, salad dressings, mayonnaise, and snack chips.

The agency recognizes that it would be extraordinarily difficult to plan an adequate diet solely from low cholesterol foods. Doing so would, for example, significantly limit the consumption of most foods from animal sources because they generally contain more than 20 mg cholesterol per serving. Most people want, and need, to include some foods from animal sources in their diets. Consequently, health care providers try to overcome this problem by building cholesterol-restricted diets around a daily allotment of animal protein and then rounding out the diet with low cholesterol foods.

The agency believes that "low cholesterol" should be defined with this common practice in mind. The 20-mg-per-serving level is low enough that it will provide the consumer with a safety factor in adhering to cholesterol restrictions, even with some foods from animal sources in the diet. Also the proposed use of the term "low cholesterol" will furnish consumers attempting to control their cholesterol intake with useful information for accomplishing this goal.

C. Cholesterol Reduced

The agency is proposing that the term "cholesterol reduced" (or "reduced cholesterol") be applied only to those foods that contain no more than one-quarter of the cholesterol content of the foods for which they are represented as substitutes, and that they resemble in organoleptic properties. Products labeled as "cholesterol reduced" will have to provide comparative quantitative information on the extent of the cholesterol reduction (e.g., "the cholesterol content of this bread pudding has been reduced from 120 mg to 30 mg per serving"). The reference point against which comparisons are to be made should be an industry-wide "normative" cholesterol content value of foods for which the "cholesterol reduced" food serves as a direct replacement, rather than an extraordinarily high cholesterol 27 content level of a single food product. In addition, the cholesterol reduced claim and the comparative quantitative information will have to appear together on the same panel of the label. With comparative information on the cholesterol reduction, the consumer will have information available to evaluate the significance of the claim "cholesterol reduced" when it is used to describe food products.

The agency believes that food labeled as "cholesterol reduced" should provide a significant reduction in cholesterol in comparison with the food it replaces. The requirement of a 75 percent reduction in cholesterol content as a precondition to use of the term "cholesterol reduced" reflects FDA's concern about the many foods that contain relatively large amounts of cholesterol, and the possibility that products with relatively high levels of cholesterol could easily claim to have reduced cholesterol content if the agency permitted a lesser reduction to be reflected in the labeling. More than one-fourth of the cholesterol-containing foods examined by the agency in the 1979 survey contain more than 100 mg of cholesterol per serving, and of these, one-third contain more than 200 mg. Considering that the average adult consumes several cholesterolcontaining foods per day, foods having a high cholesterol content should be reduced by at least 75 percent if they are to be included or used as part of a daily diet containing 300 mg or less cholesterol per day.

Three hundred milligrams or less is the daily intake suggested by the AHA (Ref. 2), AMA (Ref. 4), and WHO (Ref. 7). Clinical studies of healthy adults demonstrate that a reduction of the total dietary intake of cholesterol to 300 mg or less per day can reduce high serum cholesterol levels (Refs. 11, 22, and 23).

By the same token, foods that are inherently low in cholesterol should not be labeled "cholesterol reduced," even though it may be possible to achieve a 75 percent reduction in their cholesterol content. The agency believes that for a food that contains less than 20 mg cholesterol per serving, a reduction in cholesterol content of 75 percent is not significant. However, FDA has decided not to propose to incorporate this belief into § 101.25 because the agency considers it likely that products containing less than 20 mg per serving will be labeled "low cholesterol" rather than "cholesterol reduced." If a manufacturer does choose to use "cholesterol reduced" or both terms, comparative information on the extent of cholesterol reduction will have to be given on the same panel of the label as that on which the claim is made, thereby allowing the consumer to evaluate the significance of the claim.

D. Comparative Claims

The agency recognizes that there may be food products for which significant reductions in cholesterol content can be made but for which it may not be possible to achieve cholesterol levels that are sufficiently low to allow the products to be labeled as "cholesterol reduced." In order to encourage the increased availability of foods with lowered cholesterol content, the agency is announcing that it has no objection if manufacturers label foods truthfully to show comparative cholesterol reductions using such other terms as "less cholesterol" or "lowered cholesterol," provided that quantitative information on the reduction is provided. For example, a manufacturer could use such terms as "less cholesterol" or "lowered cholesterol" on the label of a product called "pound cake" to show that "this pound cake contains 35 percent less cholesterol than our regular pound cake (cholesterol lowered from 70 mg to 45 mg per serving)." However, to ensure that consumers are not misled into believing that an inconsequential reduction in cholesterol content will provide significant health benefits, the agency will consider appropriate regulatory action against manufacturers who make comparative labeling statements in those cases where the cholesterol content has been reduced by an inconsequential amount, on the basis that such claims could be inherently misleading. The agency invites comments on this issue.

In order that comparative claims be fully informative, under proposed § 101.25(a)(3)(iv), the label must provide quantitative information on the extent that the cholesterol was reduced, and the comparative claim and quantitative information must appear together on the same panel of the label. In the agency's opinion, the inclusion of both the comparative claim and the quantitative information will help prevent consumer misunderstanding. In addition, FDA considers comparative claims about cholesterol content to be a nutrition claims within the meaning of 21 CFR 101.9 and thus subject to the labeling requirements of that section.

A manufacturer that is unsure about how to use any of the proposed terms may request assistance from FDA's Center for Food Safety and Applied Nutrition.

V. Limitations on Use of Defined Terms

In defining cholesterol claims, the agency has addressed products that normally contain low levels of cholesterol and those that have been specifically processed or formulated to reduce cholesterol content. Cholesterol is found in nutritionally significant amounts only in foods derived from animal products. Foods formulated solely from plant ingredients contain only minute or undetectable amounts of cholesterol, and labeling claims regarding cholesterol content should not imply that plant-derived products may contain cholesterol.

The agency is concerned that cholesterol labeling claims not be used in a misleading manner. For example, use of the defined terms as part of the statement of identity of products that normally contain low levels of cholesterol can be inherently misleading. The label of a food bearing the statement "cholesterol free applesauce" implies that this particular applesauce is different from regular applesauce because it has less cholesterol. In fact, all applesauce is cholesterol free. Therefore, this proposed regulation will not permit use of the defined terms as part of the statement of identity for foods that normally contain low levels of cholesterol, unless such labeling clearly refers to all foods of that type and not merely to the particular brand to which

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the labeling attaches (e.g., "applesauce, a cholesterol free food").

Foods that have been specially processed or formulated to reduce cholesterol content are a different matter. In cases where a food is clearly lower in cholesterol than other foods of the same type, the issue is not whether the food differs from other foods of that type with regard to cholesterol content, but whether it differs from those foods in other ways.

In many cases a significant reduction in cholesterol content results in a change in the basic character of the food. In such cases, use of the cholesterol terms in conjunction with the name of a standardized food or of a food with an established common or usual name would only be appropriate if modified by additional terms (e.g., imitation or substitute) to indicate to consumers that the food differs from the standardized or unmodified product in more than just cholesterol content.

Foods that are fabricated or specially processed to reduce cholesterol content in a manner that does not alter the basic nature of the food and that does not alter the nutritional content in any way other than reduction of cholesterol, fat, and calories, however, may be properly identified using the defined terms as part of the statement of identity for that food.

VI. Fatty Acid and Cholesterol Labeling

A. Declaratory Information Statement

FDA is proposing to delete the requirement in current § 101.25(d) that food labels that bear fatty acid or cholesterol information also bear a statement that the information is for individuals modifying their diet on the advice of a physician. The agency is proposing to delete this requirement because consumers in general are increasingly interested in moderating their intake of cholesterol and fat, and many are doing so without specific medical instructions (Ref. 14). Such a statement may not, therefore, always be appropriate and may erroneously imply that a particular food should not be consumed in the absence of such specific medical advice. Also, the statement may not be necessary inasmuch as many health professional groups are suggesting that, for the U.S. population as a whole (with the exception of children under 2 years of age), reduction in total fat, saturated fat, and cholesterol is sensible and harmless (Refs. 2, 5 through 9, and 24).

Additionally, because § 101.25(b)(2)(iii) and (c)(2)(iii) contain a reference to § 101.25(d), FDA is deleting them.

B. Percent of Calories From Fat

Section 101.25(c)(2)(i) now requires that if a food label bears fatty acid content information, it must also bear the percent of calories from fat as part of the label information. The agency, to encourage food manufacturers to provide fatty acid labeling, is proposing to delete this requirement. This information is not essential to dietary management of fat intake. FDA does not believe that it will be depriving consumers of significant information by eliminating this requirement.

Information on percent of calories from fat is only valuable in measuring total dietary intake of fat and in planning a complete diet based on reducing the total percentage of calories from fat. It is not particularly useful on individual foods. The calculations needed to assess the total dietary calories from fat can be accomplished more easily by using the calories and fat (grams) information provided through nutrition labeling than from the information on percent of calories from fat on a wide variety of foods eaten in a day's time. Furthermore, because information on the percent of calories from fat is not required on all foods bearing nutrition labeling, it does not provide a ready means of calculating total dietary calories from fat.

Those individuals who want to know the percent of calories from fat in a particular food can calculate it readily from the nutrition label by (1) multiplying the number of grams of fat per serving by 9 (each gram of fat furnishes 9 Calories), (2) dividing the resultant number of Calories from fat by the total number of Calories per serving, and (3) multiplying by 100.

C. Requirement for Both Fatty Acid and Cholesterol Content

Under current § 101.25(c)(2), fatty acid information is required as a part of the nutrition label only when a claim or information specifically related to fatty acids is included on the label or in labeling or advertising. Likewise, under current § 101.25(b), cholesterol information is required as a part of the nutrition label only when a claim or information related to cholesterol is included on the label or in labeling or advertising.

FDA's experience with these regulations has revealed that there is a potential that consumers will be misled. For example, a low or cholesterol-free claim on processed foods that are high in saturated fat, such as certain types of hard margarine or nondairy sour cream, can be misleading unless information on the saturated fat level is also included on the label. The opposite can also be true. For example, the label for a bakery item may claim that the item has been made with corn or safflower oil and therefore to have high polyunsaturated fat levels, yet that label may make no mention of the item's cholesterol content, which results from the inclusion of other ingredients, such as egg yolks.

In addition, label claims for cholesterol content alone would undermine the integrity of the nutrition labeling concept. The nutrition labeling concept is based on the premise that for consumers to select intelligently a food on the basis of its nutritional properties, a complete disclosure of the key nutritional properties of that food is necessary. Except in unusual circumstances, providing a less comprehensive picture of the nutritional qualities of a food may be deceptive to the consumer.

Most individuals seeking to modify their intake of cholesterol are also interested in restricting their intake of fats and vice versa (Ref. 14). As addressed previously, many health professionals recommend a reduction of saturated fats, as well as of cholesterol, in the diet (Refs. 2 and 4 through 9) in light of current data on the relationship between dietary intake and heart disease.

Because of the inherent potential for consumers to be misled as well as their interest in, and need for, complete information, FDA is proposing to amend § 101.9(c) so that the declaration of either fatty acid composition or cholesterol content will require that quantitative information about both be provided (see proposed § 101.9(c)(6)(ii)). Fatty acid information will not be required, however, on foods that do not contain enough fat to influence total intake of fatty acids. FDA is proposing to amend current § 101.25(c)(1) to define such low fat foods as any food containing less than 2 grams of fat in a serving or any food containing less than 10 percent fat on a dry weight basis.

Section 101.25(c)(1) currently states that fatty acid content is allowed on labels or in labeling as a part of nutrition labeling only when the food contains 10 percent or more fat on a dry weight basis and not less than 2 grams of fat per serving. This precondition to the labeling of fatty acid content stems from a recommendation made in 1967 by the AMA's Council on Foods and Nutrition.

The Council's recommendation was that "labels of foods which contain 10 percent or more of the dry weight as fat should be permitted to indicate the fatty acid composition of the contained fat."

The agency was willing to accept this recommendation and also to allow the declaration of fatty acid content on foods that contain 2 or more grams of fat in an average serving. The agency believed that any food that met either precondition contained a sufficient amount of fat to make declaration of fatty acid content relevant information for use by individuals who wish to regulate their intake of fatty acids. However, the current regulation is written as "10 percent or more fat on a dry weight basis and not less than 2 grams of fat per serving." If either precondition is sufficient, the regulation should read "10 percent or more fat on a dry weight basis or not less than 2 grams of fat per serving." The agency is therefore proposing to amend the regulation to reflect the latter interpretation. The agency is maintaining the definitions of polyunstaurated and saturated fatty acids found in current § 101.25(c)(2)(ii). The basis for these definitions can be found in the **Federal Register** of January 19, 1973 (38 FR 2132).

VII. Other Provisions

In the event that a cholesterol claim is made in labeling, as with any other nutrition claim (with the exception of sodium claims), the label must also bear nutrition labeling in conformity with §§ 101.9 and 101.25.

In cases where a food with cholesterol labeling is represented as a substitute for a traditional food in the diet, the food must be nutritionally equivalent, as defined in § 101.3(e), to the food for which it substitutes or be labeled as an imitation of that food.

The agency is proposing to delete current § 101.25(a) which provides a general statement of agency policy. The presence of such a statement is unnecessary in the Code of Federal Regulations. The deletion of the paragraph should not be construed as a change in agency policy.

The agency is proposing to delete the maximum type size restrictions imposed by § 101.25(f) and (g) to encourage the use of the defined terms provided in this proposal in labeling.

The agency is also proposing to delete the remaining part of § 101.25(g) in the interest of streamlining the food labeling regulations. This provision limits the statements about cholesterol, fat, and fatty acids that may be made in food labeling. Specifically, it provides that no claim that a product will prevent, mitigate, or cure heart or artery disease or any attendant condition may be made in food labeling. Under the proposed revisions of § 101.25, this provision would be duplicative inasmuch as proposed paragraphs (a)(1) and (b)(2) of § 101.25 require that food labeling that contains information on cholesterol and fatty acid content must comply with § 101.9 as well as with the conditions that those sections themselves set forth. Section 101.9(i), like § 101.25(g), states that a food will be deemed to be misbranded under sections 201(n) and 403(a) of the act if its labeling represents, suggests, or implies that the product will prevent, cure, mitigate, or treat any disease or symptom.

The agency is also proposing to delete the first sentence of current § 101.25(h). The agency is proposing this action because it recognizes the possible value of other descriptive terms which would further characterize the actual nature of the food but are as yet undefined. Thus, the agency is not opposed to the use of these types of terms in labeling as long as quantitative information is provided on the label in conformity with §§ 101.9 and 101.25. The remaining sentence of § 101.25(h) will be retained and redesignated as paragraph (c).

The agency is aware that some foods that are represented for use as a complete meal or as a substitute for a complete meal also contain claims concerning cholesterol. Agency representatives have observed statements such as "a low cholesterol meal" or "provides a complete meal without cholesterol" on packaged foods.

The agency is of the opinion that such terminology applied to foods that are represented as a complete meal or as a substitute for a specific meal has the same potential to be misleading as when it is applied to foods that are components of meals. However, various foods represented together as a complete meal or as a substitute for a specific meal cannot easily be regulated according to the same criteria as those used for regulating individual food items.

The agency advises that foods packaged together as a complete meal or a substitute for a complete meal may also be the subject of one of two defined cholesterol statements as well as statements about meaningful reductions in cholesterol content. If the meal contains less than 100 mg of cholesterol, it may be described as a "low cholesterol meal." The 100 mg standard is derived from the fact that the daily cholesterol intake most commonly recommended for cholesterol-reduced or low-cholesterol diets is 300 mg or less per day. Thus, assuming that most people eat 3 meals a day, it is reasonable that a complete meal containing less than 100 mg of cholesterol be deemed a "low cholesterol meal."

If the meal contains less than 2 mg of cholesterol, it may be described as a "cholesterol-free meal." The term "cholesterol free" is an absolute term implying absence of cholesterol. Therefore, whatever is labeled as "cholesterol free," be it a single serving of food or a complete meal, should in fact be cholesterol free as the agency has defined that term.

Meals labeled with either of these claims, or other truthful and nonmisleading claims describing cholesterol content reductions, and accompanied by nutrition information in accordance with § 101.9, including quantitative information on fatty acid and cholesterol content in conformity with § 101.25, as appropriate, will not be deemed misbranded if they meet these criteria.

Section 101.25(e) concerns how the agency will determine compliance with § 101.25 and is not affected by the changes being proposed other than to be redesignated as § 101.25(d).

VIII. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Economic Impact

FDA has examined the economic implications of the proposed rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–345, 94 Stat. 1166). The agency concludes that approximately 250 food manufacturing firms may incur a total first year cost, adjusted to represent 1986 figures, of $1,071,200 and recurring annual costs of $31,800 to comply with this proposal. The anticipated costs of this proposal are not of sufficient magnitude to warrant designation as a major rule under any of the criteria specified under section (b) of Executive Order 12291.

In accordance with the Regulatory Flexibility Act, the agency certifies that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The initial compliance costs to small and very small firms are estimated at $910 to $960 per firm. Total compliance costs to small firms would, thus, be estimated at between $180,200 to $190,100. As these amounts are below the Department of Health and Human Services' guidelines

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for a significant economic impact, a regulatory flexibility analysis was not necessary.

A copy of the threshold assessment is on file and available for review in the Dockets Management Branch (address above).

The agency periodically announces by notice in the **Federal Register** uniform effective dates for compliance with food labeling requirements. (See, for example, the **Federal Register** of October 19, 1984 (49 FR 41019).) The agency proposes that any final rule that may issue based upon this proposal become effective in accordance with a uniform effective date for compliance with food labeling requirements which is announced by notice in the **Federal Register** and which is not sooner than 1 year following publication of any final rule based upon this proposal. The final rule would apply to affected products initially introduced or initially delivered for introduction into interstate commerce.

X. References

The following information has been placed on file in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. National Center for Health Statistics, "Annual Summary of Births, Deaths, Marriages, and Divorces: United States, 1983," *Monthly Vital Statistics Report,* Vol. 32, No. 13, DHHS Pub. No. (PHS) 84–1120, Public Health Service, Hyattsville, MD, September 21, 1984.

2. Nutrition Committee and Council on Arteriosclerosis, American Heart Association Special Report, "Recommendations for Treatment of Hyperlipidemia in Adults," *Circulation,* 69:1065A–1069A, 1984.

3. Ernst, N.D., and R.I. Levy, "Diet and Cardiovascular Disease," *in* "Nutrition Reviews' Present Knowledge in Nutrition," Washington, DC, The Nutrition Foundation, pp. 724–739, 1984.

4. The Council on Scientific Affairs of the American Medical Association, "Dietary and Pharmacologic Therapy for the Lipid Risk Factors," *Journal of the American Medical Association,* 250:1873–1879, 1983.

5. Consensus Panel for Lowering Blood Cholesterol to Prevent Heart Disease, Consensus Development Conference Statement, Office of Medical Applications of Research, National Institutes of Health, Bethesda, MD, Vol. 5, No. 7, 1984.

6. Inter-Society Commission for Heart Disease Resources, Kannel, W.B., et al., "Optimal Resources for Primary Prevention of Atherosclerotic Diseases," *Circulation,* 70:153A–205A, 1984.

7. World Health Organization, "Prevention of Coronary Heart Disease," World Health Organization Technical Report Series 678, Geneva, 1982.

8. "Healthy People," the Surgeon General's Report on Health Promotion and Disease Prevention, Department of Health, Education, and Welfare, DHEW Pub. No. 79–55071, pp. 128–131, 1979.

9. U.S. Department of Agriculture and U.S. Department of Health and Human Services, "Nutrition and Your Health, Dietary Guidelines for Americans," Washington, DC, Home and Garden Bulletin No. 232, U.S. Government Printing Office, 1985.

10. Lipid Research Clinics Program, "The Lipid Research Clinics Coronary Primary Prevention Trial Results," *Journal of the American Medical Association,* 251:351–374, 1984.

11. Levy, R.I., "Science Press Briefing on the Lipid Research Clinics Coronary Primary Prevention Trial," National Institutes of Health, Bethesda, MD, January 12, 1984.

12. Committee on Diet Nutrition and Cancer, Assembly of Life Sciences, National Research Council, "Diet, Nutrition, and Cancer," Washington, DC, National Academy Press, 1982.

13. Heimbach, J.T., and R.C. Stokes, "FDA 1978 Consumer Food Labeling Survey," Department of Health, Education, and Welfare, Washington, DC, 1979.

14. Heimbach, J.T., "Cardiovascular Disease and Diet: The Public View," *Public Health Reports,* 100:5–12, 1985.

15. "Food Labeling: Tentative Positions of Agencies," **Federal Register**, Vol. 44, No. 247, pp. 75990–76020, December 21, 1979.

16. FDA's Cholesterol Content Information Tables.

17. U.S. Department of Agriculture, "Composition of Foods," Human Nutrition Information Service, Washington, DC, Agriculture Handbooks No. 8–1 to 8–12, 1976–1984.

18. U.S. Department of Agriculture, "Provisional Table on the Fatty Acid and Cholesterol Content of Selected Foods," Human Nutrition Information Service, Washington, DC, HNIS/PT–101, 1984.

19. Heimbach, J.T., and R.C. Stokes, "Nutrition Labeling for Today's Needs," National Technical Information Service, Springfield, VA, Pub. No. PB82154402, 1981.

20. Fredrickson, D.S., et al., "Dietary Management of Hyperlipoproteinemia, A Handbook for Physicians and Dietitians," National Heart and Lung Institute, Bethesda, MD, Pub. No. (NIH) 73–110, 1973.

21. The American Dietetic Association, "Handbook of Clinical Dietetics," Yale University Press, New Haven, pp. E3–E54, 1981.

22. Connor, W.E., "The Relationship of Hyperlipoproteinemia to Atherosclerosis: The Decisive Role of Dietary Cholesterol and Fat," *in* "Biochemistry of Atherosclerosis," New York, Dekker Press, pp. 371–407, 1979.

23. Gotto, A.M., et al., "Primary Hyperlipoproteinemia and Dietary Management," *in* "Nutrition, Lipids, and Coronary Heart Disease," Raven Press, New York, pp. 247–283, 1979.

24. McGill, H.C., Jr., "Appraisal of Cholesterol as a Causative Factor in Atherogenesis," *American Journal of Clinical Nutrition,* 32:2632–2636, 1979.

XI. Paperwork Reduction Act

Sections 101.9 and 101.25 of this proposed rule contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these information collection requirements. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 3208, Washington, DC 20503, Attn: Bruce Artim.

Interested persons may, on or before January 26, 1987, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 101

Food labeling, Misbranding, Nutrition labeling, Warning statements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, it is proposed that Part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR Part 101 continues to read as follows:

Authority: Secs. 4, 6, Pub. L. 89–755, 80 Stat. 1297, 1299, 1300 (15 U.S.C. 1453, 1455); secs. 201(n), 403, 701(a), Pub. L. 717, 52 Stat. 1041 as amended, 1047–1048 as amended, 1055 (21 U.S.C. 321(n), 343, 371(a)), 21 CFR 5.10 and 5.11.

2. In § 101.9 by revising paragraph (c)(6) to read as follows:

§ 101.9 Nutrition labeling of food.

* * * * *

(c) * * *

(6)(i) "Fat content" or "Fat": A statement of the number of grams of fat in a serving (portion) expressed to the nearest gram, except that if a serving (portion) contains less than 1 gram, the statement "Contains less than 1 gram" or "less than 1 gram" may be used as an alternative. Fatty acid composition and cholesterol content may also be declared in compliance with § 101.25.

(ii) When fatty acid composition or cholesterol content is declared, both shall be declared, in that order, immediately following the statement of fat content, except that products that do not meet the requirements of § 101.25(b)(1) need not include fatty acid content information. These declarations shall comply with applicable requirements of § 101.25.

* * * * *

3. In § 101.25 by removing paragraphs (a), (d), (f), and (g), by revising the section heading, by revising and redesignating paragraphs (b), (c), and (h) as paragraphs (a), (b), and (c), respectively, and by redesignating paragraph (e) as paragraph (d) to read as follows:

§ 101.25 Labeling of foods in relation to fat, fatty acids, and cholesterol content.

(a) A food label or labeling may include a statement of the cholesterol content of the food, provided that it meets the following conditions:

(1) Nutrition information is provided on the food label in conformity with § 101.9.

(2) A quantitative statement of the cholesterol and, where appropriate, fatty acid content of the food is included in conformity with § 101.9(c)(6)(ii). If the food contains less than 2 milligrams of cholesterol per serving, the content may be stated as zero. If the food contains less than 5 milligrams of cholesterol per serving, the content shall be stated as "less than 5 mg." If the food contains 5 milligrams or more of cholesterol per serving, the content shall be expressed to the nearest 5-milligram increment.

(3) A qualitative statement of the cholesterol content of a food may be used as a part of the statement of identity of such food and elsewhere on the label and in labeling provided such statement complies with the following rules:

(i) The terms "free of cholesterol" or "cholesterol free" may be used on the label or in labeling of foods that contain less than 2 milligrams of cholesterol per serving.

(*a*) A food that is inherently free of cholesterol within the meaning of paragraph (a)(3)(i) of this section without the benefit of special processing or reformulation to alter cholesterol content may be labeled as a "cholesterol free food" provided that such labeling clearly refers to all foods of that type and not merely to the particular brand to which the labeling attaches, e.g., "spinach, a cholesterol free food." It may not be labeled with the term "cholesterol free" immediately preceding the name of the food (e.g., cholesterol free spinach), because such terminology would imply that the food has been altered to reduce cholesterol as compared to other foods of the same type.

(*b*) The terms "cholesterol free" or "free of cholesterol" may be used to describe a food that has been specifically formulated or processed to reduce the cholesterol content provided such food is a substitute for and resembles in organoleptic properties a food containing higher levels of cholesterol.

(ii) The terms "low in cholesterol" or "low cholesterol" may be used on the label or in labeling of foods that contain less than 20 milligrams of cholesterol per serving.

(*a*) A food that is inherently low in cholesterol within the meaning of paragraph (a)(3)(ii) of this section without the benefit of special processing or reformulation to alter cholesterol content may be labeled as a "low cholesterol food" provided that such labeling clearly refers to all foods of that type and not merely to the particular brand to which the labeling attaches, e.g., "lowfat cottage cheese, a low cholesterol food." It may not be labeled with the term "low cholesterol" immediately preceding the name of the food (e.g., "low cholesterol lowfat cottage cheese") because such terminology would imply that the food has been altered to reduce cholesterol as compared to other foods of the same type.

(*b*) The terms "low cholesterol" or "low in cholesterol" may be used to describe a food that has been specifically formulated or processed to reduce the cholesterol content provided such food is a substitute for and resembles in organoleptic properties a food containing higher levels of cholesterol.

(iii) The terms "cholesterol reduced" or "reduced cholesterol" may be used on the label or in labeling of a food that has been specifically formulated or processed to contain a lower cholesterol content if such food is a substitute for and resembles in organoleptic properties a food containing at least four times its cholesterol content. All labeling locations on or about the food where the term "cholesterol reduced" is used shall bear information comparing the product's per serving cholesterol content with that of the food it replaces.

(iv) A food that has been formulated or processed to contain a lower cholesterol content but that has not achieved the reduction necessary to be labeled "cholesterol reduced" may bear comparative cholesterol information on its label or labeling if such food is a substitute for and resembles in organoleptic properties a food that contains more cholesterol. The comparative information shall include quantitative information on the extent that the cholesterol was reduced, and each labeling location on or about the food where the comparative information is presented shall also bear information comparing the product's per serving cholesterol content with that of the food that it replaces (e.g., "lowered cholesterol—this pound cake contains 35 percent less cholesterol than our regular pound cake (cholesterol lowered from 70 mg to 45 mg per serving")).

(b) A food label or labeling may include information on the fatty acid content of the food provided that it meets the following conditions:

(1) The food contains 10 percent or more fat on a dry weight basis or not less than 2 grams of fat in an average serving.

(2) Nutrition information is provided on the food label in conformity with § 101.9, including quantitative information on cholesterol and fatty acid content in accordance with the labeling rules in this section. In accordance with § 101.9(c)(6)(ii), the amount of fatty acids shall be included on the label. This amount, calculated as the triglycerides, shall be stated in grams per serving to the nearest gram in the following two categories, stated with the following headings, in the following order, and displayed in equal prominence:

(i) *Cis, cis*-methylene-interrupted polyunsaturated fatty acids, stated as "Polyunsaturated";

(ii) The sum of lauric, myristic, palmitic, and stearic acids, stated as "Saturated".

(c) Any label or labeling containing any statement concerning cholesterol, fat, or fatty acids which is not in conformity with this section shall be deemed to be misbranded under sections 201(n) and 403(a) of the Federal Food, Drug, and Cosmetic Act.

* * * * *

Dated: September 16, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

Otis R. Bowen,

Secretary of Health and Human Services.

[FR Doc. 86–26597 Filed 11–21–86; 11:32 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising of Federal Prisoners

AGENCY: United States Parole Commission, Justice.

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ACTION: Proposed rules and request for comments.

SUMMARY: The Parole Commission proposes to make a number of interpretive clarifications, revisions and additions to its paroling policy guidelines contained in 28 CFR 2.20 and 2.36. These changes and additions are intended to make the guidelines more comprehensive and to more appropriately sanction certain sexual offenses against minors, offenses related to the freebased form of cocaine popularly known as "CRACK," and criminal conduct in institutions.

DATE: Public comment must be received by December 26, 1986.

ADDRESS: Comments should be addressed to: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492-5960.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Telephone (301) 492-5960.

SUPPLEMENTARY INFORMATION: The proposed revisions to 28 CFR 2.20 and 2.36 fall into three categories: (a) A revision of an offense example in the Offense Severity Index of § 2.20 that covers unlawful sexual conduct with minors to clarify, and more appropriately sanction the offenses described therein; (b) a revision to the offense examples in the Offense Severity Index of § 2.20 adding a new example to sanction offenses related to the freebased form of cocaine popularly known as "CRACK"; (c) a revision of the rescission guidelines found in § 2.36 to more appropriately sanction criminal behavior in prisons.

(a) First, Offense Example 232 in Chapter 2, Subchapter D of the Offense Behavior Severity Index of 28 CFR 2.20 grades the severity for unlawful sexual conduct with minors (e.g., carnal knowledge) as Category Four. Carnal knowledge is defined as sexual intercourse with a female who is less than sixteen years of age and who is not the wife of the offender. Offense Example 232 contains an exception that provides that: if the relationship is clearly consensual, and the victim is at least fourteen years old, and the age difference between the victim and the offender is less than four years, then the offense is to be graded as Category One. Finally, as a note to this offense example, the guidelines state that, if the victim is less than twelve years of age at the time of the offense, the aggravating factor of an extremely vulnerable victim is presumed to exist thus providing a rationale to go above the appropriate guideline range.

After reviewing this offense example, the Commission proposes to clarify the offenses/behavior covered therein by revising the title of 232 to "Carnal Knowledge of Sodomy Involving Minors" and, to more appropriately sanction this conduct, where the victim is less than fourteen years of age, to increase the severity to Category Seven. The Commission proposes further to add a new offense example, 233, to provide guidance for rating other unlawful sexual conduct with minors. Additionally, the Commission proposes to change the title of Offense Example 231 (Forcible Rape or Forcible Sodomy) to "Rape or Forcible Sodomy," thus removing a redundancy.

(b) Next, over the past several months, the Parole Commission, like the public in general, has been introduced to information about a new, more potent form of cocaine known as "CRACK". Details as to the addictive nature of this drug, as to its manufacture and the typical distribution methods associated with it, and as to its availability to a wider audience of users because of its relatively inexpensive street sales price, convinced the Commission that the existing sanctions provided for cocaine in the Offense Behavior Severity Index of § 2.20 may not appropriately sanction offenses related to this freebased form of that drug.

The Parole Commission had proposed, therefore, to amend its paroling policy guidelines contained in 28 CFR 2.20 and to develop separate guidelines for "CRACK". In that regard, the Commission sought public comment as to the nature and content of these guidelines by publishing an Advance Notice of Proposed Rulemaking in the July 31, 1968 edition of the **Federal Register** (51 FR 27424). In an effort to broaden the reviewing audience, thus increasing the potential for the receipt of useful comment, the Commission arranged for the Department of Justice to issue a press release on the proposal. Additionally, over 75 letters describing this endeavor were forwarded to members of Congress and other organizations and individuals interested in and knowledgeable about the drug. Further, an article was published in *The Third Branch* (the monthly newsletter of the Federal Judiciary) further detailing the effort.

In response, the Parole Commission received ten (10) comments. Four (4) United States Senators (D'Amato, Dodd, Heflin and Roth) wrote to note their approval of the Commission's effort to address the problem created by the drug, but only one (1) (D'Amato) had a specific recommendation: he stated that increasing the existing cocaine guidelines by a factor of ten would be warranted because of "CRACK's" "extreme potency and its addictive qualities, and of the small quantities in which it is produced and sold." The District Attorney in Philadelphia suggested that the Commission treat "CRACK" like it treats Dilaudid, while the treasurer of Americans for Substance Abuse Prevention counseled that the penalties for possession of one gram of "CRACK" be equivalent to the penalties for 1,000 grams of regular cocaine. The Chief Probation Officer from the Eastern District of Missouri "supported" the proposal to do something, but expressed a concern that these new guidelines for "CRACK" might "inadvertently decrease criminal acts regarding the distribution of 'regular' cocaine"; and the Chief Probation Officer for the Northern District of Indiana labeled the proposal as "a responsible and reasonable approach" to the issue, but one that may need future revision. An inmate at the Federal Correctional Institution at Petersburg, Virginia, wrote to inform the Commission that making "CRACK" has the side effect of removing impurities from cocaine, thus reducing the total amount of the drug in question. Finally, the Assistant Attorney General for the Criminal Division of the U.S. Department of Justice wrote to "commend" the Commission's efforts in recognizing the dangers of the drug and stated that, until enhanced penalties are enacted for "CRACK" by the Congress, the Commission's proposal was "the most significant action that can be taken" in this regard.

The Commission proposes to adopt separate guidelines for "CRACK," guidelines that treat the drug as ten times more potent than cocaine and are based on the weight of the drug alone, with no specific purity measure. In this regard, the Parole Commission seeks specific comment on two issues. The first relates to the relative potency of "CRACK" cocaine as compared with other forms of the drug. The Commission's proposal rates various quantities of "CRACK" in severity categories corresponding to the categories for 1/10 those quantities for regular cocaine. Information on this determination is thus sought. Secondly, the Commission seeks guidance on how best to define "CRACK." The proposed guidelines now refer to "freebased cocaine." A more appropriate or accurate definition may be needed.

(c) Finally, 28 CFR 2.36 contains the Commission's guidelines for sanctioning criminal conduct committed in a prison facility. Because of the relative severity and significance of all offenses committed in such institutions, the Commission proposes to increase the sanctions imposed for such behavior other than those now in effect for escape, attempted escape, and for certain administrative rule infractions. The sanction for use or simple possession of illicit drugs in institutions and for refusal to provide a urine sample for drug testing would be increased also. As proposed, the sanctions in § 2.36(a)(2)(ii) would be changed as follows: Category One: <=8 months; Category Two: <=10 months; Category Three: 12–16 months; Category Four: 20–26 months; Category Five: 36–48 months; Category Six: 52–64 months; Category Seven: 64–92 months; Category Eight: 120 + months. The proposed sanction for use or simple possession of illicit drugs would be 0–8 months as would refusal to provide a urine sample.

These proposed rule changes will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

PART 2—[AMENDED]

28 CFR Part 2 is amended as follows:

1. The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. It is proposed to revise the title of Offense Example 231 in Chapter Two, Subchapter D of the Offense Behavior Severity Index of 28 CFR 2.20 to read as follows:

231 Rape or Forcible Sodomy

3. It is proposed to revise Offense Example 232 in Chapter Two, Subchapter D of the Offense Behavior Severity Index of 28 CFR 2.20 to read as follows:

232 *Carnal Knowledge * or Sodomy Involving Minors*

(a) Grade as Category Four, except as provided below.

(b) If the relationship is clearly consensual and the victim is at least fourteen years old, and the age difference between the victim and offender is less than four years, grade as Category One.

(c) If the victim is less than fourteen years old, grade as Category Seven.

4. It is proposed to amend Chapter Two, Subchapter D of the Offense Behavior Severity Index of 28 CFR 2.20 by adding new Offense Example 233 to read as follows:

233 *Other Unlawful Sexual Conduct With Minors*

(a) Category Four.

(b) Exception: If the victim is less than fourteen years old grade as Category Six.

5. It is proposed to amend Chapter Nine, Subchapter C of the Offense Behavior Severity Index of 28 CFR 2.20 by adding new Offense Examples 923 and 924 to read as follows:

SUBCHAPTER C—COCAINE OFFENSES

* * * * *

923 *Distribution or Possession With Intent to Distribute Freebased Cocaine ("CRACK")*

(a) If extremely large scale (e.g., involving 1.5 kilograms or more), grade as Category Eight [except as noted in (c) below];

(b) If very large scale (e.g., involving 500 grams, but less than 1.5 kilograms), grade as Category Seven [except as noted in (c) below];

(c) Where the Commission finds that the offender had only a peripheral role,* grade conduct under (a) or (b) as Category Six;

(d) If large scale (e.g., involving more than 100 grams, but less than 500 grams), grade as Category Six [except as noted in (e) below];

(e) Where the Commission finds that the offender had only a peripheral role, grade conduct under (d) as Category Five;

(f) If medium scale (e.g., involving 10 grams–100 grams), grade as Category Five;

(g) If small scale (e.g., involving 1 gram–9.9 grams), grade as Category Four;

(h) If very small scale (e.g., involving less than 1 gram), grade as Category Three;

924 *Simple Possession of Freebased Cocaine ("CRACK") Category One*

6. It is proposed to revise Paragraph (a)(1) of the Rescission Guidelines in 28 CFR 2.36 to read as follows:

§ 2.36 Rescission guidelines.

(a) * * *

(1) Administrative Rule Infraction(s) (including alcohol abuse) normally can be adequately sanctioned by postponing a presumptive or effective date by 0–60 days per instance of misconduct, or by 0–8 months in the case of use or simple possession of illicit drugs or refusal to provide a urine sample. Escape or other new criminal conduct shall be considered in accordance with the guidelines set forth below.

* * * * *

7. It is proposed to revise Paragraph (a)(2)(ii) of the Rescission Guidelines in 28 CFR 2.36 to read as follows:

§ 2.36 Rescission guidelines.

(a) * * *

(2) * * *

(ii) *Other New Criminal Behavior in a Prison Facility.*

Severity rating in the new criminal behavior (from § 2.20)	Guideline range
Category one	<=8 months.
Category two	<=10 months.
Category three	12–16 months.
Category four	20–26 months.
Category five	36–48 months.
Category six	52–64 months.
Category seven	64–92 months.
Category eight	120 + months.

Dated: November 4, 1986.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 86–2850 Filed 11–24–86; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD8 86–12]

Regulated Navigation Area; Houston Ship Channel, Houston, TX

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a regulated navigation area long the upper reaches of the Houston Ship Channel in order to control vessels mooring abreast at certain waterfront facilities. This control is considered essential to minimize hazards to vessel traffic created by the intrusion of these vessels into the Houston Ship Channel.

DATES: Comments must be received on or before January 9, 1987.

ADDRESSES: Comments should be mailed to Commander, Eighth Coast Guard District (mps), Hale Boggs Federal Building, 500 Camp Street, New Orleans, Louisiana, 70130–3396. The comments will be available for inspection and copying at the Hale Boggs Federal Building, Room 1341, telephone: (504) 589–6901. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except

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* Terms marked by an asterisk are defined in Chapter Thirteen.

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Federal holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Al Dujenski, telephone: (713) 672–6639, or Lieutenant E.M. Stanton, telephone: (504) 589–6901.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or argument. Persons submitting comments should include their names and addresses, identify this notice and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. The proposed rules may be changed in light of the comments received. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Lieutenant Commander Al Dujenski, Project Officer, Coast Guard Port Safety Station, Houston, and Lieutenant Commander J.J. Vallone, Project Attorney, Eighth Coast Guard District Legal Office.

Discussion of Proposed Regulations

This action is being considered because of the hazards associated with vessels mooring in that portion of the Houston Ship Channel above the Jesse Jones—Beltway 8 Bridge normally used by deep-draft vessels. This channel has an average project width of 300 feet, a project depth of 40 feet to Sims Bayou and a project depth of 36 feet above that. Vessels mooring in the narrow confines of this channel can create significant obstructions to the safe passage of deep-draft vessels, endangering not only the passing vessels, but moored vessels and the adjacent waterfront facilities as well. Most waterfront facilities in the area have adequate channel-ward docking space fronting them, within which vessels can moor without intruding into the deep-draft channel. However, at many sites, this space is insufficient to accommodate a vessel mooring abreast to another without obstructing the deep-draft channel. Control over vessels mooring abreast is necessary to prevent such obstructions. The proposed regulations will enable the Captain of the Port, Houston, to exercise control over these vessels, through the Vessel Traffic Service (VTS), by requiring them to provide advance notice of their intent to moor abreast. Their presence in the deep-draft channel will be coordinated with deep-draft vessel traffic to preclude conflicting uses of the channel. Where necessary, vessels will be prohibited from conducting operations, or required to maintain a continuous guard on VHF Channels 13 & 16, and have the ability to get underway, and clear the channel, without 30 minutes notice. However, at four narrow points on the Houston Ship Channel, the Houston Pilots are of the opinion that mooring vessels abreast of one another at facilities located at these points is extremely hazardous and should be prohibited altogether. Those four points are all located within that area of the Houston Ship Channel under consideration by this proposal. Mooring facilities that would be affected by this prohibition are: Adams 8 and 9, and Brown and Root (first narrow point); Mobil Mining and Chemical, and Hess 2 second narrow point); Manchester A, and Traweek and Radcliffe (third point); and City Docks 1,2,13,14,15,16,17, and Pacific Molasses (fourth narrow point). The Coast Guard has reviewed the Houston Pilots' request, with respect to these four points, and is in agreement with it. However, the Coast Guard feels that the Captain of the Port should retain the authority to grant waivers to any such restrictions in order to have the flexibility to respond to unique situations as they arise.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The proposed regulations are, in fact, already being followed on an informal basis in the area under consideration by this action. Most vessels intending on mooring abreast routinely inform the Captain of the Port of this fact, in advance, and abide by any instruction given them. Such instructions are normally issued as Captain of the Port Orders, under authority of 33 CFR 160.111. With respect to those four narrow points where the Houston Pilots have suggested that vessels mooring abreast of one another at facilities adjacent to these points be prohibited altogether, such practices are alreadly routinely followed because of the perceived safety hazards involved. Nevertheless, in the past, vessels were permitted to moor abreast of one another at these locations by the Captain of the Port, Houston, on a case-by-case basis. This practice will continue under these regulations. These regulations are, therefore, largely a formalization of existing procedures.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (Water), Security measures, Vessels, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposed to amend Part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–(g), 6.04–1, 6.04–6, and 160.5

2. Section 165.806 is added to read as follows:

§ 165.806 Regulated Navigation Area, Houston Ship Channel, Houston, Texas.

(a) The following is a regulated navigation area: the waters of the Houston Ship Channel between the Jesse Jones Bridge (Beltway 8 Bridge) and the Turning Basin located at the northwest end of the Houston Ship Channel.

(b) *Definitions.* "Waterfront Facility" means all piers, wharves, mooring dolphins, and similar structures to which a vessel may be secured.

(c) *Regulations.* (1) The practice of vessels mooring abreast within the regulated navigation area is prohibited, except where permitted by the Captain of the Port, Houston, or where allowed by this regulation.

(2) Each vessel intending on mooring abreast of any vessel moored to a waterfront facility within the regulated navigation area shall provide the Captain of the Port, Houston, via Vessel Traffic Service Houston with at least a 1 hour advance notice. This notice may be provided by telephone: (713) 674–8488 or by radio: VHF Channels 11 or 12 (call: "Houston Traffic").

(3) Upon a determination by the Captain of the Port, Houston, that the

presence of the vessel mooring abreast will obstruct vessel traffic in the Channel, the vessel mooring abreast will comply with the following requirements:

(i) Maintain a continuous radio guard on VHF Channels 13 and 16.

(ii) Have the ability to get underway, and clear the Channel, within 30 minutes notice.

(4) Vessels are prohibited altogether from mooring abreast of one another at the following waterfront facilities, which are located adjacent to four narrow points on the Houston Ship Channel (these restrictions also apply to all successor corporate entities operating at these locations as well):

(i) Adams 8 and 9, and Brown and Root.

(ii) Mobil Mining and Chemical, and Hess 2.

(iii) Manchester A, and Traweek and Radcliffe.

(iv) City Docks 1,2,13,14,15,16, and 17, and Pacific Molasses.

(d) *Waivers.* (1) The regulations of paragraph (c) of this section are waived in the following instances, provided the vessels availing themselves of these waivers clearly do not intrude into the deep-draft vessel channel:

(i) For vessels mooring at any waterfront facility that does not front on the Houston Ship Channel, but fronts on connecting land cuts or tributaries.

(ii) For vessels mooring at any waterfront facility fronting on the Houston Ship Channel that has a minimum of 200 feet of mooring space available at the closest approach of its mooring structure(s) to the deep-draft vessel channel.

(2) The Captain of the Port, Houston, may waive, in whole or in part, any regulation in this section on a case-by-case basis, as deemed necessary and appropriate to that case. An individual desiring such a waiver must make a specific, written request for it to the Captain of the Port, Houston, at least 24 hours in advance of the intended operation for which the waiver is sought. The request must include the following information: The name, address and telephone number of the individual requesting the waiver; the name(s) of the vessel(s) involved: The length and beam dimension(s) of the vessel(s) involved; the mooring location; the date(s) and time(s) waiver is needed for; and the reason(s) a waiver is needed.

Dated: November 10, 1986.

E.B. Acklin,

Captain, U.S. Coast Guard District, Acting.

[FR Doc. 86-26447 Filed 11-24-86; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[General Docket No. 85-388; (RM 5167); FCC 86-449]

Rural Cellular Service; Amendments

AGENCY: Federal Communications Commission (FCC).

ACTION: Proposed rule.

SUMMARY: In a Further Notice of Proposed Rulemaking (Notice), the FCC proposes to amend Part 22 of its rules (which apply to Rural Cellular Service) to prohibit: (1) prefiling, post-filing and post-grant partial settlements among competing non-wireline cellular applicants to serve Rural Service Areas (RSAs); (2) applicants from holding or acquiring any interest in a competing application where there is no full market settlement, except as proposed; (3) the alienation of any interest in a cellular application, permit, or license to offer service until the facility has been placed in operation, except as proposed. The proposals are prompted by abuses of the cellular licensing process. The intended effect is to deter applicants from speculating in facilities. In addition, the FCC proposes to amend its rules for filing cellular radio applications in order to codify its policy that applications may only be filed on the dates it specifies. Inviting comment on its policy allowing only permittees and licensees to apply for authorization to serve areas outside their existing CGSAs but within corresponding MSAs, the FCC will not accept such applications, as of the adoption of the Notice, until this issue is resolved.

DATE: Comments must be received on or before December 22, 1986.

Reply comments must be received on or before January 8, 1987.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David H. Siehl, Mobile Services Division, Common Carrier Bureau; tele: 202-632-6450.

This is a summary of the Commission's further notice of proposed rulemaking, adopted October 16, 1986, and released November 7, 1986.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete test of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Further Notice of Proposed Rulemaking

1. On October 16, 1986, the FCC adopted a Further Notice of Proposed Rulemaking to solicit comments concerning changes in the rules for Rural Service Areas (RSAs) and procedural matters in regard to filing cellular radio applications. The FCC proposes to amend Part 22 of its rules (which apply to the Cellular Radio Service) to prohibit all prefiling, post-filing and post-grant partial settlements among competing non-wireline applicants who propose to serve RSAs. This proposal is prompted by the flood of applications and filings related to partial settlements which the FCC believes have encouraged speculative filings and delayed its processing of cellular applications. The elimination of partial settlements or cumulative chances for wireline applicants is not proposed. It is also proposed that wireline and non-wireline applicants be prohibited from holding or acquiring *any* interest in more than one application in the same RSA, even that which is less than 1%, except for permissible interests in publicly traded corporations. Further, it is proposed to prohibit the sale, transfer, assignment or other alienation of any interest in a cellular application, permit or license to offer service to RSAs until the facility has been placed in operation. However, it is proposed to allow barters and transfers of interests in construction permits in partial or whole RSAs. The objective of these proposed changes is to deter insincere applicants from speculating in unbuilt or newly constructed facilities and insure the applications reflect a genuine intention to construct and operate the proposed facilities. Finally, there are three matters concerning the filing of all cellular applications. First, it is proposed to amend the rules to codify FCC policy that cellular radio applications may only be filed on the dates specified by the FCC. Second, comment is invited on the existing FCC policy that allows only licensees and permittees to file for authorization to those reas that are outside the existing CGSA but within the MSA. This comment includes addressing whether non-permittees should be allowed to file to serve such areas when the permittee or licensee files, or at some fixed period after the construction permit is granted. Third, effective on the date of adoption of this order and until such time as the previous issue is resolved, no applications

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proposing to serve areas not included in existing or proposed CGSAs will be accepted.

2. *Ex Parte:* This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's rules, 47 CFR 1.1231 for rules governing permissible *ex parte* contacts.

3. *Initial Regulatory Flexibility Analysis.* Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. § 605(b), it is certified that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities because by helping to eliminate insincere applications, the proposed rules will encourage the entry and improve the chances of *bona fide* small businesses in the cellular licensing process.

4. *Paperwork Reduction.* The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

5. *Comments.* Pursuant to the applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before December 22, 1986 and reply comments on or before *January 8, 1987.* All revelant and timely comments will be considered by the Commision before final action is taken in this proceeding.

6. *Service List.* A copy of this *Notice* shall be sent to the Chief, Counsel of Advocacy of the Small Business Administration.

Ordering Clauses

7. Authority for this rulemaking is contained in sections 1, 4(i) and 301, 303 and 309 of the Communications Act of 1934, as amended.

8. Effective on the date of the adoption of this *Notice*, October 16, 1986, application proposing to serve areas not included in existing or proposed CGSAs will not be accepted by the Commission.

List of subjects in 47 CFR Part 22; Cellular radio service; General filing agreements; Processing of applications.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Proposed Rules

Part 22 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for Part 22 continues to read:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 153, 303).

2. Section 22.6 is amended by adding paragraph (b)(3) to read as follows:

§ 22.6 Filing of applications, fees, and number of copies.

* * * * *

(b) * * *

(3) Notwithstanding any other rule provision of this Part, cellular radio applications may only be filed on the dates specified by the Commission.

* * * * *

3. Section 22.33(b)(2) is revised to read as follows:

§ 22.33 Grants by random selection.

* * * * *

(b) * * *

(2) Markets Beyond the Top-120 and Rural Service Areas. In markets beyond the top-120 cellular modified Metropolitan Statistical Areas, the cumulative lottery chances described in paragraph (1) will be awarded to joint enterprises resulting from partial settlements among mutually exclusive wireline applicants only. Any joint enterprise resulting from a partial settlement among mutually exclusive non-wireline applicants for markets beyond the top-120 Metropolitan Statistical Areas will not be entitled to any cumulative lottery chances. Partial settlements among non-wireline applicants for Rural Service Areas are prohibited.

* * * * *

4. Section 22.921 is amended by revising the caption for paragraph (b) and by revising (b)(1) to read as follows:

§ 22.921 Ownership in applications for cellular service for markets below the top-90.

* * * * *

(b) Markets beyond the top–120 and Rural Service Areas.

(1) General. Except as otherwise provided herein, no party may have an ownership interest, direct or indirect, in more than one application for the same MSA or NECMA market, except that interests of less than one percent will not be considered. For those areas outside MSA or NECMA markets, no wireline or non-wireline party may have an ownership interest, direct or indirect, in more than one application for the same Rural Service Area, including an interest of less than one percent, except as otherwise provided herein.

* * * * *

5. Part 22 is amended by adding a new § 22.922 to Subpart K to read as follows:

§ 22.922 Transfers and assignments of applications, permits or licenses in Rural Service areas.

(a) Notwithstanding any other section of this Part and except as provided in paragraph (b) of this section, the sale, transfer, assignment or other alienation of any cellular application, permit or license to offer service to Rural Service Areas is prohibited until the facility has been constructed and placed in operation.

(b) Applicants who have construction permits in Rural Service Areas may barter and transfer the interests in such permits in partial or whole Rural Service Areas. These barters and transfers may occur soon as the applicants involved in the exchange have obtained a construction permit in a Rural Service Area.

[FR Doc. 86–26484 Filed 11–24–86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 481]

Federal Motor Vehicles Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of Proposed Rulemaking; Denial of Petition.

SUMMARY: Standard No. 208, *Occupant Crash Protection,* provides for the phased-in implementation of an automatic restraint requirement for the front outboard seats in passenger cars, beginning on September 1, 1986, with full implementation to take place on September 1, 1989. The standard also provides that if two-thirds of the population of the United States is covered by effective safety belt use laws by April 1, 1989, then the automatic restraint requirement will be rescinded.

To encourage the development of a variety of automatic restraint systems, the standard provides that a manufacturer that installs a non-belt automatic restraint system, such as an air bag system, at the driver's seating position and a manual lap/shoulder belt at the front right passenger seating position will receive credit for producing one automatic restraint-equipped passenger car ("one car credit") during

the phase-in period. In response to a petition from the Ford Motor Company, NHTSA is proposing to amend Standard No. 208, *Occupant Crash Protection*, to extend temporarily the current one car credit beyond the phase-in period. The limited extension proposed in this notice would not affect the requirement that all cars have automatic restraints beginning September 1, 1989. It would only mean that manufacturers can meet that requirement by installing a non belt system for the driver—the person that is most at risk. The agency is also proposing that manufacturers must install dynamically-tested manual lap/shoulder belts for the right front passenger in vehicles that receive a one car credit beyond September 1, 1989.

The agency believes that a several year extension is warranted by the various technical, engineering and supplier resource problems, identified by Ford, that currently hinder the widespread installation of full-front (driver and passenger) air bag systems. This proposed action would encourage the orderly development and production of passenger cars with full-front air bag systems. The agency believes that the availability of the one car credit should be limited to the time necessary to complete the development and installation of passenger side air bag systems, which the agency believes is about four years beyond model year 1990. The agency specifically seeks comments on how much leadtime is needed to develop and install those systems.

This notice also denies petitions from the Insurance Institute for Highway Safety and Dr. Ing. h.c.F. Porsche requesting the agency to adopt a two car credit during the current phase-in period for cars equipped with driver and passenger side air bag systems. NHTSA believes that the requested two car credit would not lead to increased production of air bag-equipped cars during the current phase-in and could adversely affect safety by substantially reducing the number of cars that would otherwise be equipped with automatic restraints.

DATES: Comments must be filed with the agency by December 26, 1986.

ADDRESS: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590 (Docket Room hours 8 a.m.–4 p.m.)

FOR FURTHER INFORMATION CONTACT: Dr. Richard Strombotne, Chief, Crashworthiness Division, National Highway Traffic Safety Administration, Room 5320, 400 Seventh Street, SW., Washington, DC 20590 (202–366–2264).

SUPPLEMENTARY INFORMATION:

Background

On July 11, 1984 (49 FR 28962), Secretary Dole announced her decision on occupant crash protection. The decision provided for the phased-in implementation of an automatic restraint requirement for the front outboard seats in passenger cars, beginning on September 1, 1986, with full implementation to take place on September 1, 1989. To encourage the development of innovative automatic restraint systems, the July 1984 decision also provided that manufacturers that installed a non-belt automatic restraint system, such as an air bag system, in a vehicle during the phase-in period, would receive credit for producing 1.5 automatic restraint-equipped vehicles. The decision also provided that if two-thirds of the population of the United States were covered by effective safety belt use laws, which meet certain minimum requirements, by April 1, 1989, then the automatic restraint requirement would be rescinded.

Ford 1984 Petition To Adopt a One Car Credit

Subsequent to the issuance of the occupant crash protection decision, Ford Motor Company (Ford) filed a petition for reconsideration with NHTSA seeking a modification of the automatic restraint requirements during the phase-in period. Ford asked the agency to provide for a one car credit to manufacturers that install a non-belt automatic restraint system, such as an air bag, for the driver and a manual lap/shoulder safety belt for the front right passenger. Ford said that such a credit would encourage manufacturers to produce driver-side air bag systems or other non-belt systems sooner than if they had to complete development of passenger-side automatic restraint systems as well.

After carefully analyzing the safety and other effects of the Ford petition, NHTSA decided to expand the credit provision. The agency explained, in a notice published on August 30, 1985 (50 FR 35233), that one purpose of the phase-in is to provide a rapid introduction of the lifesaving benefits of automatic restraints and to facilitate the earliest possible introduction of such restraints to permit the public to become familiar with their operation and benefits. The agency further explained that it adopted the 1.5 car credit provision to encourage the production of a wide variety of automatic restraints, especially in the early years of the phase-in. The agency concluded that providing a new one car credit for a driver-only, non-belt system would also encourage the early introduction of those systems.

NHTSA also explained that it had fully considered the safety implication of driver-only systems. The agency emphasized that an important safety consideration in its decision was the number of occupants at risk of injury at each seating position, and not just the number of seating positions that are covered by the automatic restraint requirement. NHTSA said that accident data show that there are approximately 2½ to 3 times as many injuries and fatalities involving drivers as there are involving front right seat passengers. Thus, the agency concluded that it was reasonable to encourage manufacturers to provide automatic restraint protection as soon as possible to the driver—the person who is most at risk.

Ford 1986 petition to extend one vehicle credit

On June 11, 1986, Ford filed a new petition with NHTSA asking the agency to amend Standard No. 208 to permit the production of driver-only non-belt automatic restraint systems after September 1, 1989. Ford noted that it currently is offering a driver-side air bag system as an option on its Tempo and Topaz car lines. It said that if the standard is amended, Ford "will in all likelihood install such a system after September 1, 1989, in the majority of its North American-designed car production, including the family size cars that are expected to be Ford's most popular."

Ford said that permitting the use of driver-only non-belt systems would encourage other manufacturers to produce and market those systems. In addition, extending the one car credit would allow manufacturers "the time needed to pursue orderly development of passenger-side air bags," Ford said. Ford added that one reason it was able to offer a driver-side air bag system in the Tempo and Topaz was because its "successful field experience with the General Services Administration fleet and other fleets—the fruit of the orderly, evolutionary development of that system—gave Ford confidence in its safety and effectiveness, and because Ford was able to begin the process of building a supply base." Ford said that allowing manufacturers time to establish a supply base and to develop and field test a passenger-side air bag system in the same manner would further promote the installation of those systems.

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Ford also said that "there are enough significant uncertainties about the feasibility of, and the supply base for, passenger-side air bag systems that it would not be prudent to plan such systems for individual car lines without concurrently conducting parallel programs to develop passive-belt systems for the same car lines. Such parallel programs not only would be wasteful; they simply would not be achievable with available engineering resources."

NHTSA Request for Additional Information

After receiving Ford's June 1986 petition, NHTSA requested additional information from Ford to aid the agency in making a decision whether to grant or deny the petition. (NHTSA's letter and the non-confidential portions of the Ford response are filed in Docket 74-14, General Reference, Entries 654 and 654-A) Based on the information in Ford's petition and its supplemental responses, which are discussed below, NHTSA has tentatively decided to amend Standard No. 208 to permit the continued use, beyond September 1, 1989, for a limited period of time, of driver-side, non-belt automatic restraint systems combined with manual lap/shoulder belts for the right front passenger.

To aid the agency in making its final decision on this proposal, NHTSA requests commenters to address the same issues the agency raised with Ford after Ford filed its petition. NHTSA, therefore, requests manufacturers, equipment suppliers, and other commenters to provide information on the three following general areas concerning passenger non-belt automatic restraint systems: technical problems associated with the development of those systems, leadtime issues, such as the time needed for development of a supplier base and the level of engineering and testing resources needed to develop driver and passenger air bag systems at the same time as developing other means of compliance with Standard No. 208, and the safety effects of adopting the Ford petition. In addition, the agency requests commenters to address why installing driver-side air bag systems and passenger-side automatic belts is or is not a viable option. Finally, NHTSA requests manufacturers to provide quantitative estimates of the different types of non-belt automatic restraint systems they would offer for the driver and for the passenger after the phase-in if the proposed amendment is adopted and if the proposed amendment is not adopted.

Although Ford's petition is based on installation of an air bag system, the amendment sought by Ford would apply to the use of any non-belt automatic restraint system, which includes the use of additional interior padding and other structural changes to provide "built-in" safety. NHTSA requests manufacturers pursuing those types of non belt automatic restraint systems to provide the agency with information about the development of those types of systems.

I. Technical Problems

As a part of its original petition, Ford said that there were a number of uncertainties, including technical problems, concerning the development of passenger side air bags. In response to NHTSA's letter of June 25, 1986, Ford provided additional information about those technical problems. It said that it was making progress in solving these potential problems and is working toward offering a passenger-side air bag on a 1989 model.

Ford identified a number of technical difficulties that must be overcome before it produces a passenger-side air bag system. Those difficulties include:

- Low temperature ignition characteristics of igniter/generant,
- Optimum design of the aspirator,
- Material of inflator canister,
- Knee bolster design alternatives,
- Optimum deployment door characteristics, and
- Occupant kinematic/bag location.

In addition, Ford said that it was concerned about "avoiding undue hazards to standing children and other occupants who are out of position due, for example, to pre-crash braking. . . ." Ford emphasized that it expects to solve these problems "if we proceed in an orderly, controlled manner to gain experience with passenger-side applications. However, attempting widespread, high-volume application of passenger air bags without this learning experience is simply not prudent," Ford concluded. NHTSA agrees that all of the potential problems identified by Ford appear to be solvable. The agency requests commenters to provide information on any other technical problems they have identified with non-belt systems and to identify the solutions they are pursuing for those problems and the problems identified by Ford as well as the time-frame for these solutions.

II. Leadtime Issues

A. Establishment of a Supplier Base

In its July 22, 1986, response to NHTSA's request for further information, Ford provided additional details about potential supplier problems. Ford said that, at present, there are only two domestic suppliers with experience in manufacturing driver-side air bag inflators, and the production capability of those manufacturers is expected to increase during the phase-in period. Ford said that it did not know of any suppliers that have experience with current-technology, passenger-side air bag inflators. Ford also said that the passenger-side inflator it is developing for the 1989 model year incorporates new technology which is "yet unproven and is not based on existing driver-side technology." Ford expressed concern that suppliers must have time to gain experience with this new technology to avoid "component quality problems, problems with tooling and fixtures and supply disruptions," which could jeopardize the introduction of passenger-side systems. Talley Industries, which has been involved in developing and producing air bag inflators for a number of years, has written the agency to support Ford's petition. Talley said that the Ford petition "reasonably balances the requirement for automobile occupant safety with the technical difficulties and high costs of full frontal seat passive restraint."

B. Engineering and Testing Needs

In its July 22, 1986, response to NHTSA s request for further information, Ford provided additional details about the problems associated with conducting parallel programs to develop passenger-side air bag systems and automatic safety belts. The specific estimates of the number of people-years of engineering and expenditures needed for a parallel program to develop a motorized automatic safety belt system and a passenger-side air bag system are confidential. However, as Ford emphasized in its response, the issue is not simply one of economics. Ford said, "We simply do not have sufficient qualified engineering personnel or test facilities available to design both passive belt systems and air bag systems for any of Ford's car lines on which passive restraints are first being introduced in the 1990 model year. Neither do the outside suppliers to whom we might contract such work." Ford also said that its ability to meet its current plans would be affected by the need to develop dynamically-tested manual safety belt systems for light trucks.

Ford said, it "is not yet able to predict with any degree of accuracy when it could expect the technical, supply and market acceptance issues associated with passenger-side air bags to be resolved." Ford said that its current plans provide for the initial introduction of passenger-side air bag systems to allow it to resolve any problems and prepare for making such a system available on additional vehicles.

NHTSA believes that Ford has identified valid concerns about the capability of manufacturers to develop and install passenger side air bag systems during the current phase-in period. At the same time, the technical problems and leadtime considerations identified by Ford are, as Ford acknowledges, capable of resolution; the issue is what is the time needed to develop and implement the needed solutions.

At the time of the July 1984 decision on occupant crash protection, NHTSA estimated that the maximum time necessary for implementation of an air bag system for the driver and the passenger was approximately five years. The information provided by Ford indicates that estimate was optimistic for the *widespread* introduction of driver and passenger air bag systems. So that the agency can make an informed decision about what is the leadtime necessary to develop and install passenger side air bag systems, NHTSA is particularly interested in obtaining additional information from automatic restraint equipment suppliers about their current and estimated future capabilities to provide non-belt systems in large numbers. One organization has already suggested a specific time limit for extending the one car credit. In urging the agency to adopt the Ford proposal, the Insurance Institute for Highway Safety (IIHS) suggested limiting the extension of the one car credit until September 1, 1993. The agency proposes to adopt the IIHS time limit and invites comments to address this proposal.

III. Safety Effects

A. Ford Analysis of Safety Effects

As a part of its June 1986 petition, Ford presented its analysis of the safety effects of permitting the installation of driver-side only air bag systems after September 1, 1989. Based on data developed by the agency in the July 1984 occupant crash protection decision, Ford said that a driver-side system combined with a manual lap/shoulder belt for the front right passenger "should be potentially as effective in reducing overall fatalities nationwide as driver and right front passenger passive restraint systems comprised of motorized or non-motorized 2-point belts, and more effective than detachable, non-motorized three-point passive belts." Ford's analysis shows that as the level of manual safety belt use increases, most directly as the result of the enactment of State mandatory safety-belt use laws, the potential benefits of a driver-only air bag also increase.

B. IIHS Analysis of Safety Effects

Subsequent to Ford's submission of its petition, IIHS wrote NHTSA urging the agency to adopt Ford's proposal. IIHS, however, did not request an open-ended extension of the one car credit, but instead suggested limiting the extension to vehicles produced before September 1, 1993.

As a part of its letter, IIHS included the results of an analysis it prepared on the safety effects of adopting Ford's petition. (The IIHS letter and attachments are filed in Docket 74-14, General Reference, Entry 645.) Based on estimates used in the July 1984 occupant crash protection decision, IIHS estimated that there would be 7,750 fewer annual fatalities once the entire vehicle fleet was equipped with driver-side air bags, assuming 30 percent use of manual belts by front-seat occupants. IIHS noted that "In contrast, a use rate of 70 percent for automatic belts would be required to save about the same number of lives. For moderate and critical injuries, the advantage of the driver-side air bag/manual belt combination are slightly greater . . . As manual belt use increases, the advantage of driver-side air bags becomes even more pronounced."

C. NHTSA Analysis of Safety Effects

To analyze the potential effects of adopting Ford's petition, the agency did a breakeven point analysis for different types of automatic restraint systems. The purpose of the analysis was to determine the level of automatic safety belt usage needed to provide the same incremental fatality reduction benefits as a driver side air bag system with a manual lap/shoulder safety belt and a manual lap/shoulder safety belt for the passenger. In doing this analysis, the agency used the fatality reduction estimates of a manual lap/shoulder safety belt used in the driver and right front passenger positions as the baseline to which the fatality reduction effectiveness of four other restraint systems (airbag/airbag, airbag/automatic belt, airbag/manual belt and automatic belt/automatic belt) would be compared.

In addition, the agency analyzed the sensitivity of the fatality reduction estimates for the different restraint systems to using three different assumptions about the level of safety belt usage for the driver and the right front passenger. The three different manual belt usage levels are: 1983 usage, which was used as the baseline estimate in the July 1984 Final Regulatory Impact Analysis (FRIA) on Standard No. 208, 1985 usage based on the agency's 19-city survey of belt usage, and 40 percent usage, which represents the low end of the range of belt law related usage estimated in the 1984 FRIA. The analysis shows that belt usage in cars with automatic belts for the driver and front right passenger must be above the 59-76 percent usage level in order to provide more benefits than cars equipped with a driver-side air bag system and a manual lap/shoulder belt for the passenger.

The analyses done by Ford, IIHS, and the agency all demonstrated that a driver-side, non-belt automatic restraint system combined with a manual lap/shoulder belt for the passenger provides substantial safety benefits. The analyses further show that safety belt usage in cars equipped with automatic safety belts for the driver and the passenger must be at or above 60 percent, before the benefits of that system exceed the benefits of a driver-only air bag. The IIHS and NHTSA analysis further show that, unless automatic safety belt use levels are extremely high, a driver and passenger side air bag system yields the greatest benefits of the systems analyzed. Thus, NHTSA has tentatively concluded that the projected benefits of a driver-side only air bag system warrant permitting that system beyond 1989 to permit the development of driver and passenger side air bag systems which, when used with manual lap/shoulder belts, promise to have even greater effectiveness in reducing deaths and injuries.

IV. Use of Driver-side Air Bags and Passenger-side Automatic Belts

In its request for additional information, NHTSA asked why Ford does not consider the option of driver-side air bags and passenger-side automatic belts to be viable. In its July 22 response, Ford identified two reasons why such a combination of automatic restraint systems is not viable. First, Ford reiterated its point that it does not have the engineering capability or resources to conduct parallel programs to design and develop two different automatic restraint systems for the passenger side. In addition, Ford raised the possibility of market resistance to such a combination; although Ford said it has not conducted consumer market research on this issue.

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The agency requests comments from other manufacturers and equipment suppliers about their capability to pursue parallel automatic restraint programs. In addition, the agency is interested in learning of any market research conducted by manufacturers and others on the acceptability of a driver-side air bag and passenger-side automatic belt system.

V. Specific Estimates of Air Bag Production

As a part of its request for additional information, NHTSA asked Ford to provide specific estimates of the number of vehicles it intended to produce with driver-side air bag systems if the rule is amended and if the rule is not amended. NHTSA also asked Ford to provide the same information for vehicles equipped with passenger-side air bag systems. Since the estimates have to do with future production plans, the details of the estimates are confidential. The estimates do show that whether the petition is or is not adopted makes a significant difference in Ford's plans to provide driver and passenger-side air bag systems. NHTSA requests manufacturers commenting on this notice to provide volume estimates, by car line, of their future production plans for non-belt automatic restraint systems if the proposed extension of the one car credit is adopted and if it is not adopted. The agency also requests commenters to address the issue of whether adopting Ford's proposal would discourage any manufacturer from introducing full-front air bag systems earlier than 1993.

Dynamic Testing of Manual Safety Belts

In March 1986 (51 FR 9800), NHTSA adopted a requirement that if the automatic restraint standard is rescinded, then manual lap/shoulder belts installed in the front outboard seating positions of passenger cars must pass a dynamic 30 mph crash test. The requirement for dynamic testing will go into effect on September 1, 1989, if the automatic restraint requirement is rescinded.

Since today's notice proposes to allow the continued use of a manual lap/shoulder belt at the front right seating position in passenger cars equipped with a driver-side non-belt automatic restraint beyond September 1, 1989, the agency is proposing to require the manual lap/shoulder belts at that seat to be dynamically tested. The obvious benefit of such a requirement is that it would ensure that the manual lap/shoulder belts, if worn, in those cars would have to meet the same safety performance criteria applied to automatic belts installed in other vehicles. Since the car will have to be crash tested to verify the compliance of the driver-side air bag system with the performance requirements of Standard No. 208, the incremental testing costs associated with conducting a dynamic seat for the passenger-side manual belt should be minimal.

Porsche/IIHS Petition for Two Car Credit

In separate petitions filed last year, Dr. Ing h.c.F. Porsche (Porsche) and IIHS asked the agency to provide a two car credit during the phase-in period for passenger cars with driver and passenger-side air bag systems. They argued, among other things, that a two car credit would serve as an incentive for manufacturers to develop driver and passenger-side air bag systems and will provide manufacturers and vehicle owners with more widespread experience about those systems. In its petition, Porsche said that it was currently testing a driver and passenger air bag system for its 944 model.

The agency has decided to deny the two car credit petitions for several reasons. First, manufacturers that install a full-front air bag system can already receive a 1.5 car credit. Although Porsche has written the agency about the need for two car credit, neither Porsche nor any other manufacturer has provided detailed factual data specifically explaining how a two car credit would serve as an additional incentive to any manufacturer to change its production plans during the current phase-in period. Because of the leadtime requirements necessary to install driver and passenger-side air bag systems, any manufacturer that may currently be planning to offer driver and passenger side air bag systems would probably have already had to take the necessary steps and expend most of the resources to implement those plans. Nonetheless, NHTSA invites manufacturers to quantify any use they would make of a two credit provision. Should sufficient and convincing data be provided to refute the agency's beliefs, NHTSA will reconsider its denial of the petition.

In addition, the agency is concerned that a two car credit could serve as a disincentive toward producing substantial numbers of vehicles with air bag systems during the current phase-in. The possible disincentive resulting from a two car credit is that it would cut by 50 percent the number of cars a manufacturer would have to equip with automatic restraints during the current phase-in period. Since a manufacturer could produce substantially fewer cars to meet the phase-in requirements, there would be little incentive to produce more air bag-equipped cars than absolutely necessary. In addition, because a two car credit would reduce by half the number of cars a manufacturer would have to equip with automatic restraints during the current phase-in, the agency is also concerned about the safety effects of that credit. Manufacturers and others are also invited to comment and present further analysis on these safety considerations.

The agency believes that if the Ford proposal to extend the availability of a one car credit is adopted for a limited time period, a two car credit, if permitted during the phase-in period, should not also be available beyond that time. Under the Ford proposal, *every* car manufactured after September 1, 1989, would have to contain automatic crash protection for the driver—the position most at risk. If the two car credit were also extended, a manufacturer would be able to produce some vehicles that would not have any automatic protection for the driver. Thus, even if NHTSA were to reverse its decision and propose to allow a two car credit during the phase-in period, it would not extend such credit beyond September 1, 1989. The agency notes that Porsche did not request a 2.0 car credit beyond September 1, 1989.

Regulatory Impacts

NHTSA has examined the impact of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291, but is significant within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has prepared a regulatory evaluation describing the economic and other impacts of this rulemaking action.

As discussed earlier in this notice, the regulatory evaluation shows that a driver-only air bag system can have substantial safety benefits. In fact, safety belt usage in cars equipped with automatic safety belts for the driver and the passenger must exceed 60 percent, before the benefits of that system equal the benefits of a driver-only air bag. The analysis further shows that automatic belt usage would have to be greater than 75 percent to exceed the benefits of a driver and passenger side air bag system. Thus, the agency believes that a temporary extension of the one car credit for driver-only systems will not have an adverse safety effect and will provide additional time for the orderly development and installation of driver and passenger air bag systems. Furthermore, the agency believes that the amendment proposed today can result in higher levels of safety. The agency notes that vehicle manufacturers that are currently offering driver-only air bag systems are voluntarily installing lap/shoulder safety belts for the driver, even though they could install only a lap safety belt The Final Regulatory Impact Analysis done for Secretary Dole's July 1984 occupant protection decision estimated that the combination of a lap/shoulder safety belt and an air bag system would provide the highest level of effectiveness in reducing fatal and moderate-to-critical injuries of all the restraint systems studied. The agency requests manufacturers considering the use of driver-only air bag systems to comment on whether the trend to use lap/shoulder safety belts with those systems will continue.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a full regulatory flexibility analysis.

Few, if any, passenger car manufacturers would qualify as small entities and the proposed change in the credit provision should not have a substantial effect on small manufacturers. The proposed changes would provide small and other manufacturers with additional leadtime to develop driver and passenger-side non-belt systems. The additional leadtime should have the effect of reducing a manufacturer's costs. Small organizations and governmental units should not be significantly affected since the potential cost reductions associated with the proposed change should be not be significant.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

This rulemaking action does not contain any information collection requirements that must be submitted to the Office of Management and Budget pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*).

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, Part 571 of Title 49 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

* * * * *

2. In § 571.208, S4.1.4 is revised to read as follows:

§ 571.208 Standard No. 208, Occupant crash protection.

S4.1.4 *Passenger cars manufactured on or after September 1, 1989.* Except as provided in S4.1.5, each passenger car manufactured on or after September 1, 1989. shall comply with the requirements of S4.1.2.1. Until September 1, 1993, each car whose driver's designated seating position complies with the requirements of S4.1.2.1(a) by means not including any type of seat belt and whose right front designated seating position is equipped with a manual Type 2 seat belt that meets S4.6 shall be counted as a vehicle complying with S4.1.2.1. A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

* * * * *

Issued on November 20, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86-26480 Filed 11-20-86; 11:22 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

Groundfish of the Gulf of Alaska; Availability of Amendment to Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NOAA issues this notice that the North Pacific Fishery Management Council has submitted Amendment 15 to the Fishery Management Plan for Groundfish of the Gulf of Alaska for Secretarial review and is requesting comments from the public. Copies of the amendments may be obtained from the address below.

DATE: Comments on the plan amendment will be accepted until January 10, 1987.

ADDRESS: All comments should be sent to Robert McVey, Director, Alaska Region, NMFS, P.O. Box 1668, Juneau, Alaska 99802. Copies of the amendment and the environmental assessment and the regulatory impact review/initial regulatory flexibility analysis are available upon request from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Biologist, National Marine Fisheries Service, Alaska Region), 907-586-7230.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) requires that each regional fishery management council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. This act also requires that the Secretary, upon reviewing the plan or amendment, must immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the plan or amendment.

Amendment 15 would (1) revise management goals and objectives; (2) establish an administrative framework procedure for setting annual harvest levels without plan amendment; (3) revise catch reporting requirements for at-sea processors; (4) establish four time/area closures effective for three years for non-pelagic trawling to protect king crab around Kodiak Island; and (5) expand the field order authority for making inseason adjustments of harvest quotas and bycatch limits. Regulations proposed by the North Pacific Fishery Management Council and based on this amendment are scheduled to be published within 15 days.

(16 U.S.C. 1801 *et seq.*)

Dated: November 20, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-26563 Filed 11-20-86; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 51, No. 227
Tuesday, November 25, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-301-603]

Portland Hydraulic Cement (Including Cement Clinker) From Colombia; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether portland hydraulic cement and cement clinker (cement), from Colombia is being, or is likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 15, 1986, and we will make ours on or before April 8, 1987.

EFFECTIVE DATE: November 25, 1986.

FOR FURTHER INFORMATION CONTACT: Mary Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1769.

SUPPLEMENTARY INFORMATION:

The Petition

On October 30, 1986, we received a petition in proper form filed by the American Cement Trade Alliance (ACTA). In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Colombia are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

Petitioner based foreign market value on the ex-factory home market price for portlan hydraulic cement in Colombia, which is a price set by the Colombian Ministry of Economic Development. The price used for foreign market value in this investigation was set in April 1986.

Petitioner based United States price on the weighted-average f.o.b. import price for Colombian cement derived from Department of Commerce import statistics.

Based on the above comparison, petitioner alleges a dumping margin of 47.29 percent.

After analysis of petitioner's allegations and supporting data, we conclude that a formal investigation is warranted.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on cement and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether the merchandise subject to this investigation from Colombia is being, or is likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination no later than April 8, 1987.

Scope of Investigation

The products covered by this investigation are portland hydraulic grey cement, including clinker, provided for in the *Tariff Schedules of the United States Annotated* (TSUSA) items 511.1440 and 511.1420. Excluded from this investigation are white, non-staining portland hydraulic cement provided for in TSUS item 511.11 and oil well cement provided for in TSUS item 511.14.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms that it will not disclose such information either publicly or under administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by December 15, 1986, whether there is a reasonable indication that imports of the merchandise subject to this investigation from Colombia are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-26550 Filed 11-24-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-427-604]

Portland Hydraulic Cement (Including Cement Clinker) From France; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether portland hydraulic cement and cement clinker (cement), from France is being, or is likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action

so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 15, 1986, and we will make ours on or before April 8, 1987.

EFFECTIVE DATE: November 25, 1986.

FOR FURTHER INFORMATION CONTACT: Mary Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-1769.

SUPPLEMENTARY INFORMATION:

The Petition

On October 30, 1986, we received a petition in proper form filed by the American Cement Trade Alliance (ACTA). In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from France are being, or are likely to be, sold in the United States industry.

Petitioner based foreign market value on an ex-factory prices at which two major French producers have been selling portland hydraulic cement in France during 1986.

Petitioner based United States price on the basis of exporter's sales price (ESP) since a vast majority of imports of French cement were made by a related party. Petitioner derives the ESP of French cement by subtracting the costs of transporting the cement from the French factory to the U.S. importer's cement terminal and the costs of operating the terminal from the ex-terminal price.

Based on the above comparison, petitioner alleges dumping margins ranging from 96.65 percent to 105.21 percent.

After analysis of petitioner's allegations and supporting data, we conclude that a formal investigation is warranted.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on cement and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether the merchandise subject to this investigation from France is being, or is likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination no later than April 8, 1987.

Scope of Investigation

The products covered by this investigation are portland hydraulic grey cement, including clinker, provided for in the *Tariff Schedules of the United States Annotated* (TSUSA) items 511.1440 and 511.1420. Excluded from this investigation are white non-staining portland hydraulic cement provided for in TSUS item 511.11 and oil well cement provided for in TSUS item 511.14.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms that it will not disclose such information either publicly or under administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by December 15, 1986, whether there is a reasonable indication that imports of the merchandise subject to this investigation from France are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-26551 Filed 11-24-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-484-601]

Portland Hydraulic Cement (Including Cement Clinker) From Greece: Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether portland hydraulic cement and cement clinker (cement), from Greece is being, or is likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 15, 1986, and we will make ours on or before April 8, 1987.

EFFECTIVE DATE: November 25, 1986.

FOR FURTHER INFORMATION CONTACT: Mary Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230: telephone: (202) 377-1769.

SUPPLEMENTARY INFORMATION:

The Petition

On October 30, 1986, we received a petition in proper form filed by the American Cement Trade Alliance (ACTA). In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Greece are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

Petitioner based foreign market value on the reported ex-factory price of cement produced and sold in Greece to home market customers.

Petitioner based United States price on the weighted-average f.o.b. import price for Greek cement, derived from Department of Commerce import statistics.

Based on the above comparison, petitioner alleges a dumping margin of 81.29 percent.

After analysis of petitioner's allegations and supporting data, we conclude that a formal investigation is warranted.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the

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allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on cement and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether the merchandise subject to this investigation from Greece is being, or is likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination no later than April 8, 1987.

Scope of Investigation

The products covered by this investigation are portland hydraulic grey cement, including clinker, provided for in the *Tariff Schedules of the United States Annotated* (TSUSA) items 511.1440 and 511.1420. Excluded from this investigation are white, non-staining portland hydraulic cement provided for in TSUS item 511.11 and oil well cement provided for in TSUS item 511.14.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms that it will not disclose such information either publicly or under administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by December 15, 1986, whether there is a reasonable indication that imports of the merchandise subject to this investigation from Greece are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-26552 Filed 11-24-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-608]

Portland Hydraulic Cement (Including Cement Clinker) From Japan; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether portland hydraulic cement and cement clinker (cement), from Japan is being, or is likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 15, 1986, and we will make ours on or before April 8, 1987.

EFFECTIVE DATE: November 25, 1986.

FOR FURTHER INFORMATION CONTACT: Mary Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1769.

SUPPLEMENTARY INFORMATION:

The Petition

On October 30, 1986, we received a petition in proper form filed by the American Cement Trade Alliance (ACTA). In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

Petitioner based foreign market value on the delivered sales price of cement sold in bulk through the first channel of distribution in Japan. Deductions were made for foreign inland freight and handling charges.

Petitioner based United States price on the weighted-average f.o.b. import price for Japanese cement derived from Department of Commerce import statistics.

Based on the above comparison, petitioner alleges a dumping margin of 126.66 percent.

After analysis of petitioner's allegations and supporting data, we conclude that a formal investigation is warranted.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on cement and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether the merchandise subject to this investigation from Japan is being, or is likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination no later than April 8, 1987.

Scope of Investigation

The products covered by this investigation are portland hydraulic grey cement, including clinker, provided for in the *Tariff Schedules of the United States Annotated* (TSUSA) items 511.1440 and 511.1420. Excluded from this investigation are white, non-staining portland hydraulic cement provided for in TSUS item 511.11 and oil well cement provided for in TSUS item 511.14.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms that it will not disclose such information either publicly or under administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by December 15, 1986, whether there is a reasonable indication that imports of the merchandise subject to this investigation from Japan are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-26553 Filed 11-24-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-604]

Portland Hydraulic Cement (Including Cement Clinker) From Korea; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether portland hydraulic cement clinker (cement), from Korea is being, or is likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 15, 1986, and we will make ours on or before April 8, 1987.

EFFECTIVE DATE: November 25, 1986.

FOR FURTHER INFORMATION CONTACT: Mary Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1769.

SUPPLEMENTARY INFORMATION:

The Petition

On October 30, 1986, we received a petition in proper form filed by the American Cement Trade Alliance (ACTA). In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Korea are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

Petitioner based foreign market value of an ex-factory home market price of bulk general use cement sold in Korea.

Petitioner based United States price on the weighted-average f.o.b. import price for Korean cement derived from Department of Commerce import statistics.

Based on the above comparison, petitioner alleges a dumping margin of 68.17 percent.

After analysis of petitioner's allegations and supporting data, we conclude that a formal investigation is warranted.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on cement and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether the merchandise subject to this investigation from Korea is being, or is likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination no later than April 8, 1987.

Scope of Investigation

The products covered by this investigation are portland hydraulic grey cement, including clinker, provided for in the *Tariff Schedules of the United States Annotated* (TSUSA) items 511.1440 and 511.1420. Excluded from this investigation are white non-staining portland hydraulic cement provided for in TSUS item 511.11 and oil well cement provided for in TSUS item 511.14.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms that it will not disclose such information either publicly or under administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by December 15, 1986, whether there is a reasonable indication that imports of the merchandise subject to this investigation from Korea are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-26554 Filed 11-24-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-201-802]

Portland Hydraulic Cement (Including Cement Clinker) From Mexico; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether portland hydraulic cement and cement clinker (cement), from Mexico is being, or is likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 15, 1986, and we will make ours on or before April 8, 1987.

EFFECTIVE DATE: November 25, 1986.

FOR FURTHER INFORMATION CONTACT: Mary Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1769.

SUPPLEMENTARY INFORMATION:

The Petition

On October 30, 1986, we received a petition in proper form filed by the American Cement Trade Alliance (ACTA). In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36),

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the petition alleged that imports of the subject merchandise from Mexico are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

Petitioner based foreign market value on reported ex-factory prices paid by Mexican customers for cement produced in Mexico.

Petitioner based United States price on the weighted-average f.o.b. import price for Mexican cement, derived from Department of Commerce import statistics.

Based on the above comparison, petitioner alleges dumping margins ranging from 25.21 percent to 69.20 percent.

After analysis of petitioner's allegations and supporting data, we conclude that a formal investigation is warranted.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on cement and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether the merchandise subject to this investigation from Mexico is being, or is likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination no later than April 8, 1987.

Scope of Investigation

The products covered by this investigation are portland hydrulic grey cement, including clinker, provided for in the *Tariff Schedules of the United States Annotated* (TSUSA) items 511.1440 and 511.1420. Excluded from this investigation are white, non-staining portland hydraulic cement provided for in TSUS item 511.11 and oil well cement provided for in TSUS item 511.14.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms that it will not disclose such information either publicly or under administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by December 15, 1986, whether there is a reasonable indication that imports of the merchandise subject to this investigation from Mexico are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 26555 Filed 11–24–86; 8:45 am]

BILLING CODE 3510-DS-M

[A-469-603]

Portland Hydraulic Cement (Including Cement Clinker) From Spain; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether portland hydraulic cement and cement clinker (cement), from Spain is being, or is likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 15, 1986, and we will make ours on or before April 8, 1987.

EFFECTIVE DATE: November 25, 1986.

FOR FURTHER INFORMATION CONTACT: Mary Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–1769.

SUPPLEMENTARY INFORMATION:

The Petition

On October 30, 1986, we received a petition in proper form filed by the American Cement Trade Alliance (ACTA). In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Spain are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

Petitioner based foreign market value on an ex-factory price of bulk general use cement sold in Spain, excluding charges for value-added tax.

Petitioner based United States price on the weighted-average f.o.b. import price for Spanish cement derived from Department of Commerce import statistics.

Based on the above comparison, petitioner alleges a dumping margin of 54.84 percent.

After analysis of petitioner's allegations and supporting data, we conclude that a formal investigation is warranted.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on cement and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether the merchandise subject to this investigation from Spain is being, or is likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination no later than April 8, 1987.

Scope of Investigation

The products covered by this investigation are portland hydraulic grey cement, including clinker, provided for in the *Tariff Schedules of the United States Annotated* (TSUSA) items 511.1440 and 511.1420. Excluded from this investigation are white non-staining portland hydraulic cement provided for in TSUS item 511.11 and oil well cement provided for in TSUS item 511.14.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms that it will not disclose such information either publicly or under administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by December 15, 1986, whether there is a reasonable indication that imports of the merchandise subject to this investigation from Spain are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-26556 Filed 11-24-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-307-601]

Portland Hydraulic Cement (Including Cement Clinker) From Venezuela; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether portland hydraulic cement and cement clinker (cement), from Venezuela is being, or is likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 15, 1986, and we will make ours on or before April 8, 1987.

EFFECTIVE DATE: November 25, 1986.

FOR FURTHER INFORMATION CONTACT: Mary Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1769.

SUPPLEMENTARY INFORMATION:

The Petition

On October 30, 1986, we received a petition in proper form filed by the American Cement Trade Alliance (ACTA). In compliance with the filing requirements of § 353.36b of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Venezuela are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

Petitioner based foreign market value on an ex-factory price of bulk general use cement sold in Venezuela.

Petitioner based United States price on the weighted-average f.o.b. import price for Venezuela cement derived from Department of Commerce import statistics.

Based on the above comparison, petitioner alleges a dumping margin of 97 percent.

After analysis of petitioner's allegations and supporting data, we conclude that a formal investigation is warranted.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petiton is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on cement and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether the merchandise subject to this investigation from Venezuela is being, or is likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination no later than April 8, 1987.

Scope of Investigation

The products covered by this investigation are portland hydraulic grey cement, including clinker, provided for in the *Tariff Schedules of the United States Annotated* (TSUSA) items 511.1440 and 511.1420. Excluded from this investigation are white non-staining portland hydraulic cement provided for in TSUS item 511.11 and oil well cement provided for in TSUS item 511.14.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms that it will not disclose such information either publicly or under administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by December 15, 1986, whether there is a reasonable indication that imports of the merchandise subject to this investigation from Venezuela are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-26557 Filed 11-24-86; 8:45 am]

BILLING CODE 3510-DS-M

Semiconductor Technical Advisory Committee; Partially Closed Meeting

SUMMARY: The Semiconductor Technical Advisory Committee was initially established on January 3, 1973, and rechartered on January 10, 1986 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

DATE: Time and place: December 16, 1986 at 9:30 a.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Ave., NW., Washington, DC.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public that relate to general semiconductor export issues or specifically Export Commodity Control

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Numbers (ECCN) 1544A; 1545A; 1547A; 1548A; 1564A; 1757; 1354A, and 1355A.

3. The Committee is particularly interested in receiving public comments/suggestions concerning exports of semiconductor test equipment, presently embargoed under ECCN 1355A, Subitem (b)(7).

4. Action items underway.

5. New Business.

6. Action items due at next meeting.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

Public Participation

The General Session will be open to the public and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

SUPPLEMENTARY INFORMATION: A Notice of Determination to close meetings or portions of meetings of the Committee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on January 10, 1986, in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202-377-4217. For further information or copies of the minutes call 202-377-2583.

Dated: November 19, 1986.

Margaret A. Cornejo,

Director, Technical Support Staff Office of Technology and Policy Analysis.

[FR Doc. 86-26533 Filed 11-24-86; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council and its advisory bodies will convene public meetings, December 9-12, 1986, at the Sheraton Anchorage Hotel, Anchorage, AK. On December 9, the Council will convene at 9 a.m. to make final decisions on groundfish harvest levels for 1987 and apportionments to U.S. and foreign fisheries. There also will be a major review of foreign allocations, vessel permits, and joint ventures for 1987. The Council will consider and approve nominations to its Advisory Panel (AP), Scientific and Statistical Committee (SSC), and fishery management plan teams. Other items on the agenda include reports on a domestic observer program; reflagging of foreign processing vessels, and permits and reporting requirements for U.S. transport and support vessels. The Council also will hear a report on crab management from an industry/Council workgroup and consider recommendations for further action, as well as choose a contractor for a groundfish management study. The Council will meet in executive session (not open to the public) at least once during the week, to review ongoing litigation, personnel matters and other appropriate matters. The Council's meeting may continue into December 13, if necessary. The Council's Permit Review Committee, AP, and SSC are scheduled to convene on December 7, at 1:30 p.m. Other plan team and workgroup meetings may be held on short notice during the week.

The Council's Advisory Panel Nominating Committee will convene a closed session (not open to the public) on December 10 and the Council's SSC will convene a closed session, sometime during the meeting week to discuss personnel matters and prepare recommendations for Council review and approval.

For more information contact Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, 411 West Fourth Avenue, Suite 2D, Anchorage, AK; telephone: (907) 274-4563.

Dated: November 20, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-26564 Filed 11-24-86; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service , NOAA, Commerce.

A special public meeting of Pacific Fishery Management Council advisors will convene December 2, 1986, at 9 a.m. at the Council's office (Room 180, address below), to review Oregon production index area coho abundance estimation methods. The special advisory group consists of the Council's Salmon Plan Development Team and selected members of the Scientific and Statistical Committee who will begin reviewing information on two different methodologies used by the Council to estimate coho abundance in the Oregon production index area. Recommendations developed at this and subsequent meetings will be provided to the Council in March to help guide ocean management for 1987. For further information contact Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, Metro Center, 2000 S.W. First Avenue, Suite 420, Portland OR 97201: telephone: (503) 221-6352.

Dated: November 20, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-26565 Filed 11-24-86; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Price Change Notification

AGENCY: National Technical Information Service, Commerce.

ACTION: Price change notification.

SUMMARY: This is to advise National Technical Information Service (NTIS) customers of planned price increases for calendar year 1987. Effective January 1, 1987, price increases will occur in some product areas. Paper copy and microfiche reports, selected subscription/standing order products, diskettes and magnetic tapes are the products affected by the increase.

Inquiries regarding this price notification, or price changes for other agency subscription and standing order products should be directed to Mr. Walter Finch, Acting Associate Director, Office of Program and Product Management, NTIS, Springfield, VA 22161, (703) 487-4805.

The following list details most of the price changes. North American prices are for customers in the United States, Canada and Mexico. Foreign prices are for all other customers.

1987 PRICE SCHEDULE

[Effective Jan. 1, 1987]

Price code	Domestic price	Foreign price
Microfiche and Paper Copy		
MF A01	$6.50	$13.00
PC A02	9.95	19.90
A03	11.95	23.90
A04-A05	13.95	27.90
A06-A09	18.95	37.90
A10-A13	24.95	49.90
A14-A17	30.95	61.90
A18-A21	36.95	73.90
A22-A25	42.95	85.90
A99	([1])	([1])

1987 PRICE SCHEDULE—Continued

[Effective Jan. 1, 1987]

Price code	Domestic price	Foreign price
Magnetic Tapes		
T01	150	300
T02	175	350
T03	300	600
T04	400	800
T05	500	1,000
T06	600	1,200
T07	700	1,400
T08	800	1,600
T09	900	1,800
T10	1,000	2,000
T11	1,100	2,200
T12	1,200	2,400
T13	1,300	2,600
T14	1,400	2,800
T15	1,500	3,000
T16	1,600	3,200
T17	1,700	3,400
T18	1,800	3,600
T19	1,900	3,800
T99	([1])	([1])
Diskette Products		
D01	50	100
D02	75	150
D03	125	250
D04	175	350
D05	225	450
D06	275	550
D07	325	650
D08	375	750
D09	425	850
D10	475	950
D11	525	1,050
D12	575	1,150
D13	625	1,250
D14	675	1,350
D15	725	1,450
D16	775	1,550
D17	825	1,650
D18	875	1,750
D19	925	1,850
D99	([1])	([1])

[1] Note—Contact NTIS for price quote.

David B. Frances,

Director, Office of Administrative Management.

[FR Doc. 86–26487 Filed 11–24–86; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

November 19, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 19, 1986. For further information contact Kathy Davis, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

The Governments of the United States and Thailand have agreed in consultations held in October 1986 to further amend their Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 27 and August 8, 1983, as previously amended and extended, to increase the restraint limit established for wool textile products in Categories 410–429 and 431–459, as a group, for special carryforward to 2,129,165 square yards and that for polypropylene bags in part of Category 669 (only TSUSA number 385.5300), to 1,004,350 pounds, produced or manufactured in Thailand and exported, in the case of the wool group, during the thirteen-month period which began on December 1, 1985 and extends through December 31, 1986, and in the case of Category 669 pt., during the four-month period which began on September 1, 1986 and extends through December 31, 1986.

In the letter which follows this notice the Chairman of CITA directs the Commissioner of Customs to increase these specific limits to the designated amounts.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textiles Agreements.

Committee For The Implementation of Textile Agreements

November 19, 1986.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives of November 27, 1985, as previously amended, and the directive of November 3, 1986 which established limits for certain categories of cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Thailand and exported during the agreement year which began on January 1, 1986.

Effective on November 19, 1986, the directives of November 27, 1985 and November 3, 1986, are hereby amended to increase the following limits:

Category	Restraint limit [1]	Date of export period
410–429 and 431–459, as a group 669 pt.[2].	2,129,165 square yards equivalent 1,004,350 pounds.	Sept. 1 to Dec. 1, 1985 to Dec. 31, 1986. Dec. 31, 1986.

[1] The limits have not been adjusted to account for any imports exported after November 30, 1985, or August 31, 1986, as applicable.

[2] In Category 669, only TSUSA number 385.5300.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Williman H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–26534 Filed 11–24–86; 8:45 am]

BILLING CODE 3510–DR–M

Adjustment of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in the Socialist Federal Republic of Yugoslavia

November 19, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 26, 1986. For further information contact Kathryn Cabral, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

A CITA directive of December 20, 1985 (50 FR 52824) established a limit for certain wool textile products in Category 435 (wool coats), produced or manufactured in Yugoslavia and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

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Under the terms of the Bilateral Wool and Man-Made Fiber Textile Agreement of October 26 and 27, 1978, as amended and extended, between the Governments of the United States and the Socialist Federal Republic of Yugoslavia, and at the request of the Government of the Socialist Federal Republic of Yugoslavia, the limit for Category 435 is being increased by the application of swing and carryover, increasing it from 37–875 dozen to 43,935 dozen for goods exported during the current agreement year.

The unadjusted limit for Category 435 has been filled. The limits for Categories 433 and 444 are being reduced to 6,323 dozen (Category 433) and 6,500 dozen (Category 444) to account for the swing applied in Category 435.

A description of the cotton, wool and man-made fiber textile categorites in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622) July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 19, 1986.

Commissioner of Customs,
Department of the Treasury
Washington, DC 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on December 20, 1985 from the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and man-made fiber textile products, produced or manufactured in Yugoslavia and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

Effective on November 26, 1986, the directive of December 20, 1985 is hereby further amended to adjust the previously established restraint limits for wool textile products in Category 433, 435 and 444, pursuant to the bilateral agreement of October 26 and 27, 1978, as amended and extended, between the Governments of the United States and the Socialist Federal Republic of Yugoslavia:[1]

Category	Adjusted 12-month limit [1]
433	6,323 dozen.
435	43,935 dozen.
444	6,500 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1985.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–26535 Filed 11–24–86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Graduate Medical Education Advisory Committee; Open Meeting

AGENCY: Department of Defense Graduate Medical Education Advisory Committee.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Provisions of Pub. L. 92–463, notice is hereby given that an open meeting of the Department of Defense Graduate Medical Education Advisory Committee has been scheduled as follows:

DATE: December 19, 1986, 8:00 a.m. to 5:00 p.m.

ADDRESS: Sheraton National Hotel, Columbia Pike and Washington Boulevard, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Michael Herndon, Executive Secretary, DoD Graduate Medical Education Advisory Committee, Office of the Assistant Secretary of Defense (Health Affairs), Room 3E346, the Pentagon, Washington, DC 20301 (202) 694–5355.

SUPPLEMENTARY INFORMATION: This will be the seventh meeting of the Committee. Presentation of the services selection results for AY 87 will be made. Subcommittee reports will be provided on these topics: (1) Options for achieving required end-strength goals (2) civilian academic involvement in military GME, and (3) skill maintenance requirements for active and reserve component physicians.

Linda M. Lawson,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

November 20, 1986.

[FR Doc. 86–26503 Filed 11–24–86; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing

Pursuant to Pub. L. 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:30 am to 5:00 pm on 5–6 December 1986. The meeting will be held at the La Mansion Del Rio Hotel, 112 College Street, San Antonio, Texas 78205. The purpose of the meeting is to review the Department of Defense's computer adaptive testing efforts and equating plans for the Armed Services Vocational Aptitude Battery Forms 15, 16 and 17. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. A.R. Lancaster, Executive Secretary, Defense Advisory Committee on Military Personnel Testing, Office of the Assistant Secretary of Defense (Force Management and Personnel), Room 2B271, the Pentagon, Washington, DC 20301–4000, telephone (202) 697–9271 no later than 22 November 1986.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

November 19, 1986.

[FR Doc. 86–26502 Filed 11–24–86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: The Department of Energy (DOE) has submitted the energy information collections listed at the end of this notice to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

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[1] The bilateral agreement provides, among other things, that: (1) Within the group limit the specific limit may be exceeded by certain designated percentages in any agreement period; and (2) the group limit may be exceeded for carryover and carryforward not to exceed 11 percent of the applicable limit.

The listing does not contain information collection requirements contained in regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by DOE.

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The collection number(s); (2) Collection title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (6) Affected public; (7) An estimate of the number of respondents annually; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and (9) A brief abstract describing the proposed collection and, briefly, the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. Last notice published Friday, October 31, 1986, (51 FR 39789).

ADDRESS: Address comments to Mr. Vartkes Broussalian, Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments may also be addressed to, and copies of the submissions obtained from, Mr. Gross at the address below.)

FOR FURTHER INFORMATION CONTACT: John Gross, Director, Data Collection Services Division (EI-73), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave. SW, Washington, DC 20585, (202) 252-2308.

SUPPLEMENTARY INFORMATION: If you anticipate commenting on a collection, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise Mr. Broussalian of your intent as early as possible.

Statutory Authority: (Sec. 13(b), 5(b), 5(a), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974, (15 U.S.C. 772(b), 764(b), 764(a), and 790(a)).

Issued in Washington, DC, November 18, 1986.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

DOE COLLECTIONS UNDER REVIEW BY OMB

Collection number	Collection title	Type of request	Response frequency	Response obligation	Affected public	Number of respondents annually	Respondent burden HRS annually	Abstract
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
FERC FERC-574	Gas pipeline certificate—Hinshaw Exemption.	Extension	On occasion	Required to obtain or obtain a benefit.	Businesses or other for profit.	5	1,227	The FERC-574 data is used by the Commission in assessing applications for exemption from certain provisions of the NGA by companies engaging in the transportation or sale for resale of natural gas in interstate commerce.

[FR Doc. 86-26571 Filed 11-24-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER87-109-000, et al.]

Electric Rate and Corporate Regulation Filings; Arkansas Power & Light Company, et al.

November 20, 1986.

Take notice that the following filings have been made with the Commission:

1. Arkansas Power & Light Company

[Docket No. ER87-109-000]

Take notice that on November 17, 1986 Arkansas Power & Light Company (AP&L) tendered for filing an amendment dated November 6, 1986 to the Letter Agreement of December 9, 1983 (ER84-193-000) between AP&L and the Louisiana Energy & Power Authority. The amendment provides for an extension of the term of the Letter Agreement through December 31, 1987 and has no impact on rate, contract capacity or revenue.

AP&L requests that the Commission waive any requirements with which AP&L has not already complied.

Comment date: December 4, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Central Illinois Public Service Company

[Docket No. ER87-101-000]

Take notice that on November 13, 1986, Central Illinois Public Service Company ("CIPS") tendered for filing amended Rate Schedule W-2 (Greenup) for Wholesale Electric Service to the City of Greenup for Distribution and Retail Sale to Its Customers ("Rate Schedule W-2 (Greenup)"). CIPS also tendered for filing separate amendments to the supply contracts between CIPS and the Cities of Greenup, Metropolis and Flora.

The tendered rate schedule and amendments to supply contracts comprise integral parts of comprehensive between CIPS and three cities, reached after negotiations, to continue and extend their long-term customer-supplier relationships.

CIPS requests a waiver of the Commission's notice requirements to implement the effective dates agreed to by the parties.

Comment date: December 3, 1986, in accordance with Standard Paragraph E at the end of this document.

3. Central Maine Power Company

[Docket No. ER87-85-000]

Take notice that Central Maine Power Power ("CMP") on November 6, 1986 tendered for filing a Transmission Service Agreement between Unitil Power Corporation ("Unitil") and CMP. Assuming transmission of 26,000 kilowatts under the Agreement during the initial twelve-month period of service ending October 1987, CMP would receive approximately $411,840 in revenues during the first year of the service.

Under the Agreement, CMP will provide transmission service to Unitil for up to 30,000 kilowatts per year; payment will be on the basis of a demand charge. Copies of the filing have been served on Unitil Power Corporation and on the Maine Public Utilities Commission.

Comment date: December 3, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Consolidated Edison Company of New York, Inc.

[Docket No. ER85-459-001]

Take notice that on October 29, 1986, Consolidated Edison Company of New York, Inc. (Con. Edison) tendered for filing Supplement No. 2 to its Electric

Rate Schedule FERC No. 75 (PASNY No. 3), for transmission, distribution and delivery service to the Power Authority of the State of New York (PASNY). Supplement No. 2 would decrease base revenues from jurisdictional service to PASNY under Schedule 75 by $1,029,535 annually based on the twelve-month period ended June 30, 1986.

The rate decrease proposed in Supplement No. 2 is in accordance with the rate determination of the New York Public Service Commission (NYPSC) on October 14, 1986, in Opinion No. 86-25 in which the NYPSC acted as arbiter of the rates to be charged under Schedule No. 75. Con Edison proposes to make the rate decrease to PASNY effective as of October 24, 1986 to coincide with the effective date of the rate decrease authorized by NYPSC. The NYPSC also ordered Con Edison to make refunds with interest to PASNY to reflect the NYPSC's rate determination as to all service rendered under Schedule No. 75 from July 1, 1985 *i.e.*, the date service was instituted under Schedule No. 75.

Comment date: December 3, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power & Light Company

[Docket No. ER87-79-000]

Take notice that Florida Power & Light Company (FPL), on November 3, 1986, tendered for filing as an initial rate schedule a Short Term Agreement To Provide Power and Energy By Florida & Light Company to Utilities Commission, City of New Smyrna Beach, Florida and Cost Support Schedules B-3, C, D, E, F, and G (together with Cost Support Schedule F Supplements) which support the rates for sales under the Short-Term Agreement.

The new rate schedule provides for the sale of power and energy from FPL to the Utilities Commission, City of New Smyrna Beach, Florida for a specified term of December 1, 1986 to December 31, 1989. FPL respectfully requests that the proposed Short-Term Agreement and Cost Support Schedules B-3, C, D, E, F, and G (together with Cost Support Schedule F Supplements) be made effective Deember 1, 1986 and therefore requests waiver of the Commission's notice requirements According to FPL, a copy of this filing was served upon the Utilities Commission, City of New Smyrna Beach, Florida and the Florida Public Service Commission.

Comment date: December 3, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Mississippi Power & Light Company

[Docket No. ER87-91-000]

Take notice that Mississippi Power and Light Company (MP&L), on November 10, 1986, tendered for filing a letter agreement for sale of energy to the Tennessee Valley Authority.

MP&L requests an effective date of October 1, 1986 for the letter agreement. MP&L requests waiver of the Commission's notice requirements under Section 31.11 of the Commission's Regulations.

Comment date: December 3, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Gas and Electric Company

[Docket No. ER87-104-000]

Take notice that on October 20, 1986, Pacific Gas and Electric Company (PG and E) tendered for filing certain changes in the rates, revenues, terms and conditions covering services rendered by PG and E to Northern California Power Agency, CPNational Corporation, Resort Improvement District No. 1, City of Redding, California and Shasta Dam Area Public Utility District. PG and E states in its letter accompanying the filing that the filing in this docket is made in order to meet certain requirements contained in settlement agreements approved by the Commission in prior dockets ER86-107-001 and ER86-107-002. Notice of this filing was earlier issued under the docket number ER86-107-004. The filing has been given a new docket number and is being noticed under that docket number at this time.

Comment date: December 3, 1986, in accordance with Standard Paragraph E at the end of this notice.

8. Public Service Company of New Mexico

[Docket No. ER85-608-001]

Take notice that on October 23, 1986, Public Service of New Mexico (PMN) tendered for filing a report regarding pre-commercial energy from Palo Verde Nuclear Generating Station (PVNGS) Unit 2 as required by the Commission's September 6, 1985, order. This report is the second of three which are due within thirty days of the ending of testing of each of PVNGS units. PNM states that this report is presented to show the amount and disposition of test energy produced from PVNGS Unit 2.

Comment date: December 3, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26527 Filed 11-24-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER87-105-000, et al.]

Electric Rate and Corporate Regulation Filings; Appalachian Power Co. et al.

November 19, 1986.

Take notice that the following filings have been made with the Commission:

1. Applachian Power Company

[Docket No. ER87-105-000]

Take notice that on November 14, 1986, Appalachian Power Company (APCO) tendered for filing proposed changes in its Electric Service Rate Schedule FPC No. 23 applicable to service to Kingsport Power Company. The proposed rate changes would increase revenues from jurisdiction sales and service by $577,591 based upon the twelve-month period ending December 31, 1987. APCO proposes that the rates and charges which are revised by this filing become effective January 13, 1987.

The proposed rate schedule changes are designed to reflect general increases in the cost of providing electric service and to incorporate the effects of the material provisions of the Tax Act of 1986.

Copies of the filing were served upon Kingsport Power Company and the Tennessee Public Service Commission.

Comment date: December 1, 1986, in accordance with Standard Paragraph E at the end of this document.

2. Appalachian Power Company

[Docket No. ER87-106-000]

Take notice that on November 14, 1986, Appalachian Power Company (APCO) tendered for filing proposed changes in its F.E.R.C. Rate Schedules for Service to its twenty-three wholesale customers in the States of Virginia and West Virginia. The proposed rate changes would increase revenues from jurisdictional sales and service by $4,879,617 based upon the twelve-month period ending December 31, 1987. APCO proposes that the rates and charges which are revised by this filing become effective January 13, 1987.

The proposed rate schedule changes are designed to reflect general increases in the cost of providing electric service, to incorporate the effects of the material provisions of the Tax Reform Act of 1986, and to reflect the effects of capacity and energy allocated to the Company's six municipal customers by the Southeastern Power Administration from government hydro generating facilities.

Copies of the filing were served upon APCO's jurisdictional customers and the Virginia State Corporation Commission and the Public Service Commission of West Virginia.

Comment date: December 1, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Boston Edison Company

[Docket No. ES87-11-000]

Take notice that on November 12, 1986, Boston Edison Company (Applicant), of Boston, Massachusetts, filed an application pursuant to section 204 of the Federal Power Act, seeking an order authorizing the issuance of $200,000,000 short-term debt on or before December 31, 1988, with a final maturity date no later than December 31, 1989.

Comment date: December 11, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Carolina Power & Light Company

[Docket Nos. EL86-49-000 and ER87-102-000]

Take notice that on November 14, 1986, Carolina Power & Light Company (CP&L) tendered for filing a revised Resale Fuel Adjustment Clause, Rider No. 85E (11th Revised Sheet No. 8, 11th Revised Sheet No. 8A and 3rd Revised Sheet No. 8B of the Company's FPC Electric Tariff, First Revised Volume No. 1). CP&L states that the purpose of this filing is to allow it to pass through in its fuel adjustment clause the actual cost of nuclear fuel used to produce test energy from Unit #1 of the Shearon Harris Nuclear Power Plant, which is scheduled to begin precommercial operation in December 1986. CP&L had earlier made a filing in this connection which was designated as Docket No. EL86-49-000. CP&L has now requested that this docket be terminated.

Copies of the filing have been served upon those parties that have intervened in Docket Nos. ER86-577-000 (the filing which was ultimately designated as EL86-49-000) and EL86-49-000, CP&L's jurisdictional resale customers and the State Commissions of North Carolina and South Carolina.

Comment date: December 1, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Central Illinois Light Company

[Docket No. ES87-12-000]

Take notice that on November 12, 1986, Central Illinois Light Company (Applicant), filed an application with the Commission seeking authority pursuant to section 204 of the Federal Power Act to issue from time to time short-term debt obligations in the aggregate principal amount not exceeding $66,000,000 outstanding at any time with final maturities of not later than December 31, 1989.

Comment date: December 11, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Consolidated Edison Company of New York, Inc.

[Docket No. ER87-62-000]

Take notice that on November 5, 1986, Consolidated Edison Company of New York, Inc. ("Con Edison") tendered for filing Supplements to its Rate Schedule FERC No. 78, an agreement to provide transmission service for the Power Authority of the State of New York (the "Authority"). Supplement No. 1 provides for a decrease in rate from 2.7 mills to 2.6 mills per Kwh of interruptible transmission of power and energy sold by the Authority to the Long Island Municipal Distribution Agencies in Suffolk County, Nassau County and New York City (Rockaway) (the "MDAs"), thus decreasing annual revenues under the Rate Schedule by $19,704.70. Supplement No. 2 provides for an increase in the monthly transmission charge from $0.89 to $0.93 per kilowatt for firm transmission of power and energy sold by the Authority to the MDAs, thus increasing annual revenues by $6018.32. Con Edison has requested waiver of notice requirements so that Supplements No. 1 and 2 can be made effective as of September 1, 1985 and July 1, 1986, respectively.

Con Edison states that a copy of this filing has been served by mail upon the Authority.

Comment date: December 1, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Gas and Electric Company

[Docket No. ER-87-81-000]

Take notice that on Nov. 5, 1986, Pacific Gas and Electric Company (PGandE) tendered for filing proposed changes to Rate Schedule FERC No. 95. These changes are to certain rates, terms, and conditions concerning those services rendered by PGandE under the agreement entitled "Power Sale Agreement Between Pacific Gas and Electric Company and the Port of Oakland" (Sale Agreement) which has been filed as part of Rate Schedule FERC No. 95. These changes are embodied in two bilateral agreements to the Sale Agreement:

- Appendix A notes the rates, terms, and conditions agreed upon by Port and PGandE; and
- Appendix C embodies the agreement between PGandE and the Port of Oakland (Port) on the procedure and mechanism designed to recover amounts due PGandE from Port and Port from PGandE as a result of rate changes based on certain California Public Utilities Commission and Federal Energy Regulatory Commission decisions.

The proposed changes to the rates, terms, and conditions in the Rate Appendices for services provided by PGandE to Port modify the present rate agreement between PGandE and Port, including revising the rate arrangements regarding the Diablo Canyon Nuclear Power Plant. Using 1986 billing determinants, these rate changes would result in an estimated yearly revenue increase of $70,424.

Copies of this filing were served upon Port and the Public Utilities Commission of the State of California.

Comment date: December 1, 1986, in accordance with Standard Paragraph E at the end of this notice.

8. San Diego Gas & Electric Company

[Docket No. ER87-76-000]

Take notice that on November 3, 1986 San Diego Gas & Electric Company (SDG&E) tendered for filing a change of scheduling and dispatching charge for the San Diego-Edison Firm Transmission Service Agreement (Rate Schedule FERC No. 58).

Under the terms of the agreement, SDG&E will make available to Southern California Edison Company firm transmission service between points near the U.S.-Mexico border and San Onofre as specified in the agrement.

SDG&E has requested an effective date of January 1, 1987.

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Copies of this were served upon the Public Utilities Commission of the State of California and Edison.

Comment date: December 1, 1986, in accordance with Standard Paragraph E at the end of this document.

9. Arizona Public Service Company

[Docket No. ER87-86-000]

Take notice that Arizona Public Service Company (APS) on November 7, 1986, tendered for filing an Economy Energy Interchange Agreement between Arizona Public Service Company (APS) and Southwestern Public Service Company (SPS), executed October 14, 1986.

APS requested that this Agreement become effective 60 days from the date of filing with FERC.

Copies of this filing are being served upon SPS and the Arizona Corporation Commission.

Comment date: December 1, 1986, in accordance with Standard Paragraph E at the end of this notice.

10. Carolina Power and Light Company

[Docket No. ER87-89-000]

Take notice that Carolina Power and Light Company on November 10, 1986, tendered for filing changes in its agreement with Jones-Onslow Electric Membership Corporation (EMC). Reflected in the filed Exhibit A is the installation of special metering facilities required to provide metering pulse information to Jones-Onslow EMC's Gum Branch 115 KV point of delivery and Harmon 115 KV point of delivery. The metering pulse information will be provided under Company's additional facilities plan.

Comment date: December 1, 1986, in accordance with Standard Paragraph E at the end of this notice.

11. Central Maine Power Company

[Docket No. ER37-92-000]

Take notice that Central Maine Power Company ("CMP") on November 10, 1986, tendered for filing a Letter Agreement, an Assignment and Assumption Agreement, and a Transmission Service Agreement (collectively "the Service Agreement") between Down East Peat, Ltd. ("DEP") and CMP. Assuming a 75 percent first year plant capacity factor, CMP would receive approximately $282,007 for the initial twelve month period of service ending December 30, 1989.

Under the Service Agreement, beginning on or after December 31, 1988, CMP will provide transmission service to DEP for an initial 12,000 kilowatt block of energy on the basis of a negotiated cost-based demand charge. CMP also will provide transmission service for a second, 11,000 kilowatt block of energy pursuant to a negotiated usage-based charge. Copies of the filing have been served on Down East Peat, Ltd., Peat Products of America, Ltd., Peat Products of America, Inc., Down East Peat, L.P., and on the Maine Public Utilities Commission.

Comment date: December 1, 1986, in accordance with Standard Paragraph E at the end of this notice.

12. South Carolina Electric & Gas Company

[Docket No. ER86-515-000]

Take notice that on October 17, 1986, South Carolina Electric & Gas Company (SCE&G) tendered for filing an amendment to its filing in the above captioned docket. The purpose of the amendment is to clarify the original filing.

Comment date: December 1, 1986, in accordance with Standard Paragraph E at the end of this notice.

13. Central Power and Light Company and West Texas Utilities Company

[Docket No. ER87-93-000]

Take notice that on November 10, 1986, Central Power and Light Company ("CPL") and West Texas Utilities Company ("WTU") each tendered for filing an Electric Reliability Council of Texas ("ERCOT") Interchange Sales Tariff, an ERCOT Transmission Service Tariff for Large Utility Customers and a Master ERCOT Transmission Service Facility Charge Rate Schedule. CPL and WTU filed the tariffs in order that they each may participate in interchange and coordination transactions taking place within ERCOT. The two interchange sales tariffs provide for coordination sales by CPL and WTU, respectively, of Economy A Energy, Economy B Energy, Replacement Power, Emergency A Power and Emergency B Power (as such transaction types are defined in the ERCOT System Operating Guides). The two transmission service tariffs make available to other large ERCOT utilities (utilities with maximum loads of 1500 megawatts or greater) transmission services necessary for the same types of ERCOT coordination transactions. The Master Rate Schedules are intended as a merchanism to be used to file with the Commission the basic data used to determine transmission service facility charges using the positive megawatt-mile method. CPL and WTU request an effective date of October 15, 1986 for the tariffs and, accordingly, seek waiver of the notice requirements of the Federal Power Act.

Copies of the filing have been sent to the Public Utilities Commission of Texas.

Comment date: December 1, 1986, in accordance with Standard Paragraph E at the end of this notice.

14. The Connecticut Light and power Company, et al.

[Docket No. ER87-64-000]

Take notice that on October 31, 1986, the Connecticut Light and power Company (CL&P) tendered for filing a proposed rate schedule with respect to a (1) Transmission Agreement dated March 22, 1986 between CL&P and Western Massachusetts Electric Company (WMECO); and (2) Boston Edison Company ("BECO").

The transmission charge rate is a weekly cost-of-service rate equal to one fifty-second of estimated annual average cost of transmission service on the Northeast Utilities system determined in accordance with Schedule A and Exhibits I, II, and III thereto of the Transmission Agreement. The weekly transmission charge is determined by the product of (i) the transmission charge rate ($/kW-week) and (ii) the maximum number of kilowatts BECO purchases from CMEE during an hourly period of such week.

CL&P requests that the Commission waive its standard notice period and permit the Transmission Agreement to become effective as of March 22, 1986.

EMECO has filed a Certificate of Concurrence in this docket.

CL&P further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: December 1, 1986, in accordance with Standard Paragraph E at the end of this notice.

15. Consolidated Edison Company of New York, Inc.

[Docket No. ER87-88-000]

Take notice that on November 10, 1986, Consoldiated Edison Company of New York, Inc. ("Con Edison") tendered for filing a notice of termination of its currently effective Rate Schedule FERC No. 81. The Rate Schedule, dated as of June 1, 1985, provides for the sale of capacity and energy to Long Island Lighting Company ("LILCO").

The Rate Schedule has been terminated pursuant to its terms.

Con Edison seeks an effective date of October 26, 1985, and therefore requests waiver of the Commission's notice requirements.

A copy of this filing has been served upon LILCO.

Comment date: December 1, 1986, in accordance with Standard Paragraph E at the end of this document.

16. The Dayton Power and Light Company

[Docket No. ER87-90-000]

Take notice that on November 10, 1986, The Dayton Power & Light Company (DP&L) tendered for filing an executed Short Term Agreement (Agreement) between DP&L and America Municipal Power—Ohio, Inc. (AMPO).

The proposed Agreement allows AMPO to purchase Short Term Power on behalf of its member Municipal (Patrons) and have the power delivered to the Patrons under various transmission agreements with other utilities.

DP&L requests the Commission waive its notice and filing requirements and permit the proposed Agreement to become effective December 1, 1986.

Comment date: December 1, 1986, in accordance with Standard Paragraph E at the end of this notice.

17. Iowa Electric Light & Power Company

[Docket No. ER87-46-000]

Take notice that on October 24, 1986, Iowa Electric Light & Power Company (the Company) tendered for filing Service Agreements for customers who elect to take service under the Rate RES-3.

Comment date: December 1, 1986, in accordance with Standard Paragraph E at the end of this notice.

18. Kansas City Power & Light Company

[Docket No. ER87-77-000]

Take notice that on November 3, 1986, Kansas City Power & Light Company (KCPL) tendered for filing a Letter Agreement dated October 9, 1986, between KCPL and the Kansas Electric Power Cooperative, Inc. (KEPCo). KCPL requests an effective date of October 15, 1983. KEPCo has requested that KCPL provide System Energy during the Wolf Creek Generating Station refueling outage.

In its filing, KCPL states that the rates included in the above-mentioned Agreement are KCPL's rates and charges for similar service under schedules previously accepted for filing by the Federal Energy Regulatory Commission.

Comment date: December 1, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26525 Filed 11-24-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF87-59-000, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status Certificate Applications, etc.; Panther Creek Energy, Inc., et al.

Comment date: Thirty days from publication in the Federal Register, in according with Standard Paragraph E at the end of this notice.

November 20, 1986

Take notice that the following filings have been made with the Commission.

1. Panther Creek Energy, Inc.

[Docket No. QF87-50-000]

On November 3, 1986, Panther Creek Energy, Inc. (Applicant), of 1000 Prospect Road, Windsor, Connecticut 06095-0500, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located near the boroughs of Lanford and Summit Hill in Carbon County, Pennsylvania. The facility will consist of a fluidized-bed boiler and a steam turbine generating unit. The net electric power production capacity of the facility will be 79.5 MW. The primary energy source will be anthracite culm.

2. American Anthracite Power Partners, L.P.

[Docket No. QF87-41-000]

On October 29, 1986, American Anthracite Power Partners, L.P. (Applicant), of 33 Rock Hill Road, Bala Cynwyd, Pennsylvania 19004-2010, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located off of Asbury Road in the Borough of Hampton, Hunterdon County, New Jersey. The facility will consist of one or two fluidized-bed boilers and steam turbine generator sets. The net electric power production capacity of the facility will be 35 MW. The primary energy source will be anthracite culm.

3. Anheuser-Busch, Inc.

[Docket No. QF87-52-000]

On October 31, 1986, Anheuser-Busch, Inc. (Applicant), of One Busch Place, St. Louis, Missouri 63118 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Applicant's brewery, 111 Busch Drive, Jacksonville, Florida 32229. The facility will consist of a combustion turbine generator and a heat recovery steam generator. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 8,825 kW. Thermal energy recovered from the facility will be used for various process requirements in the brewery. Installation of the facility is scheduled to begin in January 1987.

4. Chevron U.S.A. Inc.

[Docket No. QF86-1097-000]

On October 29, 1986, Chevron U.S.A. Inc. (Applicant), of 841 Standard Avenue, Richmond, California 94801 submitted for filing an application for certification of a facility as a qualifying congeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Richmond, California. The facility will consist of multiple trains, each including a combustion turbine generator and a heat recovery steam generator. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 99 MW. Thermal energy recovered from the facility will be used in refinery process equipment, such as heaters, reboilers and

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vaporizers. Installation of the facility is scheduled to begin in late 1987.

5. Energy Ingenuity Company

[Docket No. QF87-53-000]

On October 31, 1986, Energy Ingenuity Company (Applicant), c/o Robert A. Downey, of P.O. Box 3705 Littleton, Colorado 80161-3705 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the New Castle Energy Corporation Coal Mine, Section 6, Township 6 South, Range 90 West, 6th P.M., New Castle, Colorado. The facility will consist of two fluidized bed combustion boilers, two steam turbine generators. The exhaust heat and saturated steam and hot water will be used in the coal mining operation, space and water heating. The electric power production capacity of the facility will be 50 MW. The primary energy source will be coal and coal refuse.

6. Finch, Pruyn & Company, Inc.

[Docket No. QF87-45-000]

On October 28, 1986, Finch, Pruyn & Company, Inc. (Applicant), of One Glen Street, Glens Falls, New York 12801 submitted for filing an application for certification of a facility as a qualifying congeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Northside of the Hudson River in Warren County, Glens Falls, New York. The facility will consist of five boilers (four existing and one new) and an extraction/condensing steam turbine generator. The extracted steam from the facility will be used for process application at an on-site paper mill. The electric power production capacity of the facility will be 20 MW. The primary energy sources will be amonia base bisulphite liquor, No. 6 fuel oil, and biomass in the form of wood waste. The construction and rebuilding of the existing facilities began on or about December 11, 1985.

7. Kings Falls Power Corporation

[Docket No. QF87-47-000]

On October 29, 1986, Kings Falls Power Corporation (Applicant), c/o Conboy, McKay, Bachman & Kendall, of 407 Sherman Street, Watertown, New York 13601-9990 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 1.5 megawatt hydroelectric facility (FERC P. 7352-002) will be located in Lewis County, New York.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26526 Filed 11-24-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-429-023]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

November 19, 1986.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on November 7, 1986 tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1 revised tariff sheets listed in Appendix A to the filing. The purpose of this filing is as follows.

Texas Eastern filed on October 2, 1986, tariff sheets in Docket No. CP84-429-022 pursuant to the May 2, 1985 Joint Offer of Settlement in Docket No. CP84-429 and the August 1, 1986 Commission order in Docket No. CP84-429-015. Such tariff sheets reflected *inter alia* the then contemplated implementation as of November 1, 1986 of the remaining 80,000 dth per day increase of the 1986 Contract Adjustment Program and transportation pursuant to Rate Schedule CTS, all as more fully described in the May 2, 1985 Joint Offer of Settlement and the August 1, 1986 Commission order. By Commission order issued October 29, 1986 in Docket No. CP84-429-022, the aforementioned tariff sheets were approved to be effective November 1, 1986.

Subsequent to the October 2, 1986 filling, Texas Eastern encountered unavoidable delays in the construction of the facilities required to implement the final phase of the Contract Adjustment Program as of November 1, 1986. Accordingly, Texas Eastern, by the filing of the tariff sheets listed in Appendix A attached hereto, proposes to reinstate as of November 1, 1986 for the affected participants their respective billing determinants and sales entitlements at the 1985 Contract Adjustment Program levels which were in effect prior to the October 2, 1986 tariff filing. Sheet No. 14, as filed herein, reinstates the Contract Adjustment—Demand rate for the 1985 Contract Adjustment Program level (102,893 dth) as previously approved by Commission order issued August 4, 1986 in Docket No. RP86-61-002 and deletes rates for Rate Schedule CTS.

Texas Eastern will file necessary tariff sheets reflecting the implementation of the final phase of the Contract Adjustment Program upon determination of the new completion date of the required facilities.

Texas Eastern hereby advises the Commission that the commencement of service under Rate Schedule FTS-II and of firm service under Rate Schedule SS-III set forth in Texas Eastern's FERC Gas Tariff, Fourth Revised Volume No. 1 and the commencement of service under Rate Schedules X-127, X-129 and X-130 set forth in Original Volume No. 2 will not be November 1, 1986 as previously advised. The foregoing Rate Schedules and relevant Service Agreements with the customers as approved by various Commission orders provide for the possibility of an in-serve date later than November 1, 1986 pursuant to which Texas Eastern will not commence billing of those affected customers until such time as service commences under such Rate Schedules.

The proposed effective date of the tariff sheets listed in Appendix A is November 1, 1986, the date necessary for the continuance of the 1985 Contract Adjustment Program pending commencement of the 1986 Program.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure. All such motions or protests should be filed on or before 11-26-86. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public information.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26531 Filed 11-24-86; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

Algonquin Gas Transmission Amendment to Applications

[Docket Nos. CP84-654-017; CP86-480-002]

November 14, 1986.

Take notice that on November 12, 1986, Algonquin Gas Transmission Company (Applicant), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket Nos. CP84-654-017 and CP86-480-002 an amendment to its applications filed in Docket No. CP86-480-000, and jointly in Docket Nos. CP86-480-001 and CP84-654-016 pursuant to section 7(c) of the Natural Gas Act so as to modify the allocation of gas for its developmental period Rate Schedule F-4 service, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

On April 28, 1986, Applicant filed an application in Docket No. CP86-480-000 seeking authorization to increase its sales of natural gas by 4,612 dt equivalent of natural gas per day to 11 existing Rate Schedule F-4 customers and to construct and operate two pipeline loops: a 2.5 mile 16-inch line loop near New Bedford, Massachusetts, and a 1.4 mile 12-inch line loop near Berkley, Massachusetts. On September 11, 1986, Applicant filed jointly in Docket Nos. CP84-654-016 and CP86-480-001 an application to amend its existing certificate of public convenience and necessity in Docket No. CP84-654-000 and and an amendment to its application in Docket No. CP86-480-000 so as to extend one year its developmental period firm sales of natural gas under Rate Schedule F-4 and to relinquish, for a period expiring on October 31, 1987, 11,543 dt equivalent of natural gas per day that would otherwise be purchased from Texas Eastern Transmission Corporation and resold during the development period.

In its instant amendment, Applicant seeks authorization to modify its sales of natural gas during the second development period (though October 31, 1987) under its Rate Schedule F-4. Applicant proposes to sell up to 38,125 dt equivalent of gas per day on a firm basis under Rate Schedule F-4 for a period commencing November 1, 1986 and terminating on or about December 15, 1986. Thereafter, and through a period expiring on October 31, 1987, Applicant proposes to sell up to 62, 243 dt equivalent of gas per day on a firm basis to its Rate Schedule F-4 developmental period customers. Applicant proposes to allocate these sales to the following customers in the amounts shown below:

Customer	Through 12/15/86 (dt/d)	Through 10/31/87 (dt/d)
Bay State Gas Co.	2,820	4,606
Bristol & Warren Gas Co.	166	271
Colonial Gas Co.	4,260	6,954
Commonwealth Gas Co.	8,278	13,515
Connecticut Light & Power Co.	4,347	7,097
Connectict Natural Gas Corp.	6,354	10,374
Fall River Gas Co.	1,932	3,153
City of Norwich, Connecticut	378	617
Orange & Rockland Utilities, Inc.	610	995
Peguot Gas Co.	47	77
Providence Gas Co.	6,622	10,812
South County Gas Co.	103	168
Southern Connecticut Gas Co.	2,208	3,604
Total	38,125	62,243

For these sales, Applicant proposes to charge its approved initial rate for full Rate Schedule F-4 firm service, including a monthly demand handling charge of $22.756 per dt equivalent of contract demand.

In addition, Applicant asks for a waiver of the notice requirements in § 154.22 of the Commission's Regulations (18 CFR 154.22) in order to permit the *pro forma* tariff sheets accompanying its application and containing the above service modifications to be accepted for filing and made effective as of November 1, 1986.

Applicant states that the above modifications in its developmental period Rate Schedule F-4 service are necessary in order to reflect unexpected equipment outages and resultant decreased availability of gas supplies from its upstream gas supplier and to reflect the inability to receive timely permits associated with Applicant's pipeline expansion project in New Jersey.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before November 28, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commissions Rules. Persons who have heretofore filed in Docket Nos. CP84-654-016, CPD86-480-000 or CP86-480-001 need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26528 Filed 11-24-86; 8:45 am]

BILLING CODE 6717-01-M

Panhandle Eastern Pipe Line Co.; Compliance Filing

November 19, 1986.

Take notice that on November 7, 1986, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing Original Sheet Nos. 32-AL through 32-BD to its FERC Gas Tariff, Original Volume No. 1. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until November 14, 1986.

Panhandle states that these sheets are provided in compliance with the Commission's October 15, 1986 Order. These sheets set forth forms of transportation agreements for firm and interruptible service under Panhandle's Rate Schedule PT. Panhandle has also revised Original Sheet No. 32-AE to eliminate a provision in paragraph 6.6(b) which provided for collection of interest on late payments at the Citibank prime rate and states that the measurement of

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such interest shall be at an average prime rate computed in a manner consistent with the Commission's regulations.

Panhandle has requested waiver of the provisions of the October 15, 1986 Order regarding the time in which this filing is to be made so that these filed tariff sheets may be accepted.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 26, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26529 Filed 11-24-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-115-002]

Trunkline Gas Co.; Compliance Filing

November 19, 1986.

Take notice that on November 7, 1986, Trunkline Gas Co. (Trunkline) tendered for filing Original Sheet Nos. 9-CA through 9-CS to its FERC Gas Tariff, Original Volume No. 1. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until November 14, 1986.

Trunkline states that these sheets are provided in compliance with the Commission's October 15, 1986 Order. These sheets set forth forms of transportation agreements for firm and interruptible service under Trunkline's Rate Schedule PT. Trunkline has also revised Original Sheet No. 9-BR to eliminate a provision in paragraph 6.6(b) which provided for collection of interest on late payments at the Citibank prime rate and states that the measurement of such interest shall be at an average prime rate computed in a manner consistent with the Commission's regulations.

Trunkline has requested waiver of the provisions of the October 15, 1986 Order regarding the time in which this filing is to be made so that these filed tariff sheets may be accepted.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Wasington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 26, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26529 Filed 11-24-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-19-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

November 19, 1986.

Take notice that on November 14, 1986, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing First Revised Sheet No. 46 and Original Sheet No. 46A to its FERC Gas Tariff, Fourth Revised Volume No. 1. The revised tariff sheets reflect a change other than in rate level, as defined in 18 CFR 154.63.

Texas Eastern states that the revised tariff sheets are being filed in order to conform the applicability and character of service under Texas Eastern's SS Rate Schedule to that required as a result of the Commission's order authorizing abandonment of the Staten Island LNG facility used in conjuction with providing the SS service, issued in *Texas Eastern Transmission Corporation,* Docket No. CP85-859-000, 35 FERC 61,061 (1986). The revised tariff sheets provide that service under Rate Schedule SS may be subject to interruption for curtailment on a pro rata basis as a result of the destruction and abandonment of the LNG facility. The duration of the proposed revisions is limited to the period that elapses prior to the date on which the capacity lost by virtue of the destruction of the LNG facility is restored to Texas Eastern's system.

Copies of the filing were served upon Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedures. All such motions or protests should be filed on or before November 26, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.,

[FR Doc. 86-26532 Filed 11-24-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

High Energy Physics Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: High Energy Physics Advisory Panel (HEPAP).

Date and Time: Monday, December 15, 1986, 9:00 am-6:00 pm; Tuesday, December 16, 1986, 9:00 am-4:00 pm.

Place: Fermi National Accelerator Laboratory, Batavia, Illinois 60510.

Contact: Dr. P.K. Williams, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, ER-221:GTN, Washington, DC 20545, Telephone: 301/353-4829.

Purpose of Panel

To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda

Monday, December 15, 1986

—Discussion of the FY 1987 Budget for the National Science Foundation Elementary Particle Physics Program
—Discussion of the FY 1987 Budget for the Department of Energy High Energy Physics Program
—Discussion of Networking Computers for High Energy Physics
—Discussion of a Possible Subpanel on the Role of Universities in High Energy Physics
—HEPAP Review of Fermilab

Tuesday, December 16, 1986

- —Discussion of International Conference on Future Accelerators Planning Meeting in Budapest, Hungary
- —Status Report on Non-Accelerator Particle Physics Funding
- —Report on US/PRC Cooperative Program in High Energy Physics
- —Furture Discussion of Foregoing Items

Public Participation

The meeting is open to the public. The Chairperson of the panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes

Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on November 20, 1986.

J. Robert Franklin,

Deputy Advisory Committee Management Office.

[FR Doc. 86-26572 Filed 11-24-86; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed Week of October 10 Through October 17, 1986

During the Week of October 10 through October 17, 1986, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

November 14, 1986.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Oct. 10 through Oct. 17, 1986]

Date	Name and location of applicant	Case No.	Type of submission.
Oct. 15, 1986	Mitchell Fuel Co., Inc., South Windsor, CT	KEE-0075	Exception to the reporting requirements. If granted: Mitchell Fuel Co., Inc. would not be required to file Form EIA-782B, "Reseller/Retailers' Monthly Sales Report."
Do	Ultra Power Corp., Monticello, NY	KEE-0076	Exception to the reporting requirements. If granted: Ultra Power Corp. would not be required to file Form EIA-782B, "Reseller/Retailers' Monthly Petroleum Product Sales Report."

REFUND APPLICATIONS RECEIVED

[Week of Oct. 10 to Oct. 17, 1986]

Date received	Name of refund proceeding/name of refund applicant	Case No.
10/14/86	Gulf/Clair G. Reid	RF259-7
10/14/86	Conoco/Crockers Conoco Service	RF220-422
10/14/86	Farstad/Bairs Truck Stop	RF261-6
10/14/86	Dalco/North Central Public Service Company	RF248-5
4/28/86	Mobil/Penn Oil Company	RF225-10273
4/14/86	Mobil/Mid American Energy Corp	RF225-10275
10/14/86	Cement Transit Company	RF271-31
10/14/86	Foss Maritime Company	RF271-30
10/06/86	Northeast Petroleum/George E. Warren Corporation	RF264-1
10/15/86	Defense Logistics Agency	RF272-11
10/15/86	Long Island Rail Road	RF272-10
10/15/86	Land Use Corporation	RF272-9
10/14/86	Greater Roanoke Transit Co	RF272-8
10/08/86	Sigmor/Valero Refining & Marketing Company	RF242-21
10/14/86	Gulf/Port Henry Oil Corp	RF40-3494
10/14/86	Gulf/Senior Oil Co., Inc	RF40-3493
10/14/86	Gulf/Lowville Oil Co., Inc	RF40-3492
10/14/86	Gulf/A.J. Ahrens & Son	RF40-3491
10/10/86	Gulf/Tucker's Grocery	RF40-3490
10/10/86	Gulf/Holiday Inn Gulf	RF40-3489
10/10/86	Gulf/McLaughlin's Gulf	RF40-3488
10/09/86	Gulf/City of Houston, Texas	RF40-3487
10/09/86	Gulf/Yellow Cab Co. of Shreveport, Inc	RF40-3486
10/15/86	Gulf/Larry J. Harper	RF259-8
10/15/86	LARCO/Rio Vista Oil Ltd	RF112-199
10/15/86	Beacon/Cash Oil Company	RF236-75
10/15/86	Gulf/Arkansas Electric Cooperative, Inc	RF40-3495
10/15/86	Tenneco/Benton Oil Service, Inc	RF7-147
10/15/86	Tenneco/Louis Stultz, Jr., Inc	RF7-148
10/15/86	Tenneco/Clouse Oil of Ozark, AL, Inc	RF7-149
10/15/86	Tenneco/Ryan's Jet Gas, Inc	RF7-150
10/15/86	Dalco/Great Plains Gas	RF248-7
10/15/86	Marine/Billy Lawson	RF257-8
10/15/86	Marine/McCollum Service Station	RF257-9
10/16/86	Southern Towing Company	RF271-32
10/17/86	Hampton & Branchville Railroad Company	RF271-33

REFUND APPLICATIONS RECEIVED—Continued

[Week of Oct. 10 to Oct. 17, 1986]

Date received	Name of refund proceeding/name of refund applicant	Case No.
10/14/86	Amoco/Connecticut	RQ251-329
10/16/86	Erie Metropolitan Transit Authority	RF272-12
10/16/86	Via Metropolitan Transit	RF272-13
10/17/86	King Fisher Marine Service, Inc	RF272-14
10/10-17/86	Mobil Refund Applications	RF225-10346 to RF225-10385
10/10-16/86	Marathon Refund Applications	RF250-1551 to RF250-1584
10/10-17/86	H.C. Lewis Refund Applications	RF266-1 to RF266-12
10/10-17/86	Surface Transporters Refund Applications	RF270-145 to RF270-232

[FR Doc. 86-26573 Filed 11-24-86; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Orders, Week of October 6 Through October 10, 1986

During the week of October 6 through October 10, 1986, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

November 14, 1986.

Baribault Oil Company, Inc., Oakville, CT, KEE-0062

ScotRick Corporation, Clinton, CT, KEE-0063

Baribault Oil Co., Inc. and ScotRick Corporation each filed an Application for Exception in which the firm sought relief from its obligation to submit Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering the applicants' requests, the DOE found that the firms failed to demonstrate that they were particularly adversely affected by the requirement that they file the Form. Accordingly, on October 6, 1986, the DOE proposed that exception relief be denied to both firms.

Danielson Oil Co. Inc., Danielson, CT, KEE-0061

Danielson Oil Co., Inc. filed an Application for Exception in which the firm sought relief from its obligation to submit Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering the applicants' requests, the DOE found that the firm failed to demonstrate that it was particularly adversely affected by the requirement that it file the Form. Accordingly, on October 6, 1986, the DOE proposed that exception relief be denied.

Molo Oil Company, Dubuque, IA, KEE-0060

Molo Oil Company filed an Application for Exception from the requirement to file Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." On October 7, 1986, the Department of Energy issued a Proposed Decision and Order which determined that the exception request should be denied.

[FR Doc. 86-26575 Filed 11-24-86; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decision and Order, Week of October 13 Through October 17, 1986

During the week of October 13 through 17, 1986, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

November 14, 1986.

Louisiana Crude Oil and Gas Co., New Orleans, Louisiana, Dee-2130, Crude Oil

Louisiana Crude Oil & Gas Company filed an Application for Exception from the provisions of 6 C.F.R. § 150.354 and 10 C.F.R. §§ 212.73, 212.74. The exception request, if granted, would permit Louisiana Crude Oil &

Gas Company to receive retroactive exception relief from the Mandatory Petroleum Price Regulations for September 1974 through August 1977. On October 14, 1986, the Department of Energy issued a Proposed Decision and Order which tentatively concluded that the exception request should be denied.

[FR Doc. 86-26576 Filed 11-24-86; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Orders—Week of October 27 Through October 31, 1986

During the week of October 27 through October 31, 1986, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays.

November 14, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Lockheed Air Terminal, Inc., Burbank, CA, KEE-0050, Reporting Requirements.

Lockheed Air Terminal, Inc. filed an Application for Exception from the requirement to file Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." On October 31, 1986, the Department of Energy issued a Proposed Decision and Order which determined that the exception request should be denied.

[FR Doc. 86-26577 Filed 11-24-86; 8:45 am]

BILLING CODE 6450-01-M

Objection To Proposed Remedial Orders Filed for the Period of September 22 Through October 24, 1986

During the period of September 22 through October 24, 1986, the notice of objection to the proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

November 14, 1986.

Mt. Airy Refining Co., et al, Cincinnati, OH, KRO-0320, Crude Oil

On October 21, 1986, Mr. Airy Refining Co., 13715 Chelwood Place, Houston, Texas; William P. Boswell, 8805 Camargo Club Drive, Cincinnati, Ohio 45243; W. Luke Boswell, 4790 Burley Hills Drive, Cincinnati, Ohio 45243; Lindsay B. McLean, 7407 Star Key Road, Pleasant Plain, Ohio 45162; David P. Boswell, Route 5, Box VV, Priest River, Idaho 83856; P. Wilson Boswell, II, Route 1, P.O. Box 405A, Priest River, Idaho 83856; and Ellen W. Boswell, 2531 Waterside Drive, Washington, D.C. 20008 filed a Notice of Objection to a Proposed Remedial Order the DOE Economic Regulatory Administration issued to Mr. Airy *et al.* on September 24, 1986. On October 27, 1986, the State of California also filed a Notice of Objection to this PRO. In the PRO, the ERA found that during the period June 1977 to November 1977, Mt. Airy improperly reported its crude oil receipts on its Refiners Monthly Reports.

According to the PRO, these violations totalled $1,833,305.34.

[FR Doc. 86-26574 Filed 11-24-86; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $204,625.14 obtained as a result of a Consent Order which the DOE entered into with Perta Oil Marketing Corporation, a reseller-retailer of crude oil and refined petroleum products located in Beverly Hills, California. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund of a portion of the Perta consent order funds associated with the firm's alleged petroleum product overcharges must be filed in duplicate and must be received within 90 days of publication of this notice in the Federal Register. All applications should refer to Case Number HEF-0148 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Walter J. Marullo, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), Notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to a Consent Order entered into by the DOE and Perta Oil Marketing Corporation (Perta) which settled all claims and disputes between Perta and the DOE regarding the firm's compliance with the DOE price regulations during the period August 1, 1973, through January 28, 1981 (consent order period). A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the Perta consent order funds was issued on June 18, 1985. 50 FR 26611 (June 27, 1985).

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The Decision sets forth procedures and standards that the DOE has formulated to distribute the contents of an escrow account funded by Perta pursuant to the Consent Order. The DOE has decided to divide the consent order funds into two pools: one for crude oil and one for refined petroleum products. The $69,802.04, plus accrued interest, associated with Perta's alleged crude oil violations will be distributed according to the DOE's Statement of Modified Restitutionary Policy in Crude Oil Cases. *See* 51 FR 27899 (August 4, 1986). The balance of the consent order funds will be distributed to the five first purchasers which the DOE's audit of Perta indicated may have been overharged in their purchases of Perta refined petroleum products, provided that each files an Application for Refund and adequately demonstrates injury. Applications for Refund will also be accepted from first purchasers and downstream customers not identified by the DOE audit. In order to receive a refund, an unidentified claimant will be required to submit a schedule of its monthly purchases of Perta refined petroleum products and to demonstrate that it was injured by Perta pricing practices. A downstream purchaser must also submit the name of its immediate supplier and indicate why it believes the products were originally sold by Perta. If valid claims exceed the petroleum product funds available in the escrow account, all refunds will be reduced proportionately.

As the accompanying Decision and Order indicates, Applications for Refund may now be filed by customers that purchased Perta refined petroleum products during the consent order period. Applications will be accepted provided they are filed in duplicate and received no later than 90 days after publication of this Decision and Order in the **Federal Register**. The specific information required in an Application for Refund is set forth in the Decision and Order.

Dated: November 12, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

November 12, 1986.

Name of Firm: Perta Oil Marketing Corporation.

Date of Filing: October 13, 1983.

Case Number: HEF-0148.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of alleged or actual violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. On October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a Consent Order entered into with Perta Oil Marketing Corporation (Perta). This Decision and Order contains the procedures which OHA has formulated to distribute the funds received pursuant to that Consent Order.

I. Background

Perta is a "reseller-retailer" of crude oil and refined petroleum products as that term was defined in 10 CFR 212.31, and is located in Beverly Hills, California. A DOE audit of the firm's records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. A Notice of Probable Violation issued to Perta on May 9, 1979, alleged that during the period from August 1, 1973, through January 27, 1981, Perta committed possible pricing violations amounting to $1,858,143.32 with respect to its sales of crude oil and refined petroleum products.

In order to settle all claims and disputes between Perta and the DOE regarding the firm's compliance with the DOE price regulations, Perta and the DOE entered into a Consent Order on July 1, 1981. The Consent Order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. The Consent Order also states that Perta does not admit that it violated the regulations.

Under the terms of the Consent Order, Perta agreed to make refunds amounting to $250,000 as follows: First, Perta was to directly refund $60,720 to Pacific Gas and Electric Co.; second, in order to make restitution to certain wholesale purchasers, Perta was required to deposit $189,280 into an interest-bearing escrow account for ultimate distribution by the DOE. Perta deposited this amount, plus interest of $15,345.14, on November 30, 1981. This Decision concerns the distribution of the $204,625.14 received from Perta, plus the interest that has accrued on the escrow account.[1]

On June 18, 1985, a Proposed Decision and Order (PD&O) was issued which set forth a tentative plan for the distribution of refunds to parties that were injured by Perta's alleged violations in its sales of crude oil and refined petroleum products. 50 Fed. Reg. 26611 (June 27, 1985). The PD&O stated that in order to recompense parties that were injured by Perta's alleged violations of the DOE regulations, we would rely in part upon the information developed by ERA in its audit of the firm. *See, e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). With this type of material, a reasonably precise determination can be made as to the identity of possibly overcharged parties as well as the level of any alleged overcharges. At the same time, we recognized that there may have been other purchasers that were allegedly overcharged during the consent order period but which were not identified by the ERA audit. The PD&O stated that these purchasers would also be eligible to claim a portion of the consent order funds.

A copy of the PD&O was published in the **Federal Register** and comments were solicited regarding the proposed refund procedures. In addition, a copy of the PD&O was mailed to Perta as well as to each purchaser identified in the audit file. Comments were submitted on behalf of the Controller of the State of California and by the Attorney General of Texas.

The comments filed by the Attorney General of Texas concern the PD&O's proposal for effecting restitution for Perta's alleged crude oil violations. Since the PD&O was issued, the DOE has formulated a new policy with respect to refund proceedings involving alleged crude oil violations. The portion of the escrow funds attributable to alleged crude oil violations, $69,802,04, will be distributed according to the DOE's Statement of Modified Restitutionary Policy in Crude Oil Cases. *See* 51 Fed. Reg. 27899 (August 4, 1986). The remainder of this Decision sets forth the procedures for distributing refunds involving Perta's alleged overcharges in it sales of refined petroleum products. Accordingly, the procedures described in Section II below concern the distribution of $134,823.10, plus the accrued interest associated with this sum.

The comments filed on behalf of the Controller of California concern the distribution of any funds remaining after refunds have been made to injured parties. In disposing of any residual petroleum product funds, we will act in accordance with the provisions of the recently enacted Petroleum Overcharge

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[1] As of October 31, 1986, the total value of the escrow account was $323,646.53.

Distribution and Restitution Act of 1986. *See* H.R. 5300, Title III, 99th Cong., 2d Sess., 132 Cong. Rec. H11319–21 (daily ed. October 17, 1986).

II. Refund Procedures

The general guidelines which OHA may use to formulate and implement a plan to distribute funds received as the result of a Consent Order are set forth in 10 CFR Part 205, Subpart V. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981); and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

A. Refunds to Identified Purchasers

In the DOE's audit of Perta, ERA identified five first purchasers as having been allegedly overcharged in their purchases of Perta refined petroleum products.[2] As in previous cases, the funds in the escrow account will be used to make refunds to (i) the first purchasers identified in the audit that satisfactorily demonstrate that they were injured by the alleged overcharges, (ii) other injured first purchasers, and (iii) subsequent repurchasers that can also show injury. *See, e.g., Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984); *Richards Oil Company*, 12 DOE ¶ 85,150 (1984). The Appendix to this Decision lists the names and addresses of the first purchasers identified in the audit along with the shares of the petroleum product escrow funds allotted to each by ERA.[3]

Identification of first purchasers is only the first step in the distribution process. We must also consider whether these claimants were injured or were able to pass through the alleged overcharges. In order to be eligible to receive a refund, all claimants will have to file an application and, with the three exceptions discussed below, show the extent to which they were injured by the alleged overcharges. To the extent that any firm can establish injury, it will be eligible for a share of the consent order funds.

In this case we will adopt two rebuttable presumptions as well as two findings regarding injury. These presumptions and findings have been used in many previous special refund cases. We will presume that purchasers of Perta petroleum products that are claiming small refunds ($5,000 or less, excluding accrued interest) were injured by the alleged overcharges. In the absence of compelling material, we will also presume that spot purchasers were not injured.[4] In addition, we find that end users or ultimate consumers of Perta petroleum products whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges. Finally, we will not require a detailed demonstration of injury from regulated utilities or agricultural cooperatives that purchased Perta petroleum products and passed the alleged overcharges associated with those products through to their end-user members. Prior OHA decisions provide detailed explanations of the bases of these presumptions and findings. *E.g., Peterson Petroleum, Inc.*, 13 DOE ¶ 85,191 at 88,508–10 (1985). The rationale for their use was also fully explained in the PD&O. 50 FR 26611 at 26613–14 (June 27, 1985). These presumptions and findings will permit claimants to apply for refunds without incurring disproportionate expenses and will enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

A refiner, reseller or retailer that claims a refund in excess of $5,000 will be required to document its injury. While there are a variety of methods by which a claimant might make such a showing, it is generally required to demonstrate (i) that it maintained a "bank" of unrecovered increased costs, and (ii) that market conditions did not permit it to pass on the increased costs to its customers in the form of higher prices.[5]

As stated above, we recognize that there may have been other first purchasers not identified by the ERA audit, as well as downstream purchasers, that may have been injured by Perta's pricing practices during the consent order period and would therefore be entitled to a portion of the consent order funds. If additional meritorious claims are filed, we will adjust the figures listed in the Appendix accordingly. Actual refunds will be determined only after analyzing all appropriate claims.

As in previous cases, only claims for at least $15 will be processed. We have found through our experience in prior refund cases that the cost of processing claims for smaller amounts outweighs the benefits or restitution. *See e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). *See also* 10 CFR 205.286(b).

III. Applications for Refund

We have determined that by using the procedures described above, we can distribute the Perta consent order funds as equitably and efficiently as possible. Accordingly, we will now accept Applications for Refund from firms that purchased Perta refined petroleum products between August 1, 1973, and January 28, 1981. As we proposed, a portion of the consent order funds will be distributed to the firms listed in the Appendix provided that they file Applications for Refund and make any necessary demonstrations of injury. We will also grant refunds to any other purchasers or subsequent repurchasers of Perta refined petroleum products that apply for refunds and demonstrate injury.

In order to receive a refund, a claimant identified by ERA must submit either a schedule, broken down by product, of its monthly purchases of refined petroleum products from Perta or a statement verifying that it purchased refined petroleum products from Perta and is willing to rely on the data in the audit file. A purchaser not identified by ERA will be required to provide specific information as to the date, place, and volume of Perta petroleum products purchased as well as the name of the

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[2] ERA alleged that Perta committed two types of overcharges with respect to its sales of refined petroleum products. First, ERA alleged that Perta received greater than its maximum lawful selling price in certain sales of residual fuel oil. In addition, ERA maintained that Perta improperly changed the credit terms which it extended to five of its customers, thus increasing their interest costs.

[3] The share of the escrow fund allocated to each firm listed in the Appendix represents 13.5 percent of the amount each firm was allegedly overcharged. This is consistent with the terms of the Consent Order, which settled for 13.5 percent of the total amount of overcharges alleged in the audit. The firms may submit information to show that they should receive refunds larger than those indicated.

[4] The record in this proceeding reveals that Venture Trading (Venture) made only spot purchases from Perta. Venture will not be eligible for a refund unless it presents evidence that rebuts the spot purchaser presumption. In general, a spot purchaser must demonstrate that (i) the purchases were necessary to maintain supplies to base period purchasers; and (ii) it was forced by market conditions to resell the product at a loss that was not subsequently recouped. *See, e.g., Saber Energy, Inc./Mobil Oil Corp.*, 14 DOE ¶ 85,170 (1986).

[5] As we stated in the PD&O, unlike resellers and retailers, refiners were able to bank unrecouped non-product cost increases. 50 Fed. Reg. 26611 at 26613 (June 27, 1985). Therefore, a refiner attempting to prove injury in connection with an alleged credit term violation will have to demonstrate that it maintained a bank of unrecovered increased non-product costs. In the PD&O, we discussed the method by which a reseller or retailer could show injury with respect to such an alleged violation. However, since the two identified purchasers with settlement shares exceeding $5,000 are refiners, that discussion will not be recounted here.

Refiners, resellers or retailers that claim a refund in excess of $5,000 but which do not attempt to establish that they did not pass through the price increases will be eligible for a refund of up to $5,000 without making a detailed demonstration of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. See Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,122 (1982) (*Ada*).

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firm from which the purchase was made. All applicants must prove injury in accordance with the presumptions and findings outlined above.

In addition, all applications must state:

(1) Whether the applicant has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding;

(2) Whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund;

(3) Whether the applicant is or has been involved as a party in any DOE enforcement proceedings or private actions filed under section 210 of the Economic Stabilization Act. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d); and

(4) The name and telephone number of a person who may be contacted by this Office for additional information.

Finally, each application must include the following statement: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001.

All applications must be filed in duplicate and must be received within 90 days from the date of publication of this Decision and Order in the **Federal Register**. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any applicant that believes that its application contains confidential information must indicate this and submit two additional copies of its application from which the information has been deleted. All applications should refer to Case No. HEF-0148 and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by Perta Oil Marketing Corporation pursuant to the Consent Order executed on July 1, 1981, may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: November 12, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

APPENDIX

First purchaser	Share of settlement[1]	Product purchased and type of violation alleged[2]	settlement share breakdown
Amorient Petroleum, 1920 Luggarway, Long Beach, CA 90813.	$1,234.12	Fuel oil-credit	
ARCO Petroleum Products Co., 515 South Flower Street, Los Angeles, CA 90071.	5,188.13	Naphtha-credit	
Commonwealth Oil and Refining Co., Inc., 8626 Tesoro Drive, San Antonio, TX 78217.	1,196.65	Naphtha-credit	
Edgington Oil Co., Inc., 2400 East Artesia Blvd., Long Beach, CA 90805.	125,876.18	Fuel oil-price Fuel oil-credit	$97,708.30 28,167.88
Venture trading[3] 9701 Wilshire Boulevard, Beverly Hills, CA 90212.	1,328.02	Fuel oil-credit	

[1] Not including interest that has accrued on the escrow account.

[2] A firm may have purchased additional products. Violations were alleged only on those listed.

[3] As stated in the body of the Decision, Venture Trading was a spot purchaser of Perta petroleum products. The firm will not be eligible for a refund unless it rebuts the presumption of non-injury.

[FR Doc. 86-26578 Filed 11-24-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-00073; FRL 3119-7]

Biotechnology Science Advisory Committee, Subcommittee on Environmental Release; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 2-day meeting of the Biotechnology Science Advisory Committee's Subcommittee on Environmental Release to discuss the definition of environmental release.

The meeting will be open to the public.

DATE: The meeting will be held on Thursday and Friday, December 11 and 12, 1986, starting at 9 a.m. both days and ending at approximately 5 p.m. on December 12.

ADDRESS: The meeting will be held in Rm. 1112, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Elizabeth Milewski, Office of Pesticides and Toxic Substances (TS-788), Executive Secretary, Biotechnology Science Advisory Committee, Environmental Protection Agency, Rm. E-645, 401 M St., SW., Washington, DC 20460, (202-382-2914).

SUPPLEMENTARY INFORMATION: This open meeting is being held to discuss the definition of environmental release. Attendance by the public will be limited to space available. Dr. Milewski will provide rosters of the committee members and additional information, upon request. A summary of the meeting will be available from her at a later date.

Dated: November 21, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 86-26697 Filed 11-24-86; 8:45 am]

BILLING CODE 6560-50-M

[OPPE-FRL-3117-9]

An Open Meeting of the Advisory Committee Negotiating Regulations Governing Major and Minor Modifications of Resource Conservation and Recovery Act (RCRA) Permits

As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of an open meeting of the Advisory Committee negotiating regulations governing major and minor modifications of Resource Conservation and Recovery Act (RCRA) permits.

The meeting will be held on Tuesday and Wednesday, December 16 and 17, 1986, at The Conservation Foundation, 1255 23rd Street, NW., First Floor Library, Washington, DC. On Tuesday, the meeting will start at 11:00 a.m. and will run until 5:00 p.m. On Wednesday, the meeting will start at 9:15 a.m. and will run until approximately 4:00 p.m. The purpose of the meeting is to continue work on the substantive issues which the Committee has identified for resolution. This will include a report from the Class Description Working Group and a review of the draft permit modification rating scheme.

If interested in receiving more information, please contact Kathy Tyson at (202) 382–5352.

Dated: November 20, 1986.

Milton Russell,

Assistant Administrator for Policy, Planning and Evaluation.

[FR Doc. 86–26515 Filed 11–24–86; 8:45 am]

BILLING CODE 6560-50-M

[OPPE-FRL-3118-1]

Extended Duration of the Advisory Committee Negotiating New Source Performance Standards for Residential Wood Combustion Units

As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), we are giving notice that the termination date has been extended for the Advisory Committee negotiating new source performance standards for residential wood combustion units.

The termination date for the Committee will be extended until December 31, 1986. This extension will give the Committee members time to ratify the agreement they reached and have reduced to writing.

If interested in receiving more information, please contact Kathy Tyson at (202) 382–5352.

Dated: November 20, 1986.

Milton Russell,

Assistant Administrator for Policy, Planning and Evaluation.

[FR Doc. 86–26516 Filed 11–24–86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59794; FRL-3118-3]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984 (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of five such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 87–30, 87–31, 87–32, 87–33 and 87–34—December 2, 1986.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW., Washington, DC 20460 (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA.The complete non-confidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 87–30

Manufacturer. Confidential.

Chemical. (G) Polyester diol.

Use/Production. (S) Industrial component for industrial metal coating. Prod. range: 240,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 87–31

Manufacturer. Confidential.

Chemical. (G) Unsaturated polyester.

Use/Production. (S) Clear gel coat for cultured marble. Prod. range: 106,000 to 133,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 87–32

Importer. Confidential.

Chemical. (G) Copolyer of butadiene and (meth)acrylic monomers.

Use/Import. (G) Binder for printing products. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 87–33

Importer. Confidential.

Chemical. (G) Copolyer of butadiene and methacrylic monomers.

Use/Import. (G) Binder for printing products. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 87–34

Manufacturer. Confidential.

Chemical. (G) Methacrylic copolmer.

Use/Production. (S) Industrial, commercial and consumer polymer for use in coatings, adhesives and ink. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/ Disposal. Confidential.

Dated: November 14, 1986.

V. Paul Fuschini,

Acting Division Director, Information Management Division.

[FR Doc. 86–26519 Filed 11–24–86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51650; FRL-3118-4]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-two such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 87–195, 87–196, 87–197, 87–198, 87–199, 87–200, and 87–201—February 7, 1987.

P 87–202, 87–203, 87–204, 87–205, 87–206, 87–207, P 87–208, 87–209, 87–210, 87–211 and 87–212—February 9, 1987.

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P 87-213, 87-214, 87-215 and 87-216—February 10, 1987.

Written comments by:

P 87-195, 87-196, 87-197, 87-198, 87-199, 87-200 and 87-201—January 8, 1987.

P 87-202, 87-203, 87-204, 87-205, 87-206, 87-207, 87-208, 87-209, 87-210, 87-211 and 87-212—January 10, 1987.

P 87-213, 87-214, 87-215 and 87-216—January 11, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS-51650]" and the specific PMN number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87-195

Manufacturer. Confidential.

Chemical. (G) Silyl ketene acetal.

Use/Production. (S) Industrial polymerization initiator. Prod. range: Confidential.

Toxicity Data. Acute oral: 3.65 g/kg; Irritation: skin—Non-irritant, Eye—Slight.

Exposure. Manufacture: dermal, a total of 2 workers, up to 2 hrs/day, up to 5 days/yr.

Environmental Release/Disposal. .1 to 2 kg/batch released. Disposal by incineration.

P 87-196

Manufacturer. Confidential.

Chemical. (G) Silyated acrylic acid.

Use/Production. (G) Monomer in group transfer polymerization process. Prod. range: Confidential.

Toxicity Data. Acute oral: 2.25 g/kg; Irritation: Skin—Severe, Eye—Severe; Ames test: Negative.

Exposure. Manufacture: dermal, a total of 2 workers, up to 2 hrs/day, up to 8 days/yr.

Environmental Release/Disposal. Less than 100 kg/ released to air.

P 87-197

Importer. Confidential.

Chemical. (G) Perflouroalkyl betaine.

Use/Import. (S) Industrial wetting agent in paints. Import. range: 600 to 2,000 kg/yr.

Toxicity Data. Acute oral: >12,000 mg/kg; Irritation: Eye—Non-irritant.

Exposure. Processing: dermal, a total of 500 workers, up to 8 hrs/day, up to 250 days/yr.

Environmental Release/Disposal. No release.

P 87-198

Importer. Confidential.

Chemical. (G) Perfluoroalkylpolyoxyethylene.

Use/Import. (S) Industrial wetting agent in paints. Import. range: 300 to 1,000 kg/yr.

Toxicity Data. Acute oral: 6.0 ml/kg; Irritation: Skin—Slight, Eye—Non-irritant.

Exposure. Processing: dermal, a total of 500 workers, up to 8 hrs/day, up to 250 days/yr.

Environmental Release/Disposal. No release.

P 87-199

Importer. Confidential.

Chemical. (G) Perfluoroalkylammonium iodide.

Use/Import. (S) Industrial wetting agent in paints. Import. range: 300 to 1,000 kg/yr.

Toxicity Data. Acute oral: 5,000 mg/kg; Irritation: Eye—Moderate.

Exposure. Processing: dermal, a total of 500 workers, up to 8 hrs/day, up to 250 days/yr.

Environmental Release/Disposal. No release.

P 87-200

Importer. Confidential.

Chemical. (G) Perfluoroalkylpolyoxyethylene.

Use/Import. (S) Industrial wetting agent in paints. Import range: 300 to 1,000 kg/yr.

Toxicity Data. Acute oral: 6.0. ml/kg; Irritation: Skin—Slight, Eye—Non-irritant.

Exposure. Processing: dermal, a total of 500 workers, up to 8 hrs/day, up to 250 days/yr.

Environmental Release/Disposal. No release.

P 87-201

Importer. Confidential.

Chemical. (G) Perfluoroalkylpolyoxyethylene.

Use/Import. (S) Industrial wetting agent in paints. Import range: 300 to 1,000 kg/yr.

Toxicity Data. Acute oral: 14,000 mg/kg; Irritation: Eye—Non-irritant.

Exposure. Processing: dermal, a total of 500 workers, up to 8 hrs/day, up to 250 days/yr.

Environmental Release/Disposal. No release.

P 87-202

Manufacturer. Confidential

Chemical. (G) Alkyl substituted cycloalkenoate.

Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 9 workers, up to 3.5 hrs/day, up to 9 days/yr.

Environmental Release/Disposal. 1,049 to 2,995 kg released to water with .5 kg to air. Disposal by on-site pretreatment plant.

P 87-203

Manufacturer. Confidential

Chemical. (G) Fatty acid amide of polyaminoalkyl silane ester.

Use/Production. (S) Component in sizing for glass fiber. Prod. range: Confidential.

Toxicity Data. No data on PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 87-204

Manufacturer. Wilmington Chemical Corporation.

Chemical. (G) Aqueous polyurethane dispersion.

Use/Production. (G) Coating open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. Release to air. Disposal by Resource Conservation and Recovery Act (RCRA).

P 87-205

Manufacturer. Confidential

Chemical. (G) Polyurethane polymer.

Use/Production. (G) Shielded, non-dispersive use in disposable garments. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 87-206

Manufacturer. Confidential

Chemical. (G) Acrylic polymer.

Use/Production. (G) Surfactant. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 54 workers, up to 8 hrs/day, up to 23 days/yr.

Environmental Release/Disposal. 118 kg/batch released to water. Disposal by Publicly Owned Treatment Work (POTW).

P 87-207

Importer. Confidential.

Chemical. (G) Modified polyether polyol.

Use/Import. (S) Industrial and commercial co-reactant for 2-component polyurethane coating. Import range: 11,340 to 1,134,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No release.

P 87-208

Manufacturer. Confidential.

Chemical. (G) Alkenes, reaction products with triglycerides and sulfur.

Use/Production. (G) Lubricant additive—contained use. Prod. range: Confidential.

Toxicity Data. Acute oral: 3,896 mg/kg; Irritation: Skin—Non-irritant, Eye—Primary irritant; Ames test: Negative.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 87-209

Manufacturer. E.I. du Pont de Nemours & Company, Inc.

Chemical. (G) Pentenenitrilo nickel (II) cyanoborate complex.

Use/Production. (G) Promoter (contained use). Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 40 workers, up to 4 hrs/day, up to 180 days/yr.

Environmental Release/Disposal. Confidential.

P 87-210

Manufacturer. Confidential.

Chemical. (S) N-(1-aminopropyl)-hexahydro-2H-azepin-2-one.

Use/Production. (G) destructive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 87-211

Manufacturer. Confidential.

Chemical. (S) Aluminum, bis(2-propanolato) isooctanolato.

Use/Production. (G) Gelling agent in non-aqueous liquids. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 6 workers, up to 8 hrs/day, up to 5 days/yr.

Environmental Release/Disposal. No release.

P 87-212

Importer. Confidential.

Chemical. (G) Amine functional poly dimethyl siloxane.

Use/Import. (G) Open, non dispersive use. Import range: Confidential.

Toxicity Data. Acute oral; 50 ml/kg; Irritation: Skin—Moderate, eye—Severe.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 87-213

Manufacturer. Confidential.

Chemical. (G) Alkyd polyester with coconut oil.

Use/Production. (G) Polymer having dispersive industrial use. Prod. range: 10,000 to 52,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 42 workers, up to 8 hrs/day, up to 66 days/yr.

Environmental Release/Disposal. 3 to 200 kg/batch released to land. Disposal by incineration and sanitary landfill.

P 87-214

Manufacturer. Confidential.

Chemical. (G) Polyester with neopentyl glycol.

Use/Production. (G) Industrial used coating with dispersive use. Prod. range: 10,000 to 50,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 55 workers, up to 8 hrs/day, up to 24 days/yr.

Environmental Release/Disposal. 3 to 194 kg/batch released to land. Disposal by incineration and sanitary landfill.

P 87-215

Manufacturer. Confidential.

Chemical. (G) DMDAAC copolymer.

Use/Production. (G) Water treating chemical. Prod. range: Confidential

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by POTW.

P 87-216

Importer. Confidential.

Chemical. (G) Butanamide, N-(4'-substituted phenyl)-3-oxo-2-[[4-[(oxo-tetrasubstituted-heteropolycycle-ylidene-amino]phenyl].

Use/Import. (S) Industrial paint (car). Import range: 3,000 to 12,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Dated: November 14, 1986.

V. Paul Fuschini,

Acting Division Director, Information Management Division.

[FR Doc. 86-26520 Filed 11-24-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59233; FRL 3118-2]

Reaction Product of Bisphenol A, Sulfuric Acid, and Acetic Anhydride; Test Market Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TCSA, announces receipt of an application for exemption, provides a summary, and requests comments on the appropriateness of granting the exemption.

DATE: Written comments by: December 10, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-59233]" and the specific TME number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential

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version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays

T 87-3

Close of Review Period. December 21, 1986.

Importer. Nachem Incorporated.

Chemical. (S) Reaction product of bisphenol A, sulfuric acid and acetic anhydride.

Use/Import. (S) Tin plating quality. Import range: 0 to 15,000 lbs.

Toxicity Data. Acute dermal: 0.5 ml; Irritation: Skin-Irritant, Eye-Irritant.

Exposure. Use: a total of 1 worker, up to 3 shifts/day, up to 20 min/shift.

Environmental Release/Disposal. No data submitted.

Dated: November 14, 1986.

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 86-26518 Filed 11-24-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-779-DR]

Amendment to Notice of a Major Disaster Declaration; Missouri

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri (FEMA-779-DR), dated October 14, 1986, (published October 22, 1986, 51 FR 37492) and related determinations.

DATED: November 19, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice

The notice of a major disaster for the State of Missouri, dated October 14, 1986, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 14, 1986.

St. Charles County and the City of New Haven for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Joe D. Winkle,

Acting Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 86-26499 Filed 11-24-86; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Proposed Information Collection Submitted to OMB for Clearance

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) notice is hereby given of a proposed information collection from the public that was submitted to the Office of Management and Budget (OMB) for clearance. The collection document is a questionnaire which is to be sent to 140 work site labor-management committees established with the assistance of the Federal Mediation and Conciliation Service (FMCS). The purpose of the questionnaire, now under review by OMB, is to evaluate the effectiveness of FMCS activities in regard to work site labor-management committees. Information concerning the questionnaire may be obtained at the address shown below.

DATE: Comments on the proposal should be submitted to: Ted M. Chaskelson, Attorney-Advisor, Legal Services Office, Federal Mediation and Conciliation Service, 2100 K Street N.W., Washington, D.C. 20427.

FOR FURTHER INFORMATION CONTACT: Ted M. Chaskelson, (202) 653-5305.

Dated: November 19, 1986.

Dan W. Funkhouser,

Director of Administrative Services.

[FR Doc. 86-26476 Filed 11-24-86; 8:45 am]

BILLING CODE 7632-01-M

FEDERAL RESERVE SYSTEM

[Docket No. R-0579]

Automated Clearing House Float Recovery Proposals; Extension of Comment Period

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Extension of the comment period.

SUMMARY: On September 17, 1986, the Board requested public comment on proposals regarding recovery of the costs of automated clearing house ("ACH") float (Docket No. R-0579). This request set forth a proposed method of recovering the costs of float generated by ACH transactions processed during the night cycle and a corresponding reduction in the current per item surcharge assessed on night cycle ACH transactions. Comments were due by November 21, 1986. In response to requests, the Secretary of the Board, acting pursuant to delegated authority, 12 CFR 265.2(a)(6), has extended the comment period for 30 days.

DATE: Comments must now be received by December 22, 1986.

ADDRESS: Comments, which should refer to Docket No. R-0579, may be mailed to the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551, to the attention of Mr. William W. Wiles, Secretary, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding the Availability of Information, 12 CFR 261.6(a).

FOR FURTHER INFORMATION CONTACT: Earl G. Hamilton, Assistant Director (202/452-3879), Florence M. Young, Advisor (202/452-3955), or Julius F. Oreska, Manager (202/452-3878), Division of Federal Reserve Bank Operations; or Telecommunications Device for the Deaf ("TDD") users, Earnestine Hill or Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

By order of the Board of Governors of the Federal Reserve System, November 19, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-26507 Filed 11-24-86; 8:45 am]

BILLING CODE 6210-01-M

[Docket No. R-0583]

Fee Schedules for Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Approval of a Private Sector Adjustment Factor and fee schedules for Federal Reserve Bank priced services for 1987.

SUMMARY: The Board of Governors has approved a Private Sector Adjustment Factor ("PSAF") for 1987 of $70.9 million. This represents an increase of $2.8 million, or approximately 4.1 per

cent, from the 1986 target PSAF of $88.1 million. The PSAF is a recovery of imputed costs that takes into account the taxes that would have been paid and the return on capital that would have been provided had the Federal Reserve's priced services been furnished by a private business firm. The Board also approved 1987 fee schedules for the check collection, automated clearing-house, wire transfer of funds and net settlement, definitive securities safekeeping and noncash collection, and book-entry securities services.

EFFECTIVE DATE: The new PSAF will take effect on January 1, 1987. Fees for the automated clearing-house service will take effect on April 1, 1987; all other fees will take effect on January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Earl G. Hamilton, Assistant Director (202/452-3879), or Paul W. Bettge, Analyst (202/452-3174), Division of Federal Reserve Bank Operations; Oliver I. Ireland, Associate General Counsel (202/452-3625), or Joseph R. Alexander, Senior Attorney (202/452-2489), Legal Division; or Earnestine Hill or Dorothea Thompson, Telecommunication Device for the Deaf (202/452-3244), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Private Sector Adjustment Factor

Section 11A of the Federal Reserve Act, 12 U.S.C. 248a, provides that fees for Federal Reserve services include "an allocation of imputed costs which takes into account the taxes that would have been paid and the return on capital that would have been provided had the services been provided by a private business firm. . . ." The Private Sector Adjustment Factor ("PSAF") is intended to reflect the imputed costs related to taxes and return on capital. As in past years,[1] the PSAF for 1987 is based on data developed in part from a model comprised of the nation's 25 largest bank holding companies.

Briefly stated, the methodology first entails determining the value of Federal Reserve assets that will be used directly in producing priced services during the coming year, including the net effect of assets planned to be acquired or disposed of during the year. Short-term assets are assumed to be financed by short-term liabilities; long-term assets are assumed to be financed by a combination of long-term debt and equity.

Imputed capital costs are determined by applying related interest rates and rate of return on equity derived from the bank holding company model to the assumed debt and equity values. These costs, together with imputations for estimated sales taxes, FDIC insurance assessment on clearing balances held with the Federal Reserve to settle for transactions, and expenses of the Board of Governors related to priced services, comprise the PSAF.

Details regarding the derivation of the PSAF are as follows:

Asset Base

The estimated value of Federal Reserve assets used in providing priced services in 1987 is reflected in Attachment 1. Attachment 2 shows that the value of assets assumed to be financed through debt and equity are projected to total $393.8 million in 1987, an increase of $43.3 million, or 12 per cent, from 1986. This increase results largely from capital expenditures for bank premises, furniture, and equipment planned by the Reserve Banks next year.

Cost of Capital and Taxes

Because of abnormal earnings performance by bank holding companies included in the model, the Board approved imputing the cost of equity capital for the PSAF in each of the last two years using a three-year average of rates of return on equity derived from the model. While earnings of the largest bank holding companies have improved recently, the Board does not believe that rates of return on equity have returned to long-term historical levels. For example, the pre-tax return on equity (adjusting for the effect of investments in tax-exempt securities) for the largest bank holding companies averaged 18.59 percent for 1985, compared with a rate of 19.13 per cent for the three-year period 1983–1985. The Board has therefore approved the three-year averaging technique for 1987 and using three-year averages for determining the cost of equity, imputed interest costs for long-term debt, and for income taxes.

Attachment 3 shows the interest, equity, and tax rates to be used in 1987 and compares them with the rates used for developing the PSAF for 1986. The sample of 25 bank holding companies used to calculate the rates of 1987 is the same as that used for the 1986 PSAF. One large bank holding company was again removed from the sample because of unique government oversight over bank management decisions during the past year, and the twenty-sixth largest bank holding company was substituted. The bank holding companies with the highest and lowest rates of return on equity before taxes were also excluded, consistent with the methodology for determining the PSAF for the past three years. Calculations were then based on the remaining 23 bank holding companies.

Other Imputed Costs

As shown in Attachment 3, other required PSAF recoveries for 1987 for sales taxes, FDIC insurance, and Board expenses total $10.6 million, down $0.4 million from 1986. Most of the decrease is in imputed sales taxes, which is attributable primarily to the projected reduction in capital expenditures planned for 1987 over 1986. The decline is partially offset by an increase in imputed costs for FDIC insurance, resulting from the expected rise in clearing balances reflected in Attachment 1.

1987 Fee Schedules

The fees for priced services that were approved by the Board for 1986 were set to recover 102.7 per cent of the cost of providing such services, including the PSAF and cost of float. Through the first eight months of 1986, the System experienced a recovery rate of 104.0 per cent. The Board estimates that total costs including the PSAF for 1986 will be $600.4 million and revenue will be $623.1 million, resulting in a recovery rate of 103.8 per cent.

In 1987, the Board projectes that total costs for priced services including the PSAF will be $622.3 million and total revenue will be $634.0 million, resulting in a 101.9 per cent recovery rate. The majority of the 1987 fees are the same as those in effect for 1986. In 1987, all Reserve Banks will be recovering actual costs and making some contribution to the PSAF for all locally priced services.

Discussion of the fee schedules for individual service categories follow:

Commercial Check Collection

Ninety-three per cent of the proposed 1987 prices for the check service are the same as those currently in effect. Fees for the Interdistrict Transportation System ("ITS") will remain unchanged, and these fees are projected to recover the ITS costs.

The proposed 1987 check collection fee schedules are contained in Attachment 4.

Automated Clearing-House ("ACH")

Attachment 5 shows the ACH fees approved by the Board to take effect on April 1, 1987.

In proposing these fees, the Reserve Banks projected that they would bring

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[1] *See* 49 FR 11,251 (Mar. 28, 1984); 49 FR 44,556 (Nov. 7, 1984); 50 FR 47,624 (Nov. 19, 1985).

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revenues of approximately $33.9 million, 98.5 per cent of the projected $34.4 million in costs (including PSAF) associated with the services. The Board, however, believes that Reserve Bank estimates of revenue and volume may be conservative and that full recovery is likely.[2]

The current basic transaction fees for processing automated transactions will be retained in 1987, and over 809 percent of the fees for nonautomated services will also remain. The Board has determined that automated return items, automated notifications of change, and prenotifications, which are not priced currently, will be priced beginning on April 1, 1987. This date is consistent with implementation of new ACH software at the Reserve Banks, which is necessary to implement fees for these services. All other ACH fees will also take effect on April 1, 1987.

Funds Transfer and Net Settlement

In 1987, funds transfer costs, including the PSAF, are projected to increase by $2.1 million or 3.0 percent over 1986. The volume of basic funds transfers originated is expected to increase by 6.9 percent in 1987.

Based upon Reserve Bank cost and volume estimates for 1987, retaining the basic funds transfer fee of $.55 would result in a recover rate of about 104 percent. In view of this projection, the Board has reduced the basic transfer fee to $.50.[3]

In order to bring the fees for the various nonautomated services in line with costs, the Board has approved a $.50 increase in all such fees.

Finally, fees for dedicated leased line and multi-drop electronic connections have been adjusted to reflect data communications costs more accurately. The dedicated connection fee has been increased from $300 to $400, and the multi-drop connection fee from $225 to $250. The dial connection type will continue to be priced at $60, as this fee covers costs.

Attachment 6 shows the proposed funds transfer and net settlement fees for 1987.

Definitive Securities Safekeeping and Noncash Collection

Definitive securities safekeeping and noncash collection costs are expected to remain about the same in 1987. At the same time, total revenue is expected to decline slightly as a result of volume decreases. Definitive safekeeping volume is projected to decrease by about 3.5 percent and noncash collection volume by about 3.9 percent.

Because of these factors, the Board has approved the revised fee schedules for these services set out in Attachment 7.

The weighted average fee increase for definitive safekeeping in 1987 is 3.0 percent, with the majority of definitive safekeeping fees (85 percent) remaining unchanged. In three of the eleven Districts offering definitive safekeeping, fee increases range from $.05 ot $6.00. The $6.00 increase involves one District's purchases and sales fee and brings it more in line with the average fee charged in the System for this activity. The weighted average fee increase in the noncash collection activity is 3.8 percent, with the majority of the fees (80 percent) remaining unchanged.

Book-Entry Securities Services

Although the 1986 book-entry recovery rate is expected to be 125.7 per cent, the Board has postponed any changes to the book-entry fee schedule until the second quarter of 1987 because recent operational changes, such as the mid-1986 expansion of book-entry mortgage-backed securities to all Reserve Banks, have increased the cost of the book-entry service. The Reserve Banks believe that some of these costs may be due to the start up of new activities and may decline as they gain experience in handling these types of securities. The Board does not believe that the costs data available are adequate for making pricing decisions for all of 1987, and will review the book-entry fee schedule in the second quarter of 1987. Pending that review, fees for book-entry services will remain unchanged. The current book-entry fee schedule is shown in Attachment 8.

By order of the Board of Governors of the Federal Reserve System, November 5, 1986.

William W. Wiles,

Secretary of the Board.

ATTACHMENT 1.—COMPARISON OF PRO FORMA BALANCE SHEETS FOR FEDERAL RESERVE PRICED SERVICES

[Millions of dollars—average for year]

	1987	1986
Short-term assets:		
Imputed reserve requirements on clearing balances	$239.2	$204.0
Investment in marketable securities	1,753.8	1,496.0
Receivables [1]	26.8	25.9
Materials and supplies [1]	4.4	4.2
Prepaid expenses [1]	4.2	4.2
Net items in process of collection (float)	363.5	334.0
Total short-term assets	2,391.9	2,068.3
Long-term assets:		
Premises[1] [2]	229.6	191.0
Furniture and equipment [1]	126.8	123.4
Capital leases	1.8	0.2
Leasehold improvements [1]	2.0	1.8
Total long-term assets	360.2	316.4

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[2] For example, the Reserve Banks forecasted only a 27.5 per cent increase in commercial volume, while a 30 per cent increase is likely in 1986. Also, the Banks anticipate a significant (12 per cent) decrease in paper return and notification of change volumes. These transactions account for approximately 23 per cent of total ACH revenue. The Reserve Banks estimates are conservative in view of the almost 30 per cent increase in ACH volume anticipated in 1987.

[3] The basic funds transfer fee is assessed to both the institution originating and the institution receiving the funds transfer. Currently, both originator and receiver pay $.55 for a funds transfer. Each would pay $.50 less under the revised fee schedule.

ATTACHMENT 1.—COMPARISON OF PRO FORMA BALANCE SHEETS FOR FEDERAL RESERVE PRICED SERVICES—Continued

[Millions of dollars—average for year]

	1987	1986
Total assets	2,752.1	2,384.7
Short-term liabilities:		
Clearing balances	1,993.0	1,700.0
Balances arising from early credit of uncollected items	363.5	334.0
Short-term debt [3]	35.4	34.2
Total short-term liabilities	2,391.9	2,068.3
Long-term liabilities:		
Obligations under capital leases	1.8	0.2
Long-term debt [3]	126.2	94.9
Total long-term liabilities	128.0	95.1
Total liabilities	2,519.9	2,163.4
Equity [3]	232.2	221.3
Total liabilities and equity	2,752.1	2,384.7

[1] Financed through PSAF; other assets are self-financing.

[2] Includes allocations in Board of Governors' assets to priced services of $600 thousand for 1987 and $500 thousand for 1986.

[3] Imputed figures; represent the source of financing for certain priced services assets.

NOTE.—Details may not add to totals due to rounding.

ATTACHMENT 2.—DERIVATION OF THE 1987 PSAF

[Millions of dollars]

A. Assets to be Financed: [1]	
Short-term	$5.4
Long-term [2]	358.4
	393.8
B. Weighted Average Cost:	
1. Capital Structure: [3]	
Short-term Debt	9.0%
Long-term Debt	32.0%
Equity	59.9%
2. Financing Rates/Costs [3] Average rates paid by the bank holding companies included in the sample:	
Short-term Debt	8.5%
Long-term Debt	10.2%
Pre-tax Equity [4]	19.1%
3. Elements of Capital Costs:	
Short-term Debt $35.4×8.5%	$3.0
Long-term Debt 126.2×10.3%	12.9
Equity 232.2×19.1%	44.4
	60.3
C. Other Required PSAF Recoveries:	
Sales Taxes	7.3
Federal Deposit Insurance Assessment	1.6
Board of Governors Expenses	1.7
	10.6
D. Total PSAF Recoveries	70.9
As a percent of capital	18.0%
As a percent of expenses [5]	15.8%

[1] Priced service asset base is based on direct determination of assets method.

[2] Consists of total long-term assets less capital leases that are self-financing.

[3] All short-term assets are assumed to be financed by short-term debt. Of the total long-term assets, 35.2 percent are assumed to be financed by long-term debt and 64.8 percent by equity.

[4] The pre-tax rate of return on equity is based on average after-tax rates of return on equity for the bank holding company sample, adjusted by the effective tax rate to yield the pre-tax rate of return on equity. The 1987 figure for pre-tax equity and the tax rate are based upon a three-year average of these rates.

[5] Systemwide 1987 budgeted priced service expenses less shipping were $450.3 million.

ATTACHMENT 3.—CHANGES BETWEEN 1987 AND 1986 PSAF COMPONENTS

	1987	1986
A. Assets to be Financed (millions of dollars):		
Short-term	$35.4	$34.3
Long-term	358.4	316.2
	393.8	350.5
B. Cost of Capital:		
Short-term Debt Rate	8.5%	10.3%
Long-term Debt Rate	10.2%	10.3%
Pre-tax Return on Equity [1]	19.1%	19.8%
Weighted Average Cost of Capital	15.3%	16.3%
C. Tax Rate [1]	33.9%	37.6%
D. Capital Structure:		
Short-term Debt	9.0%	9.8%
Long-term Debt	32.0%	27.1%
Equity	59.0%	63.1%
E. Other Required PSAF Recoveries (millions of dollars):		
Sales Taxes	$7.3	$7.9
Federal Deposit Insurance Assessment	1.6	1.4
Board of Governors Expenses	1.7	1.7
	10.6	11.0
F. Total PSAF:		
Required Recovery	$70.9	$68.1
As Percent of Capital	18.0%	19.4%
As Percent of Expenses	15.8%	15.7%

[1] The 1987 figures for pre-tax equity and the tax rate are based on a three-year average of these rates:

	1983 (percent)	1984 (percent)	1985 (percent)	Average (percent)
Pre-tax equity rate	20.6	18.8	18.0	19.1
Tax rate	31.7	39.1	30.8	33.9

BILLING CODE 6210-01-M

2330W

ATTACHMENT 4

FEDERAL RESERVE SYSTEM
CHECK COLLECTION SERVICE AND FEE SCHEDULE
CONSOLIDATED SHIPMENT AND DIRECT SEND INTERTERRITORY DEPOSITS
EFFECTIVE JANUARY 1, 1987

	CITY						RCPC							COUNTRY						
	Unsorted		Group Sort 3/		Fine Sort		Unsorted		Group Sort 3/		Fine Sort		4/	Unsorted		Group Sort 3/		Fine Sort		Non-
OFFICE	Basic	Prem.	Basic	Prem.	Basic	Prem.	Basic	Prem.	Basic	Prem.	Basic	Prem.	HDGS	Basic	Prem.	Basic	Prem.	Basic	Prem.	Machinable
BOSTON:																				
Cash Letter Fee ($) 1/	2.25	2.25			3.25		2.25	2.25		2.25	3.25		11.25							2.25
Item Fee(cents/item)	1.7	3.0			0.7		2.3	3.5		2.9	0.9		6.0							16.0
Deposit Deadline 2/	0700	0830			0830		0001	0245		0300	0500		0830							0830
MAINE(Boston):																				
Cash Letter Fee ($) 1/							2.25				3.25									2.25
Item Fee(cents/item)							2.3				0.9									16.0
Deposit Deadline 2/							0001				0300									0830
Lewiston:																				
Cash Letter Fee ($) 1/							2.25	2.25	2.25	2.25	2.00		22.25							2.25
Item Fee(cents/item)							1.9	2.3	1.5	1.7	0.6		5.5							16.0
Deposit Deadline 2/							0030	0200	0030	0300	0400		0830							0830
Windsor Locks:																				
Cash Letter Fee ($) 1/							2.25	2.25		2.25	3.25		7.25							2.25
Item Fee(cents/item)							2.3	3.5		2.9	0.9		6.0							16.0
Deposit Deadline 2/							0001	0245		0300	0400		0830							0830
NEW YORK:																				
Cash Letter Fee ($) 1/	2.00	2.00	2.00		5.00									2.00						2.00
Fee(cents/item)	3.5	5.0	2.5		1.0									3.8						25.0 5/
Deposit Deadline 2/	0700	0830	0830		0930									1200						0830
Buffalo:																				
Cash Letter Fee ($) 1/	2.00				4.50		2.00	2.00			4.50		5.25							2.00
Item Fee(cents/item)	2.3				1.1		2.5	4.8			1.1		14.0							20.0 5/
Deposit Deadline 2/	0815				0930		0001	0315			0400		0830							0830
Jericho:																				
Cash Letter Fee ($) 1/							2.00	2.00	2.00	2.00	4.50		10.00							2.00
Item Fee(cents/item)							2.6	4.8	2.0	3.0	1.1		10.0							20.0 5/
Deposit Deadline 2/							0001	0230	0001	0300	0400		0830							0830
Cranford:																				
Cash Letter Fee ($) 1/							2.00	2.00	2.00	2.00	4.50		11.00							2.00
Item Fee(cents/item)							2.6	4.8	2.0	3.0	1.1		10.0							20.0 5/
Deposit Deadline 2/							0001	0230	0001	0300	0400		0830							0830
Utica:																				
Cash Letter Fee ($) 1/							2.00	2.00	2.00	2.00	4.50		18.00							2.00
Item Fee(cents/item)							2.5	4.8	2.0	3.0	1.1		14.0							20.0 5/
Deposit Deadline 2/							0001	0245	0001	0300	0400		0830							0830
PHILADELPHIA:																				
Cash Letter Fee ($) 1/	2.75	2.75			3.50		2.75	2.75	2.75		3.50		9.75							2.75
Item Fee(cents/item)	1.7	2.0			0.7		2.4	3.6	2.4		1.1		12.0							19.0
Deposit Deadline 2/	0700	0830			0830		0030	0230	0300/ 0500 6/		0330/ 0530 6/		0830							0830

2330k

ATTACHMENT 6

FEDERAL RESERVE SYSTEM
CHECK COLLECTION SERVICE AND FEE SCHEDULE
CONSOLIDATED SHIPMENT AND DIRECT SEND INTERTERRITORY DEPOSITS
EFFECTIVE JANUARY 1, 1987

	CITY						RCPC							COUNTRY						
	Unsorted		Group Sort 3/		Fine Sort		Unsorted		Group Sort 3/		Fine Sort		4/	Unsorted		Group Sort 3/		Fine Sort		Non-
OFFICE	Basic	Prem.	Basic	Prem.	Basic	Prem.	Basic	Prem.	Basic	Prem.	Basic	Prem.	NOGS	Basic	Prem.	Basic	Prem.	Basic	Prem.	Machinable
CLEVELAND:																				
Cash Letter Fee ($) 1/	3.50	3.50			3.00		3.50	3.50			3.00		7.00							3.50
Item Fee(cents/item)	1.7	2.5			0.8		2.2	4.5			1.0		10.0							16.0
Deposit Deadline 2/	0930 7/	1030			1030		0001	0130			0200 0300 8/		0830							1030
Cincinnati:																				
Cash Letter Fee ($) 1/	3.50	3.50			3.00		3.50	3.50			3.00		11.50							3.50
Item Fee(cents/item)	1.7	2.5			0.8		2.2	4.5			1.0		10.0							16.0
Deposit Deadline 2/	0830 7/	0930			0930		0001	0245			0315		0830							0930
Pittsburgh:																				
Cash Letter Fee ($) 1/	3.50	3.50			3.00		3.50	3.50			3.00		9.00							3.50
Item Fee(cents/item)	1.7	2.5			0.8		2.2	4.5			1.0		10.0							16.0
Deposit Deadline 2/	0830 7/	0930			0930		0001	0330			0400		0830							0930
Columbus:																				
Cash Letter Fee ($) 1/	3.50				3.00		3.50	3.50			3.00		9.00							3.50
Item Fee(cents/item)	1.7				0.8		2.2	4.5			1.0		10.0							16.0
Deposit Deadline 2/	0745 7/				0900		0001	0230			0230		0800							0745
RICHMOND:																				
Cash Letter Fee ($) 1/	2.25				3.00		2.25	2.25	2.25	2.25	3.00		22.25							2.25
Item Fee(cents/item)	1.7				0.9		2.2	4.4	1.8	2.7	1.2		11.0							10.0
Deposit Deadline 2/	0900				0900		0001	0245	0100	0245	0330/ 0400 8/		0815							1600
Baltimore:																				
Cash Letter Fee ($) 1/	2.75	2.75			2.50		2.75	2.75	2.75	2.75	2.50		16.75							2.75
Item Fee(cents/item)	1.8	2.4			1.1		2.3	4.4	1.9	2.7	1.1		11.0							10.0
Deposit Deadline 2/	0700	0830			0830		0001	0315	0100	0315	0315/ 0500 9/		0830							0830
Charlotte:																				
Cash Letter Fee ($) 1/	2.25				2.00		2.25	2.25	2.25	2.25	2.00		15.00							2.25
Item Fee(cents/item)	1.7				0.9		2.1	4.8	1.8	2.8	1.0		10.0							10.0
Deposit Deadline 2/	0900				0900		0001	0245	0100	0245	0330/ 0400 8/		0800							0900
Columbia:																				
Cash Letter Fee ($) 1/	2.50				2.25		2.50	2.50	2.50	2.50	2.25		9.00							2.50
Item Fee(cents/item)	1.8				1.0		2.1	4.4	1.8	2.8	1.0		10.0							10.0
Deposit Deadline 2/	0900				0900		0001	0245	0100	0245	0330		0900							1600
Charleston:																				
Cash Letter Fee ($) 1/	3.00				3.00		3.00	3.00	3.00	3.00	3.00									3.00
Item Fee(cents/item)	1.9				1.1		2.2	4.4	1.8	2.8	1.1									10.0
Deposit Deadline 2/	0900				0900		0001	0230	0100	0230	0300									0900

ATTACHMENT 4

FEDERAL RESERVE SYSTEM
CHECK COLLECTION SERVICE AND FEE SCHEDULE
CONSOLIDATED SHIPMENT AND DIRECT SEND INTERTERRITORY DEPOSITS
EFFECTIVE JANUARY 1, 1987

	CITY						RCPC							COUNTRY						
	Unsorted		Group Sort 3/		Fine Sort		Unsorted		Group Sort 3/		Fine Sort		4/	Unsorted		Group Sort 3/		Fine Sort		Non-
OFFICE	Basic	Prem.	Basic	Prem.	Basic	Prem.	Basic	Prem.	Basic	Prem.	Basic	Prem.	HDGS	Basic	Prem.	Basic	Prem.	Basic	Prem.	Machinable
ATLANTA:																				
Cash Letter Fee ($) 1/	2.00				2.00		2.00	3.50	2.00		2.00		5.00							2.00
Item Fee(cents/item)	1.3				0.9		1.9	3.1	1.8		1.2		10.0							13.0
Deposit Deadline 2/	0900				0930		0001	0130	2200		0300		0800*							0900
Birmingham:																				
Cash Letter Fee ($) 1/	2.00				2.00		2.00	4.00	2.00		2.00		5.00							2.00
Item Fee(cents/item)	1.3				0.8		1.9	3.5	1.5		1.0		10.0							13.0
Deposit Deadline 2/	0800				0900		0001	0130	0001 10/		0200		0900							0900
Jacksonville:																				
Cash Letter Fee ($) 1/	2.00				2.00		2.00	4.50	2.00		2.00		27.00							2.00
Item Fee(cents/item)	1.2				0.7		1.9	3.7	1.5		1.1		10.0							13.0
Deposit Deadline 2/	0800				1000		0001	0230	0001		0400		0800							0800
Nashville:																				
Cash Letter Fee ($) 1/	2.00	3.50			2.00		2.00	3.50			2.00		27.00							2.00
Item Fee(cents/item)	1.5	2.1			0.9		2.1	3.6			1.2		10.0							13.0
Deposit Deadline 2/	0800	1000			1000		0001	0130			0200		0800							0900
New Orleans:																				
Cash Letter Fee ($) 1/	1.75				2.00		1.75	4.25	1.75		2.00									1.75
Item Fee(cents/item)	1.2				0.8		2.0	3.6	1.5		1.2									11.0
Deposit Deadline 2/	0900				0900		0001	0215	2100		0300									0900
Miami:																				
Cash Letter Fee ($) 1/	2.00	3.00			2.00		2.00	3.00	2.00		2.00		25.00							2.00
Item Fee(cents/item)	1.2	2.6			0.7		1.9	3.0	1.0		1.2		8.0							13.0
Deposit Deadline 2/	0800	0830			0830		0001	0300	0001 11/		0330		0830*							0830

ATTACHMENT 4

FEDERAL RESERVE SYSTEM
CHECK COLLECTION SERVICE AND FEE SCHEDULE
CONSOLIDATED SHIPMENT AND DIRECT SEND INTERTERRITORY DEPOSITS
EFFECTIVE JANUARY 1, 1987

	CITY						RCPC							COUNTRY						
	Unsorted		Group Sort 3/		Fine Sort		Unsorted		Group Sort 3/		Fine Sort		4/	Unsorted		Group Sort 3/		Fine Sort		Non-Machinable
OFFICE	Basic	Prem.	Basic	Prem.	Basic	Prem.	Basic	Prem.	Basic	Prem.	Basic	Prem.	HDGS	Basic	Prem.	Basic	Prem.	Basic	Prem.	
CHICAGO:																				
Cash Letter Fee ($) 1/	2.00	2.00	2.00		3.75		2.00	2.00	2.00		3.75		7.00							2.00
Item Fee(cents/item)	2.3	2.6	2.3		0.9		3.4	4.1	3.4		1.4		9.0							10.0
Deposit Deadline 2/	0630	0730	0830		0730/ 0930 12/		0001	0100	0200		0300		0830							0700
Detroit:																				
Cash Letter Fee ($) 1/	2.50				2.75		2.50	3.00	2.50	3.00	2.75	3.20	7.00							2.50
Item Fee(cents/item)	1.7				C.7		2.2	4.0	2.0	2.6	1.1	1.3	10.0							7.7
Deposit Deadline 2/	0900				0900		0001	0215	0100	0415	0315	0430	0900							0900
Des Moines:																				
Cash Letter Fee ($) 1/	2.00				2.50		2.00	2.00			2.50									2.00
Item Fee(cents,item)	1.6				0.9		2.4	4.5			1.0									10.0
Deposit Deadline 2/	0800				0830		0001	0230			0315									0800
Indianapolis:																				
Cash Letter Fee ($) 1/	2.00	2.00			2.50		2.00	2.00			2.50		7.00							2.00
Item Fee(cents/item)	1.5	1.7			0.8		1.8	3.7			1.0		10.0							10.0
Deposit Deadline 2/	0900	0930			1000		0001	0315			0400		0900							0900
Milwaukee:																				
Cash Letter Fee ($) 1/	2.00				2.50		2.00	2.00			2.50		7.00							2.00
Item Fee(cents/item)	2.0				0.8		2.1	3.6			1.3		10.0							10.0
Deposit Deadline 2/	0915				0945		0100	0215			0400		0830*							0800
ST. LOUIS:																				
Cash Letter Fee ($) 1/	2.50	3.00			2.00		2.50	3.00			2.00		10.00	2.50				2.00		2.50
Item Fee(cents/item)	2.6	3.2			0.9		2.6	3.2			1.0		5.0	2.9				1.1		12.0
Deposit Deadline 2/	0800	0900			1045/ 1100 13/		0130	0300			0400		0600*	2000				2200		0800
Little Rock:																				
Cash Letter Fee ($) 1/	2.25	2.25			1.75		2.25	2.25	2.25		1.75									2.25
Item Fee(cents/item)	2.2	3.2			0.7		2.6	3.7	1.9		0.8									15.0
Deposit Deadline 2/	0900	1030			1100		0001	0130	0001		0200									0900
Louisville:																				
Cash Letter Fee ($) 1/	2.00	2.50			1.50		2.00	2.50			1.50		7.50							2.00
Item Fee(cents/item)	2.4	3.3			0.7		2.5	4.8			0.7		7.0							12.0
Deposit Deadline 2/	0815	0900			0900		0001	0230			0300		0815							0900
Memphis:																				
Cash Letter Fee ($) 1/	2.75	3.75			1.75		2.75	3.75			1.75		36.75							2.75
Item Fee(cents/item)	2.2	3.2			1.2		2.7	3.6			1.2		13.0							12.0
Deposit Deadline 2/	0800	0930			0930		0001	0130			0430		0930							0800

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ATTACHMENT 4

FEDERAL RESERVE SYSTEM
CHECK COLLECTION SERVICE AND FEE SCHEDULE
CONSOLIDATED SHIPMENT AND DIRECT SEND INTERTERRITORY DEPOSITS
EFFECTIVE JANUARY 1, 1987

	CITY						RCPC							COUNTRY						
	Unsorted		Group Sort 3/		Fine Sort		Unsorted		Group Sort 3/		Fine Sort		4/	Unsorted		Group Sort 3/		Fine Sort		Non-
OFFICE	Basic	Prem.	Basic	Prem.	Basic	Prem.	Basic	Prem.	Basic	Prem.	Basic	Prem.	HDGS	Basic	Prem.	Basic	Prem.	Basic	Prem.	Machinable
MINNEAPOLIS:																				
Cash Letter Fee ($) 1/	2.00	2.00			2.00		2.00	2.00			3.00		7.00	2.00	2.00			3.00	3.00	2.00
Item Fee(cents/item)	1.8	2.5			0.6		2.7 2.1/3.0	4.1 3.6/4.4			0.9 0.6/1.4		7.0	3.4 14/	4.0			1.4	1.9	10.0
Deposit Deadline 2/	0800	0915			0915		0001 15/	0230 15/			0430 15/		0800	1230 16/	1500 17/			1530/ 1700 18/	0300 19/	0800
Helena:																				
Cash Letter Fee ($) 1/	2.00				1.50		2.00	2.00			2.25		30.00	2.00				3.00		2.00
Item Fee(cents/item)	2.0				1.0		2.8	4.0			1.4		12.0	3.0				1.4		12.0
Deposit Deadline 2/	1000				1030		0001	0030			0300		0830	1200				1400		1000
KANSAS CITY:																				
Cash Letter Fee ($) 1/	1.75	1.75	1.75		2.20								6.75	1.75				2.50		1.75
Item Fee(cents/item)	1.8	3.8	1.6		0.8								7.50	3.0 2.3/3.3				1.2 1.0/1.8		12.0
Deposit Deadline 2/	0830	0930	0930 20/		0930								0830*	0001 21/				0100 21/		0830
Denver:																				
Cash Letter Fee ($) 1/	1.75				2.00		1.75	1.75	1.75		2.00		6.75	1.75		1.75		2.00		1.75
Item Fee(cents/item)	1.8				0.5		2.1	4.2	1.8		0.5		10.0	2.7		2.1		0.5		12.0
Deposit Deadline 2/	0900				1000		0001	0130	0100		0300		0815*	1300		2030		1500		0815
Oklahoma City:																				
Cash Letter Fee ($) 1/	1.75				2.50		1.75	1.75			2.50		17.75	1.75		1.75		2.50		1.75
Item Fee(cents/item)	1.7				0.6		2.1	3.4			0.8		8.0	2.3		2.3		0.9		8.0
Deposit Deadline 2/	0900				1000		0400	0500			0615		0900*	0001		0001		0100		0900
Omaha:																				
Cash Letter Fee ($) 1/	1.75				1.50		1.75	1.75			1.50		6.75	1.75		1.75		1.50		1.75
Item Fee(cents/item)	1.9				1.1		2.3	2.8			1.1		10.00	2.9		2.9		1.4		10.0
Deposit Deadline 2/	0900				1000		0030	0130			0230		0900*	1500		2130		1600		0900

ATTACHMENT 6

FEDERAL RESERVE SYSTEM
CHECK COLLECTION SERVICE AND FEE SCHEDULE
CONSOLIDATED SHIPMENT AND DIRECT SEND INTERTERRITORY DEPOSITS
EFFECTIVE JANUARY 1, 1987

	CITY						RCPC							COUNTRY						
	Unsorted		Group Sort 3/		Fine Sort		Unsorted		Group Sort 3/		Fine Sort		4/	Unsorted		Group Sort 3/		Fine Sort		Non-
OFFICE	Basic	Prem.	Basic	Prem.	Basic	Prem.	Basic	Prem.	Basic	Prem.	Basic	Prem.	HDGS	Basic	Prem.	Basic	Prem.	Basic	Prem.	Machinable
DALLAS:																				
Cash Letter Fee ($) 1/	2.00				2.50		2.00	2.00			2.50		10.00	2.00		2.00		2.50		2.00
Item Fee(cents/item)	1.8				0.9		2.3	3.5			1.1		7.5	2.9		2.3		1.1		15.0
Deposit Deadline 2/	0900				0930		0001	0115			0400		0830	1330		2000 22/		2130 22/		0900
Houston:																				
Cash Letter Fee ($) 1/	2.00				2.50		2.00	2.00			2.50		10.00							2.00
Item Fee(cents/item)	1.8				0.9		2.3	3.5			1.1		7.5							15.0
Deposit Deadline 2/	0900				0930		0001	0115			0400		0900							0900
San Antonio:																				
Cash Letter Fee ($) 1/	2.00				2.50		2.00	2.00			2.50		10.00							2.00
Item Fee(cents/item)	1.8				0.9		2.3	3.5			1.1		7.5							15.0
Deposit Deadline 2/	0930				1030		0001	0115			0400		0900							0930
El Paso:																				
Cash Letter Fee ($) 1/	2.00				2.50		2.00	2.00			2.50		14.50							2.00
Item Fee(cents/item)	1.8				0.9		3.2	4.5			1.3		15.0							15.0
Deposit Deadline 2/	0915				1015		0001	0030			0230		0915							0915
SAN FRANCISCO:																				
Cash Letter Fee ($) 1/	2.00		2.00		3.00		2.00	2.00	2.00		3.00			2.00				3.00		2.00
Item Fee(cents/item)	2.2		2.0		0.6		2.5	4.3	2.1		0.8			3.0				1.3		11.5
Deposit Deadline 2/	0730		0800		1000		0001	0200	6/		0500			0001				0500		0730
Los Angeles:																				
Cash Letter Fee ($) 1/	2.00		2.00		3.00		2.00	2.00	2.00		3.00									2.00
Item Fee(cents/item)	2.2		2.0		0.6		2.5	4.3	2.1		0.8									11.5
Deposit Deadline 2//	0800		0830		1000		0001	0200	6/		0500									0800
Portland:																				
Cash Letter Fee ($) 1/	2.00				2.50		2.00	2.00	2.00		2.50		8.00							2.00
Item Fee(cents/item)	1.9				0.6		2.3	4.0	1.9		0.8		8.0							11.5
Deposit Deadline 2/	0900				0930		0001	0200	6/		0400		0900*							0900
Salt Lake City:																				
Cash Letter Fee ($) 1/	2.00	2.00			2.50		2.00	2.00	2.00		2.50		21.00							2.00
Item Fee(cents/item)	1.9	3.8			0.6		2.3	4.0	1.9		0.8		8.0							11.5
Deposit Deadline 2/	0930	1015			1100		0001	0200	6/		0600		0930							0900
Seattle:																				
Cash Letter Fee ($) 1/	2.00				2.50		2.00	2.00	2.00		2.50									2.00
Item Fee(cents/item)	1.9				0.6		2.3	4.0	1.9		0.8									11.5
Deposit Deadline 2/	0900				1000		0001	0200	6/		0400/ 0500 23/									0900

ATTACHMENT 4

FOOTNOTES:

1. This is a fixed charge that applies to each cash letter deposit.
2. Deposit deadline times are shown using military time, e.g., 2:30 a.m. = 0230 and 2:30 p.m. = 1430.
3. Contact the receiving Federal Reserve Office for details on Group Sort deposits.
4. The High Dollar Group Sort (HDGS) product is offered Tuesday through Friday. An asterisk beside the deadline indicates that service is also available on Monday.
5. Special charges for nonstandard nonmachineable items: $1.50/item in New York, and $1.00/item in Buffalo, Jericho, Cranford and Utica.
6. The deposit deadline varies by group of endpoints. Contact the receiving Federal Reserve Office for specific deposit deadlines and routing numbers.
7. The Cleveland Office offers a service (Sort Fourth) which accepts all Fourth District city and HDGS items in a single cash letter. Deadlines are at 0130 and 0300. Fees are $4.75 per cash letter; 1.9¢ for Cleveland city items; 2.5¢ for other Fourth District city items; 25¢ for HDGS items. At the 0130 deadline Cleveland premium RCPC items may also be included in the cash letter for 4.5¢ per item.
8. Data cards required at later deposit deadline.
9. The 0315 deposit deadline applies to Maryland/West Virginia endpoints only - routing numbers 0521, 0522, 2521, and 2522.
10. Birmingham offers five different RCPC group sorts: three have a deposit deadline at 0001; one group has a deposit deadline at 1900 and one at 2100. The item fee for four of these groups is 1.5¢; for the fifth group the fee is 1.7¢ per item.
11. RCPC basic group sort shown at the 0001 deposit deadline is one group sort containing both City and RCPC endpoints.
12. The 0730 deposit deadline applies to all Chicago Clearinghouse endpoints. The 0930 deposit deadline applies to selected large Chicago Clearinghouse endpoints.
13. The 1045 deposit deadline applies to St. Louis Clearinghouse endpoints only.
14. Unsorted country cash letters may be deposited for calculated availability. Item fee is 4.4¢ for immediate availability items and 3.4¢ on one-day deferred items. For calculated availability deposits cash letter fee is $3.00 and the deposit deadline is 0230. Offered Tuesday through Friday.
15. Depositors have a choice of paying a single fee for each RCPC item (2.7¢ at regular deadline, 4.1¢ at premium deadline and 0.9¢ for fine-sort) or paying a two-tier price shown in the next line. Use of two-tier pricing does not require additional sorting by the depositor.
16. The 1230 deposit deadline applies Monday through Thursday. The deposit deadline is 0001 on Saturday.
17. The 1500 deposit deadline applies Monday through Thursday. The deposit deadline is 0830 on Saturday.
18. The 1530 deposit deadline applies to South Dakota endpoints only. On Saturday an 0830 deadline applies to all country endpoints.
19. Select endpoints only. Offered Tuesday through Friday.
20. Kansas City offers a second city group at 1.3¢ per item at the same 0930 deposit deadline.
21. Depositors have a choice of paying a single fee for each country item (3.0¢ for regular unsorted deposits and 1.2¢ for fine-sort deposits) or paying a two-tier price shown on the next line. Use of two-tier pricing does not require additional sorting by the depositor.
22. The deposit deadline is 1700 on Sundays.
23. The 0400 deposit deadline applies to Alaska endpoints only.

Page 6 Continued

ATTACHMENT 4

FEDERAL RESERVE SYSTEM
CHECK COLLECTION SERVICE AND FEE SCHEDULE
MIXED DEPOSITS
EFFECTIVE JANUARY 1, 1987

	City	RCPC	Country	Other Fed	Deadlines
BOSTON	2.8¢	2.8¢		6.0¢	0700/2100/0001
WINDSOR LOCKS		2.8¢		6.0¢	2100/0001
LEWISTON		2.8¢		6.0¢	2100/0001
NEW YORK	3.5¢		3.8¢	6.8¢ a/	2100/0001
BUFFALO	2.3¢	2.5¢		5.6¢ b/	0001/0200
JERICHO		2.6¢		5.2¢ b/	2000/0001
CRANFORD		2.6¢		5.2¢ b/	2200/0001
UTICA		2.5¢		5.2¢ b/	2000/0001/0130
PHILADELPHIA	1.8¢	2.5¢		4.1¢	2100/2300
CLEVELAND	1.7¢	2.2¢		c/	2100/2200/0001
CINCINNATI	1.7¢	2.2¢		c/	2000/2230/0001
PITTSBURGH	1.7¢	2.2¢		c/	2000/2130/0001
COLUMBUS	1.7¢	2.2¢		c/	2200/0001
RICHMOND	1.7¢	2.2¢		5.1¢	2115
BALTIMORE	1.8¢	2.3¢		5.2¢	2030/2330
CHARLOTTE	1.7¢	2.1¢		5.1¢	2130
COLUMBIA	1.8¢	2.1¢		5.2¢	2200
CHARLESTON	1.9¢	2.2¢		5.5¢	2115
ATLANTA	1.4¢	2.0¢		4.9¢	2130
BIRMINGHAM	1.4¢	2.0¢		4.7¢	2130
JACKSONVILLE	1.3¢	2.0¢		4.6¢	2000
NASHVILLE	1.6¢	2.2¢		5.0¢	2230
NEW ORLEANS	1.3¢	2.1¢		4.3¢	0001
MIAMI	1.3¢	2.0¢		4.3¢	1900
CHICAGO	2.3¢ d/	3.4¢ d/		5.7¢ d/	1830/2100/2300
DETROIT	2.2¢	2.2¢		5.3¢	2100/2315/0001
DES MOINES	1.7¢	2.5¢		5.0¢ e/	2000/2300
INDIANAPOLIS	1.6¢	1.8¢		4.9¢	2100/2300
MILWAUKEE	2.1¢	2.2¢		5.9¢	2130/2330/0001
ST. LOUIS	2.7¢	2.7¢	2.7¢	5.7¢	0800/1730/2000/0130
LITTLE ROCK	2.6¢	2.6¢		5.8¢	0900/1730/2000/0001
LOUISVILLE	2.5¢	2.5¢		5.6¢	0815/0001
MEMPHIS	2.7¢	2.7¢		6.8¢	0800/0001
MINNEAPOLIS	3.1¢	3.1¢	3.1¢ f/	6.3¢	0800/1230/1830/2200/0001

ATTACHMENT 4

FEDERAL RESERVE SYSTEM
CHECK COLLECTION SERVICE AND FEE SCHEDULE
MIXED DEPOSITS
EFFECTIVE JANUARY 1, 1987

	City	RCPC	Country	Other Fed	Deadlines
HELENA	2.1¢	2.9¢	3.1¢	6.0¢	0830/1900/0001
KANSAS CITY	2.0¢		3.2¢	6.2¢	0830/1330/1530/1800/2100/0001
DENVER	2.0¢	2.3¢	2.9¢	5.4¢	0900/1300/1430/2030/0001
OKLAHOMA CITY	1.9¢	2.3¢	2.5¢	6.5¢	0900/0400/0001
OMAHA	2.1¢	2.5¢	3.1¢	6.5¢	0900/1500/2000/0030
DALLAS	1.7¢	2.2¢	2.7¢	6.1¢	0900/1200/1900/0001
EL PASO	1.7¢	3.0¢		6.1¢	0915/1200/0001
HOUSTON	1.7¢	2.2¢		6.1¢	0900/1200/1900/0001
SAN ANTONIO	1.7¢	2.2¢		6.1¢	0930/1200/1900/0001
SAN FRANCISCO	4.1¢	4.1¢	4.1¢	4.1¢	0001
LOS ANGELES	4.1¢	4.1¢		4.1¢	0001
PORTLAND	3.9¢	3.9¢		3.9¢	0001
SALT LAKE CITY	3.9¢	3.9¢		3.9¢	0001
SEATTLE	3.9¢	3.9¢		3.9¢	0001

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a/ For Second District items outside the local zone, NYC charges 3.8¢.

b/ For Second District items outside local zone, the charge is 2.9¢.

c/ All offices in the Fourth District charge based on the following five Other Fed groups:

A	4.0¢
B	4.5¢
C	5.0¢
D	6.0¢
E	7.0¢

d/ Add 0.1¢ to the price at the late deadline.

e/ Add 0.2¢ to the price at the late deadline.

f/ Country items which receive immediate credit are priced at 4.4¢.

ATTACHMENT 4

FEDERAL RESERVE SYSTEM
CHECK COLLECTION SERVICE AND FEE SCHEDULE
OTHER FED SERVICES
EFFECTIVE JANUARY 1, 1987

	Other Fed Unsorted		Other Fed Group		Other Fed Nonmachinable	MDGS SuperGroup	MDGS Cull From Mix
	Price ¢	Deadline	Price ¢	Deadline	Price ¢	Price ¢	Price ¢
Boston	5.4	0001			26		
Lewiston					26		
Windsor Locks	5.4	0001			26		
New York	6.8	2100	A 6.2 B 6.0	2230	30	19.5	
Buffalo	5.6	1000			25		
Jericho	5.2	2100	A 5.1 B 4.5	2200 0001			
Cranford	5.2 5.7	0001 2200	A 5.2 B 4.4 C 5.5	2230 0001 0001			
Utica	5.2	2000	A 5.1 B 4.5	2100 0001			
Philadelphia	4.4 4.2	2130 2300	4.4	0001	32	18 Basic 20 Premium	
Cleveland	*	2100/2200/0001	City 3.8 RCPC 4.0	0130 0130	29	35	35
Cincinnati	*	2000/2230					
Pittsburgh	*	2000/2130/0001					
Columbus	*	2200/0001					
Richmond	5.1	1900	4.9	2115/2330	23.5	15	
Baltimore	5.2	2030/2330			30		
Charlotte	5.1	2130	5.1	2130	20	15	20
Columbia	5.2	2230					

* Each of the offices in the Fourth District prices unsorted Other Fed work based on the following five groups:

A 4.0
B 4.5
C 5.0
D 6.0
E 7.0

ATTACHMENT 4

FEDERAL RESERVE SYSTEM
CHECK COLLECTION SERVICE AND FEE SCHEDULE
OTHER FED SERVICES
EFFECTIVE JANUARY 1, 1987

	Other Fed Unsorted		Other Fed Group			Other Fed Nonmachinable	HDGS SuperGroup	HDGS Cull From Mix
	Price ¢	Deadline		Price ¢	Deadline	Price ¢	Price ¢	Price ¢
Charleston	5.5	2115		5.4	2115	30		
Atlanta	4.3	2130		4.2	2200	23		
Birmingham	4.6	1900	A	3.2	2000	23	12	
			B	3.6	2100			
			C	4.6	2300			
			D	3.2	1000			
			E	3.6	1000			
Jacksonville	4.5	2300	A	3.8	2130	23	15.3	
			B	1.8	2300			
			C	3.5	1200			
			D	4.3	1600			
Nashville	1.9	2230	A	3.9	1830	25		38
			B	3.2	1830			
			C	3.5	1830			
New Orleans	4.2	1615	A	4.9	1615	22.2		
			B	3.9	2000			
			C	4.4	2230			
			D	3.5	1300			
			E	2.3	2000			
Miami	4.2	1300	A	3.2	0001	23		
			B	3.8	2200			
			C	4.4	1930			
			D	2.0	0001			
Chicago	5.7	1830/2100/2300				30		35
Detroit	5.2	2100/2315/0001				30		35
Des Moines	5.0 5.2	2000/2200 0001				25		30
Indianapolis	4.8	2100/2300				24		30
Milwaukee	5.8	2130/2330/0001				25		30
St. Louis	5.7	1700/2000				30.4		
Little Rock	5.8	1730/0030		4.8	1730/0030/2000	21.9		
Louisville	5.6	0001		5.3	0001	21		
Memphis	6.8	1300				21.6		

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FEDERAL RESERVE SYSTEM
CHECK COLLECTION SERVICE AND FEE SCHEDULE
OTHER FED SERVICES
EFFECTIVE JANUARY 1, 1987

	Other Fed Unsorted		Other Fed Group		Other Fed Nonmachinable	HDGS SuperGroup	HDGS Cull From Mix
	Price ¢	Deadline	Price ¢	Deadline	Price ¢	Price ¢	Price ¢
Minneapolis	6.3	1230/1830/2200			20		
Helena	5.9	0830/1900			20		
Kansas City	6.0	1330/1530/1800			26.5		
Denver	5.2	1430/2030			30.6		
Oklahoma City	6.3	1830			14.4		
Omaha	6.3	2130	5.3	2200	14.5		
Dallas	6.0	1200/1900			30.7		
El Paso	6.0	1200					
Houston	6.0	1200/1900					
San Antonio	6.0	1200/1900					
San Francisco	5.6	1400	4.5	1/	30		
Los Angeles	5.6	1400	4.5	1/	30		
Portland	5.5	1200	4.3	1/	30		
Salt Lake City	5.5	2030	4.3	2145	30		
Seattle	5.5	1200	4.3	1/	30		

1/ Deadline depends on composition of the group.

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ATTACHMENT 4

FEDERAL RESERVE SYSTEM
CHECK COLLECTION SERVICE AND FEE SCHEDULE
PAYOR BANK SERVICES
EFFECTIVE JANUARY 1, 1987

	MICR CAPTURE						ITEM OUTSORT		
OFFICE	FEE PER DAY FIXED	MIN.	PER ITEM	REJECTS	FINE SORTED ITEMS	TRANSMISSION SURCHARGE	PER POCKET	PER ITEM	
BOSTON DIST	$20.00		$0.001		$0.012		$100.00	$0.001	
NEW YORK OFFICE		$25.00	0.001		0.023	$50 min. & .005/ item over 5000	$150.00	0.001	OVER 25,000
OTHER 2ND DIST OFFICES		$75.00	0.001		0.012		$25-$75		
PHILADELPHIA			0.001	$0.06	0.014 $1.50/PKG	$0.004	$30.00 MIN	0.001	
			0.01 surcharge to microfilm						
CLEVELAND DIST		$10.00	0.003		0.011	no charge	$25.00		
			0.005 premium						
RICHMOND DISTRICT			0.003		0.011 $1/PKG	0.004	$50.00	0.002	
			0.01 surcharge to microfilm at Richmond						
ATLANTA		$15.00	0.002	0.25		0.002			
			0.006 surcharge to microfilm						
BIRMINGHAM		$25.00	0.0025	0.25		0.002			
JACKSONVILLE		$25.00	0.0025			0.004			
MIAMI		$15.00	0.002			0.002			
NASHVILLE		$15.00	0.0015	0.10		0.0015		0.0005	$13 min.
NEW ORLEANS	$15.00		0.0025	0.25		0.002			
CHICAGO DIST		$20.00	0.003		0.028 $50.00 MIN	.003 & $20 min	$100.00		
ST LOUIS	$25.00		0.001	0.10	0.013		$25.00	0.001	
LITTLE ROCK	$15.00		0.001		0.012		$25.00	0.001	
LOUISVILLE	$15.00		0.001		0.012		$25.00	0.001	
MEMPHIS	$15.00		0.001	0.10	0.012		$25.00	0.001	
MINNEAPOLIS		$15.00	0.003		0.017 $22.00 MIN	$12 min.	$25.00	0.002	OVER 200,000
HELENA		$10.00	0.0043	0.1%		no charge		0.0035	
KANSAS CITY							$25.00	0.001	
DENVER	$25.00		0.0005		0.009 $5.00 MIN		$25.00	0.001	
OKLAHOMA CITY	$25.00		0.0005		0.009 $5.00 MIN		$25.00	0.001	
OMAHA	$25.00		0.0005		0.009 $5.00 MIN		$25.00	0.001	
DALLAS DIST							$75.00	0.0015	
SAN FRANCISCO DIST	$25.00		0.001	$500/mo.fixed & 0.002					

ATTACHMENT 4

FEDERAL RESERVE SYSTEM
CHECK COLLECTION SERVICE AND FEE SCHEDULE
PAYOR BANK SERVICES
EFFECTIVE JANUARY 1, 1987

ACCOUNT TOTALS

OFFICE	BASIC ACCOUNT FEES	PER ITEM	REJECTS	FINE SORTED ITEMS	OUTPUT: TAPE	HARD COPY	NOTIFICATION BY: TELEPHONE	WIRE	DATA COMMUNICATION
BOSTON DIST	$150/mo.& $5/acct over 10		$0.50	$0.012		Incl in base fee	$100/mo.& $2/acct over 10		$150/mo.
NEW YORK DIST	$1/acct/day & $28 min			0.023	$40 fixed & $.10/acct over 50	Incl in base fee	$1/acct & $28 min	$50 min. & $.25/acct over 50	
PHILADELPHIA	$.56/acct/day		0.06	0.014 $1.50/pkg	$20	$.50/acct & $15 min	$.75/acct & $20 min	$.75/acct & $20 min	$25/day A surcharge of $75/day the first year applies to cover development costs.
CLEVELAND DIST	$.25/acct/day			0.011		$.25/acct & $10 min	$.25/acct & $25 min	$.25/acct & $8 min	
RICHMOND DIST	$25/day & $.25/acct over 20			0.011 $1/pkg at Richmond	$10		$15/day		
ATLANTA DIST	$.50/acct/day & $10-$25 min	0.0015					$3	$.55	
CHICAGO DIST	$1/acct/day & $30 min			0.025 & $50 min		$1/acct & $30 min	$1/acct, $30 min		
ST LOUIS	$25/day	0.001	0.10	0.013	$25				
LITTLE ROCK	$25/day	0.001		0.012	$15				
LOUISVILLE	$25/day	0.001		0.012	$15				
MEMPHIS	$25/day	0.001	0.10	0.012	$15				
MINNEAPOLIS	$10/day & $.50/acct over 10								
HELENA	$150/mo & $8/acct over 10		0.196				Included in base fee.		
KANSAS CITY	$.50/acct/day & $5 min	0.0005		0.009 $5 min					
DENVER	$.50/acct/day & $5 min	0.0005		0.009 $5 min					
OKLAHOMA CITY	$.50/acct/day & $5 min	0.0005		0.009 $5 min					
OMAHA	$.50/acct/day & $5 min	0.0005		0.009 $5 min					
DALLAS DIST	$.50/acct/day & $20 min		$15/day & $1 ea >20		.001/item & $20 min	no charge	$15/day, $.50/acct over 30 accts		
SAN FRANCISCO DIST	$300/mo & $12/acct over 10								

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ATTACHMENT 4

FEDERAL RESERVE SYSTEM
CHECK COLLECTION SERVICE AND FEE SCHEDULE
OTHER SERVICES
EFFECTIVE JANUARY 1, 1987

Return Item Notification

	System
On-line wire notification	$2.25
Off-line telephone notification	$4.25
Off-line physical item return	$4.25

Other Priced Return Services

	Kansas City	Dallas	St. Louis	Atlanta
Clearinghouse returns	$.275	N/A	N/A	
Physical Return	N/A	$.50	N/A	
Automated Return	N/A	$.25	N/A	
Accelerated Returns	N/A	N/A	$.085/$1.50M	$.10/$5.00M

Truncation Pilot

	New York	Philadelphia	Richmond	Atlanta
Basic Service 1/	$ .020	$ .016	$ .015	$ .015
Fine sort - item	$ .023	$ .020	$ .018	$ .018
- package	$ 1.00	$ 1.50	$ 1.00	$1.00
Return Items	--	--	$ 2.75 2/	--
- telephone	$ 2.95	$ 2.95	N/A	$2.95
- automated	$ 2.25	$ 2.25	N/A	$2.65
Retrievals	$ 1.00	$ 1.00	$ 1.25	$1.00
Data Transmission	$ .005	$ .004	$ .004	$ .002
Per Tape			$10 F	

Share Draft Truncation

	Kansas City
Basic Service 3/	$.015/item

Microfilming

	Atlanta Office
Front-end	$.006/item
Back-end	$.006/item

F- Fixed Fee M - Minimum Fee

1/ Includes MICR capture, reject reentry, backend microfilming, storage and destruction.

2/ The same fee applies regardless of the method of notification.

3/ Includes MICR capture, data transmission, backend microfilming, and delivery of paper items.

ATTACHMENT 4

FEDERAL RESERVE SYSTEM
CHECK COLLECTION SERVICE AND FEE SCHEDULE
OTHER SERVICES
EFFECTIVE JANUARY 1, 1987

Special Settlement Services

	Minneapolis
Clearinghouse Settlement	$6,500/mo.
- semi automated	$2,500/mo.

Remote Fine Sort

	Kansas City	Dallas
Per item	$.018	$.009
Per Package	$3.50	$2.50

Supplemental Interterritory Transportation

	Minneapolis
Per Other Fed Destination	$6 - $12
Per item	$.003

Priced Incoming Transportation Relays

Office	Relay	Fee
Utica	Albany	$10/day/user
Utica	Rochester	.8¢/day
Cleveland	Toledo/Findlay	Actual
Pittsburgh	Wheeling	$4.81/day/user
Pittsburgh	Erie	$4.81/day/user
Cincinnati	Dayton	$2.50/day/user
Cincinnati	Lexington	$2.58/day/user
Detroit	all relays	1 - 3,000 items $19/day 3,001 - 5,000 items $23/day 5,001 - 10,000 items $35/day over 10,000 items $85/day
Portland	S. Oregon	$24/month/user
Seattle	Bellingham	Actual
Seattle	Spokane	Actual

ATTACHMENT 4

FEDERAL RESERVE SYSTEM
CHECK COLLECTION SERVICE AND FEE SCHEDULE
OTHER SERVICES
EFFECTIVE JANUARY 1, 1987

Foreign Items

Philadelphia

Participating as pilot Federal Reserve Bank. Fee is currently being determined by RFP process.

BILLING CODE 6210-01-C

ATTACHMENT 5.—FEDERAL RESERVE SYSTEM, AUTOMATED CLEARING HOUSE SERVICE AND FEE SCHEDULE, NATIONALLY ESTABLISHED AUTOMATED FEES, EFFECTIVE APRIL 1987[1] [2]

	Transaction fees (cents)
Origination:	
Intra-ACH	1.0
Intra-Addenda	.2
Inter-ACH	
Unsorted	1.8
Presort Consolidated	1.2
Presort Direct Send	1.0
Inter-Addenda	.3
Receipt:	
Intra-ACH	1.0
Intra-Addenda	.2
Inter-ACH	1.8
Inter-Addenda	.3
New York	1.2
	Other fees
File processing	$1.00

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[1] Effective April 1987, the following Automated Clearing House transactions will be billed as regular items: Corporate Trade Payments (CTP), Corporate Trade Exchange (CTX), Depository Institution Automated Returns (RET), Depository Institution Automated Notification of Changes (COR), and Prenotifications.

[2] Night cycle processing surcharges are currently 6.0¢ for debit transactions and 3.0¢ for next day credits. These fees may be lowered at a later date to reflect float recovery through some other means, e.g., a float factor.

ATTACHMENT 5.—FEDERAL RESERVE SYSTEM, AUTOMATED CLEARING HOUSE SERVICE AND FEE SCHEDULE, LOCALLY ESTABLISHED NONAUTOMATED FEES, EFFECTIVE APRIL 1987

	Tapes billed fee	Non-electronic delivery fee	Messenger pickup fee	Telephone[1] advice fee	Common paper returns & NOC fee	Diskette output fee
Boston	$3.00	$3.50	$2.50	$2.50	$3.50	$2.00
New York	3.00	3.50	3.00	2.50	3.00	
Philadelphia	3.00	3.50	2.50	2.50	2.75	
Cleveland	3.50	4.50	4.50	3.00	3.50	
Richmond	3.50	4.00	3.00	2.50	3.00	2.50
Atlanta	3.00	3.50	2.50	3.50	2.75	3.00
Chicago	3.50	4.50	3.00	3.00	3.50	3.00
St. Louis	3.50	4.50	3.00	3.50	2.75	
Minneapolis	3.50	4.00	3.00	3.50	3.50	
Kansas City	3.50	3.50	2.50	3.00	3.00	
Dallas	3.50	4.50	3.00	3.50	3.50	
San Francisco	3.50	4.50	3.00	3.50	3.50	2.00

[1] Additional pieces of telephone information have been uniformly priced at 5.0¢.

ATTACHMENT 6

FEDERAL RESERVE SYSTEM, WIRE TRANSFER AND NET SETTLEMENT SERVICE 1987 FEE SCHEDULE

	Fees
Wire transfer of funds:	
Basic transfer originated.	$0.50.
Basic transfer received.	$0.50.
Off-line origination	$6.00.
Telephone advice	$3.50.
Net settlement:[1]	
Settlement entry	$1.30.
Off-line settlement	$8.00.
Telephone advice	$3.50.
Electronic connections:	
Dedicated leased line.	$400 per month.
Multi-drop leased line.	$250 per month.
Dial-up	$60 per month.

[1] In cases where net settlement arrangements resulted in higher operating costs than those incurred for standard arrangements, the Reserve Banks may establish higher fees.

BILLING CODE 6210-01-M

ATTACHMENT 7

1987 Price Schedule

Definitive Safekeeping

	Deposits		Withdrawals		Receipts/Issues Per Month				Purchases And Sales		Re-Registrations		Per Month Per $1,000 Par Value	
	1986	1987	1986	1987	1-400 1986	1-400 1987	400+ 1986	400+ 1987	1986	1987	1986	1987	1986	1987 1/
Boston	12.50	12.50	12.50	12.50	2.90	2.90	2.20	2.20	15.00	15.00	12.50	12.50	-	-
New York	40.00	40.00	40.00	40.00	5.35	5.35	4.75	4.75	23.00	23.00	40.00	40.00	0.0050	0.0050
Philadelphia 2/	16.00	16.00	16.00	16.00	3.25	3.25	2.25	2.25	20.00	20.00	20.00	20.00	-	-
Cleveland	15.00	15.00	15.00	15.00	2.00	2.00	1.50	1.50	25.00	25.00	15.00	15.00	0.0050	0.0050
Richmond	15.00	15.00	15.00	15.00	1.95	1.95	1.45	1.45	20.00	20.00	15.00	15.00	-	-
Atlanta 3/	0.00	0.00	7.00	7.00	*see below		*see below		0.00	0.00	5.00	5.00	-	-
Chicago	15.00	15.00	15.00	15.00	4.00	4.00	3.00	3.00	22.00	22.00	15.00	15.00	-	-
Detroit 4/	15.00	15.00	15.00	15.00	3.00	3.00	2.75	2.75	0.00	0.00	15.00	15.00	-	-
St. Louis	18.00	18.00	18.00	18.00	2.50	3.10	1.50	1.55	0.00	0.00	20.00	20.00	-	-
Minneapolis	11.50	13.50	11.50	13.50	1.85	2.50	0.75	1.50	15.00	21.00	11.50	13.50	-	-
Kansas City	15.00	15.00	15.00	15.00	2.50	3.00	2.25	2.50	20.00	25.00	15.00	15.00	-	-
Dallas	10.00	10.00	10.00	10.00	2.25	2.25	2.00	2.00	26.50	26.50	10.00	10.00	0.0080	0.0080

1/ Applied to coupon bearing securities only.

2/ Philadelphia imposes a $2.25 receipt fee for all registered securities. This is to recognize the lower handling costs of registered securities versus bearer securities.

3/ Atlanta has a three tier structure: 1-500 receipts at $2.50 in 1986/1987; 500-1000 at $2.00 in 1986/1987; and 1000+ at $1.50 in 1986/1987.

4/ For depository institutions maintaining more than 100 receipts, Detroit fees are as follows and include the collection of coupons: 1-100 receipts at $3.50 in 1986/1987; over 100 receipts at $3.00 in 1986/1987.

ATTACHMENT 7

1987 Price Schedule
Noncash Collection
(For Banks Not Offering A Mixed Deposit Product)

	Local Coupons City		Local Coupons Country		Add-On Fee for Interdistrict Coupons		Postage and Insurance 1/		Return Items		Bond Redemptions And Sales 2/	
	1986	1987	1986	1987	1986	1987	1986	1987	1986	1987	1986	1987
Boston	$2.00	$2.00	$2.00	$2.00	$2.75	$2.75	$1.00	$1.00	$ 3.00	$ 3.00	$12.50	$12.50
New York	3.00	3.00	4.50	4.50	5.50	5.50	0.75	0.75	10.00	10.00	40.00	40.00
Philadelphia	2.90	2.90	2.90	2.90	3.45	3.45	1.00	1.00	10.00	10.00	20.00	20.00
Richmond	2.00	2.00	2.00	2.00	3.50	3.50	1.00	1.00	5.00	10.00	20.00	20.00
Chicago 3/	5.00	5.00	5.00	5.00	3.25	3.25	1.00/ 2.00	1.00/ 2.00	10.00	10.00	20.00	20.00
Detroit	2.75	2.75	3.50	3.50	3.00	3.00	0.00	0.00	10.00	10.00	15.00	15.00
Minneapolis 4/	2.50	4.25	2.50	4.25	3.50	4.40	0.60	0.00	10.00	10.00	11.50	15.00
Kansas City	3.50	4.00	3.50	4.00	3.50	3.50	1.00	1.00	10.00	10.00	20.00	25.00
San Francisco 4/	5.00	N/A	5.00	N/A	N/A	N/A	N/A	N/A	10.00	N/A	35.00	N/A

1/ Per $1,000 value shipped.

2/ Plus out-of-pocket expenses if any.

3/ Chicago - Postage and Insurance $1.00 local, $2.00 interdistrict.

4/ Minneapolis charges a fee of $4.00 (including postage and insurance) to collect 12th District coupons in 1986 and $4.40 in 1987 and a fee of $11.50 to collect 12th District bonds in 1986 and $15.00 in 1987.

ATTACHMENT 7

1987 Price Schedule
Noncash Collection
(For Banks Offering A Mixed Deposit Product)

	Local Coupons From In-District DI'S				Local Coupons From Out-Of-District DI'S				Inter-District Coupons				Return Items		Bond Redemptions And Sales	
	City		Country		City		Country		Fine Sort		Mixed					
	1986	1987	1986	1987	1986	1987	1986	1987	1986	1987	1986	1987	1986	1987	1986	1987
Cleveland	2.75	2.75	3.00	3.00	3.25	3.25	3.50	3.50	4.25	4.25	5.25	5.25	10.00	10.00	15.00	15.00
Atlanta	1.75	1.75	2.50	2.50	2.40	2.40	3.15	3.15	2.75	2.75	3.75	3.75	0.00	3.00	7.50	7.50
St. Louis 1/	3.60	4.00	3.60	4.00	3.60	4.00	3.60	4.00	3.60	4.00	3.60	4.00	0.00	10.00	15.00	15.00
Dallas	3.00	3.00	3.00	3.00	3.50	3.50	3.50	3.50	3.25	3.25	4.50	4.50	10.00	10.00	20.00	20.00

1/ St. Louis intra-district fine sort coupons $1.75 per envelope in 1986 and $2.00 in 1987.

BILLING CODE 6210-01-C

ATTACHMENT 8.—FEDERAL RESERVE SYSTEM, BOOK-ENTRY SERVICE AND FEE SCHEDULE [1]

Component	Transaction	Fees
On-line transfers originated New York	Per transfer	$3.00
9:00 a.m.–12:00 noon	Per transfer	1.00
12:01 p.m.–2:00 p.m.	Per transfer	3.00
2:01–Closing	Per transfer	5.00
Off-line transfers originated	Per transfer	10.00
Off-line transfers received	Per transfer	10.00
Account maintenance	Per account/per month	15.00
Issues in accounts maintained	Per issue/per month	.50
Funds settlement	Per transfer	.75

[1] These fees are in place currently.

[FR Doc. 86–25408 Filed 11–24–86; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisitions of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817 (j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. That factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817 (j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the office of the Board of Governors. Comments must be received not later than December 10, 1986.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Donald Betts*, Adair, Iowa; Arthur R. Friday, Atlantic, Iowa; Roy D. Harris, Harlan, Iowa; Charles E. Hornbuckle, Shenandoah, Iowa; Lynn F. Johnson, Essex, Iowa; Harold O. Larsen, Atlantic, Iowa; W.E. Lloyd, Shenandoah, Iowa; Edward Naven, Corning, Iowa; LeRoy F. Nelson, Atlantic, Iowa; Darryl D. Smith, Atlantic, Iowa; C. Norlyn Taylor, Woodbine, Iowa; Lynn Taylor, Zillisca, Iowa; and Kendal C. Warne, Sr., Atlantic, Iowa, to acquire 99.97 percent of the voting shares of Anita Bancorporation, Newton, Iowa, and thereby indirectly acquire Anita State Bank, Newton, Iowa.

2. *Harrington M. Cummings*, Gay G. Cummings, and Cummings & Co., Fremont, Michigan; to retain ownership of 12.92 percent of the voting shares of The Old State Bank of Fremont, Fremont, Michigan.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Weldon and Leah Jane Brady*, Knob Noster, Missouri; to acquire 43.5 percent of the voting shares of Sweet Springs Bancshares, Inc., Sweet Springs, Missouri, and thereby indirectly acquire Chemical Bank, Sweet Springs, Missouri.

C. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Gary C. and Norma E. Byrne*, Sacramento, California; to acquire 23.80 percent of the voting shares of Alex Brown Financial Group, Sacramento, California, and thereby indirectly acquire Bank of Alex Brown, Sacramento, California, and Meridian National Bank, Concord, California.

Board of Governors of the Federal Reserve System, November 19, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–26508 Filed 11–24–86; 8:45 am]

BILLING CODE 6210-01-M

Citicorp et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 12, 1986.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Citicorp*, New York, New York; to engage *de novo* in collection agency and credit bureau activities pursuant to §§ 225.25(b)(23) and 225.25(b)(24) of the Board's Regulation Y.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Maxwell Corporation*, Charleston, West Virginia; to engage *de novo* in management counsulting to banks in all managerial areas, such as board policy, staffing, and product pricing pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 19, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–26509 Filed 11–24–86; 8:45 am]

BILLING CODE 6210-01-M

VOL 51 ISS 227 NO 25 1986 UMI

First Haralson Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 15, 1986.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *First Haralson Corporation*, Buchanan, Georgia; to acquire Thompson-Greene Insurance Agency, Tallapoosa, Georgia, and thereby engage in insurance activities in a town of less than 5,000 persons pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in Buchanan and Tallapoosa, Georgia.

Board of Governors of the Federal Reserve System, November 19, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–26510 Filed 11–24–86; 8:45 am]

BILLING CODE 6210-01-M

First Mutual Holding Co. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and §225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 16, 1986.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. **First Mutual Holding Company**, Dover, New Hampshire; to become a bank holding company by acquiring 100 percent of the voting shares of Southeast Bank for Savings, Dover, New Hampshire. Comments on this application must be received by December 10, 1986.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. **Codorus Valley Bancorp, Inc.**, Glen Rock, Pennsylvania; to beome a bank holding company by acquiring 100 percent of the voting shares of Peoples Bank of Glen Rock, Glen Rock, Pennsylvania.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Bank Shares Incorporated*, Minneapolis, Minnesota; to acquire 88.27 percent of the voting shares of First State Bank of Apple Valley, Apple Valley, Minnesota. Comments on this application must be received by December 12, 1986.

2. *Con-West, Inc.*, Billings, Montana; to become a bank holding company by acquiring 80 percent of the voting shares of First Security Bank of Glendive, Glendive, Montana.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Dinsdale Bros., Inc.*, Central City, Nebraska; to merge with The Mitch Corporation, Central City, Nebraska, and thereby indirectly acquire First National Bank in Mitchell, Mitchell, Nebraska. Comments on this application must be received by December 15, 1986.

Board of Governors of the Federal Reserve System, November 19, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–26511 Filed 11–24–86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84D–0141]

Extra-Label Use of New Animal Drugs in Food-Producing Animals; Availability of Revised Compliance Policy Guide

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of revised Compliance Policy Guide 7125.06 prepared by FDA's Center for Veterinary Medicine and entitled "Extra-Label Use of New Animal Drugs in Food-Producing Animals." On August 1, 1986, the guide was revised to provide that the extra-label use of new animal drugs in medicated feed is not permitted under this discretionary policy. On November 1, 1986, the guide was revised to add to the listing for high priority regulatory attention the use of any nitroimidazoles in species, e.g., swine, in which use of the compounds is unapproved.

ADDRESS: The revised guide is available for public examination at, and comments and requests for single copies may be sent to, the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Edward J. Ballitch, Center for Veterinary Medicine (HFV-230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3336.

SUPPLEMENTARY INFORMATION: Concern over numerous questions regarding extra-label use of drugs in animal feeds has prompted FDA's Center for Veterinary Medicine (CVM) to announce a revision in its extra-label use policy to make it clear that the extra-label use of new animal drugs in animal feed is not permitted. On August 1, 1986, CVM revised its Compliance Policy Guide 7125.06 to clarify that a new animal drug may be used in medicated feed only as specifically permitted by regulation in 21 CFR Part 558. On November 1, 1986, CVM revised the guide by adding to the listing for high priority regulatory attention the use of dimetridazole, ipronidazole, or any other nitroimidazole in species, e.g., swine, in which use of the compound is unapproved. The November 1 revision is based on serious questions about the safety of residues which may occur from extra-label use of these drugs.

For the purpose of CVM's extra-label use policy, "extra-label use" refers to the actual or intended use of an approved new animal drug in a food-producing animal in a manner that is not in accordance with the drug's labeling.

The revised policy guide states that the highest priorities for regulatory action will be given to cases of extra-label use of new animal drugs in treating food-producing animals, when:

(1) Illegal residues occur;

(2) Chloramphenicol or diethylstilbestrol (DES) is used in food animals;

(3) Dimetridazole, ipronidazole, or any other nitroimidazole is used in a species, e.g., swine, in which use of the compound is unapproved;

(4) Manufacturers and distributors promote extra-label use of drugs;

(5) Drugs are mixed into medicated feeds intended for extra-label use; or

(6) Laymen use products in an extra-label manner at their own initiative.

Compliance Policy Guide 7125.06 is available for public examination at, and requests for single copies may be sent to, the Dockets Management Branch (address above). In accordance with 21 CFR 10.85 (d)(3) and (i), any person may submit written comments on the revised guide. Written comments should be sent to the Dockets Management Branch. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with Docket No. 84D-0141. Although any comments will be considered if the guide is revised again in the future, the agency will not defer regulatory action pending any such revision.

Dated: November 18, 1986.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-26477 Filed 11-24-86; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

Cancer Center Support Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Center Support Review Committee, National Cancer Institute, December 4-5, 1986, Holiday Inn Crowne Plaza, Rockville, Maryland 20852. This meeting will be open to the public on December 4 from 8:30 a.m. to 9:30 a.m. to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on December 4, from 9:30 a.m. to recess, and on December 5, from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. John W. Abrell, Executive Secretary, Cancer Center Support Review Committee, National Cancer Institute, Westwood Building, Room 834, National Institutes of Health, Bethesda, Maryland 20892 (301/496-9767) will furnish substantive program information.

This notice is being published less than 15 days prior to the meeting because the conflicting schedules of committee members prevented the meeting from being held at a later date.

Dated: November 17, 1986.

Betty J. Beveridge

Committee Management Officer, NIH.

[FR Doc. 86-26816 Filed 11-24-86; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

National Committee on Vital and Health Statistics, Subcommittee on Disease Classification and Automated Coding of Medical Diagnoses; Correction to Notice of Meeting

Pursuant to the Federal Advisory Act (Pub. L. 92-463), notice is hereby given that the Subcommittee on Disease Classification and Automated Coding of Medical Diagnoses of the National Committee on Vital and Health Statistics (NCVHS) established pursuant to 42 USC 242k, section 306(k)(2) of the Public Health Service Act, as amended, will convene on Tuesday, December 2, 1986 at 9:00 a.m. in Building 31, C-Wing, 6th Floor, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. This notice corrects the day and location of this meeting which was published on page 41669 of the November 18, 1986 issue of the Federal Register.

The Subcommittee will receive presentations from the National Center for Health Statistics on the current status of the Tenth Revision to the International Classification of Diseases (ICD-10). The meeting will also provide a forum for interested parties to express their views.

Further information regarding this meeting of the Subcommittee may be obtained by contacting Gail F. Fisher, Ph.D., Executive Secretary, National Committee on Vital and Health Statistics, Room 2-28, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436-7050.

Dated: November 20, 1986.

Manning Feinleib, M.D., Dr.P.H.,

Director, National Center for Health Statistics.

[FR Doc. 86-26854 Filed 11-24-86; 8:45 am]

BILLING CODE 4160-17-M

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[7-00151; ORE 09944; (OR-943-07-4220-11: GP7-017]

Proposed Continuation of Withdrawal; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture proposes that the land withdrawal for the Dale Ranger Station Administration Site continue for an additional 20 years. The land would remain closed to surface entry and mining but has been and would remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208 (Telephone 503-231-6905).

SUPPLEMENTARY INFORMATION: The Forest Service, U.S. Department of Agriculture proposes that the existing land withdrawal made by Public Land Order No. 2611 of February 12, 1962, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The land involved is located outside the Umatilla National Forest on the North Fork John Day River approximately 50 miles south of Pendleton and contains 10 acres within Section 36, T. 6 S., R. 31 E., W.M., Umatilla County, Oregon.

The purpose of the withdrawal is to protect the Dale Ranger Station Administrative Site. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: November 14, 1986.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-26490 Filed 11-24-86; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that certain accident investigation reports of blowout and/or fires that occurred on oil and gas facilities located on the Outer Continental Shelf are available to the public upon request.

ADDRESSES: Copies of the reports may be obtained from Minerals Management Service; Offshore Rules and Operations Division, MS 646; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

FOR FURTHER INFORMATION CONTACT: Mr. Price McDonald, Chief, Offshore Rules and Operations Division; Minerals Management Service; 12203 Sunrise Valley Drive, Mail Stop 646; Reston, Virginia 22091; Telephone (703) 648-7813, (FTS) 959-7813.

SUPPLEMENTARY INFORMATION: The available accident investigation reports are identified as follows:

Open file No.	Event and date	Area and block	Region
84-0040	Blowout, 7/20/83.	Matagorda Island, Block 657.	Gulf of Mexico
84-0050	Blowout, 10/20/83.	Eugene Island, Block 10.	Do.
85-0054	Explosion/Fire, 5/13/84.	West Cameron, Block 405.	Do.
85-0099	Fire, 8/17/84	East Cameron, Block 322.	Do.
86-0006	Fire, 1/6/84	Ship Shoal, Block 269.	Do.
86-0100	Blowout/Fire, 12/3/85.	West Cameron, Block 648.	Do.
86-0101	Blowout/Fire, 9/14/84.	Green Canyon, Block 69.	Do.

Dated: November 17, 1986.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 86-26492 Filed 11-24-86; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF THE INTERIOR

Oil and Gas and Sulphur Operations in Outer Continental Shelf; ODECO Oil and Gas Co.

AGENCY: Minerals Management Service, Department of the Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document.

SUMMARY: This Notice announces that ODECO Oil & Gas Company, Unit Operator of the Ship Shoal Block 113 Federal Unit Agreement No. 14-08-001-2931, submitted on November 12, 1986, a proposed Development Operations Coordination Document describing the activities it proposes to conduct on the Ship Shoal Block 113 Federal unit.

The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Wholesalers Parkway, New Orleans, Louisiana 70123.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 114, open weekdays 9:00 a.m. to 3:30 p.m., 1201 Wholesalers Parkway, New Orleans, Louisiana 70123, phone (504) 736-2519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in the proposed development operations coordination document available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: November 17, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-26491 Filed 11-24-86; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Intention To Extend Concession Contract

Pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the

Department of the Interior, through the Director of the National Park Service, proposes to extend concession contracts with Bullfrog Marina, Incorporated and Hite Resort & Marina, Incorporated, authorizing them to continue to provide accommodations, facilities and services for the public at Glen Canyon National Recreation Area, Arizona for a period of one (1) year from January 1, 1987, through December 31, 1987.

These contract extensions have been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioners have performed their obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on December 31, 1986, and therefore, pursuant to the Act of October 9, 1965, as cited above, are entitled to be given preference in the renewal of the contracts and in the negotiation of new contracts as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioners, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Rocky Mountain Region, Denver, Colorado, for information as to the requirements of the proposed contracts.

Dated: October 1, 1986.

Homer L. Rouse,

Acting Regional Director, Rocky Mountain Region.

Approved September 29, 1986.

Curtis H. Menefee,

For the Regional Solicitor, Rocky Mountain Region.

[FR Doc. 86-26562 Filed 11-24-86; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; NHL Boundaries

The National Park Service has been working to establish boundaries for all National Historic Landmarks for which no specific boundary was identified at the time of designation and therefore are without a clear delineation of the amount of property involved. The results of such designation make it important that we define specific boundaries for each landmark.

In accordance with the National Historic Landmark program regulations 36 CFR 65, the National Park Service notifies owners, public officials and other interested parties and provides them with an opportunity to make comments on the proposed boundaries.

The 60-day comment period on the attached National Historic Landmark has ended, and the boundaries have been established. Copies of the documentation of the landmark and its boundaries, including maps, may be obtained from Jerry L. Rogers, Associate Director, Cultural Resources, and Keeper of the National Register of Historic Places, National Park Service, P.O. Box 37127, Washington, DC 20012-7127, Attention: Chief of Registration (Phone: 202-343-9536).

Carol D. Shull,

Chief of Registration, National Register of Historic Places, Interagency Resources Division.

Mesilla Plaza
Mesilla, New Mexico (Dona Ana County)

[FR Doc. 86-26560 Filed 11-24-86; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 15, 1986. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by December 10, 1986.

Carol D. Shull,

Chief of Registration, National Register.

CONNECTICUT

Hartford County

Newington, *Newington Junction North Historic District (Newington Junction MRA)*, 55–108 Willard Ave.

Newington, *Newington Junction Railroad Depot (Newington Junction MRA)*, 160 Willard Ave. and 200 Francis Ave.

Newington, *Newington Junction South Historic District (Newington Junction MRA)*, 268–319 Willard Ave.

Newington, *Newington Junction West Historic District (Newington Junction MRA)*, 175 & 181–183 Willard Ave., and 269–303 W. Hill Rd.

Newington, *Willard Homestead (Newington Junction MRA)*, 372 Willard Ave.

DELAWARE

New Castle County

Odessa vicinity, *Old Ford Dairy (Boundary Increase) (Rebuilding St. Georges Hundred 1850–1880 TR)* US 13

KANSAS

Reno County

Hutchinson, *Whiteside, Houston, House*, 504 E. Sherman

KENTUCKY

Kenton County

Covington, *Austinburg Historic District (Eastside MRA)*, Roughly bounded by Chesapeake & Ohio RR, Licking River floodwall, rear lot lines of N side of Wallace Ave., and Madison Ave.

Covington, *Emery-Price Historic District (Eastside MRA)*, Roughly bounded by Eighth, Greenup, and Eleventh Sts., and alley behind W side of Scott Blvd.

Covington, *Helentown Historic District (Eastside MRA)*, Roughly bounded by Eleventh and Wheeler Sts., Chesapeake & Ohio RR, and Madison Blvd.

Covington, *West Fifteenth Street Historic District (Eastside MRA)*, 1445–1451 and 1501–1513 Madison Ave., 1421–1423 Neave St., and 10–32 W. Fifteenth St.

MAINE

Piscataquis County

Sebec-Piscataquis River Confluence Prehistoric Archaeological District

MASSACHUSETTS

Bristol County

Taunton, *U.S. Post Office-Taunton Main*, 37 Taunton Green

NEW JERSEY

Mercer County

Trenton, *Trenton and Mercer County War Memorial-Soldiers' and Sailors' Memorial Building*, W. Lafayette St.

NORTH CAROLINA

Bladen County

Clarkton, *Clarkton Depot*, Elm and Hester Sts.

OKLAHOMA

Cleveland County

Norman, *Jacobson, Oscar B., House*, 609 S. Chatauqua Ave.

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Pontotoc County

Ada, *East Central State Normal School,* East Central University Campus

Pottawatomie County

Rose—Fast Site (34PT28)

SOUTH CAROLINA

Darlington County

Hartsville, *Arcade Hotel,* 204 N. Fifth St.

Laurens County

Laurens, *Wilson-Clary House (Laurens MRA),* 120 Irby Ave.

Richland County

Nipper Creek (38RD18)

York County

Rock Hill, *Winthrop College Historic District,* Along Oakland Ave. between Cherry Rd. and Stewart Ave. on the Winthrop College Campus

TENNESSEE

Smith County

Rome, *Rome Ferry,* US 70 at Cumberland River

VIRGINIA

Lynchburg (Independent City)

Kentucky Hotel, 900 Fifth St.

Powhatan County

Ballsville, *Blenheim,* 6177 Blenheim Rd.

WISCONSIN

Dane County

Madison, *Wiedenbeck—Bobelin Warehouse,* 619 W. Mifflin St.

[FR Doc. 86-26561 Filed 11-24-86; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-18,298]

Domenico, Inc., Lynn, MA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 14, 1986 in response to a worker petition received on September 19, 1986 which was filed by the International Ladies' Garment Workers' Union on behalf of workers at Domenico, Incorporated, Lynn, Massachusetts.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA-W-17,943). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 7th day of November 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-26544 Filed 11-24-86; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Halliburton Services et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other person showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 5, 1986.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 5, 1986.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 10th day of November 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner (Union/Workers/Firm)	Location	Date Received	Date of Petition	Petition Number	Articles Produced
Halliburton Services (Workers)	Carrizo Springs, TX	10/21/86	10/6/86	TA-W-18,547	Oil well cementing services.
AT&T Information Systems (IBEW)	Underwood, IA	10/24/86	10/20/86	TA-W-18,548	Telecommunication equipment.
McDonald Tank & Equipment Co. MacTank Co. (Workers)	Great Bend, KA	10/23/86	9/25/86	TA-W-18,549	Oil and gas storage and handling.
Eaton Corp (Boilermakers)	Marion, OH	10/23/86	10/13/86	TA-W-18,550	Steel forgings.
Molycorp, Inc (USWA)	Washington, PA	10/22/86	10/20/86	TA-W-18,551	Molybdenum trioxide, molybdenum oxide.
Bailey Trucking, Inc. (Company)	Pleasantville, PA	10/22/86	10/20/86	TA-W-18,552	Transport crude oil.
Great Northern Paper Co., Woodland Div. (Workers)	Millinocket, ME	10/24/86	10/3/86	TA-W-18,553	Planting trees.
Great Northern Paper East Millinocket Mill (Workers)	Millinocket, ME	10/24/86	10/13/86	TA-W-18,554	Makes newspaper print.
Ridge Tool Co. (Workers)	Elyria, OH	10/30/86	10/22/86	TA-W-18,555	Tools.
Superior Drawn Steel (USWU)	Monaco, PA	10/28/86	10/15/86	TA-W-18,556	Steel bars.
Diamond Match Co. (Stanley Dandro Union)	Springfield, MA	10/30/86	10/24/86	TA-W-18,557	Book matches.
Cincinnati Flame Hardening (Company)	Cincinnati, OH	10/28/86	10/23/86	TA-W-18,558	Flame hardens steel parts.
Marion-Heil Bronzelo (USW)	Marion, OH	10/30/86	10/5/86	TA-W-18,559	Finished bronzed bushings.
Murray-Ohio Mfg. Co. (Workers)	Lawrenceburg, OH	10/30/86	10/27/86	TA-W-18,560	Bicycles & power mowers.
Motorola, Inc. (Company)	Joplin, MO	10/29/86	10/27/86	TA-W-18,561	CRT displays & comp. terminals.
Dia-Log Co. (Workers)	Houston, TX	10/30/86	10/24/86	TA-W-18,562	Oil service-log, perforate.
Mid-Continent Resources (Workers)	Carbondale, Co	10/28/86	10/20/86	TA-W-18,563	Mine metallurgical coal.
Stetson Hat Co. (SCWU)	St. Joseph, MO	10/29/86	10/20/86	TA-W-18,564	Hats & caps.
Dameon Oil Corp. (Workers)	Houston, TX	10/27/86	10/21/86	TA-W-18,565	Oil drilling.
Homestake Mining (Workers)	Reno, NV	10/21/86	9/30/86	TA-W-18,566	Metal exploration.
Homestake Mining (Workers)	Golden, CO	10/21/86	9/30/86	TA-W-18,567	Metal exploration.
Ideal Basic Industries Superior Plant (Workers)	Suprior, NE	10/27/86	10/17/86	TA-W-18,568	Cement.
Murray Meisner, Inc. (Workers)	NY, NY	10/22/86	10/16/86	TA-W-18,569	Ladies' dresses.
Precision Lease Service Inc. (Workers)	Carrizo Spring, TX	10/21/86	10/6/86	TA-W-18,570	Oil field construction services.
Bell Rubber (Workers)	Athens, TX	10/27/86	10/21/86	TA-W-18,571	Metal products used in oil drilling.
Flavor Tree Foods, Inc. (Company)	Englewood Cliffs, NJ	10/28/86	10/20/86	TA-W-18,572	Fruit rolls candy.
Alcoa Conductor Products Co. (Workers)	Vancover, WA	10/28/86	10/26/86	TA-W-18,573	Aluminum rod and cable.
LTV-Nemacolin Buckeye Mine (UMWA)	Nemacolin, PA	10/28/86	10/23/86	TA-W-18,574	Metallurgical coal.
LTV-Campbell Works (USWA)	Youngstown, PA	10/28/86	10/24/86	TA-W-18,575	Seamless pipe.

Appendix—Continued

Petitioner (Union/Workers/Firm)	Location	Date Received	Date of Petition	Petition Number	Articles Produced
Curtis Machine Co. (Workers)	Washington, PA	10/28/86	10/24/86	TA-W-18,576	Machined parts and equipment.
General Electric (IUE)	Schenectady, NY	10/28/86	9/9/86	TA-W-18,577	Gas and steam turbines.
Rhyan-Beth Coal Co. (UMWA)	Man, WV	10/28/86	7/7/86	TA-W-18,578	Metallurgical coal.
W-K-M, Division of Joy Manufacturing (Workers)	Houston, TX	10/28/86	10/20/86	TA-W-18,579	Valves.
Springfield Foundry Co. (USWA)	Indiana Orchard, MA	10/28/86	10/24/86	TA-W-18,580	Speciality steel castings.
Zenith Electronics Corp (UEWAI)	Chicago, IL	10/28/86	10/17/86	TA-W-18,581	Electronic video displays.
Beth Energy (UMWA)	Forty Four, PA	11/4/86	10/28/86	TA-W-18,582	Coal.
Trans American Natural Gas Corporation (Workers)	Laredo, TX	11/4/86	10/26/86	TA-W-18,583	Natural gas.
Honeywell, Inc. (Workers)	Arlington Heights, IL	11/4/86	10/27/86	TA-W-18,584	Computerized controls.
Geophysical Service, Inc. (Workers)	Dallas, TX	11/4/86	11/4/86	TA-W-18,585	Seismic exploration.
Shoe Corporation of Am. Columbus Distribution Center (Workers).	Columbus, OH	11/4/86	10/28/86	TA-W-18,586	Retail shoes.
Ithaca Gun Company (IAMAW)	Ithaca, NY	11/4/86	10/29/86	TA-W-18,587	Sporting guns.
Ithaca Gun Company Cameron Plant (IAMAW)	Cameron, MO	11/4/86	10/29/86	TA-W-18,588	Sporting guns.
Harbison Walker (USWA)	Granstville, MO	11/3/86	10/27/86	TA-W-18,589	Clay bottom pour brick.
Sledge Drilling Co. (Company)	Flora, IL	11/3/86	10/23/86	TA-W-18,590	Oil & gas drilling.
ARK-LA-TEX Oil & Gas Inc. (Company)	Wichita Falls, TX	11/3/86	10/16/86	TA-W-18,591	Oil & gas drilling.
FWA Drilling Co., Inc. (Workers)	Wichita Falls, TX	11/3/86	10/22/86	TA-W-18,592	Oil & gas drilling.
Saxon Oil Co. (Workers)	Dallas, TX	1/3/86	10/20/86	TA-W-18,593	Oil & gas production.
E.D. Capps Construction (Company)	Carthage, TX	11/3/86	10/23/86	TA-W-18,594	Construction of oil gas sites.
Waterland Enterprises Inc. (Workers)	Odessa, TX	10/29/86	10/22/86	TA-W-18,595	Amusement park.
Singer Furniture (Workers)	Bryson City, NC	10/30/86	10/24/86	TA-W-18,596	Furniture.
Brown Disc Mfg., Inc. (Workers)	CO Springs, CO	11/3/86	10/24/86	TA-W-18,597	Floppy diskettes.
Sheehan Exploration (Workers)	Casper, WY	11/3/86	10/28/86	TA-W-18,598	Oil & gas exploration services.
L&L Shothole Services (Workers)	Sidney, MT	11/3/86	10/28/86	TA-W-18,599	Test hole cleanup services.
AT&T Sales Office (Workers)	Knoxville, TN	11/3/86	10/15/86	TA-W-18,600	Billing & sales services.
Center	Alcoa, TN	11/3/86	10/15/86	TA-W-18,601	Phone sales.

[FR Doc. 86-26542 Filed 11-24-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,390]

John Drilling Co., Odessa, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 20, 1986 in response to a worker petition which was filed on behalf of workers at Johnn Drilling Company, Odessa, Texas.

A negative determination applicable to the petitioning group of workers was issued on September 30, 1986 (TA-W-18,163). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 7th day of November 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-26547 Filed 11-24-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,421]

Loffland Brothers Drilling, New Braunfels, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 20, 1986 in response to a worker petition which was filed on behalf of workers at Loffland Brothers Drilling, New Braunfels, Texas.

A negative determination applicable to the petitioning group of workers was issued on September 30, 1986 (TA-W-18,110). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 7th day of November 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-26546 Filed 11-24-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-17,061]

Revised Determination on Reconsideration; Tractech, Inc., Mercury Products Division, Canton, OH

On July 30, 1986, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of Tractech, Incorporated, Mercury Products Division, Canton, Ohio. This determination was published in the **Federal Register** on August 12, 1986 (51 FR 28905).

The International Association of Machinists and Aerospace Workers, Local 984, application for reconsideration claims that castings which the Canton plant once machined are now being machined and imported from Canada.

On reconsideration, the company furnished additional information on the transfer of clutch matching and drilling and brake turning operations to Canada. The findings confirmed that the clutch machining and drilling and brake turning operations once performed at Canton are now being performed in Canada. The machined clutches and turned brakes were first imported in October, 1985.

Layoffs associated with the transfer of the clutch machining and drilling and brake turning operations occurred at Canton in October, 1985 and have continued through 1986.

Conclusion

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of machined castings and turned brakes produced at Tractech, Inc., Mercury Products Division, Canton, Ohio, contributed importantly to the decline in production and to the total or partial separation of workers and former workers at Tractech's Mercury Products Division. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

> All workers of Tractech, Inc., Mercury Products Division, Canton, Ohio, (Turret Lathe Department and Machine Shop) engaged in employment related to the production of the machined clutch castings and to brake turning operations who became totally or partially separated from employment on or after October 1, 1985, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

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Signed at Washington, DC, this 27th day of October 1986.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 86–26549 Filed 11–24–86; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Vogue Rattan et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 5, 1986.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 5, 1986.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 17th day of November 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date Received	Date of Petition	Petition Number	Articles Produced
Vogue Rattan (Workers)	Lexington, KY	11/10/86	11/3/86	TA–W–18,602	Rattan furniture.
Bedcor Inc. (UMW)	Comfort, WV	11/10/86	11/3/86	TA–W–18,603	Coal.
Crucible Materials Corp., Trent Tube Div. (USWA)	East Troy, WI	11/5/86	10/31/86	TA–W–18,604	Stainless steel high alloy pipe & tube.
Dresser Industries Magcobar Div. (Workers)	Olney, IL	11/10/86	10/14/86	TA–W–18,605	Drilling mud & chemicals.
Classix of Miami (Workers)	Miami, FL	11/10/86	10/29/86	TA–W–18,606	Children's sportswear.
Brown & Root Marine (Workers)	Aransas Pass, TX	11/10/86	11/3/86	TA–W–18,607	Constructs offshore drilling platform.
Ford Coal Co. (Workers)	Hansford, WV	11/10/86	10/4/86	TA–W–18,608	Steam coal mining.
Stanley Well Service (Company)	Bryan, TX	11/10/86	11/4/86	TA–W–18,609	Oil well services.
RCA Consumer Electronics (Workers)	Indianapolis, IN	11/4/86	10/17/86	TA–W–18,610	Transformers.
Illva Saronno (Workers)	Edison, NJ	11/13/86	8/25/86	TA–W–18,611	Buy bottles and package liqueurs.
Maurice L. Brown Co. (Workers)	Kansas City, MO	11/13/86	11/3/86	TA–W–18,612	Produce oil (crude) and natural gas.
TRW Reda Pump Company (Workers)	Midland, TX	11/13/86	11/6/86	TA–W–18,613	Submergable oil well pumps.
Harbison Walker Refractory (USWA)	Mt. Union, PA	11/10/86	10/30/86	TA–W–18,614	Silica brick.
Wilson Drilling Ltd (Workers)	E. Albion, IL	11/10/86	11/1/86	TA–W–18,615	Oil well drilling.
Smurfit Newsprint Corp. (Workers)	Oregon City, OR	11/10/86	10/31/86	TA–W–18,616	Lumber.
BC Service Co. (Workers)	Wickett, TX	11/10/86	10/31/86	TA–W–18,617	Service oil well rigs.
Frontier Petroleum Services, Inc. (Workers)	Leveland, TX	11/10/86	10/30/86	TA–W–18,618	Service oil rigs.
Precision Geophysical Inc. (Workers)	Houston, TX	11/10/86	10/25/86	TA–W–18,619	Performs seismic studies.
Target Geographysical, Inc (Workers)	Denver, CO	11/10/86	11/2/86	TA–W–18,620	Collect and process seismic data.
U.S. Steel Mining Co., Gary No. 51 Mine (UMWA)	Wyoming County, WV	11/10/86	10/31/86	TA–W–18,621	Low volatile metallurgical coal.
U.S. Steel Mining Co., Alpheus Cleaning & Preparation Plant (UMWA).	McDowell Co., WV	11/10/86	10/31/86	TA–W–18,622	Low volatile metallurgical coal.
U.S. Steel Mining Co., Gary No. 2 Mine (UMWA)	McDowell Co., WV	11/10/86	10/31/86	TA–W–18,623	Low volatile metallurgical coal.
U.S. Steel Mining Co., Gary No. 4 Mine (UMWA)	McDowell Co., WV	11/10/86	10/31/86	TA–W–18,624	Low volatile metallurgical coal.
U.S. Steel Mining Co., Gary No. 14 Mine (UMWA)	McDowell Co., WV	11/10/86	10/31/86	TA–W–18,625	Low volatile metallurgical coal.
U.S. Steel Mining Co., Seneca Mine (UMWA)	McDowell Co., WV	11/10/86	10/31/86	TA–W–18,626	Low volatile metallurgical coal.
U.S. Steel Mining Co., Gary No. 50 Mine (UMWA)	Wyoming County, WV	11/10/86	10/31/86	TA–W–18,627	Low volatile metallurgical coal.
ATF Davidson Co. (USWA)	Whitinsville, MA	11/10/86	10/30/86	TA–W–18,628	Offset printing machines.
Umetco Minerals Corps. (USWA)	Hot Spgs, AR	11/10/86	10/29/86	TA–W–18,629	Ferrovanadium.

[FR Doc. 26541 Filed 11–24–86; 8:45 am]

Billing Code 4510–30–M

[TA–W–18,424]

WISCO (Williston Industrial Supply Corp.), Willison, ND; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 20, 1986 in response to a worker petition which was filed on behalf of workers at WISCO (Williston Industrial Supply Corporation), williston, North Dakota.

A negative determination applicable to the petitioning group of workers was issued on September 5, 1986 (TA–W–17,489). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 7th day of November 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86–26545 Filed 11–24–86; 8:45 am]

BILLING CODE 4510–30–M

Labor Surplus Area Classifications; Additions to List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATE: The additions to the labor surplus area list are effective on November 1, 1986.

SUMMARY: The purpose of this notice is to announce additions to the list of labor surplus areas, which has been extended until further notice while the Department of Labor completes implementation of Pub. L. 99–272.

FOR FURTHER INFORMATION CONTACT: William J. McGarrity, Labor Economist, Employment and Training Administration, 200 Constitution Avenue, NW., Room N4470, Attention: TEESS, Washington, DC 20213. Telephone: 202–535–0185.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Procurement Regulations Temporary Regulation 57 (41 CFR Chapter 1, Appendix), issued by the General Services Administration on January 15, 1981, (46 FR 3519), implements Executive Order 12260. Executive agencies should refer to Temporary Regulation 57 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR Part 654, Subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor published the annual list of labor surplus areas on October 11, 1985 (50 FR 41606).

Subpart B of Part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under Subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The areas described below have been classified by the Assistant Secretary of Labor as labor surplus areas pursuant to 20 CFR 654.5(b) (48 FR 15615 April 12, 1983) and are added to the list of labor surplus areas, effective November 1, 1986.

The following additions to the list of labor surplus areas are published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

[FR Doc. 86-26543 Filed 11-24-86; 8:45 am]

BILLING CODE 4510-30-M

ADDITIONS TO THE ANNUAL LIST OF LABOR SURPLUS AREAS

[November 1, 1986]

Labor surplus area	Civil jurisdiction included
Georgia: Albany City	Albany City in Dougherty County.
North Dakota:	
Mercer County	Mercer County.
Slope County	Slope County.
Williams County	Williams County.
Oklahoma:	
Murray County	Murray County.
Stephens County.	Stephens County.

Signed at Washington, DC, on November 18, 1986.

Roger D. Semerad,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 86-26543 Filed 11-24-86; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration

Advisory Committee on Sheltered Workshops; Meeting

A meeting of the Advisory Committee on Sheltered Workshops will be held in the Frances Perkins Building, Department of Labor, 200 Constitution Avenue, NW., Washington, DC on December 11 and 12 starting at 9:00 a.m. in Room N5437A and B. On December 12, the Committee will meet in Room S4215A and B beginning at 8:30 a.m.

The mission of the Advisory Committee is to provide guidance to the Department regarding the administration and enforcement of the Fair Labor Standards Act and other Federal minimum wage laws as they relate to the employment of handicapped individuals with impaired productivity at special lower minimum wages. The purposes of this meeting will be to discuss the recent amendments to section 14(c) of the Fair Labor Standards Act under which certificates are issued and to consider changes to the existing regulations.

On October 16, President Reagan signed the Amendments to the Fair Labor Standards Act of 1986 (Pub. L. 99-486). These Amendments completely revised that section of the Act providing for the payment of special minimum wages to handicapped workers under certificates issued by the Department. The Amendments reduce administrative burdens on employers by eliminating the need for various types of certificates and for physical separation of work activities centers from other sheltered workshop programs. The Amendments also provide a petition process for handicapped workers who wish to have their special minimum wage rates reviewed by an Administrative Law Judge.

Discussion of the Amendments and the regulations will be the primary agenda items. The Advisory Committee will also take up certain administrative matters, such as election of officers, and may address other items if time permits.

The public is invited to attend all meetings. Written data, views, or arguments pertaining to the business before the Advisory Committee are invited. Such data, views, or arguments may be forwarded to the Committee Secretariat prior to the meeting or presented at the meeting.

Any inquiries concerning the meeting of the Advisory Committee may be directed to: Ms. Corlis Sellers, Secretariat for the Advisory Committee on Sheltered Workshops, Room C4316, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210, telephone number (202) 523-8727. This is not a toll free telephone number.

Signed in Washington, DC, this 14th day of November 1986.

Paula V. Smith,

Administrator.

[FR Doc. 86-26540 Filed 11-24-86; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-86-167-C]

Clinchfield Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Clinchfield Coal Company, P.O. Box 7, Dante, Virginia 24237 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its McClure No. 1 Mine (I.D. No. 44-04251) located in Russell County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that entries used as intake and return air courses be separated from belt haulage entries and that belt haulage entries not be used to ventilate active working places.

2. The mine has been designed for two active longwall sections and supporting continuous miner units.

3. Large quantities of methane gas in the coal bed and adjacent strata are anticipated for the mine.

4. Bureau of Mines and DOE in conjunction with the company have drilled five vertical methane drainage

holes into the coalbed. It is anticipated that vertical ventilation gob drainage holes will be necessary to bypass large amounts of methane from the return airways during extraction of longwall blocks.

5. Inherent roof conditions and maximum overburden of 2000 feet will limit the number of airways that can be developed safely.

6. As an alternate method, petitioner proposes that—

a. all entries will be used for airways.

b. A carbon monoxide (CO) detection system, approved by MSHA, will be installed in all belt entries used as intake air course and at each belt drive and tailpiece located in intake air courses. The CO monitoring devices will be capable of giving warning authomatically when the level of carbon monoxide is 10 parts per million (ppm) above ambient air. When the carbon monoxide level is 15 parts per million (ppm) above ambient air the CO monitors will initiate fire alarm signals at an attended location on the surface where there is two-way communication.

c. If the carbon monoxide system is deenergized for routine maintenance or for failure of a sensor unit, qualified persons will monitor the belt conveyor using hand-held carbon monoxide detecting devices.

d. A maintenance program will be established which will include weekly functional tests and calibration tests every 30 days.

e. Stoppings separating the belt haulage entry from intake and return air-courses will be erected and maintained in accordance with MSHA quidelines.

7. Petitioner states that the proposed alternate method will provide the same degree of safety for ther miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 26, 1986. Copies of the petition are available for inspection at that address.

Dated: November 17, 1986.

Patricia W. Silvey;

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-26548 Filed 11-24-86; 8:45 am]

BILLING CODE 4510-43-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-412]

Duquesne Light Co.; et al; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an extension of Construction Permit No. CPPR-105 to Duquesne Light Company, Cleveland Electric Illuminating Company, Ohio Edison Company and Toledo Edison Company (the Permittees), for the Beaver Valley Power Station, Unit No. 2 located in Shippingport, Pennsylvania.

Environmental Assessment

Identification of Proposed Action: The extension would change the expiration date of Construction Permit CPPR-105 from December 31, 1986 to December 31, 1987.

The extension is responsive to Duquesne Light Company's application for extension dated July 30, 1986.

The Need for the Proposed Action: The proposed extension is needed because the completion date of Beaver Valley Unit 2 has been postponed for the following reasons:

(1) Reduced projected electric power need,

(2) Increased regulatory requirements,

(3) The permittees' financial problems,

(4) Additional time needed to fully test and evaluate portions of the project.

Environmental Impacts of the Proposed Action: The proposed extension will not allow any work to be performed that is not already allowed by the existing construction permit. The probability of accidents has not been increased and post-accident radiological releases will not be greater than previously determined, nor does the proposed extension otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed extension.

With regard to potential non-radiological impacts, the proposed extension involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with this proposed extension.

Alternatives to the Proposed Action: As required by section 102(2)(E) of NEPA (42 U.S.C. 4332(2)(E)), the staff has considered possible alternatives to the proposed action. The only possible alternative to the proposed action is not to renew the construction permit. This alternative would lead to a change in status and would result in a greater impact on Duquesne Light personnel and the environment (the project is currently more than 95% complete).

Therefore, there is no appropriate alternative to the proposed action.

Alternative Use of Resources: This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the Beaver Valley Power Station, Unit No. 2.

Agencies and Persons Consulted: The NRC staff reviewed the permittees' request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed extension.

Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for the extension dated July 30, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Dated at Bethesda, Maryland this 17th day of November, 1986.

For the Nuclear Regulatory Commission.

Lester S. Rubenstein,

Director, PWR Project Directorate #2 Division of PWR Licensing-A.

[FR Doc. 86-26569 Filed 11-24-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

Toledo Edison Co.; (Davis-Besse Nuclear Power Station, Unit 1); Issuance of Director's Decision

Notice is hereby given that the Director, Office of Inspection and Enforcement, has issued a Director's Decision pursuant to 10 CFR 2.206 concerning two Petitions, one filed by the State of Ohic on October 24, 1986 and one filed on behalf of the Toledo Coalition for Safe Energy and Susan A. Carter on October 28, 1986.

The State of Ohio had requested that the Commission institute proceedings to suspend the operating license of the Davis-Besse Nuclear Power Station of the Toledo Edison Company (licensee) until such time as the facility was in compliance with the Commission's regulations regarding emergency planning. The State of Ohio alleged in its Petition that the Governor of Ohio had withdrawn his support for the evacuation plans for the Davis-Besse Nuclear Power Plant and had further created the Ohio Emergency Evacuation Review Team (EERT). The Petition alleged that the EERT had found serious deficiencies in the emergency plans associated with the Davis-Besse facility. The Petition further alleged that to date, the Federal Emergency Management Agency (FEMA), had not issued any formal statement of adequacy concerning the Davis-Besse emergency plans. Thus, the Petition asserted that Davis-Besse had been operated without an approved emergency plan since its inception in violation of NRC regulations.

The second Petition, requested that the Commission require the licensee to show cause why its operating license for the Davis-Besse facility should not be suspended or terminated for alleged deficiencies in the area of emergency planning. The Petition asserted the absence of an approved offsite plan for Lucas County, Ohio and noted as a particular deficiency the failure to include planning for Jerusalem Township, a part of Lucas County. The Petition further alleged that a resolution of October 20, 1986 by the Northwest District of the Ohio Association of Public School Employees, American Federation of State, County and Municipal Employees, AFL–CIO not to participate in planning or evacuation in the case of an emergency at the Davis-Besse facility raised serious questions and doubts as to the efficacy of the existing emergency plans for that facility as extensive reliance is placed in that planning upon cooperation of union members who would act as volunteer drivers to transport children and adults with special transportation needs in the event of a nuclear incident at the Davis-Besse facility.

Both Petitions requested that Commission keep the Davis-Besse facility shut down pending resolution of the emergency planning issues raised.

The Director, Office of Inspection and Enforcement, has denied that relief requested in the two Petitions. The reasons for this decision are explained in the "Director's Decision Pursuant to 10 CFR § 2.206" (DD–86–17), which is available for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, DC and the Local Public Document Room for the Davis-Besse facility located at the University of Toledo, 2801 West Bancroft, Toledo, Ohio 43606.

A copy of this decision will be filed with the Secretary for Commission review in accordance with 10 CFR 2.206(c). As provided in 10 CFR 2.206(c), the decision will become the final action of the Commission twenty-five days after issuance, unless the Commission on its own motion institutes review of the decision within that time.

Dated at Bethesda, Maryland this 19th day of November, 1986.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 86–26566 Filed 11–24–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40–8027]

Sequoyah Fuels Corp., Sequoyah Facility, Gore, OK; Receipt of Petition for Director's Decision

Notice is hereby given that by a Memorandum and Order dated October 10, 1986 Administrative Law Judge John H. Frye, III, has referred certain matters relating to the Sequoyah Fuels Corporation to the staff for consideration under 10 CFR 2.206.

In a complaint filed with the Atomic Safety and Licensing Board dated June 8, 1986 entitled "Response to Order of May 22, 1986," Barbara Synar raised, among other matters, concerns over the expansion of SFC's ammonium nitrate fertilizer program. These concerns were also raised in letters written to the Commission by Native Americans for a Clean Environment (NACE) dated May 22; Paula Strachan, dated June 10; and David Singer Burtner, dated June 26 and September 23, 1986. In his October 10 Memorandum and Order, Judge Frye has referred the portion of Ms. Synar's complaint relating to SFC's fertilizer program along with the above referenced letters to the staff for consideration under 10 CFR 2.206.

In a complaint filed with the Atomic Safety and Licensing Board dated June 16, 1986 entitled "Motion to Accept Specific Complaints," Ed Henshaw raised, among other matters, concerns regarding the adequacy of security at the Sequoyah Fuels facility. In his October 10 Memorandum and Order, Judge Frye has referred this portion of Mr. Henshaw's complaint to the staff for consideration under 10 CFR 2.206.

These matters are being treated as a request for action pursuant to 10 CFR 2.206 of the Commission's regulations. As provided by § 2.206, appropriate action will be taken on the Petitions within a reasonable time.

Copies of the Petitions are available for inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and in the local public document room for the facility located at Sallisaw City Library, 101 East Cherokee, Sallisaw, Oklahoma 74955.

Dated at Bethesda, Maryland, this 14th day of November 1986.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 86–26471 Filed 11–24–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–482]

Kansas Gas and Electric Co; Consideration of Issuance of Amendment To Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–42, issued to Kansas Gas and Electric Company, Kansas City Power and Light Company, and Kansas Electric Power Cooperative, Inc. (the licensee), for operation of the Wolf Creek Generating Station located in Coffey County, Kansas. These changes were requested in the licensee's letter dated November 7, 1986.

The proposed amendment would change Technical Specification 3.5.1.a to allow closure of one ECCS accumulator isolation valve in MODE 3 above 1000 psig during startup, while performing Surveillance Requirement 4.4.6.2.2. This will only be done providing RHR pump discharge valves EJ HV–8809A and/or B are not closed and the closed isolation valve is capable of being reopened.

Also, the proposed amendment would change Technical Specification 3.5.2.e to allow closure of EJ HV–8809A and/or B in MODE 3 during startup, while performing Surveillance Requirement 4.4.6.2.2. This will only be done providing the closed valve(s) is (are) capable of being reopened and pressurizer pressure is below 1000 psig, and if above 100 psig, no ECCS accumulator isolation valve is closed.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended

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(the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In accordance with the requirements of 10 CFR 50.92, the licensee submitted the following significant hazards determination: The proposed change to Technical Specification 3.5.1 does not involve a significant hazards consideration because operation of Wolf Creek Generating Station in accordance with this change would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The maximum credible LOCA to be considered for the RCS pressure boundary during *shutdown* operation would be a 6 inch pipe break. It has been determined that low pressure shutdown and startup operating conditions are so far below the conditions for which the Reactor Coolant System (RCS) Loss of Coolant Accident LOCA) is not credible that (and) for all practical purposes this accident can be assumed not to occur. For *this credible* LOCA, the RCS break flow rate and depressurization rate are significantly less than for a design basis large break LOCA. For *startup* conditions, however, the break flow and depressurization rates would be further reduced due to the lower initial RCS pressure and temperature. In addition, the initial fuel rod temperature and decay heat level would be significantly less than for full power since the reactor would have been shutdown for a period of time. With this longer depressurization time and lower decay levels, there is ample time available for operator action to open the closed accumulator valve.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. This Technical Specification change pertains to LOCAs and to how much Emergency Core Cooling System (ECCS) flow is available immediately and after operator action. The possible slight delay in initiating full ECCS flow does not affect any other kind of accident.

(3) Involve a significant reduction in a margin of safety. The 10 CFR 50.59 Safety Evaluation for this Technical Specification amendment has concluded that the maximum credible LOCA during heatup is the rupture of a 6 inch pipe. During the period of time when this valve may be closed per the proposed Amendment, RCS pressure will be above the pressure at which the accumulators can inject water. Therefore it is concluded that during the depressurization of the RCS following a LOCA, the operators will recognize the condition and will be able to reopen the closed accumulator valve and prevent any significant fuel heatup. The valve will be able to be reopened from the main control room during this period.

The proposed change to Technical Specification 3.5.2 does not involve a significant hazards consideration because operation of Wolf Creek Generating Station in accordance with this change would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. It has been determined that law pressure shutdown and startup operating conditions are so far below the conditions for which the RCS has been designed, that a large LOCA is not credible and for all practical purposes can be assumed not to occur. It has been concluded that the maximum credible LOCA to be considered for the RCS pressure boundary during shutdown operation would be a 6 inch pipe break. For a credible LOCA, the RCS break flow rate and depressurization rate is significantly less than for a design basis large break LOCA. For startup conditions, the break flow and depressurization rates would be further reduced due to the lower initial RCS pressure and temperature. In addition, the initial fuel rod temperature and decay heat level would be significantly less than for full power since the reactor would have been shutdown for a period of time. With this longer depressurization time and lower decay heat levels, there is ample time available for operator action to open the closed RHR valve or valves.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. This Technical Specification change pertains to LOCAs and to how much ECCS flow is available immediately and after operator action. The possible slight delay in initiating full ECCS flow does not affect any other kind of accident.

(3) Involve a significant reduction in a margin of safety. The 10 CFR 50.59 Safety Evaluation for this Technical Specification amendment has concluded that the maximum credible LOCA during heatup is the rupture of a 6 inch pipe. During the period of time when EJ HV-8809A and/or B may be closed per the proposed Amendment, RCS pressure will be above the pressure at which the RHR pumps can inject water. Therefore it is concluded that during the depressurization of the RCS following a LOCA, the operators will recognize the condition and will be able to reopen the respective closed valve(s) and prevent any significant fuel heatup. The valve(s) will be able to be reopened from the main control room during this period.

During startup, the low pressure safety injection signal is blocked until RCS pressure exceeds 1,970 psig. Therefore should a LOCA occur below 1,970 psig, operator action would be required to initiate any ECCS flow. When this occurs, the operator will also open any valves that had been closed. If above 1,970 psig, the safety injection signal will be unblocked. Should a LOCA occur, the safety injection signal will start both centrifugal charging pumps, both safety injection pumps, both RHR pumps and if any accumulator valve is closed, it will automatically open it. Since the RHR pumps cannot inject water until RCS pressure drops to approximately 190 psig, two charging pumps, two safety injection pumps and four accumulators will be injecting or will have injected into the core before the RCS has depressurized to 190 psig. This allows adequate time for the operator to open EJ HV-8809A and/or B, before the pumps are needed to inject.

Based on the above analysis, the licensee concluded that the proposed amendment does not involve significant hazards considerations. The staff has reviewed the licensee's significant hazards consideration determination and agrees with the licensee's analysis. The staff has, therefore, made a proposed determination that the licensee's request does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Comments may also be delivered to Room 4000, Maryland National Bank Building, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m., Monday through Friday. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

By December 26, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person who interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitation in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination of the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following messaged addressed to B.J. Youngblood: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esq., Shaw Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas and the Washburn University School of Law library, Topeka, Kansas.

Dated at Bethesda, Maryland, this 19th day of November 1986.

For the Nuclear Regulatory Commission.

B.J. Youngblood,

Director, PWR Project Directorate No. 4, Division of PWR Licensing—A, NRR.

[FR Doc. 86-26570 Filed 11-24-86; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-277/278]

Philadelphia Electric Co.; Peach Bottom Atomic Power Station, Units 2 and 3; Exemption

I

The Philadelphia Electric Company (the licensee) is the holder of Facility Operating License No. DPR-44 which authorizes operation of the Peach Bottom Atomic Power Station, Unit 2 and Facility Operating License No. DPR-56 which authorizes operation of Peach

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Bottom Atomic Power Station, Unit 3. These operating licenses provide, among other things, that the Peach Bottom Atomic Power Station is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The station comprises two boiling water reactors at the licensee's site located in York County, Pennsylvania.

II

On November 19, 1980, the Commission published a revised Section 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants. The revised Section 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specified requirements for a particular aspect of the fire protection features at a nuclear power plant. Two of these subsections, III.F and III.M, are the subject of the licensee's exemption request.

Section III.F requires that for areas where alternative or dedicated shutdown is provided, fire detection and a fixed fire suppression system shall also be installed in the area, room, or zone under consideration. Subsection III.M of Appendix R requires that penetration seals utilize only noncombustible materials.

III

By letter dated May 27, 1983, the licensee requested an exemption from section III.M of Appendix R to 10 CFR 50 to the extent that Section III.M requires penetration seals which utilize only noncombustible materials. By letters dated July 22, 1983, September 16, 1983, December 2, 1983, February 10, 1984, September 17, 1984, January 18, 1985 and September 24, 1985, the licensee provided additional information to support the exemption request.

By letter dated September 16, 1983, the licensee also requested an exemption from the requirements of Section III.F of Appendix R. Section III.F of Appendix R requires the installation of automatic fire detection systems in all areas of the plant that contain or present an exposure fire hazard to safe shutdown or safety-related systems or components.

In the NRC's staff meeting summary dated May 13, 1986, the licensee provided information relevant to the "special circumstances" finding required by revised 10 CFR 50.12(a) (see 50 FR 50764). The licensee's information is summarized as follow:

(i) Penetration Seals.

The technical requirement of Section III.M of Appendix R would not be met because certain penetration seals are not entirely constructed of noncombustible materials. However, the licensee states that they have committed to refurbishing all subject seals used in fire rated barriers in accordance with the staff accepted ASTM tests. Therefore, it is the licensee's position that the modified seals will provide adequate performance under fire conditions and provide an equivalent level of protection to that required by section III.M. Thus, the application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule (see 10 CFR 50.12(a)(2)(ii)). Additionally, compliance with section III.M concerning the subject seals would result in costs that are significantly in excess of those contemplated when the regulation was adopted since it would result in the complete removal and total replacement of all seals in question.

(ii) Emergency Cooling Tower Fire Detectors.

The licensee stated that although safety-related cables in conduits are located in this area (stairwell), no other fixed combustibles are present and access is controlled by security personnel. This area is not used for storage and current administrative controls on combustibles preclude the presence of a fire hazard. Therefore, application of the regulation (section III.F of Appendix R) in this particular circumstance is not necessary to achieve the underlying purpose of the rule (safe shutdown).

The staff concludes that "special circumstances" exist for the licensee's requested exemptions in that the application of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of Appendix R to 10 CFR 50.12(a)(2)(ii).

The following list of exemption requests, therefore, reflects the latest status:

(i) Penetration Seals.

The technical requirement of section III.M of Appendix R would not be met because certain penetration seals are not entirely constructed of noncombustible materials.

(ii) Emergency Cooling Tower Fire Detector.

An exemption was requested from the specific requirements of Section III.F to the extent that automatic fire detection in this area would not be provided.

The acceptability of these exemption requests is addressed below. Details are contained in the NRC staff's concurrently issued Safety Evaluations.

Discussion

In response to the new fire protection rule Appendix R to 10 CFR Part 50, the licensee committed to upgrade all penetration seals in barriers used to separate redundant safe shutdown equipment which the staff had previously questioned. Upon further investigation of this open item the licensee determined that approximately 6,250 seals in 341 fire barriers needed to be upgraded, and in some cases, the licensee further concluded that certain penetration seals would require removal and replacement with fire rated seals. By letter dated May 27, 1983, the licensee indicated that instead of replacing penetration seals in accordance with III.M of Appendix R in some cases, existing seals which contain combustible materials would be modified and the modified seal would be tested in accordance with appropriate ASTM testing requirements. By letter dated September 24, 1985, the licensee stated that the redesigned penetration seals used in fire rated barriers will be refurbished with modified penetration seals which have been successfully tested and approved under appropriate ASTM standards.

Based on the licensee's commitments and the tests conducted on the redesigned penetration seals, we find the modified seals which contain combustible material will provide adequate performance under fire conditions and will provide an equivalent level of protection to that required by section III.M of Appendix R.

The technical requirements of section III.F are not met in the Emergency Cooling Tower Stairwell because automatic fire detection systems have not been installed. The combustible loading in the stairwell is negligible. Consequently, a fire of any significant magnitude or duration is not expected. Therefore, the safety-related cabling in the stairwell would not be prone to fire damage. Therefore, we find that installation of automatic fire detection systems would not significantly increase the level of fire protection in these areas.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1) the exemptions as described in section III are authorized by law and will not present an undue risk to the public health and safety, and are consistent with common defense and security and (2) special circumstances are present for the exemptions in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of Appendix R to 10 CFR Part 50. Therefore, the Commission hereby grants the following exemptions from the requirements of section III.M and III.F of Appendix R to 10 CFR Part 50:

(i) Penetration Seals.

An exemption to the technical requirement of section III.M of Appendix R to have penetration seals entirely constructed of noncombustible materials.

(ii) Emergency Cooling Tower Fire Detectors.

An exemption from the specific requirements of section III.F to the extent that automatic fire detection in the emergency cooling tower does not have to be provided.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of these exemptions will have no significant impact on the environment (51 FR 41450).

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland this 14th day of November 1986.

For the Nuclear Regulatory Commission.

R. Wayne Houston,

Deputy Director, Division of BWR Licensing.

[FR Doc. 86-26472 Filed 11-24-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-361-OL and 50-362-OL; ASLBP No. 86-538-06-OL-R]

Southern California Edison Company et al.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding.

Southern California Edison Company, et al.; San Onofre Nuclear Generating Station, Units 2 and 3

This Atomic Safety and Licensing Board is being designated pursuant to the provisions of a Remand Order issued by the Commission on September 12, 1986 regarding the planning standard 10 CFR 50.47(b)(12) which requires pre-accident arrangements for medical services for individuals who might be severely exposed to dangerous levels of offsite radiation following an accident at a nuclear power plant. In its Order the Commission remanded the matter to the Atomic Safety and Licensing Board and directed that it should be held in abeyance until the staff's detailed, generic guidance on planning standard (b)(12) is issued and implemented.

The Board is comprised of the following administrative judges:

James L. Kelly, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Cadet H. Hand, Jr., University of California, P.O. Box 247, Bodega Bay, California 94923

Elizabeth B. Johnson, Oak Ridge National Laboratory, P.O. Box X, Building 3500, Oak Ridge, Tennessee 37830

Issued at Bethesda, Maryland, this 18th day of November, 1986.

B. Paul Cotter, Jr.

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 86-26567 Filed 11-24-86;8:45am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) Collection title: Annual Earnings Monitoring
(2) Form(s) submitted: G-19b
(3) Type of request: New collection
(4) Frequency of use: One-time collection
(5) Respondents: Individuals or households
(6) Annual responses: 35,000
(7) Annual reporting hours: 2,333
(8) Collection description: The reports obtain information about an annuitant's employment and earnings. Under the RRA, an annuity can be reduced or not paid depending on the amount of earnings and type of work performed.

Additional Information or Comments

Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Judy Egan (202-395-6880), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 86-26493 Filed 11-24-86; 8:45 am]

BILLING CODE 7905-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2250; Amdt. 2]

Declaration of Disaster Loan Area; Missouri

The above-numbered Declaration (51 FR 37532), as amended (51 FR 40099), is hereby further amended in accordance with the Notice of Amendment to the President's disaster declaration, dated October 28, 1986, to include Vernon County and the adjacent County of Cooper in the State of Missouri because of damage from severe storms and flooding beginning on September 18, 1986. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on December 15, 1986, and for economic injury until the close of business on July 14, 1987.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 5900S)

Dated: October 30, 1986.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 86-26494 Filed 11-24-86; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council (Alabama); Public Meeting

The U.S. Small Business Administration, Region IV Advisory Council, located in the geographical area of Birmingham, Alabama, will hold a public meeting from 9:00 a.m. to 1:00 p.m., on Friday, December 19, 1986 in the Birmingham District Office of the Small Business Administration, 2121 8th Avenue, North, Suite 200, Birmingham, Alabama 35203, to discuss such matters as may be presented by members, staff of the Small Business Administration, or other present.

For further information, write or call James C. Barksdale, District Director, at the above address, (205) 731-1341.

Jean M. Nowak,

Director, Office of Advisory Councils.

November 18, 1986.

[FR Doc. 86-26495 Filed 11-24-86; 8:45 am]

BILLING CODE 8025-01-M

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Region IX Advisory Council (California); Public Meeting

The U.S. Small Business Administration Region IX Advisory Council located in the geographical area of Fresno, will hold a public meeting at 9:00 a.m. on December 18, 1986 at the Fresno District Office, 2202 Monterey Street, Suite 108, Fresno, California to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Mr. Peter J. Bergin, District Director, U.S. Small Business Administration, 2202 Monterey Street, Suite 108, Fresno, California 93721, (209) 487–5791.

Jean M. Nowak,

Director, Office of Advisory Councils.

November 18, 1986.

[FR Doc. 86–26496 Filed 11–24–86; 8:45 am]

BILLING CODE 8025-01-M

Region V Advisory Council (Ohio); Public Meeting

The U.S. Small Business Administration Region V Advisory Council, located in the geographic area of Cleveland, will hold a public meeting at 9:00 a.m., on Friday, December 12, 1986, at the Cuyahoga Community College Metropolitan Campus, E. 30th and Community College Avenue, Meeting Room 210, Business and Administration Building, Cleveland, Ohio to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call S. Charles Hemming, District Director, U.S. Small Business Administration, 1240 East Ninth Street, Room 317, Cleveland, Ohio 44199, (216) 522–4182.

Jean M. Nowak,

Director, Office of Advisory Councils.

November 18, 1986.

[FR Doc. 86–26497 Filed 11–24–86; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council (Texas); Public Meeting

The U.S. Small Business Administration Region VI Advisory Council located in the geographical area of Dallas, Texas, will hold a public meeting at 9:30 a.m., on Wednesday, December 17, 1986, at the LaQuinta Motor Hotel in Nacogdoches, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present. For further information, write or call James S. Reed, District Director, U.S. Small Business Administration, 1100 Commerce, Room 3036, Dallas, Texas 75242, telephone (214) 767–0600.

Jean M. Nowak,

Director, Office of Advisory Councils.

November 18, 1986.

[FR Doc. 86–26498 Filed 11–24–86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of MST Aviation, Inc.; Order To Show Cause

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 86–11–43, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that MST Aviation, Inc., is fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Special Authorities division, P-47, Department of Transportation, 400 7th Street SW., Room 6420, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than December 22, 1986.

FOR FURTHER INFORMATION CONTACT: Kathy A. Lusby, Special Authorities Division, Department of Transportation, 400 7th Street SW., Washington, DC 20590 (202) 366–2337.

Dated: November 19, 1986.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86–26522 Filed 11–24–86; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: November 19, 1986.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7313, 1201 Constitution Avenue, NW., Washington DC 20220.

Financial Management Service

OMB Number: 1510–0037
Form Number: TFS 5135
Type of Review: Extension
Title: Voucher for Payment of Awards
Clearance Officer: Douglas C. Lewis, Financial Management Service, Room 100, 3700 East West Highway, Hyattsville, MD 20782
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Internal Revenue Service

OMB Number: 1545–0168
Form Number: IRS Form 4361
Type of Review: Revision
Title: Application for Exemption from Self-Employment Tax for Use by Ministers, Members of Religious Orders and Christian Science Practitioners

OMB Number: 1545–0172
Form Number: IRS Forms 4562 and 4562A
Type of Review: Revision
Title: Depreciation and Authorization: Depreciation of Property Placed in Service After December 31, 1986

OMB Number: 1545–0429
Form Number: IRS Form 4506
Type of Review: Revision
Title: Request for Copy of Tax Form
Clearance Officer: Garrick Shear (202) 566–6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Douglas J. Colley,

Departmental Reports Management Office.

[FR Doc. 86–26539 Filed 11–24–86; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 19, 1986.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7313, 1201 Constitution Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: IRS Form 2031
Type of Review: New
Title: Waiver Certificate for Use by Ministers, Members of Religious Orders and Christian Science Practitioners Electing Coverage Under the Social Security Act
OMB Number: 1545–0008
Form Number: IRS Forms W–2, W–2c, W–2P, W–2AS, W–2GU, W–2VI, W–3, W–3c, W–3cPR, W–3PR, W–3SS
Type of Review: Revision
Title: Wage and Tax Statement
OMB Number: 1545–0747
Form Number: IRS Form 5498
Type of Review: Revision
Title: Individual Retirement Arrangement Information
Clearance Officer: Garrick Shear (202) 566–6150, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Douglas J. Colley,

Departmental Reports Management Office.

[FR Doc. 86–26536 Filed 11–24–86; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 19, 1986.

The Department of the Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7313, 1201 Constitution Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0128
Form Number: IRS Form 1220L
Type of Review: Resubmission
Title: U.S. Life Insurance Company Income Tax Return
OMB Number: 1545–0129
Form Number: IRS Form 1120–POL
Type of Review: Resubmission
Title: U.S. Income Tax Return for Certain Political Organizations
OMB Number: 1545–0145
Form Number: IRS Form 2439
Type of Review: Resubmission
Title: Notice to Shareholder of Undistributed Long-Term Capital Gains
OMB Number: 1545–0687
Form Number: IRS Form 990–T
Type of Review: Resubmission
Title: Exempt Organization Business Income Tax Return
OMB Number: 1545–0976
Form Number: IRS Form 990–W
Type of Review: Resubmission
Title: Worksheet for Estimated Tax for Tax-Exempt Trusts
Clearance Officer: Garrick Shear (202) 566–6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washigton, DC 20503

Douglas J. Colley,

Departmental Reports Management Office.

[FR Doc. 86–26537 Filed 11–24–86; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 19, 1986.

The Department of the Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7313, 1201 Constitution Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0123
Form Number: IRS Form 1220
Type of Review: Resubmission
Title: U.S. Corporation Income Tax Return
OMB Number: 1545–0155
Form Number: IRS Form 3468
Type of Review: Resubmission
Title: Computation of Investment Credit
Clearance Officer: Garrick Shear (202) 566–6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Douglas J. Colley,

Departmental Reports Management Office.

[FR Doc. 86–26536 Filed 11–24–86; 8:45 am]

BILLING CODE 4810-25

[Dept. Circ.—Public Debt Series—No. 38–86]

Treasury Notes of February 15, 1992, Series H–1992

November 19, 1986.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $8,250,000,000 of United States securities, designated Treasury Notes of February 15, 1992, Series H–1992 (CUSIP No. 912827 UH 3), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated December 3, 1986, and will accrue interest from that date, payable on a semiannual basis on August 15, 1987, and each subsequent 6 months on February 15, and August 15 through the date that the principal becomes payable. They will mature February 15, 1992, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing

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authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal Public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Standard time, Tuesday, November 25, 1986. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, November 24, 1986, and received no later than Wednesday, December 3, 1986.

3.2. The par amount of Notes Bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Wednesday, December 3, 1986. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, December 1, 1986. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Wednesday, December 3, 1986. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the

Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes alloted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 86-26636 Filed 11-21-86; 2:26 am]

BILLING CODE 4810-40-M

Fiscal Service

Treasury Current Value of Funds Rate

AGENCY: Financial Management Service.

ACTION: Notice of rate for use in Federal debt collection and discount evaluation.

SUMMARY: Pursuant to section 11 of the Debt Collection Act of 1982 (31 U.S.C. 3717), the Secretary of the Treasury is responsible for computing and publishing the percentage rate to be used in assessing interest charges for outstanding debts on claims owed the Government. Treasury's Cash Management Regulations (I TFM 6-8000) also prescribe use of this rate by agencies as a comparison point in evaluating the cost-effectiveness of a cash discount. Notice is hereby given that the applicable rate is 7% for calendar year 1987.

DATES: The rate will be in effect for the period beginning on January 1, 1987 and ending on December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Inquiries should be directed to the Cash Management Division (Agency Programs Branch), Financial Management Service, Department of the Treasury, Treasury Annex No. 1, PB-711, Washington, DC 20226 (Telephone: 202/634-5131).

SUPPLEMENTARY INFORMATION: The rate reflects the current value of funds to the Treasury for use in connection with Federal cash management systems and is based on investment rates set for purposes of Pub. L. 95-147, 91 Stat. 1227. Computed each year by averaging investment rates for the 12-month period ending every September 30 for applicability effective January 1, the rate is subject to quarterly revisions if the annual average, on the moving basis, changes by 2 per centum. The rate in effect for calendar year 1987 reflects the average investment rates for the 12-month period ended September 30, 1986.

Dated: November 5, 1986.

Russell D. Morris,

Assistant Commissioner, Federal Finance.

[FR Doc. 86-26474 Filed 11-24-86; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1986 Rev., Supp. No. 5]

Surety Companies Acceptable on Federal Bonds: South Carolina Insurance Co.

The Certificate of Authority as an acceptable surety on Federal bonds is hereby renewed for the following Company under sections 9304 to 9308, Title 31, of the United States Code effective July 1, 1986. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1986 Revision, on page 23950 to reflect this addition:

South Carolina Insurance Company. Business address: P.O. Box 1, Columbia, SC 29202. Underwriting limitation [b]: $3,791,000. Surety licenses [c]: All except AS, GU, HI, ME, NH, PR, RI, VT, VI. Incorporated in: South Carolina. Federal Process Agents [d].

Certificates of Authority expire on June 30 each year, unless revoked prior to the date. The Certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to Underwriting Limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20226, telephone (202) 634-2298.

Dated: November 18, 1986.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 86-26473 Filed 11-24-86; 8:45 am]

BILLING CODE 4810-35-M

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Sunshine Act Meetings

Federal Register
Vol. 51, No. 227
Tuesday, November 25, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting, Tuesday, November 25, 1986

November 18, 1986.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Tuesday, November 25, 1986, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW, Washington, DC.

Agenda, Item No., and Subject

General—1—Title: Establishment of a spectrum utilization policy for the fixed and mobile services' use of certain bands between 947 MHz and 40 GHz. Summary: The commission will consider whether to adopt a *Third Report and Order* which would address issues raised in the *Second Notice of Proposed Rule Making* (*2nd NPRM*) in General Docket 82–334. The item addresses eligibility, channeling plans, path length standards and a number of other issues for certain microwave frequency bands.

General—2—Title: Amendment of Parts 1, 21, 74 and 94 of the Commission's Rules to establish service and technical rules for Government and non-Government fixed service usage of the frequency bands 932–935 MHz and 941–944 MHz. Summary: In this proceeding, the Commission considers whether to adopt proposed service and technical rules for the 900 MHz Government and non-Government fixed service.

General—3—Title: Amendment of § 19.735–202 of the Commission's Rules. Summary: The Commission will consider amending Part 19 of the Commission's Rules which govern employee responsibility and conduct in order to clarify any ambiguity surrounding the application of the restrictions on the acceptance of gifts, entertainment, food and refreshments.

General—4—Title: Report and Order on the appropriate regulatory classification for subscription video services. Summary: The Commission will consider whether to modify the relevant criteria for determining if a subscription service like STV should be considered "broadcasting" under the Communications Act.

Private Radio—1—Title: Preparation for an International Telecommunication Union World Administrative Radio Conference for the Mobile Services. Summary: The Commission will consider whether to adopt a Report and Order which presents recommendations to the Department of State for U.S. proposals to be put forth at the Mobile WARC.

Common Carrier—1—Title: In the matter of Petitions for Waiver of Various sections of Part 69 of the Commission's Rules, filed by the New York Telephone Company and the New England Telephone and Telegraph Company; New York Telephone Company Tariff F.C.C. No. 40, Transmittal No. 775; New England Telephone and Telegraph Company, Tariff F.C.C. No. 41, Transmittal No. 819. Summary: The FCC will consider whether to grant petitions for waiver of its access charge rules in order to permit the New York Telephone and Telegraph Company and the New England Telephone and Telegraph Company to implement an alternative access charge plan.

Common Carrier—2—Title: Furnishing of Customer Premises Equipment by the Bell Operating Companies and the Independent Telephone Companies, CC Docket No. 86–79. Summary: The Commission will meet to consider whether to grant the Bell Operating Companies structural relief for their provision of customer premises equipment.

Common Carrier—3—Title: Reconsideration of the Commission's order establishing guidelines for its consideration of local exchange carriers petitions for waiver of Part 69 rules concerning the recovery of common line revenue requirement. Summary: The Commission will meet to consider petitions filed by various parties seeking reconsideration of its April 1986 Order denying petitions seeking waiver of various sections of Part 69 relating to local exchange carrier recovery of interstate common line revenue requirement.

Mass Media—1—Title: Petition for Declaratory Ruling regarding permissible uses of Direct Broadcast Satellite service facilities, filed by United States Satellite Broadcasting Company, Inc. Summary: The Commission considers whether to permit operators in the DBS service to provide data, voice communication, and other non-video services as an interim measure in the event the DBS market develops more slowly or less fully than earlier anticipated.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen Peratino.

Issued: November 18, 1986.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–26629 Filed 11–21–86; 12:23 pm]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Tuesday, November 18, 1986, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptoller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of Barnett Bank of Southwest Florida, Sarasota, Florida, a noninsured State bank, in organization, for Federal deposit insurance, for consent to merge, under its charter and title, with Barnett Bank of Southwest Florida, National Association, Englewood, Florida, and for consent to establish twelve existing branches and one approved, but unopened, branch of Barnett Bank of Southwest Florida, National Association as branches of Barnett Bank of Southwest Florida.

Application of the North Fork Bank and Trust Company, Mattituck, New York, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay certain deposits made in the 116 East Main Street, Patchogue, New York, branch office of Bayside Federal Savings and Loan Association, Bayside, New York, a non-FDIC-insured institution, and for consent to establish that office as a branch of the North Fork Bank and Trust Company.

Application of The First National Bank of Salida, Salida, Colorado, for consent to transfer certain assets to The Thatcher Bank, Federal Savings Bank, Salida, Colorado, a non-FDIC-insured institution, in organization, in consideration of the assumption of the liabilities of First National Bank of Salida.

Application of Apple Bank for Savings, New York (Manhattan), New York, for consent to merge, under its charter and title, with Eastern Savings Bank, New York, New York, an insured mutual savings bank, and for consent to establish the eight offices of Eastern Savings Bank as branches of the resultant bank.

By the same majority vote, the Board further determined that no earlier notice of the changes in the subject matter of the meeting was practicable.

Dated: November 19, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-26627 Filed 11-21-86; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, November 18, 1986, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a recommendation regarding the Corporation's assistance agreement with an insured bank.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8) (c)(9)(A)(ii), and (c)(9)(B).

Dated: November 20, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-26628 Filed 11-24-86; 12:22 am]

BILLING CODE 6714-01-M

NATIONAL COUNCIL ON THE HANDICAPPED

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Council on the Handicapped. This notice also describes the functions of the Council. Notice of this meeting is required under section 522(b)(10) of the "Government in Sunshine Act" (Pub. L. 94-409).

DATES:

Dec. 1, 1986, 1:30 p.m. to 5:30 p.m.
Dec. 2, 1986, 8:30 a.m. to 5:00 p.m.
Dec. 3, 1986, 9:00 a.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Andrea Farbman, National Council on the Handicapped, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267-3846, TDD: (202) 267-3232.

The National Council on the Handicapped is an independent Federal agency comprised of 15 members appointed by the President of the United States and confirmed by the Senate. Established by the 95th Congress in Title IV of the Rehabilitation Act of 1973 (as amended by the Pub. L. No. 95-602 in 1978), the Council was initially an advisory board within the Department of Education. In 1984, however, the Council was transformed into an independent agency by the Rehabilitation Act Amendments of 1984 (Pub. L. No. 98-221).

The Council is charged with reviewing all laws, programs, and policies of the Federal Government affecting disabled individuals and making such recommendations as it deems necessary to the President, the Congress, the Secretary of the Department of Education, the Commissioner of the Rehabilitation Services Administration, and the Director of the National Institute on Disability and Rehabilitation Research (NIDRR).

The meeting of the Council shall be open to the Public. The proposed agenda includes:

Reports from Chairperson and Executive Director
Discussion of Harris Poll on Disability
Briefing on President's Committee on Employment of the Handicapped
Legislative Update
Workplan Update and Toward Independence Followup
Reports from the Research, Adult Services, Children's Services, and Public Affairs Committees
NCH's discussion of unfinished and new business

Records shall be kept of all Council proceedings and shall be available after the meeting for public inspection at the National Council on the Handicapped.

Signed at Washington, DC on November 20, 1986.

Lex Frieden,

Executive Director.

[FR Doc. 86-26638 Filed 11-21-86; 2:47 pm]

BILLING CODE 9630-35-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Volume 51, No. 220, FR #41460, dated, Friday, November 14, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 AM (Eastern Time) Tuesday, November 25, 1986.

CORRECTION: This corrects Item #3 of the Closed Agenda to read as follows: "Proposed Conciliation Agreements"

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, (202) 634-6748.

Dated: November 21, 1986.

Cynthia C. Matthews,

Executive Officer.

This Notice Issued November 21, 1986.

[FR Doc. 86-26653 Filed 11-21-86; 3:29 pm]

BILLING CODE 6750-06-M

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Corrections

Federal Register
Vol. 51, No. 227
Tuesday, November 25, 1986

This section of the FEDERAL REGISTER contains editorial corrections of previously published Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency-prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59788; FRL-3095-1]

Styrene, Acrylic Modified Alkyd; Certain Chemical Premanufacture Notice

Correction

In notice document 86-23105 appearing on page 36598 in the issue of Tuesday, October 14, 1986, make the following corrections in the **SUMMARY**:

1. In the sixth line, "davs" should read "days".

2. In the twelfth line, "211722" should read "21722".

3. In the thirteenth line, the date should read "November 11, 1984".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

1987 Cost-of-Living Increase and Other Determinations

Correction

In notice document 86-25002 beginning on page 40256 in the issue of Wednesday, November 5, 1986, make the following corrections:

On page 40258, second column, eleventh line, "1985" should read "1984".

On the same page, third column, first complete paragraph, fourth line, insert "in" before "1987".

On page 40259, second column—

1 In paragraph (c), "$396" should read "$571", and in paragraph (d), remove "$396 through".

On the same page, third column, fourth line, insert "1985" before "has".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 182 and 184

[Docket No. 81N-0368]

Hydrogen Peroxide; Affirmation of GRAS Status With Specific Limitations

Correction

In rule document 86-17036 beginning on page 27169 in the issue of Wednesday, July 30, 1986, make the following correction:

On page 27170, in the third column, in the eleventh line from the bottom of paragraph 5., "63-331" should read "63-231".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 344

[Docket No. 77N-334S]

Topical Otic Drug Products for Over-the-Counter Human Use; Tentative Final Monograph To Include Drug Products for the Prevention of Swimmer's Ear and for the Drying of Water-Clogged Ears

Correction

In proposed rule document 86-17041 beginning on page 27366 in the issue of Wednesday, July 30, 1986, make the following corrections:

On page 27371, in the third column, in paragraph 4., in the twentieth line, insert "(d)," between "(c)," and "(e)".

§ 344.50 [Corrected]

On page 27373, in the first column, in the section heading for § 344.50, in the first line, insert "aid" after "removal".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 358

[Docket No. 82N-0214]

Dandruff, Seborrheic Dermatitis, and Psoriasis Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

Correction

In proposed rule document 86-17040 beginning on page 27346 in the issue of Wednesday, July 30, 1986, make the following corrections:

§ 358.703 [Corrected]

On page 27359, in the first column, in § 358.703(a), in the first line, "medical" should read "medicinal".

§ 358.710 [Corrected]

Also on page 27359, in the second column, in the section heading for § 358.710, in the second line, "or" should read "of".

§ 358.752 [Corrected]

On page 27360, in the second column, in § 358.752(e), in the second line, "wold" should read "word".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Allergenic Products Advisory Committee; Renewal

Correction

In notice document 86-17042 beginning on page 27255 in the issue of Wednesday, July 30, 1986, make the following correction:

On page 27256, in the first column, in the first line, "1981" should read "1986".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 85N-0583]

Low Back Referral Criteria Panel; Meeting

Correction

In notice document 86-17044 appearing on page 27256 in the issue of Wednesday, July 30, 1986, make the following correction:

In the third column, in the "Dated" line, "1981" should read "1986".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-029]

Yankee Atomic Electric Co. (Yankee Nuclear Power Station); Exemption

Correction

In notice document 86-22839 beginning on page 36077 in the issue of Wednesday, October 8, 1986, make the following correction:

On page 36081, in the first column, fourth complete paragraph, second line, "20" should read "2".

BILLING CODE 1505-01-D

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federal register

Tuesday
November 25, 1986

Part II

Department of Labor

Occupational Safety and Health
Administration

29 CFR Part 1926

Safety Standards for Scaffolds Used in the Construction Industry; Notice of Proposed Rulemaking

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S-205]

Safety Standards for Scaffolds Used in the Construction Industry

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Occupational Safety and Health Administration (OSHA) proposes to revise the construction industry safety standards addressing scaffolds. The standards proposed for revision regulate the design, construction, and use of all scaffolds in construction.

The proposed revisions are intended to correct problems related to the existing standards. More specifically, the existing standards regulate, in detail, the specific methods to be used to reduce employee exposure to the hazards of slipping or falling while working on scaffolds. The proposed revisions would continue to address employee exposure, but would do so using performance criteria, where possible, rather than specifications standards. This approach is another step in OSHA's plan to review its safety standards and to revise them as necessary to provide safer working conditions without imposing unnecessarily burdensome requirements. This proposal is being issued after appropriate consultation with the Advisory Committee on Construction Safety and Health (ACCSH).

DATES: Comments on this proposed rulemaking must be postmarked by February 23, 1987. Hearing requests must be postmarked by February 23, 1987.

ADDRESS: Written comments and requests for hearing should be sent to the Docket Officer, Docket No. S-205, U.S. Department of Labor, Room N-3670, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3637, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 523-8151.

SUPPLEMENTARY INFORMATION: The author of this proposed rulemaking is Roy F. Gurnham, Office of Construction and Civil Engineering Safety Standards, Occupational Safety and Health Administration.

I. Background

The shortened forms listed below are used throughout this preamble to refer to the following sources: Advisory Committee on Construction Safety and Health—ACCSH or "the Committee"; American National Standards Institute Safety Requirements for Scaffolding, ANSI A10.8-1977 and current revisions—ANSI; OSHA's construction standards—Part 1926; OSHA's general industry standards—Part 1910; and exhibits in the rulemaking record—Example.

Congress amended the Contract Work Hours Standards Act (CWHSA) (40 U.S.C. 327 et seq.) in 1969 by adding a new Section 107 (40 U.S.C. 333) to provide employees in the construction industry with a safer work environment and to reduce the frequency and severity of construction accidents and injuries. The amendment, commonly known as the Construction Safety Act (CSA) (Pub. L. 91-54; August 9, 1969), significantly strengthened employee protection by providing occupational safety and health standards for employees of the building trades and construction industry working on Federally-financed or Federally-assisted construction projects. Accordingly, the Secretary of Labor issued Safety and Health Regulations for Construction in 29 CFR Part 1518 (36 FR 7340, April 17, 1971) pursuant to section 107 of the Contract Work Hours and Safety Standards Act.

The Occupational Safety and Health Act (the Act) (84 Stat. 1590; 29 U.S.C. 651 et seq.), was enacted by Congress in 1970 and authorized the Secretary of Labor to adopt established Federal standards issued under other statutes, including the Construction Safety Act, as occupational safety and health standards. Accordingly, the Secretary of Labor adopted the Construction Standards, which had been issued under the Construction Safety Act in 29 CFR Part 1518, in accordance with section 6(a) of the Act (36 FR 10466, May 29, 1971). The Safety and Health Regulations for Construction, were redesignated as Part 1926 later in 1971 (36 FR 25232, December 30, 1971). The standard titled "Ladders and Scaffolding," § 1926.450 through 1926.452, was adopted as an OSHA standard in Subpart L of Part 1926 as part of this process.

Various amendments were made to Subpart L during the first two years of the OSHA Act. The amendments revised scaffold provisions which addressed planking grades, wood pole scaffold construction, overhead protection, bracket scaffold loading, and plank spans. Other substantive provisions concerning pump jack scaffolds, height of catch platforms, and guardrails were also added to Subpart L in 1972 (37 FR 25712, December 2, 1972).

As part of OSHA's continuing program of standards evaluation, and in response to public comments, a complete review of Subpart L was begun in 1977. Since that time, ACCSH has reviewed Subpart L five times, and transcripts of these meetings, including recommendations, have been submitted to the Assistant Secretary. The transcripts are part of the public record as Exhibit 4. The Committee's recommendations, and those of other interested parties, have been carefully analyzed in connection with the present rulemaking. Many of the changes in the proposed standard reflect the recommendations and suggestions of the Advisory Committee and interested persons. Relevant ACCSH comments are discussed below in the Summary and Explanation section. Committee discussions that were inconclusive or did not result in a specific recommendation have also been considered, but are not discussed in this preamble.

After reviewing and evaluating the provisions of Subpart L, OSHA believes that certain provisions in the existing standards are redundant or ambiguous. The standard omits coverage of some types of scaffolds used in construction (e.g., catenary scaffolds) and contains rules applying only to particular types of scaffolds which OSHA believes should apply to all scaffold types (e.g., existing paragraph § 1926.451(b)(11) requiring tight spacing of planks). The proposed language eliminates what OSHA considers to be unnecessary and redundant provisions in the current standards (e.g., the requirement for guardrails is stated 19 separate times in the existing standard). In addition, the proposal has been written in performance-oriented language. This proposal also incorporates directly the relevant provisions of the general industry standards (Part 1910) which have been determined by OSHA to be applicable to the construction industry.

For purposes of organization, the topic of ladders will be relocated from Subpart L to a revised Subpart X titled "Stairways and Ladders." These two subparts, along with a revised Subpart M, retitled "Fall Protection," constitute a package of interrelated standards which have been rewritten and reorganized to facilitate treatment of the individual subjects. OSHA intends to coordinate the rulemaking activities for these three subparts, and hopes to make the final rules for all three subparts effective at the same time.

OSHA believes that the clarified and reformatted language of the proposal will help employers to understand the requirements of Subpart L, and will improve safety by minimizing subjective interpretations of the provisions. By minimizing, if not eliminating, the interpretations needed to understand the requirements of Subpart L, OSHA intends to provide fair and equal notice to all employers of the rules for scaffold safety.

This project is also being coordinated with the project for the revision of related general industry standards in 29 CFR Part 1910, Subpart D, Walking/Working Surfaces. Wherever possible, the 1910 and 1926 proposals use the same language to address similar hazards in order to promote consistency between the two sets of standards.

II. Hazards Involved

Accidents resulting in injuries and fatalities continue to occur on scaffolds despite the promulgation of the OSHA Construction Standards in 1971. Examination of available data indicates that these accidents appear to be primarily the result of non-compliance with existing OSHA standards, and not primarily because the current standards improperly address the hazards involved in scaffold work. However, after review of accident data compiled by the Bureau of Labor Statistic (Exs. 1 and 2) and OSHA (Ex. 3), and after review of compliance problems and public comments received since 1972, OSHA believes that the present standard needs updating to clarify the requirements of currently ambiguous and confusing provisions, and to eliminate provisions which are not feasible.

Precise scaffold accident data for the entire construction industry are not available. Although the number of construction scaffold accidents can be estimated for a given period of time, the ratio of accidents to the amount of employee exposure or to the type of scaffolds used cannot be readily determined. In addition, a comparison of accident rates for the various types of scaffolds or the trades using scaffolds is not possible because no information is available on the frequency of scaffold use according to type of scaffold or trade group involved. However, based upon the limited data which have been compiled (Ex. 1), the following statistics have been developed relating to the cause of injuries (not fatalities):

a. Seventy-two percent of the injured workers attributed the accident to either the planking or support giving way, slipping, or being struck by a falling object. Plank slippage was the most commonly cited cause.

b. About 70 percent of the workers learned of the safety requirements for installing work platforms, assembling scaffolds, and inspecting scaffolds, through on-the-job training. Approximately 25 percent had no training in these areas.

c. Only 33 percent of the scaffolds were equipped with a guardrail.

The following are examples of the types of accidents that injure and kill employees working on scaffolds.

- *October 7, 1975:* Fatality. While working on a scaffold and lifting a sheet of corrugated roofing over his head, an employee fell 13 feet to his death. The scaffold was loosely planked, permitting the employee to fall through the scaffold platform (Ex. 3:15). Observance of existing provision § 1926.451(a)(4) or the clarified language of proposed paragraph § 1926.451(b)(1), might have prevented this death by providing a fully decked platform with no openings large enough for the worker to fall through.
- *November 23, 1976:* Fatality. Two employees were working on a scaffold platform which had a four foot overhang at each end. During work operations one employee stepped out onto the overhang and the platform tilted up. That employee fell 250 feet to his death (Ex. 3:16). He was wearing a body belt but was not tied off. Observance of existing paragraph § 1926.451(a)(14), or proposed paragraph § 1926.451(b)(6), specifying maximum overhang might have prevented this death. In addition, observance of proposed paragraph § 1926.451(e)(1) requiring body belt protection also might have prevented this death. There is no specific existing provision requiring body belt protection.
- *May 31, 1977:* Fatality. An employee was entering a silo to remove formwork. He entered the silo by dropping through an access hole at the top of the tank to the scaffold platform seven feet below. The platform broke when he landed on it, and he fell 100 feet to his death (Ex. 3:23). Observance of existing paragraph § 1926.451(a)(13), or proposed paragraph § 1926.451(c)(1), requiring proper means of access might have prevented this death.
- *April 16, 1975:* One fatality, two injuries. Four employees were working on a 50-foot high scaffold when a 35–40 mile an hour gust of wind toppled the scaffold. The scaffold was not adequately pinned or tied (Ex. 3:51). Observance of proposed paragraph § 1926.451(a)(1) requiring wind load design might have prevented this accident. There is no specific provision in the existing standard on this issue. Observance of existing provision § 1926.451(d)(7), or proposed paragraph § 1926.451(b)(13), requiring scaffold ties or guying, also might have prevented this accident. Observance of existing paragraph § 1926.451(d)(6), or proposed paragraph § 1926.452(c)(4), requiring locking pins on fabricated frame scaffolds might have prevented this death and these injuries.

Although the above examples suggest that observance of existing provisions might have prevented the accidents, the examples also show that deficiencies in coverage exist. OSHA believes that the proposed provisions would remove the deficiencies and provide clearer, easier to understand requirements.

For a further discussion of accident rates and significance of risk, see IV. Preliminary Regulatory Impact Assessment and Regulatory Flexibility Analysis.

III. Summary and Explanation of Proposal

The proposed standard is intended to eliminate ambiguities, unnecessary provisions, and redundancies found in the existing standard. It will increase employer innovation by using performance-oriented language to replace specification-type language which is unduly restrictive. This will allow the employer to have more alternative ways to comply with provisions than are allowed by the existing standard. In addition, it would provide a uniform set of rules for all similar types of scaffolds by changing certain specific requirements into general requirements that address common hazards, and it would provide additional requirements where deficiencies presently exist.

All incorporation by reference of national consensus standards and other materials are deleted in the proposed standard as the text of applicable requirements from those standards are proposed for inclusion in the body of the standard. This will assist employers in determining what is required by a provision without having to refer to documents outside Part 1926.

Subpart L—Scaffolds

The title of Subpart L is proposed to be changed from "Ladders and Scaffolding" to "Scaffolds" in keeping with OSHA's decision to relocate the subject of ladders to the proposed revision of Subpart X titled "Stairways and Ladders." The word "scaffold" is

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used in the title and throughout the proposed standard in lieu of the longer word "scaffolding." This change does not affect the scope of the scaffold standard.

Section 1926.450 Scope, application and definitions applicable to this subpart.

Proposed paragraph § 1926.450(a) outlines the scope and application of the entire Subpart L. The proposal would apply to all scaffolds used in construction, alteration, repair (including painting and decorating), and demolition workplaces. The term "scaffold" is defined to mean any temporary elevated platform and its supporting structure used for supporting employees or materials, or both, except crane or derrick suspended personnel platforms. The intent is to cover the hazards associated with scaffold work regardless of the style, purpose, or name of the scaffold. Crane or derrick suspended personnel platforms would be covered in Subpart N of this part. For the purposes of this Subpart, scaffolds are divided into two categories: "supported scaffolds" and "suspension scaffolds." The standards in Subpart L are intended to apply to both types of scaffolds, except where a provision is expressly limited to either suspension or supported scaffolds. Scaffolds which have a combination of supported and suspended components would be covered by both sets of standards.

Proposed paragraph § 1926.450(b) lists and defines all major words used in Subpart L. Many of the definitions are the same as those in the existing standard, although some have been reworded for uniformity or clarity. One significant change made to all definitions defining the types of scaffolds is the inclusion of the words "supported scaffold" and "suspension scaffold." This change would clarify the application of the general rules contained in § 1926.451. Another significant change is the deletion of limitations and requirements from the existing definitions. For example, the existing definition for "bricklayer's square scaffolds" is "a scaffold composed of framed wood squares which support a platform, limited to light and medium duty." The words after "platform" are proposed to be deleted from the definition because they have a substantive limitation on the use of the scaffold, rather than serving to define the type of scaffold. Similarly, the existing definition for "coupler" is "a device for locking together the component parts of a tubular metal scaffold. (The material used for the coupler shall be of a structural type, such as a drop-forged steel, malleable iron, or structural grade aluminum.)" The limitations in these definitions are substantive rather than definitional, and are more properly located in the standard's provisions.

The following are the major words which would be changed or added to the definitions paragraph in the proposed standard:

"Adjustable suspension scaffold." This is a new definition and is used in the proposal to clarify which types of suspension scaffolds are adjustable. As any type of suspended scaffold can be erected at various heights and is, therefore, adjustable, this definition explains that the term applies only to those types of scaffolds which have hoists located such that the hoist can be operated by employees on the scaffold. Hoists are defined as mechanical devices used to raise or lower a suspended scaffold.

"Body belt/harness system (personal fall arrest system)." This term replaces the existing term "safety belt" to reflect current industry use of the new terms body belt system and body harness system (also known as personal fall arrest systems).

"Catenary scaffold." This type of scaffold is not specifically addressed in the existing rules but is covered in proposed paragraph § 1926.452(r). The definition is essentially the same definition as is currently used by ANSI.

"Cleat." The existing definition applies only to ladders. The proposed definition defines this word as it applies to scaffolds, i.e., a structural member used to prevent plank slippage and to provide footing on sloped surfaces such as crawling boards.

"Dropline." This is a fall protection system piece of equipment used for body belt support. It is not used to support the scaffold.

"Equivalent." This term is used in the proposal to allow alternative means of complying with the standards. The definition makes clear that the employer must demonstrate that all alternative means of compliance will provide an equal or greater degree of safety than that attained by using the method or item specified in the standard.

"Exposed power lines." This term is defined to mean electrical power lines which are accessible and not shielded, and is used in paragraph § 1926.451(d)(6), which limits the use of scaffolds near exposed power and distribution lines. The definition excludes extension cords and power tool cords from the rule.

"Fabricated decking and planking." The existing standard only addresses solid sawn wood planking in many of its provisions. Since the market presently offers laminated wood platforms, metal decking, and decking made of other materials, as well as solid sawn wood planking, the standard has been drafted to include these items, and to officially sanction their use. The definition makes clear that both fabricated and natural products are addressed.

"Fabricated frame scaffold." This is the proposed name for the type of scaffold presently identified as "tubular welded frame scaffold." The current term is too restrictive in that the word "tubular" means round and "welded" implies metal components are involved. The rules in paragraph § 1926.452(c) are not dependent on such limitations. They address fabricated frames and related scaffold components whether the component parts are square or round, or made of metal, plastic, wood, or some other material.

"Failure." This word is used in performance-oriented paragraphs such as § 1926.451(a)(1) and § 1926.451(a)(3). Because the word can be interpreted to mean only breakage or a physical separation of component parts, the definition makes it clear that the load point where ultimate strength is exceeded also is considered to be failure. This is the point where structural members lose their ability to carry loads.

"Guardrail system." This term defines guardrails as vertical barriers erected to prevent employees from falling, and replaces the existing term "guardrail." The definition is changed as the existing definition describes a toprail, a midrail, and a stairrail, each of which has different performance criteria. The new definition makes it clear that the entire system, including toprail, midrail (or screen), and uprights, is covered when guardrails are addressed in paragraph § 1926.451(e). In addition, the definition distinguishes between Type I guardrails, those capable of providing adequate fall protection by themselves, and Type II guardrail systems, those which may be used on suspended platforms as edge delineators and to prevent misstepping, but which do not provide adequate fall protection by themselves. Body belt/harness systems must be worn when Type II guardrails are used on suspension scaffolds because of the reduced strength characteristics and lower toprail heights of Type II systems.

"Hoist." This definition clarifies that paragraphs relating to hoists, including paragraphs §§ 1926.451(b) (28), (29) and (30), apply only to the mechanisms used to elevate or lower suspension scaffolds, and do not apply to other types of material hoists.

"Ladder stand." This is a term used in § 1926.451(c) and defines one kind of means-of-access which can be used with scaffolds.

"Lower levels." This is a new term and is used to describe the areas to which an employee could fall. The definition does not apply to the surface from which the employee could fall.

"Maximum intended load." This term replaces the existing terms "maximum rated load" and "workload." The proposed term defines more clearly the types of loads which are to be included when determining the maximum load. The word "rated" in the existing term makes it unclear, in light of the existing definition, as to whether or not the safety factor of four (existing rule § 1926.451(a)(7)) or six (existing rule § 1926.451(a)(2)) is to be incorporated into the determination of the maximum load. The proposed definition and proposed rule § 1926.451(a)(1) clearly indicate that the maximum intended load does not include either safety factor.

"Mechanically-powered hoists." This is a new term and would define hoists which are powered by other than human energy.

"Mobile scaffold." This proposed term replaces the existing term "manually-propelled mobile scaffold" because there are power drive units available to propel scaffolds, and the proposed standard addresses both types of drive systems.

"Multi-level suspended scaffold." The existing standard does not specifically address suspended scaffolds with more than one platform level. This term in the proposed standard identifies such scaffold arrangements.

"Multi-point adjustable suspension scaffold." This proposed term is included to clarify the coverage of paragraph § 1926.452(q). The existing standard addresses masons' adjustable multiple-point suspension scaffolds and stone setters' adjustable multiple-point suspension scaffolds separately, and does not specifically address other types of multiple-point scaffolds. The new term allows all such scaffolds to be addressed as a group.

"Open sides and ends." This proposed definition clarifies the application of paragraph § 1926.451(e)(1), which requires fall protection, by defining the hazard for which guarding would be required. The 14-inch dimension in the definition is consistent with the provisions of proposed paragraphs §§ 1926.451 (b)(4) and (c)(7). The 18-inch limit is consistent with the intent of § 1926.451(b)(4)(ii).

"Outrigger." This term, "outrigger beam," and "outrigger scaffold" are new definitions provided to explain the difference between these three similar terms.

"Overhand bricklaying operations." This activity is identified in paragraph § 1926.451(e)(1)(v) as having unique fall protection requirements. This definition clarifies the activities involved.

"Platform." This term is used to avoid stressing the use of a particular type of work surface, such as planking or planks. The existing standard uses such terms, and consequently is ambiguous as to the use of other types of platforms such as decks or other fabricated materials or units.

"Platform unit." The existing standard uses the term "planks" in many of its provisions. This term commonly means "solid sawn wood." However, some manufacturers of fabricated planks use this term to describe their product. Furthermore, there are other types of structural members and materials which can be used to build platforms and walkways. Therefore, the term "platform unit" is needed to clarify that the standards apply to all types of platforms and walkways, not just those made of solid sawn wood.

"Pump jack scaffold." This is a new term required because this type of scaffold is not defined in the existing standard.

"Self-contained adjustable scaffolds." This type of scaffold, not specifically addressed in the existing standard, is covered by the general rules for both supported scaffolds and suspended scaffolds, depending on its construction. It is an adjustable suspension scaffold equipped with its own support frame and moveable platform.

"Step, platform, and trestle ladder scaffolds." This type of scaffold is not specifically addressed in the existing rules. The proposal addresses this type of scaffold in paragraph § 1926.452(n).

"Supported scaffold" and "Suspension scaffold." These terms are used to define the two basic types of scaffolds. These terms clarify the application of the general rules in paragraph § 1926.451.

"Unstable objects." This term is used to describe those items which shall not be used as scaffold base supports because they do not properly distribute the loads imposed on them. Such supports can break or become dislodged. Examples of such objects include barrels, boxes, bricks, blocks, and similar items. This list is essentially the same as the one set forth in E § 1926.451(a)(2).

"Vertical pickup." This term defines the structural member addressed in paragraph § 1926.452(r)(1).

"Walkway." This term is used describe platforms within a scaffold which are used for access and not as work platforms.

The following definitions have been deleted in the proposed standard. They now are defined either in another subpart or they simply are not needed because the revised provisions treat the subject in a different way than does the existing standard: "heavy duty scaffold," "light duty scaffold," "medium duty scaffold," "midrail," "toeboard," and "working load."

In the following discussion, a paragraph citation preceded by the letter "E" refers to a paragraph in the existing standard. All other citations are to the proposed standard.

Section 1926.451 General requirements.

This paragraph applies to all scaffolds, and contains most of the new rules and changed provisions. The rules in this section have been grouped into the five major subsections of capacity, construction, access, use, and fall protection, to facilitate locating a particular rule.

For purposes of clarification, those rules which apply only to certain types of scaffolds are so identified. For example, general rule § 1926.451(b)(14) would apply to supported scaffolds, and the term "supported scaffold" is used to indicate this. Similarly, general rule § 1926.451(b)(27) would only apply to suspension scaffolds. If a rule makes no distinction, like general rule § 1926.451(b)(1), then it would apply to all scaffolds.

Paragraph 1926.451(a) Capacity.

This proposed paragraph would set forth the minimum strength criteria for all scaffold components and connections. The proposed requirements are substantively the same as existing capacity provisions, however, the proposed language eliminates ambiguities and apparent inconsistencies.

Paragraph (a)(1) would require each scaffold component, except suspension ropes and guardrails, to be capable of supporting without failure its own weight and at least four times the maximum intended load applied or transmitted to that component. This is essentially the same requirement as E § 1926.451(a)(7) which requires that scaffolds and scaffold components "be capable of supporting without failure at least 4 times the maximum intended

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load." However, as written, the existing requirement is inconsistent with paragraph E § 1926.451(a)(19), which requires a safety factor of six for suspension ropes, and is ambiguous as to its application to paragraph E § 1926.451(a)(5) which governs guardrails. The proposed standard is clear that the application of the 4 to 1 safety factor does not apply to suspension ropes or guardrails.

The proposed paragraph makes it clear that the 4 to 1 factor applies to the load which is actually applied or transmitted to a component, and not to the total load placed on the scaffold. As worded, E § 1926.451(a)(7) requires that each component, regardless of its location, configuration, or the number of other components supporting the same load, be designed to support four times the maximum intended load (MIL). Literally interpreted, this could be read to require that a crossbrace on a supported scaffold be capable of supporting the same load as a scaffold leg. That is, it must be sized to support four times the MIL regardless of where the load is placed on the scaffold, and regardless that the function of a brace is to prevent sway and not directly to support the MIL. The amount of MIL applied or transmitted to each component depends on its location on the scaffold, and the type and configuration of the scaffold system. On complicated systems, the services of an engineer may be required to determine the loads at a particular point. However, because some employers do not have an engineering staff, and because some employers prefer to have a quick reference table from which a scaffold can be readily built (even if over-designed), paragraph § 1926.451(a)(1) would allow the scaffold designer to use the tables and guidelines in Appendix A. These tables and guidelines are the same as are presently provided throughout the existing standard and are believed by OSHA to provide the required 4 to 1 factor of safety when loaded in accordance with the Appendix. However, whereas the existing standard requires the use of these tables and guidelines, the proposed standard does not require them. What would be required is that the scaffold meet the performance criteria set forth in paragraph § 1926.451(a)(1). Scaffolds built and loaded to conform with Appendix A would be deemed to meet this requirement. This allows design freedom to employers who desire to engineer their scaffold set-up, while also providing a solution for employers who either do not desire to or cannot engineer the systems they use.

The tables in existing Subpart L (Tables L–3 through L–19) provide detailed specifications for components used in scaffold construction. However, OSHA believes that the important consideration in scaffold design and construction is that the scaffold support the MIL safely, and not that the scaffold have a particular sized upright regardless of MIL size and placement pattern. Consequently, the proposal would relocate all tables currently in § 1926.451, including Table L–3 governing maximum span distance, to Appendix A, and would not make the tables mandatory. Similarly, existing paragraphs such as E § 1926.451(a) (9) and (10), which specify minimum grade stress for lumber used, and E § 1926.451(c) (1), (2), (3) and (4), which specify tube size and maximum tube and coupler scaffold heights, also would be relocated to Appendix A. The relocation of existing tables and specification-type language does not reduce the level of safety presently effected by existing Subpart L. OSHA believes the proposed capacity requirements of paragraph § 1926.451(a) provide the same level of safety as the existing standard. The existing specification tables and paragraphs are engineered partial solutions to the requirements of E § 1926.451(a)(7) which requires the 4 to 1 factor of safety. Relocating these tables and paragraphs to Appendix A reduces redundant provisions and eliminates the interpretation that these specified provisions are the only acceptable ways of building a particular type scaffold.

Paragraph (a)(2) would clarify that the factor of safety of 4 to 1 also applies to direct connections to floors and roofs and to counterweight systems.

Paragraph § 1926.451(a)(3) would require that suspension ropes be capable of supporting six times the MIL, and is essentially the same as E § 1926.451(a)(19). In addition, paragraph (a)(4)(i) would require ropes to be sized so that sufficient rope surface area is available for the proper functioning of brake and hoist mechanisms used on suspension scaffolds. Paragraph (a)(4)(ii) would specify minimum rope strength for catenary scaffolds and is based on ANSI A10.8–1977, paragraph 22.2. Paragraph (a)(4)(iii), which specifies minimum rope strength for float and needle beam scaffolds, is the same as requirements E § 1926.451(p)(2) and E § 1926.451(v)(5).

Paragraph 1926.451(b) Construction.

Proposed paragraph (b)(1) would require all platforms, except walkways, to be fully decked or planked. Paragraph (b)(1) would clarify the provisions of E § 1926.451(a)(4), which requires guardrails on all open sides and ends of scaffolds. OSHA has interpreted E § 1926.451(a)(4) to mean that guardrails must be erected as close as possible to the platform planking. As guardrails normally can be conveniently attached only at the scaffold uprights, OSHA to date has required the platforms to be sized such that there is no gap between the outermost plank edge and the guardrail. However, most prefabricated end frames do not have a lateral spacing between uprights which can accommodate an integral number of commercially-available planks. Therefore, to comply with the existing rule, the last plank has to be notched, slanted, or cut to size. This can lead to a significant reduction in plank strength, and possibly cause tipping of the plank (sideways) if eccentrically loaded. Therefore, to deal with this problem, the proposed rule would modify the existing requirement by requiring the span between uprights to be planked or decked as fully as possible, but would allow up to nine and one-half inches between the planking or decking and the guardrail supports. Nine and one-half inches would be the maximum allowable open space as spaces larger than this can be filled with a standard sized platform unit (defined as individual wood planks, fabricated planks, fabricated decks, and fabricated platforms) without modification. The proposed rule also recognizes that some side warpage (as opposed to twist warpage) may occur to individual planks, and § 1926.451(b)(1)(i) would allow a maximum one-inch gap between platform units. When side brackets are used to extend the width of a platform, a gap would be permitted in the platform to accommodate the presence of the scaffold uprights.

Paragraph (b)(2) would specify a minimum width of 18 inches for all platforms, except platforms used on ladderjacks and boatswains' chairs. This would not require each platform unit to be at least 18 inches wide. Rather, it would require that the platform, which is made up of one or more platform units, to be at least 18 inches wide. OSHA believes 18 inches is the minimum safe width for scaffolds; however, the provision would allow ladderjack scaffold platforms to be as narrow as 12 inches wide. The smaller size for ladderjack scaffolds would be made because the difficulty of handling one 18-inch wide plank or two nine-inch planks on a ladder is considered by OSHA to be more hazardous than working on one 12-inch wide platform. However, because the narrowness of the 12-inch platform could cause an employee to misstep, the proposal would require body belt/harness systems to be used on ladderjacks, whereas the existing standard requires no fall protection. The existing requirement specifying a minimum size for boatswains' chair seats is proposed to be deleted as many chairs use slings or molded seats, and such a requirement is too restrictive.

Paragraph (b)(3) would prohibit the use of emergency descent devices as working platforms. These devices are not normally designed for repeated in-place use. However, this provision is not intended to preclude the use of scaffold systems which have as an additional feature the capacity to function as an emergency descent device.

Paragraph (b)(4) would limit the distance that a platform may be away from the face of the structure being worked on to 14 inches, unless Type I guardrails or body belt/harness systems are used. The existing rule, E § 1926.451(a)(4), requires guardrails on all open sides and ends of a scaffold platform, but does not specify how far away a scaffold platform may be from a building before the side facing the building is considered to be an "open side." The existing rule is often interpreted to mean that no open space is allowed. However, zero clearance during all phases of construction is not feasible. The proposed 14-inch limit recognizes that during construction the face of the wall being built often moves out towards the scaffolds. There must be sufficient space at the beginning of work to allow for the installation of insulation, lathing, plaster, masonry units, ledges, facings and other architectural or structural additions. These must be allowed for from the start, as it is not practical to move large scaffolds away from the wall as wall construction progresses outward. When the initial set back distance must be more than 14 inches, the platform can often still be kept within 14 inches of the building by the use of side brackets or extensions on supported scaffolds, and by angulated roping, static lines, or equivalent means on suspension scaffolds. An exception to the 14-inch limit is made for outrigger scaffolds, which are limited to a distance of three inches, the same as required by E § 1926.451(g)(4). Another exception is made for plastering and lathing operations, where the distance may be 18 inches. The 18-inch dimension was developed from data collected by Wang Associates (Ex. 5) which show that a shorter distance between the scaffold platform and the wall is not feasible for the operators of plastering and lathing equipment because of interference with the tools used during such operations. However, these same operations cause the employee to stand back from the edge and the hazard of falling is correspondingly reduced.

Paragraph (b)(5) would require platform units to extend a minimum of six inches beyond each end support, and is the same as E § 1926.451(a)(14). However, cleats would be allowed in lieu of overhang because of their ability to restrain movement of platform units.

Paragraph (b)(6) would change the maximum overhang allowed by E § 1926.451(a)(14) from 12 inches to 18 inches. This modification is made because many planks in use are 10 feet long and are used to span eight-foot distances. The existing rule requires these planks to be perfectly centered. This is an unnecessary requirement. In addition, because the proposed 18-inch limit, strictly interpreted, would require platform units to be cut if they extend more than 18 inches past their end supports, the rule provides that the overhang may exceed 18 inches if the extended portion is designed, capable, and installed to support employees without tipping, or is guarded to prevent employee access.

Paragraph (b)(7) would require proper support for abutting platform units. This provision is based on E § 1926.451(b)(12), which applies only to wood pole scaffolds. However, OSHA proposes that proper platform support is a valid consideration for all scaffolds, and the proposal would apply to all scaffolds. Abutted platform units do not rest one on another, but instead are end-to-end. Consequently, one unit does not support the other, and proper support can only be provided by separate bearers, butt plates, or equivalent supports.

Paragraph (b)(8) would require overlapped platforms to be overlapped a minimum of 12 inches. This would be the same requirement as E § 1926.451(a)(12), except the proposed rule also requires overlaps to occur over supports and not between supports.

Paragraph (b)(9) is taken from E § 1926.451(b)(13) for wood pole scaffolds, and prescribes the proper placement of platform units for maximum safety at corners or other changes in scaffold direction. OSHA proposes that this is a valid consideration for all scaffolds, and not just wood pole scaffolds.

Paragraph (b)(10) is proposed to assure that structural defects in platform units are not covered from view by the use of an opaque coating or finish. Hairline cracks can significantly reduce the strength of a wood member and their early detection is important. Opaque finishes can cover such cracks and make them difficult to discover. Unit edges are excepted from this rule to allow identification marks, grading marks, or other similar type of marks to be placed on the unit edges.

Paragraph (b)(11), prohibiting random combinations of scaffold components, is proposed because of the many inferior scaffold systems which can result when the products of two different manufacturers are indiscriminately assembled together. Many such combinations result in scaffolds which are not in alignment or are not plumb, and which, therefore, do not properly carry or distribute the loads imposed on the scaffolds. However, some units can be intermixed with no problem and the proposed language, therefore, does not prohibit all such combinations. However, the parts must fit together without force, and if parts are modified in order to intermix them, a competent person must determine that the resulting scaffold is structurally sound (no makeshift connections to facilitate the mixing of mismatched pieces).

Paragraph (b)(12) would prohibit the use of scaffold components made of dissimilar metals unless a competent person has determined that the resulting galvanic action will not significantly reduce any component's strength. This is a change from E § 1926.451(c) (1), (2) and (3) which prohibit the use together of any dissimilar metals on tube and coupler scaffolds. The proposed rule would apply to all scaffolds, as the problem of dissimilar metals causing galvanic action can occur on any scaffold, not just tube and coupler scaffolds. However, the proposed rule would not prohibit all uses of dissimilar metals as there are many combinations which do not produce significant galvanic reactions.

Paragraph (b)(13) would require the stabilization of all supported scaffolds when their height to base width (including outriggers, if any) ratio exceeds 4 to 1. This rule is taken from E § 1926.451(e)(1), which applies only to manually-propelled mobile scaffolds. However, the danger of a scaffold toppling because its center-of-gravity is too high is a problem with all supported scaffolds. Therefore, OSHA believes that the 4 to 1 ratio should apply to all

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supported scaffolds. Paragraph (b)(13)(i) would require ties, guys, or bracing at heights not to exceed the first multiple in height of the 4 to 1 ratio, and at 20 foot maximum intervals thereafter above the first tie, guy or brace. The following are examples of how this rule would be applied: (a) If a scaffold is five feet wide and 18 feet high, no ties, guys, or braces would be required because the height is less than four times the width; (b) if the scaffold is five feet wide and 60 feet high, ties, guys, or braces would be required at least at the 20, 40 and 60-foot levels; and (c) if the scaffold is five feet wide, 60 feet high, and the contractor ties, guys, or braces the scaffold at the 10-foot level, then ties and braces also would be required at least at the 30 and 50 foot levels, and no ties, guys, or braces would be required at the very top since the 60-foot level is only ten feet above the last intermediate level tie, guy or brace (at 50 feet).

Paragraphs (b)(13)(i) and (b)(13)(ii), which specify the horizontal spacing for ties, guys, and braces, also replace existing rules § 1926.451 (b)(4), (c)(12), and (d)(7). The existing rules require pole scaffolds, tube and coupler scaffolds, and fabricated frame scaffolds to be tied and braced at 26 feet vertically (25 feet for wood pole scaffolds) and 30 feet horizontally (25 feet for wood pole scaffolds). These existing rules are often misinterpreted to mean that scaffolds less than 26 feet high by 30 feet long (25 by 25 for wood pole scaffolds) do not need guys, ties, or braces. Proposed paragraph (b)(13)(ii) would replace the 26 and 25 foot vertical rules and require all scaffolds required by the 4 to 1 rule to have guys, ties, or braces, to have such connections installed at each end of the scaffold and at horizontal intervals not to exceed 30 feet (measured from one end only). The following are examples of how this rule would be applied: (a) If a scaffold is five feet wide, 18 feet high and 50 feet long, no vertical or horizontal ties and braces would be required because the height is less than four times the width and the four to one rule does not require connections: (b) if the scaffold is five feet wide, 50 feet high, and 25 feet long, ties and braces would be required at least at the 20 and 40-foot levels at both ends of the scaffold (four ties and braces in all); (c) if the scaffold is five-feet wide, 50-feet tall, and 70-feet long, ties and braces would be required at least at the 20 and 40-foot levels. These would be installed starting from either end, at least at the zero, 30, 60, and 70-foot horizontal distances (eight ties and braces in all).

Paragraph (b)(14) would consolidate rules E § 1926.451 (a)(2), (b)(1), (c)(6), (d)(4), (e)(8), (n)(7) and (y)(5), all of which require that scaffold uprights rest upon a stable, firm, level footing. This is not a new requirement, although the language is changed for purposes of clarity and uniformity.

Paragraph (b)(15) would consolidate rules E § 1926.451 (a)(15), (b)(1), (c)(6) and (e)(8), all of which require that uprights be secure, plumb, and braced to prevent swaying and displacement of the scaffold. This is not a new requirement, although the language is changed for purposes of clarity and uniformity.

Paragraph (b)(16) is the first of the paragraph (b) rules which specifically address suspension scaffolds. This proposed rule requires suspension support devices to rest on surfaces capable of supporting the suspension scaffold. It is taken from E § 1926.451(h)(9), and addresses the problem of adequate support for the scaffold system. It is the suspension scaffold equivalent of proposed rule (b)(14), which requires firm footing for supported scaffolds.

Paragraphs (b) (17), (18) and (19) would set forth conditions required for the use of outrigger beams, but would not require that such beams be used on suspension scaffolds. Paragraph (b)(17) would require beams to be made of structural metal and to be restrained to prevent movement. This is the same requirement as E § 1926.451 (h)(4) and (k)(8). Paragraph (b)(18) would require stabilizing the inboard ends of outrigger beams by direct connections to the floor or roof deck or by the use of counterweights. This rule clarifies E § 1926.451(h)(4) and E § 1926.451(j)(5) which require only that outriggers be securely fastened or anchored. Counterweights are not addressed in the existing standard, and the proposal corrects this oversight. Counterweights are often the only way to anchor a scaffold without damage to the supporting floor or deck. However, because of the large load often placed on masons' adjustable multi-point suspension scaffolds and the large counterweights that would be necessary to anchor such systems, the proposal does not allow counterweights for stabilizing masons' suspension scaffolds. This provision is intended to keep the supporting roof or floor from becoming dangerously overloaded.

Paragraph (b)(18)(i) would require that direct connections be evaluated by a competent person (and designed by an engineer for masons' adjustable multi-point scaffolds) to insure that the roof or floor deck is capable of supporting the loads to be imposed. Paragraph (b)(18)(ii) would require that counterweights be made of solid material, and, in effect, prohibits the practice of using sandbags or water-filled buckets as counterweights. Such counterweights are easily displaced and may leak. Paragraph (b)(18)(iii) would require counterweights to be mechanically attached to the outrigger beam. This provision would help protect against accidental counterweight displacement. Paragraph (b)(18)(iv) would prohibit the removal of counterweights from a scaffold until the scaffold is disassembled. This new rule is also intended to prevent scaffolds from being improperly balanced. Paragraph (b)(18)(v) would require outrigger beams to be tied back as an additional means of anchorage. This new provision would provide a back-up system in case the counterweights become displaced. Although tiebacks alone may not keep a scaffold from tipping, they will keep the system from falling to the ground and from causing a progressive failure of nearby scaffolds and scaffold sections. Vents, standpipes, other piping systems, and electrical conduits are not acceptable points of anchorage because they are often made of materials that cannot support the loads that would be imposed on them if a counterweight system were to fail. Paragraphs (b)(18) (vi) and (vii) would specify how tiebacks are to be installed.

Paragraph (b)(19) would specify the construction requirements for outrigger beams. Paragraph (b)(19)(i) is based on E § 1926.451(h)(8) and E § 1926.451(j)(5), and would require stop bolts or shackles at each end of beam to prevent the beam, as well as anything supported from the beam, from coming off the beam or beam support. Paragraph (b)(19)(ii) would allow the use of channel beams in lieu of "I" beams, provided they are fastened together with their flanges turned out. Paragraph (b)(19)(iii) is a new rule and would require that outrigger beams be installed with all bearing supports installed perpendicular to the beam centerline. This would help prevent tipping of the beam due to any eccentric loading. Paragraph (b)(19)(iv) would require all outrigger beams to be used with their web in a vertical position. This provision is the same as E § 1926.451 (h)(7) and (j)(5). Paragraph (b)(19)(v) would specify the correct alignment for steel shackles, clevices, and the hoisting drum when single outriggers are used. This provision is the same as E § 1926.451(h)(11).

Paragraph (b)(20) would address the types of supports, other than outrigger beams, used to suspend suspension scaffolds. Paragraph (b)(20)(i) would require that support devices such as cornice hooks, roof hooks, roof irons, and parapet clamps, be made of mild steel or equivalent material, and is the same as E § 1926.451(i)(4). Paragraph (b)(20)(ii) is a new rule and would require the use of bearing blocks to spread loads. Paragraph (b)(20)(iii) would require the use of tiebacks, the same as E § 1926.451(i)(4). The proposal, however, would specify that the tiebacks be equivalent in strength to the hoisting ropes. The tieback must be as strong as the hoisting ropes as they may have to support the scaffold in the event of a scaffold problem. Vents, standpipes, other piping systems, and electrical conduits are not acceptable points of anchorage because they are often made of materials that cannot support the loads that would be imposed on them if the support device were to fail.

Paragraph (b)(21) would specify the minimum length of suspension rope to be used at each installation. The proposal is based on rules E § 1926.451(h)(10) and (j)(7), with the clarification that either the rope shall be long enough to allow the scaffold to be lowered to the next level without the rope end passing through the hoist, or the rope shall be configured or provided with a means to prevent its end from passing through the hoist. OSHA believes this provision will prevent accidental runthrough of the suspension rope.

Paragraph (b)(22) would prohibit the repairing of wire suspension ropes. This is a new requirement and is based on OSHA's view that there is no way to determine the strength capacity of a repaired wire rope without the danger of overstressing the repair and thus rendering the rope unsafe for use on scaffolds. This provision does not prohibit joining together two or more pieces of wire rope as allowed by paragraph (b)(23).

Paragraph (b)(23) would allow suspension ropes to be joined together only by the use of eye splices with shackles, or coverplates and bolts. This is a new requirement and is based on OSHA's view that these are the only acceptable ways to connect wire ropes without affecting their strength capacities.

Paragraph (b)(24) would require the load ends of wire suspension ropes to be equipped with proper size thimbles, and to be secured by eye splicing or equivalent means. This requirement is the same as E § 1926.451(h)(10) and E § 1926.451(j)(7).

Paragraph (b)(25) would prohibit the use of defective or damaged ropes, and is based on E § 1926.451(w)(5) which prohibits damaged ropes from being used on float or ship scaffolds. Like the other rules discussed in this section, this rule is proposed to apply to all suspended scaffolds. The danger of a broken line is a problem not confined to float or ship scaffolds.

Paragraph (b)(26) is a new requirement and would require that swaged attachments or spliced eyes on wire suspension ropes be used only if they are made by the wire rope manufacturer or a qualified person.

Paragraph (b)(27) would require that wire rope clips be retightened after the initial loading and periodically thereafter. Such clips can work loose under cyclic loading and should not be assumed to be properly tightened without being checked on a regular basis.

Paragraph (b)(28) would require that scaffold hoists, both mechanically-powered and manually-powered, be of a type tested and listed by a qualified testing laboratory. This provision is a consolidation of existing provisions E § 1926.451 (h)(2), (i)(3), (j)(2), and (k)(1), except that a qualified testing laboratory must be used. For a definition of "qualified testing laboratory," see newly revised Subpart K—Electrical. OSHA is presently evaluating the many issues related to the use of testing laboratories (including OSHA's role in recognizing such laboratories) in the context of its general industry standards. To this end, OSHA published a notice of proposed rulemaking (49 FR 8326) on March 6, 1984, on the safety testing or certification of certain workplace equipment and materials involving the use of accredited testing laboratories. Although the testing and certification proposal is not applicable to the construction industry and would not directly affect Subparts K and L of Part 1926, it does incorporate a term that is analogous to the Subparts K and L term "qualified testing laboratory" (called "qualified electrical testing laboratory" in the general industry proposal). OSHA therefore recognizes that, in the interest of consistency, the outcome of the general industry rulemaking on safety testing or certification may possibly lead the Agency to reevaluate the use of terms and definitions that are found in Subparts K and L of Part 1926. When that rulemaking has been completed, appropriate changes will be proposed for the regulations in Subparts K and L, if necessary, as well as for other OSHA regulations which deal with product approval and testing laboratories.

Paragraph (b)(29) would prohibit the use of gasoline-powered hoists and is based on E § 1926.451(k)(2) which allows units to be either electrically or air motor driven. Gasoline hoists have fire hazards which are not acceptable given the confined area of a scaffold where timely escape could be very difficult, and perhaps impossible if the hoist is incapacitated.

Paragraph (b)(30) would require mechanically-powered operated gears and brakes to be enclosed, and is the same requirement as E § 1926.451(k)(3).

Paragraph (b)(31) would require that an automatic braking device or locking pawl be provided, in addition to the normal operating brake, to slow a hoist when its normal speed of descent (as recommended by the hoist manufacturer) is exceeded. This is the same requirement as E § 1926.451(k)(4), except the proposed requirement would apply to manually-powered hoists as well as mechanically-powered hoists.

Paragraph (b)(32) would require manually-powered hoists to be built that require a positive crank force to lower the scaffold. This is a new requirement and is based on OSHA's view that it will eliminate the dangerous condition of "free-running" hoists during descents. OSHA requests comments and supporting information on the need for this new requirement.

Paragraph 1926.451(c) Access.

Paragraphs (c) (1) through (6) set forth the requirements for safe access to scaffolds. They are intended to clarify the requirement of E § 1926.451(a)(13), which only requires "an access ladder or equivalent safe access shall be provided." However, OSHA's view is that these provisions should not apply to employees performing scaffold erection and dismantling operations because such rules often are not feasible until a scaffold has been erected and properly braced.

Paragraph (c)(1) provides that access to and between scaffolds more than two feet above or below the point of access shall be by certain specified means of access. This paragraph consolidates the requirements of E § 1926.451(e)(5) that ladders or stairways be provided and used on mobile scaffolds; E § 1926.451(g)(3) that connecting runways be used for access to plasterers', decorators', and large area scaffolds; and E § 1926.451(y)(9) that ladders be used for pumpjack scaffold access. In addition, other types of access are recognized as being acceptable means of access such as integral prefabricated rungs. Paragraph (c)(1) also recognizes the current industry and trade practice of using hook-on and attachable ladders designed for use with manufactured-types of scaffolds, and direct access from other scaffolds, structures, personnel hoists, or similar surfaces. The paragraph prohibits the use of crossbracing as a means of access. OSHA believes crossbraces do not provide adequate footings or handholds as they are not designed nor intended to serve as a means of access. Their use as such is believed by OSHA to be extremely hazardous.

Paragraph (c)(2) would set forth the conditions required for the use of ladders as means of access. Paragraph (c)(2)(i) would require ladders to be positioned so as not to tip the scaffold. This is based on existing mobile scaffold rule E § 1926.451(e)(5). Paragraph (c)(2)(ii) would require that the bottom rung of hook-on and attachable ladders be not more than 24 inches above the scaffold support level. This would allow scaffolds to be leveled and adjusted without constantly adjusting the ladder, up to a maximum of 24 inches. Paragraph (c)(2)(iii) would require landing platforms be provided at 20-foot maximum vertical intervals for hook-on and attachable ladders. The 20-foot requirement is a change from E § 1926.451(e)(5), which applies only to mobile scaffolds and which specifies 35-foot intervals. The proposed rule would apply to all scaffolds, and the change in the height specification is proposed so that the provision will be consistent with its counterpart in the general industry standards and because it provides a safer work environment. The proposal does not require ladders to be offset every 20 feet, or that a landing be provided on the ladder itself. It would simply require that rest platforms be placed not more than 20 feet apart. Existing work platforms or walkways which are already part of the scaffold could be used to meet this requirement. OSHA requests comments and supporting information on the need for landing platforms at 20-foot intervals, rather than at 35-foot intervals. Paragraph (c)(2)(iv) would require hook-on and attachable ladders to be specifically designed for use with manufactured types of scaffolds to insure compatibility. Paragraphs (c)(2)(v) and (vi) would specify minimum rung width and maximum rung spacing for hook-on and attachable ladders.

Paragraph (c)(3) would set forth conditions required for the use of stairway-type ladders as means of access. Paragraphs (c)(3) (i) and (ii) are similar to paragraphs (c)(2) (v), (ii) and (iii) above. Paragraph (c)(3)(iii) would require a minimum step width of 16 inches, and is based on § 1910.29(a)(3)(ii) which is a general industry rule applicable to scaffold use in construction. Paragraph (c)(3)(iv) would require slip-resistant treads on all stairs and landings. This rule is based on general industry rule § 1910.29(a)(3)(iv) which requires the steps to be fabricated from slip-resistant treads; however, the proposal would allow the use of other means to obtain the required surface, such as slip-resistant coatings.

Paragraph (c)(4) would require ramps and runways to be provided with guardrails as required by proposed Subpart M—Fall Protection.

Paragraph (c)(5) sets forth conditions required for the use of integral prefabricated scaffold rungs. Paragraph (c)(5)(i) would require that such rungs be specifically designed for use as rungs. That is, they must be capable of supporting ladder-type loads. Paragraph (c)(5)(ii) would require rungs to be at least 11½ inches wide to provide adequate footing, and paragraph (c)(5)(iii) would require that rungs be uniformly spaced. These are the same requirements as for other types of ladders (see Notice of Proposed Rulemaking for Subpart X—Stairways and Ladders). Paragraph (c)(5)(iv) would require rest platforms at 20-foot maximum vertical intervals, the same as (c)(2)(ii) above. Paragraph (c)(5)(v) would require a maximum spacing between rungs of 16½ inches.

Paragraph (c)(6) would require all rungs and steps to line up vertically with each other between rest platforms. This is to assure that a continuous climbing surface is provided. Employees descending a scaffold can misstep if rungs and steps are offset. An example of this is integral rungs on frame scaffolds. If the frames are not oriented in the same direction (i.e, ladder rungs all on the left side) a non-continuous ladder surface will result which can cause a misstep.

Paragraph (c)(7) sets forth the conditions required for direct access to a scaffold. Direct access may be made only when the two surfaces are not more than 14 inches apart horizontally, and 24 inches apart vertically. The 14-inch dimension is based on proposed rule § 1926.451(b)(4). The 24-inch dimension is consistent with similar provisions in other paragraphs in paragraph (c) above.

Paragraph 1926.451(d) Use.

This paragraph addresses the use of scaffolds and the activities which take place on scaffolds.

Paragraph (d)(1) would prohibit the overloading of a scaffold. This requirement clarifies and consolidates E §§ 1926.451 (h)(1), (i)(8), (j)(1), (s)(6), (t)(4), (w)(1), (x)(3) and (y)(1)(iii), and complements proposed rule § 1926.451(a)(1) which requires that scaffolds be capable of supporting four times the maximum intended load without failure. This rule insures that the scaffold's capacity is not exceeded.

Paragraph (d)(2) would prohibit the use of shore or lean-to scaffolds, and is the same provision as E § 1926.451(a)(20). Such scaffolds are not properly designed nor properly constructed, and pose a serious threat to anyone working on them.

Paragraph (d)(3) would require all scaffolds to be inspected by a competent person for visible defects prior to each workshift and after any occurrence which could affect the scaffold's structural integrity. Examples of such occurrences are impact loadings caused by vehicles, hoists, extremely high winds, or any other event which places large stresses on the system. This rule is based on E §§ 1926.45 (i)(7) and (k)(5), which require inspections of certain types of suspension scaffolds; however, OSHA believes all scaffolds should be inspected. OSHA requests public comment on the frequency of inspection in Issue Number 16 discussed later in this document.

Paragraph (d)(4) would require the bracing, or removal until repaired, of all scaffold components which have been damaged or weakened such that their strength has been reduced. This requirement clarifies and consolidates existing requirements E §§ 1926.451 (a)(8) and (o)(6). Bracing would be allowed as the removal of a damaged component may be extremely difficult due to its location.

Paragraph (d)(5) would prohibit the movement of scaffolds while employees are on them, except that mobile scaffolds may be moved under certain specified conditions. This clarifies existing rules E §§ 1926.451 (a)(3), (e)(6), (e)(7), (e)(8) and (p)(1) which appear to conflict with each other.

Paragraph (d)(6) would restrict the use of scaffolds near exposed and energized electric power and distribution lines. This new requirement is based on ACCSH recommendations and on paragraph E § 1926.550(a)(15) which regulates the use of cranes near lines of 50 kv or more. Paragraphs (d)(6) (i) and (ii) prohibit the use of scaffolds closer than 10 feet to all energized lines of 300 volts or more, even if the lines are insulated. Paragraph (d)(6)(iii) allows scaffolds to be used within 2 feet of energized lines less than 300 volts, provided the line is insulated. Paragraph (d)(6)(iv) prohibits the use of scaffolds closer than 10 feet to all energized uninsulated lines, of any voltage, which are exposed (not covered or guarded from contact by employees). OSHA believes these clearances would allow work, such as installing sheet metal siding on residential-type structures, to be performed safely without the need for power lines to be deenergized.

Paragraph (d)(7) would allow scaffolds to be erected, moved, dismantled, or altered only under the supervision of a competent person. It is the same requirement as E § 1926.451(a)(3).

Paragraph (d)(8) would clarify the provision of E § 1926.451(a)(17) regarding work on slippery scaffold platforms. The proposal states that no work shall take place on slippery platforms except to remove the hazard.

Paragraph (d)(9) would require the use of tag lines or similar measures to stabilize swinging loads being hoisted onto scaffolds or near scaffolds where the load could damage or impact the scaffold. This is based on § 1910.28(a)(15), a general industry standard that applies to construction, but which requires tag lines only when loads are being hoisted onto the scaffold. The proposal would extend the provision to cover other hoisting operations as the hazard being guarded against is the same, regardless of the destination of the load.

Paragraph (d)(10) would require that suspension ropes be shielded from harm caused by heat-producing processes, acids, and other corrosive substances which are used on a scaffold. This requirement is essentially the same as E § 1926.451(a)(18), which prohibits the use of any heat producing process on scaffolds supported by fiber or synthetic rope, and which requires that only treated or protected fiber or synthetic ropes be used near corrosive substances. However, the proposal would allow the use of heat producing processes if the ropes are shielded.

Paragraph (d)(11) would prohibit work on scaffolds during storms or when wind speeds exceed 40 mph, unless body belt/harness systems are worn or wind screens erected. This requirement is based on general industry regulation § 1910.28(a)(18). OSHA, in Issue Number 6, solicits comment on whether the 40 mph figure is appropriate, and what other methods are available to protect employees from high winds.

Paragraph (d)(12) would prohibit debris accumulation on scaffold platforms and is based on 29 CFR 1910.28(a)(20), a general industry regulation that applies to construction.

Paragraph (d)(13) would prohibit the use of ladders or makeshift devices on scaffolds to raise the working level of employees. This would be a new provision and would assure that workers are provided with a secure work platform, and would eliminate the hazard of tipping caused by portable ladders exerting a sideways thrust on scaffold systems. OSHA requests comments and supporting information on the need for this requirement.

Paragraph (d)(14) would limit the amount platform units could deflect under load. This is to prevent platform units from becoming overstressed and to prevent their ends from being pulled off their supports.

Paragraph 1926.451(e) Fall protection.

This paragraph would address all fall protection as related to the hazards of falling from or through a scaffold.

Paragraph (e)(1) clarifies and consolidates the following existing rules: E §§ 1926.451 (a)(4), (b)(15), (c)(13), (d)(10), (e)(10), (g)(5), (h)(15), (i)(8), (i)(11), (j)(9), (k)(9), (l)(4), (m)(6), (o)(7), (p)(9), (q)(4), (r)(5), (t)(3), (u)(3), (w)(6), (x)(5)(v), (x)(6)(iii), (y)(11), E § 1926.500(c)(2), and E § 1926.1910.29(a)(3)(vii). Whereas the existing rules are specific requirements to have guardrails only or safety belts only, the proposal would require that all employees on platforms more than 10 feet above lower levels be protected by a choice of Type I guardrails or body belt/harness systems, with certain exceptions discussed below.

Paragraph (e)(1)(i) recognizes the impracticability of using any fall protection system other than body belt/harness systems on certain types of scaffolds. This consolidates existing rules E §§ 1926.451(1)(4)—boatswains' chairs; (p)(9)—needle beam scaffolds; (w)(6)—float scaffolds; and E § 1926.752(k)—float scaffolds for steel erectors, and is a new rule for catenary scaffolds and ladder jack scaffolds.

Paragraph (e)(1)(ii) would require body belt/harness systems and Type I or Type II guardrail systems on all single-point adjustable suspension scaffolds (except boatswains' chairs) and on all two-point adjustable suspension scaffolds. The requirement to have guardrails and body belt/harnesses on two-point scaffolds is the same as E §§ 1926.451 (i)(8) and (i)(11), and is based on OSHA's belief that guardrail systems do not provide adequate fall protection when a suspension rope fails, causing a scaffold to tip or hang from only one end. OSHA believes that body belt/harness protection is also required on single-point systems as the hazard related to rope failure is the same on both types of scaffold. However, as body belt/harnesses would be the primary means of fall protection on single-point and two-point systems, Type II guardrail systems may be used in lieu of Type I systems. Type II systems have lower minimum height and strength requirements than Type I systems.

Paragraph (e)(1)(iii) is essentially the same as E § 1926.451(v)(2), which requires lifelines along "crawling boards," except the proposal would allow the alternative use of body belt/harness systems or guardrail systems.

Paragraph (e)(1)(iv) would require that employees on self-contained scaffolds be protected by body belt/harness and guardrail systems when the platform is supported by ropes (as when the scaffold is being raised or lowered on some systems) and by guardrail systems when the platform is supported directly by the scaffold frame.

Paragraph (e)(1)(v) would require guardrails to be used along scaffold walkways and to be located within eight inches of at least one side of the walkway. The provision that guardrails need be provided only along one side applies only when the platform is used as a means of access to get from one point on the scaffold to another. If work activities other than access are performed on or from the walkway, then the platform is not considered to be a walkway (see definition of "walkway") and the provisions of paragraphs (e)(1) (i) through (iv) would apply.

Employees performing overhand bricklaying operations from a supported scaffold would be protected as required by proposed Subpart M—Fall Protection.

Paragraph (e)(2) would require employees on platforms less than 45 inches wide and 4 to 10 feet above lower levels to be protected by a body belt/harness or Type I guardrail system. However, as in E § 1926.451(a)(4), this provision would not apply to self-contained suspension scaffolds, nor to any of the 23 types of scaffolds identified in § 1926.452 of the proposal. The existing requirement, as written, appears to apply to all scaffolds including those specifically exempted in the proposed paragraph. However, this broad coverage was never the intended scope of the existing provision. This is evidenced by the format of the existing rules which do not repeat this requirement in any of the specific sets of rules, although the first part of the existing paragraph (requiring protection on platforms more than 10 feet high) is restated 19 times. The proposed paragraph would allow the alternative use of body belt/harness systems

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instead of requiring only guardrail systems.

The provisions of paragraphs (e) (1) and (2) would not apply to employees erecting or dismantling scaffolds as there is often no recognized feasible way of providing fall protection for such employees. Issue Number 8, however, requests additional public comment on this point. In addition, the provisions would not apply if a scaffold is completely enclosed by the walls of a structure. To be completely enclosed, no perimeter face of the scaffold may be more than 14 inches from a wall. In other words, there may be no open sides or ends on the scaffold (see definition § 1926.450(b)). However, fall protection would be required at openings such as hoistways, elevator shafts, stairwells, or similar openings in the scaffold platform, or in the walls of the structure surrounding the platform.

Paragraph (e)(3) would provide that body belt/harnesses must be secured by lanyard to a dropline, trolley line, or scaffold structural member. However, body belt/harnesses are effective only when there are no overhead scaffold components. When there are overhead obstructions, such as additional platforms on a multi-level suspended scaffold, or a falling object canopy, the employee could be seriously injured or killed when the dropline body belt/harness arrangement arrests the employee's fall, and the overhead obstruction strikes the employee as it falls past. Therefore, paragraph (e)(3) would provide that when a scaffold has overhead obstructions, then droplines shall not be used. Paragraph (e)(3)(i) would provide that when droplines are used that they not be connected to the scaffold. This is the same requirement as in E § 1926.451(i)(8). Paragraph (e)(3)(ii) would provide that when trolley lines are used that they not be connected to the suspension lines. This would provide protection to the employee in the event of a suspension line failure. Paragraph (e)(3)(iii) would provide that when lanyards are connected to trolley lines or scaffold members on two-point adjustable scaffolds, then the scaffold shall be equipped with additional independent support lines. In the event of a suspension rope failure, the additional lines would keep the scaffold from falling. Paragraph (e)(3)(iv) would prohibit droplines, independent support lines, and suspension ropes from being attached to each other or to the same point of anchorage.

Paragraph (e)(4) would require guardrail systems to conform to provisions essentially the same as those proposed and discussed in the preamble to revised Subpart M—Fall Protection. However, because fall protection on single-point adjustable and two-point adjustable suspension scaffolds would be provided by body belt/harness systems, the guardrail requirements on these types of scaffolds are proposed to be less stringent than on other scaffolds where guardrails are the principal fall protection system. Guardrails on single point adjustable and two-point adjustable suspension scaffolds are considered by OSHA to be barriers that serve as scaffold edge delineators, restrain movement, provide handholds, and prevent misstepping. These functions do not require the same size and strength guardrail system as does fall protection. Therefore, the minimum requirements for guardrail systems (referred to as Type II systems) used on single-point and two-point scaffolds would be less than those for other guardrail systems (referred to as Type I systems) used on other scaffolds. The specific differences are set forth in proposed paragraphs (e)(4) (ii), (vii), and (viii), discussed below.

Paragraph (e)(4)(i) would require that when guardrail systems are used to provide fall protection, that they be installed along all open sides and ends of the platform. This is the same requirement as E § 1926.451(a)(4).

Paragraph (e)(4)(ii) would specify a lower limit on guardrail system height of 38 inches for Type I guardrail systems and 36 inches for Type II guardrail systems. The 38-inch lower limit is proposed in lieu of the 39-inch lower limit of proposed Subpart M to allow for guardrail height differentials caused by platform unit arrangements. For example, a frame constructed to hold a toprail 42 inches above a flush-mounted prefabricated deck would be only 40 inches above a platform made with two-inch solid sawn planks. If the planks are overlapped to form a long platform, the height would drop to 38 inches. The maximum height limit would be 45 inches for all scaffold guardrail systems.

Paragraph (e)(4)(iii) would require midrails, screens, mesh, intermediate vertical members (such as balusters), solid panels, or equivalent structural members be installed between the top edge of the guardrail system and the scaffold platform. This is essentially the same requirement as E § 1926.451(a)(5), except more alternatives are listed than just midrails, and the term "when required" is deleted as being too vague.

Paragraphs (e)(4) (iv) through (vi) specify the criteria for the installation of the midrails, screens, mesh, and baluster type protection required by paragraph (e)(4)(iii).

Paragraphs (e)(4) (vii) and (viii) would specify that Type I toprails (or equivalent) be capable of withstanding a force of at least 200 pounds applied in any downward or horizontal direction at any point along the toprail (Type II guardrail systems would have a 100 pound minimum requirement) and not deflect to a height lower than the specified limit set forth in paragraph (e)(4)(ii). The force requirement for midrails in paragraph (e)(4)(ix) would be at least 150 pounds for Type I systems, and 75 pounds for Type II systems. The 150 pound force requirement is not specified in the existing standard. However, the existing rules (e.g., E § 1926.451(b)(15) *et al.*) require midrails to be made of 1 x 6-inch lumber (or other material providing equivalent protection). The existing standard also requires midrails to be not more than 8 feet long (E § 1926.451(a)(5)), and to be a minimum 1,500 fiber stress construction grade lumber (see E § 1926.451(a)(9)). On the average, such wooden midrails can support loads up to approximately 160 pounds before breaking. Therefore, OSHA is proposing to replace the specific reference to 1 x 6-inch lumber with the performance criteria of 150 pounds force. Similarly, OSHA is proposing a performance criteria of 50 pounds for toeboards in proposed paragraph § 1926.451(f)(3).

Paragraph (e)(4)(x) would recognize that a separate guardrail section is not required on the ends of suspension scaffolds when the scaffold's support system (stirrup) or hoist restricts passage of employees.

Paragraph (e)(4)(xi) requires that guardrail systems be smooth surfaced to prevent employee injury due to lacerations or tripping caused by snagged clothing, and is essentially the same as the requirement in E § 1926.500(f)(1).

Paragraph (e)(4)(xii) requires that toprails and midrails not be so long as to constitute a hazard, and is the same as the requirement in E § 1926.500(f)(1).

Paragraph (e)(4)(xiii) is a new requirement and prohibits the use of steel banding and plastic banding as toprails or midrails. While such banding can often withstand a 200 pound load, it can tear easily if twisted. In addition, such banding often has sharp edges which can cut a hand if seized.

Paragraph 1926.451(f) Falling object protection.

This paragraph would address the hazard of falling objects.

Paragraph (f)(1) would require that overhead protection be provided, in addition to hardhat protection, for employees on scaffolds when they are exposed to the hazard of objects falling from overhead. This paragraph is based on existing rules E § 1926.451 (a)(16) and (h)(13). Paragraph (f)(1)(ii) would require the use of additional independent support lines to support the scaffold in the event of suspension support rope failure. The reason for this requirement has been explained earlier in the discussion of paragraph (e)(4). Paragraph (f)(1)(iii) would require that independent support lines and suspension ropes not be attached to the same point of anchorage. This new rule would prevent the loss of the backup safety systems in the event of suspension rope anchorage failure.

Paragraph (f)(2) would require protection from falling objects for employees on levels below the scaffold. Paragraph (f)(2)(i) would allow the use of barricades on the lower levels to exclude employees from the danger area. This is a new provision and recognizes the obvious fact that accidents can be avoided by eliminating employee exposure to the hazard. Paragraph (f)(2)(ii) would allow the alternative of providing toeboards (edging on float scaffolds) along the edge of exposure. Whereas existing rule E § 1926.451(a)(4) requires toeboards to be erected along the entire length of all open sides and ends of all scaffolds more than 10 feet high, the proposal would require them only along the edge of exposure. For example, on a long scaffold where employees are working on the ground near one end of the scaffold, the proposal would require the scaffold to have a toeboard at the end over the employees below, but not at the other end. This would be the case whether the scaffold work platform is 5, 10, or more feet in height. This change recognizes that toeboards and equivalent members are for the protection of employees below, and if those employees are not exposed or are otherwise protected, then toeboards are not necessary. Paragraphs (f)(2) (iii), (iv) and (v) would allow additional ways of providing falling object protection. Screens, guardrail systems with small openings, and canopies would all be recognized as effective means of providing employee protection.

Paragraph (f)(3)(i) would set forth the strength criteria for toeboards as discussed above. Paragraph (f)(3)(ii) would set forth the construction requirements for toeboards, and is essentially the same as E § 1926.500(f)(3).

Section 1926.452 Additional requirements applicable to specific types of scaffolds.

This section contains rules which would apply only to specific types of scaffolds as indicated. These rules would apply in addition to the general rules of § 1926.451.

Paragraph 1926.452(a) Pole scaffolds.

The word "wood" would be deleted from the title as used in E § 1926.451(b) as the scaffold could be made of other materials.

The following table lists the proposed paragraphs which would not be substantively changed from the corresponding requirement in the existing paragraphs listed:

Proposed paragraph	Existing paragraph
§ 1926.452(a)(1)	§ 1926.451(b)(14)
§ 1926.452(a)(2)	§ 1926.451(b)(9)
§ 1926.452(a)(3)	§ 1926.451(b)(10)
§ 1926.452(a)(4)	§ 1926.451(b)(10)
§ 1926.452(a)(5)	§ 1926.451(b)(5)
§ 1926.452(a)(6)	§ 1926.451(b)(5)
§ 1926.452(a)(7)	§ 1926.451(b)(7)
§ 1926.452(a)(8)	§ 1926.451(b)(7), (10)
§ 1926.452(a)(9)	§ 1926.451(b)(2)
§ 1926.452(a)(10)	§ 1926.451(b)(16)

The following existing provisions would not be carried forward in this paragraph as specific provisions for pole scaffolds because the topics they address would be covered by the proposed general rules as indicated:

Existing paragraph	Proposed general rule
§ 1926.451(b)(1)	§ 1926.451(b)(15), (16)
§ 1926.451(b)(3)	§ 1926.451(b)(4)
§ 1926.451(b)(4)	§ 1926.451(b)(14)
§ 1926.451(b)(8)	§ 1926.451(b)(16)
§ 1926.451(b)(10)	§ 1926.451(a)(1)
§ 1926.451(b)(11)	§ 1926.451(b)(1)
§ 1926.451(b)(12)	§ 1926.451(b)(5), (7), § 1926.451(a)(1)
§ 1926.451(b)(13)	§ 1926.451(b)(8)(i)
§ 1926.451(b)(15)	§ 1926.451(e)
Table L–4 through 9	§ 1926.451(a)(1), .451(e)

Paragraph 1926.452(b) Tube and coupler scaffolds.

The following table lists the proposed paragraphs which would not be substantively changed from the corresponding requirements in the existing paragraphs listed:

Proposed paragraph	Existing paragraph
§ 1926.452(b)(2)	§ 1926.451(c)(10)
§ 1926.452(b)(4)	§ 1926.451(c)(11)
§ 1926.452(b)(5)	§ 1926.451(c)(8)
§ 1926.452(b)(7)	§ 1926.451(c)(7)
§ 1926.452(b)(8)	§ 1926.451(c)(7)
§ 1926.452(b)(10)	§ 1926.451(c)(4), (5)

Paragraph (b)(1) is new for tube and coupler scaffolds and would require that platforms not be moved until the next location is properly prepared to support the platform being moved. This is the same requirement as E § 1926.451(b)(14) for wood pole scaffolds. This rule is added to this section because it addresses the problem of platform stability during construction, a problem which exists for tube and coupler scaffolds as well as pole scaffolds.

Paragraph (b)(3) would require longitudinal bracing on scaffolds, the same as E § 1926.451(c)(11). The paragraph is reworded for clarity.

Paragraph (b)(8) would require bearers to be long enough to provide full contact with the coupler. This is essentially the same as E § 1926.451(c)(9), however, the specifications are deleted because component strength would be governed by proposed general rule § 1926.451(a)(1).

Paragraph (b)(9) would specify the types of materials from which couplers may be made. This requirement was formerly contained in existing definition E § 1926.452(b)(6), "coupler," and is incorporated into the proposed standard for proper enforcement.

The following existing provisions would not be carried forward in this paragraph as specific provisions for tube and coupler scaffolds because the topics they address would be covered by the proposed general rules as indicated:

Existing paragraph	Proposed paragraph
§ 1926.451(c)(1)	§ 1926.451(a)(1), (b)(13)
§ 1926.451(c)(2)	§ 1926.451(a)(1), (b)(13)
§ 1926.451(c)(3)	§ 1926.451(a)(1), (b)(13)
§ 1926.451(c)(5)	§ 1926.451(a)(1)
§ 1926.451(c)(6)	§ 1926.451(b)(16)
§ 1926.451(c)(7), last sentence.	§ 1926.451(a)(1)
§ 1926.451(c)(12)	§ 1926.451(b)(14)
§ 1926.451(c)(13)	§ 1926.451(e)
Tables L–10 through 12	§ 1926.451(a)(1)

Paragraph 1926.452(c) Fabricated frame scaffolds.

The following table lists the proposed paragraphs which would not be substantively changed from the corresponding requirements in the existing paragraphs listed.

Proposed paragraph	Existing paragraph
§ 1926.452(c)(2)	§ 1926.451(d)(3)
§ 1926.452(c)(3)	§ 1926.451(d)(5)
§ 1926.452(c)(6)	§ 1926.451(d)(9)

Paragraph (c)(1) is new for fabricated frame scaffolds and would require that platforms not be moved until the next location is properly prepared to support the platform being moved. This would be done for the same reasons discussed for paragraph (b)(1).

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Paragraph (c)(4) would require the locking together of end frames and is essentially the same as E § 1926.451(d)(6). The requirement would only apply where uplift forces are strong enough to displace the end frames or panels, such as when a hoist is being used that could snag the scaffold during a hoist operation.

Paragraph (c)(5) would specify the proper placement of platform support brackets. Improper placement of such cantilever supports can significantly reduce their support capacity and thus endanger employees working on top of the platform.

The following existing provisions would not be carried forward in this paragraph as specific provisions for fabricated frame scaffolds because the topics they address would be covered by the proposed general rules as indicated:

Existing paragraph	Proposed paragraph
§ 1926.451(d)(1)	§ 1926.451(a)(1)
§ 1926.451(d)(2)	§ 1926.451(a)(1)
§ 1926.451(d)(4)	§ 1926.451(b)(15)
§ 1926.451(d)(7)	§ 1926.451(a)(14)
§ 1926.451(d)(8)	§ 1926.451(a)(1), Appendix A
§ 1926.451(d)(10)	§ 1926.451(e)

Paragraph 1926.452(d) Plasterers', decorators', and large area scaffolds.

Paragraph (d) would require that the provisions of proposed paragraphs § 1926.452 (a), (b), and (c) be followed, as paragraph (d) type scaffolds are almost always constructed using pole scaffolds, tube and coupler scaffolds, or fabricated frame scaffolds. The existing rule, E § 1926.451(q)(1), requires paragraph (d) type scaffolds to be built according to the existing rules for pole scaffolds only. The proposal, therefore, offers greater flexibility and choice of systems to be used, while maintaining employee safety.

The following existing provisions would not be carried forward in this paragraph as specific provisions for plasterers', decorator's, and large area scaffolds because the topics they address would be covered by the proposed general rules as indicated:

Existing paragraph	Proposed paragraph
§ 1926.451(q)(2)	§ 1926.451(b)(1)
§ 1926.451(q)(3)	§ 1926.451(c)
§ 1926.451(q)(4)	§ 1926.451(e)

Paragraph 1926.452(e) Bricklayers' square scaffolds.

Paragraphs (e) (1), (2), and (3) would require gussets, side braces, and system braces. These are essentially the same requirements as are contained in E § 1926.451(n) (3) and (4) except the specific requirements for the size of the members would be specified by § 1926.451(a)(1) and Appendix A.

Paragraph (e)(4) would limit the height of these scaffolds to three tiers and specifies the proper arrangement of the component parts. This is the same requirement as E § 1926.451(n)(6).

The following existing provisions would not be carried forward in this paragraph as specific provisions for bricklayers' square scaffolds because the topics they address would be covered by the proposed general rules as indicated:

Existing paragraph	Proposed paragraph
§ 1926.451(n)(1)	§ 1926.451(a)(1)
§ 1926.451(n)(2)	§ 1926.451(a)(1)
§ 1926.451(n)(5)	§ 1926.451(a)(1)
§ 1926.451(n)(7)	§ 1926.451(b)(15)
Table L-15	§ 1926.451(a)(1)

Paragraph 1926.452(f) Horse scaffolds.

The following table lists the proposed paragraphs which would not be substantively changed from the corresponding requirements in the existing paragraphs listed.

Proposed paragraph	Existing paragraph
§ 1926.451(e)(1)	§ 1926.451(o)(1)
§ 1926.451(e)(2)	§ 1926.451(o)(4)
§ 1926.451(e)(3)	§ 1926.451(o)(5)
§ 1926.451(e)(4)	§ 1926.451(o)(5)

The following existing provisions would not be carried forward in this paragraph as specific provisions for horse scaffolds because the topics they address would be covered by the proposed general rules as indicated:

Existing paragraph	Proposed paragraph
§ 1926.451(o)(2)	§ 1926.451(a)(1)
§ 1926.451(o)(3)	§ 1926.451(a)(1)
§ 1926.451(o)(6)	§ 1926.451(d)(4)
§ 1926.451(o)(7)	§ 1926.451(e)
Table L-16	§ 1926.451(a)(1)

Paragraph 1926.452(g) Form scaffolds and carpenters' bracket scaffolds.

The existing standard, in paragraphs E § 1926.451 (m) and (x), addresses these types of scaffolds separately. However, the two types are very similar and the proposal would address them in this same paragraph.

Paragraph (g)(1) would specify the types of attachment devices or systems used for supporting the scaffold. These are the same as presently required by E § 1926.451 (m)(2), (x)(4)(ii), and (x)(5).

Paragraph (g)(2) would specify that wooden bracket form scaffolds be an integral part of the form panel. This is the same provision as E § 1926.451(x)(6)(i).

Paragraph (g)(3) would require folding-type metal brackets to be secured against folding when extended for use. This is presently required by E § 1926.451(x)(5)(i).

The following existing provisions would not be carried forward in this paragraph as specific provisions for form and carpenters' bracket scaffolds because the topics they address would be covered by the proposed general rules as indicated.

Existing paragraph	Proposed paragraph
§ 1926.451(m)(1)	§ 1926.451(a)(1)
§ 1926.451(m)(3)	§ 1926.451(a)(1)
§ 1926.451(m)(4)	§ 1926.451(a)(1)
§ 1926.451(m)(5)	§ 1926.451(a)(1), § 1926.451(b)(5), § 1926.451(b)(6)
§ 1926.451(m)(6)	§ 1926.451(e)
§ 1926.451(x)(1)	§ 1926.451(a)(1)
§ 1926.451(x)(2)	§ 1926.451(a)(1), § 1926.451(b)(5), § 1926.451(b)(6)
§ 1926.451(x)(3)	§ 1926.451(d)(2)
§ 1926.451(x)(4)	§ 1926.451(a)(1), § 1926.451(b)(5), § 1926.451(b)(1), § 1926.451(b)(6)
§ 1926.451(x)(5)	§ 1926.451(a)(1), § 1926.451(b)(5), § 1926.451(b)(6), § 1926.451(e)
§ 1926.451(x)(6)	§ 1926.451(a)(1), § 1926.451(b)(5), § 1926.451(b)(6), § 1926.451(e)
Tables L-17, 18 and 19	§ 1926.451(a)(1), § 1926.451(e)

Paragraph 1926.452(h) Roof bracket scaffolds.

Paragraphs (h) (1) and (2), specifying criteria for proper construction and installation, are the same requirements as E § 1926.451 (u)(1) and (u)(2). Existing paragraph § 1926.451(u)(3) which requires the use of catch platforms with guardrails for fall protection would be replaced by the general fall protection requirements of § 1926.451(e). If guardrails are used for fall protection, it is not necessary for them to be mounted on a catch platform. Therefore, no reference is made to catch platforms in the proposal although they may be used if the contractor so desires.

Paragraph 1926.452(i) Outrigger scaffolds.

The following table lists the proposed paragraphs which would not be substantively changed from the corresponding requirements in the existing paragraphs listed.

Proposed paragraph	Existing paragraph
§ 1926.452(i)(1)	§ 1926.451(g)(1)
§ 1926.452(i)(2)	§ 1926.451(g)(1)
§ 1926.452(i)(3)	§ 1926.451(g)(1)
§ 1926.452(i)(4)	§ 1926.451(g)(1)

Proposed paragraph	Existing paragraph
§ 1926.452(i)(5)	§ 1926.451(g)(2)
§ 1926.452(i)(6)	§ 1926.451(g)(2)
§ 1926.452(i)(8)	§ 1926.451(g)(3)

Paragraph (i)(7) would clarify the requirements of E § 1926.451(b)(4) by specifying the means by which the scaffold platform is to be attached to the outrigger beams.

The following existing provisions would not be carried forward in this paragraph as specific provisions for outrigger scaffolds because the topics they address would be covered by the proposed general rules as indicated:

Existing paragraph	Proposed paragraph
§ 1926.451(g)(1)	§ 1926.451(a)(1)
§ 1926.451(g)(4)	§ 1926.451(b)(4), § 1926.452(i)(8)
§ 1926.451(g)(5)	§ 1926.451(e)
Table L-13	§ 1926.451(a)(1)

Paragraph 1926.452(j) Pump jack scaffolds.

The following table lists the proposed paragraphs which would not be substantively changed from the corresponding requirements in the existing paragraphs listed.

Proposed paragraph	Existing paragraph
§ 1926.451(j)(1)	§ 1926.451(y)(2)
§ 1926.452(j)(3)	§ 1926.451(y)(12)
§ 1926.452(j)(4)	§ 1926.451(y)(13)
§ 1926.452(j)(5)	§ 1926.451(a)(1), § 1926.451(y)(6)
§ 1926.452(j)(6)	§ 1926.451(a)(1), § 1926.451(y)(7)
§ 1926.452(j)(7)	§ 1926.451(y)(8)

Paragraph (j)(2) would require bracing to secure the poles to the structure on which the work is being performed, and would require that an additional brace be used whenever a brace must be removed to allow passage of the pump jack. These requirements are essentially the same as E § 1926.451(y)(4) (iii) and (iv), however, the specifications for pole spacing and brace capacity are not carried forward in this paragraph as they are covered by proposed general rule § 1926.451(a)(1).

The following existing provisions would not be carried forward in this paragraph as specific provisions for pump jack scaffolds because the topics they address would be covered by the proposed general rules as indicated:

Existing paragraph	Proposed paragraph
§ 1926.451(y)(1)	§ 1926.451(a)(1), § 1926.451(d)(2)
§ 1926.451(y)(3)	§ 1926.451(b)(1)
§ 1926.451(y)(4) (i), (ii)	§ 1926.451(a)(1)
§ 1926.451(y)(5)	§ 1926.451(b)(15)
§ 1926.451(y)(9)	§ 1926.451(c)

Existing paragraph	Proposed paragraph
§ 1926.451(y)(10)	§ 1926.451(a)
§ 1926.451(y)(11)	§ 1926.451(e)

Paragraph 1926.452(k) Ladder jack scaffolds.

The following table lists the proposed paragraphs which would not be substantively changed from the corresponding requirements in the existing paragraphs listed:

Proposed paragraph	Existing paragraph
§ 1926.452(k)(1)	§ 1926.451(s)(1)
§ 1926.452(k)(3)	§ 1926.451(s)(3)
§ 1926.452(k)(4)	§ 1926.451(s)(4)

Paragraph (k)(2) would require that all ladders used to support ladder jack scaffolds conform to the provisions of § 1926.1053 of proposed Subpart X—Stairways and Ladders. However, the paragraph would prohibit the use of job-made ladders to support ladder jacks because OSHA believes such ladders do not have the capacity to support the heavy point loading caused by ladder jack brackets.

Paragraph (k)(5) would prohibit the bridging of one ladder jack scaffold to another. This would be a new requirement and would be made to assure the stability of the system and to prevent accidental overloading of the system. This provision would not prohibit passage from one scaffold to another.

The following existing provisions would not be carried forward in this paragraph as specific provisions for ladder jack scaffolds because the topics they address would be covered by the proposed general rules as indicated:

Existing paragraph	Proposed paragraph
§ 1926.451(s)(1)	§ 1926.451(a)(1). § 1926.452(k)(1)
§ 1926.451(s)(5)	§ 1926.451(a)(1). § 1926.451(b)(5)
§ 1926.451(s)(6)	§ 1926.451(a)(1), § 1926.451(d)(2).

Paragraph 1926.452(l) Window jack scaffolds.

The following table lists the proposed paragraphs which would not be substantively changed from the corresponding requirements in the existing paragraphs listed:

Proposed paragraph	Existing paragraph
§ 1926.451(l)(2)	§ 1926.451(t)(1).
§ 1926.451(l)(3)	§ 1926.451(t)(2).

Paragraph (l)(1) would require window jack scaffolds to be securely attached to the window opening. This new requirement would assure that the scaffold cannot be accidentally displaced.

The following existing provisions would not be carried forward in this paragraph as specific provisions for window jack scaffolds because the topics they address would be covered by the proposed general rules as indicated:

Existing paragraph	Proposed paragraph
§ 1926.451(t)(3)	§ 1926.451(e)
§ 1926.451(t)(4)	§ 1926.451(a)(1), § 1926.451(d)(2)

Paragraph 1926.452(m) Crawling boards (chicken ladders).

Paragraph (m)(1) would be the same requirement as is presently contained in the fourth sentence of E § 1926.451(v)(1), which specifies crawling board length. The remainder of E § 1926.451(v)(1) would be relocated to Appendix A since it would be effectively replaced by the capacity requirements of § 1926.451(a)(1). The requirement to clinch nails would be deleted since this procedure is often not feasible due to the inaccessibility of the nail points. Existing paragraph E § 1926.451(v)(2) would be replaced by the fall protection requirements of § 1926.451(e)(1).

Paragraph 1926.452(n) Step, platform, and trestle ladder scaffolds.

Although these types of scaffolds are not specifically addressed in the existing standard, they are covered by the existing general requirements. These types of scaffolds differ from ladder jack scaffolds in that the platform rests directly on the ladder step or rung, whereas ladder jack scaffold platforms rest on brackets. The following are new paragraphs that address concerns not presently covered by the existing standard. These new provisions are based on similar provisions currently being developed by ANSI. Paragraph (n)(1) would limit the height of the scaffold platforms to the second highest rungs or steps of ladders supporting the platform, and would provide increased scaffold stability by lowering the center of gravity.

Paragraphs (n) (2), (3), and (4) are the same provisions as for ladder jack scaffolds.

Paragraph 1926.452(o) Single-point adjustable suspension scaffolds.

This paragraph would combine existing paragraphs E § 1926.451(k), single-point adjustable suspension scaffolds, and paragraph E § 1926.451(l),

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boatswains' chairs, as boatswains' chairs are a form of single-point adjustable suspension scaffold.

The following table lists the proposed paragraphs which would not be substantively changed from the corresponding requirements in the existing paragraphs listed:

Proposed paragraph	Existing paragraph
§ 1926.452(o)(1)	§ 1926.451(k)(8)
§ 1926.452(o)(3)	§ 1926.451(l)(5)
§ 1926.452(o)(5)	§ 1926.451(l)(2)
§ 1926.452(o)(6)	§ 1926.451(l)(3)

Paragraph (o)(2) would be essentially the same as E § 1926.451(k)(7), and would require that all suspension ropes hang vertically. However, the proposal would provide an exception to this rule when the scaffold is to be used on the outside of a dome-type or slanted structure. The proposal would thus recognize the practical difficulties involved in such work under the existing rule. OSHA is soliciting comments on this rule in Issue Number 10.

Paragraph (o)(4) would be essentially the same as E § 1926.451(l)(2), and would require boatswains' chairs to be rigged with crossed supporting slings. However, the proposal would add that the slings be rigged (usually with knots) to prevent slippage which could result in the platform being out-of-level. This would increase the stability of the seat.

Paragraph (o)(7) would require non-cross laminated wood chairs to be reinforced on their underside by cleats. Existing rule E § 1926.451(l)(1) requires all chairs to be cleated. This proposed rule recognizes the strength qualities of plywood-type wood seats. The remainder of E § 1926.451(l)(1), specifying chair size, would be replaced by § 1926.451(b)(2).

The following existing provisions would not be carried forward in this paragraph as specific provisions for single-point adjustable suspension scaffolds as they would be covered by the proposed general rules as indicated:

Existing paragraph	Proposed paragraph
§ 1926.451(k)(1)	§ 1926.451(b)(28)
§ 1926.451(k)(2)	§ 1926.451(b)(29)
§ 1926.451(k)(3)	§ 1926.451(b)(30)
§ 1926.451(k)(4)	§ 1926.451(b)(31)
§ 1926.451(k)(5)	§ 1926.451(d)(3)
§ 1926.451(k)(6)	§ 1926.451(b) (17) through (31)
§ 1926.451(k)(8)	§ 1926.451(e)
§ 1926.451(l)(4)	§ 1926.451(e)
§ 1926.451(l)(6)	§ 1926.451(b)(20)

Existing rule E § 1926.451(k)(10), requiring additional unspecified rules of ANSI A120.1–1970 to be followed is proposed to be deleted. All rules in that ANSI document which OSHA believes should apply to single-point adjustable suspension scaffolds have been identified and spelled out in this proposal for inclusion in the text of Subpart L.

Paragraph 1926.452(p) Two-point adjustable suspension scaffolds

This paragraph would apply to all two-point adjustable suspension scaffolds, except those used for mason's or stonesetter's work which are covered by paragraph (q).

The following table lists the proposed paragraphs which would not be substantively changed from the corresponding requirements in the existing paragraphs listed:

Proposed paragraph	Existing paragraph
§ 1926.452(p)(2)	§ 1926.451(i)(1)
§ 1926.452(p)(3)	§ 1926.451(i)(6)
§ 1926.452(p)(5)	§ 1926.451(i)(9)

Paragraph (p)(1) would be essentially the same as paragraph E § 1926.451(i)(1), which limits platforms to 36 inches wide. However, the proposal would allow wider platforms if they are designed by a qualified person to prevent unstable conditions.

Paragraph (p)(4) would require that scaffolds be ladder-type, plank-type, beam-type, or light metal-type, the same as required by E § 1926.451(i)(10). However, existing paragraph E § 1926.451(i)(10) (i) through (iv) would be replaced by the capacity requirements of § 1926.451(a)(1). Paragraph (p)(4) would also require light metal-type platforms to be tested and listed by a nationally-recognized testing laboratory. This is essentially the same requirement as E § 1926.451(i)(10)(iv), however, see the "Note" in the discussion above for paragraph § 1926.451(b)(28).

Paragraph (p)(6) would prohibit the bridging or connecting of two or more scaffolds during raising and lowering operations, unless they are specifically designed for use on multi-point systems; are articulated; and the hoists are properly sized. This provision would not prohibit passage from one scaffold to another. This rule reflects OSHA's concern that a bridging device could cause significant overloading of the hoist nearest the bridging device during operation of the hoist, and could cause excessive platform tipping. Many hoists are only sized to support one end of a two-point system. If one of two bridged scaffolds were to be raised by a hoist, a bridge or connection between the scaffolds could cause the rising scaffold to pick up the second scaffold also. This would significantly increase the load on the hoist and could also result in the second scaffold tipping up at a dangerous angle. The proposed rule would address these two hazards and also allow for properly engineered solutions.

Paragraph (p)(7) would allow the passage of employees from one scaffold to another, provided the scaffolds are at the same height; are abutting closely; and walk-through stirrups are used.

Existing provision E § 1926.451(i)(2), requiring that hangers be made of mild steel (or equivalent) and designed to support guardrails, is deleted as there are other acceptable designs and ways to attach guardrail systems.

Paragraph 1926.452(q) Multi-point adjustable suspension scaffolds, stonesetters' multi-point adjustable suspension scaffolds, and masons' multi-point adjustable suspension scaffolds

This section would combine and clarify the provisions of E § 1926.451(h), stonesetters' adjustable multi-point suspension scaffolds, and E § 1926.451(j), masons' adjustable multi-point suspension scaffolds, and would clarify that the paragraph applies to other multi-point adjustable suspension scaffolds as well.

Paragraph (q)(1) would prohibit bridging between scaffolds unless they are specifically designed to be bridged. Paragraph (q)(2) would allow passage of employees between adjacent units only when the platforms are at the same height and abutting closely. The reasons for these paragraphs are the same as those for paragraphs (p) (6)and (7) above. Paragraph (q)(3) specifying the criteria for the support system is the same as E § 1926.451(j)(4), but would apply to masons' and other multi-points as well as stonesetters' adjustable multi-point suspension scaffolds.

The following existing provisions would not be carried forward in this paragraph as specific provisions for multipoint, stonesetters', and masons' adjustable multi-point suspension scaffolds because the topics they address would be covered by the proposed general rules as indicated:

Existing paragraph	Proposed paragraph
§ 1926.451(h)(1)	§ 1926.451(a)(1), § 1926.451(d)(2)
§ 1926.451(h)(2)	§ 1926.451(b)(28)
§ 1926.451(h)(3)	§ 1926.451(a)(2)
§ 1926.451(h)(4)	§ 1926.451(b)(19)
§ 1926.451(h)(5)	§ 1926.451(a)(1)
§ 1926.451(h)(6)	§ 1926.451(a)(1), § 1926.451(b)(18)(i)
§ 1926.451(h)(7)	§ 1926.451(b)(19)(iii)
§ 1926.451(h)(8)	§ 1926.451(b)(19)(i)
§ 1926.451(h)(9)	§ 1926.451(b)(17)
§ 1926.451(h)(10)[1]	§ 1926.451 (b)(24), (b)(22)
§ 1926.451(h)(11)	§ 1926.451(b)(19)(iv)
§ 1926.451(h)(12)	§ 1926.451(b)(1)

Existing paragraph	Proposed paragraph
§ 1926.451(h)(13)	§ 1926.451(e)(6)
§ 1926.451(h)(13)	§ 1926.451(e)(6)
§ 1926.451(h)(14)	§ 1926.451(b)(16)(i), § 1926.451(d)(7)
§ 1926.451(h)(15)	§ 1926.451(e)
§ 1926.451(i)(1)	§ 1926.451(a)(1), § 1926.451(c)(2)
§ 1926.451(j)(2)	§ 1926.451(b)(28)
§ 1926.451(j)(3)	§ 1926.451 (b)(5), (b)(6)

[1] Fiber rope would not be prohibited by the proposal because § 1926.451(a)(1) would require that adequate sized fiber rope be used; § 1926.451(d)(3) would require regular inspection of the rope; and § 1926.451(d)(4) would require the removal of any defective or damaged rope.

Existing paragraph	Proposed paragraph
§ 1926.451(j)(4)[1]	§ 1926.451 (b)(19), (b)(20)
§ 1926.451(j)(5)	§ 1926.451 (b)(19)(iii), (b)(18), (b)(19)(i)
§ 1926.451(j)(6)	§ 1926.451 (a)(2), (a)(1)
§ 1926.451(j)(7)	§ 1926.451 (b)(24), (b)(22)
§ 1926.451(j)(8)	§ 1926.452 (q)(1), (q)(2)
§ 1926.451(j)(9)	§ 1926.451(e)

[1] The proposal would allow the use other equivalent materials for suspension supports, and not require only metal outriggers, iron brackets, wire rope slings, and iron hooks.

Paragraph 1926.452(r) Catenary scaffolds

Although this type of scaffold is not specifically addressed in the existing standard, it is covered by the existing general provisions. The following are new provisions that address concerns not presently covered by the existing standard. These new provisions would be essentially the same as existing ANSI A10.8–1977, paragraph 22, except the specifications contained in that standard would be replaced by proposed paragraph § 1926.451(a).

Paragraph (r)(1) would allow only one platform between vertical pickups, in order to minimize the danger of overloading the system. For the same reason, only two platforms would be allowed on the entire system.

Paragraph (r)(2) would require the platforms to be equipped with hook-shaped stops on each end to prevent the platform from falling should one of the two horizontal support ropes break.

Paragraph (r)(3) would prohibit the horizontal support ropes from being made so taut that use of the platform could cause them to break.

Paragraph (r)(4) would require each horizontal wire rope support to be continuous and unspliced.

Paragraph 1926.452(s) Float (ship) scaffolds

Paragraphs (s)(1), (s)(2), and (s)(3) would require the scaffold to consist of at least two bearers with six inch projections, securely connected to the platform. Rope connections must be such that they will not slip nor cause the platform to tip or fall. If two ropes are used, they shall be slung under the scaffold and up to the supports. These requirements are essentially the same as are required by E § 1926.451(w) (3) and (5).

The following existing provisions would not be carried forward in this paragraph as specific provisions for float scaffolds because the topics they address would be covered by the proposed general rules as indicated:

Existing paragraph	Proposed paragraph
§ 1926.451(w)(1)	§ 1926.451(a)(1), § 1926.451(d)(2)
§ 1926.451(w)(2)	§ 1926.451(a)(1)
§ 1926.451(w)(4)	§ 1926.451(e)(7)(ii)
§ 1926.451(w)(5)	§ 1926.451(a)(2)(iv), § 1926.451(d)(4)
§ 1926.451(w)(6)	§ 1926.451(e)

Paragraph 1926.452(t) Interior hung scaffolds.

Paragraph (t)(1) would require that scaffolds be suspended only from the roof structure or other structural members such as ceiling beams. This is the same requirement as existing rule E § 1926.451(r)(1).

Paragraph (t)(2) would require that the supporting members be inspected and checked for strength before the scaffold is erected. Such points of support cannot be assumed to be strong enough to support a scaffold since they may be already loaded to their capacity or they may have deteriorated over time.

Paragraph (t)(3) would delete the specific connection requirements of E § 1926.451(r)(2), which OSHA believes are obsolete, and specifies what OSHA considers to be current safe practices. The strength requirement of E § 1926.451(r)(2) would be covered by § 1926.451(a)(3).

The following existing provisions would not be carried forward in this paragraph as specific provisions for interior hung scaffolds because the topics they address would be covered by the proposed general rules as indicated:

Existing paragraph	Proposed paragraph
§ 1926.451(r)(2)	§ 1926.451(a)(2), § 1926.452(t)(3)
§ 1926.451(r)(3)	§ 1926.451(a)(1)
§ 1926.451(r)(4)	§ 1926.451(a)(1)
§ 1926.451(r)(5)	§ 1926.451(e)

Paragraph 1926.452(u) Needle beam scaffolds.

The following table lists the proposed paragraphs which would not be substantively changed from the corresponding requirement in the existing paragraphs listed:

Proposed paragraph	Existing paragraph
§ 1926.452(u)(1)	§ 1926.451(p)(1)
§ 1926.452(u)(2)	§ 1926.451(p) (2) and (5)
§ 1926.452(u)(4)	§ 1926.451(p)(4)

Paragraph (u)(3) would require that support ropes be securely attached to the needle beams. This is a change from E § 1926.451(p)(3), which requires all attachments to be either a scaffold hitch knot or eye splice. The existing rule is believed by OSHA to be too restrictive as other knots and means of attachment, such as wire rope clips, can also adequately support the scaffold.

Paragraph (u)(5) would require platform units to be bolted to the needle beam, or equivalent means of attachment used such as nails, to prevent the displacement of the units. This is a clarification of E § 1926.451(p)(6) which only requires that planks be secured against slipping. Under the existing rule, cleats and overhang could be used to secure the units. However, OSHA does not believe that cleats or overhang are adequate measures to secure platform units on needle beam scaffolds.

Paragraph 1926.452(v) Multi-level suspended scaffolds

Although these types of scaffolds are not specifically addressed in the existing standard, they are covered by the existing general requirements. These scaffolds are suspended scaffolds with more than one working level. The following provisions address concerns not presently covered by the existing standard.

Paragraph (v)(1) would require independent support lines in addition to the regular support ropes. These additional lines would support the scaffold and prevent collapse in the event of primary support line failure. The reasons for requiring these lines are given in the discussion for paragraph § 1926.451(e) which covers fall protection. Because the primary support lines could fail anywhere between the scaffold and their point of anchorage (the anchorage itself could fail), paragraph (v)(2) would prohibit attaching independent support lines and suspension ropes to the same anchorage point. Paragraph (v)(3) would prohibit platforms from being supported by any other platform(s). This provision would protect against platform overloading by requiring each platform to be attached to the supporting stirrups or hangers.

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Paragraph 1926.452(w) Mobile scaffolds.

This section would consolidate and clarify the provisions of E § 1926.451(e) and § 1910.29 of the general industry standards. This paragraph would apply to all mobile scaffolds and not just to those which are manually propelled.

The following table lists the proposed paragraphs which would not be substantively changed from the corresponding requirements in the existing paragraphs listed:

Proposed paragraph	Existing paragraph
§ 1926.452(w)(1)	§ 1926.451(e)(3), § 1926.451(e)(9)
§ 1926.452(w)(1)(i)	§ 1926.451(e)(9)
§ 1926.452(w)(1)(ii)	§ 1926.451(e)(9)
§ 1926.452(w)(2)	§ 1926.451(e)(2)
§ 1926.452(w)(5)	§ 1926.451(e)(6)
§ 1926.452(w)(6)	§ 1926.451(e)(7)

Paragraph (w)(3) is essentially the same as E § 1926.451(e)(6) which requires that propelling forces be applied as close to the base as possible. However, the proposal would limit the height at which the force could be applied to five feet to minimize overturning forces.

Paragraph (w)(4) is a new provision and would eliminate the use of winches, forklifts, trucks, or other motor vehicles to move scaffolds which are not designed to be moved by such propulsion systems.

Paragraph (w)(6)(iv) is a new provision and would require the propelling force be applied directly to the wheels (not to the frame) when power systems are used to propel scaffolds, and would limit the speed of the scaffold to two feet per second. This provision is to protect against a scaffold toppling over should it strike an object.

Paragraph (w)(6)(v) is a new provision and would prohibit employees from riding on any part of a moving scaffold which extends outward beyond the wheels, casters, or other support.

Paragraph (w)(7) would require scaffold platforms not to extend outward past the base supports of the scaffold. This provision would eliminate dangerous eccentric loading on the scaffold frame which could cause the scaffold to tip over. However, if stabilizing means such as outrigger supports are used, then the platform may extend outside the normal base points of support.

Paragraph (w)(8) would require that screw jacks or equivalent means be used to level mobile scaffolds when they are set up for stationary use. This would be a specific way of complying with § 1926.451(b)(15) of the proposed general rules requiring firm, level foundations.

Paragraph (w)(9) would be new paragraph and would require caster and wheel stems to be secured to scaffold frames to prevent them from falling out at any time.

The following existing provisions would not be carried forward in this paragraph as specific provisions for mobile scaffolds because the topics they address would be covered by the proposed general rules as indicated:

Existing paragraph	Proposed paragraph
§ 1926.451(e)(1)	§ 1926.451(b)(14)
§ 1926.451(e)(2)	§ 1926.451(a)(1), § 1926.452(w)(2)
§ 1926.451(e)(4)	§ 1926.451(b)(1)
§ 1926.451(e)(5)	§ 1926.451(c)(1), (c)(2), (c)(3)
§ 1926.451(e)(8)	§ 1926.451(b)(15), (b)(16), § 1926.452(w)(2)
§ 1926.451(e)(10)	§ 1926.451(e)

The coverage of general industry provision E § 1910.29, Manually propelled mobile ladder stands and scaffolds (Towers), which is currently applicable to construction activities, would be replaced by the proposed provisions contained in § 1926.451 (a), (b), (c), (d), (e), and § 1926.452(w). Those elements of E § 1926.1910.29 which apply to construction, and which are incorporated into the proposal, have been identified and discussed above.

Elevating and rotating work platforms. Existing paragraph E § 1926.451(f), Elevating and rotating work platforms, is proposed to be deleted in its entirety as it is redundant of the provisions contained in E § 1926.556.

Section 1926.460 Training requirements.

This section would be in addition to the training requirements of E § 1926.21, however, the provisions may be cited only when one or more citations are issued under the other provisions of Subpart L. This section clarifies the types of hazards to be addressed in all training programs given to employees working on scaffolds. Paragraphs (a), (b), and (c) would specify who must get what training, and paragraph (d) would specify how often training must be conducted. Scaffolds are only safe when they are designed, built, located, and used properly. These goals are most effectively achieved by proper training. This section contains requirements as to how the requisite training should be performed, however, it would not specify the details of the training program. Instead, it would require employees to be instructed in the proper way to build, use, place, and maintain scaffolds in order to minimize the hazards involved when building, operating, or working on scaffolds. In this way, the section would provide flexibility for the employer in designing the training program.

The proposal would require that training be provided for each employee as necessary. OSHA requests comments on the frequency of training in Issue Number 15.

Appendix A to Subpart L—Scaffold specifications

As explained in the discussion for proposed § 1926.451(a), Capacity, Appendix A is a non-mandatory set of guidelines and tables provided to assist employers in complying with the requirements of § 1926.451(a). While these tables and guidelines are non-mandatory, a scaffold will be deemed by OSHA to meet the requirements of § 1926.451(a) if a contractor uses these tables and guidelines to build and load the scaffold. The provisions are essentially the same as found throughout the existing standard. However, if the employer chooses to deviate from any provisions or guidelines in the Appendix, or if the employer constructs a component (such as joint connection) for which there is no provision or guideline, then the burden is on the employer to show compliance with paragraph § 1926.451(a).

Specific issues. The public is specifically requested to comment on the following issues.

1. The preamble identifies the provisions in the standard which are new or which are changed from the provisions of the existing standard. OSHA believes that many employers are already following many of these revised provisions. However, OSHA will evaluate, on the basis of all the evidence submitted to the public record, the likely effectiveness of the proposed revised and new provisions and will include in the final rule only those revised and new requirements for which a significant reduction in the risk of incurring injuries or fatalities would be supported by the final record. Hence, the following issues are raised:

(a) Public comment is requested on the current level of practice which meets the requirements of the proposed changes;

(b) Public comment is requested on the practicality and feasibility of the proposed changes, and whether implementation of the proposed changes will reduce the occurrence or severity of accidents;

(c) Public comment is requested on the amount of any costs or savings which have not been identified by OSHA (see Section IV of this preamble—

Preliminary Regulatory Impact Assessment and Regulatory Flexibility Analysis) which might result from the proposed changes;

(d) Public comment is requested on the availability and content of accident reports which indicate that the proposal does not properly address scaffold hazards.

2. Is there a need for OSHA to regulate the use of electric welding equipment on suspended scaffolds? Should OSHA adopt the following rules which are presently being developed and evaluated by the ANSI A10.8 Scaffold Committee?

To reduce the possibility of the welding current arcing through the wire rope when welding from suspended scaffolds, the following precautions shall be taken:

(a) Use a suitable insulated thimble to attach each wire rope to its hanging support (such as a cornice hook or outrigger). Insulate extra rope from grounding.

(b) Cover the suspension wire rope with insulating material approximately four to five feet above the hoist, and below the hoist extending downward sufficiently to insulate the tail line from the unit. The portion of the tail line that hangs free below the unit must be guided and/or retained such that it does not become grounded.

Place non-conducting insulating material under wire rope so that it does not come in contact with ground.

(c) Cover each hoist with protective covers made from insulating material.

(d) Connect a grounding conductor from the unit to the structure. The size of this conductor must be equal to or greater than the size of the welding machine grounding lead and shall be a secondary conductor and must not be in series with the primary conductor between the welder and the work piece.

(e) If unit grounding lead is disconnected at any time, welding machine shall be turned off.

(f) At no time shall active welding rod or uninsulated welding lead be allowed to contact the stage or its supporting system.

3. Should OSHA develop rules prohibiting the use of cranes, derricks, forklifts, front-end loaders, and similar pieces of equipment for the support of scaffold platforms? If such rules should be developed, what pieces of equipment should be prohibited and what other related rules, if any, are necessary? Comments should include appropriate injury and cost data.

4. Existing rule § 1926.451(e)(7)(ii) requires manually-propelled mobile scaffolds to be not more than twice as high as they are wide when employees ride on them. Proposed rule § 1926.452(w) extends this rule to cover both manually-propelled and motor-propelled mobile scaffolds. Should OSHA raise the current 2 to 1 ratio to 3 to 1 or higher on those systems which are built with a lower center-of-gravity. If this change is made, what limitations are appropriate?

5. Should OSHA require all platform units (planks, decks, etc.) to have their capacities or grades marked on them? Arguments in favor of this are that such marks could help prevent the use of inferior grades of plank in platforms, and that they would aid the user in determining the maximum load which can be placed safely on the plank or other unit. Arguments against this are that such marks can wear off, or units can deteriorate making the marks no longer valid, and the absence of a mark would be a citable violation regardless of the strength of the platform unit. Also, although such marks can be very useful in the construction of a safe scaffold, their presence or absence do not, in themselves, make a plank safe or unsafe.

6. Proposed paragraph § 1926.451(d)(11) would prohibit work on scaffolds during storms or when wind speeds exceed 40 mph, unless body belts are worn or wind screens erected. Comment is requested on the 40 mph limit, and on how to measure the windspeed. Recommendations on windspeed measurement range from monitoring hourly radio weather reports to placing anemometers on every scaffold. OSHA also solicits comments on other methods that might be used to provide employee safety in high winds.

7. Existing rule § 1926.451(i)(9) and proposed rule § 1926.452(p)(5) require two-point adjustable suspension scaffolds to be secured to prevent swaying. Should OSHA extend this rule to cover all suspended scaffolds?

8. Should proposed rule § 1926.451(e)(1), which provides that fall protection is not required for employees performing scaffold erection and dismantling operations, apply only to supported scaffolds? Such scaffolds often do not have a convenient or feasible place to which body belt/harness systems can be attached. However, suspended scaffolds are often located such that droplines can be conveniently used and, therefore, employees could be tied off.

9. With respect to pump-jack scaffolds:

(a) Should OSHA require mending plates on all spliced wood poles?

(b) Should the bottom brace requirement for poles be deleted (see proposed rule § 1926.452(j)(2))?

10. Existing rule § 1926.451(k)(7) requires the supporting rope for single-point adjustable suspension scaffolds to be vertical. The proposed rule, § 1926.452(i)(2), would allow an exception when the scaffold is used on the outside of a dometype or slanted structure. Should some deviation from vertical be allowed when suspending a scaffold under a curved surface? If yes, what should be the maximum angle permitted, and what other conditions, if any, should be specified?

11. A recent Bureau of Labor Statistics' study indicates that of all injuries which result from falls, a high percentage involve falling from the five to 10 foot level (Ex. 12:9). In addition, a high percentage of falls occur while the employees were on scaffolds (Ex. 12:9). In light of this information, should the 10 foot maximum height allowed without fall protection be changed to some other limit? If so, why, and what should the new limit be?

12. Should OSHA adopt the existing ANSI standard, A10.8-1977, paragraph 3.3, which specifies that guardrails on all scaffolds be installed no less than 36 inches above the work platform? Existing OSHA regulation § 1926.451(a)(5) *et al.* specifies that guardrails be ". . . approximately 42 inches high . . . ." which has been interpreted by OSHA to mean a range of 39 inches to 45 inches above the work platform. For the reasons discussed in the Summary and Explanation section of this preamble, the proposed standard would set the range of acceptable guardrail height at 38 inches to 45 inches for supported scaffolds, and would allow 36-inch high guardrails only for certain types of suspended scaffolds.

The ANSI A10.8 subcommittee on scaffolds considers the 36-inch lower limit to address adequately the hazard of falling from all types of scaffolds. This position is strongly supported by the Scaffold Industry Association (SIA). Their conclusions are based on the argument that OSHA's existing and proposed rules are based on studies (Exs. 9 and 10) which evaluated proper guardrail height for permanent structures, large areas where crowd control is important, and areas where high body speeds and momentum commonly are generated. These conditions, it is argued, do not exist on scaffolds and, therefore, the OSHA regulations are too restrictive and not appropriate for scaffold work. The SIA's conclusion is that a lower limit of 36 inches on scaffolds is as effective as a lower limit of 39 inches for permanent and large area structures. In addition, industry representatives state that no

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accident statistics, nor other field studies, indicate any problem caused by the current industry practice of using 36-inch high guardrails. Comment is requested on the effectiveness and cost savings of a 36-inch lower limit for guardrail height, and whether requiring a higher limit would present feasibility problems.

13. Should OSHA accept crossbracing on the intermediate levels of built-up scaffolds as an alternative to the existing and proposed rules requiring guardrail systems on such levels? Are crossbraces as effective in providing fall protection as conventional guardrail systems? The existing and proposed OSHA rules do not recognize crossbracing as an effective guardrail-type system for preventing falls. However, the SIA and other interested groups support the contention that, within limits, crossbracing can effectively perform as a guardrail-type system. Their position is that depending on the height of the cross point of the braces, crossbracing can effectively serve as a toprail, midrail, or in some situations, as both toprail and midrail. This position is supported to a degree by a study conducted by the University of Michigan (Ex. 10:37). However, an earlier study, also conducted by the University of Michigan (Ex. 6:143), provides no support for this concept.

The industry position that crossbracing can be as effective as guardrails is based on views similar to those discussed in Issue Number 12 above. Industry argues that the studies on which the requirements for guardrail systems are based do not properly reflect actual field conditions or accident statistics. For example, the Michigan study (Ex. 6) states there should be no opening in a guardrail or crossbrace system that would allow passage of a 19-inch sphere (19 inches is slightly less than the shoulder width of the 95th percentile U.S. adult male population). The industry position is that it is not a fair representative to equate a human body with a 19-inch sphere.

The specific provisions suggested by industry representatives for adoption by OSHA are as follows:

(a) Crossbracing on supported scaffolds may be used in lieu of a midrail provided the crossing point of the two braces is at or between 31 inches and 20 inches above the work surface.

(b) Crossbracing on supported scaffolds may be used in lieu of midrails and toprails provided the cross point of the two braces is at or between 48 inches and 30 inches above the work surface, and the end points at each upright are not more than 54 inches apart.

(c) Crossbracing may not be used in lieu of either a toprail or midrail on the top level of any supported scaffold.

The following have also been suggested as appropriate provisions:

(a) Crossbracing on supported scaffolds may be used in lieu of a toprail provided the crossing point of the two braces is at or between 39 inches and 49 inches above the work surface, and the end points at each upright are not more than 54 inches apart.

(b) Crossbracing on supported scaffolds may be used in lieu of midrails provided the crossing point of the two braces is at or between 30 inches and 20 inches above the work surface.

(c) Crossbracing may not be used in lieu of either a toprail or midrail on the top level of any supported scaffold.

(d) Crossbracing on supported scaffolds may not be used in lieu of both a toprail and midrail on the same scaffold level at the same time.

Comments and data reflecting engineering analyses and actual experience in the use of crossbracing are requested on the effectiveness of crossbracing when used in lieu of toprails, midrails, or both.

14. Should OSHA adopt a provision that would require mobile scaffolds to be moved only along their longitudinal axis while employees are riding on them? This provision, recommended by the ACCSH, is intended to maximize scaffold stability during movement, as tipping is most likely to occur when scaffolds are moved along their transverse axis.

15. Proposed rule § 1926.450(d) would require training and retraining as necessary for all employees using scaffolds. Public comment is requested on whether a more specific requirement or a less specific requirement such as that found in existing § 1926.21, would be appropriate. OSHA intends to include in the final rule only those training requirements for which a significant reduction in the risk of incurring injuries or fatalities would be supported in the final record.

Public comment is also requested on what training programs are currently available, who is providing them, and their cost. To the extent possible, examples of both adequate and inadequate training programs should be provided, with examples of how inadequate training may have contributed to unsafe conditions.

Companies, unions, trade associations, and other organizations conducting training programs also are encouraged to submit data concerning the safety records of employees who have undergone training. For example, have companies which have instituted training programs experienced a decrease in accidents compared to the situation existing before training was started?

Information concerning the costs of training and how such costs may be offset by more efficient and/or safe operations is also requested. Although OSHA believes safety training is necessary and beneficial, comments have been received that raise the following concerns:

What level of specificity should OSHA require in a training program? What are the necessary elements of a training program? Can the more general training requirements contained in § 1926.21 be effective in providing employees with adequate training or are the more specific requirements in this proposal necessary?

Do employers or employees believe that training is too costly for the benefits it yields? If OSHA should not require training at all, is there a basis for predicting if training efforts will decrease, increase, or stay at present levels? Would employers, employees, or other interested parties support the omission of the training requirement proposed for this subpart? Do data, eyewitness, and anecdotal evidence exist which may constitute support for OSHA's not requiring training?

Comments are also requested on whether or not training should be required to be provided in specific sessions devoted to an overall view of safety issues likely to be encountered, or are on-the-job sessions, limited to isolated safety concerns as they are encountered, sufficient to insure safety?

In addition, OSHA requests comments on whether compliance with these proposed training requirements could be practicably accomplished without keeping records. Do these proposed training requirements, as written, impose an implicit recordkeeping burden on employers? Data on the cost and time necessary for keeping training records, if any, are requested.

16. Proposed rule § 1926.451(d)(3) would require scaffolds and scaffold components to be inspected for visible defects prior to each workshift and after any occurrence which could affect a scaffold's structural integrity. Public comment is requested on whether or not the daily period of time is appropriate or if some lesser or greater period should be required.

17. Should OSHA specify a minimum slippage capacity of 4,000 pounds and a minimum breakage capacity of 16,000 pounds for couplers used on tube and

coupler type scaffolds? Industry proponents argue that such a rule is necessary to assure proper scaffold strength.

18. The proposed requirements do not limit the height at which single-point adjustable suspension scaffolds and two-point adjustable suspension scaffolds may be used. Should OSHA limit the height at which those scaffolds may be used? If so, what should this height be, and why?

19. Some single-point adjustable suspension scaffolds which are currently in use have two separate lines (one serves as an independent support line) attached to two separate anchor points; however, both lines are connected to a single point on the body support system. A failure of this single body support mechanism, or body support system, could result in an uncontrolled fall for the employee. Should OSHA permit the use of such a system in which the lifeline and support line connect to a single mechanism or body support system? If so, what criteria should be used to assure the reliability of the single mechanism or body support system to prevent failures? What has been the experience with this type of system?

20. Should OSHA prohibit or regulate the use of stilts? Proponents for such a rule should include accident data in their comments. If stilts should be allowed, comments are requested on appropriate regulations, if any, regarding their construction, use, fall protection (i.e., higher guardrails), floor conditions (i.e., level, no holes, no debris), and other necessary considerations.

21. Existing rule § 1926.451(a)(7) and proposed rule § 1926.451(a)(1), require scaffolds to be capable of supporting, without failure, at least four times the maximum intended load. OSHA recognizes that field testing of scaffolds and scaffold components with loads four times greater than the maximum intended load could permanently damage and render useless the item being tested. Public comment is requested on appropriate field test procedures or certifications for determining the capacity of scaffolds and scaffold components such as planks and ropes.

22. Existing rule § 1926.451(y)(4)(iii) and proposed rule § 1926.462(j)(2) require pumpjack scaffolds to be equipped with braces at the top and bottom, and at other points as necessary. Public comment is requested on whether or not the bottom brace should be required at all times. Comments should include appropriate engineering, cost, and injury data, and should address the type of surface the scaffold is on (i.e., sloping, level, soft ground, concrete, etc.).

23. Paragraph 1.(b) of Appendix A requires wood scaffold planks to be selected using the grading rules established by a recognized independent inspection agency for the species of wood used. Public comment is requested on whether or not a more specific requirement should be stated, and, if so, what should that requirement be?

24. Existing paragraphs E § 1926.451 (b)(16), (c)(4), (c)(5), (d)(9), and (g)(3) require specified types of scaffolds to be designed by an engineer when the scaffold to be built will exceed the limits set forth in existing Tables L–4 through L–13. Proposed rules § 1926.451(b)(18)(i) and § 1926.452 (a)(10), (b)(10), (c)(6), and (i)(8) also require specified components and scaffold types to be designed by an engineer when proposed Appendix A is not followed. However, there may be situations in which Appendix A could be safely modified by qualified persons other than registered professional engineers. A qualified person may be able to safely modify the Appendix A requirements for certain scaffolds, for example, tube and coupler scaffolds less than 125 feet in height. Are there situations in which scaffolds not built or loaded in accordance with Appendix A could be safely designed by a qualified person rather than an engineer? Are there situations in which only an engineer will be able to safely modify Appendix A? Also, while the existing tables and proposed Appendix A specify the minimum size for many components, neither standard sets forth guidelines for every component used on scaffolds such as, but not limited to, base plates, splice plates, joints, ties, and braces (the proposed rule, however, does specifically require all such components to meet the 4:1 capacity provision).

Public comment is requested on whether or not an engineer's services are needed to design all components not presently included in the tables and guidelines of Appendix A. If not, OSHA requests information on the additional criteria which should be added to Appendix A in order to provide complete tables and guidelines.

In addition, OSHA requests public comment on whether or not there are other types of scaffolds, or conditions (such as evaluating the support system for interior hung scaffolds), in addition to those already covered, where it would be appropriate to require the services of an engineer. If the services of an engineer are not necessary, what are the training and experience factors an individual must have before being allowed to design a scaffold system?

25. In some of the existing provisions and in some of the proposed provisions, OSHA uses specific numerical limits to define and clarify the duties set forth. For example, E § 1926.451(a)(7) and proposed rule § 1926.451(a)(1) require that scaffold components have a factor of safety of at least 4:1. Other examples include: proposed requirement § 1926.451(c)(7) which restricts direct access to scaffolds to those situations where the open distance between scaffold and building is not more than 14 inches horizontally and 24 inches vertically; and requirement § 1926.451(c)(1)(iii) which requires rest platforms at 20-foot maximum intervals. These and other limits are based on existing laws and consensus standards, and are used in lieu of more performance-oriented language such as "scaffold components shall be strong enough to properly support the loads imposed on them;" or "direct access shall be used only where the building and the scaffold are close enough to provide safe access;" or language which requires a numerical limit but then allows other configurations which give "equivalent" protection. OSHA believes that although such performance-oriented language would be less restrictive on employers, and thus give them more options when abating a hazard, it does not always tell the employer exactly what is required (i.e., how to do something "right"). On the other hand, requiring specific numerical limits in the rule and allowing the employer to use other limits which the employer can show will provide "equivalent" protection may respond to both these concerns. OSHA believes that the use of specific limits in certain provisions (such as those listed above, and those for guardrail heights, minimum platform widths, and similar requirements) provides the required notice to employers as to how thay can comply with a provision compared to how OSHA intends to enforce the provision. OSHA believes that such notice serves to inform employees and employers about the proper way to do things; promotes consistency in hazard abatement at all worksites; and also minimizes legal disputes over the intent of a requirement. On the other hand, specification language can increase costs without increasing safety, discourage technical innovation, prevent the use of safe alternatives, and fail to anticipate the varying needs and situations in the numerous workplaces covered by the standard.

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Public comment is requested on whether or not OSHA's use of specification language is appropriate, or if it should be moved to a non-mandatory appendix which could provide guidance to employers. If not, how should the provisions be written to provide the desired flexibility and the required fair notice? If the continued use of such limits is appropriate, are the proposed limits sufficient to abate the hazards? Comments should include appropriate cost and injury data.

26. Paragraph § 1926.451(b)(18)(ii) requires that counterweights be made of non-flowable solid materials. Should OSHA also require that counterweights be designed for no other purpose than to counterweigh the system, thereby prohibiting the use of construction materials, such as concrete masonry units, rolls of felt, etc., as counterweights? Comments should include accident and cost data.

27. Paragraph § 1926.451(b)(32) requires manually-powered hoists to be built such that they require a positive crank force to lower the scaffold. This would eliminate the dangerous condition of "free-running" hoists during descents. Public comment is requested on the need for this requirement.

28. Public comment is requested on whether landing platforms should be required at 35-foot maximum intervals as required by E § 1926.451(e)(5), or at 20-foot maximum intervals as required by proposed rule § 1926.451(c)(2)(iii).

29. Paragraph § 1926.451(d)(13) prohibits the use of ladders or makeshift devices to raise the working level of employees. Public comment is requested on the need for this requirement.

IV. Preliminary Regulatory Impact Assessment and Regulatory Flexibility Analysis

Introduction and Summary

In accordance with Executive Order No. 12291 (46 FR 13193, February 17, 1981), OSHA has analyzed the economic impact of this proposed standard. Under the criteria established in E.O. 12291, OSHA has determined that the promulgation of this proposed standard would be a "minor" action, because the expected costs of full compliance with the proposed standard would be approximately $2.636 million less in the first year and $7.657 million less each year thereafter than full compliance with the existing standard.

Affected Industries and Population at Risk

The entire construction industry would be affected by the proposed changes in the existing Subpart L in view of the extensive use of scaffolds in all sectors of the industry. In terms of the two-digit Standard Industrial Classification (SIC) codes, OSHA has determined that the proposal could potentially affect all firms in SIC's 15, Building Construction—General Contractors and Operative Builders; SIC 16, Construction Other Than Building Construction—General Contractors; and SIC 17, Construction—Special Trades Contractors. The majority of business firms classified under SIC 17 are subcontractors to the general contractors classified under SIC's 15 and 16. Rather than classifying these sectors by their two-digit SIC designations, OSHA has used the type of finished construction product as the basis for classifying the construction industry into the following four general sectors:

a. Single-family housing,

b. Residential, except single-family housing (e.g., hotels, apartments),

c. Non-residential (e.g., commercial and institutional buildings), and

d. Heavy construction (e.g., bridges, utilities).

In 1977, there were approximately 456,000 individual contractors affected by Subpart L.

OSHA has estimated that of the approximately 4 million construction workers, 3.8 million frequently work on scaffolds. In fact, of all the construction trades, only roofers and earth diggers do not frequently use some type of scaffold. It is quite likely that the amount of scaffold use would differ among different types of construction trades, although there are no available data that could quantify these differences.

Significance of Risk

OSHA estimated that the percentage of all occupational injuries that are injuries in construction due to falls from scaffolds is between 0.19 percent and 0.39 percent, with a mean of 0.29 percent. Applying this range to the 5,956,000 occupational injuries reported in the 1979 Occupational Injuries and Illnesses Report (Ex. 11), OSHA estimated that the number of injuries in construction due to falls from scaffolds was between 11,320 and 23,230, with a mean of 17,275. Of these injuries, between 5,140 and 10,545 with a mean of 7,845 were lost workday injuries and between 6,180 and 12,685 with a mean of 9,430 were non-lost workday injuries. OSHA also estimated that the number of lost workdays in construction due to falls from scaffolds would be between 92,520 and 189,810, with a mean of 141,210.

In addition, OSHA determined that there would be between 45 and 60 yearly fatalities in construction associated with falls from scaffolds.

Consequently, OSHA concluded that the construction injuries and fatalities due to falls from scaffolds are significant and merit effort to reduce their numbers.

Feasibility, Benefits, and Costs

OSHA has determined that the proposed revision of Subpart L would be technologically feasible because it would permit the use of readily available technology and equipment.

Benefits from the proposal would accrue to those workers who are at risk from current practices involving scaffolds in the construction industry. OSHA has also determined that full compliance with the proposed standard would prevent from 29 to 38 fatalities, from 8,310 to 17,190 injuries (from 3,805 to 7,805 of which would have been lost workday injuries and 4,575 to 9,385 would have been non-lost workday injuries), and from 68,490 to 140,490 lost workdays. OSHA has determined that full compliance with the existing standard would prevent from 25 to 33 fatalities, from 8,155 to 16,725 injuries (from 3,700 to 7,590 of which would have been lost workday injuries and from 4,450 to 9,135 would have been non-lost workday injuries), and from 66,000 to 136,620 lost workdays. Under conditions of full compliance, therefore, the proposed standard would be more protective than the existing standard as from four to five more fatalities would be prevented, from 225 to 465 more injuries would be prevented (of which 105 to 215 would be lost workday injuries and 120 to 250 would be workday injuries), and from 1,890 to 3,870 fewer workdays would be lost.

OSHA does not endorse any particular estimate for the value of an employee's life. For illustrative purposes, however, OSHA used two methods to estimate the monetary value of the benefits that would result from implementation of the standard. The first method, known as the "human capital" approach, estimates directly the foregone earnings and medical costs associated with an occupational injury or death. Lost production and medical costs to society, however, are the minimum benefits resulting from the prevention of an occupational injury. The other method of estimating benefits is based on the willingness-to-pay concept. Willingness-to-pay is the theoretical amount that the beneficiaries of a program would be willing to pay in order to obtain the benefits of the program or, in an occupational safety context, what a group of workers would pay to reduce the probability of a death or injury. Willingness-to-pay is therefore a more accurate indicator of the true social benefits of preventing injuries to workers.

Using the "human capital" approach, OSHA has determined that the annual monetizable benefits would be from $2.947 million to $4.437 million greater from full compliance with the proposed standard than from full compliance with the existing standard. In present value terms (using a 10 percent discount rate), these potential increases in monetizable benefits would be between $21.159 million and $31.858 million over a 10-year period.

On the basis of the willingness-to-pay concept, OSHA has determined that the annual monetizable benefits would be from $17.19 million to $24.03 million (using $3.5 million as the value for prevented fatality) greater from full compliance with the proposed standard than from full compliance with the existing standard. In present value terms, these potential increases in monetizable benefits would be between $123.424 million and $172.535 million over a 10-year period.

Using the baseline of existing industry practice, OSHA estimated the costs of full compliance with the proposed standard to be $25.531 million in the first year and the annualized costs to be $7.662 million. The present value of these costs over the next 10 years would be $68.228 million. OSHA also estimated that the costs of full compliance with the existing standard to be $28.167 million in the first year and the annualized costs to be $15.319 million. The present value of these costs over the next 10 years would be $119.364 million.

Thus, OSHA determined that the net first-year cost savings in going from full compliance with the existing Subpart L to the revised Subpart L would amount to $2.636 million. The increase in labor costs of $1.755 million, mainly attributable to the training requirement of the revised standard would be more than offset by the materials cost savings of $4.391 million. The annual cost savings thereafter would amount to $7.657 million. The present value of these annual cost savings over the next 10 years would amount to $51.136 million.

Consequently, OSHA has concluded that full compliance with the proposed Subpart L would provide a safer environment at a lesser cost to the industry than would full compliance with the existing Subpart L and that the proposal is, therefore, the more cost-effective method of assuring the safety of employees working on scaffolds.

Cost of Compliance for Other Proposed OSHA Construction Safety Standards

OSHA considered the economic impact on the construction industry of this proposed revision and of the seven other construction standards that have been recently revised and promulgated or that are in the proposed or final rulemaking stage. Using the baseline of current industry practice, OSHA estimated that the annual total costs of these standards would be about $3.4 million for Underground Construction (Subpart S), $5.8 million for Crane- or Derrick-Suspended Personnel Platforms (Subpart N), $28.7 million for Concrete and Masonry Construction (Subpart Q), $12.5 million for Ladders and Stairways (Subpart X), $48.0 million for Electrical Construction (Subpart K), and $65.8 million for Fall Protection (Subpart M), and no costs for Trenching (Subpart P). Using the baseline of full compliance with the existing standard, OSHA estimated that the incremental costs of these standards would be about $2.7 million for Underground Construction, $2.2 million for Crane- or Derrick-Suspended Personnel Platforms, $17.5 million for Concrete and Masonry Construction, and $8.4 million for Ladders and Stairways. In addition, a cost savings of $30.6 million for Electrical Construction, $27.5 million for Fall Protection, and between $11.7 million and $428 million for Trenching is estimated for those revisions. Thus, the net impact of these actions combined with this action would be increased annualized costs of $171.8 million when using a baseline of current industry practice and an annual cost savings between $46.6 million and $77.7 million when using a baseline of full compliance with the existing standards.

Regulatory Flexibility Certification

Pursuant to the Regulatory Flexibility Act (Pub. L. 96–353 Stat. 1164 (5 U.S.C. 60 et seq.)), the Assistant Secretary has made a preliminary assessment of the impact of the proposed standard and has concluded that it would not have a significant impact upon a substantial number of small entities. OSHA invites public comment concerning this preliminary conclusion.

The important criterion that governs a Regulatory Flexibility Analysis is whether the proposed standard would impose significant costs upon small entities. "Significance" is determined by the impact upon profits, market share, and on the entity's financial viability. In particular, the proposed standard's affect upon small entities relative to that upon large entities needs to be specifically evaluated. That is, OSHA must determine whether the proposal would have a relatively greater negative effect on small entities than large entities, thereby putting small entities at a competitive disadvantage, and if so, whether there are ways to minimize these effects without increasing worker risk.

If the costs of compliance for small firms are relatively minor and are proportional to the size of the firm, then there is no significant differential effect. In those cases involving large absolute costs, small firms may have greater difficulty in obtaining financing, and in those cases involving economies of scale in compliance, the burden on small firms will be greater than the burden on large firms. The proposed changes to Subpart L, however, require minimal capital expenditures and provide net cost savings to employers in comparison with the costs of compliance under the current standard. Furthermore, as its provisions are more performance-oriented than specification-oriented, small entities can use the most cost-effective methods of employee protection best suited to their particular work situations. The costs of compliance primarily depend upon the amount of scaffold footage and the number of employees, which typically depend upon the scale of operation of the entity. In addition, these costs would be a minimal component of the overall cost of the facilities. As a result, small entities would not be put at a competitive disadvantage due to these compliance costs.

Thus, OSHA has concluded that this proposed standard would not have a significant adverse impact upon a substantial number of small entities.

The assessment is available for inspection and copying at the OSHA Technical Data Center, Room N–3670, 200 Constitution Avenue NW., Washington, DC 20210. OSHA invites comments concerning the conclusions reached in the Regulatory Assessment.

V. Environmental Assessment

Finding of No Significant Impact

This proposed rule and its major alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C 4321 et seq.), the Guidelines of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and OSHA's DOL NEPA Procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the proposed rule will have no significant environmental impact.

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The proposed revisions to 29 CFR 1926.450–.460, Subpart L—Scaffolds, focus on the reduction of accidents or injuries by means of work practices and procedures, proper use and handling of equipment, and training, as well as on changes in language, definition, and format of the standard. These revisions do not impact on air, water, or soil quality, plant or animal life, the use of land, or other aspects of the environment. As such, these revisions are therefore categorized as excluded actions according to Subpart B, § 11.10, of the DOL NEPA regulations.

VI. References

1. U.S. Department of Labor, Bureau of Labor Statistics, *Work Injury Report on Scaffolds*, conducted May–November 1978, Unpublished.

2. U.S. Department of Labor, Bureau of Labor Statistics, *Occupational Injury and Illness Information for 1977 Now Available from Supplementary Data System*, March 1980.

3. U.S. Department of Labor, Occupational Safety and Health Administration, *Occupational Fatalities Related to Scaffolds as Found in Reports of Fatality/Catastrophe Investigations*, May 1979.

4. Advisory Committee on Construction Safety and Health: *Transcripts of meetings held on June 2, 1977, November 29–30, 1977; February 15, 1978; April 25–26, 1978; and June 29–30, 1982.*

5. Wang Associates, Inc., *Study of Distance Between Structural Wall and Scaffold*, June 13, 1979, Unpublished.

6. Chaffin, Miodonski, Stobbe, Boydstun, and Armstrong, *An Ergonomic Basis for Recommendations Pertaining to Specific Sections of OSHA Standard, 29 CFR Part 1910, Subpart D—Walking and Working Surface*, Department of Industrial and Operations Engineering College of Engineering, the University of Michigan, March 1978.

7. Ayoub and Bakken, *An Ergonomic Analysis of Selected Sections in Subpart D, Walking and Working Surfaces*, Texas Tech University, Institute of Biotechnology, Lubbock, Texas, August 1978.

8. Chaffin and Stobbe, *Ergonomic Considerations Related to Selected Fall Prevention Aspects of Scaffolds and Ladders as Presented in OSHA Standard 29 CFR Part 1910, Subpart D*, University of Michigan, September 1979.

9. Fattal, Cattaneo, Turner, and Robinson, *Personnel Guardrails for the Prevention of Occupational Accidents*, Center for Building Technology, Institute for Applied Technology, National Bureau of Standards, Washington, DC, July 1976 (NBSIR 76–1132).

10. Fattal and Cattaneo, *Investigation of Guardrails for the Protection of Employees from Occupational Hazards*, Center for Building Technology, Institute for Applied Technology, National Bureau of Standards, Washington, DC, July 1976 (NBSIR 76–1139).

11. U.S. Department of Labor, Bureau of Labor Statistics, *Occupational Injuries and Illnesses in 1979: Summary*, Washington, DC, April 1981.

12. U.S. Department of Labor, Bureau of Labor Statistics, *Injuries Resulting From Falls From Elevations*, Bulletin 2195, June 1984.

VII. Recordkeeping

This proposal contains no recordkeeping requirements. However, public comment is requested in the Specific Issues section of this preamble on whether the proposed training requirements impose an implicit recordkeeping requirement on employers.

VIII. Public Participation

Interested persons are invited to submit written data, views, and arguments with respect to this proposal. The comments must be postmarked by February 23, 1987, and submitted in quadruplicate to the Docket Officer, Docket S–205, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3670, 200 Constitution Avenue, NW., Washington, DC 20210.

The data, views, and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions received will be made a part of the record of this proceeding.

Additionally, under section 6(b)(3) of the OSHA Act (29 U.S.C. 655) section 107 of the Construction Safety Act (41 U.S.C. 333), and 29 CFR 1911.11, interested persons may file objections to the proposal and request an informal hearing. The objections and hearing request should be submitted in quadruplicate to the Docket Officer at the address above and must comply with the following conditions:

1. The objections must include the name, and address of the objector;
2. The objections must be postmarked by February 23, 1987.
3. The objections must specify with particularity the provisions of the proposed rule to which each objection is taken and must state the grounds therefore;
4. Each objection must be separately stated and numbered; and
5. The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

IX. State Plan States

The 25 States and territories with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within six months of the publication date of the final rule. These States and territories are: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New York (for State and local government employees only), New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Until such time as a comparable standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in these States and territories.

List of Subjects in 29 CFR Part 1926

Construction industry, Construction safety, Electric power, Fire prevention, Ladders and scaffolds, Occupational safety and health, Protective equipment, Safety, Tools, Welding.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6(b) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333), Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR Part 1911, it is proposed to amend 29 CFR Part 1926 as set forth below.

Signed at Washington, DC, this 17th day of November 1986.

John A. Pendergrass,
Assistant Secretary of Labor.

PART 1926—[AMENDED]

1. The authority citation for Subpart R of Part 1926 is revised to read as follows:

Authority: Section 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Sections 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

§ 1926.752 [Amended]

2. Paragraph (k) of § 1926.752 would be removed and reserved.

3. Subpart L of Part 1926 would be revised to read as follows:

Subpart L—Scaffolds

Sec.
1926.450 Scope, application, and definitions applicable to this subpart.
1926.451 General requirements.
1926.452 Additional requirements applicable to specific types of scaffolds.

Sec.
1926.453–1926.459 [Reserved]
1926.460 Training requirements.
Appendix A to Subpart L—Scaffold Specifications

Subpart L—Scaffolds

Authority: Section 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Sections 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

§ 1926.450 Scope, application and definitions applicable to this subpart.

(a) *Scope and application.* This subpart applies to all scaffolds used in construction, alteration, repair (including painting and decorating), and demolition workplaces covered under 29 CFR Part 1926.

(b) *Definitions.* "Adjustable suspension scaffold" means a suspension scaffold equipped with hoists that can be operated by employees on the scaffold.

"Bearer" means a horizontal transverse scaffold member (which may be supported by ledgers or runners) upon which the scaffold platform rests and which joins scaffold uprights, posts, poles, and similar members.

"Boatswains' chair" means a single point adjustable suspension scaffold consisting of a seat or sling designed to accommodate one employee in a sitting position.

"Body belt (safety belt)" means a strap with means for securing about the waist or body and for attaching to a lanyard, lifeline, or deceleration device.

"Body belt/harness system (personal fall arrest system)" means a combination of body belt, or body harness, and lanyard, deceleration device, lifeline, and point of anchorage.

"Body harness" means a design of straps which is secured about the employee in a manner to distribute the arresting forces over at least the thighs, shoulders, and pelvis, with provisions for attaching a lanyard, lifeline, or deceleration device.

"Brace" means a tie that holds one scaffold member in a fixed position with respect to another member. "Brace" also means a rigid type connection holding a scaffold to a building or structure.

"Bricklayers' square scaffold" means a supported scaffold composed of framed squares which support a platform.

"Carpenters' bracket scaffold" means a supported scaffold consisting of a platform supported by brackets attached to building or structural walls.

"Catenary scaffold" means a suspension scaffold consisting of a platform fastened to two essentially horizontal and parallel ropes, which are secured to structural members.

"Cleat" means structural members used at the ends of platform units to prevent the units from slipping off their supports. Cleats are also used to provide footing on sloped surfaces such as crawling boards.

"Coupler" means a device for locking together the component tubes of a tube and coupler scaffold.

"Crawling board (chicken ladder)" means a supported scaffold consisting of a plank with cleats spaced and secured to provide footing, for use on sloped surfaces such as roofs.

"Deceleration device" means any mechanism, such as a rope grab, rip-stitch lanyard, specially-woven lanyard, and automatic self-retracting lifeline, which serves to dissipate more energy during a fall arrest than does a standard line or strap webbing lanyard.

"Double pole (independent pole) scaffold" means a supported scaffold consisting of platforms resting on cross beams supported by ledgers and a double row of uprights independent of support (except ties, guys, braces) from any structure.

"Dropline" means a suspended vertical line, independent of the work platform, for direct attachment to a worker's body belt, body harness, lanyard, or deceleration device.

"Equivalent" means alternative designs, materials, or methods which the employer can demonstrate will provide an equal or greater degree of safety for employees than the method or item specified in the standard.

"Exposed power lines" means electrical power lines which are accessible to employees and not shielded from contact. Such lines do not include extension cords or power tool cords.

"Fabricated decking and planking" means manufactured platform units made of wood (including laminated wood, and solid sawn wood planks), metal or other materials.

"Fabricated frame scaffold (tubular welded frame scaffold)" means a supported or suspended scaffold consisting of a platform(s) supported on fabricated end frames with integral posts, horizontal bearers, and intermediate members.

"Failure" means load refusal, breakage, or separation of component parts. Load refusal is the point where the ultimate strength is exceeded.

"Float (ship) scaffold" means a suspension scaffold consisting of a braced platform resting upon two parallel bearers and hung from overhead supports by ropes of fixed length.

"Form scaffold" means a supported scaffold consisting of a platform supported by brackets attached to formwork.

"Guardrail system" means a vertical barrier erected to prevent employees from falling from an open side or edge of a scaffold platform or walkway. Type I guardrail systems are those systems capable of providing adequate fall protection without the use of body belts. Type II guardrail systems are those systems which serve as scaffold edge delineators, restrain movement, provide handholds, prevent misstepping, and which must be supplemented by body belt systems to provide adequate fall protection.

"Hoist" means a mechanical device to raise or lower a suspended scaffold. It can be either manually or mechanically power-operated.

"Horse scaffold" means a supported scaffold consisting of a platform supported by construction horses.

"Independent pole scaffold" (See "Double pole scaffold.")

"Interior hung scaffold" means a suspension scaffold consisting of a platform suspended from the ceiling or roof structure by fixed length supports.

"Ladder jack scaffold" means a supported scaffold consisting of a platform supported by brackets attached to ladders.

"Ladder stand" means a mobile, fixed-size, selfsupporting ladder consisting of a wide flat tread ladder in the form of stairs.

"Lean-to scaffold" means a supported scaffold which is kept erect by tilting it toward and resting it against a building or structure.

"Ledger" means a horizontal scaffold member upon which bearers rest. It is the longitudinal member which joins scaffold uprights, posts, poles, and similar members.

"Lower levels" means those areas to which an employee can fall. Such areas include ground levels, floors, roofs, ramps, runways, excavations, pits, tanks, materials, water, equipment, and similar surfaces.

"Masons' adjustable supported scaffold" (See definition for "Self-contained adjustable scaffold.")

"Masons' multi-point adjustable suspension scaffold" means a two-point or multi-point adjustable suspension scaffold designed and used for masonry operations.

"Maximum intended load" means the total load of all employees, equipment, tools, materials, transmitted loads, wind loads and other loads reasonably

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anticipated to be applied to a scaffold or scaffold component at any one time.

"Mechanically-powered hoist" means a hoist which is powered by other than human energy.

"Mobile scaffold" means a powered or unpowered, portable, caster or wheel-mounted supported scaffold. Such scaffolds do not include crane or derrick suspended personnel platforms.

"Multi-level suspended scaffold" means a two-point or multi-point adjustable suspension scaffold with a series of platforms at various levels supported by common stirrups.

"Multi-point adjustable suspension scaffold" means a suspension scaffold consisting of a platform(s) suspended by more than two ropes from overhead supports and equipped with means to permit the raising and lowering of the platform to desired work levels.

"Needle beam scaffold" means a suspension scaffold consisting of a platform supported by needle beams.

"Open sides and ends" means the edges of a platform that are more than 14 inches (36 cm) away horizontally from a sturdy, continuous, vertical surface (such as a building wall) or a sturdy, continuous horizontal surface (such as a floor), except for plastering and lathing operations the limit is 18 inches (46 cm).

"Outrigger" means the structural member of a supported scaffold used to increase the base width of a scaffold in order to provide greater stability for the scaffold.

"Outrigger beam" means the structural member of a suspension scaffold or outrigger scaffold which provides support for the scaffold by extending the scaffold point of attachment to a point out and away from the structure or building.

"Outrigger scaffold" means a supported scaffold consisting of a platform supported by outrigger beams (thrustouts) projecting beyond the wall or face of the building or structure, the inboard ends of which are secured inside the building or structure.

"Overhand bricklaying operations" means the process of laying bricks and masonry units such that the surface of the wall to be jointed is on the opposite side of the wall from the mason, and the mason must lean over the wall to complete the work.

"Platform" means the horizontal working surface of a scaffold.

"Platform unit" means the individual wood planks, fabricated planks, fabricated decks, and fabricated platforms which comprise the platforms and walkways of a scaffold.

"Pole scaffold" (See definitions for "Single-pole scaffold" and "Double (independent) pole scaffold.")

"Pump jack scaffold" means a supported scaffold consisting of a platform supported by vertical poles and movable support brackets.

"Roof bracket scaffold" means a rooftop supported scaffold consisting of a platform supported by triangular-shaped supports.

"Runner" means the lengthwise horizontal bracing or bearing member which supports bearers on tube and coupler scaffolds.

"Scaffold" means any temporary elevated or suspended platform, and its supporting structure, used for supporting employees or materials or both, except this term does not include crane or derrick suspended personnel platforms.

"Self-contained adjustable scaffold" means a supported scaffold consisting of an adjustable platform(s) mounted on an independent supporting frame(s) not a part of the object being worked on, and which is equipped with a means to permit the raising and lowering of the platform(s) to desired work levels. Such systems include rolling roof rigs, rolling outrigger systems, and some masons' adjustable supported scaffolds.

"Shore scaffold" means a supported scaffold which is kept erect by placing it against a building or structure and holding it in place with props.

"Single-point adjustable suspension scaffold" means a suspension scaffold consisting of a platform suspended by one rope from an overhead support and equipped with means to permit the movement of the platform to desired work levels.

"Single-pole scaffold" means a supported scaffold consisting of platforms resting on bearers, the outside ends of which are supported on ledgers secured to a single row of posts or uprights, and the inner ends of which are supported on or in a structure or building wall.

"Step, platform, and trestle ladder scaffold" means a supported scaffold consisting of a platform supported directly on the rungs of step ladders or trestle ladders.

"Stonesetters' multi-point adjustable suspension scaffold" means a two-point or multi-point adjustable suspension scaffold designed and used for stonesetters' operations.

"Supported scaffold" means one or more working platforms supported from below by outriggers, brackets, poles, legs, uprights, posts, frames, or similar support.

"Suspension scaffold" means one or more working platforms suspended by ropes or other means from an overhead structure(s).

"Trolley lines" means a horizontal line for direct attachment to a worker's body belt, lanyard, or deceleration device.

"Tube and coupler scaffold" means a supported or suspended scaffold consisting of platforms supported by individual pieces of tubing, erected with coupling devices connecting uprights, braces, bearers, and runners.

"Tubular welded frame scaffold" (See definition for "Fabricated frame scaffold.")

"Two-point suspension scaffold (swing stage)" means a suspension scaffold consisting of a platform supported by hangers (stirrups) suspended by two ropes from overhead supports and equipped with means to permit the raising and lowering of the platform to desired work levels.

"Unstable objects" means those items which do not properly distribute the loads imposed on them and which, therefore, do not constitute a proper base support for scaffolds, platform units, or employees. Examples of such objects include, but are not limited to, barrels, boxes, loose brick, and concrete blocks.

"Vertical pickup" means a rope used to support the horizontal rope in catenary scaffolds.

"Walkway" means a portion of a scaffold platform used only for access and not as a work level.

"Window jack scaffold" means a supported scaffold consisting of a platform supported by a bracket or jack which projects through a window opening.

"Worklevel" means an elevated platform used for supporting employees and their materials, where work activities are performed.

§ 1926.451 General requirements.

The following requirements apply to all scaffolds as indicated:

(a) *Capacity.* Scaffold components and connections shall have the following capacities:

(1) Each scaffold and scaffold component, except suspension ropes and guardrail systems, shall be capable of supporting, without failure, its own weight and a least four times the maximum intended load applied or transmitted to that scaffold or scaffold component. Scaffold components selected, built, and loaded in accordance with Appendix A of this Subpart will be deemed to meet this requirement.

(2) Direct connections to roofs and floors, and counterweights used to

support suspension scaffolds, shall be capable of providing a resisting moment of at least four times the tipping moment.

(3) Each suspension rope shall be capable of supporting, without failure, at least six times the maximum intended load applied or transmitted to that rope.

(4) Suspension ropes shall be as follows:

(i) Ropes supporting adjustable suspension scaffolds shall be of a diameter large enough to provide sufficient surface area for the functioning of brake and hoist mechanisms.

(ii) Ropes supporting catenary scaffolds shall be equivalent in strength to at least one-half (½) inch (1.3 cm) diameter improved plow steel wire rope;

(iii) Ropes supporting float (ship) scaffolds and needle beam scaffolds shall be equivalent in strength to at least one inch (2.5 cm) diameter first grade manila rope.

Note.—Ropes supporting boatswains' chairs are specified in § 1926.452(o).

(b) *Construction.* (1) Platforms, except those used as walkways, on all working levels on all scaffolds shall be fully planked or decked with platform units between the front uprights and the guardrail supports as follows.

(i) Platform units shall be placed as close as possible to adjacent units. Any space between adjacent units shall be no more than one inch (2.5 cm) wide except as necessary to fit around uprights when side brackets are used to extend the width of the platform.

(ii) Where full planking or decking cannot be obtained using standard width units, the platform shall be planked or decked as fully as possible; however, the remaining open space between the platform and guardrail supports shall not exceed nine and one-half inches (24.1 cm).

(2) All scaffold platforms and walkways shall be at least 18 inches (46 cm) wide except ladder jack scaffolds shall be a minimum of 12 inches (30 cm) wide, and boatswains' chairs may be any size.

(3) Emergency descent devices shall not be used as working platforms.

(4) Except as provided in paragraphs (b)(4) (i) and (ii) of this section, the front edge of all platforms shall be positioned not more than 14 inches (36 cm) from the face of the structure being worked on, unless Type I guardrails are erected along the open edge or body belt/harness systems are used to protect employees from falling.

(i) The maximum distance for outrigger scaffolds shall be three inches (8 cm);

(ii) The maximum distance for plastering and lathing operations shall be 18 inches (46 cm).

(5) Each end of a platform unit, unless cleated or otherwise restrained by hooks or equivalent means, shall extend over its support not less than six inches (15 cm).

(6) Each end of a platform unit shall not extend over its support more than 18 inches (46 cm), unless the unit is designed, capable, and installed to support employees without tipping or is guarded to prevent access of employees to the cantilevered end.

(7) On scaffolds where platform units are abutted to create a long platform, each abutted end shall rest on a separate support, butt plate, or equivalent means of support.

(8) On scaffolds where platform units are overlapped to create a long platform, the overlap shall occur only over supports, and shall not be less than 12 inches (30 cm) long unless the platform units are nailed together or otherwise restrained to prevent movement.

(9) At all points of a scaffold where the platform changes direction, such as turning a corner, any platform unit that rests on a bearer at an angle other than a right angle shall be laid first and platform units which rest at right angles over the same bearer shall be laid second, on top of the first units.

(10) Wood platform units shall not be covered with opaque finishes, except unit edges may be covered or marked for purposes of identification.

Note.—Platform units may be coated periodically with wood preservatives, fire-retardant finishes, and slip-resistant finishes; however, the coating may not obscure the top or bottom wood surfaces.

(11) Scaffold components manufactured by different manufacturers shall not be intermixed unless the component parts fit together without force. Scaffold components manufactured by different manufacturers shall not be modified in order to intermix them unless the resulting scaffold is determined by a competent person to be structurally sound.

(12) Scaffold components made of dissimilar metals shall not be used together unless a competent person has determined that galvanic action will not reduce the strength of any component to a level below that required by § 1926.451(a)(1).

(13) Supported scaffolds with a height to base width (including outrigger supports, if used) ratio of more than four to one shall be restrained from tipping by guying, tying, bracing, or other equivalent means.

(i) Guys, braces, or ties shall be provided at heights not to exceed the first multiple in height of the four to one ratio and at intervals not to exceed 20 feet (6.1 m) thereafter.

(ii) Guys, ties and braces which are required by the four to one rule shall be installed at each end of the scaffold and at horizontal intervals not to exceed 30 feet (9.1 m) (measured from one end towards the other).

(14) Supported scaffold poles, legs, posts, frames, and uprights shall bear on base plates and mud sills or other adequate firm foundation.

(i) Such footings shall be level, sound, rigid, and capable of supporting the scaffold in a loaded condition without settling or displacement.

(ii) Unstable objects shall not be used to support scaffolds or platform units.

(iii) Unstable objects shall not be used as working platforms.

(15) Supported scaffold poles, legs, posts, frames, and uprights shall be plumb and braced to prevent swaying and displacement.

(16) All suspension scaffold support devices such as outrigger beams, cornice hooks, parapet clamps, and similar devices, shall rest on surfaces capable of supporting the reaction forces imposed by the scaffold hoist operating at its maximum rated load.

(17) Suspension scaffold outrigger beams shall be made of structural metal and shall be restrained to prevent movement.

(18) The inboard ends of suspension scaffold outrigger beams shall be stabilized by bolts or other direct connections to the floor or roof deck, or they shall have their inboard ends stabilized by counterweights, except masons' adjustable multi-point suspension scaffold outrigger beams shall not be stabilized by counterweights.

(i) Before use, direct connections shall be evaluated by a competent person who shall affirm, based on the evaluation, that the supporting surfaces are capable of supporting the loads to be imposed. In addition, masons' adjustable multipoint suspension scaffold connections shall be designed by an engineer experienced in such scaffold design.

(ii) Counterweights shall be made of non-flowable solid material.

(iii) Counterweights shall be secured by mechanical means to the outrigger beams.

(iv) Counterweights shall not be removed from a scaffold until the scaffold is disassembled.

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(v) Outrigger beams shall be secured by tiebacks equivalent in strength to the suspension ropes.

(vi) Tiebacks shall be secured to a structurally sound portion of the building or structure.

(vii) Tiebacks shall be installed parallel to the centerline of the beam.

(19) Suspension scaffold outrigger beams shall be:

(i) Provided with stop bolts or shackles at both ends;

(ii) Securely fastened together with the flanges turned out when channel iron beams are used in place of I-beams;

(iii) Installed with all bearing supports perpendicular to the beam center line;

(iv) Set and maintained with the web in a vertical position; and

(v) Where a single outrigger beam is used, the steel shackles or clevices with which the wire ropes are attached to the outrigger beams shall be placed directly over the hoisting machines.

(20) Suspension scaffold support devices such as cornice hooks, roof hooks, roof irons, parapet clamps, or similar devices shall be:

(i) Made of mild steel, wrought iron, or equivalent materials;

(ii) Supported by bearing blocks; and

(iii) Secured against movement by tiebacks installed at right angles to the face of the building whenever possible, and secured to a structurally sound portion of the building. Tiebacks shall be equivalent in strength to the hoisting rope.

(21) When winding drum hoists are used on a suspension scaffold, they shall contain not less than four wraps of the suspension rope at the lowest point of scaffold travel. When other types of hoists are used, the suspension ropes shall be of such length that the scaffold can be lowered to the level below without the rope end passing through the hoist, or the rope end shall be configured or provided with means to prevent the end from passing through the hoist.

(22) The repairing of wire suspension rope is prohibited.

(23) Wire suspension ropes shall not be joined together except by eyesplicing with shackles or coverplates and bolts.

(24) The load end of wire suspension ropes shall be equipped with proper size thimbles and secured by eyesplicing or equivalent means.

(25) Defective or damaged ropes shall not be used as suspension ropes or drop lines.

(26) Swaged attachments or spliced eyes on wire suspension ropes shall not be used unless they are made by the wire rope manufacturer or a qualified person.

(27) When wire rope clips are used on suspension scaffolds, they shall be retightened after initial loading and shall be inspected and retightened periodically thereafter.

(28) Suspension scaffold mechanically-powered hoists and manually-powered hoists shall be of a type tested and listed by a qualified testing laboratory.

(29) Gasoline-powered hoists shall not be used on suspension scaffolds.

(30) Gears and brakes of mechanically-power-operated hoists used on suspension scaffolds shall be enclosed.

(31) In addition to the normal operating brake, suspension scaffold hoists shall have a braking device or locking pawl which engages automatically when the normal speed of descent of the hoist is exceeded.

(32) Manually-powered hoists shall require a positive crank force to descend.

(c) *Access.*

Note.—The following requirements do not apply to employees performing scaffold erection and dismantling operations.

(1) Access to and between scaffold platforms more than two feet (0.6m) above or below the point of access shall be by portable ladders, hook-on ladders, attachable ladders, stairway-type ladders (such as ladder stands), ramps, runways, integral prefabricated scaffold rungs, or equivalent means, or by direct access from another scaffold, structure, personnel hoist, or similar surface. Employees shall not use crossbraces as a means of access.

(2) Portable, hook-on, and attachable ladders:

(i) Portable, hook-on, and attachable ladders shall be positioned so as not to tip the scaffold;

Note.—Additional requirements for the proper construction and use of portable ladders are contained in Subpart X—Stairways and Ladders.

(ii) Hook-on and attachable ladders shall be positioned such that their bottom rung is not more than 24 inches (61 cm) above the scaffold supporting level;

(iii) Hook-on and attachable ladders shall be provided with rest platforms at 20 foot (6.0 m) maximum vertical intervals for attached ladders:

(iv) Hook-on and attachable ladders shall be specifically designed for use with manufactured types of scaffolds;

(v) Have a minimum rung length of 11½ inches (29 cm); and

(vi) Have a maximum spacing between rungs of 12 inches (30 cm).

(3) Stairway-type ladders shall:

(i) Be positioned such that their bottom step is not more than 24 inches (61 cm) above the scaffold supporting level;

(ii) Be provided with rest platforms at 12 foot (3.7 m) maximum vertical intervals;

(iii) Have a minimum step width of 16 inches (41 cm); and

(iv) Have slip-resistant treads on all steps and landings.

(4) Ramps and runways shall be provided with guardrails in accordance with the provisions of §§ 1926.501 and 1926.502.

(5) Integral prefabricated scaffold rungs shall:

(i) Be specifically designed for use as ladder rungs;

(ii) Have a minimum rung length of 11½ inches (29 cm);

(iii) Be uniformly spaced within the frame;

(iv) Be provided with rest platforms at 20 foot (6.0 m) maximum vertical intervals, and

(v) Have a maximum spacing between rungs of 16½ inches (42 cm), however, non-uniform rung spacing caused by joining end frames together is allowed, provided the resulting spacing does not exceed 16½ inches (42 cm).

(6) All steps and rungs shall line up vertically with each other between rest platforms.

(7) Direct access shall be used only when the scaffold is not more than 14 inches (36 cm) horizontally and not more than 24 inches (61 cm) vertically from the other surface.

(d) *Use.* (1) Scaffolds and scaffold components shall not be loaded in excess of their maximum intended loads or rated capacities.

(2) The use of shore or lean-to scaffolds is prohibited.

(3) Scaffolds and scaffold components shall be inspected for visible defects by a competent person prior to each workshift, and after any occurrence which could affect a scaffold's structural integrity.

(4) Any part of a scaffold damaged or weakened such that a competent person determines its strength is reduced to less than that required by § 1926.451(a) shall be immediately braced or removed from service until repaired.

(5) Scaffolds shall not be moved laterally while employees are on them, except mobile scaffolds may be moved if the provisions of § 1926.452(w) are followed.

(6) Scaffolds shall not be erected, used, or moved closer to exposed and energized power lines than as follows:

(i) For all lines of more than 50 kv, minimum clearance between the lines and all parts of the scaffold shall be 10 feet (3.1 m) plus 0.4 inch (1 cm) for each 1 kv over 50 kv, or twice the length of the line insulator, but never less than 10 feet (3.1 m);

(ii) For all insulated lines between 300 volts and 50 kv, the minimum clearance between the lines and all parts of the scaffold shall be 10 feet (3.1 m);

(iii) For all insulated lines of less than 300 volts, the minimum clearance between the lines and all parts of the scaffold shall be two feet (0.6 m);

(iv) For all lines of any voltage which are uninsulated, the minimum clearance between the lines and all parts of the scaffold shall be: 10 feet (3.1 m) for lines of 50 Kv and less; and for lines more than 50 Kv, 10 feet (3.1 m) plus 0.4 inch (1 cm) for each 1 Kv over 50 Kv, or twice the length of the line insulator, but never less than 10 feet (3.1 m).

(7) Scaffolds shall not be erected, moved, dismantled, or altered except under the supervision of a competent person.

(8) Employees shall be prohibited from working on scaffolds covered with snow, ice, or other slippery material except as necessary for removal of such materials.

(9) Where swinging loads are being hoisted onto or near scaffolds such that the loads could contact the scaffold, tag lines or equivalent measures to stabilize the loads shall be utilized.

(10) Suspension ropes shall be shielded when a heatproducing process is performed. When acids or other corrosive substances are used on a scaffold, the ropes shall be shielded, treated to resist the corrosive substances, or shall be of a material which is not adversely affected by the substance being used.

(11) Work on or from scaffolds is prohibited during storms or when wind speeds at the level of work exceed 40 mph (64 km/hour), unless employees are protected by a body belt/harness system or wind screen. Wind screens shall not be used unless the scaffold is secured against the forces imposed.

(12) Debris shall not be allowed to accumulate on platforms.

(13) Ladders and makeshift devices shall not be used on top of scaffold platforms to increase the working level height of employees.

(14) Platform units shall not deflect more than 1/60 of the span when loaded.

(e) *Fall protection.* (1) Employees (except those erecting or dismantling scaffolds) on platforms more than 10 feet (3.0 m) above lower levels shall be protected from falling to those lower levels by the use of body belt/harness systems or Type I guardrail systems, except as follows:

(i) Employees on boatswains' chairs, catenary scaffolds, float scaffolds, needle beam scaffolds, and ladder jack scaffolds shall be protected by body belt/harness systems;

(ii) Employees on single-point adjustable suspension scaffolds and on two-point adjustable suspension scaffolds shall be protected by body belt/harness systems and Type I or Type II guardrail systems;

(iii) Employees on crawling boards (chicken ladders) shall be protected by body belt/harness systems, Type I guardrail systems, or by a three-fourth inch diameter grabline or equivalent handhold securely fastened beside each crawling board;

(iv) Employees on self-contained adjustable scaffolds shall be protected by Type I guardrail systems when the platform is supported by the frame structure, and by body belt/harness systems and Type I guardrail systems when the platform is supported by ropes;

(v) Employees on walkways located within a scaffold shall be protected by a Type I guardrail system installed within eight inches along at least one side of the walkway.

Note.—Requirements to protect employees performing overhand bricklaying operations from supported scaffolds are provided in § 1926.501.

(2) Employees (except those erecting or dismantling scaffolds) on platforms (except self-contained adjustable scaffolds and those types of scaffolds covered by § 1926.452) which are less than 45 inches (1.1 m) wide, and are four feet (1.2 m) to 10 feet (3.0 m) above lower levels, shall be protected from falling to those lower levels by the use of a body belt/harness system or Type I guardrail system.

(3) Body belt/harnesses shall be attached by lanyard to a dropline, trolley line, or scaffold structural member. However, when overhead obstructions such as overhead protection or additional platform levels are part of a single-point or two-point adjustable suspension scaffold, then droplines shall not be used.

(i) Droplines, when used, shall be fastened to a fixed safe point of anchorage, shall be independent of the scaffold, and shall be protected from sharp edges and abrasion.

(ii) Trolley lines, when used, shall be secured to two or more structural members of the scaffold, and shall not be attached to the suspension ropes.

(iii) When lanyards are connected to trolley lines or structural members on a single-point or two-point adjustable suspension scaffold, the scaffold shall be equipped with additional independent support lines and automatic locking devices capable of stopping the fall of the scaffold in the event one or both of the suspension ropes fail. The independent support lines shall be equal in number and strength to the suspension ropes.

(iv) Droplines, independent support lines, and suspension ropes shall not be attached to each other, nor shall they be attached to nor use the same point of anchorage.

Note.—Safe points of anchorage include structural members of buildings, but do not include standpipes, vents, other piping systems, electrical conduit, outrigger beams, nor counterweights.

(4) Guardrail systems shall comply with the following provisions (guardrail systems built in accordance with Appendix A will be deemed to meet the requirements of paragraphs (e)(4) (vii), (viii), (ix), and (x) of this section):

(i) Guardrail systems, when used, shall be installed along all open sides and ends of platforms.

(ii) The top edge height of toprails or equivalent member shall be installed between 38 inches (1.0 m) and 45 inches (1.2 m) above the platform surface for Type I guardrail systems, and between 36 inches (0.9 m) and 45 inches (1.2 m) above the platform surface for Type II guardrail systems.

(iii) Midrails, screens, mesh, intermediate vertical members, solid panels, or equivalent structural members shall be installed between the top edge of the guardrail system and the scaffold platform.

(iv) Midrails, when used, shall be installed at a height midway between the top edge of the guardrail system and the platform surface.

(v) Screens and mesh, when used, shall extend from the top edge of the guardrail system to the scaffold platform, and along the entire opening between the supports.

(vi) Intermediate vertical members (such as balusters), when used, shall be not more than 19 inches (48 cm) apart.

(vii) Toprails or equivalent members shall be capable of withstanding, without failure, a force applied in any downward or horizontal direction at any point along their top edge of at least 200 pounds (890 n) for Type I guardrail systems, and at least 100 pounds (445 n) for Type II guardrail systems.

(viii) When the loads specified in paragraph (e)(4)(vii) of this section are applied in a downward direction, the top edge shall not deflect to a height less than 38 inches (1.0 m) above the platform surface for Type I guardrail

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systems, and 36 inches (0.9 m) for Type II guardrail systems.

(ix) Midrails shall be capable of withstanding, without failure, a force applied in any downward or horizontal direction at any point along the midrail of at least 150 pounds (666 n) for Type I guardrail systems, and at least 75 pounds (333 n) for Type II guardrail systems.

(x) Suspension scaffold hoists and non-walk through stirrups are acceptable as end guardrails, provided that the space between the hoist or stirrup and the side guardrail or structure does not allow passage of employees to the end of the scaffold.

(xi) Toprails and midrails shall be so surfaced as to prevent injury to an employee from punctures or lacerations, and to prevent snagging of clothing which could cause an employee to fall.

(xii) The ends of all rails shall not overhang the terminal posts except where such overhang does not constitute a projection hazard to employees near such overhang.

(xiii) Steel or plastic banding shall not be used as a toprail or midrail.

(f) *Falling object protection.* (1) In addition to wearing hardhats, employees on scaffolds shall be protected from falling objects by toeboards, screens, or guardrail systems erected to prevent objects from falling from higher levels, or they shall be protected by a canopy structure erected to deflect falling objects.

Note.—The criteria for toeboards, screens, and guardrail systems which are not part of a scaffold, but which are installed to prevent objects from falling onto a scaffold, are as set forth for falling object protection in § 1926.502(j).

(i) Canopies, when used, shall be installed between the falling object hazard and the employees.

(ii) When canopies are used on suspension scaffolds, the scaffolds shall be equipped with additional independent support lines equal in number to the number of points supported, and equivalent in strength to the suspension ropes.

(iii) Independent support lines and suspension ropes shall not be attached to the same points of anchorage.

(2) Where there is a danger of tools, materials, or equipment falling from a scaffold and striking employees below, the following provisions apply:

(i) The area below the scaffold to which objects can fall shall be barricaded and employees not permitted to enter the hazard area; or

(ii) A toeboard shall be erected along the edge of platforms more than 10 feet (3.1 m) above lower levels, for a distance sufficient to protect employees below, except on float (ship) scaffolds where an edging of ¾ x 1½ inch (2 x 4 cm) wood or equivalent may be used in lieu of a toeboard; or

(iii) Where tools, materials, or equipment are piled to a height higher than the top edge of the toeboard, a screen conforming to § 1926.502 and extending from the toeboard or platform to the top of the guardrail shall be erected for a distance sufficient to protect employees below, or

(iv) A guardrail system shall be installed with openings small enough to reject passage of potential falling objects, or

(v) A canopy structure built to withstand the impact forces of the potential falling objects shall be erected over the employees below.

(3) Where used, toeboards shall be:

(i) Capable of withstanding, without failure, a force of at least 50 pounds (222 n) applied in any downward or horizontal direction at any point along the toeboard (toeboards built in accordance with Appendix A will be deemed to meet this requirement); and

(ii) Three and one-half inches (9 cm) minimum in height from their top edge to the level of the walking/working surface. They shall be securely fastened in place at the outermost edge of the platform and have not more than one-half inch (1.3 cm) clearance above the walking/working surface. They shall be solid or with openings not over one inch (2.5 cm) in the greatest dimension.

§ 1926.452 Additional requirements applicable to specific types of scaffolds.

The following requirements apply to the specific types of scaffolds as indicated, in addition to the general requirements of § 1926.451.

(a) *Pole scaffolds.* (1) When platforms are being moved to the next level, the existing platform shall be left undisturbed until the new bearers have been set in place and braced prior to receiving the new platform units.

(2) Crossbracing shall be installed between the inner and outer sets of poles on double pole scaffolds.

(3) Diagonal bracing in both directions shall be installed across the entire inside face of double pole scaffolds used to support loads equivalent to a uniformly distributed load of 50 pounds (222 kg) or more per square foot (929 square cm).

(4) Diagonal bracing in both directions shall be installed across the entire outside face of all double and single pole scaffolds.

(5) Ledgers and bearers shall be installed on edge.

(6) Bearers shall extend a minimum of three inches (7.6 cm) over the outside edges of ledgers.

(7) Ledgers shall extend over a minimum of two poles, and shall be supported by bearing blocks securely attached to the poles.

(8) Braces, bearers, and ledgers shall not be spliced between poles.

(9) Where wood poles are spliced, the ends shall be squared and the upper section shall rest squarely on the lower section. Wood splice plates shall be provided on at least two adjacent sides and shall be not less than four feet (1.2 m) in length, overlap the abutted ends equally, and have at least the same cross-sectional areas as the pole. Splice plates of other materials of equivalent strength may be used.

(10) Scaffolds and scaffold components not built or loaded in accordance with Appendix A shall be designed by a registered professional engineer and shall be constructed and loaded in accordance with such design.

(b) *Tube and coupler scaffolds.* (1) When platforms are being moved to the next level, the existing platform shall be left undisturbed until the new bearers have been set in place and braced prior to receiving the new platform units.

(2) Transverse bracing across the width of the scaffold shall be installed at the scaffold ends and at least at every third set of posts. Such bracing shall be installed for each section of six levels between the fourth and sixth levels, and, shall extend diagonally from the inner or outer posts or runners at the bottom of the fourth level, upward to the inner or outer posts or runners at the bottom of the fifth level, and similarly to the sixth level.

(3) Longitudinal bracing across the inner and outer rows of posts shall be installed diagonally in both directions, and shall extend from the base of the end posts upward to the top of the scaffold at approximately a 45 degree angle. On scaffolds whose length is greater than their height, such bracing shall be repeated beginning at least at every fifth post. On scaffolds whose length is shorter than their height, such bracing shall be installed from the base of the end posts upward to the opposite end posts, and then in alternating directions until reaching the top of the scaffold.

(4) Where conditions preclude the attachment of bracing to posts, bracing shall be attached to the runners.

(5) Bearers shall be installed transversely between posts, and when coupled to the posts, shall have the inboard coupler bear directly on the runner coupler. When the bearers are

coupled to the runners, the couplers shall be as close to the posts as possible.

(6) Bearers shall extend beyond the posts and runners, and shall provide full contact with the coupler.

(7) Runners shall be installed along the length of the scaffold, located on both the inside and outside posts at level heights (when tube and coupler guardrails and midrails are used on outside posts they may be used in lieu of outside runners).

(8) Runners shall be interlocked on straight runs to form continuous lengths and shall be coupled to each post. The bottom runners shall be located as close to the base as possible.

(9) Couplers shall be of a structural metal, such as a drop-forged steel, malleable iron, or structural grade aluminum. The use of gray cast iron is prohibited.

(10) Scaffolds and scaffold components not built and loaded in accordance with Appendix A shall be designed by a registered professional engineer and shall be constructed and loaded in accordance with such design.

(c) *Fabricated frame scaffolds.* (1) When moving platforms to the next level, the existing platform shall be left undisturbed until the new end frames have been set in place and braced prior to receiving the new platform units.

(2) Frames and panels shall be braced by cross, horizontal, or diagonal braces, or combination thereof, to secure vertical members together laterally. The cross braces shall be of such length as will automatically square and align vertical members so that the erected scaffold is always plumb, level, and square. All brace connections shall be made secure.

(3) Frames and panels shall be joined together vertically by coupling or stacking pins or equivalent means.

(4) Where uplift can occur which would displace scaffold end frames or panels, the frames or panels shall be locked together vertically by pins or equivalent means.

(5) Brackets used to support cantilevered loads shall be seated with side-brackets parallel to the frames, and end-brackets at 90 degrees to the frames. Brackets shall not be bent or twisted from these positions.

(6) Scaffolds over 125 feet (38.0 m) in height above their base plates shall be designed by a registered professional engineer and shall be constructed and loaded in accordance with such design.

(d) *Plasterers', decorators', and large area scaffolds.* Scaffolds shall be constructed in accordance with paragraphs (a), (b), or (c) of this section.

(e) *Bricklayers' square scaffolds (Squares).* (1) Scaffolds made of wood shall be reinforced with gussets on both sides of each corner.

(2) Diagonal braces shall be installed on all sides of each square.

(3) Diagonal braces shall be installed between squares on the rear and front sides of the scaffold, and shall extend from the bottom of each square to the top of the next square.

(4) Scaffolds shall not exceed three tiers in height, and shall be so constructed and arranged that one square rests directly above the other. The upper tiers shall stand on a continuous row of planks laid across the next lower tier and be nailed down or otherwise secured to prevent displacement.

(f) *Horse scaffolds.* (1) Scaffolds shall not be constructed or arranged more than two tiers or 10 feet (3.0 m) in height, whichever is less.

(2) When arranged in tiers, each horse shall be placed directly over the horse in the tier below.

(3) When arranged in tiers, the legs of each horse shall be nailed down or otherwise secured to prevent displacement.

(4) When arranged in tiers, each tier shall be crossbraced.

(g) *Form scaffolds and carpenters' bracket scaffolds.* (1) Each bracket, except those for wooden bracket form scaffolds, shall be attached to the supporting formwork or structure by means of one or more of the following: nails; a metal stud attachment device; welding; hooking over a secured structural supporting member, provided the form walers are bolted to the form or secured by snap ties or tie-bolts extending through the form and securely anchored; or, for carpenters' bracket scaffolds only, by a bolt extending through to the opposite side of the structure's wall.

(2) Wooden bracket form scaffolds shall be an integral part of the form panel.

(3) Folding type metal brackets, when extended for use, shall be either bolted or secured with a locking-type pin.

(h) *Roof bracket scaffolds.* (1) Scaffold brackets shall be constructed to fit the pitch of the roof and shall provide a level support for the platform.

(2) Brackets (including those provided with pointed metal projections) shall be anchored in place by nails unless it is impractical to use nails. When nails are not used, brackets shall be secured in place with first-grade manila rope of at least three-fourth inch (1.9 cm) diameter, or equivalent.

(i) *Outrigger scaffolds.* (1) The inboard end of outrigger beams, measured from the fulcrum point to the extreme point of anchorage, shall be not less than one and one-half times the outboard end in length.

(2) Outrigger beams shall rest on edge, the sides shall be plumb, and the edges shall be horizontal.

(3) The fulcrum point of outrigger beams shall rest on secure bearings at least six inches (15.2 cm) in each horizontal dimension.

(4) Outrigger beams shall be secured in place against movement and shall be securely braced at the fulcrum point against tipping.

(5) The inboard ends of outrigger beams shall be securely anchored either by means of braced struts bearing against sills in contact with the overhead beams or ceiling, or by means of tension members secured to the floor joists underfoot, or by both, if necessary.

(6) The entire supporting structure shall be securely braced to prevent any horizontal movement.

(7) To prevent displacement, platform units shall be nailed, bolted, or otherwise secured to outriggers.

(8) Scaffolds and scaffold components not built and loaded in accordance with Appendix A shall be designed by a registered professional engineer and shall be constructed and loaded in accordance with such design.

(j) *Pump jack scaffolds.* (1) Pump jack brackets, braces, and accessories shall be fabricated from metal plates and angles. Each pump jack bracket shall have two positive gripping mechanisms to prevent any failure or slippage.

(2) Poles shall be secured to the structure by rigid triangular bracing or equivalent, at the bottom, top, and other points as necessary. For the pump jack to pass bracing already installed, an additional brace shall be installed approximately four feet (1.2 m) on the side opposite the brace from the pump jack, and shall be left in place until the pump jack has been moved and the original brace reinstalled.

(3) When guardrails are used for fall protection, a workbench may be used as the toprail only if it meets all the requirements in paragraphs (e)(5) (ii), (vii), (viii), (xii), and (xiii) of this section.

(4) Workbenches shall not be used as scaffold platforms.

(5) When poles are made of wood, the pole lumber shall be straight-grained, free of shakes, large loose or dead knots, and other defects which might impair strength.

(6) When wood poles are constructed of two continuous lengths, they shall be joined together with the seam parallel to the bracket.

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(7) When two by fours are spliced to make a pole, the splices shall be so constructed as to develop the full strength of the member.

(k) *Ladder jack scaffolds.* (1) Platforms shall not exceed a height of 20 feet (6.1 m).

(2) All ladders used to support ladder jack scaffolds shall meet the requirements of § 1926.1053 of Subpart X—Stairways and Ladders, except job-made ladders shall not be used to support ladder jack scaffolds.

(3) The ladder jack shall be so designed and constructed that it will bear either on the side rails and ladder rungs or on the ladder rungs alone. If bearing on rungs only, the bearing area shall be at least 10 inches (25.4 cm) on each rung.

(4) Ladders used to support ladder jacks shall be placed, fastened, or equipped with devices to prevent slipping.

(5) Scaffold platforms shall not be bridged one to another.

(l) *Window jack scaffolds.* (1) Scaffolds shall be securely attached to the window opening.

(2) Scaffolds shall be used only for the purpose of working at the window opening through which the jack is placed.

(3) Window jacks shall not be used to support planks placed between one window jack and another, or for other elements of scaffolding.

(m) *Crawling boards (chicken ladders).* (1) Crawling boards shall extend from the roof peak to the eaves when used in connection with roof construction, repair, or maintenance.

(2) Crawling boards shall be secured to the roof by ridge hooks or equivalent means.

(n) *Step, platform, and trestle ladder scaffolds.* (1) Scaffold platforms shall not be placed any higher than the second highest rung or step of the ladder supporting the platform.

(2) All ladders used in conjunction with step, platform and trestle ladder scaffolds shall meet the requirements of § 1926.1053 of Subpart X—Stairways and Ladders, except job-made ladders shall not be used to support such scaffolds.

(3) Ladders used to support step, platform, and trestle ladder scaffolds shall be placed, fastened, or equipped with devices to prevent slipping.

(4) Scaffolds shall not be bridged one to another.

(o) *Single-point adjustable suspension scaffolds.* (1) When two single-point adjustable suspension scaffolds are combined to form a two-point adjustable suspension scaffold, the resulting scaffold shall meet the requirements for two-point adjustable suspension scaffolds.

(2) Except as provided herein, the supporting rope shall be vertical between the scaffold and the suspension device. The scaffold shall not be swayed nor the rope fixed to any intermediate point(s) to change the direction of the rope. *Exception:* When the scaffold is on the outside of a dome-type or slanted structure, intermediate supports may be used to change the direction of the rope from a vertical direction. Such supports shall be designed and installed to prevent chafing of the rope.

(3) Boatswains' chairs tackle shall be correct size ball bearing or bushed blocks, and properly "eye" spliced minimum five-eighth (⅝) inch (1.6 cm) diameter first grade manila rope, or equivalent.

(4) Boatswains' chairs seat slings shall be reeved through four corner holes in the seat; shall cross each other on the underside of the seat; and shall be rigged so as to prevent slippage which could cause an out-of-level condition.

(5) Boatswains' chairs seat slings shall be a minimum of five-eighth (⅝) inch (1.6 cm) diameter fiber or synthetic rope or equivalent, when employees are not using a heat producing process such as gas or arc welding.

(6) When a heat-producing process is being conducted, boatswains' chairs seat slings shall be a minimum of three-eighth (⅜) inch (1.0 cm) wire rope.

(7) Non-cross-laminated wood boatswains' chairs shall be reinforced on their underside by cleats securely fastened to prevent the board from splitting.

(p) *Two-point adjustable suspension scaffolds (swing stages).*

Note.—The following requirements do not apply to two-point adjustable suspension scaffolds used as masons' or stonesetters' scaffolds. Such scaffolds are covered by paragraph (q) of this section.

(1) Platforms shall not be more than 36 inches (0.9 m) wide unless designed by a qualified person to prevent unstable conditions.

(2) The platform shall be securely fastened to hangers (stirrups) by U-bolts or equivalent means.

(3) The blocks for fiber or synthetic ropes shall consist of at least one double and one single block. The sheaves of all blocks shall fit the size of the rope used.

(4) Platforms shall be ladder-type, plank-type, beam-type, or light-metal type. Light metal-type platforms shall be tested and listed by a nationally-recognized testing laboratory.

(5) Scaffolds shall be tied or otherwise secured to prevent them from swaying. Window cleaners' anchors shall not be used for this purpose.

(6) Two-point scaffolds designed for use as two-point scaffolds shall not be bridged or otherwise connected one to another during raising and lowering operations. Two-point scaffolds designed for use in multi-point scaffolds may be bridged one to another if the bridge connections are articulated, and the hoists properly sized.

(7) Passage may be made from one platform to another only when the platforms are at the same height, are abutting closely, and walk-through stirrups specifically designed for this purpose are used.

(q) *Multi-point adjustable suspension scaffolds, stonesetters' multi-point adjustable suspension scaffolds, and masons' multi-point adjustable suspension scaffolds.*

(1) When two or more scaffolds are used they shall not be bridged one to another unless they are designed to be bridged, the bridge connections are articulated, and the hoists are properly sized.

(2) If bridges are not used, passage may be made from one platform to another only when the platforms are at the same height and are abutting closely.

(3) Scaffolds shall be suspended from metal outriggers, iron brackets, wire rope slings, iron hooks, or equivalent means.

(r) *Catenary scaffolds.* (1) No more than one platform shall be placed between consecutive vertical pickups, and no more than two platforms shall be used on a catenary scaffold.

(2) Platforms supported by wire ropes shall have hookshaped stops on each end of the platforms to prevent them from slipping off the wire ropes. These hooks shall be so placed that they will prevent the platform from falling if one of the horizontal wire ropes breaks.

(3) Wire ropes shall not be tightened to the extent that the application of a scaffold load will overstress them.

(4) Wire ropes shall be continuous and without splices between anchors.

(s) *Float (ship) scaffolds.* (1) The platform shall be supported by a minimum of two bearers, each of which shall project a minimum of six inches (15.2 cm) beyond the platform on both sides. Each bearer shall be securely fastened to the platform.

(2) Rope connections shall be such that the platform cannot shift or slip.

(3) When only two ropes are used with each float:

(i) They shall be arranged so as to provide four ends which are to be securely fastened to overhead supports.

(ii) Each supporting rope shall be hitched around one end of the bearer and pass under the platform to the other end of the bearer where it is hitched again, leaving sufficient rope at each end for the supporting ties.

(t) *Interior hung scaffolds.* (1) Scaffolds shall be suspended only from the roof structure or other structural members such as ceiling beams.

(2) Overhead supporting members (roof structure, ceiling beams, or other structural members) shall be inspected and checked for strength before the scaffold is erected.

(3) Suspension ropes and cable shall be connected to the overhead supporting members by shackles, clips, thimbles, or equivalent means.

(u) *Needle beam scaffolds.* (1) Scaffold support beams shall be installed on edge.

(2) Ropes or hangers shall be used for supports, except that one end of a needle beam scaffold may be supported by a permanent structural member.

(3) The ropes shall be securely attached to the needle beams.

(4) The support connection shall be arranged so as to prevent the needle beam from rolling or becoming otherwise displaced.

(5) Platform units shall be securely attached to the needle beams by bolts or equivalent means.

Note.—Cleats and overhang are not considered to be adequate means of attachment.

(v) *Multi-level suspended scaffolds.* (1) Scaffolds shall be equipped with additional independent support lines, equal in number to the number of points supported, and equivalent in strength to the strength of the suspension ropes, and rigged to support the scaffold in the event the suspension rope(s) fail.

(2) Independent support lines and suspension ropes shall not be attached to the same points of anchorage.

(3) Supports for platforms shall be attached directly to the support stirrup and not to any other platform.

(w) *Mobile scaffolds.* (1) Scaffolds shall be braced by cross, horizontal, or diagonal braces, or combination thereof, to prevent collapse of the scaffold and to secure vertical members together laterally so as to automatically square and align the vertical members. Scaffolds shall be plumb, level, and squared. All brace connections shall be secured.

(i) Scaffolds constructed of tube and coupler components shall also conform to the requirements of § 1926.452(b);

(ii) Scaffolds constructed of fabricated frame components shall also conform to the requirements of § 1926.452(c).

(2) Scaffold casters and wheels shall be locked with positive wheel and/or wheel and swivel locks, or equivalent means, to prevent movement of the scaffold while the scaffold is used in a stationary manner.

(3) The force used to move the scaffold shall be applied as close to the base as practicable, but not more than five feet (1.5 m) above the supporting surface.

(4) Power systems used to propel mobile scaffolds shall be designed for such use. Forklifts, trucks, or similar motor vehicles shall not be used to propel scaffolds unless the scaffold is designed for such propulsion systems.

(5) Scaffolds shall be stabilized to prevent tipping during movement.

(6) Employees shall not be allowed to ride on scaffolds unless the following conditions exist:

(i) The surface on which the scaffold is being moved shall be within three degrees of level, and free of pits, holes, and obstructions;

(ii) The maximum height to base width ratio of the scaffold during movement shall be two to one or less. Outrigger frames may be included as part of the base width dimension;

(iii) Outrigger frames, when used, shall be installed on both sides of the scaffold;

(iv) When power systems are used, the propelling force shall be applied directly to the wheels, and shall not produce a speed in excess of two feet per second (.61 mps), and

(v) The employees are not on any part of the scaffold which extends outward beyond the wheels, casters, or other supports.

(7) Platforms shall not extend outward past the base supports of the scaffold unless outrigger frames or equivalent devices are used to ensure stability.

(8) Where leveling of the scaffold is required, screw jacks or equivalent means shall be used.

(9) Caster stems and wheel stems shall be pinned or otherwise secured in scaffold legs.

§ 1926.453–1926.459 [Reserved]

§ 1926.460 Training requirements.

In addition to the requirements of § 1926.21, safety training and education, the following training requirements apply to this subpart. However, the provisions of this section may be cited only when a citation is issued concurrently under the provisions of § 1926.450, § 1926.451 or § 1926.452 of this subpart.

(a) All employees using scaffolds to perform a job task shall be instructed in the proper construction, use, placement and care of the scaffolds they are using, and the applicable provisions of this subpart.

(b) All employees repairing scaffolds shall be competent individuals trained and familiar with the design criteria, intended use, and proper procedures for repairing the defective component(s).

(c) Suspended scaffolds shall be operated only by persons who have been instructed in the operation, use, and inspection of the particular suspended scaffold being used. Employers shall instruct and supervise their employees in the safe use of all equipment provided.

(d) Training and retraining shall be provided for each employee as necessary.

Appendix A to Subpart L—Scaffold Specifications

This Appendix serves as a non-mandatory guideline to assist employers in complying with the requirements of Subpart L. Scaffold components selected and loaded in accordance with the general and specific provisions of this Appendix will be considered as acceptable designs that meet the capacity requirements of § 1926.451(a)(1). Scaffold components which are not selected and loaded in accordance with this Appendix, and components for which no specific guidelines or tables are given in the following Appendix (e.g., joints, ties, components for wood pole scaffolds more than 60 feet in height, components for heavy-duty horse scaffolds, etc.), must be designed and constructed in accordance with the capacity requirements of § 1926.451(a), and loaded in accordance with § 1926.451(d)(1).

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1. General guidelines and tables

(a) The following tables, and the tables in Part B—Specific guidelines and tables, are based on all load-carrying timber members of the scaffold being a minimum of 1,500 lb-f/in² (stress grade) construction grade lumber. All dimensions are nominal sizes as provided in the American Softwood Lumber Standards, dated January 1970, except that where rough sizes are noted, only rough or undressed lumber of the size specified will satisfy minimum requirements.

(b) All wood planking shall be selected for scaffold plank use as recognized by grading rules established by a recognized independent inspection agency for the species of wood used. The maximum permissible spans for 2 x 10 inch (nominal) or 2 x 9 inch (rough) solid sawn wood planks shall be as shown in the following table:

Maximum intended load (lb/ft²)	Maximum permissible span using full thickness undressed lumber (ft)	Maximum permissible span using nominal thickness lumber (ft)
25	10	8
50	8	6
75	6	

The maximum permissible span for 1¼ x 9-inch or wider wood plank of full thickness with a maximum intended load of 50 lb/ft² shall be four feet.

(c) Fabricated planks and platforms may be used in lieu of solid sawn wood planks. Maximum spans for such units shall be as recommended by the manufacturer based on the maximum intended load being calculated as follows:

Rated load capacity	Intended load
Light-duty	25 pounds per square foot applied uniformly over the entire span area.
Medium-duty	50 pounds per square foot applied uniformly over the entire span area.
Heavy-duty	75 pounds per square foot applied uniformly over the entire span area.
One-person	250 pounds placed at the center of the span (total 250 pounds).
Two-person	250 pounds placed 18 inches to the left and right of the center of the span (total 500 pounds).
Three-person	250 pounds placed at the center of the span and 250 pounds placed 18 inches to the left and right of the center of the span (total 750 pounds).

Note.—Platform units used to make scaffold platforms intended for light-duty use shall be capable of supporting at least 25 pounds per square foot applied uniformly over the entire unit-span area, or a 250-pound point load placed on the unit at the center of the span, whichever load produces the greater shear force.

(d) Guardrails shall be as follows:

(i) Toprails shall be equivalent in strength to 2 inch by 4 inch lumber;

1¼ inch x ⅛ inch structural angle iron;

1 inch x .070 inch wall steel tubing; or

1.990 inch x .058 inch wall aluminum tubing.

(ii) Midrails shall be equivalent in strength to 1 inch by 6 inch lumber;

1¼ inch x 1¼ inch x ⅛ inch structural angle iron;

1 inch x .070 inch wall steel tubing; or

1.990 inch x .058 inch wall aluminum tubing.

(iii) Toeboards shall be equivalent in strength to 1 inch by 4 inch lumber;

1¼ inch x 1¼ inch structural angle iron;

1 inch x .070 inch wall steel tubing; or

1.990 inch x .058 inch wall aluminum tubing.

(iv) Posts shall be equivalent in strength to 2 inch by 4 inch lumber;

1¼ inch x 1¼ inch x ⅛ inch structural angle iron;

1 inch x .070 inch wall steel tubing; or

1.990 inch x .058 inch wall aluminum tubing.

(v) Distance between posts shall not exceed 8 feet.

(e) Overhead protection shall consist of 2 inch nominal planking laid tight, or ¾-inch plywood.

(f) Screen installed between toeboards and midrails or toprails shall consist of No. 18 gauge U.S. Standard wire one inch mesh.

2. Specific guidelines and tables.

(a) Pole scaffolds.

SINGLE POLE WOOD POLE SCAFFOLDS

	Light duty up to 20 ft. high	Light duty up to 60 ft. high	Medium duty up to 60 ft. high	Heavy duty up to 60 ft. high
Maximum intended load	25 lbs/ft²	25 lbs/ft²	50 lbs/ft²	75 lbs/ft².
Poles or uprights	2 x 4 in	4 x 4 in	4 x 4 in	4 x 6 in.
Maximum pole spacing (longitudinal)	6 ft	10 ft	8 ft	6 ft.
Maximum pole spacing (transverse)	5 ft	5 ft	5 ft	5 ft.
Ledgers	1 x 4 in	1¼ x 9 in	2 x 10 in	2 x 10 in.
Bearers and maximum spacing of bearers:				
3 ft	2 x 4 in	2 x 4 in	2 x 10 in or 3 x 4 in	2 x 10 in or 3 x 5 in.
5 ft	2 x 6 in, 3 x 4 in	2 x 6 in or 3 x 4 in (rough)	2 x 10 in, 3 x 4 in	2 x 10 in, 3 x 5 in.
6 ft			2 x 10 in or 3 x 4 in	2 x 10 in or 3 x 5 in.
8 ft			2 x 10 in or 3 x 4 in	
Planking	1¼ x 9 in	2 x 10 in	2 x 10 in	2 x 10 in.
Maximum vertical spacing of horizontal members	7 ft	9 ft	7 ft	6 ft 6 in.
Bracing-horizontal	1 x 4 in	1 x 4 in	1 x 6 in or 1¼ x 4 in	2 x 4 in.
Bracing-diagonal	1 x 4 in	1 x 4 in	1 x 4 in	2 x 4 in.
Tie-ins	1 x 4 in	1 x 4 in	1 x 4 in	1 x 4 in.

Note.—All members except planking are used on edge. All wood bearers shall be reinforced with 3/16 x 2 in steel strip, or the equivalent, secured to the lower edges for the entire length of the bearer.

INDEPENDENT WOOD POLE SCAFFOLDS

	Light duty up to 20 ft. high	Light duty up to 60 ft. high	Medium duty up to 60 ft. high	Heavy duty up to 60 ft. high
Maximum intended load	25 lbs/ft²	25 lbs/ft²	50 lbs/ft²	75 lbs/ft².
Poles or uprights	2 x 4 in	4 x 4 in	4 x 4 in	4 x 4 in.
Maximum pole spacing (longitudinal)	6 ft	10 ft	8 ft	6 ft.
Maximum (transverse)	6 ft	10 ft	8 ft	8 ft.
Ledgers	1¼ x 4 in	1¼ x 9 in	2 x 10 in	2 x 10 in.
Bearers and maximum spacing of bearers:				
3 ft	2 x 4 in	2 x 4 in	2 x 10 in	2 x 10 in (rough).
6 ft	2 x 6 in or 3 x 4 in	2 x 10 in (rough) or 3 x 8 in	2 x 10 in	2 x 10 in (rough).
8 ft	2 x 6 in or 3 x 4 in	2 x 10 in (rough) or 3 x 8 in	2 x 10 in	
10 ft	2 x 6 in or 3 x 4 in	2 x 10 in (rough) or 3 x 3 in		
Planking	1¼ x 9 in	2 x 10 in	2 x 10 in	2 x 10 in.
Maximum vertical spacing of horizontal members	7 ft	7 ft	6 ft	6 ft.
Bracing—horizontal	1 x 4 in	1 x 4 in	1 x 6 in or 1¼ x 4 in	2 x 4 in.

INDEPENDENT WOOD POLE SCAFFOLDS—Continued

	Light duty up to 20 ft. high	Light duty up to 60 ft. high	Medium duty up to 60 ft. high	Heavy duty up to 60 ft. high
Bracing—diagonal	1 x 4 in	1 x 4 in	1 x 4 in	2 x 4 in.
Tie-ins	1 x 4 in	1 x 4 in	1 x 4 in	1 x 4 in.

Note.—All members except planking are used on edge. All wood bearers shall be reinforced with 3/16 x 2 in steel strip, or the equivalent, secured to the lower edges for the entire length of the bearer.

(b) *Tube and coupler scaffolds.*

MINIMUM SIZE OF MEMBERS

	Light duty	Medium duty	Heavy duty
Maximum intended load	25 lbs/ft.	50 lbs/ft^2	75 lbs/ft^2.
Posts, runners and braces	Nominal 2 in (1.90 in) OD steel tube or pipe	Nominal 2 in (1.90 in) OD steel tube or pipe	Nominal 2 in (1.90 in) OD steel tube or pipe.
Bearers	Nominal 2 in (1.90 in) OD steel tube or pipe and a maximum post spacing of 6 ft by 10 ft*.	Nominal 2 in (1.90 in) OD steel tube or pipe and a maximum post spacing of 5 ft by 8 ft*. or Nominal 2½ in (2.375 in) OD steel tube or pipe and a maximum post spacing of 6 ft by 8 ft*.	Nominal 2½ in (2.375 in). OD steel tube or pipe and a maximum post spacing of 6 ft by 6 ft.
Maximum runner spacing vertically	6 ft 6 in	6 ft 6 in	6 ft 6 in.

*Bearers shall be installed in the direction of the shorter dimension.

Note.—Longitudinal diagonal bracing shall be installed at an angle of 45° (±5°).

MAXIMUM NUMBER OF PLANKED LEVELS:

	Maximum number of additional planked levels			Maximum height of scaffold
	Light duty	Medium duty	Heavy duty	
Number of working levels				
1	16	11	6	125 ft.
2	11	1	0	Do.
3	6	0	0	Do.
4	1	0	0	Do.

(c) *Fabricated frame scaffolds.* Because of their prefabricated nature, no specific guidelines or tables are given.

(d) *Plasterers', decorators', and large area scaffolds.* These scaffolds shall be constructed in accordance with the guidelines for pole scaffolds, tube and coupler scaffolds, or fabricated frame scaffolds.

(e) *Bricklayers' square scaffolds.*

Maximum intended load	50 lb/ft^2*.
Maximum width	5 feet.
Maximum height	5 feet.
Gussets	1 x 6 in.
Braces	1 x 8 in.
Legs	2 x 6 in.
Bearers (horizontal members)	2 x 6 in.

*The squares shall be set not more than eight feet apart for light duty scaffolds and not more than five feet apart for medium duty scaffolds.

(f) *Horse scaffolds.*

Maximum intended load (light duty).	25 lb/ft^2*.
Maximum intended load (medium duty).	50 lb/ft^2*.
Horizontal members or bearers:	
Light duty	2 x 4 in.
Medium duty	3 x 4 in.
Legs	2 x 4 in.
Longitudinal brace between legs	1 x 6 in.
Gusset brace at top of legs	1 x 8 in.
Half diagonal braces	2 x 4 in.

*Horses shall be spaced not more than eight feet apart for light duty loads, and not more than five feet apart for medium duty loads.

(g) *Form scaffolds and carpenters' bracket scaffolds.*

(1) Brackets shall consist of a triangular-shaped frame made of wood with a cross-section not less than 2 inches by 3 inches, or of 1¼ inch x 1¼ inch x ⅛ inch structural angle iron.

(2) Bolts used to attach brackets to structures shall not be less than five-eighth inch in diameter.

(3) Maximum bracket spacing shall be eight feet on centers.

(4) No more than two employees shall occupy any given eight feet of a bracket or form scaffold at any one time. Tools and materials shall not exceed 75 pounds in addition to the occupancy.

(5) Wooden figure-four scaffolds:

Maximum intended load.	25 pounds/square foot.
Uprights	2 x 4 in. or 2 x 6 in.
Bearers (two)	1 x 6 in.
Braces	1 x 6 in.
Maximum length of bearers.	3 ft 6 in. (unsupported).

Outrigger bearers shall consist of two pieces of 1 x 6 inch lumber nailed on opposite sides of the vertical support.

Bearers for wood figure four brackets shall project not more than three feet six inches from the outside of the form support, and shall be braced and secured to prevent tipping or turning. The knee or angle brace shall intersect the bearer at least three feet from the form at an angle of approximately 45 degrees, and the lower end shall be nailed to a vertical support.

(6) Metal bracket scaffolds:

Maximum intended load.	25 pounds/square foot.
Uprights	2 x 4 inch.
Bearers	As designed.
Braces	As designed.

(g) Wood bracket scaffolds:

Maximum intended load.	25 pounds/square foot.
Uprights	2 x 4 in. or 2 x 6 in.
Bearers	2 x 6 in.
Maximum scaffold width.	3 ft 6 in.
Braces	1 x 6 in.

(h) *Roof bracket scaffolds.* No specific guidelines or tables are given.

(i) *Outrigger scaffolds (single level).* Outrigger beams shall extend not more than six feet beyond the face of the building.

	Light duty	Medium duty
Maximum intended load	25 lb/ft^2	50 lb/ft^2
Outrigger size	2 x 10 in	3 x 10 in.
Maximum outrigger spacing	10 ft	6 ft.

(j) *Pump jack scaffolds.* Wood poles shall not exceed 30 feet in height. Maximum intended load—500 lbs between poles; applied at the center of the span. Not more

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than two employees shall be upon a pump jack scaffold at one time between any two supports.

When 2 x 4's are spliced together to make a 4 x 4 inch wood pole, they shall be spliced with 10d common nails no more than 12 inches center to center, staggered uniformly from the opposite outside edges.

(k) *Ladder jack scaffolds.* Maximum intended load—25 lb/ft². However, not more than two employees shall occupy any platform at any one time. Maximum span between supports shall be eight feet.

(l) *Window jack scaffolds.* Not more than one employee shall occupy a window jack scaffold at any one time.

(m) *Crawling boards (chicken ladders).* Crawling boards shall be not less than 10 inches wide and one inch thick, with cleats having a minimum 1 x 1½ inch cross-sectional area. The cleats shall be equal in length to the width of the board and spaced at equal intervals not to exceed 24 inches.

(n) *Step, platform, and trestle ladder scaffolds.* No specific guidelines or tables are given.

(o) *Single-point adjustable suspension scaffolds.* Maximum intended load—250 lbs.

Wood seats for boatswains' chairs shall be not less than one inch thick if made of non-laminated wood, or five-eighth inch thick if made of marine quality plywood.

(p) *Two-point adjustable suspension scaffolds.* (1) In addition to direct connections to buildings (except window cleaners' anchors) acceptable ways to prevent scaffold sway include angulated roping and static lines. Angulated roping is a system of platform suspension in which the upper wire rope sheaves or suspension points are closer to the plane of the building face than the corresponding attachment points on the platform, thus causing the platform to press against the face of the building. Static lines are separate ropes secured at their top and bottom ends closer to the plane of the building face than the outermost edge of the platform. By drawing the static line taut, the platform is drawn against the face of the building.

(2) On suspension scaffolds designed for a working load of 500 pounds, no more than two employees shall be permitted on the scaffold at one time. On suspension scaffolds with a working load of 750 pounds, no more than three employees shall be permitted on the scaffold at one time.

(3) Ladder-type platforms. The side stringer shall be of clear straight-grained spruce. The rungs shall be of straight-grained oak, ash, or hickory, at least one and one-eighth inches in diameter, with seven-eighth inch tenons mortised into the side stringers at least seven-eighth inch. The stringers shall be tied together with tie rods not less than one-fourth inch in diameter, passing through the stringers and riveted up tight against washers on both ends.

The flooring strips shall be spaced not more than five-eighth inch apart, except at the side rails where the space may be one inch. Ladder-type platforms shall be constructed in accordance with the following table:

SCHEDULE FOR LADDER-TYPE PLATFORMS

Length of platform	12 ft	14 & 16 ft	18 & 20 ft
Side stringers, minimum cross section (finished sizes):			
At ends	1¾ x 2¾ in	1¾ x 2¾ in	1¾ x 3 in.
At middle	1¾ x 3¾ in	1¾ x 3¾ in	1¾ x 4 in.
Reinforcing strip (minimum): A ⅛ x ⅞ inch steel reinforcing strip shall be attached to the side or underside, full length.			
Rungs: Rungs shall be 1⅛ inch minimum diameter with at least ⅞ inch in diameter tenons, and the maximum spacing shall be 12 inches to center.			
Tie rods:			
Number (minimum)	3	4	4.
Diameter (minimum)	¼ in	¼ in	¼ in.
Flooring, minimum finished size	½ x 2¾ in.	½ x 2¾ in.	½ x 2¾ in.

SCHEDULE FOR LADDER-TYPE PLATFORMS

Length of platform	22 and 24 ft	28 and 30 ft.
Side stringers, minimum cross section (finished sizes):		
At ends	1¾ x 3 in	1¾ x 3½ in.
At middle	1¾ x 4¼ in	1¾ x 5 in.
Reinforcing strip (minimum): A ⅛ x ⅞-inch steel reinforcing strip shall be attached to the side or underside, full length.		
Rungs: Rungs shall be 1⅛-inch minimum diameter with at least ⅞ inch in diameter tenons, and the maximum spacing shall be 12 inches to center.		
Tie rods:		
Number (minimum)	5	6.
Diameter (minimum)	¼ in	¼ in.
Flooring, minimum finished size	½ x 2¾ in.	½ x 2¾ in.

(4) Plank-Type Platforms. Plank-type platforms shall be composed of not less than nominal 2 × 8 inch unspliced planks, connected together on the underside with cleats at intervals not exceeding four feet, starting six inches from each end. A bar or other effective means shall be securely fastened to the platform at each end to prevent the platform from slipping off the hanger. The span between hangers for plank-type platforms shall not exceed 10 feet.

(5) Beam-Type Platforms. Beam platforms shall have side stringers of lumber not less than 2 x 6 inches set on edge. The span between hangers shall not exceed 12 feet when beam platforms are used. The flooring shall be supported on 2 x 6 inch cross beams, laid flat and set into the upper edge of the stringers with a snug fit, at intervals of not more than four feet, securely nailed in place. The flooring shall be of 1 x 6 inch material nailed to the cross beams. Floor-boards shall not be spaced more than one-half inch apart.

(q)(1) *Multi-point adjustable suspension scaffolds and stonesetters' multi-point adjustable suspension scaffolds.*

No specific guidelines or tables are given for these scaffolds.

(q)(2) *Masons' multi-point adjustable suspension scaffolds.* Maximum intended load—50 lb/ft². Each outrigger beam shall be at least a standard seven inch, 15.3 pound steel I-beam, at least 15 feet long. Such beams shall not project more than six feet six inches beyond the bearing point. Where the overhang exceeds six feet six inches, outrigger beams shall be composed of stronger beams or multiple beams.

(r) *Catenary scaffolds.* (1) Maximum intended load—500 lbs.

(2) Not more than two employees shall be permitted on the scaffold at one time.

(3) Maximum capacity of comcalong shall be 2,000 lbs.

(4) Vertical pickups shall be spaced not more than 50 feet apart.

(s) *Float (ship) scaffolds.* (1) Maximum intended load—750 lbs.

(2) Platforms shall be made of three-fourth inch plywood, equivalent in rating to American Plywood Association Grade B-B, Group I, Exterior.

(3) Bearers shall be made from 2 x 4 inch, or 1 x 10 inch rough lumber. They shall be free of knots and other flaws.

(t) *Interior hung scaffolds.*

Bearers (use on edge)............ 2 x 10 in.

Maximum intended load	Maximum span.
25 lb/ft²	10 ft.
50 lb/ft²	10 ft.
75 lb/ft²	7 ft.

(u) *Needle beam scaffolds.*

Maximum intended load	25 lb/ft².
Beams	4 x 6 in.
Maximum platform span	8 ft.
Maximum beam span	10 ft.

Ropes shall be attached to the needle beams by a scaffold hitch or an eye splice. The loose end of the rope shall be tied by a bowline knot or by a round turn and a half hitch.

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Part III

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1926

Safety Standards for Fall Protection in the Construction Industry; Notice of Proposed Rulemaking

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S-206]

Safety Standards for Fall Protection in the Construction Industry

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Occupational Safety and Health Administration (OSHA) proposes to revise the construction industry safety standards addressing fall protection. The standards proposed for revision regulate the design and use of fall protection systems and procedures used in construction to prevent employees from falling into or through working levels, falling to lower levels, and to protect employees from falling objects.

The proposed revisions are intended to correct problems found in the existing standards which regulate in detail the specific methods to be used to reduce employee exposure to the hazards of falling and of being struck by falling objects. The proposed revisions would continue to address the hazards to which employees are exposed, but would do so using performance citeria where possible, rather than specification standards. The proposed revisions would also consolidate and simplify many of the existing provisions. For example, paragraph § 1926.104 Safety belts, lifelines, and lanyards, and paragraph § 1926.105 Safety nets, would be relocated to the proposed subpart. This approach is another step in OSHA's plan to review its safety standards and to revise them as necessary to provide safer working conditions without imposing unnecessarily burdensome requirements. This proposal is being issued after appropriate consultation with the Advisory Committee on Construction Safety and Health (ACCSH).

DATES: Comments on this proposed rulemaking must be postmarked by February 23, 1987. Hearing requests must be postmarked by February 23, 1987.

ADDRESS: Written comments and requests for hearings should be sent to the Docket Officer, Docket No. S-206, U.S. Department of Labor, Room N-3670, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3637, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION: The author of this proposed rulemaking is Roy F. Gurnham, Office of Construction and Civil Engineering Safety Standards, Occupational Safety and Health Administration.

I. Background

Congress amended the Contract Work Hours Standards Act (CWHSA) (40 U.S.C. 327 et seq.) in 1969 by adding a new section 107 (40 U.S.C. 333) to provide employees in the construction industry with a safer work environment and to reduce the frequency and severity of construction accidents and injuries. The amendment, commonly known as the Construction Safety Act (CSA) (Pub. L. 91-54; August 9, 1969), significantly strengthened employee protection by providing occupational safety and health standards for employees of the building trades and construction industry working on Federally-financed or Federally-assisted construction projects. Accordingly, the Secretary of Labor issued Safety and Health Regulations for Construction in 29 CFR Part 1518 (36 FR 7340, April 17, 1971) pursuant to section 107 of the Contract Work Hours and Safety Standards Act.

The Occupational Safety and Health Act (the Act) (84 Stat. 1590; 29 U.S.C. 651 et seq.), was enacted by Congress in 1970 and authorized the Secretary of Labor to adopt established Federal standards issued under other statutes, including the Construction Safety Act, as occupational safety and health standards. Accordingly, the Secretary of Labor adopted the Construction Standards, which had been issued under the Construction Safety Act in 29 CFR Part 1518, in accordance with section 6(a) of the Act (36 FR 10466, May 29, 1971). The Safety and Health Regulations for Construction were redesignated as Part 1926 later in 1971 (36 FR 25232, December 30, 1971).

The standards in Subpart E—Personal Protective Equipment, including § 1926.104—Safety Belts, Lifelines, and Lanyards, and § 1926.105—Safety Nets, were among the standards adopted by OSHA through the section 6(a) process. The standards in Subpart M—Floor and Wall Openings, and Stairways § 1926.500, were also adopted by OSHA through the section 6(a) process and have been amended several times under section 6(b) of the OSH Act. The above mentioned provisions in Subparts E and M of Part 1926 relate to fall protection and are the subject of this proposed revision.

As part of OSHA's continuing program of standards evaluation and in response to public comments, a complete review of Subpart M was begun in 1977. Since then, the ACCSH has reviewed Subpart M six times and has submitted transcripts of these meetings, including recommendations, to the Assistant Secretary. The transcripts are part of the public record as Exhibit 1. The Committee's recommendations, and those of other interested parties, have been carefully analyzed in connection with the present rulemaking. Many of the changes in the standard being proposed reflect the recommendations and suggestions of the Advisory Committee and interested persons. Relevant ACCSH comments are discussed below in the Summary and Explanation section. Committee discussions that were inconclusive or did not produce a specific recommendation have also been considered, but are not discussed in this preamble.

OSHA believes that many of the existing provisions relating to fall protection are redundant or ambiguous, and in some places may actually increase employee exposure to fall hazards. Other provisions simply are not feasible in all situations. To eliminate these problems and to encourage compliance by employers and employees, this proposal focuses on the principal hazards involved when working in elevated areas. In addition, the proposal has been written in performance-oriented language. This proposal also incorporates directly relevant provisions of the general industry standards (Part 1910) which have been determined by OSHA to be applicable to the construction industry.

For purposes of organization, the topic of stairways will be relocated from existing Subpart M to a proposed revised Subpart X titled "Stairways and Ladders." These two subparts, along with a revised Subpart L, retitled "Scaffolds," constitute a package of interrelated standards which have been rewritten and reorganized to facilitate treatment of the individual subjects. OSHA intends to coordinate the rulemaking activities for these three subparts, and hopes to make the final rules for all three subparts effective at the same time.

OSHA believes that the clarified and revised language of the proposal will help employers to understand the requirements of Subpart M, and will improve safety by minimizing subjective interpretations of the provisions. By minimizing, if not eliminating, the interpretations needed to understand the requirements of Subpart M, OSHA intends to provide fair and equal notice to all employers of the rules for fall protection.

This project is also being coordinated with the project for the revision of related general industry standards in 29 CFR Part 1910 Subpart D—Walking/Working Surfaces. Wherever possible, the 1910 and 1926 proposals use the same language to address similar hazards in order to promote consistency between the two sets of standards.

II. Hazards Involved

Fall accidents resulting in injuries and fatalities continue to occur at construction sites despite the development and promulgation of the OSHA Construction Standards in 1971. Examination of available data indicate that these accidents appear to be primarily the result of non-compliance with existing OSHA standards, and not because the standards improperly address the fall hazards involved in construction. However, after review of compliance problems and public comments received since 1972, OSHA believes that the present standard needs updating to clarify the requirements of some currently ambiguous and confusing provisions. In addition, OSHA believes that reformatting the requirements into a more logical grouping of topics will allow employers to more easily determine what they must do.

Precise fall hazard accident data for the entire construction industry are not available. Falls are reported according to the nature of the injury and the surface involved, but no match is made between the two categories. In addition, although the number of construction fall accidents can be estimated for a given period of time, the ratio of accidents to the amount of employee exposure to fall hazards cannot be readily determined. However, based upon the limited data which have been compiled, it can be estimated that as many as 41,000 injuries due to falls from elevations covered under Subpart M occurred in 1979 alone, not including those falls which resulted in fatalities (Ex. 2: Table IV–1).

Although specific accident ratios cannot be projected for the 4 million construction workers potentially covered by Subpart M, the following examples of recorded accidents illustrate the types of fall accidents that injure and kill construction employees. The list reflects selected examples and is not intended to represent all the types of falls that occur.

- August 26, 1977: Fatality. While installing shingles on a roof with a pitch greater than 4 in 12, an employee lost his balance and fell 16 feet to his death (Ex. 3:19). Observance of existing provisions § 1926.28(a) and § 1926.104, or the clarified language of proposed paragraph § 1926.501(c), might have prevented this death by protecting the employee with a body belt or harness system.
- October 17, 1976: Fatality. While painting near a roof edge, an employee slipped and fell 50 feet to the ground below. Although told to wear a body belt prior to the accident, the employee was not wearing a body belt at the time of the accident (Ex. 3:21). Observance of existing provisions § 1926.28(a) and § 1926.104, or the clarified language of proposed paragraphs § 1926.501(b)(1) and (c), might have prevented this death by protecting the employee with a body belt, body harness, safety net, or guardrail system.
- December 5, 1974: Fatality. While leaning out over the roof edge to reach an object on the end of a hoist, an employee lost his balance and fell 30 feet (Ex. 3:22). Observance of existing provisions § 1926.28(a) and § 1926.104, or the clarified language of proposed paragraph § 1926.501(b)(3), might have prevented this death by protecting the employee with a body belt or body harness system during hoist operations.
- May 17, 1977: Fatality. While cleaning up the work area, an employee lost his balance near the edge and fell 25 feet (Ex. 3:13). Observance of existing provision § 1926.500(d)(1), or the proposed paragraph § 1926.501(b)(1), might have prevented this accident by protecting the employee with a guardrail system while working near a floor edge.
- November 12, 1977: Fatality. While walking backward pulling a hot tar spreader, an employee stepped into an unguarded roof opening and fell 25 feet (Ex. 3:35). Observance of existing provision § 1926.500(b)(1), or the proposed paragraph § 1926.501(b)(4), might have prevented this accident by protecting the employee with a guardrail system or a cover placed over the roof opening.

A study of 99 fall related fatalities (Ex. 2) suggests that almost all of the deaths could have been prevented by the use of guardrails, body belts, body harnesses, safety nets, covers, or other means which would reduce employee exposure to the fall hazard. All such accidents are complex events, of course, and multiple issues must be addressed in order to protect against the human and equipment factors which can result in injury or death. Among these issues are knowledge of where protection is required; the types of appropriate systems for given situations; the proper construction and installation of safety systems; and proper supervision, work procedures, and training. Each of these topics is covered in the proposed revisions to Subpart M. The proposal concentrates on hazard identification and includes specific training requirements to supplement the general training provisions of § 1926.21. In addition to clarifying the existing provisions, the proposal provides coverage not contained in the existing Subpart M. For example, steep roofs are not identified in the existing Subpart, but are covered in the proposal.

For a further discussion of accident rates and significance of risk, see Section IV. *Preliminary Regulatory Impact Assessment and Regulatory Flexibility Analysis.*

III. Summary and Explanation of the Proposal

The following discussion explains significant substantive changes to the existing standard.

Subpart M—Fall Protection. The title of Subpart M is proposed to be changed from "Floor and Wall Openings, and Stairways" to "Fall Protection." The existing standard contains provisions which regulate fall protection in many areas and not just for floors, wall openings, and stairways. For example, roofs, floor perimeters, floor holes, dangerous equipment, ramps, runways, and stairway construction are all included in the existing scope of Subpart M. However, the existing title does not reflect this scope of coverage. The proposed title for Subpart M more accurately reflects the topics covered, i.e., fall protection systems and practices. In addition, to make Subpart M a more comprehensive set of fall protection standards for construction, the provisions of §1926.104—Safety belts, lifelines, and lanyards; §1926.105—Safety nets; and the current fall protection provisions of paragraphs §1926.651(t), §1926.651(w), §1926.700(b)(1), would all be revised and relocated to Subpart M. As discussed earlier, the topic of stairways is proposed to be relocated to a new revised Subpart X—Stairways and Ladders, as this topic also includes other rules which are not related to fall protection.

In the following discussion, a paragraph citation preceded by the letter "E" refers to a paragraph in the existing standard. All other citations are to the proposed standard.

§1926.500 Scope, application, and definitions applicable to this subpart. Paragraph §1926.500(a) outlines the scope and application of the entire

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Subpart M. The proposal would apply to all walking/working surfaces found in construction, alteration, repair (including painting and decorating), and demolition workplaces except for five specific areas: Fall protection for scaffolds would be as provided in proposed Subpart L—Scaffolds. The requirement to have fall protection on specified pieces of construction equipment would remain in Subpart N—Cranes, Derricks, Hoists, Elevators, and Conveyors, and Subpart O—Motor Vehicles, Mechanized Equipment, and Marine Operations; however, the systems required by Subparts N and O would have to conform to the provisions of proposed Subpart M. Additional requirements to have fall protection for connectors and for workers on derrick and erection floors during steel erection would remain in Subpart R—Steel Erection. Similarly, the requirement to have fall protection during tunnel operations is contained in Subpart S—Tunnels and Shafts, Caissons, Cofferdams, and Compressed Air. Additional requirements for fall protection during power transmission and distribution work would remain in Subpart V—Power Transmission and Distribution. Fall protection for stairways and ladders would be placed in a new proposed Subpart X titled "Stairways and Ladders." All activities and locations not specifically addressed in the above subparts would be governed by the provisions of Subpart M.

The scope of Subpart M is limited in paragraph §1926.500(a)(1) by providing that fall protection is not required when employees are inspecting, investigating, or assessing workplace conditions. An example of this kind of work is where an employee goes onto a roof which needs to be repaired in order to investigate the existing condition of the roof and to estimate the amount of work involved. During this inspection, there is no requirement for the employee to be protected by a guardrail, body belt, body harness, safety net, or other safety system. This exception is made because these operations are normally conducted in good weather, the nature of such work normally exposes the employee to the fall hazard for a short time, if at all, and installation of fall protection systems for short durations is not feasible without exposing the installers of the system to the same hazard, but for a longer time. In addition, employees doing this type of work are more likely to be aware of their proximity to an unprotected edge than, for example, a roofer who is moving backwards while operating a felt laying machine, or a plumber whose attention is on overhead pipe and not on the floor edge.

Paragraph §1926.500(b) lists and defines all major words used in the proposed standard. Many of the definitions are the same as those in the existing standard, although some have been reworded for uniformity or clarity. The following words have been added or have been changed from the existing definitions:

"Body belt." This definition replaces the existing term "safety belt" to reflect current industry use of the new term.

"Body belt/harness systems." This term is used to describe any combination of body belt or body harness, and lifelines, lanyards, and decleration devices.

"Body harness." This term is used to describe a system of straps, worn by an individual, that distributes the arresting forces, generated by a fall, over the individual's thighs, shoulders, and pelvis.

"Built-up roofing." The description of single-ply systems is reworded to indicate that a layer of adhesive is often part of the finished product, but not always. The definition is also reworded to indicate that any of the systems described may be covered by a layer of mineral aggregate, not just the multiple-ply systems.

"Control zones." This term refers to designated areas where overhand bricklaying operations are taking place or a leading edge is being constructed. In these areas, conventional fall protection systems (body belts, safety nets, and guardrails) would not be required, and access to these areas would be restricted to employees performing the aforementioned operations (see discussion of §1926.501(b) (2) and (9) below).

"Dangerous equipment." This term is used to refer to equipment such as galvanizing tanks, machinery, electrical equipment and similar hazards.

"Deceleration device." This term describes the equipment used to bring a falling employee to a stop without injury.

"Deceleration distance." This term is used to describe the distance an employee falls (excluding lifeline elongation) after free falling.

"Equivalent." This term is used in the proposal to allow alternative means of complying with the standards. The definition makes clear that the employer must demonstrate that all alternative means of compliance will provide an equal or greater degree of safety than that attained by using the method or item specified in the standard.

"Failure." This word is used in performance-oriented paragraphs such as §§1926.502 (b)(3) and (b)(4) dealing with guardrail strength. The definition makes it clear that, along with breakage and separation of component parts, load refusal (the point where the ultimate strength of a component is exceeded) is also considered to be failure. This is the point where structural members lose their ability to carry loads.

"Force factor" means the ratio of the arresting force generated on a rigid metal object to the arresting force generated on a human body having the same weight as the object, when the object and body fall under identical conditions. This factor is used to convert test results (see Appendix C) using a rigid metal object to results which would be expected if a human test subject of the same weight were used in the test.

"Free fall distance." This term is used to describe the distance an employee moves during a fall before a deceleration device is activated.

"Guardrail system." This term, which defines guardrails as vertical barriers erected to prevent employees from falling, replaces the existing term "standard railing."

"Hole." This term is used to identify all holes and openings in floors, roofs, and other walking/working surfaces. The existing standard addresses holes and openings as separate topics; however, the treatment of each is essentially the same. Therefore, to eliminate confusion, the proposal uses the word "hole" to describe all holes and openings in floors, roofs, and other walking/working surfaces. The term "opening" in the proposal applies only to holes and openings in walls. Specifically, the term "hole" is defined as any hole or other opening more than two inches in its least dimension. This is a change from the one inch dimension used in the existing definition for "floor hole." This change is made to address more reasonably the problem caused by small holes at a construction site. Small holes are commonplace during construction and it is neither necessary nor feasible to guard each one. Holes less than two inches wide do not pose a significant hazard and the definition is changed accordingly.

"Leading edge." This new term is used to describe that portion of a floor, roof, or formwork which is under construction and where, consequently, the edge from which employees could fall is constantly changing location as construction progresses. (See discussion of leading edges in the explanation of paragraph § 1926.501(b)(2) below.)

"Lower levels." This term is used to describe the areas to which an employee could fall. The definition does not apply to the surface on which the employee is performing work duties.

"Mechanical equipment." This term is essentially the same as E § 1926.502(p)(4) except the proposed wording clarifies that this term applies only to built-up roofing work.

"Overhand bricklaying." This activity is identified in paragraph §1926.501(b)(3) as having unique fall protection requirements. This definition clarifies the activities involved.

"Positioning device system." This new term identifies a piece of equipment used in construction which allows an employee to work with both hands free while the employee is standing in such a way (such as leaning backward) that a fall could result. Such devices are often used on formwork construction and concrete rebar placement.

"Steep roof." This refers to roofs with slopes greater than "low-pitched" roofs.

"Unprotected sides and edges." This term is essentially the same as existing definition E §1926.502(p) which says that such areas on roofs are those where there is no wall three feet or more in height. However, the new definition has been broadened to include guardrail systems as well as walls, and applies to definitions to floors and other walking/working surfaces as well as roofs. The new definition also replaces the existing three foot limit with a 39 inch limit. The new limit conforms to the lower limit for guardrail height specified in paragraph §1926.502(b)(1).

"Walking/working surface." This term is used to clarify the scope of the standard's application and includes all surfaces except ladders, vehicles, and trailers. However, the scope limitations discussed in paragraph §1926.500(a) still apply.

"Warning line system." This term is used to describe a fall protection system which may be used to protect roofers during the application of built/up roofing on low-pitched roofs.

§1926.501 Requirements to have fall protection. This section specifies the places and areas where fall protection systems would be required. The specifics of the fall protection systems, and the training necessary to use the systems properly, are covered in succeeding §§1926.502 and 1926.503, respectively.

Paragraph 1926.501(a) General. This proposed paragraph requires that all fall protection systems required by §1926.501 conform to §1926.502.

Paragraph 1926.501(b) Floors, low-pitched roofs, and other walking/working surfaces. This paragraph requires fall protection to be used on all floors, low-pitched roofs, and other walking/working surfaces with unprotected sides or edges. By definition, a floor, roof, or other walking/working surface is unprotected along its edge if there is no wall (including parapets) or guardrail system at least 39 inches in height (an exception is made, of course, at point of access). Except during the performance of built-up roofing work and except when working near dangerous equipment, fall protection is required wherever the fall distance is six feet or more. This is the same requirement as in E §1926.500(d)(1). The four foot requirement in E. §1926.500(d)(2) for runways is changed to six feet in the proposal for purposes of consistency.

In general, guardrail systems are the only fall protection systems allowed at unprotected sides or edges of floors, low-pitched roofs, and other walking/working surfaces. This is essentially the same requirement as E §1926.500(d)(1) except the proposal would allow the use of body belt/harness systems or safety net systems when the supporting surface is less than 18 inches wide (see §1926.501(b)(1)). This change is proposed because OSHA believes it often can be impractical to erect guardrail systems on such narrow platforms. The 18-inch limit is consistent with the existing rule for ramps and runways, E §1926.500(d)(3). In addition, the proposal recognizes a number of operations and areas where a guardrail system may not be a feasible or appropriate way of providing fall protection along unprotected sides and edges. Paragraphs (b)(2) through (10) identify these areas and operations and specify which fall protection systems are appropriate for the protection of employees. All other unprotected sides and edges must be provided with the systems as required by paragraph §1926.501(b)(1). Public comment is requested on this point in Issue Number 2.

Paragraph (b)(2) addresses the problem of fall protection near leading edges. As defined in this proposal, a leading edge is that portion of a floor (or roof, or formwork surface) under construction which is an edge from which an employee could fall until placement of the next floor sections.

Because the time lapse between placement of successive sections is often only a few minutes, guardrail systems erected along a leading edge have to be removed almost as soon as they are erected to allow placement of the next section. Therefore, OSHA believes that a requirement to have guardrail systems often is not feasible along leading edges.

OSHA also believes that a requirement to erect safety nets often is not feasible because of insufficient room to rig a safety net and because the net would have to be constantly moved. In addition, OSHA believes that body belts and harnesses are not always appropriate means of fall protection along leading edges as they limit an employees' freedom of movement which can hinder job performance as well as impair an employee's ability to avoid a misdirected incoming piece of concrete or other structural member used on the leading edge.

In addition, the erection of some structural members requires employees to walk along a leading edge during placement of the member. A body belt or harness can unacceptably impede this effort. However, because guardrail systems, safety net systems, and body belt/harness systems can be used feasibly in some situations, paragraph (b)(2)(i) would allow their use as fall protection for employees constructing leading edges. In addition, because of the aforementioned problems with conventional systems, OSHA is proposing to allow a safety monitoring system to be used to protect leading edge workers. Safety monitoring systems, discussed in detail below in paragraph §1926.502(h) are patterned after the systems allowed for use during built-up roofing operations, (see E §1926.500(g)).

Paragraph (b)(2)(ii) requires guardrail systems or control zone systems to be erected along leading edges to protect workers who are not constructing leading edges, but who are on a walking/working surface which has a leading edge. This requirement applies only to the leading edge hazard. Other unprotected sides and edges of the walking/working surface must be guarded as required by the other provision of paragraph (b). No other system would be allowed because OSHA believes these two systems to be the only practical way of protecting non-leading edge workers while, at the same time, keeping these workers out of the area where leading edge work is being performed. A control zone, discussed in detail in paragraph §1926.502(g) below, is simply a visual and physical barrier which prevents employees from inadvertenly entering the area immediately adjacent to the leading edge.

Paragraph (b)(3) requires employees in hoist areas to be protected by body belt/harness systems when they are leaning through hoist area access

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openings, and by either body belt/harness systems or guardrail systems at all other times. This is essentially the same requirement as E§ 1926.500(g)(5) which applies only to hoisting operations on low-pitched roofs during built-up roofing operations, except the proposal would extend the rules to all hoisting operations on floors as well as low-pitched roofs. Also, the proposal would apply to equipment hoisting areas in addition to materials handling areas.

Paragraph (b)(4) requires that all holes in floors, low-pitched roofs, and other walking/working surfaces be guarded by covers or guardrails. The existing standard contains separate specific rules for floor openings, roof openings, platform openings, hatchways, chutes, pits, etc. However, the proposed standard treats most holes as presenting the same type of hazard and does not address each individual type of hole separately. Paragraph (b)(4)(i) requires covers to be closed when holes are not in use, and paragraph (b)(4)(ii) requires guardrails to be erected around holes when covers have been removed. These are essentially the same requirements as E§.500(b)(3)(i), (b)(5), (b)(6), and (b)(8).

Paragraph (b)(5) requires employees working on formwork and reinforcing steel to be protected by a body belt/harness system, safety net system or positioning device system. Positioning devices are essentially body belts which are attached by short lanyards to the work surface, and which allow the worker to perform a job with both hands free. Because of the short length of the lanyard, approximately nine to 18 inches depending on how it is rigged, OSHA believes there is no significant fall hazard when positioning devices are used. The existing standard does not address positioning devices.

Paragraph (b)(6) requires ramps, walkways, bridges, and runways to be equipped with guardrails. This is essentially the same requirement as in E§ 1926.500(d)(2) and E§ 1926.651(w), except that the four foot limit is replaced by a six foot limit to make it conform with the other fall protection provisions, and all walkways and bridges would be covered, not just those over excavations.

Paragraph (b)(7) requires the edges of inconspicuous excavations to be provided with guardrail systems, fences, signs, or barricades to prevent employees from falling into them. In addition, walls, pits, shafts, and similar excavations shall be guarded. These are essentially the same requirements as contained in E§ 1926.651(t), which is proposed to be relocated from Subpart P to Subpart M because it addresses fall protection. However, the term "remotely located" contained in E§ 1926.651(t) is deleted and the hazard is described in terms of the excavation's visibility. Although excavations are not generally required to be provided with guardrail systems, OSHA believes that excavations which are obscured from view, because of plant growth or other visual barrier, do require protective barriers. Public comment is requested in the Specific Issues section of this preamble as to whether or not signs are appropriate means of protection for this hazard.

Paragraph (b)(8) sets out requirements to protect employees from falling into dangerous equipment. The requirement provides that where the floor, roof, or walking/working surface is less than six feet above such hazards, employees shall be protected by guardrails or equipment guards that shield the hazard. For employees on floors, roofs, and other walking/working surfaces six feet or more above dangerous equipment, guardrail systems, body belt/harness systems, or safety net systems shall be used. "Dangerous equipment" is defined as equipment such as pickling or galvanizing tanks, degreasing units, machinery, electrical equipment and other units which are hazardous in nature because of their form or function. These requirements and the definition are based on E§ 1926.500(d)(4) and (5).

Paragraph (b)(9) addresses the fall protection requirements for employees engaged in overhand bricklaying operations and related work. These employees are involved in the construction of masonry walls and must lean over the wall to complete the joint work. Related work which is also covered by this paragraph includes mason tending and electrical work which must be incorporated into the brick wall during the bricklaying process.

While the use of guardrails, body belts, body harnesses, and safety nets is allowed during overhand bricklaying, the use of such systems often is not feasible. Guardrails pose obvious interference problems and safety nets cannot be attached to many load-bearing or other brick walls as such walls are not capable of supporting the loads imposed by a net system. Body belt/harness systems often become entangled in close quarters and in those cases where suitable anchorages can be found, lanyards and lifelines pose serious tripping hazards to the mason tenders who could themselves trip and go over the edge. Therefore, after extensive consultation with the Mason Contractors of America, the International Union of Bricklayers and Allied Craftsmen, the Laborer's International Union of North America, and the ACCSH, the use of a control zone is proposed to be allowed for the protection of employees performing overhand bricklaying and related work.

A control zone, discussed in detail in paragraph § 1926.502(g) below, is simply a visual and physical barrier which prevents non-overhand-bricklaying employees from inadvertently entering the area immediately adjacent to the fall hazard. It also designates the area where overhand bricklaying may be performed without the use of guardrails, body belt/harnesses, or safety nets as fall protection. However, paragraph (b)(9)(ii) provides that if the overhand bricklayer must reach more than 10 inches below the walking/working surface, then control zones may not be used to protect such employees. Instead, such employees must use conventional fall protection systems. This requirement is proposed because the consensus opinion of the bricklaying industry and trade (Ex. 1, December 16, 1980) is that this additional leaning presents a sufficient fall hazard to warrant requiring physical restraints for fall protection, i.e., guardrail, body belt/harness, or safety net systems, despite any feasibility problems.

The exceptions listed in paragraph (b)(9) clarify which provisions of paragraph (b) apply when bricklaying employees are engaged in work activities that are covered by more than one paragraph. For example, a worker performing overhand bricklaying work near a floor hole would have to be protected as required by paragraph (b)(4) with regard to the hole. Another example is a worker performing overhand bricklaying work above dangerous equipment. The provisions of paragraph (b)(8) would apply, and a control zone could not be used. Similar exceptions apply for hoisting areas and ramps and runways. These exceptions are made because OSHA views each of these areas to be more hazardous than the unprotected sides and edges generally encountered by overhand bricklaying workers.

Paragraph (b)(10) applies to employees performing built-up roofing work on low-pitched roofs with unprotected sides and edges 16 feet or more above lower levels. Such employees shall be protected by conventional fall protection systems (guardrail systems, body belt/harness systems, safety net systems), a combination of warning line and conventional system, a combination of warning line and safety monitoring system, or safety monitoring system alone in certain specified conditions.

This is the same requirement as E § 1926.500(g)(1) except the existing language uses the terms "ground" and "eaves" as the points between which the 16-foot height criteria is to be measured. The proposal uses the terms "unprotected sides and edges" and "lower levels" to eliminate confusion, as some roofs do not have eaves, and other roofs are more than 16 feet above the ground but less than 16 feet above the nearest lower level (penthouse roofs for example). The Note at the end of this paragraph clarifies the scope of paragraph (b)(10) by specifying that employees performing built-up roofing on low-pitched roofs with a fall distance less than 16 feet are not required to have any of the fall protection systems required for higher work. This is the intent of E § 1926.500(g) which was developed during a 1980 rulemaking (see 45 FR 75618), and this position is supported by the National Roofing Contractors Association, the National Home Builders Association, the United Union of Roofers, Waterproofers, and Allied Workers, and other groups, and has been reviewed by the ACCSH.

The other provisions of E § 1926.500(g) have been relocated to various paragraphs in this revision of Subpart M. However, they have not been changed substantively as they apply to built-up roofing. For example, the E § 1926.500(g)(5) provisions on hoisting have been moved to paragraph (b)(3) and are proposed to apply to all hoist areas, not just those on low-pitched roofs. Similarly the E § 1926.500(g)(3) provisions for warning lines are moved to § 1926.502(f). All such changes are explained in the discussion for each paragraph where the provisions have been relocated.

Paragraph (b)(10) has four exceptions which limit its application to built-up roofing operations. These are the same exceptions as those for overhand bricklaying operations discussed in paragraph (b)(9) above: hoisting areas; holes; ramps and runways; and dangerous equipment. The reasons for these exceptions are the same as those discussed for overhand bricklaying.

Paragraph 1926.501(c) Steep roofs. This paragraph requires employees on roofs with slopes steeper than four in 12 (i.e., four inches vertical to 12 inches horizontal) to be protected from falling when the roof has unprotected sides or edges more than six feet above lower levels. The fall protection must consist of guardrail systems, body belt/harness systems, or safety net systems. Existing Subpart M does not specifically address steep roof fall protection requirements. Consequently, the following provisions outside Subpart M have been utilized as the basis for citations for inadequate fall protection on steep roofs: § 1926.28(a) Personal protective equipment; § 1926.104 Safety belts, lifelines, and lanyards; § 1926.105 Safety nets; § 1926.451(u)(3) Catch platforms; as well as section 5(a)(1) of the Occupational Safety and Health Act of 1970. The proposed provision explicitly sets out the required fall protection systems for steep roofs.

Paragraph 1926.501(d) Wall Openings. This provision consolidates, clarifies, and changes the existing requirements of E § 1926.500(c) (1) and (3). Under the proposal, wall openings, defined as openings 30 inches or more high and 18 inches or more wide, which have a bottom edge to lower level fall distance of six feet or more on the side away from the employees, and a bottom edge to walking/working surface height of less than 39 inches on the side facing the employees, must be provided with a guardrail system to protect employees. This is a change from E § 1926.500(c)(1) which requires such protection to be provided when the fall distance exceeds four feet, and when the near side height is less than 36 inches. These changes are made to make this rule compatible with the six foot rule of paragraphs § 1926.501 (b) and (c), the minimum height requirements for guardrail systems of paragraph § 1926.502(b)(1), and the definition of "unprotected sides and edges." The existing requirement in E § 1926.500(c)(2) for guardrails on extension platforms would be deleted as being redundant with the provisions for outrigger scaffolds covered in proposed Subpart L—Scaffolds.

Paragraph 1926.501(e) Protection from falling objects. This paragraph requires protective measures to be taken or barriers to be erected to shield employees who are exposed to the hazard of falling objects. The provision would apply only where there are employees below a walking/working surface or wall opening from which an object could fall. This is a change from existing rules E § 1926.500(b) (1), (2), (3)(ii), and (8) which require toeboards to be erected around floor, roof, and platform holes and openings regardless of whether or not employees are working below. However, the proposed rule is consistent with the intent of E § 1926.500(d)(1) which requires toeboards only where employees below are exposed to hazards from falling objects.

OSHA believes the listed alternatives for providing falling object protection are more feasible than the present requirements to use only toeboards or screens. In addition to toeboards and screens, the proposal allows guardrails, protective canopies, signs, or barricades to be erected, or else the potential fall items must be placed away from the edge a distance sufficient to prevent them from going over the edge should they be accidently displaced. This distance is not specified as it varies depending on the shape of the objects. Round objects such as rolls of roofing felt would require more distance than a stack of flat shingles. The distance also depends on the height of the object or pile of objects. OSHA believes these provisions to be appropriate means and ways of protecting against the hazards of falling objects. However, public comment is requested in the Specific Issues section of this preamble as to whether or not signs are appropriate means of protection for this hazard.

§ 1926.502 Fall protection systems criteria and practice. This section specifies the performance and practice requirements to be met when fall protection is required by § 1926.501 and other subparts in Part 1926. The following discussion highlights changes from or additions to the existing standard. Where provisions are essentially unchanged, they are, in the main, not discussed.

Paragraph 1926.502(a) General. This paragraph requires all fall protection to conform to the following provisions, as applicable, and to be provided and installed before employees begin any other work on or from the surface to be protected. To be fully effective, fall protection must be in place at the earliest possible time.

Paragraph 1926.502(b) Guardrail systems. This paragraph sets forth the requirements for all guardrail systems. Paragraph (b)(1) specifies that the top edge of guardrail systems shall be 42 inches, plus or minus three inches, above the walking/working surface. The existing requirement of E§ 1926.500(f)(1) is that the guardrail system be "approximately 42 inches from upper surface of top rail to floor, platform, runway, or ramp level." The revised language deletes the term "approximately" and establishes that the height requirement applies on all installations, not just those on floors, platforms, runways, and ramps. Paragraph (b)(2) requires midrails, screens, mesh, intermediate vertical members (i.e., balusters), solid panels, or equivalent structural members to be installed between the top edge of the system and the walking/working surface when there is no wall or parapet wall at least 21 inches high. This is essentially the same requirement as

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E§ 1926.500(f)(1)(vi)(*c*). Paragraph (b)(2)(i) specifies midrail height and is the same requirement as in E§ 1926.500(f)(1). Paragraphs (b)(2) (ii) and (iii) are new provisions that address the proper placement of screens, mesh, intermediate vertical members, and other structural members when they are used in lieu of midrails. Paragraph (b)(3) requires guardrail systems to be capable of withstanding the application of a 200 pound force applied within two inches of the top edge in an outward or downward direction. This is essentially the same requirement as E§ 1926.500(f)(1)(vi)(*b*), except the existing phrase "with a minimum deflection" is changed to read in paragraph (b)(4)(i) that "when the 200 pound test load is applied in a downward direction, the top edge of the guardrail shall not deflect to a height less than 39 inches above the walking/working surface." Deflection is specified for the top edge because that is the point an employee is most likely to fall against and it must be high enough, at all times, to prevent the employee from flipping over the system. Paragraph (b)(5) provides similar specifications for midrails, screens, mesh, intermediate vertical members, solid panels, and equivalent structural members. No minimum deflection is specified as these are not the points where an employee is in danger of flipping over the protective barrier. Paragraph (b)(6) requires that guardrail systems be smooth surfaced to prevent employee injury due to lacerations or tripping caused by snagged clothing, and is based on E§ 1926.500(f)(1)(vi)(*a*). Paragraph (b)(7) requires that toprails and midrails not be so long as to constitute a projection hazard, and is the same requirement as E§ 1926.500(f)(1)(vi)(*d*).

Paragraph (b)(8) is a new requirement and prohibits the use of steel banding and plastic banding as toprails or midrails. While such banding can often withstand a 200 pound load, it can tear easily if twisted. In addition, such banding has sharp edges which can cut a hand if seized.

Paragraph (b)(9) requires all rails to be at least one-quarter inch in diameter or thickness. This is consistent with previous OSHA interpretations related to the use of wire cable as toprails and midrails. As guardrail strength is specified in paragraphs (b)(3), (4), and (5) above, the purpose of this requirement is to assure that rails made of high strength materials not be so thin that a worker grabbing a rail is injured because of the small size of the rail. This rule does not conflict with E§ 1926.750(b)(1)(iii) which requires wire cables used as guardrails during steel erection to be at least one-half inch in diameter. The purpose of that provision is to assure that guardrails on erection or derrick floors are strong enough to withstand the impact loads which can be encountered during steel erection when the rails are struck by a load during hoisting operations.

Paragraphs (b)(10) through (15) are requirements for the use of guardrail systems. Paragraph (b)(10) sets forth the minimum length of guardrail required at hoisting areas during the performance of built-up roofing operations on low-pitched roofs. This is a combination of E § 1926.500 (g)(5)(i) and (ii).

Paragraph (b)(11) requires chains, gates, or guardrail sections to be placed across access openings when hoisting operations are not taking place. This is the same requirement as E § 1926.500(g)(5)(i), which is a clarification of the general rule E § 1926.500(d)(1). However, as written, the existing standard applies only to built-up roofing operations on low-pitched roofs. The proposed standard is written to apply clearly to all hoist locations.

Paragraph (b)(12) provides that when guardrails are used at holes, they be erected on all unprotected sides or edges of the hole. This is essentially the same requirement as in E § 1926.500(b)(1).

Paragraph (b)(13) provides that guardrails around holes used for material access not have more than two sides provided with removable guardrail sections, and that the guardrails be in place or the hole covered when the hole is not in use. This is essentially the same requirement as E § 1926.500(b)(3)(i), (b)(3)(ii), (b)(5), (b)(6), and (b)(8).

Paragraph (b)(14) provides that guardrails around holes used as points of access (such as ladderways) shall be provided with gates or be so offset that a person cannot walk directly into the hole. This is essentially the same requirement as E § 1926.500(b)(2). Paragraph (b)(15) sets forth the requirements for guardrails used on ramps and runways and is essentially the same requirement as E § 1926.500(d)(3).

The provisions in existing paragraphs E § 1926.500(f)(1) (i), (ii) and (iii) provide detailed specifications for minimum sizes of guardrail system components. However, OSHA believes that the important consideration in guardrail system design and construction is that the guardrail system be capable of supporting safely the loads as specified in paragraph § 1926.500(b), and not that a guardrail system have a particular sized component or post spacing.

Consequently, the proposal would relocate the provisions of these existing paragraphs to Appendix A, and would not make them mandatory. The relocation of these provisions does not reduce the level of safety presently achieved by the existing standard. The existing specific provisions are engineered solutions to the requirements of E § 1926.500(f)(1)(vi) which are performance criteria essentially the same as the performance requirements being proposed. Relocating the provisions to Appendix A reduces redundant provisions and eliminates the possible misinterpretation that the specified provisions are the only acceptable ways of building guardrail systems.

Paragraph 1926.502(c) Safety net systems. This paragraph replaces existing section E § 1926.105—Safety nets. The subject matter is relocated to Subpart M because of its obvious relation to the revised fall protection scope of this Subpart. As discussed below, most of the proposed requirements are substantively the same as the existing provisions.

Paragraph (c)(1) requires safety nets to be installed as close as practicable under the walking/working surface where employees need to be protected, but in no case more than 25 feet below such level. This paragraph clarifies existing paragraph E § 1926.105(a) which implies that safety net systems are not required until the fall distance exceeds 25 feet. Proposed paragraphs E § 1926.501 (b) and (c) clearly required fall protection when the fall distance exceeds six feet (with some limited exceptions), not 25 feet. An exception, without limit, is made for bridge construction where only one level of nets is required. This exception is presently recognized by paragraph E § 1926.105(c)(2). However, public comment on the adequacy of this exception is requested in the Specific Issues section of this preamble.

Paragraph (c)(2) requires nets to extend outward at least 15 feet from the outermost projection of the work surface. This is a change from the existing eight foot requirement of paragraph E § 1926.105(c)(1). The National Bureau of Standards (NBS) has conducted tests to evaluate this requirement. Their findings indicate that at least 15 feet are required to fully contain a body falling 25 feet (Ex. 14:50).

Paragraph (c)(3) requires nets to be rigged with sufficient clearance under them to prevent contact with the lower level when the net is subjected to impact forces as specified in paragraph (c)(4). This is substantively the same requirement as in E § 1926.105(c)(1).

Paragraph (c)(4) specifies the capacity requirements for safety nets and safety net installations. The paragraph requires employers to show that nets and net installations meet the capacity requirements by conducting drop tests meeting designated parameters, or by certification by a qualified person that the net and net installation meet all specified criteria when the employer can demonstrate that drop testing is not feasible or practicable. An example of where a drop test may not be feasible or practicable is where the net is strung over a public thoroughfare and the test could endanger people below. Another example is where the test weight cannot be readily retrieved from the net once it has been dropped.

For the purposes of paragraph (c)(4), OSHA considers two or more net panels joined together to be one net. Safety net installations which do not share the same net are considered to be separate systems. In addition, each time a safety net system is erected, it is considered to be a separate installation which must be tested or certified. This is a clarification of existing paragraph E § 1926.105(b) which requires all net installations to be drop-tested. Paragraph (c)(4)(ii) sets forth the proposed criteria for performing drop tests on net installations. In most respects, these criteria are the same as the paragraph 8 requirements of ANSI A10.11–1979. However, the proposal requires the test to be conducted from the highest walking/working surface on which employees are to be protected, as opposed to the 25-foot height required by ANSI, so that the test more closely resembles the type of fall from which the worker is to be protected. OSHA believes the use of a 400 pound weight to test the system is sufficient to ensure that a proper margin of safety is obtained.

Paragraph (c)(5) is a new provision and requires safety nets to be inspected weekly for mildew, wear, damage, or other deterioration. Defective components must be removed from service. Paragraph (c)(6) is also new and requires debris and tools to be removed as soon as possible from the net, but not later than the start of the next work shift. Such obstacles pose obvious safety hazards to anyone who falls into the net. Paragraph (c)(7) specifies the maximum allowable mesh opening and is essentially the same as existing rule E § 1926.105(d), which provides for a maximum of six inches on any side of an opening. The proposal also limits the size of the opening to a maximum of 36 square inches. This limit is proposed because mesh openings can be manufactured with more than four 6-inch sides. A limit of 36 square inches is necessary to keep the open mesh from being so large that an employee's head could go into it during a fall, and possibly breaking the employee's neck. This is the same requirement as in paragraph 5.1 of the 1979 ANSI standard for nets (Ex. 4). Paragraph (c)(8) specifies a minimum breaking strength of 5,000 pounds for border ropes used for net webbing, and is the same requirement as E § 1926.105(d). Paragraph (c)(9) requires connections between net panels to be as strong as integral components, and to be spaced not more than six inches apart. This is essentially the same requirement as E § 1926.105(f), except the six inch requirement is new and based on the 1979 ANSI requirement, paragraph 9.3. The existing E § 1926.105(d) requirement that all new nets must meet accepted performance standards of 17,500 foot-pounds minimum impact resistance, as determined and certified by the manufacturer, is proposed to be deleted. This requirement applies only to the net and not to the net installation. OSHA believes the important consideration is the safety net system as a whole, and that the provisions of proposed paragraph (c)(4) are sufficient to assure proper safety for employees. The best net can be rendered useless by an improper installation. For these same reasons, the E § 1926.105(d) requirement for a label of proof test also is proposed to be deleted. In addition, existing paragraph E § 1926.105(e) requiring forged steel safety hooks or shackles to fasten nets to supports is proposed to be deleted. The existing rule is unduly specific as there are other acceptable ways and means to fasten nets to supports, such as wire ropes.

Paragraph 1926.502(d) Body belt/harness systems. This paragraph replaces all of existing section E § 1926.104—Safety Belts, Lifelines, and Lanyards and would relocate coverage of bodybelt/harness systems to Subpart M as revised. This is done as part of the consolidation of fall protection requirements for construction.

Paragraph (d)(1) requires that body belt/harness systems only be used for employee protection and not as materials or equipment hoist slings, bundle ties, or for similar purposes. This is substantively the same requirement as E § 1926.104(a). Paragraph (d)(2) requires that body belt/harness systems or components subjected to impact loading, as distinguished from static load testing, be removed from service, inspected, and not used for employee protection again until found suitable for such use. This is the same requirement as in E § 1926.104(a) except the existing provision prohibits any further use of the belt for employee protection. However, OSHA recognizes that not every impact loading adversely affects a body belt/harness system. For example, a relatively short fall of one foot may leave the belt/harness system undamaged; however, a long fall of six feet probably will destroy the belt or harness. Because OSHA believes many factors, such as the employee's weight and the type of deceleration device used, will affect a system's potential capacity for reuse as employee protection, no blanket prohibition of reuse after any impact loading is proposed. Paragraph (d)(3) requires lifelines to be protected against being cut or abraded. This is essentially the same requirement as E § 1926.104(c) except the new provision deletes the specification for seven-eighth-inch wire core manila rope. This change is proposed due to the availability of other equally satisfactory types of rope which, when they are properly protected against wear, are adequate for use as lifelines. Paragraph (d)(4) requires body belt/harness systems to be rigged to minimize free fall distance with a maximum free fall distance allowed of six feet, and is meant to clarify existing rule E § 1926.104(d). The new provision also limits the drop distance by requiring the system to be rigged such that the employee cannot contact any lower level. OSHA believes that it is not sufficient to rig the system with a six foot lanyard where, for example, the potential fall distance is only eight feet. In such a situation, the lanyard would stop the free fall at six feet but the employee would bend at the waist (if a simple belt is worn). Thus, at the end of the free fall, the employee's arms, legs, and head would continue to "fall" a distance greater than the six feet and could strike the lower level. Also to be considered when body belt/harness systems are rigged is the type of deceleration device used and the additional fall distance required for it to stop the fall effectively. Based on recommendations made by the body belt/harness manufacturing industry, paragraph (d)(5) limits this additional fall distance for the deceleration device to stop the fall to 42 inches (excluding lifeline elongation). Paragraph (d)(6) is a new provision and limits the arresting force generated by a deceleration device to 10 times the employee's weight or 1,800 pounds, whichever is lower. The

"10 times" limit is based on the provisions in paragraph 3.3.5 of the American National Standard Institute's publication ANSI A10.14–1975, "Requirements for Safety Belts, Harnesses, Lanyards, Lifelines, and Drop Lines for Construction and Industrial Use" (Ex. 5). OSHA believes this limit alone is not sufficient to protect an employee from serious harm as the arresting force generated is a function of the employee's weight. For example, a 180 pound employee would experience an 1,800 pound arresting force, while a 250 pound employee would experience a 2,500 pound arresting force. Consequently, a maximum force of 1,800 pounds is proposed to avoid excessive body stresses when a fall is arrested. For a further discussion of this limit, see Issue Number 8.

Paragraph (d)(7) is a new provision and requires body belt/harness attachment points to be behind the hip of the wearer, preferably in the middle of the back or above the head, in order to produce the least amount of strain on the body when the falls are stopped. Paragraph (d)(8) requires body belts to be at least one and five-eighths inches wide. This is essentially the same requirement as the ANSI A10.14 requirement in paragraph 3.2.1, and is intended to distribute the arresting force over a large area of a body. Paragraph (d)(9) requires hardware to be drop forged, pressed, or formed steel, or equivalent strength material. This is essentially the same requirement as E § 1926.104(e), except the Federal Specification requirement is deleted as being unnecessarily restrictive as other suitable hardware is available. Paragraph (d)(10) requires hardware to be corrosion-resistant and smooth-finished so as to not damage the attached belt or lanyard. This is essentially the same requirement contained in E § 1926.104(e). Paragraph (d)(11) would provide that only one employee may be attached to any one vertical lifeline. This is a clarification of E § 1926.104 (b), (d), and (f) which specify minimum requirements for body belt lifelines. These limits are only adequate for one employee per lifeline, and OSHA thereby does not allow more than one employee per lifeline. In addition to strength considerations, OSHA believes it is inherently unsafe for two workers performing separate tasks to use a single vertical lifeline. Movement by one employee could cause the lifeline to be pulled to one side which could, in turn, cause the other worker to lose balance. In addition, should one employee fall, the other worker might be caused to fall also.

Paragraph (d)(12) would require body belt/harness systems to be secured to an anchorage capable of supporting twice the potential impact load of an employee's fall. This is a change from existing rule E § 1926.104(b) which requires anchorages to be capable of supporting a minimum dead weight of 5,400 pounds. This change is proposed because the existing rule is based on the rated strength of the manila rope commonly used for lifelines and lanyards at the time the rule was developed, and is not based on the actual load the anchor must support when an employee falls. The proposed rule is performance-oriented, and addresses the actual forces involved. A similar provision is set forth in Appendix D of OSHA's proposed rulemaking for powered platforms, 29 CFR 1910.66 (50 FR 2890, January 22, 1985), except that provision requires a design factor of only one for an anchorage's capacity. This proposal requires a design factor of two because of the public comments (Ex. 13) made in response to the powered platforms proposal.

Paragraphs (d) (13), (14), (15), and (16) specify minimum strength criteria for lifelines, lanyards, and other components, and require all components either to be capable of supporting a minimum fall impact load of 5,000 pounds or to have a minimum tensile strength of 5,000 pounds (except self-retracting lifelines and lanyards which have a 3,000 pound minimum limit). These requirements change the existing rules for lifelines and lanyards, E § 1926.104 (c) and (d), which specify a minimum limit of 5,400 pounds nominal breaking strength. This change is proposed because the existing rules were based on the strength of the then available manila rope used for body belt systems and not on the actual forces generated in a fall. The new requirement of 5,000 pounds fall impact load is based on a 250 pound employee experiencing a force of 10 times gravity times a safety factor of two. Paragraph (d)(16) requires hardware to be capable of supporting a minimum fall impact load of 5,000 pounds applied at the lanyard point of connection. This provision is consistent with the other proposed paragraphs and replaces existing rule E § 1926.104(f), which requires all hardware to be capable of withstanding a tensile loading of 4,000 pounds, but which does not specify where the 4,000 pound load is to be applied. The performance criteria of proposed rule (d)(12) for anchorages, and the specification criteria of proposed rules (d) (13) through (16) for other body belt/harness components are consistent with the provisions set forth in Appendix D of OSHA's proposed rulemaking for powered platforms, and with rules being developed for other general industry (29 CFR Part 1910) application. Public comment is requested in Issue Number 22 on whether or not this approach is appropriate for the construction industry.

Paragraphs (d) (17), (18), and (19) are new provisions and regulate the use of snap hooks. These provisions are intended to reduce the danger of "roll out" by prohibiting the use of two or more snap hooks at the same point of connection. "Roll out" is the situation where snap hooks come in contact with each other, or some other object, in such a way that the hook opens and the belt or lanyard becomes disconnected.

Paragraph (d)(20) is a new provision and requires inspection of body belt/harness systems to insure that defective systems are not used.

Paragraph (d)(21) prohibits the attachment of body belt/harness systems to hoists or guardrail systems, and is the same requirement as E § 1926.500(g)(5)(iv), except the existing rule applies only to built-up roofing operations on low-pitched roofs, and does not include the guardrail restriction. The proposed rule would extend coverage to all hoist areas and guardrail systems. However, this is not a new rule as E § 1926.104(b) specifies minimum anchorage requirements for body belts. This rule is a clarification of how the existing requirement applies to two potential points of anchorage. OSHA believes that hoists and guardrail systems are not designed nor built to withstand the impact forces generated by a fall, and therefore, should be prohibited from being used as body belt/harness anchorages.

Paragraph (d)(22) specifies how body belt/harness systems are to be rigged when used at hoist areas and is the same as E § 1926.500(g)(5)(v), except the existing rule applies to only built-up roofing operations on low-pitched roofs. However, the requirement would be extended by the proposal to cover all hoist areas. The limitation on movement when wearing a body belt/harness is made because of the frequent tendency of employees to lean out over the edge at hoist areas.

Paragraph 1926.502(e) Positioning device systems.

These new provisions set the minimum performance criteria for "positioning devices," which are systems similar to body belt systems and which can be comprised of many of the same components. The significant difference is that body belt systems are used to arrest falls, whereas positioning devices are used by employees to maintain a leaning position without using their hands while working on vertical surfaces. An example when these devices may be used is during the placement of reinforcing bars in the vertical face of a wall under construction. The employees often stand on bars already in place and must lean backward, similar to a lineman on a telephone pole, to place additional bars. The positioning device allows this to be done without the employees having to use their hands to maintain position. Paragraph (e)(1) limits the total fall distance of positioning devices to 24 inches. This distance is less than the six foot distance allowed for body belt/harness systems because the lanyards used with positioning devices usually do not stretch under fall impact loading and deceleration devices normally are not used to reduce the forces incurred during a fall. Paragraphs (e)(2) through (5) cover strength criteria and inspections. These provisions and their rationale are the same as those discussed above for body belt/harness systems.

Paragraph 1926.502(f) Warning line systems.

These provisions address proper warning line system construction, arrangement, set-up, maintenance, and use, and are the same requirements as E § 1926.500(g)(3) (i), (ii), and (iii). These provisions were discussed in detail in the preamble of the Notice of Final Standard Action for the Guarding of Low-Pitched-Roof-Perimeters During the Performance of Built-Up Roofing Work (45 FR 75618, November 14, 1980).

Paragraph 1926.502(g) Control zone systems.

These new provisions set minimum performance criteria for control zones used on leading edges and during overhand bricklaying operations. These systems are intended to serve as warning systems and as the designators and definers of areas where unique fall provisions apply. Paragraph (g)(1) requires control zones used on leading edges to be no closer than six feet to the leading edge, nor further than 25 feet away. The six foot limitation is needed to provide adequate warning to employees while their attention is diverted, that they are approaching a fall hazard. It warns workers that they are near an unprotected side or edge under construction. The 25 foot limit requires the zone to be moved as construction of the edge progresses. Paragraph § 1926.501(b)(1) requires a guardrail system to be erected along the unprotected side edges (usually perpendicular to the leading edge) which result as the control zone is moved forward. Paragraph (g)(2) requires control zones used during overhand bricklaying operations to be not less than 10 feet nor more than 15 feet from the working edge where the overhand bricklaying operations are being performed. These limits were developed after extensive consultation with industry and union representatives and review by the ACCSH. The enclosed zone is intended to provide overhand bricklayers with an area free of interference from other employees not performing related work. Paragraph (g)(3) requires the zone lines and access path lines to be made of ropes, wires, tapes, or other equivalent materials and supported on stanchions. Paragraph (g)(3)(i) requires the system to be flagged or otherwise clearly marked. Paragraph (g)(3) (ii) and (iii) regulate the height of the control zone lines for leading edges and overhand bricklaying. Overhand bricklaying control zone height limits are higher than those for leading edge work to allow the ready passage of materials underneath the line. Paragraph (g)(3)(iv) requires a minimum line tensile strength of 200 pounds. This minimum strength is required to assure that the lines will not break if an inattentive worker walks into them. Paragraph (g)(4) requires control zones to be connected to points of access, materials handling areas, and storage areas by access paths made with control zone-type barriers.

Paragraph (g)(5) addresses those work situations where no guardrails have been erected prior to the beginning of overhand bricklaying or leading edge operations. The control zone limits the employees to a controlled area of work activity where overhand bricklaying or leading edge operations are being performed. In paragraph (g)(6), OSHA recognizes that erected guardrails can interfere with overhand bricklaying and leading edge operations, and allows guardrails to be removed to permit such work. However, guardrails may only be removed to the extent necessary to accomplish one day's amount of bricklaying or leading edge work. Once guardrails are removed the resulting unprotected edge must be guarded by a control zone. Paragraph (g)(7) allows only employees engaged in overhand bricklaying and related work to be in the control zone. This limitation is necessary because the presence of extraneous employees in the control zone can interfere with otherwise safe work procedures used during overhand bricklaying and leading edge work.

Paragraph 1926.502(h) Safety monitoring systems.

The existing standard allows the use of safety monitoring systems as fall protection only on roofs and only during built-up roofing work. The proposed rule, however, allows such systems to be used also on walking/working surfaces other than roofs (see § 1926.501(b)(2)(i), leading edges). In addition, these systems are only defined in E § 1926.502(p)(7), and specific criteria are not set out in the body of the existing standard. The proposal sets forth specific criteria which apply when safety monitoring systems are used, as follows: paragraph (h)(1) requires safety monitors to be competent in recognizing fall hazards; to warn employees when they appear to be unaware of a fall hazard or are acting in an unsafe manner; to be on the same surface as the monitored employees and within visual sighting distance of them; and to be close enough to communicate orally with the employees. The monitor may have supervisory or non-supervisory responsibilities as there are no restrictions on the performance of other duties. However, the monitor must not be so busy with other responsibilities that the monitoring function is encumbered. Paragraph (h)(2) prohibits the use of mechanical equipment in areas where safety monitoring systems are being used to protect employees from falling. This is essentially the same requirement as in E § 1926.500(g)(4). Paragraph (h)(3) prohibits employees not engaged in built-up roofing work from being in an area where built-up roofing employees are working and protected by a safety monitoring system. This requirement is necessary because the presence of extraneous employees in these areas can interfere with otherwise safe work procedures used during built-up roofing work.

Paragraph 1926.502(i) Covers.

This paragraph, which is substantively the same as E § 1926.500(f)(5), sets the performance criteria for covers used to protect employees from falling into or through holes in floors, roofs, and other walking/working surfaces. Paragraph (i)(1) specifies the minimum strength requirements for covers used in roadways and vehicular aisles. Paragraph (i)(2) specifies the minimum strength requirements for all other covers. Whereas the existing rule, E

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§ 1926.500(f)(5)(ii), requires all other covers to be capable of supporting the maximum intended load, the proposed rule specifies a minimum capacity of 250 pounds. This minimum capacity is based on what OSHA considers to be the average maximum weight of an employee and the employee's tools. Paragraph (i)(3) requires covers to be installed so as to prevent accidental displacement.

Paragraph 1926.502(j) Protection from falling objects.

This paragraph sets forth the performance criteria for providing protection from falling objects. Paragraph (j)(1) requires toeboards, when used, to be erected along the edge of overhead walking/working surfaces for a distance sufficient to protect employees working below. This is a change from existing rules E § 1926.500(b) (1), (2), (3)(ii), and (8) which require toeboards around floor, roof, and platform holes and openings regardless of whether or not employees are working below. However, the proposed rule is consistent with the intent of E § 1926.500(d)(1) and proposed paragraph § 1926.501(e) which require protection only where employees below are exposed to the hazard of falling objects. Paragraph (j)(2) would be a new requirement and specifies the minimum strength of toeboards. Paragraph (j)(3) specifies how toeboards are to be installed and is essentially the same as E § 1926.500(f)(3)(i). Paragraph (j)(4) provides that where tools, equipment, or materials are higher than the top of a toeboard, additional protection must be used, such as paneling or screening erected from the working level or toeboard to the top of the toprail or midrail. This requirement is substantively the same as E § 1926.500(f)(3)(ii). Paragraph (j)(5) requires that when guardrails are used to prevent objects from falling, the openings in the guardrail must be small enough to retain the potential falling objects. This is essentially the same requirement as E § 1926.500 (c)(1)(ii) and (f)(7)(ii) except the specific limitations on hole size are deleted. Paragraph (j)(6) contains housekeeping provisions for overhand bricklaying operations which are intended to prevent tripping and to prevent displacement of materials and equipment to areas below the walking/working surface. Paragraph (j)(7) sets forth provisions for materials and equipment storage during built-up roofing operations. These are essentially the same requirements as E § 1926.500(g)(5) (vi) and (vii). Public comment is specifically requested in Issue Number 5 on what provisions are appropriate for specifying proper canopy protection.

Section 1926.503 Training.

The requirements of this section are in addition to the training requirements of E § 1926.21, however, the provisions may be cited only when one or more citations are issued under the other provisions of Subpart M.

Paragraph (a)(1) clarifies the types of hazards to be addressed in all training programs given to educate employees using fall protection systems. Fall protection and fall protection systems are only effective when they are properly designed, built, located, maintained, and used. This section sets forth the purpose and general outlines for the requisite training. However, this section does not specify the details of the training program. Instead, it requires employees to be instructed in the proper way to erect, use, place, and maintain fall protection systems. In this way, the section provides flexibility for the employer in designing the training program.

Paragraph (a)(2) specifies that training and retraining be provided for each employee as necessary. OSHA requests comments on whether or not a more specific requirement would be appropriate in Issue Number 3.

Appendix A to Subpart M—Guardrail Systems. As explained in the discussion for the proposed section governing guardrail systems, this appendix is a non-mandatory set of guidelines provided to assist employers in complying with the requirements of paragraphs § 1926.502(b) (3), (4) and (5). If a contractor uses these guidelines to select guardrail system components, and builds the system as indicated by the guidelines, then OSHA will assume that the components meet the requirements of paragraphs § 1926.502(b) (3), (4) and (5). Components for which no specific guidelines are given in the appendix (e.g., joints, base connections) must be designed and constructed in accordance with the capacity requirements of paragraphs§ 1926.520(b) (3), (4) and (5). The appendix neither creates additional obligations nor eliminates obligations otherwise contained in the standard. It is intended to provide useful, explanatory material and information to employers and employees who wish to use it to aid in understanding and complying with the standard.

Appendix B to Subpart M—Roof Widths. Appendix B is provided to serve as a guide to assist employers in complying with the requirements of paragraph § 1926.502(f). The record compiled for the promulgation of existing subsection E § 1926.500(g), which requires the guarding of low-pitched roofs during the performance of built-up roofing work, demonstrates that there was confusion as to which dimension of a building should be considered to be the width of a roof. Appendix B explains that in all cases the building must be viewed in plan view (i.e., viewed from above, looking down). The width of the roof is then the narrower of the two primary dimensions which define the roof area. Although the Appendix does not show all possible roof configurations, it does give some common arrangements. This appendix neither creates additional obligations nor eliminates obligations otherwise contained in the final standard. It is intended to provide useful, explanatory material and information to employers and employees to aid in understanding and complying with the standard.

Appendix C to Subpart M—Test Procedures for Evaluating Body Belt/Harness Systems and Positioning Device Systems. Appendix C is provided to serve as a guide to assist employers in complying with the requirements of paragraphs § 926.502 (d) and (e). Body belt/harness and positioning device systems which have been tested in accordance with the criteria of this appendix will be deemed by OSHA to meet the performance criteria of paragraphs § 1926.502(d) (5), (6), (15), and § 1926.502(e) (3) and (4). This appendix neither creates additional obligations or eliminates obligations otherwise contained in the standard. It is intended to provide useful, explanatory material and information to employers and employees to aid in understanding and complying with the standard.

Specific issues. The public is specifically requested to comment on the following issues:

1. The preamble identifies the provisions in the standard which are new or which are changed from the provisions of the existing standard. OSHA believes that many employers are already following many of these revised provisions. However, OSHA will evaluate, on the basis of all the evidence submitted to the public record, the likely effectiveness of the proposed revised and new provisions and will include in the final rule only those revised and new requirements for which a significant reduction in the risk of incurring injuries or fatalities would be supported by the final record. Hence, the following issues are raised:

a. Public comment is requested on the current level of practice which meets the requirements of the proposed changes;

b. Public comment is requested on the practicality and feasibility of the proposed changes, and whether implementation of the proposed changes will reduce the occurrence or severity of accidents;

c. Public comment is requested on the amount of any costs or savings which have not been identified by OSHA (see Section IV of this preamble—Preliminary Regulatory Impact Assessment and Regulatory Flexibility Analysis) which might result from the proposed changes;

d. Public comment is requested on the availability and content of accident reports which indicate that the proposal does not properly address fall hazards.

2. Are there areas or operations, in addition to those already identified in proposed § 1926.501, which have unique fall protection requirements not addressed by the proposed standards? Examples of such areas and operations might include carpenters erecting roof trusses during house construction; steel erectors working on other than tiered buildings (which are covered by Subpart R—Steel Erection) such as single story buildings, high bay buildings, warehouses, prefabricated buildings, communications towers, storage tanks, bridges, antennas, industrial plants, and similar structures; or connectors erecting wood, precast concrete, and structural members made of other materials. Comments on this point should describe such areas and operations in detail, and should discuss the fall protection system which should be used.

In addition, public comment is requested on whether or not OSHA has been overly restrictive in its fall protection provisions by requiring the use of only certain types of protective systems in specified areas or for specified operations. For example, paragraph § 1926.501(b)(4) requires the use of covers or guardrail systems to protect against employees falling into holes located in the walking/working surface. Are there other systems, such as warning lines or attendants (such as those allowed in § 1910.23), which would provide adequate fall protection at such locations? If so, what other systems are appropriate, under what circumstances, and at what locations?

3. In some of the existing provisions and in some of the proposed provisions, OSHA uses specific numerical limits to define and clarify the duties set forth. For example, E § 1926.502(a) and proposed paragraph § 1926.500(b) define the term hole by giving a physical measurement. This then determines when certain safety systems must be used to protect against fall hazards. These and other limits are based on existing laws and consensus standards, and are used in lieu of more performance-oriented language such as "covers shall be used on all holes which are large enough to constitute a fall hazard," or language which requires a numerical limit but then allows other configurations which give "equivalent" protection. OSHA believes that although such performance-oriented language would be less restrictive on employers, and thus give them more options when abating a hazard, it does not always tell the employer exactly what is required (i.e., how to do something "right"). On the other hand, requiring specific numerical limits in the rule and allowing the employer to use other limits which the employer can show will provide "equivalent" protection may respond to both these concerns. OSHA believes that the use of specific limits in certain provisions (such as those listed above) provides the required notice to employers as to how they can comply with a provision compared to how OSHA intends to enforce the provision. OSHA believes that such notice serves to inform employers and employees about the proper way to do things; promotes consistency in hazard abatement at all worksites; and also minimizes legal disputes over the intent of a requirement. On the other hand, specification language can increase costs without increasing safety, discourage technical innovation, prevent the use of safe alternatives, and fail to anticipate the varying needs and situations in the numerous workplaces covered by the standard.

Public comment is requested on whether or not OSHA's use of specification language is appropriate, or if it should be moved to a non-mandatory appendix which could provide guidance to employers. If not, how should the provisions be written to provide the desired flexibility and the required fair notice? If the continued use of such limits is appropriate, are the proposed limits sufficient to abate the hazards? Comments should include appropriate cost and injury data.

4. Existing provision E § 1926.500(d)(1) and proposed provision § 1926.501(b) require fall protection systems to be erected or used at all unprotected sides and edges of floors (open-sided floors) and similar walking-working surfaces. As worded, the existing provision has been interpreted to mean that a guardrail is required around an open-sided floor even when employees on the floor are working near the middle of the floor and are removed from the perimeter fall hazard. The proposed language could also be interpreted to require the same degree of protection. The existing provision has also been interpreted to mean that a citation for lack of fall protection should be issued only when employees are working near the unprotected side or edge and are thus exposed to the fall hazard. Public comment is requested on whether or not a distance (or some other method of defining exposure) should be specified whereby fall protection would be required only when an employee is within that distance of a fall hazard. Proponents for such a limit should state what that distance should be, and why. Proponents for the existing language, as modified in the proposal, should state why a limit would not be appropriate. All comments should include appropriate cost and injury data.

5. Proposed § 1926.503(a)(2) would require training and retraining as necessary for all employees exposed to fall hazards. Public comment is requested on whether a more specific requirement or a less specific requirement such as that found in § 1926.21, would be appropriate. OSHA intends to include in the final rule only those training requirements for which a significant reduction in the risk of incurring injuries or fatalities would be supported in the final record.

Public comment is also requested on what training programs are currently available, who is providing them, and their cost. To the extent possible, examples of both adequate and inadequate training programs should be provided, with examples of how inadequate training may have contributed to unsafe conditions.

Companies, unions, trade associations, and other organizations conducting training programs also are encouraged to submit data concerning the safety records of employees who have undergone training. For example, have companies which have instituted training programs experienced a decrease in accidents compared to the situation existing before training was started?

Information concerning the costs of training and how such costs may be offset by more efficient and/or safe operations is also requested. Although OSHA believes safety training is necessary and beneficial, comments have been received that raise the following concerns:

What level of specificity should OSHA require in a training program? What are the necessary elements of a training program? Can the more general training requirements contained in § 1926.21 be effective in providing employees with adequate training or are

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the more specific requirements in this proposal necessary?

Do employers or employees believe that training is too costly for the benefits it yields? If OSHA should not require training at all, is there a basis for predicting if training efforts will decrease, increase, or stay at present levels? Would employers, employees, or other interested parties support the omission of the training requirement proposed for this subpart? Do data, eyewitness, and anecdotal evidence exist which may constitute support for OSHA's not requiring training?

Comments are also requested on whether or not training should be required to be provided in specific sessions devoted to an overall view of safety issues likely to be encountered, or are on-the-job sessions, limited to isolated safety concerns as they are encountered, sufficient to insure safety?

In addition, OSHA requests comments on whether compliance with these proposed training requirements could be practicably accomplished without keeping records. Do these proposed training requirements, as written, impose an implicit recordkeeping burden on employers? Data on the cost and time necessary for keeping training records, if any, are requested.

6. Should OSHA promulgate rules requiring the inspection of work surfaces to determine their structural integrity prior to employees being required to work on such surfaces? Currently, there are no specific requirements that address this concern. The purpose of these inspections would be to insure that work surfaces have the requisite strength to not collapse under the weight of employees, tools, and materials. That such a rule may be needed is evidenced by a study conducted by OSHA (Ex. 3:77). That study shows that of eight fatalities of employees falling through ceilings, four of the accidents were caused by the work surface not being capable of supporting the employee's weight. The study also shows that of 55 fatalities resulting from falls from roof levels, approximately eight were caused by the employees working on surfaces with insufficient structural strength to support their weight. Comments should address the types of inspection criteria necessary, the methods to be used, and the qualifications of the inspectors.

7. Should OSHA promulgate a rule requiring covers to be painted or otherwise clearly marked to indicate their function as a cover? Covers are often only pieces of plywood and the purpose of this rule would be to help employees distinguish between a covered hole and debris.

8. Paragraph § 1926.501(e) allows protective canopies to be erected as an alternative form of falling object protection. Comments are requested on what criteria should be specified in paragraph § 1926.502(j) to assure proper protection for employees.

9. Proposed paragraph § 1926.252(c)(5) requires safety nets to be inspected weekly, and proposed paragraphs § 1926.252 (d)(20) and (e)(5) require body belt/harnesses and positioning devices to be inspected prior to each use. Public comment is requested on this degree of frequency of inspection.

10. The term "mechanical equipment" is used to describe the type of equipment addressed in the provisions of proposed paragraph § 1926.502(f) which addresses built-up roofing work. Wheelbarrows and mopcarts are exempted from the provisions of § 1926.502(f) because, as discussed in the 1980 rulemaking package E § 1926.502(g) Guarding of low-pitched roof perimeters during the performance of built-up roofing work (45 FR 222),

> [t]hese two pieces of equipment are excluded from the definition because their use does not require employees to move backward. In addition, they are light in weight and, therefore, develop little momentum. Wheelbarrows and mopcarts do not present the same degree of risk to roofing employees as do machines such as felt layers and gravelbuggies. Mopcarts and wheelbarrows do not require employees to divide their attention between the equipment they are using and the roof edge, as they would have to do with heavier, more awkward machinery. In addition, excluding mopcarts and wheelbarrows from outside the warning line would require employees to transport hot tar, gravel, and related materials by hand. This could result in increased burn injuries and employee fatigue, both of which may be very hazardous when working near the roof edge.

Public comment is requested as to whether or not mopcarts and wheelbarrows should remain the only exempted pieces of equipment.

11. Paragraph § 1926.501(b)(10) would provide that fall protection not be required during the performance of built-up roofing operations on low-pitched roofs when the fall distance is less than 16 feet. As discussed in the preamble, this exemption was reviewed by various labor and industry groups during a 1980 rulemaking. OSHA believes the 16-foot exemption is not necessary and that a six-foot limit is both more appropriate and more consistent with other Subpart M provisions. Although this would appear to increase the requirements, OSHA believes this provision can be changed without significant impact because another part of the existing and proposed rule states that guardrails, body belts, safety nets, and warning lines are not required on roofs 50 feet or less in width. OSHA believes the 50-foot limit has the same exemptive effect as the 16-foot limit, except safety monitoring would be required in more situations. Public comment on this change should include appropriate cost and injury data.

12. Paragraphs § 1926.501 (b)(7) and (e) set forth alternative systems and procedures for preventing employees from falling into obscured excavations, and from walking into areas where falling object projection is required. Public comment is requested on whether or not signs should be listed as an alternative method of providing the required protection. Whereas the other forms of protection involve either removing the hazard or physically restraining the employee, signs are passive and can be missed if an employee's attention is on other matters. However, signs can provide valuable information about the nature of the hazard present, and can be less costly to erect. Comments should include appropriate cost and injury data.

13. Proposed § 1926.501(b)(1) requires the use of body belts, safety nets, or guardrail systems on surfaces more than six feet above lower levels. During bridge construction, safety nets are commonly selected to provide the required fall protection. Proposed § 1926.502(c)(1) requires only one level of net when bridges are being built, the same as existing rule E § 1926.105(c)(2). Public comment is requested on whether or not a single net provides adequate fall protection for bridge projects where employees working on the upper levels of the bridge could fall and strike bridge structural members before they fall into the safety net. Stated another way, should body belt systems be required on bridge construction, in addition to nets, where the employees do not have an unobstructed fall to the net?

14. OSHA is proposing to require body belt/harness systems to be rigged such that they minimize the amount of free fall with a maximum free fall distance allowed of six feet (1.8 m). In addition, the maximum allowable force produced is limited to 10 g_n or 1,800 pounds (8 kN), whichever is lower. These provisions are consistent with ANSI A10.14–1975 and a National Bureau of Standards report on fall safety equipment (Ex. 8). However, there are several authorities which would further restrict or even prevent the use of body belt/harnesses in fall arrest systems. For example, the draft ISO international standard for personal fall arrest systems sets limits on the arresting force permitted when

using a body belt to five kN (1,125 pounds) (Ex. 9). This draft ISO standard also prohibits the use of a system which would suspend a worker more than 50 degrees from a vertical position after a fall is arrested. OSHA believes that the ISO requirements would effectively eliminate the use of body belts in fall arrest systems.

Another study conducted by Dr. Maurice Amphoux, et al. (Ex. 10), recommends that body belts not be used as fall arrest systems because of injury potential. A British Standard (Ex. 11) limits the use of body belts to a maximum free fall of two feet (.6 m) and a maximum force of five g_n. In addition, a recent review by the U.S. Air Force Aerospace Medical Research Laboratory of pertinent literature on personal fall arrest systems (Ex. 12) concludes that a body belt is not safe for prolonged suspension (especially motionless suspension).

In addition, comments and testimony received on the OSHA Subpart F powered platform proposal (29 CFR 1910.66 [50 FR 2890], January 22, 1985) relative to personal fall arrest systems stated that injuries were sustained by employees who used a body belt during fall arrest, and recommendations to limit the use of, or ban use of, the body belt for personal fall arrest systems were made.

In view of this additional information, OSHA requests that interested parties provide information, comment and supportive data as to the use of a body belt in a fall arrest system. Specifically:

a. Should OSHA restrict the use of body belts as personal fall arrest systems? If so, should limitations be placed on body belt usage?

b. Is the maximum six foot (1.8 m) free fall limitation acceptable for body belts? Should a two foot (.6 m) or other limitation be adopted for body belts instead?

c. Is the proposed 10 g_n or 1,800 pound (8 kN) force limitation for body belts acceptable? Is it acceptable for body harnesses?

d. Is there additional information available which indicates that prolonged suspension in a body belt may be a problem?

e. Is injury data available which shows that employees have been injured by a body belt during fall arrest, or during suspension following fall arrest?

f. If body belts are not allowed in personal fall arrest systems, or if limitations are placed on their use so that body harnesses are more widely used, what are the costs and benefits of using body harnesses, rather than body belts? What is the availability and worker acceptance of body harnesses in industry?

15. OSHA requests comments concerning the best method for stating the maximum force limitation allowed for body belt/harness systems. By using the force generated by a 10 g_n deceleration alone as the limitation, the permitted force value will vary with the weight of the worker. For instance, based on a 10 g_n limitation, a 275 pound (125 kg) worker would be permitted by the standard to experience 2,750 pounds (12.3 kN) of force during an arrest. In view of the human tolerance information discussed above, OSHA believes that this amount of force is unacceptable, and has proposed 1,800 pounds (8 kN) as the maximum force limitation. OSHA requests comments on the following points:

a. Does the proposal provide a reasonable means of taking both deceleration and force into account? Should the limitation be expressed solely as either maximum arrest force (pounds force), or the force generated by a maximum arrest deceleration (i.e., g_n)?

b. Is the 1,800 pound (8 kN) limitation acceptable? If not, what should the limit be? What information is available to support a different limitation for arresting force?

c. The suggested test procedures in Appendix C include a 130 pound (59 kg) test weight for lanyard systems. The National Bureau of Standards' report (Ex. 8) identified the use of lighter test weights as being more important in meeting the 10 g_n limitation for lanyards than for heavier test weights, because lighter test weights do not cause lanyards to be as elastic as do heavier weights. However, if the standard were to impose *only* a force limitation on fall arrest systems, a 130 pound (59 kg) test weight would not reflect the forces to which employees over 130 pounds (59 kg) would be exposed during a fall. OSHA requests data, views, and arguments on whether the 130 pound (59 kg) test weight for lanyard systems is appropriate, or whether the 220 pound (100 kg) test weight, which is used for all other systems, should also be used for lanyards during the force test?

d. Comments and testimony received on the OSHA Subpart F powered platform proposal relative to personal fall arrest systems stated that the test procedures proposed were confusing and overly complicated, and simplified test procedures were recommended. Are the test procedures in this proposal too complex? If the strength of all of the components of a personal fall arrest system are specified, would a single qualification test to measure arresting force be sufficient? What should be the parameters of a single test (such as free fall distance, test weight, arresting force limit)?

16. OSHA has received a number of conflicting views on body belt/harness system snap-hook design. During meetings with the Fall Protection Group of ISEA, several members of that group suggested that single action snap-hooks should no longer be permitted and favored a requirement which would mandate the use of locking snap-hooks. Other members expressed the viewpoint that properly designed and properly applied single action snap-hooks are acceptable, and that their continued use should be allowed. Comments and testimony received on OSHA's Subpart F powered platform proposal relative to personal fall arrest systems recommended the use of locking snap-hooks. OSHA requests suggestions, information, and supporting rationale as to the type of snap-hook which should be permitted. In addition, OSHA requests information pertaining to:

a. The number of snap-hooks (single action versus locking) in use;

b. The increased cost of using locking snap-hooks rather than single action snap-hooks; and

c. Incidents in which either single action or locking snap-hooks have failed in use.

17. Paragraphs §§ 1926.502 (d)(20) and (e)(5) require body belt/harness systems and positioning device systems to be inspected prior to each use for mildew, wear, damage, and other deterioration. Public comment is requested on whether or not more definitive inspection criteria is needed for determining when such systems are no longer suitable for use. If so, what criteria should be specified?

18. Public comment is requested on the following issues relating to the testing procedures set forth in Appendix C: What tests are manufacturers of body belt/harness and positioning device systems using to evaluate their equipment? Are these tests similar to the ones included in this proposal? Are products labeled as meeting a test standard, or the tests proposed by OSHA? What information is currently available to employers regarding testing of existing personal fall protection equipment? Can the proposed test methods be simplified? If so, how? Should qualification testing of personal fall protection systems be mandatory?

19. Both this proposal and Appendix D of OSHA's proposed rulemaking for powered platforms require body belt/harness systems to have certain specified strength characteristics. Non-mandatory test procedures are given (see Appendix C of this subpart) to

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assist employers in complying with the strength requirements. Body belt/harness systems tested by manufacturers in conformance with the guidelines given in the Appendix C would be considered as acceptable systems and components that meet the requirements of § 1926.502(d). Other test procedures which evaluate system strengths would also be acceptable. A commenter on Appendix D has criticized the test methods section as inadequate and suggested that testing be done in accordance with test methods of approved consensus standards for components and subassemblies of systems rather than for a complete system as OSHA has proposed. In addition, this commenter believes that tests should be mandatory. OSHA requests comments and suggestions regarding the need for clarified, mandatory test methods for components and subassemblies of body belt/harness systems and positioning device systems. OSHA would be particularly interested in any information about the existence, or development, of national consensus standards for the design and testing of such systems, components, and subassemblies.

20. A commenter on OSHA's Subpart F powered platform proposal has criticized the mandatory provisions of the powered platform proposal for failing to spell out how equipment components should be connected, and the circumstances in which the components and subsystems of a body belt/harness system would be interchangeable. It has, for example, been suggested that OSHA require body belt/harness equipment manufacturers to label their products indicating when employers could use them interchangeably and with what other equipment. It was also suggested that the components and subsystems, and any combinations thereof that an employer might employ, be tested to meet static and dynamic strength requirements. OSHA solicits comments and suggestions regarding the range of components and subsystems reasonably available to system designers and users, the availability of any nationally or internationally recognized test methods for components and subsystems, and information regarding components and subsystems which are not interchangeable. In addition, OSHA requests public comment on whether or not interchangeability would be useful or feasible.

21. OSHA uses the term "deceleration device" in both this proposal and in OSHA's Subpart F powered platform proposal to describe certain fall arrest components. A Subpart F commenter has suggested that "deceleration device" is not properly descriptive and that OSHA should instead, utilize the terms "fall arrester," "energy absorber" and "self-retracting lifeline/lanyard" to cover the separate components and subsystems involved. OSHA solicits comments as to how adequately the term "deceleration device" encompasses the components and subsystems which are used to control deceleration. OSHA also requests comments regarding the suggestion that "deceleration device" be replaced by more specific terms.

22. Proposed paragraph § 1926.502(d)(10) would require all body belt/harness hardware to "have a corrosion-resistant finish," the same as required by Appendix D of OSHA's Subpart F powered platform standard. A Subpart F commenter has suggested that OSHA quantify the corrosion resistance requirements, referring to the ASTM Salt Spray Testing Standard. OSHA solicits comments and suggestions regarding the utility and feasibility of quantification. Suggestions should be accompanied by supporting information.

23. Paragraph § 1926.502(d)(13) and OSHA's Subpart F powered platform proposal would require certain specified self-retracting lifelines and lanyards to have a minimum tensile strength of 3,000 pounds. A Subpart F commenter has suggested that self-retracting lifelines and lanyards be required to meet this minimum load requirement with the lanyard or lifeline fully extended. It was also suggested that OSHA specify the maximum arresting force to be transmitted by those devices taking into account the kind of "body belt or harness" used. OSHA solicits comments and suggestions regarding the proposed requirements for self-retracting lifelines and lanyards. Please submit supporting information.

24. A commenter on OSHA's Subpart F powered platform proposal has suggested that OSHA require proof-testing of dee-rings and snap-hooks at 100 percent of rated load to ensure that defective equipment is not used. OSHA solicits comments regarding the need for such testing and suggestions for possible implementation. OSHA would be particularly interested in information concerning what testing is currently performed or feasible, the cost of testing, and any accidents involving defects in such equipment.

25. A commenter on OSHA's Subpart F powered platform proposal has suggested that OSHA require that horizontal lifeline subsystems (trolley lines) be designed by "qualified persons" and that the requirements for horizontal lifelines (see paragraph § 1926.502(d)(14) of this proposal) be revised to include more detailed guidance. OSHA solicits comments and suggestions regarding these recommendations. Please submit supporting information.

26. Paragraph § 1926.502(d)(12) would require body belt/harness anchorages to be capable of supporting at least twice the potential impact load of an employee's fall, and paragraphs §§ 1926.502(d) (13) through (16) would require all other components to be capable of supporting at least 5,000 pounds. These provisions are consistent with the provisions set forth in Appendix D of OSHA's Subpart F powered platform proposal, and with rules being developed for other general industry applications. Public comment is requested on the applicability of this approach for the construction industry.

27. Subpart V—Power Transmission and Distribution provides additional criteria for personal climbing equipment, lineman's body belts, safety straps and lanyards. Paragraph § 1926.951(b)(4) requires lanyards and lifelines to meet the requirements of E § 1926.104, Safety belts, lifelines, and lanyards. Public comment is requested on the economic impact, and any other impact, that would result if the reference to paragraph § 1926.104 is changed to § 1926.502(d)—body belt systems, and § 1926.502(e)—positioning device systems.

IV. Preliminary Regulatory Impact Assessment and Regulatory Flexibility Analysis

Introduction and summary. In accordance with Executive Order No. 12291 (46 FR 13193, February 17, 1981) OSHA has analyzed the economic impact of this proposed standard. Under the criteria established in E.O. 12291, OSHA has determined that the promulgation of this proposed standard would be a "minor" action because the expected costs of full compliance with the proposed standard would be approximately $68.469 million less in the first year and $27.482 million less each year thereafter than full compliance with the existing standard.

Affected industries and population at risk. The entire construction industry would be affected by the proposed changes to the existing Subpart M. In terms of the two-digit Standard Industrial Classification (SIC) codes, OSHA has determined that the proposal could potentially affect all firms in SICs 15, Building Construction—General Contractors and Operative Builders; SIC 16, Construction Other Than Building

Construction—General Contractors; and SIC 17, Construction—Special Trades Contractors. The majority of business firms classified under SIC 17 are subcontractors to the general contractors classified under SICs 15 and 16. Rather than classifying these sectors by their two-digit SIC designations, OSHA has used the type of finished construction product as the basis for classifying the construction industry into the following four general sectors:

1. Single-family housing,
2. Residential, except single family housing (e.g., hotels, apartments),
3. Nonresidential (e.g., commercial and institutional buildings), and,
4. Heavy Construction (e.g., bridges, utilities). In 1977, there were approximately 456,000 individual contractors affected by Subpart M.

OSHA has estimated that all of the approximately 4 million construction workers are exposed to fall hazards. Although it is quite likely that employee exposure to fall hazards would differ among the various construction trades, no data were available to quantify these differences.

Significance of risk. OSHA has estimated that the percentage of all occupational injuries that are injuries in construction due to falls from elevations is between 0.35 percent and 0.69 percent, with a mean of 0.52 percent. Applying this range to the 5,956,000 occupational injuries reported in the 1979 Occupational Injuries and Illnesses report (Ex. 6), OSHA estimated that the number of injuries in construction due to falls from elevations was between 20,845 and 41,095 with a mean of 30,970. Of these injuries, between 9,465 and 18,655, were lost workday injuries and between 11,380 and 22,440 with a mean of 16,910 were non-lost workday injuries. OSHA also estimated that the number of lost workdays in construction due to falls from elevations would be between 170,370 and 335,790, with a mean of 253,080.

In addition, OSHA determined that there would be between 45 and 60 yearly fatalities in construction associated with falls from elevations.

Consequently, OSHA concluded that the construction injuries and fatalities due to falls from elevations are significant and merit effort to reduce their numbers.

Feasibility, benefits, and cost. OSHA has determined that the proposed revision of Subpart M would be technologically feasible because it would permit the use of readily available technology and equipment.

Benefits from the proposal would accrue to all construction workers. OSHA has also determined that full compliance with the proposed standard would prevent from 37 to 50 fatalities, from 17,300 to 34,110 injuries (from 7,855 to 15,485 of which would have been lost workday injuries and 9,445 to 18,625 would have been non-lost workday injuries), and from 141,390 to 278,730 lost workdays. OSHA has also determined that full compliance with the existing standard would prevent from 33 to 44 fatalities, from 14,385 to 28,355 injuries, (from 6,530 to 12,870 of which would have been lost workday injuries and from 7,855 to 15,485 would have been non-lost workday injuries), and from 117,540 to 231,660 lost workdays. Under conditions of full compliance, therefore, the proposed standard would prevent from 4 to 6 more fatalities, from 2,915 to 5,755 more injuries (from 1,325 to 2,615 lost workday injuries and from 1,590 to 3,140 non-lost workday injuries), and from 23,850 to 47,070 fewer lost workdays than would be prevented by the existing Subpart M.

OSHA does not endorse any particular estimate for the value of an employee's life. For illustrative purposes, however, OSHA used two methods to estimate the monetizable value of the benefits that would be a result of the implementation of the proposed standard. The first method, known as the "human capital" approach, directly estimates the foregone earnings and medical costs associated with an occupational injury or death. Lost production and medical costs to society, however, are the minimum benefits resulting from the prevention of an occupational injury. The other method of estimating benefits is based on the willingness-to-pay concept. Willingness-to-pay is the theoretical amount that the beneficiaries of a program would be willing to pay in order to obtain the benefits of the program or, in an occupational safety context, what a group of workers would pay to reduce the probability of a death or injury. Willingness-to-pay is therefore a more accurate indicator of the true social benefits of preventing injuries to workers.

Using the "human capital" approach, OSHA determined that the annual monetizable benefits would be from $13.956 million to $26.598 million greater from full compliance with the proposed standard than from full compliance with the existing standard. In present value terms (using a 10 percent discount rate), these potential increases in monetizable benefits would be between $100.204 million and $190.974 million over a 10-year period.

On the basis of the willingness-to-pay concept, OSHA determined that the annual monetizable benefits would be from $54.258 million to $100.455 million (using $3.5 million as the value for a prevented fatality) greater from full compliance with the proposed standard than from full compliance with the existing standard. In present value terms, these potential increases in monetizable benefits would be between $390 million and $721 million over a 10-year period.

Using the baseline of existing industry practice, OSHA estimated the costs of full compliance with the proposed standard to be $76.310 million in the first year and the annualized costs to be $65.777 million. The present value of these costs over the next 10 years would be $508.445 million. OSHA also estimated that the costs of full compliance with the existing standard to be $144.979 million in the first year and the annualized costs to be $93.259 million. The present value of these costs over the next 10 years would be $711.566 million.

Thus, OSHA determined that the net first-year cost savings in going from full compliance with the existing Subpart M to the revised Subpart M would be $68.679 million. The annual cost savings thereafter would be $27.472 million. The present value of these annual cost savings over the next 10 years would be $203.115 million.

Consequently, OSHA concluded that full compliance with the proposed Subpart M would provide a safer environment at a lesser cost to the industry than would full compliance with the existing Subpart M and that the proposal is therefore the more cost-effective method of assuring the safety of employees working near fall hazards.

Cost of compliance for all other proposed OSHA construction safety standards. OSHA considered the economic impact on the construction industry of this proposed revision and of the seven other construction standards that have been recently revised and promulgated or that are in the proposed or final rulemaking stage. Using the baseline of current industry practice, OSHA estimated that the annual total costs of these standards would be about $3.4 million for Underground Construction (Subpart S), $5.8 million for Crane- or Derrick-Suspended Personnel Platforms (Subpart N), $28.7 million for Concrete and Masonry Construction (Subpart Q), $12.5 million for Ladders and Stairways (Subpart X), $48.0 million for Electrical Construction (Subpart K), and $7.6 million for Scaffolds (Subpart L), and no costs for Trenching (Subpart P). Using the baseline of full compliance with the existing standards, OSHA estimated that the incremental costs of

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these standards would be about $2.7 million for Underground Construction, $2.2 million for Crane or Derrick Suspended Personnel Platforms, $17.5 million for Concrete and Masonry Construction, and $8.4 million for Ladders and Stairways. In addition, a cost savings of $30.6 million for Electrical Construction, $7.6 million for Scaffolds, and between $11.7 million and $42.8 million for Trenching is expected for those revisions. Thus, the net impact of these proposed actions in addition to this action would be increased annualized costs of $171.8 million when using a baseline of current industry practice and an annual cost savings between $46.6 million and $77.7 million when using a baseline of full compliance with the existing standards.

Regulatory flexibility certification. Pursuant to the Regulatory Flexibility Act (Pub. L. 96–353, 94 Stat. 1164 (5 U.S.C. 60 et seq.)), the Assistant Secretary has made a preliminary assessment of the impact of the proposed standard and has concluded that it would not have a significant impact upon a substantial number of small entities. OSHA invites public comment concerning this preliminary conclusion.

The important criterion that governs a Regulatory Flexibility Analysis is whether the proposed standard would impose significant costs upon small entities. "Significance" is determined by the effect upon profits, market share, and the entity's financial viability. In particular, the proposed standard's effect upon small entities relative to its effect upon large entities needs to be specifically evaluated. That is, OSHA must determine whether the proposal would have a relatively greater negative effect upon small entities than upon large entities, thereby putting small entities at a competitive disadvantage, and if so, whether there are ways to minimize any differentially adverse effects without increasing worker risk.

If the costs of compliance for small firms are relatively minor and are proportional to the size of the firm, then there is no significant differential effect. In those cases involving large absolute costs, small firms may have greater difficulty in obtaining financing, and in those cases involving economies of scale in compliance, the burden on small firms will be greater than the burden on large firms. The proposed changes to Subpart M, however, require minimal capital expenditures and provide net cost savings to employers in comparison with the costs of compliance under the current standard. Furthermore, as its provisions are more performance oriented than specification oriented, small entities can use the most cost-effective methods of employee protection best suited to their particular work situations. In addition, these costs would be a minimal component of the overall costs of the structures being built. As a result, small entities would not be put at a competitive disadvantage due to these compliance costs.

Thus, OSHA has concluded that this proposed standard would not have a significant adverse impact upon a substantial number of small entities.

The assessment is available for inspection and copying at the OSHA Technical Data Center, Room N–3670, 200 Constitution Avenue, NW., Washington, DC 20210. OSHA invites comments concerning the conclusions reached in the Regulatory Assessment.

V. Environmental Assessment

Finding of no significant impact. This proposed rule and its major alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.), the Guidelines of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and OSHA's DOL NEPA Procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the proposed rule will have no significant environmental impact.

The proposed revisions to 29 CFR 1926.500–1926.502, Subpart M—Fall Protection, focus on the reduction of accidents or injuries by means of work practices and procedures, proper use and handling of equipment, and training, as well as on changes in language, definition, and format of the standard. These revisions do not impact on air, water, or soil quality, plant or animal life, the use of land, or other aspects of the environment. As such, these revisions are therefore categorized as excluded actions according to Subpart B, section 11.10, of the DOL NEPA regulations.

VI. References

1. Advisory Committee on Construction Safety and Health, *Transcripts of meetings held on November 29–30, 1977; January 10, 1978; February 14, 1978; December 5, 1978; December 16, 1978; June 29–30, 1982.*

2. U.S. Department of Labor, Occupational Safety and Health Administration, *Preliminary Regulatory Impact and Regulatory Flexibility Assessment of Subpart M—Fall Protection*, Office of Regulatory Analysis, Washington, DC, March 1984.

3. U.S. Department of Labor, Occupational Safety and Health Administration, *Occupational Fatalities Related to Roofs, Ceilings, and Floors as Found in Reports of OSHA Fatality/Catastrophe Investigations*, November 1979.

4. American National Standard ANSI A10.11–1979, *American National Standard for Safety Nets Used During Construction, Repair, and Demolition Operations*, American National Standards Institute, New York.

5. American National Standard, ANSI A10.14–1975, *Requirements for Safety Belts, Harnesses, Lanyards, Lifelines, and Droplines for Construction and Industrial Use*, American National Standards Institute, New York.

6. U.S. Department of Labor, Bureau of Labor Statistics, *Occupational Injuries and Illnesses in 1979: Summary*, Washington, DC, April 1981.

7. Andrew C. Sulowski, "Selecting Fall Arresting Systems," *National Safety News*, October 1979.

8. National Bureau of Standards (NBS), NBSIR 76–1146 *A Study of Personal Fall-Safety Equipment*, Washington, DC: NBS, June 1977.

9. International Standards Organization (ISO), Secretariat Association Francaise de Normalisation (AFNOR). *Personal Fall Arresting Systems and Components*, (ISO/TC 94/SC4 N50E). New York, NY: ANSI, 1983.

10. Noel, Georges; Amphoux, M., et al. *Safety Equipment in Construction and Public Works Transportation*, (No. 362) Technical Institute for Construction and Public Works. Montreuil, France: 1978.

11. British Standards Institution (BSI). *Specification for Industrial Safety Belts, Harnesses and Safety Lanyards*, (BS 1397), London, England: BSI, 1979.

12. Hearon, Bernard F. and Brinkley, James W., *Fall Arrest and Post-Fall Suspension: Literature Review and Directions for Further Research*, (AFAMRL–TR–84–021), Air Force Aerospace Medical Research Laboratory, Wright-Patterson AFB, Dayton, OH: 1984.

13. Written comments on OSHA's Proposed Rule on Powered Platforms for Exterior Building Maintenance (50 FR 2890, January 22, 1985), Docket No. S–700A.

14. Yancey, Carino and Sansalone, *Perimeter Safety Net Projection Requirements*, Center for Building Technology, National Bureau of Standards, Washington, DC, May 1986 (NBSIR 85–3271).

VII. Recordkeeping

This proposal contains no recordkeeping requirements. However, public comment is requested in the Specific Issues section of this preamble on whether the proposed training requirements impose an implicit recordkeeping requirement on employers.

VIII. Public Participation

Interested persons are invited to submit written data, views, and arguments with respect to this proposal. The comments must be postmarked by February 23, 1987, and submitted in quadruplicate to the Docket Officer, Docket No. S–206, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3670, 200 Constitution Avenue, NW., Washington, DC 20210.

The data, views, and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions received will be made a part of the record of this proceeding.

Additionally, under section 6(b)(3) of the OSH Act (29 U.S.C. 657), section 107 of the Construction Safety Act (41 U.S.C. 333), and 29 CFR 1911.11, interested parties may file objections to the proposal and request an informal hearing. The objections and hearing requests should be submitted in quadruplicate to the Docket Officer at the address above and must comply with the following conditions:

1. The objections must include the name and address of the objector;
2. The objections must be postmarked by February 23, 1987;
3. The objections must specify with particularity the provisions of the proposed rule to which each objection is taken and must state the grounds therefore;
4. Each objection must be separately stated and numbered; and
5. The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

IX. State Plan Standards

The 25 States and territories with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within six months of the publication date of the final rule. These States and territories are: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, New York (for State and local government employees only), Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, Wyoming. Until such time as a comparable standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in these States and territories.

X. List of Index Terms

List of Subjects in 29 CFR Part 1926

Construction industry, Construction safety, Excavations, Hoisting safety, Occupational safety and health, Protective equipment, Safety, Tools.

Authority:

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6(b) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333), Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR Part 1911, it is proposed to amend 29 CFR Part 1926 as set forth below.

Signed at Washington, DC this 17th day of November 1986.

John A. Pendergrass,

Assistant Secretary of Labor.

PART 1926—[AMENDED]

Subpart E—[Amended]

1. The authority citation for Subpart E of Part 1926 would continue to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

§§ 1926.104, 1926.105 and 1926.107 [Amended]

2. Sections 1926.104, 1926.105, and paragraphs (b), (c), and (f) of § 1926.107 would be removed and reserved.

Subpart H—[Amended]

3. The authority citation for Subpart H of Part 1926 would be revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable. Section 1926.250 also issued under 29 CFR Part 1911.

4. Paragraph (b)(2) of § 1926.250 would be revised to read as follows:

§ 1926.250 General requirements for storage.

* * * * *

(b) * * *

(2) Employees required to work on stored material in silos, hoppers, tanks, and similar storage areas shall be equipped with lifelines and safety belts meeting the requirements of Subpart M of this part.

* * * * *

Subpart P—[Amended]

5. The authority citation for Subpart P of Part 1926 would continue to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable. Section 1926.651 also issued under 29 CFR Part 1911.

6. Paragraph (t) of § 1926.651 would be removed and reserved, and paragraph (w) of § 1926.651 would be revised to read as follows:

§ 1926.651 Specific excavation requirements.

* * * * *

(t) *[Reserved]*

* * * * *

(w) Where employees or equipment are required or permitted to cross over excavations, walkways or bridges shall be provided.

* * * * *

Subpart Q—[Amended]

7. The authority citation for Subpart Q of Part 1926 would continue to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

§ 1926.700 [Amended]

8. Paragraph (b)(1) of § 1926.700 would be removed and reserved.

Subpart V—[Amended]

9. The authority citation for Subpart V of Part 1926 would be revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8,

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Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736), as applicable. Section 1926.951 also issued under 29 CFR Part 1911.

10. Paragraph (b)(4)(i) of § 1926.951 would be revised to read as follows:

§ 1926.951 Tools and protective equipment.

* * * * *

(b) * * *

(4)(i) Lifelines and lanyards shall comply with the provisions of § 1926.502.

* * * * *

11. Subpart M of Part 1926 would be revised to read as follows:

Subpart M—Fall Protection

§ 1926.500 Scope, application, and definitions applicable to this subpart.
§ 1926.501 Requirements to have fall protection.
§ 1926.502 Fall protection systems criteria and practices.
§ 1926.503 Training requirements.
Appendix A to Subpart M—Guardrail Systems
Appendix B to Subpart M—Roof Widths
Appendix C to Subpart M—Test Procedures for Evaluating Belt/Harness Systems and Positioning Device Systems

Subpart M—Fall Protection

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 9-83 (48 FR 35736); and 29 CFR Part 1911.

§ 1926.500 Scope, application and definitions applicable to this subpart.

(a) *Scope and application.* (1) This subpart sets forth requirements to have fall protection for employees in construction, alteration, repair (including painting and decorating), and demolition workplaces covered under 29 CFR Part 1926. However, the provisions of this subpart do not apply when employees are only inspecting, investigating, or assessing workplace conditions.

(2) Section 1926.501 sets forth those workplaces, conditions, operations, and circumstances for which fall protection shall be provided except as follows:

(i) Requirements relating to fall protection for employees working on scaffolds are provided in 29 CFR 1926.451–1926.460 (Subpart L).

(ii) Requirements relating to fall protection for employees working on cranes, derricks, hoists, elevators, and conveyors are provided in 29 CFR 1926.550–1926.556 (Subpart N).

(iii) Requirements relating to fall protection for employees on pile driving equipment are provided in 29 CFR 1926.603 (Subpart O).

(iv) Requirements relating to fall protection for connectors performing steel erection and requirements for fall protection for workers on derrick and erection floors during steel erection, are provided in 29 CFR 1926.750–1926.752 (Subpart R).

(v) Requirements relating to fall protection for employees engaged in tunneling operations are provided in 29 CFR 1926.800–1926.804 (Subpart S).

(vi) Requirements relating to fall protection for employees engaged in power transmission and distribution are provided in 29 CFR 1926.950–1926.960 (Subpart V).

(vii) Requirements relating to fall protection for employees working on stairways and ladders are provided in 29 CFR 1926.1050–1926.1060 (Subpart X).

(3) Section 1926.502 sets forth the requirements for the installation, construction, and use of fall protection required by § 1926.501 and by other subparts of Part 1926, except as follows:

(i) Performance requirements for guardrail systems used on scaffolds and performance requirements for falling object protection used on scaffolds are provided in 29 CFR 1926.451–1926.460 (Subpart L).

(ii) Performance requirements for stairways, stairrail systems, and handrails are provided in 29 CFR 1926.1050–1926.1060 (Subpart X).

(iii) Specific requirements for safety railings used on derrick and erection floor during steel erection are provided in 29 CFR 1926.750 (Subpart R).

(iv) Additional performance requirements for personal climbing equipment, lineman's body belts, safety straps, and lanyards are provided in 29 CFR 1926.950–1926.960 (Subpart V).

(4) Section 1926.503 sets forth requirements for training in the installation and use of fall protection.

(b) *Definitions.* "Body belt (safety belt)" means a strap with means both for securing about the waist and for attaching to a lanyard, lifeline, or deceleration device.

"Body belt/harness system (personal fall arrest system)" means a combination of body belt or body harness, and lanyard, deceleration device, lifeline, and point of anchorage.

"Body harness" means a design of straps which is secured about the employee in a manner to distribute the arresting forces over at least the thighs, shoulders, and pelvis, with provisions for attaching a lanyard, lifeline, or deceleration device.

"Built-up roofing" means a weatherproofing cover, applied over roof decks, consisting of a liquid-applied system, a single-ply system, or a multiple-ply system. Liquid-applied systems generally consist of silicone rubber, plastics, or similar material applied by spray or roller equipment. Single-ply systems generally consist of a single layer of synthetic rubber, plastic, or similar material, and often, but not always, a layer of adhesive. Multiple-ply systems generally consist of layers of felt and bitumen. Any of the systems may be covered with a layer of mineral aggregate.

"Built-up roofing work" means the hoisting, storage, application, and removal of built-up roofing materials and equipment, including related insulation, sheet metal, and vapor barrier work, but not including the construction of the roof deck.

"Control zone" means an area designated and clearly marked in which overhand bricklaying, overhand bricklaying related work, and leading edge work may take place without the use of guardrail, body belt, or safety net systems to protect the employees in the area.

"Dangerous equipment" means equipment such as pickling or galvanizing tanks, degreasing units, machinery, electrical equipment, and other units which, as a result of form or function, may be hazardous to employees who fall onto or into such equipment.

"Deceleration device" means any mechanism, such as a rope grap, rip-stitch lanyard, specially-woven lanyard, and automatic self-retracting lifeline, which serves to dissipate more energy during a fall arrest than does a standard line or strap webbing lanyard.

"Deceleration distance" means the additional vertical distance a falling employee travels, excluding lifeline elongation, before stopping, from the point at which the deceleration device begins to operate. It is measured as the distance between the location of an employee's body belt or body harness attachment point just prior to activation of the deceleration device during a fall, and the location of that attachment point after the employee comes to a full stop, excluding lifeline elongation between those two points.

"Equivalent" means alternative designs, materials, or methods which the employer can demonstrate will provide an equal or greater degree of safety for employees than the method or item specified in the standard.

"Failure" means load refusal, breakage, or separation of component parts. Load refusal is the point where the ultimate strength is exceeded.

"Force factor" means the ratio of the arresting force on a rigid metal object to the arresting force on a human body having the same weight as the object; both falling under identical conditions.

"Free fall distance" means the vertical distance an employee falls before the body belt/harness system begins to arrest the fall. It is measured as the distance between the locations of an employee's body belt or harness attachment points before and after the fall, excluding lanyard and lifeline elongation and deceleration distance.

"Guardrail system" means a vertical barrier erected to prevent employees from falling to lower levels.

"Hole" means any hole or other opening, more than two inches (5.1 cm) in its least dimension, in a floor, roof, or other walking/working surface.

"Lanyard" means a flexible line or strap webbing which is used to secure a body belt or body harness to a lifeline or directly to a point of anchorage.

"Leading edge" means the edge of a floor, roof, or formwork which changes location as additional floor, roof, or formwork sections are placed, formed, or constructed. Leading edges not actively under construction are considered to be "unprotected sides and edges."

"Lifeline (drop lines, trolley lines)" means a line provided for direct attachment to a worker's body belt, body harness, lanyard, or deceleration device. Such lifeline may be horizontal or vertical in application.

"Lower levels" means those areas to which an employee can fall. Such areas include ground levels, floors, ramps, runways, excavations, pits, tanks, material, water, equipment, and similar surfaces.

"Low-pitched roof" means a roof having a slope less than or equal to four in 12.

"Mechanical equipment" means all motor or human propelled wheeled equipment used for built-up roofing work, except wheelbarrows and mopcarts.

"Opening" means any opening 30 inches (76 cm) or more high and 18 inches (46 cm) or more wide, in a wall or partition, through which employees can fall to a lower level.

"Overhand bricklaying and related work" means the process of laying bricks and masonry units such that the surface of the wall to be jointed is on the opposite side of the wall from the mason, requiring the mason to lean over the wall to complete the work. Related work includes mason tending and electrical installation incorporated into the brick wall during the overhand bricklaying process.

"Positioning device system" means a body belt or body harness system rigged to allow an employee to be supported on an elevated vertical surface, such as a wall, and work with both hands free while leaning backwards.

"Roof" means the exterior surface on the top of a building. This does not include floors or formwork which, because a building has not been completed, temporarily become the top surface of a building.

"Safety-monitoring system" means a safety system in which a competent person is responsible for recognizing and warning employees of fall hazards.

"Steep roof" means a roof having a slope greater than four in 12.

"Toeboard" means a low protective barrier to prevent the fall of materials and equipment to lower levels.

"Unprotected sides and edges" means any side or edge (except at entrances to points of access) of a floor, roof, ramp, or runway where there is no wall or guardrail system at least 39 inches (1.0 m) high.

"Walking/working surface" means any surface, including formwork and concrete reinforcing steel but not including ladders, vehicles, or trailers, on which employees must be in order to perform their job duties.

"Warning line system" means a barrier erected on a roof to warn employees that they are approaching an unprotected roof side or edge, and which designates an area in which built-up roofing work may take place without the use of guardrail, body belt, or safety net systems to protect employees in the area.

"Work area" means that portion of a walking/working surface where job duties are being performed.

§ 1926.501 Requirements to have fall protection.

(a) *General.* This paragraph sets forth the type of fall protection system required for specific areas and operations. All fall protection required by this section shall conform to the criteria set forth in § 1926.502 of this subpart.

(b) *Floors, low-pitched roofs, and other walking/working surfaces.* Employees on floors, low-pitched roofs, and other walking/working surfaces shall be protected from fall hazards as follows:

(1) *Unprotected sides and edges.* Except as provided in paragraph (b)(2) through (b)(10) below, employees on floors, low-pitched roofs, and other walking/working surfaces with unprotected sides and edges six feet (1.8 m) or more above lower levels, shall be protected as follows:

(i) By the use of guardrail systems when the floor, roof, or other walking/working surface is 18 inches (.5 m) or more in width;

(ii) By the use of guardrail systems, body belt/harness systems, or safety net systems when the floor, roof, or other walking/working surface is less than 18 inches (.5 m) in width.

(2) *Leading edges.* (i) Employees constructing leading edges six feet (1.8 m) or more above lower levels shall be protected by guardrail systems, body belt/harness systems, safety net systems, or safety monitoring systems;

(ii) Employees on floors, low-pitched roofs, and other walking surfaces where leading edges are under construction six feet (1.8 m) or more above lower levels, but who are not constructing the leading edge, shall be protected by guardrail systems or control zone systems along the leading edge.

(3) *Hoist areas.* (i) Employees in hoist areas six feet (1.8 m) or more above lower levels shall be protected by guardrail systems or body belt/harness systems.

(ii) *Exception:* During hoisting operations, employees leaning through the access opening or out over the edge shall be protected by the use of body belt/harness systems.

(4) *Holes.* Employees on floors, low-pitched roofs, and other walking/working surfaces with holes more than six feet (1.8 m) above lower levels shall be protected by covers or guardrail systems.

(i) When covers are used for protection, they shall be closed when the hole is not in use.

(ii) When the cover is open, employees shall be protected by guardrail systems.

(5) *Formwork and reinforcing steel.* Employees on the face of formwork or reinforcing steel six feet (1.8 m) or more above lower levels shall be protected by body belt/harness systems, safety net systems, or positioning device systems.

(6) *Ramps, walkways, bridges, and runways.* Employees on ramps, walkways, bridges, and runways six feet (1.8 m) or more above lower levels shall be protected by guardrail systems.

(7) *Excavations.* (i) Employees at the edges of excavations six feet (1.8 m) or more in depth shall be protected by guardrail systems, fences, signs, or barricades, when the excavations are not readily seen because of plant growth or other visual barrier;

(ii) Employees at the edge of wells, pits, shafts, and similar excavations six feet (1.8 m) or more in depth shall be

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protected by guardrail systems, fences, barricades, or covers.

(8) *Dangerous equipment.* (i) Employees less than six feet (1.8 m) above dangerous equipment shall be protected by guardrail systems or equipment guards.

(ii) Employees six feet (1.8 m) or more above dangerous equipment shall be protected by guardrail systems, body belt/harness systems, or safety net systems.

(9) *Overhand bricklaying and related work.* (i) Except as provided in paragraph (b)(9)(ii) of this section and paragraphs (b) (3), (4), (6), and (8) of this section, employees performing overhand bricklaying and related work six feet (1.8 m) or more above lower levels shall be protected by guardrail systems, body belt/harness systems, safety net systems, or control zone systems.

(ii) Employees reaching more than 10 inches (25 cm) below the level of the walking/working surface they are working on, shall be protected by a guardrail system, body belt/harness system, or safety net system.

(10) *Built-up roofing operations on low-pitched roofs.* Except as provided in paragraphs (b) (3), (4), (6), and (8) of this section, employees performing built-up roofing operations on low-pitched roofs with unprotected sides and edges 16 feet (4.9 m) or more above lower levels shall be protected by guardrail systems, body belt/harness systems, safety net systems, safety monitoring systems, or a combination of warning line system and guardrail, body belt/harness, safety net, or safety monitoring system, or, on roofs 50 feet (15.25 m) or less in width (see Appendix B), by the use of a safety monitoring system.

Note.—Except as provided in paragraphs (b) (3), (4), (6), and (8) of this section, fall protection is not required for employees performing built-up roofing operations on low-pitched roofs with unprotected sides and edges less than 16 feet (4.9 m) above lower levels.

(c) *Steep roofs.* Employees on steep roofs with unprotected sides and edges or holes six feet (1.8 m) or more above lower levels shall be protected from fall hazards by guardrail systems, body belt/harness systems, safety net systems, or covers.

(d) *Wall openings.* Employees working on, at, or near wall openings (including those with chutes attached) where the outside bottom edge of the wall opening is more than six feet (1.8 m) above lower levels and the inside bottom edge of the wall opening is less than 39 inches (1.0 m) above the walking/working surface, shall be protected from falling through or into the wall opening by the use of a guardrail system.

(e) *Protection from falling objects.* In addition to wearing hardhats, employees shall be protected from falling objects by toeboards, screens, or guardrail systems erected to prevent objects from falling from higher levels, or they shall be protected by a canopy structure erected to deflect falling objects, or the area to which objects could fall shall be marked with signs or barricaded and employees prohibited from entering the area, or the potential fall objects shall be placed away from the edge a distance sufficient to prevent them from going over the edge should they be accidentally displaced.

§ 1926.502 Fall protection systems criteria and practices.

(a) *General.* (1) Fall protection systems required by this part shall comply with the applicable provisions of this section.

(2) All fall protection shall be provided, installed, and used before employees begin any other work on or from the surface or area where fall protection is required.

(b) *Guardrail systems.* Guardrail systems and their use shall comply with the following provisions:

(1) Top edge height of toprails, or equivalent guardrail system members, shall be 42 inches (1.1 m) plus or minus three inches (8 cm) above the walking/working level.

(2) Midrails, screens, mesh, intermediate vertical members, or equivalent intermediate structural members, shall be installed between the top edge of the guardrail system and the walking/working surface when there is no wall or parapet wall at least 21 inches (53 cm) high.

(i) Midrails, when used, shall be installed at a height midway between the top edge of the guardrail system and the walking/working level.

(ii) Screens and mesh, when used, shall extend from the top rail to the walking/working level and along the entire opening between toprail supports.

(iii) Intermediate members (such as balusters), when used between posts, shall be not more than 19 inches (48 cm) apart.

(iv) Other structural members shall be installed such that there are no openings in the guardrail system that are more than 19 inches (.5 m) wide.

(3) Guardrail systems shall be capable of withstanding, without failure, a force of at least 200 pounds (890 N) applied within two inches (5.1 cm) of the top edge, in any outward or downward direction, at any point along the top edge.

Note.—Guardrail system components selected and constructed in accordance with Appendix A of this Subpart will be deemed to meet this requirement.

(4) When the 200 pound (890 N) test load specified in paragraph (b)(3) of this section is applied in a downward direction, the top edge of the guardrail shall not deflect to a height less than 39 inches (1.0 m) above the walking/working level.

Note.—Guardrail system components selected and constructed in accordance with Appendix A of this Subpart will be deemed to meet this requirement.

(5) Midrails, screens, mesh, intermediate vertical members, solid panels, and equivalent intermediate structural members shall be capable of withstanding, without failure, a force of at least 150 pounds (668 N) applied in any downward or outward direction at any point along the midrail or other member.

Note.—Guardrail system components selected and constructed in accordance with Appendix A of this Subpart will be deemed to meet this requirement.

(6) Guardrail systems shall be so surfaced as to prevent injury to an employee from punctures or lacerations, and to prevent snagging of clothing which could cause an employee to fall.

(7) The ends of all top rails and midrails shall not overhang the terminal posts except where such overhang does not constitute a projection hazard.

(8) Steel banding and plastic banding shall not be used as toprails or midrails.

(9) Toprails and midrails shall be at least one-quarter inch (0.6 cm) nominal diameter or thickness.

(10) When guardrail systems are used at hoisting areas during the performance of built-up roofing operations on low-pitched roofs, a minimum of four feet (1.2 m) of guardrail system shall be erected on each side of the access point through which materials are hoisted. When guardrail systems are used at pipe outlets, a minimum of four feet (1.2 m) of guardrail system shall be erected on each side of the pipe.

(11) When guardrail systems are used at hoisting areas, a chain, gate or removable guardrail section shall be placed across the access opening between guardrail sections when hoisting operations are not taking place.

(12) When guardrail systems are used at holes, they shall be erected on all unprotected sides or edges of the hole.

(13) When guardrail systems are used around holes used for the passage of materials, the hole shall have not more than two sides provided with removable guardrail sections to allow the passage

of materials. When the hole is not in use, it shall be closed over with a cover, or a guardrail system shall be provided along all unprotected sides or edges.

(14) When guardrail systems are used around holes which are used as points of access (such as ladderways), they shall be provided with a gate or be so offset that a person cannot walk directly into the hole.

(15) Guardrail systems on ramps and runways shall be erected along each unprotected side or edge; however, when operating conditions preclude installation of a guardrail system along both sides, the guardrail system may be omitted along one side provided a ramp or runway at least 18 inches (.5 m) wide is used.

(c) *Safety net systems.* Safety net systems and their use shall comply with the following provisions:

(1) Safety nets shall be installed as close as practicable under the walking/working surface on which employees are working, but in no case more than 25 feet (7.7 m) below such level. *Exception:* The 25-foot (7.7 m) limitation does not apply to nets used on bridge construction where safety nets are used for fall protection. In such cases, only one level of nets is required.

(2) Safety nets shall extend outward at least 15 feet (4.6 m) from the outermost projection of the work surface.

(3) Safety nets shall be installed with sufficient clearance under them to prevent contact with the surface or structures below when subjected to an impact force equal to the drop test specified in paragraph (c)(4) of this section.

(4) Safety nets and their installations shall be capable of absorbing an impact force equal to that produced by the drop test specified in paragraph (c)(4)(i) of this section.

(i) Safety nets and safety net installations shall be drop-tested at the jobsite before being used as a fall protection system. The drop-test shall consist of a 400 pound (180 kg) bag of sand 30±2 inches (76±5 cm) in diameter dropped into the net from the highest walking/working surface on which employees are to be protected.

(ii) *Exception:* When the employer can demonstrate that a drop-test is not feasible or practicable, the net and net installation shall be certified by a qualified person to be in compliance with the provisions of paragraphs (c)(3) and (c)(4)(i) of this section.

(5) Safety nets shall be inspected weekly for mildew, wear, damage, and other deterioration, and defective components shall be removed from service.

(6) Materials, scrap pieces, and tools which have fallen into the safety net shall be removed as soon as possible from the net and at least before the next work shift.

(7) The maximum size of each safety net mesh opening shall not exceed 36 square inches (230 cm^2) nor be longer than six inches (15 cm) on any side measured center-to-center of mesh ropes or webbing. All mesh crossings shall be secured to prevent enlargement of the mesh opening.

(8) Each safety net (or section of it) shall have a border rope for webbing with a minimum breaking strength of 5,000 pounds (22.2 kN).

(9) Connections between safety net panels shall be as strong as integral net components and shall be spaced not more than six inches (15 cm) apart.

(d) *Body belt/harness systems.* Body belt/harness systems and their use shall comply with the provisions set forth below. Body belt/harness systems which comply with the provisions of Appendix C will be deemed to meet the requirements of paragraphs (d) (5), (6), and (16) of this section, provided that when a rigid test weight is used to evaluate the criteria in Appendix C, a force factor of 1.4 is used.

(1) Body belt/harness systems and components shall be used only for employee fall protection.

(2) Body belt/harness systems or components subjected to impact loading shall be immediately removed from service and shall not be used again for employee protection unless inspected and determined by a competent person to be undamaged and suitable for reuse.

(3) Lifelines shall be protected against being cut or abraded.

(4) Body belt/harness systems shall be rigged to minimize free fall distance with a maximum free fall distance allowed of six feet (1.8 m), and such that the employee will not contact any lower level.

(5) Body belt/harness systems shall decelerate and bring the employee to a complete stop within 42 inches (1.1 m), excluding lifeline elongation, after any free fall distance.

(6) Body belt/harness systems, when stopping or preventing a fall, shall not produce an arresting force on an employee of more than 10 times the employee's weight (10 gn) or 1,800 pounds (8 kN), whichever is lower.

(7) Body belts shall be worn with the lanyard or deceleration device attachment point positioned at one of the following locations: on the belt anywhere between the sides of the body on the back portion of the belt when body belts are worn; and above the waist in the back, or above the wearer's head, when body harnesses are worn.

(8) Body belts shall be at least one and five-eighths (1⅝) inches (4.1 cm) wide.

(9) Hardware shall be drop forged, pressed or formed steel, or made of materials equivalent in strength.

(10) Hardware shall have a corrosion-resistant finish, and all surfaces and edges shall be smooth to prevent damage to the attached belt or lanyard.

(11) When vertical lifelines (droplines) are used, not more than one employee shall be attached to any one lifeline.

(12) Body belt/harness systems shall be secured to anchorages capable of supporting at least twice the potential impact load of an employee's fall.

(13) Vertical lifelines (droplines) shall have a minimum tensile strength of 5,000 pounds (22.2 kN), except that self-retracting lifelines and lanyards which automatically limit free fall distance to two feet (.61 m) or less shall have a minimum tensile strength of 3,000 pounds (13.3 kN).

(14) Horizontal lifelines (trolley lines) shall have a tensile strength capable of supporting a fall impact load of at least 5,000 pounds (22.2 kN) per employee using the lifeline, applied anywhere along the lifeline.

(15) Lanyards shall have a minimum tensile strength of 5,000 pounds (22.2 kN).

(16) All components of body belt/harness systems whose strength is not otherwise specified in paragraph (d) of this section shall be capable of supporting a minimum fall impact load of 5,000 pounds (22.2 kN) applied at the lanyard point of connection.

(17) Snap-hooks shall not be connected to loops made in webbing-type lanyards.

(18) Snap-hooks shall not be connected to each other.

(19) Not more than one snap hook shall be connected to any one dee-ring.

(20) Body belt/harness systems shall be inspected prior to each use for mildew, wear, damage, and other deterioration, and defective components shall be removed from service if their function or strength have been adversely affected.

(21) When body belt/harness systems are used at hoist areas, they shall not be attached to hoists or guardrail systems.

(22) When body belt/harness systems are used at hoist areas, they shall be rigged to allow the movement of employees only as far as the edge of the walking/working surface.

(e) *Positioning device systems.* Positioning device systems and their use

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shall conform to the following provisions:

(1) Positioning devices shall be rigged such that an employee cannot free fall more than 24 inches (61 cm).

(2) All hardware shall have a corrosion-resistant finish, and all surfaces and edges shall be smooth to prevent damage to the attached belt or connecting assembly.

(3) Positioning devices shall be secured to an anchorage capable of supporting at least twice the potential impact load of an employee's fall.

(4) Connecting assemblies shall have a minimum tensile strength of 5,000 pounds (22.2 kN).

(5) Positioning device systems shall be inspected prior to each use for mildew, wear, damage, and other deterioration, and defective components shall be removed from service if their function or strength has been adversely affected.

(f) *Warning line systems.* Warning line systems and their use shall comply with the following provisions:

(1) The warning line shall be erected around all sides of the work area.

(i) When mechanical equipment is not being used, the warning line shall be erected not less than six feet (1.8 m) from the roof edge.

(ii) When mechanical equipment is being used, the warning line shall be erected not less than six feet (1.8 m) from the roof edge which is parallel to the direction of mechanical equipment operation, and not less than 10 feet (3.1 m) from the roof edge which is perpendicular to the direction of mechanical equipment operation.

(iii) Points of access, materials handling areas, storage areas, and hoisting areas shall be connected to the work area by an access path formed by two warning lines.

(iv) When the path to a point of access is not in use, a rope, wire, chain, or other barricade, equivalent in strength and height to the warning line, shall be placed across the path at the point where the path intersects the warning line erected around the work area, or the path shall be offset such that a person cannot walk directly into the work area.

(2) Warning lines shall consist of ropes, wires, or chains, and supporting stanchions erected as follows:

(i) The rope, wire, or chain shall be flagged at not more than six foot (1.8 m) intervals with high-visibility material;

(ii) The rope, wire, or chain shall be rigged and supported in such a way that its lowest point (including sag) is no less than 34 inches (.9 m) from the walking/working surface and its highest point is no more than 39 inches (1.0 m) from the walking/working surface;

(iii) After being erected, with the rope, wire, or chain attached, stanchions shall be capable of resisting, without tipping over, a force of at least 16 pounds (71 N) applied horizontally against the stanchion, 30 inches (.8 m) above the walking/working surface, perpendicular to the warning line, and in the direction of the floor, roof, or platform edge;

(iv) The rope, wire, or chain shall have a minimum tensile strength of 500 pounds (2.27 kg), and after being attached to the stanchions, shall be capable of supporting, without breaking, the loads applied to the stanchions as prescribed in paragraph (f)(2)(iii) of this section; and

(v) The line shall be attached at each stanchion in such a way that pulling on one section of the line between stanchions will not result in slack being taken up in adjacent sections before the stanchion tips over.

(3) Employees not performing built-up roofing work shall not be allowed in the area between a roof edge and a warning line.

(4) Mechanical equipment shall be used or stored only in areas where employees are protected by a warning line system, guardrail system, or body belt system.

(g) *Control zone systems.* Control zone systems and their use shall conform to the following provisions:

(1) For leading edges on floors, low-pitched roofs, and other walking/working surfaces, the control zone shall be defined by a line erected not less than six feet (1.8 m) nor more than 25 feet (7.7 m) from the leading edge. The line shall extend along the entire length of the leading edge and shall be approximately parallel to the leading edge. The line shall be connected on each side to a guardrail system or wall.

(2) For overhand bricklaying operations, the control zone shall be defined by a line erected not less than 10 feet (3.1 m) nor more than 15 feet (4.5 m) from the working edge. The line shall extend for a distance sufficient for the control zone to enclose all employees performing overhand bricklaying and related work at the working edge and shall be approximately parallel to the working edge. Additional lines shall be erected at each end to form an enclosed area.

(3) Control zone and access path lines shall consist of ropes, wires, tapes, or equivalent materials, and supporting stanchions as follows:

(i) Each line shall be flagged or otherwise clearly marked at not more than six foot (1.8 m) intervals with high-visibility material.

(ii) For leading edge work, each line shall be rigged and supported in such a way that its lowest point (including sag) is not less than 39 inches (1 m) from the walking/working surface and its highest point is not more than 45 inches (1.3 m) from the walking/working surface.

(iii) For overhand bricklaying operations, each line shall be rigged and supported in such a way that its lowest point (including sag) is not less than 40 inches (.3 m) from the walking/working surface and its highest point is not more than 50 inches (1.3 m) from the walking/working surface.

(iv) Each line shall have a minimum tensile strength of 200 pounds (91 kg).

(4) On floors and roofs where guardrail systems are not in place prior to the beginning of overhand bricklaying operations, control zones shall be connected to points of access and material handling areas and storage areas by an access path formed by two lines similar in construction to those used to delineate the control zone.

(5) On floors and roofs where guardrail systems are not in place, employees performing overhand bricklaying and related work, or who are performing leading edge work, shall not be allowed outside of the control zone unless protected by a body belt system or safety net system.

(6) On floors and roofs where guardrail systems are in place, the guardrail systems may be removed and a control zone system erected only to the extent necessary to accomplish one day's amount of overhand bricklaying or leading edge work.

(7) Employees not performing overhand bricklaying, related work, or leading edge work, shall not be allowed in the control zone.

(h) *Safety monitoring systems.* Safety monitoring systems and their use shall comply with the following provisions:

(1) Persons monitoring the safety of other employees:

(i) Shall be competent in recognizing fall hazards;

(ii) Shall warn employees when it appears that the employees are unaware of a fall hazard or are acting in an unsafe manner;

(iii) Shall be on the same walking/working surface as, and within visual sighting distance of, the employees being monitored;

(iv) Must be close enough to communicate orally with the employees; and

(vi) Must not be so busy with other responsibilities that the monitoring function is encumbered.

(2) Mechanical equipment shall not be used or stored in areas where safety monitoring systems are being used.

(3) Employees not engaged in built-up roofing work shall not be allowed in an area where built-up-roofing employees are protected by a safety monitoring system.

(i) *Covers.* Covers for holes in floors, roofs, and other walking/working surfaces shall comply with the following provisions:

(1) Covers located in roadways and vehicular aisles shall be capable of supporting, without failure, at least twice the maximum axle load of the largest vehicle expected to cross over the cover.

(2) All other covers shall be capable of supporting, without failure, the maximum total anticipated load of employees, equipment, and materials, to be applied to the cover at any one time, or 250 pounds (114 kg), whichever is greater.

(3) All covers shall be installed so as to prevent accidental displacement.

(j) *Protection from falling objects.* Falling object protection shall comply with the following provisions:

(1) Toeboards, when used as falling object protection, shall be erected along the edge of the overhead walking/working surface for a distance sufficient to protect employees below.

(2) Toeboards shall be capable of withstanding, without failure, a force of at least 50 pounds (222 N) applied in any downward or outward direction at any point along the toeboard.

(3) Toeboards shall be a minimum of three and one-half inches (9 cm) in vertical height from their top edge to the level of the walking/working surface. They shall have not more than one-half inch (1.3 cm) clearance above the walking/working surface. They shall be solid or have openings not over one inch (2.5 cm) in greatest dimension.

(4) Where tools, equipment, or materials are piled higher than the top edge of a toeboard, paneling or screening shall be erected from the walking/working surface or toeboard to the top of a guardrail system's toprail or midrail, for a distance sufficient to protect employees below.

(5) Guardrail systems, when used as falling object protection, shall have all openings small enough to reject passage of potential falling objects.

(6) During the performance of overhand bricklaying and related work:

(i) No materials or equipment except masonry and mortar shall be stored within four feet (1.2 m) of the working edge.

(ii) Excess mortar, broken or scattered masonry units, and all other materials and debris shall be kept cleared from the work area by removal at regular intervals.

(7) During the performance of built-up roofing work:

(i) Materials and equipment shall not be stored within six feet (1.8 m) of a roof edge unless guardrails are erected at the edge.

(ii) Materials which are piled, grouped, or stacked near a roof edge shall be stable and self-supporting.

§ 1926.503 Training requirements.

(a) The employer shall provide a training program for all employees exposed to fall hazards. The program shall enable employees to recognize the hazards of falling and shall train them in the procedures to be followed in order to prevent falls to lower levels and through or into holes and openings in walking/working surfaces and walls.

(1) The employer shall assure that employees have been trained and instructed in the following areas, as applicable:

(i) The identification of fall hazards in the work area;

(ii) The use and operation of guardrail systems, body belt/harness systems, safety net systems, warning line systems, safety monitoring systems, control zones, and other protection to be used;

(iii) The correct procedures for erecting, maintaining, disassembling, and inspecting the systems to be used;

(iv) The role of each employee in the safety monitoring system when this system is used;

(v) The limitations on the use of mechanical equipment during the performance of built-up roofing work on low-pitched roofs;

(vi) The correct procedures for the handling and storage of equipment and materials and the erection of overhead protection; and

(vii) The standards contained in this subpart.

(2) Training and retraining shall be provided for each employee as necessary.

Appendix A to Subpart M—Guardrail Systems

The standard requires guardrail systems and components to be designed and built to meet the requirements of § 1926.502(b) (3), (4), and (5). This Appendix serves as a non-mandatory guideline to assist employers in complying with these requirements. Although employers may use other configurations to comply with these requirements, guardrail system components which meet the following guidelines will be considered as acceptable components that meet the requirements of § 1926.502(b) (3), (4), and (5). Components for which no specific guidelines are given in this Appendix (e.g., joints, base connections) must be designed and constructed in accordance with the capacity requirements of § 1926.502(b) (3), (4), and (5).

(1) For wood railings: Wood components shall be minimum 1500 lb-ft/in^2 fiber (stress grade) construction grade lumber; the posts shall be at least 2-inch by 4-inch lumber spaced not more than eight feet apart on centers; the toprail shall be at least 2-inch by 4-inch lumber, the intermediate rail shall be at least 1-inch by 6-inch lumber. All lumber dimensions are nominal sizes as provided by the American Softwood Lumber Standards, dated January 1970.

(2) For pipe railings: posts, toprails, and intermediate railings shall be at least one and one-half inches nominal diameter with posts spaced not more than eight feet apart on centers.

(3) For structural steel railings: posts, toprails, and intermediate rails shall be at least 2-inch by 2-inch by ⅜-inch angles, with posts spaced not more than eight feet apart on centers.

Appendix B to Subpart M—Roof Widths

This Appendix serves as a guideline to assist employers in complying with the requirements of § 1926.501(c)(9), which provides that safety monitoring systems may be used as the only means of fall protection during the performance of built-up roofing operations on low-pitched roofs 50 feet (15.25 m) or less in width. Each example in the appendix shows a roof plan or plans and indicates where each roof or roof area is to be measured to determine its width. Section views or elevation views are shown where appropriate. Some examples show "correct" and "incorrect" subdivisions of irregularly shaped roofs divided into smaller, regularly shaped areas. In all examples, the dimension selected to be the width of an area is the lesser of the two primary dimensions of the area, as viewed from above. Example A shows that on a simple rectangular roof, width is the lesser of the two primary overall dimensions. This is also the case with roofs which are sloped toward or away from the roof center, as shown in Example B.

Many roofs are not simple rectangles. Such roofs may be broken down into subareas as shown in Example C. The process of dividing a roof area can produce many different configurations. Example C gives the general rule of using dividing lines of minimum length to minimize the size and number of the areas which are potentially less than 50 feet wide. The intent is to minimize the number of roof areas where safety monitoring systems alone are sufficient protection.

Roofs which are comprised of several separate, noncontiguous roof areas, as in Example D, may be considered as a series of individual roofs. Some roofs have penthouses, additional floors, courtyard openings, or similar architectural features; Example E shows how the rule for dividing roofs into subareas is applied to such configurations. Irregular, nonrectangular roofs must be considered on an individual basis, as shown in Example F.

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Example A.

RECTANGULAR SHAPED ROOFS

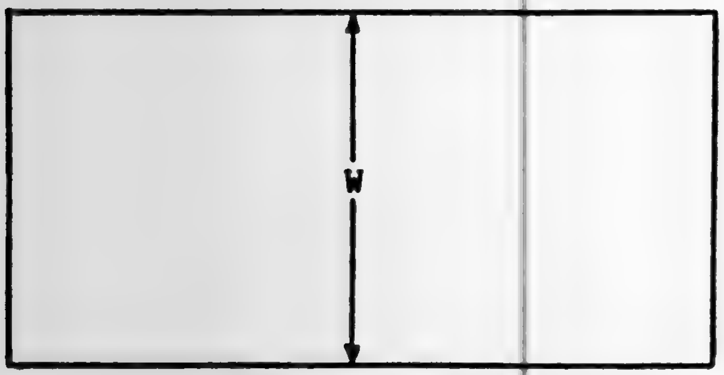

PLAN VIEW

Example B.

SLOPED RECTANGULAR SHAPED ROOFS

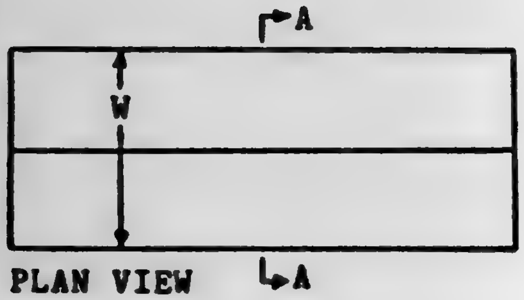

PLAN VIEW

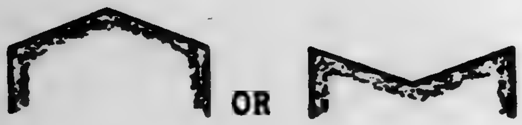

SECTION A-A

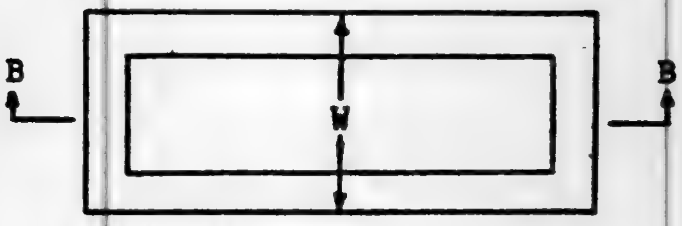

PLAN VIEW

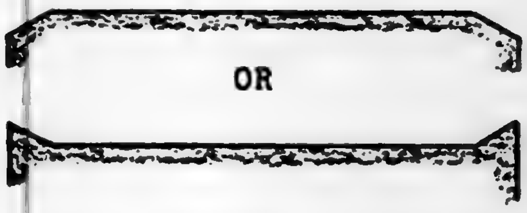

SECTION B-B

Example C.

IRREGULARLY SHAPED ROOFS WITH RECTANGULAR SHAPED SECTIONS

Such roofs are to be divided into sub-areas by using dividing lines of minimum length to minimize the size and number of the areas which are potentially less than or equal to 50 feet (15.25 meters) in width, in order to limit the size of roof areas where paragraph 1926.500(g)(1)(iii) can be applied. Dotted lines are used in the examples to show the location of dividing lines. Ⓦ denotes incorrect measurements of width.

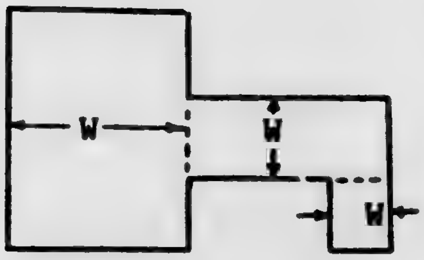

Correct

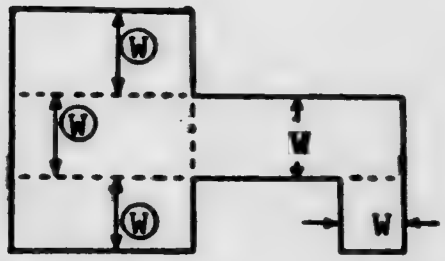

Incorrect

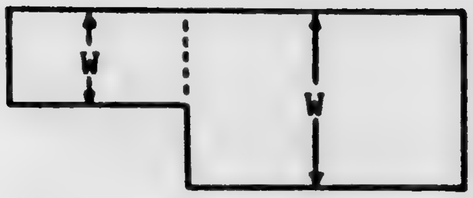

Correct

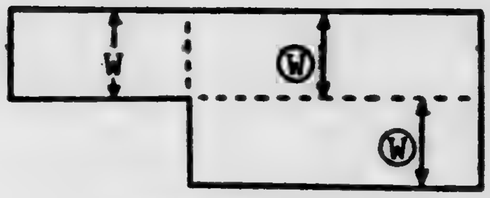

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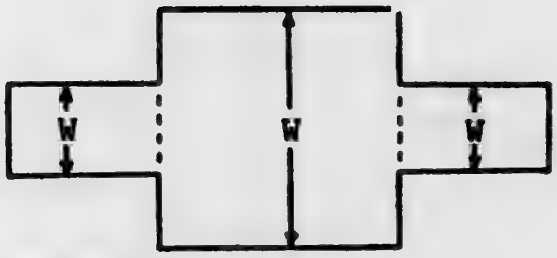

Correct

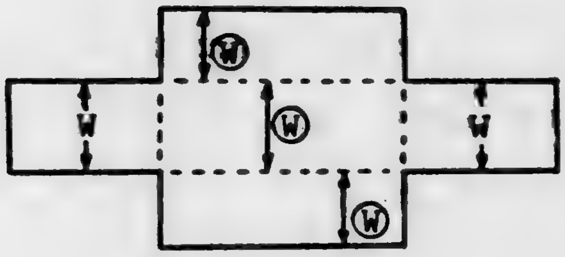

Incorrect

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Example D.

SEPARATE, NON-CONTIGUOUS ROOF AREAS

1.

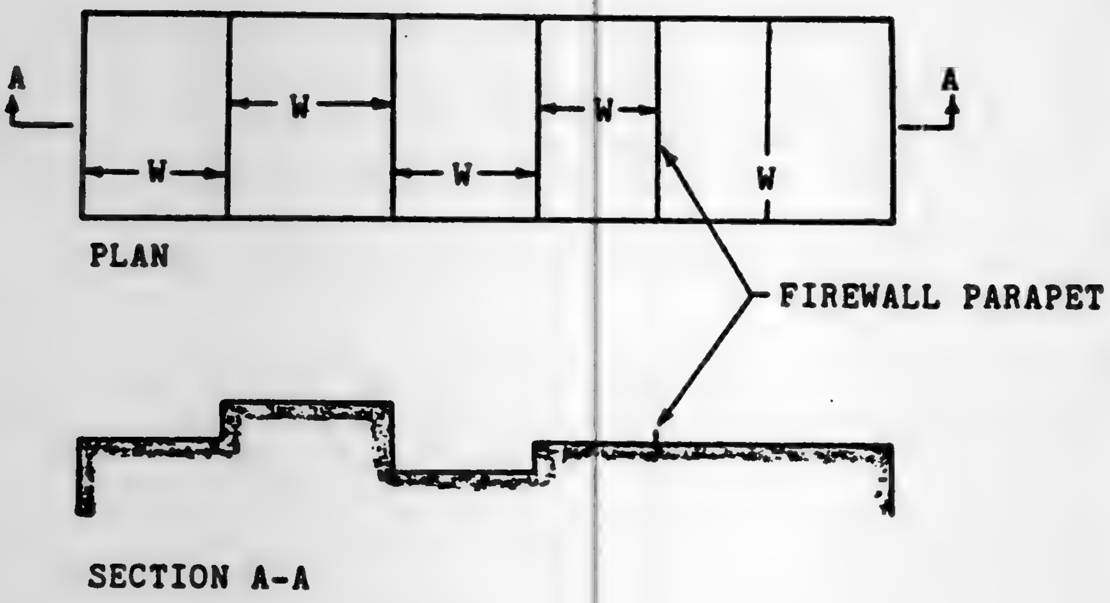
A
A
W
W
W
W
W
PLAN
FIREWALL PARAPET
SECTION A-A

2

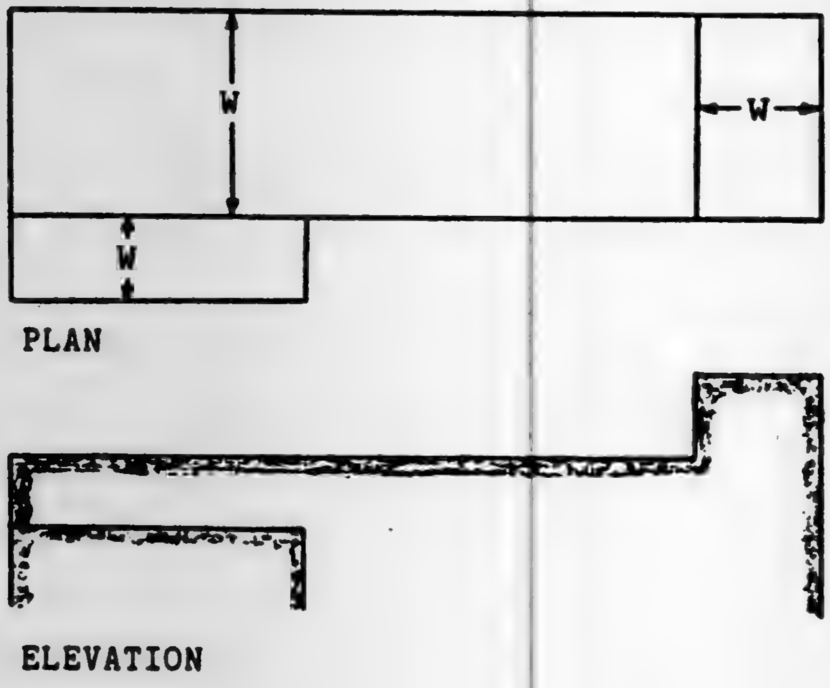
W
W
W
PLAN
ELEVATION

Example E.

ROOFS WITH PENTHOUSES, OPEN COURTYARDS, ADDITIONAL FLOORS, ETC.

Such roofs are to be divided into sub-areas by using dividing lines of minimum length to minimize the size and number of the areas which are potentially less than or equal to 50 feet (15.25 meters) in width, in order to limit the size of roof areas where paragraph 1926.500(g)(1)(iii) can be applied. Dotted lines are used in the examples to show the location of dividing lines. Ⓦ denotes incorrect measurements of width.

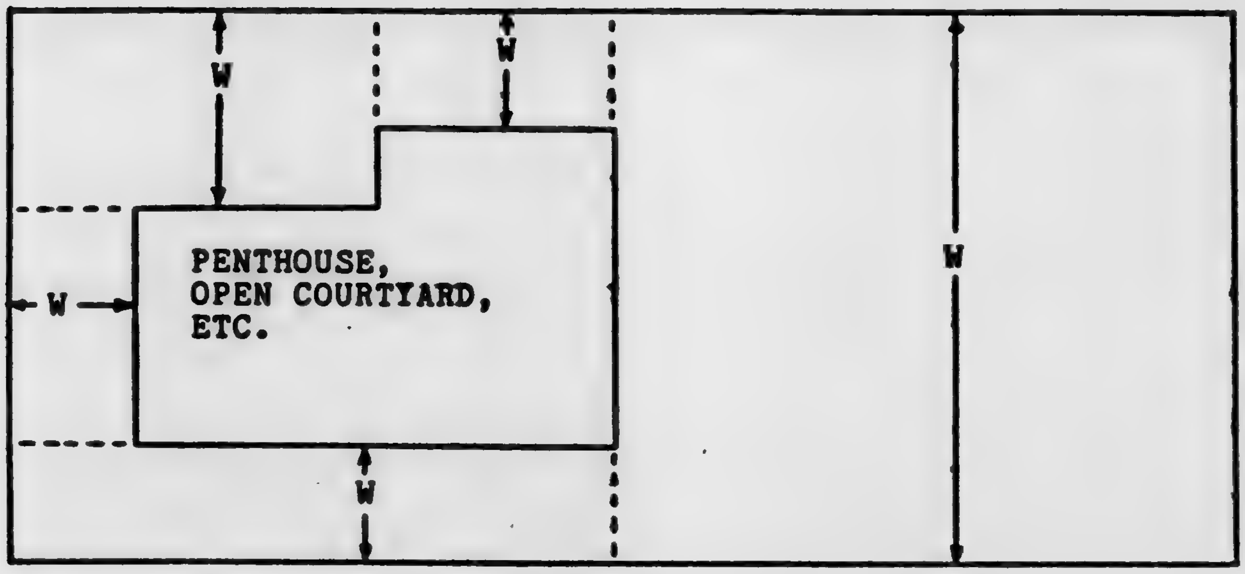
W
W
W
PENTHOUSE,
OPEN COURTYARD,
ETC.
W
W

Correct

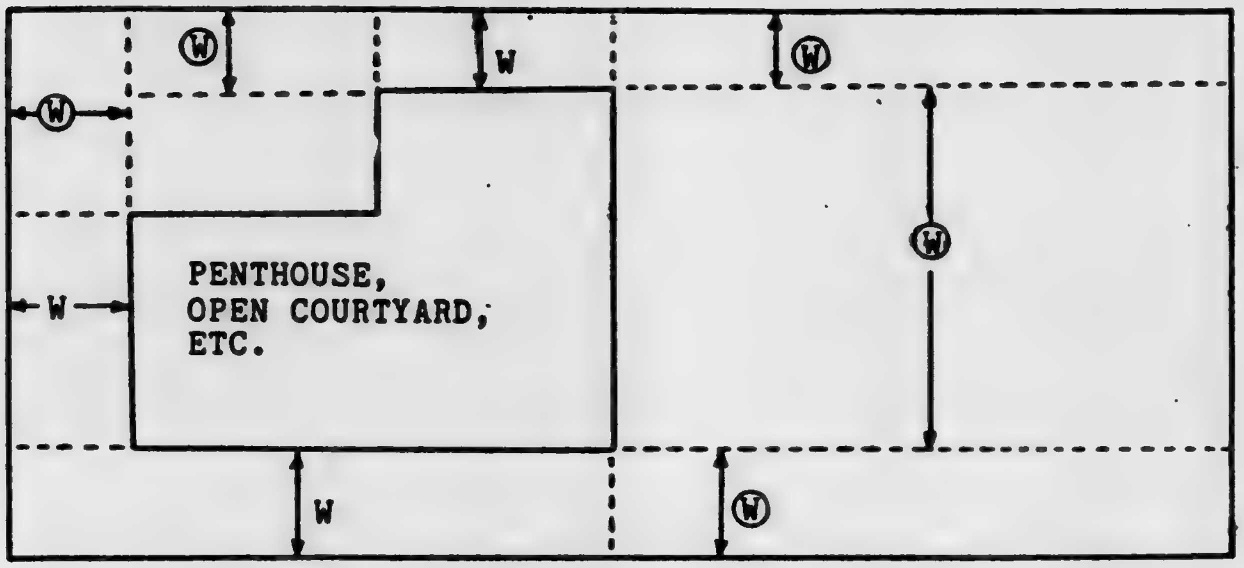
Ⓦ
W
Ⓦ
Ⓦ
Ⓦ
PENTHOUSE,
OPEN COURTYARD,
ETC.
W
W
Ⓦ

Example F.

IRREGULAR, NON-RECTANGULAR SHAPED ROOFS

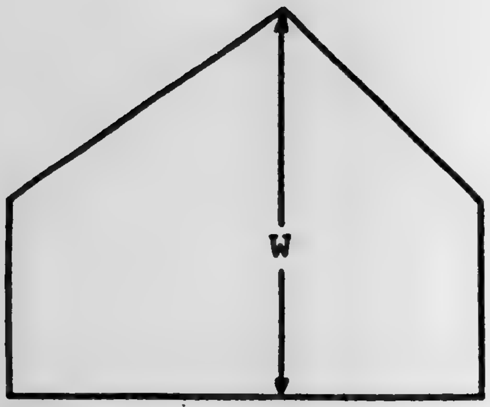

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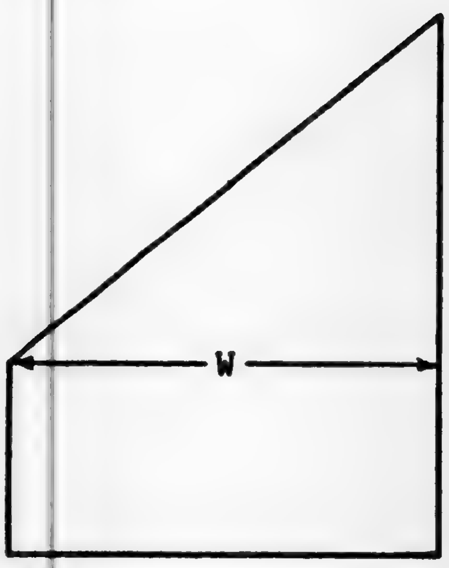

PLAN

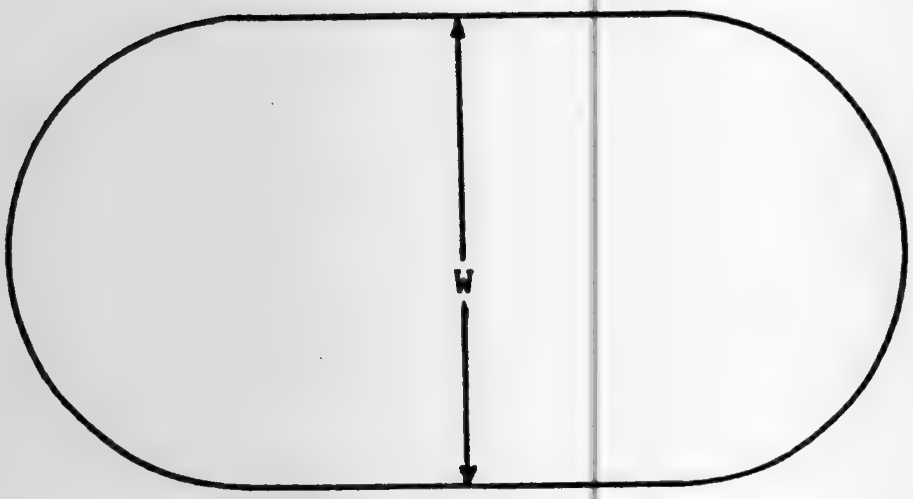

PLAN

BILLING CODE 4510-26-C

Appendix C to Subpart M—Test Procedures for Evaluating Body Belt/Harness Systems and Positioning Device Systems

The standard requires body belt/harness systems and components to meet the specified performance criteria of § 1926.502(d) (5), (6), and (16), and positioning device systems and components to meet similar requirements of § 1926.502(e) (3) and (4). This Appendix serves as a nonmandatory guideline to assist employers in complying with these requirements. Body belt/harness systems and positioning device systems tested by manufacturers in conformance with the following guidelines will be considered as acceptable systems and components that meet the requirements listed above, provided a force factor of 1.4 is used.

Testing Methods For Body Belt/Harness Systems.

(a) *General.* (1) Lifelines and lanyards shall be attached to a fixed anchorage and connected to the body belt/harness or positioning device in the same manner as they would be used to protect employees, except lanyards shall be tested only when connected directly to the anchorage and not to a lifeline.

(2) The fixed anchorages shall be rigid, and shall not have a deflection greater than .04 inches (1 mm) when a force of 2,250 pounds (10 kN) is applied.

(3) The lanyard or lifeline used to create the free fall distance shall be the one supplied with the system, or, in its absence, the worse case lanyard or lifeline intended to be used with the system.

(4) The test weight for each test shall be hoisted to the required level and shall be quickly and cleanly released without imparting any appreciable motion to it.

(5) The strength and force test shall each consist of dropping each specified weight one time without failure of the system being tested. A new system shall be used for each test.

(6) The maximum elongation shall be recorded during the strength test for lanyard systems, and during the force test for all other systems.

(b) *Strength test.* (1) During the testing of all systems, a test weight of 300 pounds plus or minus five pounds (136 kg plus or minus 2.5 kg) shall be used. The weight shall be a rigid, metal cylindrical object or torso-shaped object with a girth of 38 inches plus or minus four inches (96 cm plus or minus 10 cm).

(2) For lanyard systems, the lanyard length shall be six feet plus or minus two inches (1.83 m plus or minus 5 cm) as measured from the fixed anchorage to the attachment on the body belt/harness.

(3) For rope grab-type deceleration systems the length of the lifeline above the centerline of the grabbing mechanism to the lifeline's anchorage point shall not exceed two feet (0.61 m).

(4) For lanyard systems, for systems with deceleration devices which do not automatically limit free fall distance to two feet (0.61 m) or less, and for systems with deceleration devices which have a connection distance in excess of one foot (0.3 m) (measured between the centerline of the lifeline and the attachment point to the body belt or harness), the test weight shall fall free from a point that is 1.5 feet (46 cm) above the anchorage point, to its free hanging location (a total of 7.5 feet (2.3 m) free fall distance) without interference, obstruction, or hitting the floor or ground during the test.

(5) For deceleration devices with integral lifelines or lanyards which automatically limit free fall distance to two feet (0.61 m) or less, the test weight shall free fall a distance of four feet (1.22 m).

(6) Worst case, normal, and permitted use situations of the system shall be evaluated.

(7) Failure for the strength test shall consist of any breakage or slippage sufficient to permit the weight to fall free from the belt or harness.

(8) Following the test, the system need not be capable of further operation; however, such a non-use condition for deceleration devices shall be readily apparent.

(c) *Force test.* (1) For lanyard systems. (i) A test weight of 130 pounds plus or minus three pounds (59 kg plus or minus 1.6 kg) shall be used. The weight shall be a rigid, metal cylindrical object or torso-shaped object with a girth of 38 inches plus or minus four inches (96 cm plus or minus 10 cm).

(ii) Lanyard length shall be six feet plus or minus two inches (1.83 m plus or minus 5 cm) as measured from the fixed anchorage to the attachment on the body belt/harness.

(iii) The test weight shall fall free from the anchorage level to its hanging location (a total of six feet (1.83 m) free fall distance) without interference, obstruction, or hitting the floor or ground during the test.

(2) For all other systems. (i) A test weight of 220 pounds plus or minus three pounds (100 kg plus or minus 1.6 kg) shall be used. The weight shall be a rigid, metal cylindrical object or torso-shaped object with a girth of 38 inches plus or minus four inches (96 cm plus or minus 10 cm).

(ii) The fall distance to be used in the test shall be the maximum fall distance physically permitted by the system during normal use conditions, up to a maximum free fall distance for the test weight of six feet (1.83 m), except as follows:

(A) For deceleration systems which have a connection link or lanyard, the test weight shall free fall a distance equal to the connection distance (measured between the centerline of the lifeline and the attachment point to the body belt or harness).

(B) For deceleration devices with integral lifelines or lanyards which automatically limit free fall distance to two feet (.61 m), the test weight shall free fall a distance equal to that permitted by the system in normal use (For example, to test a system with a self-retracting lifeline or lanyard, the test weight shall be supported and the system allowed to retract the lifeline or lanyard as it would in normal use. The test weight would then be released and the force and deceleration distance measured).

(3) Worst case, normal, and permitted use situations of the system shall be evaluated.

(4) The force test is failed whenever the recorded maximum arresting force exceeds 1,800 pounds (8.0 kN) when using the 130 pound (59 kg) weight, or 2,500 pounds when using the 220 pound (100 kg) weight.

(5) Following this test, the system need not be capable of further operation; however, all such incapacities of deceleration devices shall be readily apparent.

Testing Methods For Positioning Device Systems

(a) *General.* (1) Single strap positioning devices, shall have one end attached to a fixed anchorage and the other end connected to a body belt/harness in the same manner as they would be used to protect employees. Double strap positioning devices, similar to window cleaner's belts, shall have one end of the strap attached to a fixed anchorage and the other end shall hang free. The body belt/harness shall be attached to the strap in the same manner as it would be used to protect employees. The two strap ends shall be adjusted to their maximum span.

(2) The fixed anchorage shall be rigid, and shall not have a deflection greater than .04 inches (1 mm) when a force of 2,250 pounds (10 KN) is applied.

(3) During the testing of all systems, a test weight of 250 pounds plus or minus three pounds (113 kg plus or minus 1.6 kg) shall be used. The weight shall be a rigid object with a girth of 38 inches plus or minus four inches (96 cm plus or minus 10 cm).

(4) Each test shall consist of dropping the specified weight one time without failure of the system being tested. A new system shall be used for each test.

(5) The test weight for each test shall be hoisted exactly four feet (1.2 m above its "at rest" position), and shall be dropped so as to permit a vertical free fall of four feet (1.2 m).

(6) The test is failed whenever any breakage or slippage occurs which permits the weight to fall free of the system.

(7) Following the test, the system need not be capable of further operation; however, all such incapacities shall be readily apparent.

[FR Doc. 86-26229 Filed 11-24-86; 8:45 am]

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Tuesday
November 25, 1986

Part IV

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1926

Safety Standards for Stairways and Ladders Used in the Construction Industry; Notice of Proposed Rulemaking

VOL 51
ISS 227
NO 25
1986
UMI

DEPARTMENT OF LABOR

29 CFR Part 1926

[Docket No. S-207]

Safety Standards for Stairways and Ladders Used in the Construction Industry

AGENCY: Occupational Safety and Health Administration, Labor Department.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Occupational Safety and Health Administration (OSHA) proposes that the current provisions of Subpart L of the Construction Industry Standards relating to ladders, and the current provisions of Subpart M relating to stairways be revised and relocated to a new proposed Subpart X. These provisions are relocated for the purpose of reformatting the rules into a more logical grouping of topics. Also, existing Subpart X—Effective Dates, would be deleted as it is no longer necessary.

The proposed standard is written in performance-oriented language, and is intended to eliminate ambiguities and redundancies found in the existing standards. The proposed standard also changes certain requirements applicable to specific types of ladders into general requirements that apply to all ladders.

In addition to using performance-oriented language, all incorporations by reference of national consensus standards and other outside materials are replaced by inclusion of the applicable requirements from those standards in the body of Subpart X. This is intended to assist employers in determining what is required of them without having to refer to documents outside Part 1926. This proposal is another step in OSHA's plan to review its safety standards and to revise them as necessary to provide safer working conditions without imposing unnecessarily burdensome requirements. This proposal is being issued after appropriate consultation with the Advisory Committee on Construction Safety and Health (ACCSH).

DATES: Comments on this proposed rulemaking must be postmarked by February 23, 1987. Hearing requests must be postmarked by February 23, 1987.

ADDRESS: Written comments, and requests for hearings should be sent to the Docket Officer, Docket No. S-207, U.S. Department of Labor, Room N-3760, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3637, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 523-8151.

SUPPLEMENTARY INFORMATION: The author of this proposed rulemaking is Roy F. Gurnham, Office of Construction and Civil Engineering Safety Standards, Occupational Safety and Health Administration.

I. Background

Congress amended the Contract Work Hours Standards Act (CWHSA) (40 U.S.C. 327 et seq.) in 1969 by adding a new Section 107 (40 U.S.C. 333) to provide employees in the construction industry with a safer work environment and to reduce the frequency and severity of construction accidents and injuries. The amendment, commonly known as the Construction Safety Act (CSA) (Pub. L. 91-54; August 9, 1969), significantly strengthened employee protection by providing occupational safety and health standards for employees of the building trades and construction industry working on Federally-financed or Federally-assisted construction projects. Accordingly, the Secretary of Labor issued Safety and Health Regulations for Construction in 29 CFR Part 1518 (36 FR 7340, April 17, 1971) pursuant to Section 107 of the Contract Work Hours and Safety Standards Act.

The Occupational Safety and Health Act (the Act) (84 Stat. 1590; 29 U.S.C. 651 et seq.), was enacted by Congress in 1970 and authorized the Secretary of Labor to adopt established Federal standards issued under other statutes, including the Construction Safety Act, as occupational safety and health standards. Accordingly, the Secretary of Labor adopted the Construction Standards, which had been issued under the Construction Safety Act in 29 CFR Part 1518, in accordance with section 6(a) of the Act (36 FR 10466, May 29, 1971). The Safety and Health Regulations for Construction were redesignated as Part 1926 later in 1971 (36 FR 25232, December 30, 1971). The standards dealing with ladders (§ 1926.450 in Subpart L) and stairways (§ 1926.501 in Subpart M) were adopted as OSHA standards as part of this process.

The need for review and revision of Subparts L and M, including the provisions for ladders and stairways, has been recognized by OSHA since the earliest days of the OSH Act. However, other standards activities had higher priorities. After several meetings of the Advisory Committee on Construction Safety and Health, it was determined in 1977 that a piecemeal approach to reviewing these provisions would not be acceptable. Therefore, a complete review of Subparts L and M was begun. Since that time, ACCSH has reviewed these subparts several times and transcripts of these meetings, including recommendations, have been submitted to the Assistant Secretary. The transcripts are part of the public record as Exhibit 1. The Committee's recommendations, and those of other interested parties, have been carefully analyzed in connection with the present rulemaking. Many of the changes in the proposed standard reflect the recommendations and suggestions of the Advisory Committee and interested persons. Relevant ACCSH comments are discussed below in the Summary and Explanation section. Committee discussions that were inconclusive or did not result in a specific recommendation have also been considered, but are not discussed in this preamble.

After reviewing and evaluating the provisions for ladders and stairways, OSHA believes that certain provisions in the existing standards are redundant or ambiguous. Other provisions simply are not feasible in all situations or are unnecessarily detailed. To eliminate these problems, this proposal focuses on the principal hazards involved when working on stairways and ladders and eliminates what OSHA believes to be unnecessary and redundant provisions in the current standards. In addition, the proposal has been written in performance-oriented language. This proposal also incorporates directly the relevant provisions of the general industry standards (Part 1910) which have been determined by OSHA to be applicable to the construction industry.

For purposes of organization, and in order to make it easier for employers and employees to find specific provisions, this proposal relocates the topics of stairways and ladders from Subparts L and M to a revised Subpart X titled, "Stairways and Ladders." This new subpart, along with revised Subpart L, "Scaffolds," and revised Subpart M, "Fall Protection," constitute a package of inter-related standards which have been rewritten and reorganized to facilitate treatment of the individual subjects. OSHA intends to coordinate the rulemaking activities for these subparts, and hopes to make the final rules for all three subparts effective at the same time. The existing Subpart X, "Effective Dates," in Part 1926 is no longer needed as the effective dates have occurred and there is no current need to continue to publish them. Therefore, existing Subpart X would be deleted and replaced with this new Subpart X.

OSHA believes that the clarified and reformatted language of the proposal will help employers to understand the requirements for stairways and ladders, and will improve safety by minimizing subjective interpretations of the provisions. By minimizing, if not eliminating, the interpretations needed to understand the requirements of Subpart X, OSHA intends to provide fair and equal notice to all employers of the rules for stairway and ladder safety.

This project is also being coordinated with the project for the revision of related general industry standards in 29 CFR Part 1910, Subpart D—Walking/Working Surfaces. Wherever possible, the 1910 and 1926 proposals use the same language to address similar hazards in order to promote consistency between the two sets of standards.

II. Hazards Involved

Fall accidents resulting in injuries and fatalities continue to occur at construction sites despite the promulgation of the OSHA Construction Standards in 1971. Examination of available data indicates that these accidents appear to be primarily the result of non-compliance with existing OSHA standards, and not primarily because the current standards improperly address stairway and ladder hazards involved in construction work. Nevertheless, upon reviewing compliance problems and public comments received since 1972, OSHA believes that the regulations dealing with stairways and ladders need updating to clarify the requirements of currently ambiguous and confusing provisions.

Precise accident data for the entire construction industry are not available. In addition, although the number of construction fall accidents on stairways or from ladders can be estimated for a given period of time, the ratio of accidents to the amount of employee exposure to fall hazards cannot be readily determined. However, based upon the limited data which have been compiled, it can be shown that the total number of injuries associated with falls from surfaces covered under Subpart X would be between 17,000 and 34,000 for 1979 alone (Ex. 2: Table IV–1). Although specific accident ratios cannot be projected for the 4 million construction workers potentially covered by Subpart X, the following information has been compiled concerning stairway and ladder accidents in general:

- On a yearly basis, OSHA estimates that as many as four fatalities, 5,360 impact injuries, and 1,900 sprain or strain injuries occur on stairways used in construction (summary of Exs. 15 and 16);
- 65 percent of those injured in stairway accidents require medical treatment (Ex. 3:150).

In a Bureau of Labor Statistics study of 1,400 ladder accidents which resulted in injuries (Ex. 5), the following findings were made:

- 23 percent of the accidents were in construction;
- 42 percent of those injured were working on the ladder when the accident occurred;
- 66 percent of those injured had not been trained in how to inspect ladders for defects before using them;
- 4 percent of the ladders did not have uniformly spaced steps;
- 19 percent of the ladders had one or more defects;
- 39 percent of the ladders had not been extended three feet above the landing level;
- 53 percent of non-self-supporting ladders, had not been secured or braced at the bottom, and 61 percent had not been secured at the top; and
- 53 percent of the ladders broke during use.

Based on its analysis of the above statistics and its field experience enforcing construction standards, OSHA has determined that employees using ladders and stairways are exposed to significant risk of harm. Consequently, OSHA believes revised standards are necessary to reduce that risk.

The following examples of recorded accidents will serve to illustrate the types of accidents that injure and kill employees working on or near ladders. These selected examples are not intended to cover all types of ladder accidents. The examples reference the provisions of the existing standards and the proposals which are directed at the cause of the accident.

- May 20, 1974: Fatality and injury. Two employees were pulling a metal ladder up to the level where they were working. The ladder came in contact with energized electrical wires. One employee was electrocuted, and one was severely burned (Ex. 4:18). Observance of existing paragraph § 1926.450(a)(11), or of proposed paragraph § 1926.1053(b)(12), might have prevented this accident by keeping ladders with conductive siderails away from energized electrical lines.
- September 19, 1979: Fatality. An employee used a ten foot ladder to get to a nine foot high level. To do this, the ladder had to be placed at an improperly steep angle and the employee fell off the ladder (Ex. 4:20). Observance of existing paragraph § 1926.450(a)(9), or of proposed paragraph § 1926.1053(b)(1), might have prevented the accident by assuring that a proper length ladder was used, or that the ladder was properly secured at its top, which would have allowed safe access and egress to the higher level.
- November 24, 1976: Fatality. A ladder leaning against a scaffold cross-member slipped under the cross-member as two employees climbed it, and the employees fell. Although the ladder top was secured to the scaffold cross-member, the siderails were only long enough to extend one inch above the cross-member (Ex. 4:22). Observance of existing paragraph § 1926.450(a1.(10), or the clarified provisions of proposed paragraph § 1926.1053(b)(1), might have prevented this accident by requiring the use of a ladder long enough to extend 36 inches above the point of landing.
- June 2, 1978: One Fatality and eight injuries. At the end of a work shift, too many employees got on a job-made ladder to go home and the ladder collapsed (Ex. 4:28). Observance of existing paragraph § 1926.450(b)(1), or the clarified provisions of proposed paragraph § 1926.1053(a)(1), requiring ladder components to have a safety factor of 4:1, and proposed paragraph § 1926.1053(b)(3) prohibiting the overloading of ladders, might have prevented this accident.
- September 3, 1976: Fatality. An employee stepping onto a ladder fell 22 feet when the ladder slipped on the supporting surface (Ex. 4:32). Observance of existing § 1926.450(a)(10), or the clarified provisions of proposed paragraph § 1926.1053(b)(7) might have prevented this accident by assuring that the ladder was properly secured at the bottom.

The above data and examples suggest that observance of the existing provisions or the proposed provisions might have prevented the accidents. OSHA believes that the proposed provisions will provide clearer, easier-to-understand requirements that will clarify specific requirements and, thereby, more clearly define an employer's duties.

For a further discussion of accident rates and significance of risk, see Section IV. Preliminary Regulatory Impact Assessment and Regulatory Flexibility Analysis.

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III. Summary and Explanation of the Proposal

The following discussion, which tracks the proposal paragraph by paragraph, summarizes and explains the significant substantive changes made to the ladder provisions of existing Subpart L and the significant substantive changes made to the stairway provisions of existing Subpart M.

Subpart X—Stairways and Ladders

As the title states, Subpart X would cover the topics of stairways and ladders. The subpart includes provisions for construction, inspection, maintenance, use, fall protection, and the training necessary for employees involved with stairway and ladder construction, use, and repair.

Section 1926.1050 Scope, application, and definitions applicable to this subpart.

Proposed paragraph § 1926.1050(a) outlines the scope and application of proposed Subpart X. The subpart would apply to all stairways and ladders found in construction, alteration, repair (including painting and decorating), and demolition workplaces, except that additional requirements for ladders used on or with scaffolds are in §§ 1926.451 (c) and (d) of proposed revised Subpart L—Scaffolds.

In the following discussion, a paragraph citation preceded by the letter "E" refers to a paragraph in existing Subparts L or M. All other citations are to the proposed standard.

Proposed paragraph § 1926.1050(b) lists and defines all major terms used in the proposed standard. Many definitions are the same as those in the existing standard, although some have been reworded for uniformity or clarity. The following terms have been added to or have been changed from the existing definitions:

"Equivalent." This term replaces the existing term "standard strength and construction." It is used in the text of the proposal to allow alternative means of complying with the standard. The definition makes clear that the employer must demonstrate that all alternative means of compliance will provide an equal or greater degree of safety than that attained by using the method or item specified in the standard.

"Failure." This word is used in performance-oriented paragraphs such as § 1926.1052(c)(5) dealing with stairrail strength. Because the word can be interpreted to mean only breakage or a physical separation of component parts, the definition makes it clear that load refusal, the point where the ultimate strength of a component is exceeded, is also considered to be failure. This is the point where structural members lose their ability to carry loads.

"Handrail." The proposed definition explains that handrails are rails used to provide employees with a handhold for support. The proposed definition deletes the existing language which limits handrails to bars or pipes "supported on brackets from a wall or partition . . . (to provide) a handhold in case of tripping." The new definition recognizes that handrails are not limited in form to wall- or partition-mounted bars or pipes. For example, the toprail of a stairrail system may serve as a handrail when installed according to paragraph § 1926.1052(c)(7).

"Lower levels." This is a new term and is used to describe the areas to which an employee could fall. The term does not apply to the same surface from which the employee could fall.

"Maximum intended load." This is a new term used in paragraph § 1926.1053(a)(1) to clarify the types of loads which must be considered when building a ladder, and is used in paragraph § 1926.1053(b)(3) to limit the amount of load which may be placed on a ladder.

"Riser height." This term replaces the term "rise." There is no change to the definition. For the purposes of this standard, the term "tread" used in the definition includes landings.

"Single cleat ladder." The existing definition is expanded to include siderails which are joined together with rungs and steps, as well as siderails which are joined by cleats.

"Stairrail system." This term replaces the existing term "stair railing," which is often used to describe only the top member of a total system. The proposed definition clarifies the point that the top surface of a stairrail system may also serve as a handrail.

"Unprotected sides and edges." This is a new term and defines such areas as those where there is no wall or guardrail system 39 inches or more in height or where there is no stairrail system 36 inches or more in height. This definition is consistent with the term as used in the proposed revision of Subpart M—Fall Protection, § 1926.500(b).

The following existing definitions would be deleted because they are not used in the proposed subpart or their meanings are obvious: E § 1926.502(h) "stair platform," and E § 1926.502(i) "stair, stairways."

Section 1926.1051 General requirements.

This section specifies where stairways and ladders are to be provided in order for employees to have safe means of access between levels.

Paragraph § 1926.1051(a) would provide that wherever there is a personnel point of access and no ramp, runway, sloped embankment, or personnel hoist is provided, then a ladder or stairway must be provided. This is essentially the same requirement as E § 1926.450(a)(1). Existing rule E § 1926.450(a)(1) requires a means of access at all breaks in elevation, and E § 1926.501(a) requires a means of access wherever the structure is two or more floors (20 feet) high. Public comment is requested in Issue Number 2 as to what is the appropriate height limit before a means of access must be provided.

Paragraph (a)(1) would prohibit the use of spiral stairways which will not be a permanent part of a structure after completion of the structure's construction, except where they provide the only practical means of access during construction. This requirement is essentially the same as E § 1926.501(m) except the language has been changed to clarify that stairways which will be a permanent installation may be used.

Paragraph (a)(2) would require that when ladders are used to provide the only means of access for 25 or more employees, or when they are used to serve simultaneous two-way traffic, they be double-cleated or two or more separate ladders be used. This is essentially the same requirement as E § 1926.450(b)(1), except the existing paragraph is worded in terms of providing one double-cleated ladder only, and the proposed paragraph recognizes the obvious alternative of using two or more ladders.

Paragraph (b) is a new requirement and would require all systems to be provided and installed, and all duties to be performed, before employees begin work where they use ladders or stairways. Work activities must not begin until the ladder or stairway is safe to use.

Section 1926.1052 Stairways.

This section specifies the requirements for all stairways used by construction employees.

Paragraph § 1926.1052(a) General.

Paragraph (a) sets forth the general requirements for the construction of stairways. Paragraph (a)(1) would require stairs to have landings at least 30 inches long at every 12 feet or less of vertical rise. This is the same requirement as E § 1926.501(i), except the existing term "temporary stairs" is deleted and the phrase "stairways which will not be a permanent part of the structure being built" is used to more clearly define the requirement.

Paragraph (a)(2) would require stairs to be installed at an angle between the limits of 30° and 50° from horizontal. This is the same requirement as in E § 1926.501(j).

Paragraph (a)(3) would require riser height and tread width to be uniform within each flight of stairs, including any foundation structure which serves as a tread of the stairway. This is the same requirement as E § 1926.501(k).

Paragraph (a)(4) would require platforms be provided wherever a door or gate opens onto a stairway, and that the swing of the door not reduce the effective width of the platform to less than 20 inches. This is the same requirement as E § 1926.500(b)(9).

Paragraph (a)(5) would require metal pan landings to be secured in place before filling, and is the same requirement as E § 1926.501(h).

Paragraph (a)(6) would require all parts of stairways to be free of hazardous projections, such as protruding nails. This is the same requirement as E § 1926.501(c).

Paragraph (a)(7) would require slippery conditions on stairs to be eliminated as soon as possible after they occur. This is the same requirement as E § 1926.501(e).

Paragraph § 1926.1052(b) Temporary service.

Paragraph (b) contains rules relating to temporary treads and landings used on stairways.

Paragraph (b)(1) would require stair pans which are not going to be immediately filled to be temporarily fitted with solid material up to the top edge of each pan. This is essentially the same requirement as E § 1926.501(f), except the proposed wording clarifies that the filling material is temporary; must be placed prior to any foot traffic; and must fill each pan at least to its top edge. The proposed rule adds a new provision that such temporary treads and landing must be replaced as they are worn out. As in the existing standard, temporary treads and landings are not required during construction of the stairway itself, on a flight by flight basis.

Paragraph (b)(2) would be a new rule, and would require skeleton metal stairs to be provided with temporary treads and landings prior to any foot traffic if the permanent treads or landings are not to be placed until a later date. Public comment is requested in the Specific Issues section of this preamble on whether or not this provision adequately addresses the hazard of using this type of stair frame.

Paragraph (b)(3) would require wood treads for temporary service (i.e., to fill a metal stair pan for temporary use prior to concrete placement) to be full width so that they do not shift when stepped upon. This is the same requirement as E § 1926.501(g).

Two existing rules for stairways are deleted from the proposed rules because they are redundant. Existing rule E § 1926.501(d) requires debris removal from on and under stairways. This is already provided for in E § 1926.25(a)—Housekeeping. Similarly, existing rule E § 1926.501(1), requiring illumination of stairways, repeats E § 1926.56—Illumination.

Paragraph § 1926.1052(c) Stairrails and handrails.

Paragraph (c) sets forth the requirements for stairrails and handrails. It replaces existing rule E § 1926.501(b) which requires stairway railings and guardrails to meet the requirements of existing Subpart M. The provisions of the proposed rule apply to all stairways regardless of their height above lower levels.

Paragraph (c)(1) would require stairways having four or more risers to be equipped with at least one handrail, and one stairrail system along each unprotected side or edge. As briefly discussed in the definitions section above, a stairrail system is a vertical barrier erected along unprotected sides and edges of a stairway to prevent employees from falling to a lower level. A handrail is a rail used to provide employees a handhold for support while climbing, descending, or resting on a stairway. On many stairways, the top of the stairrail system doubles as the required handrail. However, if the stairrail is too high, too low, or does not provide a proper grasping surface, or if no stairrail is required because the stairway is enclosed on both sides with walls, then a separate handrail and handrail support must be provided. These requirements are essentially the same as the requirements in E § 1926.500(e)(1), except the proposed requirements do not depend upon the width of the stairway. OSHA believes the width criteria are unnecessarily specific and do not, in and of themselves, significantly affect worker safety. Consequently, the width-related provisions of E § 1926.500(e)(1) are proposed to be deleted.

Paragraph (c)(2) would require winding and spiral stairways to be equipped with a handrail offset to prevent employees from walking on those portions of the stairways where the treads are less than six inches wide. This is the same requirement as E § 1926.500(e)(2), except the proposal expands the rule to include spiral stairways. Spiral stairways are covered because the problem of too narrow a tread is common to both types of stairways.

Paragraph (c)(3) would require the height of stairrails to be not less than 36 inches as measured from the upper surface of the stairrail system down to a point on the upper surface of the tread in line with the face of the riser at the forward edge of the tread. Existing rule E § 1926.500(f)(2) presently specifies a minimum height of 30 inches and a maximum height of 34 inches, measured the same way as required by the proposed rule. The limits specified in the existing rule were developed so they would be compatible with the existing handrail limits which are also 30 and 34 inches, thus allowing one rail to serve two functions. However, a study by the University of Michigan (Ex. 6:56) shows that the minimum height for railings should be 42 inches, but suggests that even 42 inches may be too low as "the height of the stair railing several steps below the point where the fall originates is considerably lower than the stair railing height at the point where the fall originates, thus, it appears that a fall during descent may be more likely to project the subject in the direction of this 'lower' railing, and possibly over the railing" (Ex. 6:57). Nevertheless, in order to recognize the limits already established by many existing building codes, and to allow contractors to continue the common practice of combining the stairrails and handrails into one railing system, OSHA is proposing that the minimum height of stairrails be 36 inches.

Paragraph (c)(4) would require midrails, screens, mesh, intermediate vertical members (such as balusters), or equivalent structural members to be placed between the stairway steps and the top of the stairrail system. This is essentially the same as existing rule E § 1926.500(f)(2) which requires stairrails to be similar in construction to guardrails. Paragraph (c)(4)(i) would require midrails to be located midway in height on a stairrail system. This is the same requirement as contained in E § 1926.500(f)(1). Paragraph (c)(4)(ii) would require screens or mesh, when used, to fill the entire opening between toprail and stairway steps, and paragraph (c)(4)(iii) would require baluster type members to be no more than 19 inches apart. Paragraph (c)(4)(iv) would allow other arrangements of structural members provided all openings in the system are not more than 19 inches wide. These rules would

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be new requirements as the existing rule only addresses the use of midrails. However, these new rules would allow greater flexibility for the contractor providing fall protection, and are consistent with proposed paragraph § 1926.502(b) in the proposed revisions to Subpart M—Fall Protection.

Paragraph (c)(5) would require handrails and the toprails of stairrail systems to be capable of withstanding, without failure, a force of at least 200 pounds applied within two inches of the top surface, in any downward or outward direction, and at any point along the top edge. This is essentially the same requirement as contained in E § 1926.501(b), which references E § 1926.500(f). The phrase "with a minimum of deflection" presently in E § 1926.500(f)(1)(iv) is not used in the proposed rule because deflection should not be automatically equated with failure. A rail may deflect and still restrain falls.

Paragraphs (c) (6) and (7) specify the maximum and minimum height for handrails and stairrails which are to serve as handrails. Although the existing rules E § 1926.500(f)(2) and E § 1926.500(f)(4)(ii) specify 30 and 34 inches as appropriate limits, a study by the University of Michigan (Ex. 6:43) has determined that 33 inches is the optimum height, and that a variance from this height of plus or minus three inches is appropriate. This new limit would allow any 36-inch high stairrail system to double as a handrail. However, the upper limit for handrails is proposed to be 37 inches to allow some flexibility in providing a system that can meet the height criterion for both stairrail systems and handrail systems.

Paragraph (c)(8) would require stairrail systems and handrails to be smooth finished in order to prevent clothes from being snagged (which in turn could cause an employee to trip), and to prevent the wounding of employees. This is the same requirement as E § 1926.500(f)(1)(vi)(*a*) and E § 1926.500(f)(4)(i).

Paragraph (c)(9) would require handrails to provide an adequate handhold for anyone using them. This is the same requirement as in E § 1926.500(f)(4)(i).

Paragraph (c)(10) would require that the ends of stairrail systems and handrails be constructed such that they do not constitute projection hazards. This is the same requirement as in E § 1926.500(f)(1)(vi)(*d*) and E § 1926.500(f)(4)(i).

Paragraph (c)(11) would require handrails to be spaced a minimum of one and one-half inches away from walls, stairrail systems, and other objects. This is a change from E § 1926.500(f)(4)(iii), which requires a minimum clearance of three inches. The proposed change does not affect safety, and would bring OSHA standards into conformance with the current requirements of many local building codes, as well as to ANSI standard A12.1–1973, Safety Requirements for Floor and Wall Openings, Railings, and Toeboards, paragraph 7.6.

Paragraph (c)(12) would require unprotected sides and edges of stairway landings to be provided with guardrail systems. The provisions of proposed Subpart M would apply as to the specifics of the guardrial systems, and a 42 inch (plus or minus three inches) high guardrail would be required. While this appears to be a new rule, it is actually a clarification that the minimum height of 36 inches for stairrail systems does not apply to landing areas.

Section 1926.1053 Ladders.

This section specifies the requirements for all ladders used by construction employees.

The existing standard, in paragraphs E § 1926.450(a) (3), (4), and (5), requires manufactured and fixed ladders to "be in accordance with the provisions of American National Standards Institute" safety codes. Although the specific safety codes are identified, the applicable paragraphs of each code are not specified. To eliminate confusion as to which provisions apply, and to eliminate the need for employers to refer to documents outside Part 1926, the applicable provisions of the ANSI documents have been incorporated into the text of Subpart X, and are identified in the following discussion. Where the applicable paragraphs have been updated by more recent ANSI documents, the proposal incorporates the more recent language.

Paragraph § 1926.1053(a) General.

Paragraph (a) sets forth the general requirements for the construction of ladders.

Paragraph (a)(1) would specify minimum strength requirements for all ladders.

Paragraph (a)(1)(i) would require each portable ladder and each job-built ladder to be capable of supporting, without failure, at least four times the maximum intended load applied or transmitted to that ladder when the ladder is placed at an angle of 75½ degrees from the horizon. This minimum strength requirement for portable ladders is essentially the same requirement as contained in the E § 1926.450(a) (3) and (4) references to the A14.1–1968 ANSI standard for portable wood ladders (Ex. 8) which addresses this concern in paragraph 4.1.2.1, and the A14.2–1956 ANSI standard for portable metal ladders (Ex. 9) which addresses this concern in paragraph 4.2.1. However, the 200 pound load specified by ANSI is deleted in favor of the proposed performance-oriented language which addresses more situations. Breakage, separation of component parts, or load refusal would be used as the failure criteria, as some rung deformation will normally result when such loads are applied, and a deformed rung does not necessarily indicate a ladder which is unsafe for use. Job-built ladders do not have minimum strength criteria either in the existing OSHA rules or in the ANSI standard for job-built ladders A14.4–1979 (Ex. 14). However, their potential use is the same as that of manufactured portable ladders, and, therefore, the proposed standard would impose the same strength requirements.

Paragraph (a)(1)(ii) would require fixed ladders to be capable of supporting, without failure, at least two loads of 250 pounds each, concentrated between any two consecutive points of attachment plus other anticipated loads such as those caused by winds and ice buildup. The paragraph would also require that each step and rung be capable of supporting a minimum concentrated load of 250 pounds, applied in the middle of its span. This requirement is essentially the same as contained in the E § 1926.450(a)(5) reference to the ANSI requirement for fixed ladders ANSI A14.3–1956 (Ex. 10), which addresses this in paragraph 3. However, the specific requirement is based on the updated edition of this standard, ANSI A14.3–1984 (Ex. 13), paragraph 3.2.1.1. The ANSI criteria is based on loads of 250 pounds, and is consistent with OSHA's current use of 250 pounds as the average design weight of an employee with tools.

Ladders built in conformance with Appendix A would be deemed by OSHA to meet the strength requirements of paragraph (a)(1). This includes extra heavy duty type 1A ladders built in accordance with the 1982 ANSI standards for portable metal ladders and portable reinforced plastic ladders. ANSI requires these types of ladders to have a safety factor of only 3.3, however, OSHA believes that the extensive testing procedures also required by ANSI are sufficient to insure adequate ladder strength. Appendix A references the current ANSI standards that apply to portable wood ladders, portable metal ladders, portable reinforced plastic ladders, fixed ladders, and job-made ladders (Exs. 11–14, 17). Whereas the existing standard requires conformity to similar earlier specifications (see E § 1926.450(a) (3), (4), and (5)) the proposed standard does not, as it is written in performance-oriented language. This would allow design freedom to employers who desire to engineer their own ladders, and would provide an acceptable design for employers who do not desire to or cannot engineer the systems they use. The important consideration is that the ladder be capable of safely supporting the loads imposed.

Paragraph (a)(2) would require ladder rungs, cleats, and steps to be parallel, level, and uniformly spaced when the ladder is in position for use. This requirement is based on the E § 1926.450(a)(3) reference to the ANSI standard for portable wood ladders, A14.1–1968 (Ex. 8), which addresses this in paragraph 4.2.1.2. Although this requirement is not included in its entirety in the other ANSI standards referenced by E § 1926.450(a) (4) and (5), OSHA believes that such a requirement is needed for all ladders.

Paragraph (a)(3) would require that rung, cleat, and step spacing be not less than six inches apart, nor more than 12 inches apart, as measured along the siderail, and that the limits be six and 16½ inches for individual step or rung ladders. Limits are specified in the existing standard by referencing the applicable ANSI standards for portable wood ladders, portable metal ladders, and fixed ladders in paragraphs E § 1926.450(a) (3), (4), and (5). The proposed limits are the general limits used in ANSI's current standards for the most commonly used types of ladders (Exs. 11–14, 17). Public comment is requested on these limits in Issue Number 7.

Paragraph (a)(4) would specify minimum rung, cleat, and step length for various ladders. These limits are essentially the same as contained in the E § 1926.450(a) (3), (4), and (5) references to existing ANSI requirements A14.1–1956 (Ex. 8), paragraph 4.2.1.3, ANSI A14.2–1956 (Ex. 9), paragraph 3.2.1, and ANSI A14.3–1956 (Ex. 10), paragraph 4.1.3. The limit for reinforced plastic ladders is based on the requirements for such ladders in ANSI A14.5–1982 (Ex. 17). Limits are specified only for the most commonly used types of ladders. Public comment is requested on these limits in Issue Number 7.

Paragraph (a)(5) would require individual rung ladders to be shaped such that employees' feet cannot slide off rung ends. This is the same requirement as contained in paragraph 4.1.5 of ANSI A14.3–1956 (Ex. 10) which is referenced by E § 1926.451(a)(5).

Paragraph (a)(6) would require rung and steps of metal ladders to be corrugated, knurled, dimpled, coated with skid resistant material, or be otherwise treated to minimize slipping. This is the same requirement as in paragraph 3.1.5 of ANSI A14.2–1956 (Ex. 9) which is referenced by E § 1926.451(a)(4).

Paragraph (a)(7) would prohibit the tying together of ladder sections to make a longer ladder, unless the sections are designed for such use. This is the same requirement as in paragraphs 5.2.9 of ANSI A14.1–1968 (Ex. 1) and 5.3.6 of ANSI A14.2–1956 (Ex. 9) which are referenced by E § 1926.451(a) (3) and (4), respectively.

Paragraph (a)(8) would require stepladders to be provided with a metal spreader or other locking device to keep the ladder in an open position when being used. This is the same requirement as in paragraphs 4.2.1.6 of ANSI A.14.1–1968 (Ex. 8) and 3.3.8 of ANSI A14.2–1956 (Ex. 9) which are referenced by E § 1926.451(a) (3) and (4), respectively.

Paragraph (a)(9) would require that a spliced siderail be equivalent in strength to a siderail of the same length made of one piece of the same material. This is the same requirement as E § 1926.450(b)(7), except the proposed rule would apply to all ladders, not just job-made ladders, as proper splices are important on all ladders.

Paragraph (a)(10) would require that when two or more separate ladders are used to reach an elevated work area, the ladders be offset and a platform be used between ladders. This is the same requirement as contained in E § 1926.450(b)(3), except the proposal would extend this rule to all multiple ladder situations, and not just those involving job-made ladders.

Paragraphs (a) (11) and (12) would require ladder platforms and landings to be provided with guardrails and overhead fall protection. The provisions of proposed Subpart M would apply as to the specifics of the guardrail and overhead protection construction. These are the same requirements as are contained in E § 1926.450(b)(3), except under the proposed rules, toeboards would not be required if there are no employees below the platform or landing.

Paragraph (a)(13) would require ladder surfaces to be free of puncture and laceration hazards. This provision is essentially the same provision as those contained in the E § 1926.450(a) (3), (4), and (5) references to existing ANSI requirements A14.1–1968 (Ex. 8), paragraph 3.1.1.1, ANSI A14.2–1956 (Ex. 9), paragraph 3.1, and ANSI A14.3–1956 (Ex. 10), paragraphs 4.1.4 and 4.2. These paragraphs require ladders to be without defects such as sharp edges, splinters, and burrs. The proposed provisions would also apply to job-made ladders.

Paragraph (a)(14) would prohibit wood ladders from being coated with any opaque covering except as necessary for identification or warning labels. This provision is intended to prohibit covering or painting over any splits or cracks in any wood ladder component which would cause the defect to be unnoticeable to a ladder user. This requirement is based on the E § 1926.450(a)(3) reference to ANSI requirement A14.1–1968 (Ex. 8), which addresses this in paragraph 5.1.9. However, the specific wording of the proposal is based on the revised ANSI A14.1–1982 (Ex. 11), paragraph 8.4.6.3.

Paragraph (a)(15) would require a minimum perpendicular clearance of seven inches between fixed ladder rungs, cleats, and steps, and any obstruction behind the fixed ladder. This is essentially the same requirement as contained in the E § 1926.450(a)(5) reference to ANSI A14.3–1956 (Ex. 10), which addresses this in paragraph 5.4. However, the proposal does not provide for unavoidable obstructions as in the existing rule. This change is made in line with the language of the more recent ANSI standard A14.3–1984 (Ex. 13), paragraph 5.4.2.1.

Paragraph (a)(16) would require a minimum clearance of 30 inches between fixed ladders and any obstruction on the climbing side of the ladder. Where the clearance is less than 30 inches because of unavoidable obstructions, paragraph (a)(17) would require a deflection device to be installed that would guide employees around the obstruction. These requirements are essentially the same as the E § 1926.450(a)(5) reference to ANSI A14.3–1956 (Ex. 10), which addresses this in paragraph 5.1. However, the proposal is changed to reflect the modifications contained in ANSI A14.3–1984 (Ex. 13), paragraphs 5.4.1.1 and 5.4.1.3.

Paragraph (a)(18) would specify minimum and maximum step-across distances at landings for fixed ladders of seven inches and 12 inches. This is the same requirement as in paragraph 5.6 of ANSI A14.3–1956 (Ex. 10) which is referenced by E § 1926.450(a)(5), except the existing two and one-half inch minimum limit is changed to seven inches to be consistent with rule (a)(15).

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Paragraph (a)(19) would require a minimum of 15 inches side clearance (from the ladder centerline) for all fixed ladders that do not have cages or wells. This is the same provision as in paragraph 5.2 of ANSI A14.3–1956 (Ex. 10) which is referenced by E § 1926.450(a)(5).

Paragraphs (a) (20) and (21) would require fixed ladders to be provided with cages, wells, ladder safety devices, or self-retracting lifelines where the length of climb is less than 24 feet but the top of the ladder is more than 24 feet above lower levels, and for all fixed ladders where the length of climb equals or exceeds 24 feet. This requirement is based on the E § 1926.450(a)(5) reference to ANSI A14.3–1956 (Ex. 10) which addresses this concept in paragraph 6.1.2. However, the proposed requirement reflects the updated and clarified language of A14.3–1984 (Ex. 13), paragraph 4.1. The proposal would also allow the use of the self-retracting lifelines as alternative fall protection to wells, cages, and ladder safety devices.

Paragraphs (a) (22) and (23) would set forth the requirements for fixed ladder cage and well construction and are essentially the same as ANSI A14.3–1956 (Ex. 10) paragraph 6.1, which is referenced by E § 1926.450(a)(5). However, the proposal reflects the updated and clarified language of ANSI A14.3–1984 (Ex. 13), paragraphs 6.1 and 6.2. Significant differences between the ANSI documents are as follows: Maximum cage size is increased from 28 inches to 30 inches to allow easier employee movement; wells are now required to encircle the ladder completely and be free of projections; wells must now have an inside clear width of at least 30 inches; and the bottom access opening shall not be less than seven feet nor more than eight feet high. Public comment is requested on these changes.

Paragraphs (a) (24) and (25) would set forth the requirements for ladder safety devices and is based on the E § 1926.450(a)(5) reference to ANSI A14.3–1956 (Ex. 10) which covers this topic in paragraph 6.5. However, the proposal refects the updated and clarified language of ANSI A14.3–1984, paragraph 7.

Paragraph (a)(24)(i) would require ladder safety devices and their support systems (such as a ladder to which they are attached) to be capable of withstanding, without failure, a drop test consisting of an 18-inch (.41 m) drop of a 500 pound (226 kg) weight. This provisions is based on the ANSI A14.4–1984 (Ex. 13), paragraph 7.1.3. Paragraph (a)(24)(ii) would require the devices to be of a design which permits employees using the system to ascend or descend without continually having to manipulate any part of the system. The requirement is the same as paragraph 7.3.1 of ANSI A14.3–1984. Paragraph (a)(24)(iii) would require ladder safety devices to limit the descending velocity of an employee to seven feet per second (2.1 m/sec) or less within two feet (.61 m) after a fall occurs. In establishing this velocity for ladder safety devices, it was noted that a National Bureau of Standards' report (Ex. 18) suggests a maximum descent rate of 15 feet per second for an uninjured employee and 10 feet per second (3.1 m/sec) for an injured employee for descent devices. Descent devices are a type of equipment used for escapes, whereby a worker travels down a rope or line without obstructions in the descent path. In adapting the concept of allowing a rate of descent for personal fall protection systems for climbing protection, OSHA is proposing a more conservative rate of seven feet per second (2.1 m/sec) for ladder safety devices because the ladder may injure an employee during descent. OSHA believes that in addition to providing protection from the force of the fall, this rate would enable an employee to regain control on the ladder if desired, or to allow for emergency egress at a reasonable and safe speed. This represents the speed attained after free falling approximately one foot (30.5 cm). OSHA requests comments and data in the Specific Issues section of this preamble on whether or not a descent rate of 10 feet per second would provide adequate protection. Paragraph (a)(24)(iv) would require that the maximum length of the connection between the carrier or lifeline and the point of attachment to the body belt not exceed nine inches (23 cm). This requirement is based on a recommendation contained in Drs. Chaffin and Stobbe's report, "Ergonomic Considerations Related to Selected Fall Prevention Aspects of Scaffolds and Ladders as Presented in OSHA Standard, 29 CFR Part 1910, Subpart D" (Ex. 19) which indicates that this distance is needed to ascend and descend a ladder in a position that is not awkward.

Paragraph (a)(25) would specify the mounting requirements for ladder safety devices. Paragraph (a)(25)(i) would require mountings for rigid carriers to be attached at each end of the carrier with intermediate mountings spaced along the entire length of the carrier. This is based on ANSI A.14.3–1984, paragraph 7.3.4. Paragraph (a)(25)(ii) would require mountings for flexible carriers to be attached at each end of the carrier, and that when the system is exposed to wind, cable guides be installed at a minimum spacing of 25 feet (7.6 m) and a maximum spacing of 40 feet (12.2 m) along the entire length of the carrier to prevent wind damage to the system. These are the same requirements as in ANSI A.14.3–1984, paragraph 7.3.5. Paragraph (a)(25)(iii) would require that the design and installation of mountings and cable guides not reduce the design strength of the ladder. This is based on ANSI A14.3–1984, paragraph 7.1.4.

Paragraphs (a) (26), (27), and (28) would specify the height of ladder siderails at landings, the amount of siderail flare, and would require siderails and steps or rungs to be continuous in the extension (that is, they shall be carried to the next regular step or rung beyond or above the 42 inch minimum height). These are the same requirements as in ANSI A14.3–1956 (Ex. 10), paragraph 6.3, referenced by § 1926.450(a)(5), except the minimum and maximum siderail flare is changed from 18 inches and 24 inches to 24 inches and 30 inches to reflect ANSI A14.3–1984 (Ex. 13) paragraph 5.3. Paragraph (a)(29) would require individual rung ladders, except those covered by manhole covers or hatches, to extend 42 inches above the landing or be equipped with grabrails. This is based on the ANSI A14.3–1984 (Ex. 13) paragraph 5.3.3 revision of ANSI A14.3–1956 (Ex. 10) paragraph 6.3 which is referenced by E § 1926.450(a)(5).

Paragraph § 1926.1053(b) Use.

Paragraph (b) sets forth the requirements for safe ladder use by construction employees.

Paragraph (b)(1) would require ladder siderails to extend at least three feet above the upper level or surface to which the ladder is used to gain access. This is substantively the same requirement as E § 1926.450(a)(9). The proposal would provide that when such extensions are not possible because of the ladder length, then the ladder shall be secured at the top and employees be provided with a grasping device such as a grabrail. This is essentially the same provision as in E § 1926.450(a)(9), except that the proposal would require the securing of the ladder and would not limit alternative solutions to grabrails.

Paragraph (b)(2) would require ladders to be free of slipping hazards. This requirement is based on the E § 1926.450(a)(3) reference to ANSI A14.1–1968 (Ex. 8), which in paragraph 5.1.11 requires ladder rungs to be "kept free of grease and oil"; the E § 1926.450(a)(4) reference to ANSI A14.2–1956 (Ex. 9), which requires in paragraph 8 that ladders "be maintained in safe condition;" and the E § 1926.450(a)(5) reference to ANSI A14.3–1956 (Ex. 10), which requires in paragraph 5.2.6.4 that ladders be "cleaned of oil, grease, or slippery materials." However, oil and grease are only two of many slip-causing substances and, therefore, paragraph (b)(2) would use broader language.

Paragraph (b)(3) would require that ladders not be loaded beyond their maximum intended load-carrying capacity, nor beyond their rated capacity. This requirement is a clarification and extension of the E § 1926.450(a)(3) reference to ANSI A14.1–1968 (Ex. 8) which addresses overloading in paragraph 5.2.2. The proposal would extend the rule against overloading to all ladders in all situations.

Paragraph (b)(4) would require that ladders be used only for the purpose for which they were designed. This provision is based on the E § 1926.450(a)(3) reference to ANSI A14.1–1968 (Ex. 8), which in paragraph 5.2.12 prohibits using ladders as guys, braces, skids, or for other than their intended purpose. This provision is also based on E § 1926.450(a)(7) which prohibits using ladders in a horizontal position as a scaffold platform, or a runway. The proposed restriction would apply to all ladders, not just portable ladders.

Paragraph (b)(5) would require non-self-supporting ladders to be used such that the angle of inclination is approximately one to four, horizontal distance to working ladder length distance. The proposed rule would also include the language of ANSI A14.4–1979 (Ex. 14), Safety Requirements for Job-Made Ladders, paragraph 4.4.1, which increases the required minimum angle to a ratio of one to eight for job-made ladders made with spliced siderails. This paragraph also would require fixed ladders to be used at a pitch no greater than 90 degrees from the horizontal as measured to the backside of the ladder. This rule is based on the ANSI A14.3–1956 (Ex. 10) provision in paragraph 7.1, which is contained in the E § 1926.450(a)(5) reference.

Paragraph (b)(6) would require ladders to be used only on stable and level surfaces unless secured to prevent accidental displacement. This requirement is based on E § 1926.450(a)(6), which requires "a substantial base"; on the E § 1926.450(a)(3) reference to ANSI A14.1–1968 (Ex. 8), which in paragraph 5.2.3, requires a "secure footing" for ladders; and on paragraph 5.2.5, which requires a stable footing. The additional requirement that the surface must be level or the ladders be secured is based on ANSI A14.1–1982 (Ex. 11), paragraph 8.3.4, and is included as OSHA believes that surfaces which are not level do not provide suitable support for unsecured ladders.

Paragraph (b)(7) would prohibit the use of ladders on slippery surfaces unless they are secured or provided with slip-resistant feet. This is essentially the same requirement as the E § 1926.450(a)(3) reference to ANSI A14.1–1968 (Ex. 8), which addresses this in paragraph 5.2.20, except the requirement is modified to reflect the more recent language of ANSI A14.1–1982 (Ex. 11), paragraph 8.3.4.

Paragraph (b)(8) would require ladders placed in passageways, doorways, or any location where they can be displaced by other activities or traffic, to be secured in place, or a barricade system used to keep activities and traffic away from the ladder. This is the same provision as E § 1926.450(a)(8), except for the additional proposed provision to allow the ladders to be tied off or otherwise secured. OSHA believes that if a ladder is secured against displacement then no problem exists. The type of tie-off required would vary depending on the type of activity taking place, and the likelihood of ladder displacement.

Paragraphs (b) (6), (7) and (8), would replace E § 1926.450(a)(10), which simply requires portable ladders to be tied, blocked, or otherwise secured. The revised rules would more clearly identify the hazards to be protected against by requiring such restraints where the footing is unstable, unlevel, slippery, or where the ladder can be accidentally displaced by other work activities or traffic.

Paragraph (b)(9) would require the area around the top and bottom of ladders to be kept clear. This is the same requirement as contained in E § 1926.450(a)(6), except that it would apply to fixed ladders as well as portable ladders.

Paragraph (b)(10) would require the tops of non-self-supporting ladders to be placed such that the two siderails are equally supported, or provided with a single support attachment. This requirement is proposed to insure proper ladder stability and is based on the E § 1926.450(a)(4) reference to ANSI A14.2–1956 (Ex. 9), which addresses this in paragraph 5.3.2; on ANSI A14.1–1982 (Ex. 11), which addresses it in paragraph 8.3.5; and on ANSI A14.2–1982 (Ex. 12), which covers this in paragraph 8.3.5.

Paragraph (b)(11) would provide that ladders not be moved, shifted, or extended while occupied. Essentially, this would be a new rule although E § 1926.450(a)(3) references ANSI A14.1–1968 (Ex. 8) which contains in paragraph 5.2.17 a prohibition against extending a ladder while occupied. The proposed rule is further supported by paragraph 8.3.15 of both ANSI A14.1–1982 (Ex. 11) and A14.2–1982 (Ex. 12) which prohibit relocating a ladder while it is occupied, and by paragraph 8.3.13.1 of both 1982 ANSI standards which prohibit extending a ladder while occupied.

Paragraph (b)(12) would require ladders to have nonconductive siderails when used where the ladder could contact energized equipment, except as provided in 29 CFR 1926.951(c)(1) of Subpart V—Power Transmission and Distribution. This is essentially the same requirement as E § 1926.450(a)(11), except the existing rule does not reference the Subpart V rule and, therefore, is in conflict with that provision. Subpart V provides that "portable metal or conductive ladders shall not be used near energized lines or equipment except as may be necessary in specialized work such as in high voltage substations where nonconductive ladders might present a greater hazard than conductive ladders."

Paragraph (b)(13) would prohibit using the top of a stepladder as a step. This is the same provision as ANSI A14.1–1968 (Ex. 8), paragraph 5.2.13, referenced by E § 1926.450(b)(3), except it would apply to all stepladders and not just wood stepladders.

Paragraph (b)(14) would prohibit using the crossbracing on stepladders as a step. This is the same provision as ANSI A14.1–1968 (Ex. 8), paragraph 5.2.22, referenced by E § 1926.450(a)(3), except it would apply to all stepladders and not just wood stepladders. Crossbracing is not designed as a step and its use as such can result in falls from the ladders.

Paragraph (b)(15) would require ladders to be inspected for visible defects prior to the first use of each workshift and after any occurrence which could affect their use. Public comment is requested on this requirement in Issue Number 5.

Paragraph (b)(16) would provide that ladders with structural defects be immediately tagged or withdrawn from service until repaired. This is essentially the same rule as E § 1926.450(a)(2), except tagging is added for defective ladders which are not or can not be immediately removed from service. The proposed language makes it clear that ladders can be reused after they have been repaired. The requirement in E § 1926.450(a)(2) that metal ladder inspections include a check for rung

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corrosion would be deleted as being redundant of the general inspection requirement contained in (b)(15).

Paragraph (b)(17) would require ladder repairs to restore the ladder to a condition meeting the design criteria of the ladder. This would be a new requirement, and means that if, for example, a Type 1A extra-heavy-duty-rated ladder has a broken rung, the replacement rung also must be capable of supporting at least a 300 pound load.

Existing provisions E § 1926.450(b)(2); the first line of (b)(3); and provisions (b)(4), (5), (6), (8), (9), (10), (11), and (12) are specification-type requirements for job-made ladders. They are proposed to be deleted as being redundant and in conflict with the performance-oriented provisions of proposed paragraph § 1926.1053(a)(1). Contractors who wish to refer to a guide table for the construction of job-made ladders, should use their own design tables which are compatible with § 1926.1053(a)(1), or use the ANSI standard for job-made ladders, A14.4-1979. As written, the existing rules are out of context and are not sufficiently detailed to address adequately job-made ladder construction. In addition, the provisions of paragraphs E § 1926.450(b) (6), (10), and (11) were developed for manufactured portable wood ladders and not job-made ladders. The proposed language corrects these problems.

Section 1926.1060 Training.

This section is in addition to the training requirements of E § 1926.21; however, the provisions may be cited only when one or more citations are issued under the other provisions of Subpart X.

Paragraph (a)(1) would clarify the types of hazards to be addressed in all training programs given to educate employees using ladders and stairways. Stairways and ladders are safe only when they are designed, built, located, maintained, and used properly. This section contains requirements as to how the requisite training is to be carried out. However, this section does not specify the details of the training program. Instead, it requires employees to be instructed in the proper way to build, use, place, and maintain stairways and ladders. In this way, the section provides flexibility for the employer in designing the training program.

Paragraph (a)(2) requires training and retraining to be provided for each employee as necessary. OSHA requests public comment on the frequency of training in Issue Number 8.

Specific issues. The public is specifically requested to comment on the following issues:

1. The preamble identifies the provisions in the standard which are new or which are changed from the provisions of the existing standard. OSHA believes that many employers are already following many of these revised provisions. However, OSHA will evaluate, on the basis of all the evidence submitted to the public record, the likely effectiveness of the proposed revised and new provisions and will include in the final rule only those revised and new requirements for which a significant reduction in the risk of incurring injuries or fatalities would be supported by the final record. Hence, the following issues are raised:

(a) Public comment is requested on the current level of practice which meets the requirements of the proposed changes;

(b) Public comment is requested on the practicality and feasibility of the proposed changes, and whether implementation of the proposed changes will reduce the occurrence or severity of accidents;

(c) Public comment is requested on the amount of any costs or savings which have not been identified by OSHA (see Section IV of this preamble—Preliminary Regulatory Impact Assessment and Regulatory Flexibility Analysis) which might result from the proposed changes;

(d) Public comment is requested on the availability and content of accident reports which indicate that the proposal does not properly address stairway and ladder hazards.

2. Existing rule E § 1926.450(a)(1) requires a means of access at all breaks in elevation. Existing rule E § 1926.501(a) requires a means of access on structures two or more floors (20 feet) high. Public comment is requested on an appropriate height limit where a means of access should be required. One suggestion is to require a ladder, stairway, runway, or ramp wherever there is a break in elevation of 19 inches or more, the equivalent of two standard steps. Comments should include appropriate injury and cost data.

3. Existing rule E § 1926.450(a)(3) references ANSI A14.1-1968 which prohibits the use of wooden single rail ladders in paragraph 5.2.10. However, this prohibition is not found in latter ANSI documents. OSHA believes such ladders are inherently difficult and hazardous to use, and public comment is requested on whether or not the use of such ladders should continue to be prohibited. Comments should address costs, accidents, and all types of construction materials, i.e., wood, metal, plastic, etc.

4. The requirements of proposed rules §§ 1926.1053(a)(10)-(12) are based on E § 1926.450(b)(3) which applies only to job-made ladders. Public comment is requested on whether or not it is appropriate to extend this rule to all ladders. Comments should include appropriate cost and injury data.

5. Proposed rule § 1926.1053(b)(15) requires ladders to be inspected for visible defects prior to the first use of each workshift and after any occurrence which could affect their use. The requirement for an inspection is implied in E § 1926.450(a)(2), and required by the respective E §§ 1926.450(a) (3), (4), and (5) references to ANSI provisions A14.1-1968 (Ex. 8), paragraph 5.1.10; A14.2-1956 (Ex. 9), paragraph 5.2.4; and A14.3-1956 (Ex. 10), paragraph 8. The referenced ANSI provisions do not specify a definite frequency rate for inspections, however, the proposed frequency is similar to that set out in paragraphs 8.4.1 of ANSI 14.1-1982 (Ex. 11), and A14.2-1982 (Ex. 12), which suggest that inspections be made prior to each use. Public comment is requested on the specified frequency of inspection.

6. Proposed rule § 1926.1053(a)(1)(i) requires ladders to have a four to one strength capacity (ladders meeting ANSI specifications are deemed to meet this requirement). However, once a ladder has been designed and is in use, it is difficult to assess its strength capacity as loading the ladder to four times its rated capacity could permanently damage the ladder and render it useless Specifying a maximum allowable deflection for a ladder while in use could be an appropriate method of evaluating a ladder's capacity. Public comment is requested on whether or not OSHA should specify a maximum allowable deflection for ladders, and if so, how much should be allowed, and how should it be measured (i.e., horizontally with end points supported and the working load applied in midspan)?

7. Proposed rule § 1926.1053(a)(3) specifies minimum and maximum vertical spacing between ladder rungs, steps, and cleats. Proposed rule § 1926.1053(a)(4) specifies minimum widths for rungs, steps, and cleats. These limits are based on the general limits set forth in the ANSI standards for ladders (Exs. 11-14, 17). However, the proposed limits reflect OSHA's attempt to consolidate the wide range of ANSI's limits, and consequently, do not mirror the existing ANSI provisions exactly.

Therefore, public comment is requested on the following points:

(a) Are the proposed limits appropriate, or should the more specific ANSI limits be adopted, or should other less specific limits be adopted? Proponents for using the more specific ANSI limits should state why the various limits are required for each type of ladder. Proponents for using less specific limits should state where the limits are from and why the proposed limits are not appropriate.

(b) If the proposed limits are appropriate, should they be consolidated further so that there is only one set of rules for vertical spacing, say 6 to 12 inches, and one minimum width limit, say 11½ inches?

8. Proposed rule § 1926.1060(a)(2) would require training and retraining as necessary for all employees using stairways and ladders. Public comment is requested on whether a more specific requirement or a less specific requirement such as that found in § 1926.21, would be appropriate. OSHA intends to include in the final rule only those training requirements for which a significant reduction in the risk of incurring injuries or fatalities would be supported in the final record.

Public comment is also requested on what training programs are currently available, who is providing them, and their cost. To the extent possible, examples of both adequate and inadequate training programs should be provided, with examples of how inadequate training may have contributed to unsafe conditions.

Companies, unions, trade associations, and other organizations conducting training programs also are encouraged to submit data concerning the safety records of employees who have undergone training. For example, have companies which have instituted training programs experienced a decrease in accidents compared to the situation existing before training was started.

Information concerning the costs of training and how such costs may be offset by more efficient and/or safe operations is also requested. Although OSHA believes safety training is necessary and beneficial, comments have been received that raise the following concerns:

What level of specificity should OSHA require in a training program? What are the necessary elements of a training program? Can the more general training requirements contained in § 1926.21 be effective in providing employees with adequate training or are the more specific requirements in this proposal necessary?

Do employers or employees believe that training is too costly for the benefits it yields? If OSHA should not require training at all, is there a basis for predicting if training efforts will decrease, increase, or stay at present levels? Would employers, employees, or other interested parties support the omission of the training requirement proposed for this subpart? Do data, eyewitness, and anecdotal evidence exist which may constitute support for OSHA's not requiring training?

Comments are also requested on whether or not training should be required to be provided in specific sessions devoted to an overall view of safety issues likely to be encountered, or are on-the-job sessions, limited to isolated safety concerns as they are encountered, sufficient to insure safety?

In addition, OSHA requests comments on whether compliance with these proposed training requirements could be practicably accomplished without keeping records. Do these proposed training requirements, as written, impose an implicit recordkeeping burden on employers? Data on the cost and time necessary for keeping training records, if any, are requested.

9. In some of the existing provisions and in some of the proposed provisions, OSHA uses specific numerical limits to define and clarify the duties set forth. For example, see Issue Number 7 above addressing ladder rung spacing, and see E § 1926.501(j) and proposed provision § 1926.1052(a)(2) which address stairway slope. These and other limits are based on existing laws and consensus standards, and are used in lieu of more performance-oriented language such as "provide adequate rung spacing," or "install stairways at such angles that tripping is minimized," or language which requires a numerical limit but then allows other configurations which give "equivalent" protection. OSHA believes that although such performance-oriented language would be less restrictive on employers, and thus give them more options when abating a hazard, it does not always tell the employer exactly what is required (i.e., how to do something "right"). On the other hand, requiring specific numerical limits in the rule and allowing the employer to use other limits which the employer can show will provide "equivalent" protection may respond to both these concerns. OSHA believes that the use of specific limits in certain provisions (such as those listed above, and those for stairrail, handrail heights, and similar requirements) provides the required notice to employers as to how they can comply with a provision compared to how OSHA intends to enforce the provision. OSHA believes that such notice serves to inform employees and employers about the proper way to do things; promotes consistency in hazard abatement at all worksites; and also minimizes legal disputes over the intent of a requirement. On the other hand, specification language can increase costs without increasing safety, discourage technical innovation, prevent the use of safe alternatives, and fail to anticipate the varying needs and situations in the numerous workplaces covered by the standard.

Public comment is requested on whether or not OSHA's use of specification language is appropriate, or if it should be moved to a non-mandatory appendix which could provide guidance to employers. If not, how should the provisions be written to provide the desired flexibility and the required fair notice? If the continued use of such limits is appropriate, are the proposed limits sufficient to abate the hazards? Comments should include appropriate cost and injury data.

10. Existing rule E § 1926.501(f) and proposed rule § 1926.1052(b)(1) require metal pan-type stairways to be temporarily filled with wood or other material until the concrete treads are placed. Proposed rule § 1926.1053(b)(2) addresses a similar concern for adequate footing on skeleton metal stairs, and would prohibit the use of such stairs until either temporary or permanent treads and landings are installed. OSHA solicits comments and suggestions regarding the adequacy or need for these provisions. Comments should include appropriate cost and injury data.

11. Existing rule E § 1926.500(e)(1) and proposed rule § 1926.1052(c)(1) require stairways having four or more risers to be equipped with stairrail and handrail systems. Comments have been received which suggest that "four risers" is not the appropriate lower limit. Public comment is requested on whether or not another limit is appropriate. Comments should include appropriate cost and injury data.

12. Paragraph § 1926.1053(a)(24)(iii) would limit the descending velocity of employees using ladder safety devices to seven feet per second or less. Public comment is requested on whether or not some other limit would be appropriate, such as those recommended by the National Bureau of Standards study (Ex. 18). Proponents for limits other than the one proposed should discuss why the proposed limit is not appropriate.

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IV. Preliminary Regulatory Impact Assessment and Regulatory Flexibility Analysis

Introduction and Summary

In accordance with Executive Order No. 12291 (46 FR 13193), February 17, 1981) OSHA has analyzed the economic impact of this proposed standard. Under the criteria established in E.O. 12291, OSHA has determined that the promulgation of this proposed standard would be a "minor" action because the expected yearly costs of full compliance with the proposed standard would be approximately $16.95 million in the first year and $12.543 million each year thereafter: These expected costs of compliance are less than the $100 million necessary for the proposed standard to be considered a "major" regulatory action.

Proposed Subparts L, M, and X cover surfaces and areas that are currently covered under the existing Subparts L and M. OSHA has reorganized these Subparts in order to construct a more logical ordering to its standards and to facilitate the employer's ability to find the sections appropriate to the employer's concerns. In order to comply with the spirit of E.O. 12291, OSHA has also estimated the costs of compliance with the stairrail provisions to Subpart L and the costs of compliance with the ladder training provisions to Subpart M—the subparts in which the provisions governing these surfaces are currently found. OSHA has determined that the addition of these costs of compliance estimates to those costs of compliance estimates for the provisions in the proposed Subparts L and M would not make either proposed standard a "major" action.

Affected Industries and Population at Risk

The entire construction industry would be affected by the proposed changes to the existing Subparts L and M in view of the extensive use of ladders and stairways in all sectors of the industry. In terms of the two-digit Standard Industrial Classification (SIC) codes, OSHA determined that the proposal could potentially affect all firms in SICs 15 (Building Construction—General Contractors and Operative Builders), SIC 16 (Construction Other Than Building Construction—General Contractors), and SIC 17 (Construction—Special Trades Contractors). In 1977, there were approximately 456,000 individual contractors affected by Subparts L and M. The majority of business firms classified under SIC 17 are subcontractors to the general contractors classified under SICs 15 and 16. Rather than classifying these sectors by their two-digit SIC designations, OSHA used the type of finished construction product as the basis for classifying the construction industry into the following four general sectors:

1. Single-family housing,
2. Residential, except single family housing (e.g., hotels, apartments),
3. Nonresidential (e.g., commercial and institutional buildings), and
4. Heavy construction (e.g., bridges, utilities).

OSHA estimated that all of the approximately 4 million construction workers frequently work on ladders and stairways. Although it is quite likely that the amount of ladders and stairway use would differ among different types of construction trades, no data were available to quantify these differences.

Significance of Risk

OSHA estimated that the percentage of all occupational injuries that are injuries in construction due to falls from ladders and stairways is between 0.29 percent and 0.57 percent, with a mean of 0.43 percent. Applying this range to the 5,956,000 occupational injuries reported in the 1979 Occupational Injuries and Illnesses report (Ex. 16), OSHA estimated that the number of injuries in construction due to falls from ladders and stairways was between 17,280 and 33,960 with a mean of 25,620. Of these injuries, between 7,845 and 15,420 with a mean of 11,635 were lost workday injuries and between 9,435 and 18,540 with a mean of 13,985 were non-lost workday injuries. OSHA also estimated that the number of lost workdays in construction due to falls from ladders and stairways would be between 141,210 and 277,560, with a mean of 209,385.

In addition, OSHA determined that there would be between 32 and 44 fatalities yearly in construction associated with falls from ladders and stairways.

Consequently, OSHA concluded that the construction injuries and fatalities due to falls from ladders and stairways are significant and merit effort to reduce their numbers.

Feasibility, Benefits, and Costs

OSHA determined that the proposed revision of Subparts L and M would be technologically feasible because it would permit the use of readily available technology and equipment.

Benefits from the proposal would accrue to those workers who are at risk from current practices involving ladders and stairways in the construction industry. OSHA also determined that full compliance with the proposed standard would prevent from 21 to 29 fatalities, from 13,055 to 25,610 injuries (from 5,925 to 11,630 of which would have been lost workday injuries and 7,130 to 13,985 would have been non-lost workday injuries), and from 106,650 to 209,340 lost workdays. OSHA also determined that full compliance with the existing standard would prevent from 18 to 25 fatalities, from 12,350 to 24,290 injuries, (from 5,605 to 11,030 of which would have been lost workday injuries and from 6,745 to 13,260 would have been non-lost workday injuries), and from 100,890 to 198,540 lost workdays. Under conditions of full compliance, therefore, the proposed standard would be more protective than the existing standard as from two to four more fatalities would be prevented, from 705 to 1,325 more injuries would be prevented (including from 320 to 600 lost workday injuries and from 385 to 725 non-lost workday injuries), and from 5,760 to 10,800 fewer workdays would be lost.

OSHA does not endorse any particular estimate for the value of an employee's life. For illustrative purposes, however, OSHA used two methods to estimate the monetary value of the benefits that would result from implementation of the standard. The first method, known as the "human capital" approach, estimates directly the foregone earnings and medical costs associated with an occupational injury or death. Lost production and medical costs to society, however, are the minimum benefits resulting from the prevention of an occupational injury. The other method of estimating benefits is based on the willingness-to-pay concept. Willingness-to-pay is the theoretical amount that the beneficiaries of a program would be willing to pay in order to obtain the benefits of the program or, in an occupational safety context, what a group of workers would pay to reduce the probability of a death or injury. Willingness-to-pay is therefore a more accurate indicator of the true social benefits of preventing injuries to workers.

Using the "human capital" approach, OSHA determined that the annual monetizable benefits would be from $4.139 million to $7.416 million greater under full compliance with the proposed standard than under full compliance with the existing standard. In present value terms and using a 10-percent discount rate, these potential increases in monetizable benefits would be between $29.718 million and $53.247 million over a 10-year period.

On the basis of the willingness-to-pay concept, OSHA determined that using $3.5 million as the value for a prevented fatality, the annual monetizable benefits would be from $18.444 million to $32.232 million greater under full compliance with the proposed standard than under full compliance with the existing standard. In present value terms, these potential increases in monetizable benefits would be between $132.428 million and $213.426 million over a 10-year period.

Using the baseline of existing industry practice, OSHA estimated the costs of full compliance with the proposed standard to be $16.950 million in the first year and the annualized costs to be $12.543 million. The present value of these costs over the next 10 years would be $100.110 million. OSHA also estimated that the first year and annual costs of full compliance with the existing standard to be $4.104 million. The present value of these costs over the next 10 years would be $31.314 million.

Thus, OSHA determined that the first-year cost increases in going from full compliance with the existing Subparts L and M to the revised Subpart X would amount to $12.846 million of which $11.340 million would be attributable to the training requirement. The annualized cost increases would be $8.439 million. The present value of these additional costs over the the next 10 years would be $68.796 million.

Consequently, OSHA concluded that full compliance with the proposed Subpart X would provide a safer environment than would full compliance with the existing Subparts L and M and that their benefits would be greater than the costs of compliance.

Costs of Compliance for Other Proposed OSHA Construction Safety Standards

OSHA considered the economic impact on the construction industry of this proposed revision and of the seven other construction standards that have been recently revised and promulgated or that are in the proposed or final rulemaking stage. Using the baseline of current industry practices, OSHA estimated that the annual total costs of these standards would be about $3.4 million for Underground Construction (Subpart S), $5.8 million for Crane-or Derrick-Suspended Personnel Platforms (Subpart N), $28.7 million for Concrete and Masonry Construction (Subpart Q), $7.6 million for Scaffolds (Subpart L), $48.0 million for Electrical Construction (Subpart K), $65.8 million for Fall Protection (Subpart M), and no costs for Trenching (Subpart P). Using the baseline of full compliance with existing standards, OSHA estimated that the incremental costs of these standards would be about $2.7 million for Underground Construction, $2.2 million for Crane- or Derrick-Suspended Personnel Platforms, and $17.5 million for Concrete and Masonry Construction. In addition, a cost savings of $30.6 million for Electrical Construction, $7.6 million for Scaffolds, $27.5 million for Fall Protection, and between $11.7 million and $42.8 million for Trenching is estimated for those revisions. Thus, the net impact of these actions combined with this action would be increased annualized costs of $171.8 million when using a baseline of current industry practice and an annual cost savings between $46.6 million and $77.7 million when using a baseline of full compliance with the existing standards.

Regulatory Flexibility Certification

Pursuant to the Regulatory Flexibility Act (Pub. L. 96–353, 84 Stat. 1164 [5 U.S.C 60 et seq.]), the Assistant Secretary has made a preliminary assessment of the impact of the proposed standard and has concluded that it would not have a significant impact upon a substantial number of small entities. OSHA invites public comment concerning this preliminary conclusion.

The important criterion that governs a Regulatory Flexibility Analysis is whether the proposed standard would impose significant costs upon small entities. "Significance" is determined by the impact upon profits, market share, and on the entity's financial viability. In particular, the proposed standard's effect upon small entities relative to its effect upon large entities needs to be specifically evaluated. That is, OSHA must determine whether the proposal would have a relatively greater negative effect on small entities than upon large entities, thereby putting small entities at a competitive disadvantage, and if so, whether there are ways to minimize any differentially adverse effects without increasing worker risk.

If the costs of compliance for small firms are relatively minor and are proportional to the size of the firm, then there is no significant differential effect. In those cases involving larger absolute costs, small firms may have greater difficulty in obtaining financing, and in those cases involving economies of scale in compliance, the burden on small firms will be greater than the burden on large firms. The proposed Subpart X, however, requires minimal capital expenditures. The costs of compliance primarily depend upon the amount of ladder use and stairway footage, which typically depend upon the scale of operation of the entity. In addition, these costs would be a minimal component of the overall costs of the facilities. As a result, small entities would not be put at a competitive disadvantage due to these compliance costs. Thus, OSHA concluded that this proposed standard would not have a significant adverse impact upon a substantial number of small entities.

The assessment is available for inspection and copying at the OSHA Technical Data Center, Room N–3670, 200 Constitution Avenue, NW., Washington, DC 20210. OSHA invites comments concerning the conclusions reached in the Regulatory Assessments.

V. Environmental Assessment

Finding of No Significant Impact

This proposed rule and its major alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.), the Guidelines of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and OSHA's DOL NEPA Procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the proposed rule will have no significant environmental impact.

The proposed revisions to 29 CFR 1926.1050–.1060, Subpart X—Stairways and Ladders, focus on the reduction of accidents or injuries by means of work practices and procedures, proper use and handling of equipment, and training, as well as on changes in language, definition, and format of the standard. These revisions do not impact on air, water, or soil quality, plant or animal life, the use of land, or other aspects of the environment. As such, these revisions are, therefore, categorized as excluded actions according to Subpart B, Section 11.10, of the DOL NEPA regulations.

VI. References

1. Advisory Committee on Construction Safety and Health, *Transcripts of meetings held on November 29–30, 1977; January 10, 1978; February 14, 1978; December 5, 1978; December 18, 1978; June 29–30, 1982.*

2. U.S. Department of Labor, Occupational Safety and Health Administration, *Preliminary Regulatory Impact and Regulatory Flexibility Assessment of Subpart X—Stairways and Ladders,* Office of Regulatory Analysis, March 1984.

3. Ayoub and Bakken, *An Ergonomic Analysis of Selected Sections in Subpart D, Walking/Working Surfaces,* Texas Tech University Institute for Biotechnology, Lubbock, Texas, August 1978.

4. U.S. Department of Labor, Occupational Safety and Health Administration, *Occupational Fatalities Related to Ladders*

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as Found in Reports of OSHA Fatality/Catastrophe Investigations, November 1979.

5. U.S. Department of Labor, Bureau of Labor Statistics, untitled report on ladder accident survey, unpublished.

6. Chaffin et al., *An Ergonomic Basis for Recommendations Pertaining to Specific Sections of OSHA Standard, 29 CFR Part 1910, Subpart D—Walking and Working Surfaces,* University of Michigan, Department of Industrial and Operations Engineering, College of Engineering, Ann Arbor, Michigan, 1978.

7. American National Standards Institute, *A12.1–1973—Safety Requirements for Floor and wall Openings, Railings, and Toeboards,* New York, New York.

8. American National Standards Institute, *A14.1–1968 Safety Code for Portable Wood Ladders,* New York, New York.

9. American National Standards Institute, *A14.2–1956—Safety Code for Portable Metal Ladders,* New York, New York.

10. American National Standards Institute, *A14.3–1956—Safety Code for Fixed Ladders,* New York, New York.

11. American National Standards Institute, *A14.1–1982—American National Standard for Ladders—Portable Wood—Safety Requirements,* New York, New York.

12. American National Standards Institute, *A14.2–1982—American National Standard for Ladders—Portable Metal Safety Requirements,* New York, New York.

13. American National Standards Institute, *A14.3–1984—American National Standard for Ladders—Fixed—Safety Requirements,* New York, New York.

14. American National Standards Institute, *A14.4–1979—Safety Requirements for Job-Made Ladders,* New York, New York.

15. U.S. Department of Labor, Bureau of Labor Statistics, Office of Occupational Safety and Health Statistics, unpublished data from the Supplementary Data System, April 1982.

16. U.S. Department of Labor, Bureau of Labor Statistics, *Occupational Injuries and Illnesses in 1979: Summary,* April 1981.

17. American National Standards Institute, *A14.5–1982—American National Standard for Ladders—Portable Reinforced Plastic—Safety Requirements,* New York, New York.

18. National Bureau of Standards (NBS), NBSIR 76–1146, *A Study of Personal Fall-Safety Equipment,* Washington, D.C.: NBS, June 1977.

19. Chaffin, Don B. and Terrence J. Stobbe, *Ergonomic Considerations Related to Selected Fall Prevention Aspects of Scaffolds and Ladders as Presented in OSHA Standard 29 CFR 1910, Subpart D.* The University of Michigan, Ann Arbor, Michigan, September 1973.

VII. Recordkeeping

This proposal contains no recordkeeping requirements. However, public comment is requested in the Specific Issues section of this preamble on whether the proposed training requirements impose an implicit recordkeeping requirement on employers.

VIII. Public Participation

Interested persons are invited to submit written data, views, and arguments with respect to this proposal. The comments must be postmarked by February 23, 1987, and submitted in quadruplicate to the Docket Officer, Docket No. S–207, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3670, 200 Constitution Avenue, NW., Washington, DC 20210.

The data, views, and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions received will be made a part of the record of this proceeding.

Additionally, under section 6(b)(3) of the OSH Act (29 U.S.C. 655), section 107 of the Construction Safety Act (41 U.S.C. 333), and 29 CFR 1911.11, interested persons may file objections to the proposal and request an informal hearing. The objections and hearing requests should be submitted in quadruplicate to the Docket Officer at the address above and must comply with the following conditions:

1. The objections must include the name and address of the objector;
2. The objections must be postmarked by February 23, 1987;
3. The objections must specify with particularity the provisions of the proposed rule to which each objection is taken and must state the grounds therefor;
4. Each objection must be separately stated and numbered; and
5. The objections must be accompanied by a detailed summary for the evidence proposed to be adduced at the requested hearing.

List of Subjects in 29 CFR Part 1926

Construction safety, Construction industry, Ladders and scaffolds, Occupational safety and health, Protective equipment, Safety.

X. State Plan Standards

The 25 States and Territories with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within six months of the publication date of the final rule. These States and Territories are: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, New York (for State and local government employees only), Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, Wyoming. Until such time as a comparable standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in these States and Territories.

Authority:

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6(b) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333), Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR Part 1911, it is proposed to amend 29 CFR Part 1926 as set forth below.

Signed at Washington, DC, this 17th day of November 1986.

John A. Pendergrass,

Assistant Secretary of Labor.

PART 1926—[AMENDED]

Subpart X of Part 1926 would be revised to read as follows:

Subpart X—Stairways and Ladders

Sec.
1926.1050 Scope, application, and definitions applicable to this subpart.
1926.1051 General requirements.
1926.1052 Stairways.
1926.1053 Ladders.
1926.1054–1926.1059 [Reserved]
1926.1060 Training requirements.
Appendix A to Subpart X—Ladders

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (49 FR 35736), as applicable; and 29 CFR Part 1911.

Subpart X—Stairways and Ladders

§ 1926.1050 Scope, application, and definitions applicable to this subpart.

(a) *Scope and application.* This subpart applies to all stairways and ladders used in construction, alteration, repair (including painting and decorating), and demolition workplaces covered under 29 CFR Part 1926, and also set forth, in specified circumstances, when ladders and stairways are required to be provided. Additional requirements for ladders used on or with scaffolds are contained in § 1926.451 (c) and (d).

(b) *Definitions.*

"Cleat" means a ladder crosspiece of rectangular cross section placed on edge upon which a person may step while ascending or descending a ladder.

"Double cleat ladder" means a ladder similar in construction to a single cleat ladder, but with a center rail to allow simultaneous two-way traffic for employees ascending or descending.

"Equivalent" means alternative designs, materials, or methods which the employer can demonstrate will provide an equal or greater degree of safety for employees than the method or item specified in the standard.

"Failure" means load refusal, breakage, or separation of component parts. Load refusal is the point where the ultimate strength is exceeded.

"Handrail" means a rail to provide employees a handhold for support.

"Lower levels" means those areas to which an employee can fall. Such areas include ground levels, floors, roofs, ramps, runways, excavations, pits, tanks, material, water, equipment, and similar surfaces.

"Maximum intended load" means the total load of all employees, equipment, tools, materials, transmitted loads, and other loads anticipated to be applied to a ladder component at any one time.

"Nosing" means that portion of a tread projecting beyond the face of the riser immediately below.

"Riser height" means the vertical distance from the top of a tread to the top of the next higher tread.

"Single cleat ladder" means a ladder consisting of a pair of siderails, connected together by cleats, rungs, or steps.

"Stairrail system" means a vertical barrier erected along the unprotected sides and edges of a stairway to prevent employees from falling to lower levels. The top surface of a stairrail system may also be a "handrail."

"Tread width" means the horizontal distance from front to back of a tread (including nosing, if any).

"Unprotected sides and edges" means any side or edge (except at entrances to points of access) of a stairway where there is no stairrail system or wall 36 inches (.9 m) or more in height, and any side or edge (except of entrances to points of access) of a stairway landing, or ladder platform where there is no wall or guardrail system 39 inches (1 m) or more in height.

§ 1926.1051 General requirements.

The following requirements apply as indicated.

(a) A stairway or ladder shall be provided at all personnel points of access where there is a break in elevation, and where there is no ramp, runway, sloped embankment, or personnel hoist provided.

(1) Spiral stairways which will not be a permanent part of a structure after completion of the structure being built are prohibited except where they provide the only practical means of access during construction.

(2) A double-cleated ladder or two or more separate ladders shall be provided when ladders are the only means of access or exit from a working area for 25 or more employees, or when they serve simultaneous two-way traffic.

(b) All fall protection systems and duties required by this Subpart shall be provided, installed, and performed, before employees begin work where they use stairways or ladders.

§ 1926.1052 Stairways.

(a) *General.* The following requirements apply to all stairways as indicated:

(1) Stairways which will not be a permanent part of the structure being built shall have landings of not less than 30 inches (76 cm) in the direction of travel at every 12 feet (3.7 m) or less of vertical rise.

(2) Stairs shall be installed between 30° and 50° from horizontal.

(3) Riser height and tread width shall be uniform within each flight of stairs, including any foundation structure used as one or more treads of the stairs.

(4) Where doors or gates open directly on a stairway, a platform shall be provided, and the swing of the door shall not reduce the effective width of the platform to less than 20 inches (51 cm).

(5) Metal pan landings shall be secured in place before filling.

(6) All parts of stairways shall be free of hazardous projections, such as protruding nails.

(7) Slippery conditions on stairways shall be eliminated as soon as possible after they occur.

(b) *Temporary service.* The following requirements apply to all stairways as indicated:

(1) Except during stairway construction, foot traffic is prohibited on stairways with pan stairs where the treads and/or landings are to be filled in with concrete or other material at a later date, unless the stairs are temporarily fitted with solid material at least to the top edge of each pan. Such temporary treads and landings shall be replaced when worn below the level of the top edge of the pan.

(2) Except during stairway construction, foot traffic is prohibited on skeleton metal stairs where permanent treads and/or landings are to be installed at a later date, unless the stairs are fitted with secured temporary treads and landings long enough to cover the entire tread and/or landing area.

(3) Wood treads for temporary service shall be full width.

(c) *Stairrails and handrails.* The following requirements apply to all stairways as indicated, regardless of their height above lower levels:

(1) Stairways having four or more risers shall be equipped with:

(i) At least one handrail, and

(ii) One stairrail system along each unprotected side or edge.

Note.—Stairrail systems may also serve as handrails when installed in conformance with paragraph (c)(7) of this section.

(2) Winding and spiral stairways shall be equipped with a handrail offset sufficiently to prevent walking on those portions of the stairways where the tread width is less than six inches (15 cm).

(3) Except when employees are using stairways in or on an existing building or structure which already has stairrails, the height of stairrails shall be not less than 36 inches (91.5 cm) from the upper surface of the stairrail system to the surface of the tread, in line with the face of the riser at forward edge of the tread.

(4) Midrails, screen, mesh, intermediate vertical members, or equivalent intermediate structural members, shall be provided between the toprail of the stairrail system and the stairway steps when there is no wall at least 21 inches (53 cm) high.

(i) Midrails, when used, shall be located at a height midway between the top edge of the stairrail system and the stairway steps.

(ii) Screens or mesh, when used, shall extend from the top rail to the stairway step, and along the entire opening between top rail supports.

(iii) When intermediate vertical members, such as balusters, are used between posts, they shall be not more than 19 inches (48 cm) apart.

(iv) Other structural members shall be installed such that there are no openings in the stairrail system that are more than 19 inches (48 cm) wide.

(5) Handrails and the top rails of stairrail systems shall be capable of withstanding, without failure, a force of at least 200 pounds (890 n) applied within two inches (5 cm) of the top edge, in any downward or outward direction, at any point along the top edge.

(6) The height of handrails shall be not more than 37 inches (94 cm) nor less than 30 inches (76 cm) from the upper surface of the handrail to the surface of the tread, in line with the face of the riser at the forward edge of the tread.

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(7) When the top edge of a stairrail system also serves as a handrail, the height of the top edge shall be not more than 37 inches (94 cm) nor less than 36 inches (91.5 cm) from the upper surface of the stairrail system to the surface of the tread, in line with the face of the riser at the forward edge of the tread.

(8) Stairrail systems and handrails shall be so surfaced as to prevent injury to employees from punctures or lacerations, and to prevent snagging of clothing.

(9) Handrails shall provide an adequate handhold for employees grasping them to avoid falling.

(10) The ends of stairrail systems and handrails shall be constructed so as not to constitute a projection hazard.

(11) Handrails shall have a minimum clearance of one and one-half inches (4 cm) between the handrail and walls, stairrail systems, and other objects.

(12) Unprotected sides and edges of stairway landings shall be provided with guardrail systems.

Note.—Guardrail system criteria are contained in Subpart M—Fall Protection.

§ 1926.1053 Ladders.

(a) *General.* The following requirements apply to all ladders as indicated, including job-made ladders.

(1) Ladders shall be capable of supporting the following loads without failure:

(i) Each portable ladder and job-made ladder: At least four times the maximum intended load applied or transmitted to the ladder in a downward vertical direction when the ladder is placed at an angle of 75½ degrees from the horizontal (ladders built in conformance with the applicable provisions of Appendix A will be deemed to meet this requirement);

(ii) Each fixed ladder: At least two loads of 250 pounds (114 kg) each, concentrated between any two consecutive attachments (the number and position of additional concentrated loads of 250 pounds (114 kg) each, determined from anticipated usage of the ladder, shall also be included), plus anticipated loads caused by ice buildup, winds, rigging, and impact loads resulting from the use of ladder safety devices. Each step or rung shall be capable of supporting a single concentrated load of at least 250 pounds (114 kg) applied in the middle of the step or rung (ladders built in conformance with the applicable provisions of Appendix A will be deemed to meet this requirement).

(2) Ladder rungs, cleats, and steps shall be parallel, level, and uniformly spaced when the ladder is in position for use.

(3)(i) Rungs, cleats, and steps of portable and fixed ladders shall be spaced not less than six inches (15 cm) apart, nor more than 12 inches (31 cm) apart, as measured along the ladder siderails.

(ii) Rungs, cleats, and steps of individual step or rung ladders shall be not less than six inches (15 cm) apart, nor more than 16½ inches (42 cm) apart, as measured between centerlines of the rungs, cleats, and steps.

(4) Rungs, cleats and steps shall have a minimum clear length of 16 inches (41 cm) for individual-rung and fixed ladders, 12 inches (30 cm) for portable metal ladders and reinforced plastic ladders, and 11½ inches (29 cm) for portable wood ladders.

(5) The rungs of individual-rung ladders shall be shaped such that employees' feet cannot slide off the end of the rungs.

(6) The rungs and steps of metal ladders shall be corrugated, knurled, dimpled, coated with skid-resistant material, or otherwise treated to minimize slipping.

(7) Ladders shall not be tied or fastened together to provide longer sections unless they are specifically designed for such use.

(8) A metal spreader or locking device shall be provided on each stepladder to hold the front and back sections in an open position when the ladder is being used.

(9) When splicing is required to obtain a given length of siderail, the resulting siderail must be at least equivalent in strength to a one piece siderail made of the same material.

(10) When two or more separate ladders are used to reach an elevated work area, the ladders shall be offset with a platform or landing between the ladders.

(11) Unprotected sides and edges of platforms and landings shall be provided with guardrail systems.

Note.—Guardrail system criteria are contained in Subpart M—Fall Protection.

(12) Platforms and landings shall be provided with falling object protection.

Note.—Falling object protection criteria are contained in Subpart M—Fall Protection.

(13) Ladder components shall so surfaced as to prevent injury to an employee from punctures or lacerations, and to prevent snagging of clothing.

(14) Wood ladders shall not be coated with any opaque covering, except for identification or warning labels which may be placed on one face only of a siderail.

(15) The minimum perpendicular clearance between fixed ladder rungs, cleats, and steps, and any obstruction behind the ladder shall be seven inches (18 cm).

(16) The minimum perpendicular clearance between the center line of fixed ladder rungs, cleats, and steps, and any obstruction on the climbing side of the ladder shall be 30 inches (76 cm), except as provided in paragraph § 1926.1053(a)(17).

(17) When unavoidable obstructions are encountered, the minimum perpendicular clearance between the centerline of fixed ladder rungs, cleats, and steps, and the obstruction on the climbing side of the ladder may be reduced to 24 inches, (61 cm) provided that a deflection device is installed to guide employees around the obstruction.

(18) Through fixed ladders at their point of access/egress shall have a step across distance of not less than seven inches (18 cm) nor more than 12 inches (30 cm) as measured from the centerline of the steps or rungs to the nearest edge of the landing area. If the normal step-across distance exceeds 12 inches (30 cm), a landing platform shall be provided to reduce the distance to the specified limit.

(19) Fixed ladders without cages or wells shall have a clear width to the nearest permanent object of at least 15 inches (38 cm) on each side of the centerline of the ladder.

(20) Fixed ladders shall be provided with cages, wells, ladder safety devices, or self-retracting lifelines where the length of climb is less than 24 feet (7.3 m) but the top of the ladder is at a distance greater than 24 feet (7.3 m) above lower levels.

(21) Where the total length of a climb equals or exceeds 24 feet (7.3 m), fixed ladders shall be equipped with one of the following:

(i) Ladder safety devices; or

(ii) Self-retracting lifelines, and rest platforms at intervals not to exceed 150 feet (45.7 m); or

(iii) A cage or well, and multiple ladder sections, each ladder section not to exceed 50 feet (15.2 m) in length. Ladder sections shall be offset from adjacent sections, and landing platforms shall be provided at maximum intervals of 50 feet (15.2 m).

(22) Cages for fixed ladders shall conform to all of the following:

(i) Horizontal bands shall be fastened to the siderails of rail ladders, or directly to the structure, building, or equipment for individual rung ladders;

(ii) Vertical bars shall be on the inside of the horizontal bands and shall be fastened to them;

(iii) Cages shall extend not less than 27 inches (68 cm), or more than 30 inches

(76 cm) from the centerline of the step or rung (excluding the flare at the bottom of the cage), and shall not be less than 27 inches (68 cm) in width;

(iv) The inside of the cage shall be clear of projections;

(v) Horizontal bands shall be spaced not more than four feet (1.2 m) on center vertically;

(vi) Vertical bars shall be spaced at intervals not more than nine and one-half inches (24 cm) on center horizontally;

(vii) The bottom of the cage shall be at a level not less than seven feet (2.1 m) nor more than eight feet (2.4 m) above the point of access to the bottom of the ladder. The bottom of the cage shall be flared not less than four inches (10 cm) all around within the distance between the bottom horizontal band and the next higher band;

(viii) The top of the cage shall be a minimum of 42 inches (1.1 m) above the top of the platform, or the point of access at the top of the ladder, with provision for access to the platform or other point of access.

(23) Wells for fixed ladders shall conform to all of the following:

(i) They shall completely encircle the ladder;

(ii) They shall be free of projections;

(iii) Their inside face on the climbing side of the ladder shall extend not less than 27 inches (68 cm) nor more than 30 inches (76 cm) from the centerline of the step or rung;

(iv) The inside clear width shall be at least 30 inches (76 cm);

(v) The bottom of the wall on the access side shall start at a level not less than seven feet (2.1 m) nor more than eight feet (2.4 m) above the point of access to the bottom of the ladder.

(24) Ladder safety devices, and their support systems, for fixed ladders shall conform to all of the following:

(i) They shall be capable of withstanding without failure a drop test consisting of an 18 inch (41 cm) drop of a 500 pound (226 kg) weight;

(ii) They shall permit the employee using the device to ascend or descend without continually having to hold, push or pull any part of the device, leaving both hands free for climbing;

(iii) They shall be activated within two feet (.61 m) after a fall occurs, and limit the descending velocity of an employee to seven feet/sec (2.1 m/sec) or less;

(iv) The connection between the carrier or lifeline and the point of attachment to the body belt or harness shall not exceed nine inches (23 cm) in length.

(25) Ladder safety devices shall also conform to the following:

(i) Mountings for rigid carriers shall be attached at each end of the carrier, with intermediate mountings, as necessary, spaced along the entire length of the carrier, to provide the strength necessary to stop employees' falls.

(ii) Mountings for flexible carriers shall be attached at each end of the carrier. When the system is exposed to wind, cable guides for flexible carriers shall be installed at a minimum spacing of 25 feet (7.6 m) and maximum spacing of 40 feet (12.2 m) along the entire length of the carrier, to prevent wind damage to the system.

(iii) The design and installation of mountings and cable guides shall not reduce the design strength of the ladder.

(26) The side rails of through or side-step fixed ladders shall extend 42 inches (1.1 m) above the top of the access level or landing platform served by the ladder. For a parapet ladder, the access level shall be the roof if the parapet is cut to permit passage through the parapet; if the parapet is continuous the access level shall be the top of the parapet.

(27) For through fixed ladder extensions, the steps or rungs shall be omitted from the extension and the extension of the siderails shall be flared to provide not less than 24 inches (61 cm) nor more than 30 inches (76 cm) clearance between siderails. Where ladder safety devices are provided, the maximum clearance between siderails of the extensions shall not exceed 36 inches (91 cm).

(28) For side-step fixed ladders, the siderails and the steps or rungs shall be continuous in the extension.

(29) Individual rung ladders, except those used where their access openings are covered with manhole covers or hatches, shall extend 42 inches (1.1 m) above an access level of landing platform either by the continuation of the rung spacings as horizontal grab bars or by providing vertical grab bars that shall have the same lateral spacing as the vertical legs of the rungs.

(b) *Use.* The following requirements apply to the use of all ladders including job-made ladders.

(1) When ladders are used for access to an upper landing surface, the ladder siderails shall extend at least three feet (.9 m) above the upper landing surface to which the ladder is used to gain access; or, when such an extension is not possible because of the ladder's length, then the ladder shall be secured at the top and a grasping device, such as a grabrail, shall be provided to assist employees in mounting and dismounting the ladder.

(2) Ladders shall be maintained free of slipping hazards.

(3) Ladders shall not be loaded beyond their maximum intended load-carrying capacity, nor beyond their rated capacity.

(4) Ladders shall be used only for the purpose for which they were designed.

(5) Non-self-supporting ladders shall be used at an angle such that the horizontal distance from the top support to the foot of the ladder is approximately one-quarter of the working length of the ladder (the distance along the ladder between the foot and the top support). Wood job-made ladders with spliced siderails shall be used at an angle such that the ratio is one-eighth the working length of the ladder. Fixed ladders shall be used at a pitch no greater than 90 degrees from the horizontal, as measured to the backside of the ladder.

(6) Ladders shall be used only on stable and level surfaces unless secured to prevent accidental displacement.

(7) Ladders shall not be used on slippery surfaces unless secured or provided with slip resistant feet to prevent accidental displacement.

Note.—Slip-resistant feet are not intended as a substitute for care in placing, lashing, or holding a ladder that is used upon oily, metal, concrete, or slippery surfaces.

(8) Ladders placed in any location where they can be displaced by other activities or traffic, such as in passageways, doorways, or driveways, shall be secured to prevent accidental displacement, or a barricade shall be used to keep the activities or traffic away from the ladder.

(9) The area around the top and bottom of ladders shall be kept clear.

(10) The top of a non-self-supporting ladder shall be placed with the two rails supported equally unless it is equipped with a single support attachment.

(11) Ladders shall not be moved, shifted, or extended while occupied.

(12) Ladders shall have non-conductive siderails when used where the ladder could contact energized electrical equipment, except as provided in 29 CFR 1926.951(c)(1).

(13) The tops of stepladders shall not be used as steps.

(14) Cross-bracing on stepladders shall not be used for climbing.

(15) Ladders shall be inspected for visible defects prior to the first use of each workshift and after any occurrence which could affect their safe use.

(16) Ladders with structural defects, such as broken or missing rungs, cleats, or steps, broken or split rails, corroded components, or other faulty or defective components, shall be immediately tagged with "Do Not Use" or similar

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language, or withdrawn from service until repaired.

(17) Ladder repairs shall restore the ladder to a condition meeting its original design criteria.

§§ 1926.1054–1926.1059 [Reserved]

§ 1926.1060 Training requirements.

In addition to the requirements of § 1926.21, Safety training and education, the following training requirements apply to this Subpart. However, the provisions of this section may be cited only when a citation is being issued concurrently under the provisions of § 1926.1051, § 1926.1052, or § 1926.1053 of this Subpart:

(a) The employer shall provide a training program for all employees using ladders and stairways. The program shall enable employees to recognize hazards related to ladders and stairways, and shall train the employees in the procedures to be followed in order to minimize these hazards.

(1) The employer shall assure that employees have been trained and instructed in the following areas, as applicable:

(i) The nature of fall hazards in the work area; and

(ii) The correct procedures for erecting, and maintaining, and disassembling the fall protection systems to be used; and

(iii) The proper construction, use, placement and care in handling of all stairways and ladders; and

(iv) The maximum intended load-carrying capacities of ladders used; and

(v) The standards contained in this Subpart.

(2) Training and retraining shall be provided for each employee as necessary.

Appendix A to Subpart X—Ladders

This appendix serves as a non-mandatory guideline to assist employers in complying with the requirements of Subpart X. Ladders designed and built in accordance with the provisions of the following guidelines will be considered as acceptable alternative designs that meet the capacity requirements of § 1926.1053(a)(1). Ladders not built in accordance with the following guidelines (e.g., job-built single-cleat wood ladders longer than 30 feet, job-built double-cleat wood ladders longer than 24 feet, etc.), must be designed in accordance with the capacity requirements of § 1926.1053(a)(1).

Manufactured portable wood ladders made in conformance to the provisions of American National Standards Institute publication A14.1–1982—American National Standard for Ladders—Portable Wood—Safety Requirements.

Manufactured portable metal ladders made in conformance to the provisions of American National Standards Institute publication A14.2–1982—American National Standard for Ladders—Portable Metal—Safety Requirements.

Manufactured fixed ladders made in conformance to the provisions of American National Standards Institute publication A14.3–1984—American National Standard for Ladders—Fixed—Safety Requirements.

Job-made ladders made in conformance to the provisions of American National Standards Institute publication A14.4–1979—Safety Requirements for Job-Made Ladders.

Plastic ladders made in conformance to the provisions of American National Standards Institute publication A14.5–1982—American National Standard for Ladders—Portable Reinforced Plastic—Safety Requirements.

[FR Doc. 86–26228 Filed 11–24–86; 8:45 am]

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Part V

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources: Industrial-Commercial-Institutional Steam Generating Units and Fossil Fuel-Fired Steam Generating Units; Final Rules

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3074-5]

Standards of Performance for New Stationary Sources; Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Standards of performance limiting emissions of particulate matter and nitrogen oxides (NO_x) from industrial-commercial-institutional steam generating units were proposed in the **Federal Register** on June 19, 1984 (49 FR 25102). Today's action promulgates these standards. The standards implement section 111 of the Clean Air Act and are based on the Administrator's determination that industrial-commercial-institutional steam generating units cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The intended effect of these standards is require all new, modified, and reconstructed industrial-commercial-institutional steam generating units to reduce emissions of particulate matter and (NO_x) to the levels achievable by the best demonstrated system of continuous emission reduction, considering costs, nonair quality health and environmental impacts, and energy requirements.

DATE: Effective November 25, 1986.

Under Section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under Section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later during civil or criminal proceedings to enforce these requirements.

Incorporation by Reference: The incorporation by reference of certain publications in these standards is approved by the Director of the Office of the Federal Register as of November 25, 1986.

ADDRESSES: Background information documents may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, (919) 541-2777.

Docket number A-79-02 is available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the Central Docket Section (LE-131), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, DC 20460.

See "**SUPPLEMENTARY INFORMATION**" for further details.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Porter on Mr. Walter Stevenson, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5624.

SUPPLEMENTARY INFORMATION:

Summary of Standards

Standards of performance for new sources established under Section 111 of the Clean Air Act reflect:

> * * * application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [Section 111(a)(1)(C)].

For convenience, this will be referred to as "best demonstrated technology."

Applicability

These new source performance standards (NSPS) apply to all new, modified, or reconstructed steam generating units with a heat input capacity greater than 29 MW (100 million Btu/hour) for which construction is commenced after June 19, 1984, except for electric utility steam generating units covered by 40 CFR Part 60 Subpart Da. The definition of "steam generating unit" includes all devices that combust fuel and produce steam, hot water, or heat other fluids which are used as heat transfer media. Fuel combustion units which function as process heaters are not covered if their primary purpose is to heat a fluid in order to initiate or promote a chemical reaction in which the fluid itself is a reactant or catalyst.

The owner or operator of any steam generating unit with a heat input capacity for any fuel or fuels greater than 29 MW (100 milion Btu/hour) must submit certain information as required by the General Provisions (§ 60.11), including notification of the date of initial unit startup, and must maintain certain fuel use records.

Particulate matter emission limits are established for coal-, wood-, and municipal solid waste-fired steam generating units and for steam generating units which fire fuel mixtures including these fuels. The NO_x emission limits are established for coal-, oil-, and gas-fired steam generating units and for steam generating units which fire fuel mixtures including these fuels. Steam generating units that fire fuels other than coal, wood, municipal-type solid waste, oil, or natural gas are not subject to the particulate matter or NO_x standards, as applicable, unless they fire mixtures containing significant amounts of coal, wood, municipal-type solid waste, oil, or natural gas on an annual basis, as defined in the standards.

The standards being adopted today do not revise the sulfur dioxide (SO_2) standards for coal- or oil-fired units or the particulate matter standards for oil-fired units under 40 CFR Part 60 Subpart D. Steam generating units having heat input capacities greater than 73 MW (250 million Btu/hour) constructed after August 18, 1971 remain subject to the SO_2 standard for coal- and oil-fired units and the particulate matter standards for oil-fired units under 40 CFR Part 60 Subpart D. When the SO_2 standards for coal- and oil-fired units and the particulate matter standard for oil-fired units proposed on June 19, 1986 under 40 CFR Part 60 Subpart Db are promulgated, all steam generating units larger than 29 MW (100 million Btu/hour) heat input capacity constructed after June 19, 1986 will become subject to the new SO_2 and particulate matter standards, as well as to the applicable particulate matter and NO_x standards promulgated today. As previously mentioned, all new electric utility steam generating units constructed after September 18, 1978, with heat input capacities greater than 73 MW (250 million Btu/hour) are subject to the particulate matter, NO_x, and SO_2 standards under Subpart Da of 40 CFR Part 60.

New steam generating units meeting the applicability requirements under this subpart and the applicability requirements under Subpart J (Standards of performance for petroleum refineries, § 60.100) are subject to the NO_x and particulate matter standards under this subpart and the SO_2 standards under Subpart J (§ 60.104).

New steam generating units meeting the applicability requirements under this subpart and the applicability requirements under Subpart E (Standards of performance for incinerators; § 60.50) are subject to the NO_x and particulate matter standards under this subpart.

Particulate Matter Standards

The particulate matter standards apply to coal-, wood-, and municipal type solid waste-fired steam generating units, as well as to steam generating units firing mixtures which include these fuels. For coal-fired steam generating units, the promulgated particulate matter emission limit is 22 ng/J (0.05 lb/million Btu) heat input. For steam generating units that fire wood or municipal-type solid waste, the promulgated particulate matter emission limit is 43 ng/J (0.10 lb/million Btu) heat input.

For steam generating units that fire mixtures including coal, wood, or municipal-type solid waste, with or without other fuels, the applicability of the 43 ng/J (0.10 lb/million Btu) heat input or the 22 ng/J (0.05 lb/million Btu) heat input emission limit would be determined based on the amount of coal, wood, or municipal-type solid waste combusted. Steam generating units that combust coal with wood, municipal-type solid waste or other fuels, have an annual capacity factor for wood, municipal-type solid waste or other fuels greater than 10 percent, and have a Federally enforceable permit which specifies that the unit must be operated at an annual capacity factor for wood, municipal-type solid waste, or other fuels (except coal) above 10 percent, are subject to a particulate matter emission limit of 43 ng/J (0.10 lb/million Btu) heat input. If a steam generating unit combusts coal with wood, municipal-type solid waste, or other fuels and has an annual capacity factor for wood, municipal-type solid waste, or other fuels (except coal) of 10 percent or less, or does not have a Federally enforceable permit, a particulate matter emission limit of 22 ng/J (0.05 lb/million Btu) heat input applies.

Coal-, wood-, or municipal solid waste-fired steam generating units in the 29 through 73 MW (100 through 250 million Btu/hour) heat input capacity range constructed between June 19, 1984 and November 25, 1986 that have an annual capacity factor for coal, wood, or municipal-type solid waste or any mixtures of these fuels of 30 percent or less and have a Federally enforceable permit limiting the annual capacity factor for coal, wood, or municipal-type solid waste to 30 percent or less are subject to a particulate matter emission limit of 86 ng/J (0.20 lb/million Btu) heat input.

Wood-fired steam generating units in the 29 MW through 73 MW (100 million Btu/hour through 250 million Btu/hour) heat input capacity size range constructed after November 25, 1986 that have an annual capacity factor of more than 10 percent for wood and less than 30 percent for all fuels, and have obtained a Federally enforceable operating permit limiting the annual capacity factor to these levels are subject to a particulate matter emission limit of 86 ng/J (0.20 lb/million Btu) heat input. All municipal solid waste-fired steam generating units commencing construction, modification, or reconstruction after November 25, 1986 will be subject to a 43 ng/J (0.10 lb/million Btu) heat input particulate matter standard independent of annual capacity factor. All coal-fired steam generating units commencing construction, modification, or reconstruction after November 25, 1986 will be subject to a 22 ng/J (0.05 lb/million Btu) heat input standard independent of annual capacity factor.

The annual capacity factor for determining the applicable particulate matter standard is calculated by dividing the annual heat input to the steam generating unit from firing coal, wood, municipal-type solid waste, or mixtures of these fuels as specified in the Federally enforceable limitation, by the potential annual heat input to the steam generating unit. The potential annual heat input is defined as the product of the maximum rated continuous heat input capacity (MW or million Btu/hour) multiplied by 8,760 hours per year. The potential annual heat input is a constant for each unit and is not affected by the number of hours the unit is actually operated.

The opacity standard for all steam generating units firing coal, wood, solid waste, or mixtures of these fuels, with or without other fuels, is 20 percent opacity (6-minute average) with one 6-minute excursion per hour up to 27 percent per hour. The opacity standard applies at all times except during periods of startup, shutdown, or malfunction as provided for by the General Provisions [§ 60.11(c)].

Performance tests to determine compliance with the particulate matter emission limits are conducted using Reference Method 5 or 17. It is anticipated that proposed Reference Method 5B (50 FR 21963, May 29, 1985), if promulgated, will be an applicable test method under today's standards. Reference Method 3 would be used for gas analysis and Reference Method 1 for the selection of sampling points. Reference Method 9 (a 6-minute average of 24 observations) would be used to determine compliance with the opacity standard. Continuous opacity monitoring is required for all steam generating units except as provided for by the General Provisions [§ 60.11(b)] and excess emissions (opacity) reports are required to be submitted on a semiannual basis.

NO_x Standards

The NO_x standards being adopted today apply to steam generating units with a heat input capacity greater than 29 MW (100 million Btu/hour) that fire coal, oil, natural gas, or mixtures of these fuels.

The promulgated NO_x emission limits for coal-fired steam generating units are 300 ng/J (0.70 lb/million Btu) heat input for pulverized coal-fired steam generating units, 260 ng/J (0.06 lb/million Btu) heat input for spreader stoker coal-fired steam generating units and fluidized bed combustion steam generating units, and 210 ng/J (0.50 lb/million Btu) for mass-feed stoker coal-fired steam generating units and for all coal-derived fuels. Lignite-fired steam generating units are subject to a NO_x emission limit of 260 ng/J (0.60 lb/million Btu) heat input, except for lignite mined in North Dakota, South Dakota, or Montana that is combusted in a slag tap-type furnace for which the emission limit is 340 ng/J (0.80 lb/million Btu) heat input.

For natural gas and distillate oil-fired steam generating units with maximum design heat release rates of 730,000 J/sec-m^3 (70,000 But/hour-ft^3) or less, the NO_x standard is 43 ng/J (0.10 lb/million Btu) heat input. For natural gas-fired and distillate oil-fired steam generating units with maximum design heat release rates greater than 730,000 J/sec-m^3 (70,000 Btu/hour-ft^3), the NO_x standard is 86 ng/J (0.20 lb/million Btu) heat input. For natural gas or distillate oil-fired duct burners used in steam generating units that are components of combined cycle gas turbine systems, NO_x standards are 86 ng/J (0.20 lb/million Btu) heat input.

Steam generating units firing fuel mixtures that include natural gas or distillate oil with either wood or solid waste and that have an annual capacity factor for natural gas or distillate oil greater than 10 percent are subject to a NO_x emission limit of 130 ng /J (0.30 lb/million Btu) heat input.

For residual oil-fired steam generating units having maximum design heat release rates of 730,000 J/sec-m^3 (70,000 Btu/hour-ft^3) or less, the NO_x emission limit is 130 ng/J (0.30 lb/million Btu) heat input. For residual oil-fired steam generating units having maximum design heat release rates greater than 730,000 J/sec-m^3 (70,000 Btu/hour-ft^3), the NO_x emission limit is 170 ng/J (0.40 lb/million Btu) heat input. For residual oil-fired duct burners, NO_x standards are 170 ng/J (0.40 lb/million Btu) heat input.

The NO_x emission limits for steam generating units firing mixtures of coal, oil, or natural gas would be determined by proration of the NO_x standards based on the respective amounts of each fuel fired. For steam generating units

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that fire coal, oil, or natural gas in a mixture containing other fuels (except for mixtures of natural gas or distillate oil with wood or solid waste) and for which the annual capacity factor based on the total heat input from coal, oil, and natural gas is greater than 10 percent, the steam generating unit would be required to meet the NO_x standard for coal, oil, natural gas, or a mixture of these fuels, as applicable.

Steam generating units that fire mixtures of natural gas or distillate oil with gaseous byproduct/waste fuels from chemical plants or petroleum refineries are subject to the NO_x emission limit applicable to natural gas or distillate oil. Similarly, units that fire mixtures of residual oil and liquid byproduct/waste fuels from chemical plants or petroleum refineries are subject to the NO_x emission limit applicable to residual oil.

Owners or operators of steam generating units covered by these standards may apply in one of two ways for facility-specific NO_x emission limits if they are burning byproducts/wastes. If non-toxic wastes are fired, facility-specific NO_x emission limits will be proposed and promulgated in the **Federal Register** provided the owner or operator can demonstrate to the Administrator's satisfaction that the facility has installed best demonstrated NO_x control technology, but cannot achieve the applicable NO_x standard due to characteristics of the byproduct/waste, such as high nitrogen content, high heat content, or other characteristics affecting NO_x emissions. Such a demonstration may include test data that showed the facility complied with the NO_x standard when natural gas or oil was fired, as appropriate, but is unable to comply with the applicable NO_x standard when gaseous or liquid byproduct/wastes are fired. For units firing toxic waste a full waiver of the NO_x standard will be issued provided the demonstration shows compliance with all applicable federally enforceable destruction efficiency requirements. It is suggested that the demonstration test be incorporated into the initial 30-day compliance test, which is required to be completed within 180 days of initial unit startup. Although the NO_x standards promulgated today may be delegated to State or local agencies for enforcement, these provisions for facility-specific NO_x emission limits will not be delegated.

All steam generating units subject to the NO_x standards are required to perform an initial 30-day compliance test within 180 days of initial unit startup. After the initial compliance test or 180 days following initial unit startup, whichever comes first, compliance with the standards is determined in one of two ways, depending on the size of the unit and the fuel fired. First: (1) All steam generating units larger than 29 MW (100 million Btu/hour) heat input capacity that fire coal or high nitrogen content residual oil (greater than 0.3 weight percent nitrogen), and (2) all steam generating units larger than 73 MW (250 million Btu/hour) heat input capacity that fire natural gas, distillate oil, or low nitrogen content residual oil (less than 0.3 weight percent) are required to install and operate a continuous emission monitoring system (CEMS) to measure NO_x emissions. The only exception to this is gas turbine combined cycle units equipped with duct burners where CEMS are not required.

The NO_x emission data will be used to calculate NO_x emissions on a 30-day rolling average basis. These data will be used to determine compliance with the NO_x standards; therefore, the quality assurance procedures for CEMS set forth under 40 CFR Part 60 Appendix F, Procedure 1, (49 FR 9676, March 14, 1984) when adopted will apply. NO_x compliance reports are required to be submitted on a quarterly basis.

Second, for steam generating units having heat input capacities between 29 MW and 73 MW (100 million Btu/hour and 250 million Btu/hour), and firing natural gas, distillate oil, or low nitrogen content residual oil (less than 0.3 weight percent) the owner or operator has an option of using either CEMS or monitoring steam generating unit operating conditions. In these applications, the CEMS data will not be used to determine direct compliance with the NO_x standards. The quality assurance procedures under 40 CFR Part 60 Appendix F would not apply. The CEMS data will be used to prepare excess emission reports which will be used primarily to determine if another 30-day compliance test is necessary. NO_x excess emission reports are required to be submitted on a semiannual basis.

As an alternative to CEMS for these units, the owner or operator of the facility may apply to the Administrator for approval to monitor steam generating unit operating conditions indicative of NO_x emission rates. An owner or operator applying for approval to monitor operating conditions shall submit a monitoring plan to the Administrator for review. Manufacturers of steam generating units may develop monitoring plans and provide them to owners or operators of steam generating units. The monitoring plans, with supporting operating and emission data, could subsequently be submitted by the owner or operator of the affected facility.

The plan submitted for review must outline how the conditions to be monitored can be used to predict NO_x emission rates. If approved by the Administrator, the results from monitoring operating conditions shall be recorded, used to predict NO_x emission rates, and the NO_x emission data submitted in semiannual excess emission reports. Additionally, a quarterly excess emissions report will be required to be submitted for any quarter that excess emissions occur. The excess emission reports will then be used primarily to determine if another 30-day compliance test should be conducted. It is suggested that the monitoring plan be developed during the initial 30-day compliance test which is required for all units. The standards being adopted today require that the monitoring plan be submitted within 360 days of initial unit startup.

Owners or operators of all steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) shall maintain records of annual fuel consumption by fuel type. For facilities in the 29 to 73 MW (100 to 250 million Btu/hour) heat input capacity size range and combusting residual oil containing less than 0.30 weight percent nitrogen, fuel records must be maintained that indicate the nitrogen content of the residual oil fired. If fuel nitrogen content is not reported it will be assumed to be higher nitrogen content residual oil (equal to or greater than 0.30 percent nitrogen) and CEMS will be required. Appendix F will be applicable and the emissions data used to determine compliance on a continuous basis.

Fuel specification data from the oil supplier may be used to determine fuel nitrogen content in place of on-site testing. If liquid fuel blends are fired, specifications may be prorated based on the ratio of the liquid fuels of different nitrogen content in the fuel blend. In all cases, fuel records shall be maintained for 2 years. All facilities subject to the NO_x standards operating a CEMS or measuring unit operating conditions shall maintain records for 2 years.

The owners or operators of all steam generating units having heat input capacities greater than 29 MW (100 million Btu/hour) heat input must submit certain reports. The regulation requires notification of the intent to initiate operation of a new, modified, or reconstructed steam generating unit. Additionally, those facilities subject to the particulate matter or NO_x standards must submit results of the initial performance test and performance evaluation of the CEMS within 180 days of initial startup. For those facilities monitoring opacity, monitoring NO_x by CEMS, or monitoring NO_x by operating conditions, emissions reports must be submitted even if the standards were not exceeded during the reporting period. Also, units equipped with CEMS that are used for compliance determinations will be subject to the quality assurance requirements under 40 CFR Part 60, Appendix F, Procedure 1 when promulgated and shall submit CEMS quarterly quality assurance reports.

Environmental Impacts

The environmental impacts of the standards being adopted today are expressed as incremental differences in emissions between the current emission regulations (referred to as the baseline) and these standards. These impacts are based on the assumption that energy prices experienced in 1984/1985 will continue with only moderate price increases in future years. A consequence of this fuel price assumption is that a large proportion of the new industrial-commercial-institutional steam generating unit population (greater than 50 percent) will continue to fire natural gas or oil, and that coal-fired units are expected to be limited to principally base load units in the larger size range.

The new source performance standards for particulate matter and NO_x emission controls being adopted today will result in a range of emission reductions depending on the mix of fuels assumed to be fired. New source performance standards for SO_2 were recently proposed and affect the mix of fuel fired. The SO_2 standards, as proposed, are expected to increase the market share for natural gas-fired steam generating units from approximately 30 percent to about 55 percent. Because natural gas-fired steam generating units have lower particulate matter and NO_x emissions than either coal- or oil-fired units, decreased particulate matter and NO_x emissions result with the SO_2 standards in place.

A range of environmental impacts is presented. The lower estimate is based on the incremental change between the baseline regulations (State implementation plans and Subpart D new source performance standards) and the particulate matter and NO_x standards being adopted today. The upper estimate is based on the incremental change between the baseline regulations and the particulate matter and NO_x standards combined with the recently proposed new source performance standards for SO_2 (51 FR 22384, June 19, 1986), which would also apply to this category of steam generating units.

The primary environmental impacts resulting from the particulate matter and NO_x standards being adopted today are reductions in the quantity of particulate matter and NO_x emitted from steam generating units subject to these standards. It is estimated that between 1985 and 1990 approximately 725 new steam generating units will be constructed that would be subject to the standards. Baseline emissions from these new steam generating units will be 49,000 Mg (54,000 tons) of particulate matter per year and about 77,000 Mg (85,000 tons) of NO_x per year in 1990. The standards being adopted today are projected to reduce baseline particulate matter emissions by 16,000 to 22,000 Mg (18,000 to 24,000 tons) per year and NO_x emissions by 21,000 to 24,000 Mg (23,000 to 26,000 tons) per year in 1990. This represents about a 35 to 45 percent reduction in the growth of particulate matter emissions and about a 25 to 30 percent reduction in the growth of NO_x emissions from new steam generating units subject to these standards.

The solid and liquid waste impacts associated with the particulate matter and NO_x standards are minimal. Flyash disposal levels associated with existing State regulations and Subpart D new source performance standards are only incrementally increased as a result of the particulate matter standards adopted today. Further, the change in fuel use patterns resulting from the standards can actually reduce flyash levels where increased gas use displaces coal. Overall, the standards are projected to result in solid waste impacts ranging from a net reduction of about 9,000 Mg/year (10,000 tons/year) to a net increase of 13,000 Mg/year (14,000 tons/year). The liquid waste impacts associated with the particulate matter standards are minimal. Liquid waste production levels are projected to increase over baseline by about 19,000 m^3 (680,000 ft^3) per year, or approximately 1.5 percent.

Energy Impacts

The energy impacts of the standards have been analyzed in terms of the impact on demand for natural gas, oil, and coal and in terms of overall energy requirements of steam generating units covered by the standards. Steam generating units that would be affected by the standards are projected to demand approximately 525 million GJ (498 trillion Btu) of fossil fuels in 1990. It is projected that natural gas will comprise about 30 to 50 percent of the fuel used in steam generating units and residual oil will provide a substantial portion of the remainder. The particulate matter standards would increase the national electric energy requirements by about 146 GWh/year in 1990.

Cost Impacts

In analyzing the national cost impacts of the standards, only the costs resulting from the implementation of the particulate matter and NO_x standards have been considered in this rulemaking. On a national basis, the particulate matter and NO_x standards would increase the capital cost for new steam generating units by approximately 1 percent. The nationwide increase in annualized costs for producing steam from new steam generating units subject to the standards would be approximately $36 million in 1990. This represents an increase of less than 1 percent over baseline annualized costs for producing steam from new steam generating units. The magnitude of these cost impacts remains the same regardless of the SO_2 standards.

The national incremental cost effectiveness of the particulate matter standards over existing regulations is projected to range from approximately $1,025/Mg to $1,400/Mg ($930/ton to $1,270/ton) of particulate matter removed. The national incremental cost effectiveness of the NO_x standards over existing regulations is projected to range from $370/Mg to $640/Mg ($340/ton to $580/ton) of NO_x removed.

These impacts are presented as a range of values, showing the incremental cost effectiveness between the baseline and the particulate matter and NO_x standards adopted today, and between the baseline and the combined particulate matter, NO_x, and proposed SO_2 standards. Because of the fuel shifts which are projected to occur under the proposed SO_2 standards, different cost effectiveness levels result in each case.

Economic Impacts

The economic impacts of the standards have also been evaluated in terms of the nationwide capital expenditures for pollution control equipment, the increase in the annualized cost of producing steam, the resulting rise in the price of products produced by operators of steam generating units, and the impact on the availability of capital to the firms purchasing steam generating units.

In analyzing potential product price, profitability, and capital availability impacts associated with the standards, industries likely to experience the severest impacts and the conditions which would produce the most adverse impacts were chosen for examination. The standards being adopted today were found to have no significant adverse economic impacts on any of these industries.

On the national level, assuming increases in annualized costs are passed forward to product consumers and not absorbed by industry, the standards are projected to result in a projected average increase of less than a 0.05 percentage point average increase in the product price for any major steam user group examined, with smaller increases for industries using less steam. For those selected industries which have been judged likely to be most affected by the standards, product prices could increase by 0.05 to 0.40 percent. This projected product price increase is based on a "worst case" analysis assuming full cost pass-through. If no cost pass-through and full cost absorption by industry are assumed, no product cost increase would result, and the return on assets would decrease by 0.01 to 0.60 percentage point under the standards. Impacts on any given plant would likely be much less than these worst case examples under either assumption.

Public Participation

Prior to proposal, interested parties were advised by public notice in the **Federal Register** (47 FR 19786, May 7, 1982) of a meeting of the National Air Pollution Control Techniques Advisory Committee (NAPCTAC) to discuss the standards recommended for proposal. This meeting was held on June 16 and June 17, 1982. The meeting was open to the public and each attendee was given an opportunity to comment on the standards recommended for proposal.

Subsequently, the standards were proposed on June 19, 1984 (49 FR 25102). The preamble to the proposed standards discussed the availability of the Background Information Documents (BID) which describe in detail the regulatory alternatives considered and the impacts of those alternatives. The BID's include EPA–450/3–82–006a "Fossil Fuel-Fired Industrial Boilers—Background Information for Proposed Standards Volume 1: Chapters 1–9," EPA–450/3–82–006b "Fossil Fuel-Fired Industrial Boilers—Background Information for Proposed Standards Volume 2: Appendices," and EPA–450/3–82–007 "Nonfossil Fuel-Fired Industrial Boilers—Background Information." Cost reports include EPA–450/3–82–021 "Costs of Sulfur Dioxide, Particulate Matter, and Nitrogen Oxide Controls on Fossil Fuel-Fired Industrial Boilers," and EPA–450/3–83–004 "Costs of Particulate Matter Controls for Nonfossil Fuel-Fired Boilers." Comments on the proposal were solicited and copies of the BID and cost reports were made available to interested parties.

To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, a public hearing was held on August 15, 1984 at Research Triangle Park, North Carolina. The hearing was open to the public and each attendee was given an opportunity to comment on the proposed standards.

The comment period was from proposal date (June 19, 1984) to October 1, 1984. The written comments and oral statements have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made in the proposed standards.

Comments On Proposal

Discussed below are the more significant comments made by commenters.

Priority List

Two commenters requested that steam generating units with heat input capacities of less than 73 MW (250 million Btu/hour) be delisted from the category of "Fossil Fuel-Fired Steam Generators: Industrial Boilers." The commenters indicate the reasons for their request are (1) that steam generating units under 73 MW (250 million Btu/hour) heat input capacity are not significant air pollution sources; and (2) that these units are already adequately regulated by State regulations and other requirements of the Clean Air Act.

On August 21, 1979, a priority list for development of additional NSPS was published in accordance with sections 111(b)(1)(A) and 111(f)(1) of the Clean Air Act. This list identified 59 major stationary source categories that were not covered by NSPS, but that were judged to be "significant contributors" i.e., to contribute significantly to air pollution that could reasonably be expected to endanger public health or welfare. Fossil fuel-fired industrial steam generating units ranked eleventh on this priority list of sources for which NSPS would be established in the future.

Of the 10 sources ranked above fossil fuel-fired industrial steam generating units on the priority list, nine were major sources of volatile organic compound (VOC) emissions. Because there are many areas that have not attained the national ambient air quality standard for ozone, major sources of VOC emissions were accorded a very high priority. Of the remaining source categories, fuel-fired industrial steam generating units were the highest ranked source of particulate matter and SO_2 emissions, and the second highest ranked source of NO_x emissions. The industrial-commercial-institutional source category is a significant contributor and therefore an appropriate source category for regulation. There is no requirement that subcategories of a listed category or individual sources within a listed category also be "significant contributors." For this reason, the request for delisting fossil fuel-fired steam generating units with heat input capacities less than 73 MW (250 million Btu/hour) is denied.

Applicability

A number of commenters requested clarification on the types of facilities covered by the standards. The applicability requirements of the final standards have been clarified but remain basically the same as those in the proposal. All steam generating units with more than 29 MW (100 million Btu/hour) heat input capacity for which construction is commenced after June 19, 1984, except utility units covered under Subpart Da, are covered by Subpart Db. Except as noted below, the definition of "steam generating unit" includes all devices that combust fuel and produce steam, hot water, or a heat transfer fluid. Fuel combustion units which function as process heaters are not covered if their primary purpose is to heat a fluid in order to initiate or promote a chemical reaction in which the fluid itself is a reactant or catalyst.

Although the standards being adopted today apply to a wide range of industrial-commercial-institutional steam generating units, emission limits are established only for specified fuels or fuel mixtures. Particulate matter emission limits are established for coal, municipal-type solid waste, wood and mixtures of these fuels with other fuels, and NO_x emission limits are established for natural gas, distillate oil, residual oil, coal, and mixtures of these fuels with refinery and chemical plant byproduct/waste fuels. Industrial-commercial-institutional steam generating units firing other fuels would be required to report their startup and maintain certain fuel records, but would not be subject to the particulate matter or NO_x standards. These units may, however, be regulated under Prevention of Significant Deterioration (PSD) permit requirements.

The applicability date for the standards adopted today are June 19, 1984. The standards include one particulate matter standard for low annual capacity factor coal- and municipal solid waste-fired units build between June 19, 1984 and today, and a stricter standard for such low capacity units built after today. The particulate matter standard for low annual capacity factor coal-fired units constructed between June 19, 1984 and today is 190 ng/J (0.20 lb/million Btu) heat input, whereas the standard for such units constructed after today is 22 ng/J (0.05 lb/million Btu) heat input. The particulate matter standard for low annual capacity factor municipal solid waste-fired units constructed between June 19, 1984 and today is 190 ng/J (0.20 lb/milion Btu) heat input. However, for units constructed after today's date, the standard for low annual capacity factor municipal solid waste-fired units is the same as for all other municipal waste-fired units, which is 43 ng/J (0.10 lb/million Btu) heat input.

One commenter asked if the standards apply to exhaust gas incinerators at sulfur recovery units (e.g., Claus units). Emissions from sulfur recovery units at gas processing plants are covered under Subpart LLL of 40 CFR Part 60. Emissions from sulfur recovery units at petroleum refineries are covered under Subpart J. Although sulfur recovery unit tail gas incinerators may fire some natural gas, no tail gas incinerators large enough to meet the size requirements of the standards adopted today have been identified. Therefore, few, if any, exhaust gas incinerators at sulfur recovery units would be covered by the standards being adopted today.

Similarly, sewage sludge incinerators are not covered under these standards. Emissions from sewage sludge incinerators are regulated under Subpart O of 40 CFR Part 60.

Commenters questioned whether all municipal solid waste-fired units, including municipal waste incinerators, are covered. Municipal waste incinerators are currently regulated under Subpart E of 40 CFR Part 60. Subpart Db, as adopted, supersedes Subpart E to the extent that it regulates particulate matter emissions from municipal solid waste-fired incinerators that generate steam, hot water, or heat a heat transfer fluid and have a heat input capacity greater than 29 MW (100 million Btu/hour). A 29 MW (100 million Btu/hour) heat input capacity is equivalent to approximately a 230 Mg/day (250 tons/day) capacity municipal solid waste-fired unit. Municipal solid waste incinerators without heat recovery or that have a heat input capacity less than 29 MW (100 million Btu/hour) remain subject to 40 CFR Part 60 Subpart E.

Under the standards adopted today, incinerators with heat recovery are required to meet the particulate matter standard of 43 ng/J (0.10 lb/million Btu) heat input. Incinerators without heat recovery and incinerators with heat recovery below 29 MW (100 million Btu/hour) heat input in size remain subject to the Subpart E particulate matter emission limit of 0.18 g/dscm (0.08 gr/dscf), which is approximately equivalent to 73 ng/J (0.17 lb/million Btu) heat input.

It should be noted that, in addition to being subject to the standards promulgated today, incinerators combusting byproduct/wastes containing polychlorinated biphenyls (PCB's), including incinerators with and without heat recovery, are subject to regulations pertaining to PCB's promulgated under the Toxic Substances Control Act (TSCA) (40 CFR 761.70).

Lastly, commenters raised questions about what fuels actually comprise municipal-type solid waste. Only waste such as paper, wood, yard wastes, food wastes, plastic, leather, rubber, and other materials typically collected from residential or commercial properties are regulated.

Another commenter inquired about the coverage of process heaters using waste heat economizers. Process heaters equipped with a waste heat economizer are not covered under these standards if the primary purpose of the process heater is to heat a fluid in order to initiate or promote a chemical reaction in which the fluid itself is a reactant or catalyst. The regulations have been revised to clarify this point.

The effect of the proposed standards on catalytic cracking units at petroleum refiners was questioned by one commenter. Catalytic cracking units are covered under Subpart J of 40 CFR Part 60 and are not covered under these standards. The final regulation addresses this.

Inquiry was also made concerning the applicability of Subpart Db to auxiliary (e.g., startup) steam generating units at electric utility power plants. Although these standards apply primarily to steam generating units used in industrial, commercial, and institutional applications, the standards do apply to utility units with heat input capacities greater than 29 MW (100 million Btu/hour) that are not covered under Subpart Da of 40 CFR Part 60. Consequently, small auxiliary steam generating units located at electric utility power plants meeting the applicability requirements of today's standard but not Subpart Da are subject to the standards being promulgated today.

Several commenters expressed opinions about whether various fuels were covered under the emission standards. One commenter said that black liquor recovery steam generating units at pulp mills should not be covered. Black liquor is a byproduct at pulpmills and is fired in steam generating units to recover sodium bisulfate in the flyash. Black liquor recovery units are exempted from these standards if they do not fire regulated fuels, in which case they are covered under Subpart BB of 40 CFR Part 60 applicable to Kraft pulp mills. If black liquor recovery units have an annual capacity factor for fossil fuels greater than 10 percent, which is unlikely, they would be subject to the NO_x standards under this subpart.

Other commenters questioned if various coal-derived fuels were covered by the emission standards. Coal-derived gases, coal-derived liquids, coal-oil mixtures, and coal-water mixtures and other coal-derived fuels are covered and emissions from firing these fuels would be subject to the particulate matter and NO_x standards for coal-fired units. Coal and all coal-derived fuels, including both liquid and gaseous fuels, are being covered because there are demonstrated control technologies available to reduce emissions from the combustion of fuels in both forms.

Commenters questioned whether steam generating units firing mixtures of wood and natural gas would be subject to an emission limit of 130 ng/J (0.30 lb/million Btu) heat input under § 60.46b(a), or would be subject to some prorated emission limit under § 60.43b(b). The final NO_x standards have been revised to make it clear that units firing mixtures of wood and natural gas are subject to the 130 ng/J (0.30 lb/million Btu) heat input emission limit.

It should also be noted that today's **Federal Register** contains a separate notice incorporating the same 130 ng/J (0.30 lb/million Btu) heat input emission limit into Subpart D for units firing mixtures of wood and natural gas.

Particulate Matter

Coal-Fired Steam Generating Units. Commenters stated that the cost effectiveness of particulate matter controls for coal-fired steam generating units covered by this subpart is high relative to the cost effectiveness of particulate matter control on utility power plants and this represents a poor use of capital for environmental

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protection. Another commenter said the cost effectiveness of the proposed particulate matter standards is underestimated because the baseline emission level used in the cost analysis is higher than the actual emission levels generally allowed for these sources by State regulations.

With respect to the first comment, the analysis of the cost of the particulate matter standard for coal-fired steam generating units was based on the cost and performance capability of fabric filters on industrial-size units. The analysis showed that the cost effectiveness of applying particulate matter control varies as a function of steam generating unit size and that the cost effectiveness for smaller (i.e., industrial-size) steam generating units is higher than for larger units. However, this does not necessarily mean that either the standard for industrial-commercial-institutional units or the standard for utility units under Subpart Da is unreasonable.

Based on the cost of fabric filters, the incremental cost effectiveness of particulate matter control for a typical industrial-size steam generating unit [44 MW (150 million Btu/hour) heat input capacity] is estimated to be about $1,600/Mg ($1,500/ton) of pollutant removed over the next most effective technology. As expected, this cost effectiveness level is higher than for a typical utility-size unit which would experience an incremental cost effectiveness level of less than $550/Mg ($500/ton).

When selecting the particulate matter standard for utility steam generating units under Subpart Da, cost-effectiveness levels which might be considered unreasonable were not reached. The standard was limited by the technical performance level of ESP's and fabric filters rather than by cost effectiveness. If no particulate matter standards were adopted that exceeded the cost effectiveness levels of Subpart Da, few if any particulate matter standards would be possible because the large size of facilities covered by Subpart Da alone results in low cost-effectiveness levels.

The Clean Air Act does not require that the cost effectiveness of the standards for one source category be the same as the cost effectiveness of standards for other source categories (*Portland Cement Association v. Ruckelshaus* 486 F.2d. 375, 389–90 (D.C. Cir. 1973)). The Act requires only that the costs of the standards be considered reasonable by the Administrator for the individual category of facilities subject to regulation. In this case, the cost effectiveness of applying fabric filter or other equally effective particulate matter control technologies to industrial-commercial-institutional coal-fired units is considered reasonable.

The second comment was that a baseline particulate matter emission level of 260 ng/J (0.60 lb/million Btu) heat input is higher than the actual emission levels generally allowed by State regulations. The baseline emission level represents the emission reduction capability of single mechanical collectors. Although many States require the use of more efficient control systems, mechanical collectors are the control device universally required as a minimum under even the least stringent State implementation plan (SIP).

As discussed in the preamble to the proposed standards, two technical alternatives to this baseline for the control of particulate matter emissions were analyzed in terms of cost specific basis and cost effectiveness. Technical Alternative I was based on a moderate level of control [86 ng/J (0.20 lb/million Btu) heat input] achieved by sidestream separators, low pressure drop wet scrubbers, or low efficiency ESP's. Technical Alternative II was based on a high level of particulate matter control [22 ng/J (0.05 lb/million Btu) heat input] achieved by fabric filters and other equally effective control technologies.

The cost effectiveness of the proposed standards on an individual unit basis was analyzed in terms of the incremental cost effectiveness of each alternative level of control in relation to the next less stringent alternative. Therefore, the cost effectiveness of Technical Alternative I was estimated in relation to the cost effectiveness of single mechanical collectors capable of reducing particulate matter emissions to the baseline emission level of 260 ng/J (0.60 lb/million Btu) heat input or less. The cost effectiveness of Technical Alternative II, which coincided with the proposed standard, was estimated in relation to the cost effectiveness of sidestream separators capable of reducing particulate matter emissions to 86 ng/J (0.20 lb/million Btu) heat input or less (Technical Alternative I), rather than to the baseline level of 260 ng/J (0.60 lb/million Btu) heat input. This method of analysis provides an estimate of the marginal, or incremental, cost of control for an individual unit and is the most appropriate way to review increasingly stringent control options. Because the final particulate matter standard for coal-fired units (Technical Alternative II), is compared with the cost of Technical Alternative I and not the baseline costs, the assumed baseline control level is not a factor in the calculation of the incremental cost effectiveness of the standard as adopted. Thus, the commenter's concern that the assumed baseline particulate matter emission level was too low is not relevant to the results of the cost analysis for the incremental cost between Technical Alternatives I and II.

Other commenters stated that the less stringent particulate matter standard of 86 ng/J (0.20 lb/million Btu) heat input proposed for coal-fired units less than 73 MW (250 million Btu/hour) in size with an annual capacity factor for coal of 30 percent (0.30) or less was unjustified and should be removed so that all coal-fired units would be subject to the same standard. The purpose for proposing a separate, more lenient standard for low capacity factor units was to distinguish seasonal, standby, or low-load units from base-load type units in response to the higher cost-effectiveness levels associated with control of particulate matter emissions from these types of coal-fired steam generating units.

Further analysis indicates that relatively few new coal-fired low annual capacity factor units are likely to be constructed. This pattern is expected to continue in the future, especially in light of NSPS proposed for the control of SO_2 emissions from coal-fired industrial-commercial-institutional steam generating units (51 FR 22384, June 19, 1986). The few low annual capacity factor coal-fired units that may have been constructed in the absence of SO_2 standards will likely shift from firing coal to firing natural gas or fuel oil as the primary fuel as a result of the SO_2 standards. As a result, the impacts associated with the application of more stringent particulate matter standards are not likely to materialize for low annual capacity factor units.

The judgment that relatively few low annual capacity factor steam generating units are likely to be constructed to fire coal in the future is based on a comparison of the economics of firing coal versus oil or natural gas. The annualized cost for a typical coal-fired industrial steam generating unit (44 MW; 150 million Btu/hour heat input capacity) in a low capacity factor application will exceed the cost of a natural gas-fired or oil-fired steam generating unit by 50 to 100 percent. Consequently, coal is generally not competitive with oil or natural gas in steam generating units which operate at low annual capacity factors. In such cases, the economics clearly favor selection of oil or natural gas as the primary fuel, regardless of the cost of emission control systems. As a result, in instances where a low annual capacity factor unit is built, the less than 5 percent cost increase to apply the most efficient particulate matter control technology will not change steam generating unit economics.

When viewed on an annual basis, the incremental cost effectiveness of the most effective systems is comparatively high for low capacity factor units. However, during periods of operation, the emissions potential of such coal-fired units can be as great or greater than units with higher annual capacity utilization rates. Coal-fired steam generating units used for space heating, for example, are often operated on a seasonal basis at or near full capacity for several months each year. During these periods, the emission rates of such units will be comparable to similar sized coal-fired units operated yearround.

Additionally, an emission limit requiring use of high efficiency control systems uniformly on all coal-fired units will improve the enforceability of the standards. If any low capacity factor coal-fired units are built, there will be an inherent economic incentive to operate them at higher capacity factors as plant production expands or if the unit is subsequently used for cogeneration purposes. If the unit is operated at an annual capacity factor greater than 0.30 (30 percent) it would become subject to a more stringent standard, requiring retrofit of the unit with a high efficiency control system. In addition to requiring a permit revision, such a change would require additional resources to enforce applicable monitoring, reporting, recordkeeping and other compliance-related provisions.

In the final regulation, therefore, the same standard [22 ng/J (0.05 lb/million Btu) heat input] is applicable to lower annual capacity factor coal-fired units as to higher annual capacity factor units. In the final standards, all coal-fired units constructed after today's date with heat input capacities greater than 29 MW (100 million Btu/hour) are subject to a particulate matter standard of 22 ng/J (0.05 lb/million Btu) heat input, independent of annual capacity utilization rates.

Although few, if any, units are expected to be built, it would be inappropriate to require any units which may have been constructed since proposal, but prior to today, to retrofit particulate matter control technology to meet the lower standard. The emission limit of 86 ng/J (0.20 lb/million Btu) heat input is being maintained for low annual capacity factor units constructed during this interim period. As a result, the final standards specify that low annual capacity factor coal-fired units, if constructed between June 19, 1984 and today, are subject to a particulate matter standard of 86 ng/J (0.20 lb/million Btu) heat input.

Wood-Fired Steam Generating Units. One commenter stated that promulgation of the standard of 43 ng/J (0.10 lb/million Btu) heat input proposed for wood-fired steam generating units would discourage the use of wood fuels, and that existing State regulations for wood-fired units provide adequate environmental protection to meet national ambient air quality standards (NAAQS) for particulate matter. The commenter observed that particulate matter emissions from new wood-fired steam generating units would be about 10,000 Mg (11,000 tons) in 1989, or less than 0.2 percent of the national total emissions of particulate matter from industrial-commercial-institutional steam generating units.

Also, the commenter contended that promulgation of the proposed standard would reduce the use of logging residues as fuels. This would increase open burning of logging residue in "slash fires," resulting in a net deterioration of air quality. Finally, the commenter suggested that wood-fired steam generating units be allowed to operate under existing State standards [130 to 170 ng/J (0.30 to 0.40 lb/million Btu) heat input], provided the facility demonstrated that more than 12 percent of the fuel fired was derived from logging residues.

Section 111 of the Clean Air Act requires NSPS to be based on the level of emissions achievable using best demonstrated technology. Basing a standard on best demonstated technology may result in an emission limit more stringent than a State regulation based on national ambient air quality standards (NAAQS). Particulate matter emissions of 10,000 Mg/year (11,000 tons/year) are significant and can be controlled at a reasonable cost. If the suggested logic were followed, it could be concluded that few, if any, NSPS were necessary because most individual units only contribute a small fraction of the final emissions from the source category.

In addition, promulgation of the standards is not expected to cause more logging residue to be burned in open "slash fires" than is already being burned in this manner. The promulgated standards will result in only a minor increase in cost and there will remain an economic incentive for use of logging residues where available as opposed to other fuels.

Another commenter stated that basing the 43 ng/J (0.10 lb/million Btu) heat input particulate matter emission limit for wood-fired-steam generating units on ESP technology was inappropriate. This objection was based on emission data presented in the proposed standard that showed electrostatic granular filters (EGF) achieved particulate matter emission levels of 8.6 to 17.0 ng/J (0.02 to 0.04 lb/million Btu) heat input. This commenter also noted that fabric filters achieved a particulate matter emission level of 8.6 ng/J (0.02 lb/million Btu) heat input on two wood-fired steam generating units.

Both ESP's and EGF's are considered demonstrated particulate matter emission control technologies for wood-fired steam generating units. However, the particulate matter test data for EGF's are very limited. The proposed standard was based on careful consideration of text data available for ESP's and high pressure drop scrubbers applied to seven steam generating units firing wood and mixtures of wood and fossil fuels. In comparison, particulate matter test data were available from only two steam generating units using EGF's for control of particulate matter emissions. Because of the limited database, EGF's were not selected as the basis of the standard applicable to wood-fired steam generating units.

To date, fabric filters have been used infrequently on wood-fired steam generating units because of concern about potential fire hazards. New units with control interlocks appear to greatly reduce fire hazard. But, again, fabric filters have had limited application and test data are available from only two units.

For these reasons, the particulate matter standard for steam generating units firing wood or mixtures of wood and fossil fuels has not been changed and is based on application of ESP's or high pressure drop wet scrubbers. However, any technology, including EGF's or fabric filters, can be selected to comply with the standard being promulgated today.

Municipal Solid Waste-Fired Steam Generating Units. An emission limit of 43 ng/J (0.10 lb/million Btu) heat input was proposed for steam generating units firing municipal-type solid waste. The proposed emission limit was based on the performance of electrostatic precipitators (ESP's), as demonstrated in four Reference Method 5 particulate matter emission tests on units ranging in heat input capacity from 14 to 85 MW (47 to 290 million Btu/hour). The test data showed that particulate matter emissions decreased with increasing ESP collection area and that an emission limit of 43 ng/J (0.10 lb/million Btu) heat input could be achieved by use of ESP's with collection areas of at least 47 m^2/(m^3/s) (240 ft^2/1,000 acfm).

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Although these test data were the best available during the development of the proposed standards for municipal solid waste-fired units, these data are from units that began operation in the early 1970's. Interest in waste-to-energy facilities has been increasing in recent years and a number of new units are currently in planning or under construction for operation in the near future. These new facilities are using more effective and sophisticated control equipment designed to achieve even lower particulate matter emission levels than the proposed standard. In fact, several commenters suggested that emission levels for lower than the proposed standard are now achievable by the current generation of waste-to-energy facilities. This latest generation of facilities is generally being required by permits to operate at optimum combustion levels and install spray dryer/fabric filter technology.

Efforts have been underway since proposal to collect and evaluate additional data on the performance of the latest emission control systems for municipal waste-fired units. Some additional data have been obtained; however, it is too early to draw firm conclusions about the emission reduction capabilities of this more sophisticated generation of waste-to-energy facilities. Consequently, although it is recognized that lower emission levels may be achievable in the future as a result of rapidly evolving developments in the field of municipal waste-fired steam generating unit emission control technology, an emission limit of 43 ng/J (0.10 lb/million Btu) heat input is being promulgated.

As a result of these recent events and as part of a settlement agreement with the Natural Resources Defense Council concerning their petition over the Agency's decision not to regulate emissions of polycyclic organic matter (POM), a thorough study of municipal waste-fired facilities is actively underway. A document that identifies, to the extent data are available: (1) The lowest emission levels for organic compounds (including dioxin), toxic metals, acid gases, and particulate matter that have been achieved from municipal waste combustors on a commercial scale; (2) the feed characteristics, operating conditions, and control techniques associated with such emission levels; and (3) available monitoring techniques that can be used to determine whether emission levels from municipal waste-fired units reflect the lowest emission levels achieved on a commercial scale will be issued in the near future. By June, 1987, the Administrator will decide whether to regulate emissions from municipal waste-fired facilities further.

To aid in this effort, the Administrator requests any data or information available concerning the effectiveness and cost of various emission control systems for municipal waste combustion. In particular, comments are requested on the technological and economic feasibility of establishing a particulate matter emission limit of less than 43 ng/J (0.10 lb/million Btu) heat input based on use of spray dryer/fabric filter technology.

Comments were received stating that insufficient test data exist to establish particulate matter emission standards for units firing refuse-derived fuel (processed municipal-type solid waste). Comments indicated that variations in the moisture content and other characteristics of refuse-derived fuel result in considerable variation in particulate matter emission levels of these units.

The factors affecting the control of particulate matter emissions from units firing refuse-derived fuel and the test data supporting the proposed standard of 43 ng/J (0.10 lb/million Btu) heat input for such units have been reviewed further. The test data supporting the standard are representative of the range of fuel and steam generating unit operating conditions that can reasonably be expected for units fired with refuse-derived fuel. A review of these data and the factors affecting particulate matter emissions for these units supports the ability of well-designed, operated, and maintained ESP's with an adequate specific collection area to meet the standard.

Nitrogen Oxides

Natural Gas- And Distillate Oil-Fired Steam Generating Units. Numerous comments were received stating that the proposed NO_x emission limit of 43 ng/J (0.10 lb/million Btu) heat input for natural gas- and distillate oil-fired units was too stringent for the package steam generating units covered by the proposed standards. Some commenters questioned the technical achievability of the proposed standard for package gas- and oil-fired steam generating units. Others questioned the reasonableness of the cost of meeting the standard. Additionally, some commenters noted the proposed standard might preclude the use of combustion air preheat.

Package steam generating units are those which are prefabricated and transported to the site by rail or barge, rather than being constructed on-site. Package units are characterized by relatively fixed designs and furnace dimensions limited by rail or barge shipping restrictions. As a result, package natural gas- and oil-fired units are generally restricted to less than 59 to 73 MW (200 to 250 million Btu/hour) heat input capacity.

The proposed emission limit of 43 ng/J (0.10 lb/million Btu) heat input was based, in part, on vendor guarantees of the performance capabilities of staged combustion burners (SCB's). In general, vendors would not confirm the verbal guarantees they offered informally prior to proposal of the standards, especially with respect to large package steam generating units. Review of information included in the comments and analysis of the limited emission test data available on the performance of SCB's (also known as "low-NO_x burners") do, however, indicate that the proposed NO_x emission limits can be achieved. To do so, the volumetric heat release rate for the steam generating unit would have to be maintained below some defined level. The American Boiler Manufacturers Association commented that the volumetric heat release rate would have to be limited to 730,000 to 830,000 J/sec-m^3 (70,000 to 80,000 Btu/hour-ft^3) to allow low NO_x firing methods. Additionally, communications with one low-NO_x burner manufacturer indicated the unit heat release rate would have to be maintained below about 780,000 J/sec-m^3 (75,000 Btu/hour-ft^3) to allow SCB application. Since proposal, data have been obtained from two package steam generating units employing staged combustion technology. Analysis of these limited data indicated that SCB controls can be used to meet the proposed standard at heat release rates of less than about 730,000 J/sec-m^3 (70,000 Btu/hour-ft^3).

As previously mentioned, package steam generating units covered by the standard are in the 29 to 73 MW (100 to 250 million Btu/hour) size range. Because these units are restricted in maximum outside dimensions, they typically have volumetric heat release rates that increase with increasing unit size. Typical heat release rates for package steam generating units range from about 776,000 J/sec-m^3 (75,000 Btu/hour-ft^3) for a 29 MW (100 million Btu/hour) unit up to about 983,000 J/sec-m^3 (95,000 Btu/hour-ft^3) for the largest package unit. Therefore, virtually all package gas- and oil-fired units covered by the standard being adopted today have design heat release rates in excess of 730,000 J/sec-m^3 (70,000 Btu/hour-ft^3). Units larger than 73 MW (250 million Btu/hour) heat input capacity are typically field-erected units and have heat release rates of less than 410,000 J/sec-m^3 (40,000 Btu/hour-ft^3).

Therefore, to meet the proposed standards using SCB controls, package steam generating units would have to be operated at less than full capacity in order to restrict their heat release rates to less than 730,000 J/sec-m^3 (70,000 Btu/hour-ft^3). An oversized boiler would have to be used to provide increased furnace volume to reduce the overall, volumetric heat release rate. Operation at partial load to maintain heat release rates at or below a certain ceiling is referred to as derate, and is calculated as the excess capacity that must be purchased to meet a steam demand while not exceeding a given heat release rate. As an alternative to derate, a single field-erected unit or a group of smaller packaged units could be used in place of a single package steam generating unit and little or no derate would be required. In any of the three cases, the cost of meeting a given steam demand would be higher than current conditions.

Data from both natural gas- and residual oil-fired package industrial steam generating units were gathered to determine how much derate would be needed to meet the proposed standards as a function of unit heat input capacity. Analysis of these data indicated that maintaining the maximum design heat release rate below a 730,000 J/sec-m^3 (75,000 Btu/hour-ft^3) level would require about 10 percent derate for a 29 MW (100 million Btu/hour) package unit and up to 30 percent derate for the largest package unit. The application of 30 percent derate to a typical 44 MW (150 million Btu/hour) package natural gas-fired steam generating unit would increase steam generating unit capital cost by 18 percent and annual operating costs by 2 percent. As a result, the incremental costs associated with meeting a NO_x emission limit of 43 ng/J (0.10 lb/million Btu) heat input based on the use of SCB controls over the costs associated with meeting a NO_x emission limit of 86 ng/J (0.20 lb/million Btu) based on the use of LEA alone leads to incremental cost effectiveness levels of more than \$4,400/Mg (\$4,000/ton) of NO_x removed. Consideration of the cost effectiveness of derate leads to the conclusion that the cost effectiveness of the proposed standard for package units covered by the standard is unreasonable. The cost effectiveness associated with NO_x standards based on the use of LEA, however, is considered reasonable because no derate is necessary and minimal cost impacts occur.

As discussed in the proposal, LEA is one of the most common forms of combustion modification and is directly applicable to industrial-commerical-institutional steam generating units. LEA operation involves reducing the excess combustion air to the minimum amount needed for complete combustion. Although effective on both fuel and thermal NO_x, emission test data indicate that LEA is most effective in reducing thermal NO_x, which is the principal source of NO_x emissions from natural gas and distillate oil because of their low fuel nitrogen contents.

A large amount of NO_x emission data was collected and analyzed on the performance of LEA prior to proposal. Since proposal, an emission test data set from an additional package unit with a high design heat release rate of approximately 1,035,000 J/sec-m^3 (100,000 Btu/hour-ft^3) was added to the database. The total database was re-analyzed to determine the NO_x emission level achievable by LEA under worst case conditions for the formation of NO_x, including high heat release rate and combustion air preheat. The results of this new analysis were essentially the same as for the analysis of LEA performance carried out prior to proposal. The results show that LEA is capable of reducing NO_x emissions from natural gas- and distillate oil-fired steam generating units without combustion air preheat to 86 ng/J (0.20 lb/million Btu) heat input or less on a 30-day rolling average basis and to 130 ng/J (0.30 lb/million Btu) heat input with combustion air preheat.

Review of information concerning steam generating unit sales over the past 5 years indicates that very few package steam generating units use combustion air preheat. As the name implies, combustion air preheat uses flue gas from the steam generating unit (and a heat exchanger) to preheat combustion air prior to combustion. The recovery of heat from the exhaust gases increases the overall thermal efficiency of the unit. Rather than use combustion air preheat, however, an economizer could be used to accomplish the same result. An economizer uses flue gas (and a heat exchanger) to preheat feedwater to the steam generating unit. Again, heat is recovered from the exhaust gases and an increase in thermal efficiency results. With either heat recovery option, the cost and complexity of the steam generator are increased. Additionally, space restrictions on shipment may preclude the units with preheat being shipped as one package. Because few package units use combustion air preheat and in those instances where an increase in thermal efficiency is desired, a reasonable alternative to combustion air preheat is available, the final standard will limit NO_x emissions from all natural gas- and distillate oil-fired steam generating units with heat release rate of 730,000 J/sec-m^3 (70,000 Btu/hour-ft^3) or greater to 86 ng/J (0.20 lb/million Btu) heat input.

An emission limit of 43 ng/J (0.10 lb/million Btu) heat input is, however, achievable for steam generating units with heat release rates less than 730,000 J/sec-m^3 (70,000 Btu/hour-ft^3). For example field-erected units have a fire box large enough to accommodate the longer flame lengths associated with low NO_x firing methods without derate. Field-erected steam generating units also have typical design maximum heat release rates of less than 410,000 J/sec-m^3 (40,000 Btu/hour-ft^3). Therefore, an emission limit of 43 ng/J (0.10 lb/million Btu) heat input is being promulgated for natural gas- or distillate oil-fired steam generating units with maximum design heat release rates less than 730,000 J/sec-m^3 (70,000 Btu/hour-ft^3).

In summary, the final standards will limit NO_x emissions to 43 ng/J (0.10 lb/million Btu) heat input for units firing natural gas or distillate oil with maximum design heat release rates of 730,000 J/sec-m^3 (70,000 Btu/hour-ft^3) or less, and will limit NO_x emissions to 86 ng/J (0.20 lb/million Btu) heat input for units with maximum design heat release rates greater than 730,000 J/sec-m^3 (70,000 Btu/hour-ft^3). Because package units in the size range covered by the standard will typically have heat release rates in the range of 780,000 to 990,000 J/sec-m^3 (75,000 to 95,000 Btu/hour-ft^3), practically all package units covered by today's standards will be subject to the 86 ng/J (0.20 lb/million Btu) heat input standard. Because most, if not all, field-erected steam generating units will have maximum design heat release rates of less than 410,000 J/sec-m^3 (40,000 Btu/hour-ft^3), the 43 ng/J (0.10 lb/million Btu) heat input standard will, for the most part, apply to field-erected units.

Residual Oil-Fired Steam Generating Units. Several commenters indicated they also believed the proposed NO_x standards for package residual oil-fired units were unreasonable. Specifically, commenters felt that staged combustion (SC) controls for reducing NO_x emissions from package units had not been demonstrated to meet the proposed emission limits of 130 ng/J (0.30 lb/million Btu) heat input for low nitrogen residual oil and 170 ng/J (0.40 lb/million Btu) heat input for high nitrogen residual oil for package steam generating units. Use of SC controls on package units would necessitate derating to accommodate the longer flame lengths

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associated with SC controls. Consequently, there could be a substantial cost penalty associated with meeting the emission limits as proposed. Commenters recommended that the proposed emission limits be increased to 170 ng/J (0.40 lb/million Btu) heat input for low nitrogen content oil and to 210 ng/J (0.50 lb/million Btu) heat input for high nitrogen content residual oils for package units.

Commenters, however, including two major industry trade associations (American Boiler Manufacturers Association and Council of Industrial Boiler Owners), specifically recommended promulgation of the proposed standard of 130 ng/J (0.30 million Btu/hour) heat input for low nitrogen residual oil-fired units and 170 ng/J (0.40 lb/million Btu) heat input for high nitrogen residual oil-fired units above 73 MW (250 million Btu/hour) heat input capacity.

In addition, one of the major steam generating unit manufacturers and one of the major burner manufacturers indicated their willingness to offer guarantees to achieve the proposed standards for units above 73 MW (250 million Btu/hour) in size. The support for the proposed standard as it applies to field-erected steam generating units by industry trade associations and manufacturers indicates that SC is recognized as being a NO_x control technique that can reduce NO_x emissions to the level of the proposed standards.

As evidenced by the recommendations of commenters, that the proposed standards should be promulgated for field-erected units, the issue posed in these comments is not the ability of demonstrated emission control techniques to reduce NO_x emissions from residual oils to the proposed levels, but the reasonableness of applying this technology to package units, given the costs associated with the required derate. To meet the proposed standards, most package residual oil-fired steam generating units in the 29 to 73 MW (100 to 250 million Btu/hour) heat input size range would have to be derated by 10 to 35 percent to accommodate the longer flame lengths associated with SC controls. The cost effectiveness of this approach to meeting the standards is up to $4,400/Mg ($4,000/ton) of NO_x reduction.

An alternative to derating as a means of meeting the proposed standards for residual oil would be to fire low nitrogen content residual oil, such as those containing less than 0.17 weight percent nitrogen. Analysis of the available NO_x emission data show that, without combustion air preheat, use of LEA controls alone are sufficient to meet the proposed NO_x standard when firing residual oils containing 0.17 weight percent nitrogen or less. Since LEA does not extend flame lengths, the proposed standards could be met firing very low nitrogen residual oils in large package units without any derating.

Information on the nitrogen content of residual oils sold in the United States is extremely limited. Information that is available is not current, but indicates that only about 10 to 15 percent of residual fuel oils have nitrogen contents of less than 0.17 weight percent. About a third of residual feul oils have nitrogen contents of less than 0.2 weight percent and about two-thirds of residual fuel oils have nitrogen contents of less than 0.3 weight percent. The availability of residual oils with very low nitrogen contents of 0.17 weight percent or less, therefore, could be quite limited.

An alternative to firing such extremely low nitrogen oils for meeting the proposed standards would be to switch from firing residual oil to firing natural gas. Switching to natural gas would avoid having to fire a very low nitrogen content residual oil or derating the unit. However, the cost effectiveness associated with this alternative is also fairly high, about $2,750/Mg ($2,500/ton) of NO_x reduction, because of fuel price differentials.

Consequently, in the final standards the emission limit for package residual oil-fired steam generating units has been set at 170 ng/J (0.40 lb/million Btu) heat input, independent of the nitrogen content of the residual oil fired. Compliance with a NO_x emission limit of 170 ng/J (0.40 lb/million Btu) heat input can be achieved with LEA alone without combustion air preheat when firing residual oils with nitrogen contents of about 0.3 weight percent or less. No derate would be necessary.

Most package residual oil-fired units do not use preheated combustion air. In addition, in those isolated cases where an owner/operator wanted to increase the thermal efficiency of a steam generating unit, economizers could be used to preheat feedwater rather than using preheated combustion air.

Since about two-thirds of residual fuel oils have nitrogen contents of less than 0.3 weight percent, fuel availability should not be a problem. Also, in today's residual fuel oil market, there is no apparent price premium for residual oils with nitrogen contents less than 0.3 weight percent, unless one focuses on residual oils with a very low nitrogen content (i.e., less than 0.17 weight percent). Therefore, there should be no increased costs associated with firing residual oils of less than 0.3 weight percent nitrogen in order to meet the standard.

Because the cost effectiveness of LEA controll for reducing NO_x emissions is negligible, the cost effectiveness of a 170 ng/J (0.40 lb/million Btu) heat input standard for package residual oil-fired units based on LEA and firing of residual oils with a nitrogen content of less than 0.3 weight percent is considered reasonable.

As mentioned above, the concerns expressed by commenters relative to SC controls and derate do not apply to field-erected steam generating units, which predominate in steam generating unit sizes above 73 MW (250 million Btu/hour) heat input capacity. Commenters expressed no objection to the proposed standards of 130 ng/J (0.30 lb/million Btu) heat input and 170 ng/J (0.40 1b/million Btu) heat input for low and high nitrogen residual oil, respectively, in the case of field-erected units.

The proposed standards for residual oil varied with the nitrogen content of the oil because fuel nitrogen is a major determinant of NO_x emissions from residual oil combustion and of the effectiveness of NO_x control techniques on residual oil-fired units. No distinction was made in the proposed standards between package and field-erected oil-fired steam generating units.

In the case of units above 73 MW (250 million Btu/hour) in size, the effect of the emission limit proposed for high nitrogen residual oil would have been to raise the existing standard applicable to these units. The existing 1971 standard for oil-fired units (Subpart D of 40 CFR Part 60) is 130 ng/J (0.30 lb/million Btu) heat input. It has been concluded that raising the standard for these units to 170 ng/J (0.40 lb/million Btu) heat input is unnecessary for three reasons.

First, as stated above, field-erected units are not restricted by the same furnace size limitations as package units and, therefore, can accommodate SC controls without the need for derate. Second, unlike for package units, staged combustion has been demonstrated to be effective in reducing NO_x emissions from field-erected units firing high nitrogen residual oil. Third, the existing standard has been in effect for over 15 years and there is no indication that it needs changing. In fact, no continuous emission monitoring data from field-erected units firing high nitrogen residual oil could be obtained because such units are generally exempt under § 60.45(b)(3) from a requirement to continuously monitor NO_x emissions due to having emissions during the performance test of less than 70 percent of the standard 86 ng/J (0.20 lb/million Btu) heat input.

Considering all of these factors, it appears there has been little problem meeting the longstanding Subpart D standard of 130 ng/J (0.30 lb/million Btu) heat input for high nitrogen residual oil-fired units that are field-erected and there is no need to change that standard. Therefore, the 170 ng/J (0.40 lb/million Btu) heat input standard proposed in 1984 for units greater than 73 MW (250 million Btu/hour) heat input capacity which fire high nitrogen residual oil has been replaced in the final standards. All residual oil-fired units larger than 73 MW (250 million Btu/hour) heat input capacity are subject to the same 130 ng/J (0.30 lb/million Btu) heat input emission limit.

As discussed above, steam generating units in the 29 MW to 73 MW (100 to 250 million Btu/hour) size range are generally package units and have heat release rates of 776,000 to 983,000 J/sec-m^3 (75,000 to 95,000 Btu/hour-ft^3). Field-erected units are predominant above 73 MW (250 million Btu/hour) hear input capacity and have heat release rates less than about 414,000 J/sec-m^3 (40,000 Btu/hour-ft^3). A mid-point between the two types of steam generating units that would distinguish between the two unit types would be about 720,000 J/sec-m^3 (70,000 Btu/hour-ft^3).

Consequently, the final standards limit NO_x emissions to 130 ng/J (0.30 lb/million Btu) heat input for all residual oil-fired units with maximum design heat release rates of 720,000 J/sec-m^3 (70,000 Btu/hour-ft^3) or less and to 170 ng/J (0.40 lb/million Btu) heat input for all residual oil-fired units with a maximum design heat release rate of greater than 720,000 J/sec-m^3 (70,000 Btu/hour-ft^3), independent of the nitrogen content of the residual oil being fired.

Spreader Stoker Steam Generating Units. Comments were received on the proposed standard limiting NO_x emissions from coal-fired spreader stoker steam generating units to 260 ng/J (0.60 lb/million Btu) heat input. Several commenters questioned the ability of spreader stoker steam generating units using preheated combustion air >150°C (300°F)] to meet the proposed standard. The commenters did not submit any new data showing that the NO_x standards are not achievable but they did reference a recent test at a 115 MW (400 million Btu/hour) coal-fired spreader stoker with preheated combustion air. This unit had been selected for testing because it represented the use of combustion air preheat on a spreader stoker with a very high heat release rate. Commenters stated that the data from these tests substantiate the need for a higher NO_x emission level for spreader stokers with preheated combustion air. One commenter suggested that a dual standard would be appropriate with the proposed standard of 260 ng/J (0.60 lb/million Btu) heat input applying to spreader stoker steam generating units not using combustion air preheat [<150°C (300°F)], and a standard of 300 ng/J (0.7 lb/million Btu) heat input applying to steam generating units using preheated combustion air [>150°C (300°F)]. The commenters also maintained that the proposed NO_x emission limit would force spreader stoker units with preheated combustion air to be designed for heat release rates much lower than typical design, thereby encouraging the preferential use of pulverized coal-fired units over use of spreader stoker units.

The results obtained from the referenced emissions test on the 115 MW (400 million Btu/hour) spreader stoker were analyzed to show the effect of combustion air preheat on NO_x emissions. The analysis showed that combustion air preheat temperature did not have a significant effect on NO_x emissions. The test results showed that combustion air preheat slightly lowered NO_x emissions in three of four paired data tests conducted.

Under full load operating conditions and with combustion air preheat, NO_x emissions at the tested unit exceeded 260 ng/J (0.60 lb/million Btu) heat input. However, further analysis of these data revealed that the relatively high NO_x emissions at this facility were due to the high grate heat release rate of this unit. This unit is more than 20 years old and the grate heat release rate is 2,600,000 J/sec-m^2 (816,000 Btu/hour-ft^2) at full load. By comparison, the maximum design grate heat release rate for new spreader stoker steam generating units is approximately 2,200,000 J/sec-m^2 (700,000 Btu/hour-ft^2). The manufacturer of the tested unit confirmed that the unit was designed with an atypically high grate heat release rate. Anaylsis of the test data indicated that if the grate heat release rate of this unit were lowered to less than 2,200,000 J/sec-m^2 (700,000 Btu/hour-ft^2), NO_x emissions would be less than 260 ng/J (0.60 lb/million Btu) heat input.

The NO_x emissions data previously presented in the proposed standard were based on tests from 11 different spreader stoker steam generating units. Predicted average NO_x emissions for these steam generating units were in the range of 150 to 230 ng/J (0.34 to 0.54 lb/million Btu) heat input with an average of 200 ng/J (0.46 lb/million Btu) heat input. The comment that a 260 ng/J (0.60 lb/million Btu) heat input standard would force spreader stoker steam generating units using preheated combustion air to be designed for very low heat release rates is unsubstantiated. The use of preheated combustion air does not appear to noticeably affect NO_x emissions from spreader stoker units. Analyses of the data indicated that steam generating untis with design heat release rates within the normal range of design parameters can meet the standard.

Another commenter stated the upward adjustment of the test data 260 ng/J (0.60 lb/million Btu) heat input from 230 ng/J (0.54 lb/million Btu) heat input to account for variability in NO_x emissions did not reflect data from the other two tested units, which had long-term NO_x emissions ranging from 150 to 190 ng/J (0.36 to 0.44 lb/million Btu) heat input. This commenter suggested the emission level should be lowered to between 170 to 210 ng/J (0.40 to 0.50 lb/million Btu) heat input based on the long-term emissions of these units.

This comment reflects a misunderstanding of the method used to calculate the emission limit. The long-term NO_x data were analyzed to determine the variation in NO_x emissions from mean emission levels rather than to determine the applicable emission limit. Time series analysis was used to calculate the maximum 30-day average NO_x emission levels that would be expected to occur once every 10 years. This analysis concluded that the peak 30-day average emission rate would be expected to be about 7 percent greater than the mean emission rate. The 7 percent variability factor reflects a statistical projection and is not directly comparable to average NO_x emission data measured during the test program.

Pulverized Coal-Fired Steam Generating Units. Several comments were received concerning the proposed NO_x standard for pulverized coal-fired steam generating units. Many commenters noted that the NO_x standard for pulverized coal-fired steam generating units was based on NO_x emissions data from tangentially-fired pulverized coal-fired units larger than 147 MW (500 million Btu/hour) heat input capacity. The commenters stated that pulverized coal-fired units used in industrial applications would more likely be smaller wall-fired pulverized coal-fired units rather than tangentially-fired pulverized coal-fired units which are more commonly used for large utility units. The commenters questioned the ability of the more common wall-fired pulverized coal-fired units to achieve the proposed NO_x standard of 300 ng/J (0.70 lb/million Btu) heat input. To accommodate wall-fired units, it was recommended that the NO_x emission limit for pulverized coal-fired units be increased to 340 ng/J (0.80 lb/million Btu) heat input capacity.

In response to these comments, 90 days of continuous NO_x emission data were obtained from a 88 MW (300 million Btu/hour) heat input capacity wall-fired pulverized coal-fired unit with overfire air firing eastern bituminous coal. Data from a unit firing eastern bituminous coal were selected because previously collected emissions data showed higher potential NO_x emissions when eastern bituminous coal is fired than when western subbituminous coal is fired.

More than 1,200 hours of continuous NO_x emissions data from this unit were analyzed. The hourly NO_x emissions for the 90-day period ranged from 150 to 290 ng/J (0.35 to 0.68 lb/million Btu) heat input, and steam generating unit load for the period during which data were collected ranged from 38 to 90 percent. During the entire 90-day test period, the NO_x emissions averaged 210 ng/J (0.50 lb/million Btu) heat input and steam generating unit load averaged 49 percent. A regression analysis of the continuous NO_x emission data was conducted to predict mean NO_x emissions from this unit under operating conditions of 100 percent load and 4.8 percent O_2. This analysis predicted average NO_x emissions at 100 percent load to be 290 ng/J (0.67 lb/million Btu) heat input.

A time series statistical analysis of the data was conducted to determine the variability in NO_x emissions projected to occur over a 30-day period. This analysis predicted the peak 30-day NO_x emission levels to be about 9 ng/J (0.02 lb/million Btu) heat input higher than the mean. Therefore, the peak NO_x emissions based on a 30-day rolling average would be 300 ng/J (0.69 lb/million Btu) heat input. Therefore, the proposed NO_x standard of 300 ng/J (0.70 lb/million Btu) heat input is again demonstrated to be achievable and is being promulgated for all pulverized coal-fired steam generating units.

NO_x Control for Waste Fuels. Several commenters expressed concerns over the regulation of liquid and gaseous byproduct/waste fuels. These commenters said that, in many instances, the NO_x emission limits specified in the proposed standards could not be met when combusting these byproducts/wastes because of high nitrogen content or other properties. Several commenters also stated that insufficient data are available on emissions from steam generating units firing gaseous or liquid byproducts/wastes to demonstrate the achievability of the proposed NO_x standards. Commenters stated that the emission and combustion characteristics of byproducts/wastes are too variable and uncertain to justify their inclusion in the proposed NO_x standards. Finally, commenters objected that the definition of byproducts/wastes is too broad.

In response to these comments, several points need to be considered. First, the NO_x standards being promulgated today are not intended to encourage or discourage the firing of byproduct/wastes. The regulation of byproduct waste firing is addressed by other regulations. For example, the firing of fuels containing polychlorinated biphenyls (PCB's) are regulated under the Toxic Substances Control Act (TSCA) (40 CFR 761.70). The TSCA regulations require that units firing fuels containing less than 500 ppm PCB demonstrate a 99.9 percent thermal destruction efficiency. Units firing fuels containing greater than 500 ppm PCB must demonstrate a 99.9999 percent thermal destruction efficiency.

Second, the proposed NO_x emission limits for byproducts/wastes are applicable only to steam generating units firing mixtures of natural gas or oil with byproduct/waste fuels. The purpose of these provisions is not only to control NO_x emissions from byproduct/waste fuel combustion, but also to make clear that the cofiring of byproducts/waste fuels with natural gas or oil will not have the unintended effect of exempting a steam generating unit from the NO_x emission limits that fire a minimum amount of other fuels.

Third, a comparison of data gathered from the steam generating units burning fuel mixtures including gaseous byproduct/waste fuels with data gathered from natural gas-fired units shows no discernible difference in NO_x emissions from the combustion of these two fuels. Similarly, a comparison of data gathered from steam generating units burning fuel mixtures including liquid byproduct/waste fuels with data gathered from residual oil-fired units shows no discernible difference in NO_x emissions from the combustion of these two fuels. The analysis of available data also indicates that NO_x control technologies that are effective in reducing NO_x emissions from steam generating units firing natural gas or residual oil are equally effective in reducing NO_x emissions from steam generating units firing gaseous byproduct/waste fuels or liquid byproduct/waste fuels, respectively. Consequently, it was concluded that the proposed NO_x standards for units burning natural gas should apply to units burning mixtures of natural gas and gaseous byproduct/waste fuels. Similarly, it was concluded that NO_x standards for units firing residual oil should apply to units burning mixtures of oil and liquid byproduct/waste fuels.

As discussed above, the NO_x emission limits for natural gas- and residual oil-fired steam generating units with heat release rates greater than 620,000 J/sec-m ^{3} (60,000 Btu/hour-ft ^{3}) have been revised to 86 ng/J (0.20 lb/million Btu) heat input and 170 ng/J (0.40 lb/million Btu) heat input, respectively. Consequently, the emission limits for steam generating units firing natural gas and gaseous byproduct/waste fuels and for units firing residual oil and liquid byproduct/waste fuels have been revised accordingly. The proposed NO_x emission limits have not been changed for steam generating units with low design heat release rates firing gaseous or liquid byproduct/waste fuels in combination with fossil fuels.

Because many of the concerns expressed about regulation of byproduct/waste fuels centered on the achievability of the proposed emission limit of 43 ng/J (0.10 lb/million Btu) heat input, which was based on the standard for natural gas and distillate oil, revision of that emission limit upward to 86 ng/J (0.20 lb/million Btu) heat input for steam generating units with high heat release rates is expected to resolve most of the concerns about regulation of byproduct/waste fuels.

Section 60.44b(c) of the final rule incorporates a procedure that the owner or operator of an affected facility firing nonhazardous byproduct/waste fuels can use to petition the Administrator for a facility-specific NO_x emission limit. In order to obtain a facility-specific NO_x emission limit, the owner or operator of the facility must present sufficient evidence to the Administrator to demonstrate that the facility is unable to meet the NO_x emission limits due to the characteristics of the byproducts/wastes, such as high nitrogen content, high heat value, or other factors. As a part of this evidence, the owner or operator of the steam generating unit must demonstrate compliance with the applicable emission limit when firing only natural gas or residual oil, as appropriate. This is necessary to determine excess air levels and other operating conditions representative of the best demonstrated technology. If the facility is capable of complying with the emission limit while firing natural gas or residual oil using the best demonstrated technology, but not capable of complying while firing a fuel mixture including the byproduct/waste under the same conditions, the Administrator will establish an individual NO_x emission limit for that steam generating unit reflecting the level of NO_x emission reduction achievable when firing the byproduct/waste.

The final rule also incorporates a procedure that the owner or operator of a steam generating unit which combusts a fuel mixture including toxic waste, as determined under the Resource Conservation and Recovery Act (RCRA), can use to petition the Administrator for a facility-specific waiver from the NO_x emission limits. In order to obtain a facility-specific waiver, the owner or operator must present sufficient evidence to the Administrator to support the contention that the facility is unable to meet the NO_x emission limit and still achieve the level of thermal destruction of the toxic byproduct/waste required by RCRA.

The procedures for applying for this facility-specific emission limit or waiver are set out in the final rule. Because each application for a site-specific standard or waiver will entail a different set of waste characteristics and steam generating unit designs, greater standardization of forms or procedures is not practical. Instead, each application will be evaluated on its individual merits. The authority to establish a facility-specific NO_x standard or waiver will not be delegated by the Administrator. Petitions must be submitted directly to EPA and the establishment of site-specific standards will not be delegated.

After reviewing the definition of byproduct/waste in the proposed standard, it was determined that the definition should be revised to reflect more accurately the intention of the regulation and the nature of the data on which it is based. These data were drawn from steam generating units which combust byproducts/wastes from chemical plants and refineries, and it is byproducts/wastes from these sources which are intended to be regulated by the standard. Consequently, the definition of byproduct/waste has been revised to specify that the byproducts/wastes covered by the definition extend only to those which are produced at chemical plants and refineries. Chemical plants and refineries are defined as facilities which are classified by the Department of Commerce under Standard Industrial Classification (SIC) codes 28 and 29, respectively.

NO_x Control For Wood/Natural Gas-Fired Steam Generating Units. The proposed standards included a NO_x emission limit of 130 ng/J (0.30 lb/million Btu) heat input for steam generating units firing mixtures of natural gas and wood if more than 5 percent fossil fuel is fired on an annual basis. Commenters stated that the 5 percent criterion was not realistic because it did not account for the need to periodically increase fossil fuel use to account for fluctuations in wood availability and wood characteristics. Based on these comments, the annual capacity factor for fossil fuel for exemption from the NO_x standards has been increased from 5 percent to 10 percent.

Also, a separate notice is being published elsewhere in today's **Federal Register** promulgating the amendment changing the NO_x emission limit under Subpart D for units firing mixtures of wood and natural gas to 130 ng/J (0.30 lb/million Btu) heat input.

Status Of Alternative Technologies. One comment was made regarding flue gas recirculation (FGR) as a form of combustion modification to reduce NO_x emissions. The commenter stated that FGR could achieve lower NO_x emissions that use of only LEA. The limited data available at the time of proposal did not allow FGR to be analyzed or considered as a basis of the proposed standard. Since the standard was proposed, additional data indicate that FGR may be capable of greater reductions in NO_x emissions that was previously expected. These data also indicate that FGR is most effective in suppressing thermal NO_x formation, which is the predominant NO_x formation mechanism during the combustion of natural gas and distillate oil. Presently, insufficient data are available to base the final standard solely on FGR technology. Use of FGR for reducing NO_x emissions is neither precluded nor discouraged by the promulgated standards. In addition to LEA or other technologies, FGR may be used to achieve the NO_x emission limits being promulgated today.

One comment addressed the discussion in the proposal concerning NO_x flue gas treatment systems, including selective catalytic reduction (SCR). SCR refers to the process in which combustion gases are mixed with ammonia and passed over a catalyst to reduce NO_x emissions to elemental nitrogen and water. The commenter felt that although SCR was discussed as a method to reduce NO_x emissions, inadequate consideration had been given to other types of NO_x flue gas treatment systems.

The commenter is correct in noting that there are other types of NO_x flue gas treatment systems in addition to SCR. Current post-combustion NO_x control research in the United States is focused on processes that have both NO_x and SO_x removal capability. Included among these advanced removal processes is a flue gas treatment process which uses a copper oxide acceptor material to remove both NO_x and SO_x from flue gas. There is also a fluidized bed version of the same flue gas treatment process. The electron beam process is a dry process where ammonia is added to the flue gas which is then bombarded with an electron beam, removing NO_x and SO_x in the process. This concept is being examined for NO_x removal alone and in combination lime spray dryers for SO_x removal. These types of post-combustion NO_x controls are being investigated at several bench scale and pilot unit projects in the United States. However, the processes being investigated are not commercially established and are not considered demonstrated technologies for the purpose of developing standards of performance limiting NO_x emissions from industrial-commercial-institutional steam generating units.

Another NO_x control process which is commercially available is selective noncatalytic reduction (SNR), a dry process involving a gas-phase reaction between NO_x and injected ammonia without the use of a catalyst. Ammonia is injected directly into the furnace with the furnace temperature driving the reduction reactions. This process is more difficult to control and is less efficient than SCR. Most applications of SNR are retrofits on oil refinery process heaters. There have also been several commercial applications of SCR to industrial-commercial-institutional steam generating units firing both oil and natural gas. However, SCR and SNR entail considerable costs. Therefore, although SNR and SCR are considered demonstrated technologies, they were not chosen as bases for these standards.

NO_x Monitoring. A variety of comments were received concerning continuous emission monitoring sytems (CEMS) for NO_x. Commenters suggested that steam generating units should not be required to install a NO_x CEMS if during the 30-day performance test NO_x emission levels are 10 to 30 percent below the applicable NO_x emission limit. Other commenters maintained that continuous NO_x monitoring was unnecessary for units regulated. Several comments stated that the cost of a CEMS is excessive for steam generating units having heat unit capacities less than 73 MW (250 million Btu/hour) and that these costs were underestimated in the proposed standard. One commenter suggested that conventional stack

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testing be allowed as an alternative to continuous monitoring for natural gas- and oil-fired units with heat input capacities less than 73 MW (250 million Btu/hour).

After reviewing the comments, several alternative options for NO_x emission monitoring were considered. Among the factors taken into consideration were the type of fuel being burned, the size of the steam generating unit, the type of NO_x control technology required, and associated cost effectiveness. The NO_x monitoring requirements in the promulgated standard have been revised from those proposed to reflect the results of these analyses.

Under the proposed standard, CEMS were required on all units subject to the NO_x standards. However, an option was provided allowing units having an annual capacity factor for regulated fuels of less than 30 percent to monitor steam generating unit operating conditions indicative of NO_x emissions in lieu of continuous monitoring of NO_x emissions. Under the promulgated standards, CEMS continue to be required; however, the optional monitoring of operating conditions in place of CEMS has been revised. Under the promulgated standards, the operating condition monitoring option is available for units having less than 73 MW (250 million Btu/hour) heat unit capacity and which are combusting natural gas, distillate oil, or low nitrogen content residual oil (less than 0.30 weight percent nitrogen).

This data would be used to judge proper unit operations and need for a compliance test, but it would not be used for direct enforcement of the standard. For units: (1) Having heat input capacities greater than 73 MW (250 million Btu/hour) or (2) any units combusting coal or high nitrogen content residual oil (greater than 0.30 weight percent nitrogen) greater than 29 MW (100 million Btu/hour) heat input capacity, the CEMS, as proposed, remains the reference test method and the data are used to determine compliance with the NO_x standard. However, it should be noted that under the General Provisions [40 CFR 60.13(i)], any source, including for example natural gas-fired units larger than 73 MW (250 million Btu/hour) heat input capacity, can apply for approval to monitor alternative parameters which can be used to predict NO_x emissions in place of direct monitoring of NO_x emissions by CEMS. If an application to measure alternative parameters is approved, the predicted NO_x emission rates derived from the parametric data will be used to determine direct compliance with the NO_x standard just as if monitoring by CEMS had occurred.

Under the promulgated standards, all steam generating units subject to the NO_x emission limits are required to conduct an initial 30-day performance test using a CEMS. This test will serve as the initial performance test required under § 60.8. Thereafter, (1) all steam generating units greater than 73 MW (250 million Btu/hour) heat input capacity, and (2) all steam generating units greater than 29 MW (100 million Btu/hour) heat input capacity firing coal or high nitrogen residual oil, must install and operate a CEMS [unless approval to monitor operating conditions under § 60.13(i) has been obtained]. The data from the CEMS (or from monitoring operating conditions, as applicable) are used to determine a 30-day rolling average NO_x emission rate calculated as the arithmetic average of the hourly NO_x values for the preceding 30 steam generating unit operating days. CEMS in these applications will be subject to the requirements set forth in 40 CFR Part 60 Appendix F, Procedure 1 when these requirements are promulgated. Appendix F, Procedure 1 will require the owner or operator of a CEMS to perform periodic accuracy and drift assessments of the system. For this class of steam generating units, the NO_x emission data (or the predicted NO_x emission rates from the parametric data) are used to determine compliance with the NO_x standards and a quarterly compliance report is required.

For steam generating units with heat input capacities of less than 73 MW (250 million Btu/hour) firing natural gas, distillate oil, or low nitrogen content residual oil, a CEMS is also used to conduct the initial 30-day compliance test after unit startup. Thereafter, as stated above, the owner or operator of the facility can elect to install and operate: (1) A CEMS, or (2) a system to monitor steam generating unit operating conditions and predict NO_x emissions rates. The CEMS data or the predicted NO_x emission rates derived from the optional operating conditions monitoring data will be used to prepare excess emission reports which are required to be submitted on a semiannual basis. Additionally, a quarterly excess emissions report is required for any quarter that any excess emissions occur. Because a CEMS in this application is not used for direct compliance, the requirements of 40 CFR Part 60 Appendix F, Procedure 1 do not apply. However, a 30-day performance test using CEMS may be required by the appropriate enforcement authority at any time.

If operating conditions are monitored in lieu of installing a CEMS, operating conditions such as steam generating unit load, O_2 levels, or degree of staging (i.e., ratio between primary air and secondary air and/or tertiary air or flue gas recirculation rate) shall be used to predict NO_x emission rates. Other steam generating unit operating conditions may also be monitored. The standards require that the owner or operator of a steam generating unit wishing to use the alternative monitoring procedure submit a plan to the Administrator along with the initial performance test report. The plan shall specify the conditions to be monitored, the variation expected in these conditions with operating load, the data to be used to determine that these conditions are indicative of NO_x emission control, the relationship that will be used to predict NO_x emission rates from the operating conditions that will be monitored, and the procedures and formats to be followed in monitoring and recordkeeping.

Manufacturers of steam generating units may develop and provide to steam generating unit owners, monitoring plans for common steam generating unit designs. These plans must also be supported by actual operating and emission data from the affected facility and would subsequently be submitted by the owner or operator of the steam generating unit. If approved, the owner or operator of the facility shall maintain records of the operating conditions, including steam generating unit load, identified in the plan. Monitoring data and predicted NO_x emissions rates will be submitted in a quarterly excess emission report.

Reporting

All natural gas-, distillate oil-, residual oil-, and coal-fired steam generating units having heat input capacities greater than 73 MW (250 million Btu/hour) are required to use CEMS subject to Appendix F, Procedure 1, and are required quarterly compliance reports to allow direct enforcement of the NO_x standards on a continuing basis. All coal-fired and high nitrogen content residual oil-fired steam generating units having heat input capacities greater than 29 MW (100 million Btu/hour) are also required to use CEMS subject to Appendix F, Procedure 1, and submit quarterly compliance reports to allow direct enforcement of the NO_x standards on a continuous basis. Natural gas-, distillate oil-, and low nitrogen content residual oil-fired steam generating units having heat input capacities from 100 to 250 million Btu/hour are required to submit semiannual excess emission reports; however, a quarterly excess emissions report is required for each quarter that excess emissions occur. Appendix F, Procedure 1 would not apply if CEMS are used on these units.

Under both the proposed and promulgated NO_x standards, certain residual oils must be analyzed for nitrogen content. Specifically, steam generating units in the 29 to 73 MW (100 to 250 million Btu/hour) heat input capacity size range firing low nitrogen content residual oil must report fuel nitrogen content. If fuel analysis data are not reported the oil will be assumed to be high in nitrogen content and use of a CEMS subject to the requirements of Appendix F, Procedure 1 is required. The nitrogen content can be measured by the owner or operator of the steam generating unit using American Society for Testing and Materials Method D3431–80 (incorporated by reference—see § 60.17). Fuel specification data can be obtained from fuel suppliers and provided in place of on-site fuel sampling and analysis.

Several commenters claimed that small manufacturing facilities do not have personnel capable of operating, calibrating, and maintaining NO_x CEMS. In response to this issue, owners and operators of steam generating units were surveyed to gather information concerning service personnel requirements associated with installation and operating of CEMS. The survey indicated that, in most cases, vendor training of plant personnel was provided on-site and typically lasted 1 day to 1 week. Also, a number of companies provide CEMS operating and maintenance services. The costs of employing outside specialists to provide routine service of NO_x CEMS were calculated and incorporated into the NO_x monitoring costs. The burden associated with installing, operating, and maintaining a NO_x CEMS, whether through on-site training of plant personnel or through contracts with outside specialists, is reasonable.

It should be noted that small manufacturing facilities would be expected to use steam generating units having heat input capacities less than 73 MW (250 million Btu/hour). For units having heat input capacities less than 73 MW (250 million Btu/hour), only coal- and high nitrogen content residual oil-fired steam generating units must use a CEMS. For natural gas-, distillate oil-, or low nitrogen content residual oil-fired steam generating units having heat input capacities less than 73 MW (250 million Btu/hour), use of the process monitoring option would preclude the need for a CEMS.

One comment stated that the proposed data availability requirement is too lenient. The proposed standard would have allowed an affected facility 5 calendar days to initiate servicing of an out-of-service CEMS and 15 calendar days to return the monitor to service. The commenter recommended that 75 percent valid data be required for each 30-day period. Several other comments concerned the level of reliability of NO_x CEMS.

In response to these comments, the standard has been changed to incorporate minimum data capture requirements. Minimum data capture requirements are necessary because monitors undergo periods of downtime and are not available 100 percent of the time. Minimum data capture requirements provide for downtime, but limit the amount of data permitted to be lost before supplemental sampling is required. The requirements provide the owner or operator with time to maintain and calibrate the CEMS, correct minor malfunctions, and, if necessary, arrange for supplemental sampling, while at the same time providing sufficient data for compliance determinations. Minimum data capture requirements also prevent the possibility of an affected facility operating for unreasonably long periods without collecting data.

Under the minimum data capture requirements, affected facilities are required to obtain at least 22 days of valid NO_x emission data for every 30-day period, that is, 75 percent data capture. Well operated and maintained CEMS will routinely operate better than the proposed data requirements and supplemental sampling should rarely be required.

Supplemental sampling, if necessary to meet the minimum data requirements, can be achieved with a standby CEMS, Reference Method 7, Reference Method 7A, or other approved methods.

If the minimum amount of data is not obtained for any 30-day rolling average period, reasons for failure to obtain sufficient data and a description of corrective action taken must be included in the quarterly report, along with all the information needed to calculate the 30-day rolling average values according to Method 19, section 7.

The minimum CEMS data requirements are related to proper maintenance and operation of the CEMS, not whether NO_x emission rates are calculated. In all cases, even if minimum data requirements are not met, a 30-day rolling average NO_x emission rate is calculated using all available hourly NO_x data to determine continuous compliance or excess emissions, as applicable.

Interpollutant Effects of NO_x Control. Several comments on the proposed NO_x emission limits noted that application of combustion modification techniques such as LEA and SC could lead to an increase in emissions of other pollutants. Of particular concern are increased emissions of carbon monoxide (CO), particular matter (PM), and hydrocarbons (HC).

Comments received on the interpollutant effects may have derived largely from concerns over the proposed standard for package steam generating units, which was based on LEA/SC technology. As discussed earlier in this preamble, the final standard applicable to package units is based on LEA rather than LEA/SC technology. The final standard for field-erected units is based on use of LEA/SC technology. As a result of this change in the standard, the analysis of the interpollutant effects of NO_x controls focused on use of LEA in package steam generating units and on use of LEA/SC in field-erected units.

From a technical viewpoint, the greater the reduction in excess air, the greater the reduction in NO_x emissions. It is also true, however, that at unreasonably low excess air levels, emissions of CO, PM, and HC can increase, indicating the onset of inefficient and unsafe combustion conditions. Under proper LEA operation, the excess air level is controlled to prevent operation at unacceptably low O_2 conditions that would result in an increase in emissions of CO, HC, or PM. Increases in emissions of these pollutants are associated with incomplete combustion. Increases in the CO emission level can indicate increases in emissions of other incomplete combustion products.

An analysis of CO emission data from package and field-erected units was undertaken to investigate the impact of the final standards on the emissions of incomplete combustion products. Under normal steam generating unit operating conditions, CO levels are maintained below 200 ppm. The use of unreasonably low excess air levels can result in CO concentrations exceeding 1,000 ppm, which is unacceptable.

For natural gas-fired steam generating units using LEA, carbon monoxide emission data were available from 5 tests on 1 natural gas-fired package unit having a heat input capacity of 42 MW (140 million Btu/hour). At operating O_2 levels ranging from 2 to 3 percent, which are representative of proper LEA operation, average CO levels remained less than 100 ppm representing

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acceptable operation. As operating O_2 levels were reduced to 1 percent, the CO level reached 1,300 ppm.

For distillate oil-fired steam generating units using LEA, data were available from 1 test on 1 package unit having a heat input capacity of 29 MW (100 million Btu/hour). At an operating O_2 level of 2.5 percent, the average CO level was less than 50 ppm. No data were available for operation at O_2 levels less than 2.5 percent.

For residual oil-fired steam generating units using LEA, CO emissions data were available from 3 tests on 1 package unit having a heat input capacity of 29 MW (100 million Btu/hour). At operating O_2 levels ranging from 2 to 3 percent, average CO emissions were less than 50 ppm. No data were available for operation of O_2 levels less than 2 percent.

The review of these data indicates that within proper LEA limits associated with good steam generating unit operation, LEA operation does not increase emissions of CO outside of normal operating conditions. Therefore, LEA applied to package steam generating units does not lead to incomplete combustion products (CO, HC, PM, etc.).

Under the 1971 NO_x standards (Subpart D) and under the final standards being adopted today, SC will be used as a NO_x control technique for field-erected units firing high nitrogen content fuels such as coal or residual oil. Another data review focused on CO emissions from field-erected oil- and coal-fired units. Baseline emissions when SC (overfire air) was not in use were compared to emissions during SC operation.

For six residual oil-fired field-erected units having heat input capacities greater than 73 MW (250 million Btu/hour), emissions of CO averaged about 100 ppm without SC in use. With SC in use CO levels averaged about 100 ppm. There was no incremental increase in CO emissions due to SC for the field-erected units firing residual oil.

For two pulverized coal-fired field-erected units having heat input capacities greater than 73 MW (250 million Btu/hour), emissions of CO averaged less than 100 ppm without SC in use. With SC in use, CO emissions averaged less than 100 ppm. There was no incremental increase in CO emissions due to SC for the field-erected units firing coal.

Similar to LEA, the review of LEA/SC applications to field-erected units also concluded that no noticeable increases in emissions of incomplete combustion products occurred.

In summary, the final standards are based on the application of LEA to package steam generating units, and the application of LEA/SC to field-erected units. The application of these technologies will not result in increases in emissions of incomplete combustion products.

National Impacts

Environmental Impacts. Several commenters stated that the emission reductions associated with the proposed NSPS for industrial-commercial-institutional steam generating units have been overestimated. Specifically, the commenters believe that the number of new steam generating units projected for construction during the first 5 years of the standard is too high. Also, the commenters stated that the emission levels that would occur in the absence of an NSPS have been exaggerated.

Over 600 new coal-, oil-, and natural gas-fired industrial-commercial-institutional steam generating units were projected to be constructed over the 5-year period 1985–1990. These projected new units were used in estimating the national impacts of the standards based on the Industrial Fuel Choice Analysis Model (IFCAM), which relies on inputs drawn from the Midterm Energy Forecasting System (MEFS) developed by the Energy Information Administration of the Department of Energy. These estimates included a breakout of industrial demands for these fossil fuels by region and by fuel type. Additionally, 120 new wood- and municipal solid waste-fired steam generating units are projected to be built during this same time period. The estimated growth of wood- and municipal solid waste-fired units is based on historical steam generating unit population growth data, as well as on growth projections by vendor and other industry sources. In combination, 720 coal, oil, natural gas, wood and municipal-type solid waste units are projected to be covered by the standard in its first 5 years of application.

These projections are considered to be reasonable estimates of the number of new steam generating units to be constructed during the first 5 years of these standards. If this number proves to be overestimated, as contended by the commenters projected reductions in particulate matter and NO_x emissions may be diminished, but the costs of the standards on a nationwide basis will also be proportionally reduced. The relationship between total national costs and total national emission reductions (national cost effectiveness) would remain basically unaffected by the change in the number of new steam generating units.

The baseline used to calculate the emission reductions achieved under the particulate matter and NO_x emission limits for steam generating units is also derived from the IFCAM model. The inputs to the model which form the baseline are the individual State implementation plan (SIP) regulations and the Subpart D NSPS which were adopted in 1971. For nonfossil fuel-fired steam generating units, the same approach as discussed above was used, but the calculations were done manually because IFCAM only analyzes impacts from firing fossil fuels (coal, oil and natural gas). As discussed in the preamble to the proposed standards, the use of SIP regulations and Subpart D rather than PSD permit requirements to determine the baseline emission levels may result in the impacts of the standards both in emission reductions and costs being somewhat overstated. However, the relative assessment of the costs of the standard relative to the emission reductions, on a nationwide basis, would not be affected by the baseline values chosen for comparison. Additionally, if PSD requirements were used as a baseline it would make the analysis less accurate and more difficult because it would require an estimate to be made of what PSD permit requirements would be with and without an NSPS in place. SIP regulations do not have to be based on assumptions and are clearly defined.

Another commenter stated that the proposed standards would have the effect of discouraging the retirement of old, less efficient steam generating units with higher emissions and delaying their replacement with new, energy efficient units with lower emissions. The particulate matter and NO_x standards being adopted today are not expected to have a significant effect on the retirement of older steam generating units. Other factors, such as the cost of fuels, the physical condition of the steam generating unit, and the steam requirements of the industrial processes being served by the unit will play a much greater role in the decision to replace a steam generating unit than will the standards being adopted today.

Other commenters stated that the particulate matter emission reductions achieved through the proposed standards would be insignificant, constituting only a few tenths of a percent of the total national particulate matter and NO_x emissions. As a consequence, these commenters suggest that the proposed standards are unnecessary.

As discussed above, the category of industrial-commercial-institutional steam generating units has been listed as a "significant contributor" under Section 111 of the Clean Air Act. Section 111 requires promulgation of standards reflecting best demonstrated technology for this source category. Industrial-commercial-institutional steam generating units, as a source category, are the second largest source of particulate matter and NO_x emissions in the nation, ranking only behind utility power plant steam generating units. Further, they are the largest source of particulate matter emissions listed in the NSPS priority list adopted in 1980. In 1990, new steam generating units are projected to emit 49,000 Mg (54,000 tons) of particulate matter per year in the absence of these standards. More than 16,000 Mg to 22,000 Mg (17,000 tons to 24,000 tons), of particulate matter reduction are expected to result from today's standards. In addition, the steam generating units being regulated are major sources of particulate matter emissions, in many cases, individually emitting 90 Mg (100 tons) or more of particulate matter per year. For these reasons, particulate matter emissions from industrial-commercial-institutional steam generating units are appropriate sources for regulation under Section 111 of the Clean Air Act.

Industrial-commercial-institutional steam generating units are also the second highest ranking source category for NO_x emissions on the 1980 priority list of source categories not already regulated by NSPS. In 1990, new steam generating units are projected to emit 77,000 Mg (85,000 tons) of NO_x per year in the absence of the standards. Of this amount, more than 21,000 Mg to 24,000 Mg (23,000 tons to 26,000 tons), are expected to be eliminated due to the NO_x standards adopted today. In addition, the steam generating units being regulated are major sources of NO_x, in many cases individually emitting 90 Mg (100 tons) or more of NO_x per year. For these reasons, NO_x emissions from industrial-commercial-institutional steam generating units are appropriate sources for regulation under Section 111 of the Clean Air Act.

Three commenters urged that a more thorough assessment be performed of the relative impacts of the proposed standards compared to existing State regulatory programs. The commenters questioned whether the proposed NSPS will result in any significant improvement in air quality.

The adoption of these standards will result in improvements in air quality in two respects. First, it is projected that the standards will result in a reduction in particulate matter and NO_x emissions of more than 16,000 Mg to 22,000 Mg (17,000 tons to 24,000 tons) and 21,000 Mg to 24,000 Mg (23,000 tons to 26,000 tons) per year, respectively, from a baseline emission level estimated from current State and Federal regulations. Second, today's standards will assure that the best demonstrated control technology is applied to all new units and that air pollution resulting from future growth will be minimized. To the extent that some States may already require a similar level of control, the estimates of emission reductions, as well as the estimates of the costs and economic impacts of emission control, would be diminished.

Energy Impacts. Several commenters stated that the proposed standards do not promote energy efficiency. Specifically, they believe that the standards will discourage the preheating of combustion air, will make it difficult to operate steam generating units at low excess air levels when using staged combustion, and will restrict the use of alternative fuels, such as gaseous and liquid byproducts/wastes.

The standards are not expected to have an adverse effect on the use of energy efficient steam generating unit technologies. As discussed above, the NO_x standards adopted today for coal-fired steam generating units can be achieved whether the units use combustion air preheat or not. Natural gas- and oil-fired steam generating units, which are typically package units, are not commonly designed to include combustion air preheat. If greater efficiency is desired, steam generating unit feedwater preheat can be substituted for combustion air preheat.

Operation at LEA levels is included in the basis for each of the NO_x emission limits being adopted today. LEA operation applied to any facility affected by these standards will improve energy efficiency. Additionally, available data show that those facilities which also use SC for NO_x emission control can use that technology in combination with LEA while achieving efficient steam generating unit operation.

Finally, alternative fuels are neither encouraged nor discouraged as stream generating unit fuels by the particulate matter or NO_x standards being adopted today. Existing differences in terms of either costs or availability will not be affected by these standards.

Economic Impacts. Commenters stated that the financially depressed steam generating unit and burner markets will be subjected to excessive economic risks and further market decline if the standards force the premature use of SC controls on package natural gas- and distillate oil-fired steam generating units.

As discussed previously, the proposed NO_x emission limit of 43 ng/J (0.10 million Btu/hour) heat input for package natural gas- and distillate oil-fired steam generating units with high heat release rates has been revised. As adopted today, the emission limit for these units will be 86 ng/J (0.20 lb/million Btu) heat input. This revised standard is based on the use of LEA to control NO_x emissions, rather than on the use of SC control technology. With this revision, the concerns expressed by the commenters concerning the widespread use of SC technology and the effects of the standards on package steam generating units have been addressed.

Other Considerations

Proration of Emission Limits. One commenter stated that steam generating units capable of firing multiple fuels are designed according to the combustion requirements of the most difficult fuel to be fired, and that NO_x emission control techniques ar compromised in this situation. Therefore, the commenter stated that the NO_x limits applicable to steam generating units firing mixtures of fossil fuels should not be based on the achievable emission levels for individual fuels in the mixture.

As mentioned above, LEA and SC are the two basic combustion modification techniques which have formed the basis of the NO_x standards for this source category. LEA is effective in controlling NO_x formation during the combustion of fuels with low nitrogen contents, such as natural gas. SC is effective in controlling NO_x formation during the combustion of high nitrogen content fuels, such as coal. These two techniques are compatible and may be use simultaneously on the same steam generating unit to control NO_x emissions from the firing of mixtures of high nitrogen and low nitrogen content fossil fuels. Because of this compatibility and because the effectiveness of each technique is related to the amount of each fuel fired, NO_x emission limits from the firing of mixtures of fossil fuels can be controlled to levels proportionate to the emission levels achievable for each fossil fuel alone. Therefore, the emission limit for steam generating units firing mixtures of fissil fuels is based on the prorated contribution of each fuel to the total heat input to the unit.

Emission Credits for Cogeneration. Several commenters urged the inclusion in the standard of emission credits for cogeneration steam generating units

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used in cogeneration systems. These commenters stated that the granting of emissions credits to industrial-commercial-institutional steam generating units which also generate electricity (cogenerate) would encourage the development of cogeneration, resulting in regional decreases in fuel usage and emissions of particulate matter and NO$_x$.

As stated in the preamble to the proposed rule, these standards are not intended to either encourage or discourage cogeneration systems. Emission credits for cogeneration systems are not being allowed for the following reasons. First, an emission limit for cogeneration facilities which included a emission credit would not reflect the best technological system of emission control, as required by Section 111 of the Clean Air Act. As required by the Act, these standards are based on technological systems that have been determined to offer the greatest emission reductions achievable at reasonable cost and energy impacts. To grant emission credits for cogeneration facilities would allow the use of less than best demonstrated technology.

Second, the construction and operation of cogeneration systems does not guarantee net emission reductions in all cases. In those cases where the cogeneration unit would meet more restrictive emission standards than the displaced utility unit, emission reductions would occur. However, in those cases where the cogeneration system fires fuel which is inherently more polluting than the fuels fired in the utility steam generating unit being displaced, or where the cogeneration facility is subject to a higher emission limit, cogeneration units may result in a net increase rather than a net decrease in emissions.

Third, the implementation of an emission credit would not result in cost savings in proportion to the emission increases that would result. For example, a 15 percent cogeneration credit applied to coal-fired steam generating units would raise the applicable particulate matter emission limit from 22 ng/J (0.05 lb/million Btu) heat input to 25 ng/J (0.06 lb/million Btu) heat input. The incremental cost-effectiveness of this reduction in the stringency of the standard is $2,230/Mg ($2,030/ton) for a coal-fired steam generating unit controlled by an ESP. For a coal-fired steam generating unit controlled by a fabric filter, there is no change in cost effectiveness resulting from the recognition of a credit for cogeneration. For wood- or solid waste-fired steam generating units, a 15 percent credit would raise the particulate matter emission limit from 43 ng/J (0.10 lb/million Btu) heat input to 49 ng/J 0.12 lb/million Btu) heat input. The incremental cost-effectiveness of this reduction in stringency for a solid waste-fired steam generating unit controlled by an ESP is less than $1,650/Mg ($1,500/ton). In summary, there would be no significant difference in the design or in the cost of an ESP or fabric filter applied to a cogeneration unit whether the emission credit was granted or not.

For cogeneration units subject to emission limits for NO$_x$, combustion modification techniques can be implemented at little or no cost to the steam generating unit owner or operator. No significant economic benefits would result from allowing such a credit against the NO$_x$ emission limit. Credits would, however, allow for NO$_x$ emission increases with no cost savings.

Under the final standards, cogeneration units are neither discouraged or encouraged and, therefore, emission credits for cogeneration steam generating units are not granted under this standard for the reasons discussed above. Any site-specific benefits that may occur through cogeneration can be considered in the Prevention of Significant Deterioration (PSD) program which specifically addresses the site-specific impacts of air pollution sources.

Fluidized Bed Combustion. Several commenters questioned if the proposed standards would apply to fluidized bed combustion (FBC) units, and requested clarification on the applicable NO$_x$ emission limit. Under the proposed standard, FBC units are subject to a NO$_x$ emission limit of 258 ng/J (0.60 lb/million Btu) heat input [§ 60.43b(a)(3)(ii)]. The bases for this emission limit included NO$_x$ emissions data presented in the "Technology Assessment Report for Industrial Boiler Applications: Fluidized Bed Combustion" (EPA–600/7–79–178e), "Fossil Fuel-Fired Industrial Boilers—Background Information Volume 1: Chapters 1–9" (EPA–450/3–82–006a), and "Fossil Fuel-Fired Industrial Boilers—Background Information Volume 2: Appendices" (EPA–450/3–82–006b).

A review of these data confirmed that an emission limit of 260 ng/J (0.60 lb/million Btu) heat input is appropriate for FBC units. Therefore, under the promulgated standard, FBC units are subject to a NO$_x$ emission limit of 260 ng/J (0.60 lb/million Btu) heat input.

Reference Method 5B. Currently, the performance of particulate matter control techniques is measured with Reference Method 5. However, Reference Method 5 has been found to be subject to interference by sulfur trioxide (SO$_3$) when measurements are taken downstream of a wet flue gas desulfurization (FGD) system. The SO$_3$ effectively increases measured particulate matter emissions above true values. As a result, a new reference method is under development—Reference Method 5B—that greatly reduces the problem of SO$_3$ interference. This new reference method was proposed on May 29, 1985 (50 FR 21863) and as discussed in the proposal would apply to Subpart Db.

Reference Method 5B consistently results in equivalent or lower particulate matter emission measurements, with the most significant reduction being observed when measuring particulate matter emissions in gases containing high SO$_3$ levels. A comparative analysis shows a 35 to 50 percent reduction in measured particulate matter emissions when Reference Method 5B is used in place of Reference Method 5 to measure the performance of ESP's when firing fuels which result in high concentrations of SO$_3$ in the flue gas.

At this time the standards being promulgated today do not include Reference Method 5B because Reference Method 5B has not yet been adopted. However, when Reference Method 5B is adopted it will be an applicable test method under Subpart Db for measuring particulate matter emissions downstream from a wet FGD system.

Similarly, the standards being promulgated today do not require compliance with Appendix F, Procedure 1. When these new quality assurance procedures are finalized, they will apply to units covered under this subpart.

Duct Burners. Commenters noted that duct burners associated with steam generating units used in combined cycle gas turbine systems may have difficulty meeting a 43 ng/J (0.10 lb/million Btu) heat input standards under all load conditions. Duct burners are smaller package systems and generally have heat input capacities less than 73 MW (250 million Btu/hour). NO$_x$ formation in duct burners is influenced by the temperature and O$_2$ content of the gas turbine exhaust. The gas turbine exhaust used for combustion air is about 760°C (1400°F), which would suggest a high potential for thermal NO$_x$ formation. However, the turbine exhaust gases are very low in O$_2$ content, which would tend to reduce the formation of thermal NO$_x$.

Based on a review of the NO$_x$ emissions data available from duct burners, the final standards limiting NO_x emissions from duct burners firing natural gas and distillate oil is established as 86 ng/J (0.20 lb/million Btu) heat input and 170 ng/J (0.40 lb/million Btu) heat input when residual oil is combusted. Following a review of the data, the proposed standards appeared overly restrictive and may not be achievable over all operating conditions. Under the final standards, owners and operators of duct burners are also required to conduct a performance test when requested by the Administrator. However, CEMS are not required and compliance testing on a continuous basis is not specified.

Owners and operators of duct burners are also required to conduct a performance test. Reference Method 20, which is the reference method for determining NO_x emissions from stationary gas turbines, will be used to monitor NO_x emissions during the initial and subsequent performance tests.

For the performance test, NO_x emissions will be monitored simultaneously at the gas turbine exhaust and steam generating unit outlet. The average NO_x concentration measured at the gas turbine exhaust location will be subtracted from the average NO_x concentration measured at the steam generating unit outlet in order to determine the incremental increase of NO_x emissions attributable to the duct burner.

In order to test the steam generating unit at maximum heat input capacity, the duct burner will be operated at 100 percent load, and the gas turbine will be operated at the rate needed to achieve maximum steam production.

Background Information Document. The background information documents (BID) for the standards being adopted today may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to EPA–450/382–82–006a "Fossil Fuel-Fired Industrial Boilers—Background Information Volume 1: Chapters 1–9, EPA–450/3–006b "Fossile Fuel-Fired Industrial Boilers—Background Information Volume 2: Appendices," EPA–450/3–82–007 "Nonfossil Fuel-Fired Industrial Boilers—Background Information," and EPA–450/3–86–003 "Fossil and Nonfossil Fuel-Fired Industrial Boilers—Background Information for Promulgated PM and NO_x Standard Volume 3." Volumes 1 and 2 of the BID contain technical data that served as the bases of the proposal. Volume 3 of the BID contains: (1) A summary of all the public comments made on the proposed standards, and (2) the final Environmental Impact Statement, which summarizes the impacts of the final standards.

Docket. A docket, number A–79–02, containing information considered in development of the promulgated standards, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the Central Docket Section (LE–131), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

Administrative

The docket is an organized and complete file of all the information considered in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and affected industries to identify and locate documents readily and to participate effectively in the rulemaking process. The statements of basis and purpose of the proposed and promulgated standards, the responses to significant comments, and the contents of the docket (except for interagency review materials) will serve as the record in case of judicial review [Section 307(d)(7)(A)].

The effective date of regulation is November 25, 1986. Section 111 of the Clean Air Act provides that standards of performance or revisions thereof become effective upon promulgation and apply to affected facilities for which construction or modification was commenced after the date of proposal (49 FR 25102, June 19, 1984).

As prescribed by section 111, the promulgation of these standards is based on the Administrator's determination that industrial-commercial-institutional steam generating units contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. In accordance with Section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

This regulation will be reviewed 4 years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under section 111(b) of the Act. An economic impact assessment was prepared for this regulation and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the standards to ensure that cost was carefully considered in determining the best demonstrated technology. Portions of the economic impact assessment are included in the BID and additional information is included in the Docket.

The information collection requirements associated with this regulation (Sections 60.7, 60.11, 60.13, 60.44b, 60.45b, 60.46b) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq* and have been assigned OMB control number 2060–0072.

Under Executive Order 12291, the Administrator is required to judge whether a regulation is a "major rule" and therefore subject to the requirements for preparation of a regulatory impact analysis (RIA). It has been determined that this regulation would result in none of the adverse economic effects set forth in section 1 of the Order as grounds for finding a regulation to be a "major rule." The industry-wide increase in annualized costs in the fifth year after the standards would go into effect would be less than $40 million, less than the $100 million established as the first criterion for a major regulation in the Order. The projected average increase in product prices of no more than 0.05 percent associated with the standards would not be considered a "major increase in costs or price" specified as the second criterion in the Order. The economic analysis of the standards' effects on the industry did not indicate any significant adverse effects on competition, investment, productivity, employment, innovation, or the ability of the U.S. firms to compete with foreign firms (the third criterion in the Order). Therefore, this regulation is not a "major rule" under Executive Order 12291. This rule has been submitted to OMB for review under Executive Order 12291.

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because these standards impose no adverse economic impacts on small businesses, a Regulatory Flexibility Analysis has not been conducted.

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Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference.

Dated: October 1, 1986.

Lee M. Thomas,
Administrator.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for Part 60 continues to read as follows:

Authority: 42 U.S.C. 7411, 7414 and 7601(a).

2. 40 CFR Part 60 is amended by adding a new Subpart Db consisting of §§ 60.40b through 60.49b as follows:

Subpart Db—Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units

Sec.
60.40b Applicability and definition of affected facility.
60.41b Definitions.
60.42b [Reserved]
60.43b Standard for particulate matter.
60.44b Standard for nitrogen oxides.
60.45b [Reserved]
60.46b Compliance and performance testing for particulate matter and nitrogen oxides.
60.47b [Reserved]
60.48b Emission monitoring for particulate matter and nitrogen oxides.
60.49b Reporting and recordkeeping requirements.

Subpart Db—Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units

§ 60.40b Applicability and definition of affected facility.

(a) The affected facility to which this subpart applies is each steam generating unit for which construction, modification, or reconstruction is commenced after June 19, 1984, and which has a heat input capacity from fuels combusted in the steam generating unit of more than 29 MW (100 million Btu/hour), except as provided under paragraphs (b) through (f) of this section.

(b) Coal-fired steam generating units meeting both the applicability requirements under this subpart and the applicability requirements under Subpart D (Standards of performance for fossil fuel-fired steam generators; § 60.40) are subject to the particulate matter and nitrogen oxides standards under this subpart and the sulfur dioxide standards under Subpart D (§ 60.43).

(c) Oil-fired steam generating units meeting both the applicability requirements under this subpart and the applicability requirements under Subpart D (Standards of performance for fossil fuel-fired steam generators; § 60.40) are subject to the nitrogen oxides standards under this subpart and the sulfur dioxide and particulate matter standards under Subpart D (§ 60.42 and § 60.43).

(d) Steam generating units meeting the applicability requirements under this subpart and the applicability requirements under Subpart J (Standards of performance for petroleum refineries; § 60.104) are subject to the particulate matter and nitrogen oxides standards under this subpart and the sulfur dioxide standards under Subpart J (§ 60.104).

(e) Steam generating units meeting both the applicability requirements under this subpart and the applicability requirements under Subpart E (Standards of performance for incinerators; § 60.50) are subject to the nitrogen oxides and particulate matter standards under this subpart.

(f) Steam generating units meeting the applicability requirements under Subpart Da (Standards of performance for electric utility steam generating units; § 60.40a) are not subject to this subpart.

§ 60.41b Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act and in Subpart A of this part.

"Annual capacity factor" means the ratio between the actual heat input to a steam generating unit from the fuels listed in § 60.43b(a) or § 60.44b(a), as applicable, during a calendar year and the potential heat input to the steam generating unit had it been operated for 8,760 hours at the maximum steady state design heat input capacity.

"Byproduct/waste" means any liquid or gaseous substance produced at chemical manufacturing plants or petroleum refineries, except natural gas, distillate oil, or residual oil, which is combusted in a steam generating unit for heat recovery or for disposal. Gaseous substances with carbon dioxide levels greater than 50 percent or carbon monoxide levels greater than 10 percent are not byproduct/waste for the purposes of this subpart.

"Chemical manufacturing plants" means industrial plants which are classified by the Department of Commerce under Standard Industrial Classification (SIC) Code 28.

"Coal" means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials in ASTM D388–77, Standard Specification for Classification of Coals by Rank (incorporated by reference—see § 60.17). Coal-derived synthetic fuels, including but not limited to solvent refined coal, gasified coal, coal-oil mixtures and coal-water mixtures, are included in this definition for the purposes of this subpart.

"Cogeneration system" means a power system which simultaneously produces both electrical (or mechanical) and thermal energy from the same energy source.

"Combined cycle system" means a system where a gas turbine provides exhaust gas to a heat recovery steam generating unit.

"Distillate oil" means fuel oils which contain 0.05 weight percent nitrogen or less and comply with the specifications for fuel oils number 1 and 2, as defined by the American Society of Testing and Materials in ASTM D396–78, Standard Specifications for Fuel Oils (incorporated by reference—see § 60.17).

"Duct burner" means a device which combusts fuel and which is placed in the exhaust duct of a stationary gas turbine to allow the firing of additional fuel before the exhaust gas enters a heat recovery steam generating unit.

"Federally enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State Implementation Plan, and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 and 40 CFR 51.24.

"Fluidized bed combustion steam generating unit" means a device wherein fuel and solid sorbent are distributed onto or into a bed, or series of beds, of aggregate for combustion and these materials together with solid products of combustion are forced upward in the device by the flow of combustion air and the gaseous products of combustion.

"Full capacity" means operation of the steam generating unit at 90 percent or more of the maximum steady-state design heat input capacity.

"Heat input" means heat derived from combustion of fuel in a steam generating unit and does not include the heat input from preheated combustion air, recirculated flue gases, or gas turbine exhaust gases.

"Heat release rate" means the steam generating unit design heat input capacity (in MW or Btu/hour) divided by the furnace volume (in cubic meters or cubic feet); the furnace volume is that volume bounded by the front furnace wall where the burner is located, the furnace side waterwall, and extending to the level just below or in front of the first row of convection pass tubes.

"Heat transfer medium" means any material which is used to transfer heat from one point to another point.

"High heat release rate" means a heat release rate greater than 730,000 J/sec-m^3 (70,000 Btu/hour-ft^3).

"Lignite" means a type of coal classified as lignite A or lignite B by the American Society of Testing and Materials in ASTM D388-77, Standard Specification for Classification of Coals by Rank (incorporated by reference—see § 60.17).

"Low heat release rate" means a heat release rate of 730,000 J/sec-m^3 (70,000 Btu/hour-ft^3) or less.

"Mass-feed stoker steam generating unit" means a steam generating unit where solid fuel is introduced directly into a retort or is fed directly onto a grate where it is combusted.

"Maximum heat input capacity" means the ability of a steam generating unit to combust a stated maximum amount of fuel on a steady state basis, as determined by the physical design and characteristics of the steam generating unit.

"Municipal-type solid waste" means refuse, more than 50 percent of which is municipal-type waste consisting of a mixture of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustible materials, and noncombustible materials such as glass and rock.

"Natural gas" means a naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface, of which the principal hydrocarbon constituent is methane.

"Oil" means crude oil or petroleum or a liquid fuel derived from crude oil or petroleum, including distillate and residual oil.

"Petroleum refinery" means industrial plants which are classified by the Department of Commerce under Standard Industrial Classification (SIC) Code 29.

"Process heater" means a device which is primarily used to heat a material to initiate or promote a chemical reaction in which the material participates as a reactant or catalyst.

"Pulverized coal-fired steam generating unit" means a steam generating unit in which pulverized coal is introduced into an air stream that carries the coal to the combustion chamber of the steam generating unit where it is fired in suspension. This includes both conventional pulverized coal-fired and micropulverized coal-fired steam generating units.

"Residual oil" means crude oil, fuel oils number 1 and 2 which have a nitrogen content of greater than 0.05 weight percent, and all fuel oils number 4, 5 and 6, as defined by the American Society of Testing and Materials in ASTM D396-78, Standard Specifications for Fuel Oils (incorporated by reference—see § 60.17).

"Spreader stoker steam generating unit" means a steam generating unit in which solid fuel is introduced to the combustion zone by a mechanism that throws the fuel onto a grate from above. Combustion takes place both in suspension and on the grate.

"Steam generating unit" means a device which combusts any fuel or byproduct/waste to produce steam or to heat water of any other heat transfer medium. This term includes any municipal-type waste incinerator with a heat recovery steam generating unit or any steam generating unit which combusts fuel and is part of a cogeneration system or a combined cycle system. This term does not include process heaters.

"Steam generating unit operating day" means a 24-hour period between 12:00 midnight and the following midnight during which any fuel is combusted at any time in the steam generating unit. It is not necessary for fuel to be combusted continuously for the entire 24-hour period.

"Wet scrubber system" means any emission control device which mixes an aqueous stream or slurry with the exhaust gases from a steam generating unit to control emissions of particulate matter or sulfur dioxide.

"Wood" means wood, wood residue, bark, or any derivative fuel or residue thereof, in any form, including, but not limited to, sawdust, sanderdust, wood chips, scraps, slabs, millings, shavings, and processed pellets made from wood or other forest residues.

§ 60.42b [Reserved]

§ 60.43b Standard for particulate matter.

(a) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility which combusts coal or combusts mixtures of coal with other fuels, shall cause to be discharged into the atmosphere from that affected facility any gases which contain particulate matter in excess of the following emission limits:

(1) 22 nanograms per joule (0.05 lb/million Btu) heat input;

(i) If the affected facility combusts only coal, or

(ii) If the affected facility combusts coal and other fuels and has an annual capacity factor for the other fuels of 10 percent (0.10) or less.

(2) 43 nanograms per joule (0.10 lb/million Btu) heat input if the affected facility combusts coal and other fuels and has an annual capacity factor for the other fuels greater than 10 percent (0.10) and is subject to a Federally enforceable requirement limiting operation of the affected facility to an annual capacity factor greater than 10 percent (0.10) for fuels other than coal.

(3) 86 nanograms per joule (0.20 lb/million Btu) heat input if the affected facility combusts coal or coal and other fuels and

(i) Has an annual capacity factor for coal or coal and other fuels of 30 percent (0.30) or less,

(ii) Has a maximum heat input capacity of 73 MW (250 million Btu/hour) or less,

(iii) Has a Federally enforceable requirement limiting operation of the affected facility to an annual capacity factor 30 percent (0.30) or less for coal or coal and other solid fuels, and

(iv) Construction of the affected facility commenced after June 19, 1984 and before November 25, 1986.

(b) On or after the date on which the initial performance test is completed or is required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility which combusts wood, or wood with other fuels, except coal, shall cause to be discharged from that affected facility any gases which contain particulate matter in excess of the following emission limits:

(1) 43 nanograms per joule (0.10 lb/million Btu) heat input if the affected facility has an annual capacity factor greater than 30 percent (0.30) for wood.

(2) 86 nanograms per joule (0.20 lb/million Btu) heat input if

(i) The affected facility has an annual capacity factor of 30 percent (0.30) or less for wood,

(ii) Is subject to a Federally enforceable requirement limiting operation of the affected facility to an annual capacity factor 30 percent (0.30) or less for wood, and

(iii) Has a maximum heat input capacity of 73 MW (250 million Btu/hour) or less.

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(c) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility which combusts municipal-type solid waste or mixtures of municipal-type solid waste with other fuels, shall cause to be discharged into the atmosphere from that affected facility any gases which contain particulate matter in excess of the following emission limits:

(1) 43 nanograms per joule (0.10 lb/million Btu) heat input;

(i) If the affected facility combusts only municipal-type solid waste, or

(ii) If the affected facility combusts municipal-type solid waste and other fuels and has an annual capacity factor for the other fuels of 10 percent (0.10) or less.

(2) 86 nanograms per joule (0.20 lb/million Btu) heat input if the affected facility combusts municipal-type solid waste or municipal-type solid waste and other fuels; and

(i) Has an annual capacity factor for municipal-type solid waste and other fuels of 30 percent (0.30) or less,

(ii) has a maximum heat input capacity of 73 MW (250 million Btu/hour) or less,

(iii) Has a Federally enforceable requirement limiting operation of the affected facility to an annual capacity factor of 30 percent (0.30) for municipal-type solid waste, or municipal-type solid waste and other fuels, and

(iv) Construction of the affected facility commenced after June 19, 1984 but before November 25, 1986.

(d) For the purposes of this section, the annual capacity factor is determined by dividing the actual heat input to the steam generating unit during the calendar year from the combustion of coal, wood, or municipal-type solid waste, and other fuels, as applicable, by the potential heat input to the steam generating unit if the steam generating unit had been operated for 8,760 hours at the maximum design heat input capacity.

(e) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility subject to the particulate matter emission limits under paragraphs (a), (b) or (c) of this section shall cause to be discharged into the atmosphere any gases which exhibit greater than 20 percent opacity (6-minute average), except for one 6-minute period per hour of not more than 27 percent opacity.

§ 60.44b Standard for nitrogen oxides.

(a) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility subject to the provisions of this section which combusts only coal, oil, or natural gas shall cause to be discharged into the atmosphere from that affected facility any gases which contain nitrogen oxides in excess of the following emission limits:

[Figures in parentheses represent lb/million Btu heat input]

Fuel/Steam generating unit type	Nitrogen oxide[1]
(1) Natural gas and distillate oil, except (4):	
(i) Low heat release rate	43(0.10)
(ii) High heat release rate	86(0.20)
(2) Residual oil:	
(i) Low heat release rate	130(0.30)
(ii) High heat release rate	170(0.40)
(3) Coal:	
(i) Mass-feed stoker	210(0.50)
(ii) Spreader stoker and fluidized bed combustion	260(0.60)
(iii) Pulverized coal	300(0.70)
(iv) Lignite, except (v)	260(0.60)
(v) Lignite mined in North Dakota, South Dakota, or Montana and combusted in a slag tap furnace	340(0.80)
(vi) Coal-derived synthetic fuels	210(0.50)
(4) Duct burner used in a combined cycle system:	
(i) Natural gas and distillate oil	86(0.20)
(ii) Residual oil	170(0.40)

[1] Emission limits nanograms per joule heat input.

(b) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility which simultaneously combusts mixtures of coal, oil, or natural gas shall cause to be discharged into the atmosphere from that affected facility any gases which contain nitrogen oxides in excess of a limit determined by use of the following formula:

$$E_{NO_x} = [(EL_{go} \times H_{go}) + (EL_{ro} \times H_{ro}) + (EL_c \times H_c)] / Ht$$

where:

E_{NO_x} is the nitrogen oxides emission limit,
EL_{go} is the appropriate emission limit from paragraph (a)(1) for combustion of natural gas or distillate oil,
H_{go} is the heat input from combustion of natural gas or distillate oil,
EL_{ro} is the appropriate emission limit from paragraph (a)(2) for combustion of residual oil,
H_{ro} is the heat input from combustion of residual oil,
EL_c is the appropriate emission limit from paragraph (a)(3) for combustion of coal,
H_c is the heat input from combustion of coal, and
Ht is the total heat input to the steam generating unit from combustion of coal, oil, and natural gas.

(c) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8 of this part, whichever comes first, no owner or operator of an affected facility which simultaneously combusts coal or oil, or a mixture of these fuels with natural gas, and wood, municipal-type solid waste, or any other fuel shall cause to be discharged into the atmosphere any gases which contain nitrogen oxides in excess of the emission limit for the coal or oil, or mixture of these fuels with natural gas combusted in the affected facility, as determined pursuant to paragraph (a) or (b) of this section, unless the affected facility has an annual capacity factor for coal or oil, or mixture of these fuels with natural gas of 10 percent (0.10) or less and is subject to a Federally enforceable requirement which limits operation of the facility to an annual capacity factor of 10 percent (0.10) or less for coal, oil, or a mixture of these fuels with natural gas.

(d) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility which simultaneously combusts natural gas with wood, municipal-type solid waste, or other solid fuel, except coal, shall cause to be discharged into the atmosphere from that affected facility any gases which contain nitrogen oxides in excess of 130 nanograms per joule (0.30 lb/million Btu) heat input unless the affected facility has an annual capacity factor for natural gas of 10 percent or less and is subject to a Federally enforceable requirement which limits operation of the affected facility to an annual capacity factor of 10 percent (0.10) or less for natural gas.

(e) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility which simultaneously combusts coal, oil, or natural gas with byproduct/wastes shall cause to be discharged into the atmosphere from that affected facility any gases which contain nitrogen oxides in excess of an emission limit determined by the following formula unless the affected facility has an annual capacity factor for coal, oil, and natural gas of 10 percent (0.10) or less and is subject to a Federally enforceable requirement which limits operation of the affected facility to an annual capacity factor of 10 percent (0.10) or less:

$$E_{NO_x} = [(EL_{go} \times H_{go}) + (EL_{ro} \times H_{ro}) + (EL_c \times H_c)] / Ht$$

where:

E_{NO_x} is the nitrogen oxides emission limit,
EL_{go} is the appropriate emission limit from paragraph (a)(1) for combustion of natural gas or distillate oil,
H_{go} is the heat input from combustion of natural gas, distillate oil and gaseous byproduct/waste,
EL_{ro} is the appropriate emission limit from paragraph (a)(2) for combustion of residual oil,
H_{ro} is the heat input from combustion of residual oil and/or liquid byproduct/waste,
EL_c is the appropriate emission limit from paragraph (a)(3) for combustion of coal,
H_c is the heat input from combustion of coal, and
Ht is the total heat input to the steam generating unit from combustion of natural gas, oil, coal, and byproduct/waste.

(f) Any owner or operator of an affected facility which combusts byproduct/waste with either natural gas or oil may petition the Administrator within 180 days of the initial startup of the affected facility to establish a nitrogen oxides emission limit which shall apply specifically to that affected facility when the byproduct/waste is combusted. The petition shall include sufficient and appropriate data, as determined by the Administrator, such as nitrogen oxides emissions from the affected facility, waste composition (including nitrogen content), and combustion conditions to allow the Administrator to confirm that the affected facility is unable to comply with the emission limits in paragraph (e) of this section and to determine the appropriate emission limit for the affected facility.

(1) Any owner or operator of an affected facility petitioning for a facility-specific nitrogen oxides emission limit pursuant to this section shall:

(i) Demonstrate compliance with the emission limits for natural gas and distillate oil in paragraph (a)(1) or for residual oil in paragraph (a)(2), as appropriate, by conducting a 30-day performance test as provided in § 60.46b(e). During the performance test only natural gas, distillate oil, or residual oil shall be combusted in the affected facility; and

(ii) Demonstrate that the affected facility is unable to comply with the emission limits for natural gas and distillate oil in paragraph (a)(1) or for residual oil in paragraph (a)(2), as appropriate, when gaseous or liquid byproduct/waste is combusted in the affected facility under the same conditions and using the same technological system of emission reduction applied when demonstrating compliance under subparagraph (i).

(2) The nitrogen oxides emission limits for natural gas or distillate oil in paragraph (a)(1) or for residual oil in paragraph (a)(2), as appropriate, shall be applicable to the affected facility until and unless the petition is approved by the Administrator. If the petition is approved by the Administrator, a facility-specific nitrogen oxides emission limit will be established at the nitrogen oxides emission level achievable when the affected facility is combusting coal, oil, natural gas and byproduct/waste in a manner which the Administrator determines to be consistent with minimizing nitrogen oxides emissions.

(g) Any owner or operator of an affected facility which combusts hazardous waste (as defined by 40 CFR Part 261 or 40 CFR Part 761) with natural gas or oil may petition the Administrator within 180 days of the initial startup of the affected facility for a waiver from compliance with the nitrogen oxides emission limit which applies specifically to that affected facility. The petition must include sufficient and appropriate data, as determined by the Administrator, on nitrogen oxides emissions from the affected facility, waste destruction efficiencies, waste composition (including nitrogen content), the quantity of specific wastes to be combusted and combustion conditions to allow the Administrator to determine if the affected facility is able to comply with the nitrogen oxides emission limits required by this section. The owner or operator of the affected facility shall demonstrate that when hazardous waste is combusted in the affected facility, thermal destruction efficiency requirements for hazardous waste specified in an applicable Federally enforceable requirement preclude compliance with the nitrogen oxides emission limits of this section. The nitrogen oxides emission limits for natural gas or distillate oil in paragraph (a)(1) or for residual oil in paragraph (a)(2), as appropriate, is applicable to the affected facility until and unless the petition is approved by the Administrator. (See 40 CFR 761.70 for regulations applicable to the incineration of materials containing polychlorinated biphenyls (PCB's).)

§ 60.45b [Reserved]

§ 60.46b Compliance and performance testing for particulate matter and nitrogen oxides.

(a) The particulate matter emission standards and opacity limits under § 60.43b apply at all times except during periods of startup, shutdown, or malfunction. The nitrogen oxides emission standards under § 60.44b apply at all times.

(b) Compliance with the particulate matter emission standards under § 60.43b shall be determined through performance testing as described in paragraph (d) of this section.

(c) Compliance with the nitrogen oxides emission standards under § 60.44b shall be determined through performance testing as described in paragraph (e) or (f) of this section.

(d) The following procedures and reference methods are used to determine compliance with the standards for particulate matter emissions under § 60.43b.

(1) Reference Method 3 is used for gas analysis when applying Reference Method 5 or Reference Method 17.

(2) Reference Method 5 or Reference Method 17 shall be used to measure the concentration of particulate matter and the associated moisture content as follows:

(i) Reference Method 5 at all facilities; or

(ii) Reference Method 17 at facilities where the stack gas temperature at the sampling location does not exceed an average temperature of 160°C (320°F). Reference Method 17 shall not be used at affected facilities with wet scrubber systems if the effluent gas is saturated or laden with water droplets.

(3) Reference Method 1 is used to select the sampling site and the number of traverse sampling points. The sampling time for each run is at least 120 minutes and the minimum sampling volume is 1.7 dscm (60 dscf) except that smaller sampling times or volumes may be approved by the Administrator when necessitated by process variables or other factors.

(4) For Reference Method 5, the temperature of the sample gas in the probe and filter holder is monitored and is maintained at 160°C (320°F).

(5) For determination of particulate emissions, the oxygen or carbon dioxide sample is obtained simultaneously with each run of Reference Method 5 or Reference Method 17 by traversing the duct at the same sampling location.

(6) For each run using Reference Method 5 or Reference Method 17, the emission rate expressed in nanograms per joule heat input is determined using:

(i) The oxygen or carbon dioxide measurements and particulate matter measurements obtained under this section,

(ii) The dry basis F_c factor, and

(iii) The dry basis emission rate calculation procedure contained in Reference Method 19 (Appendix A).

(7) Reference Method 9 is used for determining the opacity of stack emissions.

(e) To determine compliance with the emission limits for nitrogen oxides required under § 60.44b, the owner or operator of an affected facility shall conduct the performance test as required under § 60.8 using the continuous system for monitoring nitrogen oxides under § 60.48(b).

(i) For the initial compliance test, nitrogen oxides from the steam generating unit are monitored for 30 successive steam generating unit operating days and the 30-day average emission rate is used to determine compliance with the nitrogen oxides emission standards under § 60.44b. The 30-day average emission rate is calculated as the average of all hourly emissions data recorded by the monitoring system during the 30-day test period.

(ii) Following the date on which the initial performance test is completed or is required to be completed under § 60.8 of this part, whichever date comes first, the owner or operator of an affected facility which fires coal or which fires residual oil having a nitrogen content greater than 0.30 weight percent shall determine compliance with the nitrogen oxides emission standards under § 60.44b on a continuous basis through the use of a 30-day rolling average emission rate. A new 30-day rolling average emission rate is calculated each steam generating unit operating day as the average of all of the hourly nitrogen oxides emission data for the preceding 30 steam generating unit operating days.

(iii) Following the date on which the initial performance test is completed or is required to be completed under § 60.8 of this part, whichever date comes first, the owner or operator of an affected facility which has a heat input capacity greater than 73 MW (250 million Btu/hour) and which fires natural gas, distillate oil, or residual oil having a nitrogen content of 0.30 weight percent or less shall determine compliance with the nitrogen oxides standards under § 60.44b on a continuous basis through the use of a 30-day rolling average emission rate. A new 30-day rolling average emission rate is calculated each steam generating unit operating day as the average of all of the hourly nitrogen oxide emission data for the preceding 30 steam generating unit operating days.

(iv) Following the date on which the initial performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, the owner or operator of an affected facility which has a heat input capacity of 73 MW (250 million Btu/hour) or less and which fires natural gas, distillate oil, or residual oil having a nitrogen content of 0.30 weight percent or less shall determine compliance with the nitrogen oxides standards under § 60.44b through the use of a 30-day performance test when requested by EPA. During periods when performance tests are not requested by EPA, nitrogen oxides emissions data collected pursuant to § 60.48b(g)(1) or § 60.48b(g)(2) are used to calculate a 30-day rolling average emission rate on a daily basis and to prepare excess emission reports, but will not be used to determine compliance with the nitrogen oxides emission standards. A new 30-day rolling average emission rate is calculated each steam generating unit operating day as the average of all of the hourly nitrogen oxides emission data for the preceding 30 steam generating unit operating days.

(v) If the owner or operator of an affected facility which fires residual oil does not sample and analyze the residual oil for nitrogen content, as specified in § 60.49b(e), the requirements of paragraph (iii) of this section apply and the provisions of paragraph (iv) of this section are inapplicable.

(f) To determine compliance with the emission limit for nitrogen oxides required by § 60.44b(a)(4) for duct burners used in combined cycle systems, the owner or operator of an affected facility shall conduct the performance test required under § 60.8 using the nitrogen oxides and oxygen measurement procedures in 40 CFR Part 60 Appendix A, Method 20. During the performance test, one sampling site shall be located as close as practical to the exhaust of the turbine, as provided by section 6.1.1 of Reference Method 20. A second sampling site shall be located at the outlet to the steam generating unit. Measurements of nitrogen oxides and oxygen shall be taken at these two sampling sites simultaneously during the performance test. The nitrogen oxides emission rate from the combined cycle system shall be calculated by subtracting the nitrogen oxides emission rate measured at the sampling site at the outlet from the turbine from the nitrogen oxides emission rate measured at the sampling site at the outlet from the steam generating unit.

§ 60.47b [Reserved]

§ 60.48b Emission monitoring for particulate matter and nitrogen oxides.

(a) The owner or operator of an affected facility subject to the opacity standard under § 60.43b shall install, calibrate, maintain and operate a continuous monitoring system for measuring the opacity of emissions discharged to the atmosphere and record the output of the system.

(b) Except as provided in paragraphs (g) and (h) of this section, the owner or operator of an affected facility subject to the nitrogen oxides standard of § 60.44b(a) shall install, calibrate, maintain, and operate a continuous monitoring system for measuring nitrogen oxides emissions discharged to the atmosphere and record the output of the system.

(c) The continuous monitoring systems required under paragraph (b) of this section shall be operated and data recorded during all periods of operation of the affected facility except for continuous monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments.

(d) The 1-hour average nitrogen oxides emission rates measured by the continuous nitrogen oxides monitor required by paragraph (b) of this section and required under § 60.13(h) shall be expressed in nanograms per joule or lb/million Btu heat input and shall be used to calculate the average emission rates under § 60.44b. The 1-hour averages shall be calculated using the data points required under § 60.13(b). At least 2 data points must be used to calculate each 1-hour average.

(e) The procedures under § 60.13 shall be followed for installation, evaluation, and operation of the continuous monitoring systems.

(1) For affected facilities burning coal, wood or municipal-type solid waste, the span value for a continuous monitoring system for measuring opacity shall be between 60 and 80 percent.

(2) For affected facilities burning coal, oil, or natural gas, the span value for nitrogen oxides is determined as follows:

Fuel	Span values for nitrogen oxides (PPM)
Natural gas	500
Oil	500
Coal	1,000
Combination	$500(x+y)+1,000z$

where:

x is the fraction of total heat input derived from natural gas,

y is the fraction of total heat input derived from oil, and

z is the fraction of total heat input derived from coal.

(3) All span values computed under paragraph (e)(2) of this section for burning combinations of regulated fuels are rounded to the nearest 500 ppm.

(f) When nitrogen oxides emission data are not obtained because of continuous monitoring system breakdowns, repairs, calibration checks and zero and span adjustments, emission data will be obtained by using standby monitoring systems, Reference Method 7, Reference Method 7A, or other approved reference methods to provide emission data for a minimum of 75 percent of the operating hours in each steam generating unit operating day, in at least 22 out of 30 successive steam generating unit operating days.

(g) The owner or operator of an affected facility which has a heat input capacity of 73 MW (250 million Btu/hour) or less, and which has an annual capacity factor for residual oil having a nitrogen content of 0.30 weight percent or less, natural gas, distillate oil, or any mixture of these fuels, greater than 10 percent (0.10) shall:

(1) Comply with the provisions of paragraphs (b), (c), (d), (e)(2), (e)(3), and (f) of this section, or

(2) Monitor steam generating unit operating conditions and predict nitrogen oxides emission rates as specified in a plan submitted pursuant to § 60.49b(c).

(h) The owner or operator of an affected facility which is subject to the nitrogen oxides standards of § 60.44b(a)(4) is not required to install or operate a continuous monitoring system to measure nitrogen oxides emissions.

(Approved by the Office of Management and Budget under control number 2060-0072)

§ 60.49b Reporting and recordkeeping requirements.

(a) The owner or operator of each affected facility shall submit notification of the date of initial startup, as provided by § 60.7. This notification shall include:

(1) Identification of the fuels to be combusted in the affected facility, and

(2) The design heat input capacity and, if applicable, a copy of any Federally enforceable requirement which limits the annual capacity factor for any fuel or mixture of fuels listed in § 60.43b, or for any fuel or mixture of fuels listed in § 60.44b.

(3) [Reserved]

(4) [Reserved]

(b) For facilities subject to the particulate matter and nitrogen oxides emission limits under § 60.43b and § 60.44b, the performance test data from the initial performance test and the performance evaluation of the continuous emission monitors (using the applicable performance specifications in Appendix B) shall be submitted to the Administrator by the owner or operator of the affected facility.

(c) The owner or operator of each affected facility subject to the nitrogen oxides standard of 60.44b who seeks to demonstrate compliance with those standards through the monitoring of steam generating unit operating conditions pursuant to the provisions of § 60.48b(g)(2) shall submit to the Administrator for approval a plan which identifies the operating conditions to be monitored under § 60.48b(g)(2) and the records to be maintained under § 60.49b(j). This plan shall be submitted to the Administrator for approval within 360 days of the initial startup of the affected facility. The plan shall:

(1) Identify the specific operating conditions to be monitored and the relationship between these operating conditions and nitrogen oxides emission rates (i.e., nanograms per joule or pounds per million Btu heat input). Steam generating unit operating conditions include, but are not limited to, degree of staged combustion (i.e., the ratio of primary air to secondary and/or tertiary air) and the level of excess air (i.e., flue gas oxygen level);

(2) Include the data and information which the owner or operator used to identify the relationship between nitrogen oxides emission rates and these operating conditions;

(3) Identify how these operating conditions, including steam generating unit load, will be monitored under § 60.48b(g) on an hourly basis by the owner or operator during the period of operation of the affected facility; the quality assurance procedures or practices that will be employed to ensure that the data generated by monitoring these operating conditions will be representative and accurate; and the type and format of the records of these operating conditions, including steam generating unit load, that will be maintained by the owner or operator under § 60.49b(j). If the plan is approved, the owner or operator shall maintain records of predicted nitrogen oxide emission rates and the monitored operating conditions, including steam generating unit load, identified in the plan.

(d) The owner or operator of an affected facility shall record and maintain records of the amounts of all fuels fired during each day and calculate the annual capacity factor for coal, oil, natural gas, wood, and municipal-type solid waste for each calendar quarter.

(e) For affected facilities which fire residual oil having a nitrogen content of 0.3 weight percent or less; have heat input capacities of 73 MW (250 million Btu/hour) or less; and monitor nitrogen oxides emissions or steam generating unit operating conditions pursuant to § 60.48b(g), the owner or operator shall maintain records of the nitrogen content of the oil fired in the affected facility and calculate the average fuel nitrogen content on a per calendar quarter basis. The nitrogen content shall be determined using ASTM Method D3431–80, Test Method for Trace Nitrogen in Liquid Petroleum Hydrocarbons (incorporated by reference—see § 60.17), or fuel specification data obtained from fuel suppliers. If residual oil blends are being fired, fuel nitrogen specifications may be prorated based on the ratio of residual oils of different nitrogen content in the fuel blend.

(f) For facilities subject to the opacity standard under § 60.43b, the owner or operator shall maintain records of opacity.

(g) For facilities subject to nitrogen oxides standards under § 60.44b, the owner or operator shall maintain records of the following information for each steam generating unit operating day:

(1) Calendar date.

(2) The average hourly nitrogen oxides emission rates (nanograms per joule or pounds per million Btu heat input) measured or predicted.

(3) The 30-day average nitrogen oxides emission rates (nanograms per joule or lb/million Btu heat input) calculated at the end of each steam generating unit operating day from the measured or predicted hourly nitrogen oxide emission rates for the preceding 30 steam generating unit operating days.

(4) Identification of the steam generating unit operating days when the calculated 30-day average nitrogen oxides emission rates are in excess of the nitrogen oxides emissions standards under § 60.44b, with the reasons for such excess emissions as well as a description of corrective actions taken.

(5) Identification of the steam generating unit operating days for which pollutant data have not been obtained, including reasons for not obtaining sufficient data and a description of corrective actions taken.

(6) Identification of the times when emission data have been excluded from the calculation of average emission rates and the reasons for excluding data.

(7) Identification of "F" factor used for calculations, method of determination, and type of fuel combusted.

(8) Identification of the times when the pollutant concentration exceeded full span of the continuous monitoring system.

(9) Description of any modifications to the continuous monitoring system which could affect the ability of the continuous monitoring system to comply with Performance Specifications 2 or 3.

(h) The owner or operator of any affected facility in any category listed

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below in paragraphs (h)(1) and (h)(2) of this section is required to submit excess emission reports for any calendar quarter during which there are excess emissions from the affected facility. If there are no excess emissions during the calendar quarter, the owner or operator shall submit a report semiannually stating that no excess emissions occurred during the semiannual reporting period.

(1) Any affected facility subject to the opacity standards under § 60.43b(e) or to the operating parameter monitoring requirements under § 60.13(i)(1).

(2) Any affected facility which is subject to the nitrogen oxides standard of § 60.44b; fires natural gas, distillate oil, or residual oil with a nitrogen content of 0.3 percent or less; and has a heat input capacity of 73 MW (250 million Btu/hour) or less, and is required to monitor nitrogen oxides emissions on a continuous basis pursuant to § 60.48b(g)(1) or steam generating unit operating conditions pursuant to § 60.48b(g)(2).

(3) For the purpose of § 60.43b, excess emissions are defined as all 6-minute periods during which the average opacity exceeds the opacity standards under § 60.43b(f).

(4) For purposes of § 60.48b(g)(1), excess emissions are defined as any calculated 30-day rolling average nitrogen oxides emission rate, as determined pursuant to § 60.46b(e), which exceeds the applicable emission limits in § 60.44b.

(i) The owner or operator of any affected facility subject to the continuous monitoring requirements for nitrogen oxides pursuant to § 60.48(b) shall submit a quarterly report containing the information recorded pursuant to paragraph (b) of this section.

(j) [Reserved]

(k) [Reserved]

(l) [Reserved]

(m) All records required under this section shall be maintained by the owner or operator of the affected facility for a period of 2 years following the date of such record.

(Approved by the Office of Management and Budget under control number 2060–0072)

3. Section 60.17 is amended by revising paragraphs (a)(1) and (a)(10) and adding paragraph (a)(47), as follows:

§ 60.17 Incorporation by reference.

* * * * *

(a) * * *

(1) ASTM D388–77, Standard Specification for Classification of Coals by Rank, incorporation by reference (IBR) approved for §§ 60.41(f), 60.45(f)(4)(i), (ii), (vi), 60.41a, 60.251 (b), (c), 60.41b.

* * * * *

(10) ASTM D396–78, Standard Specification for Fuel Oils, IBR approved for §§ 60.111(b), 60.111a(b), 60.41b.

* * * * *

(47) ASTM D3431–80, Standard Test Method for Trace Nitrogen in Liquid Petroleum Hydrocarbons (microcoulometric method), IBR approved for § 60.49(e).

[FR Doc. 86–25585 Filed 11–24–86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 60

[AD–FRL–3109–1]

Standards of Performance for New Stationary Sources; Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action amends the priority list for regulation under section 111 of the Clean Air Act by expanding the source category of industrial fossil fuel-fired steam generators to cover all steam generators, including both fossil and nonfossil fuel-fired steam generators, as well as steam generators used in industrial, commercial, and institutional applications. This amendment is based on the Administrator's determination that industrial-commercial-institutional steam generating units contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The intended effect of this action is to include nonfossil fuel-fired and commercial/institutional steam generatingunits in the source category for which standards of performance are beingpublished elsewhere in today's **Federal Register**.

DATE: Effective November 25, 1986.

Under section 307(b)(1) of the Clean Air Act, judicial review of theactions taken by this notice is available only by the filing of a petition for review in the U.S Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: The background information documents may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, (919) 541–2777.

Docket number A–79–02 is available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at EPA's Central Docket Section (LE–131), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, DC.

See "**SUPPLEMENTARY INFORMATION**" for further details.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Porter or Mr. Walter Stevenson, Standards Development Branch, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5578.

SUPPLEMENTARY INFORMATION: The Clean Air Act establishes a program under section 111 to develop standards of performance for new sources within categories of stationary sources which the Administrator determines may contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. Such source categories are referred to as "significant contributors." Section 111(f) of the Clean Air Act, added by the 1977 Clean Air Act Amendments, requires that the Administrator publish a list of categories of major stationary sources which are significant contributors and for which standards of performance for new sources are to be promulgated.

This list, which identifies major source categories in order of priority for development of regulations, was proposed in the **Federal Register** on August 31, 1978, and promulgated on August 21, 1979 (40 CFR 60.16, 44 FR 49222). Of the 59 source categories on the list, the category "Industrial Fossil Fuel-Fired Steam Generators: Industrial Boilers" is listed as number 11.

Today's action amends the priority list by revising the title of this source category to "Industrial-Commercial-Institutional Steam Generating Units." This change deletes the references to the type of fuel combusted, to the distinction between steam generating unit application, and to the type of steam generator.

As amended, this source category includes any device or system which combusts fuel which results in the production of steam (or hot water), including incinerators with heat recovery, combined cycle steam generators, cogeneration systems and small electric utility steam generating units. All of these types of steam generators exhibit emission characteristics which are similar in quantity and type. Furthermore, the emission control devices which have been found to be effective on steam generating units are also effective in reducing emissions from other types of steam generators. Therefore, the scope of the source category is expanded to include all types of steam generating units except those covered under Subpart Da.

Public Participation

This amendment to the priority list was proposed in the **Federal Register** on June 19, 1984 (49 FR 25156). Public comments were solicited at the time of proposal. Notice of a public hearing was also given to provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standard. No requests to present oral testimony were received.

The public comment period was from June 19, 1984 to September 17, 1984. Two comment letters were received and were given consideration.

Significant Comments and Changes to the Proposed Standard

Two commenters requested that steam generating units with heat input capacities less than 73 MW (250 million Btu/hour) be delisted from the new category of "Industrial-Commercial-Institutional Steam Generating Units." The commenters indicated that the reasons for their request are: (1) That steam generating units under 73 MW (250 million Btu/hour) heat input capacity are not significant air pollution sources; and (2) that these units are already adequately regulated by State regulations and other requirements of the Clean Air Act.

The Administrator has determined that fossil and nonfossil fuel-fired industrial, commercial, and institutional steam generating units should be classified together as one source category for the purpose of the priority listing. These steam generating units emit similar pollutants, fire the same fuels, and may employ the same emission control techniques. Their impacts on human health are similar and the Administrator has determined, pursuant to the provisions of section 111(b)(1)(A), that the inclusion of industrial, commercial, and institutional steam generating units in one source category is warranted.

The industrial-commercial-institutional source category is a significant contributor and an appropriate source category for regulation. There is no requirement that each subcategory of a listed category or each individual source also be significant contributors. For this reason, the request that fossil and nonfossil fuel-fired steam generating units with heat input capacities less than 73 MW (250 million Btu/hour) be delisted from the source category of industrial-commercial-institutional steam generating units is denied.

Background Information Document

The background information documents (BID) for the promulgated standards under Subpart Db that contain background information related to this action may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919)541-2777. Please refer to EPA-450/3-82-006a "Fossil Fuel-Fired Industrial Boilers—Background Information Volume 1: Chapters 1-9", EPA-450/3-82-006b "Fossil Fuel-Fired Industrial Boilers—Background Information Volume 2: Appendices, EPA-450/3-82-007 "Nonfossil Fuel-Fired Industrial Boilers—Background Information," and EPA-450/3-86-003 "Fossil and Nonfossil Fuel-Fired Industrial Boilers—Background Information for Promulgated PM and NO_x Standards." The BID Volumes 1 and 2 contain technical and source emission data, as well as analyses of regulatory alternatives and economic and environmental impacts. The BID for the promulgated standards contains a summary of all the public comments made on the proposed Subpart Db standards and includes a summary of public comments received concerning this action, and the final Environmental Impact Statement, which summarizes the impacts of the Subpart Db standards.

Docket. A docket, number A-79-02, contains supporting information considered in development of standards of performance for steam generating units. The docket is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE-131), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, DC. A reasonable fee may be charged for copying.

Administrative

The docket is an organized and complete file of all the information considered in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review [Section 307(d)(7)(A)]. This docket contains supporting information used in developing the 40 CFR Part 60 Subpart Db standards.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under section 111(b) of the Act. Because this action does not promulgate a new source performance standard, an economic impact assessment was not prepared.

There are no information collection requirements associated with this amemdment to the priority list.

Under Executive Order 12291, the Administrator is required to judge whether a regulation is a "major rule" and therefore subject to the requirements of a regulatory impact analysis (RIA). This amendment would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule." This action has been submitted to OMB for review under Executive Order 12291.

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because this action imposes no adverse economic impacts, a Regulatory Flexibility Analysis has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference.

Dated: October 31, 1986.

Lee M. Thomas,

Administrator.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for Part 60 continues to read as follows:

Authority: 42 U.S.C. 7411 and 7601(a).

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2. 40 CFR Part 60, Subpart A, § 60.16 is amended by revising item 11 as follows:

§ 60.16 Priority list.

* * * * *

11. Industrial-Commercial-Institutional Steam Generating Units.

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[FR Doc. 86–25506 Filed 11–24–86; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 60

[AD-FRL-3109-2]

Standards of Performance for New Stationary Sources; Fossil Fuel-Fired Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Standards of performance limiting nitrogen oxides (NO_x) emissions from steam generating units firing mixtures of natural gas and wood were promulgated under Subpart D of 40 CFR Part 60 in the Federal Register on November 22, 1976 (41 FR 51397). This action amends the NO_x emission limit for steam generating units firing mixtures of natural gas and wood to make it consistent with the NO_x emission limit for this same fuel mixture under Subpart Db of 40 CFR Part 60 which is being promulgated in a separate document in today's Federal Register. The amended emission limit of 129 ng/J (0.30 lb/million Btu) heat input for units firing mixtures of natural gas and wood replaces the NO_x emission limit of 86 ng/J (0.20 lb/million Btu) heat input which was adopted in 1976 (41 FR 51397). The amended emission limit applies to all Subpart D steam generating units firing mixtures of natural gas and wood that commenced construction after August 17, 1971.

EFFECTIVE DATE: November 25, 1986.

Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available only by the filing of a petition for review in the U. S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: Background information documents may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, (919) 541–2777.

Docket number A–79–02 is available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at EPA's Central Docket Section (LE–131), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, DC 20460.

See "SUPPLEMENTARY INFORMATION" for further details.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Porter or Mr. Walter Stevenson, Standards Development Branch, Emission Standards and Engineering Division (MD–13), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5578.

SUPPLEMENTARY INFORMATION:

The Standards

Under 40 CFR Part 60 Subpart D, particulate matter, NO_x and sulfur dioxide emission limits are established for fossil fuel-fired steam generating units having heat input capacities greater than 73 MW (250 million Btu/hour) that commenced construction after August 17, 1971. The standards under Subpart D apply to units firing fossil fuel alone or firing mixtures of fossil fuel and wood. Today's action would amend the NO_x emission standard for units firing mixtures of natural gas and wood. Prior to today's amendment, NO_x emissions from steam generating units firing mixtures of natural gas and wood were limited to 86 ng/J (0.20 lb/million Btu) heat input. Since promulgation of 40 CFR Part 60 Subpart D in 1976 (41 FR 51397), a number of steam generating units firing mixtures of natural gas and wood have been constructed. Results from extensive emission tests indicate a NO_x emission limit of 86 ng/J (0.20 lb/million Btu) heat input is not achievable on a continuous basis for units firing mixtures of natural gas and wood.

Therefore, this action amends the NO_x standard for steam generating units subject to 40 CFR Part 60 Subpart D, which fire mixtures of natural gas and wood to 129 ng/J (0.30 lb/million Btu) heat input. The technical database supporting this emission limit is discussed in 40 CFR Part 60 Subpart Db (which is being promulgated in a separate document in today's Federal Register).

This amendment applies to all steam generating units firing mixtures of natural gas and wood that are larger than 73 MW (250 million Btu/hour) heat input capacity and that commenced construction after August 17, 1971. Without such a change, natural gas- and wood-fired steam generating units constructed after June 19, 1984 would be subject to a 129 ng/J (0.30 lb/million Btu) heat input NO_x emission limit under 40 CFR Part 60 Subpart Db, while older units constructed between August 17, 1971 and June 19, 1984 (Subpart D) would be subject to a more restrictive NO_x emission limit of 86 ng/J (0.20 lb/million Btu) heat input. The amended NO_x standard being promulgated today corrects that inconsistency.

Environmental, Energy, and Economic Impacts

The environmental, energy, and economic impacts associated with the promulgated standard are discussed in the preamble to Subpart Db (standards of performance for industrial-commercial-institutional steam generating units) which is printed separately in today's Federal Register.

Public Participation

This amendment to Subpart D was proposed and published in the Federal Register on December 2, 1985 (50 FR 49422). Public comments were solicited at the time of proposal. Notice of a public hearing was also given to provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standard. No requests to present oral testimony were received.

The public comment period was from December 2, 1985 to February 18, 1986. Four comment letters were received and were given consideration.

Significant Comments and Changes to the Proposed Standard

Comments on the proposed standard were received from industry and industrial trade associations. All of the comments endorsed the adoption of the proposed amendment. Consequently, the NO_x emission limit being amended today is the same as the proposed amendment [129 ng/J (0.30 lb/million Btu) heat input] for affected facilities firing mixtures of natural gas and wood.

Background Information Document. The background information documents (BID) for the promulgated standards under Subpart Db that contain background information related to this action may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to EPA–450/3–82–006a "Fossil Fuel-Fired Industrial Boilers—Background Information Volume 1: Chapters 1–9," EPA–450/3–82–006b "Fossil Fuel-Fired Industrial Boilers—Background Information Volume 2: Appendices," EPA–450/3–82–007 "Nonfossil Fuel-Fired Industrial Boilers—Background Information," and EPA–450/3–86–003 "Fossil and Nonfossil Fuel-Fired

Industrial Boilers—Background Information for Promulgated PM and NO_x Standards." The BID Volumes 1 and 2 contain technical and source emission data, and analyses of regulatory alternatives and economic and environmental impacts. The BID for the promulgated standards contains a summary of all the public comments made on the proposed Subpart Db standards and includes a summary of public comments received concerning this action, and the final Environmental Impact Statement, which summarizes the impacts of the standards.

Docket. A docket, number A–79–02, contains supporting information considered in development of the Subpart Db promulgated standards and includes a review of data pertaining to the proposed amendment that were not available in 1976 when 40 CFR Part 60 Subpart D was adopted. The docket is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE–131), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

Administrative

The docket is an organized and complete file of all the information considered in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review [Section 307(d)(7)(A)]. A discussion of the technical database supporting the proposed amendment to 40 CFR Part 60 Subpart D can be reviewed in Docket No. A–79–02. This docket contains supporting information used in developing the 40 CFR Part 60 Subpart Db standards and includes a review of data that were not available in 1976 when 40 CFR Part 60 Subpart D was adopted.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for the promulgation or substantial revision of any new source standard of performance promulgated under Section 111(b) of the Act. Because this revision is not substantial, an economic impact assessment was not prepared. However, an economic assessment was previously prepared for 40 CFR Part 60 Subpart D which considered other regulatory alternatives. All aspects of the assessment were considered in the formulation of the 40 CFR Part 60 Subpart D standards to ensure that cost was carefully considered in determining the best demonstrated technology. Under this action the best demonstrated technology remains the same; therefore, there is no additional economic impact. The economic impact assessment is included in the BID for the proposed 40 CFR Part 60 Subpart D standards.

There are no information collection requirements associated with this amendment to 40 CFR Part 60 Subpart D. Information collection requirements associated with 40 CFR Part 60 Subpart D have previously been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and were assigned OMB control number 2060–0026.

Under Executive Order 12291, the Administrator is required to judge whether a regulation is a "major rule" and therefore subject to the requirements of a regulatory impact analysis (RIA). This amendment would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule." This action has been submitted to OMB for review under Executive Order 12291.

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because this action imposes no adverse economic impacts, a Regulatory Flexibility Analysis has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference.

Dated: October 31, 1986.

Lee M. Thomas,

Administrator.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for Part 60 continues to read as follows:

Authority: 42 U.S.C. 7411 and 7601(a).

2. 40 CFR Part 60, § 60.44 is amended by revising paragraphs (a)(1) and (a)(2) as follows:

§ 60.44 Standards for nitrogen oxides.

(a) * * *

(1) 86 nanograms per joule heat input (0.20 lb per million Btu) derived from gaseous fossil fuel.

(2) 129 nanograms per joule heat input (0.30 lb per million Btu) derived from liquid fossil fuel, liquid fossil fuel and wood residue, or gaseous fossil fuel and wood residue.

* * * * *

[FR Doc. 86–25587 Filed 11–24–86; 8:45 am]

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Part VI

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources—Magnetic Tape Manufacturing Industry; Withdrawal of Proposed Rule for Solvent Storage Tanks

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3083-1]

Standards of Performance for New Stationary Sources—Magnetic Tape Manufacturing Industry; Withdrawal of Proposed Rule for Solvent Storage Tanks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of Proposed Rule for Solvent Storage Tanks.

SUMMARY: On January 22, 1986, EPA proposed new source performance standards (NSPS) limiting atmospheric emissions of volatile organic compounds (VOC's) from magnetic tape manufacturing facilities (51 FR 2996). Comments were received on the cost to comply with the proposed standard for solvent storage tanks. The Agency has reviewed these comments, prepared a revised cost analysis, and concluded that no cost-effective control options beyond existing practice are available for solvent storage tanks at magnetic tape facilities. Today's notice, therefore, withdraws the proposed rule for solvent storage tanks at magnetic tape manufacturing facilities.

ADDRESSES: *Docket.* Information used by EPA in the determination to rescind the proposed storage tank NSPS is contained in Docket No. A–82–45, which is available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday, at EPA's Central Docket Section (A–130), West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For further information on the policy aspects of this announcement, contact Cynthia Dowd-Monroe (telephone number (919) 541–5578); for information on the technical aspects, contact Jim Berry (telephone number (919) (541–5605), Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. Background

On January 22, 1986, pursuant to section 111 of the Clean Air Act as amended, EPA proposed standards of performance to limit VOC emissions from new solvent storage tanks at magnetic tape manufacturing facilities (51 FR 2996). The proposed regulation required the installation and use of pressure relief valves set at 103 kilopascals (kPa) on each tank for which construction began on or after January 22, 1986 (the date of proposal). Volume I of the background information document (BID) contains an analysis of the control options for VOC emissions from solvent storage tanks less than 75 cubic meters (m^3) in capacity located at magnetic tape plants. (Tanks larger than 75 m^3 were excluded from consideration because they would be covered under the proposed NSPS for volatile organic liquid storage vessels.) Three control options were considered in the analysis presented in the BID: (1) Carbon adsorbers, (2) pressure relief valves set at 103 kPa, and (3) conservation vents set at 17.2 kPa. The analysis concluded that both pressure relief valves and conservation vents were cost-effective means of controlling emissions and that the highest level of control (carbon adsorbers) was not cost effective (average cost effectiveness of $7,100/megagram (Mg)). Pressure relief valves achieve a higher level of control than conservation vents; therefore, they were the basis of the proposed standard.

Implicit in the requirement for pressure relief valves set at 103 kPa is that the tank would be a pressure vessel built in accordance with American Society of Mechanical Engineers (ASME) codes. The baseline case (i.e., the type tank that would be installed in the absence of an NSPS) is a tank operated at atmospheric pressure. To compare the costs of ASME pressure vessels and atmospheric tanks, EPA gathered data for both ASME pressure vessels and tanks built to American Petroleum Institute (API) specification 12F. The data indicated that there was no significant cost difference between ASME pressure vessels and tanks built to the specifications of API 12F. On the basis that no additional cost would be incurred to obtain the higher level of control achieved by pressure vessels equipped with pressure relief valves, the proposed standard required the installation and use of pressure relief valves.

On March 11, 1986, a public hearing was held to allow oral comments on all aspects of the proposed standard. At this hearing and in subsequent written comments, industry representatives stated that an inappropriate baseline was selected for comparison to the various control options and that the cost of necessary ancillary equipment was not included in the cost analysis. According to the commenters, these factors would increase the cost difference between baseline and the proposed standard, resulting in increased cost-effectiveness values.

II. Comments

The commenters stated that instead of the vertical, atmospheric tank designed to meet API standard 12F proposed as baseline in the BID, the baseline should be a horizontal atmospheric tank designed to meet Underwriters Laboratories (UL) specification No. 142 or No. 58. The commenters stated that if an API 12F tank were installed at a manufacturing facility, the facility would not be in compliance with Occupational Safety and Health Administration (OSHA) regulations (29 CFR 1910.106) which restrict the use of API 12F tanks to production liquids in the oil industry. The commenters also contended that there is a significant cost differential between tanks built to the UL specifications and pressure vessels built to ASME specifications.

Additionally, commenters made the following statements about EPA's cost analysis:

1. The EPA's cost analysis was based on a 5-centimeter (cm) diameter pressure relief valve which would not comply with the emergency venting requirements of OSHA regulation 29 CFR 1910.106. A more expensive 15.2-cm diameter pressure relief valve would be required;

2. More complex and expensive equipment to measure liquid levels would be necessary in pressure vessels; and

3. The cost estimate for pressure vessels should have included the cost of additional land area to comply with fire codes.

III. Cost Reevaluation

After evaluating these comments, the Agency has determined that commenters are correct in noting the conflict between the baseline case in the original cost analysis and OSHA requirements and in asserting that a 37-m^3 pressure vessel would require a 15.2-cm diameter pressure relief valve to comply with OSHA regulations, that additional costs for liquid level measuring gauges would be incurred, and that additional land area could be required. Therefore, the cost analysis presented in the BID was reevaluated. This analysis is contained in Docket No. A–82–45, Item IV–B–2.

For this reevaluation, EPA attempted to ascertain the baseline tank from the types of tanks already in use. However, representatives of plants that EPA contacted were unable to cite the design specifications of their tanks because the records had been lost, the tanks were built before the representative joined the company, or the tanks are a very small concern in plant construction, etc. Atmospheric tanks designed to UL specification No. 142 or No. 58 or API specification 650 are technically feasible for baseline. The Agency assumed that the baseline tank type would be the design that meets all applicable codes and regulations for the least cost. In recent price quotations received from several vendors and commenters, the price of a 37-m³ atmospheric tank designed to UL specifications ranged from $4,400 to $5,200 and averaged $4,800 while the price of the same size tank designed to API specification 650 was $11,300. Considering the lower cost for UL tanks, it seems probable that most industry representatives would elect to use tanks constructed to UL specifications. Therefore, for the purpose of this reevaluation, it was first assumed that the baseline tank would be constructed to UL specifications.

The cost estimates received for a 37-m³ pressure vessel equipped with pressure relief valves set at 103 kPa designed to ASME codes ranged from $13,700 to $16,000 and averaged $14,800. The difference between the average capital cost of a UL tank and that of a pressure vessel is $10,000. This cost would raise the cost-effectiveness value of controlling emissions with pressure relief valves set at 103 kPa from a net credit to about $8,400/Mg. This is judged to be unreasonable for this industry.

Because of the uncertainty over whether a UL tank or an API 650 tank is the correct baseline, EPA also examined whether installation of a pressure vessel is cost effective when compared to an API 650 tank as baseline. The capital cost differential between the API 650 cost estimate and the average pressure vessel cost is about $3,500. This capital cost results in a cost-effectiveness value of about $2,100/Mg for controlling emissions with pressure relief valves. This also is judged to be unreasonable for this industry. Because these cost-effectiveness values are unreasonable for this industry for all cases when tank costs alone are considered, it is clear that inclusion of costs for additional land area or ancillary equipment would only make the control option less cost effective.

IV. Alternative Control Technology

The cost-effectiveness values in the original cost analysis presented in the BID for the control option requiring installation of conservation vents were reasonable. However, that analysis assumed that the same type of tank could be used for both the baseline case and the conservation vent option and that the only expense incurred would be for the vent itself. Since that time, the Agency has determined that for a pressure setting of 17.2 kPa, an API 620 tank, which can be designed for pressures up to 103 kPa, must be used and that an emergency vent must also be installed. An API 620 tank would be more expensive than an API 650 tank because the higher internal pressures require more complex construction such as dished bottoms and tie-downs. In addition, costs for this control option are also incurred for the vent itself ($990) and for a 20-cm diameter emergency vent ($2,100). If, as an estimate, the tank cost is assumed to be equivalent to that of an API 650 tank ($11,300), the minimum capital cost of the conservative vent option would be $14,390. This option would require an incremental capital cost of $9,590 relative to a UL 142 tank and $3,090 relative to an API 650 tank. Including only these factors in the capital costs, the cost-effectiveness values of conservation vents relative to a UL 142 tank and an API 650 tank are $11,400/Mg and $2,800/Mg, respectively. Both of these values would be higher if the actual higher costs of an API 620 tank were used instead of assuming that the capital cost is the same as that of an API 650 tank. Thus, there is no alternative control technology to pressure relief valves that could be used as the basis of a revised NSPS.

V. Conclusion

In summary, the Agency has reevaluated the cost of the proposed NSPS based on industry comments and new data. Whether UL tanks or API 650 tanks are the correct baseline, the cost-effectiveness of the proposed NSPS for solvent storage tanks is unreasonable. The cost-effectiveness values of a higher level of control (carbon adsorption) and of a lower level of control (conservation vents) are also unreasonable. Thus, there is no cost-effective control option for solvent storage tanks. Accordingly, the rule for solvent storage tanks proposed at 51 FR 2996 on January 22, 1986, is withdrawn.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference, Magnetic tape manufacturing (SIC Codes 3679, 3373).

Dated: November 7, 1986.

Lee M. Thomas,

Administrator.

[FR Doc. 86-26512 Filed 11-24-86; 8:45 am]

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Part VII

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 52

Federal Acquisition Regulation (FAR); Service of Protest Clause; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

Federal Acquisition Regulation (FAR); Service of Protest Clause

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a revision to Federal Acquisition Regulation (FAR) 52.233-2, Service of Protest, that would (1) clarify service of protest requirements and (2) provide for designation of officials or locations where an information copy of the protest must be delivered.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before January 26, 1987, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 86-58 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The proposed revision to FAR 52.233-2 is expected to have a slight beneficial impact on small entities under the Regulatory. Flexibility Act (5 U.S.C. 601, et seq.); however the magnitude of that impact cannot be determined from available data. Comments are invited.

B. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because the proposed revision to FAR 52.233-2 does not impose any additional reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: November 14, 1986.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Part 52 be amended as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for Part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

2. Section 52.233-2 is amended by removing in the title of the clause the date "(JAN 1985)" and inserting in its place the date "(NOV 1986)" and by revising the provision to read as follows:

52.233-2 Service of protest.

As prescribed in 33.106, insert the following provision:

Service of Protest (Nov 1986)

(a) *Definition.* "Protest," as used in this provision, means a written objection by an interested party to a solicitation by an agency for offers for a proposed contract for the acquisition of supplies or services or a written objection by an interested party to a proposed award or the award of such a contract.

(b) *General.* Protests filed directly with an agency and copies of any protests that are filed with the General Accounting Office (GAO) or the General Services Administration Board of Contract Appeals (GSBCA) shall be served on the Contracting Officer, by obtaining written and dated acknowledgment of receipt from

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The copy of any such protest must be received in the office or offices designated above on the same day a protest is filed with the GSBCA, or within one day of filing a protest with the GAO.

(Contracting Officer designate the official or location where a protest may be served on the Contracting Officer. Contracting Officer may designate, in accordance with agency procedures, the official or location where an information copy of the protest must be delivered.)

(End of provision)

[FR Doc. 86-26488 Filed 11-24-86; 8:45 am]

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Part VIII

Department of Transportation

Research and Special Programs Administration

Southern Pacific Transportation Company Application for Inconsistency Ruling; Public Notice and Invitation to Comment

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. IRA-39]

Southern Pacific Transportation Company Application for Inconsistency Ruling; Public Notice and Invitation to Comment

AGENCY: Research and Special Programs Administration; DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: Southern Pacific Transportation Co. (SP) has applied for an administrative ruling to determine whether §§ 705.310–705.380 of the Nevada Administrative Code, promulgated by the Nevada Public Service Commission (NPSC), are inconsistent with the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR) issued thereunder, and, therefore, preempted under section 112(a) of the HMTA. The NPSC regulations establish a permit system which governs the rail transportation, storage, loading and unloading of certain hazardous materials in Nevada.

DATES: Comments received on or before January 8, 1987, and rebuttal comments received on or before February 23, 1987, will be considered before an administrative ruling is issued by the Director of the Office of Hazardous Materials Transportation. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and any comment received may be reviewed in the Dockets Branch, Research and Special Programs Administration, Room 8426, Nassif Building, 400 7th Street SW., Washington, DC 20590. Comments and rebuttal comments on the application may be submitted to the Dockets Branch at the above address, and should include the Docket Number IRA-39. Three copies are requested. A copy of each comment and rebuttal comment also must be sent to SP's counsel, John MacDonald Smith, Esq., Southern Pacific Building, One Market Plaza, San Francisco, CA 94105 and to Mr. Scott M. Craigie, Chairman, Public Service Commission of Nevada, 505 East King Street, Carson City, NV 89710, and that fact certified to at the time the comment is submitted to the Dockets Branch. (The following format is suggested: "I hereby certify that copies of this comment have been sent to Messrs. Smith and Craigie at the addresses specified in the Federal Register.")

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Office of the Chief Counsel, Research and Special Programs Administration, 400 7th Street SW., Washington, DC 20590, Telephone 202-366-4401.

SUPPLEMENTARY INFORMATION:

1. Background

The HMTA (49 U.S.C. app. 1801 *et seq.*) at section 112(a) (49 U.S.C. app. 1811(a)) expressly preempts "any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement" of the HMTA or the HMR issued thereunder.

Procedural regulations implementing section 112 of the HMTA are codified at 49 CFR 107.201–107.225. These regulations provide for the issuance of inconsistency rulings and nonpreemption determinations. Briefly, an inconsistency ruling is an administrative option as to the relationship between a state or political subdivision requirement and a requirement of the HMTA or HMR. Section 107.209(c) sets forth the following factors which are considered in determining whether a state or political subdivision requirement is inconsistent:

(1) whether compliance with both the state or political subdivision requirement and the HMTA or HMR is possible (the "dual compliance" test); and

(2) the extent to which the state or political subdivision requirement is an obstacle to the accomplishment and execution of the HMTA and the HMR (the "obstacle" test).

2. Application for Inconsistency Ruling

Southern Pacific Transportation Company (SP) has filed an application for an administrative ruling seeking a determination that sections 705.310–705.380 of the Nevada Administrative Code are inconsistent with the HMTA and the HMR. The Nevada provisions require railroads to obtain permits from NPSC before the railroads may load or unload certain hazardous materials onto or from railroad equipment while on railroad property; transfer certain hazardous materials from property owned or controlled by the railroad to another means of transportation; or store defined hazardous materials on property owned or under the control of a railroad, except on a through track. These regulatory provisions contain permit application requirements, application evaluation criteria, permit expiration and renewal procedures, suspension or revocation criteria, and notice procedures. Sections 705.310–705.380 are reprinted as Appendix A to this Notice.

SP contends that the Nevada provisions are inconsistent for five general reasons:

They require different treatment and handling of certain commodities because of their DOT classifications as hazardous materials.

(2) They require the preparation of lengthy, cumbersome permit applications, replete with irrelevant and extraneous detail, before the defined hazardous materials may be loaded, unloaded, transferred, stored or temporarily held in transit.

(3) They involve extensive delays and require hazardous materials to be held in other states pending admission into Nevada.

(4) The required application information goes far beyond that required on Department of Transportation (DOT) shipping papers.

(5) Permit processing delays result in NPSC having uncontrolled discretion over the transportation of hazardous materials in Nevada.

SP asserts that NPSC is not empowered under HMTA to dictate in what manner (i.e., trailer on flatcar or container on flatcar) hazardous materials may be transported to or from transfer points in Nevada. Additionally, SP states that NPSC may not exercise general regulatory control over the loading, unloading, and storing of hazardous materials and is not empowered to dictate when, where and under what conditions these activities may take place on railroad property. SP specifically alleges that NPSC's prohibition against holding cars at any rail yard, siding or intermediate point for more than 48 hours is inconsistent with 49 CFR § 174.14.

The applicant alleges the below-described specific conflicts between the Nevada regulations and the following Federal regulations:

(1) 49 CFR 174.5, which exempts from regulation under the HMR railway torpedoes or fusees.

(2) 49 CFR 218.37(a)(1)(iii), which requires a trainman to place a track torpedo on the rail or drop a lighted fusee on the truck for rear-end protection;

(3) 49 CFR 174.16, which requires certain unloading from rail cars or storage on the carrier's property; and

(4) 49 CFR 174.103, which requires certain unloading or immediate removal of damaged or astray shipments.

SP contends that the permit process takes months and ultimately leaves to the uncontrolled discretion of NPSC whether railroads may transport hazardous materials to or from Nevada. SP supports this allegation by pointing to an ongoing application which allegedly has been filed and not acted upon for 10 months.

Also, the applicant contends that Federal laws and regulations require SP, as a common carrier, to promptly transport all hazardous materials which are prepared, packaged and tendered in accordance with DOT regulations; therefore, SP states, it does not have authority to refuse shipments from customers and connecting carriers until a state permit is obtained. In essence, SP contends it cannot comply with both the Federal and state requirements.

SP further contends that NAC § 705.330(l)(i) improperly attempts to place the governmental responsibility for contingency planning on railroad carriers.

Additionally, a SP requests an expeditious determination of whether NPSC's regulations are inconsistent because, it asserts, 21 criminal proceedings have been instituted against SP or its employees because of alleged noncompliance with the Nevada regulations. These criminal proceedings relate to movements of explosives to and from the Army Ammunition Plant at Hawthorne, Nevada. SP has attached to its application an affidavit of William R. Lucas, Deputy Director for Inland Traffic of the Military Traffic Management Command (MTMC), in which he asserts that prompt and efficient railroad service is necessary to support the national defense effort and that Nevada's regulations adversely affect such service.

Finally, SP asserts that the amount of information needed to comply with the permit regulation causes an inherent time lag and adversely affects SP and its customers. Consequently, SP states, the regulations of NPSC are an obstruction to the free flow of commerce.

3. Public Comment

Comment should be restricted to the issue of whether the challenged NPSC regulations are inconsistent with the HMTA or the HMR issued thereunder.

Persons intending to comment on the application should examine the complete application in the RSPA Dockets Branch, the procedures governing the Department's consideration of applications for inconsistency rulings (49 CFR 107.201–107.211), and the cited NPSC regulations in Appendix A to this notice.

Issued in Washington, DC on November 19, 1986.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

APPENDIX A

Nevada Administrative Code

Transportation of Hazardous Material by Rail

705.310 Definitions.

As used in NAC 705.310 to 705.380, inclusive, unless the context otherwise requires:

1. "Commission" means the public service commission of Nevada.

2. "Hazardous material" means low specific activity material as defined in 49 CFR 173.403(n) and radioactive material as defined in 49 CFR 173.403(y) and:

(a) Class A explosives as defined in 49 CFR 173.53;

(b) Class B explosives as defined in 49 CFR 173.88;

(c) Poison A as defined in 49 CFR 173.26; and

(d) Flammable solids (DANGEROUS WHEN WET labels only) as defined in 49 CFR 173.150, which are subject to the requirements for placards in Table 1 of 49 CFR 172.504.

3. "Storage" means keeping any hazardous material for more than 48 hours.

705.320 Activities for which permit required.

A person shall not:

1. Load or unload hazardous material or containers carrying hazardous material onto or from railroad equipment on property owned by or under the control of a railroad;

2. Transfer hazardous material from property owned by or under the control of a railroad to another means of transportation; or

3. Store hazardous material on property owned by or under the control of a railroad, except a through track, without a permit issued by the commission.

705.330 Application for permit; fee.

1. An application for a permit must include:

(a) A map of the proposed site for loading, unloading, storage or transfer, including the indicators of its location on the track and all structures at the site;

(b) A report identifying each switch, siding, spur or branch of track at the site and its purpose;

(c) A copy of any report made by a federal or state inspector during the preceding 6 months on defects in the track and the remedial action taken;

(d) A summary of all major construction or other work on the track at the site during the preceding year;

(e) A summary of all hazardous material carried by the railroad during the preceding 12 months;

(f) A summary of all unintended releases of hazardous material during the preceding 12 months which were reported by the applicant pursuant to 49 C.F.R. §§ 171.16 and 171.17;

(g) An outline of the procedure to be used in the loading, unloading, transfer or storage of the hazardous material;

(h) A description of the measures to be used by the railroad to ensure that the hazardous material is safe from vandalism, theft or sabotage; and

(i) An outline of all plans to be used in the event of an accident.

2. The application must be accompanied by a fee of $200.

705.340 Evaluation of application.

In evaluating an application for a permit, the commission will consider:

1. The topography of the proosed site;

2. The proximity of the proposed site to:

(a) Centers of population;

(b) Heavily traveled highways;

(c) Hospitals;

(d) Schools;

(e) Sources of water; and

(f) Other sites for the storage of hazardous material;

3. The expected duration of the operation at the site;

4. The availability of alternative sites;

5. The quality of the track;

6. The security at the site.

7. The plans to be used in the event of an accident at the site;

8. The equipment and resources available in the event of an accident at the site; and

9. Any other pertinent information requested by the commission.

705.350 Expiration and renewal of permit.

1. A permit issued by the commission is valid for 1 year. Upon a showing of compelling need, the commission may issue a temporary permit which is valid while the application for an annual permit is pending.

2. An annual permit may be renewed if the applicant:

(a) Certifies that the information submitted in the original application is still correct, or he files such amendments to previously submitted information as are necessary to keep the information current; and

(b) Files a statement:

(1) Describing any relevant accident or release of hazardous materials since the issuance or renewal of the permit, or if an accident or release has not occurred, a certification to that effect; and

(2) Summarizing the loading, unloading, transfer or storage conducted pursuant to the permit, as well as any incident involving the hazardous material.

3. An application for renewal must be submitted at least 60 days before the expiration of the permit and be accompanied by a fee of $200.

4. If, at least 60 days before the expiration of the permit, the holder of a permit files an application for renewal which is complete and conforms with the requirements of this section, the permit does not expire until the application for renewal has been finally determined.

705.360 Suspension or revocation of permit.

A permit may be suspended or revoked by the commission if:

1. An activity is being performed in violation of the terms of the permit;

2. The suspension or revocation is necessary to protect against risks to life and property; or

3. The permit was issued on the basis of false, fraudulent or misleading representations or information.

705.370 Notice of application; dismissal of application for lack of information.

1. The commission will give notice of any application received by it for a permit or renewal of a permit at least 30 days before the date on which the commission intends to take action.

2. The commission will dismiss an application for a permit without prejudice if:

(a) There is insufficient information upon which to issue a permit; or

(b) Additional information is requested by the commission from the applicant but not submitted.

705.380 Adoption of federal regulations by reference.

1. Every railroad subject to regulation by the commission shall comply with the provisions of 49 CFR Parts 171, 172, 173 and 174, as those parts existed on November 1, 1985. Those parts are hereby adopted by reference.

2. A copy of a publication containing Parts 100 to 177, inclusive, of Title 49 of the Code of Federal Regulations may be obtained at a price of $14 from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402.

[FR Doc. 86-26523 Filed 11-24-86; 8:45 am]

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federal register

Tuesday
November 25, 1986

Part IX

Environmental Protection Agency

40 CFR Part 763

Strategies for Implementing the Asbestos Hazard Emergency Response Act; Open Meeting; Notice

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 763

[OPTS-62049; FRL 3119-8]

Strategies for Implementing the Asbestos Hazard Emergency Response Act; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be an open meeting to discuss the strategies EPA will use to implement the Asbestos Hazardous Emergency Response Act (AHERA). EPA invites interested persons to attend.

DATE: The meeting will be held on Monday, December 8, 1986, from 1 p.m. to 4 p.m..

ADDRESS: The meeting will be held in: North Conference Room 3, Washington Information Center, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, Office of TSCA Assistance (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-543, 401 M Street SW., Washington, DC 20460 (202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Background

On October 22, 1986, President Reagan signed into law the Asbestos Hazard Emergency Act of 1986, Public Law 99-519. AHERA requires EPA to promulgate regulations pertaining to the inspection and abatement of asbestos-containing materials (ACM) in public and private schools. Specifically, AHERA also requires EPA to develop regulations which include requirements for local education agencies (LEAs) to conduct inspections of their school buildings for asbestos-containing materials (ACM), develop asbestos management plans, submit these plans to their State Governor, and implement appropriate response actions. Under AHERA, EPA must develop model State accreditation programs for persons who work in the asbestos abatement industry. States are required to initiate accreditation programs for persons who perform inspections, prepare management plans, and conduct response actions. Finally, AHERA requires EPA to conduct studies on asbestos-related issues.

AHERA provides specific deadlines for EPA, LEAs, and States to carry out the provisions of the Act. Therefore, EPA is holding an open meeting on December 8, 1986, so that persons who may be affected by AHERA and any regulations or policies EPA may develop under the Act, have an opportunity to discuss EPA's schedule for, and their participation in, the regulatory development process.

II. Major Requirements of AHERA

Under AHERA, EPA is directed to promulgate regulations which provide a framework for addressing asbestos problems in public and private schools. The statute sets deadlines of 180 days after enactment for EPA to issue proposed rules and 360 days for issuance of final rules. EPA must develop regulations which include requirements for: (1) The inspection of all public and private school buildings for ACM; (2) the identification of circumstances requiring response actions; (3) descriptions of the appropriate response actions; (4) the implementation of response actions; (5) the establishment of a periodic surveillance program for ACM, or an operations and maintenance program for friable ACM; (6) the preparation and implementation of asbestos management plans by LEAs; (7) the submission of the management plans to State Governors, who may review the plans and approve or disapprove them; and (8) the transportation and disposal of waste ACM.

AHERA also provides that no person may inspect for ACM in a school building, prepare a management plan for an LEA, or design or carry out response actions unless that person has been accredited under a State program in accordance with AHERA or has been accredited pursuant to a course approved by EPA. To implement this provision EPA must, within 180 days of enactment of AHERA, develop a model State accreditation program. Further, within 180 days after the date of enactment of AHERA, EPA must ensure that any EPA-approved course is consistent with EPA's model accreditation plan. State legislatures are to adopt accreditation programs at least as stringent as EPA's model.

Finally, EPA will conduct two studies under AHERA; one relating to asbestos in public buildings, a second on the issue of liability insurance and the asbestos abatement industry.

III. Issues To Be Discussed at the Meeting

EPA has begun to analyze the requirements of the legislation and identify issues to be resolved during the implementation of AHERA. To encourage public participation in the regulatory development process, the Agency will hold an open meeting for interested parties to discuss the requirements of AHERA on Monday, December 8, 1986, from 1 to 4 p.m. at the Washington Information Center in the North Conference Room 3. Interested parties should include persons and organizations who might be affected by regulations or policies developed under the Act.

Topics to be covered at the meeting will include: (1) Key issues and preferred policy outcomes regarding regulations on LEA inspections, management plans, and periodic surveillance activities for ACM; (2) key issues and preferred policy outcomes regarding regulations on response actions and operations and maintenance plans for ACM; and (3) key issues and preferred policy outcomes regarding State accreditation programs for persons who inspect for asbestos, develop management plans, or conduct response actions. Interested parties are invited to consult the advance notice of proposed rulemaking published in the **Federal Register** of August 12, 1986 (51 FR 28914) for a discussion of several related options which were under consideration by EPA before the passage of AHERA. Copies of the notice are available by contacting the Office of TSCA Assistance.

EPA is considering a variety of approaches to encourage public participation in the regulatory development process. The Agency is interested in discussing suggestions for enhancing public participation at the open meeting. Interested parties should also be prepared to discuss approaches which will maximize the benefit of public participation in the development of regulations and other policies under AHERA.

IV. Potential Interested Parties

When considering persons and organizations who may be interested in attending the open meeting, EPA identified the following categories of potential interested parties.

Education Groups

National Parents and Teachers' Association
Council on American Private Education
United States Catholic Congress
National School Boards Association

Unions

National Education Association
Service Employees International Union

Industry Groups

Asbestos Information Association

Safe Building Alliance
American Wall and Ceiling Institute

State Interest Groups

National Governors' Association
National Council of State Legislatures

These, and any other interested persons or groups, are specifically invited to attend the meeting and participate in the discussion.

Dated: November 21, 1986.

Susan F. Vogt,

Acting Deputy Director, Office of Toxic Substances.

[FR Doc. 86-26693 Filed 11-24-86; 8:45 am]

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For information on briefings in New York, NY, and Pittsburgh, PA, see announcement on the inside cover of this issue.

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Pittsburgh, PA

RESERVATIONS: Kenneth Jones or Lydia Shaw
Pittsburgh: 412-644-INFO
Philadelphia: 215-597-1707, 1709

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Presidential Documents

Title 3—

The President

Proclamation 5577 of November 24, 1986

American Indian Week, 1986

By the President of the United States of America

A Proclamation

The Americans we know as American Indians and Native Americans were the first explorers and settlers of the areas that now make up the United States. Mountain and river, lake and valley, State and county, trail and town across the land bear Indian names; they are lasting reminders of the presence and the significance of American Indians not just in our geography but throughout the whole of American history.

Many of the foods we eat and the medicines and remedies we use were introduced by Indians, and more than one highway follows an Indian trail. Indians make contributions in every area of endeavor and American life, and our literature and all our arts draw upon Indian themes and wisdom. Countless American Indians have served in our Armed Forces and have fought valiantly for our country. All Americans are grateful for these lasting contributions.

We look to the future with the expectation of even stronger tribal governments and lessened Federal control over tribal government affairs. We look to a future of development of economic independence and self-sufficiency, and an enhanced government-to-government relationship that will allow greater Indian control of Indian resources.

During the Thanksgiving season, generations of Americans have been reminded of the early friendship of the Pilgrims and American Indians. We give thanks to God for the friendship, cooperation, and brotherhood between American Indians and other Americans, as we thank Him for all the many blessings He bestows on us. We thank Him for all that American Indians and Native Americans have meant and continue to mean to American life.

The Congress, by Public Law 99–471, has designated the week of November 23 through November 30, 1986, as "American Indian Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning November 23 through November 30, 1986, as American Indian Week, and I request all Americans to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of November, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc 83–26874
Filed 11-25-86; 11:12 am]
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Presidential Documents

Proclamation 5578 of November 24, 1986

National Family Caregivers Week, 1986

By the President of the United States of America

A Proclamation

America is the land of opportunity. But few Americans stop to think that among our greatest opportunities is a longer life span than previous generations ever would have dreamed possible.

Americans are living longer, and their lives are more productive than ever before. The number of people 65 years old or older continues to grow rapidly, and there has been an unprecedented increase in persons 85 or older. With this blessing comes the reality that advancing age can bring increased frailty and disability. Some 5.2 million people have disabilities that leave them in need of help with such daily tasks as dressing, bathing, and food preparation.

The prime source of such care for these people is their families. These loving family caregivers provide 80 to 90 percent of the medical care, household maintenance, transportation, and shopping needs of older persons. Too little recognition is given in our society to those who perform such a labor of familial love. Anyone who has personally cared for a loved one or who has witnessed such care knows that, however gratefully received, the effort is often physically and emotionally challenging.

For these reasons, it is important that all Americans have a greater awareness of and support for the vital role of family caregivers. I also ask individual Americans to think about the older people in their neighborhoods, to lend a hand when the opportunity presents itself, and to offer a friendly smile of greeting to older people. This is a wonderful way to repay the lifetime of care, kindness, and assistance that older people have already given others. It is also a fine way to discover afresh that older Americans, despite the disabilities they might have, can give everyone a great deal of love, wisdom, and friendship in return.

The Congress, by Public Law 99-477, has designated the week beginning November 24, 1986, as "National Family Caregivers Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning November 24, 1986, as National Family Caregivers Week. I call upon the American people, State and local governments, communities, neighbors, and other interested persons to observe this occasion with appropriate activities and ceremonies.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of November, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-26875
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1137

Milk in the Eastern Colorado Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action continues to suspend through February 1987 portions of the Eastern Colorado Federal milk order that relate to the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Also suspended for the same period is the "touch-base" requirement that each producer's milk be received at least three times each month at a pool distributing plant. Continued suspension of the provisions was requested by a cooperative association representing producers supplying the market in order to prevent uneconomic movements of milk.

EFFECTIVE DATE: November 26, 1986.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued October 28, 1986; published November 3, 1986 (51 FR 39863).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Eastern Colorado marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on November 3, 1986 (51 FR 39863) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. No comments opposing the proposed suspension were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for the months of November 1986 through February 1987 the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing plant".
2. In the second sentence of § 1137.12(a)(1), the words "30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of" and "distributing".

Statement of Consideration

This action continues for the months of November 1986 through February 1987 suspension of the limit on the amount of producer milk that a cooperative association may divert from pool plants to nonpool plants, and the requirement that three deliveries of each producer's milk be received at a pool distributing plant each month. Earlier actions suspended these provisions for the months of September 1985 through October 1986.

The order provides that a cooperative may divert a quantity of milk not in excess of 30 percent of the cooperative association's member milk received at pool distributing plants in the months of March, April, May, June, July and December, and 20 percent in other months. The suspension allows up to 50 percent of a cooperative's member milk supply to be diverted to nonpool plants and remain eligible to share in the marketwide pool.

The continued suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association of producers supplying the market. Mid-Am also requested the earlier suspensions. The cooperative association stated that the volume of producer milk pooled on the Eastern Colorado order began to increase following the conclusion of the Milk Diversion Program in 1985, and has continued to increase during 1986. According to the cooperative, Eastern Colorado producer milk during the first 7 months of 1986 increased 10.7 percent over the same period in 1985. At the same time, producer milk used in Class I increased only 1.3 percent. Mid-Am stated that as a result of increased milk production, there are ample supplies of local milk available to meet the fluid requirements of Denver-area distributing plants. The cooperative estimated that approximately 15 loads of producer milk produced in Kansas and Nebraska would have to be shipped to Eastern Colorado pool distributing plants each month in order to qualify Mid-Am producers for continued pool status. The cooperative stated that these shipments would displace Denver-area milk, which would have to be moved to surplus handling plants. Both movements, according to Mid-Am, would represent uneconomic movements of milk. Without the requested continued suspension, the cooperative expects to incur substantial unnecessary costs for the movement of its milk solely for the purpose of pooling the milk of its members currently associated with the Eastern Colorado market.

No comments in opposition to the proposed action were received. Comments supporting the proposed action were filed by Mountain Empire Dairymen's Association (MEDA), a cooperative association representing most of the producers pooled under the order. Mid-Am also filed comments that provided additional information in support of the suspension.

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Milk production is significantly above year-earlier levels and consequently a greater proportion of the available milk supplies will have to be shipped to manufacturing plants for surplus uses. Favorable weather conditions and ample feed supplies provide strong indications that the current production trends will continue, without offsetting increases in Class I use. In view of these circumstances, it is concluded that the suspension of the diversion limits and "touch-base" requirements of the Eastern Colorado milk order should be continued for the months of November 1986 through February 1987 to ensure the orderly marketing of milk supplies. The suspension will prevent uneconomic movements of some milk through pool plants merely for the purpose of qualifying it for producer milk status under the order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that without extensive unnecessary and expensive hauling and handling substantial quantities of milk from producers who regularly supply the market otherwise would be excluded from the marketwide pool, thereby causing a disruption in the orderly marketing of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No views in opposition to this action were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1137

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the following provisions of § 1137.12(a)(1) of the Eastern Colorado order are hereby suspended for the months of November 1986 through February 1987:

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

1. The authority citation for 7 CFR Part 1137 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1137.12 [Amended]

2. In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing plant" are suspended.

3. In the second sentence of § 1137.12(a)(1), the words "30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of" and "distributing" are suspended.

Effective Date: November 26, 1986.

Signed at Washington, DC, on November 19, 1986.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 86–26620 Filed 11–25–86; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1951

Implementation of Administrative Offset

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Farmers Home Administration (FmHA) adds a regulation to permit administrative offset against amounts that would otherwise be paid by other Federal agencies to delinquent FmHA Farmer Program loan borrowers. The objective is to inform the public of the procedures that will be used by FmHA to exercise administrative offset. The intended effect is to allow the Agency to collect amounts that would otherwise be paid to delinquent borrowers.

EFFECTIVE DATE: November 26, 1986. Comments must be submitted on or before December 26, 1986.

ADDRESSES: Send comments, in duplicate, to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348–S, 14th and Independence SW., Washington, DC 20250. All written comments will be available for public inspection during normal working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Bob Nelson, Management Analyst, telephone (202) 475–4705, Farmers Home Administration, U.S. Department of Agriculture, Room 5423, South Agriculture Building, Washington, DC 20250.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined "non-major." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub.L. 91–190, an Environmental Impact Statement is not required.

This activity is listed in the Catalog of Federal Domestic Assistance under Farm Ownership Loans, specifically related to non-farm enterprise loans (No. 10.407) and Soil and Water Loans (SW Loans) (No. 10.416) and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983.) Emergency Loans (No. 10.404) and Farm Operating Loans (No. 10.406) are excluded from the Executive Order.

FmHA is implementing this interim rule immediately with a 30 day comment period. It is the policy of this Department that rules relating to public property, loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. Good cause exists to make this regulation effective immediately and not to publish the regulation as a proposed rule. The rule is interpretative only and publication as a proposed rule is unnecessary. This regulation applies to Farmer Program borrowers who have been offered the opportunity to restructure their debts and whose accounts have been accelerated.

While delinquent debts owed to FmHA remain unpaid, FmHA must borrow money to operate which increases the Federal deficit. Increased Government borrowing causes interest rates to rise and reduces the availability of credit in the country. The Debt Collection Act of 1982 (31 U.S.C. 3701, 3711 and 3716–19), the Attorney General-Comptroller General's joint claims collection standards for agencies (4 CFR Parts 101 through 105) and the Department of Agriculture's debt collection regulations (7 CFR Parts 1 and 3) contain specific and detailed requirements which agencies of the Department must follow in order to collect debts by offset. The FmHA regulation does not add to those existing requirements. The regulation simply restates those requirements and identifies the FmHA employees who are responsible for fulfilling those requirements for FmHA. Publication as a proposed rule is unnecessary because no new requirements or restrictions are imposed on those who are already subject to the Departmental regulation. Making this FmHA regulation effective immediately upon publication is warranted because the regulation does no more than give guidance to FmHA's staff and affected parties as to how the Agency intends to administer the Debt Collection Act, the Attorney General-Comptroller General regulation, and the Departmental regulation.

The reporting requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB Control Number 0575–0119.

List of Subjects in 7 CFR Part 1951

Account servicing, Loan programs—Agriculture, Accounting, Credit.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 42 U.S.C. 1480; CFR 2.70.

2. Subpart C consisting of §§ 1951.101 through 1951.150 is added to read as follows:

Subpart C—Offsets of Federal Payments to FmHA Borrowers

Sec.
1951.101 General.
1951.102–1951.104 [Reserved]
1951.105 Administrative offset.
1951.106–1951.149 [Reserved]
1951.150 OMB control number.

Subpart C—Offsets of Federal Payments to FmHA Borrowers

§ 1951.101 General.

The Federal Claims Collection Act of 1966 as amended by the Debt Collection Act of 1982 and the Deficit Reduction Act of 1984 authorize Farmers Home Administration (FmHA) to use administrative, salary and Internal Revenue Service (IRS) offsets to collect delinquent debts. Any money that is or may become payable from the United States to an FmHA borrower may be subject to offset for the collection of a delinquent debt the borrower owes to FmHA. In addition, money may be collected from an FmHA's borrower's pay for delinquent amounts owed by that borrower to FmHA if the borrower is an employee of a Federal agency, the U.S. Postal Service, the Postal Rate Commission, or a member of the U.S. Armed Forces or the Reserve.

§§ 1951.102–1951.104 [Reserved]

§ 1951.105 Administrative offset.

When a Farmer Program borrower is owed money by another Federal agency (except a tax refund owed by IRS), this section explains how to collect delinquent amounts owed by that borrower to FmHA. Payment up to the delinquent amount will be made to FmHA directly by the other Federal agency. The delinquent amount does not have to be reduced to judgment or be undisputed and the payment does not have to be covered by an FmHA security instrument. Before another Federal agency can be asked to offset any amount, the borrower's account must be accelerated. Offset cannot be used, if, according to State law, accepting a payment after acceleration has the effect of reinstating the account. A State supplement must be issued explaining whether offset can be used in each State. Section 1955.15(d)(3) of Subpart A of Part 1955 of this chapter is not applicable to this situation. Decisions made under the following sections are not appealable under Subpart B of Part 1900 of this chapter.

(a) *Feasibility of administrative offset.* The first step a County Supervisor must take to use this offset procedure is to decide if offset is feasible. If the County Supervisor decides that offset is not feasible, the reasons for this decision will be documented in the running case record and no offset will be made. If offset is feasible, the directions in the following sections will be used to collect by offset. Offset is *not* feasible if:

(1) It is not practical. For example, the cost to the Government of collecting by offset might exceed the amount of the delinquency.

(2) Making the payment directly to FmHA would substantially interfere with or defeat the purpose of the other Federal agency.

(3) The account has not been accelerated.

(4) There are legal obstacles to collecting the debt. For example, if the borrower is under the jurisdiction of a bankruptcy court or if the statute of limitations on collecting the debt has expired, the debt cannot be collected by offset. The State Office should contact the Office of General Counsel (OGC) for advice, if necessary.

(b) *Notice to borrower of administrative offset.* After the County Supervisor has determined it is feasible to collect by offset, the County Supervisor will send the borrower FmHA Form Letter 1951–1 or FmHA Form Letter 1951–2. This will be personally delivered to the borrower or sent by certified mail, return receipt requested, with a copy sent by regular mail on the same day. If the certified mail receipt is returned, it will show when the borrower received the FmHA Form Letter and the time limits set out in FmHA Form Letters 1951–1 or 1951–2 will run from that date. If delivery by certified mail is not accomplished, FmHA will assume that the borrower received the FmHA Form Letter by regular mail on the day the certified mail was refused or was unable to be delivered. If the borrower does not take any action within the time limits set out in FmHA Form Letter 1951–1, the County Supervisor will prepare and send FmHA Form Letter 1951–3 as required by § 1951.105(d) of this subpart. FmHA Form Letter 1951–2 may be used if the County Supervisor has reason to believe that another Government agency is about to make a payment to a borrower *and* if failure to make an offset would substantially prejudice the government's ability to collect *and* if there is not enough time to use FmHA Form Letter 1951–1 and complete the procedures set out in § 1951.105 of this subpart. FmHA Form Letter 1951–2 may also be used if the borrower had an FmHA appeal hearing to contest the delinquency and the existence of the debt. FmHA Form Letter 1951–2 may not be used in any other circumstances. If FmHA Form Letter 1951–2 is used, FmHA Form Letter 1951–3 will be prepared and sent as set out in this subpart.

(c) *Borrower's request for records, offer to repay or request for a review regarding administrative offset.* (1) If a borrower responds to FmHA Form Letters 1951–1 or 1951–2 by asking to review and copy FmHA's records relating to the delinquent debt, the County Supervisor must promptly respond by sending a letter which tells the borrower the location of the borrower's FmHA files and that the files may be reviewed and copied within the next 30 calendar days. Copying costs (see FmHA Instruction 2018-F) and the hours the files will be available each day will be set out in the letter.

(2) If a borrower responds to FmHA Form Letter 1951-1 by offering to repay the delinquency, the offer will be accepted only if the County Supervisor decides that an offset would result in undue financial hardship to the borrower or would be unfair to the borrower for some reason. This decision will be documented in the running case record and the borrower will be sent a letter which sets out the County Supervisor's decision to accept or reject the offer to repay. Form FmHA 440-9, "Supplementary Payment Agreement," will be used if a repayment offer is accepted. The County Supervisor must decide whether to accept the offer within 45 calendar days after the initial offer to repay is made.

(3) If a borrower responds to FmHA Form Letters 1951-1 or 1951-2 by asking for a review of FmHA's determination that a debt exists and/or is delinquent, the borrower then has 10 calendar days to send the County Supervisor evidence supporting the borrower's position. As soon as possible, the County Supervisor will forward the borrower's request for a review, the borrower's case file and all evidence provided by the borrower to the District Director for review. If the borrower asked for a hearing, the District Director will decide if one is needed. A hearing is needed only if the question of the delinquency and the existence of the debt cannot be determined from a documentary review of the borrower's file and any other evidence provided. If a hearing is needed, the borrower will be informed in writing of the time and place of the hearing; Exhibit A to Subpart B of Part 1900 of this chapter will be sent to the borrower and those directions will be followed. If the borrower requests a hearing and the District Director determines that a hearing is not needed, the District Director will inform the borrower in writing of why a hearing is not needed within 15 calendar days of receiving the borrower's file and evidence. The District Director will then conduct a documentary review within 45 days of when the borrower asked for a review. At the hearing or after the documentary review, the District Director will decide whether the debt exists and/or is delinquent; this decision will be made within 30 calendar days of the hearing or review. The District Director will send the borrower a letter which explains the decision. The District Director's decision is final and the borrower has no right to a further review. Copies will be sent to the borrower's attorney (if any), the County Supervisor, and the Assistant Secretary for Administration, USDA, Washington, DC 20250.

(4) The time limits set in FmHA Form Letters 1951-1 or 1951-2 run concurrently. If a borrower asks to review the FmHA file and offers to repay the debt, the borrower cannot take 30 calendar days to ask to review the FmHA file and then take an additional 30 days to offer to repay. The request to review the file, the offer to repay and/or request for a review must all be made within 30 days of the date the borrower receives the FmHA Form Letter. FmHA then has a maximum of 45 calendar days from the day the borrower's request is received by FmHA to evaluate the offer to repay or complete the review.

(d) *Request for administrative offset.* If FmHA Form Letter 1951-2 has been sent, FmHA Form Letter 1951-3 will be prepared and mailed immediately by the County Supervisor. If FmHA Form Letter 1951-1 has been sent, FmHA Form Letter 1951-3 will be prepared by the County Supervisor after: (1) The borrower has reviewed the file (or the time for review has expired, whichever comes first); (2) a review of the record and any evidence provided by the borrower or a hearing has been concluded and a decision has been made that the debt exists and is delinquent; or (3) a decision is made whether to accept a repayment offer. FmHA Form Letter 1951-3 will be sent by the County Supervisor to the Agricultural Stabilization and Conservation Service (ASCS), Federal Crop Insurance Corporation (FCIC) or any other Federal agency likely to have money scheduled to be paid to the borrower. Exhibit A of this subpart (available in any FmHA office) provides the addresses of officials to whom a completed FmHA Form Letter 1951-3 should be mailed. The County Supervisor will send a copy of the completed FmHA Form Letter 1951-3 to the State Administrative Officer.

(e) *Application of payments, refunds and overpayments for administrative offset.* (1) Only delinquencies can be collected by offset. Therefore, if an FmHA Form Letter 1951-3 is submitted to another Federal agency which owes a borrower an amount in excess of the FmHA delinquency, that excess will be remitted to the borrower by the other agency.

(2) If a borrower is delinquent on more than one FmHA debt, amounts collected by offset will be distributed and applied as regular payments.

(3) If a borrower receives FmHA Form Letter 1951-2 of this subpart and an offset is made and after a review of the FmHA file and any evidence presented by the borrower the County Supervisor/District Director decides that the offset should not have been made or should have been made for a lesser amount, a refund will be processed promptly in accordance with § 1951.13(b) of Subpart A of Part 1951 of this chapter. The borrower is not entitled to interest on the amount refunded.

(4) If FmHA receives money through an offset but the borrower is not delinquent at the time or the amount received is in excess of the delinquency, the entire amount or the amount in excess of the delinquency must be refunded promptly to the borrower in accordance with § 1951.13(b) of Subpart A of Part 1951 of this chapter. The borrower is not entitled to any payment of interest on the refunded amount.

(5) All amounts collected by offset will be recorded on Exhibit B of this subpart (available in any FmHA office) by the County Supervisor. Exhibit B will be filed in operational file 1951-Offsets, and a copy will be sent to the State Administrative Officer every six months.

(f) *Cancellation of administrative offset.* If a borrower's name has been submitted to another agency for offset and the borrower's account is brought current (either by payment or by some servicing action), the County Supervisor will notify the other agency that the borrower is no longer delinquent. The addresses listed on Exhibit A of this subpart (available in any FmHA office) will be used for ASCS and FCIC.

(g) *Administrative offset of FmHA money.* FmHA will not offset its loan or grant funds at the request of other agencies. Information provided by other agencies about debts owed to them will be considered by FmHA when it evaluates a borrower's repayment ability and will be compared to financial information that the borrower provided.

§§ 1951.106-1951.149 [Reserved]

§ 1951.150 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575-0119.

Dated: August 1, 1986.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 86-26706 Filed 11-25-86; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CAS-RM-80-116]

Energy Conservation Program for Consumer Products; Amendments to Provisions for the Waiver of Consumer Product Test Procedures

AGENCY: Conservation and Renewable Energy Office, DOE.

ACTION: Final rule.

SUMMARY: The Department of Energy is amending the Department's appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed product test procedures. Manufacturers currently may petition DOE to temporarily waive test procedures for a particular product. A waiver may be granted when characteristics of the product prevent the use of the prescribed test procedures or lead to test procedure results that provide materially inaccurate comparative data. Today's rule will simplify the waiver process so that a manufacturer, when petitioning DOE for a test procedure waiver, may also request, and if eligible, be granted, an interim waiver of test procedure requirements while DOE considers the petition for waiver.

EFFECTIVE DATE: December 26, 1986.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-132, Room GF-217, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9127

Eugene Margolis, Esq., Department of Energy, Office of General Counsel, Mail Station GC-12, Room 6B-128, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-9513.

SUPPLEMENTARY INFORMATION:

I. Introduction
  a. Authority
  b. Background
II. Discussion of Comments
III. Environmental, Regulatory Impact, and Regulatory Flexibility Reviews
  a. Environmental Review
  b. Regulatory Impact Review
  c. Small Entitv Impact Review

I. Introduction

a. Authority

Part B of Title III of the Energy Policy and Conservation Act (EPCA) (Pub. L. 94-163), as amended by the National Energy Conservation Policy Act (NECPA) (Pub. L. 95-619),[1] created the Energy Conservation Program for Consumer Products Other Than Automobiles. The consumer products subject to this program (referred to hereafter as "covered products") are: refrigerators and refrigerator-freezers; freezers; dishwashers; clothes dryers; water heaters; room air conditioners; home heating equipment, not including furnaces; television sets; kitchen ranges and ovens; clothes washers; humidifiers and dehumidifiers; central air conditioners; and furnaces, as well as any other consumer product classified by the Secretary of Energy, if the product uses a specified minimum amount of energy. See section 322. The Secretary has not so classified any additional products.

Under the Act, the program consists essentially of three parts: Testing, labeling, and energy efficiency standards.

For each of the covered products, the Department of Energy, in consultation with the National Bureau of Standards, is required to establish test procedures which provide test results that reflect the energy efficiency, energy use, or estimated annual operating cost of each covered product. See section 323(b)(1). One hundred and eighty days after a test procedure for a product is adopted, a manufacturer must represent the energy consumption of or the cost of energy consumed by the product only in accordance with the DOE test procedure. See section 323(c). Test procedures have been prescribed relating to all products, and are amended on the basis of continuing review. The test procedures are intended for use in other program elements, such as product labeling (administered by the Federal Trade Commission pursuant to section 324 of the Act) and energy efficiency standards, as required by section 325 (a)(1) and (c) of the Act.

b. Background

DOE has prescribed test procedures for the covered products numerated in section 322(a) (1)-(13) of the Act. Procedures to allow DOE temporarily to waive test procedure requirements under certain narrow conditions were published by the Department on September 26, 1980. 45 FR 64109. These procedures, contained in § 430.27 of the Code of Federal Regulations allow DOE, upon petition, to waive applicability of test procedures for a particular basic model if the model has design characteristics which either prevent testing according to the prescribed test procedures or which lead to test procedure results that provide materially inaccurate comparative data. Within one year of granting any waiver, DOE is required to publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. The waiver terminates on the effective date of the applicable final rule.

The test procedure waiver regulations contained no provisions to allow immediate regulatory relief to a manufacturer that might experience economic hardship during the period DOE is considering such a manufacturer's petition for a test procedure waiver. As a result, manufacturers seeking immediate regulatory relief from test procedure requirements while the applicable petition for waiver is under consideration have found it necessary to file an application for exception with DOE's Office of Hearings and Appeals as provided in 10 CFR, Part 205, Subpart D. Recognizing the need to simplify this process, on April 16, 1986, DOE published a proposal, modeled after the provisions contained in 10 CFR, Part 205, Subpart D, that would allow any manufacturer to request, concurrently, from the Assistant Secretary for Conservation and Renewable Energy both a waiver from test procedure requirements and an interim waiver from those requirements. (51 FR 12861.)

DOE proposed that any manufacturer petitioning DOE for a test procedure waiver could file an "Application for Interim Waiver" as part of or after the filing of a petition for waiver. The application would have to address what economic hardship or competitive disadvantage would result in the event that the application was denied. Under the proposal a petitioner for waiver, upon applying for an interim waiver, would be required to send a copy of such application with a copy of the

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[1] Part B of Title III of EPCA as amended by NECPA, 42 U.S.C. 6291-6309, is referred to in this notice as the "Act."

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petition to all competitors, and each applicant, prior to filing with DOE, must include a list of those persons to whom the petition for waiver and application for interim waiver are being sent. DOE also proposed that an interim waiver would expire 90 days after issuance or upon DOE's grant or denial of the petition for waiver and that DOE could provide a 180-day extension of an interim waiver.

DOE requested comments on the proposal and held a public hearing in Washington, DC, on May 20, 1986, at which testimony was received from representatives of three appliance manufacturers. During the comment period that ended June 16, 1986, DOE received comments from six manufacturers.

II. Discussion of Comments

All the comments received supported DOE's proposal to simplify the test procedure waiver provisions. Carrier Corporation (Carrier, No. 10), Snyder General Corporation (Snyder General, No. 11) and Lennox Industries (Lennox, No. 13) urged adoption of the rule as proposed.[2] Amtrol, Inc. (Amtrol, No. 12), Whirlpool Corporation (Whirlpool, Testimony and No. 14), General Electric Company (GE, Testimony and No. 15) and Electrolux (Electrolux, Testimony) also supported the concept of the proposal and made recommendations on the filing requirements for petitions for waiver and applications for interim waiver, and posed questions to DOE concerning the effect of waivers and interim waivers on manufacturer energy claims and product labeling requirements.

After careful review of the testimony and comments received, DOE is amending the test procedure waiver provisions to include several of the recommendations submitted.

DOE received comments addressing information that should be contained in Petitions for Waiver and Applications for Interim Waiver.

Whirlpool and Electrolux stressed the importance of the criteria being clear and not subject to various interpretations (Whirlpool, No. 14 at 2 and Electrolux, Testimony). Whirlpool agreed that a petition and an application should identify the basic model(s) for which a waiver or interim waiver is requested and show that the particular basic model(s) has design characteristics which prevent testing according to the prescribed test procedure. However, it believes that model numbers should not be required in a petition or application since providing such information would "serve no useful purpose to the waiver process" and could reveal product models prior to introduction to the marketplace (Whirlpool, No. 14 at 3–7).

General Electric testified, and Electrolux agreed, that a Petition for Waiver and Application for Interim Waiver should include identification of all models that are included in the basic model description. In written comments, GE suggested that identification of a "family of models to be covered by waiver could be done by providing a unique alpha/numeric code" in the model number that would be used to identify the models for product labeling purposes. The company suggested that the statement "All models designated [proper alpha/numeric code inserted] are tested according to the provisions of the waiver". If, after a waiver had been granted, a manufacturer wished to add additional models to be covered by the waiver, GE recommended that the manufacturer file a new Petition for Waiver and Application for Interim Waiver (GE, No. 15 at 1).

Commenters agreed that petitioners be required to explain in detail why the existing test procedure cannot be used and provide sufficient information on the new design or feature that is the basis for the petition (GE, Testimony; Whirlpool No. 14 at 3–8; Electrolux, Testimony). Whirlpool added that a petition should include information on the uniqueness of the design, technical data and patents pending (Whirlpool, No. 14 at 3).

These commenters also agreed that a Petition for Waiver and Application for Interim Waiver describe any alternate test procedure known by the petitioner, but that knowledge of an alternate test procedure should not be used as a basis to grant an interim waiver (GE, No. 15 at 2; Electrolux, Testimony; Whirlpool, No. 14 at 7). Whirlpool added that a manufacturer should have at least 180 days to submit test data to assist DOE in gathering relevant information concerning the petition. Whirlpool emphasized that the burden of identifying an alternate test procedure is on DOE, not the manufacturer (Whirlpool, No. 11 at 7).

Finally, these commenters generally agreed that an Application for Interim Waiver should demonstrate the likely success of the Petition for Waiver and show what economic hardship or competitive disadvantage is likely to result without a favorable determination by DOE. Whirlpool and Electrolux also concluded that an interim waiver should be granted without delay if the application contains the requested basic identification and justification. The manufacturers maintain that it is the Petition for Waiver, not the Application for Interim Waiver, that should be the subject of scrutiny by DOE (Whirlpool, No. 14 at 4; Electrolux, Testimony).

The Department of Energy agrees that criteria for Petitions for Waiver and Applications for Interim Waiver should be as clear and objective as possible. DOE observes, however, that the basic criteria recommended by the commenters are the same criteria DOE has proposed. DOE concurs that information submitted by manufacturers should be substantial and thorough and while neither the Department nor the manufacturers have not defined these terms, DOE believes that it is in the manufacturers best interests to submit as much information and detail as possible.

Section 430.27 has always required a petitioner to address the "specific" requirements sought to be waived and to discuss "in detail" the need for the requested waiver, including identification of the particular basic model(s) for which a waiver is requested and the design characteristics constituting the reasons for the waiver.

In regard to identifying the basic model(s) for which a waiver or interim waiver is sought, DOE has not required, nor is requiring in today's rule, that specific model numbers be provided. However, DOE does not accept Whirlpool's contention that such information would "serve no useful purpose." A petitioner is required to clearly identify the units covered by the petition. While DOE recognizes that in some cases using model numbers could be burdensome, the Department encourages, when feasible, manufacturer use of a model number(s) to ensure that identification of the product(s) is most descriptive and concise. The Department wants to be very clear on this point: Compliance with § 430.27 (a)(1) and (b)(2) requires that, at a minimum, the basic model(s) be identified using some designator unique to that model(s) or family of models and which could be identified, for example, in a review of the manufacturer's product literature. However, DOE reserves the right to request and use the specific model numbers of the applicable basic model for identification purposes. If a manufacturer has a question concerning the applicability of a waiver, DOE encourages the manufacturer to contact the Department.

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[2] Comments on the proposal were given docket numbers and are numbered consecutively, beginning with the number ten (10). Comments submitted as part of an oral presentation at the May 20, 1986, public hearing are identified as Testimony.

DOE agrees that the granting of an interim waiver should not be based on the applicant's identification of an alternate test procedure, and nothing in DOE's regulations requires such a showing. DOE requires that a Petition for Waiver and an Application for Interim Waiver "include any alternate test procedure known to the petitioner. . . ." Clearly, however, the petitioner/applicant will have some data available since a determination was made, after testing, that the prescribed test procedure is inappropriate. The Department believes that a petitioner/applicant has a responsibility to address this issue by participating in the development of an alternate test procedure. DOE agrees with Whirlpool's suggestion that manufacturers submit test data and any other information to DOE while the Petition for Waiver is being considered. DOE points out that the Application for Interim Waiver is not the subject of the same scrutiny a Petition for Waiver receives but must address issues of the economic/competitive hardship and the likely success of the waiver petition.

Three commenters suggested that an interim waiver be granted for 180 days with an allowable 180-day extension, rather than the 90-day interim waiver, 180-day extension proposed by DOE. These commenters suggested that 90 days would not allow adequate time for a manufacturer to submit applicable field test data while DOE considers the pending Petition for Waiver and that a 180-day interim waiver could eliminate the need for an extension in case of unanticipated delays during consideration of the Petition for Waiver (Whirlpool, Testimony and No. 14 at 7; Amtrol, No. 12 at 1; and Electrolux, Testimony).

The Department agrees with the recommendation of granting interim waivers for 180 days. This change is reflected in today's notice.

Commenting on the requirements for notifying competitors, Whirlpool suggested that a petitioner have five working days from the date a Petition for Waiver is published in the **Federal Register** in which to send written notification. Whirlpool explained that five working days should provide ample time for a petitioner to receive a copy of the published notice. Whirlpool also stated that the proposed rule needs to be more specific about the timing and procedure for filing an Application for Interim Waiver and Petition for Waiver. Section 430.27(c)(2) of DOE's proposal stated: "Each applicant for Interim Waiver, whether filing jointly with, or subsequent to, the Petition for Waiver with DOE, shall concurrently notify in writing all known manufacturers. . . ." Whirlpool explained that from a competitive point of view, concurrent notification is more appropriate than prior notification and provides ample time for competitors to submit comments. Whirlpool explained further that concurrent would mean the same day (Whirlpool, Testimony).

DOE concurs with Whirlpool's suggestions. Today's notice reflects these changes.

General Electric also suggested a change to § 430.27(c)(2). GE recommended that certification by an applicant to DOE that a Petition for Waiver and Application for Interim Waiver have been sent to competitors also include a statement that these documents have been received by the appropriate manufacturers. GE stated that this could be accomplished by sending the documents via certified or registered mail (GE, Testimony). Whirlpool disagreed, stating that GE's suggestion would be burdensome.

DOE agrees with Whirlpool. The Department's purpose in amending the test procedure waiver provisions is to simplify and expedite the waiver process and GE's suggestion could cause unnecessary delays in that process. It is also for this reason that DOE proposed, and today's rule requires, that persons submitting comments to DOE concerning an application for interim waiver also send a copy of the comments to the applicant. Similarly, today's rule requires persons submitting comments to DOE concerning a petition for waiver also send a copy to the petitioner.

One commenter, Whirlpool, maintained that DOE should include some provisions for a petitioner to have "confidential preliminary review sessions with DOE prior to the formal filing for interim waiver." Whirlpool stated that the confidential and preliminary aspects of such a provision are "crucial" to the process working smoothly and encouraging innovation (Whirlpool, Testimony).

DOE fails to see the need to formally prescribe such provisions. The Department has been and continues to be available to discuss such matters with manufacturers. In addition, since the treatment of confidential material already is addressed at 10 CFR 1004.11, DOE believes it is unnecessary to address this further in today 's rule.

Amtrol raised the question of what would happen if DOE granted an Interim Waiver and denied the Petition for Waiver. In that event, DOE will, at that time, address the specific steps required of the manufacturer.

Finally, Whirlpool and GE expressed confusion regarding the labeling of, and advertising claims for, applicable products during the term of the waiver but before DOE amends the test procedure regulations. Both commenters urged DOE to obtain a ruling or some type of clarification from the Federal Trade Commission (FTC) on the applicability of FTC's product labeling regulations for model(s) covered by an Interim Waiver or Waiver (Whirlpool, No. 14 at 4; GE, Testimony). General Electric also questioned how a waiver or interim waiver should be treated relative to a mandatory energy efficiency standard for that product (GE, Testimony).

DOE is aware that manufacturers have questions concerning compliance with FTC labeling regulations as applied to products that have received waivers from prescribed DOE test procedures. The Department believes that the appropriate procedure for addressing these concerns is for manufacturers to request from FTC an interpretation of the applicable FTC labeling regulations. Any other limitations that might be imposed on a manufacturer by a waiver will be specified by DOE in the interim waiver or waiver. In regard to the effect of a waiver on compliance with provisions of a mandatory energy efficiency standard for a particular product, DOE would address this issue in each interim waiver or waiver granted after the applicable energy efficiency standard is in effect.

III. Environmental, Regulatory Impact and Regulatory Flexibility Reviews

a. Environmental Review

Since test procedures under the energy conservation program for consumer products are used only to standardize the measurement of energy usage and do not affect the quantity of energy usage, amending the test procedure waiver process will not result in any environmental impacts. Since it is clear that this amendment is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, neither an Environmental Impact Statement nor an Environmental Assessment was required for this rule.

b. Regulatory Impact Review

DOE has concluded that the rule is not a "major rule" for purposes of Executive Order 12291 because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for

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consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, in accordance with section 3(c)(3) of the Executive Order, which applies to rules other than major rules, the rule was submitted to OMB for review without a regulatory impact analysis.

c. Small Entity Impact Review

In light of the foregoing, the Department has determined and hereby certifies pursuant to section 605(b) of the Regulatory Flexibility Act that the rule will not have a "significant econonic impact on a substantial number of small entities." The rule affects manufacturers of covered products. As previously discussed, the rule only simplifies the test procedure waiver process.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

In consideration of the foregoing, Part 430 of Chapter II of Title 10, Code of Federal Regulations is amended, as set forth below.

Issued in Washington, DC, November 14, 1986.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 continues to read as follows:

Authority: Sec. 323(b), Pub. L. 94–163, 89 Stat. 917, as amended by Pub. L. 95–619, 92 Stat. 3266, 42 U.S.C. 6293(b).

2. Section 430.27 is revised to read as follows:

§ 430.27 Petitions for Waiver and applications for Interim Waiver.

(a)(1) Any interested person may submit a petition to waive for a particular basic model any requirements of § 430.22, or of any appendix to this subpart, upon the grounds that the basic model contains one or more design characteristics which either prevent testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.

(2) Any interested person who has submitted a petition for waiver as provided in this subpart may also file an application for interim waiver of the applicable test procedure requirements.

(b)(1) A Petition for Waiver shall be submitted, in triplicate, to the Assistant Secretary for Conservation and Renewable Energy, United States Department of Energy. Each Petition for Waiver shall:

(i) Identify the particular basic model(s) for which a waiver is requested, the design characteristic(s) constituting the grounds for the petition, and the specific requirements sought to be waived and shall discuss in detail the need for the requested waiver;

(ii) Identify manufacturers of all other basic models marketed in the United States and known to the petitioner to incorporate similar design characteristic(s);

(iii) Include any alternate test procedures known to the petitioner to evaluate in a manner representative of the energy consumption characteristics of the basic model; and

(iv) Be signed by the petitioner or by an authorized representative. In accordance with the provisions set forth in 10 CFR 1004.11, any request for confidential treatment of any information contained in a Petition for Waiver or in supporting documentation must be accompanied by a copy of the petition, application or supporting documentation from which the information claimed to be confidential has been deleted. DOE shall publish in the **Federal Register** the petition and supporting documents from which confidential information, as determined by DOE, has been deleted in accordance with 10 CFR 1004.11 and shall solicit comments, data and information with respect to the determination of the petition. Any person submitting written comments to DOE with the respect to a Petition for Waiver shall also send a copy of such comments to the petitioner. In accordance with paragraph (i) of this section, a petitioner may submit a rebuttal statement to the Assistant Secretary for Conservation and Renewable Energy.

(2) An Application for Interim Waiver shall be submitted in triplicate, with the required three copies of the Petition for Waiver, to the Assistant Secretary for Conservation and Renewable Energy, U.S. Department of Energy. Each Application for Interim Waiver shall reference the Petition for Waiver by identifying the particular basic model(s) for which a waiver and temporary exception are being sought. Each Application for Interim Waiver shall demonstrate likely success of the Petition for Waiver and shall address what economic hardship and/or competitive disadvantage is likely to result absent a favorable determination on the Application for Interim Waiver. Each Application for Interim Waiver shall be signed by the applicant or by an authorized representative.

(c)(1) Each petitioner, after filing a Petition for Waiver with DOE, and after the Petition for Waiver has been published in the **Federal Register**, shall, within five working days of such publication, notify in writing all known manufacturers of domestically marketed units of the same product type (as listed in section 322(a) of the Act) and shall include in the notice a statement that DOE has published in the **Federal Register** on a certain date the Petition for Waiver and supporting documents from which confidential information, if any, as determined by DOE, has been deleted in accordance with 10 CFR 1004.11. Each petitioner, in complying with the requirements of this paragraph, shall file with DOE a statement certifying the names and addresses of each person to whom a notice of the Petition for Waiver has been sent.

(2) Each applicant for Interim Waiver, whether filing jointly with, or subsequent to, a Petition for Waiver with DOE, shall concurrently notify in writing all known manufacturers of domestically marketed units of the same product type (as listed in Section 322(a) of the Act) and shall include in the notice a copy of the Petition for Waiver and a copy of the Application for Interim Waiver. In complying with this section, each applicant shall in the written notification include a statement that the Assistant Secretary for Conservation and Renewable Energy will receive and consider timely written comments on the Application for Interim Waiver. Each applicant, upon filing an Application for Interim Waiver, shall in complying with the requirements of this paragraph certify to DOE that a copy of these documents have been sent to all known manufacturers of domestically marked units of the same product type (as listed in section 322(a) of the Act). Such certification shall include the names and addresses of such persons. Each applicant also shall comply with the provisions of paragraph (c)(1) of this section with respect to the petition for waiver.

(d) Any person submitting written comments to DOE with respect to an Application for Interim Waiver shall also send a copy of the comments to the applicant.

(e) If administratively feasible, applicant shall be notified in writing of the disposition of the Application for Interim Waiver within 15 business days of receipt of the application. Notice of DOE's determination on the Application for Interim Waiver shall be published in the **Federal Register**.

(f) The filing of an Application for Interim Waiver shall not constitute grounds for noncompliance with any requirements of this subpart, until an Interim Waiver has been granted.

(g) An Interim Waiver from test procedure requirements will be granted by the Assistant Secretary for Conservation and Renewable Energy if it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver.

(h) An interim waiver will terminate 180 days after issuance or upon the determination on the Petition for Waiver, whichever occurs first. An interim waiver may be extended by DOE for 180 days. Notice of such extension and/or any modification of the terms or duration of the interim waiver shall be published in the **Federal Register**, and shall be based on relevant information contained in the record and any comments received subsequent to issuance of the interim waiver.

(i) Following publication of the Petition for Waiver in the **Federal Register**, a petitioner may, within 10 working days of receipt of a copy of any comments submitted in accordance with paragraph (b)(1) of this section, submit a rebuttal statement to the Assistant Secretary for Conservation and Renewable Energy. A petitioner may rebut more than one response in a single rebuttal statement.

(j) The petitioner shall be notified in writing as soon as practicable of the disposition of each Petition for Waiver. The Assistant Secretary for Conservation and Renewable Energy shall issue a decision on the petition as soon as is practicable following receipt and review of the Petition for Waiver and other applicable documents, including, but not limited to, comments and rebuttal statements.

(k) The filing of a Petition for Waiver shall not constitute grounds for noncompliance with any requirements of this subpart, until a waiver or interim waiver has been granted.

(l) Waivers will be granted by the Assistant Secretary for Conservation and Renewable Energy, if it is determined that the basic model for which the waiver was requested contains a design characteristic which either prevents testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. Waivers may be granted subject to conditions, which may include adherence to alternate test procedures specified by the Assistant Secretary for Conservation and Renewable Energy. The Assistant Secretary shall consult with the Federal Trade Commission prior to granting any waiver, and shall promptly publish in the **Federal Register** notice of each waiver granted or denied, and any limiting conditions of each waiver granted.

(m) Within one year of the granting of any waiver, the Department of Energy will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. As soon thereafter as practicable, the Department of Energy will publish in the **Federal Register** a final rule. Such waiver will terminate on the effective date of such final rule.

(n) Any person aggrieved by an action under this section may file an appeal with the DOE's Office of Hearings and Appeals as provided in 10 CFR Part 205, Subpart H.

[FR Doc. 86–26634 Filed 11–25–86; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 25130; Amdt. No. 334]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rule) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: December 18, 1986.

FOR FURTHER IMFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS–230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 95 of the Federal Aviation Regulations (14 CFR Part 95) prescribes new, amended, suspended, or revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference.

The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same

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reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC on November 18, 1986.

John S. Kern,

Director of Flight Standards.

Adoption of the Amendment

PART 95—[AMENDED]

Accordingly and pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR Part 95) is amended as follows effective at 0901 G.m.t:

1. The authority citation for Part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354 and 1510; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended as follows:

BILLING CODE 4910-13-M

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 334 EFFECTIVE DATE, DECEMBER 18, 1986

§95.1001 DIRECT ROUTES-U.S.

IS AMENDED TO DELETE

FROM	TO	MEA
KANSAS CITY, MO VORTAC *2800 - MOCA	LINCOLN, NE VORTAC	*3500 MAA-35000
PUTNAM, CT VORTAC	LAWED, MA	3000

§95.6001 VOR FEDERAL AIRWAY 1

IS AMENDED TO READ IN PART

FROM	TO	MEA
JACKSONVILLE, FL VORTAC *5000 - MRA **2100 - MOCA	*STARY, GA FIX	**4000
NORFOLK, VA VORTAC	CAPE CHARLES, VA VORTAC	2000

§95.6004 VOR FEDERAL AIRWAY 4

IS AMENDED TO READ IN PART

FROM	TO	MEA
FLEMS, WY FIX	LIBEL, CO FIX	10000
HILL CITY, KS VORTAC *3700 - MOCA	WESAL, KS FIX	*5500
WESAL, KS FIX *2700 - MOCA	SALINA, KS VORTAC	*4000
TOPEKA, KS VORTAC	LANSI, KS FIX	3000

§95.6007 VOR FEDERAL AIRWAY 7

IS AMENDED TO DELETE

FROM	TO	MEA
MENOMINEE, MI VOR VIA E ALTER	ESCANABA, MI VORTAC VIA E ALTER	2500
ESCANABA, MI VORTAC VIA E ALTER	MARQUETTE, MI VOR/DME VIA E ALTER	3600

§95.6009 VOR FEDERAL AIRWAY 9

IS AMENDED TO READ IN PART

FROM	TO	MEA
OSHKOSH, WI VORTAC *2300 MOCA	GREEN BAY, WI VORTAC	*3000

IS AMENDED TO DELETE

FROM	TO	MEA
GREEN BAY, WI VORTAC VIA E ALTER	MENOMINEE, MI VOR VIA E ALTER	2600
MENOMINEE, MI VOR VIA E ALTER	IRON MOUNTAIN, MI VORTAC VIA E ALTER	3300
IRON MOUNTAIN, MI VORTAC VIA E ALTER	MARQUETTE, MI VOR/DME VIA E ALTER	3600
MARQUETTE, MI VOR/DME VIA E ALTER *3000 - MOCA	HOUGHTON, MI VORTAC VIA E ALTER	*3600

FROM	TO	MEA

§95.6013 VOR FEDERAL AIRWAY 13

IS AMENDED TO READ IN PART

FROM	TO	MEA
HARLINGEN, TX VOR/DME	RAYMO, TX FIX	1600
IDDAS, LA FIX *4000 - MRA	*DUBOW, AR FIX	2000

§95.6016 VOR FEDERAL AIRWAY 16

IS AMENDED TO READ IN PART

FROM	TO	MEA
CALVERTON, NY VORTAC	FLIBB, CT FIX	2000
FLIBB, CT FIX	NORWICH, CT VORTAC	2500

§95.6017 VOR FEDERAL AIRWAY 17

IS AMENDED TO READ IN PART

FROM	TO	MEA
BROWNSVILLE, TX VORTAC	HARLINGEN, TX VOR/DME	2000

§95.6020 VOR FEDERAL AIRWAY 20

IS AMENDED TO READ IN PART

FROM	TO	MEA
BARRS, NC FIX	GREENSBORO, NC VORTAC	2800

§95.6037 VOR FEDERAL AIRWAY 37

IS AMENDED TO READ IN PART

FROM	TO	MEA
JACKSONVILLE, FL VORTAC	BRUNSWICK, GA VORTAC	2100

§95.6045 VOR FEDERAL AIRWAY 45

IS AMENDED TO DELETE

FROM	TO	MEA
SAGINAW, MI VORTAC VIA W ALTER	BENNY, MI FIX VIA W ALTER	2200
BENNY, MI FIX VIA W ALTER *3000 - MRA	*BANJO, MI FIX VIA W ALTER	2500
BANJO, MI FIX VIA W ALTER *2600 - MOCA	ZABLE, MI FIX VIA W ALTER	*5000
ZABLE, MI FIX VIA W ALTER	ALPENA, MI VORTAC VIA W ALTER	3000

§95.6050 VOR FEDERAL AIRWAY 50

IS AMENDED TO READ IN PART

FROM	TO	MEA
SAINT JOSEPH, MO VORTAC *2400 - MOCA	KIRKSVILLE, MO VORTAC	*3000

§95.6051 VOR FEDERAL AIRWAY 51

IS AMENDED TO READ IN PART

FROM	TO	MEA
ASTOR,FL FIX	JACKSONVILLE, FL VORTAC	2100

§95.6058 VOR FEDERAL AIRWAY 58

IS AMENDED TO READ IN PART

FROM	TO	MEA
HARTFORD, CT VORTAC *3000 - MRA	*TRAIT CT FIX	2500

§95.6078 VOR FEDERAL AIRWAY 78

IS AMENDED BY ADDING

FROM	TO	MEA
ALPENA, MI VORTAC	ZABLE, MI FIX	3000
ZABLE, MI FIX *3000 - MRA **2600 MOCA	*BANJO, MI FIX	**5000
BANJO, MI FIX	BENNY, MI FIX	2500
BENNY MI FIX	SAGINAW, MI VORTAC	2200

§95.6091 VOR FEDERAL AIRWAY 91

IS AMENDED TO READ IN PART

FROM	TO	MEA
PLATTSBURGH, NY VORTAC *3000 - MOCA	U S CANADIAN BORDER	*3500

§95.6104 VOR FEDERAL AIRWAY 104

IS AMENDED TO READ IN PART

FROM	TO	MEA
MALAE, NY FIX	PLATTSBURGH, NY VORTAC	5800
PLATTSBURGH, NY VORTAC	BURLINGTON, VT VORTAC	2600

§95.6112 VOR FEDERAL AIRWAY 112

IS AMENDED TO DELETE

FROM	TO	MEA
PORTLAND OR VORTAC VIA S ALTER	THE DALLES, OR VORTAC VIA S ALTER	7000

§95.6121 VOR FEDERAL AIRWAY 121

IS AMENDED TO DELETE

FROM	TO	MEA
*EUGENE, OR VORTAC VIA N ALTER	COBUR, OR FIX VIA N ALTER	
	NE BND	5000
	SW BND	4400
*3300 - MCA EUGENE VORTAC, NE BND		
COBUR, OR FIX VIA N ALTER	MOBIL, OR FIX VIA N ALTER	
	NE BND	7000
	SW BND	5200
MOBIL, OR FIX VIA N ALTER	MANTE, OR FIX VIA N ALTER	
	NE BND	10000
	SW BND	8000
MANTE, OR FIX VIA N ALTER	REDMOND, OR VORTAC VIA N ALTER	10000

§95.6139 VOR FEDERAL AIRWAY 139

IS AMENDED TO READ IN PART

FROM	TO	MEA
NORFOLK, VA VORTAC	CAPE CHARLES, VA VORTAC	2000
CELTS, MA FIX *5000 - MRA **1400 - MOCA	*TONNI, MA FIX	**3000
TONNI, MA FIX *5500 - MRA **1300 - MOCA	*EXALT NH FIX	**5000
EXALT, NH FIX *1300 - MOCA	SEEDY NH FIX	*5000

§95.6159 VOR FEDERAL AIRWAY 159

IS AMENDED TO READ IN PART

FROM	TO	MEA
SIOUX CITY, IA VORTAC	HURLY NE FIX	4500

§95.6165 VOR FEDERAL AIRWAY 165

IS AMENDED TO READ IN PART

FROM	TO	MEA
ARVIN, CA FIX	SHAFTER, CA VORTAC	3000
PYRAM, NV FIX	BINNZ NV FIX	
	NW BND	*14000
	SE BND	*12000
*10700 MOCA		

§95.6182 VOR FEDERAL AIRWAY 182

IS AMENDED BY ADDING

FROM	TO	MEA
NORTH BEND, OR VORTAC	*GAMMA, OR FIX	
	S BND	4000
	N BND	4500
*6200 - MRA		
GAMMA, OR FIX	NEWPORT- OR VORTAC	4500
NEWPORT, OR VORTAC	NEWBERG, OR VORTAC	6000
NEWBERG, OR VORTAC	PORTLAND OR VORTAC	[illegible]

§95.6190 VOR FEDERAL AIRWAY 190

IS AMENDED TO READ IN PART

FROM	TO	MEA
DALHART TX VORTAC *5400 - MOCA	GAGE, OK VORTAC	*7000

§95.6193 VOR FEDERAL AIRWAY 193

IS AMENDED TO DELETE

FROM	TO	MEA
WHITE CLOUD, MI VORTAC VIA W ALTER *2300 - MOCA	MANISTEE, MI VOR VIA W ALTER	*2900
MANISTEE, MI VOR VIA W ALTER	TRAVERSE CITY MI VORTAC VIA W ALTER	[illegible]

§95.6197 VOR FEDERAL AIRWAY 197

IS AMENDED TO READ IN PART

FROM	TO	MEA
ARVIN, CA FIX	SHAFTER, CA VORTAC	3000

§95.6205 VOR FEDERAL AIRWAY 205

IS AMENDED TO READ IN PART

FROM	TO	MEA
BOSTON, MA VORTAC	*WIMPY, MA FIX	**3000
*5000 - MRA		
**2100 - MOCA		
WIMPY, MA FIX	*WETTR, MA FIX	**3000
*5000 - MRA		
**2100 - MOCA		
SCUPP, MA FIX	SILVE, NH FIX	*3000
*2100 - MOCA		
SILVE, NH FIX	PEASE, NH VOR	*3000
*2100 - MOCA		

§95.6216 VOR FEDERAL AIRWAY 216

IS AMENDED TO DELETE

FROM	TO	MEA
SAGINAW, MI VORTAC VIA S ALTER	PECK, MI VORTAC VIA S ALTER	3000

§95.6222 VOR FEDERAL AIRWAY 222

IS AMENDED TO READ IN PART

FROM	TO	MEA
MAXON, LA FIX	*WRACK, LA FIX	**5000
*3000 - MRA		
**1400 - MOCA		

§95.6224 VOR FEDERAL AIRWAY 224

IS AMENDED TO READ IN PART

FROM	TO	MEA
MARQUETTE, MI VOR/DME	*ESTON, MI FIX	3000
*3100 - MCA ESTON FIX S BND		
ESTON, MI FIX	SCHOOLCRAFT COUNTY, MI VOR	3100

§95.6233 VOR FEDERAL AIRWAY 233

IS AMENDED TO DELETE

FROM	TO	MEA
MOUNT PLEASANT, MI VOR/DME VIA W ALTER	TRAVERSE CITY, MI VORTAC VIA W ALTER	3000
TRAVERSE CITY, MI VORTAC VIA W ALTER.	PELLSTON, MI VORTAC VIA W ALTER:	3000

§95.6241 VOR FEDERAL AIRWAY 241

IS AMENDED TO READ IN PART

FROM	TO	MEA
EUFAULA, AL VORTAC	COLUMBUS, GA VORTAC	2400

§95.6253 VOR FEDERAL AIRWAY 253

IS AMENDED TO READ IN PART

FROM	TO	MEA
LUCIN, UT VORTAC	ROGET ID FIX	11000
TWIN FALLS, ID VORTAC	LITKE ID FIX	6000

§95.6267 VOR FEDERAL AIRWAY 267

IS AMENDED TO READ IN PART

FROM	TO	MEA
MATEO, FL FIX	JACKSONVILLE FL VORTAC	*3000
*2100 - MOCA		
JACKSONVILLE, FL VORTAC	*BAXLY GA FIX	**3000
*3000 - MRA		
**2100 - MOCA		

§95.6269 VOR FEDERAL AIRWAY 269

IS AMENDED BY ADDING

FROM	TO	MEA
REDMOND, OR VORTAC	MANTE OR FIX	10000
MANTE, OR FIX	MOBIL OR FIX	
	NE BND	10000
	SW BND	8000
MOBIL, OR FIX	COBUR OR FIX	
	NE BND	7000
	SW BND	5200
COBUR, OR FIX	*EUGENE OR VORTAC	
	NE BND	5000
	SW BND	4400
*3300 - MCA EUGENE VORTAC NE BND		

§95.6285 VOR FEDERAL AIRWAY 285

IS AMENDED BY ADDING

FROM	TO	MEA
WHITE CLOUD, MI VORTAC	MANISTEE, MI VOR	*2900
*2300 - MOCA		
MANISTEE, MI VOR	TRAVERSE CITY MI VORTAC	2800

IS AMENDED TO DELETE

FROM	TO	MEA
INDIANAPOLIS, IN VORTAC VIA E ALTER	WELDO, IN FIX VIA E ALTER	2900
WELDO, IN FIX VIA E ALTER	KOKOMO IN VORTAC VIA E ALTER	2700

§95.6287 VOR FEDERAL AIRWAY 287

IS AMENDED TO DELETE

FROM	TO	MEA
NORTH BEND, OR VORTAC VIA W ALTER	*GAMMA OR FIX VIA W ALTER S BND	4000

§95.6287 VOR FEDERAL AIRWAY 287—Continued

FROM	TO	MEA
	N BND	4500
*6200 - MRA		
GAMMA, OR FIX VIA W ALTER	NEWPORT, OR VORTAC VIA W ALTER	4500
NEWPORT OR VORTAC VIA W ALTER	NEWBERG OR VORTAC VIA W ALTER	6000
NEWBERG OR VORTAC VIA E ALTER	PORTLAND, OR VORTAC VIA E ALTER	4000

§95.6310 VOR FEDERAL AIRWAY 310

IS AMENDED TO READ IN PART

FROM	TO	MEA
MULBE NC FIX	*BURCH, NC FIX	**6000
*3300 - MCA BURCH FIX, W BND		
**5200 - MOCA		
BURCH NC FIX	GREENSBORO, NC VORTAC	2500

§95.6320 VOR FEDERAL AIRWAY 320

IS AMENDED BY ADDING

FROM	TO	MEA
PELLSTON MI VORTAC	TRAVERSE CITY, MI VORTAC	3000
TRAVERSE CITY, MI VORTAC	MOUNT PLEASANT, MI VOR/DME	3000
MOUNT PLEASANT, MI VOR/DME	SAGINAW, MI VORTAC	2600
SAGINAW, MI VORTAC	PECK, MI VORTAC	3000

§95.6325 VOR FEDERAL AIRWAY 325

IS AMENDED TO READ IN PART

FROM	TO	MEA
ATHENS GA VORTAC	WOMAC, GA FIX	3600
WOMAC, GA FIX	LOGEN, GA FIX	4000

§95.6341 VOR FEDERAL AIRWAY 341

IS AMENDED BY ADDING

FROM	TO	MEA
OSHKOSH, WI VORTAC	GREEN BAY, WI VORTAC	*3000
*2300 - MOCA		
GREEN BAY WI VORTAC	MENOMINEE, MI VOR	2600
MENOMINEE MI VOR	HAVEL MI FIX	2500
HAVEL, MI FIX	IRON MOUNTAIN, MI VORTAC	3300
IRON MOUNTAIN, MI VORTAC	MARQUETTE, MI VOR/DME	3600
MARQUETTE, MI VOR/DME	HOUGHTON, MI VORTAC	*3600
*3000 - MOCA		

§95.6401 VOR FEDERAL AIRWAY 401

IS AMENDED TO READ IN PART

FROM	TO	MEA
CASPER WY VORTAC	RANKK WY FIX	11000
RANKK WY FIX	WORLAND, WY VOR/DME	
	NW BND	7000
	SE BND	11000

§95.6415 VOR FEDERAL AIRWAY 415

IS AMENDED TO READ IN PART

FROM	TO	MEA
HELLO, GA FIX	ANNYE, GA FIX	6000
ANNYE, GA FIX	TOCCOA, GA VORTAC	5000

§95.6431 VOR FEDERAL AIRWAY 431

IS AMENDED TO READ IN PART

FROM	TO	MEA
HYANNIS, MA VORTAC	*WIMPY, MA FIX	**3000
*5000 - MRA		
**2100 - MOCA		
WIMPY, MA FIX	BOSTON, MA VORTAC	*3000
*2100 - MOCA		

§95.6450 VOR FEDERAL AIRWAY 450

IS AMENDED BY ADDING

FROM	TO	MEA
ESCANABA, MI VORTAC	MENOMINEE, MI VOR	2500
MENOMINEE, MI VOR	GREEN BAY, WI VORTAC	2600

§95.6451 VOR FEDERAL AIRWAY 451

IS AMENDED TO READ IN PART

FROM	TO	MEA
CELTS, MA FIX	*TONNI MA FIX	**3000
*5000 - MRA		
**1400 - MOCA		
TONNI, MA FIX	*EXALT, NH FIX	**5000
*5500 - MRA		
**1300 - MOCA		
EXALT, NH FIX	SEEDY, NH FIX	*5000
*1300 - MOCA		

§95.6463 VOR FEDERAL AIRWAY 463

IS AMENDED TO READ

FROM	TO	MEA
WOMAC, GA FIX	*ANNYE, GA FIX	**5000
*5900 - MCA ANNYE FIX, N BND		
**4100 - MOCA		
ANNYE, GA FIX	HARRIS, GA VORTAC	7000

§95.6520 VOR FEDERAL AIRWAY 520

IS AMENDED TO READ IN PART

FROM	TO	MEA
PORTLAND, OR VORTAC	THE DALLES, OR VORTAC	7000

§95.6566 VOR FEDERAL AIRWAY 566

IS AMENDED TO READ IN PART

FROM	TO	MEA
MUSHE, LA FIX	*WRACK, LA FIX	**4000
*3000 - MRA		
**1600 - MOCA		

FROM	TO	MEA	MAA
§95.7079 JET ROUTE NO. 79			
	IS AMENDED TO READ IN PART		
ORMOND BEACH, FL VORTAC	*STARY, GA FIX	18000	45000
STARY, GA FIX	CHARLESTON, SC VORTAC	20000	45000
§95.7121 JET ROUTE NO. 121			
	IS AMENDED TO READ IN PART		
JACKSONVILLE, FL VORTAC	*STARY, GA FIX	18000	45000
STARY · GA FIX	CHARLESTON, SC VORTAC	20000	45000
§95.7143 JET ROUTE NO. 143			
	IS AMENDED TO READ IN PART		
POINT REYES, CA VORTAC	MENDOCINO, CA VORTAC	18000	45000
MENDOCINO, CA VORTAC	ROSEBURG, OR VOR	18000	45000
§95.7174 JET ROUTE NO. 174			
	IS AMENDED TO READ IN PART		
JACKSONVILLE, FL VORTAC	*STARY, GA FIX	18000	45000
STARY, GA FIX	CHARLESTON, SC VORTAC	20000	45000

[FR Doc. 86-26588 Filed 11-25-86; 8:45 am]
BILLING CODE 4910-13-C

§95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
	V-182		
	IS AMENDED BY ADDING		
NEWPORT, OR VORTAC	NEWBERG, OR VORTAC	29	NEWPORT
	V-287		
	IS AMENDED TO DELETE		
NEWPORT, OR VORTAC VIA W ALTER	NEWBERG, OR VORTAC VIA W ALTER.	29	NEWPORT

§95.8005 JET ROUTES CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
	J-143		
	IS AMENDED BY ADDING		
MENDOCINO, CA VORTAC	ROSEBURG, OR VOR	150	MENDOCINO

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14 CFR Part 97

[Docket No. 25127; Amdt. No. 1334]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—Approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW. Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW. Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591 telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4 and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument Incorporation by reference.

Issued in Washington, DC, on November 14, 1986.

John S. Kern,

Director of Flight Standards

Adoption of the Amendment

PART 97—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449 January 12, 1983; and 14 CFR 11.49(b)(2)).

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows

Effective February 12, 1987

Parkersburg, WV—Wood County Airport-Gill Robb Wilson FLD, VOR RWY 21, Amdt. 13
Parkersburg, WV—Wood County Airport-Gill Robb Wilson FLD, NDB RWY 3, Amdt. 5
Parkersburg, WV—Wood County Airport-Gill Robb Wilson FLD, ILS RWY 3, Amdt. 8

. . . Effective January 15, 1987

Gladwin, MI—Gladwin, NDB RWY 27, Amdt. 2
Owosso, MI—Owosso Community, VOR RWY 28, Amdt. 5
Mansfield, OH—Mansfield Lahm Muni, VOR RWY 14, Amdt. 12
Mansfield, OH—Mansfield Lahm Muni, VOR RWY 32, Amdt. 5
Mansfield, OH—Mansfield Lahm Muni, LOC BC RWY 14, Amdt. 6
Mansfield, OH—Mansfield Lahm Muni, NDB RWY 32, Amdt. 10
Mansfield, OH—Mansfield Lahm Muni, ILS RWY 32, Amdt. 14
Mansfield, OH—Mansfield Lahm Muni, RADAR-1, Amdt. 2
Mansfield, OH—Mansfield Lahm Muni, RNAV RWY 5, Amdt. 1
Mansfield, OH—Mansfield Lahm Muni, RNAV RWY 23, Amdt. 5

. . . Effective December 18, 1986

Auburn, AL—Auburn-Opelika Robert G. Pitts, RNAV RWY 36, Amdt. 3
Rifle, CO—Garfield County, LOC/DME-A, Orig
Venice, FL—Venice Muni, VOR/DME-A, Amdt. 4
Cornelia, GA—Habersham County, NDB RWY 6, Orig
Lawrenceville, GA—Gwinnett County, LOC RWY 25, Amdt. 2
Lawrenceville, GA—Gwinnett County, NDB RWY 25, Amdt. 3
Thomaston, GA—Reginald Grant Memorial, NDB RWY 3, Orig
Emmetsburg, IA—Emmetsburg Muni, NDB RWY 13, Amdt. 1
Emmetsburg, IA—Emmetsburg Muni, NDB RWY 31, Amdt. 1
Storm Lake, IA—Storm Lake Muni, NDB RWY 35, Orig
Baltimore, MD—Baltimore-Washington Intl, RADAR 1, Amdt. 10
Tupelo, MS—Industrial Airpark, VOR RWY 11, Amdt. 1, CANCELLED
St Louis, MO—Lambert-St Louis Intl, LDA/DME RWY 12L, Amdt. 3
St Louis, MO—Lambert-St Louis Intl, ILS RWY 12R, Amdt. 18
Atlantic City, NJ—Atlantic City Muni/Bader Field, VOR RWY 11, Amdt. 2
Atlantic City, NJ—Atlantic City Muni/Bader Field, VOR-A, Amdt. 2
Atlantic City, NJ—Atlantic City Muni/Bader Field, RNAV RWY 11, Amdt. 4
Belmar-Farmingdale, NJ—Allaire, VOR-A, Amdt. 10, CANCELLED
Belmar-Farmingdale, NJ—Allaire, VOR-A, Orig
Robbinsville, NJ—Trenton-Robbinsville, VOR RWY 29, Amdt. 9
Vincentown, NJ—Red Lion, VOR-A, Amdt. 5
Binghamton, NY—Edwin A. Link Field/Broome County, NDB RWY 34, Amdt. 16
Calverton, NY—Calverton Naval Weapons Industrial Reserve Plant/Peconic Field, VOR/DME or TACAN RWY 32, Amdt. 2
Calverton, NY—Calverton Naval Weapons Industrial Reserve Plant/Peconic Field, VOR/DME or TACAN A, Amdt. 2
Rochester, NY—Rochester-Monroe County, ILS RWY 4, Amdt. 11
Syracuse, NY—Syracuse Hancock Intl, NDB RWY 28, Amdt. 25
Syracuse, NY—Syracuse Hancock Intl, ILS RWY 10, Amdt. 4
Wellsville, NY—Wellsville Muni ARPT, Tarantine FLD, VOR-A, Amdt. 5
Wellsville, NY—Wellsville Muni ARPT, Tarantine FLD, LOC RWY 28, Amdt. 3
Wellsville, NY—Wellsville Muni APRT, Tarantine FLD, NDB RWY 28, Amdt. 8
Westhampton Beach, NY—Suffolk County, LOC BC RWY 6, Amdt. 3, CANCELLED
Hickory, NC—Hickory Muni, VOR RWY 24, Amdt. 23
Hickory, NC—Hickory Muni, NDB RWY 24, Amdt. 4
Hickory, NC—Hickory Muni, ILS RWY 24, Amdt. 8
Lexington, NC—Lexington Muni, VOR/DME RWY 8, Amdt. 4
Mocksville, NC—Twin Lakes, NDB RWY 9, Amdt. 2
Morganton, NC—Morganton-Lenoir, SDF RWY 3, Amdt. 3
Morganton, NC—Morganton-Lenoir, NDB RWY 3, Amdt. 3
Morganton, NC—Morganton-Lenoir, RNAV RWY 3, Amdt. 2
Salisbury, NC—Rowan County, VOR RWY 2, Amdt. 4
Salisbury, NC—Rowan County, VOR-A, Amdt. 6
Statesville, NC—Statesville Muni, VOR/DME RWY 10, Amdt. 6
Statesville, NC—Statesville Muni, NDB RWY 20, Amdt. 6
Statesville, NC—Statesville Muni, RNAV RWY 2, Amdt. 5
Wilkesboro, NC—Wilkes County, NDB RWY 24, Amdt. 5
Connellsville, PA—Connellsville, VOR-A, Amdt. 1
Connellsville, PA—Connellsville, LOC RWY 5, Amdt. 1
DuBois, PA—DuBois-Jefferson County, NDB RWY 25, Amdt. 8, CANCELLED
Mayaguez, PR—Mayaguez, NDB RWY 9, Orig
Abingdon, VA—Virginia Highlands, VOR/DME-B, Amdt. 5
Chase City, VA—Chase City Muni, NDB RWY 36, Amdt. 2
Clarksburg, WV—Benedum, VOR RWY 3, Amdt. 12
Clarksburg, WV—Benedum, NDB RWY 21, Amdt. 7, CANCELLED
Clarksburg, WV—Benedum, ILS RWY 21, Amdt. 9
Fairmont, WV—Fairmont Muni, NDB-A, Amdt. 5, CANCELLED

. . . Effective October 30, 1986

Rochester, NH—Skyhaven, NDB RWY 33, Amdt. 2

[FR Doc. 86-26587 Filed 11-25-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Lenperone Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by A.H. Robins Co. providing for use of 10- and 25-milligram lenperone tablets as a tranquilizer, antiemetic, and for pre- and postoperative medication in dogs.

EFFECTIVE DATE: November 26, 1986.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV-112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3430.

SUPPLEMENTARY INFORMATION: A.H. Robins Co., 1405 Cummings Drive, P.O. Box 26609, Richmond, VA 23261, submitted a supplement to NADA 97-901 providing for use of 10- and 25-milligram lenperone tablets as a tranquilizer, antiemetic, and for pre- and postoperative medication in dogs. The drug is currently approved for such use as a 5-milligram lenperone tablet. The supplement is approved and the regulations are amended to reflect this approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

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Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Section 520.1236 is amended by revising paragraph (a) to read as follows:

§ 520.1236 Lenperone tablets.

(a) *Specifications.* Each tablet contains 5, 10, or 25 milligrams of lenperone hydrochloride.

* * * * *

Dated: November 18, 1986.

Marvin A. Norcross,

Associate Director for New Animal Drug Evaluation.

[FR Doc. 86–26596 Filed 11–25–86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Extension of Temporary Placement of Acetyl-alpha-methylfentanyl, Alpha-methylthiofentanyl, Beta-hydroxyfentanyl, Beta-hydroxy-3-methylfentanyl, 3-Methylthiofentanyl and Thiofentanyl Into Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This final rule is issued by the Administrator of the Drug Enforcement Administration (DEA) to extend the temporary scheduling of the narcotic substances, acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, beta-hydroxy-3-methylfentanyl, 3-methylthiofentanyl and thiofentanyl into Schedule I of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*). The temporary scheduling of these six substances is due to expire on November 29, 1986. This notice will extend the temporary scheduling of the six fentanyl analogs for six months or until rulemaking proceedings pursuant to 21 U.S.C. 811(a) are completed, whichever occurs first.

EFFECTIVE DATE: November 29, 1986.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633–1366.

SUPPLEMENTARY INFORMATION: On October 29, 1985, the Administrator of the Drug Enforcement Administration issued a final rule in the **Federal Register** (50 FR 43698–702) amending § 1308.11(g) of Title 21 of the Code of Federal Regulations to temporarily place six fentanyl analogs into Schedule I of the Controlled Substances Act pursuant to the emergency scheduling provisions of 21 U.S.C. 811(h). The six fentanyl analogs are:

(1) acetyl-alpha-methylfentanyl (*N*-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-*N*-phenylacetamide)

(2) alpha-methylfentanyl (*N*-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-*N*-phenylpropanamide)

(3) beta-hydroxyfentanyl (*N*-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-*N*-phenylpropanamide)

(4) beta-hydroxy-3-methylfentanyl (*N*-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-*N*-phenylpropanamide)

(5) 3-methylthiofentanyl (*N*-[1-(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-*N*-phenylpropanamide)

(6) thiofentanyl (*N*-phenyl-*N*-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide)

The final rule which became effective on November 29, 1985 was based on findings by the Administrator that the emergency scheduling of the above referenced six fentanyl analogs was necessary to avoid an imminent hazard to the public safety. Section 201(h)(2) of the CSA (21 U.S.C. 811(h)(2)) requires that the emergency scheduling of a substance expires at the end of one year from the effective date of the order. However, during the pendency of proceedings under 21 U.S.C. 811(a)(1) with respect to the substance, temporary scheduling of that substance may be extended for up to six months. Proceedings for the scheduling of a substance under 21 U.S.C. 811(a) may be initiated by the Attorney General (delegated to the Administrator of DEA pursuant to 28 CFR 0.100) on his own motion, at the request of the Secretary of the Department of Health and Human Services, or on the petition of any interested party. Such proceedings regarding the six fentanyl analogs have been initiated by the Administrator.

Therefore, the temporary scheduling of acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, beta-hydroxy-3-methylfentanyl, 3-methylthiofentanyl and thiofentanyl which is due to expire on November 29, 1986, may be extended until May 29, 1987, or until proceedings initiated in accordance with 21 U.S.C. 811(a) are completed; whichever occurs first.

Pursuant to 21 U.S.C. 811(h)(2) the Administrator hereby orders that the temporary scheduling of acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, beta-hydroxy-3-methylfentanyl, 3-methylthiofentanyl and thiofentanyl be extended until May 29, 1987 or until the conclusion of scheduling proceedings initiated in accordance with 21 U.S.C. 811(a); whichever occurs first.

Pursuant to Title 5, United States Code, section 605(b), the Administrator certifies that the extended scheduling of acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, beta-hydroxy-3-methylfentanyl, 3-methylthiofentanyl and thiofentanyl in Schedule I of the Controlled Substances Act will have no impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96–354). The substances, acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, beta-hydroxy-3-methylfentanyl, 3-methylthiofentanyl and thiofentanyl have no legitimate use or manufacturer in the United States.

It has been determined that the extension of the temporary placement of acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, beta-hydroxy-3-methylfentanyl, 3-methylthiofentanyl and thiofentanyl in Schedule I of the CSA under the emergency scheduling provision is a statutory exception to the requirements of Executive Order 12291 (46 FR 13193).

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Dated: November 21, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86–26643 Filed 11–25–86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8106]

Income Taxes; Time for Determining Relationship of Persons Transferring Depreciable Property

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 1239 which clarify the proper time for determination of the relatedness of the transferor and transferee of depreciable property for purposes of section 1239. These final regulations provide the public with guidance as to the proper time for determining relatedness under section 1239. This amendment does not reflect amendments to section 1239 made by the Installment Sales Revision Act of 1980, the Technical Corrections Act of 1982 and the Tax Reform Act of 1984.

EFFECTIVE DATE: The regulations are effective for transfers after January 6, 1983.

FOR FURTHER INFORMATION CONTACT: Robert Beatson of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-3459).

SUPPLEMENTARY INFORMATION:

Background

On January 6, 1983, the **Federal Register** published proposed amendments (48 FR 667) to the Income Tax Regulations (26 CFR Part 1) under section 1239 of the Internal Revenue Code of 1954. One comment was received regarding this proposal. A public hearing was neither requested nor held. After consideration of this comment, these amendments are adopted as revised by this Treasury Decision.

Explanation of Provisions

Section 1239 disallows capital gains treatment on the sale or exchange of depreciable property between related taxpayers as defined in section 1239(b). This section is designed to prevent the immediate payment of a capital gains tax in return for the elimination over a period of years of income taxes on an equivalent amount of ordinary income as a result of the additional depreciation deduction allowable on the increased basis of the transferred property.

Public Comment

The proposed amendments to section 1239 state that a taxpayer and an entity are considered related if there is 80-percent ownership before or immediately after the sale or exchange of depreciable property. This rule does not make any distinction between whether the selling party is the shareholder or the corporation. Additionally, the proposed amendments state that where there is a sale or exchange between two entities, there is relatedness if a shareholder has 80-percent ownership (either actual or constructive ownership) of the transferor before the sale or exchange of depreciable property and the same shareholder has 80-percent ownership (either actual or constructive ownership) of the transferee immediately after the sale or exchange of depreciable property.

The commentator noted that the appropriate time for determining whether a person and a controlled entity are "related persons" when the person sells property to or exchanges property with the entity should be immediately after the sale or exchange of the property. After consideration of this comment, the final regulations provide that when a person sells property to or exchanges property with a controlled entity, the proper time for determining relatedness is immediately after the sale or exchange. Thus, the holding in *Robishaw* v. *United States*, 616 F.2d 507 (Ct. Cl. 1980) is not followed. The commentator further suggested that the appropriate time for determining whether a person and a controlled entity are "related persons" when the entity sells property to or exchanges property with the person should be before the sale or exchange of the property. After consideration of this comment, it has not been adopted since it is believed that abusive situations may result under such a rule. Thus, when a controlled entity sells property to or exchanges property with a person, the time for determining relatedness is immediately before or immediately after the sale or exchange of the depreciable property.

The final regulations also do not adopt the proposed example.

Regulatory Flexibility Act

Although a notice of proposed rulemaking that solicited public comment was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 did not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Non-Applicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Drafting Information

The principal author of this final regulation is Robert Beatson of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation both on matters of substance and style.

List of Subjects in 26 CFR 1.1201-1.1252-2

Income taxes, Capital gains and losses, Recapture.

Adoption of amendments to the regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.1239-1 is amended by redesignating paragraph (c)(3) as (c)(5) and adding new paragraphs (c)(3) and (c)(4). New paragraphs (c)(3) and (c)(4) read as follows:

§ 1.1239-1 Gain from sale or exchange of depreciable property between certain related taxpayers after October 4, 1976.

* * * * *

(c) *Rules of construction.* * * *

(3) *Relationship determination for transfers made after January 6, 1983—taxpayer and an 80-percent owned entity.* For purposes of paragraph (b)(2) of this section with respect to transfers made after January 6, 1983—

(i) If the transferor is an entity, the transferee and such entity are related if the entity is an 80-percent owned entity with respect to such transferee either immediately before or immediately after the sale or exchange of depreciable property, and

(ii) If the transferor is not an entity, the transferee and such transferor are related if the transferee is an 80-percent owned entity with respect to such transferor immediately after the sale or exchange of depreciable property.

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(4) *Relationship determination for transfers made after January 6, 1983—two 80-percent owned entities.* For purposes of paragraph (b)(3) of this section, with respect to transfers made after January 6, 1983, two entities are related if the same shareholder both owns 80 percent or more in value of the stock of the transferor before the sale or exchange of depreciable property and owns 80 percent or more in value of the stock of the transferee immediately after the sale or exchange of depreciable property.

* * * * *

James I. Owens,
Acting Commissioner of Internal Revenue.

Approved: November 14, 1986.

J. Roger Mentz,
Assistant Secretary of the Treasury.

[FR Doc. 26603 Filed 11-25-86; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

Availability of Records and Publication of Department of the Navy Documents Affecting the Public

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Freedom of Information Act (5 U.S.C. 552) requires Government agencies to maintain and make available for inspection and copying current indexes that provide identifying information on certain matters issued, adopted, or promulgated after July 4, 1967. The Department of the Navy is complying with this provision by adding Subpart C—Addresses for Requests for Department of the Navy Records and Locations at Which Department of the Navy Records are Available for Public Inspection which is codified at 32 CFR Part 701.

EFFECTIVE DATE: November 26, 1986.

FOR FURTHER INFORMATION CONTACT: Mrs. G.R. Aitken, Office of the Chief of Naval Operations, OP-09B30, Department of the Navy, The Pentagon, Washington, DC 20350-2000, telephone (202) 694-2817.

List of Subjects in 32 CFR Part 701

Freedom of information.

PART 701—[AMENDED]

Accordingly, 32 CFR Part 701 is amended as follows:

1. The authority citation for Part 701 continues to read as follows:

Authority: 5 U.S.C. 552, as amended by Pub. L. 93-502, 32 CFR Part 286 (40 FR 8190). Subpart E also issued under 32 CFR Part 196 (40 FR 4911), unless otherwise noted.

2. 32 CFR Part 701 is amended by adding Subpart C to read as follows:

Subpart C—Addresses for Requests for Department of the Navy Records and Locations at Which Department of the Navy Records Are Available for Inspection

Sec.
701.31 Addresses for requests for Department of the Navy records.
701.32 Locations at which Department of the Navy records are available for public inspection.

Subpart C—Addresses for Requests for Department of the Navy Records and Locations at Which Department of the Navy Records Are Available for Public Inspection

§ 701.31 Addresses for requests for Department of the Navy records.

Members of the public should address requests to the Commanding Officer or head of the activity where the record is located. When the official having custody of the record is not known, the request should be addressed to the originating official or the official having primary responsibility for the subject matter involved. The following are the most commonly requested types of records: (If you are unable to determine the official having cognizance over the requested records, send your request for naval matters to the Chief of Naval Operations, (Code 09B30), Pentagon, Washington, DC 20350-2000 and Marine Corps matters to the Commandant of the Marine Corps, HQMC, Navy Department, Washington, DC 20380.)

(a) *Audit Reports.* Send requests for internal audit matters to the Auditor General of the Navy, Navy Department, P.O. Box 1206, Falls Church, VA 22041.

(b) *Chaplain Corps.* Send requests for religious affairs matters to the Chief of Chaplains, Navy Department, Washington, DC 20370.

(c) *Civilian Personnel Records.* (1) Send requests for personnel records of current civilian employees, or those separated from Federal employment less than 30 days, to the employing installation marked to the attention of the civilian personnel officer.

(2) Send requests for individuals formerly employed by the Department of the Navy, or separated from Federal employment for more than 30 days, to the Director, National Personnel Records Center, (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118.

(d) *Contractual/Procurement Records and Related Matters.* (1) Send requests for copies of Navy procurement directives and Defense Acquisition Regulations (DARs) to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(2) Send requests for current contracts to the contracting officer or head of the procurement activity when known. If unknown, submit requests for Navy contracts to the Chief of Naval Operations (OP-09B30), Pentagon, Washington, DC 20350-2000 and Marine Corps contracts to the Deputy Chief of Staff for Installations and Logistics, U.S. Marine Corps, Washington, DC 20380.

(e) *Courts-Martial Records.* (1) Send requests for records of trial by general courts-martial, or special courts-martial which resulted in a bad conduct discharge, or involving commissioned officers to the Judge Advocate General, 200 Stovall Street, Alexandria, VA 22332.

(2) Send requests for records of trial by summary courts-martial or special courts-martial not involving a bad conduct discharge to the officer having supervisory authority in the review process.

(f) *Inspector General Records.* (1) Send requests for inspector general inspections, investigations, and related survey matters which are prepared by the Naval Inspector General to the Naval Inspector General, Navy Department, Washington, DC. 20370.

(2) Send requests for those records prepared by inspector generals of other Navy commands to the commander for whom the inspector general records were prepared.

(g) *Investigative records.* (1) Send requests for NIS investigatory records and related matters to the Commander, Naval Security and Investigative Command, Washington, DC 20388.

(2) Send requests for JAG Manual investigative reports to the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332.

(3) Send requests for mishap investigative reports to the Commander, Naval Safety Center, Naval Air Station, Norfolk, VA 23511.

(h) *Legal matters.* (1) General Counsel legal matters. Those relating to the acquisition, custody, management, transportation, taxation, and disposition of real and personal property, and the procurement of services, including the fiscal, budgetary, and accounting aspects thereof, excepting, however, tort claims and admiralty claims arising independently of contract, and matters relating to the naval petroleum reserves; operations of the Military Sealift

Command, excepting tort and admiralty claims arising independently of contract; the Office of the Comptroller of the Navy; procurement matters in the field of patents, inventions, trademarks, copyrights, royalty payments, and similar matters, including those in the Defense Acquisition Regulations (DARs), and Navy procurement directives, and; industrial security, claims and litigation should be directed to the Office of Counsel of the concerned activity. If unknown, submit to the General Counsel, Navy Department, Washington, DC 20360.

(2) Judge Advocate General legal matters. In addition to military law, all matters except those outside the jurisdiction of the General Counsel should be directed to the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332.

(i) *Medical records.* (1) Send requests for inpatient medical treatment records of active duty Navy and Marine Corps personnel and their dependents to the medical treatment facility where the patient is or was being treated. These records are held for two years and then retired to the National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132.

(2) Send requests for outpatient medical treatment records of active duty Navy and Marine Corps personnel and their dependents to the military treatment facility attached to the Command at which they are assigned.

(3) Send requests for outpatient medical records of Navy personnel who have been separated (discharged, retired, or deceased) for less than four months to the Commanding Officer, Naval Reserve Personnel Center, New Orleans, LA 70149–7800. After four months, send requests to the Director, National Personnel Records Center, (Military Personnel Records), 9700 Page Boulevard, St. Louis, MO 63132. Send requests for dependents' outpatient records to the last medical facility where treatment was provided if within two years of sponsor's release/separation from the service. After the two years, send requests to the Director, National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63232.

(4) Send requests for outpatient medical records of Marine Corps personnel who have been separated (discharged, retired, or deceased) for less than four months to the Director, Marine Corps Reserve Support Center, 10950 El Monte Street, Overland Park, KS 66211–1408. After four months, send requests to the Director, National Personnel Records Center, (Military Personnel Records), 9700 Page Boulevard, St. Louis, MO 63132. Requests for dependents' outpatient records should be addressed to the last medical facility where treatment was provided if within two years of active duty member's release/separation from the service. After two years, send requests to the Director, National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63232.

(5) When the location of a military member or dependent's medical record is not known, send requests to the Commander, Naval Medical Command, Navy Department, Washington, DC 20372.

(6) Send requests for medical records of drilling reservists to the reserve centers where they are assigned.

(7) Send requests for medical records of inactive or retired reservists to the Commanding Officer, Naval Reserve Personnel Center, New Orleans, LA 70149–7800.

(8) Civilian employee medical records. Send requests to the medical facility where the person is/was treated. After two years, send requests to the Director, National Personnel Records Center, (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118.

(j) *Military Personnel Records.* (1) Send requests for records of active duty Navy personnel, or those separated (discharged, retired or deceased for up to one year) to the Commander, Naval Military Personnel Command, Navy Department, Washington, DC 20370 and for Marine Corps personnel to the Commandant of the Marine Corps, (Code M), Navy Department, Washington, DC 20380.

(2) Send requests for records of Navy and Marine Corps personnel who have separated (discharged, retired or deceased) for more than one year and inactive reservists to the Director, National Personnel Records Center, (Military Personnel Records), 9700 Page Boulevard, St. Louis, MO 63132.

(3) Send requests for former officer personnel separated prior to 1902 and former enlisted personnel separated prior to 1885 to the Chief, Military Reference Branch, Military Archives Division, National Archives, Washington, DC 20408.

(4) Send requests for records of drilling reservists to the member's servicing personnel support unit.

(5) Send requests for records of inactive duty reservists who still have an obligation to the Navy to the Commanding Officer, Naval Reserve Personnel Center, New Orleans, LA 70149–7800.

(6) Send requests for records of separated reservists who have not retired to the Director, National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132.

(7) Send requests for records of retired reservists to the Commanding Officer, Naval Reserve Personnel Center, New Orleans, LA 70149–7800.

(k) *Publications.* (1) Send requests for instructions issued under the Department of the Navy's directives issuance system and quarterly subject index thereof (NAVPUBNOTE 5215) to the Director, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19111.

(2) Send requests for Marine Corps directives, publications, and manuals to the Commandant of the Marine Corps, (Code HQS), Navy Department, Washington, DC 20380.

(3) Send requests for military specifications, standards, and handbooks to the Director, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19111.

(l) *Research Records.* Send requests for records regarding basic research and grants to the activity having custody of the record. If unknown, send to the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217.

(m) *Systems Commands.*—(1) *Aeronautical weapons systems.* Send requests for information on aeronautical weapons systems, associated subsystems and related systems and equipment to the Commander, Naval Air Systems Command, Naval Air Systems Command Headquarters, Washington, DC 20361.

(2) *Facilities.* Send requests for information on facilities and land management (design, construction, and maintenance; utilities; housing; and real estate matters) to the Commander, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332.

(3) *Ships.* Send requests for information on ships and ordnance materials to the Commander, Naval Sea Systems Command, Naval Sea Systems Command Headquarters, Washington, DC 20362.

(4) *Space and Naval Warfare.* Send requests for information on development technologies regarding battle force architecture and engineering, space communications, navigation, undersea and ocean surveillance, oceanographic matters, antisubmarine warfare, information transfer systems, and information management systems to the Commander, Space and Naval Warfare Systems Command, Washington, DC 20363–5100.

(5) *Supply.* Send requests for information on naval supply matters to the Commander, Naval Supply Systems

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Command, Naval Supply Systems Command Headquarters, Washington, DC 20376 and for Marine Corps supply matters to the Commandant of the Marine Corps. (Code L), HQ USMC, Washington, DC 20380.

(n) *Ships deck logs.* Send requests for ships deck logs originating after 30 June 1945 to the Chief of Naval Operations, (OP–09B37), Pentagon, Washington, DC 20350–2000. Those originated prior to 1945 are held by the Chief, Military Reference Branch, Military Archives Division, National Archives, Washington, DC 20408.

(o) *Supply catalogs.* Send requests for Navy and Federal supply catalogs, master cross reference indexes, and related cataloging publications cataloging, such as M1–1, –2 and –3) to H–3 and Federal manuals for supply cataloging, such as Ml–1, –2 and –3) to the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402–9325.

(p) *Technical reports.* Send requests for unclassified technical reports or publications to the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 20402.

§ 701.32 Locations at which Department of the Navy records are available for public inspection.

The following is a list of locations where Navy records are available for public inspection:

(a) *Navy Department Library.* The Navy Department Library is located at the Washington Navy Yard, Building 44, Second floor, U.S. Naval Station, 9th and M Streets, SE., Washington, DC 20374.

(1) *Hours of Operation:* 9 a.m. to 4 p.m., Monday through Friday, except holidays.

(2) *Type of Materials Held:* The library has some 130,000 volumes of information of interest to the Navy, such as naval and general history, international law and diplomacy, naval architecture and shipbuilding, naval customs and traditions, naval shore stations, yards and bases, uniforms, insignia, awards, medals and flags, geography, travel and guide books, aviation, Navy music, etc. Also contained are approximately 5,000 rare book collections. Additionally, the library has an index by subject matter of materials held, i.e., NAVPUBNOTE 5215, Consolidated Subject Index, a quarterly publication which lists instructions originated by Washington Headquarters organizations and Marine Corps directives system quarterly checklist of directives distributed outside Headquarters, U.S. Marine Corps. The library is equipped with desks and study carrels for library users and has specialized devices to facilitate research, such as microfilm reader/printers, copy machines, and outlets for tape recorders.

(b) *Defense Reading Room.* The Defense Reading Room is located in Room 2E165 of the Pentagon, Washington, D.C. 20310. Due to building security, upon arrival at the Pentagon, call 695–3973 to arrange for an escort to the Reading Room.

(1) *Hours of Operation:* 8 a.m. to 4 p.m., Monday through Friday, except holidays.

(2) *Type of Materials Held:* Microfiche copies of indexes and decisional documents regarding Navy Discharge Review Board and Board for Correction of Naval Records proceedings.

(c) *Law Library of the Judge Advocate General.* The law library is located at the Hoffman Building, #2, Room 9S47, 200 Stovall Street, Alexandria, VA 22332–2400

(1) *Hours of Operation:* 9 a.m. to 4 p.m., Monday through Friday, except holidays.

(2) *Type of Materials Held:* The library has published and unpublished decisions of the Navy-Marine Corps Court of Military Review, Navy and Marine Corps directives, miscellaneous superseded manuals, and courts-martial orders and the Navy Department Bulletin.

Dated: November 14, 1986.

Harold L. Stoller, Jr.

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 86–26056 Filed 11–25–86; 8:45 am]

BILLING CODE 3810–01–M

Corps of Engineers, Department of the Army

33 CFR Part 334

Navigation and Navigable Waters; Danger Zones and Restricted Area Regulations; Cooper River, SC

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Army is amending the regulations which establish a naval restricted area in the Cooper River in the vicinity of the Charleston Naval Shipyard, Charleston County, South Carolina. The amendment enlarges the existing restricted area to make it compatible with the Navy's present use of the area, and provide additional security for the Naval base.

EFFECTIVE DATE: December 26, 1986.

ADDRESS: HQDA, DAEN–CWO–N, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Eppard or Mr. Sam Collinson at (202) 272–1783.

SUPPLEMENTARY INFORMATION: The Commander, Naval Base, Charleston, South Carolina has requested the Department of the Army amend the regulation in 33 CFR 334.460 (formerly 207.164b). These regulations, which establish a restricted area in the Cooper River in the vicinity of the Charleston Naval Shipyard, were approved on 6 May 1960 and last amended 2 September 1978. The existing restrictions on anchoring, fishing, loitering and photographing remain unchanged and would apply to the enlarged restricted area. The title of the enforcing agency in paragraph (b)(4) is changed to reflect a change in Navy organization.

Notes:

1. The Department of the Army has determined that this rule is not a major rule within the meaning of Executive Order 12291 and is exempt from the general requirements of Executive Order 12291 in accordance with the exemption provided military functions.

2. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 33 CFR Part 334

Navigation, Waterways, Transportation.

For the reasons set out in the preamble, Title 33, Chapter II, Part 334 is amended as follows:

PART 334—DANGER ZONES AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.460 is amended by revising paragraphs (a)(3) and (b) (4) and (5) as follows:

§ 334.460 Cooper River and Tributaries at Charleston, SC; restricted areas.

(a) *The areas.*

* * * * *

(3) That portion of the Cooper River beginning on the west channel edge at latitude 32°52′06″, longitude 79°57′54″; thence to the easterly shore to latitude 32°52′13″, longitude 79°57′30″; thence proceeding along the easterly shore to latitude 32°51′30″, longitude 79°56′15.5″; thence along the Cooper River to latitude 32°51′01″, longitude 79°55′50″; thence to latitude 32°50′52″, longitude 79°56′03.5″; thence to latitude 32°51′01″,

longitude 79°56′07″; thence to latitude 32°51′19″, longitude 79°57′05″; thence to latitude 32°51′33″, longitude 79°57′27″; thence to latitude 32°51′48.5″, longitude 79°57′ 41.5″; thence to latitude 32°52′06″, longitude 79°57′54″.

* * * * *

(b) *The regulations.*

* * * * *

(4) The regulations in paragraphs (b) (1) and (2) of this section shall be enforced by Commander, Naval Base, Charleston, South Carolina, and such agencies as he/she may designate.

(5) The regulations in paragraph (b)(3) of this section shall be enforced by the Commanding Officer, Naval Ammunition Depot, Charleston, South Carolina, and such agencies as he/she may designate.

Dated: November 12, 1986.

Approved:

Robert K. Dawson,

Assistant Secretary of the Army, (Civil Works).

[FR Doc. 86–26599 Filed 11–25–86; 8:45 am]

BILLING CODE 3710-08-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL 3089–1]

Amendments to Subparts D, Da, Db, and J; Addition of Method 5B and Method 5F to Appendix A

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: These amendments and test methods were proposed in the **Federal Register** on May 29, 1985 (50 FR 21863). This action promulgates: (1) The amendments to the test methods and procedures under § 60.46 of Subpart D and § 60.106 of Subpart J, (2) the amendments to the compliance determination procedures and methods under § 60.48a of Subpart Da and § 60.46b of Subpart Db, and (3) the addition of Method 5B, "Determination of Nonsulfuric Acid Particulate Matter from Stationary Sources," and Method 5F, "Determination of Nonsulfate Particulate Matter from Stationary Sources," to Appendix A of 40 CFR Part 60. These amendments are being made to minimize the measurement of sulfuric acid mist by Method 5 or Method 17 when used to measure particulate matter (PM) after flue gas desulfurization (FGD) systems and fluid catalytic cracking unit (FCCU) catalyst regenerators. This action is necessary because EPA's intent was not to include sulfuric acid when the emission standards for PM were established for these affected facilities.

These methods are being promulgated for the source categories specified here to measure emissions under section 111 of the Clean Air Act, where emission limitations are based on the application of best demonstrated control technology (BDT). In cases where the emission limits are based on ambient air quality considerations, such as under section 110 of the Clean Air Act, and the resultant State implementation plans, it would be appropriate to measure PM emissions using Method 5 or a modified Method 5 which includes material caught in the impingers following the filter.

DATES: Effective November 26, 1986.

Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Summary of Comments and Responses.* This document for the promulgated test methods may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to "Summary of Comments and Responses for Methods 5B and 5F, EPA–450/3–86–008." This document contains: (1) A summary of all the public comments made on the proposed test methods with the Administrator's response to the comments, and (2) a summary of the changes made to the test methods since proposal.

Docket. Docket No. A–81–05, containing supporting information used in developing the promulgated rule, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE–131), West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Gary D. McAlister or Mr. Roger T. Shigehara, Emission Measurement Branch (MD–19), Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2237.

SUPPLEMENTARY INFORMATION:

I. Background

The EPA adopted standards to limit PM from boilers built after 1971 (Subpart D); utility boilers built after 1978 (Subpart Da); and FCCU's built after 1973 (Subpart J). These standards were intended to limit particulate emissions through the use of BDT. The Agency has recognized that the methods which have been available for testing these sources may not accurately assess the performance of the control devices that are being used for PM control. This was noted in the preamble to the new source performance standard (NSPS) for electric utility steam generating units published on June 11, 1979 (44 FR 33580). In the section on performance testing, the Agency stated, "Since technology is not available for the control of sulfuric acid mist, which is condensed in the FGD system, the Administrator does not believe the PM sample should include condensed acid mist. The final regulation, therefore, allows PM testing for compliance between the outlet of the PM control device and the inlet of a wet FGD system. The EPA will continue to investigate revised procedures to minimize the measurement of acid mist by Method 5 or Method 17 when used to measure PM after the FGD system. Since technology is available to control particulate sulfate carryover from an FGD system and the Administrator believes good mist eliminators should be included with all FGD systems, the regulations will be amended to require PM measurement after the FGD system when revised procedures for Method 5 or Method 17 are available." As noted here, mist eliminators can control scrubber liquor droplets which might contain dissolved metal sulfates, but they cannot control the sulfuric acid mist which might form in the stack.

In addition, since EPA promulgated an NSPS for PM emissions from FCCU regenerators on March 8, 1974 (39 FR 9308), EPA has been asked to clarify whether the intent of the emission regulation was to control condensible sulfur trioxide (SO_3) in the gas phase at the operating temperature of the control device along with the "catalyst fines" or "mineral dust."

In the public notice of proposed rulemaking for a revision to the FCCU NSPS (44 FR 60759), EPA stated that Method 5 may collect condensible matter that is not controllable by the best systems of emission reduction. Therefore, a facility employing such systems could be in noncompliance if

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significant quantities of such condensibles are present because feed stocks or process conditions are different from those tested to support the NSPS. Method 5 was used in 1971 and 1972 to collect data to support the NSPS. The facilities tested were conventional regenerators equipped with electrostatic precipitators (ESP's) and carbon monoxide boilers. It was further stated that the condensible materials that are present in the gas phase at the control device operating temperature were not intended to be controlled.

As a result of this, the Agency undertook a program to develop test methods which measure PM in a manner consistent with the original standards. Two methods have been developed.

Method 5B is essentially the same as Method 5 except that the samples are collected at 320 °F instead of 250 °F and the samples are heated in a laboratory oven to 320 °F for 6 hours before analysis. Method 5B is applicable to Subpart D, Da, Db, and J sources that are equipped with wet FGD systems.

Method 5F has exactly the same sampling procedure as Method 5B, but the analysis procedure calls for chemical measurement of the water soluble sulfates which are then subtracted from the total sample mass. Method 5F is applicable only to Subpart J sources that do not use wet FGD's.

The intent of these new methods is to ensure that these NSPS reflect the control technologies on which they are based. The EPA recognizes that the emissions of acid mist which are not measured by these methods are measured as PM in the ambient air. Although there may be some exceptions, these methods would generally not be appropriate for emission limits that are based on achieving a particular impact on ambient air quality, for example, in State implementation plans under Section 110 of the Act.

As a result of the development of these two new methods, the following revisions are being made in § 60.46 of Subpart D, § 60.48a of Subpart Da, § 60.46b of Subpart Db, and § 60.106 of Subpart J.

1. The method for determining PM concentration for those Subpart D, Da, Db, and J sources with wet FGD systems is being changed from Method 5 to Method 5B. The method for Subpart J sources without wet FGD systems is being changed from Method 5 to Method 5B or Method 5F. The method for Subparts D, Da, and Db sources without wet FGD systems will continue to be Method 5.

2. The use of Method 17 with the Method 5B analytical procedure is being allowed if Method 17 is used after wet FGD systems, or if the average stack temperature is less than or equal to 160 °C. This procedure, however, could lead to a high bias in the particulate results as all the acid cannot be removed by thermal heating.

3. Paragraph 60.48a(a)(7) is being deleted. Paragraph (7) is no longer needed with the issuance of Method 5B.

II. Public Participation

The amendments and test methods were proposed and published in the **Federal Register** on May 29, 1985 (50 FR 21863). To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed rules, a public hearing was scheduled for July 26, 1985 at the Research Triangle Park, North Carolina, but no one wished to make an oral presentation. The public comment period was from May 29, 1985 to July 31, 1985. Nine comment letters were received concerning issues relevant to the proposed test methods. The comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made in the proposed test methods or amendments.

III. Significant Comments and Changes to the Proposed Test Methods

Nine comment letters were received on the proposed test methods and amendments. A detailed discussion of these comments and responses can be found in the background information document which is referred to in the **"ADDRESSES"** section of this preamble. The summary of comments and responses serves as the basis for the revisions which have been made to the test methods and amendments between proposal and promulgation. The major comments and responses are summarized in this preamble. Most of the comment letters contained multiple comments. The significant comments fell into two categories.

Applicability

Three commenters argued that other sources faced circumstances that were similar to those Subparts D, Da, Db and J sources equipped with wet FGD units and should also be allowed to use Method 5B for determining compliance with particulate matter emission limits.

The development of Methods 5B and 5F was in response to a specific problem. The issue is not simply that Method 5 may measure condensed H_2SO_4 as particulate matter. Rather, the issue is that the potential for condensed H_2SO_4 is greater at these sources now than it was when their emission limits were established because changes in operating conditions have allowed the affected sources to use feed stocks with much higher sulfur content. There was no evidence presented that a similar situation existed for the sources cited by the commenters.

Two commenters thought that it was inappropriate to eliminate the option of sampling particulate matter emissions prior to wet FGD's. These commenters argued that EPA had not demonstrated that there was a consistent relationship between measurements made with Method 5B after a wet FGD and measurements made with Method 5 before a wet FGD.

The original intent of this regulation was to require testing downstream of any FGD unit. Because of concern that condensed sulfuric acid following the FGD would be counted as particulate matter by Method 5, Subpart Da sources were temporarily given the option of testing upstream of the FGD. Method 5B will not measure the condensed sulfuric acid and, therefore, may be used downstream of the FGD unit as originally intended by the regulation. The change in test location does not represent a change in the standard, but merely eliminates a temporary option granted until a method could be developed that would not count condensed sulfuric acid as particulate matter.

In addition, during its development Method 5B was shown to yield particulate matter measurements that were always equal to or less than those measured by Method 5 at the same location. Since the promulgation of Subpart Da, at least three sources equipped with FGD units have conducted compliance tests where the test point was downstream of the FGD unit and the particulate matter was measured using Method 5. All of these sources were found to be in compliance with the particulate matter standard. Because the particulate matter measured by Method 5B is always equal to or less than that measured by Method 5B, these sources would also have been shown to be in compliance if Method 5B had been used to measure the particulate matter. Therefore, we believe it is reasonable to require that sources equipped with FGD units must conduct particulate matter tests downstream of the FGD unit.

Technical

Two commenters were concerned that Method 5F eliminated more than condensed H_2SO_4 from particulate samples because it uses a water extraction procedure to remove water soluble sulfates from the sample.

The use of Method 5F is limited to FCCU's which are not equipped with wet FGD units. We believe that any water soluble sulfates from these sources would be limited to condensed H_2SO_4 or metal sulfates formed from condensed H_2SO_4 in the sampling train. Thus, Method 5F would eliminate only condensed H_2SO_4 from the sample.

One commenter, citing costs as the major factor, thought it was unreasonable to limit the analytical procedure in Method 5F to ion chromatography. This commenter wanted the option of using the barium titration procedure described in Method 6 as an alternative analytical procedure.

At the time of the proposal, we did not have data to show that the titration procedure was an acceptable alternative method. We have recently completed the necessary development work and will propose the titration procedure as an alternative method.

One commenter pointed out that additional blanks should be included in Method 5F. The commenter also suggested that smaller beakers be used when drying the sample to determine the dried residue. Both of these changes have been incorporated into the method.

IV. Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify readily and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated test methods and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review (Section 307(d)(7)(a)).

Miscellaneous

This rulemaking does not impose any additional emission measurement requirements on facilities affected by this rulemaking. Rather, this rulemaking revises the test method to which the affected facilities are already subject.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This regulation is not major because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, U.S.C. 3501 *et seq.*

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have any economic impact on small entities because no additional test costs are incurred. Any written comments from the Office of Management and Budget and any written EPA responses are available in the docket.

List of Subjects in 40 CFR Part 60

Air pollution control, Incorporation of reference, Intergovernmental relations, Report, Recordkeeping requirements, Petroleum refineries, Electric utility steam generators.

Dated: October 31, 1986.

Lee M. Thomas,
Administrator.

PART 60—[AMENDED]

For the reasons set forth in the preamble, 40 CFR Part 60 is amended as follows:

1. The authority citation for Part 60 continues to read as follows:

Authority: Sections 101, 111, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. In § 60.46b, paragraphs (d)(1), (d)(2), (d)(2)(i), (d)(2)(ii), (d)(5), (d)(6) are revised and paragraph (d)(2)(iii) is added to read as follows:

§ 60.46b Compliance and performance testing for particulate matter and nitrogen oxides.

* * * * *

(d) * * *

(1) Method 3 is used for gas analysis when applying Method 5, Method 5B, or Method 17.

(2) Method 5, Method 5B, or Method 17 shall be used to measure the concentration of particulate matter as follows:

(i) Method 5 shall be used at affected facilities without wet flue gas desulfurization (FGD) systems; and

(ii) Method 17 may be used at facilities with or without wet scrubber systems provided that the stack gas temperature does not exceed a temperature of 160 °C (320°F). The procedures of sections 2.1 and 2.3 of Method 5B may be used in Method 17 only if it is used after a wet FGD system. Do not use Method 17 after wet FGD systems if the effluent is saturated or laden with water droplets.

(iii) Method 5B is to be used only after wet FGD systems.

* * * * *

(5) For determination of particulate emissions, the oxygen or carbon dioxide sample is obtained simultaneously with each run of Method 5, Method 5B, or Method 17 by traversing the duct at the sampling location.

(6) For each run using Method 5, Method 5B, or Method 17, the emission rate expressed in nanograms per joule heat input is determined using:

* * * * *

3. In § 60.46, paragraphs (a)(2), (a)(3), (b), (c), and (f)(3)(ii) are revised to read as follows:

§ 60.46 Test methods and procedures.

(a) * * *

(2) Method 3 for gas analysis to be used when applying Method 5, 5B, 17, 6, 7, 7A, 7C, or 7D.

(3) Method 5, 5B, or 17 for concentration of particulate matter and the associated moisture content as follows: Method 5 is to be used at affected facilities without wet flue gas desulfurization (FGD) systems; Method 5B is to be used only after wet FGD systems; and Method 17 may be used at facilities with or without wet FGD systems provided that the stack gas temperature at the sampling location does not exceed an average temperature of 160 °C (320 °F). The procedures of sections 2.1 and 2.3 of Method 5B may be used with Method 17 only if it is used after wet FGD systems. Do not use Method 17 after wet FGD systems if the effluent gas is saturated or laden with water droplets.

* * * * *

(b) For Method 5, 5B, or 17, Method 1 shall be used to select the sampling site and the number of traverse sampling points. The sampling time for each run shall be at least 60 minutes, and the minimum sampling volume shall be 0.85 dscm (30 dscf) except that smaller sampling times or volumes, when necessitated by process variables or other factors, may be approved by the Administrator. The probe and filter holder heating systems in the sampling train shall be set to provide a gas temperature of 160±14 °C (320±25 °F).

(c) For Methods 6 and 7, 7A, 7C, or 7D the sampling site shall be the same as that selected for Method 5, 5B, or 17. The

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sampling point in the duct shall be at the centroid of the cross section or at a point no closer to the walls than 1 m (3.28 ft). For Methods 6 and 7C or 7D, the sample shall be extracted at a constant volumetric flow rate.

* * * * *

(f) * * *

(3) * * *

(ii) For determination of particulate emissions, the oxygen sample shall be obtained simultaneously by traversing the duct at the same sampling location used for each run of Method 5, 5B, or 17 under paragraph (b) of this section. Method 1 shall be used for selection of the number of oxygen traverse points except that no more than 12 sample points are required.

* * * * *

4. In § 60.48a, paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6) are revised; paragraph (a)(7) is removed.

§ 60.48a Compliance determination procedures and methods.

(a) * * *

(1) Method 3 is used for gas analysis when applying Method 5, 5B, or 17.

(2) Method 5, 5B, or 17 is used for determining particulate matter emissions and associated moisture content as follows: Method 5 is to be used at affected facilities without wet FGD systems; Method 5B is to be used only after wet FGD systems; and Method 17 may be used at facilities with or without wet FGD systems provided that the stack gas temperature at the sampling location does not exceed a temperature of 160 °C (320 °F). The procedures of sections 2.1 and 2.3 of Method 5B may be used in Method 17 only if it is used after wet FGD systems. Do not use Method 17 after wet FGD systems if the effluent is saturated or laden with water droplets.

(3) For Method 5, 5B, or 17, Method 1 is used to select the sampling site and the number of traverse sampling points. The sampling time for each run is at least 120 minutes and the minimum sampling volume is 1.7 dscm (60 dscf) except that smaller sampling times or volumes, when necessitated by process variables or other factors, may be approved by the Administrator.

(4) For Method 5 or 5B the probe and filter holder heating system in the sampling train is set to provide an average gas temperature of 160 °C (320 °F).

(5) For determination of particulate emissions, the oxygen or carbon dioxide sample is obtained simultaneously with each run of Method 5, 5B, or 17 by traversing the duct at the same sampling location. Method 1 is used for selection of the number of oxygen or carbon dioxide traverse points except that no more than 12 sample points are required.

(6) For each run using Method 5, 5B, or 17, the emission rate expressed in ng/J heat input is determined using the oxygen or carbon-dioxide measurements and particulate matter measurements obtained under this section, the dry basis Fc-factor and the dry basis emission rate calculation procedure contained in Method 19 (Appendix A).

* * * * *

5. In § 60.106, paragraphs (a)(1)(i) and (a)(2) are revised to read as follows:

§ 60.106 Test methods and procedures.

(a) * * *

(1) * * *

(i) Method 5B or 5F is to be used to determine particulate matter emissions and associated moisture content from affected facilities without wet FGD systems; only Method 5B is to be used after wet FGD systems.

(ii) * * *

(iii) * * *

(2) For Method 5B or 5F, the sampling time for each run shall be at least 60 minutes and the sampling rate shall be at least 0.015 dscm/min (0.53 dscf/min), except that shorter sampling times may be approved by the Administrator when process variables or other factors preclude sampling for at least 60 minutes.

* * * * *

6. Appendix A is amended by adding Method 5B and Method 5F as follows:

Appendix A—Reference Methods

* * * * *

Method 5B—Determination of Nonsulfuric Acid Particulate Matter From Stationary Sources

1. *Applicability and Principle.*

1.1 Applicability. This method is to be used for determining nonsulfuric acid particulate matter from stationary sources. Use of this method must be specified by an applicable subpart, or approved by the Administrator, U.S. Environmental Protection Agency, for a particular application.

1.2 Principle. Particulate matter is withdrawn isokinetically from the source using the Method 5 train at 160 °C (320 °F). The collected sample is then heated in the oven at 160 °C (320 °F) for 6 hours to volatilize any condensed sulfuric acid that may have been collected, and the nonsulfuric acid particulate mass is determined gravimetrically.

2. *Procedure.*

The procedure is identical to EPA Method 5 except for the following:

2.1 Initial Filter Tare. Oven dry the filter at 160±5 °C (320 ±10 °F) for 2 to 3 hours, cool in a desiccator for 2 hours, and weigh. Desiccate to constant weight to obtain the initial tare. Use the applicable specifications and techniques of Section 4.1.1 of Method 5 for this determination.

2.2 Probe and Filter Temperatures. Maintain the probe outlet and filter temperatures at 160±14 °C (320±25 °F).

2.3 Analysis. Dry the probe sample at ambient temperature. Then oven-dry the probe and filter samples at a temperature of 160±5 °C (320±10 °F) for 6 hours. Cool in a desiccator for 2 hours, and weigh to constant weight. Use the applicable specifications and techniques of Section 4.3 of Method 5 for this determination.

* * * * *

Method 5F—Determination of Nonsulfate Particulate Matter From Stationary Sources

1. *Applicability and Principle.*

1.1 Applicability. This method is to be used for determining nonsulfate particulate matter from stationary sources. Use of this method must be specified by an applicable subpart of the standards, or approved by the Administrator, U.S. Environmental Protection Agency, for a particular application.

1.2 Principle. Particulate matter is withdrawn isokinetically from the source using the Method 5 train at 160 °C (320 °F). The collected sample is then extracted with water. A portion of the extract is analyzed for sulfate content. The remainder is neutralized with ammonium hydroxide before it is dried and weighed.

2. *Apparatus.*

The apparatus is the same as Method 5 with the following additions.

2.1 Analysis.

2.1.1 Erlenmeyer Flasks. 125-ml, with ground glass joints.

2.1.2 Air Condenser. With ground glass joint compatible with the Erlenmeyer flasks.

2.1.3 Beakers. 250-ml.

2.1.4 Volumetric Flasks. 1-liter, 500-ml (one for each sample), 200-ml, and 50-ml (one for each sample and standard).

2.1.5 Pipets. 5-ml (one for each sample and standard).

2.1.6 Ion Chromatograph. The ion chromatograph should have at least the following components.

2.1.6.1 Columns. An anion separation or other column capable of resolving the sulfate ion from other species present and a standard anion suppressor column. Suppressor columns are produced as proprietary items; however, one can be produced in the laboratory using the resin available from BioRad Company, 32nd and Griffin Streets, Richmond, California. Other systems which do not use suppressor columns may also be used.

2.1.6.2 Pump. Capable of maintaining a steady flow as required by the system.

2.1.6.3 Flow Gauges. Capable of measuring the specified system flow rate.

2.1.6.4 Conductivity Detector.

2.1.6.5 Recorder. Compatible with the output voltage range of the detector.

3. *Reagents.*

The reagents are the same as for Method 5 with the following exceptions:

3.1 Sample Recovery. Water, deionized distilled to conform to American Society for Testing and Materials Specification D1193–74, Type 3, is needed. At the option of the analyst, the $KMnO_4$ test for oxidizable organic matter may be omitted when high concentrations of organic matter are not expected to be present.

3.2 Analysis. The following are required:

3.2.1 Water. Same as in Section 3.1.

3.2.2 Stock Standard Solution, 1 mg $(NH_4)_2SO_4$/ml. Dry an adequate amount of primary standard grade ammonium sulfate at 105° to 110 °C for a minimum of 2 hours before preparing the standard solution. Then dissolve exactly 1.000 g of dried $(NH_4)_2SO_4$ in water in a 1-liter volumetric flask, and dilute to 1 liter. Mix well.

3.2.3 Working Standard Solution, 25 μg $(NH_4)_2SO_4$/ml. Pipet 5 ml of the stock standard solution into a 200-ml volumetric flask. Dilute to 200 ml with water.

3.2.4 Eluent Solution. Weigh 1.018 g of sodium carbonate (Na_2CO_3) and 1.008 g of sodium bicarbonate ($NaHCO_3$), and dissolve in 4 liters of water. This solution is 0.0024 M Na_2CO_3/0.003 M $NaHCO_3$. Other eluents appropriate to the column type and capable of resolving sulfate ion from other species present may be used.

3.2.5 Ammonium Hydroxide. Concentrated, 14.8 M.

3.2.6 Phenolphthalein Indicator. 3,3-Bis(4-hydroxyphenyl)-1-(3H)-isobenzofuranone. Dissolve 0.05 g in 50 ml of ethanol and 50 ml of water.

4. *Procedure.*

4.1 Sampling. The sampling procedure is the same as Method 5, Section 4.1, except that the probe outlet and filter temperatures shall be maintained at 160°±14 °C (320°±25 °F).

4.2 Sample Recovery. The sample recovery procedure is the same as Method 5, Section 4.2, except that the recovery solvent shall be water instead of acetone.

4.3 Analysis.

4.3.1 Sample Extraction. Cut the filter into small pieces, and place it in a 125-ml Erlenmeyer flask with a ground glass joint equipped with an air condenser. Rinse the shipping container with water, and pour the rinse into the flask. Add additional water to the flask until it contains about 75 ml, and place the flask on a hot plate. Gently reflux the contents for 6 to 8 hours. Cool the solution, and transfer it to a 500-ml volumetric flask. Rinse the Erlenmeyer flask with water, and transfer the rinsings to the volumetric flask including the pieces of filter.

Transfer the probe rinse to the same 500-ml volumetric flask with the filter sample. Rinse the sample bottle with water, and add the rinsings to the volumetric flask. Dilute the sample to exactly 500 ml with water.

4.3.2 Sulfate (SO_4) Analysis. Allow the sample to settle until all solid material is at the bottom of the volumetric flask. If necessary, centrifuge a portion of the sample. Pipet 5 ml of the sample into a 50-ml volumetric flask, and dilute to 50 ml with water. Prepare a standard calibration curve according to Section 5.1. Analyze the set of standards followed by the set of samples using the same injection volume for ~~both~~ standards and samples. Repeat this analysis sequence followed by a final analysis of the standard set. Average the results. The two sample values must agree within 5 percent of their mean for the analysis to be valid. Perform this duplicate analysis sequence on the same day. Dilute any sample and the blank with equal volumes of water if the concentration exceeds that of the highest standard.

Document each sample chromatogram by listing the following analytical parameters: Injection point, injection volume, sulfate retention time, flow rate, detector sensitivity setting, and recorder chart speed.

4.3.3 Sample Residue. Transfer the remaining contents of the volumetric flask to a tared 250-ml beaker. Rinse the volumetric flask, and add the rinsings to the tared beaker. Make certain that all particulate matter is transferred to the beaker. Evaporate the water in an oven heated to 105 °C until only about 100 ml of water remains. Remove the beakers from the oven, and allow them to cool.

After the beakers have cooled, add five drops of phenolphthalein indicator, and then add concentrated ammonium hydroxide until the solution turns pink. Return the samples to the oven at 105 °C, and evaporate the samples to dryness. Cool the samples in a desiccator, and weigh the samples to constant weight.

4.4 Blanks.

4.4.1 Filter Blank. Choose a clean filter from the same lot as those used in the testing. Treat the blank filter as a sample, and analyze according to Sections 4.3.1 and 4.3.2.

4.4.2 Water. Transfer a measured volume of water between 100 and 200 ml into a tared 250-ml beaker. Treat the blank as a sample, and analyze according to Section 4.3.3.

5. *Calibration.*

The calibration procedure is the same as Method 5, Section 5, with the following additions:

5.1 Standard Calibration Curve. Prepare a series of five standards by adding 1.0, 2.0, 4.0, 6.0, and 10.0 ml of working standard solution (25 μg/ml) to a series of five 50-ml volumetric flasks. (The standard masses will equal 25, 50, 100, 150, and 250 μg.) Dilute each flask to volume with water, and mix well. Analyze with the samples as described in Section 4.3. Prepare or calculate a linear regression plot of the standard masses in μg (x-axis) versus their responses (y-axis). (Take peak height measurements with symmetrical peaks; in all other cases, calculate peak areas.) From this line, or equation, determine the slope, and calculate its reciprocal which is the calibration factor, S. If any point deviates from the line by more than 7 percent of the concentration at that point, remake and reanalyze that standard. This deviation can be determined by multiplying S times the response for each standard. The resultant concentrations must not differ by more than 7 percent from each known standard mass (i.e., 25, 50, 100, 150, and 250 μg).

5.2 Conductivity Detector. Calibrate according to manufacturer's specifications prior to initial use.

6. *Calculations.*

Calculations are the same as Method 5, Section 6, with the following additions:

6.1 Nomenclature.

C_w=Water blank residue concentration, mg/ml.

F=Dilution factor (required only if sample dilution was needed to reduce the concentration into the range of calibration).

H_s=Sample response, mm for height or mm^2 for area.

H_b=Filter blank response, mm for height or mm^2 for area.

m_b=Mass of beaker used to dry sample, mg.

m_f=Mass of sample filter, mg.

m_n=Mass of nonsulfate particulate matter, mg.

m_s=Mass of ammonium sulfate in the sample, mg.

m_t=Mass of beaker, filter, and dried sample, mg.

m_w=Mass of residue after evaporation of water blank, mg.

S=Calibration factor, μg/mm.

V_b=Volume of water blank, ml.

V_s=Volume of sample evaporated, 495 ml.

6.2 Water Blank Concentration.

$$C_w = \frac{m_w}{V_b}$$

Eq. 5F–1

6.3 Mass of Ammonium Sulfate.

$$m_s = \frac{99(H_s - H_b)}{1000}$$

Eq. 5F–2

6.4 Mass of Nonsulfate Particulate Matter.

$$m_n = m_t - m_b - m_s - m_f - V_s C_w$$

Eq. 5F–3

7. *Bibliography.*

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INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Ch. 7, App. D

[AIDAR Notice 87-3]

Acquisition Regulation Concerning Direct AID Contracts With U.S. Citizens or U.S. Resident Aliens for Personal Services Abroad

AGENCY: Agency for International Development (AID), IDCA.

ACTION: Final rule.

SUMMARY: The AID Acquisition Regulation (AIDAR) is being amended to clarify several provisions in Appendix D, Direct AID Contracts With U.S. Citizens or U.S. Resident Aliens for Personal Services Abroad.

EFFECTIVE DATE: November 26, 1986.

FOR FURTHER INFORMATION CONTACT: M/SER/PPE, Mrs. Patricia L. Bullock, telephone (703) 875-1534.

SUPPLEMENTARY INFORMATION: The AID Acquisition Regulation (AIDAR) is being amended to remove FAR references in the policy text (Paragraphs 1 through 12) of Appendix D, to incorporate guidance on the use of operating expense funds and program funds obligated under a personal services contract, and to make miscellaneous editorial changes.

This AIDAR Notice is not a major rule and is exempt from the requirements of Executive Order 12291 by OMB Bulletin 85-7. The change is not considered "significant" under FAR 1.301 or FAR 1.501, and public comments have not been solicited. This Notice will not have an impact on a substantial number of small entities or require any information collection, as contemplated by the Regulatory Flexibility Act or the Paperwork Reduction Act respectively.

List of Subjects in 48 CFR Chapter 7, Appendix D

Government procurement.

For the reasons set out in the preamble, Chapter 7 of Title 48 of the Code of Federal Regulations is amended as follows:

1. The authority citation for the Appendices to Chapter 7 is unchanged and continues to read as follows:

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., p. 435.

Appendix D—Direct AID Contracts With U.S. Citizens or U.S. Resident Aliens for Personal Services Abroad.

2. Paragraph 1, *General,* is amended by revising paragraphs (b) (1), (2) and (4) to read as follows (paragraph (b) introductory text is republished):

1. *General*

* * * * *

(b) *Definitions.* For the purpose of this Appendix:

(1) "Personal Services Contract" (PSC) means a contract which establishes an employee-employer relationship.

(2) "Nonpersonal Services Contract" means a contract which establishes an independent contractor relationship.

* * * * *

(4) "Abroad" means outside the United States and its possessions.

* * * * *

3. Paragraph 4, *Policy,* Subparagraph (a) is revised to read as follows:

a. *General.* AID may finance, with either program or operating expense (OE) funds, the cost of personal services as part of the Agency's program of foreign assistance by entering into a direct contract with an individual U.S. citizen or U.S. resident alien for personal services abroad.

(1) *Program funds.* Program funds may be obligated for periods up to five years where necessary and appropriate to the accomplishment of the tasks involved.

(2) *Operating expense funds.* Operating funds may be obligated for periods not to exceed twenty-four months where necessary and appropriate to the accomplishment of the tasks involved.

4. *Section 11, General Provisions,* Clause 14, Post of Assignment Privileges is amended as follows:

a. The clause date is changed from "(Dec. 1985)" to "(Aug. 1986)"; and

b. Subparagraph (a) concerning health room privileges; in the second sentence the phrase "do not include hospitalization" is corrected to read "do include hospitalization".

5. *Section 11, General Provisions,* Clause 24, Use of Pouch Facilities is amended as follows:

a. The clause date is changed from "(Dec. 1985)" to "(Aug. 1986)"; and

b. Subparagraph (a)(2) concerning pouch privileges; in the first sentence remove the phrase "or U.S. resident alien".

Dated: November 17, 1986.

John F. Owens,

Procurement Executive.

[FR Doc. 86-26596 Filed 11-25-86; 8:45 am]

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48 CFR Parts 705 and 706

[AIDAR Notice 87-2]

Acquisition Regulation Concerning Publicizing Mission Procurements

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The AID Acquisition Regulation is being amended to re-establish an exception to publicizing requirements for procurements by AID Missions overseas.

EFFECTIVE DATE: November 26, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Kelly, M/SER/PPE, Room 1600I, SA-14, Agency for International Development, Washington, DC 20523. Telephone (703) 875-1534.

SUPPLEMENTARY INFORMATION: AID has authority under 40 USC 474 to modify federal procurement rules when necessary to avoid impairment of the foreign assistance program.

Prior to the issuance of FAC 84-13, procurements by AID Missions overseas were generally exempt from synopsizing in the Commerce Business Daily by FAR 5.201(b). FAC 84-13 restricted that exception to Defense agencies where only local sources are solicited.

On June 25, 1986, AID notified the Office of Federal Procurement Policy, OMB (OFPP) and the Small Business Administration (SBA) of its intention to exercise the authority of 40 USC 474 to re-establish the publicizing exception for overseas procurements which had been provided under the FAR until the issuance of FAC 84-13. OFPP and SBA replied that they had no objection, but suggested that we model our exception on FAR 5.202(a)(12).

Accordingly, we are amending the AIDAR to re-establish the overseas publicizing exception in consideration of the coverage now provided in FAR 5.202(a)(12). At the same time, we are deleting related coverage at AIDAR 706.201-70 which has become obsolete.

We consider this to be an administrative amendment, not substantively affecting AID's long standing policy and practice concerning the publicizing of overseas procurements. Therefore, the change is not considered a major rule, subject to FAR 1.301 or 1.5. This Notice will not have an impact on a substantial number of small entities, nor will it require any information collection, as contemplated by the Regulatory Flexibility Act and Paperwork Reduction Act, respectively.

List of Subjects in 48 CFR Parts 705 and 706

Government procurement.

For the reasons set out in the Preamble, Chapter 7 of Title 48 of the Code of Federal Regulations is amended as follows:

1. The authority citations in Parts 705 and 706 are revised to read as follows:

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR Part 1979 Comp., p. 435; 40 U.S.C. 474.

PART 705—PUBLICIZING CONTRACT ACTIONS

Subpart 705.2—Synopsis of Proposed Contract Actions

2. Section 705.202 is revised to read as follows:

705.202 Exceptions.

(a) [Reserved]

(b) The head of the Agency for International Development has determined in writing, after consultation with the Administrators for Federal Procurement Policy and the Small Business Administration that advance notice is not appropriate or reasonable for:

(1) Contract actions described in AIDAR 706.302–70.

(2) Contract actions of $100,000 or less by an AID Mission made and performed outside of the United States, its possessions, or Puerto Rico, where only local sources are solicited. (For purposes of this paragraph, "local source" is any firm, organization, or individual present in the cooperating country.)

PART 706—COMPETITION REQUIREMENTS

Subpart 706.2—[Removed]

3. Subpart 706.2 is removed.

Dated: November 17, 1986.

John F. Owens,

Procurement Executive.

[FR Doc. 86–26595 Filed 11–25–86; 8:45 am]

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Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1786

Prepayment of REA Guaranteed Federal Financing Bank Loans

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend 7 CFR Chapter XVII by adding Part 1786, Prepayment of REA Guaranteed Federal Financing Bank Loans. The new part establishes policies and procedures to implement the provisions of Section 306(a) of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) (the "RE Act"). On October 21, 1986, the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509) (the "1986 Act") was enacted. The 1986 Act created two new sections of the RE Act, (1) Section 306(A) dealing with the prepayment of certain loans held by the Federal Financing Bank ("FFB"), a wholly-owned government instrumentality under the supervision of the Secretary of the Treasury, and guaranteed by REA; and (2) section 306(B) relating to the sale or prepayment of REA direct or insured loans. These proposed regulations will implement section 306(A) of the RE Act.

Section 306(A) establishes conditions under which REA guaranteed FFB loans may be prepaid by borrowers by paying the outstanding principle due. It requires the Administrator of REA to establish eligibility criteria to ensure that $2.0175 billion of prepayments are permitted during FY 1987 and such prepayment activity is directed to those cooperative borrowers in the greatest need of the benefits associated with prepayment. Additionally, section 306(A) provides that, after the cumulative amount of net proceeds from prepayments for FY 1987 exceeds $2.0175 billion, a borrower will not qualify for prepayment if, the Secretary of the Treasury determines that such prepayment would adversely affect the operation of the FFB.

DATES: Comments must be received on or before December 11, 1986.

ADDRESS: Comments may be mailed to the Rural Electrification Administration, Attention: Laurence V. Bladen, Room 4064, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Laurence V. Bladen, Financing Policy Specialist, Rural Electrification Administration, telephone number (202) 382-1265.

SUPPLEMENTARY INFORMATION: Pursuant to the RE Act, REA hereby proposes to amend 7 CFR Chapter XVII by adding a new past concerning the prepayment of FFB indebtedness.

This action has been reviewed in accordance with Executive Order 12291, Federal Regulations. It will not: (1) Have an annual effect on the economy of $100 million or more; or (2) result in a major increase in costs or prices for consumers, individuals, industries, Federal, state, or local government agencies or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, and has been determined not to be "major".

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq. (1976)] and, therefore, does not require an environmental impact statement or an environmental assessment. This program is listed in the Catalog of Federal Domestic Assistance as 10.850, Rural Electrification Loans and Loan Guarantees and 10.851, Rural Telephone Loans and Loan Guarantees. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015 Subpart V in 50 FR 47034, (November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Section 1011(c) of the 1986 Act directs the Secretary of Agriculture to issue regulations within 60 days of enactment of the 1986 Act to implement the prepayment of FFB loans. In order to meet this statutory deadline and still provide for a review and comment period on the proposed rule, the comment period has been shortened to 15 days.

Background

Prior to enactment of Pub. L. 99-349 and Pub. L. 99-509 borrowers wishing to prepay their FFB loans had to comply with the provisions of the notes evidencing their loans which the general required a prepayment premium. Section 306(A) permits a REA-financed electric or telephone system to prepay the loan (or any loan advance there under) by paying the outstanding principal balance due on the loan (or advance), if:

(a) The loan was outstanding on July 2, 1986;

(b) Private capital, with the existing loan guarantee, is used to replace the loan; and

(c) The borrower certifies that any savings from such prepayment will be passed on to its customers or used to improve the financial strength of the borrower in cases of financial hardship.

No sums in addition to the payment of the outstanding balance may be charged as a result of such prepayment against the borrower, the Rural Electrification and Telephone Revolving Fund, or REA.

Section 306(A) of the RE Act provides that except for $2.0175 billion of prepayments during FY 1987, a borrower will not qualify for prepayment if, in the opinion of the Secretary of the Treasury, to prepay in such borrower's case would adversely affect the operation of the Federal Financing Bank.

Section 306(A) requires the Administrator of REA to establish eligibility criteria to ensure that the $2.0175 billion of permitted loan prepayment activity during FY 1987 contemplated by section 306(A) will be directed toward those cooperative borrowers in greatest need of the benefits associated with prepayment. The 1986 Act also requires the Administrator to issue regulations to facilitiate prepayments under section 306(A).

List of Subjects in 7 CFR Part 1786

Administrative practice and procedure, Electric utilities, Telephone utilities, Guaranteed loan program—energy, Guaranteed loan program—telephony.

In view of the above, REA proposes to amend 7 CFR Chapter XVII by adding Part 1786 to read as follows:

PART 1786—PREPAYMENT OF REA GUARANTEED FEDERAL FINANCING BANK LOANS

Sec.
1786.1 Purpose.
1786.2 Policy.
1786.3 Definitions
1786.4 Qualifications.
1786.5 Eligibility for prepayment under section 306(A)(d)(2).
1786.6 Application procedure.
1786.7 Settlement procedure.
1786.8 Forms.
1786.9 Access to records of lenders.
1786.10 Loss, theft, destruction, mutilation or defacement of REA Guarantee.
1786.11 Other prepayments.

Authority: 7 U.S.C. 901–950b; Title 1, Subtitle B, Pub. L. 99–509; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

§1786.1 Purpose.

This subpart contains the general regulations of the Rural Electrification Administration (REA) for implementing section 306(A) of the Rural Electrification Act of 1936, as amended (RE Act) permitting, in certain circumstances, loans made by the Federal Financing Bank (FFB) and guaranteed by the Administrator of REA to be prepaid by REA borrowers by paying the outstanding principal balance due on the FFB Loan, using private capital with the existing REA guarantees.

§ 1786.2 Policy.

It is the policy of REA to facilitate the prepayment of FFB loans in accordance with section 306(A) of the RE Act, to ensure that $2.0175 billion of statutorily authorized prepayments during FY 1987 be allocated on the basis of greatest need. Furthermore, it is REA policy to carry out the objectives of the prepayment program without increasing the loan guarantee exposure to REA or the administrative burden on REA.

§ 1786.3 Definitions.

For the purposes of this Part:

"Administrator" means the Administrator of REA.

"Documentation" means all or part of the agreements relating to a prepayment under this Part, irrespective of whether REA is a party to each agreement.

"Existing Loan Guarantee" means a guarantee of payment issued by REA to FFB pursuant to the RE Act on or before July 2, 1986.

"Fees" means any fees, costs or charges, incurred in connection with obtaining the Private Loan used to make the prepayment including without limitation, accounting fees, filing fees, legal fees, printing costs, recording fees, trustee fees, overheads of the borrower, underwriting fees, capital stock purchases, or other equity investment requirements of the Lender.

"FFB" means the Federal Financing Bank, an instrumentality and wholly owned corporation of the United States.

"FFB Loan" means one or more advances on or before July 2, 1986, by FFB on a promissory note executed by a borrower and guaranteed by REA pursuant to section 306 of the RE Act (7 U.S.C. 936).

"Guarantee" means the endorsement, in the form specified by REA which is executed by the Administrator.

"Lender" means the organization making and Servicing the Private Loan which is to be guaranteed under the provisions of this Part and used to prepay the FFB loan. The term "Lender" does not include the FFB, or any other Government agency.

"Loan Guarantee Agreement" means the written contract by and among the Lender, the borrower and the Administrator setting forth the terms and conditions of a Guarantee issued pursuant to the provisions of this Part.

"Mortgage" means the mortgage and security agreements by and among the borrower and REA, as from time to time supplemented, amended and restated.

"Private Loan" means the loan which is to be guaranteed under the provisions of this Part and used to prepay an FFB Loan.

"Private Note" means the note, bond or other obligation evidencing indebtedness created by the Private Loan.

"REA" means the Rural Electrification Administration, an agency of the United States Department of Agriculture.

"RE Act" means the Rural Electrification Act of 1936 (7 U.S.C. 901–950b), as amended.

"Service" or "Servicing" means the following activities to be performed by the Lender:

(a) The billing and collecting of the Private Loan payments from the borrower;

(b) Notifying the Administrator promptly of any default in the payment of principal and interest on the Private Loan and submitting a report, as soon as possible thereafter, setting forth the Lender's views as to the reasons for the default, how long the Lender expects the borrower to be in default, and what corrective actions the borrower states it is taking to achieve a current debt service position;

(c) Notifying the Administrator of any known violations or defaults by the borrower under the lending agreement, Loan Guarantee Agreement, or related security instruments, or conditions of which the Lender is aware which might lead to nonpayment, violation or other default; and

(d) Such other activities as may be specified in the Loan Guarantee Agreement.

§ 1786.4 Qualifications.

(a) *Borrowers.* To qualify to prepay an FFB Loan pursuant to this Part, the borrower must:

(1) Demonstrate that the FFB Loan was outstanding on July 2, 1986;

(2) Prepay the FFB Loan using private capital;

(3) Certify that any savings resulting from such prepayment will be passed on to its customers, or used to improve the financial strength of the borrower in cases of financial hardship; and

(4) Be eligible to prepay pursuant to section 306(A)(d)(2) of the RE Act in accordance with § 1786.5 of these regulations.

(b) *Lenders.* To participate in a borrower's prepayment of an FFN loan pursuant to this Part, the Lender must:

(1) Be a private legally organized lending agency;

(2) Have capital and surplus of at least $50 million or be supervised by the Farm Credit Administration; and

(3) Have the capability to adequately Service the Private Loan. A qualified Lender may participate out up to 90 percent of each Private Loan to entities other than a Government agency, the borrower, or an affiliate of the borrower, provided that such participation shall be on terms and conditions satisfactory to the Administrator.

(c) *Private Loans.* Private Loans, the proceeds of which are used exclusively to prepay FFB Loans, shall be eligible for a Guarantee under this Part. With respect to the prepayment of any one FFB Loan, the Administrator may endorse Guarantees on not more than three Private Notes evidencing Private Loans. Private Loans and Private Notes shall comply with the following:

(1) The principal amount of the Private Note may not exceed the outstanding principal balance of the FFB Loan being prepaid.

(2) The Private Note shall bear interest at a fixed interest rate which shall be less than the weighted average interest rate on the FFB Loan being prepaid.

(3) Principal payments shall commence on the first payment date following the closing of the Private Loan and shall be made either quarterly, semiannually, or annually.

(4) The Private Note shall provide for scheduled principal amortization at an

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annual rate not less than the annual amortization rate of the FFB Loan. The Private Note shall not provide for balloon or bullet payments.

(5) The term of the Private Note shall not exceed the shorter of (i) 34 years from the last day of the calender year in which the first advance of funds was made under the FFB Loan or (ii) the final maturity date of the FFB Loan.

(6) The Private Note shall not provide for deferments of interest.

(7) The Private Note shall not be directly or indirectly part of a transaction the income of which is excluded from gross income for the purposes of Chapter I of the Internal Revenue Code of 1954 as amended by the Tax Reform Act of 1986.

(8) The Private Note shall not be transferrable or assignable except (i) with the written approval of the Administrator or (ii) as an undivided pro rata interest in a pool of obligations no more than 80 percent of which (on a par value basis at any time over the life of the pool) may be made up of obligations guaranteed by the Administrator pursuant to the RE Act. The remainder of the pool shall be made up of obligations which shall not be guaranteed, collateralized or secured in any manner whatsoever, in whole or in part, directly or indirectly by an obligation of the United States Government or any of its agencies. In considering whether to approve a transfer or an assignment, the Administrator with the concurrence of the Secretary of the Treasury may consider whether the transaction is so structured as to ensure that the transfer or assignment will not unreasonably compete with the marketing of obligations of the United States.

(9) Neither the principal of nor interest on the Private Note shall include amounts attributable to Fees associated with the Private Loan. The borrower, subject to the approval of REA, may finance the Fees with the proceeds of a loan. Such a loan will not be guaranteed by REA nor will REA share mortgage security to enable another lender to obtain security for such a loan to the borrower.

(10) Private Loans and Private Notes shall otherwise be in form and substance satisfactory to the Administrator.

§ 1786.5 Eligibility for prepayment under section 306(A)(d)(2).

(a) *Borrowers.* To be eligible to prepay under section 306 (A)(d)(2) of the RE Act, the borrower must be a cooperative-type organization and be in the greatest need of the benefits associated with prepayment. The determination of eligibility rests solely within the discretion of the Administrator. In making the determination of eligibility, the Administrator will consider the following criteria:

(1) Whether the borrower's financial condition is such that the borrower will not be able to meet the financial tests set forth in its Mortgage;

(2) Whether the borrower is in default or near default on interest or principal payments due on loans made or guaranteed by REA, and is making a good faith effort to increase rates and reduce costs to avoid default;

(3) Whether the borrower is participating in a work out or debt restructuring plan with REA; and

(4) Whether the borrower received the approval of the Secretary of the Treasury to prepay FFB loans pursuant to the "Interim Regulations Governing Prepayments of Loans Made by the Federal Financing Bank and Guaranteed by the Rural Electrification Administration", 31 CFR Part 16, 51 FR 28810, August 12, 1986.

(b) *Amounts of Loans.* The amounts of a borrower's FFB Loans that are eligible to be prepaid may be restricted to advances with a long-term maturity date and to those advances with an interest rate greater than 10.0 percent per annum.

(c) *Adverse Effect on FFB.* The Secretary of the Treasury has determined pursuant to section 306(A)(c)(1) of the RE Act that par prepayments of FFB Loans have an adverse effect on the operation of the FFB. Consequently no par prepayments will be permitted under section 306(A) in addition to the $2.0175 billion determined to be eligible under section 306(A)(d)(1) except where the Administrator recommends that a borrower otherwise determined to be eligible based on greatest need be allowed to prepay all of its long-term FFB Loans with an interest rate greater than 10.0 percent per annum rather than part of such FFB Loans.

§ 1786.6 Application procedure.

(a) *Exception.* Any borrower that received the approval of the Secretary of the Treasury to prepay FFB loans pursuant to the "Interim Regulations Governing Prepayments of Loans Made by the Federal Financing Bank and Guaranteed by the Rural Electrification Administration", 31 CFR Part 16, 51 FR 28810, August 12, 1986, shall be deemed to have complied with the Application Procedure set forth in this § 1786.6. Any such borrower shall be subject to and shall comply with all other provisions of this Part.

(b) *Applications.* Each application to make a prepayment pursuant to this Part shall be received by the Area Director not less than 30 business days prior to the projected settlement date for the Private Loan and shall be on such forms as REA may prescribe. The application shall provide among other matters the following:

(1) Borrower's REA designation.

(2) Borrower's name and address.

(3) Listing of each FFB Loan advance to be prepaid by loan designation, REA account number, advance date, maturity date, original amount, and outstanding balance.

(4) Evidence that the borrower meets the qualification provisions of § 1786.4(a) of these regulations.

(5) A certification of the chief executive officer of the borrower stating that, "Any savings from the prepayment of Federal Financing Bank Loan puruant to section 306(A) of the Rural Electrification Act of 1936, as amended [7 U.S.C. 936(A)] will be passed on to the customers of (insert the corporate name of the borrower) or used to improve the financial strength of (insert the corporate name of the borrower) in cases of financial hardship."

(6) A certified copy of a resolution of the board of directors of the borrower approving the certification cited above and requesting REA approval of the prepayment.

(7) Evidence supporting its application for eligibility under § 1786.5 of this Part, and a 10-year financial forecast of the borrower based on the proposed interest rate and amortization terms of the Private Loan

(8) Evidence in form and substance satisfactory to the Administrator that the benefits of prepayment will not be used to reduce rates and that any Federal or state regulatory body having jurisdiction over the borrower's rates will not order a reduction in the borrower's revenue requirements as a result of the prepayment.

(9) Lender's proposal for the Private Loan.

(10) Evidence of the Lender's qualifications.

(11) Estimated/expected interest rate.

(12) Proposed amortization schedule.

(13) Plans for marketing the Private Loan.

(14) Estimate of Fees, and expenses, including any taxes.

(15) Servicing entity's name and address.

(16) Evidence that the borrower has received all approvals which can be obtained at the time of application and which are required under Federal or state law, loan agreements, security

agreements, existing financing arrangements, or any other agreement to which the borrower is a party.

(c) *Notifications.* If a borrower's application has been approved, the Administrator will promptly notify the borrower, the Lender and FFB to that effect. If not approved the Administrator will promptly notify the borrower.

§ 1786.7 Settlement procedure.

(a) *General.* Private Loan settlements in connection with prepaying FFB Loans pursuant to this Part shall be conducted in accordance with the provisions of this section.

(b) *Settlement Date.* When REA is satisfied with the Documentation, the parties will schedule a settlement date. The Private Loan will be settled and the Guarantee delivered on a date and time mutually agreed upon among the parties not earlier than ten business days after receipt by REA of all final Documentation. REA reserves the right to limit the aggregate dollar amount of and/or the number of prepayments or settlements that take place on any given day.

(c) *Place of Settlement.* All Private Loan settlements will take place in Washington, DC, at a location of the borrower's choosing.

(d) *Repayment of FFB.* Prior to 1:00 p.m. prevailing local time in New York, New York, on the settlement date, the borrower shall wire immediately available funds to REA through the Department of the Treasury account at the Federal Reserve Bank of New York in an amount sufficient to pay the outstanding principal of the FFB Loan plus accrued interest from the last payment date to and including the settlement date.

(e) *Substitute Note.* In the event that a borrower does not prepay all FFB Loans evidenced by the same promissory note, the borrower will execute and deliver a substitute note to evidence its obligation to pay in accordance with its terms the remaining FFB Loans.

(f) *Documentation.* The following executed documents, opinions and material shall be delivered at the settlement:

(1) The Private Note.

(2) The Guarantee.

(3) The Loan Guarantee Agreement.

(4) Copy of the Private Loan agreement between the Lender and the borrower.

(5) Evidence that the borrower has received all approvals which are required under Federal or state law, loan agreements, security agreements, existing financing arrangements, or any other agreement to which the borrower is a party.

(6) An amendment in recordable form revising the description of the obligations secured by the Mortgage.

(7) An approving opinion of the borrower's legal counsel to the effect that the Private Note is a valid and legally binding obligation of the borrower which is secured under the Mortgage, and the priority of the Mortgage, as amended pursuant to paragraph (f)(6) of this section, remains undisturbed. In the event that the borrower delivers a substitute note as required by section (f) of this section then a similar conclusion concerning such substitute note shall be contained in the opinion required under this subparagraph.

(8) An approving opinion of the Lender's legal counsel to the effect that the Loan Guarantee Agreement is a valid and legally binding obligation of the Lender.

(9) Such other opinions of counsel as may be required by the Administrator.

(10) Copies of any other Documentation required by the Lender.

(11) Copies of any other Documentation required by REA to ensure that the Private Loan is adequately secured.

§1786.8 Forms.

(a) Guarantees and Loan Guarantee Agreements executed by REA pursuant to this Part will be on forms prescribed by REA. Such forms will include, without limitation, additional details on Servicing, procedures for notifying REA of a default, the manner for requesting payment on a Guarantee.

(b) The Loan Guarantee Agreement shall provide REA with the right to accelerate the Private Loan in the event of a default by the borrower and shall provide the Lender with no more than 10 years of call protection.

(c) REA may also prescribe standard forms of certifications to be used in connection with materials required to be furnished pursuant to § 1786.6(b)(5).

§ 1786.9 Access to records of lenders.

Upon request by REA the Lender will permit representatives of REA (or other agencies of the U.S. Department of Agriculture authorized by that Department) to inspect and make copies of any of the records of the Lender pertaining to REA guaranteed loans. Such inspection and copying may be made during regular office hours of the Lender or any other time the Lenders and REA find convenient.

§ 1786.10 Loss, theft, destruction, mutilation, or defacement of REA guarantee.

(a) *Authorized representative.* Except where the evidence of debt was or is a bearer instrument, the REA Deputy Administrator-Program Operations is authorized on behalf of REA to issue a replacement guarantee(s) for one(s) which may have been lost, stolen, destroyed, mutilated, or defaced. Such replacement(s) shall be issued only to the Lender or holder and only upon receipt of an acceptable certificate of loss and an indemnity bond.

(b) *Requirements.* When a Guarantee(s) is lost, stolen, destroyed, mutilated, or defaced while in the custody of the Lender, or holder, the Lender will coordinate the activities of the party who seeks the replacement documents and will submit the required documents to REA for processing. The requirements for replacement are as follows:

(1) A certificate of loss properly notarized which includes:

(i) Legal name and present address of the owner, requesting the replacement forms.

(ii) Legal name and address of lender of record.

(iii) Capacity of person certifying.

(iv) Full identification of the Guarantee, including the name of the borrower, date of the Guarantee, face amount of the evidence of debt purchased, date of evidence of debt and present balance of the loan. Any existing parts of the documents to be replaced should be attached to the certificate.

(v) A full statement of circumstances of the loss, theft, or destruction of the Guarantee.

(vi) The Lender or holder, shall present evidence demonstrating current ownership of the Guarantee and note. If the present holder is not the same as the original lender, a copy of the endorsement of each successive holder in the chain of transfer from the initial private lender to present holder shall be included. If copies of the endorsement cannot be obtained, best available records of transfer shall be presented to REA (e.g., order confirmation, cancelled checks, etc).

(2) An indemnity bond acceptable to REA shall accompany the request for replacement except when the holder is the United States, a Federal Reserve Bank, a Federal Government Corporation, a state or territory, or the District of Columbia. The bond may be with or without surety. The bond shall be with surety except when the outstanding principal balance and accrued interest due the present holder is less than $1,000,000 verified by the lender in writing in a letter of certification of balance due. The surety shall be a qualified surety company

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holding a certificate of authority from the Secretary of the Treasury and listed in Treasury Department Circular 580.

(3) All indemnity bonds shall be issued and/or payable to the United States of America acting through the Administrator of the Rural Electrification Administration. The bond shall be in an amount not less than the unpaid principal and interest. The bond shall save REA harmless against any claim or demand which might arise or against any damage, loss, costs, or expenses which might be sustained or incurred by reasons of the loss or replacement of the instruments.

§ 1786.11 Other prepayments.

Nothing contained in this Part shall prohibit a borrower from making prepayments of FFB Loans in accordance with the terms thereof.

Dated: November 21, 1986.

Jack Van Mark,

Acting Administrator.

[FR Doc. 86-26696 Filed 11-24-86; 3:54 pm]

BILLING CODE 3410-15-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-211-AD]

Airworthiness Directives; Airbus Industrie Model A300 B2 and B4 Series Airplanes.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require inspections and replacement, if necessary, of certain flap ball screwjack no-back assemblies on certain Airbus Industrie Model A300 B2 and B4 series airplanes. There have been reports of excessive wear of the carbon friction discs in the screwjack no-back assemblies. Excessive wear can cause the screwjack to become reversible and lead to an asymmetrical flap condition, which could result in a partial loss of controllability.

DATES: Comments must be received on or before January 19, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-211-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-211-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The French Civil Aviation Authority (DGAC), in accordance with the provisions of an existing bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Airbus Model A300 series airplanes.

There have been a number of reports of excessive wear of the carbon friction disc in certain flap screwjack no-back assemblies. This wear can cause the screwjack to become reversible, which can lead to flap asymmetry and partial loss of controllability of the airplane. Airbus Industrie Service Bulletin A300-27-172, dated April 10, 1984, has been issued, which describes a jackhead backlash check to determine no-back condition, and describes procedures for flap screwjack replacement, if necessary. The DGAC has issued a Consigne de Navigabilité which mandates compliance with the service bulletin.

Airbus Industrie Service Bulletin A300-27-173, dated May 2, 1984, describes a certain Modification of the flap screwjack assemblies, Modification AI 5240, which corrects the unsafe condition.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require screw-to-jackhead axial backlash checks of certain flap screwjack no-back assemblies, and ball screwjack replacement, if necessary, in accordance with Airbus Industrie Service Bulletin A300-27-172, dated April 10, 1984. Modification of the flap ball screwjack assemblies in accordance with Modification AI 5240, as described in Airbus Industrie Service Bulletin A300-27-173, dated May 2, 1984, would constitute terminating action for the requirements of the AD. (This amendment would not apply to airplanes with Modification AI 5240 already installed.)

It is estimated that 34 airplanes of U.S. registry would be affected by this AD, that it would take approximately 51 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $69,360.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Airbus Industrie Model A300 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L: 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 B2 and B4 series airplanes, certificated in any category, equipped with the flap ball screwjack no-back mechanisms, listed in Airbus Industrie Service Bulletin A300-27–172, dated April 10, 1984, which have not been modified in accordance with Modification AI 5240 as described in Airbus Industrie Service Bulletin A300-27–173, dated May 2, 1984.

To prevent an asymmetric flap condition due to excessive wear of the carbon friction disc in the screwjack no-back assemblies, accomplish the following prior to the accumulation of 13,000 landings or within the next 1,000 landings after the effective date of this AD, whichever occurs later, unless previously accomplished:

A. Perform a jackhead axial backlash measurement on affected flap ball screwjacks in accordance with the accomplishment instructions of Airbus Industrie Service Bulletin A300–27–172, dated April 10, 1984.

B. Repeat the measurement required by paragraph A., above, at the following intervals:

1. If the backlash is less than or equal to 0.331 mm, prior to 3,000 landings after the last measurement.

2. If the backlash is more than 0.331 mm but less than or equal to 0.407 mm, prior to 2,000 landings after the last measurement.

3. If the backlash is more than 0.407 mm, but less than 0.560 mm, prior to 1,000 landings after the last measurement.

C. Replace the flap ball screwjack within the next 250 landings when a measurement required by paragraph A. or B., above, indicates the backlash is greater than or equal to 0.560 mm.

D. Incorporation of Airbus Industrie Modification AI 5240, described in Airbus Industrie Service Bulletin A300–27–173, dated May 2, 1984, constitutes terminating action for the requirements of this AD.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 19, 1986.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–26580 Filed 11–25–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 86–NM–213–AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD), applicable to certain Boeing Model 747 airplanes, that requires an inspection for loose or failed bolts used for the forward attachment of the Numbers 1, 2, 3, 6, 7, and 8 trailing edge flap tracks to the wing lower surfaces. The service bulletin, referenced in the applicability statement of the AD, omitted 13 airplanes from the effectivity list. This proposed action would expand the applicability of the AD to include the additional affected airplanes, and ensure proper inspection of those airplanes.

DATES: Comments must be received on or before January 19, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (ATTN: ANM–103), Attention: Airworthiness Rules Docket No. 86–NM–213–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The service bulletin specified in this AD may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM–120S; telephone (206) 431–1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 86–NM–213–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The FAA issued AD 86–18–06, Amendment 39–5386 (51 FR 28061; August 5, 1986), to require inspection for loose or failed bolts used for the forward attachment of the Numbers 1, 2, 3, 6, 7, and 8 trailing edge flap tracks to the wing lower surfaces on certain Boeing Model 747 series airplanes in accordance with Boeing Service Bulletin 747–57A2234, dated February 21, 1986. The AD was made applicable to the airplanes listed in that service bulletin.

That service bulletin mistakenly excluded 13 airplanes from the effectivity listing of the service bulletin. As a result of discovering this error, Boeing has issued Alert Service Bulletin 747–57A2234, Revision 1, dated October 16, 1986, which adds those 13 airplanes to the effectivity listing.

The revised service bulletin also contains minor editorial revisions which merely serve to clarify the accomplishment instructions, and have no additional economic impact on operators.

Since the situation that required issuance of AD 86–18–06 is likely to exist or develop on other airplanes of the same type design, the FAA is proposing to amend the applicability of the existing airworthiness directive to include the additional 13 airplanes.

It is estimated that 2 airplanes of U.S. Registry would be affected by this amendment, that it would take approximately 42 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $3,360.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending AD 86–18–06, Amendment 39–5386 (51 FR 28061; August 5, 1986), by revising the applicability statement to read as follows:

Boeing: Applies to all Model 747 series airplanes listed in Boeing Alert Service Bulletin 747–57A2234, Revision 1, dated October 16, 1986, certificated in any category. To detect loose or broken bolts for the forward attachment of the Numbers 1, 2, 3, 6, 7, and 8 trailing edge flap tracks to the wing lower surface, accomplish the following, unless already accomplished.

Issued in Seattle, Washington, on November 19, 1986.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–26581 Filed 11–25–86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86–CE–59–AD]

Airworthiness Directive; Helio Models H–700 and H–800 Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to Helio Models H–700 and H–800 airplanes. Reports of delamination and failure of the composite material landing gear legs on Models H–700 and H–800 airplanes have been received. This AD would require inspection of the composite material main landing gear legs for delamination and replacement of delaminated gear legs with metallic legs per Supplemental Type Certificate (STC) SA2171CE. This action is necessary to prevent failure of a landing gear leg and possible loss of the airplane.

DATES: Comments must be received on or before January 1, 1987.

ADDRESSES: Copies of STC SA2171CE applicable to this AD may be obtained from Clarence H. Brent, P.O. Box 486, Pittsburg, Kansas 66762, or the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86–CE–59–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Douglas W. Haig, Aerospace Engineer, ACE–120W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946–4409.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86–CE–59–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

There has been one accident and one incident involving the composite main landing gear legs on Helio Models H–700 and H–800 airplanes. A Helio Model H–800 was involved in an accident when one of the gear legs failed during a landing. In the second case, a Model H–700 was found with a wing sagging. The cause was delamination of one of the main landing gear legs. Analysis established that the most likely cause of delamination was shear failure due to bolt tipping. Although redesign of the attachment of the gear legs to the fuselage and the gear leg to the axle assembly to alleviate the bolt tipping is a possibility, it is not likely as the manufacturer is no longer in business. The only fix when one gear has delaminations is to replace both landing gear legs with metal parts per STC SA2171CE.

Since the condition described is likely to exist or develop in other Helio Models H–700 and H–800 airplanes of

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the same design, the AD would require inspection of the main landing gear legs for delamination and replacement of both legs per STC SA2171CE if either leg has delamination. The FAA has determined there are approximately 18 airplanes affected by the proposed AD. A cost of $30 per airplane per year is estimated to conduct the required inspection. Installation of STC SA2171CE, if required, would cost approximately $3000 per airplane. Since the cost of replacing failed or unserviceable parts is not included in the total cost computation for purposes of classifying a rulemaking action in accordance with Executive Order 12291, the total estimated cost to the private sector for this action is $540 annually for the inspections.

Therefore, I certify that this action: (1) Is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Helio: Applies to Models H–700 and H–800 airplanes (all serial numbers), certificated in any category.

Compliance: Required as indicated in the body of the AD after the effective date of this AD, unless previously accomplished.

To assure airworthiness of the composite main landing gear legs, accomplish the following:

(a) Within the next 100 hours time-in-service after the effective date of this AD and each 100 hours time-in-service thereafter, remove landing gear fairings if installed and visually inspect the edges of the composite main landing gear legs for evidence of delamination. Delamination is evidenced by longitudinal splitting between the fiberglass plies. This could occur anywhere along the span of the landing gear leg. If any delamination is found prior to further flight, install new right and left landing gear legs in accordance with STC SA2171CE.

(b) If, in between the inspections required in paragraph (a) above, it is observed that the wings do not appear level, or one side of the airplane appears to be drooping, prior to further flight, conduct the inspections and replacement if necessary, as specified in paragraph (a) of this AD.

(c) The inspection required in paragraphs (a) and (b) are no longer required after STC SA2171CE has been incorporated.

(d) Ferry permits issued in accordance with FAR 21.197 and equivalent methods of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946–4400.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Clarence H. Brent, P.O. Box 486, Pittsburg, Kansas 66762; or the Federal Aviation Administration, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, MO 64106.

Issued in Kansas City, Missouri, on November 17, 1986.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 86–26586 Filed 11–25–86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket Number 86–ANE–38]

Airworthiness Directives; Pratt & Whitney (PW) JT9D–3A, –7, –7A, –7AH, –7H, –7F, –7J, and –20 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would require modification of the sixth stage turbine inner airseal (IAS) assembly in accordance with Revision 5 of PW Service Bulletin (SB) 4835. It would also require a one time visual and fluorescent penetrant inspection (FPI) and removal, if necessary, of IAS assemblies that have been modified in accordance with Revision 3, or earlier revisions of the SB. The proposed AD is needed to prevent an uncontained engine failure.

DATES: Comments must be received on or before January 27, 1987.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 86–ANE–38, 12 New England Executive Park, Burlington, Massachusetts 01803; or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket Number 86–ANE–38".

Comments may be inspected at the New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable SB and section of the Engine Manual may be obtained from Pratt & Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457.

A copy of the SB and of the appropriate section of the engine manual is contained in Rules Docket Number 86–ANE–38, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Engine Certification Branch, ANE–141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7084.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the

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substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 86–ANE–38". The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that there have been four sixth stage IAS ruptures in-service to date. Additionally, investigation of a recent uncontained engine failure indicates that the sixth stage IAS ruptured and liberated engine parts which penetrated a wing fuel tank inspection port. The post modification inspection requirements of PW SB 4835, Revision 3, or earlier revisions of the same SB, were insufficient to detect all cracks on the IAS. Cracks were found on failed IAS which had been modified and inspected previously in accordance with the above requirements. The inspection requirements have since been improved by the addition of a wet abrasive blast process to expose cracks that could otherwise be concealed by corrosion. IAS on which the requirements of PW SB 4835, Revision 4, or later revision of the same SB, have been incorporated are not subject to this AD.

Since this condition is likely to exist or develop on other engines of the same type design, the proposed AD would require modification of certain IAS assemblies in accordance with the requirements of PW SB 4835, Revision 5, dated September 27, 1983. It will also require a one time visual and FPI of IAS assemblies that have been modified per Revision 3, or earlier revisions of the same SB, at the next low pressure turbine (LPT) module shop visit.

Conclusion

The FAA has determined that this proposed regulation involves approximately 1,806 engines at an approximate total cost of $66,800. It has also been determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since the proposed rule affects only operators using Boeing 747 and McDonnell Douglas DC–10 aircraft in which the JT9D engines are installed, none of which are believed to be small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT**".

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, and Incorporation by reference.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Pratt & Whitney: Applies to Pratt & Whitney (PW) JT9D–3A, –7, –7A, –7AH, –7H, –7F, –7J, and –20 series turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent a sixth stage turbine inner airseal (IAS) rupture that can cause uncontained engine failure, accomplish the following:

(a) Modify within the next 500 cycles in service after the effective date of this AD, sixth stage IAS assemblies Part Numbers (P/N) 751879, 660178, 661387, 667924, 677871, 704516, and 751881 in accordance with the Accomplishment Instructions contained in PW Service Bulletin (SB) 4835, Revision 5, dated September 27, 1983.

(b) Wet abrasive blast, visually inspect, and fluorescent penetrant inspect sixth stage IAS assemblies P/N 774836, 774827, 774829, 774825, 774831, 774834, and 774838 that have been reworked in accordance with the requirements of Revision 3, or an earlier revision of PW SB 4835, at the next low pressure turbine (LPT) module shop visit after the effective date of this AD, in accordance with the requirements of Paragraph 4E, Inspection 01, Section 72–52–06, of the Engine Manual P/N 646028, Revision 74, or FAA approved equivalent.

(c) Remove from service, prior to further flight and replace with serviceable parts any sixth stage IAS assemblies found cracked when accomplishing paragraph (a) or (b) above.

Note.—For the purpose of this AD, an LPT module shop visit occurs when the LPT module rotor is removed from the case and vane assembly.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance time specified in this AD.

The FAA will request the permission of the **Federal Register** to incorporate by reference the manufacturer's SB and the appropriate section of the Engine Manual identified and described in this document.

Issued in Burlington, Massachusetts, on November 18, 1986.

William H. Williams, Jr.,

Acting Director, New England Region.

[FR Doc. 86–26585 Filed 11–25–86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket Number 83–ANE–5]

Airworthiness Directives; Rolls-Royce plc (R–R) (Formerly Rolls-Royce Ltd.) Dart Mks. 506, 510, 511, 514, 515, 520, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 542, 543, and 550 Series Turboprop Engines and All Variants

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD) which requires inspection and overhaul of propeller low torque switches on certain R–R Dart turboprop engines. The proposed AD would supersede AD 77–20–04 R1, Amendment 39–4639 (48 FR 19161), by imposing a life limit on propeller low torque switches. The proposed AD is needed to prevent cracking of the snap diaphragm in the switch, which could delay propeller auto-feathering and thereby affect aircraft controllability.

DATES: Comments must be received on or before January 27, 1987.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England

Region, Office of the Regional Counsel, Attention: Rules Docket Number 83–ANE–5, 12 New England Executive Park, Burlington, Massachusetts 01803; or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket Number 83–ANE–5".

Comments may be inspected at the New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable service bulletin (SB) may be obtained from Rolls-Royce plc, East Kilbride, Attn: Dart Engine Service Manager, Glasgow G74–4PY, Scotland.

A copy of the SB is contained in Rules Docket Number 83–ANE–5, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Marc J. Bouthillier, Engine Certification Branch, ANE–142, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7085.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 83–ANE–5". The postcard will be date/time stamped and returned to the commenter.

This notice proposes to supersede Amendment 39–4639 (48 FR 19161), AD 77–20–04 R1, which requires a one time inspection and overhaul of propeller low torque switches. After issuing Amendment 39–4639, the FAA has determined that the one time inspection and overhaul is inadequate in identifying cracked switch diaphragms, and inadequate in preventing future diaphragm cracks. Therefore, the FAA proposes to supersede Amendment 39–4639 by imposing a life limit on propeller low torque switches.

A number of cracked propeller low torque switch diaphragms have been found. One was sufficiently cracked as to have an affect on the torque pressure at which the switch operated. The presence of such cracking, which cannot be identified by current field maintenance or preflight check activity, can delay the accomplishment of auto-feathering. A delay in auto-feathering could affect aircraft controllability. Since this condition is likely to exist or develop on other engines of the same type design, the proposed amendment would impose a life limit on certain propeller low torque switches.

Conclusion

The FAA has determined that the proposed regulation involves 784 engines, and the approximate cost would be $190 per engine. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT**".

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L 97–449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. By adding to § 39.13, the following new airworthiness directive (AD) which supersedes AD 77–20–04 R1, Amendment 39–4639 (48 FR 19161) as follows:

Rolls-Royce plc: Applies to Rolls-Royce plc (R–R) (Formerly Rolls-Royce Limited) Dart Mks. 506, 510, 511, 514, 515, 520, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 542, 543, and 550 series turboprop engines and all variants.

Compliance is required as indicated, unless already accomplished.

To prevent a delay in auto-feathering, remove from service low torque switch Part Numbers (P/N) 3700892, 3700895, 3701232, 3500355–356, 3500410–412, L944707–709, L944738–740, L944742–744 and L944769, in accordance with R–R Dart Service Bulletin Da61–12, Revision 2, dated September 1978, per the following schedule:

(a) Remove from service, low torque switches that have accumulated 5 or more calendar years time in service on the effective date of this AD, within 12 months from the effective date of this AD.

(b) Remove from service, low torque switches that have accumulated less than 5 calendar years time in service on the effective date of this AD, within 5 calendar years time in service, or within 12 months from the effective date of this AD, whichever occurs later.

(c) Remove from service, low torque switches which cannot have their in-service calendar time established, within 12 months from the effective date of this AD.

(d) Thereafter, remove from service, low torque switches at or prior to accumulating 5 calendar years time since initial installation on an engine.

Note.—The calendar time commences with initial installation of a new switch, or an overhauled switch, on an engine. This limit includes storage or on-shelf time accumulated after initial installation on an engine. Overhaul of the low torque switch zero-times the part.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance time specified in this AD.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

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The FAA will request the permission of the Federal Register to incorporate by reference the manufacturer's SB identified and described in this document.

This amendment supersedes Amendment 39–4639 (48 FR 19161), AD 77–20–04 R1.

Issued in Burlington, Massachusetts, on November 18, 1986.

William H. Williams, Jr.,

Acting Director, New England Region.

[FR Doc. 86–26584 Filed 11–25–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 86–AGL–2]

Proposed Alteration of Federal Airways V–7 and V–510

AGENCY: Federal Aviation. Administration (FAA), DOT.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This action corrects the comment date for Federal Airway V–7 and V–510 as published in the Federal Register on November 4, 1986 (51 FR 40036). The date given for comments was "November 16, 1986." The correct date is "December 16, 1986."

FOR FURTHER INFORMATION CONTACT: Gene Falsetti, Airspace and Air Traffic Rules Branch (ATO–230), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9249.

Issued in Washington, DC, on November 19, 1986.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 86–26582 Filed 11–25–86; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–23817; File No. S7–737]

Designation of National Market System Securities

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendments and solicitation of public comments.

SUMMARY: The Commission is proposing amendments to its rules governing (i) the designation of securities qualified for trading in a national market system and (ii) transaction reporting. These amendments would result in the designation as National Market System Securities of all securities for which transactions are reported pursuant to an effective transaction reporting plan. The Commission also is proposing conforming amendments to related rules. The Commission is taking this action after reviewing the comments received in response to two releases relating to the designation of National Market System Securities.

DATE: Comments to be received by December 31, 1986.

ADDRESSES: All comments should be submitted in triplicate and addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. All comments should refer to File No. S7–737, and will be available for public inspection at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andrew E. Feldman, Esq., (202) 272–2414, Room 5205, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Summary

The Securities and Exchange Commission ("Commission") is proposing amendments to Rule 11Aa2–1 ("NMS Securities Rule")[1] under the Securities Exchange Act of 1934 ("Act"),[2] which establishes criteria and procedures for designating certain securities as qualified for trading in a national market system ("NMS Securities"). The Commission also is proposing amendments to Rule 11Aa3–1 ("transaction reporting rule") under the Act, which governs the collection and dissemination of transaction information for equity securities.[3]

The proposed amendments would replace the existing NMS designation criteria with a standard designating as NMS Securities all over-the-counter ("OTC") or listed securities for which transactions are reported pursuant to an effective transaction reporting plan approved by the Commission pursuant to Rule 11Aa3–1 under the Act ("reported securities").[4] The transaction reporting rule also would be amended to require the NASD to designate certain NASDAQ securities as subject to transaction reporting. In addition, the proposed amendments would conform related rules under the Act to the new definition of an NMS Security.

The Commission is proposing these amendments after soliciting comment on issues relating to the designation of NMS Securities[5] and on proposed amendments to the NMS Securities Rule that would have provided the NASD with the authority to adopt certain corporate governance standards in addition to the Commission's current NMS eligibility criteria.[6]

In conjunction with these proposed amendments to the Commission's rules, the NASD has filed with the Commission a proposed rule change and reporting plan amendment that would incorporate into the NASD's rules and reporting plan designation standards based on the Tier 2 NMS criteria currently contained in the Commission's NMS Securities Rule, and include certain corporate governance criteria previously proposed by the NASD.[7] Adoption of the NASD's proposal concurrently with the Commission's proposed rule amendments would ensure the continuance of OTC transaction reporting.

II. Background

In the Securities Acts Amendments of 1975 ("1975 Amendments"), Congress directed the Commission "to facilitate the establishment of a national market system for securities."[8] In giving the Commission this broad mandate, Congress neither defined the term "national market system" nor specified the minimum components of such a system. Instead, Congress vested in the Commission "broad discretionary powers to oversee the development of a national market system" and "maximum flexibility" in working out its specific details in a manner consistent with the findings and goals of the 1975 Amendments.[9]

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[1] 17 CFR 240.11Aa2–1. *See* Securities Exchange Act Release No. 17549 (February 17, 1981), 46 FR 13992 ("Rule 11Aa2–1 Adoption Release").

[2] 15 U.S.C. 78a *et seq.*, as amended by the Securities Acts Amendments of 1975 ("1975 Amendments"), Pub. L. No. 94–29 (June 4, 1979), 89 Stat. 97, [1979] U.S. Code Cong. & Adm. News 97.

[3] 17 CFR 240.11Aa3–1. *See* Securities Exchange Act Release No. 16589 (February 19, 1980), 45 FR 12377.

[4] *See* 17 CFR 240.11Aa3–1. Reported securities include all securities listed on the New York Stock Exchange ("NYSE" and the American Stock Exchange ("Amex"), sole regional exchange listings that substantially meet the Amex or NYSE listing criteria, and OTC securities presently designated as NMS Securities. Transaction reports for listed securities from all markets are collected and disseminated pursuant to a transaction reporting plan administered by the Consolidated Tape Association ("CTA"). The CTA members are the New York, American, Boston, Cincinnati, Midwest, Pacific, and Philadelphia Stock Exchanges, and the National Association of Securities Dealers, Inc. ("NASD"). Transaction reports for NMS Securities are collected and disseminated through the NASD's electronic interdealer quotation system ("NASDAQ") or by communicating with NASDAQ headquarters.

[5] *See* Securities Exchange Act Release No. 22127 (June 21, 1985) 50 FR 26584 ("NMS Securities Concept Release"). *See also infra* notes 24–25 and accompanying text.

[6] *See* Securities Exchange Act Release No. 22505 (October 4, 1985), 50 FR 41667 ("NMS Securities Corporate Governance Release"). *See also infra* notes 28–29 and accompanying text.

[7] *See* SR–NASD–86–27 and Securities Exchange Act Release Nos. 23818 and 23819 (November 17, 1986) ("Proposed Reporting Plan"). *See also id.*

As part of the general mandate to facilitate the establishment of an NMS, Congress specifically directed the Commission, by rule, to "designate the securities or classes of securities qualified for trading in the national market system."[10] The 1975 Amendments, however, were silent as to the particular standards the Commission should employ in designating NMS Securities. Similarly, the legislative history did not mandate the use of any particular set of standards in the designation process. Instead, Congress provided the Commission with the flexibility and discretion to base NMS designation standards upon the Commission's experience in facilitating the development of a national market system.[11]

On February 17, 1981, the Commission adopted the NMS Securities Rule. The Rule provides criteria and procedures for designating certain securities, primarily securities traded solely OTC, as NMS Securities.[12] The primary effects of designating OTC stocks as NMS Securities at the present time are: (1) Transactions in such securities must be reported in a real-time system in accordance with the Commission's transaction reporting rule;[13] (2) quotations for such securities must be firm as to the quoted price and size in accordance with the Commission's firm quotation rule;[14] and (3) customer confirmations of principal trades in such securities must disclose mark-ups and mark-downs.[15] In adopting the Rule, the Commission determined, among other things, that real-time transaction reporting and firm quotations would increase market efficiency and enhance opportunities for public investors to obtain execution of their orders in the best possible markets.[16]

The rule employs a two-tiered approach for designation pursuant to procedures established by an NASD-administered Designated Plan.[17] Tier 1, which became effective April 1, 1982, requires that the most actively traded OTC securities be designated as NMS Securities.[18] Tier 2, which became effective on February 1, 1983, permits additional OTC securities to become NMS designated at the election of the issuer.[19]

Based on the early trading experience of NMS Securities, the Commission and most industry participants concluded that last sale reporting and firm quotations had improved the markets for NMS Securities and benefited investors without imposing undue burdens on market makers.[20] In February 1984, the NASD petitioned the Commission to expand the Tier 2 designation critieria to allow more issuers of OTC securities to elect NMS status. The NASD requested that the Tier 2 criteria incorporate the alternative standards that the NASD used to determine its National List (*i.e.*, the list of NASDAQ securities that the NASD supplies to the national news media), which focused primarily on issuer characteristics.[21] Using the flexibility provided it by Congress, the Commission, on December 18, 1984, adopted the revised Tier 2 criteria proposed by the NASD, thereby increasing the number of OTC securities eligible for designation from 1350 to approximately 2500.[22] The Commission

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[8] *See* section 11A(a)(2) of the Act.

[9] *See* Senate Comm. on Banking, Housing, and Urb. Affairs, *Report to Accompany S. 249: Securities Acts Amendments of 1975*, S. Rep. No. 75, 94th Cong., 1st Sess. 7–9 (Comm. Print 1975), *reprinted in* [1975] U.S. Code Cong. & Ad. News 179, 185–87 ("Senate Report"). *See also* Securities Exchange Act Release No. 14416 (January 26, 1978), 43 FR 4354; Securities Exchange Act Release No. 15671 (March 22, 1979), 44 FR 20360. The 1975 Amendments establish that "[t]he securities markets are an important national asset which must be preserved and strengthened" through the application of "new data processing techniques." Section 11A(a)(1) of the Act. Congress found that these techniques should be used to foster intermarket linkages, enhance investor protection, and maintain fair and orderly markets. Congress stated as goals of an NMS the availability of quotation and transaction information, the efficient execution of transactions, fair competition between the markets, the execution of customer orders in the best possible market, and, where consistent with other goals, the execution of orders without the participation of a dealer. Section 11A(a)(2) of the Act.

[10] *See* section 11A(a)(2) of the Act.

[11] Congress, however, did expect that securities designated would have trading characteristics sufficient to ensure that they would benefit from NMS initiatives. *See* Senate Report, *supra* note 9, at 194.

[12] Rule 11Aa2-1 Adoption Release, *supra* note 1, at 13992–94 Currently, most NMS Securities are not listed on a national securities exchange. Effective January 1, 1986, however, certain securities listed on regional stock exchanges as well as NASDAQ and not reported via the CTA are eligible for NMS designation. *See infra* note 27 and accompanying text. In adopting the NMS Securities Rule, the Commission concluded that establishing NMS qualification criteria for listed securities was unnecessary at that time because most listed securities already were included in NMS last sale and quotation disclosure facilities, and selection of less than all reported securities as NMS Securities could create unwarranted distinctions among these securities. Nonetheless, the Commission specifically left open whether exchange traded securities should be designated as NMS Securities in the future. *See* Rule 11Aa2-1 Adoption Release, *supra* note 1, at 13994–95, 14000–04.

[13] 17 CFR 240.11Aa3-1.

[14] 17 CFR 240.11Ac1-1.

[15] *See* Rule 10b-10 under the Act, 17 CFR 240.10b-10. *See also* Securities Exchange Act Release No. 22397 (September 11, 1985), 50 FR 37648. In addition, the Commission has issued a policy statement indicating its willingness, subject to certain conditions, to approve exchange applications for unlisted trading privileges in NMS Securities. *See infra* note 26 and accompanying text.

[16] *See* Rule 11Aa2-1 Adoption Release, *supra* note 1, at 13996.

[17] *See* 17 CFR 240. 11Aa2–1(b)(1). The NASD's "National Market System Securities Designation Plan with Respect to NASDAQ Securities" generally provided procedures for designating NMS Securities, determining substantial compliance with the designation criteria, and publishing lists of designated securities. The plan also establishes maintenance criteria for NMS Securities and criteria for terminating or suspending the designation of NMS Securities. *See* Securities Exchange Act Release No. 18399 (January 7, 1982), 47 FR 2226. *See also* Securities Exchange Act Release No. 22894, 50 FR 49642.

[18] *See* 17 CFR 240. 11Aa2–1(b)(4)(i) The Tier 1 criteria for mandatory NMS designation require that the issuer of the NASDAQ security must have net tangible assets of at least $2,000,000 and capital and surplus of at least $1,000,000. In addition, there must be at least 500,000 publicly owned shares of stock outstanding with a total market value of at least $5,00,000. Furthermore, the price per share must be at least $10 or more, the average trading volume per month must be at least 600,000 shares, and there must be at least four NASDAQ market makers in the security.

[19] *See* 17 CFR 240. 11Aa2–1(b)(ii), (iii). The Tier 2 designation criteria were amended in December 1984, and contain two alternative sets of criteria. The first alternative, applicable to newer companies with substantial net income but less extensive assets, requires that an issuer have net income in the previous fiscal year or in two of the last three fiscal years of at least $300,000, and at least 350,000 publicly held shares with a market value of $2,000,000. This alternative also requires a minimum bid price per share of three dollars and minimum of two NASDAQ market makers in the stock for five business days prior to the application date. *See* 17 CFR Part 240.11Aa2–1(b)(4)(ii). The second alternative, applicable to longer established companies with substantial assets, requires that the issuer have operated for four years, have capital and surplus of $8,000,000, and have at least 800,000 publicly held shares with a market value of $8,000,000. This second alternative also requires a minimum of two NASDAQ market makers for five business days before the application date, but imposes no minimum price per share requirements. *See* 17 CFR 240.11Aa2–1(b)(4)(iii).

[20] *See* Securities Exchange Act Release No. 21583 (December 18, 1984), 50 FR 730, 735 ("Rule 11Aa2–1 Amendments Release").

[21] For a discussion of the NASD's petition, see Securities Exchange Act Release No. 20902 (April 30, 1984), 49 FR 19314.

[22] *See* Rule 11A2–1 Amendments Release, *supra* note 20, at 735–37. The Commission received 347 comments on the proposed amendments to the Rule. Most commentators focused on the broad issue of whether it was appropriate to expand the number of securities eligible for NMS designation to the level of the NASD's National List, and generally on the importance of retaining minimum bid price, trading

Continued

stated that the expansion was justified because it provided additional OTC securities with the benefits of last sale reporting and furthered the ongoing consideration of whether to include some or all NMS Securities in other NMS initiatives.[23]

Following the expansion of the Tier II NMS designation criteria, the Commission, on June 21, 1985, solicited comment on a broad range of issues concerning NMS designation.[24] Noting that last sale reporting had become an established part of the OTC market, the Commission asked commentators to address what direction NMS designation should take and how these securities should participate in the NMS. With respect to NMS designation, the Commission stated: "[T]o the extent the Rule is deemed either to be no longer necessary to encourage OTC reporting or to confer an unfair advantage on OTC stocks designated as NMS Securities, should the Rule be refocused to designate other types of securities as NMS Securities?" [25]

While the NMS Securities Concept Release comment solicitation was still outstanding, the Commission took a number of actions to reduce barriers to competition between exchange and OTC markets. On September 16, 1985, the Commission announced the terms and conditions for exchanges to commence trading NMS Securities on an unlisted trading privileges basis ("OTC/UTP").[26] At the same time, the Commission also amended the NMS Securities and transaction reporting rules to allow listed securities that are not reported in the consolidated transaction reporting system to be designated as NMS Securities.[27]

In addition, in response to a petition from the NASD, the Commission, on October 4, 1985, proposed amendments to the Rule to allow the NASD to adopt, as additional NMS eligibility criteria, certain corporation governance requirements.[28] The Commission proposed the enabling amendments for public comment and requested commentators to address the costs and benefits of granting the NASD explicit authority under the Rule to establish corporate governance eligibility criteria for NMS Securities, and alternative approaches to the proposed amendment which could be taken to attain the same end.[29]

III. Comments

Both the NMS Securities Concept and Corporate Governance Releases raised significant market structure issues, and elicited comments specifically addressing the question of what should be an NMS Security. The views of commentators are summarized below.[30]

A. NMS Concept Release

The Commission received 220 comments in response to the NMS Securities Concept Release. Commentators consisted of 109 issuers, 89 broker-dealers, five securities markets, five trade associations, one law firm, two investment advisers, and nine individuals. While a limited number of commentators addressed the panoply of issues raised by the NMS Securities Concept Release, most discussed only the question whether the rule should be redirected to encompass other securities.

The NASD[31] and the vast majority of OTC market participants [32] asserted that the Rule should be maintained in its present form. These commentators argued that revisions to the Rule are unnecessary because designation does not create a danger of public misperception of the investment quality of NMS Securities, and claimed that allegations to that effect come only from the NASD's exchange market competitors. They contend that suggested revisions to the Rule that would restrict designation to only a few securities and exclude securities currently covered would deprive investors, the securities markets, and issuers of the benefits of last sale reporting, and, coming so soon after the expansion of the Tier 2 eligibility criteria, would create confusion.[33]

Four stock exchanges and several other commentators favored refocusing the Rule.[34] The New York Stock

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volume, and market maker requirements. The NASD and the vast majority of OTC market participants fully supported the proposed Tier 2 expansion. Other commenters, including five stock exchanges, opposed the NASD's proposal, although they generally indicated support for the NASD's extending last sale reporting requirements to OTC stocks on its own. *See id.* at 732–735.

Among other things, opponents of the NASD's petition argued that the NASD was using the fact of NMS designation as a marketing device in competing with the exchanges for "listings." In approving the expansion of the Tier 2 NMS designation criteria, the Commission stated, however, that it "has never suggested that NMS designation warrants the quality of these securities," and that "there was no intent on the Commission's part to use this initiative as a vehicle to contrast the relative merits of OTC and listed securities." *See* Rule 11Aa2–1 Amendments Release, *supra* note 20, at 737 n.89.

[23] *See id.* at 735.

[24] *See* NMS Securities Concept Release, *supra* note 5. *See also* Securities Exchange Act Release No. 22505 (October 4, 1985), 50 FR 41697.

[25] *See* NMS Securities Concept Release, *supra* note 5, at 26587–88. With respect to integrating NMS Securities into other NMS facilities and initiatives, the Commission solicited comment on the extent to which NMS Securities should be included in intermarket linkages or made subject to trade-through or short sale rules. *See id.* at 26685–87.

[26] *See* Securities Exchange Act Release No. 22412 (September 16, 1985), 50 FR 38640 (OTC/UTP Release"). The start of OTC/UTP trading is conditioned on, among other things, the Commission approving a plan submitted by the applicant exchanges and the NASD to consolidate exchange and OTC quotations and transaction reports in the NMS Securities for which UTP is granted. *See id.* at 38648–49. The Commission urges the NASD and interested exchanges to complete their negotiations regarding this plan by the end of the calendar year.

[27] *See* Securities Exchange Act Release No. 22413 (September 16, 1985), 50 FR 38515 ("OTC/Listed NMS Securities Release").

[28] *See* NMS Securities Corporate Governance Release, *supra* note 6. The term "corporate Governance" refers to SRO rules or listing standards that define shareholder rights and corporate management's responsibilities. The NYSE and, to a lesser extent, the Amex and the regional exchanges have corporate governance requirements for initial and continued listing. *Id.* at 41697. The NASD's corporate governance proposal specifies, among other things, that every NMS company be required to have a minimum of two independent directors on its board of directors and an audit committee composed of a majority of independent directors. In addition, the standards would establish requirements concerning shareholder meetings, quorums, proxies, and conflicts of interest. *See* Securities Exchange Act Release No. 22506 (October 4, 1985), 50 FR 41769.

[29] *See* NMS Securities Corporate Governance Release, *supra* note 6, at 41698.

[30] In additional to considering these comments in formulating the instant proposed amendments to the Rule, the Commission is separately examining the views of those commentators on other matters raised by the NMS Securities Concept Release, such as the appropriateness of short sale regulation, trade-through protection, and intermarket linkages for the OTC market, as part of its ongoing effort to facilitate the establishment of an NMS.

[31] *See* Letter from Gordon F. Macklin, President, NASD, to John Wheeler, Secretary, SEC (December 31, 1985) ("NASD Comment").

[32] OTC market participants include issuers, broker-dealers, and their respective organizations. Two of the three organizations of issuers and broker-dealers that commented asserted that the Rule should be maintained in its present form. *See* Letter from J. Patrick Campbell and Edward M. Posner, Chairman, OTC Trading Committee, Securities Industry Association, to John P. Wheeler, Secretary, SEC (December 24, 1985); Letter from Alan T. Rains, Jr., President, National Association of OTC Companies, to John Wheeler, Secretary, SEC (December 16, 1985). The National Security Traders Association ("NSTA"), however, asserted that listed securities also should be designated NMS Securities because, like those OTC securities currently designated NMS Securities, they are subject to last-sale reporting. *See* Letter from John N. Tognino, Chairman, and John L. Watson III, President, NSTA, to John Wheeler, Secretary, SEC (December 19, 1985).

[33] *See, e.g.,* NSAD Comment, *supra* note 31, at 1–3.

[34] In addition to the stock exchanges, the commentators who favored refocusing the Rule included the NSTA. *See* NSTA Comment, *supra* note 32, at 1–2.

Exchange, Inc. ("NYSE") and the Boston Stock Exchange, Inc. ("BSE") argued that the Rule was not necessary to maintain last sale reporting in the OTC market, and that the NASD both could and should propose its own reporting rules. Therefore, they concluded that the Commission should rescind the Rule.[35] The Amex suggested that all listed and OTC securities that are subject to real-time transaction and quotation reporting be designated as NMS Securities, and that the Rule be amended to delete the present Tier 1 and Tier 2 designation criteria and make all securities for which trades are reported pursuant to the Commission's transaction reporting rule eligible for designation.[36] The Midwest Stock Exchange, Inc. ("MSE") asserted that the Commission should adopt a new rule under section 11A(c)(1) of the ACt[37] requiring last sale and quotation reporting for exchange listed or NASDAQ traded securities and refocus the Rule to require mandatory NMS designation of those securities with trading characteristics suitable for auction-type trading.[38]

B. NMS Corporate Governance Release

The Commission received six comments in response to the NMS Corporate Governance Release. Commentators consisted of three securities markets, the North American Securities Administrators Association, Inc. ("NASAA"), a state corporation department, and a bar association. The commentators endorsed in principle establishing corporate governance standards for NASDAQ securities.[39] Four commentators, however, contended that the proposed amendments would delegate to the NASD the authority under the Rule to adopt criteria for NMS designation, and opposed the amendments on that ground.[40] The NYSE and the Amex asserted that the NASD should promulgate its own listing standards that would incorporate both corporate governance standards and transaction reporting requirements, but differed on how the Commission should facilitate that process, with the NYSE advocating rescinding the Rule and the Amex supporting making all reported securities eligible for NMS designation.[41] The BSE also argued that the NASD should adopt corporate governance standards for NASDAQ securities independently of the NMS designation process, but suggested that the Commission require, by rule, transaction reporting for all NASDAQ securities.[42] NASAA stated that granting a self-regulatory organization ("SRO") authority to establish NMS designation criteria potentially could undermine the integrity of the securities markets, and that some state oversight of SROs should be permitted if SROs were granted this authority.[43]

IV. Discussion

The Commission adopted the NMS Securities Rule in 1981 in order, among other things, to bring transaction reporting to the OTC market. Since the designation of the first NMS Securities in 1982, however, last sale reporting has become an established part of the OTC market, and is a benefit that OTC issuers have sought through the designation process.[44] Under the current structure of the Rule, Commission rulemaking is necessary in order to take any action that affects which NASDAQ securities are designated as NMS Securities. As the NMS Securities Tier 2 expansion rulemaking that concluded in December 1984 and the ongoing NMS Securities Corporate Governance rulemaking illustrate, this can be a lengthy and somewhat cumbersome process.[45]

The comments received in response to the NMS Securities Concept and Corporate Governance Releases have highlighted the need (1) to ensure the continued viability of real-time reporting in the OTC market and (2) to streamline NMS designation in general and provide the NASD with flexibility in establishing additional standards for those OTC securities designated as NMS Securities. After considering the comments regarding how best to accomplish these objectives in a manner consistent with the Act, the Commission, using the flexibility provided it by Congress, now proposes to amend the Rule to delete the current NMS Tier 1 and Tier 2 criteria and to define as NMS Securities all securities for which transactions reported are pursuant to an effective transaction reporting plan.

In addition, the Commission is proposing to amend its transaction reporting rule to require the NASD to establish criteria for determining which NASDAQ securities are subject to transaction reporting. Only those NASDAQ securities covered by the NASD rules and reporting plan would be considered "reported".

In order to provide an orderly transition to NASD designation of OTC reported securities, the NASD has filed with the Commission pursuant to section 19(b)(1) of the Act a proposed rule change to amend Schedule D of the NASD By-Laws and the NASD reporting plan.[46] Under the NASD's proposal, NASDAQ securities that satisfy standards equal to the current Tier 2 NMS eligibility criteria and the proposed

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[35] *See* Letter from James E. Buck, Secretary, NYSE, to John Wheeler, Secretary, SEC (January 20, 1986), at 7 ("NYSE Comment"); Letter from Brian Riddell, Executive Vice President, BSE, to John Wheeler, Secretary, SEC (February 4, 1986), at 2. The NYSE added that, if the Commission chose not to rescind the Rule, listed stocks included in NMS transaction reporting facilities should continue to be distinguished from OTC stocks designated as NMS Securities. *See* NYSE Comment, *supra*, at 7.

[36] *See* Letter from Kenneth R. Leibler, President and Chief Operating Officer, Amex, to John Wheeler, Secretary, SEC (June 11, 1986) ("Amex Comment"), at 13–17. The Amex stated that the NASD then could adopt its own eligibility standards for OTC trade reporting. *Id* at 14–16. The Amex also suggested that all NMS Securities, whether listed or OTC, should be subject to identical regulatory requirements, *e.g.*, trade-through and short sale rules. *Id.* at 5–10. As indicated above, the Commission will consider these comments in the course of its review of the comments on the NMS Securities Concept Release.

[37] Section 11A(c)(1) of the Act gives the Commission broad authority to adopt transaction and quotation reporting rules for the protection and benefit of investors.

[38] *See* Letter from John G. Weithers, Chairman, MSE, to John Wheeler, Secretary, SEC (May 7, 1986), at 5–8. The MSE stated that, in this way, last sale reporting would be maintained in the OTC market, and the Commission no longer would have to promulgate and adopt NASDAQ listing standards. In addition, issuer choice, corporate governance standards, and other issuer characteristics no longer would be elements in the NMS designation process. *Id.* at 8.

[39] Two commentators endorsed the specific criteria proposed by the NASD for NMS issuers. *See* Letter from Franklin Tom, Commissioner of Corporations, State of California, to John Wheeler, Secretary, SEC (November 8, 1986) ("Cal. Corp. Dep't Comment"), at 1–2; Letter from Arnold L. Jacobs, Chairman, Committee on Securities Regulation of the Association of the Bar of the City of New York, to John Wheeler, Secretary, SEC (November 19, 1985) ("N.Y.C. Bar Ass'n Comment"), at 1. One commentator, however, opposed the NASD's proposed corporate governance standards because the standards did not embody the one share-one vote principle. *See* Letter from Royce O. Griffin, President, NASAA, to John Wheeler, Secretary, SEC (December 13, 1985) ("NASAA Comment"), at 1–2.

[40] *See infra* text accompanying notes 41–43. One commentator expressed no opinion on the structural consequences of an explicit grant of authority to the NASD under the Rule to adopt corporate governance standards for NMS Securities. *See* N.Y.C. Bar Ass'n Comment, *supra* note 39, at 1–2. Another commentator, however, endorsed the proposed enabling amendments. *See* Cal. Corp. Dep't Comment, *supra* note 39, at 1.

[41] *See* Letter from James E. Buck, Secretary, NYSE, to John Wheeler, Secretary, SEC (January 21, 1986), at 7–10; Amex Comment, *supra* note 36, at 17–22.

[42] *See* Letter from Brian Riddell, Executive Vice President, BSE, to John Wheeler, Secretary, SEC (December 19, 1985), at 3.

[43] NASAA Comment, *supra* note 39, at 4.

[44] *See* Rule 11Aa2-1 Amendments Release, *supra* note 20, at 735–36.

[45] *See supra* notes 21–29 and accompanying text.

[46] *See* Proposed Reporting Plan, *supra* note 7.

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corporate governance standards would be eligible for transaction reporting pursuant to issuer election. All current OTC issuers whose securities have been designated as NMS Securities under the Tier 1 or Tier 2 criteria automatically could continue to be OTC reported securities.[47]

The Commission believes that the proposed amendments are consistent with the intent of Congress in adopting the 1975 Amendments. Although Congress anticipated that NMS designation criteria would relate to the trading characteristics of securities, Congress provided the Commission with maximum flexibility in developing a national market system. The Commission has participated actively in the development of a national market system for eleven years. During that period, it has become clear that the fundamental components of a national market system—market information systems, trading linkages, and market competition—clearly benefit the trading markets of securities with widely varying trading characteristics. For this reason, all Amex and NYSE securities have been included in the consolidated transaction reporting and quotation systems. In addition, essentially all listed reported securities which are multiple traded have been included in the Intermarket Trading System. Similarly, the vast majority of NASDAQ securities qualifying under present Tier 2 standards have been designated as NMS Securities and are included in the NASDAQ/NMS reporting system. For these reasons, securities included in NMS quotation and transaction reporting systems, the fundamental building blocks of an NMS, should be designated as qualified for participation in any NMS facility.[48]

The proposed amendments also would accord OTC securities currently designated as NMS Securities and listed securities reported to the consolidated tape equal treatment under the NMS Securities Rule and the transaction reporting rule, and thereby address the concern expressed by some[49] that the NMS Securities Rule favors NASDAQ stocks over listed stocks. NMS eligibility for both OTC and listed securities would be tied to the transaction reporting rule. The requirements for an effective transaction reporting plan for NASDAQ securities would parallel those for listed securities. The CTA has determined based on a reporting plan filed with and approved by the Commission which listed securities are eligible to be reported to the consolidated tape,[50] and the NASD would do the same through its proposed amendments to its reporting plan that subject certain NASDAQ securities to the reporting requirements of the plan.

The proposed amendments to the Rule and the transaction reporting rule furthermore would streamline NMS designation. The Commission would continue to have an NMS Securities Rule as contemplated by the Act,[51] and would be able to exercise oversight over which securities are designated by reviewing the eligibility standards established in the reporting plans filed by the self-regulatory organizations, either individually or jointly. Because the NMS designation criteria would be established by reference to a reporting plan, however, the Commission would not have to amend the Rule each time changes in the designation criteria were suggested. Consequently, the NASD could expand the universe of NASDAQ securities reported on a real-time basis for filing with the Commission an amendment to the NASDAQ reporting plan. At the same time, the Commission would retain authority to disapprove any proposal that would impose criteria that either inappropriately restrict or expand those securities eligible for last sale reporting and, consquently, NMS designation.[52]

By removing from the Commission's rules the current NMS designation criteria, the proposed amendments provide the NASD with flexibility to initiate proposed standards for and encourage the development of OTC trade reporting with the Commission retaining ultimate control over the standards through its approval and amending authority with respect to self-regulatory organizations' rules and transaction reporting plans. The proposed amendments also allow the NASD to propose last sale reporting eligibility standards that do not incorporate the current Tier 1 NMS mandatory designation criteria. Indeed, the NASD proposes to do just that. If approved, this would mean that, for the first time, issuers whose securities had been mandatorily designated under Tier 1 would be able to elect to opt out of transaction reporting.

The Commission preliminarily believes that granting Tier 1 issuers that option would not be inappropriate. Mandatory designation of the most actively traded OTC securities was necessary when the NMS Securities Rule was first adopted in order to ensure that the most actively traded NASDAQ securities would be included in a transaction reporting system. The Commission determined that this was appropriate because of the clear benefits to public investors and market efficiency resulting from each reporting. The Commission also recognized the potential that issuers of Tier 1 securities might not voluntarily request designation, because of concerns raised at that time by some market participants that last sale reporting would adversely affect market liquidity in those securities.[53]

In the four years since the first OTC securities were designated as NMS Securities, however, it has become generally accepted that OTC trade reporting provides investors with improved information on executions, enhances market efficiency and liquidity, and increases the public exposure of market information concerning NMS issuers.[54] Because trade reporting has been both widely accepted by and proven beneficial to investors and the OTC market, the Commission believes that, even without specific designation criteria in the Rule, transaction reporting will continue to spread in the OTC market. The Commission believes, therefore, that there is no longer any need to mandate trade reporting for Tier 1 OTC securities.[55]

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[47] These NMS issuers would have a grace period with which to comply with the NASD's proposed corporate governance criteria. Those criteria would not become effective until 18 months after their adoption. *See* Proposed Reporting Plan, *supra* note 7.

[48] The Commission recognizes that securities which are traded in only one market cannot benefit from market linkage facilities. In light of the Commission's decision regarding UTP for OTC securities, however, any reported security may be traded by multiple markets in the future. Given that fluid situation and the Commission's belief that such securities would benefit from inclusion in a market linkage system, we see no reason to determine that those securities are not qualified to trade in an NMS.

[49] Exchange commentators raised this competitive question in the NMS Securities Tier 2 expansion rulemaking, see *supra* note 22, and the Commission solicited comment on this issue in the NMS Securities Concept Relase. *See supra* notes 24–25 and accompanying text. The Commission has considered rescinding the Rule in its entirety. The Commission believes, however, that totally rescinding the Rule would be inappropriate because the term NMS Securities has become identified with those OTC securities that are reported on a real-time basis, and a change in that term could prove unnecessarily confusing to investors. The Commission also believes that this would be inappropriate in view of Section 11A(a)(2) of the Act, which requires the Commission, by rule to "designate the securities or classes of securities qualified for trading in the national market system." *See supra* text accompanying note 10 and Rule 11A2–1 Amendments Release, *supra* note 20, at 736.

[50] The Commission approved the CTA Plan in Securities Exchange Act Release No. 10787 (May 10, 1974), 39 FR 17799. While currently the transaction reporting rule requires that exchanges file a transaction reporting plan for all listed securities, the Commission has approved exceptions for securities that do not meet certain criteria. *See* Securities Exchange Act Release No. 10851 (June 13, 1974), 39 CFR 22194. Thus, the transaction reporting plan for listed securities does not require transaction reports for securities that are listed solely on regional stock exchanges and do not meet Amex listing standards.

[51] *See Supra* note 10 and accompanying text. *See also supra* note 49.

[52] *See* sections 19(b)(2) and 19(c) of the Act, and Rules 19b–4, and 11A3–2(b)(2) under the Act.

[53] *See* Rule 11Aa2–1 Adoption Release *supra* note 1, at 13995–98.

[54] *See supra* note 44 and accompaying text.

For the foregoing reasons, the Commission preliminarily believes that the proposed amendments to the Rule and the transaction reporting rule would continue OTC transaction reporting, and make NMS designation more flexible. Nonetheless, the Commission solicits comments on whether the proposed amendments fulfill these objectives, and whether there would be a better method by which to do the same in a manner consistent with the Act.[56] In addition, the Commission solicits comment on the possible costs and benefits of the proposed amendments, and of any suggested alternatives. The Commission preliminarily believes that the costs entailed by the Commission's proposal are nominal because last sale reporting requirements would not be increased or extended to a greater number of securities, while the benefits include significant reductions in legal and regulatory burdens to SROs and the Commission.

IV. Summary of the Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") pursuant to the Regulatory Flexibility Act ("RFA")[57] regarding the proposed amendments to the Rule and the transaction reporting rule. The IRFA states that the proposed amendments would designate all reported securities as NMS securities. The IRFA also notes that the NASD concurrently has proposed to incorporate into the NASD's rules and reporting plan the existing NMS designation criteria as well as certain corporate governance requirements. The IRFA states that the proposed amendments should ensure the continued viability of real/time reporting in the OTC market and streamline the NMS designation process. The IRFA also notes that, at the same time, the proposed amendments would not make any additional securities subject to transaction reporting. The IRFA notes, however, that the proposed amendments indirectly could impose certain costs on small issuers and broker-dealers, but that these costs would be minimized. Nonetheless, the IRFA solicits comments on any possible costs the proposed amendments might have on small entities, and on possible alternatives to the proposed amendments.

A copy of the IRFA may be obtained by contracting Andrew E. Feldman, (202) 272-2414, Division of Market Regulations, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

V. Statutory Basis and Text of the Amendments

Pursuant to the Securities Exchange Act of 1934 and particularly Sections 11A(a), 11A(c), 10(a), 31 and 23(a) thereof, 15 U.S.C. 78k-1(a), 78k-3(a), 78j, 78ee, and 78w(a), the Commission proposes to amend §§ 240.11Aa2-1, 240.11Aa3-1, 240.11Ac1-1, 240.10a-1, and 240.31-1 in Chapter II of Title 17 of the Code of Federal Regulations.

Text of Proposed Amendments to Rules 11Aa2-1, 11Aa3-1, 11Ac1-1, 10a-1, and 31-1

Note.—Arrows indicate text proposed to be added. Brackets indicate text proposed to be deleted.

Chapter II, Title 17 of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read as follows:

Authority: Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78w).

* * * * *

Sections 240.11Aa2-1 and 240.11Aa3-1 also issued under Secs. 2, 3, 6, 9, 10, 15, 17, and 23, Pub. L. 78-291, 48 Stat. 881, 882, 885, 889, 891, 895, 897, and 901, as amended by secs. 2, 3, 4, 11, 14, and 18, Pub. L. 94-29, 89 Stat. 97, 104, 121, 137, and 155 (15 U.S.C. 78b, 78c, 78f, 78i, 78j, 78o, 78q, and 78w); sec. 15A, as added by sec. 1, Pub. L. 75-719, 52 Stat. 1070, as amended by sec. 12, Pub. L. 94-29, 89 Stat 127 (15 U.S.C. 78o-3); sec. 11A, as added by sec. 7, Pub. L. 94-29, 89 Stat. 111 (15 U.S.C. 78k-1).

* * * * *

Section 240.11Aa1-1 also issued under Secs. 2, 3, 6, 9, 10, 15, 17, and 23, Pub. L. 78-291, 48 Stat. 881, 882, 885, 889, 891, 895, 897, and 901, as amended by secs. 2, 3, 4, 11, 14, and 18, Pub. L. 94-29, 89 Stat. 97, 104, 121, 137, and 155 (15 U.S.C. 78b, 78c, 78f, 78i, 78j, 78o, 78q, and 78w); as amended by Pub. L. 94-29 June 4, 1975; Sec. 1, Pub. L. 75-719, 52 Stat. 1070, as amended by sec. 12, Pub. L. 94-29, 89 Stat 127-131 (15 U.S.C. 78o-3, as amended by Pub. L. No. 94-29 (June 4, 1975); sec. 7, Pub. L. No. 94-29, 89 Stat. 111 (15 U.S.C. 78k-1).

* * * * *

Section 240.10a-1 also issued under Secs. 2, 3, 6, 9, 10, 15, 17, and 23, Pub. L. 78-291, 48 Stat. 881, 882, 885, 889, 891, 895, 897, and 901, as amended by secs. 2, 3, 4, 11, 14, and 18, Pub. L. 94-29, 89 Stat. 97, 104, 121, 137, and 155 (15 U.S.C. 78b, 78c, 78f, 78i, 78j, 78o, 78q, and 78w); sec. 15A, as added by sec. 1, Pub. L. 75-719, 52 Stat. 1070, as amended by sec. 12, Pub. L. No. 94-29, 89 Stat 127, 15 U.S.C. 78o-3); sec. 11A, as added by sec. 7, Pub. L. No. 94-29, 89 Stat. 111 (15 U.S.C. 78k-1).

* * * * *

Section 240.31-1 also issued under Secs. 2, 3, 23, and 31, Pub., L. 78-291, 48 Stat. 881, 882, 901, and 904, as amended by secs. 2, 3, 18, and 22, 89 Stat. 97, 155, and 162 (15 U.S.C. 78b, 78c, 78w, and 78ee.

2. Section 240.11Aa2-1 is revised as follows:

§ 240.11Aa2-1 Designation of national market system securities.

▶The term "national market system security" shall mean any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan approved by the Commission pursuant to § 240.11Aa3-1 (Rule 11Aa3-1 under the Act).◀

3. Section 240.11Aa3-1 is amended by revising paragraphs (a)(4), (a)(5), (a)(6), and (b)(1), redesignating (b)(2) (i) through (vii) as (b)(2) (ii) through (viii), adding a new (b)(2)(i), and revising newly redesignated (b)(2)(ii) as follows:

§ 240.11Aa3-1 Dissemination of transaction reports and last sale data with respect to transactions in reported securities.

(a) * * *

* * * * *

(4) The term "reported security" shall mean any listed equity security or ▶NASDAQ◀ [national market system] security for which [a] transaction▶ reports are required to be reported on a real-time basis pursuant to a

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[55] Although the NASD's proposal, if approved, would allow issuers to opt out of last sale reporting, it also would, at least initially, ensure that all those OTC securities that currently are designated as NMS Securities, including current Tier 1 securities, could continue to be reported on a real-time basis. By considering the NASD's proposed reporting plan at the same time as the proposed amendments to the Rule and the transaction reporting rule, the Commission is ensuring that OTC transaction reporting would not be interrupted if the proposed amendments changing the NMS designation structure were adopted.

[56] Because all reported securities, and not just OTC securities, would be designated as NMS Securities pursuant to these proposals, the Commission also is proposing amendments to exemptions contained in Rules 11Ac1-1, 10a-1, and 31-1 under the Act where the term "National Market System Security" is used to specify an OTC reported security.

[57] 5 U S.C. 604.

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transaction◆ reporting plan [with respect to transactions in such security is required

(5) The term "listed equity security" shall mean any equity security listed and registered, or admitted to unlisted trading privileges, on a national securities exchange ("exchange")◆, except for a NASDAQ Security◆[that is not a national market system security].

◆(6) The term "NASDAQ security" shall mean any registered equity security for which quotation information is disseminated in the National Association of Securities Dealers Automated Quotation system ("NASDAQ")

(i) Which is not listed or admitted to unlisted trading privileges on an exchange; or

(ii) Which is listed or admitted to unlisted trading privileges on an exchange provided that:

(A) No rule, stated policy or practice of such exchange shall prohibit, condition, or otherwise limit, directly or indirectly, the ability of any member to effect any transaction in such security otherwise than on such exchange, and

(B) Such exchange shall permit NASDAQ market makers telephone access to exchange trade facilities with respect to transactions in NMS Securities to the same extent that exchange market makers are permitted access to NASDAQ market makers, and

(C) Transaction reports in such security are not collected, processed, and made available pursuant to the plan submitted to the Securities and Exchange Commission pursuant to Rule 17a–15 (subsequently amended and redesignated as Rule 11Aa3–1) under the Securities Exchange Act of 1934, as amended ("the CTA Plan"), which plan was declared effective as of May 17, 1974.◆

* * * * *

(b)(1) ◆Every exchange shall, with respect to transactions in listed equity and NASDAQ securities executed through its facilities, and every association shall, with respect to transactions in listed equity and NASDAQ securities executed by its members otherwise than on an exchange, file a transaction reporting plan.◆

(2) * * *

(i) The listed equity and NASDAQ securities or classes of such securities for which transaction reports shall be required by the plan;◆ [i] ◆(ii)◆ Reporting requirements with respect to transactions in listed equity securities or ◆ NASDAQ◆ [national market system] securities, for any borker or dealer subject to the plan;

* * * * *

4. § 240.11Ac1–1 is amended by revising paragraphs (a)(16) and (a)(18), removing paragraph (a)(19), and redesignating paragraphs (a)(20) and (a)(21) as paragraphs (a)(19) and (a)(20) as follows:

§ 240.11Ac1–1 Dissemination of quotations for reported securities.

(a) * * *

(16) The term "consolidated system "shall mean the consolidated transaction reporting system submitted to the Securities and Exchange Commission pursuant to Rule 17a–15 (subsequently amended and redesignated as Rule 11Aa3–1) under the Securities Exchange Act of 1934, as amended, which plan was declared effective as of May 17, 1974◆ [contemplated by § 240.11Aa3–1 (Rule 11Aa3–1 under the Act)].

* * * * *

(18) The term "Rule 19c–3 security" shall mean any [exchange-traded] security◆listed on at least one exchange◆which is not a "covered security" as that term is defined in § 240.19–c–3 (Rule 19c–3 under the Act).

* * * * *

5. Section 240.10a–1 is amended by revising paragraph (a)(1)(ii) as follows:

§ 240.10a–1 Short sales.

(a)(1)(i) * * *

(ii) The provisions of paragraph (a)(1)(i) of this section shall not appy to transactions by any person in◆NASDAQ◆[National Market System] securities as defined in◆§ 240.11Aa3–1 (Rule 11Aa3–1◆ [§ 240.11Aa2–1 (Rule 11A2–1 under the Act].

* * * * *

6. Section 240.31–1 is amended by revising paragraph (f) as follows:

§ 240.31–1 Securities transactions exempt from transaction fees.

* * * * *

(f) Transactions in◆NASDAQ◆[National Market System] securities as defined in◆§ 240.11Aa3–1 (Rule 11Aa3–1◆ [§ 240.11A2–1 (Rule 11Aa2–1] under the Act). The terms and provisions of this paragraph shall remain effective until May 6, 1988.

By the Commission.

Jonathan G. Katz,

Secretary.

November 17, 1986.

[FR Doc. 86–26672 Filed 11–25–86; 8:45 am]

BILLING CODE 8010-01-M

Notices

Federal Register
Vol. 51, No. 228
Wednesday, November 26, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

November 21, 1986.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250 (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Foreign Agricultural Service
  Licenses for Importation/Transfer of Sugar to be Re-Exported in Sugar-Containing Products
  Recordkeeping; On occasion
  Businesses or other for-profit; Small businesses or organizations; 345 responses; 575 hours; not applicable under 3504(h)
  Carol Brick-Turin (202) 447-2916
- Food and Nutrition Service
  Shelters for Battered Women and Children—Part 273
  Recordkeeping; On occasion
  Individuals or households, State or local governments; Federal agencies or employees; 137 responses; 106 hours; not applicable under 3504(h)
  Mildred Kriegel (703) 756-3429
- Rural Electrification Administration
  Certification of Authority
  REA-675
  On occasion
  Small businesses or organizations; 450 responses; 45 hours; not applicable under 3504(h)
  Bert Huntington (202) 382-1966

Reinstatement

- Economic Research Service
  Cotton Distribution Survey
  Once in 5 to 6 years
  Businesses or other for-profit; 387 responses; 194 hours; not applicable under 3504(h)
  Edward H. Glade, Jr. (202) 786-1840
- Food and Nutrition Service
  Federal-State Special Supplemental Food Program Agreement
  FNS-339
  Annually
  State or local governments; 87 responses; 44 hours; not applicable under 3504(h)
  Laurie Hickerson (703) 756-3710

Jane A. Benoit,
Departmental Clearance Officer.

[FR Doc. 86-26671 Filed 11-25-86; 8:45 am]

BILLING CODE 3410-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Fish and Wildlife Service

National Park Service

Interagency Grizzly Bear Committee; Interagency Guidelines on Management of Grizzly Bear

AGENCIES: Forest Service, USDA; Bureau of Land Management, Fish and Wildlife Service, National Park Service, USDI.

ACTION: Notice of the Interagency Grizzly Bear Guidelines as approved by the Interagency Grizzly Bear Committee.

SUMMARY: Based on comments received in response to the May 28, 1985 (50 FR 21696) request for public comments, the above-named Federal agencies, as members of, and representing the Interagency Grizzly Bear Committee (IGBC), announce the adoption of the final Interagency Guidelines on Management of Grizzly Bear. The Guidelines, which affect the management of grizzly bears in Idaho, Montana, Washington, and Wyoming, will be integrated into each agency's directive system and implemented through each agency's land and resource management activities.

EFFECTIVE DATE: November 26, 1986.

FOR FURTHER INFORMATION CONTACT:

Lorraine Mintzmyer, Regional Director, National Park Service, USDI, P.O. Box 25287, Denver, Colorado 80225, (303) 234-2500

Galen Buterbaugh, Regional Director, Fish and Wildlife Service, USDI, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225, (303) 234-2209

James C. Overbay, Regional Forester, Forest Service, USDA, P.O. Box 7669, Missoula, Montana 59807, (406) 329-3316

Dean Stepanek, State Director, Bureau of Land Management, P.O. Box 30157, Billings, Montana 59107

SUPPLEMENTARY INFORMATION:

History of the Guidelines

In 1983, the Secretaries of Agriculture and the Interior established an

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Interagency Grizzly Bear Committee to provide a consistent and coordinated approach toward achieving grizzly bear recovery, as mandated by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1536, 1538–1540). Committee members include representatives from the Forest Service, National Park Service, Bureau of Land Management, Fish and Wildlife Service, and the Fish and Wildlife agencies of the States of Idaho, Montana, Wyoming, and Washington.

In 1979, several of the agencies participated in developing Guidelines for Management Involving Grizzly Bears in the Greater Yellowstone Area ("Guidelines"). Since then, the Guidelines have undergone several revisions as agencies developed first-hand experience in implementing them. They were submitted to the Fish and Wildlife Service in May 1979, for formal consultation, in accordance with the Endangered Species Act. The biological opinion of the Fish and Wildlife Service concluded that implementation of the Guidelines will promote the conservation of the grizzly bear.

Overview of Guidelines

The Guidelines identify and describe five Grizzly Bear Management Situations and contain specific guidelines for managing grizzly bears and other resources in these areas. Each Management Situation has a description of the grizzly bear population and habitat conditions, followed by general management direction applicable to lands containing those conditions. Appendix A to this notice provides the text of each of the Grizzly Bear Management Situations contained in the Guidelines.

The full text of the Guidelines also includes resource management guidelines for coordinating management of wildlife, timber, fire, range, recreation, mineral, watershed, and special uses in relation to grizzly bears. The resource guidelines differ somewhat for each Management Situation, according to the bear population, habitat conditions, and associated management direction emphasis. Guidance consists of ways to maintain and improve habitat, ways to minimize the potential for grizzly-human conflict, and recommendations to resolve grizzly-human conflicts.

The document also contains several appendices useful to resource managers. The appendices deal with interagency responsibilities, methods for dealing with nuisance grizzly bears, methods of evaluating grizzly bear habitat quality and of estimating consequences of proposed management activities, the Biological Opinion rendered by the Fish and Wildlife Service on use of the Guidelines, and the agreement establishing the Interagency Grizzly Bear Committee.

Summary of the Review, Proposals, Comments, and Responses

The Interagency Grizzly Bear Committee (IGBC) published the text of the Management Situations and proposed changes, and issued a request for public comments on May 28, 1985 (50 FR 21696) and then held 19 public meetings on the Guidelines in Idaho, Montana, Washington, Wyoming.

In addition to the public comments received at the meetings, the IGBC received one hundred twenty-five (125) written comments. An interagency team reviewed a content analysis of the comments and modified the proposed changes. The team also added an item on preventive control of known nuisance grizzly bears. These proposals were then circulated to all line officers who held the public meetings. Based on comments, one further change was made in definition and direction for Management Situation 2.

Proposal: Broaden the Scope and Application of Guidelines. The Guidelines originally were developed for application in the Greater Yellowstone Area. The Committee proposed changing the name from "Guidelines for Management Involving Grizzly Bears in the Greater Yellowstone Area" to "Interagency Grizzly Bear Guidelines". Further, the Committee proposed formal application of the Guidelines on National Forest System, National Park System, and Bureau of Land Management lands throughout occupied grizzly bear ecosystems in the States of Idaho, Montana, Washington, and Wyoming per the Grizzly Bear Recovery Plan.

Comments: Several respondents supported this proposal; others commented that the different grizzly bear ecosystems need guidelines tailored to the specific region.

Committee Response: The IGBC believes the Guidelines provide sound principles and general practices that are suitable for the various grizzly bear ecosystems and allow for appropriate consistency across those ecosystems. The IGBC adopted the proposal, with one change in the recreation management guidelines under Management Situation 1.

This change provides the flexibility to tailor the strictness of sanitation standards to local conditions. Thus, mandatory standards can be applied in areas where conflicts with people have been documented, or where grizzly bear populations are relatively small and survivorship of individual bears is considered crucial for recovery of the species. Mandatory sanitation standards may not be needed in areas with a low likelihood of conflicts, or where grizzly populations are larger and individual survival is less crucial for recovery.

Proposal: Create a Sixth Management Situation Designation. The Committee proposed to add a new section, Management Situation 2A, to provide guidance for interim management of lands where additional biological data is needed to classify an area as Management Situation 1 (necessary for recovery) or Management Situation 2 (unnecessary for recovery). The proposed section was designed to deal with the fact that none of the five Management Situations in the original guidance provided guidelines for areas where additional information is needed to fully determine whether habitat resources are necessary for recovery. In cases of such uncertainty, there is a risk that certain land uses could impinge on recovery.

Comments: The proposal to add Management Situation 2A received considerable comment. Reasons for support centered on the need for interim guidance for lands where biological information is insufficient. Reasons for opposition included mistrust of such stratifications and concern about continued ambiguity and management uncertainty. Also, some respondents expressed a preference for a conservative management approach, whereby habitat of uncertain value for grizzly bear recovery would be protected until such time that it could be classified as either Management Situation 1 or Management Situation 2.

Committee Response: The IGBC believes the Guidelines and the attendant Management Situations represent a comprehensive and integrated approach to the goal of grizzly bear conservation.

Although the context and direction for management varies legitimately across Management Situations, it is the overall integration of management actions and human activities in Management Situations 1, 2, 3, and 4 that has direct or indirect relationships to the conservation and recovery of the grizzly. Based on the comments received, the Committee believes that a revision in Management Situation 2, rather than a separate description, is the best way to reflect this variable but integrated management approach to species recovery and to reduce the risks involved in cases of uncertainty.

The Committee made three substantive changes in Management Situation 2. Initially, Management Situation 2 described areas where grizzlies occur but which lack distinct population centers, and are considered unnecessary for survival and recovery of the species. As revised, Management Situation 2 now also includes areas where the necessity of the habitat resources for recovery has not yet been determined.

Another change in Management Situation 2 concerns the effect of major Federal actions or programs. The original description of Management Situation 2 indicated major Federal activities or programs might affect the conservation of the grizzly bear by contributing to human-caused bear mortalities. The revision adds a statement recognizing that major Federal activities or programs also might affect bear conservation by long-term displacement where the zone of influence could affect habitat use in areas classified as Management Situation 1.

The third change in Management Situation 2 addresses management direction for areas where there is uncertainty about importance of the habitat resource for recovery. In such cases, when grizzly population and/or habitat use and other land uses are mutually exclusive, other land uses may prevail provided they do not cause irretrievable or irreversible resource commitments which preclude the possibility of future classification to Management Situation 1 (necessary for recovery). This change reduces the level of risk to recovery that exists when there is uncertainty about the importance of an area to meeting recovery goals.

Proposal: Allow Modification of Guidelines on Administrative Units. The original guidelines were written to address occupied grizzly bear habitat throughout the Greater Yellowstone Area. The proposal was to allow modification of the resource management guidelines on a given administrative unit of the Forest Service, National Park Service, or Bureau of Land Management to address more specifically the resource situation on a given unit.

Comments: Nearly all respondents on this subject supported the need for flexibility but differed regarding the appropriate management level. Most respondents indicated that: (a) Modification of the resource management guidelines should be an interagency decision at an ecosystem level (i.e., Ecosystem Management Subcommittee), and (b) refinement of vegetation prescriptions would best be handled by a local administrative unit (i.e., National Forest).

Committee Response: The IGBC concurs with the sentiment expressed in the public comments and modifed the proposal to provide appropriate flexibility. An Interagency Ecosystem Management Subcommittee may recommend changes (as necessary) in the resource management guidelines for approval by the Interagency Grizzly Bear Committee. Administrative units within the National Forest, Park Service, or Bureau of Land Management may modify the Guidelines only to develop more precise vegetation prescriptions which support the direction and objectives for a Management Situation.

Response to Other Concerns of Respondents

Other Concerns: Several respondents expressed concern that the Guidelines lacked an administrative mechanism for preventing problem grizzly-human conflicts, particularly where public land classified as Management Situation 1 adjoins private lands. Suggestions for proactive management ranged from a "buffer zone" concept to guidelines for intercepting a specific bear(s).

Committee Response: The IGBC believes that responsiveness to this valid concern is vital to successful conservation of the species. First, it should be noted that the present Guidelines state that grizzly habitat enhancement will not be done in close proximity to private property or other areas which could bring grizzlies in contact with humans. Nevertheless, the lands of concern may be important seasonal range for grizzlies, and bears may be there using existing habitat components without causing trouble. Hence, creation of a "buffer zone" does not appropriately address the concern of adjacent private landowners.

The IGBC recognizes that certain grizzlies have known behavior patterns, which, when combined with location, time, and other factors, indicate that an incident is highly probable. To provide guidance for these situations which require the safe removal of target bears, the Committee has added a section entitled Preventive Action (included as Appendix B in this notice) to the Guidelines. This guidance provides the involved agencies with an appropriate mechanism for proactive management of probable conflict situations. Such action could be implemented regardless of the Management Situation involved. Human activities must be in compliance with applicable guidelines to minimize potential for grizzly-human conflicts for that Management Situation.

For copies of the full text of the Interagency Grizzly Bear Guidelines, contact James C. Overbay, Regional Forester, USDA Forest Service, P.O. Box 7669, Missoula, Montana 59807 (406-329-3318).

For the Forest Service:

Dated: November 5, 1986.

R. Max Peterson,

Chief.

For the Bureau of Land Management:

Dated: November 19, 1986.

Robert F. Burford,

Director.

For the Fish and Wildlife Service:

Dated: November 17, 1986.

Frank Dunkle,

Director.

For the National Park Service:

Dated: November 18, 1986.

William Penn Mott, Jr.,

Director.

Appendix A—Text of Management Situations

The five Management Situations and related management direction which the specific guidelines address are as follows:

Management Situation 1

Population and habitat conditions. The area contains grizzly population centers (areas key to the survival of grizzlies where seasonal or year-long grizzly activity, under natural, free-ranging conditions is common) and habitat components needed for the survival and recovery of the species or a segment of its population. The probability is very great that major Federal activities or programs may affect the grizzly (that is, will have direct or indirect relationships to the conservation and recovery of the grizzly).

Management direction. Grizzly habitat maintenance and improvement and grizzly-human conflict minimization will receive the highest management priority. Management decisions will favor the needs of the grizzly bear when grizzly habitat and other land use values compete. Land uses which can affect grizzlies and/or their habitat will be made compatible with grizzly needs or such uses will be disallowed or eliminated. Grizzly-human conflicts will be resolved in favor of grizzlies unless the bear involved is determined to be a nuisance. Nuisance bears may be controlled through either relocation or removal but only if such control would result in a more natural free-ranging grizzly population and all reasonable measures have been taken to protect the bear and/or its habitat (including area closures and/or activity curtailments).

Management Situation 2

Population and habitat conditions. Current information indicates that the area lacks distinct population centers; highly suitable habitat does not generally occur, although some grizzly habitat components exist and grizzlies may be present occasionally. Habitat resources in Management Situation 2 either are unnecessary for survival and recovery of the species, or the need has not yet been determined but habitat resources may be necessary. Certain management

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actions are necessary. The status of such areas is subject to review and change according to demonstrated grizzly population and habitat needs. Major Federal activities may affect the conservation of the grizzly bear primarily in that they may contribute toward (a) human-caused bear mortalities or (b) long-term displacement where the zone of influence could affect habitat use in Management Situation 1.

Management direction. The grizzly bear is an important, but not the primary, use of the area. In some cases, habitat maintenance and improvement may be important management considerations. Minimization of grizzly-human conflict potential that could lead to human=caused mortalities is a high management priority. In this management situation, managers would accommodate demonstrated grizzly populations and/or grizzly habitat use in other land use activities if feasible, but not to the extent of exclusion of other uses. A feasible accommodation is one which is compatible with (does not make unobtainable) the major goals and/or objectives of other uses. Management will at least maintain those habitat conditions which resulted in the area being stratified Management Situation 2. When grizzly population and/or grizzly habitat use and other land use needs are mutually exclusive, the other land use needs may prevail in management consideration. In cases where the need of the habitat resources for recovery has not yet been determined, other land uses may prevail to the extent that they do not result in irretrievable/irreversible resource commitments which would preclude the possibility of eventual restratification to Management Situation 1. If grizzly population and/or habitat use represents demonstrated needs that are so great (necessary to the normal needs or survival of the species or a segment of its population) that they should prevail in management considerations, then the area should be reclassified under Management Situation 1. Managers would control nuisance grizzlies.

Management Situation 3

Population and habitat conditions. Grizzly presence is possible but infrequent. Developments, such as campgrounds, resorts or other high human use associated facilities, and human presence result in conditions which make grizzly presence untenable for humans and/or grizzlies. There is a high probability that major Federal activities or programs may affect the species' conservation and recovery.

Management direction. Grizzly habitat maintenance and improvement are not management considerations. Grizzly-human conflict minimization is a high priority management consideration. Grizzly bear presence and factors contributing to their presence will be actively discouraged. Any grizzly involved in a grizzly-human conflict will be controlled. Any grizzly frequenting an area will be controlled.

Management Situation 4

Population and habitat conditions. Grizzlies do not occur in the area but habitat and human conditions make the area potentially suitable for grizzly occupancy, and the area is needed for the survival and recovery of the species. The probability is very great that major Federal activities and programs may affect the species' conservation and recovery.

Management direction. The grizzly bear is an important potential use on the area. Grizzly habitat maintenance and improvement are important management considerations. Grizzly-human conflict minimization is not a management consideration. Habitat and human conditions making the area suitable for grizzly occupancy will not be degraded pending decisions regarding reestablishment of grizzlies.

Management Situation 5

Population and habitat conditions. Grizzlies do not occur, or occur only rarely in the area. Habitat may be unsuitable, unavailable, or suitable and available but unoccupied. The area lacks survival and recovery values for the species or said values are unknown. Major Federal activities and programs probably will not affect species conservation and recovery.

Management direction. Consideration for grizzly bears and their habitat in other resource related decisions is not directed. Maintenance of grizzly habitat is an option. Any grizzly involved in a grizzly-human conflict will be controlled.

Appendix B—Guidelines for Preventive Action

Under the Appendix, "Plan for Determining Grizzly Bear Nuisance Status and for Controlling Nuisance Grizzly Bears", add:

IV. Preventive Action

Certain specific grizzlies have known behavioral patterns, which, when combined with location, time and other factors, indicate that an incident is highly probable. In such situations, direct preventive action designed to safely remove the bear(s) from the situation (prior to an occurrence which would result in nuisance status and possible loss of the bear(s) to the ecosystem) can be implemented regardless of the Management Situation involved. Human activities must be in compliance with applicable guidelines to minimize potential for grizzly-human conflicts for that Management Situation. Control actions should be designed to capture and remove the specific target bear(s).

[FR Doc. 86-26619 Filed 11-25-86; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration
Title: Fishermen's Contingency Fund
Form Number: Agency—NOAA 88-164, 88-166; OMB-0648-0082
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 1,365 respondents; 13,650 reporting hours
Needs and Uses: The purpose of the Fishermen's Contingency Fund is to compensate commerical fishermen for losses or of damages to fishing gear or vessels attributable to oil and gas activities on the Outer Continental Shelf. The application form and 15-day report are required in order to file claims against the fund.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations; individuals
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sheri Fox 395-3785

Agency: National Oceanic and Atmospheric Administration
Title: Fishing Vessel and Gear Damage Compensation Fund
Form Number: Agency—NOAA 88-178; OMB—0648-0094
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 400 respondents; 8,000 reporting hours
Needs and Uses: The application form is required of commerical fishermen who file claims against the Fishing Vessel and Gear Damage Compensation Fund in accordance with Section 10 of the Fishermen's Protective Act of 1967. The purpose of the Fund is to compensate fisherman for vessel casualties caused by foreign vessels and for gear casualties caused by any other vessel, whether foreign or domestic.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations; individuals
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sheri Fox 395-3785

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: November 19, 1986.

Edward Michals,

Departmental Clearance Officer, Information Management Division.

[FR Doc. 86-26657 Filed 11-25-86; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[C-580-602]

Final Affirmative Countervailing Duty Determination; Certain Stainless Steel Cooking Ware From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in the Republic of Korea (Korea) of certain stainless steel cooking ware as described in the "Scope of Investigation" section of this notice. We are not including Woo Sung Company, Ltd. (Woo Sung) or Dae Sung Industrial Company, Ltd. (Dae Sung) in this determination because benefits received by those companies are *de minimis*. Where a company receives *de minimis* benefits, we consider that to be a "significant differential" warranting company-specific treatment under section 706 of the Tariff Act of 1930 as amended by section 607 of the Trade and Tariff Act of 1984 (Pub. L. 98-573). The estimated net subsidy for all other manufacturers, producers, or exporters in Korea of certain stainless steel cooking ware is 0.78 percent *ad valorem*.

We have notified the U.S. International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to suspend liquidation of all entries of stainless steel cooking ware from Korea, except that produced and exported by Woo Sung or Dae Sung, that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond on entries of these products in the amount equal to the estimated net subsidy as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: November 26, 1986.

FOR FURTHER INFORMATION CONTACT: Rick Herring or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0187 or 377-0161.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Korea of stainless steel cooking ware. For puposes of this investigation, the following programs are found to confer subsidies:

- Short-Term Export Financing under the Export Financing Regulations and Foreign Trade Financing Regulations;
- Export Tax Reserve under Articles of the Act Concerning the Regulation of Tax Reduction and Exemption;
- Unlimited Deduction of Overseas Entertainment Expenses under Article 18-2 of the Corporation Tax Law;
- Loans to Promising Small and Medium Enterprises;
- Exemption from the Acquisition Tax under the Law for the Promotion of Income Sources in Rural Areas; and
- Duty Drawback on Non-physically Incorporated Items and Excessive Loss Rates under the Duty Drawback System.

We determine the estimated net subsidy for certain stainless steel cooking ware to be 0.78 percent *ad valorem* for all manufacturers, producers, or exporters in Korea except for Woo Sung and Dae Sung which have not been included in this determination.

Case History

On January 21, 1986, we received a petition filed in proper form by the Fair Trade Committee of the Cookware Manufacturers Association on behalf of the U.S. industry which manufactures certain stainless steel cooking ware. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Korea of certain stainless steel cooking ware receive, directly or indirectly, subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on February 10, 1986, we initiated an investigation (51 FR 6019, February 19, 1986). We stated that we expected to issue a preliminary determination by April 16, 1986.

Since Korea is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the ITC of our initiation. On March 4, 1986, the ITC determined that there is a reasonable indication that imports of certain stainless steel cooking ware from Korea materially injury, or threaten material injury to, a U.S. industry (51 FR 9541, March 19, 1986).

We presented questionnaires concerning the petitioner's allegations to the Government of Korea at its embassy in Washington, DC on February 20, 1986. We received the responses to our questionnaires on March 26, 1986.

There are seven Korean producers of the subject merchandise accounting for over 75 percent of the exports to the United States during the period of review. They are Kyung Dong Industrial Company, Ltd. (Kyung Dong), Namil Metal Company, Ltd. (Namil), Il Shin Company, Ltd. (Il Shin), Hai Dong Stainless Industries Co. (Hai Dong), Woo Sung, Dae Sung, and Bum Koo Industrial Co., Ltd. (Bum Koo). For the producers identified above, the following trading companies accounted for substantially all of their trading company sales of the subject merchandise to the United States during the review period: Sammi Corporation, Daewoo Corporation, Korea Trading International Company, Samsung Company, Haitai International, Sunkyong Company, Daewonsa Corporation, Hyundai Corporation, G.I. Corporation, Ssangyong Corporation, and Dong Chang Company.

On the basis of information contained in the responses, we made a preliminary negative countervailing duty determination on April 16, 1986 (51 FR 15520, April 24, 1986). On April 30, 1986, we extended the deadline for the final determination in this investigation to September 15, 1986, to correspond to the dates of the final determinations in the antidumping duty investigations of the same products from Korea and Taiwan (51 FR 16882, May 7, 1986). This was done at the request of petitioner pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98-573). From April 28 through May 12, 1986, we verified the responses of the Government of Korea and the following companies: Bum Koo, Hai Dong, Kyung Dong, Namil, Il Shin, Woo Sung, Sammi, Hyundai, Daewonsa, Daewoo, and Samsung.

On August 1, 1986, the deadlines for the final determinations in the antidumping duty investigations of certain stainless steel cooking ware from Korea and Taiwan were postponed to no later than November 19, 1986.

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Accordingly, the final determination for the countervailing duty investigation of certain stainless steel cooking ware from Korea was also postponed to coincide with the antidumping duty determinations of the same products from Korea and Taiwan (51 FR 28610, August 8, 1986).

On August 12, 1986, we presented a supplemental questionnaire to the Government of Korea requesting information on additional programs which came to our attention during the course of the verification of the sales responses in the concurrent antidumping duty investigation. We received the response to that questionnaire on August 26, 1986. The verification of the response to the supplemental questionnaire was conducted between August 27 and August 29, 1986.

Petitioner submitted a request for a hearing, which was subsequently withdrawn with the consent of respondents. Both petitioner and respondents filed briefs discussing the issues arising in this investigation which have been taken into consideration in this determination.

Scope of Investigation

The products covered by this investigation are all non-electric cooking ware of stainless steel which may have one or more layers of aluminum, copper, or carbon steel for more even heat distribution. These products are provided for in item number 653.94 of the *Tariff Schedules of the United States* (TSUS). The products covered by this investigation are skillets, frying pans, omelette pans, sauce pans, double boilers, stock pots, sauce pots, dutch ovens, casseroles, steamers, and other stainless steel vessels, all for cooking on stove top burners, except tea kettles and fish poachers. Excluded from the scope of investigation are stainless steel oven ware and stainless steel kitchen ware, which are included under the 653.94 *TSUS* classification.

Analysis of Programs

Throughout this notice we refer to certain general principles applied to the facts of the current investigation. These general principles are described in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

For purposes of this final determination, the period for which we are measuring subsidies (the review period) is calendar year 1985. Based upon our analysis of the petition, the responses to our questionnaires, verification, and comments filed by petitioner and respondents, we determine the following.

I. Programs Determined to Confer Subsidies

We determine that subsidies are being provided to manufacturers, producers, or exporters in Korea of certain stainless steel cooking ware under the following programs:

A. Short-Term Export Financing

Petitioner alleges that producers and exporters in Korea of certian stainless steel cooking ware receive preferential short-term export financing under the Export Financing Regulations.

The Export Financing Regulations were promulgated on February 25, 1982. On October 17, 1985, these regulations were terminated with the creation of the Foreign Trade Financing Regulations. These latter regulations provide the guidelines for short-term export financing. Export financing takes the form of loans on bills related to export sales transactions. Eligibility is based upon presentation of export documents or upon past export performance. Export loans based on past preformance cannot exceed 90 days, while loans based on specific export documents cannot exceed 180 days and are limited to the terms of the applicable letter of credit. During our review period, the rate of interest charged on short-term export financing remained constant at ten percent, which was the ceiling established by the governor of the Bank of Korea.

During verification, we found that the Bank of Korea continues to set different rediscount ratios for export and domestic short-term loans. We first learned of this preference in the administration of short-term loans in our investigation of *Oil Country Tubular Goods* in 1984.

The rediscount ratio for export loans is 70 percent of the face value of the loan. The rediscount ratio on domestic commercal bills is 30 percent of the face value of the loan for large firms. The rediscount ratio for small- and medium-sized firms is 70 percent. Small- and medium-sized firms are defined as companies with fewer than 300 employees.

Of the seven producers, Kyung Dong and Namil are classified as large firms, as are all the trading companies, except G.I. Corporation.

Because only exporters are eligible to use the short-term export financing, we find these loans to be countervailable to the extent that they are provided on preferential terms. Moreover, we determine that the different rediscount ratios applied to financing for the large firms (70 percent for export transactions, 30 percent for domestic transactions) results in the provision of export financing on preferential terms for large firms. This is because in lending to large firms, commercial banks have an incentive to channel more funds to finance those firms' export transactions and fewer funds to finance their domestic transactions.

To measure the benefit bestowed on large firms, we computed a weighted-average interest rate to represent what large firms pay to finance domestic transactions. Because commercial banks have an incentive to direct their loans for large firms to financing export transactions, large firms are likely to receive relatively less commercial bank financing for their domestic transactions. As a result, large firms must seek alternative sources for financing domestic sales.

The weighted-average interest rate we have computed is a best estimate measure of the preference created by the different rediscount ratios. It includes the interest rates on commercial bank loans for domestic transactions, financing from investment and finance companies, the curb market, and the issuance of commercial paper.

The weights assigned to each of these sources of short-term domestic credit were based on the *Monthly Statistical Bulletin* of the Bank of Korea and on the annual survey on curb market financing published by the Korean Chamber of Commerce. The *Monthly Statistical Bulletin* provided the size of, and interest rates charged on, short-term financing from each of the sources except the curb market. We are using the information from the Korean Chamber of Commerce as the most appropriate measure of the average curb market size and rate in 1985, because it is the only independently-conducted survey of the curb market we were able to obtain during this investigation.

Using the data from these sources we calculated a weighted-average interest rate of 13.02 percent. We compared that rate to the 10 percent interest rate on export loans received by the companies classified as large companies.

For small- and medium-sized firms, no preference is created by the rediscount ratios because the ratios for export loans and domestic loans to small- and medium-sized businesses are identical. Instead, export financing for small- and medium-sized firms is countervailable to the extent that the interest rate on export loans is less than the benchmark interest rate. We have chosen as our benchmark the interest rate on commercial bank loans for domestic transactions.

During 1985, the interest rate on domestic short-term bank loans was allowed to vary from 10 to 11.5 percent. During our verification of *Offshore Platform Jackets and Piles from Korea* in September and October 1985, we were told by the Bank of Korea, the Korea Development Bank, and two commercial banks that, although the interest rate is allowed to vary from 10 to 11.5 percent, commercial banks will usually charge the ceiling rate of 11.5 percent on all their lending. The respondents in their briefs in this current investigation concede the fact that most lending by commercial banks is done at 11.5 percent. Therefore, to measure the benefits from those companies classified as small- and medium-sized firms, we compared the 10 percent interest rate for their export loans to the benchmark interest rate of 11.5 percent charged by commercial banks on domestic short-term lending.

In determining the benefit provided under this program, we based our calculations on total export loans because the companies were unable to tie specific loans to the products under investigation. For the export loans to the trading companies, we factored the benefit back to the producers based on the ratio of exports to the United States of cooking ware made through the trading company for each respective producer over total exports of the trading company. We calculated the interest savings to the companies and divided the interest savings by total exports of the producers. Using this methodology, we calculated an estimated net subsidy of 0.38 percent *ad valorem* for all manufacturers, producers, or exporters in Korea except Dae Sung and Woo Sung. for Dae Sung, we calculated an estimated net subsidy of 0.18 percent *ad valorem*, and for Woo Sung, we calculated an estimated net subsidy of 0.16 percent *ad valorem*.

Since Dae Sung and Woo Sung have been excluded from this determination, we have deducted both the benefits received under this program and their sales from our denominator when calculating the estimated net subsidy for all other manufacturers, producers, or exporters. The same procedure was followed in the calculation of the estimated net subsidy for each of the other programs determined to confer subsidies.

B. Export Tax Reserves

Petitioner alleges that manufacturers, producers, and exporters of the subject merchandise receive tax benefits under Articles 22, 23, and 24 of the Act Concerning the Regulation of Tax Reduction and Exemption. These articles provide for deductions from taxable income for a number of different reserves covering export losses, overseas, market development, and price fluctuation losses.

Under Article 22, a corporation may establish a reserve amounting to one percent of foreign exchange earnings, or 50 percent of net income in the applicable period, whichever is smaller. If certain export losses occur, they are offset from the reserve fund. If there are no offsets for export losses, the reserve is returned to the income account and taxed, after a one-year grace period, over a three-year period.

Under Article 23, governing overseas market development, a corporation may establish a reserve fund amounting to one percent of its foreign exchange earnings in the export business for the respective business year. Expenses incurred in developing overseas markets are offset from the reserve fund. Like the export loss reserve fund, if there are no offsets for expenses, the reserve is returned to the income account and taxed, after a one-year grade period, over a three-year period.

A price fluctuation reserve fund may be established under Article 24. A corporation may establish reserves equivalent to five percent of the book value of the products and works in progress which will be exported by the close of the business year. This reserve may be used to offset losses resulting from the fluctuation of prices for export goods by returning an amount equivalent to the losses to the income account. If not so utilized, the reserve is returned to the income account the following year.

The balance in all three reserve funds is not subject to corporate tax, although all moneys in the reserve fund are eventually reported as income and subject to corporate tax either when they offset export losses or when the one-year grace period expires.

We determine that these export reserve programs confer benefits which constitute export subsidies because they provide a deferral, contingent upon exports, of direct taxes.

To measure the benefit conferred by the deferral, we treated the tax savings on these funds as short-term interest-free loans. Accordingly, the amount of tax savings was multiplied by the rate of interest the firm would have had to pay for a short-term commercial bank loan (11.5 percent). On this basis, we calculated an estimated net subsidy of 0.01 percent *ad valorem* for all manufacturers, producers, or exporters in Korea except Dae Sung and Woo Sung. For Dae Sung, we calculated an estimated net subsidy of 0.02 percent *ad valorem*, and for Woo Sung, we calculated an estimated net subsidy of less than 0.01 percent *ad valorem*.

C. Unlimited Deduction of Overseas Entertainment Expenses

Petitioner alleges that producers and exporters of the subject merchandise receive tax benefits in the form of entertainment expense deductions.

Under Article 18–2 of the Corporation Tax Act and supporting legislation, entertainment expenses for domestic clients and foreign clients ("overseas entertainment expenses") are eligible to be deducted from taxable income. The amount which can be deducted for domestic entertainment expenses is subject to a ceiling according to an established formula and depending on the amount of any overseas entertainment expenses claimed. There is no cap on overseas entertainment expenses. Because entertainment expense deductions are unlimited only for export business activities, we determine that this program confers benefits which constitute export subsidies, to the extent that the overseas expenses claimed are greater than those which would have been allowed using the domestic cap formula.

To calculate the benefit from this program for the review period, we added the amounts of overseas entertainment expenses claimed in the companies' tax returns filed in 1985 exceeding their domestic caps. We then divided this amount by the value of exports in 1985, and calculated an estimated net subsidy of 0.01 percent *ad valorem* for all manufacturers, producers, or exporters in Korea except Dae Sung and Woo Sung. For Dae Sung, we calculated an estimated net subsidy of less than 0.01 percent *ad valorem*. Woo Sung did not receive any benefits under this program.

D. Exception from the Acquisition Tax

Under the Law for the Promotion of Income Sources in Rural Areas, companies which establish factories in rural areas may be exempted from paying the acquisition tax on purchases of land, buildings, and capital equipment. The rate of the acquisition tax is two percent. Since the tax exemption is limited to companies located in certain regions of the country, we determine the program to be countervailable.

During the review period, Bum Koo was the only producer to receive this tax exemption. To calculate a benefit under this program, we took the total amount

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of tax exemption received and divided by the total sales value of all the producers. Using this methodology, we calculated an estimated net subsidy of 0.07 percent *ad valorem* for all manufacturers, producers, or exporters in Korea except Dae Sung and Woo Sung. Dae Sung and Woo Sung did not receive any benefits under this program.

E. Loans to Promising Small and Medium Enterprises

Under this program, the Bank of Korea directs banks to provide loans to select "promising" small- and medium-sized companies. The Ministry of Trade and Industry provides the guidelines to be used by the banks in designating promising companies. According to these guidelines, promising small and medium companies are to be designated among:

- companies producing basic raw materials and components for manufacturing industries;
- companies possessing advanced technology;
- exporting companies;
- import-substituting companies;
- companies producing folk artifacts and souvenirs;
- companies manufacturing high-quality sporting goods;
- companies manufacturing Olympic-related merchandise; and
- rural companies producing local specialties with local resources.

Bum Koo and Il Shin have been designated as promising companies and both had loans outstanding under this program during the period of review.

During verification we were not provided with documentation on the specific criterion Bum Koo and Il Shin, or any other company, met to be selected as a promising company under this program. From the selection criteria of the program, it appears that the only criterion either company could meet is that it is an exporting company. Therefore, we determine that the loans received by Bum Koo and Il Shin under this program are countervailable to the extent that they were provided at preferential interest rates.

For Bum Koo, the information provided in the supplemental response on the outstanding loans under this program did not correspond to the loan information contained in the company's interest-expense ledger. Therefore, we used the interest-expense ledger to determine the amount of loans outstanding under this program for Bum Koo. For Il shim, we used the information contained in the supplemental response.

To determine whether loans received under this program provided a countervailable benefit, we compared their interest rate to the interest rate on other long-term loans received by the two companies. For Il Shin, the interest rates of previously outstanding loans were reduced when the company was designated as "promising" under this program. Therefore, we compared the interest rate on the loans prior to the designation to the interest rate on the loans after the designation of Il Shin.

For Bum Koo, it appears from the information that we verified that the company has only received loans from under this program or under the Export Loan program. Therefore, as a benchmark for Bum Koo, we used the interest rate on the long-term loans of Il Shin prior to its designation, as best information available on the national average interest rate on long-term variable rate loans, and compared that to the interest rate of the loans Bum Koo received under this program. Using that benchmark, we determine that the loans received by Il Shin and Bum Koo under this program are countervailable.

Since these are variable-rate loans, we used our short-term methodology to calculate the benefit conferred by this loan program. To calculate a benefit, we took the amount of the interest savings of the loans and divided by the total export value of all producers. Using this methodology, we calculated an estimated net subsidy of 0.11 percent *ad valorem* for all manufacturers, producers or exporters in Korea except Dae Sung and Woo Sung. Dae Sung and Woo Sung did not receive any benefits under this program.

F. Duty Drawback on Non-Physically Incorporated Items and Excessive Loss Rates

Under the Korean duty drawback system, cooking ware manufacturers are allowed to claim duty drawback on emery powder and chromic oxide. Emery powder and chromic oxide are used in the washing and polishing of cooking ware, and are not physically incorporated in the exported item. We determine the amount of duty drawback received on emery powder and chromic oxide to be countervailable because they are not physically incorporated into the exported item.

The Korean government also establishes an authorized loss rate for raw materials used in the manufacture of exported goods. Duty drawback includes the amount of duty remitted on the loss or wastage for the raw material. For stainless steel sheet or coil used in the production of cooking ware, two standard usage rates (input ratios) based on the loss rates are established by the Government of Korea. For pots, kettles, creamers and colanders (category 1) the rate is 1.5530. For pans, dishes, bowls and kitchen tools (category 2), the rate is 1.4465. For example, to claim duty drawback on 1.5530 kilograms of stainless steel, only 1 kilogram need be physically-incorporated in an exported pot. These input ratios include material which may later be sold as scrap.

The Government of Korea reduces the amount of duty drawback received on the exported product to account for the sale of by-products produced from the excess raw materials used in the production of the exported goods. For stainless steel cooking ware, a deduction for stainless steel scrap is made. This deduction is based on the grade of the steel. For AISI–430, a deduction of 2.13 percent is made to reflect the sale of scrap which is created in the production process of cooking ware. For AISI–304, the deduction rate is 2.46 percent.

During the government verification on the calculation of these rates, we reviewed summarized calculations of input ratios. However, when we asked to see the backup documentation, including the files and the responses from cooking ware companies used to determine these rates, we were told by government officials that these records were not available. Because we were unable to check back to source documents, we must consider the government calculation of the input ratios as unverified.

We have determined that a duty drawback program which includes some amount for loss or wastage in determining the amount of custom duties remitted on raw materials used in the manufacture of exported goods is not necessarily countervailable. Duty drawback for loss or wastage a only becomes countervailable when the allowance for this loss or wastage is unreasonable or excessive. We consider duty drawback received on recoverable scrap to constitute an unreasonable or excessive remission of customs duties. Therefore, when loss or wastage rates include recoverable scrap, we would find that the rates are excessive, and, thus, countervailable.

In this case, we compared, as best information available, the government's value-based duty drawback reduction rate (which theoretically accounts for the sale of scrap), to the average ratio of the value of the companies' actual scrap sales to total input purchased. Information on company-specific scrap sales was contained in the cost verification reports for the concurrent antidumping duty investigation, which have been formally submitted on the record of the countervailing duty investigation by respondents' counsel. Making this comparison, we find that the government's reduction rate does not adequately compensate for scrap sales. As such, we find that the duty drawback in this case is excessive, and hence, countervailable. To calculate the benefit from the excessive drawback, we multiplied the percentage of the excessive duty drawback by the total amount of duty drawback (less the amount of drawback received on emery powder and chromic oxide since that entire amount is countervailable).

Adding the benefits from the drawback of emery powder and chromic oxide and the excessive drawback from recoverable scrap, and dividing by total exports of the producers, we calculated an estimated net subsidy of 0.20 percent *ad valorem* for all manufacturers, producers, or exporters in Korea except Dae Sung and Woo Sung. For Dae Sung, we calculated an estimated net subsidy of 0.15 percent *ad valorem,* and for Woo Sung, we calculated an estimated net subsidy of 0.18 percent *ad valorem.*

II. Programs Determined Not To Be Used

We determine that manufacturers, producers, or exporters in Korea of certain stainless steel cooking ware did not use the the following programs:

A. Tariff Reductions on Plant and Equipment

Petitioner alleged that certain Korean manufacturers receive special tariff reductions on imported plant and equipment. Article 28 of the Customs Law allows for reductions of import duties for certain industries on particular items designated by the Ministry of Finance. According to the responses of the Government of Korea and Korean companies, and based upon our findings at verification, producers of the subject merchandise are not eligible for tariff reductions because Article 28 specifies that only machinery used in the production of machine parts, and machinery used in the manufacture of electronic goods are eligible for this program.

B. Free Export Zone Program

Petitioner alleged that firms located in free export zones received certain tax incentives such as exemptions on corporate, residence, defense, and property taxes. According to the responses of the Government of Korea and Korean companies, and based upon findings at verification, no stainless steel cooking ware producers or trading companies selling cooking ware are located in free export zones.

C. Export Credit Financing from the Export-Import Bank of Korea

Petitioner alleges that producers and exporters of certain stainless steel cooking ware may receive below market financing for pre-export projects and export transactions. Petitioner further alleges that the National Investment fund (NIF) finances exports on a deferred payment basis. According to the response of the Government of Korea, and based upon our findings at verification, financing from the Export-Import Bank of Korea (KXMB) is only provided for large capital goods, and no such financing is provided for exports of consumer goods like cooking ware. The only source of NIF deferred payment export loans is through export credit financing programs of the KXMB, and cooking ware exports are not eligible for such financing.

D. Export Guarantees from the KXMB

Petitioner alleged that producers of the subject merchandise receive advance payment export guarantees and performance guarantees from the KXMB. According to the response of the Government of Korea, and based upon verification findings, the KXMB only provides such guarantees for exports of large capital goods and projects, and no guarantees are offered for sales of consumer goods such as stainless steel cooking ware.

E. Accelerated Depreciation

Petitioner alleged that producers of the subject merchandise receive accelerated depreciation benefits. Article 25 of the "Act Concerning the Regulation of Tax Reduction and Exemption" permits a firm earning more than 50 percent of its total proceeds in a business year from foreign exchange to increase its normal depreciation by 30 percent. If the corporation has received less than 50 percent of its total proceeds from foreign exchange, it can still claim some accelerated depreciation, determined by a formula based on the firm's foreign exchange earnings and total business earnings. We found at verification that none of firms investigated used accelerated depreciation under this program during the review period.

Respondents' Comments

Comment 1: Respondents contend that the commercial bank rate for domestic commercial loans and bill discounting is the correct rate to use as the benchmark for short-term export financing.

DOC Position: We agree that it is the appropriate benchmark for small-and medium-sized firms. For large firms, however, the different rediscount ratios mean that banks prefer to finance these firms' exports, as opposed to domestic transactions. We measure this preference by computing a weighted-average interest rate comprising the alternative sources of financing used by large firms to finance their domestic transactions. This treatment of short-term financing is consistent with our *Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Korea* (49 FR 46776, November 28, 1984).

Comment 2: Respondents argue that the Korean "curb market" cannot be the benchmark to measure the preference created by export loans, nor should it be included in any weighted-average benchmark.

DOC Position: The curb market rate, alone, does not accurately reflect the overall non-export financing interest rate. However, it is a source of domestic financing in Korea, and, thus, was included in the calculation of the weighted-average interest rate used to measure the preference arising from the different rediscount ratios for large firms.

Comment 3: Respondents argue that the average rate of all non-government regulated sources of financing is not an appropriate benchmark.

DOC Position: We agree. As stated above, we used the commercial bank rate for domestic loans as the benchmark. Non-government regulated financing was only included when measuring the benefit conferred by different rediscount ratios for large firms.

Comment 4: Respondents argue that Sammi Corporation's tax credit relating to the sale of its shipping vessels is not a subsidy for its cookware exports.

DOC Position: We agree. However, the credit is one not generally available in Korea and it reduced Sammi's effective corporate tax rate. Thus, we calculated the benefit to Sammi under the export tax reserve programs using the corporate tax rate that would have applied absent the reduction due to the specified tax credit.

Comment 5: Respondents argue that there are no counteravailable benefits as a result of the rediscount ratios.

DOC Position: Because of the difference in the rediscount ratios for export loans and for domestic bills of large companies, we determine that a preference is provided in the administration of the export loan program. To measure that preference,

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we used a weighted-average interest rate as the best estimate of the benefit conferred on large firms by this preference.

Comment 6: Respondents contend that benefits occurring from export tax reserves tied directly to products other than stainless steel cooking are not countervailable.

DOC Position: We agree. Where we have verified that benefits pertain to some product other than the subject merchandise, we have followed our standard practice of not including such benefits in the calculation of the estimated net subsidy.

Petitioner's Comments

Comment 1: Petitioner contents that the benchmark rate should be the Korean "curb market" rate. Petitioner further claims that even if the curb market is not used as the benchmark, the benchmark should be the average of all non-government controlled financing rates.

DOC Position: As explained in the section of the notice "Analysis of Programs," we have used the weighted-average interest rate on short-term debt instruments to measure the preference conferred on large firms by the different rediscount ratio applied to their loans. This weighted-average interest rate is not a benchmark, as we typically use that term. It measures the preference created by the different rediscount ratios, not the preference created by low-interest export loans absent the different rediscount ratios. The benchmark, which measures the preference absent the different rediscount ratios, is the interest rate on commercial bank loans for domestic transactions.

We have rejected the curb market rate as a benchmark because it is not representative of what firms in Korea would pay to finance domestic transactions. Instead, to finance domestic transactions, they rely primarily on commercial bank loans. As a result, commercial bank loans are the appropriate benchmark for small- and medium-sized firms. The *Subsidies Appendix* states that we will use the most appropriate national average commercial method of short-term financing. Because commercial banks are the predominant source, they represent the source of financing most used.

While we occasionally use more than one instrument in computing a benchmark, it is the exception rather than the rule. We only use more than one instrument when no single instrument represents the average borrowing experience of firms in that country, as reflected by the overall amount of borrowing which occurs from that source.

Comment 2: Petitioner argues that the tax credit Sammi Corporation received under Article 46 of the Corporate Tax Law on its income from the sale of shipping vessels is countervailing as a domestic subsidy.

DOC Position: We disagree. Where respondents have shown that benefits pertain to merchandise other than the subject merchandise, we have followed our standard policy of not including such benefits in our calculation of the estimated net subsidy. However, we note that in calculating the corporate tax rate for Sammi, we did not allow these credits to reduce Sammi's effective rate, because the credits are provided to a specific enterprise or industry, or a group of enterprises or industries.

Comment 3: Petitioner contends that the rediscounting preference granted to large firms confers a countervailable subsidy.

DOC Position: See our position to Respondents' Comment 5.

Comment 4: Petitioner argues that all benefits received as a result of tax reserves, whether pertaining to the products subject to this investigation or not, are countervailable subsidies.

DOC Position: We disagree. Where respondents have shown that benefits pertain to merchandise other than the subject merchandise, we have followed our standard policy of not including such benefits in our calculation of the estimated net subsidy.

Comment 5: Petitioner argues that the Korean system of duty drawback remits duties and taxes on items not physically-incorporated in exported cooking ware.

DOC Position: We have determined that duty drawback received from emery powder and chromic oxide is countervailable because these chemicals are not physically-incorporated.

Verification

In accordance with section 776(a) of the Act, we verified the information used in making our final determination. During verification, we followed normal verification procedures, including meeting with government officials, as well as on-site inspection of the companies, inspection of documents and ledgers, and tracing information in the responses to source documents, accounting ledgers, and financial statements.

Suspension of Liquidation

In accordance with section 705(c)(1)(B) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Korea, except that produced and exported by Woo Sung or Dae Sung, which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, and to require a cash deposit or bond equal to 0.78 percent *ad valorem* for each entry of this merchandise.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 75 days after the date of this determination. If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury exists, we will issue a countervailing duty order, directing Customs officers to continue to suspend liquidation and to collect cash deposits on all entries of stainless steel cooking ware from Korea entered, or withdrawn from warehouse, for consumption as described in the "Suspension of Liquidation" section of this notice.

Administrative Procedures

We afforded interested parties an opportunity to present information and written views in accordance with Commerce regulations (19 CFR 355.34(a)). Petitioner submitted a request for a hearing, which was subsequently withdrawn with the consent of respondents. Written views have been received and were considered in reaching this final determination.

This notice is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

November 19, 1985.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

[FR Doc. 86–26662 Filed 11–25–86; 8:45 am]

BILLING CODE 3510-DS-M

[A-427-001]

Sorbitol From France; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 14, 1986, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on sorbitol from France. The review covers one manufacturer/exporter of this merchandise to the United States and consecutive periods from June 1, 1982 through March 31, 1985.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: November 26, 1986.

FOR FURTHER INFORMATION CONTACT: Maureen Rosch or David Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5255/2923.

SUPPLEMENTARY INFORMATION:

Background

On August 14, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 29143) the preliminary results of its administrative review of the antidumping duty order on sorbitol from France (47 FR 15391, April 9, 1982). We began this review under our old regulations. After the promulgation of our new regulations, one respondent, Roquette Freres, requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of crystalline sorbitol. Crystalline sorbitol is a polyol produced by the catalytic hydrogenation of sugars (glucose). It is used in the production of sugarless gum, candy, groceries, and pharmaceuticals. Crystalline sorbitol is currently classifiable under item 493.6820 of the Tariff Schedules of the United States Annotated.

The review covers one French manufacturer/exporter of crystalline sorbitol to the United States, Roquette Freres, and consecutive periods from June 1, 1982 through March 31, 1985.

Final Results of the Review

We invited interested parties to comment on the preliminary results. We received no comments or requests for a hearing. Based on our analysis, the final results of our review are unchanged from those we presented in the preliminary results, and we determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Roquette Freres	06/01/82—03/31/83	0.70
	04/01/83—03/31/84	0.96
	04/01/84—03/31/85	0.21

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, since the most recent margin is less than 0.50 percent and, therefore, *de minimis*, the Department waives the estimated antidumping duty cash deposit requirement. The waiver applies to shipments of French sorbitol entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: November 21, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86–26659 Filed 11–25–86; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-601]

Final Determination of Sales at Less Than Fair Value; Certain Stainless Steel Cooking Ware From Korea

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain stainless steel cooking ware from the Republic of Korea (Korea) is being, or is likely to be, sold in the United States at less than fair value. We also determine that critical circumstances do not exist with respect to imports of this merchandise from Korea. We have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to continue with the suspension of liquidation of all entries of certain stainless steel cooking ware from Korea that are entered, or withdrawn from warehouse, for consumption, on or after July 7, 1986, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margins as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: November 26, 1986.

FOR FURTHER INFORMATION CONTACT: Alain Letort, Carole Showers, or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202/377–0186 (Letort), 202/377–3217 (Showers), or 202/377–0161 (Taverman).

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that certain stainless steel cooking ware from Korea is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (the Act) [19 U.S.C. 1673d(a)]. We made fair value comparisons on sales of the class or kind of merchandise to the United States during the period of investigation, August 1, 1985, through January 31, 1986. The weighted-average margins are shown in the "Suspension of Liquidation" section of this notice. We have also determined that critical circumstances do not exist with respect to imports of this merchandise from Korea.

Case History

On January 21, 1986, we received a petition from the Fair Trade Committee

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of the Cookware Manufacturers Association on behalf of the U.S. industry which manufactures stainless steel cooking ware. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Korea are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673), and that these imports materially injure, or threaten material injury to, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on February 10, 1986 (51 FR 6016—February 19, 1986). On March 7, 1986, the ITC preliminarily determined that there is reasonable indication that imports of certain stainless steel cooking ware from Korea are materially injuring a U.S. industry (51 FR 9541—March 19, 1986).

On March 21, 1986, we presented antidumping duty questionnaires to Bum Koo Industrial Co., Ltd. (Bum Koo), Dae Sung Industrial Co., Ltd. (Dae Sung), Hai Dong Stainless Industries Co. (Hai Dong), Kyung Dong Industrial Co., Ltd. (Kyung Dong), and Namil Metal Co., Ltd. (Namil). These companies accounted for at least 60 percent of exports of the subject merchandise from Korea to the United States during the review period. Respondents were requested to answer the questionnaires within 30 days. On April 16, 1986, counsel for respondents requested extensions for submission of questionnaire responses. This request was granted on April 17, 1986. On April 29 and May 12, 1986, we received responses to our questionnaires.

Dae Sung, Hai Dong, Kyung Dong, and Namil submitted supplemental computer tape responses on June 10, 16, 17, and 18, 1986, too late to be considered for our preliminary determination. This information was verified and has been used in this final determination.

On March 5, 1986, we received from petitioner an allegation that a Korean trading company, Sammi Corporation (Sammi), sold the subject merchandise in the United States during the review period at prices below its cost of acquisition plus selling expenses (*i.e.*, "middleman dumping"). We requested that petitioner submit information which was reasonably available, providing evidence of middleman dumping, so that we could determine whether an investigation was warranted. Since trading companies typically operate at small mark-ups, and presumably do not take losses, we require some specific evidence that the trading company is, in fact, dumping before initiating an investigation with respect to the trading company. Petitioner cited an ongoing predatory pricing lawsuit against Sammi's U.S. subsidiary, Ken Carter Industries, Inc., and submitted several public documents obtained from that lawsuit, including allegations that Ken Carter sustained significant losses on its U.S. sales of stainless steel kitchenware (which include a large number of products not subject to our investigation). None of the documents submitted contained any pricing or cost data for Ken Carter or Sammi. After examining these documents, we determined that, without more direct evidence, these documents did not provide a sufficient basis upon which to initiate an investigation of the alleged middleman dumping by Sammi.

On May 30, 1986, petitioner alleged that home-market and third-country sales of the subject merchandise were made by respondents at prices below their costs of production. On June 23, 1986, we sent respondents supplemental questionnaires requesting that they submit certain cost of production information. Because of the late filing of this allegation, we did not analyze cost of production data for purposes of the preliminary determination. We are addressing this issue fully in this final determination.

On May 23, 1986, petitioner alleged that critical circumstances exist with respect to imports of the subject merchandise from Korea. On June 30, 1986, we made our preliminary affirmative antidumping duty determination (51 FR 24563—July 7, 1986). We stated in our notice that we preliminarily determined that critical circumstances do not exist in this case. We also stated that we expected to issue a final determination by September 15, 1986.

On July 1, 1986, respondents requested that the deadline for the final antidumping duty determination be extended to 135 days after the publication date of the preliminary determination in the **Federal Register**. We granted an extension on August 1, 1986 (51 FR 28610—August 8, 1986) and stated that we expected to issue a final determination no later than November 19, 1986.

From July 31 to August 16, 1986, we verified the home-market, third-country, and purchase price sales information provided by the respondents at the offices of Bum Koo, Dae Sung, Hai Dong, Kyung Dong, and Namil in Korea. From August 25 to September 9, 1986, we verified the cost-of-production information submitted by the respondents at the offices and manufacturing plants of Bum Koo, Dae Sung, Hai Dong, Kyung Dong and Namil in Korea. On October 9 and 10, 1986, we verified the exporter's sales price information submitted by Kyung Dong at the offices of Kyung Dong New Jersey (KDNJ) in Rutherford, New Jersey.

We received amended responses, based on information previously verified, from Bum Koo on August 22, 1986, from Namil on September 23, 1986, from Kyung Dong on September 25 and October 31 1986, from Dae Sung on October 8, 1986, and from Hai Dong on October 8 and October 31, 1986.

Scope of Investigation

The products covered by this investigation are non-electric cooking ware of stainless steel which may have one or more layers of aluminum, copper, or carbon steel for more even heat distribution. These products are provided for in item number 653.94 of the *Tariff Schedules of the United States* (TSUS). The products covered by this investigation are skillets, frying pans, omelette pans, saucepans, double boilers, stock pots, sauce pots, dutch ovens, casseroles, steamers, and other stainless steel vessels, all for cooking on stove top burners, except tea kettles and fish poachers. Excluded from the scope of investigation are stainless steel oven ware and stainless steel kitchen ware, which are included under the 653.94 TSUS item number. This investigation covers the period from August 1, 1985, through January 31, 1986.

Fair Value Comparisons

In order to determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price to the foreign market value. For purposes of this final determination, we used purchase price, exporter's sales price, home market and third-country sales prices, and constructed values provided in the responses.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price, where the merchandise was sold to unrelated purchasers prior to importation into the United States. We calculated the purchase price based on the packed FOB, CIF, or C&F duty-paid price to unrelated purchasers in the United States or to unrelated trading companies for sales to the United States, as appropriate. We made deductions, where appropriate, for inland freight, ocean freight, marine insurance, brokerage and handling charges, U.S. customs duties, and other charges such as inspection fees, service charges, and container freight station charges (wharfage).

For those sales made out of inventory by Kyung Dong's related importer in the United States, we used exporter's sales price to represent the United States price, as provided in section 772(c) of the Act, because the merchandise was sold to an unrelated purchaser after importation into the United States. For those sales, we made additional deductions, where appropriate, for U.S. brokerage expenses, U.S. customs duties, U.S. inland freight and insurance, U.S. wharfage charges, sales commissions, credit expenses, advertising costs, and other selling expenses incurred on sales to the United States.

We made additions to purchase price and exporter's sales price for duty drawback, *i.e.*, import duties which were rebated, or not collected, by reason of the exportation of the merchandise to the United States, pursuant to section 772(d)(1)(B) of the Act. With respect to Bum Koo, Hai Dong, Kyung Dong, and Namil, we note that, in the parallel countervailing duty investigation of the subject merchandise, we found that a portion of the duty drawback received by these respondents was based on materials which were not physically incorporated into the finished product. We did not reduce, however, the amount of the duty drawback adjustment in this case to reflect the excessive rebate of import duties, for the reasons described in DOC response to petitioner's comment 3.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on home-market sales, third-country sales and, where appropriate, constructed values. In accordance with section 773(a)(1)(A) of the Act, we calculated foreign market value for Bum Koo and Kyung Dong based on home-market prices of such or similar merchandise. Since the remaining companies had no viable home market, in accordance with section 773(a)(1)(B) of the Act and § 353.5 of our regulations, we calculated foreign market value for Hai Dong, Namil, and Dae Sung based on third-country sales of such or similar merchandise. In the case of Hai Dong and Namil, no single third country met the criteria of § 353.5(d) of our regulations and still provided an adequate number of sales. Thus, we aggregated sales to a number of third countries to calculate foreign market value. In the case of Dae Sung, we used the third country with the largest value of sales for our price-to-price comparisons.

For Bum Koo and Kyung Dong, we based our calculations of foreign market value on ex-factory or delivered, packed prices to unrelated purchasers in the home market. We made adjustments for differences in commissions, credit, and advertising expenses, where appropriate. We subtracted home-market packing and added U.S. packing to all home-market prices. For some home-market sales used for comparison to purchase price transactions, sales commissions were paid in one market and not the other. Pursuant to § 353.15(c) of our regulations, we made adjustments for differences between commissions paid in one market and indirect selling expenses, which were used as an offset to the commissions, in the other market, where available. We also made an adjustment for the differences in commissions paid in the two markets, where appropriate, in accordance with § 353.15(b) of our regulations. Where we used exporter's sales price, we used home market indirect selling expenses to offset U.S. selling expenses.

Consistent with our past practice, we disallowed Kyung Dong's claimed circumstance-of-sale adjustment for bad debts incurred on certain home-market sales, but included the bad debt loss in homemarket indirect selling expenses.

As stated previously, for Hai Dong, Namil, and Dae Sung we based our calculations of foreign market value on the packed, FOB, CIF, or C&F price to unrelated purchasers in third countries. We made deductions, where appropriate, for inland freight, ocean freight, marine insurance, brokerage and handling charges, and other direct selling expenses such as inspection fees, service charges, and container freight station charges (wharfage). We subtracted third-country packing and added U.S. packing. We also made an addition to third-country prices for import duties which were rebated by reason of exportation of the merchandise to third countries. Where appropriate, we made adjustments for commissions and credit expenses. In the case of some third-country sales used for comparison to purchase price sales, commissions were paid in one market and not the other. Pursuant to § 353.15(c) of our regulations, we made adjustments for differences between commissions paid in one market and indirect selling expenses, which was used as an offset to the commissions, in the other market. We also made an adjustment for the differences in commissions paid in both markets, where appropriate.

Where there was no identical product in either the home market or the third-country market with which to compare a product sold in the United States, we made an adjustment to account for differences in the physical characteristics of the merchandise, where possible, in accordance with section 773(a)(4)(C) of the Act.

Cost of Production/Constructed Value

In accordance with section 773(a)(2) of the Act, we supplemented home-market and third-country sales prices with constructed values when there were insufficient sales of such or similar merchandise above cost in the home market or third country. Constructed values were based on the responses, using actual material and fabrication costs. We made the following adjustments to the data submitted by the respondents:

1. Bum Koo

a. We included import duties in the cost of manufacture in calculating cost of production and constructed value since we added duty drawback to United States price.

b. We annualized the respondent's depreciation and adjusted it to reflect certain recently acquired assets.

c. We adjusted general, selling and administrative expenses by imputing interest to certain interest-free loans received from related parties.

d. We recalculated general, selling and administrative expenses based on the cost of goods sold, rather than on the cost of manufacture.

e. We reclassified labor for consumer packing as a fabrication cost.

f. We reallocated consumer packing materials to the cost of manufacture.

2. Dae Sung

a. We corrected a mathematical error in the cost of materials submitted by the respondent.

b. We reallocated certain plant management expenses, such as wages for cafeteria cooks, security guards, and motor pool drivers, from general, selling and administrative expenses to fabrication costs.

c. We disallowed income accruing from a sale of obsolete cooking ware originally ordered by a customer in Iran as an offset to the cost of production.

d. We did not include duty drawback in the cost of production because, in determining whether third-country sales were below cost, we did not add duty drawback to third-country sales prices.

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e. We reclassified a portion of labor expenses for outer packing as labor expenses for consumer packing, and treated this portion as a fabrication cost.

3. Hai Dong

a. We reallocated certain plant management expenses, such as wages for cafeteria cooks, security guards, and motor pool drivers, from general, selling and administrative expenses to fabrication costs.

b. We increased material costs to reflect the respondent's actual raw material wastage rate, rather than the standard government wastage rate.

c. He reallocated consumer packaging expenses to the cost of manufacture.

d. We did not include duty drawback in the cost of production because, in determining whether third-country sales were below cost, we did not add duty drawback to third-country sales prices.

4. Kyung Dong

a. We reallocated certain plant management expenses, such as wages for cafeteria cooks, security guards, and motor pool drivers, from general, selling and administrative expenses to fabrication costs.

b. We added an imputed credit cost to general, selling and administrative expenses in order to reflect home-market credit expenses, and deducted an amount from interest expenses so that interest expenses related to credit would not be double-counted.

c. We recalculated general, selling and administrative expenses based on the cost of goods sold, rather than on the cost of manufacturing.

5. Namil

a. We reclassified a portion of labor expenses as packing labor.

b. We reallocated certain plant management expenses, such as wages for cafeteria cooks, security guards, and motor pool drivers, from general, selling and administrative expenses to fabrication costs.

c. We did not include duty drawback in the cost of production because, in determining whether third-country sales were below cost, we did not add duty drawback to third-country sales prices.

d. We recalculated the recovery value for scrap based on actual, rather than theoretical, wastage rates.

e. We added an imputed credit cost to general, selling and administrative expenses in order to reflect home-market credit expenses, and deducted an amount from interest expenses so that interest expenses related to credit would not be double-counted.

We based constructed values for all the respondents on their costs of production, which we adjusted as described above.

In cases where the cost of production related to costs incurred on sales to third countries, we included duty drawback in constructed value since duty drawback is added to United States price.

We used actual verified expenses to calculate general, selling and administrative expenses in cases where they exceeded the statutory minimum of 10 percent; in all other cases, we used the statutory minimum. To calculate profit, we used the statutory minimum of eight percent of the total of materials, fabrication, and general expenses. We then added in U.S. packing costs. Based on the information available to us at the time of the preliminary determination, we were unable to make circumstance-of-sale adjustments to constructed values. We have made these circumstance-of-sale adjustments in this final determination.

Currency Conversions

In calculating foreign market value, we made currency conversions from Korean won to U.S. dollars in accordance with § 353.56(a)(1) of our regulations, using certified daily exchange rates as furnished by the Federal Reserve Bank of New York. For exporter's sales price comparisons, we used the official exchange rate on the date of sale, since using the exchange rate as of the date of sale is consistent with section 615 of the Trade and Tariff Act of 1984 (the 1984 Act). We followed section 615 of the 1984 Act rather than § 353.56(a)(2) of our regulations, because the later law supersedes that section of the regulations.

Verification

We verified all information used in making our final determination in accordance with section 776(a) of the Act. We used standard verification procedures, which included examination of relevant sales and financial records of the company.

Petitioner's Comments

Comment 1. Petitioner states that respondents have made sales in the home market and in third country markets at prices below the cost of producing the merchandise. Petitioner further contends that these sales: (1) Have been made over an extended period of time and in substantial quantities; and (2) are not at prices which permit recovery of all costs within a reasonable period of time. Therefore, petitioner argues that the Department should disregard these sales when calculating foreign market value (FMV).

DOC Position. The Department has investigated petitioner s allegation of belowcost sales and applied its conventional cost viability test to determine which, if any, home-market or third-country sales should be disregarded in the calculation of FMV. Applying this test, if 10 percent or less of a company's home market (or third country) sales of such or similar merchandise were found to have been below cost, we used all sales in our FMV calculations. If between 10 and 90 percent of a company's home-market (or third-country) sales of such or similar merchandise were found to have been below cost, we disregarded those sales in our FMV calculations. If over 90 percent of a company's home-market (or third-country) sales of such or similar merchandise were found to have been below cost, we used constructed value in our FMV calculations.

Comment 2. Petitioner argues that the Department's grouping guidelines for such or similar merchandise are too broad and should be narrowed to allow for more utility and specialty differences in cookware items.

DOC Position. The Department's grouping guidelines for such or similar merchandise meet the criteria of section 771(16) (A) and (B) of the Act. Furthermore, while the grouping guidelines define the outer limits of what products may be compared to each other in making fair value determinations, actual comparisons are based on the most similar merchandise within the individual grouping. Furthermore, difference in merchandise adjustments were made for comparisons between "similar" merchandise.

Comment 3. Petitioner argues that respondents' claim for a duty drawback adjustment to United States price should be denied to the extent it includes drawback on raw material waste. Petitioner further argues that for those companies where FMV is based on third-country sales, drawback should be added to third-country prices.

DOC Position. Section 772(d)(1)(B) of the Act directs the administering authority to add to United States price any import duties which have been rebated upon exportation. No distinction is made between import duties on materials that are physically incorporated into the finished product and import duties on non-physically incorporated materials, including waste.

We note that the countervailing duty law does make such a distinction: Excessive import duty remissions, including unreasonable or excessive allowances for waste, are countervailable export subsidies. If, in a countervailing duty investigation, we were to find an excessive remission of import duties, we would adjust United States price in our antidumping duty case, in accordance with section 772(d)(1)(D) since this excessive remission would constitute an export subsidy. In that situation, it would be appropriate to limit the amount of drawback added to United States price under section 772(d)(1)(B) to the non-excessive portion of the import duty rebate. To do otherwise, *i.e.*, to add the full amount of the drawback and to make an addition under section 772(d)(1)(D) would result in double-counting.

In the parallel countervailing duty investigation of certain stainless steel cooking ware from Korea, we found that four companies under investigation in that case which are also under investigation in this case, received an excessive rebate of import duties because duties were drawn back on inputs that were not physically incorporated into the exported product. This over-rebate, however, was *de minimis*. Therefore, we did not adjust United States price under section 772(d)(1)(D) for this export subsidy, nor did we limit the adjustment under section 772(d)(1)(B) because the effect of the adjustment would have been insignificant.

Where FMV was based on third-country sales, we added duty drawback to transaction prices.

Comment 4. Petitioner argues that since respondents have presented no evidence, and the Department has not verified, that respondents actually paid the import duties which allegedly were rebated on steel purchased from Sammi Corporation, no drawback adjustment should be granted.

DOC Position. We disagree. We verified that for each duty drawback received, even on steel purchased from Sammi, respondents had to present a certificate of duties paid and an export permit showing the amount of steel incorporated into the exported product. Since the respondents were the actual holders of the certificate of duties paid, and only one such certificate was issued for each importation. it is reasonable to assume that the respondents indirectly paid the import duties on steel purchased from Sammi in the price they paid for the steel.

Comment 5. Petitioner argues that duty drawback should not be added to the United States price because respondents have failed to provide sufficient documentation for the allowance.

DOC Position. We disagree. We believe that respondents have provided us with sufficient documentation to justify the allowance of an adjustment for duty drawback. Furthermore, in a similar situation, the Court of International Trade ruled that the Department's determination regarding what constitutes sufficient documentation to justify the allowance of a duty drawback was reasonable (see *Huffy Corp.* v. *United States*, Slip Op. 86–36. 11 CIT___, March 27, 1986).

Comment 6. Petitioner argues that an over-rebate of import duties is likely to have occurred with respect to certain products for the following reasons: (1) In claiming duty drawback, respondents did not differentiate between various types of stainless steel, each type being associated with a discrete cost and dutiable value; and (2) in claiming duty drawback for materials used in the production of its cookware, respondents did not differentiate between these different types of raw materials and are seeking an adjustment without regard to either the composition of the exported product or to whether the raw materials are physically incorporated into the exported article.

DOC Position. We disagree. Contrary to petitioner's assertion, for each duty drawback, the required export permit contains specific weights and gauges of materials incorporated into the finished products. We verified that respondents received duty drawbacks on imported steel only to the extent (weight and gauge) that the steel is incorporated into the exported product plus an estimated waste allowance authorized by the government. See also our response to petitioner's comment 3 regarding excessive import duty remissions for wastage and non-physically incorporated inputs.

Comment 7. Petitioner states that, based upon verification reports, respondents have sales of seconds or rejects only in the home market. Petitioner argues that these sales should be disregarded in determining FMV, as is the Department's practice, when such sales are present in only one market.

DOC Position. We agree. We did not include sales of seconds or rejects in our FMV calculations.

Comment 8. Petitioner argues that the Department should compare sales of sets to sales of sets or, at the very least, set components to set components, to avoid a distortion of the dumping margin.

DOC Position. Where sets sold in the U.S. market were similar to sets sold in the home market, we compared sets in both markets. In certain instances, however, the sets sold by the respondents in the United States were of an entirely different composition from the sets sold in the home market. Therefore, we determined that it was reasonable to compare set components to set components, as long as the component prices were arrived at by the same method of allocation in both markets. In the case of Kyung Dong, however, we were unable to distinguish set pieces from open-stock pieces because of inconsistencies in the computerized data submitted by the company.

Comment 9. Petitioner argues that in making price-to-price comparisons, the Department must account for differences in consumer packaging between the U.S. market and the home (or third-country) market by way of a difference-in-merchandise adjustment pursuant to 19 CFR 353.16.

DOC Position. We agree. Any difference in consumer packing is reflected in difference-in-merchandise adjustments.

Comment 10. With regard to Kyung Dong, petitioner argues that respondent's claimed adjustment for level-of-trade differences should be denied. Petitioner contends that, in order to qualify for a level-of-trade adjustment, respondent must prove, and the Department must verify, the existence of two facts: (1) That the respondent incurred consistently different costs in selling to customers in one level of trade and not in the other; and (2) that the difference in the respondent's selling costs have a direct and consistent relationship to differences in prices charged to various types of customers.

DOC Position. Kyung Dong never requested the Department to make a level-of-trade adjustment. The respondent did, however, request that sales to the United States be compared only to home-market sales made in similar quantities and under similar circumstances. Kyung Dong classified its home-market sales into four categories: (1) Sales to department stores; (2) sales to wholesalers; (3) door-to-door sales; and (4) sales to company employees and sales of defective goods. Kyung Dong claims that U.S. sales should be compared only to sales to wholesalers because the quantities and circumstances of these sales are most similar to Kyung Dong's sales in the U.S. market. Respondent could not substantiate this claim during verification. Therefore, for purposes of this determination, we compared sales in the U.S. market to all home-market sales, except for sales to employees and sales of defective goods.

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Comment 11. With regard to Kyung Dong, petitioner argues that the Department should follow its usual practice in classifying bad debt as indirect selling expenses and deny this claimed adjustment to home-market sales.

DOC Position. We agree. The Department has consistently treated bad debt losses as indirect selling expenses because they are not, by their very nature, directly tied to sales.

Comment 12. With regard to Kyung Dong, petitioner argues that the claimed adjustment for advertising expenses should be denied because it is based on the following faulty premises: (1) Portions of advertising expenses claimed are for expenses incurred for institutional advertising; (2) advertising for multi-product advertising was improperly allocated over sales of cooking ware in the home market, instead of using an allocation based on the relative size of advertisement for each product under investigation; (3) advertising was incorrectly included for items not used to establish FMV in calculating selling expense; and (4) respondent failed to list, or apply, any advertising expenses incurred by Kyung Dong New Jersey (KDNJ) to purchase price transactions.

DOC Position. We disagree. We verified that all advertising expenses claimed by Kyung Dong and KDNJ were allowable as a circumstance-of sale adjustment under our regulations and that the respondent's method of allocating advertising expenses was proper.

Comment 13. With regard to Kyung Dong, petitioner contends that respondent has overstated its home-market credit expense by basing it on an interest rate greater than the benchmark used in the countervailing duty (CVD) investigation involving the same company and product. Petitioner argues that Kyung Dong, as well as other respondents, should be required to calculate credit expenses based on an interest rate no higher than the benchmark used in the CVD case. Petitioner argues further that since the Department could not verify the average time that credit was extended by Kyung Dong, the claimed adjustment for credit expense must be denied.

DOC Position. In CVD investigations, we use a national short-term benchmark to measure the benefit arising from subsidized short-term loans, in accordance with the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006—April 26, 1984). This is because we seek the cost of the most comparable alternative source of financing to government-subsidized loans. In an antidumping investigation, however, we measure a company's actual cost of credit, and use this amount to compute the company's credit expenses, because it is that cost which affects the company's pricing policies.

Comment 14. With regard to Kyung Dong, petitioner argues that the claimed duty drawback adjustment should be reduced to the extent it is based on drawback of duties paid on chemicals which are not physically incorporated into the exported item.

DOC Position. Kyung Dong did receive duty drawback on emery powder and chromic oxide, which are used in the washing and polishing of cooking ware, and are not physically incorporated into the exported product. However, we did not make an adjustment to Kyung Dong's duty drawback, because deducting this portion of the drawback would not have a significant effect on the calculation of the dumping margin. *See* also, DOC response to petitioner's comment 3.

Comment 15. With regard to Kyung Dong, petitioner contends that its claimed adjustment to FMV for inland freight for home-market shipments is significantly overstated. Petitioner argues that any home-market deliveries of Kyung Dong cooking ware by its employees using company-owned trucks cannot qualify as an inland freight adjustment to FMV, and that respondent's inability to segregate its expenses for delivering cooking ware necessarily overstates these costs.

DOC Position. We agree with petitioner, and have not adjusted FMV for foreign inland freight because Kyung Dong was unable to provide any documentation for its estimated calculation of inland freight expenses.

Comment 16. With regard to Kyung Dong, petitioner argues that all sales made through KDNJ meet the criteria for, and should be treated as, exporter's sales price (ESP) transactions. Petitioner further argues that in the event the Department does not treat all KDNJ sales as ESP transactions, the Department should impute an appropriate commission factor to be deducted from purchase price.

DOC Position. Kyung Dong received the customer's sales orders through KDNJ for certain sales to the United States. Since these sales occurred prior to the date of importation and KDNJ merely transmitted the order to Kyung Dong, we consider these sales to be purchase price sales, as defined in section 772 of the Act. Furthermore, we do not impute commissions in purchase price transactions.

Comment 17. With regard to Dae Sung, petitioner states that respondent failed to set forth sales data for one of its five largest third-country markets, thereby leaving the Department without a full set of data for comparisons with third-country sales. Therefore, petitioner argues that the Department should use best information available, drawing inferences adverse to Dae Sung, for those United States sales disregarded in the preliminary determination; or at the minimum, should use constructed value as the basis of comparison for those sales.

DOC Position. We disagree with petitioner. Dae Sung did not report its sales to its second-largest third-country market because the vast majority of sales to that market consisted of merchandise that fell outside the scope of this investigation.

Comment 18. With regard to Dae Sung, petitioner contends that since respondents paid commissions on both third-country and United States sales, its claim for offsetting commissions paid in the U.S. market with indirect selling expenses is inappropriate.

DOC Position. We agree. Commissions were paid on both U.S. sales and on third-country sales. Therefore, we made a circumstance of sale adjustment based on the difference in the commissions paid in both markets.

Comment 19. With regard to Bum Koo, petitioner submits that the Department should follow its normal practice and disregard Bum Koo's drawback adjustments because a response correcting its improperly calculated drawback claim was not submitted prior to verification.

DOC Position. In its original submission, Bum Koo incorrectly made a claim for duty drawback on its home-market sales, which we disallowed in our preliminary determination. The company subsequently amended its response and correctly claimed a duty drawback adjustment to sales to the United States. We verified this amended response.

Comment 20. With regard to Bum Koo, petitioner argues that U.S. commissions are not subject to offset because respondent has not claimed, nor has the Department verified, any indirect selling expenses incurred by Bum Koo in the home market.

DOC Position. We agree. No offsets were made for commissions paid in the United States.

Comment 21. With regard to Hai Dong, petitioner argues that respondent's adjustment for a commission offset must be limited to home market indirect selling expenses or to U.S. commissions, whichever is less, in accordance with § 353.15(c) of our regulations.

DOC Position. We agree. As there were no home-market sales, for each U.S. sale for which a commission was paid, we compared the commission to the verified indirect selling expenses for third-country sales and applied the commission offset.

Comment 22. With regard to Namil, petitioner contends that if respondent has reported a lower sale price than that actually charged to the third-country customer due to Namil's deductions for exchange rate losses or trading company mark-up, then the third-country price should be the contract sale price, not Namil's net receipts on such sales.

DOC Position. We disagree. The proper sale price to use in fair value comparisons is the price actually received from the customer based on the respondent's net receipts.

Comment 23. Petitioner argues that certain plant management expenses, such as wages for cafeteria cooks, plant security guards, and bus drivers were improperly included in general, selling and administrative expenses by the respondents instead of factory overhead. These expenses should be included in the cost of manufacture for purposes of the final determination.

DOC Position. We agree. Because these expenses are necessary for the operation of the manufacturing plant, we have reclassified them as factory overhead expenses and included them in the cost of manufacture.

Comment 24. Petitioner argues that respondents' claimed adjustment to production costs for duty drawback should be denied because (a) it includes rebates of import duties levied on raw materials which are not physically incorporated into the exported merchandise, but rather are wasted as part of the production process, and (b) because official Korean Customs loss rates on which duty drawback payments are based exceed the respondents' actual loss rates.

DOC Position. As explained in the "Cost of Production/Constructed Value" section of this notice, we included duty drawback in the cost of production of home-market sales and did not include it in the cost of production for third-country sales.

Comment 25. Petitioner argues that consumer packing labor costs should be included in the cost of materials and fabrication expenses for purposes of constructed value calculations, because such packing is part of the product sold to the consumer or end-user.

DOC Position. We agree with petitioner, and have included the materials, labor, and factory overhead expenses related to consumer packing in the cost of manufacture.

Comment 26. Petitioner claims that respondents should not be allowed to offset interest expenses by certain non-operating interest income, such as dividends and interest on bank accounts.

DOC Position. We agree with petitioner. Interest income which does not result from production or sales of the products under investigation is not related to those products.

Comment 27. Petitioner contends that the respondents' cost of materials should include the 2.5 percent defense tax levied on all imported raw materials.

DOC Position. We agree with petitioner. The defense tax was included in the respondents' materials costs with respect to home-market production costs. Since this tax is rebated upon exportation of the finished product, we did not include it in the cost of production for third-country sales.

Comment 28. Petitioner contends that the Department has failed to specify whether the value-added tax (VAT) paid on imported raw materials was refunded upon exportation of the finished product. In addition, because the VAT levied on home-market sales is not refunded but rather passed through to the consumer, it should be included in the cost of production in determining whether home-market sales were made at prices lower than the cost of production.

DOC Position. We disagree with petitioner. The VAT is collected by the respondents who pass it on to Korean tax authorities. Furthermore, sales prices submitted by respondents were net of VAT. Therefore, we did not include VAT in production costs.

Comment 29. Petitioner believes that all export-related direct selling expenses should be included in general, selling and administrative expenses.

DOC Position. We have included in general, selling and administrative expenses all direct selling expenses related to sales of these products in the appropriate markets. We did not include transportation and other ex-factory expenses, however, since the cost of production is compared to an ex-factory price for purposes of the below-cost test.

Comment 30. Petitioner affirms that annual bonuses paid to employees should be prorated over the period of investigation, classified as factory overhead, and not included in general, selling and administrative expenses.

DOC Position. We included the *pro rata* portion of employee bonuses in fabrication costs, not in general, selling and administrative expenses.

Comment 31. Petitioner argues that Kyung Dong's capitalized expenses for molds, which were not included in depreciation, should be reclassified as factory overhead and included in the cost of manufacture for purposes of the final determination.

DOC Position. We revised depreciation expenses to include the depreciation of molds, and treated these as factory overhead included in the cost of manufacture.

Comment 32. Petitioner contends that Namil double-counted scrap revenue as an offset to both material costs and general, selling and administrative expenses.

DOC Position. We agree with petitioner. Where submitted scrap offsets reflected amounts other than actual scrap recovery, we adjusted material costs to reconcile with actual scrap sales and inventory quantities. We did not include material scrap recovery as non-operating income in general, selling and administrative expenses.

Comment 33. Petitioner argues that, in calculating Namil's production costs and constructed value for purposes of the final determination, the Department should use general, selling and administrative expenses for the period of investigation rather than an average for calendar year 1985.

DOC Position. We agree with petitioner. We made certain adjustments to reflect Namil's general, selling and administrative expenses during the period of investigation.

Comment 34. Petitioner contends that losses sustained by Namil as a result of a warehouse fire which occurred during the period of investigation are a cost of doing business and should be included in the respondent's production costs.

DOC Position. Since the loss of the materials resulting from the fire would not have been considered a cost related solely to current operations, this loss should be amortized over a reasonable period of time. This relatively insignificant loss would have no effect on production costs during the period of investigation. Therefore, we did not include this loss in the cost of production.

Comment 35. Petitioner argues that the Department should disregard any cost-of-production information submitted by Bum Koo during the verification unless such information is more detrimental to the respondent than

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the best information otherwise available.

DOC Position. We used the cost information submitted by Bum Koo when it could be verified. Most of the changes to the submitted cost-of-production information resulted from differences in methodology, not because the data could not be verified.

Comment 36. Petitioner argues that import duties paid by Bum Koo on raw material inputs should be included in the respondent's production costs.

DOC Position. We agree. We adjusted Bum Koo's production costs to include duty drawback, since the cost of production was related to home-market sales.

Comment 37. With respect to Bum Koo, petitioner argues that general, selling and administrative expenses should be allocated over the cost of goods sold rather than over the cost of manufacture, which significantly understates such expenses.

DOC Position. We agree with petitioner. We used the cost of goods sold to calculate the percentage of general, selling and administrative expenses in cases where respondents used a different methodology.

Comment 38. Petitioner contends that the Department should disallow the theoretical scrap offset claimed by Bum Koo because actual usage rates and money amounts received were not verified.

DOC Position. We obtained actual scrap data during verification and appropriately adjusted the theoretical scrap offset to actual usage rates.

Comment 39. With respect to Bum Koo, petitioner argues that the Department should include the respondent's research and development expenses in the cost of manufacture because the nature of these expenses was neither explained nor verified.

DOC Position. Since the respondent could not document the nature of the research and development expenses, a portion of these expenses was included in general, selling and administrative expenses.

Comment 40. Petitioner argues that, because the Department was unable to verify Bum Koo's standard labor and machine time expenses for the products under investigation, we must base our final determination on best information otherwise available in calculating such expenses.

DOC Position. During verification, we ascertained that Bum Koo had accounted for all labor and and factory overhead. We compared the results of Bum Koo's allocation to the data submitted by the other respondents, which was in the official record of this case, and determined that the amount allocated by Bum Koo was reasonable.

Comment 41. With respect to Bum Koo, petitioner contends that the Department should allocate depreciation for new equipment acquisitions per production volume by quarter in order to include the appropriate expenses for such new equipment in the respondent's cost of manufacture.

DOC Position. We agree with petitioner. We reviewed depreciation on assets acquired during the year and, where appropriate, made adjustments ensuring that these expenses were accounted for in the correct period.

Comment 42. Petitioner argues that the Department should impute interest expenses to general, selling and administrative expenses on all interest-free loans Bum Koo received from related parties.

DOC Position. We agree with petitioner. We imputed interest expenses on all interest-free loans received by Bum Koo from related parties to reflect the prevailing market cost of comparable loans from commercial sources.

Comment 43. Petitioner argues that Dae Sung's material costs were understated because they were based on standard government usage rates, rather than on the respondent s lower actual usage rates.

DOC Position. We used the respondent's actual verified scrap rates.

Comment 44. With regard to Dae Sung, petitioner argues that scrap revenue derived from 1985 sales of cooking ware produced in 1981 for a customer in Iran is non-operating revenue and should not be allowed as an offset to general, selling and administrative expenses.

DOC Position. We agree with petitioner. The sale of cooking ware originally destined for Iran which was sold during 1985 was not a result of production during that period of time. Therefore, we did not use the sale of obsolete inventory to offset the cost of production during the period of investigation.

Respondents' Comments

Comment 1. Respondents contend that the purpose of duty drawback is to reimburse the exporter for the duty paid on the amount of raw materials *required* to produce a given quantity of finished product, *i.e.*, including waste, and not, as petitioner argues only on the raw materials that are actually physically incorporated into the exported product, *i.e.*, not including waste. Respondents further contend that their argument is supported by section 772(d) of the Act and that the Korean system completely complies with these statutory criteria. Therefore, respondents argue that the full amount of the duty drawback received for steel should be allowed as an adjustment.

DOC Position. See response to petitioner's comment 3.

Comment 2. Respondents argue that since Korean duty drawback procedures are the same for both U.S. and third-country sales, the Department must be consistent in its duty drawback adjustments.

DOC Position. We agree. We have added duty drawback to both United States price and third-country price.

Comment 3. Kyung Dong contends that the bad debt it incurred as a result of uncollected invoices to two customers, one which went bankrupt and one which is presently serving a jail sentence, is distinguishable from the bad debt generally classified by the Department as an indirect selling expense. Respondent argues that the bad debt they incurred unquestionably falls within the statutory and regulatory construct for circumstance-of-sale adjustment. If this circumstanceof-sale adjustment is disallowed, respondent requests that fifty percent of its verified write-off amount for bad debt for fiscal 1986 be included among its home-market indirect selling expenses.

DOC Position. We disagree. *See* response to petitioner's comment 11.

Comment 4. Kyung Dong argues that its adjustment for advertising expenses in the home market is reasonably calculated and fully verified and, hence, there is no need for modification. Similarly, respondent argues. KDNJ's advertising expenses are properly allocated to its ESP sales only.

DOC Position. See response to petitioner's comment 12.

Comment 5. Kyung Dong states that it imports emery powder and chromic oxide for use in its cookware production, and applies for and receives a rebate of duties paid on them upon exportation of its merchandise. Therefore, respondent argues that its purchase price and ESP sales should be increased by the amount of duties which were rebated "by reason of the exportation of the merchandise to the United States," as stated in the antidumping duty law [19 U.S.C. 1677a(d)(I)].

DOC Position. See response to petitioner's comments 3 and 14.

Comment 6. Kyung Dong argues that the calculation of its foreign inland freight costs for merchandise Kyung Dong delivers itself is a reasonable estimate in light of the fact that it maintains no records of what specific shipments are carried in which vehicles at what time. Respondent further argues that there is no reason to believe that this estimate in anyway distorts reality, and submits that the estimate was fully verified, as was the non-existence of reasonable alternatives.

DOC Position. We disagree. *See* response to petitioner's comment 15.

Comment 7. Dae Sung states that information was provided to the Department on commissions paid for U.S. sales and for third-country sales, and on indirect selling expenses. Respondent argues that the Department should permit commission offsets consistent with Department policy, the statute, and the regulations (19 U.S.C. 1677b and 19 CFR 353.15).

DOC Position. See response to petitioner's comment 18.

Comment 8. Respondents contend that it was entirely proper for Dae Sung not to have reported its sales to its second-largest third-country market because the vast majority of sales to that market consisted of merchandise that fell outside the scope of this investigation.

DOC Position. We agree with respondents. *See* response to petitioner's comment 17.

Comment 9. With respect to Dae Sung's scrap sale in 1985 of cooking ware produced for an Iranian customer in 1981, respondents argue that Dae Sung incurred expenses during 1985 in attempting to sell this merchandise. Therefore, the revenue from this scrap sale should be allowed as an offset to general, selling and administrative expenses.

DOC Position. We disagree. *See* response to petitioner's comment 44.

Comment 10. Hai Dong argues that it is entitled to a commission offset on the basis of its indirect selling expenses, which were verified by the Department.

DOC Position. See response to petitioner's comment 21.

Comment 11. Respondents argue that certain plant management expenses, such as wages for cafeteria cooks, plant security guards, and bus drivers were properly included in general, selling and administrative expenses, because these expenses are not related to any particular operation or product but rather relate to overall company operations.

DOC Position. We disagree. *See* response to petitioner's comment 23.

Comment 12. Respondents contend that their claimed duty drawback adjustment to production costs should be allowed because (a) petitioner relied on a mistaken comparison of Korean government input ratios with company loss percentages in concluding that duty drawback made an excessive allowance for waste, (b) Korean government loss percentages are consistent with the respondents' loss percentages, and (c) in the case of Hai Dong, the respondent submitted steel costs that were based on government waste rates and verified.

DOC Position. See response to petitioner's comment 24.

Comment 13. Respondents contend that, contrary to petitioner's assertion, interest expenses were not offset by non-operating interest revenues in calculating general, selling and administrative expenses. Non-operating interest income was included in general, selling and administrative expenses only to the extent of non-operating interest expenses. Therefore, no interest expenses were offset by interest income.

DOC Position. We only included interest income as an offset when it was related to production or sales of products under investigation.

Comment 14. Respondents argue that, contrary to petitioner's assertion, the value added tax (VAT) is not a cost of production because it is passed through by the respondents to their customers or end-users. With respect to Kyung Dong, the VAT should be excluded from production costs for purposes of determining whether home-market sales were made at prices below production costs, because Kyung Dong reported its home-market sale prices net of VAT.

DOC Position. See response to petitioner's comment 28.

Comment 15. Respondents contest petitioner's assertion that employee bonuses should be included in factory overhead and prorated into general, selling and administrative expenses. Respondents claim they properly included bonuses for factory workers and managers in the cost of manufacture, and bonuses for administrative workers and managers in general, selling and administrative expenses.

DOC Position. We agree with respondents on this issue.

Comment 16. With respect to Namil, respondent contests petitioner's assertion that scrap offsets were double-counted. Rather, respondent argues that Namil's income statement reflects a revaluation of year-end scrap inventory, and not sales of scrap merchandise.

DOC Position. See response to petitioner's comment 32.

Comment 17. With respect to Namil's losses in a warehouse fire, respondents argue that fire losses should not be included in production costs because a fire is not a cost of doing business. Fire insurance, however, is a cost of doing business and was included in fixed factory overhead.

DOC Position. See response to petitioner's comment 34.

Comment 18. With respect to Namil, in response to petitioner's contention that the Department should use general, selling and administrative expenses for the period of investigation rather than an average for calendar year 1985, respondents argue that Namil's books are closed once a year. Therefore, the only real figure for general, selling and administrative expenses is the calendar year figure and the figure for the period of investigation is only an estimate.

DOC Position. See response to petitioner's comment 33.

Suspension of Liquidation. In accordance with section 733(d)(2) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of certain stainless steel cooking ware from Korea that are entered, or withdrawn from warehouse, for consumption, on or after July 7, 1986, the date of publication of our notice of preliminary determination in the **Federal Register**. The U.S. Customs Service shall continue to require a cash deposit or bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The cash deposit or bonding rate established in the preliminary determination shall remain in effect with respect to entries or withdrawals made prior to the date of publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin (percent)
Bum Koo	31.23
Dae Sung	6.11
Hai Dong	12.14
Kyung Dong	28.28
Namil	1.36
All others	12.40

Article VI ¶5 of the General Agreement on Tariffs and Trade provides that "[n]o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Accordingly, the level of export subsidies (as determined in the November 19, 1986 final affirmative countervailing duty determination on certain stainless steel

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cooking ware from the Republic of Korea) will be subtracted from the dumping margins for cash deposit or bonding purposes on imports of certain stainless steel cooking ware from the Republic of Korea, as defined in the "Scope of Investigation" section of this notice.

Critical Circumstances

Petitioner alleged that imports of the subject merchandise from Korea present "critical circumstances." Under section 733(e)(1) of the Act, critical circumstances exist if we determine that:

> (A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or
>
> (ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and
>
> (B) There have been massive imports or the class or kind of merchandise that is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following data in order to determine whether massive imports have taken place: (1) The volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports. Based on our analysis of recent import statistics, we find that imports of the subject merchandise from Korea have not been massive over a short period. Accordingly, we do not have to consider whether section 733(e)(1)(A) of the Act applies in this case. Therefore, we determine that critical circumstances do not exist with respect to imports of certain stainless steel cooking ware from Korea. We have notified the ITC of this determination.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a United States industry, within 45 days of the date of this determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If the ITC, however, determines that such injury does exist, we will issue an antidumping duty order directing the U.S. Customs Service to assess an antidumping duty on certain stainless steel cooking ware from Korea, equal to the amount by which the foreign market value exceeds the United States price.

Administrative Procedures

We afforded interested parties an opportunity to submit written views in accordance with § 353.46 of our regulations (19 CFR 353.46). We also afforded the parties to the proceeding an opportunity to present views orally before the Department at a public hearing in accordance with § 353.47 of our regulations (19 CFR 353.47). No hearing was requested.

Both petitioner and respondents submitted briefs addressing the sales issues arising from the investigation on September 29, 1986, and rebuttal briefs on October 7, 1986. We received additional briefs on cost-of-production and constructed value issues on October 30 and November 3, 1986.

This determination is being published pursuant to section 735(d) of the Act [(19 U.S.C. 1673d(d))].

Paul Freedenberg,

Assistant Secretary for Trade Administration.

November 19, 1986.

[FR Doc. 86-26660 Filed 11-25-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-603]

Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Cooking Ware From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain stainless steel cooking ware from Taiwan is being, or is likely to be, sold in the United States at less than fair value. We also determine that critical circumstances exist only with respect to imports of this merchandise from Taiwan by Song Far Industry Co., Ltd. and Lyi Mean Industrial Co., Ltd. We have notified the U.S. International Trade Commission (ITC) of our determinations. We have also directed the U.S. Customs Service to continue with the suspension of liquidation of all entries of certain stainless steel cooking ware from Taiwan that are entered, or withdrawn from warehouse, for consumption, and to require a cash deposit or bond for each such entry in an amount equal to the estimated dumping margins. Furthermore, with respect to Song Far Industry Co., Ltd., and Lyi Mean Industrial Co., Ltd., we have directed the U.S. Customs Service to suspend liquidation retroactively to April 8, 1986, on all unliquidated entries, or withdrawals from warehouse, for consumption as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: November 26, 1986.

FOR FURTHER INFORMATION CONTACT: Jack Davies or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW. Washington, DC 20230; telephone (202) 377-1785 or 377-2438.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that certain stainless steel cooking ware from Taiwan is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)). We made fair value comparisons on sales of the class or kind of merchandise to the United States during the period of investigation, August 1, 1985 through January 31, 1986. The weighted-average margins are shown in the "Suspension of Liquidation" section of this notice. We also determine that critical circumstances exist only with respect to imports of this merchandise by Song Far Industry Co., Ltd. and Lyi Mean Industrial Co., Ltd.

Case History

On January 21, 1986, we received a petition filed in proper form by the Fair Trade Committee of the Cookware Manufacturers Association on behalf of the U.S. industry which manufactures stainless steel cooking ware. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of certain stainless steel cooking ware from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We determined that the petition contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated such an investigation on February 10, 1986 (51 FR 6019, February 19, 1986), and notified the ITC of our action. On March 7, 1986, the ITC determined that there is a reasonable indication that imports of certain stainless steel cooking ware from Taiwan materially injure, or threaten material injury to, a U.S. industry (51 FR 9541, March 19, 1986).

On March 25, 1986, we presented antidumping duty questionnaires to Golden Lion Metal Industry Co., Ltd. (Golden Lion); Song Far Industry Co., Ltd. (Song Far); and Lyi Mean Industrial Co., Ltd. (Lyi Mean). According to information submitted by the authorities in Taiwan, these companies account for at least 60 percent of exports of the subject merchandise to the United States. Respondents were requested to answer the questionnaire in 30 days.

For Golden Lion, we received responses on April 28 and May 9 and computer tapes on May 20. For Song Far, we received responses on April 29 and May 9, 15, and 16, and received computer tapes on May 23. On May 23, we requested additional information from these two companies. We received supplemental responses from Golden Lion on June 6, 20, 23, and 26, and from Song Far on June 6 and 20.

We granted Lyi Mean an extension until May 30 for submission of its response. We granted an additional extension until June 3, and a subsequent extension until June 16. We received partial responses from Lyi Mean on June 16 and 17. Additional responses were received on June 23. A computer tape was provided on July 3.

On May 23, and June 4, 1986, petitioner alleged that critical circumstances exist with regard to imports from Taiwan of the products under investigation.

On June 13, 1986, petitioner alleged that home market and/or third country sales of the products under investigation were made by Golden Lion and Song Far at prices below their cost of production. On June 23, petitioner further alleged that third country sales of the subject merchandise were made by Lyi Mean at prices below the cost of production. These allegations were received too late to be considered in our preliminary determination. Cost of production questionnaires were presented to the three respondents on July 10. Cost responses were received on August 11 from Golden Lion and Lyi Mean and on August 14 from Song Far. Additional information was requested on August 27. Supplemental cost data were received from Golden Lion on September 3, and 4 and October 8, and from Song Far on September 3, 10, and 25. From September 1 to 26, 1986, we verified the information provided by the respondents at respondents' company offices in Taiwan. In lieu of a hearing, petitioner and respondents simultaneously submitted initial briefs on November 6, and rebuttal briefs on November 10, 1986. We have taken these written views into consideration in this determination.

Scope of the Investigation

The products covered by this investigation are non-electric cooking ware of stainless steel which may have one or more layers of aluminum, copper or carbon steel for more even heat distribution. These products are provided for in item number 653.94 of the *Tariff Schedules of the United States* (TSUS). The products covered by this investigation are skillets, frying pans, omelette pans, saucepans, double boilers, stock pots, sauce pots, dutch ovens, casseroles, steamers, and other stainless steel vessels, all for cooking on stove top burners, except tea kettles and fish poachers. Excluded from the scope of investigation are stainless steel oven ware and stainless steel kitchen ware, which are included under the 653.94 TSUS item number. This investigation covers the period from August 1, 1985, through January 31, 1986.

Fair Value Comparisons

In order to determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price to the foreign market value. For purposes of this determination, we used purchase price information provided by respondents and, as best information available, constructed value information provided by petitioner and respondents for foreign market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price, since the merchandise was sold to unrelated purchasers prior to importation into the United States. We calculated the purchase price based on the packed f.o.b. or f.o.r. (free on rail) price to unrelated purchasers in the United States or to unrelated trading companies for sales to the United States, as appropriate.

We made deductions for inland freight, brokerage, and cash discounts, where appropriate. We made additions to purchase price, where appropriate, for import duties and harbor taxes which were rebated, or not collected, by reason of the exportation of the merchandise to the United States, pursuant to section 772(d)(1)(B) of the Act. We deducted from duty drawback the 0.5 percent service fee charged by the Taiwan authorities, the over-rebate of duties associated with recoverable scrap metal, and, where appropriate, the rebate of duties on polishing materials.

Foreign Market Value

In accordance with section 776 of the Act, we calculated foreign market value for each of the three respondents from the best available information.

For Lyi Mean, we used, as best information available, constructed value cost data provided by petitioner for 8 quart and 12 quart stock pots. We used petitioner's cost data because we were not successful in completing the verification of Lyi Mean's production cost data. During the verification, the Department concluded that the cost response was not verifiable due to a lack of production records, conflicting and unreliable accounting records, misrepresented documents, and inaccurate source documents.

For Song Far and Golden Lion, we used, as best information available, constructed values which were based on data from three sources: certain verified cost elements, audited financial statements, and petitioner's cost information. During the verification, the Department could not verify substantial portions of the cost responses because of conflicting data and lack of supporting documentation. However, certain elements of the cost responses were satisfactorily verified. These elements were used, together with information from audited financial statements and petitioner's information, to develop constructed values. We determine that this is the best information available for Song Far and Golden Lion.

Because we could not verify all the cost of production factors, and because petitioner's cost information was provided only for a small number of products, we could not test whether home market or third country sales had been made at less than their cost of production. However, for those products for which we had sufficient information, we did use the cost information derived from the sources identified above to develop the constructed value used in our fair value comparisons. For general expenses, we used information from the companies' audited financial statements. For profit, we used eight percent as required by the statute.

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Currency Conversion

In calculating foreign market value, we made currency conversions from New Taiwan dollars to U.S. dollars in accordance with § 353.56(a) of our regulations, using the certified daily exchange rates furnished by the Federal Reserve Bank of New York.

Verification

We verified all respondent information used in making our final determination in accordance with section 776(a) of the Act. We used standard verification procedures, which included examination of relevant sales and financial records of each company. We were unable to verify the cost response submitted by Lyi Mean and unable to verify substantial portions of the cost responses submitted by Song Far and Golden Lion.

Critical Circumstances

Petitioner alleged that imports of the subject merchandise from Taiwan present "critical circumstances." Under section 735(c)(3) of the Act, critical circumstances exist if we determine that:

> (A) (i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or
>
> (ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and
>
> (B) There have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

Petitioner did not allege "a history of dumping" but relied solely on the alternative test of "importers' knowledge." Therefore, we must determine whether the person by whom, or for whose account, the merchandise was imported "knew or should have known" that the exporter was selling the merchandise at less than its fair value in accordance with section 733(e)(1)(A) of the Act. It is the Department's position that this test is met where margins calculated on the basis of responses to the Department's questionnaire are sufficiently large that the importer knew or should have known that prices for sales to the United States (as adjusted according to the antidumping law) were significantly below fair value. In this case, the margins calculated are sufficiently large for Song Far and Lyi Mean that the importer knew or should have known that the merchandise was being sold in the United States at less than fair value. Therefore, we determine that this test is met.

Pursuant to section 735(c)(3), we generally consider the following data in order to determine whether massive imports have taken place: (1) The volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports.

Based on our analysis of recent import statistics, we find that imports have been massive over a short period of time, and, therefore, for the reasons described above, we determine that critical circumstances exist with respect to imports of certain stainless steel cooking ware from Taiwan by Song Far and Lyi Mean. We have notified the ITC of this determination.

Petitioner's Comments

Comment 1. Petitioner contends that home market and third country sales have been at less than the cost of production over an extended period of time, in substantial quantities, and at prices which do not permit the recovery of all costs within a reasonable period of time in the normal course of trade. Therefore, such sales must be disregarded when calculating the foreign market value.

DOC Response. As explained above, because of the deficiencies in the verification of the cost responses, we did not test whether home market or third country sales were made at prices below their cost of production. Instead, we used constructed value, based on best information available, for calculating foreign market value.

Comment 2. Petitioner argues that the seven "such or similar" product groupings established by the Department should be narrowed in determining whether each category of such or similar merchandise has satisfied the home market and third country viability tests.

DOC Response. Since we did not make price to price comparisons, we did not have to consider the composition of such or similar merchandise categories.

Comment 3. Petitioner argues that respondents' claims for duty drawback adjustments should be rejected because the Department was unable to verify the respondents' raw material usage. Therefore, it is impossible to determine whether there were sufficient imports of the raw materials upon which duties and taxes were paid to account for the drawback adjustment claimed.

DOC Response. At verification, we found that each of the three respondents had imported large quantities of stainless steel sheet and strip, had paid import duties, and had received duty drawback on these imports. We also found that stainless steel sheet and strip is the primary material input in manufacturing the product under investigation.

Comment 4. Petitioner argues that respondents' claims for duty drawback adjustments should be rejected because respondents failed to differentiate among the various types of steel used for cookware production. Since respondents claimed drawback adjustment on a per weight or a per unit basis, irrespective of the composition of the product at issue, and irrespective of the wide range of costs (and dutiable values) among the various types of stainless steel, an adjustment would likely result in the over-rebate of import duties and harbor taxes on stainless steel with respect to some products.

DOC Response. At verification, we found that all grades and qualities of stainless steel sheet and strip are subject to the same import duty and harbor tax rates in Taiwan. Likewise, the duty drawback rate on export merchandise, which is based on the import duty and harbor tax rates, applies to all grades and qualities of stainless steel.

Comment 5. Petitioner argues that any duty drawback adjustment granted by the Department should be limited to the rebate of duties and taxes on imported raw materials which are physically incorporated into the exported merchandise; no drawback adjustment should be granted for raw materials wasted in the production of the exported article.

DOC Response. Section 772(d)(1)(B) of the Act directs the administering authority to add to United States price any import duties which have been rebated upon exportation. No distinction is made between import duties on materials that are physically incorporated into the finished product and import duties on non-physically incorporated materials, including waste.

We note that the countervailing duty law does make such a distinction: Excessive import duty remissions, including unreasonable or excessive allowances for waste, are countervailable export subsidies. If, in a countervailing duty investigation, we were to find an excessive remission of import duties, we would adjust United States price in our antidumping duty case, in accordance with section 772(d)(1)(D) since this excessive remission would constitute an export subsidy. In that situation, it would be appropriate to limit the amount of drawback added to United States prices under section 772(d)(1)(B) to the non-excessive portion of the import duty rebate. To do otherwise *i.e.*, to add the full amount of the drawback and to make an addition under section 772(d)(1)(D) would result in double-counting.

In the parallel countervailing duty investigation of certain stainless steel cooking ware from Taiwan, we found that there was an excessive remission of import duties because duties on non-physically incorporated polishing agents and recoverable scrap were rebated. (See "Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Cooking Ware from Taiwan," published concurrently with this notice.

As a result of these countervailable export subsidies, we are adjusting the dumping margins consistent with section 772(d)(1)(D). To avoid the double-counting problem mentioned above, we have limited the duty drawback adjustment to United States price to that portion that is non-excessive.

Comment 6. Petitioner argues that with respect to Golden Lion and Lyi Mean, for which FMV will be based in whole or in part on third country sales, the Department should add to third country price the total amount of drawback set forth in respondents' questionnaire responses, to prevent granting the companies credit for an over-rebate of duties, while disallowing the claimed adjustment for drawback to United States price.

DOC Response. Because we based foreign market value on constructed value for all respondents, this issue is moot.

Comment 7. Petitioner argues that respondents' questionnaire responses should be disregarded in favor of best information, due to untimely submissions; the revision of information shortly before and throughout the verification; the existence of internal and external, audited books; and attempts to mislead the Department with respect to source documentation.

DOC Response. Pursuant to section 776(b) of the Act, we used the best information available as described in the "Foreign Market Value" section of this notice, because verification revealed major portions of the responses to be incorrect or unsubstantiated. The best information available for purposes of this final determination is information submitted in the responses and verified pursuant to section 776(a) of the Act, and, in the absence of verified data, information submitted in the petition.

Comment 8. Citing *Porcelain-On-Steel Cooking Ware from Taiwan* (51 FR 36425, October 10, 1986), petitioner contends that the Department should include all material and labor costs associated with consumer packaging in "cost of materials and fabrication" for purposes of constructed value calculations in the final determination.

DOC Response. The Department agrees. Since the consumer packaging is considered part of the product sold to the consumer, all costs were included in the cost of manufacturing.

Comment 9. Petitioner contends that Lyi Mean's questionnaire response should be rejected in its entirety and FMV should be based on best information due to the pervasive bad faith evidenced by Lyi Mean during verification; the fact that Lyi Mean had no home market sales during the period of investigation; the fact that a successful completion of the cost investigation depended upon Lyi Mean's submission of reliable and verifiable cost of production information, which was not forthcoming; and the existence of one set of books for internal record keeping and a second, audited set for tax purposes.

DOC Response. See "Foreign Market Value" section and the Department's response to petitioner's Comment 7 above.

Comment 10. Petitioner contends that since the duty drawback claimed by Lyi Mean could not be verified, this adjustment to United States price must be denied.

DOC Response. We disagree. We were able to verify the duty drawback data in the company's response using appropriate source documents.

Comment 11. Petitioner argues that because Lyi Mean's sales prices to the trading companies include Lyi Mean's advertising expenses to the final consumer, United States price should be reduced by such advertising expenses.

DOC Response. Since we constructed a value for foreign market value using best information available, we did not have to make any circumstances of sale adjustments.

Comment 12. Petitioner contends that, contrary to respondent's arguments, the Department properly initiated a cost of production investigation against Lyi Mean.

DOC Response. We agree. Please see the Department's response to respondents' Comment 33 below.

Comment 13. Petitioner contends that as a result of Golden Lion's refusal to cooperate during verification, the Department's verification of the company's cost of production response was unsuccessful, and that Golden Lion's cost response must be rejected in its entirety.

DOC Response. See the "Foreign Market Value" section of this notice and the Department's response to petitioner's Comment 7 above.

Comment 14. Petitioner argues that because the Department was unable to verify the new packing data submitted at the end of the verification, the Department should use, as best information available, the highest U.S. packing costs submitted by Golden Lion.

DOC Response. We disagree. We verified respondent's export packing material expenses, consumer packing material expenses, and packing labor costs. Therefore, for purposes of this determination, we are using Golden Lion's verified information on U.S. packing costs.

Comment 15. Petitioner argues that because the Department's verification of Golden Lion's adjustments for differences in merchandise was unsuccessful, the Department should deny any adjustments submitted by Golden Lion which would reduce foreign market value, but should grant all submitted adjustments for differences in merchandise which increase foreign market value.

DOC Response. Since we based foreign market value on constructed value, this issue is moot.

Comment 16. If Golden Lion's cost response is not rejected in its entirety, petitioner argues that miscellaneous adjustments should be made to the cost response to correct numerous expense and cost omissions and misallocations.

DOC Response. For Golden Lion, we used only certain elements from the cost responses in constructing foreign market value. We consider that the elements we used were verified. For those elements that were not satisfactorily verified, we used petitioner's information and certain information from audited financial statements.

Comment 17. If Golden Lion's cost response is not rejected in its entirety, petitioner argues that production time should be based on best information available.

DOC Response. In calculating constructed value for Golden Lion, we used petitioner's labor cost data as best information available for direct labor expenses.

Comment 18. If Golden Lion's cost response is not rejected in its entirety, petitioner argues that the company's general and administrative expenses should be allocated over the cost of goods sold.

DOC Response. The Department agrees and has allocated the general and administrative expenses and net interest expense over the costs of goods sold from the audited financial

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statements, as best information available.

Comment 19. If Golden Lion's cost response is not rejected in its entirety, petitioner argues that "miscellaneous expenses," bad debt expenses, interest expenses, foreign exchange losses and "other foreign exchange losses and other losses," and expenses for "other materials" should be included in G&A.

DOC Response. The Department has included all general and administrative expenses, including net interest expense as reflected on the audited financial statements, as best information available.

Comment 20. If Golden Lion's cost response is not rejected in its entirety, petitioner argues that the Department should use the audited figures for material usage, not the lower material figures compiled by Golden Lion's employees.

DOC Response. The Department did not consider the material usage to be verified and, therefore, used petitioner's data as best information.

Comment 21. Petitioner contends that as a result of Song Far's untimely and revised questionnaire responses, various requests that the Department reconstruct its response, and two sets of irreconcilable books, a substantial portion of Song Far's cost response could not be verified. Therefore, the Department should reject Song Far's response in its entirety in favor of best information available.

DOC Response. See the "Foreign Market Value" section of this notice.

Comment 22. Petitioner argues that because Song Far's cost submission could not be verified, the Department should either deem all of Song Far's home market sales at below the cost of production, or utilize petitioner's methodology for cost of production and constructed value as best information.

DOC Response. For Song Far, we determined that certain elements from the cost responses were verified. Therefore, we used those elements in addition to petitioner's information and audited financial statements in constructing foreign market value. We consider that the elements we used were verified.

Comment 23. Petitioner argues that because a substantial portion of Song Far's U.S. sales are made through Taiwanese trading companies and because Song Far's advertising is aimed at customers of these trading companies, Song Far's price to the trading companies includes advertising expenses. Therefore, an appropriate portion of advertising expenses should be deducted from United States price as a circumstance of sale adjustment.

DOC Response. Since we used constructed value as best information available for foreign market value, we did not have to make any circumstances of sale adjustments.

Comment 24. Petitioner contends that all finance charges and any other expenses incurred by Song Far in receiving payment for U.S. sales should be included in U.S. credit costs for purposes of any circumstance of sale adjustment for credit expenses.

DOC Response. See the Department's response to petitioner's Comment 23 above.

Comment 25. Petitioner argues that any payments made from the "private account" of Song Far's chairman should be considered payments made and expenses incurred by Song Far, since it is likely that the chairman was reimbursed one way or another for such expenses.

DOC Response. We assume that any such payments and expenses are subsumed in the general expenses that were taken directly from Song Far's audited financial statements.

Comment 26. Petitioner contends that any expenses incurred as a prerequisite to becoming a bonded manufacturer as well as any drawback which pertains to products not under investigation or not sold during the period of investigation should be deducted from any drawback adjustment.

DOC Response. Duty drawback in Taiwan is made on a shipment by shipment basis. Therefore, the drawback claimed would pertain only to sales of the subject merchandise during the period of investigation. At verification, we found no evidence of expenses incurred as a prerequisite to becoming a bonded factory.

Comment 27. Petitioner argues that because Song Far did not receive drawback on imports of plastic used in cooking ware handles, as claimed on the company's computer tapes, the amount of drawback claimed should be reduced in an amount equal to the duties and taxes paid on imported plastic.

DOC Response. At verification, Song Far revised its duty drawback to eliminate any drawback on plastic materials used in cooking ware handles. We did not allow any duty drawbacks on plastic materials in this final determination since there were no such drawbacks.

Comment 28. Petitioner argues that drawback received by Song Far on processing chemicals used as stainless steel cookware surface polishers should be denied, because such processing chemicals are not physically incorporated into the exported merchandise.

DOC Response. We agree, and have not added back duty drawback received for non-physically incorporated surface polishers for reasons stated in the Department's reponse to petitioner's Comment 5.

Comment 29. Petitioner contends that because Song Far could not explain why shipments of the same product were granted different amounts of drawback per unit, the Department should use the lowest drawback figure.

DOC Response. We agree. For Song Far, we used the lowest duty drawback rates applicable to each product.

Comment 30. Petitioner argues that since the home market credit expenses set forth on the computer printout were inconsistent, and since it does not appear that the Department verified the revised credit expense worksheet submitted on the next to the last day of verification, the Department should reject all claimed credit expenses on Song Far's home market sales.

DOC Response. Since we did not make price to price comparisons, we did not have to use Song Far's home market credit expenses. The revised home market credit worksheet, however, was verified.

Comment 31. Petitioner argues that due to Song Far's failure to provide complete and accurate information prior to the start of verification, the Department was unable to verify any differences in merchandise. Therefore, Song Far is not entitled to any favorable difference in merchandise adjustments.

DOC Response. Since we did not make price-to-price comparisons, this issue is moot.

Comment 32. Petitioner argues that because Song Far calculated its scrap offset without differentiating among the various types of metals used in its production process, it is likely that Song Far's claimed scrap offset is overstated and should be disallowed.

DOC Response. We did not allow any scrap offset in calculating the constructed value for Song Far because we did not verify the scrap value used in Song Far's production costs.

Comment 33. Petitioner argues that if Song Far's cost response is not rejected in its entirety, all interest expenses and any export expenses which cannot be separated by product should be included in general expenses.

DOC Response. The Department used the general, selling, and administrative, expenses and net interest expenses as reflected on Song Far's audited financial statements.

Comment 34. Petitioner argues that if Song Far's cost response is not rejected in its entirety, for purposes of constructed value calculations, raw material costs must include all import duties and harbor taxes not collected by reason of export of the finished merchandise containing the imported raw materials.

DOC Response. The Department used the petitioner's data for the costs of the materials, since the Department did not consider these data to be verified.

Comment 35. Petitioner argues that if Song Far's cost response is not rejected in its entirety, non-operating income, such as "income from processing for outside factories," should not offset interest and exchange loss expenses.

DOC Response. The Department does not offset expenses with non-operating income unless such income is directly related to the production of the product. Although we did use interest income to offset interest expense, no other types of non-operating income were deducted from expenses in this case.

Comment 36. Petitioner argues that if Song Far's cost response is not rejected in its entirety, factory overhead expenses should be allocated over production quantities or sales.

DOC Response. The Department did not consider the amount of factory overhead in the response to be verified. The Department therefore used for the factory overhead, a percentage of factory overhead to labor, as reflected on the audited financial statements of the respondent.

Comment 37. Petitioner argues that if Song Far's cost response is not rejected in its entirety, G & A expenses should be allocated over the cost of goods sold.

DOC Response. We agree and have made the appropriate calculation.

Comment 38. Petitioner argues that if Song Far's cost response is not rejected in its entirety, labor costs should include all meal allowances and employee welfare contributions recorded on Song Far's books.

DOC Response. Since the Department did not consider the labor rate to be verified, it used the petitioner's data as best information available.

Comment 39. Petitioner argues that if Song Far's cost response is not rejected in its entirety, the Department should refuse to make favorable revisions to the company's raw material cost data which could not be verified, and direct raw material usage should be based on best information available.

DOC Response. In calculating raw material costs, we used Song Far's product material usage rates which we verified and petitioner's metal prices, with no allowance for scrap.

Respondents' Comments

Comments on Behalf of Golden Lion

Comment 1. Respondent argues that several components of labor expense stated in the Department's verification report such as the annual bonus should not be included in Golden Lion's labor cost.

DOC Response. The Department used petitioner's labor costs, since Golden Lion's labor costs could not be verified.

Comment 2. Respondent contends that certain miscellaneous expenses, export brokerage expenses, commissions, and bad debt should be excluded from G & A, and that other expenses relating to office personnel should be included.

DOC Response. The Department used the general and administrative expenses and net interest expenses reflected on the audited financial statements, as best information.

Comment 3. Respondent argues that various amounts in the Department's verification report regarding factory overhead, such as rent expense, should be deducted from the factory overhead.

DOC Response. The Department used as best information the factory overhead expenses reflected on the audited financial statements.

Comment 4. Respondent argues that interest expense, foreign exchange, and other losses are not ordinary business expenses and should be attributable only to Golden Lion's profit/loss, not to the company's normal G&A expenses.

DOC Response. Since we were not able to verify all general expenses, the Department used as best information, the general and administrative expenses and the net interest expenses from the audited financial statements.

Comment 5. Respondent argues that the Department verified the total raw material usage figures, such as the initial weight, scrap percentage, defective percentage, and production daily record, necessary to support Golden Lion's duty drawback adjustment.

DOC Response. Although we were not able to verify fully the company's cost response, we allowed Golden Lion's duty drawback adjustment because we were able to verify the company's duty drawback data from appropriate source documents.

Comment 6. Respondent argues that the Department should disregard petitioner's allegation that duty has been over-rebated as a result of Golden Lion's failure to indicate raw material gauge and other specifications. Although different metal types do affect the costs of raw materials, duty (and the rebate, thereof) is paid only on the basis of weight; therefore, the gauge of imported raw materials is immaterial.

DOC Response. See the DOC response to petitioner's Comment 4.

Comment 7. Respondent argues that the 48 percent allowance for scrap is the ratio of wasted raw material to finished goods; the ratio of wasted raw material to all imported raw material is 32.5 percent. Therefore, petitioner's contention that the duty drawback portion of Golden Lion's U.S. prices should be reduced by 48 percent is incorrect.

DOC Response. We adjusted Golden Lion's duty drawback to reflect the 0.5 percent service fee charged by the Taiwan authorities on the amount of duty drawback rebated and to reflect the over-rebate of material physically incorporated in the export merchandise, as noted in the Department's response to petitioner's Comment 5.

Comment 8. Respondent argues that if the consumer packaging cost is included in the cost of production, only the cost of color boxes, plastic bags, tapes, and a portion of the packing labor should be included. The cost of cartons and strings should be excluded from the cost of production.

DOC Response. In our constructed value calculations, we used all of the above packaging costs, except for cartons, in the consumer packaging component of the cost of production. Cartons were included as export packing expenses.

Comment 9. Respondent argues that the petitioner's suggested methodology for cost of production and constructed value should be disregarded because Golden Lion responded in good faith to the Department's cost questionnaire; the company did not intend to mislead the Department; Golden Lion submitted additional information during verification to facilitate the Department's verification, not to reconstruct the response; and because these supplemental verification documents are listed in the verification report and, thus, constitute best information available.

DOC Response. See the "Foreign Market Value" section of this notice.

Comment 10. Respondent argues that U.S. packing cost should be treated as verified and, therefore, should be accepted according to Golden Lion's submissions for packing costs for each U.S. product, rather than at the highest U.S. packing costs as petitioner suggests.

DOC Response. The Department used the respondent's export packing material expenses, consumer packing material expenses, and packing labor costs in our fair value comparisons.

Comment 11. Respondent contends that Golden Lion's product time study,

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which was reviewed by the Department during verification, should be used as the basis for labor cost allocation.

DOC Response. Since the labor expenses submitted by the respondent did not include the sub-contract expenses, the Department used petitioner's data as best information.

Comment 12. Respondent argues that for per unit usage of products, the Department should adopt the revised usage schedule provided by Golden Lion, instead of the usage schedule sent to the Taiwanese tax authority.

DOC Response. We used petitioner's raw material cost data in calculating constructed value, because we were unable to verify fully Golden Lion's material usage rates.

Comment 13. Respondent argues that the cost of Canadian products is higher than that of U.S. products because the thinner metal used for Canadian products is more expensive than the thicker metal used for U.S. products. Therefore, the differences in merchandise should be granted so as to be consistent with the different metals.

DOC Response. Since we used constructed value, this issue is moot.

Comment 14. Respondent argues that Golden Lion's leased equipment should be capitalized, and the rental payments should be treated as installment payments of principal and interest on the purchase of equipment.

DOC Response. Since we could not verify the specific information referred to in Respondent's comment, we have used, as best information available, the factory overhead reflected in the audited financial statements.

Comments on Behalf of Song Far

Comment 15. Respondent argues that several items of expense, such as meal allowances, the employee welfare fund, the retirement pension plan, and other miscellaneous expenses, should not be allocated as factory overhead to the stainless steel cookware products under investigation.

DOC Response. Since we could not verify the specific information referred to in Respondent's comment, we have used, as best information available, the factory overhead reflected in the audited financial statements.

Comment 16. Respondent argues that several items of GS & A, such as various charitable donations, meal allowance, the employee welfare fund, commission, export expense, bad debt loss, and other miscellaneous expenses, should not be allocated to the stainless steel cookware products under investigation.

DOC Response. The Department used general and administrative expenses and net interest expense reflected on the audited financial statements, as the best information available for general expenses.

Comment 17. Respondent argues that home market sales 1 and 4 were made through a broker and that the broker's commission should be deducted from home market prices.

DOC Response. Since we did not make any price-to-price comparisons, we did not have to consider this issue.

Comment 18. Respondent argues that Song Far has properly substantiated its claim for drawback adjustments.

DOC Response. We verified Song Far's duty drawback data from appropriate source documents, but were unable to reconcile the differences between actual and theoretical drawback. Therefore, as best information available, we have used the lowest theoretical duty drawback rate applicable to each product.

Comment 19. Respondent argues that drawback adjustments to United States price for raw materials wasted in the production process should be allowed because the scrap and loss in stainless steel sheet/strip during production is an inevitable and necessary result of the cookware manufacturing process, and because, in reality, Song Far has been under-rebated due to the Taiwan authorities' stringent approach to approving the scrap and loss rates in stainless steel cookware production.

DOC Response. See our response to petitioner's Comment 5.

Comment 20. Respondent argues that packing material and labor for shipment packing should be separated out and not counted for Song Far's cost of manufacture for consumer packing.

DOC Response. The Department used the respondent's costs for color boxes (both material and labor) as consumer packing and respondent's costs for cartons as export packing.

Comment 21. Respondent contends that because Song Far has submitted timely questionnaire responses, any revisions made by Song Far before and during the verification were only corrections of minor errors, the verification was done based on audited financial statements, Song Far did not request that the Department reconstruct its response during verification, and because all calculations were based on source documents, the Department should use the information provided by Song Far, not best information available, in making its final determination.

DOC Response. See the "Foreign Market Value" section of this notice.

Comment 22. Respondent argues that there should be no adjustment to United States price with regard to advertising, because Song Far's product brochures are used for both export and home market sales.

DOC Response. Since we did not make price-to-price comparisons, we did not need to make any adjustments for advertising.

Comment 23. Respondent argues that Song Far incurred no expenses as a prerequisite to becoming a bonded manufacturer; thus, nothing should be deducted from the drawback.

DOC Response. We agree.

Comment 24. Respondent argues that, as verified by the Department, no duty drawback pertaining to non-stainless steel cooking ware has been claimed by Song Far.

DOC Response. Although Song Far received duty drawback on other products, we verified that no duty drawback pertaining to non-stainless steel cooking ware was claimed or included in the allowable duty drawback on the products under investigation.

Comment 25. Respondent argues that the processing chemicals are indispensable for producing stainless steel cooking ware; therefore, the duty drawback received by Song Far for processing chemicals should not be denied.

DOC Response. While the processing chemicals may be necessary for producing the cooking ware, we have found, in the companion countervailing duty case on certain stainless steel cooking ware from Taiwan, published concurrently with this notice, that the remission of duties on these inputs constitutes a countervailable export subsidy because they are physically incorporated into the exported product. As explained in the Department's response to petitioner's Comments 5 and 28, we have adjusted the dumping margin to reflect this export subsidy, and we have not included duty drawback on these products in our adjustment to United States price for duty drawback.

Comment 26. Respondent argues that the Department should use the actual duty drawback received, or at least use the theoretical duty drawback, not the lowest duty drawback figure on sales of the same items.

DOC Response. We are using the lowest theoretical duty drawback rate applicable to each sale, because at verification we could not reconcile the difference between actual and theoretical duty drawback data.

Comment 27. Respondent argues that Song Far's difference in merchandise adjustments were verified and should be used by the Department.

DOC Response. We disagree. We were not able to verify fully Song Far's adjustments for differences in merchandise.

Comment 28. Respondent argues that Song Far's claimed scrap offset should be allowed because it is calculated based on the Bonded Factory Schedules of Materials Used, which were approved by Taiwan Customs authorities and verified by the Department.

DOC Response. We did not allow a scrap offset for raw materials when calculating constructed value.

Comment 29. Respondent argues that Song Far's United States prices should be adjusted by adding import duties and harbor taxes which would have been paid if the goods would have been sold in Taiwan.

DOC Response. We did adjust United States price for duty drawback, where the duty drawback was non-excessive. See the Department's response to petitioner's Comment 5 above.

Comment 30. Respondent argues that Song Far's factory overhead expenses should be allocated over direct labor hours to reflect reasonably the share of stainless steel cooking ware in the factory overhead.

DOC Response. The Department used the amounts reflected on the audited financial statements to determine the amount of factory overhead.

Comment 31. Respondent argues that only an allocation of G&A based on sales can reasonably reflect the share of stainless steel cooking ware in G&A.

DOC Response. The Department generally allocates the G&A based on costs of sales, not sales revenue.

Comment 32. Respondent argues that the Department should use Song Far's raw material cost data, which the Department checked during verification, without finding any discrepancies.

DOC Response. The Department used the company's usage rates and the petitioner's data for the cost of materials, with no allowance for scrap.

Comments on behalf of Lyi Mean

Comment 33. Respondent argues that the ITA unlawfully commenced a cost-of-production (COP) investigation against Lyi Mean; that the COP data, the COP submissions, and the COP verifications are, therefore, void; and that the final determination should be predicated upon Lyi Mean's sales, as reported to the Department of Commerce and verified.

DOC Response. We disagree. In the June 23 cost allegation on Lyi Mean, petitioner cites information from Lyi Mean's responses of June 16 and 17 showing that Lyi Mean had no home market sales of the products under investigation. Therefore, petitioner presented cost of production data as evidence that Lyi Mean's third country sales were made at prices below this cost of production. We determined that the information provided by petitioner constituted a reasonable basis for our initiation of a cost of production investigation.

Comment 34. Respondent argues that if the Department decides to base fair value on cost of production, it should correct petitioner's alleged cost figures, especially those concerning factory overhead, before applying them to Lyi Mean as best information available.

DOC Response. See the "Foreign Market Value" section of this notice.

Comment 35. Respondent argues that Lyi Mean acted in good faith, submitted an exemplary sales response, and did not attempt to impede the Department's verification in any way. Due to the company's small size and unsophisticated accounting system, some records were irreconcilable and others were simply not maintained, but the company should not, as a result, be punished with margins based on best information available.

DOC Response. Section 776(a) of the Act precludes the Department from issuing a final determination based on unverified information. Since all of Lyi Mean's responses could not be verified, the Department must use the best information available as described in the "Foreign Market Value" section of this notice.

Comment 36. Respondent argues that petitioner's November 6, 1986, new cost claims should be rejected, and the original cost claim embodied in petitioner's June 23, 1986, letter should be followed, modified by the substitution of a reasonable number for overhead.

DOC Response. In calculating constructed value, we utilized the cost information contained in petitioner's June 23, 1986, submission.

Comment 37. Respondent argues that if the Department rejects Lyi Mean's cost submission as not verified, the rejection should apply to the entire response. Unverified information in the response is not usable as best information available; therefore, petitioner errs in arguing that Lyi Mean's profit figure should be derived from Lyi Mean's COP submission rather than set at the statutory eight percent minimum.

DOC Response. The Department has used the petitioner's data submitted on June 23 for all of the costs of production and constructed value components.

Suspension of Liquidation

In accordance with section 735(d)(2) of the Act, on July 7, 1986 we directed the U.S. Customs Service to suspend liquidation of all entries of certain stainless steel cooking ware from Taiwan. As of the date of publication of this notice in the **Federal Register**, the liquidation of all entries, or withdrawals from warehouse, for consumption will continue to be suspended, and is ordered retroactively to April 8, 1986, for Song Far and Lyi Mean. The U.S. Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price, as shown in the table below. The security amount established in our preliminary determination of July 7, 1986, is no longer in effect. The suspension of liquidation will remain in effect until further notice.

With respect to Golden Lion and all others, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of certain stainless steel cooking ware from Taiwan that are entered, or withdrawn from warehouse, for consumption, on or after July 7, 1986, the date of publication of our notice of preliminary determination in the **Federal Register**. The U.S. Customs Service shall continue to require a cash deposit or bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price, as shown in the table below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin percentage
Golden Lion Metal Industry Co., Ltd	15.08
Song Far Industry Co., Ltd	25.90
Lyi Mean Industrial Co., Ltd.	26.10
All other manufacturers/producers/exporter	22.61

Article VI 5. of the General Agreement on Tariffs and Trade provides that "(n)o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Accordingly, the level of export subsidies (as determined in the

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corresponding final affirmative countervailing duty determination on certain stainless steel cooking ware from Taiwan) will be subtracted from the dumping margins for deposit or bonding purposes on imports of certain stainless steel cooking ware, as defined in the "Scope of Investigation" section of this notice.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a United States industry, within 45 days of the date of this determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If the ITC, however, determines that such injury does not exist, we will issue an antidumping duty order directing the U.S. Customs Service to assess an antidumping duty on certain stainless steel cooking ware from Taiwan, equal to the amount by which the foreign market value exceeds the U.S. price.

Administrative Procedures

We afforded interested parties an opportunity to submit written views in accordance with § 353.46 of our regulations (19 CFR 353.46). We also afforded the parties to the proceeding an opportunity to present views orally before the Department at a public hearing in accordance with § 353.47 of our regulations (19 CFR 353.47). No hearing was requested.

Both petitioner and respondents submitted briefs addressing the sales issues arising from the investigation on November 6, 1986, and rebuttal briefs on November 10, 1986.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

November 19, 1986.

[FR Doc. 86-26661 Filed 11-25-86; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; University of Texas et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 87-018. Applicant: University of Texas at Austin, RLM 11.214, Austin, TX 78712. Instrument: Diagnostic Neutral Beam. Manufacturers: Culham Laboratories, United Kingdom, Intended Use: The instrument will be used to provide change-exchange centers for the change-exchange reaction with protons and impurity ions in the hot plasma. Neutrals formed by the change-exchange reaction will then eject a proton which can be observed with spectroscopic diagnostics. This instrument will also be used for training graduate students. Application received by Commissioner of Customs: November 3, 1986.

Docket No.: 87-029. Applicant: Children's Hospital, 125 Desoto Street, Pittsburgh, PA 15213. Instrument: Electron Microscope, Model CM 10/35 with Accessories. Manufacturer: N.V. Phillips, The Netherlands. Intended Use: The instrument will be used for clinical and research studies of human tissues and organs (liver, kidney, muscle, heart, brain, skin, nasal mucosa) from pediatric patients with a variety of diseases and various types of tumors. Research will be performed on the types of tumors. Research will be performed on the tumors using immunoelectron microscopy to better define tumor lineage, information which can improve selection of treatment protocols. Application Received by Commissioner of Customs: November 4, 1986.

Docket No.: 87-030. Applicant: Our Lady of the Lake Regional Medical Center, 5000 Hennessy Boulevard, Baton Rouge, LA 70809. Instrument: Extracorporeal Shock Wave Lithotripter. Manufacturer: Dornier Medical Systems, West Germany. Intended Use: The instrument is intended to be used for studies of kidney and ureteral stones to determine if there is a relationship to the type of stone formation and the patient's environment. The instrument will also be used to train medical residents and staff urologist in the use of lithotripsy. Application Received by Commission of Customs: November 4, 1986.

Docket No: 87-031. Applicant: University of California, Los Angeles, 405 Hilgard Avenue, Los Angeles, CA 90024. Instrument: Electron Microscope, Model H-7000 with Accessories. Manufacturers: Hitachi, Japan, Intended Use: The instrument is intended to be used for the following experiments on biological samples, mostly macromolecular proteins from subcellular preparations:

(1) Examination of protein microcrystals to determine the three dimensional structure.

(2) Examination of viral tail fibers at various stages of development,

(3) Determination of proteins in viral tails by visualization of specific binding sites using collodial gold and

(4) Use of metal shadowing of viral base plates to determine their structure.

These experiments will be conducted to increase the understanding of the structure and function of multi-subunit enzymes, viral tails and components of tissues. In addition, the instrument will be used for various educational purposes in the course Structural Molecular Biology. Application Received by Commissioner of Customs: November 4, 1986.

Docket No: 87-033. Applicant: University of Colorado, Department of Chemistry, Boulder, CO 80309-0215. Instrument: FTI Spectrometer, Model IZM030 with Accessories. Manufacturer: Bomen, Inc., Canada. Intended Use: The instrument will be used (a) to measure the infrared absorption spectra of polyatomic radicals, and (b) to measure the ultraviolet absorption spectra of jet cooled organic molecules. The research will be performed by graduate students, postdoctoral associates and undergraduate students. Application Received by Commissioner of Customs: November 5, 1986.

Docket No: 87–034. Applicant: University of California, Lawrence Livermore National Laboratory, P.O. Box 5012, Livermore, CA 94550. Instrument: Laser Ionisation Mass Analyser, Model LIMA–2A. Manufacturer: Cambridge Mass Spectrometry, United Kingdom. Intended Use: The instrument will be used to investigate photon induced emission of electrons, ions and neutrals of solids (or low vapor pressure liquids suspended on the surface of solids). Two types of experiments will be conducted (a) experiments to determine the spatial variation of electron emission from insulator surfaces as a function of photon fluence and photon wavelength and (b) impurity analysis of materials using indirect emission processes. Application Received by Commissioner of Customs: November 6, 1986.

Docket No: 87–035. Applicant: California State University, Los Angeles, 5151 State University Drive, Los Angeles, CA 90032. Instrument: NMR Spectrometer, Model AM 400 with Accessories. Manufacturer: Bruker Instruments Inc., West Germany. Intended Use: The instrument is intended to be used in chemistry and biochemistry research projects. Typical experiments in the liquid and solid state will involve carborane compounds, phosphorus-containing hemoglobin effectors, ruthenium-substituted myoglobin models, anticancer antibiotics, metal-ion complexation, membrane properties, whole cell studies, crown ether complexation, polymer structure, surface chemistry and biochemical systems. The goals of these projects are the evaluation of molecular structures, molecular interactions and metabolic processes. In addition, the instrument will be used for educational purposes in various chemistry courses. Applicant received by Commissioner of Customs: November 6, 1986.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR. 86–26664 Filed 11–25–86; 8:45 am]

BILLING CODE 3510–DS–M

[C–583–604]

Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Cooking Ware from Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Taiwan of certain stainless steel cooking ware as described in the "Scope of Investigation" section of this notice. The estimated net subsidy is 2.14 percent *ad valorem*.

We have notified the United States International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to suspend liquidation of all entries of stainless steel cooking ware from Taiwan that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond on entries of these products in the amount equal to the estimated net subsidy as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: November 26, 1986.

FOR FURTHER INFORMATION CONTACT: Jack Davies or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–1785 or 377–2438.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Taiwan of certain stainless steel cooking ware. For purposes of this investigation, the following programs are found to confer subsidies:

- Export Loss Reserve
- 25 Percent Income Tax Ceiling for Big Trading Companies
- Overrebate of Duty Drawback on Imported Materials Physically Incorporated in Export Merchandise
- Duty Drawback on Imported Materials Not Physically Incorporated in Export Merchandise

We determine the estimated net subsidy for certain stainless steel

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cooking ware to be 2.14 percent *ad valorem.*

Case History

On January 21, 1986, we received a petition filed in proper form by the Fair Trade Committee of the Cookware Manufacturers Association on behalf of the U.S. industry which manufactures certain stainless steel cooking ware. In compliance with the filing requirements of section 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Taiwan of certain stainless steel cooking ware receive, directly or indirectly, subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on February 10, 1986, we initiated the investigation (51 FR 6020, February 19, 1986). We stated that we expected to issue a preliminary determination by April 16, 1986.

Since Taiwan is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the ITC of our initiation. On March 4, 1986, the ITC determined that there is a reasonable indication that imports of certain stainless steel cooking ware from Taiwan materially injure, or threaten material injury to, a U.S. industry (51 FR 9541, March 19, 1986).

We presented a questionnaire concerning the petitioner's allegations to the American Institute in Taiwan in Washington, DC on February 20, 1986. We received responses to the questionnaire on March 13, 19, and 31, 1986. There are five producers of the subject merchandise in Taiwan which accounted for a majority of the exports to the United States during the review period: Golden Lion Metal Industry Co., Ltd.; Song Far Co., Ltd.; Lyi Mean Industry Co., Ltd.; Crown Manufacturing Co., Ltd.; and First Stainless Steel Industry Co., Ltd. In addition, we selected seven trading companies, which accounted for a majority of the subject merchandise exported by these five producers to the United States during our review period, to respond to our questionnaire: Transmark International Corp.; Fairview International Corp.; Collins Co., Ltd.; Jack-Tom Industrial Co., Ltd.; D & J Industrial Co., Ltd.; Atico Corp.; and Pan-Orient Industrial Corporation.

On the basis of information contained in the responses, we made a preliminary negative countervailing duty determination on April 16, 1986 (51 FR 15520, April 24, 1986). On April 30, 1986, we extended the deadline date for the final determination in this investigation to September 15, 1986, to correspond to the dates of the final determinations in the antidumping duty investigations of the same products from Taiwan and Korea (51 FR 16882, May 7, 1986). This was done at the request of petitioner pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984 (PL 98–573). From May 19 to May 30, and September 1 to September 26, 1986, we conducted verification in Taiwan.

On August 1, 1986, the deadline dates for the final determination of the antidumping duty investigations of certain stainless steel cooking ware from Korea and Taiwan were postponed to no later than November 19, 1986. Accordingly, the final determination for the countervailing duty investigation of certain stainless steel cooking ware from Taiwan was also postponed to coincide with the antidumping duty determinations of the same products from Korea and Taiwan (51 FR 28610, August 8, 1986).

Petitioner submitted a request for a hearing, which was subsequently withdrawn with the consent of respondents. Both petitioner and respondents filed briefs discussing the issues arising in this investigation which have been taken into consideration in this determination.

Scope of Investigation

The products covered by this investigation are all non-electric cooking ware of stainless steel which may have one or more layers of aluminum, copper, or carbon steel for more even heat distribution. These products are provided for in item number 653.94 of the *Tariff Schedules of the United States* (TSUS). The products covered by this investigation are skillets, fry pans, omelette pans, sauce pans, double boilers, stock pots, sauce pots, dutch ovens, casseroles, steamers, and other stainless steel vessels, all for cooking on stove top burners, except tea kettles and fish poachers. Excluded from the scope of investigation are stainless steel oven ware and stinless steel kitchen ware, which are also included under the 653.94 TSUS classification.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the

"Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order" (49 FR 18006, April 26, 1984).

For purposes of this determination, the period for which we are measuring subsidies (the review period) is calendar year 1985. Based upon our analysis of the petition, the responses to our questionnaires, verification, and comments filed by petitioner and respondents, we determine the following:

I. PROGRAMS DETERMINED TO CONFER SUBSIDIES

We determine that subsidies are being provided to manufacturers, producers, or exporters in Taiwan of certain stainless steel cooking ware under the following programs:

A. Export Loss Reserve

Article 31 of the Statute for Encouragement of Investment (SEI) permits exporters to establish an export loss reserve of up to one percent of the previous year's export exchange settlement to be used exclusively for compensating export losses. Companies treat the export loss reserve as a business expense and deduct it from taxable income in one year, then balance the account and carry the reserve funds forward as taxable income for the next year. Song Far Industry Co., Ltd., a producer of certain stainless steel cooking ware, reported that it used this program during the review period.

Because the export loss reserve is contingent on export sales, we determine that it confers a benefit which constitutes an export subsidy. To calculate the benefits, we treated the tax savings from the export loss reserve as a one-year, interest-free loan. We compared the interest-free rate with the maximum short-term lending rate set by the Central Bank of China, multiplied the difference by the amount of the tax savings, and then allocated the benefit over the total 1985 export sales of all products by the five manufacturers who responded to our questionnaire. The estimated net subsidy is 0.001 percent *ad valorem.*

B. 25 Percent Income Tax Ceiling for Big Trading Companies

Article 15 of the SEI permits productive enterprises and big trading companies to pay no more than 25 percent corporate income tax on income exceeding NT$500,000, rather than the 35 percent required by Taiwan's graduated corporate income tax law.

In the "Final Negative Countervailing Duty Determination: Porcelain-on-Steel Cooking Ware from Taiwan" (51 FR 36453, October 10, 1986), we determined that this program was available to only a select number of trading companies based on export performance. In examining the criteria used to determine "big-trading company" status, we learned that to be eligible a trading company had to comply with all of the following: (1) Have a predetermined annual income from exports; (2) maintain outstanding capital in excess of NT$200 million; (3) operate only an export-import business; and (4) maintain overseas subsidiaries in more than three countries. Since the preferential tax treatment extended to big trading companies is based on export performance we determined that this program conferred an export subsidy.

Collins Co., Ltd., a respondent in this investigation, was designated as a big trading company in 1984 and 1985. At verification, we found that Collins Co., Ltd. had calculated its 1984 tax, which was payable during the review period, payable at the 25 percent rate. To calculate the subsidy, we computed Collins' tax savings resulting from the difference in the 25 and 35 percent rates. We allocated a portion of the tax savings to the manufacturers who exported the products under investigation to the United States through Collins. We then divided the benefits allocated to these manufacturers by their 1985 exports of the subject merchandise to the United States. The estimated net subsidy is 0.010 percent *ad valorem.*

C. Overrebate of Duty Drawback on Imported Materials Physically Incorporated in Export Merchandise

Based on an allegation raised by the petitioner after our preliminary negative countervailing duty determination in this investigation, we examined the duty drawback system in Taiwan regarding exports of stainless steel cooking ware.

Duty drawback in Taiwan is given on certain imported materials used to produce certain export products. Duty drawback is refunded on a shipment-by-shipment basis and is calculated by applying a pre-established duty drawback rate to the net weight of the finished product in each export shipment. The duty drawback rate is approved by the Taiwan authorities for each export product based on raw material usage and production yield data submitted by manufacturers of the export product.

For the stainless steel cooking ware under investigation, the Taiwan authorities established an authorized loss rate for raw materials used in the manufacture of exported goods. Duty drawback includes the amount of duty remitted on the loss or wastage for the raw material. For stainless steel sheet or coil used in the production of cooking ware, the input ratio imputed in Taiwan duty drawback rate is 1.48. For example, to claim duty drawback on an exported pot weighing 1 kilogram, 1.48 kilograms of stainless steel is assumed to be physically-incorporated in the exported pot. These allowable loss rates include material which may later be sold as scrap.

We have determined that a duty drawback program which includes some amount for loss or wastage in the calculation of the amount to be remitted on raw materials used in the manufacture of exported goods is not necessarily countervailable. The rates only become countervailable when they are unreasonable or excessive. We consider duty drawback received on recoverable scrap to constitute an unreasonable or excessive rebate of customs duties. Therefore, when loss or wastage rates include an amount for recoverable scrap, we would find that the rates are excessive and, thus, countervailable.

During the verification, we reviewed summary worksheets used by the Taiwan authorities to calculate the loss rate. However, because the loss rates calculated by the Taiwan authorities were not based directly on stainless steel cooking ware, but rather on other stainless steel kitchenware that are grouped and classified by the Taiwan authorities in the same duty drawback category as is cookware we considered it necessary to examine the companies' information concerning loss rates.

In this case, we compared the loss rate approved by the Taiwan authorities to the loss rate of Song Far, excluding from our comparison the loss attributable to recoverable scrap. Making this comparison, we find that the Taiwan authorities' established loss rate is excessive. As such, we find that in this case, a portion of the duty drawback is countervailable. To calculate the benefit from the excessive drawback, we multiplied the percentage of the excessive duty drawback by the total amount of duty drawback for Golden Lion, Song Far, and Lyi Mean (the only companies for which we had information concerning duty drawback). Dividing by total exports of those producers, we calculated an estimated net subsidy of 2.128 percent *ad valorem.*

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D. Rebate of Import Duties and Indirect Taxes on Imported Materials Not Physically Incorporated in Export Merchandise

At verification, we found that Song Far had received duty drawback on two types of liquid polish used to polish stainless steel metal in the subject merchandise. Since it was not demonstrated at verification that such liquid metal polishes are physically incorporated in the exported product, we determine that the duty drawback of import duties and indirect harbor taxes on imported liquid polish constitutes a countervailable benefit to manufacturers and producers of standless steel cooking ware.

Duty drawback on these two types of liquid metal polish was received by Song Far only on export shipments of the subject merchandise made on or after November 26, 1985. For those export shipments made after this date and during the review period, we computed the amount of duty drawback attributable to the liquid metal polish and divided this amount by total 1985 exports of Song Far, Golden Lion, and Lyi Mean to arrive at a net subsidy of 0.002 percent *ad valorem.*

II. PROGRAM DETERMINED NOT TO CONFER SUBSIDIES

We determine that subsidies are not being provided to manufacturers, producers, or exporters in Taiwan of certain stainless steel cooking ware under the following program:

A. Development Loans under Article 84 of the SEI for the Purchase of Local Taiwan-made Machinery

At verification, we found that Golden Lion had received development loans under Article 84 of the SEI for the Medium Business Bank of Taiwan (MBBT) for the purchase of local Taiwan-made machinery.

Under Article 84 of the SEI, the Executive Yuan Development Fund provides funds from the Taiwan budget for certain development purposes to different agencies, one of which is the MBBT. The MBBT is owned by the Taiwan authorities and is operated as a profit making bank. The bank is required to provide at least 70 percent of its lending to small- and medium-size businesses in Taiwan. MBBT makes three types of development loans under Article 84 of the SEI: (1) Purchase of local Taiwan-made machinery, (2) purchase of automated machinery, and (3) manufacture of strategic products. Approximately 25 percent of the funds for these development loans are provided by the Executive Yuan Development Fund.

MBBT authorities stated that any productive enterprise as defined under Article 3 of the SEI, is eligible to apply for a development loan to purchase local Taiwan-made machinery. We examined MBBT loan records and found that a variety of industry sectors had received development loans to purchase local Taiwan-made machinery, including electric fans, plastic injection molds, rubber foam sponge, automobile parts, sewing machines, wood furniture, unfinished textiles, cardboard, cotton weaving, lanolin for cosmetics, floor tiles, surgical bandages, plastic pipe, glass molding machines, steel castings, plumbing equipment, general hardware equipment, vacuum cleaner parts, and printed circuit boards.

We have determined in previous final countervailing duty determinations that the term "productive enterprises" as defined in Article 3 of the SEI, does not limit application to a specific enterprise or industry or a group of enterprises or industries. Furthermore, the MBBT loan records show that development loans for the purchase of local Taiwan-made machinery are not provided to a specific enterprise or industry, or group of enterprises or industries. Therefore, we determine that development loans under Article 84 of the SEI for the purchase of local Taiwan-made machinery are not countervailable.

III. PROGRAMS DETERMINED NOT TO BE USED

We determine that manufacturers, producers, or exporters in Taiwan of certain stainless steel cooking ware did not use the following programs.

A. Preferential Export Financing

The Export Loan Discount Regulations of the Central Bank of China permit registered exporters to apply for low-cost export loans upon presentation of a letter of credit. Authorized commercial banks provide export loans at normal commercial rates, then apply for interest rate reductions from the Central Bank. If the Central Bank approves the reduction, commercial banks correspondingly reduce the lending rate to the exporters. With the exception of Trans World Prosperity, none of the companies under investigation obtained export financing under this program during the review period.

Trans World Prosperity is a trading company related to Transmark International Company, a respondent in this investigation. At verification, we found that Trans World Prosperity had used export loans during the review period which had interest rates at the export loan interest rate approved by the Central Bank of China. We verified that none of these export loans were used to finance exports of the products under investigation to the United States during the review period.

B. Duty Exemptions and Deferrals on Imported Equipment

Article 21 of the SEI allows productive enterprises to pay import duties and dues on selected capital equipment in a series of installments beginning one year from the date of importation. In addition, qualified enterprises are exempt from import duties on selected machinery and equipment used for the establishment or expansion of an approved project or for research and development. None of the companies under investigation used duty exemptions or deferrals on imported equipment during the review period.

C. 22 Percent Income Tax Ceiling

Article 15 of the SEI permits capital-intensive and/or technology-intensive enterprises engaged in the basic metal production industry, heavy machinery industry, or petrochemical industry to use a marginal tax rate of 22 percent, instead of the 35 percent rate required by Taiwan's income tax law. None of the companies under investigation claimed the 22 percent income tax rate during the review period.

D. Accelerated Depreciation and Tax Holiday

Article 6 of the SEI allows newly established "productive enterprises" either to use accelerated depreciation on fixed assets, machinery, and equipment or to select a five-year holiday on corporate income taxes. In addition, expanding firms may participate in a four-year tax holiday on increased profits from expansion or a rapid depreciation of newly purchased buildings or equipment. None of the companies under investigation applied for or received benefits under Article 6 of the SEI during the review period.

Petitioner's Comments

Comment 1: Petitioner argues that rebates of import duties and taxes levied on imported raw materials not physically incorporated in exported merchandise are countervailable.

DOC Position: We agree. (See actions I.C and I.D above.)

Comment 2: Petitioner argues that the system of deferred payment of import duties and harbor taxes applicable to producers of stainless steel cooking ware is countervailable because the system allows deferred payment of import duties and harbor taxes until after the raw materials have been used to produce cooking ware for export. The benefit is equal to the value of an interest free loan for the amount of duties and taxes which should have been paid at the time of importation of the raw materials.

DOC Position: This allegation was brought to our attention late in the investigation. We therefore were unable to gather sufficient information at verification upon which to make a determination. This issue will be addressed in any eventual administrative review under section 751 of the Act, if requested.

Comment 3: Petitioner maintains that the long-term development loans received by Golden Lion for purchase of local Taiwan-made machinery are preferential in nature of thus are countervailable.

DOC Position: We disagree. As stated in section II.A. above, we have determined that these loans are not limited to a specific enterprise or industry or group thereof, and are therefore not countervailable.

Comment 4: Petitioner argues that the preferential export financing received by Trans World Prosperity and Collins Co., Ltd., under the Export Discount Regulation of the CBC is countervailable.

DOC Position: During verification at Trans World Prosperity and Collins Co., Ltd., we examined company accounting records and export documents on each of the export loans provided under the Export Loan Discount Regulations. We found that all of the export loans received were used to finance exports of merchandise other than that under investigation.

Comment 5: Petitioner contends that the tax benefits received by Collins Co., Ltd., as a result of being designated a "big trading company" in 1984 and 1985 are countervailable.

DOC Position: We agree. (See section I.B. above.)

Comment 6: Petitioner argues that all benefits received by Song Far as a result of the export loss reserve are contervailable.

DOC Position: We calculated the tax savings achieved by Song Far based on the actual amount of the export loss reserve deduction claimed on Song Far's 1984 income tax return which was filed during the review period. See our discussion in Section I.A. above.

Comment 7: Petitioner argues that stainless steel cooking ware producers in Taiwan receive a countervailable overrebate of duty drawback because the Taiwan duty drawback system appears to grant rebates based, in part, on the weight of packing materials purchased in the home market.

DOC Position: At verification, we found that duty drawback was calculated by applying the duty drawback rate for stainless steel cooking ware to the net weight, not gross weight, listed on the export declaration. Therefore, the duty drawback rate did not include the weight of packing materials.

Respondents' Comments

Comment 1: Respondents argue that the wastage factor necessary to account for the amount of raw materials required to produce the finished export product is not countervailable.

DOC Position: We agree that loss or wastage rates used in the determination of duty drawback rates are not necessarily countervailable. However, when the wastage rates are excessive, the excess is countervailable. (See sections I.C. and I.D. above.)

Comment 2: Respondents contend that the deferral of payment on import duties and taxes does not confer a countervailable benefit on Taiwan producers of stainless steel cooking ware.

DOC Position: This issue will be addressed in any eventual administrative review under section 751 of the Act, if requested. (See DOC Position to Petitioner's *Comment 2* above.)

Comment 3: Respondents maintain that the long-term development loans received by Golden Lion under article 84 of the SEI are available to a wide selection of industries and are not targeted to any specific enterprise or industry, or group of enterprises or industries.

DOC Position: We agree. (See section II.A. above.)

Comment 4: Respondents argue that export financing received by Trans World Prosperity and Collins Co., Ltd. is not countervailable because none of the export loans under consideration were made for shipments of the merchandise under investigation.

DOC Position: We agree. (See section III.A. above.)

Comment 5: Respondents contend that the benefits received by Collins Co., Ltd. as a big trading company are not countervailable because the 25 percent income tax ceiling is available to an enormous number and variety of enterprises in Taiwan.

DOC Position: We disagree. (See section I.B. above.)

Verification

In accordance with 776(a) of the Act, we verified the data used in making our final determination. We conducted verification in Taiwan during May 19 to 30, and a follow-up verification during September 1 to 26, 1986. During verification, we followed normal verification procedures, including meeting with government officials and inspection of documents, as well as on-site inspection of the accounting and financal records of the companies producing and exporting the merchandise under investigation to the United States.

Administrative Procedures

We afforded interested parties an opportunity to present information and written views in accordance with Commerce regulations (19 CFR 355.34(a)). Petitioner, after requesting a hearing, withdraw his request with the consent of respondents. Therefore, a hearing was not held in this investigation. Written views have been received and were considered in reaching this final determination.

Suspension of Liquidation

In accordance with section 705(c)(1)(B) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Taiwan which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, and to require a cash deposit or bond equal to 2.14 percent *ad valorem* for each entry of this merchandise.

ITC Notification

In accordance with section 705(c) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure or threaten material injury to a U.S. industry within 75 days after the date of this determination. If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or

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cancelled. If, however, the ITC determines that such injury exists, we will issue a countervailing duty order, directing the Customs officers to continue suspension of liquidation and to collect cash deposits on all entries of certain steel cooking ware from Taiwan entered, or withdrawn from warehouse, for consumption, as described in the "Suspension of Liquidation" section of this notice.

This notice is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

November 19, 1986.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

[FR Doc. 86-26663 Filed 11-25-86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Permits; Foreign Fishing

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*)

Send comments on applications to: Fees, Permits and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington, DC 20235, or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231-0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building Room 2115, 320 South New Street, Dover, DE 19901, 302/674-2331

Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571-4366

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco, De Ponce Building, Suite 1108, Hato Rey, PR 00918, 809/753-4926

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813/228-2815

Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, Metro Building, Suite 420, 2000 S.W. First Avenue, Portland, OR 97201, 503/221-6352

Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 88510, 907/274-4563

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813, 808/523-1368.

For further information contact John D. Kelly or Shirley Whitted (Fees, Permits, and Regulations Division, 202-673-5319).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register**. The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1987 have been received from the Governments shown below.

Dated: November 21, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Fisheries Service.

Fishery codes and designation of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

Code	Fishery	Regional fishery management councils
ABS	Atlantic Billfishes and Sharks.	New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA	Bering Sea and Aleutian Islands Groundfish.	North Pacific.
GOA	Gulf of Alaska	North Pacific.
NWA	Northwest Atlantic Ocean.	New England, Mid-Atlantic
SNA	Snails (Bering Sea)	North Pacific.
WOC	Pacific Groundfish (Washington, Oregon and California).	Pacific.
PBS	Pacific Billfishes and Sharks.	Western Pacific.

Activity codes which specify categories of fishing operations applied for are as follows:

Activity code	Fishing operations
1	Catching, processing and other support.
2	Processing and other support only.
3	Other support only.
*	Vessel(s) in support of U.S. vessels (Joint Venture).

Joint Venture

The Governments of Italy, Japan, Spain, German Democratic Republic (GDR), the Kingdom of the Netherlands (Netherlands) and the Union of Soviet Socialist Republics (USSR) have submitted permit applications to engage in joint venture activities in the Northwest Atlantic Ocean Fisheries during 1987. Foreign vessels will receive transshipments of U.S. harvested fish and appropriate by-catch species. The following tables summarize their request:

SPECIES

[In metric tons]

Country	Illex	Loligo	Mackerel	Dog fish	Hake red/silver	American partner
Northwest Atlantic Ocean Fisheries						
Italy	2,000	2,000	1,000	500	500/1,000	IST Corporation, Inc., Cape May, NJ.
Japan	1,500	1,500				Lund's Fisheries, Inc., Cape May, NJ.
Spain	1,000	1,000				Stonavar Trading Inc., Bristol, RI.
GDR			7,500			The Mayflower Group, Gloucester, MA.
Netherlands			1,000			Scan Ocean, Inc., Gloucester, MA.
USSR			20,000			Marine Resources Company, Int'l., Seattle, WA.

The Governments of the People's Republic of China (China), Japan, the Republic of Korea (Korea), the Polish People's Republic (Poland), and the Union of the Soviet Socialist Republics (USSR) have submitted permit applications to engage in joint venture activities in the Alaskan fisheries during 1987. The Government of the Polish People's Republic has also submitted permit applications for the WOC fishery. Foreign vessels will receive transshipments of U.S. harvested fish and appropriate by-catch species. The following tables summarize their requests:

SPECIES

[In metric tons]

Country	Pollock	Pacific cod	Atka mackerel	Yellowfin sole	Other flounders	Miscellaneous	American partner
Bering Sea and Aleutian Islands Fisheries							
China	23,000	2,200	1,500	2,500	2,000	0	Undetermined.
Japan	475,000	2,000	0	55,500	0	0	(1)
Korea	594,640	26,750	38,300	42,100	4,450	610	(2)
Poland	45,000	1,000	20	200	520	420	(3)
USSR	4,000	29,000	0	91,000	0	0	Marine Resources Company, Int'l. Seattle, WA.
Gulf of Alaska							
China	7,200	780	0	0	0	0	Undetermined.
Japan	50,000	0	0	0	0	0	(1)
Korea	47,370	1,200	3,900	0	930	490	(2)
Poland	5,000	300	10	0	50	120	(3)
USSR	14,000	61,000	1,000	0	0	0	Marine Resources Company, Int'l. Seattle, WA.

[1] Japanese partners in Seattle, WA: Northern Deep Sea Fisheries, Inc., Profish International, Inc.; Westward Trawlers, Inc.; Peter Pan Seafoods, Inc., Kyokuyo USA, Inc. Partners in other locations: Kodiak & Western Trawlers Group, Kodiak, AK; Alyeska Ocean, Inc., Anacortes, WA.

[2] Korean partners in Seattle, WA: Joint Venture Fisheries, Ltd.; Arctic Venture Fisheries, Inc.; Profish Alaska, Inc.; Cal-Alaska Fisheries, Inc. Partners in other locations: Alaska Joint Venture Fisheries, Anchorage, AK; Alaska Pacific fisheries, Ltd., Anchorage, AK; and Daerim America, Inc., Ft. Lee, NJ.

[3] Polish partners in Seattle, WA are Profish International, Inc. and Alaska Pacific International, Ltd.; and in Coos Bay, OR, Quest Export Trading Co.

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SPECIES

[In metric tons]

Country		American Partner
Washington, Oregon and California Trawl Fisheries		
Poland	Requests 37,500 mt. Pacific whiting only.	(¹)

[1] Polish partners in Seattle, WA are Profish International, Inc. and Alaska Pacific International, Ltd.; and in Coos Bay, OR, Quest Export Trading Co.

[FR Doc. 86-26698 Filed 11-21-86; 5:05 pm]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Centocor et al.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Centocor of Malvern, PA 19355, NeoRx Corporation of Seattle, WA 98119 and Organon of West Orange, NJ 07052 a shared exclusive right to practice the invention embodied in U.S. Patent Application No. 6-778,670, "Target Specific Cross-Linked Heteroantibodies." The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to Robert P. Auber, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Patent Licensing Specialist, Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 86-26633 Filed 11-25-86; 8:45 am]

BILLING CODE 3510-04-M

United States Travel and Tourism Administration

Travel and Tourism Advisory Board; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. (App. 1976) notice is hereby given that the Travel and Tourism Advisory Board of the U.S. Department of Commerce will meet on December 15, 1986 at 10:00 a.m. at Hyatt Regency Hotel, 151 East Wacker Drive, Chicago, Illinois 60601. Meeting will take place in the Addams Room.

Established March 19, 1982, the Travel and Tourism Advisory Board consists of 15 members, representing the major segments of the travel and tourism industry and state tourism interests, and includes one member of a travel labor organization, a consumer advocate, an academician and a financial expert.

Members advise the Secretary of Commerce on matters pertinent to the Department's responsibilities to accomplish the purpose of the National Tourism Policy Act (Pub. L. 97-63), and provide guidance to the Assistant Secretary for Tourism Marketing in the preparation of annual marketing plans.

Agenda items are as follows:

I. Call to Order
II. Approval of the Minutes
III. Old Business
  A. New Directions for USTTA Worldwide
  B. Status of SIC Codes
  C. Crisis Management
IV. New Business
  A. U.S./Ecuador Bilateral Tourism Relations
  B. Current Legislative Issues
    1. Visa Waiver—Posturing for Tourism
    2. Impact of Tax Reform on Tourism
  C. National Tourism Week and Bicentennial of the Constitution
  D. Christopher Columbus Quincentenary Celebration
V. Miscellaneous
  A. Establish next meeting date
VI. Adjournment

A limited number of seats will be available to observers from the public and the press. The public will be permitted to file written statements with the Committee before or after the meeting. To the extent time is available, the presentation of oral statements is allowed.

Karen M. Cardran, Committee Control Officer, United States Travel and Tourism Administration, Room 1865, U.S. Department of Commerce, Washington, DC 20230 (telephone: 202-377-0140) will respond to public requests for information about the meeting.

Donna Tuttle,

Under Secretary for Travel and Tourism, U.S. Department of Commerce.

[FR Doc. 86-26589 Filed 11-25-86; 8:45 am]

BILLING CODE 3510-11-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Certain Cotton Textile Products Produced or Manufactured in the People's Republic of China

November 21, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 28, 1986. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

On December 30, 1985 a directive dated December 24, 1985 was published in the **Federal Register** (50 FR 53182), which announced the import restraint limits for certain cotton, wool and man-made fiber textile products, including cotton printcloth in Category 320 pt. (only TSUS items 320.—, 321.—, 322.—, 326.—, 327.—, and 328.— with statistical suffixes 21, 22, 24, 31, 38, 49, 57, 74, 80 and 98, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986. CITA has determined that exports of certain napped fabrics currently charged to the 1986 limit for Category 320 pt., should not be charged to that limit.

Accordingly, in the letter which follows this notice, the Chairman of CITA directs the Commissioner of Customs, to deduct 3,588,813 square yards from the import charges made to the current year limit.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule

3 of the Tariff Schedules of the I States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 21, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China, I request that, effective on November 28, 1986, you deduct 3,588,813 square yards from charges made to the restraint limit established in the directive of December 24, 1985 for cotton textile products in Catagory 320-P [1], produced or manufactured in China and exported during the agreement year which began on January 1, 1986 and extends through December 31, 1986.

This letter will be published in the **Federal Register**.

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-26655 Filed 11-25-86; 8:45 am]

BILLING CODE 3510-DR-M

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[1] In Category 320, only TSUS items 320.—, 321.—, 322.—, 326.—, 327.—, and 328.— with statistical suffixes 21, 22, 24, 31, 38, 49, 57, 74, 80 and 98.

Adjusting Import Limits for Certain Cotton and Man-Made Fiber Apparel Products Produced or Manufactured in the Philippines

November 20, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 20, 1986. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

A CITA directive dated December 20, 1985 (50 FR 52830), as amended, established limits for certain specified categories of cotton, wool and man-made fiber textile products, including Categories 336-T, 336-NT, 636-T, 636-NT, 645/646-NT and 646-T, produced or manufactured in the Philippines and exported during the agreement year which began January 1, 1986 and extends through December 31, 1986. During consultations held in November 1986, pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement on November 24, 1982, as amended, between the Governments of the United States and the Republic of the Philippines, it was agreed that limits for Categories 336-NT, 636-NT and 645/646-NT, would be increased by the application of special swing.

The 1986 agreement year limits for Categories 336-T, 636-T and 646-T are being reduced to account for the increases in the other categories.

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the restraint limits previously established for the categories, as indicated.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textiles Agreements.

November 20, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on December 20, 1985 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

Effective on November 20, 1986, the directive of December 20, 1985 is hereby further amended to include the following adjusted restraint limits:[1]

Category	Adjusted 12-mo. limit [2]—dozen
336-T	397,111
336-NT	36,652
636-T	1,087,963
636-NT	60,512
645/646-NT	133,842
646-T	306,593

[2] The limits have not been adjusted to account for any imports exported after December 31, 1985.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-26656 Filed 11-25-86; 8:45 am]

BILLING CODE 3510-DR-M

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[1] The agreement provides, in part, that: (1) specific limits may be exceeded during the agreement year by designated percentages; (2) specific limits may be adjusted for swing, carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

November 20, 1986.

The USAF Scientific Advisory Board Ad Hoc Committee on Minuteman III Penetration Aids will meet at the Pentagon, Washington D.C. on December 15-16, 1986 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to review, discuss and evaluate the effectiveness of penetration aids proposed for the Minuteman III.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-26601 Filed 11-25-86; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

National Petroleum Council, Committee on U.S. Oil and Gas Outlook; Meeting

Notice is hereby given that the

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Committee on U.S. Oil and Gas Outlook will meet in December 1986. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on U.S. Oil and Gas Outlook will be studying factors affecting the overall outlook for oil and gas in the United States. Its analysis and findings will be based on information and data to the gathered by the various task groups.

The Committee on U.S. Oil and Gas Outlook will hold its 8th meeting on December 9–10, 1986, starting at 9:00 a.m., in the 29th Floor Conference Room of Tenneco Inc., the Tenneco Building, 1010 Milam Street, Houston, Texas.

The tentative agenda for the Committee on U.S. Oil and Gas Outlook meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Discuss study assignments.
3. Review draft report.
4. Discuss and other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Committee on U.S. Oil and Gas Outlook is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee on U.S. Oil and Gas Outlook will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Pat Dickinson, Advanced Fuels, Technology Extraction and Environmental Controls, Fossil Energy, 301/353–2430, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 100 Independence Avenue SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on November 19, 1986.

Donald L. Bauer,

Principal Deputy Assistant Secretary, Fossil Energy.

[FR Doc. 86–26614 Filed 11–25–86; 8:45 am]

BILLING CODE 6450–01–M

Bonneville Power Administration

[BPA File No. DSC–6(c)]

Hearing and Opportunity for Public Review and Comment; Proposed Implementation of a Conservation Program Designed to Modernize Aluminum Smelters in the Pacific Northwest

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice; Request for comments. All comments and documents submitted as part of the Official Record compiled in the process should contain the file number designation DSC–6(c).

SUMMARY: BPA is proposing to implement a conservation program to encourage primary aluminum smelters in the Pacific Northwest to modernize their plants (conservation/modernization program). This program has the potential to provide up to 250 megawatts of energy savings. Section 6(c) of this Pacific Northwest Electric Power Planning and Conservation Act of 1980, 16 U.S.C. 839d(c) (Northwest Power Act), requires a hearing to be held on BPA proposals to acquire a major resource or to implement a conservation measure which will conserve an amount of power equivalent to a major resource. Section 3(12) of the Northwest Power Act, 16 U.S.C. 839a(3)(12), defines a major resource as having a planned capability greater than 50 average megawatts and is acquired for a period of more than 5 years. The Administrator is also required, on the basis of the hearing, to determine whether the proposal is consistent with the Northwest Conservation and Electric Power Plan (Plan) of the Pacific Northwest Electric Power and Conservation Planning Council (Council). Notice is hereby given for a section 6(c) hearing on the proposed conservation/modernization program.

Responsible Official: Mr. John D. Carr, Director, Division of Planning and Evaluation, Office of Conservation, is the official responsible for the section 6(c) hearing on the conservation/modernization program.

DATES: A description of the proposal conservation/modernization program and supporting decision document are available at this time from BPA's Public Reference Room, 1002 NE. Holladay, Portland, Oregon 97232–4189.

BPA's direct testimony will be available on January 2, 1987, from BPA's Public Reference Room.

Persons wishing to become a party to the hearing must submit a written petition to intervene. The written petition must be received by January 9,1987, and should be addressed to Hearing Officer, c/o James O. Luce, Office of General Counsel—APP, Bonneville Power Administration, 1002 NE. Holladay, Portland, Oregon 97232–4189.

A prehearing conference will be held before the hearing officer at 9:00 a.m. on January 12, 1987, at 1827 NE. 44th Avenue, Portland, Oregon 97213. Registration for the prehearing conference will begin at 8:30 a.m. At the prehearing conference, the hearing officer will establish the hearing schedule which will be mailed to all parties of record.

The hearing will commence at 9:00 a.m. on January 26, 1987, at 1827 NE. 44th Avenue, Portland, Oregon 97213.

Persons who are not parties may submit oral and written comments to the BPA Public Involvement office through February 13, 1987.

The Administrator's record of decision on the proposal will be completed by February 20, 1987. The hearing officer will establish the hearing schedule so as to enable the Administrator to meet this schedule.

The hearing will be conducted pursuant to the section 6(c) Hearings Procedures recently adopted by the Administrator and published concurrently with this notice.

ADDRESSES: Written comments should be submitted to Ms. Donna L. Geiger, Public Involvement Manager, Bonneville Power Administration, P.O. 12999, Portland, Oregon 97212. Oral comments should be submitted to the Public Involvement Office at the following telephone numbers, voice/TTY: 503–230–3478 in Portland; toll-free 800–452–8429 for Oregon outside of Portland; 800–547–6048 for Washington, Idaho, Montana, Wyoming, Utah, Nevada, and California.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa M. Cunningham, BPA Public Involvement office.

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6959.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509-622-4377.

Mr. Terence G. Esvelt, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206-442-4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-522-6226.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.

Mr. Frederic D. Rettenmund, Boise District Manager, 550 West Fort Street, Room 376/Box 035, Boise, Idaho 83724, 208-334-9137.

SUPPLEMENTARY INFORMATION:

I. Background

Section 6(c) of the Northwest Power Act requires the Administrator to (1) conduct a public hearing on any BPA proposal to acquire a major resource or to implement a conservation measure which will conserve an amount of electric power equivalent to a major resource and (2) to determine whether the proposed action is consistent with the Council's Plan. The Act also permits the Council to determine subsequently whether the action is consistent with the Council's Plan. If either the Administrator or the Council determines that the proposed action is inconsistent with the Plan, BPA can proceed with the action only after receiving expenditure authorization from Congress.

II. Proposed Major Resource Action

BPA is proposing to implement a conservation/modernization program which will provide financial incentives to BPA's primary aluminum smelter direct service industrial customers to modernize their plants and make them more efficient users of electricity. An incentive of 5 mills (0.5 cents) per saved kilowatthour for a 10 year period will be offered by BPA for energy saved through efficiency improvements at individual smelters. The benefits include maintaining BPA revenues from these customers, helping to stabilize the region's electric power system loads, and making available to BPA up to 250 megawatts of energy savings when they have needed.

III. Relevant Statutory Provisions

Bonneville Project Act, 16 U.S.C. 832 *et seq.;* Federal Columbia River Transmission System Act, 16 U.S.C. 838 *et seq.;* Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C 839 *et seq.*

IV. Procedures Governing Section 6(c) Hearings

The Section 6(c) Hearings Procedures were recently adopted by the Administrator and are published concurrently with this notice. The procedures area also available upon request from the BPA Public Involvement office.

BPA's 6(c) hearing procedures limit the scope of the hearing to a determination of whether the proposed major resource action will achieve substantially the goals and objectives of the Council's Plan in effect at the time the Administrator initiates a 6(c) proceeding. The 6(c) hearing on the conservation/modernization program will be limited to a determination of whether the program will achieve substantially the goals and objectives of the current 1986 Council Plan.

BPA's 6(c) procedures provide for publication of a notice of a hearing on the proposed major resource action, a prehearing conference, a hearing, receipt of written or oral comments, compilation of the hearing record, preparation of a record of decision, which includes the Administrator's determination regarding consistency, and the transmittal of the record of decision to the Council.

The procedures provide that the Administrator may approximate the amount of time available to the hearing officer to conduct the hearing, compile the hearing record, and permit the Administrator to prepare and complete his record of decision for transmittal to the Council. For the conservation/modernization proposal, the Administrator believes that this process can be completed in 26 days. Therefore, pursuant to section 4 of the 6(c) hearings procedures, the Administrator intends to complete and transmit to the Council the 6(c) record of decision on February 20, 1987.

A prehearing conference has been scheduled before an independent hearing officer on January 12, 1987, at 9 a.m. at 1827 NE. 44th Avenue, Portland, Oregon 97213. Registration for the prehearing conference will begin at 8:30 a.m. Issues for discussion at the prehearing conference may include intervention of parties, discovery, the need for clarification sessions, the scope of cross-examination, hearing schedules, and other pertinent matters.

The 6(c) hearing on the proposed conservation/modernization program will be occurring during the time of BPA's 1987 Transmission and Wholesale Power Rate Adjustment Proceeding. 51 FR 40483; 40484 (Nov. 7, 1986). In the interests of any persons who may wish to participate in both the 6(c) hearing and the rate case, BPA is scheduling the hearings to take place in the same location. BPA intends to schedule the respective hearings such that persons participating in both hearings can attend each hearing with a minimum of inconvenience. Therefore, the Administrator has scheduled the prehearing conference for the 6(c) hearing (January 12, 1987) after the prehearing conference for the rate case (January 9, 1987) in order to assure that any changes in the rate case schedule will not impact the schedule of the 6(c) hearing on the conservation/modernization program.

During the prehearing conference, the hearing officer will act on all intervention petitions and oppositions to intervention petitions, establish additional procedures, establish a service list, establish a procedural schedule, and consolidate parties with like interests into groups for purposes of jointly sponsoring testimony.

The prefiled testimony of BPA witnesses will be available on January 2, 1987, from BPA's Public Reference Room, 1002 NE. Holladay, Portland, Oregon 97232-4189. The telephone number for the Public Reference Room is 503-230-3478. A copy of the testimony will be sent to persons who may be requesting party status. During the 6(c) proceeding, copies of exhibits, studies, qualifications, attachments, and other relevant documents will be available to any interested person for review in the Public Reference Room.

The 6(c) procedures distinguish between "participants" and "parties." Those persons who wish to be "participants" in the hearing need only submit oral or written comments to the BPA Public Involvement Office or at the hearing itself. Participants' comments will become a part of the hearing record and their issues addressed in the record of decision. Participants are not entitled to cross-examine parties' witnesses, seek discovery, serve or be served with documents, and are not subject to the same procedural requirements as parties, such as cross-examination.

Persons who wish to be "parties" to the 6(c) hearing must file a petition to intervene, explaining their interests in sufficient detail to permit the hearing officer to determine whether they have a relevant interest in the hearing. A major resource sponsor, contracting entities, or the Council may intervene and gain party status upon request. All petitions must specify the person's interests in the outcome of the hearing. For this hearing on the conservation/modernization program, any Pacific Northwest aluminum smelter direct service

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industrial customer of BPA, or its industry representative, will be granted party status.

Intervention petitions must be filed with the Hearing Officer, c/o Office of General Counsel—APP, Bonneville Power Administration, 1002 NE. Holladay, Portland, Oregon 97232–4169, and served on BPA's Office of General Counsel—APP, c/o James O. Luce, at the above address. Petitions for intervention in this proceeding must be filed and served by January 9, 1987. Pursuant to section 1(c) of the hearing procedures, BPA waives the requirement in section 5(d) that an opposition to an intervention petition be filed and served at least 24 hours before the prehearing conference. Any opposition to an intervention petition may instead be made at the prehearing conference. Any party, including BPA, may oppose a petition to intervene.

Parties are subject to all procedural requirements contained in these hearing procedures and are entitled to service of documents from all other parties. Parties may also be cross-examined and are required to serve documents on the other parties. The hearing officer may allow BPA and the parties to engage in discovery subject to the time available for the hearing. In order to facilitate any discovery, the hearing officer may order BPA, the parties, or both, to make witnesses available for clarifying sessions. When clarifying sessions are scheduled, BPA and parties intending to participate in clarification of a witness' testimony will be required to serve all data requests relevant to that testimony 3 business days prior to the clarification session. The witness may answer data requests at the clarification session or answer in writing.

The hearing officer may schedule cross-examination as appropriate, limited to issues which the hearing officer determines there are material disputes of fact or to issues identified in a statement of issues adopted by the hearing officer. The hearing officer is encouraged under these procedures to allow filing of surrebuttal testimony in lieu of cross-examination on any issue. At the close of cross-examination, parties may have the opportunity to file briefs. The Administrator may provide for an opportunity for the parties to present oral argument.

Persons need not attend the hearings in order to have their views included in the record. Written or oral comments may be included in the record if they are submitted by February 13, 1987. Procedures for submitting comments to BPA's Public Involvement Office are detailed in the Dates and Addresses sections of this notice.

The hearing record will include, among other things, transcripts of the hearing, testimony and exhibits, all comments submitted to BPA, briefs and pleadings, and any other materials and information submitted by BPA. The hearing officer will certify the record. From this record, the Administrator will prepare a record of decision which will identify and resolve each relevant major issue presented by BPA, parties, or participants in the hearing process. The record of decision will set forth the Administrator's decision on each of these issues.

Upon completion of the record of decision, the Administrator will promptly provide a copy of the record of decision to the Council. The Administrator will also promptly serve copies of the record of decision on all parties to the proceeding. Copies will also be available to the participants upon request to BPA's Public Involvement Office.

V. Statement of Issues

In order to assist the Administrator in making the determination that the conservation/modernization program is consistent with the Plan, two issues will be addressed in the 6(c) hearing on the conservation/modernization program. These two issues are set forth below:

Issues No. 1: whether the conservation/modernization program meets the goal of being a cost-effective resource as defined in the 1986 Plan.

Issue No. 2: whether the conservation/modernization program substantially meets the goals and objectives of the 1986 Plan for regional conservation efforts.

Issued in Portland, Oregon, on November 18, 1986.

Robert E. Ratcliffe,

Acting Administrator, Bonneville Power Administration.

[FR Doc. 86–26612 Filed 11–25–86; 8:45 am]

BILLING CODE 6450-01-M

[BPA File No: 6(c)–86]

Policy for Section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Agency policy.

SUMMARY: On September 19, 1986, Bonneville Power Administration (BPA) issued a "Proposed Legal Interpretation of section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act" (Northwest Power Act or Act), 16 U.S.C. 839d(c). A notice of the availability of the proposed interpretation was also published. (*See* 51 FR 36841 (Oct. 16, 1986). Section 6(c) requires the Administrator to conduct public hearings on any BPA proposal to acquire a major resource or to implement a conservation measure which will conserve an amount of electric power equivalent to a major resource, and to determine whether the proposed major resource acquisition is consistent with the Pacific Northwest Electric Power and Conservation Planning Council's (Council) Northwest Conservation and Electric Power Plan (Plan). In addition, the Act also permits the Council to determine subsequently whether the proposal to acquire the major resource or conservation measure is consistent with the Council's Plan. If either BPA or the Council determine that the proposed major resource acquisition is inconsistent with the Plan, BPA can acquire the major resource only after receiving approval from Congress. BPA invited comments to its proposed interpretation and considered these comments in promulgating the following section 6(c) Policy (Policy). This Policy addresses the types of resource acquisition proposals subject to section 6(c) review, the procedures for section 6(c) hearings, and the criterion for a BPA finding of consistency with the Plan.

Responsible Official: John D. Carr, Director, Division of Planning and Evaluation, Office of Conservation, is the official responsible for this Policy.

FOR FURTHER INFORMATION CONTACT: Lynn W. Baker, Public Involvement Office, P.O. Box 12999, Portland, Oregon 97212, 503–230–3478. Oregon callers outside Portland may use 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Wyoming, and Washington may use 800–547–6048. Information may also be obtained from:

Mr. Terrence G. Esvelt, Puget Sound Area Manager, Room 250, 415 First Avenue North, Seattle, Washington 98109, 206–442–4130.

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97208, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503–687–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6226, extension 701.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Federal Building, 550 W. Fort Street, Room 376, Boise, Idaho 83724, 208–334–9137.

SUPPLEMENTARY INFORMATION:

I. Background

A. Relevant Statutory Provision

Section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839d(c), requires the Administrator to conduct public hearings on any BPA proposal to acquire a major resource or to implement a conservation measure which will conserve an amount of electric power equivalent to a major resource, and to determine whether the proposed major resource acquisition is consistent with the Council's Plan. In addition, the Act also permits the Council to determine subsequently whether the major resource or conservation measure is consistent with the Council's Plan. If either the Administrator or the Council determine that the proposed major resource acquisition or conservation measure implementation is inconsistent with the Plan, BPA can acquire the major resource or implement the conservation measure only after receiving expenditure authorization from Congress. Section 6(c) provides:

> 6.(c)(1) For each proposal under subsection (a), (b), (f), (h) or (l) of this section to acquire a major resource, to implement a conservation measure which will conserve an amount of electric power equivalent to that of a major resource, to pay or reimburse investigation and preconstruction expenses of the sponsors of a major resource, or to grant billing credits or services involving a major resource, the Administrator shall—
>
> 6.(c)(a)(A) publish notice of the proposed action in the **Federal Register** and provide a copy of such notice to the Council, the Governor of each State in which facilities would be constructed or a conservation measure implemented, and the Administrator's customers;
>
> 6.(c)(1)(B) not less than sixty days following publication of such notice, conduct one or more public hearings, presided over by a hearing officer, at which testimony and evidence shall be received, with opportunity for such rebuttal and cross-examination as the hearing officer deems appropriate in the development of an adequate hearing record;
>
> 6.(c)(1)(C) develop a record to assist in evaluating the proposal which shall include the transcript of the public hearings, together with exhibits, and such other materials and information as may have been submitted to, or developed by, the Administrator; and
>
> 6.(c)(1)(D) following completion of such hearings, promptly provide to the Council and make public a written decision that includes, in addition to a determination respecting the requirements of subsection (a), (b), (f), (h), (l), or (m) of this section, as appropriate—
>
> 6.(c)(1)(D)(i) if a plan is in effect, finding that the proposal is either consistent or inconsistent with the plan or, notwithstanding its inconsistency with the plan, a finding that it is needed to meet the Administrator's obligations under this Act, or
>
> 6.(c)(1)(D)(ii) if no plan is in effect, a finding that the proposal is either consistent or inconsistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2) of this Act or notwithstanding its inconsistency, a finding that it is needed to meet the Administrator's obligations under this Act.
>
> 6.(c)(1)(D) In the case of subsection (f) of this section, such decision shall be treated as satisfying the applicable requirements of this subsection and of subsection (f) of this section, if it includes a finding of probable consistency, based upon the Administrator's evaluation of information available at the time of completion of the hearing under this paragraph. Such decision shall include the reasons for such finding.
>
> 6.(c)(2) With sixty days of the receipt of the Administrator's decision pursuant to paragraph (1)(D) of this subsection, the Council may determine by a majority vote of all members of the Council, and notify the Administrator—
>
> 6.(c)(2)(A) that the proposal is either consistent or inconsistent with the plan, or
>
> 6.(c)(2)(B) if no plan is in effect, that the proposal is either consistent or inconsistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2).
>
> 6.(c)(3) The Administrator may not implement any proposal referred to in paragraph (1) that is determined pursuant to paragraph (1) or (2) by either the Administrator or the Council to be inconsistent with the plan or, if no plan is in effect, with the criteria of section 4(e)(1) and the considerations of section 4(e)(2)—
>
> 6.(c)(3)(A) unless the Administrator finds that, notwithstanding such inconsistency, such resource is needed to meet the Administrator's obligations under this Act, and
>
> 6.(c)(3)(B) until the expenditure of funds for that purpose has been specifically authorized by Act of Congress enacted after the date of the enactment of this Act.
>
> 6.(c)(4) Before the Administrator implements any proposal referred to in paragraph (1) of this subsection, the Administrator shall—
>
> 6.(c)(4)(A) submit to the appropriate committees of the Congress the administrative record of the decision (including any determination by the Council under paragraph (2) and a statement of the procedures followed or to be followed for compliance with the National Environmental Policy Act of 1969.
>
> 6.(c)(4)(B) publish notice of the decision in the **Federal Register**, and
>
> 6.(c)(4)(C) note the proposal in the Administrator's annual or supplementary budget submittal made pursuant to the Federal Columbia River Transmission System Act (16 U.S.C. 838 and following).
>
> 6.(c)(4) The Administrator may not implement any such proposal until ninety days after the date of which such proposal has been noted in such budget or after the date on which such decision has been published in the **Federal Register**, whichever is later.
>
> 6.(c)(5) The authority of the Council to make a determination under paragraph (2)(B) if no plan is in effect shall expire on the date two years after the establishment of the Council.

B. Public Involvement

BPA and the Council issued a joint Issue Paper on July 29, 1986, in which the major issues involving section 6(c) were presented and alternative approaches were discussed and explored. BPA and the Council received 30 written comments in response to the Issue Paper. BPA and the Council also created a Consultation Group to meet with both agencies to discuss the Issue Paper and assist the agencies in the development of their respective proposed policies. This group met on July 24 and September 2, 1986.

On September 19, 1986, BPA issued a "Proposed Legal Interpretation of section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act, Request for Comments." BPA also published a notice of the availability of the proposed interpretation. (51 FR 36841 October 16, 1986). BPA requested written comments from the public on the interpretation. BPA received comments from 25 parties, including publicly-owned utilities, investor-owned utilities, and organizations representing these utility groups, environmental and fish and wildlife interests, and direct service industrial customers. The following parties submitted written comments: W. Culham, Natural Resources Defense Council, H. Grant, National Wildlife Federation, M. Blumm, Montana Department of Natural Resources and Conservation, Intercompany Pool (two comments), National Marine Fisheries Services, Western Public Agencies Group, Pacific Gas and Electric Company, Idaho Attorney General, Pacific Power & Light Company, Pacific Northwest Utilities Conference Committee, Non-Generating Public Utilities, Public Power Council, The Washington Water Power Company (two comments), Washington State

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Energy Office, Northwest Conservation Act Coalition, Direct Service Industries, Inc., Columbia River Inter-Tribal Fish Commission, B. Braaton, Oregon Department of Energy, and the Confederated Tribes of the Umatilla Indian Reservation. This policy has taken full consideration of the comments of these interested parties. These comments are addressed in BPA's Decision Document, dated November 12, 1986, which is available upon request from BPA's Public Involvement Office.

C. Scope of Policy

This Section 6(c) Policy addresses only proposals to acquire major resources under subsections (a), (b) and (1), and proposals to implement a conservation measure under subsection (a) and (b) which will conserve an amount of electric power equivalent to that of a major resource. This policy does *not* address proposals to pay or reimburse investigation and preconstruction expenses of the sponsors of a major resource under subsection (f), or proposals to grant billing credits or services involving a major resource under subsection (h).

II. Policy

A. Definitions

This section contains definitions of terms used in the Policy and is a part of the Policy. Terms defined in the Northwest Power Act have the same meaning in this policy, unless further defined.

1. *Acquire or acquisition.* To "acquire" means to incur, and an "acquisition" is, a contractual obligation to make payment for:

a. specified rights to the output or capability of a generating resource; or

b. the installation of specified conservation measures, or for conservation savings.

2. *Binding contract offer.* A "binding contract offer" exists when the Administrator presents a unilaterally executed contract for signature by the other contracting party.

3. *Conservation resource.* A "conservation resource" is actual or planned reduction of electric power consumption resulting from increases in the efficiency of energy use, production or distribution, by either:

a. the direct application of renewable resources by a consumer; or

b. the implementation of conservation measures.

4. *Generating resource.* A "generating resource" is actual or planned electric power capability of the following type of generating facility:

a. renewable resources, such as solar, wind, hydro, goethermal, biomass, or similar sources of energy; or

b. resources using waste heat or having high fuel conversion efficiency; or

c. thermal resources, such as nuclear and coal; or

d. combustion turbines.

5. *Option.* An "option" is the purchase of a unilateral right to acquire an existing or proposed generating or conservation resource within a particular time period on specified terms. No commitment to acquire a resource is made at the time an option is purchased. Options will be used as low-cost means to increase BPA's flexibility in meeting the range of future resource needs.

B. Threshold

1. *Proposals.*

a. The existence of a proposal, and when to initiate a section 6(c) hearing process on the proposal, will be determined by the Administrator. This determination will take into account, among other criteria, the existence of sufficient information concerning a proposed future resource action such that the proposal's compliance with statutory requirements and its consistency with the Council's Plan can be adequately assessed.

b. BPA shall consult with the Council and with representatives from the region prior to the time a section 6(c) review is initiated. Such consultation will address the advisability of modifying BPA's proposal and/or amending the Council's Plan. In addition, BPA shall consult periodically with the Council and representatives of the region with a view to discussing potential proposals to acquire resources within the context of section 6(c).

c. Given the necessarily preliminary current level of understanding of the types of resource acquisitions that may require review pursuant to section 6(c), the Administrator will initiate, at least once every 5 years, a public policymaking concerning the section 6(c) Policy, including threshold, procedures, and consistency criterion, in order to evaluate evolving understandings of resource acquisitions and to assess the need for changes in this Policy. The result of such public policymaking will be a final action for purposes of judicial review under section 9(e)(5) of the Northwest Power Act, or other applicable laws.

2. *Generating resources.*

a. A proposal to acquire a generating resource shall be subject to section 6(c) review if the aggregate megawatts proposed to be acquired at any one generating resource project constitute more than 50 average megawatts and are acquired for a period of more than 5 years.

b. A proposal to acquire a generating resource through a utility system sale shall be subject to section 6(c) review if the aggregate megawatts proposed to be acquired from the utility for that sale constitute more than 50 average megawatts and are acquired for a period of more than 5 years.

c. The aggregate megawatts proposed to be acquired shall be measured by the Administrator upon consideration of factors including, but not limited to, planned capability measured with generally accepted planning criteria, and the term of the contract for acquisition.

3. *Generation programs*

a. A generation program shall be subject to section 6(c) review if the Administrator proposes to one or more entitites binding contract offers to acquire more than 50 average megawatts of electric power for a period of more than 5 years:

(1) From a single generating resource technology, and

(2) At a fixed price or a fixed price formula.

b. The electric power proposed to be acquired shall be measured by the Administrator upon consideration of factors including, but not limited to, planned capability measured with generally accepted planning criteria, and the term of the contract for acquisition.

c. An individual contract resulting from a generation program which has been reviewed under section 6(c) shall not be subject to further review under section 6(c).

4. *Conservation resources*

a. A proposal to acquire a conservation resource shall be subject to section 6(c) review if the aggregate megawatts proposed to be acquired under a single contract constitute more than 50 average megawatts and are acquired for a period of more than 5 years.

b. The aggregate megawatts proposed to be acquired shall be measured by the Administrator upon consideration of factors including, but not limited to, planned savings based upon a reasonably expected penetration of the activities, and the term of the contract for acquisition.

5. *Conservation programs*

a. A conservation program shall be subject to section 6(c) review if the Administrator proposes to one or more entities generic contracts which consist of a set of logically related activiites proposed by the Administrator to capture more than 50 average megawatts of energy savings in a recognized planning sector or subsector for a period of more than 5 years, and which either:

(1) Do not specify particular measures to be installed or implemented, but require an actual delivery of savings for payment; or

(2) Are provided by a single mode of program delivery and consist of a well-defined set of measures, but do not require actual delivery of savings for payment.

b. The energy savings proposed to be acquired shall be measured by the Administrator upon consideration of factors including, but not limited to, the planned savings based upon a reasonably expected penetration of the activities, and the term of the contract for acquisition.

c. An individual contract resulting from a conservation program which has been reviewed under section 6(c) shall not be subject to further review under section 6(c).

6. *Requests for proposals*

a. A request for proposals (RFP) issued by the Administrator, which the Administrator has determined does not constitute a binding contract offer, shall not be subject to section 6(c) review.

b. In response to an RFP, the Administrator retains the discretion to acquire the electric power or the energy savings through an acquisition under sections 2–5, above. In the event of an acquisition under section 3 or 5, the Administrator may choose to expand the program to entities which did not participate in or respond to the RFP.

7. *Options to acquire major resources*

a. A proposal to purchase an option shall not be subject to section 6(c) review.

b. A proposal to exercise a major resource option shall be subject to section 6(c) review.

8. *Section 6(1) Resources*

a. A proposal to acquire a major extraregional renewable resource shall be subject to section 6(c) review.

b. Interregional exchanges are not subject to section 6(c) review.

C. Section 6(c) Hearings Procedures

The appendix, incorporated by reference into this Policy, specifies the procedures for the section 6(c) hearings.

D. Consistency

A BPA proposal pursuant to section 6(c)(1) of the Northwest Power Act shall be found consistent with the Northwest Conservation and Electric Power Plan if it is judged to be so structured that it will achieve substantially the goals and objectives of the Plan in effect at the time the proposal is made.

Issued in Portland, Oregon, on November 12, 1986.

James J. Jura,

Administrator.

APPENDIX TO POLICY FOR SECTION (6)(c) OF THE PACIFIC NORTHWEST ELECTRIC POWER PLANNING AND CONSERVATION ACT

Section 6(c).—Hearings Procedures

1. Applicability and Scope

(a) *General Procedures.* These procedures apply to all proceedings conducted under the procedural requirements contained in section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. 839d(c)

(b) *Scope.* The scope of all proceedings conducted under these procedures shall be limited to an inquiry into whether the action proposed by the Administrator will achieve substantially the goals and objectives of the Council's Plan.

(c) *Waiver.* To the extent permitted by law, the Administrator may waive any section of these procedures or prescribe any alternative procedures he determines to be appropriate.

2. Definitions

(a) "Administrator" means the BPA Administrator or the Acting Administrator.

(b) "Agent" means counsel, consultants, witnesses, employees and other representatives of a person.

(c) "Council" means the members appointed to the Pacific Northwest Electric Power and Conservation Planning Council.

(d) "Hearing Officer" means the official designated by the Administrator to conduct a hearing pursuant to Northwest Power Act Section 6(c).

(e) "Legal Issue" includes any issue grounded on any contractual right or obligation, and of BPA's organic statues, the administrative Procedure Act, 5 U.S.C. 551, *et seq.*, or the Trade Secrets Act, 18 U.S.C. 1905, which has a bearing on the propriety of the action proposed by the Administrator.

(f) "Participant" means any person submitting for the record oral or written comments pursuant to section 6 of these procedures on a major resource action proposed by the Administrator.

(g) "Party" means any person whose intervention is effective under section 5.

(h) "Person" means an individual, partnership, corporation, association, an organized group of persons, a municipality, including a city, county, or any other political subdivision of a state, any agency, department, or instrumentality of a state, a state compact agency or interstate body, a province, or the United States, or any officer, or agent of any of the foregoing acting in the course of his or her employment or agency.

(i) "Record" means the testimony, exhibits, transcripts, notices, comments briefs, pleadings, and such other materials and information as submitted or developed by the Administrator. The record shall be certified by the hearing officer.

(j) "Record of Decision" means the document, issued by BPA which identifies and resolves each relevant, major issue in the 6(c) hearing; summarizes the factual, legal and policy arguments presented by BPA, the parties, and the participants on such issue; and sets forth the Administrator's decision on such issue.

3. Notice of Proposed Action

(a) The Administrator shall publish notice of any proposed action pursuant to Section 6(c) in the **Federal Register** and provide a copy of the notice to:

(1) The member of the Council and its executive staff;

(2) The Government of each State in the Pacific Northwest Region;

(3) The Administrator's customers; and

(4) Others the Administrator deems appropriate.

(b) The Administrator may initiate the section 6(c) process with this notice by indicating a date, not less than 60 days following publication of this notice, on which a public hearing or hearings will be held pursuant to section 6(c). This notice must comply with the requirements of section 4.

4. Initiation of Section 6(c) Process

(a) A section 6(c) process on the Administrator's proposed major resource action may be initiated by a hearing notice published in the **Federal Register**. The hearing notice shall:

(1) Specify the proposed major resource action;

(2) Establish a deadline for filing petitions to intervene;

(3) Specify the date on which the Administrator will issue the Record of Decision, which date shall be used by the hearing officer in establishing the procedural schedule for the hearing;

(4) Establish the dates on which the hearing officer will conduct the prehearing conference and commence the 6(c) hearing;

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(5) Set forth a statement and short explanation of each of the issues to be addressed in the hearing; and

(6) Provide other information which the Administrator determines to be pertinent to the hearing.

(b) The Administrator shall provide a copy of the notice to the persons identified in section 3(a).

5. Intervention

(a) *Filing.* A person seeking to become a party in a 6(c) hearing must file a petition to intervene with the hearing officer. A copy of the petition shall be served on BPA's Office of General Counsel/APP.

(b) *Contents.* The petition shall state the name and address of the person and the person's interests in the outcome of the hearing. Petitioners may designate no more than two persons on whom service will be made. The major resource sponsor, contracting entities, or the Council shall be granted intervention, based on a petition filed in conformity with this section. Other petitioners must explain their interests in sufficient detail to permit the hearing officer to determine whether they have a relevant interest in the hearing.

(c) *Time.* (1) Petitions must be filed within the time specified in the section 4 notice of the hearing in question.

(2) Granting an untimely petition to intervene must not be a basis for delaying or deferring any procedural schedule. A late intervenor must accept the record developed prior to its intervention. In acting on an untimely petition, the hearing officer shall consider whether:

(i) The petitioner has a good reason for filing out of time;

(ii) Any disruption of the proceeding might result from allowing a late intervention;

(iii) The petitioner's interest is adequately represented by existing parties; and

(iv) Any prejudice to, or extra burdens on, existing parties might result from permitting the intervention.

(d) *Opposition.* Any opposition to an intervention petition shall be filed and served at least 24 hours before the prehearing conference. Opposition to a late intervention petition shall be filed and served within 2 business days after service of the petition.

(e) *Application of hearing procedures.* Procedures specified in sections 8–14 are available only to parties, and are not available to participants.

6. Participation

Any person who is not a party may become a participant by submitting oral or written recommendations for the record or by testifying in legislative-style hearings when conducted by the Administrator for the purpose of receiving public comment. Oral or written comments must be submitted to the BPA Public Involvement Office.

7. Prehearing Conference

A prehearing conference shall be held on the date specified in the Administrator's section 4. **Federal Register** notice. During the conference, the hearing officer shall:

(a) Act on all intervention petitions;

(b) Establish any special procedures the hearing officer considers appropriate, provided that such special procedures conform to BPA's procedures governing proposed major resource actions;

(c) Establish a service list;

(d) Establish a procedural schedule for the entire hearing which may include the scheduling of prefiled testimony; and

(e) Consolidate parties with similar interests into groups for purposes of filing jointly sponsored testimony and briefs and for expediting cross-examination.

8. Discovery

The hearing officer may allow BPA and the parties to any 6(c) hearing to engage in discovery, and be subject to discovery requests, subject to the time available for the hearing and according to the following rules:

(a) *Data requests.* Data requests shall be made in writing at the times designated in the procedural schedule. Any relevant information may be requested that is not privileged or unduly burdensome to produce. Requests shall be addressed to counsel for the party to whom the request are sent (or directly to a party not represented by counsel), and shall be served on all parties to the service list compiled by the hearing officer. Responses to data requests are required to be served on the requesting party or counsel for the requesting party.

(b) *Clarification sessions.* The hearing officer may schedule one or more transcribed sessions for the purpose of allowing parties to question witnesses about the contents of their prepared testimony and the derivation of their recommendations and conclusions. The procedural schedule shall require that BPA and the parties wishing to participate in clarification of a witness' testimony serve all data requests pertaining to that testimony at least 3 business days prior to the session. Witnesses shall have the option of providing answers to data requests during the clarification session. If a witness is unable to answer a given question during the clarifying session, the answer to that question shall be provided in accordance with paragraph (a) of this section.

(c) *Objections to discovery.* Objections to data requests or to questions asked during clarification sessions shall be submitted within the time specified in the procedural schedule. Objections must explain the grounds on which response is being withheld.

(d) *Motions to compel.* Anyone whose data request or clarifying question is not answered may file a motion with the hearing officer to compel an answer. The movant must certify that it first attempted to resolve the objection informally with the objecting party. Motions to compel must be made within the time specified in the procedural schedule.

(e) *Privileged Information.* The hearing officer may issue protective orders or make in camera inspection of documents as necessary to protect copyrighted, proprietary, or othewise privileged information. The hearing officer may not order release of documents in BPA's possession withheld on the basis of exemptions to the Freedom of Information Act, 5 U.S.C. section 552, or the Trade Secrets Act, 18 U.S.C. 1905.

(f) *Sanctions.* The hearing officer may remedy any refusal to comply with an order compelling answer to a data request or clarification question by:

(1) Striking the testimony or exhibits to which the question or request relates; or

(2) Limiting discovery or cross-examination by the party refusing to answer or respond.

(g) *Copies.* Any party wishing copies of data responses should request them from the party submitting the response.

9. 6(c) Hearing Schedule

(a) *General Rule.* Consistent with fairness to the parties and participants, the hearing officer may establish procedures and conduct hearings as necessary to develop a full and complete record and to receive public comment and argument related to the proposed major resource action. The Record of Decision in 6(c) hearings shall be issued on the date set forth in the notice issued under section 4., except as provided in paragraph (b) of this section.

(b) *Extensions.* Only the hearing officer may request the Administrator to extend the hearing limit, on a showing of good cause by a party. Upon a determination of the hearing officer that a party's showing has merit and is not dilatory, the hearing officer may request in writing an extension of time from the Administrator. Submission of a request shall not have the effect of staying the proceedings. The Administrator shall notify the hearing officer and the parties of his determination within 4 days thereafter.

10. Testimony and Exhibits

(a) *General Rule.* (1) The opportunity for refutation or rebuttal on any material submitted by any other party or by BPA shall be provided to the parties as the hearing officer deems appropriate. Except as provided in paragraph (b), witnesses shall submit all testimony and exhibits at the times specified in the procedural schedule. Oral testimony will be permitted only by leave of the hearing officer.

(2) Any rebuttal to BPA's direct case must be contained in a party's direct testimony, which shall also contain any affirmative case that party's wishes to present. Any subsequent rebuttal testimony permitted by the hearing officer shall be limited to rebuttal of the parties' direct cases. In lieu of cross-examination, the hearing officer is encouraged to allow the filing of surrebuttal testimony on an issue.

(3) Written testimony must have line numbers inserted in the left-hand margin of each page. It is the responsibility of each party to obtain from the hearing officer's clerk exhibit numbers for display on prefiled testimony and exhibits.

(4) The hearing officer shall reject exhibits and other documentation of excessive length. Parties may only introduce into evidence excerpts or summaries of such documentation, which exclude irrelevant or redundant material.

(b) *Items by reference.* Other testimony, exhibits, or studies may be designated as items by reference in any proceeding. Items by reference should not be physically included in the record, unless the hearing officer so orders.

(c) *Offical notice.* The hearing officer may take official notice of any matter that may be judicially noticed by federal courts, or any matter about which BPA is expert.

(d) *Motions to strike.* Motions to strike prefiled testimony and exhibits shall be filed within 7 days after service. Answers to the motion may be made; however, the movant may not reply to the answer.

(e) *Record of participants.* Testimony and comments received pursuant to section 6. shall be compiled in a separate section of the record.

(f) *Sanctions.* The hearing officer may reject or exclude all or part of any evidentiary material or pleading not submitted in accordance with this section.

11. Hearing

(a) *Panels.* The hearing officer may permit a party's witnesses to testify in a panel, provided that each panel member (1) has submitted a statement of qualifications, and (2) is under oath. Any panel member may respond to a cross-examination question.

(b) *Cross-examination.* (1) Cross-examination shall be provided as the hearing officer deems appropriate and shall be limited to issues which the hearing officer determines there are material disputes of fact or to issues identified in a statement of issues adopted by the hearing officer. The hearing officr may impose reasonable time limitations on the cross-examination of any witness.

(2) Only counsel for a witness may object to questions asked during cross-examination, except in instances of friendly cross-examination or where the objector can demonstrate that answers would unduly prejudice its interests.

(3) Where parties have substantially similar positions, the hearing officer may appoint lead counsel to conduct cross-examination.

(4) The hearing officer shall not permit cross-examination on issues where it is clear that the questioner's position is not adverse to that of the witness, *viz.,* friendly cross-examination.

(c) *Cross-examination exhibits.* (1) Documents used during cross-examination of any witness must be submitted to the hearing officer and to the witness' counsel 3 business days prior to the date set for cross-examination.

(2) If a document used as a cross-examination exhibit contains material not offered as evidence, the party utilizing the exhibit must:

(i) Plainly designate the matter offered as evidence; and

(ii) Segregate and exclude the material not offered in evidence, to the extent practicable.

(d) *Stipulations.* The hearing officer may receive into evidence stipulations on any issue of fact.

(e) All other matters relating to conduct of hearings are left to the discretion of the hearing officer.

12. Briefs.

(a) *General rule.* (1) At the conclusion of the evidentiary portion of a hearing, the hearing officer may allow each party to submit a brief. The purpose of a brief is to identify separately each legal, factual, and policy issue to be resolved by the Administrator and present all arguments in support of a party's position on each of these issues. The brief should also rebut contentions made by adverse witnesses in their prepared testimony.

(2) All evidentiary arguments in briefs must be based on cited material contained in the record. Materials not admitted into evidence shall not be attached to any brief. Incorporation by reference shall not be permitted. The hearing officer may impose page limitations on any brief.

(b) *Sanctions.* The hearing officer shall not admit into the record any brief that does not conform to this section.

13. Oral Argument

An opportunity for parties to present oral argument may be provided at the discretion of the Administrator.

14. Service of Documents

BPA and each party shall provide a copy of all motions, briefs, pleadings and prefiled materials to all persons listed in the service list compiled by the hearing officer. Until a service list is adopted by the hearing officer under section 6., service on parties may be made by service on BPA General Counsel/APP. Parties may designate no more than two persons on whom service shall be made. The Administrator may designate additional persons upon whom service will be made. Participants shall not be included on the service list. Service of requests for data and responses to such requests is governed by section 8 (b) and (h).

15. Record of Decision

(a) *Determinations.* The Administrator shall make public a written decision which contains the following two determinations:

(1) The proposed action satisfies the requirements of subsection (a), (b), (f), (h), (l), or (m) of section 6 of the Northwest Power Act, as appropriate; and either:

(2) The proposed action is consistent with the Council's Plan; or

(3) The proposed action is inconsistent with the Council's Plan; or

(4) Nothwithstanding the proposed action's inconsistency with the Council's Plan a finding that the proposed action is needed to meet the Administrator's obligations under the Northwest Power Act.

(b) *Submission of Record.* The Administrator shall promptly provide a copy of the Record of Decision to the Council.

(c) *Service of Record.* The Administrator shall promptly serve copies of the Record of Decision on all parties to the proceeding. Copies of the

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Record of Decision shall be made available to participants and the public upon request to BPA's Public Involvement Manager.

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Record of Decision; Proposed Conservation/Modernization (Con/Mod) Program; Direct Service Industry Options Environmental Impact Statement (EIS)

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Aluminum Smelter Conservation/Modernization Program Offering.

SUMMARY:

Decision

The Bonneville Power Administration has decided to offer the Con/Mod option analyzed in the Final EIS (DOE/EIS-0123F) and the *DSI Options Study* (Options Study, DOE/BP-475 and 477) that provides a 5 mills per kilowatthour (/kWh) incentive to all the region's aluminum smelters for electric energy efficiency improvements resulting from plant modernization.

Decision Factors

BPA considered several factors before the decision was made to offer the Con/Mod program. The decision factors included: (1) Legal requirements; (2) stabilization of BPA revenues and loads; (3) economic effects on other BPA customers; (4) equity for all aluminum plants in the region; and (5) socioeconomic and physical environmental impacts.

Alternatives

Con/Mod

Con/Mod consist of onsite modifications and retrofits to improve the production efficiency of aluminum smelters.

BPA studied three levels of Con/Mod incentive in the Final EIS: 3, 5, and 10 mills/kWh of energy saved. In addition, three approaches were considered for how BPA should offer a Con/Mod program; (1) A pilot program whereby only one or two of the total ten smelters in the region would participate, based on a competitive solicitation (the pilot program would be expanded at a later time to include the remaining smelters); (2) a targeted program whereby the oldest, least efficient smelters would be targeted for BPA financial support to modernize; and (3) a program offered-to-all aluminum smelters in the region on a non-competitive basis.

Other program features of the proposed Con/Mod program were discussed in the program development process, such as program duration and term of payment, but these features are not anticipated to affect physical environmental impacts. A no-action alternative was also considered.

No Action

BPA would not offer Con/Mod to the aluminum industry, but rather rely on the smelters to modernize solely on their own.

Environmentally Preferred Alternative

The Con/Mod program, in combination with the variable rate which was recently implemented (Variable Industrial Power Rate Record of Decision, 51 FR 23811), is the environmentally preferred alternative. Together they offer an improved atmosphere for aluminum companies to make long-term decisions related to operation and facility upgrades. Those decisions will be based on electricity costs that are relatively responsive to aluminum market conditions and a fixed incentive offered for energy saved through plant modernization.

Rationale

Based on the Final EIS, BPA determined that the socioeconomic factors outweigh any environmental impacts that may result from actual physical modifications and process changes used to effect Con/Mod at Northwest aluminum smelters. Any environmental impacts from a combination of the proposed Con/Mod with the variable rate would also be outweighed by the socioeconomic benefits, particularly the resulting continued employment in the region.

Mitigation

Adverse environmental impacts are not likely to result from BPA's proposed Con/Mod program or cumulatively from the Con/Mod program with the variable rate. Specific environmental mitigation measures for the Con/Mod program are not needed and none are proposed.

Monitoring

BPA does not plan to monitor environmental effects of the proposed Con/Mod initiative. The aluminum companies are required to monitor their environmental performance and make periodic reports to the environmental regulatory agencies that have jurisdiction in their respective geographic locations.

FOR FURTHER INFORMATION CONTACT: Anthony R. Morrell, Environmental Manager, Bonneville Power Administration, P.O. Box 3621-SJ, Portland, Oregon 97208, telephone (503) 230-5136.

SUPPLEMENTARY INFORMATION:

Background

The BPA has been considering three options to help stabilize the alumium Direct Service Industries' (DSI) loads, thereby maintaining and possibly enhancing BPA's revenues. These aluminum smelters purchase power directly from PBA. Collectively, they are facing an economic downturn in the current metals market and competition worldwide from newer, more efficient plants. Two smelters in the region already have closed and others are operating well below production capacity levels.

From a legal standpoint, the decision to make the Con/Mod program available to the region's smelters is authorized by sections 2(1)(A) and 6 of the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (Northwest Power Act), 16 U.S.C. 839(1)(A), 839d; section 11(b) of the Federal Columbia River Transmission System Act, 16 U.S.C. 838i(b); section 2(f) of the Bonneville Project Act, 16 U.S.C. 832a(f) [as affirmed in Section 9(a) of the Northwest Power Act, 16 U.S.C. 839f(a)]; and other laws.

BPA completed the *Final Environmental Impact Statement, Direct Service Industry Options* in April 1986. In the Final EIS, BPA analyzed the potential environmental impacts of no action and alternatives for each of three options identified in the BPA publication entitled *DSI Options Study, Final Report,* Parts 1 and 2, June 1985 (DOE/BP-475 and 477). The three options identified were: (1) A variable rate to the aluminum smelter DSI's based on market prices for aluminum; (2) a conservation/modernization program incentive to encourage the aluminum smelter DSI's to modernize; and (3) a rate "link" between rates charged BPA's preference customers and those charged the DSI customers (the IP-PF rate link).

The major effects examined in the Final EIS included aluminum smelter operations, resource operations and development, and environmental and socioeconomic impacts.

The three options, or actions, are not alternatives to each other since each could be implmented independently. One of the options considered, the variable rate, has already been offered by BPA and accepted by the region's primary aluminum smelters. This occurred only after completion of the Final EIS and the Variable Industrial Power Rate Record of Decision (ROD).

This ROD pertains only to the Con/Mod program for aluminum smelters and does not resolve issues relating to the proposed IP–PF rate link, which still is under consideration by BPA. In arriving at its decision on the Con/Mod program, BPA considered potential impacts identified in the Final EIS of implementing such a program, as well as potential cumulative impacts associated with implementing a Con/Mod program in combination with the recently adopted variable rate.

Decision

BPA has decided to make an Aluminum Smelter Conservation/Modernization Program available to the region's primary aluminum smelters.

The Con/Mod program will provide 5 mills/kWh for energy saved by the aluminum companies through electric energy efficiency improvements. BPA will provide 10-year payment terms in return for a reduction in each participating company's contract demand (i.e., the maximum power entitlement provided to a Direct Service Industry by BPA). The contract demand reduction will provide energy to the region when BPA determines it is needed.

The program will be offered to all the primary aluminum smelters located in the BPA service area. The program will be available to the aluminum smelters through the term of the Power Sales Contracts with the DSI's.

The Con/Mod program is designed to support additional capital investments by the aluminum companies to modernize the region's primary aluminum smelters, thereby helping to stabilize BPA's system loads and power sales revenues.

For as long as it operates, the program proposed by BPA will make available assistance to the Northwest aluminum industry as a whole. Business decisions on the part of the companies will determine program participation. Participation by companies will benefit BPA, the aluminum industry, and the region by providing for more stable BPA loads and revenues in the short term. In the long term, the energy conservation acquired from the smelters will provide additional power to the region when it is needed.

Alternatives

The following alternatives were analyzed in reaching the decision to offer the Con/Mod Program:

A. *No-Action Alternative.* Under the no-action alternative, an aluminum smelter conservation/modernization program would not be offered. The no-action alternative described in the Final EIS assumed continuation of the rate provisions previously in effect for DSI power sales (prior to the recent offering of the variable rate). That is, it assumed continuation of rate design features in the industrial firm power (IP–85) rate schedule. However, the level of the rate was presumed to change over time, as dictated by BPA costs and revenues computed by the BPA Decision Analysis Model (DAM). Among the features of the no-action alternative defined in the IP–85 rate schedule is the provision for offering an incentive rate when BPA revenues would be increased by doing so.

Subsequent to the completion of the Final EIS (DOE/EIS–0123F), BPA implemented the variable rate for the region's primary aluminum smelters. Hence, the "no-action" alternative now includes the variable rate.

B. *Conservation/Modernization (Con/Mod) Program Alternative.* Under the Con/Mod Alternative, BPA would offer an incentive to the aluminum smelters to make outsite modifications and retrofits to improve their production efficiency.

1. BPA studied three Con/Mod incentive levels in the Final EIS:

a. A 3 mills/kWh saved incentive;

b. A 5 mills/kWh saved incentive; and

c. A 10 mills/kWh saved incentive.

2. In addition, BPA considered three approaches related to how BPA would offer a Con/Mod program:

a. A pilot program whereby only one or two of the total ten smelters in the region would participate based on a competitive solicitation. The pilot program would be expanded at a later time to include the remaining smelters;

b. A targeted program whereby the oldest, least efficient smelters would be targeted for BPA financial support to modernize; and

c. A program offered to all the aluminum smelters in the region on a non-competitive basis.

Rationale

BPA based its decision on five major factors. Those factors and the role each played in the decision are described below.

A. *Legal Requirements.* The Northwest Power Act places a priority on conservation resources. One of the purposes of the Act is to encourage conservation and efficiency in the use of electric power. The Administrator is also authorized to encourage the widest possible use of electric power at the lowest possible rates consistent with sound business principles and to make expenditures to carry out his duties. Modernization of the aluminum smelters is intended to improve the efficiency in the use of electric power in the aluminum production process. The resulting stabilization of the DSI load and maintenance of BPA revenues through the near term actions encouraged by Con/Mod, together with conservation through future load reduction, meet the Administrator's statutory obligations and objectives.

The no-action alternative does not meet the statutory obligations and objectives.

B. *Stabilization of BPA Revenues and Loads.* In recent years, the amount of aluminum smelter power purchases from BPA has fluctuated dramatically from year to year. The changing power demand has resulted in uncertainty about how much load BPA should plan to meet and the amount of resources to acquire, resulting in additional uncertainty about predicate rates. Lower levels of operation at Northwest aluminum smelters also have contributed to weakness and instability in the region's economy as a whole. Short-term attempts to alleviate these problems have been only partially successful. Of the ten aluminum smelters located in the Pacific Northwest, two are now closed. Collectively, when all the region's smelters are operating at historical capacity levels, they provide 25 percent of BPA's revenues through power purchases and account for 30 percent of BPA's total system loads.

BPA desires to stabilize the DSI aluminum smelter loads in order to gain more certainty related to load forecasting, planning, and revenues. Forecasting stable revenues would enhance BPA's ability to make the necessary payments to the U.S. Treasury and would stabilize rates to other BPA customers.

The short-term objective of the Con/Mod initiative is to stabilize BPA loads and revenues through modernization of the region's energy-intensive aluminum industry. The long-term objective is to acquire conservation from efficiency improvements that result from modernization of the smelters.

No-Action Alternative: The no-action alternative, which represented the status quo prior to the offering of the variable rate, did not meet the need for stabilizing the region's aluminum smelters. Even with the variable rate, the no-action alternative does not meet the objective of modernizing the region's aluminum smelters. Under no-action, BPA presumably would offer DSI

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incentive rates on a short-term basis (DOE/EIS-0123F, p. 12). However, these periodic incentive rate offerings have been only partially successful in stabilizing DSI loads in recent years. Furthermore, the variable rate alone does not provide incentives specifically for smelter modernization that the aluminum companies need to influence their long-term smelter operating decisions.

The Con/Mod Alternative: The Con/Mod alternative, in combination with the variable rate, offers the likelihood of the highest production levels at operating smelters (DOE/EIS-0123F, pp. 90-102). Therefore, this alternative presents a greater potential for BPA revenue stability.

C. *Avoidance of Adverse Economic Effects to Other BPA Customers.* One of the design principles for a Con/Mod program identified in the *DSI Options Study* is that other BPA ratepayer classes should not be expected to pay for a program that would primarily benefit only the aluminum DSIs.

No-Action Alternative: Under the no-action alternative, additional aluminum smelter closures would be more likely. In this event, BPA's other customer classes would experience any wholesale rate increases necessary for BPA to meet its payment obligations to the U.S. Treasury.

Additionally, operating levels of some energy-intensive industries purchasing power from retail utilities could be adversely affected if lost revenues to BPA from aluminum plant closures or reduced operations ultimately result in significant rate increases at the retail level. Decreased operating levels for retail industrial consumers could result in additional layoffs.

Finally, wholesale rate increases resulting from aluminum plant closures could discourage some new industries from locating in the Pacific Northwest. This would be more of a factor for those electrical energy-intensive industries from whom rate level and long-term rate stability are important.

Con/Mod Alternative: A Con/Mod incentive in combination with the variable rate probably would result in a higher average level of aluminum production by the region's smelters than would the variable rate alone. A higher average operating level would help to stabilize BPA revenues required to maintain BPA's payments to the U.S. Treasury.

The Con/Mod Alternative would also "secure" or "include" the right for BPA to reduce a participating aluminum company's contract demand (maximum power entitlement provided by BPA) in return for BPA's financial support of plant modernization. A reduction in a company's contract demand would create a benefit to other ratepayers by providing additional power to the region when it is needed, therefore eliminating some of the high cost of new generating resources.

Finally, encouraging continued smelter operations results in continued employment of aluminum workers which has a significant socioeconomic benefit to the region as a whole.

D. *Equity for All Aluminum Plants in the Region.*

No-Action Alternative: Under the no-action alternative, there would be no Con/Mod offering to any of the region's aluminum smelters. Therefore, it could be concluded that the results would not favor one or more smelter(s) over the others.

Con/Mod Alternative: Three approaches to offering Con/Mod to the region's aluminum smelters were evaluated during the design process: (1) a pilot program, (2) a targeted program, and (3) offering Con/Mod to all the region's smelters. However, a guiding principle in the design of the Con/Mod program was to ensure that the program would not unfairly advantage one aluminum smelter over another.

1. *Pilot Program.* In a pilot program, BPA would select one or two facilities as a test of the program and its features. Results of that test would lead to program modifications and a decision whether to extend the offer.

BPA maintains that the *modernization* objective would not be met by a pilot activity. That is, a pilot program would not be sufficient to stabilize the region's aluminum industry by only offering incentives to one or two of the smelters. The *conservation* objective could be met by pilot activity, followed later by a regionwide program available in the early 1990s. However, a pilot program could unfairly advantage one or two aluminum smelters in the region.

2. *Targeted Program.* In a targeted program, BPA would select only the least efficient facilities and provide funds for ungrades. Analysis identified a targeted program as potentially more effective in facilitating upgrades in the plants that are most threatened by the current state of their economies of production. However, this approach was not pursued because: (a) A targeted program is not sufficiently sensitive to the competitive positions of the Northwest plants with one another; (b) determination of effective reimbursement levels and selection of the facilities under a targeted program would be a lengthy and difficult process (undermining the short-term stabilization objective of the program); and (c) a targeted program would put BPA in the position of making business decisions for some of the region's smelters.

3. *Program Offering-to-All Smelters.* This approach offers the Con/Mod program to all of the region's aluminum smelters on a non-competitive basis.

The aluminum industry is highly competitive. BPA is concerned that limiting program eligibility to certain smelters could result in creating a competitive advantage for one plant over another. Offering the program to all smelters is more conducive to the near term goal of stabilizing the aluminum industry in the region as a whole, thereby maintaining BPA revenues and system loads.

E. *Socioeconomic and Environmental Impacts.*

No-Action Alternative: Computer modeling results for the no-action alternative predict average probabilities of operating for each of the region's aluminum smelters. Some plants have a quite high probability of remaining in operation according to the model (e.g., Intalco and Alcoa Wenatchee) while others have a relatively low probability of continuing operation. Those in the latter class are Reynolds at Troutdale; Alcoa at Vancouver (closed in June 1986); and Kaiser at Mead. (All model results for the Alcoa smelter at Wenatchee were for the portion of the plant served only by BPA.)

The employment impacts of smelter closures or reduced operation would tend to be concentrated in immediate areas surrounding the affected aluminum plants. However, there would be some residual effects on regional employment. Certain regional businesses that supply goods and services to the aluminum smelters would face a reduction in demand for their products, thus potentially resulting in employee layoffs.

Closure or reduced operation of some or all of the aluminum smelters could also result in a significant loss of revenues to BPA. The magnitude of the revenue reduction would depend on BPA's ability to market the displaced power at rate levels greater than or equivalent to those paid by the DSI's. A significant revenue reduction would require an overall wholesale power rate increase in order for BPA to recover its costs and continue timely payments to the U.S. Treasury. An overall rate increase would increase costs to the remaining DSI's and to utilities purchasing wholesale power from BPA. Therefore, closure or reduced operation of some aluminum smelters could ultimately have impacts on retail industrial, commercial, and residential consumers.

Closure of an aluminum smelter would reduce the amount of air pollutants emitted into an airshed. Presumably, this would increase the opportunities for other industrial development in an area under prevention of significant deterioration (PSD) rules, although the actual occurrence of such development would be dependent on many other site-specific factors. At a number of the sites, PSD rules are not currently a significant constraint to moderate industrial development. Implementing a proposal or alternative which would keep an aluminum plant open would basically maintain the status quo with respect to opportunities for other industrial development under PSD rules.

The no-action alternative may be viewed as having no environmental impact in itself because the status quo environmental effects would continue as long as the plants continue to operate. However, with no action by BPA, additional plant closures could result in a future different from a simple extension of the current situation.

Con/Mod Alternative: BPA modeled the likely outcome of three Con/Mod incentive levels. To test the sensitivity of the effectiveness of a Con/Mod program, studies were made at long-run aluminum prices of both 65 cents per pound (¢/lb.) and 70¢/lb. The lower assumed long-run aluminum price (65¢/lb.) results in similar trends in employment and smelter operations to those at 70¢/lb.

Cumulative impacts on Northwest aluminum industry employment of the combination of a Con/Mod program offered equitably to all smelters is dependent on the level of Con/Mod incentive provided. With a moderate (3 to 5 mills per kilowatthour) incentive, the impacts are little different than with the variable rate alone. With a high (10 mills per kilowatthour) incentive, substantial gains in Northwest aluminum industry employment are likely (DOE/EIS-0123F, p. 118).

At 3 mills/kWh and a long-run aluminum price of 70¢/lb., increases in probability of operation are slight or non-existent for all smelters. Aluminum smelter impacts are, therefore, essentially the same as for the no-action alternative. Con/Mod, to the limited extent it may occur, is not expected to change smelter operational impacts substantially (DOE/EIS-0123F, p. 105). There could be some minor smelter employment impacts since one of the objectives of a Con/Mod measure is likely to be a reduction in labor costs as well as power costs. This is not shown, however, by the smelter employment results from the model which shows an overall near-term reduction of less than 1 percent and long-term gains of also less than 1 percent (DOE/EIS-0123F, p. 105).

When funding levels are increased to 5 mills/kWh with a long-run aluminum price of 70¢/lb., some increases in operation might occur at a number of plants, but no particular plant characteristic seems to trigger such an increase. The increase is as great as 8 percent for Columbia Falls in Fiscal Year 1997–2000, but is more typically 1 or 2 percent for most plants in most periods. Environmental impacts from smelter operations of this alternative are a little greater than for the 3 mills/kWh incentive alternative. Smelter employment impacts are projected as a negligible decrease in the near-term, and increases of less than 5 percent in the later periods, on average (DOE/EIS-0123F, p. 105).

BPA's analysis concluded that limiting the Con/Mod incentive to 5 mills/kWh saved will also produce a "win-win" result by protecting other ratepayer classes from higher wholesale rates due to a program offering.

At a 10 mills/kWh Con/Mod incentive and a long-run aluminum price of 70¢/lb., all the plants are projected to increase their probability of operating over the no action alternative. Some plants improve by over 10 percent in some periods. Generally, the more efficient, lower cost smelters show smaller improvements than the higher cost plants and improvements are greater in the later periods, probably because the aluminum price in the model trends higher in later periods (DOE/EIS-0123F, pp. 105–107).

BPA analysis concluded that a 10 mills/kWh Con/Mod incentive level would have an adverse economic effect on other BPA ratepayer classes. This effect would violate the "win-win" principle described in the *DSI Options Study*. However, higher levels of smelter employment would be expected at an incentive level of 10 mills/kWH than at lower incentive levels (DOE/EIS-0123F, p. 111).

Participation in a Con/Mod program will be optional to all smelters. Hence, if the level of incentive offered for modernization is considered inadequate by the aluminum companies, then a Con/Mod incentive at any of the three levels will not alter operation of the smelters, nor will it prevent them from closing.

Addition of a Con/Mod incentive to the variable rate is not expected to substantially improve the likelihood of reopening the smelter at The Dalles, or to substantially affect a decision to close the smelter at Columbia Falls, Montana, since both plants already have undergone major investments to make them more energy-efficient.

Still, it is expected that a Con/Mod incentive in combination with the variable rate probably would result in a higher average level of aluminum production by the region's smelters than would a variable rate alone. The higher the level of Con/Mod incentive, the greater the potential effect on smelter operating levels (DOE/EIS-0123F, p. 116–118). The actual physical modifications to smelters associated with implementation of a Con/Mod program would not be expected to increase the smelters' production of various air and water pollutants per ton of aluminum produced. A number of the modernization measures expected to be undertaken would tend to reduce emissions.

Furthermore, the actual physicial modifications and process changes used to effect Con-Mod at Northwest aluminum smelters are expected to have minimal physical environmental impact for two reasons: (1) Federal and State environmental regulatory control already exists, and (2) modifications or retrofits to aluminum smelters are not anticipated to increase pollutant discharges.

Changes in operation of thermal and hydroelectric resources resulting from a Con/Mod program are expected to be minor because of compensating actions BPA would take to market to others any power made available as a result of DSI load reductions (DOE/EIS-0123F, p. 132). Effects on thermal or hydroelectric generating resource operation from the proposed Con/Mod alternative in combination with the variable rate also are not significant (DOE/EIS-0123F, p. 132).

The impact on future need for acquiring new generating or conservation resources of having available a Con/Mod program in addition to the variable rate is unclear. Compared to having the variable rate alone, smelter loads on average likely would increase with the Con/Mod program since the smelters would tend to operate more. On the other hand, the smelters would be more efficient and, assuming their production capacity stayed constant, their loads at maximum production would decrease. The effect of having a Con/Mod program in addition to the variable rate on the need for future resources is dependent on whether smelters increase their production capacity with the Con/Mod program; which smelters choose to modernize; future aluminum prices, which greatly influence smelter operating levels; and the contractual terms chosen to secure the conservation savings. No definitive statement of impacts may be made without speculation (DOE/EIS–0123F, p. 109).

Environmentally Preferred Alternative

Selection of the environmentally preferred alternative entails balancing negative physical impacts with positive socioeconomic benefits. The Con/Mod alternative is environmentally superior to the no-action alternative described in the Final EIS when taking into account socioeconomic and physical environmental effects.

Under the Con/Mod alternative, the currently closed smelter at Vancouver, Washington, would have a higher probability of operating in the future than under no action. The Con/Mod program combined with the variable rate also would reduce the probability of closures and fluctuations in production levels at the other smelters. Therefore, the combination of these options would allow for higher, more stable employment in the region's aluminum industry (DOE/EIS–0123F, pp. 49–52, 97–102, 119–120.)

If the Con/Mod program and the variable rate together would result in reopening of the Vancouver plant, the physical impacts on the locale of the plant would be greater than under no action. However, any adverse physical impacts of this plant would be within the limits established by its environmental permits and would not be substantial. Avoiding permanent closure of this plant probably would require earlier development of new generating or conservation resources than under no action. However, because BPA expects to have a resource surplus for several years, the real effect that continued operation of the Vancouver plant would have on BPA's resource acquisition is somewhat uncertain. Finally, the Con/Mod program with the variable rate would not result in adverse physical impact from hydro and thermal resource operation that would exceed those under no action. This is because of actions BPA would take to market power freed up by smelter closures.

In summary, addition of the Con/Mod program to the variable rate is the environmentally preferred course of action. The socioeconomic benefits of preserving, stabilizing, and possibly increasing aluminum smelter employment, and of preserving and stabilizing BPA revenues under the proposal, would outweigh any adverse effects of the proposed Con/Mod program on the physical environment because those effects are regulated under Federal, State, and local regulations and permits. The adverse socioeconomic impacts of the no-action alternative would outweigh any positive physical impacts. The Con/Mod program in addition to the variable rate is environmentally preferred over having only the variable rate.

Mitigation

Adverse environmental impacts are not likely to result from BPA's proposed Con/Mod program. Also, it is unlikely that the proposed Con/Mod program will result in new aluminum plant production capacity in the region.

Physical impacts could result if aluminum plants operating levels increased. However, all of the aluminum planst are required to comply with Federal and State laws and regulations for protection of the environment. Air pollution control equipment already has been installed in the plants to comply with regulatory requirements. Existing groundwater pollution problems from past practices at some smelters are being addressed by State and Federal environmental agencies. Facilities for storage of spent potliners have been improved at some of the plants, reducing chances for further contamination from cyanide-containing leachate. Therefore, specific mitigation measures for the Con/Mod program are not needed and none are proposed.

Any changes in hydroelectric resource generation that might occur as a result of changes in aluminum smelter loads will be limited by factors constraining river operations. These factors include flood control, navigation, recreation, and mitigation for fish. Under the terms of the Northwest Power Act, BPA is required to protect, mitigate, and enhance fish and wildlife to the extent affected by development and operation of hydroelectric projects on the Columbia River or its tributaries. BPA, the U.S. Army Corps of Engineers, and the Northwest Power Planning Council will continue to develop and implement effective spill, bypass, and transportation programs to facilitate passage of downstream migrating smolts.

Monitoring

BPA does not plan to monitor environmental effects of the proposed Con/Mod initiative.

Generally, smelters are required, as a condition of their permit, to report to the responsible environmental regulatory agency any physical or operational change which would increase air pollutant emissions, discharges of water pollutants, or hazardous waste generation, except for a simple change in production level within design production capacity.

The aluminum companies are also required to monitor their environmental performance and make periodic reports to the environmental regulatory agencies that have jurisdiction in their respective geographic locations. Furthermore, the plants are periodically inspected by regulatory agency personnel. For any change in emissions discovered through the preceding, the regulatory agencies have authority to require a change in one or more of the plants' environmental permits.

For any substantial change in the smelter, such as an increase in capacity or a change in the type of pollution control device, a permit modification or a new permit would be required. Permits also expire periodically and must be renewed for a plant to continue to operate. When a permit is being granted, renewed, or modified, the regulatory agency assures compliance to the established regulations and standards.

Moreover, regulatory agencies generally go beyond the strict requirements of the regulations and standards, and may impose more stringent measures or additional requirements if needed to protect the environment, or if they are otherwise practical (e.g., a smelter's past performance indicates it can meet a stricter permit).

Issued in Portland, Oregon, on November 18, 1986.

Robert E. Ratcliffe,

Acting Administrator, Bonneville Power Administration.

[FR Doc. 86–26611 Filed 11–25–86; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

Determinations Under the Natural Gas Policy Act for OCS Leases Issued on or After April 20, 1977

Issued: November 20, 1986.

On September 27, 1983, the Federal Energy Regulatory Commission (Commission) issued Order No. 336 under Docket Nos. RM83–3 and RM81–12 (48 FR 44,508 September 29, 1983). In that order, the Commission amended its regulations relating to filing requirements for well category applications under the Natural Gas Policy Act of 1978 (NGPA). The determination process for natural gas produced from a new lease, i.e., a lease entered into on or after April 20, 1977, on the Outer Continental Shelf (OCS), and qualifying as new natural gas under section 102 of the NGPA, was amended in two respects. First, the Commission eliminated the requirement that a determination be made for each well producing gas from a new OCS lease. Second, in lieu of filing an application for each well, the Commission now permits the grant of a new OCS lease to constitute the requisite jurisdictional agency determination that the gas is produced from a new OCS lease.

Under the revised procedures, the U.S. Department of Interior, Minerals Management Service (MMS), must file within 60 days of the grant of the lease a notice of determination which includes the lease number, the area and block number, and the date on which the OCS lease was issued by the Secretary of the Interior. The determination is subject to Commission review in the same manner as other jurisdictional agency determinations.

On November 12, 1986, the Commission received notice from MMS, Gulf of Mexico OCS Region, that 41 leases were issued as a result of OCS Sale 105 for the Western Gulf of Mexico on August 27, 1986. Gas produced from the following leases has been determined to be gas produced from a new OCS lease under NGPA Section 102:

Lease No. OCS-G	Area	Block	Effective date
8545	Mustang Island	A-34	Nov. 1, 1986.
8546	Matagorda Island	566	Oct. 1, 1986.
8547	....do	680	Do.
8548	....do	688	Do.
8549	Brazos	A-51	Nov. 1, 1986.
8550	Galveston	186	Oct. 1, 1986.
8551	....do	359	Do.
8552	....do	360	Nov. 1, 1986.
8553	....do	418	Do.
8554	....do	A-68	Do.
8555	Galveston South	A-221	Oct. 1, 1986.
8556	High Island	35	Do.
8557	....do	73	Nov. 1, 1986.
8558	....do	109	Oct. 1, 1986.
8559	....do	A-18	Nov. 1, 1986.
8560	....do	A-76	Oct. 1, 1986.
8561	....do	A-126	Nov. 1, 1986.
8562	....do	A-127	Do.
8563	High Island East	46	Do.
8564	....do	A-234	Oct. 1, 1986.
8565	High Island South	A-425	Do.
8566	....do	A-468	Nov. 1, 1986.
8567	....do	A-512	Do.
8568	....do	A-513	Do.
8569	....do	A-528	Do.
8570	High Is East Add South Ex	A-314	Oct. 1, 1986.
8571	....do	A-320	Nov. 1, 1986.
8572	....do	A-322	Do.
8573	....do	A-378	Do.
8574	....do	A-379	Oct. 1, 1986.
8575	....do	A-397	Nov. 1, 1986.
8576	East Breaks	598	Oct. 1, 1986.
8577	....do	599	Do.
8578	Garden Banks	156	Do.
8579	....do	199	Do.
8580	Alaminos Canyon	600	Do.
8581	....do	601	Do.
8582	....do	731	Do.
8583	....do	775	Do.
8584	....do	813	Do.
8585	....do	857	Do.

The complete list of OCS leases submitted by the MMS for this sale, with area and block descriptions, is available for inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within twenty days after this notice is issued by the Commission.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-26687 Filed 11-25-86; 8:45 am]

BILLING CODE 6717-01-M

Determinations Under the Natural Gas Policy Act for OCS Leases Issued on or After April 20, 1977

Issued November 20, 1986

On September 27, 1983, the Federal Energy Regulatory Commission (Commission) issued Order No. 336 under Docket Nos. RM83-3 and RM81-12 (48 FR 44508 September 29, 1983). In that order, the Commission amended its regulations relating to filling requirements for well category applications under the Natural Gas Policy Act of 1978 (NGPA). The determination process for natural gas produced from a new lease, i.e., a lease entered into on or after April 20, 1977, on the Outer Continental Shelf (OCS), and qualifying as new natural gas under section 102 of the NGPA, was amended in two respects. First, the Commission eliminated the requirement that a determination be made for each well producing gas from a new OCS lease. Second, in lieu of filing an application for each well, the Commission now permits the grant of a new OCS lease to constitute the requisite jurisdictional agency determination that the gas is produced from a new OCS lease.

Under the revised procedures, the U.S. Department of Interior, Minerals Management Service (MMS), must file within 60 days of the grant of the lease a notice of determination which includes the lease number, the area and block number, and the date on which the OCS lease was issued by the Secretary of the Interior. The determination is subject to Commission review in the same manner as other jurisdictional agency determinations.

On September 2, 1986, the Commission received notice from MMS, Gulf of Mexico OCS Region, that 30 leases were issued as a result of OCS Sale 94 for the Eastern Gulf of Mexico on December 18, 1985. Notice of these determinations was issued by the Commission on September 12, 1986. On October 28, 1986, MMS notified the Commission that eight additional leases have been granted under this same sale. Gas produced from the following leases has been determined to be gas produced from a new OCS lease under NGPA secton 102:

Lease No. OCS-G	Area	Block	Effective date
8361	FMG	411	Aug. 1, 1986.
8352	....do	412	Do.
8363	....do	455	Do.
8364	....do	456	Do.
8365	....do	499	Do.
8366	....do	500	Do.
8367	....do	543	Do.
8368	....do	587	Do.

The complete list of OCS leases submitted by the MMS for this sale, with area and block descriptions, is available for inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, DC. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within twenty days after this notice is issued by the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26668 Filed 11-25-86; 8:45 am]

BILLING CODE 6717-01-M

Notice of Determinations Under the Natural Gas Policy Act for OCS Leases Issued on or After April 20, 1977

Issued November 20, 1986.

On September 27, 1983, the Federal Energy Regulatory Commission (Commission) issued Order No. 336 under Docket Nos. RM83-3 and RM81-12 (48 FR 44508 September 29, 1983). In that order, the Commission amended its regulations relating to filing requirements for well category applications under the Natural Gas Policy Act of 1978 (NCPA). The determination process for natural gas produced from a new lease, i.e., a lease entered into on or after April 20, 1977, on the Outer Continental Shelf (OCS), and qualifying as new natural gas under section 102 of the NGPA, was amended in two respects. First, the Commission eliminated the requirement that a determination be made for each well producing gas from a new OCS lease. Second, in lieu of filing an application for each well, the Commission now permits the grant of a new OCS lease to constitute the requisite jurisdictional agency determination that the gas is produced from a new OCS lease.

Under the revised procedures, the U.S. Department of Interior, Minerals Management Service (MMS), must file within 60 days of the grant of the lease a notice of determination which includes the lease number, the area and block number, and the date on which the OCS lease was issued by the Secretary of the Interior. The determination is subject to Commission review in the same manner as other jurisdictional agency determinations.

On October 29, 1986, the Commission received notice from MMS, Gulf of Mexico OCS Region, that 101 leases were issued as a result of OCS Sale 104 for the Central Gulf of Mexico on April 30, 1986. Gas produced from the following leases has been determined to be gas produced from a new OCS lease under NGPA section 102:

Lease No. OCS-G	Area	Block	Effective date
8400	West Cameron	26	June 1, 1986.
8401	do	55F	July 1, 1986
8402	do	141	June 1, 1986.
8403	do	142	July 1, 1986
8404	do	208	June 1, 1986
8405	West Cameron, West	304	July 1, 1986
8406	do	314	Do.
8407	do	315	Do.
8408	do	402	June 1, 1986
8509	West Cameron, West	472	Do.
8410	do	585	July 1, 1986.
8411	do	599	Do.
8412	do	610	Do.
8413	East Cameron	14G	Do.
8414	do	51	Do.
8416	do	149	June 1, 1986.
8417	do	188	July 1, 1986.
8418	do	189	Do.
8420	East Cameron, South	364	Do.
8421	Vermilion	43	Do.
8423	do	196	Do.
8424	do	207	Do.
8426	Vermilion, South	274	Do.
8427	do	341	June 1, 1986.
8428	do	279	Do.
8431	South Marsh Island, South	111	July 1, 1986.
8432	Eugene Island	49	June 1, 1986.
8433	do	179	July 1, 1986.
8434	do	190	Do.
8435	do	232	June 1, 1986.
8436	do	234	Do.
8437	do	235	Do.
8438	do	241	Do.
8439	Eugene Island, South	317	July 1, 1986.
8441	Ship Shoal	117	Do.
8442	do	118	Do.
8443	South Timbalier	75	Do.
8444	do	84	Do.
8445	South Timbalier, South	270	Do.
8446	do	274	Do.
8448	do	279	June 1, 1986.
8449	do	303	July 1, 1986.
8450	do	304	Do.
8451	do	306	Do.
8452	Grand Isle, South	104	Do.
8453	do	110	Do.
8454	West Delta	36G	Do.
8455	do	78F	June 1, 1986.
8456	do	78G	Do.
8457	do	97	Do.
8458	West Delta, South	121	July 1, 1986.
8459	do	122	Do.
8460	Main Pass	44	Do.
8461	do	59	Do.
8462	Main Pass, South & East	206	June 1, 1986.
8463	do	240	July 1, 1986.
8465	do	275	Do.
8467	do	315	Do.
8469	Viosca Knoll	871	June 1, 1986.
8470	do	872	Do.
8471	do	873	Do.
8472	do	916	Do.
8473	do	917	Do.
8474	do	955	Do.
8475	do	957	Do.
8476	do	983	July 1, 1986.
8478	Ewing Bank	783	Do.
8479	do	827	Do.
8480	do	870	Do.
8481	do	957	Do.
8483	Mississippi Canyon	72	June 1, 1986.
8484	do	84	Do.
8485	do	128	Do.
8486	do	208	Do.
8487	do	252	Do.
8488	do	504	Do.
8489	do	538	Do.
8490	do	539	Do.
8491	do	582	Do.
8492	do	583	Do.
8493	do	612	Do.
8494	do	613	Do.

Lease No. OCS-G	Area	Block	Effective date
8495	do	656	Do.
8496	do	657	Do.
8497	do	673	Do.
8498	do	674	Do.
8499	do	717	Do.
8500	Green Canyon	55	July 1, 1986.
8501	do	120	June 1, 1986.
8502	do	122	Do.
8503	do	168	Do.
8504	do	209	Do.
8505	Atwater Valley	387	Do.
8506	do	388	Do.
8507	do	427	Do.
8508	do	428	Do.
8509	do	429	Do.
8510	do	430	Do.
8511	do	431	Do.
8512	do	471	Do.
8513	do	472	Do.

The complete list of OCS leases submitted by the MMS for this sale, with area and block descriptions, is available for inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, DC. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within twenty days after this notice is issued by the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26669 Filed 11-24-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-57-000, et al.]

Natural Gas Certificate Filings; Florida Gas Transmission Co. et al.

November 21, 1986.

Take notice that the following filings have been made with the Commission:

1. Florida Gas Transmission Company

[Docket No. CP87-57-000]

Take notice that on November 6, 1986, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP87-57-000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to transport natural gas for Monsanto Chemical Company (Monsanto) and to construct and operate certain facilities necessary for the delivery of such gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

FGT proposes to transport, on an interruptible basis, up to 15 billion Btu equivalent per day for the account of Monsanto for ultimate use in Monsanto's plant located in Pensacola, Escambia County, Florida. It is stated that Monsanto would purchase such gas from Enron Gas Marketing, Inc. FGT states that the gas would be received at the following points of receipt:

(1) Existing point of interconnection between FGT and Houston Pipe Line Company (HPL) near Sinton in San Patricio County, Texas (Sinton); or

(2) Existing point of interconnection between FGT and HPL near Magnet Withers in Matagorda County, Texas (Magnet Withers); or

(3) Existing point of interconnection between FGT and HPL in Orange County, Texas (Orange); or

(4) Existing point of interconnection between FGT and Acadian Gas Pipeline System in West Baton Rouge Parish, Louisiana (Acadian).

FGT states that gas may be tendered by Monsanto during a day at any one, but only one, of the above-listed points of receipt. FGT proposes to redeliver the gas for the account of Monsanto at a proposed point of interconnection with Five Flags Pipeline Company (Five Flags) in Santa Rosa County, Florida. FGT proposes to install an 8-inch meter station, quality measuring equipment, and certain related appurtenances at an estimated cost of $140,000 in order to make the interconnection with Five Flags.

FGT proposes to charge a maximum transportation rate which would consist of the sum of a facility charge, a service charge, other charges, and the Gas Research Institute surcharge. It is stated that the facility charge is 12.6 cents per MMBTu equivalent delivered to Five Flags for Mansanto's account and that the service charge is 4.0 cents per MMBTu equivalent per 100 miles of forward haul. FGT states the proposed service charge as follows:

Point or receipt	Service charge per MMBTu equivalent
1. Sinton	27.3 cents.
2. Magnet Withers	22.2 cents.
3. Orange	16.8 cents.
4. Acadian	10.4 cents.

FGT states that because Monsanto can elect to receive gas through other interstate and instrastate pipelines, FGT is requesting authorization to charge Monsanto a rate lower than the otherwise applicable rate, but not less than the minimum transportation rate of 6.9 cents per MMBTu equivalent delivered to Five Flags.

FGT states that the term of the transportation agreement is for a period of five years, and from year to year thereafter.

Additionally, FGT states that upstream transportation services would be provided by HPL and Acadian pursuant to Section 311 of the Natural Gas Policy Act, and that downstream transportation service would be provided by Five Flags pursuant to Section 311.

Comment date: December 12, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. National Fuel Gas Supply Corporation

[Docket No. CP87-59-000]

Take notice that on November 7, 1986, National Fuel Gas Supply Corporation (National), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP87-57-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the interruptible transportation of up to 50,000 Mcf of natural gas per day for National Fuel Gas Distribution Corporation (Distribution) and up to 30 Mcf of natural gas per day for Pine-Roe Natural Gas Company (Pine-Roe) for use as general system supply, for a term ending December 31, 1988, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

National states that it would receive the subject gas for Distribution at existing receipt points and redeliver equivalent volumes at existing delivery points. With regard to Pine-Roe, National states that the volumes will be delivered to National by Columbia Gas Transmission Company at an existing interconnection of their facilities known as East Fork for transportation and delivery to Pine-Roe through an existing tap on National's T-9 Line in Clarion County, Pennsylvania. National adds that Pine-Roe is a small distributor serving a predominately residential, temperature sensitive market in the

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vicinity of Clarion, Pennsylvania. National explains that Pine-Roe does not have sufficient supplies to meet its winter season needs and has in the past made emergency purchases of gas from National in order to meet its requirements.

National further states that it will provide these services pursuant to its existing Rate Schedule T-1 which provides for a rate of 26.82 cents per Mcf of gas and 2 percent shrinkage. It is explained that the rate and the treatment of revenues under this proposal would be subject to the outcome of National's current rate filing pending at Docket No. RP86-136-000.

Comment date December 12, 1986 in accordance with Standard Paragraph F at the end of this notice.

3. Northwest Pipeline Corporation

[Docket No. CP87-54-000]

Take notice that on November 5, 1986, Northwest Pipeline Corporation (Applicant) 295 Chipeta Way, Salt Lake City, Utah 84208, filed in Docket No. CP87-54-000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain natural gas liquifaction service for Southwest Gas Corporation (Southwest), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that pursuant to a LS-1 service agreement dated December 7, 1977, between Applicant and Southwest, it liquefies, stores, vaporizes and delivers up to a storage demand volume of 12,000 dt equivalent of natural gas per day and a storage volume of 43,400 dt equivalent of natural gas at its LNG plant located near Plymonth, Washington. It is stated that Southwest, by letter agreement, dated October 21, 1986, agreed to cancel the LS-1 service agreement, to be effective the later of the date of the Commission order granting the requested abandonment or the day after the date upon which Southwest has reduced its inventory to zero.

It is stated that the agreement to cancel is the result of a letter agreement, dated June 12, 1986, between Applicant and the Public Service Commission of Nevada (PSCN), whereby PSCN agreed to and has withdrawn (1) its appeal before the U.S. Court of Appeals for the District of Columbia, Case Number 85-1744, and (2) its opposition to offer of settlement in Docket Nos. RP85-13-000 and RP86-65-000, approved by Commission order, issued October 23, 1986.

It is further stated that Applicant assumes that Southwest would continue to assure its customers adequate levels of natural gas service and that there would be no immediate impact on Rate Schedule LS-1 to Applicant's other customers.

Comment date: December 12, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Overthrust Pipeline Company

[Docket No. CP87-56-000]

Take notice that on November 6, 1986, Overthrust Pipeline Company (Overthrust), 79 South State Street, P.O. Box 11450, Salt Lake City, Utah 84147, filed in Docket No. CP87-56-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited term authorization for the continuation of interruptible transportation service on behalf of Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), for a period of two years, commencing on December 11, 1986, or until such time as the Commission issues an order in Overthrust's pending application in Docket No. CP83-70-000. Additionally, Overthrust requests pre-granted abandonment authority upon the issuance and acceptance of a permanent certificate in Docket No. CP83-70-000 to provide long-term transportation service for Tennessee, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Overthrust states that its request for a limited-term certificate, with pre-granted abandonment authority, would allow it to continue to render service for Tennessee while the Commission continues its consideration of Overthrust's application in Docket No. CP83-70-000 and the competitive applications, filed by various interstate pipeline companies, to provide downstream service for Tennessee. Overthrust explains that unless the Commission grants this limited-term application, service for Tennessee would be terminated on December 11, 1986.

Overthrust proposes to charge its existing Rate Schedule I Overrun rate for interruptible transportation service provided to Tennessee under the limited-term certificate and any temporary authority. Overthrust explains that its Rate Schedule I rate is the same rate that Tennessee currently pays for interruptible transportation service and that Overthrust proposes no change to the character or amount of service presently provided for Tennessee. It is further stated that the rate charged to Tennessee is subject to the outcome of Overthrust's rate proceeding in Docket No. RP85-60-000.

Comment date: December 12, 1986, in accordance with Standard Paragraph F at the end of this notice.

5. Pacific Gas Transmission Company

[Docket No. CP87-66-000]

Take notice that on November 12, 1986, Pacific Gas Transmission Company (PGT), 160 Spear Street, San Francisco, California 94101-1570, filed in Docket No. CP87-66-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing (1) the interruptible transportation of natural gas in interstate commerce; and (2) pregranted abandonment authorization upon termination of the transportation agreement, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that the transportation would be accomplished by means of a delivery to PGT at Kingsgate, British Columbia, of up to 30,000 Mcf of natural gas per day for the account of Bonus Energy, Inc. (Bonus), and the redelivery of such natural gas to Bonus at a point of interconnection between the pepeline systems of PGT and Pacific Gas and Electric Company at Malin, Oregon. PGT states that the interruptible transportation service would be accomplished through the utlization of existing capacity available on PGT's system. It is also stated that the term of the agreement would be for a primary term of ninety days, not to exceed one year.

PGT further requests pregranted abandonment authorization to terminate service upon termination of the transportation agreement.

Comment date: December 12, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-26666 Filed 11-25-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. QF87-60-000, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; Indeck Energy Services, Inc., et al.

November 21, 1986.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Indeck Energy Services, Inc.

[Docket No. QF87-60-000]

On November 3, 1986, Indeck Energy Services, Inc. (Applicant), of 1111 South Willis Avenue, Wheeling, Illinois 60090, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Otsego, Michigan and will consist of one or two steam generators and a steam turbine generator. Steam recovered from the facility will be used in paper production process. The maximum electric power production capacity of the facility will be 60 MW. The primary source of energy will be coal. Installation of the facility will begin April 1987.

2. Ogden Haverhill Associates

[Docket No. QF87-58-000]

On November 3, 1986, Ogden Haverhill Associates (Applicant), of 140 East Ridgewood Avenue, Paramus, New Jersey 07652, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Haverhill, Massachusetts and will consist of two mass-burn steam generators and one steam turbine generator. The electric power production capacity of the facility will be 43 MW. The primary source of energy will be municipal solid waste.

3. Solar Turbines Incorporated

[Docket No. QF87-71-000]

On November 5, 1986, Solar Turbines Incorporated (Applicant), of 2200 Pacific Highway, San Diego, California 92138-5376 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the site of Caterpillar Incorporated, in York, Pennsylvania. The facility will consist of six combustion turbine generators, heat recovery steam generators and two extraction/condensing steam turbine generators. Steam extracted from the turbines will be utilized for process by the Caterpillar Incorporated Plant. The net electric power production capacity of the facility will be approximately 69 MW. The primary energy source for the facility will be natural gas with #2 fuel oil as back-up. Installation of the facility will begin approximately in February of 1987.

4. Texaco Producing, Inc.

[Docket No. QF87-46-000]

On October 28, 1986, Texaco Producing, Inc. (Applicant), of P.O. Box 10269, Bakersfield, California 93389-0269, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Kern County, California and will consist of a combustion turbine generator and a heat recovery steam generator. Steam recovered from the facility will be used for enhanced oil recovery techniques. The electric power production capacity of the facility will be 33 MW. The cogeneration facility is scheduled to begin operation on January 1, 1989.

5. Wormser Engineering, Inc.

[Docket No. QF87-72-000]

On November 5, 1986, Wormser Engineering, Inc. (Applicant), of 225 Merrimac Street, Woburn, Massachusetts 01801, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located at the Alpha Industrial Center in Alpha, New Jersey. The facility will consist of a fluidized-bed boiler and a steam turbine generating unit. The net electric power production capacity of the facility will be 80 MW. The primary energy source will be anthracite culm.

6. Wormser Engineering, Inc.

[Docket No. QF87-76-000]

On November 7, 1986, Wormser Engineering, Inc. (Applicant), of 225 Merrimac Street, Woburn, Massachusetts 01801, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Rockaway, New Jersey. The facility will consist of a fluidized-bed boiler and a steam turbine generating unit. The net electric power production capacity of the facility will be 80 MW. The primary energy source will be anthracite culm.

7. Wormser Engineering, Inc.

[Docket No. QF87-77-000]

On November 7, 1986, Wormser Engineering, Inc. (Applicant), of 225 Merrimac Street, Woburn, Massachusetts 01801, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations No

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determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Roxbury, New Jersey. The facility will consist of a fluidized-bed boiler and a steam turbine generating unit. The net electric power production capacity of the facility will be 80 MW. The primary energy source will be anthracite culm.

Standard paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-26670 Filed 11-25-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP87-58-000 et al.]

Natural Gas Certificate Filings; Transcontinental Gas Pipeline Corp. et al.

Take notice that the following filings have been made with the Commission:

1. Transcontinental Gas Pipeline Corp.

[Docket No. CP87-58-000]

November 18, 1986.

Take notice that on November 6, 1986, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP87-58-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Diamond Shamrock Offshore Partners Limited Partnership (Diamonnd Shamrock), a producer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco proposes to transport up to 1,000 Mcf per day of natural gas on an interruptible basis for Diamond Shamrock for a term of two years and year to year thereafter. It is stated that Diamond Shamrock is the producer of oil and gas in Vermilion area block 37, offshore Louisiana (Vermilion 37). It is further stated that in recent years, gas produced in Vermilion 37 was used in gas lift operations to maintain oil production in the block. It is explained that in November 1985, oil production was shut in due to the depletion of the remaining gas reserves in Vermilion 37. It is indicated that in connection with the shut-in operations in Vermilion 37, Diamond Shamrock has a suspension of production authorization from the Minerals Management Service of the U.S. Department of the Interior which will expire November 30, 1986. In order to avoid a possible loss of lease in Vermilion 37, Transco states that Diamond Shamrock has requested it to transport gas which Diamond Shamrock produces in Vermilion area block 57 (Vermilion 57). Such gas, it is indicated, would be used to resume gas lift operations in Vermilion 37, and thus, the production of oil.

It is stated that Columbia Gulf Transmission Company would also provide transportation of such gas, pursuant to its Order No. 436 blanket certificate. Columbia Gulf would receive the gas in Vermilion 57 and transport it to an interconnection with Transco at the Acadia gas plant in Terrebonne Parish, Louisiana. Transco would then deliver the gas by backhaul from the Acadia plant to Vermilion 37. Transco notes that Diamond Shamrock has requested that it seek a certificate approval by November 30, 1986, to avoid the possibility of the loss of its lease.

Transco proposes to impose certain "use or lose" conditions on the transportation service for Diamond Shamrock. It is stated that such conditions are consistent with the "use or lose" provisions being imposed on transitional NGPA section 311 services currently being rendered by Transco. Transco further proposes that the section 7(c) authority requested for the subject service cover any future identical service which Transco performs for Diamond Shamrock in the event a termination of the initial service occurs which is related to the use or lose provisions.

Comment date: December 2, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. El Paso Natural Gas Co. vs. Pacific Gas and Electric Co. and Southern California Gas Co.

[Docket No CP87-44-000]

November 19, 1986.

Take notice that on October 24, 1986, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP87-44-000 pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, a complaint that Pacific Gas and Electric Company (PG&E) and Southern California Gas Company (SoCal) and/or affiliates thereof, are or may be pursuing a course of conduct which contravenes El Paso's presently effective service agreements, certificates of public convenience and necessity authorizing service pursuant to such service agreements, and El Paso's FERC Gas Tariff, all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

Specifically, El Paso avers that PG&E and SoCal are engaging or will be engaging in the transportation by displacement of Candian volumes of gas which utilized the El Paso pipeline system without the proper authorization. El Paso requests that the Commission issues an order (1) directing the PG&E and SoCal to cease and desist from engaging in the subject transportation transactions unless and until a transportation agreement with El Paso has been executed providing for such service, and, (2) requiring payment of El Paso's applicable tariff rate for any past service in violation of service agreements, certificates and tariff. In the alternative, El Paso requests that the Commission issue an order declaring that the subject transportation arrangements are not currently authorized and any future transportation of this nature would require prior execution of an appropriate transportation service agreement.

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, PG&E and SoCal are to respond within 20 days from the date of this notice.

Comment date: December 9, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Natural Gas Pipeline Co., of America

[Docket No. CP87-45-000]

November 20, 1986.

Take notice that on October 30, 1986, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket

No. CP87–45–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Natural: (1) To transport on an interruptible basis natural gas volumes from an existing receipt point in Wharton County, Texas, to existing delivery points in Cameron and Vermilion Parishes, Louisiana, Montgomery County, Texas, and to a proposed delivery point in Cameron Parish, Louisiana, and (2) to construct certain minor facilities at the proposed delivery point requried for such transportation service, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Natural states that it has entered into a gas transportation agreement with Columbia Gas Transmission Corporation (Columbia) to provide on an interruptible basis transportation of up to a maximum of 150 billion Btu equivalent of gas per day for Columbia for a primary term of two years.

Natural also states that it proposes to charge Columbia a transportation rate consistent with its Rate Schedule TRT–1 maximum rate levels effective July 1, 1986. Natural further proposes to charge Columbia the currently effective GRI surcharge, if required.

Natural; proposes to construct an 8-inch tap connection and appurtenant facilities near Chalkley in Cameron Parish, Louisiana, at an estimated cost of $78,000. Initial financing of these facilities would be from funds on hand.

Natural also requests authorization to add and delete receipt points as required to support the transportation service. The construction of such receipt points added to implement the arrangement would be done under Natural's blanket construction authorization in Docket No. CP82–402–000, it is stated.

Comment date: December 11, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Northwest Pipeline Corp.

[Docket No. CP87–53–000]

November 20, 1986.

Take notice that on November 5, 1986, Northwest Pipeline Corporation (Applicant) 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP87–53–000, an application pursuant to section 7(c) of the Natural Gas Act for authorization for a limited-term transportation of natural gas in interstate commerce for the account of Cascade Natural Gas Company (Cascade), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Applicant proposes to transport up to 150 billion Btu equivalent of natural gas per day, on an interruptible basis, for the account of Cascade, terminating on October 31, 1989, pursuant to a gas transportation agreement dated October 17, 1986, which provides for transportation under Rate Schedules T–4 and T–5 of Northwest's FERC Gas Tariff, Volume No. 1–A.

Applicant states that Cascade has procured supplies of natural gas which it would deliver to Applicant's at various existing receipt points on Applicant's transmission system for ultimate delivery by Cascade to various end-users.

It is further stated that Applicant proposes to transport Cascade's gas through its transmission system and redeliver thermally equivalent volumes, less transmission fuel, to Cascade at certain existing sales meter stations in Oregon and Washington

It is asserted that Cascade would subsequently deliver this gas to certain specified end-users on its distribution system.

Applicant explains that it would charge Cascade for all volumes of gas transported and delivered under the transportation agreement at either the interruptible, incremental on-system transportation rate or the interruptible, replacement on-system transportation rate as set forth, respectively, in Applicant's Rate Schedules T–4 and T–5, FERC Gas Tariff, Volume No. 1–A. The T–4 transportation rate would apply to volumes transported during any month which are incremental to the corresponding 1984 monthly volumes for the endusers as indicated in Exhibit C of the application, it is stated. As set forth on Sheets 201 and 202 of Applicant's Volume No. 1–A Tariff, the currently effective T–4 transportation rate is 20.00 cents per million Btu equivalent, plus a GRI charge of 1.31 cents per million Btu equivalent, a fuel reimbursement charge and the currently T–5 transportation rate which is 37.97 cents per million Btu equivalent, plus a 1.31 cents per million Btu equivalent charge, a fuel reimbursement charge, and, if applicable, a take-or-pay cost reimbursement fee of 24.0 cents per million Btu equivalent and/or a gathering payment credit of 30.91 cents per million Btu equivalent, it is stated.

Comment date: December 11, 1986, in accordance with Standard Paragraph F at the end of this notice.

5. Southern Natural Gas Co.

[Docket No. CP87–52–000]

November 20, 1986.

Take notice that on November 4, 1986, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP87–52–000 an application pursuant to section 7(c) of the Natural Gas Act, for a limited-term certificate of public convenience and necessity as set forth in the application which is on file with the Commission and open to public inspection.

Southern requests limited-term certificates of public convenience and necessity authorizing it to transport gas on behalf of Jim Walter Metals, a Division of the Georgia Marble Company, a wholly owned subsidiary of Jim Walter Corporation (JWM) in accordance with the terms and conditions of a transportation agreement between JWM and Southern dated August 11, 1986, as amended October 6, 1986 (JWM Agreement), and on behalf of Masonite Corporation (Masonite) in accordance with the terms and conditions of a transportation agreement between Masonite and Southern dated October 22, 1986 (Masonite Agreement). Subject to the receipt of all necessary governmental authorizations, Southern has agreed to transport on an interruptible basis up to 1.2 billion Btu equivalent of natural gas per day purchased by JWM from SNG Trading Inc. and Yankee Resources, Inc. for use at its plant in Mt. Holly, South Carolina, and up to 1.5 billion Btu equivalent of natural gas per day that Masonite has arranged to purchase from SNG Trading Inc. for use at Masonite's plant in Marion County, South Carolina. Southern requests that the Commission issue the limited-term certificates for terms expiring one (1) year from the date of the Commission's order issuing the requested authorization.

Southern states that the JWM and Masonite Agreements provide that JWM and Masonite will cause gas to be delivered to Southern for transportation at the various existing points on Southern's contiguous pipeline systen specified in Exhibit A to the Agreement. Southern asserts that pursuant to the JWM and Masonite Agreements, Southern will redeliver to South Carolina Pipeline Corporation (South Carolina) for JWM's and Masonite's respective accounts, at the Aiken Meter Station, Aiken, South Carolina, an equivalent quantity of gas less 3.25 percent of such amount which shall be deemed to have been used as compressor fuel and company-use gas

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(including system unaccounted-for gas losses); less any and all shrinkage, fuel or loss resulting from or consumed in the processing of gas; and less JWM's and Masonite's pro-rata share of any gas delivered for their respective accounts which is lost or vented for any reason.

Southern states that JWM and Masonite have agreed to pay Southern each month the following transportation rate:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to South Carolina under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to South Carolina do not exceed the daily contract demand of South Carolina, the transportation rate shall be 48.2¢ per MMBtu; and

Where the aggregate of the volumes transported and redelivered by Southern on any day to South Carolina under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to South Carolina exceed the daily contract demand of South Carolina, the transportation rate for the excess volumes shall be 77.6¢ per MMBtu. Southern asserts that it will collect from JWM and Masonite the GRI surcharge of 1.35¢ per Mcf on any such other GRI funding unit or surcharge as hereafter prescribed.

Southern states that the transportation arrangement will enable JWM and Masonite to diversify their natural gas supply sources and to obtain gas at competitive prices. In addition, Southern avers that it will obtain take-or-pay relief on all volumes transported pursuant to the JWM and Masonite Agreements.

Comment date: December 11, 1986, in accordance with Standard Paragraph F at the end of this notice.

6. Southern Natural Gas Co.

[Docket No. CP86-392-002]

November 20, 1986.

Take notice that on October 30, 1986, Southern Natural Gas Company (Southern), P. O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP86-392-002 a petition to amend the orders granting the limited-term certificate pursuant to section 7(c) of the Natural Gas Act in Docket Nos. CP86-392-000 and CP86-392-001, so as to authorize an increase of gas quantities being transported for The Southeast Alabama Gas District (Southeast Alabama), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Southern requests that the Commission amend the certificate authorization to authorize Southern to transport up to 37 billion Btu equivalent of natural gas per day for Southeast Alabama, in accordance with the terms and conditions of the March 7, 1986, transportation agreement as amended by an August 1, 1986, letter agreement.

It is stated that by orders issuing certificate authorizations in Docket Nos. CP86-392-000 and CP86-392-001 on June 13, 1986, and September 11, 1986, respectively, for a limited term expiring on June 13, 1987, the Commission authorized Southern to transport up to 7 billion Btu equivalent of natural gas per day on an interruptible basis on behalf of Southeast Alabama under the terms and conditions set forth in the transportation agreement dated March 7, 1986. It is further stated that Southern's certificate authorizes Southern to receive gas for transportation at various existing points of delivery on Southern's contiguous pipeline system specified in Exhibit A to the agreement and to redeliver the gas to Southeast Alabama at the Southeast Alabama Gas District Meter Station in Elmore County, Alabama, and at the Highway 169 Gate Meter Station in Les County, Alabama. Southern advises that Southeast Alabama purchases the transported gas from SNR Trading Inc., and uses it to supply certain of Southeast Alabama's industrial customers who have the installed capacity to utilize fuel oil.

Southern states that Southeast Alabama has informed Southern that other industrial end-use customers which it supplies have switched, or have indicated that they will switch, to fuel oil for substantially all of their energy requirements. Southern explains that Southeast Alabama has arranged to obtain additional sources of supply of natural gas in order to be able to offer natural gas to these customers at a price that is competitive with fuel oil and to meet the requirements of its other customers. It is further explained that, in order to provide for transportation of these additional volumes, Southern and Southeast Alabama have entered into the August 1, 1986, amendment to the transportation agreement to provide for the transportation of up to 37 billion Btu equivalent of gas per day. Southern states that in all other respects the transportation service will remain the same.

Comment date: December 11, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

7. Tennessee Gas Pipeline Co., a Division of Tenneco Inc.

[Docket No. CP87-47-000]

November 20, 1986.

Take notice that on October 31, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP87-47-000 an application pursuant to section 7(c) of the Natural Gas Act so as to authorize an interruptible transportation service for Kerr-McGee Corporation (Kerr-McGee), acting on its own behalf and on behalf of Kerr-McGee Federal Limited Partnership I-1981 and Samedan Oil Corporation (Samedan), acting on its own behalf and on behalf of New England Energy Incorporated, collectively referred to herein as Producers, pursuant to the terms of a gas transportation agreement between Applicant and Kerr-McGee dated October 30, 1986, and between Applicant and Samedan dated October 30, 1986, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that the gas to be transported by Applicant is produced by Kerr-McGee and Samedan from reserves located in High Island Blocks 21, 22, and 34, offshore Texas. Applicant states that pursuant to the terms and conditions of gas transportation agreements with each of the Producers it would receive up to 120,000 dt equivalent of natural gas per day for the account of each producer at the existing point of interconnection between the facilities of Applicant and the Producers on the High Island Block 22 platform, offshore Texas. Applicant would then transport and deliver thermally equivalent quantities of gas (less quantities retained for Applicant's fuel and uses and gas lost and unaccounted for and the plant thermal reduction due to processing), it is stated, for the account of each Producer at the following points of delivery:

(1) To Texas Eastern Transmission Company at Applicant's Meter No. 2-0375 located in Allen Parish, Louisiana

(2) To Texas Gas Transmission Company at Applicant's Meter No. 2-8002 located in Acadia Parish, Louisiana.

(3) To Columbia Gulf Transmission Company at Applicant's Meter No. 1-1034 in Acadia Parish, Louisiana.

(4) To ANR Pipeline Company at a point on Applicant's system near MP831-1+8.31 in LaSalle Parish, Louisiana.

(5) To Natural Gas Pipeline Company of America at Applicant's Meter No. 1-1717 in Cameron Parish, Louisiana.

(6) To Transcontinental Gas Pipeline Corporation (Transco) at Applicant's Meter No. 2-0373 located in Allen Parish, Louisiana.

(7) To Transco at Applicant's Meter No. 2-0291 in Jasper County, Mississippi.

(8) To United Gas Pipe Line Corporation (United) at Applicant's Meter No. 2-0391 in Jefferson Davis Parish, Louisiana.

(9) To United at Applicant's Meter No. 2-0533 in Ouachita Parish, Louisiana.

Applicant states that the interstate pipelines to whom the gas is delivered for the account of Producers would transport the gas for Producers under Order No. 436 transportation arrangements. The gas would then be sold to spot markets off the Order No. 436 pipelines, it is stated.

Applicant proposes to charge for this transportation service an offshore laterals charge of 10.6 cents per dt equivalent of gas transported from the point of receipt in High Island Block 22 to the central gathering platform in Sabine Pass Block 18 (Sabine Pass 18), offshore Louisiana. For transportation of the gas from Sabine Pass 18 to the applicable point of delivery, Applicant proposes to collect a quantity charge equal to the applicable cost-based rate multiplied by the total quantity of gas delivered by Applicant for the account of Producers at each delivery point. Applicant would also retain from the quantities received for transportation a quantity of gas necessary to meet its system fuel and use requriements.

Applicant states that it would also transport the liquid and liquefiable hydrocarbons associated with the natural gas tendered for transportation.

Comment date: December 11, 1986, in accordance with Standard Paragraph F at the end of this notice.

8. Texas Eastern Transmission Corp.

[Docket No. CP87-51-000]

November 20, 1986.

Take notice that on November 3, 1986, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP87-51-000 an application pursuant to section 7(b) of the Natural Gas Act for authorization to abandon a portion of the sales service it provides the City of Batesville, Indiana (Batesville) under Texas Eastern's Rate Schedule SGS, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern requests authorization to reduce its sales obligations to Batesville to a maximum daily quantity (MDQ) of 4,449 dekatherms (dt) equivalent of natural gas and an Annual Contract Quantity (ACQ) of 1,623,885 dt of natural gas, which quantities reflect a reduction of 360 dt and 131,400 dt of natural gas in the MDQ and ACQ, respectively, currently provided under the existing SGS service agreement dated February 19, 1986, between Texas Eastern and Batesville. Texas Eastern states that such reductions in the MDQ and ACQ are equivalent to and represent the incremental volumes which Texas Eastern was authorized to sell to Batesville under Rate Schedule SGS by the Commission's order issued on August 15, 1985, in Docket No. CP84-429-000, *et al.*

Texas Eastern states that it is filing the application for partial abandonment in acquiescence to Batesville's expressed desire to give up the incremental sales quantities approved in Docket No. CP84-429-000, *et al.*

Further, Texas Eastern states that it does not propose to abandon any facilities in connection with its proposed partial abandonment of service to Batesville. All facilities currently utilized to render service to Batesville would remain in place to make deliveries at the reduced levels.

Comment date: December 11, 1986, in accordance with Standard Paragraph F at the end of this notice.

9. United Gas Pipe Line Co.

[Docket No. CP87-55-000]

November 20, 1986.

Take notice that on November 5, 1986, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP87-55-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for permission to abandon certain sales service under the blanket authorization issued in Docket No. CP82-430-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United requests authority to abandon certain industrial sales services as follows:

Customer	Contract expiration date
Georgia Sugar Refinery	01/01/87
St. Charles Grain Elevator	01/01/87
Tenneco Oil Co.	01/01/87
Corhart Refractories (Corning Glass)	01/01/87
Westvaco Corp.	01/01/87
BHP Petroleum	01/01/87
Ideal Cement Co.	01/01/87
Parade Co.	01/01/87
Loyce and Jack Phillips	01/01/87

United states that the sales contracts have expired or will expire in the near future and that the proposed abandonments have been agreed to by the affected industrial customers. United further states that its facilities will remain in place in anticipation of future service.

Comment date: January 5, 1986, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of

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the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–26615 Filed 11–25–86; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for refunding to adversely affected parties $76,330.45 obtained as a result of consent orders which the DOE entered into with the following firms:

O'Connell Oil Company of Pittsfield, Massachusetts.

Key Oil Company of Franklin, Kentucky.

The funds are being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund of a portion of either the O'Connell or the Key consent order fund must be filed in duplicate within 90 days of publication of this notice the the **Federal Register.** Applications should refer to the appropriate case number, HEF–0141 for O'Connell, and HEF–0106 for Key. Address applications to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Sharon Dennis, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision explains the procedures that the DOE has formulated to distribute to adversely affected parties the $76,330.45, plus accrued interest, that the DOE obtained under the terms of consent orders entered into with O'Connell Oil Company and Key Oil Company. O'Connell and Key provided these funds to settle all claims and disputes with the DOE regarding the manner in which each applied the federal price regulations to its sales of motor gasoline and diesel fuel, respectively. The O'Connell consent order covered the firm's motor gasoline sales between April 1, 1979, and April 30, 1980; the Key consent order covered the firm's diesel fuel sales between November 1, 1973, and March 31, 1974. Firms or individuals that purchased motor gasoline from O'Connell or diesel fuel from Key during these time periods may be eligible to receive a portion of the consent order funds

The DOE solicited comments concerning distribution of the consent order funds in two Proposed Decision and Orders, one for the O'Connell case issued on December 13, 1985, and one for the Key case issued on March 11, 1986. 50 FR 51919 (December 20, 1985); 51 FR 9262 (March 18, 1986). Following this, the DOE determined the final refund application procedures. As the Decision explains, the DOE audit of Key identified eight first purchasers who may be eligible for a refund. To receive a refund, these firms must submit either a schedule of their monthly purchases for Key, or a statement verifying that they purchased diesel fuel from Key and are willing to rely on the data in the audit files to document their claim. The Decision also describes the process by which purchasers not identified in the DOE audits may apply for refunds. These unidentified purchasers must submit monthly schedules of their diesel fuel purchases from Key or their motor gasoline purchases from O'Connell, and proof that they were injured by the consent order firm's alleged pricing violations. The Decision also specifies that retailers of O'Connell motor gasoline that claim refunds in excess of the $5,000 small claims threshold will be subject to different requirements for proving injury than those required of other large reseller and retailer applicants in the O'Connell and Key proceedings. Applicants claiming $5,000 or less need only document their purchase volumes.

The specific information required in an Application for Refund is set forth in the Decision and Order. Applications will be reviewed provided they are filed within 90 days of the publication of this Decision and Order in the **Federal Register.**

Dated: November 14, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Firms: O'Connell Oil Company, Key Oil Company.
Date of Filing: October 13, 1983.
Case Numbers: HEF–0141, HEF–0106.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with consent orders entered into with O'Connell Oil Company (O'Connell), and Key Oil Company (Key). This Decision and Order contains the procedures which the OHA has formulated to distribute the funds received pursuant to these consent orders.

I. Background

Both O'Connell and Key are "reseller-retailers" of "refined petroleum products" as those terms were defined in 10 CFR 212.31. O'Connell is located in Pittsfield, Massachusetts, and Key is located in Franklin, Kentucky. ERA audits of the consent order firms revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. The audit of O'Connell indicated that during the period April 1, 1979 through April 30, 1980, O'Connell committed possible pricing violations amounting to $9,361.13 with respect to its sales of motor gasoline. Similarly, ERA's audit of Key's records, which resulted in a Proposed Remedial Order (PRO) issued on March 20, 1981, alleged that Key committed certain pricing violations with respect to its sales of diesel fuel during the period November 1, 1973 through March 31, 1974.

Subsequently, O'Connell and Key entered into separate consent orders with the DOE in order to settle their disputes with the DOE concerning their sales of motor gasoline and diesel fuel, respectively. Each consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. The consent orders also state that the firms do not admit that they violated the regulations. On September 4, 1981, pursuant to the terms of the O'Connell consent order, O'Connell deposited $9,361.13 into an interest-bearing escrow account for ultimate distribution by the DOE.[1] Similarly, on September 21, 1983, Key completed the payments required of its settlement. The consent order required Key to remit $58,730; however, including installment interest, Key's total deposit amounted to $66,969.32, which we will consider to be the principal amount.[2]

II. Jurisdiction and Authority To Fashion Refund Procedures

The general guidelines which the OHA may use to formulate and implement a plan to distribute funds received as the result of a consent order are set forth in 10 CFR Part 205, Subpart V. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981) (*Coline*), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

The OHA issued a Proposed Decision and Order (PD&O) in the O'Connell proceeding on December 13, 1985, 50 FR 51919 (December 20, 1985), and in the Key proceeding on March 11, 1986, 51 FR 9262 (March 18, 1986). In order to give notice to all potentially affected parties, copies of the Proposed Decisions were published in the **Federal Register** and comments regarding the proposed refund procedures were solicited. In addition, copies of the PD&Os were mailed to purchases who were identified in the separate audit files and for whom addresses were available. Copies were also sent to various petroleum marketers' associations. While none of the consent order firms' customers submitted comments on the proposed procedures, comments were filed in the Key proceeding on behalf of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island and West Virginia. These comments concern the distribution of any funds remaining after refunds have been made to injured parties. The purpose of this Decision is to establish procedures for filing and processing claims in the first stage of the O'Connell and Key refund proceedings. In determining the manner of indirect restitution, we will act in accordance with the provisions of the recently enacted Petroleum Overcharges Distribution and Restitution Act of 1986. *See* H.R. 5300, Title III, 99th Cong., 2d Sess., Cong. Rec. H11319–21 (daily ed. October 17, 1986). Since no comments were received concerning first-stage procedures, we will employ the procedures suggested in the PD&Os. However, in both cases we will modify our calculation of the proposed volumetric factor.

We will provide refunds to identifiable purchasers of O'Connell motor gasoline who may have been injured by O'Connell's pricing practices between April 1, 1979 and April 30, 1980, and to Key customers who may have suffered injury as a result of Key's pricing practices in its sales of diesel fuel during the period November 1, 1973 through March 31, 1974. Purchasers must file applications documenting their purchases in order to be eligible for a portion of the consent order funds.

III. Distribution of Refunds

As we proposed in the Key PD&O, we will rely in part on the information in the Key audit file to aid us in determining the identity of certain allegedly overcharged parties and the amount of alleged overcharges each party suffered. *See, e.g., Dalco Petroleum, Inc.*, 14 DOE ¶ 85,248 (1986). The rationale for this plan was fully explained in the Key PD&O. 51 FR 9262 at 9263. In addition to identifying certain customers and alleging overcharges to these parties, the Key audit alleged overcharges to other, unidentified customers. However, since it was impossible for ERA to assign overcharges to unidentified customers, we proposed using the volumetric allocation methodology to determine the proper refund amounts for these customers. In the case of O'Connell where no first purchasers were identified, we also proposed the use of a volumetric approach to distribute the funds in escrow. *See, e.g., Propane Gas and Appliance Company*, 14 DOE ¶ 85,244 (1986). Since there were no objections to our proposals for distributing the refund monies by these methods, we will adopt them for use in the present proceeding.

The eight first purchasers of Key diesel fuel identified in ERA's audit and the portion of the consent order fund which was allotted to each by ERA are listed in the Appendix. We will allot the remaining, $59,268 of the Key consent order fund to customers who are as yet unidentified. The entire O'Connell consent order fund will be allotted to as yet unidentified claimants. The procedures for distribution of funds to unidentified purchasers (*i.e.*, using the volumetric method) follows in Section IV, below.

IV. Demonstration of Injury

Identification of first purchasers is only the first step in the distribution process. We must also determine whether the first purchasers were injured or were able to pass through the alleged overcharges. Besides considering the information which the audit files provide, we will adopt two rebuttable presumptions as well as two findings, regarding injury. First, we will presume that purchasers of O'Connell motor gasoline or Key diesel fuel that are claiming small refunds ($5,000 or less) were injured by the alleged overcharges.[3] In the absence of compelling material, we will also adopt a presumption that spot purchasers of products from either firm were not injured. In addition, we make a finding that end users or ultimate consumers of O'Connell motor gasoline and Key diesel fuel whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges. As proposed, end users, along with applicants filing claims at or below the $5,000 threshold, need only document their purchases to establish injury.[4] Nor will we require a detailed demonstration of injury from regulated utilities or agricultural cooperatives that purchased O'Connell motor gasoline or Key diesel fuel and passed the alleged overcharges associated with those products through to their end user customers or members. However, we will require such applicants to certify that they will pass any refund received through to their customers/members, to provide us with a full explanation of how they plan to

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[1] As of October 31, 1986, the O'Connell escrow account contained $17,130.02, representing $9,361.13 in principal, and $7,768.89 in accrued interest. O'Connell had previously deposited funds into an escrow account pursuant to an earlier consent order regarding sales of motor gasoline during the period November 1, 1973 through March 31, 1974. Those sales and that escrow account are not involved in this Decision.

[2] As of October 31, 1986, the Key escrow account contained $96,234.63, representing $66,969.32 in principal and $29,265.31 in interest.

[3] All of the customers identified in the Key audit were assigned refund amounts below the $5,000 small claims threshold, and will therefore not be required to provide a detailed demonstration of injury.

[4] We recognize that individuals who purchased Key diesel fuel or motorists which purchase motor gasoline from O'Connell's company-operated, service stations may have difficulty documenting their purchases, especially those made so long ago. Therefore, if these purchasers no longer have purchase documentation, they may submit estimates of purchases accompanied by a detailed explanation of how these estimated purchases volumes were derived. This information might include the type and number of vehicles owned, the approximate number of miles driven, etc.

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accomplish this restitution, and to notify the appropriate regulatory body or membership group of their receipt of any refund money. Prior OHA decisions provide detailed explanations of the bases of these presumptions and findings. *E.g., Peterson Petroleum, Inc.*, 13 DOE ¶ 85,191 at 88,508–10 (1985). The rationale for their use was also fully explained in the O'Connell and Key PD&Os. 50 FR 51919 at 51920–922 (December 20, 1985); 51 FR 9262 at 9263–264 (March 18, 1986). These presumptions and findings will permit claimants to apply for refunds without incurring prohibitively high expenses.

Unlike threshold claimants, a reseller or retailer which claims a refund in excess of $5,000 will be required to provide detailed documentation of its injury. While there are a variety of methods for making such a showing, we proposed that such a claimant be required to demonstrate (i) that it maintained a "bank" of unrecouped increased product costs throughout the regulatory period, and (ii) that market conditions would not permit it to pass on the increased costs to its customers in the form of higher selling prices.[5] Since there were no objections to the proposed demonstration of injury, we will adopt these requirements for resellers and retailers of Key diesel fuel, and resellers of O'Connell motor gasoline. As proposed, retailers of O'Connell motor gasoline will be subject to a different requirement for proving injury than that adopted above.[6] Retailers of O'Connell gasoline will not be required to submit cost bank data for the period following the discontinuation of the banking regulations for motor gasoline retailers, *i.e.*, after July 16, 1979; however, in order to qualify for a refund in excess of $5,000, they will be required to show that they maintained prices for motor gasoline at the same level as if overcharges had not occurred. To do so, a retailer may compare the prices it paid for O'Connell motor gasoline with the prices paid for motor gasoline by its competitors to show that market forces prevented it from recovering cost increases in the prices charged its own customers. *See Pacer Oil Company of Florida, Inc.*, 13 DOE ¶ 85,291 (1985).[7]

V. Calculation of Refund Amount

As previously stated, we will use the volumetric approach to distribute refund monies to the unidentified purchasers of Key diesel fuel and O'Connell motor gasoline. In the case of Key customers, we will use a straight volumetric approach. However, in the O'Connell proceeding we will modify the usual volumetric approach to fit the unique characteristics of that case.

Using a volumetric factor, a successful claimant's refund is determined by multiplying a factor, know as the volumetric refund amount, by the number of gallons of product purchased by the claimant. For claimants that purchased diesel fuel from Key during the period November 1, 1973 through March 31, 1974, but that were not identified by the ERA, the volumetric factor is $0.01413 per gallon.[8]

With regard to O'Connell, although the DOE's audit does not identify specific parties which may have been injured by the alleged overcharges, audit information does exist concerning the amount of consent order funds due O'Connell's wholesale and retail classes of customer. These records show that O'Connell sold fewer gallons at wholesale than retail, but that the wholesale transactions bore a greater proportion of the total amount of the alleged overcharges. As a result, in the audit file the ERA assigned a greater share of the settlement funds to wholesale purchasers. As previously stated, we will rely on this information to aid in the distribution of refunds, and we will therefore adopt the proposal to establish separate volumetric factors for O'Connell's wholesale and retail coustomers. We will also presume that within these two categories of customer, the alleged overcharges were distributed equally among all of the gallons of product sold.

O'Connell's wholesale and retail customers will be eligible to receive a refund equal to the number of gallons of motor gasoline purchased from O'Connell, multiplied by the appropriate volumetric factor. According to the consent order, $7,407.49 of the settlement funds should go to resellers and $1,953.64 to commercial end users and customers of company-owned service stations.[9] Based upon O'Connell's actual volume of gasoline sales to these customers, the volumetric factor for customers of company-owned service stations and commercial end users is $0.000402 per gallon, and the volumetric factor for wholesale dealer customers is $0.00437 per gallon.[10] Successful applicants in both cases will receive a proportionate share of the accrued interest.[11]

As in previous cases, only claims for at least $15 will be processed. In prior refund cases we have found that the cost of processing claims for smaller amounts outweighs the benefits of restitution. *See, e.g., Uban Oil Co.,* 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b). The same principle applies here.

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[5] This injury requirement reflects the nature of the petroleum price regulations in effect beginning on November 1, 1973, and ending on June 30, 1976 for reseller-retailers of diesel fuel (that product's decontrol date), and on July 16, 1979 and May 1, 1980 for motor gasoline retailers and resellers, respectively. Under the original rules, a reseller or retailer of these refined petroleum products was required to calculate its maximum lawful selling price (MLSP) by summing its selling price on May 15, 1973, with increased product costs incurred since that time. A firm which was unable to charge its MLSP in a particular month could "bank" any unrecovered increased product costs, so that those costs could be recouped in a later month, if possible. *See* 10 CFR 212.93; FR 29546 (1980).

[6] This was proposed because, effective July 16, 1979, a motor gasoline retailer was required to calculate its MLSP under a fixed-margin approach. Unrecouped increased product costs could no longer be banked for later recovery. 10 CFR 212.93; 45 FR 29546 (1980).

[7] Resellers or retailers who claim a refund in excess of $5,000 but who do not attempt to establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,122 (1982) (Ada).

[8] The Key volumetric has been slightly modified. The portion of the Key settlement fund that was assigned to identified purchasers by ERA should not be included in the calculation. Nor should the computation of the Key volumetric factor have included volumes purchased by identified claimants. *See* Beacon Oil Company, 14 DOE ¶ 85,509 (1986) (recalculation produced increased volumetric factor). Since the information available from ERA's audit did not provide sufficient information with which to determine a volumetric factor based solely on Key's sales to unidentified customers, the volumetric factor was recalculated by dividing the total settlement amount, $66,969, by the total 4,739,801 gallons of diesel fuel sold by Key to all purchasers during the consent order period.

[9] Since the service stations were owned by O'Connell, they are ineligible to claim the refunds allocated to them by ERA themselves, since such a refund would amount to returning consent order funds to O'Connell. However, customers which purchased motor gasoline from any of the following company-owned stations during the consent ordr period may file claims for those purchases. The stations are: East Street Amoco, Southstreet Amoco, Hinsdale Amoco, and Yellow Cab Service Station, all located in the Pittsfield, Massachusetts area.

[10] The volumetric factors have been revised from those estimated in the PD&O to reflect O'Connell's actual total sales volume during the consent order period, as supplied by the firm since the issuance of the PD&O. *See* Memorandum of telephone conversation between Mr. Solbin, O'Connell's Treasurer, and Sharon Dennis, OHA Staff Analyst. Using information available in the audit file we determined that commercial end users and company-owned service stations purchased 74.16 percent of O'Connell's total sales during the priod, or 4,865,225 gallons. We then divided this amount into the portion of consent order funds assigned retail purchasers by the ERA ($1,953.64) to obtain the volumetric factor of $0.000402 per gallon. Similarly, we divided the funds assigned O'Connell's wholesale dealer customers ($7,407.49) by O'Connell's wholesale sales volume, 1,695,216 gallons, to obtain the volumetric factor of $0.00437 per gallon.

[11] The volumetric presumption is rebuttable. A claimant which believes that it incurred a disproportionate share of the alleged overcharges within its class may submit evidence proving this claim. *See* Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co., 12 DOE ¶ 85,054 at 88,164 (1984).

VI. Applications for Refund

The procedures described above will allow us to distribute the O'Connell and Key consent order funds as equitably and efficiently as possible. Accordingly, we will now accept applications for refunds from individuals and firms that purchased O'Connell motor gasoline during the period April 1, 1979 through April 30, 1980, or Key diesel fuel during the period November 1, 1973 through March 31, 1974. Eligible applicants include downstream customers as well as first purchasers. As we proposed, a portion of the Key consent order funds will be distributed to the firms listed in the Appendix who file applications for refund, provided they make any necessary demonstrations of injury. No addresses are available for those firms marked by an asterisk in the Appendix. In an attempt to locate those firms, we will provide Key and various petroleum dealers' associations with copies of the Decision and will publish a notice in the **Federal Register.** We will accept information regarding the identity and present location of these firms for a period of 90 days from the date of publication of this Decision and Order in the **Federal Register.**[12]

There is no specific application form which must be used. In order to receive a refund, each claimant must submit the following information:

(1) A schedule of its monthly purchases of O'Connell motor gasoline or Key diesel fuel along with any relevant information necessary to support its claim in accordance with the presumptions and findings outlined above. An applicant listed in the Appendix may instead submit a statement verifying that it purchased Key diesel fuel and is willing to rely on the data in the audit file. If the applicant was a downstream purchaser it must also submit the name of its immediate supplier and indicate why it believes the products were originally sold by O'Connell or Key;

(2) How the applicant used the product—whether it was a reseller, retailer or end user;

(3) Whether the applicant has previously received a refund, from any source, with respect to the alleged overcharges identified in either of the ERA audits underlying this proceeding;

(4) Whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund;

(5) Whether the applicant is or has been involved as a party in any DOE enforcement or private, § 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d); and

(6) The name and telephone number of a person who may be contacted by this Office for additional information.

Finally, each application must include the following statement: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001.

All applications must be filed in duplicate and must be received within 90 days from the date of publication of this Decision and Order in the **Federal Register.** A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any applicant which believes that its application contains confidential information must indicate this and submit two additional copies of its application from which the information has been deleted. All applications should refer to the appropriate case number (HEF–0141 for O'Connell and HEF–0106 for Key) and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585.

It Is Therefore Ordered That:

(1) Applications for Refunds from the funds remitted to the Department of Energy by O'Connell Oil Company pursuant to the Consent Order executed on December 1, 1980, and by Key Oil Company pursuant to the Consent Order executed on September 29, 1981, may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: November 14, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

APPENDIX.—KEY OIL COMPANY

First purchasers	Share of settlement [1]
Cecil Key Truck Stop, Highway 222 & I65, Glendale, KY 42740	$1,340
Tri County Paving & Stone, Post Office Box 92, Rockfield, KY 42274	736
Gassie Construction Company, 720 Beech Street, Bowling Green, KY 42101	469
Gallatin Oil Company, 411 West Main Street, Gallatin, TN 37066	2,545
Winn Oil Company, 2910 N. Main Street, Madi- sonville, KY 42431	1,071
Nay Oil Company, Louisville, KY 40201	1,004
V.E. Overhold [2]	67
Allen Oil Company [2]	469

[1] This figure includes the share of installment interest. It does not include accrued interest. See footnote 2.

[2] No address available.

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[12] If we are unable to locate any firm listed in the Appendix, we will reserve any funds allocated to that firm for distribution in a subsequent proceeding.

[FR Doc. 86–26635 Filed 11–25–86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OA-FRL-3118-8]

Agency Programs Subject to Executive Order 12372 and Section 204 of the Demonstration Cities and Metropolitan Development Act

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is publishing a revised list of programs which States may choose to review under their official Executive Order 12372 process and which may be subject to section 204 of the Demonstration Cities and Metropolitan Development Act. This Notice is required under 40 CFR Part 29 to make final the list of EPA programs and activities subject to intergovernmental review.

EFFECTIVE DATE: November 26, 1986.

FOR FURTHER INFORMATION CONTACT: Corinne S. Allison, Grants Policy and Procedures Branch, Grants Administration Division (PM–216), Environmental Protection Agency 401 M St., SW., Washington, DC 20460 (telephone: (202) 382–5294).

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SUPPLEMENTARY INFORMATION: On March 3, 1986, EPA published a Notice (51 FR 7336) proposing to exclude from intergovernmental review under Executive Order 12372 most research, development, and demonstration projects; all EPA-issued interstate plans and permits; all except one training grant program, and certain applications submitted under the Senior Environmental Employment (SEE) Program. The comment period on the proposed exclusions ended on April 17, 1986. As no comments were received, the Agency has determined that the exclusions should be made final. Accordingly, the following list identifies EPA programs, other than those described in the March 3 Notice, which a State may choose to review under an official Executive Order 12372 process. Programs on the list involving projects that may also be subjected to the review requirements of Section 204 of the Demonstration Cities and Metropolitan Development Act are identified with an asterisk (*).

Note: Applications submitted in excluded EPA programs for projects proposed in a metropolitan area may still be subject to review under section 204. Applicants must contact their areawide/Regional/local planning agency designated to perform metropolitan or regional planning for the area regarding this requirement.

Programs Subject to Executive Order 12372 and Section 204 of the Demonstration Cities and Metropolitan Development Act

CFDA No.	Assistance program title
*66.001	Air Pollution Control Program Support.
*66.418	Construction Grants for Wastewater Treatment Works.
*66.419	Water Pollution Control State and Interstate Program Support.
(N/A)	Water Pollution Control State and Local Manpower Program Development.
*66.432	State Public Water System Supervision.
*66.433	State Underground Water Source Protection.
*66.435	Water Pollution Control Lake Restoration Demonstration.
*66.438	Construction Management Assistance.
*66.454	Water Quality Management Planning.
*66.455	Construction Grants for Wastewater Treatment Works for Combined Sewer Overflows.
*66.456	Comprehensive Estuarine Management.
*(N/A)	State Inventories of Uncontrolled Hazardous Waste Sites.
66.500	Environmental Protection Consolidated Research.[1]
66.501	Air Pollution Control Research.[1]
66.502	Pesticides Control Research.[1]
66.504	Solid Waste Disposal Research.[1]
*66.505	Water Pollution Control Research, Development, and Demonstration.[1]
*66.506	Safe Drinking Water Research and Demonstration.[1]
66.507	Toxic Substances Research.[1]
66.508	Senior Environmental Employment (SEE) Program.[2]
*66.600	Consolidated Continuing Environmental Program Support.
*66.603	Loan Guarantees for Construction of Treatment Works.
*66.700	Pesticides Enforcement Program Support.
*66.701	Toxic Substances Compliance Monitoring Cooperative Agreements.
66.702	Asbestos Hazards Abatement (Schools) Assistance Program.
*66.801	Hazardous Waste Management State Program Support.
*66.802	Hazardous Substance Response Trust Fund.
*66.804	State Underground Storage Tanks Program.
*(N/A)	State/Local Innovative Waste Management Activities.
*(N/A)	Special Studies, Investigations and Surveys.
	Direct development activity title
*(N/A)	Real property acquisition or disposition, including obtaining major leases or easements.
*(N/A)	Construction of new EPA facilities.
*(N/A)	EPA issued plans and permits which do not impact interstate areas.

[1] Selection is limited to proposals which (a) require an Environmental Impact Statement (EIS); or (b) do not require an EIS but will be newly initiated at a particular site and require unusual measures to limit the possibility of adverse exposure or hazard to the general public; or (c) have a unique geographic focus and are directly relevant to the governmental responsibilities of a State or local government within that geographic area.

[2] Selection is limited to proposals which will provide support to a State or local environmental agency.

Dated: July 28, 1986.

Howard M. Messner,

Assistant Administrator for Administration and Resources Management.

[FR Doc. 86-26847 Filed 11-25-86; 8:45 am]

BILLING CODE 6560-50-M

[A-5-FRL-31191-1]

Announcement of Actions Taken Under the PSD Regulations: Wisconsin

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that USEPA, Region V, has issued two permits under the Federal Prevention of Significant Deterioration (PSD) regulations, codified at 40 CFR 52.21 (as amended on August 7, 1980), to the following two companies: (1) Consolidated Papers, Inc.—permit issued on February 15, 1985; and (2) Quad/Graphics, Inc.—permit issued on December 5, 1985.

ADDRESSES: Copies of the permits and background information are available for inspection at the following addresses. (It is recommended that you telephone William E. Beyer, at (312) 886-6053, before visiting the Region V Office).

Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604

Wisconsin Department of Natural Resources, Bureau of Air Management (AIR/3), 101 South Webster Street, Madison, Wisconsin 53707

FOR FURTHER INFORMATION CONTACT: William E. Beyer, (312) 886-6053.

SUPPLEMENTARY INFORMATION: The PSD permit for Consolidated Papers, Inc., grants approval to construct a 445.16 million BTU/hour (MMBTU/hr) boiler (Boiler No. 5) in the Village of Biron, Wood County, Wisconsin. The boiler will fire sub-bituminous coal, or a combination of such coal and wood bark refuse. The proposed project qualifies as a "major modification" of an existing major stationary source under the PSD regulations. The pollutants reviewed include total suspended particulates (TSP), sulfur dioxide (SO_2), nitrogen oxide (NO_x), carbon monoxide (CO), and volatile organic compounds (VOC). The permit was issued by USEPA on February 15, 1985.[1]

The PSD permit for Quad/Graphics, Inc., grants approval to construct two rotogravure printing presses, a proof press, an electroplating process, and two boilers, each rated at 20.681 MMBTU/hr, in the Village of Lomira, Dodge County,

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[1] Prior to their submission to USEPA, both applications were reviewed by the Wisconsin Department of Natural Resources (WDNR) and were subject to public comment and the opportunity for hearing. This is consistent with USEPA's January 29, 1981 (46 FR 9580), partial delegation to WDNR to implement the PSD program. See 40 CFR 52.21(u).

Wisconsin. The proposed project qualified as a major new stationary source under the PSD regulations. The pollutants reviewed include TSP, SO_2, NO_x, CO, and VOC. The permit was issued by USEPA on December 5, 1985.[1]

Under section 307(b)(1) of the Clean Air Act (the Act), judicial review of any of the above actions is available only by the filing of a petition for review in the appropriate U.S. Circuit Court of Appeals within 60 days of today's notice. Under section 307(b)(2) of the Act, any requirements associated with the above actions may not be challenged later in civil or criminal proceedings that may be brought by the USEPA to enforce the permit requirements.

For the above actions, the appropriate court is the U.S. Court of Appeals for the Seventh Circuit. A petition for review must be filed with that court on or before January 26, 1986.

Dated: November 17th, 1986.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 86-26645 Filed 11-25-86; 8:45 am]

BILLING CODE 6560-50-M

[A-4-FRL-3118-9]

PSD Permit for Toyota Motor Manufacturing U.S.A., Inc.; Final Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that a Prevention of Significant Deterioration (PSD) permit issued by the Kentucky Department for Environmental Protection (DEP) to Toyota Manufacturing U.S.A., Inc., (Toyota) on June 19, 1986, and revised by DEP on July 17, 1986, became effective on October 2, 1986. The permit was issued for the construction of an automobile assembly plant in Georgetown, Kentucky.

DATE: This action is effective as of October 2, 1986, the date of the Administrator's denial of petitions for review of the Toyota PSD permit.

ADDRESSES: Copies of the permit and the order denying the petitions for review are available for public inpection or upon request at the following locations:

Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365

Kentucky Department for Environmental Protection, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Building #2, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Wayne J. Aronson of the EPA Region IV Air Programs Branch at the Atlanta address above. Telephone number (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On June 19, 1986, DEP issued its final determination to issue a PSD permit to Toyota to construct an automobile assembly plant in Georgetown, Kentucky. On July 17, 1986, DEP issued a revised final determination to issue a permit. The final determination and revision were issued by DEP under authority delegated by EPA Region IV on May 19, 1980.

By petitions dated July 18, 1986, Jerry Hammond, Charles Hoffmaster, and Randall Maddox, all residents of Kentucky, petitioned the Administrator of EPA pursuant to 40 CFR 124.19(a) for certain relief regarding the DEP determination. On August 1, 1986, the Administrator denied these petitions (PSD Appeal No. 86-3, Order Denying Petitions for Review).

By petitions dated August 17, 1986, these same petitioners requested review by the Administrator of the revised DEP determination. On October 2, 1986, the Administrator denied these petitions (PSD Appeal No. 86-4, Order Denying Petitions for Review).

The denial by the Administrator of these petitions completes the administrative review procedures available under 40 CFR Part 124, and constitutes final agency action. Petitions for judicial review of this action pursuant to section 307(b)(1) of the Clean Air Act must be filed within sixty days of the publication of this notice.

Dated: November 5, 1986.

Lee A DeHihns, III,

Acting Regional Administrator.

[FR Doc. 86-26646 Filed 11-25-86; 8:45 am]

BILLING CODE 6560-50-M

[OPPE-FRL-3118-7]

National Air Pollution Control Techniques Advisory Committee and Management Advisory Group to the Construction Grants Program; Advisory Committee Renewals

The U.S. Environmental Protection Agency announces the renewal of the National Air pollution Control Techniques Advisory Committee and the Management Advisory Group to the Construction Grants Program following consultation with the Committee Management Secretariat, General Services Administration. EPA has determined that renewal of these advisory committees is in the public interest in connection with the performance of duties imposed on the Agency by law. The charters which continue these two advisory committees for two more years, unless otherwise sooner terminated, will be filed with the appropriate Congressional Committees and the Library of Congress. The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act and the rules and regulations issued in implementation of the Act.

FOR FURTHER INFORMATION CONTACT: Mary Anne Beatty, EPA Committee Management Officer (PM-213), U.S. Environmental Protection Agency, 401 M Street SW., Washington , DC 20460, 202-382-5036.

Dated: November 7, 1986.

Howard M. Messner,

Assistant Administrator for Administration and Resources Management.

[FR Doc. 86-26648 Filed 11-25-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-42014D; FRL-3117-2]

Intent To Approve Amendment to Montana Plan for Certification of Applicators of Restricted Use Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intent to Approve Amended Montana Plan for Certification of Pesticide Applicators of Restricted Use Pesticides.

SUMMARY: The director of the Montana Department of Agriculture has submitted to EPA an amendment to their approved plan for the certification of applicators of restricted use pesticides. This amendment to the Montana certification plan permits certification of Compound 1080 Livestock Protection Collar applicators and applicators of restricted wood preservative pesticides. This amendment also includes changes in laws, regulations, policies, and Department organization that have occurred since the Montana Certification Plan was approved December 13, 1976. Notice is given of the intention of the Regional Administrator, EPA Region VIII, to approve this amendment. A summary of the amendment appears under Supplementary Information. Interested persons are invited to comment.

DATE: Comments should be submitted on or before December 26, 1986.

ADDRESS: Address comments identified by the document control number "OPP-42014D" to: Dean Chaussee, Montana Operations Office, EPA Region VIII,

BEST COPY AVAILABLE

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Federal Office Building, Drawer 10096, 301 South Park, Helena, Montana 59626.

FOR FURTHER INFORMATION CONTACT: Dean Chaussee (406–449–5414).

SUPPLEMENTARY INFORMATION: In accordance with the provisions of section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended, 86 Stat. 973, 7 U.S.C. 136b and 40 CFR Part 171, Keith Kelly, Director, Montana Department of Agriculture, has submitted to EPA an amendment to the Montana State Plan to permit certification of private and commercial applicators of the Compound 1080 Livestock Protection Collar and applicators of wood preservatives. This amendment also includes changes in laws, regulations, policies and Department organization that have occurred since the plan was originally approved in 1976. Montana regulations subdivide the Federal designation of commercial applicator into designations of commercial, public utility, government, and non-commercial applicators. Whenever the term "commercial applicator" is used in this notice it refers to the Federal designation unless otherwise indicated.

On July 11, 1985, EPA registered Compound 1080 for predator control use in Livestock Protection Collars. Prior to this action, all predator control uses of Compound 1080 had been cancelled. The registration of Compound 1080 Livestock Protection Collars imposed additional reporting and recordkeeping requirements beyond those required of other restricted use pesticides. Further, the registration required that Compound 1080 Livestock Protection Collar applicators receive specific training and a distinct certification. This amendment to the original Montana Certification Plan meets the requirements of the Compound 1080 Livestock Protection Collar registration.

The Montana Plan sets up a special certification subcategory for both private and commercial applicators. Private applicators must meet both the general certification competency standards plus product specific competency standards for the Compound 1080 Livestock Protection Collar. Competency in the product specific standards will be determined through a pass/fail written examination.

Commercial applicators must also meet both the general certification competency standards plus specific competency standards for the Compound 1080 Livestock Protection Collar. Government applicators will be certified in the Predator subcategory under the Regulatory Pest Control major category. Other commercial applicators will be certified in the Vertebrate subcategory under the Agricultural Pest Control major category. Competency will be determined through a pass/fail written examination. The State estimates that there will be 60 private and commercial applicators requesting certification to use the collar.

All private and commercial applicators will be required to complete a training course presented by the Montana Department of Agriculture. The course will use a training package developed by Texas A&M University under a contract from EPA.

Collars will be available to applicators only through the Montana Department of Livestock.

Applicators who cannot read will not be certified.

Reciprocity will be granted only to applicators holding a specific Compound 1080 Livestock Protection Collar certification. Reciprocity will be further limited to those who own or lease land in Montana and to Federal employees engaged in predator control in an official capacity.

The written examination which the Department will use to determine competency was attached to the plan, but will not be available for public review in order to protect the integrity of the examination. EPA has reviewed the examination and determined that it would satisfactorily measure the competence of applicators when completed in conjunction with the other certification requirements.

On January 10, 1986, EPA announced that the wood preservative chemicals creosote, pentachlorophenol, and inorganic arsenicals would be classified as restricted use pesticides effective November 10, 1986. EPA advised the State applicator certification agencies that there were users of these compounds that would need to be certified who may not fit into the standard certification categories. Use of wood preservatives classified as restricted use does not entail any reporting or recordkeeping requirements beyond those of other restricted use pesticides.

The Montana Department of Agriculture has determined that, in the interim, private applicators (i.e., producers of agricultural commodities) can continue to use wood preservatives under their current certification. This conforms to EPA policy. Beginning in late 1987 a section of the private applicator certification training course will be devoted to wood preservatives in those parts of the State where there is a need. In conjunction with the availability of specialized training, private applicators who complete that training will have a wood preservative designation added to their certification. After that time, private applicators who do not receive the wood preservative designation will not be permitted to buy or use the products. Methods of competency determination will remain the same.

The Montana Department of Agriculture has added a new major category for commercial certification entitled Wood Product Pest Control. Commercial applicators using wood preservatives classified for restricted use must become certified in this category regardless of other categories in which they might be certified.

The standards of competency that commercial applicators must meet include knowledge of the equipment and procedures necessary for personal protection both while using the wood preservatives and while using wood products treated with the preservatives: the need to protect users of treated wood products and provide Consumer Information Sheets; disposal requirements; and the procedures necessary to protect livestock, water, and other aspects of the environment. A training course and a written examination covering these specific competency standards are being developed and are expected to be available in October 1986. EPA will review these materials as they become available to insure that the competency standards are adequately addressed.

The Montana Department of Agriculture estimates that approximately 250 commercial applicators will seek training and testing for certification in the Wood Product Pest Control Category. An estimate of the number of private applicators has not been made but will be done as part of the planning effort in 1987 in preparation for the special training effort mentioned above.

Since the Montana Certification Plan was approved in 1976, the State has made numerous changes, mostly minor, in the way the program is set up. During this last year, major changes were made in the State regulations. The Montana Department of Agriculture held public hearings on all changes in regulations and followed the State Administrative procedures rule. Except for the regulatory changes during this last year, the individual changes made were minor. Cumulatively the minor changes become significant. EPA is not required formally to approve minor changes in a State's certification program although EPA did review or make note of the minor changes as they occurred and remains up-to-date on the State's conduct of the program.

In 1983, the Montana Pesticides Act was amended to increase the maximum criminal penalty that could be assessed and to give the Department of Agriculture the authority to assess a civil penalty administratively. Regulations implementing the civil penalty authority were promulgated in 1986 and are expected to expedite the enforcement process.

Provisions for providing a limited emergency certification to private applicators have been taken out of the program. These provisions were included initially to prevent a hardship on those farmers who were unaware of the requirements for or the existence of the applicator certification program. This program, which has been in place since 1976, should now be common knowledge in the farming community. The State has also deleted provisions for certifying private applicators who are illiterate. This action was deemed necessary because of the necessity of the applicator's being able to read and understand all of the information provided on a pesticide label.

License fees have been increased or, in the case of private applicators, instituted to help offset the cost of operating the program. These fees are used primarily to cover the cost of providing educational materials.

Some changes have been made in the categorization of commercial applicators. The Public Utility category was combined within the Right-of-Way category since both categories cover the same types of pesticide use and differed only in type of employer for whom the applicator worked. A subcategory of the Structural Pest Control Category, entitled Food Manufacturing and Processing, was eliminated because of the small number of applicators within the group. Grain elevator fumigators were placed within the Seed Treatment category because the same people were being certified in both categories and usage problems were similar.

Copies of the plan amendment are available for review at the following locations during normal business hours:

1. Montana Department of Agriculture, Rm. 317, Sixth Ave. and Roberts St., Helena, Montana, (406-444-2944).
2. Montana Operations Office, Environmental Protection Agency, Rm. 292, Federal Office Building, 301 South Park, Helena, Montana, (406-449-5414).
3. Environmental Protection Agency, Rm. 2456, 999 18th St., Denver, Colorado, (303-293-1730).
4. Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, Virginia, (703-557-3262).

Interested persons are invited to submit comments.

Dated: November 5, 1986.

John G. Welles,

Regional Administrator, Region VIII.

[FR Doc. 86-26287 Filed 11-25-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30274; FRL-3117-1]

FMC Corp.; Application To Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to conditionally register a pesticide product involving a changed use pattern pursuant to the provision of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by December 26, 1986.

ADDRESS: By mail submit comments identified by the document control number [OPP-30274] and the file symbol (279-GNAO) to: Information Services Section (TS-757C), Program Management and Support Division, Attn: Product Manager (PM) 15, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460,

In person, bring comments to: Rm. 236, CM#2, Attn: PM 15, Registration Division (TS-767C), Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: George LaRocca, PM 15, (703-557-2400).

SUPPLEMENTARY INFORMATION: FMC Corp., Agricultural Chemicals Group, 2000 Market St., Phila, PA 19103, has submitted an application to EPA to conditionally register the pesticide product Capture 2 EC®, EPA File Symbol 279-GNAO, containing the active ingredient bifenthrin, (2-methyl[1,1'-biphenyl]-3-yl) methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate at 25.1 percent, the product involves a changed use pattern pursuant to the provision of section 3(c)(4) of FIFRA. The application proposes that the product include in its presently registered ornamental use, a new use to control pests on full season cotton. Notice of receipt of this application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register** The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703-557-3262), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: November 12, 1986.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-26288 Filed 11-25-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180706; FRL-3116-8]

Emergency Exemptions; Dicamba, etc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests in the eight States listed below and one quarantine exemption to the U.S. Department of Agriculture. Also listed are two crisis exemptions initiated by the California Department of Food and Agriculture. These exemptions,

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issued during the month of September, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific, quarantine, and crisis exemption for its effective dates.

FOR FURTHER INFORMATION CONTACT: See each specific exemption for the name of the contact person. The following information applies to all contact people:

By mail:

Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arkansas State Plant Board for the use of dicamba on fallow land which will be planted to cotton in the spring to control redvine; September 18, 1986 to December 1, 1986. (Libby Pemberton)

2. California Department of Food and Agriculture for the use of sethoxydim on alfalfa to control prairie cupgrass; September 10, 1986 to March 15, 1987. (Libby Pemberton)

3. Florida Department of Agriculture and Consumer Services for the use of fluazifop-butyl on carrots to control grassy weeds; September 2, 1986 to July 31, 1987. (Libby Pemberton)

4. Illinois Department of Agriculture for the use of thiabendazole on stored corn to control fungi; September 5, 1986 to January 1, 1987. (Jim Tompkins)

5. Louisiana Department of Agriculture for the use of fenvalerate on sorghum grain to control the sorghum midge; September 24, 1986 to September 30, 1986. Louisiana had initiated a crisis exemption for this use. (Stan Austin)

6. Mississippi Department of Agriculture and Commerce for the use of dicamba on fallow land which will be planted to cotton in the spring to control redvine; September 18, 1986 to December 1, 1986. (Libby Pemberton)

7. Oregon Department of Agriculture for the use of carbofuran on mint to control strawberry root weevil larvae; September 8, 1986 to October 31, 1986. (Stan Austin)

8. Texas Department of Agriculture for the use of fenvalerate on sorghum grain to control the sorghum midge: September 24, 1986 to September 30, 1986. Texas had initiated a crisis exemption for this use. (Stan Austin)

9. Texas Department of Agriculture for the use of 2,6-dichloro-4-nitroaniline on peanuts to control *Sclerotinia;* September 19, 1986 to October 17, 1986. (Jim Tompkins)

EPA issued a quarantine exemption to the U.S. Department of Agriculture for the use of lure baits containing naled and methyl eugenol on inanimate objects to control the guava fruit fly in California; September 5, 1986 to September 4, 1989. U.S. Department of Agriculture had initiated a crisis exemption for this use. (Jim Tompkins)

Crisis exemptions were initiated by the:

1. California Department of Food and Agriculture on September 5, 1986, for the use of aluminum phosphide on wild rice to control grain borers and grain noths. Since it was anticipated that this program would be needed for more than 15 days, California requested a specific exemption to continue it. The need for this program is expected to last until December 31, 1986. (Stan Austin)

2. California Department of Food and Agriculture for the use of malathion on persimmons to control the oriental fruit fly. Since it was anticipated that this program would be neeedcd for more than 15 days, California requested a quarantine exemption to continue it. The need for this program is expected to last for 3 years. (Jim Tompkins)

Authority: 7 U.S.C. 136.

Dated: November 12, 1986.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 86-26391 Filed 11-25-86; 8:45 am]

BILLING CODE 6560-50-M

[PP 4G3156/T532; FRL-3116-9]

American Hoechst Corp.; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for the combined residues of the herbicide monoammonium 2-amino-4-(hydroxymethylphosphinyl)butanoate and its metabolite in or on certain raw agricultural commodities. These temporary tolerances were requested by American Hoechst Corp.

DATE: These temporary tolerances expire January 1, 1988.

FOR FURTHER INFORMATION CONTACT:

By mail: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW. Washington, DC 20460.

Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1830).

SUPPLEMENTARY INFORMATION: American Hoechst Corp.; Agricultural Division, Route 202-206 North, Somerville, NJ 08876, has requested in pesticide petition PP 4G3156 the establishment of temporary tolerances for the combined residues of the herbicide monoammonium 2-amino-4-(hydroxymethylphosphinyl)butanoate and its metabolite of 3-methylphosphinicopropionic acid, in or on the raw agricultural commodities soybean seed, citrus, pome fruit, grapes, and stone fruit at 0.05 part per million (ppm).

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 8340-EUP-10, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active herbicide to be used must not exceed the quantity authorized by the experimental use permit.

2. American Hoechst Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire January 1, 1988. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 610–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: (21 U.S.C. 346a(j)).

Dated: November 10, 1986.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86–26289 Filed 11–25–86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-36130; FRL-3118-5]

Publication of Addenda on Data Reporting to Pesticide Assessment Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Addenda to the Pesticide Assessment Guidelines on reporting the following studies: avian oral LD_{50}, dietary LC_{50} and reproduction, developmental toxicity, rotational crops, storage stability, analytical method(s), and crop field trials have been finalized and are now available to the public from the National Technical Information Service. The addenda supersede paragraphs in the Guidelines on data reporting and provide a format for the preparation of study reports by those submitting data to EPA. While these Guidelines are not mandatory at this time, data submitters are encouraged to follow the format so that reports will be consistent, thereby increasing the efficiency of pesticide registration and other regulatory activities.

ADDRESS: Guidelines can be ordered from: National Technical Information Service, ATTN: Order Desk, 5285 Port Royal Road, Springfield, VA 22161, (703–487–4650).

FOR FURTHER INFORMATION CONTACT:

Elizabeth M.K. Leovey, Hazard Evaluation Division (TS–769C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number Rm. 703B, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, Va, (703–557–2162).

SUPPLEMENTARY INFORMATION: The specific addenda, with NTIS order numbers, currently available from NTIS are as follows:

Document title	NTIS document No.	EPA document No.
Pesticide Assessment Guidelines—Subdivision E Addendum 1.	PB86–248176	540/9–86–152
Hazard Evaluation: Wildlife and Aquatic Organisms		
Series 71–2—Acute Dietary LC_{50} Test for Waterfowl and Upland Game Birds,		
Series 71–1—Acute Oral LD_{50} Test for Waterfowl and Upland Game Birds,		
Series 71–4—Avian Reproduction Test for Waterfowl and Upland Game Birds.		
Pesticide Assessment Guidelines—Subdivision F Addendum 1.	PB86–248184	540/9–86–150
Hazard Evaluation: Humans and Domestic Animals		
Series 83–3—Rat or Rabbit Developmental Toxicity Study.		
Pesticide Assessment Guidelines—Subdivision N Environmental Fate.	*PB86–247848*	*540/9–86–149*
Series 165–2—Field Accumulation Studies on Rotational Crops, Addendum 1 on Data Reporting.		
Pesticide Assessment Guidelines—Subdivision O Addendum 2, Residue Chemistry.	PB86–248192	540/9–86–151
Series 171–4—Analytical Method(s), Magnitude of the Residue: Crop Field Trials, and Storage Stability Study..		

These documents were reviewed by the U.S. Department of Agriculture, the Food and Drug Administration, and other organizations within EPA. They were discussed by the FIFRA Scientific Advisory Panel in a public meeting on September 27, 1985 and underwent public comment announced in the **Federal Register** of July 31, 1985 (50 FR 31010). The documents were revised to reflect consideration of these comments, and the public comments are addressed in the documents.

Orders may be placed by mail or telephone. All orders should specify whether the document is requested in hard copy or microfiche form since prices vary for hard copy but are a consistent $5.95 for the microfiche. For the documents listed in this notice, the price of the paper copy is $9.95. There is an additional $3.00 handling charge for each order. Payment may be made by charging against an NTIS deposit account; charging to VISA, MasterCard, or American Express; or by check or money order. In all orders, the document title, NTIS order number of the document, desired form of the document (microfiche or hard copy), and the price must be stated.

Data Reporting Guidelines for the remaining major studies in the Pesticide Assessment Guidelines will also be published. Publication will be announced in the **Federal Register**.

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Dated: October 27, 1986.

Anne Barton,

Acting Director, Hazard Evaluation Division, Office of Pesticide Programs.

[FR Doc. 86–26517 Filed 11–25–86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS–59234; FRL–3119–5]

Certain Chemical Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TIME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME–86–62. The test marketing conditions are described below:

EFFECTIVE DATE: November 3, 1986. Written comments will be received until December 11, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS–59234]" and the specific TME number should be sent to: Document Control Officer (TS–790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–201, 401 M St., SW., Washington, DC 20460, (202 382–3532).

FOR FURTHER INFORMATION CONTACT: Sally Sasnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Environmental Protection Agency, Rm. E–613, 401 M St., SW., Washington, DC 20460, (202–382–3861).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substance for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–86–62. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

Inadvertently notice of receipt of the application was not published; therefore, an opportunity to submit comments is being offered at this time. The complete non-confidential document is available in the Public Reading Room NE G004 at the above address between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury.

The following additional restrictions apply to TME–86–62. A bill of lading accompanying each shipment must state that the uses of the substance are restricted to those approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced.
2. The applicant must maintain records of dates of the shipments to the customer and the quantities supplied in each shipment.
3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T–86–62

Date of Receipt: September 24, 1986.

Close of Review Period: November 7, 1986. The extended comment period will close November 11, 1986.

Applicant/Importer: Confidential.

Chemical: (G) Aliphatic polycarboxilic acid metal salt.

Use: (G) Contained use bleaching agent.

Production Volume: Confidential.

Number of Customers: Confidential.

Toxicity Data: Non mutagenic

Worker Exposure: Confidential.

Environmental Release/Disposal: Confidential.

Test Marketing Period: Three Months.

Commencing on: November 3, 1986.

Risk assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not represent any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its findings that the test market activities will not present any unreasonable risk of injury to health or the environment.

Dated: November 3, 1986.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 86–26649 Filed 11–25–86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS—51566B; FRL 3119–4]

Certain Chemical; Premanufacture Notice Termination of Review Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is revoking, effective November 8, 1986, following the signing of a Consent Order for the new chemical substance subject to premanufacture notice (PMN) P–85–735, the remaining portion of a 90-day extension of the review period for PMN P–85–735, under the authority of section 5(c) of the Toxic Substances Control Act (TSCA).

FOR FURTHER INFORMATION CONTACT: Kenneth Moss, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Environmental Protection Agency, Rm. E–613, 401 M Street, SW., Washington, DC 20460, (202–382–3395).

SUPPLEMENTARY INFORMATION: The original 90-day review period for PMN P–85–735 was scheduled to expire on December 22, 1985. EPA published a section 5(c) extension notice for the PMN, in the **Federal Register** of December 31, 1985 (50 FR 53395), to provide the Agency with sufficient time to issue an order under section 5(e). The Order would have prohibited the Company from manufacturing the PMN substance in, or importing it in powder form into, the United States pending the submission and evaluation of test or monitoring data addressing the potential risk of injury to human health.

The review period, including the extension under section 5(c), is scheduled to expire January 19, 1987. After the Order was proposed, the company suspended the notice review period and submitted more data and information. In light of this new data and information, EPA and the Company agreed to enter into a Consent Order addressing the potential risk of injury to health.

Therefore, EPA is revoking the remaining portion of the extended review, effective immediately.

Dated: November 8, 1986.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 86-26650 Filed 11-25-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

November 19, 1986.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of this submission may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037, telephone (202) 857-3800. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395-4814. For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0003
Title: Application for Amateur Radio Station and/or Operator License
Form No.: FCC 610
Action: Revision
Estimated Annual Burden: 118,750 Responses; 9,856 Hours

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-26623 Filed 11-25-86; 8:45 am]

BILLING CODE 6712-01-M

Information Collection Requirement Approvals by Office of Management and Budget

November 18, 1986.

The following information collection requirement has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0089
Title: Application for Land Radio Station License in the Maritime Services
Form No.: FCC 503

A revised application form FCC 503 has been approved for use through 10/31/89. The January 1986 edition with an expiration date of 11/30/87 will remain in use until revised forms are available.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-26622 Filed 11-25-86; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

November 18, 1986.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of this submission may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 2037, telephone (202) 857-3800. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395-4814. For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No: 3060-0064
Title: Application for Station Authorization in the Private Operational Fixed Microwave Radio Service
Form No.: FCC 402
Action: Revision
Estimated Annual Burden: 7,619 Responses; 45,714 Hours

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-26621 Filed 11-25-86 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1629]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

November 17, 1986.

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions must be filed within 15 days after publication of this Public Notice in the **Federal Register**. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Rock Harbor, Florida) (MM 85-372, RM-5172) Number of petitions received: 1.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-26625 Filed 11-25-86; 8:45 am]

BILLING CODE 6712-01-M

[File Nos. BPH-850712P5 et al.; MM Docket No. 86-425]

Applications for Consolidated Hearing; Teton Broadcasting Ltd. Partnership, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Teton Broadcasting Limited partnership; Jackson, WY.	BPH-850712P5	86-425.
B. Kova Communications Limited; Jackson, WY.	BPH-850712P6	
C. Jackson Skywave, Inc.; Jackson, WY.	BPH-850712P8	
D. Echonet Corporation; Jackson, WY.	BPH-850712P9	
E. Beacon Broadcasting, Inc.; Jackson, WY.	BPH-850712Q2	(Dismissed.)
F. Archie Givens, Jr.; Jackson, WY.	BPH-850712Q4	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

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Issue Heading and Applicant(s)

1. Environmental Impact, A, C, D, F
2. Site Availability, B
3. Air Hazard, B, C, D, F
4. Comparative, A, B, C, D, F
5. Ultimate, A, B, C, D, F

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete hearing designation order in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commissions duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-26624 Filed 11-25-86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212-009847-016.

Title: U.S. Atlantic Coast/Brazil Agreement.

Parties:

Companhia de Navegacao Lloyd Brasileiro
Companhia de Navegacao Maritime Netumar
United States Lines (S.A.) Inc.

Synopsis: The proposed amendment would extend the provisions of the agreement governing alternate coast service until December 31, 1987.

Agreement No.: 212-009848-018.

Title: U.S. Gulf Ports/Brazil Agreement.

Parties:

Companhia de Navegacao Lloyd Brasileiro
Companhia Maritima Nacional
United States Lines (S.A.) Inc.

Synopsis: The proposed amendment would extend the provisions of the agreement governing alternate coast service until December 31, 1987.

Agreement No.: 212-010027-016.

Title: Brazil/U.S. Atlantic Coast Agreement.

Parties:

Companhia de Navegacao Lloyd Brasileiro
Companhia de Navegacao Maritima Netumar S/S
United States Lines (S.A.) Inc.
A/S Ivarans Rederi
Empresa Lineas Maritimas Argentinas S/A
A. Bottacchi S.A. de Navegacion C.F.I.I.
Van Nievelt, Goudriaan and Co., B.V.

Synopsis: The proposed amendment would extend the provisions of the agreement governing alternate coast service until December 31, 1987.

Agreement No.: 212-010286-010.

Title: Italy-U.S.A. North Atlantic Pool Agreement.

Parties:

Compania Trasatlantica Espanola, S.A.
Jugolinija
Nedlloyd Lines
Zim Israel Navigation Company, Ltd.
"Italia" di Navigazione, S.P.A.
Farrell Lines, Inc.
Sea-Land Service, Inc.

Synopsis: The proposed amendment would extend a provision excluding non-containerizable cargo from pool cargo to September 30, 1987, and would give additional individuals authority to execute and file amendments to the agreement.

Agreement No.: 212-010320-014.

Title: Brazil/U.S. Gulf Ports Agreement.

Parties:

Companhia de Navegacao Lloyd Brasileiro
Companhia Maritima Nacional
United States Lines (S.A.) Inc.
Empresa Linera Maritimas Argentinas S.A.
A. Bottacchi S.A. de Navegacion C.F.I.I.
Transportation Maritima Mexicana S.A.

Synopsis: The proposed amendment would extend the provisions of the agreement governing alternate coast service until December 31, 1987.

Agreement No.: 212-010382-010.

Title: Agrentina/U.S. Guld Ports Agreement.

Parties:

A. Bottacchi S.A. de Navegacion C.F.I.I.
Cia. de Navegacao Lloyd Brasileiro
Companhia Maritima Nacional
Empresa Lineas Maritimas Argentinias S.A.
Reefer Express Lines Pty. Ltd.
Transportacion Maritima Mexicana S.A.
United States Lines (S.A.) Inc.

Synopsis: The proposed amendment would extend the provisions of the agreement governing alternate coast service until December 31, 1987.

Agreement No.: 212-010386-009.

Title: Argentina/U.S. Atlantic Coast Agreement.

Parties:

A. Bottacchi S.A. de Navegacion C.F.I.I.
Cia. de navegacago Lloyd Brasileiro
Empresa Lineas Maritimas Argentinas S.A.
United States Lines (S.A.) Inc.
Reefer Express Lines Pty., Ltd.
Van Nievelt, Goudriaan & Co., by (Holland Pan Am)

Synopsis: The proposed amendment would extend the provisions of the agreement governing alternate coast service until December 31, 1987.

Agreement No.: 212-010388-006.

Title: U.S. Atlantic Coast/Argentina Agreement.

Parties:

A. Bottacchi S.A. de Navegacion C.F.I.I.
Empresa Lineas Maritimas Argentinas S.A.
United States Lines (S.A.) Inc.

Synopsis: The proposed amendment would extend the provisions of the agreement governing alternate coast service until December 31, 1987.

Agreement No.: 212-010389-006.

Title: U.S. Gulf Ports/Argentina Agreement.

Parties:

A. Bottacchi S.A. de Navegacion C.F.I.I.
Empresa Lineas Maritimas Argentinas S.A.
United States Lines (S.A.) Inc.

Synopsis: The proposed amendment would extend the provisions of the agreement governing alternate coast service until December 31, 1987.

Agreement No.: 202-010676-022

Title: Mediterranean/U.S.A. Freight Conference.

Parties:

Achille Lauro

C.I.A. Venezolana de Navegacion
Compania Trasatlantica Espanola, S.A.
Costa Line
Farrell Lines, Inc.
"Italia" de Navigazione, S.p.A.
Jugolinija
Jugooceanija
Lykes Lines
Nedlloyd Lines
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would extend indefinitely the previously filed 48 hour notice period, excluding Saturdays, Sundays and Holidays, for independent action on rate or service items or freight forwarder compensation.

Dated: November 21, 1986.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secreatry.

[FR Doc. 86-26639 Filed 11-25-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Rules of Organization; Technical Amendments

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Technical amendments.

SUMMARY: The Secretary of the Board has approved technical amendments to the Board's Rules of Organization to reflect organizational changes. The amendments will bring descriptions of the functions of various offices and divisions of the Board up to date.

EFFECTIVE DATE: November 26, 1986.

FOR FURTHER INFORMATION CONTACT: James McAfee, Associate Secretary (202-452-3259), or Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Board's Rules of Organization is an uncodified regulation issued as required by section (a)(1) of the Freedom of Information Act, 5 U.S.C. 552(a)(1). Copies are available from the Board's Publication Section, Washington, DC 20551 (202) 452-3245.

Rules of Organization

1. Paragraph (b) of section 2 of the Board's Rules of Organization is revised to read as follows:

SECTION 2—Composition and Location

* * * * *

(b) *Location and business hours.* The principal offices of the Board are at 20th Street and Constitution Avenue NW., Washington, DC 20551. The public entrance is at 20th and C Streets NW. The Board's regular business hours are from 8:45 a.m. to 5:15 p.m. each weekday except Saturday, but its business hours may be changed from time to time.

2. Section 3 of the Board's Rules of Organization is revised to read as follows:

SECTION 3—Central Organization

The Board's central organization consists of the members of the Board and the following offices, divisions, and officials:

(a) *Office of Board Members* consists of the members of the Board, and assistants and special assistants to the Board assigned to public affairs and congressional liaison.

(b) *Office of Staff Director for Monetary and Financial Policy* is responsible for preparation of position papers and other documents on monetary policy issues, including issues relating to open market, discount, and reserve requirements policy; performance of secretariat functions for the Federal Open Market Committee; coordination of regulatory and statistical issues closely related to monetary policy; liaison with the trading desk at the Federal Reserve Bank of New York in connection with open market operations; liaison with Treasury and other agencies in the domestic financial area; coordination with the System Account Manager and with the Treasury on foreign exchange market operations, Eurodollar and international banking policy issues; coordination of analysis and development of options for Board consideration with regard to foreign exchange policies and the international payments mechanism; and appropriate staff coordination with other agencies in these areas.

(c) *Office of Staff Director for Federal Reserve Bank Activities* is responsible for overseeing the Division of Federal Reserve Bank Operations, assisting the Board's Committee on Federal Reserve Bank Activities, and coordinating the functions of other Board divisions that relate to Federal Reserve Bank matters. The responsibilities of this office also include all Reserve Bank director matters, coordination of the annual evaluation program for Federal Reserve Banks, the Federal Reserve System's program for emergency preparedness, and representing the Board in activities pertaining to Bank operational matters in meetings with foreign central banks and other United States government agencies.

(d) *Office of Staff Director for Management* is responsible for the planning and coordination of staff operations and organization, resource management, and supervision of the following functions: Board building administration and operations, Board budget and accounting activities, the Automation Policy and Programs Committee, personnel-related activities, equal employment opportunity, and contingency planning operations.

(e) *Office of the Executive Director for Information Resource Management* is responsible for overseeing the Division of Hardware and Software Systems and the Division of Applications Development and Statistical Services. The office has overall responsibility for advanced planning and conceptual application of technology, for automation policy, and for coordination of automation projects with other components of the Federal Reserve System.

(f) *Office of the Secretary,* headed by the Board's secretary, coordinates and handles items requiring Board action, including actions under delegated authority; prepares agendas for Board meetings; implements actions taken at Board meetings; prepares, circulates, and indexes minutes of the Board; has responsibility for the Board's regulatory planning and review; publishes the *Federal Reserve Regulatory Service* and related manuals; provides liaison at the staff level with the Federal Advisory Council, the Thrift Institutions Advisory Council, and *ad hoc* groups of the Reserve Banks; makes arrangements for individuals and groups visiting the Board; maintains custody of and provides reference service to official records of the Board; handles correspondence and public requests for records; secures visas for official travel of System personnel; and provides relief secretarial and stenographic services.

(g) *Legal Division,* headed by the Board's general counsel, advises the Board in carrying out its statutory and regulatory responsibilities by the preparation of Board decisions, regulations, rules, instructions, and legal interpretations of statutes and regulations, administered by the Board; represents the Board in civil litigation and administrative proceedings; assists other divisions in fulfilling their responsibilities in such areas as contracting, fiscal agency activities, Federal Reserve Bank matters, labor law, personnel, and supervisory enforcement matters; and prepares

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testimony or comments on proposed legislation.

(h) *Division of Research and Statistics*, headed by a director, provides the Board and the Federal Open Market Committee with the economic analysis and information needed for current operations, for the formulation of monetary and credit policies, and for the exercise of responsibilities with regard to bank regulation; prepares, publishes, and interprets a variety of statistical series in the financial and nonfinancial fields; conducts basic research relating to the effects of monetary policy on economic activity and prices and to the effects of financial regulation on the structure and functioning of financial markets.

(i) *Division of International Finance*, headed by a director, provides the Board, the Federal Open Market Committee, and other System officials with assessments of current international economic and financial developments. Staff members analyze major economic and financial developments abroad, issues connected with exchange market developments, international financial flows and their implications, the international monetary and financial systems and their evolution, and the balance-of-payments adjustment process. The division provides economic data and analyses for public release. It also works with the Chairman and other Board members in their roles as members of various interagency bodies dealing with international economic policy issues.

(j) *Division of Federal Reserve Bank Operations*, headed by a director, advises and assists the Board in its oversight of Reserve Bank operations. The division is responsible to the Board on matters concerning payments system policy, the price and level of Federal Reserve Bank services (check collection, funds transfer, automated clearing house, net settlement, securities, and coin and currency), and improvements to the efficiency of the payments mechanism. It also maintains liaison with interested parties on payments matters.

The division reviews and appraises Reserve Bank communications and automation plans and proposals, as well as Reserve Bank building plans. It reviews proposed Reserve Bank budgets; administers expense control and budgeting system for collection and analysis of budget and expense data; prescribes accounting principles, standards, and related requirements to be followed by the Reserve Banks; and provides certain centralized financial accounting services.

The division conducts an annual financial examination of each Reserve Bank. It also conducts operational reviews of various Reserve Bank functions, including: check collection, electronic payments, coin and currency, securities, fiscal agency, open market, protection, data processing, communications, accounting, and audit.

The division maintains liaison with the Treasury and other government agencies to facilitate the System's role as fiscal agent to the United States. It also coordinates the printing and distribution of Federal Reserve notes and is jointly responsible with the Bureau of the Mint for the production and distribution of coin.

(k) *Division of Banking Supervision and Regulation*, headed by a director, coordinates the bank supervisory functions of the System and evaluates the examination procedures of the Reserve Banks; exercises general supervision of the commercial and fiduciary activities of state member banks; administers the supervisory features of laws and regulations relating to affiliates and bank holding companies; supervises various foreign banking activities of member banks and foreign banking and financing corporations; administers the public disclosure provisions of the Securities Exchange Act of 1934, as amended, in their application to state member banks, and the provisions of the act giving responsiblity to the Board for regulating security credit transactions; administers the pertinent provisions of the Financial Institutions Supervisory Act of 1966, and amendments contained in the Financial Institutions Regulatory and Interest Rate Control Act of 1978, in their application to state member banks, bank holding companies, nonbank subsidiaries, Edge Act corporations, foreign banks with domestic operations, and persons related to such institutions; monitors the Currency and Foreign Transactions Reporting Act in its application to state member banks and Edge Act corporations; processes and presents to the Board applications filed pursuant to the Bank Holding Company Act of 1956, as amended, and the Bank Merger Act and various other applications submitted under the provisions of the Federal Reserve Act or related statutes; and advises the Board regarding developments in banking and bank supervisory policies and procedures.

(l) *Division of Consumer and Community Affairs*, headed by a director, implements consumer affairs legislation for which the Board has responsibility. Its functions include drafting regulations and interpretations pursuant to the Truth in Lending Act, the Equal Credit Opportunity Act, the Home Mortgage Disclosure Act, the Fair Credit Billing Act, the Consumer Leasing Act, the Electronic Funds Transfer Act, and the Federal Trade Commission Improvements Act, for financial institutions and other firms engaged in consumer credit, electronic funds transfer, and leasing activities. The division also administers the Board's consumer complaint handling system and directs and monitors enforcement activities with regard to state member banks. The legislation enforced includes the acts mentioned as well as the Company Reinvestment, Fair Credit Reporting, Fair Debt Collection Practices, Fair Housing, Flood Disaster Protection, and Real Estate Settlement Procedures Acts and Regulation Q, Interest on Deposits. The division assists the community affairs activities of the Reserve Banks, which are related to the Federal Reserve's Community Reinvestment Act responsibilities.

(m) *Division of Personnel*, headed by a director, is responsible for the development and implementation of Board personnel policies and programs, and advises and assists the Board and the Reserve Banks on personnel matters pertaining to the Federal Reserve Banks.

(n) *Division of Support Services*, headed by a director, is responsible for duplication and distribution of Board publications, press releases, speeches and testimony; space management; printing, contracting, and supply services, communications; food service management; operation and maintenance of electrical and mechanical systems; buildings and grounds maintenance; and personnel and building security.

(o) *Office of the Controller*, headed by the Board's controller, assists the Board's divisions and the Federal Financial Institutions Examination Council in establishing and operating within their organizational structures, in managing their resources, and in ensuring the propriety and accountability of resource utilization by: Administering the budget functions of planning, formulating, executing, reviewing, and reporting; receiving and disbursing funds; maintaining books of account; developing means to improve operations; conducting organizational analyses; conducting program analyses; providing financial analysis and consultation; reporting results of operations; conducting special studies; maintaining records of organizational and financial transactions; assuring that proper cost/benefit and lease purchase analyses are a part of major capital investments; and participating in or supporting managerial committees and task forces.

(p) *Division of Hardware and Software Systems,* headed by a director, is responsible for the overall planning, acquisition, implementation, operation, and maintenance of the Board's automation and data communications equipment, environmental operating and data base systems software, data processing and communications security, mainframe linkage to distributed processing, and other hardware and environmental software required at the Board and the Contingency Processing Center (CPC). The division is responsible for providing a climate in which users share responsibility in determining needs and translating these needs into services, and providing effective and efficient improvements in all automation and communication system services to the Board and through the CPC to the Federal Reserve System.

(q) *Division of Applications Development and Statistical Services,* headed by a director, is responsible for the design, development, and implementation of applications software; for the collection, processing, and maintenance of statistical and regulatory data provided by commercial banks, bank holding companies, other financial institutions, and Federal Reserve Banks, and for the provision of technical consulting services relating to automation activities in other Board divisions and offices.

(r) *Other personnel.* The Board does not employ administrative law judges or hearing officers as regular members of its staff, but, in accordance with applicable provisions of law and in individual cases as the need may arise, the Board obtains and utilizes administrative law judges and hearing officers, whose functions in such capacity are appropriately separated, as required by law, from investigative and prosecuting functions of the staff.

3. The appendix to the Board's Rules of Organization is revised to read as follows:

Appendix

Federal Reserve Banks

*Boston**

600 Atlantic Avenue, Boston, Massachusetts 02106

*New York**

33 Liberty Street (Federal Reserve P.O. Station), New York, New York 10045

Buffalo Branch

160 Delaware Avenue, Buffalo, New York 14202 (P.O. Box 961, Buffalo, New York 14240)

Philadelphia

Ten Independence Mall, Philadelphia 19106 (P.O. Box 66, Philadelphia, Pennsylvania 19105)

*Cleveland**

1455 East Sixth Street (P.O. Box 6387), Cleveland, Ohio 44101

Cincinnati Branch

150 East Fourth Street (P.O. Box 999), Cincinnati, Ohio 45201

Pittsburgh Branch

717 Grant Street (P.O. Box 867), Pittsburgh, Pennsylvania 15230

*Richmond**

701 East Byrd Street, Richmond, Virginia 23219 (P.O. Box 27622, Richmond, Virginia 23261)

Baltimore Branch

502 S. Sharp Street, Baltimore, Maryland 21201 (P.O. Box 1378, Baltimore, Maryland 21203)

Charlotte Branch

401 South Tryon Street (P.O. Box 30248), Charlotte, North Carolina 28230

Culpepper Communications and Records Center

P.O. Drawer 20, Culpepper, Virginia 22701

Atlanta

104 Marietta Street, NW., Atlanta, Georgia 30303 (P.O. Box 1731, Atlanta, Georgia 30301-1731)

Birmingham Branch

1801 Fifth Avenue, North, Birmingham, Alabama 35202 (P.O. Box C-10447, Birmingham, Alabama 35283)

Jacksonville Branch

515 Julia Street, Jacksonville, Florida 32231

Miami Branch

9100 Northwest 36th Street, Miami, Florida 33178 (P.O. Box 520847, Miami, Florida 33152)

Nashville Branch

301 Eighth Avenue, North, Nashville, Tennessee 37203

New Orleans Branch

525 St. Charles Avenue (P.O. Box 62630), New Orleans, Louisiana 70161

*Chicago**

230 South La Salle Street (P.O. Box 834), Chicago, Illinois 60690

Detroit Branch

160 Fort Street, West (P.O. Box 1059), Detroit, Michigan 48231

St. Louis

411 Locust Street, St. Louis, Missouri 63102 (P.O. Box 442, St. Louis, Missouri 63166)

Little Rock Branch

325 West Capital Avenue (P.O. Box 1261), Little Rock, Arkansas 72203

Louisville Branch

410 South Fifth Street, Louisville, Kentucky 40201 (P.O. Box 32710, Louisville, Kentucky 40232)

Memphis Branch

200 North Main Street, Memphis, Tennessee 38103 (P.O. Box 407, Memphis, Tennessee 38101)

Minneapolis

250 Marquette Avenue, Minneapolis, Minnesota 55480

Helena Branch

400 North Park Avenue, Helena, Montana 59501

Kansas City

925 Grand Avenue, Kansas City, Missouri 64198

Denver Branch

1020 16th Street, Denver, Colorado 80202 (Terminal Annex—P.O. Box 5228, Denver, Colorado 80217)

Oklahoma City Branch

226 Dean A. McGee Avenue (P.O. Box 25129), Oklahoma City, Oklahoma 73125

Omaha Branch

1710 Dodge Street (P.O. Box 3958), Omaha, Nebraska 68102

Dallas

400 South Akard Street (Station K), Dallas, Texas 75222

El Paso Branch

301 East Main Street (P.O. Box 100), El Paso, Texas 79999

Houston Branch

1701 San Jacinto Street, Houston, Texas 77002 (P.O. Box 2578), Houston, Texas 77252)

San Antonio Branch

126 East Nueva Street, San Antonio, Texas 78204 (P.O. Box 1471, San Antonio, Texas 78295)

San Francisco

101 Market Street, San Francisco, California 94104 (P.O. Box 7702, San Francisco, California 94120)

Los Angeles Branch

409 West Olympic Boulevard, Los Angeles, California 90015 (Terminal Annex—P.O. Box 2077, Los Angeles, California 90051)

Portland Branch

915 S.W. Stark Street, Portland, Oregon 97025 (P.O. Box 3436, Portland, Oregon 97208)

Salt Lake City Branch

120 South State Street, Salt Lake City, Utah 84111 (P.O. Box 30780, Salt Lake City, Utah 84125)

Seattle Branch

1015 Second Avenue, Seattle, Washington 98104 (P.O. Box 3567, Seattle, Washington 98124)

Board of Governors of the Federal Reserve System, November 21, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-26685 Filed 11-25-86; 8:45 am]

BILLING CODE 6210-01-M

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*Additional offices of these Banks are located at Lewiston, Maine 04240; Windsor Locks, Connecticut 06096; Cranford, New Jersey 07016; Jericho, New York 11753; Utica at Oriskany, New York 13424; Columbus, Ohio 43216; Columbia, South Carolina 29210; Charleston, West Virginia 25328; Des Moines, Iowa 50306; Indianapolis, Indiana 46204; and Milwaukee, Wisconsin 53202.

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Change in Bank Control Notices; Acquisitions of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and section 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 12, 1986.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Robert J. McFann*, Lakewood, Colorado; Robert Gregory, Denver, Colorado; Brent V. Lovejoy, Englewood, Colorado; Douglas R. Olson, Denver, Colorado; Equity Concepts, Englewood, Colorado; Edward I. Nichols, Denver, Colorado; Nancy Gallanis and Michael Krueger, Denver, Colorado; and Glen B. Clark, Jr., Denver, Colorado; to acquire 44.4 percent of the voting shares of The Bank of Aurora, Aurora, Colorado.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *Roy Doumani*, Beverly Hills, California; Gerald L. Parsky, Los Angeles, California; William E. Simon, Morriston, New Jersey; and Larry B. Thrall, Jr., Beverly Hills, California; to acquire an additional 54.4 percent of the voting shares of World Trade Bancorp, Beverly Hills, California, and thereby indirectly acquire World Trade Bank, N.A., Beverly Hills, California.

2. *Kem Gardner*, Salt Lake City, Utah; to acquire an additional 22 percent of the voting shares of Union Bancorporation, Salt Lake City, Utah, and thereby indirectly acquire Union Bank, Salt Lake City, Utah.

Board of Governors of the Federal Reserve System, November 20, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-26604 Filed 11-25-86; 8:45 am]

BILLING CODE 6210-01-M

Duco Bancshares, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 16, 1986.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Duco Bancshares, Inc.*, Villa Park, Illinois; to acquire Banill Corporation, Normal, Illinois, and thereby engage in insurance sales as an agent or broker for the sale of life, health and accident insurance that is directly related to extension of credit by its subsidiary bank, through the acquisition of Company pursuant to 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in Normal and Bloomington, Illinois and surrounding McLean County. Comments on this application must be received by December 4, 1986.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Pacific Corporation*, Los Angeles, California; to acquire Goldome Premium Finance, Inc., Bohemia, New York, and thereby engage in financing the payment of consumer and commercial insurance premiums through its indirect subsidiary, Security Pacific Insurance Premium Financing, Inc., from offices in Baltimore, Maryland; Keene, New Hampshire; Cherry Hill and Keyport, New Jersey; and Buffalo, New York, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 20, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-26607 Filed 11-25-86; 8:45 am]

BILLING CODE 6210-01-M

Financial Corporation of Central Illinois, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than December 15, 1986.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230

South LaSalle Street, Chicago, Illinois 60690:

1. *Financial Corporation of Central Illinois, Inc.*, Strasburg, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Strasburg State Bank, Strasburg, Illinois.

Board of Governors of the Federal Reserve System, November 20, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-26608 Filed 11-25-86; 8:45 am]

BILLING CODE 6210-01-M

Irving Bank Corporation; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under § 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 12, 1986.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Irving Bank Corporation*, New York, New York; to engage *de novo* through its subsidiary, Irving Trust Company California, San Francisco, California, in performing the functions or activities which may be performed by a trust company (including activities of a fiduciary, agency or custodial nature) in the manner authorized by the law of the State of California pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 20, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-26609 Filed 11-25-86; 8:45 am]

BILLING CODE 6210-01-M

Warranty Bancorporation

This notice corrects a previous **Federal Register** document (FR Doc. 86-25790), published at page 41434 of the issue for Friday, November 14, 1986.

Under the Federal Reserve Bank of Chicago, the entry for Warranty Bancorporation is corrected to read as follows:

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Warranty Bancorporation*, Ottumwa, Iowa; to become a bank holding company by acquiring 80 percent of the voting shares of South Ottumwa Savings Bank, Ottumwa, Iowa.

Comments on this application must be received by November 28, 1986.

Board of Governors of the Federal Reserve System, November 20, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-26610 Filed 11-25-86; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

GSA Bulletin FPMR A-91; General

November 13, 1986.

To: Heads of Federal agencies

Subject: Use of GSA office relocation contracts.

1. *Purpose.* This bulletin advises Federal agencies that effective July 3, 1986, FPMR Amendment G-79 (51 FR 24329, July 3, 1986) amended 41 CFR 101-40.109-2 and 101-40.109-3 by removing the provision for mandatory use of office relocation contracts entered into by the General Services Administration (GSA) on or after July 3, 1986.

2. *Applicability.* The guidelines in this bulletin apply to all civilian executive agencies subject to 41 CFR Part 101-40.

3. *Expiration date.* This bulletin expires October 31, 1987, unless sooner canceled or revised.

4. *Background.* Prior to July 3, 1986, agencies were authorized to make their own arrangements for office relocations within specified dollar thresholds. In all other instances, GSA entered into term and single office move contracts, and these contracts were made mandatory for use by all agencies. GSA has determined that use of GSA office relocation contracts will no longer be mandatory on other agencies. Therefore, FPMR Amendment G-79 was issued to authorize agencies either to enter into their own office relocation contracts or request the appropriate GSA office (see 41 CFR 101-40.101-1) to enter into contracts on behalf of the requesting agency.

5. *Effect on existing contracts.* GSA mandatory use office relocation contracts entered into prior to July 3, 1986, will remain in force for the life of those contracts. When those contracts expire, new contracts will be subject to the nonmandatory provisions of FPMR Amendment G-79. Mandatory contracts entered into prior to July 3, 1986, are not to be extended through exercise of renewal options. Before contracting for office relocation services, agencies should confer with the appropriate GSA office to determine if any mandatory use contracts are still in effect.

By delegation of the Commissioner, FSS.

William B. Foote,

Assistant Commissioner, Office of Policy and Agency Liaison.

[FR Doc. 86-26626 Filed 11-25-86; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Mental Health Small Grant Review Committee; Reestablishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776) and the Anti-Drug Abuse Act of 1986., (Pub. L. 99-570, section 501(j)), the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, (ADAMHA), announces the reestablishment, effective December 2, 1986, of the following committee: Mental Health Small Grant Review Committee.

The duration of this committee is continuing unless formally determined by the Administrator, ADAMHA, that termination would be in the best public interest.

This notice is late because of very recent legislative changes which necessitated revisions of committee charter documents.

Dated: November 20, 1986.

Donald Ian Macdonald

Administrator, Alcohol, Drug Abuse, and Mental Health Administraton.

[FR Doc. 86-26651 Filed 11-25-86; 8:45 am]

BILLING CODE 4160-20-M

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Meeting of Board of Scientific Counselors

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Allergy and Infectious Diseases, on December 15, 16 and 17. The meetings will be held in the Solarium, 11th Floor, Building 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public on December 15 from 9:00 a.m. until 12:00 p.m. and 1:15 p.m. until 5:45 p.m. During this open session, the permanent staff of the Laboratories of Immunology and Immunoregulation will present and discuss their immediate past and present research activities.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting of the Board will be closed to the public on December 15 from 8:30 a.m. until 9:00 a.m., and from 12:00 p.m. until 1:15 p.m., and on December 16 from 8:00 a.m. until recess and on December 17 from 8:30 a.m. until adjournment for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personal qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A-32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301) 496-5717, will provide summaries of the meeting and rosters of the Board members upon request.

Dr. John I. Gallin, Executive Secretary, Board of Scientific Counselors, NIAID, National Institutes of Health, Building 10, Room 11C103, telephone (301) 496-3006, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13-301, National Institutes of Health)

Dated: November 13, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86-26617 Filed 11-25-86; 8:45 am]

BILLING CODE 4140-01-M

Social Security Administration

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services covers the Social Security Administration. Notice is hereby given that Chapter SE, as published in the **Federal Register** on August 7, 1979, and as amended on May 7, 1984 and June 13, 1984, is being amended to reflect the establishment of the Office of Communications Technology. This change consolidates the Agency's audiovisual and graphics functions. The revisions are as follows:

Chapter SE—Office of Governmental Affairs

SE.00 Mission
SE.10 Organization
SE.20 Functions

Section SE.10 The Office of Governmental Affairs—(Organization):

Add:

F. The Office of Communications Technology ( ).

Section SE.20 The Office of Governmental Affairs—(Functions):

Add:

F. The Office of Communications Technology ( ) directs and implements technical information communications functions for the Agency. The Office is responsible for the design and production of audiovisual and graphics materials. The Office utilizes state-of-the-art technological theories, principles and methodologies, in determining and creating the most effective means of communicating the Agency's information.

Dated: November 7, 1986.

Nelson J. Sabatini,

Deputy Commissioner for Management and Assessment.

[FR Doc. 86-26641 Filed 11-25-86; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-86-1654]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, Telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S.

Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Mortgagee's Certification and Application for Interest Reduction Payments
Office: Administration
Form Number: HUD-3111
Frequency of Submission: Monthly
Affected Public: State or Local Governments and Businesses or Other For-Profit
Estimated Burden Hours: 90
Status: Extension
Contact: Inder K. Varma, HUD, (202) 755-6706; Robert Fishman, OMB, (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Dated: November 19, 1986.

Proposal: Tenant Participation and Management in Public Housing Projects; Eligibility for Comprehensive Improvement Assistance Program Funds
Office: Public and Indian Housing
Form Number: None
Frequency of Submission: On Occasion
Affected Public: Individuals or Households, State or Local Governments, Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations
Estimated Burden Hours: 5,800
Status: Revision
Contact: Janice Rattley, HUD, (202) 755-1800; Robert Fishman, OMB, (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Dated: November 19, 1986.

Proposal: Comprehensive Improvement Assistance Program (CIAP): Project Implementation Schedule
Office: Public and Indian Housing
Form Number: None
Frequency of Submission: On Occasion
Affected Public: State or Local Governments and Non-Profit Institutions
Estimated Burden Hours: 2,000
Status: Extension
Contact: Pris P. Buckler, HUD, (202) 755-6640; Robert Fishman, OMB, (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 19, 1986.

John T. Murphy,

Director, Information Policy and Management Division.

[FR Doc. 86-26632 Filed 11-25-86; 8:45 am]

BILLING CODE 4210-1-M

[Docket No. N-86-655]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ACTION: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATON CONTACT: David S. Cristy, Reports Management Officer Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement or an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Single Family Mortgage Insurance Premium Questionnaire
Office: Administration
Form Number: HUD-2753
Frequency of Submission: On Occasion
Affected Public: Businesses or Other For-Profit
Estimated Burden Hours: 1,200
Status: Reinstatement
Contact: Robert Wiggins, HUD, (202) 426-8980; Robert Fishman, OMB, (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 20, 1986.

Donald C. Demitros,

Director, Office of Information Policies and Systems.

[FR Doc. 86-26631 Filed 1-25-86; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY 920 07 4121-10]

Powder River Regional Coal Team; Availability of Proposed Data Adequacy Standards for the Powder River Coal Region and an Addition to the Upcoming Powder River Regional Coal Team Meeting

SUMMARY: Proposed Data Adequacy Standards for the Powder River Region are available upon request beginning November 7, 1986. The public is invited to comment on these standards. In addition, the agenda for the Powder River Regional Coal Team meeting which was announced in the september 25, 1986, **Federal Register** is modified to add a discussion on the "District Court Decision's Relationship to the Round One Montana Leases."

DATE: Public comments on the Proposed Data Adequacy Standards are requested by January 6, 1986. The discussion of the "District Court Decision's Relationship to the Round One Montana Leases" will take place during the Powder River Regional Coal Team Meeting on December 4, 1986.

ADDRESS: Copies of the Proposed Data Adequacy Standards may be obtained

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upon request from either Don Brabson, Powder River Project Manager, Branch of Solid Minerals, Bureau of Land Management, 2515 Warren Avenue, Cheyenne, Wyoming 82001; telephone (307) 772-2571 or (FTS) 328-2571 or Al Pierson, Powder River Resource Area Manager, Bureau of Land Management, Miles City Plaza, Miles City, Montana 59301; telephone (406) 232-7000.

Comments on these Standards are to be submitted to Don Brabson at the above address.

FOR FURTHER INFORMATION CONTACT: Don Brabson at the above address or telephone number.

SUPPLEMENTARY INFORMATION: The Proposed Data Adequacy Standards contain recommended levels of data to be acquired prior to the leasing of delineated coal tracts. Data adequacy standards are proposed for geology, soils, hydrology, wildlife, air, cultural resources, economics and social, and land-use, within the Powder River Coal Region. This effort was prepared by a multidesciplinary task force composed of Federal and State resource specialists. This task force was appointed and guided by the Powder River Regional Coal Team. The preparation, with public input, of regional data adequacy standards is consistent with Secretary of the Interior Hodel's recent decisions to supplement the Federal Coal Management Program.

The Regional Coal Team welcomes comments on any aspects of these standards and is especially interested in public comments concerning the extensiveness and appropriate tiering for data adequacy standards. Of particular concern within the Team is whether or not the suggested level of data would be more appropriate in some cases (i.e., soils, wildlife, hydrology, and air quality) to the mine permit tier. Lastly, the Team would like public comment on whether a matrix, which typifies the kinds of data acquired during the land use planning, activity planning and mine permitting tiers, would clarify the Bureau's tiered approach to data collection and Federal coal management decision-making. Such a matrix could be included in the final report, if the public considers it worthwhile.

During the Regional Coal Team meeting on December 4, 1986, the Team will discuss the U.S. District Court of Montana decision of October 6, 1986, in The Northern Cheyenne Tribe vs. Hodel (CV82-116-BLG-JFB). If appropriate, the Team may develop a recommendation for compliance with this Court Order. Public input opportunities will be provided on this and all other Regional Coal Team meeting agenda items.

Hillary A. Oden,

State Director.

[FR Doc. 86-26709 Filed 11-25-86; 8:45 am]

BILLING CODE 4310-22-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-713282

Applicant: San Diego Zoological Society, San Diego, CA.

The applicant requests a permit to import one male and one female captive born cheetah (*Acinonyx jubatus*) from the National Zoological Gardens in Pretoria, South Africa for the purpose of breeding. These cheetahs will be included as a part of the SSP program.

PRT-713584

Applicant: Exotic Cats of Georgia, Atlanta, GA.

The applicant requests a permit to buy one captive born female margay (*Felis pardalis*) from Danny Treanor, Orlando, Florida, for breeding with two male margays which are owned by the applicant.

PRT-713643

Applicant: San Diego Zoological Society, San Diego, CA.

The applicant requests a permit to import one male captive born musk deer (*Moschus moschiferus moschiferus*) from the Leipzig Zoo in East Germany. This male will be paired with females as they become available in order to establish a captive breeding population in North America.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service fo the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: November 19, 1986.

Earl B. Baysinger,

Chief, Federal Wildlife Permit Office.

[FR Doc. 86-26618 Filed 11-25-86; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701-TA-284 (Final)]

Bicycle Tires and Tubes From Korea

AGENCY: International Trade Commission.

ACTION: Institution of a final countervailing duty investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: As a result of an affirmative redetermination by the U.S. Department of Commerce that imports from Korea of bicycle tires and tubes manufactured by Hung-A, provided for in items 772.48 and 772.57 of the Tariff Schedules of the United States, respectively, were being subsidized by the Government of Korea, the Commission hereby gives notice of the institution of final countervailing duty investigation No. 701-TA-284 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of such imports. The Commission will make its final injury determination by February 19, 1987 (see sections 705(a) and 705(b) of the act (19 U.S.C. 1671d(a) and 1671d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: October 23, 1986.

FOR FURTHER INFORMATION CONTACT: Cynthia Wilson (202-523-0291), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background

In a 1979 countervailing duty investigation, the Treasury Department issued a countervailing duty order covering only one of three Korean manufacturers of bicycle tires and tubes. The petitioner in this investigation, the Carlisle Tire and Rubber Co., initiated a suit challenging Treasury's negative determination on the other two manufacturers, Hung-A and Dae Yung. On September 11, 1981, the Court of International Trade remanded Treasury's negative determination to the Department of Commerce for redetermination. On March 3, 1982, Commerce sent its remand results to the Court, with an above de minimis rate for Hung-A, and a de minimis rate for Dae Yung. The Court affirmed Commerce's redetermination on October 6, 1983.

Participation in the investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good causes shown by the person desiring to file the entry.

Service list

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report

A public version of the prehearing staff report in this investigation will be placed in the public record on December 30, 1986, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on January 13, 1987, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on December 26, 1986. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on December 31, 1986, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is January 9, 1987.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later then the close of business on January 20, 1987. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before January 20, 1987.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority

This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: November 19, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-26700 Filed 11-25-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-243]

Certain Luggage Products; Commission Decision Not To Review Initital Determinations Terminating Two Respondents on the Basis of Consent Orders; Kingsport International Corporation, et al.

AGENCY: International Trade Commission.

ACTION: Nonreview of intital determinations terminating the investigation as to two respondents on the basis of consent orders.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review two initial determinations (IDs) granting joint motions to terminate the investigation as to respondents Kingport International Corporation (Kingport) and Monarch Luggage Company, Inc. (Monarch) on the basis of consent orders.

FOR FURTHER INFORMATION CONTACT: Randi S. Field, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0261.

SUPPLEMENTARY INFORMATION: On February 12, 1986, Lenox, Incorporated (Lenox) through its Division Hartmann Luggage Company (Hartmann) filed a section 337 complaint with the Commission alleging unfair methods of competition and unfair acts in the importation and sale of certain luggage products. The Commission's notice of investigation divided Lenox's allegations into the following alleged unfair acts: (1) Violation of section 43(a) of the Lanham Act; (2) common law trademark infringement; (3) trademark dilution; (4) trade dress misappropriation; (5) passing off; and (6) unfair competition. 51 Fed. Reg. 10580 (March 27, 1986). The notice of investigation listed twelve respondents which were alleged to be in violation of section 337.

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On October 2, 1986, complainant Lenox, through Hartmann, and respondent Kingport filed a joint motion (Motion No. 243–27) to terminate the investigation as to Kingport on the basis of a proposed consent order. On October 3, 1986, complainant Lenox, through Hartmann, and respondent Monarch filed a joint motion (Motion No. 243–30) to terminate the investigation as to Monarch on the basis of a proposed consent order.

On October 17, 1986, the presiding administrative law judge (ALJ) issued two ID (Orders Nos. 49 and 50) granting the joint motions and terminating the investigation as to Kingport and Monarch, respectively, on the basis of consent orders. No petitions for review or comments from the public or Government agencies concerning the ID's were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule § 210.53 (19 CFR 210.53).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–1626. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: November 18, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–26703 Filed 11–25–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–243]

Certain Luggage Products; Commission Determination Not To Review Initial Determination Finding Respondent in Default; Pei Lin Leather Products of Taiwan

AGENCY: International Trade Commission

ACTION: Nonreview of initial determination (ID) finding respondent in default and imposing procedural sanctions.

SUMMARY: Notice is hereby given that the Commission has determined not to review the presiding administrative law judge's (ALJ) ID finding respondent Pei Lin Leather Products of Taiwan (Pei Lin) in default in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Randi S. Field, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0261

SUPPLEMENTARY INFORMATION: On August 18, complainant Lenox Inc., filed a motion (Motion No. 243–13) requesting that respondent Pei Lin be found in default. On August 20, 1986, the ALJ issued an order (Order No. 22) ordering Pei Lin to show cause why a finding of default should not be made. Pei Lin did not respond to Order No. 22. On October 21, 1986, the ALJ issued an ID (Order No. 53) finding respondent Pei Lin in default pursuant to Commission rule § 210.25 (19 CFR 210.25). The ALJ ruled that Peil Lin has waived: (1) Its right to appear in the investigation; (2) its right to be served with documents by any party; and (3) its right to contest the allegations at issue. No petitions for review of the ID were received nor were any agency comments received.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired persons are advised that information of this mater can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: November 17, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–26704 Filed 11–25–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–243]

Certain Luggage Products; Initial Determination Terminating Respondent on the Basis of Settlement Agreement; Pungkook Industrial Co., Ltd.

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Pungkook Industrial Co., Ltd. (Pungkook).

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on November 20, 1986.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register.** Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be derected to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

Issued: November 20, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR. Doc. 86–26702 Filed 11–25–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731-TA-349 (Preliminary)]

Certain Welded Carbon Steel Pipes and Tubes From Taiwan

Determination

One the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Taiwan of light-walled rectangular pipes and tubes [3] which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On October 2, 1986, a petition was filed with the Commission and the Department of Commerce by counsel for the Committee on Pipe and Tube Imports (CPTI), alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of light-walled rectangular pipes and tubes from Taiwan. Accordingly, effective October 2, 1986, the Commission instituted preliminary antidumping investigation No. 731-TA-349 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of October 16, 1986 (51 FR 36873). The conference was held in Washington, DC, on October 27, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on November 17, 1986. The views of the Commission are contained in USITC Publication 1906 (November 1986), entitled "Certain Carbon Steel Pipes and Tubes from Taiwan: Determination of the Commission in Investigation No. 731-TA-349 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: November 17, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-26707 Filed 11-25-86; 8:45 am]

BILLING CODE 7020-02-M

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[1] The record is defined in § 207.2(i) of the Commission's rules of practice and procedure (19 CFR 207.2(i)).

[2] Chairman Liebeler makes a negative determination.

[3] For purposes of this investigation, the term "light-walled rectanguler pipes and tubes" covers welded carbon steel pipes and tubes or rectangular (including square) cross section, having a wall thickness less than 0.156 inch, provided for in item 610.4928 of the Tariff Schedules of the United Stats Annotated (TSUSA).

[Investigation No. 731-TA-326 (Final)]

Frozen Concentrated Orange Juice From Brazil

AGENCY: International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-326 (Final) under section735(b) of the Tarff Act of 1930 (19 U.S.C. 1673(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of frozen concentrated orange juice, provided for in item 165.29 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Commerce has extended this investigation pursuant to section 735(a)(2) of the act and will make its final LTFV determination on or before March 9, 1987; the Commission will make its final injury determination by April 22, 1987 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: October 23, 1986.

FOR FURTHER INFORMATION CONTACT: Stephen Vastagh (202-523-0283), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of frozen concentrated orange juice from Brazil are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on May 9, 1986, by Florida Citrus Mutual, an association of growers of citrus fruit for processing. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (51 FR 24238, July 2, 1986).

Participation in the investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21 days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report

A public version of the prehearing staff report in this investigation will be placed in the public record on February 27, 1987, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on March 12, 1987, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on March 2, 1987. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on March 5, 1987, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is March 9, 1987.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on March 19, 1987. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before March 19, 1987.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority

This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published purusant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: November 17, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-26701 Filed 11-25-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-265 (Final) and 731-TA-297-299 (Final)]

Porcelain-on-Steel Cooking Ware From Mexico, the People's Republic of China, and Taiwan

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 167d(b)), that an industry in the United States is materially injured by reason of imports from Mexico of cooking ware of steel, enameled or glazed with vitreous glasses (porcelain-on-steel) other than teakettles, provided for in item 654.08 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be subsidized by the Government of Mexico. The Commissioner determines [3] that an industry in the United States is not materially injured or threatened with material injury, nor is the establishment of an industry materially retarded by reason of imports from Mexico of porcelain-on-steel teakettles, provided for in item 654.08 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be subsidized by the Government of Mexico.

Further, the Commission determines,[4] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. (1673d(b)), that an industry in the United States is materially injured by reason of imports from Mexico, the People's Republic of China, and Taiwan of porcelain-on-steel cooking ware, provided for in item 654.08 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). Because Commerce made an affirmative final critical circumstances determination with regard to imports from one Mexican producer, the Commission is required to make an additional finding. Pursuant to section 735(b)(4)(a), the Commission unanimously determined that there is not material injury by reason of massive imports of the subject LTFV merchandise over a short period of time to the extent that it is necessary to impose the duty retroactively.

Background

The Commission instituted investigation No. 701-TA-265 (Final) effective March 4, 1986, following a preliminary determination by the Department of Commerce that imports of porcelain-on-steel cooking ware from Mexico were being subsidized within the meaing of section 701 of the Act (19 U.S.C. 1671). The Commission instituted investigations 731-TA-297-299 (Final) effective May 20, 1986, following preliminary determinations by the Department of Commerce that imports of porcelain-on-steel cooking ware from Mexico, the People's Republic of China, and Taiwan were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notices in the **Federal Register** of April 9, 1986 (51 FR 12220) and of June 25, 1986 (51 FR 23164). The hearing was held in Washington, DC, on October 9, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on November 17, 1986. The views of the Commission are contained in USITC Publication 1911 (November 1986), entitled "Porcelain-on-Steel Cooking Ware from Mexico, the People's Republic of China, and Taiwan: Determinations of the Commission in Investigations Nos. 701–TA–265 (Final) and 731–TA–297–299 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

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[1] The record is defined in § 207.2(i) of the Commission's rules of practice and procedure (19 CFR 207.2(i)).

[2] Commissioners Eckes, Lodwick, and Rohr made affirmative determinations. Chairman Liebeler, Vice Chairman Brunsdale, and Commissioner Stern determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports from Mexico which are being subsidized. Pursuant to 19 U.S.C. 1677(11) (1980), when the Commissioners voting on a determination by the Commission are evenly divided as to whether the determination should be affirmative or negative, the Commission shall be deemed to have made an affirmative determination.

[3] Commissioners Eckes and Lodwick dissenting.

[4] Commissioner Rohr dissenting with respect to imports of procelain-on-steel teakettles.

Issued: November 17, 1986.
By order of the Commission.
Kenneth R. Mason,
Secretary.
[FR Doc. 86–26705 Filed 11–25–86; 8:45 am]
BILLING CODE 7020–02–M

[Investigations Nos. 701–TA–267 and 268 (Final)]

Top-of-the-Stove Stainless Steel Cooking Ware From Korea and Taiwan

AGENCY: International Trade Commission.

ACTION: Institution of final countervailing duty investigations and scheduling of a hearing to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigations Nos. 701–TA–267 and 268 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Korea and Taiwan of cooking ware of stainless steel, including skillets, frying pans, omelette pans, sauce pans, double boilers, stock pots, dutch ovens, casseroles, steamers, and simiar stainless steel vessels (but not including teakettles), all the foregoing for cooking on stove-top burners,[1] provided for in item 653.94 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in its final determinations, to be subsidized. On April 24, 1986, Commerce published in the **Federal Register** its negative preliminary determinations that imports of the product from Korea and Taiwan were not being subsidizing. The Commission will make its final injury determinations 75 days after receipt of Commerce's notification of its determinations (see sections 705(a) and 705(b) of the act (19 U.S.C. 1671d(a) and 1671d(b))).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: November 21, 1986.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202–523–0165), Office of Investigations, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of final affirmative determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 701 of the act (19 U.S.C. 1671) are being provided to manufacturers, procedures, or exporters in Korea and Taiwan of top-of-the stove stainless steel cooking ware. These investigations were requested in a petition filed on January 21, 1986, buy counsel on behalf of the Fair Trade Committee of the Cookware Manufacturers Associations, Walworth, Wisconsin. In response to that petition the Commission couducted preliminary countervailing duty investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (51 FR 9541, March 19, 1986).

Participation in the investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report

A public version of the prehearing staff report was placed in the public record on November 10, 1986, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing on related antidumping investigations, Top-of-the-stove stainless steel cooking ware from Korea and Taiwan, Invs. Nos. 731–TA–304 & 305 (Final), beginning at 9:30 a.m. on November 24, 1986 at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. At that hearing the Commission will hear testimony and receive evidence regarding the countervailing duty investigations instituted herein. Requests for a separate hearing in these investigations, for the limited purpose of supplementing the November 24, 1986, hearing record with testimony and evidence solely related to the countervailing duty investigations, should be field in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on December 11, 1986. If such a hearing is requested, it will be held on Wednesday, December 17, 1986, at 9:30 a.m. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on December 15 in room 117 of the U.S. Internatioal Trade Commission Building. The deadline for filing prehearing briefs is December 15, 1986.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures

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[1] The products are made of stainless steel and may either have plain bottoms or contain one or more layers of aluminum, copper, or carbon steel formore even heat distribution.

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described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2)).

Written submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (29 CFR 207.24) and must be submitted not later than the close of business on December 24, 1986. In addition, any person who has not entered an appearance as a aprty to the investigation may submit a written statement of information pertinent to the subject of the investigations on or before December 24, 1986.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: November 21, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-26706 Filed 11-25-86; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF LABOR

Task Force on Economic Adjustment and Worker Dislocation; Meeting

Notice is hereby given that the Task Force on Economic Adjustment and Worker Dislocation will hold its seventh meeting at 10:00 a.m. on Thursday, December 11, 1986, in Room C-5515—Seminar Room 6, 200 Constitution Avenue, NW., Washington, DC 20210. The public is invited to attend.

The purpose of the meeting is to discuss the finalized draft outline of the Task Force report.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Holmes, U.S. Department of Labor, Room S-5317, Washington, DC 20210, (202) 523-6227.

Signed at Washington, DC, this Thursday of November 20, 1986.

Michael E. Baroody,

Assistant Secretary for Policy

[FR Doc. 86-26592 Filed 11-25-86; 8:45 am]

BILLING CODE 4510-23-M

Employment and Training Administration

Targeted Jobs Tax Credit Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of the reauthorization of the Targeted Jobs Tax Credit program.

SUMMARY: The Targeted Jobs Tax Credit (TJTC) program offers employers a credit against their tax liability for hiring individuals from nine target groups who have traditionally had difficulty in obtaining and holding jobs. The TJTC program had expired on December 31, 1985, but, by statute, has now been reinstated through December 31, 1988. This notice gives further guidance on the operation of the TJTC program.

FOR FURTHER INFORMATION CONTACT: Mr. Clayton J. Cottrell, Planning and Operations, Employment and Training Administration, U.S. Department of Labor, Room N-4456, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202-535-0192.

For general TJTC program information contact: Nearest office of the State Employment Security Agency, usually listed in the telephone directory under State Government, Employment Security Commission, Employment and Training, or Job Service.

SUPPLEMENTARY INFORMATION: The Tax Reform Act of 1986 has reauthorized the Targeted Jobs Tax Credit program for a three-year period, through December 31, 1988, for the same nine target groups as were authorized in the most recent prior legislation. The groups are as follows:

—*Economically disadvantaged summer youth employees* who are 16 or 17 years of age on the hiring date and who have not previously worked for the employer;

—*Youth aged 18 through 24* from economically disadvantaged families (the definition of "economically disadvantaged" varies with location);

—*Youth aged 16 through 19* from economically disadvantaged families, who participate in a qualified cooperative educational program;

—*Handicapped persons* referred to the employer from state vocational rehabilitation or Veterans' Administration programs;

—*Vietnam-era veterans* who are economically disadvantaged;

—*Ex-Offenders* who are economically disadvantaged and hired no later than five years after release from prison or date of conviction, whichever is more recent;

—*Recipients of Aid to Families with Dependent Children* (AFDC) who are eligible for AFDC on the hiring date and have received it for 90 days immediately prior to being hired, and participants in the Work Incentive (WIN) program;

—*Recipients of Federal Supplemental Security Income* (SSI);

—*Recipients of state and local general assistance payments for* at least 30 days.

Procedural guidance in the form of an Employment Service Program Letter (ESPL) No. 1-87 was issued by the U.S. Department of Labor, Employment and Training Administration, to State Employment Security Agencies on November 4, 1986. The ESPL, in pertinent part, is set forth below:

1. *Purpose.* To provide guidance in implementing the Targeted Jobs Tax Credit (TJTC) program as reauthorized by the Tax Reform Act of 1986.

2. *Reference.* The Internal Revenue Code of 1954; The Tax Reduction and Simplification Act of 1977; The Revenue Act of 1978; The Technical Corrections Act of 1979; The Economic Recovery Tax Act of 1981; The Tax Equity and Fiscal Responsibility Act of 1982; The Technical Corrections Act of 1982; The Deficit Reduction Act of 1984; The Tax Reform Act of 1986; ET Handbook #377, 3rd Edition.

3. *Background and Information.* The Tax Reform Act of 1986, signed into law on October 22, 1986, reauthorized the TJTC program for a three-year period for the same nine target groups authorized in the most recent prior legislation.

The operation of the TJTC program has been altered many times since it was initiated in 1978, due to the legislation referenced in section 2, rulings from the Internal Revenue Service (IRS), and policy decisions from the Department of Labor.

The Secretary of Labor and the Secretary of Treasury are jointly responsible under the law, as amended, for administration of the TJTC program. By agreement with the Secretary of Treasury, the Secretary of Labor provides guidance and oversight to the State Employment Security Agencies (SESAs) about processing, determination of eligibility and certification of applicants to employers, as well as compliance review, and reports to the Congress. The IRS is responsible for granting the tax credit to employers and for enforcement.

According to the Economic Recovery Tax Act of 1981 (ERTA), the SESAs are the designated agencies responsible for certification processing under TJTC. Responsibilities and program operations remain essentially the same as described in Employment and Training Handbook No. 377, 3rd Edition (ET Handbook).

Procedures for resolving policy questions or appeals will remain as described in the ET Handbook. Page changes to the ET Handbook incorporating all provisions of the new legislation will be issued without undue delay. The changes may update formats or reporting procedures, or clarify other policy issues.

4. *Major Changes.* The following subparagraphs outline additional changes under the new legislation.

a. Amount of Credit. The TJTC for first year wages is limited to 40 percent of up to $6,000 earned (maximum credit $2,400). Tax Credit for second year wages is eliminated. Wages paid during the retention period (See b. below) apply if the minimum retention requirement is met. Credit for economically disadvantaged summer youth employees remains at 85 percent of up to $3,000, for a maximum credit of $2,550 for each individual.

b. A minimum employment period (Retention Period) of 90 days or 120 hours of paid employment (14 days or 20 hours in the case of economically disadvantaged summer youth employees) is required before the employer can claim the tax credit.

5. *Certification.* Guidance on determining the timeliness of requests for certification has been given in the ET Handbook which describes the provisions of sections 7502 and 7503 of the Internal Revenue Code of 1954 (the Code), and the implementing IRS regulations at 26 CFR 301.7502-1 and 301.7503-1. The ET Handbook applies to determinations of timeliness for documents filed under the Code, which includes written requests for certification under the TJTC program for employees who began work on or before December 31, 1985, and on or after October 22, 1986.

Under section 51(d)(16)(A) of the Code, an individual generally is treated as a member of a targeted group only if, on or before the day such individual begins work for an employer, the employer has received or requested in writing a certification from a designated local agency that such individual is a member of a targeted group. If, however, on or before the day such individual begins work for the employer, such individual has received from a designated local agency a written preliminary determination (voucher) indicating membership in a targeted group, that individual is treated as a member of a targeted group if, on or before the fifth day after beginning work for the employer, the employer has received or has requested in writing the certification from a designated local agency. For either of these situations, the date that the certification is required by the law to be received or requested by the employer is hereafter defined as the "statutory filing date" by which certifications must be requested in writing to be timely filed.

In accepting or processing requests for certification for employees beginning work during the period from January 1 through October 21, 1986 the following examples describe "timely filing."

Example 1. During the period from January 1, 1986, through October 21, 1986 (the Retroactive Period) the employer hires a TJTC-eligible person and places in the U.S. mail a written request for certification, properly addressed to the State agency, or hand delivers a written request prior to the statutory filing date, and such request for certification is on file with the State agency. This is a timely filing.

Example 2. During the Retroactive Period the employer hires a TJTC-eligible person and places in the U.S. mail, uses a Mailgram, or delivers to the State agency, a written request for certification prior to the statutory filing date and the State agency returned, discarded, or otherwise disposed of such request.

The request shall be deemed to have been timely filed only if the employer provides clear and convincing documentary evidence of such timely filing, such as the original written request and postmark, dated certificate of mailing, or State agency date stamp, or a photocopy thereof.

Example 3. During the Retroactive Period the employer hires a TJTC-eligible person, but is told by the State agency (or the employer otherwise decides on its own) that no request for certification should be filed or that no such request will be accepted by the State agency. As a result, the employer does not file a written request for certification to the proper State agency prior to the statutory filing date. Any later filing with respect to that hire is not a timely filing, even if the State agency's and/or the employer's action was based on a perception that the TJTC program had expired.

In general, if the envelope containing the request, or if a Certificate of Mailing from the Post Office, is postmarked with a date no later than the statutory filing date, the filing would be timely. For registered mail, the date of registration is permissible. For privately metered mail, a more detailed rule, discussed on page 33 of ET Handbook, applies. If the request is hand-delivered to the State agency, any dated receipt or State agency dated log entry would indicate whether the filing was timely.

With respect to issues other than timeliness of filing, as set forth in the above 3 examples, the ET Handbook will apply to the processing of requests for certification filed during the retroactive period.

6. *Funding.* The Continuing Resolution for 1987 (PL 99-500) authorizes use of funds granted for Program Year (PY) 1986 under Section 6, Wagner-Peyser Act, to carry out the TJTC program. These funds have already been allocated to States.

7. *Economically Disadvantaged.* Where appropriate, the Lower Level Standard Income Levels (LLSIL), issued by the U.S Department of Labor in the **Federal Register** of June 11, 1985, (50 FR 24508) are to be used in determining eligibility for those beginning work before April 30, 1986. The updated LLSIL issued in the **Federal Register** of April 15, 1986 (51 FR 12752) are to be used in determining eligibility for those beginning work or being vouchered on or after April 30, 1986.

8. *Certification Format.* SESAs should inform each employer who receives a TJTC certification of the required minimum employment period. Enforcement of the requirement is between the employer and the IRS. The necessary information can be provided by the SESA with the following statement given in writing with each TJTC certification:

> Under the provisions of the Tax Reform Act of 1986, employers must attest to the IRS when claiming the TJTC that each targeted group member either was employed by the employer for at least 90 days (14 days in the case of qualified summer youth employees), or has completed at least 120 hours of work performed for the employer (20 hours in the case of qualified summer youth employees).

The U.S. Department of Labor is no longer requiring States to use the ETA forms 8468, 8469, and 8470 for the eligibility Voucher, Applicant Characteristics data, and Employer

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Certification. Instead States may develop their own documentation.

9. *Reporting.* No changes in reporting requirements are anticipated at this time. The National Office is in the process of requesting approval from the Office of Management and Budget (OMB) to reinstitute the same reporting procedures as described in the ET Handbook, subject to OMB review of the ET Handbook update.

10. *Records.* Records retention procedures will remain as described in the ET Handbook.

11. *Publicity.* Department of Labor Fact Sheet on the TJTC is being issued.

12. *Action Required.* SESAs should immediately provide the above information to appropriate staff and TJTC or other appropriate units and participating agencies, and notify employers that the TJTC program is reestablished.

13. *Inquiries.* Direct questions to the appropriate ETA Regional Office.

Signed at Washington, DC, this 20th day of November, 1986.

Roger D. Semerad,

Assistant Secretary for Employment and Training.

[FR Doc. 86-26593 Filed 11-25-86; 8:45 am]

BILLING CODE 4510-30-M

MERIT SYSTEMS PROTECTION BOARD

Call for Riders for MSPB Report on Federal Employee Involvement Systems

AGENCY: Merit Systems Protection Board.

ACTION: Notice of call for riders for MSPB report, *Getting Involved: Improving Federal Management With Employee Participation.*

SUMMARY: The purpose of this notice is to inform Federal departments and agencies that, due to an unanticipated number of requests for copies, the Merit Systems Protection Board (MSPB) is again printing a limited number of copies of a recent report titled, *Getting Involved: Improving Federal Management With Employee Participation.* This report identifies the major systems, policies, or procedures in place within the 22 largest Federal departments or independent agencies which allow or encourage employees to identify or help resolve agency related problems. Federal departments and agencies may order copies of this report by riding MSPB's printing requisition #7-00060 with the Government Printing Office.

DATE: Agency requisitions (Standard Form 1) must be submitted no later than January 5, 1987.

ADDRESS: Interested departments and agencies should send requisitions—through their Washington, DC headquarters office authorized to procure printing—to the Government Printing Office, Requisitions Section, Room 836, Washington, DC 20401.

Agencies may estimate cost by using the current Government Printing Office price list of printing services and the printing information contained in the "supplementary information" section below.

FOR FURTHER INFORMATION CONTACT: John M. Palguta, Director, External Review and Studies Division, MSPB, 1120 Vermont Avenue NW., Washington, DC 10419, 202-653-8900.

SUPPLEMENTARY INFORMATION: This is one of a series of reports produced by the Board under its statutory authority to conduct special studies of the civil service system. Reports of those studies are addressed to Congress and the President. This particular report is based upon a study designed to compile information on systems, policies, or procedures identified by each major Federal department and agency as one which they have in place and which allows or encourages employees to identify or help resolve agency related problems. The report was first released on September 18, 1986. Requests for copies of the report recently exceeded the number initially printed. This second printing is intended to satisfy any additional requests.

The report discusses Quality Circles, Suggestion Programs, Hotlines, and a number of other programs and systems which are unique to particular agencies. All of the identified programs and systems have the potential to foster constructive employee involvement. Telephone numbers for the responsible offices in each agency are provided so that the report may serve as a resource document for interested parties. This 124 page, bound report is printed in one color ink on 8½x11 inch paper. The cost per copy will depend on the volume of agency orders.

Dated: November 20, 1986.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 86-26600 Filed 11-25-86; 8:45 am]

BILLING CODE 7400-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-482]

Kansas Gas & Electric Co., Kansas City Power & Light Co., Kansas Electric Power Cooperative, Inc.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of footnote d-2(c) of Appendix A to 10 CFR Part 20, to the Kansas Electric Power Company, Kansas City Power & Light Company, and Kansas Electric Cooperative, Inc., (the licensee) for the Wolf Creek Generatings Station located at the licensee's site in Coffey County, Kansas.

Environmental Assessment

Identification of Proposed Action

The exemption would relax the requirement in Footnote d-2(c) of Appendix A to 10 CFR Part 20 which states, "No allowance is to be made for the use of sorbents against radioactive gases or vapor." The exemption would allow the use of a radioactive protection factor of 50 for certain respiratory protection canisters used by workers at the licensee's Wolf Creek facility. The staff's technical evaluation of this request will be published in a report entitled "Safety Evaluation Report Related to the Use of Radioiodine Protection Factor for Sorbent Canisters at Wolf Creek."

The exemption is responsive to the licensee's application for exemption dated July 1, 1985, as supplemented by letters dated November 8, 1985 and May 6, 1986.

The Need for the Proposed Action

The proposed exemption is needed because the features described in the licensee's request are potential means to reduce occupational exposure to radiation for some tasks at the Wolf Creek facility.

Environmental Impact of the Proposed Action

The proposed exemption will most likely reduce the work effort and occupational exposure for some tasks at the Wolf Creek facility. As stated in the staff's Safety Evaluation Report:

> The utilization of air purifying respirators in lieu of air-supplied or self-contained apparatuses, where possible, can result in person-rem reductions estimated overall at 30% for tasks requiring radioiodine protection, in a range of from 25% to 50% for several major tasks. The light weight, less

cumbersome air purifying respirators (i.e., sorbent canisters) can provide increased comfort and mobility in most cases, and result in increased worker efficiency and decreased time on-the-job. The licensee has provided a task analysis which shows that the use of sorbent canisters at Wolf Creek can result in significant dose savings and should be an effective ALARA measure.

With regard to potential radiological impacts to the general public, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect the potential for or consequences of radiological accident and does not affect radiological plant effluents. The exemption has no effect on non-radiological impacts of facility operation. Therefore, the Commission concludes that there are no significant environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since we have concluded that the environmental effects of the proposed action are negligible, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statements (construction permit and operating license) for the Wolf Creek Generating Station.

Agencies and Persons Consulted

The NRC Staff reviewed the licensee's request and consulted with an NRC contractor at Los Alamos National Laboratory.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the enviornmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the request for exemption dated July 1, 1985, as supplemented November 8, 1985, and May 6, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the William Allen White Library, Emporia State University, Emporia, Kansas, and at the Washburn University School of Law Library, Topeka, Kansas.

Dated at Bethesda, Maryland, this 19th day of November 1986.

For the Nuclear Regulatory Commission

B.J. Youngblood,

Director, PWR Project Directorate No. 4, Division of PWR Licensing-A.

[FR Doc. 86-26688 Filed 11-25-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-366]

Consideration of Issuance of Amendment to Facility Operating License and Proposed no Significant Hazards Consideration Determination and Opportunity for Hearing; Georgia Power Co., et al.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment of Facility Operating License No. NPF-5 issued to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, for operation of the Edwin I. Hatch Nuclear Plant, Unit No. 2 located in Appling County, Georgia.

The amendment would modify the Technical Specification Sections related to operability requirements for the Main Control Room Environmental Control System (MCRECS) to (1) delete the requirement for automatic actuation of the control room pressurization mode of operation of the MCRECS upon receipt of a low-low reactor vessel water level signal, (2) change the requirement for automatic actuation of the control room pressurization mode of the MCRECS upon receipt of a high radiation signal in the refueling floor exhaust to require automatic actuation based on a high radiation signal in the refueling floor area (i.e., the word "exhaust" would be replaced by the word "area"), (3) change the location and format of the requirements related to the operability of the MCRECS to clarify and facilitate their use, (4) correct errors in the identification numbers listed for instrumentation that provides actuation signals for operation of the MCRECS, and (5) augment the MCRECS applicability requirements (Operational Conditions for which the MCRECS is required to be operable) to include additional Operational Conditions.

Proposed changes (1) and (2) above are needed to make the Technical Specifications compatible with the existing plant design and the design as described and evaluated in the Hatch Unit 2 Final Safety Analysis Report.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

With respect to change (1), the existing Technical Specification requires that the control room pressurization mode of MCRECS operation be automatically actuated upon receipt of a low-low (Level 2) reactor vessel water level signal and upon receipt of a low-low-low (Level 3) reactor vessel water level signal. The Standard Review Plan and the Standard Technical Specifications do not specify a requirement for actuation of the control room pressurization mode based on low reactor vessel water level. Thus removal of one of the two actuation requirements based on low reactor vessel water level is acceptable. In addition, the existing Technical Specification also requires actuation of the control room pressurization mode based on high drywell pressure. Thus the remaining low-low-low reactor vessel water level together with this high drywell pressure actuation requirement continue to provide diverse LOCA signal actuation of the control room pressurization mode, and the elimination of the redundant reactor vessel water level actuation requirement does not significant change the safety margin provided by the current Technical Specification requirements.

With respect to change (2), the location of the radiation monitors that will actuate the control room pressurization mode of MCRECS operation will be area radiation monitors and will be located in the refueling floor area close to the exhaust ducts rather than inside the ducts as currently required. Because these area radiation monitors will be in a direct line of sight to the refueling pool surface, they should respond to direct radiation from any bubbles that rise to the top of the pool and therefore should provide quicker actuation of the pressurization mode of operation than would the currently required monitor inside the

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exhaust ducts which has less exposure to direct radiation. In addition, because the area radiation monitors will be located close to the exhaust ducts they should detect any radioactive gases that would be detected by monitors located inside the ducts. Therefore, the proposed requirement is essentially equivalent and possibly provides improved detection of radioactive releases and actuation of the control room pressurization mode.

Changes (3) and (4) do not modify any current Technical Specification requirements. They change the location and format of information and correct instrument numbers related to MCRECS requirements.

Change (5) adds requirements (a) that the control room isolation mode of MCRECS operation shall be operable when the reactor is in the Cold-Shutdown Operational Condition and (b) that the MCRECS be operable when the reactor is in the Refueling Operational Condition and when irradiated fuel is being handled in the secondary containment. This addition should increase the safety of operation in these situations.

None of the above proposed modifications change the existing plant design or require modification of the accident analysis as described in the Hatch 2 Final Safety Analysis Report, nor do the proposed modifications change the manner in which the plant is operated. Accordingly, the changes are not expected to (1) increase the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

On the basis of the above, the Commission has determined that the requested amendments meet the three criteria and therefore has made a proposed determination that the amendment application does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

By December 26, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make is effective, notwithstanding the request for hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attn: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last tne (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in

Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller, Director, BWR Project Directorate #2, Division of BWR Licensing: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Bruce W. Churchill, Esquire, Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Dated at Bethesda, Maryland, this 18th day of November 1986.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, BWR Project Directorate No. 2, Division of BWR Licensing.

[FR Doc. 86-26687 Filed 11-25-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-445A and 50-446A]

Texas Utilities Electric Co. et al.; Receipt of Antitrust Information

Texas Utilities Electric Company, Brazos Electric Power Cooperative, Inc., Texas Municipal Power Agency and Tex-La Electric Cooperative of Texas have filed antitrust information in conjuction with their application for operating licenses for the Comanche Peak Steam Electric Station, Units 1 and 2 located in Somervell County, Texas, approximately 40 miles southwest of Fort Worth, Texas. The data submitted contains antitrust information for review, pursuant to NRC Regulatory Guide 9.3; necessary to determine whether there have been any significant changes since the antitrust settlement of September 15, 1980.

On completion of a staff antitrust review, The Director of the Office of Nuclear Reactor Regulation will issue an initial finding as to whether there have been "significant changes" under section 105c(2) of the Atomic Energy Act, as amended. A copy of this finding will be published in the **Federal Register** and will be sent to the Washington, DC and local public document rooms and to those persons providing comments or information in response to this notice. If the initial finding concludes that there have not been any significant changes, requests for reevaluation may be submitted for a period of 30 days after the date of the **Federal Register** Notice. The results of any reevaluation that are requested will also be published in the **Federal Register** and copies sent to the Washington, DC and local public documents rooms.

A copy of the general information portion of the application for an operating license and the antitrust information submitted is available for public examination and copying for a fee at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and in the local public document room at the Somervell County Library, On the Square, P.O. Box 417, Glen Rose, Texas 76403.

Any person who desires additional information regarding the matter covered by this notice or who wishes to have views considered with respect to significant changes related to antitrust matters which occurred since the antitrust settlement should submit such requests for information or views to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Planning & Program Analysis Staff, Office of Nuclear Reactor Regulation, on or before December 26, 1986.

Dated at Bethesda, Maryland, this 20th day of November, 1986.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Director, Planning & Program Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 86-26689 Filed 11-25-86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Schedule A, B, and C Positions Placed or Revoked

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 632-6817.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on October 28, 1986 (51 FR 39442). Individual authorities established or revoked under Schedule A, B, or C between October 1, 1986, and October 31, 1986, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

The following exception was established:

Department of the Army

Three positions of physical therapist that will function as athletic trainers at the United States Military Academy, West Point, New York. Effective October 9, 1986.

Schedule B

No Schedule B exceptions were established or revoked during October.

Schedule C

The following exceptions have been established:

Department of Agriculture

One Staff Assistant to the Assistant Secretary for Governmental and Public Affairs. Effective October 6, 1986.

One Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service. Effective October 9, 1986.

One Private Secretary to the Deputy Assistant Secretary for Marketing and Inspection Services. Effective October 16, 1986.

One Northeast Area Director to the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service. Effective October 17, 1986.

One Executive Assistant to the Administrator, Agricultural Stabilization and Conservation Service. Effective October 30, 1986.

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One Confidential Assistant to the Administrator, Agricultural Marketing Service. Effective October 30, 1986.

One Private Secretary to the Administrator, Agricultural Marketing Service. Effective October 31, 1986.

Department of the Army

One Secretary (Steno) to the Assistant Secretary of the Army (Financial Management). Effective October 23, 1986.

Department of Commerce

One Director, Office of Consumer Affairs to the Director, Office of Public Affairs. Effective October 3, 1986.

One Special Assistant to the Assistant Secretary for Administration. Effective October 10, 1986.

One Confidential Assistant to the Deputy Assistant Secretary for Export Administration, International Trade Administration. Effective October 17, 1986.

One Confidential Assistant to the Deputy Assistant Secretary for Administration. Effective October 23, 1986.

One Congressional Affairs Specialist to the Congressional Affairs Advisor, Bureau of the Census. Effective October 27, 1986.

Deparment of Defense

One Staff Assistant to the Assistant Secretary of Defense. Effective October 6, 1986.

One Private Secretary to the Deputy Under Secretary of Defense. Effective October 22, 1986.

One Private Secretary to the Senior Judge, U.S. Court of Military Appeals. Effective October 28, 1986.

Department of Education

One Director, Adult Literacy Initiative to the Under Secretary. Effective October 3, 1986.

One Confidential Assistant to the Assistant Secretary for Special Education and Rehabilitative Services. Effective October 7, 1986.

One Special Assistant to the Director, Office of Bilingual Education and Minority Languages Affairs. Effective October 7, 1986.

One Confidential Assistant to the Chief of Staff/Counselor to the Secretary. Effective October 8, 1986.

One Special Assistant to the Administrator for Management Services. Effective October 8, 1986.

One Special Assistant to the Assistant Secretary for Vocational and Adult Education. Effective October 20, 1986.

One Confidential Assistant to the Chief of Staff/Counselor to the Secretary. Effective October 20, 1986.

One Staff Assistant to the Chief of Staff/Counselor to the Secretary. Effective October 20, 1986.

One Special Assistant to the Deputy Under Secretary for Management. Effective October 31, 1986.

Department of Energy

One Staff Assistant to the Secretary. Effective October 9, 1986.

One Staff Assistant to the Assistant Secretary for International Affairs and Energy Emergencies. Effective October 9, 1986.

One Staff Assistant to the Director of Energy Research. Effective October 9, 1986.

One Confidential Assistant (Secretary) to the Special Assistant to the Secretary. Effective October 10, 1986.

One Staff Assistant to the Assistant Secretary for International Affairs and Energy Emergencies. Effective October 23, 1986.

One Secretary (Confidential Assistant) to the Assistant Secretary for Fossil Energy. Effective October 24, 1986.

One Legal Advisor to a Member of the Federal Energy Regulatory Commission. Effective October 27, 1986.

Department of Health and Human Services

One Director, Office of Public Affairs to the Assistant Secretary for Human Development Services. Effective October 9, 1986.

One Director, Division of Legislative Services and Congressional Affairs to the Director, Office of Legislation and Policy, Health Care Financing Administration. Effective October 10, 1986.

One Director, Division of Legislation to the Director, Office of Legislation and Policy, Health Care Financing Administration. Effective October 10, 1986.

One Special Assistant for Liaison Activities to the Administrator, Alcohol, Drug Abuse, and Mental Health Administration. Effective October 10, 1986.

One Confidential Secretary to the Assistant Secretary for Legislation. Effective October 24, 1986.

One Special Assistant to the Director, Office of Civil Rights. Effective October 24, 1986.

Department of Housing and Urban Development

One Executive Assistant to the General Deputy Assistant Secretary for Housing. Effective October 15, 1986.

One Staff Assistant to the Executive Assistant to the Secretary. Effective October 15, 1986.

One Staff Assistant to the Regional Administrator-Regional Housing Commissioner. Effective October 30, 1986.

Department of the Interior

One Special Assistant to the Assistant to the Secretary and Director, External Affairs. Effective October 21, 1986.

One Confidential Assistant to the Director, U.S. Fish and Wildlife Service. Effective October 30, 1986.

Department of Justice

One Confidential Assistant (Private Secretary) to the Assistant Attorney General, Criminal Division. Effective October 2, 1986.

One Secretary (Typing) to the Associate Attorney General. Effective October 14, 1986.

Department of Labor

One Staff Assistant to the Under Secretary. Effective October 7, 1986.

One Senior Liaison Officer to the Deputy Under Secretary for Congressional Affairs. Effective October 7, 1986.

One Special Assistant to the Assistant Secretary for Occupational Safety and Health. Effective October 10, 1986.

One Secretary's Representative to the Associate Deputy Under Secretary for Intergovernmental Affairs. Effective October 22, 1986.

One Secretary (Stenography) to the Assistant Secretary for Veterans' Employment and Training. Effective October 30, 1986.

Department of State

One Staff Assistant to the Deputy Secretary of State. Effective October 7, 1986.

One Deputy Coordinator to the Coordinator for Public Diplomacy for Latin America and the Caribbean. Effective October 8, 1986.

One Secretary (Steno) to the Executive Secretary/Special Assistant to the Secretary of State. Effective October 8, 1986.

One Foreign Affairs Officer to the Assistant Secretary, Bureau of International Organization Affairs. Effective October 15, 1986.

One Public Information Officer to the Deputy Assistant Secretary for International Social and Humanitarian Affairs, Bureau of International Organization Affairs. Effective October 24, 1986.

One Member, Policy Planning Council to the Chairman, Policy Planning Council. Effective October 24, 1986.

Department of Transportation

One Special Assistant to the Administrator, Federal Highway Administration. Effective October 8, 1986.

Department of the Treasury

One Deputy Assistant Secretary (Legislative Affairs) to the Assistant Secretary (Legislative Affairs). Effective October 2, 1986.

Agency for International Development

One Director, Office of Interbureau Affairs and Special Projects to the Deputy Assistant Administrator for External Affairs. Effective October 23, 1986.

Arms Control and Disarmament Agency

One Secretary (Typing) to the Assistant Director, Multilateral Affairs Bureau. Effective October 2, 1986.

One Secretary (Steno) to the Special Representative for Arms Control and Disarmament. Effective October 15, 1986.

Commission on Civil Rights

One Confidental Secretary to the Commissioner. Effective October 7, 1986.

Commodity Futures Trading Commission

One Special Assistant to the Commissioner. Effective October 8, 1986.

Federal Emergency Management Agency

One Confidential Assistant to the Associate Director, Emergency Operations Directorate. Effective October 22, 1986.

Federal Labor Relations Authority

One Staff Assistant to a Member. Effective October 14, 1986.

One Confidential Assistant to the Chairman. Effective October 30, 1986.

Federal Mine Safety and Health Review Commission

One Attorney-Adviser (General) to a Commissioner. Effective October 10, 1986.

One Confidential Secretary to the General Counsel. Effective October 10, 1986.

Federal Trade Commission

One Director, Office of Congressional Relations to the Chairman. Effective October 1, 1986.

General Service Administration

One Confidential Assistant to the Regional Administrator. Effective October 7, 1986.

One Confidential Assistant to the Director, Office of the Executive Secretariat. Effective October 8, 1986.

One Confidential Assistant to the Associate Administrator for Congressional Affairs. Effective October 14, 1986.

International Trade Commission

One Staff Assistant (Legal) to a Commissioner. Effective October 1, 1986.

National Endowment for the Humanities

One General Counsel to the Chairman. Effective October 1, 1986.

Office of Managment and Budget

One Administrative Assistant to the Associate Director, Human Resources, Veterans and Labor. Effective October 17, 1986.

Office of Personnel Management

One Special Assistant to the Assistant Director for Congressional Relations. Effective October 1, 1986.

One Confidential Assistant (Typing) to the General Counsel. Effective October 20, 1986.

One Staff Assistant to the Counselor to the Director. Effective October 31, 1986.

Office of the U.S. Trade Representative

One Director, Office of Private Sector Liaison to the Assistant U.S. Trade Representative for Public and Intergovernmental Affairs. Effective October 16, 1986.

Pension Benefit Guaranty Corporation

One Secretary (Typing) to the Executive Director. Effective October 27, 1986.

President's Commission on Executive Exchange

Two Staff Assistants (Typing) to the Executive Director. Effective October 6, 1986.

Small Business Administration

One Special Assistant to the Associate Deputy Administrator for Management and Administration. Effective October 2, 1986.

Two Special Assistants to two Regional Administrators. Effective October 8, 1986.

One Special Assistant to the Associate Deputy Administrator for Special Programs. Effective October 24, 1986.

One Special Assistant to the Administrator. Effective October 24, 1986.

United States Tax Court

One Trial Clerk to a Judge. Effective October 23, 1986.

Authority: 5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., P.218.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

[FR Doc. 86-26630 Filed 11-25-86 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-23823; File No. SR-Amex-86-28]

Self-Regulatory Organizations; Proposed Rule Change by the American Stock Exchange, Inc. Relating to an Amendment to the Exchange Constitution To Reduce the Transfer Fee Applicable to Leases of Regular Memberships

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act") 15 U.S.C. 78s(b)(1) notice is hereby given that on October 27, 1986, the American Stock Exchange Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is amending Article VII, section 1(d) of the Exchange Constitution to reduce the transfer fee applicable to leases of regular memberships from $2,500 to $1,500.

The text of the proposed rule change is available at the Office of the Secretary, American Stock Exchange Inc. and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects o such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange is effecting a Constitutional amendment which addresses the disparity between the cost involved in leasing a regular membership as compared to an options principal membership. Currently regular members incur a $2,500 fee to lease their seats while OPMs pay only $500. This disparity will be reduced by lowering the fee payable on lease of a regular membership to $1,500.

Article VII, section 1(d) of the Constitution provides that the initiation fee for the transfer of a regular membership pursuant to a special transfer agreement is to be based upon a formula tied to the latest price at which a regular membership has been sold, but not to exceed $2,500. This cap is reached whenever memberships are selling at or above $20,000. Since the average price of a regular membership currently is $248,000, the fee payable upon transfer is always at the maximum of $2,500. In contrast, the same section provides that the initiation fee payable upon the special transfer of an options principal membership is only $500. The initiation fee upon transfer of options principal memberships was set at $500 in 1978, in part to reflect the value of options principal memberships at that time, and also to make them more attractive to member firms whom it was felt would have greater need to transfer such memberships among employees. Since then, however, the value of an OPM has increased significantly, and the current average price if approximately $180,000.

Subsequent to the initial sale of Options Principal Memberships, the Exchange membership adopted a plan permitting members—both OPMs and regular members to lease their memberships. The growth in leasing in recent years has tendered to highlight the discrepancy in the cost of transferring regular memberships as opposed to Options Principal Memberships With the view to narrowing such disparity the Exchange Constitution will be amended to reduce the transfer fee payable in connection with a lease of the regular membership to $1,500.[1] Such reduction will enhance the value of a regular membership and update the initiation fee structure in light of changing seat values. The initiation fee payable by a new member upon the purchase of a membership will remain as is.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general, and section 6(b)4 in particular, in that the reduction in the transfer fee for lease of a regular membership will provide for equitable dues, fees and other charges among Exchange members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others.

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and paragraph (e) of Securities Exchange Act Rule 19B–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by December 17, 1986.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 18, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 26673 Filed 11–25–85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–23811; File No: SR–CBOE-86–33]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Inc. Relating to the Addition of One-Half Point Exercise Prices in Canadian Dollar Option Contracts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 10, 1986 the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would enable the Exchange to add one-half point exercise prices in Canadian dollar option contracts, either singly or at the same time as the next exercise price is added.

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[1] The Commission recognizes that, under the existing Exchange Constitution, it would be technically possible to transfer a regular membership seat for less than $1,500 if the latest sale price of a seat was $5,000 or less. As noted above, however, because Exchange seats generally sell for much higher prices, the current transfer fee is always at the maximum of $2,500. Accordingly, in practice, the proposal results in a reduction of transfer fees from $2,500 to $1,500.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to allow the listing of additional exercise prices in Canadian dollar currency option contracts. Because the Canadian dollar relative to the United States dollar is not volatile, few exercise prices are available for Canadian dollar options trading. The statutory basis for the proposed rule change is section 6(b)(5) of the Securities Exchange Act of 1934 (the Act), in that it is designed to facilitate transactions in Canadian dollar currency option contracts.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 17, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 14, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-26674 Filed 11-24-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

November 20, 1986.

The above named national securities exchange has filed applications with the Security and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Hanson Trust PLC
  American Depository Receipts (File No. 7-9381)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 12, 1986, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-26680 Filed 11-25-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

November 20, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

NV Homes L.P.
  Units of Limited Partnership Interest (File No. 7-9382)
UNUM Corporation
  Common Stock, $.10 Par Value (File No. 7-9383)
Lone Star Ind., Inc.
  $5.375 Cumulative Convertible Preferred (File No. 7-9384)
Duke Realty Investments Inc.
  Income Shares, $.01 Par Value (File No. 7-9385)
Schafer Value Trust, Inc.
  Common Stock, $.01 Par Value (File No. 7-9386)
Hanson Trust
  American Depository Shares, No Par Value (File No. 7-9387)
Commercial Credit Co.
  Common Stock $.01 Par Value (File No. 7-9388)
Motel 6 L.P.
  Units Representing Limited Partnership Interests (File No. 7-9389)
Hanson Trust PLC
  American Depository Shares (File No. 7-9390)
Danaher Corporation (Delaware)
  Common Stock, $.01 Par Value (File No. 7-9391)

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Harinschafeger Industries, Inc. (Holding Company)
Common Stock, $.01 Par Value (File No. 7–9392)
Premark International Inc.
Common Stock, $.10 Par Value (File No. 7–9393)
Raytech Corporation (Holding Company)
Common Stock, $1.00 Par Value (File No. 7–9394)
Cook United, Inc.
Common Shares, $.01 Par Value (File No. 7–9395)
The Clorox Company (Delaware)
Common Stock, $1.00 Par Value (File No. 7–9396)
United States Leasing International, Inc. (Delaware)
Common Stock, $1.00 Par Value (File No. 7–9397)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 12, 1986, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant of delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 86–26680 Filed 11–25–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–23834; File No. SR–MSRB–86–14]

Self-Regulatory Organizations; Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Uniform Practice and Confirmation, Clearance and Settlement of Customer Transactions

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 20, 1986, the Muncipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) The Municipal Securities Rulemaking Board ("Board") is filing an interpretation of rules G–12 on uniform practice and G–15 on confirmation, clearance and settlement of customer transactions (hereinafter referred to as "the proposed rule change") that clarifies the date as of which a notice of call is deemed to be published under the rules. The proposed rule change states that, in general, the publication date of a notice of call is the date of the edition of the publication in which the call notice is first published. The proposed rule change states that, to qualify as a notice of call under the rules, a notice of a partial call must identify the certificates that will be redeemed.

The proposed rule change also states that, if a notice of call for a registered security is not published, but is sent to registered owners, the publication date is the date shown on the notice. If no date is shown on the notice, the issuer, the trustee or the appropriate agent of the issuer must be contacted to determine the date of the notice of call. If a notice of call of a registered security is published and also is sent directly to registered owners, the publication date is the earlier of the actual publication date or the date shown on the notice sent to registered owners.

The full text of the proposed rule change is available for inspection and copying at the Commission's Public Reference Section and at the offices of the Board.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regualtory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Board rules G–12(e)(x) and G–15(c)(viii) on deliveries of called securities provide that a certificate for which a notice of partial call has been published does not constitute good delivery unless it was identified as called at the time of trade. The rules also provide that, if a notice of call affecting an entire issue has been published on or prior to the trade date, called securities do not constitute good delivery unless identified as such at the time of trade. An inter-dealer delivery that does not meet these requirements may be rejected or reclaimed under rule G–12(g). Thus, a dealer, in some instances, must determine the date that a notice of call is published (the "publication date") to determine whether delivery of a called certificate constitutes good delivery for a particular transaction.

The rationale of rules G–12(e)(x) and G–15(c)(viii) is that, once information becomes public concerning a specific issue or specific certificates of an issue being called, the industry can react to this information and trade the securities or deliver certificates accordingly. Consistent with this rationale, the proposed rule change states that, in general, the date of the edition of the publication in which the issuer, the issuer's agent or trustee for an issue first publishes a notice of call constitutes the publication date of the notice for the purposes of the rules. The proposed rule change also states that a notice of a partial call does not exist for purposes of the rules unless the specific certificates to be called are identified in the notice. Thus, an announcement that a specific percentage of an issue will be called does not constitute a notice of call because the certicates that will be redeemed cannot be determined from the announcement.

The proposed rule change also addresses several other questions that may arise in determining the publication date of call notices. Some notices of calls for registered securities generally are sent directly to registered bond owners and also are published. In some cases, however, call notices are sent to registered owners, but are not published. The proposed rule change states that, in such cases, the publication date for purposes of the rules is the date of the notice of call sent to registered owners, as shown on the notice. In the unusual case in which such a notice is not dated, the proposed rule change states that the publication date is determined by contacting the trustee, the issuer or an appropriate agent of the issuer to determine the date of the notice. Since a notice sent to registered owners may be the only means by which a call notice is made known, such a determination of publication date is consistent with the rationale of the rules G–12(e)(x) and G–15(c) (viii).

The Board also is aware that a call notice may be sent to registered bond owners and then published at a later date. The proposed rule change states that in such situations, for purposes of rules G–12(e)(x) and G–15(c)(viii), the publication date is the earlier of the actual publication date or the date shown on the notice sent to registered owners. This conforms to the rationale of the rules since, if registered owners have call information prior to its publication, they may be able to act on that information.

The Board understands that registered securities depositories use a lottery system to allocate securities called pursuant to partial calls. The Board notes that depositories use the publication date of a notice of partial call as the date as of which securities in the depository are subject to the call lottery. The lottery process thus is similar to the operation of rules G–12(e)(x) and G–15(c)(viii). The Board believes that the proposed rule change is consistent with the procedures used by depositories to determine publication date and will provide for consistent treatment for physical and book-entry deliveries of called securities. The Board also believes that adoption of the proposed rule change will lessen the possibility of disputes involving delivery of called securities by clarifying the publication dates of call notices in certain situations.

(b) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended, ("the Act") which requires and empowers the Board to adopt rules which are

> designed . . . . to foster cooperation and coordination with persons engaged in . . . . clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general to protect investors and the public interest . . . .

The Board believes that the proposed rule change will further the purposes of the Act by clarifying situations in which called securities may properly be delivered, rejected or reclaimed under the Board's rules.

B. Self-Regulatory Organization's Statment on Burden on Competition

The Board believes that the proposed rule change would not impose any burden on competition since it applies uniformly to all brokers, dealers and municipal securities dealers and serves primarily to clarify existing rules on delivery of called securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Chnage Received from Members, Participants, or Others.

The Board neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 17, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 20, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–26675 Filed 11–25–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–23820; File No. SR–NASD–86–31]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to NASD Appendix E to the NASD's Rules of Fair Practice.

Pursuant to section 19(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 17, 1986, the National Association of Securities Dealer, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Froposed Rule Change

The proposed rule change to section 2(e) of Appendix E of the Rules of Fair Practice makes it more clear that the definition of "options contract" is identical to the definition of option in section 33(d) of Article III of the Rules of Fair Practice.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Board of Govrnors approved rule change to make it clear that the definition of "options contract" in section 2(e) of Appendix E is identical to the definition of "option" in section 33(d) of Article III of the NASD's Rules of Fair Practice. The proposed rule change does not alter, amend or otherwise modify the substance of section 2(e), but simplifies the wording to enhance its clarity.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Corporation does not anticipate that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on the Comment on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor

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received with respect to the proposed rule changes contained in this filing.

III. Date of Effectiveness of Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date or it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be approved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 17, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 17, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-26676 Filed 11-25-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23818; File No. SR-NASD-86-27]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Eligibility Criteria for Issuers of NASDAQ National Market System Securities

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(b)(1), notice is hereby given that on September 26, 1986, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change add a new Part III to Schedule D of the NASD By-Laws that sets forth criteria for determining the NASD Securities for which there shal be real-time last sale reporting under the NASD's Transaction Reporting Plan.[1]

Under amendments to Rule 11Aa2-1 under the Securities Exchange Act of 1934 ("Act") concurrently being proposed by the Commission,[2] securities satisfying these criteria and subject, therefore, to real-time last sale reporting, would be designated as National Market System Securities. The criteria proposed by the NASD are essentially identical to the Tier II criteria currently found in Rule 11Aa2-1 and in the NASD's NMS Designation Plan. In addition, the NASD proposes to add to these criteria certain corporate governance requirements that have previously been published for comment.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule changes would amend Schedule D to the Association's By-Laws to incorporate certain provisions now found in the NASD National Market System Designation Plan or in Commission Rule 11Aa2-1. These changes are being made for the purpose of consolidating all NASDAQ National Market System rules into a single easily identifiable document and in response to the discussions with the Commission staff concerning proposed amendments to its Rules 11Aa2-1 and 11Aa3-1.[4] The NASD has proposed amendments to its currently effective transaction reporting plan which it seeks to have become effective upon approval of this rule filing and the appropriate amendments to the Commission rules.[5] Securities which have been designated as NASDAQ National Market System securities under current SEC Rule 11Aa2-1 will remain so designated upon approval of this rule change subject to either voluntary termination or termination based upon a lack of future compliance with the provisions of Part III.

Section 1 of the proposed rule change dealing with applications for national market system designation contains no substantive changes and is derived from the Association's currently effective designation plan. Provisions for granting exceptions to the criteria contained in Part III have been included to parallel currently existing language found in Part II relating to general NASDAQ criteria.

Section 2 dealing with quantitative designation criteria provides the currently effective "Tier 2" criteria from Commission Rule 11Aa2-1. The current "Tier 1" mandatory designation criteria of Rule 11Aa2-1 have been eliminated in that the Association believes that these criteria have served the purpose for which they were intended when adopted by the Commission in February of 1981 (See Release No. 34-17549). This purpose was to enable the Commission and the industry to "gain experience with transaction reporting for a limited number of OTC securities which have previously have not been subject to last sale trade reporting." Since that time, however, over 2,300 securities have become a part of NASDAQ/NMS and the Association no longer believes that Tier 1 serves a valid purpose given the wide spread acceptance of trade reporting for over-the-counter securities.

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[1] The NASD, concurrent with this proposal, proposes to amend its Transaction Reporting Plan to incorporate by reference these eligibility criteria into that Plan. *See* Securities Exchange Release No. 23819 (November 17, 1986), published elsewhere in this issue of the **Federal Register**.

[2] *See* Securities Exchange Act Release No. 23817 (November 17, 1986), published elsewhere in this issue of the **Federal Register**.

[3] *See* Securities Exchange Act Release No. 22505 (October 7, 1985), 50 FR 41697. The proposed corporate governance standards would become effective 18 months after Commission approval.

[4] *See supra* note 2.

[5] *See supra* note 1.

Section 3 of the proposed rule change dealing with registration requirements tracks the requirements currently contained in commission Rule 11Aa2–1a(2) and (3).

Section 4 of the proposed rule change sets forth the maintenance criteria currently contained in the Association's designation plan.

Section 5 of the proposed rule change incorporates, without change, the Association's NASDAQ/NMS corporate governance criteria which have previously been published for comment in filing SR–NASD–85–20.

Section 6 of the proposed rule change provides procedures for termination of designation for non-compliance with the requirements of sections 4 and 5.

These changes are consistent with section 15A(b)(6) of the Securities Exchange Act, which requires that NASD rules protect investors and the public interest and with section 11A(a) requiring the development of a national market system which enhances competition among markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association believes that the proposed rule changes do not impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments, on the Proposed Rule Change Received from Members, Participants or Others

The NASD solicited comments with respect to a general recodification of Schedule D. None of the comments received related to the proposed rule changes.

III. Dates of Effectiveness of the Proposed Rule Change in Timing of Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the Submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, an all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 16, 1986.

Dated: November 17, 1986.

By the Commission.

Jonathan Katz,

Secretary.

[FR Doc. 86–26558 Filed 11–24–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–23824; File No. SR–OCC–86–22]

Self-Regulatory Organizations; Notice of Filings and Immediate Effectiveness of Proposed Rule Change of Options Clearing Corporation

On October 23, 1986, the Options Clearing Corporation ("OCC") filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). The Commission is publishing this notice to solicit comment on the rule change.

The proposal revises "Appendix A" of OCC's "Supplement to Agreement for OCC Services" ("Supplement"). The Supplement states the terms for clearing members' access to, and use of, OCC's on-line computerized communications service, known as C/MACS (Clearing Member Accounting and Control System).[1] Appendix A also sets forth the monthly charges to clearing members for access to, and use of C/MACS.

The proposal would add a monthly "personal computer dial-up access" fee of $200 to the Appendix A fee schedule. The proposal does not change OCC's fees for other means of C/MACS access, i.e., on-line leased line transmission with Direct Data Service (with or without tape) at $2,055 per month; and (2) on-line leased line transmission only, at $785 per month. OCC states that the proposed rule change is consistent with section 17A of the Act, and particularly Section 17A(a)(3)(D) of the Act, because the proposal provides for the equitable allocation of reasonable fees among OCC's participants.

The rule change has become effective, pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons may submit written comments within 21 days after notice is published in the Federal Register. Persons making written comments should file six copies with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549. Copies of the filing, with accompanying exhibits and amendments, and all written comments, except for material that may be withheld from the public under 5 U.S.C. 552, are available at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing also are available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–86–22 and should be submitted by December 17, 1986.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: November 18, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–26677 Filed 11–25–86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

November 20, 1986.

The above named national securities

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[1] The Commission approved this "dial-up" access feature in Securities Exchange Act Rel. Nos. 22930 (February 24, 1986), 51 FR 7172, and 23580 (September 5, 1986), 51 FR 32712 (File Nos. SR–OCC–85–20 and 86–15, respectively).

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exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

UNUM Corporation, Common Stock, $0.10 Par Value (File No. 7-9380)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 12, 1986 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: November 18, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-26681 Filed 11-25-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23826; File No. PHLX 86-27]

Self-Regulatory Organizations; Proposed Rule Change By the Philadelphia Stock Exchange, Inc. Relating to Prompt Payment of Dues, Users' Fees, Fines and Other Charges

Pursuant to section 19(b)(1,) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)91), notice is hereby given that on August 25, 1986 the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. the Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange ("PHLX" or the "Exchange") proposes to amend its By-Law, Article XIV, section 14-5, and Rule 50 as set forth below. Italic indicate material proposed to be added; brackets indicate material proposed to be deleted.

Proposed Amendment of Exchange By-Law, Article XIV, Sec. 14-5:

Penalty for Non-payment

Second 14-5 A member who shall not pay his dues within three months after the same shall become payable or a foreign currency option participant who shall not pay any foreign currency options users' fees assessed against him within three months after the same shall be payable or a member or foreign currency options participant who shall not pay a fine within twenty days after the same shall become payable shall be reported by the Secretary to the Board of Governors and, after due notice, may be suspended by the Board of Governors until payment is made [.] *in full to the Exchange of such member's or participant's entire outstanding account balance of all dues, users' fees, or fines.*

Fines shall be payable on the day after their imposition. Should payment of dues, foreign currenty options users' fees and fines not be made within one year after payment is due, the membership or foreing currency options participation of the delinquent, as the case may be, may be disposed of by the Committee on Admissions upon at least ten days written notice mailed to him at his address registered with the Exchange.

Proposed Amendment of Exchange Rule 50:

Late Charge

Rule 50. There shall be imposed upon any member or member organization using the facilities or services of the exchange, or enjoying any of the privileges therein, a later charge until payment is received of dues, fees, fines, or other charges imposed by the Exchange and not paid within forty (40) days after notice thereof has been mailed. The amount of such late charge shall be fixed from time to time by the Board of Governors. If any member or member organization shall fail to pay such [dues, fees,] fines, *including late charge within twenty days after notice thereof has been mailed, or dues, fees,* or other charges, including late charges, within ninety (90) days after notice therof has been mailed, the Controller shall so notify the Board of Governors which shall take such action as it may deem appropriate [.], *including, after due notice, suspending such member or member organizations until payment is made in full to the Exchange of such member's or member organization's entire outstanding account balance of all dues, fees, fines, or other charges imposed by the Exchange.*[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis of the Proposed Rule Change

The purpose of the proposed by-law amendment and rule change is to failitiate prompt payment by members, participants and their broker-dealer organizations of dues, users' fees fines and other charges imposed by the Exchange. the by-law amendment and rule change would enable the Exhange the require that a member or participant make payment in full of the entire outstanding balance of his account in order to be reinstated to privileges on the Exchange if suspended for non-payment of such dues, users' fees, fines, or other charges. The Exchange's Board of Governors authorized the by-law amendment and rule change in response to an increase in accounts receivable due from members, participants and their broker-dealer organizations that was experienced in the fourth quarter 1985 and the first quarter 1986.

The proposed by-law amendment and rule change are intended to notify members, participants and their broker-dealer organizations that Exchanges dues, users' fees, fines and other charges should be remitted promptly, and to deter the practice of chronic late payment of solely that portion of a member's or participant's account that has become over ninety days past due or in a delinquent status.

The proposed rule change and by-law amendment are consistent with section 6(b)(4) of the Securities Exchange Act in that they will facilitate the equitable allocation of reasonable dues, fees and other charges among members and participants.

B. Self-Regulatory Organizations Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The membership of the Exchange was notified of the proposed by-law amendment by Circular 86–29 dated June 23, 1986. No written comments or requests for a special membership meeting on the proposed by-law amendment were received.

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[1] The language of the proposed change to Rule 50 was amended by a letter from the Phlx to the Division of Market Regulation, which clarified the different grace periods between dues and other payments. *See* letter from Murray L. Ross, Secretary, Phlx, to Stephen Luparello, Staff Attorney, Division of Market Regulation, SEC, dated October 29, 1986.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes it reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or;

(B) Institute proceedings to determine whether the proposed rule changed should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to the file number in the caption above and should be submitted by December 17, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 18, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–26677 Filed 11–25–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–23819; File No. S7–787]

Self-Regulatory Organizations; Transaction Reporting Plan; Notice of Filing of Amendments to the Transaction Reporting Plan With Respect to NASDAQ/NMS Securities

The National Association of Securities Dealers, Inc. on September 26, 1986 submitted amendments to the Transaction Reporting Plan with respect to NASDAQ/NMS Securities ("Plan") to incorporate by reference from Schedule D of the NASD's By-Laws eligibility requirements that determine the NASDAQ securities for which there shall be real-time last sale reporting.[1] The NASD concurrently also is proposing to add to Schedule D of the NASD's By-Laws the specific criteria referred to by the proposed amendment.[2] These eligibility criteria are essentially the Tier II National Market System ("NMS") designation criteria currently contained in Rule 11Aa2–1 under the Securities Exchange Act of 1934, in addition to certain proposed corporate governance requirements previously published for comment.[3] Furthermore, the Commission concurrently is proposing amendments to Rule 11Aa2–1 that would delete these criteria from that Rule and designate as NMS Securities all securities for which real-time last sale reports are required by a transaction reporting plan.[4] Thus, under the NASD and Commission proposals the securities satisfying the proposed eligibility criteria that would be contained in the NASD's Transaction Reporting Plan and Schedule D would continue to be designated as NMS Securities.

Interested persons are invited to submit written comments on the proposed amendment. Persons submitting comments should file six copies with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Copies of the submission and related items, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. All communications should refer to File No. S7–737 and should be submitted by December 17, 1986.

Dated: November 17, 1986.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–26559 Filed 11–25–86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–15422; 812–6511]

Application for Order; Family Life Insurance Co.

November 19, 1986.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for order under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Family Life Insurance Company ("FLIC") and Merrill Lynch Variable Annuity Account ("Account").

Relevant 1940 Act Section: Order requested *under* Section 26(b).

Summary of Application: Applicants seek an order approving substitutions of certain securities issued by an open-end management investment company and held by the Account. Applicants require the substitutions in order to preserve the current tax status of certain variable annuity contracts funded by the Account in light of temporary regulations recently issued by the Internal Revenue Service ("IRS").

Filing Date: The Application was filed on October 22, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests may be received by the SEC by 5:30 p.m., on December 11, 1986. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also sent it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. FLIC, Account, Park Place, Seattle, Washington, 98101.

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[1] These amendments are submitted pursuant to Rule 11Aa3–1 and 11Aa3–2 under the Securities Exchange Act of 1934.

[2] *See* Securities Exchange Act Release No. 23818 (November 17, 1986), published elsewhere in this issue of the **Federal Register**.

[3] *See* Securities Exchange Act Release No. 22505 (October 4, 1985), 50 FR 41897. The proposed corporate governance standards would become effective 18 months after the approval of the proposed amendments.

[4] *See* Securities Exchange Act Release No. 23817 (November 17, 1986), published elsewhere in this issue of the **Federal Register**.

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FOR FURTHER INFORMATION CONTACT: Staff Attorney David S. Goldstein (202) 272-2622 or Special Counsel Brian M. Kaplowitz (202) 272-2061 (Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicant's Representations and Statements

1. FLIC, a stock and disability insurance company organized under the laws of the State of Washington, is the depositor of the Account and a wholly-owned subsidiary of Merrill Lynch & Co., Inc. The Account is a separate account of FLIC registered under the 1940 Act as a unit investment trust, and was established for the purpose of funding certain variable annuity contracts issued by FLIC (the "Contracts"). The Contracts are individual deferred variable annuity contracts designed for use in connection both with retirement plans qualifying for special income tax treatment under the Internal Revenue Code of 1954, as amended (the "Code"), and for use with plans not so qualifying. The Contracts are registered under the Securities Act of 1933.

2. Premiums under the Contracts are allocated by Contract owners among one or more sub-accounts of the Account for investment in separate investment portfolios (the "Funds") of Merrill Lynch Variable Series Funds, Inc. (the "Variable Series Funds, Inc."), a diversified, open-end management investment company registered under the Act. For each Fund, there is a sub-account of the Account for Conracts under tax-qualified plans ("qualified Contracts") and one for Contracts under nonqualified plans ("nonqualified Contracts"). The Funds in which premiums currently may be invested include the Merrill Lynch Reserve Assets Fund (the "Reserve Assets Fund"), the Merrill Lynch U.S. Government Money Fund (the "U.S. Government Money Fund") and five additional Funds. The investment objectives of the Reserve Assets Fund are to preserve shareholder capital, to maintain liquidity and to achieve the highest possible current income by investing in short-term money market securities, including but not limited to short-term U.S. Government Securities and U.S. Government Agency Securities. These objectives are the same as those of U.S. Government Money Fund except that the latter's investment are limited to U.S. Government or U.S. Government Agency securities.

3. No sales load deductions are made from premiums under the Contracts and Contract owners may transfer all or part of their Contract values from one sub-account to another without charge, subject to certain restrictions on the timing and frequency of transfers. With certain exceptions, withdrawals or partical withdrawals of Contract values are subject to a contingent deferred sales charge. FLIC has reserved the right under the Contracts to substitute, without consent of Contract owners, shares of another investment portfolio for shares of any Fund held by the Account.

4. As set forth in the Propsectus for the Account and pursuant a private letter ruling issued by the IRS on September 30, 1983, the Contracts are expected to be taxed as annuities under Section 72 of the Code so that, for federal income tax purpose, any income, gain or loss realized with respect to the assets held in the Account will be includible in the computation of the income of FLIC and not in the income of Contract owners or of any annuitant or beneficiary under a Conract.

5. On September 15, 1986, the IRS published temporary regulations which supercede the private letter ruling. *Treas. Reg.* §1.817-5T, 51 FR 32633 (1986). The temporary regulations, which become effective as to the Account on December 15, 1986, deny annuity tax treatment for any nonqualified variable annuity contract investing in a portfolio holding more than fifty-five percent (55%) of its assets in securities of the same issuer and provide that all "government securities" are to be treated as securities of a single issuer.

6. The U.S. Government Money Fund will not meet the diversification standards established by the temporary regulations and, consequently, any nonqualified Contract with Contract values allocated to that Fund will forfeit its eligibility for annuity tax treatment under Section 72 of the Code. As a result of the issuance of the temporary regulations, FLIC has determined to cease offering the U.S. Government Money Fund as an eligible portfolio for allocations of premiums or transfers of contract values with respect to nonqualified Contracts. Contract owners have been advised by letter and prospectus supplement of this change and of the reasons therefor, and have been further advised that Contract values allocated to the U.S. Government Money Fund may be immediately transferred to another eligible Fund. FLIC intends to exercise its right under the Contracts to effect the substitution of shares of the Reserve Assets Fund for all shares of the U.S. Government Money Fund then held by the Account for nonqualified Contracts.

7. Section 26(b) was intended to provide for Commission scrutiny of proposed substitutions which could, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the proceeds of redemption, or both.

8. The proposed substitution of shares of the Reserve Assets Fund for shares of the U.S. Government Money Fund is necessary to preserve the annuity tax status of nonqualified Contracts, consistent with the investment expectations of Contract owners, and is appropriate in view of their investment objectives. The substitutions will not result in the type of costly forced redemption which section 26(b) was intended to guard against because: (1) No sales load deductions are made from premiums under the Contracts; (2) substitutions will be effected at net asset value without the imposition of any transfer or other charges; and (3) nonqualified Contract owners are exempted from the Contracts' transfer frequency limitations in order to transfer Contract values from the U.S. Government Money Fund to another eligible Fund prior to the substitution or from the Reserve Assets Fund to another eligible Fund within 30 days of receiving notice of the substitution.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-26682 Filed 11-25-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15420; File No. 812-6400]

Application for Exemption; Ohio National Life Assurance Corp. et al.

AGENCY: Securities and Exchange Commission ("SEC")

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant(s): Ohio National Life Assurance Corporation (the "Company"), Ohio National Variable Account R (the "Account"), O.N. Equity Sales Company ("ONESCO").

Relevant 1940 Act Sections: Exemption requested under section 6(a) from sections 2(a)(32), 22(c), 27(c)(1), and 27(d) and Rules 6e-3(T)(b)(12), (b)(13), (c)(2), (c)(4), and 22c-1 thereunder.

Summary of Application: Applicants seek an order to permit them to issue flexible premium variable life insurance contracts (the "Contracts"), as defined in paragraph (c)(1) of Rule 6e-3(T), which provide for the waiver of future premiums upon disability of the insured and for a contingent deferred administrative charge.

Filing Date: The application was filed on May 29, 1986, and amended on July 28, and October 23, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 15, 1986. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant(s) with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: SEC, 450 5th Street, NW., Washington, DC 20549. The Company, the Account and ONESCO, 237 William Howard Taft Road, Cincinnati, Ohio 45219.

FOR FURTHER INFORMATION CONTACT: Staff Attorney David S. Goldstein (202) 272-2622 (Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Notice of this Application was given previously. However, Applicants again amended their Application subsequent to the expiration of the notice period to reflect changes made to the sales load under the Contracts and to request relief for only two of the Applicants' contracts rather than three, as before. All interested persons are referred to the prior notice, dated August 8, 1986 (Release No. IC-15241) for a summary of the Application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

November 19, 1986.

[FR Doc. 86-26683 Filed 11-25-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/1024]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea; Working Group on Radio Communications; Meeting

The Working Group on Radio Communications of the Subcommittee on Safety of Life at Sea will conduct an open meeting at 9:30 a.m. on December 18, 1986 in Room 9230 of the Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

The purpose of the meeting is to discuss the results of the Thirty-second Session of the Subcommittee on Radiocommunications of the International Maritime Organization which was held in London during December 1986. In particular the working group will discuss the following topics:

Global Maritime Distress Safety System
Preparations for the ITU WARC for Mobile Telecommunications

FOR FURTHER INFORMATION CONTACT: Lt. McDannold, U.S. Coast Guard Headquarters (G-TTS-1/63), 2100 Second Street, SW., Washington, DC 20593-0001, Telephone: (202)267-1258.

Dated: November 19, 1986.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 86-26594 Filed 11-25-86; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[AC No. 43.13-IA]

Proposed Revision of Current Advisory Circular (AC) 43.13-IA, Acceptable Methods, Techniques, and Practices—Aircraft Inspection and Repair

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: FAA is soliciting comments on the current issue of AC 43.13-1A.

SUMMARY: This notice announces the proposed revision to an AC used by the aviation community as general guidelines and acceptable practices for aircraft inspection and repairs. Comments are requested from the public on revisions required, changes, corrections of errors, and inclusion of new or different information.

DATE: Comments must be received on or before January 12, 1987.

ADDRESS: Mail or deliver comments on the current AC to: Federal Aviation Administration, Mike Monroney Aeronautical Center, Aviation Standards National Field Office, Engineering and Manufacturing Branch, Airman's Record Building, Room 203. Attention: AVN-110, P.O. Box 25082, 6500 S. MacArthur, Oklahoma City, Oklahoma 73125. Comments mailed or delivered must be identified with "AC 43.13-1A."

FOR FURTHER INFORMATION CONTACT: Jerry Searcy, AVN-110, at the above address, telephone: (405) 686-4171.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the current AC by submitting such written data, views, or arguments as they may desire. Comments must be identified as pertaining to AC 43.13-1A and submitted to the above address. All communications received on or before the closing date for comments will be considered by the Engineering and Manufacturing Branch, AVN-110, Oklahoma City, Oklahoma, before revising the AC. Comments may be inspected at the above address in Room 203 weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

Commentators wishing acknowledgement of receipt by the FAA must submit, with their comments, a self-addressed, stamped, postcard bearing the statement: "AC 43.13-1A." The card will be dated and returned to the sender.

Types of comments solicited include:

1. Noted errors—typographical or data.
2. Suggested changes in type of data or format.
3. Suggested inclusion of new material.
4. Suggested additional chapters or addition of latest state-of-the-art technology.
5. Suggested clarification or rewrite of existing material.

Discussion

Advisory Circular 43.13-1a is the document of acceptable methods, techniques, and practices for aircraft inspections and repairs used by the aviation industry in the absence of approved manufacturer's manuals. This AC, used by a large majority of the general aviation industry, was last revised in 1972. A revised document containing corrections and the latest state-of-the-art technology is desired. This AC is one of the most frequently requested documents and will have a significant influence on aviation safety.

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The FAA proposes to revise this document in two phases. To accomplish this the first phase will correct all known errors and include minor changes, rewrite, and additions. The second phase will consider new materials, technology, and major changes or additions.

This publication of FAA acceptable practices was developed for, and is used extensively by, the aviation community. To assure that it contains the most accurate and current data available, the FAA solicits industry's input and the benefit of its expertise.

Issued in Washington, DC, on November 18, 1986.

William T. Brennan,

Acting Director of Flight Standards.

[FR Doc. 86-26583 Filed 11-25-86; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. IP85-16; Notice 2]

Olin Corp.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Olin Corporation, of Stamford, Connecticut, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.116, Motor Vehicle Safety Standard No. 116, *Motor Vehicle Brake Fluids*. The basis of the petition was that the noncompliance was inconsequential as it related to motor vehicle safety.

Notice of the petition was published on November 27, 1985 and an opportunity afforded for comment (50 FR 48857).

Paragraph S5.1.3 of Federal Motor Vehicle Safety Standard 116, requires that when brake fluid is tested according to S6.3, the kinematic viscosities in centistokes (cSt.) at stated temperatures shall be neither less than 1.5 cSt. at 100 °C (212 °F) nor more than the following maximum value for the grade indicated:

(a) DOT 3: 1,500 cSt. at minus 40 °C. (minus 40 °F).

(b) DOT 4: 1,800 cSt. at minus 40 °C. (minus 40 °F).

Petitioner stated that on or about August 11 and 12, 1984, it blended one lot of DOT3 HDCP-550 Brake Fluid which was shipped to Gold Eagle Company (1 shipment), Standard Oil (2 shipments) and to Scholle Company (1 shipment) between September 10 and October 12, 1984. These four shipments comprised the entire Lot.

Prior to shipment, petitioner conducted the test for kinematic viscosity specified in paragraph S6.3. On December 14, 1984 petitioner discovered a typographical error in its HDCP-550 Brake Fluid Product Specification dated September 8, 1982, which listed the minus 40 °C viscosity specification as 1,200 cSt. "minimum" at minus 40 °C. Petitioner's specification should have read 1,200-1,450 cSt. at minus 40 °C.

In the Corporation's opinion the nonconformity presented no safety hazard and therefore no recall was warranted.

The retained test samples were rechecked by Olin and the following values obtained:

Shipment to Gold Eagle: 1,546 cSt.
Shipment to Standard Oil: 1,547 cSt.
Shipment to Standard Oil: 1,552 cSt.
Shipment to Scholle: 1,547 cSt.

Olin stated that the typographical error in their HDCP-550 product specification has been corrected and that it has been reissued. Current Lots of Olin Corporation's HDCP-550 fluid meet Federal Motor Vehicle Standard No. 116.

To substantiate its contention that the noncompliance is inconsequential, Olin stated that Paragraph S5.1.3(b) of Standard No. 116, establishes 1,800 cSt. at minus 40 °C as the maximum viscosity level for DOT-4 brake fluid which is 200 cSt. higher than the viscosity levels of the Lot involved. Further, Olin argued that Standard No. 116 requires that DOT-3 and DOT-4 brake fluids be fully compatible with each other. The mixing of DOT-3 and DOT-4 in motor vehicles could result in minus 40 °C viscosities in the 1,500 to 1,800 cSt. range.

No comments were received on the petition.

The agency has decided to grant Olin's petition. Kinematic viscosity is a measure of the resistance of a fluid to flow. Thus, as the viscosity increases the resistance to flow increases. In cold weather a higher viscosity fluid will flow more slowly through a brake system and the response time will be slower. A higher viscosity fluid will also have a higher boiling point. DOT-3 and DOT-4 brake fluids have different viscosities and boiling points but are required by Standard No. 116 to be compatible with each other (DOT-4 is regarded as a heavier duty fluid, developed in the early 1970's to meet the requirements of the new disc brake systems coming into wide usage at that time). The agency sees no detrimental effects occurring if the Olin fluid is used in motor vehicle brake systems; the fluid will have a slightly higher viscosity than allowed, but well within the viscosity range of a companion brake fluid specified by Standard No. 116.

Accordingly, it is hereby found that petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

(Sec. 102, Pub. L. 93-492, 88 Stat 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on November 20, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86-26579 Filed 11-25-86; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Dept. Circ. Public Debt Series—No. 37-86]

Treasury Notes; AG-1988

The Secretary announced on November 19, 1988, that the interest rate on the notes designated Series AG-1988, described in Department Circular—Public Debt Series—No. 37-86, dated November 13, 1986, will be 6¼ percent. Interest on the notes will be payable at the rate of 6¼ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 86-26642 Filed 11-25-86; 8:45 am]

BILLING CODE 4810-25-M

Customs Service

Application for Recordation of Trade Name: "Alaskan Seafood Co."

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12) for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "ALASKAN SEAFOOD COMPANY" used by the Alaskan Seafood Company, a corporation organized under the laws of the State of Arizona, located at 1827 W. Mission Drive, Chandler, Arizona 85224.

The application states that the trade name is used in connection with fresh frozen seafood, manufactured in Mexico and the United States.

Before final action is taken of the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register**.

DATE: Comments must be received on or before January 26, 1987.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Beatrice E. Moore, Entry, Licensing and Restricted. Merchandise Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-5765).

Dated: November 21, 1986.

Donald W. Lewis,

Director, Entry Procedures and Penalties Division.

[FR Doc. 86-26652 Filed 11-25-86; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

Commissioner's Advisory Group; Open Meeting

There will be a meeting of the Commissioner's Advisory Group on December 10 and 11, 1986. The meeting will be held in Room 3313 of the Internal Revenue Service Building. The building is located at 1111 Constitution Avenue NW., Washington, DC. The meeting will begin at 9:00 A.M. on Wednesday, December 10 and 9:00 A.M. on Thursday, December 11. The agenda will include the following topics:

WEDNESDAY, DECEMBER 10, 1986

Report on Follow-Up Items from September Meeting
Update on Tax Reform
International Tax
Update on Automated Examination System (AES)
Electronic Filing

THURSDAY, DECEMBER 11, 1986

Report on Problem Resolution Program (PRP) Procedures for Increased Accessibility
Penalties
Last Reflections on Function of Advisory Group

The meeting, which will be open to the public, will be in a room that a accommodates approximately 50 people. If you would like to have the Committee consider a written statement, please call or write Robert F. Hilgen, Acting Executive Secretary, 1111 Constitution Ave. NW., Room 3014, Washington, DC 29224.

FOR FURTHER INFORMATION CONTRACT: Robert F. Hilgen, Acting Executive Secretary (202) 566-4143 (Not toll-free).

Lawrence B. Gibbs,

Commissioner.

[FR Doc 86-26602 Filed 11-25-86; 8:45 am]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Allison Herron, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: November 20, 1986.

By direction of the Administrator.

David A. Cox,

Associate Deputy Administrator for Management.

Extension

1. Department of Veterans Benefits
2. Certificate As To Securities
3. VA Form 27-4709
4. On occasion; Annually; Biennially
5. Individuals or households
6. 9,600 responses
7. 2,112 hours
8. Not applicable

[FR Doc. 86-26590 Filed 11-25-86; 8:45 am]

BILLING CODE 8320-01-M

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Sunshine Act Meetings

Federal Register
Vol. 51, No. 228
Wednesday, November 26, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:18 p.m. on Thursday, November 20, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider a recommendation regarding the Corporation's assistance agreement with an insured bank.

The meeting was recessed at 4:30 p.m., and at 4:38 p.m. that same day the meeting was reconvened, by telephone conference call, at which time the Board of Directors:

(A)(1) Received bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Norman Bank of Commerce, Norman, Oklahoma, which was closed by the Bank Commissioner for the State of Oklahoma on Thursday, November 20, 1986; (2) accepted the bid for the transaction submitted by First Interstate Bank of Oklahoma City, National Association, Oklahoma City, Oklahoma; and (3) provided such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction; and

(B)(1) Received bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Texana National Bank of College Station, College Station, Texas, which was closed by the Senior Deputy Comptroller for Bank Supervision, Office of the Comptroller of the Currency, on Thursday, November 20, 1986; (2) accepted the bid for the transaction submitted by First State Bank in Caldwell, Caldwell, Texas, an insured State nonmember bank; (3) approved the application of First State Bank in Caldwell, Caldwell, Texas, for consent to purchase certain assets of and assume the liability to pay deposits made in Texana National Bank of College Station, College Station, Texas, and for consent to establish the sole office of Texana National Bank of College Station as a branch of First State Bank in Caldwell; and (4) provided such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction; and

(C)(1) Accepted the highest acceptable bid which may be submitted in accordance with the "Instructions for Bidding" for the purchase of assets of and the assumption of the liability to pay deposits made in First National Bank, Willows, California, which was scheduled for closing later in the day by the Senior Deputy Comptroller for Bank Supervision, Office of the Comptroller of the Currency, or (2) in the event no acceptable bid for a purchase and assumption transaction is submitted, accepted the highest acceptable bid for an insured deposit trnasfer transaction which may be submitted, or (3) in the event no acceptable bid for either type transaction is submitted, made funds available for the payment of the insured deposits of the closed bank.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: November 21, 1986.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 86-26,729 Filed 11-24-86; 10:53 am]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, December 1, 1986.

PLACE: Marriner S. Eccles Federal Reserve Boad Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed change in payroll computation procedures.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 21, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-26690 Filed 11-21-86; 4:36 pm]

BILLING CODE 6210-01-M

INTERNATIONAL TRADE COMMISSION

[USITC SE-86-41]

TIME AND DATE: Tuesday, November 25, 1986 at 2:30 p.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. 731-TA-354 (P) (Stainless steel pipes and tubes from Sweden)—briefing and vote.
6. Inv. 731-TA-308 and 310 (F) (Certain butt-weld pipe fittings from Brazil and Taiwan)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,

Secretary.

November 14, 1986.

[FR Doc. 86-26694 Filed 11-21-86; 5:06 pm]

BILLING CODE 7020-02-M

INTERNATIONAL TRADE COMMISSION

[USITC SE-86-42]

TIME AND DATE: Wednesday, December 3, 1986 at 2:30 p.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. 731-TA-355 (P) (Certain silica filament fabric from Japan)—briefing and vote.

6. Inv. 751–TA–11 (Salmon gill fish netting from Japan)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

Kenneth R. Mason,
Secretary.
November 18, 1986.

[FR Doc. 86–26695 Filed 11–21–86; 5:07 pm]
BILLING CODE 7020–02–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 24, December 1, 8, and 15, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of November 24

Wednesday, November 26

10:00 a.m.
Briefing by Executive Branch (Closed—Ex. 1)
11:00 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of December 1—Tentative

Wednesday, December 3

10:00 a.m.
Briefing by Steering Group on Strategic Planning (Public Meeting)

Thursday, December 4

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of December 8—Tentative

Wednesday, December 10

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Thursday, December 11

10:00 a.m.
Periodic Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of December 15—Tentative

Tuesday, December 16

10:00 a.m.
Briefing on Status of TVA (Public Meeting)

Wednesday, December 17

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
2:00 p.m.
Quarterly Source Term Meeting (Public Meeting)

Thursday, December 18

10:00 a.m.
Briefing on Chernobyl (Public Meeting)
2:00 p.m.
Briefing on Status of Palisades (Public Meeting)
3:30 p.m.
Affirmation Session (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Affirmation of "Request for Hearing by Advanced Medical Systems, Inc." (Public Meeting) was held November 20.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634–1410.

Robert B. McOsker,
Office of the Secretary.
November 20, 1986.

[FR Doc. 86–26684 Filed 11–21–86; 4:14 pm]
BILLING CODE 7590–01–M

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Corrections

Federal Register
Vol. 51, No. 228
Wednesday, November 26, 1986

This section of the FEDERAL REGISTER contains editorial corrections of previously published Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency-prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51648; FRL-3108-5]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

Correction

In notice document 86–25505 beginning on page 41012 in the issue of Wednesday, November 12, 1986, make the following corrections:

1. On page 41013, first column, under **P87–106**, in the tenth line, *"Impact"* should read *"Import"*.

2. On the same page, second column, under **P87–110**, in the first line, *"Importer"* should read *"Manufacturer"*.

3. On page 41015, third column, under **P87–143**, in the third line, "benzenesulfonic" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-940-07-4212-14; A-20631]

Conveyance in Cochise County, AZ

Correction

In notice document 86–23428 appearing on page 37082 in the issue of Friday, October 17, 1986, make the following correction:

In the first column, third line, "1987" should read "1976".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-940-06-4220-10; A-21018]

Order Providing for Opening of Public Lands in Gila County, AZ

Correction

In notice document 86–22178 appearing on page 35057 in the issue of Wednesday, October 1, 1986, make the following correction:

In the second column, fourth line from the bottom "Tps. 4¼" should read "Tps. 4½".

BILLING CODE 1505-01-D

federal register

Wednesday
November 26, 1986

Part II

Environmental Protection Agency

40 CFR Part 152

Regulations for the Imposition of Fees for Certain Activities Conducted Under the Federal Insecticide, Fungicide, and Rodenticide Act; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 152

[OPP-36101; FRL 3040-6]

Regulations for the Imposition of Fees for Certain Activities Conducted Under the Federal Insecticide, Fungicide, and Rodenticide Act, as Amended

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that 40 CFR Part 152 be amended to add provisions which will authorize the Environmental Protection Agency to collect fees in advance for certain activities required of the Agency by request of private parties pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., and the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 321 et seq., as amended. The authority for this rulemaking is 31 U.S.C. 9701. The document also solicits comments on possible future elaborations of such a fee system, including annual fees to recover post-registration Agency costs; and differential fees based on Agency costs which relate to the risks of each pesticide or the completeness of the data supporting its registration, or both. The principal differences between the proposed fee system and the possible future elaborations are that the latter would (a) recover more of the costs incurred by EPA to operate the pesticide program and (b) allocate and recover those incremental costs by somewhat different means.

DATE: Comments must be received on or before January 26, 1987.

ADDRESS: Submit three copies of written comments, identified with the document control number "OPP-36101," by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, deliver comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this proposed rule may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Joseph F. Powers, Jr., Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1002-C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1485).

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I. Background

The Independent Offices Appropriation Act of 1952 (IOAA) contained a provision providing for recoupment by Federal agencies of costs incurred by them in performing certain services for certain beneficiaries. This provision, originally designated as 31 U.S.C. 483(a), was codified into positive law on September 13, 1982, at 31 U.S.C. 9701. This provision, commonly referred to as the "User Charge Statute," authorizes and encourages Federal regulatory agencies to recover, to the fullest extent possible, costs attributable to services provided to identifiable recipients. The relevant text states:

> *Fees and charges for Government services and things of value.*
>
> (a) It is the sense of Congress that each service or thing of value provided by an agency (except a mixed-ownership Government corporation) to a person (except a person on official business of the United States Government) is to be self-sustaining to the extent possible.
>
> (b) The head of each agency (except a mixed-ownership Government corporation) may prescribe regulations establishing the charge for a service or thing of value provided by the agency. Regulations prescribed by the heads of executive agencies are subject to policies prescribed by the President and shall be as uniform as practicable. Each charge shall be—
>
> (1) fair; and
>
> (2) based on:
>
> (A) the costs to the Government;
>
> (B) the value of the service or thing to the recipient;
>
> (C) public policy or interest served; and
>
> (D) other relevant facts.
>
> (c) This section does not affect a law of the United States:
>
> (1) prohibiting the determination and collection of charges and the disposition of those charges; and
>
> (2) prescribing bases for determining charges, but a charge may be redetermined under this section consistent with the prescribed bases.

In 1959, the Bureau of the Budget issued Circular No. A-25. This circular was updated in 1963 and 1974. It states in pertinent part:

> 3. *General Policy.* A reasonable charge . . . should be made to each identifiable recipient for a measurable unit or amount of Government Service or property from which he derives a special benefit.

The Federal Insecticide, Fungicide, and Rodenticide Act as amended (FIFRA) (7 U.S.C. 136 et. seq.) authorizes EPA to regulate pesticide products. The regulation of pesticides includes registering products for sale and/or use within the United States and continued regulation of these products and their uses for identification of unreasonable harmful effects. Thus, a registration is a license that allows the registrant to market a product.

In recognition of the fact that pesticide applicants and registrants receive certain benefits from EPA's registration activities, the Agency has examined the feasibility and desirability of making the pesticide registration program as self-supporting as possible by having the applicant for pesticide registration, rather than the tax-paying public at large, bear some of the costs of pesticide registration through a registration fee system based on the IOAA. Through the annual appropriation of funds by the Congress, the public provided approximately $67 million to support the pesticide program in FY 1985.

It should be noted that for many years EPA has been collecting fees for processing related tolerance petitions as authorized by FFDCA section 408(o). These fees are placed in a revolving fund which is directly available to the program. However, under current statutory authority, fees collected under the IOAA would be deposited to the U.S. Treasury as miscellaneous receipts rather than being directly available to the program. The Agency has proposed legislation which would permit such fees to be made available to the Agency.

In developing this proposal EPA has reviewed the case law and kept in mind *National Cable Television Assn.* v. *U.S.*, 415 U.S. 336 (1974), where the Supreme Court distinguished "taxes," which the Court stated could be levied only by the Congress, from "fees," which may properly be charged by Federal agencies pursuant to the IOAA. The distinction drawn was that, unlike a tax, a fee "is incident to a voluntary act, e.g., a request that a public agency permit an applicant" to engage in a regulated activity and is charged for an agency action which "bestows a benefit on the applicant, not shared by other members of society." The user fee proposed in this rule is a "fee" under that definition. Companies choose to produce a pesticide and request EPA to grant initial and continuing registrations for their products. This Agency, by granting such registrations, is bestowing a benefit on the applicant that is not shared by other members of society.

In 1972 an amendment to FIFRA authorizing fees for registration was proposed but was deleted in conference, and the conference report included language indicating that no fees should be charged (S. Rep. No. 92-1540, 92nd Cong. 2nd Sess. (1972)). However, a subsequent amendment to FIFRA, the Federal Pesticide Act of 1978 (Pub. L. 95-396, September 30, 1978), required EPA to study the feasibility of establishing fees payable by applicants requesting registrations. The required study was completed and a report delivered to Congress.[1] In the report, EPA concluded that there were no major technical or administrative constraints on assessing and collecting fees, pursuant to the IOAA.

In this notice of proposed rulemaking, EPA proposes to impose transaction fees for certain registration activities which are required to be completed under FIFRA and the FFDCA when applicants request a registration, a modification to an existing registration, an experimental use permit, or a food additive regulation. The amounts of the proposed transaction fees would be contained in a schedule of fees for specific requested activities. Applicants would be required to submit such fees with applications.

This notice also advises the public of approaches EPA is seriously considering to recover costs associated with post-registration activities. Recovery of these costs is not contemplated by this proposed rule, but may be the subject of a notice of proposed rulemaking in the future. However, the Agency is seeking early public comment to assist it in refining these approaches.

II. Proposed Fee System

A. Activity Costs Proposed for Recovery Through This Rule

In this rule, EPA proposes to include in its user charge system the costs of the following activities requested by applicants to register their products. Under the proposed system, charges would differ depending on the type of activity requested, but would be identical for all requests within the same category (except in the cases where fee waivers or adjustments are applicable; see Unit II.D).

1. *New chemical registrations.* These activities are associated with any application for registration of a pesticide product containing a new active ingredient, i.e., one which is not contained as an active ingredient in any other product that has been registered by the Agency. (New biochemical, biotechnical, or microbial active ingredients would not be included in this category.) This type of action always requires resources to perform a scientific review of data submitted, in order to support a finding that risks to the environment or human health would be at acceptable levels if the new product were registered.

2. *New biochemical, biotechnical, and microbial registrations.* These activities are associated with any application for registration of a pesticide product containing a new biochemical, biotechnical, or microbial active ingredient not contained in any other product that has been registered by the Agency. These include pheromones and hormones used as pesticides and living organisms introduced into the environment to control the population or biological activities of other life forms considered as pests under FIFRA.

3. *New use registrations.* These activities address applications for registration (or for amendments of a registration) entailing a major change to the use pattern of an active ingredient contained in a previously registered product.

4. *Old chemical registrations.* These so-called "me too" activities include review of applications for registration of a new product containing pesticidally active ingredients and uses which are substantially similar or identical to those currently registered. The resources needed to review routine old chemical registration applications vary in a manner similar to those required for technical amendments. Most old chemical registration applications can be processed administratively, while others require a science review.

5. *Amendments.* These activities are associated with any application to amend the registration of a currently registered product not entailing a major change to the use pattern of an active ingredient contained in a previously registered product.

6. *Experimental use permits.* These activities address applications for permits pursuant to section 5 of FIFRA to apply a limited quantity of a pesticide in order to accumulate information necessary to register the pesticide. The application may be for a new chemical or for a new use of an old chemical. The applicant for an experimental use permit may be required to submit data requiring scientific review before the permit is issued. Other applications may need only administrative review.

7. *Food additive regulations.* These activities are associated with the review of petitions or requests for the issuance of regulations prescribing the conditions under which pesticides may be safely used as food additives. (Food additive regulations are issued under section 409 of the FFDCA; the existing tolerance fee requirement (40 CFR Part 180) covers only tolerance petitions or requests for

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[1] "Technical and Economic Feasibility of Charging Fees to Cover Costs of Pesticide Registration Programs under FIFRA," Office of Pesticide Programs, February 1980.

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issuance of tolerances under section 408 of the FFDCA.)

B. Activities Not Included in the Proposed System

The EPA conducts a number of other activities related to pesticide regulation. These range from services requested of the Agency by identifiable recipients such as State and local governments to more general, Agency-initiated public services such as research and development. The Agency does not now propose to recover the costs of these following activities.

1. *Special local needs.* A State may register additional uses of federally registered pesticides formulated for distribution and use within a State to meet special local needs. EPA, however, upon review of the State-issued registration, may disallow the registration under certain circumstances. EPA does not propose to collect a fee from a State for this review.

2. *Emergency exemption requests.* Federal or State agencies may be exempted from the provisions of FIFRA, as amended, if the Administrator determines that emergency conditions exist requiring such an exemption. The data required by the Administrator in order to make the judgment that an emergency exists are described in 40 CFR 166.20. The most common exemption is to allow the use of a pesticide for a site on which a registration has not been obtained. EPA does not propose to collect fees from the States or other Federal agencies for this activity.

3. *Research and development activities.* EPA has not determined whether the Agency's research and development activities on pesticides can be said to benefit pesticide registrants, per se. EPA, thus, does not propose to include these costs in the current registration fee system.

4. *Pesticide enforcement activities.* These activities provide benefits primarily to the general public, although by providing compliance assistance to the pesticide chemical industry, applicators, and user groups, and by assisting them with product registration for special local needs, emergency exemptions, and experimental use permits, the EPA pesticide enforcement staff does provide general benefits to the manufacturers of pesticides by broadening their markets. EPA believes at this time, however, that it should not propose to charge fees for these activities.

Other pesticide enforcement activities—including the preparation of civil and administrative actions, State grants, and general program oversight—are directed primarily to actual enforcement of proper use, labeling, and establishment of registration and production reporting requirements. EPA also proposes to exclude the costs of such activities from registration fees. Thus, none of these pesticide enforcement costs are currently considered appropriate for recovery through a system of registration fees.

5. *Certification and training.* EPA's FY 1985 budget for grants supporting applicator certification and training is $2.6 million. The beneficiaries of this program include the applicators, who gain access to restricted use products and improved protection of their health and property; registrants, who are able to market products which might otherwise be cancelled and who benefit generally from the education of users of their more hazardous products; and the general public, through the institution of use restrictions on hazardous pesticides. For programs operated by the Federal government, the Agency is actively considering a number of options which appear to be available for instituting user fees or otherwise recovering certification and training costs. If the Agency does determine that such fees are appropriate, it will establish them through separate rulemaking.

6. *Tolerance petitions, temporary tolerance petitions and exemption from tolerance requests.* The costs of processing requests under FFDCA section 408 for tolerances, temporary tolerances, or exemptions from the need for tolerances will not be recovered under this proposed system, since they are already recovered under the FFDCA tolerance fee system. Costs of processing requests for issuance of food additive regulations under FFDCA section 409 would be recovered in the proposed rule.

7. *Integrated pest management.* The integrated pest management (IPM) program coordinates use of pest control methods and environmental information to prevent unacceptable levels of pest damage by the most economical means, and with the least possible hazard to persons, property, and the environment. Since Agency encouragement of the IPM program benefits the public and accrues to the general public interest, costs associated with this program will not be recovered through fees.

8. *Farm safety.* The farm safety program seeks to protect farmers, farmworkers, applicators, farm families, and others from direct or indirect exposure to pesticides resulting from their extensive use in the farm environment. EPA does not propose to include the costs of administering that portion of the program which is not related to individual registration actions in this user fee system.

9. *Reviews of already registered uses of pesticides.* See Unit III of this preamble.

C. How the User Fees Will Be Calculated

In order to calculate all direct and indirect costs specifically attributable to fee categories in this proposed rule, the Agency conducted an in-depth analysis of the resources expended on registration activity. This study, entitled "Registration Fee Cost Analysis," is available for public inspection at the Office of Pesticide Programs (OPP), Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. It outlines the processes used in determining the costs for the proposed transaction fee using FY 1983 data.

The data used to develop this fee system were derived from the OPP Time Accounting Information System (TAIS), the OPP On-Line Action Tracking System (OLTS), the EPA Financial Management System (FMS), the OPP Extramural Resource Management System (ERMS), and other internal records. Interviews were also conducted with responsible program personnel to verify the information contained in the data bases and the actual steps involved in registering a pesticide.

The TAIS is an automated internal OPP information system developed in 1979 to record professional employee time spent on various activities and projects. Professional employees (exclusive of some administrative and policy analysts) at or below the section chief level were required to complete a TAIS form each pay period (every 2 weeks). Secretaries, clerical employees, and managers (branch chiefs and above) have not been required to submit TAIS forms. In 1983, 378 OPP employees participated in TAIS out of a total OPP work force of 587. The TAIS was also used as a basis for developing tolerance fee schedules. Refer to the Tolerance Fee Cost Analysis, November 1983, in Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

The OLTS tracks actions proceeding through the registration process. Examples of the information contained in this system include: The number of application receipts, the number of actual registrations, the number of withdrawals and cancellations, as well as the number of transfers between categories. The OLTS provided the number of registration actions of each type taken in FY 83. The unit cost (in Full Time Equivalents, or FTEs) for each type of registration activity was calculated by dividing the total number of FTEs (as reported by the TAIS) for a particular type of activity by the total number of actions of each type (as reported by the OLTS).

The EPA FMS tracks commitments, obligations, and disbursements for salaries and expenses. It was used to determine the average cost of salaries and expenses.

The ERMS tracks the expenditure of contract dollars. This information was used to determine how many dollars were spent on external services to support registration activities.

The proposed fee system consists of a fee per transaction to recover administrative processing costs and scientific review costs related to an applicant's request to register a product under one of these registration/fee categories: New Chemicals; Old Chemicals; New Uses; Amendments; New Biochemicals, Biotechnical and Microbial; Experimental Use Permits and Food Additive Regulations.

Both direct and indirect costs are incurred in performing these administrative processing and science activities. EPA management information systems track and report direct costs attributable to the fee categories. Indirect costs such as secretarial/clerical support, managerial support, and extramural dollars for the program office were allocated to the fee categories. In addition to the total program costs, a portion of the Agency's overhead costs (e.g., the costs of maintaining the Office of the Assistant Administrator for Pesticides and Toxic Substances and the Office of the Administrator) has been prorated to each fee category.

Based on FY 83 Agency cost data and the number of completed registration requests, EPA would recover approximately $18 million through the proposed fee system. This amount is slightly more than one quarter of all costs expended in FY 85 to conduct pesticide activities. The magnitude of these costs for specific fee categories is reflected in the following fee schedule. The fees listed are the 1983 costs which would apply to each application for the designated type of registration.

TYPE OF REGISTRATION

Transaction fee	
New Chemical	$163,100
Old Chemical	3,500
New Use	29,900
Amendment	600
New Biochemical, Biotechnical and Microbial	56,600
Experimental Use Permit	4,000
Food Additive Regulation	5,300

It should be noted that while some of these fees appear large, they reasonably reflect the Agency's costs of processing these types of applications. Moreover, to the best of EPA's knowledge, they represent only a small fraction of applicants' product development costs for these actions. Based on data from the National Agricultural Chemical Association which stated that its members spent $527 million on research and development for pesticides in 1982, the additional $18 million paid in fees would add about 2.9 percent to the expected research and development costs. The fee of $163,100 for a new chemical application represents about 0.7 percent of the $25 million a company would spend in developing a product.

It is the intent of the Agency to charge fees which continue to reasonably reflect the current costs of operating the registration program. The Agency would periodically review costs and fees to make sure they are in balance. Should the methodology or procedure for calculating the user fees warrant change, EPA would make such changes available for public comment prior to initiating a change to the fee schedule.

In order to keep the fees reasonably in line with general costs, the proposed fee schedule would be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale. New fees would be printed in the **Federal Register** as a final rule to become effective 30 days or more after publication, as specified in the rule. The final fees to be established by this rule will be recalculated prior to publication of the final rule to account for increases in the GS pay scale between 1983 and the date of publication of the final rule. For example, if the fees were to be adjusted today they would be increased to account for a 4 percent increase in 1984, 3.5 percent in 1985 and 0 percent in 1986. This would increase all fees by 7.64 percent.

D. When the User Fees May Be Waived or Adjusted

If EPA decides that fees should be charged for pesticide registrations, there will be circumstances under which it may be prudent to grant exemptions or waivers from fees. While the IOAA is silent concerning such waivers, it does provide that the President shall set policies concerning the implementation of the IOAA. Office of Management and Budget (OMB) Circular A–25, section 9 (b), contains guidelines for Federal user charge systems and provides for exceptions to a general user fee policy under several conditions. EPA's interpretation of these policies and examples of how they would apply to registration user fees follow.

1. *Public interest.* If the recipient is engaged in an activity designed to promote the public interest, the registration fee may be waived. This area of consideration covers categories which serve public policy objectives of FIFRA, FFDCA, and the Agency. Examples of these waiver categories are as follows:

a. *Registration or amendments to registrations for some products judged to be useful in integrated pest management (IPM) programs.* The intent of this waiver would be, in part, to encourage the development, dissemination, and use of IPM practices as directed by Congress in FIFRA. The decision on the usefulness of a pesticide product within an IPM framework would be made by EPA on a case-by-case basis.

b. *Minor use registrations.* Congress has mandated the EPA to take special note of economic incentives for minor pesticide uses when requiring test data to support registrations. Thus, waivers of fees for such uses would be consistent with congressional intent. The decision to waive the fee for a minor use registration would be made on a case-by-case basis.

c. *Federally sponsored Inter-Regional Research Project number 4 (IR–4 program).* EPA would categorically waive fees related to costs incurred in registering products or new uses for existing products approved in the federally sponsored Inter-Regional Research Project number 4 (IR–4 program). This program is a nationwide cooperative effort including EPA, United States Department of Agriculture (USDA) Agricultural Research Service, State research services and State experimental stations. Fees will be automatically waived for actions requested by the IR–4 program.

2. *Economic hardship.* A registration fee may also be waived if the imposition of a fee would result in an economic hardship on the registrant. The EPA has, for many years, considered waivers of tolerance fees for economic hardship. Considerations for an economic hardship waiver include size of the firm, pesticide sales and number of registrations with the Agency.

3. *Small business.* The Small Business Administration (SBA) has also suggested that the Agency grant blanket waivers, or fee adjustments, to small businesses. The SBA suggestion would define, for this purpose, a small business as one with annual gross revenue from chemical sales of no more than $40 million and which has no more than 150

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employees. For businesses meeting those criteria the SBA has suggested that the fee should be no more than 1 percent of the annual gross revenues for the pesticide for which the registration action was requested.

This proposal does not specifically include a blanket waiver for small businesses but the Agency is very interested in exploring this concept further. It does appear that most pesticide registrants would satisfy the SBA's "small business" criteria. Also, EPA notes that it would be very difficult to determine (in advance of registration) the annual gross revenues for a pesticide, since registration is a prerequisite to legal sale of a pesticide. The effect of the suggested fee adjustment for fee collections or on the pesticide industry has not been determined. The Agency encourages the public to comment on this matter.

The Agency would review all fee waiver requests, whatever their origin, including foreign governments, based on the merits of the requests and the criteria established under 40 CFR 152.18(c).

A fee of $1,100 would be charged for each request for waiver (or refund) to cover costs involved in reviewing such a request, unless the registration fee is less than $1,100; then the amount of the registration fee would be remitted with the request for a waiver. Given the fee schedule proposed in this rule, an application for an amendment is the only case in which the registration fee is less than the $1,100 waiver request fee. Therefore, an applicant requesting a waiver or refund of the $600 registration fee to amend a product should submit $600 with a waiver request. An applicant requesting a waiver or refund of any other registration fee proposed in this rule would submit $1,100 with a waiver request. The $1,100 fee would not be required for waiver requests from applicants with no financial interest in the petition. The proposed waiver fee will be adjusted annually by the same percentage change in the Federal General Schedule (GS) pay scale. The new fees would be printed in the **Federal Register** as a final rule.

If a waiver or refund is granted, any fee charged for request for waiver or refund will be refunded. The fee will not be refunded if the request for waiver is submitted after scientific review has begun on the registration or other application. If the waiver has been denied, the proper fee must be submitted after notice of denial.

III. Options for Future Fee Systems

A. General Authority for Recovering Post-Registration Costs

EPA is also considering the appropriateness of recovering the costs of post-registration activities through user fees. These activities are not specifically sought by registrants, and benefit the public—as well as the registrants—by attempting to ensure that licensed products continue to comply with FIFRA. However, these activities do allow pesticides to remain on the market, and thus bestow a "special benefit" to the registrants. In cases construing two Supreme Court decisions, *National Cable Television Assn.* v. *U.S.*, 415 U.S. 336 (1974), and *Federal Power Commission* v. *New England Power Co.*, 415 U.S. 345 (1974), the IOAA (31 U.S.C. 9701) repeatedly has been interpreted by U.S. Courts of Appeals to allow the recovery of all costs an agency incurs in providing a "special benefit" to a private person, whether or not benefits also accrue to the public at large as a result of the agency activity.

In *Electronic Industry Association* v. *Federal Communications Commission*, 554 F. 2d 1109 (D.C. Cir. 1976), for instance, the court said that "The FCC is entitled to charge for services which assist a person in complying with his statutory duties. Such services create an independent private benefit." This analysis is also valid for postlicensing reviews designed to assure the licensee's ongoing compliance with legal requirements. In a case involving a regulatory scheme closely analogous to pesticide registration, the Nuclear Regulatory Commission was held to be entitled to recover the costs of routine inspections of the facilities of previously licensed nuclear facilities. In *Mississippi Power & Light Co.* v. *U.S. Nuclear Regulatory Commission*, 601 F. 2d at 231 (5th Cir. 1979), the court concluded that the licensee obtains an ongoing special benefit from retaining its license, and that it is proper to recover the cost of agency activities designed to ensure that the licensee's activities comply with statutes and regulations.

EPA believes that courts would view post-registration reviews under FIFRA similarly. These reviews are based on the tacit assumption that registrants wish to maintain their registrations. (A registrant may always voluntarily terminate a registration if he chooses.) During the course of these reviews, EPA evaluates the data to determine what modifications in the registration, if any, are needed in order that it may be found to comply with the statute and regulations and thus remain in force. EPA may also determine that further data must be submitted in order to update the information base on a chemical.

B. Post-Registration Activities Being Considered for Cost Recovery in the Future—Generic Chemical Review Program

EPA believes that Agency costs incurred for registration standards, special reviews and similar activities related to determining the continuing registrability of products already on the market are recoverable under 31 U.S.C. 9701. The Agency may in the future propose to expand the proposed user fee system to recover the costs of generic chemical review activities initiated by the Agency with respect to existing registered chemicals.

The generic chemical review program examines current knowledge about each active ingredient contained in one or more registered pesticide products, determines the adequacy of the scientific data base supporting currently registered uses, and establishes scientifically based regulatory standards for the reregistration of existing products and registrations of future products which contain that active ingredient. Where warranted, this program conducts risk/benefit analyses and takes appropriate actions to reduce unacceptable risks caused by the use of individual pesticides. The following activities comprise the generic chemical review program.

1. *Registration standard.* A registration standard (RS) is intended to aid the reregistration decision process for pesticides through the assembly and review of all available, appropriate data on active ingredients and the subsequent identification of additional data requirements. On the basis of this review, the Agency establishes the various conditions to be met in order to register or reregister pesticide products containing these active ingredients. One principal intent of the RS program is to ensure that existing products do not pose unreasonable risks to health and the environment. Upon product reregistration under a standard, each affected registrant receives the benefit of continued access to markets.

2. *Data call-in.* A registration standard will be more complete and therefore more effective if certain key data are up-to-date and available for review. Therefore, under the data call-in program, letters are sent to registrants identifying data gaps and requiring registrants to conduct the necessary studies. (Because of scientific advances and more stringent requirements, most

chemicals registered prior to 1978 will not have a complete, up-to-date data base.) This approach enables the Agency to obtain important data at the beginning of the registration standard development process. The Agency then conducts a comprehensive review of available health and environmental data pertaining to the chemical in question. Data call-ins may also be initiated to address new concerns, e.g., ground water contamination potential.

3. *Special review.* The special review process is an intensive risk/benefit review of registered pesticide chemicals suspected of causing unreasonable adverse effects on the environment.

4. *Hearing support.* FIFRA provides registrants the opportunity to ask EPA for a reconsideration of its intent to suspend, cancel, or deny a registration.

5. *Lab data audit.* This activity assures that studies concerning health and environmental effects used in support of pesticide registration actions, generally developed by the registrants, are complete and valid.

C. Possible Approaches for Recovering Post-Registration Costs

Future fee systems would be designed to recover post-registration costs, in addition to costs associated with registrant requests, which the currently proposed fee system would recover. One approach, an annual fee for all science reviews, would combine all science review costs (those involved with registrant requests as well as those involved with post-registration reviews) and split the costs of reviewing an active ingredient among all basic producers of that active ingredient. (Basic producers are those registrants not eligible for the formulator's exemption under FIFRA section 3(c)(2)(d).) The second approach, differential fees related to risks/benefits or completeness of data, would vary fees based on the costs related to reviewing riskier chemicals or those chemicals with data gaps rather than establishing uniform fees within registration and post-registration activity categories. A more complete discussion of these two approaches follows in Unit III.C.1 and 2, respectively.

1. *Annual fee for all science reviews.* This approach would consist of a one-time transaction fee to recover the costs associated with the administrative processing of each requested registration action, and a new annual fee to be assessed on all basic producers of an active ingredient each year the product containing that ingredient remains on the market. The annual fee approach would replace the proposed fee system and would change its focus to more clearly associate the cost of maintaining a scientific review capability with the entire class of those benefiting from this capability.

Most of OPP's review costs are directed at the effects of ingredients of pesticide products, not at the products per se. Moreover, once a pesticide product is registered by Company A, other companies may also seek and obtain registrations for products containing the same ingredient. The data reviews and analyses performed in order to decide whether A's product may be registered normally form the basis for the Agency's decisions on the registrability of the similar products produced by companies B, C, and D. (In this respect, the EPA regulatory program differs from programs of some other agencies, in which a given review can directly relate only to one possible license, e.g., a particular nuclear power plant or television station.) Since all four firms arguably benefit equally from the reviews, it could be considered inequitable to charge only A for the costs of the initial reviews, even though A's application is what initially caused the work to be done.

Conversely, much of the most important and resource-consuming work in the OPP review program is directed at ingredients contained in products which are already registered. Although reviews of registered products and applications for new ones are often on essentially unrelated "tracks," the results of studies received in support of an application for a new product may lead the Agency to perform intense reviews of the continuing registrability of related old products. The Agency is also required to reregister products containing "old" active ingredients. The "old" registrants may not be seeking any new approvals while these reviews are underway, but applications for similar products from new firms may be received at any time. Charging the costs of the reviews concerning a given active ingredient conducted during a particular period only to the persons who happen to seek or obtain registrations during that period would reward unfairly the licensees who had received earlier Agency approvals, since the reviews benefit the old and new registrants equally. A more equitable scheme would recognize these effects by spreading the relevant costs over time and charging each firm which benefited by such Agency work (and thus gained or retained access to marketing rights) a roughly equal share of the resulting costs.

The Agency reviews chemicals episodically. While some costs are incurred because of applications filed—broad, intensive reviews of products containing new active ingredients before they are first approved, and narrow, intensive reviews when applications for major new use patterns are filed—the Agency also incurs major costs unrelated to any particular applicant activity. For example, it conducts broad, intensive reviews during the section 3(g) reregistration of products containing old active ingredients, and broad, intensive review during special reviews initiated when concerns arise about significant risks posed by a registered ingredient. Very little review is conducted in other situations, whether or not "me-too" applications are being processed. Moreover, the time needed for a review depends more upon the complexity of the issues than upon the type of application filed. If the data pose difficult analytical problems, or if the risk/benefit question is a close call, more time will be required than if the data are unequivocal and the risks of a chemical are clearly greater (or clearly lower) than its benefits. Thus, the amount of review activity for a particular ingredient over time is largely unpredictable, either in terms of the number of reviews that will be needed during the life of the chemical or in terms of the difficulty of the reviews. This would make it difficult to set fees, in advance of reviews, based on the amount of work that would be required on the individual chemical, although it may be possible to calculate average costs for certain classes of chemicals.

In addition, the risks and benefits of an active ingredient under review must be considered by EPA in light ot the risks and benefits of competing products containing different ingredients. EPA often undertakes major reviews of the risks and benefits of a group of pesticide products containing different ingredients (e.g., all termiticides, all fumigants). This would confound any attempt to assess the costs of review of a particular chemical only against the licensees of products containing that chemical, even on a retroactive basis. Accordingly, assigning the cost of scientific review of the overall chemical data base to the class of basic producers of those chemicals may offer advantages in efficiency and equity over the proposed system.

In summary, this approach would distinguish administrative processing costs for requested registration actions from the overall costs of maintaining a scientific staff for technical reviews of the characteristics of active ingredients. As in the proposed fee system, the administrative costs of processing a specific application would be recovered

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by a transaction fee. However, the costs of all scientific reviews would be recovered through an annual fee to be assessed against the basic producers of each registered active ingredient.

Under this approach, applicants would be charged a transaction fee based upon the average cost of registration action processing activities for that type of action plus relevant Agency overhead costs. An annual fee would also be assessed on all basic producers of the active ingredient, and would continue to be assessed for each year the product is on the market. For example, if 600 active ingredients are registered, and the pesticide program incurs annual scientific review costs of $30 million (an average cost of $50,000 per active ingredient), and there are 10 producers of a specific active ingredient, the annual fee would be $5,000 for each producer of that active ingredient ($30 million divided by 600 divided by 10). This approach would significantly reduce the transaction fees proposed in this rule by displacing the cost of scientific review to an annual fee. It would increase collections by approximately $22 million, to a total of about $40 million, or approximately 60 percent of all costs expended on pesticide activities in FY 85.

A variation of this approach would be to collect only generic chemical review costs through an annual fee and collect scientific costs associated with registrant requests through a transaction fee. The annual fee would be an add-on to the proposed fee system. This would ensure that the major portion of scientific review costs would be allocated to all beneficiaries while retaining full recovery of Agency costs occasioned by individual requests. It would also allow recovery of generic chemical review costs to supplement, rather than supplant, the proposed fee system.

2. *Differential fees related to risks/benefits or completeness of data.* This option would impose differential fees within registration and generic chemical review activity categories. The fees would differ in relation to the costs expended to determine the risks/benefits posed by certain classes of chemicals and/or the lack of completeness of their data bases. This approach assumes that chemicals may be categorized into certain classes and that it is possible to calculate the average costs of review for each class of chemicals. The Agency is currently studying this issue.

Like the proposed system, this option would recover, through a transaction fee, both the administrative and the scientific costs associated with registrant requests. Similar to the annual fee option, the differential approach would also recover Agency-initiated generic chemical reviews through an annual fee. However, the annual fee may be imposed per pound of active ingredient produced, rather than being divided equally among all producers of a particular active ingredient.

Unlike the other approaches discussed, the transaction and annual fees in this option would differ in amount for different types of active ingredients in order to better reflect Agency costs. For instance, and purely by way of illustration, pesticides which hit "risk" triggers and demonstrate beneficial characteristics generally require greater resources for review than other pesticides, and certain pesticide classes generally involve higher "risks" than other classes. Similarly, and again by way of illustration, pesticides which lack certain test data, or whose supporting data appear inadequate in light of current test protocols, may require greater Agency resources before review may be completed and a decision made. In addition, EPA costs may be related to the amount of a particular active ingredient produced. Given roughly similar toxicity, the Agency in general tends to give higher priority to those chemicals with high annual production volume, which is often a reasonable surrogate for exposure.

In short, data requirements and risk may be closely related to Agency costs. As an added benefit contrasted with uniform "flat" fees, differential fees might better encourage development and use of less risky pesticides and help reduce data gaps, both by providing incentives to market lower-risk products and by encouraging earlier compliance with Agency data requirements. Well-defined fee waivers (e.g., for minor use products or those subject to final registration standards where a complete data base exists) could reflect lower costs or special public interests associated with identified activities, and could complement this approach.

EPA requests comments concerning this differential fee option, especially on three issues: (1) Whether any differential fee based on cost recovery would be large enough to influence producer or user behavior and, if so, how behavior might be affected; (2) whether, even if such behavior appears unlikely to be affected in general, such differential fees may nevertheless produce significant effects (e.g., on smaller volume pesticide products with gross sales under $5 million) or otherwise improve program efficiency (e.g., by accelerating voluntary cancellation of inactive registrations); and (3) what surrogates or objective criteria might reasonably be used to define circumstances reflecting differential Agency costs, especially related to risks or data gaps, without requiring case-by-case fee determinations.

Consideration must also be given by EPA to the practicality and cost of establishing and maintaining such a complex fee system.

D. Changes in Cost Calculation Methodology for Possible Future Options

The general methodology for determining direct and indirect costs of administrative processing and science review activities covered in the proposed fee schedule would also be used in developing fee schedules for future options. As with the proposed system, data from the TAIS, OLTS, FMS, the OPP ERMS and other internal records would be used to identify and allocate specific Agency expenditures.

However, since the proposed fee system and the possible future options differ on how activities are categorized (registrant-initiated versus Agency-initiated, and/or scientific versus administrative), different cost centers would be used in developing the fee schedules. For example, the Agency would use the "Registration Division" as a cost center for administrative or processing costs related to registration actions, while a combination of divisions contribute to scientific review of an active ingredient.

The differential fee option depends upon identifying classes or "events" that serve as surrogates for cost, rather than distributing the cost of certain services uniformly among the applicants or producers of an active ingredient. This option would differentiate cost by class of chemical. For example, and purely by way of illustration, fees for insecticides might be greater than fees for disinfectants because costs to the Agency for review of insecticides may be found to be greater. Alternatively, one "event" on which to base fees might be special review; special review represents a significant additional cost which most pesticides do not cause the Agency to incur, and fees could reflect this difference. Within classes or "events," fees might be charged per pound of active ingredient used in the United States in the most recent previous year for which data are available.

IOAA authority requires any fee system to be based upon a rational methodology. To be administratively feasible, that fee system must also be relatively simple to implement. Differentiation of fees requires identification of reasonable surrogates for variable Agency costs and a formula which can easily be used to derive actual fees from such costs. Such surrogates or criteria for defining pesticides which should be subject to higher (or lower) fees may be derivable from historical costs to the Agency of registering or reregistering different types of pesticides, and would project which types of pesticides would likely be subject to particular cost-incurring activities in the near future (e.g., development of registration standards for high volume food use chemicals of certain threshold toxicity), or from combinations of these and similar factors.

E. Current Events

The Agency will, of course, adhere to any FIFRA reauthorization provisions which are enacted and signed into law. It is important to note, however, that today's proposed rule is the direct result of a study on user fees required by Congress in its 1978 amendments to FIFRA. Publishing this proposed rule may generate useful information about mechanisms for fee collection, and can advance public debate on the benefits of post-registration fees by contributing to a more informed sense of the range of potential user fees which may be available under existing statutory authority.

Accordingly, today's proposed rule is being published in order to propose specific fees which would recover the costs of certain actions requested by registrants, as well as to secure and address advance comments on broader principles related to the role of fees in sound pesticide policy. Interested parties will have ample opportunity to scrutinize specific application of those broader proposals during subsequent comment period.

IV. Other Regulatory Requirements

EPA submitted this rule to the Scientific Advisory Panel (SAP) in accordance with section 25(d) of FIFRA and the SAP waived its review of the rule.

As required under section 25(a)(2)(A) of FIFRA, the Agency submitted a copy of this proposed rule to the Secretary of Agriculture. The comments of the Secretary of Agriculture follow:

> We have indicated in the past, and reiterate, that in the case of many agricultural pesticide uses the increased cost of the pesticide cannot be passed on by the farmer to the consumer of his product. It appears that the farmer will be stuck for the costs of a service that benefits the entire public in the provision of a wholesome food supply both in quantity and quality. Therefore, it is not at all clear that the concept of special benefits has been met in this case.

The concept of a special benefit is applicable to pesticide manufacturers who derive that benefit through the registration of pesticides. A registration is a license that allows a registrant to market a product. The courts have repeatedly held that an agency may recoup the cost of providing a special benefit to a private person regardless of whether or not the public at large also derives benefits from the agency activity. Additionally, it is not at all clear to the Agency to what extent the pesticide industry can or will pass the cost of fees (which constitute less than one-half of one percent of gross income from pesticides sales at the retail level) on to the user.

V. Other Statutory Requirements

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has developed a document entitled "Regulatory Impact Analysis of User Charges for Registering Pesticides Under the Federal Insecticide, Fungicide, and Rodenticide Act." This document is available for public inspection at the address identified earlier in the preamble.

A. Executive Order 12291

Under Exective Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The Agency has determined that this proposal is not major because it does not meet any of the criteria set forth and defined in section 1(b) of the Order.

Also in accordance with E.O. 12291, the proposed rule was submitted to the Office of Management and Budget (OMB) for review.

B. Regulatory Flexibility Act

The proposed regulation has been reviewed under the provisions of section 3(a) of the Regulatory Flexibility Act and it has been determined that this proposal does not contain provisions which would have a significant adverse impact on a substantial number of small entities.

The Agency recognizes that the establishment of fees to accompany registration applications would have the potential for adversely affecting many small businesses. This would be the case primarily with respect to formulating firms since few small firms or individuals develop new pesticides. To remove all possibility of serious financial harm on small businesses, the proposed regulation includes an explicit waiver provision based in part on economic hardship. This inclusion should alleviate the concerns about impacts on small businesses as expressed in the Regulatory Flexibility Act. The Agency is also requesting today public comment on the concept of a blanket fee adjustment for small business.

C. Paperwork Reduction Act

This proposed rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 152

Intergovernmental relations, Administrative practice and procedure.

Dated: November 17, 1986.

Lee M. Thomas,
Administrator.

Therefore, it is proposed that 40 CFR Part 152 be amended as follows:

PART 152—[AMENDED]

1. The authority citation for Part 152 is revised to read as follows:

Authority: 7 U.S.C. 136 through 136y; § 152.18 also issued under 31 U.S.C. 9701 and 21 U.S.C. 348 and 371.

2. By adding § 152.18 to a proposed Subpart A to read as follows:

Subpart A—General Provisions

§ 152.18 Fees.

(a) *Purpose.* This section prescribes fees to be charged for certain pesticide regulatory activities performed by the Environmental Protection Agency (as authorized by 31 U.S.C. 9701) and provisions regarding their payment.

(b) *Fee amounts.* (1) The fee for processing an application to amend the registration of a currently registered product which is not described by paragraph (b)(6) of this section is $600.

(2) The fee for an application for an experimental use permit under FIFRA section 5 is $4,000.

(3) The fee for processing a petition or request under FFDCA section 409 for establishment of a food additive regulation is $5,300.

(4) The fee for processing an application for registration of a pesticide product containing a biochemical, biotechnical or microbial active ingredient which has not been listed as an active ingredient in any other product registered under FIFRA is $56,600.

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(5) Except as provided by paragraph (b)(4) of this section, the fee for processing an application for registration of a pesticide product containing an active ingredient which has not been listed as an active ingredient in any other product registered under FIFRA is $163,100.

(6) The fee for processing an application for registration (or for amendment of a registration) entailing a major change in the use pattern of an active ingredient contained in a previously registered product is $29,900.

(7) The fee for processing an application for registration of a new product which is not described in paragraph (b)(4), (5) or (6) of this section is $3,500.

(c) *Waiver and refund.* (1) Fees will be automatically waived for actions requested by the IR-4 program.

(2) The Administrator may waive or refund part or all of any fee imposed by paragraphs (b)(2) through (7) of this section if the applicant requests a waiver or refund and if the Administrator determines in his or her sole discretion that such a waiver or refund will promote the public interest or that payment of the fee would work an unreasonable hardship on the applicant.

(3) A request for a waiver or refund of a fee shall be submitted in writing by the applicant to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division (TS-767C), 401 M St., SW., Washington, DC 20460. A fee of $1,100 shall accompany every request for a waiver or refund, unless the registration fee is less than $1,100; then, the amount of the registration fee shall accompany the request for a waiver or refund. No fee will be imposed on any person who has no financial interest in the application. The fee for requesting a waiver or refund shall be refunded if the request is granted.

(d) *Payment.* All deposits and fees required by this section shall be paid by money order, bank draft, or certified check drawn to the order of the Environmental Protection Agency. All deposits and fees shall be forwarded with the application to the Environmental Protection Agency, Headquarters Accounting Operations Branch, Office of Pesticide Programs (Registration Fees), Registration Division, P.O. Box 360277M, Pittsburgh, PA 15251. An application for which a waiver of the fee or refund has been requested will not be accepted for processing until the fee has been waived or, if the waiver has been denied, the proper fee is submitted after notice of denial. A request for waiver or refund will not be accepted after scientific review has begun on the application.

(e) *Adjustment of fees.* This fee schedule will be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale. In addition, processing costs and fees will periodically be reviewed and changes will be made to the schedule as necessary. When automatic adjustments are made, based on the GS pay scale, the new fee schedule will be published in the **Federal Register** as a final rule to become effective 30 days or more after publication, as specified in the Rule. When changes are made based on periodic reviews, the changes will be subject to public comment.

[FR Doc. 86-26513 Filed 11-25-86; 8:45 am]

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federal register

Wednesday
November 26, 1986

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 800

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Performance Bonds; Bond Release Application; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 800

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Performance Bonds; Bond Release Application

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the U.S. Department of the Interior (DOI) proposes to revise the rule that governs the information needed in an application to release a performance bond. This revision is proposed in accordance with the Secretary's brief of March 5, 1984, in which the Secretary addressed the National Wildlife Federation's challenge to the omission of the permittee's name in the notice of bond release. The proposed rule would require that the notice of bond release include the name of the permittee.

On June 16, 1986, OSMRE accepted a proposal to revise the self-bonding regulations sought by a petition for rulemaking submitted by the National Coal Association/American Mining Congress (NCA/AMC) Joint Committee on Surface Mining Regulations. The proposed revision would allow third parties to guarantee a self-bond.

DATES:

Written Comments: OSMRE will accept written comments on the proposed rule until 5 p.m. eastern time on February 4, 1987.

Public Hearings: Upon request, OSMRE will hold public hearings on the proposed rule in Washington, D.C., Denver, Colorado; and Knoxville, Tennessee, 9:30 a.m. local time on January 28, 1987. Upon request OSMRE also will hold public hearings in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington at times on dates to be announced prior to the hearings. OSMRE will accept requests for public hearings until 5:00 p.m. eastern time on January 14, 1987.

ADDRESSES:

Written Comments: Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5315, 1100 L Street NW, Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5315–L, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240.

Public Hearings: Department of the Interior Auditorium, 18th and C Streets, NW, Washington, DC; Brooks Towers, 2d Floor Conference Room, 1020 15th Street, Denver, Colorado; and the Hyatt House, 500 Hill Avenue, SE., Knoxville, Tennessee. The addresses for any hearings scheduled in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington will be announced prior to the hearings.

Requests for public hearings: Submit orally or in writing to the person and address specified under "**FOR FURTHER INFORMATION CONTACT**".

FOR FURTHER INFORMATION CONTACT: Frank Mancino, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: (202) 343–7952.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rules
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rules should be specific, should be confined to issues pertinent to the proposed rules, and should explain the reason for any recommended change.

Where possible, commenters should submit five copies of their comments (see "**ADDRESSES**"). Comments received after the close of the comment period (see "DATES") may not be considered or included in the Administrative Record for the final rule.

Public Hearings

OSMRE will hold public hearings on the proposed rule on request only. The times, dates, and addresses scheduled for the hearings at three locations are specified previously in this notice (see "**DATES**" and "**ADDRESSES**"). The times, dates, and addresses for the hearings at the remaining locations have not yet been scheduled, but will be announced in the Federal Register at least 7 days prior to any hearings which are held at these locations.

Any person interested, in participating at a hearing at a particular location, should inform Frank Mancino (See "FOR FURTHER INFORMATION CONTACT") either orally or in writing of the desired hearing location by 5:00 p.m. eastern time on January 7, 1987. If no one has contacted Mr. Mancino to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSMRE requests that persons who testify at a hearing give the transcriber a written copy of their testimony. To assist OSMRE in preparing appropriate questions for clarification of issues, OSMRE also requests that persons who plan to testify submit to OSMRE at the address previously specified for the submission of written comments (see "ADDRESSES") an advance copy of their testimony.

II. Background

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (the Act, Pub. L. 95–87) sets forth the general regulatory requirements governing surface coal mining operations and the surface impacts of underground coal mining. OSMRE has by regulations implemented the general requirements of the Act and established performance standards to be achieved by different operations. The regulations dealing with the requirements for performance bonding are contained within 30 CFR Subchapter J, Part 800. This part was revised on July 19, 1983 (48 FR 32932) and August 10, 1983 (48 FR 36429).

Section 800.40 of 30 CFR contains the requirements for release of performance bonds. Under this section, an operator is required to place a newspaper advertisement in a newspaper of general circulation, at least once a week, for four consecutive weeks, notifying the public of the proposed application for bond release. The notification requires, among other things, the permit number, the approval date (for the permit), the location of the land of the permit, the acreage, and the type and amount of the bond as well as the dates and type of reclamation work achieved. In promulgating the 1983 rule, the Secretary assumed that an applicant or permittee would identify himself, since an operator applying for bond release is required to place such an advertisement. This assumption was challenged in *In re: Permanent Surface Mining Regulation Litigation (II),* Civil Action No. 79–1144 (D.D.C. 1984), when plaintiffs raised the issue. The Secretary then agreed to incorporate the name of the permittee as a requirement of section 800.40. (*In re: Permanent Surface Mining Litigation* Civil Action 79–1144 (D.D.C.), Brief For Federal Defendants, March 5, 1984). This change will execute that agreement. In addition, the words "operator or applicant" are replaced with the word "permittee" in order to clarify the meaning of this part.

On September 19, 1985, OSMRE received a petition in the form of a letter from the Joint NCA/AMC Committee on Surface Mining Regulations. This petition, filed according to the rulemaking provisions of 30 CFR 700.12, proposed revisions in the bonding regulations. On October 29, 1985, OSMRE published the petition in the **Federal Register** (50 FR 43722) for public comment. On June 16, 1986, OSMRE made a decision to accept one proposal and to reject the two other proposals in the petition. Notice of the OSMRE decision was published in the **Federal Register** on July 7, 1986 (51 FR 15047). OSMRE accepted the proposal to revise the bonding regulations to allow for corporations other than parent companies to guarantee a permittee's self-bond. Accordingly, OSMRE proposes to revise § 800.5 and 800.23 to allow for nonparent companies to guarantee the self-bond of a permittee.

III. Discussion of Proposed Rules

The insertion of the permittee's name into the requirements of § 800.40(a)(2) is considered a clarification of the existing requirements. It is authorized by the Act and subsequent regulations and is reasonable in light of the requirements of 30 CFR 800.40.

Section 800.5 deals with definitions for bonding. Paragraph 800.5(c) which defines a self-bond would be revised. The new definition of self-bond would provide for an indemnity agreement with either a permittee or a corporate guarantor for the permittee.

Section 800.23 establishes the requirements and criteria for appoval of a self-bond. This section would be revised only to remove all references to "parent corporation", replacing such a term with the words "corporate" or "corporation". This revision would allow any party to guarantee the self-bond of a permittee as long as it met the requirements of Section 800.23.

During the revision of the bonding regulations in 1982–83, a commentor proposed revision 800.23 to allow for non-parent guarantors for a self-bond. OSMRE rejected this comment on the grounds that such a provision could increase the risk to a regulatory authority (48 FR 36425). However, in view of information presented during the public comment period on the rulemaking petition, OSMRE has reached the conclusion that allowance of this provision would not increase the risk to a regulatory authority. Instances have been presented of mine mouth powers plants, dependent upon the coal from the adjacent mine, that would be willing to guarantee the self-bond for the mine operator. Although a corporation such as a utility company is not a parent to the mine operator, in such an instance, it does have a significant vested interest in the proper operation of the mine.

Therefore, OSMRE concluded that this proposal is reasonable because it would not significantly increase the risk to a regulatory authority in accepting a self-bond guarantee by such an entity as long as that corporation met the financial requirements for a self-bond.

Effect in Federal Program States

The rules proposed today, if adopted, would be applicable through cross-referencing in those States with Federal programs. This includes Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, and 947 respectively. Comments are specifically solicited as to whether unique conditions exist in any of these States relating to this proposal which should be reflected either as changes to the national rules or as State-specific amendments to any or all of the Federal programs.

IV. Procedural Matters

Federal Paperwork Reduction Act

The information collection requirements contained in 30 CFR 800.11, 800.15(c), 800.21(c), 800.23(a), 800.30(b), 800.40(a), and 800.60(a) have been approved according to Office of Management and Budget procedures under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0043.

Executive Order 12291

The U.S. Department of the Interior (DOI) has examined the proposed rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis.

Regulatory Flexibility Act

The DOI has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the proposed rule would not have a significant economic impact on a substantial number of small entities.

National Environmental Policy Act

OSMRE has prepared an environmental assessment (EA) of the impacts on the human environment of this proposed rulemaking. This EA is on file in the OSMRE Administrative Record at the address listed in the "**ADDRESSES**" section of this preamble. An EA on the final rule will be completed and a final conclusion reached on the significance of any resulting impacts before issuance of the final rule.

Author

The principal author of this proposed rule is Frank Mancino, Physical Scientist, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: (202) 343–7952.

List of Subjects in 30 CFR Part 800

Coal mining, Insurance, Reporting and recordkeeping requirements, Surety bonds, Surface mining, Underground mining.

Accordingly, it is proposed to amend 30 CFR Part 800 as follows.

Dated: October 24, 1986.

J. Steven Griles,

Assistant Secretary for Land and Minerals Management.

PART 800—BOND AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS UNDER REGULATORY PROGRAMS

1. The authority citation for Part 800 is revised to read as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*), unless otherwise noted.

2. Section 800.5 is amended by revising paragraph (c) to read as follows:

§ 800.5 Definitions

* * * * *

(c) *Self-bond* means an indemnity agreement in a sum certain executed by the permittee or any corporate guarantor and made payable to the regulatory authority, with or without separate surety.

3. Section 800.23 is amended by removing the definition of *parent corporation* from paragraph (a), and by revising paragraphs (b) introductory text, (c) introductory text, (d), (e)(1), (2) and (4), (f) and (g) to read as follows:

§ 800.23 Self-bonding.

(a) * * *

* * * * *

(b) The regulatory authority may accept a self-bond from an applicant for a permit if all of the following conditions are met by the applicant or its corporate guarantor:

* * * * *

(c) The regulatory authority may accept a written guarantee for an applicant's self-bond from any corporate guarantor, if the guarantor meets the conditions of paragraphs (b)(1) through (b)(4) of this section as if it were the applicant. Such a written guarantee shall be referred to as a "corporate guarantee." The terms of the corporate guarantee shall provide for the following:

* * * * *

(d) For the regulatory authority to accept an applicant's self-bond, the total amount of the outstanding and proposed self-bonds of the applicant for surface coal mining and reclamation operations shall not exceed 25 percent of the applicant's tangible net worth in the United States. For the regulatory authority to accept a corporate guarantee, the total amount of the corporate guarantor's present and proposed self-bonds and guaranteed self-bonds for surface coal mining and reclamation operations shall not exceed 25 percent of the guarantor's tangible net worth in the United States.

(e) * * *

(1) The indemnity agreement shall be executed by all persons and parties who are to be bound by it, including the corporate guarantor, and shall bind each jointly and severally.

(2) Corporations applying for a self-bond or corporations guaranteeing a permittee's self-bond shall submit an indemnity agreement signed by two corporate officers who are authorized to bind the corporations. A copy of such authorization shall be provided to the regulatory authority.

* * * * *

(4) Pursuant to § 800.50, the applicant or corporate guarantor shall be required to complete the approved reclamation plan for the lands in default or to pay to the regulatory authority an amount necessary to complete the approved reclamation plan, not to exceed the bond amount. If permitted under State law, the indemnity agreement when under forfeiture shall operate as a judgment against those parties liable under the indemnity agreement.

(f) A regulatory authority may require self-bonded applicants and corporate guarantors to submit an update of the information required under paragraphs (b)(3) and (b)(4) of this section within 90 days after the close of each fiscal year following the issuance of the self-bond or corporate guarantee.

(g) If at any time during the period when a self-bond is posted, the financial conditions of the applicant or the corporate guarantor change so that the criteria of paragraphs (b)(3) and (d) of this section are not satisfied, the permittee shall notify the regulatory authority immediately and shall within 90 days post an alternate form of bond in the same amount as the self-bond. Should the permittee fail to post an adequate substitute bond, the provisions of § 800.16(e) shall apply.

4. Section 800.40 is amended by revising paragraph (a)(2) to read as follows:

§ 800.40 Requirement to release performance bonds.

(a) * * *

(2) Within 30 days after an application for bond release has been filed with the regulatory authority, the permittee shall submit a copy of an advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The advertisement shall be considered part of any bond release application and shall contain the permittee's name, permit number and approval date, notification of the precise location of the land affected, the number of acres, the type and amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, a description of the results achieved as they relate to the permittee's approved reclamation plan, and the name and address of the regulatory authority to which written comments, objections, or requests for public hearings and informal conferences on the specific bond release may be submitted pursuant to § 800.40(f) and (h). In addition, as part of any bond release applicant, the permittee shall submit copies of letters which he or she has sent to adjoining property owners, local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the surface coal mining and reclamation operation took place, notifying them of the intention to seek release from the bond.

* * * * *

[FR Doc. 86-26640 Filed 11-25-86; 45 am]

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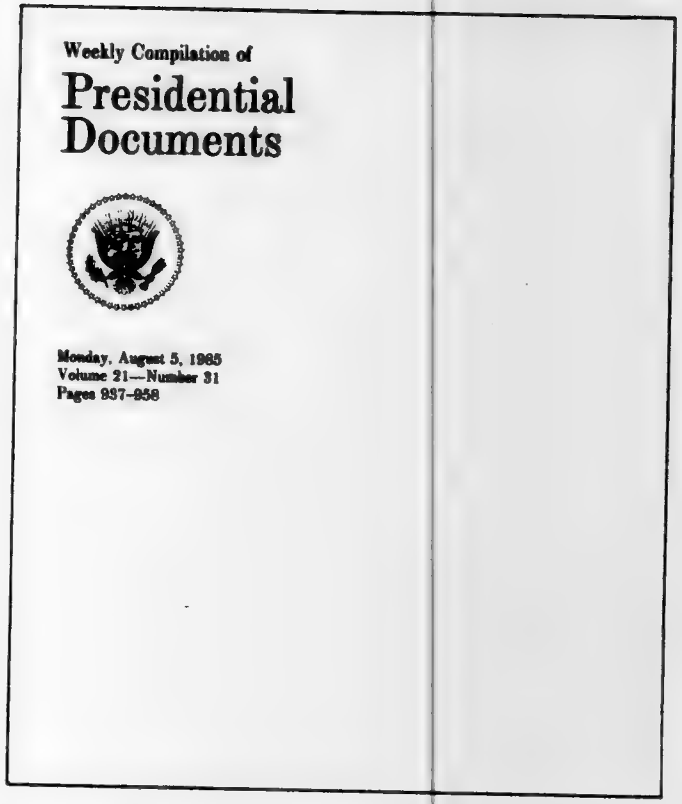

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WHO: The Office of the Federal Register.

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

NEW YORK, NY

WHEN: December 5 at 10:00 a.m.

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RESERVATIONS: Arlene Shapiro or Stephen Colon,
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PITTSBURGH, PA

WHEN: December 8 at 1:30 p.m.

WHERE: Room 2212, William S. Moorehead Federal Building, 1000 Liberty Avenue,
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RESERVATIONS: Kenneth Jones or Lydia Shaw
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

Retirement; Alternative Forms of Annuity

AGENCY: Office of Personnel Management.

ACTION: Interim rules with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim rules and requesting comment on the rules to implement section 204 of the Federal Employees' Retirement System Act of 1986, which requires OPM to offer alternative forms of annuity. These interim rules specify what types of benefits will be offered and how OPM will administer them.

DATES: Interim rules effective June 6, 1986; comments must be received on or before January 27, 1987.

ADDRESSES: Send comments to Reginald M. Jones, Jr., Assistant Director for Pay and Benefits Policy, Retirement and Insurance Group, P.O. Box 57, Washington, DC 20044, or deliver to OPM, Room 4351, 1900 E Street, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert M. Rosenblatt, (202) 632-5560.

SUPPLEMENTARY INFORMATION:

I. Introduction

Effective June 6, 1986, section 204 of the Federal Employees' Retirement System Act of 1986, Pub. L. 99-335, amended the civil service retirement law by adding section 8343a to subchapter III of chapter 83 of title 5, United States Code. Section 8343a requires OPM to offer alternative forms of annuities under the Civil Service Retirement System (CSRS). These interim regulations establish the rules OPM will use in administering the new provision.

II. Eligibility

Section 8343a states that retiring employees may elect to receive benefits other than those otherwise payable under CSRS. Eligibility for the alternative forms of annuities is limited to non-disability annuitants. If the retiring employee is married, the employee and the employee's spouse must jointly waive any survivor benefit otherwise payable under CSRS. If this waiver is not made, the employee is ineligible to elect the alternative form of annuity. Also ineligible is any employee who has a former spouse entitled by court order to receive a portion of the employee's annuity or a survivor annuity based on the employee's service.

Section 81.2203 (a), (b), and (c) of the interim regulations restate these basic eligibility requirements, specifying that the employee's status at the time of retirement will govern OPM's determination. This gives effect to the statutory language of section 8343a(a), which provides that the employee may make the election "at the time of retiring." "Time of retirement" is defined in these interim regulations in the same way as in OPM's survivor benefit regulations (Subpart F of 5 CFR Part 831) to mean the date on which the annuity benefit begins to accrue.

Section 831.2203(d) provides that an election of an alternative form of annuity must be filed on a form prescribed by OPM and that the form will require, in the case of a married annuitant, that the spouse of the retiree consent to the specific election of the alternative form of annuity made by the retiree. The regulatory requirement that the spouse consent to the exact election made by the retiree will ensure that the spouse is fully informed of the election.

Section 831.2203(e) provides a time limit for electing an alternative form of annuity consistent with the limits imposed under Subpart F of this part for making survivor benefit elections.

Sections 831.2203 (f) and (g) provide for situations in which a retiree dies before making an election regarding the alternative form of annuity. Under the CSRS, the majority of married retirees elect a full survivor benefit for their spouse. Under the method of computing the alternative forms of annuity (described in paragraph III) the rate of survivor benefits will be the same regardless of whether the retiree elects to receive an alternative form of annuity (and the lump-sum credit) or just the annuity otherwise payable under CSRS. Therefore, if a retiree dies before making an election, OPM will deem the annuitant to have elected the full survivor benefit for any current spouse plus the alternative form of annuity (and the lump-sum credit). The regulations provide one exception to this rule: If the retiree had submitted to OPM a valid election of survivor benefits in which the current spouse consented not to receive the maximum survivor benefit, *and* the election named a former spouse to receive a survivor benefit, OPM will honor that election by paying the former spouse the full or partial survivor benefit that had been elected by the decedent and will also deem that the decedent elected the alternative form of annuity. Under both in general rule and the exception, the lump-sum credit will be paid in the order of precedence for lump-sum payments in section 8342(c) of title 5, United States Code.

III. Alternative Forms of Annuity

Section 8343a(b) requires OPM to offer at least 2 alternative forms of annuity, each of which includes payment of the employee's lump-sum credit (employee deductions and deposits for civilian and military service deposits, plus interest, if any, that was added before 1957), plus an annuity payable for the life of the annuitant. Under one of these mandatory offerings, no survivor annuity would be payable; and under the other, a survivor benefit for the spouse would be payable.

Under § 831.2204(a), OPM will offer any of the 4 types of annuity otherwise available under the CSRS: (1) A self-only annuity; (2) an annuity with a reduction to provide an annuity for the current spouse; (3) an annuity with a reduction to provide a survivor annuity to a named person having an insurable interest; and (4) an annuity with a reduction to provide an annuity for a former spouse. Certain combinations of these types of annuities are available under existing rules governing survivor benefit elections (Subpart F of 5 CFR Part 831), and will also be available as section 8343a benefits. The rate of annuity payable to the annuitant will be further reduced in accordance with § 831.2205.

Section 831.2204(b) provides that once OPM has established the rate of annuity

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payable to retirees who have elected to receive an alternative form (and the lump-sum credit), OPM will treat these annuitants and their survivors in the same way as other annuitants with regard to post-retirement rights and obligations that would be otherwise applicable to annuitants under the CSRS. The established rate of annuity payable will be increased by cost-of-living adjustments provided under 5 U.S.C. 8340. Survivor benefits (including children's benefits) will be payable and terminable in accordance with 5 U.S.C. 8341. Recomputations of annuity, as in the case of a post-retirement marriage, divorce, or remarriage will be calculated in accordance with 5 U.S.C. 8339, and subject to the same notice requirements, if any. Subsequent changes in post-retirement statutory or regulatory provisions will be similarly applied equally to both the alternative and non-alternative annuitants, unless future law or regulations specifically provide otherwise.

IV. Computation of the Alternative Forms of Annuity

With regard to computation of the alternative form of annuity, section 8343a simply requires that the present value of the combined lump-sum credit and alternative form of annuity payable to the retiree be "actuarially equivalent" to the present value of the annuity otherwise payable to the retiree under the CSRS. The law provides no specific guidance on determining actuarial equivalence under section 8343a. These interim regulations provide that OPM will use the dynamic interest and inflation assumptions currently adopted by the Board of Actuaries as applicable to the CSRS: a 6.5 percent interest rate and a 5 percent rate of inflation (that is, yearly cost-of-living adjustment in annuities). OPM will also use its mortality tables (life expectancy) for non-disability CSRS annuitants.

The present value of an annuity is the amount of money, together with interest, needed at the time of retirement to fund an annuity for the life of the annuitant. This amount of money (present value) earns interest at an assumed rate (6.5% per year in this case) and the annuity increases at an assumed rate (5% per year in this case). Using these assumptions, the annuity payments gradually delete the initial amount of money, until by the end of the expected lifetime, the amount is reduced to zero. Of course, this computation is done at the time of retirement and is based on actuarially-determined assumptions and expectancies for a large group rather than on individual cases.

The present value of an annuity may be determined by multiplying the monthly rate of annuity by a "present value factor" defined under § 831.2202. Using the elements described above, OPM's Office of the Actuary has created the following table for this purpose. The table applies equally to men and women, even though their life expectancies are slightly different. This unisex table was obtained by averaging separate present value factors for male and female retirees weighted by the total dollar value of annuities typically paid to new retirees under CSRS.

Present Value Factors

Age at retirement:	*Present value of a monthly annuity*
40	346.2
41	339.9
42	333.5
43	327.0
44	320.3
45	312.0
46	303.0
47	292.5
48	283.9
49	277.0
50	269.0
51	261.9
52	256.0
53	249.4
54	243.1
55	236.0
56	229.2
57	222.9
58	216.7
59	210.1
60	204.6
61	199.6
62	191.7
63	185.2
64	178.1
65	171.3
66	164.6
67	158.8
68	152.7
69	146.4
70	140.8
71	134.6
72	129.5
73	123.7
74	118.1
75	111.6
76	107.1
77	102.5
78	96.5
79	90.3
80	84.7
81	80.0
82	76.0
83	72.4
84	69.2
85	66.1
86	62.3
87	58.7
88	55.2
89	51.9
90	48.7

The present value factor of 236.0, for example, represents the amount of money earning interest at 6.5 percent (the present value) theoretically needed at the time of retirement to fund the annuity of a 55-year-old retiree if the annuity starts out at the rate of $1 per month and is payable for the annuitant's lifetime with yearly cost-of-living increases of 5 percent. If the table must be changed because of changes in underlying assumptions or mortality rates, OPM will publish a **Federal Register** notice of the proposed change at least 30 days before the effective date of the change.

The actuarial equivalence between: (i) The present value of the lump-sum credit/alternative form of annuity and (ii) the annuity ordinarily payable (without the lump-sum credit payment) may be determined in either of 2 ways that produce mathematically identical results. The first method is:

(1) Monthly annuity ordinarily payable under CSRS (including any reductions for survivor benefits elected), multiplied by

(2) Present value factor, yields

(3) Present value of annuity ordinarily payable, minus

(4) Lump-sum credit, yields

(5) Present value of alternative form of annuity, divided by

(6) Present value factor, yields

(7) Monthly rate of alternative form of annuity, rounded to the next lowest dollar.

The second method (which is prescribed into the regulations at § 831.2205) simply produces the dollar reduction in the commencing rate of annuity attributable to the payment of the lump-sum credit:

(1) Lump-sum credit, divided by

(2) Present value factor, yields

(3) Monthly reduction (in dollars, rounded up), subtracted from the monthly rate ordinarily payable, yields

(4) Monthly rate of alternative form of annuity.

Examples

Under the first method, for an annuitant whose commencing date of annuity is his or her 55th birthday, OPM would compute the rate of his or her alternative form of annuity as follows, assuming his or her ordinarily payable monthly rate would be $1000 (after a reduction to provide a survivor annuity):

(1) $1000, multiplied by
(2) 236.0, yields
(3) $236,000, minus
(4) $20,000, yields
(5) $216,000, divided by
(6) 236.0, yields
(7) $915.

Using the second method for the same retiree, OPM will compute the reduction attributable to the payment of the lump-sum credit, as follows:

(1) $20,000, divided by
(2) 236.0, yields
(3) $85 subtracted from $1000, yields
(4) $915.

It should be noted that survivor benefits are not reduced by a retiree's election of the alternative form of annuity. An election to provide survivor benefits requires a reduction in the retiree's annuity, but this reduction is made before computing the alternative form of annuity. Therefore, the reduction in annuity to provide the survivor benefit is the same for the alternative form of annuity as for the annuity ordinarily available. Because the reduction for survivor benefits is the same regardless of the payment of the lump-sum credit, the rate of survivor annuity is unaffected by election of the alternative form of annuity. This methodology is intended to give effect to the language in 5 U.S.C. 8343a(c) requiring OPM to consider only the annuity "provided the employee" in determining actuarial equivalence.

In the event of a recomputation of an annuity, for example because of post-retirement marriage or divorce, which may give rise to a new survivor reduction in the retiree's annuity or elimination of the reduction, OPM recomputes the annuity in the same way as if there has been no election of the alternative form of annuity. OPM then applies the same reduction attributable to payment of the lump-sum credit as was currently in effect at the time of the recomputation.

V. Deposits and Redeposits for Civilian Service

Section 831.2206 addresses situations in which a retiree elects the alternative form of annuity but owes a deposit for prior civilian service not subject to retirement deductions or a redeposit for a period of service that was subject to deductions but the deductions were refunded to the employee. Under our current procedures, retiring employees may make deposits or redeposits for civilian service (military service deposits must be made directly to the employing agency before retirement) at any time before final adjudication of their annuity in order to increase the rate of annuity, but are barred from making these payments after OPM's final adjudication of the rate of annuity. Deposits and redeposits an employee makes (including interest charged by OPM) are included in the lump-sum credit.

Employees who elect an alternative form of annuity and who elect to make a deposit or redeposit while OPM is processing their annuity application will, under § 831.2206, be paid the actual lump-sum credit (not including these deposits or redeposits) but these deposits and redeposits will be deemed to have been made for the purpose of computing the alternative form of annuity. This procedure will eliminate the administrative burden of first receiving deposit or redeposit payments from the retiree and then merely returning them to the retiree in the payment of the lump-sum credit.

Waiver of Notice of Proposed Rulemaking and 30-Day Delay of Effective Date

Under 5 U.S.C. 553(b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these amendments effective in less than 30 days. The regulations are effective on June 6, 1986, the effective date of section 204 of Pub. L. 99–335, to give immediate effect to the new benefit provisions that are implemented by these regulations.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect retired Government employees and spouses.

List of Subjects in 5 CFR Part 831

Administrative practice and procedures, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management
Constance Horner,
Director.

Accordingly, OPM is amending 5 CFR Part 831 to add a new Subpart V to read as follows:

PART 831—RETIREMENT

* * * * *

Subpart V—Alternative Forms of Annuities

Sec.
831.2201 Purpose.
831.2202 Definitions.
831.2203 Eligibility.
831.2204 Alternative forms of annuities available.
831.2205 Computation of alternative form of annuity.
831.2206 Election to pay deposit or redeposit for civilian service.

Subpart V—Alternative Forms of Annuities

Authority: 5 U.S.C. 8343a.

§ 831.2201 Purpose.

This subpart explains the benefits available to employees and Members who elect an alternative form of annuity under section 8343a of title 5, United States Code.

§ 831.2202 Definitions.

In this subpart—

"Alternative form of annuity" means the benefit elected under § 831.2204.

"Current spouse annuity" has the same meaning as in § 831.603.

"Date of final adjudication" means the date 30 days after the date of the first regular monthly payment as defined in § 831.603.

"Former spouse annuity" has the same meaning as in § 831.603.

"Present value factor" represents the amount of money (earning interest at an assumed rate) required at the time of retirement to fund an annuity that: (a) Starts out at the rate of $1 a month and is payable in monthly installments for the annuitant's lifetime based on mortality rates for non-disability annuitants under the Civil Service Retirement System; and (b) increases each year at an assumed rate of inflation. Interest, mortality, and inflation rates used in computing the present value are those used by the Board of Actuaries of the Civil Service Retirement System for valuation of the System, based on dynamic assumptions. The present value factors are unisex factors obtained by averaging sex-distinct present value factors, weighted by the total dollar value of annuities typically paid to new retirees at each age.

"Time of retirement" has the same meaning as in § 831.603.

§ 831.2203 Eligibility.

(a) Except as provided in paragraphs (b) and (c) of this section, an employee or Member whose annuity entitlement commences after June 5, 1986, under any provision of subchapter III of chapter 83 of title 5, United States Code (other than section 8337 of that title), may elect an alternative form of annuity instead of any other benefits under the subchapter.

(b) An employee or Member who, at the time of retirement, has a former spouse who is entitled to a portion of the employee's or Member's retirement benefits or a former spouse annuity under a qualifying court order as defined by § 831.1703 may not elect an alternative form of annuity.

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(c) An employee or Member who is married at the time of retirement may not elect an alternative form of annuity unless the employee's or Member's spouse specifically consents to the election before the date of final adjudication. OPM may waive spousal consent only under the conditions prescribed by § 831.608.

(d) The election of an alternative form of annuity and evidence of spousal consent must be filed on a form prescribed by OPM. The form will require that a notary public or other official authorized to administer oaths certify that the current spouse presented identification, gave consent to the specific election as executed by the retiree, signed or marked the form, and acknowledged that the consent was given freely in the notary's or official's presence.

(e) An employee or Member may not elect an alternative form of annuity unless written notice of the election is received in OPM from the employee or Member on or before the date of final adjudication. An affirmative election under paragraph (a) cannot be revoked after the date on which OPM authorizes payment of the lump-sum credit.

(f) Except as provided in paragraph (g), an annuitant who dies before the date of final adjudication is deemed to have made an affirmative election under paragraph (a) with a fully reduced annuity to provide a current spouse annuity, regardless of any election completed under § 831.607, and the lump-sum credit will be paid in accordance with the order of precedence established under 5 U.S.C. 8342(c).

(g) If an annuitant described in paragraph (f) has completed an election under § 831.605(a) or (b)—

(1) The lump-sum credit will be paid in accordance with the order of precedence established under 5 U.S.C. 8342(c); and

(2) The election under § 831.605(a) or (b) will be honored.

§ 831.2204 Alternative forms of annuities available.

(a) An employee or Member who is eligible to make an election under § 831.2203 may elect to receive his or her lump-sum credit plus an annuity computed in accordance with section 8339 of title 5, United States Code, for which they qualify (including any reduction for survivor benefits) and reduced under § 831.2206.

(b) A retired employee or Member who elected an alternative form of annuity is subject to all provisions of subchapter III of chapter 83 of title 5, United States Code, as would otherwise apply to a retired employee or Member who did not elect an alternative form of annuity.

§ 831.2205 Computation of alternative form of annuity.

(a) To compute the beginning rate of annuity payable to a retiree who elects an alternative form of annuity, OPM will first compute the monthly rate of annuity otherwise payable under subchapter III of chapter 83 of title 5, United States Code, including all reductions provided under the subchapter other than those in § 8343a. That monthly rate is then reduced by an amount equal to the retiree's lump-sum credit divided by the present value factor for the retiree's attained age (in full years) at the time of retirement. The reduced monthly rate is then rounded to the next lowest dollar and becomes the rate of annuity payable.

(b) OPM will publish a notice in the **Federal Register** announcing any proposed ajustments in present value factors at least 30 days before the effective date of the adjustments.

§ 831.2206 Election to pay deposit or redeposit for civilian service.

If an employee or Member who elects an alternative form of annuity owes a deposit or redeposit for civilian service, and elects to pay that deposit or redeposit before the date of final adjudication, OPM will compute the annuity as if the deposit or redeposit had been made and will deem that deposit or redeposit to be included in the lump-sum credit for the purpose of computing the reduction in annuity under § 831.2205.

[FR Doc 86-26893 Filed 11-26-86; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

[Amdt. 14]

Child Care Food Program; Reviews of Sponsoring Organizations of Day Care Homes

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Child Care Food Program (CCFP) regulations to require States to conduct biennial reviews of institutions which sponsor large numbers of day care homes. The rule also reduces the number of facilities which States must review as part of the overall sponsor review of sponsors with more than 200 homes. Finally, in the interest of clarity, this rule revises and reorganizes the section of the CCFP regulations which sets out State agencies' responsibilities for monitoring institutions' performance. This regulation will enhance accountability in the CCFP.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302, (703) 756-3620. Copies of all written comments on the proposed rule are available for review during normal business hours at 3101 Park Center Drive, Room 509, Alexandria, Virginia 22302.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has been classified as not major because it will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices for Program participants, individual industries, Federal agencies, State or local government agencies or geographic regions, and will not have a significant economic impact on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

This regulation has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Pursuant to the review, the Administrator of the Food and Nutrition Service has certified that this final rule does not have a significant economic impact on a substantial number of small entities because State agencies are not "small entities" as defined under the Act.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements that are included in this final rule have been approved by the Office of Management and Budget (OMB) under clearance 0584-0055.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983)

Background

On April 15, 1986, the Department published a proposed rule at 51 FR 12711 which would modify the State agencies' review requirements with respect to sponsoring organizations of day care homes. First, the proposal would have required States to conduct biennial reviews of all sponsors which administer more than 200 day care homes. In addition, States would have been required to conduct reviews of all sponsors whenever they initially exceed the levels of 50, 200, and 1,000 homes. Moreover, to avoid an increase in States reporting burden, the Department proposed to reduce the number of homes which States are required to sample as part of a sponsor review. Finally, the Department proposed to revise and reorganize the section of the CCFP regulations specifying State agencies' review responsibilities. For a complete discussion of the Department's rationale, interested parties should consult the preamble to that proposed rule.

During the official comment period, 28 commenters responded to various aspects of the proposed rule (1 advocacy group; 19 State agencies; 5 FNS regional offices; 1 interested party). In general, commenters tended to favor the proposal, except for the provision requiring reviews within 30 days of a sponsors' move above 50, 200, or 1,000 homes. On this point, a solid majority of commenters either opposed the provision outright or recommended modifications. All comments have been considered in the development of this final regulation, and the remainder of this preamble addresses the issues raised by commenters.

Fourteen commenters approved of the proposal to require biennial reviews of sponsors with 200 or more homes. Most of these commenters were State agencies which already conduct reviews biennially. Five commenters disapproved. By and large, these latter comments objected to what they perceived would be an additional administrative burden; two of these commenters also observed that biennial organization-wide audits would tend to make more frequent administrative reviews unnecessary, while one commenter felt that States could achieve the same ends without conducting formal reviews.

The Department does not believe that more frequent reviews will duplicate the findings of audits or that informal contacts with a sponsor can substitute for a review. The Department recognizes the value of organization-wide audits; such audits, however, are concerned primarily with the sponsor's financial management system. Auditors do ensure that sponsors can document that administrative responsibilities have been fulfilled (e.g., training and monitoring) but they do not routinely visit a representative sample of homes to observe conditions on site. Reviews of individual facilities, of course, constitute an integral part of sponsors reviews. Consequently, while an audit provides a useful management tool for State agencies, it does not represent an appropriate substitute for a State agency's detailed review of the sponsor's overall operations.

For much the same reason, the Department does not believe that informal contact with a sponsor would yield results as satisfactory as those obtained through a formal review. It is only through a structured review of an adequate sample of a sponsor's facilities that the State can make a reasonable assessment of the quality of that sponsor's overall operation. The Department continues to believe, therefore, that thorough biennial reviews of larger sponsors offer the best means of ensuring accountability in this area of the CCFP.

With respect to commenters' concerns about possible burden implications for State agencies, the Department wishes to reiterate that fewer than 90 sponsors nationwide actually operate 200 or more day care homes. Consequently, States should be able to schedule biennial reviews of these sponsors within the context of the current review requirements, which mandate that one third of all institutions be reviewed every year. The Department also notes that other provisions, which are discussed below, will further reduce the likelihood of any increase in burden for State agencies. For these reasons, the Department is adopting the biennial review of day care home sponsors with more than 200 homes as proposed.

In conjunction with the proposal for biennial reviews of large sponsors, the Department also proposed to require States to conduct additional reviews whenever a sponsor initially added enough homes to move into a different tier for calculating maximum administrative reimbursement (50, 200 and 1,000 homes). States would have had to conduct these reviews within 30 days of the date that the sponsor actually moved into the higher tier. The Department believed this proposal would improve the State's oversight of growing sponsors by ensuring that these sponsors have sufficient capability to administer the CCFP before they are permitted to expand significantly.

Three commenters favored this proposal. Fourteen, hovever, opposed the provision, while another eight believed the proposal would need to be modified substantially before they could support it. Generally commenters considered the proposal to be burdensome, and several noted that such reviews may, in many cases, be redundant since sponsors may have already been reviewed recently. Others pointed out that States have no mechanism for learning of a sponsor's increase in homes within 30 days and suggested that States would encounter significant problems with scheduling these "extra" reviews.

In light of these comments, the Department has reconsidered this proposal. The Department continues to believe that sponsors should be approved for expansion only if they have administered the program properly at a lower level. The Department recognizes, however, that States have means other than reviews for making this determination in most cases. Moreover, sponsors moving above 200 or 1,000 homes would be subject to biennial reviews, thereby reducing the need for an immediate review of these sponsors. For these reasons, and because the scheduling of large numbers of extra reviews could create an additional burden for States, the Department is withdrawing the proposal for extra reviews whenever a sponsor exceeds 50, 200, or 1,000 homes.

The Department continues to be concerned, however, that some smaller sponsors, particularly those that are rapidly growing, may not always receive adequate technical assistance from State agencies. Since there can sometimes be a significant potential for program losses and abuse, regardless of a sponsor's actual size, the Department believes that additional reviews may be justified in these cases. For these reasons, the Department is presently considering the possibility of a future regulatory change to require either biennial reviews of smaller sponsors or special reviews of rapidly growing sponsors. The Department is weighing the advantages and disadvantages of additional reviews and is reviewing various methods for identifying additional sponsors whose size or rapid growth could create potential deficiencies. Following its consideration of these issues, the Department expects to issue an appropriate proposed rulemaking for public comment in the near future.

Finally, the Department proposed to reduce the number of homes which State agencies must visit as part of their

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reviews of sponsors with more than 200 homes. Instead of reviewing 10 percent of the first 1,000 homes and 5 percent of all homes over 1,000, the proposal would have required States to sample 5 percent of the first 1,000 homes and 2.5 percent of all homes over 1,000. Eleven commenters approved of the proposal; two commenters were opposed, and one commenter discussed the proposal without expressing clear cut support or opposition. The two disapproving commenters believed that the proposal could impair accountability, since a smaller selection of homes might reduce the State's ability to detect problems.

The Department agrees that a larger sample of homes will render a more complete picture of a sponsor's operations than will a smaller sample. The Department does not agree, however, that the reduction presented in the proposal will result in less effective oversight of the program. First, the number of homes selected will still be adequate to reveal the existence of widespread problems, and States may expand their samples when significant abuses are detected. Moreover, since States will be required to review larger sponsors twice as often as before (the reduction in home visits would not apply to reviews of sponsors with 200 or fewer homes), the number of homes reviewed during the four-year review cycle would remain the same. To this end, States are reminded that homes should be selected randomly except when follow up reviews of specific homes are indicated. Consequently, the Department is adopting this provision as proposed.

List of Subjects in 7 CFR Part 226

Day care, Food assistance programs, Grant programs—health, infants and children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR Part 226 is amended as follows:

PART 226—CHILD CARE FOOD PROGRAM

1. The authority citation for Part 226 continues to read as follows:

Authority: Sections 803, 810, and 820, Public Law 97–35, 95 Stat. 521–535 (42 U.S.C. 1758, 1766); Section 2, Public Law 95–627, 92 Stat. 3603 (42 U.S.C. 1766); Section 10, Public Law 89–642, 80 Stat. 889 (42 U.S.C. 1779), unless otherwise noted.

2. Section 226.6(k) is amended by removing the last three sentences, adding two new sentences to the end of the paragraph, and adding new paragraphs (k)(1) though (k)(3) to read as follows:

§ 226.6 State agency administrative responsibilities.

* * * * *

(k) *Program assistance.* * * * State agencies shall annually review 33.3 percent of all institutions. State agencies shall also ensure that each institution is reviewed according to the following schedule.

(1) Independent centers, sponsoring organizations of centers, and sponsoring organizations of day care homes with 1 to 200 homes shall be reviewed at least once every four years. Reviews of sponsoring organizations shall include reviews of 15 percent of their child care and outside-school-hours care centers and 10 percent of their day care homes.

(2) Sponsoring organizations with more than 200 homes shall be reviewed at least once every two years. Reviews of such sponsoring organizations shall include reviews of 5 percent of the first 1,000 homes and 2.5 percent of all homes in excess of 1,000.

(3) Reviews shall be conducted for newly participating sponsoring organizations with five or more child care facilities within the first 90 days of program operations.

* * * * *

Dated: November 19, 1986.

Robert E. Leard,

Administrator.

[FR Doc. 86–26814 Filed 11–26–86; 8:45 am]

BILLING CODE 3410-30-M

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7 CFR Parts 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 284 and 285

[Amdt. No. 279]

Food Stamp Program; Dependent Care Deduction

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends Food Stamp Program (FSP) regulations to implement a technical amendment provision contained in Pub. L. 99–500. In accordance with the statute, this action establishes a maximum dependent care deduction limit of $160 per month for all FSP households which incur dependent care expenses. Currently, only households which contain no elderly or disabled members are subject to the $160 a month limit. This action will result in all households being subject to the same dependent care deduction limit.

EFFECTIVE DATE: This action is effective retroactive to May 1, 1986 for households residing in States which elected to implement, prior to October 18, 1986, a dependent care deduction limit consistent with the limit required by this final action. For households residing in all other States, this action is effective on December 1, 1986.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Judith M. Seymour, Supervisor, Certification Rulemaking Section, Eligibility and Monitoring Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, VA 22302, or by telephone at (703) 756–3429.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This final action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1. The Department has classified this action as nonmajor. The annual effect of this action on the economy will be less than $100 million. This final action will have no effect on costs or prices. Competition, employment investment, productivity, and innovation will remain unaffected. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises.

Executive Order 12372

The Food Stamp Program is listed in the catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final rule and related Notice to 7 CFR 3015, Subpart V (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, Stat. 1164, September 19, 1980). Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on substantial number of small entities. State welfare agencies are affected to the extent that they must implement the provisions described in this action. Potentially eligible and currently participating households are affected to the extent that they contain elderly or disabled member and the households incur dependent care expenses. Such households in Alaska, Hawaii and Guam will realize reduced benefits. This same type of household residing in the 48 States and District of Columbia or the Virgin Islands could realize an increase in benefits under this action.

Paperwork Reduction Act

This action does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB).

Public Participation

This action is being finalized without prior notice of proposed rulemaking or public comment. The provision of this final action is mandated by Pub. L. 99-500 and is nondiscretionary in nature. Therefore, this action constitutes an interpretative rule for which notice and public comment are not required under 5 U.S.C. 553(b).

Justification for Publishing a Final Rule Effective Less Than Thirty Days From Publication

Pub. L. 99-500 mandates that the provision of this final action is effective on December 1, 1986. The statute also provides that for some States, the provision is effective retroactive to May 1, 1986. Therefore, this action is nondiscretionary and must be promulgated as quickly as possible in order to notify the public of the new rule and its statutory effective dates. Thus, publication not less than 30 days prior to the effective date is not required under 5 U.S.C. 553(d) because this is an interpretive rule and the effective dates are mandated by law.

Background

Dependent Care Income Deduction Limit

Section 638 of Pub. L. 99-500, enacted October 18, 1986, changes the dependent care deduction limit for households containing an elderly or disabled member. The statute establishes the limit at a flat rate of $160 per month, per household. In accordance with Food Stamp Act provisions in effect prior to Pub. L. 99-500, such households, effective October 1, 1986, could begin to receive a maximum monthly dependent care deduction amount of $149 in the 48 States and DC, $260 in Alaska, $213 in Hawaii, $182 in Guam and $111 in the Virgin Islands. These limits were subject to annual cost-of-living adjustments.

On December 23, 1985, Pub. L. 99-198 was enacted which contained a provision to establish a flat monthly dependent care income deduction rate of $160 per month for nonelderly/nondisabled households. This rate is not subject to annual cost-of-living adjustments. Previously the dependent care deduction limit was capped at the excess shelter expense deduction limit and subject to annual cost-of-living adjustments. While the legislative history accompanying Pub. L. 99-198 discussed application of the flat dependent care limit to all households, the language of the statute did not contain a conforming amendment to require that the $160 rate be applied to households with an elderly or disabled member. Thus, the Department published final rules on April 1, 1986 which implemented the $160 dependent care deduction limit for nonelderly/nondisabled households only. Households containing an elderly or disabled member continued to be entitled to a dependent care deduction amount capped at the excess shelter expense deduction limit and subject to annual costs-of-living adjustments.

Pub. L. 99-500 contains the necessary technical amendments to amend the language of the Food Stamp Act to provide that households containing an elderly or disabled member shall also be subject to a dependent care deduction limit of $160 per month. Therefore, effective December 1, 1986, the FSP Dependent Care Deduction Amounts for elderly/disabled households published by the Department in the **Federal Register** of October 8, 1986 (51 FR 36043) become moot and are hereby rescinded on December 1, 1986. Accordingly, this final action amends 7 CFR 273.9(d)(4) and 273.10(e)(1)(i)(E) to reflect that all households which incur dependent care expenses shall be eligible for an income deduction for such expenses up to a maximum deduction amount of $160 per month, per household.

Implementation

As explained earlier, the Department published final rules which required State agencies to implement a $160 dependent care deduction limit for nonelderly/nondisabled households on May 1, 1986 in accordance with Pub. L. 99-198. Some State agencies, expecting immediate passage of a technical amendment to apply this deduction limit to elderly/disabled households, implemented the deduction limit for elderly/disabled households prior to enactment of the technical amendment on October 18, 1986 (Pub. L. 99-500). In accordance with the technical amendment, the $160 dependent care deduction provision of Pub. L. 99-500 is effective retroactive to May 1, 1986 for State agencies which implemented the provision prior to the enactment date of Pub. L. 99-500. Accordingly, this final action amends 7 CFR 271.2(g) to provide: (1) A retroactive effective date of the deduction limit for State agencies which implemented the provision of this final action early and (2) that quality control reviewers shall not include in the error determination variances which resulted from early implementation of the provision of this final rule provided that implementation occurred during the period beginning May 1, 1986 through October 1986.

For all other State agencies, section 638 of Pub. L. 99-500 specifically provides that the $160 dependent care deduction limit for elderly/disabled households is effective thirty days after enactment of Pub. L. 99-500 (November 17, 1986) and is not applicable when determining benefit levels for any month beginning prior to that effective date. Therefore, this final action amends 7 CFR 271.2(g) to provide that State agencies which did not implement a $160 dependent care deduction limit for elderly/disabled households prior to October 18, 1986, shall implement such a deduction limit on December 1, 1986 (the first month after the effective date of Pub. L. 99-500 for which benefits are to be computed using the new cap). This final action also provides that: (1) If for any reason the State agency fails to implement the provision on the required date, affected households shall be provided lost benefits, back to December 1, 1986 and (2) State agencies shall implement the deduction provision in accordance with the mass change procedures outlined in 7 CFR 273.12(e), except that, for affected households in Alaska, Hawaii and Guam, State agencies shall send an individual notice to affected households describing the new statutory change. Although, such a notice is not required under the provisions of 7 CFR 273.12(e), the Department believes that affected households should be notified as some of the households could realize a significant reduction in benefits or termination from the Program under this statutory change. We recognize, that the immediate implementation schedule of this final action may cause some difficulties for State agencies and could result in increased error rates. Therefore, 7 CFR 271.2(g) is amended by this final action to provide that for quality control purposes only, quality control reviewers shall not include in the error determination variances which result solely from a State agency's implementation or nonimplementation of the rule for the period between December 1, 1986 and January 1, 1987.

Authority Citations

The Department is taking this opportunity to amend Title 7 of the Code of Regulation (CFR) to change the

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statutory authority references appearing after the table of contents for Parts 271 through Part 285. The Authority citations as currently referenced are misleading to users of the CFR.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs-social programs.

7 CFR Part 272

Alaska, Civil rights, Food Stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food Stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 274

Administrative practice and procedure, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting and recordkeeping requirements.

7 CFR Part 276

Administrative practice and procedure, Food stamps, Fraud, Grant programs-social programs, Penalties.

7 CFR Part 277

Food stamps, Government procurement, Grant programs-social programs, Investigations, Reporting and recordkeeping requirements.

7 CFR Part 278

Administrative practice and procedure, Banks, Banking, Claims, Food stamps, Groceries-retail, Groceries, general line-wholesaler, Penalties.

7 CFR Part 279

Administrative practice and procedure, Food stamps, Groceries-retail, Groceries, general line-wholesaler.

7 CFR Part 280

Disaster assistance, Food stamps, Grant programs-social programs.

7 CFR Part 281

Administrative practice and procedure, Food stamps, Grant programs-social programs, Indians.

7 CFR Part 282

Food stamps, Government contracts, Grant programs-social programs, Research.

7 CFR Part 284

Administrative practice and procedure, Food assistance programs, Grant programs-social programs, Health, Nutrition.

7 CFR Part 285

Administrative practice and procedure, Food assistance programs, Grant programs-social programs, Health, Nutrition.

Accordingly, 7 CFR Parts 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 284 and 285 are amended as follows:

1. The authority citation for Parts 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 284 and 285 is revised to read as follows:

Authority: 7 U.S.C. 2011–2029

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g)(81) is added to read as follows:

§ 272.1 General terms and conditions.

*   *   *   *   *

(g) *Implementation.* * * *

(81) Amendment No. 279. (i) For State agencies which elected to implement a $160 dependent care deduction limit for all households prior to October 18, 1986, the dependent care deduction provision of Amendment No. 279 is effective retroactive to May 1, 1986 in accordance with section 638 of Pub. L. 99–500. In such States, for QC purposes only, QC reviewers shall not include in the error determination variances which resulted from early implementation by these States of the deduction limit provided the implementation occurred during the period beginning May 1, 1986 through October 1986.

(ii) For all other State agencies, the $160 dependent care deduction provision of Amendment No. 279 shall be implemented for elderly and disabled applicant and participating households on December 1, 1986. State agencies shall implement the provision as a mass change in accordance with § 273.12(e), except that affected households in Alaska, Hawaii and Guam shall be issued an individual notice which, at a minimum, informs the households of the general nature of the mass change, the effect of the deduction limit on the household's allotment, and the month the change will take effect. If for any reason the State agency fails to implement the provision on the required date, affected households shall be provided restored benefits, back to December 1, 1986. For QC purposes only in such States, QC reviewers shall not include in the error determination variances which resulted solely from a State agency's implementation or nonimplementation of the deduction limit between December 1, 1986 and January 1, 1987.

PART 273—CERTIFICATION OF PARTICIPATING HOUSEHOLDS

3. In § 273.9, paragraph (d)(4) is amended by revising the second sentence and by removing the last sentence.

The revision reads as follows:

§ 273.9 Income and deductions.

*   *   *   *   *

(d) *Income deductions.* * * *

(4) * * * The maximum monthly dependent care deduction amount households shall be granted under this provision is $160 per month, per household.

*   *   *   *   *

4. In § 273.10, the first sentence of paragraph (e)(1)(i)(E) is revised to read as follows:

§ 273.10 Determining household eligibility and benefit levels.

*   *   *   *   *

(e) *Calculating net income and benefit levels.* (1) *Net monthly income.* * * *

(i) * * *

(E) Subtract monthly dependent care expenses, if any, up to a maximum amount of $160. * * *

*   *   *   *   *

Dated: November 21, 1986.

Sonia F. Crow,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 86–26714 Filed 11–26–86; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 463

[Docket No. ERA-R-79-19]

Annual Reports From States and Non-Regulated Utilities on Progress in Considering the Ratemaking and Other Regulatory Standards Under the Public Utility Regulatory Policies Act of 1978

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice and availability of Form ERA-166.

SUMMARY: Sections 116 and 309 of the Public Utility Regulatory Policies Act of 1978 (PURPA) require State regulatory authorities and certain nonregulated utilities to submit to the Department of Energy (DOE) annual reports on their progress in considering ratemaking and other regulatory standards established by Titles I and III of PURPA. Under the present DOE regulations (10 CFR Part 463), as amended, each of the reporting entities must file an annual report by February 28, 1987, covering the calendar year 1986 reporting period. All reports are to be made on Form ERA–186.

DATE: Reports are due by February 28, 1987.

ADDRESS: All completed Forms ERA–186 should be addressed to: Office of Fuels Programs, Economic Regulatory Administration, Department of Energy, Form ERA–186, Room GA–076, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Steven Mintz, Office of Fuels Programs, Economic Regulatory Administration, U.S. Department of Energy, 1000 Independence Avenue SW., Room GA–076, Washington, DC 20585, Phone (202) 252–9506.

SUPPLEMENTARY INFORMATION:

I. Background

On August 1, 1979 (44 FR 47294, August 13, 1979), DOE issued a rule (10 CFR Part 463) setting forth the manner in which State regulatory authorities and certain nonregulated gas and electric utilities are required to report on their consideration of the ratemaking and other regulatory standards established by sections 111(d), 113(b), and 303(b) of the Public Utility Regulatory Policies Act of 1978 (PURPA).

On August 4, 1982 (47 FR 33679), DOE amended Part 463 by revising § 463.3 (a) and (c). The revised rule requires the reporting entities to file their annual reports on February 28 of each year. Each annual report must cover the immediately preceding calendar year (for example, the report due on February 28, 1987, shall cover the period January 1, 1986–December 31, 1986).

II. The Report Form

The Form ERA—186 is identical to the form published on January 7, 1986 (51 FR 593) except for date changes. It was approved by the Office of Management and Budget (OMB Control Number 1903–0066), and is being sent to each electric and gas utility listed in appendices A and B of ERA Federal Register notice [Docket No. ERA–R–79–43B] which is published annually at the end of each calendar year. Copies of this form are also available upon request from this office at the address referenced in this announcement.

(Public Utility Regulatory Policies Act of 1978, Pub. L. 95–617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*); Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7101 *et seq.*)

Issued in Washington, DC, on November 24, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–26858 Filed 11–26–86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. RM 79–14]

Incremental Pricing Regulations Implementing the Incremental Pricing Provision of the Natural Gas Policy Act of 1978

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order prescribing incremental pricing thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: December 1, 1986.

FOR FURTHER INFORMATION CONTACT: Richard P. O'Neill, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, (202) 357–8500.

SUPPLEMENTARY INFORMATION: In the matter of Publication of Prescribed Incremental Pricing Acquisition Cost Threshold of the NGPA of 1978.

Issued: November 24, 1986.

Section 296 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(l) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of December, 1986 are issued by the publication of a price table for the month. The incremental pricing acquisition cost threshold prices for months prior to those reflected on the table are found in § 282.304.

The incremental pricing thresholds for December, 1986 reflect a two-month lag adjustment described in the notice of the March 1, 1986 thresholds.

List of Subjects in 18 CFR Part 282

Natural gas.

Richard P. O'Neill,

Director, Office of Pipeline and Producer Regulation.

TABLE I.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

	January	February	March	April	May	June	July	August	September	October	November	December
Calendar year 1985												
Incremental Pricing Threshold	$2.372	$2.378	$2.383	$2.388	$2.399	$2.410	$2.421	$2.427	$2.433	$2.439	$2.446	$2.453
NGPA Section 102 Threshold	3.869	3.880	3.911	3.932	3.962	3.992	4.022	4.045	4.068	4.091	4.116	4.141
NGPA Section 109 Threshold	2.452	2.457	2.462	2.467	2.476	2.489	2.500	2.506	2.512	2.516	2.525	2.532
130% of No. 2 Fuel Oil in New York City Threshold	7.170	7.310	7.090	6.980	7.210	7.120	7.400	7.000	6.520	6.630	6.940	7.140
Calendar year 1986												
Incremental Pricing Threshold	$2.460	$2.467	$2.474	$2.481	$2.487	$2.493	$2.499	$2.504	$2.509	$2.514	$2.522	$2.530
NGPA Section 102 Threshold	4.166	4.191	4.216	4.241	4.264	4.287	4.310	4.332	4.354	4.376	4.403	4.431
NGPA Section 109 Threshold	2.539	2.546	2.553	2.560	2.566	2.572	2.578	2.583	2.588	2.593	2.601	2.609
130% of No. 2 Fuel Oil in New York City Threshold	7.370	[illegible]	5.040	5.200	[illegible]	[illegible]	[illegible]	3.190	3.310	4.020	3.320	3.240

[FR Doc. 86–26820 Filed 11–26–86; 8:45 am]

BILLING CODE 6717-01-M

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 86-203]

Importations of Motor Vehicles and Boats by Employees of Public International Organizations

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by deleting the privilege previously available to members of the Secretariat of a public international organization to import into the U.S., motor vehicles, boats, or related pieces of equipment exempt from federal emission or safety standards. Currently, more than 15,000 staff personnel of such organizations are eligible to make nonconforming importations and the State Department has determined that the number of exemptions has extended well beyond the intended limits of the program.

The State Department has informed Customs that the exemptions are not required by international law and are no longer warranted. Also, continuation of the exemption program would allow the continued unjustified introduction into the U.S. of motor vehicles and boats which injure the public health and pose an unnecessary risk to the public safety.

Therefore, this document amends the regulations to remove the exemptions available to public international organization employees. In the rare instance when some international agreement might require such a privilege being granted, or to accommodate special circumstances, the regulations allow for individuals who receive special State Department designation to have the privilege of making nonconforming importations. It should also be noted that these amendments in no way prohibit an employee of a public international organization from importing a motor vehicle or boat into the U.S. under other Customs Regulations and having it modified to meet U.S. standards.

EFFECTIVE DATE: December 29, 1986.

FOR FURTHER INFORMATION CONTACT: Louis Alfano, Commercial Compliance Division (202-566-5307).

SUPPLEMENTARY INFORMATION:

Background

The Customs Service, in the discharge of its duties, is often called upon to help enforce some 400 statutory and regulatory requirements on behalf of approximately 40 other Federal agencies. Three such instances are the cooperative efforts of Customs and the Environmental Protection Agency, the National Highway Traffic Safety Administration, and the Coast Guard, respectively, in enforcing regulations pertaining to the importation of motor vehicles, motor vehicle engines, boats, and related equipment. The specific regulations involved are § 12.73, Customs Regulations (19 CFR 12.73), concerning emission standards for imported motor vehicles and engines, § 12.80, Customs Regulations (19 CFR 12.80), concerning safety standards for imported motor vehicles, and § 12.85, Customs Regulations (19 CFR 12.85), concerning safety standards for imported boats.

In all three of these regulations, there are examples of certain types of importations which will be exempted from compliance with the applicable emission or safety standard. Common to all three is the exemption available to members of the Secretariat of a public international organization. The exemptions appear at §§ 12.73(b)(5)(iv), 12.80(b)(1)(vi), and 12.85(c)(5), Customs Regulations (19 CFR 12.73(b)(5)(iv), 12.80(b)(1)(vi), and 12.85(c)(5)). More precisely, the exemption is available to a member of the Secretariat of a public international organization, so designated pursuant to the International Organizations Immunities Act (22 U.S.C. 288), on assignment in the U.S. A list of these organizations is included in § 148.87, Customs Regulations (19 CFR 148.87).

The International Organizations Immunities Act (the IOIA) was passed in 1945 to bring some standardization to the conduct of affairs with public international organizations. The U.S. had been dealing directly with other governments for a very long time, and diplomatic law was fairly well established. However, the U.S. was dealing with other countries through the medium of public international organizations with increasing frequency at this time. The IOIA was the U.S. response to the need for formal methods of dealing with public international organizations. The law was passed with the thought in mind that public international organizations, and the employees thereof, should be granted privileges and immunities similar to, but less extensive, than the privileges and immunities granted to foreign governments and diplomats. This reflected the fact that public international organizations were not foreign governments but were publc organizations oftem carrying on work or research of a governmental nature.

The use of the IOIA in the three Customs Regulations mentioned above had expanded beyond the concept of the law as passed in 1945. It was not a necessary practice to grant employees of public international organizations the right to import nonconforming motor vehicles or boats for personal use. The IOIA was intended to extend privileges and immunities only to official acts of the organization and its employees.

Accordingly, a notice proposing to remove these exemptions was published in the **Federal Register** on February 7, 1986 (51 FR 4760). In the notice it stated that the State Department had advised Customs that the current exemption program was not required by any international law and was no longer warranted. Over 15,000 staff employees of public international organizations were eligible to import nonconforming motor vehicles, motor vehicle engines, boats, and related pieces of equipment for personal use. The State Department's Office of Foreign Missions informed Customs that this number of exemptions extended well beyond the intended limits of the program. Also contributing to the proposal to eliminate the exemption program was the unnecessary harm inflicted on the U.S. environment by these nonconforming imports and the unnecessary risk they pose to the public safety. Accordingly, §§ 12.73, 12.80, and 12.85 would be amended by removing the exemption available to employees of public international organizations.

To accommodate the rare instance in which a binding international commitment requires that such an exemption be granted, or special circumstances exist, it was proposed to add language to §§ 12.73, 12.80, and 12.85, permitting the State Department to designate individuals who are not foreign government diplomatic personnel, but who are otherwise entitled to import nonconforming motor vehicles, motor vehicle engines, boats or related equipment.

The notice requested public comment on the matter.

Discussion of Comments

Six comments were received in response to the proposal, four from various representatives of the automotive industry, one from a "Legal Foundation", and one from an employee of a public international organization.

With the exception of the employee, the commenters were supportive of the amendments for a variety of reasons.

The automotive industry commenters included both domestic and foreign car dealers, and franchised as well as grey-market dealers. All agreed that the exemptions should be removed. All were concerned with the public health and safety threats associated with nonforming vehicles being allowed to operate on U.S. highways. The franchised dealers of foreign-made vehicles asserted that servicing of nonconforming vehicles is difficult and can damage the reputations of the vehicles they sell and service. Representatives of the grey-market vehicle modifiers and testers expressed concerns that exempt nonconforming vehicles would be sold in the U.S. and confused with those which had been modified by their members after importation, damaging the reputation of their industry.

The public international organization employee commented that the exemptions should be retained since he believed that far fewer than the 15,000 employees eligible for the exemption actually use it, and therefore it was not a major problem. Customs is of the opinion that the administrative problems experienced by the State Department and the health and safety problems recognized by EPA, NHTSA, and the Coast Guard are very real now, and could only be exacerbated if the exemptions were retained and at some point in the future were used by all eligible employees.

After careful analysis of the comments received, and further consideration of the matter, it has been determined to adopt the amendments as proposed. It should be noted that these amendments in no way prohibit an employee of a public international organization from importing a motor vehicle or boat into the U.S. under other Customs Regulations and having it modified to meet U.S. standards (see § 12.73(b)(5)(x), Customs Regulations (19 CFR 12.73(b)(5)(x)), for example).

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is certified that the regulations set forth in this document will not have significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was John Doyle, Regulations Control Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 12

Air pollution control, Marine safety, Motor vehicle pollution, Motor vehicle safety, Motor vehicles.

Amendments to the Regulations

Part 12, Customs Regulations (19 CFR Part 12), is amended as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for Part 12 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11, Tariff Schedules of the United States), 1624. Section 12.73 also issued under 19 U.S.C. 1484; 42 U.S.C. 7522, 7601; section 12.85 also issued under 19 U.S.C. 1623; 46 U.S.C. 4302, 4306, 4310.

2. Section 12.73(b)(5)(iv) is revised to read as follows:

§ 12.73 Federal motor vehicle air pollution control.

* * * * *

(b) * * *

(5) * * *

(iv) Such motor vehicle or motor vehicle engine is not covered by a certificate of conformity with Federal motor vehicle emission standards, and the importer or consignee is a member of the armed forces of a foreign country on assignment in the U.S. or is a member of the personnel of a foreign government on assignment in the U.S. or other individual who comes within the class of persons for whom free entry of motor vehicles has been authorized by the Department of State in accordance with general principles of international law and that such vehicle or engine will not be sold in the U.S.; or

* * * * *

3. Section 12.80(b)(1)(vi) is revised to read as follows:

§ 12.80 Federal motor vehicle safety standards.

* * * * *

(b) * * *

(1) * * *

(vi) The importer or consignee is a member of the armed forces of a foreign country on assignment in the U.S. or is a member of the personnel of a foreign government on assignment in the U.S. or other individual who is within the class of persons for whom free entry of vehicles has been authorized by the Department of State in accordance with general principles of international law, is importing the vehicle or equipment item for purposes other than resale; and a copy of his official orders, if any, is attached to the declaration (or, if a qualifying member of the personnel of a foreign government on assignment in the U.S., the name of the Embassy to which he is accredited is stated on the declaration).

* * * * *

4. Section 12.85(c)(5) is revised to read as follows:

§ 12.85 Coast Guard boat and associated equipment safety standards.

* * * * *

(c) * * *

(5) *Products owned by certain foreign governments.* In the case of an importer or consignee employed in one of the capacities set forth in this subparagraph, a declaration will be filed in accordance with paragraph (d) of this section. The declaration shall state that the importer or consignee is either a member of the armed forces of a foreign country on assignment in the U.S. or is a member of the personnel of a foreign government on assignment in the U.S. or other individual who comes within the class of persons for whom free entry of boats has been authorized by the Department of State in accordance with general principles of international law, and that he is importing the product for purposes other than resale.

* * * * *

William von Raab,
Commissioner of Customs.

Approved:

Francis A. Keating, II,
Assistant Secretary of the Treasury.

November 12, 1986

[FR Doc. 86-26760 Filed 11-26-86; 8:45 am]

BILLING CODE 4820-02-M

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19 CFR Parts 113 and 141

[T.D. 86-204]

Customs Regulations Amendments Relating to Bonds and Powers of Attorney

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

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SUMMARY: This document amends the Customs Regulations to clarify that bonds submitted by limited partnerships need only have the firm name and the names of the general partners authorized to bind the firm placed on the bonds. Also, the regulations are being clarified to provide that limited partnerships need only name the general partners who have authority to bind the firm, on a power of attorney, unless the partnership agreement provides otherwise. These amendments are necessary inasmuch as the existing regulations only treat the subject of partnerships generally and do not differentiate between the ordinary partnership and a limited partnership.

EFFECTIVE DATE: November 28, 1986.

FOR FURTHER INFORMATION CONTACT: Jerry C. Laderberg, Entry Procedures and Penalties Division (202-566-5765).

SUPPLEMENTARY INFORMATION:

Background

Section 113.32(a), Customs Regulations (19 CFR 113.32(a)), provides that unless written notice of the full names of all partners in the firm has been previously filed with the district director or regional commissioner (of Customs) in the case of a bond relating to repayment of erroneous drawback payment, the names of all persons composing the partnership shall appear in the body of the bond. Section 141.39(a), Customs Regulations (19 CFR 141.39(a)), similarly provides for the names of all members of a partnership on a power of attorney granted by a partnership. The rationale for the naming of the partners on the bond, as noted in § 113.32(c), is that when a bond is executed by any member of the partnership, it shall be binding on the other partners in like manner and to the same extent as if such other partners had personally joined in the execution, pursuant to section 495, Tariff Act of 1930, as amended (19 U.S.C. 1495).

These requirements make no distinction between an ordinary partnership and a limited partnership. In the ordinary partnership, all the partners are personally liable for the debts of the partnership and are bound by the actions of each other.

In a limited partnership, the limited partners are liable for the debts of the partnership only in an amount not exceeding their investment in the partnership. Also, they are not bound by the actions of any other partner in the firm, except as provided for in the partnership agreement. The general partners in a limited partnership, however, usually have the same liabilities as the general partners in the ordinary partnership.

In return for the limited liability of the limited partner, his activities in the partnership are restricted. In fact, his name may not even appear in the business name of the partnership. Because of the extensive responsibility of the general partner, however, it is necessary for his name to be included in all documents of the partnership, as well as on bonds and powers of attorney.

Action

Because of the substantially different liabilities of limited partners, Customs believes that the regulations concerning the naming of all partners on bonds and powers of attorney should be amended to require, with respect to limited partnerships, only the name of the firm and the names of the general partners who have authority to bind the partnership on the bond or power of attorney (unless the partnership agreement provides otherwise with respect to a power of attorney), and to exempt the limited partners from being bound by the actions of other partners in the firm, except as provided for in the partnership agreement. Also, a copy of this agreement will be required to be submitted with each bond executed by the partnership, or each power of attorney submitted by it.

Accordingly, § 113.32 (a) and (c), and § 141.39(a), Customs Regulations, are amended to reflect these changes.

The amendments are in conformity with existing Customs policy which requires only the names of the general partners in a limited partnership who have authority to bind the firm, on a Customs bond or power of attorney. This policy was expressed in a Customs Headquarters ruling dated February 15, 1985 (723977JLF).

Inapplicability of Public Notice and Delayed Effective Date Provisions

Inasmuch as these amendments merely clarify existing regulations, pursuant to 5 U.S.C. 553(b)(B) and (d)(3), notice and solicitation of comments is unnecessary and good cause is found for dispensing with a delayed effective date for adoption of the amendments.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

This document is not subject to the provisions of the "Regulatory Flexibility Act" (5 U.S.C. 601 et seq.). That Act does not apply to any regulation, such as this, for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 et seq.) or any other statute.

Drafting Information

The principal author of this document was Susan Terranova, Regulations Control Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Parts 113 and 141

Customs duties and inspection, Customs bonds and principals, Powers of attorney.

Amendments to the Regulations

Parts 113 and 141, Customs Regulations (19 CFR Parts 113, 141), are amended as set forth below.

PART 113—CUSTOMS BONDS

1. The authority citation for Part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624. Subpart E also issued under 19 U.S.C. 1484.

2. Section 113.32 is amended by revising paragraphs (a) and (c) to read as follows:

§ 113.32 Partnerships as principals.

(a) *Names of partners on the bond*—(1) *In general.* Unless written notice of the full names of all partners in the partnership has been previously filed with the district director, or regional commissioner in the case of a bond relating to repayment of erroneous drawback payment, the names of all persons composing the partnership shall appear in the body of the bonds.

(2) *Limited partnerships.* Bonds submitted by limited partnerships need only have the firm name and the names of the general partners authorized to bind the firm on them. The bond must be accompanied by a copy of the partnership agreement. For this purpose, a partnership or a limited partnership means any business association recognized as such under the laws of the state where the association is organized.

* * * * *

(c) *Action of one principal binding on all principals of the partnership.* Pursuant to section 495, Tariff Act of 1930, as amended (19 U.S.C. 1495), when a bond is executed by any member of the partnership, the bond shall be binding on the other partners in like manner and to the same extent as if such other partners had personally joined in the execution. However, in the case of a limited partnership, the limited partners will not be bound by the actions of any other partner in the firm, except as provided for in the partnership agreement.

PART 141—ENTRY OF MERCHANDISE

1. The authority citation for Part 141 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624. Subpart G also issued under 19 U.S.C. 1505.

2. Section 141.39(a) is revised to read as follows:

§ 141.39 Partnerships.

(a)(1) *General.* A power of attorney granted by a partnership shall state the names of all members of the partnership. One member of the partnership may execute a power of attorney in the name of the partnership for the transaction of all its Customs business.

(2) *Limited partnership.* A power of attorney granted by a limited partnership need only state the names of the general partners who have authority to bind the firm unless the partnership agreement provides otherwise. A copy of the partnership agreement must accompany the power of attorney. For this purpose, a partnership or limited partnership means any business association recognized as such under the laws of the state where the association is organized.

* * * * *

Alfred R. De Angelus,

Acting Commissioner of Customs.

Approved:

Francis A. Keating, II,

Assistant Secretary of the Treasury.

November 10, 1986.

[FR Doc. 86-26761 Filed 11-26-86; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 83F-0035]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Aspartame

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of aspartame in noncarbonated frozen or refrigerated, concentrated and single-strength fruit juices, fruit drinks, fruit flavored drinks and ades, and imitation fruit flavored drinks and ades, and also in frozen stick-type confections and novelties. This action responds to petitions filed by the Coca-Cola Co., Division of Foods, and Tropicana Products, Inc.

DATES: Effective November 28, 1986; objections by December 29, 1986.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Carl L. Giannetta, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 18, 1983 (48 FR 11513), FDA announced that a food additive petition (FAP 3A3694) had been filed by the Coca-Cola Co., Division of Foods, P.O. Box 2079, Houston, TX 77001, proposing that § 172.804 *Aspartame* (21 CFR 172.804) be amended to provide for the safe use of aspartame (1-methyl *N-L-alpha*-aspartyl-*L*-phenylalanine) as a sweetener in frozen concentrated and single-strength beverages, the latter being shipped, stored, and sold refrigerated; and that a food additive petition (FAP 3A3695) had been filed by Tropicana Products, Inc., P.O. Box 338, Bradenton, FL 33560, also proposing that § 172.804 be amended to provide for the safe use of aspartame as a sweetener in refrigerated single-strength nonstandardized dilute fruit juice beverages, frozen concentrated nonstandardized fruit juice containing beverages, and frozen fruit juice containing confections.

The agency received a citizen's petition (FAP 6CP3956) (dated July 17, 1986) from James S. Turner and Diane T. Dean, consumer attorneys, on behalf of the Community Nutrition Institute (CNI). The petition requested: reconsideration and repeal of 21 CFR 172.804 (c) and (d); and convening of a public hearing to receive and consider the evidence supporting these requests. The petition alleged that current food use of aspartame presents an imminent health hazard and fails to meet the legal safety standard. On October 23, 1986, CNI amended its petition. The petition further contends that new evidence (eye damage) shows that aspartame creates an imminent health hazard to the American consumer and that new evidence shows that aspartame is not shown to be safe. By letter dated November 21, 1986, the agency denied the petition (This document is incorporated by reference and is on public display at the agency's Dockets Management Branch.)

One comment was received in response to the filing of the Tropicana petition. General Foods Corp. requested that the use of aspartame in frozen confections not be restricted to those confections containing fruit juice so that "any regulation which issues with respect to FAP 3A3695 include the use of APM [aspartame] in frozen novelties (e.g., gelatin pops) as well as in frozen fruit juice containing confections." The agency has considered this comment in evaluating the Tropicana petition and agrees that restricting the use of aspartame to juice-containing confections does not appear to be necessary. However, the frozen confection and novelties covered by this regulation are only those sold ready-to-eat on a stick.

In determining whether the proposed use of aspartame is safe, FDA has considered whether the estimated daily intake of the additive by the 90th percentile consumer will be less than the acceptable daily intake established by the agency. In the final regulation approving the use of aspartame in carbonated beverages (48 FR 31376; July 8, 1983), the agency established an acceptable daily intake of 50 milligrams per kilogram of body weight for aspartame. The agency determines the estimated daily intake for various age groups by making conservative projections based on data about particular food consumption levels and the amount of additive proposed for use in the particular food.

The agency concludes that consumption of aspartame will be well below the acceptable daily intake and that the proposed new uses will be safe. Therefore, the agency concludes that the regulation should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any material that are note available for public disclosure before making the documents available for inspection.

The agency commonly uses the estimated daily intake for the 90th percentile consumer of a food additive as a measure of high chronic exposure

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because that level of consumption is significantly above the intake of the average consumer and provides an added conservatism with respect to the acceptable daily intake for those individuals who regularly consume food containing the additive. Because of initial concerns about the potential consumer overexposure to one or a few types of products containing an artificial sweetener, the FDA Commissioner previously elected to be as cautious as possible and rely upon an even more conservative measure of potential aspartame consumption, the 99th percentile eater, in assessing the safety of aspartame for use in carbonated beverages.

However, as the number of uses of aspartame increases, the probability that a single individual will be a 99th percentile consumer for all uses diminishes significantly. For this reason, the increased number of uses of aspartame in food has made the use of the cumulative 99th percentile estimated daily intake an unrealistic measure of chronic exposure to aspartame. Under these circumstances, the use of the cumulative 90th percentile estimated daily intake is more realistic and more in accord with the agency's customary conservative way of calculating chronic exposure to food additives. Accordingly, the agency is no longer relying upon the cumulative 99th percentile estimated daily intake in evaluating the safety of aspartame.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Under FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25), an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

Any person who will be adversely affected by this regulation may at any time on or before December 29, 1986, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 349); 21 CFR 5.10, 5.61.

2. In § 172.804 by adding new paragraphs (c)(8) and (c)(9) to read as follows:

§ 172.804 Aspartame.

* * * * *

(c) * * *

(8) Noncarbonated, refrigerated single-strength and frozen concentrates of the following beverages:

(i) Fruit juice based drinks (where food standards do not preclude such use).

(ii) Fruit flavored drinks and ades.

(iii) Imitation fruit flavored drinks and ades.

(9) Frozen stick-type confections and novelties.

* * * * *

Dated: November 24, 1986

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86–26850 Filed 11–25–86; 10:29 am]

BILLING CODE 4160-01-M

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21 CFR Part 172

[Docket No. 84F–0137]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Aspartame

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of aspartame in breath mints. This action responds to a petition filed by the Shaklee Corp.

DATES: Effective November 28, 1986; objections by December 29, 1986.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Carl L. Giannetta, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 18, 1984 (49 FR 21118), FDA announced that food additive petition FAP 4A3766 had been filed by the Shaklee Corp., Shaklee Terraces, 444 Market St., San Francisco, CA 94111, proposing that § 172.804 *Aspartame* (21 CFR 172.804) be amended to provide for the safe use of aspartame (1-methyl *N-L-alpha*-aspartyl-*L*-phenylalanine) as a sweetener in natural flavor products sold exclusively as breath mints.

The agency received a citizen's petition (FAP 6CP3956) (dated July 17, 1986) from James S. Turner and Diane T. Dean, consumer attorneys, on behalf of the Community Nutrition Institute (CNI). The petition requested: reconsideration and repeal of 21 CFR 172.804 (c) and (d); and convening of a public hearing to receive and consider the evidence supporting these requests. The petition alleged that currrent food use of aspartame presents an imminent health hazard and fails to meet the legal safety standard. On October 23, 1986, CNI amended its petition. The petition further contends that new evidence (eye damage) shows that aspartame creates an imminent health hazard to the American consumer and that new evidence shows that aspartame is not shown to be safe. By letter dated November 21, 1986, the agency denied the petition. (This document is incorporated by reference and is on public display at the agency's Docket Management Branch.)

In determining whether the proposed use of aspartame is safe, FDA has considered whether the estimated daily intake of the additive by the 90th percentile consumer will be less than the acceptable daily intake established by the agency. In the final regulation approving the use of aspartame in carbonated beverages (48 FR 31376; July 8, 1983) the agency established an acceptable daily intake of 50 milligrams/kilogram of body weight for aspartame. The agency determines the estimated daily intake for various age groups by making conservative projections based on data about particular food consumption levels and the amount of additive proposed for use in the particular food.

The agency commonly uses the estimated daily intake for the 90th percentile consumer of a food additive as a measure of high chronic exposure because that level of consumption is significantly above the intake of the average consumer and provides an added conservatism with respect to the acceptable daily intake for those individuals who regularly consume food containing the additive. Because of initial concerns about the potential consumer overexposure to one or a few types of products containing an artificial sweetener, the FDA Commissioner previously elected to be as cautious as possible and rely upon an even more conservative measure of potential aspartame consumption, the 99th percentile eater, in assessing the safety of aspartame for use in carbonated beverages.

However, as the number of uses of aspartame increases, the probability that a single individual will be a 99th percentile consumer for all uses diminishes significantly.

For this reason, the increased number of uses of aspartame in food has made the use of the cumulative 99th percentile estimated daily intake an unrealistic measure of chronic exposure to aspartame. Under these circumstances, the use of the cumulative 90th percentile estimated daily intake is more realistic and more in accord with the agency's customary conservative way of calculating chronic exposure to food additives. Accordingly, the agency is no longer relying upon the cumulative 99th percentile estimated daily intake in evaluating the safety of aspartame.

The agency concludes that consumption will be well below the acceptable daily intake and that the proposed new use will be safe. Therefore, the agency concludes that the regulation should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the Notice of Filing for FAP 4A3766 (May 18, 1984; 49 FR 21118). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

Any person who will be adversely affected by this regulation may at any time on or before December 29, 1986, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularly the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10.

2. In § 172.804 by adding new paragraph (c)(10) to read as follows:

§ 172.804 Aspartame.

* * * * *

(c) * * *

(10) Breath mints.

* * * * *

Dated: November 24, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86–26860 Filed 11–25–86; 10:29 am]

BILLING CODE 4160-01-M

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21 CFR Part 172

[Docket No. 84F–0137]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Aspartame

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of aspartame in noncarbonated, chilled iced tea beverages. This action responds to a petition filed by Thomas J. Lipton, Inc.

DATES: Effective November 28, 1986; objections by December 29, 1986.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Carl L. Giannetta, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 18, 1984 (49 FR 21118), FDA announced that food additive petition FAP 4A3769 had been filed by Thomas J. Lipton, Inc., 800 Sylvan Ave., Englewood Cliffs, NJ 07632, proposing that § 172.804

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Aspartame (21 CFR 172.804) be amended to provide for the safe use of aspartame (1-methyl *N-L-alpha*-aspartyl-*L*-phenylalanine) as a sweetener in noncarbonated, chilled, ready-to-drink iced tea beverages.

The agency received a citizen's petition (FAP 6CP3956) (dated July 17, 1986) from James S. Turner and Diane T. Dean, consumer attorneys, on behalf of the Community Nutrition Institute (CNI). The petition requested: administrative reconsideration and repeal of 21 CFR 172.804(c) and (d); and convening of a public hearing to receive and consider the evidence supporting these requests.

The petition alleged that current food use of aspartame presents an imminent health hazard and fails to meet the legal safety standard. On October 23, 1986, CNI amended its petition. The petition further contends that new evidence (eye damage) shows that aspartame creates an imminent health hazard to the American consumer and that new evidence shows that aspartame is not shown to be safe. By letter dated November 21, 1986, the agency denied the petition. (This document is incorporated by reference and is on public display at the agency's Dockets Management Branch.)

In determining whether the proposed use of aspartame is safe, FDA has considered whether the estimated daily intake of the additive by the 90th percentile consumer will be less than the acceptable daily intake established by the agency. In the final regulation approving the use of aspartame in carbonated beverages (48 FR 31376; July 8, 1983), the agency established an acceptable daily intake of 50 milligrams per kilogram of body weight for aspartame. The agency determines the estimated daily intake for various age groups by making conservative projections based on data about particular food consumption levels and the amount of additive proposed for use in the particular food.

The agency commonly uses the estimated daily intake for the 90th percentile consumer of a food additive as a measure of high chronic exposure because that level of consumption is significantly above the intake of the average consumer and provides an added conservatism with respect to the acceptable daily intake for those individuals who regularly consume food containing the additive. Because of initial concerns about the potential consumer overexposure to one or a few types of products containing an artificial sweetener, the FDA Commission previously elected to be as cautious as possible and rely upon an even more conservative measure of potential aspartame consumption, the 99th percentile eater, in assessing the safety of aspartame for use in carbonated beverages.

However, as the number of uses of aspartame increases, the probability that a single individual will be a 99th percentile consumer for all uses diminishes significantly. For this reason, the increased number of uses of aspartame in food has made the use of the cumulative 99th percentile estimated daily intake an unrealistic measure of chronic exposure to aspartame. Under these circumstances, the use of the cumulative 90th percentile estimated daily intake is more realistic and more in accord with the agency's customary conservative way of calculating chronic exposure to food additives. Accordingly, the agency is no longer relying upon the cumulative 99th percentile estimated daily intake in evaluating the safety of aspartame.

The agency concludes that consumption of aspartame will be well below the acceptable daily intake and that the proposed new use will be safe. In order to simplify the regulation, the agency has editorially incorporated all approved uses of aspartame in tea into one paragraph. Therefore, the agency concludes that the regulation should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Under FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25), an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

Any person who will be adversely affected by this regulation may at any time on or before December 29, 1986, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any paticular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10.

2. In § 172.804 by removing "and tea" from paragraph (c)(5)(ii) and by adding new paragraph (c)(11) to read as follows:

§ 172.804 Aspartame.

* * * * *

(c) * * *

(11) Tea beverages to include ready-to-serve, liquid concentrates, and dry bases.

* * * * *

Dated: November 24, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-26881 Filed 11-25-86; 10:29 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6631

[AA-320-06-4220-10; OR-11331(WASH)]

Washington; Withdrawal of Public Land for Split Rock Recreation Site

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order closes 24.65 acres of public land to surface entry and mining for a period of 20 years to protect the Bureau of Land Management's Split Rock Recreation Site. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: November 28, 1986.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land, which is under the jurisdiction of the Secretary of the Interior, is hereby withdrawn from settlement, sale, location, and entry, under the general land laws, including the the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws, and reserved for use as a Bureau of Land Management recreation site:

Willamette Meridian

Split Rock Recreation Site

T. 30 N., R. 26 E.,
  Sec. 18, lot 7.

The area described contains 24.65 acres in Okanogan County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. The withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

J. Steven Griles,

Assistant Secretary of the Interior.

November 17, 1986.

[FR Doc. 86-26716 Filed 11-26-86; 8:45 am]

BILLING CODE 4310-84-M

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43 CFR Public Land Order 6632

[OR-940-07-4220-10; OR-30420 (WASH)]

Washington; Withdrawal of Mineral Estate for Protection of the Department of Energy Hanford Site

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 1,000.75 acres of mineral estate from mining for 20 years to protect the Hanford Site. The lands have been and remain open to mineral leasing. The surface estate is acquired and not subject to the public land laws.

EFFECTIVE DATE: November 28, 1986.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described lands are hereby withdrawn from location under the United States mining laws (30 U.S.C. Ch. 2), but not from applications and offers under the mineral leasing laws to protect portions of the existing U.S. Department of Energy's Hanford Site:

Willamette Meridian

T. 11 N., R. 24 E.,
  Sec. 14 NE¼ and NE¼SE¼.
T. 12 N., R. 24 E.,
  Sec. 12, E½ and NW¼.
T. 13 N., R. 25 E.,
  Sec. 28, lots 1 and 2, and E½NW¼.
T. 14 N., R. 25 E.,
  Sec. 22, NE¼.

The areas described aggregate 1,000.75 in Benton and Grant Counties.

2. The lands described in paragraph 1, which are already part of the Hanford Site, are not subject to operation of the general land laws because the surface estate has been acquired by the United States.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date, pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

J. Steven Griles,

Assistant Secretary of the Interior.

November 17, 1986.

[FR Doc. 86-26717 Filed 11-26-86; 8:45 am]

BILLING CODE 4310-33-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 281

[Docket No. R-100]

Subsidized Vessels and Operations; Non-Subsidized Voyages Restrictions Elimination

AGENCY: Maritime Administration, DOT.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD) hereby amends 46 CFR Part 281 by revoking §§ 281.11 through 281.17, "Non-Subsidized Voyages." These regulations govern procedures for approving non-subsidized voyages by a subsidized liner operator or by a related company. Revocation of these regulations will allow greater operating flexibility for the subsidized liner operator and will result in savings in subsidy costs to the government at no additional subsidy cost to the government.

EFFECTIVE DATE: December 29, 1986.

FOR FURTHER INFORMATION CONTACT: Edmond J. Fitzgerald, Director, Office of Trade Studies and Subsidy Contracts, Maritime Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, Tel. (202) 366-2400.

SUPPLEMENTARY INFORMATION:

Background

On *October 7, 1985*, MARAD published a notice of proposed rulemaking (NPRM) in the Federal Register proposing to rescind §§ 281.11 through 281.17 of Title 46 of the Code of Federal Regulations, which govern procedures for approving nonsubsidized voyages by a subsidized liner operator or by a related company (50 FR 40876). The 45 day comment period was extended 15 days at the request of several commenters (50 FR 48616, Nov. 26, 1985). The existing regulations require that a subsidized operator obtain approval by MARAD before it or a related company undertakes a non-

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subsidized voyage. MARAD requires a detailed application describing the service, the cargo to be carried, proposed sailing schedules and financial results.

The criteria for approval by MARAD are two-fold: service, i.e., that there is a need for the voyage and that such voyage would have no adverse impact on the applicant's regular sailings; and financial results, i.e., that there is an expectation of reasonable profit (46 CFR 281.15). If the proposed voyage is to be made on a route served by U.S.-flag berth operators on which the subsidized operator does not maintain a berth operation, the subsidized operator is required to obtain the consent of competing U.S.-flag berth operators (except as otherwise determined by the Maritime Administrator (46 CFR 281.11(d)). The term "U.S.-flag berth operator," as used in the existing regulations, refers to a subsidized or non-subsidized operator rendering on the given route an exclusively U.S.-flag service, maintaining a definite advertised schedule, and offering relatively frequent sailings in the area on which the subsidized operator has filed an application. Generally, the test as to whether competition exists between the proposed non-subsidized voyage and voyages of other U.S.-flag berth operators is whether the proposed non-subsidized voyage will provide a service of the type that would be competitive under the considerations of section 605(c) of the Merchant Marine Act, 1936, as amended (Act) (46 CFR 281.11(g)).

The existing regulations provide for a number of exceptions and differing treatment for different types of operations. Operations specifically authorized by operating-differential subsidy (ODS) contracts are altogether outside the purview of the rule. For example, United States Lines, Inc., Waterman Steamship Co., Lykes Bros. Steamship Co., Inc., and Delta Steamship Lines, Inc., have such contractual authority to conduct certain non-subsidized voyages.[1] However, only United States Lines, Inc., has taken advantage of its contractual authority. Lykes has not deployed its six new containerships (which are authorized to operate on a non-subsidized basis through its contract amendment) due to depressed market rates in the transpacific trades. Considering that Lykes is trying to sell those containerships, it is unlikely that it will conduct non-subsidized operations in those trades. Waterman conducted 20 non-subsidized voyages on trade routes 5, 7, 8, 9 from 1979–1981, ranging from 2 to 17 days in length. Delta conducted several non-subsidized voyages in 1983. United States Lines, Inc. has been conducting non-subsidized round the world (RTW) voyages since 1985 pursuant to its contractual authority, and now conducts weekly RTW sailings. The impact of this service was considered by the Maritime Subsidy Board (MSB) in MA/MSB Docket S–774 (January 31, 1986). In that Docket the MSB found that "the impact of USL's proposed services on U.S.-flag competitors will either be minimal or those competitors failed to carry their burden of proof that grant of USL's application would have a significant adverse impact." Docket S–774, p. 58.

Another exception to the existing regulations was made several years ago. On September 19, 1981, the Maritime Administrator made an exception to the requirements of the regulations, pursuant to § 281.11(d) of the regulations, determining that a subsidized operator may make a non-subsidized voyage without consent of competing U.S.-flag berth operators in two situations: (1) Where the operator is carrying a full shipload of bulk or bagged agricultural commodities or fertilizers subject to the cargo preference laws of the United States; or (2) where the operator is carrying any full cargo of other commodities on a route when there is only a single shipper (i.e., shipping company), and the vessel is not operated as a common carrier. The Maritime Administrator also determined that MARAD would continue to require prior approval (for (1) and (2) above) if a subsidized vessel is used for the voyage. If the voyage is made by a non-subsidized vessel, MARAD's approval is not needed.

Purpose of the Existing Regulations

Prior to the promulgation of the existing rule in 1957, MARAD considered applications for individual non-subsidized voyages by subsidized operators on the basis of the merits of each application. At that time, each ODS contract contained a provision (Article 11–16) requiring express approval from MARAD for subsidized operators to operate non-subsidized vessels in competition with any other service route or line. Article 11–16 of each ODS contract also specified that subsidized operators seeking to conduct non-subsidized voyages had to comply with such regulations that the agency might adopt. With the increase of Article 11–16 applications during the 1950's, MARAD was prompted to promulgate regulations to assure "uniform and equitable administration of this competition clause of the contracts."

The main statutory authority for the regulations was section 606 of the Act (46 U.S.C. 1176). Section 606 governs the review and readjustment of ODS payments. Prior to 1970, section 606(5) provided for recapture of certain profits with respect to capital investment necessarily employed in the service or route, *see, e.g., Pacific Far East Line, Inc.,* v. *United States*, 394 F.2d 990, 993 (Ct. Cl. 1963), and section 606(6) required subsidized operation to be conducted in "the most economical and efficient manner." 49 Stat. 20004. In the 1970 amendments to the Act, Pub. L. 91–469, the recapture provision was dropped, hence, rendering the recapture features of the regulations superfluous.

The intent of the regulations is reflected in § 281.15, which delineates the standards for the Maritime Administrator to apply in approving applications for non-subsidized voyages. The Administrator is authorized to approve applications demonstrating that a "definite need" exists for the non-subsidized service, that such service will not adversely affect the applicant's regular sailings, and that each voyage is expected to yield a profit. General statutory authority for this provision was in section 606(5) of the Act. Competitive impact is not established as a predominant factor. However, generally allowing competitors to oppose a subsidized operator's application to enter the competitor's route on a non-subsidized basis effectively assures that consideration of competitive impact will be a factor in the disposition of applications.

In a 1981 **Federal Register** publication, MARAD explained that the purpose of promulgating §§ 281.11 to 281.17 was "to ensure that the continuity and quality of subsidized operators will not be adversely affected, . . . to safeguard against improper competitive practices[,] and to prevent operators prejudicial to the purposes and policy of the Act," (46 FR 48198, October 1, 1981). This purpose is consistent with MARAD's general concern with the efficiency of subsidized operators. However, MARAD noted that the regulations might be changed in the future.

For several years MARAD has intended to revise its regulation on unsubsidized deviations and voyages by subsidized operators, now set out at 46 CFR Part 281, and has so advised the public. *See e.g.*, 47 48877, October 28, 1982; 50 FR 17611, 17613, April 29, 1985. The rule has given rise to administrative and judicial disputes since at least 1979. See *Sea-Land Services, Inc.* v. *Dole*, 723 F.2d 975 (D.C. Cir. 1983), *cert. denied*, 105 S. Ct. 103 (1983). More recently, a district court decision in *Farrell Lines, Inc.* v. *Dole*, 619 F. Supp. 298 (D.D.C. 1985), focused on the requirements of the rule, among other things, and remanded certain matters to the agency for entry of a new decision. The agency rendered a new decision on remand in Docket No. S–774, on January 31, 1986.

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[1] United States Lines, Inc. contract no. MA/MSB–483, as amended and restated; Waterman Steamship Co., contract no. MA/MSB–450, as amended and restated; Lykes Bros. Steamship Lines, contract no. MA/MSB–451, as amended and restated; Delta Steamship Lines, Inc., contract no. MA/MSB–425, as amended and restated.

The Proposed Rule; Reasons for Rescinding the Existing Regulations

In the NPRM, MARAD cited several reasons for rescinding the existing regulations. First, MARAD noted the need for revision of the rule to account for the repeal of recapture (former section 606(5)) provisions of the Act. Second, MARAD reasoned that rescission of the regulations would give U.S.-flag subsidized operators greater operating flexibility, and consequently, encourage their competitiveness with foreign-flag operators. In addition, the government would realize budgetary savings as operators made the transition from subsidized to non-subsidized operations. Finally, MARAD stated its belief that rescission would encourage subsidized operators to make the transition completly to non-subsidized operations, once operators established themselves in the non-subsidized service.

In the NPRM and accompanying regulatory evaluation, MARAD considered the factors of competitive impact, adequacy of service, and financial soundness of subsidized operators. Since several commenters raised these issues in commenting on the NPRM, MARAD will address them more fully in the sections responding to comments below:

The Final Rule

The final rule is based on the same rationale as the NPRM (see above). A revised regulatory evaluation was prepared in response to some commenters who raised concerns about certain data in the draft regulatory evaluation.

MARAD has expanded on the main reason underlying this rulemaking given in the NPRM: that revocation will provide greater operating flexibility. The elimination of funding for construction-differential subsidy (CDS) and ban on expansion of ODS liability (see final regulatory evaluation) further supports the rationale that subsidized operators need more operating flexibility to develop their non-subsidized services and modernize their fleets.

For the reasons stated below and in the final regulatory evaluation, MARAD has decided, after consideration of all comments, to rescind the existing regulations in this final rule. Since 1970, the liner shiping environment and the U.S.-flag subsidized operators' role in that environment have changed dramatically. Rescission of the existing regulations is based on these changes, which includes:

Elimination of the recapture provisions (section 606(5)) of the Act

The recapture provisions of the Act (the statutory basis for the existing regulations) authorized MARAD to recover excess profits (greater than 10 percent of the capital employed) of subsidized services. Thus, the existing regulations required that subsidized operators show that their unsubsidized services would not dilute their profits and the consequent return to the government. Despite elimination of section 606(5) in 1970, the existing regulations have been retained to protect U.S.-flag operators from potential improper competitive impacts of non-subsidized services by subsidized operators, to protect applicants' subsidized operations, and to prevent operations prejudicial to the Act (*see* discussion of existing regulations, above, and 46 FR 48196, October 1, 1981). However, the above reason for retaining the regulations no longer exist. Existing enforcement provisions in operators' ODS contracts, as well as Title XI documents, operate to assure the quality of subsidized services. The issues of improper competitive impact and operations prejudicial to the Act are addressed in the responses to comments below:

Decline in U.S.-flag share of U.S. liner trade

The U.S.-flag share of U.S. liner trade fell sharply from 27 percent in 1981 to 20.6 percent in 1985, reflecting primarily a decline in subsidized services. Total U.S.-flag subsidized sailing dropped from 731 in 1982 to 575 in 1985. Rescission of the existing regulations would allow U.S.-flag subsidized operators the opportunity to further expand their non-subsidized participation in U.S. foreign trade which could place them on equal terms with foreign-flag competitors who have the freedom to deploy and redeploy vessels in response to changing trade patterns.

Containerization of major U.S. liner trades

The containerization revolution has had far-reaching effects on U.S. shipping patterns. A containership can move the cargo of four to ten breakbulk ships of similar size. Consequently, containerships require larger cargo volumes at each port call than breakbulk ships, and this has led to the rapid growth in line-haul/feeder (hub-spoke) deployments, particularly in the east-west trades. Furthermore, the fact that containers can also be used in rail and truck transportation and are easily loaded/unloaded from ships has led to the concentration of cargoes at hub ports (e.g., New York, Baltimore, Savannah, Seattle, and Rotterdam). Since additional hub ports are likely to develop, even where cargo volumes have been low (e.g., San Juan, Puerto Rico, and Colombo, Sri Lanka), subsidized operators should be allowed to expand and adjust non-subsidized services accordingly. With the revocation of the existing regulations, U.S.-flag subsidized operators would have greater opportunities to deploy and redeploy vessels on a non-subsidized basis in the changing linehaul/feeder services.

Restrictions on funding for CDS and new ODS contracts

Given the current restrictions on funding for CDS and new ODS contracts, subsidized operators under existing contracts must have the flexibility, through revocation of the existing regulations, to structure non-subsidized services and modernize their fleets to reverse the growing foreign-flag presence in U.S. foreign trades. Indeed, the existing regulations discourage U.S.-flag operators and private investors from taking the risks required to meet foreign-flag competion.

The policy reasons for rescinding the existing regulations further include the following:

Greater Operating Flexibility

MARAD seeks to allow greater operating flexibility of subsidized operators in an effort to encourage them to become more competitive with foreign-flag operators. Ultimately, such flexibility should lead to a stronger, more competitive U.S. merchant marine.

Deregulation

Removing existing regulatory restrictions on the operations of subsidized operators is consistent with encouraging greater competition in the market place and removing unnecessary governmental interference. The

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government's role in approving non-subsidized voyages by subsidized liner companies will be eliminated, allowing such companies more flexibility to plan their operations for both the long and short-term in response to the changing market environment. Further, provisions in ODS contracts and Title XI agreements ensure the quality and continuity of subsidized services.

Reduced Reliance on Subsidy

Considering current budget constraints, MARAD is seeking ways to encourage operators to reduce their reliance on subsidy. Most ODS contracts will expire in the 1990's (the United States Lines, Inc. ODS contract expires next year; see final regulatory evaluation). By encouraging subsidized operators to make the transition to non-subsidized operations now, MARAD believes that they will be better able to compete without subsidy by the time their contacts expire.

Discussion of Comments Received

MARAD received comments on the NPRM from ten interested parties. Three commenters, all subsidized U.S.-flag liner companies, supported the elimination of the regulations on the basis that it would allow them to compete more effectively with foreign-flag operators. Seven commenters, including five U.S.-flag liner companies, one maritime trade union, and one association representing companies engaged in U.S.-flag marine transportation, opposed the NPRM.

The commenters supporting rescission of the regulations, United States Lines, Inc., Lykes Bros. Steamship Co., Inc., and American President Lines, Inc., stressed that subsidized operators would benefit from additional operating flexibility, which would allow them to compete more effectively with foreign-flag operators. Proponents of rescission also argued that the original statutory policy justifications for the regulations no longer exist.

The commenters opposing rescission were the Seafarers International Union, Transportation Institute, Farrell Lines, Inc., Central Gulf, Inc., Prudential Lines Inc., Waterman Steamship Corporation and Sea-Land Service, Inc. These commenters contended that elimination of the regulations would result in negative competitive impacts on the U.S.-flag liner industry, and that MARAD has an obligation to oversee non-subsidized voyages by subsidized liner companies. Specific comments are addressed below:

1. Policy of the Merchant Marine Act (46 U.S.C. 1101)

Several commenters argued that MARAD has an obligation under section 101 of the Act to prevent non-contract operations that are prejudicial to the Act. Other operators argued that the existing regulations are contrary to section 101 of the Act in that they discourage competition and do not reflect the present industry environment.

Section 101 of the Act (46 App. U.S.C. 1101) declares it to be "the policy of the United States to foster the development and encourage the maintenance of such a merchant marine." The existing restrictions on non-subsidized operations restrain the development of the U.S. merchant marine and restrict competition with foreign-flag operators.

Allowing subsidized U.S.-flag operators to conduct non-subsidized voyages without the disincentive of the application and approval process required by the regulations should encourage subsidized operators to modernize their vessels. Modernized vessels would be better able to operate on a non-subsidized basis than old, unmodernized inefficient vessels. Certainly, the promotion of a U.S.-flag fleet comprised of the most efficient vessels in the national interest. A more specific discussion of how revocation of these regulations would benefit the U.S. merchant marine fleet is set forth below.

2. Section 605(c) Implications—Competitive Impact and Adequacy of Service

A commenter opposed rescission of sections 281.11 through 281.17 on the grounds that MARAD has a statutory obligation to consider evidence of competitive impact and adequacy of service under section 605(c) of the Act (46 U.S.C. 1175).

The United States Court of Appeals for the District of Columbia has held that section 605(c) of the Act itself is not applicable to non-subsidized operations. *Sea-Land Service, Inc.*, v. *Dole, supra.* The Court of Appeals held in that case that section 605(c) of the Act does not impose a hearing or fact-finding requirement on requests for authority to conduct non-subsidized operations. *Id.* at 979. While dicta in *Sea-Land* did note that an equivalent or lesser standard might be inferred from the totality of the Act, the court did not decide what, if any, that standard might be. The court also refused to decide "whether the Secretary can permit non-subsidized operations of contract vessel without considering the impact upon essential services thereby affected." *Id.* at 978.

Although MARAD has no statutory obligation to consider evidence of competitive impact or adequacy of service under 605(c) in considering non-subsidized services, it has evaluated these factors in this final rule (see below) and in the regulatory evaluation accompanying this rule. MARAD recognizes the need to address these considerations in response to concerned commenters. On the basis of past experience with non-subsidized operation in different trade routes allowed by contract amendments, no harmful competitive impacts have been proven. While several subsidized operators have contractual authority to conduct certain non-subsidized operations (see pp. 3–4), two of those operators (Waterman and Lykes) have not taken advantage of their ability to conduct non-subsidized operations in recent years. In addition, MARAD has already addressed the issues of competitive impact and adequacy of service in relation to the United States Lines, Inc. non-subsidized operations in MSB Docket S–774. In that docket, the MSB concluded that competitors did not carry their burden of proof that grant of USL application for non-subsidized services would have significant adverse impact on the subsidized operators. Of the U.S.-flag subsidized operators, USL currently provides the most non-subsidized competition.

However, MARAD recognizes that rescinding the existing regulations will allow for more non-subsidized operations than existing contract amendments allow. Further, MARAD cannot accurately predict what, if any, non-subsidized operations will take place. For these reasons, MARAD will assess the actual impact of this final rule after one year following its effective date, and invites interested parties to comment on the actual impact on their operations at that time.

3. Regulatory Authority of MARAD

Some commenters opposing revocation argued that MARAD lacks the regulatory authority to revoke the rule. They contended that MARAD did not show in its NPRM why existing restrictions on non-subsidized operations by subsidized companies are no longer necessary, and cited MARAD's long history of controlling such operations. Other commenters contended that revocation of the regulations is long overdue to allow subsidized operators flexibility to meet foreign-flag competition. One commenter argued that with the revocation of the recapture provisions (former section 606(5)) of the Act, the regulations have no close tie with a specific statutory mandate.

MARAD has the authority to alter its regulations as long as it resorts to the appropriate administrative procedures. *See Motor Vehicle Manufacturers Association* v. *State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 42 (1983). The Supreme Court has recognized that "[r]egulatory agencies do not establish rules of conduct to last forever . . . and that an agency must be given ample latitude to adopt their rules and policies to the demands of changed circumstances." *Permian Basin Area Rate Cases*, 390 U.S. 747, 784 (1968); *see also Motor Vehicle Manufacturers, supra.*

The existing rules were promulgated in 1957, and the history of controlling non-subsidized operations by subsidized operators through their ODS contracts dates back prior to 1957. Since then, and especially since 1970, radical changes have occurred in the liner shipping environment faced by U.S.-flag subsidized operators. These changes are further elaborated above and in the regulatory evaluation.

The NRPM noted that "one of the main reasons for rescinding these regulations is to encourage subsidized operators to meet foreign-flag competition more effectively" (50 FR 40879 (Oct. 7, 1985)). The radical changes in the liner industry, including the sharp decline in the U.S.-flag share of U.S. liner trade from 27 percent in 1981 to 20.6 percent in 1985 (reflecting primarily a decline in subsidized services), require a reassessment of U.S. maritime policy in order to fulfill the mandate of section 101 of the Act. Restricting a subsidized operator from competing freely on a non-subsidized basis hinders operating flexibility, and the ability to compete with foreign-flag operators. With most ODS contracts due to expire in the 1990's (see page four of regulatory evaluation), subsidized operators need the flexibility to compete on a non-subsidized basis to begin to make the transition to non-subsidized operations. While MARAD is aware that an increase in competition among U.S.-flag operators may possibly result in displacement of less efficient services, and downward pressure on freight rates, the *overall* efficiency of the U.S.-flag liner industry should increase, and U.S.-flag participation in the U.S. liner trades should expand.

4. Economic Impact on Industry

Commenters' opposing the NPRM-made several arguments to the effect that rescinding the rule would result in negative competitive impacts on the liner industry:

(a) Some commenters noted that liner trades are already depressed, and eliminating existing restrictions on non-subsidized voyages by subsidized liner companies would further depress the trades. One operator (See-Land Service, Inc.) supported this contention with two studies by Manalytics, Inc. purporting to analyze the impact of United States Lines, Inc.'s non-subsidized vessel deployment on U.S.-flag liner capacity in the east-west trades. That operator concluded that existing U.S.-flag service in the east-west trade was adequate and United States Lines, Inc.'s deployment would overtonnage these trades.

MARAD noted in the NPRM that a major reason for revoking the existing restrictions was to encourage competition with foreign-flag operators. The argument that liner trades are already depressed is more reason to revoke the existing restrictions on subsidized liner operators, to allow them to compete with foreign-flag operators in areas where cargoes are available, without the concern of requesting a prior approval. In addition, experience in the liner trades does not support the alleged negative impact. For example, Lykes Bros. Steamship Lines, Inc., redeployed four of its containerships from the U.S. Pacific/Far East trade to the U.S. Gulf/Europe trade in June 1986 due to the dramatic decrease in freight rates in the Pacific-Far East trade. Lykes is also seeking a buyer for six new foreign-built containerships that it had planned to operate on a non-subsidized basis in the Pacific-Far East trade. If a trade is depressed and offers little prospect for profitable operations, an operator is not likely to deploy/redeploy its vessels on a non-subsidized basis (see final regulatory evaluation, p. 6). In response to the Manalytics studies analyzing the east-west trades, MARAD believes that the analyses are unsupported and overstated.

Sea-Land used Manalytics' estimates of U.S.-flag liner capacity as a measure of adequacy of U.S.-flag service on east-west trade routes. These estimates did not consider efficiency or operating costs relative to foreign-flag vessels. While deployment of an inefficient, high-cost U.S.-flag vessel adds to overall U.S.-flag capacity, it may not be able to compete effectively against foreign-flag vessels for U.S. cargoes. The Maritime Subsidy Board, in contrast, considers actual U.S.-flag participation in the respective liner trades as a measure of adequacy of U.S.-flag service with 50 percent U.S.-flag participation as the minimum standard for adequacy.[2]

Manalytics assumed that U.S.-flag liner capacity in 1987 would simply be U.S.-flag liner capacity in 1985 plus anticipated U.S.-flag newbuilding (liner) deployments for 1986–87. The analyses did not consider deletions from the operating fleet or the impact of rates and relative costs on U.S.-flag vessel deployments over time. For instance, 50 of 68 U.S.-flag liner vessels deployed in 1985 were older than 10 years, steam-powered and had 30–42 man crews. In contrast, modern foreign-flag containerships have 10–21 man crews and are diesel-powered (more fuel-efficient than steam). Thus, many of these U.S.-flag ships have already been removed from service. The impact of low freight rates and foreign cost reductions on deployments of old inefficient U.S.-flag tonnage is reflected in the sharp decline in U.S.-flag subsidized sailings from 1982 to 1985 as well as the decline in U.S.-flag participation in U.S. liner trade over the same period.

Finally, Manalytics did not consider cross trade activities by U.S.-flag operators in the aforementioned affidavits despite a 1983 Manalytics study which showed that 21 percent of U.S.-flag liner utilization in 1982 was for cross trades and predicted that these trades would become increasingly important for U.S. liner operators.[3]

(b) Several commenters argued that if the regulations were rescinded, operators would use subsidy payments to finance non-subsidized as well as subsidized services, driving other U.S.-flag liner services out of business.

MARAD believes that it is unlikely that subsidy monies will be used to finance non-subsidized voyages. ODS payments do not compensate operators for all their cost disadvantages vis-a-vis foreign-flag and U.S. unsubsidized operators (e.g., crew size, fuel consumption, cargo handling and maintenance and repair). While MARAD makes ODS payments based on an operator's *accrued* costs, operators must eventually pay for these incurred costs for which they received subsidy. Thus, MARAD believes that subsidy monies could not be used as a viable source of financing for non-subsidized voyages. However, to assure that ODS monies are being used to pay

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[2] See Maritime Subsidy Board decision, Docket S. 774, U.S. Lines, Inc. Application for Round-The-World Service, p. 28–30.

[3] See Manalytics, Inc. U.S.-flag Crosstrading, U.S.-flag Crosstrading Operations and U.S. Policy Options, Vol. 2, 1984, p. 3–4.

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for ODS accruals and to respond to the commenters' concerns about use of subsidy payments to finance non-subsidized operations, MARAD will require that once a year operators sign and submit a document, prepared by MARAD, certifying and affirming that ODS payments are being used to pay for ODS accrued expenses.

(c) Two commenters contended that if the regulations were rescinded, new U.S.-flag, foreign-built vessels would likely be deployed on a non-subsidized basis in the over-tonnaged east-west trades because these trades involve large volumes of high-valued, containerized cargoes.

The claim that revocation will result in the concentration of unsubsidized services on high volume (east-west) routes and the abandonment of services on other routes is also unfounded (see 4(a) above). Assuming U.S.-flag modernized or newbuilding capacity is deployed on higher-volume routes, rates in these trades would fall relative to lower-volume routes, creating an incentive for U.S.-flag operators to serve the lower-volume routes. In addition, by maintaining services on several routes, an operator would minimize the adverse impacts of volume or rate declines in specific trades.

(d) Several commenters contended that U.S.-flag service on the major east-west line-haul routes is adequate, and thus rescission of the regulations would not increase U.S.-flag participation in these trades, but instead, would negatively affect the U.S.-flag liner industry, contrary to the purposes and policies of the Act. These commenters further argued that MARAD should make adequacy/inadequacy determinations, not rescind the regulations.

MARAD does not believe that it must make adequacy/inadequacy determinations regarding non-subsidized voyages (see *section 605(c)* arguments, *supra;* and *Sea-Land* v. *Dole, supra*). However, MARAD has considered overall adequacy of U.S.-flag service in relation to this final rule. United States-flag participation in the east-west trades has traditionally been inadequate by any standard (*see Sea-Land Service, Inc.* v. *Kreps,* 566 F.2d 763, 767 (D.C. Cir. 1977)). Overall U.S.-flag participation in U.S. liner trade has steadily declined to 20.6 percent in 1985. According to MARAD's *United States Oceanborne Foreign Trade Routes,* June 1985, (pp. 283–298), only in one year on one trade route from 1971–1983 has U.S.-flag participation in the two-way trades equalled or exceeded the "adequacy" goal of 50 percent U.S.-flag participation. In 1984, no essential trade route had U.S.-flag participation above 50 percent. *Id.* in view of such consistent overall inadequate U.S.-flag service, MARAD believes that greater U.S.-flag participation in the foreign trades should be encouraged by allowing greater operating flexibility through this final rule.

(e) *Preference Cargoes.* One commenter commented that repealing the regulations would allow an expansion of non-subsidized services by subsidized operators into the preference cargo trade, thus reducing the preference cargoes available to those U.S.-flag operators already in the trade.

The Act provides no protection against non-subsidized U.S.-flag competition for the U.S. share of preference cargoes. MARAD believes that it is in the best interest of the government to encourage competition, especially on a non-subsidized basis, for preference cargoes, to prevent rates from becoming artificially high. U.S.-flag operators already benefit from the absence of direct foreign-flag competition for preference cargos. In addition, most preference cargoes are exempted from application of the existing regulations due to the 1981 amendments to the regulations (see p. 5, *supra*).

5. Budgetary Savings

Some commenters criticized MARAD's claim in the NPRM that the government could save $8.6 million in ODS savings if the regulations were repealed.

MARAD agrees that it is impossible to quantify actual ODS savings. MARAD cannot accurately predict what operators' redeployment and investment plans will be after revocation. In addition, ODS accrued expenses are expected to decline with or without revocation due to expiration of ODS contracts and scrapping of subsidized vessels, making an accurate prediction based on anticipated annual ODS accruals impossible. In the NPRM, MARAD stated that the savings in ODS should be $8.6 million. The $8.6 million figure was not intended to be an absolute figure, nor was it intended to be the main reason for revocation. MARAD simply listed it as one of the possible benefits that would accrue, and gave an estimated quantification based on three percent of subsidized operations operating on a non-subsidized basis. While some commenters criticized this figure, no commenter offered an alternative figure. Since MARAD acknowledges that absolute quantification of ODS savings is not possible, it is not using this figure in the final rule as support for its position. However, MARAD still believes ODS savings will be realized as subsidized operators make the transition to non-subsidized operations.

6. Rebuttal Comments

One commenter requested the opportunity to respond to comments it anticipated from subsidized operators predicting their proposed non-subsidized voyages in their comments to the NPRM.

Subsidized operators did not choose to predict their proposed non-subsidized voyages in their comments on the NPRM. MARAD believes that interested parties have had more than sufficient time to express their views on the NPRM.

MARAD's response to arguments regarding competitive impact and other economic consequences of revocation are more fully addressed in the final regulatory evaluation.

E.O. 12291, Statutory and DOT Requirements

The Maritime Administrator has determined that this final rule is non-major under E.O. 12291, and thus a regulatory impact analysis is unnecessary. The rule is considered to be significant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). A final regulatory evaluation has been prepared on the rule and will be placed in the public docket. The Maritime Administrator certifies that this rulemaking will not exert a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 501 et seq.). This rulemaking would affect only U.S.-flag liner operators in the foreign trade, none of which is a small entity under the applicable criteria. The rulemaking includes no reporting requirements for the collection of information within the scope of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Certification documents requiring provision of names only are not considered "information" for purposes of the Paperwork Reduction Act and its implementing regulations (5 CFR 1320.7(k)((1)).

List of Subjects in 46 CFR Part 281

Administrative practice and procedure, Grant programs—transportation, Maritime carriers, Reporting requirements.

PART 281—INFORMATION AND PROCEDURE REQUIRED UNDER LINER OPERATING-DIFFERENTIAL SUBSIDY AGREEMENTS

1. The authority citation for Part 281 continues to read as follows:

Authority: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114. Interpret or apply sec. 606, 49 Stat. 2004, as amended, 46 U.S.C. 1176.

§§ 281.11 through 281.17 [Removed]

46 CFR Part 281 is amended by removing §§ 281.11 through 281.17 and their undesignated heading "Non-Subsidized Voyages."

Dated: November 24, 1986.

By Order of the Maritime Administrator.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 86-26764 Filed 11-26-86; 8:45 am]

BILLING CODE 4910-81-M

VOL 51 ISS 229 NO 28 1986 UMI

Proposed Rules

Federal Register
Vol. 51, No. 229
Friday, November 28, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-202-AD]

Airworthiness Directives; Airbus Model A310 Series Airplanes.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require test, inspection, and rework, if necessary, of the ram air turbine (RAT) uplock and roller on certain Airbus Model A310 airplanes. This action is prompted by reports of failure of the RAT to deploy during ground test because the uplock hook was dented and the roller seized. This action is necessary to ensure that the RAT will deploy if needed to provide emergency standby hydraulic power to the flight controls.

DATE: Comments must be received no later than January 20, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 86–NM–202–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 86–NM–202–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion: The Direction Générale de L'Aviation Civile (DGAC) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on certain Airbus Model A310 series airplanes. During a ground test of the ram air turbine (RAT) extension system, the RAT failed to deploy when commanded to do so from the flight deck. Subsequent investigation revealed that the uplock hook had developed a dent where it contacted the roller in the extension system. In addition, the effect of the dent was aggravated by RAT roller seizure. This condition, if not corrected, could lead to the failure of the RAT to deploy when needed to supply emergency standby hydraulic power to the flight controls.

Airbus Industrie Service has issued Bulletin A310–29–2010, Revision 3, dated August 21, 1985, which describes procedures for test, inspection, and rework, if needed, of the RAT mechanism. The DGAC has classified this service bulletin as mandatory.

This airplane model is manufactured in France and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require test, inspection, and rework, if necessary, in accordance with the previously mentioned service bulletin. Incorporation of Modification AI 5958, described in Airbus Industrie Service Bulletin A310–29–2012, Revision 1, dated September 2, 1986, would constitute terminating action for the repetitive inspection requirements of the proposed AD; this modification deals with the replacement of the RAT uplock box.

It is estimated that 52 airplanes of U.S. registry would be affected by this AD, that it would take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $20,800.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($400). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A310 series airplanes with serial numbers listed in Airbus Service Bulletin A310–29–2010, Revision 3, dated August 21, 1985, certificated in any category. Compliance is required within 700 hours time in service after the effective date of this AD.

To prevent failure of the ram air turbine (RAT) extension system and ensure deployment of the RAT when required, accomplish the following, unless previously accomplished:

A. Test, inspect, and rework, if necessary, the RAT uplock hook and roller in accordance with Airbus Industrie Service Bulletin A310–29–2010, Revision 3, dated August 21, 1985.

B. Repeat the tests, inspections, and necessary rework required by paragraph A., above, at intervals not to exceed 1,400 hours time in service.

C. Incorporation of Modification AI 5958, as described in Airbus Industrie Service Bulletin A310–29–2012, Revision 1, dated September 2, 1986, constitutes terminating action for the repetitive inspection requirements of this AD.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 20, 1986.

Leroy A. Keith,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–26710 Filed 11–26–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 86–AGL–20]

Proposed Alteration of Federal Airway V–493

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to realign Federal Airway V–493 between the Appleton, OH, (APE) very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) and the York, KY, (YRK) VORTAC. This realignment will facilitate movement eastward of special use airspace and thereby enhance high density traffic volume which is north/south oriented on the western boundary of the special use airspace.

DATE: Comments must be received on or before December 29, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 86–AGL–20, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The offficial docket may be examined in the Ruels Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Laser, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9248.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86–AGL–20." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to realign VOR Federal Airway V–493 between Appleton, OH, VORTAC and York, KY, VORTAC. This realignment is predicated upon moving R–5503 eastward to facilitate north/south air carrier traffic flow between Columbus and Cincinnati, OH. A separate docket action, 86–AGL–25, proposes to subdivide and relocate R–5503 Wilmington, OH. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034;

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February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, VOR Federal Airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V–493 [Amended]

By removing the words "York, KY; Appleton, OH;" and substituting the words "York, KY; INT York 030 °T(032°M) and Appleton, OH, 183°T(185°M) radials; Appleton;"

Issued in Washington, DC, on November 20, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–26712 Filed 11–26–86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 73

[Airspace Docket No. 86–AWP–22]

Proposed Alteration of Restricted Area R-2519 Point Mugu, CA, and Revocation of Restricted Area R-2520 Point Mugu, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the lateral boundaries of Restricted Area R-2519 and revoke Restricted Area R-2520 located at Point Mugu, CA. The Department of Navy (DON) has requested that R-2519 be slightly expanded to ensure that all hazardous activity is contained within restricted airspace. The DON also requested that R-2520 be revoked since the usage of the airspace no longer justifies permanent designation.

DATE: Comments must be received on or before December 29, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 86–AWP–22, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, 15000 Aviation Boulevard, Hawthorne, California.

FOR FURTHER INFORMATION CONTACT: Andrew B. Oltmanns, Airspace and Aeronautical Information Requirements Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9245.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86–AWP–22." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 73 of the Federal Aviation Regulations (12 FR Part 73) to alter the lateral boundaries of R–2519 and revoke R–2520 at Point Mugu, CA. The DON has requested that a slight expansion of R–2519 is necessary to ensure that all conducted hazardous activities are contained within restricted airspace. The DON also requested that R–2520 be revoked since the airspace is no longer used and no longer justifies permanent designation. Although R–2519 will be slightly expanded, with the revocation of R–2520 the net effect of this proposed action will be to return additional airspace to the flying public. Section 73.25 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

The Proposed Amendment

PART 73—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation administration proposes to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. § 73. 25 is amended as follows:

R–2520 Point Mugu, CA [Remove].

R–2519 Point Mugu, CA [Amended].

Remove the present boundaries and substitute the following:

Boundaries. Beginning at lat. 34°07′15″ N., long. 119°07′40″ W.; to lat. 34°06′55″ N., long. 119°06′00″ W.; to lat. 34°04′15″ N., long. 119°03′40″ W.; to lat. 34°02′15″ N., long. 119°04′20″ W.; thence 3 nautical miles from and parallel to the shoreline to lat. 34°05′30″ N., long. 119°13′00″ W.; to lat. 34°05′55″ N., long. 119°11′15″ W.; to lat. 34°07′08″ N., long. 119°09′32″ W.; to the point of beginning.

Issued in Washington, DC on November 21, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–26711 Filed 11–26–86; 8:45 am]

BILLING CODE 4910-3-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 852 3235]

Aquanautics Corp.; Proposed Consent Agreement With Analysis To Aid Public Comment; Agreement Containing Consent Order to Cease and Desist

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a San Francisco manufacturer of marine survival suits to notify owners and users of its suits of a safety defect that is potentially life-threatening and send a repair kit to all users and purchasers it can identify to correct the product defect.

DATE: Comments will be received until January 27, 1987.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pennsylvania Avenue., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/B-411, Theodore H. Hoppock, Washington, DC 20580; (202) 376–8648.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Marine survival suits, Trade practices.

United States of America Before Federal Trade Commission

The Federal Trade Commission having initiated an investigation of certain acts and practices of Aquanautics Corporation, hereinafter sometimes referred to as proposed respondent, and it now appearing that the proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Aquanautics Corporation by its duly authorized officers, and its attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent Aquanautics Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at One Maritime Plaza, Suite 1750, San Francisco, CA 94111.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of the complaint attached hereto.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the proposed complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the proposed complaint attached hereto.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the proposed complaint attached hereto and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect hereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more

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compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For the purpose of this Order, the following definitions shall apply:

1. "The Imperial exposure suit" means an exposure suit manufactured by Imperial Manufacturing Corporation before April 1980 for sale in the United States or for use on vessels documented or numbered pursuant to 46 U.S.C. 12101–12122 or on mobile offshore drilling units subject to Coast Guard regulation pursuant to 43 U.S.C. 1333, equipped with an inflatable bladder, called a high rider ring, which includes an inflator tube which is glued, but not clamped, to the elbow of the high rider ring.

2. "Imperial Manufacturing" means the company which manufactured and sold the Imperial exposure suit.

3. "Person" means any individual, partnership, corporation, firm, trust, estate, cooperative, association, or other entity.

4. "Distributor" means any person who purchased or received on consignment the Imperial exposure suit for resale.

5. "Retailer" means any person, other than a distributor, who sold the Imperial exposure suit to the public.

6. "Owner" means any person who purchased the Imperial exposure suit from Imperial Manufacturing, a distributor, or a retailer.

7. "User" means any person who uses or has available for use the Imperial exposure suit irrespective of the ownership of that suit.

8. "Panduit strap" means the plastic strap of the type used to secure the inflator tube to the high rider rings used on exposure suits manufactured by Imperial Manufacturing after April 1980.

9. "The modification contemplated by this Order" means the installation of two Panduit straps to reinforce the attachment of the inflator tube to the elbow of the high rider ring and installation of two additional Panduit straps to reinforce the attachment of the inflator nozzle to the inflator tube.

10. "United States" means the fifty states, the District of Columbia, and all commonwealths, territories and possessions.

I.

It Is Ordered That respondent Aquanautics Corporation, a corporation, its successors and assigns, and its officers, and respondent's agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the Imperial exposure suit or any other exposure suit in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication, that any such exposure suit provides the necessary flotation and head and shoulder support for the user to float safely in cold or rough water or diminishes the likelihood of drowning, unless such is the case.

II.

It Is Further Ordered that respondent do forthwith cease and desist from failing to:

A. Not later than twenty (20) days after the date of service of this Order, send, by first-class mail in an envelope clearly marked on the front with the words "Contains Exposure Suit Safety Information And New Safety Straps", to each owner or user of the Imperial exposure suit for whom respondent possesses, controls, or has access to a mailing address the following:

1. A copy of Attachment A(1) to this Order. The "Customer Response Card" depicted in Attachment A(1) shall be provided with prepaid postage sufficient to allow it to be mailed first class to the address contained thereon without the need of any additional postage;

2. A sufficient number of Panduit straps to effect the modification contemplated by this Order on each of the Imperial exposure suits respondent's records show that the owner or user has;

3. A copy of Attachment B to this Order.

B. Respondent shall not be obliged to send the materials listed in subparagraphs 1 through 3 of Paragraph A herein to the owner or user of the Imperial exposure suit if respondent has records which show that:

1. The owner or user of the Imperial exposure suit previously has received the modification contemplated by this Order; or

2. The Imperial exposure suit was purchased for use on vessels or structures on which the United States Coast Guard requires the carriage of Coast Guard approved exposure suits pursuant to the following regulations:

a. 46 CFR 33.37;
b. 46 CFR 94.41;
c. 46 CFR 108.513; or
d. 46 CFR 192.41.

C. Not later than twenty (20) days after the service of this Order, place and cause to be disseminated the advertisements attached as Attachments E(1) and E(2) to this Order in two consecutive issues of the following publications beginning in the earliest possible issue of each such publication:

1. National Fisherman;
2. The Fisherman's News;
3. The Fisherman;
4. Alaska Fisherman's Journal;
5. The Fish Boat;
6. Pacific Fishing; and
7. Commercial Fisheries News.

The first such advertisement in each publication shall be full page in size and be in the form of Attachment E(1); the second shall be one-half page in size and be in the form of Attachment E(1) or Attachment E(2).

D. Not later than thirty (30) days after the service of this Order, send, by first-class mail, to each of the approximately 8,000 current holders of "Fisheries Entry Permits" issued by the State of Alaska, at the address shown on the list of holders of such permits available from the State of Alaska, a copy of Attachments A(2) and B to this Order and a sufficient number of Panduit straps to effect the modification contemplated by this Order on one (1) Imperial exposure suit.

III.

It Is Further Ordered that:

A. Not later than fifteen (15) days after the date of service of this Order, respondent shall contact the following distributors of the Imperial exposure suit and obtain from each distributor, or from the distributor's available records, the names and addresses of all persons, including retailers, to whom the Imperial exposure suit was sold by such distributors to the extent that the distributors have such information:

1. Atlantic Survival Company;
2. King Neptune Company;
3. Nordby Company;
4. Seattle Marine and Fishing Supply Co.;
5. Shelikoff Net Company;
6. Eagle Enterprises, Inc.;
7. Englund Marine Supply Company, Inc.; and
8. Harry's Plumbing and Heating.

B. Not later than fifteen (15) days after the date of service of this Order, respondent shall send, by first-class mail, to all retailers (a) known to it to have sold the Imperial exposure suit or (b) which become known to it to have sold the Imperial exposure suit as a consequence of the efforts described in Paragraph III A, above, the following:

1. A letter in the form of Attachment C(1) to this Order;

2. A copy of a display poster, at least 24 inches by 36 inches, with the form and content of Attachment D to this Order; and

3. A minimum of sixty (60) Panduit straps which the retailer shall be requested to distribute free of charge to any person who requests them to effect the modification contemplated by this Order. Thereafter, respondent shall furnish additional Panduit straps free of charge to any distributor or retailer who requests them for application to the Imperial exposure suit to effect the modification contemplated by this Order.

Respondent shall, within forty-five (45) days after the date of service of this Order, obtain from each such retailer, or from the available records of each such retailer, the names and addresses of all persons known or reasonably believed to be owners or users of the Imperial exposure suit to the extent that: (a) The retailers have such information and (b) the retailers are willing or able to make such information available to respondents.

C. Not later than thirty (30) days after the service of this Order, respondent shall send to each distributor of the Imperial exposure suit from which respondent obtained, pursuant to Paragraph III A above, (a) the names and addresses of all persons to whom the Imperial exposure suit was sold by that distributor or (b) the response that the distributor had no records of the names and addresses of any owners or users of the Imperial exposure suit, the following:

1. A letter in the form of Attachment C(2) to this Order;

2. A copy of a display poster, at least 24 inches by 36 inches, with the form and content of Attachment D to this Order; and

3. A minimum of sixty (60) Panduit straps which the distributor shall be requested to distribute free of charge to any person who requests them to effect the modification contemplated by this Order. Thereafter, respondent shall furnish additional Panduit straps free of charge to any distributor who requests them for application to the Imperial exposure suit to effect the modification contemplated by this Order.

D. Not later than forty-five (45) days after service of this Order, respondent shall send, by first-class mail, to all distributors and retailers of the Imperial exposure suit, except for those distributors and retailers from which respondent obtained, (a) the names and addresses of all persons known or reasonably believed to be owners or users of the Imperial exposure suit or (b) the response that the distributor or retailer had no records of the names and addresses of any owners or users of the Imperial exposure suit, the following:

1. A letter in the form of Attachment C(3) to this Order;

2. A copy of a display poster, at least 24 inches by 36 inches, with the form and content of Attachment D to this Order; and

3. A minimum of sixty (60) Panduit straps which the distributor or retailer shall be requested to distribute free of charge to any person who requests them to effect the modification contemplated by this Order. Thereafter, respondent shall furnish additional Panduit straps free of charge to any distributor or retailer who requests them for application to the Imperial exposure suit to effect the modification contemplated by this Order.

E. Respondent shall pay, to each retailer or distributor to whom it is required to send Attachment C(3), the sum of ten (10) dollars for each name and address of an owner or user of the Imperial exposure suit such retailer or distributor provides to respondent. Respondent shall pay the ten (10) dollars even if the address provided is not a current address. Said payment must be made within thirty (30) days of respondent's receipt of such names and addresses.

Provided, however, that respondent shall not be required to pay for any name and address provided to it pursuant to this provision if:

1. Respondent determines and documents that the named person(s) never owned or used the Imperial exposure suit; or

2. Respondent previously had obtained the name and address from any retailer or distributor prior to the date Attachment C(3) was sent to such retailer or distributor; or

3. The name and address is not contained or reflected in the regularly kept business records of such distributor or retailer.

IV.

It Is Further Ordered that:

A. Respondent shall send, by first-class mail, to each person reported to respondent to be or who claims to respondent to be an owner or user of the Imperial exposure suit, within twenty (20) days of respondent's receipt of said report or claim, Attachments A(1) and B and four (4) Panduit straps for each of the Imperial exposure suits reported or claimed to be owned or used by that person.

B. Respondent shall within ten (10) days of the return of any mailing made pursuant to section II A, sections III B, C, or D, or section IV A of this Order marked by the Post Office as undeliverable, make a reasonable search for the current address of the addressee of each returned mailing. For mailings made pursuant to Sections II A or IV A, this search shall include the use of the pertinent telephone directory, contacting the relevant ship registries and listings and contacting fishermen's unions.

C. Respondent shall, within ten (10) days of locating a new address through the search required by section IV B, send, by first-class mail, the same Attachment(s) and number of Panduit straps sent to the original address to each person for whom a new address is found.

V.

It Is Further Ordered that:

A. Respondent keep and maintain for three years from the date of service of this Order the following records:

1. The names, addresses and dates of mailing of all notices or Panduit straps required by this Order;

2. For each contact respondent makes pursuant to the requirements of section III A, the name and address of each distributor contacted; the name of the representative or employee of respondent who made the contact; and a record of the response the distributor made to the contact, including, but not limited to, the following information: (a) Did the distributor state that it had records of the names and addresses of owners or users of the Imperial exposure suit which it agreed to provide to respondent, (b) did the distributor state that it had records of the names and addresses of owners or users of the Imperial exposure suit which, for any reason, it would not agree to provide to respondent, (c) did the distributor state that it had no records of the names and addresses of owners or users of the Imperial exposure suit and (d) any other response the distributor made regarding respondent's efforts to obtain from it the names and addresses of owners or users of the Imperial exposure suit;

3. Each response page attached to Attachment C(1) and C(2) of this Order returned to respondent by a distributor or retailer of the Imperial exposure suit;

4. The names, addresses, date of receipt and source of the report of all persons reported to respondent to be owners or users of the Imperial exposure suit;

5. The amount of payment, the date of payment and the name and address of the recipient of all payments made pursuant to section III E of this Order; and

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6. The total number of Panduit straps disseminated by respondent pursuant to the provisions of this Order.

B. Respondent shall, upon request, make the records specified in section V A available to the Federal Trade Commission for inspection and copying.

VI.

It Is Further Ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the Order.

VII.

It Is Further Ordered that respondent shall, within one hundred twenty (120) days after service upon it of this Order, file with the Commission a report, in writing, setting forth in detail, the manner and form in which it has complied with this Order.

Attachment A(1)

[Company Letterhead]

Urgent Notice Re: Your Personal Safety

Dear Imperial Survival Suit Owner:

This letter is to inform you of the need to make *immediate modifications* on your Imperial Model 1409 exposure suit equipped with a high rider ring because you may be in danger during an emergency if you use it without modifying it.

The National Transportation Safety Board has concluded that a *serious safety hazard* may exist in Imperial Model 1409 exposure suits equipped with high rider rings manufactured before April 1980.

According to our records, you have purchased an Imperial Model 1409 exposure suit equipped with a high rider ring made between 1975 and April 1980. As part of an agreement we have reached with the Federal Trade Commission, we are sending you this important safety warning and modification kit for your Imperial exposure suit.

We have received reports that the inflator tube assembly, which is used to inflate the high rider ring in these suits, has separated when individuals have attempted to inflate the high rider ring in emergency situations. This separation prevents inflation of the high rider ring, which, when inflated, helps keep the head and shoulders above water.

If the high rider ring cannot be inflated, the exposure suit does not provide you with the added head and shoulder support ("freeboard") intended, and your chance of survival in an emergency situation may be reduced.

We have developed a *free*, simple modification kit to fix this problem and eliminate the safety hazard. We have enclosed this modification kit and the instructions for its use in this mailing. You can complete the modification in just a few minutes time. Once modified, your Imperial exposure suit will afford you all of the protection intended when it was manufactured. The modification kit meets Coast Guard Standards.

If you should have any additional Model 1409 Imperial exposure suits manufactured prior to April 1980, or know of anyone else who has one, please be sure to fill out and mail the enclosed card. We will send anyone mailing us this card additional *free*, easy-to-use kits for modifying the inflator tube.

Sincerely,

Aquanautics Corporation.

Enclosures.

Customer Response Card

Please send me additional free modification kit(s) for my Imperial Model 1409 exposure suit(s) to the address below.

Name ————————————

Address ————————————

————————————

# of Kits needed ————————————

————————————

Postage Paid

Aquanautics Corporation
FTC Compliance
One Maritime Plaza
Suite No. 1750
San Francisco, CA 94111–9852

Attachment A(2)

[Company Letterhead]

Urgent Notice Re: Your Personal Safety

Dear Fisheries Entry Permit Holder:

This letter is to inform you of the need to make *immediate modifications* on any Imperial Model 1409 exposure suit equipped with a high rider ring in your possession because you may be in danger during an emergency if you use it without modifying it.

The National Transportation Safety Board has concluded that a *serious safety hazard* may exist in Imperial Model 1409 exposure suits equipped with high rider rings manufactured before April 1980. You can determine if an Imperial Model 1409 exposure suit was manufactured before April 1980 by checking the high rider ring. If there are no plastic tie-down straps on the inflator tube, it was manufactured before April 1980 and needs modification.

Because of your occupation, you may have purchased an Imperial Model 1409 exposure suit equipped with a high rider ring made between 1975 and April 1980. As part of an agreement we have reached with the Federal Trade Commission, we are sending you this important safety warning and modification kit for such an Imperial exposure suit.

We have received reports that the inflator tube assembly, which is used to inflate the high rider ring in these suits, has separated when individuals have attempted to inflate the high rider ring in emergency situations. This separation prevents inflation of the high rider ring, which, when inflated, helps keep the head and shoulders above water.

If the high rider ring cannot be inflated, the exposure suit does not provide you with the added head and shoulder support ("freeboard") intended, and your chance of survival in an emergency situation may be reduced.

We have developed a *free*, simple modification kit to fix this problem and eliminate the safety hazard. We have enclosed this modification kit and the instructions for its use in this mailing. You can complete the modification in just a few minutes time. Once modified, the Imperial exposure suit will afford you all the protection intended when it was manufactured. The modification kit meets Coast Guard standards.

If you should have any additional Model 1409 Imperial exposure suits manufactured prior to April 1980, or know of anyone else who has one, please be sure to fill out and mail the enclosed card. We will send anyone mailing us this card additional *free*, easy-to-use kits for modifying the inflator tube.

Sincerely,

Aquanautics Corporation.

Enclosures

Customer Response Card

Please send me additional free modification kit(s) for my Imperial Model 1409 exposure suit(s) to the address below.

Name ————————————

Address ————————————

————————————

# of Kits needed ————————————

————————————

Postage Paid

Aquanautics Corporation
FTC Compliance
One Maritime Plaza
Suite No. 1750
San Francisco, CA 94111–9852

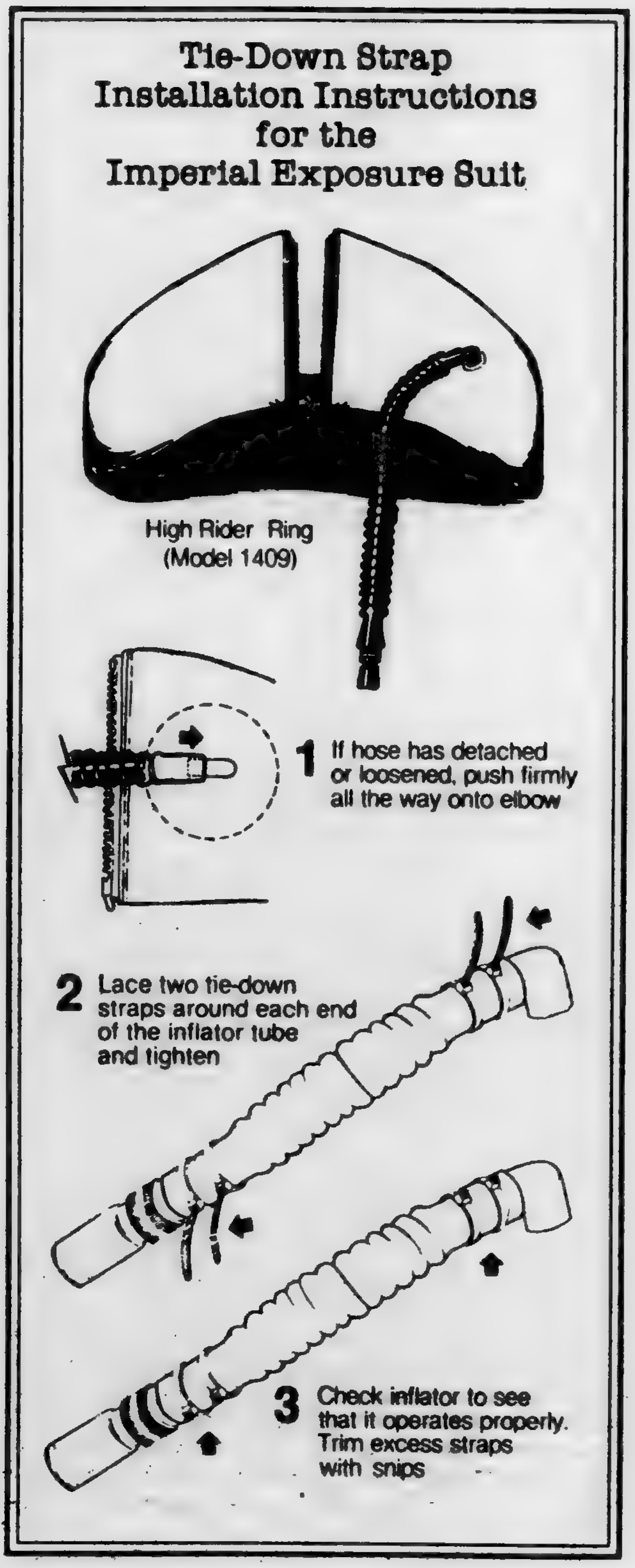

Tie-Down Strap Installation Instructions for the Imperial Exposure Suit

1 If hose has detached or loosened, push firmly all the way onto elbow

2 Lace two tie-down straps around each end of the inflator tube and tighten

3 Check inflator to see that it operates properly. Trim excess straps with snips

Attachment C(1)

[Company Letterhead]

Urgent Notice Re: The Safety of Your *Customers*

Dear [Name of retailer]:

Imperial Manufacturing manufactured and sold an exposure suit equipped with a high rider ring (Model 1409) between 1975 and April 1980. The National Transportation Safety Board has concluded that a *serious safety hazard* may exist in this model exposure suit.

We have received reports that the inflator tube assembly, which is used to inflate the high rider ring in these suits, has separated when individuals have attempted to inflate the high rider ring in emergency situations. This separation prevents inflation of the high rider, which, when inflated, helps keep the head and shoulders above water.

If the high rider ring cannot be inflated, the exposure suit does not provide the added head and shoulder support ("freeboard") intended and may reduce the chance of survival.

We have reached an agreement with the Federal Trade Commission to attempt to 1) notify by mail as many owners and users of Imperial survival suit Model 1409 as we can find of the hazard inherent in their suit and 2) provide them, free of charge, the necessary Panduit (tie-down) straps to eliminate the hazard.

We need your help in locating the names and addresses of purchasers or users of Model 1409 exposure suits equipped with a high rider ring manufactured prior to April 1980. Accordingly, we are making an urgent request that you check your records for, and provide us with, the names and addresses of any purchaser or user of an Imperial Model 1409 exposure suit equipped with a high rider ring manufactured prior to April 1980 sold by your firm. Moreover, if you know the name and address of any other owner or user of these suits, please provide them to us also.

We [have enclosed] or [will be sending] a poster which explains to your customers the hazard and how to get a free modification kit to remedy the hazard. Please put this poster in a highly visible location in your place of business so that your customers may be informed of the hazard and spread the word to their colleagues.

We [have also enclosed] or [will also send] a supply of 60 Panduit straps and instructions for their use. As the instructions explain, the simple installation of four of these straps on the inflator tube assembly of Imperial survival suit Model 1409 will eliminate this safety hazard. Please make these Panduit straps and instructions available free of charge to anyone who owns or uses a Model 1409 exposure suit. If you should need more of these straps, please call Nik Salmela collect at 206–698–0245, and we will rush more to you as quickly as possible.

Please fill out the attached response page and return it to our attention at your earliest convenience. Thank you for your valuable assistance in our effort to eliminate this safety hazard.

Sincerely,

Aquanautics Corporation.

[COMPANY LETTERHEAD]

[Addressee]

Please check the appropriate boxes:

[ ] We do not have records of the owners and users of Imperial Model 1409 Survival Suits equipped with a high rider ring manufactured before April 1980.

[ ] We do have records of the owners and users of Imperial Model 1409 Survival Suits equipped with a high rider ring manufactured before April 1980.

[ ] We will make these names and addressed available to Aquanautics Corporation.

☐ We will not make these names and addresses available to Aquanautics Corporation.

Signature of authorized agent ______

Title ______

Date ______

Attachment C(2)

[Company Letterhead]

Urgent Notice Re: The Safety of Your *Customers*

Dear (*Name of distributor*):

[Optional introductory phrase: As explained in his earlier contact with you]. Imperial Manufacturing manufactured and sold an exposure suit equipped with a high rider ring (Model 1409) between 1975 and April 1980. The National Transportation Safety Board has concluded that a *serious safety hazard* may exist in this model exposure suit.

We have received reports that the inflator tube assembly, which is used to inflate the high rider ring in these suits, has separated when individuals have attempted to inflate the high rider ring in emergency situations. This separation prevents inflation of the high rider, which, when inflated, helps keep the head and shoulders above water.

If the high rider ring cannot be inflated, the exposure suit does not provide the added head and shoulder support ("freeboard") intended and may reduce the chance of survival.

We have reached an agreement with the Federal Trade Commission to attempt to 1) notify by mail as many owners and users of Imperial survival suit Model 1409 as we can find of the hazard inherent in their suit and 2) provide them, free of charge, the necessary Panduit (tie-down) straps to eliminate the hazard. You already have assisted us in this effort by providing us with any names and addresses of owners and users of this Imperial Survival suit which you have.

We [have enclosed] or [will be sending] a poster which explains to your customers the hazard and how to get a free modification kit to remedy the hazard. Please put this poster in a highly visible location in your place of business so that your customers may be informed of the hazard and spread the word to their colleagues.

We [have also enclosed] or [will also send] a supply of 60 Panduit straps and instructions for their use. As the instructions explain, the simple installation of four of these straps on the inflator tube assembly of Imperial survival suit Model 1409 will eliminate this safety hazard. Please make these Panduit straps and instructions available free of charge to anyone who owns or uses a Model 1409 exposure suit. If you should need more of these straps, please call Nik Salmela collect at 206-696-0245, and we will rush more to you as quickly as possible.

Please fill out the attached response page and return it to our attention at your earliest convenience. Thank you for your valuable assistance in our effort to eliminate this safety hazard.

Sincerely,

Aquanautics Corporation.

[Company Letterhead]

[Addressee]

Please check the appropriate boxes:

☐ We do not have records of the owners and users of Imperial Model 1409 Survival Suits equipped with a high rider ring manufactured before April 1980.

☐ We do have records of the owners and users of Imperial Model 1409 Survival Suits equipped with a high rider ring manufactured before April 1980.

☐ We will make these names and addressed available to Aquanautics Corporation.

☐ We will not make these names and addresses available to Aquanautics Corporation.

Signature of authorized agent ______

Title ______

Date ______

Attachment C(3)

[Company Letterhead]

Urgent Notice Re: The Safety of Your *Customers*

This is so important that we will *pay* you to help us.

Dear (*Name of distributor or retailer*):

As we explained in our earlier contact with you, we urgently need your help in locating your customers who purchased an Imperial exposure suit (Model 1409) and we will pay you to help us. *Your efforts might save the life of one of your customers or neighbors.*

Between 1975 and April 1980, Imperial Manufacturing manufactured and sold an exposure suit equipped with a high rider ring (Model 1409). The National Transportation Safety Board has concluded that a *serious safety hazard* may exist in this model exposure suit.

We have received reports that the inflator tube assembly, which is used to inflate the high rider ring in these suits, has separated when individuals have attempted to inflate the high rider ring in emergency situations. This separation prevents inflation of the high rider, which, when inflated, helps keep the head and shoulders above water.

If the high rider ring cannot be inflated, the exposure suit does not provide the added head and shoulder support ("freeboard") intended and may reduce the chance of survival.

We have reached an agreement with the Federal Trade Commission to attempt to 1) notify by mail as many owners and users of Imperial survival suit Model 1409 manufactured prior to April 1980 as we can find of the hazard inherent in their suit and 2) provide them, free of charge, the necessary Panduit (tiedown) straps to eliminate the hazard.

We need your help in locating the names and addresses of purchasers or users of Model 1409 exposure suits equipped with a high rider ring manufactured prior to April 1980. Accordingly, we are making an urgent request that you check your records for, and provide us with, the names and addresses of any purchaser or user of an Imperial Model 1409 exposure suit equipped with a high rider ring manufactured prior to April 1980 sold by your firm. Moreover, if you know the name and address of any other owner or user of these suits, please provide them to us also.

We understand that such a records check is not without cost to you. In an attempt to help defray the cost of searching for and providing us with the requested names and addresses, *we will pay you ten dollars ($10.00) for each name and address of a purchaser or user of an Imperial Model 1409 survival suit you send us.* You will receive your payment even if you do not have the most current address for the purchaser or user. You will receive this payment within 30 days of our receipt of your bona fide list of names and addresses.

In addition, we have [enclosed] or [already sent you] a poster which explains to your customers the hazard and how to get a free modification kit to remedy the hazard. Please put this poster in a highly visible location in your place of business so that your customers may be informed of the hazard and spread the word to their colleagues.

We have also [enclosed] or [already sent you] a supply of 60 Panduit straps and instructions for their use. As the instructions explain, the simple installation of four of these straps on the inflator tube assembly of Imperial survival suit Model 1409 will eliminate this safety hazard. Please make these Panduit straps and instructions available free of charge to anyone who owns or uses an Imperial Model 1409 exposure suit equipped with a high rider ring manufactured before April 1980. If you should need more of these straps, please call Nik Salmela collect at 206-696-0245, and we will rush more to you as quickly as possible.

We're counting on you to make your best effort to locate the names and addresses of owners and users of this exposure suit. Thank you for your valuable assistance in our effort to eliminate this safety hazard.

Sincerely,

Aquanautics Corporation.

BILLING CODE 6750-01-M

IMPORTANT SAFETY NOTICE

For Imperial Exposure Suit users with High Rider Ring

SAFETY MODIFICATION NEEDED

Ask your Dealer for the FREE Safety Modification Kit

WHO: **If you own an Imperial Survival Suit equipped with a High Rider Ring (Model 1409) manufactured before April 1980 - contact your nearest Imperial Dealer immediately.**

To determine when your suit was made, look for the manufacturing date stamp inside the back of the neck of the suit. If there is NO date stamp, the suit was manufactured prior to 1981. Then check your High Rider Ring. If there are no plastic tie-down straps on the inflator tube, it was manufactured before April 1980 & needs modification.

WHY: **A defect may exist causing the inflator assembly on the High Rider Ring to separate, preventing its proper inflation. Proper inflation of this ring is important because it holds the body in a more upright position - increasing your chance of survival.**

The only modification needed is to the High Rider Ring accessory. The suit itself is in no other way affected.

FREE FIX: **The modification required is easy and quick. And there's no need to bring in the suit for this modification. Just ask your dealer for the FREE Safety Modification Kit.**

This do-it-yourself kit contains four simple-to-install tie-down straps. These will ensure a secure connection to keep the High Rider Ring inflated when in use (see illustrations at right). Though this modification is quick and easy, it's important that it be made for your assured safety. The kit meets Coast Guard standards. If your dealer is out of the kit simply write us for a free kit at:

AQUANAUTICS

One Maritime Plaza, Suite 1750
San Francisco, CA 94111

Tie-Down Strap Installation Instructions for the Imperial Exposure Suit

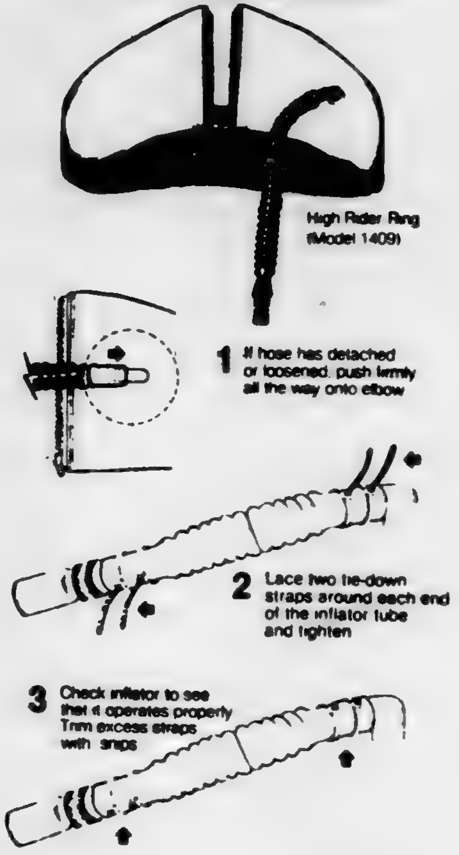

1 If hose has detached or loosened, push firmly all the way onto elbow

2 Lace two tie-down straps around each end of the inflator tube and tighten

3 Check inflator to see that it operates properly. Trim excess straps with snips

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IMPORTANT SAFETY NOTICE

For Imperial Exposure Suit users with High Rider Ring

SAFETY MODIFICATION NEEDED

Send or call for a FREE Safety Modification Kit

WHO: If you own an Imperial Survival Suit equipped with a High Rider Ring (Model 1409) manufactured before April 1980-contact Aquanautics Corporation for a FREE safety modification kit.

To determine when your suit was made, look for the manufacturing date stamp inside the back of the neck of the suit. If there is NO date stamp, the suit was manufactured prior to 1981. Then check your High Rider Ring. If there are no plastic tie-down straps on the inflator tube, it was manufactured before April 1980 & needs modification.

WHY: A defect may exist causing the inflator assembly on the High Rider Ring to separate, preventing its proper inflation. Proper inflation of this ring is important because it holds the body in a more upright position - increasing your chance of survival.

The only modification needed is to the High Rider Ring accessory. The suit itself is in no other way affected.

FREE FIX: The modification required is easy and quick. And there's no need to bring in the suit for this modification. We will send you a FREE safety modification kit to correct this problem.

This do-it-yourself kit contains four simple-to-install tie-down straps. These will ensure a secure connection to keep the High Rider Ring inflated when in use (see illustrations at right). Though this modification is quick and easy, it's important that it be made for your assured safety. The kit meets Coast Guard standards.

For your FREE modification kit,
simply write to:

AQUANAUTICS
One Maritime Plaza, Suite 1750
San Francisco, CA 94111
or call us collect at (415) 658-6629

Tie-Down Strap Installation Instructions for the Imperial Exposure Suit

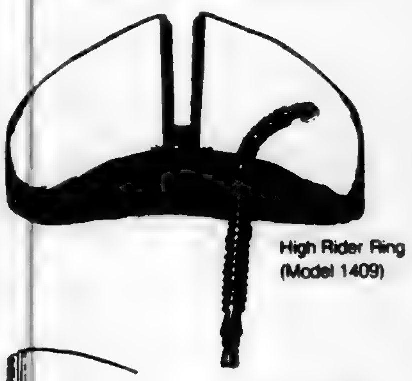

High Rider Ring
(Model 1409)

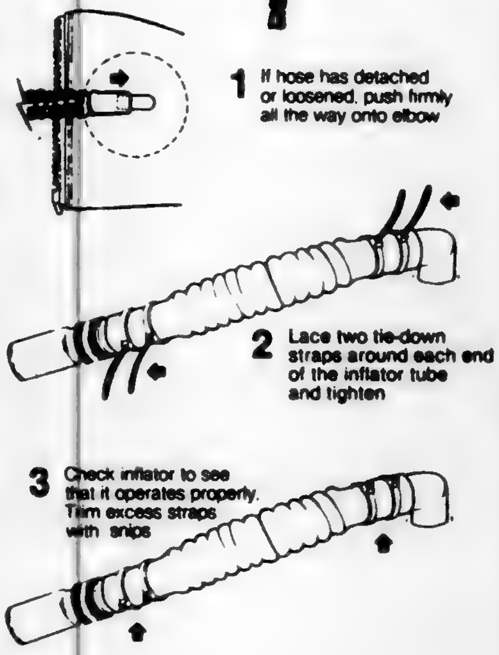

1 If hose has detached or loosened, push firmly all the way onto elbow

2 Lace two tie-down straps around each end of the inflator tube and tighten

3 Check inflator to see that it operates properly. Trim excess straps with snips

IMPORTANT SAFETY NOTICE

For Imperial Exposure Suit users with High Rider Ring

SAFETY MODIFICATION NEEDED

Send or call for a FREE Safety Modification Kit

WHO: If you own an Imperial Survival Suit equipped with a High Rider Ring (Model 1409) manufactured before April 1980 - contact Aquanautics Corporation for a FREE safety modification kit.

To determine when your suit was made, look for the manufacturing date stamp inside the back of the neck of the suit. If there is NO date stamp, the suit was manufactured prior to 1981. Then check your High Rider Ring. If there are no plastic tie-down straps on the inflator tube, it was manufactured before April 1980 & needs modification.

WHY: A defect may exist causing the inflator assembly on the High Rider Ring to separate, preventing its proper inflation. Proper inflation of this ring is important because it holds the body in a more upright position - increasing your chance of survival.

The only modification needed is to the High Rider Ring accessory. The suit itself is in no other way affected.

FREE FIX: The modification required is easy and quick. And there's no need to bring in the suit for this modification. We will send you a FREE safety modification kit to correct this problem.

This do-it-yourself kit contains four simple-to-install tie-down straps. These will ensure a secure connection to keep the High Rider Ring inflated when in use (see illustrations at right). Though this modification is quick and easy, it's important that it be made for your assured safety. The kit meets Coast Guard standards.

For your FREE modification kit, simply write to:

AQUANAUTICS CORPORATION
One Maritime Plaza, Suite 1750 • San Francisco, CA 94111
or call us collect at (415) 658-6629

Tie-Down Strap Installation Instructions for the Imperial Exposure Suit

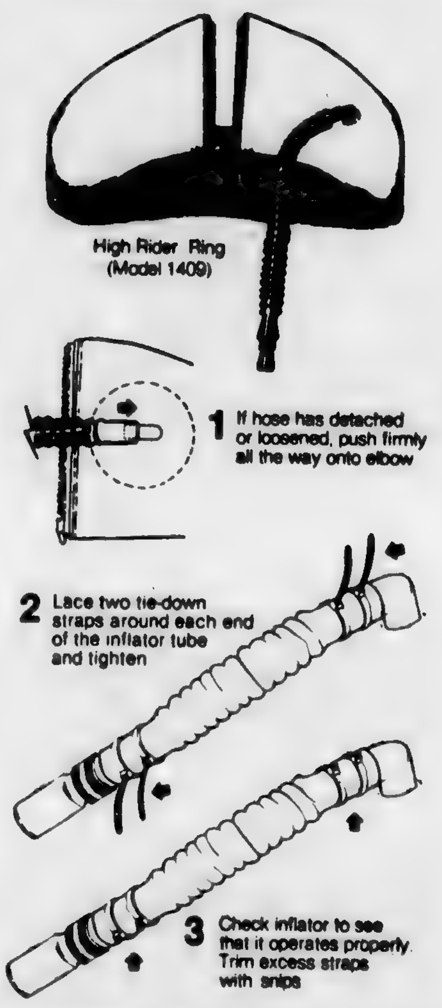

High Rider Ring (Model 1409)

1 If hose has detached or loosened, push firmly all the way onto elbow

2 Lace two tie-down straps around each end of the inflator tube and tighten

3 Check inflator to see that it operates properly. Trim excess straps with snips

BILLING CODE 6750-01-C

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Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Aquanautics Corporation, One Maritime Plaza, San Francisco, CA 94111.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that Imperial Manufacturing Corporation, a company previously owned by Aquanautics, made false and misleading representations regarding the flotation safety capabilities of the Imperial Model 1409 survival suit. Model 1409 survival suits are one-piece, hooded jump suit-like garments made of a flexible, buoyant material (neoprene) which, when donned, completely enclose the body, except for the nose and eyes. They are designed to protect the wearer from the effects of hypothermia and to provide flotation in emergency situations, such as the sinking of a boat or the collapse of an offshore oil drilling rig. Model 1409 survival suits are equipped with an inflatable flotation bladder—called a high rider ring—which is intended to allow the wearer to keep his or her head and shoulders more upright in the water. The wearer must blow up the high rider ring by the use of a flexible hose called the inflator tube. The inflator tubes on Model 1409 survival suits were inadequately affixed to the high rider ring and have pulled off in use. The result is that the ring cannot be inflated or will not remain inflated. The complaint alleges that, contrary to Imperial's representations, the Model 1409 survival suit will not consistently and safely provide the necessary flotation and head and shoulder support for the user to float safely in cold water for lengthy periods of time because of the failure of the inflator tube consistently to inflate the high rider ring.

The proposed consent order prohibits Aquanautics from representing that any survival suit it sells provides the necessary head and shoulder support for the user to float safely in cold or rough water or will diminish the likelihood of drowning unless such is the case.

The proposed consent order also requires Aquanautics to send, by first class mail to owners and users of the Model 1409 survival suit, a notice which both warns of the possible failure of the high rider ring inflator tube and contains a simple kit consisting of four plastic tie-down straps (Panduit straps) which the owner or user can install on the inflator tube. This simple modification is intended to prevent the inflator tube from separating from the high rider ring. Aquanautics is required to send this notice to any owner or user whose name and address it currently possesses or subsequently obtains pursuant to the provisions of the Order.

The proposed order requires Aquanautics to undertake various efforts to obtain as many names and addresses of owners or users of the Model 1409 survival suit as possible. Aquanautics must ask all of its retailers and distributors who sold Model 1409 survival suits to provide it with the names and addresses of any purchasers or users in their files. If the retailer or distributor has such information but is unable or unwilling to provide it, the proposed order requires Aquanautics to offer such retailers or distributors $10.00 per name and address to compensate them for the cost of searching for and providing such information. In addition, the proposed order requires Aquanautics to place a full page advertisement followed by a half page advertisement in two consecutive issues of seven periodicals targeted to the fishing and boating industry. These advertisements warn owners or users of the Model 1409 survival suit of the possible failure of the inflator tube and inform them how to contact Aquanautics to obtain a free repair kit to prevent this hazard. The proposed order also requires Aquanautics to provide its distributors and retailers with a display poster which warns their customers of the hazard. Aquanautics must also provide retrofit kits to each of its distributors and retailers so that any owner or user of the Model 1409 survival suit who sees this poster can obtain a free retrofit kit on the spot.

Additionally, because of the high concentration of commercial fishermen in Alaska, some of whom live relatively isolated lives, the proposed order requires Aquanautics to send warning notices regarding the inflator tube problem to the registered owners of the approximately 8000 Alaska commercial fishing boats to whom "Fisheries Entry Permits" have been issued by the state of Alaska.

Finally, the proposed order contains standard provisions that require Aquanautics to maintain records of compliance for 3 years; to provide the Commission with 30 days notice of corporate changes; and to file a compliance report within 120 days after service of the complaint and order.

The purpose of this analysis is to facilitate public comment on the proposed order; it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,
Secretary.

[FR Doc. 86–26501 Filed 11–26–86; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[File No. 851 0126]

J. Thomas Arno, M.D., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, 62 doctors in Meadville, Pennsylvania from entering into any agreement to refuse to deal with any physician, group of physicians, or hospital, or from refusing to refer patients, for the purpose of restricting or lessening competition.[1]

DATE: Comments will be received until January 27, 1987.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/B–823, M. Elizabeth Gee, Washington, DC 20580 (202) 724–1341.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

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[1] Three of the respondents named in Attachment A to this order have separate proposed consent agreements identical to this entered against them. The proposed consent agreements with respondents J. Henry Burkholder, M.D., Danilo L. Guanzon, M.D., and Lucia Pagniello, M.D. are available at the FTC's Public Reference Branch, Room H–130, 6th St. and Pa. Ave., NW., Washington, DC 20580.

List of Subjects in 16 CFR Part 13

Physicians, Trade practices.

United States of America, Before Federal Trade Commission

[File No. 851-0126]

Agreement Containing Consent Order To Cease and Desist

In the matter of J. Thomas Arno, M.D., Azhar Aslam, M.D., Barry B. Bittman, M.D., Raymond J. Bridge, M.D., Gerald M. Brooks, M.D., J. Henry Burkholder, M.D., Kwang Y. Choi, M.D., Candido T. Cortes, Jr., M.D., Aiman N. Daghestani, M.D., Arthur G. Deininger, M.D., Timothy Downing, M.D., M. Bruce Dratler, M.D., Robert A. Driscoll, M.D., David W. Dunn, M.D., Victor B. Farrah, D.O., Nicholas J. Fedorka, D.M.D., Edward M. Fine, M.D., Mark R. Foster, M.D., Luis C. Gomez, M.D., Danilo L. Guanzon, M.D., Mary B. Hagamen, M.D., Alanson O. Hibbard, M.D., William T. Holland, Jr., M.D., Ronald A. Kellogg, M.D., Lucille Kirchner, M.D., David D. Kirkpatrick, Jr., M.D., Robert L. Kirkpatrick, M.D., George Kwitka, M.D., James H. Larson, M.D., Curtis H. Laub, M.D., Donald E. LaVay, M.D., Ovunda A. Lawson, D.O., Seung C. Lee, M.D., Brian F. McIntosh, M.D., James R. McLamb, M.D., Mohamed Moakeh, M.D. Rebecca F. Morris, M.D., William J. Morris, M.D., Spero E. Moutsos, M.D., Robert N. Moyers, M.D., John B. Nesbitt, M.D., Vincente R. Ordinario, Jr., M.D., Edward J. Owens, D.O., Lucia Pagniello, M.D., William K. Petrella, D.O., Joseph G. Piroch, M.D., Paul T. Poux, M.D., Tariq Qureshi, M.D., Renato P. Ramirez, M.D., Stacey A. Robertson, D.O., Diogenes A. Saavedra, M.D., Robert A. Santora, M.D., Lawson C. Smart, M.D., Fred W. Strickland, Jr., M.D., William D. Sullivan, M.D., John O. Taylor, M.D., Christopher W. Thomas, M.D., Ronald M. Vrablik, M.D., Thomas M. Watson, M.D., Randy S. Zelen, M.D., and John B. Zinnamosca, M.D.

The Federal Trade Commission having initiated an investigation of certain acts and practices of respondents and it now appearing that respondents are willing to enter into an agreement containing an Order to cease and desist from engaging in the acts and practices being investigated,

It Is Hereby Agreed by and between respondents and their duly authorized attorneys and counsel for the Federal Trade Commission that:

1. Respondents are physicians licensed and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania. Their mailing addresses are listed in the Appendix attached hereto.

2. Respondents admit all of the jurisdictional facts set forth in the draft of complaint here attached.

3. Respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules of Practice, the Commission may, without further notice to respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following Order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to respondents' addresses stated in this agreement shall constitute service. Respondents waive any right they may have to any other manner of service. The complaint attached hereto may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

7. Respondents have read the proposed complaint and Order contemplated hereby. They understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after the Order becomes final.

Order

I.

It is ordered, that each respondent, directly or indirectly or through any device, shall cease and desist from entering into, maintaining or continuing, or attempting to enter into, maintain or continue, any agreement or understanding, either express or implied, to refuse to deal with or to withhold patient referrals from any physician, group of physicians, or other health care provider, or to refuse to deal with or to withhold patient admissions from any hospital.

Provided, however, that this section shall not be construed to prohibit any respondent from participating in hospital medical staff credentialling recommendations, hospital medical staff credentialling decisions in his or her capacity as a hospital board member, hospital utilization review, hospital peer review, hospital quality assurance, or hospital policy making, where such conduct by the respondent neither constitutes nor is part of any agreement, combination or conspiracy whose purpose, effect or likely effect is to impede competition unreasonably.

II.

It is further ordered, that each respondent shall cease and desist from directly or indirectly, or through any device:

A.[1] Making any threat, express or implied, including but not limited to any

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[1] *See* Analysis of Proposed Consent Order to Aid Public Comment regarding addition of five-year time limit to Part II.A. of the Order.

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threat to refuse to deal with or to withhold patient referrals from any physician, group of physicians, or other health care provider, or to refuse to deal with or to withhold patient admissions from any hospital, for the purpose of restricting or lessening competition; or

B. Inducing or attempting to induce any person to refuse to deal with or to withhold patient referrals from any physician, group of physicians, or other health care provider, or to refuse to deal with or to withhold patient admissions from any hospital, for the purpose of restricting or lessening competition.

III.

A. It is further ordered, that within thirty (30) days after service of this Order, the respondents shall mail a copy of this Order and the accompanying complaint to the Administrator, Board of Corporators, and each member of the medical staff of St. Vincent Health Center, Erie, Pennsylvania, and to the President of the Erie County Medical Society.

B. It is further ordered, that each respondent shall, within sixty (60) days after service of this Order, and at any time the Commission, by written notice, may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which the respondent has complied with this Order.

C. It Is Further Ordered, that each respondent shall promptly notify the Commission of any change in respondent's business address set forth in the Appendix to this Order.

Appendix

J. Thomas Arno, M.D.: 149 North Main Street, Meadville, Pennsylvania 16335;
Azhar Aslam, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;
Barry B. Bittman, M.D.: 149 North Main Street, Meadville, Pennsylvania 16335;
Raymond J. Bridge, M.D.: R.D. #2, Box 96, Conneaut Lake, Pennsylvania 16316;
Gerald M. Brooks, M.D.: 403 Euclid Avenue, Saegertown, Pennsylvania 16433;
J. Henry Burkholder, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;
Kwang Y. Choi, M.D.: 505 Poplar Street, Meadville, Pennsylvania 16335;
Candido T. Cortes, Jr., M.D.: 505 Poplar Street, Meadville, Pennsylvania 16335;
Aiman N. Daghestani, M.D.: 773 North Main Street, Meadville, Pennsylvania 16335;
Arthur G. Deininger, M.D.: 390 Park Avenue, Meadville, Pennsylvania 16335;
Timothy Downing, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;
M. Bruce Dratler, M.D.: 505 Poplar Street, Meadville, Pennsylvania 16335;
Robert A. Driscoll, M.D.: Meadville City Hospital, 751 Liberty Street, Meadville, Pennsylvania 16335;
David W. Dunn, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;
Victor B. Farrah, D.O.: 505 Poplar Street, Meadville, Pennsylvania 16335;
Nicholas J. Fedorka, D.M.D.: 226 Park Avenue, Meadville, Pennsylvania 16335;
Edward M. Fine, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;
Mark R. Foster, M.D.: 768 Liberty Street, Meadville, Pennsylvania 16335;
Luis C. Gomez, M.D.: 505 Poplar Street, Meadville, Pennsylvania 16335;
Danilo L. Guanzon, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;
Mary B. Hagamen, M.D.: 432 Main Street, Saegertown, Pennsylvania 16433;
Alanson O. Hibbard, M.D.: 838 Park Avenue, Meadville, Pennsylvania 16335;
William T. Holland, Jr., M.D.: 899 Grove Street, Meadville, Pennsylvania 16335;
Ronald A. Kellogg, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;
Lucille Kirchner, M.D.: Meadville City Hospital, 751 Liberty Street, Meadville, Pennsylvania 16335;
David D. Kirkpatrick, Jr., M.D.: 279 Walnut Street, Meadville, Pennsylvania 16335;
Robert L. Kirkpatrick, M.D.: 1056 South Main Street, Meadville, Pennsylvania 16335;
George Kwitka, M.D.: Meadville City Hospital, 751 Liberty Street, Meadville, Pennsylvania 16335;
James H. Larson, M.D.: 491 Jackson Park Drive, Meadville, Pennsylvania 16335;
Curtis H. Laub, M.D.: 766 Liberty Street, Meadville, Pennsylvania 16335;
Donald E. LaVay, M.D.: Spencer Hospital, 1034 Grove Street, Meadville, Pennsylvania 16335;
Ovunda A. Lawson, D.O.: 217 North Street, Meadville, Pennsylvania 16335;
Seung C. Lee, M.D.: Spencer Hospital, 1034 Grove Street, Meadville, Pennsylvania 16335;
Brian F. McIntosh, M.D.: Meadville City Hospital, 751 Liberty Street, Meadville, Pennsylvania 16335;
James R. McLamb, M.D.: 766 Liberty Street, Meadville, Pennsylvania 16335;
Mohamed Moakeh, M.D.: 773 North Main Street, Meadville, Pennsylvania 16335;
Rebecca F. Morris, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;
William J. Morris, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;
Spero E. Moutsos, M.D.: 370 Chestnut Street, Meadville, Pennsylvania 16335;
Robert N. Moyers, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;
John B. Nesbitt, M.D.: 279 Walnut Street, Meadville, Pennsylvania 16335;
Vincente R. Ordinario, Jr., M.D.: Third Street, Conneaut Lake, Pennsylvania 16316;
Edward J. Owens, D.O.: 118 Railroad Street, Cambridge Springs, Pennsylvania 16403;
Lucia Pagniello, M.D.: 506 North Main Street Ext., Meadville, Pennsylvania 16335;
William K. Petrella, D.O.: 823 Chestnut Street, Meadville, Pennsylvania 16335;
Joseph G. Piroch, M.D.: 7 Lakeside Square, Conneaut Lake, Pennsylvania 16316;
Paul T. Poux, M.D.: P.O. Box 127, Guys Mills, Pennsylvania 16327;
Tariq Qureshi, M.D.: Meadville City Hospital, 751 Liberty Street, Meadville, Pennsylvania 16335;
Renato P. Ramirez, M.D.: Linesville Medical Center, West Erie Street, Linesville, Pennsylvania 16424;
Stacey A. Robertson, D.O.: 402 Main Street, Saegertown, Pennsylvania 16433;
Diogenes A. Saavedra, M.D.: 884 Highland Avenue, Meadville, Pennsylvania 16335;
Robert A. Santora, M.D.: 505 Poplar Street, Meadville, Pennsylvania 16335;
Lawson C. Swart, M.D.: 766 Liberty Street, Meadville, Pennsylvania 16335;
Fred W. Strickland, Jr., M.D.: 495 Pine Street, Meadville, Pennsylvania 16335;
William D. Sullivan, M.D.: Meadville City Hospital, 751 Liberty Street, Meadville, Pennsylvania 16335;
John 0. Taylor, M.D.: 843 Park Avenue, Meadville, Pennsylvania 16335;
Christopher W. Thomas, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;
Ronald M. Vrablik, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;
Thomas M. Watson, M.D.: 505 Poplar Street, Meadville, Pennsylvania 16335;
Randy S. Zelen, M.D.: 149 North Main Street, Meadville, Pennsylvania 16335; and
John B. Zinnamosca, M.D.: 505 Poplar Street, Meadville, Pennsylvania 16335.

Arno, et al.—Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from sixty-two physicians practicing in the Meadville, Pennsylvania, area. The agreement would settle charges by the Commission that the proposed respondents violated Section 5 of the Federal Trade Commission Act by concertedly threatening to cease referring patients to physician specialists associated with a hospital in Erie, Pennsylvania, if the specialists associated with that hospital opened up a competing office in the Meadville area.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint

A complaint has been prepared for issuance by the Commission along with the proposed order. It alleges that sixty-two physicians practicing in Crawford County, Pennsylvania, in or near the city of Meadville, participated in a combination or conspiracy to restrict competition by threatening not to refer patients to physician specialists from St. Vincent Medical Center in Erie, Pennsylvania, if a group of specialists from that hospital ("Erie Group") opened a competing office in the Meadville area. The proposed respondents communicated this threat by a letter which was sent to the Erie County Medical Society and to the administrator, Board of Corporators, and the entire medical staff of St. Vincent.

The complaint alleges that, as a result of the threat, the Erie Group suspended its plans to establish a medical office in the Meadville area.

The complaint further alleges that the purpose or effects of the combination or conspiracy have been to restrain trade unreasonably, hinder competition in the provision of health care services in the Meadville area, and deprive consumers of the benefits of competition, in the following ways, among others:

A. The Erie Group has been deterred from providing health care services in the Meadville, Pennsylvania, area, thereby limiting competition among physicians for patients on the basis of price, service, and quality;

B. Other health care providers and provider groups from outside the Meadville area are or may be deterred from establishing offices or facilities that compete with Meadville area physicians;

C. Patients' options in selecting a physician may be limited; and

D. Some patients may be required to travel greater distances, at additional expense and inconvenience, to obtain their preferred health care services.

The Proposed Consent Order

Parts I and II of the order describe the conduct prohibited by the order. The first paragraph of Part I would prevent the proposed respondents from conspiring to refuse to deal with, or to withhold patient referrals or admissions from, any health care provider. The second paragraph of Part I, however, contains a proviso that permits respondents to participate in hospital medical staff credentialling decisions, hospital utilization review, hospital peer review, hospital quality assurance, or hospital policymaking, where such conduct neither constitutes nor is part of any agreement, combination or conspiracy whose purpose, effect or likely effect is to impede competition unreasonably.

In contrast to Part I, which would only prohibit concerted conduct, Part II would prohibit certain unilateral conduct. II.A would prohibit respondents from unilaterally making any threat to refuse to deal with, or withhold patient referrals or admissions from, any health care provider if made for the purpose of restricting or lessening competition. The Commission intends to add a time limit to Part II.A of its Decision and Order, limiting the effective time of this prohibition to a period of five years. This will be accomplished by adding the words "For a period of five years following the effective date of this Order," at the beginning of Part II.A of the Decision and Order.

Part II.B would prohibit respondents from unilaterally inducing or attempting to induce any person to refuse to deal with, or withhold patient referrals or admissions from, any health care provider if done for the purpose of restricting or lessening competition.

Parts II.A and II.B apply only to conduct that is undertaken "for the purpose of restricting or lessening competition." They do not prohibit conduct simply on the ground its foreseeable or actual effect will be to injure a competitor. Therefore, a respondent would be free to act unilaterally to advocate restrictions on other practitioners or to oppose hospital privileges for other practitioners, so long as the respondent's purpose was not to restrict or limit competition.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 86-26755 Filed 11-26-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Proposed Placement of Acetyl-alpha-methylfentanyl, Alpha-methylthiofentanyl, Beta-hydroxyfentanyl, Beta-hydroxy-3-methylfentanyl, 3-Methylthiofentanyl and Thiofentanyl Into Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking is issued by the Administrator of the Drug Enforcement Administration (DEA) to place the narcotic substances, acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, beta-hydroxy-3-methylfentanyl, 3-methylthiofentanyl and thiofentanyl into Schedule I of the Controlled Substances Act (CSA) (21 U.S.C. 801 et seq.). This proposed action by the DEA Administrator is based on data gathered and reviewed by DEA. If finalized, this proposed action would impose the regulatory control mechanisms and criminal sanctions of Schedule I on the manufacture, distribution and possession of the six referenced analogs of fentanyl.

DATE: Comments must be submitted on or before January 27, 1987.

ADDRESS: Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION: On October 29, 1985, the Administrator of the Drug Enforcement Administration issued a final rule in the **Federal Register** (50 FR 43698-702) temporarily placing several analogs of fentanyl, a Schedule II narcotic analgesic into Schedule I of the Controlled Substances Act. Six of the fentanyl analogs controlled under the emergency scheduling provisions of the CSA (21 U.S.C. 811(h)) are:

(1) acetyl-alpha-methylfentanyl (*N*-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-*N*-phenylacetamide)
(2) alpha-methylthiofentanyl (*N*-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-*N*-phenylpropanamide)
(3) beta-hydroxyfentanyl (*N*-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-*N*-phenylpropanamide)
(4) beta-hydroxy-3-methylfentanyl (*N*-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-*N*-phenylpropanamide)
(5) 3-methylthiofentanyl (*N*-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-*N*-phenylpropanamide)
(6) thiofentanyl (*N*-phenyl-*N*-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide)

The final rule which became effective on November 29, 1985 was based on a finding by the Administrator that the emergency scheduling of the above referenced fentanyl analogs was necessary to avoid an imminent hazard to the public safety. Section 201(h)(2) of the CSA (21 U.S.C. 811(h)(2)) requires that the emergency scheduling of a substance expires at the end of one year from the effective date of the order. However, if proceedings to schedule a substance pursuant to 21 U.S.C. 811(a)(1) have been initiated and are pending, the temporary scheduling of a substance

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may be extended for up to 6 months. Under this provision, the temporary scheduling of acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, beta-hydroxy-3-methylfentanyl, 3-methylthiofentanyl and thiofentanyl which would expire on November 29, 1986, may be extended to May 29, 1987. This extension is being ordered by the DEA Administrator in a separate action.

DEA has gathered and reviewed the available information regarding the actual abuse and relative potential for abuse of the six fentanyl analogs. DEA, in conjunction with the National Institute on Drug Abuse (NIDA), has provided for the synthesis and biological testing of each of the fentanyl analogs. By letter dated October 27, 1986, the DEA Administrator submitted the data which DEA has gathered regarding the six fentanyl analogs to the Assistant Secretary for Health, Department of Health and Human Services. In accordance with 21 U.S.C. 811(b), the DEA Administrator also requested a scientific and medical evaluation of the relevant information and a scheduling recommendation for the six fentanyl analogs from the Assistant Secretary for Health.

The following is a brief summary of the available information submitted to the Assistant Secretary for Health regarding the above six fentanyl analogs: *N*-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-*N*-phenylacetamide or acetyl-alpha methylfentanyl behaves as a typical morphine-like compound in rodent antinociceptive tests. It has a rapid onset but a shorter duration of action than morphine. In rats, acetyl-alpha-methylfentanyl is approximately 10 times more potent as an analgesic than morphine. Acetyl-alpha-methylfentanyl substitutes completely for morphine when administered to morphine-dependent withdrawn monkeys. DEA laboratories have identified acetyl-alpha-methylfentanyl in 20 exhibits of drug evidence seized or purchased in California since 1983. Approximately four ounces of acetyl-alpha-methylfentanyl were seized at a clandestine laboratory site in June 1985.

N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-*N*-phenylpropanamide or alpha-methylthiofentanyl has been identified in drug evidence submissions from California, Louisiana and Florida since 1984. Over three kilograms of material containing alpha-methylthiofentanyl were confiscated from a clandestine laboratory in California. Alpha-methylthiofentanyl is not yet available for biological testing. Based on the known morphine-like activity of alpha-methylfentanyl, thiofentanyl and other alpha-methyl- or thio-substituted fentanyl analogs, it can be predicted that alpha-methylthiofentanyl is a morphinomimetic compound, at least as potent as fentanyl as an analgesic and with a longer duration of action.

N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-*N*-phenylpropanamide, or betahydroxyfentanyl produces typical morphine-like effects in rats. Its analgesic potency is approximately 150 times that of morphine. DEA laboratories have identified beta-hydroxyfentanyl in four exhibits of drug evidence obtained in California since 1984. Two of the exhibits which consisted of over four kilograms of material contained beta-hydroxyfentanyl and were confiscated from a clandestine laboratory.

N-[1-(2-hydrooxy-2-phenethyl]-3-methyl-4-piperidinyl]-*N*-phenylpropanamide or beta-hydroxy-3-methylfentanyl has been studied extensively in China. Beta-hydroxy-3-methylfentanyl behaves as a typical morphine-like compound in several rodent antinociceptive tests. In its (+)-cis form, beta-hydroxy-3-methylfentanyl is over 7800 times more potent than morphine in mice as an analgesic. Binding studies show it to have a high affinity for the mu-opiate receptor. Nalorphine and naloxone effectively antagonize the opiate effects of beta-hydroxy-3-methylfentanyl. DEA laboratories have identified betahydroxy-3-methylfentanyl in drug evidence submissions from California and Florida since 1985. Beta-hydroxy-3-methylfentanyl has been identified as a combination of its cis and trans diastereomers. Over four kilograms of a powder containing beta-hydroxy-3-methylfentanyl were confiscated at a clandestine laboratory site.

N-phenyl-*N*-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide or thiofentanyl produces typical morphine-like effects in rodent antinociceptive tests. It is approximately 175 times more potent than morphine as an analgesic. DEA laboratories have identified thiofentanyl in five evidence samples from California and Louisiana since 1985. Two of the exhibits were obtained at a clandestine laboratory site in June 1985 in California.

Fentanyl-like substances have been associated with at least 60 narcotic overdose deaths since January 1984. Although the specific fentanyl analogs involved were not identified it is likely that at least some of the deaths were associated with the use of the six fentanyl analogs described above. The deaths occurred during the time period and in those areas where the six fentanyl analogs were identified. Two of the deaths occurred in Oregon and the remainder in California. Deaths were typical narcotic overdoses with the cause of death usually reported as pulmonary congestion due to intravenous "fentanyl" toxicity.

DEA has identified each of the six fentanyl analogs at a clandestine laboratory. There are no commercial manufacturers or suppliers of any of the six analogs nor are they used therapeutically. The Assistant Secretary for Health, when notified of DEA's intention to emergency schedule the six fentanyl analogs, did not object to this action. The Assistant Secretary's concurrence meant that no Investigational New Drug exemption (IND's) or approved New Drug Applications (NDA's) were in effect for any of the six fentanyl analogs. Neither the Assistant Secretary for Health nor the Food and Drug Administration has notified DEA of any change in the marketing status of any of the six fentanyl analogs. If a substance cannot lawfully be marketed under the Food, Drug and Cosmetic Act, that substance, under the CSA, has no currently accepted medical use in treatment in the United States and is not accepted as safe for use under medical supervision.

The DEA Administrator, based on the information gathered and reviewed by his staff and after consideration of the factors in 21 U.S.C. 811(c), believes that sufficient data exists to propose that acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, beta-hydroxy-3-methylfentanyl, 3-methylthiofentanyl and thiofentanyl be placed into Schedule I of the CSA pursuant to 21 U.S.C. 811(a). The specific findings required pursuant to 21 U.S.C. 811 and 812 for a substance to be placed into Schedule I are as follows:

(1) The drug or other substance has a high potential for abuse.

(2) The drug or other substance has no currently accepted medical use in treatment in the United States.

(3) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

The DEA Administrator contends that there is adequate data to support each of the findings for the Schedule I placement of acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, beta-hydroxy-3-methylfentanyl, 3-methylthiofentanyl and thiofentanyl. The DEA Administrator further contends that adequate data exists to classify acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, beta-hydroxy-3-methylthiofentanyl, 3-methylthiofentanyl and thiofentanyl as opiates as defined in 21 U.S.C. 802(18) and hence as narcotics as defined in 21 U.S.C. 802(17).

Before issuing a final rule in this matter, the DEA Administrator will take into consideration the scientific and medical evaluations and scheduling recommendations of the Secretary of the Department of Health and Human Services in accordance with 21 U.S.C. 811(b). The recommendations of the Secretary regarding scientific and medical matters are binding on the Administrator and if the Secretary recommends that a substance should not be controlled, the DEA Administrator will not control it. The Administrator will also consider relevant comments from other concerned parties.

Interested persons are invited to submit their comments, objections or requests for hearing in writing with regard to this proposal. Requests for a hearing should state with particularity the issues concerning which the person desires to be heard. All correspondence regarding this matter should be submitted to the Administrator, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative.

In the event that comments, objections or requests for a hearing raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall order a public hearing by notice in the Federal Register, summarizing the issues to be heard and setting the time for the hearing which will not be less than 30 days after the date of the notice.

Pursuant to Title 5, United States Code, section 605(b), the Administrator certifies that the proposed placement of acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, beta-hydroxy-3-methylfentanyl, 3-methylthiofentanyl and thiofentanyl into Schedule I of the CSA will have no impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96-354). The substances proposed for control in this notice have no legitimate use or manufacturer in the United States. In accordance with the provisions of Title 21 United States Code, section 811(a), this proposal to place acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, beta-hydroxy-3-methylfentanyl, 3-methylthiofentanyl and thiofentanyl into Schedule I is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, have been exempted from the consultation requirements of Executive Order 12291 (46 FR 13193).

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of DEA by Department of Justice Regulations (28 CFR 0.100), the Administrator hereby proposes that 21 CFR 1308 be amended as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. In § 1308.11, the introductory text of paragraph (b) is revised to read as follows:

* * * * *

§ 1308.11 Schedule I.

* * * * *

(b) *Opiates.* Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation (for purposes of paragraphs (b)(13) and (b)(36) only, the term isomer includes the optical and geometric isomers):

* * * * *

3. Section 1308.11 is further amended by redesignating paragraphs (b)(1) through (b)(7) as (b)(2) through (b)(8), paragraphs (b)(8) and (b)(9) as (b)(10) and (b)(11), paragraphs (b)(10) through (b)(31) as (b)(14) through (b)(35), paragraphs (b)(32) through (b)(45) as (b)(37) through (b)(50) and paragraphs (b)(46) and (b)(47) as (b)(52) and (b)(53) and by adding new paragraphs (b)(1), (b)(9), (b)(12), (b)(13), (b)(36) and (b)(51) to read as follows:

§ 1308.11 Schedule I

* * * * *

(b) * * *

(1) Acetyl-alpha-methylfentanyl (*N*-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-*N*-phenylacetamide) . . . 9815

* * * * *

(9) Alpha-methylthiofentanyl (*N*-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-*N*-phenylpropanamide) . . . 9832

* * * * *

(12) Beta-hydroxyfentanyl (*N*-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-*N*-phenylpropanamide) . . . 9830

* * * * *

(13) Beta-hydroxy-3-methylfentanyl (*N*- [1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-*N*-phenylpropanamide . . . 9831

* * * * *

(36) 3-methylthiofentanyl (*N*-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-*N*-phenylpropanamide . . . 9833

* * * * *

(51)Thiofentanyl (*N*-phenyl-*N* [1-(2-thienyl)ethyl-4-piperidinyl]-propanamide . . . 9835

* * * * *

§ 1308.11 [Amended]

4. Section 1308.11 is amended by removing paragraphs (g)(3), (g)(4), (g)(6) through (g)(8) and (g)(10) and redesignating existing paragraph (g)(5) as (g)(3), existing paragraph (g)(9) as (g)(4) and existing paragraph (g)(11) as (g)(5).

Dated: November 21, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86-26844 Filed 11-26-86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 357

[Department of the Treasury Circular, Public Debt Series No. 2-86]

Regulations Governing Book-Entry Treasury Bonds, Notes, and Bills

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Proposed rulemaking.

SUMMARY: On March 14, 1986, the Department published a portion of a proposed rule (the "March Rule") that will govern securities held in the commercial book-entry system, now referred to as the Treasury/Reserve Automated Debt Entry System ("TRADES"). 51 FR 8846. A separate book-entry system, known as the

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TREASURY DIRECT Book-Entry Securities System ("TREASURY DIRECT"), was implemented in mid-1986, and final regulations applicable to securities held in TREASURY DIRECT were published on May 16, 1986. 51 FR 18260.Upon final adoption, the TRADES regulations, together with the final TREASURY DIRECT regulations, will form Part 357 of Title 31 of the Code of Federal Regulations, which will govern all book-entry marketable Treasury securities.

The section-by-section analysis for the March Rule contained a detailed discussion that raised a number of complex issues and requested specific comments and proposed solutions. Several of the comment letters received contained detailed analyses of the proposed rule that responded to the issues raised and identified additional technical issues that required clarification or refinement of the proposed rule. Given the complexity of the issues raised, several commenters requested that the Department, after revision and incorporation of the comments received, republish the rule in proposed form to provide a second opportunity for public comment. The Department responded with a notice published in August 1986 advising those interested that a revised rule would be published again in proposed form with provision for a thirty-day comment period. 51 FR 29559 (August 19, 1986). The revised proposed rule for securities held in TRADES is set forth below, preceded by a section-by-section discussion of the specific comments received, changes made in response to those comments, and, where appropriate, reasons for not adopting suggested changes.

Certain of the provisions set forth below in Subpart A and Subpart D were published in final form as part of the final rule for TREASURY DIRECT. They are reprinted here for clarity and completeness. Where revisions are proposed, they are explained below in the section-by-section discussion.

DATE: Comments must be received on or before December 29, 1986.

ADDRESS: Send comments to the Office of the Chief Counsel, Bureau of the Public Debt, E Street Building, Washington, DC 20239–0001.

FOR FURTHER INFORMATION CONTACT: Virginia Rutledge, Attorney-Advisor, (202) 535–4890, or Cynthia Reese, Senior Attorney and Special Assistant, (202) 376–4320.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written comments and suggestions. Those received before the expiration of the comment period will be considered in the preparation of the final rule. At the option of the Department, those received after the expiration of the comment period may be considered in the preparation of the final rule. No public hearing is contemplated, but if written requests for a hearing are received, and if it is determined that the rulemaking process will be clearly enhanced by oral presentation, a hearing will be scheduled.

Discussion of the Comments Received

Summary

The Department received 28 comment letters on the proposed rule, as published on March 14, 1986. The comments ranged from brief letters simply supporting the project of replacing the existing book-entry regulations (Subpart O of 31 CFR Part 306 and 31 CFR Part 350, hereinafter collectively referred to as "Subpart O") to very detailed letters that included discussions of numerous issues and proposed specific regulatory language to resolve them. The Department thanks all of those who submitted comments and is especially appreciative of the time and effort that went into the more detailed letters.

The majority of comments were favorable, either explicitly or implicitly. Ten comment letters expressly supported the proposed rule, although most suggested modifications of varying degrees. Fifteen other commenters proposed modifications or expressed concerns about specific provisions of the proposed rule but did not oppose its adoption. One bank that submitted a comment letter suggested that the proposed rule was unnecessary but specifically expressed concern only about the requirement of the March Rule to send written confirmation of transfers. Two commenters in a joint letter expressed opposition to the proposed rule and suggested retention of Subpart O with only a single modification.[1] The Department believes that most if not all of the concerns raised by these commenters have been addressed by the revision set forth below, which includes a number of the suggested modifications.

Not surprisingly, several of the comment letters, including all of the most detailed ones, dealt at some length with the issue of resolution of competing claims that was discussed in detail in the section-by-section analysis of the March Rule. Most of the letters mentioning the issue favored a uniform Federal rule. The more detailed comments, almost without exception, favored adoption of some form of a bona fide purchaser rule and some form of priority for clearing liens. In the revised proposed rule printed below, the Department has adopted this approach.

In addition, several commenters focused on the warranties and duties of book-entry custodians set forth in the March Rule. Some commenters suggested broadening the warranties and including warranties of transferors other than book-entry custodians. In contrast, several banks suggested that, given the rather stringent banking regulations governing custody of customer securities, banks should not be required to make any warranties under the Treasury regulations. The bank commenters also pointed out certain differences between the banking regulations, which set out specific rules governing the provision of confirmations of securities transactions to bank customers, and the requirements set out in the proposed rule.

A third area focused on by commenters was the mechanics of the transfer rules themselves. Several commenters proposed eliminating the distinction between rules governing transfers of ownership of whole securities and transfers of security interests. Various reformulations were proposed, although all still would focus on book-marking as the relevant act of transfer. Related comments questioned the need for the additional rules governing attachment and perfection of security interests that were included in the March Rule.

One final area of comment involved the interaction of the regulations with other law. Three commenters specifically suggested that book-entry custodians subject to foreign law be exempt from the Department's regulations. Other comments focused on the interaction between the regulations and State law in a number of specific areas.

Two commenters submitting a joint comment letter questioned the Department's authority to promulgate rules such as those set forth below. Section 3121 of Title 31 of the United States Code grants the Secretary broad authority to establish the terms and conditions on which Treasury securities are issued. The Supreme Court recognized the breadth of this authority in *Free* v. *Bland*, 369 U.S. 663 (1962), in which the Court concluded that Treasury regulations governing ownership of savings bonds validly preempted community property rights in the bonds that might otherwise have existed under State law. The Secretary's authority also supports establishing rules such as those set forth below describing how to transfer interests in book-entry Treasury securities.

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[1] In a joint letter, four commenters, including the two referred to above, opposed the adoption of the March Rule, as proposed, but differed in their suggested modifications and submitted individual letters setting out their proposals. As a result, the joint letter has not been counted separately here, although it is included in the total of 28 comment letters mentioned above.

A primary concern of these two commenters was that the proposed rule would require significant changes in the current structure of clearing arrangements for Treasury securities. This was not the intention of the Department, and the Department believes that the concerns underlying this comment have been eliminated for the most part by the revisions to the March Rule that are set forth below.

Section-by-Section Discussion

Section 357.1.[3] This section provides that the new rule will apply to securities transactions occurring on or after a specified date, which is anticipated to be 60 days after the date of publication of the rule in final form.

Two commenters requested clarification as to how the rule describing the date of applicability of the proposed rule would be applied to a repurchase agreement that is initiated before the effective date but completed after that date. To clarify this point, one of the commenters suggested changing the word "transactions" in § 357.1(a) to the word "transfers." This would make clear that, for repurchase agreements initiated before the effective date but completed afterward, Subpart O would be applicable to the first step in the repurchase transaction while the proposed rule would be applicable to the second step.

Aside from the issue of how the section should be applied to repurchase agreements, the suggested drafting change would not be consistent with the basic structure of the proposed rule. As used in the March Rule, the term "transactions" was intended to include more than transfers of interests in securities. Both payments of interest and payments of principal on redemption constitute transactions that are to be expressly covered by the proposed rule and for which the effective date of § 357.1 would be relevant.

Nevertheless, for transactions involving two or more transfers of a security or a limited interest in a security, the Department believes that the result described above will be the appropriate one as a general rule: each transfer should be viewed separately for purposes of determining the applicability of these regulations. At the same time, the Department recognizes that having a single transaction subject to different rules depending upon the timing of each step in the transaction in some cases may cause unnecessary complexity. Furthermore, for transactions such as secured loans that will be initiated before but will continue beyond the effective date of this rule, the Department recognizes that the parties to such a transaction may wish to have the entire transaction governed by this rule.

To provide flexibility for such transactions, the Department has added a new sentence to § 357.1(b) that permits selection of either the existing regulations or the new Part 357. The provision requires an agreement in writing and applies only to transactions that will bridge the effective date specified in § 3.57.1(a).

The March Rule provided that a transaction involving a transfer would be deemed to have occurred for purposes of this section on the date on which occurs the act that constitutes a transfer as described in this Part. One commenter suggested that if § 357.1(b) were intended to describe when a transaction occurs for all purposes of the proposed rules, then § 357.1(b) should state that a transaction occurs "at the time" of transfer rather than on the date of transfer, since several transfers of a security can occur on a single day. The Department has not adopted this change since § 357.1(b) was intended to have the limited purpose of describing when a transaction occurs for purposes of the effective date set forth in § 357.1(a). The Department has added wording to § 357.1(b) to clarify this point.

Section 357.2. This section is the basic governing law provision. The March Rule provided that the rights and obligations of the United States would be governed by applicable Federal law. The rights and obligations of others would be governed by applicable Federal law, and to the extent not inconsistent with Federal law, by State and local law.

As noted above, questions as to the interaction of these rules with State law arose in connection with several comments. For example, one commenter suggested that, in proposing a rule on the transfer and pledge of Treasury securities, the Department should be cautious about creating rules resulting in different consequences for holding Treasury securities than would be the case for other uncertificated securities governed solely by State law. In particular, this commenter suggested that it would be unwise to ignore existing State law on secured transactions which represent the working out of relative rights of parties to a transaction.

The Department agrees that, as a general proposition, caution should be exercised in varying or preempting State law. However, the Department notes that the existing regulations of Subpart O already preempt State law to some extent. Furthermore, even with the minimalist approach of Subpart O, which leaves many issues completely to State law, a variety of interpretative questions have arisen concerning the appropriate application of the existing regulations, although not all of these questions have become the subject of litigation. As a result, with respect to book entry securities, there is not an accepted body of principles that operates to provide predictable results. Matters are further complicated because not all states have adopted the rules found in the 1978 revision to Article 8 of the Uniform Commercial Code (the "UCC"). Furthermore, even where such rules have been adopted, some of the litigation arising from recent failures of government securities dealers suggests that important legal issues are yet to be resolved that stem from some of the concepts and relationships that arise where interests in securities are transferred without the transfer of a certificate. Finally, the Department notes that the law of secured lending generally has continued to change as new types of property that may be the subject of secured transactions have developed, and the balance of rights among the various parties is reexamined and reevaluated. Recent litigation concerning transactions in government securities reflects just such a process.

Given the foregoing, the Department continues to believe that the Federal interest in uniformity and certainty for participants in the government securities market warrants supplanting State law with a Federal rule governing transactions in Treasury book-entry securities. In drafting the proposed rule, the Department has not attempted to

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[3] Because of the addition of some new sections, certain of the sections contained in the March Rule have been renumbered. Unless otherwise indicated, section numbers in this discussion refer to the sections as numbered below. Where appropriate for clarity, the section number preceding the discussion of comments and changes to any given section is followed by a bracketed number indicating the section number or numbers of the same provision as published in the March Rule.

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vary arbitrarily the State law rules governing transactions in investment securities. Instead, the Department's goal is to also provide a rational set of rules that balances the interests of all participants in the market and provides a framework for giving effect to investor expectations while preserving the efficiency and liquidity of the market. The comments received have been very useful in identifying those areas where the March Rule failed to achieve these goals, most notably in the area of competing claims. The Department believes the revisions to the rule published below resolve those deficiencies.

Another commenter suggested an approach that would view the Federal Reserve Banks as clearing corporations, as defined in section 8–102(3) of the UCC. This approach would also deem all book-entry securities either to be held in bearer definitive form at the Federal Reserve Bank of New York or to be in uncertificated form registered in the name of the Federal Reserve Bank of New York, so that the UCC as adopted by New York would govern all transfers and pledges of securities. This approach has the advantage of providing uniformity and perhaps a reasonable level of certainty throughout the market. However, the Department does not believe that it is appropriate for the entire market in Treasury securities to be subject to the laws of a single State's jurisdiction.

Instead, the Department continues to believe that it is appropriate to provide in its rule the basic framework for transactions in government securities. Under the March Rule, the conceptual approach of the governing law provision was that of a partial preemption of State law: issues not explicitly dealt with in the proposed rules would be governed by State law. After further consideration, the Department has concluded that the difficulty in describing with any precision the line between preempted and nonpreempted State law under such a partial preemption would unnecessarily focus attention on drawing that line. To emphasize the Federal interest motivating the rule, and given the broad authority of the Department to promulgate regulations relating to Treasury securities, the Department has concluded that a better approach is to preempt State law completely. The Department anticipates that, in accordance with the approach taken by the Supreme Court decision in *U.S.* v. *Kimbell Foods,* 440 U.S. 715 (1979), principles derived from State law will be incorporated into applicable Federal law as the rule for decision, whenever appropriate, for issues not explicitly dealt with in the regulations. The Department believes that this approach will, on balance, cause less confusion because it focuses on inclusion rather than exclusion, as would be the case with a partial preemption.

One comment noted certain specific areas in existing law that had not been covered in the March Rule. They are the warranties, if any, of issuers of instructions (section 8–306 of the UCC); the effect, if any, of unauthorized instructions (section 8–311 of the UCC); a purchaser's rights, if any, to proof of a transferor's authority (section 8–316 of the UCC); and the formal requisites, if any, of transfers (section 8–319 of the UCC).

Two of these would appear to be generally inapplicable in the context of TRADES. Under section 8–308(4) of the UCC, an "instruction" is defined as an order to the issuer of an uncertificated security, requesting the registration of a transfer, pledge, or release from pledge. The warranties of an originator of an instruction under section 8–306 of the UCC run to the issuer, to any person guaranteeing the instruction or specially guaranteeing the originator's signature, to a purchaser for value, and to a debtor or third person under certain circumstances. Under section 8–311 of the UCC, an owner may assert the ineffectiveness of an unauthorized instruction against the issuer and certain purchasers, and an issuer who registers a transfer, pledge, or release of an uncertificated security upon an unauthorized instruction is subject to liability for improper registration.

In TRADES, book-entry securities are transferred electronically on the books of Federal Reserve Banks and in many cases on the books of the book-entry custodians that comprise the system. Transfers on TRADES do not constitute registration for purposes of Article 8 of the UCC, and an "instruction," as that term is used in the UCC, does not correspond to any procedure now used in TRADES. It is more comparable to a "transaction request" used to request a transfer of a security in TREASURY DIRECT (see § 357.28). Thus, the Department believes that provisions relating to an "instruction" are inapplicable to securities held in TRADES. To the extent the general principles underlying these sections are relevant, the Department anticipates that they would be applied as the rule for decision by a court, in accordance with *Kimbell Foods.*

Section 8–316 of the UCC provides that the transferor of a security must supply the purchaser with proof of the transferor's authority to sell. Failure to comply gives the purchaser the right to reject or rescind the transfer. Section 8–319 of the UCC provides that a contract for the sale of securities is not enforceable unless there is some writing signed by the party against whom enforcement is sought, or unless other specified criteria are met. The Department believes that it is inappropriate to promulgate a specific Federal rule in these regulations, since neither of these provisions is suited to the speed with which transactions frequently occur in the government securities market.

Interaction of the proposed rule with foreign law was another issue addressed by commenters. Two commenters suggested that, to avoid subjecting them to potentially conflicting legal requirements, overseas book-entry custodians should be exempt from the proposed rule unless the book-entry custodian and its customer have made a valid choice of United States law or the law of any state. Their proposed solution would have added language of exemption to § 357.2 as proposed in the March Rule and would have added a definition of "overseas book-entry custodian" to § 357.3.

Although the Department agrees with the basic concept, a different solution was chosen that does not require defining a new category of book entry custodian. Instead, a new § 357.2(c) simply provides that rights and obligations, other than rights and obligations of the United States, arising out of interests in securities maintained on the books of a book-entry custodian at a place outside the United States are governed by the foreign law applicable to the business of the book-entry custodian, unless the book-entry custodian and its customer have made a valid choice of United States law.

The Department believes this formulation reaches the same results as those intended by the proposals of the two commenters on this issue, but avoids some of the issues that might arise unnecessarily by defining a separate category of book-entry custodians. For example, under the language proposed by one commenter a book-entry custodian that qualified as an overseas book-entry custodian and operated a custodial business in the United States arguably could have claimed exemption from the regulations even with respect to the U.S. custodial business by virtue of qualification as an overseas book-entry custodian.

In addition, one commenter suggested adding specific language providing that a branch of a domestic corporation may qualify as an overseas book-entry custodian, although technically a branch is not a legal entity separate from the U.S. corporation. Under the Department's formulation, a single entity may conduct custodial business both within and without the United States. Whether or not these rules apply with respect to any specific security would depend upon where the records are maintained and what law is applicable to the custodial arrangement in question.

Finally, one commenter proposed adding language permitting an overseas book-entry custodian to maintain back-up records or computing facilities in the United States provided that the custodial activities of the book-entry custodian generally fell within the description of activities that would qualify an entity as an overseas book-entry custodian. The Department agrees that, standing alone, maintenance of back-up records in the United States should not affect the exemption for securities maintained outside the United States, but does not believe it necessary to add specific language to § 357.2. In the individual case, whether the level of activity conducted in the United States or the degree of reliance on facilities or records maintained in the United States is sufficient to defeat the exemption, will be a question of fact that may be determined by whether the specific arrangement in question was reasonable under the circumstances and whether it had the appearance of simply intending to circumvent the applicability of the regulations.

Another commenter suggested the addition of a sentence to § 357.2 that would have expressly permitted parties to a transaction in a security to make a choice of the law of any State or nation which bears a reasonable relation to the transaction. The ability to make a choice of foreign law bearing a reasonable relationship to a transaction is implicit in the proposed rule for securities maintained outside the United States. However, the Department does not believe that an entity conducting its custodial business in the United States should be able to select foreign law in lieu of the proposed rule. The question of making a choice of applicable State law is no longer relevant because of the preemption of State law described above. The Department does anticipate that the parties to a transaction may select the State law that may be incorporated into applicable Federal law as the rule for decision.

Section 357.3. This section includes all of the defined terms for purposes of Part 357, including definitions already published in final form in the final TREASURY DIRECT rule. 51 FR 18260. Certain new definitions have been added, and certain definitions previously published have been revised. The additions and revisions are described below.

The definitions of "clearing bank," "clearing lien," and "clearing services" are new and are explained in the discussion of § 357.15, a new provision dealing with clearing liens. The definition of "depository institution" previously included in the TREASURY DIRECT rule has also been included below because of its applicability in the context of the new § 357.15.

The term "issue" is defined to mean securities identified by a single CUSIP number. A CUSIP number is the number assigned to identify securities of the same issue by the Committee on Uniform Securities Identification Practices. The term "issue" is used in two new provisions, §§ 357.12(c) and 357.14(e).

This manner of defining an issue applies to securities of the same interest rate and maturity that generally are issued on a single day, as well as the principal and interest components separated under the Department's STRIPS program. Whether or not a security is eligible for STRIPS is determined by the offering circular for that security. If a security is stripped, each component is given a different CUSIP number. Interest payments stripped from securities of different maturities but which are due on the same day will bear the same CUSIP number and are indistinguishable from one another. Therefore, once stripped, the interest payments due on the same date are treated, for purposes of this rule, as a single issue.

The definition of "person" has been revised to include governmental entities.

The definition of "security" has been expanded to provide specifically that a book-entry Treasury security is a security for purposes of State and local law. This clarification was made in response to comments that indicated that a book-entry security might otherwise be considered an "intangible" for some purposes, which could create unpredictable legal consequences. The clarification also is important for purposes of the incorporation of State law principles discussed under § 357.2 above. The provision is not intended, however, to subject the United States or the Federal Reserve Banks, when acting as fiscal agents of the United States, to the obligations of an issuer under Article 8 of the UCC as adopted by the various states.

The March Rule defined a "book-entry custodian" as a person other than the Department or a Federal Reserve Bank that in the the ordinary course of its business maintains book-entry securities accounts for others. The definition also specifically provided that a book-entry custodian could have a security interest in securities held for another person and also could hold securities for its own account.

A comment was made proposing that the definition of "book-entry custodian" be expanded to state specifically that the book-entry custodian may be the transferor of the security or security interest, because the usual meaning of the term "custodian" is an independent third party. This proposal may have also been prompted by the discussion of § 357.13(d) in the section-by-section analysis of the March Rule, which suggested in another context that an effective transfer of a security interest would require the involvement of a third party having no interest in the transaction giving rise to the security interest.

The Department does not believe that an amendment of the definition of "book-entry custodian" is necessary. However, it should be emphasized that, notwithstanding any statement to the contrary in the discussion of the March Rule, under the proposed rule an entity may be both the book-entry custodian and the transferor of a security or a limited interest. The Department recognizes that many repurchase agreements are structured in precisely this way. Although a greater degree of protection may be gained by using a third-party custodian for such transactions, the parties are not required to do so under these regulations.

In response to a suggestion in the comments, the Department considered adding definitions of the terms "transferor" and "transferee," but concluded that the meaning of these terms is sufficiently clear in the context of the rule.

Several commenters proposed additional defined terms in connection with new regulatory language they had proposed. Exclusion of these proposed definitions for the most part depended upon the Department's response to the underlying issue, as discussed elsewhere in this section-by-section analysis.

Section 357.10. This section describes the procedure by which interest and principal are paid and provides that the obligation of the United States is discharged at the time

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payment is credited to an account at a Federal Reserve Bank. It also provides that a book-entry custodian, upon receipt of a payment for a customer, must make the payment available to the customer on the date of receipt.

One Federal Reserve Bank noted that the time frame specified for making payments available might be difficult to comply with because the mechanics of crediting such payments may involve end-of-day batch processing. It is the Department's understanding, however, that depository institutions consider the funds available at the beginning of the day even where the actual paperwork regarding the credit may not be completed until the end of the day. The Department believes this is the correct view and notes that no depository institutions or other entities that might be affected by the rule made a similar comment. No change to the rule was made.

Section 357.10(d) has been modified to make the duty of a book-entry custodian to make principal and interest payments available to a customer subject to any rights the book-entry custodian may have as a secured party under a written security agreement. The original provision was not intended to override any claim that the book-entry custodian might have to such payments arising from an express agreement with a customer.

Section 357.11. Section 357.11 is modeled after the shelter rule of section 8–301 of Article 8. It describes the rights of a transferee upon acquisition of a security or a limited interest in a security. One commenter suggested that this rule be amended to make clear that the reference to "transferor" includes both the prior interest holder and the book-entry custodian effecting the transfer. The rationale is that a transferee should succeed to the rights that its own book-entry custodian has against any upper-tier custodian. This would appear to be internally inconsistent. In our view, there are two mutually exclusive alternatives: Either the book-entry custodian is acting as a principal in the transaction and, therefore, is the prior interest holder, or the book-entry custodian is acting as an agent, in which case it has no rights in the security independent of the rights of its customer.

Another commenter suggested a substantial revision of § 357.11 as part of its approach to reintroduction of the concept of a bona fide purchaser. A major feature of this commenter's proposal was to rely on State law to determine the consequences of a transfer. This commenter felt that the "shelter rule" as stated in proposed § 357.11, absent a bona fide purchaser rule, would have the substantive effect of creating a set of Federal rights, and proposed changing the language to provide that a transfer would be an effective transfer for purposes of State law. The Department has not adopted this change since it follows from the discussion of § 357.2 that these rules are, in fact, the basis for a set of Federal rights.

One commenter also suggested that it would be useful to clarify that, upon default of the debtor, a disposition of collateral by a secured party conveys to the purchaser all of the debtor's rights in the collateral, as is provided in section 9–504(4) of the UCC. The commenter was concerned that the interaction of § 357.2 of the March Rule, which provided that State law would be not applicable where it would be inconsistent with these regulations, with the ideas expressed in § 357.11 might be viewed as precluding the result dictated by section 9–504(4) of the UCC. The question of inconsistency has been eliminated by the changes to § 357.2 discussed above. Furthermore, were the question to arise in litigation it is for just such an issue that the Department anticipates a court would look to State law to supply the rule for decision.

Section 357.12 [Sections 357.12 and 357.13]. The March Rule covered transfers of securities in § 357.12 and transfers of security interests in § 357.13. A transfer of a security was deemed to occur at the time an entry is made on the books of a Federal Reserve Bank or a book-entry custodian. Transfer of a security interest was deemed to occur (i) at the time an entry is made on the books of a Federal Reserve Bank or a book-entry custodian; (ii) at the time written notification is received by a book-entry custodian; or (iii) where the secured party is to be the book-entry custodian, when the security is received in an account for the transferor of the security interest and a written agreement is executed.

Several commenters indicated that they believed the proposed rule made an unnecessary distinction between transfers of ownership and transfers of security interests, and that the correct characterization of a transaction should be left to other law. It was pointed out that a single transaction may be subject to different characterizations for different purposes. This is especially true for repurchase agreements and reverse repurchase agreements, which constitute a substantial portion of the daily activity in the government securities market. One commenter also suggested that the transfer provisions in the March Rule might require modification of the back office procedures to give full recognition in account titles and records to pledges of securities. The proposed solution suggested by some commenters was to combine into a single provision the rules for transfers of securities and transfers of limited interests in securities.

In drafting the proposed rule, the Department did not intend to require new procedures on the part of book-entry custodians. Instead, the Department drafted provisions that conformed to existing practices in various parts of the market. By providing alternative methods of transfer, the Department believes it provided sufficient flexibility so that no single entity would be required to significantly restructure its operations. In addition, the Department recognized the importance of variable characterization described above and intended to permit parties to accomplish a repurchase transaction without necessarily characterizing it as either an outright sale and repurchase or as a secured transaction. The flexibility to do this was preserved by explicitly recognizing in the proposed rule that a transfer that may appear on the books of a book-entry custodian to be a transfer of outright ownership may also serve as merely a transfer of a security interest. Since repurchase agreements customarily contain language that constitutes a sale and repurchase as well as alternative language describing the grant of a security interest, it would have been possible under the proposed rule to take the position either that the transaction was a sale and repurchase or that it was the grant of a perfected security interest.

Given the number of comments on the point that the Department received, the Department decided to make certain changes that will more clearly preserve flexibility. However, the Department was reluctant to go quite as far as the drafting solutions proposed by two of the commenters that would have completely combined within a single descriptive phrase transfers of ownership of securities and transfers of limited interests. The Department felt that although a certain flexibility should be preserved, the rule should not encourage intentional ambiguity. Therefore, instead of using a single descriptive phrase, the Department chose to combine §§ 357.12 and 357.13 as originally proposed into a single new § 357.12 that is structured in a manner similar to section 8–313 of the UCC. In addition, the Department has substituted the term "limited interest" for the term "security interest" in recognizing that there are a whole range of limited interests in property other than security interests. Under the new § 357.12, certain of the transfer methods may apply to both transfers of securities and transfers of limited interests while others, by their terms, are confined to transfers of limited interests. The Department felt that although a certain flexibility should be preserved, the rule should not encourage intentional ambiguity.

Two commenters also suggested that what constitutes a transfer should not be limited to the single act of crediting a securities account. The commenters suggested that any entry that permits identification of an interest in favor of the transferee should be sufficient to constitute a transfer. The Department agrees with this approach and has adopted language similar to that suggested in the comment letters.

Another commenter also suggested changing the word "books" to "records" in the proposed rule to avoid an implication that a transfer cannot occur until end-of-the-day reconciliation of a book-entry custodian's books. The Department believes that any such implication is eliminated by the change discussed in the preceding paragraph.

Two commenters also recommended that the use of subaccounts be specifically authorized as a means of accomplishing a transfer since the computer programs of several clearing banks are structured to permit their use. We understand that what happens operationally is that a dealer may effect a transfer to its customer by directing the dealer's clearing bank to move designated securities into a subaccount of the dealer's account on the books of the clearing bank that specifically identifies the dealer's customer as the transferee. The Department believes that it is not necessary to add specific language referring to subaccounts since the transaction as described falls within the terms of the general transfer rule. However, the Department notes that the use of subaccounts raises an interpretative issue with potentially significant consequences for the dealer and its clearing bank that would not be resolved by adding proposed language explicitly authorizing the use of subaccounts. The basic question is who is acting as the book-entry custodian for the customer? Since the entry reflecting the transfer may be made on clearing bank's books rather than on internal records of the dealer, arguably the clearing bank may be the book-entry custodian for the dealer's customer and would therefore be subject to the provisions setting forth book-entry custodian warranties and other duties with respect to the transfer to that customer. However, it is unlikely that this reflects the expectations of either the clearing bank, the customer, or the dealer.

An implicit assumption of the transfer rules and the rules describing the duties and warranties of book-entry custodians has been that a transfer is recorded on the books of the entity with whom the transferee deals and that will maintain the security for the transferee, whether or not, between the transferee and that entity, their dealings are expressly characterized as involving a custodial arrangement. Under this view, if a dealer engages in a repurchase transaction with another entity where the dealer retains control of the security, then the dealer would constitute a book-entry custodian for purposes of these rules.

To take into account the assumption just described and to avoid a result that would view the clearing bank in the hypothetical described above as the book-entry custodian for the dealer's customer, the proper view is that subaccounts within a dealer's account on the books of the clearing bank should be viewed as constituting part of the dealer's records as well as a part of the records of the clearing bank. Under this view, the use of a subaccount clearly falls within the general description of a transfer, and it is the dealer that must carry out the duties and warranties of a book-entry custodian with respect to that transfer. It should also be noted that a subaccount transfer may constitute a segregation of customer securities that, in accordance with new § 357.15(c), prevents assertion of a clearing lien unless expressly agreed to by the dealer's customer.

One commenter pointed out that in some circumstances a book-entry custodian taking a security interest from its customer might agree that the security interest would not arise until fulfillment of some condition in addition to the requirements set forth in § 357.12(a)(5). To provide for such situations, the Department has added new language as § 357.12(b) which permits delayed effectiveness of a limited interest by agreement between the parties.

Several commenters expressed concern in a variety of ways that the March Rule suggested that a book-entry custodian could make an effective transfer simply by marking its books and without regard to whether that custodian actually maintained any of the appropriate securities itself either directly on the books of a Federal Reserve Bank or through another book-entry custodian. The March Rule had been structured as it was in part to express the idea that at all times after a book-entry custodian marks its books in favor of a customer, that customer has rights as against its book-entry custodian to the amount of securities so transferred to the customer regardless of the specific time at which the book-entry custodian itself may have acquired such securities. However, in light of the comments received, the Department has reconsidered this issue and concluded that, although the underlying assumption is correct, the March Rule may have appeared to have an impact different from that intended. Therefore, the Department decided to include regulatory language expressing the need for a link between ownership reflected on the books of a book-entry custodian and maintenance of securities at a Federal Reserve Bank. This required link is what was described in the March Rule as a "chain of accounts." 51 FR 8849, March 14, 1986, footnote 2.

Two commenters proposed similar definitions of "written" that describe what means of recording data will constitute an entry for purposes of the transfer rules. The Department has incorporated the definitional language into § 357.12(d) as a means of describing when an entry is made. The Department concluded that the concept of a writing was unnecessary so long as guidance is provided as to what may constitute an entry. However, the Department did not include the phrases suggested by these commenters that would have required that the data not only be displayable at some point in time, but that it be expected to be stored. This requirement seemed to incorporate into the rules what would more appropriately be simply an evidentiary issue in the event of litigation.

Section 357.12(e) is a new provision describing cross-system transfers between TREASURY DIRECT and TRADES.

Several commenters suggested that the notice-type security interest provided in § 357.13(c) of the March Rule be eliminated, primarily because of the uncertainties as to the rights and obligations that would exist between the book-entry custodian and the secured party that were described in the discussion of the March Rule. It was also pointed out that retaining § 357.13(c) would have the effect of transforming TRADES into a paper system. Some of these commenters proposed in the alternative that the rule explicitly provide that a book-entry custodian may reject any such notice of

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a security interest. Since no commenter suggested that the notice-type security interest would constitute a particularly useful alternative to the other methods of transferring security interests, the Department decided simply to eliminate the notice-type security interest.

Section 357.13 [Section 357.14]. This section sets out the rules for enforceability of a security interest between the grantor and the secured party and the enforceability of a security interest against third parties. It also covers the termination of a security interest.

As noted above, several commenters recommended minimizing the distinction between transfers of securities and transfers of security interests and other limited interests in securities. As a corollary to this suggestion, some of these commenters also recommended eliminating virtually all distinctions between attachment, perfection, and transfer of a security interest. In addition, some commenters noted that the terms "grant", "creation" and "validity" of a security interest are also used in other provisions of the proposed rule, and suggested that these terms created unnecessary confusion.

Although admittedly there is some overlap in some of the terms referred to above, in drafting the proposed rule the term was used that seemed best suited to the context. It was felt that since all of them have been terms used in the area of secured lending, their meaning would be relatively clear.

One commenter also noted a source of confusion in that § 357.1(b) of the March Rule appeared to make the transfer of a security interest the pivotal event. As already explained in the discussion of another comment on § 357.1(b), that provision is significant only for purposes of determining the applicability of these rules to a transaction in a security that was outstanding prior to the adoption of this rule in final form.

Two of the commenters suggested alternative approaches to § 357.14 of the March Rule that would eliminate the concept of attachment. The Department included attachment as a separate concept in the March Rule for two reasons. First, the Department felt that the three requirements of attachment, none of which is extraordinary, should not be eliminated as basic prerequisites for carving out a security interest from the bundle of rights and interests belonging to an owner of property. The Department believes that it is precisely in the case of secured transactions that many of the uncertainties under Subpart O have arisen. In drafting the proposed rule, one of the Department's primary goals was to eliminate that uncertainty. It seemed advisable, whenever possible, to cast the proposed rule in terms of concepts, such as both attachment and perfection, that have well-established significance in secured transactions.

The second reason for adoption of the concept of attachment is that the Department wanted to establish that if automatic perfection of a security interest lapsed, the security interest itself would not lapse but would merely become unenforceable against third parties. Although it may be the rare case in which such a question should arise, making no provision for it seemed to leave an unnecessary gap.

Because of the criticism of its incorporation in the March Rule, the Department has eliminated use of the term "attachment" but has not eliminated the three basic requirements associated with attachment of a security interest. In doing so, it was noted that one of the commenters recommending elimination of the concept also would have retained two of the requirements of attachment—that the debtor have rights in the collateral and that the secured party give value.

Two comments agreed, in principle, with the requirement of a written security agreement as an element of perfection of a security interest. Two other comments objected to this requirement, however, stating that a written agreement is unnecessary except in certain cases, *i.e.,* in the case of temporary perfection and in the case of any clearing lien.

The Department agrees that a written agreement should be a requirement for automatic perfection and a requirement for according priority to a clearing lien. The clearing lien requirements are discussed in the analysis of § 357.15. In the case of automatic perfection, it is appropriate to require a written agreement because perfection does not depend on book-marking or some other act of a book-entry custodian. In other types of perfection, the interests in a security can be discerned from the records of the book-entry custodian and confirmed upon request. As a result, the requirement of a written agreement has been eliminated from these rules in the case of these other methods of perfection. In those cases, transfer of the security or security interest will be sufficient to perfect the security interest, assuming the basic requirements set forth in § 357.13(a) have been complied with.

The March Rule provided for "automatic" or "temporary" perfection of a security interest for a period of 7 calendar days. Thereafter, the security interest would continue to be perfected only if there were a transfer of the security or the security interest and the security agreement were reduced to writing.

Several comments urged that a security interest perfected by the automatic method should be subordinated to all other interests in the same security. These comments were concerned about innocent third parties or purchasers taking a security subject to such an interest, without having any means to determine whether the interest exists. As pointed out in one comment, however, this risk would be mitigated by a bona fide purchaser concept.

The revised rule retains the concept of automatic perfection. The rules also contain a modified bona fide purchaser provision in § 357.14 under which an innocent third party could prevail over parties having perfected security interests, especially those perfected only by means of automatic perfection and not reflected on the books of a book-entry custodian.

Although one comment endorsed lengthening the automatic perfection period to the 21 days provided in existing law, other comments lent support to the view that the 7-day period was adequate. This rule retains the 7-day period.

Several commenters expressed concern about § 357.14(d) of the March Rule which described the methods of terminating a security interest. Section 357.14(d) had provided, among other things, that a security interest could be terminated by a transfer of the interest to a designee or successor in interest of the grantor of the security interest. The concern expressed was that this could be interpreted to mean that a dealer that had granted a security interest to its clearing bank could unilaterally terminate the security interest by transferring securities subject to the security interest to a customer.

The Department did not intend this section to permit unilateral termination of a security interest by the debtor. The term "successor in interest" was added simply to provide for the situation where the debtor had been merged into or acquired by another entity. The term "designee" was included simply to provide flexibility and not require transfer solely to the debtor as the means for terminating a security interest. For example, under this provision, a clearing lien would terminate if a clearing bank on the instruction of its dealer-customer, transfers a security from the dealer's clearing account to another account at the clearing bank or to another book-entry custodian maintaining a securities account at a Federal Reserve Bank.

Because of the comments described above, the Department has added the phrase "by or with the agreement of the secured party" to § 357.13(e) to clarify that termination of a security interest requires the agreement of both the debtor and the secured party. However, it should be noted that this provision is not intended to suggest that a valid rehypothecation of securities, such as a dealer might do with customer securities purchased on margin, would terminate the initial security interest on which the rehypothecation was based.

One commenter also would have added a definition of "value" to § 357.3 to make it clear that value includes antecedent debt. The Department believes that this is the result that would be reached by looking to State law as described above in § 357.2.

The same commenter also suggested that it be clarified that the concept of "value" does not require a one-for-one identification with the security that is the subject of the security interest. Presumably, the comment is made with a view toward the clearing lien granted by a dealer to its clearing bank where credit may be extended by a clearing bank during the day but it is not possible to pinpoint the specific security purchased by the dealer that requires the extension of credit. The Department does not believe that the regulations imply any requirement that the credit extension be tied to a specific security. It appears that uncertainty on this point would more appropriately be handled in the clearing agreement itself. It is the Department's understanding that a clearing agreement generally is drafted to provide that the clearing bank has a security interest in all unsegregated securities in the dealer's clearing account. Because of this structure, the clearing lien is in effect a floating lien that attaches to securities while they are in that account.

Section 357.14. This is one of two sections dealing with the issue of resolution of competing claims that was discussed in detail in the March Rule. *See* 51 FR 8848–50. Although several alternative approaches were considered prior to the March publication, the Department ultimately decided to leave resolution of competing claims to State law. However, the Department also specifically invited comments on the issues discussed and suggestions of specific provisions dealing with competing claims.

One of the specific alternatives considered by the Department was the incorporation in this rule of a traditional bona fide purchaser ("BFP") rule. In the March Rule, the Department expressed three concerns with adoption of such a rule. The first was a theoretical concern about structuring such a rule for the book-entry environment. The second was a more practical concern that the concept of a BFP may be of limited use in a tiered book-entry system where transactions affecting a transferee's rights in a security can occur at any time after the transferee acquires BFP status. The third concern expressed by the Department was that a BFP provision could affect the efficiency and liquidity of the government securities market if it impaired the ability of clearing banks that extend daily credit to government securities dealers to collateralize their dealer loans.

The Department received eight comments that were addressed to this issue. Three commenters provided specific proposals for dealing with competing claims to securities that would include incorporation of a bona fide purchaser rule and a provision expressly providing priority for clearing liens. In addition, three commenters suggested other alternatives for resolving the issue of competing claims, and four other commenters favored a Federal rule on priorities of competing claims, although they did not suggest specific regulatory language.

After careful consideration, the Department has adopted an approach to competing claims similar to the approach suggested by the three commenters first referred to above. The Department has added a modified BFP rule in § 357.14 and a new priority provision for clearing liens in § 357.15.

The three commenters suggesting this approach include a major clearing bank, an association of government securities dealers, and an ad hoc group of attorneys from the Section on Corporations, Banking and Business law of the American Bar Association. These three commenters, as well as a number of other commenters on the issue of competing claims, all emphasized the importance of the role played by clearing banks in the government securities market. For example, one commenter stated:

> As currently structured, the government securities market could not operate efficiently without daily extensions of credit by clearing banks because clearing banks routinely permit transfers of securities from their accounts with a Federal Reserve Bank even though the funds to pay for such transfers may not be available to the clearing bank until several hours after the transfer of such securities.

As the Department recognized in the discussion of the competing claims issue in the March Rule, such extensions of credit must be fully collateralized to satisfy the safety and soundness requirements of the bank regulators.

Adoption of an unlimited BFP rule would create a significant risk to clearing banks since their security interest in securities in a dealer's clearing account could be cut off if the dealer, on its own books, transfers those securities to customers who would qualify as BFPs. To balance the interests of lower-tier investors against the need for the clearing banks to fully collateralize their extensions of credit to dealers, the Department decided to adopt the approach suggested by the three commenters referred to above that would incorporate a BFP rule but expressly provide that a qualifying clearing lien will have priority over all other claims to the same securities including those of a BFP. The Department views this approach, which provides priority only for qualifying clearing liens, as preferable to an approach that would provide a more general rule favoring the claim of all upper tier book-entry custodians over the lower tiers.

Section 357.14 expressly provides that a transferee may qualify as a good faith transferee if it acquired its interest for value, in good faith and without notice of adverse claims. To qualify as a transferee for purposes of this section, one must acquire a security under § 357.12(a) (1), (3), or (5). This is to parallel somewhat the common law requirement that to qualify as a BFP one must take delivery of the property. As with the traditional BFP concept, a good faith transferee takes a security free of all adverse claims. In effect, the rule eliminates the possibility of tracing securities beyond what one's book-entry custodian itself maintains. The Department considers this to be an appropriate result given that book-entry securities of the same issue are fungible and generally not subject to tracing.

One commenter suggested that the BFP rule also should provide that for transfers of securities from TRADES to an account in TREASURY DIRECT or for transfers on the books of a clearing corporation, the transferee could qualify as a BFP. The Department believes that for transfers from TRADES to TREASURY DIRECT, such a provision is unneeded. Section 357.21 of the TREASURY DIRECT rules provides that the form of registration of a security in TREASURY DIRECT is conclusive evidence of ownership. Such a rule is intended to preclude any assertion of adverse claims to a security held in TREASURY DIRECT. The Department has decided not to include transfers on the books of a clearing corporation at

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this time for the same reasons described below that the Department has not included a clearing lien priority for clearing corporations.

The same commenter also suggested a provision that would permit explicitly the transfers of limited interests in securities to TREASURY DIRECT accounts. The commenter stated that, but for language in § 357.25 of the TREASURY DIRECT rules stating that the Department will not recognize any claims of security interests, many secured parties, including public bond trustees, would use TREASURY DIRECT for secured transactions. The Department is considering the possibility of allowing TREASURY DIRECT to be used for trust indentures but believes any revision would require a change to the TREASURY DIRECT provision rather than the provisions set forth below.

In drafting its modified BFP rule, as suggested by one commenter, the Department chose the phrase "good faith transferee" rather than "bona fide purchaser" to highlight the fact that, as described below, under these proposed rules the rights of a purchaser who acquired a security in good faith, for value and without notice of adverse claims are somewhat less broad than the rights of the traditional bona fide purchaser. Although as a matter of semantics the phrases are virtually synonymous, the Department believes it is appropriate to use a phrase that is somewhat less recognized as a legal term of art than is the phrase "bona fide purchaser."

Under § 357.14, the interest in a security of a transferee who qualifies as a good faith transferee would be subject to two categories of potential adverse claims. First, § 357.15 provides generally that a qualifying clearing lien will have priority over all other interests in a security including that of a good faith transferee. In effect, the rule provides that any transferee acquiring a security through a dealer or other entity that acquires securities through a clearing arrangement is deemed to have constructive notice of any clearing lien attaching to the transferee's security. The details of the clearing lien priority are set forth in the discussion of § 357.15 below.

In addition to the provision for a priority of a clearing lien, a good faith transferee's interest may be limited by the claims of other good faith transferees claiming the same security through the same book-entry custodian. Three of the commenters offering specific proposals to deal with competing claims recommended adoption of a similar rule. As one commenter noted, "in those cases in which the adverse claimants are customers of the same book-entry custodian," the application of a strict "last in time" priority rule produces an arbitrary result. All customers of the same book-entry custodian will generally have precisely the same relationship with the book-entry custodian and all should share pro rata the risk that the book-entry custodian will not have enough securities of the appropriate issue to satisfy all of the claimants. The rule would provide that such customers are good faith transferees but only to the extent of their pro rata share of the appropriate securities. This provision is not intended to preempt other federal law, such as the Bankruptcy Code or the Securities Investor Protection Act, on the distribution of assets in an insolvency.

A fourth comment letter that addressed the issue of competing claims also would have specified that transferees may qualify as bona fide purchasers under certain circumstances. However, instead of a specific provision dealing with clearing liens this commenter would have provided more generally that the rights of any lower-tier transferee would always be subject to the rights of higher-tier transferees. To mitigate generally favoring the upper-tiers over the lower tiers, this commenter also suggested a provision whereby a lower-tier transferee could protect its interests by requesting segregation of its securities. However, the Department is reluctant to adopt the remainder of this proposal which essentially would rely on segregation of securities. Our primary concern is that segregation is not currently a regulatory requirement that is enforced by periodic inspection of books and records. Furthermore, recent litigation suggests that even where segregation is used, it is not always maintained so as to protect properly all fully-paid securities held for customers. Legislation has been enacted that would provide for regulation of brokers and dealers in government securities and that would grant both the rulemaking and enforcement authority necessary to establish a reliable system of segregation of customer securities. However, until such a system is in place, the Department is reluctant to promulgate a rule that relies so heavily on segregation as a means of protecting an investor's interests.

An added concern is that to provide effective protection of the lowest tier under this proposal, segregation must occur at every level in the chain of accounts. Given that each tier generally only has knowledge of those with whom it deals directly, such a requirement would leave too much to chance and generally would make protected status of a customer at a lower tier depend upon too many events beyond that customer's control and upon facts it could not verify.

Two other commenters, in a joint letter, favored retaining Subpart O with one modification to correct what the commenters identified as the sole interpretative issue that has arisen under the existing regulations. The issue arose in *Wichita Federal Savings & Loan Association* v. *Comark*, 610 F. Supp. 406 (S.D.N.Y.), *vacated*, 610 F. Supp. 418 (1985). The commenters' concern with the court's decision in that case is that it would have allowed a secured party, such as a clearing bank, to be ousted of its security interest by the unilateral act of its dealer-customer. Although the court's decision was vacated, the commenters suggest that, in order to prevent any similar decision in subsequent litigation, the existing regulations be amended to state explicitly that entities holding securities directly on the books of a Federal Reserve Bank shall be deemed to be in the sole and exclusive possession of the securities. Although the proposal certainly would resolve the one interpretative issue raised by Comark and eliminate any uncertainty for entities holding securities on the books of a Federal Reserve Bank, we believe it does not adequately take into account other interpretative questions that have been raised under Subpart O. Furthermore, the proposal does not take into account the multiple interrelationships that exist in the government securities market.

In addition to the comments discussed above, one other commenter appeared to favor adoption of the State law concept of a bona fide purchaser, but felt that the proposed rule would provide only interim benefit in light of the then-pending legislation that would establish regulation of brokers and dealers in government securities. (Such legislation was enacted by Congress on October 6, 1986.) The Department believes this comment is based on a misperception about the types of regulations that Treasury may promulgate pursuant to the legislation. Although such regulations may include requirements concerning safekeeping of customer securities, it is unlikely that such regulations would become the sole basis for establishing substantive rights in securities or that they would be the basis for resolving all competing claims to securities.

Section 357.15 Under this new section, a qualifying clearing lien is one which arises under a written agreement between a book-entry custodian and an entity providing clearing services. Clearing services are defined as delivering and receiving securities and payments for securities on behalf of other persons. A qualifying clearing lien may be asserted only by a depository institution maintaining a book-entry securities account at a Federal Reserve Bank through which the entity provides clearing services.

The Department considered providing clearing lien priority for entities not having direct access to a Federal Reserve Bank. However, given that a qualifying clearing lien may defeat the interests of a dealer's customers, it seemed advisable to limit the category of entities that could assert clearing lien priority. Furthermore, the Department believes that the level of clearing services engaged in by institutions not having accounts directly with a Federal Reserve Bank is so small that it would not justify opening up the availability of the clearing lien priority to a whole new range of institutions.

The Department intends for the provision as drafted to permit clearing lien priority for all entities currently performing clearing services for a significant number of government securities dealers. The Department recognizes that, in some cases, a portion of the clearing services performed by a depository institution through a securities account at a Federal Reserve Bank may be carried out by an operating subsidiary or an affiliate under common control with such depository institution. However, the Department has assumed that the actual extension of credit which requires the clearing lien is extended by the depository institution rather than the subsidiary or the affiliate.

The clearing lien priority is further limited by requiring that the clearing bank acquire it in good faith. This requirement is intended to exclude the availability of the priority only in cases where an institution has engaged in egregious practices. It is not intended to suggest that a clearing bank is under an obligation, as a general proposition, to investigate whether or not a dealer's customers may have a claim to the same securities that are subject to the clearing lien. For example, the majority of book-entry securities transfers are completed without human intervention through computer links between Federal Reserve Banks and depository institutions. The electronic transmissions usually contain information about parties involved in the underlying transaction. That information is ordinarily reviewed only by the book-entry custodian which is doing business with the ultimate transferee. The mere presence of that type of information should not affect the good faith of other book-entry custodians involved in a transfer. A clearing bank must be able to rely on its dealer-customer in identifying securities that are available to use as collateral for credit extended by the clearing bank.

There are three other limitations to the clearing lien priority in addition to the requirement of good faith. First, the priority is available only to the extent of credit actually extended in providing clearing services. This limitation serves to preclude assertion of the priority for other extensions of credit by a bank to its dealer customer. For those credit extensions, the Department believes that the entity extending credit outside a clearing arrangement whereby the entity finances the purchase of the securities used as collateral should bear any risk that the customer is using as collateral securities to which others might have legitimate claims.

As another limitation, the proposed rule specifically provides that a clearing lien may not be asserted against securities segregated as fully paid customer securities on the clearing bank's books. Although, as was discussed above, the Department chose not to link protection of lower tiers to segregation of securities, since segregation is not a currently required practice, the Department nevertheless believes that where segregation is maintained, it should be given its intended effect.

Two of the commenters favoring a clearing lien priority and adoption of a BFP rule would have given similar effect to segregation on the books of a clearing bank. However, these proposals would have gone further and precluded assertion of a clearing lien once the clearing bank received a notice to segregate from its dealer customer. Such a rule would appear to create a problem similar to that discussed above in connection with the *Comark* case: a clearing lien could be effectively terminated by the unilateral action of someone other than the entity that is a secured party. Although in many cases the rule may not present a problem because there will be more than enough collateral in the account subject to the clearing lien, it would appear to create an unacceptable level of uncertainty given the amount of credit extended by clearing banks on a regular basis.

As a final limitation, the clearing lien priority is effective only against claims of third parties. It may not be asserted to defeat an interest granted by the clearing bank itself.

Two commenters proposed that provisions be added to the proposed rule to permit a clearing corporation to qualify for the proposed clearing lien priority. A clearing corporation would be defined using the definition of clearing corporation set forth in Article 8 of the UCC, with certain changes intended to permit inclusion of existing registered clearing agencies.

The Department believes that there currently are no entities involved in the Treasury securities market that would fall within the definition of a clearing corporation. However, it has been brought to the Department's attention that more than one proposal is being considered by entities in the private sector, including one of the commenters referred to above, that would establish a clearing corporation for Treasury securities. The proposals are aimed at establishing a system for netting daily transactions among major participants to cut down on the number of actual transfers of securities that take place and to diminish the amount of funds that will actually move over fedwire. The Department believes that such an arrangement, properly structured, could enhance the efficiency of the market and has no wish to discourage full exploration of the possible approaches to netting and resolution of the various legal issues that would arise in structuring a netting arrangement. However, given the preferred position of a clearing lien under the proposed rule, the Department is reluctant to include provisions at this time that would allow assertion of the clearing lien by an entity of yet undetermined character. The Department believes that as the proposals become more concrete it will be easier to evaluate the appropriate way in which the arrangement may be taken into account in the regulations. A clearing lien priority may well be appropriate and the Department believes that such amendments to the rule as may be necessary would not require significant restructuring of the rules and would be relatively easy to accomplish. For these reasons, the Department decided not to include provisions dealing with clearing corporations at this time.

Section 357.16 [Section 357.15]. This section describes the duties of a book-entry custodian to provide confirmations and acknowledgments. The March Rule combined the duties and warranties of a book-entry custodian in a single section numbered § 357.15. In these rules, the warranty provisions are in a new § 357.17 discussed below.

The March Rule stated that a book-entry custodian must send confirmation

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of a transfer of a security to the transferee no later than the close of business on its next business day after the day on which the transfer entry is made. The rule also provided that a book-entry custodian must send an acknowledgment of (i) the entry of a security interest on its books, or (ii) the receipt of notice of a security interest, by the close of business on its next business day after the day on which the entry is made or the notice is received, respectively.

Several comments were received relating to the use of the terms "confirmation" and "acknowledgment." It was suggested that the term "transaction statement" or "acknowledgment" be used in place of "confirmation" because of the potential confusion over the existing usage of the term "confirmation" and a possible implication that compliance with rules on confirmations promulgated by the Securities and Exchange Commission or other regulatory authorities might be required. On the other hand, another comment urged the elimination of the term "acknowledgment" in favor of the term "confirmation" because of the latter term's accepted meaning in the securities industry.

This rule retains the term "confirmation" in connection with security transfers and the term "acknowledgment" in connection with transfers of limited interests. The term "confirmation" is used in a general sense and is intended to refer to the existing practice of the issuance of a memorandum setting out the relevant details of a trade. It is not intended to imply that compliance with other regulatory requirements would automatically be required. The term "acknowledgment" is also used in a general sense. A term other than "confirmation" was chosen in connection with transfers of limited interests (including security interests), because it did not appear that the procedure set forth in the rule would necessarily correspond to existing terminology.

With respect to acknowledgments of limited interests marked on the books of a book-entry custodian, the March Rule stated that an acknowledgment must be sent to both the transferor and transferee of the security interest, on the assumption that both parties would have an established customer relationship with the book-entry custodian. Two comments pointed out that, in such a situation, it is likely that the book-entry custodian will not have a customer relationship with the secured party, and that the book-entry custodian may know nothing about the secured party other than the secured party's name. For this reason, a provision was added to this rule to the effect that if the book-entry custodian does not have the address of the transferee of the limited interest, then the transferee's acknowledgment shall be sent to the transferee at the address of the transferor.

It should be noted that because the notice-type transfer of a security interest (§ 357.13(c) of the March Rule) has been eliminated, the corresponding requirements for acknowledgment of that type of transfer have also been eliminated. It should further be noted that since acknowledgments are only required for transfer of a limited interest by the book-marking method under § 357.12(a)(4), a clearinq bank would not be required to provide confirmation of its clearing lien to a dealer because a transfer of a security interest in those circumstances occurs under § 357.12(a)(5).

The March Rule also included a provision (§ 357.15(d)) that stated that a book-entry custodian must provide to a customer, or to another person designated by the customer, upon written request, information as to the interests of any customers of the book-entry custodian in a security in which the requesting customer has an interest, as shown on the books of that book-entry custodian. This provision has been retained, but in response to a number of comments, several clarifications have been made.

Several comments raised a question about the meaning of the term "security" in this context and expressed concern about a violation of confidentiality if disclosure of the interests of other customers in securities of the same issue would be required. The language in paragraph (c) of this section has been clarified to indicate that only customer interests "in that same security" need be disclosed. For example, assume that a book-entry custodian ("book-entry custodian #1") maintains $500,000 of Treasury notes of a particular issue in its account at another book-entry custodian ("book-entry custodian #2"). A customer of book-entry custodian #1, who owns a $5,000 Treasury note of that same issue, as reflected on book-entry custodian #1's books, requests a statement under § 357.16(c) of these rules. The statement book-entry custodian #1 would be required to provide would relate only to the $5,000 Treasury note owned by the customer. However, book-entry custodian #1 would be required to identify any interests that affect either that particular note or the entire aggregate amount of notes maintained on the books of book-entry custodian #2 for the account of book-entry custodiam #1.

A statement issued by a book-entry custodian under § 357.16(c) must reflect the interests recorded on the book-entry custodian's books, and interests granted by, or in favor of, the book-entry custodian, as of the date the customer's request is received. A book-entry custodian has no obligation to advise the requester of changes that occur thereafter, unless the customer subsequently requests another statement. This rule also recognizes that to constitute an adequate request from a customer, the request must be in writing, must provide the address to which a response is to be furnished, and must be received in the department of the book-entry custodian responsible for maintaining records of book-entry securities.

A suggestion was made that the regulations should cover the question whether a standing request by a customer must be honored, and if so, when the request would become stale. This suggestion was not adopted because the Department is of the opinion that this is a matter that can be resolved by agreement between a book-entry custodian and its customer.

A number of banking institutions objected in principle to the confirmation requirements, pointing out that under rules of the Federal Reserve and other regulatory agencies, they are already subject to confirmation and record-keeping requirements in effecting securities transactions for customers. The Department agrees that if these financial institutions are already subject to such requirements, there would be little purpose in subjecting them to another set of requirements. Therefore, this section of the regulations has been amended to provide that if a book-entry custodian is subject to Federal banking regulation requiring that a confirmation be furnished to a customer for whom it effects a securities transaction, then the book-entry custodian is not subject to the confirmation requirements of these regulations, provided the book-entry custodian is in compliance with the banking regulation.

Several comments also expressed the view that a book-entry custodian and customer should be permitted to agree to waive the confirmation requirements, such as in a case where a customer only wishes to receive a statement periodically, in lieu of a confirmation of each transaction. Under these rules, a waiver is permissible only if it is specifically authorized by other Federal regulations. The Department is reluctant to sanction a waiver in other cases, because it appears such a practice could be used to undermine the protections intended to be provided by this section.

Section 357.17 [Section 357.15]. The March Rule provided that by sending a confirmation of a transfer of a security, a book-entry custodian would (i) warrant to its transferee, and any subsequent transferee, that it had made an appropriate entry on its books, or that such an entry would be made before the book-entry custodian next opens for business, and (ii) warrant the book-entry custodian's good faith and authority. The warranty of good faith and authority included a warranty that the security described was free of claims of, or claims created by, the book-entry custodian, except as specifically noted on the confirmation; and a warranty that, to the knowledge of the book-entry custodian, the security described was free of claims, except as specifically noted on the confirmation. The March Rule also provided that by issuing a confirmation upon the request of a customer, a book-entry custodian would warrant to its customer that the information provided therein was accurate.

This section changes, to some extent, the warranties given by a book-entry custodian, and also includes warranties for other transferors of a security or security interest.

Most of the comments that addressed warranties agreed that it is appropriate for a book-entry custodian to give certain warranties, although one financial institution objected to the warranties on the basis that they would not encourage any greater degree of care on the part of the book-entry custodian. The Department agrees with the majority of the comments. Although warranties admittedly provide only limited protection to investors, such protection may have a beneficial effect. Also, as pointed out by the comments, under existing law, an "intermediary" warrants its good faith and authority. (See section 8-306(3) of the UCC.)

One financial institution suggested that a book-entry custodian should not be liable for consequential or special damages for breach of warranty, in view of the potential for large losses. This section does not address the measure of damages for breach of warranty. The Department is of the view that damages for breach of warranty could be limited by agreement between the parties to the securities transaction, provided the limitation is not unconscionable. Also, it is noted that as a general rule, consequential damages are not recoverable unless they are foreseeable.

The March Rule provided that the book-entry custodian's warranty to a transferee would arise upon the sending of a confirmation. A comment was made to the effect that the warranty should attach at the time the books are marked (*i.e.*, the time of transfer) rather than when the confirmation is sent. The Department agrees that it is desirable for the warranty to attach at the time an entry is made, because this will normally occur at an earlier point in time than the time when the confirmation is sent. Consequently, paragraph (a) of this section states that a book-entry custodian's transfer warranty arises in connection with the actual transfer of a security or an interest in a security in accordance with § 357.12.

The March Rule also provided that the warranty of a book-entry custodian would run to its transferee and any subsequent transferee. Two comments urged that the warranty run only to the immediate transferee, for reasons of consistency with existing law and the inability, in any event, of a subsequent transferee to trace a book-entry security. The Department agrees that each transferor should only give a warranty to the party with whom it deals, and this section has been changed accordingly.

Several comments expressed concerns about the warranty that a security is free of claims of, or claims created by, the book-entry custodian, and other claims of which the book-entry custodian has knowledge, except as specifically noted on the confirmation. With respect to "claims of" the book-entry custodian, two financial institutions pointed out that it may be difficult to describe a book-entry custodian's claims against its customer specifically, since many different circumstances could result in a lien or charge under the applicable custody or other agreement, and that such circumstances may not be known at the time a confirmation is sent. Because the claims between a book-entry custodian and its customer should already be known to the customer, there is no purpose in requiring that these claims be noted on a confirmation. Thus, the language relating to "claims of" a book-entry custodian has been deleted.

In connection with the claims of third parties of which the book-entry custodian has knowledge, several banks commented on their potential exposure if notices of claims are received at an office other than where the customer's account is maintained. Although these comments were prompted primarily by the provision on notice-type transfers of security interests (§ 357.13(c) of the March Rule), which has been eliminated in this proposed rule, the Department has considered whether it would be appropriate to define what constitutes "knowledge" of claims by a book-entry custodian. The Department has concluded that because of the many types of organizations involved and the unpredictability of the potential factual situations, it would be difficult to prescribe such a rule. It should be noted, however, that the Department would not consider a general disclaimer by the book-entry custodian noted on the confirmation acceptable compliance with the warranties required under paragraph (a).

A suggestion was made that a warranty should be made that, at the time of the transfer, a sufficient quantity of securities of that issue is in the transferor's account to effect the transfer to the transferee and all contemporaneous transfers to other transferees. The Department is of the view that such a provision would focus on the timing of transfers with a precision that does not actually correspond to the realities of trading in an electronic book-entry system. Nonetheless, the Department believes it is appropriate for a book-entry custodian to warrant that the security being transferred is actually present in the book-entry custodian's own account. Thus, the book-entry custodian's warranty of good faith and authority has been expanded in paragraph (a) of this section to include a warranty that the security is part or all of an amount of the same security maintained in an account of the book-entry custodian on the books of another book-entry custodian or on the books of a Federal Reserve Bank.

Another comment was made to the effect that a book-entry custodian's warranty of good faith and authority should include a warranty that a security will not be transferred from a customer's account except upon instructions from the customer or a court of competent jurisdiction. The rationale for this proposal was to provide a basis for a Federal claim against a book-entry custodian who acts negligently or fraudulently in transferring securities from an account of a customer. The Department has decided not to include it in these rules for the reason that it does not appear it would realistically create any added protection for investors.

Paragraph (c) of this section adds a warranty that is applicable to any transferor of a security or an interest in a security, other than the United States or a Federal Reserve Bank. Such a transferor warrants to its transferee that the transfer is rightful and effective and

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that the transferor is acting in good faith. Paragraph (b) of this section provides that where a book-entry custodian is also the transferor of the security or an interest in a security, it will warrant to the transferee that the transfer is rightful and effective, in addition to the other warranties given by a book-entry custodian.

The transferor warranty was added in response to comments stating that a seller which is not a book-entry custodian should also give certain warranties to the purchaser. Under the regulations currently in effect, which are based on the concept that a book-entry security is deemed to be the equivalent of a bearer definitive security, a transferor would give such warranties under applicable law, among them a warranty that the transfer is effective and rightful (section 8–306 of the UCC). With the elimination of the bearer definitive fiction, commenters pointed out that the transferor warranty also would have been inadvertently eliminated in those states that have not adopted the revised UCC Article 8 (applicable to uncertificated securities).

The March Rule contained a provision stating that by sending a confirmation upon specific request of a customer, a book-entry custodian would warrant that the information provided therein is accurate. One comment was made to the effect that this provision should be deleted in the case of banks, which are already held to a high standard of care. The provision has been retained as paragraph (d) of this section because it does not appear to create any new administrative burden for book-entry custodians.

Paragraph (e) of this section retains the provision in § 357.13(f)(1) of the March Rule that by sending a confirmation of a transfer, a book-entry custodian warrants that it has made a transfer entry or that such an entry will be made before the book-entry custodian next opens for business. Although a book-entry custodian's warranty will arise under paragraph (a) of this section upon the transfer of the security or an interest in the security, rather than upon the sending of a confirmation, it is necessary to provide some assurance that an entry actually has been made or will be made before the book-entry custodian next opens for business. Thus, paragraph (e) provides that by sending a confirmation of transfer in accordance with § 357.16(a) or pursuant to a similar requirement under other Federal regulation, a book-entry custodian warrants that it has made a transfer entry as described in § 357.12(a)(3) or that such an entry will be made before the book-entry custodian next opens for business.

Paragraph (f) of this section provides that the warranties described in this section may not be disclaimed or limited by agreement. It is noted that the obligations of good faith, diligence, reasonableness and care prescribed by the Uniform Commercial Code may not be disclaimed by agreement, although the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable (See section 1–102(3) of the UCC). Paragraph (f) of this section makes clear that the warranties in these rules preempt other provisions of law which might permit the disclaimer or variation of warranties by agreement. The warranties in these rules are intended to set standards for good faith, reasonableness, and care in the applicable transactions.

Section 357.18. This section, which describes when a duty to transfer is fulfilled, is new. It was added in response to comments on the March Rule to the effect that by prescribing a Federal rule on securities transfers, the existing State law on the obligation of a transferor to deliver a security had been altered or eliminated (see UCC sec. 8–314).

Paragraph (a) of this section states that a book-entry custodian fulfills its duty to transfer a security at the time it makes an entry on its books or instructs another book-entry custodian or Federal Reserve Bank to make an entry or it instructs its book-entry custodian or Federal Reserve Bank to transfer the security to TREASURY DIRECT. The intent is that the action that must be taken is the action that is appropriate for the circumstances. For example, if a customer of a book-entry custodian (BEC #1) which maintains an account at another book-entry custodian (BEC #2) instructs BEC #1 to transfer a security to a purchaser who maintains an account at a third book-entry custodian (BEC #3), then BEC #1 has fulfilled its duty to transfer at the time it instructs BEC #2 to make a transfer entry.

Paragraph (b) provides that a transferor other than a book-entry custodian, a Federal Reserve Bank, or the United States, fulfills its duty to transfer at the time it instructs its book-entry custodian to make an entry on its books or to instruct another book-entry custodian or Federal Reserve Bank to make an entry or to transfer the security to TREASURY DIRECT. As described above, the applicable action should be appropriate to the circumstances. In addition, the transferor must instruct its book-entry custodian in the manner required by the book-entry custodian.

Section 357.19 [357.16]. Section 357.16 of the March Rule dealt with the priority of interests of the United States. It provided that a security interest in a security transferred to the United States to secure deposits of public money, deposits to Treasury tax and loan accounts, or pursuant to a similar requirement of Federal statute or regulation, shall be superior to any other interest in the security. It also provided that a security transferred to the United States shall be free of adverse claims, unless the security was acquired in a transaction in which the United States was acting in a proprietary, rather than governmental, capacity. Those provisions have been retained and redesignated as § 357.19 of this rule.

Comments were made to the effect that some limitation should be included on the ability of the United States or a Federal Reserve Bank to claim securities under these provisions that have been segregated for customers. Other comments raised the possibility that a security interest granted to the United States could operate as a "secret lien" and could cut off the claims of other parties without notice. For example, if an individual were to grant a security interest to the United States, interests of others such as a clearing bank or a dealer would be subordinated to the interest of the United States.

As noted in the discussion of the March Rule, a priority for security interests in favor of the United States is appropriate in the circumstances described because the security interests run to the benefit of the general public. As a practical matter, it is unlikely that there would be competing customer interests in any securities in which a security interest has been granted to secure Treasury tax and loan and similar accounts, because such securities are transferred on the books of a Federal Reserve Bank to a specific account maintained for the United States.

This section relates only to interests of the United States and the Department. It does not address the interests of a Federal Reserve Bank arising from its extension of credit to a clearing bank. See § 357.15 with respect to the clearing lien of a Federal Reserve Bank.

Another comment made the suggestion that in lieu of the distinction between a "proprietary" and "governmental" capacity used in this provision, that a "commercial"/"governmental" distinction would be preferable, based on concepts in statutes such as the Foreign Sovereign Immunities Act. The comment was also made that the qualification that priority treatment would only apply to transfer of a security to the United States when the United States is acting in a "governmental" capacity should apply as well to transfers of security interests to the United States.

The Department has decided to retain the term "proprietary" because the suggested concept of a "commercial" capacity does not appear to be illuminating in this context. Arguably, the nature of every securities transaction is "commercial." With respect to the application of the governmental/proprietary concept to transfers of security interests, the Department is of the view that transfers of security interests to the United States as required by Federal statute or regulation are inherently governmental in nature, and it is thus unnecessary to introduce the concept in this part of this provision.

A new sentence was added to the end of § 357.19 to clarify that a security or a limited interest in a security required by statute or regulation that is transferred to the name of any executive department of the United States has the same priority as a security or limited interest transferred expressly to the United States or the Department. The term "executive department" is defined in 5 U.S.C. 105.

Section 357.20. This section, which is new, describes the general authority of the Federal Reserve Banks, as fiscal agents of the United States, to issue, service, maintain, and transfer book-entry securities, and to make related payments of principal and interest. The provision simply restates a similar rule in § 306.116 of Subpart O.

Section 357.21 [357.17]. Section 357.17(b) of the March Rule provided that the United States and the Federal Reserve Banks would be entitled to treat the entity in whose account a security is credited as the entity exclusively entitled to transfer the security and would not be liable for acting on the instruction of that entity. This provision now appears in paragraph (b) of this section of these rules.

One comment was made that this provision could be interpreted to permit the United States or a Federal Reserve Bank to exercise a right of set-off against securities in an account where the interests of third parties could be jeopardized. This section is not intended to address the property claims of the United States or a Federal Reserve Bank and is intended solely to enable the Federal Reserve Banks to continue to operate the Fedwire securities transfer mechanism through automated transmissions that are not reviewed by Federal Reserve Bank personnel. The property claims of a Federal Reserve Bank that may arise from extensions of credit to banks must be established or perfected as provided for in other parts of these regulations. Policy matters associated with such claims are being addressed separately by the Board of Governors of the Federal Reserve System.

Section 357.42. Paragraph (b) of § 357.42 of the proposed rule provided, in part, that in the event that the United States is unable to make a payment when due, the liability of the United States would be limited to the amount of the payment. This provision has been retained.

One comment was made suggesting that the provision be amended to state that for principal payments that are not made when due, interest at the contract rate would continue to accrue. This suggestion has not been adopted because the Department has no authority to pay interest after the maturity of a security and no funds have been appropriated for that purpose.

Section 357.44. This section, which is unchanged from the March Rule, states that notices of judicial proceedings affecting a security are to be directed to the Federal Reserve Bank or book-entry custodian, as appropriate, whose books show the interest of the person against whom the proceedings are directed.

A suggestion was made that the provision be changed to provide that an enforcement order is not effective until the Federal Reserve Bank or book-entry custodian receives written process or notification at the appropriate location. The Department has decided not to expand the provision as suggested because it is intended to be merely informational in approach. It is not intended to reach substantive questions of the effectiveness of notices or orders.

Procedural Requirements

The proposed rule is not considered a "major rule" for purposes of Executive Order 12291. A regulatory impact analysis, therefore, is not required.

Although this rule is being issued in proposed form to secure the benefit of public comment, the notice and public procedures of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

List of Subjects in 31 CFR Part 357

Electronic funds transfer, Federal Reserve System, Government securities.

Dated: November 20, 1986.

Gerald Murphy,

Fiscal Assistant Secretary.

Part 357 of Subchapter BI of Title 31, Code of Federal Regulations, Chapter II is proposed to be amended as follows:

1. The authority citation for Part 357 continues to read as follows:

Authority: 31 U.S.C. Chapter II; 12 U.S.C. 391.

2. The Table of Contents for Part 357 is amended by adding entries for §§ 357.0, 357.1 and 357.2 to Subpart A, and by adding Subpart B, consisting of §§ 357.10–357.21, and by adding headings to §§ 357.42 and 357.44 in Subpart D to read as follows:

PART 357—REGULATIONS GOVERNING BOOK-ENTRY TREASURY BONDS, NOTES AND BILLS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 2–86)

Subpart A—General Information

Sec.
357.0 Dual book-entry systems.
357.1 Applicability.
357.2 Governing law.

* * * * *

Subpart B—Treasury/Reserve Automated Debt Entry System (TRADES)

357.10 Payment of interest; payment at maturity or upon call.
357.11 Rights acquired upon transfer and perfection.
357.12 Transfers.
357.13 Enforceability, perfection and termination of a security interest.
357.14 Good faith transferee.
357.15 Clearing lien priority.
357.16 Duties of book-entry custodians.
357.17 Warranties.
357.18 Duty to transfer.
357.19 Priority of interests of the United States.
357.20 Authority of Federal Reserve Banks.
357.21 Rights of the United States and Federal Reserve Banks with respect to transfers on Federal Reserve Bank records.

* * * * *

Subpart D—Additional Provisions

357.42 Liability of Department and Federal Reserve Banks.
357.44 Notices of attachment for securities in TRADES.

3. Sections 357.0, 357.1, and 357.2 are added to Subpart A to read as follows:

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Subpart A—General Information

§ 357.0 Dual book-entry systems.

Securities to which this Part applies, as set forth in § 357.1, shall be maintained in either of the following two book-entry systems, and may be transferred from one system to the other in accordance with this Part:

(a) *Treasury/Reserve Automated Debt Entry System (TRADES).* A security is maintained in TRADES if it is credited to a securities account maintained at a Federal Reserve Bank. *See* Subpart B for rules pertaining to TRADES.

(b) *TREASURY DIRECT Book-entry Securities System (TREASURY DIRECT).* A security is maintained in TREASURY DIRECT if it is credited to a TREASURY DIRECT account as described in § 357.20 of this Part.[1] See Subpart C for rules pertaining to TREASURY DIRECT.

§ 357.1 Applicability.

(a) This Part applies to all transactions in securities in book-entry form that occur on or after [the date which is 60 calendar days after the date of publication of Subparts A, B, and D of this Part in final form], except that:

(1) A security may not be transferred to or maintained in TREASURY DIRECT unless the offering circular applicable to such security specifies that it is eligible to be maintained in TREASURY DIRECT or until such time as the Secretary announces that such security has become eligible to be maintained in TREASURY DIRECT; and

(2) Nothing contained in the rules set forth in this Part shall limit or restrict existing rights and duties of the United States with respect to any security issued and outstanding prior to the date such security becomes eligible to be maintained in TREASURY DIRECT. In addition, these rules shall not affect the rights that parties have acquired in a transaction in such outstanding securities that occurred prior to [the date which is 60 calendar days after the date of publication of Subparts A, B, and D of this Part in final form] and that was rightful and effective under the regulations and law then applicable to such outstanding security.

(b) For purposes of determining the applicability of Subpart B of this Part to a transaction in a security in accordance with paragraph (a) of this section, a transaction involving a transfer of a security or a limited interest in a security will be deemed to have occurred on the date on which occurs the act that constitutes the transfer of the security or of the limited interest in a security as described in this Part. For purposes of the preceding sentence, the parties to a transaction that will involve two or more transfers of a security or a limited interest in a security and that will continue beyond the date specified in paragraph (a), may agree in writing either that the entire transaction shall be governed by Part 357 or that the entire transaction shall be governed by applicable Treasury regulations as in effect prior to adoption of Part 357.

(c) For transactions in securities that were issued prior to [the date which is 60 days after the date of publication of Subparts A, B, and D of this Part in final form] this Part supplements, amends, and modifies the regulations contained in Subpart O Department Circular No. 300, current revision (31 CFR Part 306) and Department Circular, Public Debt Series No. 26–76 (31 CFR Part 350), and to the extent that the rules contained in this Part are inconsistent with the regulations contained in Circular Nos. 300 and 26–76, the rules of this Part shall control, subject only to the limitation set forth in paragraph (a)(2) of this section.

§ 357.2 Governing law.

(a) The rights and obligations of the United States and the Department with respect to securities to which this Part applies are governed solely by applicable Treasury regulations, including the regulations of this Part, the offering circular, the announcement and/or notice of the offering, and other applicable Federal law (hereinafter collectively referred to as "applicable Federal law").

(b) The rights and obligations arising out of interests in securities, other than rights and obligations of the United States, are governed by applicable Federal law, except as provided in paragraph (c) of this section.

(c) Notwithstanding paragraph (b) of this section, the rights and obligations, other than rights and obligations of the United States, arising out of interests in securities maintained on the books of a book-entry custodian at a place outside the United States, its territories or possessions are governed by applicable foreign law, if the business of such book-entry custodian conducted at such place is subject to the laws of a jurisdiction other than the United States, its territories or possessions, and such book-entry custodian and its customer have not made a valid choice of applicable Federal law with respect to such securities.

4. Section 357.3 is revised to read as follows:

§ 357.3 Definitions.

In this Part, unless the context indicates otherwise:

"Bill" means an obligation of the United States, with a term of not more than one year issued under Chapter 31 of Title 31 of the United States Code, in book-entry form.

"Bond" means an obligation of the United States, with a term of more than ten years, issued under Chapter 31 of Title 31 of the United States Code, in book-entry form.

"Book-entry custodian" is a person other than the Department or a Federal Reserve Bank, that in the ordinary course of its business maintains book-entry securities accounts for other persons. A book-entry custodian may have a security interest in securities held for another person and also may hold securities for its own account.

"Clearing bank" means a depository institution, as defined below but excluding a depository institution described in paragraph (g), which has a book-entry securities account at a Federal Reserve Bank through which it provides clearing services.

"Clearing lien" means a security interest granted to a clearing bank or Federal Reserve Bank, pursuant to a written agreement, to secure credit extended in providing clearing services.

"Clearing services" means delivering and receiving securities and payments for securities on behalf of other persons.

"Department" means the United States Department of the Treasury and, where appropriate, the Federal Reserve Banks acting as fiscal agents of the United States.

"Depository institution" means an entity described in section 19(b) of the Federal Reserve Act (12 U.S.C. 461(b)). Under section 19(b) of the Federal Reserve Act, the term "depository institution" includes:

(a) Any insured bank as defined in 12 U.S.C. 1813 or any bank which is eligible to make application to become an insured bank under 12 U.S.C. 1815;

(b) Any mutual savings bank as defined in 12 U.S.C. 1813 or any bank which is eligible to make application to become an insured bank under 12 U.S.C. 1815;

(c) Any savings bank as defined in 12 U.S.C. 1813 or any bank which is eligible to make application to become an insured bank under 12 U.S.C. 1815;

(d) Any insured credit union as defined in 12 U.S.C. 1752 or any credit union which is eligible to make application to become an insured institution under 12 U.S.C. 1781;

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[1] TREASURY DIRECT accounts are maintained through a system administered by the Federal Reserve Bank of Philadelphia, acting as fiscal agent of the United States. Such accounts may be accessed by investors in accordance with Subpart C through any Federal Reserve Bank or the Bureau of the Public Debt.

(e) Any member as defined in 12 U.S.C. 1422;

(f) Any insured institution as defined in 12 U.S.C. 1724 or any institution which is eligible to make application to become an insured institution under 12 U.S.C. 1726; and

(g) For the purpose of 12 U.S.C. 248(o), 342 to 347, 347c, and 372, any association or entity which is wholly owned by or which consists only of institutions referred to in paragraphs (a) through (d) of this definition.

"Entity" means any person except an individual.

"Federal Reserve Bank" or "Reserve Bank" means a Federal Reserve Bank or Branch.

"Financial institution" means, for purposes of direct deposit, an institution which has agreed to receive credit payments under 31 CFR Part 210, as amended from time to time, and has not withdrawn its participation in a direct deposit program under Part 210, or an institution which is willing to agree to receive credit payments under 31 CFR Part 210 and has enrolled with its Federal Reserve Bank.

"Incompetent" means an individual who is legally, medically or mentally incapable of handling his or her business affairs, except that a minor is not an incompetent solely because of age.

"Issue" means a group of securities, as defined in this section, that is identified by the same CUSIP number.

"Maturity value" is the amount that the Department is obligated to pay when a security matures.

"Minor" means an individual who is under the age of majority, as determined by applicable state law.

"Note" means an obligation of the United States, with a term of at least one year, but of not more than ten years, issued under Chapter 31 of Title 31 of the United States Code, in book-entry form.

"Original issue" means the offering by the Department of the Treasury of a marketable Treasury security to the public and its issuance in book-entry accounts maintained either directly by the Treasury or held through a Federal Reserve Bank.

"Owner," as used in Subpart C, means the individual(s) or entity in whose name a security is registered. If a security is registered in more than one name, the term "owner" includes all those whose names appear on the registration and are authorized by this Part to make a transaction request on a security held in TREASURY DIRECT.

"Person" means and includes an individual, corporation, company, governmental entity, association, firm, partnership, trust, estate, and any other similar organization.

"Redemption" means payment of a security at maturity, or pursuant to a call for redemption in accordance with the terms of a security.

"Representative" includes an executor, administrator, legal guardian, committee, conservator, and any similar person or entity appointed by a court to represent the estate of a decedent, minor, or incompetent, as well as a trustee, whether appointed by a court or otherwise.

"Secured party" is a person in whose favor there is security interest.

"Security" means a bond, note, or bill, each as defined in this section, and any other obligation issued by the Department that, by the terms of the applicable offering circular or announcement, is made subject to this Part. Solely for purposes of this Part, it also means the interest and principal components of a security eligible for Separate Trading of Registered Interest and Principal of Securities ("STRIPS"), if such security has been divided into such components by the express terms of the offering circular under which the security was issued and the components are maintained separately on the books of a Federal Reserve Bank. A security shall be deemed a security for purposes of State law.

"Security agreement" means an agreement that creates a security interest.

"Security interest" and "pledge" mean an interest in a security, which interest is acquired by a secured party to secure payment or performance of an obligation and is created by a security agreement between the person having such obligation and the secured party.

"Taxpayer identifying number" or "TIN" means a social security account number or an employer identification number, as appropriate.

"TRADES" is the Treasury/Reserve Automated Debt Entry System.

"Transaction request" means a request to effect a change in an account master record or securities portfolio maintained in TREASURY DIRECT.

"Transaction request form" means a form or series of forms prescribed for use by the Department to request a transaction in TREASURY DIRECT. (This term includes a document that the Department has determined contains all of the elements required by the transaction request form.)

"TREASURY DIRECT" is the TREASURY DIRECT Book-Entry Securities System.

5. New Subpart B, consisting of §§ 357.10 through 357.21, is added to read as follows:

Subpart B—Treasury/Reserve Automated Debt Entry System (TRADES)

§ 357.10 Payment of interest; payment at maturity or upon call.

(a) Interest on securities maintained in TRADES shall be credited to such reserve or other account at a Federal Reserve Bank as is designated by the entity to whose securities account at such Federal Reserve Bank such securities have been credited.

(b) Securities maintained in TRADES shall be redeemed at maturity or upon call by charging the securities account in which they are maintained and by crediting the amount of the redemption proceeds, including both principal and interest, where applicable, to such reserve or other account at a Federal Reserve Bank as is designated by the entity whose securities account at such Federal Reserve Bank was charged.

(c) The obligation of the Department and the United States to make payments of interest and principal on securities held in TRADES shall be discharged at the time payment in the appropriate amount is credited to an account at a Federal Reserve Bank in accordance with paragraph (a) or (b) of this section.

(d) Subject to any rights it may have as a secured party under a written security agreement, a book-entry custodian that is maintaining securities on behalf of another person shall, upon receipt of any payment in accordance with paragraph (a) or (b) of this section relating to such securities, make such payment available for withdrawal or use by such other person at the earliest possible time on such date of receipt and in any event not later than the close of business on such date of receipt.

§ 357.11 Rights acquired upon transfer and perfection.

(a) Upon transfer of a security in accordance with § 357.12, the transferee acquires the rights in the security that the transferor had or had actual authority to convey.

(b) A transferee of a limited interest (including a security interest) in a security acquires rights only to the extent of the interest transferred and to the extent described in § 357.13. The creation of a security interest as described in § 357.13(a) or the termination of a security interest as described in § 357.13(e) constitutes a transfer of a security interest for purposes of this paragraph.

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§ 357.12 Transfers.

(a) Transfer of a security or a limited interest (including a security interest) in a security to a transferee occurs only:

(1) At the time an entry is made on Federal Reserve Bank books that credits a security to a securities account maintained for the transferee; or

(2) With respect to the transfer of a limited interest in accordance with § 357.20(a), at the time an entry is made on the books of the Federal Reserve Bank on whose books the interest of the transferor appears identifying such limited interest in favor of the transferee; or

(3) At the time an entry is made on the books of a book-entry custodian that credits such security to a securities account maintained for the transferee or that otherwise permits identification of the transferee and the security transferred; or

(4) With respect to the transfer of a limited interest other than the transfer of a security interest as described in paragraph (a)(5) of this section, at the time an entry is made on the books of the book-entry custodian on whose books the interest of the transferor appears identifying such limited interest in favor of the transferee; or

(5) With respect to the transfer of a security interest where the secured party is to be the book-entry custodian on whose books the interest of the transferor of the security interest appears, when both the security has been transferred to the transferor of the security interest in accordance with this section, and the transferor has executed a written security agreement with the book-entry custodian granting the book-entry custodian such security interest.

(b) By written agreement, a transferor and a transferee of a limited interest under paragraph (a)(4) or a security interest under paragraph (a)(5) of this section may place additional conditions on the transfer of such limited interest that delay the effectiveness of such transfer until such time as the specified conditions have been fulfilled. Notwithstanding any such conditions that may be agreed to as described in the preceding sentence, the book-entry custodian effecting a transfer under paragraph (a)(4) shall be entitled to treat the transfer as effective as to both the transferor and the transferee, unless the book-entry custodian is a party to such agreement.

(c) A transfer under paragraph (a) (3), (4), or (5) of this section is effective only if the security transferred or the security in which the limited interest is granted is part or all of an amount of securities of the same issue that (1) are maintained at a Federal Reserve Bank in an account of the book-entry custodian effecting the transfer, or (2) is credited on the books of another book-entry custodian to an account of the book-entry custodian effecting the transfer and is maintained at a Federal Reserve Bank.

(d) For the purposes of this section, an entry is made if it is (1) in writing on tangible media, (2) displayable in writing (such as on a video screen) from data contained in or retrievable by electronic or other data processing equipment, or (3) convertible into either form within a reasonable time without undue delay or unreasonable expense.

(e) A security eligible to be maintained in TREASURY DIRECT under § 357.1(a)(1) may be transferred from an account in TRADES to an account in TREASURY DIRECT in accordance with § 357.22(a). A transfer of a security from TREASURY DIRECT to TRADES is effective when the book-entry custodian of the transferee designated on the transaction request form by the transferor makes an entry on its books that credits such security to a securities account maintained for the transferee or that otherwise permits identification of the transferee and the security transferred.

§ 357.13 Enforceability, perfection and termination of a security interest.

(a) A security interest is enforceable between the grantor of the security interest and the secured party, only if:

(1) The security interest has been granted pursuant to a security agreement between the grantor of the security interest and the secured party,

(2) The grantor of the security interest has rights in the security, and

(3) The secured party has given value.

(b) A security interest becomes perfected and enforceable against third parties at the time at which the security or security interest has been transferred to the secured party pursuant to § 357.12(a).

(c) Prior to the time a security interest becomes perfected in accordance with paragraph (b) of this section, if the security agreement referred to in paragraph (a)(1) of this section has been reduced to written form signed by the grantor of the security interest and containing a description of the collateral, a security interest is perfected and enforceable against third parties for a period of seven (7) calendar days from the date on which it became enforceable against the grantor under paragraph (a) of this section. Thereafter, a security interest will continue to be perfected only if, no later than the seventh day of the period described in this paragraph, the security interest becomes perfected in accordance with paragraph (b) of this section. If the security interest does not become perfected in accordance with paragraph (b) within the seven-day period, the security interest will become unperfected and unenforceable against third parties, but will continue to be enforceable between the secured party and the grantor of the security interest, until the time at which the transfer requirement of paragraph (b) has been complied with, and the security interest will be deemed to be perfected only as of such time.

(d) A security interest that is perfected in accordance with this section shall be perfected for all purposes, including but not limited to the applicability of any state or local law concerning priority of perfected security interests.

(e) A security interest in a security is terminated by (1) transfer of the security, by or with the agreement of the secured party, to the grantor of the security interest, a designee of the grantor, or any successor in interest of the grantor, (2) fulfillment of the obligation for which the security interest was granted, or (3) written release of the security interest signed by the secured party.

§ 357.14 Good faith transferee.

(a) A good faith transferee is a transferee that acquired a security or a limited interest in a security for value, in good faith, and without notice of any adverse claim.

(b) Except as otherwise provided in §§ 357.15 and 357.19, a good faith transferee, in addition to acquiring rights in a security in accordance with § 357.11, acquires its interest in the security free of any adverse claim which arose prior to the transfer of such interest to such transferee.

(c) An "adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security.

(d) A transferee is a transferee for purposes of this section if:

(1) The transferee takes a security or a limited interest in a security by any voluntary transaction creating or granting an interest in a security, and not solely by operation of law; and

(2) Such security or limited interest is transferred to the transferee in accordance with the provisions of § 357.12(a)(1), (a)(3), or (a)(5).

(e) Among transferees whose interests in securities are reflected on the books of the same book-entry custodian, the interests of the good faith transferees shall have priority over the interests of those who do not qualify as good faith transferees. In the event that the claims to securities of the same issue of those who qualify as good faith transferees exceed the aggregate amount of such securities available to satisfy their claims, the good faith transferees shall share ratably in the available securities of that issue.

(f) Notwithstanding § 357.11, the transferee of a security or a limited interest that has been a party to any fraud or illegality affecting the security, or that as a prior transferee of the security had notice of an adverse claim, cannot improve its position by taking from a good faith transferee.

§357.15 Clearing lien priority.

(a) A clearing lien in a security shall have priority over all other claims of third parties to that security including claims of a transferee that qualifies as a good faith transferee except that:

(1) All clearing liens are subject to any interests of the United States in the same security as provided in § 357.19; and

(2) A clearing lien asserted by a clearing bank is subject to a clearing lien of a Federal Reserve Bank in the same security.

(b) A clearing lien qualifies for the priority provided under this section only to the extent of credit actually extended in performing clearing services and only if:

(1) The lien is perfected in accordance with § 357.13(b); and

(2) The lien was acquired in good faith.

(c) A clearing lien may not be asserted by a clearing bank against securities which the clearing bank has segregated or otherwise identified on its own books as securities belonging to customers of a book-entry custodian for which the clearing bank provides clearing services, except where such customers have agreed in writing to permit use of their securities as collateral. A clearing lien may not be asserted by a Federal Reserve Bank against securities which are segregated on the books of the Federal Reserve Bank as securities belonging to customers of the depository institution for which the Federal Reserve Bank provides clearing services except where such customers have agreed in writing to permit use of their securities as collateral.

§ 357.16 Duties of book-entry custodians.

(a) A book-entry custodian shall send to its customer confirmation of a transfer of a security to such customer under § 357.12(a)(3) no later than the close of business on its next business day after the day on which the entry described in § 357.12(a)(3) is made.

(b) A book-entry custodian shall send an acknowledgment of the transfer of a limited interest in accordance with § 357.12(a)(4) to the transferor and to the transferee of such limited interest no later than the close of business on its next business day after the day on which the entry described in § 357.12(a)(4) is made. If the transferee has not provided the book-entry custodian with its address, the acknowledgment required to be sent to the transferee shall be sent to the transferee at the address of the transferor.

(c) A book-entry custodian, upon receipt of an adequate request by a customer, shall provide a statement to such customer or a designee of such customer, of:

(1) The interest in such security of such customer and any other customer in that same security, as such interests appear on the books of the book-entry custodian as of the date the request is received, and

(2) Any limited interest in favor of the book-entry custodian, or granted by the book-entry custodian to a third party, as of the date the request is received. For purposes of this paragraph, an adequate request is a request in writing, that provides the address to which a response is to be sent, and which is received at the department of the book-entry custodian that is responsible for maintaining the records of book-entry securities. For purposes of this paragraph, a customer of a book-entry custodian is any person whose interest in a security, including a limited interest, is recorded on the books of the book-entry custodian.

(d) Any confirmation, acknowledgment, or statement issued pursuant to this section must be delivered in writing or in such other form that at the option of the recipient may be reduced to writing.

(e) For purposes of this section, if any book-entry custodian is subject to a regulation of the Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, or other Federal regulatory agency under which a book-entry custodian effecting a securities transaction for a customer is required to furnish to its customer a confirmation or written notification of the transaction, then such book-entry custodian shall not be subject to the requirements of this section so long as it is in compliance with such regulation.

(f) A confirmation, acknowledgment, or statement required under this section may not be waived by the person entitled to receive it unless such waiver is specifically authorized by Federal regulation referred to in paragraph (e) of this section.

§ 357.17 Warranties.

(a) In connection with any transfer of a security or an interest in a security in accordance with § 357.12, a book-entry custodian warrants its good faith and authority. Such warranty of good faith and authority shall include, but shall not be limited to:

(1) A warranty that the security described in any required confirmation is free of any lien, encumbrance, or claim, including any adverse claim of ownership, granted by the book-entry custodian except as specifically noted on the confirmation;

(2) A warranty that, to the knowledge of the book-entry custodian, the security described in the confirmation is free of any other claims, except as specifically noted on the confirmation; and

(3) A warranty that the security is part or all of an amount of the same security maintained in an account of the book-entry custodian on the books of another book-entry custodian or on the books of a Federal Reserve Bank.

(b) A book-entry custodian that is also the transferor of the security or an interest in a security warrants to the transferee that the transfer is rightful and effective, in addition to the warranties described in paragraph (a) of this section.

(c) Any transferor of a security or an interest in a security, other than the United States, a Federal Reserve Bank, or a book-entry custodian, warrants to its transferee that the transfer is rightful and effective and that the transferor is acting in good faith.

(d) By providing a statement in accordance with § 357.16(c) or pursuant to a similar requirement under other Federal regulation, a book-entry custodian warrants to its customer that the information provided therein is accurate.

(e) By sending a confirmation in accordance with § 357.16(a) or pursuant to a similar requirement under other Federal regulation or an acknowledgment in accordance with § 357.16(b), a book-entry custodian warrants to its transferee that the book-entry custodian has made an entry as described in § 357.12(a) (3) or (4), as appropriate, or that such an entry will be made before the book-entry custodian next opens for business.

(f) The warranties described in this section may not be disclaimed or limited by agreement.

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§ 357.18 Duty to transfer.

(a) Unless otherwise agreed, a book-entry custodian fulfills its duty to transfer a security at the time:

(1) It makes an entry on its books or instructs another book-entry custodian to make such an entry in accordance with § 357.12(a)(3);

(2) It instructs a Federal Reserve Bank to make an entry in accordance with § 357.12(a)(1); or

(3) It instructs its book-entry custodian or Federal Reserve Bank to transfer the security to TREASURY DIRECT.

(b) Unless otherwise agreed, a transferor other than the United States, a Federal Reserve Bank, or a book-entry custodian fulfills its duty to transfer at the time it instructs its book-entry custodian, in the manner required by such book-entry custodian:

(1) To make an entry on its books or instruct another book-entry custodian to make such an entry in accordance with § 357.12(a)(3);

(2) To instruct a Federal Reserve Bank to make an entry in accordance with § 357.12(a)(1); or

(3) To transfer the security to TREASURY DIRECT.

§ 357.19 Priority of interests of the United States.

A limited interest in securities transferred to the United States or the Department to secure deposits of public money or deposits to the Treasury tax and loan accounts, or any other limited interest in favor of the United States that is required by Federal statute or regulation and is transferred to the United States or the Department, shall be superior to any other interest created in such securities, whenever created. A security transferred to the United States or the Department shall be free of any adverse claims, whenever created, unless the security was acquired in a transaction in which the United States or the Department was acting in a proprietary rather than governmental capacity. For purposes of this section, a security or a limited interest in a security is transferred to the United States if an entry is made in accordance with § 357.12 identifying either the United States or any executive department thereof as the transferee.

§ 357.20 Authority of Federal Reserve Banks.

Each Federal Reserve Bank is hereby authorized as fiscal agent of the United States to issue securities offered and sold by the Department to which this Subpart applies, in accordance with the terms of the applicable offering circular and with procedures established by the Bureau of the Public Debt; to service and maintain such securities in securities accounts established for such purposes; to make payments of principal and interest on such securities, as directed by the Department; and to effect transfer of securities between securities accounts as directed by the entities for which such securities accounts are maintained.

§ 357.21 Rights of the United States and Federal Reserve Banks with respect to transfers on Federal Reserve Bank records.

(a) A transfer of a limited interest on the books of a Federal Reserve Bank under § 357.12(a)(2) may be made to a person or entity other than a Federal Reserve Bank or the United States only pursuant to an order of a Federal court or a specific requirement of Federal law or by agreement with the Federal Reserve Bank on whose books the transfer is to be recorded. In the event that a limited interest is transferred on the books of a Federal Reserve Bank pursuant to § 357.12(a)(2), that Federal Reserve Bank shall recognize the interest of the transferee only to the extent expressly set forth in the applicable Federal statute or regulations, that Federal Reserve Bank's operating circulars and letters, or by specific agreement with the transferee.

(b) Except as otherwise provided in paragraph (a) of this section, and notwithstanding any information or notice to the contrary, the United States and the Federal Reserve Banks shall be entitled to treat the entity in whose account a security is credited as the entity exclusively entitled to effect transfers of such security, to receive interest and other payments with respect to such security and otherwise to exercise control over the security. Subject only to any requirements to recognize the interest of a transferee, as described in paragraph (a) of this section, a Federal Reserve Bank that has transferred a security or a limited interest according to the instruction of the entity in whose account the security is maintained, shall not be liable for conversion or participation in breach of fiduciary duty even though the instructing entity had no right to issue the instruction. The Federal Reserve Bank shall be fully discharged by completing the order of the entity in whose account the security is maintained.

6. Subpart D is amended by adding text to §§ 357.42 and 357.44. Sections 357.40, 357.41, 357.43, and 357.45 are republished.

Subpart D—Additional Provisions

§ 357.40 Additional requirements.

In any case or any class of cases arising under these regulations, the Secretary of the Treasury ("Secretary") may require such additional evidence and a bond of indemnity, with or without surety, as may in the judgment of the Secretary be necessary for the protection of the interests of the United States.

§ 357.41 Waiver of regulations.

The Secretary reserves the right, in the Secretary's discretion, to waive any provision(s) of these regulations in any case or class of cases for the convenience of the United States or in order to relieve any person(s) of unnecessary hardship, if such action is not inconsistent with law, does not impair any existing rights, and the Secretary is satisfied that such action will not subject the United States to any substantial expense or liability.

§ 357.42 Liability of Department and Federal Reserve Banks.

(a) The Department and the Federal Reserve Banks may rely on the information provided in a tender or transaction request form and are not required to verify the information. The Department and the Federal Reserve Banks shall not be liable for any action taken in accordance with the information set out in a tender or transaction request form or evidence submitted in support thereof.

(b) In the event that the United States or the Department is unable to make a payment on a security when due, the liability of the United States and the Department is limited to the amount of the payment. In the event that the United States or the Department is unable to take any other action with respect to securities to which this Part applies, neither the United States nor the Department shall be liable for failure to take such action if such failure to take action is due to an event which is beyond the reasonable control of the United States or the Department. An event which is beyond reasonable control includes but is not limited to natural disasters, acts of God, war or other civil commotion, accident, computer or other equipment failure, or the failure or interruption of electrical power or of communications lines.

§ 357.43 Liability for transfers to and from TREASURY DIRECT.

A depository institution or other entity that transfers to, or receives, a security from TREASURY DIRECT is deemed to be acting as agent for its customer and agrees thereby to indemnify the United States and the Federal Reserve Banks from any claim, liability, or loss resulting from the transaction.

§ 357.44 Notices of attachment for securities in TRADES.

In the event of judicial proceedings in which a person seeks to attach a security maintained by a Federal Reserve Bank for an entity's account or to obtain an order concerning disposition of such securities, any notice of attachment or other notice arising from such judicial proceeding shall be directed to the Federal Reserve Bank on whose books such security is maintained. In all other cases in which a person seeks to attach a security maintained in TRADES or to obtain an order concerning disposition of such security, any notice of attachment or other notice arising from such judicial proceeding shall be directed to the book-entry custodian on whose books appears the interest of the person against whom the attachment or other disposition is sought.

§ 357.45 Supplements, amendments or revisions.

The Secretary may, at any time, prescribe additional supplemental, amendatory or revised regulations with respect to securities, including charges and fees for the maintenance and servicing of securities in book-entry form.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8-86-11]

Drawbridge Operations Regulations; Pascagoula River, MI

AGENCY: U.S. Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Mississippi State Highway Department, the Coast Guard is considering a change to the regulation governing the operation of the U.S. Highway 90 drawbridge across the Pascagoula River, mile 1.8 at Pascagoula, Mississippi. The proposed change would permit the draw of the bridge to remain closed to navigation from 6:15-7:15 a.m., 7:25-8 a.m, and 3:30-4:45 p.m. Monday through Friday except holidays. The bridge presently is permitted to remain closed to vessel traffic from 6:15-7:15 a.m., 7:25-8 a.m., 3:15-4:15 p.m., and 4:30-5:30 p.m. Monday through Friday except holidays.

This proposal is being made because of an increase in vehicular traffic and a change in the pattern of vehicular traffic flow. This action should help to relieve congestion at the bridge site during the peak hours of traffic flow, while still providing for the reasonable needs of navigation.

DATE: Comments must be received on or before January 12, 1987.

ADDRESS: Comments should be mailed to Commander (obr), Eighth Coast Guard District, 500 Camp Street, New Orleans, Louisiana 70130. The comments and other materials referenced in this notice will be available for inspection and copying in Room 1115 at this address. Normal office hours are between 8:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, at the address given above, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. This proposed regulation may be changed in the light of comments received.

Drafting Information

The drafters of this notice are Perry Haynes, project officer, and Lieutenant Commander James Vallone, project attorney.

Discussion of Proposed Regulation

The U.S. Highway 90 drawbridge across the Pascagoula River, mile 1.8 at Pascagoula, has a closed vertical clearance of 31 feet above high water. Waterway traffic consists of commercial vessels, fishing boats and recreational craft. Data submitted by the Mississippi State Highway Department show that vessel traffic flow remains approximately the same as it was upon implementation of the current regulations, while vehicular traffic has increased and the traffic flow has changed.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034: February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that the bridge will actually remain in the closed to navigation position less than with the current regulation. The new closure time is requested in an effort to expedite the flow of the changed vehicular traffic pattern. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46(c)(5); 33 CFR 1.05-1(g).

2. Section 117.683 is revised to read as follows:

§ 117.683 Pascagoula River.

The draw of the US90 bridge mile 1.8 at Pascagoula, shall open on signal; except that, from 6:15 a.m. to 7:15 a.m., 7:25 a.m. to 8 a.m., and 3:30 p.m. to 4:45 p.m. Monday through Friday except Federal holidays, the draw need not be opened for the passage of vessels.

Dated: November 14, 1986.

E.B. Acklin,

Captain, U.S. Coast Guard Commander 8th Coast Guard, District, Acting.

[FR Doc. 86-26767 Filed 11-26-86; 8:45 am]

BILLING CODE 4910-14-M

VOL 51 ISS 229 NO 28 1986 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Grants for Advanced Nurse Training Programs

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would revise existing regulations governing the program of Grants for Advanced Nurse Training, authorized by section 821 of the Public Health Service Act (the Act) amending the eligibility criteria to specify that up to 1 year of planning time is allowed for all projects to plan, develop and operate an advanced nurse education program This proposal would also revise the regulations to incorporate the amendments made to section 821 of the Act by Pub. L. 99–92, the Nurse Education Amendments of 1985 enacted on October 22, 1985 and Pub. L. 99–129, the Health Professions Training Assistance Act enacted on October 22, 1985.

DATE: Comments must be received by January 27, 1987. When these proposed rules are issued as final rules, technical changes made to conform the regulations to legislative amendments will be made effective as of the effective date in the relevant legislation.

ADDRESSES: Written comments should be addressed to Mr. Thomas D. Hatch, Director, Bureau of Health Professions, Health Resources and Services Administration, Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Support, BHPr, Room 7–74, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mrs. Gretchen A. Osgood, R.N., M.S., Deputy Director, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Room 5C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number 301 443–5786.

SUPPLEMENTARY INFORMATION: Section 821 of the Public Health Service Act (the Act), authorizes the award of grants to public and private nonprofit collegiate schools of nursing to meet the costs of projects to: (a) Plan, develop, and operate, (b) expand, or (c) maintain programs which lead to masters' and doctoral degrees and which prepare nurses to serve as nurse educators, administators, or researchers or to serve in clinical nurse specialities determined by the Secretary to require advanced education. Final regulations for the Grants for Advanced Nurse Training Program are codified at 42 CFR Part, 57, Subpart Z.

The Department is proposing to amend the eligibility criteria in the existing regulations to shorten the planning time for projects to plan, develop and operate an advanced nurse education program. In 1975, when the program was authorized, few doctoral programs in nursing existed. A long planning time was important to assure that the program could obtain approval by their respective States. Now, with a number of doctoral programs in existence, significantly sophisticated faculties and stronger university support, it is believed that up to 1 year of federally supported planning time is sufficient. Therefore, it is proposed to revise § 57.2503, *"Eligibility."*, to specify a planning time of up to 1 year for all projects to plan, develop and operate advanced nurse education programs.

Interested persons may submit written comments to this proposal to the Director of the Bureau of Health Professions at the address given above. Following the close of the comment period, the regulation will be revised as warranted by public comment.

In addition to the above, a number of amendments are necessary to conform the existing regulations with Pub. L. 99–92 and with Pub. L. 99–129 as follows:

1. Revise the title of 42 CFR Part 57, Subpart Z from "Grants for Advanced Nurse Training Program" to "Grants for Advanced Nurse Education Program," and strike out the word "training" and insert in lieu thereof "education" wherever it appear in the text.

2. Revise § 57.2501, *"Applicability."*, to include as eligible the projects which prepare nurse researchers and substitute "public and private nonprofit" for "public and nonprofit private" when referring to collegiate schools of nursing.

3. Revise § 57.2502, *"Definitions."*, to change the following terms:

(a) The definition of "State" by striking out "the Canal Zone" and inserting in lieu thereof "the Commonwealth of the Northern Mariana Islands";

(b) The definition of "Advanced nurse education program" to specify the level of education in nursing from "graduate degree" to "masters' and doctoral degrees", and add "researchers" to the fields of nurse specialties that require advanced education; and

(c) The definition of "Collegiate school of nursing" to specify the level of education in nursing from "graduate degree" to "masters' and doctoral degrees."

4. Revise § 57.2503, *"Eligibility."*, to:

(a) Clarify the applicant eligibiltiy criteria by substituting "public or private nonprofit" for "public or nonprofit private" when referring to collegiate schools of nursing; and

(b) Clarify the project eligibility criteria by deleting the words "significantly" and "existing" when referring to a project to expand or maintain an advanced nurse education program and add research as a specialty area for project eligibility.

5. Revise § 57.2506, *"Evaluation and grant awards."*, (b) *Funding preference.* to clarify the method for funding applications and to add a funding priority for education projects in geriatric and gerontological nursing.

It is also proposed to amend the existing regulations to provide an added emphasis on the national need to train more minority and financially needy students, and to have the applicants include as part of their applications a plan for sustaining a project beyond the period during which Federal support is available. Therefore, the regulations would be amended further as follows:

1. Revise § 57.2504, *"Application."*, to include two additional application requirements for: (a) a plan to attract and retain a higher than average number of minority and financially needy students; and (b) a plan to sustain the project beyond the period during which Federal assistance is available.

2. Revise § 57.2506, *"Evaluation and grant awards."*, (a) *Evaluation.* to include among other evaluation factors the degree to which the applicant proposes to attract, retain and graduate minority and financially needy students; and (b) *Funding preference.* to add a special consideration for projects which include a plan to attract and retain minority and financially needy students.

Regulatory Flexibility Act and Executive Order 12291

These regulations govern a financial assistance program in which participation is voluntary. The rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291. For these reasons, the Secretary has determined that this rule is not a major rule under Executive Order 12291 and a regulatory impact analysis is not required. Further, because the rule does not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis under the

Regulatory Flexibility Act of 1980 is not required.

Paperwork Reduction Act of 1980

Section 57.2504 contains information collection requirements which are subject to review by the Office of Management and Budget (OMB) under section 3507 of the Paperwork Reduction Act of 1980. We have submitted a copy of these information collection requirements to OMB for approval. Other organizations and individuals desiring to submit comments on the information collections should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20205, Attn: Desk Officer for HHS.

List of Subjects in 42 CFR Part 57

Dental health,
Education of the disadvantaged,
Educational Facilities,
Educational study program,
Emergency medical services,
Grant programs—education,
Grant programs—health,
Health facilities,
Health professions,
Loan programs—health,
Medical and dental schools,
Scholarships and fellowships,
Student aid.

Accordingly, 42 CFR Part 75, Subpart Z is proposed to be amended as follows:

(*Catalog of Federal Domestic Assistance*, No. 13.299, Grants for Advanced Nurse Training Programs)

Dated: July 28, 1986.

Robert E. Windom,

Assistant Secretary for Health.

Approved: August 22, 1986.

Otis R. Bowen,

Secretary.

1. The title of 42 CFR Part 57, Subpart Z (§§ 57.2501—57.2514) is revised to read as follows:

Subpart Z—Grants for Advanced Nurse Education Programs

2. The authority citation for Subpart Z is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended by 63 Stat. 35 (42 U.S.C. 216); sec. 821 of the Public Health Service Act, 89 Stat. 361; as amended by 95 Stat. 930, and by 99 Stat. 394 and 548 (42 U.S.C. 296*l*).

3. Section 57.2501 is revised to read as follows:

§ 57.2501 Applicability.

The regulations of this subpart apply to the award of grants to public and private nonprofit collegiate schools of nursing under section 821 of the Public Health Service Act (42 U.S.C. 296*l*) to meet the costs of projects to: plan, develop, and operate; expand; or maintain programs which lead to masters' and doctoral degrees and which prepare nurses to serve as nurse educators, administrators, or researchers or to serve in clinical nurse specialties determined by the Secretary to require advanced education.

4. Section 57.2502 is amended by alphabetizing the definitions, and revising the definitions for "Advanced nurse training program", "Collegiate school of nursing", and "State", as follows:

§ 57.2502 Definitions.

* * * * *

"Advanced nurse education program" means a program of study in a collegiate school of nursing which lead to masters' and doctoral degrees and which prepares nurses to serve as nurse educators, administrators, or researchers or to serve in clinical nurse specialties determined by the Secretary to require advanced education.

* * * * *

"Collegiate school of nursing" means a department, division, or other administrative unit in a college or university which provides primarily or exclusively a program of education in professional nursing and allied subjects leading to the degree of bachelor of arts, bachelor of science, bachelor of nursing, or to an equivalent degree, or to masters' and doctoral degrees in nursing, and including advanced education related to this type of educational program provided by the school, but only if the program, or unit, college or university is accredited.

* * * * *

"State" means a State, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands, or the Trust Territory of the Pacific Islands.

5. Section 57.2503 is amended by revising paragraphs (a)(1), (b)(1), (b)(2) introductory text, (b)(2)(i), (b)(2)(iii), and (b)(3) to read as follows:

§ 57.2503 Eligibility.

(a) * * *

(1) Be a public or private nonprofit collegiate school of nursing.

* * * * *

(b) * * *

(1) A project to plan, develop, and operate an advanced nurse education program. The planning period of this project is limited to one year. The project must enroll students before the end of the project period;

(2) A project to expand an advanced nurse education program through one or more of the following activities:

(i) The addition to the masters' or doctoral program of a new clinical, research, or functional (administration or teaching) specialty area,

(ii) * * *

(iii) The addition of a new educational site for the program; or

(3) A project to maintain an advanced nurse education program.

6. Section 57.2504 is amended by revising paragraphs (c)(1), (c)(11), and (d) and by adding new paragraphs (c)(12) and (c)(13) to read as follows:

§ 57.2504 Application.

* * * * *

(c) * * *

(1) A proposal for a project to: plan, develop, and operate; expand; or maintain an advanced nurse education program.

* * * * *

(11) Information concerning the source and number of potential students for the education program, and a description of plans, if any to encourage graduates of the education program to practice in States in need of nurses prepared in the specialty in which education is to be provided; and

(12) A plan to sustain the project beyond the period during which Federal assistance is available; and

(13) A plan to attract and retain a higher than average number of minority and financially needy students.

(d) In the cast of a project to expand or to maintain an advanced nurse education program, the application shall contain an assurance satisfactory to the Secretary that the applicant will expand, in carrying out the program during the fiscal year for which a grant under this subpart is sought, an amount of non-Federal funds (excluding costs of construction) at least as great as the average amount of non-Federal funds (excluding expenditures of a nonrecurring nature, including costs of construction) expended for this purpose during the 3 fiscal years immediately preceding the fiscal year for which the grants is sought.

* * * * *

7. Section 57.2505 is amended by revising paragraph (b) to read as follows:

§ 57.2505 Evaluation and grant awards.

* * * * *

(b) A project supported under this subpart shall enroll professional nurses,

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as defined in § 57.2502, or students who will be professional nurses, as defined in § 57.2502, at or prior to completion of the advanced nurse education program.

8. Section 57.2506 is amended by revising paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(8), and (b); and by adding paragraph (a)(9) to read as follows:

§ 57.2506 Evaluation and grant awards.

(a) * * *

(1) The need for the proposed project including, with respect to projects to provide education in professional nursing specialties determined by the Secretary to require advanced education:

(i) The current or anticipated need for professional nurses educated in the specialty; and

(ii) The relative number of programs offering advanced education in the speciality;

(2) The need for nurses in the specialty in which education is to be provided in the State in which the education program is located, as compared with the need for these nurses in other States;

(3) The degree to which the applicant proposes to recruit students from States in need of nurses in the specialty in which education is to be provided, and to promote their return to these States following education;

(4) The degree to which the applicant proposes to encourage graduates to practice in States in need of nurses in the specialty in which education is to be provided;

(5) The potential effectiveness of the proposed project in carrying out the educational purposes of section 821 of the Act and this subpart;

* * * * *

(8) The potential of the project to continue on a self-sustaining basis after the period of grant support; and

(9) The degree to which the applicant proposes to attract, retain and graduate minority and financially needy students.

(b) *Funding preference:* In determining the priority for funding applications approved under paragraph (a) of this section, the Secretary will consider:

(1) The relative merit of the proposed project based upon the factors in paragraph (a) of this section; and

(2) Whether a proposed project contains any of the following elements:

(i) An educational program in geriatric and gerontological nursing;

(ii) A plan to attract and retain minority and financially needy students (the project will be given special consideration); and

(iii) Special funding preferences as announced by the Secretary by notice in the **Federal Register**, should specific needs warrant such action.

* * * * *

9. Section 57.2509 is amended by revising paragraphs (a)(1), and (b) to read as follows:

§ 57.2509 Nondiscrimination.

(a) * * *

(1) Section 855 of the Act (42 U.S.C. 298b–2) and its implementing regulation, 45 CFR Part 83 (prohibiting discrimination on the basis of sex in the admission of individuals to education programs).

* * * * *

(b) The grantee shall not discriminate on the basis of religion in the admission of individuals to its education programs.

10. Section 57.2511 is amended by revising paragraphs (b)(1) introductory text and (c)(2) to read as follows:

§ 57.2511 Grantee accountability.

* * * * *

(b) * * *

(1) Royalties received during the period of grant support as a result of copyrights or patents may be retained by the grantee and, in accordance with the terms and conditions of the grant, used in either or both of the following ways:

* * * * *

(c) * * *

(2) *Final settlement.* There shall be payable to the Federal Government as final settlement with respect to each approved project the total sum of: (i) Any amount not accounted for under paragraphs (a) and (b) of this section; and (ii) Any other amounts due under Subparts F, M, and O of 45 CFR Part 74. This total sum shall constitute a debt owed by the grantee to the Federal Government and shall be recovered from the grantee or its successors or assigns by offset or other lawful action.

[FR Doc. 86–26665 Filed 11–26–86; 8:45 am]

BILLING CODE 4160–15–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86–419, RM–5430]

Radio Broadcasting Services; Centre, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Cherokee Broadcasting Corporation to allot Channel 290A to Centre, Alabama, as that community's first local FM service.

DATES: Comments must be filed on or before January 8, 1987, and reply comments on or before January 23, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Gary S. Smithwick, Esq., Keith & Smithwick, 1320 Westgate Drive, Winston-Salem, NC 27103.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, (202) 634–6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–419, adopted October 15, 1986, and released November 17, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140 Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from time to time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–26784 Filed 11–26–86; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 86-428, RM-5335]

Television Broadcasting Services; Peoria, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a proposal to delete the reservation on UHF Television Channel *59 at Peoria, Illinois, making it available for commercial use, and to reserve Channel 47, already in use on a noncommercial educational basis, in response to a petition filed by Donald L. Markley.

DATES: Comments must be filed on or before January 8, 1987, and reply comments on or before January 23, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Donald L. Markley, 206 North Bergan, Peoria, Illinois 61604 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-428, adopted October 20, 1986, and released November 17, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-26785 Filed 11-26-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-429, RM-5336]

Radio Broadcasting Services; Kaplan, LA

AGENCY: Federal Communications Commission.

ACTION: Proposal rule.

SUMMARY: This document requests comments on a petition filed by Mid-Acadiana Broadcasting, Inc. proposing the substitution of Channel 247C2 for Channel 249A at Kaplan, Louisiana, and modification of the license of Station KMDL (FM) to specify operation on Channel 247C2 as that community's first wide area coverage FM channel. Finalization of this proposal is contingent upon the grant of a pending application filed by Station KAYD (FM), Beaumont, Texas, to change to Class C1 which will eliminate a short spacing problem.

DATES: Comments must be filed on or before January 8, 1987, and reply comments on or before January 23, 1987.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Bradford D. Carey, Fawer, Brian, Hardy, & Zatkis, 700 Camp Street, New Orleans, Louisiana 70130-3702 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commissions Notice of Proposed Rule Making, MM Docket No. 86-429, adopted October 20, 1986, and released November 17, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete Text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-26787 Filed 11-26-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-430, RM-5310]

Radio Broadcasing Services; Bogue Chitto, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Bogue Chitto Broadcasting Company, proposing the allotment of FM Channel 225A to Bogue Chitto, Mississippi, as that community's first FM broadcast service.

DATES: Comments must be filed on or before January 8, 1987, and reply comments on or before January 23, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Donald B. Brady, Bogue Chitto Broadcasting Company, 623 Northwest Avenue, McComb, Mississippi 39648.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, (202) 634-6530

Proposed Rule Making, MM Docket No. 86-430 adopted October 20, 1986, and released November 17, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800,

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2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-26786 Filed 11-26-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-436; RM-5493]

Radio Broadcasting Services; Defiance, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to allocate Channel 290A to Defiance Ohio, as the community's second local FM service, at the request of Gary Wilson. Canadian concurrence is required.

DATES: Comments must be filed on or before January 12, 1987, and reply comments on or before January 27, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultants as follows: Gary Wilson, 1719 Dorr Street, #196, Toledo, Ohio 43517, (petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-436, adopted October 24, 1986, and released November 21, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-26783 Filed 11-26-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-433, RM-5477]

Radio Broadcasting Services; Hormigueros, PR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes the allocation of Channel 291A to Hormigueros, Puerto Rico, as the community's second local FM Service, at the request of Occidental Broadcasting Corporation. A site restriction of 16.6 kilometers south is required.

DATES: Comments must be filed on or before January 12, 1987, and reply comments on or before January 27, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: John L. Tierney, Esq., Ann Bavender, Esq., Tierney & Swift, 1020 19th Street, NW. Suite 200, Washington, DC. (counsel to petitioner) .

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-433, adopted October 24, 1986, and released November 21, 1986. The full text of this Commission decision is avilable for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-26780 Filed 11-26-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-434, RM-5573]

Radio Broadcasting Services; Pago Pago, American Samoa

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes the allocation of Channel 221A to Pago Pago, American Samoa, as the community's first local FM service, at the request of Samoa Technologies, Inc. The channel can be allocated in compliance with the Commission's minimum distance separation and other technical requirements without the imposition of a site restriction.

DATES: Comments must be filed on or before January 12, 1987, and reply comments on or before January 27, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Ray D. Thrower, P.E., Thrower & Associates, Inc. P.O. Box 12725, Salem, Oregon 97309 (Consultant to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, (202) 634–6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–434, adopted October 24, 1986, and released November 21, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–26781 Filed 11–26–86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86–431, RM–5417]

Radio Broadcasting Services; Albert Lea, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Albert Lea Communications, proposing the allotment of FM Channel 241A to Albert Lea, Minnesota. The proposal could provide a second broadcast service for the community.

DATES: Comments must be filed on or before January 12, 1987, and reply comments on or before January 27, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should service the petitioners, or their counsel or consultant, as follows: Harry G. Sells, Sells & Gregory, 10401 Georgetown Pike, Great Falls, Virginia 22066 (counsel to the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–431, adopted October 20, 1986, and released November 21, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–26778 Filed 11–26–86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86–420, RM–5446]

Radio Broadcasting Services; Atwater, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Norman Jones, proposing the allotment of FM Channel 231A to Atwater, Minnesota, as that community's first broadcast service. There is a site restriction 5.5 kilometers (3.4 miles) south of the community.

DATES: Comments must be filed on or before January 8, 1987, and reply comments on or before January 28, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or the counsel or consultant, as follows: A.L. Stein, Colorado Building, Suite 915, 1341 G Street NW., Washington, DC 20005 (counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle (202) 634–6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–420, adopted October 15, 1986, and released November 17, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcript Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–26779 Filed 11–26–86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86–435, RM–5516]

Radio Broadcasting Services; Morehead City, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes the substitution of FM Channel 242C2 for Channel 240A at Morehead City, NC at the request of Curtis Radio Group, Inc. and the modification of its license for Station WRHT(FM) to specify operation on the higher-powered channel. Channel 242C2 can be allocated without a site restriction. However, it cannot be used at Station WRHT(FM)'s present site due to a .9 kilometer short-spacing to Station WYLT, Channel 241, Raleigh, NC.

DATES: Comments must be filed on or before January 12, 1987, and reply comments on or before January 27, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Mark J. Prak, Esq., Tharrington, Smith and Hargrove, 209 Fayetteville Street Mall, P.O. Box 1151, Raleigh, NC 27602 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro (202) 634–6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–435, adopted October 24, 1986, and released November 21, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 37 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–26782 Filed 11–26–86; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 85–350; FCC 86–498]

Television, AM Radio, FM Radio; Amendment to the Commission's Rules and Procedures Concerning Broadcast Equal Opportunity Practices and Reporting Requirements

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Further Notice of Proposed Rule Making (Further Notice) seeks comment on an alternative proposal for the Broadcast Equal Employment Opportunity (EEO) Program Report submitted by the Office of Management and Budget (OMB). The Commission believes that this proposal is worthy of further consideration as an alternative to the EEO Program Report proposed by the Commission in its *Notice of Proposed Rule Making* (*Notice*) in MM Docket No. 85–350, adopted November 14, 1986 (50 FR 49566; December 3, 1985). A further notice in this proceeding is also desirable to ensure compliance with certain procedural requirements of the Paperwork Reduction Act. The Further Notice requests comment on whether OMB's proposal for the Broadcast EEO Program Report would provide the Commission with sufficient information to evaluate a broadcast licensee's efforts to comply with the EEO requirements. It also seeks comment on whether this proposal would minimize the reporting and administrative burden of these requirements for both broadcasters and the Commission.

DATES: Comments due January 5, 1987; replies due January 20, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman, Mass Media Bureau, (202) 632–6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rule Making in MM Docket No. 85–350, adopted October 31, 1986, and released November 12, 1986. The full text of this Commission decision, including the proposed OMB broadcast EEO report form, is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street Northwest, Suite 140, Washington, DC 20037.

Summary of the Further Notice of Proposed Rule Making

1. In the *Notice*, the Commission proposed to replace its 5-point and 10-point Model EEO Program Reports with a new Broadcast EEO Program Report, to revise the Annual EEO reporting requirements for broadcasters, and to revise its procedures for evaluating broadcast licensee EEO performance. The two proposed new forms were submitted to OMB for clearance under the Paperwork Reduction Act.

2. OMB contended, however, that the submission was not timely under its rules and returned the forms without action. Subsequently, OMB filed comments regarding the proposed forms and suggested an alternative version of Form 396, the Broadcast EEO Program Report. In its comments, OMB contends that the proposed Form 396 is not an improvement over the existing form. In particular, OMB criticizes the required submission of job descriptions and the questions requiring narrative answers. It believes that these requirements would be burdensome on licensees and the Commission, would not be very useful because broadcasters could carefully craft responses to be technically true while not revealing their shortcomings in EEO performance, and would be difficult for the Commission to use in its evaluation of EEO efforts. OMB also believes that the proposed form does not give broadcasters a clear and simple explanation of the Commission's EEO requirements.

3. In order to remedy the problems that it sees with the reporting requirements proposed by the Commission in the *Notice*, OMB proposes an alternative Form 396 styled after the existing 10-point Model Program Report form. The Commission believes that alternative reporting requirements proposed by OMB are worthy of further consideration. Accordingly, the Commission has adopted this Further Notice to seek comment on this proposed Broadcast EEO Program Reporting format.

4. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

5. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, this proceeding proposes alternative EEO program reporting requirments for all 11,000 broadcast stations. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete decision.

6. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

7. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before January 5, 1987; and reply comments on or before January 20, 1987. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

List of Subjects in 47 CFR Part 73

Television, AM radio, FM radio.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-26788 Filed 11-26-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. MMPAH-1986-1]

Regulations Governing the Taking and Importing of Marine Mammals

AGENCY: Office of the Administrative Law Judge, U.S. Department of Commerce, for the National Marine Fisheries Service (NMFS), NOAA.

ACTION: Correction relating to witnesses in formal rulemaking proceeding.

SUMMARY: On November 13, 1986, a notice announced, *inter alia*, the witnesses in a forthcoming formal Rulemaking proceeding, 51 FR 41814, (Nov. 19, 1986). This notice corrects the witness list for the Hearing scheduled to be conducted on December 1, 1986, in Seattle, Washington.

DATES: The dates remain as published in the Orders of September 17, 1986, 51 FR 33907 (Sept. 24, 1986) and November 13, 1986, 51 FR 41814 (Nov. 19, 1986).

ADDRESS: Office of the Administrative Law Judge Suite 6716 U.S. Department of Commerce 14th and Constitution Ave., NW. Washington, DC 20230

FOR FURTHER INFORMATION CONTACT: Rosalie Smith, Office of the Administrative Law Judge Suite 6716 U.S. Department of Commerce 14th & Constitution Ave., NW. Washington, DC 20230 Telephone: 202-377-3135

SUPPLEMENTARY INFORMATION: .

In the Matter of: Proposed Regulations to Govern the Taking of Marine Mammals (Dall's Porpoise) Incidental to Commercial Salmon Fishing Operations.

Order

The following witnesses' names were erroneously omitted from the Order of November 13, 1986 Federal Register of November 19, 1986, 51 FR 41814:

Harud Ogi
Roger McManus
Natasha Adkins
Walter V. Reid
Alan Reichman
Paul Spong

Dated: November 21, 1986.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 86-26757 Filed 11-26-86; 8:45 am]

BILLING CODE 3510-08-M

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50 CFR Part 652

[Docket No. 61198-6209]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of proposed 1987 fishing quotas and request for comments.

SUMMARY: NOAA issues a notice of proposed quotas for th surf clam and ocean quahog fisheries for 1987 and requests public comment. These proposed quotas have been selected from a range defined as optimum yield (OY) for each fishery. The intended effect of this action is to establish allowable harvests of surf clams and ocean quahogs from the fishery conservation zone in 1987.

DATE: Comments will be accepted until December 26, 1986.

ADDRESS: Comments on the proposed 1987 fishing quotas should be sent to Bruce Nicholls, National Marine Fisheries Service, 2 State Fish Pier, Gloucester, MA 01930. The information used to justify the quotas is available for public inspection at this address; copies may be requested in writing.

FOR FURTHER INFORMATION CONTACT: Bruce Nicholls (Plan Coordinator), 617-281-3600, ext. 263.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) directs the Secretary of Commerce (Secretary), in consultation with the Mid-Atlantic Fishery Management Council, to specify quotas for surf clams and ocean quahogs on an annual basis from within ranges which have been identified as OY for each fishery.

In selecting the quota values proposed in this action, the Regional Director, Northeast Region, NMFS, has considered stock assessments, catch records, and other relevant information concerning exploitable biomass and spawning biomass, fishing mortality rates, stock recruitment, projected effort and catches and areas likely to be reopened to fishing.

As of October 3, 1986, surf clam landings from the Mid-Atlantic Area were 2,181,000 bushels, out of a quota (adjusted) of 2,725,000 bushels. Surf clam landings from the Georges Bank Area were 215,000 bushels from a quota of 300,000 bushels. Surf clam landings from the Nantucket Shoals Area, reduced by subtraction of surf clams taken on Stellwagen Bank, on October 24, 1986, reached 204,000 bushels from a quota of 200,000 bushels. This fishery was closed on October 31 (51 FR 40173, November 5, 1986) Harvest of ocean quahogs in all areas reached 3,111,000 bushels from the overall quota of 6,000,000 bushels.

Analyses of stock assessments, catch records, and all other relevant information indicate stable productivity in the surf clam and ocean quahog fisheries. Adequate resources currently exist to maintain current harvest levels in the surf clam fishery and to allow the ocean quahog fishery to continue to grow towards established quota limits.

The following quotas are proposed for the surf clam and ocean quahog fisheries for 1987:

Fishery areas	1986 quota (in bushels)
Mid-Atlantic surf clam	2,650,000
Georges Bank surf clam	300,000
Nantucket Shoals surf clam	200,000
Ocean quahog	6,000,000

Comments on the proposed quotas will be accepted for 30 days. Comments will be considered by the Secretary,

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who will determine appropriate final annual quotas for each fishery and publish those quotas in the Federal Register.

Other Matters

This action is taken under authority of 50 CFR 652.21 and is in compliance with Executive Order 12291. The action is covered by the certification for Amendment 3 to the FMP, and under the Regulatory Flexibility Act, that the authorizing regulations do not have a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 24, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries, Resource Management, National Marine Fisheries Service.

[FR Doc. 86-26830 Filed 11-26-86; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 655

[Docket No. 61108-6208]

Atlantic Mackeral, Squid, and Butterfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of preliminary initial specifications for 1987 and request for comments.

SUMMARY: NOAA issues this notice to propose preliminary initial specifications for the 1987 fishing year for Atlantic mackeral, squid, and butterfish, and requests public comments. Regulations governing these fisheries require the Secretary of Commerce (Secretary) to publish preliminary initial specifications. This action provides data and requests comments for NOAA's determination of the final initial specifications for the 1987 fishing year.

DATE: Comments must be received on or before December 28, 1986.

ADDRESS: Send comments to Salvatore A. Testaverde, Northeast Regional Office, NMFS, NOAA, 2 State Fish Pier, Gloucester, MA 01930-3097. Mark on the outside of the envelope, "Comments on 1987 Annual Specifications".

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, 617-281-3600 Ext. 273.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for Atlantic Mackeral, Squid, and Butterfish Fisheries (FMP) (FR 51 10547, March 27, 1986) stipulate at §§ 655.22(b) that the Secretary will publish a notice specifying the preliminary annual amounts of the initial optimum yield (IOY) as well as the amounts for domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable levels of foreign fishing (TALFF) for the species managed under the FMP. No reserves are permitted under the FMP for any of these species.

Procedures for determining the initial annual amounts are found at § 655.21. The Secretary is required to publish this notice on or about November 1 of each year and to provide a 30-day comment period on the preliminary specifications. These specifications are based on information submitted by the Mid-Atlantic Fishery Management Council (Council), including an analysis of the nine economic factors specified at § 655.21(b)(1)(ii). The Council's recommendations and other relevant data are available for inspection at the NMFS Regional Office at the above address during the comment period. The New England Fishery Management Council has not yet formulated its recommendations for all of these annual specifications. However, the New England Council has recommended that, for 1987, the *Loligo* TALFF should be set at no more than 1,700 mt, and the *Illex TALFF* should be set at zero. Also, this Council recommended that any TALFF earned under the 1986 TALFF/squid purchase ratio policy would be available up to March 31, 1987, within the foreign fishing area. The New England Council will discuss all the 1987 annual specifications at a meeting during the comment period. There recommendations, public comments, and future comments by the New England Council on all annual specifications will be considered in the final decision. A notice of final determination of the initial amounts and response to public comments is expected to be published in the Federal Register before January 1, 1987.

The following table lists the preliminay initial specifications in metric tons for the maximum optimum yield (Max OY), allowable biological catch (ABC), IOY, DAH, DAP, JVP, and TALFF for Atlantic mackeral, *Illex* and *Loligo* and butterfish. These initial specifications are the amounts that the Regional Director, Northeast Region, NMFS, is proposing for the 1987 fishing year beginning January 1.

TABLE. PRELIMINARY INITIAL ANNUAL SPECIFICATIONS FOR ATLANTIC MACKEREL SQUID, AND BUTTERFISH FOR THE 1987 FISHING YEAR, JANUARY 1 THROUGH DECEMBER 31, 1987.

[in Metric tons]

Specifications	Squid		Atlantic mackerel	Butterfish
	Loligo	Illex		
Max OY [1]	44,000	30,000	[2] N/A	[3] 16,000
ABC	37,000	22,500	294,000	[3] 16,000
IOY	28,534	15,000	154,600	13,068
DAH	28,500	15,000	[4] 69,600	13,000
DAP	25,000	12,000	29,000	13,000
JVP	3,500	3,000	28,000	
TALFF	34	0	85,000	68

[1] These are the maximum OYs as stated in the FMP.

[2] Not applicable; depends upon $F_{0.1}$ and U.S. domestic development; see the FMP.

[3] IOY can rise to this amount.

[4] Includes 12,600 mt projected recreational catch.

The Regional Director has determined that the IOY levels proposed for the 1987 fishing year will promote the continued growth of the domestic industry, thereby providing the greatest overall benefits to the United States. These levels were set to encourage growth in both the harvesting and processing sectors of the U.S. fishing industry in accordance with the purposes of the Magnuson Act. They were selected after meetings and discussions with the Council, considering information from industry groups and foreign national representatives, and review of the performance of U.S. fishermen, projected domestic landings, and joint venture information.

As in the previous fishing year, specifications give priority to domestic users. Squid TALFFs are initially set at bycatch levels as prescribed by the regulations. The Regional Director publishes the squid TALFFs as proposed by the Council, set at bycatch only throughout the fishing year. The Council has recommended an *Illex* TALFF of zero unless stock assessments support a foreign directed fishery for silver and red hake during 1987. The scientific assessments for the hakes have not been completed at this time. Until the completion of the assessments and the determination of hake TALFFs, the Regional Director proposes an *Illex* TALFF initially set at zero. If a directed fishery for hakes by foreign nations is allowed during 1987, the appropriate bycatch will be added to the TALFFs for the FMP's species.

Atlantic mackerel specifications, especially ABC, have been increased because of the continued rebuilding of the mackerel stocks. TALFF has been increased to provide for foreign vessels which participate in joint ventures and also for those allowed to engage in directed fisheries.

Butterfish specifications for DAH and DAP are increased by 1,000 mt from last year, and a TALFF of 68 mt is again provided for bycatch in other fisheries.

Classification

This action is authorized by 50 CFR Part 655 and complies with Executive Order 12291.

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Part 655

Fisheries, Reporting and recordkeeping requirements.

Dated: November 24, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

FR Doc. 86-26840 Filed 11-26-86; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 663

[Docket No. 61107-6207]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of preliminary fishery specifications and request for comment.

SUMMARY: The NMFS announces and requests comments on the preliminary 1987 specifications for groundfish taken in the fishery conservation zone and territorial waters off the coasts of Washington, Oregon, and California. These preliminary specifications estimate the acceptable level of biological catch, the optimum yield quota, and the distribution of the optimum yield between domestic and foreign fishing operations as required by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan. The intended effect of this action is to obtain public comments which will be considered before determining the final specifications for 1987.

DATE: Comments on the preliminary specifications for 1987 must be received by December 15, 1986.

ADDRESSES: Send comments to Rolland A. Schmitten, Regional Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, Washington 98115 or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten at 206-526-6150 or E. Charles Fullerton at 213-514-6169.

SUPPLEMENTARY INFORMATION: The implementing regulations for the Pacific Coast Groundfish Fishery Management Plan (FMP) at 50 CFR Part 663 state that management specifications for groundfish will be evaluated each calendar year, preliminary specifications will be published in the **Federal Register** followed by a public comment period, and final specifications for the succeeding calendar year will be published near the beginning of that year. The management specifications include the acceptable biological catch (ABC) for all groundfish species, an estimate of the annual catch that could be taken without jeopardizing a resource' s productivity, and the optimum yield (OY) for six species (Pacific whiting, sablefish, Pacific ocean perch, shortbelly rockfish, widow rockfish, and, north of 39° N. latitude, jack mackerel), which is based on socioeconomic as well as biological factors and thus is not necessarily equal to the ABC. The OYs for these six species are the maximum amounts of fish (in round weight) that may be taken and retained or landed each year from the fishery conservation zone (3-200 nautical miles) and the territorial sea (0-3 nautical miles) off Washington, Oregon, and California.

The OY for each of these six species is comprised of several components that will be reassessed near July 1. The domestic annual harvest (DAH), which consists of estimates of domestic annual processing (DAP) and joint venture processing (JVP), is verified by surveys in September and June of the needs of the domestic fishing and processing industries. The total allowable level of foreign fishing (TALFF) is the remainder, if any, of OY after domestic needs have been subtracted. Before TALFF is designated a reserve of 20 percent of OY is established for each species in case the domestic industry needs more than was initially estimated.

The OYs and ABCs may be changed during the year within limits, under the procedures outlined in the regulations at § 663.22.

The Pacific Fishery Management Council (Council) reviewed and approved preliminary specifications for the 1987 ABCs and OYs and received public comment at its September 1986 meeting in Portland, Oregon. However, after the Council endorsed preliminary ABC specifications in September, updated biological analyses for some species were received from the Council's Groundfish Management Team and released to the public by the Council. These analyses are considered to be the best available information at this time. Also, the Council recommended increases in ABC greater than 30 percent for two species, widow and chilipepper rockfish. Such increases are prohibited by the regulations at § 663.24. Consequently, the specifications presented in this notice in some cases differ from the numbers the Council recommended in September.

The 1987 preliminary management specifications are given in Tables 1 and 2, followed by a discussion of the specifications for each species with a numerical OY and for each species whose ABC in 1987 is not the same as in 1986. The aggregate data upon which these preliminary specifications are based are available for public inspection at the Regional Directors' offices during business hours until the end of the comment period.

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TABLE 1.—PRELIMINARY ESTIMATES OF ABC FOR 1987 IN METRIC TONS (MT) FOR THE CALIFORNIA/WASHINGTON REGION BY INPFC AREAS

Species	Vancouver [1]	Columbia	Eureka	Monterey	Conception	Total
Roundfish:						
Lingcod	1,000	4,000	500	1,100	400	7,000
Pacific Cod	2,200	900	(2)	(2)	(2)	3,100
Pacific Whiting						[3] 195,000
Sablefish						12,000
Rockfish:						
Pacific Ocean Perch	0	0	(2)	(2)	(2)	0
Shortbelly						[3] 10,000
Widow						[3] 12,000
Other Rockfish [4]:						
Bocaccio	(2)	(2)	(2)	4,100	2,000	6,100
Canary	800	[5] 2,100	600	(2)	(2)	3,500
Chilipepper						[3] 3,000
Yellowtail	1,100	[5] 2,600	300	(2)	(2)	4,000
Remaining Rockfish	800	[5] 3,700	1,900	4,300	3,300	14,000
Flatfish:						
Dover Sole	2,400	11,500	8,000	5,000	1,000	27,900
English Sole						[3] 1,900
Petrale Sole	600	1,100	500	800	200	3,200
Other Flatfish (except arrowtooth flounder)	700	3,000	1,700	1,800	500	7,700
Other Fish [6]:						
Jack Mackerel [7]						12,000
Others	2,500	7,000	1,200	2,000	2,000	14,700

[1] U.S. portion.

[2] These species are not common nor important in the areas footnoted. Accordingly, for convenience, Pacific cod is included in "Other" category for the areas footnoted and rockfish species are included in the "Remaining Rockfish" category for the areas footnoted only.

[3] Total all areas.

[4] "Other rockfish" means rockfish species at § 663.2, as amended, which do not have a numerical OY.

[5] For management of the *Sebastes* complex of rockfish, the Columbia area is split into northern and southern parts of Coos Bay, Oregon (43°21'34" N. latitude), and ABCs for the Columbia area are prorated as follows:

[6] "Other fish" includes sharks, skates, ratfish, morids, grenadiers, jack mackerel, arrowtooth flounder, and, in the Eureka, Monterey, and Conception area, Pacific cod. "Other fish" is part of the "other species" category listed at § 663.2.

[7] North of 39° N. latitude.

Species	Columbia area (total)	North of Coos Bay	South of Coos Bay
Canary	2,100	1,700	400
Yellowtail	2,600	2,500	100
Remaining rockfish	3,700	3,300	400

TABLE 2.—PRELIMINARY SPECIFICATIONS OF OY AND ITS DISTRIBUTION FOR 1987

[In thousands of metric tons]

Species	Total OY	DAP	JVP[1]	DAH	Reserve	TALFF[1]
Pacific whiting	195.0	15.0	120.0	135.0	39.0	21.0
Sablefish	[2] 12.0	12.0	0.0	12.0	0.0	0.0
Pacific ocean perch	(3)	(3)	0.0	(3)	0.0	0.0
Shortbelly rockfish	10.0	1.0	5.0	6.0	2.0	2.0
Widow rockfish	12.5	12.5	0.0	12.5	0.0	0.0
Jack mackerel	12.0	0.0	0.0	0.0	2.4	9.6
Other species	(4)					

[1] In the foreign trawl and joint venture fisheries for Pacific whiting, incidental catch allowance percentages (based on TALFF) and incidental retention allowance percentages (based on JVP) are: sablefish 0.173 percent; Pacific ocean perch 0.062 percent; rockfish excluding Pacific ocean perch 0.738 percent; flatfish 0.1 percent; jack mackerel 3.0 percent; and other species 0.5 percent. In foreign trawl and joint venture fisheries, "other species" means all species, including nongroundfish species, except Pacific whiting, sablefish, Pacific ocean perch, rockfish excluding Pacific ocean perch, flatfish, jack mackerel, and prohibited species. In a foreign trawl or joint venture fishery for species other than Pacific whiting, incidental allowance percentages will be stated in the conditions and restrictions to the foreign fishing permit. See § 611.70(c)(2) for application of incidental retention allowance percentages to joint venture fisheries.

[2] Of this 12,000 metric tons, 2,500 metric tons is for part of the Monterey subarea. See § 663.21(a)(2).

[3] The exact amount of OY for Pacific ocean perch is not yet determined, but will allow only for incidental catches taken while fishing for other species. The OY is expected to be lower than 1,550 metric tons. (In 1986, the OY was 1,550 metric tons, 950 metric tons for the Columbia subarea and 600 metric tons for the Vancouver subarea.) Pacific ocean perch from other subareas are included in the OY for "other species." See § 663.21(a)(3).

[4] The total OY for "other species" is that amount of fish that may be lawfully harvested and/or processed under § 611.70 and Part 663. See § 663.2 for species listing.

Numerical OY Species (Tables 1 and 2)

Pacific whiting. Although the annual ABC/OY for Pacific whiting has not been harvested in any of the past nine years, the very strong 1977 and 1980 year-classes that supported the fishery have been reduced without replacement. Reproduction apparently has been poor since 1980, and there have been three very weak year-classes since 1983. This is only partly offset by the 1984 year class which appears strong. In addition, new information indicates that the spawn-recruit relationship used to make the 1986 estimates was too optimistic. Accordingly, the ABC and OY are reduced to 195,000 mt in 1987 from 295,800 mt in 1986.

In 1987 as in 1986, ABC and OY are proposed to be equal. The estimates for shore-based processing (DAP) and for joint venture processing (JVP) are the same as in 1986, 15,000 mt and 120,000 mt, respectively. Accordingly, DAH is preliminarily estimated at 135,000 mt and initial TALFF at 21,000 mt. The reserve, which is established in case the domestic industry needs more fish than originally projected, is set at 39,000 mt (20 percent of OY).

Sablefish. In view of the declining contribution of the 1980 year class and uncertainty about the strength of subsequent year classes, it currently is believed that the exploitation rate of the west coast sablefish stock should not exceed that at MSY (the maximum sustainable yield overtime). The estimate of MSY in 1986 is maintained in 1987, modified by a 13 percent increase which accounts for deepwater sablefish stocks which had not been included in previous analyses. Accordingly, the 1987 preliminary estimate of ABC for sablefish is 12,000 mt, 13 percent higher than in 1986. The 1987 OY for sablefish is proposed to equal ABC and thus is reduced about 10 percent from 1986 levels; OY was 28 percent above ABC in 1986. Because the shore-based industry intends to process all available sablefish, none is available for joint venture or foreign fishing in 1987 except for minimal allowances for unavoidable incidental catches.

An ABC and OY of 2,500 mt for sablefish in the Monterey Bay subarea are specified in the FMP. However it has not been possible to identify (from available landings data) which fish were caught in this area. As a result, no ABC is proposed for the Monterey Bay area in 1987. The Council is preparing an amendment to the FMP which proposes removing the OY for Monterey Bay; the 2,500 mt OY is maintained for this area until the issue is fully considered in the amendment process and deleted by final rulemaking.

Pacific ocean perch. Pacific ocean perch have been overfished and are managed under the rebuilding schedule specified in the FMP. The most recent available data indicate that there has been no rebuilding of the Pacific ocean perch stock since 1979 and even if the OY were reduced by more than half, rebuilding would be slight. Accordingly, the ABCs for both the Vancouver and Columbia areas are set at zero; OY will be set at a level that will allow some if not all incidental catches to be landed, but will not allow directed fishing. Although OY has not been estimated yet (pending receipt of a report from the Council's Groundfish Management Team analyzing the latest available data), it is expected to be below the 1986 OY of 1,550 mt (600 mt in the Vancouver subarea and 950 mt in the Columbia subarea). Clearly, domestic processors will fully utilize OY so no Pacific ocean perch are available for joint venture or foreign fishing in 1987 except for minimal allowances for unavoidable incidental catches.

Shortbelly rockfish. The preliminary 1986 ABC and OY estimates for shortbelly rockfish are both 10,000 mt, the same as in 1983–1986. A DAP of 1,000 mt as indicated by the year-end survey should supply shore-based processing needs adequately, and 5,000 mt is estimated for joint venture processing in 1987, the same as in 1986; the joint venture never developed in 1986. The remaining 4,000 mt of OY is divided 2,000 mt for foreign fishing and 2,000 mt for a reserve in case domestic needs become higher than initially estimated. Most shortbelly are available south of 39° N. latitude, in an area closed to foreign trawling, and no interest has been expressed in a directed foreign fishery for this species north of 39° N. latitude in 1987.

Widow rockfish. The preliminary 1986 coastwide ABC for widow rockfish is 12,100 mt, 30 percent higher than the 9,300 mt ABC in 1986. Scientific data support an increase of 34 percent (to 12,500 mt), but the regulations at § 663. 24 limit annual increases of ABC and OY to 30 percent above the level at the beginning of the previous year. Accordingly, the initial ABC for widow rockfish in 1987 is increased by the maximum 30 percent. The OY, however, was 10 percent higher than ABC in 1986, and thus can be increased to 12, 500 mt in 1987 (from 10,200 mt) without exceeding the 30 percent limit. These increases in ABC and OY occur because the strength of incoming year classes, particularly from 1978, 1979, and 1980, was underestimated. Because this species is fully utilized by domestic shore-based processors, no widow rockfish are available for joint venture or foreign fishing in 1987 except for minimal allowances for unavoidable incidental catches.

Jack mackerel (north of 39° N. latitude). The 1987 ABC and OY estimates for jack mackerel (both at 12,000 mt) are proposed to be maintained at the same levels as in 1985 and 1986. No domestic interest was identified on the stock north of 39° N. latitude.

Accordingly, a reserve of 2,400 mt is proposed along with 9,600 mt designated as available for foreign fishing in 1987.

Species Without a Numerical OY (Table 2)

The other species managed under the FMP do not have numerical OYs. For the most part, they cannot be harvested selectively and, unless biological stress is documented, have not been regulated by quotas. Full utilization by domestic processors of some species in the multispecies complex precludes joint venture or foreign targeting on underexploited species because large incidental catches of the fully utilized species are likely to result. Consequently, no numerical specifications for DAH, DAP, JVP, and TALFF are made because JVP and TALFF are not available for any species in the multispecies complex. However, ABCs are specified for the major species or species groups. Only two changes in ABC are proposed for this multispecies complex in 1987, for chilipepper rockfish and for English sole.

Chilipepper rockfish. The 1987 ABC for chilipepper rockfish is 3,000 mt, 30 percent higher than the 2,300 mt ABC in 1986, and applies coastwide. In 1986, the ABC was specified only for two subareas, 1,300 mt for Monterey and 1,000 mt for Conception. Considerable evidence exists of a single unit stock of chilipepper rockfish off California, so the ABCs are combined in 1987. Scientific data support a 57 percent increase in ABC (to 3,600 mt), but the regulations at 50 CFR 663. 24 limit annual increases of ABC to 30 percent above the level at the beginning of the previous year. Accordingly, the initial ABC for chilipepper in 1987 is increased by the maximum 30 percent. The proposed increase in ABC is due to (1) several large year classes, especially 1973 and 1975, which contributed significantly to the fishery between 1978 and 1983; (2) the 1979 year class which is above average in strength; and (3) no

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apparent trend toward juvenescence as a result of intense exploitation.

English sole. The proposed ABC for English sole in 1987 is 1,900 mt, 27 percent higher than the 1,500 mt ABC in 1986. This increase results from new analyses which apply to the Vancouver and Columbia subareas and which are extrapolated coastwide.

Classification

These preliminary specifications are made under the authority of and in accordance with 50 CFR Part 663. This action is in compliance with Executive Order 12291 and is covered by the Regulatory Flexibility Analysis prepared for the implementing regulations.

(16 U.S.C 1801 *et seq.*)

List of Subjects in 50 CFR Part 663

Fisheries, Fishing, Foreign relations.

Dated: November 24, 1986.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 86-26748 Filed 11-24-86; 12:40 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 51, No. 229
Friday, November 28, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Public Meeting of Assembly

Notice is hereby given, pursuant to the Federal Advisory Committee Act, Pub. L. No. 92–463, that the membership of the Administrative Conference of the United States, which makes recommendations to administrative agencies, to the President, Congress, and the Judicial Conference of the United States regarding the efficiency, adequacy, and fairness of the administrative procedures used by administrative agencies in carrying out their programs, will meet in Plenary session on Thursday, December 4, 1986 at 1:15 p.m. and Friday, December 5, 1986 at 9:00 a.m. in the Amphitheatre of the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC

The Conference will consider, not necessarily in the order stated, proposed recommendations on the following subjects.

1. Separation of Functions in Agency Adjudication: The OSHA Model.

2. Improving the Medicare Appeals System for Coverage and Payments Disputes.

3. Agency Procedures for Responding to Petitions for Rulemaking.

4. Case Management as a Tool for Improving agency adjudication.

5. Acquiring the Services of "Neutrals" for Alternative Means of Dispute Resolution.

The Assembly will also consider a proposed amendment to the Bylaws of the Conference.

Plenary sessions are open to the public. Further information on the meeting, including copies of proposed recommendations, may be obtained from the Office of the Chairman, 2120 L Street NW., Suite 500, Washington, DC 20037, telephone (202) 254–7020.

Richard K. Berg,
General Counsel.
November 20, 1986.

[FR Doc. 86–26713 Filed 11–26–86; 8:45 am]

BILLING CODE 6110-01-M

Committee on Regulation; Meeting

AGENCY: Committee on Regulation, ACUS.

ACTION: Committee meeting.

SUMMARY: The Administrative Conference Committee on Regulation will meet to discuss a draft report on the regulation of policy making.

DATE: December 4, 1986, 9:00 a.m.

ADDRESS: 1330 Connecticut Avenue, N.W., Conference Center, Level C, Washington, DC.

Public Participation: Attendance at the meeting is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least one day in advance. The committee chairman may permit members of the public to make oral statements at the meeting. Written statements may be submitted to the committee at any time. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: William C. Bush, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037; telephone (202) 254–7020.

SUPPLEMENTARY INFORMATION: Professor Thomas D. Morgan has submitted a draft report on the subject of control and oversight of the policy making activities of regulatory agencies.

This research project was initially intended to review proposals to institute a legislative "regulatory budget" by which Congress would approve, on an annual basis, economic costs that could be imposed under particular regulatory programs. The study has been expanded to address other forms of control over regulation, including congressional oversight, regulatory review by the Office of Management and Budget, and judicial review of agency actions. The Committee met with Professor Morgan in June 1986 to discuss this project when it was in the formative stage, and will now review a more finished draft report. No proposed Conference recommendations are expected to be formulated at the meeting.

Dated: November 20, 1986.

Richard K. Berg,
General Counsel.

[FR Doc. 86–26751 Filed 11–26–86; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF COMMERCE

[Docket Nos. 4652–04 and 4652–05]

Ognian Bozarov and Assen Koinov (Respondents); Order Amending Temporary Denial Order

By Order of February 3, 1984, 49 FR 4958 (February 9, 1984), Respondents Ognian Bozarov and Assen Koinov, together with three other respondents and five related persons, were temporarily denied U.S. export privileges, pursuant to the authority of § 388.19 of the Export Administration Regulations (currently codified at 15 CFR Parts 368–399 (1986)). Respondents Bozarov and Koinov have now moved to vacate the temporary denial order of February 3, 1984 as to them; and the U.S. Department of Commerce has stated that it does not oppose such vacating as to these two Respondents.

Accordingly, it is hereby ordered that, effective November 20, 1986, the temporary denial order of February 3, 1984 is amended by deleting, from the respondents named therein:

Ognian Bozarov,
57 Boul. Tcherni Vrah,
Sofia, Bulgaria
and
Assen Koinov,
57 Boul. Tcherni Vrah,
Sofia, Bulgaria

This amendment of the temporary denial order of February 3, 1984 applies only to Respondents Bozarov and Koinov; this amendment has no application to any of the other respondents or to any of the related persons named in such order.

A copy of this amendment of the temporary denial order of February 3, 1984 shall be published in the **Federal Register**.

Dated: November 20, 1986.

Thomas W. Hoya,
Administrative Law Judge.

[FR Doc. 86–26768 Filed 11–26–86; 8:45 am]

BILLING CODE 3510-DT-M

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International Trade Administration

[A-489-602]

Initiation of Antidumping Duty Investigation; Acetylsalicylic Acid (Aspirin) From Turkey

AGENCY: International Trade Administration, Import Administration Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether acetylsalicylic acid (aspirin) from Turkey is being, or is likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 15, 1986, and we will make ours on or before April 9, 1987.

EFFECTIVE DATE: November 28, 1986.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson or Steven Lim, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5288 or (202) 377-5332.

SUPPLEMENTARY INFORMATION:

The Petition

On October 31, 1986, we received a petition in proper form filed by Monsanto Company on behalf of the U.S. industry producing aspirin. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Turkey are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing injury, or threaten material injury, to a U.S. industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumpting duty investigation and, further, whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on aspirin from Turkey and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether aspirin from Turkey is being, or is likely to be, sold in the United States at less than fair value.

Scope of Investigation

The product covered by this investigation is acetylsalicylic acid (aspirin), contining no additives other than inactive substances (such as starch, lactose, cellulose, or coloring material) and/or active substances in concentrations less than that specified for particular non-prescription drug combinations of aspirin and active substances as published in the *Handbook of Non-Prescription Drugs,* 8th edition, American Pharmaceutical Association, and is not in tablet, capsule or similar forms for direct human consumption. This product is currently classified under item 410.72 of the *Tariff Schedules of the United States (TSUS).*

United States Price and Foreign Market Value

Petitioner calculated United States price based on Bureau of Census import statistics. Petitioner based foreign market value on the home market prices of Turkish producers.

Based on this method of comparison, petitioner alleged dumping margins ranging from 33 percent to 83 percent.

After analysis of petitioner's allegations and supporting data, we conclude that a formal investigation is warranted.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by December 15, 1986, whether there is a reasonable indication that imports of aspirin from Turkey are causing material injury, or threaten material injury, to a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

November 20, 1986.

[FR Doc. 86-26658 Filed 11-26-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-489-603]

Initiation of Countervailing Duty Investigation: Acetylsalicylic Acid (Aspirin) From Turkey

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of acetylsalicylic acid (aspirin) from Turkey, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the United States International Trade Commission (ITC) of this action, so that it may determine whether imports of the subject merchandise from Turkey materially injure, or threaten material injury to, a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 15, 1986, and we will make ours on or before January 26, 1987.

EFFECTIVE DATE: November 28, 1987.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2438.

SUPPLEMENTARY INFORMATION:

The Petition

On October 31, 1986, we received a petition in proper form from the Monsanto Company with respect to aspirin from Turkey. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Turkey of aspirin receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act). In addition, the petition alleges that such imports materially injure, or threaten material injury to, the U.S. industry.

Since Turkey is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation and the ITC is required to determine whether imports of the subject merchandise from Turkey materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on aspirin from Turkey and have found that it meets the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(c) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Turkey of aspirin receive benefits which constitute subsidies within the meaning of the Act. If our investigations proceeds normally, we will make our preliminary determination on or before January 26, 1987.

Scope of Investigation

The product covered by this investigation is acetylsalicyclic acid (aspirin), containing no additives other than inactive substances (such as starch, lactose, cellulose, or coloring material) and/or active substances in concentrations less than that specified for particular non-prescription drug combinations of aspirin and active substances as published in the *Handbook of Non-Prescription Drugs*, 8th edition, American Pharmaceutical Association, and is not in tablet, capsule or similar forms for direct human consumption. This product is currently provided for in item 410.72 of the *Tariff Schedules of the United States.*

Allegations of Subsidies

The petition lists a number of practices by the Government of Turkey which allegedly confer subsidies on the manufacturers, producers, or exporters in Turkey of aspirin. We are initiating an investigation on the following alleged programs:

—General Incentives Program:

—Interest Rebates
—Credit for Operational Requirements
—Preferential Interest Rates on Loans of Foreign Origin
—Income and Corporation Tax Allowance
—Accelerated Depreciation
—Re-evaluation of Fixed Assets
—Customs Duty Exemptions
—Customs Duty Exemptions on Physically Incorporated Raw
—Materials
—Customs Duty Deferrals
—Exemptions From Taxes on Payments to Foreign Suppliers
—Foreign Exchange Allocation Scheme
—Authorization to Seek Foreign Financing
—Employee Wage and Salary Tax Exemption
—Other Tax Exemptions
—Preferential Export Financing
—Export Tax Rebate and Supplemental Tax Rebate
—Exemptions on Loan Fees
—Export Revenue Tax Deduction
—Resource Utilization Support Fund
—Premium to Support Investment
—Incentive Premium for Domestically Obtained Capital Goods

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an adminsitrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by December 15, 1986 whether there is a reasonable indication that imports of aspirin from Turkey materially injure, or threaten material injury to, a United States industry. If its determination is negative, this investigation will terminate; otherwise it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 702(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary of Import Administration.

November 20, 1986.

[FR Doc. 86-26769 Filed 11-26-86; 8:45 am]

BILLING CODE 3510-DS-M

Electronic Instrumentation Technical Advisory Committee; Partially Closed Meeting

A meeting of the Electronic Instrumentation Technical Advisory Committee will be held December 16 and 17, 1986, in the Federal Building, 450 Golden Gate Avenue, San Francisco, CA. On December 16 the meeting will be held in Room 13029 starting at 9:30 a.m. and will continue in Room 13029 on December 17.

The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to electronics and related equipment and technology.

General Session:

1. Opening remarks by the Chairperson.

2. Presentation of papers or comments by the public.

3. Continuation of discussion concerning the export controls on ECCN 1521A (broad band amplifiers).

4. Public comments are invited on the following entries on the Commodity Control List (CCL):

CCL 1522A—Lasers and Laser Systems
CCL 1529A—Electronic Test Equipment—particularly Subitem b(5) and Subitem (f)
CCL 1531A—Frequency Synthesizers
CCL 1541A—Cathode Ray Tubes
CCL 1572A—Recording and Reproducing Equipment.

Comments should consider the need for revision (strengthening, relaxation or decontrol) of the current regulations based on technological trends, foreign availability and national security. The Committee is also interested in proposals for revision to the People's Republic of China guidelines and G-COM regulations relating to these CCL numbers.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting and can be directed to: Technical Support Staff, Office of Technology & Policy Analysis, Room 4073, 14th Street & Constitution Avenue, NW. Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Government in the Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the

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Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce. Telephone: 202-377-4217. For further information or copies of the minutes contact Betty A. Ferrell, 202/377-2583.

Dated: November 21, 1986.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology & Policy Analysis.

[FR Doc. 86-26770 Filed 11-26-86; 8:45 am]

BILLING CODE 3510-OT-M

University of Chicago; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 85-016. Applicant: University of Chicago, Argonne, IL 60439. Instrument: Ultra High Vacuum Chamber. Manufacturer: Kratos Analytical Instruments, United Kingdom. Intended Use: See notice at 49 FR 47283.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign article is a compatible accessory to an existing instrument providing ultra high vacuum to $5x10^{11}$ torr. The capability is pertinent to the applicant's intended purpose. We know of no domestic apparatus of equivalent scientific value to the foreign article which can be readily adapted to the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-26772 Filed 11-26-86; 8:45 am]

BILLING CODE 3510-DS-M

University of Houston-University Park; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM In Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW, Washington, DC.

Docket No. 86-058. Applicant: University of Houston-University Park, Houston, TX 77004. Instrument: Gas Isotope Ratio Mass Spectrometer System, Model Delta E with Accessories. Manufacturer: Finnigan MAT, West Germany. Intended Use: See notice at 51 FR 666.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides automated instrument parameter monitoring functions, precise measurement of small samples and a multielement multicollector (six-Faraday cup) system. These capabilities are pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instument for the applicant's intended use.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-26773 Filed 11-26-86; 8:45 am]

BILLING CODE 3510-DS-M

University of Kentucky; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No. 85-012. Applicant: University of Kentucky, Lexington KY 40506-0055. Instrument: Fourier-Transform Infrared Spectrometer System, Model IZMO1 with Accessories. Manufacturer: Bomen Inc., Canada. Intended Use: See Notice at 49 FR 47283.

Comments: None Received.

Decision: No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The Foreign article provides an unapodized resolution of 0.024 cm^{-1}. The capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-26774 Filed 11-26-86; 8:45 am]

BILLING CODE 3510-DS-M

University of Minnesota; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 84-277. Applicant: University of Minnesota, Minneapolis, MN 55455. Instrument: Mass Spectrometer, Model Delta E. Manufacturer: Finnigan MAT, West Germany. Intended Use: See notice at 49 FR 35398.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides an internal precision of 0.02°/00 for 20 microliter samples of CO_2 and a automated 20 sample port heatable manifold. These capabilities are pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-26775 Filed 11-26-86; 8:45 am]

BILLING CODE 3510-DS-M

Geological Survey, Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No. 84–301. Applicant: U.S. Geological Survey, Arvada, CO 80002. Instrument: Inductively Coupled Plasma Mass Spectrometer, Model ELAN 250. Manufacturer: SCIEX Incorporated, Canada. Intended use: See notice at 49 FR 40069.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides simultaneous qualitative and quantitative data at major, minor, trace and ultratrace levels directly from aqueous samples. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–26771 Filed 11–26–86; 8:45 am]

BILLING CODE 3510-DS-M

Woods Hole Oceanographic Institution; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No. 86–277. Applicant: Woods Hole Oceanographic Institution, Woods Hole, MA 02543. Instrument: Mass Spectrometer, Model Delta E. Manufacturer: Finnigan MAT, West Germany. Intended Use: See notice at 51 FR 28859.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides an internal precision of 0.04‰ for samples of N_2O down to 5.0 micromoles. The National Bureau of Standards advises in its memorandum dated September 15, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States

Frank W. Creel,

Director Statutory Import Programs Staff.

[FR Doc. 86–26776 Filed 11–26–86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meeting

AGENCY: National Maritime Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will convene a public meeting, December 2–3, 1986, at the King's Grant Inn, Danvers, MA. On December 2 at 10 a.m., the Council will convene to discuss reports of the lobster, scallop and groundfish oversight committees; reports on the gillnet/recreational mediation effort; the gillnet study, and fishery management in New Zealand, as well as to discuss other fishery management and administrative matters. The meeting will adjourn on December 3, at approximately 4 p.m.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, (Route One), Saugus, MA 01906; telephone: (617) 231–0422.

Richard B. Roe,

Director, Office of Fisheries Management, National Maritime Fisheries Service.

[FR Doc. 86–26841 Filed 11–26–86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; National Marine Fisheries Service, Northwest and Alaska Fisheries Center (P77#23)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulatory Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: National Marine Fisheries Service, Northwest and Alaska Fisheries Center, National Marine Mammal Laboratory.

b. Address: 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115.

2. Type of Permit: Scientific Research.

3. Species:

North sea lion (*Eumetopias jubatus*)
Harbor seal (*Phoca vitulina*)
Largha seal (*Phoca largha*)
Ringed seal (*Phoca hispida*)
Ribbon seal (*Phoca fasciata*)
Bearded seal (*Erignathus barbatus*)

4. Number and Type of Take:

To take for five (5) years up to 5,000 northern sea lions and 1,000 harbor seals by capturing up to 3 (3) times each using physical and/or chemical restraint for marking, weighing, measuring, obtaining blood, milk, and swab samples, and sex identification. Of the proceding, 500 northern sea lions and 100 harbor seals will be instrument tagged. And additional, 200 northern sea lions, 200 harbor seals, 100 largha seals, 100 ringed seals, 100 ribbon seals, and 100 bearded seals will be taken by intentional sacrifice for food habits and disease studies.

In addition, all of the above species will be taken in the following manners: (1) Collection of an unspecified number of specimen materials from dead animals that become available from subsistence takes by Alaskan residents, found dead, or made available by the research; (2) incidential harassment of an unspecified number of animals associated with and supporting the research in addition to ground surveys, aerial surveys, and boat or ship surveys; and (3) importation of biological specimen material.

5. Location of Activity: Alaska and adjacent waters including the eastern North Pacific and the Chukchi Sea.

6. Period of Activity: 5 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review in the following offices:

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Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC; and Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802.

Dated: November 20, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-26844 Filed 11-26-86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; Dr. Kenneth S. Norris, Dr. Randall S. Wells, and Dr. William T. Doyle (P20G)

On September 25, 1986, notice was published in the **Federal Register** (51 FR 34115) that an application had been filed by Dr. Kenneth S. Norris, Dr. Randall S. Wells, and Dr. William T. Doyle, Institute of Marine Sciences, Long Marine Laboratory, University of California, Santa Cruz, California 95064, to capture, maintain, and release Pacific white-sided dolphins (*Lagenorhynchus obliquidens*) for scientific research.

Notice is hereby given that on November 19, 1986, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805 Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415,

Dated: November 20, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-26843 Filed 11-26-86; 8:45 am]

BILLING CODE 3510-22-M

[Modification No. 4 to Permit No. 413]

Marine Mammals; Permit Modification, Southwest Fisheries Center

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), and § 222.25 of the regulations governing endangered species permits (50 FR 222), Scientific Research Permit No. 413 issued to the Southwest Fisheries Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038, on April 20, 1983 (48 FR 17638), as modified on July 6, 1983 (48 FR 31062), May 11, 1984 (49 FR 20047), and July 11, 1985 (50 FR 28238), is further modified as follows:

Section B.7 & 8 is added:

7. Captive research studies to determine underwater auditory thresholds and the appropriate dose of an inhibitory analog of gonadotropin-releasing hormone as described in the modification request of May 2, 1986, may be conducted on the animals held under Condition A-5.

8. A veterinarian shall be present during the initial conduct of the inhibitory analog of gonadotropin-releasing hormone experimental procedures as well as at any other times during the course of the research that the veterinarian believes his presence would be advisable.

This modification became effective on November 20, 1986.

As required by the Endangered Species Act of 1973 issuance of this modification is based on a finding that such modification: (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Modification was also issued in accordance with and is subject to Parts 220 through 222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

Documents submitted in connection with the above modification are available for review in the following offices:

Protected Species Division, National Marine Fisheries Service, 1825 Connecticut Avenue, Room 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: November 21, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-26842 Filed 11-26-86; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License to Polysciences, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Polysciences, Inc., having a place of business in Warrington, PA, an exclusive right in the United States and certain foreign countries to manufacture, use and sell products in the inventions entitled "Silver Stains for Detection of Polypeptides and Nucleic Acids," U.S. Patent Application Serial Number No. 6-859,822. The patent rights in this invention has been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.9 The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Patent Licensing Specialist, Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 86-26738 Filed 11-26-86; 8:45 am]

BILLING CODE 3510-04

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Calcol, Inc., having a place of business in Shaker Heights, OH 44122, an exclusive right in the United States and certain foreign countries to manufacture, use and sell products in the inventions entitled "Tumor Treatment in Humans with 4-Carboxyphthalo-(1,2-diaminocyclohexane)-Platinum (II)" U.S. Patent Application Serical Number No. 6-540,667. The patent rights in this invention has been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.9. The proposed license may be granted unless, within sixty days from the date of this published

Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Patent Licensing Specialist, Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 86-26732 Filed 11-26-86; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting Import Limits for Certain Cotton Wool and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

November 24, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 28, 1986. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

On December 30, 1985 a directive dated December 24, 1985, as amended, was published in the Federal Register (50 FR 53182), which announced the import restraint limits for certain cotton, wool and man-made fiber textile products, including Categories 338, 345, 347/348, 352, 359-V (only TSUSA numbers 381.0258, 381.0554, 381.3949, 381.5800, 381.5920, 384.0451, 384.0648, 384.0650, 384.0651, 384.3449, 384.3450, 384.4300, 384.4421, and 384.4422), 369-L (only TSUSA numbers 706.3210, 706.3650, and 706.4111), 445/446, 636, 639, 640, 652, and 669 pt. (only TSUSA number 385.5300), among others, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986. In accordance with the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, and at the request of the Government of the People's Republic of China, CITA is adjusting the foregoing limits, variously, for carryforward and swing. To the extent used, the carryforward applied to the limits for Categories 345, 347/348, 636 and 639 will be deducted from the applicable limits for these products in the 1987 agreement year. In addition, charges amounting to 12,599 dozen will be deducted from imports charged to the current year sublimit for Category 338-pt. and charged to the 1985 sublimit for the category. Accordingly, in the letter which follows this notice, the Chairman of CITA directs the Commissioner of Customs to adjust the restraint limits previously established for the indicated categories. The limits for Categories 359-V and 669 pt. are being reduced to account for swing being applied to other categories.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textiles Agreements.

November 25, 1986.

Committee for the Implementation of Textile Agreements

November 24, 1986.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on December 24, 1985 by the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain categories of cotton, wool, and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during 1986.

Effective on November 28, 1986, the directive of December 24, 1985 is hereby further amended to adjust the previously established limit for cotton, wool and man-made fiber textile products in the following categories, as provided under the terms of the bilateral agreement of August 19, 1983, as amended:[1]

Category	Adjusted 1986 limit [1]
338	894,035 dozen of which not more than 449,295 dozen shall be in TSUSA numbers 381.0240 and 381.4130.
345	100,787 dozen.
347/348	2,142,583 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1985.

352	1,275,952 dozen.
359-V [2]	813,750 pounds.
369-L [3]	4,079,250 pounds.
445/446	275,891 dozen.
636	366,495 dozen.
639	1,066,569 dozen.
640	1,026,538 dozen.
652	1,889,080 dozen.
669 pt. [4]	2,161,497 pounds.

[2] In Category 359, only TSUSA numbers 381.0258, 381.0554, 381.3949, 381.5800, 381.5920, 384.0451, 384.0648, 384.0650, 034.0651, 384.3449, 384.3450, 384.4300, 384.4421, and 384.4422.

[3] In Category 369, only TSUSA numbers 706.3210, 706.3650, and 706.4111.

[4] In category 669, only TSUSA number 385.5300.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-26872 Filed 11-26-86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal

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[1] The agreement provides, in part, that: (1) with the exception of Category 315, any specific limit may be exceeded by not more than 5 percent of its square yards equivalent total, provided that the amount of the increase is compensated for by and equivalent square yard decrease in one or more other specific limits in that agreement year; (2) the specific limits for certain categories may be increased for carryforward, and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

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Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection.

ADDRESS: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Victoria Moss, Office of Federal Acquisition and Regulatory Policy (202) 523–4820 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION: a. *Purpose:* When the same item or class of items is being acquired by more than one agency, the exchange and coordination of pertinent information, particularly cost and pricing data, is necessary to promote uniformity of treatment of major issues and the resolution of particularly difficult or controversial issues. For this reason, the contracting officer, early in a negotiation of a contract, or in connection with the review of a subcontract, must request the contractor to furnish information as to the contractor's or subcontractor's previous Government contracts and subcontracts for the same or similar end items and major subcontractor components. This information is particularly beneficial during the period of acquisition planning, presolicitation, evaluation, and preaward survey. The information is used to determine a firm's responsibility.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, 2,000; responses per respondent, 10; total annual responses 20,000; hours per response, .25; and total burden hours, 5,000.

Obtaining copies of proposals

Requesters may obtain copies from the FAR Secretariat (VRS), Room 4041, GSA Building, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0036, Information Regarding Previous Contracts.

Dated: November 17, 1986.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 86–26715 Filed 11–26–86; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Unauthorized Use of the Global Positioning System (GPS)

AGENCY: Command, Control, Communications, and Intelligence (C^3I).

ACTION: Notice of Unauthorized use of the global positioning system (GPS)

SUMMARY: The Department of Defense currently has a research and development (R&D) constellation of navigation satellites in orbit that are the forerunners of an operational Global Positioning System (GPS) constellation of 18 navigation satellites plus three on orbit spares. The R&D satellites plus operational satellites that are scheduled to join the constellation beginning in 1988, are essential to the development of the military user equipment and operational uses of the system. During the development and deployment phases of the GPS, the R&D and operational satellites will transmit signals which are intended *only* for government testing purposes, and are not intended for operational use. The signals from the R&D and operational satellites are subject to change without advanced warning, may transmit non-useable altered signals for government testing, and may be turned on and off at any time. Therefore, any use of the GPS satellite signals for positioning, navigation, time transfer, or any other purpose, is not authorized by the U.S. Government and will be at the risk of the user.

On 1 January 1987, the GPA Control Segment will begin using the World Geodetic System (WGS) 84, versus the current WGS 72, to upload satellite navigation message ephermeris data elements. The GPS Control Segment has used the Department of Defense (DOD) World Geodetic System (WGS 72) as the modeling basis for GPS satellite ephermeris generation during the early phases of the GPS system development and production.

Since the advent of WGS 72, the Defense Mapping Agency (DMA) has continued to refine the WGS modeling process and has evolved the new WGS 84 version which is a significant change and improvement over WGS 72. DMA is in the final process of the development and implementation of the WGS 84. The GPS Control Segment will begin using WGS 84 for satellite vehicle broadcast message elements on 1 January 1987. Although the two versions of the WGS are similar, use of the WGS 72 description in GPS receivers, without acounting for the difference in WGS 84, will result in systematic biases and geographically variable positioning errors.

When the GPS is declared fully operational, an event that is scheduled to occur in 1991, the DOD intends to provide GPS Standard Positioning Service (SPS) to any user, world-wide, at an accuracy of 100 meters, Two Distance Root Mean Square (2 DRMS). There is no plan to charge users for this service.

ADDRESS: Office of the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence, Room 3D174, The Pentagon, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Colonel Phillip Baker, telephone (202) 695–6123, for general information on GPS. Questions regarding WGS should be directed to Mr. Michael Ellett, telephone (213) 643–0191.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86–26733 Filed 11–26–86; 8:45 am]

BILLING CODE 3810–01–M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group C (Mainly Opto Electronics) of the DOD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 1:00 p.m. on Monday, 1 December and 9:00 a.m. on Tuesday, 2 December 1986.

ADDRESS: The meeting will be held at the Naval Ocean Systems Center, Building 33, (Cloud Room), San Diego, California 92152.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging devices, infrared detectors and lasers. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

November 20, 1986.

[FR Doc. 86-26762 Filed 11-26-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Cancellation of USAF Scientific Advisory Board Meeting

The meeting of the USAF Scientific Advisory Board Ad Hoc Committee on Minuteman III Penetration Aids, scheduled to meet at Headquarters Ballistic Missile Office, Norton AFB CA, on November 24–25, 1986, has been canceled. The meeting was announced on November 6, 1986, 51 FR 40352.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-26735 Filed 11-26-86; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Tues. & Wed., 16–17 December 1986.

Times of meeting: 0730–1700 hours each day.

Place: LTV Aerospace and Defense Company, 1725 Jefferson Davis Highway, Suite 900, Arlington, VA.

Agenda: The Army Science Board Ad Hoc Subgroup for Effectiveness Review of ARDEC will meet for the purpose of reviewing additional ARDEC programs, conducting discussions with customers of ARDEC products and services, and meeting with cognizant representatives of the DA Staff. The panel will meet in executive session to discuss their emerging observations, identifying additional informational requirements, and methodology for continuing the review. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C. specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86-26734 Filed 11-26-86; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Notice Inviting Applications for a Grant for the National Center for Research in Vocational Education (CFDA 84.051)

Purpose: To provide a grant to a nonprofit entity associated with a public or private nonprofit university for the five-year operation of the National Center for Research in Vocational Education.

Deadline For Transmittal of Applications: August 14, 1987.

Applications Available: December 5, 1986.

Available Funds: $6 million annually.

Project Period: 5 years beginning January 16, 1988.

Applicable Regulations: (a) The regulations in 34 CFR Part 417; and (b) The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78.

For Applications or Information Contact: Mary G. Lovell, U.S. Department of Education, Office of Vocational and Adult Education, 400 Maryland Avenue, SW, Room 519 Reporters Building, Washington, DC 20202. Telephone (202) 732-2371.

Program Authority: 20 U.S.C. 2404.

Dated: November 24, 1986.

John K. Wu,

Acting Assistant Secretary for Vocational and Adult Education.

[FR Doc. 86-26731 Filed 11-26-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

[BPA File No: RSES]

Proposed 1988 Resource Strategy; Notice of Intent to Prepare an Environmental Impact Statement and Scoping Meetings

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of intent to prepare an environmental impact statement (EIS), announcement of scoping, notice of scoping meetings, and request for comment.

SUMMARY: BPA hereby gives notice of its intent to prepare and consider an Environmental Impact Statement (EIS) on the 1988 Resource Strategy.

The Resource Strategy is a document that is prepared annually to describe BPA's conservation and generating resources program priorities for a given rate and budget period, in the context of a long-term planning horizon. The 1988 Resource Strategy will be a key input to BPA's 1989 rate case and fiscal year 1990 budget process. In developing its Resource Strategy, BPA examines the Northwest Power Planning Council's (Council) latest Power Plan and identifies programs to implement the Power Plan. The Council's Power Plan presents a portfolio of power resources for the region, ranking these resources by cost, type, and sequence of development. The Council's Power Plan is BPA's principal guide to action. The Resource Strategy emphasizes those actions BPA must take in the near term considering long-term needs. Its development also provides forum for resolving resource-related policy issues.

The programmatic EIS will analyze the environmental impacts of the alternative strategies which BPA will examine for meeting future demands for electricity. BPA expects that the analysis in this EIS will be broad enough to encompass future Resource Strategies which continue along the same general direction. Therefore, BPA anticipates the need to update the EIS only when significant changes in the strategy occur. The analysis in the EIS will focus on the environmental differences among alternative combinations of resources. It will be used by decisionmakers, along with the results of other analyses, in selecting a preferred Resource Strategy. The EIS will also encompass any specific proposals for action that may be contained in the Resource Strategy.

During the development of the 1988 Resource Strategy, BPA plans to develop alternative levels for conservation and generation programs and projects focusing on fiscal years 1990 through 1994. These levels will reflect the outcome of various studies to determine what the resource picture would look like if BPA served the electrical needs of the entire region; and will reflect the feasibility of firming up supplies of nonfirm hydropower through various means, including the use of direct service industry (DSI) interruptibility, combustion turbines, and contractual mechanisms. BPA will also incorporate in the 1988 Resource Strategy the conclusions of its 1987 study of whether to restart, terminate, or continue to preserve Washington Public Power Supply System Nuclear Plants (WNP)-1 and -3.

BEST COPY AVAILABLE

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DATES: Two scoping meetings will be held:

December 12, 1:00 p.m., 415 First Avenue North, Room 250, Seattle, Washington

(Please call Mr. Terry Esvelt at 206–442–4130 if you plan to attend.)

December 16, 1:30 p.m., 1005 NE. Holladay, Room 464, Portland, Oregon

Responsible Official: Mr. Roy B. Fox, Environmental Coordinator for the Office of Power and Resources Management, is the responsible official for the development of the EIS on the 1988 Resource Strategy, and may be contacted at (503) 230–4261 in Portland.

FOR FURTHER INFORMATION: Written comments on the scope of the EIS and the environmental analysis should be submitted to Mr. Anthony R. Morrell, Environmental Manager, at P.O. Box 3621–SJ, Portland, Oregon 97208, by December 31, 1986.

To have your name placed on the Resource Strategy or the EIS mailing list, or for other questions, please call the Public Involvement office at 230–3478 in Portland. Toll-free lines: Oregon callers may use 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800–547–6048.

Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952.

Mr. Wayne Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206–442–4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6226.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Room 376, 550 West Fort Street, Boise, Idaho 83724, 208–334–9137.

SUPPLEMENTARY INFORMATION:

Background

BPA's Resource Strategy assesses the alternative loads that the Administrator may have to serve, explains how the Administrator proposes to serve those loads with additional conservation and generating resources, and explains the rationale for the proposal. It translates general conclusions based on analysis and guidance from the Council's Power Plan into levels of conservation and generation programs (acquisition, research and development, etc.). Development of the Resource Strategy also provides a forum to resolve certain issues which are significant to near-term and long-term power resource planning and development.

BPA staff is working on the 1988 Resource Strategy by defining significant issues to consider in the next 2 years. Teams have begun consulting with various groups for information and comment. The draft 1988 Resource Strategy and EIS will be distributed in Fall 1987; the final strategy and EIS will be available in Spring 1988.

Alternatives

The Resource Strategy will be composed of different resource alternatives open to BPA. A set of conservation and generating resource actions, together with the timing of such actions, constitutes a single resource alternative. BPA will identify a range of possible alternatives, and then analyze the consequences of each in terms of a range of impacts, such as rate effects, environmental impacts, financial impacts, and net economic costs both to the region and to various customer rate classes in the region.

The resource alternatives which BPA will analyze in the EIS will be identified through public comment during the EIS scoping period and through other public processes associated with the Resource Strategy development, including the guidance of the Council's Power Plan. The alternatives can range from very low resource acquisition levels to aggressive levels of acquisition such as purchasing options on coal plants and providing large incentives for conservation measures.

The analysis will examine these alternatives under a wide variety of assumptions reflecting some key uncertainties, such as uncertain load growth and the variability in output of the hydro system due to variations in precipitation.

The principle of the analysis is simple, but its execution is complex. The analysis must consider many thousands of quantitative relationships among loads and resources, as well as qualitative factors. It is important to emphasize that such analysis does *not* produce a "best" Resource Strategy. In this situation it is impossible to find a strategy which is best in all ways. For example, a strategy which could produce a long-term economic benefit to the entire region might also have negative near-term rate impacts on certain customer classes or require levels of long-term financing from third parties and BPA which cannot be achieved.

Major Resource Strategy Issues

Certain components are common to any Resource Strategy. These include: (1) Conducting an analysis of loads and resources to assess combinations of resources that could be acquired by BPA in the future; and (2) program planning for conservation and generating resources, by which proposed program levels and costs are determined as the basis for preparing BPA's budget. These components will be incorporated into the 1988 Resource Strategy as proposed program levels for fiscal years 1990 through 1994.

Following are the key subject areas of the Resource Strategy. The outcome of these various subjects will be a range of alternative strategies from which a preferred strategy and program levels will be chosen. It there are proposals for action to implement the preferred strategy, they will be analyzed in the EIS, in terms of the impacts which they have on the quality of the human environment.

A. Administrator's Obligation

The Administrator's Obligation Studies seek to gain more information on how customer utilities will make decisions on building their own resources or turning to BPA to meet their loan growth. The Resource Strategy may identify specific actions that BPA might take to achieve certain goals, such as contractual arrangements or incentive programs. If specific actions are proposed, an environmental analysis would be included in the EIS.

B. Strategies for Firming Nonfirm Hydropower

For the 1988 Resource Strategy, BPA will analyze alternative ways of making firm, dependable power out of power that cannot always be counted on due to variability in river flows and, consequently, in hydro system output. These alternatives might include backing nonfirm resources with the use of combustion turbines, contracting for the use of extraregional resources, load management, or changing the planning criteria for the hydroelectric system.

The EIS would look primarily at how changes to hydro system operations would affect fish and wildlife resources. The analysis will also include air quality issues associated with combustion turbine operations and changes in extraregional generation patterns.

C. WNP-1 and -3 Study.

The 1988 Resource Strategy will incorporate the study conclusions reached during a public process in 1986 and 1987 on whether termination, completion, or continued preservation is the best choice for one or both of the nuclear projects. The EIS will reflect these conclusions.

Major Environmental Concerns

The tentative scope of the 1988 Resource Strategy includes those issues which are described above. The thread common to these issues is their implication for BPA's resource activities in the near future—on the need for resources, on the makeup of the preferred mix of resources, and on how those resources would be acquired by BPA. Thus, the common environmental theme will be a comparison of the environmental impacts of various conservation and generating resources. The EIS will examine the impacts of the range of alternative combinations of resources that BPA could acquire in the future. The EIS will focus on resource decisions that are contained in the Resource Strategy, and will not attempt to re-evaluate the underlying assumptions or studies conducted by BPA. The EIS will also analyze any proposal for action, considering the effect it may have on the need for resources, and for the extent to which it affects the timing, amount, or selection of one resource type over another.

The folowing list shows the relevant environmental impact categories that we expect to address in the EIS.

1. *Conservation resources:* The impacts of known and available energy conservation measures on air quality as well as any relevant socioeconomic impacts.
2. *Thermal resource development:* The impacts of additional thermal resource development on air, land, and water quality. Incentive for thermal development vary by the load which BPA serves.
3. *Thermal resource operations:* The impacts of changes in generation patterns of existing resources, both in the Federal system and for the entire region. For example, the EIS will include generic discussions of coal, nuclear, and combustion turbine generation. Generation patterns may vary according to the amount and type of loads which BPA serves.
4. *Hydro development:* The impacts of additional hydro development on air, land, and water quality, and any effects on fisheries resources. Incentives for hydro development may be affected by the load which BPA serves.
5. *Hydro system operations:* The impacts of changes to river elevations and flows on fish and wildlife, recreation, irrigation, and cultural resources. Changes may occur if BPA adopts some strategies for firming nonfirm hydropower, imports resources, or varies the amount and type of loads which it serves.
6. *Canadian resources:* The impacts of changes to hydro operations and development in Canada as a result of interregional power acquisitions. The changes could occur if Canadian resources are developed or operated for sale to the Pacific Northwest.
7. *Extraregional resources:* Changes in the availability of BPA power to sell to other regions could affect California utility operating and planning decisions, which may have environmental consequences.
8. *Socioeconomics:* The impacts of conservation and generating resource actions on human activities, communities, and institutional arrangements. This category would include an analysis of any changes in loads or operations of BPA's customers.

Related Issues

BPA is currently preparing an EIS on its power sales contracts in response to a lawsuit filed in 1981. This EIS will examine BPA's existing contracts with its customers. A relationship between the Resource Strategy and the power sales contracts exists because the strategy may propose methods of meeting power supply obligations which are established through the contracts. A relationship between the two EISs would occur if the Resource Strategy identifies the need for contractual mechanisms to promote BPA becoming the region's provider of resources to meet future electrical energy needs.

Related Documents

Copies of the 1986 Resource Strategy, an Issue Backgrounder on the Resource Strategy, and an Issue Alert on the future of WNP-1 and -3 are available from BPA's Public Involvement office. BPA will also be preparing various public materials on the 1987 and 1988 Resource Strategies.

Issued in Portland, Oregon, on November 13, 1986.

James J. Jura,

Administrator.

[FR Doc. 86-26836 Filed 11-26-86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-C&E-87-03; OFP Case No. 65041-9330-20-24]

Acceptance of Petition From O'Brien Energy Systems for Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978 and Availability of Certification

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance.

SUMMARY: On October 22, 1986, O'Brien Energy Systems, filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for a proposed cogeneration facility to be located in Salinas, California, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemption from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501 and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided in sections 701(c) and 9d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption

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from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register**.

Docket No. ERA–C&E–87–03 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA–093, Washington, DC 20585, Telephone: (202) 252–4523

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue SW., Washington, DC 20585, Telephone: (202) 252–6947.

SUPPLEMENTARY INFORMATION: The proposed cogeneration facility will consist of a General Electric (GE) gas turbine which will operate at base load, in conjunction with a hot gas generator and one three level pressure heat recovery boiler with a supplementary duct burner capable of producing 163,000 lb/hr of high pressure steam. The facility will use natural gas. The wast heat recovery boilers rely primary upon the turbine generator's exhaust heat. The steam turbine will accept high pressure steam from the boiler and deliver low pressure steam and/or generate additional electricity. The facility will have a power production capacity of approximately 41.5 MW during summer on-peak operating conditions. Its heat input requirements for natural gas is 342.81 MW BTU/hr. For lower heating value basis, and 380.62 MW BTU/hr. on a higher value basis. The facility's capacity is expected to be 95 percent and its utilization factor will be 95 percent.

Merchants Refrigeration (MR) will purchase all the refrigerant output of the facility, which will be utilized for cold storage. Salinas Tallowing and Semplot Foods will purchase the steam output. The electrical production of the facility will be purchased by Pacific Gas and Electric (PS&E).

Section 212(c) of the Act and 10 CFR 503.7 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), the petitioners have certified to ERA that:

1. The oil or gas to be consumed by the cogneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

On May 22, 1986, DOE published in the **Federal Register** (51 FR 18866) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of a cogneration FUA permanent exemption, is among the classes of actions that DOE has categorically exclused from the requirements to prepare an Environmental Impact Statement or an Environmental Asssessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. The petitioners have certified that they will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

DOE's Office of Environment, in consultation with the Office of General Counsel, will review the completed environmental checklist submitted by the petitoners' pursuant to 19 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on the petitioner's petition that the grant or denial of exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

The acceptance of the petition by ERA does not constitute a determination that the petitioners are entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on November 20, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–26811 Filed 11–26–86; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 86–59–NG]

Natural Gas Imports; Forest Marketing Corp.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Application for Blanket Authorization to Import Natural Gas from Canada for Short-Term and Spot Sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on November 7, 1986, of the application of Forest Marketing Corporation (FMC) for blanket authorization to import from Canada up to a total of 100 Bcf of natural gas during a two-year term beginning on the date of first delivery. The natural gas would be purchased from a variety of suppliers located in Canada. The Canadian gas would be sold in the U.S. on a short-term and spot market basis to such purchasers as local distribution companies, electric utilities, pipelines and industrial and commercial end-users. FMC would import the gas for its own account or as an agent for both Canadian suppliers and U.S. purchasers. The firm intends to use existing facilities to transport the imported gas, and proposes to inform the ERA of the date of its first transaction, and to file quarterly reports to the ERA. The quarterly reports would be filed within 30 days following each calendar quarter and would show the details of each transaction including: parties, price, volume, transporters, term of the agreements, take-or-pay or make-up provisions, if any, points of entry, and markets served.

The application was filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than December 29, 1986.

FOR FURTHER INFORMATION CONTACT:

Edward J. Peters, Jr., Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–8162

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000

Independence Avenue SW., Washington, DC 20585, (202) 252-6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that the import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In responses to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to this proceeding and to have written comments considered as a basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-9478. They must be filed no later than 4:30 p.m., December 29, 1986.

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision on the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based upon the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of FMC's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 20, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-26810 Filed 11-26-86; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Basic Energy Sciences Advisory Committee; Open Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

NAME: Basic Energy Sciences Advisory Committee (BESAC).

DATE AND TIME: December 17, 1986—9:00 a.m.—5:00 p.m.; December 18, 1986—9:00 a.m.—3:00 p.m.

PLACE: Conference Room 6E-069, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

CONTACT: Louis C. Ianniello, Department of Energy, Office of Basic Energy Sciences (ER-11), Office of Energy Research, Washington, DC 20545, Telephone: 301/353/3081.

PUPPOSE OF THE COMMITTEE: To provide a advice on a continuing basis to the Secretary of the Department of Energy (DOE), through the Director of Energy Research, on the many complex scientific and technical issues that arise in the development and implementation of the Basic Energy Sciences (BES) program.

TENTATIVE AGENDA: Briefings and discussions of:

December 17, 1986

- Presentations by staff of the Basic Energy Sciences Program
- Discussions of Major facilities
- Public Comment (10 minute rule)

December 18, 1986

- New Research Directions
- Organization of BESAC
- Next meeting
- Public Comment (10 minute rule)

PUBLIC PARTICIPATION: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact: Louis C. Inniello at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

TRANSCRIPTS: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC., between 9:00 a.m. and 4:00 P.M., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on November 24, 1986.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 86-26837 Filed 11-26-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TA87-2-32-000, 001]

Colorado Interstate Gas Co.; Proposed Change in FERC Gas Tariff

November 24, 1986.

Take notice that on November 14, 1986, Colorado Interstate Gas Company (CIG) filed Twenty-Seventh Revised Sheet No. 7, Twenty-Eighth Revised Sheet No. 8, Alternate Twenty-Seventh Revised Sheet No. 7 and Alternate Twenty-Eighth Revised Sheet No. 8 to its FERC Gas Tariff, Original Volume No. 1.

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According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until November 19, 1986. CIG states that these revised sheets reflect the 15.2 mills per Mcf Gas Research Institute (GRI) charge authorized by Commission Opinion No. 252 issued on September 19, 1986, in Docket No. RP86-117-000. CIG requests that the proposed tariff sheets be made effective on January 1, 1987. CIG further states that pursuant to Paragraph 24 of CIG's FERC Gas Tariff, Original Volume No. 1, said GRI charge applies only to sales and transportation deliveries to and for distributors for resale, to pipelines which are not members of GRI, and for any parties receiving a sales or transportation service who are not members of GRI.

CIG respectfully requests the Commission to grant any waivers of the Commission's regulations as it may deem necessary to accept this filing.

Copies of the filing have been served upon CIG's jurisdictional customers and other interested public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 1, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26821 Filed 11-26-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-170-001]

Mississippi River Transmission Corp.; Compliance Filing

November 24, 1986.

Take notice that on November 14, 1986, Mississippi River Transmission Corporation (MRT) submitted for filing Substitute Eighteenth Revised Sheet No. 4 to its FERC Gas Tariff, Second Revised Volume No. 1 to be effective April 1, 1987. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until November 18, 1986.

This revised tariff sheet was filed in compliance with Ordering Paragraph (F) of the Commission Order issued October 31, 1986 in the captioned proceeding. MRT states that its filing does not constitute a waiver of any legal right MRT has to challenge the Commission's October 31, 1986 disposition of the advance payment issue.

Copies of the filing have been served upon MRT's jurisdictional customers, the state commissions of Arkansas, Illinois, and Missouri, and all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 1, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26823 Filed 11-26-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-2570-003, etc.]

Phillips 66 Natural Gas Company et al., Applications for Abandonment and Blanket Limited-Term Certificate With Pre-Granted Abandonment

November 21, 1986.

Take notice that each of the applicants listed herein have filed applications pursuant to section 7 of the Natural Gas Act for authorization to abandon service or for a blanket limited-term certificate with pre-granted abandonment to sell natural gas for resale in interstate commerce, as described herein.

The circumstances presented in the applications meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G-2570-003, CI64-612-003, A, Oct. 10, 1986 [1].	Phillips 66 Natural Gas Company, 336 Home Savings & Loan Building, Bartlesville, Oklahoma 74004.	Neches Gas Distribution Company, Fox Graham Plant, Carter County, Oklahoma.	([2])	
G-2570-004, B, Oct. 10, 1986 [1].	......do	Northwest Central Pipeline Corporation, Fox Graham Plant, Carter County, Oklahoma.	([3])	

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G16367-001, B, Nov. 3, 1986.	Mobil Texas & New Mexico Inc., Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	Transwestern Pipeline Company, Olive T. Jones #6, #7, #8 and #9 Wells, Hemphill and Lipscomb Counties, Texas.	(4)	
CI64-612-004, B, Oct. 10, 1986 [1].	Phillips 66 Natural Gas Company	Northwest Central Pipeline Corporation, Fox Graham Plant, Carter County, Oklahoma.	(3)	
CI64-1079-000, B, Oct. 30, 1986 [5].	Mobil Oil Corporation, Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	Colorado Interstate Gas Company, Hugoton and Panoma Fields, Kearny Haskell and Grant Counties, Kansas.	(6)	
CI65-1355-003, B, Oct. 30, 1986 [18].	Mobil Producing Texas & New Mexico Inc., Nine Greenway Plaza—Suite 2700, Houston, Texas 77046.	El Paso Natural Gas Company, Coyanosa, Waha and Worsham Bayer Fields, Pecos and Reeves Counties, Texas.	(19)	
CI86-740-000, B, Sept. 22, 1986 [7].	Wm. T. Burton Industries, Inc., P.O. Box 100, Sulphur, Louisiana 70663.	United Gas Pipe Line Company, Bayou Des Allemands Field, Lafourche and St. Charles Parishes, Louisiana.	(8)	
CI87-61-000, B, Oct. 14, 1986.	Steven Johnson d/b/a AGCO Petroleum, c/o Porter & Clements, 3500 Republic Bank Center, Houston, Texas 77002.	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., North Rincon Field, Starr County, Texas.	(20)	
CI87-67-000, B, Oct. 17, 1986 [9].	Davis Gas Processing, Inc., 211 North Colorado, Midland, Texas 79701.	El Paso Natural Gas Company, Big Lake Gas Processing Plant, Reagan County, Texas.	(10)	
CI87-83-000, B, Oct. 29, 1986 [27].	Reynolds Metals Company, 6601 West Broad Street, Richmond, Virginia 23230.	Arkla Energy Resources, a division of Arkla, Inc., Gregg Field, Sebastian County, Arkansas.	(28)	
CI87-86-000, B, Oct. 28, 1986 [12].	Jack L. Burrell, *et al.*, 2301 Cedar Springs, Suite 400, Dallas, Texas 75201.	El Paso Natural Gas Company, Peyton Field Area, Ward County, Texas.	(13)	
CI87-87-000, B, Oct. 28, 1986 [12].	......do	Transwestern Pipeline Company, Reeves and Pecos Counties, Texas.	(14)	
CI87-90-000, B, Oct. 30, 1986 [5].	Osborn Heirs Company, *et al.*, [15] P.O. Box 17968, San Antonio, Texas 78286.	Colorado Interstate Gas Company, Hugoton and Panoma Fields, Kearny, Haskell and Grant Counties, Kansas.	(6)	
CI87-91-000, B, Oct. 30, 1986.	Rosewood Resources, Inc., Suite 300, 200 Crescent Court, Dallas, Texas 75201.	United Gas Pipe Line Company, Iowa Field, Calcasieu and Jefferson Davis Parishes, Louisiana.	(16)	
CI87-92-000, A, Oct. 30, 1986.	Mobil Producing Texas & New Mexico Inc.	Various Purchasers, Coyanosa, Waha and Worsham Bayer Fields, Pecos and Reeves Counties, Texas.	(21)	
CI87-94-000, B, Oct. 31, 1986.	Jerome P. McHugh, 650 S. Cherry, Suite 1225, Denver, Colorado 80222.	Northwest Pipeline Corporation, Various Fields, Rio Arriba and San Juan Counties, New Mexico.	(22)	
CI87-95-000, B, Oct. 31, 1986.	......do	El Paso Natural Gas Company, Various Fields, San Juan County, New Mexico, and La Plata County, Colorado.	(23)	
CI87-97-000, A, Nov. 3, 1986.	Mobil Texas & New Mexico Inc.	Various Purchasers, Olive T. Jones #6, #7, #8 and #9 Wells, Hemphill and Lipscomb Counties, Texas.	(17)	
CI87-99-000, B, Nov. 3, 1986.	Big Run Production Company, 313 West Rusk, Tyler, Texas 75701.	United Gas Pipe Line Company, Joaquin Field, Shelby and Panola Counties, Texas.	(24)	
CI87-102-000, B, Nov. 6, 1986.	Delaware Royalty Company, Inc., 1212 Main Street, Suite 1400, Houston, Texas 77002.	United Gas Pipe Line Company, Red Fish Bay/Mustang Island Field, Nueces County, Texas.	(25)	
CI87-116-000, B, Nov. 17, 1986.	Vernon E. Faulconer, P.O. Box 7995, Tyler, Texas 75711.	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., San Salvador Field, Hidalgo County, Texas.	(26)	

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[1] Additional information received October 17 and 23, 1986, and November 12, 1986.

[2] Applicant has requested authorization to extend for an additional two year limited-term its certificates with pre-granted abandonment to sell gas to Neches for which abandonment authorization is requested in Docket No. G-2570-004 and CI64-612-004.

[3] Applicant requests authorization to extend for an additional term of 2 years from October 2, 1986, the partial abandonment of its sale of gas to Northwest and its limited-term certificates as requested in Docket Nos. G-2570-003 and CI64-612-003 for resale of the gas to Neches. A limited-term abandonment was issued in Docket No. G-2569-001 and CI64-612-001 and certificates were issued in Docket No. G-2569-001 and CI64-612-001 and certificates were issued in Docket No. G-2569-002 and CI64-612-002 to Applicant's predecessor, Aminoil, Inc., by order issued October 2, 1984. Applicant states that it is incurring substantially reduced takes without payment, the deliverability is 11 MMcf per day, and

the gas is categorized under NGPA sections 103, 104, 106, and 108. Applicant states that the conditions which existed at the time the first limited-term partial abandonment and limited-term certificates were approved are still present and Applicant desires to continue to sell gas to Neches. Applicant requests that its rate schedule under which it sells gas to Neches on file with the Commission as Phillips Petroleum Company FERC Gas Rate Schedule No. 813 be redesignated to Phillips 66 Natural Gas Company FERC Gas Rate Schedule No. 82.

[4] Applicant requests a three-year partial limited-term abandonment of sales to Transwestern from the Olive T. Jones #6, #7, #8 and #9 wells. Applicant states that sales were made under a rollover contract dated August 14, 1980, on file as Applicant's FERC Gas Rate Schedule No. 67. Applicant states that the contract term was subject to termination by Transwestern which notified Applicant that the contract expired on January 1, 1985, and currently Applicant has an interim contract with Transwestern which is effective October 1, 1986, and is cancelable by either party on 10 days notice. Applicant states that the subject gas is NGPA section 104 post-1974 gas and that the estimated deliverability is approximately 2.4 MMcf/d. Applicant states that Transwestern has shut in the subject gas without payment since March 1986 except for four days in August. Applicant requests that the abandonment not contain conditions permitting any interruption or first call by Transwestern during the limited period. Applicant proposes to sell the gas to another purchaser at market clearing prices.

[5] Additional information received October 31 and November 18, 1986.

[6] Mobil in Docket No. CI64-1079-000 requests authorization for a limited-term abandonment of certain sales of gas to Colorado Interstate for a period of three years. Osborn in Docket No. CI87-90-000 requests similar authorization for its interest under the same contract and under five other contracts and seeks pre-granted abandonment authorization for sales to third parties of this gas. Osborn is the operator of the property covered by all six contracts. Mobil and Osborn state that they are subject to substantially reduced takes without payment and that the wells are capable of a deliverability of 14 MMcf per day. Applicant states that the wells, contracts, NGPA categories, and percentage interests are as follows:

Contract	Well Name	NGPA	County	State	Field	Owners
A	Burnett 1	104C	Kearny	Kansas	Hugoton	OHC (100%).
A	Hawk 1	104C	Kearny	Kansas	Hugoton	OHC (100%).
A	Krehbiel 1	104C	Kearny	Kansas	Hugoton	OHC (50%).
A	Swank 1	104C	Kearny	Kansas	Hugoton	OHC (100%.
A	Vickers 1	104C	Kearny	Kansas	Hugoton	OHC (100%).
A	Vickers 2	104C	Kearny	Kansas	Hugoton	OHC (100%).
A	Wiatt-Bakke 1	104C	Kearny	Kansas	Hugoton	OHC (100%).
A	Wilson 1	104C	Kearny	Kansas	Hugoton	OHC (100%).
B	Gropp 1	104C	Kearny	Kansas	Hugoton	OHC (49.45%); Koch (37.91%); Texaco (12.64%).
B	Gropp 1-A	104D	Kearny	Kansas	Panoma	OHC (27.62%); P-L (21.83%); Koch (37.91%); Texaco (12.64%).
B	Helen Hoover C	104C	Kearny	Kansas	Hugoton	OHC (100%).
B	Helen Hoover 1-A	104D	Kearny	Kansas	Panoma	OHC (56.25%); P-L (43.75%).
C	Bless 1	104C	Kearny	Kansas	Hugoton	OHC (100%).
C	Burnett-Wiatt 1	108C	Kearny	Kansas	Hugoton	OHC (100%).
C	Burnett-Wiatt 1-A	104D	Kearny	Kansas	Panoma	OHC (53.72%); P-L (46.88%).
C	Davis 1	104C	Kearny	Kansas	Hugoton	OHC (100%).
C	Modie 1	104C	Kearny	Kansas	Hugoton	OHC (75%); Koch (25%).
C	Modie 1-A	104D	Kearny	Kansas	Panoma	OHC (37.5%); P-L (37.5%); Koch (25%).
D	Finnup 1	104C	Kearny	Kansas	Hugoton	OHC (100%).
D	Finnup 1-A	104D	Kearny	Kansas	Panoma	OHC (56.25%); P-L (43.75%).
E	Applegate 1	104C	Kearny	Kansas	Hugoton	OHC (43.75%); Mobil (43/75%).
E	Applegate 1-A	104D	Kearny	Kansas	Panoma	OHC (43.75%); P-L (43.75%).
E	Burnett 1-A	104D	Kearny	Kansas	Panoma	OHC (25%); P-L (25%).
E	Coke 1	104C	Kearny	Kansas	Hugoton	OHC (48.4375%); Mobil (48.4375%).
E	Collingwood 1-A	104D	Kearny	Kansas	Panoma	OHC (50%); P-L (50%).
E	Collingwood 1	104C	Kearny	Kansas	Hugoton	OHC (50%); Mobil (50%).
E	Hawk 1-A	104D	Kearny	Kansas	Panoma	OHC (50%); P-L (50%).
E	Finkelstein 1	104C	Kearny	Kansas	Hugoton	OHC (37.5); Mobil (37.5%).
E	Finkelstein 1-A	104D	Kearny	Kansas	Panoma	OHC (37.5%); P-L (37.5%).
E	Hickok 1	104C	Grant	Kansas	Hugoton	OHC (50%); Mobil (50%).
E	Hickok 2	104C	Grant	Kansas	Hugoton	OHC (50%); Mobil (50%).
E	Hoover 1-A	104D	Kearny	Kansas	Panoma	OHC (50%); P-L (50%).
E	Jarvis 1	104C	Grant	Kansas	Hugoton	OHC (43.75%); Mobil (43.75%).
E	Jarvis 1-A	104E	Grant	Kansas	Panoma	OHC (87.5%).
E	Johnson 1	104C	Kearny	Kansas	Hugoton	OHC (50%); Mobil (50%).
E	Johnson 1-A	104E	Kearny	Kansas	Panoma	OHC (50%); P-L (50%).
E	Johnson 2	104C	Kearny	Kansas	Hugoton	OHC (50%); Mobil (50%).
E	Johnson 2-A	104E	Kearny	Kansas	Panoma	OHC (50%); P-L (50%).
E	Johnson 3	104C	Kearny	Kansas	Hugoton	OHC (37.46%); Mobil (37.46%).
E	Johnson 4	104C	Kearny	Kansas	Hugoton	OHC (25%); Mobil (25%).
E	Johnson 4-A	104E	Kearny	Kansas	Panoma	OHC (25%); P-L (25%).
E	Johnson 5	104C	Kearny	Kansas	Panoma	OHC (74.93%).
E	Krehbiel 1-A	104D	Kearny	Kansas	Panoma	OHC (25%); P-L (25%).
E	Pemberton 1	104C	Kearny	Kansas	Hugoton	OHC (50%); Mobil (50%).
E	Pemberton 1-A	108D	Kearny	Kansas	Panoma	OHC (50%); P-L (50%).
E	Phelps 1	104C	Grant	Kansas	Hugoton	OHC (50%); Mobil (50%).
E	Phelps 1-A	104E	Grant	Kansas	Hugoton	OHC (100%).
E	Sauer 1	104C	Kearny	Kansas	Hugoton	OHC (50%); Mobil (50%).
E	Sauer 1-A	104D	Kearny	Kansas	Panoma	OHC (50%); P-L (50%).
E	Tate 1	104C	Kearny	Kansas	Hugoton	OHC (50%); Mobil (50%).
E	Tate 1-A	104E	Kearny	Kansas	Panoma	OHC (50%); P-L (50%).
E	Vickers 1-A	104D	Kearny	Kansas	Panoma	OHC (37.632%); P-L (37.5%).

Contract	Well Name	NGPA	County	State	Field	Owners
E	Vickers 2-A	104D	Kearny	Kansas	Panoma	OHC (50%); P-L (50%).
E	Wiatt 1	104C	Kearny	Kansas	Hugoton	OHC (50%); Mobil (50%).
E	Wiatt 1-A	104D	Kearny	Kansas	Panoma	OHC (50%); P-L (50%).
E	Wilson 1-A	104D	Kearny	Kansas	Panoma	OHC (50%); P-L (50%).
F	Martin 1-A	104D	Kearny	Kansas	Panoma	OHC (50%); P-L (50%).
F	Rinehart 1	108D	Kearny	Kansas	Hugoton	OHC (66.67%); M. Mace (25%); W. Mace (8.33%).
F	Williams 1-A	104D	Kearny	Kansas	Panoma	OHC (50%); P-L (50%).

Contract Code: A=Gas purchase Agreement Dated September 9, 1953, B =Gas Purchase Agreement Dated August 31, 1954, C=Gas Purchase Agreement Dated December 12, 1955, D=Gas Purchase Agreement Dated January 27, 1959, E=Gas Purchase Agreement Dated March 1, 1961, F=Gas Purchase Agreement Dated February 5, 1976.

NGPA Classification Code: C=Flowing Gas, D=Post-1974 Gas, E=1973–74 Biennium Gas.

[7] Additional information received November 4, 1986.

[8] Applicant, a small producer certificate holder in Docket No. CS71–643, requests authorization to permanently abandon a sale of gas to United which is covered under a contract dated October 3, 1983, due to expire September 1, 1988. Applicant states that United informed Applicant that it would no longer be able to purchase gas from the following wells:

Well	Reservoir	NGPA Category
Simoneaux No. 2	CIB OP RA SUA	#104—Recompletion.
Simoneaux No. 10	CIB OP RA SUA	#104—Recompletion.

Applicant states that it is subject to substantially reduced takes without payment and that the wells have a potential deliverability of 1,200 Mcf per day. Applicant states that it has entered into negotiations to sell the gas to a third party.

[9] Additional information received November 6, 1986.

[10] Applicant, a small producer certificate holder in Docket No. CS80–7–000, requests authorization to permanently abandon its sale of gas to El Paso at the outlet of the Big Lake Gas Processing Plant. Applicant states that El Paso recently notified Applicant that it intends to terminate the subject contract dated December 1, 1953, effective January 1, 1987. Applicant states the gas subject to the Commission's NGA jurisdiction is NGPA section 104, 106(a), 108 and 109 gas and that the average price of all the gas is $1.67 per Mcf based on August 1986 residue gas sales of 132,866 Mcf. Applicant requests abandonment authorization on behalf of itself and on behalf of 54 producer suppliers who sell to applicant under percentage-of-proceeds contracts. Applicant states that it is contractually authorized to seek abandonment on behalf of such behind-the-plant producers. Applicant further states that El Paso has given Applicant the unconditional release of all gas subject to the December 1, 1953, contract.

[11] Not used.

[12] Additional information received November 6, and 12, 1986.

[13] Applicant, a small producer certificate holder in Docket No. CS72–46, requests authorization to permanently abandon a sale of gas to El Paso, and requests pre-granted abandonment for future sales of said gas for resale in interstate commerce for a 3-year limited term. Applicant states that the May 18, 1953 contract expired on January 1, 1985, and that by letter dated October 6, 1985, El Paso states that it planned to shut in the Brictson B No. 1 well. Applicant states that it is subject to substantially reduced takes without payment. Applicant states that the well produces NGPA section 104 recompletion gas, the deliverability of the well is 75 Mcf per day, and Applicant desires to make sales for resale of said gas in interstate commerce as well as sales to nonjurisdictional purchasers.

[14] Applicant, a small producer certificate holder in Docket No. CS72–46, requests authorization effective December 31, 1986, to permanently abandon a sale of gas to Transwestern, and requests pre-granted abandonment for all future sales of said gas for resale in interstate commerce for three year limited-term. Applicant states that the September 1, 1981, contract had a primary term of five years and that by letter dated September 17, 1986, Transwestern gave notice to terminate effective December 31, 1986. Applicant states that its gas wells are being shut-in and that it will be receiving no cash flow from the wells. Applicant states that its wells produce NGPA section 106(a) gas with a deliverability of 305 Mcf per day and section 108 gas with a deliverability of 395 Mcf per day. Applicant states that it desires to make sales for resale of said gas in interstate commerce as well as sales to non-jurisdictional purchasers.

[15] The parties to be covered by this application are:

Party	Sells under
Osborn Heirs Company	CS71–126
Koch Industries, Inc	CS76–73
Mervyn M. Mace	CS79–95
Wanda Mace	CS79–95
Mobil Oil Corporation	CI64–1079
Partnership Properties Co.	CS73–158

Et al. parties each own fractional interests in some of the wells sold under the subject contracts.

[16] Rosewood a small producer certificate holder in Docket No. CS84–72–000, requests a two-year limited-term abandonment of its sales of NGPA 106 gas to United from Iowa Field, Calcasieu and Jefferson Davis Parishes, Louisiana. Rosewood states that eighteen wells within Iowa Field are currently producing oil and gas with average total production of 1,105 Mcf per day, over 50% of which is used as lease fuel or in gas lift operations. The remaining production is sold to United. Average monthly sales from the field are 13,000 Mcf per month. Sales are made in accordance with a contract dated May 1, 1979, as amended, between Shell Western Exploration Production, Inc. ("SWEPI"), (to whose rights and obligations thereunder Rosewood Resources, Inc., as Seller, has succeeded) and United Gas Pipe Line Company, as Buyer. The contract expired on January 1, 1986. Rosewood and United have not been able to reach a satisfactory renewal agreement, United has informed Rosewood that it will soon be unable to take delivery of this gas. Rosewood has requested that United continue takes until permission for abandonment can be obtained and, to date, deliveries have continued. Producing wells dedicated to United in the Iowa Field are listed below: A.O. Fontenot No. 9, F. Heyd No. 18, F. Heyd No. 22, F. Heyd No. 41, F. Heyd No. 43, F. Heyd No. 55A, F. Heyd No. 56, F. Heyd No. 63, F. Heyd No. 64, E.O. Stafford No. 1, E.O. Stafford No. 11.

The shut-in wells listed below are also dedicated to United. Rosewood has not completed its evaluation of these wells during the time since they were acquired from Shell and has not, as yet, determined whether or not they are capable of future production. Rosewood respectfully requests that future production from any of these wells be included in the limited-term abandonment requested.

Shut In Wells: A.O. Fontenot #10, F. Heyd #2, F. Heyd #6, F. Heyd #7, F. Heyd #11, F. Heyd #13, F. Heyd #19, F. Heyd #20, F. Heyd #23, F. Heyd #25, F. Heyd #27, F. Heyd #29, F. Heyd #35, F. Heyd #36, F. Heyd #39, F. Heyd #48, F. Heyd #50, F. Heyd #51, F. Heyd #58, F. Heyd #59, F. Heyd #61, F. Heyd #62, F. Heyd #66, E.O. Stafford #10, Wait-Heyd #1.

Rosewood's interest in these wells is 100%. Rosewood states that authorization for limited-term abandonment is in the public interest because it will allow gas which otherwise would be shut in to enter the market place for consumption.

[17] Applicant requests in Docket No. CI87-97-000 a three-year limited-term certificate with pre-granted abandonment to make sales for resale in interstate commerce of gas which is subject to the limited-term abandonment in Docket No. G-16367-001. Applicant requests that the requirements of Part 154 of the Commission's Regulations be waived.

[18] Additional information filed November 13, 1986.

[19] Applicant requests limited-term abandonment authorization for a three-year period for a sale to El Paso being made under an expired contract dated June 14, 1965, on file with the Commission as Applicant's FERC Gas Rate Schedule No. 94. Applicant states that El Paso has shut-in the subject gas without payment since June, 1986. Applicant indicates that the subject application covers NGPA section 108 and section 104 flowing gas and that the average daily delivery prior to June, 1986, was 12,850 Mcf per day of section 104 gas and 3 Mcf per day of section 108 gas. Applicant requests that the Commission not impose any conditions permitting any interruption or first call by El Paso during the three-year term.

[20] Applicant requests authorization to abandon a sale to Tennessee previously covered by Texaco Inc.'s FERC Gas Rate Schedule No. 138. Applicant has acquired all of Texaco's interest in the subject property. Applicant indicates that it is subject to substantially reduced takes without payment. Applicant states that deliverability is approximately 50 Mcf per day but Tennessee has only been taking an average of 50 Mcf per month. Applicant has advised that the gas from the two wells involved is NGPA section 108 gas. In addition Applicant states that the AGCO-Davenport No. 1-B Well cannot be produced without compression and both the AGCO-Davenport No. 1-B Well and the AGCO-Davenport No. 22 Well cannot be produced without a low pressure line being laid to the wells. Under the terms of the contract, if neither Seller nor Buyer elects to install compression, Buyer shall release the gas. Applicant indicates that neither Buyer nor Seller is willing to install compression or lay a low pressure gathering line.

[21] Applicant requests blanket limited-term certificates with pre-granted abandonment authorization to authorize the sale of the gas proposed to be abandoned in Docket No. CI65-1355-003 to other purchasers for a three-year period. Applicant also requests waiver of the requirements of Part 154 of the Commission's regulations requiring the establishment of rate schedules and the filing of blanket affidavits in accordance with § 154.94(h) and, to the extent applicable, § 154.94(k).

[22] Applicant requests authorization to abandon sales to Northwest Pipeline from certain wells authorized under its small producer certificate in Docket No. CS72-365. Applicant advises that the wells have been totally or substantially shut-in since March 1986 and that it is not being paid for gas not taken. Applicant states that, upon issuance of an order granting the requested authorization, it will terminate sales to Northwest Pipeline and Northwest Pipeline will be relieved of any take-or-pay obligation it might have. The subject wells, their estimated deliverability and the NGPA category of the gas are as follows:

Name of well	Estimated daily deliverability (Mcf)	NGPA category
Tribal #3	130	104
Apache #1	100	104
Apache #3	50	108
Apache #4		108
Apache #5	20	108
Apache #6	84	104
Tribal #4		104
Chris #1	70	104
Erin #1	500	104

[23] Applicant requests authorization to abandon sales to El Paso from certain wells authorized under its small producer certificate in Docket No. CS72-365. Applicant advises that the wells have been totally or substantially shut-in since March 1986 and that it is not being paid for gas not taken. Applicant states that upon issuance of an order granting the requested authorization, it will terminate sales to El Paso from the subject wells and El Paso will be relieved of any take-or-pay obligation it might have. The subject wells, their estimated deliverability and the NGPA category of the gas are as follows:

Name of well	Estimated daily deliverability (Mcf)	NGPA category
Oneda #1	150	104
Allen #1	20	108
Hardie #1	60	104
Roelofs #1	20	108
Hardie #4	15	104
Roelofs #2	115	104
Hardie #5	67	104
Nassau #1	10	108
Nassau #2	66	104
Florance #1	60	108
Ute #2	20	108
Ute #3	200	104
Nassau #3	100	104
Bengal A #2	10	108
Colket #1	300	104
Nassau #7	40	104
Clay #1	400	104
Nassau #6	500	104

[24] Applicant requests authorization to abandon sales to United from certain wells previously sold under American Petrofina Company of Texas' (now Fina Oil and Chemical Company) FERC Gas Rate Schedule No. 11. Applicant states that it purchased the subject wells from American Petrofina Company of Texas. Applicant has advised that the subject wells are shut-in and that it is subject to substantially reduced takes without payment. Applicant has filed a release agreement dated August 25, 1986, by which United releases that portion of the gas deliverable from the subject wells which United does not desire to purchase on any day during the term of the release agreement and Applicant agrees to release United from its obligations under the subject contract including take-or-pay for the term of the release agreement. Applicant also agrees that United or any of its affiliates may credit against any take-or-pay obligations under any contracts with Applicant volumes released and sold pursuant to the release agreement. The subject wells, their estimated deliverability and the NGPA category of the gas are as follows:

Name of well	Estimated daily deliverability (Mcf)	NGPA category
O.B. Siler #1	100	104-flowing.
Bertha Brantley #1	100	104-flowing.
Hanson 1-C	100	104-flowing.
Hanson 1-T	100	104-flowing.
J.T. Carroll "A" #1	100	104-biennium.

Applicant indicates that it is negotiating with Eastex Gas Transmission Company, an intrastate purchaser, to purchase released gas from the subject wells.

[25] Applicant requests authorization to abandon sales to United from the State Tract 426 & 441—S10 No. 1 Well. Applicant states that United has not taken any gas since November 1985 and has not paid for gas not taken. Applicant indicates that the deliverability from its 50% interest in the well is approximately 325 Mcf per day. Applicant has advised that the well is subject to NGPA section 104.

[26] Applicant, a small producer certificate holder in Docket No. CS74-147, requests authorization to permanently abandon sales to Tennessee from four wells subject to a contract dated April 1, 1952, which expired on December 31, 1983. Applicant states that Tennessee has not taken any gas from the subject wells since July 1986 and that Tennessee has advised that it can neither purchase nor receive any of the gas from the subject wells and that future purchases, if any, will be on a best efforts basis. Applicant states that it is subject to substantially reduced takes without payment. The subject wells, their estimated daily deliverability and the NGPA category of the gas are as follows:

Well name	Estimated daily deliverability (Mcf)	NGPA category
Santa Cruz-Hendrix No. 1	400	108.
Weinfield No. 1	300	108.
Weinfield No. 2	70	104-recompletion.
Wilcox No. 1	400	108.

Applicant states that it is presently negotiating with Corpus Christi Gas Fathering Company and Valero Transmission Company for the purchase of this gas.

[27] Applicant, which operates under a small producer certificate in Docket No. CS72-541, requests limited-term partial abandonment authorization of certain sales of excess gas to Arkla, covered by a rollover contract dated February 1, 1985. Applicant states that Applicant and Arkla have entered into a temporary release from contractual commitment (and corresponding take-or-pay obligations) of dedicated gas produced in excess of Arkla's system requirements. Applicant states that the primary term for this release extends through September 30, 1987, and month to month thereafter unless terminated by either party upon 30 days' notice. Applicant requests that its limited-term authorization expire with the primary term of its release, September 30, 1987. Applicant states that the wells and NGPA pricing categories are as follows:

Well name	NGPA category
Basham	Section 108.
Boyd	Section 108.
Cochran	Section 108.
Craig 1	Section 108.
Nichols 1	Section 108.
Boyd	Section 106(a).
Cochran	Section 106(a).
McGee	Section 106(a).
Synaground	Section 106(a).
Turner	Section 106(a).
Ware	Section 106(a).

Applicant states that takes of gas under the subject contract have been substantially reduced without payment, that the wells involved are capable of 3,118 MMcf per day, and that Applicant proposes to market the gas to third parties and/or to transport it to its own gas-consuming facilities.

[28] Additional information received November 19, 1986.

Filing Code: A—Initial Service—B—Abandonment—C—Amendment to add acreage—D—Amendment to delete acreage—E—Total Succession—F—Partial Succession.

[FR Doc. 86-26818 Filed 11-26-86; 8:45 am]

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[Docket No. CP85-805-001]

Texas Eastern Transmission Corp. Proposed Changes in FERC Gas Tariff

November 24, 1986.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on 11-14, 1986 tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1 the following sheet:

Second Revised Eighty-first Revised Sheet No. 14

By Commission orders issued March 20, 1981, July 24, 1981 and May 10, 1982 in Docket Nos. CP81-4, CP81-291, and CP82-2 respectively, Texas Eastern was granted authorization to render a firm daily withdrawal service under its Rate Schedule SS-II that was designated as Phase I, II, and III Firm Expansions. Such service is currently reflected in Volume No. 1 of Texas Eastern's tariff. By Commission order issued June 4, 1986 in Docket No. CP85-805, Texas Eastern was granted further authorization to render additional firm daily withdrawal service under its Rate Schedule SS-II and to construct and operate pipeline facilities designated as Phase IV Firm Expansion. The above designated tariff sheet is being filed pursuant to section 4.G. of Rate Schedule SS-II and the Commission's authorization in the June 4, 1986 order for the sole purpose of incorporating in Texas Eastern's tariff the Firm Demand Charge of $9.766 per dekatherm of firm service for the composite facilities (Phase I, II, III, IV).

The above tariff sheet also reflects the reinstatement of the Contract Adjustment—Demand rate for the 1985 Contract Adjustment sales level (102,893 dth) and the deletion of rates for Rate Schedule CTS that were filed on November 7, 1986 in Docket No. CP84-429-023 both of which have not yet been approved by the Commission. In the event the sheets filed on November 7, 1986 are not approved or are revised in any way, Texas Eastern will refile the above listed tariff sheet to reflect the final determination on Texas Eastern's November 7, 1986 filing.

The proposed effective date of the above listed tariff sheet is November 15, 1986, the commencement date of the firm daily withdrawal service in Rate Schedule SS-II Phase IV.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 2, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26822 Filed 11-26-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. EF87-1021-000 etc.]

Alaska Power Administration et al.; Electric Rate and Corporate Regulation Filings

November 21, 1986.

Take notice that the following filings have been made with the Commission:

1. Alaska Power Administration

[Docket No. EF87-1021-000]

Take notice that on October 31, 1986, the Under Secretary of the Department of Energy, by Rate Order No. APA-7, did confirm and approve, on an interim basis, to be effective with the beginning of the November billing period, firm energy rate schedule SN-F3 for 28.8 miles per kilowatthour for power from the Alaska Power Administration's Snettisham Project. The new firm energy rate increases the amount of revenue 15 percent over the existing rate.

The new rate will be in effect pending the Commission's approval of it, or a substitute rate, on a final basis, or until superseded. The Under Secretary states that the rate schedule is submitted for confirmation and approval on a final basis pursuant to authority vested in the Commission by Delegation Order No. 0204108 and requests the rate schedule be effective for a period of five years.

Comment date: December 5, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Boston Edison Company

[Docket No. ER87-84-000]

Take notice that on November 5, 1986, Boston Edison Company (Edison) tendered for filing a supplemental Exhibit A to a Service Agreement for Braintree Electric Light Department (Braintree), under its FERC Electric Tariff, Original Volume No. III, Non-Firm Transmission Service (the Tariff). The Exhibit A specifies the amount and duration of transmission service required by Braintree under the Tariff.

Edison requests waiver of the Commission's notice requirements to permit the Exhibit A to become effective as of the commencement date of the transaction to which it relates, November 1, 1986.

Edison states that it has served the filing on Braintree Electric Light Department and the Massachusetts Department of Public Utilities.

Comment date: December 5, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Carolina Power & Light Company

[Docket No. ER87-100-000]

Take notice that Carolina Power and Light Company on November 13, 1986, tendered for filing an executed Exhibit A for the Laurel Hill 23 kv Point of Delivery, with an in-service date of August 1, 1986, as part of its agreement with Pee Dee EMC. The load served from this point of delivery was formerly served by Laurel Hill Electric Company (FPC No. 51), a private distribution utility which was dissolved on March 20, 1986. The Laurel Hill 23 kv point of delivery is currently being served at 4 kv but will be converted to 23 kv by Mid-October 1986. It is respectfully requested that the supplement filed herewith become effective prior to the normal 60-day notice period in order that Pee Dee EMC can take advantage of a lower rate under the Resale Service Schedule.

Comment date: December 5, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Centel Corporation

[Docket No. ER87-83-000]

Take notice that Centel Corporation (Centel), on November 4, 1986, tendered for filing an Interconnection Contract between Centel and the City of Ashland, Kansas. Included with this filing are Agreements between Centel and the City of Ashland covering Service Schedule 85-D-1, Supplement Power Service, Service Schedule 85-A-1, Firm Power Service, and Service Schedule B, Emergency Service, which are attachments to the Interconnection Contact dated October 6, 1986.

Copies of the filing were serveds upon the City of Ashland, Kansas, and the Utilities Division, Kansas Corporation Commission, Topeka, Kansas.

Comment date: December 5, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Idaho Power Company

[Docket No. ER87-99-000]

Take notice that on November 12, 1986, the Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1976, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during September 1986, along with cost justification for the rate charged. This filing includes the following supplements:

Utah Power & Light Company—Supplement No. 58
Sierra Pacific Power Company—Supplement No. 55
Washington Water Power Company—Supplement No. 42

Comment date: December 5, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Southwestern Public Service Company

[Docket No. ER87-98-000]

Take notice that Southwestern Public Service Company (Southwestern) on November 12, 1986, tendered for filing an initial rate schedule consisting of the "Agreement for Economy Interchange Between City of Farmington and Southwestern Public Service Company".

The agreement provides for interchanges of Economy Energy between the electrical systems of City of Farmington (Farmington) and Southwestern.

Both Southwestern and Farmington can realize substantial benefits for their customers by the interchange of Economy Energy between two systems. Such benefits include being able to purchase and sell energy in amounts and at prices best determined by the parties on the day of the transaction and desire by this agreement to facilitate such flexibility in the exchange of Economy Energy. It is anticipated that this Economy energy interchange will provide substantial fuel cost savings to both parties.

Copies of this filing were served upon the City of Farmington, the Public Utility Commission of Texas and the New Mexico Public Service Commission.

Comment date: December 5, 1986, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-26817 Filed 11-26-86; 8:45am]

BILLING CODE 6717-01-M

[Docket No. CI87-59-000]

Winchester Oil Co.; Application for Abandonment

November 24, 1986.

Take notice that the Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to abandon service as described herein.

The circumstances presented in the application meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the application which is on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI87-59-000, B, Oct. 9, 1986.	Winchester Oil Co., 300 W. Austin St., Marshall, Texas 75670	United Gas Pipe Line Co., Waskom Field, Harrison County, Texas	[1]	

Filing code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[1] Applicant, which operates under a small producer certificate in Docket No. CS87-9-000, requests authorization to permanently abandon certain sales to United. United has released the subject gas pursuant to supplemental agreements dated September 30, 1986. The gas involved is NGPA sections 104 flowing and 1973-1974 Biennium, 106(a) and 108 gas. Estimated deliverability is 445 Mcf/d. Applicant proposes to make spot or other short-term sales of the subject gas in the interstate market and requests pre-granted abandonment therefor. Applicant states since the properties were acquired from Tenneco Oil Company by assignment dated July 2, 1986, Applicant has been subjected to extended periods of complete shut-in of production by United without payment. Applicant states it runs the risk of losing its lease interest if it cannot sell the gas to other parties. Applicant requests expedited approval for an unlimited term, or in the alternative, for a two-year term.

[FR Doc 86-26810 Filed 11-26-86; 8:45 am]

BILLING CODE 6717-01-M

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ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3119-9]

Environmental Impact Statements; Availability

Responsible agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements Filed November 17, 1986 Through November 21, 1986 Pursuant to 40 CFR 1506.9.

EIS No. 860477, Final FHW, MT, Bozeman Arterials Development, North 19th Avenue Construction, Durston Road to Oak Street; Oak Street Construction, North 19th Avenue to North 7th Avenue; and Kagy Boulevard Construction, South 3rd Avenue to South 19th Avenue, Gallatin County, Due: December 29, 1986, Contact: William Dunbar (406) 449–5310.

EIS No. 860478, Draft, FHW, OR, North Marine Drive/Swift Highway Improvement, I–5 to Rivergate Industrial District, Multnomah County, Due: January 23, 1986, Contact: Dale Wilken (503) 399–5749.

EIS No. 860479, Draft, FHW, OR, US 101/Oregon Coast Highway Improvement, Rogue River Bridge to Gold Beach, Curry County, Due: January 23, 1987, Contact: Dale Wilken (503) 399–5749.

EIS No. 860480, Draft, COE, PA, Lehigh River Basin Hydroelectric Power Study, Development, Carbon County, Due: January 12, 1987, Contact: Roy Denmark (215) 597–4833.

EIS No. 860481, Final, AFS, UT, CO, Manti-LaSal National Forest, Land and Resource Management Plan, Due: December 29, 1986, Contact: Lee Foster (801) 637–2817.

EIS No. 860482, Draft, FHW, MD, Warren Road Extension, MD–45/York Road to I–83/Harrisburg Expressway, Baltimore County, Due: January 16, 1987, Contact: Edward Terry (301) 962–4010.

EIS No. 860483, Draft, EPA, GA, Brunswick Harbor, Ocean Dredged Material Disposal Site, Designation, Due: January 12, 1987, Contact: Chris Provost (404) 347–2126.

EIS No. 860484, Draft, AFS, WA, Olympic National Forest, Land and Resource Management Plan, Due: February 27, 1987, Contact: George Pozzuto (206) 753–9516.

EIS No. 860485, Report, COE, LA, Mississippi River Enlargement, Deep Draft Navigation Access, Gulf of Mexico to Baton Rouge, Dredging of Fairview Crossing at Mile 116, Contact: David Carney (504) 838–2528.

EIS No. 860486, Legislative Draft, FWS, AK, Arctic Nnational Wildlife Refuge, Coastal Plain Resource Management, Oil and Gas Exploration, Development and Production, Leasing or Wilderness Designation, Due: January 23, 1987, Contact: Don Ciccone (202) 343–2590.

EIS No. 860487, Report, COE, LA, Mississippi River Ship Channel, Deep Draft Navigation Access, Gulf of Mexico to Baton Rouge, Test Prototype Sill Construction at Mile 47.4, Contact: David Carney (504) 838–2528.

EIS No. 860488, Report, COE, LA, Mississippi River Ship Channel, Deep Draft Navigation Access, Gulf of Mexico to Baton Rouge, Submarine Barrier or Sill Construction at Mile 64.1, Contact: Suzanne Hawes (504) 862–2518.

EIS No. 860489, Report, COE, LA, Mississippi River Ship Channel, Deep Draft Navigation Access, Gulf of Mexico to Baton Rouge, Marsh Creation, Venice to the Gulf Reach, Contact: Suzanne Hawes (504) 838–2518.

Amended Notice

EIS No. 860410, Draft, COE, IL, MO, Mississippi River Locks and Dam 26 (Replacement) Construction, Second Lock, Upper Mississippi and Illinois Rivers Due: December 9, 1986, Published FR: 10–10–86—Review period extended.

Dated: November 24, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86–26833 Filed 11–26–86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3120-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 10, 1986 through November 14, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. DS–IBR–J34009–UT, Rating EC2, Bonneville Unit, Central Utah Project, Municipal and Industrial Water System, Construction and Modifications, 404 Permit Issuance, Updated Information, UT. SUMMARY: EPA's major concerns include insufficient wetland mitigation and lack of progress on certain 1979 Bureau of Reclamation commitments resulting from the previous final EIS. EPA provided recommendations to ensure adequate wetland replacement and achievement of the 1979 commitments to implement instream flows in the Uinta Basin. EPA also recommended language necessary to insure the 1979 commitments, to develop conservation plans, would meet the conservation goals of project development in the least environmentally damaging manner.

ERP No. D–NPS–K61066–CA, Rating LO, Sequoia-Kings Canyon Nat'l Parks, Grant Grove and Redwood Mtn. Areas, Development and Use, CA. SUMMARY: EPA expresed a lack of objections to the proposal, but requested information on: (1) Whether Clean Water Act Sect. 404 permits for road construction are needed; (2) air and water quality construction impacts; and (3) sewage treatment requirements due to increased overnight visitor use.

ERP No. D–USA–G10001–NM, Rating LO, White Sands Missile Range Ground Based Free Electron Laser Technology Integration Experiment Facility, Construction and Operation, Possible Sect. 10 and 404 Permit, NM. SUMMARY: EPA expressed no objection to the implementation of the low power phase of the GBFEL–TIE. EPA's rating is conditioned upon the Army fully complying with the requirements under Sect. 1508.28(b) of the CEQ Regulations regarding "Tiering". Tiering will require preparation of a supplemental EIS fully addressing the associated impacts of the high power phase. At this planning stage, EPA concludes that the Orogrande site is an appropriate candidate to be recommended for selection as the preferred siting location.

DS–USN–K11027–CA, Rating EO2, Treasure Island Naval Station, Hunters Pt. Naval Shipyard, San Francisco Bay Region Ship Homeporting, Basing Additional Ships and Constructing Support Facilities, CA. SUMMARY: EPA's principal concern is whether the proposed dredging will degrade San Francisco

Bay water quality through the reintroduction of toxic contaminants. EPA has agreed to review recent sampling data. A second concern is whether onshore construction will overlap with possible hazardous waste sites. Finally, EPA raised questions about the relationship of this supplemental EIS to an upcoming Navy Homeporting EIS for the San Francisco Bay Region.

Final EISs

F-AFS-K01004-AZ, Canyon Uranium Mining Development, Kaibab Nat'l Forest, AZ. SUMMARY: The final EIS adequately addressed the concerns EPA raised on the draft EIS.

ERP No. F-BLM-J70006-UT, Warm Springs Resource Area, Resource Mgmt. Plan, UT. SUMMARY: EPA did not identify potential environmental impacts which would require changes in the preferred alternative.

ERP No. F1-BLM-K65040-CA, Eastern San Diego Co. Planning Unit, Sawtooth Mtn. B, Carrizo Gorge and San Felipe Hills Wilderness Study Areas, Wilderness Recommendations, CA. SUMMARY: The final EIS addressed the concerns EPA had raised on the draft EIS.

ERP No. F-FHW-K40115-CA, CA-4 Freeway Construction, Wilson Way to CA-99, CA. SUMMARY: The final EIS adequately addressed the concerns EPA had raised on the draft EIS, however, EPA noted its continuing concern with ozone violations in the Stockton area.

ERP No. F-SCS-G36134-LA, Upper Vermilion Bayou Watershed Protection, Flood Prevention and Drainage Plan, 404 Permit, LA. SUMMARY: EPA has no objections to the proposed action as described.

Regulations

ERP No. R-NRC-A22108-00, 10 CFR Part 40, Uranium Mill Tailings Regulation, Ground-Water Protection and Other Issues (51 FR 24697). SUMMARY: EPA does not believe that the proposed rules adequately incorporate EPA's groundwater protection requirements into NRC's regulations. EPA stated that the proposal does not satisfy section 84 (a)(3) of the Atomic Energy Act, does not conform to EPA standards under the Solid Waste Disposal Act, authorizes alternate standards rather than alternate site-specific compliance mechanisms, and improperly considers irrelevant mine waste regulations.

Dated: November 24, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86-26834 Filed 11-26-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3115-8]

Intent To Prepare a Supplemental Environmental Impact Statement (EIS); City of Los Angeles Wastewater Treatment Facilities, CA

AGENCY: U.S. Environmental Protection Agency (EPA) Region IX.

ACTION: Preparation of a draft supplemental Environmental Impact Statement.

Purpose: To fulfill the requirements of section 102(2)(c) of the National Environmental Policy Act, EPA has identified a need to prepare an EIS and therefore issues this Notice of Intent pursuant to 40 CFR 1501.7.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Helliker, California Branch, Water Management Division, U.S. Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, California 94105, Telephone (415) 974-8283.

SUMMARY

1. *Description of the Proposed Action:* The EPA action would be the approval of a facilities plan and the issuance of grant monies pursuant to section 201 of the Clean Water Act for the design and construction of wastewater treatment facilities at a site in the City of Los Angeles, California.

2. *Public and Private Participation in the EIS Process:* Full participation by interested Federal, State and local agencies as well as other interested private organizations and parties is invited. The public will be encouraged to participate in the planning process.

3. *Scoping:* The final EIS for the City of Los Angeles wastewater facilities plan, issued in October of 1982, studied alternatives for the treatment of municipal wastewater generated in the City of Los Angeles. The preferred alternative identified in that EIS was "Inland-Coastal Split Treatment (B4C)."

The final EIS for sludge management in the Los Angeles/Orange County Metropolitan Area, issued in December of 1980, identified sludge dehydration and combustion as the best alternative for the City of Los Angeles. Major portions of the chosen alternatives from both of the EISs have been constructed in the City of Los Angeles.

The focus of the supplemental EIS will be on alternatives to treat wastewater to secondary effluent requirements from current and projected flows in the City of Los Angeles. EPA Region IX will be holding meetings to discuss alternatives for providing this wastewater treatment and disposal. For additional information, contact the person indicated above. Public notice will be given prior to all subsequent meetings.

4. *Timing:* EPA estimates the draft supplemental EIS will be available for public review and comment around April, 1987.

5. *Requests for Copies of the Draft Supplemental EIS:* All interested parties are encouraged to submit their name and address to the person indicated above for inclusion on the distribution list for the draft supplemental EIS and related public notices.

Dated: November 18, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86-26835 Filed 11-26-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Bott Communications Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant and city/state	File No.	MM Docket No.
A. Bott Communications, Inc.; Ukiah, CA.	BPH-850314MA	86-407
B. Claudia Clarke and Theodore S. Storck, d/b/a Redwood Empire Broadcasting; Ukiah, CA.	BPH-850529MB	
C. Joseph M. Perez; Ukiah, CA.	BPH-850529MD	
D. Marilyn J. Johnson; Ukiah, CA.	BPH-850531MB	
E. Sound Sense, a California Limited Partnership; Ukiah, CA.	BPH-850531MK	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, A, B, C, D, E
2. Comparative, A, B, C, D, E
3. Ultimate, A, B, C, D, E

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3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplication contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gary,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 86-26789 Filed 11-26-86; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Jesus Is Lord Ministries International et al.

1. The Commission has before it the following mutually exclusive applications for a new AM station:

Applicant and city/state	File No.	MM Docket No.
A. Jesus is Lord Ministries International; Cashtown, PA.	BP-84102AH	86-432
B. Lighthouse Broadcasting Co.; Dalton, MA.	BP-850729AA	
C. Lighthouse Broadcasting Co.; Falmouth, VA.	BP-850729AC	
D. Solvay Radio; Solvay, NY.	BP-850729AE	
E. Greater Virginia Broadcasters Stafford, VA; Stafford, VA.	BP-850729AL	
F. Upstate Broadcasters; Fayetteville, NY.	BP-850729AM	
G. Central Pennsylvania Broadcasters; Shickshinny, PA.	BP-850729AN	
H. Family Stations, Inc. Nicholson, PA.	BP-850729AP	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, B, D, E, F, H
2. City Coverage—AM, B, C, D
3. 307(b), All Applicants
4. Contingent Comparative, All Applicants
5. Ultimate, All Applicants

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

Larry D. Eads,

Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 86-26790 Filed 11-26-86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

Federal Saving and Loan Advisory Council Meeting

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the Federal Savings and Loan Advisory Council. Notice of the meeting is required under the Federal Advisory Committee Act.

DATE(S): December 17, 1986, 9:00 a.m.–4:30 p.m.; December 18, 1986, 9:00 a.m.–11:30 a.m.

ADDRESS: Federal Home Loan Bank Board, Board Room, 6th Floor, 1700 G Street NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: John M. Buckley, Jr. (202/377-6577); Debra J. Ahearn (202/377-6924).

SUPPLEMENTARY INFORMATION:

Proposed agenda:

1. What additional Service Corporation activities should be sought for federally chartered thrift institutions?

2. What should the Board's legislative priorities be for 1987 session of Congress?

3. Review effect of REMICs on the thrift industry's mortgage lending activities and overall profitability.

No. 11, November 24, 1986.

Jeff Sconyers,

Secretary.

[FR Doc. 86-26765 Filed 11-26-86; 8:45 am]

BILLING CODE 6720-01-M

Federal Maritime Commission

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-007540-046.

Title: U.S. Atlantic & Gulf/

Puerto Rico Maritime Shipping Authority

Sea-Land Service, Inc.

Shipping Corporation of Trinidad and Tobago, Ltd.

Synopsis: The proposed amendment would expand the scope of the agreement to include U.S. Atlantic coast ports from West Palm Beach, Florida to Key West, Florida and intermodal service via such ports. Additionally, the number of rate-making sections would be increased from three to four.

Agreement No.: 203-010664-003.

Title: Pan-Atlantic Carrier Trade Agreement.

Parties:

Hapag-Lloyd AG

Intercontinental Transport (ICT) BV

Atlantic Container Line GIE

Dart-ML Limited

Trans Freight Lines

Lykes Bros. Steamship Company, Inc.

United States Lines, Inc.

Johnson Scanstar

Nedlloyd Lijnen B.V.

Synopsis: The proposed amendment would admit Nedlloyd Lijnen B.V. as a party to the agreement.

Agreement No.: 203-010977-001.

Title: Hispaniola Discussion Agreement.

Parties:

United States Atlantic and Gulf/ Hispaniola Steamship Freight Association.

Zim Israel Navigation Co.

Overseas Transport International Corp.

Synopsis: The proposed amendment would admit Overseas Transportation International Corp. as a party to the agreement.

Agreement No.: 224–011032.

Title: Seattle Terminal Agreement.

Parties:

Port of Seattle (Post)
Stevedoring Services of America (SSA)

Synopsis: The proposed agreement would permit the Port to lease approximately twenty-five acres of paved land at the Port's Terminal 42 and to provide preferential use of berthing space and container handling equipment to SSA for a period of five years with an option to extend the agreement for an additional five year period.

Agreement No.: 224–011033.

Title: Seattle Terminal Agreement.

Parties:

Port of Seattle (Post)
Nippon Yusen Kaisha, Ltd.
Showa Line, Ltd.

Synopsis: The proposed agreement would permit the Port to lease land and office space at the Port's Terminal 37 to the remaining agreement parties and to provide those parties preferential berthing rights and preferential use of certain container handling equipment for an initial period of five years with an option to extend the agreement for a period of three years.

Agreement No.: 224–011034.

Title: Seattle Terminal Agreement.

Parties:

Port of Seattle (Post)
Dovex Corporation (Dovex)

Synopsis: The proposed agreement would permit the Port to provide preferential use of chill warehouse space to Dovex for an initial period of ten years.

By Order of the Federal Maritime Commission.

Dated: November 24, 1986.

Joseph C. Polking,

Secretary.

[FR Doc. 86–26756 Filed 11–26–86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Citizens of Hardeman County Financial Services, Inc., Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 17, 1986.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Citizens of Hardeman County Financial Services, Inc.,* Whiteville, Tennessee; to engage *de novo* in acting as agent in the sale of credit insurance directly related to extensions of credit made by Applicant's wholly-owned subsidiary, The Whiteville Savings Bank, Whiteville, Tennessee, and will be limited to assuring the repayment of the outstanding balance due on such extensions of credit in the event of the death, disability, or involuntary unemployment of the debtor pursuant to § 225.25(b)(8)(i)(A) and (B) of the Board's Regulation Y. These activities will be conducted in the State of Tennessee.

Board of Governors of the Federal Reserve System, November 21, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–26726 Filed 11–26–86; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Banks or Bank Holding Companies

The notifications listed below have applied for the Board's approval under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 12, 1986.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Jess Correll, Vincent Correll, and Ward Correll,* all of Somerset, Kentucky; to acquire 100 percent of the voting shares of Nabanco, Inc., Lancaster, Kentucky.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Aveue, Kansas City, Missouri 64198:

1. *C. Dennis Reese* and C. Dennis and/or Joyce Reese, Lenexa, Kansas; to retain ownership of 10.56 percent of the voting shares of Louisburg Bancshares, Inc., Louisburg, Kansas, and thereby indirectly acquire Bank of Louisburg, Louisburg, Kansas.

Board of Governors of the Federal Reserve System, November 21, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–26727 Filed 11–26–86; 8:45 am]

BILLING CODE 6210-01-M

Financial Institutions, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding

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Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 17, 1986.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Financial Institutions, Inc.*, Warsaw, New York; to acquire 54.95 percent of the voting shares of the Pavilion State Bank, Pavilion, New York.

2. *First National Bancorp, Inc.*, Norfolk, New York; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Norfolk, Norfolk, New York.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *National Penn Bancshares, Inc.*, Boyertown, Pennsylvania; to acquire 20 percent of the voting shares of Penncore Financial Services Corporation, Camp Hill, Pennsylvania, and thereby indirectly acquire Commonwealth State Bank, Newton, Pennsylvania. Comments on this application must be received by December 18, 1986.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *ICNB Financial Corporation*, Ionia, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of The Ionia County National Bank of Ionia, Ionia, Michigan. Comments on this application must be recieved by December 18, 1986.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Founders Bancorp, Inc.*, Scottsdale, Arizona; to become a bank holding company by acquiring 80 percent of the voting shares of Founders Bank of Arizona, Scottsdale, Arizona.

Board of Governors of the Federal Reserve System, November 21, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-26728 Filed 11-26-86; 8:45 am]

BILLING CODE 6210-01-M

[Docket No. R-0575]

Format for Wire Transfer of Funds

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Approval of format for wire transfer of funds.

SUMMARY: The Board of Governors of the Federal Reserve System ("Board") has approved a two-part program to require depository institutions sending funds transfers over Fedwire to provide third-party payments information in a structured message format. Specifically, a two-phased program has been approved which involves:

(1) A $0.25 surcharge for Fedwire funds transfers not conforming to a standard format, beginning April 1, 1988; and

(2) Mandatory use of the standard message format beginning April 3, 1989.

EFFECTIVE DATES: Phase one (surcharge, effective April 1, 1988; Phase two (mandatory use), effective April 3, 1989.

FOR FURTHER INFORMATION CONTACT: Julius F. Oreska, Manager, (202/452-3878) or Peggy Weimer, Senior Analyst, Division of Federal Reserve Bank Operations (202/452-3544); or Telecommunications Device for the Deaf ("TDD") users, Earnestine Hill or Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: On June 6, 1986, the Board issued for public comment a proposal to encourage use of a structured format for transmission of third-party payment information over Fedwire. (51 FR 21246, June 11, 1986) It was proposed that implementation of the standard Fedwire format would be phased in over a two-year period. Beginning in January 1988, a $0.25 surcharge would be assessed for each message that did not conform to the standard format. The standard format would become mandatory for Fedwire payments in January 1989, with nonconforming messages being rejected and returned to originators.

Background

The current Fedwire format for a funds transfer message consists of two parts. The first part contains precisely structured information that identifies the sending and receiving depository institution and the dollar amount of the transfer. The second part of the message contains information in an unstructured form about the customers of the depository institution involved in the transfer and the purpose of the transfer. The lack of structure in the second part of the message requires depository institutions receiving the messages to review payment instructions manually in order to post the payments to the customers' accounts.

In 1982, the American Bankers Association issued a report that recommended a format convention for Fedwire third-party payments. The convention requires that the third-party information be identified using standard three character identifiers, called field tags, for each field of information and that the fields of information be provided in a specific sequence. Although the Federal Reserve has supported this convention since its introduction, less than 11 percent of third-party messages processed on Fedwire are in the structured form.

Comments

Seventy-four comments were received in response to the request for public comment. Of the seventy comments which addressed the proposal, 58 supported the concept or parts of the concept, while 12 respondents opposed it.

One reason given by commenters in favor of the proposal was that use of the standard format would facilitate timely processing and posting of funds transfer messages, regardless of the institution's size or whether the posting was done automatically or manually. Some commenters believed that the use of standardized field tags to designate third-party information would enhance risk reduction efforts by facilitating more timely monitoring of customer accounts. In addition, some commenters stated that implementation of the proposal would allow institutions to reduce delays, errors, and uncertainties associated with messages received in the present free text format.

Reasons given by commenters for opposition to the proposal included: The current method of processing Fedwire payments was not time consuming, costly, or error-prone; the proposal would not facilitate timely or accurate posting of funds transfers; and the proposal catered to the needs of the large depository institutions.

Mandatory usage of the standard format beginning January 1, 1989, was supported by all but one of the commenters, but fifteen respondents commented on the unresolved status of a transferee depository institution's legal liability related to posting of a transfer on the basis of an account number rather than on the basis of account name. To realize the full benefits of the format by automatically posting payments to customers' accounts, these commenters suggested that certain legal questions concerning reliance on account numbers when posting transactions could be clarified by the Federal Reserve. this is a separate issue from standardizing the Fedwire format, and it will be studied further by the Board. The effectiveness of this proposal is not negated by failure to achieve immediate resolution of this legal issue.

Several commenters questioned the equity of the proposal that the Federal Reserve would provide software support to institutions with personal computer connections to the Reserve Banks.[1] These commenters believed that the personal computer ("PC") software modification should not be provided without charge to the institutions with PC connections to Fedwire, if the large computer interface ("CI") institutions were required to pay for their own software changes.

The Federal Reserve had three options available for handling the issue of providing software support to depository institutions. One option was not to provide software support to any institutions. This option, although equitable, would not foster use of the structured format, especially by small and medium size institutions who do not have the capacity to develop their own software. A second option was to provide application software to institutions with PC connections and those with CI connections. Due to the variety of software used by the CI banks it is impractical for the Reserve Banks to meet the software needs of the CI institutions. In addition, the CI institutions are much more capable of making the software changes needed to use the structured format. The third option, and the one the Board adopted, was to provide software to institutions with PC connections and technical advice to assist the CI institutions. Besides benefiting small- and medium-sized institutions with PC connections, this option benefits large institutions through technical assistance in meeting the target requirements and by smaller institutions originating messages in the standard format. The cost of providing the software is minimal, on the order of $175,000.

Several commenters questioned the cost basis for charging the $0.25 surcharge for nonstandard messages. Specifically, they believe that such a charge would more than recover the Federal Reserve's development costs and would then subsidize the basic Fedwire service.

The Board believes that the surcharge is necessary to recover costs and to encourage depository institutions to expend the resources to originate payments using the standard format. The surcharge will affect only depository institutions who fail to use the standard format. While it is difficult to predict the amount of revenue that might result, it is believed that the income from the surcharge should be relatively insignificant because of the long lead time before the surcharge policy becomes effective.

Some questions were raised by commenters concerning the standard format specifications as outlined in the technical document supplied by the Reserve Banks, including the length of the message and certain required fields. Many commenters believe that certain third-party beneficiary information (e.g., beneficiary account number) should be required for receivers to achieve full automation benefits.

Those suggestions have not been adopted, because originators of transfers do not always have access to information related to the beneficiary's account. Further, since the Federal Reserve cannot edit for the accuracy of the information contained in the field, the sending institution may include inaccurate information to pass mandatory edits. Technical constraints prohibit lengthening the Fedwire format beyond its present eight lines at the present time. Discussions with industry representatives and individual depository institutions indicate that the present eight line Fedwire format provides sufficient space for the large majority of present Fedwire payments. Optional fields included in the recommended message format can be utilized for additional text, if required by originators. Therefore, beneficiary information will remain an optional field.

Implementation

The majority of the commenters who discussed the implementation schedule believe that the proposed schedule of January 1, 1988, for the surcharge for nonconforming messages and January 1, 1989, for mandatory usage of the standard format was reasonable. Some commenters qualified their responses, stating that their implementation readiness is dependent upon the Federal Reserve providing the detailed technical specifications by the end of the third quarter of 1986, as specified in the request for public comment. This would provide a reasonable time period to prepare for implementation.

A preliminary document detailing the technical specifications of the format was available from the Reserve Banks upon request during the comment period. As a result of questions raised by commenters, the technical specifications have undergone some minor revision to address these issues.

Final format specifications have been completed and are now available from the Reserve Banks. Since many commenters expressed concern about having ample time to implement changes, the Board has changed the implementation dates to April 1, 1988, and April 3, 1989, respectively.

For the foregoing reasons, Reserve Banks will assess a $0.25 surcharge for all messages not conforming to the format beginning April 1, 1988. Use of the format will be mandatory beginning April 3, 1989.

By order of the Board of Governors of the Federal Reserve System, November 21, 1986.

William W. Wiles,

Secretary.

[FR Doc. 86-26725 Filed 11-26-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the

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[1] Approximately 6,300 depository institutions are electronically connected to the Fedwire network. The Reserve Banks' intelligent terminal application software is made available free of charge to the estimated 4,800 institutions with PC connections to the Fedwire network. Institutions connected to the Fedwire network pay either terminal leasing fees or, if they own their terminals, electronic connection fees.

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last list was published on November 7, 1986.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of packages)

National Institutes of Health

Subject: High frequency Hearing Sensitivity.

—NEW—

Respondents: Individuals or households.

Health Resources and Services Administration

Subject: Application to Participate in the Public Health Capitation Program—Extension—(0915-0089).

Respondents: Non-profit institutions.

Office of the Assistant Secretary for Health

Subject: Addendum to Financial Status Report—Reinstatement—(0937-0155).

Respondents: State or local governments; Non-profit institutions.

Subject: National Nursing Home Survey Followup.

—NEW—

Respondents: Individuals or households; Businesses or other for-profit; Non-profit instititions; Small businesses or organizations.

Subject: Laboratory Research on Response Error on Health Survey Questions.

—NEW—

Respondents: Individuals or households.

OMB Desk Officer: Bruce Artim.

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-8650 for copies of package)

Subject: State Agency Sheets for Verifying Exclusions from the Prospective Payment System—Extension—(0938-0358)—HCFA-437.

Respondents: State or local governments; Non-profit institutions; Small businesses or organizations.

OMB Desk Officer: Fay S. Iudicello.

Social Security Administration

(Call Reports Clearance Officer on 301-594-5706 for copies of package)

Subject: Earnings Statement Interview Guide.

—NEW—

Respondents: Individuals or households.

Subject: Statement for Determining Continuing Eligibility for Supplemental Security Income Payments—Revision—(0960-0131)

Respondents: Individuals or households.

Subject: Request for Worker's Compensation/Public Disability Benefit Information—Revision—(0960-0098)

Respondents: State or local governments; Businesses or other for-profit.

Subject: Statement for Determining Continuing Eligibility for Supplemental Security Income Payments—Revision—(0960-0145)

Respondents: Individuals or households.

Subject: Statement for Determining Continuing Eligibility for Supplemental Security Income Payments—Revision—(0960-0416)

Respondents: Individuals or households.

OMB Desk Officer: Judy A. McIntosh.

Office of the Secretary

(Call Reports Clearance Officer on 202-245-0509 for copies of package)

Subject: Implementation of the Equal Access to Justice Act in Agency Proceedings—Subpart B—Reinstatement—(0990-0118)

Respondents: Individuals or households; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.

OMB Desk Officer: Judy A. McIntosh.

Copies of the above information collection clearance packages can be obtained by calling the Reports Clearance Officer on the number shown above.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

ATTN: (name of OMB Desk Officer)

Dated: November 24, 1986.

Barbara S. Wamsley,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86-26866 Filed 11-26-86; 8:45 am]

BILLING CODE 4150-04-M

National Institutes of Health

Consensus Development Conference on Diet and Exercise in Noninsulin-Dependent Diabetes Mellitus; Meeting

Notice is hereby given of the NIH Consensus Development Conference on "Diet and Exercise in Noninsulin-Dependent Diabetes Mellitus," sponsored by the National Institute of Diabetes and Digestive and Kidney Diseases and the NIH Office of Medical Applications of Research, in collaboration with INSERM, Institut National de la Sante et de la Recherche Medicale, France. The conference will be held December 8-10, 1986, in the Masur Auditorium of the Warren G. Magnuson Clinical Center (Building 10) at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Noninsulin-dependent diabetes (also called adult-onset or type II diabetes) is the most common form of diabetes, affecting an estimated 10 million Americans. The cornerstone of treatment for this type of diabetes is not insulin or other drug therapy but, rather, the adoption of certain healthy living habits. Two of the most prominent lifestyle components are diet and exercise.

The conference will address the significance and recommended use of dietary modification and exercise in the treatment and prevention of this disease. Key questions that will be addressed are: (1) What is the significance of excess body fat in the patient with noninsulin-dependent diabetes mellitus? How can weight reduction best be achieved and maintained? (2) What are the appropriate components of the dietary prescription for patients with noninsulin-dependent diabetes mellitus? (3) What are the benefits and risks of exercise in patients with noninsulin-dependent diabetes mellitus? How should exercise be prescribed? (4) What is the evidence that weight control, diet, and/or exercise can prevent noninsulin-dependent diabetes mellitus? (5) What are the directions for future research?

This conference will bring together biomedical investigators, practicing physicians, other health professionals, and representatives of the public. Following 2 days of presentations by medical experts and discussion by the audience, a consensus panel will weigh the scientific evidence and formulate a draft statement in response to the questions above. On the morning of the third day, Consensus Panel Chairman George Cahill, M.D., Professor of Medicine, Harvard Medical School, and Director of Research, Howard Hughes Medical Institute, Boston, will read this preliminary Consensus Statement before the conference audience and invite comments and questions.

Information on the program may be obtained from Ms. Sharon Feldman, Prospect Associates, Suite 500, 1801 Rockville Pike, Rockville, Maryland 20852, phone (301) 468-6555.

Dated: November 21, 1986.

William F. Raub,

Acting Director, NIH.

[FR Doc. 86-26825 Filed 11-26-86; 8:45 am]

BILLING CODE 4110-01-M

National Institute of Environmental Health Sciences; Superfund Hazardous Substance Basic Biomedical Research & Training Grant Program; Meeting

Notice is hereby given of a meeting to be held at the National Institute of Environmental Health Sciences, Main Conference Facility, Building 101, Research Triangle Park, North Carolina, on December 15, 1986. The meeting will begin at 9 a.m. and end at approximately 4:00 p.m. The meeting is open to the public.

Background

The Superfund Amendments and Reauthorization Act of 1986 establishes a basic university research and education program within the Department of Health and Human Services. The law authorizes the Secretary, acting through the National Institute of Environmental Health Sciences (NIEHS), to conduct basic research including epidemiologic and ecologic studies in a broad range of areas related to understanding and attenuating the potential health effects resulting from exposure to hazardous substances. NIEHS is also authorized to allocate up to 10 percent of funds appropriated for this purpose to provide grants for training of state and local and other workers at Superfund sites and for long-term, post-graduate training in the biomedical sciences and the geosciences for professionals working in the hazardous waste field. Congress authorized funds for this program for a five-year period beginning in October 1986. The total amounts reserved for research, development, demonstration and training are $3 million in Fiscal Year 1987, $10 million in 1988, $20 million in 1989, $30 million in 1990, and $35 million in 1991. These dollar amounts are budget ceilings and actual amounts will be appropriated each year consistent with the Federal budget process.

The purpose of this meeting is to describe the new research programs assigned to NIEHS under the new Superfund Amendments and Reauthorization Act of 1986, legislation and to receive oral and written comments and suggestions regarding these new research initiatives. These comments will be considered by NIEHS staff in the development of a program announcement for appropriate biomedical research areas.

Topics to be discussed in the morning session may include but are not limited to: Overview of section 311a, Superfund Amendments and Reauthorization Act of 1986 legislation; Superfund biomedical research program—some possible approaches; NIEHS grants process and implementation plan. Those wishing to make oral presentations on the research program will be given that opportunity in the afternoon session. These presentations must be limited to 7 minutes. Oral presentations should be supported by written documents that can be left with Ms. Riley at the meeting.

A draft program description to be summarized at the meeting is described below. Written comments are encouraged and it is requested that they be received by close of business on December 10, 1986. Every effort will be made to consider comments received through December 19. In order to accommodate as many people wishing to speak as possible, persons wishing to make oral presentations should contact Ms. Riley at the address below no later than December 10, 1986.

Ms. Janet A. Riley, Administrative Office, OD, NIEHS, P.O. Box 12233,
Research Triangle Park, NC 27709

Attendance is limited only by space available. For further information regarding the meeting, please contact Ms. Riley at the above address or telephone 919-541-7621 or FTS 629-7621. The official Government representative for this meeting will be Dr. Anne P. Sassaman.

Dated: November 24, 1986.

David P. Rall,

Director.

Program Background and Description

This NIEHS hazardous substance basic biomedical research and training complements a broader research and development component of Superfund managed by three Federal agencies.

The Environmental Protection Agency (EPA), the principal manager of the Superfund program, has specific mandated research responsibilities in the areas of assessment of the environmental impact of hazardous substances at sites, hazardous waste containment and destruction technologies, and environmental transport and fate. Protection of public health and welfare is the primary goal of EPA, and thus it also has authority to conduct and support research to monitor and test for hazardous substances in the environment and for health effects and health risks of hazardous substances.

The Agency for Toxic Substances and Disease Registry (ATSDR) in the U.S. Public Health Service was established by the original Superfund law in December 1980. ATSDR provides site specific, public health assessments and advisories to EPA and to state and local agencies, citizens, and health care providers. In addition, ATSDR supports applied research activities such as the development and evaluation of toxicologic profiles for hazardous substances found at Superfund sites, the initiation (in cooperation with the HHS's National Toxicology Program and EPA's Toxic Substances Control Act and Federal Insecticide, Fungicide, and Rodenticide Act programs) of toxicologic testing where necessary for these substances. ATSDR also supports research into improved clinical laboratory methods to assess human exposure in communities affected by Superfund sites and may establish exposure registries, health surveillance systems, and epidemiologic studies.

NIEHS's basic hazardous substances biomedical research and training responsibilities are a new facet of the Superfund program and are intended to provide a wide range of research to address the broad public health concerns arising from the release of hazardous substances and hazardous wastes during catastrophic incidents and from uncontrolled, leaking waste disposal sites. NIEHS is an institute of the National Institutes of Health and for 20 years has been the Federal focus for basic environmental health and related research. The Superfund reauthorization builds on the NIEHS's history of conducting in-house research and supporting grants for environmental health sciences research, and specifically requires that NIEHS Superfund basic biomedical research and training grants be awarded in accordance with Section IV of the PHS Act. Under Section IV, NIEHS is required to follow the grants procedures established by the National Institutes of Health. NIEHS must outline research opportunities and promising areas of inquiry relevant to a particular field of biomedical science (in this instance, the broad field of hazardous substance health effects), and publicize the Program Announcement in the *NIH Guide to Grants and Contracts.*

Applications for grants for specific research projects are solicited from institutions and organizations through publication of Program Announcements or Requests for Applications in the *NIH Guide.* (Under the Superfund

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Reauthorization Act these are limited to universities.) All applications for research programs must be evaluated for scientific merit by a peer review panel of eminent, primarily non-Federal scientists, taking into account the training and experience of the researchers, and the facilities and equipment of their institutions. A second level review is conducted by the National Advisory Environmental Health Sciences Council.

Grants are awarded by NIEHS on the basis of the recommendations from the peer reviewers and the Council, programmatic priorities of the Institute, and the availability of funds. This mechanism maximizes the strengths of these interrelated groups. The NIEHS staff (in collaboration with their colleagues in EPA and ATSDR, and the broader scientific community) define broad areas of research opportunities; the academic research community conceives specific research inquiries related to the broad public health problem; and the scientific peer review system identifies the best applications for funding support.

NIEHS intends to initiate this process quickly to avoid delays and to capitalize on the enthusiasm arising from enactment of the Superfund reauthorization. However, it is recognized that coordination and communications are vital to the eventual success of this program. Accordingly, NIEHS will schedule annual meetings to facilitate exchange of information among grantees and to foster communication and coordination among the relevant Federal agencies. Internal NIEHS scientific staff discussions and conversations with other scientists already have resulted in a draft outline of some representative avenues of research opportunity relevant to the health concerns associated with hazardous waste transport, storage and release of hazardous substances into the environment. This draft follows an outline and uses headings taken from the language pertaining to the NIEHS responsibilities in the Superfund reauthorization act.

NIEHS interprets the act to permit NIEHS to fund grants for engineering, ecologic, and hydrogeologic research. The draft outline, however, focuses on biomedical research opportunities. NIEHS plans to support engineering, ecologic, and hydrogeologic research insofar as they are integral parts of a larger, broad-based biomedical research program grant. Because of the press of time and the need to follow prescribed NIH grants procedures, NIEHS will focus on biomedical research grant applications in the first fiscal year of the program. Applicants preparing grants for first year funding will be encouraged to develop supplemental applications in subsequent years if they wish to expand their research to include engineering and/or ecologic components. Applicants for funding in the first year who plan to add engineering/ecologic research components should so indicate at the time of their initial application, if at all possible. Any information the applicant can provide indicating ways these components would be linked to the biomedical research would be useful. Applicants for grants in the second and third years are encouraged to develop multidisciplinary basic biomedical research program proposals with supporting engineering and/or ecologic components. NIEHS also recognizes the importance of prevention in the protection of public health. Consequently, applicants are asked to consider basic research into methods to attenuate the toxicity or other hazards associated with hazardous substances or to mitigate the effects of exposure on populations at risk.

An opportunity exists to integrate the research training grants into institutions receiving grants of basic research. Universities may include proposals either for education and training in the biomedical and geosciences or for training state and local or other workers in applications to NIEHS. Universities with programs which emphasize research can enter into contracts with public or private entities and state or local agencies to provide education and training or for any other purpose which might strengthen their research projects. Certain of these long-term training programs may be carried out in conjunction with the National Institute for Occupational Safety and Health.

The research and development section of the Superfund reauthorization provides a unique opportunity for the creation of university based biomedical research program with close ties to engineering and hydrogeologic sciences and to the field of ecology. These broad programs have great potential for improving the understanding of the relationships between human exposures to hazardous substances and adverse health effects.

NIEHS plans to take advantage of this opportunity to solicit and support from Superfund monies basic biomedical research grants which will ultimately become multi-disciplinary centers in universities.

Draft Outline of Some NIEHS Superfund Hazardous Substance Basic Biomedical Research and Development Opportunities

A. Methods/Technologies to Detect Hazardous Substances in the Environment

1. New methods should be developed to detect and determine the chemcials/agents present at/near dump sites. These methods should have the sensitivity and specificity needed to detect the lowest concentrations of hazards which could post toxic threats to humans.

The development of these new methods for detection and quantification of chemicals present at/near dump sites should be linked to the study/review of the toxicity of those chemicals present at the site in order to have guidelines as to the sensitivity/specificity needed in the new methods.

Special attention needs to be paid to the fact that most chemicals/hazards at dump sites will occur in complex mixtures—that is, with chemicals of many kinds, as well as with soil, water, and air. Interfering substances, or changes in the chemical/toxic material being analyzed, can occur in the process of sample collection (on air filters for example) and need to be considered. New approaches are needed for the analysis and toxicologic evaluation of chemicals/agents in such mixtures.

2. Improved techniques are needed for measuring and modeling movement and alteration of chemicals through the media surrounding the waste dump in order to increase the reliability of measurements for risk assessment at such sites.

Investigations as to presence/spread of toxic materials away from dumpsites should consider and attempt to measure the presence of these materials in many places/sources. This would at least include wells providing water to area homes; streams/surface waters in the neighborhood (especially waters providing fish, bath water); air in the neighborhood where people move/live; ground; dust/particulates in these same areas (and in all parts of the household including pets, rodents). Multiple samples should be taken since variation over time in pollutant presence and concentration are likely in each of these vectors.

Animals living in/near dump sites might be sampled to detect the presence/spread of chemicals from the dump. These animals might be feral (rats, mice, rabbits, fish, reptiles, birds) or domestic (pets of households close to the dump). Multiple samples (e.g. blood might be taken from living animals, but more complete analysis might be possible only on dead/sacrificed animals. Animals (e.g. rodents, rabbits, etc.) might be added to the dump site (in cages/defined areas?) for sampling at definite intervals (to detect spread of chemicals, etc.).

B. Advanced Techniques for the Detection, Assessment, and Evaluation of the Effects on Human Health of Hazardous Substances

1. Methods should be developed for human dosimetry, e.g., by sampling blood, urine, tissues. Specific and sensitive methods to detect and quantify toxic chemicals in human tissues (including blood) at the concentrations likely to occur after environmental exposures are needed for almost all chemicals likely to occur at dump sites. The application of newer analytical techniques to biological samples often requires extensive adaptation and validation. When this is done, these methods may give reliable estimates of exposure of humans to chemicals and also give some idea of time of exposure (if analysis is done on samples taken at different times in the same person, and this study is coupled with pharmacokinetic expertise.).

This dosimetry must be coupled with accurate and sensitive measure in exposed persons of the biological actions of the specific chemicals contacted.

In these ways carefully designate epidemiological and risk assessment studies of persons exposed to dump site chemicals may be carried out (either at the dump site or at the site of an industrial accident).

2. Methods to detect and quantify chemical metabolites, and adducts of chemicals with human/animal tissue macromolecules (enzymes, other tissue proteins, and DNA/RNA) may also be useful in detecting and quantifying exposure and estimating times of exposure to hazardous materials/chemicals. Some metabolites or stable adducts may give estimates of cumulative exposures to chemicals. These approaches need to be applied and validated in studies of exposures to hazards from dump sites. The detection and qualification of chemical adducts in biological samples are especially difficult and in need of new approaches (e.g., some of these adducts are present in very small amounts and many are also short-lived; adduct reference standards are frequently unavailable).

The research here should also be communicated to those working to develop methods for detection/quantification of chemicals in water, soil and air around dump sites (see A.1., above)—since many chemicals also form adducts/methabolites in passage from the dump site to the various sampling points.

3. Methods are needed to "fingerprint" the biological effects of specific hazardous chemicals/pollutants so that exposures to such chemicals can be more easily/clearly defined and set apart from effects produced by other chemicals/causes. These methods should be applicable to humans, and to the levels of (and perhaps intermittent exposures to) hazardous chemicals likely to be contacted in environmental/dump sites.

Exposures to toxic chemicals may result in different gene expressions and these might be detected by gene products—different enzymes or proteins or different amounts of these. Both repression and depression are possible. Oncogenes and anti-oncogenes would be a subset of these phenomena and marking their activation/repression could also mark exposures to toxic chemicals.

(a) One example here might be the peculiar cytochrome P-450 isozymes produced in both animals and humans and in several tissues by some pollutants. The presence of these specific P-450 isozymes and their amounts (e.g., in a biopsy/autopsy sample) might then be used to detect and quantify the exposure of the person so sampled to things like PCBs or TCDD.

(b) New enzyme formation following pollutants exposure may be detected by measuring enzyme activity. Newer techniques for such measurements can be applied to humans and animals—and may be done with non-radioactive labeled "substrates"—e.g., ^{13}C-labeled caffeine, antipyrine.

(c) Another example here might be the use of specific induction of sets of genetic changes to distinguish between different mutagens/chemicals. Effects of different polycyclic hydrocarbons (PCHC) can be so distinguished in cultured human cells. An example here is the change in sister chromatid exchanges (increase) in cultured lymphocytes from animals exposed to some PCHC. Such effects need additional testing/validation.

(d) If a hazardous chemical induced the production of an antibody in persons exposed to it, then detection of this antibody might prove exposure of the person so tested to this chemical. Such antibody detection could be very sensitive and specific for such toxic chemical exposures. Highly reactive chemicals (forming adducts with proteins, etc.) might be more likely to produce these kinds of reactions than chemicals which did not form such adducts.

4. Behavioral/neurological effects of low-level exposures to toxic chemicals should be investigated as possible early indicators of pollutants contacts around dump sites.

(a) An example here is the possible use of learning tests or video games which seem to measure small decrements in integrated CNS functions produced by things like exposure to lead. The specificity (differences between toxic chemicals) of the changes in such measures is unknown at present.

5. Possible effects of dump-site chemicals on all aspects of the reproduction process should be assessed. In humans, both male and female effects can now be studied.

(a) In males, semen and sperm analysis is possible (e.g., measure chemicals there, and also study effects on sperm biochemistry, morphology, activity, ability to fertilize hamster eggs, etc.)

(b) In females, present tests are probably inadequate and new tests are needed, but menstrual cycle irregularities, time to menopause, and failure to conceive are now used.

(c) Pregnancy rates and outcomes need to be monitored, and studies on fetuses and newborns of animals/people living near dump sites could be very valuable. Maternal exposures to chemicals can be indicated by changes in maternal, fetal, and placental enzymes; or if there is actual presence of chemicals/metabolites/adducts in amniotic fluid, maternal, placental, and fetal/newborn tissues (sampled before or at birth, and when amniocentesis is done, or when there is a miscarriage etc.).

(d) Teratology as an outcome of animal (feral or domestic pets) or human pregnancy and its relation to chemical exposures needs study (both by laboratory testing of dump site chemicals, and in the field by careful epidemiology). Early tests for pregnancy (hCG assays) may be helpful for both diagnosis and prevention strategies.

6. Immunological studies of exposed populations might be useful. Many pollutants change immune reactions (TCDD, PBBs depress immune response to viruses, etc.) and such changes may be indicators of exposure. This needs better methodology and validation for low level exposures.

December 15—Open meeting to discuss scientific content of biomedical research program. Incorporate comments/suggestions into final biomedical research planning document. Finalize RFQ/PA.

January 26–27—Discussion of research plan, concept, clearance by National Advisory Environmental Health Sciences Council.

January 30— Announcement in NIH Guide describing program, soliciting applications for FY 87 awards.

February—Open meeting to discuss engineering/ecology plans.

March—Second NIH Guide describing full programs, including engineering/ecology; announce fall receipt date.

*?

May 1—Receipt date for applications (cleared with DRG).

*?

July—Review committees meet (no site visits).

September 15—Proposed receipt date for FY 88 applications.

September 14–15—Review of applications by National Advisory Environmental Health Sciences Council.

September 30—Start date for FY 87 awards.

*? Superfund Research and Development Advisory Committee meets to review research plan. Date dependent upon appointments.

[FR Doc. 86–26826 Filed 11–26–86; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting of the Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee, National Heart, Lung, and Blood Institute, January 14–15, 1987, Federal Building, Conference Room B119, 7550 Wisconsin Avenue, Bethesda, Maryland 20892. The entire meeting will be open to the public from 8:30 a.m. to approximately 5:00 p.m. on Wednesday, January 14, and from 8:30 a.m. to adjournment on Thursday, January 15, to evaluate program support in Arteriosclerosis, Hypertension and Lipid Metabolism. Attendance by the public will be limited on a space available basis.

Ms. Terry Bellicha, Chief, Public Inquiry and Reports Branch, National Heart, Lung and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members.

Dr. G.C. McMillan, Associate Director, Arteriosclerosis, Hypertension and Lipid Metabolism Program, NHLBI, Room 4C12, Federal Building, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–1613, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: November 24, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86–26828 Filed 11–26–86; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting of the National High Blood Pressure Education Program Coordinating Committee

Notice is hereby given of the meeting of the National High Blood Pressure Education Program Coordinating Committee sponsored by the National Heart, Lung, and Blood Institute on January 16, 1987, from 8 a.m. to 1 p.m., Bethesda Hyatt Regency, One Bethesda Metro Center, Bethesda, Maryland 20814, (301) 657–1234.

The entire meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National High Blood Pressure Education Program. Attendance by the public will be limited to space available.

For the detailed program information, agenda, list of participants, and meeting summary, contact: Dr. Edward J. Roccella, Coordinator, National High Blood Pressure Education Program, Office of Prevention, Education and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A05, Bethesda, Maryland 20892, (301) 496–0554.

Dated: November 21, 1986.

William F. Raub,

Acting Director, NIH.

[FR Doc. 86–26827 Filed 11–26–86; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Methyl Methacrylate

The HHS' National Toxicology Program today announces the availability of the Technical Report describing the toxicology and carcinogenesis studies of methyl methacrylate, which is used primarily as a chemical intermediate in the plastics industry. Toxicology and carcinogenesis studies were conducted by exposing groups of 50 male rats to atmospheres containing methyl methacrylate at 0, 500, or 1,000 ppm; female rats at 0, 250 or 500 ppm; and male and female mice at 0, 500, or 1,000 ppm for a period of two years.

Under the conditions of these 2-year inhalation studies, there was no evidence of carcinogenicity[1] of methyl methacrylate for male F344/N rats exposed at 500 or 1,000 ppm, for female F344/N rats exposed at 250 or 500 ppm, or for male and female B6C3F$_1$ mice exposed at 500 or 1,000 ppm. Inhalation of methyl methacrylate was associated with inflammation of the nasal cavity and degeneration of the olfactory sensory epithelium in male and female rats and mice; epithelial hyperplasia of the nasal cavity was also observed in exposed mice.

Copies of *Toxicology and Carcinogenesis Studies of Methyl Methacrylate in F344/N Rats and B6C3F$_1$* Mice (Inhalation Studies) (TR 314) are available without charge from the NTP Public Information Office, MD B2–04, P.O. Box 12233, Research Triangle Park, NC 27709. Telephone (919) 541–3991, FTS: 629–3991.

Dated: November 19, 1986.

David P. Rall,

Director.

FR Doc. 86–26829 Filed 11–26–86; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–943–07–4220–11; I–15071]

Idaho; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that a portion of a withdrawal for the Boise Reclamation Project be continued for an additional 100 years, which is the estimated remaining life of the improvements with which it would be associated. Under the proposal, the 16,925 acres involved would remain closed to surface entry and the mining

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[1] The NTP uses five categories of evidence of carcinogenicity to summarize the strength of the evidence observed in each animal study: two categories for postive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

laws, but have been and would remain open to the mineral leasing laws.

DATE: Comments should be received within 90 days of the date of publication of this notice.

ADDRESS: Comments should be sent to: Idaho State Director, Bureau of Land Management, 3380 Americana Terrace, Boise, ID 83706.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, Idaho State Office, 208-334-1597.

The Bureau of Reclamation proposes that a portion of the land withdrawal made by the Secretarial Order of November 9, 1937, be continued for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The land are located within the following-described townships:

Boise Meridian, Idaho

T. 5 N., R. 7 E.
T. 8 N., Rs. 4 and 5 E.
T. 9 N., Rs. 5 and 6 E.
T. 10 N., Rs. 4 and 5 E.
T. 11 N., R. 4 E.
T. 19 N., R. 1 W.

The total area involved contains 16,925 acres, more or less, in Elmore, Boise, Valley and Adams Counties. Most of the lands involved are located in the vicinity of the South and Middle Forks of the Payette River near Garden Valley. Additional acreages are located around Lost Valley Reservoir west of McCall and along the North Fork of the Boise River southeast of Idaho City.

The purpose of the withdrawal is to protect the lands for use as potentual irrigation storage, power generation and flood control facilities. No change is proposed in the purpose for segragative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued, and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: November 19, 1986.

William E. Ireland

Chief, Realty Operations Section.

[FR Doc. 86-26720 Filed 11-26-86; 8:45 am]

BILLING CODE 4310-GG-M

[AZ-020-7-4212-13; AR-034183]

Public Land Exchange in Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of termination and opening order.

SUMMARY: Notice is hereby given that the Notice of Realty Action published in the **Federal Register** on April 10, 1985 (50 FR 14165) for public land exchange AR-034183 is to be terminated. Upon termination of the Notice of Realty Action, the public lands described therein will be subject to appropriation under the public land laws and the mining laws.

DATE: This action is effective at 10:00 a.m. on December 15, 1985.

FOR FURTHER INFORMATION CONTACT: Mike Berch, Realty Specialist, Kingman Resource Area, 2475 Beverly Avenue, Kingman, Arizona 86401, (602) 757-3161.

Dated: November 19, 1986.

Marlyn V. Jones,

District Manager.

[FR Doc. 86-26737 Filed 11-26-86; 8:45 am]

BILLING CODE 4310-32-M

[NV-030-07-4333-12]

Camping Limits on Public Lands Within the Carson City District

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of Special Camping Rules on Public Lands Administered by the Carson City District, Nevada.

Special Recreation Management Areas

The following rules apply to lands administered by the Bureau of Land Management (BLM) within the Indian Creek-East Fork, Walker Lake, and Churchill County Special Recreation Management Areas:

1. Persons may occupy any one site or sites open to camping within a special recreation management area (SRMA) for not more than fourteen (14) days during any twenty-one (21) day period. Following the 14 days, persons may not relocate on BLM lands within the same SRMA until completion of the 21-day period. Exceptions will be made to accommodate campground volunteers.

2. An exception to Rule 1 will be made to allow certain long-term camping within the Walker Lake SRMA. With permission from the Area Manager's field representative, long-term camping of up to 30 continuous days will be permitted. Long-term campers may be assigned to specific sites to reduce conflicts with other users. Long-term camping will not be permitted for residential purposes, where a member of the camping party leaves the camping area to maintain employment.

3. Camping is not permitted at the Hangman's Bridge launch and Ruhenstroth Dam takeout sites within the Indian Creek-East Fork SRMA from April 5 through July 15.

4. Parking areas at the Grimes Point and Cold Springs sites within the Churchill County SRMA may be used for overnight resting. The length of stay shall not exceed 14 hours.

5. The following is prohibited within all special recreation management areas:

(a) Failing to have at least one person occupy a camping area during the first night after camping equipment has been set up.

(b) Leaving personal property unattended for more than 24 hours without permission from the Area Manager.

Extensive Recreation Use Areas

The following rules apply to all other lands administered by the Carson City District, Nevada.

1. Persons may camp on public lands not closed or otherwise restricted to camping for a total period of not more than twenty-one (21) days during any one twenty-eight (28) day period. Following the 21-day period, persons may not relocate to other District lands until completion of the 28-day period. Under special circumstances and upon request, the Area Manager may give written permission for extension beyond the 21-day limit.

2. Camping overnight is not permitted in the Steamboat Geyser Basin, Washoe County, Nevada, on lands described as the SW1/4SW1/4, Sec. 28, and NE1/4NW1/4, Sec. 33, T. 18 N., R. 20 E., Mount Diablo Mer.

3. Persons may not camp on public lands near Carson City, Nevada, residential areas for more than (3) days during any fourteen (14) day period.

This includes all public lands in T. 15 N., R. 19 E.; T. 15 N., R. 20 E.; T. 14 N., R. 19 E.; and Sections 2 through 8, T. 14 N., R. 20 E., Mount Diablo Mer.

4. Persons shall not leave personal property unattended within extensive recreation use areas for more than 72

hours without permission of the Area Manager.

SUPPLEMENTARY INFORMATION: These camping limits are established to reduce the incidence of long-term occupancy trespass conducted under the guise of camping; to allow the general public equitable access to desired recreation sites; to reduce competition with private developments that offer sites for temporary and long-term residential uses; and to protect certain sensitive public resources.

Authority for these rules is contained in CFR Title 43, Chapter II, Part 8365, Subpart 8365.1-2, 8365.1-6, and 8365.2-3.

DATE: These rules will be effective immediately upon publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: District Manager, Carson City District Office, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89701. Telephone (702) 882-1631.

Dated: November 14, 1986.

James W. Elliott,

District Manager, Carson City District.

[FR Doc. 86-26718 Filed 11-26-86; 8:45 am]

BILLING CODE 4310-HC-M

[ID-050-07-4920-10-7887]

Intent to Amend the Monument Resource Management Plan

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of intent to prepare a planning amendment for public land in Jerome County, Idaho.

SUMMARY: The Shoshone District, Bureau of Land Management, has received a request to sell North Side Canal Company a parcel of public land on which to build a hydro-electric generation project. The parcel identified is the only location suitable for the project and Federal Energy Regulatory Commission regulatons restrict the proposed development to privately owned land. Since the Monument Resource Management Plan decision for the parcel is retention in public ownership, a planning amendment is required to allow disposal.

DATE: Comments should be submitted by December 31, 1986.

ADDRESS: Shoshone District Office, P.O. Box 2-B, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: Robert D. Cordell or Joseph Aitken, Telephone (208) 886-2206.

SUPPLEMENTARY INFORMATION:

1. *Description of the Proposed Planning Action:* The Shoshone District, Bureau of Land Management, proposes to prepare a planning amendment which will consider changing the designation of a specific parcel of public land from retention to disposal.

2. *Geographic Area:* The legal description of the public land is: Township 9 South, Range 19 East, Boise Meridian, Section 24: SE¼NE¼, 40.00 acres. The land is located 1½ miles west and 2 miles north of Hazelton, Idaho. At the Wilson Lake Dam in Jerome County. The 40 acre parcel includes the existing Wilson Lake Dam and Ditch Rider Station.

3. *Anticipated Issues:* The only anticipated issues is that of land disposal. This is considered a non-controversial action and no oppositon is anticipated from existing users or the public.

4. *Disciplines Represented and Used to Prepare The Planning Amendment:* The following resources will be considered in preparing the planning amendment: Lands, wildlife, range, minerals, cultural, watershed/soils, and threatened/endangered plant and animal species. Staff members representing each resource will make up the planning team.

5. *Scheduled Public Meeting:* No public meetings are scheduled at this time.

6. *Location and Availability of Documents Relevant to the Planning Process:* All documents are located at the Shoshone district Office. The hours of availability are 7:45 a.m. to 4:30 p.m. Monday through Friday, except holidays.

Dennis D. Schufe,

Acting District Manager.

[FR Doc. 86-26719 Filed 11-26-86; 8:45 am]

BILLING CODE 4310-GG-M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service'ss clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service clearance officer and the OMB Interior Desk Officer, Washington, DC 20503, telephone 202-395-7313.

Title: North American Woodcock Singing-Ground Survey.

Abstract: Data is used to assess the population status of the woodcock. Such data is used by Federal, State, and Canadian conservation agencies in the evaluation and formulation of annual hunting and shooting regulations.

Frequency: Annually.

Description of Respondents: Individuals and households and Federal, State and local governments

Annual Responses: 1

Annual Burden Hours: 580

Service Clearance Officer: James E. Pinkerton, 202-653-7499, Room 859, Riddell Building, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: November 3, 1986.

Walter O. Stieglitz,

Assistant Director—Refuges and Wildlife.

[FR Doc. 86-26739 Filed 11-26-86; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Champlin Petroleum Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5553, Block 184, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located on Fourchon and Patterson, Louisiana.

DATE: The subject DOCD was deemed submitted on November 19, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Wholesalers Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 21, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-26722 Filed 11-26-86; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30940]

D&I Railroad Company; Operation; Between Hawarden, IA, and Beresford, SD; Modified Rail Certificate

November 18, 1986.

D&I Railroad Co. (D&I) filed for a modified certificate of public convenience and necessity under 49 CFR 1150 Subpart C on October 31, 1986, and supplemented it on November 12, 1986. D&I is now authorized to provide serivce over the line of the former Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MICW), between Hawarden, IA and Beresford, SD.[1]

The State of South Dakota acquired this line following an order of abandonment issued by the United States District Court for the Northern District of Illinois, Eastern Division, in proceedings for the reorganization of MILW.

D&I will operate this line pursuant to agreements between the State of South Dakota, the Sioux Valley Regional Authority and itself, and between the Burlington Northern Railroad Company and itself.

A copy of this modified certificate notice shall be served on the Association of American Railroads (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86-26754 Filed 11-26-86; 8:45 am]

BILLING CODE 7035-01-M

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[1] Applicant questions whether it must specifically seek general common carrier authority in its modified certificate. It notes that, in the original modified certificate issued in Finance Docket No. 29910, *D&I R. Co.—Operation Betw. Sioux Falls, SD, and Sioux City, IA* (not printed), served May 4, 1982, involving service between Sioux Falls and Sioux City, IA, it has only requested authority to transport aggregate materials. Amendments to modified certificates to expand commodity authority is unnecessary. The certificates grant general commodity authority without any commodity restriction. Therefore, no additional authority is required to transport general commodities between Sioux Falls and Sioux City. As a result, this modified certificate is limited to authoritzing operations between Howarden and Beresford.

Intent To Engage in Compensated Intercorporate Hauling Operations; Ajax Energy Partners et al.

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named partnership and subsidiary corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent partnership and address of principal office: Ajax Energy Partners, c/o DJ Resources, Inc., 225 West 34th Street-Suite 1107, New York, New York 10122.

2. Wholly-owned subsidiaries which will participate in the operations, and States of incorporation:

Ajax Hudson Petroleum, Inc., New York
Best Petroleum, Inc., New York
Ajax Energy Trucking Co., Inc., New York
Heather Trucking, Ltd., New York
Petro Chemical Trucking, Ltd., New York

B. 1. Parent Corporation and address of principal office: Vogel Paint and Wax Co., Inc., Industrial Airpark, Orange City, Iowa 51041—State of Incorporation—Iowa.

2. Wholly-owned subsidiaries which will participate in the operations and State(s) of incorporation:

	State of incorporation
Previous Notice: (9/13/83)	
Master Products	Iowa
Quad States Industries, Inc	Iowa.
Diamond Vogel Paint Company	Iowa.
Diamond Products Company	Illinois.
Vogel Paint Mfg. Co., Inc	Nebraska.
Van Sickle Paint Mfg. Co	Nebraska.
Tretiak's Inc	Nebraska.
Marwin Paint, Inc	Minnesota.
Mile Hi Paints & Equipment Co	Colorado.
Komac Paint, Inc	Colorado.
Diamond Vogel of Wisconsin, Inc	Wisconsin.
Addition: (10/8/86)	
Franklin Enterprises Limited	Iowa.

C. 1. Parent corporation and address of principal office: Gifford-Hill & Company, Inc., P.O. Box 47127, Dallas, Texas 75247; Physical Address: 300 E. John Carpenter Freeway, Irving, Texas 75062. Incorporated—Delaware.

2. Wholly-owned subsidiaries which will participate in the operations and address of their respective principal offices:

(i) ConAgg Transportation, Inc., P.O. Box 47127, Dallas, Texas 75247; Physical Address: 300 E. John Carpenter Freeway, Irving, Texas 75062. Incorporated—Texas.

(ii) Gifford-Hill Concrete Company, P.O. Box 47127, Dallas, Texas 75247; Physical Address: 300 E. John Carpenter Freeway, Irving, Texas 75062. Incorporated—Texas.

D. 1. Parent corporation and address of principal office: INTERCO INCORPORATED, 101 South Hanley Rd., St. Louis, Missouri 63105.

2. Wholly-owned subsidiaries which will participate in the operations and states of incorporations:

Delmar Sportswear, Inc., Maryland
Big Yank Corporation, Delaware
Patriot Investment Company, Missouri
Fine's Men's Shops, Inc., Virginia
Converse, Inc., Delaware
United Shirt Distributors, Inc., Delaware
Golde's Department Stores, Inc., Missouri
QCS, Inc., Missouri
Cowden Manufacturing Company, Kentucky
Stuffed Shirt, Inc., Delaware
Queen Casuals, Inc., Delaware
Northeast Factory Outlet, Pennsylvania
Londontown Corporation, Delaware
Matthew Manufacturing Company, Maryland
Star Sportswear Manufacturing, Corp., Delaware
The Scranton Outlet Corporation, Delaware
Washington Holding Company, Georgia
Milford Sportswear, Inc., Delaware
Sky City, Stores, Inc., Delaware
Broyhill Furniture Industries, Inc., North Carolina
Highland House, Inc., North Carolina
Furniture Craftsmen of Hickory, Inc., North Carolina
Highland Transport, Inc., North Carolina
Grand Entry Hat Corp., New York
Central Hardware Company, Missouri
Witte Hardware Corporation, Missouri
TA Whitney Ltd., Delaware
INTERCO Export, Ltd., Missouri
Lease Management, Inc., Missouri
Abe Schrader Corporation, Delaware
SS Advertising Associates, Inc., New York
The Biltwell Company, Inc., Missouri
Ace Sweater Mills, Inc., South Carolina

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Campus Sweater & Sportswear Export Company, Ohio
Carolina Sportswear Company, North Carolina
Central Sportswear Company, North Carolina
Chester Sportswear Company, South Carolina
Creedmoor Sportswear Company, South Carolina
Ellwood Knitting Mills, Inc., Pennsylvania
Warren Shirt Company, Pennsylvania
St. Paul Sportswear Company, Virginia
Label Corp., South Carolina
Kenbridge Sportswear Company, Virginia
H & H Manufacturing Corp., Georgia
Nationwide-Penncraft, Inc., Georgia
Rogin, Inc., Georgia
LaCrosse Sportswear Corporation, Virginia
Factory Outlet Company, Delaware
Lexington Sportswear Company, South Carolina
Louisburg Sportswear Company, North Carolina
Morgan Sportswear Company, Georgia
Olympic Sweater & Sportswear Company, Ohio
Southampton Sportswear Corporation, Ohio
Swainsboro Sportswear Company, Georgia
Campus Far East Company, Ohio
Flat Rock Manufacturing Company, Georgia
The Florsheim Shoe Store Company of Fairfield, Alabama
The Florsheim Shoe Store Company of Hollywood, California, California
The Florsheim Shoe Store Company of Santa Barbara, California
The Florsheim Shoe Store Company of Merle Hay Mall, Iowa
The Florsheim Shoe Store Company of San Diego, Ltd., California
The Florsheim Shoe Store Company of California, California
Thayer McNeil Shoe Company of San Mateo, California
The Florsheim Shoe Store Company of Tremont, Colorado
The Florsheim Shoe Store Company of Waterbury, Connecticut
The Florsheim Shoe Store Company of Clarence, N.Y. Inc., New York
The Florsheim Shoe Store Company of Dadeland, Florida, Florida
The Florsheim Shoe Store Company of Georgia, Georgia
Thayer McNeil of Miami, Inc., Florida
The Florsheim Shoe Store Company of Miami Beach, Florida, Florida
The Chicago Florsheim Shoe Store Company, Illinois
The Florsheim Shoe Store Company of Lafayette Square, Inc., Indiana
The Florsheim Shoe Store Company of Brantree, Inc., Massachusetts
The Florsheim Shoe Store Company of Woodland, Michigan
The Florsheim Shoe Store Company of Brookdale, Minnesota, Minnesota
The Florsheim Shoe Store Company of Oxmoor, Kentucky
The Florsheim Shoe Store Company of Southdale, Minnesota
The Florsheim Shoe Store Company of New Orleans, Inc., Louisiana
The Florsheim Shoe Store Company of Baltimore, Maryland
The Florsheim Shoe Store Company of West County, Missouri
L. J. O'Neill Shoe Company, Missiouri
The Florsheim Shoe Store Company of Moorestown, New Jersey
The Florsheim Shoe Store Company of Inc., New York
The Florsheim Shoe Store Company of Livingston, New Jersey
The Florsheim Shoe Store Company of Sunrise Mall, Inc., New York
The Florsheim Shoe Store Company of Akron, Ohio, Ohio
The Florsheim Shoe Store Company of of Canton, Ohio
The Florsheim Shoe Store Company, Ohio
The Florsheim Shoe Store Company of Cincinnati, Ohio
The Florsheim Shoe Store Company of Southwyck, Ohio
The Florsheim Shoe Store Company of Cleveland, Heights, Ohio, Ohio
The Florsheim Shoe Store Company of Cleveland, Ohio, Ohio
The Florsheim Shoe Store Company of Eastland, Ohio
The Cleveland Florsheim Shoe Company Ohio
The Florsheim Shoe Store Company of Fairview, Ohio
The Florsheim Shoe Store Company of Mentor, Ohio
The Florsheim Shoe Store Company of Franklin Park, Ohio
The Florsheim Shoe Store Company of Shepard Mall, Oklahoma
The Florsheim Shoe Store Company of Alder Street, Oregon
The Florsheim Shoe Store Company of Lloyd Center, Oregon
The Florsheim Shoe Store Company of Neshaminy, Pennsylvania
The Florsheim Shoe Store Company of Monroeville, Pennsylvania
The Florsheim Shoe Store Company of Pittsburgh, Pennsylvania, Pennsylvania
Thayer McNeil Shoe Company of Pittsburgh, Pennsylvania
The Florsheim Shoe Store Company of Warwick, Rhode Island
The Florsheim Shoe Store Company of Whitehaven, Tennessee, Tennessee
The Florsheim Shoe Store Company of North Park, Texas
The Florsheim Shoe Store Company of Philadelphia, Pennsylvania, Pennsylvania
The Philadelphia Florsheim Shoe Store Company, Pennsylvania
The Florsheim Shoe Store Company of Houston, Texas, Texas
The Florsheim Shoe Store Company of Memorial City, Texas
The Florsheim Shoe Company, Utah
The Florsheim Shoe Store Company Incorporated of Richmond, Virginia, Virginia
The Florsheim Shoe Store Company of Cloverleaf, Virginia
The Florsheim Shoe Store Company of SouthCenter, Washington
The Florsheim Shoe Store Company of Brookfield, Inc., Wisconsin
Duane's East, Inc., New York
Thompson, Boland & Lee, Inc., Delaware
The Florsheim Shoe Store Company of Hawaii, Delaware
Miller Taylor Shoe Company, Georgia
Senack Shoes Inc., Missouri
Senack Shoes of Alabama, Inc., Alabama
Senack Shoes of Arkansas, Inc., Arkansas
Senack Shoes of Illinois, Inc., Illinois
Senack Shoes of Central States, Inc., Wisconsin
Senack Shoes of Iowa, Inc., Iowa
Senack Shoes of Kansas, Inc., Kansas
Senack Shoes of Kentucky, Inc., Kentucky
Senack Shoes of Louisiana, Inc., Louisiana
Senack Shoes of Mississippi, Inc., Mississippi
Senack Shoes of Missouri, Inc., Missouri
Senack Shoes of Nebraska, Inc., Nebraska
Senack Shoes of New Mexico, Inc., New Mexico
Senack Shoes of Connecticut, Inc., Connecticut
Senack Shoes of Northeast, Inc., Missouri
Senack Shoes of Oklahoma, Inc., Oklahoma
Senack Shoes of Tennessee, Inc., Tennessee
Senack Shoes of Texas, Inc., Texas
Idaho Department Store Company, Colorado
Keith O'Brien Stores Inc., Oregon
Keith O'Brien Investment Company, Idaho
Ethan Allen Inc., Delaware
Andover Wood Products, Inc., Maine
EA Enterprises, Inc., Florida
Ethan Allen Adco, Inc., New York
Lake Avenue Associates, Inc., Connecticut
Northeast Consolidated, Inc., Vermont
Riverside Water Works, Inc., Vermont
KEA International Inc., New York

Geneal Furniture Corporation, Delaware

E. 1. Parent corporation and address of principal office: Kilsby-Roberts Co., Suite 300, 140 South State College Boulevard, Brea, CA 92621.

2. Wholly-owned subsidaries which will participate in the operations, and State(s) of incorporation: A.B. Murray Co., Inc., State of Delaware.

F. 1. Parent Corporation and address of principal office: Kraft, Inc., Kraft Court, Glenview, Il 60025.

2. Wholly-owned subsidaries which will participate in the operations and State(s) of incorporation:

A. Duracell, Inc. (Delaware)
B. Duracell International, Inc. (Delaware)
C. Celestial Seasonings, Inc. (Delaware)
D. Celestial Transport, Inc. (Colorado)
E. Consolidated Distribution Center, Inc. (Delaware)
F. Pollo Diary Products Corporation (New York)
G. Sagecoach Express, Inc. (Illinois)
H. Tombstone Pizza Corporation (Wisconsin)
I. Westman Commission Company (Colorado).

Noreta R. McGee,
Secretary.

[FR Doc 86-26752 Filed 11-26-86; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 395 (Sub-1)]

Keokuk Northern Real Estate Co. & Keokuk Junction Railway Co., Notice of Election of Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of election of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10910(g)(2), the Keokuk Northern Real Estate Company and Keokuk Junction Railway Company elect exemption from all provisions of Title 49, United States Code. This notice broadens a prior election of exemption at 46 FR 45220, September 10, 1981.

DATES: This exemption is effective December 3, 1986.

ADDRESSES: Send pleadings referring to Ex Parte No. 395 (Sub-No. 1) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: Susan M. Milligan, Suite 1100, 1133 Fifteenth Street NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InforSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area), or toll-free (800) 424-5403.

Decided: November 10, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Commissioner Lamboley dissented with a separate expression.

Noreta R. McGee,
Secretary.

[FR Doc. 86-26753 Filed 11-26-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30937]

Chicago and North Western Transportation Co. and Western Railroad Properties, Inc.; Exemption of Operating Agreement

Chicago and North Western Transportation Company (C&NW) and its wholly-owned subsidiary Western Railroad Properties, Inc. (WRPI) have filed a Notice of Exemption to amend a railroad operating agreement in order to permit C&NW to conduct operations as agent for WRPI over a 9.5-mile line of railroad between Coal Creek Jct. and Caballo Jct. in the Powder River Basin of Wyoming.[1] The operating agreement will be consummated on or about December 15, 1986, and operations by C&NW on behalf of WRPI will commence on or about January 1, 1987.

This is a transaction within a corporate family of the type specifically exempted from the necessity of prior review and approval under 49 CFR 1180.1(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Use of this exemption is subject to the employee protective conditions in *Norfolk & W. Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980). *See* Finance Docket No. 30833, *supra,* n.1.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: James P. Daley and Christopher A. Mills, One North Western Center, 165 North Canal Street, Chicago, IL 60606, and Fritz R. Kahn, L. John Osborne, and Thomas E. Acey, Jr. Verner, Liipfert, Bernhard, McPherson and Hand, Chartered, Suite 1000, 1660 L Street, NW., Washington, DC 20036.

Dated: November 24, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 86-26901 Filed 11-26-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-17,836]

Buckeye, Inc. Midland, TX; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Buckeye, Incorporated, Midland, Texas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-17,836; Buckeye, Incorporated, Midland, Texas (November 4, 1986).

Signed at Washington, DC, this 18th day of November 1986.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-26791 Filed 11-26-86; 8:45am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period November 3, 1986–November 7, 1986 and November 10, 1986—November 14, 1986.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each

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[1] Both the acquisition [from Burlington Northern Railroad Company (BN)] of an undivided one-half interest in the line and operation over the line by WRPI were exempted from prior Commission review under 49 U.S.C. 11343 in Finance Docket No. 30833, *et al., Chicago & N.W. Transp. Co., Western R.R. Prop., Inc., and B.N.R.R. Co.* (not printed), served August 12, 1986, as revised November 17, 1986.

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of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-17,471; Holiday Apparel, Inc., Hollidaysburg, PA

TA-W-17,523; United Metal Fabricators, Inc., Johnstown, PA

TA-W-17,606; River Weaving Corp., Esmond, RI

TA-W-17,556; Material Handling Systems Div., Colmar, PA

TA-W-17,663; Spargo Wire Co., Rome, NY

TA-W-17,809; Fansteel, Inc., Electronic Products Div., North Chicago, IL

TA-W-17,989; Champion International Corp., Kilickitat, WA

TA-W-17,992; Champion International Corp., Morton, WA

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-17,560; Columbian Hancock Development Center, Swartz, LA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-17,857; Vulcan Mold & Iron Co., Lansing, IL

Aggregate U.S. Imports of ingot molds are negligible.

TA-W-17,634; Heinemann Electric, Trenton, NJ

Aggregate U.S. imports of molded case circuit breakers did not increase as required for certification.

TA-W-17,405; C.E., Natco, Williston, ND

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-17,557; RPI Colorado, Inc., Boulder, CO

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-17,966; Stemco-Engler (Stemco Instruments), Jersey City, NJ

Worker separations were attributable to a transfer of production to another domestic facility.

TA-W-17,763; Federal Cartridge Corp. (Currently Known as Federal Ammunition Div.), Federal-Hoffman, Inc., Anoka, MN

Imports did not contribute importantly to worker separations at the firm.

TA-W-17,808; Wellman Industries, Longview, TX

Aggregate U.S. imports of oil storage tanks are negligible.

TA-W-18,250; Baker Production Technology, Houston, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,251; Baker Service Tools, Snyder, TX;

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-18,872; LTV Steel Co., Jennings Road, Cleveland, OH

Aggregate U.S. imports of carbon steel sheet and strip did not increase as required for certification.

TA-W-18,071; Harkins & Company, Alice, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,092; Reed tool Co., Houston, TX

Aggregate U.S. imports of oilfield equipment are negligible.

TA-W-18,413; UGI, Reading PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-17,939; Bremco Industries, Bremen, OH

Aggregate U.S. imports of storage tanks are negligible.

Affirmative Determinations

TA-W-17,473; Magic Marker Industries, Inc., Trenton, NJ

A certification was issued covering all workers of the firm separated on or after May 21, 1985.

TA-W-17,536; Sandy Lee Manufacturing Co., Menomonie, WI

A certification was issued covering all workers of the firm separated on or after May 1, 1985 and before June 5, 1986.

TA-W-17,501; Zeller Corp., Defiance, OH

A certification was issued covering all workers of the firm separated on or after May 9, 1985.

TA-W-17,598; Beverly Rose Sportswear, Boston, MA

A certification was issued covering all workers of the firm separated on or after May 19, 1985 and before May 17, 1986.

TA-W-17,485; Armstrong Rubber Co., Madison, TN

A certification was issued covering all workers of the firm separated on or after May 14, 1985.

TA-W-17,582; UID Switches, Division of Illinois Tool Works, Irvington, NJ

A certification was issued covering all workers of the firm separated on or after May 29, 1985.

TA-W-17,546; Rockwell International Axle Division, New Castle, PA

A certification was issued covering all workers of the firm separated on or after May 29, 1985.

TA-W-17,648; Ladd Petroleum Corp., Billing, MT

A certification was issued covering all workers of the firm separated on or after January 1, 1986.

TA-W-17,528; Capitol Steel Corp., Oklahoma City, OK

A certification was issued covering all workers of the firm separated on or after May 21, 1985.

TA-W-17,396; E & W of Monterey, Inc., Monterey, TN

A certification was issued covering all workers of the firm separated on or after April 25, 1985 and before July 1, 1986.

TA-W-17,585; Boston Gear, Quincy, MA

A certification was issued covering all workers of the firm separated on or after June 6, 1985.

TA-W-17,477; General Brewing Co., Vancouver, WA

A certification was issued covering all workers of the firm separated on or after May 16, 1985.

TA-W-17,630; Ranco, Inc., Automotive Div., Delaware, OH

A certification was issued covering all workers of the firm separated on or after June 24, 1985.

TA-W-17,484; Macwhyte Wire Rope Co., Kenosha, WI

A certification was issued covering all workers of the firm separated on or after May 14, 1985.

TA-W-17,510; Strippit/Di-Arco Houdaille, Inc., Department 20 Electronic Assemblers, Akron and Clarence, NY

A certification was issued covering all workers of the firm separated on or after May 22, 1985.

TA-W-17,520; Jumping Jack Shoes, Inc., Factory #1, Monett, MO

A certification was issued covering all workers of the firm separated on or after May 22, 1985.

TA-W-17,527; Abelo Sportswear, Tamaqua, PA

A certification was issued covering all workers of the firm separated on or after May 5, 1985 and before June 30, 1986.

TA-W-17,978; North American Philips Lighting Corp., Owensboro, KY

A certification was issued covering all workers of the firm separated on or after August 26, 1985.

TA-W-17,507; Manhattan-Miami Corp., Hialeah, FL

A certification was issued covering all workers of the firm separated on or after May 20, 1985.

TA-W-17,604; General Houseware Corp., Leyse Aluminum Div., Kewaunee, WI

A certification was issued covering all workers of the firm separated on or after June 3, 1985.

TA-W-17,642; Ontario Forge Corp., Muncie, IN

A certification was issued covering all workers of the firm separated on or after July 2, 1986.

TA-W-17,465; Spicer Transmission Div., Dana Corp., Toledo, OH

A certification was issued covering all workers of the firm separated on or after May 16, 1985.

TA-W-17,554A Cadillac Textile, Inc., New York, NY

A certification was issued covering all workers of the firm separated on or after May 29, 1985.

TA-W-17,990; Champion International Corp., Libby, MT

A certification was issued covering all workers of the firm separated on or after November 8, 1985.

TA-W-17,991; Champion International Corp., Bonner, MT

A certification was issued covering all workers of the firm separated on or after November 7, 1985.

TA-W-17,554; Cadillac Textile, Inc., Cumberland, RI

A certification was issued covering all workers of the firm separated on or after May 29, 1985.

TA-W-17,936; Fox Technology, Inc., (Comgen Technology, Inc.), Dayton OH

A certification was issued covering all workers of the firm separated on or after August 15, 1985.

TA-W-1/,942; Pico Products, Inc., Liverpool, NY

A certification was issued covering all workers of the firm separated on or after December 31, 1985.

TA-W-17,932; FMC Corp., Construction Equipment Group, Bowling Green, KY

A certification was issued covering all workers of the firm separated on or after January 1, 1986.

TA-W-18,177; Allegretti Rowe, Inc., El Paso, TX

A certification was issued covering all workers of the blower bag sewing department of the firm separated on or after August 25, 1985.

TA-W-17,898; Callon Petroleum Co., Natchez, MS

A certification was issued covering all workers of the firm separated on or after August 19, 1985.

TA-W-17,899; Callon Petroleum Co., Oklahoma City, OK

A certification was issued covering all workers of the firm separated on or after August 25, 1985.

TA-W-17,900; Callon Petroleum Co., Lafayette, LA

A certification was issued covering all workers of the firm separated on or after August 19, 1985.

TA-W-17,901; Wilcox Energy Co., Natchez, MS

A certification was issued covering all workers of the firm separated on or after August 19, 1985.

TA-W-17,731; Santa Fe Energy Co., Midland, TX

A certification was issued covering all workers of the firm separated on or after July 13, 1985.

I herby certify that the aforementioned determinations were issued during the period November 3, 1986–November 7, 1986 and November 10, 1986–November 14, 1986. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street N.W., Washington, DC 20213 during normal business hours or will be mailed to persons to write to the above address.

Dated: November 18, 1986.

Marvin M. Fooks

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-26792 Filed 11-26-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,241]

Simonds Cutting Tools Newcomerstown, OH; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, and investigation was initiated on September 30, 1986 in response to a worker petition received on September 23, 1986 which was filed on behalf of workers at Simonds Cutting Tools, Newcomerstown, Ohio.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA-W-18,165). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 18th day of November 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-26793 Filed 11-26-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-17,475]

Xco of Colorado, Inc., Denver, CO; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Xco of Colorado, Incorporated, Denver, Colorado. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued. TA-W-17, 475; Xco of Colorado, Incorporated, Denver, Colorado (November 4, 1986).

Signed at Washington, DC, this 18th day of November 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-26794 Filed 11-26-86; 8:45 am]

BILLING CODE 4510-30-M

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Federal Committee on Apprenticeship; Public Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1) of October 6, 1972, notice is hereby given that the Federal Committee on Apprenticeship (FCA) will conduct an open meeting on December 3, 1986, from 9:00 a.m.–4:30 p.m.; December 4, from 9:00 a.m.–12 noon at the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5437 A&B, Washington, DC.

The agenda for the meeting on December 3 will include:

1. Swearing in New Members.
2. Welcoming Remarks.
3. Status Report on BAT by Director.
4. Status Report on NASTAD (National Association of State and Territorial Directors).
5. Discussion of Clearinghouse, Lane Community College.
6. Report on Plans for Fiftieth Anniversary of the National Apprenticeship Act.
7. Report of FCA Marketing Subcommittee.

The agenda for the meeting on December 4 will include:

8. Discussion by FCA members on their Recommendations to the Secretary of Labor.

Agenda is subject to change due to time constraints and priority items which may come before the Committee between the time of this publication and the scheduled date of the FCA meeting.

Members of the public are invited to attend the proceedings. Any member of the public who wishes to file written data, views or arguments pertaining to the agenda may do so by furnishing it to the Executive Secretary at any time prior to the meeting. Thirty duplicate copies are needed for the members and for inclusion in the minutes of the meeting.

Any member of the public who wishes to speak at this meeting should so indicate the nature of intended presentation and the amount of time needed by furnishing a written statement to the Executive Secretary at any time prior to the meeting. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests.

Communications to the Executive Secretary should be addressed as follows: Mrs. M.M. Winters, Bureau of Apprenticeship and Training, ETA, U.S. Department of Labor, 200 Constitution Ave., Room N–4649, Washington, DC 20210.

Note.—The 15 day requirement could not be met because of scheduling problems.

Signed at Washington, DC, this 24th day of November 1986.

Roger D. Semerad,

Assistant Secretary of Labor.

[FR Doc. 86–26796 Filed 11–26–86; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S–3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Alabama:	
AL86–4 (Jan. 3, 1986)	p. 8.
AL86–6 (Jan. 3, 1986)	p. 13.
Connecticut:	
CT86–1 (Jan. 3, 1986)	p. 64, pp. 67–76.
Florida:	
FL86–17 (Jan. 3, 1986)	p. 144.
Maryland:	
MD86–11 (Jan. 3, 1986)	pp. 411–412.
New York:	
NY86–3 (Jan. 3, 1986)	p. 661.

NY86-11 (Jan. 3, 1986)	pp. 736-738.
NY86-16 (Jan. 3, 1986)	p. 760.
NY86-18 (Jan. 3, 1986)	p. 784.
Volume II	
Arkansas:	
AR86-1 (Jan. 3, 1986)	p. 4.
AR86-3 (Jan. 3, 1986)	p. 11.
Indiana:	
IN86-2 (Jan. 3, 1986)	p. 237, pp. 243-244.
IN86-3 (Jan. 3, 1986)	p. 253, pp. 256-257.
IN86-4 (Jan. 3, 1986)	p. 262-272.
IN86-5 (Jan. 3, 1986)	pp. 275-276, p. 279.
Minnesota:	
MN86-7 (Jan. 3, 1986)	p. 511, pp. 517-523a.
MN86-8 (Jan. 3, 1986)	pp. 529-530, pp. 536-538b.
Missouri:	
MO86-1 (Jan. 3, 1986)	pp. 540-542, pp. 548, 551.
Nebraska:	
NE86-2 (Jan. 3, 1986)	pp. 621-622.
Wisconsin:	
WI86-10 (Jan. 3, 1986)	p. 990.
Volume III	
California:	
CA86-1 (Jan. 3, 1986)	pp. 35-42.
Colorado:	
CO86-1 (Jan. 3, 1986)	pp. 97-98.
CO86-4 (Jan. 3, 1986)	pp. 373-376.
Montana:	
MT86-1 (Jan. 3, 1986)	p. 153.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 80 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 21st day of November 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86-26699 Filed 11-26-86; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-86-157-C]

Golden Oak Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Golden Oak Mining Company, Route 2, Box 177, Whitesburg, Kentucky 41858 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Black Oak II Mine (I.D. No. 15-07139) located in Knott County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.
2. Petitioner states that application of the standard would result in a diminution of safety to the miners affected because the cab or canopy would impair the operator's visibility, and the cramped position would result in operator fatigue, creating a hazard. The cab or canopy would also hinder the operator from making a rapid escape if necessary and could strike and dislodge roof bolts leaving unsupported roof.
3. For these reasons, petitioner requests a modification of the standard in mining heights of 50 inches or less.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 29, 1986. Copies of the petition are available for inspection at that address.

Dated: November 20, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-26804 Filed 11-26-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-143-C]

Jim Walter Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Jim Walter Resources, Inc., P.O. Box C-79, Birmingham, Alabama 35283 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its No. 5 Mine (I.D. No. 01-01322) located in Tuscaloosa County, Alabama. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follow:

1. The petition concerns the requirement that underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps be housed in fireproof structures.
2. Petitioner has a compressor station which is located in a crosscut near an intake air shaft. All entries close to the compressor station are maintained as intake airways and there are no return airways available for ventilating the compressor station.
3. As an alternate method, petitioner proposes to install a heat activated fire suppression system. The compressor station will be housed in a fireproof structure with self-closing doors.
4. Petitioner states that the proposed alternative method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Person interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 29, 1986. Copies of the petition are available for inspection at that address.

Dated: November 20, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-26805 Filed 11-26-86; 8:45 am]

BILLING CODE 4510-43-M

Dated: November 20, 1986.

Patricia W. Silvey,

Assistant Associate Secretary for Mine Safety and Health.

[FR Doc. 86-26806 Filed 11-26-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-148-C]

Nowacki Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Nowacki Coal Company, Box 1308, R.D. #1, Tamaqua, Pennsylvania 18252 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Nowacki Slope (I.D. No. 36-07592) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follow:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the Ameircan National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 29, 1986. Copies of the petition are available for inspection at that address.

Dated: November 20, 1986.

Patricia W. Silvey,

Assistant Associate Secretary for Mine Safety and Health.

[FR Doc. 86-26806 Filed 11-26-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-145-C]

Renegade Coal Company, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Renegade Coal Company, Inc., R.D. #1, Box 470A, Barnesville, Pennsylvania 18214 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its No. 1 Slope (I.D. No. 36-07528) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "mankeshift" safety devices were installed they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degee of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 29, 1986. Copies of the petition are available for inspection at that address.

Dated: November 20, 1986.

Patricia W. Silvey,

Assistant Associate Secretary for Mine Safety and Health.

[FR Doc. 86-26807 Filed 11-26-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-103-C]

S. & T. Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

S. & T. Coal Company, R.D. #1, Box 56A, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescuers) to its Skidmore Slope (I.D. No. 36-01984) located in Dauphin County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follow:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-contained self-rescue device approved by the Secretary which is adequate to protect such person for one hour or longer.

2. Petitioner states that the distance from the mine portal to the actual working face is less than 2,000 feet. The mine can be evacuated in less than 15 minutes.

3. Petitioner states that the devices are too heavy, bulky, and cumbersome to be worn while working or in the narrow confines of the slope gun boat which serves as a mantrip at the mine.

4. Sections of the mine are subjected to freezing temperatures making constant availability of the devices questionable. In addition, the wet mine conditions make it difficult to locate a suitable dry storage location for the self-rescuers.

5. For those reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 29, 1986. Copies of the petition are available for inspection at that address.

Dated: November 20, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-26808 Filed 11-26-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-151-C]

T. & T. Fuels, Inc.; Petition for Modification of Application of Mandatory Safety Standard

T. & T. Fuels, Inc., P.O. Box 206, Bruceton Mills, West Virginia 26525 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its No. 3 Mine (I.D. No. 46-04542) located in Preston County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile battery-powered machines.
2. As an alternate method, petitioner proposes to use a spring-loaded locking device in lieu of padlocks. The spring-loaded device will be designed, installed and used to prevent the unintentional loosening of the threaded rings that secure the battery plugs to the battery receptacles. In addition, the fabricated metal brackets will be securely attached to the battery receptacles to prevent accidental loss of the device.
3. Petitioner states that the spring-loaded metal locking devices will be easier to maintain than padlocks because there are no keys to be lost and dirt cannot get into the workings as with a padlock.
4. Operators of permissible, mobile, battery-powered machines affected by this modification will be trained in the proper use of the locking device, the hazards of breaking battery-plug connections under load, and the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.
5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 29, 1986. Copies of the petition are available for inspection at that address.

Dated: November 20, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-26809 Filed 11-26-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-150-C]

B. & B. Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

B & B. Coal Company, 225 Main Street, Joliett-Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Rock Ridge No. 1 Slope (I.D. No. 36-07741) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.
2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.
3. Petitioner further believes that if "makeshift" safety devices were installed they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.
4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.
5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 29, 1986. Copies of the petition are available for inspection at that address.

Dated: November 20, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-26796 Filed 11-26-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-152-C]

B. & B. Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

B. & B. Coal Company, 225 Main Street, Joliett-Tremont, Pennsylvania 17981, has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its Rock Ridge No. 1 Slope (I.D. No. 36-07741) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute. The minimum quantity of air in any coal mine reaching each working face shall be 3,000 cubic feet a minute.
2. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine. Ignition, explosion, and mine fire history are nonexistent for the mine. There is no history of harmful quantities of carbon monoxide and other noxious or poisonous gases.
3. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.
4. Extremely high velocities in small cross sectional areas of airways and manways required in friable Antracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the

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miners and cause extremely uncomfortable damp and cold conditions in the mine.

5. As an alternative method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 29, 1986. Copies of the petition are available for inspection at that address.

Dated: November 20, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-26797 Filed 11-26-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-153-C]

B. & B. Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

B. & B. Coal Company, 225 Main Street, Joliett-Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescuers) to its Rock Ridge No. 1 Slope (I.D. No. 36-07741) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-contained self-rescue device approved by the Secretary which is adequate to protect such person for one hour or longer.

2. The mine is always damp to wet. The only electrical equipment, which is a pump, is located at the foot of the slope.

3. Petitioner states that the distance from the mine portal to the actual working face is less than 2,000 feet. The mine can be evacuated in less than 15 minutes.

4. Petitioner states that the devices are too heavy, bulky, and cumbersome to be worn while working or in the narrow confines of the slope gun boat which serves as a mantrip at the mine.

5. Sections of the mine are subjected to freezing temperatures making constant availability of the devices questionable. In addition, the wet mine conditions make it difficult to locate a suitable dry storage location for the self-rescuers.

6. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 29, 1986. Copies of the petition are available for inspection at that address.

Dated: November 20, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine and Health.

[FR Doc. 86-26798 Filed 11-26-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-149-C]

Buck Mountain Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Buck Mountain Coal Company, R.D. #4, Box 357B, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Buck Mountain Slope (I.D. No. 36-02053) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petition states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petition further believes that if "makeshift" safety devices were installed they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 29, 1986. Copies of the petition are available for inspection at that address.

Dated: November 20, 1986.

Patricia W. Silvey,

Assistant Associate Secretary for Mine Safety and Health.

[FR Doc. 86-26799 Filed 11-26-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-144-C]

Clinchfield Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Clinchfield Coal Company, P.O. Box 7, Dante, Virginia 24237 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Lambert Fork No. 2 Mine (I.D. No. 44-06175) located in Dickenson County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs and canopies be installed on the mine's electric face equipment.

2. The mine is opened into the Lower Banner coalbed with undulations in the height of the coal seam, which ranges from 24 to 60 inches in thickness, and has very uneven haulage roadways.

3. Petitioner states that if canopies were installed on Joy 21SC end-driven and center-driven shuttle cars it would result in a diminution of safety for the miners affected because they would dislodge roof supports, decrease the operator's visibility, and create discomfort to the operator.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 29, 1986. Copies of the petition are available for inspection at that address.

Dated: December 29, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-26800 Filed 11-26-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-147-C]

Craft Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Craft Coal Company, P.O. Box 16, Monterville, West Virginia 26282 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Stone Run No. 6 Mine (I.D. No. 46-05720) located in Randolph County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile battery-powered machines.

2. As an alternate method, petitioner proposes to use a spring-loaded locking device in lieu of padlocks. The spring-loaded device will be designed, installed and used to prevent the threaded rings that secure the battery plugs to the battery receptacles from unintentionally loosening and will be attached to prevent accidental loss. In addition, the fabricated metal brackets will be securely attached to the battery receptacles to prevent accidental loss of the brackets.

3. Petitioner states that the spring-loaded metal locking devices will be easier to maintain than padlocks because there are no keys to be lost and dirt cannot get into the workings as with a padlock.

4. Operators of permissible, mobile, battery-powered machines affected by this modifications will be trained in the proper use of the locking device, the hazards of breaking battery-plug connections under load, and the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 29, 1986. Copies of the petition are available for inspection at that address.

Dated: November 20, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-26801 Filed 11-26-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-155-C]

Dunkard Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Dunkard Mining Company, Box 8, Dilliner, Pennsylvania 15327 has filed a petition to modify the application of 30 CFR 75.1103-4 (automatic fire sensor and warning device systems; installation; minimum requirements) to its Dunkard Mine (I.D. No. 36-01301) located in Greene County, Pennsylvania. The petition is filled under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of fire within each belt flight.

2. In a separate petition (M-86-156-C), petitioner proposes to use belt air to ventilate the active working places.

3. In lieu of a heat detection system, petitioner proposes to use an early-warning fire detection system using a low-level carbon monoxide detection system. The system will be installed and operated with specific conditions as outlined in the petition in all belt entries used as intake aircourses.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 29, 1986. Copies of the petition are available for inspection at that address.

Dated: November 20, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-26802 Filed 11-26-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-156-C]

Dunkard Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Dunkard Mining Company, Box 8, Dilliner, Pennsylvania 15327 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Dunkard Mine (I.D. No. 36-01301) located in Greene County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries and that belt haulage entries not be used to ventilate active working places.

2. The present system of restricting air flow in the belt entry can create positive pressure from the belt to the track and

in some cases from the track to the intake escapeway. This creates the situation where a fire and resultant smoke on the belt immediately causes smoke on the track entry and a migration to the intake escapeway negating smoke free escapeways from the section.

3. The use of belt air will increase the capability of the ventilation system to dilute, render harmless and carry away methane gas, coal dust, and other potentially dangerous or harmful gases and or contaminants.

4. As an alternate method, petitioner proposes to use the air in the belt entry to ventilate active working places. In support of this, petitioner states that:

(a) A low-level carbon monoxide detection system will be installed in all belt entries used as intake air courses and at each belt drive and tailpiece and at intervals not to exceed 2,000 feet along each conveyor belt entry. The monitoring devices will be capable of giving warning of a fire for a minimum of four hours after the source of power to the belt is removed. A visual alert signal will be activated when the carbon monoxide level at any sensor is 10 parts per million (ppm) above ambient air and an audible signal will be sounded at 15 ppm above ambient air. All persons will be withdrawn to a safe area at 10 ppm and evacuated at 15 ppm. The fire alarm will be activated at a surface location where there is a two-way communication. The carbon monoxide system will be capable of identifying any activated sensor and the loss of communications to any or all remote units.

(b) The CO system will be visually examined at least once each coal producing shift and tested for functional operation weekly to insure the monitoring system is functioning properly. The monitoring system will be calibrated with known concentrations of CO and air mixtures at least monthly. The belt conveyor will be examined at least once during each coal producing shift while employees are working. A record of all inspections will be maintaining on surface.

(c) If the CO monitoring system is deenergized for routine maintenance or for failure of a sensor unit, the belt conveyor will continue to operate and qualified persons will patrol and monitor the belt conveyor using hand-held CO detecting devices.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 29, 1986. Copies of the petition are available for inspection at that address.

Dated: November 20, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-26803 Filed 11-26-86; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Appointment of Members

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of appointment of members.

Notice is hereby given that appointments have been made to fill fifteen (15) vacancies on the Advisory Committee on Construction Safety and Health. The vacancies were created by the expiration of the terms of the fifteen (15) members on June 30, 1986. The new membership of the Committee and the categories represented are as follows:

Employee

Mr. Joe A. Adam, Director, Department of Safety and Health, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry. (reappointed)

Mr. Robert E.P. Cooney, retired union official. (reappointed)

Mr. Jim E. Lapping, Director, Safety and Health, Building and Construction Trades Department, AFL-CIO. (reappointed)

Mr. Joseph L. Durst, Director, Occupational Safety and Health, United Brotherhood of Carpenters and Joiners of America. (reappointed)

Mr. George E. Smith, Director, Safety Department, International Brotherhood of Electrical Workers. (reappointed)

Employer

Mr. V. Sherwood Kelly, President, Athena Associates, Ltd. (reappointed)

Mr. James Packenham, Safety Manager, Ebasco. (reappointed)

Mr. Larry L. Swanda, Vice President, Jensen Construction Company. (reappointed)

Mr. Thomas J. Reynolds, Corporate Manager of Safety, Morrison Construction Company. (new appointment)

Mr. John A. Ward, Chairman of the Board of Directors, Watco Corporation. (new appointment)

State

Mr. Allen Meier, Commissioner of Labor, State of Iowa. (reappointed)

Mr. Donald D. Owsley, Administrator, Wyoming Occupational Safety and Health Commission. (new appointment)

Public

Mr. Leonard E. Dodson, Consultant. (new appointment—served previously as a member in the employer category)

Mr. Wesley E. Pell, Major General, U.S. Army (Retired), Vice Chancellor for Facilities Planning and Construction, Texas A & M University System (new appointment—to serve as Chairman)

Federal

Mr. John B. Moran, Director, Division of Safety Research, National Institute for Occupational Safety and Health. (reappointment)

Each of these members has been appointed for a term which will end on June 30, 1988.

The Advisory Committee on Construction Safety and Health was established under section 107 of the Contract Work Hours and Safety Standards Act and section 7(b) of the Occupational Safety and Health Act of 1970 to advise the Secretary of Labor on matters pertaining to construction safety and health.

FOR ADDITIONAL INFORMATION CONTACT: Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, Room N3637, 200 Constitution Avenue NW., Washington, DC 20210, telephone: (202) 523-8024.

Signed at Washington, DC, this 21st day of November, 1986.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 86-26837 Filed 11-26-86; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes a notice at least monthly of all agency requests for records disposition authority (records schedules) which include records being proposed for disposal or which reduce the retention period for records already authorized for disposal. The first notice was published on April 1, 1985. Records schedules identify records of continuing value for eventual preservation in the National Archives of the United States and authorize agencies to dispose of records of temporary value. NARA invites public comment on proposed records disposals as required by 44 U.S.C. 3303a(a).

DATE: Comments must be received in writing on or before January 27, 1987.

ADDRESS: Address comments and requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy.

The control number appears in parenthesis immediately after the title of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. government agencies create billions of records in the form of paper, film, magnetic tape, and other media. In order to control the accumulation of records, Federal agencies prepare records schedules which specify when the agency no longer needs them for current business and what happens to the records after the expiration of this period. Destruction of the records requires the approval of the Archivist of the United States, which is based on a thorough study of their potential value for future use. A few schedules are comprehensive; they list all the records of an agency or one of its major subdivisions. Most schedules cover only one office, or one program, or a few series of records, and many are updates of previously approved schedules.

This public notice identifies the Federal agencies and their appropriate subdivisions requesting disposition authority, includes a control number assigned to each schedule, and briefly identifies the records scheduled for disposal. The complete records schedule contains additional information about the records and their disposition. Additional information about the disposition process will be furnished with each copy of a records schedule requested.

Schedules Pending Approval

1. Department of Energy, Economic Regulatory Administration (NC1-434-82-2). Case files relating to enforcement of petroleum pricing and allocation regulations in effect from 1973 to 1981.

2. Environmental Protection Agency, Office of Information Resources Management (N1-412-86-3). General correspondence and records relating to the development and coordination of the management of information resources within the agency.

3. Department of the Interior, Bureau of Mines (N1-70-86-1). Safety and environmental health records, including those that relate to internal program inspections and evaluations and automated records whose textual copies were previously appraised as disposable.

4. Interstate Commerce Commission, Bureau of Accounts (NC1-134-83-5). Comprehensive schedule for the bureau and its sections.

5. Tennessee Valley Authority, Office of Power, Division of Power System Operations (N1-142-87-1). Substation maintenance records.

6. Department of the Treasury, Office of the Assistant Secretary for Domestic Finance, Office of Revenue Sharing (N1-56-86-4). Civil rights compliance case files and Intergovernmental relations files.

7. Veterans Administration, Department of Medicine and Surgery (N1-15-86-8). Volunteer information cards, time sheets, and ADP printouts.

8. Veterans Administration, Department of Veterans Benefits (N1-15-86-11). Special Evaluation Pension (SEP) Folders. Working files used for agency Field Station administrative purposes.

Dated: November 21, 1986.

Frank G. Burke,

Acting Archivist for the United States.

[FR Doc. 86-26777 Filed 11-26-86; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 86-84]

NASA Advisory Council, Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on Aviation Safety Research.

DATE: Date and time: December 18, 1986, 1 p.m. to 4:30 p.m.; December 19, 1986, 8 a.m. to 4:30 p.m.

ADDRESS: Ames Research Center, Building 200, Director's Committee Room, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT: Mr. Louis J. Williams, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2798.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee was established to provide overall guidance and direction to the aeronautics research and technology activities in the Office of Aeronautics and Space Technology (OAST). Special Ad Hoc Review teams were formed to address specific topics. This Ad Hoc Review Team on Aviation Safety Research, chaired by Mr. Donald Pritchett, is comprised of 9 members. The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons including the team members and other participants). The team will review the aviation safety research efforts being conducted at NASA's Ames and Lewis Research Centers.

Type of Meeting: Open.

Agenda

December 18, 1986
1 p.m.—Opening Remarks.
1:30 p.m.—Briefings by Ames Research Center.
Personnel on Aviation Safety Research.
4:30 p.m.—Adjourn.
December 19, 1986
8 a.m.—Briefings by Ames and Lewis Research.
Centers personnel on Aviation Safety Research Activities.
3 p.m.—Review Team Discussion.

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4:30 p.m.—Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

November 18, 1986.

[FR Doc. 86-26723 Filed 11-26-86; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Safety Philosophy, Technology, and Criteria; Meeting

The ACRS Subcommittee on Safety Philosophy, Technology, and Criteria will hold a meeting on December 10, 1986, Room 1167, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, December 10, 1986—9:00 A.M. until the conclusion of business

The Subcommittee will: (1) Discuss the implications of the Chernobyl Accident, (2) continue its review of USI A-17, "Systems Interactions in Nuclear Power Plants," and (3) review the status of the NRC's work on steam generator overfill, and (4) discuss the NRC's proposed policy for reviewing reactivated license application for deferred or canceled nuclear power plants, and (5) discuss the status of the EDO's work on the implementation of the Commission's Safety Goal Policy.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and quesitons may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Dr. Richard Savio (telephone 202/634-3267) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contract the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: November 24, 1986.

Thomas G. McCreless,

Assistant Executive Director for Technical Activities.

[FR Doc. 86-26816 Filed 11-26-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-389-OLA; ASLBP No. 87-544-01-LA]

Florida Power and Light Co. et al.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Florida Power and Light Company, et al.
St. Lucie Plant, Unit No. 2
Facility Operating License No. NPR-16

This Board is being established pursuant to a notice published by the Commission on October 20, 1986, in the **Federal Register** (51 FR 37242-45) entitled, "Consideration of Issuance of Amendment to Facility Operating License and Proposed no Significant Hazards Consideration Determination and Opportunity for Hearing." The amendment would permit the licensee to transfer Unit No. 1 spent fuel from the Unit No. 1 spent fuel pool to the Unit No. 2 spent fuel pool.

The Board is comprised of the following Administrative Judges:

Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Gustave A. Linenberger, Jr., Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Issued at Bethesda, Maryland, this 20th day of November 1986.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 86-26815 Filed 11-26-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-293]

Boston Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a schedular exemption from certain requirements of 10 CFR Part 50, Appendix J, to the Boston Edison Company (BECo/licensee) for the Pilgrim Nuclear Power Station located at the licensee's site in Plymouth County, Massachusetts.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant temporary relief from the 18-month frequency part of Section III.A.6(b) of Appendix J which requires, under certain circumstances, that Type A overall primary containment leakage tests be performed at each plant shutdown or approximately every 18 months, whichever occurs first.

Need for the Proposed Action

To meet the "approximately every 18-months" requirement of Section III.A.6(b), a Type A test will have to be performed upon completion of the ongoing Type B and C testing of airlocks and valves. However, performing the Type A test at this time is unnecessary since the Pilgrim Station is shut down and will remain so until after the reactor has been refueled and a Type A test is performed in the spring of 1987.

Environmental Impact of the Proposed Action

Type A testing is performed to assure that primary containment leakage is within acceptable limits during plant operation. Since that purpose will be served by the test to be performed after the reactor is refueled, and the reactor will not be operated prior to that time, any earlier Type A testing is unnecessary. Eliminating the earlier testing may, in fact, reduce occupational exposures. The proposed exemption does not affect plant nonradiological effluents and will have no other environmental impact. Therefore, the Commission concludes that there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, other alternatives need not be evaluated. The principal alternative to the exemption would be to require rigid compliance with the Section III.A.6(b) requirements. Such action would not enhance the protection of the environment and would result in unjustified costs for the licensee.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement related to the operation of Pilgrim Station.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated August 29, 1986. This letter is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Plymouth Public Library, 11 North Street, Plymouth County, Massachusetts.

Dated at Bethesda, Maryland this 21st day of November 1986.

For the Nuclear Regulatory Commission.

Rajender Auluck,

Acting Director, BWR Project Directorate #1, Division of BWR Licensing.

[FR Doc. 86-26831 Filed 11-26-86; 8:45 am]

BILLING CODE 7590-01-M

Draft Finding of No Significant Impact; Cleveland Cliffs Iron Co.

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of finding of no significant impact.

SUMMARY:

(1) Proposed Action. The proposed administrative action is to terminate Cleveland Cliffs Iron Company's Source Material License SUA-1352 for the Collins Draw In-Situ Leach Research and Development site, at which complete ground-water restoration has not been achieved.

(2) Reasons for Finding of No Significant Impact. An Environmental Assessment was prepared by the staff of the U.S. Nuclear Regulatory Commission (NRC) and issued by the Commission's Uranium Recovery Field Office, Region IV. Based on this assessment, the Commission has determined that no significant impact will result from the proposed action, and therefore, an environmental impact statement is not warranted.

The following statements support the finding of no significant impact and summarize the conclusions from the environmental assessment:

(a) After solution mining, the licensee, using a combination of reverse osmosis, ground-water sweep, air stripping and clean water injection conducted several episodes of restoration which partially improved ground-water quality. The utilization of an ammonium carbonate lixiviant in the A-1 and B well fields as well as the dissolution of precipitates from the production zone continue to maintain elevated levels of chemical, metallic and radionuclide species.

Alternatives considered for removing or containing the remaining contamination included additional ground-water restoration involving recirculation with reverse osmosis treatment, ground-water sweep, open pit or underground mining of the production zone, isolation of the production zone by grout or chemical substances and oxidative destruction of residual ammonia by chlorine. Evaluation of these alternatives follows.

Additional restoration utilizing recirculation of production zone water with reverse osmosis treatment would be costly. Previous utilization of the reverse osmosis unit maintained at the site indicates that, without the construction of an appropriately sized evaporation pond (estimated to cost $400,000+), such an effort would have little or no effect on the elevated ground-water parameters. The data on ground-water restoration in the A-1 well field, where reverse osmosis was utilized, indicates that 13 ground-water parameters are elevated. Ground-water data in the B well field, where reverse osmosis was not utilized, shows elevated levels of the same 13 constituents as in the A-1 well field, as well as three additional parameters. Based upon this data, the utilization of reverse osmosis restoration would probably have only minimal improvements on ground-water quality.

Ground-water sweep may cause temporary improvements in ground-water quality. However, the relative differences between water qualities in the production zone and the unmined portions of the formation indicate the circulation restoration option would not be successful to any measureable extent.

Actual mining of the production zone as well as chemically isolating the area would be extremely costly and have unacceptable environmental impacts associated with them. Furthermore, chemically isolating the production zone is not a proven technology and could result in large financial inputs with marginal success.

Oxidative destruction of residual ammonia by chlorine is technology that has not been utilized on a field scale. Due to this, its success is questionable. Additionally, the utilization of this method would lower the production zone aquifer pH and potentially increase concentrations of heavy metals, resulting in overall degradation of the existing water quality.

Due to the above restoration options and potential problems associated with their implementation, natural restoration or dilution of the remaining ground-water contaminants appears to be the best method of reducing elevated levels of chemical, metallic and radionuclide constituents.

(b) Prior to mining at the Collins Draw project, baseline water quality sampling showed water quality to be high in total dissolved solids and radium. Although these concentrations were high, they did not preclude the water usage as a domestic water source; however, no domestic usage was known to exist in the area. Current use of water from wells adjacent to the production zone consists of using the water for oil well drilling. Due to this, contaminated water from the production zone is being drawn towards these wells where it is utilized during drilling operations. Utilization of water for drilling purposes is a consumptive use which effectively "uses up" the contaminated water. Furthermore, due to the pumping that is taking place, a ground-water sweep of the production zone is being performed. The ultimate effect of this process is to dilute the remaining ground water which has been contaminated due to prior uranium mining operations.

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Overall, the production zone covers approximately 0.5 acre and consists of approximately 3.6 million gallons of water in an aquifer system which covers thousands of acres. Due to this, the incremental contamination caused by the Collins Draw Research and Development project is not significant when considering the overall quality and utilization of this ground water in this area. Furthermore, the current ground-water uses of stock watering and oil well servicing have not been precluded due to uranium recovery operations.

(c) Decommissioning and decontamination of the facility will cause minor surface disturbances of the well field areas and process site. Upon completion of these tasks, the site will be returned to its premining land use of open range.

In accordance with 10 CFR 51.32, the Director, Uranium Recovery Field Office has made the determination to issue this draft finding of no significant impact to further the purposes of NEPA and to accept comments on the draft finding for a period of 30 days after issuance in the **Federal Register.** Mail comments to the U.S. Nuclear Regulatory Commission, Uranium Recovery Field Office, P.O. Box 25325, Denver, Colorado 80225. The environmental assessment setting forth the basis for the finding, is available for public inspection and copying at the Commission's Uranium Recovery Field Office located at 730 Simms Street, Suite 100, Golden, Colorado, and at the Commission's Public Document Room at 1717 H Street NW, Washington, DC.

Dated at Denver, Colorado, this 21st day of November 1986.

Gary R. Konwinski,

Project Manager, Licensing Branch 1, Uranium Recovery Field Office, Region IV.

Approved by:

Gary Konwinski,

Acting Chief, Licensing Branch 1, Uranium Recovery Field Office, Region IV.

[FR Doc. 86-26832 Filed 11-26-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-528]

Arizona Public Service Co. et al. Palo Verde Nuclear Generating Station, Unit 1; Issuance of Director's Decision

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has denied a Petition filed under 10 CFR 2.206 by Myron L. Scott on behalf of the Coalition of Responsible Energy Education regarding the Palo Verde Generating Station (PVNGS), Unit 1. The Petitioner alleged that the integrated leak rate test performed for the containment at PVNGS Unit 1 was deficient in various respects and, therefore, is invalid. Based on these alleged deficiencies, the Petitioner requested relief in the form of service upon the Arizona Public Service Company of an Order to Show Cause why the operating license for PVNGS Unit 1 should not be suspended and the containment ordered immediately retested in accordance with federal regulations.

The Staff has considered the Petitioner's allegations and has determined that they do not provide an adequate basis for the relief requested. The reasons are fully described in a "Director's Decision Under 10 CFR 2.206" (DD-86-18) which is available for public inspection at the Commission's Public Document Room located at 1717 H Street NW., Washington, DC. 20555, and at the Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

A copy of the decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c).

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 86-26830 Filed 11-26-86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Inv. No. 337-TA-231]

Certain Soft Sculpture Dolls, Popularly Known as Cabbage Patch Kids Related Literature and Packaging; Request for Public Comments in Connection with Presidential Review of Exclusion Order Regarding

AGENCY: Office of the United States Trade Representative.

ACTION: Request for public comments on the general exclusion order issued by the U.S. International Trade Commission (Commission) in *Certain Soft Sculpture Dolls, Popularly Known As "Cabbage Patch Kids," Related Literature and Packaging Therefor.*

SUMMARY: On November 19, 1986, the Commission referred to the President for review its determination that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), in the importation into the United States, and in the sale, of certain soft sculpture dolls because of infringement of registered copyrights, failure to mark the country of origin combined with evidence of consumer confusion and consumer preference for the domestic product. The Commission found that these unfair methods of competition and unfair acts had the effect or tendency to destroy or substantially injure an efficiently and economically operated industry in the United States.

The Commission issued an order directing the U.S. Customs Service to exclude from entry in the United States imports of foreign soft sculpture dolls known as "Cabbage Patch Kids," related birth certificates and adoption papers, and packaging therefor, including but not limited to such models as the 16-inch Cabbage Patch kids; 14-inch Preemies; 16-inch Twins; 16-inch World Travelers; 16-inch Cornsilk Kids; 14-inch Preemie Twins; 16-inch Clowns; 16-inch Astronauts; 16-inch Allstars; and 12-inch Babies, that infringe Original Appalachian Artworks, Inc.'s copyrights, U.S. Copyright Registration Nos. VA-35-804, VA 141-801, TX 1-254-777, TX 1-254-778, and TX 1-261-526, except under license from or with the permission of Original Appalachian Artworks, Inc.

Under Section 337(g), the President, for policy reasons may disapprove the Commission's determination within 60 days following receipt of the determination and record. If disapproved by the President, the determination, and any order issued under its authority, would be without force or effect. The President also may approve the Commission's determination rendering the determination and order final on the date that the Commission receives notice of the approval. If the President takes no action to approve or disapprove the determination and order, they become final automatically following the 60-day review period.

Interested parties may submit comments concerning foreign or domestic policy issues that should be considered by the President in making his decision regarding this investigation. Parties commenting on domestic policy issues should specifically refer to the portion of the Commission's record related to that issue. If the domestic policy issue was not raised before the Commission, parties should provide a rationale for that omission.

Comments may not exceed 15 letter-sized pages, including attachments. Parties must provide twenty copies of the submission to the Secretary, Trade Policy Staff Committee, Room 521, 600 17th Street, NW., Washington, DC 20506. All submissions must be received by

close of business, Thursday, December 4, 1986.

FOR FURTHER INFORMATION CONTACT: Catherine R. Field, Assistant General Counsel, (202) 395-3432.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 86-26877 Filed 11-26-86; 8:45 am]

BILLING CODE 3190-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

State Agency Advisory Committee, Regular Meeting Notice

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its State Agency Advisory Committee, to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Current MCS revisions.
- Petitions for additional MCS from NRDC/NCAC and CASE.
- Bonneville's WPPSS cost-effectiveness analysis.
- Resolution of 6(c).
- Other issues of interest to the task force.

DATE: Friday, December 12, 1986, 9:00 a.m.–5:00 p.m.

ADDRESS: The meeting will be held at the World Trade Center at Sea-Tax Airport; Mezzanine Level; Room 44A; Highway 99 South; Seattle, WA.

FOR FURTHER INFORMATION CONTACT: Jim Litchfield, (503) 222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 86-26736 Filed 11-26-86; 8:45 am]

BILLING CODE 0000-00-M

POSTAL RATE COMMISSION

[Docket No. A87-5; Order No. 722]

Mary Nichols, Petitioner; Notice and Order Accepting Appeal and Establishing Procedural Schedule

Issued: November 20, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Bonnie Guiton, Vice-Chairman; John W. Crutcher; Henry R. Folsom, Patti Birge Tyson.

Docket Number: A87-5

Name of Affected Post Office: Burkville, Alabama 36725

Name(s) of Petitioner(s): Mary Nichols

Type of Determination: Closing

Date of Filing of Appeal Papers: November 13, 1986

Categories of Issues Apparently Raised:

1. Effect on the community [39 U.S.C. 404(b)(2)(A)].
2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before November 28, 1986.

(b) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

November 13, 1986—Filing of Petition

November 20, 1986—Notice and Order of Filing of Appeal

December 8, 1986—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)].

December 18, 1986—Petitioner's Participant Statement or Initial Brief [*see* 39 CFR 3001.115(a) and (b)].

January 7, 1987—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].

January 22, 1987—Petitioner's Reply Brief should petitioner choose to file one [*see* 39 CFR 3001.115(d)].

January 29, 1987—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].

March 13, 1987—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 86-26724 Filed 11-26-86; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-24243]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

November 20, 1986.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 15, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Jersey Central Power & Light Company (70-7293)

Jersey Central Power & Light Company ("JCP&L"), Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, an electric utility subsidiary of General Public Utilities Corporation, a registered holding company, has filed an application pursuant to sections 9(a) and 10 of the Act.

In order to reduce the unauthorized taking of electric energy from its facilities, commonly known as "theft of service," JCP&L personnel have produced a series of computer programs designed to assist in the administration of the company's efforts to track suspected instances involving theft of service and to identify possible offenders (the "Programs"). The Programs were designed and created by

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full-time JCP&L employees as part of their normal duties and were intended for the exclusive use of JCP&L.

Since the development of the Programs, JCP&L has been approached by representatives of various electric and gas utilities requesting that they be permitted to use the Programs. JCP&L proposes to grant these companies a nonexclusive, nontransferable license to use the Programs for a cash consideration to be negotiated with the prospective licensees. Because no agreements to license the Programs have been entered into, JCP&L does not know the amount of the payments it may receive.

Ohio Power Company, et al. 70-7311

Ohio Power Company ("Ohio Power"), an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, and Ohio Power's coal mining subsidiaries, Southern Ohio Coal Company ("SOCCo") and Windsor Power House Coal Company ("Windsor"), 1 Riverside Plaza, Columbus, Ohio 43215, have filed an application-declaration pursuant to sections 6(a), 7, 9, 10, and 12(b) of the Act and Rule 45 thereunder.

SOCCo and Windsor seek authorization to issue, respectively, from time-to-time through March 31, 1987, up to $135 million and up to $8 million aggregate principal amount of unsecured, fixed-rate notes ("Notes") to banks or other financial institutions. The Notes will mature in not less than two nor more than ten years from the date of issuance and will be issued pursuant to a fixed-rate, term loan agreement. The Notes will be unconditionally guaranteed by Ohio Power and will bear interest to maturity at a rate which would not be greater than 11% per annum. SOCCo and Windsor also seek authorization to issue, respectively, no less than $25 million and no more than $50 million and no less than $2 million and no more than $4 million of new notes ("New Notes") payable to Ohio Power. The sum of the Notes and New Notes will not exceed $160 million for SOCCo and $10 million for Windsor.

Indiana & Michigan Electric Company (70-7313)

Indiana & Michigan Electric Company ("I&ME"), One Summit Square, Fort Wayne, Indiana 46801, a subsidiary of American Electric Power Company, Inc., a registered holding company, has filed a declaration pursuant to sections 6(a) and 7 of the Act and Rule 50 promulgated thereunder.

I&ME proposes to issue and sell, in one or more transactions from time-to-time through December 31, 1987, up to $300 million aggregate principal amount of its (i) First Mortgage Bonds ("Bonds"), in one or more series, each with a maturity of not less than 5 years and not more than 30 years, through a competitive bid basis, unless I&ME later seeks and receives authorizations for an exception from competitive bidding and/or (ii) unsecured notes to mature in not less than 2 years and not more than 10 years pursuant to a proposed term loan agreement and to bear interest at a rate not greater than 12 percent per annum. If I&ME determines to issue the Bonds in more than one series, it may seek to sell one or more series on a competitive basis and one or more series on a negotiated basis.

American Electric Power Company, Inc., et al. (70-7316)

American Electric Power Company, Inc. ("AEP") a registered holding company, and its electric utility subsidiaries, Appalachian Power Company ("Appalachian"), 40 Franklin Road, S.W., Roanoke, Virginia 24011, Columbus and Southern Ohio Electric Company ("Columbus"), 215 North Front Street, Columbus, Ohio 43215, Indiana & Michigan Electric Company ("Indiana"), One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801, Kentucky Power Company ("Kentucky"), 1701 Central Avenue, Ashland, Kentucky 41101, Kingsport Power Company ("Kingsport"), 40 Franklin Road, S.W., Roanoke, Virginia 24011, Michigan Power Company ("Michigan"), P.O. Box 413, Three Rivers, Michigan 49093, Ohio Power Company ("Ohio"), 301 Cleveland Avenue SW., Canton, Ohio 44701, and Wheeling Electric Company ("Wheeling"), 51 Sixteenth Street, Wheeling, West Virginia 26003, have filed an application-declaration pursuant to sections 6(a), 6(b), 7 and 12(b) of the Act and Rules 45 and 50 thereunder.

During the period from January 1, 1987 through December 31, 1988, Appalachian, Columbus, Indiana and Kentucky propose to issue and sell to banks and dealers in commercial paper short-term notes in aggregate principal amounts not exceeding $125 million, $150 million, $200 million and $75 million, respectively, at any one time outstanding. Kingsport, Michigan and Wheeling propose to issue and sell to banks short-term notes in aggregate principal amounts not exceeding $5 million, $10 million and $5 million, respectively, at any one time outstanding. Appalachian, Columbus, Indiana and Kentucky request that the proposed issuance and sale of commercial paper be excepted from the competitive bidding requirements of Rule 50, pursuant to Rule 50(a)(5).

During the same period, Columbus also proposes to extend an existing credit agreement with Prudential Interfunding Corporation (HCAR No. 23748, June 26, 1986) which provides for short-term borrowings up to an aggregate principal amount of $35 million. Such borrowings will be evidenced by a revolving note maturing no more than 270 days from the date of issuance or renewal and secured by a first security interest in certain coal supplies of Columbus.

AEP requests authorization during the same period to make cash capital contributions from time to time to provide equity capital of up to $25 million for both Indiana and Columbus.

Middle South Utilities, Inc., et al. (70-7317)

Middle South Utilities, Inc. ("Middle South"), a registered holding company, its service company subsidiary, Middle South Services, Inc. ("Services"), both of 225 Baronne Street, New Orleans, Louisiana 70112, Arkansas Power & Light Company ("Arkansas"), First Commercial Building, Little Rock, Arkansas 72201, Louisiana Power & Light Company ("Louisiana"), 142 Delaronde Street, New Orleans, Louisiana 70114, Mississippi Power & Light Company ("Mississippi"), Electric Building, Jackson, Mississippi 39201, and New Orleans Public Service Inc. ("New Orleans"), 317 Baronne Street, New Orleans, Louisiana 70112, each an operating subsidiary of Middle South (collectively, "Operating Companies"), the Operating Companies' fuel-supply subsidiary, System Fuels, Inc. ("SFI"), and Middle South's generating-company subsidiary, System Energy Resources, Inc. ("System Energy"), both of 225 Baronne Street, New Orleans, Louisiana 70112, have filed an application-declaration pursuant to sections 6(a), 7, 9(a), and 10 of the Act and Rule 50(a)(5) thereunder.

By order dated December 30, 1985 (HCAR No. 23967), the applicants-declarants were authorized to participate in a system money pool. It is now proposed that, during the period ending December 31, 1988, such companies continue their participation in the money pool, that the Operating Companies be authorized to issue and sell short-term notes to banks and to commercial paper dealers, and the System Energy be permitted to make short-term borrowings through the pool as well as invest therein. Total outstanding short-term borrowings so proposed to be made by each of the

Operating Companies and System Energy during this period will not exceed 10% of the sum of (a) the total principal amount of all bonds or other securities representing secured indebtedness issued or assumed by an Operating Company or System Energy and then outstanding and (b) the capital and surplus of the Operating Company or System Energy as then stated on its books. Total borrowings through the money pool by Services and SFI will not exceed, at any one time outstanding, amounts equal to the aggregate unused portions of back-up lines of credit then available to these companies. Services and SFI will be permitted to borrow only after the daily needs of the Operating Companies and System Energy have been satisfied. Middle South may lend to the pool but is not authorized to borrow therefrom. All loans will be payable on demand, may be prepaid by any borrowing Participant at any time without premium or penalty, and will bear interest, payable monthly, at a rate of interest, calculated on a daily basis, equal to the daily federal funds effective rate as quoted by the Federal Reserve Bank of New York. Services, as administrator of the money pool, will invest funds remaining in the pool after satisfication of the borrowing needs of the participants and will allocate the earnings among the participants providing the excess funds on a pro rata basis in accordance with their respective interests in the funds.

In the event that, on any given day, the available funds in the money pool are insufficient to satisfy the short-term borrowing requirements of one or more of the Operating Companies, such Operating Companies will effect short-term borrowing through bank loans and/or the sale of commercial paper. The notes proposed to be issued and sold to banks will be payable on demand of the lending bank or not more than one year from the date of issuance and will bear interest at a rate per annum generally no greater than one percent over the prime commercial bank rate. The commercial paper proposed to be issued by the Operating Companies will be in the form of unsecured promissory notes with varying maturities not to exceed 270 days, will not be prepayable, and will be sold directly to a dealer at a discount not in excess of the maximum discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturity. An exception from the competitive bidding requirements of Rule 50 has been requested for the proposed issuance of commercial paper notes.

Middle South Utilities, Inc., (70-7318)

Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding compnay, has filed a declaration pursuant to section 6(a) and 7 of the Act.

Middle South proposes to enter into a revolving credit agreement providing for the issuance by Middle South until December 31, 1989 of up to $60,000,000 at any one time outstanding of its unsecured promissory notes to a group of commercial banks. The Notes issued will bear interest from the date thereof on the unpaid principal amount at a rate per annum equal to one of three rates, as selected by Middle South from time to time.

The Connecticut Light and Power Company (70-7320)

The Connecticut Light and Power Company ("CL&P"), Selden Street, Berlin, Connecticut 06037, a wholly owned subsidiary of Northeast Utilities, a registered holding company, has filed a declaration pursuant to sections 6(a) and 7 of the Act and Rule 50 thereunder.

The proposed transaction relates to the financing of CL&P's portion of the cost of acquiring, constructing and installing certain pollution control facilities and/or sewage or solid waste disposal facilities ("Facilities") at the Seabrook Nuclear Power Station, Unit No. 1 in Seabrook, New Hampshire. CL&P owns 4.05985% of Unit No. 1. The Industrial Development Authority of the State of New Hampshire ("Issuer") intends to issue pollution control revenue bonds ("Bonds) in an aggregate amount not exceeding $25,000,000. The Bonds will be issued an Indenture of Trust between the issuer and a trustee ("Trustee"). The Issuer will lend the proceeds of the Bonds to CL&P pursuant to a loan agreement. CL&P requests that its borrowings under the loan agreement be excepted from the competitive bidding requirements of Rule 50, pursuant to Rule 50(a)(5). CL&P will agree to make payments corresponding to the amounts needed to pay the principal of, premium, if any, and interest on the Bonds as they become due. The obligations of CL&P to repay its loan will be evidenced by a promissory note. The Bonds will be issued with variable interest rates as floating rate demand bonds and will mature in not more than thirty years. At the option of CL&P, the interest rates on the Bonds may be converted to a fixed interest rate. Prior to fixing rates, the Bonds may be tendered for payment by holders. If the Bonds cannot be remarketed, the Trustee may draw upon an irrevocable letter of credit issued by a bank to pay tendering bondholders.

System Fuels, Inc, et al. (70-7321)

System Fuels, Inc. ("SFI"), One Poydras Plaza, 639 Loyola Avenue, New Orleans, Louisiana 70113, a fuel procurement subsidiary of Arkansas Power & Light Company ("AP&L"), First National Building, Little Rock, Arkansas 72203, Louisiana Power & Light Company ("LP&L"), 142 Delaronde Street, New Orleans, Louisiana 70174, Mississippi Power & Light Company ("MP&L"), Electric Building, Jackson, Mississippi 39205, and New Orleans Public Service Inc. ("NOPSI"), 317 Baronne Street, New Orleans, Louisiana 70112 (collectively, "Operating Companies"), each a subsidiary of Middle South Utilities, Inc. ("Middle South"), a registered holding company, and the Operating Companies have filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and Rules 45, 90 and 91 thereunder.

By order dated December 30, 1985 (HCAR No. 23968), SFI was authorized to borrow from time to time through December 31, 1986, up to an aggregate principal amount of $56 million from the Operating Companies, pursuant to a loan agreement. It is not proposed to amend the agreement (as amended, "Loan Agreement") to provide for borrowings by SFI for the repayment of loans. Such borrowings will be made from time to time from January 1, 1987 through December 31, 1987, in an aggregate principal amount not exceeding, at any one time outstanding, the sum of $40 million and the amount outstanding under the 1986 agreement (currently estimated to be $11 million), which amount will be converted to loans under the Loan Agreement.

The Operating Companies' commitments under the proposed Loan Agreement are $15,649,000 for AP&L, $22,711,000 for LP&L, $7,650,000 for MP&L and $4,990,000 for NOPSI. The commitment of each company is equal to the same proportion of the total commitments as such company's kilowatt-hour sales for the twelve months ended September 30, 1986, bear to the total kilowatt-hour sales of the Operating Companies for that period.

The applicants-declarants also request authorization for the Operating Companies to assure any party which may contract with SFI in the ordinary course of SFI's fuel supply business that the Operating Companies will, in

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accordance with their respective shares of ownership of the common stock of SFI, take such action as may be appropriate from time to time to maintain the sound financial condition of SFI so that it may discharge its contractual obligations. The applicants-declarants further request authorization for personnel employed by the other companies in the Middle South system to perform services for SFI at cost, in circumstances where the employment of such personnel is efficient and economical.

Pennsylvania Electric Company (70-7328)

Pennsylvania Electric Company, ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907, a subsidiary of General Public Utilities Corporation, a registered holding company has filed an application with the Commission pursuant to sections 6(b), 9(a) and 10 of the Act and Rule 50(a)(5) thereunder.

Penelec proposes to issue an aggregate of up to $41,000,000 principal amount of its first mortgage bonds ("New Bonds") to The Cambria County Industrial Development Authority ("Authority"). The New Bonds will be delivered to the Authority to pay the purchase price of certain pollution control facilities presently being constructed in connection with certain of Penelec's electric generating stations. The interest rate, maturity date, and the redemption, repurchase or repayment provision will correspond to the interest rate, maturity date, and the redemption or prepayment provisions with respect to the pollution control revenue bonds ("Authority Bonds") to be issued by the Authority.

The Authority Bonds will have a term of not less than 10 and not more than 30 years, redeemable at Penelec's direction not earlier than 1991 or later than 1996. The Authority Bonds will initially bear a fixed interest rate for a period of one to seven years, and then are convertible to a capped variable rate for the reminder of the term at the option of the bondholders.

Eastern Edison Company et al. (70-7329)

Eastern Edison Company ("Eastern Edison"), 110 Mulberry Street, Brockton, Massachusetts 02403, Blackstone Valley Electric Company ("Blackstone"), Washington Highway, P.O. Box 1111, Lincoln, Rhode Island 02865 and Montaup Electric Company ("Montaup"), P.O. Box 2333, Boston Massachusetts 02107, (collectively, "Operating Companies"), electric utility subsidiaries of Eastern Utilities Associates, a registered holding company, have filed a declaration pursuant to sections 6(a) and 7 of the Act.

The Operating Companies propose to issue and sell short-term notes to banks from time to time from December 30, 1986 to December 28, 1987 in aggregate principal amounts not exceeding $50 million for Eastern Edison, $40 million for Montaup and $10 million for Blackstone, at any one time outstanding. No such note will mature later than September 30, 1988.

General Public Utilities Corporation (70-7330)

General Public Utilities Corporation ("GPU"), 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered holding company, has filed an application pursuant to sections 9(a) and 10 of the Act.

In order to replace excess liability insurance coverage which expired on July 1, 1986, and to provide continuity of coverage for its system companies and their directors and officers, GPU has entered into a subscription agreement with Exel Limited ("Exel"), a Cayman Islands corporation, subject to Commission approval. GPU proposes to acquire 7,866 shares of common stock of Exel for a purchase price of $150 per share, or an aggregate purchase price of $1,180,000. Exel owns all of the common stock of XL Insurance Company ("XL"), a Barbados insurance company organized to underwrite general libility and directors' and officers' liability insurance coverage. In order to obtain insurance from XL, which will not be a licensed insurer in the United States, a potential policyholder is required to subscribe for shares of common stock of Exel in an amount equal to a percentage of the policyholder's gross first year premium. GPU's liability as a participant would be limited to GPU's capital investment in Exel in the event that XL incurs underwriting losses in excess of accumulated capital and surplus. GPU states that it expects that its proposed ownership interest in Exel will not exceed 1% of the voting stock outstanding at any one time.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Johnathan G. Katz,

Secretary.

[FR Doc. 86-26749 Filed 11-26-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15423; (812-6476)]

Application for Exemption; BT Investment Trust

November 20, 1986.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: BT Investment Trust ("Applicant").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of Section 17(f).

Summary of Application: Applicant seeks an order to permit it to maintain excess variation margin with its futures commission merchants ("FCMs") when it engages in futures contracts.

DATES: The application was filed on September 11, 1986, and amended on October 21, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 15, 1986. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 60 Broad Street, New York, NY 10004.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney (202) 272-2847 or Brion R. Thompson, Special Counsel (202) 272-3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant was organized as a business trust under the laws of the Commonwealth of Massachusetts and is registered as an open-end, diversified, management investment company under the 1940 Act.

2. Applicant currently offers shares in three investment portfolios: the Cash Management Fund, the Treasury Money Fund, and the Equity Index Fund (the "Fund"). The Fund seeks to provide investment results that approximate the aggregate price and dividend performance of the securities included in the Standard & Poor's 500 Composite Stock Price Index ("S&P 500 Index") by investing primarily in common stocks included in the S&P 500 Index.

3. Applicant intends to purchase, through the Fund, S&P 500 Index futures contracts as a means of hedging against anticipated adverse price movements of securities. If the Fund anticipates an increase in the market prices of securities which it intends to purchase, it may purchase S&P 500 Index futures contracts when it is not fully invested in securities in order to offset, in part or entirely, increases in the cost of such securities, and convert cash balances into an investment which reflects the S&P 500 Index. The Fund will purchase such futures contracts, provided it creates a segregated account with its Custodian consisting of cash, U.S. Government securities or other appropriate high grade debt obligations in an amount equal to the total market value of any futures contract, less the initial margin for the contract. In order to close long positions in S&P 500 Index futures contracts prior to their settlement date, the Fund will enter into offsetting sales of S&P 500 Index futures contracts. In no event will the Fund purchase or sell such futures contracts for the purposes of speculation. The Fund's investments in securities other than common stocks included in the S&P 500 Index will represent as a group not more than 20 percent of the Fund's net assets and will be in any combination of S&P 500 Index futures contracts and money market instruments. The Fund does not intend to purchase or write options on S&P 500 Index futures contracts.

4. Applicant has filed a Notice of Eligibility on behalf of the Fund claiming exclusion from the definition of the term "commodity pool operator" in accordance with rule 4.5 of the Commodity Futures Trading Commission (the "CFTC"), and has undertaken in the Notice of Eligibility to comply with the rules, requirements and interpretations of the CFTC.

5. Initial margin payments required in connection with Applicant's transactions in S&P 500 Index futures contracts will be made into special segregated accounts with Applicant's Custodian, in the name of the FCM and for the benefit of the Fund ("Account"). A separate Account will be established for each FCM with which Applicant enters into futures transactions, and each such Account will be maintained apart from the general custodial account of Applicant. The amounts held in the Accounts will constitute performance bonds, to be returned to Applicant upon termination of the futures positions, assuming that all of Applicant's contractual obligations have been satisfied. An FCM will have access to such amounts only upon a representation to the Custodian that Applicant is in default on its obligations to the FCM and that all conditions precedent to the FCM's right of access to the Account have been satisfied. Subsequent "variation margin" payments due to an FCM, if any, will be made directly to the FCM by Applicant.

6. Upon entering into an S&P 500 Index futures contract, Applicant must post an "initial margin" deposit, in an amount equal to a certain percentage of the face value of the futures contract, in an Account for the FCM effecting the futures transaction. If on any day the net equity of Applicant's Account for the FCM falls below the required margin, Applicant must make a "variation margin" payment to increase the equity in the Account. Similarly, if Applicant's open futures contract positions with an FCM reflect a net gain on any day, the FCM is obligated to pay Applicant a variation margin in the amount of the excess (unless part of that variation margin is retained by the FCM in order that the Account may continue to meet the minimum margin requirements). Were a variation margin owed to Applicant by an FCM in connection with S&P 500 Index futures contracts held by the FCM rather than by Applicant's Custodian, Applicant might not be in compliance with Section 17(f) of the 1940 Act.

7. While Applicant has a right to demand a variation margin owed to it from an FCM in any amount on any day that there is an excess above the required initial margin, Applicant submits that it would be unnecessarily costly and unduly burdensome for both the Fund and its FCMs if the Fund were required to demand payment of *de minimus* amounts of variation margin. To demand an insubstantial portion of its assets, the Fund would have to incur transaction fees charged by its Custodian and additional operating expenses. Applicant believes that the ability to leave a variation margin with its FCMs in the amounts and on the conditions described below would save the Fund, its shareholders and FCMs the expense of processing payments for small amounts of variation margin without increasing in any meaningful degree any risk to the security of its assets.

8. Applicant will enter into a spearate agreement among itself, its Custodian and each FCM, pursuant to which Applicant's initial margin deposits will be held by the Custodian, subject to disposition by the FCM in accordance with CFTC rules and the rules of the applicable contract market. Each agreement will provide that: (1) The Customdian will take instructions with respect to disposition of assets in that Account only from the FCM; (2) in directing any disposition of assets, the FCM must state that Applicant is in default (if the directed disposition is to the FCM), that all conditions precedent to its right to direct disposition have been satisfied, and that the disposition is for a proper purpose under, and in all other respects complies with, the terms of the agreement; (3) assets of Applicant that would otherwise be held by the FCM will be in the possession of the Custodian until released or sold or otherwise disposed of in accordance with or under the terms of the agreement; (4) those assets will not otherwise be pledged or encumbered by the FCM; (5) when requested by Applicant, the FCM will cause the Custodian to release to Applicant's general custodial account any assets to which Applicant is entitled under the terms of such agreement; and (6) assets in the segregated Account will otherwise be used only to satisfy Applicant's obligations to the FCM under the terms of the agreement.

9. Applicant will promptly cause any amounts no longer required as initial margin to be transferred to its general custodial account and will, prior to engaging in any transactions in future contracts or options thereon, disclose in a prospectus supplement the risk of loss of margin deposits due to the bankruptcy of an FCM, although the foregoing arrangements are designed to reduce that risk.

10. Applicant undertakes with respect to its S&P 500 Index futures contracts that any variation margin payable by an FCM to Applicant will be reflected as net gains, will be immediately shown as increased equity in Applicant's account with the FCM and will be credited immediately to Applicant's net asset value. Conversely, variation margin payments made to an FCM will be reflected as net losses.

11. Applicant further undertakes that it will monitor variation margin each day in order to promptly demand, on a daily basis, payment and transfer of

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amounts from an FCM to Applicant's Custodian (for the general or a segregated custodial account maintained for the purpose of holding margin deposits, as appropriate) that are not required to maintain Applicant's S&P 500 Index futures positions ("excess variation margin") whenever and to the extent the excess variation margin owed to Applicant by a given FCM exceeds $50,000 and to the extent necessary to maintain the aggregate amount of excess variation margin held by all of its FCMs at a level which will not exceed ⅛ of one percent of the net assets of the Fund. Applicant anticipates that excess variation margin will be returned to it one business day or less after the levels described above are reached.

12. Initial margin held by Applicant's Custodian and variation margin payments held by Applicant's FCM will continue to be regarded as assets of Applicant, unless and until such amounts are owed to the FCM, and no FCM will be permitted to pledge or encumber amounts held by it or the Custodian for the benefit of Applicant. In the event of the insolvency of an FCM, amounts held by the FCM for the benefit of the Applicant will be subject to federal bankruptcy laws and the bankruptcy regulations of the CFTC, which provide for *pro rata* distribution to customers of the FCM of all customer property.

13. Applicant believes that the order requested is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act in view of the CFTC requirement that initial margin deposits and premiums on commodity futures and related options may not exceed five percent of the fair market value of the Fund's assets, and of the extensive regulations of the CFTC governing segregation and accounting by FCMS.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-26750 Filed 11-26-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

[Docket 44485]

Baltimore-London Service Case; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on December 8, 1986, at 10:00 a.m. (local time), in Room 5332, Nassif Building, 400 7th Street SW., Washington, DC, before Administrative Law Judge Ronnie A. Yoder.

Dated: November 20, 1986.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 86-26759 Filed 11-26-86; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 86-065]

Rules of the Road Advisory Council; Membership Applications

AGENCY: Coast Guard, DOT.

ACTION: Request for Applications.

SUMMARY: The U.S. Coast Guard is seeking applications for appointment to membership on the Rules of the Road Advisory Council. This Council was established under the Inland Navigational Rules Act of 1980 (33 U.S.C. 2073) to advise, consult with, and make recommendations to the Secretary of Transportation on matters relating to the Inland Navigation Rules and the International Regulations for Preventing Collisions at Sea (72 COLREGS).

DATE: Requests for applications should be received by the Coast Guard no later than January 15, 1987. Applications must be completed and returned to the Coast Guard no later than February 15, 1987.

ADDRESS: Persons interested in applying should write to Commandant (G-NSS-2), U.S. Coast Guard Headquarters, Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: Commander Charles K. Bell, Executive Director, Rules of the Road Advisory Council (G-NSS-2), Room 1606, U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, DC 20593-0001, (202) 267-0366.

SUPPLEMENTARY INFORMATION: In June 1987, there will be seven vacancies on the 21-member Council. The seven appointments will be made by the Secretary of Transportation. The Coast Guard will accept applications received after the publication of this notice and before February 15, 1987 and thereafter make recommendations to the Secretary. Under the Inland Navigational Rules Act and ". . . to assure balanced representation, members shall be chosen, insofar as practical, from the following groups: (1) Recognized experts and leaders in organizations having an active interest in the Rules of the Road and vessel and port safety, (2) representatives of owners and operators of vessels, professional mariners, recreational boaters, and the recreational boating indusry, (3) individuals with an interest in maritime law, and (4) Federal and state officials with responsibility for vessel and port safety."

Since its establishment, the Council has met at least yearly at various sites in the continental United States. Members are entitled to receive per diem in lieu of subsistance, as well as to be reimbursed for travel expenses, in accordance with current regulations. The Authorization for the Council was extended to September 30, 1990. The seven new appointments will expire three years from June 1987.

Dated: November 21, 1986.

A.B. Smith,

Captain, U.S. Coast Guard, Chief, Office of Navigation (Acting).

[FR Doc. 86-26766 Filed 11-26-86; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7313, 1201 Constitution Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0074
Form Number: IRS Form 1040
Type of Review: Revision
Title: Unisex Annuity Tables
OMB Number: 1545-0718
Form Number: IRS Form 941-M
Type of Review: Extension
Title: Employer's Monthly Federal Tax Return
Clearance Officer: Carrick Shear, (202) 566-6150, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 21, 1986.

Douglas J. Colley,

Departmental Reports Management Office.

[FR Doc. 86-26740 Filed 11-26-86; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7313, 1201 Constitution Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0002
Form Number: IRS Form CT-2
Type of Review: Extension
Title: Employee Representative's Quarterly Railroad Tax Return

OMB Number: 1545-0245
Form Number: IRS Form 6627
Type of Review: Reinstatement
Title: Environmental Taxes

Clearance Officer: Garrick Shear, (202) 566-6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf, (202), 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dated: November 21, 1986.

Douglas J. Colley,

Departmental Reports Management Office.

[FR Doc. 86-26824 Filed 11-26-86; 8:45 am]

BILLING CODE 4810-25-M

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Sunshine Act Meetings

Federal Register
Vol. 51, No. 229
Friday, November 28, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 am., December 5, 1986.

PLACE: 2033 K Street, NW., Washington, DC., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 245-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86-26867 Filed 11-25-86; 11:07 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 am., December 12, 1986.

PLACE: 2033 K Street, NW., Washington, DC., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86-26868 Filed 11-25-86; 11:08 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 am., December 19, 1986.

PLACE: 2033 K Street, NW., Washington, DC., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86-26869 Filed 11-25-86; 11:09 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., December 26, 1986.

PLACE: 2033 K Street NW., Washington, DC., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86-26870 Filed 11-25-86; 11:10 am]

BILLING CODE 6351-01-M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 2, 1986, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Auberger, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090 (703-883-4010).

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: No portion of the meeting will be closed to the public (limited space available). The matters to be considered at the meeting are:

1. Approval of Minutes of November Meeting.
2. Regulations:
   Proposed: Sections 611.1020-611.1031—Director Compensation
3. Consideration of Guidelines for Regulatory Accounting Practices/Requirements

Dated: November 24, 1986.

Kenneth J. Auberger,

Secretary, Farm Credit Administration Board.

[FR Doc. 86-26884 Filed 11-25-86; 12:06 pm]

BILLING CODE 6705-01-M

FEDERAL COMMUNICATIONS COMMISSION

November 24, 1986.

The Federal Communications Commission previously announced on November 18, 1986, its intention to hold an Open Meeting, November 25, 1986, on the subject listed below. This item has been rescheduled to be held in a Closed Meeting following the Regular Open Meeting which will commence at 9:30 a.m., at 1919 M Street NW., Washington, DC.

Agenda, Item No., and Subject

Private Radio—1—Title: Preparation for an International Telecommunication Union World Administrative Radio Conference for the Mobile Services. Summary: The Commission will consider whether to adopt a Report and Order which presents recommendations to the Department of State for U.S. proposals to be put forth at the Mobile WARC.

This item is closed to the public because it concerns Executive Order and Premature Disclosure matters (See 47 CFR 0.603 (a) and (i).

The prompt and orderly conduct of Commission business requires this change and no earlier announcement of the change was possible.

The following persons are expected to attend this meeting:

Commissioners and their Assistants
Managing Director and members of his staff
Acting Chief, Private Radio Bureau
Chief, Common Carrier Bureau
Chief, Field Operations Bureau
Chief, Mass Media Bureau
Chief, Engineer and members of his staff
Chief, Office of Congressional and Public Affairs

Action by the Commission November 21, 1986. Commissioners Fowler Chairman; Quello, Dawson, Patrick and Dennis voting to consider this item in Closed Session with less than 7-days notice to the public.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen Peratino, FCC Office of Congressional and Public Affairs, telephone number (202) 632-5050.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-26906 Filed 11-25-86; 3:11 pm]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:15 a.m. on Friday, November 21, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider the following matters:

(A) Application of The Steel City National Bank of Chicago, Chicago, Illinois, for consent to purchase certain assets of and assume the liability to pay deposits made in the branch located at 9117 South Commercial Avenue, Chicago, Illinois, of United Savings of America, Streamwood, Illinois, a non-FDIC-insured institution.

(B) Application of Grenada Bank, Grenada, Mississippi, an insured State nonmember bank, for consent to merge, under its charter and title, with The Bank of Leland, Leland, Mississippi, and for consent to establish the two offices of The Bank of Leland as branches of the resultant bank.

(C) Application of Southern Bank and Trust Company, Mount Olive, North Carolina, an insured State nonmember bank, for consent to merge, under its charter and title, with Tarheel Bank & Trust Co., Gatesville, North Carolina, and for consent to establish the six offices of Tarheel Bank & Trust Co., as branches of the resultant bank.

(D) Application of The Greater New York Savings Bank, New York City (Brooklyn), New York, an insured savings bank, for consent to transfer certain assets to Ensign Bank, FSB, Hialeah, Florida, a non-FDIC-insured institution, in consideration of the assumption of the liability to pay deposits made in the Lexington Avenue and Port Chester Branches of The Greater New York Savings Bank.

At that same meeting, the Board also considered a request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: November 24, 1986.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 86-26871 Filed 11-25-86; 11:11 am]

BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, December 2, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

* * * * *

DATE AND TIME: Thursday, December 4, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Proposed FEC *Guideline for Presentation in Good Order* for the 1988 Presidential primary election
Draft Advisory Opinion 1986-39—Timothy P. Dillon on behalf of Vincent Carrafiella
Draft Advisory Opinion 1986-40—John R. Raese on behalf of West Virginia Republican Party
Draft Advisory Opinion 1986-41—Mary E. Downs on behalf of the Air Transport Association of America
Proposed revisions of Title 26 regulations
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 86-26900 Filed 11-25-86; 2:55 pm]

BILLING CODE 6715-01-M

UNITED STATES INSTITUTE OF PEACE

TIMES AND DATES:

9:00 a.m.-5:00 p.m., Thursday, December 4, 1986
9:30 a.m.-5:00 p.m., Friday, December 5, 1986

PLACES:

Thursday, December 4, 1986. Tayloe House, National Courts Building, 717 Madison Place, NW., Washington, DC 20005
Friday, December 5, 1986. United States Senate, Russell Senate Office Building, Room 385, Washington, DC 20510

STATUS: Open (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. 98-525).

AGENDA (TENTATIVE):

Thursday: Meeting of Board of Directors convened. Consideration of business, including minutes of seventh meeting, committee reports, grants program update, program discussion, and closing meeting in order to consider, in committee and plenary session, (a) specific grant applications and (b) personnel matters regarding the Jennings Randolph Program for International Peace.

Friday: Morning: Information Services Committee convened to discuss the intellectual map of the peace field with Prof. Inis Claude (Univ. of Virginia), Dr. Edward Luttwak (CSIS, Georgetonw Univ.), Prof. Gene Sharp (Univ. of Massachusetts and Harvard Univ.), and Prof. Louis Sohn (Univ. of Georgia). Afternoon: Committee meeting may continue. Committee may adjourn and Board may reconvene in executive session to conclude discussions on grant applications and personnel matters commenced on Thursday.

CONTACT: Mrs. Olympia Diniak. Telephone: (202) 789-5700.

Dated: November 24, 1986.

Robert F. Turner,

President, United States Institute of Peace.

[FR Doc. 86-26894 Filed 11-25-86; 2:11 pm]

BILLING CODE 3155-01-M

Corrections

Federal Register
Vol. 51, No. 229
Friday, November 28, 1986

This section of the FEDERAL REGISTER contains editorial corrections of previously published Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency-prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA Action 2066; A-7-FRL-3069-2]

Approval and Promulgation of State Implementation Plans; Missouri

Correction

In rule document 86-18985 beginning on page 30063 in the issue of Friday, August 22, 1986, make the following correction:

§ 52.1320 [Corrected]

In § 52.1320 (c)(59)(i)(A), on page 30064, in the first column, in the last line, "1986" should read "1985".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 62

[A-1-FRL-3107-7]

Approval and Promulgation of Implementation Plans; Massachusetts; Correction Notice; Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Certification of No Designated Facilities

Correction

In rule document 86-25343 beginning on page 40799 in the issue of Monday, November 10, 1986, make the following corrections:

1. On page 40800, in the third column, immediately following the last paragraph, the table which appears on page 40801 should appear here also.

2. On page 40801, in the first column, in the third paragraph, in the fifth line, "December 10, 1986" should read "January 9, 1987".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-66129A; FRL-3108-7]

Carbon Tetrachloride; Intent to Cancel Registrations of Pesticide Products Containing Carbon Tetrachloride

Correction

In notice document 86-25503 beginning on page 41004 in the issue of Wednesday, November 12, 1986, make the following corrections:

1. On page 41006, in the first column, in the fourth complete paragraph, in the seventh line, "b2" should read "bw".

2. On the same page, in the second column, in the sixth line from the top, "95" should read "94".

3. On the same page, in the same column, in the first complete paragraph, in lines 23 and 25, "has" should read "had".

4. On the same page, in the third column, the heading after the first complete paragraph should read "D. Exposure".

5. On page 41007, in the first column, in the first complete paragraph, in the seventh line, insert "and" before "5".

6. On the same page, in the second column, in the 7th, 8th, 14th and 25th lines, "<" should read "<".

7. On the same page, in the same column, in the last paragraph, in the eighth line, "anc" should read "and".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-66132; FRL-3094-7]

Dinoseb; Intent to Cancel and Deny All Registrations for Pesticide Products Containing Dinoseb

Correction

In notice document 86-23100 beginning on page 36650 in the issue of Tuesday, October 14, 1986, on page 36653, second column, in Table 1 make the following corrections:

1. Under the entry for **Soybeans**, fifth line, in column two, the "Daily exposure" for "Late post" should read "1.4 (1.1-8.9)".

2. Under the entry for **Grapes**, insert ")" after "sprayer" in column one.

3. In "footnote 1", second line, the first word should read "boom".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 85F-0036]

Indirect Food Additives; Adhesives and Components of Coatings

Correction

In rule document 86-21562 beginning on page 33887 in the issue of Wednesday, September 24, 1986, make the following correction:

On page 33888, in the third column, in the first complete paragraph, in the ninth line, "in" should read "is".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 83F-0156]

21 CFR Part 178

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

Correction

In rule document 86-21563 beginning on page 33892 in the issue of Wednesday, September 24, 1986, make the following correction:

On page 33895, in the first column, the last line of the authority should read "CFR 5.10, 5.61.".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Pyrantel Tartrate

Correction

In rule document 86–21560 beginning on page 33897 in the issue of Wednesday, September 24, 1986, make the following corrections:

1. On page 33898, in the first column, in the first line, "NASA" should read "NADA"; and
2. On the same page, in the same column, in the ninth line, "or" should read "of".

BILLING CODE 1505-01-D

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federal register

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Part II

Department of Energy

Western Area Power Administration

10 CFR Part 904
General Regulations for the Charges for the Sale of Power From the Boulder Canyon Project; Final Rule

VOL 51 ISS 229 NO 28 1986 UMI

DEPARTMENT OF ENERGY

Western Area Power Administration

10 CFR Part 904

General Regulations for the Charges for the Sale of Power From the Boulder Canyon Project

AGENCY: Western Area Power Administration, Department of Energy.

ACTION: Final rule.

SUMMARY: The Western Area Power Administration (Western) is announcing the adoption of General Regulations for the Charges for the Sale of Power From the Boulder Canyon Project (General Regulations). These General Regulations define the methodology to be used in the computation of the charges for the sale of power from the Boulder Canyon Project (Project) on and after June 1, 1987. These General Regulations shall supersede the "General Regulations for Lease of Power" dated April 25, 1930 (1930 General Regulations), and the "General Regulations for Generation and Sale of Power in Accordance with the Boulder Canyon Project Adjustment Act" approved and promulgated on May 20, 1941 (1941 General Regulations), both of which shall terminate on May 31, 1987.

EFFECTIVE DATE: June 1, 1987. The General Regulations are promulgated on November 28, 1986.

ADDRESSES: For further information concerning these General Regulations, contact:

Mr. Tom Carter, Assistant Area Manager for Power Marketing, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 477-3255

Mr. Gary D. Miller, Attorney, Office of the General Counsel, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231-1531

SUPPLEMENTARY INFORMATION:

Introduction

Hoover Dam[1] (originally known as Boulder Dam) was authorized by Congress in 1928. When it was constructed, it represented a major achievement in the history of American public works because of its massive size—over 600 feet—and because of the enormous amounts of power that it could generate and the water that could be stored in its reservoir. Today, more than 50 years later, Hoover remains an important national resource. The benefits of its powerplant and its reservoir are distributed to millions of people in the States of Arizona, California, and Nevada.

In September 1929, the Secretary of the Interior issued an invitation for applications for the purchase of power from the Project. In response to the 27 applications, the Secretary announced a tentative allocation of power on October 21, and a hearing was held on November 12–13 with regard to the protests to the proposed allocation. In February 1930, the Department of the Interior (Interior) initiated negotiations with the applicants. By late April 1930, general regulations had been issued and two contracts satisfying the repayment requirements of the Boulder Canyon Project Act had been executed. The first contract with the United States for a lease of power privileges was executed by the City of Los Angeles acting through its Department of Water and Power (LADWP) and the Southern California Edison Company (SCE), while the second contract with the United States for the purchase of energy was executed by the Metropolitan Water District of Southern California (MWD). Thereafter, additional contracts for the purchase of energy were executed by the cities of Pasadena, Burbank, and Glendale, the State of Nevada, and the State of Arizona.

Construction of the Dam started in 1930. The first unit of the powerplant was placed in service on June 1, 1937, and the 50-year period of the energy contracts began to run on that date. On May 20, 1941, Interior adopted the 1941 General Regulations which, among other things, established the basis for the energy rates for the period June 1, 1937, through May 31, 1987.

The existing power contracts expire on May 31, 1987. In 1979, Western began the process of determining how power would be allocated after that expiration date. In the course of that process, controversy erupted over the extent to which the existing contractors would be entitled to renew their contracts. The dispute was heightened by the filing of a lawsuit by Nevada in 1981.

In order to settle this controversy and ensure the orderly marketing of power to customers in all three states, Congress passed the Hoover Power Plant Act of 1984, (98 Stat. 1333, 43 U.S.C. 618, 619 *et seq.*) (Hoover Power Plant Act), which provides very specific guidelines for the marketing and allocation of power from the Project for the 30-year period from June 1, 1987, to May 30, 2017. To a very large extent, Congress has made the major decisions concerning the Project; namely, who is to be offered the power from the Project and in what amounts. Congress, in effect, decided to continue largely intact the existing pattern of allocating power from Hoover Dam. Representative Udall described this legislative settlement as "an equitable allocation of the Hoover resources among customers in the three states [which] permits the Department of Energy to go forward with the [marketing of power] smoothly and without controversy" (May 3, 1984; H3308).

Under the Hoover Power Plant Act, Western is responsible for ensuring that those decisions are implemented. This rulemaking was instituted pursuant to that responsibility. The Hoover Power Plant Act does not provide specific guidelines on the precise form of the charges for power from the Project. However, Western's responsibility under the statutory framework for Hoover Dam is quite clear concerning the charges. Western must establish charges which result in the collection of revenues sufficient to cover the costs and obligations identified in the relevant statutes. In carrying out this mandate, Western has considerable discretion to construct a rate design for the charges for power from the Project.

The Government itself has no particular economic interest in the intricacies of the rate design, since whatever rate design is adopted must yield the same overall amount of revenue. In developing a fair and equitable rate design, however, Western has sought the active participation of those entities whose business and economic interests will be directly affected by Western's decision concerning rate design. In one sense, the interests of these entities are necessarily in competition since there is a fixed amount of revenue which must be collected. Simply stated, any decrease in the charges to one entity must be offset on a dollar-for-dollar basis by an increase in the aggregate charges to other entities. However, all these entities share a common interest in the orderly marketing of power from Hoover Dam. Orderly marketing requires the adoption of a rate design which takes into account the positions of all the entities and attempts to treat everyone equitably. Such a rate design will permit Western to go forward with the marketing of power from the Project consistent with the settlement embodied in the Hoover Power Plant Act. This is the very reason the Act was enacted.

Background

The Reclamation Act of 1902 (43 U.S.C. 391 *et seq.*), the Boulder Canyon Project Act of 1928 (43 U.S.C. 617 *et seq.*)

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[1] Hoover Dam is, in this document, referred to as Hoover, Hoover Dam, and the Project.

(Project Act), the Boulder Canyon Project Adjustment Act of 1940 (43 U.S.C. 618 *et seq.*) (Adjustment Act), the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*), the Colorado River Storage Project Act (43 U.S.C. 620 *et seq.*), the Colorado River Basin Project Act (43 U.S.C. 1501 *et seq.*), and the Hoover Power Plant Act provide the statutory framework within which Western markets power from the Project. The Project Act provides for the construction of works for the protection and development of the Colorado River Basin and for other purposes. Section 617d of the Project Act addresses the Secretary of the Interior's authority, under such regulations as he may prescribe, to contract for the generation and delivery of electrical energy. The charge for electric service from the Project shall be established to provide sufficient revenue to recover all expenses of operation and maintenance, and repayment, with interest, of all amounts advanced from the United States Treasury for the Project.

The Adjustment Act further defines the Secretary of the Interior's authority to promulgate the charges, or the basis of computation thereof, for electrical energy generated at Hoover Dam. In accordance with this authority, the Secretary of the Interior approved and promulgated the 1941 General Regulations. The 1941 General Regulations provide the basis for computation of the charges for electrical energy generated at Hoover Dam through May 31, 1987.

The Department of Energy Organization Act transferred the responsibility for the power marketing and transmission functions of the Project to Western from the Bureau of Reclamation (Reclamation). The construction, power generation, operation, maintenance, and replacement responsibilities of the Project powerplant and appurtenant works remained with Reclamation. "General Regulations for Power Generation, Operation, Maintenance, and Replacement at the Boulder Canyon Project, Arizona/Nevada" are the subject of a separate rulemaking by the Department of the Interior under 43 CFR Part 431. A final rule in that rulemaking was published in the **Federal Register** (51 FR 23960) on July 1, 1986.

The power marketing function of Western includes the responsibility for promulgating charges for the sale of power. The marketing of power from the Project is the administrative responsibility of Western's Boulder City Area Office. The marketing of power from the Project beginning June 1, 1987, shall be in accordance with the "Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects," published in the **Federal Register** (49 FR 50582) on December 28, 1984. That document conforms the Boulder City Area Office marketing criteria to the Hoover Power Plant Act.

The Hoover Power Plant Act amends and is supplemental to the Project Act, the Adjustment Act, and the Colorado River Basin Project Act of 1968. The Hoover Power Plant Act also sets forth requirements and guidelines for the marketing and allocation of power from the Project for the period beginning June 1, 1987.

In effect, the Hoover Power Plant Act provides each original contractor with the opportunity for renewal of its allocation. Additionally, the Act authorizes the renovation of the existing generators at Hoover through an uprating program. The uprating will provide approximately 500 MW of additional capacity. This additional capacity and specified amounts of associated firm energy have been statutorily allocated among the three States. The statute specifies that the Nevada allocation is to be offered to the Colorado River Commission of Nevada (CRC) and that the Arizona allocation is to be offered to the Arizona Power Authority (APA). The statute does not specify any particular entity in California to be offered the California allocation from the uprating program.

However, in order to spread the benefits of Hoover power to more customers, the Act provides that California's share of the uprating capacity (127 MW) and associated firm energy may not be sold to any customer that now receives 20 MW or more of Hoover Power. Consequently, LADWP, MWD, and SCE are ineligible to receive an allocation of uprating power. Instead, Western will market it to preference entities in California, whose identities and allocations were determined in a separate rulemaking.

As to the specific allocations, section 105(a)(1)(A) of the Hoover Power Plant Act states that the Secretary of Energy shall offer "to each contractor for power generated at Hoover Dam a renewal contract for delivery commencing June 1, 1987, of the amount of capacity and firm energy specified for that contractor" in the following schedule:

SCHEDULE A.—LONG TERM CONTINGENT CAPACITY AND ASSOCIATED FIRM ENERGY RESERVED FOR RENEWAL CONTRACT OFFERS TO CURRENT BOULDER CANYON PROJECT CONTRACTORS

Contractor	Contingent capacity (kW)	Firm energy (thousands of kWh)		Total
		Summer	Winter	
Metropolitan Water District of Southern California	247,500	904,382	387,592	1,291,974
City of Los Angeles	490,875	486,535	209,658	696,193
Southern California Edison Co	277,500	175,486	75,208	250,694
City of Glendale	18,000	47,398	20,313	67,711
City of Pasadena	11,000	40,655	17,424	58,079
City of Burbank	5,125	14,811	6,347	21,158
Arizona Power Authority	189,000	452,192	193,797	645,989
Colorado River Commission of Nevada	189,000	452,192	193,797	645,989
U.S., for Boulder City	20,000	56,000	24,000	80,000
Totals	1,448,000	2,631,651	1,128,136	3,759,787

Section 105(a)(1)(B) states that the Secretary of Energy shall offer to purchasers in the States of Arizona, California, and Nevada "contracts for delivery commencing June 1, 1987, or as it thereafter becomes available, of capacity resulting from the uprating program and for delivery commencing June 1, 1987, of associated firm energy as specified" in the following schedule:

SCHEDULE B.—CONTINGENT CAPACITY RESULTING FROM THE UPRATING PROGRAM AND ASSOCIATED FIRM ENERGY

Contractor	Contingent capacity (kW)	Firm energy (thousands of kWh)		Total
		Summer	Winter	
Arizona	188,000	148,000	64,000	212,000
California	127,000	99,850	43,634	143,214
Nevada	188,000	288,000	124,000	412,000
Totals	503,000	535,850	231,634	767,214

Section 105(a)(1)(B) provides that contracts for this power from the uprating program be offered to the APA and the CRC. By **Federal Register** notice of November 20, 1985 (50 FR 47837), Western allocated contingent capacity and associated firm energy to be made available through the uprating program to purchasers in California as specified in the following schedule:

ALLOCATION SCHEDULE

State	Contingent capacity (kW)	Firm energy (thousands of kWh)		Total
		Summer	Winter	
Arizona: Arizona Power Authority	188,000	148,000	64,000	212,000

ALLOCATION SCHEDULE—Continued

State	Contingent capacity (kW)	Firm energy (thousands of kWh)		Total
		Summer	Winter	
Nevada: Colorado River Commission	188,000	288,000	124,000	412,000
California:				
City of Anaheim	40,000	36,255	15,745	52,000
City of Azusa	4,000	3,486	1,514	5,000
City of Banning	2,000	1,394	606	2,000
City of Burbank	15,000	3,794	1,648	5,442
City of Colton	3,000	2,789	1,211	4,000
City of Glendale	2,000	2,894	1,257	4,151
City of Pasadena	9,000	2,525	1,096	3,621
City of Riverside	30,000	27,191	11,809	39,000
City of Vernon	22,000	19,522	8,478	28,000
Total California	127,000	99,850	43,364	143,214
Total	503,000	536,850	231,364	767,214

The financing of the uprating program will be accomplished with funds advanced by the customers. The power purchasers agreed to this financing arrangement, are capable of raising the monies, and will enter into contracts with the United States to advance funds. The contracts will provide for the repayment of the advanced funds, plus interest, from revenues produced by operation of the Project.

Proposed General Regulations were first published in the **Federal Register** (50 FR 20732) on May 17, 1985. The **Federal Register** notice provided that comments on the proposed General Regulations would be accepted by Western on or before July 15, 1985. A public information forum on the proposed General Regulations was held on June 4, 1985, and a public comment forum was held on July 1, 1985. At the public comment forum, Western announced a 90-day delay in the public process on the proposed General Regulations. The 90-day delay was in response to a request made by the CRC on behalf of the Boulder Canyon Project renewal contractors and proposed Uprating Program contractors.[2] The 90-day delay was granted by Western to allow those involved to resolve their differences regarding Project matters. Subsequently, on July 26, 1985, Western published in the **Federal Register** (50 FR 30447) a "Notice of a Delay in the Comment Period on the Proposed General Regulations for Charges for the Sale of Power From the Boulder Canyon Project." The notice provided that the comment period would be extended until October 1, 1985.

Upon review of the initial comments received, Western determined that it would be in the best interest of all concerned to publish the revised proposed General Regulations and allow for additional comments. The revised proposed General Regulations and the request for comments were published in the **Federal Register** (50 FR 49050) on November 29, 1985. A public comment forum was held in Las Vegas, Nevada, on December 19, 1985, to receive oral comments. The period for written comments closed on January 6, 1986. Western received written and oral comments on the proposed General Regulations principally from three entities, the LADWP, the city of Vernon, and CRC. CRC submitted comments on behalf of CRC; APA; MWD; and the cities of Burbank, Glendale, Pasadena, Anaheim, Azusa, Banning, Colton, and Riverside.[3] Additional separate comments generally supporting the Joint Allottees' position were made by representatives of APA; MWD; the Central Arizona Water Conservation District; the Irrigation and Electrical Districts Association of Arizona; and the cities of Anaheim, Azusa, Banning, Colton, Glendale, Pasadena, and Riverside. LADWP's comments were supported by SCE. Written comments were also received from the National Wildlife Federation.

Upon a request for more information on the proposed General Regulations, Western published a notice in the **Federal Register** (51 FR 3471) on January 28, 1986, announcing an additional public comment forum to be held in Las Vegas, Nevada, on February 12, 1986. In a February 4, 1986, **Federal Register** Notice (51 FR 4376), Western invited all interested parties to indicate to Western, either during the public comment forum or by written request to be received by February 17, 1986, any additional information required on the revised proposed General Regulations. Responses to the oral and written requests for more information were provided in a **Federal Register** Notice (51 FR 12333) on April 10, 1986. That notice also provided that interested parties could submit further written comments on the revised proposed General Regulations within 30 days of publication of the notice and request another public comment forum within 5 days of the date of the notice. Western did not receive requests for an additional comment forum.

In a further effort to be responsive to the concerns expressed by the allottees regarding major outstanding issues in the General Regulations, Department of Energy (DOE) officials met in Washington, D.C., on July 10, 1986, with representatives of the allottees. The Under Secretary of the Department of Energy encouraged the allottees to develop a consensus proposal which would resolve the major outstanding issues in a manner which would be mutually satisfactory to all. It was announced at the meeting that the comment period on the General Regulations would be reopened in order to receive any additional comments from any interested party. The notice of the reopening of the comment period until August 7, 1986, appeared in the July 24, 1986, **Federal Register** (51 FR 26555). This notice also announced the availability of a summary of the July 10 meeting. Western's responses to all significant oral and written comments received by Western during the public process on the proposed General Regulations are set forth in the Analysis and Decision section of this notice.

Analysis and Decision

Western's decisions concerning the substance of the General Regulations, as well as supporting analyses and discussion of the comments, are organized by section and title as they appear in the final General Regulations. In particular, this section addresses changes that were made to the revised proposed General Regulations and incorporated into the final General Regulations.

Section 904.1 Purpose and Section 904.2 Scope

The discussions of these sections incorporate comments received on the Authorities, Purpose, and Scope sections of the revised proposed General Regulations. The first discussion is on the 904.1 Authorities section of the revised proposed General Regulations, which has been incorporated into the 904.1 Purpose section in these General Regulations.

Few comments were received concerning the Authorities section. One set of comments suggested adding the phrase "to the extent that Congress has made these applicable to the Boulder Canyon Project" to the list of cited authorities. These comments also suggested citing section 7 of the Colorado River Storage Project Act and the Colorado River Basin Project Act of 1968 as authorities. The remaining comments on this section stated that the power marketing authorities of Reclamation law, other than those contained in the Project Act, the Adjustment Act, and the Hoover Power Plant Act, do not apply to the marketing of Hoover power.

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[2] In this notice, those entities which were allocated power from Hoover Dam are identified generically as "contractors" or "allottees."

[3] This group called themselves the Joint Allottees and will hereafter be identified by that name.

After review and consideration, Western has decided to cite the Colorado River Storage Project Act of 1956 and the Colorado River Basin Project Act of 1968 in the revised proposed General Regulations. Western has concluded that adding the phrase "to the extent that Congress has made these applicable to the Boulder Canyon Project" and the inclusion of a specific citation to section 7 of the Colorado River Storage Project Act are unnecessary. Western does not have the authority to apply provisions of any law to the Project which Congress has not made applicable thereto. The citation of Reclamation law in this section includes section 7 of the Colorado River Storage Project Act, therefore, specific citation of section 7 is not necessary.

A commentor cited section 18 of the Reclamation Project Act of 1939 as authority for the claim that Reclamation law, except for the provisions of the Project Act, the Adjustment Act, and the Hoover Power Plant Act, does not apply to the marketing of Hoover power. This particular section of the law merely states: "Nothing in this Act shall be construed to amend the Boulder Canyon Project Act (45 Stat. 1057), as amended." To state that nothing in the Reclamation Project Act of 1939 shall be deemed to have amended or changed the Project Act is not the same thing as saying that the provisions of the 1939 Act shall not apply to the marketing of Hoover power. In fact, section 617m of the Project Act states that the Project Act is supplemental to Reclamation law. Specifically, this section states that:

> This subchapter shall be deemed a supplement to the reclamation law, which said reclamation law shall govern the construction, operation, and management of the works herein authorized, except as otherwise herein provided (43 U.S.C. 617m).

The Hoover Power Plant Act, an act which the commentor concedes applies to the marketing of Hoover power, by its own terms, makes the Colorado River Basin Project Act of 1968 applicable to the marketing of Hoover power. Section 102 of the Hoover Power Plant Act sets forth the valuation and commencement date for the Project contribution to the Lower Colorado River Basin Development Fund, as an amendment to, and to be inserted into, the Colorado River Basin Project Act of 1968. Section 7 of the Colorado River Storage Project Act and section 8 of the Boulder City Act of 1958, Pub. L. No. 85–900 (72 Stat. 1726), also bear upon the marketing of Hoover power and thus further refute the commentor's claim regarding the limited applicability of general Reclamation law.

It is further noted that all of the original contracts for electrical energy from the Project state as an authority the phrase: ". . . pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as the Reclamation law. . . ." This indicates that Western and its predecessor have consistently, for many years, interpreted Reclamation law to be applicable to the marketing of power from the Project.

After analysis and consideration, Western has concluded that, except for the additional citations described above, only the title of this section requires a change. This section will otherwise remain as published on November 29, 1985.

Two entities submitted comments regarding the Purpose and Scope sections of the proposed General Regulations. One commentor agreed with Western's proposal to revoke, by these General Regulations, the 1941 General Regulations and the 1930 General Regulations. The other commentor took exception to the termination of the 1941 General Regulations as proposed by Western.

The commentor's primary basis for the exception to the termination of the 1941 General Regulations focuses on the scope and breadth of coverage of the 1941 General Regulations as compared to the scope and breadth of coverage of these General Regulations. These General Regulations have a narrower scope and breadth of coverage than the 1941 General Regulations. The reason for this difference was noted by the commentor. In 1941, the Secretary of the Interior had sole Federal responsibility for all facets of the Project. The responsibility changed in 1977 when the Congress enacted the Department of Energy Organization Act. This act divided the Federal responsibility for power between the Secretary of the Interior and the Secretary of Energy. The result of this division of Federal responsibility is that any regulations proposed by either department will have a narrower scope and breadth of coverage than did the 1941 General Regulations.

The commentor further suggested that the 1941 General Regulations should not be revoked until Reclamation's regulations are ready for simultaneous promulgation with Western's proposed General Regulations. Western exercises no control over the timing of, or the promulgation of, regulations by Reclamation. Western and Reclamation have separate and distinct statutory obligations. In fact, however, Reclamation has already published a final rule entitled "General Regulations for Power Generation, Operation, Maintenance, and Replacement at the Boulder Canyon Project, Arizona/Nevada," in the **Federal Register** (51 FR 23960) on July 1, 1986.

One commentor remarked that Western's proposed General Regulations were "superseding and repealing in their entirety (without hearing) the 1941 Regulations." The claim of a lack of hearing is without substance. Public comment forums for the proposed General Regulations were held on December 19, 1985 (50 FR 49050, November 29, 1985), and February 12, 1986 (51 FR 3471, January 28, 1986). In addition, all interested parties have had the opportunity to submit detailed written comments on the provisions of the proposed General Regulations. Western believes that full and ample opportunity for hearing has been extended to all interested parties on all aspects of these General Regulations.

Another commentor submitted that if the 1941 General Regulations are to be terminated, a number of provisions contained in the 1941 General Regulations should be carried forward into the new proposed General Regulations. The suggested provisions were a "most favored nation" clause, a provision whereby a default by one contractor would not affect the rights of others, a provision for a hearing on any proposed amendment to regulations hereafter promulgated, and some assurance that any such amendments would not impair then existing rights or enlarge obligations of the contractors. It is Western's belief that, except for the "most favored nation" clause and the matter of impact of future amendments on existing rights of contractors, the suggested provisions are not necessary for inclusion in these General Regulations. The "most favored nation" and future amendments impact limitation language has been added to these General Regulations. The inclusion of any of the other suggested provisions would add nothing of substance to the rights of the contractors. Those other suggested additions are addressed by applicable law, and thus their inclusion in these General Regulations would be an unnecessary restatement of law.

Western has concluded that, except for the two changes above and except for other minor revisions (including reference to the general regulations of the Department of the Interior), these sections do not require changes to their

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provisions as published on November 29, 1985.

Section 904.3 Definitions

A few minor comments were received on this section. All recommended changes were considered, but Western determined that some recommended changes would not add to the clarity of the definitions. Word changes were recommended, and most of these recommendations were accepted by Western.

Early in the comment period, it was recommended that additional definitions be added. New definitions have been added, where necessary, to clarify additions made to the General Regulations. In addition, some definitions have been added, deleted, or modified to conform with the definitions in related Western and Reclamation documents.

Section 904.4 Marketing Responsibilities

In the comments submitted regarding the section entitled "Power Generation and Marketing Responsibilities" in the revised proposed General Regulations, commentors have expressed concern about coordination efforts between Reclamation and Western and how this coordination may or may not impact the contractors. One commentor suggested that the Secretary of the Interior is a necessary party to the contracts between Western and the allottees. Western, with the agreement of Reclamation, has determined that Reclamation will concur only in the specific provisions of the contract that relate to Reclamation's responsibilities.

Another commentor suggested the creation of an operating committee which would include Reclamation, Western, and the Hoover contractors. This committee would enable the parties to coordinate their mutual efforts regarding the Project. Western believes that the formal creation of such a committee would be an inefficient use of time and effort in this case. Coordination already has taken place, and the two Federal entities will continue to coordinate their endeavors. The contractors will continue to have ready access to Western. Interior's general regulations indicate that this is also the case with Reclamation and the contractors. Interior's general regulations and Western's electric service contracts will provide specific means of coordination to the contractors (see for example, Interior Regulations, 43 CFR Part 431, 431.4(d)).

Western has concluded that since Interior has published general regulations providing for Reclamation's responsibilities for the Project, Western's General Regulations do not need to be specific in that area; therefore, this section has been modified to exclude the specific responsibilities of Reclamation.

Section 904.5 Revenue Requirements

The Revenue Requirements section of these General Regulations has been rewritten, but no major changes have been made to the contents of the revenue requirements specified in the revised proposed General Regulations. Two sections, 904.14 and 904.15, of the revised proposed General Regulations have been deleted and the contents partially incorporated into this section. Western determined that much of 904.14, Payments to States and Transfers From the Colorado River Dam Fund, was appropriately covered in Interior's general regulations; therefore, this section was removed from these final General Regulations. Appropriate reference concerning transfers to the Colorado River Dam Fund is now included in the Revenue Requirements section. Section 904.15, Repayment Periods, has been transferred, in total, to the Revenue Requirements section. Western believes that the subject of repayment periods should be included in this section relating to the revenues. One modification made to the repayment provisions is the inclusion of the words "or June 1, 1987, whichever is later" in subsection (c)(1). The discussion of the comments given below will cover all major comments received on the three sections of the revised proposed General Regulations that are now incorporated into this one section of the General Regulations.

The major comments relating to the revenue requirements focused on the repayment of the advances deemed by statute to be allocated to flood control. The spectrum of the various comments on this section was diverse and all encompassing. One commentor disputed Western's authority to require flood control repayment and to include interest on the flood control allocation. Another commentor stated that the repayment period proposed by Western is too long and that the interest rate on the flood control amounts is too low. Another commentor expressed agreement with Western's proposal for repayment of the flood control allocation.

The matter of flood control and its repayment for the Project was initially addressed in the Project Act. The Project Act originally provided that:

> The Secretary of the Treasury is authorized to advance to the fund, from time to time and within the appropriations therefor, such amounts as the Secretary of the Interior deems necessary for carrying out the provisions of this subchapter, except that the aggregate amount of such advances shall not exceed the sum of $165,000,000. Of this amount the sum of $25,000,000 shall be allocated to flood control and shall be repaid to the United States. . . . If said sum of $25,000,000 is not repaid in full during the period of amortization, then 62½ percentum of all net revenues shall be applied to payment of the remainder. Interest at the rate of 4 percentum per annum accruing during the year upon the amounts so advanced and remaining unpaid shall be paid annually out of the fund, except as herein otherwise provided (43 U.S.C. 617, 617a(b)).

This section was amended by the Hoover Power Plant Act. This amendment deleted the phrase "except that the aggregate amount of such advances shall not exceed the sum of $165,000,000." Thus, Congress expressly readdressed this provision of the Project Act when it adopted the recent Hoover Power Plant Act, and chose to leave undisturbed the Project Act's requirement that the unamortized flood control allocation be repaid with interest to the United States.

The Adjustment Act, enacted on July 19, 1940, also addressed the matter of the flood control allocation and its repayment to the United States. This act provided a period of deferment for repayment of the flood control allocation as follows:

> The first $25,000,000 of advances made to the Colorado River Dam Fund for the project shall be deemed to be the sum allocated to flood control by section 617a(b) of this title and repayment thereof shall be deferred without interest until June 1, 1987, after which time such advances so allocated to flood control shall be repayable to the Treasury as the Congress shall determine (43 U.S.C. 618, 618f).

This section of the Adjustment Act was not altered or amended by the Hoover Power Plant Act. Deferring a cost is not the equivalent of debt forgiveness, as one commentor seems to suggest. The congressional intent that the flood control allocation be repaid is clear. The same conclusion was arrived at not only in a legal opinion by Western dated June 3, 1985, but also in a legal opinion dated April 5, 1985 by Interior's Office of the Solicitor (copies of which have been provided to all interested parties, see 51 FR 12333). The Comptroller General also found that repayment of the flood control allocation commencing in 1987, following a deferment during which interest would not accrue, was provided for by the Adjustment Act (see unpublished decision of the Comptroller

General of the United States, B-12615, dated October 29, 1940).

One commentor has taken a position disputing repayment commencing in 1987. In taking this position, the commentor has focused on the last phrase of section 618f of the Adjustment Act which states that "such advances so allocated to flood control shall be repayable to the Treasury as the Congress shall determine." The commentor does concede that ". . . arguably, under the Adjustment Act, no further congressional action is necessary before the $25,000,000 flood control allocation can be charged to the Hoover rate after 1987 . . ." (letter dated June 5, 1985, incorporated by reference in the January 6, 1986, comments of CRC). Nonetheless, the commentor concludes that since Congress has not made a subsequent specific determination detailing how repayment is to be handled, the period of deferment should be extended indefinitely until Congress takes specific action.

This position is urged despite the Adjustment Act's specification, rather than implication, that the period of deferment ends June 1, 1987. Adopting a construction of section 618f of the Adjustment Act that would infer an indefinite deferment of repayment from that section's last phrase would seem to read out of the same section the explicit June 1, 1987, terminal date for the deferment that the Congress specifically provided. Examination of section 618f itself does not suggest convincingly that, in alluding to the possibility of new legislation, Congress intended the explicit terminal date provided in that section to be contingent on passage of new legislation. Reading section 618f above, it is more reasonable to conclude that Congress intended that new legislation might be adopted in the future that would specify in greater detail the terms of repayment after the statutory deferral period had run.

The commentor further suggests that sections 618 and 618a of the Adjustment Act support the position for no repayment and no interest on the flood control allocation. The pertinent provisions of these two sections are as follows:

> The Secretary of the Interior is hereby authorized and directed to, and he shall, promulgate charges, or the basis of computation thereof, for electrical energy generated at Hoover Dam, computed to be sufficient, together with other net revenues from the project, to accomplish the following purposes:
>
> (a) . . .
>
> (b) To repay to the Treasury, with interest, the advances to the Colorado River Dam Fund for the project made prior to June 1, 1937, within 50 years from that date (excluding advances allocated to flood control by section 617a(b) of this title, which shall be repayable as provided in section 618f of this title), . . . (43 U.S.C. 618).

and;

> All receipts from the project shall be paid into the Colorado River Dam Fund and shall be available, without further appropriation, for:
>
> (a) . . .
>
> (b) Repayment to the Treasury, with interest (after making provision for the payments and transfers provided in subsections (c) and (d) of the section), of advances to the Colorado River Dam Fund for the construction of the project (excluding the amount allocated to flood control by section 617a(b) of this title), . . . (43 U.S.C. 618a).

Read in complete isolation, the text of the latter provision, section 618a(b), briefly describes only an exclusion of flood control funds from the permitted disposition of receipts for repayment to the Treasury. Read more closely, however, the funds are identified specifically as those allocated to flood control "by section 617a(b),". Section 618f of the Adjustment Act, which, as was described above, contains the terminal date of the repayment deferral for the flood control allocation, explicitly is directed to "the sum allocated to flood control by section 617a(b)," of the Project Act. Thus, section 618a(b) merely points back, albeit indirectly, to section 618f. Similarly does the other cited provision, section 618(b), specify directly that the flood control allocation is to be repayable "as provided in section 618f . . ." Thus, neither provision, by its own text, can be read in isolation, and the text of each leads back to section 618f of the Adjustment Act, which contains the explicit terminal date for repayment deferral that was analyzed above.

Given this, the meaning of section 618(b) of the Adjustment Act is readily discernible. The rate for electrical energy generated at Hoover Dam, together with other net revenues,[4] shall be sufficient to repay to the Treasury, with interest, the advances to the Colorado River Dam Fund for the Project made prior to June 1, 1937, within 50 years of that date. This rate, commencing June 1, 1937, and continuing through May 31, 1987, cannot include a component for the recovery of the flood control allocation, since this component has been deferred, including interest thereon, until June 1, 1987, by section 618f of the Adjustment Act. However, commencing June 1, 1987, the rate shall include a component for the recovery of the flood control allocation, with interest, unless Congress shall direct otherwise. This is a reasonable meaning which effectuates the express intent of Congress in enacting this legislation. Moreover, section 618(b) states that the flood control allocation is "repayable as provided in section 618f" rather than repayable "without interest." It is Western's opinion that if Congress had intended that the flood control allocation was repayable without interest, it could, and would, have so stated.

Section 618a(b) specifies that all receipts of the Project shall be paid into the Colorado River Dam Fund and shall be available for repayment to the Treasury, with interest, of advances to the said fund for construction of the Project, excluding the amount allocated for flood control pursuant to section 617a(b) of the Project Act. As was described above, however, section 618f by its own terms is directed to the allocation for flood control under section 617a(b) of the Project Act. Thus, the exclusion contained in section 618a(b) must be read in conjunction with the provisions of sections 618(b) and 618f. So read, the reasonable meaning of this exclusion is that receipts in the fund cannot be used to repay the flood control allocation until June 1, 1987, the date set by Congress for commencing such repayment in section 618f, unless Congress directs otherwise. Pursuant to the provisions of section 618, the rate charged for electrical energy generated at Hoover Dam, which provides receipts for payment into the fund, cannot include any component for repayment of the funds advanced and allocated to flood control until after June 1, 1987. This is a reasonable interpretation of section 618a(b) which harmonizes all the relevant provisions of the Project and Adjustment Acts and which gives effect to all the text of each provision.

The comments also discussed the question of interest on the flood control allocation. One commentor submitted that no interest is applicable to this sum, while another commentor submitted that the proposed interest rate of 3 percentum per annum is too low. The following discussion will first address the issue of whether or not interest is applicable to the repayment of the flood control allocation.

The comments disputing the applicability of interest to the repayment of the flood control allocation rely heavily upon portions of the legislative history leading up to the enactment of the Adjustment Act in 1940. The legislative process leading up

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[4] The "other net revenues" have a negligible effect on the rate design.

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to the Adjustment Act was long and convoluted. Several draft proposals were offered but were not enacted. The Adjustment Act currently addresses flood control repayment as follows:

> The first $25,000,000 of advances made to the Colorado River Dam Fund for the project shall be deemed to be the sum allocated to flood control by section 617a(b) of this title and repayment thereof shall be deferred without interest until June 1, 1987, after which time such advances so allocated to flood control shall be repayable to the Treasury as the Congress shall determine (43 U.S.C. 618f).

The commentor included in its comments what it referred to as the "long form" of section 7(d) of S. 4039, a companion bill to H.R. 9877, as follows:

> The said $25,000,000 allocated to flood control shall be deemed to have been the first advances made for construction purposes, and shall be repaid *without interest* after full repayment of the net advances in such manner as Congress may hereafter require (Letter dated May 30, 1985, incorporated by the CRC in comments dated January 6, 1986). (Emphasis added.)

As the commentor noted, this "long form" language is what prior unsuccessful legislative attempts (H.R. 6629 and H.R. 6666) contained, regarding changes to the then existing requirement for repayment of the flood control allocation in the Project Act. An important element is the prior unsuccessful attempts at legislative change. Had the language of H.R. 6629 and 6666 or the "long form" of S. 4039 been enacted, the commentor's position might have more substance. In this instance, the differences in language do not support the commentor's position regarding interest being applied to the flood control repayment. It is difficult to argue that "shall be deferred without interest until June 1, 1987," is the same as "shall be repaid without interest after full repayment of the net advances." All the cited legislative history does not overcome this plain difference in wording and meaning.

Examination of the existing statutory language reinforces Western's interpretation. The key operative phrase in the existing law concerning the application of interest to flood control repayment is "shall be deferred without interest until June 1, 1987." To fully comprehend the meaning of this phrase, one must keep in mind the existing provisions of the Project Act that were being impacted by the phrase. The Project Act mandated that advances for the Project included the sum of $25,000,000 for flood control, that the flood control sum was to be repaid to the Treasury along with all other advances, and that all advances would bear interest at the rate of 4 percentum per annum (43 U.S.C. 617a(b)). The interest rate was changed from 4 to 3 percentum per annum by the Adjustment Act. The existing applicable law at the time the Adjustment Act was being considered and debated required repayment of flood control, with interest. Had Congress opted only for language that repayment of the flood control allocation was to be deferred until June 1, 1987, then the flood control allocation would have clearly accrued interest during the period of deferment. Had Congress opted for language that the flood control allocation was to be repaid without interest, after full repayment of the net advances, then interest would not have accrued or been payable at all. Congress did consider, but did not adopt, this very language. Since Congress chose language that only deferred repayment without interest until June 1, 1987, the logical interpretation of the language is that interest was to be deferred along with repayment only until the stated date. Interest would not accrue during the period of deferment. However, interest is due and payable on the sums advanced for flood control starting June 1, 1987.

Another commentor disputing Western's proposed treatment of the flood control allocation repayment took a position totally different from the position discussed above. This commentor felt the flood control allocation was due in total on June 1, 1987. Obviously, this balloon payment concept renders moot the question of interest rate and amortization period for repayment of the flood control allocation. The commentor did indicate that if Western felt the single payment balloon option was too burdensome for the contractors, a short period of amortization might be appropriate; this short period being one "ratemaking" cycle of 5 years. This commentor took exception to Western's proposed 50-year amortization period and application of the 3 percent interest rate set forth in the Adjustment Act.

The suggestion that the flood control allocation becomes due in total as a single balloon payment on June 1, 1987, the date the congressional deferment ends, is contrary to applicable law. First, section 617a(b) of the Project Act clearly established that the flood control allocation was not required to be repaid to the Treasury within the first 50-year "period of amortization." Section 617a(b) specifically provided that if the flood control allocation was not repaid within the initial amortization period, then a stated portion of the net revenues from the Project, after this initial repayment period, was to be applied to the unpaid balance of the flood control allocation. The key here is that Congress clearly contemplated, and accepted, the fact that the flood control allocation would not necessarily be repaid within the initial 50-year amortization period.

Congress revisited the issue of repayment of the flood control allocation in 1940. In the Adjustment Act, Congress specifically directed that the flood control allocation would not be repaid within the initial 50-year period of amortization by deferring such repayment, along with the interest thereon, until June 1, 1987 (43 U.S.C. 618f). The Adjustment Act unequivocally directed that the repayment of the flood control allocation, with interest, was deferred until a date certain. Congress did not state that the repayment was being converted from an extended period of amortization to a single balloon payment scheme with the final payment due on a date certain.

Had Congress intended such a result, it is reasonable to assume it would have so stated in clear, concise terms. Without such a definitive statement of intent, one can only look at the existing law for implementation of flood control repayment.

The Adjustment Act, in section 618 (including recent amendments made by the Hoover Power Plant Act), expresses a clear intent for 50-year periods of amortization for advances to the Colorado River Dam Fund. Given the directives of the applicable law regarding repayment of the flood control allocation, Western declines to adopt the concept of a balloon payment due June 1, 1987.

This commentor also took exception to Western's proposal to apply 3 percent interest to the flood control allocation commencing June 1, 1987, and to amortize the repayment over a 50-year period. The commentor states that such a result is contrary to the provisions of DOE Order RA 6120.2, dated September 20, 1979, as amended (RA 6120.2). The answer to these two exceptions is that RA 6120.2 is not the appropriate, controlling authority to determine the interest rate to be charged or the amortization period for the repayment for the Project. The appropriate authority, in this case, is the Adjustment Act. The existing law specifies both the interest rate and the period of amortization. By its own terms, RA 6120.2 allows deviations from its provisions when authorized by statute. Moreover, a Federal agency does not have the authority to overrule a specific congressional mandate by administrative fiat. Given the mandate of sections 618 and 618e, Western has no choice concerning the appropriate rate of interest to be applied and the period of amortization for repayment of the flood control allocation.

A commentor took exception to Western's use of the word "within" instead of "over" for investment cost recovery periods. As was previously noted (see 51 FR 12333, dated April 10, 1986), applicable statutory provisions use both "within" and "over" in addressing repayment of investment costs. Congress would have eliminated this dual usage of terms in its amending provisions of the Hoover Power Plant Act had it deemed such dual usage a problem. The April 10, 1986, **Federal Register** Notice also pointed out that use of "within" was the result of comments submitted following the original publication of the proposed General Regulations in May 1985. Given this new concern, Western changed the reference from "within" to "over," as the comment suggests, in the revisions made to the repayment provision of this section.

Another commentor submitted comments concerning allowable interest costs for reimbursement to the non-Federal entities advancing funds for the uprating program. The commentor proposed imposing a ceiling on allowable interest costs. The ceiling proposed was the "Federal rate of interest applicable at the time of each advance." The relevant portion of the Hoover Power Plant Act states:

> Those amounts advanced by non-Federal purchasers shall be financially integrated as capital costs with other project costs for rate-setting purposes, and shall be returned to those purchasers advancing funds throughout the contract period through credits which include interest costs incurred by such purchasers for funds contributed to the Secretary of the Interior for the uprating program (Section 619a(f)).

The Hoover Power Plant Act makes no provisions for placing a ceiling derived from the cost of money to the Federal government on the amount of interest costs that may be reimbursed through credits. Instead, the statute describes the credits purchasers are entitled to receive as including the "interest costs *incurred by such purchasers*" (emphasis supplied). While prudent action should be expected by all parties to complete the requisite financing arrangements, Western believes it would be contrary to the statute to limit the amount of interest costs allowable to some composite Federal interest rate in effect at the time various advances are made. Western believes, however, that it is important to scrutinize interest costs to ensure the interest costs are prudent and in keeping with normal business practice.

The relevancy of the Boulder City Act of 1958 to §§ 904.6(c)(5) and 904.15(a) of the revised proposed General Regulations was questioned by one commentor. Western included this reference in the General Regulations because Boulder City was originally a Federal camp and part of the Project. The Boulder City Act of 1958 authorized the transfer of the Federal property to the municipality of Boulder City upon incorporation. This same act transferred the Federal Government's rights to power for Boulder City from the Project and gave the municipality the same rights to deferred payments as the other Boulder Canyon Project contractors.

Comments on the repayment periods, incorporated into this section, were minimal. One commentor requested a separate provision for the repayment period on replacements. The Revenue Requirements section of the General Regulations has been modified to specify "Capital costs of investments and replacements." Western believes that this modification addresses the commentor's concerns that replacements be treated as a capital cost, rather than an annual cost.

In addition to the comments addressed above, several word changes were recommended by the commentors. Most of these changes have been incorporated into the final version of this section. This section has been rewritten to match more closely Interior's general regulations and to define more clearly the revenue requirements to be used in development of the charges for electric service. The Repayment Period section of the revised proposed General Regulations has been incorporated into this section.

Section 904.6 Charge for Capacity and Firm Energy, Section 904.7 Base Charge, and Section 904.8 Lower Basin Development Fund Contribution Charge

Western is combining the discussion of these sections concerning the Base Charge and Lower Basin Development Fund Contribution Charge (Contribution Charge). While the Base Charge and the Contribution Charge do not raise entirely the same issues, Western believes its overall decision on charges should consider the combined effect of the Base Charge and the Contribution Charge on the contractors. Accordingly, Western has considered specific issues relating to the Base Charge or the Contribution Charge separately, but has evaluated the fairness and equity of various rate designs on the basis of the combined effect of the Base Charge and the Contribution Charge. The discussion on charges is divided as follows:

1. Responsibility to Set Rates
2. Overview of Western's Efforts to Resolve the Issues
3. Contribution Charge
4. Base Charge
5. Description of Rate Design Proposals
6. Analysis of Rate Design Proposals
7. Adopted Rate Design
8. Other Comments

1. Responsibility to Set Rates

By law, Western is charged with the responsibility to establish rates for electrical energy generated at the Project. The Project Act provides that such rates be set "with a view to meeting the revenue requirements herein provided for. . . ." (43 U.S.C. 617d(c)). The Adjustment Act provides that:

> The Secretary . . . is hereby authorized and directed to, and he shall, promulgate charges, or the basis of computation thereof, for electrical energy generated at Hoover Dam, computed to be sufficient, together with other net revenues from the project, to accomplish the following purposes: . . . (43 U.S.C. 618).

Further:

> The Secretary is hereby authorized from time to time to promulgate such regulations and enter into such contracts as he may find necessary or appropriate for carrying out the purposes of this subchapter and the Project Act, . . . as modified hereby. . . . (43 U.S.C. 618g).

Included in this authority is the administrative discretion necessary to carry out the statutory directives regarding rates and regulations concerning electrical energy generated at Hoover Dam. The applicable law does not mandate that any particular rate design be used. The law does require that the rate design used must produce sufficient revenues to meet the statutory obligations of the Project. The Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act, and the Hoover Power Plant Act require Western to exercise this administrative discretion and determine a rate design for the Project for the period beginning June 1, 1987. Additionally, the Hoover Power Plant Act amended the Colorado Basin Project Act of 1968 so as to require the rate design to recover specified amounts, generally referred to as the "Contribution Charge."

2. Overview of Western's Efforts to Resolve the Issues

As discussed previously, Western believes the rulemaking process should give great weight to the views of those persons directly affected by these

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regulations. This is especially appropriate with respect to the rate design for the Base Charge and the Contribution Charge. Earlier statutes relating to Hoover and the Hoover Power Plant Act mandate the level of revenues to be collected by the charges, certain entities which must be offered contracts, and the amount of contingent capacity and associated firm energy allocated to each such entity. Thus, the remaining significant issue is developing a rate design to apportion the revenue requirements among the contractors. In this situation, each contractor possesses the most thorough understanding of the issue as it relates to that contractor's own circumstances. In the aggregate, the contractors will be the entities directly affected by the decision on rate design. Accordingly, throughout this rulemaking proceeding, Western has encouraged the contractors to discuss the issues among themselves and attempt to develop a common position on rate design.

At the June 4, 1985, public information forum on the proposed General Regulations, Western indicated that rate design would be discussed during a separate public process. Interested parties in attendance at the forum indicated that the rate design should be determined in the General Regulations in order to assure certainty and to permit the financing of Reclamation's Hoover uprating program to proceed as scheduled. Western indicated that it was not opposed to the inclusion of the rate design in the General Regulations. Western also indicated that it would seriously consider any rate design which all of the allottees could agree upon and which assured collection of adequate revenues, and did not violate the law. Western went on to introduce three possible approaches for the rate design of the Base Charge and the Contribution Charge, along with the clearly stated proviso that these three approaches were not the only possible methods Western would consider. Interested parties were requested to submit any rate design they felt appropriate.

In July 1985, Western granted a 90-day extension of the comment period (50 FR 30447, July 26, 1985) to enable the allottees to seek agreement among themselves on recommendations for a rate design. During this period, Western met upon request with various allottees to supply additional information and to help resolve differences on these matters. When, late in the 90-day extension period, the allottees indicated that they were unable to agree among themselves and requested assistance from Western, Western's Boulder City Area Manager met with, and attempted to mediate among, the allottees. This effort was unsuccessful. Western then issued its revised proposed General Regulations, subsequently provided additional information on the revised proposal, and held several public comment forums. The allottees were still unable to reach accord on rate design.

In a further attempt to help the allottees resolve their differences on the rate design, the Under Secretary of the Department of Energy and other officials of DOE and Western met with representatives of the allottees and requested that they try to develop a proposal on the rate design that would be acceptable to all parties. The comment period on the revised proposed General Regulations was reopened for 2 weeks to allow the allottees time to discuss their concerns and submit additional comments. Notwithstanding these efforts, the allottees have not submitted a common position on rate design. Rather, the allottees have continued throughout the process to be divided into two groups.

One group is comprised of CRC; APA; MWD; and the California cities of Glendale, Pasadena, Burbank, Banning, Azusa, Anaheim, Colton, and Riverside (identified as the Joint Allottees). The other group includes LADWP and SCE (hereinafter called the LADWP-SCE Group [5]).

Although these two groups did not agree upon a common position, their positions did evolve during the course of this rulemaking. In the earlier stages of the proceeding, each group presented at least one rate design which distinctly favored the major renewal entities contained in that group when compared to the current allocation of economic burdens among the allottees. The final positions of both groups, however, would result in all the allottees' being treated more nearly the same as under the existing system. Thus, while consensus was not achieved, Western believes the efforts to achieve a common position were constructive. This process, along with its analysis of the various proposals submitted, has helped Western to identify a range of reasonableness within which the effects of the rate design for the period beginning June 1, 1987, will treat all the contractors in an evenhanded manner consistent with the Hoover Power Plant Act.

3. *Contribution Charge*

The Contribution Charge is a statutorily mandated amount which is to be included in the rates charged to the Hoover allottees. The statute provides that rates charged to purchasers in Arizona are to include the "equivalent of" 4½ mills per kilowatthour (kWh), whereas the rates charged to purchasers in California and Nevada are to include the "equivalent" (of) 2½ mills per kWh. The revenues to be produced by the Contribution Charge are required to be used for certain statutorily specified purposes.

The issue regarding the Contribution Charge is over how the revenues to be raised by it are to be apportioned and collected. More specifically, the issue involves whether the revenues required to be raised by means of the Contribution Charge are to be collected based upon energy sales alone, or alternatively, partly upon energy sales and partly upon capacity sales.

It must be explained at the outset that the controversy over the Contribution Charge has a financial impact only upon the purchasers in California. Since there is effectively only one purchaser in Nevada (CRC) [6] and only one purchaser in Arizona (APA), how the Contribution Charge revenue requirement for each of those states is apportioned and collected as between energy and capacity makes no difference. That is to say, regardless of whether the Contribution Charge for each of those two States is collected 100 percent from energy sales, or 100 percent from capacity sales, or partly from energy sales and partly from capacity sales, the CRC and the APA will pay virtually the same total dollar amount. As will be seen, the foregoing is not true in California where there are multiple purchasers.

An illustration will help to point up the differences in approach of the two groups with regard to how the Contribution Charge should be collected. Assume for the purposes of illustration that the energy made available to California purchasers in a year is 2,531,023,000 kWh. Based upon that assumption the amount of revenue which the Hoover Power Plant Act indicates should be raised through the Contribution Charge in that year in California is $6,327,558 (2,531,023,000 kWh × the equivalent of 2½ mills per kWh = $6,327,558). The question then becomes how the $6,327,558 is to be apportioned and collected.

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[5] The city of Vernon submitted separate comments of its own. However, those comments generally supported and agreed with the positions taken in the LADWP-SCE Group's comments on these sections.

[6] The impact of Boulder City is negligible.

The LADWP–SCE group contended that it should be apportioned and collected based solely upon the energy available to each purchaser. That approach amounts to, and results in, each California purchaser being charged 2½ mills per kWh of energy purchased. Under this approach, the capacity allocations of each purchaser are simply not a factor which is considered. This approach is financially advantageous to California contractors such as LADWP and SCE which have small energy allocations relative to their capacity allocations. That is true, of course, because they, having relatively little energy compared to capacity, will pay a smaller portion of the total revenues to be raised in California through the Contribution Charge when those are apportioned and collected based solely on energy than would be true if those revenues were apportioned and collected partly on capacity allocations.

The Joint Allottees, on the other hand, contended that the revenues to be raised through the Contribution Charge should be apportioned and collected based upon capacity and energy. As previously noted, this approach does not financially impact purchasers in Nevada and Arizona, but does financially impact purchasers in California. The 50–50 proposal of the Joint Allottees, as applied to California, illustrates the differences in impact. Under that proposal, 50 percent of the revenues required to be raised through the Contribution Charge would be apportioned and collected based upon the energy available to the California purchasers, while 50 percent would be apportioned and collected based upon the contingent capacity available to the California purchasers. In the illustration, the revenues to be raised in a year through the Contribution Charge for California as a whole, as noted, would be the equivalent of 2½ mills times the total assumed California energy purchases of 2,531,023,000 kWh, or $6,327,558. If one half of that total amount is apportioned to, and collected from, energy sales, that will result in a charge of $.00125 per kWh ($6,327,558 divided by 2 = $3,163,779 divided by 2,531,023,000 kWh = .00125). The other one half would be apportioned on, and collected based upon, capacity sales. That would result in a charge per kilowatt (kW) of $2.69 for the year ($3,163,779 divided by 1,177,000 kW allocated to California under the Hoover Power Plant Act of 1984 = $2.69 per kW). The difference in the impact of these two approaches is illustrated by looking at two California purchasers at the extremes. MWD has a large energy allocation relative to its capacity allocation, while the reverse is true of SCE. The following table illustrates in this example the financial impact on each under the two approaches.

	100 percent on energy	50 percent energy—50 percent capacity
MWD:		
1,191,974,000 kWh	$3,229,935	$1,614,967
247,500 kW		665,775
Total paid	3,229,935	2,280,742
SCE:		
250,694,000 kWh	626,735	313,367
277,500 kW		746,475
Total paid	626,735	1,059,842

Thus, just as was the case with the 100 percent on energy approach favoring certain parties, it can be seen that it is financially advantageous to parties such as MWD, with a large energy allocation relative to its capacity allocation, to have part of the revenues required to be collected through the Contribution Charge apportioned to and collected based upon capacity, rather than solely upon energy.

The comments and arguments of the parties with respect to this issue focused primarily upon the proper statutory construction of the language imposing the Contribution Charge. These matters are discussed hereinafter.

The Contribution Charge is a recent statutory requirement for inclusion in the rates charged to purchasers of power from the Project. The Hoover Power Plant Act amended paragraph (2) of section 403(c) of the Colorado River Basin Project Act of 1968 (43 U.S.C. 1543) by adding the following:

> *Provided however,* that for the Boulder Canyon project commencing June 1, 1987, and for the Parker-Davis project commencing June 1, 2005, and until the end of the repayment period for the Central Arizona project described in section 301(a) of this Act, the Secretary of Energy shall provide for surplus revenues by including the equivalent of 4½ mills per kilowatthour in the rates charged to purchasers in Arizona for application to the purposes specified in subsection (f) of this section and by including the equivalent 2½ mills per kilowatthour in the rates charged to purchasers in California and Nevada for application to the purposes of subsection (g) of this section as amended and supplemented: *Provided further,* that after the repayment period for said Central Arizona project, the equivalent of 2½ mills per kilowatthour shall be included by the Secretary of Energy in the rates charged to purchasers in Arizona, California, and Nevada to provide revenues for application to the purposes of said subsection (g) of this section (98 Stat. 1333, section 102(c)).

Controversy regarding the proper rate design to be used in apportioning and collecting the Contribution Charge centered around the correct statutory construction of the foregoing language. The LADWP–SCE Group construed the statute to mandate that 100 percent of the Contribution Charge must be applied to the energy sales of the Project, to the exclusion of capacity sales. The Joint Allottees construed the statute as evidencing an intention that the Contribution Charge be split between both capacity and energy sales from the Project. The positions of the two groups were based, in large part, on their differing legal interpretations of the words "equivalent" (of), "rates," and "purchasers."

The Joint Allottees' construction of the language may be summarized as follows:

> (a) The word "equivalent" does not mean "the same as" but rather "of equal force or value." The use of the phrase "equivalent" (of) indicates that Congress was not simply mandating a charge of 2½ mills per kWh. If that had been what Congress intended, the words "equivalent" (of) would have been omitted from section 102(c) so as to simply require "including 2½ mills per kWh in the energy rate charged to purchasers in California . . ." Moreover, those words cannot properly be ignored. The Joint Allottees relied upon the rule of statutory construction to the effect that every word of a statute must be given meaning if possible.
>
> (b) The use of the plural form of "rates" is a reference to the energy rate and capacity rate, thus indicating that the Contribution Charge was to be recouped through each.
>
> (c) The word "purchasers" should be construed to refer to purchasers in the general or collective sense and to thus mean all of the purchasers in each state as a group. By construing the word "purchasers" as referring not to individual purchasers—but rather to the purchasers in a given state as a group—the statute would not require each individual purchaser in the state to pay exactly 2½ mills per kWh for energy purchased.

The upshot of the Joint Allottees' statutory construction was their conclusion that the provision indicated an intention that the total annual Contribution Charge revenue requirement for each of the three states was intended to be recouped partly based upon energy sales and partly based upon capacity sales. In particular, the Joint Allottees argued that the reference to "purchasers" in the Hoover Power Plant Act refers to the purchasers in each state as a group in the collective sense and that the statute is fully complied with as long as all the purchasers in any one state are collectively paying the amount which is the equivalent of 2½ mills per kWh for the total kWh delivered to all of the purchasers in that state.

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The statutory construction of the LADWP–SCE Group may be summarized as follows:

(a) The word "equivalent" means "equal to."

(b) The word "rates" refers to either rates in general or to energy rates. (The construction of this word does not appear to be an essential element of construction by this Group.)

(c) The word "purchasers" refers to the individual purchasers in each state. They assert that "purchasers" is used three times in section 102(c), which establishes the charge, twice in section 205(a)(1)(B) and once in section 105(a)(1)(C).

The LADWP–SCE Group contended the statutory language mandated that the Contribution Charge be recouped entirely based on energy sales. The construction of the word "purchasers" to refer to each individual purchaser in a given state is a crucial premise in the overall result contended for by the LADWP–SCE Group. That is true because such construction, in turn, affects how the word "equivalent" should be properly interpreted. Specifically, if the word "purchasers" refers, for example, to each individual purchaser in California and the statutory mandate is to include the equivalent of 2½ mills per kWh received by each individual purchaser in the rates of each such individual purchaser, that precludes apportioning and charging part of the Contribution Charge on the basis of capacity as advocated by the Joint Allottees. For, if that were done, the Contribution Charge to each individual purchaser will not be equal to or equivalent of 2½ mills per kWh for each kWh purchased by each individual purchaser.

The point that each individual allottee would not pay the equivalent of 2½ mills per kWh if the Contribution Charge were apportioned partly on the basis of capacity was made by the LADWP–SCE Group in analyzing the effects of the Joint Allottees' proposal to apportion and charge the Contribution Charge in California 50 percent on energy and 50 percent on capacity. The LADWP–SCE Group presented an example illustrating that the 50–50 assessment method would require LADWP to pay in effect 3.14 mills instead of 2.5 mills per kWh, resulting in an increased annual cost of $446,722, or $13.4 million over the 30-year contract period. SCE would pay in effect 4.23 mills instead of 2.5 mills per kWh, resulting in an increased annual cost of $432,576, or $12.97 million over the 30-year contract period. MWD, however, would pay in effect 1.76 mills instead of 2.5 mills per kWh, resulting in a decreased annual cost of $949,666, or about $28.5 million less over the 30-year contract period.

Both the Joint Allottees and the LADWP–SCE Group presented lengthy comments and analyses of the background and legislative history of the Contribution Charge, citing various facets of that material as being supportive of their respective positions. In that regard, the LADWP–SCE Group attempted to marshal support for the position that the Contribution Charge was intended to be a continuation of what it contended was the past practice of collecting similar types of "surplus revenues" from the dam and appurtenances charges (i.e., charges which are comparable to an energy charge). The Joint Allottees, among other things, emphasized the use of the word "power" in various statements made by various Government officials and members of Congress in the development of the Hoover Power Plant Act and in what it contended was the evolution of the "equivalent of" language through various drafts. Additionally, the Joint Allottees contended, largely in rebuttal to the position argued by the LADWP–SCE Group, that Congress was primarily concerned with ensuring that the Contribution Charge would result in producing the anticipated surplus revenues to be used for the statutorily specified purposes—not with mandating a given rate design as would be the case under the LADWP–SCE Group's construction.

Western has carefully reviewed the background and legislative history material presented by both sides. Western has concluded that this material is simply not persuasive in support of the construction contended for by either side. In short, the legislative history does not clearly indicate an intention regarding how the Contribution Charge was to be collected as between energy and capacity.

Western is similarly unpersuaded that the relevant statutory language mandates that the Contribution Charge be placed upon both energy and capacity sales. In that regard, the plain meaning of "equivalent of" would at most appear to permit rather than to mandate application of the Contribution Charge to both capacity and energy components. Moreover, since no particular rate design or split is set out in the pertinent language of the statute it would seem obvious that Congress necessarily intended that Western use its discretion in the rate design used to collect the Contribution Charge.

The Joint Allottees, in their comments on this topic, recognized the discretionary aspects of the relevant language. Thus, they observed in their comments of October 23, 1985, as follows:

> "By use of the word "equivalent," Congress plainly left to Western's discretion the allocation of those dollars in the design of rates for the Boulder Canyon Project. That discretion—to allocate the Contribution Charge between the rate components for capacity and energy—was intended. It is the logical consequence of quantification of the 1968 requirement for "surplus."

Equally unpersuasive as the contention that the "equivalent" language compels allocation to capacity and energy is the Joint Allottees argument concerning the significance of the congressional use of the plural form of "rate" in section 102(c). Given that Congress did not clearly establish any particular rate design for the Project for the period beginning June 1, 1987, the argument, without more, that congressional use of the word "rates" in section 102(c) was a deliberate collective reference to capacity and energy rates is unpersuasive. Rather, Western concludes that the use of the word "rates," if anything, suggests a congressional intent to permit Western the flexibility to adopt a rate design with one or more rates which would produce the Contribution Charge revenues required.

On the other hand, the LADWP–SCE Group argued that Western was required by the Hoover Power Plant Act to assess 100 percent of the Contribution Charge to the energy rate, and since Western was proposing such an assessment, the Group was in agreement with Western. Although Western has decided to continue the approach reflected in its revised proposed regulations and to assess 100 percent of the Contribution Charge to the energy component, it has not based that decision on the statutory construction or legal theory advocated by the LADWP–SCE Group. Western believes that the use of "equivalent" (of) recognizes the fact that the Hoover Power Plant Act does not mandate a particular rate design and thus is intended to give Western the flexibility to include the specified Contribution Charges in whatever rate design Western adopts. In the context of a Base Charge rate design such as the one Western has adopted, which has both an energy and capacity component, Western believes the best way to achieve the statutory goals of assessing a Contribution Charge equivalent of the required 2½ or 4½ mills per kWh is to assess 100 percent of the charge to the energy component. The practical considerations which Western identified in its April 10, 1986, Federal

Register notice for doing this remain valid. By any mathematical standard and under any definition, charging 2½ mills per kWh is the "equivalent of" a Contribution Charge of 2½ mills per kWh.

Moreover, requiring each purchaser in a State to pay the Contribution Charge on the basis of the energy it actually receives will result in both each *individual* purchaser in California paying the equivalent of 2½ mills per kWh received by that purchaser and the purchasers in California *as a group* paying the total dollar amount of Contribution Charge revenues for that State which results from the multiplication of 2½ mills per kWh times the kWh available to California purchasers.

After detailed analysis and consideration, Western has concluded that the section does not require any changes to its provisions as published on November 29, 1985. By placing the charge entirely on energy, Western has clearly met the intent of Congress that the revenues to be raised through the Contribution Charge will be collected and, also, has avoided charging some individual contractors in California more or less than 2½ mills per kWh.

4. Base Charge

The Base Charge is composed of a capacity component and an energy component. The Base Charge is designed and intended to produce revenues which will recoup all of the costs and statutorily imposed financial obligations of the Project with the exception of the revenues which the Hoover Power Plant Act (by amending the Colorado River Basin Project Act) specifies are to be recovered through the Contribution Charge. The specific types of costs and statutorily imposed financial obligations of the Project which the Base Charge is intended to recoup are those which are identified in § 904.5(b) of the General Regulations.

From the outset of this rulemaking, Western has proposed that there would be two components of the Base Charge. One component would be an "energy component" consisting of a charge of a specified mills per kWh amount for each kWh of energy sold from the Project. The other component would be a "capacity component" consisting of a specified dollar amount per kW of capacity to which each allottee is entitled during a specified time period. The energy charge and the capacity charge would be uniform with respect to all sales of energy and capacity from the Project (i.e., would not vary with the identity of the purchaser). This dual component rate design approach is a standard method of charging for electric power.

Western also proposed that the total revenue requirement amount which was to be recouped through the Base Charge would be divided between the energy component and the capacity component by applying an appropriate percentage split to the total Base Charge revenue requirement amount. Applying that percentage split to the total Base Charge revenue requirement amount would thus result in the dollar amount to be recouped through the energy component and the dollar amount to be recouped through the capacity component. The total dollar amount to be recouped from energy over the remaining years in the repayment period is then divided by the number of years remaining in the repayment period in order to calculate the estimated average annual revenue from the energy component which is required to be recouped each year. That amount of estimated average annual revenue to be recouped through the energy component is then divided by the estimated average annual energy estimated to be available in order thereby to derive an actual mills per kWh energy charge. The average annual energy estimated to be available is derived by taking the total energy expected during the remainder of the repayment period and dividing that number by the number of years remaining in the repayment period.

The total dollar amount to be recouped from capacity over the remaining years in the repayment period is divided by the number of years remaining in the repayment period in order to calculate the estimated average annual revenue required to be recouped from capacity. That average annual revenue amount is then divided by the estimated average annual capacity rating of the Project in order thereby to derive the actual dollar per kW capacity charge. The estimated average annual capacity rating of the Project is derived by taking the total capacity rating of the Project expected during the remainder of the repayment period and dividing that number by the number of years remaining in the repayment period. The capacity rating of the Project will be based on the estimated powerplant output capability with all units in service at 498 feet of net effective head or 1,951,000 kW, whichever is less.

Oversimplifying somewhat and merely by way of illustration, if the estimated average annual Base Charge revenue requirement for a year was determined to be $100 million and the appropriate percentage split were determined to be 50 percent from capacity and 50 percent from energy, then the capacity charge would be designed to recoup a total of $50,000,000 over the year and the energy charge would be designed to recover $50,000,000 over the year. Carrying the illustration further, assuming the average annual kWh available are 4,527,001,000, then the energy charge would be set at the $0.01104/kWh level needed to produce the $50,000,000 of energy charge revenue requirements ($50,000,000 ÷ 4,527,001,000 kWh = $0.01104/kWh). Similarly, assuming the average annual capacity rating is 1,951,000 kW, the capacity charge would be set at the $25.63/kW level needed to produce the $50 million of capacity charge revenue requirements ($50,000,000 ÷ 1,951,000 kW = $25.63/kW). (For the sake of simplicity, the illustration assumes an annual $/kW charge rather than a monthly $/kW charge.)

It is the determination of what is the appropriate capacity/energy percentage split (i.e., comparable to the 50–50 split in the foregoing example) to be applied to the total Base Charge revenue requirement amount which has prompted widely divergent views and prolonged controversy. That controversy arises out of the differing economic impacts which various percentage splits have upon various allottees.

Simply put, the varying economic impact arises out of the fact that the allottees have been allotted different amounts of capacity in proportion to energy under the terms of the Hoover Power Plant Act of 1984. Some allottees have been allotted large amounts of capacity relative to the amount of energy which they have been allotted. LADWP and SCE fall in this category. For those allottees it is financially advantageous to have the capacity charge as low as possible and the energy charge as high as possible. Consequently, it is advantageous to those allottees to have a relatively low percentage of total revenue requirements recouped through the capacity component and a relatively high percentage of those revenue requirements recouped through the energy component. On the other hand, some allottees have been allotted a large amount of energy relative to the amount of capacity allotted them. MWD falls in this category. For them it is financially advantageous to have the energy charge as low as possible and the capacity charge as high as possible. Consequently, it would be advantageous to them to have a high percentage of total costs allocated to capacity and a low percentage allocated to energy.

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5. Description of Rate Design Proposals

In view of the prolonged nature of this rulemaking and the multiplicity of rate design proposals which were suggested, it will be helpful to briefly review the chronology of those proposals.

Western published its initial proposed General Regulations on May 17, 1985 (50 FR 20732). Those proposed regulations, while indicating that the Base Charge would contain both a capacity component and an energy component, did not specify how costs would be recovered as between the two components. Rather, those proposed regulations indicated that the manner of such division would be determined in a future public process. Similarly, no rate design for the Contribution Charge was specified or proposed in those regulations.

On June 4, 1985, Western held a public information forum with regard to the May 17th proposed General Regulations. In the course of that forum, Western mentioned three possible Base Charge rate design approaches. Those possible approaches were described as being a traditional method, where the capacity component included the fixed costs of a project and the energy component included the annualized costs; the historical (Hoover) method, where the capacity component included all of the costs associated with generating machinery and associated equipment, and the energy component included all of the costs associated with the dam and appurtenant works; and an equitable split method, where all costs would be equitably split between an energy component and a capacity component based upon a percentage split rather than attempting to put costs into various categories and formulas. Western stressed that by presenting these alternatives it did not intend to imply that they were the only alternatives it would consider or that the same method would be used for the Base Charge and the Contribution Charge.

On September 24, 1985, the Joint Allottees proposed that the Base Charge be divided 50 percent to capacity and 50 percent to energy (hereinafter "50–50 split"). The Joint Allottees cited the rate design for the Colorado River Storage Project as precedent for a 50–50 split.[7] Additionally, equitable considerations were urged in its support. Thus, the comments noted:

> The division of costs as between the capacity and energy components *should not favor one customer over another as will happen if a "35–65," "65–35," or more unequal, split in favor of capacity or energy is adopted.* (Emphasis added)

These comments also urged that the Contribution Charge be apportioned on a 50–50 basis. The Joint Allottees reiterated their September 24th "draft" comments with respect to the Base Charge in comments filed October 1, 1985.

On September 30, 1985, LADWP and SCE submitted comments. Essentially those comments urged that the Base Charge should be determined by using a traditional cost allocation methodology. A cost allocation study was presented which showed that the appropriate cost allocation split was 35 percent to capacity and 65 percent to energy (hereinafter "35–65 split").

On October 23, 1985, the Joint Allottees submitted supplemental comments which analyzed the elements of the Base Charge revenue requirements using traditional cost allocation principles. That analysis indicated that 70 percent of costs should be recouped from capacity charges and 30 percent from energy charges (hereinafter "70–30 split").

On November 29, 1985, Western, having reviewed all of those proposals and the comments regarding them, published its revised proposed General Regulations (50 FR 49050). Those revised regulations provided that the Base Charge revenue requirement would be collected 45 percent from the capacity charge and 55 percent from the energy charge (hereinafter "45–55 split"). As shown in Western's April 10, 1986, **Federal Register** Notice, this rate design was based upon an "equitable split" type of approach. In these same revised proposed regulations the Contribution Charge was shown as being placed 100 percent on energy.

On December 19, 1985, Western held a public comment forum with respect to its revised proposed General Regulations. The Joint Allottees presented further explanation and comment in support of the 70–30 split based upon their traditional cost allocation study. Part of this commentary related to a refinement whereby common costs which were not directly assignable to capacity or energy would be allocated in some other manner. These refinements did not materially change the 70–30 result. Spokesmen for the Joint Allottees stressed their view that Hoover was primarily a peaking, or capacity-related, facility and that, consequently, a majority of the costs associated with it should properly be recovered through capacity charges. For the stated purpose of achieving a compromise, the Joint Allottees indicated a willingness to agree to a 50–50 split on both the Base Charge and the Contribution Charge. These positions were essentially reiterated at the public comment forum of February 12, 1986, and incorporated in all subsequent Joint Allottee comments.

The LADWP–SCE position at the December 19th forum was an offer to agree to accept Western's proposed 45–55 split on the Base Charge if all other allottees would similarly agree. Further explanation of the traditional cost allocation study results in support of the 35–65 split was also presented. This group's willingness to accept Western's proposal as a compromise was expressed again at the February 12, 1986, public comment forum and in all subsequent comments.

The comments of the city of Vernon supported a 10 percent to capacity and 90 percent to energy split as reasonable in light of the value of the resource being based upon the amount of time the resource is available for use by each contractor. The more energy a contractor has to use with its capacity, the longer the resource is available. Concomitantly, so reasons the city of Vernon, the longer the resource is available for use, the more valuable it is, and since the amount of energy controls the length of availability for use, the energy component of the Base Charge should carry the largest percentage of the cost. The city did indicate that it could support the 35–65 split for the Base Charge.

Subsequent to the February public comment forum there was no significant change in the positions of the two groups with respect to the Base Charge rate design issue. The Joint Allottees did, however, in written comments received August 7, 1986, submit a proposal to continue with the 1941 General Regulations' methodology.

6. Analysis of Rate Design Proposals

As previously noted, both the Joint Allottees and the LADWP–SCE Group advocated a Base Charge rate design derived by the use of a traditional utility ratemaking cost allocation methodology. That methodology consisted of a cost classification scheme whereby each of the elements of cost set forth in Section 904.5 of these General Regulations is identified as being, in whole or in part, either capacity-related or energy-related. Under this methodology, generally fixed costs are classified as capacity costs while generally variable costs are classified as energy costs. Capacity-related costs are accumulated as are energy-related costs. The relationship of the accumulated costs in each category as compared to the total results in the percentage "split" between capacity costs and energy costs.

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[7] The rate design for the Colorado River Storage Project provides for a 50–50 split but contains no contribution charge. While Western might properly take note of this rate design, it is not dispositive since it involves an unrelated project and was adopted pursuant to a different statute.

The cost allocation study presented by the Joint Allottees allocated 70 percent of costs to capacity and 30 percent to energy. The LADWP-SCE Group presented a cost allocation study which allocated 35 percent of costs to capacity and 65 percent to energy. Each group offered up extensive criticism of asserted defects and shortcomings in the cost allocation study of the other group. In addition, the city of Vernon, through its expert, criticized the study of the Joint Allottees. The city of Vernon analysis distinguished the Hoover situation from that of a typical utility with multiple generating resources. According to this analysis, Hoover is an energy-constrained system. Vernon contended that because the usefulness of the capacity allotted to most allottees is limited by the amount of energy available, most Hoover costs are properly allocated to the energy component.

The cost allocation studies of the various groups put side by side point up the high degree of uncertainty involved in an attempt to apply traditional utility ratemaking principles to this Project. In fact, each of the parties which advocated the use of the traditional utility ratemaking costs allocation methodology recognized that it is necessarily reliant on judgment to some degree. The comments of the LADWP-SCE Group of January 4, 1986 (pp. 9-15), and the discussion attached to the comments of the city of Vernon of January 6, 1986 (pp. 7-18) recognize that "proper" classification of particular costs is susceptible to different interpretations and can lead to very different results. The uncertainty of the "traditional" method was aptly summarized as follows:

> The literature also observes that costs can be classified in accordance with the function to be served by the expenditure but realistically accepts the fact that costs cannot always be easily identified and quantified and, even more frequently, costs cannot easily be classified (i.e., pigeonholed into one classification or another) (Comments of Joint Allottees dated January 6, 1986, page 19).

Several considerations lead to the conclusion that the traditional cost allocation approach to the rate design of the Base Charge is not appropriate for the use in this proceeding. As previously noted, the Joint Allottees and the LADWP-SCE Group, both purporting to use the same methodology, derived widely differing results. That wide divergence in results is particularly interesting when a comparison of the respective cost allocation studies reveals that there was significant disagreement only with respect to three of the elements of cost: Payments to the states; replacements; and annual operation and maintenance (O&M) expense. It is primarily the differing treatment of the last item, annual O&M, which causes the great difference in result. That item of expense comprises approximately 60 percent of each group's projected 30-year contract period revenue requirement. The LADWP-SCE Group allocated 100 percent of this item to energy, thus failing to recognize any fixed O&M. That approach is contrary to the great weight of authority. On the other hand, the Joint Allottees arbitrarily allocated O&M expense 50 percent to capacity and 50 percent to energy. No persuasive reason for the 50-50 allocation of O&M was advanced.

In addition, as the city of Vernon and other parties recognized, the Hoover Project is not strictly comparable to the typical regulated utility operation with respect to which the traditional cost allocation principles were designed. Those differences make the application of such principles to Hoover controversial and difficult at best. For these reasons, Western has determined not to utilize the traditional cost allocation methodologies urged on it in this rulemaking.

Moreover, comparative analyses of all the suggested methods show that application of the proposed traditional rate design methods does not produce the highest level of fairness and equity among all of the allottees. The rate designs produced by those methods would benefit a select few at the expense of others. As one group observed early in these proceedings:

> The division of costs, as between the capacity and energy components, should not favor one contractor over another as will happen if a "35-65," "65-35," or more unequal, split in favor of capacity or energy is adopted (Comments of Joint Allottees dated October 1, 1985, page 5).

The Joint Allottees asserted in their May comments (page 5) that there are no disruptive consequences in abandoning the historic patterns and adopting their proposed 70-30 split. As discussed in more detail in the following section, Western's analysis does not support this view. During the next 30 years, the estimated cost of an average kWh from the Hoover Powerplant will increase by 123 percent. Neither the 70-30 split nor the 35-65 split will spread this increase in cost equitably among the allottees. For example, the 70-30 split proposal would increase the MWD rate by 69 percent, while the SCE rate would increase by 166 percent. Similarly the 35-65 split proposal would produce an increase of 127 percent for MWD, while producing only a 98 percent increase for LADWP. Western finds that magnitude of the disparity in the increases which would result from these two "extreme" proposals would be disruptive to the relative economic positions of the allottees.

The 50-50 split was proposed by the Joint Allottees as a compromise. This method fits within the "equitable split" approach of the Base Charge as originally presented by Western. This method makes no effort to classify and allocate specific items of cost to capacity or energy. The Joint Allottees' proposal is an equitable split approach where all revenue required to be collected through the Base Charge and the Contribution Charge would be charged 50 percent to sales of capacity and 50 percent to sales of energy. As such, it does not involve the classification of the costs or elements of the cost of service which resulted in the 70-30 split and 35-65 splits under the "traditional" cost allocation ratemaking approach discussed above. Rather it focuses on the results of the rate design and the extent to which those results treat each allottee fairly and equitably. Western agrees with the view that the results of a rate design are the proper focus for evaluating its merits. With respect to this particular proposal, however, Western believes that charging equal shares of the total cost to the capacity and energy components of the Base Charge and the Contribution Charge does not produce the most fair and equitable result with respect to the affected entities in this case, particularly when historical practice is introduced into the analytical process. The comparison of all suggested methods which follows will demonstrate that the interests of fairness and equity are not best served by this method nor by the traditional method proposals resulting in the 70-30 and 35-65 splits.

In their comments of August 7, 1986, the Joint Allottees proposed that the historical method (established in the 1941 General Regulations) of charging GM&E costs to capacity and D&A costs to energy could continue unchanged or could serve as a basis for charging costs to capacity and energy.[8] The suggestion

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[8] In their comments of August 7, 1986, the Joint Allottees correctly pointed out that on page 12335 of

Continued

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that the historical method continue unchanged fails to take into account the differences in the mode of operation under the 1941 General Regulations and under the Hoover Power Plant Act. Under the 1941 General Regulations, section 18 sets forth the application of GM&E charges. The relevant portion provides:

> (b)(1) a direct charge to cover the entire cost of amortization, together with a proper share of the amortization costs of common facilities as provided in (a)(I) above, shall be paid by an allottee for the machinery and equipment installed for the sole use of such allottee;
>
> (2) the amortization charges, including a proper share of amortization cost of common facilities as provided in (a)(I) above, for a section or sections of machinery and equipment used jointly *will be apportioned on the basis of energy taken*, both firm and secondary, within the minimum annual obligation of each allottee as the minimum considered; . . . . (Emphasis added.)

These rules were designed for the Hoover Powerplant as it was operated for the first 50 years under contracts which gave individual allottees entitlements from specific units. Of the 17 main generating units at Hoover, 11 were installed for the sole use of individual allottees, and 6 were shared units. For the 11 units which are for the sole use of individual allottees, the GM&E charge is the equivalent of a capacity charge. For the six shared units, the GM&E charge is based upon energy taken and thus appears to be an energy charge. However, because of the fact that one party, LADWP, is entitled to over 84 percent of the capacity of these shared units, the GM&E charge for the entire Hoover Powerplant is roughly equivalent to a capacity charge. That is to say, if the parties sharing the six units were to be charged on the basis of capacity entitlement rather than energy usage, the shift of costs would be less than 10 percent of the total costs of GM&E. Thus, when speaking of the original contracts, Western has treated GM&E as comparable to a capacity charge.

Under the Hoover Power Plant Act, however, no entity is entitled to the sole use of a specific unit. All allottees will have a right to capacity from the entire Hoover Powerplant, and thus, they each share all of the units. Thus, if the 1941 General Regulations governing application of GM&E were literally followed, the entire burden of GM&E costs would be based upon energy taken. Thus, all GM&E charges and all D&A charges would be allocated based upon energy. Rather than resulting in a 60 percent to capacity and 40 percent to energy split, as suggested by the Joint Allottees, the application of the historic method would result in a charge of 0 (zero) percent to capacity and 100 percent to energy. Western found this result to be inequitable and it obviously is not what the Joint Allottees had in mind. Rather, it is reasonably apparent that what the Joint Allottees had in mind was a rate design which would reflect a continuation of the capacity versus energy cost classification aspects of the 1941 Regulations. Thus capacity costs would be those types of costs which had been, or which would have been, GM&E costs under the 1941 Regulations. Energy costs would be those types of costs which had been, or which would have been, D&A costs under the 1941 Regulations.

In the analysis which follows, Western has determined that rate designs which provide for either a 70–30 split or a 50–50 split of the Base Charge and a 50–50 split of the Contribution Charge do not produce as equitable results as the rate design ultimately adopted. Since a 60–40 split of the Base Charge and a 50–50 split of the Contribution Charge falls between these two rate designs, Western concluded the 60–40 split would not be the most equitable rate design. However, although Western has determined that continued application of the existing rate design would not be appropriate, Western does believe that a fair and equitable rate should preserve in general the relative economic relationships between capacity and energy charges of the historic method. As has been stated in the Joint Allottees' comments, the historical rate design was the result of a compromise leading to the 1941 General Regulations. Western finds that this approach has operated successfully since its implementation in 1941. Western believes that a fair and equitable rate design should reasonably reflect the historic capacity/energy split and take into account the historic and prospective relative economic positions of the allottees.

In support of its view, Western notes that neither the Hoover Power Plant Act nor its legislative history contemplates a dramatic change in the positions of the allottees. While the Hoover Power Plant Act does not specify a particular rate design, the legislative history does indicate that Congress expressly considered this subject. During the House debate, Representative Boxer offered an amendment which would have required power from the Project to be sold at market rates. The amendment was rejected. The floor debates that preceded rejection of the Boxer Amendment indicate that the House consciously chose not to change the status quo. Such an intent is completely consistent with the genesis of the Hoover Power Plant Act as a settlement of the controversy surrounding allocation of power from the Project. To a large extent, the equitable nature of that settlement would be undermined by a significant change in the allocation of economic burdens among the allottees.

The Joint Allottees have also argued that since the major additional cost at the Hoover Powerplant is for the uprating program, which creates new capacity, the capacity charge should pay the additional costs, because the historic pattern will be altered (comments attached as Appendix A to CRC's May 12, 1986, comments, page 4). Western finds this argument unpersuasive. The renewal allottees agreed to blend the additional costs caused by the uprating program so that all allottees would pay for those improvements. That arrangement was reflected in the Hoover Power Plant Act. Consequently, it would depart from what the parties agreed to and from what Congress directed to argue that the renewal contractors should not share in these costs. Taking the analysis further, each of the renewal allottees will receive an amount of capacity and energy which it agreed represented a renewal of its rights under the original contract. None of the three largest California allottees is receiving a direct benefit from the uprating program. Since they are each receiving relatively the same amount of capacity and energy which they each received under the original contracts, and since the rates of each are being affected in relatively the same manner, the costs of the uprating program will be shared, as they should be, on a relatively equal basis.

7. Adopted Rate Design

During the course of the proceeding, Western reached several conclusions about what would constitute an equitable rate design for power from Hoover Dam. First, because the Hoover Power Plant Act specifically allocates very different relative amounts of energy and capacity to certain contractors, no rate design could yield

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the **Federal Register** Notice of April 10, 1986, Western inadvertently reversed the future generating machinery and equipment (GM&E) charge with the dam and appurtenant works (D&A) charge. Their statement that the GM&E charge should be 60 percent and the D&A charge should be 40 percent is correct. We conclude that this was harmless error in the text of the notice, since Western utilized the correct figures in its study which was supplied to all the contractors in the supplemental materials accompanying the April 10, 1986, **Federal Register** Notice.

the same results for all contractors in the sense of imposing precisely the same composite charge (that is, the total energy and capacity charges divided by either energy or capacity). Thus, the equitable nature of a rate design cannot be measured simply by looking for uniformity in charges, but rather must be evaluated in light of its relative effects on each contractor. Second, because the rate design must collect a statutorily specified level of revenue, there exists, in effect, a "zero-sum game" situation in which no contractor can improve its benefits except at the expense of one or more other contractors. Thus, an equitable rate design should seek to minimize the degree to which individual contractors benefit at the expense of others. Finally, the Hoover Power Plant Act represented, to a large degree, a negotiated settlement among the existing contractors over the future allocation of power from Hoover Dam. There is no indication that either Congress or the existing contractors contemplated that this settlement would give rise to any radical change in the rate treatment of the existing contractors. Thus, an equitable rate design should seek to maintain, to the extent practicable, the relative positions of the contractors which have resulted under the existing system.

Western has chosen a rate design on the basis of these conclusions. Initially, it analyzed the various rate designs to see which one would approximate most closely the historic split of costs between capacity and energy. Then, Western evaluated the degree of neutrality which each rate design displayed towards the contractors. That is, which rate design most minimized more favorable treatment for one contractor at the expense of other contractors. Finally, Western evaluated the extent to which the various rate designs maintained the existing relative positions of the contractors.

In order to approximate the rate treatment under the existing system, Western analyzed the historic split between energy and capacity costs. Historically, the Hoover rates consisted of a GM&E charge, which is comparable to a charge for capacity, and a D&A charge, which is comparable to a charge for energy. During the first 48 years of the original Hoover contracts, the application of the GM&E charge resulted in total revenues of $207,315,384 and the application of the D&A charge resulted in total revenues of $327,051,085. Thus, it can be said that capacity has historically paid 38.796 percent of the total costs, and energy has historically paid 61.204 percent of the total costs.

As noted previously, Western proposed the 45–55 split. Western proposed this rate design in part because analyses indicated the overall effect [9] of this design would approximate closely the historic split between capacity and energy. The Joint Allottees pointed out, however, that this design would result in an overall allocation of 35 percent to capacity, and 65 percent to energy, which differed from the historic cost split.

Western has decided to adopt an overall rate design which provides for a 50–50 split between capacity and energy for the Base Charge and 100 percent of the Contribution Charge on energy (Adopted Rate Design). The Adopted Rate Design results in capacity paying 38.394 percent and energy paying 61.606 percent of the Project costs over the 30-year contract period. This comes closer to the historic average capacity/energy cost split than any of the proposals, as shown by the following:

OVERALL RATE DESIGN

Base charge Contribution charge	Historical	50–50 0–100	45–55 0–100	50–50 50–50	70–30 50–50	35–65 0–100	60–40 50–50
Capacity (percent)	38.796	38.394	34.6	50	65.4	26.9	57.7
Energy (percent)	61.204	61.606	65.4	50	34.6	73.1	42.3

In evaluating the equitable nature of the Adopted Rate Design, Western has considered factors other than how closely a rate design approximates the historic split between capacity and energy costs. In particular, Western has analyzed the effects on individual contractors and especially the manner in which a rate design treats the contractors relative to one another.

Western evaluated the future economic impact on each contractor of the Adopted Rate Design and the various proposals. In order to compare their effects, Western developed an Average Annual Composite Contractor's Cost (AACCC) for each rate design. The AACCC is computed by taking the total annual estimated cost of the contractor's allocated energy and capacity and dividing by the number of kWh or kW allocated that contractor by the Hoover Power Plant Act.[10] Table A sets forth the AACCC's per kWh for each contractor under each rate design. This AACCC is a dollar per kWh amount which represents the contractor's average cost per unit of allocated energy. As such, it provides a suitable measure of cost for comparison with similarly computed amounts for other allottees.

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[9] Western has evaluated the rate designs by looking at the overall effect of the Base Charge and the Contribution Charge. Isolating segments of the rate design for analytical discussion without ever viewing the whole rate design can result in an inability to assess the overall fairness and equity of the entire rate design.

[10] The AACCC's are based on the Hoover Power Plant Act allocations of capacity and firm energy and the most recently available estimated future costs. The cost data was provided by Reclamation and has been made available to each of the allottees. Although the cost numbers used are the best available, they do not necessarily reflect the actual and estimated costs which will be used to calculate the charges after June 1, 1987.

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TABLE A.—SUMMARY COMPARISON OF ECONOMIC IMPACT ANALYSIS, BOULDER CANYON PROJECT, PROPOSED CONTRACTOR'S ESTIMATED AVERAGE ANNUAL COMPOSITE CONTRACTOR'S COST (AACCC PER KWH)[1] on the Basis of Allocated Firm Energy for Future 30-YEAR CONTRACT PERIOD

Proposed contractor	AACCC under 35-65 split [2]	AACCC under 70-30 split [3]	AACCC under 50-50 split [4]	AACCC under 45-55 split [5]	AACCC under adopted rate design [6]
Banning	$0.01643	$0.02226	$0.01975	$0.01768	$0.01831
Colton	0.01449	0.01773	0.01632	0.01520	0.01555
Azusa	0.01488	0.01863	0.01700	0.01569	0.01610
Burbank	0.01454	0.01784	0.01641	0.01526	0.01562
Vernon	0.01477	0.01837	0.01681	0.01555	0.01594
Riverside	0.01464	0.01807	0.01658	0.01539	0.01576
Anaheim	0.01464	0.01807	0.01658	0.01539	0.01576
Pasadena	0.01120	0.00999	0.01047	0.01096	0.01084
Glendale	0.01084	0.00916	0.00984	0.01051	0.01032
Boulder City	0.01062	0.00887	0.00967	0.01022	0.01002
SCE	0.01725	0.02421	0.02122	0.01875	0.01949
LADWP	0.01413	0.01687	0.01567	0.01473	0.01503
CRC	0.01145	0.01090	0.01123	0.01128	0.01120
APA	0.01409	0.01415	0.01412	0.01411	0.01412
MWD	0.01017	0.00759	0.00864	0.00964	0.00938

[1] AACCC per kWh is equal to the contractor's total estimated cost which is the resultant of the following formula: [the contractor's allocated capacity (kW)] multiplied by [the capacity charge (cost per kW)]; plus, [the contractor's allocated firm energy (kWh)] multiplied by [the energy charge (cost per kWh)]; plus, [the contractor's estimated total Contribution Charge]; and that sum divided by [the contractor's allocated firm energy (kWh)].

[2] 35-65 split=Base Charge of 35 percent on Capacity and 65 percent on Energy, with 100 percent of Contribution Charge on Energy.

[3] 70-30 split=Base Charge of 70 percent on Capacity and 30 percent on Energy, with 50 percent of Contribution Charge on Energy and 50 percent on Capacity.

[4] 50-50 split=Base Charge of 50 percent on Capacity and 50 percent on Energy, with 50 percent of Contribution Charge on Energy and 50 percent on Capacity.

[5] 45-55 split=Base Charge of 45 percent on Capacity and 55 percent on Energy, with 100 percent of Contribution Charge on Energy.

[6] Adopted Rate Design=Base Charge of 50 percent on Capacity and 50 percent on Energy, with 100 percent of Contribution Charge on Energy.

Table A sets forth composite annual costs to each contractor (for economic comparison) which are based on allocated energy (that is, total cost per allocated kWh). Some parties suggested that the comparison of the economic impacts among the allottees should instead be based on capacity (that is, total cost per kW). Western recognizes that Hoover Dam is a very versatile resource that can serve as a peaking facility for some customers and a base-load facility for other customers. Indeed, during the negotiations which led to the settlement embodied in the Hoover Power Plant Act, the allottees sought and agreed to different relative amounts of energy and capacity largely on the basis of whether they wanted power from Hoover Dam for peaking functions or for base-load functions. Those allottees which wanted to use their Hoover allocation for peaking functions generally sought a relatively large allocation of capacity compared to their allocation of energy. That combination allows an allottee to use its relatively large amount of capacity for all or part of the relatively short duration of one or more peaks. Those allottees which wanted to use their Hoover allocation for functions more in the nature of base-load operations sought amounts of capacity and energy which would complement each other and allow an allottee to use its capacity allocation over a relatively large percentage of the time. As a consequence of the different ways in which allottees view and utilize power from Hoover Dam, a comprehensive view of its value can be obtained by looking at the total costs to individual allottees both in terms of allocated energy and in terms of allocated capacity. For purposes of further comparison, Table B sets forth composite annual costs to each contractor which are based on capacity. The numbers in Table B were derived in the same way as the numbers in Table A except that a contractor's total costs were divided by the number of kW rather than divided by the number of kWh allocated.

TABLE B.—SUMMARY COMPARISON OF ECONOMIC IMPACT ANALYSIS, BOULDER CANYON PROJECT, PROPOSED CONTRACTOR'S ESTIMATED AVERAGE ANNUAL COMPOSITE CONTRACTOR'S COST (AACCC kW)[1] ON THE BASIS OF ALLOCATED CAPACITY FOR FUTURE 30-YEAR CONTRACT PERIOD

Proposed contractor	AACCC under—				
	35-65 split[2]	70-30 split[2]	50-50 split[2]	45-55 split[2]	Adopted rate design[2]
Banning	16.42	22.26	19.75	17.68	18.31
Colton	19.32	23.63	21.75	20.26	20.73
Azusa	18.60	23.29	21.25	19.62	20.13
Burbank	19.22	23.59	21.68	20.17	20.65
Vernon	18.80	23.38	21.39	19.79	20.29
Riverside	19.03	23.50	21.55	20.00	20.49

TABLE B.—SUMMARY COMPARISON OF ECONOMIC IMPACT ANALYSIS, BOULDER CANYON PROJECT, PROPOSED CONTRACTOR'S ESTIMATED AVERAGE ANNUAL COMPOSITE CONTRACTOR'S COST (AACCC kW)[1] ON THE BASIS OF ALLOCATED CAPACITY FOR FUTURE 30-YEAR CONTRACT PERIOD—Continued

Proposed contractor	AACCC under—				
	35–65 split[2]	70–30 split[2]	50–50 split[2]	45–55 split[2]	Adopted rate design[2]
Anaheim	19.03	23.50	21.55	20.00	20.49
Pasadena	34.55	30.83	32.28	33.82	33.45
Glendale	38.96	32.91	35.34	37.75	37.14
Boulder City	42.50	35.48	38.68	40.90	40.10
SCE	15.59	21.87	19.17	16.94	17.61
LADWP	20.10	24.00	22.29	20.95	21.38
CRC	32.12	30.58	31.50	31.66	31.43
APA	32.06	32.21	32.13	32.11	32.13
MWD	53.10	39.60	45.12	50.34	48.96

[1] AACCC per kW is equal to the contractor's total estimated cost which is the resultant of the following formula: [the contractor's allocated capacity (kW)] multiplied by [the capacity charge (cost per kWh)]; plus, [the contractor's allocated energy (kWh)] multiplied by [the energy charge (cost per kW)]; plus, [the contractor's estimated total Contribution Charge]; and that sum divided by [the contractor's allocated capacity (kW)].

[2] See footnotes 2–6 of Table A for descriptions of the Rate Designs.

In order to evaluate more thoroughly and clearly the information in Tables A and B, Graphs A and B were prepared which depict the data in Tables A and B, respectively. The vertical axis of each graph indicates the AACCC, while the numbered points on the horizontal axis represent the 15 individual contractors. The effects of each of the various rate designs were graphed by connecting the points which represent the AACCC's of each of the 15 contractors under each particular rate design. Chart A sets forth the identities of the contractors shown by number on the horizontal axis of Graphs A and B, as well as the amounts of energy (kWh) and capacity (kW) allocated to each contractor.

Graphs A and B show that no rate design results in all, or even most, contractors paying approximately the same AACCC on either an energy or a capacity basis. Rather, each rate design results in widely varying AACCC's. The graphs also show that, in most cases, the contractors generally maintain their relative positions vis-a-vis one another, regardless of which rate design is used. Moreover, the tables show that those contractors which have relatively high AACCC's on an energy basis have relatively low AACCC's on a capacity basis and vice versa. These results are a direct consequence of the Hoover Power Plant Act's allocating very different amounts of capacity relative to energy to certain contractors. Given those statutory allocations, no rate design could treat all contractors exactly the same (that is, yield the same AACCC).

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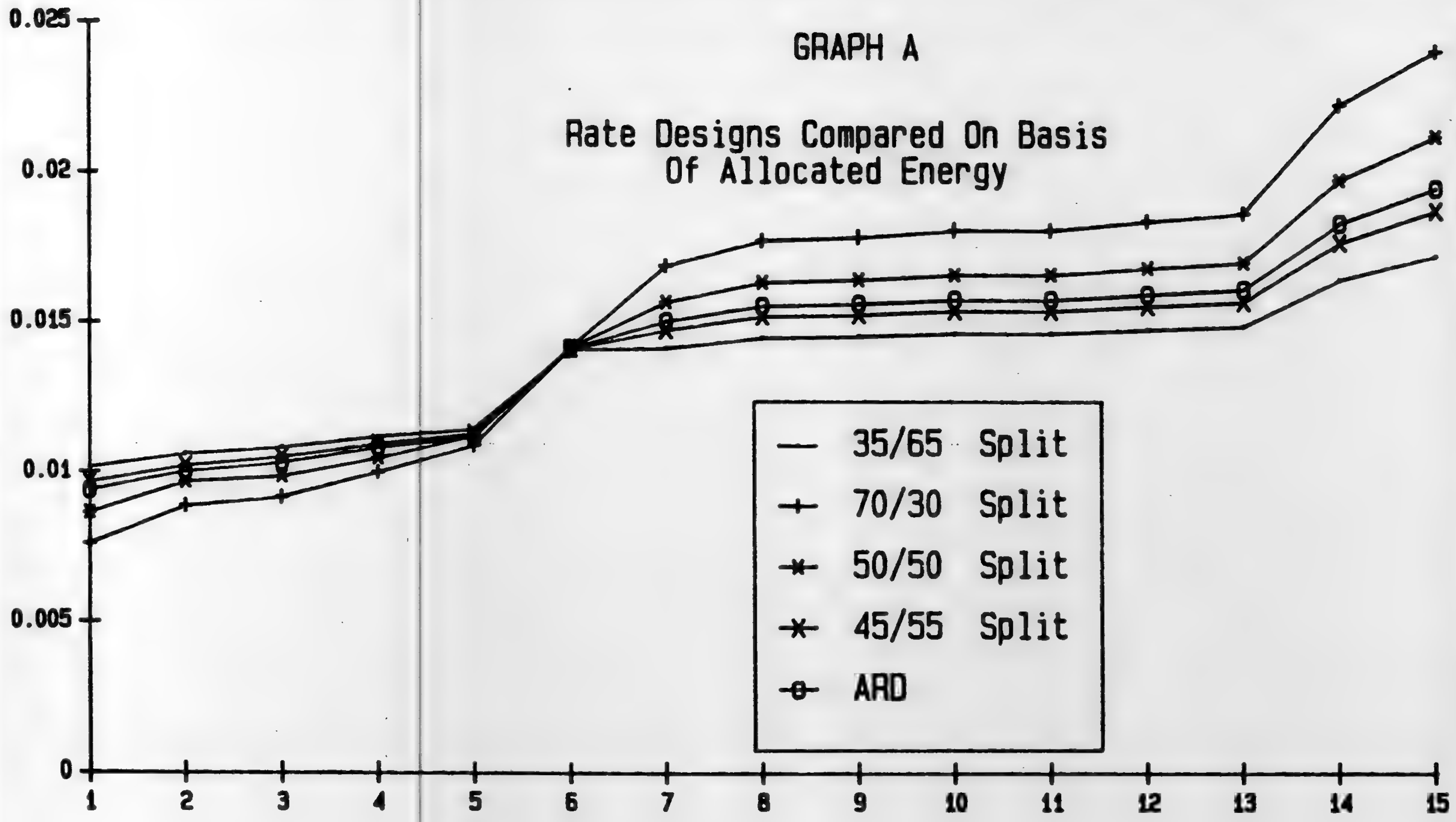

GRAPH A

Rate Designs Compared On Basis Of Allocated Energy

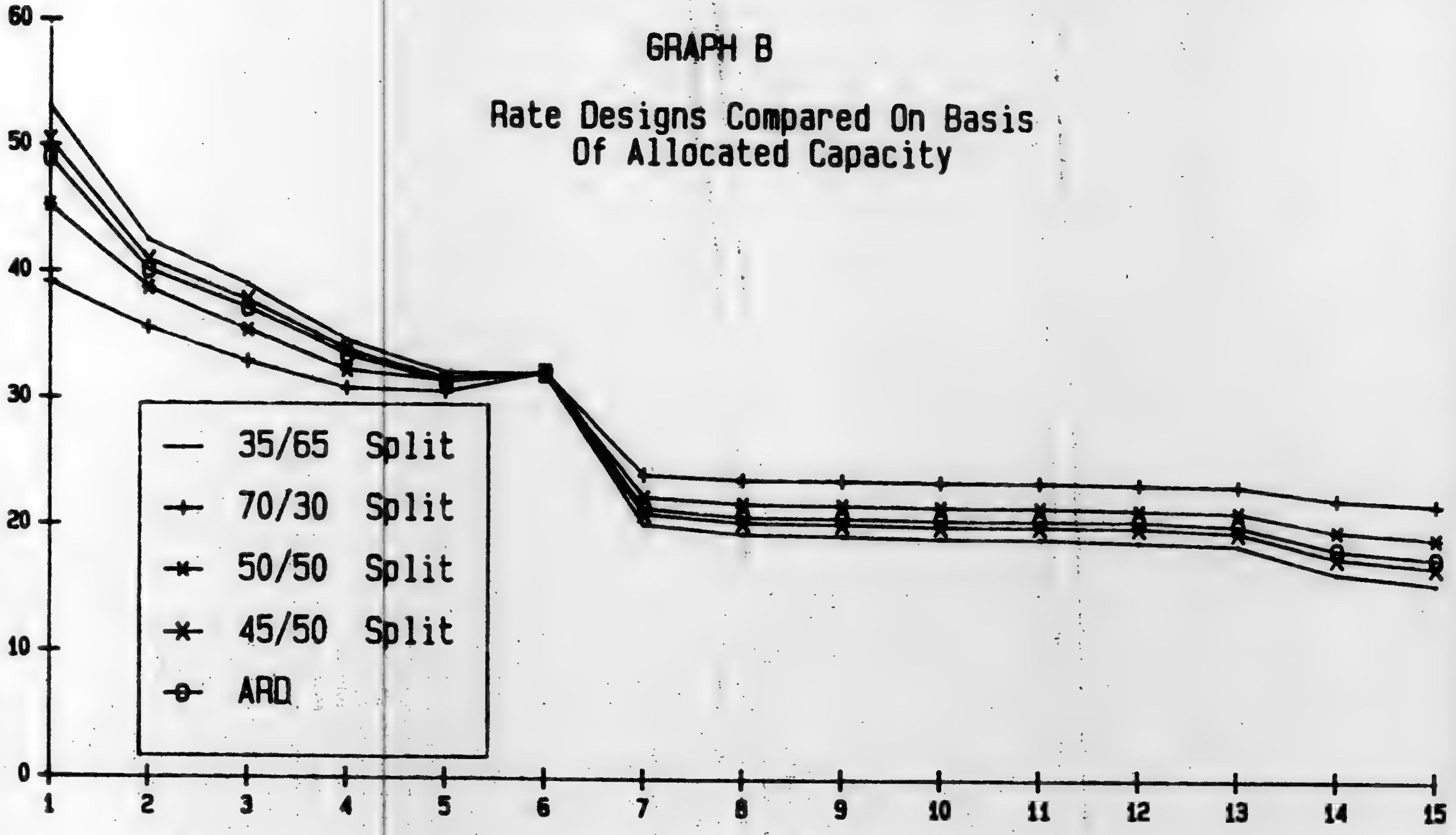

GRAPH B

Rate Designs Compared On Basis Of Allocated Capacity

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CHART A.—IDENTIFICATION OF CONTRACTORS ON GRAPHS A AND B; AND AMOUNTS OF ENERGY AND CAPACITY ALLOCATED TO EACH CONTRACTOR

Designation on graphs	Contractor	Allocated energy (kWh)	Allocated capacity (kW)	Capacity factor [1] (percent)
1	MWD	1,291,974,000	247,500	59.59
2	Boulder City	80,000,000	20,000	45.66
3	Glendale	71,862,000	20,000	41.02
4	Pasadena	61,700,000	20,000	35.22
5	CRC	1,057,989,000	377,000	32.04
6	APA	857,989,000	377,000	29.68
7	LADWP	698,193,000	490,875	16.24
8	Colton	4,000,000	3,000	15.22
9	Burbank	26,600,000	20,125	15.09
10	Riverside	39,000,000	30,000	14.84
11	Anaheim	52,000,000	40,000	14.84
12	Vernon	28,000,000	22,000	14.53
13	Azusa	5,000,000	4,000	14.27
14	Banning	2,000,000	2,000	11.42
15	SCE	250,694,000	277,500	10.31

[1] The Capacity factor is the percentage of time a contractor has energy to utilize its capacity for generation.

Graphs A and B, however, do show that the rate designs vary in the level of equity and fairness they achieve. Specifically, the more favorably a rate design treats some contractors (that is, lower AACCC's), the less favorably it treats the other contractors (that is, higher AACCC's). An examination of how various rate designs affect MWD and SCE illustrates this point.[11]

Compared to the other rate designs, the 70–30 split results in the lowest energy- or capacity-based AACCC for MWD and the highest energy-or capacity-based AACCC for SCE, while the 35–65 split results in the highest energy- or capacity-based AACCC for MWD and the lowest energy-or capacity-based AACCC for SCE. The reason for these results is clear. The 70–30 split loads costs on capacity and thus favors those contractors which are allocated relatively more energy than capacity, such as MWD. On the other hand, the 35–65 split loads costs on energy and thus favors those contractors which are allocated relatively more capacity than energy, such as SCE.

When the AACCC's of MWD and SCE are compared, the tilting effects of the 70–30 split and the 35–65 split become evident. The 70–30 split produces the greatest divergence between the lowest (MWD's) and the highest (SCE's) energy-based AACCC's because costs are loaded on those contractors allocated relatively more capacity. Likewise, the 35–65 split produces the greatest divergence between the lowest (SCE's) and the highest (MWD's) capacity-based AACCC because costs are loaded on those contractors allocated relatively more energy.

To a lesser extent, a comparison of the 50–50 split and the 45–55 split produces results similar to the comparison of the 70–30 split and the 35–65 split. The significance of these comparisons is that the Adopted Rate Design, in effect, exhibits the least shifting of costs among contractors because of differences in relative amounts of allocated capacity and energy.

Since the amount of revenue to be collected remains constant, more favorable treatment for one contractor necessarily means less favorable treatment for other contractors. Western believes an equitable rate design should seek to minimize the extent to which one contractor benefits at the expense of another. In other words, an equitable rate design displays neutrality in its treatment of the various contractors. A comparison of the various rate designs in light of both allocated capacity and allocated energy indicates that the Adopted Rate Design results in the least extreme shifts of costs among the contractors, and thus is the most equitable. When viewed together, Graphs A and B show clearly that the Adopted Rate Design is within the range of reasonableness and minimizes the disparity of treatment among the contractors. That is, while different contractors have different AACCC's, the Adopted Rate Design smooths out the peaks (high AACCC's) and valleys (low AACCC's) which are more pronounced in the other rate designs and which indicate more favorable treatment of some contractors at the expense of others.

Another factor which influenced Western's decision is the degree to which each rate design would result in relatively similar increases in the charges paid by the contractors. Table C sets forth the AACCC for the 30-year contract period under each rate design for MWD, LADWP, and SCE and the percentage of increase which the AACCC under each represents over the AACCC for that contractor in operating year 1986 (OY86). These three contractors may not receive allocations of capacity from the uprating program, and thus their capacity and energy entitlements after 1987 are roughly equivalent to their entitlement in earlier years. Moreover, these three contractors encompass the greatest difference in Hoover capacity factors, MWD having the highest and SCE having the lowest. Looking at the effects which the various rate design proposals would have upon these three contractors in terms of the high and low percentage of increase deviations from the present rate design thus gives an insight into significant shifts in relative economic positions of the contractors potentially most significantly impacted by the various rate design proposals.

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[11] Western chose MWD and SCE for this illustration because they are renewal contractors, they do not receive any of the uprating program capacity, and because they represent the greatest difference in the capacity factors.

TABLE C.—OPERATING YEAR 1986 (OY86) VS. POST 1987-AACCC PER KWH [1]

	Plant average	MWD	LADWP	SCE	High-low factor deviation
Actual OY86 rate	$0.00555	$0.00439	$0.00744	$0.00869	
Adopted rate design [2]	$0.01240	$0.00938	$0.01503	$0.01949	
Increase factor (percent)	123	114	102	124	22
45-55 split [2]	$0.01240	$0.00964	$0.01473	$0.01875	
Increase factor (percent)	123	120	98	116	22
50-50 split [2]	$0.01240	$0.00864	$0.01567	$0.02122	
Increase factor (percent)	123	97	111	144	47
35-65 split [2]	$0.01240	$0.01017	$0.01413	$0.01725	
Increase factor (percent)	123	132	90	99	33
70-30 split [2]	$0.01240	$0.00759	$0.01687	$0.02421	
Increase factor (percent)	123	73	127	179	106

[1] See footnote 1 of Table A for the definition of AACCC per kWh.

[2] See footnotes 2-6 of Table A for descriptions of the rate designs.

Table C shows the range of increases for each of the selected contractors under the various proposals, as compared to the AACCC for OY86, which is the most current reflection of the relative economic positions of these contractors. Table C shows that Western's Adopted Rate Design and the 45-55 split produce the least deviation. The Adopted Rate Design thus maintains the current relative economic relationships of these contractors as well as the 45-55 split and better than the other three rate proposals. However, the results shown in Table C are not completely accurate. For one thing, there are differences in the amount of firm energy which each contractor received in OY86 and the amount of allocated firm energy which each will receive during the post-1987 period. In OY86 LADWP received 645,362,474 kWh of firm energy, whereas in the post-1987 period its allotted firm energy will be 698,193,000 kWh. In OY86 MWD received 1,378,172,282 kWh, while in the post-1987 period its allotted firm energy will be 1,291,974,000 kWh. And in OY86 SCE received 269,118,088 kWh, whereas in the post-1987 period its allotted firm energy will be 250,694,000 kWh. Table C does not make any adjustments to account for these differences. Because of these differences, each contractor has a different AACCC than it would if it had received its post-1987 allocation of energy. Moreover, a review of firm energy receipts by these contractors in OY86 and previous years does not show a constant relationship between the receipts of these contractors from one year to the next. For example, in OY86 the firm energy receipts of SCE were approximately 19% of the firm energy receipts of MWD and the firm energy receipts of LADWP were approximately 47% of those of MWD. In OY83, however, the firm energy receipts of SCE were approximately 39% of those of MWD and the firm energy receipts of LADWP were approximately 71% of those of MWD. Due to the fluctuating relationship in the energy receipts (and consequently in their firm energy costs) on a year-to-year basis of the contractors, the results of the comparisons presented in Table C are skewed to reflect the particular relationship in firm energy receipts which happened to exist in OY86. Table D adjusts the AACCC of each contractor in order to eliminate variations in energy receipts (and consequently costs) and thus to permit a meaningful comparison of the change in the relative economic positions of these contractors.

Therefore, the actual OY86 AACCC of each of these contractors was adjusted in order to reflect the cost of the amount of firm energy which each will receive in the post-1987 period. Specifically, the actual OY86 AACCC of each was recomputed assuming that each had had firm kWh receipts in OY86 in the amount of the post-1987 firm kWh allotted to it. The actual OY86 total firm energy cost of each was adjusted to reflect the cost derived by multiplying the adjusted kWh receipts of each by its actual OY86 average firm energy rate. The adjusted firm energy cost for each contractor was then added to that contractor's actual OY86 capacity costs (generating charges) and the total was then divided by that contractor's post-1987 firm kWh allotment. Western believes that the comparison shown in Table D of that adjusted OY86 AACCC for each of these three contractors with the AACCC of each under the various proposed rate designs is a more meaningful comparison than that presented in Table C since the results are not skewed to reflect random variations in the amounts of energy actually received in OY86. Of course, the AACCC's for the proposed rate designs are computed in part on the post-1987 energy allocations. The use of adjusted OY86 AACCC's permits a better comparison since each contractor is treated as receiving the same amount of energy in OY86 as it is allocated in the post-1987 period.

TABLE D.—ADJUSTED OPERATING YEAR 1986 (OY86) VS. POST 1987-AACCC PER KWH[1]

	MWD	LADWP	SCE	High-low factor deviation
OY86 rates (adjusted)	$0.00448	$0.00712	$0.00910	
Adopted rate design[2]	$0.00938	$0.01503	$0.01949	
Increase factor (percent)	109	111	114	5
45-55 split[2]	$0.00964	$0.01473	$0.01875	
Increase factor (percent)	115	107	106	9
50-50 split[2]	$0.00864	$0.01567	$0.02122	
Increase factor (percent)	93	120	133	40

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TABLE D.—ADJUSTED OPERATING YEAR 1986 (OY86) VS. POST 1987-AACCC PER KWH[1]—Continued

	MWD	LADWP	SCE	High-low factor deviation
35–65 split[2]	$0.01017	$0.01413	$0.01725	
Increase factor (percent)	127	98	90	37
70–30 split[2]	$0.00759	$0.01687	$0.02421	
Increase factor (percent)	69	137	166	97

[1] See footnote 1 of Table A for the definition of AACCC per kWh.
[2] See footnotes 2–6 of Table A for descriptions of the rate designs.

Table D shows that Western's Adopted Rate Design results in the lowest amount of deviation from the adjusted OY86 rates. It thus shows that the Adopted Rate Design results in more closely maintaining those contractors in the same relative current economic positions than do the other proposals.

Similarly, Table E shows that the Adopted Rate Design results in the lowest amount of deviation from adjusted OY86 rates when the comparison is made on a dollar per kilowatt basis, rather than on a dollar per kilowatthour basis. The adjusted OY86 dollar per kilowatt rates shown in Table E for each contractor were derived from the same OY86 adjusted composite cost of power (i.e., energy and capacity) for each which was used in deriving the adjusted rates shown in Table D. Thus, the actual OY86 firm energy costs of each contractor were adjusted in the very same manner which was explained in the discussion of Table D and with the same resultant adjusted cost of firm energy. The adjusted firm energy cost of the contractor was then added to the actual OY86 capacity charges of the contractor and the sum divided by the kilowatts of capacity of the contractor (i.e., the same number of contingent capacity kilowatts as are allocated to each pursuant to the Hoover Power Plant Act) in order to derive a dollar per kilowatt composite cost of power.

TABLE E.—ADJUSTED OPERATING YEAR 1986 VS. POST 1987-AACCC PER KW[1]

	MWD	LADWP	SCE	High-low factor deviation
OY86 rates (adjusted)	$23.36	$10.12	$8.22	
Adopted rate design[2]	$48.95	$21.38	$17.61	
Increase factor (percent)	110	111	114	4
45–55 split[2]	$50.34	$20.95	$16.94	
Increase factor (percent)	115	107	106	9
50–50 split[2]	$45.12	$22.29	$19.17	
Increase factor (percent)	93	120	133	40
35–65 split[2]	$53.10	$20.10	$15.59	
Increase factor (percent)	127	99	90	37
70–30 split[2]	$39.60	$24.00	$21.87	
Increase factor (percent)	70	137	166	96

[1] See footnote 1 of Table B for the definition of AACCC per kW.
[2] See footnotes 2–6 of Table A for descriptions of the rate designs.

As previously noted the basis for comparison in Tables C, D, and E is OY86 rates (Table C) or adjusted OY86 rates (Tables D and E). Western recognizes, however, the difficulty in choosing a particular year for which AACCCs could be developed and used as an historical basis for comparison with the AACCCs developed in Table A with respect to the 30-year future contract period. For example, if OY84 rates were used as a basis for comparison in Table C, the Adopted Rate Design would produce the lowest percentage deviation, while if OY85 rates were used, that would not be the case. The inconsistency in results arises primarily from two factors. The major factor is that the firm energy allocations of the contractors under the present arrangements are a percentage of a mathematically defined number of kWh which are reduced by a constant amount of kWh from year to year. Therefore, the variations in the quantity of firm energy receipts are such that there is not a constant relationship among the quantities of firm energy received by the three allottees from one year to the next due to the reducing percentage of defined firm energy declared to be available in concert with the annual change in the cost per firm kWh. The absence of such a constant relationship necessitates the adjustments to firm energy quantities and costs, which adjustments have been described in the discussion of Table D. Also, because some contractors are entitled to particular generating sections and due to the way GM&E charges are computed, extraordinary O&M expense in a given year on a particular generating section can directly and significantly affect the AACCC of such contractor.

The adjustments to the OY86 firm energy costs, which adjustments are reflected in the Adjusted Rates shown in Tables D and E, eliminate the variations in composite cost which are attributable to variation in firm energy cost due to the variation in relative firm energy receipts, but do not eliminate variations in relative costs which might be attributable to extraordinary O&M expense on generating sections. Therefore, a decision was made to make comparisons based on adjusted average composite rates of the three contractors where such average composite rates were for a ten year period. A comparison based upon adjusted 10-year average composite rates should tend to mitigate any difference in results which would be attributable to extraordinary O&M expense on a particular generating section in a particular year or years, by making the effects of such less pronounced and by a balancing out process. Moreover, when Congress and the allottees contemplated the settlement embodied in the Hoover Power Plant Act, their frame of reference was rate treatment generally during recent years. Thus, a comparison based upon the previous decade would reflect generally the assumptions which underlie the adoption of the Hoover Power Plant Act.

The amount of deviation among the three contractors under the various proposed rate designs was examined when composite rates resulting under those rate designs were compared with a 10-year average adjusted composite rate for each contactor for the most recent ten years 1977–1986. This comparison was made on both an energy (composite cost per kWh) and a capacity (composite cost per kW) basis. In both cases, as is shown in Tables F and G, the Adopted Rate Design resulted in the lowest percentage amount of deviation.

Table F shows the comparison on an energy, or composite cost per kWh basis. The actual firm energy cost of each contractor was adjusted for each year in the ten year period, in the same manner as has been described in the discussion of Table D. The adjusted energy cost for the year was then added to the actual capacity charges for that year to produce an adjusted composite cost of power for that year. That adjusted composite cost of power was then divided by the kilowatthours of firm energy allotted to the contractor by the Hoover Power Plant Act. The resulting ten annual adjusted composite cost per kWh amounts for the contractor were then totalled and divided by ten to produce the 10-year average adjusted composite cost rate for that contractor which is shown in Table F.

TABLE F.—ADJUSTED 10-YEAR AVERAGE AACCC (1986–1977) [1] VS. POST 1987-AACCC ON A DOLLAR/KWH BASIS

	MWD	LADWP	SCE	High-low factor deviation
10-year average rates (adjusted) (OY86–OY77)	$0.00382	$0.00570	$0.00805	
Adopted rate design [2]	$0.00938	$0.01503	$0.01949	
Increase factor (percent)	146	164	142	22
45–55 split [2]	$0.00964	$0.01473	$0.01875	
Increase factor (percent)	152	159	133	25
50–50 split [2]	$0.00864	$0.01567	$0.02122	
Increase factor (percent)	126	175	164	49
35–65 split [2]	$0.01017	$0.01413	$0.01725	
Increase factor (percent)	166	148	114	52
70–30 split [2]	$0.00759	$0.01687	$0.02421	
Increase factor (percent)	99	196	201	102

[1] See footnote 1 of Table A for the definition of AACCC per kWh.

[2] See footnotes 2–6 of Table A for descriptions of the rate designs.

Table G shows the same type of 10-year average comparison shown in Table F except on a capacity, or per kW basis. The same adjusted composite cost of power which was developed for each contractor for each of the 10 years for use in Table F was used in developing the adjusted ten year average composite rates in Table G. Each annual adjusted composite cost of power (i.e., adjusted cost of firm energy plus actual capacity charges) was divided by the number of kilowatts of contingent capacity allotted to the contractor in question by the Hoover Power Plant Act. The resulting ten adjusted composite cost per kilowatt amounts for each contractor were then totalled and divided by 10 in order to derive the ten year average adjusted composite dollar per kW rate shown for that contractor on Table G.

TABLE G.—ADJUSTED 10-YEAR AVERAGE AACCC (1986–1977) [1] VS. POST 1987-AACCC ON A DOLLAR/KW BASIS

	MWD	LADWP	SCE	High-low factor deviation
10-year average rates (adjusted)	$19.93	$8.10	$7.27	
Adopted rate design [2]	$48.96	$21.38	$17.61	
Increase factor (percent)	146	164	142	22
45–55 split [2]	$50.34	$20.95	$16.94	
Increase factor (percent)	153	159	133	26
50–50 split [2]	$45.21	$22.29	$19.17	
Increase factor (percent)	126	175	164	49
35–65 split [2]	$53.10	$20.10	$15.59	
Increase factor (percent)	166	148	114	52
70–30 split [2]	$39.60	$24.00	$21.87	
Increase factor (percent)	99	196	201	102

[1] See footnote 1 of Table B for the definition of AACCC per kW.

[2] See footnotes 2–6 of Table A for descriptions of the rate designs.

Given the Project's historical cost pattern, the historic relative economic relationships of the allottees, and the prospective allocation of costs, Western has concluded, after careful consideration, that the Adopted Rate

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Design is the most fair and equitable of all the proposals and is a proper exercise of Western's administrative discretion. Accordingly, Western is changing the percentage split of the Base Charge in section 904.7 of the General Regulations, as published on November 29, 1985, to reflect the Adopted Rate Design.

8. Other Comments

Additional changes have been made to the development of the capacity and energy components of the Base Charge. Paragraph (b) has been modified to indicate that the capacity component will be a dollar-per-kilowattmonth amount applied to each contractor's capacity amount. The dollar-per-kilowattmonth will be based on the estimated revenue requirements of the capacity component, divided by the total estimated capacity rating of the Hoover Powerplant, divided by 12. The kW rating will be based on the powerplant output capability with all units in service at 498 feet of net effective head or 1,951,000 kW, whichever is less. The development of the energy component has also been modified. The determination for the charge per kWh has been changed from a charge being based on "total Firm Energy" to "total kilowatthour."

Western, in accordance with RA 6120.2, will prepare an annual repayment study to determine the adequacy of the then-effective rates to ensure recovery of all financial obligations over the remaining years of the Project repayment period. Whenever the repayment study shows that the repayment requirements are not being met, action will be taken to prepare and recommend a plan to be implemented at the next practicable time to satisfy the repayment requirements. If it is determined that a rate adjustment is required, Western will initiate a formal rate adjustment proceeding.

In developing the charge per unit, Western will utilize the criteria specified in RA 6120.2. Specifically, in determining the cost per kWh, Western will utilize energy quantities determined by reservoir operation studies based on historical stream flow studies prepared by Reclamation. The estimated energy quantities for the remaining repayment period will be used in estimating future revenues for the Project. In the absence of power quantity projections available from hydrology studies, Western will utilize the allocation of energy specified in the Hoover Power Plant Act.

In its August 7, 1986, comments, the Joint Allottees suggested that in the event of deficiencies or excesses in revenues assignable in any one year to either the capacity or energy cost component, these deficiencies or excesses must be charged or credited to the same component in future years. Section 904.7 has been modified to provide that the only time there can be a deficiency in capacity revenue is during the uprating period or in a situation where the output of the plant is significantly reduced. The determination of the level of such "significant reduction" is left to the electric service contract negotiation. Western believes that properly setting the level at which capacity revenues are reduced will make the occurrence of such reductions extremely rare. It should be noted that because there will not be a charge for excess capacity, there cannot be any significant excess of revenues collected by the capacity charge. Energy projections are based on average hydrologic forecasts for the repayment period, and the energy rates are calculated accordingly. Thus, the rate is based on a forecast of average energy to be produced over the repayment period. Since these energy forecasts are based upon long-term averages, deficiencies and excesses should occur in equal amounts. These deficiencies and excesses should offset each other over the Project repayment period. In the early years of the contract there will be an overcollection on the energy component because of the excess energy that will be generated due to the high levels of the reservoirs on the Colorado River. This overcollection on the energy component will be shared equally by capacity and energy components in future years and will result in a reduction in the amounts required of both components in later years. While this occurrence will be to the advantage of those contractors with large amounts of capacity relative to energy, there are offsetting factors. The benefits of integrating the operation of the Boulder Canyon Project with other Federal Projects, which is referred to in section 904.5(g) of these regulations, will be produced from use of capacity for shaping, firming, and supplying spinning reserves. These activities will involve use of capacity but, because all of the energy from the Project is allocated, will not use energy from the Project. These benefits, although produced exclusively from capacity, will be credited in the same manner as the overcollection for energy and thus will benefit both capacity and energy components equally. Based upon the foregoing, Western has concluded that it is neither necessary nor desirable to adopt the Joint Allottees' proposal.

Another change made to this section 904.7 concerns the application of the energy component. During contract negotiations, the allottees requested that lay off of energy provisions be included in the contract (see discussion of section 904.11, Lay Off of Energy). The language proposed by an allottee provides that each contractor will continue to be obligated to pay for energy available to that contractor. The application of the energy component of the Base Charge was modified to reflect this obligation.

Section 904.8 has been modified to clarify that the Contribution Charge will not be applied to energy purchased at the contractor's request. This clarification was added because one commentor pointed out that the revised proposed General Regulations did not specifically address firming energy. The commentor further stated the Contribution Charge requirement did not apply to firming energy. Western has been convinced by the commentor's arguments and has added the above-noted provision to the General Regulations. In addition, discussions in the contract negotiations have indicated that it may be necessary to purchase energy from other resources in order to provide a non-Federal funding contractor with the credits to which it is entitled. Such purchases, if necessary, also would not be subject to the Contribution Charge.

Section 904.9 Excess Capacity

The comments submitted concerning excess capacity at the Project were made by the two major commenting groups, the Joint Allottees and the LADWP–SCE Group. The Joint Allottees contended that any excess capacity generated at the Project during the 30 year contract period rightfully belonged to the contractors and that Western was not authorized by law to use any such excess capacity to integrate the Hoover Project with other Federal projects on the Colorado River. This group did, however, indicate a willingness to negotiate with Western to allow some portion of any excess capacity to be retained by Western for Project integration purposes. In support of their position regarding Western's lack of legal authority to determine that available excess capacity should be used for integration purposes, the Joint Allottees offered an analysis and construction of various provisions of the Boulder Canyon Project Act of 1928, the Boulder Canyon Adjustment Act, the Reclamation Project Act of 1939, the Act of May 28, 1954 (68 Stat. 143), the Colorado River Basin Project Act, the Colorado River Storage Project Act, and the Hoover Power Plant Act.

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In contrast, the LADWP–SCE Group concluded that disposition of any capacity in excess of 1,951,000 kW, the amount statutorily allocated by the Hoover Power Plant Act, is properly a matter of Western's administrative discretion. Further, they conclude that the contractors have no statutory right to any capacity in excess of 1,951,000 kW.

Logically, an important foundational point for this issue is the ownership of the Project. Congress addressed this point in clear, concise terms in the Project Act, which states:

> The title to said dam, reservoir, plant, and incidental works shall forever remain in the United States, and the United States shall, until otherwise provided by Congress, control, manage, and operate the same . . . (43 U.S.C. 617e).

There is no dispute over who owns, controls, manages, and operates this Project. Congress has not deemed it necessary to change the above mandate for the Federal role in this Project. The contractors are contractors of the Project, paying for, and receiving capacity and energy from this Project (a status not uncommon to the utility industry as a whole). Some commentors seem to believe that because the contractors have purchased output of the Project in the past, and the money they paid was used to repay the Federal investment, this gave them the equivalent of an equity position in the Project. The above citation demonstrates that this is not the intent of Congress.

Western's position is that the contractors' rights to power from the Project are established by the Hoover Power Plant Act which makes specific allocations in the schedules set forth in section 619a. The allocations contained in Schedules A and B are expressed specifically in kW for capacity and kWh for energy. The allocations of Schedule A provide each of the nine renewal allottees a specified number of kW of capacity and, by season, a specified amount of kWh of energy. No mention is made in Schedule A of any excess Project capacity. It is significant that the allocations are made in terms of specific amounts of capacity and energy, rather than in terms of percentages of Project output.

The allocations contained in Schedule B are stated in specific amounts of kW of capacity and kWh of energy for the States of Arizona, California, and Nevada. Schedule B also makes no mention of any excess capacity of the Project. Again it is significant that the allocations of uprating program capacity are made in terms of specific amounts of capacity, rather than in terms of percentages of the resulting increased capacity. If Congress had intended to direct every kW of capacity resulting from the uprating program exclusively to the three states specified, Congress would have made allocations in terms of percentages of resulting uprating program capacity or would have included a clear affirmative indication that any excess capacity was to go to the allottees. Congress did neither. The Joint Allottees emphasize that Congress provided that any funds advanced for the uprating program by the non-Federal entities, plus interest thereon, were to be returned to those entities during the contract period through credits. That feature of the statute does not demonstrate that the contractors were to become owners of equity interests in any excess capacity that might exist in this Federal resource. In fact, Congress chose to use a specific-amount allocation method, even though it knew well by what it provided in section 619 that the uprating program would be financed in large part by funds advanced by non-Federal entities.

Since Congress did not specifically allocate all of the capacity that might result from the uprating program, the question arises regarding what disposition Congress did intend for any resulting capacity in excess of the 1,951,000 kW of capacity specifically allocated in the 1984 Act. Western believes that section 619 of the Hoover Power Plant Act, in addition to making the allocations, provides the answer. Sections 619a(a) (3) and (4) provide:

> (3) Subdivision E of the "General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects" published in the Federal Register May 9, 1983 (48 FR commencing at 20881), hereinafter referred to as the "Criteria" or as the "Regulations" shall be deemed to have been modified to conform to this section.

and, each contract shall:

> (4)(C) conform to the applicable provisions of subdivision E of the Criteria, commencing at 48 FR 20881, modified as provided in this section. To the extent that said provisions of the Criteria, as so modified, are applicable to contracts entered into under this section, those provisions are hereby ratified.

Section E of the General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects (48 FR 20881) (Criteria) specifically made the following point regarding all of the projects of the Boulder City Area Office:

> The Projects will be operationally integrated to improve the efficiency of the Federal system in accordance with: the operational constraints of the Colorado River, hydro-project powerplants, and Navajo Generating Station, as may be imposed by the Secretary of the Interior or authorized representatives; applicable laws; the general items, conditions, and principles contained in these Criteria; and the General Power Contract Provisions in effect which are applicable to a particular Project (48 FR 20882, May 9, 1983).

The Joint Allottees contended that the above quoted provision of the Criteria did not conform to, and was inconsistent with, the Hoover Power Plant Act. In that regard they point to the provision of section 105(g) of that Act which provides that section 105 (which sets forth the allocations of capacity to the allottees specified in Schedules A and B) ". . . constitutes the exclusive method for disposing of capacity and energy from Hoover Dam for the period beginning June 1, 1987, and ending September 30, 2017". Additionally, the Joint Allottees stress that the Act does not specifically allocate any capacity to Western.

Western does not agree with the Joint Allottees. "Disposing" of capacity and energy is not the same as "use" of such capacity that was not disposed of pursuant to the Act. Thus, Western believes this portion of section E of the Criteria was not changed by the Hoover Power Plant Act, that no changes to it were necessary to conform it to that Act, and that, consequently, it was effectively ratified by the Act. The General Regulations provide that if the uprating program results in excess capacity as defined in those Regulations, Western is entitled to such excess capacity to integrate the operation of the Boulder City Area projects and other Federal projects on the Colorado River. All excess capacity not required by Western shall be offered to the Boulder Canyon Project contractors. The excess capacity reservation by Western is for a purpose clearly stated in the Criteria, which Congress consciously addressed through ratification in the Hoover Power Plant Act. Western believes that if Congress had desired to alter this approach in any way, it would have done so explicitly in the modification and ratification process of the Hoover Power Plant Act.

Another factor influencing Western's decision is set forth in section 619a of the Hoover Power Plant Act and section E of the Criteria concerning the specific allocations. Section 619a does not vest in the proposed contractors an absolute right to the specific allocations. This section merely mandates that Western offer each of the allottees listed in Schedule A a renewal contract and offer contracts for the uprating program capacity and associated energy specified in Schedule B. The law does

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not state that each proposed contractor is vested with the right to and entitled to the capacity and energy set forth. This is made abundantly clear by the provisions of section 105(h)(2)(i) and the contingencies there referenced. Of course, this language does concomitantly require that Western use good faith in offering a contract and, as in all contracting efforts, there is room for good faith, arm's length bargaining among the parties. Offering a contract to an entity is considerably different from vesting an absolute right to receive something of value in an entity. This distinction and intent are further underscored by section E of the Criteria, which Congress did not alter or amend in this regard, which stated in 1983 and continues to state:

> In the event that a contractor or potential contractor fails to place power under contract within a reasonable period, as specified by the United States and in accordance with the terms and conditions offered by the United States, or fails to provide contributed funds, the amounts of power released by such failure will be reallocated . . . (48 FR 20885, May 9, 1983; 49 FR 50588, December 28, 1984).

Such a reallocation is in keeping with section 619a(g) of the Hoover Power Plant Act, which states that section 619a is the exclusive method for disposing of capacity and energy from Hoover Dam for the contract period commencing June 1, 1987. This result is in keeping with the universally accepted rule that when Congress directs a Federal agency to carry out prescribed actions, that direction carries with it the concomitant authorities necessary in order to carry out the congressional directive. If reallocation were not a viable option to Western, then in the event that any of the designated proposed contractors declined to accept or could not contract for the allocation, Western would be unable to take any further action to carry out the clear intent of Congress to market the capacity and energy generated at the Project. Western remains convinced that reallocation is an option, should offered contracts remain unaccepted.

Western's position that the United States is entitled to the excess capacity as defined in the General Regulations, if any excess capacity results from the uprating program, has not changed; however, this section has been modified to more clearly define the use and pricing of the capacity by the United States.

One commentor offered a suggestion that there should be a charge for excess capacity to the user. In considering the possibility of developing a charge for excess capacity, Western examined the variables of hydrology, the output characteristics of the powerplant, and the possible frequency of outages. Western concludes that the excess capacity would be available for short time periods during the contract period; as such, it would be very difficult to determine a charge for that service. Equally as difficult would be the billing and accounting for such an intermittent quantity. Therefore, in the interest of rate stability, Western will not develop a charge for excess capacity in these General Regulations but will provide for excess capacity accounting and delivery in the contracts.

The "benefits" provision of this section has been modified to refer to the "benefits" section added as paragraph (g) of § 904.5 of these General Regulations. Western believes that the specific benefit language is relevant to revenues and should be included in that section.

Section 904.10 Excess Energy

Excess energy is energy generated at Hoover Dam during a given year which is in excess of 4,501,001 million kWh of energy. The Hoover Power Plant Act creates three priorities with respect to such excess energy. The first priority consists of the first 200 million kWh of excess which goes to Arizona. Any deficits in this amount may be accumulated up to 600 million kWh. The second priority consists of up to 26 million kWh needed to meet contractual obligations to supply firm energy allotments in schedules A and B. Any excess energy over and above the amount required to meet the first two priorities is third-priority excess energy which is to be divided equally among the States of Arizona, California, and Nevada.

Comments were received regarding the pricing of excess energy and the disposition of third-priority excess energy, particularly the allocation in California.

Initially, Western proposed that all excess energy was to be priced at a rate developed under the procedures for short-term sales. Subsequent comments convinced Western that this was inappropriate for first-priority and second-priority excess energy. The revised proposed General Regulations published November 29, 1985, reflected that change. The rationale for the proposed pricing of first- and second-priority excess energy at the firm energy price was provided in the **Federal Register** (51 FR 12333) on April 10, 1986. That April notice continued, however, to propose pricing of third-priority excess energy under the procedures for short-term sales.

Comments submitted by the LADWP–SCE Group indicated agreement with Western's revised proposed pricing of first-priority and second-priority excess energy but expressed disagreement with the proposed pricing of third-priority excess energy. Their position was in agreement with the Joint Allottees's position discussed below that third-priority excess energy should not be priced under procedures for short-term sales. The LADWP–SCE Group also suggested that third-priority excess energy should be priced at the firm energy price.

The Joint Allottees's comments stated that all excess energy should be at a lesser price than firm energy and suggested that Western should adopt the "customary pricing principles" presently being used to price the Hoover "secondary" energy. The Joint Allottees argued that the disposition accorded APA of the first-priority excess energy recognized that Arizona's acceptance of the statutorily specified quantity of first-priority excess energy was in lieu of a larger allocation of firm energy, and that it was contemplated that excess energy would be sold at a lesser price. They further state that Western's proposal to price this first-priority excess energy and second-priority excess energy at the firm energy price "does not take into account that excess energy is not firm energy and is sold on an if-, as-, and when-available basis" and, consequently, should be sold at a lesser price than firm energy.

In the comments on pricing of third-priority excess energy, this same group stated that all "third-priority excess energy is permanently disposed of" and that "Western has confused short-term availability (i.e., availability from time to time) with short-term sales."

The arguments against offering third-priority excess energy at a price developed in accordance with applicable procedures for short-term power sales are convincing. Western agrees that the allocation of third-priority excess energy is established for the 30-year contract term and is, therefore, a long-term resource. Western agrees that a long-term rate should be established for this long-term resource. In response to comments that the price of third-priority excess energy should be less than that of firm energy because of the lower quality, Western does not agree that the quality of third-priority excess energy is significantly less than that of firm energy. Due to the low capacity factor of most of the contractors, excess energy will be, for the most part, scheduled and delivered during onpeak hours, just as firm energy will be. With the rate for third-priority excess energy in the 5 mills per kWh range, Western believes that this rate is fair and equitable. Western has not been presented with any compelling reasons to reduce the rate for third-priority excess energy below the firm energy rate. Therefore, this section has been changed to provide that third-priority excess energy is to be available at the then existing firm energy price.

Comments on the allocation of third-priority excess energy addressed two areas of concern. The Joint Allottees's comments also addressed the third-priority excess energy available to Arizona and Nevada. They stated that the regulations should specify that the excess energy available to Arizona must be offered to APA and that excess energy available to Nevada must be offered to CRC. The General Regulations have been modified to state that the third-priority excess energy will be offered to those named allottees in those states.

The second area of concern was the basis upon which third-priority excess energy was to be disposed of among the multiple California contractors. In their comments of September 28, 1985, the LADWP–SCE Group proposed a "converging formula" that would increase each of the California allottee's capacity factors in such a manner that all of the allottees would reach 100 percent at the same time. The Joint Allottees argued that third-priority excess energy should be offered in proportion to each contractor's firm energy allotment. They stated that if contractors must share proportionately in any curtailments in capacity and energy, they should share proportionately in any excesses. As with several other issues regarding the proposed General Regulations, Western was faced with two opposing viewpoints. Because in all likelihood, Western will have only one contractor in Arizona and one in Nevada, the allocation by Western of third-priority excess energy among contractors is a matter which will have a practical impact only on California allottees.

Due to the wide disparity in the California allottees' capacity factors, Western attempted to find a formula that would be equitable to all of the California allottees. The Hoover capacity factors for California allottees vary from that of SCE with a low of 10.31 percent to that of MWD with a high of 59.59 percent. While the allottee with a 59.59 percent capacity factor (MWD) sees the Hoover Powerplant as an energy producer, the value of the Hoover resource to the low-capacity factor allottee (SCE) is as a capacity-related peaking resource. However, the value of that peaking resource may be severely limited because of its inability to use Hoover capacity during the entire duration of its peak. That limitation arises, of course, because of the limited energy available.

In considering the legitimate claims of both kinds of contractors to the available third-priority excess energy, allocating excess energy strictly on the basis of capacity fails to recognize that those excess energy years are the same years when MWD would most likely have additional water to pump. On the other hand, allocating third-priority excess energy strictly on the basis of energy tends to deprive the low capacity factor contractors of the opportunity to enhance the value of the Hoover resource by meeting a greater portion of the duration of their peaks. If third-priority excess energy were allocated based only on allocations of firm energy in California, as has been suggested by the Joint Allottees, MWD, the entity with the highest capacity factor, would reach 100 percent capacity factor at a time when SCE, a very low-capacity factor contractor, reaches 17 percent capacity factor. If additional third-priority excess energy becomes available to the California contractors, capacity being paid for by SCE and others would have to be used in order to deliver the energy to which MWD is entitled. It would be necessary to deliver this energy to MWD during offpeak hours as MWD's entitlement to firm energy already allows it to use its capacity entitlement nearly 14 hours per day. Delivery of offpeak energy to MWD, in lieu of delivering onpeak energy to another contractor whose capacity factor is low, reduces the value of the resource to California as a whole. Using Western's method, with the same amount of third-priority excess energy available to California, the MWD capacity factor would rise to 68 percent, while the SCE capacity factor would rise to 22 percent. Thus, Western's method would result in MWD receiving a considerable amount of energy with which to pump surplus water, and at the same time, would provide SCE with the ability to meet peakloads for a much longer duration. Other contractors would also benefit from the delivery of additional energy during onpeak hours. Western believes this results in the highest and best use of the hydro-resource in the public interest by best utilizing the water resources of the region and by reducing dependency on nonrenewable fossil fuels. In addition, this provides for an equitable distribution of the economic benefits of third-priority excess energy among the California contractors. Therefore, in balancing the proposals of both sides and considering the public interest, Western has adopted a formula which recognizes both capacity entitlements and energy entitlements in allocating third-priority excess energy.

Section 904.11 Lay Off of Energy

This section has been added to the General Regulations as a result of discussions with the allottees during contract negotiations. The allottees requested language to provide for the disposal (lay off) of energy available to them that they are unable to utilize. This new section provides that Western will lay off available energy at the request of a contractor pursuant to provisions of the contract. The contractor failing to take its available energy will be billed for any deficit between the amount that Western would have received at the then existing energy rate and the amount actually received as a result of the lay off.

Section 904.12 Payments to Contractors

One commentor questioned the basis for returning funds to contractors through credits on monthly bills and wanted to know the legal basis and significance of this provision. Under the general authorities of the Project Act, the Adjustment Act, and the Department of Energy Organization Act, the Secretary of Energy is authorized to provide for the application of revenues. Furthermore, the 1941 General Regulations provided for credit adjustments, and the same concept is being carried forward to these General Regulations.

This section has not been modified, and credits will be given for any obligation of the United States to return funds to the contractors. Specifically, the Hoover Power Plant Act provided for credits for the amounts advanced by non-Federal purchasers for funds contributed for the uprating program. Adjustments to monthly bills would be another example of a return of funds by credits.

Section 904.12 Capacity Reductions

(Deleted from final General Regulations)

All comments received on this section of the revised proposed General Regulations agreed that the formula proposed to be used during capacity reductions needed revision. The entire section has been deleted from the General Regulations because Western agrees that the formula was incorrect.

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Western has concluded that the question of capacity reductions is more appropriately covered in the contract negotiations.

Section 904.13 Disputes

Several commentors submitted recommendations for changes to Western's dispute resolution proposal. In light of the substantive merit of the comments received by Western on this matter, and in an effort to eliminate unnecessary differences in dispute resolution procedures between Western and Reclamation, Western has amended this section.

As proposed, any dispute or disagreement as to interpretation or performance of these regulations shall be first presented to and decided by the Secretary of Energy, acting by and through the Administrator of Western. The decision of the Administrator shall be final and binding, unless a request for arbitration is received by the Administrator within 30 days after the date of decision by the Administrator, or the disputing party files a claim in a Federal district court within applicable statutory time limits. Western changed the reference to a Federal district court to a Federal court of competent jurisdiction. Commentors correctly noted that some disputes could be within the jurisdiction of the Federal Claims Court.

Commentors recommended that provisions be made for administrative appeal of the Administrator's decision to the Secretary of Energy. Western believes that injection of such an additional procedural requirement is legally unnecessary and only serves to lengthen the administrative process and increase the administrative burden for dispute resolution. The Department of Energy Organization Act clearly specifies that such matters are to be performed by the Secretary of Energy, acting by and through the Administrators of the various power marketing administrations. The clear congressional intent is not to burden, unnecessarily, the administrative process surrounding activities of the power marketing administrations. This is achieved by eliminating one level of the appeal process, thereby allowing a dispute to proceed in a more timely fashion. This specific intent provided for in the Department of Energy Organization Act does not apply to the administrative workings and relationships of Interior and its relationship to Reclamation.

A description of the changes made to the Disputes section follows. One major change to the section is the selection of the third arbitrator by the two initial arbitrators named to the panel or pursuant to the Commercial Arbitration Rules. This selection process is in lieu of the original proposal that the third arbitrator be selected by the Chief Judge of the Federal district court that would have jurisdiction of the matter, if taken directly to court. Selection of the third arbitrator by the two arbitrators chosen by the disputants provides additional assurance that the third arbitrator shall have subject matter experience and qualification.

The process for disputes has been changed; if arbitration is requested, the Administrator shall have 90 days from the date of receipt of the request to either concur or deny the request. If no action is taken by the Administrator within the 90 days, the request shall be deemed denied. If the Administrator concurs in the request for arbitration, the Administrator and the contractor shall each name an arbitrator to the panel of arbitrators within 30 days of receipt of the notice of concurrence by the Administrator. If there is more than one disputing contractor, they will collectively name one arbitrator to the panel. In the event the disputing contractors fail to collectively name an arbitrator within 15 days after their first meeting, the arbitrator shall be named in accordance with the applicable provisions of the Commercial Arbitration Rules of the American Arbitration Association. The two arbitrators named to the panel shall select a third member for the panel of arbitrators. This third arbitrator selection shall be completed within 30 days of the first meeting of the two arbitrators. In the event the two arbitrators fail to name the third arbitrator of the panel within the designated time, that arbitrator shall be selected in accordance with the Commercial Arbitration Rules of the American Arbitration Association. This selection process is in accord with comments received by Western and provides uniformity in the Western procedures and those of Reclamation.

The arbitration shall be limited to the issue submitted to the panel. The panel may interpret but shall not rewrite, change, or amend these General Regulations or the contracts for Hoover power. The arbitration shall be governed by the Commercial Arbitration Rules of the American Arbitration Association. The panel of arbitrators shall render a final decision within 60 days of the date of selection of the third arbitrator. A decision of any two of the arbitrators shall be deemed a final decision and, as such, shall be final and binding upon all parties involved in the dispute.

These changes to the dispute resolution process are made in view of the merit of the comments received by Western and are in compliance with applicable law.

904.14 Future Regulations

The comments on this section focused on the addition of a clarification that any future regulations or amendments would not have an adverse impact upon the existing contract rights and obligations of the allottees and the inclusion of a "most favored nation" clause. Both items were contained in the 1941 General Regulations that these General Regulations are replacing.

Western believes that any future promulgation of regulations or amendments hereto could not unilaterally impose adverse impacts upon existing contract rights and/or obligations. Given that such a disclaimer has been used in the past and that the allottees seem to agree on a need for such a disclaimer to these General Regulations, Western has included a provision that any future regulations or amendments would not have an adverse impact upon the existing contract rights and obligations of the contractors, and Western has included a "most favored nation" clause as paragraph (b) to § 904.14 which clarifies an approach applicable to Western's dealings with all contractors.

Executive Order 12291

Under the provisions of section 3 of Executive Order 12291, dated February 17, 1981, a regulatory impact analysis must be made prior to the publication of a major rule. These General Regulations are of a technical nature and are considered to be a nonmajor rule within the meaning of the Executive Order. Western has an exemption from sections 3, 4, and 7 of Executive Order 12291; accordingly, no clearance of these regulations by the Office of Management and Budget (OMB) is required.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), each agency, when required to publish a general notice of proposed rule, shall prepare for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the General Regulations relate to rates for electric service provided by Western. Under 5 U.S.C. 601(2), rates, prices, and services are not considered rules within the meaning of the Act. Furthermore, pursuant to section 605(b) of the

Regulatory Flexibility Act of 1980, the Secretary of Energy, acting by and through the Administrator of Western, hereby certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

Paperwork Reduction Act of 1980

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) requires that certain information collection requirements be approved by the OMB before information is demanded of the public. OMB has issued a final rule on the Paperwork Burdens on the Public (48 FR 13666) dated March 31, 1983. Ample opportunity was provided in the proposed rule for the interested public to participate in the development of the General Regulations. Nevertheless, this is at their sole election. There is no requirement that members of the public participating in the development of the General Regulations supply information about themselves to the Government. It follows that the General Regulations are exempt from the Paperwork Reduction Act.

National Environmental Policy Act

Pursuant to the National Environmental Policy Act of 1969, and Department of Energy regulations published in the **Federal Register** Notice (47 FR 7976) on February 23, 1982, as amended, Western evaluated the potential for environmental impact of the Boulder City General Consolidated Power Marketing Criteria or Regulations for the Boulder City Area Projects (Environmental Assessment No. DOE EA–0204). On May 2, 1983, the DOE executed a Finding of No Significant Impact for that proposal. Part of the original Criteria was a reference to the rate formula and application criteria that are now developed and proposed in this notice. At the time of the Criteria environmental assessment, the formula and its application were determined to not, either by themselves or cumulatively, have a significant impact. Now that these General Regulations are better defined, Western has made a determination by memorandum, which is available for public review. The determination, which was based upon environmental considerations, concludes that this action does not involve a major Federal action having a significant adverse impact on the human environment, and the preparation of an environmental assessment or an environmental impact statement is not required.

Documents in Public File

The following materials relative to the research performed, analyses made, and other information supporting the General Regulations are available for inspection and copying at the Boulder City Area Office:

1. Letter dated August 8, 1986, to All Interested Parties (with copies of comments received) from Western regarding comments on the revised proposed General Regulations.

2. **Federal Register** Notice (51 FR 28555) dated August 7, 1986, "Charges for the Sale of Power From the Boulder Canyon Project; Notice of a Meeting Between Department of Energy Officials and Representatives of the Contractors of Hoover Dam Power; Reopening of Comment Period."

3. Notice of Environmental Determination, dated May 1986, for the Boulder Canyon Project.

4. Letter dated May 22, 1986, to All Interested Parties (with copies of comments received) from Western regarding comments on the revised proposed General Regulations.

5. **Federal Register** Notice (51 FR 12333) dated April 10, 1986, "Proposed Rule; Additional Information."

6. Reporter's Transcript of Proceedings, Public Comment Forum on revised Proposed General Regulations, February 12, 1986.

7. Statement dated February 12, 1986, to Western from the Colorado River Commission regarding "Request for Additional Analysis and Information Regarding Western Area Power Administration's Proposed General Regulations for the Charges for the Sale of Power From the Boulder Canyon Project."

8. **Federal Register** Notice (51 FR 3471) dated January 28, 1986, "Notice of Public Comment Forum."

9. **Federal Register** Notice (51 FR 4376) dated February 4, 1986, "Future Notice of Public Comment Forum."

10. Letter dated January 10, 1986, to All Interested Parties from Western (with copies of comments received) regarding the revised proposed General Regulations published in the **Federal Register** (50 FR 49050) on November 29, 1985.

11. Reporter's Transcript of Proceedings, Public Comment Forum on Revised Proposed General Regulations, December 19, 1985.

12. **Federal Register** Notice (50 FR 49050) dated November 29, 1985, "Proposed Rulemaking and Request for Comments," announcing the revised proposed General Regulations.

13. "Memorandum for Tom Hine Re Hoover Conformed Criteria From Jack L. Stonehocker on Behalf of Colorado River Commission of Nevada, Arizona Power Authority, Metropolitan Water District of Southern California and the Cities of Burbank, Glendale, Pasadena, Anaheim, Azusa, Banning, Colton, and Riverside," received November 5, 1985.

14. Letter dated October 23, 1985, to Western from Colorado River Commission regarding draft supplemental comments on the Base Charge, the Contribution Charge, and the charge on excess energy.

15. Letter dated October 21, 1985, to All Interested Parties (with copies of comments received) from Western regarding the proposed General Regulations published in the **Federal Register** (50 FR 20732) on May 17, 1985.

16. Letter dated September 24, 1985, to Western from Colorado River Commission, transmitting three draft position papers in respect to the "Hoover Items."

17. **Federal Register** Notice (50 FR 37835) dated September 18, 1985, "10 CFR, Part 903, Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions."

18. **Federal Register** Notice (50 FR 30447) dated July 26, 1985, "Notice of Delay in Comment Period on the Proposed General Regulations for the Charges for the Sale of Power From the Boulder Canyon Project."

19. Letter dated July 5, 1985, to Western from Colorado River Commission transmitting a list of items which the Hoover allottees propose to discuss during the delay on the General Regulations, entitled "Hoover Items."

20. Letter dated July 1, 1985, to Colorado River Commission from Western responding to a request for delay in the public process on the General Regulations.

21. Proposed Power Delivery Schedule, July 1, 1985, presentation and slides.

22. Reporter's Transcript of Proceedings, Public Comment Forum on Proposed General Regulations, July 1, 1985.

23. Letter dated June 28, 1985, to All Interested Parties from Western regarding questions asked at the public information forum on June 4, 1985.

24. Letter dated June 27, 1985, to Western from Jack L. Stonehocker, Colorado River Commission, requesting a delay in the proceedings on the proposed General Regulations.

25. Draft Power Repayment Study, June 4, 1985, presentation.

26. Memorandum dated June 3, 1985, from Gary D. Miller, Attorney for the General Counsel, regarding "Boulder

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Canyon Project/Repayment of the Flood Control Allocation."

27. Proposed General Regulations Public Information Forum, June 4, 1985, presentation and slides.

28. Letter dated May 3, 1985, to Colorado River Commission and Arizona Power Authority from Western responding to an April 18, 1985, letter on conformance of the "General Consolidated Power Marketing Criteria or Regulations for the Boulder City Area Projects" to the Hoover Power Plant Act of 1984.

29. **Federal Register** Notice (50 FR 20732) dated May 17, 1985, "Proposed Rulemaking," announcing the proposed General Regulations.

30. Letter dated April 18, 1985, to Western from Colorado River Commission and Arizona Power Authority regarding the conformance of the "General Consolidated Power Marketing Criteria or Regulations for the Boulder City Area Projects" to the Hoover Power Plant Act of 1984.

31. Memorandum dated April 5, 1985, from Department of the Interior's Assistant Solicitor, Branch of Water and Power, Division of Energy and Resources, regarding "Repayment of Flood Control Allocation—Boulder Canyon Project."

32. Letter dated March 27, 1985, to Western from Bureau of Reclamation regarding "Post-1987 Repayment Requirements of the Boulder Canyon Project."

33. **Federal Register** Notice (50 FR 7823) dated February 26, 1985, announcing corrections to the "Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects."

34. **Federal Register** Notice (49 FR 50582) dated December 28, 1984, publishing the "Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects."

35. **Federal Register** Notice (49 FR 25230) dated June 20, 1984, "18 CFR Part 300, Filing Requirements and Procedures for Approving the Rates of Federal Power Marketing Administrations."

36. "1984 Hoover Operation Concepts Report," jointly written by Bureau of Reclamation and Western.

37. Delegation Order 0204–108, published in the **Federal Register** (48 FR 55664) December 14, 1983.

38. **Federal Register** Notice (48 FR 20872) dated May 9, 1983, publishing the "General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects."

39. Consolidated Power Marketing Plan Public Information Forum, August 29, 1980, presentation and slides.

40. Consolidated Power Marketing Plan Public Information Forum, May 16, 1980, presentation and slides.

41. Department of the Interior, Bureau of Reclamation "Uprating Program, Hoover Powerplant, Special Report," issued May 1980, supplemented January 9, 1985, and revised September 1985.

42. Consolidated Power Marketing Plan Public Information Forum, February 22, 1980, presentation and slides.

43. Consolidated Power Marketing Plan Public Information Forum, November 30, 1979, proceedings of the meeting.

44. Department of Energy Order RA 6120.2, Power Marketing Administration Financial Reporting, September 20, 1979.

45. October 31, 1975, General Accounting Office letter regarding the operation of Hoover Powerplant.

46. Bureau of Reclamation Report Number REC–ERC–83–8, Generation Efficiency Loading Algorithm.

47. Worksheets on analysis made on the development of Base Charge.

48. Worksheets on analysis made on the development of Contribution Charge.

49. Worksheets on analysis made on allocation of excess energy in California.

List of Subjects in 10 CFR Part 904

Electric power rates.

For the reasons set out in the preamble, Title 10, Chapter III of the Code of Federal Regulations is amended as set forth below.

Issued at Golden, Colorado, November 14, 1986.

William H. Clagett,

Administrator.

Chapter III of Title 10 of the Code of Federal Regulations is amended by adding a new Part 904 to read as follows:

PART 904—GENERAL REGULATIONS FOR THE CHARGES FOR THE SALE OF POWER FROM THE BOULDER CANYON PROJECT

Subpart A—Power Marketing

Sec.

904.1 Purpose.
904.2 Scope.
904.3 Definitions.
904.4 Marketing responsibilities.
904.5 Revenue requirements.
904.6 Charge for capacity and firm energy.
904.7 Base charge.
904.8 Lower basin development fund contribution charge.
904.9 Excess capacity.
904.10 Excess energy.
904.11 Lay off of energy.
904.12 Payments to contractors.
904.13 Disputes.
904.14 Future regulations.

Authority: Reclamation Act of 1902 (32 Stat. 388); Boulder Canyon Project Act of 1928 (43 U.S.C. 617 *et seq.*); Boulder Canyon Project Adjustment Act of 1940 (43 U.S.C. 618 *et seq.*); Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); Colorado River Storage Project Act of 1956 (43 U.S.C. 620 et *seq.*); Colorado River Basin Project Act of 1968 (43 U.S.C. 1501 et *seq.*); and Hoover Power Plant Act of 1984 (98 Stat. 1333 (43 U.S.C. 619 et *seq.*)).

Subpart A—Power Marketing

§ 904.1 Purpose.

(a) The Secretary of Energy, acting by and through the Administrator of the Western Area Power Administration (Administrator), is authorized and directed to promulgate charges for the sale of power generated at the Boulder Canyon Project powerplant, and also to promulgate such general regulations as the Secretary finds necessary and appropriate in accordance with the power marketing authorities in the Reclamation Act of 1902 (32 Stat. 388) and all acts amendatory thereof and supplementary thereto, and the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*).

(b) In accordance with the Boulder Canyon Project Act of 1928 (43 U.S.C. 617 *et seq.*), as amended and supplemented (Project Act); the Boulder Canyon Project Adjustment Act of 1940 (43 U.S.C. 618 *et seq.*), as amended and supplemented (Adjustment Act); the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); and the Hoover Power Plant Act of 1984 (98 Stat. 1333 (43 U.S.C. 619 *et seq.*)) (Hoover Power Plant Act); the Western Area Power Administration (Western) promulgates these General Regulations for the Charges for the Sale of Power From the Boulder Canyon Project (General Regulations) defining the methodology to be used in the computation of the charges for the sale of power from the Boulder Canyon Project.

§ 904.2 Scope.

These General Regulations are effective June 1, 1987, and shall apply as the basis for computation of all charges applicable to any sale of power from the Boulder Canyon Project after May 31, 1987. "General Regulations for Power Generation, Operation, Maintenance, and Replacement at the Boulder Canyon Project, Arizona/Nevada" are the subject of a separate rulemaking of the Department of the Interior under 43 CFR Part 431. The "General Regulations for Generation and Sale of Power in Accordance with the Boulder Canyon Project Adjustment Act" (1941 General Regulations) dated May 20, 1941, and the

"General Regulations for Lease of Power" dated April 25, 1930, terminate May 31, 1987.

§ 904.3 Definitions.

The following terms wherever used herein shall have the following meanings:

(a) "Billing Period" shall mean the service period beginning on the first day and extending through the last day of any calendar month.

(b) "Boulder City Area Projects" shall mean the Boulder Canyon Project, the Parker-Davis Project, and the United States entitlement in the Navajo Generating Station (a feature of the Central Arizona Project).

(c) "Capacity" shall mean the aggregate of contingent capacity specified in section 105(a)(1)(A) and the contingent capacity specified in section 105(A)(1)(B) of the Hoover Power Plant Act (43 U.S.C. 619).

(d) "Central Arizona Project" shall mean those works as described in section 1521(a) of the Colorado River Basin Project Act of 1968 (43 U.S.C. 1501 et seq.), as amended.

(e) "Colorado River Dam Fund" or "Fund" shall mean that special fund established by section 2 of the Project Act and which is to be used only for the purposes specified in the Project Act, the Adjustment Act, the Colorado River Basin Project Act of 1968, and the Hoover Power Plant Act.

(f) "Contract" shall mean any contract for the sale of Boulder Canyon Project capacity and energy for delivery after May 31, 1987, between Western and any contractor.

(g) "Contractor" shall mean the entities entering into contracts with Western for electric service pursuant to the Hoover Power Plant Act.

(h) "Excess Capacity" shall mean capacity which is in excess of the lesser of: (1) Capacity that Hoover Powerplant is capable of generating with all units in service at a net effective head of 498 feet, or (2) 1,951,000 kW.

(i) "Excess Energy" shall mean energy obligated from the Project pursuant to section 105(a)(1)(C) of the Hoover Power Plant Act (43 U.S.C. 619).

(j) "Firm Energy" shall mean energy obligated from the Project pursuant to section 105(a)(1)(A) and section 105(a)(1)(B) of the Hoover Power Plant Act (43 U.S.C. 619).

(k) "Overruns" shall mean the use of capacity or energy, without the approval of Western, in amounts greater than Western's contract delivery obligation in effect for each type of service provided for in the Contract.

(l) "Project" or "Boulder Canyon Project" shall mean all works authorized by the Project Act, the Hoover Power Plant Act, and any future additions authorized by Congress, to be constructed and owned by the United States, but exclusive of the main canal and appurtenances authorized by the Project Act, now known as the All-American Canal.

(m) "Replacements" shall mean such work, materials, equipment, or facilities as determined by the United States to be necessary to keep the Project in good operating condition, but shall not include (except where used in conjunction with the word "emergency" or the phrase "however necessitated") work, materials, equipment, or facilities made necessary by any act of God, or of the public enemy, or by any major catastrophe.

(n) "Uprating Program" shall mean the program authorized by section 101(a) of the Hoover Power Plant Act (43 U.S.C. 619(a)) for increasing the capacity of existing generating equipment and appurtenances at the Hoover Powerplant, as generally described in the report of the Department of the Interior, Bureau of Reclamation, entitled "Hoover Powerplant Uprating, Special Report," issued in May 1980, as supplemented in the report entitled, "January 1985 Supplement (revised September 1985) to Hoover Powerplant Uprating, Special Report-May 1980."

§ 904.4 Marketing responsibilities.

(a) Capacity and energy available from the Project will be marketed by Western under terms of the Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects (Conformed Criteria) published in the Federal Register (49 FR 50582) on December 28, 1984. Western shall dispose of capacity and energy from the Project in accordance with section 105(a)(1) of the Hoover Power Plant Act (43 U.S.C. 619(a)(1)), these General Regulations, and the Contracts between the Contractors and Western.

(b) Procedures for the scheduling and delivery of capacity and energy shall be provided for in the Contracts between the Contractors and Western.

§ 904.5 Revenue requirements.

(a) Western shall collect all electric service revenues from the Project in accordance with applicable statutes and regulations and deposit such revenues into the Colorado River Dam Fund. All receipts from the Project shall be available for payment of the costs and financial obligations associated with the Project. The Secretary of the Interior is responsible for the administration of the Colorado River Dam Fund.

(b) The electric service revenue of the Project shall be collected through a charge, computed to be sufficient, together with other net revenues from the Project, to recover the following costs and financial obligations associated with the Project over the appropriate repayment periods set out in paragraph (c) of this section:

(1) Annual costs of operation and maintenance;

(2) Annual interest on unpaid investments in accordance with appropriate statutory authorities;

(3) Annual repayment of funds, and all reasonable costs incurred in obtaining such funds, advanced by non-Federal Contractors to the Secretary of the Interior for the Uprating Program;

(4) The annual payment of $300,000 to each of the States of Arizona and Nevada provided for in section 618(c) of the Adjustment Act and section 1543(c)(2) of the Colorado River Basin Project Act (43 U.S.C. 1501 *et seq.*) (Basin Act), as amended or supplemented;

(5) Capital costs of investments and Replacements, including amounts readvanced from the United States Treasury (Treasury);

(6) Repayment to the Treasury of the advances to the Colorado River Dam Fund for the Project made prior to May 31, 1987, for which payment was deferred because of a deficiency in firm energy generation due to a shortage of available water, as provided for in article 14(a) of the 1941 General Regulations and section 8 of the Boulder City Act of 1958 (72 Stat. 1726), as shown on the books of accounts of Reclamation as of May 31, 1987;

(7) Repayment to the Treasury of the first $25,000,000 of advances made to the Colorado River Dam Fund deemed to be allocated to flood control by section 617a(b) of the Project Act as provided by section 618f of the Adjustment Act; and

(8) Any other financial obligations of the Project imposed in accordance with law.

(c) The Project repayment period shall extend to the final year allowed under applicable cost recovery criteria. The revenue for the costs and financial obligations set out in paragraph (b) of this section shall be collected over the following repayment periods:

(1) The repayment period for advances made to the Colorado River Dam Fund from funds advanced to the Secretary of the Interior by non-Federal entities for the Uprating Program and associated work shall be the period commencing with the first day of the month following completion of each segment of the Uprating Program, or

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June 1, 1987, whichever is later, and ending September 30, 2017;

(2) The repayment period for the payments to the Treasury of the advances to the Colorado River Dam Fund for the Project which were payable prior to May 31, 1987, but which were deferred pursuant to article 14(a) of the 1941 General Regulations and section 8 of the Boulder City Act of 1958, shall be the power contract period beginning June 1, 1987, and ending September 30, 2017. Such repayment period is based on a 50-year repayment period beginning June 1, 1937, adjusted for the periods the initial payments were deferred;

(3) The repayment period for the payment to the Treasury of the first $25,000,000 of advances made to the Colorado River Dam Fund deemed to be allocated to flood control by section 617a(b) of the Project Act and deferred by section 618(f) of the Adjustment Act shall be the 50-year period beginning June 1, 1987;

(4) The repayment period for advances to the Colorado River Dam Fund for the Project made on or after June 1, 1937, and prior to June 1, 1987, shall be the 50-year period beginning June 1 immediately following the year of operation in which the funds were advanced;

(5) The repayment period for investments, other than for the visitor facilities authorized by section 101(a) of the Hoover Power Plant Act (43 U.S.C. 619(a)), made from Federal appropriations on or after June 1, 1987, shall be a 50-year period beginning with the first day of the fiscal year following the fiscal year the investment is placed in service; and

(6) The repayment period for the visitor facilities authorized by section 101(a) of the Hoover Power Plant Act (43 U.S.C. 619(a)) shall be the 50-year period beginning June 1, 1987, or when substantially completed, as determined by the Secretary of the Interior, if later.

(d) Annual costs for operation and maintenance and payments to States as set out in paragraph (b) of this section shall be collected as long as revenues accrue from the operation of the Project.

(e) Surplus revenues will also be collected for transfer from the Colorado River Dam Fund for contribution to the Lower Colorado River Basin Development Fund pursuant to section 1543(c)(2) of the Basin Act as amended by the Hoover Power Plant Act to provide revenue for the purposes of sections 1543(f) and 1543(g) of the Basin Act.

(f) All annual costs will be calculated based on a Federal fiscal year. To accommodate the transition from the pre-1987 operating year of June 1 to May 31 to a fiscal year, there will be a 4-month transition period beginning June 1, 1987, and ending September 30, 1987.

(g) If integrated operation of the Boulder Canyon Project with other Boulder City Area Projects and other Federal projects on the Colorado River, as provided in § 904.9 of these General Regulations, confers a direct power benefit upon such other Boulder City Area Projects and such other Federal projects, or if a direct power benefit is conferred by other Boulder City Area Projects or other Federal projects on the Colorado River upon the Boulder Canyon Project, Western shall equitably apportion such benefits and appropriate charges among the Boulder Canyon Project, other Boulder City Area Projects, and other Federal projects on the Colorado River.

§ 904.6 Charge for capacity and firm energy.

The charge for Capacity and Firm Energy from the Project shall be composed of two separate charges; a charge to provide for the basic revenue requirements, as identified in paragraphs (b), (c), and (d) of § 904.5 of these General Regulations (Base Charge), and a charge to provide the surplus revenue for the Lower Colorado River Basin Development Fund contribution, as identified in paragraph (e) of § 904.5 of these General Regulations (Lower Basin Development Fund Contribution Charge).

§ 904.7 Base charge.

(a) The Base Charge shall be developed by the Administrator and promulgated in accordance with appropriate DOE regulations. The Base Charge shall be composed of a capacity component and an energy component.

(b) The capacity component of the Base Charge shall be a dollar per kilowattmonth amount determined by (1) multiplying the estimated average annual revenue requirement developed pursuant to paragraphs (b), (c), and (d) of § 904.5 of these General Regulations by 50 percent, and (2) dividing the results of that multiplication by the estimated average annual kW rating of the Project, and (3) dividing the quotient by 12. The total estimated kW rating will be based on the powerplant output capability with all units in service at 498 feet of net effective head or 1,951,000 kW, whichever is less. The capacity component of the Base Charge shall be applied each billing period to each kW of rated output to which each Contractor is entitled by Contract. Adjustments to the application of the capacity component shall be made during outages which cause significant reductions in capacity as provided by the Contract.

(c) The energy component of the Base Charge shall be a mills per kWh amount determined by (1) multiplying the estimated average annual revenue requirements developed pursuant to paragraphs (b), (c), and (d) of § 904.5 of these General Regulations by 50 percent and (2) dividing the results of that multiplication by the average annual kWh estimated to be available from the Project. The energy component of the Base Charge shall be applied to each kWh made available to each Contractor, as provided for by Contract, except for the energy purchased by Western, at the request of a Contractor, to meet that Contractor's deficiency in Firm Energy pursuant to section 105(a)(2) of the Hoover Power Plant Act (43 U.S.C. 619(a)(2)) and section F of the Conformed Criteria, and that Contractor's Uprating Program credit carry forward, as provided by Contract.

(d) Application of the Base Charge to capacity and energy overruns will be provided for by Contract. The capacity component and the energy component of the Base Charge shall be applied each billing period for each Contractor.

(e) The Base Charge shall be reviewed annually. The Base Charge shall be adjusted either upward or downward, when necessary and administratively feasible, to assure sufficient revenues to effect payment of all costs and financial obligations associated with the Project pursuant to paragraphs (b), (c), and (d) of § 904.5 of these General Regulations. The Administrator shall provide all Contractors an opportunity to comment on any proposed adjustment to the Base Charge pursuant to the DOE's power rate adjustment procedures then in effect.

§ 904.8 Lower basin development fund contribution charge.

(a) The Lower Basin Development Fund Contribution Charge will be developed by the Administrator of Western on the basis that the equivalent of 4½ mills or 2½ mills per kWh, as appropriate, required to be included in the rates charged to purchasers pursuant to section 1543(c)(2) of the Basin Act, as amended by the Hoover Power Plant Act, shall be collected from the energy sales of the Project.

(b) The Lower Basin Development Fund Contribution Charge shall be applied to each kWh made available to each Contractor, as provided for by Contract, except for the energy purchased by Western at the request of a Contractor to meet:

(1) That Contractor's deficiency in Firm Energy, pursuant to section 105(a)(2) of the Hoover Power Plant Act (43 U.S.C. 619(a)(2)) and section F of the Conformed Criteria; and

(2) That Contractor's Uprating Program credit carry forward as provided by Contract. A 4½ mills per kWh charge shall be applied to each kWh made available to an Arizona Contractor, and a 2½ mills per kWh charge shall be applied to each kWh made available to a California or Nevada Contractor; provided, that after the repayment period of the Central Arizona Project, a 2½ mills per kWh charge shall be applied to each kWh made available to the Arizona, California, and Nevada Contractors. The Lower Basin Development Fund Contribution Charge shall be applied to energy overruns. The Lower Basin Development Fund Contribution Charge shall be applied each billing period for each Contractor.

§ 904.9 Excess capacity.

(a) If the Uprating Program results in Excess Capacity, Western shall be entitled to such Excess Capacity to integrate the operation of the Boulder City Area Projects and other Federal Projects on the Colorado River. Specific criteria for the use of Excess Capacity by Western will be provided by Contract. All Excess Capacity not required by Western for the purposes specified by Contract will be available to all Contractors at no additional cost on a pro rata basis based on the ratio of each Contractor's Capacity allocation to the total Capacity allocation.

(b) Credits for benefits resulting from project integration shall be determined by Western and such benefits shall be apportioned in accordance with paragraph (9) of § 904.5 of these General Regulations.

§ 904.10 Excess energy.

(a) If excess Energy is determined by the United States to be available, it shall be made available to the Contractors, in accordance with the priority entitlement of section 105(a)(1)(C) of the Hoover Power Plant Act (43 U.S.C. 619(a)(1)(c)). After the annual first- and second-priority entitlement to excess energy has been obligated for delivery, Western will make available one-third of the third-priority excess energy to the Arizona Power Authority, one-third to the Colorado River Commission of Nevada, and one-third to the California Contractors.

(b) Western will make available third-priority excess energy to the California Contractors based on the following formula:

$F = \frac{1}{2}(A/B + C/D)(E)$: Where:
A = Contractor's allocated Capacity
B = Total California allocated Capacity
C = Contractor's allocated Firm Energy
D = Total California allocated Firm Energy
E = Third-priority Excess Energy available to California
F = Contractor's third-priority Excess Energy

(c) The charge for all Excess Energy shall be the charge for Boulder Canyon Project Firm Energy existing at the time the Excess Energy is made available to the Contractor, including the appropriate Lower Basin Development Fund Contribution Charge.

§ 904.11 Lay off of energy.

(a) If any Contractor determines that it is temporarily unable to utilize Firm Energy or Excess Energy, Western will, at the Contractor's request, attempt to lay off the Firm Energy or Excess Energy the Contractor declares to be available for lay off, pursuant to the provisions for lay off of energy specified in the Contract.

(b) If Western is unable to lay off such energy, or if the Contractor fails to request Western to attempt to lay off the energy, the Contractor will be billed for the Firm Energy or Excess Energy that was available to the Contractor but could not be delivered to the Contractor or sold to another customer.

(c) In the event that Western must lay off the Firm Energy or Excess Energy at a rate lower than the effective Firm Energy rate, the Contractor will be billed for the difference between the amount that Western would have received at the then existing Firm Energy rate, including the appropriate Lower Basin Development Fund Contribution Charge, and the amount actually received.

§ 904.12 Payments to contractors.

(a) Funds advanced to the Secretary of the Interior for the Uprating Program and costs reasonably incurred by the Contractor in advancing such funds, as approved by Western, shall be returned to the Contractor advancing the funds during the Contract period through credits on that Contractor's power bills. Appropriate credits will be developed and applied pursuant to terms and conditions agreed to by contract or agreement.

(b) All other obligations of the United States to return funds to a Contractor shall be repaid to such Contractor through credits on power bills, with or without interest, pursuant to terms and conditions agreed to by contract or agreement.

§ 904.13 Disputes.

(a) All actions by the Secretary of Energy, acting by and through the Administrator of Western, shall be binding unless or until reversed or modified in accordance with provisions contained herein.

(b) Any disputes or disagreements as to interpretation or performance of the provisions of these General Regulations under the responsibility of Western shall first be presented to and decided by the Administrator. The Administrator shall be deemed to have denied the Contractor's contention or claim if it is not acted upon within ninety (90) days of its having been presented.

(c) The decision of the Administrator shall be final unless, within thirty (30) days from the date of such decision, a written request for arbitration is received by the Administrator. The Administrator shall have ninety (90) days from the date of receipt of a request for arbitration either to concur in or deny in writing the request for such arbitration. Failure by the Administrator to take any action within the ninety (90) day period shall be deemed a denial of the request for arbitration. In the event of a denial of a request for arbitration, the decision of the Administrator shall become final. Upon a decision becoming final, the disputing Contractor's remedy lies with the appropriate Federal court. Any claim that a final decision of the Administrator violates any right accorded the Contractor under the Project Act, the Adjustment Act, or Title I of the Hoover Power Plant Act is barred unless suit asserting such claim is filed in a Federal court of competent jurisdiction within one (1) year after final refusal by the Administrator to correct the action complained of, in accordance with section 105(h) of the Hoover Power Plant Act.

(d) When a timely request for arbitration is received by the Administrator and the Administrator concurs in writing, the disputing Contractor and the Administrator shall, within thirty (30) days after receipt of notice of such concurrence, each name one arbitrator to the panel of arbitrators which will decide the dispute. All arbitrators shall be skilled and experienced in the field pertaining to the dispute. In the event there is more than one disputing Contractor, the disputing Contractors shall collectively name one arbitrator to the panel of arbitrators. In the event of their failure collectively to name such an arbitrator within fifteen (15) days after their first meeting, that arbitrator shall be named as provided in the Commercial Arbitration Rules of the American Arbitration Association. The two arbitrators thus selected shall name a third arbitrator within thirty (30) days

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of their first meeting. In the event of their failure to so name such third arbitrator, that arbitrator shall be named as provided in the Commercial Arbitration Rules of the American Arbitration Association. The third arbitrator shall act as chairperson of the panel. The arbitration shall be governed by the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be limited to the issue submitted. The panel of arbitrators shall not rewrite, change, or amend these General Regulations or the Contracts of any of the parties to the dispute. The panel of arbitrators shall render a final decision in this dispute within sixty (60) days after the date of the naming of the third arbitrator. A decision of any two of the three arbitrators named to the panel shall be final and binding on all parties involved in the dispute.

§ 904.14 Future regulations.

(a) Western may from time to time promulgate such additional or amendatory regulations as deemed necessary for the administration of the Project in accordance with applicable law; provided, that no right under any Contract shall be impaired or obligation thereunder be extended thereby.

(b) Any modification, extension, or waiver of any provision of these General Regulations granted for the benefit of any one or more Contractors shall not be denied to any other Contractor.

(c) Western reserves the right to terminate, modify, or extend these regulations, either partially or in their entirety, to the extent permitted by law or existing contract.

[FR Doc. 86-26686 Filed 11-24-86; 11:45 am]

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Friday
November 28, 1986

Part III

Department of Education

34 CFR Parts 668 and 690

Student Assistance General Provisions and Pell Grant Program; Final Regulations

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DEPARTMENT OF EDUCATION

34 CFR Parts 668 and 690

Student Assistance General Provisions and Pell Grant Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: Starting with the 1987–88 award year, the Secretary of Education is eliminating the Alternate Disbursement System of making awards to students under the Pell Grant Program. Under that System, the Secretary, rather than the institution the student is attending, calculates and disburses Pell Grant awards to students. The Secretary is amending the Pell Grant Program regulations, 34 CFR Part 690, to revoke Subpart H, "Administration of Grant Payments—Alternate Disbursement System (ADS)," and to eliminate references to the Alternate Disbursement System in the other subparts of Part 690 as well as in the Student Assistant General Provisions regulations, 34 CFR Part 668. The Secretary is eliminating the Alternate Disbursement System because he believes that the reasons for operating the System no longer justify the cost to the Department of operating it.

The Pell Grant Program is authorized by section 411 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1070a.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later, if Congress takes certain adjournments. It should be noted, however, that these regulatory amendments apply only to the award to student financial assistance under the Pell Grant Program for award years beginning on or after July 1, 1987. If you want to know the effective date of these regulations, call or write the Department of Education (ED) contact person.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Sellers, Chief, Pell Grant Policy Section, or Ms. Carney McCullough, Pell Grant Program Specialist, Office of Student Financial Assistance, U.S. Department of Education, [ROB–3, Room 4318], 400 Maryland Avenue SW., Washington, DC 20202. Telephone (202) 472–4300.

SUPPLEMENTARY INFORMATION: The Secretary developed two systems for paying Pell Grants to students, the Regular Disbursement System (RDS) and the Alternate Disbursement System (ADS). Under the RDS, the institution determines whether a student is eligible to receive a Pell Grant and the amount of that grant. It then disburses the grant to the student by crediting the student's institutional account or paying the grant directly to the student. The Secretary provides money to RDS institutions for these disbursements.

The ADS was developed to accommodate institutions that did not wish to involve themselves directly in the administration of the Pell Grant Program. Under the ADS, the institution determines whether a student is eligible to receive a Pell Grant, but ED determines the amount of that grant. ED then disburses the grant to the student by mailing a check to the student. Thus under the ADS, ED essentially carries out many financial aid office functions for an ADS institution, at no cost to the institution, that RDS institutions carry out directly or through a financial aid service.

Each RDS and ADS institution receives an administrative cost allowance of $5 for each student who receives a Pell Grant at that institution. In addition, the ADS costs ED over $1 million annually to administer, yet the ADS serves only 35–40 thousand of the 2.83 million students who receive Pell Grants annually. ED believes that it is no longer necessary or appropriate to continue this subsidy for ADS institutions and that ADS institutions will be able to administer the Pell Grant Program properly under the RDS by either hiring their own staff or by contracting with financial aid consultants with the expertise to provide that administration.

Revisions to the Notice of Proposed Rulemaking

No significant changes have been made to the Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** of August 22, 1986, 51 FR 30190–30191.

Summary of Comments and Responses

A summary of the comments received and the Department's response to these comments follow.

Comment: Several commenters noted that administering the Pell Grant Program under the RDS would require additional work by institutions currently under ADS. As a result, these institutions would need to hire additional staff or to contract with a financial aid consultant at an increased cost to the institution.

Response: No change has been made. The Secretary already pays an administrative cost allowance of $5 per Pell Grant recipient to both ADS and RDS institutions to assist in defraying the cost of administering the Pell Grant Program. The Secretary believes that it is no longer appropriate to subsidize ADS institutions in their participation in the Pell Grant Program and is therefore placing them on an equal financial footing with RDS institutions.

Comment: Several commenters felt that the elimination of the ADS would force small institutions without appropriate administrative or financial capabilities to withdraw from participation in the Pell Grant Program, and as a result, their eligible students would no longer receive Pell Grants.

Response: No change has been made. It is not the Department's intent to force ADS institutions to withdraw from the Pell Program and, therefore, prevent eligible students from receiving Pell Grants. These institutions can hire employees in their financial aid office with the requisite background and experience or can employ a financial aid consultant to perform these Pell Grant functions.

Comment: Several commenters indicated that their ADS institutions would convert to RDS but that ADS institutions which convert will need substantial training in the administration of the Pell Grant Program under the RDS.

Response: No change has been made. The Secretary will offer training and technical assistance to institutions which convert from ADS to RDS in the administration of the Pell Grant Program.

Comment: Several commenters suggested alternative ways for the Secretary to save money without completely eliminating ADS such as eliminating the administrative cost allowance for ADS institutions and charging a processing fee to institutions utilizing ADS.

Response: No change has been made. The Secretary has considered alternatives such as those mentioned before proposing the elimination of ADS. The administrative cost allowance for institutions with Pell Grant recipients is prescribed by law and cannot be eliminated. It is impractical for the Secretary to continue to administer the ADS and charge the participants a user fee.

Moreover, the processing fee that ED would charge would probably not be significantly less than the cost of employing a financial aid consultant to administer the Pell Grant Program.

Comment: Three commenters pointed out that some institutions participate in the Pell Grant Program through ADS because institutional dictates prohibit the schools from accepting Federal funds which are not designated for specific students. The ADS allows institutions to act as intermediaries for the students.

Response: No change has been made. Whether an institution participates under ADS or RDS, Pell Grant monies are designated for specific students, and institutions do not select the recipients of Pell Grants. Therefore, institutions such as those described by the commenters continue to act only as intermediaries under the RDS.

Comment: One commenter suggested that the ADS be phased out in order to assist students who enrolled in programs with the belief that Federal funds would be available to them for the duration of their program.

Response: No change has been made. Phasing out the ADS would be extremely costly to the Department and would not benefit a large number of students.

Comment: Several commenters supported the Secretary's proposal to eliminate the ADS as a means of cost saving without sacrificing the availability of funds for student financial assistance and as an opportunity to bring equity to the Pell Grant Program, thereby facilitating the processing of financial aid for students.

Response: The Secretary agrees with the commenters and is eliminating the ADS.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291.

They are classified as nonmajor because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant impact on a substantial number of small entities. Most of the institutions that participate in ADS have very few Pell Grant recipients. Those institutions which are considered small entities and have a large number of Pell Grant recipients will still be able to participate in the Pell Grant Program by contracting with financial aid services for the calculation and payment of grants rather than expanding their administrative functions.

Paperwork Reduction Act of 1980

These regulations do not contain any information collection requirements and are, therefore, not subject to the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) which governs such requirements.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 668

Administrative practice and procedures, Colleges and universities, Consumer protection, Education loan programs—education, Grant programs—education, Student aid.

34 CFR Part 690

Administrative practice and procedure, Education, Education of disadvantaged, Grant programs—education, Student aid.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provisions of these regulations.

(Catalog of Federal Domestic Assistance: No. 84.063, Pell Grant Program)

Dated: November 14, 1986.

William J. Bennett,

Secretary of Education.

The Secretary amends Parts 668 and 690 of Title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for Part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141; 50 U.S.C. App. 482, unless otherwise noted.

§ 668.14 [Amended]

2. In § 668.14, "or" is inserted after the semicolon at the end of paragraph (c)(1)(ii), "; or" is removed at the end of paragraph (c)(2) and a period is inserted in that place, and paragraph (c)(3) is removed.

§ 668.21 [Amended]

3. In § 668.21, paragraph (a)(3) is removed.

§ 668.22 [Amended]

4. In § 668.22, in paragraph (a)(1), the term "(Regular Disbursement System)" is removed.

5. In § 668.32, paragraph (d) is revised to read as follows:

§ 668.32 Statement of educational purpose.

* * * * *

(d) Until a student who is applying for title IV, HEA program assistance under the Pell Grant, campus-based, or State Student Incentive Grant programs files a Statement of Educational Purpose with the institution, an institution may not, for any period of instruction, disburse funds to the student under any title IV, HEA program.

(Authority: 20 U.S.C. 1091).

§ 668.33 [Amended]

6. In § 668.33, "or" is inserted after the semicolon at the end of paragraph (a)(1)(i), "; or" is removed at the end of paragraph (a)(1)(ii) and a period is inserted in that place, and paragraph (a)(1)(iii) is removed.

§ 668.41 [Amended]

7. In § 668.41, the phrase ", including the Pell Grant Program under the Alternate Disbursement System (ADS)," is removed.

§ 668.85 [Amended]

8. In § 668.85, in paragraph (c)(1), the phrase "or to the Secretary if the student is attending an institution which is under the alternate disbursement system," is removed.

PART 690—PELL GRANT PROGRAM

9. The authority for Part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a, unless otherwise noted.

Subpart H—[Removed]

10. Subpart H of Part 690 (§§ 690.91–690.101) is removed.

§ 690.2 [Amended]

11. In § 690.2, paragraph (b), the definitions for "ADS institution" and "RDS institution" are removed.

§ 690.3 [Amended]

12. In § 690.3, paragraph (c) is removed.

§ 690.7 [Amended]

13. In § 690.7, paragraph (b), introductory text, the phrase "(or to the Secretary if it is an ADS institution)" is removed, the term "RDS" is removed in paragraph (c) introductory text, and paragraph (d) is removed.

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14. Section 690.61 is revised to read as follows:

§ 690.61 Submission process and deadline for student aid report.

(a) *Submission process.* (1) In order to receive a Pell Grant at an institution, a student shall submit a valid Student Aid Report (SAR) to that institution.

(2) An institution is entitled to rely on SAR information except under conditions set forth in §§ 668.16(f) and 668.60.

(b) *Student Aid Report deadline.* (1) Except as noted in § 668.60, to receive a Pell Grant for an award year, a student shall submit the relevant parts of the SAR to his or her institution by June 30 of that award year.

(2) Except as noted in § 680.60, to receive a Pell Grant for an award year, a student shall submit the relevant parts of the SAR to an institution while he or she is still enrolled and eligible for payment at that institution.

Authority: 20 U.S.C. 1070a.

15. In § 690.65, paragraphs (a), (b), and (c) are revised to read as follows:

§ 690.65 Transfer student; attendance at more than one institution during an award year.

(a) If a student who receives a Pell Grant at one institution subsequently enrolls at a second institution in the same award year, the student shall submit an SAR to the second institution to receive a grant at the second institution. (The institution shall follow the procedures regarding transfer students set forth in 34 CFR 668.14.)

(b) The second institution shall calculate the student's award according to § 690.63.

(c) The second institution may pay a Pell Grant for only that portion of the award year in which a student is enrolled at that institution. The grant amount must be adjusted if necessary to ensure that the grant does not exceed the student's Scheduled Pell Grant for that award year.

* * * * *

§ 690.66 [Amended]

16. In § 690.66, paragraph (d) is removed.

17. In §§ 690.3, 690.63, 690.66, the heading for Subpart G of Part 690 (§§ 690.71–690.84), 690.71, 690.72, 690.73, and 690.74 the terms "Regular Disbursement System" and "RDS" are removed wherever they appear.

§ 690.73 [Amended]

18. In § 690.73, paragraph (e) is removed.

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November 28, 1986

Part IV

Environmental Protection Agency

State FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting

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DATE: N
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ENVIRONMENTAL PROTECTION AGENCY

[OPP-00234; FRL 3120-4]

State FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the State FIFRA Issues Research and Evaluation Group (SFIREG). The meeting will be open to the public.

DATE: Monday, December 15, and Tuesday, December 16, 1986, beginning at 8:30 a.m. on December 15 and ending by mid-afternoon on December 16.

ADDRESS: The meeting will be held at: Hyatt-Regency—Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202, (703-486-1234).

FOR FURTHER INFORMATION CONTACT: By mail:

Philip H. Gray, Jr., Office of Pesticide Programs (TS-766C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1115C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7096).

SUPPLEMENTARY INFORMATION: The tentative agenda for the meeting thus far includes the following topics:

1. A status report by the Director, Office of Pesticide Programs, on ongoing FIFRA-State issues.
2. Action items from the July 1986 meeting of the SFIREG.
3. Regional reports.
4. Working Committee Reports.
5. Presentations by the Office of Pesticide Program's Registration Division on issues of interest to State Lead Agencies.
6. Presentations by the Office of Compliance Monitoring on issues of interest to State Lead Agencies.
7. Other topics as appropriate.

Dated: November 17, 1986.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 86-27002 Filed 11-26-86; 11:17 am]

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LIST OF PUBLIC LAWS

Note: The listing of public laws enacted during the second session of the 99th Congress has been completed.

[Last listing: Nov. 20]

The listing will be resumed when bills are enacted into public law during the first session of the 100th Congress which convenes on January 6, 1987.

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